TITLE: FEDERAL REGISTER.

REEL NO: 7 OF 8

VOLUME: 54

ISSUES: 220-236
PAGES: 47667-51008

DATE: NOVEMBER 16 - DECEMBER 11, 1989

PUBLICATION NO: 2575.00

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11-16-89
Vol. 54 No. 220

federal register

Thursday
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11-16-89
Vol. 54 No. 220
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federal register

Thursday
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WHEN: December 7, at 9:00 a.m.
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1100 L Street NW., Washington, DC.
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Presidential Documents

Title 3—

The President

Proclamation 6067 of November 14, 1989

American Education Week, 1989

By the President of the United States of America

A Proclamation

Education is a lifelong process of growth and discovery that, for each child, begins within the inimitable shelter of the family and extends through years of schooling and experience. During American Education Week, we pause to reflect upon the importance of a strong educational system to our well-being as individuals and as a Nation.

America's schools play an important role in nurturing our children's intellectual and social development. By helping their students grow in knowledge, skill, and reasoning ability, teachers not only open the doors of opportunity for them, but also help them to become responsible, productive citizens. Giving young people a greater understanding of our Nation's history and preparing them to exercise their rights and responsibilities as citizens, America's schools help strengthen our system of self-government.

Our Nation's Founding Fathers clearly understood the vital connection between liberty and learning. They knew that only an educated and informed public can keep a free and democratic government. Like Thomas Jefferson, James Madison, our fourth President, was a strong advocate of public education. "Knowledge will forever govern ignorance," he once wrote, "and a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

Two hundred years after our Nation's founding, we can be grateful for the dedication to learning that is so deeply ingrained in American tradition. However, standing on the threshold of the 21st century also compels us to examine the state of American education and consider what it holds for our future. A good education is a lasting treasure in its own right, but is also essential to keeping the United States strong and prosperous in an increasingly competitive world.

In September, I met with the Nation's Governors in an historic Summit to discuss the challenges facing us in working toward excellence in education. The President's Education Summit with the Governors brought forth unanimous agreement on the significance of this issue to the future of the Nation and to the quality of life for every American. We will build upon the vision of our Founding Fathers in establishing national education goals and in mobilizing a state-by-state effort to restructure our educational system.

Improving our Nation's education system is not a job for its chief executives alone, however. The challenge and responsibility for the Nation's future must be met by each citizen in every walk of life. It will require the sustained involvement of parents, teachers, local school administrators, business leaders, elected officials, and the public at large. It will require recognizing the value of lifelong learning, raising our expectations, holding ourselves accountable for results, and never settling for the minimum. Every American can help ensure that young people receive the quality education they need and deserve. We can do so by participating in parent-teacher organizations; by serving on our local school boards; and by supporting private institutions, adult education, and literacy programs. We can also lend our support to our local libraries

and museums, and encourage our children to take advantage of these valuable educational resources.

This year, as we observe American Education Week and reflect upon its theme, "Learning and Liberty: Our Roots, Our Future," let us renew our determination to improve America's educational system. Strengthening our schools is one of the greatest investments we can make in our Nation's future.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning November 12, 1989, as American Education Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27138
Filed 11-14-89; 4:25 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Nov. 14 on signing Proclamation 6067, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 46).

Rules and Regulations

Federal Register
Vol. 54, No. 220
Thursday, November 16, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1478

1989 Tree Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises 7 CFR part 1478 to set forth the regulations for the 1989 Tree Assistance Program (1989 TAP) authorized by the Disaster Assistance Act of 1989 (Pub. L. 101-82). These regulations provide the criteria to be used in making assistance available to eligible producers for certain 1989 tree or tree seedling losses. The Commodity Credit Corporation (CCC) will: (1) Reimburse eligible persons for part of the eligible costs of planting seedlings to offset losses of trees planted in any year that were planted to produce annual crops for commercial purposes and were lost due to freeze or related condition in 1989; and, (2) reimburse eligible persons for part of the eligible costs of replanting seedlings planted in 1988 or 1989 that were planted to produce trees to be harvested for commercial purposes and were lost due to drought or related condition in 1989. 1989 TAP payments may cover 65 percent of the eligible costs of planting that portion of the eligible loss which, after adjustment for normal mortality, exceeds a 45 percent loss as determined under these regulations. The regulations set forth standards for determining losses and payments. In addition, the regulations set forth applicable payment limitations and other program provisions. 1989 TAP assistance, generally, will be available only for approved costs incurred after the application for assistance is approved.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013 (Tel. (202) 447-6221).

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request. The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Tree Assistance Program; Number 10.TAP, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Subtitle B of Title I of the Disaster Assistance Act of 1989 (Pub. L. 100-82) ("the 1989 Act") provides that, subject to certain limitations, the Secretary of Agriculture shall make assistance available to eligible orchardists who planted trees for commercial purposes but lost such trees as a result of freeze or related condition in 1989, as determined by the Secretary. To be an eligible orchardist, a person must produce annual crops from trees for commercial purposes and own 500 acres or less of such trees. Subtitle B provides that eligible orchardists may receive reimbursement of 65 percent of the eligible costs of replanting trees lost due to freeze or related condition in 1989 in excess of 45 percent mortality (adjusted for normal mortality). However subtitle B provides that the total amount of such payments that a "person" may receive may not exceed $25,000, and also provides that the Secretary shall issue regulations defining the term "person" for these purposes. The Act specifies that such regulations shall conform to the extent practicable to the regulations issued under section 1001 of the Food Security Act of 1985. These regulations are set forth at 7 CFR part 1498.

Subtitle C of title I of the 1989 Act provides that, subject to certain limitations, the Secretary of Agriculture shall provide assistance to eligible tree farmers that planted tree seedlings in 1988 or 1989 to produce trees to be harvested for commercial purposes but lost such seedlings as a result of drought or related condition in 1989, as determined by the Secretary. Under subtitle C, to be an "eligible tree farmer" the applicant must be a person who grows trees for harvest for commercial purposes and owns 1,000 acres or less of such trees. Under subtitle C, an eligible person may receive reimbursement of 65 percent of the cost of replanting seedlings lost due to drought or related condition in 1989 in excess of 45 percent morality (adjusted for normal mortality). The total amount of such payments that a "person" may receive is, by the terms of the Act, limited to $25,000.

The Act, for assistance made under both subtitle B and C, permits assistance to be made available in the form of seedlings rather than through a direct payment. Under either subtitle, value of such seedlings may not exceed $25,000 per "person."

Section 151 of the Act contains a further limitation for both subtitles. Under that section, no person is eligible to receive assistance if the person has "qualifying gross revenues" in excess of $2 million annually, as determined by

the Secretary. The Act defines "qualifying gross revenues" to mean: (1) If a majority of the person's annual income is received from farming, ranching, and forestry operations; the gross revenues from the person's farming, ranching, and forestry operations; and (2) if less than a majority of the person's annual income is from farming, ranching, and forestry operations, the person's gross revenue from all sources.

For purposes of determining a "person", 7 CFR part 1478 provides that the provisions of 7 CFR part 1497 shall be used. The provisions of 1497.8 refer only to farming operations. However, the gross revenue determination requires the review of an entity's non-farm income. Accordingly for purposes of determining whether two or more entities shall be considered one "person", the income from all entities, whether or not an individual entity is engaged in farming, shall be used.

The Act provides for using CCC to carry out the program and provides that the Secretary and the CCC may issue such regulations as may be needed. The Act directs the Secretary or CCC, as appropriate, to issue regulations for Title I programs as soon as practicable and without regard to the requirements for notice and public participation in rulemaking prescribed in 5 U.S.C. 553 or in any directive of the Secretary. Accordingly, this rule is issued without prior public comment.

Generally these regulations limit the reimbursable costs to those incurred after an application for assistance has been approved. Also, the costs must generally be those approved in the application. Further, as required by sections 125 and 135 of the Act, provision is made in the regulations to avoid duplicative payments where assistance was provided under another program such as the Conservation Reserve Program (7 CFR part 704) or the Forestry Incentives Program (7 CFR part 701).

The regulations allow only for assistance to reimburse producers to plant seedlings to replace the lost trees or seedlings, as appropriate. Under these regulations, commercial nurseries will not generally be eligible for assistance. With respect to assistance made available in accordance with subtitle B of the Act, the applicant must be engaged in the business of growing trees for the production of annual crops for commercial purposes. Similarly, with respect to assistance made available in accordance with subtitle C of the Act, the person must be in the business of growing trees for harvest, and must have suffered losses of plants planted as tree seedlings. Assistance will not be made available for plants grown at the site by the applicant from seed, or grown for resale as live plants.

It has been determined that providing relief in the form of seedlings would be costly and inefficient due to distribution difficulties and the lack of seedlings available for distribution. Accordingly, all assistance shall be made by CCC by means of a check issued by CCC.

For CCC, the provisions of this part will be administered through State and county Agricultural Stabilization and Conservation Service (ASC) committees. The regulations limit the per/seedling and per/acre TAP reimbursements which the county committees may approve without the concurrence of the State ASC Committee.

For purposes of the Paperwork Reduction Act, the OMB Number 0560–0079 has been assigned for the information collection requirements of this part. Send comments regarding this collection of information to: Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 7 CFR Part 1478

Administrative practices and procedures, Natural resources, and Trees.

Final Rule

Accordingly, subchapter B, chapter XIV of title 7 of the Code of Federal Regulations is amended by revising part 1478 to read as follows:

PART 1478—1989 TREE ASSISTANCE PROGRAM

Sec.

1478.1 General statement.
1478.2 Administration.
1478.3 Definitions.
1478.4 Program availability.
1478.5 Qualifying loss.
1478.6 Eligible costs.
1478.7 Payment.
1478.8 Obligations of an eligible owner.
1478.9 Payment limitation.
1478.10 Liens and claims of creditors; Set-offs.
1478.11 Appeals.
1478.12 Misrepresentation and scheme or device.
1478.13 Estates, trusts, and minors.
1478.14 Deaths, incompetency, or disappearance.
1478.15 Other regulations.
1478.16 Paperwork Reduction Act assigned numbers.

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1421 *note.*

§ 1478.1 General statement.

The regulations in this part set forth the terms and conditions of the 1989 Tree Assistance Program (1989 TAP) authorized by title I of the Disaster Assistance Act of 1989 (the Act). Within specified limits, the Commodity Credit Corporation (CCC) is authorized by the Act to:

(a) Reimburse eligible persons for part of the cost of replanting seedlings to offset losses by an eligible orchardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to freeze or related condition in 1989; and,

(b) Reimburse eligible tree farmers for part of the cost of replanting seedlings planted in 1988 or 1989 that were planted to produce trees to be harvested for commercial purposes where the seedlings were lost due to drought or related condition in 1989.

Such assistance may not exceed 65 percent of the eligible reseeding costs actually incurred by the producer with respect to those elibible losses which, after adjustments for normal mortality, exceed a percentage loss of 45 percent, as determined by CCC.

§ 1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1478.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

"Annual gross revenue" means with respect to a person, as defined in Part 1497 of this title:

(i) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations; and,

(ii) Receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources. However, the determinations made in accordance with § 1497.8 of this chapter shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

"Approving official" means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

"ASCS" means the Agricultural Stabilization and Conservation Service.

"CCC" means the Commodity Credit Corporation.

"County" means a county or similar geographic area as determined by CCC.

"DASCO" means the Deputy Administrator, or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

"Eligible owner" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes:

(i) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(ii) Any Indian organization or entity chartered under the Indian Reorganization Act;

(iii) Any tribal organization under the Indian Self-Determination and Assistance Act; and,

(iv) Any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part.

Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded. In addition, in determining whether an individual or other entity is an eligible owner, such person, as determined under part 1497 of this chapter, must with respect to a request for relief for losses due to freeze or related condition in 1989, not own more than 500 acres of trees which produce annual crops for commercial purposes and with respect to a request for relief for losses due to drought or related condition in 1989, not own more than 1,000 acres of trees produced for harvest for commercial purposes. Also, in order to be eligible for payments under this part a person, as defined under Part 1497 of this chapter, must not also have annual gross revenue in excess of $2 million, as determined under this part.

"Eligible trees" or *"eligible seedlings"* means trees or seedlings as appropriate, which are determined by CCC to have been planted for:

(i) The production of wood products, fruit, nuts, syrup, or similar products, or,

(ii) Harvest as Christmas trees.

Such trees or seedlings must be planted in the ground and may not be trees or seedlings planted in containers, or in other devices which are not placed in the ground, trees or seedlings grown from seed at the site, trees or seedlings produced for resale in a live condition, ornamental trees or seedlings, bushes, shrubs, vines and similar plants, and windbreaks, shelterbelts and wildlife enhancement plantings. In addition, if the request for assistance is for losses from a freeze or related condition, the eligible trees must also be trees that have been planted for commercial purposes to produce annual crops; and, if the request for relief is for losses due to drought or related condition, the plants must be tree seedlings planted in 1988 or 1989 for harvest for commercial purposes.

"Executive Vice President" means the Executive Vice President, CCC, or a designee of the Executive Vice President.

"Harvest" means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

"Individual stand" means an area of eligible trees which are tended to by an eligible owner as a single operation, whether or not such trees are planted in the same field or similar location, as determined by CCC. Differing species of trees in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of drought susceptibility.

"Local county office" means with respect to individual stands of eligible trees which are grown on a farm:

(i) Which has been assigned an ASCS farm serial number, the county ASCS office which services such farm; or

(ii) which has not been assigned an ASCS farm serial number, the county ASCS office which services the county in which such stand is located.

"Normal mortality" with respect to a request for relief for drought or related condition, means the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the period between the time of planting and the time of the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling or tree survival rates in the local area, as determined by the County ASC committee in accordance with instructions of DASCO.

"Operator" means a person who is in general control of the tree farming operations as determined by CCC.

"Seedling" means a tree which was planted in the ground for commercial purposes and is of a size which CCC determines is:

(i) Normally planted in the ground and;

(ii) Does not exceed the size which is normally considered seedling size for the particular species of an eligible tree.

"State" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

"State committee", *"State office"*, *"county committee"*, or *"county office"*, means the respective ASC committee or ASCS office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in part 719 of this title.

§ 1478.4 Program availability.

A request by an eligible owner for assistance under this part must be made on or before June 30, 1990. Eligible owners shall not receive assistance under this part with respect to losses of seedlings which were:

(a) Planted under the Conservation Reserve Program; or

(b) The subject of any cost-share assistance or other assistance under any other Federal program, unless approved in writing by DASCO.

§ 1478.5 Qualifying loss.

(a) A person shall be eligible to receive assistance under this part with respect to losses due to freeze or related condition in 1989 or drought or related condition in 1989 only if such owner is an eligible owner, as defined in this part and has sustained a qualifying loss of eligible tree seedlings or trees as determined by CCC. The only type of losses which may be considered qualifying are the following:

(1) A loss by an eligible owner who is an orchardist who is the owner of eligible trees planted in any year for commercial purposes which are lost as a result of a freeze or related condition in 1989 as determined by the county ASC committee in accordance with instructions of DASCO or

(2) A loss by an eligible tree farmer who grows trees for harvest for commercial purposes and is the owner of eligible tree seedlings planted for such commercial purposes in 1988 or 1989 which were lost as a result of drought or related condition in 1989 as determined by the county ASC committee in accordance with instructions of DASCO.

Qualifying loss determinations shall be made on an individual stand basis.

(b) A qualifying loss shall be the loss for the individual stand of eligible tree seedlings or eligible trees, as appropriate, after taking into account the normal mortality of such seedlings, trees, or seedlings and trees as appropriate, on such stand, in excess of 45 percent mortality (adjusted for normal mortality). Qualifying losses shall not include losses which could have been prevented through readily-available horticultural measures.

§ 1478.6 Eligible costs.

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of planting seedlings, not in excess of the number of seedlings or trees constituting the qualifying loss, to the extent that CCC determines that such costs are reasonable, and are to replace the number of trees or seedlings constituting the qualifying loss. If the costs are to replace lost seedlings, such costs for replacement seedlings shall be limited by the cost needed to plant seedlings that are as similar as possible in size and value to those originally planted and subsequently destroyed. If the costs are to replace lost trees, the costs shall only be for replacement seedlings of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall be only the costs which are the cost of the seedlings, site preparation measures that are both normal cultural practices for the type of individual stand being reestablished and necessary to ensure successful plant survival, chemicals and nutrients if needed to ensure successful plant survival, and labor used to physically plant such seedlings as based on standard labor rates as determined by the county committee. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements. Eligible costs shall not include those costs incurred prior to filing an application for participation in the program, unless specifically otherwise approved by DASCO.

(b) Eligible costs shall not include costs incurred for replanting species of seedlings differing significantly from the species of the seedlings or trees constituting the qualifying loss except as approved by CCC. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred.

(c) Eligible costs shall only include costs approved within the limits set by this part including, but not limited to, those limits set forth in paragraphs (a) and (f) of this section, which have been actually incurred by the eligible owner and for which the eligible owner has presented adequate documentation. Further, except as otherwise authorized by DASCO, eligible costs shall not include costs for a practice or activity which has not been completed.

(d) The amount of assistance which shall be paid by CCC, shall not exceed 65 percent of the eligible costs actually incurred by an eligible applicant from replanting the qualifying loss as determined by CCC.

(e) Notwithstanding any other provision of this part, an application for payment shall not be approved by the county committee without the written approval of the State committee if such payment would exceed:

(1) For timber and wood seedlings, $.25 per seedling;

(2) For Christmas tree seedlings, $.50 per seedling;

(3) For other seedlings, $5.00 per seedling; or

(4) An amount, determined on a per acre individual stand basis taking into account the amount of the eligible tree seedling loss, which is greater than:

(i) For land planted to timber and wood seedlings, 75 percent of the average county dryland cropland value.

(ii) For Christmas tree seedlings, 100 percent of the average county dryland cropland value; and

(iii) For all other seedlings, 250 percent of the average county dryland cropland value.

(f) The State committee may not, without the written approval of DASCO, approve an application for payment, if such payment would exceed 150 percent of the amounts specified in paragraph (e) of this section.

§ 1478.7 Payment.

(a) Applications for payment shall be filed by the eligible owner with the local ASCS office and shall certify and set forth accurately the number of seedlings or trees which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered.

(b) (1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and conditions of this part, provided the applicant is not a county committee member or an ASCS employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all ASCS employees except an application which may be submitted by the State Executive Director, or by a State Committee member.

(3) DASCO, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambigious and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(5) An applicant shall be notified in writing of the action taken with respect to an application by the appropriate official.

§ 1478.8 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on a form approved by CCC and must also submit all documentation requested by the appropriate official which is necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents; and

(3) Comply with all applicable noxious weed laws.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county ASC committee, or DASCO, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

§ 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses in 1989 due to freeze or related condition shall not exceed $25,000.

(b) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses in 1989 due to drought or related condition shall not exceed $25,000.

§ 1478.10 Liens and claims of creditors: set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 13 of this title shall be applicable to this part.

§ 1478.11 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 780 of this title.

§ 1478.12 Misrepresentation and scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program; (b) made any fraudulent representation; or (c) misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

In either case all moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CCC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severably liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies as will apply.

§ 1478.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The minor establishes the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency of disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1478.15 Other regulations.

In addition to any other regulations as may be applicable, the following regulations shall also apply to this part:

(a) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(b) Part 790 of this title, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply with the Program;

(d) Part 796 of this title, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403 of this chapter, Interest on Delinquent Debt.

§ 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and the OMB Number 0560–0079 has been assigned.

Signed at Washington, DC on November 7, 1989.

John A. Steven,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–26686 Filed 11–15–89; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS Number 1217–89]

RIN 1115–AB14

Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation, and by Aircraft

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule designates the Hancock International Airport, Syracuse, New York, as a port of entry for aliens arriving by aircraft; deletes Hogansburg, New York and St. Juste, Maine as "Class B" ports of entry; and redesignates St. Aurelie, Maine from a "Class A" port of entry to "Class B". "Class B" ports may be utilized by aliens who at the time of applying for

admission are lawfully in possession of valid alien registration receipt cards or valid non-resident alien border-crossing cards, or are admissible without documents under the documentation waivers contained in 8 CFR part 212. Due to increasing numbers of vessels arriving at Syracuse and St. Aurelie, it is necessary that each be designated a port of entry to be staffed by inspectors of the Immigration and Naturalization Service.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Gene Paz, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633–4033.

SUPPLEMENTARY INFORMATION: Under the present Immigration and Naturalization Service (INS) organization, the District Office in Buffalo, New York has jurisdiction over the state of New York, except that part within the jurisdiction of the New York District Office and the United States Immigration Offices at Toronto, Ontario, Canada and Montreal, Quebec, Canada. Therefore, Hancock International Airport at Syracuse, New York falls within the jurisdiction of Buffalo.

Scheduled international air traffic began arriving at Hancock International Airport, Syracuse, New York, on January 5, 1988. There are currently four daily scheduled arrivals by a major carrier as well as several commuter flights. During fiscal year 1988, 36,501 United States citizens and 52,623 alien passengers were inspected by officers of the INS.

The "Class B" port of entry at St. Juste, Maine was closed by the U.S. Customs Service in 1965, and the port of entry at Hogansburg, New York was closed several years ago. Traffic in the area now utilizes the port of entry at Massena, New York.

The St. Aurelie, Maine port of entry has now been changed from a "Class A" port to a "Class B" port due to its remoteness. The new designation will still allow INS to accommodate the applications for entry by local woodsmen and sportsmen who do not require INS documentation. As no permanent INS personnel are assigned to St. Aurelie, Maine, aliens requiring documentation should be referred to a "Class A" port of entry.

Section 100.4(c)(2) deletes Hogansburg, New York from Class B—District 7; deletes St. Aurelie, Maine from Class A—District 22; deletes St. Juste, Maine from Class B–District 22; and redesignates St. Aurelie, Maine to Class B—District 22.

Section 100.4(c)(3) designates Syracuse, New York to District 7—Buffalo, New York.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this final rule will not have significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, chapter I, part 100 of title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act; 8 U.S.C. 1103.

2. In § 100.4(c)(2) District numbers 7 and 22 are revised and in § 100.4(c)(3) District No. 7 is revised to read as follows:

§ 100.4 Field service.

* * * * *

(c) * * *

(2) * * *

District No. 7—Buffalo, N.Y.

Class A

Albany, N.Y.
Alexandria Bay, N.Y.
Buffalo, N.Y.
Cape Vincent, N.Y.
*Champlain, N.Y.
*Chateaugay, N.Y.
Clayton, N.Y.
*Fort Covington, N.Y.
Lewiston, N.Y.
*Massena, N.Y.
*Mooers, N.Y.
*Niagara Falls, N.Y.
*Ogdensburg, N.Y.
Oswego, N.Y.
Rochester, N.Y.
Rouses Point, N.Y.
*Thousand Islands Bridge, N.Y.
*Trout River, N.Y.
Youngstown, N.Y.

Class B

Canaans Corner, N.Y.
Churubusco, N.Y.
Jamison's Line, N.Y.

Class C

Sodus Point, N.Y.

* * * * *

District No. 22—Portland, Maine

Class A

*Alburg, V.T.
*Alburg Springs, V.T.
*Bangor, Maine (the port of Bangor includes, among others, the port facilities at Bar Harbor, Belfast, Brewer, Bucksport Harbor, Prospect Harbor, Sandypoint, Seal Harbor, Searsport, and South West Harbor, Maine)
*Beebe Plain, V.T.
*Beecher Falls, V.T.
*Bridgewater, Maine
*Calais, Maine (includes Ferry Point and Milltown Bridges)
*Canaan, V.T.
*Coburn Gore, Maine
*Derby Line, V.T.
*Eastport, Maine
*East Richford, V.T.
*Fort Fairfield, Maine
*Fort Kent, Maine
*Hamlin, Maine
*Highgate Springs, V.T.
*Houlton, Maine
*Jackman, Maine
*Limestone, Maine
Lubec, Maine
*Madawaska, Maine
Morses Line, V.T.
*Newport, V.T.
*North Troy, V.T.
*Norton, V.T.
Pittsburgh, N.H.
Portland, Maine
*Richford, V.T. (includes the Pinnacle port of entry)
*St. Albans, V.T.
*Van Buren, Maine
*Vanceboro, Maine
*West Berkshire, V.T.

Class B

Daaquam, Maine
Easton, Maine
Eastcourt, Maine
Forest City, Maine
Knoxford Line Road (Mars Hill), Maine
Monticello, Maine
Orient, Maine
Robbinston, Maine
St. Aurelie, Maine
St. Pamphile, Maine

Class C

Bath, Maine
Boothbay Harbor, Maine
Kittery, Maine
Rockland, Maine
Wiscasset, Maine

* * * * *

(c) * * *

(3) * * *

District No. 7—Buffalo, N.Y.

Albany, N.Y., Albany County Airport
Massena, N.Y., Richards Field
Ogdensburg, N.Y., Ogdensburg Harbor
Ogdensburg, N.Y., Ogdensburg Municipal Airport
Rochester, N.Y., Rochester-Monroe County Airport
Rouses Point, N.Y., Rouses Point Seaplane Base
Syracuse, N.Y., Hancock International Airport
Watertown, N.Y., Watertown Municipal Airport

* * * * *

Dated: October 5, 1989.

Richard E. Norton,

Associate Commissioner Examinations, Immigration and Naturalization Service.

[FR Doc. 89-26921 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 238

[INS Number: 1041–89]

RIN 1115–AA58

Contracts With Transportation Lines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule updates the listings of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States and carriers which have entered into agreements with the U.S. Immigration and Naturalization Service to guarantee the passage through the United States in immediate and continuous transit by aliens destined to foreign countries. It is necessary to publish and record approved transportation line contracts and to make this information available to the public to allow the transportation lines to begin the services agreed to in the contract. This rule will facilitate travel of passengers while passing through the United States.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Donna Kay Barnes, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 7123, Washington, DC 20536, Telephone: (202) 633–2725.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service entered into agreements with Continental Airlines and Canadian Airlines International, Ltd. on January 30, 1987, with Nolisair International, Inc. (dba Nationair Canada) on July 14, 1987, with Admiral Cruise Lines and Northwest Airlines on May 27, 1987, with Delta Airlines Inc. on July 27, 1987, with Skylink Airlines and Aerocoach Aviation on September 28, 1987, with Comair, Inc. on November 16, 1987, with Canadian Airlines International, Ltd. on November 17, 1987, with B.C. Stena Line, Ltd. on June 5, 1989, and with American Trans Air, Air Alliance, Inc., Piedmont Airlines, Sun Country Airlines, Odyssey International, Quebecair/Air Quebec International (dba InterCanadian), Time Air, Inc. on July 1, 1989, and U.S. Air on July 6, 1989, to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the traveling public.

The Commissioner further entered into agreements with Nolisair International Inc. (dba Nationair Canada) on July 14, 1987, with Avensa Airlines, Catamaran Cruise Lines, and Skylink Airlines, Ltd. on November 18, 1987, with Canadian Airlines International, Ltd. on December 17, 1987, with Ontario Express, Ltd. (dba Canadian Partner) on May 20, 1988, with Malev Hungarian Airlines on June 5, 1989, with Resort Commuter, Inc. (dba Resorts) on June 15, 1989, and with Time Air, Inc., and Horizon Airlines Industries, Inc. on July 1, 1989 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the amendment merely updates the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that the rule will not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of Section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. This rule constitutes a notice to the public under 5 U.S.C. 552.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restrictions, and Transportation lines.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1103, and 1228.

2. Section 238.3(b) is amended by adding in alphabetical sequence the following transportation lines:

§ 238.3 [Amended]

* * * * *

(b) * * *

Avensa Airlines

* * *

Canadian Airlines International, Ltd.

* * *

Catamaran Cruiselines

* * *

Horizon Airlines Industries, Inc.

* * *

Malev Hungarian Airlines

* * *

Nolisair International, Inc. (dba Nationair Canada)

* * *

Ontario Express, Ltd. (dba Canadian Partner)

* * *

Resort Commuter, Inc. (dba Resorts)

* * *

Skylink Airlines, Ltd.

* * *

Time Air, Inc.

* * *

3. Section 238.4 is amended by adding in alphabetical sequence the following transportation lines under the following headings and by adding a new heading "At Shannon" to read as follows:

§ 238.4 [Amended]

* * * * *

* * *

At Bermuda

* * *

Continental Airlines

* * *

Piedmont Airlines

* * *

U.S. Air

* * *

At Calgary

* * *

Canadian Airlines International, Ltd.

* * *

Time Air, Inc.

* * *

At Edmonton

* * *

Canadian Airlines International, Ltd.

* * *

Delta Airlines, Inc.

* * *

At Freeport

Aerocoach Aviation International, Inc.

* * *

Comair, Inc.

* * *

Sun Country Airlines

• • •

At Montreal

Air Alliance, Inc.

• • •

Canadian Airlines International, Ltd.

• • •

Northwest Airlines

• • •

Odyssey International

• • •

Quebec/Air Quebec, Inc., (dba Intercanadian)

• • •

At Nassau

• • •

American Trans Air

• • •

Piedmont Airlines

• • •

Sun Country Airlines

• • •

At Shannon

American Trans Air

• • •

At Vancouver

Admiral Cruiselines

• • •

Canadian Airlines International, Ltd.

• • •

Delta Airlines, Inc.

• • •

Skylink Airlines

• • •

At Victoria

• • •

B.C. Stena Line, Ltd.

• • •

Canadian Airlines/International, Ltd.

• • •

At Toronto

• • •

Canadian Airlines International, Ltd.

• • •

Nolisair International, Inc., (dba Nationair Canada)

• • •

Odyssey International

• • •

Quebecair/Air Quebec, Inc., (dba Intercanadian)

• • •

At Winnipeg

• • •

Canadian Airlines International, Ltd.

• • •

• • • • •

Dated: September 11, 1989.

Richard E. Norton,

Associate Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-26922 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 245

[INS Number: 1003-89]

RIN 1115-AA31

Powers and Duties of Service Officers; Availability of Service Records, Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to rule document.

SUMMARY: This corrects errors in the final rule published on July 12, 1989, beginning at 54 FR 29440 regarding adjustment of status to that of persons admitted for permanent residence.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

§ 245.1 [Corrected]

1. On page 29441, in the first column, amendatory instruction 4, "(c)(i)" should read "(c)(1)".

§ 245.2 [Corrected]

2. On the same page, in the third column, in § 245.2(a)(5)(ii), "§ 245.2(a)(i)" should read "§ 245.2(a)(1)".

§ 245.6 [Corrected]

3. On the same page, in the same column, in § 245.6(a), "§ 245.3" should read "§ 245.6".

4. On the same page, in the same column, in § 245.6(d)(2), "§ 245.a.1(c)(i)" should read "§ 245a.1(c)(1)".

5. On page 29442, in the first column, in § 245.6(g)(2), the word "decision" should read "application", and in the 3rd line insert the words "the letter" immediately after the word "and" and before the word "is".

Dated: November 8, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-26837 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 245a

[INS Number: 1022-R-89]

RIN 1115-AA52

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to rule document.

SUMMARY: This corrects errors in the final rule published on July 12, 1989, beginning at 54 FR 29442 regarding aliens lawfully admitted for permanent residence.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone (202) 786-3658.

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100-204, SECTION 902

§ 245a. [Corrected]

1. On page 29455, in the second column, in the second line, amendatory instruction 5, remove the term "introductory text".

2. On the same page, in the third column, remove the 5 asterisks after the text in § 245a.4(c).

Dated: November 8, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-26838 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 286

[INS Number: 1212-89]

RIN 1115-AA30

INS Immigration User Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes the maintenance of the Immigration User Fee at the current $5.00 level for the period December 1, 1988, through November 30, 1990.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4705.

SUPPLEMENTARY INFORMATION: The INS published a proposed rule on June 9, 1989, at 54 FR 24714 that published the status of the Immigration User Fee Account as of December 1, 1988, and recommended that the Immigration User Fee (IUF) remain unchanged at the current $5.00 level for the period December 1, 1988, through November 30, 1990. No comments were received by the June 26, 1989, closing date for comments. Accordingly, the IUF in § 286.2 will remain unchanged.

AUTHORITY: 8 U.S.C. 1103, 1356.

Dated: September 26, 1989.

James L. Buck,

Acting Commissioner.

[FR Doc. 89-26920 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 316a

[INS Number: 1243-89]

Residence; Physical Presence and Absence; Recognized American Institutes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Beirut University College to the list of recognized American institutions conducting research abroad, in accordance with sections 316(b) and 319(b) of the Immigration and Nationality Act, as amended [8 U.S.C. 1427(b) and 1430(b)]. This rule will allow employees of Beirut University College who are active in scientific research on behalf of the institute to be eligible for constructive residence and (in the case of United States citizen employees) their spouses eligible for naturalization without regard to the normal residence requirements.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633-3946.

SUPPLEMENTARY INFORMATION: Section 316(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1427(b), allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted towards the residence requirements for naturalization. 8 CFR 316a.2 lists American institutions of research that have been recognized by the Attorney General to qualify for the constructive resident benefit. Absences abroad in the employment of these institutions will be counted as constructive residence in establishing the residence for naturalization, provided all conditions of 8 U.S.C. 1427(b) which lists the requirements for naturalization are satisfied.

Section 319(b) of the Act, supra, provides in pertinent part that any person whose spouse is (1) a citizen of United States, (2) employed by an American institute of research recognized as such by the Attorney General, (3) regularly stationed abroad, and who is in the United States at the time of naturalization and declares an intention to take up residence in the U.S. after citizen spouse terminates his/her employment, may be naturalized with certain exceptions from the regular requirements, including the residence requirements.

The addition of Beirut University College to the list of institutions conducting research abroad will enable alien employees and alien spouses of United States citizen employees of Beirut University College to be deemed eligible for the benefits of sections 316(b) and 319(b) of the Act, if regularly stationed abroad in the conduct of research.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely amends an existing list. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section (1)(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

Accordingly, part 316a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority citation for 8 CFR part 316a continues to read as follows:

Authority: 8 U.S.C. 1103, 1427, 1430, and 1443.

§ 316a.2 [Amended]

In § 316a.2, American institutions of research, the listing of organizations is amended by adding in alphabetical sequence "Beirut University College".

Dated: September 26, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-28919 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Lypho-Med, Inc. The sponsor informed FDA of the address change.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Lypho-Med, Inc., has advised FDA of a change of address from 4020 W. Division St., Chicago, IL 60651, to 2045 North Cornell Ave., Melrose Park, IL 60160. FDA is amending the regulations in 21 CFR 510.600(c) [1] and [2] to reflect this new address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) in the entry for "Lypho-Med, Inc.," and in the table in paragraph (c)(2) in the entry for "000469" by removing "4020 W. Division St., Chicago, IL 60651" and replacing it with "2045 North Cornell Ave., Melrose Park, IL 60160."

Dated: November 7, 1989.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-26916 Filed 11-15-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for Solvay Veterinary, Inc. to Solvay Animal Health, Inc. The sponsor informed FDA of the changes.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540, has informed FDA of a change of name and address to Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120. The agency is amending the regulations in 21 CFR 510.600(c) (1) and (2) to reflect the change in name and address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Solvay Veterinary, Inc.," and in the table in paragraph (c)(2) in the entry for "053501" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120..	053501
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
053501	Solvay Animal Health, Inc., 1201 Northland, Dr., Mendota Heights, MN 55120
* * * * *	

Dated: November 6, 1989.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-26915 Filed 11-15-89; 8:45 am]

BILLING CODE 4160-01-M

POSTAL SERVICE

39 CFR 232

Updating of Authority Citation

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to update the authority citation for part 232 by substituting a reference to the most recently enacted appropriation act.

EFFECTIVE DATE: November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service

PART 232—[AMENDED]

The authority citation for part 232 is revised to read as set forth below:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 606, Treasury, Postal Service and General Government Appropriations Act, 1990, Pub. L. 101-136; 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-26978 Filed 11-15-89; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BPD-302-N]

Medicare Program; Medicare as Secondary Payor and Medicare Recovery Against Third Parties; Publication of Court Orders

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Publication of Court Orders.

SUMMARY: In accordance with the November 9, 1989 order of the United States District Court for the District of Columbia, in *American Hospital Association, et al. v. Sullivan,* No. 88-2027 (RCL), HCFA is publishing that order and the Joint Stipulation and Order of August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Tom Stuber (301) 965-8899.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; and No. 13.773, Medicare Hospital Insurance).

Dated: November 14, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

In the United States District Court for the District of Columbia:

American Hospital Association, California Association of Hospitals and Health Systems, Federation of American Health Systems, Illinois Hospital Association, Indiana Hospital Association, Missouri Hospital Association, Tennessee Hospital Association, Wisconsin Hospital Association, Florida Hospital Association, and Texas Hospital Association, Plaintiffs, v. *Louis Sullivan, Secretary of The United States Department of Health and Human Services et al.* Defendants.

Order

The Court, having considered Plaintiffs' Second Motion For Preliminary Injunction, and having heard the arguments of counsel in support thereof and in opposition thereto, and having considered all other papers filed with respect thereto, is of the opinion that said Motion ought to be, and it is hereby, granted, in part, for the reasons stated in open court.

The Court expressly finds that enforcement of certain provisions [of] the Final Rule published by Defendants on October 11, 1989 at 54 FR 41716, 41742-41743 (to be codified at 42 CFR 411.54 and at 42 CFR 411.50(b) as relates to the definition of "prompt" or "promptly") (the "Final Rule") against the foregoing Plaintiffs and certain of their member hospitals, would be contrary to the Joint Stipulation and Order entered by this Court on August 24, 1988 ("Order of August 24, 1988") and would constitute violation of that Order by Defendants.

It is, therefore, ordered as ancillary to and consistent with this Court's Order of August 24, 1988, and pending final disposition of this cause:

1. That Defendants are ordered to publish this order and the Stipulation and Order of August 24, 1988, without Supplementary Information (as defined in 1 CFR 18.12 (1989)), in the **Federal Register** as an exception to the Final Rule as soon as possible and no later than November 16, 1989;

2. That by separate order the Plaintiff Intervenors' respective motions have been granted and all of the terms and protections afforded Plaintiff AHA members by the terms of this Order and the Order of August 24, 1988 shall apply to them and their member hospitals; and

3. The Plaintiffs are awarded their costs, expenses, and reasonable attorneys' fees incurred in preparing and filing their Second Motion for Preliminary Injunction and the accompanying documents, and may seek additional costs and fees in connection with the hearing. Counsel for Plaintiffs shall submit an itemized statement of costs, expenses, and attorneys' fees within 45 days of the entry of this Order. Defendants may file their objections within 15 days thereafter, and the Court will determine the award. No bond shall be required.

Royce C. Lamberth,

United States District Judge.

November 9, 1989, 5:40 p.m.

[Civil Action No. 88-2027 RCL]

American Hospital Association Plaintiff, v. *Otis R. Bowen, Secretary of the United States Department of Health and Human Services, et al.* Defendants.

Joint Stipulation and Order

Plaintiff's Motion for Preliminary Injunction came on for hearing in this case on Monday, August 15, 1988 at 2:00 p.m. At the conclusion of argument by counsel, the Court recessed to permit the parties to confer and to consider certain terms and conditions. Thereafter, the parties represented to the Court that in lieu of this Court's further consideration of the Motion, and until this Court's final disposition of this case, the parties have agreed to entry of a Stipulation and Order by the Court on the terms and conditions set forth below.

In consideration whereof, it is hereby stipulated and ordered until final disposition of this matter:

1. As an alternative to billing Medicare, the member hospitals ("member hospitals") of the American Hospital Association ("AHA") may bill liability insurance carriers mentioned in 42 U.S.C. 1395y(b)(1) for their full charges for inpatient hospital services (42 U.S.C. 1395x(b)) and outpatient hospital and hospital diagnostic services (42 U.S.C. 1395x(s)(2) (B) and (C)) rendered to Medicare beneficiaries, may file liens in accordance with state law, may execute said liens, and may bill and receive voluntary payment from willing insurance carriers.

2. Any and all funds collected or received by the member hospitals in the manner described in Paragraph 1 hereof shall be retained by each hospital in a separate, interest bearing account.

3. Any member hospital that wishes to obtain the benefit of this Stipulation and Order must send to the Department of Health and Human Services ("HHS") a copy of each bill to a willing liability insurer and each lien filed against liability insurance proceeds, and also must notify HHS and the beneficiary whenever payment is received. Defendants shall promptly notify counsel for the AHA of the agency to which such copies and notices shall be sent. This paragraph shall apply only to liens filed and bills sent, and payments received on these bills and liens, after the date of entry of this Stipulation and Order.

4. A. Defendants and their agents shall not terminate, institute termination proceedings, or threaten to terminate the Medicare provider agreement of any member hospital, or impose any other sanction against any member hospital if the member hospital is in compliance with the terms of paragraphs 1, 2, and 3 of this Stipulation and Order, on grounds that the member hospital has billed willing liability insurance carriers, filed liens, or received payment from said carriers after the date of entry of this Stipulation and Order under the circumstances as described in 42 U.S.C. 1395y(b)(1) or any manual provisions, directives, instructions, or rules or regulations, existing or proposed, that interpret or implement 42 U.S.C. 1395y(b)(1). Inadvertent failures to comply with this Stipulation and Order shall not constitute grounds for termination or other sanction, where such noncompliance is corrected within thirty (30) calendar days after notice thereof.

4. B. Pending final disposition by this Court, Defendants agree not to terminate any provider on grounds that the member hospital has billed willing liability insurance carriers, filed liens, or received payment from said carriers before the date of entry of this Stipulation and Order under the circumstances as described in 42 U.S.C. 1395y(b)(1) or any manual provisions, directives, instructions, or rules or regulations, existing or proposed, that interpret or implement 42 U.S.C. 1395y(b)(1). If defendants prevail, defendants will allow hospitals which have not complied thirty (30) calendar days to come into compliance.

5. A. Regardless of the outcome of this litigation, any member hospital which has collected or received funds from liability insurance and retained such funds in the manner described at paragraphs 1, 2, and 3 hereof, shall be entitled to payment in an amount equal to the amount Medicare would have paid under prevailing policy, principles and law, in each case, plus appropriate deductible and coinsurance amounts, as if the member hospital had billed Medicare initially and had not sought recovery from liability insurance. In the event it becomes necessary for a member hospital to bill Medicare for reimbursement for care provided in such cases, such bill shall be considered timely notwithstanding any other rule, law, regulation, policy, or procedure that

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might have otherwise barred such claim, provided that the bill is submitted to Medicare not later than sixty (60) calendar days after the entry of a final order in this case.

5. B. If the defendant prevails in this litigation, member hospitals establishing accounts as provided at paragraphs 1, 2, and 3 hereof shall disburse to Medicare or the beneficiary, as the Court may direct, the contents of such accounts by check or other legally negotiable instrument payable jointly to the appropriate Medicare beneficiary and to the Health Care Financing Administration, except as the Court may otherwise direct. Medicare agrees to accept responsibility for refunding the beneficiary as required by law. If plaintiff prevails in this litigation, member hospitals shall be entitled to such contents.

6. All parties agree that this Court is a proper forum in which to litigate the issues set out in the Complaint filed herein by the AHA, and neither party shall seek any other forum in which to litigate those issues. Defendants and AHA, individually and on behalf of its members, further agree to be bound by the determination of this court, subject to any appeal therefrom which may be available.

7. All member hospitals of the AHA shall have the benefit of this stipulation and order, except those that are plaintiffs in *Oregon Association of Hospitals, et al.* v. *Bowen*, CA No. CV 88–625FR, U.S.D.C. (Oregon) including the Oregon Association of Hospitals and its members listed therein. AHA shall provide, within fourteen (14) days, HCFA a list of its member hospitals.

8. In the event that either party is notified of a claim that the terms of this stipulation and order work an extreme financial hardship upon any beneficiary or provider, the parties hereto shall confer to determine if such situation can be resolved. If the situation cannot be resolved by such negotiations, the parties may seek the guidance of this Court.

9. The Court acknowledges that because of the agreement of the parties reflected in this stipulation and order, plaintiff AHA voluntarily withdraws at this time its Motion for Preliminary Injunction.

10. Counsel, by their signatures, warrant that they are authorized to agree to the terms of this Stipulation and Order on behalf of the parties they represent.

Dated: August 19, 1988.

Sheila Lieber,

Renee M. Wohlenhaus,

Attorneys, Department of Justice, Civil Division, Room 3324, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530, Tel: (202) 633–2205.

Of Counsel:

Thomas K. Stuber,

Office of General Counsel, United States Department of Health and Human Services, Baltimore, Maryland.

Attorneys for Defendants.

Dated: August 19, 1988.

Gregory M. Luce,

Irwin Cohen,

Dan M. Peterson,

Mark D. Gustafson,

Fulbright & Jaworski,

1150 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036, Tel: (202) 452–8600.

Of Counsel:

Michael F. Anthony,

Margaret J. Hardy,

Ann L. Treimer.

Attorneys for Plaintiff.,

Royce C. Lamberth,

U.S. District Judge.

It is so Ordered.

Dated: August 24, 1988.

[FR Doc. 89–27104 Filed 11–15–89; 8:45 am]

BILLING CODE 4120–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–186; RM–6246]

Radio Broadcasting Services; Prairie du Chien, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Prairie du Chien, Wisconsin, and modifies the license of Station WPRE–FM to specify operation on the higher class co-channel, at the request of Prairie Broadcasting Company. *See* 53 FR 17232, May 16, 1988. This action provides the community with a first wide coverage area FM service. A 0.6 kilometer (0.4 mile) site restriction is required, at coordinates 43–02–49 and 91–08–59. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–186, adopted October 23, 1989, and released November 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Wisconsin, removing Channel 232A and adding Channel 232C2 at Prairie du Chien.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–26865 Filed 11–15–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 91158–9258]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the foreign fishing regulations. This is a housekeeping rule that changes the addresses of the Northeast Regional Office and the Foreign Fisheries Observer Program, which were recently moved, and makes other minor corrections to Appendix A of Subpart A. The intent is to correct and update Appendix A in order to expedite the transfer of messages and reports from the designated representatives of foreign fishing vessels to NMFS.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Gerrior (Chief, Foreign and Domestic Sea Sampling Investigation), 508–548–5123, ext. 291.

SUPPLEMENTARY INFORMATION: The changes to 50 CFR part 611 implemented by this rule are required because of recent changes in the addresses of the Northeast Regional Office, NMFS, and the Foreign Fisheries Observer Program; the administrative separation of the Northwest Science Center and the Alaska Science Center; and other minor changes in addresses and contacts. The changes are necessary to expedite the transfer of required messages and reports from designated representatives of foreign fishing vessels to NMFS. These reports include Activity Reports, Weekly Reports, and Effort Plans, which are essential for the monitoring of foreign fishing operations; there is no change in the number or type of reports required. In addition, other corrections, such as routing codes, are made to appendix A to reflect administrative changes that have occurred since the tables were last updated.

Classification

This final rule, technical amendment, is issued under 50 CFR part 611. Because this rule only makes minor, non-substantive corrections, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and that there is good cause under 5 U.S.C. 533(d) not to delay for 30 days its effective date. Additionally, the prior public comment and delay of effective date requirements of 5 U.S.C. 553 are inapplicable under paragraph (a)(2) of that section because the changes reflect an agency management directive.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule is minor and technical in nature and therefore is not a major rule under Executive Order 12291. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not contain a collection-of-information requirement for the purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: November 9, 1989.

James E. Douglas, Jr.

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for 50 CFR part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

Appendix A to Subpart A—[Amended]

2. Table 1 of appendix A to subpart A is revised to read as follows:

TABLE 1.—ADDRESSES

NMFS Regional Directors	NFS Science and Research Directors	U.S. Coast Guard Commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester MA 01930; Telex: 940007; FAX: (508) 281–9333; Telephone: (508) 281–9300.	Director, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Woods Hole, MA 02543, Attn: Observer Program; Telex: 322200; FAX: (508) 548–5123 x258; Telephone: (508) 548–5123.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004; Telex: 126831; Telephone: (212) 668–7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702; Telephone: (813) 893–3141.	Director, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149, Telephone: (305) 361–4284.	As above.
Director, Northeast Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Seattle, WA 98115; Telex: 9104442786; FAX: (206) 526–6426; Telephone: (206) 526–6150.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112; FAX: (206) 442–4304; Telephone: (206) 442–1872.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501; Telex: 172343; Telephone: (415) 437–3700.
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, AK 99801; Telex: 09945377; Telephone: (907) 586–7221.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way Northeast, BIN C15700, Bldg. 4, Seattle, WA 98115; Telex: 329422; FAX: (206) 526–4004; Telephone: (206) 526–4000.	Commander, Seventeenth Coast Guard District, P.O. Box 3–5000, Juneau, AK 99801; Telex: 45305; Telephone: (907) 586–7200, after hours: (907) 586–7340.
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731; Telephone: (213) 548–2575.	Director, Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038; Telephone: (619) 453–2820.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI 96813; Telex: 392401; Telephone: (808) 546–7597.

3. Table 2 of Appendix A to Subpart A is revised to read as follows:

TABLE 2—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Northwest Atlantic Ocean Fishery, including the Hake Fishery.	Director, Northeast Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Atlantic Billfish and Sharks Fishery	Director, Northeast Center, Attn: Observer Program.	Commander, Atlantic Area.
Gulf of Mexico	Royal Red Shrimp Fishery		
Caribbean Sea			
Pacific Ocean off the States of California, Oregon, and Washington.	Pacific Coast Groundfish Fishery	Director, Northwest Region	Commander, Pacific Area.

TABLE 2—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES—Continued

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
		Director, Northwest Fisheries Science Center.	
North Pacific Ocean and Bering Sea off Alaska.	Gulf of Alaska Groundfish Fishery	Director, Alaska Region	Commander, Seventeenth Coast Guard District.
	Bering Sea and Aleutian Islands Groundfish Fishery.	Director, Alaska Fisheries Science Center.	
	Snail Fishery		
Pacific Ocean off Hawaii and Other U.S. Insular Possessions in the Central and Western Pacific.	Seamount Groundfish Fishery	Director, Southwest Region	Commander, Fourteenth Coast Guard District.
	Pacific Billfish, Oceanic Sharks, Wahoo, and Mahi-Mahi Fishery.	Director, Southwest Center	
	Precious Coral Fishery		

4. Table 4 of Appendix A to Subpart A, including the accompanying abbreviations, is revised to read as follows:

TABLE 4—ADDRESSES FOR REPORTS AND SUBMITTALS

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Northwest Atlantic Ocean Fishery, including the Hake Fishery.	DOS	CG Atlantic Area, and NMFS–NEC, Attn: Observer Program.	NMFS–NEC, Attn: Observer Program.	NMFS–NEC, Attn: Observer Program, and NMFS–F/EN13.	CG Atlantic Area	NMFS–F/CM1.
Atlantic Billfish and Sharks Fishery.	DOS	CG Atlantic Area, and NMFS–NEC, Attn: Observer Program.	NMFS–NEC, Attn: Observer Program.	NMFS–NEC, Attn: Observer Program, and NMFS–F/EN13.	CG Atlantic Area	NMFS–F/CM1.
Royal Red Shrimp Fishery.						
Pacific Coast Groundfish Fishery.	DOS	CG Pacific Area, and NMFS–NWR.	NMFS–NWR	NMFS–AKC, and NMFS–F/EN13.	CG Pacific Area	NMFS–F/CM1.
Gulf of Alaska Groundfish Fishery.	DOS	CG District 17, and NMFS–AKR.	NMFS–AKR	NMFS–AKC, and NMFS–F/EN13.	CG District 17	NMFS–F/CM1.
Bering Sea and Aleutian Islands Groundfish Fishery.						
Snail Fishery						
Seamount Groundfish DOS Fishery.	DOS	CG District 14, and NMFS–SWR.	NMFS–SWR	NMFS–SWR, and NMFS–F/EN13.	CG District 14	NMFS–F/CM1.
Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery.						
Precious Coral Fishery						

Abbreviations:
DOS—Department of State, OES-OFA, Washington, DC 20520.
NMFS–F/EN13—Chief, Office of Enforcement, National Marine Fisheries Service, Silver Spring Metro Center 1, 1335 East-West Highway, Silver Spring, MD 20910, Attn: F/EN13.
NMFS–F/CM1—Chief, Operations Support and Analysis Division, National Marine Fisheries Service, Silver Spring Metro Center 1, 1335 East-West Highway, Silver Spring, MD 20910, Attn: F/CM1.
NMFS–NWR—Director, Northwest Region (See Table 1).
NMFS–AKR—Director, Alaska Region (See Table 1).
NMFS–SWR—Director, Southwest Region (See Table 1).
NMFS–NEC—Director, Northeast Fisheries Center (See Table 1).
NMFS–AKC—Director, Alaska Fisheries Science Center (See Table 1).
CG Atlantic Area—Commander, Atlantic Area (See Table 1).
CG Pacific Area—Commander, Pacific Area (See Table 1).
CG District 14—Commander, Fourteenth Coast Guard District (See Table 1).
CG District 17—Commander, Seventeenth Coast Guard District (See Table 1).

[FR Doc. 89–26956 Filed 11–8–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 652

[Docket No. 81123–9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam trip landing limits.

SUMMARY: NOAA issues this notice to impose limits on the amount of surf clams that may be landed during a fishing trip in the Nantucket Shoals Area. This action is necessary to reduce the rate of harvest from the fishery. The intended effect is to match fishing effort to the amount of available quota for the area.

EFFECTIVE DATES: November 9, 1989 through December 30, 1989.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, telephone 508–281–9252.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) contain at 50 CFR 652.22(b)(2)(ii) a provision allowing the Regional Director to impose trip landing limits to reduce harvest of surf clams from the Nantucket Shoals Area when the harvest in that area reaches, or is likely to reach, 50 percent of a quarterly quota.

Landings have consistently exceeded quarterly quotas established for the area. For the first quarter, the quota of 40,000 bushels was exceeded by 8,000 bushels. The second quarter cumulative quota of 100,000 bushels was exceeded by 18,000 bushels. The harvest through the third quarter of 168,000 bushels exceeded the cumulative quota of 160,000 bushels by 8,000 bushels. Landings through October 20, 1989, have totaled 185,000 bushels which exceeds the 50 percent point of 180,000 bushels for the cumulative quota for the four quarters. If this rate is allowed to continue it will necessitate an early closure of the Nantucket Shoals Area where the quota would be reached by mid-November.

Trip limits were not imposed in previous quarters even though the quarterly quotas were exceeded due to the expectation that harvest rates would decrease as occurred last year and vessels would switch to the Georges Bank Area. This did not occur and the problem was further compounded by the closure in August (54 FR 33700, August 16, 1989) of the Georges Bank Area to the harvest of surf clams after paralytic shellfish poisoning was discovered. Two vessels that had been working the Georges Bank Area restricted their trips to the Nantucket Shoals Area thus increasing the overall catch rate in Nantucket Shoals. It is necessary to continue the emergency closure in the Georges Bank Area, thus no change in effort on Nantucket Shoals is expected until the more severe weather starts.

The Regional Director discussed these harvest statistics with the Mid-Atlantic and New England Fishery Management Councils at their October meetings and recommended that catch limits be imposed at the minimum amount specified in the FMP. This will allow the harvest to continue while reducing the possibility of an early closure. Should a closure become necessary, notice will be published in the Federal Register as required by § 652.22(d).

The trip landing limits implemented by this notice are: (1) For vessels between 0 and 50 gross registered tons, 224 bushels/trip; (2) for vessels between 51 and 100 gross registered tons, 768 bushels/trip. No vessels harvesting surf clams in the Nantucket Shoals Area after November 9, 1989, may land more than the amount indicated above for its size class. These trip limits will expire at the end of the quarter, December 30, 1989, unless adjusted, cancelled, or superseded by closure of the fishery.

Other Matters

This action is taken under the authority of 50 CFR part 652 and is taken in compliance with Executive Order 12291.

List of Subject in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–26888 Filed 11–9–89; 4:18 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 90407–9176]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment and release of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council and to promote the foreign policy objectives of the United States.

DATES: This notice is effective November 9, 1989. Comments will be accepted through November 24, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675.

Initial specifications for DAH, domestic annual processing (DAP), and JVP for 1989 were published at 54 FR 38095. The same notice established a 15 percent non-specific reserve and then apportioned amounts from that reserve to JVP in order to provide bycatch amounts for JVP fisheries.

In the Bering Sea subarea, the amounts of pollock, yellowfin sole, other flounders, Pacific cod and rock sole available for joint venture operations (JVP) were increased in early September (54 FR 37112, September 7, 1989) based on new information about potential DAP needs. Later in September (54 FR 38686, September 20, 1989) the amount available for DAP operations for Atka mackerel was supplemented by 3,043 metric tons (mt) from the non-specific reserve. On October 6, 1989 (54 FR 41977, October 13, 1989) the DAP for Greenland turbot was supplemented by 1,200 mt and the JVP for arrowtooth flounder was supplemented by 2,000 mt from the non-specific reserve. On October 31 (54 FR 46619, November 6, 1989) the amount of sablefish specified for DAP operations in the Bering Sea subarea and the Aleutian Islands subarea were supplemented by 420 mt and 510 mt, respectively, from the non-specific reserve.

On October 13, the Region completed an analysis of DAP needs for pollock for the remainder of 1989. The Region concluded that DAP operations for pollock in the Bering Sea subarea would require a supplement from the non-specific reserve of 21,000 mt before the end of the year. The Region also concluded that 9,000 mt of Aleutian subarea pollock originally specified for DAP was in excess of DAP needs.

Reapportionment (Table 1)

In the Bering Sea subarea, the following action is taken by this notice to release pollock from the non-specific reserve to the BSA JVP: 2,500 mt is

released from the non-specific reserve to JVP.

In the Aleutian Islands, the following action is taken by this notice to reapportion pollock from DAP to JVP: 4,500 mt of the amount identified as in excess of DP needs is reapportioned from DAP to JVP.

In the BSAI, the following actions are taken by this notice to release groundfish from the non-specific reserve to JVP: 50 mt of squid is released from the non-specific reserve to JVP and 500 mt of "other species" are released from the non-specific reserve to JVP. JVP fisheries have experienced greater than anticipated catches of squid and "other species" and rather than requiring discards of fish, this action would allow the bycatch of these categories of fish to be retained.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to avoid waste and to benefit domestic fishermen who otherwise would be required to terminate a fishery earlier than necessary. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea)	DAP	1,045,585		1,045,585
TAC=ABC=1,340,000	JVP	267,415	+2,500	272,915
Pollock (Aleutian Is)	DAP	11,432	−4,500	6,932
TAC=13,450 ABC=117,900	JVP	0	+4,500	4,500
Squid	DAP	850		850
TAC=1,000 ABC=10,000	JVP	25	+50	75
Other Species	DAP	11,274		11,274
	JVP	4,000	+500	4,500
Total (TAC=2,000,000)	DAP	1,350,487	−4,500	1,345,987
	JVP	604,015	+7,550	611,639
	Reserves	45,424	−3,050	42,374

[FR Doc. 89-26862 Filed 11-9-89; 4:18 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of receipt of groundfish.

SUMMARY: NOAA announces the prohibition of receipt of certain groundfish by the joint venture processing (JVP) fishery in the Bering Sea Subarea. This prohibition applies to pollock taken in the directed fishing for that species. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council (Council).

DATES: Effective November 9, 1989. Comments will be accepted through November 24, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675.

The initial JVP for pollock in the Bering Sea subarea as 93,415 mt. In January, NOAA announced the prohibition of receipt by foreign processors of pollock taken in a directed fishery (54 FR 3608, January 25, 1989). A later action (54 FR 37112, September 7, 1989) apportioned sufficient amounts of Bering Sea subarea pollock (174,000 mt) to JVP to allow reopening of the directed fishery. An additional 2,500 mt was reapportioned in another notice action published in the same issue of the Federal Register as this notice. As of October 28, 37,672 mt remained uncaught in the 269,915 mt quota.

Two types of JVP fisheries have occurred during the fall opening, one for pollock and the other for yellowfin sole, flatfish, and rock sole. The latter fishery has a pollock bycatch which averages about 18 percent of the yellowfin sole taken. Under § 675.20(a)(7), the Regional Director has determined that 5,500 mt of the current JVP pollock quota is needed to provide retained bycatch amounts of pollock in the yellowfin sole fishery. At current catch rates, the remaining pollock will be taken on November 9.

Therefore, foreign processors are prohibited from receiving pollock taken in directed fisheries, effective noon, Alaska Standard Time, November 9, 1989.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent the harvest of pollock from exceeding the established JVP amount. However, interested persons are invited to submit

comments in writing to the address above through November 24, 1989.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-26863 Filed 11-9-89; 4:18 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 220
Thursday, November 16, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 91037-9237]

RIN 0607-AA12

Foreign Trade Statistics; Amendment to the Foreign Trade Statistics Regulations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Foreign Trade Statistics Regulations to raise the present exemption for filing Shipper's Export Declarations (except for shipments requiring a validated export license) from $1,500 to $2,500 in order to relieve documentation burden. The exemption for shipments through the U.S. Postal Service will remain at $500 and there is no exemption for shipments requiring a validated export license.

DATE: Comments should be submitted on or before January 16, 1990.

ADDRESS: Send comments to the Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Don L. Adams, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: The proposal to raise the minimum value requirement for the filing of Shipper's Export Declarations from the present level of $1,501 to a new level of $2,501, if implemented, is expected to reduce the number of required Shipper's Export Declarations by over 1.5 million documents per year. The proposed increase in the value limit is expected to increase the share of exempted shipments from about 2.0 percent of the overall value of exports to 3.0 percent. While there will be some loss of statistical detail at the more detailed levels (that is, commodity by country, commodity by country by district, and so forth), the benefits accruing to both the public and the Census Bureau by the reduction in the number of Shipper's Export Declarations required to be filed and processed outweigh the anticipated loss in statistical detail. Raising the value exemption for filing Shipper's Export Declarations to $2,500 is a change that relieves documentation burden.

This proposed amendment does not meet the criteria of a major rule as set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Pursuant to the Provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), the General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed regulation, if promulgated, will not have a significant economic effect on a substantial number of small entities because it raises the exemption level thereby reducing the reporting requirements of smaller entities. This imposes no additional burden on the public thus satisfying the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Reporting requirements.

To effect this change, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR part 30) as set forth below.

PART 30—[AMENDED]

1. The authority citation for part 30 continues to read as follows:

Authority: Title 13, United States Code, sections 301-307; and Title 5, United States Code, Section 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 FR 42765.

2. Section 30.55 is amended by changing "$1500" wherever it appears in paragraph (h) to "$2500," so that as revised § 30.55(h) reads as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Shipments (except shipments requiring a validated export license and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR parts 730-799), where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is $2,500 or under: Provided, however, that this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $2500-and-under shipments.

* * * * *

Dated: September 26, 1989.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

Dennis M. O'Connell,

Director, Office of Trade and Tariff Affairs, Treasury Department.

[FR Doc. 89-26859 Filed 11-15-89; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD2 89-03]

Drawbridge Operation Regulations; Ouachita River, AR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the St. Louis Southwestern Railroad Bridge, Mile 338.8, presently listed as located at Mile 331.4, near Camden, Arkansas to provide that the draw need not be opened for the passage of vessels. This proposal is being made because no requests have been made to open the draw for more than 20 years. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before December 18, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398. The comments and other materials referenced in this notice will be available for inspection and copying at 1430 Olive Street, Room 400, St. Louis, MO 63103-2398. Normal office hours are between 7:45 a.m. and 4:15 p.m., Mondary through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, 314-425-4607.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Second Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, project officer, and LT M. A. Suire, project attorney, Second District Legal Office.

Discussion of Proposed Regulations

This swing-span drawbridge is presently required to open on signal if at least 48 hours notice is given. The existing regulation lists the location of the bridge as Mile 331.4. The Coast Guard has confirmed that the actual location of the structure is Mile 338.8. The Corps of Engineers reports that the federally authorized navigation project for channel maintenance on the Ouachita River extends to Mile 337.0. The bridge owner reports that the notice requirement notwithstanding they have received no requests to open the bridge in over 20 years. This change will relieve the bridge owner of the burden of maintaining machinery and personnel for requests which don't materialize; yet, create no significant impact on the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures published at 44 FR 11034 on February 26, 1979. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the reported information that no requests for openings have been made for more than 20 years. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implications Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-(g).

2. Section 117.133 is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.133 Ouachita River

(a) The draw of the Chicago, Rock Island and Pacific Railroad Bridge, Mile 291.7 at Calion, shall open on signal if at least 24 hours notice is given, except as follows:

(1) Any vessel that requires the opening of the draw and that intends to return within 24 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(2) When the pool stage is above 21 feet on the upper gauge at Lock and Dam No. 8, the Commander, Second Coast Guard District, notifies the bridge owner, who is then given one day in which to place a drawtender in constant attendance and open the draw on signal.

(b) The draw of the St. Louis Southwestern Railroad Bridge, Mile 338.8 near Camden, need not be opened for the passage of vessels.

Dated: November 1, 1989.

W. J. Ecker,

Rear Admiral, Commander, Second Coast Guard District.

[FR Doc. 89-26917 Filed 11-15-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-490, RM-6751]

Radio Broadcasting Services; Kealakekua, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Kona Broadcasting Systems, Inc., proposing the substitution of Channel 241C for Channel 221A at Kealakekua, Hawaii, and the modification of its license for Station KOAS(FM) to specify operation on the higher powered channel. Channel 241C can be allotted to Kealakekua in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 19-43-07 and West Longitude 155-54-38.

DATES: Comments must be filed on or before January 1, 1990, and reply comments on or before January 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rainer K. Kraus, Koteen & Naftalin, 1150 Connecticut Avenue, NW., Washington, DC 20554 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-490, adopted October 23, 1989, and released November 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26866 Filed 11-15-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-488, RM-6932]

Radio Broadcasting Services; Chenango Bridge, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition on Northeastern Broadcasting, Inc., seeking the allotment of Channel 281A to Chenango Bridge, New York, as its first local FM service. Petitioner is requested to provide further information concerning the status of Chenango Bridge as a community for allotment purposes. Channel 281A can be allotted to Chenango Bridge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 42-10-12 and West Longitude 75-52-24. Canadian concurrence is required since Chenango Bridge is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 2, 1990, and reply comments on or before November 9, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Lynch, Independent Broadcast Consultants, Inc., 110 County Road 146, RFD 1, Box 312, Trumansburg, New York 14886 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-488, adopted October 23, 1989, and released November 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26867 Filed 11-15-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-489, RM-6955]

Radio Broadcasting Services; Barnwell, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Radio WBAW, Inc. seeking the substitution of Channel 256C3 for Channel 256A at Barnwell, South Carolina, and the modification of its license for Station WBAW-FM accordingly. Channel 256C3 can be alloted to Barnwell in compliance with the Commission's minimum distance separation requirements and can be used at Station WBAW-FM's present transmitter site. The coordinates for this allotment are North Latitude 33-13-25 and West Longitude 81-21-35. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 256C3 at Barnwell or require the petition to demonstrate the availability of an additional eqivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 2, 1990, and reply comments on or before January 17, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100-17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-489, adopted October 23, 1989, and released November 9, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceedings.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 89-26868 Filed 11-15-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-487, RM-6855]

Radio Broadcasting Services; Randolph and Brandon, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Stokes Communications Corporation, licensee of Station WCVR-FM, Randolph, Vermont, proposing the substitution of Channel 271C3 for Channel 272A at Randolph, and the modification of Station WCVR-FM's license to specify the higher class channel. In order to accomplish the substitution at Randolph, Channel 268A must be substituted for vacant but applied for Channel 270A at Brandon, Vermont. Channel 271C3 at Randolph requires a site restriction of 9.1 kilometers (5.6 miles) northeast of the city. The coordinates are 43-59-30 and 72-36-18. A site restriction of 2.5 kilometers (1.5 miles) east of Brandon is required for Channel 268A at that community. The coordinates are 43-47-42 and 73-03-40. Concurrence of the Canadian government is also required for the proposal.

DATES: Comments must be filed on or before January 2, 1990, and reply comments on or before January 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard R. Zaragoza, Esquire, John Joseph McVeigh, Esquire, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037-1125 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-487, adopted October 19, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contract.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26869 Filed 11-15-89; 8:45am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-486, RM-6913]

Radio Broadcasting Services; Kaukauna and Cleveland, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WinCom Wisconsin Limited Partnership, licensee of Station WKFX(FM), Channel 285A, Kaukauna, Wisconsin, proposing the substitution of Channel 276C3 for Channel 285A at Kaukauna, and the modification of its station's license accordingly. In order to accomplish the upgrade at Kaukauna, the proposal requires the substitution of Channel 251A for Channel 276A at Cleveland, Wisconsin, and the modification of the license of Station WKTT(FM) at Cleveland to specify operation on the new frequency. Channel 276C3 can be allotted to Kaukauna with a site restriction of 20.9 kilometers (18.6 miles) northeast, at coordinates 44-21-00 and 88-02-00. Channel 251A can be used at the current transmitter site of Station WKTT(FM). The coordinates are 43-59-11 and 87-45-53. The proposal could provide Kaukauna with its first wide coverage area FM service.

DATES: Comments must be filed on or before January 2, 1990, and reply comments on or before January 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Brian M. Madden, Esquire, Robert Clifton Burns, Esquire, Cohn and Marks, 1333 New Hampshire Ave., NW., Suite 600, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-486, adopted October 19, 1989, and released November 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26870 Filed 11-15-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of the Navy is promulgating part 5243, subpart 5243.70, of the Navy Acquisition Procedures Supplement (NAPS) to

restrict contract price adjustments under shipbuilding contracts, thus implementing by regulation the requirements of 10 U.S.C. 2405. The Department is also promulgating an amendment to part 5252 to add the text of a solicitation provision and two contract clauses.

DATES: Public comments are solicited and should be received by January 16, 1990.

ADDRESS: Interested parties should submit written comments to: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), ATTN: Mr. Richard Moye, CBM–AP, Washington, DC 20360–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Moye, OASN(S&L) CBM–AP, (202) 692–3558.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2405 prohibits the Secretary of a military department from making a price adjustment to a shipbuilding contract, entered into after 7 December 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request for equitable adjustment, or demand for payment) arising out of events occurring more than 18 months before submission of the claim, request for equitable adjustment, or demand for payment.

10 U.S.C. 2405 further provides that a claim, request for equitable adjustment, or demand for payment is submitted on the date the contractor's submission is received by the contracting officer accompanied by the supporting data for the claim, request for equitable adjustment, or demand for payment and the certification required by section 6(c)(1) of the Contract Disputes Act.

The 18-month limitation was originally enacted in the DOD Appropriations Act for Fiscal Year (FY) 1984 (Pub. L. 98–212), reenacted in the DOD Appropriations Act for FY 1985 (Pub. L. 98–473), and reenacted as permanent legislation in the DOD Authorization Act for FY 1985 (Pub. L. 98–525). Implementing regulations were incorporated by DOD in Defense Federal Acquisition Regulation Supplement (DFARS) subpart 243.70 (now included at 48 CFR 243.70) on 25 July 1985 and published in Defense Acquisition Circular 84–12.

Guidance on interpretation and application of the legislation was informally circulated by the Navy among shipbuilders for comment in July 1989. Comments were considered in drafting the proposed rule, which is the Navy regulation for implementing 10 U.S.C. 2405.

The proposed rule defines the terminology of the statute. It promulgates the solicitation provisions and contract clauses necessary to be included in shipbuilding contracts. The proposed rule also specifies the supporting documentation that should be included, and the certification required of shipbuilders, when claims, requests for equitable adjustment or demands for payment are submitted. In summary, the proposed rule is intended to clarify the meaning and insure the consistent interpretation, implementation and administration of the statute.

B. Summary of Major Provisions

(1) *Subpart Scope.* Section 5243.7001 of the proposed rule describes the scope of subpart 5243.70.

(2) *Definitions.* Section 5243.7002 of the proposed rule defines the terminology of the statute, including the terms "claims," "demand for payment," "event," "price adjustment," "request for equitable adjustment," and "shipbuilding contract." Examples of "events" are also provided.

(3) *Prohibited Actions.* Section 5243.7003 of the proposed rule identifies restrictions on contracting officer authority to make price adjustments to shipbuilding contracts.

(4) *Documentation and Certification.* Proposed section 5243.7004 describes the certification required of shipbuilders. The proposed rule also describes the minimum supporting information that should be submitted.

(5) *Provisions and Clauses.* Proposed section 5243.7005 identifies the notice provision to be included in all shipbuilding solicitations and clauses detailing certification and supporting data requirements to be included in all shipbuilding contracts. These provisions and clauses are included in new sections 5252.243–9000 through 5252.243–9002.

C. Paperwork Reduction Act

The proposed rule contains no new information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq*). Supporting data requirements identified in the proposed rule include only data already required to be maintained by shipbuilding contractors.

D. Regulatory Flexibility Act Information

The proposed rule will have no economic impact upon small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq*. The statute has been implemented in DFARS since 1985, affecting all shipbuilders, large and small. The proposed NAPS rule will benefit the Navy and its shipbuilding contractors by insuring uniform application of the law. Therefore, no regulatory flexibility analysis has been performed.

List of Subjects in 48 CFR Parts 5243 and 5252.

Contract modifications, Documentation requirements, Government procurement, Shipbuilding Contracts, Solicitation provisions and contract clauses.

It is proposed to amend Title 48 of the Code of Federal Regulations as follows:

1. By adding part 5243 to read as follows:

PART 5243—CONTRACT MODIFICATIONS

Subpart 5243.70—Adjustments to Prices Under Shipbuilding Contracts

Sec.

5243.7001 Adjustments to prices under shipbuilding contracts.
5243.7002 Definitions.
5243.7003 Prohibited actions and procedures.
5243.7004 Documentation and certification requirements.
5243.7005 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35

Subpart 5243.70—Adjustments to Prices Under Shipbuilding Contracts

5243.7001 Adjustments to prices under shipbuilding contracts.

(a) 10 U.S.C. 2405 prohibits the Secretary of a military department from making a price adjustment to a shipbuilding contract, entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request for equitable adjustment, or demand for payment) arising out of events occurring more than 18 months before the submission of the claim, request for equitable adjustment, or demand for payment.

(b) 10 U.S.C. 2405 provides that a claim, request for equitable adjustment, or demand for payment is submitted on the date the contractor's submission is received by the contracting officer accompanied by the supporting data for the claim, request for equitable adjustment, or demand for payment and the certification required by section 6(c)(1) of the Contract Disputes Act, if the matter is over $50,000.

(c) This subpart implements 10 U.S.C. 2405.

5243.7002 Definitions.

As used in this subpart, the following terms have the meaning set forth below.

"Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment to the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A claim does not include a request for equitable adjustment or demand for a payment, as defined below. As used in this subpart, a request for extraordinary contractual relief pursuant to Public Law 85–804 does not constitute a claim.

"Demand for payment" means a written demand for payment, other than routine payment in accordance with the payment terms of the contract. A routine invoice that does not seek, as a matter of right, payment of an amount in excess of the contract price is not a demand for payment; however, an invoice seeking interest or other amounts not included in the contract price does constitute a demand for payment.

"Event" means the action, inaction, conduct, or occurrence which gives rise to the contractor's claim, request for equitable adjustment, or demand for payment. Some examples of events are set forth below:

(a) Formal changes (including changes based on engineering changes proposals (ECPs) and non-engineering change proposals (NECPs)). The event for a formal written change, which is neither fully priced nor maximum priced prior to the contracting officer's authorization to proceed. The date the event occurs is the date of receipt of the contracting officer's authorization to proceed. This subpart does not apply to: (1) Bilateral changes which are fully priced or maximum priced prior to the contractor being authorized to proceed by the contracting officer, or (2) formal written changes authorized by the contracting officer which are fully priced or maximum priced within 18 months after the contractor has been authorized to proceed and which are based on a contractor proposal which contains adequate supporting data and, if the matter is over $50,000, is certified in accordance with the requirements of section 6(c)(1) fo the Contract Disputes Act. (See paragraph (b) of this definition below for unilateral pricing actions related to maximum priced changes).

(b) Unilateral pricing of maximum priced modifications or any other modification which is not fully priced. If the contracting officer unilaterally establishes the price of a maximum priced formal change, or any other modification which is not fully priced at the time it is issued, the unilateral pricing action is an event subject to this subpart. The date the event occurs is the date of receipt of the contracting officer's determination by the contractor.

(c) Constructive changes. The event is the action or inaction upon which liability is based. The date the event occurs is the date of the action or inaction.

(d) Defective Government-furnished property (Government-furnished material, equipment, or information). The event is the direction from the contracting officer regarding correction, replacement or repair of the property. The date the event occurs is the date of receipt of the contracting officer's direction by the contractor.

(e) Late government-furnished property (Government-furnished material, equipment, or information). The event is the earlier of the actual delivery of the Government-furnished property to the contractor, or the notification from the contracting officer establishing a revised delivery date for the property. The date the event occurs is the earlier of the actual date the property is delivered to the contractor or the date of receipt of the contracting officer's notification of the revised delivery date of the property by the contractor.

(f) Defective Government specifications. The event occurs when the contracting officer directs corrective action. The date the event occurs is the date of receipt of the contracting officer's direction by the contractor.

"Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure, or provision, or to the definition of types of costs to be included or excluded from the methodology employed to determine the final price, which has the effect of increasing the fixed price, target price, ceiling price, the final price, or the fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment.

"Request for equitable adjustment" means a written request for a price adjustment to the contract in accordance with the provisions of a clause which expressly provides for such a price adjustment. The definitization of a maximum priced modification, within the maximum price, is not considered to be a request for equitable adjustment.

"Shipbuilding contract" means a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and either department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract). A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.

5243.7003 Prohibited actions and procedures.

(a) Contracting officers shall not make any price adjustment pursuant to any claim, request for equitable adjustment, or demand for payment submitted by a contractor seeking a price adjustment to a shipbuilding contract entered into after December 7, 1983, if the event giving rise to the claim, request for equitable adjustment, or demand for payment occurred more than 18 months prior to the date of receipt by the contracting officer of a claim, request for equitable adjustment, or demand for payment with adequate supporting data and, if the matter is over $50,000 the certification required by Section 6(c)(1) of the Contract Disputes Act. Nothing contained in this subpart affects any matter which is fully priced within 18 months after the occurrence of the event.

(b) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the matter, or any part of the matter, is subject to the prohibition set forth in

paragraph (a) of this section, contracting officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent actions of the parties. Unrelated matters or matters arising out of different events included in a single claim, request for equitable adjustment, or demand for payment shall be reviewed based on the event appropriate to each individual matter and a determination of the application of the prohibition set forth in paragraph (a) of this section shall be made for each such matter.

5243.7004 Documentation and certification requirements.

(a) For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over $50,000, the certification required by Section 6(c)(1) of the Contract Disputes Act. If either the supporting data or the certification, if the matter is over $50,000, is deficient, the claim, request for equitable adjustment, or demand for payment shall not be considered to be submitted until any such deficiency is corrected.

(b) Adequate supporting data.

(1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Adequate supporting data for a claim, request for equitable adjustment, or demand for payment is not only necessary to satisfy the statutory requirement, but also is essential to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request for equitable adjustment or demand for payment must be accompanied by supporting data in accordance with the requirements of a contract clause defining the documentation requirements for such matter, or, if there is no contract clause addressing the matter, at a minimum, the following information should be submitted:

(i) A narrative statement of the nature of the event, the time when the event occurred, and the causal relationship between the event and the impact on the cost of performance of the contract, including a description of how the event affected scheduled performance;

(ii) A description of the relevant effort the contractor was required to perform in the absence of the event;

(iii) A description of the relevant effort the contractor was actually required or will be required to perform;

(iv) A description of components, equipment, and other property involved;

(v) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(vi) A description of all property which will no longer be needed by the contractor;

(vii) A description of any delay caused by the event;

(viii) A description of any disruption caused by the event.

(2) If any submission does not contain the required adequate supporting data, the contractor shall be notified of the nature of the deficiency in the supporting data.

(c) Certification.

(1) A claim, request for equitable adjustment, or demand for payment in excess of $50,000 must be certified in accordance with the requirements of Section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207). If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.

(2) A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the certification requirements.

(3) Once a claim, request for equitable adjustment, or demand for payment has been properly certified, even if additional certifications are required of, or provided by, the contractor, the date of the original proper certification shall be operative for purposes of this subpart, unless the additional certification is required, or provided, because the contractor has submitted an essentially new claim, request for equitable adjustment, or demand for payment.

5243.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 5252.243–9000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.

(b) The contracting officer shall insert the clause at 5252.243–9001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment, and at 5252.243–9002, Documentation of Requests for Equitable Adjustment, in shipbuilding contracts. Use of the clause at 5252.243–9002 is optional for nonshipbuilding contracts, and in such case, contracting officers may modify the clause at 5252.243–9002 as deemed appropriate.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35

2. Part 5252 is amended by adding new sections 5252.243–9000, 5252.243–9001 and 5252.243–9002 to read as follows:

5252.243–9000 Notification of applicability of 10 U.S.C. 2405.

As prescribed at 5243.7005(a), insert the following provision:

Notification of Applicability of 10 U.S.C. 2405 (1989)

The contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment seeking a price adjustment to this contract submitted by the contractor is subject to 10 U.S.C. 2405.

(End of Clause)

5252.243–9001 Requirements for adequate supporting data and certification of any claim, request for equitable adjustment, or demand for payment.

As prescribed at 5243.7005(b), insert the following clause in full text:

Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment (1989)

(a) This contract is subject to 10 U.S.C. 2405; therefore, a price adjustment will not be made to this contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request for equitable adjustment, or demand for payment) arising out of events occurring more than 18 months before the submission of the claim, request for equitable adjustment, or demand for payment.

(b) A claim, request for equitable adjustment, or demand for payment is considered to be submitted on the date the contractor's submission is received by the contracting officer accompanied by adequate supporting data for the claim, request for equitable adjustment or demand for payment and the certification required by section 6(c)(1) of the Contract Disputes Act, if the matter is over $50,000.

(c) Adequate supporting data includes all the information required by the clause of this contract entitled Documentation of Requests for Equitable Adjustment. For any matter not subject to the operation of that clause, adequate supporting data shall, at a minimum, include:

(1) A narrative statement of the nature of the event, the time when the event occurred, and the causal relationship between the event and the impact on the cost of performance of the contract, including a description of how the event affected scheduled performance;

(2) A description of the relevant effort the contractor was required to perform in the absence of the event;

(3) A description of the relevant effort the contractor was actually required or will be required to perform;

(4) A description of components, equipment, and other property involved;

(5) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(6) A description of all property which will no longer be needed by the contractor;

(7) A description of any delay caused by the event;

(8) A description of any disruption caused by the event.

(d) It is recognized that an individual claim, request for equitable adjustment, or demand for payment may not include all of the factors listed in subparagraphs (1) through (8) above, or that the contractor may not reasonably be able to furnish complete information on all of the factors listed in subparagraphs (i) through (viii) above. Accordingly, the Contractor is only required to set forth in the claim, request for equitable adjustment, or demand for payment information with respect to those factors which are relevant to the individual matter, with the level of detail which is reasonably available to the Contractor.

(e) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over $50,000. The certification requirements are those set forth in the clause of this contract entitled Disputes. In order to be a proper certification, the certificate must be executed (i) if the Contractor is an individual, by the individual, or (ii) if the contractor is not an individual, by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(f) For the purpose of this clause, the following terms have the meanings set forth below.

(1) "Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment to the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A claim does not include a request for equitable adjustment or demand for payment, as defined below. As used in this clause, a request for extraordinary contractual relief pursuant to Public Law 85–804 does not constitute a claim.

(2) "Request for equitable adjustment" means a written request for a price adjustment to the contract in accordance with the provisions of a clause which expressly provides for such a price adjustment. The definitization of a maximum priced modification, within the maximum price, is not considered to be a request for equitable adjustment.

(3) "Demand for payment" means a written demand for payment, other than routine payment in accordance with the payment terms of the contract. A routine invoice that does not seek, as a matter of right, payment of an amount in excess of the contract price is not a demand for payment; however, an invoice seeking interest or other amounts not included in the contract price does constitute a demand for payment.

(4) "Event" means the action, inaction, conduct, or occurrence which gives rise to the contractor's claim, request for equitable adjustment, or demand for payment.

(5) "Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure, or provision, or to the definition of types of costs to be included or excluded from the methodology employed to determine the final price, which has the effect of increasing the fixed price, target price, ceiling price, the final price, or the fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment.

(End of Clause)

5252.243–9002 Documentation of requests for equitable adjustment.

As prescribed at 5243.7005(b), insert the following clause in full text:

Documentation of Requests for Equitable Adjustment. (1989)

(a) For the purposes of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also (i) an engineering change proposed by the Government or the Contractor pursuant to any other clause(s) of this contract and (ii) any act or omission to act on the part of the Government in respect of which a request is made for equitable adjustment under the clause of the contract entitled Changes or any other article or clause of this contract.

(b) Whenever the Contractor requests or proposes an equitable adjustment of $250,000 or more per vessel in respect to a change made pursuant to a written order designated as a "change order" or in respect to a proposed engineering change and whenever the Contractor requests an equitable adjustment in any amount in respect to any other act or omission to act on the part of the Government, the proposal supporting such request shall include the following information for each individual item or element of the request:

(1) A description (i) of the work required by the contract before the change, which has been deleted by the change, and (ii) of the work deleted by the change which already has been completed. The description is to include a list of identifiable components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property is to be indicated. Separate description is to be furnished for design and production work. Items of identifiable raw material, purchased parts, components and other identifiable hardware, which are made excess by the change and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) Description of work necessary to undo work already completed which has been deleted by the change;

(3) Description of work which is substituted or added by the change. A list of identifiable components and equipment (not bulk materials or items) involved should be included. Separate descriptions are to be furnished for design work and production work;

(4) Description of interference and inefficiencies in performing the change;

(5) Description of disruption attributable solely to the change, which description shall include the following information:

(A) Description of each identifiable element of disruption and how work has been, or may be, disrupted;

(B) The calendar period of time during which disruption occurred, or may occur;

(C) Area(s) of the Contractor's operations where disruption occurred, or may occur;

(D) Trade(s) or functions disrupted, with a breakdown of manhours and material for each trade or function;

(E) Scheduling of trades before, during, and after the period of disruption insofar as such scheduling may relate to or be affected by the estimated disruption;

(F) Description of any measures taken to lessen the disruptive effect of the change.

(6) Delay in delivery attributable solely to the change;

(7) Other work or increased costs attributable to the change;

(8) Supplementing the foregoing, a narrative statement of the nature of the alleged Government act or omission, when the alleged Government act or omission occurred, and the "causal" relationship between the alleged Government act or omission and the claimed consequences therefor, cross-referenced to the detailed information provided as required above.

(c) Each proposal submitted in accordance with this clause shall include a copy of the Contractor's ship's labor budget at the cost class level in effect as of the date the event began, the cost incurred at the cost level as of the same date, and the proposed effect of the change at the cost class level.

(d) It is recognized that an individual request for equitable adjustment may not include all of the factors listed in subparagraphs (1) through (8) above, or that the Contractor may not reasonably be able to

furnish complete information on all of the factors listed in subparagraphs (1) through (8) above. Accordingly, the Contractor is only required to set forth in the request for equitable adjustment information with respect to those factors which are relevant to the individual request for equitable adjustment, with the level of detail which is reasonably available to the Contractor.

(e) In addition to any information required under paragraph (b) above, each proposal submitted in support of a claim for equitable adjustment, under any provision of this contract, of $100,000 or more, or under $100,000 if requested by the Contracting Officer, shall contain a duly executed Standard Form (SF) 1411 with respect to each individual claim item. The information furnished shall be in sufficient detail to permit the Contracting Officer to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, as set forth in the SF 1411, with the information submitted pursuant to subparagraphs (b)(1) through (8) hereof.

(f) The certification requirements as set forth in the clause of this contract entitled Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment or the clause of this contract entitled Certification of Requests for Adjustment or Relief Exceeding $100,000 shall be complied with.

(End of Clause)

Dated: November 8, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28625 Filed 11-15-89; 8:45 am]

BILLING CODE 3810-AR-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a draft environmental assessment and regulatory impact review (EA/RIR) and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has prepared a draft EA/RIR that assesses potential effects of regulatory changes affecting the Pacific halibut fishery in the Bering Sea. Public comment is especially requested on environmental quality issues relating to the regulatory changes considered in the draft EA/RIR. Copies of the draft EA/RIR may be obtained from the Council at the address below. The purpose of this notice is to solicit public comments on the draft EA/RIR.

DATE: Comments on the draft EA/RIR are invited until November 27, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Copies of the draft EA/RIR may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Pacific halibut fisheries are regulated under authority of the International Pacific Halibut Commission (IPHC) established by convention between the United States and Canada. The Northern Pacific Halibut Act of 1982 (Halibut Act) gives effect to convention amendments made in 1979 and provides the Council with authority to develop regulations governing halibut fishing off Alaska which are in addition to, but not in conflict with, regulations adopted by the IPHC. Such regulations may be implemented only with approval of the Secretary of Commerce (Secretary).

In August 1989, the Council solicited regulatory amendment proposals for the 1990 halibut fishing season. The Council received and reviewed 17 proposals. At its meeting in September 1989, the Council reviewed the recommendations of its Halibut Management Team and Halibut Regulatory Amendment Advisory Group and decided to consider amending the halibut regulations in response to only one of the proposals affecting Regulatory Area 4C (Pribilof Islands).

Specifically, the allocative measures being considered by the Council for Regulatory Area 4C involve extension of the existing 10,000 pound trip limit (which currently applies to 50 percent of the catch limit) to 100 percent of the catch limit. If approved, this regulatory change is designed to enhance halibut fishing opportunities for residents of the Pribilof Islands.

The Council's Halibut Management Team has prepared a draft EA/RIR that assesses the potential environmental and economic effects of the regulatory alternatives under consideration. Copies of this draft EA/RIR may be requested from the Council at the address listed above. Comments on how any of the alternatives may effect the human environment are especially requested.

The Council intends to make its decision on these alternatives at its next scheduled meeting, December 4-8, 1989. If necessary, a proposed rule would be published as soon as practicable after that date with an additional opportunity for public comment on the Council's decision. Any resulting final rule, if approved by the Secretary, would be in effect before the beginning of the 1990 halibut fishing season.

Dated: November 8, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-28684 Filed 11-9-89; 4:18 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 663

[Docket No. 91160-9260]

Foreign Fishing; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary groundfish fishery specifications and management measures, and request for comments.

SUMMARY: NOAA announces and requests comments on the preliminary 1990 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California. The preliminary specifications propose the level of the acceptable biological catch, the optimum yield, and the distribution of the optimum yield between domestic and foreign fishing operations for groundfish species and species groups. The preliminary management measures suggest fishing restrictions that would keep landings within specified levels. These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this preliminary notice is to provide the Secretary of Commerce with the best available information on which to base the final specifications and management measures for 1990 and to provide opportunity for public participation in this decisionmaking process.

DATES: Comments on these preliminary specifications and management measures for 1990 must be received by December 1, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION:

Preliminary Specifications of ABC and OY

Under the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR part 663.24, the management specifications for groundfish must be evaluated each calendar year, the preliminary specifications for the upcoming year must be published in the **Federal Register** inviting public comment, and the final specifications must be published in the **Federal Register** following public comment. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF).

The ABC is the annual catch, for the more than 80 groundfish species managed by the FMP, that can be taken without jeopardizing a resource's productivity.

The OY is based on the ABC as modified by socioeconomic factors, and thus is not necessarily equal to the ABC. The FMP uses two types of OYs, numerical OYs which are quotas, and a nonnumerical OY which is all the fish which can be legally caught under the gear, area, and catch restrictions imposed by the FMP.

Each numerical OY is a quota, i.e., the maximum amount of fish (in round weight) that may be retained, or landed each year from the exclusive economic zone (EEZ) (3-200 nautical miles) and the state waters (0-3 nautical miles) off the coasts of Washington, Oregon, and California. A numerical OY is specified only for each of six species: Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel. The OY for each of these six species includes determinations of the amounts available for domestic and foreign fishing. The DAH consists of estimates of DAP and JVP which are determined by surveys in September and June to assess the industry's planned utilization. The TALFF is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than was initially estimated.

The more than 70 remaining species managed under the FMP are included in the nonnumerical OY. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization by domestic processors of some species in this multispecies complex precludes joint venture or foreign targeting on underexploited species in this complex because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing are not available for any species in this multispecies complex. However, ABCs are specified for the major species or species groups.

The OYs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22.

The preliminary 1990 management specifications for each species with an ABC different than in 1989, or with a numerical OY, are discussed below, followed by Tables 1 and 2 which list the ABCs and OYs for all species or species groups. In some cases, ranges are presented. The final ABCs and OYs may not fall within these ranges. The aggregate data upon which these preliminary specifications are based are available for public inspection at the offices of the Regional Directors (see ADDRESSES above) during business hours until the end of the comment period.

TABLE 1—PRELIMINARY SPECIFICATIONS OF ABC FOR 1990 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	Area					
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific Cod						[3] 3.2
Pacific Whiting						[3] 160.0-196.0
Sablefish						[3] 5.5-9.0
Rockfish:						
Pacific Ocean Perch	0.0	0.0	[2]	[2]	0.0	
Shortbelly						[3] 13.0
Widow						[illegible]
Other Rockfish: [4]						
Bocaccio	[2]	[2]	[2]	[3] 4.1	[3] 2.0	6.1
Canary	0.8	[3] 2.1	0.8			3.5
Chilipepper						[3] 3.6
Yellowtail	1.1	[3] 2.9	0.3	[2]	[2]	4.3
Remaining Rockfish	0.8	[3] 3.7	1.9	4.3	[illegible]	14.0
Flatfish:						
Dover Sole	2.1	5.3	5.1	5.0	1.8	19.3
English Sole						[3] 1.9
Petrale Sole	0.6	1.1	0.5	0.8	0.2	3.2
Other Flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish: [5]						
Jack Mackerel [7]						12.0
Others	2.5	7.0	1.2	[illegible]	2.0	14.7

[1] U.S. portion.

[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] "Other rockfish" means rockfish species at 50 CFR 663.2, as amended, which do not have a numerical OY.
[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43° 21' 34" N. latitude), and ABCs for the Columbia area are prorated as follows:

Species	Columbia area Total	North of Coos Bay	South of Coos Bay
Canary	2.1	1.7	0.4
Yellowtail	2.9	2.8	0.1
Remaining rockfish	3.7	3.3	0.4

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at 50 CFR 663.2.
[7] North of 39° N. latitude.

TABLE 2—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1990

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific Whiting	160.0–196.0	14.0–23.0	137.0–182.0	160.0–196.0	0.0	0.0
Sablefish [2]	5.5–9.0	5.5–9.0	0.0	5.5–9.0	0.0	0.0
Pacific Ocean Perch [3]	[3] 1.54	[3] 1.54	0.0	[3] 1.54	0.0	0.0
Shortbelly Rockfish	13.0	0.5	12.5	13.0	0.0	0.0
Widow Rockfish	6.9–8.9	6.9–8.9	0.0	6.9–8.9	0.0	0.0
Jack Mackerel	12.0	0.0	5.0	5.0	2.4	4.6
Other Species	[8]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.
[2] Of this 1,540 metric tons, 500 metric tons is for the Vancouver area and 1,040 metric tons is for the Columbia area. Pacific ocean perch from other areas are included in the OY for "other species." See 50 CFR 663.21(a)(3).
[3] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under 50 CFR 611.70 and part 663. See 50 CFR 663.2 for species listing.

Proposed Change to ABC for Nonnumerical OY Species

The preliminary ABCs for all species included in the nonnumerical OY are the same as in 1989, with the exception of Dover sole (Table 1). A stock assessment of Dover sole in the Vancouver, Columbia, and Eureka areas is in preparation and is expected to be available before the Pacific Fishery Management Council (Council) makes its final recommendations in November. Revisions to these preliminary estimates are anticipated at that time. Until the stock assessment is finalized, the Groundfish Management Team (GMT) recommended that the preliminary ABC for each subarea be the mean of the last five years' landings, to more accurately reflect the forthcoming final coastwide ABC for 1990 which is expected to be lower than in 1989. The preliminary ABCs by International North Pacific Fisheries Commission (INPFC) statistical subarea are as follows: Vancouver—2,100 mt (12 percent below the 1989 ABC of 2,400 mt); Columbia—5,300 mt (54 percent below the 1989 ABC of 11,500 mt); Eureka—5,100 mt (36 percent below the 1989 ABC of 8,000 mt); Monterey—5,000 mt (the same as in 1989); and Conception—1,800 mt (80 percent above the 1989 ABC of 1,000 mt). The sum of these result in a preliminary coastwide ABC of 19,300 mt, 31 percent below the 27,900 mt coastwide ABC for Dover sole in 1989.

Stock assessments for canary and yellowtail rockfish also are underway and may result in changes in the ABCs for those species.

Proposed Specifications for Numerical OY Species

Pacific whiting. The status of the Pacific whiting stock was assessed in 1989 using the stock synthesis model introduced in last year's assessment. As noted last year, the whiting fishery continues to be supported by the strong 1980 and 1984 year classes. By 1990, the 1980 year class will have been in the U.S. fishery for nine years, and its contribution is expected to diminish considerably. There is no evidence of strong recruitment to the population since 1984 and spawning biomass will decline from 829,000 mt in 1989 to an estimated 599,000 mt in 1990. Further biomass (and corresponding yield) declines are expected through 1992. Total yield for 1990 from the U.S. and Canadian fisheries combined is estimated to be in the range of 180,000-245,000 mt. The U.S. ABC is calculated, based on the portion of the stock estimated to be in U.S. waters at the time of the fishery and the age structure of the stock in 1990, to range from 160,000 to 196,000 mt, 29 to 13 percent below the 225,000 mt ABC in 1989.

In 1989 as in previous years, OY is proposed to equal ABC. The 1990 estimate of DAP is a range from 14,000 mt to 23,000 mt, compared to 18,000 mt in 1989. Because a NOAA survey to estimate preliminary joint venture requests for 1990 resulted in requests which exceed the amount proposed for OY, the JVP in 1990 is proposed to be a range from 137,000 mt to 182,000 mt, the difference between OY and DAP. Accordingly, the preliminary determination of DAH in 1990 is equal to OY and there is no initial TALFF and no reserve. These amounts may change, depending on the final specifications of ABC and OY, revised DAP requests, and applications for joint venture processing which are received later in the year. At its November meeting, the Council may recommend that the OY not be equal to ABC.

Sablefish. The preliminary 1990 ABC for sablefish ranges from 5,500 mt to 9,000 mt, compared with 9,000 mt in 1989. Revised sablefish aging criteria employed by NMFS generated age compositions with a greater proportion of older fish, which resulted in the use of lower natural mortality estimates, a lower rate of turnover in the population, and thus decreased estimated yield.

The Council recommended that the preliminary OY be set equal to ABC. At its November meeting, it will consider setting the OY 300 mt above ABC to provide a buffer, possibly for uncertainties in landings projections, landings of unavoidable bycatch, and operations of small fisheries late in the year. (See the section on management measures at the end of this notice.) Because domestic processors will process all available sablefish, none is available for joint venture or foreign fishing in 1990 except for minimal allowances for unavoidable incidental catches.

Pacific ocean perch. The preliminary 1990 ABCs for Pacific ocean perch in both the Vancouver and Columbia areas are zero, as has been the case since 1987. Pacific ocean perch have been overfished in the past and now are managed under a rebuilding schedule specified in the FMP. No new stock assessment was conducted for 1990. The most recent available data indicate little or no rebuilding of the Pacific ocean perch stock since 1979, and there are no indications of strong recruitment to the population. However, the stock also does not appear to be declining, and increased landings in 1988 and 1989 may indicate the emergence of stronger year classes. The GMT may consider combining the ABCs (and thus the OYs) for the Vancouver and Columbia areas in the near future.

As in the past three years, an OY is proposed to allow some if not all incidental catches to be landed, but not to encourage directed fishing. Therefore, the preliminary OYs for 1990 are the same as in 1989: 500 mt in the Vancouver area and 1,040 mt in the Columbia area. (The OY in the Columbia area was increased from 800 mt to 1,040 mt on July 26, 1989 (54 FR 31688, August 1, 1989).) Domestic processors will fully utilize the OY, so no Pacific ocean perch are available for joint venture or foreign fishing in 1990 except for minimal allowances for unavoidable incidental catches.

Widow rockfish. The preliminary ABC for 1990 is a range of 6,900 to 8,900 mt, 44 to 28 percent lower than the 12,400 mt ABC in 1989. The decrease is attributable mostly to the relatively weak 1982 and 1983 year classes. The best estimates using cohort analysis and the stock synthesis model are that the stock has been fished down from a 1980 biomass of 150,000—250,000 mt to a 1989 level of 50,000–70,000 mt.

It is proposed that the preliminary OY equals ABC, as in 1989, and therefore it ranges from 6,900 to 8,900 mt. Because this species is fully utilized by domestic processors, no widow rockfish are available for JVP or TALFF in 1990 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1989 ABC and OY specifications for shortbelly rockfish are both 13,000 mt, 30 percent above the 10,000 mt ABC and OY in 1989. Although the GMT provided an ABC range of 13,900—47,000 mt, the regulations at 50 CFR 663.24 prevent annual increases of more than 30 percent. However, inseason increases of an additional 30 percent are allowed if the need exists and criteria at 50 CFR 663.22(b) are satisfied.

The GMT's recommended ABC range from 13,900 to 47,000 mt is based on the extremes of the MSY estimates from two yield calculation approaches that reexamined the age, growth, and potential yield of shortbelly rockfish. This range differs considerably from the 1989 ABC of 10,000 mt, as a result of improved understanding of natural mortality and revised yield calculation methods. Shortbelly rockfish remains an unexploited, virgin stock at present. Due to the considerable uncertainty in the estimate of virgin biomass, the ABC recommendation is based on a potential yield model rather than the more standard approach of calculating yield from the fishing mortality that would produce MSY (F_{msy}) and estimated current biomass. As the fishery develops and more reliable estimates of current biomass are obtained, alternative strategies for fishing down the virgin stock can be evaluated.

There is little domestic processing of shortbelly rockfish, and the DAP is reduced from 1,000 mt to 500 mt which should fully accommodate domestic processing needs in 1990. Two joint venture companies expressed interest in harvesting 13,000–15,000 mt of shortbelly rockfish, in conjunction with experimental fisheries for that species. Accordingly, JVP is preliminarily designated at 12,500 mt, the difference between OY and DAP. Because DAH would equal OY, there is no surplus available for TALFF and no reserve.

Jack mackerel (north of 39° N. latitude). The preliminary 1989 ABC and OY specifications for jack mackerel are both 12,000 mt, the same as during 1985–1989. No new stock assessment has been conducted for this species. No domestic processing interest has been identified for the stock north of 39° N. latitude, the only component of this species managed by the FMP. However, there is some preliminary interest in a joint venture fishery for as much as 5,000 mt in 1990. Accordingly, DAP is set at zero, JVP is 5,000 mt, TALFF is 4,600 mt, and the reserve (20 percent of the OY) remains at 2,400 mt.

Harvest Guidelines

NOAA proposes to designate a harvest guideline, as it has done since 1983, for the *Sebastes* complex of rockfish (of which yellowtail rockfish is a dominant component) north of Coos Bay, Oregon. The harvest guideline is the amount of fish that the Council intends to be landed in a given year, and management measures may be imposed to keep landings close to that level. However, unlike a quota, the fishery does not necessarily close when a harvest guideline amount is reached.

As in the past, the harvest guideline for the *Sebastes* complex is derived by adding the ABCs for the species in the complex north of Coos Bay. Consequently, the ABCs for yellowtail rockfish, canary rockfish, and the remaining rockfish category are prorated to determine the portion of the ABCs in the Columbia area that apply north of Coos Bay. The harvest guideline is determined by adding the prorated ABCs for the Columbia area north of Coos Bay to the ABCs for those same species in the Vancouver area. As in 1989, the harvest guideline is preliminarily set at 10,500 mt. If the ABCs are changed for any species in the *Sebastes* complex north of Coos Bay, the harvest guideline will reflect that change (See footnote 5 of Table 1). Similarly, the harvest guideline for yellowtail rockfish also has been based on its ABC and prorated for the area north of Coos Bay, Oregon. As in 1989, the harvest guidelines for yellowtail rockfish preliminarily is estimated at 3,900 mt.

Preliminary Management Measures

NOAA is considering certain management measures intended to reduce the rate of landings in 1989 for several species or species groups. Management measures which restrict fishing levels are implemented under the "points of concern" authority in the FMP (sections 1.2 and 9.3.1; 50 CFR 663.22). Any such actions are designed to prevent or reduce biological stress on the stock.

The Council has recommended trip poundage limits (the amount of fish that may be taken and retained, possessed, or landed per vessel per fishing trip) and trip frequency limits (the number of legal landings that may be made in a particular period of time) for the species and species groups discussed below. However, proposal of such limits here does not preclude the Council from recommending other limits or limits on other species based on new information. In particular, if the final ABC for Dover sole remains as low as proposed, the

Council may find it necessary to recommend restrictions on landings of that species under the points of concern mechanism in order to prevent the ABC from being substantially exceeded. Trip limits were placed on Dover sole in 1989 as an unavoidable part of the deepwater complex, of which sablefish is a part, for the purpose of conserving sablefish.

The management measures proposed below for 1990 are tentative because the final specifications on which they ultimately are based will not be approved until after the Council's November 1989 meeting. Therefore, these proposed management measures are subject to change based on more recent scientific information and public comment.

Widow Rockfish. The OY for widow rockfish in 1989 was 12,400 mt. A weekly trip limit of 30,000 pounds was implemented on January 1, 1989. The weekly limit was reduced to 10,000 pounds on April 26, 1989, and a biweekly option was added. The weekly and biweekly limits applied only when there were more than 3,000 pounds of widow rockfish in a landing. The trip limit was reduced to 3,000 pounds and trip frequency restrictions were removed on October 11, 1989.

If the OY for widow rockfish in 1990 remains as proposed, 6,900–8,900 mt, management restrictions will be necessary in 1990. Trip poundage and frequency limits in 1990 are likely to be more restrictive than in 1989.

Sebastes Complex (including Yellowtail Rockfish). The harvest guideline for the *Sebastes* complex in 1989 was 10,500 mt. A weekly trip limit of 25,000 pounds (containing no more than 7,500 pounds of yellowtail rockfish) was implemented on January 1, 1989, and biweekly and twice-weekly trip limit options were available. The weekly limit for the *Sebastes* complex remained the same throughout the year, but the weekly limit for yellowtail rockfish was reduced to 3,000 pounds or 20 percent of the *Sebastes* complex, whichever was greater, on July 28, 1989, and proportional changes were made to the biweekly and twice-weekly options. In 1989, the trip frequency limits were applied only when more than 3,000 pounds of the *Sebastes* complex were landed. The harvest guideline is not expected to differ greatly in 1990, in which case management measures will be necessary to conserve yellowtail rockfish. Restrictions in 1990 are likely to be similar to those in 1989.

Pacific Ocean Perch. The OY for Pacific ocean perch in 1989 was 500 mt in the Vancouver area, and 1,040 mt in the Columbia area (increased from 800 mt on July 28, 1989), for a total OY of 1,540 mt. On January 1, 1989, the trip limit for Pacific ocean perch was 5,000 pounds or 20 percent of all fish on board, whichever was less. This limit was reduced to 2,000 pounds or 20 percent of all fish on board, whichever was less, on July 28, 1989. These limits only applied when more than 1,000 pounds of Pacific ocean perch were on board. If the OY for Pacific ocean perch in 1990 remains the same as in 1989, management restrictions will be necessary in 1990. The trip poundage limit in 1990 is likely to be similar to that in 1989.

Sablefish (and the Deepwater Complex). In 1989, the OY for sablefish was 10,400–11,000 mt. On January 1, 1989, the OY was allocated 52 percent for the trawl fleet and 48 percent for the nontrawl (fixed) gear fleet. The 600 mt difference in the OY range was intended to be used as a buffer to accommodate uncertainties in landings projections, unavoidable bycatch, and the enable small fisheries that operate later in the year to have an opportunity to land their catch. A sablefish trip limit of 1,000 pounds or 45 percent of the deepwater complex, whichever was greater, was imposed on the multispecies trawl fishery to discourage target fishing for sablefish and to slow achievement of the trawl quota. If the trawl quota had been reached early in the year, sablefish would have continued to be caught in fisheries for other species. These incidentally caught sablefish would have been discarded because further landings must be prohibited after a quota is reached.

In April it became evident that the rate of trawl landings was too high to avoid premature closure. To prevent reaching the trawl quota too early, 400 mt of the nontrawl quota and 600 mt buffer were transferred to the trawl quota, in conjunction with restrictive trip limits on the trawl fishery both for the deepwater complex and for its sablefish component. The weekly limit for the deepwater complex was 30,000 pounds, which could include no more than 1,000 pounds or 25 percent sablefish, whichever was greater. Biweekly and twice-weekly trip limit options were available. The trip frequency limits applied when more than 4,000 pounds of the deepwater complex were on board. The maximum limit for landings of the deepwater complex, and the trip frequency limits, were removed on October 4, 1989, when it became evident that sufficient sablefish remained for the trawl fishery to continue to the end of the year, but the limits on sablefish (1,000 pounds or 25 percent of the deepwater complex, whichever was greater) remained.

The nontrawl fishery continued unrestricted (except for size limits) until July 17 when the target fishery was virtually eliminated and a 100-pound trip limit was imposed, which was intended to stretch the fishery until the end of the year. Landings were slower than anticipated and the limit was increased to 2,000 pounds or 20 percent of the fish on board, whichever was less, on October 4, 1989. The 20 percent limit applied only when more than 100 pounds of sablefish were on board.

The Council is considering a number of options for management of sablefish in 1990. Under any of these options, the Council is likely to set aside a harvest guideline of sablefish for treaty Indian harvest. This harvest guideline is not expected to exceed 205 mt. Under any of the options, the Council also may choose to limit trawl landings of the deepwater complex as in 1989. However, the Council also is considering changing the species of the complex to include certain species of slope rockfish. If so, this would require a redetermination of the appropriate species and percentage (by round weight) of sablefish that could be taken relative to the deepwater complex. The Council also may choose to limit nontrawl landings.

The Council is considering the following options to slow the harvest of sablefish in both the trawl and nontrawl fisheries in order to prevent biological stress, reduce discards, and provide for the landing of unavoidable bycatch in other fisheries. As in past years, trip poundage and trip frequency limits are likely to be recommended to achieve these objectives and the gear quotas proposed in the following options.

Option 1. After subtracting the Indian harvest guideline, continue the 58 percent trawl and 42 percent nontrawl gear quotas established April 26, 1989 (54 FR 18658, May 2, 1989). The management measures adopted at the April 1989 Council meeting (including specification of a deepwater Dover sole assemblage and restrictions on those species) would be reimplemented January 1, 1990. A 300 mt reserve could be established in addition to the ABC to be set as the upper limit of OY. That reserve would be available for overages in either fishery to prevent all landings from being prohibited.

Option 2. The same as Option 1 except the trawl quota would be 56 percent and the nontrawl quota would be 44 percent, based on the same percentages established in April 1989, but before the 600 mt buffer was added to the trawl quota.

Option 3. Divide the last 10 percent of the OY equally between trawl and nontrawl gears, accompanied by a trip limit on trawl gear that equals the average percentage of sablefish in all trawl landings containing sablefish (not to exceed 30 percent), as required at 50 CFR 663.27(b)(3).

Option 4. Establish a trawl quota between 4,000 and 6,000 mt of sablefish and designate the remainder for the nontrawl fleet.

Final Actions

The Council will make final recommendations for the 1990 specifications and management measures at its November 15–17, 1989 meeting in Portland, Oregon. Public comment will be invited at that meeting was well as during the public comment period following the publication of this notice. The Secretary will consider public testimony and the latest information on stock status and expected catch and effort before announcing the final specifications and management measures that will be effective January 1, 1990.

Classification

The preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24 (a) and (b). The management measures are proposed under the authority of 50 CFR 663.22(a) and 663.23.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this notice are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assesssment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed significantly.

This action is in compliance with Executive Order 12291. The action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The public has had opportunities to comment on this action. The public participated in Groundfish Select Group, Groundfish Management Team, and Council meetings in August and September 1989 that resulted in the recommendations from the Council. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. *et seq.*

Dated: November 9, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–26955 Filed 11–13–89; 12:12 pm]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 54, No. 220
Thursday, November 16, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-188]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Molokai, Hawaii, of cotton plants genetically engineered to be tolerant to the herbicide *Bromoxynil*. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-192-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to tolerate the herbicide *Bromoxynil*. The field trial will take place in Molokai, Hawaii.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into the cotton genome. In nature, genetic material contained in chromosomes can only be transferred to other sexually compatible flowering plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is at a sufficient distance away from any compatible plants with which cotton plants may cross-pollinate.

2. Neither the herbicide tolerance gene by itself, nor its gene product, confers on cotton plants any plant pest characteristics. Traits that lead to weediness in plants are polygenic and cannot be conferred by adding a single herbicide tolerance gene.

3. The mocro-organism *Klebsiella pneumoniae* subsp. *ozaenae* from which the herbicide tolerance gene was isolated is not a plant pest and is widely distributed in the environment as a common soil inhabitant.

4. In nature, the herbicide tolerance gene does not provide the transformed cotton plants with any measurable selective advantage over nontransformed cotton plants in their ability to disseminate or to become established in the environment.

5. The vector (tumor inducing Ti-plasmid) used to transfer the herbicide tolerance gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this field test. The vector, although derived from a DNA sequence of a known plant pest, has been effectively disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants. The vector acts by delivering the genes into the chromosomal DNA where the genes are stably incorporated.

6. The vector agent, *Agrobacterium tumefaciens*, the bacterium that was used to deliver the vector DNA containing the herbicide tolerance gene into the plant cell is a well known plant pest, and has been effectively eliminated with an appropriate antibiotic and is no longer associated with the transformed cotton plants.

7. Generally, the movement of the introduced gene(s) is not possible except by pollination of compatible flowering plants. Cotton plants are generally self-pollinators and are not wind-pollinated. Because cotton plants in rare instances are insect-pollinated, the test plants are surrounded by 100 feet of border rows to prevent cross-pollination.

8. Bromoxynil is an herbicide that rapidly degrades in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the field test is very small (238 feet wide by 378 feet long) and is biologically isolated from any species of wild plants and animals by a surrounding area of cultivated land.

10. The experimental plot is located on a private ranch and has good physical security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 13th day of November 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-26858 Filed 11-15-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-189]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-278-01	Monsanto Agricultural Company...?	10-05-89	Tomato plants genetically engineered for insect resistance using *Bacillus thuringiensis* var. *kurstaki*.	Florida.
89-278-02	Monsanto Agricultural Company	10-05-89	Tomato plants genetically engineered for insect resistance using *Bacillus thuringiensis* var. *kurstaki*.	Florida.

Done in Washington, DC, this 13th day of November 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-26959 Filed 11-15-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held December 6 and 7, 1989 9 a.m., in the Herbert C. Hoover Building, room 1617F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which effect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of the following Commodity Control List Numbers:
   - 1521—Amplifiers and related equipment
   - 1522—Lasers
   - 1529—Electronic equipment for testing and measuring
   - 1531—Frequency synthesizers
   - 1534—Flatbed microdensitometers
   - 1541—Cathode-ray tubes
   - 1553—X-ray systems, flash discharge
   - 1556—Optical elements and elements for optical tubes
   - 1572—Recording/reproducing equipment

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto. The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements on issues pertinent to export regulations for commodities within the responsibility of the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior

to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Lee Ann Carpenter at (202) 377–2583.

Dated: November 13, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–26924 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-DT-M

Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held December 5, 1989, 9 a.m., in the Herbert C. Hoover Building, room 1617F, 14th Street & Constitution Avenue NW., Washington, DC. The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to lasers and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Lee Ann Carpenter, 202–377–2583.

Dated: November 13, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–26925 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on December 7, 1989. The meeting will be from 2:00 to 4:00 p.m. in room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Report on conditions in the export market; review of Office of Textiles and Apparel export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377–4324).

Dated: November 9, 1989.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–26927 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 4:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–147R. *Applicant:* University of Hawaii at Manoa, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* FTIR Spectrometer System, Model DA3. *Manufacturer:* Bomem, Canada. Original notice of this resubmitted application was published in the **Federal Register** of June 1, 1989.

Docket Number: 89–250. *Applicant:* U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Bldg. 350, Argonne, IL 60439. *Instrument:* Mass Spectrometer, Model PlasmaQuad PQ 2 Plus. *Manufacturer:* VG Instruments Group, United Kingdom. *Intended Use:* The instrument will be used for studies of trace elements in a matrix consisting primarily of uranium or plutonium during research concentrated on the development of high accuracy-high precision methodology for the analysis of elemental impurities. *Application Received by Commissioner of Customs:* October 10, 1989.

Docket Number: 89–251. *Applicant:* Knox College, 2 South Street, Galesburg, IL 61401. *Instrument:* Electron Microscope, Model JEM–100SX. *Manufacturer:* JEOL, Inc, Japan. *Intended Use:* The instrument will be used for studying biological specimens in conjunction with the following ongoing research:

(1) The immune and pathological responses in marine invertebrates focusing on comparing structure and function, origin and development of circulating cells in the coelomic cavity.

(2) Studies of the impact of stress upon the normal activities and growth of cells focusing on understanding how plant cells regulate normal cellular protein synthesis during heat shock.

(3) Study of the effects of alcohol at the cellular level in the fruit fly, *Drosophila melanogaster.*

The instrument will also be used for educational purposes in various biology courses. *Application Received by Commissioner of Customs:* October 10, 1989.

Docket Number: 89–252. *Applicant:* University of Pennsylvania, Physiology Department, School of Medicine, B–405 Rich Bldg. 6085, Philadelphia, PA 19104. *Instrument:* Hybrid Piezo-Manipulator, Model PM 20N. *Manufacturer:* Biomedizinische Instrumente, West Germany. *Intended Use:* The instrument will be used for studies of biological cells from frog skin and the ciliary body of the rabbit eye *in vitro.* The objectives of the research are to (i) identify the transfer mechanisms responsible for absorption and secretion of salt and water across model biological systems, (ii) clarify the mechanisms for regulating absorption and secretion, and (iii) test the effectiveness of drugs in altering those processes. In addition, the instrument will be used for educational purposes in the courses Physiology 1111, Independent Study and Physiology 570, Techniques in Cell and Molecular Physiology. *Application Received by Commissioner of Customs:* October 12, 1989.

Docket Number: 89–253. *Applicant:* La Jolla Cancer Research Foundation, 10901 N. Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model VG 70–250SE. *Manufacturer:* VG Analytical, Ltd., United Kingdom. *Intended Use:* The instrument will be used to elucidate the molecular weights and sequences of carbohydrates and peptides in various research projects that require high-mass range mass spectrometry including fast atom bombardment-mass spectrometry. *Application Received by Commissioner of Customs:* October 17, 1989.

Docket Number: 89–254. *Applicant:* Catholic University of America, Vitreous State Laboratory, Suite 400 Hannan Hall, 620 Michigan Avenue NE., Washington, DC 20064. *Instrument:* FTIR Spectrometer, Model DA3.16. *Manufacturer:* Bomem, Inc., Canada. *Intended Use:* The instrument will be used to collect and study collision induced spectra of nonpolar gases, liquids and solids. The properties studied in these activities are molecular motions and interactions in the materials. In addition, the instrument will be used in the training of graduate students. *Application received by Commissioner of Customs:* October 17, 1989.

Docket Number: 89–255. *Applicant:* University of Wisconsin-Madison, Department of Anthropology, Madison, WI 53706. *Manufacturer:* Finnigan Corp., West Germany. *Intended Use:* The instrument will be used for research in reconstructing the diets of individuals through analysis of the stable isotope ratios of carbon and nitrogen in bone collagen. In addition, the instrument will be used in teaching courses in paleonutrition and bone chemistry. *Application Received by Commissioner of Customs:* October 18, 1989.

Docket Number: 89–256. *Applicant:* NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135. *Instrument:* Scanning Electron Microscope, Model JSM–840A. *Manufacturer:* JEOL, Inc., Japan. *Intended Use:* The instrument will be used in the development of new high temperature materials for aerospace propulsion. Of particular interest are the characterization of the interfaces between fibers and matrices in advanced composites, and the precipitates in new intermetallic compounds being developed as matrices for metal matrix composites. *Application Received by Commissioner of Customs:* October 20, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–26926 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Tampa/St. Petersburg, Florida

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $216,776 for the project performance of 04/1/90 to 03/31/91. The MBDC will operate in the Tampa/St. Petersburg, Florida, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $184,260 in Federal Funds and a minimum of $32,516 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications December 15, 1989. Applications must be postmarked on or before December 15, 1989.

ADDRESS: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 1371 Peachtree Street, Suite 505, Atlanta, Georgia 30309, 404/347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia, Thursday, November 30, 1989, at 9:00 a.m.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: November 9, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 89–26908 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Minneapolis/St. Paul, Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estiamted at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period April 1, 1990 to March 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Minneapolis/St. Paul geographic service area. The award number of this MBDC will be 05–10–90001–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is December 22, 1989. Applications must be postmarked on or before December 22, 1989.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernment Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: November 11, 1989.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 89–26909 Filed 11–15–89; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The Caribbean Fishery Management Council will resume the public hearing scheduled for September 21, 1989 (54 FR 35524) on the management measures for the development of the Queen Conch Fishery Management Plan, which was cancelled because of Hurricane Hugo. Oral and written presentations will be accepted.

DATES: Written comments will be accepted until December 31, 1989.

The public hearing will be scheduled, as follows: December 19, 1989, 7:30 p.m., St. Thomas, U.S.V.I.

ADDRESSES: Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918–2577.

The hearing will be held at the following location: St. Thomas, U.S.V.I.—Legislature Building.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 800–766–5926.

Dated: November 9, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–26900 Filed 11–15–89; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on December 6–7, 1989, at the Dunes Manor Hotel, 28th Street and The Ocean, Ocean City, MD. The Council will begin meeting on December 6, 1989, at 8 a.m., and will adjourn during the afternoon of December 7. The Council will discuss striped bass management, receive a report from the Squid/Mackerel/Butterfish Committee, and discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss employment and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 9, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–26872 Filed 11–15–89; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Postponement of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meeting on November 8, 1989, of the South Atlantic Fishery Management Council's Shark Advisory Panel, previously published at 54 FR 41602, to be held at the South Atlantic Council's headquarters (address below), has been postponed. The postponement will allow the South Atlantic Council to review the draft Secretarial Shark Fishery Management Plan at its December 2, 1989, public meeting, at its headquarters.

Information regarding rescheduling of the Shark Advisory Panel public meeting will be published in the **Federal Register** at a later date.

FOR MORE INFORMATION CONTACT: Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: November 9, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–26873 Filed 11–15–89; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (SAFMC) will hold a joint public meeting with the Gulf of Mexico Fishery Management Council (GMFMC), and the two Council Committees also will hold public meetings during the week of November 27 through December 2, 1989, at the Town and Country Inn, 2008 Savannah Highway, and at the SAFMC's headquarters (address below).

SAFMC's Committees

The Red Drum Committee will meet on November 28, 1989, from 1 p.m., to 5 p.m. The Personnel Committee will begin its meeting on November 29 at 8 a.m., with a closed session (not open to the public), to discuss employment matters. A public meeting of the King and Spanish Mackerel Committee will follow, and will adjourn at 5 p.m. These meetings will take place at the SAFMC's headquarters.

The Snapper-Grouper Committee will meet on December 1 at 8 a.m. Meetings of the Spiny Lobster, Finance, Habitat and Environmental Protection, and Swordfish Committees will follow. Adjournment is at 6 p.m. The meetings will take place at the Town and Country Inn.

The Swordfish Committee will meet again on Saturday, December 2 from 8 a.m., to 10 a.m., at the SAFMC's headquarters.

SAFMC

The Council will meet at its headquarters on Saturday, December 2 from 10:30 a.m., to 5 p.m., to review reports of the Executive, Finance, Spiny Lobster, Snapper-Grouper, Swordfish, Habitat and Environmental Protection, Law Enforcement, and Red Drum Committees. It also will review the draft Secretarial Shark Fishery Management Plan. In a closed session (not open to the public), the Council will discuss employment matters as a result of recommendations of the Personnel, Advisory Panel Selection, and Scientific and Statistical Selection Committees.

GMFMC Committees

The Shark Management Committee will meet on November 27, 1989, from 2 p.m., to 5:30 p.m. The Budget Committee will meet on November 28 at 8 a.m., followed by meetings of the Reef Fish Management and the Mackerel Management Committees. Adjournment is at 5:30 p.m. The Habitat Protection Committee will meet on November 29 from 8 a.m., to 9:30 a.m.

GMFMC

The Council will meet on November 29 from 9:45 a.m., to 5 p.m., at the Town and Country Inn, to appoint Council committee members, review the Shark, Reef Fish, Habitat Protection, and Budget Committees' reports, and receive the enforcement and director's reports. The Council also will hold a closed session (not open to the public) to discuss employment issues.

Joint SAFMC/GMFMC Meeting

The two Councils will meet on November 30 from 8:30 a.m., to 5 p.m., at the Town and Country Inn, to discuss mackerel issues, and to receive a report regarding the International Commission for the Conservation of Atlantic Tuna.

A detailed agenda will be available to the public on or about November 14, 1989. For more information about the SAFMC meeting agenda contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

For more information about the GMFMC meeting agenda contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: November 9, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–26875 Filed 11–15–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma

November 9, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1954).

A copy of the current bilateral agreement between the Governments of the United States and the Socialist Republic of the Union of Burma is

available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1954); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 25, 1987 and September 11, 1987, between the Governments of the United States and the Socialist Republic of the Union of Burma; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in Categories 340/341/640/641/840, produced or manufactured in Burma and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following restraint limit:

Category	12-month limit
340/341/640/641/840	297,754 dozen of which not more than 238,203 dozen shall be in Categories 340/640/840

Imports charged to this category limit for the period January 1, 1989 through December 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit is subject to adjustment in the future pursuant to the provisions of the bilateral textile agreement between the Governments of the United States and the Socialist Republic of the Union of Burma.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–26928 Filed 11–15–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to Locational Price Differentials Applicable to Deliveries on the Soybean Meal Futures Contract

AGENCY: Commodity Futures Trading Commisson.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBOT" or "Exchange") has submitted proposed amendments to the soybean meal futures contract changing the price differentials currently applicable to deliveries made in four of the contract's existing five non-par delivery territories. The proposed amendments also will establish an automatic mechanism for annually determining the locational price differentials applicable to futures deliveries of soybean meal at regular shipping plants located in non-par delivery territories. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before December 18, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CBOT soybean meal futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under the soybean meal futures contract's current terms, the delivery area is divided into six distinct delivery territories. Each delivery territory is assigned a price differential which is applicable to the delivery of soybean meal at any regular shipping plant located in that territory. The par delivery territory is the central territory (which includes Illinois and Kentucky). The non-par delivery territories and their associated price differentials currently are: the Northeast territory (which includes Indiana and Ohio) at a $3.50 per ton premium; the Mid South territory (which includes Tennessee and Arkansas and parts of Mississippi and Alabama) at a $4.50 per ton premium; the Missouri territory at a $2.50 per ton discount; the Eastern Iowa territory (which includes approximately the southeastern quadrant of Iowa) at a $7.00 per ton discount; and the Northern territory (which includes that part of Iowa not in the Eastern Iowa territory) at a $9.00 per ton discount. The current terms of the contract do not specify a procedure for routinely changing the contract's locational price differentials.

The proposed amendments to the soybean meal futures contract will reduce the premium for the Northeast territory from $3.50 to $3.00 per ton, reduce the discount for the Missouri territory from $2.50 to $2.00 per ton, reduce the discount for the Eastern Iowa territory from $7.00 to $6.00 per ton, and reduce the discount for the Northern territory from $9.00 to $7.00 per ton. Under the proposed amendments, futures deliveries made from regular shipping plants located in the Mid South territory will continue to receive a premium of $4.50 per ton.

The proposed amendments also will establish a method for automatically adjusting, on an annual basis, the locational price differentials applicable to futures deliveries in non-par delivery territories. Under the terms of the proposal, the price differential applicable to deliveries in each non-par delivery territory will change by no more than one dollar per ton ($100 per contract of 100 tons) from year to year when changes are required. Changes will not necessarily be required in each year. Adjustments to territorial differentials will be calculated by the Exchange and published by September 15 of each year for application to all deliveries made in the subsequent calendar year. The boundaries of the contract's existing delivery territories will not be changed.

Under the proposal, the discounts established automatically each year under the Exchange's regulations, applicable to deliveries in each territory in which deliveries are at a discount to the contract price, will be increased (decreased) by fifty cents per ton whenever (1) the average ratio of the number of soybean meal shipping certificates outstanding relative to regular soybean meal processing capacity in that territory is two or more times (one-half or less) the average ratio for all other territories combined, or (2) when this certificates/capacity ratio for the par Central territory is one-half or less (two or more times) the certificates/capacity ratio for all other territories combined.[1] Conversely, for each territory in which deliveries are at a premium to the contract price, the premium will be decreased (increased) by fifty cents per ton under the conditions described in (1) and (2) above. The adjustment for a particular non-par territory for the following year will be one dollar per ton if both of the above conditions are met. In addition, no adjustment in the price differential for any non-par territory for the following year will be made if the weekly average of outstanding CBOT soybean meal shipping certificates is 300 or less in all delivery territories combined. In all cases, delivery in the Central territory will be at par.

The CBOT indicates that the proposed new price differentials will more accurately reflect the current cash market differentials for soybean meal in the contract's delivery area. The Exchange indicates that, in determining the proposed new differentials, it considered soybean meal cash price data, surveys of the views of soybean meal users and shippers, and the opinions of the members of the CBOT's Soybean Meal Committee. The CBOT indicates that, based on its analysis of this information, the proposed new price differentials are consistent with the cash market price relationships within the contract's delivery area.

According to the Exchange, the proposed method for automatically adjusting soybean meal futures price differentials will result in differentials that consistently reflect the differentials observed in the underlying cash market. In addition, the Exchange expects the amended rules to enhance convergence of cash and futures prices for all delivery territories while achieving an equitable distribution of deliveries throughout the delivery area. The Exchange also believes that implementation of the proposed amendments will result in certain benefits including the following: objective rather than subjective determination of applicable differentials, shortened lag time between determination and implementation of necessary changes in differentials, and gradual adjustment of differentials.

The Exchange intends to make the proposed amendments effective for all soybean meal futures contracts listed after Commission approval.

The Commission is seeking comment on the proposed amendments noted above. In particular, the Commission is requesting comment on the extent to which the proposed new differentials for the Northeast, Missouri, Eastern Iowa and Northern delivery territories reflect cash market price differences for all potential delivery locations in each of these territories. In addition, the Commission is requesting comment on the extent to which the proposed method for automatically adjusting the soybean meal contract's locational delivery differentials will result in differentials that reflect cash market pricing relationships within the contract's delivery area.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC by the specified date.

Issued in Washington, DC, on November 9, 1989.

Steven Manaster,

Director.

[FR Doc. 89–26861 Filed 11–15–89; 8:45 am]

BILLING CODE 6351-01-M

[1] The certificates/capacity ratios described above would be calculated using an average of the number of soybean meal shipping certificates that are reported outstanding on a weekly basis during a soybean crop year (September 1 through August 31). Soybean meal processing capacity would be based on the maximum 24 hour soybean meal production capacity of regular CBOT shipping plants.

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB), Army.

Dates of Meeting: 4–5 December 1989.

Time of Meeting: 0800–1700 hours each day.

Place: Aberdeen Proving Ground, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup on Toxic and Hazardous Waste Management will conduct its next meeting at which time proprietary and classified materiel will be discussed, and the draft of a final report will be formulated. This meeting is closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–26911 Filed 11–15–89; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 6–7 December 1989.

Time: 0800–1600, 6 Dec 89, Ft Rucker, AL, 0830–1530, 7 Dec 89, St Louis, MO.

Place: Fort Rucker, Alabama and St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Analysis will convene to determine the type and extent of analysis done during the development and assessment

of requirements for aviation material systems and force structure. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-26932 Filed 11-15-89; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before December 18, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 9, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

[FR Doc. 89-26906 Filed 11-15-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Application for Drug-Free Schools and Communities Programs—Educational Personnel and Training Grants.

Frequency: Annually.

Affected Public: State or local governments; non-profit institutions.

Reporting Burden:

Responses: 500.

Burden Hours: 12,000.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This application will be used by State and local educational agencies to apply for funding under the Drug-Free Schools and Communities Act. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Instructions for Performance Status Report—Magnet Schools Program.

Frequency: Annually.

Affected Public: State or local government.

Reporting Burden:

Responses: 54

Burden Hours: 162.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Grantees are required to submit a performance report under the Magnet School Program. The Department uses this information to monitor compliance with terms and conditions of the grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Performance Report for the Removal of Architectural Barriers to the Handicapped.

Frequency: Annually.

Affected Public: State and local government.

Reporting Burden:

Responses: 57.

Burden Hours: 29.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This performance report will be used by State educational agencies who receive grants under the Removal of Architectural Barriers to the Handicapped Program. The Department uses the information to monitor the performance of the grantees.

[FR Doc. 89-26905 Filed 11-15-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA), (Pub. L. 92-463) and in accordance with section 101-6.1015 title 41 Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Department of Energy (DOE) Advisory Committee on Nuclear Facility Safety (ACNFS) has been renewed for a 2 year period ending November 13, 1991.

The ACNFS provides advice and recommendations to the Secretary of Energy on the safety of the Department's nuclear production and utilization facilities. Such facilities include the Department's production reactors, test reactors, research reactors, and associated nuclear processing facilities. The Committee is composed largely of recognized experts in the field of nuclear energy from outside the Department, and are appointed by the Secretary of Energy.

The Committee members are chosen to ensure an appropriately balanced representation of the industry and users affected, including those of residential, commercial and industrial consumers, and where appropriate, from state and local governments and state regulatory utility commissions. The ACNFS membership is made up of professionals who work in the private and academic sectors, reside in various parts of the country, and specialize in a wide array of disciplines within or pertinent to the nuclear energy field. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Act and section 624(b) of the DOE Organization Act (Pub. L. 95-91) and implementing regulations.

The renewal of the ACNFS has been determined necessary and in the public interest in connection with the performance of duties imposed upon the DOE by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the DOE Organization Act (Pub. L. 95-91), and the GSA Final Rule on Federal Advisory Committee Management, and the implementing regulations.

Further information regarding this advisory committee may be obtained from Elinor Donnelly at (202) 586-3448.

Issued at Washington, DC on November 13, 1989.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 89-26962 Filed 11-15-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF89-285-001, et al.]

Crater Lake Lumber Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 8, 1989.

Take notice that the following filings have been made with the Commission:

1. Crater Lake Lumber Co.

[Docket No. QF89-285-001]

On October 23, 1989, Crater Lake Lumber Co. (Applicant) of HC 67 Box 307, Chiloquin, Oregon 97624, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Klamath County, Oregon. The facility consists of a boiler and a back-pressure steam turbine generator. Thermal energy recovered from the facility is utilized for drying lumber and space heating. The electric power production capacity of the facility is 2500 KW. The primary source of energy is wood waste in the form of wood chips, planer shavings, bark and sawdust. Operation of the facility began in February 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Turbo Power Systems-II, L.P.

[Docket No. QF89-205-001]

On October 26, 1989, Virginia Turbo Power Systems-II, L.P. (Applicant), of P.O. Box 1396, Houston, Texas, 77251, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Unionville, Orange County, Virginia. The facility will consist of a combustion turbine-generator, a heat recovery boiler, a condensing-extraction steam turbine generator, a gas to water heat exchanger, a steam to water heat exchanger and a hot water storage tank. Thermal energy from the facility will be sold to Battlefield Farms, Inc. for use in heating an existing 11.8-acre greenhouse located adjacent to the cogeneration facility. The maximum net electric power production capacity of the facility will be 129,151 KW. The primary energy source will be natural gas. Installation was scheduled to commence during the fourth quarter of 1989.

The original application was filed on March 24, 1989, and granted on July 28, 1989 (48 FERC ¶ 62,076). The recertification is requested due to an ownership change of the facility. Jefferson Energy Company, an indirect wholly owned subsidiary of SCE Corp, an electric utility holding company, will have 50% ownership interest in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power & Light Co.

[Docket No. ER90-28-000]

Take notice that Arkansas Power & Light Company (AP&L) filed on November 3, 1989 revised Page 6 of Appendix A to the Transmission Service Agreement with the City of Hope, Arkansas, that was initially filed on October 19, 1989.

Appendix A to the Agreement contains a formula transmission rate. The revision represents a technical correction changing the operational sign in front of variable ITCWO in the rate formula from a plus (+) to a minus (−).

Comment date: November 22, 1989, in accordance with Standard Paragraph E end of this notice.

4. Pacific Gas and Electric Co.

[Docket No. ER90-49-000]

Take notice that on October 31, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing as a rate schedule a contract with the City of Santa Clara, California (Santa Clara) entitled "Settlement Agreement Concerning FERC Docket No. E-7777-000 (II), et al. Between the Pacific Gas and Electric Company and the City of Santa Clara Providing For Transmission and Support Services" (Settlement Agreement) dated September 22, 1989. The Settlement Agreement and its appendices contain rates and charges for firm and as-available transmission service, support services and optional replacement power proposed to be sold to Santa Clara by PG&E.

Service would commence on January 1, 1990 and continue for up to approximately 17 years, subject to possible termination no earlier than April 1, 1997. PG&E would provide to Santa Clara: (a) Up to 25 MW of firm transmission service between the Nevada-Oregon border and PG&E's Midway Substation, and between Midway and the border; (b) up to 22 MW (coincident schedule) of as-available transmission service from Midway Substation to Santa Clara's point of delivery and from Santa Clara resources to PG&E's service area to Midway; and (c) support and replacement power services in the event of curtailed or terminated transmission service.

Copies of this filing were served upon Santa Clara and the Public Utilities Commission of the State of California as well as other participants in this docket.

Comment date: November 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ES90-6-000]

Take notice that on November 3, 1989, UtiliCorp United Inc. ("Applicant") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue, from time to time, up to and including $200 million of unsecured notes, final maturities no later than December 31, 1992.

Comment date: Deeember 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Co.

[Docket No. ER89-124-000]

Take notice that on November 3, 1989, Carolina Power & Light Company (CP&L) filed revisions to Appendix C and Exhibit C and Exhibit No. 1 to the Amendment to the Interchange Agreement between CP&L and Duke Power Company (Duke) dated March 20, 1987 (CP&L Rate Schedule FPC No. 45 and Duke Rate Schedule FPC No. 10). The revisions which included spreading CP&L's daily transmission rate over 16 hours per day in order to calculate CP&L's hourly transmission rate and capping CP&L's charges for hourly transmission service at the daily rate per KW times the highest amount (KW) transmitted in any hour of the day being made in response to a Commission's Staff's directive. CP&L is also unilaterally filing updated rates for production demand and transmission use based on 1989 projecting costs. These changes are requested to become effective on the date the Commission accepts this filing.

Comment date: November 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER90-58-000]

Take notice that on November 7, 1989, Southern California Edison Company (Edison) tendered for filing, the following Letter Agreement No. 3:

Letter Agreement No. 3 to the Edison-SMUD. Power Sale Agreement Between Southern California Edison Company (Edison) and Sacramento Municipal Utility District (SMUD)

The Letter Agreement amends the Edison-SMUD Power Sale Agreement to extend to date by which SMUD is to advise Edison that SMUD has made satisfactory transmission arrangements for its purchase from Edison to November 30, 1989.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific, doing business as Pacific Power & Light Co. Utah Power & Light

[Docket No. ER90-57-000]

Take notice that PacifiCorp, doing business as Pacific Power & Light, on November 6, 1989, tendered for filing, in accordance with section 35.13 of the Commission's Regulations, Amendment No. 1 to Contract No. 87-LAO-298 and supplement No. 25 to Contract No. 14-06-400-2537 between PacifiCorp and the United States Department of Energy, Western Area Power Administration (Western). These contracts are both part of the PacifiCorp/Pacific Power & Light Company's Rates Schedule No. 45.

PacifiCorp requests waiver of the Commission's notice requirements to permit this rate schedule change to become effective August 29, 1989, this date being consistent with the effective dates of the Contracts.

Copies of the filing were supplied to the Wyoming Public Service Commission and Western.

Comment date: November 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26882 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-237-001]

Midland Cogeneration Venture Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility and Petition for Temporary Waiver of Operating and Efficiency Standards

November 9, 1989.

On November 2, 1989, Midland Cogeneration Venture Limited Partnership (Applicant) of 100 Progress Place, Midland, Michigan 48640 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. On November 7, 1989, Applicant submitted, as an accompaniment to the application, a petition for temporary waiver of the operating and efficiency standards for qualifying cogeneration facilities contained in § 292.205 of the Commission's regulations. No determination has been made that the submittals constitute a complete filing.

The topping-cycle cogeneration facility is located at 100 Progress Place, Midland, Michigan 48640. The facility consists of 12 combustion turbine generators, 12 heat recovery boilers of which six are equipped for supplementary firing, an extraction/condensing steam turbine generator, and a back-up extraction/condensing steam turbine generator. The primary energy source is natural gas. Thermal energy recovered from the facility will be used by Dow Chemical Company for process uses and space heating. The net electric power production capacity of the facility will be approximately 1,393.7 MW.

Certification on the original application was issued on March 12, 1987 (38 FERC ¶ 61,244 (1987)). The recertification is requested due to (1) inclusion of the above referenced back-up steam turbine generator, (2) changes in the partnership agreement, and (3) changes in provisions of agreements providing for the transfer of assets to the Partnership. CMS Midland (CMS) a wholly-owned subsidiary of Consumer Power Company, an electric utility, will have an ownership interest in the facility. Applicant states that CMS's equity interest in the facility will not exceed 50%. The temporary waiver of the operating and efficiency standards is requested for the period June 2, 1989 through December 31, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed no later than November 28, 2989 and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26883 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-204-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP90-204-000]

November 8, 1989.

Take notice that on October 31, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-204-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kimball Resources, Inc. (Kimball), a gas marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that, pursuant to a transportation agreement dated September 22, 1989, it proposes to transport up to 25,000 Dt. per day of natural gas for Kimball. Tennessee further states that the agreement provides for it to receive the gas from various existing receipt points located in Louisiana, offshore Louisiana, Texas, offshore Texas and Mississippi and to redeliver the gas to various existing points of delivery located in Louisiana, Mississippi, Tennessee and Texas. Kimball has informed Tennessee that it expects to have the full 25,000 Dt. transported on an average day and, based thereon, estimates that 9,125,000 Dt. would be transported annually. Tennessee advises that, the service commenced October 7, 1989, as reported in Docket No. ST90-253-000 (filed October 27, 1989), pursuant to § 284.223 of the Commission's Regulations.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP90-196-000]

November 8, 1989.

Take notice that on October 31, 1989, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request with the Commission in Docket No. CP90-196-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for permission and approval to abandon a meter station used to measure natural gas volumes delivered to South Coast Sugars, Inc. (South Coast), a direct industrial sales customer, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United states that it proposes to abandon its meter station at Homeplace Settlement, Lafourche Parish, Louisiana, because South Coast requested United to terminate its natural gas deliveries as of December 31, 1988. United also states that its proposed abandonment of measuring facilities would not cause an inconvenience for its other customers.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP90-213-000]

November 8, 1989.

Take notice that on November 2, 1989, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-213-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 20,600 MMBtu of natural gas per day for Texican from receipt points located in Louisiana, Offshore Louisiana and Texas to delivery points located in Louisiana. United anticipates transporting an annual volume of 7,519,000 MMBtu.

United states that the transportation of natural gas for Texican commenced September 20, 1989, as reported in Docket No. ST90-149-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP90-209-000]

November 8, 1989.

Take notice that on November 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-209-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Texaco Gas Marketing Inc. (Texaco) under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to maximum of 380,500 MMBtu of natural gas per day for Texaco from receipt points located in Louisiana, Mississippi and Texas to delivery points located in Louisiana and Mississippi. United anticipates transporting, on an average day 380,500 MMBtu and an annual volume of 131,582,500 MMBtu.

United states that the transportation of natural gas for Texaco commenced September 12, 1989, as reported in Docket No. ST90-150-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Questar Pipeline Company

[Docket No. CP90-184-00

November 8, 1989.

Take notice that on October 31, 1989, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP90-184-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas for NGC Transportation Inc. (NGC), under Questar's blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar proposes to transport, on an interruptible basis, up to 20,000 MMBtu equivalent on a peak day, 20,000 MMBtu equivalent on an average day and 7,300,000 MMBtu equivalent on an annual basis for NGC. It is stated that Questar would receive the gas at existing points on Questar's system and would deliver equivalent volumes at an interconnection with NGC. It is explained that the transportation service commenced September 27, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-87.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP90–211–000]

November 8, 1989.

Take notice that on November 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed a request for authorization at Docket No. CP90–211–000, pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service on behalf of Transworld Oil U.S.A., Inc., (Transworld) a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that under the interruptible gas transportation agreement, dated September 11, 1989, between United and Transworld, United proposes to transport a maximum daily quantity of 103,000 MMBtu. It is stated that gas would be received from receipt points in the States of Texas, Mississippi, and Louisiana to delivery points in the States of Texas, Mississippi, and Alabama. United also states that the estimated daily and annual quantities would be 103,000 and 37,595,000, respectively. El Paso further states that transportation service commenced September 30, 1989, as reported in Docket No. ST90–160–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP90–217–000]

November 8, 1989.

Take notice that on November 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–217–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Tenngasco Corporation (Tenngasco), a marketer acting as agent for the parties listed in Exhibit "D" to the transportation agreement, under the blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 18, 1989, as amended, under its Rate Schedule FT–A, it proposes to transport up to 24,000 dekatherms (dt) per day equivalent of natural gas for Tenngasco. Tennessee states that it would transport the gas for Tenngasco from receipt points located offshore Louisiana, and in the states of Louisiana and Texas. Tennessee further states that the points of delivery are located in the states of West Virginia and Tennessee, and the ultimate points of delivery are located in the states of Kentucky, Tennessee, Louisiana, Virginia, West Virginia, Illinois, and Indiana.

Tennessee advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–329–000 (filed October 31, 1989). Tennessee further advises that it would transport 24,000 dt on an average day and 8,760,000 dt annually.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP90–160–000]

November 8, 1989.

Take notice that on October 30, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request at Docket No. CP90–160–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for BridgeGas U.S.A., Inc. (BridgeGas), a gas marketer, under its blanket certificate issued at Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Pursuant to a transportation agreement dated June 7, 1989, El Paso requests authority to transport up to 26,375 MMBtu of natural gas per day for BridgeGas. El Paso states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to redeliver it to various existing points of delivery in Oklahoma. BridgeGas has informed El Paso that it expects to have only 10,550 MMBtu transported on an average day and, based thereon, El Paso estimates that 3,850,750 MMBtu would be transported annually. El Paso advises that the transportation service commenced on September 18, 1989, as reported at Docket No. ST90–155–000, pursuant to § 284.223(a) of the Commissions Regulation.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP90–212–000]

November 8, 1989

Take notice that on November 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP90–212–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide firm transportation service on behalf of Triumph Natural Gas Limited Partnership, a natural gas marketer, under United's blanket certificate issued in Docket No. CP88–6, all as more fully set forth in the request which is open to public inspection.

United states that it proposes to transport, pursuant to their August 22, 1989, agreement, 25,173 MMBtu equivalent of natural gas on peak and average days, and 9,188,145 MMBtu annually. United states that it commenced service on September 1, 1989, under the automatic 120-day authorization provisions of § 284.223(a) of the Regulations as reported in Docket No. ST90–162. United also states that it would receive such gas at existing interconnections in Eugene Island Blocks 37, 38, 57 and 58, offshore Louisiana, and deliver gas at existing interconnections for shipper's behalf in Pike County, Mississippi, and St. Mary Parish, Louisiana.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP90–157–000]

November 9, 1989.

Take notice that on October 27, 1989, Northwest Pipeline Corporation (Northwest, 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–157–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (19 CFR 157.205) for authorization to transport natural gas for Union Pacific Resources Company (Union Pacific), a marketer and producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 75,000 MMBtu equivalent of natural gas on a peak day, 100 MMBtu equivalent on an average day and 36,500 MMBtu equivalent on an annual basis for Union Pacific. It is stated that Northwest would transport the gas through various existing points on Northwest's system and would deliver equivalent volumes at various points in Wyoming, Utah, Colorado, and Idaho.

It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced September 24, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST90–184–000.

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP90–139–000]

November 9, 1989.

Take notice that on October 27, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP90–139–000, an application pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving the abandonment of a 3,580-foot segment of 12-inch pipeline located in East Lake Palourde Field, Assumption Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas originally installed the segment of 12-inch pipeline to attach certain reserves controlled by Union Oil of California (Union) in East Lake Palourde Field pursuant to authority granted to it by the Commission on December 7, 1955, in Docket No. G–8828 (14 FPC 480 (1955)). Texas Gas states that the segment of pipeline has deteriorated to the point that it is not economically feasible to be refurbished for continued usage. Texas Gas further states that Union has other facilities located in the immediate area which can be utilized to continue the deliverance of the volumes of natural gas purchased by Texas Gas in the East Lake Palourde Field.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP90–200–000]

November 9, 1989.

Take notice that on October 30, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, pursuant to section 7(c) of the Natural Gas Act, and the Commission's regulations filed in Docket No. CP89–200–000 an application for a certificate of public convenience and necessity authorizing the transportation and delivery of natural gas for direct sale to GAF Building Materials Corporation (GAF) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that United would transport and deliver up to 1,000 Mcfd of natural gas for direct sale to GAF in Dallas, Texas, under its interruptible Rate Schedule No. 88–107.

United also proposes to operate the tap and metering facilities at the delivery point which were originally constructed pursuant to Secton 311 of the Natural Gas Policy Act.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP90–210–000]

November 9, 1989.

Take notice that on November 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–210–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing, Inc. (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposed to transport natural gas on behalf of Texaco from various points of receipt located in Texas, Louisiana and Mississippi to various points of delivery located in Louisiana, Texas and Mississippi.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Texaco would be 103,000 MMBtu equivalent, 103,000 MMBtu equivalent and 37,595,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST90–148, filed with the Commission on October 17, 1989, it reported that transportation service for Texaco had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Florida Gas Transmission Company

[Docket No. CP87–166–007]

November 9, 1989.

Take notice that on October 24, 1989, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, petitioned the Commission in Docket No. CP87–166–007 to amend the order issued August 13, 1987, in Docket No. CP87–166–000, for authorization pursuant to section 7(c) of the Natural Gas Act (NGA) to add seven existing receipt points to its natural gas transportation service for Enron Industrial Natural Gas Company (Enron Industrial), a Hinshaw pipeline, all as more fully set forth in the petition to amend which is open to public inspection.

FGT proposes to add two interconnections on its pipeline system with Houston Pipe Line Company in Matagorda and Refugio Counties, Texas; an interconnection with Southern Natural Gas Company in Washington, Parish, Louisiana; an interconnection with Texas Eastern Transmission Corporation in St. Landry Parish, Louisiana; an interconnection with Texas Gas Transmission Corporation in Acadia Parish, Louisiana; an interconnection with Transcontinental Gas Pipe Line Corporation in Vermilion Parish, Louisiana; and an interconnection with Truckline Gas Company in Calcasieu Parish, Louisiana. FGT would add these seven interconnections as receipt points to its FERC Rate Schedule X–27 for servicing Enron Industrial.

Comment date: November 30, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26886. Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-163-000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

November 7, 1989.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP90-163-000]

Take notice that on October 30, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed, in Docket No. CP90-163-000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase peak withdrawal capabilities at Texas Gas' Midland Storage Field, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to add twenty-eight new storage wells and install approximately 4.88 miles of 4-inch and 6-inch diameter pipeline in the Midland Storage Field. Texas Gas states that the grant of the authorizations requested will enable Texas Gas to increase the peak day deliverability by 100,000 Mcf.

The estimated cost is $8,803,720 to be financed from funds on hand.

Comment date: November 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP90-155-000]

Take notice that on October 27, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP90-155-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Natural Gas Clearinghouse (NGC) under its blanket certificate issued in Docket No. CP86-553 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Equitrans states that it would receive the gas for NGC at various existing points of receipt in Pennsylvania, and would redeliver the gas at various existing delivery points located in Pennsylvania.

Equitrans further states that the maximum daily, average daily and annual quantities that it would transport for NGC would be 49,000 Mcf of natural gas, 4,000 Mcf of natural gas and 1,460,000 Mcf of natural gas, respectively.

Equitrans indicates that in a filing made with the Commission in Docket No. ST90-159, it reported that transportation service for NGC commenced on September 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this paragraph.

3. Southern Natural Gas Company

[Docket No. CP90-175-000]

Take notice that on October 30, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-175-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap, pipeline, metering and appurtenant facilities and to provide transportation through said facilities to Freeport-McMoRan Resource Partners Limited Partnership (FMRP), and end user, under Southern's blanket certificate issued in Docket No. CP82-406-000 and Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with theCommission and open to public inspection.

Southern states that it proposes to construct and operate approximately 3.75 miles of 8-inch pipeline, a meter station and appurtenant facilities in order to provide firm transportation as well as interruptible transportation, if necessary, to FMRP for use at its proposed Sulphur Mine to be located in Main Pass Block 299, offshore Louisiana. Southern further states that it proposes to install the facilities from Main Pass Block 298 to Block 299, offshore Louisiana, at an estimated construction and installation cost of $2,828,970. Southern indicates that the installation of the proposed facilities would have no adverse impact on its peak day or annual requirements.

Southern states it would perform the proposed firm transportation service for FMRP pursuant to a service agreement dated August 25, 1989, under Southern's Rate Schedule FT. Southern further states that the service agreement provides for a maximum quantity of 20,000 Mcf of gas on a peak day and FMRP anticipates requesting the entire 20,000 Mcf of gas on an average day after commencement of full mining operations, resulting in 7,300,000 Mcf of gas being transported on an annual basis. Southern indicates that it would perform the proposed interruptible transportation service for FMRP pursuant to a service agreement dated August 25, 1989, under Southern's Rate Schedule IT. Southern further indicates that the service agreement provides for a maximum transportation quantity of 25,000 MMBtu per day. FMRP only will use the interruptible transportation to supplement its firm transportation, if necessary, to meet fluctuating gas requirements and estimates that it may require 10,000 MMBtu of gas on an average day, it is stated. Southern states that this would result in an estimated quantity of 3,650,000 MMBtu of gas being transported on an annual basis pursuant to the IT service agreement. Southern indicates that it would receive the gas under both agreements at various receipt points located in the offshore areas of Louisiana and Texas and in the states of Alabama, Mississippi, Louisiana and Texas for delivery to FMRP at the FMRP Meter Station located on FMRP's Main Pass 299 platform in Main Pass Block 299, offshore Louisiana.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Valero Interstate Transmission

[Docket No. CP89-2187-000]

Take notice that on September 27, 1989, Valero Interstate Transmission (Vitco), Post Office Box 1569, San Antonio, Texas 78292, filed in Docket No. CP89-2187-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sales service of natural gas it provides to Natural Gas Pipeline Company of America (Natural), made under Victco's Rate Schedule S-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Vitco states that by virtue of an agreement between the parties, the November 1, 1958, contract for sales of gas made to Natural terminated as of July 1, 1989.

Comment date: November 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP90-180-000]

Take notice that on October 31, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-180-000 a request pursuant to § 175.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Acacia Gas Corporation (Acacia), a marketer of natural gas, under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Acacia, pursuant to an interruptible transportation service agreement dated August 24, 1988 (Agreement No. IGP-1381). The transportation agreement is effective for a primary term ending September 1, 1989, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 40,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Acacia advised Natural that the volume anticipated to be transported on an average day is 15,000 MMBtu; and based on that average day figure, the annual volume to be transported is 5,475,000 MMBtu. Natural proposes to receive the subject gas at various points located in the states of Arkansas, Illinois, Iowa, Kansas, Louisiana, Offshore Louisiana, Texas and Offshore Texas. It is stated that the delivery points are located in Illinois, Oklahoma, Offshore Louisiana and Offshore Texas. Natural avers that no new facilities are required to provide the proposed service.[1]

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on September 4, 1989, as reported in Docket No. ST90-299-000.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-202-000]

Take notice that on October 31, 1989, Transcontinental Gas Pipe Line Corporation, (Transco) P.O. Box 1396, Houston, Texas, 77251 filed in Docket No. CP90-202-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Fina Oil and Chemical Company (Fina), under its blanket authorization issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for Fina, pursuant to a service agreement dated July 20, 1989 (System Contract No. 000.3344). The term of the service agreement shall be effective as of July 20, 1989, and shall remain in force and effect through August 19, 1989, and thereafter until terminated by either party upon at least 30 days written notice to the other party. Transco proposes to transport on a peak day up to 149,000 dekatherm equivalent; on an average day up to 40,000 dekatherm equivalent; and on an annual basis 14,600,000 dekatherm equivalent of natural gas for Final. Transco proposes to receive the subject gas at various existing receipt points in onshore and offshore Louisiana and offshore Texas. Transco would then redeliver the gas at various existing delivery points in onshore Louisiana. Transco proposes to charge the then effective, applicable rates and charges under its IT rate schedule. Transco avers there is no agency relationship under which a local distribution company or an affiliate of Fina would receive gas on behalf of Fina.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Transco commenced such self-implementing service on September 8, 1989, as reported in Docket No. ST90-20-000.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-173-000]

Take notice that on October 30, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-173-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157. 205) for authorization to add a delivery point for service to South Carolina Pipeline

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[1] Natural states that Receipt Point Nos. 12, 34, 92, 101, 110, 139, 142, 147, 173, 236, 262, 286, 302, 377, and 425 as listed in Exhibit A to the transportation agreement are described therein as 'proposed' points. Although these receipt points have been included in the agreement at Acacia's request, Natural states that no agreement has been reached concerning construction. Natural further states that any necessary authorizations will be obtained prior to constructing these points and utilizing them for service hereunder. Natural also states that Exhibit A incorrectly lists the existing Receipt Point Nos. 299, 318 and 388 as 'proposed' points. According to Natural, these points were originally constructed as facilities to be utilized solely for transportation authorized by section 311 of the NGPA and subpart B of part 284. Natural avers that use of Point Nos. 318 and 388 for jurisdictional service was reported in Natural's Annual Report for Blanket Certificate Activities in Docket No. CP82-402-000 filed May 1, 1989. Natural further states that use of Point No. 299 for jurisdictional service will be reported in Natural's Annual Report for Blanket Certificate Activities which will be filed on or before May 1, 1990.

Corporation (South Carolina), an existing transportation customer of Transco, under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the request which in on file with the Commission and open to public inspection.

Transco proposes to install the additional delivery point on Transco's mainline in Anderson, South Carolina in order to facilitate the existing firm transportation service for South Carolina which Transco was authorized to perform in Docket No. CP88–68–00 *et al.* It is stated that the delivery point would be designed for a maximum of 12,000 Mcf per day and that this would not affect South Carolina's daily entitlement of 29,300 Mcf per day. It is asserted that Transco's tariff does not prohibit the addition of the delivery point and that Transco has sufficient flexibility to accomplish the deliveries at the additional point without detriment to Transco's other customers. It is explained that the end use of the gas would be for residential and small commercial markets. It is stated that Transco would construct and operate a 4-inch hot tap and appurtenant facilities for the additional delivery point.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP90–206–000]

Take notice that on October 31, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0899 filed in Docket No. CP90–206–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas on an interruptible basis for Grand Valley Gathering System (Grand Valley), a gatherer and reseller, under Northwest's blanket certificate issued in Docket No CP86–578–000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated October 21, 1988, as amended on December 5, 1988, it proposes to transport up to 20,000 million Btu per day of natural gas for Grand Valley. Northwest states it would receive the gas at any receipt point on Northwest's system and redeliver the gas at any delivery point on Northwest's system. Northwest estimates that the peak day volumes, average volumes, and annual volumes would be 20,000 million Btu, 10,000 million Btu, and 3,650,000 million Btu, respectively. It is stated that Northwest has not initiated a 120-day transportation service for Grand Valley under § 284.223(a) of the Commission's Regulations.

Northwest indicates that once it is authorized to provide the proposed transportation service, it intends to make a new receipt point available by constructing and operating a new tap and meter station on its Union Oil transmission lateral in Garfield County, Colorado. Northwest states that the service would be performed for a primary term expiring on February 10, 1995, but would continue month to month thereafter subject to termination upon thirty business days written notice by either party. Northwest proposes to charge rates and abide by the terms and conditions of its Rate Schedule TI–1.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP90–178–000]

Take notice that on October 31, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No CP90–178–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for BP Gas Inc. (BP), a marketer of natural gas, under its blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it would transport natural gas for BP from various receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, Alabama, Ohio and New York to various interconnections between Tennessee and certain local distribution companies and pipelines. The ultimate delivery points are located in multiple states.

Tennessee states that the maximum daily, average daily and annual quantities that it would transport for BP would be 400,000 dt equivalent of natural gas, 400,000 dt equivalent of natural gas and 146,000,000 dt equivalent of natural gas, respectively.

Tennessee indicates that in Docket No. ST90–235, filed with the Commission on October 26, 1989, it reported that transportation service for BP had begun on September 28, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. ANR Pipeline Company

[Docket No. CP90–149–000]

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–149–000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations for authorization to transport natural gas for Santanna Natural Gas Corporation (Santanna), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the transportation service will be provided pursuant to a transportation agreement dated September 1, 1989, wherein ANR proposes to transport natural gas on an interruptible basis for Santanna. ANR states that it would receive the gas at ANR's existing points of receipt in the states of Oklahoma, Louisiana, Texas, Wisconsin and Kansas and the offshore Louisiana and Texas gathering areas and redeliver the gas for the account of Santanna at existing interconnections located in the state of Wisconsin.

ANR proposes to transport on a peak day up to 75,000 dekatherms (dt), with an estimated average daily quantity of 75,000 dt. On an annual basis, ANR could transport up to 27,375,000 dt.

ANR also states that no construction of new facilities will be required to provide this transportation service.

ANR states that service for Santanna under § 284.223(a) commenced September 16, 1989, as reported in Docket No. ST90–131–000.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP90–201–000]

Take notice that on October 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–201–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations for authorization to abandon and remove certain metering facilities used to serve a direct industrial customer, under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authorization to abandon and remove a sales meter station, formerly serving Boral Bricks, Inc. (Boral Bricks), located in Lincoln County, Mississippi. It is stated that the meter station consists of two positive meters, two regulators, a separator and various relief and other type valves. United indicates that the meter station was certificated in Docket No. G–232 and that sales service to Boral Bricks was abandoned in Docket No. CP86–742. United states that Boral Bricks requested in a letter that United remove its facilities.

United indicates that the meter station is located on United's 2-inch line, now serving Entex, Inc. (Entex), a local distribution company, who resells gas to Boral Bricks. United states that it does not propose to abandon the 2-inch line serving Entex, therefore the proposed abandonment would not result in any loss of service. United further states that removal of the facilities would be accomplished without detriment or disadvantage to its other existing customers.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Equitrans, Inc.

[Docket No. CP90–152–000]

Take notice that on October 27, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, PA 15205, filed in Docket No. CP90–152–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Consolidated Fuel Corporation (CFC), under the blanket certificate issued in Docket No. CP86–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on an interruptible basis up to 1,176 Mcf of natural gas on a peak day for CFC, 1,176 Mcf on an average day and 429,240 Mcf on an annual basis. It is stated that Equitrans would receive the gas for CFC's account at points on Equitrans' system in West Virginia and Pennsylvania and would deliver equivalent volumes at 3 points on Equitrans system in Pennsylvania. It is asserted that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is explained that Equitrans commenced the transportation service October 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–175.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this paragraph.

14. ANR Pipeline Company

[Docket No. CP90–148–000]

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–148–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Northwestern Mutual Life Insurance Corporation (Northwestern), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 11,200 dt equivalent of natural gas on a peak day, 11,200 dt equivalent on an average day and 4,088,000 dt equivalent on an annual basis for Northwestern. ANR states that it would perform the transportation service for Northwestern under ANR's Rate Schedule ITS. ANR indicates that it would transport the gas from receipt points in the offshore Louisiana and Texas gathering areas, to delivery points located in Wisconsin.

It is explained that the service commenced September 7, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–134. ANR indicates that no new facilities would be necessary to provide the subject service.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–208–000]

Take notice that on November 1, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–208–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign natural gas deliveries at certain delivery points for service to Wisconsin Power & Light Company (WP&L), an existing wholesale customer, and to operate certain delivery points for service to WP&L under Northern's blanket certificate issued in Docket No. PC82–401–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to reassign volumes being delivered to WP&L at Wyocena and Poynette, Wisconsin, to an existing delivery point serving the community of Juda, Wisconsin. It is stated that Northern would reduce WP&L's daily entitlements at Wyocena and Poynette by a total of 173 Mcf and would increase WP&L's daily entitlement at Juda by 173 Mcf. It is asserted that the reassignment of volumes could be accomplished without detriment to Northern's other customers and that the changes would all be within existing entitlements.

Northern also requests authorization to operate and maintain two existing delivery points for service to WP&L at Juda and Platteville, Wisconsin. It is stated that the delivery points were installed under Natural Gas Policy Act section 311 authorization for an existing transportation service by Northern. It is asserted that the end use of the gas would be residential, commercial and industrial, and that, in the fifth year of service, peak day deliveries would total 1,377 Mcf at Juda and 2,056 Mcf at Platteville, and annual deliveries would total 325,850 Mcf at Juda and 245,856 at Platteville, It is further asserted that Northern has sufficient capacity to make the deliveries as proposed without detriment to any other customers.

Comment date: December 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Colorado Interstate Gas Company

[Docket No. CP90–141–000]

Take notice that on October 27, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, CO 80944, filed, in Docket No. CP90–141–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase peak withdrawal capabilities at three of CIG's existing storage fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to add seven new injection/withdrawal wells, lay 5,000 feet of 4-inch and 6-inch diameter pipeline in the Flank Storage Field; to add two new injection/withdrawal

wells and lay 1,600 feet of 6-inch pipeline in the Latigo Storage Field; and recomplete one observation well to an injection/withdrawal well, convert one injection/withdrawal well to an observation well and install 500 feet of 4-inch pipeline in the Boehm Storage Field systems, respectively. "CIG" states that the grant of the authorizations requested will increase the peak day deliverability of the three storage fields by a total of 53 MMcf per day.

The estimated cost is $4,251,500 to be financed from funds on hand and internally generated cash from operations.

Comment date: November 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26887 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-169-013, RP86-105-015, RP87-25-003]

ANR Pipeline Co.; Compliance Filing

November 9, 1989.

Take notice that on November 6, 1989, ANR Pipeline Company (ANR) filed a certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1A, to be effective January 1, 1990.

ANR states that this filing is in compliance with the Commission's October 6, 1989 order.

ANR states that copies of this filing have been served upon each person designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26889 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-32-000]

Colorado Interstate Gas Co.; Compliance Filing

November 9, 1989.

Take notice that Colorado Interstate Gas Company ("CIG"), on November 3, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 61G12
Third Revised Sheet No. 61G12-B

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued in this docket and that the filing reflects revisions to conform with revisions to the tariff of Northwest Pipeline Corporation ("Northwest") which were approved by the Commission on October 12, 1989, by an order issued on Docket Nos. RP89-219, *et al.*, 49 FERC ¶61,056 (1989). Specifically, CIG's filing reflects a reduction in the principal amount of take-or-lay buyout-buydown costs billed to CIF by Northwest resulting from Northwest's revision of allocation factors for each of its affected customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26890 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 9, 1989.

Take notice that Equitrans, Inc. (Equitrans) on October 31, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1989.

Thirteenth Revised Sheet No. 10
Twelfth Revised Sheet No. 14
Sixth Revised Sheet No. 34
Alternate Thirteenth Revised Sheet No. 10
Alternate Twelfth Revised Sheet No. 14
Alternate Sixth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's regulations and Section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

On October 11, 1989, Equitrans filed with the Commission in Docket No. RP90-10-000 a request for authority to track the recovery of firm transportation charges assessed to it by Texas Eastern Transmission Corporation ("TETCO") under Rate Schedule FT-1. Pending the outcome of the filing Equitrans hereby submits primary tariff sheets Thirteenth Revised Sheet No. 10, Twelfth Revised Sheet No. 14, Sixth Revised Sheet No. 34 to reflect these firm transportation charges in its Quarterly PGA. Equitrans is also filing alternate tariff sheets and workpapers to reflect the exclusion of firm transportation charges in the event the waiver is denied.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26891 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 9, 1989.

Take notice that on November 6, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1990:

Thirty-Second Revised Sheet No. 7

First Revised Sheet No. 7-B

According to Granite State, the revised sales rates on Thirty-Second Revised Sheet No. 7 reflect a current adjustment for projected gas costs during the first quarter of 1990 and a surcharge for unrecovered purchased gas costs. It is further stated that the filing is Granite State's annual purchased gas cost filing in compliance with § 154.305 of the Commission's revised purchased gas cost regulations, established in Order Nos. 483 and 483-A. Granite State further states that First Revised Sheet No. 7-B states the Gas Research Institute surcharge, effective January 1, 1990, as authorized in Docket No. RP89-187-000 which is applicable to Granite State's purchases of Canadian gas from Shell Canada, Limited.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory Commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26892 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA90-2-000]

Maguire Oil Co.; Petition for Adjustment

November 9, 1989.

Take notice that on October 26, 1989, Maguire Oil Company (Maguire) filed a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Part 385 (Subpart K) of the Commission's Regulations. Maguire requested the Commission to waive the filing requirements of § 271.805 in order to permit production from the Mayo #3 well located in Beaver County, Oklahoma, to qualify as a stripper gas well under NGPA section 108 during the following six periods: September 1985-December 1985; July 1986-September 1986; November 1986-February 1987; April 1987-July 1987; October 1987-February 1988; and, October 1988-November 1988. If a stripper well's production averages more than 60 Mcf per production day during any 90-day production period, it is disqualified. However, the operator may file a petition within 150 days of the end of the disqualifying period to continue the qualification if the overproduction was caused by certain specified reasons including temporary pressure buildup.

Maguire states that the gas produced was sold exclusively to Colorado Interstate Gas Company (Colorado) and that the Oklahoma Corporation Commission's (OCC) section 108 affirmative determination for the subject well became final on March 12, 1980. Maguire asserts that although it was notified on March 1, 1989, by Colorado that the subject well exceeded the qualifying limit of 60 MCF per day for the 90-day period beginning September 1985, this was the first notice of disqualification that it had received regarding production from the well. On July 27, 1989, OCC issued an affirmative determination which concluded that the increase in production during the periods of disqualification was the result of the temporary pressure buildup resulting from a shutdown at the purchaser's request. Maguire contends

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that had Colorado met its regulatory obligations by monitoring production and by submitting a notice of the initial overproduction, Maguire would have timely filed for a temporary pressure buildup determination. Maguire requests a waiver of § 271.805(f)(1) on the grounds that it was unaware of the requirement to file a petition for a temporary pressure buildup determination.

Maguire also asserts that unless a waiver is granted it will suffer a special hardship, inequity or unfair distribution of burden because it will suffer an out-of-pocket loss of $6,939.19 for the periods in question.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26893 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-240-001]

Northern Natural Gas Co.; Filing

November 9, 1989.

Take notice that on November 6, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Second Substitute Fourth Revised Sheet No. 52f.3
Substitute Original Sheet No. 52f.3a.

The Commission, by Order issued October 20, 1989 accepted Northern's revised tariff sheets filed on September 21, 1989 which deleted from Northern's present tariff the requirement that the effective date of an FT-1 Transportation Service Agreement shall be the date of execution by Shipper and set forth its policy to accept requests for firm transportation service where service is projected to commence within 230 days of the date of the request except where facilities are required to be constructed or where Shipper is required to give notice of termination under a presently effective contract and that such provision would be applied in a not unduly discriminatory basis.

The Commission, by order dated October 20, 1989 accepted the revised tariff sheets, subject to certain conditions, to be effective October 20, 1989. In the order, the Commission stated that it

> • • • will approve the proposal, conditioned upon Northern filing within fifteen days of this order to modify its tariff consistent with what was approved in *Natural.*

Northern states that in compliance with the Commission's October 20, 1989 Order, Northern has reflected in the proposed tariff sheets a reduction in the number of days from receipt of a transportation request to the effective date of the Service Agreement from up to 230 days to up to 140 days, consistent with the provision approved for Natural. Also, Northern has deleted the two exceptions to the policy which were contained in the September 21, 1989 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before November 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to interevene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26894 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-103-000 and RP88-262-000 et al.]

Panhandle Eastern Pipe Line Co.

November 9, 1989.

Take notice that an informal conference will be convened in the above-proceedings on Tuesday, November 28, 1989 at 10 a.m. in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The conference is being convened, *inter alia,* pursuant to the procedural schedule established by the Presiding Administrative Law Judge on August 15, 1989 for the purpose of facilitating the formulation by the parties of a joint stipulation of the issues in Docket Nos. RP88-262-000 *et al.* In addition, the on-going settlement negotiations in Docket Nos. RP87-103-000 and RP88-262-000 *et al.* will be continued at this conference. If necessary, the conference will carry on through November 29, 1989.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact John J. Keating (202) 357-5762 or Donald A. Heydt (202) 357-5248.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26895 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-9-000]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

November 9, 1989.

Take notice that on November 1, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1990:

Second Revised Volume No. 1

Item A:
Sixteenth Revised Sheet No. 20
Thirteenth Revised Sheet No. 20A
Nineteenth Revised Sheet No. 21
Ninth Revised Sheet No. 22
Substitute Eighth Revised Sheet No. 23
Substitute Eighth Revised Sheet No. 24
Item B: Fifth Revised Sheet Nos. 31-36
Item C:
Substitute Third Revised Sheet No. 350
Fourth Revised Sheet No. 351
Substitute Third Revised Sheet No. 352
Substitute Third Revised Sheet No. 353
Third Revised Sheet No. 354
Substitute Third Revised Sheet No. 355
Third Revised Sheet No. 356
Substitute Third Revised Sheet No. 357
Substitute Second Revised Sheet No. 358
Fourth Revised Sheet No. 359
Fourth Revised Sheet No. 360
Substitute First Revised Sheet No. 361
Substitute First Revised Sheet No. 362

Original Volume No. 2

Item D:
Sixteenth Revised Sheet No. 5
Fifteenth Revised Sheet No. 6

Tennessee states that the purpose of the revisions listed under Item A is to reflect various PGA rate adjustments pursuant to section 2, 3, and 5 of Article XXIII of the General Terms and Conditions of Tennessee's Tariff. Tennessee states that the purpose of the revisions listed under Item B is to reflect amortization of production related costs pursuant to the settlement agreement approved by the Commission Order on June 14, 1985 in Docket Nos. CP84-441, *et al.* Tennessee states the purpose of the revisions under Item C is to update the Index of Purchasers to reflect the most current contract information available. Tennessee states that the purpose of the revisions listed under Item D is to reflect adjustments to transportation rate schedules for changes in the cost of gas for fuel and losses pursuant to section 5 of Article XXIII of the General Terms and Conditions.

Tennessee states that the total change in the Tennessee Gas Rate from the last scheduled PGA is $0.426 per dth consisting of a Current Purchased Gas Rate Adjustment of ($0.0004) per dth and a Surcharge for Amortizing Unrecovered Purchase Gas Costs consisting of Unrecovered Purchase Gas Costs in the deferral period ending August 31, 1989 and transferred unamortized Unrecovered Purchase Gas Costs from the amortization period ending December 31, 1989 of $0.6764 per dth to be effective from January 1, 1990 through December 31, 1990. Tennessee states that the total change to the Demand Rate is $0.83 per dth, reflecting a Current Adjustment of $0.76 and a Surcharge for Amortizing Unrecovered Purchase Gas Costs of $0.08. Tennessee states that the gas rate adjustment is based upon an Average Cost of Purchase Gas of $2.2505 per dth.

Tennessee has requested, by petition filed concurrently in this docket, a waiver of the requirements of Opinions 256 and 256-A. Tennessee has also requested a waiver of the requirements of § 154.305(g) of the Commission's regulations to allow inclusion of the estimated balance in the amortizing subaccount in the surcharge adjustment for this filing.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26896 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-11-001]

United Gas Pipeline Co.; Compliance Filing

November 9, 1989.

Take notice that on November 3, 1989, United Gas Pipe Line Company (United) tendered for filing a complete, revised set of FERC Form No. 542-PGA schedules and additional workpapers in compliance with the Commission's September 29, 1989 Letter Order (September Order) in this Docket.

United states that this filing has the following impact on its gas cost as shown in Ninety-First Revised Sheet No. 4 and Tenth Revised Sheet No. 4.1 to be effective October 1, 1989.

Rate Schedule	Change
DG, PL	D1 reduced $.09, D2 no change, Commodity increased $.0223.
G	Commodity increased $.0132.

The D1 reduction for the DG and PL customers (and a corresponding $.0091 commodity reduction for G customers) is due to removing from this filing the impact of the direct bill of Sea Robin's deferred account. The commodity increase of $.0223 for all customers is the result of several revisions and corrections to the surcharge calculation required in the September Order. There is a corresponding increase in the AOS Rate Schedule for DG and PL on Tenth Revised Sheet No. 4-G.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before November 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26897 Filed 11-15-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-39-NG]

Northridge Petroleum Marketing, Inc., Order Granting Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Northridge Petroleum Marketing, Inc. (Northridge), authorization to import from Canada up to 15,000 Mcf of natural gas per day and to subsequently export the same gas back to Canada over a term of nine years beginning November 1, 1989, and ending October 31, 1998. The import/export is part of a transportation arrangement to move gas from one part of Canada to another part of Canada via Great Lakes Gas Transmission's (Great Lakes) and Michigan Consolidated Gas Company's (MichCon) pipelines that traverse the States of Minnesota, Wisconsin and Michigan, and would not result in a net import or export of natural gas into or out of the U.S.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 9, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-26864 Filed 11-15-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed Week of September 29 Through October 6, 1989

During the Week of September 29 through October 6, 1989, the applications for other relief listed in the Appendix to

this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 9, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 29 through Oct. 6, 1989]

Date	Name and location of applicant	Case No.	Type of submission
10/2/89	Beacon/E.J. Brown, Hardin, Kentucky	RR238–2	Request for Modification/Rescission in the Beacon Refund Proceeding. If granted: The September 8, 1989 Decision and Order (RF238–1) issued to E.J. Brown would be modified regarding the firm's application for refund submitted in the Beacon refund proceeding.
10/2/89	Economic Regulatory Administration, Washington, DC	LBJ–0001	Request for Protective Order. If granted: The Economic Regulatory Administration would enter into a Protective Order regarding the release of proprietary information to Salomon, Inc. in connection with the Proposed Remedial Order (KRO–0720)
10/2/89	National Telephone Directory Corp., Somerset, New Jersey.	RR272–36	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: National Telephone Directory Corporation's application for refund submitted in the Crude Oil refund proceeding would be modified.

Refund Applications Received

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/29/89 thru 10/6/89.	Crude Oil Refund, Applications Received.	RF272–75729 thru RF272–75751.
9/29/89 thru 10/6/89.	Atlantic Richfield Refund, Applications Received.	RF304–10450 thru RF304–10504.
9/29/89 thru 10/6/89.	Shell Oil Refund, Applications Received.	RF315–7366 thru RF315–7460.
10/2/89	John Edward Patch.	RF300–10674.
10/2/89	Exit 7 Gulf	RF300–10675.
10/3/89	Bedford "Beck" Vaughn.	RF307–10064.
10/5/89	D & R Market	RF309–1373.
10/5/89	Shermidor Ltd.	RF313–310.

[FR Doc. 89–26967 Filed 11–15–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of September 25 Through September 29, 1989

During the week of September 25 through September 29, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in "*Energy Management: Federal Energy Guidelines,*" a commercially published loose leaf reporter system.

Dated: November 9, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals

Appeal

William Albert Hewgley, 9/27/89, KFA–0315

William Albert Hewgley filed an Appeal from a partial denial by the Privacy Act Authorizing Official, Office of Chief Counsel, Oak Ridge, of a Request for Information which the Appellant had submitted under both the Freedom of Information Act (the FOIA) and the Privacy Act. In considering the Appeal, the DOE found that the Program Office was correct in denying Mr. Hewgley's requests under both the FOIA and the Privacy Act to obtain his personnel file from a DOE contractor. Important issues that were considered in the Decision and Order were (i) whether the contractor's personnel files should be considered "agency records" for FOIA purposes and thus releasable, and (ii) whether those files should be obtainable under the Privacy Act.

Request for Exception

WJC, Inc., 9/27/89, KEE–0174

WJC, Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–23, entitled "Annual Survey of Domestic Oil and Gas Reserves." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

Refund Applications

Atlantic Richfield Company/American Airlines, Inc., 9/29/89, FR304–10446

The DOE issued a Supplemental Order concerning a Decision and Order issued on September 15, 1989 to *New Enterprises Stone and Lime Co., et al.* in the Atlantic Richfield Company (ARCO) special refund proceeding. After the issuance of that Decision, one applicant, American Airlines, Inc., requested that its refund be paid by wire transfer. Accordingly, the September 15 Decision was modified to stipulate that the American Airlines, Inc. refund be paid by electronic wire transfer.

Atlantic Richfield Company/Bowman Petroleum Company, 9/29/89, RF304–2586

The DOE issued a Decision and Order concerning an Application for Refund filed by Bowman Petroleum Company in the Atlantic Richfield Company (ARCO) special refund proceeding. The applicant was a reseller-retailer of gasoline and middle distillates that applied for a small refund. Although the applicant's distillate purchases were made on a regular basis, and thus qualified for a refund, it appeared that Bowman was a spot purchaser of ARCO gasoline. However, the firm successfully argued that since the base period was revised to the period November 1977 through October 1978, it gained allocation rights against ARCO for its purchases after 1978, and qualified for refunds for purchases made after that period. The DOE concluded that Bowman should receive a refund totaling $2,147, representing $1,620 in principal and $527 in accrued interest.

Atlantic Richfield Company/D & J ARCO, 9/29/89, RF304–10445

The DOE issued a Supplemental Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline in the Atlantic Richfield Company refund proceeding. That Decision rescinded the part of the Decision and Order issued on September 8, 1989, *Atlantic Richfield Co./Loeder Oil Co., Inc.*, 19 DOE ¶ 85,365 (1989), which pertains to D & J ARCO, Case No. RF304–7227, since the claimant had previously been granted a refund in the ARCO proceeding based upon the same purchase volume of motor gasoline.

Atlantic Richfield Company/Mike's ARCO Service, et al., 9/29/89, RF304–8419 et al.

The DOE issued a Decision and Order concerning 15 applications for refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All the applicants documented the volume of their purchases and were end-users of reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured and awarded a refund. The refunds granted in this decision totaled $22,395, including $5,498 in accrued interest.

Atlantic Richfield Company/Rome City School District, et al., 9/28/89, RF304–7575 et al.

The DOE issued a Decision and Order concerning fifty applications for refund filed by forty-four claimants in the Atlantic Richfield Company special refund proceeding. Each of the applicants adequately documented the volume of their ARCO purchases. Forty-one of the claimants were either end-users or reseller/retailers requesting refunds of $5,000 or less. The three remaining claimants elected to limit their refunds to $5,000. The refunds granted in this decision total $103,163, including $78,025 in principal and $26,640 in accrued interest.

Atlantic Richfield Company/Schwalb Coal & Oil Co., Inc., et al., 9/28/89, RF304–2757 et al.

The DOE issued a Decision and Order concerning fifty-one Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured and awarded a refund. The refunds granted in the Decision totaled $83,784, including $20,569 in accrued interest.

Atlantic Richfield Company/Thomas Farm Gas Supply, 9/29/89, RF304–10385

The DOE issued a Supplemental Order in the Atlantic Richfield Company special refund proceeding rescinding the refund granted to Thomas Farm Gas Supply under Case No. RF304–7412 in *Atlantic Richfield Company/Arden's Arco*, 19 DOE ¶ 85,358 (1989). The amount of the refund rescinded was $6,590.

De Dietrich (USA), Inc. et al., 9/27/89, RF272–10679 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 18 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it purchased and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $99,312.

Donald Ragsdale, 9/29/89, RC272–72

The DOE issued a Supplemental Decision and Order concerning an Application for Refund filed by an end-user of refined petroleum products in connection with the crude oil refund proceeding. The Decision rescinded the part of the Decision and Order issued on May 5, 1989, to *Town of Gaston, et al.*, 18 DOE ¶ 85,981, which pertains to Donald Ragsdale, Case No. RF272–21424, since the refund check was returned to the DOE and all efforts to locate the claimant have been unsuccessful.

Exxon Corporation/Blankenship Feed & Seed, Inc., et al., 9/28/89, RF307–7710 et al.,

The DOE issued a Decision and Order concerning 60 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $44,370 ($36,176 principal and $8,194 interest).

Exxon Corporation/Deer Park Independent School District et al., 9/25/89, RF307–2788 et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. All of the applicants disagreed with the gallonage information recorded on volume sheets supplied by Exxon and submitted alternative gallonage figures which they requested that the OHA accept either in lieu of or in combination with Exxon's figures. The OHA agreed to accept the applicants' figures because they were taken directly from the firms' actual Exxon invoices or monthly sales records from the consent order period. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,577 ($15,146 principal plus $3,431 interest).

Exxon Corporation/Holloway Exxon, et al., 9/28/89, RF307–3481 et al.

The DOE issued a Decision and Order granting 49 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less than $5,000 and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted in this determination is $76,647.

Exxon Corporation / Oxford Interstate Exxon, et al., 9/29/89, RF307–934 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased product directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $9,348 ($7,621 principal plus $1,727 interest).

Exxon Corporation / R.L. Angst & Son, Inc. et al., 9/29/89, RF307–3202 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased product directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $16,160 ($13,175 principal plus $2,985 interest).

Exxon Corp./Ronson Aviation, Inc., 9/29/89, RR307–1

The Department of Energy issued a Decision and Order in which it reconsidered the amount of the refund to be awarded to Ronson Aviation, Inc. in the Exxon Corporation special refund proceeding. On August 23, 1989, the DOE had granted Ronson a refund of $1,068 on the basis of its purchases from Exxon as reflected in a purchase volume schedule generated by Exxon. In evaluating the firm's Motion for Reconsideration, the DOE reviewed Ronson's actual purchase records and concluded that they were accurate. Accordingly, the DOE granted Ronson an additional refund of $568 on the basis of the additional gallonage reflected in the firm's records.

Exxon Corporation / State Department of Highways & Public Transportation, et al., 9/27/89, RF307–7600 et al.

The DOE issued a Decision and Order concerning 53 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. Each applicant received a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $39,803 ($32,454 principal and $7,349 interest).

Exxon Corporation / United Airlines, Inc., 9/28/89, RF307–5726

The DOE issued a Decision and Order concerning an Application for Refund filed by United Airlines, Inc. in the Exxon Corporation special refund proceeding. United disagreed with the gallonage figures listed on its Exxon printout and submitted alternative monthly gallonage figures obtained in part from its actual records during the consent order period and in part from estimates for those months for which records did not exist. Because its estimation methodology and the resultant estimates were reasonable in light of United's other figures for which actual records were available, its purchase volume figures were accepted. The refund granted in this Decision was $484,434 ($397,827 in principal and $86,607 in interest).

Exxon Corporation / Wyatt, Inc., 9/28/89, RF307–5894

The DOE issued a Decision and Order concerning an Application for Refund filed by Wyatt, Inc. in the Exxon Corporation special refund proceeding. Wyatt's allocable share was calculated to be in excess of $5,000. Since Wyatt did not elect to make a showing of injury, the firm was eligible to receive the larger of $5,000 or 40 percent of its allocable share up to $50,000. In this case, 40 percent was greater and accordingly, the firm was granted a refund of $61,335 ($50,000 in principal plus $11,335 in interest).

Gulf Oil Corporation/Florida Power Corporation, 9/28/89, RF300–6348

The DOE issued a Decision and Order concerning an Application for Refund filed by the Florida Power Corporation, a regulated public utility, in the Gulf Oil Corporation special refund proceeding. Florida Power certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The total refund amount granted in this Decision is $46,586.

Gulf Oil Corporation/G. Stanley Roberts Distributor, Inc., 9/27/89, RF300–5322

The DOE issued a Decision and Order concerning and Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $8,719.

Gulf Oil Corporation/H.H. Park, Inc., 9/27/89, RF300–10867

The DOE issued a Supplemental Order reducing a refund granted on March 27, 1989 to H. H. Park, Inc., from the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Pride Petroleum, Inc., et al.*). In that Decision and Order, Park had been granted a refund of $47,747, but had only been entitled to $19,099 under the 40% mid-range presumption which it had elected. Park was required to remit the excess $28,648 to the DOE.

Gulf Oil Corporation/Jack R. Beabout, et al., 9/28/89, RF300–10467 et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $44,423.

Gulf Oil Corporation/Morgan Oil Company, Martin County Oil Co., Inc., A.P.G., Inc., 9/28/89, RF300–5315, RF300–5325, RF300–5489

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants is a consignee and reseller of Gulf refined products and each elected to base its refund on the appropriate presumptions of injury. The sum of the refunds granted in this Decision is $13,601.

Gulf Oil Corporation/Nashville Electric Service, et al., 9/27/89, RF300–915 et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $3,916.

Gulf Oil Corporation/Reed W. Smith, Jr., 9/28/89, RF300–10056, RF300–10057, RF300–10058, RF300–10059

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Reed W. Smith, Jr. Because the four service stations operated by Mr. Smith were under common ownership during the consent order period, and because their allocable share exceeds $5,000, they were deemed one firm. The refund granted in this Decision is $8,719 ($5,000 principal plus $1,719 in interest).

Gulf Oil Corporation/Romano & Company, et al., 9/27/89, RF300–9418 et al.

The DOE issued a Decision and Order concerning 108 Applications for Refund submitted in the Gulf Oil Coporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $179,940.

Gulf Oil Corporation/Southern California Edison Company, 9/28/89, RF300–10388

The DOE issued a Decision and Order concerning an Application for Refund filed by Southern California Edison Company (Southern California), a regulated public utility, in the Gulf Oil Coporation special refund proceeding. The DOE granted Southern California's Application after the firm certified that it would notify its appropriate state regulatory agency of any refund received and that it would pass through the amount of any refund to its customers. The total refund amount granted in this Decision, inclusive of interest, is $46,625.

Mayor and City Council of Baltimore, 9/27/89, RF272–19669

The Department of Energy (DOE) issued a Decision and Order concerning an Application for Refund submitted by the Mayor and City Council of Baltimore (Baltimore). Baltimore requested a refund based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 C.F.R. Part 205, Subpart V (Subpart V). Since Baltimore waived its rights to a Subpart V crude oil refund, the city was ineligible to receive a refund in the Subpart V crude oil refund proceedings. Accordingly, the Application submitted by Baltimore was denied.

Murphy Oil Corporation/Zippy Mart of Alabama, Inc., Zippy Mart, Inc., Zippy Mart of South Carolina, Inc., Zippy Mart of Georgia, Inc., 9/27/89, RF309–638, RF309–639, RF309–640, FR309–641

The DOE issued a Decision and Order granting Applications for Refund filed by four commonly owned applicants, each a purchaser of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. The four refund applications were considered together in the determination of the appropriate injury presumption because all of the stock in the Zippy Mart affiliates was purchased by Crown Central Petroleum Corporation (Crown Central) in 1983. The total of the refund granted in this Decision was $60,220, representing $50,000 in principal and $10,220 in accrued interest.

National Helium Corp./California, 9/29/89, RQ3–529

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of California in the National Helium Corp. special refund proceeding. California requested permission to use $1,000,000 in National Helium funds towards improving a section of a major arterial road in the State. The DOE found that this program was part of a balanced overall state plan of restitution to injured consumers of petroleum products. Accordingly, the DOE granted California's second-stage refund request, and disbursed $1,000,000 to the State.

Oxford Construction Company, 9/27/89, RF272–5975

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Oxford Construction Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant used actual records of purchases as well as estimates to formulate its claim. The refund granted in this Decision is $7,826.

The Balf Company, 9/25/89, RF272–6685, RD272–6685

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the Balf Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The only evidence submitted by the States was an affidavit by an economist stating that the construction industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the DOE denied the Motion for Discovery which the State had filed. The refund granted in this Decision is $37,642.

Total Petroleum/Rupp Oil Co., et al., 9/25/89, RF310–213 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by five purchasers of motor gasoline and/or No. 2 oils from Total Petroleum Inc. Under the standards established in *Total Petroleum Inc*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds to the five reseller-applicants which total $67,843 ($56,644 principal and $11,199 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Omaha Public Power District et al., (See attached list)	RF272–20569	9/25/89	12	$38,654

Dismissals

The following submissions were dismissed:

Name	Case No.
Burks Shell Oil	RF315–82 RF315–370
C.V. Sangaree	RF300–10172
Chelmont Exxon	RF307–9406
City of Burbank	RF304–7852
Copypro	RF300–5836
Diesel Stop	RF300–7036
Forest Lane Exxon	RF307–10002
Frank Dupuis	RF307–9184
Hicks Oil and Hicksgas	RF300–9042
Mitchell's Service Center	RF304–7566
New Heaven Shell Service	RF315–2684
Palm Springs Arco	RF304–6453
Park Avenue Gulf	RF300–9186
Ray's Arco	RF304–3976
Rieches Standard Service	RF307–9543
Safety Kleen Corp.	RF300–10234
Steele's Atlantic Service	RF304–5779
Tradax Export S.A.	RF300–10149
Triple T Service	RF304–9871

[FR Doc. 89–28988 Filed 11–15–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,360,607.07 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Bi-Petro, Inc. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate December 18, 1989 and should be addressed to: Office of Hearings and Appeals, Department of

Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number: Bi-Petro, Inc., Case No. LEF–0001.

FOR FURTHER INFORMATION CONTACT:
Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION:

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Bi-Petro, Inc. (Bi-Petro). The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 8, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 8, 1989.

Implementation of Special Refund Procedures

Name of Firm: Bi-Petro, Inc.
Date of Filing: October 19, 1989.
Case Number: LEF–0001.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On October 19, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures for the distribution of funds obtained from Bi-Petro, Inc. (Bi-Petro) as a result of the DOE's enforcement of the federal petroleum price and allocation regulations concerning the resale of crude oil for the period August 19, 1973 through January 27, 1981. Bi-Petro remitted $1,360,607.07 to the DOE pursuant to a September 30, 1985 Consent Order between the firm and the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.[1] We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Bi-Petro, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court approved Settlement Agreement in In Re: The Department of Energy Stripper Well Exemption Litigation M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, see e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell Oil); Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988) (Allerkamp), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court claiming that the OHA violated the Setlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In Re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318, 1323 (D. Kan. 1987), aff'd 857 F. 2d. 1481 (Temp. Emer. Ct. App. 1988). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. Id. at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, $1,360,607.07 (plus interest) in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $272,121.41 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of product purchased during the period of crude oil price controls. A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987). The end user presumption of injury can be rebutted if evidence shows that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. Id. They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp. 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($1,360,607.07) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons).[2] *See* Mountain Fuel, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[2] This yields a volumetric refund amount of $.00000067 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund in the crude oil refund proceedings need not file another application. A deadline of June 30, 1988 was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including Shell Oil. *See* A. Tarricone Inc., 16 DOE ¶ 85,681 (1987). A deadline of October 31, 1989 was established for the second stage of disbursements in the crude oil proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, corrected 17 DOE ¶ 85,669 (1988), and ending with Texaco Inc., 19 DOE ¶ 85,200, *corrected* 19 DOE ¶ 85,236 (1989). The deadline for filing a refund application in this proceeding is October 31, 1990. This volumetric refund amount in the third stage of disbursements will be increased as additional crude oil violations amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $1,088,485.66 (plus interest), be disbursed in equal shares to the states and federal government for direct restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Exemption Litigation Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Bi-Petro, Inc. pursuant to the consent order executed on September 30, 1985 will be distributed in accordance with the foregoing Decision.

[FR Doc. 89–26966 Filed 11–15–89; 8:45 am]

BILLING CODE 6450–01–M

[1] For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

[2] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51742; FRLK-3665-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit premanufacture notice (PMN) to EPA at least 90 days before manufacture of import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 19 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-1133, December 26, 1989.
P 89-1139 December 27, 1989.
P 90-3, 90-4, December 31, 1989.
P 90-8, 90-9, 90-10, January 2, 1990.
P 90-11, 90-12, January 7, 1990.
P 90-13, 90-14, 90-15, 90-16, 90-17, 90-18, January 8, 1990.
P 90-19, January 13, 1990.
P 90-20, 90-21, 90-22, January 8, 1990.

WRITTEN COMMENTS BY:

P 89-1133, November 28, 1989.
P 89-1139, November 27, 1989.
P 90-3, 90-4, December 1, 1989.
P 90-8, 90-9, 90-10, December 3, 1989.
P 90-11, 90-12, December 8, 1989.
P 90-3, 90-14, 90-15, 90-16, 90-17, 90-18, December 9, 1989.
P 90-19 December 14, 1989.
P 90-20, 90-21, 90-22, December 9, 1989.

ADDRESS: Written comments, identified by the document control number "(OPTS-51742)" and the specific PMN number should be sent to:

Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460 (202) 382-3532

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-1133

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (G) Binder. Prod. range: Confidential.

P 89-1139

Manufacturer. Confidential.
Chemical. (G) Amine salt of alkyl acid phosphate.
Use/Production. (G) Metallic corrosion inhibitor. Prod. range: Confidential.

P 90-3

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50> 5,00 mg/kg species (Rat). Acute dermal toxicity: LD50 200-2,000 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 90-4

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50> 500 mg/kg species (Rabbit). Acute dermal toxicity: LD50 200-2,000 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 90-8

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Automotive body patch resin. Prod. range: Confidential.

P 90-9

Manufacturer. Confidential.
Chemical. (G) Alkylaryl ether phosphate, sodium salt.
Use/Production. (G) An additive used in the textile industry. Prod. range: Confidential.

P 90-10

Importer. Confidential.
Chemical. (G) Polymethacrylate acid derivative.
Use/Import. (G) Binding agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50> 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90-11

Importer. Confidential.
Chemical. (G) Substituted cyclohexanol.
Use/Import. (G) Products; highly dispersive. Import range: 100-5,000 kg/yr.
Toxicity Data. Acute dermal toxicity: LD50> 2.0 g/kg species (Rabbit). Skin irritation: Moderate species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 90-12

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90-13

Importer. Confidential.
Chemical. (G) Salt of naphthalene sulphonic acid condensate.
Use/Import. (G) Dispersing/surface active agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50> 5,000 mg/kg species (Rat). Static acute toxicity: LC50 > 199 mg/kg time species (Raintrout). Eye irritation: None species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-14

Manufacturer. Akzo Coating Inc.
Chemical. (G) Acrylate resin solution.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P-90-15

Manufacturer. Confidential.
Chemical. (G) Alkyl carboxylic acid reaction product with alky amines, quaternized.
Use/Production. (G) Finishing agent for textiles. Prod. range: Confidential.

P 90-16

Importer. Confidential.
Chemical. (G) Lithium, N-Octadecyl telephtalamate.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 90-17

Manufacturer. Confidential.
Chemical. (G) Acrylate-capped polyurethane diol.
Use/Production. (S) Compenet of radiation-curable coatings. Prod. range: Confidential.

P 90-18

Manufacturer. American Biltrite Inc.
Chemical. (G) Radiation curable aliphatic urethane oligomer.
Use/Production. (S) Coating for vinyl resilient flooring. Prod. range: 50,000-70,000 kg/yr.

P 90-19

Manufacturer. Mazer Chemicals.
Chemical. (G) Stearoxy methicone/dimethicone copolymer.
Use/Production. (S) Cosmetic personal care product additive and textile lubricant. Prod. range: Confidential.

P 90-20

Manufacturer. Confidential.
Chemical. (G) Mono alkyl naphthalene.
Use/Production. (G) Heating medium oil. Prod. range: Confidential.

P 90-21

Manufacturer. Confidential.
Chemical. (G) Mono alkyl naphthalene.
Use/Production. (G) Heating medium oil. Prod. range: Confidential.

P 90-22

Importer. Nippon Gohsei (U.S.A.) Co.
Chemical. (G) Copolymer of unsaturated polyester and allyl-compounds.
Use/Import. (G) Coating for woodwork. Import range: 10,000-70,000 kg/yr.

Dated: November 2, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-26798 Filed 11-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59278A; FRL-3666-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-28. The test marketing conditions are described below.

EFFECTIVE DATE: November 6, 1989. Written comments will be received until December 1, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59278A]" and the specific TME number "[TME-89-28]" should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 382-2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk o injury.

EPA hereby approves TME-89-28. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published upon receipt of the TME application. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-89-28.

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. The Company shall maintain the following records until 5 years after the date they are created, and shall make them available for inspectin or copying in accordance with section 11 ofTSCA:

a. The applicant must maintain records of the quantity of the TME substance produced and the date of maufacture.

b. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-89-28

Date of Receipt: September 25, 1989.
Applicant: Reichhold Chemicals, Inc.
Chemical: Reactive polyurethane adhesive (G).
Use: Adhesive for laminating (G).
Production Volume: 7,000 lbs.
Number of Customers: 1.
Test Marketing Period: 26 weeks, commencing on first day of manufacture.
Risk Assessment: EPA identified no environmental concerns. Based on data on isocyanates and data submitted pursuant to section 8(e) of TSCA, the TME substance may cause cancer and respiratory sensitization; however, there is no exposure via the route of concern. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: November 6, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-26797 Filed 11-15-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; NJT Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. NJT Limited Partnership, Tucson, AZ.	BPH-870515ME	89-470
B. Josie FM Limited Partnership, Tucson, AZ.	BPH-870515MI	
C. Southern Arizona Broadcasters, Tucson, AZ.	BPH-870515MW	
D. Bartnet Broadcasting, Tucson, AZ.	BPH-870515NB	
E. Old Pueblo Broadcasting, Inc., Tucson, AZ.	BPH-870515NC	
F. Peggy C. Browne, Tucson, AZ.	BPH-870515ND	
G. F.E.M. Rey, Inc., Tucson, AZ.	BPH-870515NL	
H. Arizona/Capitol Communications, Ltd., Tucson, AZ.	BPH-870515NS	
I. Playa Del Sol, Tucson, AZ.	BPH-870515NX	
J. Alfrehar Amigos, Tucson, AZ.	BPH-870515OH	
K. Kevin M. & Patricia Wodlinger, Tucson, AZ.	BPH-870515NK (Previously Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Financial Qualifications	C, H
2. City Coverage	A, B, C, E, F, H, J
3. Environmental	E, F, I
4. Air Hazard	J
5. Comparative	A-J
6. Ultimate	A-J

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch room 230, 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-26871 Filed 11-15-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.

Title: Financial Report.

Form Number: FDIC 6200/06.

OMB Number: 3064-0006.

Expiration Date of Current OMB Clearance: March 31, 1990.

Frequency of Response: On occasion.

Respondents: All prospective directors or officers of proposed or operating depository institutions applying for Federal deposit insurance as either a state nonmember bank or a state-chartered savings association; each individual proposing to acquire control of an insured state nonmember bank; and each individual being proposed as a director or being considered for employment as a senior executive officer of certain insured state nonmember banks.

Number of Respondents: 3,010.

Number of Responses Per Respondent: 1.

Total Annual Responses: 3,010.

Average Number of Hours Per Response: 2.

Total Annual Burden Hours: 6,020.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments of this collection of information are welcome and should be submitted on or before January 16, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FIDC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to revise the use of form FDIC 6200/06, Financial Report. The report is currently submitted to the FDIC by each individual director or officer of a proposed or operating bank applying for Federal deposit insurance as a state nonmember bank, or by a person proposing to acquire control of an insured state nonmember bank.

Because of the recent passage of the Financial Institute Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC has been given additional supervisory authority regarding savings associations resulting in the need for expanding the use of the report form. Therefore, in addition to those individuals already required to submit the Financial Report, the FDIC would require the report from each director or officer of a proposed state-chartered savings association or an operating savings association applying for Federal deposit insurance. Also, because of FIRREA (section 914, Pub. L. 101-73), the Financial Report would be submitted by each proposed new director or proposed new senior executive officer of a state nonmember bank which (a) became insured or has undergone a change in control within the preceding two years or (b) is not in compliance with the applicable capital requirements or is otherwise in a troubled condition. The FDIC required by statute to evaluate the general character and financial condition of certain individuals who will be involved in the management or control of insured state-chartered banks and savings associations.

Dated: November 9, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-26973 Filed 11-15-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: New collection.

Title: Notification of Addition of Directors and Senior Executive Officers of Certain Depository Institutions.

Form Number: FDIC 6810/01.

Frequency of Response: On occasion.

Respondents: Any insured State nonmember bank who is required to notify the FDIC of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution.

Number of Respondents: 2,200.

Number of Responses Per Respondent: 1.

Total Annual Responses: 2,200.

Average Number of Hours Per Response: One half hour.

Total Annual Burden Hours: 1,100.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contract: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6069, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before January 16, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to implement a new collection of information from certain insured state nonmember banks. The proposed collection of information is a statutory requirement of the recently enacted Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Under FIRREA (section 914, Pub. L. 101-73), an insured depository institution shall notify the appropriate federal banking agency of the proposed addition of any individual to the board directors or the employment of any individual as a senior executive officer of such institution at least 30 days before such addition or employment becomes effective, if the insured depository institution (a) became insured or has undergone a change in control within the past two years or (b) is not in compliance with the applicable capital requirements or is otherwise in a troubled condition. The FDIC would implement this statutory requirement by requiring those state nonmember banks that are subject to the notification requirement of FIRREA to submit form FDIC 6810/01, Notification of Addition of a Director or Employment of a Senior Executive Officer.

Dated: November 9, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-26974 Filed 11-15-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200304.

Title: Sea-Land Service Terminal Agreement.

Parties:

Sea-Land Service, Inc. (Sea-Land).
Senator Linie.

Synopsis: The Agreement permits Sea-Land to provide or arrange to have provided stevedoring and terminal services to Senator Linie at Sea-Land's Port of Long Beach terminal facilities for an indefinite term. Senator Linie will compensate Sea-Land in accordance with the provisions of the rate schedule set forth in Appendix I of the Agreement.

Agreement No.: 224-200137-001.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority.
Jugolinija.

Synopsis: The Agreement amends the basic agreement to consolidate all rent, wharfage and dockage charges into a single unit rate per container. The consolidated rate and other charges will escalate on October 1, each year of the agreement in an amount equal to the U.S. Consumer Price Index but not to exceed 6%.

By Order of the Federal Maritime Commission.

Dated: November 8, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-26901 Filed 11-15-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010807-005.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach.
Maersk, Inc.

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-010807). It provides that any adjustment of the monthly rent specified at paragraph 5.2 of the basic agreement, as amended, shall be filed with the Commission and become effective pursuant to the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: November 9, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-26902 Filed 11-15-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Correction; The Maybaco Co.

This notice corrects a previous Federal Register notice (FR Doc. 89-26,177) published at page 46,774 of the issue for Tuesday, November 7, 1989.

Under the Federal Reserve Bank of Richmond, the entry for The Maybaco Company is amended to read Maryland Bank, N.A., Newark, Delaware instead of Maryland National Bank, N.A., Newark, Delaware.

The entry is also corrected to add the following subsidiaries of MNC Financial, Inc., Baltimore, Maryland which Applicant also proposes to acquire:

Maryland National Pennsylvania Corporation, Philadelphia, Pennsylvania, and thereby engage in making loans for its own account and on behalf of others pursuant to § 225.25(b)(1); MN Credit Corporation, Baltimore, Maryland, and thereby originate consumer loans and personal property leases for itself and bank pursuant to § 225.25(b)(1); MN Services Corporation, Baltimore, Maryland, and thereby engage in mortgage banking and brokerage business, leasing of real or personal property, negotiating loans, and dealing with payments of mortgages, pursuant to § 225.25(b)(1); ReCap, Inc., Wilmington, Delaware, and engage in real estate workout activities, pursuant to § 225.25(b)(1); American Security Investment Services, Inc., Washington, DC, and thereby engage in providing discount brokerage services pursuant to § 225.25(b)(15); ASB Capital Management, Inc., Washington, DC, and thereby engage in acting as an investment advisor pursuant to § 225.25(b)(19); MNC Credit Group, Towson, Maryland, and thereby engage in servicing commercial loans and leases for affiliated or unaffiliated individuals, partnerships, corporations or other entities, acting as advisor or broker in leasing of equipment and personal property, commercial and equipment leasing transactions; leasing of personal property, originating, making, acquiring, holding, servicing, and disposing of secured and unsecured loans, lines of credit, mortgages and charges on real or personal property, engaging in mortgage banking, brokering and servicing and in selling as agent credit life, disability and accident and health insurance in connection with extensions of credit by bank and nonbank subsidiaries of MNC Financial, Inc., commercial lending, including but not limited to financing of accounts receivable, inventories, and other types of secured and unsecured loans to commercial enterprises, pursuant to § 225.25(b) (1), (5) and (8); Maryland National Mortgage Corporation, Baltimore, Maryland, and thereby engage in mortgage banking, brokering and servicing and acting as advisor in mortgage loan transactions, pursuant to § 225.251(b)(1); MNC American Corporation, Aurora, Colorado, and thereby engage in industrial banking and servicing loans pursuant to § 225.25(b) (1) and (2); MNC Consumer Discount Company, Coraopolis, Pennsylvania, and thereby engage in mortgage banking, brokering, and servicing, including but not limited to second mortgage financing, and in originating, buying, selling, and otherwise dealing in loans as principal or agent, pursuant to § 225.25(b)(1); Mid-Atlantic Life Insurance Company, Coraopolis, Pennsylvania, and thereby engage in underwriting, as reinsurer, credit life and credit accident and health insurance on loans and other extensions of credit made by subsidiaries of MNC Financial, Inc. and originated in Maryland, Ohio, Pennsylvania, New Jersey, Virginia and by American Industrial Bank, pursuant to § 225.25(b)(8); Landmark Financial Services, Inc., Silver Spring, Maryland, and thereby engage in making, acquiring and servicing consumer, real estate and sales finance loans, acting as broker for credit life, health and accident insurance, reinsuring credit life, health and accident insurance sold by Landmark Financial Services, Inc., providing automobile insurance premium financing, providing data processing services related to such premium financing, pursuant to § 225.25(b) (1), (7), 8(ii) and 8(iii); Virginia Federal Savings Bank, Richmond, Virginia, and engage in operating and controlling a savings association, pursuant to § 225.25(b)(9); First Service Corporation of Virginia, Richmond, Virginia, and engage in managing real property acquired in loan workouts, pursuant to § 225.25(b)(1); Southern Condominum Service, Incorporated, Richmond, Virginia, and engage in managing real property acquired in loan workouts, pursuant to § 225.25(b)(1); Southern Hotel Service, Incorporated, Richmond, Virginia, and engage in managing real property acquired in loan workouts, pursuant to § 225.25(b)(1); Southern Finance Corporation, Richmond, Virginia, and engage in CMO-arbitrage transactions pursuant to § 225.25(b)(9);

Board of Governors of the Federal Reserve System, November 9, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-26910 Filed 11-15-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Integrated Quality Control Review Worksheet; *Form Number:* HCFA-316; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 4,084; *Average Hours per Response:* 6.6; *Total Estimated Burden Hours:* 269,419 (reporting) and 179,494 (recordkeeping) for a total of 470,161 hours.

2. *Type of request:* Extension; *Title of Information Collection:* Laboratory Personnel Qualification Appraisal; *Form Number:* HCFA-3083; *Frequency:* On occasion; *Respondents:* Individuals/households and small businesses/organizations; *Estimated Number of Responses:* 3,080; *Average Hours per Response:* .33; *Total Estimated Burden Hours:* 1,000.

3. *Type of Request:* Extension; *Title of Information Collection:* Blood Bank Inspection Checklist; *Form Number:* HCFA-282; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 750.

4. *Type of Request:* New; *Title of Information Collection:* TEFRA Evaluation Survey; *Form Number:* HCFA-R-133; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 12,428; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 6,214.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Criteria for Medicare coverage of Heart Transplants; *Form Number:* HCFA-R-106; *Frequency:* Annually; *Respondents:* Small businesses/organizations and non-profit institutions; *Estimated Number of Responses:* 75; *Average Hours per Response:* 100; *Total Estimated Burden Hours:* 7,800.

6. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in BPD-311, Revaluation of Assets; *Form Number:* HCFA-R-130; *Frequency:* On occasion; *Respondents:* Small Businesses/organizations and State/local governments; *Estimated Number of Responses:* 102; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 26.

7. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in BPD-356, Limits on Payment for Drugs; *Form Number:* HCFA-R-113; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 52; *Average Hours per Response:* 3; *Total Estimated Burden Hours:* 156 (reporting) and 156 (recordkeeping) for a total of 312 ours.

8. *Type of Request:* Extension; *Title of Information Collection:* Acquisition, Protection and Disclosure of PRO Information; *Form Number:* HCFA-R-70; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 53; *Average Hours per Response:* 1,175.8; *Total Estimated Burden Hours:* 62,317.

9. *Type of Request:* Extension; *Title of Information Collection:* Municipal Health Services Cost Reporting Form; *Form Number:* HCFA-255; *Frequency:* Annually; *Respondents:* State/local Governments; *Estimated Number of Responses:* 15; *Average Hours per Response:* 34; *Total Estimated Burden Hours:* 510.

10. *Type of Request:* Revision; *Title of Information Collection:* Claims Processing Assessment System (CPAS) Review Schedule; *Form Number:* HCFA-331, 503, R-01 and R-83; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 1,043; *Total Estimated Burden Hours:* 53,194 (reporting) and 12,991 (recordkeeping) for a total of 66,185 hours.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 9, 1989.

Louis B. Hays,

Acting Administrator Health Care Financing Administration.

[FR Doc. 89-26936 Filed 11-15-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: the Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special matters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact with respect to injuries.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will led to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, not only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from September 26 through October 31, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Acting Director, Bureau of Health Professions, 5600 Fishers Lane,

Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. James Watson on behalf of Grant Watson, Albany, Georgia, Claims Court Number 89–92 V;
2. Kim & Maureen Gaskill on behalf of Katherine Gaskill, Deceased, Indianapolis, Indiana, Claims Court Number 89–93 V;
3. Beverly & Rose Morris on behalf of Katherine Morris, Austin, Texas, Claims Court Number 89–94 V;
4. Karen Brauer, Houston, Texas, Claims Court Number 89–95 V;
5. Troy C. Smith, Washington, DC, Claims Court Number 89–96 V;
6. First Commercial Bank on behalf of Jimmy Ray Jones, Jr., Deceased, Little Rock, Arkansas, Claims Court Number 89–97 V;
7. Cynthia Pease on behalf of Valerie Pease, Deceased, Detroit, Michigan, Claims Court Number 89–98 V;
8. Nancy Lehman on behalf of Karen Lehman, Twin Falls, Idaho, Claims Court Number 89–99 V;
9. Mark & Mary Muench on behalf of Andrew Muench, Rochester, New York, Claims Court Number 89–100 V;
10. Tecola Miles on behalf of Amadika Miles, Deceased, Philadelphia, Pennsylvania, Claims Court Number 89–101 V;
11. Michael Veon on behalf of Eric Veon, Santa Cruz, California, Claims Court Number 89–102 V;
12. Carl & Rachel Ruben on behalf of Max Ruben, Boca Raton, Florida, Claims Court Number 89–103 V;
13. Donald & Patricia Cameron on behalf of Amanda Cameron, Portage, Pennsylvania, Claims Court Number 89–104 V;
14. Theodore & Jean Kotopoulos on behalf of Elaine Kotopoulos, Fort Lee, New Jersey, Claims Court Number 89–105 V.

Dated: November 9, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–26914 Filed 11–15–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Notice of Establishment; Biomedical Research Support Advisory Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), and section 402(b)(6) of the Public Health Service Act, [42 U.S. Code 282(b)(6)] as amended, the Acting Director, NIH, announces the restructuring and renaming of the General Research Support Review Committee, effective October 1, 1989. The new committee will be the Biomedical Research Support Advisory Committee.

The Biomedical Research Support Advisory Committee shall provide technical and scientific advice to the Director, NIH, and the Director, Division of Research Resources, on matters relating to new institutional and support mechanisms, guidelines, planning, objectives, operational policy and review for special initiatives.

Unless renewed by appropriate action prior to its expiration, the Biomedical Research Support Advisory Committee will terminate September 30, 1991.

Dated: November 6, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–26860 Filed 11–15–89; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Supplementary Agreement on Social Security Between the United States and Switzerland; Entry into Force

The Commissioner of Social Security gives notice that on October 1, 1989, a supplementary agreement entered into force which amends the social security agreement between the United States (U.S.) and Switzerland that has been in effect since November 1, 1980. The supplementary agreement, which was signed on June 1, 1988, was concluded pursuant to section 233 of the Social Security Act. It simplifies the original agreement, primarily by introducing a new method of computing U.S. Social Security benefit amounts when entitlement for the benefits is based on combined U.S. and Swiss social security coverage. The supplementary agreement also updates and clarifies several additional provisions of the original agreement.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: October 31, 1989.

Gwendolyn S. King,

Commissioner of Social Security

[FR Doc. 89–26946 Filed 11–15–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records maintained by the Office of Surface Mining Reclamation and Enforcement. The change being published is editorial in nature, and reflects an organizational change which has occurred in the system manager section of the notice since publication of the material in the Federal Register on June 16, 1988 (53 FR 22575). The notice being revised is titled "Applicant/Violator System (AVS)—Interior, OSMRE–9," and is published in its entirety below.

Since this change does not involve any new or intended use of the information in the system of records, the notice shall be effective on or before November 16, 1989. Additional information regarding this revision may be obtained from the Privacy Act Officer, Office of Surface Mining Reclamation and Enforcement, Room 252, South Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: November 6, 1989.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Interior/OSMRE–9

SYSTEM NAME:

Applicant/Violator System (AVS)—Interior, OSMRE–9.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of the Interior, Washington, D.C. 20240 and field locations. For specific addresses of field locations contact the System Manager at the address given below. Major system hardware is located at the National Center, Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains names of coal mining permit holders and applicants: individuals and entities who own or control coal mining permit holders and applicants; operators for and agents of coal mining permit holders and applicants; individuals and entities responsible for unabated Federal or State cessation orders, unpaid Federal or State civil penalties. Federal or State air and water quality violations arising from surface mining operations, bond forfeitures, or violations of abandoned mine land reporting and payment requirements arising under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (SMCRA); and individuals or entities who own or control individuals or entities responsible for unabated Federal or State cessation orders, unpaid Federal or State civil penalties; Federal or State air and water quality violations arising from surface mining operations, bond forfeitures, or violations of abandoned mine land reporting and payment requirements arising under the SMCRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Coal Mining Permit Application information and Permit information such as individuals listed in the application or permit (names, addresses, and social security numbers, if available), bond and acreage information; (2) violator information obtained from OSMRE enforcement records, state enforcement records, and abandoned mine land records; (3) ownership and control information on coal mining operations obtained from the aforementioned records, the Mine Safety and Health Administration legal identity forms and other MSHA records, State Corporation Commission and Secretary of State records, clerk of court records, company or operator financial reports and investigative reports provided to OSMRE under contract.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.; and the February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., el al.* v. *William P. Clark, et al.*, Civil No. 81–2134 (D.D.C. 1985).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are to: (a) Serve as a tool for OSMRE and State regulatory authorities to determine if any individual or entity who owns or is in control of an operation covered by a coal mining permit or application for a permit was or is in control of any entity with an unabated Federal or State cessation order, unpaid Federal or State civil penalty, Federal or State air and water quality violation, bond forfeiture, or violation of abandoned mine land reporting and payment requirements arising under SMCRA; (b) enable OSMRE and State regulatory authorities to take appropriate to withhold or revoke permits of entities or individuals responsible for violations of SMCRA, the corresponding provisions of State law, or other laws or regulations referred to in section 510(c) of SMCRA; (c) develop data on coal mining activities on a nationwide basis; (d) provide statistics by company, region; judicial district, State and nationwide for management purposes; (e) enable OSMRE and State regulatory authorities to effectively monitor their program requirements; (f) enable OSMRE to collect civil penalties due it from violators or to collect delinquent abandoned mine land fees. Disclosures outside the Department of the Interior may be made: (1) To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing or implementing any statute, rule, regulation, or order when OSMRE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) to the Internal Revenue Service when disclosure will enable OSMRE to collect civil penalties due it from violators or to collect delinquent abandoned mine lands fees; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to public interest groups as may be required under a February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., et al.* v. *William P. Clark, et al.*, Civil No. 81–2134 (D.D.C. 1985); (5) to the U.S. Department of Justice or a court or other adjudicative body of competent jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with purpose for which the records were compiled; (6) to applicants and permittees pursuant to permit determinations; (7) to individuals or entities in response to their requests for permit-related information about themselves and related individuals or entities contained within the AVS system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file cabinets and recorded on computer usable media.

RETRIEVABILITY:

Data is retrievable by numerous combinations or data filed such as assigned index number, company name, individual name, State, permit number, violation numbers and amount(s) due.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records. Manual records are maintained in OSMRE areas occupied by OSMRE personnel during working hours with buildings locked and/or guarded during nonworking hours.

RETENTION AND DISPOSAL:

Data stored on computer usable media will be retained until it is determined that the data is no longer needed or required. Manual records will be retained to serve as verification and back-up material. ADP printout records will be disposed of periodically when superseded. Records are retained and disposed of in accordance with OSMRE Records Disposition Authority NC1–433–80–1, Item No. 302–06.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Finance and Accounting, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the Systems Manager. See 43 CFR 2.60 for form of request.

RECORD ACCESS PROCEDURE:

To see your records, write the system Manager. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63 for required content of request.

CONTESTING RECORD PROCEDURES:

A petition for amendment of AVS data shall be addressed to the Assistant Director, Information Systems Management and must meet the content requirement of 43 CFR 2.71. The petition for amendment must be submitted in writing.

RECORD SOURCE CATEGORIES:

(1) Federal and State Coal Mining Permit files both manual and computerized. (2) Applicable OSMRE and State Title IV and V programs files both manual and computerized. (3) Mine Safety and Health Administration (MSHA) Legal Identity Forms and other records. (4) Individual, Operator and Company financial reports. (5) MSHA R–31 Comptroller information Data Base. (6) State Corporation Commission, Secretary of State, Taxation bureaus and Clerk of Court Records. (7) Individual or Company Net Worth Determination reports. (8) Department of the Interior Solicitor Files. (9) OSMRE contractors who prepare investigative reports.

[FR Doc. 89–26971 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

[CO–010–00–4320–02]

Craig, Colorado, Advisory Council Meeting

Time and Date: December 13, 1989, at 10 a.m.

Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered

1. Coal bed methane
2. Wildlife 2000
3. Follow up on riparian workshop
4. Status of recreation resolution
5. Status of noxious weed resolution
6. Division of Wildlife's elk/cattle grazing study
7. BLM's allocation of forage in wildlife/livestock conflict allotments
8. Coordinated resource management.

Contact Person for More Information: Mary Pressley BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: November 7, 1989.

Kenneth P. Smith,

Acting District Manager.

[FR Doc. 89–26929 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–JB–M

[CA–050–4410–04]

Advisory Council Meeting; Ukiah, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94–579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, December 13–14, 1989, to discuss a number of issues related to management of public lands in the Ukiah District's Arcata, Clear Lake, and Redding resource areas. A complete agenda is available from the Ukiah BLM Office.

DATES: The Council will meet from 1:00 p.m. to 4:00 p.m. December 13 and from 8:00 a.m. to 3:30 p.m. December 14. Opportunity for public comment will be provided at 10:00 a.m. December 14.

ADDRESS: The Council will meet at the Bureau of Land Management Office, 355 Hemsted Drive, in Redding.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:00 a.m. Thursday, December 14. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: November 3, 1989.

Alfred W. Wright,

District Manager.

[FR Doc. 89–26933 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–00–4212–14; N–39772, et al.]

Battle Mountain District, Tonopah Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; competitive sale of Federal land in Nye County, Nevada.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale through competitive bidding procedures under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

Mount Diablo Meridian

T. 12 S., R. 47 E.,
Sec. 7,
N–39772 lot 57
N–51405 lot 10
N–51406 lot 11
N–51407 lot 42
N–51408 lot 43
N–51409 lot 58
N–51410 lot 61
N–51411 lot 62
N–51412 SW¼NE¼NE¼NW¼
N–51413 SE¼NW¼NE¼NW¼
N–51414 NE¼SW¼NE¼NW¼
N–51415 NW¼SE¼NE¼NW¼.

Twelve parcels of land, each containing 2.5 acres, for a total of 30 acres.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The parcels are isolated. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. The land will not be offered for sale for at least 60 days after publication of this Notice in the **Federal Register**.

The lands are not within any Grazing Allotment.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, together with the right to prospect for, mine and remove these minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Battle Monument District Office.

The patents, when issued, will be subject to a 50 foot easement for roads and public utilities purposes, in favor of Nye County, along the north, south, east, and west boundaries of each parcel.

Patents to lots 57 (N–39772) and 58 (N–51409), when issued, will be subject to N–51921, a 100 foot wide right-of-way for powerline purposes which has been granted to the Valley Electric Association, Inc. in perpetuity.

General Information: Publication of this notice in the **Federal Register** segregates the public lands from all the forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a notice of termination or 270 days from the date of publication of this notice, whichever comes first.

Information relative to the sale and bidding procedures as well as the appraised fair market value of the parcels, will be made available to the public at a later date, not less than 30 days before the sale.

The lands are proposed to be offered for sale by sealed bid, utilizing competitive bidding procedures. Conveyance of the mineral estates, except for oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, will occur simultaneously with the sale of the land. A bid will constitute an application for the mineral estates having no known mineral values; therefore, all bids must be accompanied by a $50.00 filing fee for conveyance of the available mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

James D. Curnivan,

Battle Mountain District Manager.

[FR Doc. 89–26954 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–HC–M

[WY–940–00–4730–12]

Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., November 6, 1989.

Sixth Principal Meridian

T. 52 N., R. 70 W.

The plat representing the dependent resurvey of the south boundary and the subdivisional lines, T. 52 N., R. 70 W., Sixth Principal Meridian, Wyoming, Group No. 473, was accepted October 30, 1989.

T. 52 N., R. 71 W.

The plat representing the dependent resurvey of the south and east boundaries, a portion of the west boundary, and the subdivisional lines, T. 52 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 473, was accepted October 30, 1989.

T. 42 N., R. 116 W.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 42 N., R. 116 W., Sixth Principal Meridian, Wyoming, Group No. 514, was accepted October 30, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: November 7, 1989.

John P. Lee, Chief,

Branch of Cadastral Survey.

[FR Doc. 89–26931 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–22–M

[ID–943–90–4214–11; IDI–4476, IDI–05384]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a withdrawal of 21.7 acres in the Challis and Salmon National Forests continue for an additional 30 years. The lands are now being used as one administrative site and one recreation site. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATE: Comments should be received by February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 American Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 5230 and 1376 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

(PLO 5230, IDI–4476)

Hughes Creek Administrative Site Addition No. 1
T. 25 N., R. 21 E., unsurveyed,
Secs. 15 and 22, metes and bounds.

(PLO 1376, IDI–05384)

Park Creek Recreation Area
T. 6 N., R. 18 E, unsurveyed.
Sec. 24, Metes and bounds.

The areas described aggregate 21.7 acres in Lemhi and Custer Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and is so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 7, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–26952 Filed 11–15–89; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–00–4920–10–4445; N–50250]

Proposed Withdrawal of Public Lands at Yucca Mountain, Nevada; Public Meeting

November 9, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings on the proposed withdrawal of public lands at Yucca Mountain.

SUMMARY: The Bureau of Land Management has scheduled public meetings in Reno, and Henderson, NV on the Department of Energy's (DOE) Yucca Mountain withdrawal application. The purpose of these public meetings is to gather information for consideration and incorporation into the withdrawal case record. The Department of Energy has amended their withdrawal application to exclude use of the land for site characterization studies. In other words, the proposed withdrawal will be solely for the purpose of maintaining the physical integrity of the subsurface environment from unplanned or unknown intrusions in order to ensure that scientific studies

for site characterization are not invalidated. The actual site characterization studies on the subject land have been authorized by a right-of-way reservation (N-47748) that was issued to the Department of Energy on January 6, 1988, pursuant to Sec. 507 of the Federal Land Policy and Management Act (43 U.S.C. 1767).

DATES: The public meetings will be held in Reno, Nevada at the Reno-Sparks Convention Center, 4590 S. Virginia St., Reno, NV on December 18, 1989, and in Henderson, NV at the Henderson Convention Center, 200 South Water, Henderson, NV on December 19, 1989. Both meetings will begin at 6:00 PM each evening. Additional public comments will be accepted until December 29, 1989. Those persons wishing to make a statement at either meeting should pre-register by calling (702) 646-8800 in Las Vegas or (702) 328-6330 in Reno. They may also register at the door prior to the meetings.

ADDRESS: Written comments should be addressed to: State Director (NV-943), Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, 850 Harvard Way, Reno, Nevada, telephone (702) 328-6330.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-26907 Filed 11-15-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-439 through 445 (Preliminary)]

Industrial Nitrocellulose From Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia of industrial nitrocellulose,[2] provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (previously under item 445.25 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 19, 1989, a petition was filed with the Commission and the Department of Commerce by Hercules Incorporated, Wilmington, Delaware, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of industrial nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia. Accordingly, effective September 19, 1989, the Commission instituted preliminary antidumping investigations Nos. 731-TA-439 (Preliminary) (Brazil), 731-TA-440 (Preliminary) (Japan), 731-TA-441 (Preliminary) (People's Republic of China), 731-TA-442 (Preliminary) (Republic of Korea), 731-TA-443 (Preliminary) (United Kingdom), 731-TA-444 (Preliminary) (West Germany), and 731-TA-445 (Preliminary) (Yugoslavia).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 22, 1989 (54 FR 39055). The conference was held in Washington, DC, on October 11, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 3, 1989. The views of the Commission are contained in USITC Publications 2231 (November 1989), entitled "Industrial Nitrocellulose from Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia: Determinations of the Commission in Investigations Nos. 731-TA-439 through 445 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: November 6, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-26861 Filed 11-15-89; 8:45 am]

BILLING CODE 7035-02-M

[1] The record is defined in section 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of these investigations does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures and Prospects for Future U.S.-Mexican Trade Relations

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearing, and request for comments.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-252-1263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332-282 following receipt of a letter on October 18, 1989 from the House Committee on Ways and Means requesting the Commission to conduct a two-phase investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) of Mexico's recent trade and investment reforms. As requested by the Committee, phase I of the investigation will provide a comprehensive review of recent trade and investment liberalization measures undertaken by Mexico and, to the extent possible, a description of the implications for U.S. exporters and investors. Some discussion of Mexico's role in and positions taken in the Uruguay Round of multilateral trade negotiations will also be provided.

Phase II will provide a summary of the views of recognized authorities on prospects for future U.S.-Mexican trade relations. As requested by the Committee, this survey will explore such proposals as a free trade area, an enhanced dispute settlement mechanism, possible sectorial approaches, the recently established Framework of Understanding, and other options for enhanced bilateral trade relations.

Phase I of the investigation will be submitted to the Committee no later than six months after receipt of the letter; phase II will be submitted to the Committee no later than 6 months after completion of phase I.

Public Hearing

A public hearing in connection with phase I of this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on December 4, 1989. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Commission, 500 E Street, SW, Washington, DC 20436, no later than noon, November 27, 1989. The deadline for filing prehearing briefs (original and 14 copies) is November 27, 1989. Post hearing briefs are due on December 18, 1989. Notice of a separate public hearing for phase II of this investigation will be announced in the Federal Register at a later date.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the phase I report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than January 8, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

By Order of the Commission.

Issued: November 9, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-26880 Filed 11-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-427 (Final)]

Certain Telephone Systems and Subassemblies Thereof From Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: Effective August 2, 1989, the Commission instituted the subject investigation and established a schedule for its conduct (54 FR 33763, August 16, 1989). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from October 10, 1989 to December 18, 1989 (54 FR 33261, August 14, 1989). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is revised as follows: the deadline for filing posthearing briefs is January 3, 1990, and the deadline for Parties to file additional written comments on business proprietary information is January 10, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 9, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-26903 Filed 11-15-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier; Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR Part 1182, as revised in *Pur., Merger & Cont.-Motor Passenger & Water Carriers*, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.16. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, Subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-19545, filed October 30, 1989. Barnett Rukin, et al.—Continuance in Control—Giraldo Limousine Service Corp. Applicants' representative: Michael J. Marzano, 99 Kinderkamack Road, Westwood, NJ 07675. Applicants Barnett Rukin, Julius Eisen, Irwin Flateman, Charles J. Flateman, individuals, and Short Line Terminal Agency, Inc., and Limousine Rental Service, Inc., (collectively, Rukin *et al.*), are in control: (1) of Chenango Valley Bus Lines, Inc. (MC-141324); (2) Colonial Coach Corp. (MC-39491); (3) GL Bus Lines, Inc. (MC-180074); (4) Gray Line New York Tours, Inc. (MC-180229); (5) Hudson Transit Corporation (MC-133403); (6) Hudson Transit Lines, Inc. (MC-228); (7) International Bus Services, Inc. (MC-155937), common and contract carriers of passengers; and (8) of Giraldo Limousine Service Corp. (Giraldo), a new carrier seeking its initial common and contract authority to transport passengers, in charter and special operations, between points in the United States and passengers and their baggage, between points in the United States, under continuing contract(s) with persons or organizations requiring passenger service (MC-218255). The business address of Rukin *et al.* is 17 Franklin Turnpike, Mahwah, NJ 07430 and the business address of Giraldo is 614 West 49th Street, New York, NY 10019. Upon issuance of authority to Giraldo, Rukin *et al.* will be in control of eight carriers.

Decided: November 8, 1989.

BEST COPY AVAILABLE

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28949 Filed 11-15-89; 8:45 am]

BILLING CODE 7035-01

[Finance Docket No. 31561]

Consolidated Rail Corporation—Trackage Rights Exemption—Boston and Maine Corp. and Springfield Terminal Railway Co.

Boston and Maine Corporation and Springfield Terminal Railway Company have agreed to grant overhead trackage rights to Consolidated Rail Corporation approximately between milepost 3.0 at Barber, MA, and milepost 28.0 (Hill Yard) at Ayer, MA. The trackage rights became effective on November 3, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27090 Filed 11-15-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31560]

Consolidated Rail Corp. Trackage Rights Exemption—Providence and Worcester Railroad Co.

Providence and Worcester Railroad Company (PW) has agree to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) in the city of Worcester, MA, over PW's Track 1, extending from the east side of Green Street to its connection with PW's Main Track, north of Bridge Street, then over the Main Track to PW's Gardner Branch baseline station 153+50. The trackage rights became effective November 3, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27091 Filed 11-15-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 6, 1989 a proposed consent decree in *United States* v. *Duffield*, Civil Action No. 88-C-1367-B, was lodged with the United States District Court for the Northern District of Oklahoma. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the underground injection control ("UIC") program set forth at part C of the Safe Drinking Water Act, 42 U.S.C. 300h-300h-7, and its implementing regulations codified at 40 CFR part 147, Subpart GGG. The violations involve the operation of two salt water disposal wells, known as Well No. 4 and Well No. 5, located in the Southwest Quarter of Osage County, Oklahoma. The complaint alleged several violations of the UIC regulations including (1) failure to demonstrate mechanical integrity of well No. 4; (2) failure to submit annual reports for well No. 4; (3) failure to plug well No. 5 within one year after termination of injection; (4) failure to submit annual reports for well No. 5; (5) failure to demonstrate mechanical integrity for well No. 5; and (6) failure to correct the construction of well No. 5 within one year of notification of the well's inadequacies. The complaint sought injunctive relief to require compliance with the UIC program and civil penalties for past violations. Since the filing of the complaint, defendant Duffield has brought Well No. 4 into compliance with the regulations. Duffield has also ceased use of Well No. 5 as an injection well. The consent decree requires Duffield to maintain compliance with UIC regulations for Well No. 4, and properly plug Well No. 5 or convert it to a production well. The decree requires the defendant to pay $12,000 in settlement of the United States' claims for civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Duffield*, D.J. Ref. 90-5-1-1-3142.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103 and at the Region VI Office of the United States Environmental Protection Agency, Office of Regional Counsel, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division

[FR Doc. 89-26950 Filed 11-15-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Adminstration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before January 2, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Record Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-89-4). Slot Machine Status Reports.

2. Department of Agriculture (N1-16-89-1). Background material pertaining to audits and investigations, and headquarters reference copies of field investigation case files.

3. Department of Commerce, Patent and Trademark Office (N1-241-89-3). Copies of Congressional correspondence retained outside the Commissioner's Office.

4. General Services Administration, Federal Supply Service (N1-137-89-3). Facilitative specification files.

5. Department of Justice, Executive Officer for Immigration Review (N1-60-89-9). Case files of the Chief Administrative Hearing Officer.

6. Department of Justice, Federal Bureau of Investigation (N1-65-89-7). Index cards for cases whose destruction have been authorized or which have been automated.

7. Department of Justice, Foreign Claims Settlement Commission , Micronesian Claims Commission (N1-299-89-5). Financial and personnel files, routine correspondence, and inquiries received after the filing deadline.

8. Department of Labor, Commission on Workforce Quality and Labor Market Efficiency (N1-174-90-1). Comprehensive schedule for all records of the Commission.

9. Office of Personnel Management, Office of Workforce Information (N1-146-89-1). The dynamics and longitudinal files of the Central Personnel Data File (the master file will be transferred to the National Archives).

Dated: November 9, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-26977 Filed 11-15-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: November 9, 1989.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB number: 3133-0004.
Form number: NCUA 5300.
Type of review: Revision of a currently approved collection.
Title: Semiannual Financial and Statistical Report.
Description: Federally-insured credit unions are required to report information, necessary for supervisory purposes, internal management, policy and regulatory decisions and research.
Respondents: Federally-insured credit unions.
Estimated number of respondents: 14,236.
Estimated burden hours per response: 4.50 hours.
Frequency: Semiannually.
Estimated total reporting burden: 128,124 hours.

OMB number: 3133-0058.
Form number: None.
Type of review: Extension of the expiration of a currently approved collection.
Title: Credit Committee Records.
Description: Credit unions must maintain records of the actions taken regarding approval-disapproval of loans.
Respondents: Federal credit unions.
Estimated number of respondents: 8,963.
Estimated burden hours per response: 8 hours.
Frequency of response: Monthly.
Estimated total reporting burden: 71,704 hours.

OMB number: 3133-0080.
Form number: None.
Type of review: Extension of the expiration date of a currently approved collection.
Title: Special Meetings of Federal Credit Union Board.
Description: Federal Credit Union Bylaws require that the credit union president call a special meeting of the board of directors upon receipt of a written request signed by the majority of the directors.
Respondents: Federal credit unions.
Estimated number of respondents: 890.

Estimated burden hours per response: .4 hour.
Frequency of response: As necessary.
Estimated total reporting burden: 356 hours.
OMB number: 3133–0061
Form number: None.
Type of review: Extension of the expiration date of a currently approved collection.
Title: Credit Union Bylaws and Certificate.
Description: Each Federal Credit Union is required to maintain file copies of its organization certificates, bylaws, amendments and special authorizations.
Respondents: Federal credit unions.
Estimated number of respondents: 8,963.
Estimated burden hours per response: .2 hour.
Frequency of response: As necessary.
Estimated total reporting burden: 1,793 hours.
Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street, NW, Washington, DC 20456.
OMB reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,
Secretary of the NCUA Board.
[FR Doc. 89–26934 Filed 11–15–89; 8:45 am]
BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Task Force on December 7, 1989.

Name: Task Force on Women, Minorities and the Handicapped in Science and Technology.
Date: Thursday, December 7, 1989.
Time: 9:00 a.m. to 1:00 p.m.
Place: The Pentagon, Room 3E869, Washington, DC 20301.
Type of Meeting: Open
Purpose: Discussion of the issue of the final report.

Sue Kamnitzer,
Executive Director.
[FR Doc. 89–26913 Filed 11–15–89; 8:45 am]
BILLING CODE 7555–01–M

Science and Technology Centers Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Science and Technology Research Centers Panel of the Advisory Committee for Science & Technology Centers.
Date and Time: December 5–6, 1989—8:30 a.m. to 5:00 p.m. each day.
Place: Room 533, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of meeting: Closed
Contact Person: William C. Harris, Director, Office of Science & Technology Centers Development (202) 357–9808, Room 533, National Science Foundation, Washington, DC 20550.
Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice and recommendations concerning support for Science and Technology Research Centers.
Agenda: Review and evaluation of Science & Technology Research Centers Proposals as part of the selection process of awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–26912 Filed 11–15–89; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 & 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for operations of the Donald C. Cook Nuclear Plant Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Indentification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to Waste Gas Holdup System hydrogen and oxygen monitoring to allow part of the system to be inoperable while it is replaced.

The proposed action is in accordance with the licensee's application for amendment dated January 27, 1989.

The Need for the Proposed Action

The proposed change to the TS is required in order to allow a portion of the Waste Gas Holdup System Explosive Monitoring System to be inoperable for 160 days on a one-time basis so that it may be replaced. The amendment also would make some editorial changes.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the proposed change does not involve a significant hazards consideration. The staff has determined that the extended interval of time in which the oxygen and hydrogen monitor will be out of service for the replacement effort does not involve a significant increase in the probability or consequences of an accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternatives Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Donald C. Cook Nuclear Plant, dated August, 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an environment statement for the proposed license amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 18, 1989 (54 FR 34267). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated January 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Maude Preston Polenske Memorial Library in St. Joseph, Michigan.

Dated at Rockville, Maryland, this 9th day of November, 1989.

For the Nuclear Regulatory Commission.
John F. Stang,
Acting Director, Project Directorate III–1 Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89–26970 Filed 11–15–89; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–433]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility Operating License No. R–124, University of California at Santa Barbara L–77 Research Reactor

The U.S. Regulatory Commission (the Commission) is considering issuance of an Order terminating Facility Operating License No. R–124 for the University of California at Santa Barbara (UCSB) L–77 Research Reactor located in Santa Barbara, California, in accordance with the application dated September 9, 1985, as supplemented on November 20 and December 9, 1985, and March 24 and June 27, 1986.

Environmental Assessment

Identification of Proposed Action: By application dated September 9, 1985 as supplemented, the UCSB requested authorization to decontaminate and dismantle its L–77 Research Reactor Facility, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R–124. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated August 26, 1988, the UCSB completed the dismantlement and submitted a final survey report on January 5, 1987. Representatives of the Oak Ridge Associated Universities, (ORAU), under contract to NRC, conducted a survey of the facility on June 14 and 15, 1989. The survey is documented in an ORAU report "Confirmatory Radiological Survey of the L–77 Research Reactor Facility, University of California at Santa Barbara, Santa Barbara, California," M.R. Landis, September 1989, Region V, in a memorandum dated October 3, 1989, found that the ORAU report findings support that data developed in the licensee's final survey report.

Need for Proposed Action: In order to release the facility for unrestricted access and use, Facility Operating License No. R–124 must be terminated.

Environmental Impact of License Termination: The University of California at Santa Barbara, indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of 5 micro R/hr above ground at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action: Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility Operating License No. R–124.

Agencies and Persons Consulted: Personnel from the Radiological Site Assessment Program, Oak Ridge Associated Universities (an NRC contractor) assisted Region V in the conduct of the Termination Survey for the University of California at Santa Barbara, L–77 Research Reactor Facility.

Finding of no significant impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based on the foregoing Environmental Assessment, the Commission has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility Operating License No. R–124, dated September 9, 1985, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 8th day of November 1989.

For the Nuclear Regulatory Commission.
Seymour H. Weiss,
Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.
[FR Doc. 89–26964 Filed 11–15–89; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 8, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Franklin Multi Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–5488)
Hibernia Corporation
Class A Voting Common Stock, Without Par Value (File No. 7–5487)
Spelling Entertainment, Inc.
Common Stock, No Par Value (File No. 7–5489)
Tandy Brands, Inc.
Common Stock, $1.00 Par Value (File No. 7–5490)

Precision Castparts Corp.
Common Stock, Without Par Value (File No. 7–5490)
Putnam Investment Grade Municipal Trust
Shares of Beneficial Interest, Without Par Value (File No. 7–5491)
Mitsubishi Bank, Ltd.
American Depositary Shares, 50 Yen Par Value (File No. 7–5492)
Crawford & Co.
Common Stock, $1.00 Par Value (File No. 7–5493)
Johnson Products
Common Stock, $.50 Par Value (File No. 7–5494)
Dreyfus Municipal Income, Inc.
Common Stock, $.001 Par Value (File No. 7–5495)
Muni Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–5496)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 1, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–26957 Filed 11–15–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2389]

Alaska; Declaration of Disaster Loan Area

Anchorage Borough and the contiguous Boroughs of Kenai Peninsula, Matanuska-Susitna, and Valdez-Cordova in the State of Alaska constitute a disaster area as a result of damages caused by flooding which began on August 25 and ended on or about October 30, 1989. Applications for loans for physical damage may be filed until the close of business on January 11, 1990 and for economic injury until the close of business on August 9, 1990 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations.

The interest rates are:

For physical damage	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Alaska is 238906, and for economic injury the number is 667200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 9, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–26940 Filed 11–15–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2387; Amdt. 1]

Declaration of Disaster Loan Area; California

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated October 27, 1989, to include the Counties of Contra Costa and Marin as a disaster area as a result of damages caused by an earthquake which occurred on October 17, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Sacramento, Solano, and Sonoma in California until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 18, 1989, and for economic injury until the close of business on July 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 30, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–26941 Filed 11–15–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2388]

Kentucky; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 30, 1989, I find that the Counties of Clay, Floyd, Jackson, Knott, Leslie, Letcher, Magoffin, Owsley, Perry, and Pike in the State of Kentucky, constitute a disaster area as a result of damages caused by severe storms, flooding, and mudslides on October 16—18, 1989. Applications for loans for physical damage may be filed until the close of business on December 29, 1989, and for economic injury until the close of business on July 30, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Bell, Breathitt, Estill, Harlan, Johnson, Knox, Laurel, Lee, Madison, Martin, Morgan, Rockcastle, and Wolfe in the State of Kentucky; Buchanan, Dickerson, and Wise Counties in the State of Virginia, and Mingo County in the State of West Virginia may be filed until the specified date at the above location.

The interest rates are:

For physical damage	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.25
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Kentucky is 238806, and for economic injury the number is 666900. In Virginia, the economic injury number is 6870 00 and in West Virginia the economic injury number is 667100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 2, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–26942 Filed 11–15–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 6806; Amdt. 1]

Washington; Declaration of Disaster Loan Area

The Counties of Grays Harbor and King continguous counties of Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, Thurston, and Yakima in the State of Washington, constitute an Economic Injury Disaster Loan Area as a result of damage from the oil spill in Alaska's Prince William Sound area, which occurred on March 24, 1989. All other information remains the same; i.e., the termination date for filing applications for eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere is the close of business on *May 2, 1990* at the addres listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurence.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: October 31, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–26943 Filed 11–15–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 6868]

Washington; Declaration of Disaster Loan Area

The Okanogan County and the contiguous counties of Chelan, Douglas, Ferry, Grant, Lincoln, Skagit, and Whatcom in the State of Washington, constitute an Economic Injury Disaster Loan Area as a result of damages resulting from the closure of the North Cascades Highway (State Route 20) as a result of a rock slide which occurred on August 16, 1989.

Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 31, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: October 31, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–26944 Filed 11–15–89; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: TVA's Procurement Format including Invitation to Bid, Request for Proposal, Request for Quotation, and other related procurement documents.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit, and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 174,000.

Estimated Total Annual Burden Hours: 162,342.

Estimated Average Burden Hours Per Response: .933.

Need For and Use of Information: TVA must procure equipment, materials, and services to fulfill its statutory obligations. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors or purchasers who voluntarily see to contract with TVA are affected.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89–26963 Filed 11–15–89; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

President's Commission on Aviation Security and Terrorism; Closed Meeting

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of closed meeting of the President's Commission on Aviation Security and Terrorism.

SUMMARY: As previously announced, the President's Commission on Aviation Security and Terrorism will be holding its first public hearing. Before this first public hearing the Commission will meet in closed session to discuss matters relating to Commission organization, personnel, and related matters.

DATE: Friday, November 17, 1989, 9 a.m. et.

ADDRESS: Reserve Officers Association, Executive Library, Fourth Floor, One Constitution Avenue, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Commission on Aviation Security and Terrorism, 1825 K Street, NW., Suite 519, Washington, DC 20036. (202) 254–3166, FAX (202) 254–3359.

SUPPLEMENTARY INFORMATION: Prior notice of the public portion of the Commission's hearing has already been provided. (November 2, 1989; 54 FR 46316). In accordance with section 10 of the Federal Advisory Committee Act, the executive session before the public hearing will be closed to the public because matters will be discussed that

come within the following provisions of 5 USC 552b(c): (1) Classified national security information; (2) internal personnel rules and practices of the Commission; and (3) matters exempt from mandatory disclosure by statute, namely Section 310, Federal Aviation Act of 1958, as amended.

Issued in Washington, DC on November 8, 1989.

Harry R. Van Cleve,

Commission General Counsel.

[FR Doc. 89-26898 Filed 11-15-89; 8:45 am]

BILLING CODE 6910-63-M

Coast Guard

Ninth Coast Guard District Industry Day; Meeting

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 31 January 1990, the Commander, Ninth Coast Guard District, will sponsor an Industry Day program to provide for an open exchange on matters of mutual interest or concern to the Great Lakes marine community and the Coast Guard. The Industry Day activities will be held at the Coast Guard Officers' Club, which is adjacent to the Coast Guard Marine Safety Office, 1055 East Ninth Street, Cleveland, Ohio.

The schedule of events for Industry Day is:

8:00 a.m., Registration
9:00 a.m., Industry Day Presentation
11:30 a.m., "No Host" Buffet Luncheon
1:00 p.m., Industry Day Presentations continue
4:00 p.m., Industry Day concludes
4:00–6:30 p.m., "No Host" social hour in the Officers' Club.

Advance registration and payment of the $15.00 conference fee (which includes the cost of the luncheon and social hour) is required. Persons desiring registration forms or additional information on the Industry Day activities should contact the personnel named below.

Recommendations for discussion topics will be considered in developing the final agenda. Such recommendations must be submitted in writing to the address listed below. All registration forms and recommendations must be received by 17 January 1990.

FOR FURTHER INFORMATION CONTACT: CDR R.D. Arnett or Ms. Michelle Mavracic, Commander(m), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone: Commercial (216) 522–3994, FTS 942–3994.

Dated: November 3, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 89-28916 Filed 11-15-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Surry County, NC

AGENCY: Federal Highway Administration (FHWA).

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Surry County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, District Engineer, Federal Highway Administration, 4505 Falls of the Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2852.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway connection from US–52 to I–77 in Surry County, North Carolina, was issued on June 23, 1988 and published in the July 13, 1988 **Federal Register**. The FHWA has since been advised by the North Carolina Department of Transportation the proposed action will be advanced as a State funded project and will not require an EIS. As a result, the previous Notice of Intent is hereby rescinded.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 8, 1989.

Roy C. Shelton,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 89-26951 Filed 11-15-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP 89-09; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Hella, Inc.

Hella, Inc. of Cranford, New Jersey, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment" on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 requires that taillamps be designed to conform to the requirements of the Society of Automotive Engineers' Standard J585e, September 1977, "Tail Lamps (Rear Position Lamps)", which specifies that a tail lamp shall not exceed a designated maximum candlepower at night over any area larger than that generated by a ¼ degree radius, within a solid cone angle from 20L to 20R and from H to 10U. The maximum candela permitted for the single compartment lamps as those produced by Hella is 18 candela at H (the horizontal) or above.

Hella imported approximately 109,000 combination stop/tail lamps which exceed the maximum limit of 18 candlepower for taillamp function on or above the horizontal. Hella supports its petition with the following four arguments:

"1. *The subject rear combination lamps were designed to conform to FMVSS 108.*"

"2. *The excess taillamps values above the horizontal do not compromise motor vehicle safety.*" Hella submitted that industry experience and supporting studies have established that "the human eye, in the vast majority of cases, cannot detect a change in luminescence [sic] unless it is more than a 25 percent increase or decrease (SAE Recommended Practice J576, footnote 1)." Of the eight lamps tested that exceeded the maximum intensity, one exceeded this maximum by 3.6 candela (20%), one by 1.5 candela (8.3%) and the remainder by less than 1.3 candela (7.2%).

"3. *The luminous intensity does not present a safety hazard because of glare.*" Hella argued that NHTSA pointed out in Docket 78–08, Notice 2, amending FMVSS 108, the "current ratio of candlepower output by stop and taillamps in combination lamps (must) be maintained at test points above the horizontal and extended to test points below the horizontal to minimize problems of glare." [44 FR 75385]. In that rulemaking, the petitioner, Truck Safety Equipment Institute, had argued, "that there must be countless driving situations every day where the following driver is exposed to lamp candlepower outputs from approximately 15 cp to 22 cp' [sic] without any evidence of hazardous driving conditions because of glare."

"4. *The record confirms that the subject noncompliance presents no threat to motor vehicle safety.*" Hella is not aware of any complaints, accidents or injuries related to the subject products' exceeding the maximum limit of 18 candlepower for the taillamp function on or above the horizontal.

Interested persons are invited to submit written data, views and arguments on the petition of Hella, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 18, 1989.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: November 9, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-26899 Filed 11-15-89; 8:45 am]

BILLING CODE 4910-59-M

Maritime Administration

[Docket S-854]

Lykes Bros. Steamship Co., Ltd.; Application for Authorization To Permit a Reciprocal Space Charter and Coordinated Sailing Agreement With a Foreign Carrier

By application of October 17, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) requests the Maritime Administration's authority to the extent required to effect a Reciprocal Space Charter and Coordinated Sailing Agreement (Agreement) with Deppe Linie GmbH & Co. (Deppe), a foreign carrier.

The trade covered by the Agreement is that between the U.S. gulf and east coast and north Europe. Lykes presently operates five vessels (four Express Class subsidized container vessels and one unsubsidized RO/RO vessel) and Lykes states that Deppe operates three foreign-flag container vessels in the trade. Lykes claims that the trade is generally overtonnaged at this time, and announced new building projects of several other carriers are expected to aggravate the overtonnaging. If the Agreement is permitted to become effective, Lykes states that it and Deppe will each remove one vessel from the trade, thus reducing from eight to six the total number of vessels operated in the trade by these parties.

Lykes expects that this reduction will not only alleviate the general overtonnaging in the trade but it will also materially increase, particularly during seasonal downturns, the utilization of the Lykes' vessels remaining in the trade.

Further, Lykes contends that the rationalization of schedules and itineraries authorized by the Agreement will improve Lykes present seven-day service frequency and Deppe's fortnightly service frequency to a coordinated six-day service frequency. Lykes claims that this six-day service would be the best offered by any carrier now in the trade and is expected to result in an improvement of Lykes' competitive position.

Lykes understands that if Deppe cannot coordinate sailings under this Agreement or under agreement with some carrier other than Lykes, Deppe will, in order to maintain a viable, competitive service, likely add vessels to the trade in addition to its present three and only worsen the overtonnaging referred to above and thus adversely affecting Lykes, as well as other carriers in the trade.

Lykes believes that the advantages to be gained by the Agreement—improved vessel utilization, reduced operating costs by elimination of a vessel in the trade, and improved competitive position by reason of improved service frequency—will strengthen Lykes' Line B service. Lykes cannot foresee any adverse impact from the Agreement; rather, the Agreement will, in Lykes view, benefit the trade generally by a reduction of the present overtonnaging in the trade which should result in increased trade stability.

Section 804(a) of the Act provides that "it shall be unlawful for any contractor receiving operating-differential subsidy under title VI . . . to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act." Section 804(b) states that this provision may be waived by the Secretary under special circumstances and for good cause shown.

Other U.S.-flag competitors advertise service in the range covered by the Agreement. For this reason, the Maritime Administration is publishing this **Federal Register** notice as a matter of discretion.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on Nov. 29, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804, (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 9, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-26879 Filed 11-15-89; 8:45 am]

BILLING CODE 4910-81-M

UNITED STATES INFORMATION AGENCY

Meeting of the Cultural Advisory Committee

The Cultural Property Advisory Committee will meet on December 1, 1989, from 9:00 a.m. to approximately 4 p.m. at USIA headquarters, 301 4th Street, SW., Washington, DC. The meeting's agenda will consist of the review of an emergency request from the Government of Guatemala for U.S. import restrictions on certain of its archaeological materials. Discussion will focus on whether Guatemala's request meets the criteria of the Convention on Cultural Property Implementation Act (Act) and whether the Committee should recommend that U.S. import restrictions be imposed on material described in Guatemala's request.

The Committee's meeting shall be closed to the public for it will involve the review of Guatemala's request and discussion of information which, if disclosed prematurely, would be likely to frustrate significantly the implementation of proposed U.S. Government actions and policies. Public

disclosure of information at this time identifying specific endangered cultural property is likely to frustrate the possible imposition of import restrictions on such cultural property. The Committee will discuss recommendations to the President as to appropriate U.S. action regarding Guatemala's request under the terms of the Act. For the foregoing reasons the closing of the meeting is authorized under 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C.2605(h).

Dated: November 7, 1989.

Eugene P. Kopp,

Acting Director, United States Information Agency.

Determination to Close Meeting of the Cultural Property Advisory Committee

December 1, 1989.

U.S. INFORMATION AGENCY

The Committee's meeting of December 1, 1989 will involve discussion of investigative techniques and procedures for the handling of a State Party request of the Government of Guatemala. There will be discussion of information, the premature disclosure of which would be likely to frustrate significantly implementation of proposed U.S.G. actions and policies and possibly compromise future U.S.G. negotiating objectives.

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that the meeting of the Committee on December 1, 1989, shall be closed to the public in accordance with the 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2606(h).

Dated: November 7, 1989.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 89-26975 Filed 11-15-89; 8:45 am]

BILLING CODE 8230-01-M

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on November 28, 1989, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Tuesday, November 28, 1989

Part One—Closed to the Public

10:30 a.m.

1. Report by the Director of Radio Marti

11:15 a.m.

2. TV Marti

12:00 noon

3. Role of executive director

Part Two—Open to the Public

12:30 p.m.

4. Public testimony period

Items one through three, which will be discussed from 10:30 a.m. to 12:15 p.m., will be closed to the public. Items one and two involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item three relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact James Skinner at (202) 485-6312 to make prior arrangements, as access to the building is controlled.

Dated: November 8, 1989.

Eugene P. Kopp,

Acting Director.

Determination to Close Portions of Advisory Board Meeting of November 28, 1989

Based on information provided to me by the Advisory Board for Radio Broadcasting to Cuba, I hereby determine that the 10:30 a.m. to 12:15 p.m. portion of the meeting may be closed to the public.

The Advisory Board has requested that this part of the November 28, 1989 meeting be closed because it will involve a discussion of classified information (5 U.S.C. 552b(c)(1)) and of matters which relate solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)).

Dated: November 8, 1989.

Eugene P. Kopp,

Acting Director.

[FR Doc. 89-26976 Filed 11-15-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 220
Thursday, November 16, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE: 9:00 a.m. to 5:00 p.m., December 2, 1989.

PLACE: Doubletree Hotel, 901 Camino del Rio, South, San Diego, California.

STATUS: The meeting will be open to the public, except for personnel matters.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

Consideration of applications submitted for funding; SJI FY 1991 budget submission to Congress.

Portions Closed to the Public

Discussion of internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314, (703) 684-6100.

David I. Tevelin

Executive Director.

[FR Doc. 89-27032 Filed 11-13-89; 8:45 am]

BILLING CODE 6820-SC-M

Corrections

Federal Register
Vol. 54, No. 220
Thursday, November 16, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. A-33, Supp. 1]

Federal and State Tax Tables To Be Used for Calculating 1989 Relocation Income Tax (RIT) Allowance Payments

Correction

In rule document 89-23459 appearing on page 41244 in the issue of Friday, October 6, 1989, make the following correction:

On page 41244, in the second column, under **SUMMARY**, in the sixth line, remove the "5" after "B, and C".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 342

Acquisition Regulation; Miscellaneous Amendments

Correction

In rule document 89-25427 beginning on page 43965 in the issue of Monday, October 30, 1989, make the following corrections:

342.7002 [Corrected]

1. On page 43966, in the second column, in § 342.7002(9)(e), in the fifth line, "financing" should read "Financing".

2. On the same page, in the same column, in the same paragraph, in the 12th line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 89N-0116]

Proposed Technical Revision in the Regulations Governing Drug Master File Submissions

Correction

In proposed rule document 89-24430 beginning on page 42515 in the issue of Tuesday, October 17, 1989, make the following correction:

On page 42515, in the third column, under **SUPPLEMENTARY INFORMATION**, in the ninth line, "of the" should read "or to".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components

Correction

In proposed rule document 89-24366 beginning on page 42674 in the issue of Tuesday, October 17, 1989, make the following correction:

§ 1020.30 [Corrected]

On page 42685, in the third column, in paragraph (g)(2), in the eighth line, "high-voltage" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-43-7122-08-DO63; CACA 23486]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 89-24181 beginning on page 42053 in the issue of Friday, October 13, 1989, make the following corrections:

1. On page 42053, in the second column, under **DATE**, in the third line, "January 11, 1989" should read "January 11, 1990".

2. On the same page, in the same column, under **Mount Diablo Meridian**, in the 19th line, remove "NE¼".

3. On the same page, in the third column, under **San Bernadino Meridian**, in the fourth line, insert "N." following "T.12".

4. On page 42054, in the first column, in the 29th line from the bottom, "lot of 2" should read "lot 2 of".

BILLING CODE 1505-01-D

federal register

Thursday
November 16, 1989

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care Treatment and Instruction of Inmates; Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its regulations on Smoking/No Smoking Areas within its institutions and offices. The amendment requires Chief Executive Officers to designate by the placement of signs each area that may be used as a smoking area. The absence of a sign shall be interpreted as indicating a no smoking area. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Effective January 1, 1990. Bureau Chief Executive Officers may request up to a six month extension for compliance.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Smoking/No Smoking Areas. This amendment restricts the areas where smoking is permitted and changes the presumption, in the absence of a sign, from smoking to no smoking. A proposed rule on this subject was published in the **Federal Register** August 17, 1989 (54 FR 34094). A summary and response to the submitted comments follows.

The majority of the commenters expressed approval of the requirements in the proposed rule. Several commenters suggested further requirements for accommodating nonsmokers. A commenter suggested that each institution be required to identify whole units as no smoking areas. Another commenter stated that, in his opinion, the rule failed to address those nonsmoking inmates who live in a dormitory type setting. Section 551.162 states that, to the extent practicable, Chief Executive Officers shall accommodate nonsmoking inmates in nonsmoking living quarters and that the sharing of a cell or *living area* (emphasis added) between a smoker and a nonsmoker will be avoided except where impractical. Implementing guidelines provide further clarification. The guidelines state that in institutions with common living areas for large number of inmates, living facilities will be separated into smoking and nonsmoking areas sufficient to accommodate all nonsmokers, and, where practical, separate dormitories should be provided for nonsmoking inmates desiring such housing. A commenter objects to the phrase "to the extent practicable" in § 551.162(b), and recommends that it be replaced with more definite language to provide mandatory "no smoking" living quarters in each institution. We believe the existing language is sufficient. Ordinarily, accommodation will be made for nonsmoking inmates, but there may be circumstances beyond the control of the Bureau of Prisons (e.g., increased prison population) which would make such separation not practicable. For similar reasons, it currently may not be possible to always prevent secondary inhalation by nonsmokers of smoke originating from a designated smoking area.

Several commenters raised questions about restrictions on smoking in specific areas. Commenters who were in favor of restrictions pointed out locations (e.g., television, rooms, restrooms, inmate law libraries, and visiting rooms) in which smoking by other inmates was particularly objectionable to them. Section 551.160(b) clearly identifies libraries and restrooms as ordinarily being nonsmoking areas. Designations of smoking areas in television rooms and visiting rooms will be made at the discretion of the Chief Executive Officer. A commenter recommended that smoking be allowed only in private cells and outdoors. We believe that adequate provision can be made to allow for smoking in additional designated indoor areas. Commenters who were in favor of smoking requested that the rule make it clear that inmates have the right to smoke in their own cells and that provision for smoking areas applies to administrative detention units. Section 551.162 allows for the Chief Executive Officer to designate smoking areas for inmates restricted to an area (such as a cell or administrative detention unit) for an extended period of time. Inmates who object to a specific area's designation can file a complaint under the Administrative Remedy Procedure.

A commenter suggests that sales of all tobacco products in institution commissaries be discontinued. We believe this is not now necessary, as persons who elect to smoke are permitted to do so in designated smoking areas. A commenter suggests that the Bureau contract with organizations which offer programs designed to help people quit smoking. Where there is sufficient interest and resources available in the institution, Bureau staff will consider establishing or contracting for programs to help inmates quit smoking.

Several commenters question whether the restrictions on smoking will be properly enforced and/or that the enforcement of such policy may cause tension within an institution. One commenter questions whether Bureau staff who themselves smoke can be expected to enforce the policy. Restrictions on smoking within institutions apply equally to Bureau staff. Furthermore, Bureau staff are trained, and expected, to enforce Bureau policy in an objective manner. We believe that the present amendment, with its presumption of no smoking and consequent focus on the designation of appropriate smoking areas, will also simplify the enforcement process. While there is a possibility that restricting smoking to designated areas may temporarily increase tension, we believe that any such occurrence will be short-lived as the smoking areas become identifiable and resources are made available to help interested persons quit smoking. One commenter suggested that the policy be enforced through the issuance of "tickets" or by summary ejection from the nonsmoking area. We believe that existing Bureau disciplinary procedures, which contain provision to protect inmate rights, are adequate for the enforcement of this policy.

In publishing this final rule, the Bureau is making two minor changes to the regulatory text. In § 551.160(b), the phrase "to the minimum possible" replaces the phrase "to a minimum number of locations," and in § 551.160(a) the phrase "as a smoking area" replaces the phrase "as smoking areas". The revised phrases more accurately characterize how areas can be designated, and were inadvertently changed when published in the proposed rule.

This regulation becomes effective January 1, 1990. Where special implementation problems exist, the Director of the Bureau, upon written request from a Chief Executive Officer, may allow up to a six month extension for compliance.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

In consideration of the foregoing, part 551 in subchater C of 28 CFR, chapter V is amended as set forth below.

G.L. Ingram,

Acting Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. In part 551, subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definition.
551.162 Designated smoking areas.
551.163 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances in which smoking is permitted within its institutions and offices.

(a) All areas of Bureau of Prisons facilities and vehicles are no smoking areas unless specifically designated as smoking areas by the Chief Executive Officer consistent with the guidelines set forth in this rule.

(b) Chief Executive Officers shall limit smoking areas to the minimum possible consistent with effective operations. Under no circumstances shall smoking be permitted in the following areas, except as noted in § 551.162(a):

(1) Elevators,
(2) Storage Rooms and Warehouses,
(3) Libraries,
(4) Corridors and Halls,
(5) Dining Facilities,
(6) Kitchen and Food Preparation Areas,
(7) Medical/Dental Care Delivery Areas,
(8) Institution/Government Vehicles,
(9) Administrative Areas and Offices,
(10) Auditoriums,
(11) Class and Conference Rooms,
(12) Gymnasiums and Exercise Rooms, and
(13) Restrooms.

§ 551.161 Definition.

For purpose of this rule, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated smoking areas.

(a) Chief Executive Officers shall identify "smoking areas" for staff and inmates, especially those who may be employed in, or restricted to, a nonsmoking area for an extended time.

(b) To the extent practicable, Chief Executive Officers shall accommodate nonsmoking inmates in nonsmoking living quarters. The sharing of a cell or living area between a smoker and a nonsmoker will be avoided except where impractical due to circumstances, and then may be done only for limited duration.

§ 551.163 Notice of smoking areas.

The Chief Executive Officer shall ensure that smoking areas are clearly identified for staff and inmates by the appropriate placement of signs. The *absence* of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action will be taken for failure to observe smoking restrictions.

[FR Doc. 89–27006 Filed 11–15–89; 8:45 am]

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S.J. Res. 73/Pub. L. 101–149

To designate the week beginning October 29, 1989, as "Gaucher's Disease Awareness Week". (Nov. 13, 1989; 103 Stat. 929; 1 page) Price: $1.00

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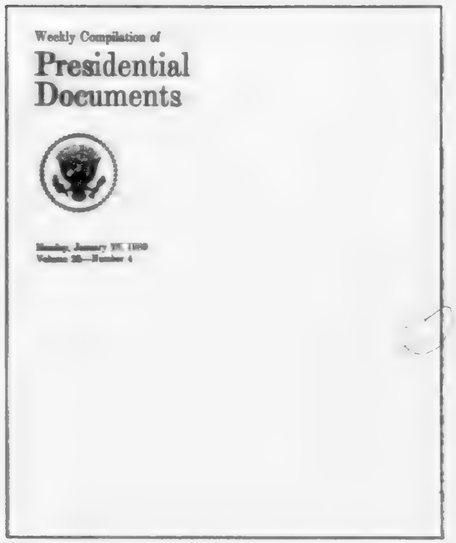
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First Floor Conference Room,
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Friday, November 17, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-005]

RIN 0581-AA19

Tobacco; Fees and Charges for Permissive Inspection and Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for the voluntary inspection and certification of tobacco upon request. This action would increase the fees and charges currently in force for permissive grading to reflect increased costs of operating the program. In addition, the fee structure would be revised so that all costs of the service would be charged on an hourly basis. The previous billing fee to users consisted of an hourly rate, to which travel, per diem and adminstrative costs were added. Under the Act, fees collected must cover, as nearly as practicable, the Department's costs for performing the inspection service, including administrative and supervisory costs. This increase does not affect the fee for the mandatory inspection of tobacco sold at designated auction markets.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (54 FR 31530, July 31, 1989) that the Department proposed to amend the regulations governing the permissive inspection of tobacco to increase the fees and charges for inspection and grading services to those requesting the services.

Interested parties were given an opportunity to comment on the proposed rule. No comments were received. This action makes final the fee increase as proposed.

Permissive inspections as authorized under the Tobacco Inspection Act, are made available to interested parties on a fee basis sufficient to cover the costs, as nearly as practicable, of the services provided, including aministrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current hourly fee schedule for domestic permissive inspection has been in effect since November 4, 1985, as published in the **Federal Register** (50 FR 45805) on November 4, 1985.

Previously, users of the service were billed the standard hourly rate, plus travel and administrative costs. The new hourly fee would include all of the costs of the program in one rate which would include travel, as well as the costs for salary and administrative services. This fee structure would reduce the time and costs of calculating charges by eliminating the need to pro-rate travel expenses when inspectors perform both mandatory and permissive inspections, or permissive inspections for more than one party, on the same trip. The change would also make users' costs more predictable for each use of the service. Past experience indicates that it is unlikely that costs for any user would be significantly more or less over a season than if travel costs were billed separately.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. As a result of this review, it has been determined that the present fees are insufficient to cover the Department's costs. The major factors causing the need for additional funds are increases in Government salaries, travel allowances and administrative costs since 1985. Therefore, the Department proposed that the base hourly rate of $22.30 be revised to read "hourly rate shall be $29.45," the overtime rate of $26.60 shall be "$35.15," and the Sunday and holiday rate of $33.34 shall be "$44.05."

This final rule has been reviewed under USDA producers established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Few of the entities which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This action would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority statement for subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.123 is amended by revising paragraph (b) to read as follows:

§ 29.123 Fees and charges.

* * * * *

(b) *Domestic permissive inspection and certification.* Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $29.45. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $35.15. The rate of $44.05 shall be charged for work performed on Sundays and holidays. These same fees or charges shall be applicable for hogshead, bale, case, or sample inspections.

* * * * *

Dated: November 14, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-27069 Filed 11-16-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 694]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 17 through November 23, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 694 (7 CFR part 907) is effective for the period from November 17 through November 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 73,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 68 percent of the 1989-90 crop of 73,350 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (10 percent) or processed (22 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee at its November 14, 1989, meeting, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provides a 30-day period for the receipt of comments from interested persons. That comment period will end on November 20, 1989. The Department will analyze all comments received, and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating the marketing policy and considering the issuance of weekly volume regulations.

The Committee met publicly on November 14, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of eight to one with one abstention, that 1,500,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989-90 marketing policy. This recommended amount is 50,000 cartons less than estimated in the tentative shipping schedule adopted by the Committee on October 3, 1989. Of the 1,500,000 cartons, 1,440,000 are allotted for District 1, and 60,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 9, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,060,000 cartons compared with 520,000 cartons shipped during the week ending on November 10, 1988. Export shipments totaled 242,000 cartons compared with 23,000 cartons shipped during the week ending on November 10, 1988, and processing and other uses accounted for 385,000 cartons compared with 152,000 cartons shipped during the week ending on November 10, 1988.

Fresh domestic shipments to date this season total 2,312,000 cartons compared with 900,000 cartons shipped by this time last season. Export shipments total 362,000 cartons compared with 23,000 cartons shipped by this time last season. Processing and other use shipments total 653,000 cartons compared with 290,000 cartons shipped by this time last season.

For the week ending on November 9, 1989, handlers in District 1 had net undershipments of 43,900 cartons and handlers in District 3 had net overshipments of 2,900 cartons. Thus, undershipments of 41,000 cartons will be carried over into the week ending on November 18, 1989. Total adjusted allotment for the week ending on November 18, 1989, is 1,637,000 cartons. Estimated shipments for the week ending on November 16, 1989, are 1,675,000 cartons.

The average f.o.b. shipping point price for the week ending on November 9, 1989, was $9.23 per carton based on a reported sales volume of 811,000 cartons compared with last week's average of $9.53 per carton on a reported sales volume of 548,000 cartons. The season average f.o.b. shipping point price to date is $9.56 per carton. The average f.o.b. shipping point price for the week ending on November 10, 1988, was $10.92 per carton; the season average f.o.b. shipping point price at this time last season was $10.46 per carton.

The Committee reports that the demand for navel oranges ranges from good to excellent for the larger sizes (88's and larger) and from moderate to light for the smaller sizes (113's and smaller).

According to the National Agricultural Statistics Service, the 1988-89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989-90 season average fresh on-tree price would be $4.38 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989-90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 17 through November 23, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market. By using provisions contained in the navel orange marketing order, handler shipments could exceed an estimated 1,685,000 cartons during the week.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 14, 1989, and this action needs to be effective for the regulatory week which begins on November 18, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.994 is added to read as follows:

Note.—This section will not appear in the annual Code of Federal Regulations.

§ 907.994 Navel Orange Regulation 694.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 17 through November 23, 1989, is established as follows:

(a) District 1: 1,440,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 60,000 cartons;
(d) District 4: unlimited cartons.

Dated: November 15, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–27219 Filed 11–16–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 692]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 692 establishes the quantity of fresh California-Arizona Lemons that may be shipped to market at 260,000 cartons during the period from November 19 through November 25, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 692 (7 CFR part 910) is effective for the period from November 19 through November 25, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their won behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on November 14, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 12–1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.992 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.992 Lemon Regulation 692.

The quantity of lemons grown in California and Arizona which may be handled during the period from Novermber 19, 1989, through November 25, 1989, is established at 260,000 cartons.

Dated: November 15, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–27218 Filed 11–16–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM89–12–000; Order No. 516]

Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Natural Gas

Issued November 9, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to clarify that the requirements in 18 CFR part 154 to file contracts, service agreements and related information do not apply to the sale or transportation of natural gas under 18 CFR part 284.

EFFECTIVE DATE: This final rule is effective November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman: Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon

I. Introduction

This final rule revises 18 CFR part 154 to clarify that the requirements in part 154 to file contracts, service agreements and related information do not apply to the sale or transportation of natural gas under 18 CFR part 284. This instant final rule is necessary to correct the inconsistency between parts 154 and 284 regarding what information must be filed with the Commission for such sales and transportation as well as when that information must be filed.

II. Background

The Commission has adopted a series of regulations in Part 284 to accommodate the need for special kinds of transportation and sales authority for which some of the traditional rate rgulations of part 154 are unsuited. The Part 284 regulations govern certain transportation by interstate and intrastate pipelines (subparts B and C), the assignment of contractual rights to receive surplus natural gas (subpart E), blanket certificates for certain transportation services (subpart G), transportation on the Outer Continental Shelf (subparts H and K), and emergency natural gas sale, transportation and exchange transactions (subpart I). These regulations were largely adopted or comprehensively revised by Order Nos. 436, 500, and 509. [1]

The orders authorized the provision of sale and transportation services that are, to a large extent, self-implementing. Almost all of these subparts contain specific reporting and filing requirements that are compatible with and facilitate the regulatory scheme involved.[2] Because the part 284 sale and transportation services are largely self-implementing (as long as the overall regulatory prerequisites for the service are satisfied), the reports required to be made to the Commission are due after a particular service is made. For example, under § 284.223(f), a pipeline providing a transportation service under a blanket certificate must file with the Commission an initial full report, describing the service provided, within 30 days after commencing the service. This initial report need contain only the identities of the parties, the dates of commencement and projected termination of the service, the estimated total and maximum daily quantities of natural gas to be transported, the points between which the gas is to be transported, and the location of the original source and ultimate delivery point of the gas.[3]

In contrast, the filing provisions of part 154 are applicable to pipeline rates in general, were established long before the regulatory systems created under part 284, and were designed to be compatible with traditional pipeline rates and services, where prior notification to the Commission and the filing or detailed information was required before a particular sale or transportation service could be rendered. For example, §§ 154.1 and 154.22 require that all contracts affecting or relating in any manner to a rate schedule for any sale or transportation of natural gas must be filed with the Commission not less than 30 nor more than 60 days prior to the proposed effective date. Section 154.62 requires that executed service agreements must be accompanied by various information, including an estimate of sales and revenues. Section 154.63 requires that any change in an executed service agreement already on file with the Commission must be filed with specified information, including a statement of the nature, reasons, and basis for the proposed change and a comparative statement of revenues for the revised service agreement. Section 154.64 requires that a notice of cancellation must be given at least 30 days prior to the proposed termination date, and detailed information must accompany the notice, including the reasons for the cancellation or termination.

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs., (Regulations Preambles 1982–1985), ¶ 30,665 (1985), modified Order No. 436–A, 50 FR 52,217 (Dec. 23, 1985), FERC Stats. & Regs., (Regulations Preambles 1982–1985), ¶ 30,675 (1985), modified further, Order No. 436–B, 51 Fed. Reg. 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688, reh'g denied, Order No. 436–C, 34 FERC ¶ 61,404 (1986), reh'g denied, Order No. 436–D, 34 FERC ¶ 61,405 (1986), reconsideration denied, Order No. 436–E, 34 FERC ¶ 61,403 (1986), vacated and remanded sub nom. *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987). On August 7, 1987, the Commission issued Order No. 500, which promulgated interim regulations in response to the Court's remand. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 Fed. Reg. 30,334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,761 extension granted, Order No. 500–A, 52 FR 39,507 (Oct. 22, 1987), FERC Stats. & Regs., ¶ 30,770, *modified* Order No. 500–B, 52 FR 39,630 (Oct. 23, 1987), III FERC Stats. & Regs., ¶ 30,772, modified further, Order No. 500–C 52 FR 48,986 (Dec. 29, 1987), III FERC Stats. & Regs., ¶ 30,786, *modified further*, Order No. 500–D, 53 Fed. Reg. 8439 (Mar. 15, 1988), III FERC Stats. & Regs., ¶ 30,800, reh'g denied, Order No. 500–E, 43 FERC ¶ 61,234 (May 6, 1988). Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, Order No. 509, 53 FR 50,925 (Dec. 19, 1988), III FERC Stats. & Regs. ¶ 30,842, reh'g denied, Order No. 509–A, 54 FR 8301 (Feb. 28, 1989), III FERC Stats. & Regs. ¶ 30,849.

[2] 18 CFR 284.106, 284.126, 284.148, 284.165, 284.223(f), and 284.270. Subpart K uses the reporting requirements of subpart G for blanket certifictes (§ 284.303), and subpart H has been superseded by Subpart K.

[3] Section 284.223(f) also requires subsequent reports and an annual report, as well as notification of termination of the service. Consistent with the overall scheme of part 284, however, these reports reflect transactions that have already been completed. For example, a notification of termination of a service must be filed not later than 30 days after the service has ended. A pipeline need not provide any reasons for the termination.

The filing requirements of part 154 are therefore clearly inconsistent with the filing requirements of part 284. The filing requirements of part 154 are also incompatible with the regulatory scheme of part 284, which grants to pipelines the flexibility they need to respond to changing market forces and the exigencies of particular situations, like emergencies. In this context, giving the type of pre-service notification required by part 154 is impracticable or impossible. Likewise, the elaborate informational filings required by part 154 are simply not needed by the Commission to exercise its supervisory responsibilities over the gas markets for part 284 transactions and constitute an unnecessary regulatory burden on the industry. The rulemakings that adopted part 284 fully spell out the rate reports and filings that pipelines must make, including when the filings must be made, if the pipelines render service qualifying under the subject to part 284.

The Commission has received requests for waiver of the filing requirements of part 154 from pipelines providing service under part 284.[4] These waiver requests impose an unnecessary workload on the pipelines and the Commission's staff and serve no useful purpose. The Commission understands that a significant number of pipelines do not (and cannot) fully comply with all of the part 154 filing requirements for part 284 services. There exists confusion in the industry as to which filing requirements, those of part 154 and/or those of part 284, apply to services rendered under part 284.

III. The Final Rule

For the reasons set forth above, the final rule adopted herein clarifies that the requirements of part 154 governing the filing of contracts, service agreements and related information do not apply to the sale or transportation of natural gas pursuant to part 284. The clarification is effected by adding a sentence at the end of § 154.1(a). The clarification will eliminate the confusion that has arisen from the inadvertent inconsistency between parts 154 and 284.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[5] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[6] No environmental analysis is necessary for adoption of this rule because it is merely procedural and corrective in nature, clarifying existing filing requirements.[7]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[8] requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or certify that the rule will not have a significant economic impact on a substantial number of small entities. The final rule, by clarifying that certain filing requirements are inapplicable, will have the effect of reducing the regulatory burden on pipelines, including those that may be considered small entities. The Commission therefore certifies pursuant to the Regulatory Flexibility Act[9] that this rule will not have a "significant economic impact on a substantial number of small entities."

VI. Paperwork Reduction Act

The Paperwork Reduction Act[10] and the Office of Management and Budget's (OMB)[11] regulations require that OMB approve certain information collection requirements imposed by agency rules. This final rule, by clarifying that particular filing requirements do not apply to certain transactions, reduces the information collection requirements in part 154. The Commission is notifying the Office of Management and Budget that this information collection requirement has been reduced.

VII. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[12] specifies that notice and comment for rulemaking are not required when the "agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission finds that notice and comment are unnecessary for this rulemaking, as it merely cures an inadvertent inconsistency in the regulations by confirming that the later-adopted reporting and filing requirements in part 284, which are specific to transactions performed under the authority of part 284, take precedence over the earlier-adopted, more general requirements in part 154.

This final rule is procedural in nature. The Commission finds good cause to make this rule effective immediately upon issuance. This final rule is therefore effective November 9, 1989.

List of Subjects in 18 CFR Part 154

Alaska, Natural Gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 154, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982).

2. In § 154.1, paragraph (a) is amended by adding the following sentence at the end:

§ 154.1 Application; obligation to file.

(a) * * * The reporting requirements of part 154 governing the filing of contracts, service agreements and related information do not apply to the sale or transportation of natural gas pursuant to part 284.

* * * * *

[FR Doc. 89–27019 Filed 11–16–89; 8:45 am]

BILLING CODE 6717–01–M

[4] See, for example, the compliance filing of Sabine Pipe Line Co., Docket No. CP86–522–010, filed January 27, 1989.

[5] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[6] 18 CFR 380.4 (1988).

[7] 18 CFR 380.4(a)(1) and 380.4(a)(2)(ii) (1988).

[8] 5 U.S.C. 601–612 (1982).

[9] 5 U.S.C. 605, 605(b) (1982).

[10] 44 U.S.C. 3501–3520 (1982).

[11] 5 CFR 1320.13 (1988).

[12] 5 U.S.C. 553 (1982).

18 CFR Part 388

[Docket No. RM87–21–001; Order No. 448–A]

Revision of Freedom of Information Act Rules; Technical Amendment

Issued November 9, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this technical amendment to make one correction to Part 388 of the Commission's regulations. On January 14, 1988, the Commission issued a final rule in Order No. 488. In the final rule the word "confidential" was replaced by the word "privileged" in numerous places in § 388.112 of the Commission's regulations. This technical correction now replaces that word in the one place where it was inadvertently overlooked when the final rule was issued.

EFFECTIVE DATE: This technical correction is effective November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Ethel Lenardson Morgan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this technical amendment will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is making one technical correction to part 388 of the Commission's regulations. The Commission is correcting § 388.112(c)(1)(i) by removing the word "confidential" and replacing it with the word "privileged" in order to conform the meaning of this subsection with the meaning of the remainder of § 388.112, which deals with requests for privileged treatment of documents submitted to the Commission.[1] In the final rule, issued on January 14, 1988, the word "confidential" was changed to "privileged" in appropriate places in § 388.112.[2] This technical correction now changes that word in the one place where it was inadvertently overlooked in the final rule.

This technical correction is effective November 9, 1989.

List of Subjects in 18 CFR Part 388

Freedom of Information.

In consideration of the foregoing, the Commission amends part 388, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); 5 U.S.C. 301–305 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

§ 388.112 [Amended]

2. In § 388.112, in paragraph (c)(1)(i), the word "confidential" is removed and the word "privileged" is inserted in its place.

[FR Doc. 89–27020 Filed 11–16–89; 8:45 am]

BILLING CODE 6717–01–M

[1] The word "confidential" which appears twice in § 388.112(f) is not changed because the word is used as part of the term "confidential commercial information", which term is defined in Executive Order No. 12,600 and is included within the scope of § 388.107(d) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This is also Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552 (1982), as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, sections 1801–1804, 100 Stat. 3207, 3207–48 (1986).

[2] Order No. 488, 53 FR 1469 (Jan. 20, 1988); III FERC Stats. & Regs. ¶ 30,789 (Jan. 14, 1988).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 89–96]

Implementation of the Air Carrier Smuggling Prevention Program

AGENCY: U.S. Customs Service, Treasury.

ACTION: Interim rule, solicitation of comments.

SUMMARY: The Anti-Drug Abuse Act of 1988 (19 U.S.C. 1584 note) directed that the Customs Service implement a new program to be known as the Air Carrier Smuggling Prevention Program (ACSPP) as an amendment of the Customs Regulations. This program is intended to be a logical extension of the Customs expanded interdiction program, and is to exist for a 2-year test period. This interim amendment establishes the ACSPP for a 2-year period at the Miami, Dallas, and Los Angeles International Airports. Participation in the program will be optional for carriers. In order to be considered for the program, a carrier will have to provide Customs with a comprehensive security plan to assist in preventing illicit drugs from entering the United States. Those carriers which do apply and are accepted will be accorded the appropriate consideration should any contraband violation occur. The ACSPP is intended to increase the cooperative effort which prevails between Customs and the carriers. All comments received will be reviewed and considered before the final regulations are issued.

DATES: Interim rule effective December 18, 1989; comments must be received on or before January 16, 1990.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gary Heffner, Office of Inspection and Control, U.S. Customs Service (202) 566–2140.

SUPPLEMENTARY INFORMATION:

Background

An important part of the Customs Service efforts to eliminate the importation of narcotics into the United States is the cooperation of the major air and sea carriers. As a result of increased penalties and possible seizure of conveyances with the enactment of the Anti-Drug Abuse Act of 1986, Customs and many of the major carriers have been working closely together with other law enforcement agencies to combat the flow of illegal drugs. Thus far, cooperation with air carriers has been reflected by the creation of initiatives on three levels which describe the relationships between Customs and the air carriers. At the lowest level, there is no official

agreement between Customs and the carriers. This level consists of primarily low-risk flights or carriers. The feeling between the parties is that, at present, compliance with existing regulations offers adequate protection for the carriers and provides sufficient safeguards to Customs and the American people.

A second level of the air carrier initiative consists of formal agreements between the air carriers and Customs. At this level, the carriers are engaged in flights on which there is a higher risk that attempts will be made to smuggle illegal narcotics. At this level, the air carriers have agreed with Customs that they will take active measures to prevent their conveyances from being used to facilitate smuggling. To this end, they and Customs have developed procedures which are intended to reduce the chances that narcotics will be on or in planes operated by the carrier.

On May 1, 1989, Customs announced a new "Super Carrier Initiative Agreement" with the aim of further uniting government and industry efforts to eliminate commercial carriers as the means of transporting narcotics into the United States. This program was designed to meet the needs of high risk carriers that have made significant efforts to prevent smuggling aboard their conveyances but continue to experience difficulties resulting in mounting penalties and seizures of their conveyances. By signing the Super Carrier Initiative Agreement, the carrier agrees to impose strict security standards at foreign and domestic terminals and facilities and aboard their conveyances. In return, Customs will provide enhanced security awareness training, foreign and domestic site surveys, and assistance in identifying potential smuggling opportunities. Should illegal drugs continue to be found aboard the conveyance, the degree of compliance with the terms of the agreement will be considered in assessing penalties or seizing the conveyance.

Air Carrier Smuggling Prevention Program

In section 7369 of the Anti-Drug Abuse Act of 1988 (19 U.S.C. 1584 note), Congress sought to reinforce the cooperative efforts of Customs and the air carriers by directing the Customs Service to establish a 2-year demonstration program at three international airports classified as high risk. This program has been identified as the Air Carrier Smuggling Prevention Program (ACSPP).

The 2-year demonstration of the ACSPP will be conducted at the Miami, Dallas, and Los Angeles International Airports. These sites vary in size, airport configuration, and geographic proximity to narcotic source countries, as well as in level of risk, and will provide an adequate assessment of this program. To expedite this program, Customs is willing to work with carriers and accept applications to enter into this program prior to the effective date of this interim regulation.

As an integral element in the ACSPP, the carrier must continue to stress the importance of its security measures at the point of departure. It must be understood that the ACSPP is designed to prevent drugs from entering the United States by instituting preventive procedures at the point of departure.

Carriers who wish to participate in the program will have to submit detailed compliance programs (Standard Operating Procedures (SOPs)) to Customs for review and approval prior to their being accepted into the program. These SOPs will have to detail security procedures the carriers will take to reduce the possibility of their aircraft being used by smugglers. These procedures will have to include employee awareness programs, passenger baggage and cargo integrity procedures, as well as physical security measures which will have to be taken at both foreign and domestic terminals. These measures will not affect any Customs right to conduct searches or inspections of passengers, cargo and conveyances. The interim amendment to part 122 of the Customs Regulations sets forth the establishment of the ACSPP, and the criteria and methods which Customs will utilize in determining an air carrier's eligibility to participate in the program. The interim regulation is being issued after consultation with the Secretary of Transportation.

Comments

Before adopting this interim amendment as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:30 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Inapplicability of Notice

Congress directed that the ACSPP be established within 6 months after enactment of the Anti-Drug Abuse Act of 1988. In order to comply with the Congressional mandate that the program be implemented within a short time period, it is determined, pursuant to 5 U.S.C. 553(b)(B), that notice of the interim regulation is impracticable. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), do not apply.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515-____.

Comments concerning the collection of information and accuracy of estimated average annual burden, and suggestions for reducing the burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1515-____), Washington, DC 20503, with copies to the U.S. Customs Service, Paperwork Management Office, at the address previously specified.

The collection of information in the regulation is in § 122.173. This information is required by Customs to determine whether applicants to the ACSPP have developed procedures which Customs believes will be sufficient to attain the objectives of the program. Customs will use the information to verify the adequacy and completeness of plans and procedures participating carriers will implement to insure that the ACSPP operates as intended by both the Congress and the Customs Service. The likely respondents are commercial air carriers engaged in international commerce with arrival destinations at one or more of the designated airports.

Estimated total annual reporting and/or recordkeeping burden: 1,800 hours.

Estimated average annual burden per respondent and/or recordkeepers: 60 hours.

Estimated number of respondents and recordkeepers: 30.

Estimated annual frequency of responses: 1.

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and the control number assigned by OMB will be amended accordingly when the final amendment to the regulation is adopted.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Amendment to the Regulations

Part 122 of the Customs Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122, Customs Regulations (19 CFR part 122), is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. App. 1509. Subpart R, also issued under 19 U.S.C. 1584 note.

2. Part 122 is amended by adding a new subpart R consisting of §§ 122.171 through 171.176, to read as follows:

Subpart R—Air Carrier Smuggling Prevention Program

Sec

122.171 Description of program.
122.172 Eligibility.
122.173 Application procedures.
122.174 Operational procedures.
122.175 Exemption from penalties.
122.176 Removal from ACSPP.

Subpart R—Air Carrier Smuggling Prevention Program

§ 122.171 Description of program.

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers in Customs efforts to prevent the smuggling of controlled substances. If carriers develop and adopt thorough and complete internal security procedures at all terminals, both foreign and domestic, the opportunity for their conveyances being used as conveyances for controlled substances will be greatly reduced. Participation in the program is voluntary. However, should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier, the carrier will be exempt from seizure and penalty should it satisfy the provisions of § 122.175 of this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

§ 122.172 Eligibility.

Any carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

§ 122.173 Application procedures.

(a) *Application.* To participate in the ACSPP, an eligible carrier will submit an application to the Assistant Commissioner, Office of Inspection and Control, U.S. Customs Service, in which the carrier must certify that it has developed and will continue to maintain procedures which are designed to safeguard both employee and cargo integrity. Copies of the procedures developed by the carrier must accompany the application.

(b) *Approval criteria.* Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Inspection and Control, will verify that, at a minimum, procedures are in place which:

(1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo or mismanifested cargo is placed on board the conveyance or entered into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or mismanifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points.

(c) *Acceptance and notification.* Upon proper verification by Customs that a carrier has certified in writing that it will be conducting its operations pursuant an approved SOP, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

§ 122.174 Operational procedures.

(a) *Participating carriers.* Participating carriers are required to:

(1) Provide security personnel for every international arrival to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.

(2) Provide security personnel at the foreign point of departure for every international departure scheduled to arrive at an ACSPP designated airport to conduct the following procedures:

(i) Perform a thorough internal and external search of the departing aircraft;

(ii) Maintain total control of all passengers and cargo being loaded on the aircraft from either the passenger terminal or the carrier's cargo facility;

(iii) Verify that all cargo placed on the aircraft is properly manifested, marked and weighed and that piece counts are properly performed;

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being loaded; and

(v) Maintain similar positive security measures at all foreign intermediate airports prior to the arrival of the aircraft at an ACSPP designated airport.

(b) *U.S. Customs.* U.S. Customs will:

(1) Retain all current options available regarding the search and inspection of any and all passengers, cargo and conveyances; and

(2) Provide training to carrier personnel to assist the development of proper operational procedures.

§ 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the district director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

§ 122.176 Removal from ACSPP.

(a) *Grounds for removal and suspension from ACSPP.* (1) The Assistant Commissioner, Inspection and Control, shall revoke the privilege of operating as a member of the ACSPP if:

(i) Acceptance into the program was gained through fraud or the misstatement of a material fact; or

(ii) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or theft-connected or Customs related crime.

(2) The Assistant Commissioner, Inspection and Control, may revoke or suspend the privilege of operating as a member of the ACSPP if the carrier has been notified in writing that it has been found in noncompliance with a provision of the program and after having been given a reasonable opportunity, has failed to correct the noncompliance. Examples of noncompliance include:

(i) Refusing or neglecting to obey a proper order of a Customs officer or any Customs order, rule, or regulation relative to the carrier's cooperation within the program;

(ii) Failing to retain merchandise which has been designated for examination by Customs;

(iii) Failing to provide secure facilities or properly safeguard merchandise within the carrier's area of control; and

(iv) Failing to observe any of the procedures which the carrier had set forth in the SOP which served as the basis for its acceptance into the program.

(b) *Notice and appeal.* The Assistant Commissioner, Office of Inspection and Control, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate with the office of the Assistant Commissioner, Inspection and Control, and shall set forth the response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision.* The Assistant Commissioner, Inspection and Control, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 26, 1989.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-27025 Filed 11-16-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 89F-0107]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bentonite, modified with benzyl (hydrogenated tallow alkyl) dimethyl ammonium chloride as a modifier in resinous and polymeric coatings for use in contact with food. This action is in response to a petition filed by United Catalysts, Inc.

DATES: Effective November 17, 1989; written objections and requests for a hearing by December 18, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 2, 1989 (54 FR 18700), FDA announced that a food additive petition (FAP 8B4112) had been filed by United Catalysts, Inc., P.O. Box 32370, Louisville, KY 40232, proposing that § 175.300 Resinous and polymeric coatings (21 CFR 175.300) be amended to provide for the safe use of bentonite, modified with benzyl (hydrogenated tallow alkyl) dimethyl ammonium chloride, as a rheological modifier in resinous and polymeric coatings for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 175.300 should be amended in paragraph (b)(3)(xxxiii) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 18, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

§ 175.300 [Amended]

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by alphabetically adding a new entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Bentonite, modified by reaction with benzyl dimethyl alkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow (CAS Reg. No. 71011-24-0). For use only as a rheological agent in coatings intended to contact food under repeated use conditions.

* * * * *

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26987 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 175

[Docket No. 88F-0227]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bentonite, modified by reaction with sodium stearate and benzyl dimethyl alkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow; and for the safe use of hectorite, modified by reaction with a mixture of benzyl methyl dialkyl ammonium chloride and dimethyl dialkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow, for use as rheological agents in resinous and polymeric coatings complying with 21 CFR 175.300 when used on repeated-use containers. This action is in response to a petition filed by N. L. Industries, Inc.

DATES: Effective November 17, 1989; written objections and requests for a hearing by December 18, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 26, 1988 (53 FR 28069), FDA announced that a food additive petition (FAP 8B4082) had been filed by N. L. Industries, Inc., P.O. Box 1090, Hightstown, NJ 08520, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of bentonite clay modified by reaction with benzyl dimethyl hydrogenated tallow alkyl ammonium chloride and sodium stearate, and for the safe use of hectorite clay modified by reaction with a mixture of benzyl methyl bis(hydrogenated tallow alkyl) ammonium chloride and dimethyl bis(hydrogenated tallow alkyl) ammonium chloride as pigments in resinous and polymeric coatings for use on repeated-use bulk food containers.

FDA has evaluated data in the petition and other relevant material. During the course of its evaluation, FDA determined that the additives would be more accurately described as "bentonite, modified by reaction with sodium stearate and benzyl dimethyl alkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow;" and as "hectorite, modified by reaction with a mixture of benzyl methyl dialkyl ammonium chloride and dimethyl dialkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow." Therefore, the agency is using these names in this final rule.

The agency has also determined in its review that the additives are not pigments but instead are rheological agents used in coatings to control flow, viscosity, and pigment suspension, and that it would be more appropriate to regulate the proposed use of the additives in § 175.300(b)(3)(xxxiii) as rheological additives rather than in § 175.300(b)(3)(xxvi). The petitioner agrees with this finding. The agency further concludes that the proposed use of these additives is safe.

Therefore, the agency is amending § 175.300(b)(3)(xxxiii) to include two new entries which identify the two substances and prescribe limitations for their safe use as rheological agents in resinous and polymeric coatings.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 18, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the

regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by alphabetically adding two new entries to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Bentonite, modified by reaction with sodium stearate and benzyl dimethyl alkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow (CAS Reg. No. 121888–68–4). For use as a rheological agent only in coatings intended to contact dry food under repeated-use conditions.

* * * * *

Hectorite, modified by reaction with a mixture of benzyl methyl dialkyl ammonium chloride and dimethyl dialkyl ammonium chloride, where the alkyl groups are derived from hydrogenated tallow (CAS Reg. No. 121888–67–3). For use as a rheological agent only in coatings intended to contact dry food under repeated-use conditions.

* * * * *

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–27055 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co., providing for use of clindamycin hydrochloride liquid for dogs for treatment of dental infections caused by susceptible strains of *Staphylococcus aureus* and for soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *Bacteroides fragilis, B. melaninogenicus, Fusobacterium necrophorum,* and *Clostridium perfringens.*

EFFECTIVE DATE: November 17, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 135–940 providing for use of Antirobe® Aquadrops Liquid (clindamycin hydrochloride) in dogs for treatment of dental infections caused by susceptible strains of *S. aureus* and for soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *B. fragilis, B. melaninogenicus, F. necrophorum,* and *C. perfringens,* in addition to the current approval for treatment of canine wound infections, abscesses, and osteomyelitis caused by *S. aureus.* The supplement is approved and the regulations are amended in 21 CFR 520.447(c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.447 is amended by revising paragraph (c) to read as follows:

§ 520.447 Clindamycin hydrochloride liquid.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount.* Wounds, abscesses, and dental infections: 2.5 milligrams per pound of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 milligrams per pound of body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use.* For use in dogs for treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by susceptible strains of *Staphylococcus aureus* and for soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *Bacteroides fragilis, Bacteroides melaninogenicus, Fusobacterium necrophorum,* and *Clostridium perfringens.*

(3) *Limitations.* Wound infections, abscesses, and dental infections: Do not use for more than 4 days if no improvement of acute infection is observed. Osteomyelitis: Do not use for more than 28 consecutive days if no improvement is observed. Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses. Use with caution in animals receiving neuromuscular blocking agents, because clindamycin may potentiate their action. Prescribe with caution in atopic animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–27053 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. The supplement provides for the safe and effective use of clindamycin hydrochloride capsules in dogs for treatment of dental infections caused by susceptible strains of *Staphylococcus aureus,* and soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *Bacteroides fragilis, B. melaninogenicus, Fusobacterium necrophorum,* and *Clostridium perfringens.*

EFFECTIVE DATE: November 17, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 120–161 providing for use of Antirobe® Capsules (clindamycin hydrochloride) in dogs for treatment of dental infections caused by susceptible strains of *S. aureus,* and soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *Bacteroides fragilis, B. melaninogenicus, F. necrophorum,* and *C. perfringens.* The NADA is currently approved for treatment of canine wound infections, abscesses, and osteomyelitis caused by *S. aureus.* The supplement is approved and the regulations are amended in 21 CFR 520.446(c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.446 is amended by revising paragraph (c) to read as follows:

§ 520.446 Clindamycin hydrochloride capsules.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount.* Wounds, abscesses, and dental infections: 2.5 milligrams per pound of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 milligrams per pound of body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use.* For use in dogs for treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by susceptible strains of *Staphylococcus aureus,* soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *Bacteroides fragilis, Bacteroides melaninogenicus, Fusobacterium necrophorum,* and *Clostridium perfringens.*

(3) *Limitations.* Wound infections, abscesses, and dental infections: Do not use more than 4 days if no improvement of acute infection is observed. Osteomyelitis: Do not use for more than 28 consecutive days if no improvement is observed. Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses. Use with caution in animals receiving neuromuscular blocking agents, because clindamycin may potentiate their action. Prescribe with caution in atopic animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–27054 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 1710 and 1720

[Docket No. R–89–1390; FR–2503–X–03]

Amendments Relating to Interstate Land Sales Registration; Effective Date and Corrections

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration, (HUD).

ACTION: Notice of announcement of effective date for final rule; corrections.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on October 4,

BEST COPY AVAILABLE

1989 (54 FR 40863) that amended the Department's regulations to provide a regulatory exemption from the registration requirements of the Interstate Land Sales Full Disclosure Act. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**. This notice announces the effective date for that final rule. Thirty calendar days of continuous session of Congress have now expired in the present Congress since this rule was published.

The notice also corrects the heading of the preamble (to reference 24 CFR part 1720) that was inadvertently omitted in the publication of the final rule, and adds the authority citation for this same part.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Director, Interstate Land Sales Registration Division, Department of Housing and Urban Development, Room 6278, Washington, DC 20410. Telephone (202) 755–0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 4, 1989 (54 FR 40863), HUD published in the **Federal Register** a final rule that, because of the authority provided by 15 U.S.C. 1702(c), enabled the Department to provide a regulatory exemption from the registration requirements of the Interstate Land Sales Full Disclosure Act. The new exemption applied to sales in subdivisions (as that term was defined by the Act) of 100 or more lots that were created by the continual acquisition and disposal of lots in geographically scattered locations which, unless extraordinary steps were taken, were offered under one common promotional plan and were, therefore, subject to registration. However, because of the very nature of those types of operations that were constantly acquiring tracts of land in scattered and diverse parts of the country, registration was impractical from both the registrants' and the registering agency's standpoint.

The new exemption allowed developers of those subdivisions to operate without the necessity of maintaining a registration or taking the steps required to avoid operating under one common promotional plan.

Developers currently operating two or more subdivisions of fewer than 100 lots each in compliance with the 100 lot exemption provisions (24 CFR 1710.6), may wish to convert to the new Multiple Site Subdivision Exemption (24 CFR 1710.15). Ordinarily, conversion from the 24 CFR 1710.6 exemption could result in a retroactive nullification of exemption eligibility, thus making previous sales voidable. However, developers of two or more subdivisions that were in compliance with the 24 CFR 1710.6 exemption on November 13, 1989, the effective date of the new 24 CFR 1710.15 exemption, may apply for the new exemption and, if found eligible and an Exemption Order issued, may operate under the new exemption without nullifying prior exemption eligibility under 24 CFR 1710.6. The period during which conversion must be completed begins on November 13, 1989, and ends on June 30, 1990.

Section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. Thirty calendar days of continuous session of Congress have now expired in the present Congress since this rule was published.

Accordingly, this document announces the effective date of, and the following corrections are made to, FR Doc. 89–23365 published in the **Federal Register** on October 4, 1989 (54 FR 40863):

PARTS 1710 AND 1720—[CORRECTED]

1. On page 40863, second column, correct the heading "24 CFR Part 1710" to read, "24 CFR Parts 1710 and 1720".

2. On page 40863, second column, correct the "**DATES**" section to read, "**EFFECTIVE DATE:** November 13, 1989".

3. On page 40868, second and third columns, redesignate amendatory items 5 and 6 as items 6 and 7, respectively.

4. On page 40868, second column, add the following text:

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

5. The authority citation for part 1720 is revised to read as follows:

Authority: Section 1419, Interstate Land Sales Disclosure Act (15 U.S.C. 1718); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 8, 1989.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 89–27030 Filed 11–16–89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[T.D. ATF–288; Ref: Notice Nos: 680 and 682]

Increased Tolerance in Alcohol Content for Distilled Spirits Products in 50 and 100 ml Bottle Sizes (P8–17)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is liberalizing regulations to allow a change in alcohol content tolerance for all spirits products bottled in 50 and 100 ml bottle sizes. Current regulations allow a "normal" drop in alcohol content, occurring during the course of bottling operations, of 0.15 percent alcohol by volume (0.3 proof). However, there is some indication that certain bottlers are having difficulty in limiting the alcohol content loss which occurs during bottling to this amount. When the alcohol content drops more than is permitted by current regulations, the spirits must be reconditioned, rebottled, or relabeled. All of these operations increase the bottlers' expenses. This change will allow the alcohol content of all spirits bottled in 50 and 100 ml bottles to drop a maximum of 0.25 percent alcohol by volume (0.5 proof) in the course of bottling operations, before having to recondition, rebottle, or relabel the product.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

Background

Petition

On January 3, 1986, Heublein, Inc. petitioned ATF to increase the alcohol content drop tolerance beyond the current proof drop tolerance, regardless of solid content, for certain bottle sizes. Heublein contended that larger than usual evaporative losses often occur when bottling in the 50 and 100 ml size bottles. The larger losses appear to be due primarily to the low rate of product flow through the filler, which increases the time that spirits products are subjected to evaporation.

Notices Numbered 680 and 682

ATF published Notice Number 680 in the **Federal Register**, on March 22, 1989 (54 FR 11745), proposing to amend §§ 5.37(b) and 19.386 by allowing for the alcohol content of all spirits bottled in 50 and 100 ml bottles to drop a maximum of 0.25 percent alcohol by volume (0.5 proof) in the course of bottling operations. With the publication of Notice No. 682 on May 19, 1989 (54 FR 21630), the comment period was extended to July 21, 1989.

Analysis of Comments

In response to Notices numbered 680 and 682, ATF received 17 comments. Of the seventeen comments, two (Union Europeenne des Alcools, Eaux-de-Vie-et-Spiritueux and National Association of Beverage Importers (NABI)) simply requested an extension of the comment period. As a result of those requests, the comment period established by Notice No. 680 was extended until July 21 1989, with the publication of Notice No. 682. The remaining 15 comments supported the proposal made in the notice. These were received from the following: Glenmore Distilleries Company, Korbel, Syndicat National des Fabricants de Liqueurs, The Gin Rectifiers and Distillers Association, French Federation des Exportateurs de Vins et de Spiritueux (FEVS), National Association of Beverage Importers, Inc. (NABI), Distilled Spirits Council of the United States, Inc (DISCUS), Schieffelin & Somerset Co., Union Europeenne des Alcools, Eaux-de-Vie et Spiritueux, Heublein, Inc., Brown Forman Corporation, Joseph E. Seagram & Sons, Inc., Bureau National Interprofessionnel du Cognac, and Jim Beam Brands Co.

Several of the commenters requested that the proposal be expanded to: (1) Allow for a plus tolerance of 0.3% alcohol by volume (.6 proof); (2) increase the drop tolerance to 0.3% alcohol by volume (.6 proof); and (3) apply the alcohol content tolerance to all bottle sizes regardless of solids content. The basis for most of these requests was to harmonize the United States and Economic Community regulations (EC 87–250).

ATF considered these three requests but rejected each of the requests. The request for a plus tolerance of 0.3% alcohol by volume (.6 proof) is outside the scope of the Notice of Proposed Rulemaking. The commenters requesting an increased drop tolerance of 0.3% alcohol by volume (.6 proof) did not submit any evidence that such increased tolerance is necessitated by good commercial practices. The tolerance of 0.25% alcohol by volume (.5 proof) is consistent with the tolerance for high solids products, and ATF sees no reason to adopt a different standard here. Finally, the comments received did not provide support or documentation reflecting a compelling need to consider additional bottle sizes.

Without evidence supporting a hardship, as demonstrated and supported for the 50 and 100 ml bottle sizes, the comments contain no specific evidence of compliance problems with maintaining label proof in other bottle sizes which would warrant an expansion of the provision in this final rule. ATF determined that a necessity exists to allow for a proof drop in bottling of 50 and 100 ml bottle sizes, due to the difficulty in bottling of the small bottle sizes. ATF feels the final rule is consistent with current good commercial practices in the United States and imposes no special burdens on domestic producers, bottlers and importers.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets. . .

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This certification is based upon the fact that it affects predominantly large entities, the general revenue effects flow directly from the underlying statute, and the regulation will not affect a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there is no reporting or recordkeeping requirement.

Drafting Information

The principal author of this document is Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practices and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Issuance

27 CFR parts 5 and 19, entitled "Labeling and Advertising of Distilled Spirits," and "Distilled Spirits Plants," respectively, are amended as follows:

PART 5—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 5.37(b) is revised to read as follows:

§ 5.37 [Amended]

* * * * *

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.25 percent alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles; or

(3) Not to exceed 0.15 percent alcohol by volume for all other spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e)).

PART 19—[AMENDED]

Para. 3. The authority for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062,

5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6091, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 4. Section 19.386 (a) and (b) are revised to read as follows:

§ 19.386 Alcohol content and fill.

(a) *General.* (1) At representative intervals during bottling operations, proprietors shall test and examine bottled spirits to determine whether those spirits agree in alcohol content and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure label accuracy of the bottled product, the regional director may require corrective measures.

(b) *Variations in alcohol content and fill.* The proprietor shall rebottle, recondition, or relabel spirits if the bottle contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled; and/or

(2) Alcohol content, subject to a normal drop in alcohol content which may occur during bottling operations not to exceed:

(i) 0.25 percent alcohol by volume for products containing solids in excess of 600 mg per 100 ml, or

(ii) 0.25 percent alcohol by volume for all spirits products bottled in 50 or 100 ml size bottles, or

(iii) 0.15 percent alcohol by volume for all other spirits and bottle sizes.

For example, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1394, as amended (26 U.S.C. 5201, 5301))

Signed: September 27, 1989.

Daniel R. Black,

Acting Director.

Approved: October 30, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89–27073 Filed 11–16–89; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AC08

Determining Entitlement Usage Under the Vocational Rehabilitation Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a final rule to facilitate the determination of entitlement usage under the vocational rehabilitation program. There is no single reference point in existing rules for determinations of entitlement usage under the vocational rehabilitation program. This rule codifies existing policy by incorporating current provisions regarding entitlement usage into the rule and adding additional provisions to provide a complete guide to entitlement usage under the vocational rehabilitation program.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–6496.

SUPPLEMENTARY INFORMATION: At pages 7206 and 7207 of the **Federal Register** of February 17, 1989 (54 FR 7206), the Department published proposed regulations under which VA staff determine entitlement usage under the vocational rehabilitation program. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. No comments, suggestions, or objections were received. Since no comments, suggestions or objections were received, these amendments are adopted as final with certain nomenclature changes required since VA became the Department of Veterans Affairs on March 15, 1989, and with a correction to the authority citation at § 21.79(b).

These final regulations do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The final regulations will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the final regulations only affect the rights of individual VA beneficiaries under chapter 31. No new regulatory burdens are imposed on small entities by these final regulations.

(The Catalog of Federal Domestic Assistance Number is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 23, 1989.

Edward J. Derwinski,

Secretary.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended by adding § 21.79 to read as follows:

§ 21.79 Determining entitlement usage under chapter 31.

(a) General. The determination of entitlement usage for chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of § 21.310 of this part.

(Authority: 38 U.S.C. 1508(d))

(b) No charge against chapter 31 entitlement. No charge will be made against chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1508(d), 1517)

(c) Periods during which entitlement may be charged. Charges for usage of chapter 31 entitlement may only be made for program participants in one of the following case statuses:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living.

(Authority: 38 U.S.C. 1508, 1509)

(d) Method of charging entitlement under chapter 31. The Department of Veterans Affairs will make a charge against entitlement:

(1) On the basis of total elapsed time (1 day of entitlement for each day of pursuit) if the veteran is being provided a rehabilitation program on a full-time basis;

(2) On the basis of a proportionate rate of elapsed time if the veteran is being provided a rehabilitation program on a three-quarter, one-half or less than one-half time basis. Entitlement is charged at a:

(i) Three-quarter time rate if pursuit is three-quarters or more, but less than full-time;

(ii) One-half time rate if pursuit is half-time or more, but less than three-quarter time;

(iii) One-quarter time rate if pursuit is less than half-time. Measurement of pursuit on a one-quarter time basis is limited to veterans in independent living or extended evaluation programs.

(Authority: 38 U.S.C. 1508(d), 1780(g))

(e) *Computing entitlement.* (1) The computation of entitlement is based upon the rate of program pursuit, as determined under § 21.310 of this part, over the elapsed time during which training and rehabilitation services were furnished;

(2) The Department of Veterans Affairs will compute elapsed time from the commencing date of the rehabilitation program as determined under § 21.322 of this part to the date of termination as determined under § 21.324 of this part. This includes the period during which veterans not receiving subsistence allowance because of a statutory bar; e.g., certain incarcerated veterans or servicepersons in a military hospital, nevertheless, received other chapter 31 services and assistance. Elapsed time includes the total period from the commencing date until the termination date, except for any period of unauthorized leave;

(3) If the veteran's rate of pursuit changes after the commencing date of the rehabilitation program, the Department of Veterans Affairs will:

(i) Separate the period of rehabilitation program services into the actual periods of time during which the veteran's rate of pursuit was different; and

(ii) Compute entitlement based on the rate of pursuit for each separate elapsed time period.

(Authority: 38 U.S.C. 1508(f))

(f) *Special situtations.* (1) When a chapter 31 participant elects benefits of the kind provided under chapter 30 or chapter 34 as a part of his or her rehabilitation program under chapter 31, the veteran's entitlement usage will be determined by using the entitlement provisions of those programs. Entitlement charges shall be in accordance with § 21.7076 for chapter 30 and § 21.1045 under chapter 34. The entitlement usage computed under these provisions is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against either chapter 30 or chapter 34.

(Authority: 38 U.S.C. 1508(f))

(2) When a veteran is pursuing on-job training or work experience in a Federal agency on a nonpay or nominal pay basis, the amount of entitlement used is determined in the following manner:

(i) Entitlement used in on-job training in a Federal agency on a nonpay or nominal pay basis is determined in the same manner as other training.

(ii) Entitlement used in pursuing work experience will be computed in the same manner as for veterans in on-job training except that work experience may be pursued on a less than full-time basis. If the veteran is receiving work experience on a less than full-time basis, entitlement charges are based upon a proportionate amount of the workweek. For example, if the workweek is 40 hours, three-quarter time is at least 30 hours, but less than 40 hours, and half-time is at least 20 hours but less than 30 hours.

(Authority: 38 U.S.C. 1508(c))

(3) Entitlement is charged on a full-time basis for a veteran found to have a reduced work tolerance.

(Authority: 38 U.S.C. 1508(d), 1780(g))

(g) Overpayment. The Department of Veterans Affairs will make a charge against entitlement for an overpayment of subsistence allowance under the conditions described in § 21.1045(h) of this part.

(Authority: 38 U.S.C. 1780(g))

[FR Doc. 89–26981 Filed 11–16–89; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–314; RM–6773]

Radio Broadcasting Services; Colusa, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276A for Channel 243A at Colusa, California, and modifies the Class A permit of Monument Media, Inc. for Station KKLU(FM), as requested, to remedy alleged interference occurring within its primary service area. Channel 276A may be used at the petitioner's suggested site at coordinates 39–12–19 and 122–00–19, or at the site specified in its currently authorized site at coordinates 39–12–52 and 122–00–23. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–314, adopted October 10, 1989, and released November 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by revising the entry for Colusa by removing Channel 243A and adding Channel 276A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27000 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-51; RM-6076, RM-6265]

Radio Broadcasting Services; Evans and Martinez, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Columbia County Broadcasters, substitutes Channel 230C3 for Channel 232A at Martinez, Georgia, modifies its license for Station WMTZ(FM) to specify operation on the higher powered channel and allots Channel 299C2 to Martinez for use by other interested parties. At the request of Evans Broadcasters, the Commission allots Channel 222A to Evans, Georgia, as its first local FM service. Channel 230C3 can be allotted to Martinez with a site restriction of 19.4 kilometers (12.0 miles) west to avoid a short-spacing to unoccupied but applied for Channel 230A at St. Matthews, South Carolina. The coordinates for Channel 230C3 are North Latitude 33-30-00 and West Longitude 82-16-57. Channel 299C2 can be allotted to Martinez with a site restriction of 25.3 kilometers (15.7 miles) northwest to avoid a short-spacing to Station WKQB, Channel 298C, St. Georgia, South Carolina, and to unoccupied but applied for Channel 296A at Waynesboro, Georgia. The coordinates for Channel 299C2 are North Latitude 33-40-30 and West Longitude 82-16-14. Channel 222A can be allotted to Evans with a site restriction of 10.3 kilometers (6.4 miles) northwest to avoid a short-spacing to Stations WLPE, Channel 219A, Augusta, Georgia, and WPEH-FM, Channel 221A, Louisville, Georgia. With this action, this proceeding is terminated.

DATES: Effective December 22, 1989. The window period for filing applications for Channel 299C2 at Martinez, Georgia, and Channel 222A at Evans, Georgia, will open on December 26, 1989, and close on January 26, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order and Memorandum Opinion and Order, MM Docket No. 88-51, adopted October 11, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by adding the following entry, Evans, Georgia, Channel 222A, and amending the entry for Martinez, Georgia, by adding Channels 230C3 and 299C2 and removing Channel 232A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27015 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-38; RM-6517]

Radio Broadcasting Services; Flint, Harbor Beach and Sebewaing, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 288B1 for Channel 288A at Flint, Michigan, and modifies the license of WWCK-FM to specify the new channel, in response to a petition filed by Reams Broadcasting, Inc. Majac of Michigan, Inc., license of Station WWCK-FM, is the successor to Reams Broadcasting, Inc. The coordinates for Channel 288B1 are 43-01-18 and 83-41-00. To accommodate the upgrade at Flint, the Commission substitutes Channel 279C2 for Channel 289C2 at Harbor Beach, Michigan (43-59-06 and 82-58-25), and Channel 267A for Channel 280A at Sebewaing, Michigan (43-48-01 and 83-23-38). Canadian concurrence has been obtained for the allotment of the channels at Flint, Harbor Beach and Sebewaing, Michigan. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-38, adopted October 17, 1989, and released November 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 288A and adding Channel 288B1 at Flint, removing Channel 289C2 and adding Channel 279C2 at Harbor Beach, and removing Channel 280A and adding Channel 267A at Sebewaing.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26998 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-96; RM-6658]

Radio Broadcasting Services; Harrisonville and Carrollton, MO and Girard, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action is taken in response to a petition filed by KCFX Radio, Inc. This document substitutes FM Channel 266C1 for Channel 264C at Harrisonville, Missouri, and modifies the license of Station KCFX(FM) to specify Channel 266C1. The coordinates for Channel 266C1 are 39-00-57 and 94-30-24. To accommodate the upgrade at Harrisonville, substitutions will be made at Girard, Kansas, and Carrollton, Missouri. We shall substitute Channel 256A for Channel 266A at Girard, Kansas, and modify the license for Station KYPG to specify operation on Channel 256A. The coordinates for Channel 256A are 37-29-02 and 94-50-08. At Carrollton, Missouri, we shall substitute Channel 264C1 for Channel 266C and modify the license for Station KMZU to specify Channel 264C1. The coordinates for Channel 264C1 are 39-22-05 and 93-29-40.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-96, adopted October 17, 1989, and released November 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Missouri by removing Channel 266C and adding Channel 264C1 at Carrollton, and by removing Channel 264C and adding Channel 266C1 at Harrisonville.

3. In § 73.202(b), the Table of FM Allotments is amended under Kansas by removing Channel 266A and adding Channel 256A at Girard.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-26999 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-14; RM-6524]

Radio Broadcasting Services; Hot Springs and Pine Ridge, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tracy and Valerie Bastian, substitutes Channel 244C1 for Channel 244A at Hot Springs, South Dakota, modifies its license for Station KZMX(FM) accordingly, and substitutes Channel 228A for unoccupied and unapplied for Channel 243A at Pine Ridge, South Dakota. Channel 244C1 can be allotted to Hot Springs in compliance with the Commission's minimum distance separation requirements and can be used at Station KZMX(FM)'s present transmitter site. Channel 228A can be allottted to Pine Ridge without the imposition of a site restriction. The coordinates for Channel 244C1 at Hot Springs are North Latitude 43-26-34 and West Longitude 103-27-27. The coordinates for Channel 228A at Pine Ridge are North Latitude 43-01-06 and West Longitude 102-33-24. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-14, adopted October 11, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for the entry for Hot Springs, South Dakota, to remove Channel 244A and add Channel 244C1, and amending the entry for Pine Ridge, South Dakota, to remove Channel 243A and add Channel 228A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27013 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA issues this notice closing the fishery for Pacific ocean perch taken from the Columbia subarea off the coasts of Washington and Oregon, and seeks public comment on this action. This closure is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) which state that retention or landing of a species is prohibited when that species quota is reached. This action is intended to protect a species considered to be under long-term biological stress.

DATES: Effective from 0001 hours Pacific Standard Time, November 13, 1989, until 2400 hours Pacific Time, December 31, 1989. Comments will be accepted until December 4, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115. The aggregate data upon which this determination is based are available for public inspection at the first address listed above during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP at 50 CFR 663.21(b) require the Secretary of Commerce (Secretary) to prohibit retention or landing of a species in any regulatory subarea when the numerical optimum yield (OY) quota for that species in the applicable regulatory subarea is reached. The 1989 OY for Pacific ocean perch in the Columbia subarea (between 47°30' N. latitude and

43°00' N. latitude) is 1,040 metric tons (as revised at 54 FR 31688, 8/1/89).

Based on the best available information to date from the Pacific Fishery Management Council's Groundfish Management Team, the Regional Director has determined that the Pacific ocean perch quota will be reached on November 13, 1989. Accordingly, the Secretary announces that retention or landing of Pacific ocean perch taken from the Columbia subarea off the States of Washington and Oregon must be prohibited on November 13, 1989. The States of Washington and Oregon also will close state ocean waters in the Columbia subarea on this date.

This action is automatic and non-discretionary under § 663.21(b) and supersedes the current trip limit for Pacific ocean perch only as it pertains to fish taken from the Columbia subarea. Currently the trip limit for Pacific ocean perch coastwide (Washington, Oregon, and California) is 2,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less; however, this limit applies only if more than 1,000 pounds of Pacific ocean perch are on board (54 FR 31688, 8/1/89). Accordingly, the trip limit remains in effect for Pacific ocean perch caught outside of the Columbia subarea.

For the reasons stated above, the Secretary announces the following:

(1) From 0001 hours Pacific Standard Time, November 13, 1989 until 2400 hours Pacific Standard Time, Sunday, December 31, 1989, it is unlawful to retain or land Pacific ocean perch from the Columbia subarea (between 47°30' N. latitude and 43°00' N. latitude).

(2) All Pacific ocean perch that are possessed or landed in the Columbia subarea are presumed to have been taken and retained in the Columbia subarea unless otherwise demonstrated by the person in possession of those fish.

Classification

The determination to prohibit further landings of Pacific ocean perch taken from the Columbia subarea is based on the most recent data available. This action is taken under the authority of 50 CFR 663.21(b) and 663.23, and is in compliance with Executive Order 12291.

Because of the immediate need to prohibit further landings of Pacific ocean perch and thereby prevent the excessive harvest that could otherwise result, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. Public comments also will be accepted for 15 days after this notice is published in the **Federal Register.** The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-27038 Filed 11-13-89; 5:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 221
Friday, November 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-89-029]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increase in fees would result in a fee of $34.00 per hour for continuous resident services and $38.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These proposed fees represent a $2.00 per hour increase in each case. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. would be $41.80 per hour representing an increase of $2.20 per hour.

The fees need to be increased to cover the anticipated increase in Federal salaries to be effective about January 1, 1990; to cover increases in nonsalary inflationary costs; to cover an increase in the government's costs for employee health benefits; and to generate additional revenues necessary to sustain the program.

DATES: Comments must be received on or before December 18, 1989.

ADDRESSES: Comments should be sent to: Office of the Director, USDA/AMS/Dairy Division, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, Room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 382-9381.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that if promulgated it would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $140,000 during fiscal year 1990. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover as nearly as practicable the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when program costs exceed revenues. Revenues have continued to decline and it is anticipated that Federal salaries will increase by 3.6 percent and the government's costs for employee health benefits will increase 13.3 percent about January 1, 1990. Also, nonsalary costs, including overhead costs related to the administration of the grading program, are projected to rise by 4.2 percent during FY 1990. The current fees, which became effective on April 17, 1989, will not cover these increased costs.

The operating costs for FY 1990, will exceed revenues by approximately $140,000. Our estimate of revenue-producing hours from January 1, 1990, through the end of FY 1990 is 70,000 hours; therefore, a proposed increase of $2.00 per hour should cover the increased costs. We propose to increase the resident fee from $32.00 to $34.00 per hour, and the nonresident fee from $36.00 to $38.00 per hour between the hours of 6 a.m. and 6 p.m. and from $39.60 to $41.80 per hour between 6 p.m. and 6 a.m.

This document proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $36.00 to $38.00 for services performed between 6 a.m. and 6 p.m. and from $39.60 to $41.80 for services performed between 6 p.m. to 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increase the hourly fee for continuous resident services from $32.00 to $34.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

Timing of Proposed Fee Increases

It is contemplated that the proposed fees will be implemented on an expedited basis in order to minimize that period of time between the effective date of the Federal pay increase and the effective date of this fee increase. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the Federal Register and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be January 14, 1990.

All written submissions made pursuant to this notice will be available for public inspection at the Dairy Division, Agricultural Marketing Service, USDA, Washington, DC, during regular business hours.

List of Subjects in 7 CFR Part 58

Food graders and standards, Dairy products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, subpart A, be amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $38.00 for service performed between 6 a.m. and 6 p.m., and $41.80 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $34.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Signed at Washington, DC, on: November 14, 1989.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 89–27088 Filed 11–16–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–370]

RIN 1218–AB15

Occupational Exposure to Bloodborne Pathogens

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of rescheduled hearing.

SUMMARY: With this notice, OSHA is rescheduling and changing the location of the meeting room for the San Francisco, CA informal public hearing on the Proposed Standard for Occupational Exposure to Bloodborne Pathogens.

DATES: The Agency has rescheduled the hearing to begin January 9, 1990, at 10 a.m. in the Savoy Room, Holiday Inn Union Square, 480 Sutter St., San Francisco, CA 94108.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Office of Public Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: On May 30, 1989, OSHA published a Notice of Proposed Rulemaking on Occupational Exposure to Bloodborne Pathogens in the **Federal Register** (54 FR 23042) and announced a series of public hearings. The locations announced for the hearings were Washington, DC, Chicago, IL, and San Francisco, CA. Additional hearing sites were later announced for New York, NY (54 FR 31858) and Miami, FL (54 FR 41460).

The beginning date announced for the San Francisco, CA hearing was October 24, 1989, seven days after the Loma Prieta earthquake. It was decided that the disruptions caused by the earthquakes could interfere with public participation in the hearing and, thus, prevent full development of the rulemaking record. For this reason, the October 23 public hearing in San Francisco, CA was postponed to a later date. Participants who had filed a Notice of Intention to Appear were notified by telephone or mailgram. These participants do not need to file additional Notices of Intention to Appear at the January 9 hearing. They will be given actual notice of the rescheduling by mail.

Authority: (Secs. 6(b), 8(c) and 8(g). Public Law 91–596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 14 day of 1989.

G.F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 89–27077 Filed 11–16–89; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "**Kansas program**") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to administrative procedures for public hearings. The amendment is intended to revise the State program at its own initiative to improve operational efficiency.

This notice sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. c.s.t. December 18, 1989. If requested, a public hearing on the proposed amendment will be held on December 12, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on December 4, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each

requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Surface Mining Section, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16

II. Proposed Amendment

By letter dated November 2, 1989, (Administrative Record No. KS–446) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at the State's own initiative to improve its program.

The regulations that Kansas proposes to amend are: Kansas Administrative Regulations (K.A.R.) 47–4–14, Public Hearing Administrative Procedures.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.s.t. December 4, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1989

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–26995 Filed 11–16–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to water control for coal processing waste banks, backfilling and grading, inspection and enforcement, disposal of noncoal wastes, and the training, examination, and certification of blasters. The revised proposed amendment is intended to make the State program consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and revised proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the revised proposed amendment.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 4, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address listed in "**ADDRESSES** or Telephone:" (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program.

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

On March 9 and 17, 1989, OSM published notices in the Federal Register (54 FR 9980 and 54 FR 11163; Administrative Record Nos. NM–480 and NM–484) approving the June 17, 1987, (as revised and clarified on February 18, 1988, and August 10, 1988; Administrative Record Nos. NM–356, NM–393, and NM–438), and April 18, 1988 (as revised and clarified on October 20, 1988; Administrative Record Nos. NM–405 and NM–452) State-proposed amendments to the rules of the New Mexico program. The Director of OSM approved the amendments on the condition that New Mexico would adopt the rules in a form identical to that submitted to and reviewed by OSM and the public.

By letters dated March 29 and April 26, 1989 (Administrative Record Nos. NM–489 and NM–490), New Mexico submitted to OSM copies of the rules that it had promulgated (effective April 28, 1989) subsequent to OSM's approvals. Upon comparing the OSM-approved rules and the State-promulgated rules, OSM identified differences in the two sets of rules.

On June 12, 1989, OSM published a notice in the Federal Register (54 FR 24912) soliciting public review of New Mexico's promulgated rules to determine whether they were no less effective than the Federal regulations and no less stringent that SMCRA. The public comment period ended July 12, 1989.

After reviewing the promulgated rules and all comments received during the comment period, OSM identified the following provisions of the promulgated rules that appeared to be less effective than the Federal regulations and less stringent than SMCRA: The definition of blaster, Rule 80–1–33–11; water control for coal processing waste banks, Rule 80–1–20–83(b); backfilling and grading, Rule 80–1–20–103(a)(1); inspection and enforcement, Rule 80–1–29–11(a); disposal of noncoal wastes, Rules 80–1–20–89(d)(2); and the training, examination, and certification of blasters, Rules 80–1–33–13 and 80–1–33–15. By letter dated August 7, 1989, OSM notified New Mexico of its concerns (Administrative Record No. NM–529). By letter dated October 23, 1989, New Mexico responded to these concerns by submitting proposed revisions to the promulgated rules (Administrative Record No. NM–548).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the revised proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the revised proposed amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 3, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–26994 Filed 11–16–89; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions from the State of Wyoming pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to portions of the Amendment. Specifically twelve issues were responded to by Wyoming and are discussed under the Proposed Amendment section. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Wyoming program and the proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit additional comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 4, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776

Roger Shaffer, Administrator, Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Casper Field Office, (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 Federal Register (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

On March 31, 1989 Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. WY–12–1). Wyoming submitted the proposed amendment in response to the December 23, 1985 and June 6, 1987 letters that OSM sent in accordance with 30 CFR 732.17(c) and to satisfy required program amendments at 30 CFR 950.12 and 950.16. Wyoming proposes to amend the following Department of Environmental Quality/Land Quality Division rules and regulations relating to coal mining operation: Authorities and Definitions, chapter I; Permit Applications, chapter II; Environmental Protection Performance Standards, chapter IV; Performance Standards of Special Categories of Coal Mining, chapter V; Blasting for Surface Coal Mining Operations, chapter VI; Underground Mining, chapter VII; Variances for Surface Coal Mining Operations, chapter IX; Coal Exploration, chapter XI; Self-bonding Program, chapter XII; Procedures Applicable to Surface Coal Mining Operations, chapter XIII; Permit Revisions, chapter XIV; Release of Bonds or Deposits for Surface Coal Mining Operations, chapter XVI; Inspections, Enforcement and Penalties for Surface Coal Mining Operations, chapter XVII; Designation of Areas Unsuitable for Surface Coal Mining, chapter XVIII; Limited Mining Operations for Ten (10) Acres or Less of Affected Land, chapter XX.

OSM published a notice in the April 20, 1989 Federal Register (54 FR 15955) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. WY–12–4). The public comment period ended May 22, 1989.

During its review of the amendment, OSM identified twelve issues included under the following topics: Permit revisions, topsoil substitutes, disposal of excess spoil, groundwater monitoring frequency, revegetation: Standards for success, stream diversions, bond release, and inspection and enforcement. OSM notified Wyoming of these issues by letter dated June 21, 1989 (Administrative Record No. WY–12–6). Wyoming responded in a letter dated July 17, 1989 (Administrative Record No. WY–12–7) to all twelve issues cited in the June 21, 1989 OSM letter.

In a meeting between OSM and Wyoming on July 18, 1989 these issues were discussed. OSM sent a follow-up letter dated July 27, 1989 (Administrative Record No. WY–12–8). In this letter OSM responded to both Wyoming's July 17, 1989 letter and the issues discussed at the July 18, 1989 meeting held between OSM and the State summarizing how each issue would be resolved based on the July 18, 1989 meeting.

OSM sent Wyoming a second letter on August 9, 1989 discussing further research OSM had conducted regarding three of the twelve issues: Permit revisions, topsoil substitutes and bond release applications (Administrative Record No. WY–12–9).

In a letter dated August 14, 1989 Wyoming responded to OSM on the following issues discussed in previous correspondence: Permit revision, topsoil substitutes, disposal of excess spoil and inspection and enforcement (Administrative Record No. WY–12–10).

In response to OSM's August 9, 1989 letter, Wyoming sent a letter on August 22, 1989 discussing disposition of the issues identified (Administrative Record No. WY–12–11). Specifically the permit revision and topsoil substitute issues are discussed.

In letter dated October 3, 1989 (Administrative Record No. WY–12–12) OSM responded to Wyoming's letter of August 14, 1989 stating that disposal of excess spoil remained as the only unresolved issue. By letter dated October 27, 1989 (Administrative Record No. WY–12–13) to OSM, Wyoming stated it will recommend to the Environmental Quality Council that the waiver of stability analysis included in the proposed amendment be deleted.

III. Public Comment Procedures

OSM is reopening the comment period to the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of Wyoming's additional responses. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operation.

[FR Doc. 89–26997 Filed 11–16–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD45

Health Care Outside the United States for Veterans With Service-Connected Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical regulations (38 CFR part 17) to enable the Secretary to furnish hospital care and medical services outside of the United States to a veteran who is eligible for treatment of a service-connected disability or as part of a rehabilitation program, without regard to the veteran's citizenship. The regulation governing extensions of community nursing home care in the Philippines is also being revised to make it consistent with regulations governing such extensions in the United States.

DATES: Comments must be received on or before December 18, 1989. Comments will be available for public inspection until December 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposed regulations to: The Secretary of Veterans Affairs, Department of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2143.

SUPPLEMENTARY INFORMATION: Under VA's regulations for providing health care outside the United States for veterans with service-connected disabilities (38 CFR 17.36) "No person shall be entitled to receive hospital or domiciliary care or medical services in a foreign country other than the Republic of the Philippines except—(a) otherwise eligible veterans who are citizens of the United States sojourning or residing abroad and in need of treatment for an adjudicated service-connected disability, or nonservice-connected disability associated with and held to be aggravating a service-connected disability, and (b) for a veteran who is participating in a rehabilitation program and who is medically determined to be in need of hospital care or medical services."

This amendment, contained in the Veterans' Benefit and Services Act of 1988, Public Law 100–322, authorizes VA to furnish hospital care and medical services outside of the United States to a veteran who is not a citizen of the United States, where the Secretary determines, as a matter of discretion and pursuant to these regulations, that furnishing such care is appropriate and feasible for the treatment of a service-connected disability or as part of a rehabilitation program under 38 U.S.C. chapter 31. There is no rational basis for eliminating the citizenship requirement in Canada and the Philippines, and retaining it in all other countries. That is particularly the case given that there are very few non-citizen service-connected veterans in those other countries, and it would not be costly or administratively difficult to furnish the services. By proposing these regulatory amendments, the Secretary exercises his discretion, provided in the law, to eliminate the citizenship requirement entirely. (See 38 U.S.C. 624 (b)(2)(B).)

Finally, the regulation governing extensions of community nursing home care in the Philippines is being revised. A similar regulation governing extensions of such care in the United States, 38 CFR 17.51a, was revised on April 21, 1988. The regulation governing extensions in the Philippines was inadvertently not amended, however. It is now being amended to make the two regulatory provisions consistent.

This proposed amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The change concerns the furnishing of health care outside the United States for veterans with service-connected disabilities without regard to the veteran's citizenship. This change imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

(Catalog of Federal Domestic Assistance Numbers: 64.009 and 62.011.)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home, Philippines, Veterans.

Approved: October 25, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 17, Medical, is proposed to be amended as follows:

1. Section 17.36 is revised to read as follows:

§ 17.36 Hospital care and medical services in foreign countries.

The Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the United States, without regard to the veteran's citizenship;

(a) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(b) If the care is furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care for the reasons enumerated in 38 CFR 17.48(j)(2) of this part.

(Authority: 38 U.S.C. 624)

§ 17.37 [Removed and reserved]

2. Section 17.37 is removed and reserved.

3. In § 17.38 paragraph (d) is revised to read as follows:

§ 17.38 Hospital or nursing home care at Veterans Memorial Medical Center, Philippines.

* * * * *

(d) *Extensions of community nursing home care beyond 6 months.* The Director may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing home care continues to exist and

(1) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(2) The veteran has made specific arrangements for private payment for such care, and

(i) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(ii) Such difficulties can reasonably be expected to be resolved within the extension period; or

(3) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(4) In no case may an extension under paragraph (d) (1) or (2) of this section exceed 45 days.

(Authority: 38 U.S.C. 210(c)(1); 620(a))

§ 17.39 [Removed and reserved]

4. Section 17.39 is removed and reserved.

[FR Doc. 89–26982 Filed 11–16–89; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900–AD84

Veterans' Education; the Veterans' Benefits and Programs Improvement Act of 1988 and Noncontributory Educational Assistance Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect Dependents' Educational Assistance and the Vietnam Era GI Bill. These include permitting high school training and refresher, remedial and deficiency training for all dependents, an increase in the monthly tutorial assistance and the total tutorial assistance under both programs, and a liberalization of the rules concerning adjustment of monthly benefits following a course withdrawal. This effect of this proposal is to acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer the new provisions of law.

DATES: Comments must be received on or before December 18, 1989. Comments will be available for public inspection until December 27, 1989. It is proposed that the effective dates of the amended regulations coincide with the effective dates of the laws upon which they are based. Consequently, it is proposed to make the amendments to §§ 21.4200, 21.4201, and 21.4236 retroactively effective on November 18, 1988. It is proposed to make the amendments to §§ 21.4136, and 21.4137(h) retroactively effective on June 1, 1989. It is proposed to make the amendments to all other regulations and the removal of § 21.4252(f) retroactively effective on August 15, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 27, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans' Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: VA is proposing to amend various regulations and to remove a regulation in order to implement several provisions of Public Law 100–689 which affect the Dependents' Educational Assistance Program and the Vietnam Era GI Bill. These provisions permit pursuit of a high school diploma for all trainees in the Dependents' Educational Assistance Program; provide for an increase in the maximum monthly tutorial assistance and the maximum tutorial assistance available to trainees under both programs; and provide for a liberalization of the rules concerning the adjustment of the monthly payment of benefits following the withdrawal from one or more courses.

VA finds that good cause exists for making the amendments to §§ 21.4200, 21.4201, and 21.4137(h), like the sections of Public Law 100–689 they implement, retroactively effective on November 10, 1988. VA finds that good cause exists for making §§ 21.4136 and 21.4137(h), like the section of law they implement retroactively effective on June 1, 1989. VA finds that good cause exists for making the remainder of the regulations and the removal of § 21.4252(f), like the provisions of law they implement, retroactively effective on August 15, 1989. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran or eligible person who is entitled by law to it, or in the granting of a benefit to a veteran or eligible person who is not entitled to it.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 24, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.1045 the introductory text, paragraphs (a)(2) through (a)(4), (a)(3) introductory text, (b)(2) through (b)(6), (c)(3), (g)(2) (i), and (k) are revised to read as follows:

§ 21.1045 Entitlement charges.

VA will make charges against entitlement only when required by this section. Charges for institutional training will be based upon the principle that a veteran or eligible person who trains full time for 1 day should be charged 1 day of entitlement. The provisions of this section apply to veterans training under chapter 34 of title 38, United States Code, as well as to veterans for that portion of a program under chapter 31 of title 38, United States Code, during which the veteran receives payment at the chapter 34 rate pursuant to a valid election under § 21.264 of this part to receive educational assistance allowance equivalent to that paid to veterans training under chapter 34.

(Authority: 38 U.S.C. 1691)

(a) * * *

(2) A veteran who—

* * * * * *

(3) A veteran who—

* * * * * *

(4) A veteran, not on active duty, who is pursuing refresher, remedial or deficiency courses.

(Authority: 38 U.S.C. 1691)

(b) * * *

(2) A veteran who is pursuing a program of apprenticeship or other on-job training under chapter 34;

(3) A veteran or serviceperson under chapter 34 who is pursuing a correspondence course; or

(4) A veteran, not on active duty, who—

(i) Is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235 of this part;

(ii) Elects to receive educational assistance allowance at the rate described in § 21.4136(a) of this part, and

(iii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1,

1980, or has not remained continuously enrolled in such a course since October 1, 1980; or

(5) A serviceperson under chapter 34 who is pursuing a refresher, remedial or deficiency course; or

(6) A veteran or serviceperson under chapter 34 for the pursuit of any course not described in paragraph (a) of this section.

(Authority: 38 U.S.C. 1661, 1677(b), 1691)

(c) * * *

(3) A veteran may concurrently enroll in a refresher, remedial or deficiency course or courses for which paragraph (a)(4) of this section requires no charge against entitlement and in a course or courses for which paragraph (b) of this section requires a charge against entitlement. When this occurs, VA will charge entitlement for the concurrent enrollment based only on pursuit of the course or courses described in paragraph (b) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.

(Authority: 38 U.S.C. 1661, 1677(b))

* * * * *

(g) * * *

(2) * * *

(i) $220 paid after December 31, 1972, and before September 1, 1974, to a veteran as an educational assistance allowance.

* * * * *

(k) Education loan after otherwise applicable delimiting date—chapter 34. VA will make a charge against the entitlement of a veteran who receives an education loan pursuant to § 21.4501(c) of this part at the rate of 1 day for each day of entitlement that would have been used had the veteran been in receipt of educational assistance allowance for the period for which the loan was granted.

(Authority: 38 U.S.C. 1662; Pub. L. 95–202, Pub. L. 100–689)

2. Section 21.3045 is revised to read as follows:

§ 21.3045 Entitlement charges.

VA will make charges against an eligible person's entitlement only when required by this section. Charges for institutional training will be based upon the principle that an eligible person who trains full time for 1 day should be charged 1 day of entitlement.

(a) *No entitlement charge for eligible persons receiving tutorial assistance.* VA will make no charge against the entitlement of an eligible person for tutorial assistance received in accordance with § 21.4236.

(Authority: 38 U.S.C. 1692, 1733(b))

(b) Entitlement charges for elementary and secondary education. (1) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235 of this part, there are two sets of circumstances which will always result in VA's making no charge against his or her entitlement. These are as follows.

(i) Either the eligible spouse or surviving spouse completed training during the period beginning on October 1, 1980 and ending on August 14, 1989, and remained continuously enrolled from October 1, 1980 through the time the spouse or surviving spouse either completed training or August 14, 1989, whichever is earlier; or

(ii) The eligible spouse or surviving spouse completed training before August 15, 1989, and received educational assistance based upon the tuition and fees charged for the course.

(2) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235 of this part, the following circumstances will always result in VA's making a charge against his or her entitlement.

(i) The spouse or surviving spouse elects to receive dependents' educational assistance at the rate described in § 21.4137(a) of this part, and

(ii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980.

(3) When an eligible person pursues refresher, remedial or deficiency training before August 15, 1989, the following provisions govern the charge against the entitlement.

(i) VA will not make a charge against the entitlement of an eligible spouse or surviving spouse.

(ii) VA will make a charge against the entitlement of an eligible child.

(4) The following provisions apply to an eligible person for training received after August 14, 1989. When he or she is pursuing a course leading to a secondary school diploma or equivalency certificate or refresher, remedial or deficiency training—

(i) VA will make no charge against the entitlement of an eligible person for the first five months of full time pursuit (or its equivalent in part-time pursuit).

(ii) VA will make a charge against the entitlement of an eligible person for pursuit in excess of the pursuit described in paragraph (b)(4)(i) of this section.

(Authority: 38 U.S.C. 1733(a); Pub. L. 100–689)

(c) *Other courses for which entitlement will be charged.* VA will make a charge against the period of entitlement of—

(1) An eligible person for pursuit of a program of apprenticeship or other on-job training,

(2) A spouse or surviving spouse for pursuit of a correspondence course; or

(3) An eligible person for the pursuit of any course not described in paragraph (a) or (b) of this section.

(Authority: 38 U.S.C. 1734)

(d) *Determining entitlement charge.* The provisions of this paragraph apply to all courses except those courses for which VA is not making a charge against the eligible person's entitlement, nor do they apply to apprenticeship or other on-job training, correspondence courses, or to courses offered solely through independent study.

(1) After making any adjustments required by paragraph (d)(3) of this section VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit) if the eligible person is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the eligible person is pursuing a program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the eligible person changes his or her training time after the commencing date of enrollment, VA will—

(i) Divide the enrollment period into separate periods of time during which the eligible person's training time remains constant; and

(ii) Compute the elapsed time separately for each time period.

(3) An eligible person may concurrently enroll in refresher, remedial or deficiency training for which paragraph (b)(3) or (b)(4)(i) of this section requires no charge against entitlement and in a course or courses for which paragraph (b)(2) or (b)(4)(ii) or (c) of this section requires a charge against entitlement. When this occurs, VA will charge entitlement for the concurrent enrollment based only on pursuit of the courses described in paragraph (b)(2) or (b)(4)(ii) or (c) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.

(Authority: 38 U.S.C. 1733(a); Pub. L. 100–689)

(e) *Entitlement charge for pursuit solely by independent study.* VA will make charges against the entitlement of an eligible person in the manner described in paragraph (d) of this section, if he or she is pursuing a program of education solely by independent study. However, the computation will always be made as though the eligible person's training were one-quarter time.

(Authority: 38 U.S.C. 1682(b), 1732(a))

(f) *Entitlement charge for apprenticeship or other on-job training.* The charge against entitlement for pursuit of apprenticeship or other on-job training program shall be 1 month for each month of training assistance allowance paid to the eligible person for the program. If there is a reduction in the eligible person's monthly training assistance allowance due to his or her failure to complete 120 hours of training during the month, VA will combine the portions of those months for which a reduction was made. VA will make no charge against entitlement for the period of combined reductions.

(Authority: 38 U.S.C. 1734, 1787)

(g) *Entitlement charge for correspondence courses.* The charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each—

(1) $220 paid after December 31, 1972, and before September 1, 1974, to a spouse or surviving spouse as an educational assistance allowance,

(2) $260 paid after August 31, 1974, and before January 1, 1975,

(3) $270 paid after December 31, 1974, and before October 1, 1976,

(4) $292 paid after September 30, 1976, and before October 1, 1977,

(5) $311 paid after September 30, 1977, and before October 1, 1980,

(6) $327 paid after September 30, 1980, and before January 1, 1981,

(7) $342 paid after December 31, 1980, and before October 1, 1984, and

(8) $376 paid after September 30, 1984.

(Authority: 38 U.S.C. 1786(a))

(h) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is wavied and is not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge aginst entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the reamining amount of the overpayment balance determined in paragraph (h)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 1671, 1732)

(i) *Interruption to conserve entitlement.* An eligible person may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the eligible person is enrolled for the term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the eligible person is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment is actually terminated;

(2) The eligible person cancels his or her enrollment, and does not negotiate an educational benefits check for any part of the certified period of enrollment;

(3) The eligible person interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The eligible person requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the eligible person negotiated a check for educational benefits for the certified period is immaterial.

(Authority: 38 U.S.C. 1711)

(j) *Education loan after otherwise applicable delimiting date-spouse or surviving spouse.* VA will make a charge against the entitlement of a spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) of this part at the rate of 1 day for each day of entitlement that would have been used had the spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted.

(Authority: 38 U.S.C. 1712)

3. In § 21.4136 paragraph (k)(4) is redesignated as paragraph (k)(5), paragraph (k)(1), and (k)(2)(vii) are revised and paragraphs (k)(2)(viii) and (k)(4) are added to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. chapter 34.

* * * * *

(k) *Mitigating circumstances.* (1) VA will not pay benefits to any veteran for a course from which the veteran withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(i) There are mitigating circumstances,

(ii) The veteran submits a description of the circumstances in writing to VA within 1 year from the date VA notifies the veteran that he or she must submit the description of the mitigating circumstances, and

(iii) The veteran submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA.

(2) * * *

(vii) Unanticipated active duty military service, including active duty for training,

(viii) Unanticipated difficulties in caring for the veteran's or eligible person's child or children.

(Authority: 38 U.S.C. 1780(a); Pub. L. 100–689)

* * * * *

(4) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the veteran received educational assistance under either title 38, United States Code or chapter 106, title 10, United States Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. Veterans to whom this subparagraph applies are not submit to the reporting requirement found in paragraph (k)(1)(ii) of this section.

(Authority: 38 U.S.C. 1780(a)(4); Pub. L. 100-689)

* * * * *

4. In § 21.4137 paragraph (h)(4) is redesignated as paragraph (h)(5), paragraphs (h)(1), (h)(2)(vii) and the introductory text of paragraph (m), paragraphs (m)(1) and (m)(2)(ii) are revised, and paragraphs (h)(2)(viii), (h)(4) and (m)(3) are added to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.

* * * * *

(h) *Mitigating circumstances.* (1) VA will not pay benefits to any eligible person for a course from which the eligible person withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(i) There are mitigating circumstnaces,

(ii) The eligible person submits a description of the circumstances in writing to VA within 1 year from the date VA notifies the eligible person that he or she mast submit the description of the mitigating circumstances, and

(iii) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA.

(2) * * *

(vii) Unanticipated active duty military service including active duty for training,

(viii) Unanticipated difficulties in caring for the eligible person's child or children.

(Authority: 38 U.S.C. 1780)

* * * * *

(4) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the eligible person received educational assistance under title 38, United States Code or under chapter 106, title 10, United States Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. Eligible persons to whom the provisions of this subparagraph apply are not subject to the reporting requirement found in paragraph (h)(1)(ii) of this section.

(Authority: 38 U.S.C. 1780(a)(4); Pub. L. 100-689)

* * * * *

(m) *Courses leading to a secondary school diploma or equivalency certificate.* The monthly rate of educational assistance allowance payable to an eligible person enrolled in a course leading to a secondary school diploma or equivalency certificate shall be as follows:

(Authority: 38 U.S.C. 1733; Pub. L. 100-689)

(1) The monthly rate shall be the rate for institutional training stated in paragraph (a) of this section if—

(i) Either—

(A) The eligible spouse or surviving spouse was enrolled in the course on October 1, 1980, and

(B) The eligible spouse or surviving spouse has remained continuously enrolled after October 1, 1980, in courses leading to a secondary school diploma or an equivalency certificate; or

(ii) The educational assistance allowance payable to the eligible spouse or surviving spouse is for education or training received after August 14, 1989.

(Authority: 38 U.S.C. 1733; Pub. L. 100-689)

* * * * *

(2) * * *

(ii) The second set of monthly rates is the monthly rate for institutional training found in paragraph (a) of this section. See § 21.3045 of this part for the way in which this election affects the charge against the eligible spouse's or surviving spouse's entitlement.

(3) The monthly rate of educational assistance allowance payable to an eligible child enrolled in a course leading to a secondary school diploma or equivalency certificate shall be the monthly rate for institutional training stated in paragraph (a) of this section. No educational assistance allowance shall be paid to an eligible child for such education or training pursued before August 15, 1989.

(Authority: 38 U.S.C. 1691, 1733; Pub. L. 98-466, Pub. L. 100-689)

5. In § 21.4200 paragraph (v) is added to read as follows:

§ 21.4200 Definitions.

* * * * *

(v) *"Reservist".* This term means a member of the Selected Reserve or a member of the National Guard or the Air National Guard.

(Authority: 38 U.S.C. 1673(d))

6. In § 21.4201 paragraphs (c)(3)(ii), (c)(3)(iv)(*d*), (c)(4) introductory text, (e)(2) introductory text, (e)(2)(i) and (f)(1)(ii) are revised to read as follows:

§ 21.4201 Restrictions on enrollment—percentage of students receiving financial support.

* * * * *

(c) * * *

(3) * * *

(ii) Is on or immediately adjacent to a military base, or a facility of the National Guard (including the Air National Guard) or the Selected Reserve),

* * * * *

(iv) * * *

(*d*) In the case of a course offered on or immediately adjacent to a facility of the National Guard or the Selected Reserve, members of the National Guard, members of the Selected Reserve and their dependents.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans, eligible persons, and reservists receiving assistance under chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 106, title 10, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed seaprately for the main campus and any branch or extension of the institution). However, the provisions or paragraph (a) of this section will apply to such a course when—

(Authority: 38 U.S.C. 1673(d); Publ. L. 98-525, Pub. L. 100-689) 16, 1988)

* * * * *

(e) * * *

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section, the following students will be considered to be nonsupported provided the VA is not furnishing them with educational assistance under title 38, United States Code or under chaper 106, title 10, United States Code.

(i) Students who are not veterans or reservists, and are not in receipt of instuttional aid.

(Authority: 38 U.S.C. 1673(d); Pub. L. 98-525, Pub. L. 100-689)

* * * * *

(f) * * *

(1) * * *

(ii) Until such time as the total number of veterans, eligible persons and reservists receiving assistance under chapters 30, 31, 32, 34, 35, or 36, title 38, United States Code, or chapter 106, title 10, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(Authority: 38 U.S.C. 1673(d),Pub. L. 98-525, Pub. L. 100-689)

7. In § 21.4236 paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In additional to payment of education assistance allowance at the monthly rates specified in § 21.4136 or § 21.4137 of this part, VA will authorize the cost of the tutorial assistance in an amount not tgo exceed $100 per month effective Novemberr 18, 1988.

(Authority: 38 U.S.C. 1692(b); Pub. L. 91-219, Pub. L. 92-540, Pub. L. 93-508, Pub. L. 94-502, Pub. L. 95-202, Pub. L. 98-466, Pub. L. 98-543, Pub. L. 100-689)

(d) *Entitlement charge.* VA will make no charge against the period of the veteran's entitlement as computed under § 21.1041 of this part or the eligible person's entitlement as computed under § 21.3044 of this part. Special supplemental assistance provided undee this section will not exceed a maximum of $1,200 effective November 18, 1988.

(Authority: 38 U.S.C. 1690, 1692, 1693; Pub. L. 91-219, Pub. L. 93-508, Pub. L. 94-502, Pub. L. 94-202, Pub. L. 98-466, Pub. L. 98-543, Pub. L. 100-689)

8. In § 21.4237 the section heading, the introductory text to paragraph (a), and paragraph (d) are revised to read as follows:

§ 21.4237 Special assistant for the educationally disadvantaged-chapter 35.

(a) *Enrollment.* VA may approve the enrollment of an eligible spouse or surviving spouse in an appropriate course or courses at the secondary school level in a State. After August 14, 1989, VA may approve the enrollment of an eligible child in an appropriate course or courses at the secondary school level in a State. This approval may be made only if the eligible person—

(Authority: 38 U.S.C. 1691, 1733; Pub. L. 100-689)

* * * * *

(d) *Entitlement charge.* The provisions of § 21.3045 of this part will determine whether VA will make a charge against the period of the entitlement of the eligible person because of enrollment in coruses under the provisions of this section.

(Authority: 38 U.S.C. 1733; Pub. L. 92-540, Pub. L. 96-466, Pub. L. 100-689)

§ 21.4252 [Removed]

9. In § 21.4252, paragraph (f) is removed and reserved.

[FR Doc. 89-26983 Filed 11-16-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

38 CFR Part 21

RIN 2900-AE10

Reservists Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Department of Veterans Affairs, Department of Defense and Department of Transportation.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the administration of educational assistance for members of the Selected Reserve. The effect of these provisions is to change the way in which the Department of Veterans Affairs (VA) must measure certain courses which do not lead to a standard college degree; to add a requirement that certain reservists be counseled before choosing a program of education; and make a change concerning nonduplication of Federal programs. This proposal also contains two minor changes required by the Veterans' Benefits and Programs Improvement Act of 1988 pertaining to elimination of the 180 days service requirement and less than half-time training. Other amended regulations resulting from the Veterans' Benefits and Programs Improvement Act of 1988 and dealing with the education programs the Department of Veterans Affairs administers will be proposed separately.

DATES: Comments must be received on or before December 18, 1989. Comments will be available for public inspection until December 27, 1989. It is proposed that the effective date of the amendments to § 21.7540la) and § 21.7672 (b) through (f), like the provisions of law they implement, be made retroactively effective on November 18, 1988. It is proposed that the effective date of all other amendments, like the provisions of law they implement, be made retroactively effective on October 28, 1986.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 27, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Several regulations are amended in order to implement provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99-576). Two sections are amended in order to implement provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100-689). These provisions affect the measurement of certain courses which do not lead to a standard college degree. In many cases this will result in an increase in the monthly benefit payable to reservists enrolled in these courses. The provisions also prohibit receipt of benefits under two or more of the education programs administered by VA. This will result in a sharp reduction in benefits to a few reservists who are also veterans.

The Department of Veterans Affairs, the Department of Defense, and the Department of Transportation find that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a reservist who is entitled by law to it, or in the granting of a benefit to a reservist who is not entitled to it.

The Department of Veterans Affairs, the Department of Defense, and the Department of Transportation have determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will

not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation have certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility anaylses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

A Catalog of Federal Domestic Assistance number for the program affected by these regulations is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Aproved: July 21, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Dated: August 11, 1989.

A.V. Conte,

Acting Principal Deputy, Assistant Secretary for Reserve Affairs, Department of Defense.

Dated: October 18, 1989.

John N. Faigle,

Rear Admiral, U.S. Coast Guard, Chief, Office of Readiness and Reserve.

38 CFR part 21 Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.7540, paragraph (a)(4) and (a)(5) and paragraph (b) and the authority citations for paragraph (a) and paragraph (b) are revised and paragraph (c) and its authority citation are added to read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) * * *

(4) Is participating satisfactorily in the Selected Reserve; and

(5) Has not elected to have his or her service in the Selected Reserve credited toward establishing eligiblity to benefits provided under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689)

(b) *Limitations on establishing eligibility.* (1) An individual must elect whether or not he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. Chapter 106 when—

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 1412, and has established eligibility to that assistance partially through service in the selected Reserve, or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 1412 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505 followed by service in the Selected Reserve.

(2) A reservist may revoke his or her election provided he or she has not negotiated a check for benefits under either 38 U.S.C. chapter 30 or 10 U.S.C. chapter 106 after the date of the election. Once the reservist has negotiated a check under either chapter, the election is irrevocable.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, 99–576)

(c) *Dual eligibility.* An individual who has established eligibility for basic educational assistance under 38 U.S.C chapter 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. chapter 106 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 2132(d), 2134; Pub. L. 98–525)

2. In § 21.7600, paragraphs (b) and (d) and their authority citations are revised to read as follows:

§ 21.7600 Counseling.

* * * * *

(b) *Required counseling.* (1) In any case in which the Department of Veterans Affairs has rated the reservist as being incompetent, the reservist must be counseled before selecting a program of education. The requirement that counseling be provided is met when—

(i) The reservist has had one or more personal interviews with the counselor;

(ii) The counselor and the reservist have jointly developed recommendations for selecting a program of education; and

(iii) The counselor has reviewed the recommendations with the reservist.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) The Department of Veterans Affairs will take no further action on a reservist's application for assistance under this chapter when he or she—

(i) Fails to report for counseling;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1663; Pub. L. 98–525, Pub. L. 99–576)

* * * * *

(d) *Provision of counseling.* The Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the reservist. In addition, the Department of Veterans Affairs shall provide counseling as needed for the purpose identified in paragraph (b) of this section following the reservist's request for counseling, the reservist's initial application for benefits or any communication from the reservist or guardian indicating that the reservist wishes to change his or her program. The Department of Veterans Affairs shall take appropriate steps (including individual notification where feasible) to acquaint reservists with the availability and advantages of counseling services.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 1663; Pub. L. 98–525, Pub. L. 99–576)

3. Section 21.7603 is revised to read as follows:

§ 21.7603 Travel expenses.

The Department of Veterans Affairs will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 10 U.S.C. chapter 106 or for whom counseling is required under that chapter.

(Authority: 38 U.S.C. 111)

4. In § 21.7642, paragraph (a) and its authority citation are revised to read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 106 and any of the following provisions of law—

(1) 38 U.S.C. ch. 30,

(2) 38 U.S.C. ch. 31,

(3) 38 U.S.C. ch. 32,

(4) 38 U.S.C. ch. 34,

(5) 38 U.S.C. ch. 35,

(6) 10 U.S.C. ch. 107,

(7) Section 903 of the Department of Defense Authorization Act, 1981, or

(8) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1433(a), 1781(b), 1795; Pub. L. 98–525, Pub. 99–576)

* * * * *

§ 21.7670 [Amended]

5. In § 21.7670, paragraph (e) is removed and reserved.

6. Section 21.7672 is revised to read as follows:

§ 21.7672 Measurement of courses not leading to a standard college degree.

(a) *Overview.* (1) Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis or a combination of both. Factors which the Department of Veterans Affairs must include in determining the proper basis for measurement include whether the courses are accredited; whether the course could be credited toward a standard college degree; and whether the course is offered on a standard quarter or semester-hour basis.

(2) In determining which is the correct basis for measuring a reservist's enrollment, the Department of Veterans Affairs will first examine whether credit-hour measurement is appropriate, as provided in paragraph (b) of this section, or if requested by the educational institution, paragraph (c) of this section.

(3) If it is not appropriate to measure a reservist's courses on a credit-hour basis, the Department of Veterans Affairs will use the provisions of paragraph (d) of this section to examine whether a combination of credit-hour and clock-hour measurement may be used.

(4) If it is appropriate neither to measure the reservist's enrollment on a credit-hour basis nor on a combination of credit hours and clock hours, the Department of Veterans Affairs will measure the enrollment on a clock-hour basis as described in paragraphs (e) and (f) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 99–576)

(b) *Credit-hour measurement—standard method.* (1) The Department of Veterans Affairs will measure a reservist's enrollment in a course not leading to a standard college degree on a credit-hour basis whenever all the conditions listed in this paragraph are met.

(i) The reservist is enrolled in a course which—

(A) Is offered during the school year by a fully accredited institution of higher learning in residence on a standard quarter- or semester-hour basis, and

(B) Is approved pursuant to 38 U.S.C. 1775.

(ii) A majority of the total credits required for the course is derived from unit courses or subjects offered by that institution of higher learning as part of a course, approved pursuant to 38 U.S.C. 1775, leading to a single standard college degree.

(2) When all the conditions of paragraph (b)(1) of this section are met, the Department of Veterans Affairs will—

(i) Measure the reservists's enrollment in the same manner as collegiate undergraduate courses are measured in § 21.7670(a), (b), (c) of this part.

(ii) Apply the provisions of—

(A) Section 21.4272(e) of this part and measure those courses as though they were undergraduate courses using the "normal method", when appropriate;

(B) Section 21.4272(f) of this part if one or more of the reservist's courses have insufficient standard class sessions; and

(C) Section 21.4272(g) of this part if one or more of the reservist's courses are offered during a nonstandard term.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 99–576)

(c) *Credit-hour measurement—alternate method.* Even though courses not leading to a standard college degree do not qualify for credit-hour measurement as provided in paragraph (b) of this section, an educational institution offering courses not leading to a standard college degree may measure those courses on a quarter- or semester-hour basis as indicated for collegiate courses in § 21.7670 of this part provided—

(1) The academic portions of the courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit.

(2) The laboratory portions of the courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit.

(3) The shop portion of the courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1⅓ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; ¾ hours for less than one-half-time courses of 6–10 clock hours; and no rest periods shall be allowed for other less than one-half-time courses of 0–5 clock hours.

(4) In no event shall the courses be considered full-time training when less than 22 hours per week of attendance is required.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525)

(d) *Mixed credit-hour and clock-hour measurement.* (1) When a course not leading to a standard college degree in which the veteran is enrolled cannot qualify for credit-hour measurement under either paragraph (b) or (c) of this section, the Department of Veterans Affairs will measure the course on a combined clock-hour and credit-hour basis when the provisions of this paragraph are met.

(i) The course in which the reservist is enrolled—

(A) Is offered by an institution of higher learning, and

(B) Does not lead to a standard college degree; and

(ii) The institution of higher learning requires as part of the reservist's program of education one or more unit subjects for which credit is granted toward a standard college degree; and

(2) The Department of Veterans Affairs will apply—

(i) The provisions of § 21.7670(a), (b) and (c) of this part and the provisions of § 21.4272(e), (f) and (g) of this part, where appropriate, to the portion of the reservist's enrollment consisting of the unit subject or subjects described in paragraph (d)(1)(ii) of this section measured on a credit-hour basis, and

(ii) The provisions of paragraph (d) of this section to the portion of the reservist's enrollment which is being measured on a clock-hour basis.

(3) For a reservist enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 18 clock hours net instruction because the course is accredited and theory and class instruction predominate as provided in paragraph (f)(2) of this section, the Department of Veterans Affairs will measure enrollment as provided in the following table. Clock hours in the table include customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock-hour requirements. Credit hours in this table refer to credit hours pursued during a semester or

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quarter as defined in § 21.4200(b) of this part. If the semester or quarter hour is not one which meets the definition of § 21.4200(b) of this part, before using the table the Department of Veterans Affairs will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, the VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Minimum necessary clock hour enrollment—(12 credit hours and 18 clock hours are full time)			
	Full time	Three-fourth time	One-half time	Less than ½ time
1 credit hour	16 or more clock hours net instruction.	11–15 clock hours net instruction.	7–10 clock hours net instruction.	0–6 clock hours.
2 credit hours	15 clock hours net instruction.	10–14 clock hours net instruction.	6–9 clock hours net instruction.	0–5 clock hours.
3 credit hours	13 or 14 clock hours net instruction.	9–12 clock hours net instruction.	4–8 clock hours net instruction.	0–3 clock hours.
4 credit hours	12 clock hours net instruction.	7–11 clock hours net instruction.	3–6 clock hours net instruction.	0–2 clock hours.
5 credit hours	10 clock hours net instruction.	6–9 clock hours net instruction.	1–5 clock hours net instruction.	0 clock hours.
6 credit hours	9 clock hours net instruction.	4–8 clock hours net instruction.	0–3 clock hours net instruction.	Not applicable.
7 credit hours	7 clock hours net instruction.	3–6 clock hours net instruction.	0–2 clock hours net instruction.	Not applicable.
8 credit hours	6 clock hours net instruction.	1–5 clock hours net instruction.	0 clock hours net instruction.	Not applicable.
9 credit hours	4 clock hours net instruction.	0–3 clock hours net instruction.	Not applicable	Not applicable.
10 credit hours	3 clock hours net instruction.	0–2 clock hours net instruction.	Not applicable	Not applicable.
11 credit hours	1 clock hour net instruction	0 clock hours	Not applicable	Not applicable.

(4) For a reservist enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 22 clock hours net instruction because the course is accredited and shop practice predominates as provided in paragraph (f)(1) of this section, the Department of Veterans Affairs will measure enrollment as provided in the following table. Supervised study is excluded from the clock hours included in this table. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this section, before using the table, the Department of Veterans Affairs will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, the VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Minimum necessary clock hour enrollment—(12 clock hours and 22 credit hours are full time)			
	Full time	Three-fourth time	One-half time	Less than ½ time
1 credit hour	20 or more clock hours attendance with not more than 2¼ hours period allowance.	14–19 clock hours attendance with not more than 1½ hours rest period allowance.	9–13 clock hours attendance with not more than 1 hour rest period allowance.	0–8 clock hours attendance with not more than ½ hour rest period allowance.
2 credit hours	18 clock hours attendance with not more than 2 hours rest period allowance.	12–17 clock hours attendance with not more than 1½ hours rest period allowance.	7–11 clock hours attendance with not more than ¾ hour rest period allowance.	0–6 clock hours attendance with not more than ¼ hour rest period allowance.
3 credit hours	16 clock hours attendance with not more than 1¾ hours rest period allowance.	11–15 clock hours attendance with not more than 1½ hours rest period allowance.	5–10 clock hours attendance with not more than ¾ hours rest period allowance.	0–4 clock hours attendance with not more than ¼ hours rest period allowance.
4 credit hours	15 clock hours attendance with not more than 1¾ hours rest period allowance.	9–14 clock hours attendance with not more than 1¼ hours rest period allowance.	4–8 clock hours attendance with not more than ½ hour rest period allowance.	0 clock hours.
5 credit hours	13 clock hours attendance with not more than 1½ hours rest period allowance.	7–12 clock hours attendance with not more than 1 hour rest period allowance.	2–6 clock hours attendance with not more than ¼ hour rest period allowance.	0 clock hours.
6 credit hours	11 clock hours attendance with not more than 1¼ hours rest period allowance.	5–10 clock hours attendance with not more than ¾ hour rest period allowance.	0–4 clock hours	
7 credit hours	9 clock hours attendance with not more than 1 hour rest period allowance.	3–8 clock hours attendance with not more than ½ hour rest period allowance.	0–2 clock hours	
8 credit hours	7 clock hours attendance with not more than ¾ hour rest period allowance.	2–6 clock hours attendance with not more than ¼ hour rest period allowance.	0–1 clock hour	
9 credit hours	5 clock hours attendance with not more than ½ hour rest period allowance.	0–4 clock hours	Not applicable	
10 credit hours	4 clock hours attendance with not more than ½ hour rest period allowance.	0–3 clock hours	Not applicable	

Credit hour enrollment	Minimum necessary clock hour enrollment—(12 clock hours and 22 credit hours are full time)			
	Full time	Three-fourth time	One-half time	Less than ½ time
11 credit hours	2 clock hours attendance with not more than ¼ hour rest period allowance.	0–1 clock hour	Not applicable	

(5) The Department of Veterans Affairs will measure an enrollment as provided in this paragraph when the provisions of paragraph (d)(1) of this section apply to the enrollment, but neither the provisions of paragraphs (d)(3) nor (d)(4) of this section apply. This may occur when either the courses which must be measured on a clock-hour basis normally require neither 18 clock hours attendance nor 22 clock hours net instruction, or 12 credit hours are not normally full-time at the school, or both. Credit hours in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which is defined in § 21.4200(b) of this part, before using the procedure in this paragraph the VA will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, the Department of Veterans Affairs will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part. The Department of Veterans Affairs will—

(i) Divide the number of credit hours in which the reservist is enrolled by the number of credit hours normally considered full time, three-quarter time, and one-half time at the school;

(ii) Multiply the percentages determined in paragraph (d)(5)(i) of this section by the number of clock hours of attendance or net instruction, as appropriate, which paragraph (e) or (f), respectively, of this section requires for each training time;

(iii) Subtract the result determined in paragraph (d)(5)(ii) of this section from the minimum number of clock hours of attendence or net instruction, as appropriate, which paragraph (e) or (f) of this section, respectively, requires for each training time (rounding to the nearest clock hour and dropping fractions of one-half hour to the next lower clock hour). Negative numbers will be changed to zero.

(iv) Multiply the length of time (if any) provided in paragraph (f) of this section for a rest period allowance by the percentage determined in paragraph (d)(5)(i) of this section;

(v) Subtract the length of time determined in paragraph (d)(5)(iv) of this section from the length of time determined in paragraph (f) of this section for a rest period allowance (rounding to the nearest quarter-hour and dropping fractions of 7½ minutes to the next lower quarter-hour); and

(vi) Measure the enrollment on the basis of the greatest training time permitted by the number of clock hours in which the reservist is enrolled and the length of his or her rest period allowance.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99–576)

(e) *Nonaccredited-clock hour measurement.* If after having examined the courses in which a reservist is enrolled the Department of Veterans Affairs concludes that the reservist's enrollment qualifies neither for credit-hour measurement as provided in paragraphs (b) and (c) of this section nor for a combination of credit-hour and clock-hour measurement as provided in paragraph (d) of this section, the Department of Veterans Affairs shall measure a nonaccredited course not leading to a standard college degree as follows. For the purposes of this paragraph clock hours and class sessions mean clock hours and class sessions per week.

(1) If shop practice is an integral part of the course—

(i) Full-time training shall be 30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study.

(ii) Three-quarter-time training shall be 22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study.

(iii) Half-time training shall be 15 through 21 clock hours attendance with not more than 1¾ hours rest period allowance and not more than 2½ hours of supervised study.

(iv) Less than half-time training shall be 1 through 14 clock hours of attendance. For attendance of between 8 and 14 clock hours there shall be not more than ¾ hours rest period allowance and not more than 1¼ hours of supervised study. For attendance of between 1 and 7 clock hours shall be no rest period allowance and no supervised study.

(2) Except as provided in paragraph (e)(3) of this section, if theory and classroom instruction predominates in a course—

(i) Full-time training is 25 clock hours net instruction and not more than 5 hours of supervised study,

(ii) Three-quarter-time training is 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study, and

(iii) Half-time training is 12 through 17 hours net instruction and not more than 2½ hours of supervised study. In measuring net instruction for the purposes of this paragraph there will be included customary intervals not to exceed 10 minutes between classes.

(iv) Less than half-time is 1 through 11 clock hours net instruction. For 7 through 11 clock hours net instruction there shall be not more than 1¼ hours of supervised study. For 1 through 6 clock hours net instruction there shall be no supervised study.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525, Pub. L. 99 576).

(f) *Accredited courses-clock hour measurement.* If after having exmined the courses in which a reservist is enrolled the Department at Veteran Affairs concludes that the reservist's enrollment qualifies neither for credit-hour measurement as provided in paragraphs (b) and (c) of this section nor for a combination of credit-hour and clock-hour measurement as provided in paragraph (d) of this section, the Department of Veterans Affairs shall measure accredited courses not leading to a standard college degree as follows.

(1) If shop practice is an integral part of the course—

(i) Full-time training shall be 22 clock hours attendance with not more than 2½ hours rest period allowance.

(ii) Three-quarter-time training shall be 16 through 21 clock hours attendance with not more than 2 hours rest period allowance.

(iii) Half-time training shall be 11 through 15 clock hours attendance with not more than 1¼ hour rest period allowance.

(iv) Less than half-time training shall be 1 through 10 clock hours attendance. For attendance of 6 through 10 clock hours there shall be not more than ¼ hour rest period allowance. For

attendance of 1 through 5 clock hours there shall be no rest period allowance. Supervised study shall be excluded from measurement of all courses to which this paragraph applies.

(2) If theory and class instruction predominates—

(i) Full-time training is 18 clock hours net instruction.

(ii) Three-quarter-time training is 13 through 17 clock hours net instruction, and

(iii) Half-time training is 9 through 12 clock hours net instruction.

(iv) Less than half-time training is 1 through 8 clock hours net instructon. In measuring net instruction for this paragraph there will be included customary intervals not to exceed 10 minutes between classes; however, supervised study must be excluded.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98-525, Pub. L. 99-576)

7. Section 21, 7673 is added to read as follows:

§ 21.7673 Measurements of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where a reservist enrolls concurrently in courses offered by two schools and the standards for measurement of the courses pursued concurrently in the two schools are different, the Department of Veterans Affairs will measure the reservist's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the reservist is pursuing at the primary institution. This conversion will be accomplished as follows.

(1) If the Department of Veterans Affairs measures the course at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.7672(b) of this part, and

(i) The Department of Veterans measures the course in the second school on a mixed basis as provided in § 21.7672(d) of this part, the Department of Veterans Affairs will add to the credit hours the reservist is pursuing at the primary institution the credit hours attributable to any course the reservist is pursuing at the second school which the Department of Veterans Affairs could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours; or

(ii) The Department of Veterans Affairs measures the courses at the second school on clock-hour basis, the clock hours will be converted to credit hours.

(2) If the Department of Veterans Affairs measures the course at the primary institution on a mixed basis as provided in § 21.7672(d) of this part, and

(i) The Department of Veterans Affairs measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the reservist is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.7670 or § 21.7672(b) or (c) of this part, as appropriate; or

(ii) The Department of Veterans Affairs measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.7670 or § 21.7672 (b) or (c) of this part, as appropriate.

(3) If the Department of Veterans Affairs measures the courses pursued at the primary institution on a clock-hour basis, and

(i) The Department of Veterans Affairs measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which the Department of Veterans Affairs can measure on credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the reservist's training time; or

(ii) The VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.7672(b) of this part, the VA will convert the credit hours to clock hours to determine the reservist's training time.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require the Department of Veterans Affairs convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require the Department of Veterans Affairs to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(d) *Standards for measurement the same.* Where the standards for measurement of the courses pursued concurrently in the two schools are the same, the Department of Veterans Affairs will measure the reservist's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.7672(d) of this part must be applied to the enrollment, the Department of Veterans Affairs will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.7672(d) of this part. In applying those provisions the Department of Veterans Affairs will use the standard for full time at the primary institution.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

[FR Doc. 89-26979 Filed 11-16-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE31

Veterans Education; Qualifying for the Montgomery GI Bill-Active Duty Through Service in the Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: An individual may qualify for benefits under the Montgomery GI Bill-Active Duty by serving at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service and, after completion of active duty service, serving at least four continuous years in the Selected Reserve. At present, the Code of Federal Regulations does not contain a period of time which must not be exceeded between the individual's release from active duty and his or her affiliation with the Selected Reserve. In order to ensure that the Selected Reserve enlists servicemembers before their military skills have significantly eroded, this proposal sets a time limit of one year between release from active duty and affiliation with the Selected Reserve.

DATES: Comments must be received on or before December 18, 1989. Comments will be available for public inspection until December 27, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 27, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr. Acting Assistant Director for Education Policy and Program Administration, Voclational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs (VA) is proposing to amend 38 CFR 21.7042(b) and 38 CFR 21.7044(b) in order to state that to qualify for the Montgomery Gi Bill-Active Duty through service on active duty followed by service in the Selected Reserve an individual must affiliate with the Selected Reserve within one year of release from active duty. This restriction ensures that the Selected Reserve will enlist servicemembers before their military skills have been significantly eroded. It will also make the Montgomery GI Bill-Active Duty easier for VA to administer, because VA will not have to track all servicemembers who serve a two-year period of active duty to the completion of their total military obligation.

VA has determined that these proposed regulations to do not contain a major rule as that term is defined in E.O. 12291, entitled Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these proposed regulations, if promulated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 26, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. § 21.7042, paragraph (b)(4) is revised and an authority citation is added, and paragraph (b)(9) and an authority citation are added so the revised and added text reads as follows:

§ 21.7042 Basic eligibility requirements.

* * * * * *

(b) * * *

(4) Except as provided in paragraphs (b)(6) and (b)(9) of this section, after completion of active duty service, the individual must serve at least 4 continuous years service in the Selected Reserve. The individual must affiliate with the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412)

* * * * * *

(9) An individual who has met the requirements of paragraphs (b)(1) through (b)(3) of this section and has made a commitment (as determined by the Secretary concerned) to serve 4 years in the Selected Reserve may pursue a program of education with basic educational assistance eligibility under paragraph (b) of this section while performing the 4-year Selected Reserve service requirement of paragraph (b)(4) of this section.

(Authority: 38 U.S.C. 1412)

* * * * * *

2. In § 21.7044, paragraph (b)(4)(ii) is revised and an authority citation is added to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * * *

(b) * * *

(4) * * *

(ii) Except as provided in paragraph (b)(6) of this section, after completion of active duty service, the individual must serve at least 4 continous years service in the Selected Reserve. The individual must affiliate with the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412)

* * * * * *

[FR Doc. 89-26980 Filed 11-16-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

RIN 2900-AD92

Loan Guaranty; Requirement for Holder To Retain Records for One Year; Eliminate Minimum Property Standards

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to require that lenders participating in the program maintain their VA home loan origination records for at least one year from the date of loan closing. It is also proposed to eliminate references to the HUD Minimum Property Standards (MPS-HUD Handbook 4900.1), as both HUD and VA have discontinued use of this handbook. This amendment is designed to facilitate VA monitoring of

lender performance by assuring that records are available for inspection.

DATES: Comments must be received on or before December 18, 1989. Comments received will be available for public inspection until December 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 27, 1989.

In addition, interested persons may provide comments on the recordkeeping requirements in §§ 36.4215 and 36.4330 to the Office of Management and Budget only at the address provided in the Paperwork Reduction Act section below.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider, Assistant Director for Loan Policy (284), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

Under VA regulations at 38 CFR 36.4215 and 36.4330, the holder of a VA guaranteed loan is required to maintain a record of the payments received on the obligation and of disbursements made, including the amounts and dates of these payments. These records must be maintained until the Secretary ceases to be liable as guarantor of the loan. These regulations provide the Secretary with the right to inspect the records or accounts of a holder pertaining to loans guaranteed by VA.

VA proposes to amend these regulations to require that lenders maintain all loan origination records for at least one year. This will assure that when VA auditors conduct audits and examinations of lender records, the records will be available. These amendments will specify that loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract or addendum, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents. No new records are being required; only records already being created are required to be maintained. The titles of §§ 36.4215 and 36.4330 would be changed from "Accounting Records" to "Maintenance of Records".

Section 36.4360a of title 38, Code of Federal Regulations refers to the (MSP) Minimum Property Standards for One and Two Family Dwellings, HUD (Department of Housing and Urban Development), 4900.1.

It is proposed to eliminate this reference, as both HUD and VA have discontinued use of this handbook. This proposed amendment would simply confirm the fact that VA has discontinued use of the MPS–HUD Handbook 4900.1 in favor of local building codes, the Council of American Building Officials (CABO) Code, or minimum standards for planning, construction and general acceptability prescribed by the Secretary.

Paperwork Reduction Act

Sections 36.4215 and 36.4330 of this regulation contain recordkeeping requirements. As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request for approval of these recordkeeping requirements. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed recordkeeping requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations simply assure that lenders retain the loan origination records which already must be prepared in connection with a VA guaranteed home loan for a minimum period of one year, and eliminate a reference to the now discontinued Minimum Property Standards Handbook, 4900.1. Such a minimum retention period for these records is consistent with good lender practice, and will not impose any significant new burden. The one year record retention requirement is considered minimal and is similar to the one year record retention requirement of the Department of Housing and Urban Development for FHA insured loans, which lenders already follow. The Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) also have record retention requirements. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

Executive Order 12291

The proposed regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119)

List of Subjects In 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), and 1812(g) of title 38 United States Code.

Approved: October 24, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 36, Loan Guaranty, is proposed to be amended as follows:

PART 36—[AMENDED]

§ 36.4214 [Amended]

1. In § 36.4214 remove the numbers "1819" where they appear and add, in their place, the numbers "1812".

2. In § 36.4215 the section heading and paragraph (b) are revised and paragraph (c) is added to read as follows:

§ 36.4215 Maintenance of records.

* * * * *

(b) The lender shall retain copies of all loan origination records on a VA guaranteed loan for at least one year from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 210(c), 1803(c)(1) and 1812(g))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed by the Secretary.

§ 36.4216 [Amended]

3. In § 36.4216, text and authority citation, remove the numbers "1819" where they appear and add, in their place, the numbers "1812".

4. In § 36.4330, the section heading and paragraph (b) are revised and paragraph (c) is added to read as follows:

§ 36.4330 Maintenance of records.

* * * * *

(b) The lender shall retain copies of all loan origination records on a VA guaranteed loan for at least one year from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

§ 36.4331 [Amended]

5. In the authority citation to § 36.4331 remove the numbers "1819" where they appear and add, in their place, the numbers "1812".

6. In § 36.4360a, paragraph (b)(2) is revised and an authority citation is added to read as follows:

§ 36.4360a Appraisal requirements.

* * * * *

(b) * * *

(2) *Horizontal condominiums.* Department of Veterans Affairs policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums. Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations or repairs made to convert the building to the condominium form of ownership unless the local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(Authority: 38 U.S.C. 210(c)(1), 1803(c)(1))

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[FR Doc. 89–27046 Filed 11–17–89, 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3680–7]

Alternative Emission Control Plan for the Union Carbide Corp. Taft Plant; Hahnville, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing disapproval of the Union Carbide Corporation Taft Plant Alternative Emission Reduction Plan request ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). This volatile organic compound (VOC) Bubble request identifies credits from the shutdown of a Glyoxal Reactor Column vent and five storage tank service changes in lieu of controls being placed on two VOC storage tanks. A portion of the emission reduction credits (ERCs) were determined to be invalid. The basis for this disapproval is a determination by the State and company of the "baseline" that is inconsistent with the guidelines of the Emissions Trading Policy Statement of December 4, 1986. The true baseline does not lend itself to affording any Emission Reduction Credits. The principle used to establish the credits in this proposal is invalid; therefore, the credits are invalid.

DATE: Comments must be received on or before December 18, 1989.

ADDRESSES: Written comments on this action should be addressed to Mr. Tom Diggs, Chief (6T–AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested person wanting to examine these documents should make an appointment with the appropriate office at least twenty four hours before visiting day.

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Building, 625 North 4th Street, P.O. Box 44066, Baton Rouge, Louisiana 70804

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plans Section, Air Programs Branch, Air, Pesticides & Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202–2733, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan for the Union Carbide Corporation Taft Plant located at Hahnville, St. Charles Parish. This area is currently designated nonattainment for ozone. The submittal

contained certification that adequate notice and a public hearing were provided for the proposed alternate emission reduction plan. EPA is proposing to disapprove the SIP revision and invites comments from all interested persons. Comments received at the EPA Region 6 address listed above within 30 days of the publication of this notice will be considered.

Union Carbide's Taft Plant proposed using emission reductions from the shutdown fo a Glyoxal Reactor column vent and some associated tankage changes in lieu of controlling the emissions from two fixed roof volatile organic compound (VOC) storage tanks. Total noncompliance emissions from the tanks are 10.75 TPY.

Before being shut down in May of 1980, the Glyoxal Reactor Column vent had emissions after control of 9.9 TPY. Five tanks had changes made in the substances stored which reduced emissions by 3.69 TPY.

Accounting for the Glyoxal shutdown and the tank service changes, total proposed credits of 13.59 TPY were to cover the excess emissions of 10.75 TPY from the two tanks, leaving a 2.84 TPY net air quality benefit. The total trade, as proposed, is summarized below:

Credit from vent shutdown (−9.9 TPY) + credit from tank changes (−3.69 TPY) + noncompliance emissions from two storage tanks (10.75 TPY)=Net air quality benefit (−2.84 TPY)

EMISSIONS (TONS/YEAR)

Sources	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
VOC Storage Tanks	11.28	11.28	0.00	0.15	10.9	+10.75
Tank Changes	3.76	0.07	−3.69	3.76	0.07	−3.69
Glyoxal Vent Shutdown	9.9	0.0	−9.9	9.9	0.0	−9.9
Total	24.94	11.35	−13.59	13.81	10.97	−2.84

The Bubble was reviewed for compliance with the requirements of section 110 of the Clean Air Act, 40 CFR part 51, EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982 [47 FR 15076], and the final ETPS of December 4, 1986 [51 FR 43814]. This bubble is a pending bubble. The final ETPS states that pending bubbles will be processed in accordance with the 1982 policy and must show that applicable standards, increments, and visibility requirements will not be jeopardized. For this reason, a pending bubble is reviewed for compliance with both the 1982 interim policy and the 1986 final policy. EPA has reviewed the State submittal and developed an Evaluation Report. This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. The review is summarized below.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, and the reason for disapproval, is a portion of the reductions are not surplus:

A Baseline level of emissions is the level of pollutant output below which a source must reduce its emission in order to qualify for an "emission reduction". An Emissions Reduction is the physical reduction of emissions by a source. To be eligible for conversion into an Emission Reduction Credit (ERC) this reduction must be below the measurable baseline or currently required level of emissions and must be permanently enforceable. An ERC is the commodity that can be "banked" and later used by a source to satisfy the required emission limits contained in its permit. The ERC is the end product of the conversion of emission reductions.

The difference between the baseline level and the enforceable level of emissions is what can be available for credit (ERCs). It is required that the actual level of emissions in question be less than the baseline level of emissions for credit to be available. The baseline level of emissions is determined in this case to be a Reasonably Available Control Technology (RACT) level. RACT is a floating roof for the type of storage tanks that are credit donating in this case. RACT level emissions are established by calculations using the EPA publication "Compilation of Air Pollutant Emission Factors: (AP–42)," 3rd edition, because the proposal was submitted at a point in time when the 3rd edition was applicable.

This proposed bubble utilizes the following concept, which is invalid, as justification for generating ERCs. First, the baseline level of emissions for the trade is calculated based on the characteristics and parameters of the VOCs being stored in the credit generating source prior to the trade. Second, credit is being derived by a change in the type of VOCs being stored in the same tank. This replacement material is less volatile and consequently has less emissions to the atmosphere. Third, a level of emissions less than the baseline level can be calculated for the replacement, less volatile, compound. Fourthly, the difference between the baseline and this subsequent level of emissions is used as ERCs for an emissions trade.

The reason this method of calculating ERCs is invalid is that the baseline level of emissions is reestablished when the replacement, less volatile, compound is stored. This is not a situation where a baseline is fixed at a certain level at a certain point in time and any variance from this level can be creditable. The baseline level of emissions is determined by RACT, which in this case, specifies a type of equipment used (floating roof tanks) and not the type of material stored. Changes in emissions resulting from the material being stored is a variable that is not regulated and is allowed to change, while equipment specifications are regulated and are the standard by which the baseline is developed. ERCs can only come from improvements in what is regulated, not in other variables that effect total emissions. In this case, ERCs can only come from improvements in the level of emissions resulting from changes in equipment specifications, not changes in the material being stored, because equipment is what is being regulated. The baseline level of emissions is a "type-of-equipment" dependant, not a "point-in-time" dependant, concept. It is EPA's position that the method used to establish the credits from the VOC storage tanks in this proposal is invalid; therefore, these credits are invalid.

To further explain, let's take the converse situation of this proposal, i.e. when a more volatile replacement material is stored. When a company stores a VOC in a tank and then replaces the stored material with a more volatile VOC, the baseline is reestablished at a higher level of emissions in response to the change. If this were not the case, the source would have to consume/obtain ERCs for the change. They do not have to obtain credits because the baseline is reestablished (same as above), but in the opposite direction. Likewise, when the less volatile VOC is a replacement storage material, the reestablished baseline is at a lower level than before. But this level is still the baseline; (Baseline being the level of pollutant output Below which a source must reduce emissions in order to qualify for an "emissions reduction." Because the replacement storage material level of emissions *IS* the baseline, not Below the baseline, there are no credits available for the trade.

The trade was also reviewed to determine if other criteria for an adequate trade were met. First, the emissions reductions would need to be enforceable at the State level if the credits were valid, through permits granted by the Louisiana Air Quality Division to Union Carbide, and would need to be enforceable at the Federal level upon incorporation into the Louisiana SIP. The present permit, #1836T(M–1), if the credits were valid, would need to have improved recordkeeping requirements in order to satisfy EPA's criteria for enforceability.

Second the emission reductions would be permanent because the Glyoxal unit was dismantled in December 1981, and the tanks which had service changes now would have a permanent emissions limit.

Third, calculations quantifying all of the emissions involved in the trade were submitted to EPA in permit #1836T(M–1).

Proposed Action

The Union Carbide Bubble does not meet all of the criteria for an acceptable Bubble as outlined above, therefore EPA is proposing to disapprove this plan.

The submittal may also contain other deficiencies not noted. This report does not discuss these deficiencies because the submittal does not meet certain major provisions (validity of credits, recordkeeping) discussed previously, which in themselves provide enough reason to propose disapproval of the action. To determine the applicable requirements of the emissions trading program the applicant or State agency should consult the Emissions Trading Policy of December 4, 1986 (51 FR 43814), appendix D of the proposed Ozone/Carbon Monoxide Nonattainment Policy of November 24, 1987 (52 FR 45105), and the enforceability checklist included in a September 23, 1987 memorandum from J. Craig Potter, Thomas L. Adams Jr., and Francis S. Blake re: "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation Plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 18, 1989 will be considered in EPA's final rulemaking. All coments will be available for inspection during normal business hours at the Region 6 office listed at the front of this notice.

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities because it effects only one entity.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: November 3, 1989.

Robert E. Layton, Jr.,

P.E. Regional Administrator.

[FR Doc. 89–27070 Filed 11–16–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[Docket No. 121RA–LDR; FRL 3680–5]

National Oil and Hazardous Substance Pollution Contingency Plan; Applicability of RCRA Land Disposal Restrictions to CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice and request for comment; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) today is extending the comment period for the Supplemental Notice and Request for Comment published in the **Federal Register** at 54 FR 41566–41569 (October 10, 1989). That Notice solicited comment on certain issues concerning the application of the Resource Conservation and Recovery Act (RCRA) land disposal restrictions to responsive actions conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as well as, to RCRA actions.

The Agency received a number of requests for an extension of the 30 day comment period for the notice. These requests noted that an extension would be useful for the several individuals and organizations for adequately preparing comments. Since this notice addresses an important set of issues, and since the Agency wishes to obtain comments from as many affected parties as possible, a two week extension to the comment period will be given.

DATES: The comment period on the Supplemental Notice published at 54 FR 41566–41569 will be extended until November 24, 1989.

ADDRESS: Written comments on the Supplemental Notice published at 54 FR 41566–41569 should be submitted, in triplicate, to the Superfund Docket, Docket No. 121RA–LDR, located in Room 2427 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Specific questions about the extension of the comment period for the Supplemental Notice should be directed to David M. Fagan, Office of Solid Waste and Emergency Response (OS–341), U.S. Environmental Protection Agency, Washington, DC 20460. Tel. (202) 382–4497.

Dated: November 8, 1989.

Jonathan Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–26717 Filed 11–16–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–480, RM–6500]

Radio Broadcasting Services, Newton and Sullivan, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Superior Broadcasting, Inc., proposing the substitution of Channel 294B1 for Channel 292A at Sullivan, Illinois, and the modification of its Class A license for Station WSAK(FM) to specify operation on the higher class channel, and the substitution of Channel 278A for Channel 295A at Newton, Illinois. Channel 294B1 can be allotted to Sullivan, Illinois, in compliance with the minimum distance separation requirements of the Commission's Rules. The coordinates for this allotment are 39–37–49 and 88–30–28. Channel 278A can be used at the sites proposed by the Newton applicants for Channel 295A. The coordinates for the applicants for Channel 278A at Newton are 38–59–22 and 88–10–57 (880727MI) and 39–00–05 and 88–11–25 (880728MP).

DATES: Comments must be filed on or before December 29, 1989, and reply comments on or before January 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Aaron Shainis, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 700, Washington, DC 20036 (Counsel for Superior Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–480, adopted October 16, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27016 Filed 11–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–479, RM–7030]

Radio Broadcasting Services; Newberry, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Leon B. Van Dam, proposing the substitution of FM Channel 250C1 for Channel 250C2 at Newberry, Michigan. Petitioner also requests modification of his construction permit for station WUPQ, Channel 250C2, to specify operation of Channel 250C1. The coordinates for Channel 250C1 are 46–18–53 and 85–33–45. Canadian concurrence will be obtained for this allotment.

DATES: Comments must be filed on or before December 29, 1989, and reply comments on or before January 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leon B. Van Dam, P.O. Box 152, Newberry, Michigan 49868.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–479, adopted October 11, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27014 Filed 11–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–471, RM–6697]

Radio Broadcasting Services; Heidelberg, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Pine Belt Broadcasting, Inc., proposing the substitution of FM Channel 257C2 for Channel 257A at Heidelberg, Mississippi, and modification of its license for Station WEEZ, to specify operation on the higher class channel. The coordinates for Channel 257C2 are 31–52–21 and 89–15–41.

DATES: Comments must be filed on or before January 4, 1990, and reply comments on or before January 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christopher D. Imlay, Booth, Freret & Imlay, 1920 N Street NW., Suite 520, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–471, adopted October 10, 1989, and released November 13, 1989. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27003 Filed 11–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–481, RM–6918]

Radio Broadcasting Services; Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Curtis Radio Group, Inc. seeking the substitution of Channel 242C1 for Channel 242C2 at Morehead City, North Carolina, and the modification of its license for Station WRHT(FM) to specify operation on the higher powered channel. Channel 242C1 can be allotted to Morehead City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34–43–18 and West Longitude 76–42–54. In accordance with § 1.430(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 242C1 at Morehead City or require the petitioner to demonstrate the availability of an additional equivalent class channel for such use.

DATES: Comments must be filed on or before December 29, 1989, and reply comments on or before January 16, 1990.

ADDRESSES: Federal Communications Commission, Washingotn, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–481, adopted October 11, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73.

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27018 Filed 11–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–472, RM–6919]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on a petition by FLS Radio Enterprises seeking the allotment of Channel 236C2 to Lincoln City, Oregon, as the community's second local FM service. Channel 236C2 can be allotted to Lincoln City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236C2 at Lincoln City are North Latitude 44–57–06 and West Longitude 124–00–54.

DATES: Comments must be filed on or before January 4, 1990 and reply comments on or before November 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–472, adopted October 10, 1989, and released November 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27002 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-482; RM-6920]

Radio Broadcasting Services; Newport, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jonathan Seagull Broadcasting Company seeking the allotment of Channel 224C3 to Newport, Oregon, as the community's second local FM service. Channel 224C3 can be allotted to Newport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-38-30 and West Longitude 124-03-00.

DATES: Comments must be filed on or before December 29, 1989, and reply comments on or before January 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-482, adopted October 11, 1989, and released November 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27017 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-473, RM-6931]

Radio Broadcasting Services; Chamberlain, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Les Kleven proposing the allotment of Channel 260C1 to Chamberlain, South Dakota, as the community's first local FM service. Channel 260C1 can be alloted to Chamberlain in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43-48-30 and West Longitude 99-19-48.

DATES: Comments must be filed on or before January 4, 1990 and reply comments on or before January 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Les Kleven, Box 587, Sturgis, South Dakota 57785 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-473, adopted October 10, 1989, and released November 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27001 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period on Proposed Reclassification of the Aleutian Canada Goose From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service (Service) is extending the public comment period on the Service's proposal to reclassify the Aleutian Canada goose from endangered to threatened. The Aleutian Canada goose is known to nest on seven Alaska islands and winters along the Oregon coast, northern California coast and the California Central valley. The comment period is being extended for 60 days to grant commenters additional time to prepare and submit comments.

DATES: The comment period, which originally closed on November 28, 1989, now closes on January 29, 1990.

ADDRESSES: Comments and materials concerning the Service's proposal to reclassify the Aleutian Canada goose from endangered to threatened should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 or Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald L. Garrett, Alaska Regional Endangered Species Coordinator at (907) 786-3505 (FTS 786-3505) or Mr. James W. Teeter, (see addresses section/ Oregon) at (503) 231-6158 (FTS 429-6158).

SUPPLEMENTARY INFORMATION:

Background

The Service proposed to reclassify the Aleutian Canada goose from endangered to threatened status on September 29, 1989 (54 FR 40142). The species is threatened with eradication of insular breeding populations by introduced foxes. Recovery efforts over the past 14 years has yielded an increase from 790 birds in 1975 to about 5,800 birds in fall 1988. Annual increases in numbers of Aleutian Canada geese on the California wintering grounds have averaged 16 percent. While fox control in Alaska made former breeding islands once again suitable for nesting geese, Canada goose closure areas in key California and Oregon wintering habitat have been primarily responsible in allowing the Aleutian Canada goose population to dramatically increase in size.

Since publication of the proposed rulemaking, some parties have requested an extension of the comment period to allow further public input. The Service finds that extending the public comment period will benefit the rulemaking process and, hence, issues this notice. Written comments may be submitted until January 29, 1990, to the Service offices in the **ADDRESSES** section.

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Author

The primary author of this notice is Ronald L. Garrett, Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, or comm. (907) 786-3505 (FTS 786-3505).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: November 9, 1989.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 89-27075 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 90764-9261]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications for 1990 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1990 fishing year for Atlantic squid and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to propose for public comment preliminary initial specifications for the coming fishing year on or about November 1. This action provides information and requests comments for NOAA's determination of the initial specifications for the 1990 fishing year.

DATE: Comments must be received on or before December 14, 1989.

ADDRESS: Send comments to Paul H. Jones, NOAA Fisheries, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope, "Comments Annual Specifications".

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 508-281-9273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, March 27, 1986), as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the initial optimum yield (IOY), as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found at § 655.21 and § 655.22. The Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. The preliminary initial specifications for Atlantic Mackerel were published separately (54 FR 31862, August 2, 1989) to allow U.S. businesses sufficient time to formulate plans and arrange contracts for 1990 joint venture operations. These specifications are based on recommendations submitted by the Mid-Atlantic Fishery Management Council (Council), the lead Council for the FMP.

The Director, Northeast Region, NMFS (Regional Director), in consultation with the Council, has determined the total allowable biological catch (ABC), IOY, DAH, DAP, JVP and TALFF for each species. The analyses of the economic factors specified at § 655.21(b)(1)(ii) for squid, Council recommendations, and other relevant data are available for inpsection at the NMFS Regional Office at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons (mt) for the maximum optimum yield (Max OY); ABC: IOY, which is the sum of DAH (DAP+JVP) and TALFF; for *Loligo* and *Illex* squid and butterfish. These initial specifications are the amounts that the Regional Director is proposing for the 1990 fishing year beginning January 1, 1990.

TABLE—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC SQUIDS AND BUTTERFISH FOR THE 1990 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1990

[in metric tons (mt)]

Specifications	Squid	Butterfish	
		Loligo	Illex
Max OY [a]	44,000	30,000	16,000
ABC [b]	37,000	22,500	16,000
IOY	26,010	15,000	10,019
DAH	26,000	15,000	10,000
DAP	26,000	12,000	10,000
JVP	0	3,000	0

TABLE—PRELIMINARY INITIAL ANNUAL SPCIFICATIONS FOR ATLANTIC SQUIDS AND BUTTERFISH FOR THE 1990 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1990—Continued

[in metric tons (mt)]

Specifications	Squid	Butterfish	
		Loligo	Illex
TALFF	10	0	19

[a] Max OY as sated in the FMP.
[b] IOY can rise to this amount.

The Regional Director has determined that the IOY levels proposed for the 1990 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. These levels were set to encourage continued growth in both the harvesting and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Fishery Conservation and Management Act. They were selected after meetings and discussions with the Council, considering information from industry groups and foreign national representatives, review of the performances of U.S. fishermen and processors, projected domestic landings, stock assessments, and joint venture information.

Atlantic Squids

The Max OY specified in the FMP is 44,000 mt for *Loligo* squid and 30,000 mt for *Illex* squid. Based on the most recent scientific information available, the Council has recommended setting the ABC for *Loligo* and *Illex* squid at the same levels set for 1986, 1987, 1988, and 1989. The proposed IOY, presented in the table, represents a modification of ABC based on the analysis of nine economic factors outlined in the FMP and contained in the regulations at § 655.21(b)(2)(ii).

Domestic landings of *Loligo* squid during the first three months of the 1989 winter offshore fishery were three times the level of 1988, indicating reasonable availability of stock. Based on this level of domestic production, as well as the information provided from the processor survey, the Council believes that 1990 will be the highest year for domestic landings, and has recommended setting DAH at 4,000 mt above the 1989 amount. The proposed *Loligo* squid IOY provides for an expanded DAH plus a TALFF of 10 mt, an amount to accommodate *Loligo* squid incidentally caught in the foreign Atlantic mackerel fishery. Based on the Council's 1989 processor survey, the projection that domestic processors have the capacity and intent to utilize the entire amount expected to be harvested by domestic fishermen, the proposed *Loligo* squid JVP is zero.

The proposed *Illex* squid IOY level is based on the Council's statement that U.S. fishermen have demonstrated that they have the capacity and intent to use 15,000 mt. As a result, the Council has recommended that the IOY and DAH be set at 15,000 mt. Based on the processors' reported capacity and intent to utilize approximately 12,542 mt during 1989, a DAP of 12,000 mt is proposed. With a DAP of 12,000 mt, the remaining 3,000 mt, which U.S. processors do not have the capacity and intent to process, is proposed for the JVP level. In his decision to adopt the Council's recommendations for *Illex* squid, the Regional Director has weighed the domestic harvesters' interest in participating in joint ventures against continued foreign involvement and agrees with the JVP level as proposed. The Regional Director concurs with the Council that the specifications, as proposed, would be in the best interest of the developing U.S. *Illex* squid fishery.

As in the previous fishing year, specifications give priority to domestic users. Squid IOY, as recommended by the Council, are proposed at levels that provide squid TALFF at bycatch levels only. The Council has recommneded an *Illex* squid IOY which results in an *Illex* squid TALFF of zero. If a directed fishery for hakes by foreign nations is allowed during 1990, the appropriate bycatch, as specified in the FMP, will be added to the TALFFs.

Butterfish

Based on the processors' reported capacity and intent to utilize approximately 7,230 mt in 1989 and the most recent catch and biological data about the butterfish stock, the Council recommends no changes to the proposed butterfish specifications over the previous year. In agreement with the provisions of the FMP, a butterfish TALFF of 19 mt is proposed to provide for bycatch from the mackerel fishery. The Council recommends that the 5,981 mt difference between IOY and ABC be made available for the DAP component of DAH if U.S. processors' plans are fulfilled or for bycatch TALFF if needed in other fisheries.

The Council's recommendations, and all public comments on the annual specifications, will be considered in the final decision. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** on or about December 15, 1989.

Classification

This action is authorized by 50 CFR part 655 and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: November 13, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-27074 Filed 11-14-89; 12:45 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 221
Friday, November 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 9105-01]

Action Affecting Export Privileges: A.M.Y. Enterprises

Summary

Pursuant to the October 6, 1989, recommended Decision and Order of the Administrative Law Judge ("ALJ"), which Decision and Order ("Recommended Order") is affirmed in part and modified in part, A.M.Y. Enterprises, with an address of 2154 76th Street, Brooklyn, New York 11214, and all successors, and assignees, officers, partners, representatives, agents and employees are hereby denied for a period of one year from the date hereof all privileges of participating, directly or indirectly, in any transaction involving commodities or technical data exported from the United States in whole or in part, to be exported, or that are otherwise subject to the Export Administration Regulations ("Regulations").[1] Beginning on the date of this final agency action, the denial of export privileges set forth above shall be suspended, as authorized by § 788.16(c) of the Regulations, for one year, and shall be terminated thereafter, provided that Respondent has committed no further violations of the Export Administration Act, the Regulations, or the final Order issued in this proceeding.

Background

On March 17, 1989, the Office of Export Enforcement, U.S. Department of Commerce ("Agency"), issued a charging letter against Respondent, A.M.Y. Enterprises, alleging multiple violations of the Export Administration Act of 1979, as amended (50 U.S.C., app. 2401–2420 (Supp. 1989)) ("the Act"), and Regulations. Respondent answered the charging letter and denied the charges. Subsequently, the Agency and Respondent entered into a consent agreement and, on August 21, 1989, the Agency submitted the agreement to the ALJ for his consideration. The ALJ approved the consent agreement on October 6, 1989, finding its terms to be reasonable. The ALJ also found that Respondent had committed one violation of the Act and Regulations, which violation Respondent admitted in the consent agreement.

Discussion

On October 6, 1989, the ALJ issued his Recommended Order in this proceeding approving the consent agreement as negotiated by the parties. Recommended Order at 11. In his Recommended Order, however, the ALJ makes two misstatements which I am hereby modifying in this Order.

Initially, the ALJ states that "[a] central issue in this proceeding is the need for findings [of violation] by this Tribunal in reviewing consent agreement cases." *Id.* at 3 (emphasis added). The ALJ correctly notes the recent confusion concerning the necessity of finding violations in consent proceedings conducted pursuant to § 788.17(a)(2). In summarizing the earlier decisions in *Behar, Hon Kwan Yu,* and *Smit,* however, the ALJ incorrectly concludes that "a finding of violation by Respondent A.M.Y. Enterprises should be made here." *Id.* at 10 (emphasis added). This issue was resolved recently in *In the Matter of Bernardus Johannes Jozef Smit,* 54 FR 39027 (Sept. 22, 1989). *Smit* specifically held that "neither the Act nor the Regulations require that a finding of violation be made in order to impose sanctions under a consent agreement" (54 FR at 39028). To the extent that there is any remaining uncertainty with respect to this issue, I reaffirm that holding here—there is no requirement for a finding of violation to impose a civil penalty in consent proceedings brought pursuant to § 788.17(a)(2). In fact, § 788.17(a)(2) provides that the ALJ will issue only a recommended order in approving a consent agreement submitted pursuant to that section. *Id.* (emphasis added). Thus, it appears that once the ALJ approves a consent agreement filed pursuant to § 788.17(a)(2), he should not be issuing a recommended decision (including findings of fact, conclusions of law, and findings of violation) regarding such consent agreement. Of course, if the ALJ has any objection to the proposed consent agreement, he retains the discretion to reject such agreement under § 788.17(a).

In addition to the above error, the ALJ made an apparently unintended misstatement in his Recommended Order regarding the suspension of Respondent's denial period. Under the terms of the consent agreement, the parties agreed that the appropriate sanction would be suspended one-year denial of all U.S. export privileges. As the ALJ specifically observed: "To settle the admitted violation * * *, the parties agreed that a one-year denial of U.S. export privileges would be imposed on Respondent, and that this one-year denial would be suspended." Recommended Order at 2 (emphasis added). The ALJ found the terms of the Consent Agreement reasonable, approved the Agreement, and stated his intent to implement the "agreed sanction * * *—a suspended one-year denial of export privileges." *Id.* While it is clear that the ALJ intended that Respondent's one-year denial period be suspended for one year beginning on the date of the entry of the final agency action, the ALJ's Recommended Order is unclear in that regard. To the extent that the ALJ's Recommended Order indicates that the denial period is not suspended until one year from the entry of this Final Order, the Recommended Order is modified.

Accordingly, I hereby modify the ALJ's October 6, 1989 recommended Decision and Order to read as follows: [2]

Order

I. The ALJ's Decision to affirm the Consent Agreement, as negotiated by the parties to settle this case, is hereby affirmed, striking that portion of the Decision and Order which states that

[1] Effective October 1, 1988, the Regulations were redesignated as parts 768–799 of title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368–399 (1988).

[2] In order to avoid any confusion regarding what terms of the ALJ's Recommended Order apply, I have set forth herein a complete order in this case. Accordingly, since this order constitutes the final agency order in this proceeding, and since it does not incorporate the ALJ's Recommended Order, the latter is not being published in the **Federal Register**.

the ALJ is required to find violation in a consent proceeding.

II. The ALJ's Order is modified to read as follows:

For a period of one year from the date of this order, Respondent,

A.M.Y. Enterprises
2154 76th Street
Brooklyn, New York 11214

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly to indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Act and the Regulations.

III. Commencing on the date of this order, the denial of export privileges set forth in Paragraph I, above, shall be suspended, in accordance with § 788.16 of the Regulations, for one year, and shall thereafter be terminated, provided that Respondent has committed no further violation of the Act, the Regulations, or this order. During the one-year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III and VI this Order shall also be suspended during such one-year period.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In financing, forwarding, transporting, or other services of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VI. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or any related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

This constitutes the final agency action in this matter.

Date: November 6, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

UNITED STATES DEPARTMENT OF COMMERCE

OFFICE OF ADMINISTRATIVE LAW JUDGE

Suite 6716, Washington, DC 20230

Decision and Order

Appearance for Respondent:
James Sannino, President, A.M.Y. Enterprises, 2154 76th Street, Brooklyn, New York 11214

Appearance for Agency:
G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Avenue, NW., Washington, DC 20230

Preliminary Statement

This proceeding against Respondent A.M.Y. Enterprises began with the issuance March 17, 1989 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations").[1] The charging letter alleged that in August 1988 Respondent had violated § 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.10 of the Regulations in connection with the attempted export of computer equipment from the United States to Venezuela.

Respondent answered the charging letter with a denial of its allegations. At a time in the proceeding when Respondent was in default, the Agency submitted for the record its evidence supporting the charges. Subsequently Respondent cured its procedural default, and the parties submitted a Consent Agreement. In the Consent Agreement, Respondent admitted that it violated § 787.3(b) of the Regulations, as alleged in the charging letter, and the Agency agreed to seek withdrawal, without prejudice, of its charges that Respondent violated also three other sections. To settle the admitted violation of § 787.3(b), the parties agreed that a one-year denial of U.S. export privileges would be imposed on Respondent, and that this one-year denial would be suspended. The Agency petitioned this Tribunal for leave to withdraw without prejudice its three remaining charges.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesignated as 15 CFR parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

Discussion

The Agency's case focused on an attempted export from the United States on August 27, 1988 of computer equipment. The equipment was seized by the Agency several hours before it was to leave by air for Venezuela, because its shipping documents cited an export licenser that in fact covered the shipment of different computer equipment.

In connection with this attempted export, Respondent admitted in the Consent Agreement that from about August 1 to August 27, 1988 it conspired with two others to export the equipment without the required export license, in violation of § 787.3(b) of the Regulations. As noted, the Agency agreed in the Consent Agreement to withdraw its other three charges. These three were: Attempting an unauthorized export, in violation of § 787.3(a); misrepresentations on shipping documents, in violation of § 787.5(a)(1)(ii); and unauthorized use of the export license for the different computer equipment, in violation of § 787.10.

Issue

A central issue in this proceeding is the need for findings by this Tribunal in reviewing consent agreement cases. Three recent decisions by the Under Secretary for Export Administration have addressed this issue, and have arrived at two different outcomes.

The first case was *In the Matter of Robert Behar*, 53 FR 48666 (Dec. 2, 1988). In *Behar*, a consent agreement was submitted in which the respondents "admit[ted] that the facts are as stated in the Charging Letter," and agreed with the Agency upon the imposition of a civil penalty. The Administrative Law Judge presiding in that case approved the consent agreement, and also found, based on the respondents' admission of the facts in the Charging Letter, that they had committed the violations alleged therein. Both the Agency and the respondents challenged that finding when the case was referred by the Administrative Law Judge to the Under Secretary, arguing that the respondents had admitted only that certain facts were true, not that they had committed any violations.

The Under Secretary affirmed the approval of the consent agreement, and further ruled in favor of the Administrative Law Judge on the disputed finding. Here the Under Secretary declared: "Indeed, the Under Secretary's authority for imposing civil penalties in such cases [consent agreement cases] is based on the finding of a violation" (*Behar*, 53 FR 48666, 48667). Moreover, "For Export Administration Act cases in which there will be the imposition of a penalty, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary of a violation to support the imposition of the penalty" (emphasis added) (*id.*).

The Agency filed a motion in *Behar* for the Under Secretary to reconsider his ruling in favor of the finding of violations. Before that motion was decided, the second case to present the issue emerged: *In the Matter of Hon Kwan Yu, individually and doing business as Seed H.K. Ltd.*, 54 FR 11427 (Mar. 20, 1989). In *Yu*, the parties submitted a consent agreement in which the respondents agreed with the Agency on a civil penalty and a denial period, but admitted nothing regarding facts or violations. The Agency, citing its then pending motion for reconsideration in *Behar*, argued again that the final decision should contain no finding of a violation.

Eventually *Yu* became a default proceeding because the respondents, claiming budgetary constraints, declined to participate in additional steps scheduled in the case. The presiding Administrative Law Judge ruled for the Agency in a default decision, imposing the sanctions stipulated in the consent agreement. The Administrative Law Judge included in the decision a finding, based on evidence submitted by the Agency, that the respondents had committed the alleged violations. When the case was referred to the Under Secretary, the Agency again argued that consent agreement cases required no finding of a violation, citing its still pending motion for reconsideration in *Behar*.

The Under Secretary, with some adjustment of the provisions for suspension, affirmed the denial period and civil penalty stipulated in the parties' consent agreement and imposed by the Administrative Law Judge, but focused his decision primarily on the pending *Behar* issue. To identify that issue, the Under Secretary restated the *Behar* ruling that was under challenge by the Agency: "[W]here there is to be a penalty imposed, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary—and hence the ALJ—of a violation of the Act to support the imposition of that penalty" (54 FR 11427).

After an extensive discussion of the pertinent law, the Under Secretary rejected the Agency's challenge to his *Behar* ruling. The Under Secretary's Order in *Yu* consisted of two parts: Affirming, as noted above, a denial period and a civil penalty for the respondents; and stating that "The decision in *In re Behar* * * * is reaffirmed" (54 FR 11427, 11429).

Thus stood the situation when the final of the three consent agreement cases addressing the issue went to the Under Secretary: *In the Matter of Bernardus Johannes Jozef Smit*, 54 FR 39027 (Sept. 22, 1989). In *Smit*, the parties submitted a consent agreement in which the respondent agreed with the Agency on a civil penalty and a denial period, but admitted nothing regarding facts or violations. As in *Behar* and *Yu*, the consent agreement in *Smit* was accompanied by a proposed decision and order implementing it; but the Agency made to the presiding Administrative Law Judge no challenge to the *Behar* and *Yu* rulings that imposition of an administrative sanction in consent cases requires the finding of a violation.

The Administrative Law Judge approved the consent agreement and imposed the sanctions stipulated therein. Further, in accord with the Under Secretary's *Behar* and *Yu* decisions, the Administrative Law Judge included a finding, based on evidence submitted by the Agency, that the respondent had committed the alleged violations. When the case was referred to the Under Secretary, both the Agency and the respondent objected to the inclusion of this finding. The Agency's brief advanced substantially the same arguments as in its motion to reconsider *Behar*.

This time, however, the result was different from that in *Behar*, as reaffirmed in *Yu*. Those two decisions by the Under Secretary had held, as quoted above, that a finding of a violation is required for imposing sanctions in consent agreement cases. In *Smit*, the Under Secretary now declared: "Neither the Act nor the Regulations requires that a finding of violation be made in order to impose sanctions under a consent agreement" (54 FR 39027, 39028).

That quotation was one of two conclusions advanced by the Under Secretary in his *Smit* discussion of any need for a finding of violation in consent agreement cases. In the other conclusion, the Under Secretary adopted the agrument—which the Under

Secretary had rejected in *Behar* and *Yu*—that the finding of violation conflicted with the terms of the consent agreement. Consequently, in *Smit* the Under Secretary affirmed the sanctions stipulated in the consent agreement, but deleted the finding that the respondent had committed the alleged violations.

What is the connection between *Behar* and *Yu*, on the one hand, and *Smit* on the other? They were all decided within ten months time. In its *Smit* brief to the Under Secretary, the agency faced up to this question squarely. *Behar* and *Yu*, stated the Agency "held that, where a penalty is imposed, whether a denial of export privileges, a civil penalty, or both there must be a finding of a violation to support the imposition of that penalty;" and *Behar* and *Yu* the Agency contended, *"were incorrect"* (emphasis in original) (Agency's August 28, 1989 Submission 3).

The Under Secretary declined the Agency's invitation to address this contention. His textual discussion in the *Smit* decision of any need to find a violation was extensive, but it omitted any mention of either *Behar* and *Yu*. In a footnote, *Smit* did cite differences between that case and those two prior ones (54 FR 39027, 39028 n.2). *Behar* the footnote said, had involved the respondent's admission of the facts alleged in the charging letter, a factor absent from *Smit*. *Yu*, the footnote said, was a default, not a consent agreement, case.

That *Smit* footnote began its *Behar* and *Yu* references by stating: "Prior decisions have ruled that a finding of violation would be necessary under certain circumstances in order to impose sanctions" (*id.*). The next footnote in *Smit* stated clearly: "A careful reading of this section [§ 788.17 of the Regulations, which governs consent proceedings] shows that *it is not appropriate to make a finding of violation in consent proceedings* * * *" (emphasis added) (54 FR 39027, 39029 n. 3). The previous footnote, the only reference in *Smit* to *Behar* and *Yu*, ended simply: "To the extent that *Behar* and *Hon Kwan Yu* are inconsistent with the conclusion I reach here, I decline to follow these decisions" (54 F.R. 39027, 39028 n.2).

The issue for the moment, in view of *Behar*, *Yu*, and *Smit*, is to determine the proper disposition of the case at hand. Respondent A.M.Y. Enterprises, in its consent agreement, admitted to commission of a violation; and the Agency had previously submitted evidence of the violation. Per *Behar* and *Yu*, a finding of violation is required to support imposition of the sanction stipulated by the consent agreement. Per *Smit*, such a finding is "not appropriate," although the Under Secretary declined the Agency's invitation to overrule *Behar* and *Yu*. But even by *Smit's* reasoning, such a finding for Respondent A.M.Y. Enterprises would seem, although not mandatory, still unobjectionable, since it would not conflict with the terms of Respondent A.M.Y. Enterprises' consent agreement.

Therefore a plausible reading of *Behar Yu*, and *Smit* in combination suggests that a finding of violation by Respondent A.M.Y. Enterprises should be made here. That interpretation is fortified by a consent agreement case that went to the Under Secretary after *Smit*, and that was decided by him before *Smit*. In *In the Matter of Ruben Sanchez, individually and doing business as Oficina Tecnica Ruben Sanchez CA*, 54 FR 39026 (Sept. 22, 1989), the parties submitted a consent agreement in which the respondents agreed with the Agency on a denial period and admitted one violation. The record contained evidence of that violation.

The decision of the Administrative Law Judge approved the consent agreement, imposed the denial period, and introduced a finding of violation by the respondent; and this decision was routinely affirmed by the Under Secretary without analysis. Consequently, *Sanchez* provides support for including a finding of violation in the instant decision.

Conclusion

The evidence introduced by the Agency is sufficient to show that Respondent A.M.Y. Enterprises conspired with two others from about August 1 to August 27, 1988 to export computer equipment from the United States to Venezuela without the required export license. Accordingly, Respondent is found to have violated § 787.3(b) of the Regulations, as alleged in the charging letter.

The Consent Agreement negotiated by the parties to settle this case is reasonable, and its terms are approved by the undersigned. Accordingly, the Agency's petition for leave to withdraw without prejudice its charges that Respondent violated §§ 787.3(a), 787.5(a)(1)(ii), and 787.10 of the Regulations is granted, and the agreed sanction for Respondent's admitted violation of Section 787.3(b)—a suspended one year denial of export privileges—is implemented by the Order set forth below.

Order

I. For a period of one year from the date of the final Agency action, Respondent,

A.M.Y. Enterprises,
2154 76th Street,
Brooklyn, New York 11214.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing one year from the date of the final Agency action, the denial of export privileges set forth in Paragraph I above shall be suspended, in accordance with § 788.16 of the Regulations, for one year, and shall be terminated at the end of such year, provided that Respondent has committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the one-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended during such one-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(V) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or any related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: October 6, 1989.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89-27049 Filed 11-16-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Application for Permit; Reef Ltd. (P455)

SUMMARY: Notice is hereby given that an Applicant has applied in due form for a Public Display Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Reef Ltd., South Coast, P.O.B. 104, Eilat, Israel.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphin (*Tursiops truncatus*), six (6); California sea lion (*Zalophus californianus*), six (6).

4. The Applicant requests permission to capture/maintain six bottlenose dolphins off the west coast of Florida. The California sea lions will be acquired from beached/stranded stocks and not from the wild. The Applicant proposes to maintain the animals in the open sea environment in the Gulf of Eilat and to provide public exhibition of and education about marine mammals for the Eilat region of Israel.

5. Location and Duration of Activity: Collection of dolphins requested from the west coast of Florida and the duration of the requested activity is for a period of two (2) years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 9, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-27094 Filed 11-16-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to Dr. Thomas N. James (P452)

On August 24, 1989, notice was published in the **Federal Register** (54 FR 35228) that an application had been filed by Dr. Thomas N. James, University of Texas Medical Branch, Galveston, Texas 77550–2774, for a permit to import one and one-half sperm whale hearts (*Physeter catodon*) for scientific purposes.

Notice is hereby given that on November 9, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit, (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act. This Permit is issued in accordance with and is subject

to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, Permit Division, National Marine Fisheries, 1335 East West Highway., Suite 7324, Silver Spring, Maryland; and
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard., St. Petersburg, Florida 33702.

Dated: November 9, 1989.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89–27035 Filed 11–16–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to Dr. Joseph Robert Mobley (P453)

On August 24, 1989 notice was published in the **Federal Register** (54 FR 35221) that an application had been filed by Dr. Joseph Robert Mobley, Assistant Professor, Department of Social Sciences, University of Hawaii at West Oahu, 96–043 Ala Ike, Pearl City, Hawaii 96782, for a permit to take by harassment humpback whales (*Megaptera novaeangliae*) for scientific purposes.

Notice is hereby given that on November 9, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396.

Dated: November 9, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–27036 Filed 11–16–89; 8:45 am]

BILLING CODE 3510-13-M

Marine Mammals; Application for Modification by Dr. Bernd Wursig and Mr. Salvatore Cerchio (P36B)

Notice is hereby given that Dr. Bernd Wursig, Professor of Marine Mammalogy, Texas A&M University, and Mr. Salvatore Cerchio, Moss Landing Marine Laboratory, requested a modification to Permit No. 663 issued on February 21, 1989, and published February 27, 1989 (54 FR 8231), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 663 authorized harassment of up to 100 humpback whales (*Megaptera novaeangliae*) during photographic activities. Photographs were taken to identify recorded singers. The Modification would allow the permittees to conduct the same study over a 4-year period ending on December 31, 1993, with an increase in the number of takes by harassment from 100 to up to 250 animals per year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7514.

Dated: November 9, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–27037 Filed 11–16–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

November 13, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heizen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulleting boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent consultation between the Governments of the United States and the United Mexican States, agreement was reached to amend the current bilateral textile agreement to convert the specific limits for Categories 342/642 and 666 to designated consultation levels. The non-Special Regime sublimits for these categories and the overall limit for Categories 342/642 are being adjusted for 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correction:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20220.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on November 20, 1989, the directive of december 22, 1988 is amended further to adjust the limits for the following categories:

Category	Amended 12-mo. limit [1]
342/642	350,000 dozen.
666	3,461,817 kilograms.
Non-special regime category sublimits:	
342/642	75,000 dozen.
666	2,200,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–27047 Filed 11–16–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Establishment; Notice Correction

In FR Doc. 89–25872 appearing at page 46540 in the issue for Friday, November 3, 1989, make the following corrections:

1. On page 46541, first column, under CLASS 1730, Chock Wheel, Painted, NSN –0001D, the ending bracket should appear after the size rather than after U-shaped.

2. On page 46542, third column, under CLASS 5510, Lath, Wood, the sizes for the NSNs should read (⅜ x 1½" x 36") and (38 x 1½ x 48") respectively.

3. On page 46545, first column, under CLASS 7210, the first Bedspring heading should read Bedspread.

4. On page 46546, first column, under CLASS 7210, Sheet, Bed, the three-digit number reading "-229 should read "-299".

5. On page 46546, first column, under CLASS 7220, Mat, Floor, should read (SH) rather than (IB).

6. On page 46550, second column, under CLASS 7930, Detergent, General Purpose, in the fourth line, the two-digit number reading "-00" should read "-01".

7. On page 46550, third column, under CLASS 8010, Enamel, should read (IB) rather than (B).

8. On page 46553, third column, under CLASS 8410, Slacks, Woman's, NSN 8410–00–591–1201 should not appear twice.

9. On page 46556/7, third and first columns respectively, the following M.R. items should have an (IB) after name; 020, 750, 834, 835, 836, 837, 838, 839, 840, 845 and 929.

10. On page 46558, first column, under Commissary Shelf Stocking and Custodial Service, in the twenty-seventh line, "Monumouth" should read "Monmouth".

11. On page 46558, first column, under Commissary Warehousing Service, the third line should read Mountain Home Air Force Base, Idaho.

12. On page 46558, second column, after the second line, the heading "Completion of Ford DD 1574 and DD 1574–1" should be inserted.

13. On page 46559, second column, in the fourth line "(SH)" should appear after Vienna, Ohio.

14. On page 46559, second column, in the sixteenth line "except" should read "except".

15. On page 46559, third column, in the thirteenth line "Huntington" should read "Huntingdon".

16. On page 46559, third column, in the thirty-fifth line "Worchester" should read "Worcester".

17. On page 46559, third column, in the fifty-fifth line "Fourth" should read "Fort".

18. On page 46560, first column, in the twenty-seventy line "5804 NE Hassalo Street and" should appear before "5840 NE Hassalo Street".

19. On page 46562, first column, in the thirty-second line "Charleston" should appear before "West Virginia".

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–27078 Filed 11–16–89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 8, 22 and 29, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 37356, 39033 and 40160) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1990:

Commissary Warehousing, Homestead Air Force Base, Florida:

BEST COPY AVAILABLE

Janitorial/Custodial, U.S. Post Office-Courthouse, Vicksburg, Mississippi;
Janitorial/Custodial, U.S. Army Reserve Center, 2100 Quaker Point Road, Quakertown, Pennsylvania;
Operation of Postal Service Center, Dover Air Force Base, Delaware;
Planting and Transplanting Horticultural Materials, USFS, Bend Pine Nursery Market, 63095 Deschutes Market Road, Bend, Oregon.

Beverly L. Milkman,
Executive Director.
[FR Doc. 89-27079 Filed 11-16-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1990; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1990 a service to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: December 18, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Janitorial/Custodial, U.S. Post Office and Courthouse, 5th and State Line, Texarkana, Arkansas.

Beverly L. Milkman,
Executive Director.
[FR Doc. 89-27080 Filed 11-16-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 9, 1989.

The USAF Scientific Advisory Board Engineering & Services Advisory Group will meet on 11-12 December 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC.

The purpose of this meeting is to receive briefings on and discuss the impact of emerging technological megatrends (Project "Future Vision") on the ability of Engineering and Services to carry out its mission in the future. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 89-27057 Filed 11-16-89; 8:45 am]
BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 9, 1989.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Electronic Security Command (ESC) will meet on December 5-6, 1989 from 8:00 a.m. to 5:00 p.m. at San Antonio, TX.

The purpose of this meeting will be to address the ESC role in electronic combat support, co-channel interference, tactical communications architecture, and refinement of the ESC ROADMAP. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 89-27058 Filed 11-16-89; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Privacy Act of 1974, Amendment of System Notices and New Routine Uses

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Federal agencies are required by the Privacy Act of 1974, as amended, to publish in the **Federal Register** a notice of the establishment of a new routine use of agency systems of records. The U.S. Department of Energy (DOE) proposes to establish two new routine uses for DOE-5, "Personnel Records of Former Contractor Employees;" DOE-33, "Personnel Medical Records;" DOE-35, "Personnel Radiation Exposure Records;" DOE-43, "Personnel Security Clearance Files;" DOE-71, "The Radiation Accident Registry;" DOE-72, "The Department of Energy Radiation Study Registry;" and DOE-73, "The US-DTPA Registry." The first new routine use would permit the disclosure of records maintained in these systems to independent researchers for purposes of conducting epidemiological studies of current and former workers at DOE facilities. Independent researchers who have had their proposals reviewed by the National Academy of Sciences (NAS), and have been certified by NAS as appropriate to receive this information, may be granted access to records maintained in these systems. Currently, access to records is permitted only for health hazards evaluations and epidemiological studies of workers conducted by DOE contractors and other Federal and state agencies. This notice will permit disclosure to independent researchers or records maintained in these systems that are necessary for epidemiological studies of workers at DOE facilities.

The second routine use proposed by the Department for these systems or records will permit the disclosure of records maintained in these systems to members of an advisory committee who will review and evaluate the Department's epidemiological program.

The Department also proposes to delete death certificates from the listing of categories of records maintained in DOE-72, "The Department of Energy Radiation Study Registry." The Privacy Act only applies to records that pertain to living individuals. The death certificates, therefore, are not subject to the Privacy Act and should not be included as part of the system of records. Moreover, since the death certificates were obtained pursuant to confidentiality agreements with state agencies, the documents are not agency records because they are not under the control of the DOE.

DATES: Comments must be received by December 18, 1989. Written comments should be sent to: John H. Carter, MA-232.1, Chief of Freedom of Information and Privacy Act, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-5955. If no comments to the contrary are received with respect to a particular proposed system, it is the intent of the DOE to operate any such system as proposed at the expiration of the advance notice period.

FOR FURTHER INFORMATION CONTACT:

John J. Carter, MA-232.1, Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5955.
Abel Lopez, Office of General Counsel, GC-43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8618.

SUPPLEMENTARY INFORMATION: Under the routine uses currently established for DOE-5, "Personnel Records of Former Contractor Employees;" DOE-33, "Personnel Medical Records;" DOE-35, "Personnel Radiation Exposure Records;" DOE-43, "Personnel Security Clearance Files;" DOE-71, "The Radiation Accident Registry;" DOE-72, "The Department of Energy Radiation Study Registry," and DOE-73, "The US-DTPA Registry," DOE cannot provide independent researchers or members of any advisory committee access to records maintained in these systems. DOE, therefore, is establishing routine used to provide independent researchers access to records maintained in these systems for purposes of studying whether there are any health effects from occupational exposure to chemical, radiation, and physical hazards to current and former workers at DOE facilities and to members of any advisory committee appointed to review and evaluate the conduct of the Department's epidemiological program.

The Privacy Act provides that a record may be disclosed, without the prior written consent of the individual to whom the record pertains, pursuant to a routine use. A routine use, with respect to disclosure of a record, is a use which is compatible with the purpose for which the record was collected. It has been determined that the proposed routine uses are compatible because the records are maintained for purposes of either assessing workers' health and safety or conducting health and mortality studies. Since the proposed routine uses will provide access to the information to conduct epidemiological studies of current and former workers at DOE facilities and to evaluate the Department's epidemiological program, the information will be used in accordance with the purposes for which the information was collected and maintained.

The text of the system notice is set forth below.

Issued in Washington, DC on November 6, 1989.

Charles R. Tierney,
Director of Administration.

DOE-5

SYSTEM NAME:
Personnel Records of Former Contractor Employees.

SECURITY CLASSIFICATION:
Unclassified.

SYSTEM LOCATION:
The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:
Name, employment history, earnings, medical history, and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Routine uses of records include employment history verification, radiation exposure records for medical and litigation purposes, and issuance of clearances.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiological study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act. Additional routines uses listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records.

RETRIEVABILITY:
By name.

SAFEGUARDS:
Records are maintained in locked or guarded buildings.

RETENTION AND DISPOSAL:
Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:
Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA-52, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.
Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:
a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 11, 12, and 14 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).
b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURE:
Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:
Same as Notification procedures above.

RECORD SOURCE CATEGORIES:
The subject individual's employer.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-33

SYSTEM NAME:

Personnel Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Bendix Corporation, P.O. Box 1159, Kansas City, MO 64141.
U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, Pittsburgh, PA 15122–0079.
U.S. Department of Energy, Dayton Area Office, Box 66, Miamisburg, OH 45342.
U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.
U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.
U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 11, Tupman, CA 93276.
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403–2068.
U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road, East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE employees and DOE contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THIS SYSTEM:

Medical histories on employees resulting from medical examination and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and pyschological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patients at Kadlec Hospital. Records kept on the results of work place and medical monitoring of individuals for exposure to chemical and physical agents (not covered in DOE–35) and related work history data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference to Title II of the Department of Energy Organization Act; 5 U.S.C. 7901; Executive Order 12009; OMB Circular A–72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicians, U.S. Department of Labor, various state departments of labor and industry groups, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

DOE may disclose a record from this system of records to officials of the National Institute for Occupational Safety and Health for the purpose of conducting a health hazard evaluation of workers.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act. Additional routine uses listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH–30, Washington, DC 20585.

Field Offices: The managers and directors of field locations identified as items 2 through 21 Appendix A of 47 FR 14284, dated April 2, 1982, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name or where requester believes such record may be located, social security number, employer(s), and time period.

RECORDS ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, Office of Personnel Management retirement life insurance and health benefits records system, and the Office of Personnel Management personnel management records systems.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations: U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 30030, Amarillo, TX 79129–0030.
U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973.
U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45442.
U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Streeet, New York, NY 10014.
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, CF–690, 785 DOE Place, Idaho Falls, ID 83402.
U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.
U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.
U.S. Department of Energy, Naval Reactors Representative Office, General Delivery, Naval Base Branch, Post Office, Charleston Naval Shipyard, Charleston, SC 29408.
U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 21, Groton, CT 06340.
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Vallejo, CA 94592.
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, P.O. Box 973, Newport News, VA 23607.
U.S. Department of Energy, Naval Reactors Representative Office, Norfork Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705–0848.
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, P.O. Box 128, Pearl Harbor, HI 96860.
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, P.O. Box 2008, Portsmouth, NH 03801.
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard, P.O. Box 1A, Bremerton, WA 98314.
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439.
U.S. Department of Energy, Pinellas Area Office, P.O. Box 2900, Largo, FL 34294..
U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80402–0982.
U.S. Department of Energy, Sandia National Laboratories, P.O. Box 5800, Albuquerque, NM 87115.
U.S. Department of Energy, Shippingport Nuclear Power Station, General Electric Co., P.O. Box 335, Shippingport, PA 15077.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Department of Energy (DOE) employees and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Department of Energy (DOE) and contractor personnel and other individuals' radiation exposure records, and other records, in connection with registeries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Navy uses these records to monitor radiation exposure of Naval and other personnel.

Nuclear Regulatory Commission uses these records to monitor radiation exposure of DOE contractor personnel.

U.S. Department of Energy and its contractors and consultants, other contractors, and organizations, including various states' departments of labor and industry groups, use these records to monitor radiation exposure.

Department of Defense uses these records for the purpose of identifying DOD and DOD-contractor personnel exposed to inoizing radiation during nuclear testing and for conducting epidemiological studies of radiation effects on individuals so identified.

National Academy of Sciences and Center for Disease Control (and appropriate management personnel of the U.S. Department of Health and Human Services) use these records for conducting epidemiologic studies of the effects of radiation on individuals exposed to ionizing radiation.

The Department of Energy may disclose a record from this system of records to officials of the National Institute for Occupational Safety and Health for the purpose of conducting a health hazard evaluation of workers.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the date and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tape, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings, with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are rendered illegible and destroyed by shredding, maceration or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH–30, Washington, DC 20585.

Field Offices: The managers and directors of field locations 3, 4, and 6

through 18 in Appendix A, of 47 FR 14284, dated April 2, 1982, and the additional locations listed above under System Location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORDS ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-43

SYSTEM NAME:

Personnel Security Clearance Files.

SECURITY CLASSIFICATION:

Classified and unclassified materials.

SYSTEM LOCATION:

The locations listed as items 1, 3, 5, 6, 8, 11, 12, 14 through 18 and 21, in Appendix A of 47 FR 14284, dated April 2, 1982.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DOE and DOE contractors; consultants, other individuals requiring access to classified information and facilities; access permittees who are authorized access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations concerning individuals processed for access authorization (clearances).

PERSONNEL SECURITY FOLDERS:

Name, grade, organization, date and place of birth, and social security number. Contains requests for security clearance, OPM Standard Forms 85, 86, 87, and 171, and OS Forms DPS 24 and 24A; results of national agency check and inquiries and a record of authorized individuals who have had access to the folder. May also contain action checklist, termination checkout sheet, OPM Standard Forms 50, 52, or 73 as well as notification to Office of Personnel Management of agency action on case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Executive Order 10450 and 9830; Federal Personnel Manual, chapters 731 and 736.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from this system may be disclosed as a rountine use to competent medical authority to determine whether an individual has an illness or mental condition which causes, or may cause, a signficant defect in the judgment or reliability of this individual.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

The additional routine uses listed in Appendix B of 47 FR 14284; dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, disc, magnetic tape, computer printouts and microfishe.

RETRIEVABILITY:

By name and numeric code.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in locked buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 5, 6, 8, 11, 12, 14 through 18 and 21 and Appendix A of 47 FR 14284, dated April 2, 1982, listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 5, 6, 8, 11, 12, 14 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, date of birth, social security number, clearance processing location, and time period.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Personnel Security Questionnaire and fingerprint card executed by the subject individual; background investigation reports by Federal Bureau of Investigation, Office of Personnel Management, and other Government agencies conducting background investigations; summaries and transcripts of interviews with the individual; interrogatopry letters to the

individual; local police department reports; and security infraction reports received from the individual's supervisor.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsection 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5). The DOE exemption regulation appears at 10 CFR part 1008.12(b), 45 FR 61576, September 16, 1980.

DOE-71

SYSTEM NAME:

The Radiation Accident Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute doses of ionizing radiation as defined by exposure dose criteria agreed to by the DOE and the Nuclear Regulatory Commission (NRC) by an interagency agreement. The dose criteria established by this agreement include one or more of the following: greater than or equal to 25 REM (Roentgen Equivalent in Man) to the whole body, active blood-forming organs or gonads; greater than or equal to 600 REM to skin of the whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to ⅛ NCRP maximum permissible organ burden internally; all those medical misadministrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

To those individuals known to have been involved in an event in which one or more other persons received a dose equal to or in excess of the DOE/NRC criteria but whose personal dose was less than these criteria. The histories of these individuals contribute control population data.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, social security numbers, date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, EKGs, and radiation exposure report); medical records of illnesses, examinations, including routine followup examinations, and investigations that have occurred since the radiation exposure; photographs of facsimilies of radiation-induced injuries; search and contact information for registrants not identified and/or located; consent to release information forms completed by registrants; death certificates; anecdotal information; correspondence relating to the accident and/or the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USE AND THE PURPOSE OF SUCH USES:

To provide a current record of radiation accidents for use by the DOE, and its contractors and consultants; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act. Additional uses 4, 8, 9, and 10 listed in Appendix B, of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disc, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Acess is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Name, social security number, and time period.

RECORDS ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-72

SYSTEM NAME:

The Department of Energy Radiation Study Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those present and former employees of contractors of the DOE and its predecessor organizations including the Manhattan District, USAEC, and ERDA, and present and former civilian employees in the DOE Naval Reactor Program who received a whole body exposure of ionizing radiation equal to or in excess of 5 REM in any 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rosters of names of individuals meeting the above criteria for inclusion in the Registry submitted through the DOE field operation officers from DOE owned and operated facilities and sites. In addition to names of such individuals, these rosters include social security number of other identifying information, sex, race, date of birth, date and/or place of death, first date of hire, last date of termination, continuity of hire, year in which they received first dose greater than or equal to 5 REM, actual radiation dose in excess of 5 REM, and total career radiation exposure dose.

Original or copied lifetime medical records from plant and private physicians and hospitals including routine physical examinations, reports of diagnostic and laboratory tests, radiographs, EKG's, etc., or abstracted portions of such records as are required for the purposes of this study.

Search and contact information for registrants who are no longer employed at qualified sites or who are deceased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a current record of registrants for use by DOE, its contractors, and consultants; to identify specific populations for use in epidemiological and clinical studies; to conduct medical surveillance during the lifetime of the registrants.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act. Additional uses 4, 8, 9 and 10 listed in Appendix B, of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records and Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-73

SYSTEM NAME:

The US–DTPA Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those individuals who, because of real or suspected internal contamination with transuranic elements, have received diethylenetriaminepentaacetic acid (DTPA), in the calcium or zinc form during the course of chelation therapy. Administration of the agent DTPA is limited to physicians who are co-investigators with the DOE contractor staff on the Investigative New Drug License of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records compiled by the physician administering DTPA in the event of an exposure that was known to have or was suspected of having caused transuranic contamination internally requiring chelation therapy with DTPA. These records include a description of the exposure, the results of serial bioassays and investigations conducted to evaluate the level of internal contamination and the efficacy of subsequent chelation by DTPA. The form of DTPA and the route and frequency of administration are recorded together with any untoward effects of the therapy.

Name, social security numbers or other identifiers and vital status of treated persons. The last known address and the name of the private physicians of individuals who have relocated or who are no longer within the practice of the administering physician(s) are included in the DTPA Registry to facilitate the search and contact of these individuals; medical records of illnesses, examinations, including routine followup examinations, investigations, etc., that have occurred since the initial administration of DTPA; and death certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a current record of individuals treated with DTPA for use by the DOE and its contractors and consultants; identify by epidemiological methods any long-term untoward effects associated with DTPA therapy; to provide information to FDA in accord with the IND license and issuances.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of an advisory committee for purposes of conducting a review of the Department of Energy epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act. Additional uses 4, 8, 9, and 10 as listed in Appendix B, of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORDS ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–27081 Filed 11–16–89; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the retransfer of 20,020 grams of uranium enriched to 10.20% in the isotope uranium-235. The material will be transferred from Karlsruhe, Federal Republic of Germany to Tokai, Japan, for use at the Nuclear Safety Research Reactor. Retransfer document RTD/JA(EU)–49 has been assigned to this retransfer.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 13, 1989.

John Brodman,

(Acting) Deputy Assistant Secretary for International Affairs.

[FR Doc. 89–27084 Filed 11–16–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; European Atomic Energy Community and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan

Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU-48, for the transfer from France to Japan of fuel elements containing 96 kilograms of uranium, enriched to 19.95 percent in the istope uranium-235 for use in the JRR-3 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 13, 1989.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc 89-27085 Filed 11-16-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-646-000 and CP89-654-000; CP89-661-000]

Champlain Pipeline Co.; Algonquin Gas Transmission Co.; Champlain Pipeline Project; Availability of DEIS and Intent to Postpone Further Processing of Applications

November 14, 1989.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and related nonjurisdictional facilities.

Champlain Facilities

The FERC has recently been informed by Champlain Pipeline Company (Champlain) that its project as currently proposed will be modified/restructured due to changed circumstances. Consequently, the Commission is holding in abeyance all further processing of Champlain's applications in the above-referenced dockets until such time as Champlain files its modified proposal.

However, Champlain has indicated that, while it intends to restructure the project in terms of the sizing of the proposed facilities and the customers it would serve, the proposed mainline pipeline route would be substantially the same. Comments are therefore welcome regarding the DEIS analysis of issues pertinent to the location of the proposed facilities, construction procedures and recommended mitigation measures.

Upon receipt of a revised/updated Champlain proposal, the Commission staff will issue an appropriate environmental document for public review. Advance notice will be given of the Commission's intent and procedures for the environmental review at that time. The Commission staff will notify appropriate state agencies when a revised application is filed and will meet with them to discuss schedulding matters.

Algonquin Facilities

As indicated in the Champlain Pipeline Project DEIS, the facilities proposed by Algonquin Gas Transmission Company (Algonquin) in Docket No. CP89-661-000, would also be needed to render transportation service proposed in the Iroquois/Tennessee and ANR Pipeline Projects. For that reason, the environmental review of Algonquin's facilities, as analyzed in the Champlain Pipeline Project DEIS, must still be completed as noted below.

A DEIS for the Iroquois/Tennessee Pipeline Project is being issued concurrently with the Champlain Pipeline Project DEIS. Algonquin has indicated that the facilities needed for the Iroquois/Tennessee service include all those identified in the Champlain Pipeline Project DEIS except for the Andover, Cromwell and Medfield Loops. Therefore, comments on the staff's analysis of the Algonquin facilities should be filed in response to this notice as indicated below. The final analysis of the Algonquin facilities and the staff's responses to comments regarding those facilities will appear in the final EIS (FEIS) for the Iroquois/Tennessee Pipeline Project.

Concurrent with this notice, a separate notice for the Iroquois/Tennessee Pipeline Project is being issued. All parties affected by both projects, including Federal, state and local entities, will be sent both notices. Anyone not receiving one of the notices can request a copy of the notice by contacting the FERC Project Manager identified below. The Iroquois/Tennessee notice establishes a schedule for public meetings which will be held in January 1990, to receive comments on the DEIS for that project.

Comment Procedures

Written comments on the Algonquin facilities, which are part of the Iroquois/Tennessee and ANR Pipeline Projects, must be filed on or before January 19, 1990, reference Docket No. CP89-661-000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the FERC Project Manager identified below.

After comments on the Algonquin facilities are reviewed, any significant new issues are investigated, and modifications are made, the final analysis of those facilities will be incorporated into the Iroquois/Tennessee Pipeline Project FEIS. The FEIS will contain the staff's responses to comments received on the DEIS. All comments on specific environmental issues should contain supporting documentation and rationale.

Written comments on the Champlain facilities are also welcome because the staff is still very interested in having public review of the Champlain Pipeline Project DEIS. Such comments should reference Docket Nos. CP89-646-000 and CP89-654-000. However, the comment period is extended indefinitely and will not be closed until issuance of further advance notice. A copy of these comments should also be sent to the FERC Project Manager.

Comments addressing the Champlain mainline facilities will be kept on file and considered in light of any amended filings. Such comments will be considered by the staff and will be addressed in any subsequent environmental document(s) issued for any amended project.

DEIS Distribution

The DEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, Room 2200, 825 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties in this proceeding. Any person may file a motion to intervene on the basis of the Commission staff's DEIS [18 CFR 380.10(a) and 385.214].

A limited number of copies of the DEIS are available from Mr. Lonnie Lister, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, or call (202) 357-8891 or FTS 357-8891.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26884C Filed 11-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-144-000]

ANR Pipeline Co.; Request Under Blanket Authorization

November 6, 1989.

Take notice that on October 27, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-144-000, a request pursuant to §§ 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certification Docket No. CP88-532-000, 5,000 dth for Stone Container Corp., all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that service commenced September 21, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-130-000 and estimates the volumes transported to be 5,000 dth per day on peak day and average day, and 1,825,000 dth on an annual basis.

ANR also indicates that no new facilities are to be constructed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27022 Filed 11-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-195-005]

CNG Transmission Corp., Texas Eastern Transmission Corp.; Amendment

November 13, 1989.

Take notice that on October 31, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV 26302-2450 and Texas Eastern Transmission Corporation (Texas Eastern) P.O. Box 2521, Houston TX 77252-2521, collectively referred to as "Applicants," submitted a joint amendment to their Niagara Cogeneration Project Application (Application) which was filed on January 15, 1988 and amended November 10, 1988 and on January 27, 1989 for certificates of public convenience and necessity and related authorizations pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f), and the Rules and Regulations of the Commission issued thereunder, all as more fully set forth in the request on file with the Commisison and open to public inspection.

Applicants state the sole purpose of this amendment is to implement the PennEast Restructuring Agreement dated August 18, 1989 (Agreement) between CNG and Texas Eastern to dissolve the PennEast Gas Service Company (PennEast), a general partnership between CNG and an affiliate of Texas Eastern, and to proceed with the instant PennEast/CNG/Texas Eastern proposal as a divided CNG-Texas Eastern project. Applicants also state that there are no changes in the services or facilities proposed in this docket as a result of the restructuring but only changes in ownership of those facilities and the designations of parties providing service. Applicants provided new CNG rates for proposed service under the restructuring, which are similar to those proposed by PennEast. Similarly, Applicants further state, there are no changes in the services, rates, or facilities proposed in the related applications of Tennessee Gas Pipeline Company in Docket No. CP88-171-000 and National Fuel Gas Supply Corporation, *et al.*, in Docket No. CP88-194-001 as a result of the restructuring except as to separate ownership and services by CNG and Texas Eastern. Applicants submit that the only effect of the restructuring on the proposals in those dockets is the transfer of the ownership interests of PennEast to CNG and Texas Eastern in the facilities proposed therein. The Applicants respectfully request that the Commission authorize CNG and Texas Eastern to own the undivided interests previously owned by PennEast in the facilities proposed in those dockets in accordance with the Agreement and to authorize the unbundled rates for CNG and Texas Eastern as described and proposed in the joint amendment.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 20, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27021 Filed 11-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-203-000]

Northwest Pipeline Corp.; Application

November 9, 1989.

Take notice that on October 31, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP90-203-000, an applicaiton pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval for partial or total abandonment of its Rate Schedule ODL-1 and DS-1 natural gas sales service obligation to certain customer companies, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it offered each of its firm sales customers another opportunity to make an unlimited conversion of existing firm sales contract demand to firm transportation contract demand to be effective October 1, 1989. Northwest explains that the conversions were implemented effective October 1, 1989, under new Rate Schedule TF-1 service agreements for amendments to existing service agreements.

Northwest requests permission and approval to abandon the addition 67,167.5 dt's per day of firm ODL–1 and DS–1 sales certificate obligaiton which relects its customers' October 1, 1989 conversions to firm transportation service. Northwest states that the remaining authorized contract demand level for ODL–1 and DS–1 service for the affected nine customer will be 93,240 Dt's per day. Further, Northwest states that the specific volume of sales contract obligation proposed to be abandoned for each customer is listed on the table below, and represents the difference between the pre 10–01–89 firm sales contract obligation for each customer.

Customer	Additional sales contract obligation proposed to be abandoned effective 10–01–89 (Dth)
ODL–1:	
Cascade Natural Gas	9,600
CP National	500
Paiute Pipeline	20,000
Washington Water Power	30,000
DS–1:	
City of Buckley	568.5
City of Ellensburg	3,600
City of Enumclaw	1,221.5
Rocky Mountain Natural Gas	892.5
Wyoming Industrial Gas	625
Total	67,167.5

Northwest states that for seven of the nine subject sales customers, the proposed abandonment is a partial reduction in service obligation, while for Paiute and Rocky Mountain a total sales abandonment is proposed consistent with their respective 100 percent conversions to firm transportation.

Further, Northwest states that, consistent with CPO National's conversion to firm transportation for all its firm sales contract demand except temporarily the portion necessary to serivce its two delivery points on PGT's system, Northwest requests approval to abandon its obligation to deliver firm sales gas to CP National except for the Klamath Falls and Vaughn Lumber delivery points located on PGT's system.

Northwest requests that the subject abandonments of firm sales obligation be made effective October 1, 1989, the effective date of the corresponding conversion to firm transportation.

Northwest states that it does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of sales services. Northwest explains that its transmission system will continue to be fully utilized to provide service to its former sales customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27023 Filed 11–16–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–49–NG]

Megan-Racine Associates, Inc; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 25, 1989, of an application filed by Megan-Racine Associates, Inc. (Megan-Racine), for authorization to import up to 11,700 Mcf of natural gas per day over a 20-year term. The application submitted required supplemental information on October 12, 1989. The imported gas would be used to fuel the applicant's new 49-MW cogeneration plant to be constructed and operated in Canton, New York. Megan-Racine requests that the authorization commence on or about October 1, 1990, which is the anticipated date for the beginning of the facility's testing phase. The gas would be imported at the international boundary of the United States and Canada near Massena, New York, and transported within the United States through existing and proposed pipeline facilities.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 204–111 and 204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 18, 1989.

ADDRESSES:

Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Megan-Racine, a New York corporation with its principal place of business in Tampa, Florida, was formed to undertake the development, construction, ownership, and operation of a natural gas-fired congeneration facility to be built at a Kraft, Inc., processing plant in Canton, New York. According to the applicant, the new cogeneration facility is expected to be completed and in commercial operation by November 1, 1990. Megan-Racine states that the gas will be used to fuel a new combined-cycle unit certified by the Federal Energy Regulatory Commission as a "qualifying cogeneration facility" under the Public Utility Regulatory Policies Act of 1978. The steam produced will be sold to the Kraft, Inc., plant and the electricity generated will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk) under a 15-year power sales agreement dated November 1, 1987.

Megan-Racine would purchase the gas from Western Gas Marketing Limited (Western Gas) pursuant to a precedent agreement enclosed as part of the application. The precedent agreement was executed on April 12, 1989, later amended in minor respects, and included a proposed gas purchase contract. The proposed contract would require Megan-Racine to pay Western Gas, for gas delivered, a price that is the sum of the monthly demand charge and the monthly commodity charge in effect for each month. The monthly demand charge is derived by multiplying the daily contract quantity (initially set at 11,700 Mcf) by a demand rate that is the sum of the monthly demand charges paid by Western Gas for transportation of Megan-Racine's daily contract quantity on the pipeline systems of NOVA Corporation of Alberta (NOVA), TransCanada PipeLines, Ltd. (TransCanada), and Niagara Gas Transmission, Ltd. (Niagara Gas), plus a supply reservation fee of $4.563 per Mcf per month. The commodity charge is initially set at $1.45 per MMBtu delivered to the United States border and is to be adjusted quarterly pursuant to a formula that is based equally on the percentage change in Niagara Mohawk's average annual marginal avoided energy cost above or below a base cost of $.253 per kilowatt-hour and the percentage change in CNG Transmission Corporation's (CNG) gas commodity component in its RQ Rate Schedule above or below a base cost of $2.4146 per MMBtu. The agreement also provides for a reopening of the pricing provisions prior to the start of the contract years commencing November 1, 1995, and November 1, 2000. If the parties are unable to reach agreement on a revised price formulation, the agreement provides for arbitration.

The proposed contract obligates Megan-Racine to take delivery of at least 60 percent of the annual contract quantity (defined as the daily contract quantity multiplied by the number of days in the year) but provides that undeliveries below the 60 percent minimum level may be purchased by the applicant during the succeeding 12 month period. Megan-Racine must pay a deficiency charge levied on the volumes not taken below the minimum quantity equal to the average commodity charge in effect during the year. In addition, the amount that Western Gas is obligated to supply is subject to reduction if Megan-Racine takes less than minimum contract volumes.

Megan-Racine indicates that Western Gas would transport the natural gas through the pipeline facilities of NOVA and TransCanada in Canada to an existing interconnection with the pipeline facilities of Niagara Gas. The gas would then be transported on the Niagara system to an existing interconnection with the distribution system of St. Lawrence Gas Company, Inc. (St. Lawrence), at the international border of the United States and Canada near Massena, New York, where delivery to the applicant would take place. Megan-Racine states that such routing would necessitate the construction of eight miles of 12 inch diameter distribution line connecting the cogeneration facility to St. Lawrence's existing distribution system.

In support of its application, Megan-Racine states that all of the natural gas imported under its requested authorization would be used to fuel the new cogeneration facility. The applicant asserts that its arrangement with Western Gas is and would remain competitive over the proposed term. Megan-Racine maintains that the arrangement would provide it with a wide degree of flexibility to vary its daily, monthly, and annual takes to conform to the operational characteristics of the cogeneration facility. Megan-Racine further asserts that additional flexibility for both parties is enhanced by their opportunity to renegotiate pricing provisions in 1995 and 2000. With respect to the applicant's decision to select a Canadian supplier, Megan-Racine states that it contracted domestic gas suppliers, but was not able to find terms that were as competitive as those negotiated with Western Gas. Megan-Racine maintains that the proposed arrangement would provide reasonable assurances that a secure supply of natural gas will be available for purchase from Western Gas. The applicant also states that it has either received or is planning to receive various state and local environmental approvals for the proposed project. For these reasons, Megan-Racine maintains that the proposed import is consistent with the public interest.

Megan-Racine filed a certification of compliance with the coal capability requirement for proposed new electric powerplants on October 11, 1989, pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (10 U.S.C. 3801 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Megan-Racine's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Megan-Racine asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

Under section D of the DOE guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environmental assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove this application is unnecessary, and compliance with NEPA for the proposed action can be achieved by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the FUA, and as a result, such actions have been

granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttal presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on this import application that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedurs, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Megan-Racine's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27082 Filed 11-16-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-71-NG]

Salmon Resources Ltd.; Application To Extend Blanket Authorization Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 20, 1989, of an application filed by Salmon Resources Ltd. (Salmon) requesting that blanket authority previously granted in DOE/ERA Opinion and Order No. 94 (Order 94), issued December 16, 1985 (ERA Docket No. 85-18-NG), and extended in DOE/ERA Opinion and Order No. 217 (Order 217), issued January 22, 1988 (ERA Docket No. 87-50-NG), be further extended for two years beginning on February 14, 1990, the expiration of its current import authorization, through the period ending February 13, 1992. Under the extension requested, Salmon would be authorized to import volumes not to exceed, in the aggregate, 100 Bcf of Canadian natural gas over a two-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than December 18, 1989.

ADDRESSES:

Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9516.

Dianne Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Salmon, a Wyoming corporation with its principal place of business in Lakewood, Colorado, is a wholly owned subsidiary of Shell Canada Limited, a Canadian corporation headquartered in Calgary, Alberta. The imported gas would continue to be supplied by Shell or such supply sources as may become available and sold by Salmon on a short term or spot basis to, among others, industrial end users, agricultural users, electric utilities, pipelines, and local distribution companies. Salmon incorporated by reference the exhibits contained in Salmon's original application dated September 18, 1985 (ERA Docket No. 85-18-NG). The incorporated information thus would include assertions that each sale will be market responsive and that the imports would be accomplished using existing pipeline capacity and no new construction would be involved. Salmon also would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. Salmon's prior quarterly reports filed with FE indicate that approximately 11.3 Bcf of natural gas was imported under Order 217 through September 30, 1989.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Salmon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27083 Filed 11-16-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3681-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed November 6, 1989 through November 9, 1989 pursuant to 40 CFR 1506.9.

EIS No. 890315, Final, AFS, WY, Bridger-Teton National Forest, Land and Resource Management Plan, Implementation, Teton, Fremont, Lincoln, Sublette, Sweetwater and Uinta Counties, Due: December 18, 1989, Contact: Brian E. Stout (307) 733-2752.

EIS No. 890316, Draft, AFS, ID, South Fork Salmon River Road Reconstruction, Warm Lake Highway to the confluence of the South Fork Salmon River, Implementation, Boise and Payette NFs, Valley County, ID, Due: January 2, 1990, Contact: John Hooper (208) 634-8151.

EIS No. 890317, Draft, AFS, CA, King-Titus Fire Recovery Project, Implementation, Klamath National Forest, Siskiyou County, CA, Due: January 3, 1990, Contact: Carmine Lockwood (916) 493-2243.

EIS No. 890318, Draft, FHW, TX, IH-30/IH-35W Interchange Improvements, (Forest Park Blvd. to Riverside Drive) and (Hattie St., to Luella St.) Funding, Tarrant County, TX, Due: January 2, 1990, Contact: W.L. Hall, Jr. (512) 483-8585.

EIS No. 890319, Final, COE, LA, Alohe-Rigolette Area Agriculture Flood Control Plan, Implementation, Red River Floodplain, Grant and Rapides Parishes, LA, Due: December 18, 1989, Contact: Steve Mathies (504) 862-2520.

EIS No. 890320, Final, BLM, NM, Molycorp Guadalupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Taos County, NM, Due: December 18, 1989, Contact: Robert T. Dale (505) 761-4541.

EIS No. 890321, Final, FHW, VA, US 288 Construction, US 360/Hull Street to I-64, Funding, Section 10 and 404 and Coast Guard Permits, Chesterfield, Henrico, Goochland and Powhatan Counties, VA, Due: December 18, 1989, Contact: Robert L. Hundley (804) 786-4304.

Dated: November 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27086 Filed 11-16-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3681-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 30, 1989 through November 3, 1989 pursuant to the environmental Review process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J61078-UT, Rating EC2, Uinta National Forest, Arterial Travel Route Development and Management Implementation, Utah and Wasatch Counties, UT.

Summary: EPA is concerned with the lack of discussion related to wetlands and water quality impacts and mitigation. Additional information is requested in the final EIS.

Final EISs

ERP No. D-AFS-L65104-OR, Uchoco National Forest and Crooked River National Grassland, Land and Resource Management Plan, Implementation, Crook, Grant, Harney, Jefferson and Wheeler Counties, OR.

Summary: EPA has no objections to the proposed action as described in the final EIS. EPA is interested in working with the Forest Service to develop the forest-wide water quality and fish resource monitoring plan.

ERP No. F-COE-L90021-WA, North and South Puget Sound Unconfined Open-Water Disposal for Dredged Material, Phase II, Site Designation, Section 10 and 404 Permits, Whatcom, Skagit, Challam and Pierce, Counties VA.

Summary: EPA's comments on the draft EIS were adequately addressed. EPA has no objections to the proposed action as described in the final EIS.

ERP No. F-FHW-L40165-WA, I-90 Improvements, Four Lakes to the Idaho State Line, Funding and 404 Permit, Spokane County, WA.

Summary: EPA had no objection to the proposed action as described in the final EIS. No formal letter was sent to the agency.

ERP No. F-HUD-C85042-PR, Encantada Residential Development, Mortgage Insurance, Dos Bocas Ward, Trujillo Alto, PR.

Summary: EPA believes the project will not result in any adverse environmental impacts.

Dated: November 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27087 Filed 11-16-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3680-8]

Relative Risk Reduction Strategies Committee; Risk Reduction Subcommittee Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Risk Reduction Subcommittee of the Relative Risk Reduction Strategies Committee (RRRSC). The Subcommittee will meet on November 28, 1989 (10:00 a.m. to 5:00 p.m.) at the Howard Johnson's National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Purpose: The purpose of this meeting is to discuss alternative risk management strategies for environmental problems based, in part, on an evaluation of EPA's 1987 report "Unfinished Business." For further information concerning this project, please refer to the notices contained in 54 FR 35386, August 25, 1989, and 54 FR 38282, September 15, 1989.

FOR FURTHER INFORMATION: Members of the public wishing further information concerning the Subcommittee or the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, U.S. Environmental Protection Agency (A-101F), 401 M Street, SW., Washington, DC, (202) 382-2552 (FTS) 382-2552, FAX (202) 475-9693. Seating at the meeting is on a first come basis.

Dated: November 8, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-27071 Filed 11-16-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00284; FRL-3666-6]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 18, 1989 and ending on December 19, 1989. This notice announces the location and times for the meeting and sets forth tentative agenda items. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, December 18, 1989 from 8:30 a.m. to 5 p.m. and on Tuesday, December 19, 1989 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESS: The meeting will be held at: Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486-1234.

FOR FURTHER INFORMATION CONTACT:

By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-3401.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of the Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Update on the Office of Pesticide Programs' activities related to biotechnology.
7. Update on the Office of Pesticide Programs' proposed Endangered Species Protection Program.
8. Status of the Office of Pesticide Programs' Data Needs working group.
9. Reporting on activities related to the Pesticide Monitoring Improvement Act.
10. Other items as appropriate.

Dated: November 3, 1989.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89-27076 Filed 11-16-89; 8:45 am]

BILLING CODE 6560-50-D

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

Summary: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the report of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, December 5, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Matters, Developments in Russia/Central Europe, Reinvolving Financial Institutions, Tided Aid Credit Status, Lundine Discussion, Execution of LALDC, and other topics.

Public Participation: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than December 4, 1989. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact, prior to November 30, 1989, the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 89-27048 Filed 11-16-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

November 7, 1989.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0029.

Title: Application for New Broadcast Station License.

Form No.: FCC 302.

A revised application form FCC 314 has been approved for use through 9/30/92. The June 1988 edition with an OMB expiration date of 9/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0062.

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form No.: FCC 330.

The approval on FCC 330 has been extended through 8/31/92. The May 1987 edition with an OMB expiration date of 12/31/89 will remain in use until revised forms are available.

OMB No.: 3060-0072.

Title: Airborne Mobile Radio Telephone License Application.

Form No.: FCC 409.

The approval on FCC 409 has been extended through 9/30/92. The February 1987 edition with an OMB expiration date of 9/30/89 will remain in use until revised forms are available.

OMB No.: 3060-0089.

Title: Application for Land Radio Station License in the Maritime Services.

Form No.: FCC 503.

The approval on FCC 503 has been extended through 10/31/92. The April 1987 edition with the previous expiration date of 10/31/89 will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-27012 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

Open En Banc Hearing

November 9, 1989.

The Federal Communications Commission will hold an Open *En Banc* hearing on AM Improvement Issues on Thursday, November 16, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

The Commission will review the situation concerning the AM service, examine its prospects for improvement and explore the key issues related to AM improvement and most appropriate means of their resolution.

General matters to be considered at the *En Banc* hearing will include, but are not limited to, the following:

1. AM improvement and the future of AM radio;
2. Uses of the AM expanded band (1605 kHz-1705 kHz);
3. AM technical improvements and station assignment policies;
4. AM stereophonic transmission and its impact on AM technical criteria and assignment policies;
5. The importance of receiver quality to the future of the AM service.

Additional information may be obtained from William Hassinger, Mass Media Bureau, telephone number (202) 632-6460.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-27004 Filed 11-16-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Solicitation of Comments for Study on Pass-Through Deposit Insurance Which Is Mandated by the Financial Institutions Reform, Recovery and Enforcement Act of 1989

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Solicitation of comments.

SUMMARY: Pursuant to section 220 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRRE Act"), the FDIC is preparing a report, to be transmitted to Congress concerning the pass-through of deposit insurance to individual investors in unit investment trusts and to individual participants in pension and profit-sharing plans qualified under section 401 of the Internal Revenue Code. The purpose of this notice is to solicit comments, suggestions and any relevant data or statistics from interested parties on the issues to be explored by the FDIC in its study on pass-through insurance.

DATE: Comments must be received by December 15, 1989.

ADDRESS: Send written comments to Federal Deposit Insurance Corporation, Legal Division—Room 4018, 550 17th Street NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Lynn Nejezchleb, Chief, Financial Markets Section, Division of Research and Statistics (202-898-3931), or Claude A. Rollin, Senior Attorney, Legal Division (202-898-3985), Federal Deposit

Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC currently insures deposit accounts maintained by fiduciaries (*e.g.* agents, nominees, custodians, guardians, or trustees) in the amount of up to $100,000 for the interest of each principal or beneficial owner in such accounts, provided that certain recordkeeping requirements are satisfied.[1] Since the insurance coverage for such accounts passes through the fiduciary to the actual beneficial owners of the funds this type of insurance coverage is commonly referred to as "pass-through" insurance. For instance, if the trustee of an irrevocable trust maintains a deposit account comprised of trust funds at an insured depository institution and the trust has three beneficiaries, the deposit insurance would pass through the trustee to each beneficiary so that each beneficiary's interest in the account would be separately insured up to $100,000. In addition, such insurance coverage would be separate from the insurance coverage provided for any other accounts maintained by or for the settlor, trustee or beneficiaries in different rights and capacities at the same insured depository institution. However, if a beneficiary has interests in more than one trust account established pursuant to trusts created by the same settlor then all of those interests would be aggregated and insured on a combined basis up to $100,000.

Most pension plans and other trusted employee benefit plans are treated by the FDIC as irrevocable trusts and their funds, when deposited in an FDIC-insured bank, are insured according to the aforementioned rules governing the insurance coverage for deposits of irrevocable trusts. In other words, the deposits of most pension and profit-sharing plans are entitled to "pass-through" insurance and thus are insured in the amount of up to $100,000 per beneficiary, provided that the FDIC's recordkeeping requirements are satisfied. However, this "pass-through" insurance coverage is provided only when the value of each participant's interest in the plan's accounts can be determined without evaluation of any contingencies except for those contained in the present worth tables and rules of calculation for their use which are set forth in the Federal Estate Tax regulations. Thus, for example, while an employee pension or profit-sharing plan would, in most cases, qualify for pass-through insurance coverage, a health and welfare plan generally would not qualify for such coverage because in the case of a health and welfare plan, the present value of a participant's interest is contingent on an event (i.e. illness or accident) that is not covered by the above-mentioned present worth tables.

In addition, the FDIC has taken the position that deposit accounts established pursuant to a state or municipal deferred compensation plan which qualifies under section 457 of the Internal Revenue Code, 26 U.S.C. 457 (a "457 Plan") are not entitled to "pass-through" insurance coverage. Consequently, deposit accounts at FDIC-insured banks which are comprised of 457 Plan funds have been added together and insured in the amount of up to $100,000 in the aggregate. By contrast, the former FSLIC insured 457 Plan deposit accounts at FSLIC-insured savings institutions in the amount of up to $100,000 per participant pursuant to a specific regulation. 12 CFR 561.4(b). The FDIC's position (of not providing pass-through insurance coverage for 457 Plan deposits) has been based on the fact that, under section 457 of the Internal Revenue Code, the funds of 457 Plans are required to "remain (until made available to the participant or other beneficiary) solely the property rights of the State. . . ." 26 U.S.C. 457(b)(6). Since the State, rather than the employees, is deemed to be the sole owner of the funds until they are distributed, the FDIC has maintained that the employees (participants) do not have any ownership interests in the funds upon which insurance coverage could be based and thus the funds cannot be insured on a pass-through basis.

Similarly, the FDIC has not been providing pass-through insurance coverage for deposits maintained by unit investment trusts. An existing FDIC regulation which governs the deposit insurance provided for accounts established by corporations (12 CFR 330.5(b)) provides that trusts which are registered or subject to registration under section 8 of the Investment Company Act of 1940 (the "40 Act") shall be treated as corporations for the purpose of determining insurance coverage on the trust's accounts. Unit investment trusts are generally registered or subject to registration under the 40 Act and thus have been treated as corporations for insurance purposes. Consequently, the FDIC has been adding together all of the deposits maintained by a unit investment trust at the same FDIC-insured bank and has been insuring such deposits in the amount of up to $100,000 in the aggregate. The former FSLIC did not have a comparable regulation governing the deposits of entities registered or subject to registration under the 40 Act. The former FSLIC treated deposit accounts maintained by unit investment trusts at FSLIC-insured savings institutions as irrevocable trust accounts and insured them on a "pass-through" basis in the amount of up to $100,000 for the interest of each beneficiary of (investor in) such trusts.

Section 220(b)(2) of the FIRRE Act mandates that, within six months of the date of enactment of the FIRRE Act, the FDIC must "transmit to the Congress a report containing its findings and recommendations relating to the pass-through of deposit insurance either to individual investors in unit investment trust funds or to individual participants in pension or profit sharing plans qualified under section 401 of the Internal Revenue Code of 1986." Moreover, section 220(b)(2) requires that the report contain the FDIC's "assessment of the potential effects of broadening deposit insurance coverage on the safety of the insurance funds and the operation of capital markets."

In conducting this study on "pass-through" insurance, the FDIC is interested in receiving comments, suggestions and nay data or statistics relating to the following issues:

1. The extent to which the FDIC should, as a matter of policy, provide pass-through deposit insurance for deposits of unit investment trusts, pension plans, profit-sharing plans and other trusted employee benefit plans;

2. The effect of pass-through insurance coverage on the safety of the insurance funds and the operation of capital markets;

3. The extent to which pass-through insurance coverage generally affects the liquidity of insured financial institutions;

4. The potential effects of expanding the existing insurance coverage to provide pass-through insurance coverage for individual investors in unit investment trusts.

Dated at Washington, DC, this 13th day of November 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-27029 Filed 11-16-89; 8:45 am]

BILLING CODE 6714-01-M

[1] The recordkeeping requirements are enumerated at 12 CFR 330.1(b).

FEDERAL MARITIME COMMISSION

Spain-Italy/Puerto Rico Island Pool Agreement and USA-South Africa Discussion Agreement; Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011213-012.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Transatlantica Espanola, S.A.

Nordana Line AS

Sea-Land Service, Inc.

Synopsis: The proposed amendment would admit d'Amico Societa di Navigazione S.p.A. as a party to the Agreement effective January 1, 1990. It would also recalculate the parties' pool shares to reflect the addition of a new participant in the arrangement.

Agreement No.: 203-011232-001

Title: USA-South Africa Discussion Agreement

Parties:

Lykes Bros. Steamship Co., Inc.

Navinter

Safbank Line, Ltd.

Mediterranean Shipping Company SA

Synopsis: The proposed amendment would add P&O Containers Ltd. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-26996 Filed 11-16-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

A.B.N.-Stichting, et al.—Formulations of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Correction

This Notice corrects a previous **Federal Register** Notice (FR Doc. 89-23252) published at page 40737 of the issue for Tuesday, October 3, 1989.

Under the Federal Reserve Bank of Chicago, the entry for A.B.N.-Stichting is amended to read as follows:

1. A.B.N.-Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; Algemene Bank Nederland N.V., Amsterdam, The Netherlands; and LaSalle National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Exchange Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Exchange National Bank of Chicago, Chicago, Illinois; Exchange Bank of DuPage, Oak Brook, Illinois; Exchange Bank of River Oaks, Calumet City, Illinois; and Exchange Bank of Lake County, Vernon Hills, Illinois.

In connection with these applications, Applicants also propose to acquire Exchange Securities Corp., Hallandale, Florida, and thereby engage in underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16); and to expand Company's activities to include engaging in broker activities for stocks, bonds and other securities pursuant to § 225.25(b)(15) of the Board's Regulation Y. Applicants also propose to acquire Union Realty Mortgage Co., Inc., Chicago, Illinois, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Comments on this application must be received by December 1, 1989.

Board of Governors of the Federal Reserve System, November 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27042 Filed 11-16-89; 8:45 am]

BILLING CODE 6210-01-M

Atlantic Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Atlantic Bancshares, Inc., Newington, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Atlantic Trust Company, Newington, New Hampshire.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arkansas National Banking Corporation, Rogers, Arkansas; to become a bank holding company by acquiring at least 94.51 percent of the voting shares of First National Bank, Bentonville, Arkansas; and at least 99.56 percent of the voting shares of Farmers and Merchants Bank, Rogers, Arkansas.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American National Corporation, Omaha, Nebraska; to acquire 100 percent of the voting shares of The Northern Corporation, Omaha, Nebraska, and thereby indirectly acquire Northern Bank, Omaha, Nebraska.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Broadway Bancshares of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Broadway Air Force National Bank, Randolph Air Force Base, Texas; Broadway National Bank, San Antonio, Texas; and Eisenhower National Bank, San Antonio, Texas. Comments on this

application must be received no later than December 1, 1989.

2. Golbalshares, Limited, Road Town, Texas; to become a bank holding company by acquiring 61.5 percent of the voting shaes of El Paso Financial Corporation, Wilmington, Delaware, and thereby indirectly acquire El Paso State Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, November 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27043 Filed 11–16–89; 8:45 am]

BILLING CODE 6210–01–M

Valley Capital Corp., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Valley Capital Corporation, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Pacific Century Finance Company, Las Vegas, Nevada, in providing financing on non-recourse dealer installment sales contracts and thereby engage in lending activities pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27044 Filed 11–16–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 1, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. David E. Worthen, Bountiful, Utah; to acquire an additional 1.29 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, for a total of 25.81 percent, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27045 Filed 11–16–89; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Docket Nos. 8880 and 8956]

Modification of Prior Decisions; Reliable Mortgage Corp. et al. and Seekonk Freezer Meats, Inc. et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for filing of amicus curiae briefs on proposed modification of prior decisions.

SUMMARY: The Commission has issued an order reopening the proceedings in Reliable Mortgage Corp. et al. (Dkt. 8956) to consider modifying the decision therein to clarify that the respondents' credit advertising practices that violated the Truth in Lending Act are also unfair and deceptive acts or practices, in violation of section 5(a) of the Federal Trade Commission Act. This document announces the opportunity for filing of amicus curiae briefs on the proposed modifications.

DATE: The deadline for filing amicus briefs in this matter is January 2, 1990.

ADDRESS: Briefs should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the orders reopening these matters should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Carole L. Reynolds, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202) 326–3230.

SUPPLEMENTARY INFORMATION: The original order against Reliable Mortgage Corp. *et al.* in Docket No. 8956 was dated January 8, 1975, and published at 85 F.T.C. 21. The original order against Seekonk Freezer meats, Inc. *et al.* in Docket No. 8880 was dated March 15, 1973, and was published at 82 F.T.C. 1025. In *Reliable,* the Commission determined that respondents had violated the Truth in Lending Act (TILA), Pub. L. 90–321, 15 U.S.C. 1601 *et seq.* and Regulation Z, 12 CFR part 226, by stating an interest rate in an advertisement promoting their mortgage plans without stating the annual percentage rate as required. In *Seekonk,* the Commission determined that respondents had violated the TILA and Regulation Z in an advertisement promoting their installment credit plans without stating all credit terms required to be disclosed. The Commission's view has been that the credit advertising practices that were found to violate the TILA in *Reliable* and *Seekonk* also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act. However, in *United States v. Hopkins Dodge, Inc.,* 849 F.2d 311 (8th Cir. 1988), the United States Court of Appeals for the Eighth Circuit held that the Commission's failure to explicitly state in these two cases that credit advertising violations of the TILA and Regulation Z are unfair or deceptive acts or practices precluded use of the two cases as predicates to civil penalty enforcement actions pursuant to section 5(m)(1)(B) of the FTC Act.

On January 31, 1989, the Commission issued an order against Reliable Mortgage Corp. *et al.* to show cause why the proceedings against them should not be reopened to consider modification of the decision therein to clarify that respondents' credit advertising violations of the TILA were also unfair and deceptive acts or practices in violation of the FTC Act. On January 31, 1989, the Commission also issued an order against Seekonk Freezer Meats *et al.* to show cause why the proceedings against them should not be reopened to consider modification of the decision therein to clarify that respondents' credit advertising violations of the TILA were either unfair or unfair and deceptive acts or practices in violation of the FTC Act. The Commission also issued a press release and published a notice in the **Federal Register** on February 17, 1989, announcing a 30-day period for public comment on the proposed reopenings.

Respondents failed to answer the show cause orders. (Respondent Reliable did, however, informally reply by letter to the FTC staff that it had no objections to the proposed reopening). No comments were received in response to the Federal Register notice.

As a result, on September 25, 1989, the Commission issued orders reopening the proceedings in *Reliable* and Seekonk, and directing briefs to consider modification of the decisions contained therein. The Commission now intends to decide whether to modify the decisions in *Reliable* and *Seekonk* to state expressly that the credit advertising practices addressed in *Reliable* constitute unfair and deceptive acts or practices in violation of section 5(a) of the FTC Act and that the credit advertising practices addressed in *Seekonk* constitute either unfair or unfair and deceptive acts or practices in violation of section 5(a) of the FTC Act. Interested parties may submit amicus curiae briefs as noted above.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–27089 Filed 11–16–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Teenage Parent Demonstration: 24-Month Follow-up—New—This survey is part of the impact evaluation of the Teenage Parent Demonstration Projects being conducted in Illinois and New Jersey. The survey will gather information on outcomes from demonstration participants which will contribute to the evaluation of the demonstrations. The purpose of the demonstration projects is to identify interventions which promote self-sufficiency among teenage parents. *Respondents:* individuals; *Number of Respondents:* 4,774; *Frequency of Response:* One time; *Average Burden per Response:* 1.31 Hours; *Total Burden:* 6,244 Hours.

OMB Desk Officer: Shannah Koss-McCallum.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245–6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: November 8, 1989.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 89–26945 Filed 11–16–89; 8:45 pm]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in December

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of one of the agency's advisory committees in the month of December 1989.

The initial review group will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. app. 2 10(d).

Notice of this meeting is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: December 5–6: 8:00 a.m.

Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of Meeting: Open—December 5: 8:30–9:15 a.m. Closed—Otherwise

Contact: Regina Thomas, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and psychoneuroimmunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, a summary of the meeting, and a roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: November 13, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–26992 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–20–M

BEST COPY AVAILABLE

Food and Drug Administration

[Docket No. 89F-0462]

The Dow Chemical Co., E.I. Du Pont De Nemours and Co., B.F. Goodrich; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Dow Chemical Co., E.I. du Pont de Nemours and Co., and B.F. Goodrich have filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyurethane resins, derived from reactions of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol, as rubber articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-[illegible]

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4182) has been filed by the Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, E.I. Du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898, and B.F. Goodrich, 3925 Embassy Pkwy., Akron, OH 44313, proposed that § 177.2600 Rubber articles intended for repeated use (21 CFR 177.2600) of the food additive regulations be amended to provide for the safe use of polyurethane resins, derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol, as rubber articles intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26990 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0451]

ICI Americas, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICI Americas, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethylamine-epichlorohydrin and acrylamide acrylic acid resins as fixing agents for immobilizing glucose isomerase enzyme.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Enzyme Bio-Systems Ltd., International Plaza, Route 9W, Englewood Cliffs, NJ 07632, has filed a petition (FAP 9A4175), proposing that the food additive regulations be amended to provide for the safe use of dimethylamine-epichlorohydrin and acrylamide acrylic acid resins as fixing agents for immobilizing glucose isomerase enzyme.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26988 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0452]

Enzyme Bio-Systems Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Enzyme Bio-Systems Ltd. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethylamine-epichlorohydrin and acrylamide acrylic acid resins as fixing agents for immobilizing glucose isomerase enzyme.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Enzyme Bio-Systems Ltd., International Plaza, Route 9W, Englewood Cliffs, NJ 07632, has filed a petition (FAP 9A4175), proposing that the food additive regulations be amended to provide for the safe use of dimethylamine-epichlorohydrin and acrylamide acrylic acid resins as fixing agents for immobilizing glucose isomerase enzyme.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26989 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0450]

ICI Americas, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICI Americas, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(isobutene)/maleic anhydride, diethanolamine reaction product as a surfactant in the preparation of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard intention to contact aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4179) has been filed by ICI Americas, Inc., Concord Pike & Murphy Rd., Wilmington, DE 19877, proposing that § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of polyethylene glycol (MW 1500-4000)/poly(12-hydroxystearic acid) copolymers as a stabilizer in the preparation of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard intended to contact aqueous and fatty foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26989 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

manufacture of paper and paperboard intention to contact aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4178) has been filed by ICI Americas, Inc., Concord Pike and Murphy Rd., Wilmington, DE 19897, proposing that § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of poly(isobutene)/maleic anhydrides, diethanolamine reaction product as a surfactant in the preparation of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard intended to contact aqueous and fatty foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-26991 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89P-0225]

Ice Cream Deviating From the Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Hershey Creamery Co. to market test a product designated as "light ice cream" that deviates from the U.S. standard of identity for ice cream (21 CFR 135.110). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0324.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of standards of identity promulgated under section 401 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Hershey Creamery Co., 301 South Cameron St., P.O. Box 1821, Harrisburg, PA 17105.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for ice cream in 21 CFR 135.110 in that: (1) The milkfat content of the product is reduced by at least 50 percent; and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a ½-cup serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of this variation is to offer the consumer a product that is nutritionally equivalent to ice cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light ice cream." The principal display panel of the label must include the statements "reduced calorie" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories than our regular ice cream" and "50 percent less fat than our regular ice cream."

The product complies with reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is a 50 percent reduction in the fat content of the product. The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

The permit provides for the temporary marketing of a total of 500,000 cases of two half-gallon containers. The test product will be produced and packaged at the Hershey Creamery Co., Harrisburg, PA 17105, and will be distributed in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but no later than _____.

Dated: November 8, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-27056 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee; Advisory Council on Nurses Education

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Council on Nurses Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6193.

Dated: November 13, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-26986 Filed 11-16-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Biotechnology Policy Board; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub.

L. 92–463, 86 Stat. 770–776) and section 222 of the Public Health Service Act, as amended (42 U.S.C. 217a), the Acting Director, National Institutes of Health announces the establishment by the Secretary, Department of Health and Human Services, on October 31, 1989, of the National Biotechnology Policy Board.

The National Biotechnology Policy Board will review and appraise the various programs and activities of the Federal Government relating to biotechnology, including the amount and type of biotechnology-related research, research training, and career development activities, conducted or funded by Federal agencies; and nonconfidential, privately-funded biotechnology activities, including both basic and applied research, and the development of commercial biotechnology-related industries and products.

The Board will submit recommendations, through the Director, NIH, and/or the Secretary of Health and Human Services, to the President and Congress on policies to enhance basis and applied research; to enhance the competitiveness of the United States in the development of commercial biotechnology-related industries and products; to assure the training of sufficient scientists, engineers, and laboratory personnel for both research and commercial development; and to enhance the transfer of technology from university and Federal research laboratories to commercial laboratories.

The Board will also make recommendations regarding Federal research activities, as well as participation in cooperative research initiatives involving governmental and private entities; and regulatory policies that affect biotechnology industries and products, ensuring that the regulatory system protects the public health, safety and environment without unduly impeding academic and commercial activities.

Unless renewed by appropriate action prior to expiration, the National Biotechnology Policy Board shall terminate on October 31, 1991.

Dated: November 7, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89–26757 Filed 11–16–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting; National Diabetes Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be December 4, 1989. The meeting will begin at 6 p.m. and adjourn at approximately 10 p.m. The Board will meet at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: November 9, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–27040 Filed 11–16–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on November 3, 1989.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Administrative Requirements—Regulations and Policy—0915–0047—The information is needed to document that schools are properly administering the HPSL and NSL programs in accordance with statutory and regulatory requirements (e.g., reviewing financial aid transcripts, submitting required reports and maintaining student records and repayment records) *Respondents:* Individuals or households, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Students:			
Financial Aid Transcript, 57.206(a)(3) & 57.306(a)(2)	10,500	.25	1
Schools:			
Loan Repayment & Delinquent Accounts, 57.206(a)(2) & 57.210(b)(1)(x)	[illegible]	.05	113
Disability Cancellation, 57.211(a) & 57.311(a)	100	.50	1
Cost of Attendance 57.206(b)(2) & 57.306(b)(2)(ii)	[illegible]	.61	1
Death Cancellation, 57.211(b) & 57.311(b)	178	.017	1
HPSL Repayment Records, 57.215(b)(c)	320	28.75	1
NSL Repayment Records, 57.315(a)(2)(3)	1,360	2.5	1

Estimated Annual Burden: 17,606 hours.

2. The Youth Survey for the Community Intervention Trial for Smoking Cessation (COMMIT)—NEW—The National Cancer Institute (NCI) is conducting the Community Intervention Trial for Smoking Cessation (COMMIT), which will test whether community-based strategies can produce long-term cessation among smokers. Clearance is herein requested to pre-test and field surveys to assess the impact of youth-based inteventions on the attitudes, beliefs and behaviors of ninth-grade students in the study communities. *Respondents:* Individuals or households; *Number of Respondents:* 4,033; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.67 hours; *Estimated Annual Burden:* 2,702 hours.

3. Black Lung Clinic Program (42 CFR 55a) and Program Guidelines—0915–0081—These program regulations and guidelines provide prospective Black Lung Clinic Program applicants with means to apply for grants and provide program officials with sufficient information to determine whether an applicant has an approvable project under current law and regulations. *Respondents:* State or local governments, non-profit institutions; *Number of Respondents:* 14; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1,500 hours; *Estimated Annual Burden:* 21,000 hours.

4. Declarations of Net Quantity—0910–0238—Food manufacturers use the information to determine the amount and form of the declaration of quantity of contents that appears on product labels, since provisions of the Food, Drug and Cosmetic Act deem a product misbranded unless it contains an accurate statement. Food manufacturers are not required to submit any information concerning declarations of net quantity to FDA. *Respondents:* Businesses or other for profit, small businesses or organizations; *Number of Respondents:* 1,500; *Number of Responses per Respondent:* 2.2; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 6,500 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: November 9, 1989.

Phyllis M. Zucker,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–26937 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–N–46]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 17, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC (20410; telephone (202) 755–7300; TDD number for the hearing-and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized and underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of Agriculture: Marsha Pruitt, USDA, 14th and Independence Avenue SW, South Bldg.,

Room 1566, Washington, DC 20250 (202) 477–5225; Department of Health and Human Services: Wayne Mullinex, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857 (301) 443–2265.

Dated: November 13, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Building (by State)

(Number of Properties [ ])

Minnesota

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #431; Township 60N Range 9W
Comment: one story metal; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #465; Township 60N Range 9W
Comment: one story wood bldg; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #450; Township 60N Range 9W
Comment: one story metal; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #460; Township 60N Range 9W
Comment: one story wood bldg; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #464; Township 60N Range 9W
Comment: two story cement block/wood bldg; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #451; Township 60N Range 9W
Comment: one story metal bldg; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #420; Township 60N Range 9W
Comment: one story wood bldg; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #411–1, 411–2, 411–3, 411–4; Township 60N Range 9W
Comment: one story wood dormitories; off site use only; structurally unsound

Isabella Ranger District [1], Superior National Forest, Lake County, MN, Landholding Agency: Agriculture
Location: Property #462; Township 60N Range 9W
Comment: one story metal gym; off site use only; structurally unsound

NEVADA

Indian Health Station [1], Carson City, NV, Landholding Agency: HHS
Location: On Stewart School Site
Comment: 5,858 sf; structurally needs rehab

Note: Corrections to **Federal Register** dated Nov. 3, 1989. GSA Control # for Madera Emp. Trng. Center and Sewage Lagoon, Madera Co., CA should read 9–CR–(1)–(CA)–864.

Fort Sill, Lawton, OK property TO 2532 listed twice. Property TO 2533 was omitted. Fort Sill Property TO 4489 should read PO 4489.

[FR Doc. 89–27031 Filed 11–16–89; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–760–09–4410–01–2410; 516 DM 6, Appendix 5]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed revised instructions for the Bureau of Land Management (BLM).

SUMMARY: This notice announces proposed revised procedures for implementing the National Environmental Policy Act (NEPA) within the BLM. The revisions proposed will delete a number of obsolete and potentially misleading references and will refine the agency's list of actions that are categorically excluded from preparation of an environmental document. These revisions are based on the agency's continued experience with the Act.

DATES: Comments must be received by January 2, 1990.

ADDRESS: Comments should be sent to Jonathan P. Deason, Director, Office of Environmental Project Review, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Deason, Director, Office of Environmental Project Review, Office of the Secretary, (202) 343–3891; or Christopher Muller, Division of Planning and Environmental Coordination, BLM, (202) 653–8824.

SUPPLEMENTARY INFORMATION: The BLM's existing procedures for implementing the NEPA appear in appendix 5 to chapter 6, part 516 of the Departmental Manual (516 DM 6, appendix 5). These procedures were previously published in the **Federal Register** on September 26, 1983 (48 FR 43731). The revisions proposed in this notice will revise § 5.1 to reflect recent organizational changes in the BLM; will update the list of cross-referenced regulations in § 5.2; will delete from § 5.3 obsolete items in the list of BLM actions that normally require the preparation of an environmental impact statement (EIS); and will update in § 5.4 the list of BLM actions that are categorically excluded from NEPA documentation unless the action qualifies as an exception under 516 DM 2.3A(3).

The proposed list of BLM actions that normally require the preparation of an EIS differs from the existing list in three respects:

1. Approval of court ordered grazing and timber management activity plans has been deleted from the list as the BLM has filed all of the grazing and timber management EIS's it was scheduled to prepare. The impacts of these activities are now addressed through the EIS's the BLM prepares in conjunction with its resource management plans.

2. Issuance of coal preference right leases has been added to the list.

3. Proposals for wilderness, wild and scenic rivers and national trails have been added to the list.

The proposed list of categorically excluded actions differs from the existing list in several respects:

1. A number of existing categorical exclusions have been deleted. Some have been deleted because they are obsolete. Others have been deleted because the actions in question are covered by one of the categories on the existing Departmental list (appendix 1 of 516 DM 2). Still others have been deleted because the activities in question are now being addressed in the EIS's the BLM prepares in conjunction with its resource management plans or in programmatic environmental documents.

2. A number of the existing categorical exclusions have been revised. Some exclusions included unnecessary qualifiers which have been removed. Others have been revised to more clearly specify the category of activity that is being excluded.

3. A number of new exclusions have been added, including 5.4.A(3)–(6), 5.4.B(2), 5.4.C(6), 5.4.D(1)–(9), and 5.4.H(1)–(3). The agency has determined, based on its experience that these categories of actions do not individually or cumulatively have a significant effect on the human environment.

4. The order in which the exclusions are presented has been changed. The existing list is subdivided into nine sections: General, Realty, Transportation, Minerals, Recreation, Rangeland Management, Forestry, Wildlife, and Other. In the revised list, the sections appear in the following order: Fish and Wildlife, Fluid Minerals, Forestry, Rangeland Management, Realty, Solid Minerals, Transportation and Signs, and Other.

Comments on these proposed revisions are invited. To be considered in the preparation of the final revision, comments must be received by January 2, 1990.

Dated: October 31, 1989.

Jonathan McClean,

Director, Office of Environmental Project Review, Office of the Secretary, U.S. Department of the Interior.

516 DM 6—Appendix 5

* * * * *

Sections 5.1A through 5.1C are revised to read as follows:

A. The Director/Deputy Director are responsible for National Environmental Policy Act compliance for Bureau of Land Management activities.

B. The Assistant Director, Support Services, is responsible for policy interpretation, program direction, leadership, and line management for Bureau environmental policy, coordination and procedures.

(1) Division of Planning and Environmental Coordination which reports to the Assistant Director, Support Services, has Bureauwide environmental compliance responsibilities. These include providing program direction for environmental compliance and ensuring the incorporation and integration of the compliance process into Bureau management systems and decision processes. Information about Bureau environmental documents or the environmental review process can be obtained by contacting this office.

C. The Assistant Directors, Renewable Resources, Energy and Mineral Resources, and Management Services are responsible for cooperating with the Assistant Director, Support Services, to ensure that the environmental compliance process operates as prescribed within their areas of responsibility. This includes managing and ensuring the quality of environmental analyses, assigned environmental documents and records of decision.

* * * * *

Section 5.2 is revised to read as follows:

B. Regulations. The following partial list provides guidance to applicants on program regulations which may apply to a particular application. Many other regulations deal with proposals affecting public lands, some of which are specific to BLM while others are applicable across a broad range of Federal programs (e.g., Protection of Historic and Cultural Programs—36 CFR 800).

(1) Resource Management Planning—43 CFR 1610;

(2) Withdrawals—43 CFR 2300;

(3) Land Classification—43 CFR 2400;

(4) Disposition; Occupancy and Use—43 CFR 2500;

(5) Disposition; Grants—43 CFR 2600;

(6) Disposition; Sales—43 CFR 2700;

(7) Use; Rights-of-Way—43 CFR 2800;

(8) Use; Leases and Permits—43 CFR 2900;

(9) Oil and Gas Leasing—43 CFR 3100;

(10) Geothermal Resources Leasing—43 CFR 3200;

(11) Coal Management—43 CFR 3400;

(12) Leasing of Solid Minerals Other than Coal/Oil Shale—43 CFR 3500;

(13) Mineral Materials Disposal—43 CFR 3600;

(14) Mining Claims Under the General Mining Laws—43 CFR 3800;

(15) Grazing Administration—43 CFR 4100;

(16) Wild Free-Roaming Horse and Burro Management—43 CFR 4700;

(17) Forest Management—43 CFR 5000;

(18) Wildlife Management—43 CFR 6000; and

(19) Recreation Management—43 CFR 8300.

* * * * * *

Section 5.3 is revised to read as follows:

A. The following types of Bureau actions will normally require the preparation of an environmental impact statement:

(1) Approval of resource management plans.

(2) Proposals for wilderness, wild and scenic rivers, and national trails.

(3) Approval of regional coal lease sales in a coal production region.

(4) Decision to issue a coal preference right lease.

(5) Approval of applications to the BLM for major actions in the following categories:

(a) Sites for major steam electric powerplants, petroleum refineries, synfuel plants and industrial facilities.

(b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways and railroads.

(6) Withdrawals from mineral entry under U.S. mining laws of 5,000 acres or more of public lands where evidence indicates minerals of more than normal value are present or serious interest in mineral development has been expressed.

(7) Approval of operations that would result in liberation of radioactive tracer materials or nuclear stimulation.

(8) Approval of proposed mining plans for a surface coal mining and reclamation operation that meets the following:

(a) The environmental impacts of the proposed mining operation are not adequately analyzed in an earlier environmental document covering the specific leases or mining activity; and

(b) The area to be mined is 1,280 acres or more, or the annual production level is 5 million tons or more; and

(c) Mining and reclamation operations will occur for 15 years or more.

(9) Approval of a new non-coal surface mine which would disturb a total of 640 acres or more.

(10) Approval of a new commercial surface oil shale mine plan, regardless of size.

(11) Approval of a new underground uranium mine plan in which 640 acres or more would be mined.

B. If, for any of these actions, it is anticipated that an environmental impact statement is not needed based on potential impact significance, an environmental assessment will be prepared and handled in accordance with § 1501.4(e)(2).

* * * * *

Section 5.4 is revised to read as follows:

In addition to the actions listed in the Departmental categorical exclusions outlined in appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. Fish and Wildlife

(1) Modification of existing fences to provide improved wildlife ingress and egress.

(2) Modification of water developments to improve or facilitate wildlife use.

(3) Construction of perches, nesting platforms, islands and similar structures for wildlife use.

(4) Temporary emergency feeding of wildlife during periods of extreme adverse weather conditions.

(5) Routine augmentations such as fish stocking.

(6) Relocation of nuisance or depredating wildlife.

(7) Installation of devices to protect animal life such as raptor electrocution prevention devices.

B. Fluid Minerals

(1) Issuance of individual oil and gas or geothermal leases reserving the right to deny all lease activities.

(2) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 354) where the subject lands are already in production.

(3) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(4) Approval of minor modifications or minor variances from activities described in approved development/production plans, such as the relocation of a drill site(s).

(5) Approval of unitization agreements, communitization agreements, or development contracts.

(6) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(7) Approval of royalty determinations such as royalty rate reduction and operations reporting procedures.

(8) Reports to other Surface Management Agencies concerning mineral appraisals and applications for rights-of-way, leases, lease consolidation applications, lease assignments and bond determinations.

C. Forestry

(1) Land cultivation and silvicultural activities (excluding herbicides) in forest tree nurseries, seed orchards, and progeny test sites.

(2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing rights-of-ways.

(3) Reseeding or reforestation of old timber sales or burn areas where no pesticides are used and there is no conversion of timber type or conversion of non-forested to forested land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of big game repellant, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scion and cones.

(4) Precommercial thinning activities using small mechanical devices.

(5) Disposal of small amounts of miscellaneous vegetation products such as Christmas trees, wildings, floral brush (ferns, boughs, etc.), cones, and firewood outside of established harvest areas.

D. Rangeland Management

(1) Approval of transfers of grazing preference.

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs where no new access is needed.

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions.

(4) Removal of wild horses or burros from private lands at the request of the landowner.

(5) Processing (transporting, sorting, providing veterinary care to, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros.

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care Agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy.

E. Realty

(1) Withdrawal extensions or modifications which only establish a new time period and entail no change in segregative effect or use.

(2) Withdrawal revocations, terminations, extensions or modifications and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.

(3) Withdrawal revocations, terminations, extensions or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions would be subject to the NEPA process.

(4) Withdrawal revocations, terminations, extensions or modifications; classification terminations or modifications; or opening actions that the Secretary of the Interior is required by law to execute.

(5) All non-discretionary land actions in Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), Alaska Statehood Act and other statutes, including:

(a) Native allotments.

(b) Trade and manufacturing sites.

(c) Homesites.

(d) Headquarters sites.

(e) State selections.

(6) Administrative conveyances and leases to the State of Alaska to accommodate airports for which property rights existed prior to the enactment of NEPA.

(7) Actions taken in conveying mineral interests under section 209(b) of FLPMA.

(8) Resolution of class one color-of-title cases.

(9) Issuance of recordable disclaimers of interest under section 315 of FLPMA.

(10) Corrections of patents and other conveyance documents under section 316 of FLPMA and other applicable statutes.

(11) Renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

(12) Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-Way).

(13) Conversion of existing right-of-way grants to Title V grants or existing leases to FLPMA section 302(b) leases where no new facilities or other changes are needed.

(14) Grants of rights-of-way wholly within the boundaries of other compatible rights-of-way.

(15) Amendments to existing rights-of-way such as the upgrading of existing facilities which entail no additional disturbances outside the right-of-way boundary.

(16) Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(17) Transfer of land or interest in land to or from other Bureaus or Federal agencies where current management will continue and future changes in management will be subject to the environmental compliance process.

(18) Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

(19) Grants of rights-of-way for pipelines, terminal access roads, single poled distribution or telephone lines, and utility drops to single family residences.

(20) Grants of a rights-of-way for buried telephone or utility distribution lines.

(21) Temporary placement of a pipeline above ground.

(22) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

(23) One time issuance of short-term (3 years or less) rights-of-way or land use authorizations which authorizes a trespass action where no new use or construction is allowed.

F. Solid Minerals

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 354) where the subject lands are already in production.

(2) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(3) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(4) Approval of royalty determinations such as royalty rate reduction and operations reporting procedures.

(5) Reports to other Surface Management Agencies concerning mineral appraisals and applications for rights-of-way, leases, lease consolidation applications, lease assignments and bond determinations.

(6) Determination and designation of logical mining units (LMU's).

(7) Findings of completeness furnished to the Office of Surface Mining Reclamation and Enforcement for Resource Recovery and Protection Plans.

(8) Approval of minor modifications to or minor variances from activities described in an approved exploration plan for leasable minerals.

(9) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan for leasable minerals.

(10) Digging of exploratory trenches for mineral materials.

(11) Disposal of mineral materials such as sand, stone, gravel, pumice, pumicite, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres.

G. Transportation and Signs

(1) Placing existing roads in any transportation plan when no new construction or upgrading is needed.

(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates, or cattleguards on/or adjacent to existing roads.

(3) Temporary closure of roads.

(4) Placement of recreational, special designation or information signs, visitor registers, kiosks and portable sanitation devices.

H. Other

(1) Maintaining plans in accordance with 43 CFR 1610.5–4.

(2) Acquisition of existing water developments (e.g., wells and springs) on public land.

(3) Conducting preliminary hazardous material assessments and site investigations.

(4) Use of small sites for temporary field work camps where the sites will be restored to their natural or original condition.

(5) Issuance of special recreation permits to individuals or organized groups for search and rescue training, orienteering or similar activities and for dog trails, endurance horse races or similar events.

(6) Off road vehicle travel to drilling or data collection or observation sites.

(7) Construction of snow fences for safety purposes or to accumulate snow for small water facilities.

(8) Installation of devices to protect human life (e.g., grates across mines).

(9) Construction of small protective enclosures including those to protect reservoirs and springs and those to protect small study areas.

(10) Removal of non-valuable, recent structures and materials (including abandoned automobiles, fences and buildings) and reclamation of the site.

(11) Actions where BLM has concurrence or co-approval with another Bureau and the action is a categorical exclusion for that Bureau.

(12) Rendering formal classification of lands as to their mineral character and waterpower and water storage values.

* * * * * *

[FR Doc. 89–26993 Filed 11–16–89; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[NM–010–4320–12/GPO–0004]

Albuquerque District, New Mexico; District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Grazing Advisory Board meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on Wednesday, December 13, 1989, at 10:00 a.m. in the BLM District Office located at 435 Montano NE, Albuquerque, New Mexico. The agenda for the meeting will include the following:

Introduction and Opening Remarks
Approval of Minutes of Last Meeting
Noxious Weed Video
Law Enforcement in BLM
Big Game Transplants
Public Comment Period (1:00 p.m.)
Rio Puerco Pipeline Assessment
Range Improvement Projects
Election of Officers

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Albuquerque District, 435 Montano NE, Albuquerque, New Mexico 87107.

Dated: November 8, 1989.

Patricia E. McLean,
Associate District Manager.

[FR Doc. 89–27052 Filed 11–16–89; 8:45 am]

BILLING CODE 4310–FB–M

[NV–050–00–4210–02]

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held December 13, 1989, at 10:00 a.m. in the Las Vegas District Office at 4765 Vegas Drive, Las Vegas Nevada.

The meeting agenda will include:

1. Agenda approval and review and approval of minutes of the last meeting.
2. Election of Chairman.
3. Desert Tortoise Habitat Conservation Plan briefing on the status of the plan.
4. Sand and Gravel Permitting.
5. Wildhorse gathering proposals.
6. Clark County Resource Management Plan (RMP) schedule and process.
7. Unfinished business.
8. Public Comments.

Advisory Council meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126, prior to November 13, 1989.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on January 13, 1990.

Dated: November 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-27010 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Bayou Darter for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft revised recovery plan for the bayou darter. It occurs only in Bayou Pierre and its tributaries: White Oak Creek, Foster Creek, and Turkey Creek. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 16, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Ave., Suite 316, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Complex Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Bowker at the above address (601/965-4900, FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for reclassifying or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Ethostoma rubrum (the bayou darter) is a threatened species under the Endangered Species Act of 1973, as amended. It is endemic to the Bayou Pierre and its larger tributaries in Mississippi. This draft revision Recovery Plan for the Bayou Darter is a revision of the plan first approved in 1983. The revision incorporates data gathered on this species since the original plan was approved and defines new criteria for satisfaction of the recovery objective and new recovery tasks.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 9, 1989.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 89-27007 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Mountain Sweet Pitcher Plant for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for mountain sweet pitcher plant. This plant occurs on public and private lands in the mountains of North Carolina and South Carolina. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 16, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other

Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is mountain sweet pitcher plant (*Sarracenia rubra* ssp. *jonesii*). The area of emphasis for recovery actions is the mountains of North Carolina and South Carolina. Habitat protection and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 8, 1989.

Brian P. Cole,

Field Supervisor.

[FR Doc. 89-27011 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: St. Louis Zoo, St. Louis, MO; *PRT-742489*

The applicant requests a permit to import one captive-born male amur leopard (*Panthera pardus orientalis*) from the Zurich Zoological Garden, Zurich, Switzerland, for the purpose of enhancement of propagation.

Applicant: St. Louis Zoo, St. Louis, MO; *PRT-742488*

The applicant requests a permit to import one captive-born female amur leopard (*Panthera pardus orientalis*) from the Helsinki zoo, Helsinki, Finland, for the purpose of enhancement of propagation.

Applicant: Falcon Research Group, Bow, WA; *PRT-742493*

The applicant requests a permit to import blood samples taken from wild captured arctic peregrine (*Falco peregrinus tundrius*) and cassins peregrine (*F. p.* cassini) falcons along the west coast of South America for scientific research purposes.

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 4, Atlanta, GA; *PRT-697819*

The applicant requests amendment and renewal of their current permit to allow take of additional species of wildlife and plants for purposes of scientific research purposes and enhancement of propagation or survival of the species in accordance with Recovery Plans, listing, or other Service work for those species.

Applicant: Edward Fernandez, Chicago, IL; *PRT-742854*

The applicant requests a permit to import one captive-born female black leopard (*Panthera pardus*) from the Jaragua Casino Hotel, Santo Domingo, Dominican Republic, for magic act performances during which the applicant will provide information on the leopard's ecological role and conservation needs.

Applicant: Gladys Porter Zoo, Brownsville, TX; *PRT-742847*

The applicant requests a permit to import one female Jentink's duiker (*Cephalophus jentinki*) of wild origin from the East Berlin Zoo, Germany, for the purpose of captive-propagation.

Applicant: Randy P. Fedak, San Diego, CA; *PRT-742848*

The applicant requests a permit to purchase two captive-hatched female radiated tortoises (*Geochelone radiata*) from Mr. Wayne Hill, Winterhaven, Florida, for the purpose of captive-propagation.

Applicant: Point Defiance Zoo & Aquarium, Tacoma, WA; *PRT-744058*

The applicant requests a permit to import one captive born female black lemur (*Lemur macaco*) from the Metro Toronto zoo, Toronto, Canada, for captive breeding and display purposes.

Applicant: Jordan Productions, Las Vegas, NV; *PRT-738597*

The applicant requests a permit to export and reimport one captive born female tiger (*Panthera tigris*) for circus performances during which the applicant will provide information on the tiger's ecological role and conservation needs.

Applicant: Lion Country Safari, Inc., W. Palm Beach, FL; *PRT-744042*

The applicant requests a permit to export one pair of Asian elephants (*Elephas maxmus*) to African Lion Safari and Game Farm, Ltd., Cambridge, Ontario, Canada, for display and possible breeding purposes.

Applicant: Dr. George E. Lawrence, Tehachapi, CA; *PRT-743026*

The applicant requests a permit to live-trap and release Tipton kangaroo rats (*Dipodomys n. nitratoides*) and giant kangaroo rats (*D. ingens*) in Kern Country, California, in order to determine the presence or absence of these two species on lands included in a proposed Wildlife Preserve.

Applicant: National Marine Fisheries Service, Southwest Fisheries Center, La Jolla, CA; *PRT-744029*

The applicant requests a permit to import dead sea turtles and their parts salvaged from drift-nets operated by foreign vessels on the high seas for scientific research purposes and for development of conservation and management efforts for sea turtles in pelagic habitats.

Applicant: Sherry Broadhead, Meridian, MS; *PRT-744140*

The applicant requests a permit to import the sport-hunted trophy of a male bonetebok (*Damaliscus dorcus dorcus*) called from the captive herd of A. Austin, Spitskop (Albany) Grahamstown, Republic of South Africa for the purpose of enhancement of the herd.

Applicant: Columbus Zoological Gardens, Powell, OH; *PRT-743076*

The applicant requests a permit to import two pairs of pygmy chimps (*Pan paniscus*) from the Limbrugse Zoo, Belgium. The males have been held in captivity since July 25, 1980. The females have been held in captivity since July, 1983. The import is for the purposes of breeding and zoological exhibition.

Applicant: Zoological Society of San Diego, Center for Reproduction of Endangered Species; *PRT-743073*

The applicant requests a permit to import samples of blood, skin, tissue and hair for scientific research purposes. The samples will be collected from 400 individual Western lowland gorillas (*Gorilla g. gorilla*) and Eastern lowland gorillas (*Gorilla gorilla graueri*). These gorillas will have been removed from the wild or born in captivity are located in zoological parks throughout the world.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 13, 1989.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-27027 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Assessments for Incorrect or Late Reports and Failure to Report

November 1, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of assessment rates.

SUMMARY: The Minerals Management Service (MMS) has existing regulations at 30 CFR 216.40 and 218.40 which provide for assessments in the nature of liquidated damages for incorrect or late reports and failure to report production and royalty information by payors, operators, or lessees on Federal and Indian leases. The regulations require that the assessment amount (rate) for each violation will be established periodically based on MMS's experience with costs and improper reporting and that a Notice of the established assessment rate will be published in the **Federal Register**. This Notice establishes the assessment rate in accordance with the regulations.

EFFECTIVE DATE: The assessment rates established in this Notice will apply to reports received on or after January 1, 1990. These rates will remain in effect until a subsequent Notice is published in the **Federal Register** which changes the assessment rates.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS-652, Building 85, Denver Federal Center, Denver, Colorado, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public of assessment rates for incorrect and late reports and failure to report production and royalty information to the MMS automated Production Accounting and Auditing System (PAAS) and the Auditing and Financial System (AFS) on Federal and Indian leases pursuant to established regulations. The regulations at 30 CFR 216.40 and 218.40 were amended by the **Federal Register** Notice published July 22, 1987 (52 FR 27593), which provides that the assessment would be a variable amount not to exceed $10 per day for each late report or $10 per day for each erroneous report. Prior to that Notice, the regulations fixed the assessments at $10 per day for each late report and $10 per day for each erroneous report. A report is defined at 30 CFR 216.40(c) and 218.40(c) as each line of required production or royalty information. The AFS assessment rates have not changed from the Federal Register Notice published on July 22, 1987, (52 FR 27593).

Nonrespondent Exceptions

Paragraph (a) at 30 CFR 216.40 and 218.40 provides that an assessment of an amount not to exceed $10 per day may be charged for each production or royalty report not received by MMS by the designated due date. This includes both late reports and failure to report which are classified by MMS as "nonrespondent exceptions" will be $10 per month under AFS. The rates were established by MMS for PAAS on non-respondent reports will be $3 per month. The rate established by MMS for "nonrespondent exceptions" will per month under AFS. The rates were established based on a study of the actual costs associated with the effort to resolve the exceptions and the number of lines on the report involved with the exception. These rates will be assessed for each line item of production or royalty information that is due at MMS on or after the effective date of this Notice, received late by MMS, or not reported to MMS. The total assessment shall not exceed $10,000 per operator or payor code per report month.

Erroneous Reporting

PAAS

Paragraph (b) at 30 CFR 216.40 provides that an assessment of an amount not to exceed $10 per day may be charged for each production report under the PAAS received by the designated due date but which is incorrectly completed. Based on actual costs incurred to correct erroneous reports, MMS has established an assessment of $10 per line each month for erroneous reports made to PAAS.

The rates may be assessed for each operator caused incorrect line item of production information received by MMS after the effective date of this Notice. The total assessment shall not exceed $10,000 per operator code per report month for reports made to the PAAS.

AFS

Paragraph (b) at 30 CFR 216.40 provides that an assessment of an amount not to exceed $10 per day may be charged for each royalty report received by the designated due date but which is incorrectly completed. Based on actual costs incurred to correct erroneous reports, MMS has established the following assessment rate schedule for erroneous royalty reporting.

1-100 lines in error—$5.00 per line each month
101-500 lines in error—$8.00 per line each month
Over 500 lines in error—$10.00 per line each month

A reduced rate of $3 per line each month will be assessed for erroneous lines caused by a header error, or for erroneous lines caused by the same error which is repeated on every line of a royalty report.

The rates were established based on a study of the actual costs associated with the effort to resolve the exceptions, the number of lines on the report involved with the exception, and the type of error on the report.

These rates will be assessed for each incorrect line item of royalty information received by MMS after the effective date of this Notice. The total assessment shall not exceed $10,000 per payor code per report month for reports made to the AFS.

Dated: November 13, 1989.

Jerry D. Hill,

Associated Director for Royalty Management.

[FR Doc. 89-27051 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, December 9, 1989 at the Kennedy Center, Washington, DC. The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfield, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Pound, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC.
Mr. Barry A. Passett, Washington, DC.
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business,
2. Superintendent's report,
3. Committee reports,
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact James D. Young, Acting Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: November 13, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89-29984 Filed 11-16-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Co.; Construction and Operation of Additional Rail Line From Ashland to Decker, in Rosebud and Big Horn Counties, Montana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (EIS) and to hold public scoping meetings.

SUMMARY: The Tongue River Railroad Company will formally seek ICC authorization in the coming months to construct and operate a 42-mile rail line from a point approximately 8 miles south of Ashland to a point near the Spring Creek mine north of Decker in Rosebud and Big Horn Counties, MT. Because of the potential for significant environmental impacts which may be associated with the construction and operation of the proposed project, preparation of a supplemental EIS is necessary and informal public scoping meetings will be held.

DATES: December 6, 1989, 7-9 p.m.; December 7, 1989, 10 a.m.-1 p.m.

Comments regarding environmental concerns may be submitted at the scoping meetings. Also, written comments may be submitted directly to the ICC no later than January 19, 1990.

PLACE: Old Gymnasium, St. Labre Indian School, Ashland, MT.

ADDRESSES: Written comments and/or requests for the draft EIS or final EIS should be sent to: Dana White, Section of Energy and Environment, Interstate Commerce Commission, Room 3214, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Dana White (202) 275-6889 or Elaine K. Kaiser, Section Chief, (202) 275-7684. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The proposed Ashland to Decker rail line will be an extension of the planned 81-mile rail line between Miles City and Ashland in Custer, Rosebud, and Powder River Counties, MT for which the Tongue River Railroad Company has already obtained ICC authorization (ICC decision granting construction and operation authority in F.D. 30186, served September 4, 1985) and for which an EIS has already been completed (EIS in F.D. 30186, served August 23, 1985). The Tongue River Railroad, a common carrier, anticipates that the principal commodity moved on the proposed rail extension will be coal. Informal public scoping meetings will be held to inform the public about the proposed project and to encourage public participation in the identification of environmental issues and concerns that need to be addressed in the EIS.

By the Commission, John F. Hennigan, Jr., Director, Office of Transportation Analysis.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27097 Filed 11-16-89; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use by DRI/McGraw-Hill

The Commission has received a request from DRI/McGraw-Hill for permission to use certain data from the Commission's 1988 ICC Waybill Sample. For each of 24 railroads (listed below), DRI request a listing of all interchanging railroads, and the number of carloads interchanged with each. If an interchanging railroad exchanges traffic with one of the listed railroads at more than one point, then the information requested is the total number of carloads interchanged not the number exchanged at each point. No commodity, revenue information or data on where the interchanges occurred is requested.

Railroads

Conrail
Florida East Coast
Illinois Central
Atchison, Topeka & Santa Fe
Chicago & North Western
Kansas City Southern
Southern Pacific
Union Pacific
Genessee & Wyoming
Paducah & Louisville
Duluth, Missabe & Iron Range
Lake Superior & Ishpeming
CSX Transportation
Grand Trunk Western
Norfolk Southern
Burlington Northern
Denver & Rio Grande Western
Soo Line
St. Louis Southwestern
Elgin, Joliet & Eastern
Monongahela
Richmond, Fred. & Potomac
Green Bay & Western
Wisonsin Central

The Commission requires rail carriers to file waybill sample information if any of the past three years they terminated on their lines; (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 C.F.R. Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential or potentially confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the Publication of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who

objected will be timely notified of the Director's decision.

Contact: James A. Nash (202) 275–6864

Noreta R. McGee,

Secretary.

[FR Doc. 89–27093 Filed 11–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 323X]

CSX Transportation, Inc.—Abandonment Exemption—In Saginaw County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 0.2-mile line of railroad between mileposts 34+39 and 45+00, at Superior Street, in Saginaw, Saginaw County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 27, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 7, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 22, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27096 Filed 11–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31552]

Consolidated Rail Corp.; Joint Project for Relocation of a Line of Railroad Exemption—The Grand Trunk Western Railroad Co.

On October 12, 1989, Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1180.2(d)(5) for the relocation of a portion of its line and operations in Chicago, IL, to a parallel and adjacent 1.48-mile line to be acquired from The Grand Trunk Western Railroad Company (GTW). The line to be acquired extends from GTW Valuation Station 112+00±, at milepost 6.97±, just east of Oakley Avenue, to GTW Valuation Station 189+82±, at milepost 8.45±, just east of St. Louis Avenue. The purpose of the relocation is to accommodate the construction of a local transit project, by the City of Chicago (City), over Conrail's existing right-of-way.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers, and incidental thereto, Conrail's abandonment of its existing line and construction of connecting track. The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN*, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project qualifies under the class exemption procedures at 49 CFR 1180.2(d)(5).

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles E. Mechem, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103-2959.

Dated: November 13, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27094 Filed 11–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31541]

Indiana Hi-Rail Corp., Trackage Rights Exemption—Central Railroad Co., of Indianapolis

Central Railroad Company of Indianapolis (CERA) has agreed to grant local trackage rights to Indiana Hi-Rail Corporation (IHRC) between milepost I–108.6, at Argos, IN, and milepost I–74.2, at Peru, IN. CERA leases the involved line from Norfolk and Western Railway Company and expects that the lessor will consent to the trackage rights grant.[1] The trackage rights were to have become effective October 25, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner (for IHRC), Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street NW., Washington, DC 20006; and Carl Miller (for CERA), Miller & Miller, 407 Broadway, New Haven, IN 46774.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: November 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–26947 Filed 11–16–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31557]

Union Pacific Railroad Co.; Joint Project for Relocation of a Line of Railroad and Trackage Rights Exemptions—Burlington Northern Railroad Co.

On October 12, 1989, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1180.2(d) (5) and (7) for a joint project with Burlington Northern Railroad Company (BN) for the relocation of UP's operations through acquisition of overhead trackage rights over BN's 20.7-mile line between milepost 0.5, near Lincoln, and milepost 80.3, near Crete, in Lancaster and Saline Counties, NE. The trackage rights became effective on October 19, 1989.

The joint project involves relocation of a line of railroad that does not disrupt service to shippers, and incidental thereto, abandonment of UP's existing 6.04-mile line between milepost 13, near Kramer, and milepost 19.04, near Crete, in Lancaster and Saline Counties, NE. The Commission will assume jurisdiction over the abandonment component of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN*, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment of UP's line is not subject to the Commission's jurisdiction. The remainder of the joint relocation project, involving the acquisition of overhead trackage rights, qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence E. Wzorek, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Dated: November 13, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27095 Filed 11–16–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and machanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] IHRC notes that it has not concluded its discussions with the lessor, but does not specifically state whether the lease requires the lessor's permission for the acquisition of trackage rights. This notice does not constitute a ruling whether the lessee can lawfully grant trackage rights in question.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations

Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II:		
Texas	TX89-54	p. 1136k p. 1136l

Modifications to General Wage

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:		
Connecticut	CT89-1 (Jan. 6, 1989)	p. 61 pp. 62-66
Florida	FL89-13 (Jan. 6, 1989)	p. 129 p. 130
New York	NY89-3 (Jan. 6, 1989)	p. 701 p. 705
New York	NY89-13 (Jan. 6, 1989)	p. 799 pp. 800-801
West Virginia	WV89-2 (Jan. 6, 1989)	p. 1209 p. 1210 p. 1216 p. 1219 p. 1079
Volume II:		
Missouri	MO89-2 (Jan. 6, 1989)	p. 647 p. 651
Missouri	MO89-9 (Jan. 6, 1989)	pp. 693 p. 695
Nebraska	NE89-2 (Jan. 6, 1989)	p. 719 pp. 720-721
Texas	TX89-2 (Jan. 6, 1989)	p. 981 p. 982
Texas	TX89-51 (Jan. 6, 1989)	p. 1136c p. 1136d
Volume III:		
Alaska	AK89-1 (Jan. 6, 1989)	p. 1 pp. 2-3
California	CA89-1 (Jan. 6, 1989)	p. 33 pp. 36-37
California	CA89-2 (Jan. 6, 1989)	p. 43 p. 52
Colorado	CO89-1 (Jan. 6, 1989)	p. 105 p. 106
Hawaii	HI89-1 (Jan. 6, 1989)	p. 135 p. 136
Nevada	NV89-1 (Jan. 6, 1989)	p. 241 p. 243
Nevada	NV89-2 (Jan. 6, 1989)	p. 263 p. 264
Nevada	NV89-3 (Jan. 6, 1989)	p. 269 p. 270
Nevada	NV89-4 (Jan. 6, 1989)	p. 277 p. 278
Nevada	NV89-5 (Jan. 6, 1989)	p. 287 p. 288

Corrections to General Wage

Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, section 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume (s).

Volume III:
Wage Decision No. CA88-4, Modifications 7 through 13
Wage Decision No. CA89-4, through Modification 8
Wage Decision No. WA89-1, Modifications 5 through 12

Pursuant to the Regulations, 25 CFR part 1, section 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 9th Day of November 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-26853 Filed 11-16-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC. 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. *Date:* December 1, 1989.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives programs, for the December 1989 deadline, to the Division of General Programs, for projects beginning after April 1, 1990.

2. *Date:* December 1, 1989.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review State and Regional Exemplary Award proposals submitted by State humanities councils to the Division of State Programs, for projects beginning after May 1, 1990.

3. *Date:* December 1, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Stipends applications in European History II, submitted to the Division of Fellowship and Seminars, for projects beginning after May 1, 1990.

4. *Date:* December 1, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Sociology, Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

5. *Date:* December 4, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in American History I, submitted to the Division of Fellowship and Seminars, for projects beginning after April 1, 1990.

6. *Date:* December 4, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Stipends applications in Anthropology, Folklore, and New World Archaeology, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1990.

7. *Date:* December 4, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Stipends applications in Art History and Architecture submitted to the Division of Fellowships and Seminars, for prjects beginning after may 1, 1990.

8. *Date:* December 5, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Foreign Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

9. *Date:* December 5, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Stipends applications in American Literature, submitted to the Division of Education Programs, for projects beginning after May 1, 1990.

10. *Date:* December 6, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Summer Stipends applications in Two-Year Colleges, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

11. *Date:* December 7, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Philosophy I, submitted to the Division

of Fellowships and Seminars, for projects beginning after May 1, 1990.

12. *Date:* December 8, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in European History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

13. *Date:* December 8, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

14. *Date:* December 8, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Stipends applications in Classical and Medieval Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

15. *Date:* December 6, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Philosophy II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

16. *Date:* December 11, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in African, Asian, and Latin American History and Politics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

17. *Date:* December 12, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Political Science I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

18. *Date:* December 12, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Modern American and Modern British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

19. *Date:* December 13, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Foreign Languages and Literature II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

20. *Date:* December 14, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Political Science II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

21. *Date:* December 14, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

22. *Date:* December 15, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends applications in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

23. *Date:* December 15, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

24. *Date:* December 13, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Communications, Rhetoric, Theater, and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

Stephen J. McCleary,
Advisory Committee, Management Officer.
[FR Doc. 89–27024 Filed 11–16–89; 8:45 am]
BILLING CODE 7536–01–M

National Endowment for the Arts; Literature Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 6, 1989, from 2:00 p.m.–6:00 p.m. and on December 7–8, from 9:00 a.m.–6:00 p.m. and on December 9 from 9:00 a.m.–3:00 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 9, 1989, from 12:00 p.m.–3:00 p.m. The topic for discussion will be policy.

The remaining portions of this meeting on December 6 from 2:00 p.m.–6:00 p.m., on December 7–8 from 9:00 a.m.–6:00 p.m., and on December 9 from 9:00 a.m.–12:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 9, 1989.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 89–27008 Filed 11–16–89; 8:45 am]
BILLING CODE 7537–01–M

National Endowment for the Arts; Museum Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Museum Purchase Plan Section) to the National Council on the Arts will be held on December 6, 1989 from 9:15 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 6, 1989, from 9:15 a.m.–10:30 a.m. The topic for discussion will be opening remarks.

The remaining portion of this meeting on December 6 from 10:00 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/683–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: November 9, 1989.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 89–27009 Filed 11–16–89; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 and issued to Northeast Nuclear Energy Company, et al (the licensee), for the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would modify the Technical Specifications as follows:

(1) TS 4.2.2.2.2 would be changed to revise the Fxy formula for three-loop operation.

(2) TS 3/4.7.1.5 would require that main steam isolation valves (MSIVs) be OPERABLE in Mode 4. In addition, the action statement and surveillance requirements would be revised to reflect an MSIV closure time of 120 seconds for Mode 4. Two related, proposed, changes to the TS are:

(a) Table 3.3–3, Engineered Safety Features Actuation System (ESFAS) Instrumentation, would be revised to add Mode 4 operability requirements for containment spray and containment isolation (Phase B) on High-3 containment pressure and for main steam isolation on manual initiation, automatic actuation logic, and High-2 containment pressure.

(b) Table 4.3–2, ESFAS Instrumentation Surveillance Requirements, would be revised to require surveillance in Mode 4 of containment spray actuation and Phase B containment isolation on High-3 containment pressure and steam line isolation manual initiation, automatic actuation logic, and High-2 containment pressure.

(3) TS Tables 3.3–6, 3.3–10, 4.3–3, 4.3–7 would be changed to eliminate the inconsistency between the tables, and represent the actual function of containment purge exhaust area radiation monitors RE41 and 42 (fuel drop monitors).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 18, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page numbet of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 20, 1989 supplemented October 16, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room, Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 9th day of November 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27067 Filed 11–16–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL and 50–444–OL; Offsite Emergency Planning]

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for that portion of the offsite emergency planning phase of this operating license proceeding concerned with the Massachusetts Radiological Emergency Response Plan. As reconstituted, this Appeal Board will consist of the following members:

G. Paul Bollwerk, III, Chairman
Alan S. Rosenthal
Howard A. Wilber

Dated: November 13, 1989.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 89–27065 Filed 11–16–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket 70–25; ASLBP No. 89–594–01–ML]

Rockwell International Corp.; Time Extended for Intervention

November 9, 1989.

In the matter of Rockwell International Corporation, Rocketdyne Division (Special Material License Number SNM–21) before Atomic Safety and Licensing Board Administrative Judge Peter B. Bloch; request to renew until October 30, 1990; time extended for intervention.

On November 2, 1989, Rockwell International Corporation requested[1] an amendment of the license extension request that was the subject of the notice of "Limited Time Within Which to Intervene," issued by me on October 2, 1989. In light of that amendment it is appropriate to extend the time within which to intervene to November 25, with extensions beyond that time permitted only upon a showing of good cause.[2]

All further filings in this case are to be by overnight mail service or by regular mail only if mailed at least five days prior to the deadline for the filing.

The Rockwell amendment would: 1. Reduce the use limit to less than 6g of Pu for research and development activities; 2. Reduce the possession limit to 400g of special nuclear material (SNM) to cover the 6g of Pu for use and up to 394g of SNM contamination distributed in the Rockwell International Hot Laboratory; 3. limit the term of the renewal request until October 30, 1990; and 4. stipulate that after October 30, 1990, the only activities under license SNM–21 will be decontamination and decommissioning. The combined extension-amendment does not, however, contain a request for a license that will cover decontamination and decommissioning.

Upon consideration of the entire record in this case, it is so Ordered.

Peter B. Bloch,

Presiding Officer.

[FR Doc. 89–27066 Filed 11–16–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27438; File No. SR–NASD–89–51]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The amendment was received by me today.

[2] Since the previously granted license—as now reduced in scope by this amendment—is apparently permitted to remain in effect during the consideration of this combined request for an extension and amendment, it is urgent that speed be maintained in handling this matter before it becomes moot.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(3)(A)(i) under the Act, the NASD is proposing an interpretation of an existing rule, pertaining to the Association's periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers, as described more fully below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to notify the Commission of the reclassification of some 521 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security periodically (approximately every six months) to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of June 30, 1989, using second quarter, 1989 trading data and the following established criteria:

A 1,000-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $250, and two or more market makers;

A 200-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers.

The 521 NASDAQ/NMS securities that have been reclassified as of October 9, 1989, are set out as an Exhibit to the filing, Notice To Members 89–67.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rulemaking initiatives of the NASD be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." The NASD believes that the reassessment of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the NASDAQ market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 8, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27062 Filed 11–16–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

November 13, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Astrotech International Corp.
Warrants expiring 3/31/89 (purchase 1 Common at $6.00) (File No. 7–5497)
Burlington Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–5498)
Eljer Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–5499)
Global Marine, Inc.
Warrants expiring 3/16/89 (purchase 1 Common at $3.00) (File No. 7–5500)
Gundle Environmental Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–5501)
Illinois Central Transportation Co.
Common Stock, $.01 Par Value (File No. 7–5502)
Interpublic Group of Companies, Inc.
Common Stock, $.10 Par Value (File No. 7–5503)
MCN Corporation
Common Stock, $1.00 Par Value (File No. 7–5504)
Medusa Corporation
Common Stock, No Par Value (File No. 7–5505)
Oryx Energy Co.
Common Stock, $1.00 Par Value (File No. 7–5506)
Repsol S.A.
American Depositary Shares (representing 1 Cap Share) (File No. 7–5507)
Rexene Corp.
Common Stock, $1.00 Par Value (File No. 7–5508)
RJR Holdings Group
Cum. Exch. Pfd. Stock, Common Stock, $.01 Par Value (File No. 7–5509)

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Saatchi & Saatchi Co. plc
American Depositary Shares (representing 3 Ord. Shares par 10p) (File No. 7–5510)
Schwitzer, Inc.
Common Stock, $.10 Par Value (File No. 7–5511)
Scotsman Industries
Common Stock, $.10 Par Value (File No. 7–5512)
Sotheby's Holdings, Inc.
Common Stock, $.10 Par Value (File No. 7–5513)
WCI Holdings
15.50% Cum. Exch. Pfd. Stock, Common Stock, $.01 Par Value (File No. 7–5514)
Crane Company
Common Stock, $1.00 Par Value (File No. 7–5515)
Lee Pharmaceuticals
Common Stock, $.10 Par Value (File No. 7–5516)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 5, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27063 Filed 11–16–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17210; 811–3080]

Morgan Keegan Daily Cash Trust; Application for Deregistration

November 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Morgan Keegan Daily Cash Trust ("Applicant").

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATES: The application on Form N–8F was filed on January 3, 1989 and an amendment thereto on July 10, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 7, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certicate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC. 20549. Applicant, Federal Investors Tower, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Max Berueffy, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized under the laws of the Commonwealth of Massachusetts. On July 28, 1980, Applicant filed a Notification of Registration pursuant to section 8(b) of the 1940 Act. On that same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A which was declared effective December 8, 1980, and the initial public offering commenced on December 9, 1980.

2. Proxy materials with respect to a proposal to liquidate Applicant were distributed to shareholders and filed with the SEC on or about November 10, 1988. On November 16, 1988, Applicant's Board of Trustees (the "Trustees") approved the Plan of Liquidation ("Plan") of Applicant.

3. At a special meeting of shareholders held on December 23, 1988, the shareholders voted to approve the Plan.

4. As of December 21, 1988, Applicant had 84,723,351.17 shares outstanding, with a net asset value per share of $1.00. On or before December 28, 1988, all shares were voluntarily redeemed by the shareholders at their net asset value. Applicant was liquidated on December 28, 1988, pursuant to its Declaration of Trust and applicable state law.

5. On January 23, 1989 Applicant withdrew its Business Certificate from the City of Boston. Also, on January 24, 1989, Applicant filed a Certificate of Liquidation with the Secretary of State of Massachusetts. These filings became effective upon the filing date.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27059 Filed 11–16–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17207; 812–7370]

RGS (AEGCO) Funding Corporation; Application

November 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: RGS (AEGCO) Funding Corporation.

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from all provisions.

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to assist in the financing and refinancing of certain property through leveraged lease transactions in which AEP Generating Company ("AEGCO") will be the lessee.

FILING DATE: The application was filed on August 3, 1989 and amended on November 8, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 5, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by the Corporate Trinity Company ("CTC"), a company controlled by The Corporate Trust Company ("CT"). There is, and in the future will be, no class of equity securities of Applicant other than its common stock. AEGCO is a wholly-owned subsidiary of American Electric Power Company, Inc., a New York corporation and registered public utility holding company ("AEP").

2. Applicant's sole purpose is to assist the Lessor (as defined below) in the financing and refinancing, in whole or in part, of its undivided interest in Unit No. 2 ("Unit 2") of the Rockport Generating Station ("Rockport Plant") acquired in one or more leveraged lease transactions ("Leveraged Lease Transactions") in which AEGCO will be the lessee (the "Lessee").[1] In each Leveraged Lease Transaction, the Lessee will sell a portion of its 50% undivided ownership interest in Unit 2 to Wilmington Trust Company as owner trustee ("Owner Trustee") under six grantor trusts (each such trust being for the benefit of a single beneficiary or "Owner Participant"). (Wilmington Trust Company, in its capacity as lessor in the Leveraged Lease Transaction, is also referred to as "Lessor.") The Lessor will lease such interest back to the Lessee pursuant to a long-term lease agreement (each such agreement, a "Lease"). Each Lessor will obtain the funds for the payment of the purchase price of the undivided interest in Unit 2 in part from an equity investment to be made by its Owner Participant and in part from non-recourse loans that will be evidenced by notes of such Lessor ("Lessor Notes"). It is expected that the majority of the aggregate principal amount of the loans to be made to each Lessor will be interim loans made by a syndicate of banks ("Bank Loans"), and that the remainder will be term loans made by the Applicant with the proceeds of the sale of several series of its debt securities ("Lease Bonds"). If the Bank Loans are not refunded in full at the time of the issuance of the Lease Bonds, no bank would have greater rights under the Lease Indentures (as defined below) than those available to the holders of the Lease Bonds.

3. CTC and CT have entered into an agreement with AEGCO under which CTC and CT have agreed to cause Applicant to participate in one or more Leveraged Lease Transactions, and AEGCO has agreed to indemnify CTC and CT with respect to such participation. AEGCO and Indiana Michigan Power Company ("I&M"), each of which currently owns a 50% undivided ownership interest in the Rockport Plant, have entered into an agreement establishing their respective rights and obligations as owners for the construction and ownership of the Rockport Plant (the "Owners' Agreement"), an agreement providing for the operation and maintenance of the Rockport Plant (the "Operating Agreement") and an agreement providing for AEGCO to make available to I&M all of the power and associated energy available to AEGCO from its undivided interest in the Rockport Plant (the "Unit Power Agreement") (these agreements are hereinafter collectively referred to as the "Rockport Plant Agreements"). Under the Rockport Plant Agreements, I&M is authorized to act as agent for AEGCO in connection with, and has primary responsibility for and control over, the construction, operation and maintenance of the Rockport Plant. AEGCO's rights under the Rockport Plant Agreements will not be assigned to the Lessor. Under other leveraged lease transactions, such agreements usually are assigned to the lessor and then to a lease indenture trustee as security for the lessor notes. These assignments are intended to assure that a capable operator is contractually obligated to operate and maintain the plant for the benefit of the equity and debt investors. In this instance, these investors demanded an operating agreement with more extensive provisions for their benefit than the present Operating Agreement between AEGCO and I&M. Thus, I&M has entered into another operating agreement (the "Unit 2 Operating Agreement") directly with the Lessor which will become effective upon the expiration of any Lease. The Unit 2 Operating Agreement will be assigned by the Lessor to the Lease Indenture Trustees as security for the Lessor Notes and thus will ultimately secure payments on the Lease Bonds.

4. The Applicant's obligation to participate in any Leverage Lease Transaction, and the conditions to such participation, are set forth in a participation agreement ("Participation Agreement"). Such obligation will be limited to participating, upon the request of the Owner Participant in such Leveraged Lease Transaction, in: (a) The financing of the Lessor's purchase of an undivided interest in Unit 2 on the closing date for such transaction, (b) the refinancing from time to time of all or a portion of any series of Lessor Notes issued by such Lessor (and because of their "pass-through" nature, the related Lease Bonds), and (c) the financing from time to time of such Lessor's share of the cost of capital improvements to Unit 2.[2] In each case, the Applicant's participation will involve issuing one or more series of its Lease Bonds and lending the proceeds thereof on a non-recourse basis to the Lessor in exchange for Lessor Notes, and will be subject to the conditions described in section I.A.11. of the application to assure proper documentation and a security interest for repayment from the Lessor. Applicant expects that the Lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act").

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[1] The SEC granted orders in Holding Company Act Release Nos. 35–24872 (April 25, 1989) and 35–24810 (June 22, 1988) permitting the sale and leaseback by AEGCO and Indiana Michigan Power Company of their respective 50% undivided ownership interest in Unit 2. The SEC also has issued a notice in Holding Company Act Release No. 35–24832 (August 3, 1988) in connection with the long-term debt financing.

[2] Financing the cost of capital improvements and refinancing of the Lessor Notes will be infrequent and undertaken only in circumstances in which the Owner Participant determines it would be economically advantageous to the participants to do so. Refinancing decisions would be based on factors similar to those considered by any obligor, such as the level of prevailing market interest rates. Any net savings in interest expense would accrue on a dollar-for-dollar basis to the Lessee. In addition, refinancing would occur only in connection with the refunding by the Lessor of the Lessor Notes evidencing the Bank Loans or the retirement of one or more series of Lease Bonds. Each series of Lease Bonds will be backed by Lessor Notes of like aggregate principal amount, interest rate, redemption and other terms and conditions. Applicant will not be obligated to pay for any refinancing costs. The Lessor initially is expected to pay such costs and would recover them from the Lessee.

5. Any successor Owner Trustee (and thus any Lessor) will be required to be a bank or trust company incorporated and doing business within the United States and have a combined capital and surplus of at least $100,000,000. Each of the Owner Participants purchasing beneficial interests in the grantor trusts will be a sophisticated investor. All such beneficial interests have been offered and will be sold in transactions not involving any public offering within the meaning of section 4(2) of the Securities Act. The nature and availability of the tax benefits of the beneficial interest in a grantor trust, the large investment required, the legal and regulatory framework of the Leveraged Lease Transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of any such beneficial interest. As long as the Lessor Notes are outstanding, the Applicant will receive assurances from each Lessor and its Owner Participant that they are not and will not be an investment company within the meaning of Section 3(a) of the 1940 Act or are and will be deemed to be excluded from the definition of an investment company by virtue of the provisions of section 3(b) or section 3(c) of the 1940 Act.

6. Each Lease will be a "net lease" under which the Lessee will be unconditionally obligated to make rental and other payments sufficient to pay the principal of, and premium, if any, and interest on, the Lessor Notes issued in connection therewith, without any right of counterclaim, setoff, deduction or defense on the part of the Lessee.[3] The documentation evidencing each Leveraged Lease Transaction (the "Transaction Documents") will require that each series of Lessor Notes pledged as security for the Lease Bonds contain redemption provisions which correlate to the redemption provisions of the related series of Lease Bonds. The Transaction Documents will also require that, so long as no event of default shall have occurred under the related Lease, the related Lease Indenture Trustee (as defined below) shall not take or cause to be taken any action contrary to the Lessee's rights under such Lease, including the right to quiet use, enjoyment and possession of the undivided interest in Unit 2.

7. The Lessor Notes of each Lessor will be issued pursuant to separate but substantially identical trust indentures, mortgage and security agreements with The Connecticut National Bank acting as trustee for the holders of the Lessor Notes issued thereunder (in each case, a "Lease Indenture" with a "Lease Indenture Trustee"). Pursuant to each Lease Indenture, the Lessor will grant to the Lease Indenture Trustee an assignment of basic rent and certain other payments to be made by the Lessee under the applicable Lease (the "Lease Indenture Estate"). All Lessor Notes issued under each Lease Indenture will be secured equally and ratably by a lien on and security interest in the Lease Idenfure Estates. Applicant will not participate in any Leverage Lease Transaction unless the Lease Indenture Estate securing the Lessor Notes includes (a) all right, title and interest in and to such Lessor's undivided ownership interest in Unit 2; (b) substantially all of such Lessor's rights under the Lease, including the right to receive all basic rent and other amounts payable by the Lessee; and (c) such Lessor's rights under the Unit 2 Operating Agreement and its easements and rights to certain ancillary services and facilites after the end of the Lease term.

8. Applicant will not purchase any Lessor Note unless such Lessor Note and all other Lessor Notes, if any, are issued in respect of leased property having an aggregate fair market sales value (measured at the time such leased property was first financed under the Leases) equal at least to 110% of the original principal amount of such Lessor Note and such other Lessor Notes.

9. All Lease Bonds will be issued under a single collateral trust indenture (the "Collateral Trust Indenture") to be entered into by the Applicant and The Connecticut National Bank as trustee (the "Collateral Trust Trustee"). For each series of Lease Bonds there will be a separate supplemental indenture that will establish the terms of those Lease Bonds. The Applicant will pledge to the Collateral Trust Trustee, as security for the payment of the principal of, and premium, if any, and interest on all Lease Bonds, all Lessor Notes issued to the Applicant for the equal and ratable benefit of the holders of all Lease Bonds. Such pledged Lessor Notes will be registered in the name of the Collateral Trust Trustee as pledgee. Each such Lessor Note, in turn, will be secured by, among other things: (i) A security interest in substantially all the rights of the Lessor under the related Lease, including the right of the Lessor to receive basic rent and certain other amounts payable by Lessee thereunder, and (ii) the property leased under the related Lease. The Connecticut National Bank also will be the Lease Indenture Trustee under each Lease Indenture and the trustee under a collateral trust indenture to be entered into with RGS (I&M) Funding Corporation in a transaction similar to the one described in this notice involving I&M, another subsidiary of AEP. However, The Connecticut National Bank is not affiliated with any of the Lessors and is not a trustee under any indenture to which AEP or its subsidiaries is a party. Applicant believes that The Connecticut National Bank's position as trustee under both the Lease Indentures and the Collateral Trust Indentures is permitted by the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

10. The various series of Lease Bonds will have terms that may differ as to maturity dates, interest rates, sinking fund obligations, provisions for redemption and other matters. The interest rates, maturities and principal amounts and other terms of each series of Lease Bonds issued from time to time will be determined by reference to prevailing market conditions. Until any funds received by the Collateral Trust Trustee for the redemption of any Lease Bonds are required to be so applied, the Collateral Trust Trustee may, and at the request of Applicant shall, invest such funds in certain investments ("Permitted Investments," as defined in condition 6 below) maturing at such times as are required to redeem such Lease Bonds on the date or dates specified therefor. However, the cash required to service the Applicant's obligations under the Lease Bonds will never be greater than the cash that the Applicant is entitled to receive in respect of the Lessor Notes.

11. The initial issuance of Lease Bonds is expected to be through a private placement of one or more Series of Lease Bonds having a maximum aggregate principal amount of $400 million. Although AEGCO will not be the actual obligor or guarantor in respect of the Lease Bonds of any series, under the analysis customarily applied in leveraged lease transactions, AEGCO will be considered the issuer of the Lease Bonds of any series issued in respect of a Lease to which it is a party under the Securities Act and the obligor under the Trust Indenture Act. If the registration requirements of the Securities Act are applicable to an issuance of Lease Bonds, AEGCO will file a registration statement under the Securities Act covering such Lease Bonds and the Collateral Trust Indenture will be qualified under the Trust Indenture Act. Any registration statement filed under the Securities Act relating to the Lease Bonds will name AEGCO as the registrant thereof and will be signed on behalf of AEGCO by its officers and directors as required by the Securities Act and the rules and regulations thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to AEGCO. Subsequent Lease Bonds may also be issued in private placement pursuant to section 4 (2) of the Securities Act, in underwritten public offerings, and, possibly, in distributions exempt from registration because they will come to rest outside the United States. In the case of any offering of Lease Bonds outside the United States, the Applicant will obtain an opinion of United States counsel that registration under the Securities Act is not required and will enter into agreements and follow procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible).

12. The collateral Trust Trustee will be required, upon the occurrence of any default under any Lease Indenture or of any event of default, event of loss, or deemed loss event under the Lease of which the Collateral Trust Trustee has actual knowledge, to give notice thereof in accordance with the provisions of the Collateral Trust Indenture to all holders of Lease Bonds. Upon the occurrence of any such event, any holder of a Lease Bond may at any time request the Collateral Trust Trustee to direct, or to participate in the direction of, any action under such Lease Indenture to the extent allowed. Upon receiving any directions from holders of Lease Bonds, the Collateral Trust Trustee will be required to report to the Lease Indenture Trustee the principal amount of the pledged Lessor Notes which is opposed to, in favor of, or is taking no position with respect to any action or vote. The principal amount of the pledged Lessor Notes will be voted in proportion to the principal amount of Lease Bonds taking or abstaining from taking corresponding positions. The Lease Indenture Trustee will be required to follow the directions of the holders of a majority in principal amount of the Lessor Notes outstanding which, in the case of each Lease Indenture under which pledged Lessor Notes are issued, will mean the holders of a majority in aggregate principal amount of the Lease Bonds then outstanding acting through the Collateral Trust Trustee. By virtue of this passthrough voting mechanism, the rights and remedies provided under each Lease Indenture to the holders of Lessor Notes, acting through their fiduciary, the Lease Indenture Trustee, will be exercisable directly by the holders of the Lease Bonds acting through their fiduciary, the Collateral Trust Trustee. In the event that the Collateral Trust Trustee does not receive directions from holders of Lease Bonds as described above, the Collateral Trust Trustee will be required to use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. Similarly, if the Lease Indenture Trustee has not received a directive within a stated period of time, it also will be required to act as a prudent man would in the case of his own property.

13. Accordingly, if AEGCO were to default under the Leases in the payment of that portion of the rent required to pay amounts then due and payable in respect of the Lessor Notes pledged to the Collateral Trust Trustee, the Lease Indenture Trustees would have the right, and, upon the receipt of a directive given by the holders of a majority in principal amount of the pledged Lessor Notes under each Lease Indenture would be required, to declare all pledged Lessor Notes immediately due and payable and to exercise concurrently with the Lessors any remedies available to them under the Lease and the remedies available under the Lease Indentures. Such remedies would include the right to demand after a specified grace period that the Lessee pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of, and premium, if any, and interest on, all Lessor Notes. The holders of the Lease Bonds would therefore have access under the Collateral Trust Indenture and the Lease Indentures to the credit of the Lessee and would be entitled to realize on their collateral up to the aggregate unpaid amont of such Lessor Notes, free of any rights of the Lessee or any creditor thereof.

Applicant's Legal Conclusions

1. Applicant's requested exemption from Section 6(c) of the 1940 Act is appropriate in the public interest, and consistent with the protection of investors and with the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons. The activities of the Applicant are essentially those of a special purpose finance company. Leveraged leases are designed to provide business, financial and other benefits to the lessees, lessors and lenders involved. Such transactions provide companies such as AEGCO with a financially favorable method of acquiring the use of capital assets necessary to conduct their businesses. Until relatively recently, parties to leveraged lease transactions were faced with a limited source of debt financing. Such financing had been available almost exclusively from the institutional private placement market. Consequently, lessees, whose rental payments must be sufficient to service the debt incurred by their lessors, were generally confined to the terms offered by the institutional private placement market. The proposed issuance of the Applicant's Lease Bonds would provide a convenient mechanism for AEGCO to obtain the benefits of access to public as well as other segments of the debt capital markets in a manner similar to that afforded to other similarly situated lessees.

2. The Applicant's Lease Bonds will not be guaranteed by AEGCO or its affiliates. However, because of the unconditional obligations of AEGCO under the Leases, in conjunction with the remedies under the Lease Indentures and the Collateral Trust Indenture, the purchasers of the Lease Bonds will have access to the credit of AEGCO. As the assignee of rentals and other payments under the related Leases as security for payment of the Lessor Notes, the Lease Indenture Trustees directly will be entitled to exercise, subject to the provisions of the Lease Indentures, on behalf of and for the benefit of the Lease Bondholders, all of the rights and remedies against AEGCO provided in the Leases. The exercise of such rights and remedies will occur at the direction of Lease Bondholders through the Collateral Trust Trustee's instruction to the related Lease Indenture Trustees. The Lease Bondholders would therefore have access to the credit of the Lessee and would be entitled to realize on their collateral (primarily the Lessor Notes pledged to the Collateral Trust Trustee) up to the aggregate unpaid amount of such Lessor Notes free of any rights of the Lessee or any creditor thereof.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. In the future, all outstanding shares of Applicant's common stock will be owned by CTC or CT or a successor to, or assignee of, CTC or CT performing similar functions, and there will be no pubic offering of the common stock or of any other equity security of Applicant.

2. Applicant's sole purpose is and will be limited to operating as a "pass-through" vehicle for the financing and refinancing of the several undivided ownership interests in Unit 2 to be purchased by the Lessors.

[3] As Lessee under a net lease, AEGCO will be responsible for paying all taxes, insurance premiums, operating and maintenance costs, and all other similar costs associated with the undivided interest in Unit 2.

3. The Lease Indenture Estate securing the Lessor Notes will include (i) all right, title and interest in and to such Lessor's undivided ownership interest in Unit 2; (ii) substantially all of such Lessor's rights under the Lease to which it is a party, including the right to receive all basic rent and certain other amounts payable by the Lessee thereunder; and (iii) such Lessor's rights under the Unit 2 Operating Agreement and its easements and rights to certain ancillary services and facilities in respect of such undivided interest in Unit 2 after the end of the Lease term.

4. Payments of the principal of, and premium, if any, and interest on, the Lessor Notes issued to the Applicant will be due in such amounts and at such times as will be sufficient to pay the principal of, and premium, if any, and interest on, the Lease Bonds on the scheduled payment dates therefor, including sinking fund payment dates.

5. AEGCO, in its capacity as Lessee under each Lease, will covenant that: (i) It will not, directly or indirectly, create, incur, assume or permit to exist any lien or other encumbrance on or with respect to the Leased Property, the Lessor's title thereto, or any interest of the Lessor therein, except certain "permitted liens" listed in Section IV of the application, and (ii) it will promptly at its own expense take such action as may be necessary duly to discharge any such lien, except permitted liens.

6. Applicant will not invest, reinvest in, own, hold or trade securities other than Lessor Notes and Permitted Investments, the latter such term being limited under the Transaction Documents to securities having a maturity of 90 days or less that are: (i) direct obligations of the United States of America; (ii) obligations fully guaranteed by the United States of America; (iii) certificates of deposit issued by commercial banks under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus of at least $500,000,000 and having long-term unsecured debt securities then rated at the rating assigned to the Lease Bonds by Standard & Poor's Corporation or Moody's Investors Service, Inc. or at a higher rating (but no more than $10,000,000 in principal amount from any one bank); or (iv) open market commercial paper of any corporation incorporated or doing business under the laws of the United States of America or of any political subdivision thereof having a rating assigned by Standard & Poor's Corporation or Moody's Investors Service, Inc. equal to the highest rating assigned by such organization to commercial paper (but not more than $12,000,000 in principal amount at any given time from any one company).

7. At least 85% of the proceeds received by Applicant from the sale of the Lease Bonds will be used to finance or refinance the undivided interests in Unit 2 as soon as practicable but in no event later than six months after Applicant's receipt thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27060 Filed 11-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17208; 812-7369]

RGS (I&M) Funding Corporation; Application

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RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from all provisions.

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to assist in the financing and refinancing of certain property through leveraged lease transactions in which Indiana Michigan Power Company ("I&M") will be the leasee.

FILING DATE: The application was filed on August 3, 1989 and amended on November 8, 1989.

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2. Applicant's sole purpose is to assist the Lessor (as defined below) in the financing and refinancing, in whole or in part, of its undivided interest in Unit No. 2 ("Unit 2") of the Rockport Generating Station ("Rockport Plant") acquired in one or more leveraged lease transactions ("Leveraged Lease Transactions") in which I&M will be the leasee (the "Lessee").[1] In each Leveraged Lease Transaction, the Lessee will sell a portion of its 50% undivided ownership interest in Unit 2 to Wilmington Trust Company as owner trustee ("Owner Trustee") under six grantor trusts (each such trust being for the benefit of a single beneficiary or "Owner Participant"). (Wilmington Trust Company, in its capacity as lessor in the Leveraged Lease Transaction, is also referred to as "Lessor.") The Lessor will lease such interest back to the Lessee pursuant to a long-term lease agreement (each such agreement, a "Lease"). Each Lessor will obtain the funds for the payment of the purchase price of the undivided interest in Unit 2 in part from an equity investment to be made by its Owner Participant and in part from non-recourse loans that will be evidenced by notes of such Lessor ("Lessor Notes"). It is expected that the majority of the aggregate principal amount of the loans to be made to each Lessor will be interim loans made by a syndicate of banks ("Bank Loans"), and that the remainder will be term loans made by the Applicant with the proceeds of the sale of several series of its debt securities ("Lease Bonds"). If the Bank Loans are not refunded in full at the time of the issuance of the Lease Bonds, no bank would have greater rights under the Lease Indentures (as defined below) than those avaialble to the holders of the Lease Bonds.

3. CTC and CT have entered into an agreement with I&M under which CTC and CT have agreed to cause Applicant to participate in one or more Leveraged Lease Transactions, and I&M has agreed to indemnify CTC and CT with respect to such participation. AEP Generating Company ("AEGCO") and I&M, each of which currently owns a 50% undivided ownership interest in the Rockport Plant, have entered into an agreement establishing their respective rights and obligations as owners for the construction and ownership of the Rockport Plant (the "Owners' Agreement"), an agreement providing for the operation and maintenance of the Rockport Plant (the "Operating Agreement") and an agreement providing for AEGCO to make available to I&M all of the power and associated energy avaialble to AEGCO from its undivided interest in the Rockport Plant (the "Unit Power Agreement") (these agreements are hereinafter collectively referred to as the "Rockport Plant Agreements"). Under the Rockport Plant Agreements, I&M is authorized to act as agent for AEGCO in connection with, and has primary responsibility for and control over, the construction, operation and maintenance of the Rockport Plant. I&M's rights under the Rockport Plant Agreements will not be assigned to the Lessor. Under other leveraged lease transactions, such agreements usually are assigned to the lessor and then to a lease indenture trustee as security for the lessor notes. These assignments are intended to assure that a capable operator is contractually obligated to operate and maintain the plant for the benefit of the equity and debt investors. In this instance, these investors demanded an operating agreement with more extensive provisions for their benefit than the present Operating Agreement between AEGCO and I&M. Thus, I&M has entered into another operating agreement (the "Unit 2 Operating Agreement") directly with the Lessor which will become effective upon the expiration of any Lease. The Unit 2 Operating Agreement will be assigned by the Lessor to the Lease Indenture Trustees as seucrity for the Lessor Notes and thus will ultimately secure payments on the Lease Bonds.

4. The Applicant's obligation to participate in any Leverage Lease Transaction, and the conditions to such participation, are set forth in a participation agreement ("Participation Agreement"). Such obligation will be limited to participating, upon the request of the Owner Participant in such Leveraged Lease Transaction, in: (a) The financing of the Lessor's purchase of an undivided interest in Unit 2 on the closing date for such transaction, (b) the refinancing from time to time of all of a portion of any series of Lessor Notes issued by such Lessor (and because of their "pass-through" nature, the related Lease Bonds), and (c) the financing from time to time of such Lessor's share of the cost of capital improvements to Unit 2.[2] In each such case, the Applicant's participation will involve issuing one or more series of its Lease Bonds and lending the proceeds thereof on a non-recourse basis to the Lessor in exchange for Lessor Notes, and will be subject to the conditions described in section I.A.11. of the application to assure proper documentation and a security interest for repayment from the Lessor. Applicant expects that the Lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act").

5. Any successor Owner Trustee (and thus any Lessor) will be required to be a bank or trust company incorporated and doing business within the United States and have a combined capital and surplus of at least $100,000,000. Each of the Owner Participants purchasing beneficial interests in the grantor trusts will be a sophisticated investor. All such beneficial interests have been offered and will be sold in transactions not involving any public offering within the meaning of section 4(2) of the Securities Act. The nature and availability of the tax benefits of the beneficial interest in a grantor trust, the large investment required, the legal and regulatory framework of the Leveraged Lease Transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of any such beneficial interest. As long as the Lessor Notes are outstanding, the Applicant will receive assurances from each Lessor and its Owner Participant that they are not and will not be an investment company within the meaning of section 3(a) of the 1940 Act or are and will be deemed to be excluded from the definition of an investment company by virtue of the provisions of section 3(b) or section 3(c) of the 1940 Act.

6. Each Lease will be a "net lease" under which the Lessee will be unconditionally obligated to make rental and other payments sufficient to pay the principal of, and premium, if any, and interest on, the Lessor Notes issued in connection therewith, without any right of counterclaim, setoff, deduction or defense on the part of the Lessee.[3] The documentation evidencing each Leveraged Lease Transaction (the "Transaction Documents") will require that each series of Lessor Notes pledged as security for the Lease Bonds contain redemption provisions which correlate to the redemption provisions of the related series of Lease Bonds. The Transaction Documents will also require that, so long as no event of default shall have occurred under the related Lease, the related Lease Indenture Trustee (as defined below) shall not take or cause to be taken any action contrary to the Lessee's rights under such Lease, including the right to quiet use, enjoyment and possession of the undivided interest in Unit 2.

7. The Lessor Notes of each Lessor will be issued pursuant to separate but substantially identical trust indentures, mortgage and security agreements with The Connecticut National Bank acting as trustee for the holders of the Lessor Notes issued thereunder (in each case, a "Lease Indenture" with a "Lease Indenture Trustee"). Pursuant to each Lease Indenture, the Lessor will grant to the Lease Indenture Trustee an assignment of basic rent and certain other payments to be made by the Lessee under the applicable Lease (the "Lease Indenture Estate"). All Lessor Notes issued under each Lease Indenture will be secured equally and ratably by a lien on and security interest in the Lease Indenture Estates. Applicant will not participate in any Leverage Lease Transaction unless the Lease Indenture Estate securing the

[1] The SEC granted orders in Holding Company Act Release Nos. 35-24872 (April 25, 1989) and 35-24910 (June 22, 1989) permitting the sale and leaseback by AEP Generating Company and I&M of their respective 50% undivided ownership interest in Unit 2. The SEC also has issued a notice in Holding Company Act Release No. 35-24932 (August 3, 1989) in connection with the long-term debt financing.

[2] Financing the cost of capital improvements and refinancing of the Lessor Notes will be infrequent and undertaken only in circumstances in which the Owner Participant determines it would be economically advantageous to the participants to do so. Refinancing decisions would be based on factors similar to those considered by any obligor, such as the level of prevailing market interest rates. Any net savings in interest expense would accrue on a dollar-for-dollar basis to the Lessee. In addition, refinancing would occur only in connection with the refunding by the Lessor of the Lessor Notes evidencing the Bank Loans or the retirement of one or more series of Lease Bonds. Each series of Lease Bonds will be backed by Lessor Notes of like aggregate principal amount, interest rate, redemption and other terms and conditions. Applicant will not be obligated to pay for any refinancing costs. The Lessor initially is expected to pay such costs and would recover them from the Lessee.

[3] As Lessee under a net lease, I&M will be responsible for paying all taxes, insurance premiums, operating and maintenance costs, and all other similar costs associated with the undivided interest in Unit 2.

Lessor Notes includes: (a) All right, title and interest in and to such Lessor's undivided ownership interest in Unit 2; (b) substantially all of such Lessor's rights under the Lease, including the right to receive all basic rent and other amounts payable by the Lessee; and (c) such Lessor's rights under the Unit 2 Operating Agreement and its easements and rights to certain ancillary services and facilities after the end of the Lease term.

8. Applicant will not purchase any Lessor Note unless such Lessor Note and all other Lessor Notes, if any, are issued in respect of leased property having an aggregate fair market sales value (measured at the time such leased property was first financed under the Leases) equal at least to 100% of the original principal amount of such Lessor Note and such other Lessor Notes.

9. All Lease Bonds will be issued under a single collateral trust indenture (the "Collateral Trust Indenture") to be entered into by the Applicant and The Connecticut National Bank as trustee (the "Collateral Trust Trustee"). For each series of Lease Bonds there will be a separate supplemental indenture that will establish the terms of those Lease Bonds. The Applicant will pledge to the Collateral Trust Trustee, as security for the payment of the principal of, and premium, if any, and interest on all Lease Bonds, all Lessor Notes issued to the Applicant for the equal and ratable benefit of the holders of all Lease Bonds. Such pledged Lessor Notes will be registered in the name of the Collateral Trust Trustee as pledgee. Each such Lessor Note, in turn, will be secured by, among other things: (i) A security interest in substantially all the rights of the Lessor under the related Lease, including the right of the Lessor to receive basic rent and certain other amounts payable by Lessee thereunder, and (ii) the property leased under the related Lease. The Connecticut National Bank also will be the Lease Indenture Trustee under each Lease Indenture and the trustee under a collateral trust indenture to be entered into with RGS (AEGCO) Funding Corporation in a transaction similar to the one described in this notice involving AEGCO, another subsidiary of AEP. However, The Connecticut National Bank is not affiliated with any of the Lessors and is not a trustee under any indenture to which AEP or its subsidiaries is a party. Applicant believes that The Connecticut National Bank's position as trustee under both the Lease Indentures and the Collateral Trust Indentures is permitted by the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

10. The various series of Lease Bonds will have terms that may differ as to maturity dates, interest rates, sinking fund obligations, provisions for redemption and other matters. The interest rates, maturities and principal amounts and other terms of each series of Lease Bonds issued from time to time will be determined by reference to prevailing market conditions. Until any funds received by the Collateral Trust Trustee for the redemption of any Lease Bonds are required to be so applied, the Collateral Trust Trustee may, and at the request of Applicant shall, invest such funds in certain investments ("Permitted Investments," as defined in condition 6 below) maturing at such times as are required to redeem such Lease Bonds on the date or dates specified therefor. However, the cash required to service the Applicant's obligations under the Lease Bonds will never be greater than the cash that the Applicant is entitled to receive in respect of the Lessor Notes.

11. The initial issuance of Lease Bonds is expected to be through a private placement of one or more Series of Lease Bonds having a maximum aggregate principal amount of $400 million. Although I&M will not be the actual obligor or guarantor in respect of the Lease Bonds of any series, under the analysis customarily applied in leveraged lease transactions, I&M will be considered the issuer of the Lease Bonds of any series issued in respect of a Lease to which it is a party under the Securities Act and the obligor under the Trust Indenture Act. If the registration requirements of the Securities Act are applicable to an issuance of Lease Bond, I&M will file a registration statement under the Securities Act covering such Lease Bonds and the Collateral Trust Indenture will be qualified under the Trust Indenture Act. Any registration statement filed under the Securities Act relating to the Lease Bonds will name I&M as the registrant thereof and will be signed on behalf of I&M by its officers and directors as required by the Securities Act and the rules and regulations thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to I&M. Subsequent Lease Bonds may also be issued in private placements pursuant to section 4(2) of the Securities Act, in underwritten public offerings, and, possibly, in distributions exempt from registration because they will come to rest outside the United States. In the case of any offering of Lease Bonds outside the United States, the Applicant will obtain an opinion of United States counsel that registration under the Securities Act is not required and will enter into agreements and follow procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible).

12. The Collateral Trust Trustee will be required, upon the occurrence of any default under any Lease Indenture or of any event of default, event of loss, or deemed loss event under the Leases of which the Collateral Trust Trustee has actual knowledge, to give notice thereof in accordance with the provisions of the Collateral Trust Indenture to all holders of Lease Bonds. Upon the occurrence of any such event, any holder of a Lease Bond may at any time request the Collateral Trust Trustee to direct, or to participate in the direction of, any action under such Lease Indenture to the extent allowed. Upon receiving any directions from holders of Lease Bonds, the Collateral Trust Trustee will be required to report to the Lease Indenture Trustee the principal amount of the pledged Lessor Notes which is opposed to, in favor of, or is taking no position with respect to any action or vote. The principal amount of the pledged Lessor Notes will be voted in proportion to the principal amount of Lease Bonds taking or abstaining from taking corresponding positions. The Lease Indenture Trustee will be required to follow the directions of the holders of a majority in principal amount of the Lessor Notes outstanding which, in the case of each Lease Indenture under which pledged Lessor Notes are issued, will mean the holders of a majority in aggregate principal amount of the Lease Bonds then outstanding acting through the Collateral Trust Trustee. By virtue of this pass-through voting mechanism, the rights and remedies provided under each Lease Indenture to the holders of Lessor Notes, acting through their fiduciary, the Lease Indenture Trustee, will be exercisable directly by the holders of the Lease Bonds acting through their fiduciary, the Collateral Trust Trustee. In the event that the Collateral Trust Trustee does not receive directions from holders of Lease Bonds as described above, the Collateral Trust Trustee will be required to use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. Similarly, if the Lease Indenture Trustee has not received a directive within a stated period of time, it also will be required to act as a prudent man would in the case of his own property.

13. Accordingly, if I&M were to default under the Leases in the payment of that portion of the rent required to pay amounts then due and payable in respect of the Lessor Notes pledged to the Collateral Trust Trustee, the Lease Indenture Trustees would have the right, and, upon the receipt of a directive given by the holders of a majority in principal amount of the pledged Lessor Notes under each Lease Indenture would be required, to declare all pledged Lessor Notes immediately due and payable and to exercise concurrently with the Lessors any remedies available to them under the Lease and the remedies available under the Lease Indentures. Such remedies would include the right to demand after a specified grace period that the Lessee pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of, and premium, if any, and interest on, all Lessor Notes. The holders of the Lease Bonds would therefore have access under the Collateral Trust Indenture and the Lease Indentures to the credit of the Lessee and would be entitled to realize on their collateral up to the aggregate unpaid amount of such Lessor Notes, free of any rights of the Lessee or any creditor thereof.

Applicant's Legal Conclusions

1. Applicant's requested exemption from section 6(c) of the 1940 Act is appropriate in the public interest, and consistent with the protection of investors and with the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons. The activities of the Applicant are essentially those of a special purpose finance company. Leveraged leases are designed to provide business, financial and other benefits to the lessees, lessors and lenders involved. Such transactions provide companies such as I&M with a financially favorable method of acquiring the use of capital assets necessary to conduct their businesses. Until relatively recently, parties to leveraged lease transactions were faced with a limited source of debt financing. Such financing had been available almost exclusively from the institutional private placement market. Consequently, lessees, whose rental payments must be sufficient to service the debt incurred by their lessors, were generally confined to the terms offered by the institutional private placement market. The proposed issuance of the Applicant's Lease Bonds would provide a convenient mechanism for I&M to obtain the benefits of access to public as well as other segments of the debt capital markets in a manner similar to that afforded to other similarly situated lessees.

2. The Applicant's Lease Bonds will not be guaranteed by I&M or its affiliates. However, because of the unconditional obligations of I&M under the Leases, in conjunction with the remedies under the Lease Indentures and the Collateral Trust Indenture, the purchasers of the Lease Bonds will have access to the credit of I&M. As the assignee of rentals and other payments under the related Leases as security for payment of the Lessor Notes, the Lease Indenture Trustees directly will be entitled to exercise, subject to the provisions of the Lease Indentures, on behalf of and for the benefit of the Lease Bondholders, all of the rights and remedies against I&M provided in the Leases. The exercise of such rights and remedies will occur at the direction of Lease Bondholders through the Collateral Trust Trustee's instructions to the related Lease Indenture Trustees. The Lease Bondholders would therefore have access to the credit of the Lessee and would be entitled to realize on their collateral (primarily the Lessor Notes pledged to the Collateral Trust Trustee) up to the aggregate unpaid amount of such Lessor Notes free of any rights of the Lessee or any creditor thereof.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. In the future, all outstanding shares of Applicant's common stock will be owned by CTC or CT or a successor to, or assignee of, CTC or CT performing similar functions, and there will be no public offering of the common stock or of any other equity security of Applicant.

2. Applicant's sole purpose is and will be limited to operating as a "pass-through" vehicle for the financing and refinancing of the several undivided ownership interests in Unit 2 to be purchased by the Lessors.

3. The Lease Indenture Estate securing the Lessor Notes will include: (1) All right, title and interest in and to such Lessor's undivided ownership interest in Unit 2; (ii) substantially all of such Lessor's rights under the Lease to which it is a party, including the right to receive all basic rent and certain other amounts payable by the Lessee thereunder; and (iii) such Lessor's rights under the Unit 2 Operating Agreement and its easements and rights to certain ancillary services and facilities in respect of such undivided interest in Unit 2 after the end of the Lease term.

4. Payments of the principal of, and premium, if any, and interest on, the Lessor Notes issued to the Applicant will be due in such amounts and at such times as will be sufficient to pay the principal of, and premium, if any, and interest on, the Lease Bonds on the scheduled payment dates therefor, including sinking fund payment dates.

5. I&M, in its capacity as Lessee under each Lease, will covenant that: (i) It will not, directly or indirectly, create, incur, assume or permit to exist any lien or other encumbrance on or with respect to the Leased Property, the Lessor's title thereto, or any interest of the Lessor therein, except certain "permitted liens" listed in Section IV of the application, and (ii) it will promptly at its own expense take such action as may be necessary duly to discharge any such lien, except permitted liens.

6. Applicant will not invest in, reinvest in, own, hold or trade securities other than Lessor Notes and Permitted Investments, the latter such term being limited under the Transaction Documents to securities having a maturity of 90 days or less that are: (i) Direct obligations of the United States of America; (ii) obligations fully guaranteed by the United States of America; (iii) certificates of deposit issued by commercial banks under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus of at least $500,000,000 and having long-term unsecured debt securities then rated at the rating assigned to the Lease Bonds by Standard & Poor's Corporation or Moody's Investors Service, Inc. or at a higher rating (but no more than $10,000,000 in principal amount from any one bank); or (iv) open market commercial paper of any corporation incorporated or doing business under the laws of the United States of America or of any political subdivision thereof having a rating assigned by Standard & Poor's Corporation or Moody's Investors Service, Inc. equal to the highest rating assigned by such organization to commercial paper (but not more than $12,000,000 in principal amount at any given time from any one company).

7. At least 85% of the proceeds received by Applicant from the sale of the Lease Bonds will be used to finance or refinance the undivided interests in Unit 2 as soon as practicable but in no event later than six months after Applicant's receipt thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27061 Filed 11-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24982]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 9, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and

any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–6306)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior orders of the Commission dated November 27, 1985 and March 20, 1986 (HCAR Nos. 23925 and 24053, respectively), Consolidated was authorized to issue 364,616 shares of its common stock, $2.75 par value, from time-to-time through December 31, 1989, pursuant to its dividend reinvestment plan ("DRIP") and pursuant to the employee stock ownership plan ("ESOP") of Consolidated and its participating subsidiaries. It is anticipated that approximately 210,348 and 154,268 of said common stock allocated to the DRIP and the ESOP, respectively, will remain unissued as of December 31, 1989.

Consolidated now proposes to issue and sell, from time-to-time through December 31, 1994, up to 210,348 shares of its common stock, $2.75 par value, pursuant to its DRIP and up to 154,268 shares of its common stock, $2.75 par value (collectively, "Common Stock"), pursuant to its ESOP. The agent established pursuant to the DRIP and the trustee established pursuant to the ESOP will purchase the Common Stock. Consolidated requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Common Stock.

Consolidated will, at the option of its Board of Directors, offer participants in the DRIP and ESOP either authorized and unissued common stock or outstanding common stock purchased in the open market. Authorized and unissued common stock will be used whenever additional equity capital is needed by Consolidated. Whenever additional equity capital is not needed, common stock will be acquired through open market purchases. In either event, Consolidated will absorb all brokerage commissions and administrative charges.

Consolidated Natural Gas Company (70–7170)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By orders of the Commission dated November 27, 1985 and March 20, 1986 (HCAR Nos. 23926 and 24052, respectively) Consolidated was authorized to issue and sell up to 1,500,000 shares of its common stock, $2.75 par value, from time-to-time through December 31, 1989 pursuant to its dividend reinvestment plan ("DRIP"). It is anticipated that as of December 31, 1989 none of the 1,500,000 shares of common stock authorized to be issued will have been issued.

Consolidated now requests authorization to issue and sell, from time-to-time through December 31, 1994, to AmeriTrust Company National Association, as agent, up to 1,500,000 shares of its common stock ("Common Stock"), $2.75 par value, pursuant to the DRIP. Consolidated requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Common Stock.

Consolidated will, at the option of its Board of Directors, offer participants either authorized and unissued common stock or outstanding common stock purchased in the open market. Authorized and unissued common stock will be used whenever additional equity capital is needed by Consolidated. Whenever additional equity capital is not needed, common stock will be acquired through open market purchases. In either event, Consolidated will absorb all brokerage commissions and administrative charges.

The Connecticut Light and Power Company (70–7634)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

The proposed transaction relates to the financing of CL&P's share of the costs of acquiring, constructing, and installing certain pollution control and/or sewage or solid waste disposal facilities at the Seabrook Nuclear Power Station, Unit 1. It is proposed that, on or before December 31, 1989, the Industrial Development Authority of the State of New Hampshire ("NHIDA") issue pollution control revenue bonds ("Bonds") in the principal amount of up to $20 million for a term not exceeding 30 years, the proceeds of which would be loaned by NHIDA to CL&P pursuant to and in accordance with a financing agreement between CL&P and NHIDA ("Financing Agreement"). It is further proposed that on or before December 31, 1989 CL&P issue one or more of its First and Refunding Mortgage Bonds, Series TT ("First Mortgage Bond") in a corresponding principal amount of up to $20 million to evidence its borrowing from NHIDA of such proceeds.

Under the Financing Agreement, CL&P will agree to make payments corresponding to the amounts needed to pay the principal of, and premium, if any, and interest on, the Bonds as they become due. The Bonds will bear interest at a fixed rate and will be subject to optional and mandatory redemption provisions. The terms of the First Mortgage Bond will correspond with the terms of the Bonds. Additionally, the Bonds may be secured by an insurance policy which will permit the trustee to draw funds from the issuing entity to pay unpaid principal and interest on the Bonds. If the Bonds are so secured, CL&P will pay a premium for such insurance policy.

The terms of the proposed First Mortgage Bond would not be in accordance with the Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105, February 16, 1956, as supplemented by HCAR No. 16369, May 8, 1969) ("Policy") regarding redemption provisions. CL&P requests authority to deviate from the Policy.

CL&P has also requested an exemption from the competitive bidding requirements pursuant to Rule 50(a)(5) with respect to its borrowing under the Financing Agreement and the issuance of the First Mortgage Bond. CL&P requests that it may begin negotiations with potential underwriters so that a lead or sole underwriter may be tentatively selected and such underwriter may begin negotiating and documenting the terms of the transaction. CL&P may do so.

Entergy Corporation, et al. (70–7679)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric public-utility subsidiary companies, Arkansas Power & Light Company ("AP&L"), 425 W. Capitol Street, Little Rock, Arkansas 72203; Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112; Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201; and System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 86–91, 93 and 94 thereunder.

Entergy proposes to form and capitalize a new, wholly owned service subsidiary company, Entergy Operations, Inc. ("EOI"), to act as agent and perform services for all Entergy system companies which own nuclear power plants with respect to the possession, use, operation, management and/or construction of any such nuclear plants. AP&L, LP&L and SERI are owners of nuclear power plants ("Plant Owners"). AP&L is the owner and operator of the Arkansas Nuclear One Generating Station, Units 1 and 2; LP&L is the owner and operator of Unit No. 3 (nuclear) of the Waterford Steam Electric Generating Station; and SERI is the holder of a 90% undivided ownership and leasehold interest in, and operator of, Grand Gulf Nuclear Generating Station ("Grand Gulf") Unit No. 1 ("Grand Gulf 1") and a holder of a 90% ownership interest in Grand Gulf Unit No. 2 ("Grand Gulf 2"),[1] which has been cancelled as of September 2, 1989 (collectively "Nuclear Plants").

EOI proposes to issue and sell, and Entergy proposes to acquire, up to 1,000 shares of EOI's common stock for an aggregate purchase price of $1 million. Entergy and EOI also propose to enter into a Loan Agreement ("Loan Agreement"), under which EOI could borrow from Entergy, from time-to-time through June 30, 1992, up to an aggregate principal amount of $20 million at any one time outstanding, such borrowings to be evidenced by the issuance of a note ("Note"). The Note will mature on June 30, 1992 and will bear interest, payable quarterly, on the unpaid principal amount thereof at the rate of interest publicly announced by Morgan Guarantee Trust Company of New York in New York, New York from time-to-time as its prime rate, and may be prepaid in whole or in part at any time, without premium or penalty.

EOI's borrowings under the Loan Agreement will be in addition to its borrowings under the Entergy system money pool ("Money Pool"), for which EOI will seek authority from the Commission by post-effective amendment in File No. 70–7575 (See HCAR No. 24798). EOI's borrowings under the Loan Agreement, through the Money Pool, and/or through such other borrowing arrangements as may be authorized by the Commission shall not exceed an aggregate principal amount of $20 million at any one time outstanding. EOI's borrowings outstanding at any one time through the Money Pool shall not exceed an amount equal to the aggregate unused portion of the lines of credit then available to EOI pursuant to the Loan Agreement and/or such other borrowing arrangements as may hereafter be entered into by EOI and authorized by the Commission.

EOI's agency responsibilities and the limitations on its agency authority with respect to each Nuclear Plant will be set forth in separate operating agreements ("Operating Agreements") to be entered into between EOI and each Plant Owner. The Operating Agreements will also provide for certain indemnification agreements in connection with EOI's service activities. The Operating Agreements will not affect the ownership of the nuclear plants and will recognize that each Plant Owner will continue to own all of the capacity and energy of that Nuclear Plant to which it would otherwise be entitled. Under the Operating Agreements, the Plant Owners will retain control over EOI's spending and contracting authority as their respective agent, and will continue to provide all funds for operating, maintenance and decommissioning by EOI of the Nuclear Plants.

All operating services supplied by EOI pursuant to the Operating Agreements will be performed for the Plant Owners at cost and will be accounted for and billed to the Plant Owners as prescribed by Rules 91 and 93 and the uniform system of accounts prescribed thereunder. EOI will follow the Uniform System of Accounts for Mutual and Subsidiary Service Companies as prescribed by the Commission from time-to-time in accordance with Rule 93.

SERI and MP&L also propose to terminate their June 21, 1974 Service Agreement and their December 1, 1986 Partial Termination Agreement and to enter into a: (1) Support Agreement, pursuant to which MP&L will provide certain miscellaneous support services for Grand Gulf 1 and (2) Switchyard and Transmission Interface Agreement setting forth commitments regarding the Grand Gulf 1 switchyard and related matters, both of which will designate EOI as the agent of SERI to exercise all rights SERI may have under such agreements. AP&L and LP&L will enter into Support and Switchyard and Transmission Interface Agreements directly with EOI. Entergy Services, Inc., a service subsidiary company of Entergy, will also provide certain accounting and other related services to EOI under a Service Agreement.

Southwestern Electric Power Company (70–7687)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

SWEPCO proposes to sell to Oklahoma Gas & Electric Company ("OG&E"), a nonassociate public-utility company, approximately 4.84 miles of 161 kv transmission line between SWEPCO's Bonanza Substation south of Ft. Smith, Arkansas and the Ft. Smith, Arkansas Substation owned by OG&E, for a cash purchase price of $302,000. SWEPCO states that it believes that the sale would be financially prudent and in the best interests of its investors and consumers.

Entergy Services, Inc., et al. (70–7689)

Entergy Corporation ("Entergy"), a registered holding company, and its subsidiary service company, Entergy Services, Inc. ("Services"), both of 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rule 45 thereunder.

[1] South Mississippi Electric Power Association, a Mississippi cooperative, owns the remaining 10% of Grand Gulf 1 and Grand Gulf 2. EOI will assume responsibility for Grand Gulf 2 from SERI.

By order dated December 28, 1987 (HCAR No. 24546), Services was authorized to borrow and reborrow from Entergy from time-to-time through December 31, 1989 up to an aggregate principal amount of $30 million at any one time outstanding. Services now requests authorization through December 31, 1991 to effect such unsecured borrowing in an aggregate amount of up to $35 million at any one time outstanding, pursuant to a new loan agreement ("Loan Agreement") with Entergy. These borrowings will be in addition to Service's borrowings from time-to-time through the Middle South Electric System Money Pool ("Money Pool"), as authorized by order of the Commission dated December 30, 1988 (HCAR No. 24798); provided, however, that: (i) The aggregate principal amount of the borrowings by Services outstanding at any one time, pursuant to the Loan Agreement, through the Money Pool and through such other borrowing arrangements as may hereafter be entered into by Services pursuant to authorization of the Commission, shall not exceed $35 million, and (ii) the aggregate principal amount of borrowings by Services outstanding at any one time through the Money Pool shall not exceed an amount equal to the aggregate unused portion of the line(s) of credit then available to Services pursuant to the Loan Agreement and/or such other borrowing arrangements as may hereafter be entered into by Services. Borrowings by Services from Entergy from time to time pursuant to the Loan Agreement will be evidenced by a note of Services bearing interest on the unpaid amount thereof at the rate of interest publicly announced by Manufacturers Hanover Trust Company in New York, New York from time to time as its prime rate.

Services also proposes to issue unsecured promissory notes to one or more banks in an aggregate principal amount of up to $35 million at any time outstanding, such notes to evidence external bank borrowings. The commitment(s) of any such bank(s) would reduce correspondingly Entergy's commitment to Services under the Loan Agreement. Entergy requests authorization to guarantee Service's obligations to such bank(s). Based upon certain assumptions regarding interest rates and compensating balances, Services states that the effective interest cost for borrowings from a bank or banks would be approximately 13.9% per annum.

Central Power and Light Company (70–7690)

Central Power and Light Company ("CP&L"), 539 N. Carancahua Street, Corpus Christi, Texas 78401, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under Section 12(d) of the Act and Rule 44 thereunder.

CP&L proposes to sell to its industrial customer, Hoechst-Celanese ("Celanese"), certain distribution facilities ("Distribution Facilities") located on Celanese's premises near Bishop, Texas, for a cash purchase price of $300,000. Celanese is using the Distribution Facilities to transport self-generated power, and has inter-connected with its customer-owned distribution facilities CP&L's Distribution Facilities. It is stated that the Distribution Facilities are not adaptable, at that location, for use in serving any other customer.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27064 Filed 11–16–89; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee to be held November 21, 1989 from 9:00 a.m. to 12:00 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters of disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 89–27050 Filed 11–16–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Issuance by Government of Japan of Certificates Verifying Non-Cuban Origin of Nickel-Bearing Materials Manufactured by Certain Japanese Steel Corporations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Brown, Senior Enforcement Policy Analyst, Office of Foreign Assets Control, Treasury Department, 1331 G Street, NW., Washington, DC 20220, tel.: 202/376–0431.

Certificates of origin are now available for importation into the United States from Japan of nickel-bearing materials produced by the Shunan Works of Nisshin Steel Corporation. These certificates are issued pursuant to an arrangement between the Government of Japan and the Government of the United States. The certificates, which are issued by the Japanese Ministry of International Trade and Industry, attest that the materials with respect to which they are issued do not contain nickel of Cuban origin. Each certificate will bear the following statement:

The Ministry of International Trade and Industry (MITI) hereby certifies that the nickel-bearing products described herein do not contain nickel of Cuban origin and that this certificate has been issued in accordance with procedures administered by MITI to which prior consent was given by the Government of the United States on June 27, 1983." Each certificate shall bear as a footnote the statement: "Issued in connection with the United States Cuban Assets Control Regulations.

Nickel-bearing material produced by the Shunan Works of the Nisshin Steel Corporation may be imported under the general license in § 515.536(c) of the Cuban Assets Control Regulations (31 CFR part 515) in accordance with the provisions of that section and of § 515.808 of the Regulations. Such merchandise will be permitted entry through United States Customs if a certificate of origin as described above and issued by MITI is presented to the U.S. Customs authorities at the point of entry. Nickel-bearing material produced by other Japanese steel producers is not required to be accompanied by a certificate as a condition for entry into the United States.

(Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5; Sec. 620(a), 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748)

Dated: October 17, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 3, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–27172 Filed 11–15–89; 10:46 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Open Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Special Medical Advisory Group will be held on December 7–8, 1989. The session on December 7 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC, and the session on December 8 will be held in the Omar Bradley Conference Room (10th floor) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on December 7 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on December 8 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233–3985) prior to December 1, 1989.

Dated: November 8, 1989.

By direction of the Secretary.

Laurence M. Christman,

Executive Assistant to the Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 89–26985 Filed 11–16–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 221
Friday, November 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 22, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Guidelines for Federal Reserve Bank of Philadelphia employee salary structure adjustments.

Discussion Agenda

2. Proposed amendments to Regulation B (Equal Credit Opportunity) to implement the Equal Credit Opportunity Act regarding applications for business credit. (Proposed earlier for public comment; Docket No. R-0671)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27170 Filed 11-15-89; 10:31 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 22, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27171 Filed 11-15-89; 10:31 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 221
Friday, November 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Determination of the 1989 Fiscal Year Interest Rate on Rural Telephone Bank Loans

Correction

In rule document 89-25682 beginning on page 45729 in the issue of Tuesdau, October 31, 1989, make the following corrections:

1. On page 45729, in table 1., the heading for the fifth column should read "(Amount × rate)/Advances (percent).

2. On page 45730, in table 2., the heading for the fifth column should read "(Advances × Cost Rate)/Total Advances (percent).

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of Chicago, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-25048 appearing on page 43447 in the issue of Wednesday, October 25, 1989, make the following correction:

On page 43447, in the 3rd column, in the 1st complete paragraph, in the 12th line, remove the period following "amps/torr".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System Rates and Weights

Correction

Document 89-26149, beginning on page 46728 in the issue of Tuesday, November 7, 1989, was published in the "Rules and Regulations" section of the issue. It should have appeared in the "Notices" section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-00-4212-12; MTM 72921]

Notice of Conveyance and Order Providing for Opening of Public Land in Carbon County, MT

Correction

In notice document 89-24734 beginning on page 43142 in the issue of Friday, October 20, 1989, make the following correction:

On page 43142, in the third column, the seventh line from the bottom of the page should read "T. 9 S., R. 28 E.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-09-4214-11; MTM 41514]

Proposed Continuation of Withdrawal; Montana

Correction

In notice document 89-24183 beginning on page 42054, in the issue of Friday, October 13, 1989, make the following correction:

On page 42055, in the first column, under "**Principal Meridian**", in "T. 14 S., R. 5 W., Sec. 1" in the third line remove the "comma" after "S½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-00-4214-11;GPO-017, et al.]

Proposed Continuation of Withdrawals; Oregon

Correction

In notice document 89-25027 appearing on page 43341 in the issue of Tuesday, October 24, 1989, make the following correction:

On page 43341, in the 2nd column, under **Rogue River National Forest**, the 13th line should read "T. 28 S., R. 4 E., W.M., Secs. 34, 35, and 36."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Independence Valley Speckled Dace and Clover Valley Speckled Dace

Correction

In rule document 89-23814 beginning on page 41448 in the issue of Tuesday, October 10, 1989, make the following correction:

§ 17.11 [Corrected]

On page 41453, in § 17.11(h), in the table, in the second column, the second entry should read *Rhinichthys osculus lethoporus*.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Wayne National Forest

Correction

In notice document 89-26659 appearing on page 47416, in the issue of Tuesday, November 14, 1989, make the following correction:

On page 47416, in the 2nd column, under **SUMMARY**, in the 17th line, after "information", insert "for

consideration by OSM until November 29, 1989".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Presidential Determination No. 90-3 of October 26, 1989, for the Secretary of State

Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974--Emigration Policies of the Republic of Hungary

Correction

In the Presidential document 89-26236 in the issue of Monday, November 6, 1989, on page 46591 make the following correction:

Substitute the heading "Presidential Determination No. 90-3 of October 26, 1989" for the top heading "Memorandum of October 26, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-15]

Revision of Control Zone; Midland, TX

Correction

In rule document 89-25443 beginning on page 43959 in the issue of Monday, October 30, 1989, make the following correction:

§ 71.171 [Corrected]

On page 43960, in the second column, in § 71.171, under **Midland, TX [Revised]**, in the first line, remove "and" following "Midland".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-38]

Proposed Revision of Transition Area; Clovis, NM

Correction

In proposed rule document 89-25451 beginning on page 43971 in the issue of Monday, October 30, 1989, make the following correction:

§ 71.181 [Corrected]

On page 43972, in the first column, in § 71.181, in the last line, "75" should read "7.5".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

Correction

In notice document 89-25286 appearing on page 43887 in the issue of Friday, October 27, 1989, make the following corrections:

1. On page 43887, in the second column, under *Perchloroethylene*, in the formula, "CL_4" should read "$4CL_4$".

2. On the same page, in the third column, under *Trichloroethylene*, in the formula, insert "ethylene" following "C_2H_4".

BILLING CODE 1505-01-D

federal register

Friday,
November 17, 1989

Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Indian Health Service; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records Notices

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records. Since the publication of November 22, 1988, OASH has made the following changes to its inventory of systems of records: (1) OASH has added new system of records 09–37–0021, "AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR," 54 FR 9253, March 6, 1989., (2) System of records 09–37–0018, "Disaster Health Services Information Systems, HHS/OASH/DEP," has been deleted because the records are no longer maintained in OASH. (3) OASH made no changes to its system notices that affect the public's right or need to know, such as changes in the location of records or the address of a system manager. (4) A table of contents of active systems of records is published below. The complete text of the system notices was last published in the Office of the Federal Register's 1987 annual Compilation of Privacy Act Issuances.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Dated: October 18, 1989.

Office of the Assistant Secretary of Health; Table of Contents

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.
09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM.
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM.
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM.
09–37–0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM.
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM.
09–37–0015 National Center for Health Services Research and Health Care Technology Assessment (NCHSR) Grants Records System, HHS/OASH/NCHSR.
09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.
09–37–0019 National Medical Expenditure Survey, HHS/OASH/NCHSR.
09–37–0020 Office of Minority Health Grants Records System, HHS/OASH/OMH.

[FR Doc. 89–25287 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974; Annual Publication of Revisions to Systems Notices

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: Privacy Act; Annual publication of revisions to Privacy Act system notices.

SUMMARY: ADAMHA is publishing this document to meet the requirement of section 3.a.(8) of Appendix I to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records about Individuals," which require that agencies review each system of records annually and publish any minor changes in the **Federal Register** (FR). ADAMHA has reviewed all of its active systems and is publishing all minor changes to its systems notices.

SUPPLEMENTARY INFORMATION: ADAMHA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as routine uses, title and address changes, system location, and system manager(s).

1. Changes

The following minor changes have been made to systems of records as follows:

a. 09–30–0020

SYSTEM NAME:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA.

A minor alteration has been made to the system manager(s) of this system notice. The following category should be revised in its entirety:

SYSTEM MANAGER(S) AND ADDRESS:

Medical Director, Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

b. 09–30–0022

SYSTEM NAME:

National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Research Files, HHS/ADAMHA/NIDA.

A minor alteration has been made to the system manager(s) of this system notice. The following category should be revised in its entirety:

SYSTEM MANAGER(S) AND ADDRESS:

Medical Director, NIDA Addiction Research Center, Francis Scott Key Medical Center—Building C, P.O. Box 5150, Baltimore, Maryland 21224.

c. 09–30–0037

SYSTEM NAME:

Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA.

A minor alteration has been made to the system manager(s) of this system notice. The following category should be revised in its entirety:

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Psychotherapy of Opiate-Dependent Individuals, Technology Transfer Branch, Division of Clinical Research, National Institute on Drug Abuse, Room 10A–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

d. 09–30–0038

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA.

Minor alterations have been made to the retention and disposal and system manager(s) of this system notice. The following categories should be revised in their entirety:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal healthy adults who voluntarily participate in studies on the pharmacokinetics of drugs of abuse, at the University of North Carolina, during the period November 1979 through September 1984 and September 1987 through September 1990 and Langley Porter Psychiatric Institute, during the

period September 1987 through September 1992.

RETENTION AND DISPOSAL:

The records will be kept no later than September 1995 (5 years after the anticipated completion of the studies). At that time, the NIDA project officer will authorize in writing the clinical investigation to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, Room 10A–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

e. 09–30–0039

SYSTEM NAME:

Drug Abuse Treatment Outcome Study (DATOS), HHS/ADAMHA/NIDA.

Minor alterations have been made to the system name, system location, categories of individuals covered by the system, categories of records in the system, purpose, routine uses of records, and system manager(s). The following categories should be revised in their entirety:

SYSTEM NAME:

Drug Abuse Treatment Outcome Studies, HHS/ADAMHA/NIDA.

SYSTEM LOCATION:

For the Treatment Outcome Prospective Study (TOPS):

Computer Application Center, Research Triangle Institute, Box 12194, Research Triangle Park, North Carolina 27709.

For the new FY 1990 study, the contract will be awarded in December 1989. Therefore, contractor location is not yet known.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally funded treatment programs, including Treatment Alternative Street Crime (TASC) programs of the Department of Justice, who have requested to be included in the Treatment Outcome Prospective Study (TOPS) where data collection began in 1979 and continued through 1986. Also included will be new data on voluntary adult clients of federally funded treatment programs who have requested to be included in a new study entitled "Drug Abuse Treaty Outcome Study;" (DATOS). The new study will begin in 1990 and will continue through 1994.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories are: Demographic data indicators of physical and psychological health, drug abuse history and treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

PURPOSE(S):

The purpose of the system is to compile information on drug abusers who obtain treatment in federally funded drug abuse treatment programs in order to derive information on the effectiveness of treatment outcome and environments and abusers behavior and characteristics subsequent to treatment. Researchers and drug abuse service providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client, clinic, and community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Within the restrictions set forth in HHS regulations concerning the confidentiality of drug abuse patient records (42 CFR 2.56, we may disclose a record for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

2. An ADAMHA contractor (to be determined) uses the records in this system to accomplish the research purpose for which the records are collected. In the event of followup studies or continuation studies because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent ADAMHA contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

SYSTEM MANAGER(S) AND ADDRESS:

Treatment Outcome Studies, Chief, Clinical Medicine Branch, Division of Clinical Research, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, Room 10A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

f. 09–30–0041

SYSTEM NAME:

Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA.

Minor alterations have been made to the system location and system manager(s) of this system notice. The following categories should be revised in their entirety:

SYSTEM LOCATION:

Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

SYSTEM MANAGER(S) AND ADDRESS:

Medications Development Coordinator, Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, P.O. Box 5180, Baltimore, Maryland 21224.

g. 09–30–0043

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA.

Minor alterations have been made to the system location and system manager(s) of the system notice. The following categories should be revised in their entirety:

SYSTEM LOCATION:

Research Technology Branch, Division of Preclinical Research, National

Institute on Drug Abuse, Room 10A–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Research Triangle Institute, Research Triangle Park, North Carolina 27709.

SYSTEM MANAGER(S) AND ADDRESS:

Project Director, Drug Supply Program, Research Technology Branch, Division of Preclinical Research, Room 10A–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

2. Readers who notice any errors or omissions in ADAMHA system notices are invited to bring them to my attention at the following address:

Alcohol, Drug Abuse, and Mental Health, Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Date: October 24, 1989.

Joseph R. Leone,

Executive Officer, ADAMHA.

3. Table of Contents

The following is a list of system notices which ADAMHA currently maintains:

09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH

09–30–0020 Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978), HHS/ADAMHA/NIDA

09–30–0022 National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA

09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA

09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs, HHS/ADAMHA/OA

09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA

09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA

09–30–0033 Correspondence Files, HHS/ADAMHA/OA

09–30–0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH

09–30–0036 Alcohol, Drug Abuse, and Mental Health Epidemiological and Biometric Research Data, HHS/ADAMHA/OA

09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA

09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/OA

09–30–0039 Drug Abuse Treatment Outcome Studies (TOPS), HHS/ADAMHA/NIDA

09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA

09–30–0043 Shipment Records of Drugs of Abuse of Authorized Researchers, HHS/ADAMHA/NIDA

09–30–0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treatment at Nursing Homes in Lexington, Kentucky (1942 to the Present), HHS/ADAMHA/NIMH

09–30–0048 Intramural Research Program Records in In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA

09–30–0049 Consultant Records Maintained by ADAMHA Contractors, HHS/ADAMHA/OA

09–30–0050 Clinical Research: Patient Medical Records, HHS-ADAMHA/OA

[FR Doc. 89–25556 Filed 11–16–89; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria either for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with Circular A–130, Appendix 1. The notices republished below are complete and accurate as of August 31, 1989.

Included is a list of two systems of records that have been deleted since the 1988 publication and a complete list of the systems of records that NIH currently maintains.

SUPPLEMENTARY INFORMATION:

The following information summarizes the current status of all systems of records which NIH maintains:

A. System Name.

The following systems have been updated to reflect a change in the name of the system:

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER, publ. **Federal Register**, Vol. 51, No. 226, p. 42407.

09–25–0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42435.

B. System Location.

The following systems have been updated to reflect a change in the system locations. These changes do not affect the access by the individual to the individual's records.

09–25–0005, Administration: Library Circulation and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 68.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 473.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42427.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 51, No. 226, p. 42427.

09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42428.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institutes, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER, publ. **Federal Register**, Vol. 51, No. 226, p. 42407.

09–25–0093, Administration: Administration Authors, Reviewers and Members of the

Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 497.

09–25–0096, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 498.

09–25–0106, Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1 p. 502.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 509.

09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 51, No. 226, p. 42418.

C. Categories of Individuals Covered by the System.

The following systems have been updated to reflect an increase in the number of individuals covered by the system. This change does not constitute a major modification and no advance publication is required.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1 p. 509.

09–25–0140, International Activities: International Scientific Research in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42413.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

D. Storage.

The following systems have been updated to reflect a change in the method of storing the records:

09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0060, Cinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42433.

E. Retrieval.

The following systems have been updated to reflect a change in the method of retrieving the records:

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

F. System Manager(s) and Address(es).

The following systems have been updated to reflect a change in the system manager or the address of the system manager. These changes do not affect the access by the individual to the individual's records.

09–25–0005, Administration: Library Circulation and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 468.

09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 473.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1 p. 477.

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51 No. 226, p. 42404.

09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51 No. 226, p. 42404.

09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42428.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER, publ. **Federal Register**, Vol. 51, No. 226, p. 42407.

09–25–0067, Administration: Employees and Consultants, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 497.

09–25–0096, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42428.

09–25–0106 Administration: Executive Secreteriat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 502.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 509.

09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 51, No. 226, p. 42418.

09–25–0140, International Activities: International Scientific Research in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, pub. **Federal Register**, Vol. 51, No. 226, p. 42413.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 51, No. 226, p 42440.

09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 51, No. 226, p. 42444.

09–25–0154, Biomedical Research: Records of Subjects in Cancer Studies of the

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Division of Cancer Prevention and Control, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42420.

09–25–0156, Records of Participants in Programs and Respondents in Surveys use to Evaluate Programs of NIH, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42447.

G. Record Access Procedures.

The following systems have been updated to reflect a change in the procedure for access to information contained in the record.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

H. Record Source Categories.

The following systems have been updated to reflect a change in the source of the information contained in the record.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

I. Notification Procedures.

The following systems have been updated to reflect a change in the office, official, and/or address to write to determine whether or not the system contains a record about the individual.

09–25–0015, Clinical Research, Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 473.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, publ. **Federal Register**, 1987 Comp. Vol. 51, No. 226, p. 42426.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42427.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 509.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

J.

The following systems have been changed for clarity and editing purposes.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42433.

09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

09–25–0140, International Activities: International Scientific Research in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42413.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

K.

The following systems haye a name change due to the renaming of the organization from National Institute of Neurological and Communicative Disorders and Stroke (NINCDS) to National Institute on Deafness and Other Communication Disorders (NINDS) as follows:

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 473.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 509.

09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 510.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, Publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

L. DELETED SYSTEMS OF RECORDS

The following systems of records which appeared in the 1988 annual publication are now being deleted;

09–25–0019, Clinical Research: Genetic Counseling HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 474.

09–25–0020, Clinical Research: Genetics of Neurological Disorders, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

We are publishing only those systems which have been changed to reflect minor modifications. All system notices were last published in the **Federal Register**, Privacy Act Issuances, 1987 Compilation, Volume 1, pp. 465–527, November 24, 1986, Vol. 51, No. 228 pp. 42398–42449 and selectively updated on November 24, 1987 in Vol. 52 No. 226 and on November 22, 1988 in Vol. 53, No. 225.

The following is a list of active systems of records maintained by NIH.

TABLE OF CONTENTS

09–25–0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 466.

09–25–0002, Clinical Research: Patient Phonocardiogram Records, HHS/NIH/NHLBI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 466.

09–25–0003, Administration: Authorized Radionuclide Users File, HHS/NIH/ORS, Publ. **Federal Register**, Vol. 51, No 226, p. 42473.

09–25–0005, Administration: Library Circulation and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 466.

09–25–0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42401.

09–25–0008, Administration: Radiation Workers Monitoring, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42433.

09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42402.

09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 42424.

09–25–0014, Clinical Research: Student Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 51, No. 226, p. 4242.

09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 472.

09–25–0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 473.

09–25–0021, Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS, Publ. **Federal Register**, 1987 Comp. Vol. 1, p. 475.

09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 476.

09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 477.

09–25–0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, publ. Federal Register, Vol. 51, No. 226, p. 42403.

09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, no. 226, p. 42404.

09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42404.

09–25–0036, Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG, publ. **Federal Register**, Vol. 51, No. 226, p. 42405.

09–25–0037, Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 481.

09–25–0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK, publ. Federal Register, 1987 Comp. Vol. 1, p. 483.

09–25–0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 483.

09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 484.

09–25–0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, publ. **Federal Register**, Vol 51, No. 226, p. 42426.

09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42427.

09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. Federal Register, Vol. 51, No. 226, p. 42428.

09–25–0048, Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42429.

09–25–0053, Clinical Research: Vision Studies, HHS/NIH/NEI, publ. **Federal Register**, Vol. 51, No. 226, p. 42414.

09–25–0054, Administration: Property Accounting, HHS/NIH/ORS, publ. **Federal Register**, Vol. 51, No. 226, p. 42431.

09–25–0057, Clinical Research: Burkitt's Lymphome Registry, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42432.

09–25–0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42433.

09–25–0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 491.

09–25–0069, NIH clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42406.

09–25–0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42434.

09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER, publ. **Federal Register**, Vol. 51, No. 226, p. 42407.

09–25–0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42435.

09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 495.

09–25–0087, Administration: Employees and Consultants, HHS/NIH/NIAID, publ. Federal Register, Vol. 51, No. 226, p. 42436.

09–25–0091, Administration: General Files on Employees, Donors, and Correspondents, HHS/NIH/NEI, publ. **Federal Register**, Vol. 51, No. 226, p. 42415.

09–25–0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 497.

09–25–0096, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 498.

09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. Federal Register, Vol. 51, No. 226, p. 42408.

09–25–0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 499.

09–25–0102, Administration: Grants Associates Program Working Files, HHS/NIH/DRG, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 500.

09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors, and Relatives of Inpatients, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 501.

09–25–0106, Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 502.

09–25–0108, Personnel: Guest Researchers/Student Scientists/Scientists Emeriti, HHS/NIH/DPM, publ. **Federal Register**, Vol. 51, No. 226, p. 42409.

09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42410.

09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42436.

09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 506.

09–25–0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42416.

09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, publ. **Federal Register**, Vol. 51, No. 226, p. 42412.

09–25–0126, Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 51, No. 226, p. 42417.

09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 509.

09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 510.

09–25–0130, Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 511.

09–25–0133, Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 51, No. 226, p. 42438.

09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 51, No. 226, p. 42418.

09–25–0140, International Activities: International Scientific Research in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, publ. **Federal Register**, Vol. 51, No. 226, p. 42413.

09–25–0142, Clinical Research: Records of Subjects in Intramural Research, Epidemology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, publ. **Federal Register**, 1987 Comp. Vol. 1, p. 515.

09–25–0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Disease, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 51, No. 226, p. 42439.

09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 51, No. 226, p. 42440.

09–25–0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct In Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH, publ. **Federal Register**, Vol. 52, No. 102, p. 19929.

09–25–0152, Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 51, No. 226, p. 42442.

09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 51, No. 226, p. 42444.

09–25–0154, Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI, publ. **Federal Register**, Vol. 51, No. 226, p. 42420.

09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of NIH, HHS/NIH/OD, publ. **Federal Register**, Vol. 51, No. 226, p. 42447.

09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD, publ. **Federal Register**, Vol. 52, No. 156, p. 30255.

Date: October 26, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

09–25–0005

SYSTEM NAME:

Administration: Library Circulation and User I.D. File, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 1L25B, 9000 Rockville Pike, Bethesda, MD 20892, and Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892, and Building 38, Room 1S33, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Library records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act: 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Library material, services and circulation control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of Library users may be disclosed to NIH contractors and staff in order to accomplish library material, services and circulation control. Recipients are required to maintain Privacy Act safeguards with respect to those records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer tape and disc, and on file cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users

requesting services such as MEDLINE and other computer online bibliographic searches, translations and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards: The office housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files.

Procedural Safeguards: Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users.

RETENTION AND DISPOSAL:

Years at NIH: 3. Disposal methods include burning or shredding paper materials and erasing computer tapes.

SYSTEM MANAGER AND ADDRESS:

Chief, Reference and Bibliographic Services Section, Library Branch, Division of Research Services, Building 10, Room 1L21, NIH, 9000 Rockville Pike, Bethesda, MD 20892, and Librarian, Division of Computer Research and Technology, Building 12A, Room 3018, NIH, 9000 Rockville Pike, Bethesda, MD 20892, and Chief, Public Services Division, Library Operations, National Library of Medicine, Building 38, Room 1S33, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual, NIH Library ID card data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0010

SYSTEM NAME:

Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals potentially exposed to biohazardous microbial agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microbial agents registry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

(1) To serve as a base for health and safety for individuals and organizations involved in use of potentially hazardous agents. (2) To identify potential hazards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on magnetic tape, and 3380 disks.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees authorized to use the records include professional staff in the Biological Carcinogenesis Branch who have been informed of the need for maintaining confidentiality of the records.

2. Physical Safeguards: Office records are kept in closed cabinets in offices which are locked during off-duty hours.

3. Procedure Safeguards: Access to the file is strictly controlled by the system manager and his designee, and records may be removed from files only at the request of the system manager or other authorized employee. Access to computerized records is controlled by the use of security codes known only to the authorized users.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security", of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

National Cancer Institute, Division of Cancer Etiology, Biological Carcinogenesis Program Coordinator, Research Resources Biological Carcinogenesis Branch, Executive Plaza

North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and/or organizations providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0015

SYSTEM NAME:

Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 12, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients participating in clinical epilepsy research sponsored by the National Institute of Neurological Disorders and Stroke (NINDS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research on epilepsy, specifically neurophysiological studies of patients and new drug studies designed to improve treatment of epilepsy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic tape and discs.

RETRIEVABILITY:

Records are retrieved by identifying number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access to HHS researchers or the staff of the Epilepsy Branch. No other use is permitted without specific permission of the System Manager.

Physical Safeguards: Records are kept in a location which is locked during non-duty hours.

Procedural Safeguards: Records are used in the system location only and are returned to file cabinets at the end of each working day. Location is attended at all times during working hours. Personnel having access to system have received Privacy Act training.

RETENTION AND DISPOSAL:

Years at NIH: 10. Years at Federal Records Center: 15.

SYSTEM MANAGER AND ADDRESS:

Chief, Epilepsy Branch, NINDS, Federal Building, Room 114, 7550 Wisconsin Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought,

and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Clinical treatment records from physicians, nurses and other sources of care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0016

SYSTEM NAME:

Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, NIH, 7550 Wisconsin Ave., Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Women in the perinatal study of NIH during their pregnancies, their children, husbands, fathers of children and other family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories and examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Biomedical and behavioral research by HHS scientists to discover leads to the developmental disorders of childhood by relating events of pregnancy, labor and delivery, infancy and early childhood to subsequent development of the child.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Certain infectious diseases are reported to state government as required by law.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on punch cards and magnetic tape, computer printouts, and on microfilm.

RETRIEVABILITY:

Records are retrieved by identifying number assigned to the mother.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access to HHS researchers and data processing support staff only upon receiving an approved written request from the System Manager which specifies the data to be received and the intended use of the data. A list of authorized users is maintained.

Physical Safeguards: Records are in an area with no other use which is locked when system is not in use.

Procedural Safeguards: Personnel having access are trained in Privacy requirements. Records of access to the system are maintained. Records are used in the system area or other designated work area.

RETENTION AND DISPOSAL:

Years at NIH: indefinite. Some records are sent to the Federal Records Center and held for 3 years.

SYSTEM MANAGER AND ADDRESS:

Chief, Developmental Neurology Branch, National Institute of Neurological Disorders and Stroke (NINDS), Federal Building, NIH, 7550 Wisconsin Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform

the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Mother, child, father, biomedical examiners, hospital and clinic records, schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0021

SYSTEM NAME:

Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5D03, NIH, 9000 Rockville Pike, Bethesda, MD 20892. Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research patients of NIH on Guam.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and demographic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Biomedical research on patients by HHS scientists who study selected diseases and conditions found on the island of Guam in the Pacific.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees. Certain infectious diseases are reported to Territorial authorities as required by law. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on punch cards, magnetic tape, index cards, and print-out sheets.

RETRIEVABILITY:

Records are retrieved by name and ID number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS researchers or their authorized collaborators.

Physical Safeguards: Location is locked during non-working hours and records are returned to location at end of working day.

Procedural Safeguards: Persons having access to records are informed of the Privacy Act requirements and location is attended at all times during the working day.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the NIH Records Control Schedule, item 3000–G–3. A copy of the schedule may be obtained by writing to the system manager at the address below. Inactive records may be retired to a Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Intramural Research, National Institute of Neurological Disorders and Stroke (NINDS), Building 10, Room 5N14, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the reasons for the correction, and the corrective action sought.

RECORD SOURCE CATEGORIES:

Individuals and their families.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0026

SYSTEM NAME:

Clinical Research: Nervous System Studies, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5B20, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research patients in NIH-related studies having nervous system disorders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and demographic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research by HHS scientists on patients with special diseases of the nervous system, with particular emphasis on those diseases known or thought to be caused by slow or latent viruses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

Certain infectious diseases are reported to state government as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on magnetic tape, and on computer print-out sheets.

RETRIEVABILITY:

Records are retrieved by name, disease and attending physician name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access only to scientists on the staff of the Central Nervous System Studies Laboratory and their assistants.

Physical Safeguards: Records are kept in a locked location.

Procedural Safeguards: Personnel having access to system are informed of Privacy Act requirements.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the NIH Records Control Schedule, item 3000–G–3. A copy of the schedule may be obtained by writing to the system manager at the address below. Inactive records may be retired to a Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Chief, Central Nervous System Studies Lab., Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Attending physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0031

SYSTEM NAME:

Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with possible perinatal, acute or chronic diseases and normal volunteers in NIH-related studies pertaining to the central nervous system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Laboratory findings for viruses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289h.

PURPOSE OF THE SYSTEM:

Clinical research by HHS scientists and their authorized collaborators and research on blood serum, specifically to discover the role of infections (particularly those caused by a virus) in diseases of the central nervous system and also to study the role of vaccines in these diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

Certain infectious diseases are reported to State Government as required by law.

Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on papers and in file folders.

RETRIEVABILITY:

Records are retrieved by name and number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS scientists and their assistants and authorized collaborators.

Physical Safeguards: Records are kept in cabinets which are locked at all times that system is not in use, in a location which is also locked when system is not in use.

Procedural Safeguards: Personnel having access to system have been trained in Privacy Act requirements. Records are used in a designated work area and the system location is attended at all times during working hours.

RETENTION AND DISPOSAL:

Years at NIH: 15. Years at Federal Records Center: 20.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Laboratory of Central Nervous Systems Studies, Intramural Research Program, Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospital records, volunteers, and laboratory data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0034

SYSTEM NAME:

International Activities: Scholars-in-Residence Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 38A, Room 612, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Distinguished scientists and scholars invited to accept NIH scholarships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and education histories; references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421, "International Cooperation" of the PHS Act.

PURPOSE OF THE SYSTEM:

To administer and award scholarships to distinguished scientists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the

particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in locked file cabinets. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: 1. At Federal Records Center: 5.

SYSTEM MANAGER AND ADDRESS:

Fogarty International Center, National Institutes of Health, Building 16, Room 202, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Information is obtained from invitees, reference sources, and persons supplying recommendations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0035

SYSTEM NAME:

International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 38A, Room 612, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens applying for participation in health scientist exchange programs through NIH.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports, including curricula vitae and letters of reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

PURPOSE OF THE SYSTEM:

To maintain records necessary to administer health scientist exchange programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

3. Information is furnished to pertinent staff of the relevant foreign ministry for acceptance purposes.

4. Applications are made available to authorized employees and agents of the Federal Government for the purpose of inspections and audits, and, in appropriate cases, to the Department of Justice for investigation under civil and criminal laws.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in locked file cabinets. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: 1. At Federal Records Center: 5. Destroy 6 years after close out (NIH Manual 1743, Appendix I, Section 2300-320-7).

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Program Specialist, Health Scientist Exchange Programs, International Coordination and Liaison, Branch, FIC, Building 38A, Room 612, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants and individuals who supply references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 6S237, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and other participants in current and past research projects of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and dental histories, dental pathologies and therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 285h.

PURPOSE OF THE SYSTEM:

(1) To record the diagnosis and treatment of patients with diseases of the mouth, tongue, teeth and surrounding tissues; (2) To record the normal condition of the mouth, tongue, teeth and surrounding tissues of individuals referred to the dental clinic; (3) To provide clinical data for research into the etiology, treatment and prevention of oral diseases; (4) For review and planning of the NIDR clinical program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and hospital ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to dentists, physicians, dental hygienists, dental assistants and other health care personnel involved in the care and treatment of patients in the NIDR dental clinic, and to referring professionals. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are stored in a cabinet which is locked at all times when not in use.

3. Procedural Safeguards: Access is controlled by clerical staff of the Dental Clinic during clinic hours, and by the Officer of the Day when the clinic is closed.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), Manual Chapter 1743, item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Records will be destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Clinical Investigations and Patient Care Branch, NIDR, Building 10, Room 6S237A, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Building 31, Room 2C-35, 9000 Rockville Pike, Bethesda, MD 20892

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, parents or guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0044

SYSTEM NAME:

Clinical research: Sensory Testing Research Program, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1-N-114, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Infants, children and adults participating in the Sensory Testing Research Program of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Test results, extracts from medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 288a.

PURPOSE OF THE SYSTEM:

(1) To record the medical/dental histories of individuals participating in the Sensory Testing Research Program; (2) To record the results of chemosensory tests of individuals participating in the Sensory Testing Research Program; (3) For research on sensitivity to oral nasal stimulation; (4) For review and planning of the Clinical Investigations and Patient Care Branch program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees, referring health professionals and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain infectious diseases are reported to state governments as required by law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, data books and in a mini-computer maintained by the NIDR Scientific Systems Section.

RETRIEVABILITY:

Records are retrieved by name, date of observation and age of subject.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Clinical Investigations Section staff, to scientist colleagues by invitation of the principal investigator and to referring professionals. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Records are stored in rooms which are locked at all times when not in use. Computer terminals are in secured areas. Access to computer file is controlled by software protection codes associated with each site.

3. Procedural Safeguards: Access is controlled by Clinical Investigation Section staff.

These safeguards are in compliance with the standards of chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Research Psychologist, Clinical Investigations, NIDR, Building 10, Room 1A05, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, 9000 Rockville Pike, Building 31, Room 2C-35, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record

shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Subject individual, cooperating clinician or health agency, family members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0048

SYSTEM NAME:

Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 7, Rooms 106 and 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, volunteers, laboratory personnel in the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical specimens, attendant data and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For diagnostic and epidemiologic studies of viral respiratory diseases and hepatitis, conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Certain infectious diseases are reported to state governments as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in data books.

RETRIEVABILITY:

Records are retrieved by name, patient or study number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Data books are kept in locked rooms. Offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Respiratory Viruses Section, LID, NIAID, Building 7, Room 106, NIH, 9000 Rockville Pike, Bethesda, MD 20892, and Chief, Hepatitis Virus Section, NIAID, Building 7, Room 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to Privacy Act Coordinator, NIAID, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records, field study records, and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0060

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 13C103, 9000 Rockville Pike, Bethesda, MD 20892, and Frederick Cancer Research Center, Building 428, Frederick, MD 21701, and National Cancer Institute, Navy Hospital, Building 8, Room 3146, Bethesda, MD 21814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All patients who have been hospitalized or seen in outpatient clinics on treatment research protocols in the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 281, 282.

PURPOSE OF THE SYSTEM:

(1) Patient care and treatment. (2) Clinical and epidemiological research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes, microcomputer disks, index cards, and manual paper records.

RETRIEVABILITY:

Records are retrieved by patient name or number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Head, Biostatistics and Data Management Section, National Institutes of Health, Building 10, Room 13C103, 9000 Rockville Pike, Bethesda, MD 20892, and Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research Center, 335 Park Avenue, Building 567, Room 129, Frederick, MD 21701, and Navy Hospital, Deputy Branch Chief, NCI—Naval Medical Oncology Branch, Building 8, Room 5101, Bethesda, MD 20814.

NOTIFICATION PROCEDURE:

Write to system manager for the appropriate location to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or

incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospital medical records, referring physician, referring hospitals, clinical laboratories, patient contact, and Central Tumor Registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0069

SYSTEM NAME:

NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Chief, Genetics Section, DCE, Executive Plaza North, Room 400, 6130 Executive Blvd., Bethesda, MD 20892, and National Institutes of Health, Division of Computer Research and Technology, Building 12A, 9000 Rockville Pike, Bethesda, MD 20892, and WESTAT, Inc., STSC Building, Suite 402, 2115 E. Jefferson Street, Rockville, MD 20852.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cancer patients and their family members admitted to the NIH Clinical Center or the National Cancer Institute (NCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

National Cancer Institute physicians and supporting staff are involved in research on the cause and diagnosis of disease and the treatment of patients, requiring the maintenance of working files to chart progress, responses to treatment, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files.

RETRIEVABILITY:

Records are retrieved by identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and the Clinical Center whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Epidemiology & Biostatistics, Clinical Epidemiology Branch, Division of Cancer Etiology, NCI, Chief, Clinical Genetics Section, Executive Plaza North, Suite 400, 6130 Executive Blvd., Bethesda, MD 20892, and Chief, Family Studies Section, Environmental Epidemiology Branch, Executive Plaza North, Suite 439, 6130 Executive Blvd., Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Patients' personal physicians, NIH staff treating the patients or performing test, requested outside records, and patients themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0075

SYSTEM NAME:

Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD/OER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 5B59, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons submitting research proposals to the National Institutes of Health involving risks to subjects or matters pertaining to the protection of the rights and welfare of human research subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research protocol, identification of Principal Investigator, institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(c)(g).

PURPOSE OF THE SYSTEM:

Monitoring of research proposals that may involve undue risks to subjects or ethical considerations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (2) In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on card file.

RETRIEVABILITY:

Records are retrieved by name of Principal Investigator.

SAFEGUARDS:

(1) Authorized Users: Members of the professional staff of the Office for Protection from Research Risks (OPRR) may use information from the file in connection with follow up procedures of research proposals identified as involving potential risk to the protection of the rights and welfare of human research subjects.

(2) Physical Safeguards: Records are maintained in offices which are monitored during business hours and are locked during off-duty hours.

(3) Procedural Safeguards: Requests for information from the file are made to the Compliance Coordinator who supervises and is responsible for the file. Computer files are password protected.

RETENTION AND DISPOSAL:

Records are kept for 6 years after the end of a research project or 6 years after final action in any case involving litigation.

SYSTEM MANAGER AND ADDRESS:

Director, OPRR, National Institutes of Health, Building 31, Room 5B59, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Proposals submitted by individuals, but identified by employees or consultants of HHS as possibly involving undue hazards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0077

SYSTEM NAME:

Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Rm. 540, 6130 Executive Blvd., Bethesda, MD 20892, and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer and other patients, and normal donors of biopsy and tumor specimens, who are seen at clinically-oriented organizations under contract to the National Cancer Institute. Both adults and children are covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history and diagnostic information about the donor, information on the type of specimen, location of repository (if specimen is stored before use), and distribution record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 281, 282: "Research and Investigation," "National Cancer Institute," and "Cancer Research and Other Activities."

PURPOSE OF THE SYSTEM:

(1) For cancer research, using by-products of cancer treatment, such as biopsy and tumor specimens that would normally be discarded, to allow interpretation of experimental results; (2) To project future research needs; (3) To monitor and evaluate the NCI distribution system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department contemplates that it may contract with a private firm for storage and preservation of specimens. Records necessary for identification, retrieval and research use will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, discs.

RETRIEVABILITY:

Retrieved by name of donor and cross-referenced by identifying number, procurement source, and various epidemiological characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records, computers and computer terminals are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files are coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users.

4. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND MANAGER:

Coordinator, Research Resources, Biological Carcinogenesis Branch, Division of Cancer Etiology, NCI, National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Specimen Report Form filled out by the organization providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0087

SYSTEM NAME:

Administration: Employees and Consultants, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curriculum vitae, nominations for awards and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d) 289a.

PURPOSE OF THE SYSTEM:

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) Council members, advisors and guest lecturers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintained records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are kept until no longer needed for reference.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications, National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: National Institutes of Health, Privacy Act Coordinator, NIAID, Westwood Building, Room 704, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0093

SYSTEM NAME:

Administration: Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 82, Room 235, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors and manuscript reviewers and members of the Journal of the National Cancer Institute (JNCI) editorial board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accepted, rejected and pending manuscripts and review comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281.

PURPOSE OF THE SYSTEM:

Manuscript review by NCI staff of manuscripts submitted for possible publications or oral presentations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Disclosure may be made to qualified experts not within the definition of Department employees for opinions as a part of the review of manuscripts.

(3) In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and manuscript number.

SAFEGUARDS:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant access only to JNCI staff personnel, the Editor in Chief, and members of the Board of Editors whose duties require the use of such information.

(2) Physical Safeguards: Records are kept in a limited access area where an employee is present at all times during

working hours. Office is locked during off-duty hours.

(3) Procedural Safeguards: Access to manual files is tightly controlled by office staff. Only authorized users may have access to the files.

Information that identifies reviewers is not maintained in computer files.

RETENTION AND DISPOSAL:

Years at NIH: 1. Disposal methods including burning or shredding.

SYSTEM MANAGER AND ADDRESS:

Managing Editor, JNCI, Building 82, Room 235, 9000 Rockville Pike, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Authors and reviewers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0096

SYSTEM NAME:

Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20852.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators, project officers, and contract specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contract projects administrative data (e.g., project titles and descriptions, contractor information, etc.), fiscal data (e.g., funding/cost data, obligations), and programmatic data (e.g., scientific classifications, scope of work).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(g), 281.

PURPOSE OF THE SYSTEM:

(1) Provides administrative and financial information for administration and tracking of procurement activities of National Cancer Institute (NCI) contracts;

(2) Collects and maintains this information in an accurate and timely fashion for financial reporting and budgeting, as well as ad hoc queries on NCI contracting activities;

(3) Provides pre-award tracking and milestone data used to monitor and administer the total procurement process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(3) In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes and on-line discs.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

(1) Authorized Users: The contractor maintaining this system has been instructed not to release any information from the contract management system without prior approval of the system manager.

(2) Physical Safeguards: Computer records are kept in a limited access area. Offices are locked during off-duty hours.

(3) Procedural Safeguards: The computer center protects files physically and with access controls. Files may be used only with the approval of the system manager.

RETENTION AND DISPOSAL:

Years at NIH: 10. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. Disposal methods include erasing computer tapes and shredding of printed output.

SYSTEM MANAGER AND ADDRESS:

National Cancer Institute, Manager, NCI Contract Management System, Grants Financial and Data Analysis Branch, Executive Plaza South, Room 643, 6120 Executive Boulevard, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Negotiated Contract and Summary of Negotiations/IMPAC Code Sheet, NIH forms 1759–1 and 1759–2 generated by NIH staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0106

SYSTEM NAME:

Administration: Executive Secretariat Correspondence Records. HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Executive Secretariat, Office of the Director, Building 1, Room B1–55, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information on NIH programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

1. To locate and follow-up correspondence to assure prompt reply.

2. Incoming correspondence is forwarded to other HHS components when a response from them is warranted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored by computer index and in file folders.

RETRIEVABILITY:

Records are retrieved by name, document number, date, and subject.

SAFEGUARDS:

Access to textual records is limited to authorized personnel (system manager and staff). Computer files are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH records Control Schedule, items 1700–C–1 and 1700–C–2. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Director, Executive Secretariat, Building 1, Room B1–52, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0112

SYSTEM NAME:

Grants: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant applications and review history, awards, financial records, progress reports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "National Library of Medicine," "National Cancer Institute," "National Heart, Lung and Blood Institute," "National Institute of Dental Research," "National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases," "National Institute of Neurological Diseases and Stroke, and Other Institutes," "National Institute of Child Health and Human Development," "National Institute of General Medical Sciences," "National Eye Institute," and "National Institute on Aging," of the Public Health Service Act, (42 U.S.C. 241, 276, 281, 287, 288, 289(a), (d), (e), (i), 289(k–2)).

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PURPOSE OF THE SYSTEM:

1. Information provided is used by NIH staff for review, award, and administration of grant programs.

2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.

3. Staff may also use curriculum vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant peer review process.

4. As a part of the cost analysis of a proposed grant, a budget review is conducted of the percentage of time and effort listed under personnel category, equipment and supply categories, and other items listed under "other" category.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. Of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.

2. To the cognizant audit agency for auditing;

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual;

5. To qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 56.2, for opinions as a part of the application review and award administration processes;

6. To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter;

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected; or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. To a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records;

9. To the grantee institution in connection with performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant proposal.

10. To the profit institution's president or official responsible for signing the grant application in connection with the review or award of a grant application and in connection with the administration and performance of a grant under the terms and conditions of the awards.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The Department may disclose to consumer reporting agencies information on individuals who have failed to meet payback obligations incurred under awards made under authority of the National Research Service Awards Program (41 U.S.C. 2891–1). Information disclosed includes data identifying the individual, the amount, status and history of the obligation, and that the obligation arose from an award made under the National Research Service Awards Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes and discs, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name and grant number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health scientist administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the system manager. Authorization for access to computerized files is controlled by the system manager or designated official and is granted on a need-to-know basis. Lists of authorized users are maintained.

2. Physical Safeguards: Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. Procedural Safeguards: Access to file rooms and files is strictly controlled by files staff or other designated officials; charge-out cards identifying users are required for each file used; inactive records are transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage is controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirements of the Privacy Act as applied to the grants program.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Years at NIH: For the appropriate Retention period and disposal method; refer to NIH Manual Chapter 1743: National Research Service Awards—chapter 4000–B–4, Construction Awards—chapter 4600 D–1, Funded Grants—Chapter 4000 B–1, Unfunded Grants—Chapter 4000 C–1.

SYSTEM MANAGER AND ADDRESS:

See Appendix II.

NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

Individuals may also request lists of accountable disclosures that have been made of their record(s).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified in Appendix II, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Location

National Cancer Institute, Executive Plaza South, Suite T–42, 6120 Executive Boulevard, Bethesda, MD 20892.

National Heart, Lung and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, MD 20892.

National Library of Medicine, Building 38A, Room 5N509, 8600 Rockville Pike, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Westwood Building, Rooms 722 and 733, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, Chief, Data Control Section OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Diabetes, Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Arthritis and Musculoskeletal and Skin Diseases, Westwood Building, Room 6A18, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Child Health and Human Development, Landow Building, Room 6A21, 7910 Woodmont Avenue, Bethesda, MD 20892.

National Institute of Aging, Building 31, Room 5C39, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, Bethesda, MD 20892.

National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.

National Institute of General Medical Sciences, Grants Management Officer, Westwood Building, Room 936, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892.

National Institute of Deafness and Other Communication Disorders, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892.

National Eye Institute, Building 31, Room 6A47, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Research Resources, Building 31, Room 5B32, 9000 Rockville Pike, Bethesda, MD 20892.

National Center for Nursing Research, Building 38A, Room B2E17, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Appendix II: System manager and address

National Cancer Institute, Grants Management Officer, Executive Plaza South, Suite 216, 6120 Executive Boulevard, Bethesda, MD 20892.

National Heart, Lung and Blood Institute, Chief, Grants Operations Branch, Division of Extramural Affairs, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute, Administrative Officer, Division of Extramural Affairs, Westwood Building, Room 7A11, Bethesda, MD 20892.

National Library of Medicine, Associate Director for Extramural Programs, Building 38A, Room 5N505, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Westwood Building, Room 710, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, Chief, Data Control Section, ITEB, OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Diabetes, Digestive and Kidney Disease, Grants Management Officer, Room 639, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Child Health and Human Development, Chief, Office of Grants & Contracts, Executive Plaza North Room S01, 6130 Executive Building, Bethesda, MD 20892.

National Institute on Aging, Grants Management Officer, Room 5C07, Building 31, Bethesda, MD 20892.

National Institute of Dental Research, Grants Management Officer, NIDR, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.

National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, N.C. 27709.

National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Westwood Building, Room 936, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892.

National Institute on Deafness and Other Communication Disorders, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892.

National Center for Nursing Research, Acting Director, Division of Extramural Programs, Building 38A, Room B2E17, 9000 Rockville Pike, Bethesda, MD 20892.

National Eye Institute, Grants Management Officer, Building 31, Room 6A52, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Research Resources, Director, Office of Grants and Contracts Management, Building 31, Room 5B32, 9000 Rockville Pike, Bethesda, MD 20892.

Appendix III: Notification Procedures

National Cancer Institute
See Appendix II.
National Heart, Lung and Blood Institute, Privacy Act Coordinator, Building 31, Room 5A50, Bethesda, MD 20892.
National Library of Medicine
See Appendix II.
National Institute of Allergy and Infectious Diseases
See Appendix II.
National Institute of Diabetes, Digestive, and Kidney Diseases, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Child Health and Human Development
See Appendix II.
National Institute of Aging
See Appendix II.
National Institute of Dental Research, NIDR Privacy Act Coordinator, Building 31, Room 2C–35, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Environmental Health Sciences
See Appendix II.
National Institute of General Medical Sciences
See Appendix II.
National Institute of Neurological Disorders and Stroke
See Appendix II.
National Institute on Deafness and Other Communication Disorders
See Appendix II.
National Eye Institute
See Appendix II.
National Center for Nursing Research
See Appendix II.
Division of Research Resources
See Appendix II.

Appendix IV: Records Access Procedures

National Cancer Institute, Privacy Act Coordinator, Building 31, Room 10A30, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute
See Appendix III.
National Library of Medicine
See Appendix II.
National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Westwood Building, Room 703, Bethesda, MD 20892.
National Institute of Arthritis, Diabetes, Digestive and Kidney Diseases
See Appendix III.
National Institute of Child Health and Human Development
See Appendix II.
National Institute on Aging
See Appendix II.
National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Environmental Health Sciences
See Appendix II.
National Institute of General Medical Sciences, Privacy Act Coordinator, Westwood Building, Room 9A05, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Chief, Administrative Services Branch, Building 31, Room 8A49, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Head, Administrative Management Section, Building 31, Room B162, 9000 Rockville Pike, Bethesda, MD 20892.
National Eye Institute, Administrative Officer, Building 31, Room 6A31, 9000 Rockville Pike, Bethesda, MD 20892.
Division of Research Resources, Privacy Act Coordinator, Building 31, Room 5B10, 9000 Rockville Pike, Bethesda, MD 20892.

09–25–0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A51, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE OF THE SYSTEM:

(1) To maintain a record of the investigators under Investigational New Drug (IND) applications. (2) To appoint consultants to the Clinical Research Subpanel (CRS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical and Epidemiological Studies Branch, Microbiology and Infectious Diseases Program, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Building is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: Indefinite.

SYSTEM MANAGER AND ADDRESS:

Chief, Clinical and Regulatory Affairs Section, DMID, NIAID, Building 31, Rm 7A51, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator,

Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures.

Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0126

SYSTEM NAME:

Clinical Research: Neural Prosthesis & Biomedical Engineering Studies. HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, Room 9C02, 7550 Wisconsin Ave., Bethesda, MD 20892, and: (1) At hospitals and medical centers under contract, and (2) Federal Records Centers. A list of locations is available upon request from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers, males and females, participating in clinical studies to determine the feasibility of neural prostheses, and in clinical studies related to the development of instrumentation for diagnosis and treatment of neurological and sensory disorders conducted under contract for the National Institute of Neurological Disorders and Stroke (NINDS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical research data as related to studies which seek to determine the feasibility of neural prostheses and to develop instrumentation for diagnosis and treatment of neurological and sensory disorders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 421, 289a, 289c.

PURPOSE OF THE SYSTEM:

(1) Clinical research on the development of neural prosthesis (artificial devices) to enhance function of individuals with various disorders of the central nervous system.

(2) Research on the development of new instruments to improve diagnosis and treatment of disorders of the nervous system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS scientists and their authorized collaborators.

(2) Physical Safeguards: Records are kept in a locked room when not in use.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Director, Fundamental Neurosciences Program, NINDS, Federal Building, Room 916, 7550 Wisconsin Ave., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, 9000 Rockville Pike, Bethesda, MD 20892, and ask if a file with your name exists in the Neural Prothesis or Biomedical Engineering Studies.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Write to system manager and reasonably identify the record and specify the information to be contested,

and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Patients, patients' families, hospital records and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0129

SYSTEM NAME:

Clinical Research: Clinical Research Studies dealing with Hearing, Speech, Language and Chemosensory Disorders. HHS/NIH/NIDCD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Deafness and Other Communicative Disorders (NIDCD), Federal Building, NIH, 7550 Wisconsin Avenue, Bethesda, MD 20892, and, at hospitals, medical centers, universities and educational settings under contract. Inactive records may be stored at a Federal Records Center. A list of locations is available upon request from the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers participating in clinical research studies dealing with hearing, speech, language and chemosensory disorders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical findings, clinical research data, medical and educational histories and research data on the hearing, speech, language, cognition and chemosensory systems of subjects being tested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research on the disorders of speech, language, and hearing to discover factors leading to these disorders and to improve prevention, diagnoses, and treatment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Name or identifier code.

SAFEGUARDS:

(1) Authorized Users: Employees who maintain the system are instructed to grant access only to the principal investigator and staff assigned to a particular project, and to other authorized personnel (project officer, contracting officer).

(2) Physical Safeguards: Records are locked in cabinets when not in actual use and system location is locked during non-working hours.

(3) Procedural Safeguards: Personnel having access to system are trained in Privacy Act requirements. Records are returned to locked file cabinets at end of working day.

RETENTION AND DISPOSAL:

Years at NIH: One year to indefinitely, depending on the requirements of the specific study. Following completion of a specific study all individual identification are removed, or the records destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Communication Sciences and Disorders, NIDCD, Federal Building, Room 1C-11, NIH, 7550 Wisconsin Ave, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to: Head, Administrative Management Section, NIDCD, Building 31, Room B162, 9000 Rockville Pike, Bethesda, MD 20892, and ask if a file exists with your name in studies of the Division of Communication Sciences and Disorders. Please supply the following information:

1. Approximate date and place of examination and/or treatment.

2. Name of the study, if known.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to system manager and reasonably identify the record specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information provided by patients, patients' families, hospital records, school records, and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0134

SYSTEM NAME:

Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences. HHS/NIH/NIEHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Environmental Health Services (NIEHS), Epidemiology Branch, P.O. Box 12233, Research Triangle Park, North Carolina 27709, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating government agencies. Inactive records may be stored in a Federal Records Center. A list of locations and contracts is available upon request made to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and minors, both male and female, with known or suspected diseases, maladies, chemical or biological contaminations, as well as normal or non-suspect individuals and minors in control or study groups for the purposes of comparison. Individuals included in this system of records normally have volunteered to participate in the study and voluntarily provided information for inclusion in the system.

The participants may be, but are not limited to, patients; workers subject to specific environments; individuals selected because of social, nutritional, physical, genetic and economic conditions and behavioral characteristics; and members of the general population subject to the variety of contaminants present in the environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records pertinent to an individual's current health status: Medical history; occupational history and work environments; and selected items of personal data such as smoking habits, family size, family medical history and domiciles. Examples of information which may be included in this system are name, Social Security Number, date of birth, weight, height, sex, race, medical history, blood type, laboratory results, examination findings, current and previous medications received, list of employers, descriptions of the work environment, substances or compounds routinely handled or exposed to, and a history of current and previous residences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

National Institute of Environmental Health Sciences uses the data collected to:

1. Determine whether or not general conditions, chemicals and/or other substances found in the environment have effects on the health and well being of individuals or groups of individuals;

2. Determine how these conditions, chemicals or other substances, acting by themselves or in combination, produce adverse effects on health;

3. Identify individual or group characteristics that make a person susceptible to chemical contamination, disease or other adverse health effects from these environmental conditions or agents;

4. Determine whether there is a general or background level of exposure or other chemical effects in a local area, regional area, or nationally as well as within general or specific work environments;

5. Develop and/or validate epidemiologic or laboratory methods for detecting adverse effects due to environmental exposures;

6. Determine the scientific basis for advising regulatory agencies such as the Environmental Protection Agency, the National Institute of Occupational Safety and Health and the Department of Labor's Occupational Safety and Health Administration regarding the adverse health effects of substances and conditions found in the environment;

7. Determine the scientific basis for advising local, state, other governmental agencies and international governments regarding the adverse health effects of substances and conditions found in the environment;

8. Determine the scientific basis for advising the Congress, industry, workers, scientific or public agencies and other interested parties regarding the known or potential for adverse health effects from exposure to substances or conditions found in the environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of the individual in response to an inquiry from the congressional office, made at the request of the individual, and in the case of a minor, the minor's parent or legal guardian.

3. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from a mandatory disclosure, disclosure may be made from this system of records.

6. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

7. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in one of a combination of the following mediums: file folders, data forms, punch card, magnetic tape discs.

RETRIEVABILITY:

Information is retrieved by personal identifier such as name or code number.

Social security numbers which are supplied on a voluntary basis also are used for retrieval.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Use of these records is limited to those persons whose official duties require such access. Access to the information is controlled by the Project Officer or his representative at remote locations. Contractors or collaborating researchers, by formal agreement, comply with the provisions of the Privacy Act and Department regulations.

(2) Physical safeguards: Hard copy data is maintained in locked file cabinets at the National Institute of Environmental Health Sciences or remote study locations. Information stored in computer systems is accessible only through proper sequencing of signal commands and access codes specifically assigned to the Project Officer or contractor in accordance with Departmental standards and National Bureau of Standards guidelines.

(3) Procedural safeguards: Subjects directly participating in studies are advised that their identity is known only to those persons involved in conducting the study, and that any published findings will be in a format which precludes individual identification.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

The records are maintained until they are no longer required for the research purpose(s) for which the record was established. The records are destroyed by shredding, burning, or other appropriate means so as to render them illegible. Computer tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Chief, Epidemiology Branch, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

NOTIFICATION PROCEDURE:

Normally, individuals would know whether a file existed on the basis of their voluntary participation and provision of data. However, individuals may write to the system manager to determine if a file exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. In writing, they should provide the following data:

a. Complete name at the time of the study.

b. Birthdate.

c. Home address at the time of the study.

d. The facility where the examination was given or information otherwise collected.

e. Date, or approximate dates when information was collected or an examination conducted.

f. Name of study if known.

g. A current name, address and telephone number where they can be reached.

An individual who requests notification of or access to a medical or dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's description.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

The same information as outlined under notification procedures is needed for access to records. The request should be addressed to the System Manager.

CONTESTING RECORD PROCEDURE:

Write to the System Manager and specify the record and the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, universities, medical schools, hospitals, commercial, institutions, labor and trade organizations, State agencies, international agencies, foreign governments, other U.S. Government agencies, patients and normal volunteers, physicians, researchers and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Fogarty International Center, Building 16A, Room 101, 9000 Rockville Pike, Bethesda, MD 20892, and Division of Computer Research and Technology, Building 12A, Room 3061, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their postdoctoral or equivalent research careers who are invited to the National Institutes of Health for further training or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign, however some may be resident aliens or U.S. citizens.

Individuals in these categories include Visiting Associates, Visiting Scientists, Foreign Special Experts who are employees and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, Fogarty Scholars, Special Volunteers, Adjunct Scientists and Residents who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, immigration data and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 2421 and Section 307 of the Public Health Service Act.

PURPOSE OF THE SYSTEM:

To document the individual's presence at the NIH, to record immigration history of the individual in order to verify continued eligibility in existing programs, and to meet requirements in the Code of Federal Regulations (8 CFR Parts 8 & 22, "Aliens and Nationality").

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the U.S. Government including, but not limited to, the General Accounting Office, the Internal Revenue Service, and the FBI and Immigration and Naturalization Service, Department of Justice, for purposes of investigations, inspections and audits.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on file cards, computer tapes and microfilm.

RETRIEVABILITY:

By name, country of citizenship, institution, fellowship number, social security number, visa and immigration status, and home address.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records of successful applicants are retained indefinitely.

SYSTEM MANAGERS AND ADDRESS:

Chief, International Services and Communications Branch, Building 16A, Room 101, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager as listed above. Verification of identity is required.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official listed under notification procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD ACCESS CATEGORIES:

Subject individuals and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0143

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with infectious diseases, immunologic diseases involving adverse reactions of the body (e.g., allergic reactions) and related diseases (e.g. Acquired Immunodeficiency Disease Syndrome/AIDS), normal healthy volunteers who serve as controls for comparison with patients, relatives of patients and other individuals whose characteristics or conditions are being studied for possible connections with the occurrence of the diseases under investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

This system will be used to support (1) Epidemiologic, clinical and biometric investigations into the causes, nature (morbidity and mortality), outcome, therapy and cost of infectious,

immunologic and related diseases; (2) Review and evaluation of the progress of these research projects, and identification of and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with one or more private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs, and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and NIAID employees who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and with Department regulations.

Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, and part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed according to the terms of the contract. Records at NIAID facilities are retained and destroyed in accordance with the authority provided in the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows the records to be kept until the system manager determines that the data has no further value for scientific research. Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGER AND ADDRESS:

Chief, Epidemiology and Biometry Branch, DMID, National Institute of Allergy and Infectious Diseases, Westwood Building, Room 739, Bethesda, Maryland 20892, and Chief, Epidemiology Branch, DATDS, Room 240P, Control Data Building, 6003 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

NIAID Privacy Act Coordinator, Room 703, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892, and provide the following information:

1. System name,
2. Complete name and home address at the time of the study,
3. Birthdate,
4. Facility conducting study,
5. Disease type (if known),
6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, from physicians, research investigators and other collaborating persons and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0148

SYSTEM NAME:

Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the respective System Managers of the subsystems included in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with neurological diseases, communicative disorders, stroke, hearing loss, chemosensory deficits, and related diseases; normal, healthy volunteers who serve as controls for comparison with patients; relatives of patients; and other individuals whose characteristics or conditions are suited for possible connections with the occurrence of the diseases and disorders under investigations. Subject individuals include both adults and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, biomedical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence, or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 241, Research and Investigation, and 289a, Establishment of Institutes, of the Public Health Service Act (42 U.S.C. 301, 431).

PURPOSE OF THE SYSTEM:

This system will be used to support (1) contracted and contract-related epidemiological, clinical and biometric investigations into the causes, nature, outcome, therapy, prevention and cost of neurological and communicative disorders, hearing loss, chemosensory deficits, and stroke; (2) review and evaluation of the progress of these research projects, and identification and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with a private firm for

the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or patient identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and employees, and other authorized biomedical researchers who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating or other researchers are required to comply with the provisions of the Privacy Act and with HHS Privacy Act regulations.

Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, and Part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed as specified in individual contracts.

Records at NIH facilities are retained and destroyed in accordance with the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows the records to be kept until the system manager determines that the data has no further value for scientific research. Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGERS AND ADDRESS:

NINDS and NIDCD research activities are divided, functionally and administratively. In effect, there are six subsystems within this single umbrella system. NINDS has five programs and NIDCD one. System Managers have been designated for each subsystem as follows:

Director, Division of Communication Sciences and Disorders, NIDCD, NIH, Federal Building, Room 1C11, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Fundamental Neurosciences, NINDS, NIH, Federal Building, Room 916, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Convulsive, Developmental and Neuromuscular Disorders, NINDS, NIH, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Demyelinating Atropic, and Dementing Disorders, NINDS, NIH, Federal Building, Room 812, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Stroke and Trauma, NINDS, NIH, Federal Building, Room 8A08, 7550 Wisconsin Avenue, Bethesda, MD 20892, and Director, Division of Intramural Research, NIH, Building 10, Room 5N14, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

NINDS Privacy Act Coordinator, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892, or NIDCD Privacy Act Coordinator, Federal Building, Room 1C–06, 7550 Wisconsin Avenue, Bethesda, MD 20892, and provide the following information:

1. System name,
2. Complete name and home address at the time of the study,
3. Birthdate,
4. Facility conducting the study,
5. Disease type (if known),
6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) of whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notifications procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the system manager and reasonably identify the record, specify the information being contested and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from individual participants, and from physicians, research investigators and other collaborating persons, and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, and collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0153

SYSTEM NAME:

Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals and clinics, research centers, educational institutions, commercial organizations, local and State agencies, and other Executive Branch agencies of the Federal Government under contract to the National Institute of Child Health and Human Development (NICHD), and in NICHD facilities in Bethesda, Maryland. Inactive records may be stored at Federal Records Centers. A list of specific locations and contractors is available upon request from the System Manager, whose address is listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include adults and children (a) who are presently or have been treated by the NICHD, (b) whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied by the NICHD, or (c) normal volunteers who have agreed to provide control data for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and statistical information collected in biomedical and behavioral research studies, such as medical histories, vital statistics, personal interviews, questionnaires, current addresses of study participants, radiographs, records on biological specimens, study models, and correspondence from or about participants in these studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301, Research and Investigation, and Section 441, National Institute of Child Health and Human Development, of the Public Health Service Act as amended (42 U.S.C. Sections 241, 288d).

PURPOSES OF THE SYSTEM:

This system is used: 1. For program review, evaluation, planning, and administrative management for research on child health and human development; 2. to monitor the incidence, prevalence or development of the disease, condition, behavior, or health status under investigation; 3. to determine the relation of various factors (e.g., social, economic, environmental, physical, and medical) to the occurrence of the disease, condition, development, behavior, or health status under investigation; 4. to identify abnormal disease, condition, or health status and inform the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) of the existence of such conditions. CDC uses this information in fulfilling its congressionally mandated responsibility for the monitoring of disease and prevention of epidemics. FDA uses this information in carrying out its congressional mandate for controlling certain potentially harmful products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. Certain infectious diseases are reported to State governments as required by law.

5. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, microfilm, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NICHD project officer; and NICHD employees whose duties require the use of such information. One time and special access to the data is controlled by the System Manager, the NICHD Project Officer, and the Contract and/or Project Director.

(2) Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

(3) Procedural Safeguards: Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need, such as alerting the volunteer subjects to any findings in the study that might affect their health. Data stored in computers is accessed through the use of passwords/keywords known only to the principal investigators or authorized personnel. These passwords/keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Chief, Contracts Management Section, NICHD, Executive Plaza North, Room 610H, 6130 Executive Blvd., North Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

NICHD Privacy Act Coordinator, Building 31, Room 2A–17, 9000 Rockville Pike, Bethesda, MD 20892, and provide the following information in writing:

1. Full name and address at time of participation in the study.
2. Name or description of the study.
3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his or her relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, medical and clinical research observations, and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

9–25–0154

SYSTEM NAME:

Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 343K, 6130 Executive Blvd., Bethesda, MD 20892, and National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892, and at hospitals, medical schools, universities, research institutions, commercial organizations, collaborating State and Federal Government agencies, and Federal Records Centers. Write to system manager at the address below for the address of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children in the following categories: Patients with cancer; persons for whom cancer risk can potentially be lowered; and persons without signs or symptoms who may be identified through screening and detection methods as having cancer or being at increased risk of developing cancer. For certain types of epidemiologic studies, e.g., case-control studies, NCI may also collect, for purposes of comparison, records on other persons. These comparison groups could include normal individuals (e.g., family members or neighborhood controls), or other patient groups (e.g., hospital controls) who do not have cancer or are not at a particularly high risk of developing cancer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying participants (such as name, address, Social Security Number), medical records, progress reports, correspondence, epidemiological data, and records on biological specimens (e.g., blood, tumors, urine, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, Research and Investigation, and Title IV, Part A, National Cancer Institute, of the Public Health Service Act (42 U.S.C. 241, and 281–286).

PURPOSES:

Records in this system will be used, (1) to evaluate cancer control programs, including prevention, screening, detection, diagnosis, treatment, rehabilitation, and continuing care; (2) to identify characteristics of persons who may be particularly susceptible to environmental or occupational factors for substances which cause or prevent cancer, and/or to cancer; (3) to determine risk factors or substances which cause or prevent cancer, and the ways in which they do so; (4) to evaluate statistical and epidemiological methodologies for risk factor assessment, clinical trials, cancer control studies, and the study of the natural history of cancers; (5) to plan for, administer, and review research activities as described in the above purposes; (6) information from this system may be reported to the Food and Drug Administration (FDA) as a condition for approval of clinical investigations of new drugs, or to report adverse effects of drugs so that FDA can make informed decisions on authorizing use of such drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee—for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, charts, graphs, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name, Social Security Number when supplied voluntarily or contained in existing records used in projects under this system, or other identifying number.

SAFEGUARDS:

Measures to prevent unauthorize disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists, and support staff of the National Cancer Institute (NCI), or its contractors, grantees or collaborators who need such information in order to contribute to the research or administrative purposes of the system. The system manager specifically authorized one-time and special access by others on a need-to-know basis consistent with the purposes and routine uses of the system.

2. Physical safeguards: Records are kept in limited access areas. Offices and records storage locations are locked during off-duty hours. Input data for computer files is coded to avoid individual identification. Where possible, information on individual identities is kept separate from data used for analysis.

3. Procedural safeguards: Access to manual files is granted only to authorized personnel, as described above. Access to computer files is controlled through security codes known only to authorized users. Names and other details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers. Code numbers and complete identifiers are linked only if there is a specific need, such as for data verification.

Contractors, grantees or collaborators who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by

the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project director, contract officers and project officers oversee compliance with these requirements.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

NCI retains research records in accordance with the NIH Records Control Schedule, item 3000–G–3, which allows the system manager to keep the records as long as they are useful in scientific research. Contractors, grantees and collaborators who receive disclosures of records from this system retain the records only as long as necessary to accomplish the purpose for which the disclosures are made. Inactive records may be transferred to a Federal Records Center. Disposal methods include burning hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Surveillance Program, DCPC, National Cancer Institute, Executive Plaza North, Room 343K, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a file exists, write to the system manager and provide the following information:

a. System name: "Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control Activities";

b. Complete name at time of participation;

c. Facility and home address at the time of participation;

d. In some cases, where records are retrieved by an identifying number, such as the Social Security Number or Hospital Identification Number, it may be necessary to provide that number. In some cases, to ensure proper identification it may be necessary to provide date(s) of participation (if known), birthdate, or disease type (if known), study name and location (if known).

The requester must also verify his or her identify by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a maximum fine of five thousand dollars.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Write to the system manager and provide the same information as requested under the notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures which have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the system manager, identify the record, and specify the information contested. State the corrective action sought and your reasons for requesting the correction, and provide supporting information to show that the record is inaccurate, incomplete, irrelevant, untimely, or unnecessary.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, such as universities, medical schools, hospitals, research institutions, commercial institutions, state agencies, other U.S. Government agencies, patients and normal volunteers, physicians, research investigators and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who have participated in or benefited from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by NIH; (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289l–1 and 44 U.S.C. 3101).

PURPOSE OF THE SYSTEM:

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department may disclose information from this system of records to the Department of Justice, to court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. Physical Safeguards: Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of keywords known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NIH, as provided by the NIH Records Control Schedule, section 1100–C–2. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b). Policy coordination for this system is provided by:

Director, Division of Planning and Evaluation, National Institutes of Health, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization

responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information:

1. Full name;

2. Name and location of the evaluation study or other NIH program in which the requester participated or the institution at which the requester was a student or employee, if applicable; and

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG;" 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; NSF–8, "Doctorate Record File", NSF–43, "Doctorate Work History File" (previously entitled "NSF–43, Roster and Survey of Doctorate Holders in The United States" and other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System managers

National Institutes Health, Office of the Director, Director, Division of Planning and Evaluation, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI), Director, Office of Program Planning & Evaluation, Building 31, Room 5A03, Bethesda, MD 20892

National Library of Medicine (NLM), Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI), Associate Director for Program Planning, Analysis and Evaluation, Building 31, Room 6A25, Bethesda, MD 20892

National Cancer Institute (NCI), Public Health Educator, OCC, NCI, National Institutes of Health, Building 31, Room 4B43, Bethesda, MD 20892

National Institute on Aging (NIA), Chief, Office of Planning, Analysis, Technical Information and Evaluation, Federal Building, Room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases (NIAID), Chief, Information Technology and Evaluation Branch, Office of Administrative Management, Building 31, Room 7A17, Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD), Chief, Office of Planning and Evaluation, Building 31, Room 2A10, Bethesda, MD 20892

National Institute of Dental Research (NIDR), Chief, Office of Planning, Evaluation Section, Building 31, Room 2C36, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS) Program, Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, NC 27709

National Institute of General Medical Sciences (NIGMS), Associate Director for Evaluation, Westwood Building, Room 9A18, 5333 Westbard Avenue, Bethesda, MD 20892

Fogarty International Center (FIC), National Institutes of Health, Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892

Division of Research Resources (DRR), Evaluation Officer, Office of Program Planning and Evaluation, NIH, Building 31, Room 5B54, Bethesda, MD 20892

National Center for Nursing Research (NCNR), Chief, Office of Program Planning and Evaluation, Building 38, Room B2E17, Bethesda, MD 20892

Appendix 2: Notification and access officials

NIH, Office of the Director, Associate Director for Science, Policy and Legislation, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI), Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892

National Library of Medicine (NLM), Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI), Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892

Fogarty International Center (FIC), Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892

Division of Research Resources (DRR), Program Analyst, Office of Program Planning and Evaluation, Building 31, Room 5B54, Bethesda, MD 20892

National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892

[FR Doc. 89–25809 Filed 11–16–89; 8:45 am]

BILLING CODE 4101–01–M

Centers for Disease Control

Privacy Act of 1974: Annual Publication of Systems of Records

AGENCY: Centers for Disease Control, HHS.

ACTION: Publication of minor changes to notices of systems of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Centers for Disease Control (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as system deletions, changes in the system location of records or organizational changes affecting the designation and address of system managers. Categories covering safeguards and storage information have also been revised, where appropriate, to reflect the provisions of CDC's systems security plans.

1. Centers for Disease Control

Table of Contents

A. The following CDC active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1986:

09–20–0000 Cooperative Mycoses Study. HHS/CDC/CID.
09–20–0001 Certified Interpreting Physician File. HHS/CDC/NIOSH.
09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications. HHS/CDC/NIOSH.
09–20–0059 Division of Training Mailing List. HHS/CDC/NIOSH.
09–20–0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses. HHS/CDC/CPS.
09–20–0090 Studies of Testing for Tuberculosis and Other Mycobacterioses. HHS/CDC/CPS.
09–20–0096 Records of Tuskegee Study Health Benefit Recipients. HHS/CDC/CPS.
09–20–0102 Alien Mental Waiver Program. HHS/CDC/CPS.
09–20–0103 Alien Tuberculosis Follow-up Program. HHS/CDC/CPS.
09–20–0106 Specimen Handling for Testing and Related Data. HHS/CDC/CID.
09–20–0112 CDC Exchange Visitor and Guest Researcher Records. HHS/CDC/PMO.
09–20–0113 Epidemic Investigation Case Records. HHS/CDC/CID.
09–20–0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. HHS/CDC/NIOSH.
09–20–0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist. HHS/CDC/NIOSH.
09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.
09–20–0137 Passport File. HHS/CDC/IHPO.
09–20–0138 Epidemic Intelligence Service Officers Files. HHS/CDC/EPO.
09–20–0147 Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.
09–20–0149 Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.
09–20–0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.
09–20–0154 Medical and Laboratory Studies. HHS/CDC/NIOSH.
09–20–0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare). HHS/CDC/PHPPO.
09–20–0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations. HHS/CDC/NIOSH.
09–20–0160 Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CCDPHP.
09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.
09–20–0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEHIC.

B. The following National Center for Health Statistics (NCHS) systems, renumbered to reflect the organizational realignment under CDC, were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

09–20–0163 Applicants for National Center for Health Statistics Technical Assistance. HHS/CDC/NCHS. (Formerly numbered 09–37–0009.)
09–20–0168 Curricula Vitae of Consultants to the National Center for Health Statistics. HHS/CDC/NCHS. (Formerly numbered 09–37–0014.)
09–20–0169 Users of Health Statistics. HHS/CDC/NCHS. (Formerly numbered 09–37–0016.)

C. The following NCHS systems, similarly renumbered to reflect the organizational realignment under CDC, were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

09–20–0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population. HHS/CDC/NCHS. (Formerly numbered 09–37–0010.)
09–20–0165 Health Manpower Inventories and Surveys. HHS/CDC/NCHS. (Formerly numbered 09–37–0011.)
09–20–0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year. HHS/CDC/NCHS. (Formerly numbered 09–37–0012.)
09–20–0167 Health Resources Utilization Statistics. HHS/CDC/NCHS. (Formerly numbered 09–37–0013.)

D. Revised categories of the following CDC systems of records, reflecting changes in the system location of records or the system manager and address category, were last published in the **Federal Register**, 53 FR 47345, November 22, 1988:

09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications. HHS/CDC/NIOSH.

09–20–0106 Specimen Handling for Testing and Related Data. HHS/CDC/CID.

E. CDC has deleted system 09–20–0027, Radiation Exposure Records for NIOSH Employees, HHS/CDC/NIOSH. Records are maintained under 09–10–0008, Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH, previously published in the **Federal Register**, 51 FR 42531, November 24, 1986.

2. The following systems are revised to reflect changes in the system location of records or the system manager and address category. The revised categories are published in their entirety below:

09–20–0096

SYSTEM NAME:

Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/CPS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Center for Prevention Services, 1600 Freeway Office Park, Rm. 311, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

* * * * *

09–20–0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/CPS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Visa Medical Activity, Division of Quarantine, Center for Prevention Services, 1644 Freeway Office Park, Room 1323A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

* * * * *

09–20–0103

SYSTEM NAME:

Alien Tuberculosis Follow-up Program, HHS/CDC/CPS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Visa Medical Activity, Division of Quarantine, Center for Prevention Services, 1644 Freeway Office Park, Room 1327A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/CID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

Center for Prevention Services, 1600 Freeway Office Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Environmental Health and Injury Control, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Chronic Disease Prevention and Health Promotion, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Center for Prevention Services, 1600 Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Center for Environmental Health and Injury Control, Chamblee, Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Center for Chronic Disease Prevention and Health Promotion, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0137

SYSTEM NAME:

Passport File, HHS/CDC/IHPO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

International Health Program Office, Bldg. 16, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, International Health Program Office, Bldg. 16, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0138

SYSTEM NAME:

Epidemic Intelligence Service Officers Files, HHS/CDC/EPO.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Epidemiology Program Office, Bldg. 1, Rm. 5112, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

* * * * *

09-20-0157

SYSTEM NAME:

Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0160

SYSTEM NAME:

Records of Subjects in Health Promotion and Education Studies, HHS/CDC/CCDPHP.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Center for Chronic Disease Prevention and Health Promotion, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Center for Chronic Disease Prevention and Health Promotion, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09-20-0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/CPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Center for Prevention Services, 1600 Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for

Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Prevention Services, 1600 Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

3. To further reflect the provisions of CDC's system security plans, the safeguards information in a number of automated systems is being revised.

A. System notices 09-20-0089, 09-20-0090, 09-20-0103, 09-20-0106, 09-20-0113, and 09-20-0136 which describe records maintained at CDC, Atlanta, Georgia, are amended to contain the following new Safeguards category:

* * * * *

SAFEGUARDS:

1. *Authorized users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a card key system. Access to the computer room is controlled by a card key and security code (numeric keypad) system. Access to the data entry area is also controlled by a card key system. The hard copy records are kept in locked cabinets in locked rooms. The local fire department is located directly across the street from the Clifton Road buildings. The computer room is protected by an automatic sprinkler system, automatic sensors (e.g., water, heat, smoke, etc.) are installed, and portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fire proof safe. The 24-hour guard service in buildings provides screening of visitors. Electronic anti-intrusion devices are in effect at the Federal Records Center.

3. *Procedural safeguards:* System security includes automatic suspension of accounts, forced password changes, and control of systems and data set access. Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. When Privacy Act tapes are erased, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

* * * * *

B. System notices 09-20-0149 and 09-20-0153 which describe records maintained at CDC's National Institute for Occupational Safety and Health (NIOSH), Morgantown, West Virginia, are amended to contain the following Safeguards category:

* * * * *

SAFEGUARDS:

1. *Authorized users:* The NIOSH mainframe computer, located within the Morgantown facility, uses a security package to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a daily basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical safeguards:* Access to the facility is monitored, and controlled after hours, by a 24-hour guard service. Hard copy records are kept in locked cabinets in locked rooms. Access to the computer room is controlled by a punch lock system. System print-outs are made available to the requester through the use of "pigeon-hole" mailboxes which are individually secured by (combination) locking doors. The local fire department is one mile from the facility, which is of structural steel and cement block construction, with pre-cast cement panels on the envelope. No combustible materials are used in the building construction, including all interior walls. The computer room is protected by a Halon gas, built-in extinguisher system. Heat sensors are installed, and portable fire extinguishers are located throughout the computer room. The active system files are backed up on a weekly basis. The entire system is backed up, with copies of the files stored in a secure, fireproof safe in a separate location within the facility.

3. *Procedural safeguards:* System security includes automatic suspension of accounts, forced password changes, and control of systems and data set access. Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or a job submission. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to

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specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

* * * * *

C. System notice 09–20–0147 which describes records located at CDC's National Institute for Occupational Safety and Health (NIOSH), Cincinnati, Ohio, is amended to contain the following Safeguards category:

* * * * *

SAFEGUARDS:

1. *Authorized users:* A database software security package is utilized to control unauthorized access to the system. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff or contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical safeguards:* Hard copy records are kept in locked cabinets in locked rooms. Guard service in buildings provides screening of visitors. The limited access, secured computer room contains fire extinguishers and an overhead sprinkler system. Computer terminals and automated records are located in secured areas. Electronic anti-intrusion devices are in operation at the Federal Records Center.

3. *Procedural safeguards:* Data sets are password protected and/or encrypted. Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or a job submission. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

Employees and contractor staff who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either Government or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

* * * * *

4. Notices for systems 09–20–0055, 09–20–0112, 09–20–0117, 09–20–0118, 09–20–0154, and 09–20–0159 are amended to more accurately describe the Storage and Safeguards categories of these manual systems:

* * * * *

STORAGE:

File folders.

* * * * *

SAFEGUARDS:

1. *Authorized users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical safeguards:* Records are kept in locked cabinets in locked rooms. Guard service in buildings provides screening of visitors. Electronic anti-intrusion devices are in operation at the Federal Records Center.

3. *Procedural safeguards:* Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with system manager prior to making disclosures of data.

4. *Implementation guidelines:* HHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Mangement Regulations, subchapter B—Archives and Records.

* * * * *

Dated: November 3, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–26393 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–18–M

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Publication of minor changes to notice of system of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents and minor changes to its notice of system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as changes in the system location of records or organizational changes affecting the designation or address of the system manager.

Table of Contents

1. The following system notice currently maintained by ATSDR was published in the **Federal Register**, 53 FR 30720, August 15, 1988:

09–19–0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

2. The following system reflects changes in the system location of records and the designation and address of the system manager. The revised categories are published in their entirety below:

09–19–0001

SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Health Studies (DHS), Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 35, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are also located at contractor sites. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 35, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

Dated: November 3, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89–26392 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–70–M

Indian Health Service

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Indian Health Service, PHS, HHS.

ACTION: Annual publication of systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Indian Health Service (IHS) is publishing the table of contents of its systems of records.

SUPPLEMENTARY INFORMATION: IHS has completed the annual review of its systems of records and is publishing the listing below. There are no changes to report which affect the public's right or need to know.

The following systems notice currently maintained by IHS was published in the **Federal Register**, 53 FR 47347, November 22, 1988:

Table of Contents

09–17–0001 Health and Medical Records Systems, HHS/IHS/OHP
09–17–0002 Indian Health Service Scholarship Programs/HHS/IHS/OHP
09–17–0003 Indian Health Service Staff Credentials and Privileges Records, HHS/IHS/OHP

Dated: November 6, 1989.

Edgar Caster,

Director, Division of Management Policy.

[FR Doc. 89–26777 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–16–M

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the address of systems managers.

1. HRSA has added the following systems of records during the year:

09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr, 53 FR 51012–51014, December 1988
09–15–0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr, 54 FR 39578–39581, September 27, 1989.

2. Other minor system notice changes affecting individual categories are published below.

Dated: October 20, 1989.

James A. Walsh

Associate Administrator for Operations and Management.

Table of Contents

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0001 Division of Federal Occupational and Beneficiary Health Services, Health and Counseling Records, HHS/HRSA/BHCDA.
09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BHCDA.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA.
09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/BHCDA.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BHCDA.
09–15–0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BHCDA.
09–15–0022 Accounts Receivable, HHS/HRSA/OA.
09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA.
09–15–0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA.
09–15–0043 Cuban Loan Program, HHS/HRSA/OA.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0045 Health Resources and Services Administration Loan Repayment/Dept Management Records Systems, HHS/HRSA/OA.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0052 Nurse Practitioner and Midwifery Traineeship Program, HHS/HRSA/BHPr.
09–15–0054 Health Care Practitioner Adverse Credentialing Data Bank, HHS/HRSA/BHPr.
09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09–15–0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

09–15–0022

SYSTEM NAME:

Accounts Receivable, HHS/HRSA/OA. Minor alterations have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinating Official: Director, Division of Fiscal Services, Health Resources and Services Administration, Room 16–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Chief, Debt Management Branch, Division of Fiscal Services, Health Resources and Services Administration, Room 16A–09, 5600 Fishers Lane, Rockville, MD 20857.

Director, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0029

SYSTEM NAME:

PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA. Minor alterations have been made to this system notice. The following category should be revised:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 255) Receipt, Apprehension, Treatment and Release of Lepers; section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals Medical Examinations, and Medical Care; and Section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Services to National Oceanic and Atmospheric Administration and Public Health Service.

* * * * *

09–15–0037

SYSTEM NAME:

Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA. Minor alterations have been made to the system notice. The following categories should be revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, and who have received funds under the PHS and NHSC scholarship programs and NHSC Loan Repayment Program; individuals who have volunteered for service in the NHSC; scholarship recipients who are fulfilling their PHS and/or NHSC scholarship obligations; and individuals who include an interest in employment in or an assignment to a medical facility located in a health manpower shortage area or a medically underserved population area, including public and Federal medical facilities, such as community health centers, Indian Health Service (IHS) medical facilities, and other federally sponsored public health centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, Social Security number, scholarship application, Loan Repayment Program application, and associated forms, employment data, professional performance, and credentialing history of licensed health professionals; preference for site-selection; personal, professional, and demographic background information; progress reports (which include related data, correspondence, and professional performance information consisting of continuing education, performance awards, and adverse or disciplinary actions); payroll forms, loan repayment forms, deferment and placement data; and repayment/delinquent/default status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 333 of the Public Health Service Act, as amended (42 U.S.C. 254f), Assignment of Corps Personnel;

Section 338 of the Public Health Service Act, as amended (42 U.S.C. 254), Scholarship Program and Loan Repayment Program;

Section 202 of title II of Pub. L 92–157 (42 U.S.C. 3505d), National Health Manpower Clearinghouse;

Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514 note);

Section 4 of the Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514 note), Requirement That Applicant Furnish Taxpayer Identifying Number; and

Section 215(a) of the Public Health Service Act, as amended (42 U.S.C. 216(a)), for PHS commissioned officers, and 5 U.S.C. 3301 for civil service employees, both of which authorize verification of an individual's suitability for employment.

PURPOSE(S):

The purposes of this system of records are: (1) To select applicants for the PHS and NHSC scholarship programs and Loan Repayment Program; (2) to monitor scholarship-related activities, such as payment tracking, deferment of service obligation, default, placement, and claims determination; (3) to select and match PHS and NHSC scholarship recipients, NHSC volunteers, and other individuals for assignment to or employment with a private or group practice or to a medical facility located in a health manpower shortage area or a medically underserved population area, including other public and federally sponsored medical programs, such as IHS medical facilities and community health centers; (4) to monitor services provided by NHSC or PHS health providers; (5) to maintain records on and to verify individual's educational background, previous and current professional employment data, and performance history information to verify that all claimed background and employment data are valid and all claimed credentials are current and in good standing; and (6) to assist Bureau of Health Care Delivery and Assistance (BHCDA) officials in the collection of overdue debts owed under the PHS and NHSC scholarship programs and Loan Repayment Program.

Records in this system are also used by HHS Regional Offices and IHS for the purpose of negotiating site assignment, and by PHS for the purpose of recruiting health professionals for PHS programs.

Records may be transferred to System No. 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/QA," for debt collection purposes when BHCDA officials are unable to collect overdue debts owed under the PHS and NHSC scholarship programs and Loan Repayment Program.

* * * * *

NOTIFICATION PROCEDURES:

To find out if the system contains records about you, contact the Policy-Coordinating Official. The Policy-Coordinating Official will then refer the requester to the appropriate System Manager or Regional Office.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, Social Security number or other identifying numbers, dates of enrollment in the scholarship program or loan program, and at least one piece of tangible identification such as driver's license, passport, or voter registration card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine.

Requests by mail: A written request must contain the name and address of the requester, Social Security number or other identifying numbers, and his/her signature which is either notarized to verify his/her identity or includes a written certification that the requester is the person he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: Dates of enrollment in the scholarship program or loan program, and current enrollment status, such as pending application approval, deferment of service obligation, or shortage area placement.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

* * * * *

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; educational institutions attended; internship and/or residency training progress reports; NHSC Site Selection Questionnaires; NHSC Private Practice Option Agreements; Bureau of Health Professions Area Resources File tapes; PHS Commissioned Personnel Operations Division and U.S. Office of Personnel Management personnel records; health professional associations; DHHS contractors/subcontractors; consumer reporting agencies/credit bureaus; or participating lending institutions; other Federal agencies, including but not limited to the Department of Treasury, the Internal Revenue Service (IRS), and the U.S. Postal Service; State or local government medical licensing board and/or the Federation of State Medical Boards or a similar nongovernment entity; and third parties who provide references concerning the subject individual.

* * * * *

09–15–0038

SYSTEM NAME:

Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, MD 20857

* * * * *

09–15–0039

SYSTEM NAME:

Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

09–15–0040

SYSTEM NAME:

Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Computer Research and Technology, NIH Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

09–15–0041

SYSTEM NAME:

Health Professions Student Loan Cancellation, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

09–15–0042

SYSTEM NAME:

Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA. Minor alterations have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Rockville, MD 20857.

Division of Computer Research and Technology, NIH Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA. Minor alterations have been

made to the system notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official: Associate Administrator for Operations and Management, Health Resources and Services Administration, Room 14A–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Office of the Administrator: Chief, Debt Management Branch, Division of Fiscal Services, Health Resources and Services Administration, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service: Chief, Financial Management Branch, Indian Health Service, Room 5A–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions; Director, Office of Debt Management, Bureau of Health Professions, Room 8A–43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

09–15–0052

SYSTEM NAME:

Nurse Practitioner and Midwifery Traineeship Programs, HHS/HRSA/BHPr. Minor alterations have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM NAME:

Nurse Practitioner and Nurse Midwifery Traineeship Programs, HHS/HRSA/BHPr.

* * * * *

[FR Doc. 89–25150 Filed 11–16–89; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Food and Drug Administration (FDA) is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: FDA has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in FDA, and (2) those minor changes which affect the public's right or need to know, such as title changes, and changes in the systems location or the address of system managers.

Dated: October 19, 1989.

Jeffrey A. Nesbit,

Associate Commissioner for Public Affairs.

Table of Contents

09–10–0002 Regulated Industry Employee Enforcement Records, HHS/FDA/OC, 53 FR 9815, March 25, 1988

09–10–0003 FDA Credential Holder File, HHS/FDA/OC, 51 FR 42524, November 24, 1986

09–10–0004 Communications (Oral and Written) With the Public, HHS/FDA/OC, 51 FR 42524, November 24, 1986

09–10–0005 State Food and Drug Official File, HHS/FDA/ORA, 51 FR 42524, November 24, 1986

09–10–0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/ORA, 51 FR 42524, November 24, 1986

09–10–0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH, 51 FR 42524, November 24, 1986

09–10–0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/OMO, 51 FR 42524, November 24, 1986

09–10–0010 Bioresearch Monitoring Information System, HHS/FDA, 51 FR 42524, November 24, 1986

09–10–0011 Certified Retort Operators, HHS/FDA/CFSAN, 51 FR 42524, November 24, 1986

09–10–0013 Employee Conduct Investigative Records, HHS/FDA/OMO, 51 FR 42524, November 24, 1986

09–10–0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CBER, 51 FR 42524, November 24, 1986

09–10–0017 Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH, 51 FR 42524, November 24, 1986

09–10–0018 Employee Identification Card Information Record, HHS/FDA/OMO, 51 FR 42524, November 24, 1986

Minor alterations have been made to the following system notices:

09–10–0002

SYSTEM NAME:

Regulated Industry Employee Enforcement Records, HHS/FDA/OC. The organizational symbols for this system notice have been revised to reflect organizational changes.

SYSTEM LOCATION:

Appendixes A and B, location of Field/District Offices and location of Federal Record Centers are being republished in their entirety to reflect current addresses.

Appendix A: Addresses and working hours of the Food and Drug Administration Field Offices

The following is a list of the Food and Drug Administration Field Offices, their addresses and working hours where individuals may have access to records in Food and Drug Administration Privacy Act Record Systems:

NORTHEAST REGION

Regional Office

830 Third Avenue, Brooklyn, NY 11232, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

District Offices

One Montvale Avenue, 3rd Floor, Stoneham, MA 02180, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

850 Third Avenue, 4th Floor, Brooklyn, NY 11232–1593, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

599 Delaware Avenue, Buffalo, NY 14202, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

Regional Laboratory

850 Third Avenue, 4th Floor, Brooklyn, NY 11232–1593, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

Winchester Engineering and Analytical Center (WEAC), 109 Holton Street, Winchester, MA 01890.

MID-ATLANTIC REGION

Regional Office

2nd and Chestnut Streets, Room 900, Philadelphia, PA 19106, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

District Offices

2nd and Chestnut Streets, Room 900, Philadelphia, PA 19106, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

61 Main Street, West Orange, NJ 07052, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

900 Madison Avenue, Baltimore, MD 21201, Office hours: 7:45 a.m. to 4:15 p.m. (e.s.t.).

1141 Central Parkway, Cincinnati, OH 45202–1097, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

SOUTHEAST REGION

Regional Office

60 Eighth Street, NE., Atlanta, GA 30309, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

District Offices

60 Eighth Street, NE., Atlanta, GA 30309, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

297 Plus Park Boulevard, Nashville, TN 37217, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.).

7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

4298 Elysian Fields Avenue, New Orleans, LA 70122, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.).

Fernandez Juncos Avenue, Puerta de Tierra, San Juan, PR 00908–5719, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

Regional Laboratory

60 Eighth Street, NE., Atlanta, GA 30309, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

MIDWEST REGION

Regional Office

20 N. Michigan Avenue, Room 550, Chicago, IL 60602, Working hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

District Offices

433 W. Van Buren Street, Room 1222, Chicago, IL 60607, Working hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

1560 East Jefferson Avenue, Detroit, MI 48207, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.).

240 Hennepin Avenue, Minneapolis, MN 55401, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.).

SOUTHWEST REGION

Regional Office

3032 Bryan Street, Dallas, TX 75204, Office hours: 8:00 a.m. to 4:30 (c.t.).

District Offices

3032 Bryan Street, Dallas, TX 75204, Office hours: 8:00 a.m. to 4:30 (c.t.).

1009 Cherry Street, Kansas City, MO 64106, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.).

Denver Federal Center, Building 20, P.O. Box 25087, Denver, CO 80225–0087, Working hours: 8:00 a.m. to 4:30 p.m. (m.t.).

PACIFIC REGION

Regional Office

Federal Office Building, Room 526, 50 U.N. Plaza, San Francisco, CA 94102, Working hours: 8:00 a.m. to 4:30 p.m. (p.t.).

District Offices

Federal Office Building, Room 526, 50 U.N. Plaza, San Francisco, CA 94102, Working hours: 8:00 a.m. to 4:30 p.m. (p.t.).

1521 W. Pico Boulevard, Los Angeles, CA 90015–2486, Office hours: 8:00 a.m. to 4:30 p.m. (p.t.).

22201 23rd Drive, S.E., Bothell, WA 98021–4421, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.).

Appendix B—General Services Administration, Federal Archives, and Records Centers

National Centers:

District of Columbia, Maryland, Virginia, and West Virginia except for U.S. Court records for Maryland, Virginia, and West Virginia: Washington National Records Center, Washington, DC 20409.

National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

Regional Centers

Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island, Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154.

New York, New Jersey, Puerto Rico, the Virgin Islands, and the Panama Canal Zone, Federal Records Center, Military Ocean Terminal, Building 22, Bayonne, NJ 07002–5388.

Delaware, Pennsylvania, and U.S. Court records for Maryland, Virginia, and West Virginia, Federal Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144.

North Carolina, South Carolina, Tennessee, Mississipi, Alabama, Georgia, Florida and Kentucky, Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Illinois, Wisconsin, Minnesota, and U.S. Court records for Indiana, Michigan, and Ohio, Federal Records Center, 7358 South Pulaski Road, Chicago, IL 60629.

Indiana, Michigan, and Ohio except for U.S. Court records, Federal Records Center, 3150 Springboro Road, Dayton, OH 45439.

Kansas, Iowa, Nebraska, and Missouri, Federal Records Center, 2306 East Bannister Road, Kansas City, MO 64131.

Texas, Oklahoma, Arkansas, Louisiana, and New Mexico, Federal Records Center, P.O. Box 6216, Fort Worth, TX 76115.

Shipping address only (do not use for mail), 4900 Hemphill Street, Building 1, Dock 1, Fort Worth, TX.

Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota, Federal Records Center, P.O. Box 25307, Denver, CO 80225.

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Arizona; Clark County, Nevada; and Southern California (counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego). Federal Records Center, 24000 Avila Road, 1st Floor, P.O. Box 6719, Laguna Niguel, CA 92677.

Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean areas (except American Samoa), Federal Records Center, 6125 Sand Point Way NE., Seattle, WA 98115.

09–10–0003

SYSTEM NAME:

FDA Credential Holder File, HHS/FDA/OC. The organizational symbols for this system notice have been revised to reflect organizational changes.

09–10–0004

SYSTEM NAME:

Communications (Oral and Written) With the Public, HHS/FDA/OC. The organizational symbols for this system notice have been revised to reflect organizational changes.

09–10–0010

SYSTEM NAME:

Bioresearch Monitoring Information System, HHS/FDA. The system location and system manager(s) portion of this notice have been revised to reflect current addresses and titles.

SYSTEM LOCATION:

Center for Drug Evaluation and Research, Office of Compliance, Division of Scientific Investigations (HFD–340), 7520 Standish Place, Rockville, MD 20855.

Center for Biologics Evaluation and Research, Office of Compliance, Bioresearch Monitoring Staff (HFB–130), 8800 Rockville Pike, Rockville, MD 20892.

Center for Devices and Radiological Health, Office of Compliance and Surveillance, Bioresearch Monitoring Staff (HFZ–341), 1390 Piccard Drive, Rockville, MD 20850.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy Director, Division of Scientific Investigations (HFD–341), Center for Drug Evaluation and Research, Office of Compliance, 7520 Standish Place, Rockville, MD 20855.

Director, Division of Regulations and Bioresearch Monitoring (HFB–130), Center for Biologics Evaluation and Research, Office of Compliance, 8800 Rockville Pike, Bethesda, MD 20892.

Director, Bioresearch Monitoring Staff (HFZ–341), Center for Devices and Radiological Health, Division of Compliance Operations, 1390 Piccard Drive, Rockville, MD 20850.

09–10–0015

SYSTEM NAME:

Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CBER. The organizational symbols for this system notice have been revised to reflect organizational changes, the location and system managers portions of this notice have been revised to reflect current address and title.

SYSTEM LOCATION:

Center for Biologics Evaluation and Research, Division of Blood and Blood Products (HFB–400), 8800 Rockville Pike, Bethesda, MD 20892.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Division of Blood and Blood Products (HFD–830), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892.

[FR Doc. 89–25152 Filed 11–16–89; 8:45 am]

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November 17, 1989

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Two Types of Consumer Products; Final Rule and Determinations and Analyses of Competitive Impacts

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Two Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE or Department) to administer an energy conservation program for these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers; and to establish standards for small gas furnaces, and to consider prescribing standards for television sets.

The Department of Energy has determined that revised energy conservation standards for refrigerators, refrigerator-freezers and freezers would result in significant conservation of energy and be economically justified. Therefore, the Department is today amending title 10, part 430 of the Code of Federal Regulations (part 430) to add new standards for this product. More stringent standards, including the maximum technologically feasible level, were considered by the Department, but rejected based upon consideration of the economic analysis.

For small gas furnaces, the Department has determined that standards would result in a significant conservation of energy and be economically justified. Therefore, the Department is today amending part 430 to add standards for this product which are the maximum allowable by law.

For television sets, DOE has determined a new analysis is necessary and is not now making a determination on the need for standards on televisions.

EFFECTIVE DATES: This action amending § 430.32(a), the standards for refrigerators, refrigerator-freezers and freezers, is effective as of January 1, 1993.

This action amending § 430.32(e), setting the standards for small gas furnaces (input rate less than 45,000 Btu/hr), is effective as of January 1, 1992.

ADDRESSES: A copy of the Technical Support Document may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the Technical Support Document may be obtained from: U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507

U.S. Department of Energy, CE-43.1, Docket No. CE-RM-87-102, Forrestal Building, Room 6B-025, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320

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I. Introduction

a. Authority

Part B of title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, the National Appliance Energy Conservation Act (NAECA), Pub. L. 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

[1] Part B of title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the "Act." Part B of title III is codified at 42 U.S.C. 6291 *et seq.* Part B of title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. The Department of Energy, in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). The test procedures are an integral part of the energy conservation standards. The energy performance standards, i.e., efficiency and consumption, are based on the test procedures found in subpart B to 10 CFR part 430. The test procedures are used by manufacturers to certify compliance with the standards and will be used by the Department to determine compliance with the standards.

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules generally require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). At the present time there are FTC rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979, 52 FR 46888, December 10, 1987, and 54 FR 28031, July 5, 1989.

For each of the 12 covered products, the Act prescribes an initial Federal energy conservation standard. Section 325(b)-(h). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within 3 to 10 years, also depending on the product. Section 325(b)-(h). After the specified period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. Section 325(l)(1). The Department's first review of standards is for refrigerators, refrigerator-freezers and freezers.

The Act also directs DOE to prescribe an energy conservation standard for small gas furnaces, i.e., gas furnaces having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992. Section 325(f)(1)(B).

With regard to another covered product, television sets, the Act allows the Department to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992. Section 325(i)(3).

Two products (refrigerators, refrigerator-freezers, and freezers; and small gas furnaces) are the subject of this rulemaking. As noted below in the product-specific discussion, the Department is postponing a final decision on standards for television sets and will conduct a new analysis for television sets and publish a proposed rule based on that analysis.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(l)(2)(A).

Section 325(l)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, section 325(l)(2)(B)(ii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *"

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)-(c). Exceptions to this general rule include: (1) State standards prescribed or enacted before January 3, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327 (b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (section 327 (b)(3) and (f) (1)-(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (section 327(b)(6) and 327(c)).

Another exception to Federal preemption concerns standards for refrigerators, refrigerator-freezers and freezers. The Act specifies that if DOE does not publish a final rule before January 1, 1990, relating to the revision of Federal standards for this product category, the State of California's December 14, 1984, standards (effective January 1, 1992) for these products, would become effective in California beginning January 1, 1993, and may not be preempted by any Federal standard. This exemption from preemption by a Federal standard would exist as long as

the California standard was not made more stringent. Section 325(b)(3)(A)(ii)(I) and section 327(c).

In addition, if DOE does not publish a final rule before January 1, 1992, relating to the revision of standards for refrigerators, refrigerator-freezers, and freezers, any State regulation which applies to such products manufactured on or after January 1, 1995, is exempt from Federal preemption until the effective date of a Federal standard. Section 325(b)(A)(ii)(II).

b. Background

The purpose of this rulemaking is two-fold: (1) To review the energy conservation standards for refrigerators, refrigerator-freezers, and freezers (hereafter referred to as refrigerators) that have been established by the Act; and, (2) to propose energy efficiency standards which are not less than 71 percent and not more than 78 percent AFUE (annual fuel utilization efficiency) [2] for small gas furnaces, i.e., those having an input rate less than 45,000 Btu per hour.

As directed by the Act, DOE published an advance notice of proposed rulemaking, with a 60-day comment period that ended February 5, 1988. (Hereafter referred to as the advance notice.) 52 FR 46367, December 7, 1987. The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to DOE's approach. In addition, on January 28, 1988, a public hearing was held on the advance notice.

On December 2, 1988, DOE published a Notice of Proposed Rulemaking concerning refrigerators, refrigerator-freezers, and freezers; small gas furnaces and television sets. (Hereafter referred to as the proposed rule.) 53 FR 48798, December 2, 1988. The Department proposed to establish an energy conservation standard of 78 percent AFUE for small gas furnaces which was the highest level within the range (71 to 78 percent AFUE) for DOE to consider as set by the Act. For television sets, the Department proposed that an energy conservation standard would not be economically justified. For refrigerators, DOE did not propose a specific standard level; rather, DOE solicited comments and information within a range of standard levels. This range of standard levels considered is shown in Table 1–1 below. The standards prescribed by the Act, effective January 1, 1990, and those prescribed today, effective January 1, 1993, are shown in Table 1–2 below. During the 60-day comment period ending January 31, 1989, DOE received 120 written comments and testimony from 33 participants at the public hearing held in Washington, DC, on January 12 and 13, 1989. The issues raised are addressed in section III of this notice.

TABLE 1–1.—PROPOSED RANGE OF ENERGY STANDARDS EQUATIONS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Energy standards equations (Kwh/yr)
1. Refrigerators and refrigerator-freezers with manual defrost	(16.3AV+316) to (11.9AV+258)
2. Refrigerator-freezer—partial automatic defrost	(21.8AV+429) to (14.1AV+305)
3. Refrigerator-freezers—automatic defrost with: Top-mounted freezer without through-the-door ice service	(23.5AV+471) to (16.8AV+363)
4. Refrigerator-freezers—automatic defrost with: Side-mounted freezer without through-the-door ice service	(27.7AV+488) to (13.1AV+540)
5. Refrigerator-freezers—automatic defrost with: Bottom-mounted freezer without through-the-door ice service	(27.7AV+488) to (17.9AV+386)
6. Refrigerator-freezers—automatic defrost with: Top-mounted freezer with through-the-door ice service	(26.4AV+535) to (17.6AV+380)
7. Refrigerator-freezers—automatic defrost with: Side-mounted freezer with through-the-door ice service	(30.9AV+547) to (15.2AV+652)
8. Upright freezers with: manual defrost	(10.9AV+422) to (12.3AV+181)
9. Upright freezers with: automatic defrost	(16.0AV+623) to (18.0AV+264)
10. Chest freezers and all other freezers	(14.8AV+223) to (11.2AV+163)

AV = Total adjusted volume, expressed in Ft.[3] as determined in Appendices A1 and B1 of Subpart B.

TABLE 1–2.—JANUARY 1, 1990, AND JANUARY 1, 1993, ENERGY STANDARDS EQUATIONS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Energy standards equations (Kwh/yr)	
	Effective Jan. 1, 1990	Effective Jan. 1, 1993
1. Refrigerators and refrigerator-freezers with manual defrost	(16.3AV+316)	(19.9AV+98)
2. Refrigerator-freezer—partial automatic defrost	(21.8AV+429)	(10.4AV+398)
3. Refrigerator-freezers—automatic defrost with: Top-mounted freezer without through-the-door ice service [1]	(23.5AV+471)	(16.0AV+355)
4. Refrigerator-freezers—automatic defrost with: Side-mounted freezer without through-the-door ice service	(27.7AV+488)	(11.8AV+501)
5. Refrigerator-freezers—automatic defrost with: Bottom-mounted freezer without through-the-door ice service	(27.7AV+488)	(14.2AV+364)
6. Refrigerator-freezers—automatic defrost with: Top-mounted freezer with through-the-door ice service	(26.4AV+535)	(17.6AV+391)
7. Refrigerator-freezers—automatic defrost with: Side-mounted freezer with through-the-door ice service	(30.4AV+547)	(16.3AV+527)
8. Upright freezers with: manual defrost	(10.9AV+422)	(10.3AV+264)
9. Upright freezers with: automatic defrost	(16.0AV+623)	(14.9AV+391)
10. Chest freezers and all other freezers	(14.8AV+223)	(12.0AV+124)

[1] Including all refrigerators with automatic defrost
AV = Total adjusted volume, expressed in Ft.[3], as determined in appendices A1 and B1 of Subpart B of this Part.

[2] AFUE is the ratio of annual fuel output energy to annual fuel input energy, expressed as a percent.

II. General Discussion

a. Maximum Technological Feasible Levels

The Act requires that, in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (1)(2)(A)). Accordingly, for each class of product that was under consideration in this rulemaking, a maximum technologically feasible level was identified. The maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units without affecting the product's utility. DOE believes that the maximum technologically feasible level must be capable of being assembled, but not necessarily manufactured, by the effective date of a standard.

The maximum technologically feasible levels were derived by adding energy-conserving engineering design options to the respective classes in order of decreasing consumer paybacks. Accordingly, the maximum technologically feasible level for refrigerator-freezers includes dual compressors and evacuated panels. A complete discussion of each maximum technologically feasible level, and the design options included in each, is found in the Engineering Analysis. *See* Technical Support Document, chapter 3.

The "max tech" levels presented in this notice are predicated on the assumption that CFC–11 and –12 will not be available for refrigerator production. In the Engineering Analysis the Department applied a five percent efficiency penalty for the CFC–11 substitute. *See* Technical Support Document, chapter 3. If CFC–11 and –12 were available for these designs, then the "max tech" levels could be even more efficient. A complete set of engineering cost-efficiency curves are presented in the Engineering Analysis for refrigerators, including those with CFC–11 and –12.

Table 2–1 presents the Department's maximum technologically feasible levels for the 10 refrigerator classes and 2 small gas furnace classes:

TABLE 2–1.—MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Products & product classes	Unit energy consumption [1]
Refrigerators:	
Manual defrost (17.0 cu. ft.) [2]	325 kWh/yr.
Partial automatic defrost (16.8 cu. ft.)	502 kWh/yr.
Automatic defrost top mount (20.8 cu. ft.)	490 kWh/yr.
Automatic defrost side-by-side (24.1 cu. ft.)	564 kWh/yr.
Automatic defrost side-by-side with through-the-door service features (31.9 cu. ft.)	746 kWh/yr.
Automatic defrost top mount with through-the-door service features (20.8 cu. ft.)	540 kWh/yr.
Automatic defrost bottom mount (22.8 cu. ft.)	498 kWh/yr.
Freezers:	
Chest, manual defrost (22.5 cu. ft.)	250 kWh/yr.
Upright, manual defrost (26.1 cu. ft.)	423 kWh/yr.
Upright, automatic defrost (25.3 cu. ft.)	588 kWh/yr.
Small Gas Furnaces:	
Non-weatherized (indoor)	97% AFUE [3].
Weatherized (outdoor)	97% AFUE [3].

[1] These maximum technologically feasible energy consumption levels for refrigerators/refrigerator-freezers/freezers are based on design options that use substitutes for CFC–11 and –12.
[2] Adjusted volume.
[3] 78 percent AFUE is the maximum standard level that is allowed by the Act for small gas furnaces.

The Department believes that these are the maximum technologically feasible energy conservation levels from an engineering standpoint; with the exception of small gas furnaces, each of these levels was evaluated in accordance with the economic justification factors specified in the Act to determine if the levels were economically justified. The maximum technologically feasible levels for small gas furnaces were excluded from the analysis, since these levels are beyond the legislated range in which the Department has to establish standards.

The Department evaluated each maximum technologically feasible level to determine if it would be economically justified at the time of the effective date of the standard. DOE rejected energy conservation standards that have unacceptable impacts on consumers or manufacturers, e.g., unusually long payback periods and negative impacts on manufacturers' returns-on-equity, or result in the changing of the utility of the product.

b. Energy Savings

1. *Determination of Savings.* The Department forecasts energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model (LBL–REM). The LBL–REM forecasts energy consumption over the period of analysis (1993–2015) for candidate standards and the base case.[3] The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case.

The LBL–REM is fully explained in the Technical Support Document. Appendix B to that document addresses the LBL–REM in detail. The LBL–REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

The LBL–REM is used to project residential energy use over the relevant time periods. By comparing the energy consumption projection at alternative standards or no standards (for small furnaces), and at alternative standard levels or the Act's 1990 standards (for refrigerators), the Department estimated the amount of energy projected to be saved during the period 1993–2015.[4] The

[3] For refrigerators, the base case represents no standards beyond the Act's 1990 standards; for small gas furnaces, the base case represents no standards.

[4] LBL–REM analyzed a single standard level or alternative levels over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may

Continued

energy saved is expressed in Quads, i.e., quadrillion Btu's. With respect to electricity, the savings are quads of source or primary energy, which includes the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. In 1987, the amount of electrical energy consumed at the site was less than one-third of the amount of source energy that was required to generate and transmit the site electrical energy.[5] Therefore, it is important to identify whether the electricity involved is site or source energy.

The LBL–REM projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

Under section 325(l)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the Department believes that a standard level option need not meet a threshold level of energy savings to be considered a "significant" saver of energy. The U.S. Court of Appeals, *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 1373. Thus, for this rulemaking, DOE believes that each candidate standard considered results in significant energy savings.

c. *Rebuttable Presumption*

NAECA established new criteria for determining whether a standard level is economically justified. Section 325(l)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then it can be presumed that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

d. *Economic Justification*

As noted earlier, section 325(l)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. *Economic Impact on Manufacturers and Consumers.* The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulated hypothetical firms in the industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), is explained fully in the Technical Support Document. *See* Technical Support Document, Appendix C. LBL–MIM provides a broad array of outputs. The outputs are shipments, price, revenue, net income, and return-on-equity (ROE). An "Output Table" lists values for all these in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how ROE would be affected by a change in any one of the model's nine control variables.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense of each standard level are presented in Chapter 6 of the Technical Support Document.

2. *Life-Cycle Costs (LCC).* One measure of the effect of proposed standards on consumers is the change in life-cycle costs resulting from standards. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense, incuding maintenance expenditures, discounted over the lifetime of the appliance.

The LCC was calculated for the range of efficiencies in the Engineering Analysis for each class of product in the year standards are imposed. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are inputs that are taken from the 1989 *Annual Energy Outlook* of the Energy Information Administration. Appliance usage inputs for refrigerators are taken from the refrigerator test procedure and for small gas furnaces are taken from the furnace test procedure and modified to adjust from laboratory to field usage.

The differences in life-cycle costs between the base case and various levels of standards for refrigerators and small gas furnaces are presented in Tables 6.1–6.3 of the Technical Support Document. These LCC's are calculated at a seven percent discount rate; a higher rate, e.g., ten percent, gives a smaller difference between standards cases and the base case, while a lower rate, e.g., five percent, produces a greater difference. This results because the consumer benefits, i.e., reduced operating expenses accrue over the life of the appliance and are discounted back to some base year. Therefore, the lower the discount rate, the greater the resulting consumer benefits after discounting. In addition, as can be seen in the various LCC curves, the use of a higher discount rate results in a flatter curve.

When the LCC numbers are plotted graphically (on the Y axis) against unit energy consumption (on the X axis), the data generally produce a curve that is concave from above in shape. This means that at first the LCC curve will decline as efficiency improvements are made, will reach a minimum (which may or may not be discrete), and then rise. This indicates that the first efficiency

have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this reulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2015.

[5] Energy Information Administration, *Electric Power Annual 1987*, Tables 25 and 82, DOE/EIA–0348(87), 1988.

[6] For this calculation, cost-of-operation, i.e., energy saving, is derived from the DOE test procedures. See §§ 430.22 (e) and (n). Consumers who use the products less than the test procedure assumes will experience a longer payback while those who use them more than the test procedure assumes will have a shorter payback.

improvements will produce energy savings, the value of which will more than pay for the design change. As additional efficiency improvements are made, it becomes increasingly costly to save more energy, and, eventually, the value of the energy savings will not cover the expenditures for the design improvements. *See* Technical Support Document, Figures 6.1–6.12.

The minimum of the LCC curve was of particular interest in the analysis. The minimum of the curve represents that level of efficiency improvements that maximizes the difference between the value of energy saved and the additional consumer expenditures for the relevant efficiency improvements. Therefore, design options that corresponded to the minimum point were of special consideration in establishing standard levels.

The Department conducted a net present value (NPV) analysis to assess the differential economic impacts on consumers that would occur from the adoption of standards (for small gas furnaces) and amended standards (for refrigerators) compared to a base case with no-standards (for small gas furnaces) and the Act's 1990 standards (for refrigerators). *See* Technical Support Document, Chapter 5. The LBL–REM calculates the total expenditure for each product (discounted total value of energy consumption from 1992 through the last year of use for those products purchased through the year 2015, plus the total discounted expenses for equipment purchased from 1992 through 2015), with and without standards (for small furnaces), and with more stringent standards and with the Act's 1990 standards (for refrigerators). The NPV analysis is similar to the LCC analysis, in that the greatest NPV should occur at the standard level that corresponds to the LCC minimum for the product.[7] The NPV for each product at the different standard levels is identified in section IV of this notice.

3. *Energy Savings.* While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from new or revised standards. DOE used the LBL–REM results, discussed earlier, in its consideration of total projected savings. The savings are provided in section IV of this notice.

4. *Lessening of Utility or Performance of Products.* This factor cannot be quantified. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the two products under consideration in this rulemaking. That is, to the extent that comments, or DOE's own research, indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for this product. In this way the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed. However, other factors, in conjunction with standards, could affect the utility or performance of products subject to standards. For example, the EPA limitations on chlorofluorocarbon (CFC) production could cause refrigerator manufacturers to adopt alternatives to the regulated CFCs which could affect the referigerator's utility or performance. If this occurs, DOE is not able to assure that utility and performance would not be affected by standards.

5. *Impact of Lessening of Competition.* The determination of this factor is to be made by the Attorney General. This determination is presented for each product in section IV of today's notice. In addition, a copy of the Attorney General's letter containing the findings is published in today's **Federal Register**.

6. *Need of the Nation to Conserve Energy.* With increasing concern about the prospects of polluted air, acid rain and global warming, some have argued that energy conservation, including more stringent energy conservation standards, is necessary to help alleviate those prospects. Accordingly, results from the environmental assessment for each product will be reported concerning this factor in the product specific discussion (section IV) of this notice.

7. *Other Factors.* This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that he deems to be relevant. The only such factor that has been identified is the EPA regulation to restrict the production of certain CFCs. This factor, too, is discussed in section IV of this notice.

III. Discussion of Comments

The Department received 120 written comments in response to the December 1988 proposed rule, and received testimony from 33 persons at the January 12–13, 1989, public hearing. These comments addressed all aspects of the analysis. In this section, the Department will discuss the general analytical issues raised by the comments; and then, the product-specific issues.

a. General Analytical Comments

1. Energy Projections

In the analysis for the proposed rule, the Department used energy price forecasts from the 1986 Annual Energy Outlook of the Energy Information Administration. The American Gas Association (AGA) contended that these price forecasts should be updated. (AGA, No. 128, at 16–17).[8]

The Department agrees with AGA and has updated the energy price projections by incorporating the forecasts from the 1989 Annual Energy Outlook (DOE/EIA–0383(89)).

2. Discount Rate Selection

In the Department's analysis for the proposed rulemaking, a seven percent discount rate was used to calculate consumer life-cycle costs and net present values.

The Department received numerous comments on the choice of an appropriate discount rate.[9] Among those supporting a lower rate, generally either three or four percent, were the Rocky Mountain Institute (RMI) (RMI, No. 49, at 1), the Natural Resources Defense Council (NRDC) (NRDC, No. 81, at 8–9), the Northwest Conservation Act Coalition (NCAC) (NCAC, No. 91, at 1), Massachusetts Executive Office of Energy Resources (Mass) (Mass, No. 107, at 5), the California Energy Commission (CEC) (CEC, No. 108, at 17), Edison Electric Institute (EEI) (EEI, No. 127, at 10), Ohio Office of the Consumer's Counsel (Ohio) (Ohio, No. 138, at 7), and Representative Edward J. Markey (Markey, No. 151, at 3).

The principal argument offered in support of a lower rate is that appliance energy conservation standards have

[7] The net present value (NPV) of a standard, per appliance, is calculated for all affected appliances that are purchased in the projection period, while the life-cycle cost (LCC) is calculated only for the lifetime of an appliance that is purchased in the first year of the relevant standard. Therefore, NPV and LCC estimates, per appliance, may not correlate exactly

[8] Comments on the proposed rule have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the January 12 and 13, 1989, public hearing are identified as Testimony.

[9] Since the benefits of improved efficiency and the expenses of obtaining and maintaining the more efficient equipment accrue at different rates over time, the values must be stated in terms of a common point in time. Usually this common time is the present, and the expense and benefit flows are discounted to present values through the application of an appropriate discount rate. This rate is typically independent of price changes and tax considerations; as such, it is a real, after-tax rate.

benefits that accrue to all of society, and these positive benefits should be accounted for by a reduction in the discount rate for the individual purchasers of the energy saving appliances.

The Department agrees that all of society benefits from energy-conserving appliances, e.g., more energy-efficient appliances can help reduce the need to build additional electrical generating plants, and thereby have positive economic and environmental effects that can be enjoyed by all members of society. It is also true, however, that most of the benefits from more efficient appliances are realized by the individual purchasers of those appliances, while those benefits that are collective in nature and benefit all members of society, e.g., the environmental benefits mentioned above, are properly tallied in the environmental assessment that the Department must conduct for the rulemaking, and are considered under the economic justification factors. Such external benefits from the purchase of energy conserving appliances should not be used to support a lower discount rate for calculating the benefits to the individual purchasers.

Social discount rates can be appropriate in situations where there are significant societal benefits that cannot be estimated. However, even in those circumstances, there is a practical problem in determining what that rate should be, that is, by what amount the private discount rate should be lowered in order to account for the benefits that accrue to all of society. Most of the comments that argue for a social discount rate suggested, as noted above, lowering the individual purchaser's rate to three or four percent. None of these comments, however, offers any theoretical or empirical basis to support such a reduction, and the Department, therefore, rejects such calls for lowering the individual purchaser's discount rate. Furthermore, as noted above, many of the benefits that accrue to all of society from more energy-efficient appliances are, the Department believes, environmental benefits, which are calculated in the Environmental Assessment (DOE/EA–0386). Any additional social benefits that might exist from an individual's purchase of more energy-efficient appliances are, DOE believes, not sufficiently large or inestimable to warrant reducing the consumer's discount rate.

The use of a three percent discount rate has no reasoned theoretical basis. It is not related to the opportunity cost of money for purchasing consumer durables. It represents the extreme of the calculations of the social discount rate in a more general context, and is thus suspect on these grounds. Finally, the use of a three percent discount rate does not change the results qualitatively. For refrigerators, as seen in the Technical Support Document, standard level 3 has certain positive benefits, greater in magnitude than results calculated at a higher discount rate. Level 4 has even higher benefits, but is rejected for reasons not related to the discount rate and the calculated life-cycle-cost and net present value.

The principal exception to those who argued for a lower discount rate was a comment offerd by Battelle (Battelle) on behalf of the Association of Home Appliance Manufacturers (AHAM). (Battelle, No. 110, at 8–18 and 32–34). Battelle stated that consumers' past implicit discount rates [10] for appliances have been calculated to be in the 40 to 100 percent range. These rates are implicit discount rates, developed from data on past consumer purchases. Based on these data, Battelle contends that the discount rate, to be used in the analysis, should be no lower than 20 percent.

DOE reviewed these comments and found several problems with Battelle's recommendation. First, the implicit discount rate is a value, initially calculated from historical data, that is used by LBL–REM in the projection of efficiency choices. LBL–REM uses implicit (market) discount rates that characterize the market-place's trade-off of purchase price against operating expense. For refrigerators, these values are calculated from purchase data, including the shipment weighted energy factor for 1987, which was obtained from AHAM. The implicit discount rates used in the proposed rule were reported for each class in table B.2 of the Technical Support Document, and range from 78 to 279 percent. Implicit discount rates for the small gas furnace classes were calculated to be 16 and 20 percent; these were used in the proposed rule and are also reported in Table B.2 of the Technical Support Document.

Secondly, household appliances are considered to be consumer durable goods, not investment goods. This definition has been accepted elsewhere in the Federal government; for example, the U.S. Department of Commerce's *Survey of Current Business* reports expenditures on appliances in this way. A consumer durable good is one that is expected to last more than one year. All of the appliances that are covered by the Act fall into this category.

The return to a consumer of an appliance is the utility that is derived from having and using the product. The consumer will spend on appliances up to the point that the marginal utility that he derives is equal to the purchase price.

The idea of a monetary payback from consuming an appliance is contrary to economic thought. Only investment goods are expected to yield a monetary return. Furthermore, to calculate a rate of return to consumers from consuming an appliance, one would need some cardinal measure of their individual utility schedules, and would need to make interpersonal comparisons of them. Both of these concepts are contrary to economic theory and application.[11]

Although the concept of paybacks from the consumption of a consumer durable is contrary to economics, such is the approach that has been taken by those who argue that the "correct" discount rates to use in consumer life-cycle cost and net present value calculations for the appliance standards program are the implicit discount rates derived from past consumer appliance purchase data.

It has been suggested by some that, since many of the appliances under this program are "necessities," the average model should be considered a consumer durable, but that any additional price paid for a more energy-efficient model could be considered a consumer investment, against which monetary returns can be calculated. It is then suggested that the rate of these returns should be used as discount rates in the life-cycle-cost and net present value calculations.

This approach has some conceptual appeal; however, there would be problems with its implementation. Such a calculation would be appropriate where the more energy-efficient model differed from the average model only in its improved energy-efficiency. If there were other differences in features between the two appliances, the extra price for the more energy-conserving model could be at least partly related to those different features; therefore, the extra price would not be solely for the energy conserving aspect of the more efficient machine, and calculating rates of return based on that extra price would not produce a rate of return from the aspect of investing in energy-efficiency.

Finally, the proposal to use a discount rate of 20 percent is counter to the practice of government agencies that are evaluating either regulatory program or government investments. In the evaluation of regulations, regulatory agencies often use (real) discount rates of three to seven percent. For example, the Environmental Protection Agency (EPA) in performing its regulatory impact assessment of the Montreal Protocol, used a 3 percent real discount rate. DOE, in evaluating Voluntary Energy Conservation Performance Standards for Commercial and Multi-family High Rise Residential Buildings used a seven percent real discount rate.

Even if the arguments for the use of a higher discount rate were accepted, they would not change the results of the analysis qualitatively. For refrigerators, at a ten percent discount rate, the level 3 standards would have some positive benefits (although reduced from the benefits calculated at seven percent. The net benefits of the level 3 standards would be higher than level 2 or level 4.

In deriving the seven percent discount rate that was used in the proposed rule, DOE was guided by the Court decision. *NRDC* v. *Herrington, supra* at 110. In the December 22, 1982, and August 1983 final rules concerning appliance energy efficiency standards, DOE used a ten percent discount rate. In dismissing the ten percent discount rate, the Court presented, without comment, a methodology for calculating a discount rate for consumer life-cycle cost and net present value calculations.

The methodology was a calculation of the interest charged on consumer loans, minus the tax deductibility of such interest, minus the rate of inflation; this yields a real, after-tax, rate of interest.

The applicability of that methodology changed considerably with passage of the Tax Reform Act of 1986 (Pub. L. 99–514). The Tax Reform Act phases out the tax deductibility of interest paid on consumer loans (the phase-out will be complete at the end of 1990). DOE used that methodology in calculating a discount rate for the December 1988 proposed rule. The Department examined interest rates on consumer loans (then about 12 percent) and deducted the expected annual rate of price increases (often used as a measure of the inflation rate) in the early 1990's (then forecasted to be around 5 percent).

With the passage of the Tax Reform Act, the issue became more complex. To the extent that purchases of more efficient appliances occur along with the sale of new homes, then the purchase prices of those appliances are often being financed by the interest rate on the mortgage, which is typically lower than interest on consumer installment loans, and is also fully tax deductible. Therefore, in order to derive an appropriate discount rate for these purchasers, it is necessary to estimate the expected mortgage interest rates, as well as the percentage of shipments of refrigerators and small furnaces that are expected to be installed in new homes. When this rule is effective in 1993, there are projections that the fixed contract mortgage rate for conventional commitments will be 10.78 percent.[12] For a purchaser in a marginal tax rate of, say, 28 percent, the after tax rate of interest paid would be 7.76 percent (10.78 x .72). Furthermore, it is estimated that the annual rate of price increases in 1993 will be 4.7 percent.[13] Therefore, the net, after tax, real rate of interest to these consumers would be 3.06 percent (7.76–4.70).

However, only a fraction of the units are expected to be installed in new homes and, thus, qualify for such a favorable interest rate. According to projections in the LBL–REM, around 60 percent of the small furnace shipments, and more than 30 percent of refrigerator shipments in 1993 are expected to be installed in new homes.

Presumably, then, 40 percent of small furnace shipments and 70 percent of refrigerator shipments in 1993 will be purchased as replacements and installed in existing homes. How these units are purchased would indicate an appropriate discount rate. For example, some replacement purchases could be made through home equity loans, the interest for which would be fully tax deductible. Many other replacements will be bought with cash that is withdrawn from savings or by an unsecured, personal loan.

For cash purchases, the relevant interest expense is the foregone interest that those savings could have earned. In 1993, time deposits, i.e., savings accounts, are expected to be earning between 7.72 and 7.79 percent interest.[14] Since such interest, if earned, would be fully taxable, the net, after tax earnings that are foregone are between 5.55 and 5.61 percent for an individual in a 28 percent marginal tax bracket. Subtracting the expected rate of price increases (4.7 percent), one obtains a resulting discount rate of 0.85 to 0.91 percent.

Many consumers, however, will purchase their appliances by taking out unsecured, personal loans, which are likely to carry interest rates of 16 to 20 percent; these interest payments would not be tax deductible. The discount rate for this group of purchasers would be as high as 13.3 to 15.3 percent.

As the foregoing discussion indicates, there is a wide range of possible discount rates to be used in calculating life-cycle costs and net present values. The range is from approximately 1 percent to slightly more than 15 percent.

Although many of the purchasers of these appliances should have real, after tax interest payments below 7 percent, many will have payments in excess of 15 percent; thus it would appear that the use of a seven percent rate in the consumer life-cycle cost and net present value calculations is justified. Since one discount rate is to apply in all the calculations, the Department used a rate approximately at the mid-point of the potential consumer discount rates.

This approach has several advantages. First, it has a reasoned theoretical justification in that it is related to the opportunity cost of money for purchasing consumer durables; as such, it is justified in terms of the alternate consumer investment opportunities that are forgone in order to finance the purchases of the appliances. Secondly, use of a higher rate would arbitrarily bias the LCC results upward, while a lower rate would create biases in the opposite direction.

3. Selection of Candidate Standard Levels

In the proposed rule, the Department indicated that its selection of candidate standard levels was dependent on the consumer life-cycle cost curves that were developed in the analysis. These curves were calculated by estimating the expected initial price increase that such additional design options would cause, adding the discounted value of maintenance and operating expenses, and comparing them to the discounted value of energy savings that would result from those design options. The selection criteria were to consider as possible standard levels as many points from the curves as would be practical. Two levels that were considered as standards were the maximum technologically feasible levels, as required by the Act, and the LCC minima which, at least theoretically, should maximize the benefits to the consumer. In addition, in the case of classes of refrigerators, the Department considered, as candidate standard

[10] The implicit discount rate is a measure of marketplace behavior where, using historical data, a discount rate is calculated that would result in the shipment weighted energy factor (SWEF) coinciding with the minimum LCC point.

[11] See, for example, Donald Stevenson Watson, *Price Theory and Its Uses*, Boston: Houghton Mifflin Company, 1963. Chs. 4 and 5, esp. pages 59–61 and 68–71. For an additional critique of the practicality of cardinal measurement of utility, see William S. Vickrey, *Microstatics*, New York: Harcourt Bruce & World, Incorporated, 1964, pp. 36–51.

[12] DRI/McGraw-Hill, *U.S. Long-Term Review: Winter 1988–89, Table 6.*

[13] *Ibid.*, Table 1.

[14] *Ibid.*, Table 23.

levels, up to three points less efficient than the LCC minima.

NCAC and Ohio suggested that LCC points occurring between the LCC minima and the maximum technologically feasible should be considered as viable candidate levels. (NCAC, No. 91, at 2; Ohio, No. 138, at 3).

DOE disagrees with the comment. The Department analyzed the LCC minima and maximum technologically feasible levels for refrigerators, and found both levels not to be economically justified. While there is an engineering design that falls between the LCC minima and the maximum technologically feasible, the Department believes that if two standard levels are found not to be economically justified, the levels between them are also not economically justified.

The CEC said that the establishment of a revised standard that is less efficient than the lowest LCC point is not economically justified. (CEC, No. 108, at 30).

The Department disagrees with the CEC's statement; the standards decision is based on a review of the analytical results, after taking all seven factors of economic justification into consideration. The LCC results are just one of the factors that is considered.

Jon Leber (Leber), a professional engineer, noted that DOE incorrectly stated that "at efficiency levels beyond the LCC minima, the incremental first cost of the product exceeds the value of the energy savings such that the average consumer does not realize a benefit from the investment." DOE agrees; Mr. Leber correctly notes that, in such a situation, "The consumers will still realize a benefit from the investment but the ratio of the benefit to the cost will now be less than one." (Leber, No. 155, at 1).

Ohio maintained that Congress clearly did not intend for DOE to exclude considering the benefits of energy efficiency that go beyond those that are represented in a life-cycle cost comparison. (Ohio, No. 138, at 7).

The Department agrees with Ohio, and notes that the LCC comparison was just one of the seven factors of economic justification that was consider.

4. Calculation of Energy Savings

Some comments questioned the Department's calculations of energy savings. The CEC contended that historically the average efficiency resulting from a new standard has overshot the theoretical market minimum by five to ten percent, and that DOE has underestimated the actual energy savings and economic benefits that will accrue from standards by at least that amount. (CEC, Testimony, January 12, 1989).

The Department notes overshoot means the positive difference between maximum unit energy consumption standard levels, and the average unit energy consumption actually attained by models sold after standards are implemented. For example, actual unit energy consumption may be five percent or more lower than standard levels.

DOE did not assume an overshoot, but adhered to its methodology, that, in the base case, the market will demand a range of efficiencies such that the SWEF exceeds the 1990 standard (in the case of refrigerators). In the standards cases, designs which met or went beyond the standard were considered to be available for purchase and were used to calculate a new SWEF. While no arbitrary overshoot was assumed, the average efficiency projected after standards by this method is allowed to go beyond the standard by an amount depending upon the base case distribution of efficiencies. In looking at the SWEF under each standard level, the Department is confident that it has captured all of the energy savings that each candidate standard level could generate.

It should be noted that the more stringent the standard level, the closer that the SWEF will be to the standard level, and the lower that the overshoot will be. LBL–REM SWEF projections are found in Tables 5.6, 5.7, and 5.16 of the Technical Support Document.

5. Reporting of the Environmental Benefits of Standards

In reporting the results of the analysis in the proposed rule, the Department presented the environmental effects of standards only in the Environmental Assessment (DOE/EA–0372, November 1988). The Solar Energy Association of Oregon (SEAO) commented that, in determining the economic justification of candidate standards, the Department should consider the environmental benefits that it calculates would result from candidate standards. (SEAO, No. 44, at 2). In addition, Representative Markey commented that mitigating global warming and pollution are important for our national security. (Markey, No. 151, at 2).

Under the economic justification factor, Need of the Nation to Conserve Energy, as discussed above, the Department considered the environmental effects that are expected to result from standards. These effects are reported for each product in section IV of this notice.

6. Choice of Proposed Standard Levels

In the proposed rule, the Department proposed a range of refrigerator standards, from not amending the 1990 standards through standard level 3. All of these possible standards were found to save a significant amount of energy, be technologically feasible, and be economically justified.

RMI commented that although the Department found that standard levels 4 and 5 also satisfied those requirements, it did not propose either, thereby "violating the law." (RMI, No. 49, at 2).

The Department notes that RMI is mistaken; in fact, in the proposed rule, the Department said that both standard levels 4 and 5 would be technologically feasible and would result in a significant conservation of energy, but that the Department found that they were not economically justified.

GE and AHAM commented that the Department should not adopt refrigerator standards that are based on the scenario used for the proposed rule (in which it was assumed that CFC–11 and –12 would be available for refrigerator production), since that analysis did not consider the phase-out of CFCs. (GE, No. 125, at 7; and AHAM, No. 137, at 2).

While there is much speculation and many proposals concerning the phase-out of CFC–11 and –12, the Montreal Protocol calls for an immediate rollback of production to 1986 levels with a 50 percent cut of those levels by 1998. As a result, various chemical companies and laboratories are doing research on finding replacement chemicals. However, the record is fairly clear that replacement chemicals will not be available by 1993 when these standards go into effect.

DOE believes that CFC–11 and –12 will be available to refrigeration manufacturers in 1993 and probably will still be available in 1997, although at higher prices. The Department believes that, short of some new treaty or legislation, any transition from CFC–11 and –12 over the 1993 to 1998 time span will occur voluntarily. However, DOE believes that such a transition would likely occur; therefore, the analysis was modified to include the possibility that it occurs before 1998. To accomplish this, the analysis was divided into two parts. For the period 1993 through 1995, it was assumed that CFC–11 and –12 are available, and for the period 1996 and beyond, it was assumed they are replaced.

For this later time period, the engineering analysis was modified as discussed, *supra*, in the "Product-Specific Analytical Comments for Refrigerators" to include features such as enhanced heat transfer for evaporators and dual compressors. Other features, such as the 5.3 EER compressor and enhanced performance foam insulation (k=.10), were deleted, since such designs are not likely to be achievable without CFCs. A 5.3 EER compressor needs CFC–12 as a working fluid to achieve its maximum efficiency. Based on announcements from Dupont, it was assumed that a replacement for CFC–12 becomes available with no performance penalty. In addition, based on results of tests conducted by the Mobay Corporation [18], it was assumed that the replacement for CFC–11 will have a five percent penalty in insulation performance. The thermal conductivity of 0.1275 Btu-in/hr°F ft ^{2} was used in the analysis for today's final rule.

In addition to a performance penalty for the CFC–11 substitute, the Department also assumed a price penalty for both CFC–11 and CFC–12 substitutes. This penalty was to assume a three-fold increase in price.

The engineering analysis presented in the proposed rule is still used for the earlier time period; the Department chose to modify the engineering analysis only slightly, because the Department believes it still is generally representative of the possibilities with CFC–11 and –12 being available. The slight modifications included increasing the estimates of evacuated panel costs, and, as baseline volumes were adsjusted, recomputing the baseline cost estimates.

All impacts of the refrigerator standards presented today are a result of the original engineering analysis being used for 1993 through 1995 and the modified engineering analysis, with its different costs and features, being used from 1996 and beyond. The Department believes that this represents a conservative but plausible scenario for the possibility of a transition away from the CFC–11 and –12.

Both the with- and without CFC–11 and –12 scenarios were used in the LBL–REM, LBL–MIM, and in the environmental analyses. As the scenarios changed inputs to LBL–REM, the LBL–REM fed into LBL–MIM and the environmental analyses and affected their results, also.

The Department notes that in the above scenario the consumer paybacks presented are based on the earlier CFC case, since the Department believes that the Act requires those estimates to be presented for the year in which the standards are to be effective. The trial standard levels, however, were based on costs and efficiencies achievable with alternatives to CFC–11 and –12, i.e., the post-1995 scenario.

[18] Dietrich, K. W. and H. P. Doerge, "Performance of Alternative Chlorofluorocarbons in Rigid Urethane Appliance Foams," in *Proceedings of SPI: 31st Annual Technical/Marketing Conference*, October 18–21, 1988, pp. 141–147.

b. Product-Specific Analytical Comments

1. Refrigerators

A. *Engineering Analysis:* The comments on the engineering analysis of refrigerators dealt with a variety of issues, ranging from the Department's methodological approach and assumptions to its estimates and calculations.

Evacuated Panel Costs and Energy Efficiency

One comment contended that, in the analysis for the proposed rule, the Department had underestimated the costs and overestimated the associated K value for evacuated panel insulation. (Admiral, No. 135, at 2). General Electric's (GE's) comment, however, supported the K value (of 0.05 for a composite of evacuated panel and foam insulation) used by the Department. (GE, No. 125, in Appendices 6 and 7).

With regard to the underestimation of cost, for the analysis for the final rule, the Department agrees that an increase in its estimate of evacuated panel costs is justified after receiving comments from Admiral, who has performed research on the development of vacuum panels.

DOE agrees with GE that the K value for a composite wall of foam insulation ands an evacuated panel is correctly represented by 0.05. The Department realizes that Admiral's original estimate of K value was speculative. However, DOE is relying more on GE's comment, since that company has actually manufactured powder filled panels in refrigerator-freezers, and, therefore, has actual knowledge of what the K factor can be.

Evacuated panel availability

Amana Refrigeration, Inc., (Amana, No. 87, at 1–3) believes that the arguments concerning the future availability of evacuated panels for industry wide use are ill-considered. The statement identified a single, but all-important facet of this emerging technology; namely, the supply of ultra-fine silica powders which have thus far been the best candidates for filler material for two types of panels.

Amana stated that based upon the several patents issued and other literature covering this subject area, fumed silica and precipitated silica are the premier candidates for filler material in evacuated panels. When utilized in a plastic pouch and evacuated to an absolute pressure of approximately 0.1 Torr, the densified silica weighs approximately 8.0 to 9.8 lbs per ft^3. (This is the powder-filled panel produced by GE). Fumed silica tends to have a smaller particle size (0.8 um) than the fine precipitated silicas (1.3 to 2.0 um), thus tending to be a more consistent insulator.

With this information, Amana provided a "what if" scenario, for a hypothetical use of evacuated panels in the industry's refrigerator and refrigerator/freezer products. First, Amana made several assumptions:

(1) The industry's annual production of 6.9 million refrigerators and refrigerator/freezers in 1988 will continue at that level.

(2) The 18 cu. ft. top freezer model described in the Technical Support Document represents an "average" model for the purpose of calculating material requirements.

(3) That a composite insulation structure consisting of ½" thick panels (R=10) and foamed-in-place polyurethane represents a viable structure for consideration.

(4) That the evacuated panels should substantially cover the entire inner surface (5 sides) of the refrigerator outer case to achieve the benefits of enhanced insulation. For the assumed model described in the Technical Support Document engineering analysis, this could require as much as 45 ft^2 of evacuated panel. The silica material required then ranges from 15.5 to 18.6 lbs. per unit. (The lower number refers to fumed silica fillers; the higher to precipitated silica.)

DOE believes that these four assumptions are reasonable for this analysis. Amana's fifth and all important assumption is that the entire Industry has to install evacuated panels in all its products by 1993—a purely hypothetical scenario.

Amana, using the assumptions above, demonstrates that industry requirements for fumed and precipitated silica for evacuated panel use are in the range of from 107 to 128 million pounds, annually. Since the entire United States' production capability for manufacturing these materials is estimated to be approximately 200 million pounds annually, the refrigeration industry's requirements could consume over 60 percent of the entire national supply. This would be an untenable situation, and the suppliers of silica powders

would need to enhance their productive capability significantly.

A fumed silica manufacturing plant with an annual capacity of 11 million pounds represents a $40 million investment, not including the siting and environmental protection costs. To meet the hypothetical demand noted above, ten such plants would be needed. Erection and prove-out time requirements would range from 3 to 4 years after site selection, zoning approvals, environmental impact statements, and other preliminary procedures were completed.

Quantum Optics testified that "Aerogels are now available only in limited quantities, but several projects are underway that could lead to production for the entire refrigerator industry by 1993 if adequate investment capital is committed." (Quantum Optics, Testimony, January 12, 1989).

DOE has reviewed the comments, and believes that the chemical industry will not be able to make sufficient quantities of silica commercially available by 1993; and, therefore rejects this technology as being economically justified.

Additivity of Energy Impacts of Design Options

White Consolidated Industries (WCI) stated that the analysis was "not adequate for standard setting. Often various design changes interact with each other or with existing systems. The results are rarely additive as simplistically assumed by (the Department's) analysis." (WCI, No. 78, at 5).

The Department agrees that because designs can interact, the energy impacts are not necessarily additive. That is why the Department computed independently the energy impacts of each combination of designs. Simulations were run for each combination of design options as shown in the Technical Support Document. Interactions among design options were accounted for as part of the simulation model.

Estimates of Improved Thermal Conductivity Values

WCI stated that the Department's analysis of improved insulations goes "far beyond anything we believe will be available." (WCI, No. 78, at 6). Specifically, WCI argued that the assumption that .11 and .10 K values can be achieved with MDI foam is not valid.

In response, the Department notes that GE testified that it presently achieves a K value equal to 0.11. (GE, Testimony, January 12, 1989). Since a K value equal to 0.11 is available now, the Department has no reason to believe that it will not still be available in 1993, when this rule will be in effect. On the other hand, because of the expected product development, e.g., drying, rigidity, and other implementation issues, that the Department expects will be needed to achieve the availability of .10 foam, DOE agrees with WCI that such foam is not likely to be available, in necessary quantities, in 1993. Therefore, in its analysis for this final rule, the Department limited its consideration of a maximum improvement in thermal conductivity value to 0.11.

Substitution of Foam Insulation for Fiberglass

In the proposed rule, the Department reported that it had estimated a 12 percent reduction in energy-use as a result of substituting foam for fiberglass under the lid of a chest freezer. WCI argued, however, that when it made a similar substitution, there were zero energy savings. (WCI, No. 78, at 5).

The Department's estimate of energy savings from foaming the lid of a chest freezer was obtained from an analysis of K factors for fiberglass and foam insulation. With the area and temperature difference being equal, the Department believes that the superior K factor of foam should provide a noticeable savings.

Furthermore, even assuming a penalty for the replacement of CFC–11, the Department estimated that foaming the lid of a chest freezer would still result in an 8.6 percent reduction in energy-use for this design option.

In addition, the substitution of foam for fiberglass should provide superior insulating qualities, at least theoretically, and, therefore, provide some energy savings. Empirically, such substitutions have produced energy savings in other refrigeration applications. The Department, therefore, does not understand why WCI's substitution of foam for fiberglass in a chest freezer lid produced no energy savings.

Energy Savings With the 5.0 EER Compressor

In the proposed rule, the Department reported that its energy model predicted an 11.2 percent energy reduction when a 5.0 EER compressor was substituted for a 4.5 EER compressor in the case of an 18 cubic foot, top-mount, automatic defrost refrigerator-freezer. Admiral, however, commented that its simulation model "predicts a 7.1 percent energy reduction for the same change." (Admiral, No. 123, at 7).

The Department's simulations modeled actual compressors with data supplied by compressor manufacturers. The 5.0 EER compressor that was modeled was actually a 5.05 EER compressor at the standard rating conditions (130°F condensing temperature and −10°F evaporator temperature). The Department has changed its designation of the 5.0 EER compressor to a 5.05 EER compressor in the substitute CFC analysis. The 4.5 EER compressor is actually a 4.3 EER compressor at the rating point. If both compressors operated at the same standard conditions, the efficiency improvement for the refrigeration system would be (5.05−4.3)/4.3=17.4 percent. The energy reduction, (assuming no auxiliary electric energy use) would be 14.8 percent. However, since only about 75 percent of the total energy use for the top-mount automatic defrost refrigerator-freezer is for the compressor, the efficiency improvement would be only 11.1 percent (.75 (14.8 percent)). Therefore, if the evaporator and condenser temperatures were at −10°F and 130°F, respectively, 11.1 percent would be the expected energy savings. The Department had an 11.2 percent energy savings. It should be noted that the simulation model solves iteratively for the condenser and evaporator temperatures. Therefore, the actual compressor EER is rarely equal to the nominal value.

Baseline Model

A number of comments claimed that the baseline models are inaccurate; that is, they do not properly represent the features of average models to be sold in 1990. These comments also stated that the average unit represented by the shipment-weighted energy factor (SWEF) would be substantially higher, i.e., more efficient, than the 1990 standard. (AHAM, No. 137, at 3 and 16; GE, No. 125, at 22–24. Battelle, No. 110, at 1, and Testimony, January 13, 1989; and Admiral, No. 123, at 7).

In response, the Department notes that the purpose of the baseline models is to provide a basis for estimating changes in unit energy consumption and production costs associated with implementing engineering design changes. The baseline models in the analysis for today's final rule are generally representative of units that marginally comply with the 1990 standard. In the proposed rule, DOE stated that the baseline models for refrigerators, refrigerator-freezers, and freezers "represent a typical model within an appliance class that will be sold during 1990, the year NAECA standards first take effect."

The Department's baseline unit contained designs that were meant to represent only one combination that can be used to meet the 1990 standard. The baseline description should not be interpreted as being unique. Indeed, there are many ways to achieve a particular energy-use. The baselines that were chosen represent one set of descriptions for units close to the 1990 standards. Where the baseline consumption was greater than the expected 1993 SWEF, an adjusted baseline (from the cost-efficiency curve) was established with which to calculate economic quantities such as payback periods. The Department believes that it is reasonable to expect that the baseline unit should have characteristics that are similar to marginally compliant units that will be produced in 1990. The Department believes that recent manufacturer data submitted to the Department by Battelle show that objective was accomplished. (Battelle, No. 110).

The Department has responded to Battelle's comment by adding a point in the engineering analysis' cost-efficiency curves that reflects the BEM, and has used that information in the LBL-REM. This point was used as the 1990 SWEF, from which calculations of energy savings were made. In addition, its use in the LBL-REM influenced the other parts of the analysis that use LBL-REM output as input, e.g., the LBL-MIM, environmental analysis payback calculations.

In selecting a baseline unit, the Department chose units that had adjusted volumes that are representative of the different models sold. Comments that the baselines chosen had adjusted volumes that differed from the industry averages, which were provided by Battelle, are not relevant. That is because energy standards are not in terms of a single maximum allowable energy consumption regardless of size, but, rather, the standards are equations that relate energy-use to adjusted volume. Therefore, differently sized units of the same class have different maximum allowable levels of energy consumption.

According to data submitted by Battelle, in many cases, the industry has planned design changes to meet the 1990 standards which differ from those characterized by the DOE baseline model. DOE recognizes the diverse methods by which industry can meet the 1990 standards, and is not implying that a specific design will be adopted by all manufacturers. For some classes, the DOE baseline units do not meet the 1990 standards. In those classes, a design option is identifiable which will meet the 1990 standard. DOE assumes that the most cost-effective designs will be incorporated first.

Compressor Efficiencies for Smaller Capacity Units

WCI contended that the proposed rule failed "to take into account the very important difference that size makes in compressor efficiency." (WCI, No. 78, at 5).

Specifically, WCI pointed out that in smaller refrigerators, the correspondingly smaller compressors are less energy-efficient.

This point was also raised at the hearing in testimony offered by Mr. Hardt of the Embraco Corporation. (Hardt, Testimony, January 12, 1989).

After extensive review of the subject, the Department agrees with WCI's and Embraco's contention. As a result, the analysis for this rulemaking limited its evaluation of the maximum feasible compressor efficiency to 4.0 EER for the very small refrigerator-freezers. This consideration was applied only to the manual defrost refrigerator class, since that is the class in which virtually all of the relevant smaller units fall.

Accuracy of the Simulation Model

GE stated that "using the simulation program that GE normally uses for design guidance, the results showed the baseline model would use 1016 kWh/yr., compared with 947 kWh/yr. as shown in the TSD." (GE, No. 125, at 21).

In response, the Department notes that it is difficult to compare two simulation programs without knowing all the details about them. However, there is a very important difference between GE's baseline unit and DOE's. The Department's description of the schematic drawing of its baseline in Appendix A of the proposed rule's Technical Support Document was in error. It describes a 20 ft^3, rather than an 18.0 ft^3, top-mount automatic defrost refrigerator-freezer. The simulations were done for an 18.0 ft^3 unit as described in the proposed rule. The Department, however, placed the wrong schematic in the appendix. Therefore, GE would be expected to obtain a higher energy consumption for its baseline than the Department did. The adjusted volume for the unit pictured in Appendix A is actually 23.4 ft^3 rather than 20.8, a 2.6 ft^3 increase over the baseline adjusted volume. DOE believes that the difference in adjusted volume accounts for the higher energy use of GE's baseline unit.

Analysis of Several Refrigerator Design Options

Several comments contended that the Department had failed to analyze properly several significant design options. These included dual compressor units; two-stage, two-evaporator systems; hybrid evaporators; variable-speed compressors; and, silica aerogel insulation. (American Council for an Energy-Efficiency Economy (ACEEE), ACEEE, No. 77, at 1–4; NRDC, No. 81, at 38–55; NYSEO, No. 156, at 125; CEC, No. 108, at 10; and RMI, No. 49, at 3–5). Each of these will be discussed.

There are at least three variants of two-evaporator systems. These are the two-stage, two-evaporator system, e.g., the LaBrecque cycle; the two-compressor, two-evaporator system; and the hybrid evaporator system. The energy savings arise by having the refrigerator evaporator operate at a higher (about 20 °F) temperature than the freezer evaporator (about −13 °F). A reduction in defrost energy is also possible since there is less condensation of moisture from food in the refrigerator at the higher evaporator temperature. Food will also keep longer because it will not get as dehydrated.

The two-stage, two-evaporator LaBrecque cycle refrigerator-freezer is being developed. Theoretical estimates are that this design can save 20–25 percent of compressor energy currently consumed.

The hybrid evaporator is a two-evaporator system with one compressor. A valve controls the flow of refrigerant to the two evaporators. Two companies have commented that it did not perform well. Amana stated that "variations in the temperatures had a marked effect on the compressor cycling pattern and on thermal performance of the unit." (Amana, Testimony, January 13, 1989).

The two-compressor, two-evaporator system received much attention in the comments (ACEEE, No. 77, at 3; RMI, No. 49, at 4; NRDC, No. 81, at 49–53). These comments identified the Norgard prototype as a low energy prototype that uses this technology. It must be noted that the Norgard prototype also uses thicker insulation than is normal for similarly sized U.S. refrigerator-freezers. There are no anti-sweat heaters and no condenser fan. The Norgard paper [16]

[16] Per Henrik Pedersen, Jorgen Schjaer-Jacobsen, and Jorgen S. Norgard, *Reducing Electricity Consumption in American Type Combined Refrigerator/freezer*, paper presented at 37th Annual International Appliance Technical Conference, Purdue University, May 6–7, 1986.

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estimates about 20 percent energy savings for the refrigeration system. Using the Norgard equations and the Department's data results in a 17 percent energy savings for the compressor. Norgard does not provide data on the compressor EERs or additional cost for the refrigeration system. One comment stated that the Norgard prototype can be built for $150–$200 more than conventional models, and the price premium would fall with increased production. (RMI, No. 49, at 4). This price increase is supposed to cover all changes in the prototype relative to the conventional model. Two-compressor, two-evaporator system models are built by Sub-Zero in the U.S. and by Bosch in Germany.

After analyzing the three different two-evaporator systems, the Department has added such a design option to the analysis. DOE selected the two-evaporator, two-compressor system for the analysis.

The Department attempted to obtain data on variable-speed compressors from refrigerator and compressor manufacturers, but was unable to. In the future, manufacturers may go to this technology to match loads better to compressor capacity. This will reduce cycling losses and allow for higher evaporator temperatures in the refrigerator compartment. The cost of such a system and the performance are not yet known. This design could eventually be considered as another alternative for the two-evaporator system; that is, a variable-speed compressor could operate with an electronically controlled valve and two evaporators to supply refrigerant to the cabinet that requires it.

Since the Department's original analysis, aerogel insulation has been more seriously considered as a replacement for foam insulation in refrigerators and freezers. A prototype is being constructed by a manufacturer in concert with Quantum Optics, Inc. (Quantum) (Quantum, Testimony, January 12, 1989). DOE performed some analysis of this design option, e.g., the development of cost-efficiency data, but chose instead to let powder-filled panels be the representative for evacuated panel insulation. Powder-filled evacuated panels have been used in some refrigerators marketed in the United States, and the Department believes that the data on their cost and performance characteristics are more reliable for use in modeling the energy-conserving possibilities of evacuated panels.

Two comments argued that the Department's analysis was insufficient in treating alternative refrigerants, condenser gas heating, and improved gaskets. (NRDC, No. 81, at 44–55; and CEC, No. 108, at 10).

Improved gaskets reduce heat leakage and thus reduce compressor energy use. This can be done by improving single gasket designs or changing to a double gasket design. NRDC commented that improved single gaskets should be considered. (NRDC, No. 81, at 57). The Department's proposed rule assumed a 10 percent improvement in gasket heat leakage for its baseline models. The Department does not see that further improvements can be made. Therefore, for the final rule, the Department continued to assume a 10 percent improvement in gasket heat leakage for the baseline models.

Since the proposed rule was prepared, new research has been performed on alternative refrigerants. Alternatives, such as HFC–134a and HCFC–22, and mixtures have been considered. The former will not provide an efficiency as high as that of CFC–12, although both HFC–134a has the advantage of no ozone depleting potential (ODP) and HCFC–22 a much lower ODP than that of CFC–12. For mixtures, such as CFC–12 and DME, preliminary Oak Ridge National Laboratory (ORNL) data show an improvement in efficiency relative to that of CFC–12 alone. However, the work at ORNL is only preliminary and more testing is necessary. The Dupont mixture, consisting of HCFCs–22 and –124, and HFC–152a, is reported to be approximately equal to CFC–12 in efficiency. The new blend is reported to be a drop-in, and oil compatibility is not reported to be a problem. The ODP is very low (0.03) relative to CFC–12 (1.0). Toxicity testing is needed for HCFC–124. Only limited commercial quantities could be provided before 1993–94 (Dupont, No. 113, at 2).

Two comments contended that substitution of condenser gas heating for anti-sweat heaters around the doors of refrigerators and freezers will save energy because the electric energy use of the heaters is saved. (NRDC, No. 81, at 56; and RMI, No. 49, at 5). This is a controversial issue. It is not clear if the heat flowing into the cabinets due to the increased wall temperature would be greater than that provided by the electric heaters. Since any additional internal heat would have to be removed by the refrigeration system, condenser gas heating may not be more energy efficient than electric anti-sweat heating. One participant at the hearing stated that it is unclear whether using condenser gas heating saves energy. (Sub-Zero Freezer Company, Inc. (Sub-Zero), Testimony, January 12, 1989).

NRDC assumes that condenser gas heating will save energy because most of the heat energy will flow outwards (due to the higher R-value of the walls). However, DOE believes this may not occur since the wall temperature may still be higher than without condenser gas heating. Therefore, DOE rejects condenser gas heating as an energy saving design.

Natural Convection in Lieu of Fans

RMI commented that the Department should have included the use of natural convection currents instead of fans in some situations. (RMI, No. 49, at 5).

The Department notes that it may be possible to remove fans in a two-evaporator design where air need not be circulated from the freezer to the refrigerator compartment. The Norgard design uses one fan in the freezer compartment, and none in the refrigerator cabinet. Sub-Zero's design, on the other hand, uses fans in each cabinet.

Where two-evaporator systems were studied, the Department's analysis included a four watt evaporator fan in the freezer compartment, and no fan in the refrigerator compartment. By modeling this design, which is similar to the Norgard one, the Department's analysis does address the savings potential of natural convection currents.

Inclusion of Enhanced Heat Transfer for Evaporators

Two comments stated that DOE should have included in its analysis enhanced heat transfer for evaporators. Heat exchanger heat transfer can be improved by increased area, increased air flow over the refrigerant tubes or other heat transfer enhancement. (ACEEE, No. 77, at 4; and CEC, at 10). All of these approaches allow the evaporator temperature to be increased, which results in less compressor energy use. Heat exchanger area can be increased by increasing face area or adding more rows of refrigerant tubes. Increased area will result in increased evaporator heat transfer effectiveness. Increasing the volume occupied by the heat exchanger will reduce the internal volume since evaporators are located inside the cabinets. Simulations with the top-mount, automatic defrost refrigerator-freezer indicate that an increase in evaporator "heat transfer-area product" of 10 percent will result in a 1.1 percent energy use decrease.

DOE added this design option to the analysis.

Another alternative is to add fins or redesign the fins so as to increase the rate of heat transfer. For example, the amount of material used in the fins could be kept constant while changing the shape of the fins, and possibly increasing their density. Alternate materials could be used that have higher rates of heat transfer to the surrounding air. The heat transfer on the interior of the heat exchanger tubes can also be enhanced by adding grooves or other modifications. Data provided by coil manufacturers to the Department indicate that an energy savings of 1.5–2.0 percent is possible for enhanced evaporator heat transfer for an additional cost of $1.225 million (all tooling and expenses, covering all applicable refrigerator and freezer classes). Although there is no confirmation of this cost estimate, DOE has converted this tooling cost into a per unit cost.

The ACEEE further stated that a paper by Mr. Bohman of Amana discusses the potential savings with improved evaporator heat transfer. In that paper, an example was given where the uA value [17] for the evaporator is increased from 65 to 113, and the compressor can operate at −10 °F rather than −15 °F. This results in an energy savings of 7.5 percent for a 74 percent increase in heat transfer effectiveness. This is similar to the simulation results cited above. The analysis is over-simplified since space limitations and other factors must still be considered. Costs of such an improvement were not provided in any comments received. Therefore, DOE is using the data that was used previously to estimate energy savings and costs for enhanced evaporator heat transfer.

Improved Expansion Valves and Fluid Control Valves

One comment states that data should be gathered on improved expansion valves and fluid control valves, since fluid control valves could be used to reduce off-cycle refrigerant movement. (CEC, No. 108, at 10). Fluid control valves would cause a compressor to start against an unequalized pressure condition. This has been accomplished for rotary, but not for reciprocating compressors. Fluid control valves have not been effective with reciprocating compressors; and, it was reciprocating compressors that the Department simulated in its analysis. Therefore, the Department has not modeled any energy savings from the use of fluid control valves with reciprocating compressors.

Although DOE has comments requesting an evaluation of improved expansion valves, no new data have been forthcoming. As stated in the proposed rule, it is expected that some energy savings would be possible from this design option in the non steady-state mode. Another complication is that the test procedure may not be suitable to demonstrate the savings from this design option. Additional information from the laboratory as well as in-use data are needed to evaluate this design accurately.

There were no new data submitted on either of these design options.

B. *Consumer Analysis:* The comments on the consumer analysis of refrigerators dealt with a number of issues including the baseline models and efficiencies for 1990 and the Department's projections of no improvement in energy use and efficiency levels for refrigerators.

Energy Use Projections

Battelle submitted data that support the energy consumption estimates that had been attributed to specific designs by the Department. These data indicate that manufacturers plan to exceed the 1990 standards. Battelle did not criticize the costs associated with the design options.

DOE continues to calculate energy savings and net present value of proposed standards by comparing the trial standards cases to the base case, which includes the 1990 standards. DOE welcomes the AHAM data submitted by Battelle, since it is useful for calibrating the base case in 1990, as noted above.

Based on revisions to the engineering data and modeling inputs, e.g., energy price projections and heat pump shipments, the Department has calculated a new projection of efficiencies for refrigerators. These revised projections are reported in the Technical Support Document accompanying today's final rule. *See* Technical Support Document, Appendices A and B.

NYSEO criticized the Department's questioning of its own projection that, in the absence of more stringent refrigerator standards, no improvement in refrigerator efficiency would be likely. NYSEO characterized the Department's statement as a "turnaround" for which DOE had provided no justification. (NYSEO, No. 156, at 20).

While the Department believes that conservation improvements in refrigerators will occur, nevertheless, the analysis for the final rule continues to project that in the absence of more stringent standards, there would be no improvement in refrigerator energy efficiency. The Department continues to question the LBL-REM's forecast of no improvement in SWEF over the analysis period (1993–2015). The Department finds that the improvement in efficiency which has occurred and the improvements that are possible, as shown in the engineering analysis, make it highly unlikely that, on average, there will be no improvement in refrigerator efficiency over the next 25 years.

Shipments

One comment on the proposed rule suggested that the Department's projections of refrigerator shipments under the different standards cases were too high. (Battelle, No. 110, at 2, 23). Battelle not only does not expect shipments to increase in the standards cases, as DOE had projected in the proposed rule, but expects instead that shipments would decline under standards, at least in the short term. (Battelle, No. 110, at 21).

DOE agrees with comments raised by Battelle.

DOE obtained the results of increasing shipments in the standards' cases primarily because of the operating expense elasticities in the LBL-REM, which were based on a cross-sectional analysis that was done in 1976. In response to Battelle's comments, the Department has revised, but not eliminated, operating expense elasticities, in order to prevent refrigerator sales from increasing in the standards' cases. Values of the operating cost elasticities for refrigerators and for freezers are presented in the Technical Support Document.

Battelle also contended that "consumers switching to efficient models only steal sales from inefficient models." (Battelle, No. 110, at 22).

The Department believes that this view is unsupported. Although effectively all households in the U.S. now own a refrigerator, the saturation did not stop at 100 percent. In fact, many households now own two, and in some cases three, refrigerators. If the operating expense of an appliance decreases, it could become more attractive to a larger population.

Maintenance Expenses

Another critique of the consumer analysis of refrigerators was that the Department did not include additional maintenance expenses that would be associated with more efficient refrigerator designs. Battelle suggested, in fact, that more efficient designs impose an incremental maintenance expense equal to five percent of the incremental price. (Battelle, No. 110, at 16). In addition, while not suggesting a specific amount, GE also complained

[17] uA is the engineering factor for heat transfer-area usually given in units of Btus/hr/°F.

that the economic analysis that was reported in the proposed rule did not consider maintenance expenses. (GE, No. 125, at 34).

In the proposed rule, DOE assumed that there would be no incremental maintenance expenses for the refrigerator, refrigerator-freezer, and freezer design options considered. The Department does not believe that incremental maintenance expenses are accurately represented by simply taking five percent of the incremental price as proposed by Battelle. The information presented is insufficient to justify including such expenses as proportional to equipment prices. In addition, the Department does not believe that the designs under consideration, e.g., more efficient compressors and improved gaskets, would be sufficiently different in design from their less energy-conserving counterparts that their estimated reliability should be lower. The Department, therefore, continued to assume no incremental maintenance expenses in its analysis for the final rule.

C. *Manufacturer Analysis:* The comments on the proposed rule's analysis of impacts on refrigerator manufacturers dealt with four areas: the markups used in the analysis; profitability questions; the discount rate from the manufacturers' perspective; and, the "worst case" refrigerator sensitivity scenario. Each of these are discussed, below:

Markup

CEC and NRDC argued that the constant markup assumption in the manufacturers' impact model (LBL–MIM) was unrealistically high, and they requested documentation of its origin. (CEC, No. 108, at 14–16; and NRDC, No. 81, at 111–113).

The Department notes that the Manufacturer Analysis uses a manufacturer markup, which varies with the product class, and a retail markup which is constant. To arrive at the retail price, the manufacturer's cost is multiplied by the manufacturer markup and the retail markup.

The LBL–MIM computes a set of manufacturer markups based on estimates of the average markup and the ratio of the highest to the lowest markup, and on the assumption that markup is linearly related to the price of the appliance class, that is, the greater the price, the greater the markup that is contained within that price. These three pieces of information completely define the manufacturer markup for each appliance class.

The first use of these markups is to estimate the unit variable cost in the calibration, or present-day, case. This is done by taking the retail prices for calibration-case appliance models, and dividing, first, by a constant retail markup, and then by the manufacturer markup for the appropriate class.

The central economic calculations of the LBL–MIM (found in the long-run module) divides the cost of a baseline (calibration) unit into fixed and variable components. It is assumed that fixed costs cannot be marked up, but that variable costs are. From this assumption, a markup for variable cost is computed; this markup reproduces the estimate of the industry's average ROE. This markup is then applied to the long-run variable cost component of all cost increases, and is constant over all design options. At this stage of the model, classes are not considered.

The manufacturer analysis is based on manufacturer price, which is calculated as just described. In addition, one final calculation using markups is made for the benefit of other parts of the analysis. That is the calculation of retail prices for the individual classes. This begins with the manufacturing price in the calibration case, and adds to this the change in long-run variable cost times the manufacturer markup for the particular class under consideration. (This is the markup described above; it varies from class to class.) These new prices are then all multiplied by a factor (near one in value) which is designed to ensure that the average price, when computed by weighing all classes by their shipments, is the same as the price that is computed by the long-run module, and is used in the LBL–MIM analysis.

The comments requested documentation to validate these markups. There are no "real market data" on markups at either the manufacturer or retail level, since these data are highly confidential. The manufacturer markups used in the analysis were developed for the proposed rule from data and information collected from refrigerator manufacturers.

The retail markup is an average retail markup that covers a range of actual markups and it is not meant to represent any one type of retail distribution channel. NRDC asserts that the retail markup will decrease rather than stay constant as standards impose a higher first cost of refrigerators. (NRDC, No. 81, at 111). However, NRDC does not provide any data to support its claim or to show how much the markup should decrease. There is no reason to believe that retailers will not mark up cost increases induced by standards. The Department did not use any data to arrive at the constantness of the retail markup assumption, because no data exist, but believes that assumption is more plausible than any alternative.

Profitability

The questions about refrigerator manufacturers' profitability involved projections about profitability in the short- and long-run, as well as the projected differences in forecasted profitability under five standards cases.

In commenting on the likely short-run profitability results, Battelle stated, "the cost increases that will accompany more stringent standards will not be fully recovered or immediately reflected in higher prices, resulting in lower profits and returns in the short run." (Battelle, No. 110, at 22).

In response, it must be noted that if standards lead to a decrease in shipments, the LBL–MIM does predict a short-run fall in profits. LBL–MIM predicts, however, that there will not be a decline in shipments or profits in the short run for refrigerator manufacturers. Nevertheless, the dynamic process of adapting to a new situation—the process of reaching a new equilibrium of demand and supply—is difficult to model. It is difficult to predict what production, marketing, and pricing strategies different manufacturers would choose in adapting to more stringent standards, and it is possible that some manufacturers would make choices that would result in lower profits in the short run until they learn how to operate in the new environment.

On the issue of long-run profitability, Battelle contends that, under revised standards, refrigerator and freezer shipments will decrease rather than increase (as the Department had projected in the proposed rule), and, therefore, profits will decrease. In addition, for any chance for profits to increase, shipments would need to increase. (Battelle, No. 110, at 22). The Department of Justice (DOJ) also questions the conclusion that the proposed refrigerator standards could increase profits. (DOJ, No. 162, at 4).

The Department notes that for improved profitability, it is not necessary for shipments to increase under revised standards. If a manufacturer sells fewer units that are higher priced or that have higher profit margins, it is possible that profits would increase.

Battelle does state that "because cost increases cannot be passed on, immediately or completely in this price competitive market, profits and ROE (return-on-equity) cannot increase." (Battelle, No. 110, at 22).

In response, the Department questions the inevitability of this result, since Battelle gives no data to support the assertion that costs cannot be passed on completely, nor to what extent they can be passed on. Observation of the marketplace strongly supports the view that increases in variable costs generally are passed on, often with a markup. No single manufacturer could independently make substantially more efficient machines and expect an increase in his profitability, because his product's purchase price would be higher to the consumer than would his competitor's less-efficient product. Because of that manufacturer's higher prices, and the fact that the average consumer does not consider life-cycle expenses, that manufacturer, by acting alone to produce a more energy-efficient appliance, would likely experience declines in profitability and ROE. However, standards are likely to raise the production costs of major refrigerator manufacturers similarly, thereby increasing the likelihood that costs can be passed on in the form of higher consumer prices for refrigerators. Furthermore, the extent to which costs are passed on is determined by the proportion that is variable as opposed to fixed, as discussed under markup above.

In urging support for standard level 4, the Oregon Department of Energy (ODE) contended that "level 4 results in a more positive economic impact on manufacturers than level 3." (ODE, No. 83, at 2).

The Department notes that the ODE did not describe what criteria it was using for "positive economic impact;" from the analytical results in support of the proposed rule, however, the Department consistently used ROE as the normal measure of impact, and ROE was reported to be 0.03 percentage point lower at standard level 4 than at standard level 3.

Manufacturers' discount rate

Battelle asserts that "From the manufacturers' perspective, use of a 7 percent real discount rate is also unsupportable" for a manufacturer analysis. (Battelle, No. 110, at 33). Battelle's concern appears to be that the correct discount rate be used in estimating the economic impacts of energy conservation standards on manufacturers.

In response, the Department notes that the LBL–MIM used a real interest rate of six percent in modeling the interest rate paid for debt incurred by the firm. This figure was reported on pages C–45 and C–59 of the proposed rule's Technical Support Document. Battelle concurs with using this interest rate for this part of a manufacturer's operations. (Battelle, No. 110, at 33).

LBL–MIM uses the firm's weighted average cost of capital (WACC) (which includes both return-on-equity and return on debt) in analyzing the impacts of additional investments induced by standards, and LBL–MIM uses a WACC rate of 12.1 percent for refrigerator manufacturers (See proposed rule TSD, p. C–59). Battelle uses ROE for the manufacturers discount rate. Although WACC is a different measure from ROE, the rate that is used is similar to what Battelle suggests the analysis should use: "Based on our knowledge and experience, an industry like the refrigerator/freezer industry would likely require a return-on-equity between 10 and 20 percent, though probably in the mid to lower half of this range * * * *" (Battelle, No. 110, at 33).

Thus, it seems that Battelle's disagreement with the discount rate used in the Manufacturers Analysis is a result of misunderstanding what numbers are used in what portions of LBL–MIM.

Sensitivity Analysis

The NRDC commented that the refrigerator sensitivity analysis that was used in a "worst case" scenario, which consisted of a low consumer operating expense elasticity, was implausible and should not be used. (NRDC, No. 81, at 113–117).

In response, the Department notes that the NRDC correctly states that if the operating cost elasticity is zero, "consumers pay no attention whatever to operating costs," but then incorrectly concludes that "market forces will never save a single kilowatt-hour of energy consumption in refrigerators, but instead that standards will be and have been responsible for 100 percent of the efficiency improvement that can ever take place." (NRDC, No. 81, at 113–114). In fact, increased efficiency is often the by-product of technological change driven by very different market forces. DOE does not believe that all scenarios are possible. This one is offered as a way of providing a firm bound on the estimated values. The Department agrees with NRDC that a zero operating cost elasticity is highly improbable, but lacks the data to estimate that probability.

NRDC also states that even if consumers are totally unresponsive to savings in operating costs, there will still be an operating cost elasticity, because consumers are saving money on operating expenses, and thus will buy more refrigerators. This is referred to as the "income effect," which, the Department believes, would be small in this case because: (1) The operating cost savings in any one year are extremely small relative to a consumer's income; and, (2) the consumer is not restricted to buying appliances with the money saved—he or she can spend it in any way desired.

Regarding the industry price elasticity, the Department agrees with NRDC's analysis that the data showing a price elasticity of −1 are improbable. That price elasticity was used, however, only in the sensitivity analysis. Sensitivity analyses are meant to help set upper and lower bounds on the results of an analysis, and as such are supposed to be unlikely. Thus, the Department believes that its choices of industry price elasticity and operating cost elasticity for the sensitivity analysis are good choices.

2. Comments on Small Furnace Analysis

A. Engineering Analysis

The engineering comments related to the energy use of an induced draft fan, the space required for induced draft fans in narrow units, low maintenance costs, and low installation costs. Each of these will be addressed.

Energy Use

Lone Star Gas (LSG) correctly states that DOE did not include the cost of electricity to operate the induced draft fan motor in a 78 percent AFUE small gas furnace. (LSG, No. 130, at 9).

The Department has not included electrical consumption in the determination of AFUE for any gas or oil furnaces. However, as furnaces have become more sophisticated with items such as induced draft fans, to include electricity consumption in the determination of AFUE has become a growing concern. While the AFUE calculation for small gas furnaces does not include any fan energy consumption, the Department did include, in the analysis for the final rule, an operating cost for a 50W electric power demand for the induced draft fan in the 78 percent AFUE small gas furnace.

Size

Energen and Alabama Gas Corporation (E&AGC) state that induced draft fan designs are currently not available in the narrow sizes (10.5"–12.25") that are often used in multifamily housing. (E&AGC, No. 82, at 4).

Presently designed induced draft units may not fit some of the narrowest spaces now being used. DOE believes that there are no technical reasons, however, to preclude the design of narrower induced draft fan units. It is difficult for DOE to predict exactly what

new models will look like but the Department does not believe that the compact, narrow furnace market will be abandoned. Additionally, some of the relatively new gas units that combine water and space heating in one unit may be appropriate where compactness is required.

Maintenance Costs

LSG and Southern Gas Association (SGA) state that DOE maintenance costs are too low and that DOE should include the cost of replacing a circuit board which, they claim, is likely to fail during the life of a small gas furnace. (LSG, No. 130, at 7; and SGA, No. 51, at 6).

DOE does not consider the control electronics for the induced draft unit to be basically any more complex than for the IID design required for the 71 percent AFUE furnace. There are only simple controls such as thermostats, sensors and switches to test for air flow. The Department does not expect any increased circuit board maintenance costs for the induced draft furnace relative to the 71 percent AFUE design and, therefore, the maintenance costs have not been changed.

Installation Costs

A number of gas supply companies stated that increased installation costs would result from the replacement of old furnaces with 78 percent AFUE induced draft furnaces, because of venting modifications to accommodate atmospheric gas water heaters. LSG estimated an increase of $60–$150. (LSG, No. 30, at 6). SGA estimated an increase of $0–$400 with an average of $175. (SGA, No. 51, at 5). Florida Natural Gas Association (FNG) estimated an increase of $200. (FNG, No. 115, at 3). AGA projected an unspecified increased cost. (AGA, No. 128, at 13).

Common venting of induced draft gas furnaces and atmospheric water heaters is a complex issue. Building codes vary throughout the nation and most localities may require some modifications to common venting systems, including prohibiting them. Such modifications would be expected to cause some increase in installation cost. The costs would fall most heavily on replacement furnaces in multifamily buildings, since changes from current venting practices can be accounted for in designs for new construction and single family units, where venting can often be done directly through the sidewall. DOE does not have any data that provides an estimate of how frequently additional installation costs would be incurred. To account for these increased costs, the final rule included a $200 estimated extra installation cost for all replacement furnaces in multifamily units.

B. Consumer Analysis

There were comments on many consumer issues dealing with small gas furnaces. These included end-use specific gas prices, conversion expenses, fuel-switching, oversizing factors, rebound effects, maintenance expenses, heat pump shipments, fan energy consumption, calculations of AFUE, and the furnace-water heating fuel linkage. Each of these will be addressed.

End-Use Gas Price

Enserch Corporation (Enserch) commented that for the Department to employ end-use specific electricity prices for the analysis of those appliances that consume electricity, and not to employ end-use specific natural gas prices for the small furnace analysis is both "illogical and erroneous." (Enserch, No. 51, at 8).

In response, the Department notes that while it agrees in principle with using end-use specific energy prices for natural gas in the small furnace analysis, neither the Energy Information Administration, nor the AGA (in its Home Househeating Survey) collects direct information on natural gas prices by end-use consumption.

The Department does not believe, therefore, that the price of natural gas that is utilized by small gas furnaces can be determined from any existing data base. Therefore, DOE continued to assume that the price of natural gas for small gas furnaces was the average residential price of natural gas.

Shift to Electric Resistance Heating

The Act required that the Department analyze the extent to which the prices associated with conservation standards on small gas furnaces could cause consumers to switch from natural gas to electric resistance heat. In the analysis for the proposed rule, the Department did not account for any additional consumer expense in undertaking such a switch. This assumption was criticized by the Edison Electric Institute (EEI) and by the American Electric Power System and Southern Company (AEPSSC). (EEI, No. 127, at 6–7; and AEPSSC, No. 136, at 10). EEI stated that this expense would not be insignificant. According to the 1988 edition of "Means Electrical Cost Data," EEI reported that to upgrade a home with electrical service capacity of 60 amperes to 200 amperes would cost the consumer $860. Even to upgrade to 150 ampere service, EEI reported, would cost the consumer $715. (EEI, No. 127, at 6).

In response, the Department included, in the LBL–REM modeling runs for this final rule, expenses that could be involved in the replacement market to convert from gas heat to electric heat.

A number of comments were received concerning the Department's belief that a 78 percent AFUE standard on small gas furnaces would not result in a significant shift to electric resistance heating. The Department proposed this conclusion as a result of its estimation of expected market shares from LBL–REM. In Table 5.20 of the proposed rule's Technical Support Document, the Department had estimated that a 78 percent AFUE standard or small gas furnaces would not lead to a shift to electric resistance heat. The analysis projects that standards would lead to an increase in small gas furnace shipments, compared to the base case, over the 1992–2015 time period. This increase was expected to come at the expense of larger gas furnaces and electric heat pumps. A similar shift is found in this final rule.

The small gas furnace methodology is based on historical data on space heating choices in new homes from 1976–79. In addition, the method effectively assumes that the elasticities are a function of climate, energy prices, and other variables, and are not constant.

As a result, the Department is confident in its analysis of market shares.

Nevertheless, numerous comments suggested that a 78 percent AFUE standard on small gas furnace would lead to initial price increases, the result of which would be a significant shift to electric resistance heat, especially in new construction where, it is argued, builders, who are concerned primarily with the initial purchase price, make the purchase decision. Among those presenting these conclusions were Southern Gas Company (SGC) (SGC, No. 51, at 3 and 9); Atlantic Gas Light Company (AGLC) (AGLC, No. 70, at 1); Mobile Gas Service Company (MGSC) (MGSC, No. 72, at 2); Hope Gas, Inc. (HGI, No. 112, at 2); Florida Natural Gas Association (FNGA) (FNGA, No. 115, at 3); Laclede Gas Company (LGC) (LGC, No. 121, at 2–5); AGA (AGA, No. 128, at 6 and 12); Southern California Gas Company (SCGC, No. 134, at 2 and 6); and ENTEX and Arkansas Louisiana Gas (ENTEX) (ENTEX, No. 161, at 3).

A number of comments, on the other hand, supported the Department's conclusion that a 78 percent AFUE standard on small gas furnaces would not result in a significant shift from natural gas to electric resistance heat.

Bard Manufacturing Company (Bard) and GAMA concluded that a 78 percent AFUE small furnace standard should not result in a loss of market share by gas utilities because: (1) The price differential between a 71 percent AFUE and a 78 percent AFUE furnace in today's marketplace would not apply in 1992 when NAECA standards go into effect; (2) the cost to upgrade older homes to the 200 amp service needed for electric heating makes it unlikely that gas furnaces would lose market share to electric resistance heating in replacement markets; (3) in the new construction market in the South, gas furnaces compete against heat pumps, not against electric resistance heating; and, (4) in new construction, the cost of venting a 78 percent AFUE fan-assisted combustion system gas furnace through the wall is, in most cases, less than the cost of venting a 71 percent AFUE atmospheric combustion gas furnace, which would require construction of a chimney for venting. (Bard, No. 90, at 1–2; and GAMA, No. 129, at 3–6).

Market Share

In response to comments received, DOE revised several assumptions that have an impact on the market shares of gas furnaces, including: Energy price projections, maintenance costs of efficient gas furnaces, conversion costs from gas to electric heat, and retrofit costs for replacing small gas furnaces. These changes are reported in the Technical Support Document.

GAMA data indicate that 40 percent of 1985 shipments of all gas warm air central furnaces were at or above 71 percent AFUE, and that 61 percent of small gas furnaces sold in 1985 were at or above 71 percent AFUE. (1985 is the most recent year for which data on small gas furnace shipments are available). In 1988, 52 percent of all gas furnaces shipped were at or above 71 percent AFUE. DOE believes that the more efficient furnaces are being bought both for replacement and for use in new housing. AGA data show increasing market shares for gas heating, and a substantial number of conversions from electric heat to gas heat. (AGA, No. 128, Attachment 1, at 4 and 11). In light of the current market for gas furnaces, DOE does not believe that purchasers, including builders, are sensitive only to equipment costs. Therefore, DOE has modeled the market decisions based upon observed market behavior. *See* Technical Support Document, Appendix B.

Fuel Switching

In a related comment, ENTEX charged that the Department had not adequately addressed fuel-switching because LBL–REM "does not emulate the marketplace for furnaces in new residential construction, where builders decide on which type of heating equipment is installed, and are extremely sensitive to the initial cost of the equipment." (ENTEX, No. 161, at 3).

As described in the proposed rule, LBL–REM had been modified for the purpose of analyzing small gas furnaces, to take account of the sensitivity to initial equipment cost and other sensitivities that have been reflected in actual market purchases in new homes. In addition, LBL–REM models the sensitivity to first cost as a function of climate, with purchasers in milder climates more sensitive to first cost (relative to operating cost) than purchasers in more severe climates. This information was reported on pages B–10 and B–11 of the proposed rule's Technical Support Document. These modifications were maintained in the analysis for this final rule.

Oversizing Factor

In the analysis of small gas furnaces, the Department assumed that furnaces would be oversized for the expected heating loads by a factor of 2.3. This assumption was derived from AGA data for existing furnaces.

Several comments suggested that, with the trend toward less oversizing, the Department was using an unrealistic assumption about the future, wherein, it is argued, smaller equipment, more suited to actual heating loads, will be installed. These comments contend, therefore, that by using an unrealistically high oversizing factor, the Department has underestimated the size of the future market for small gas furnaces. (LGC, No. 121, at 4; EEI, No. 127, at 8; and NRDC, No. 81, at 92).

In response, the Department analyzed a small gas furnace sensitivity case with an oversizing factor of 1.3. This resulted in much higher shipments and a correspondingly higher net present value. In addition, the impacts of standards remained small. *See* Technical Support Document, Tables 5.28 and 5.31.

Rebound Effect

In the analysis for the proposed rule, the Department assumed that purchasers of more efficient furnaces, with a 78 percent AFUE standard, could utilize them more intensively than expected, and thereby reduce the energy savings below what the engineering estimates would otherwise project. This so-called "rebound effect" was assumed to be 30 percent, so that only 70 percent of the engineering estimates of expected savings would actually be expected to result.

This estimate of a 30 percent rebound effect was criticized in several comments, which argued that the rebound should be lower, and perhaps equal to zero. (AEPSSC, No. 136, at 13; EEI, No. 127, at 9; NRDC, No. 81, at 93; and NYSEO, No. 156, at 2 and 28–30).

In response, in a sensitivity analysis for the final rule, the Department removed the rebound effect with respect to operating expense for all small heating systems. Usage behavior, however, was still assumed to be a function of income.

Setting the usage elasticity with respect to operating cost at zero was expected to increase the energy savings attributed to standards. Since the rebound effect was eliminated for all small heating systems, the impacts were observed among other fuels, as well as natural gas.

Other Issues

EEI commented that in the proposed rule, the Department underestimated heat pump shipments. (EEI, No. 127, at 9).

In the final rule, the Department revised the heat pumps shipments to agree with reported shipments from 1980–1987. These results are presented in the Technical Support Document. *See* Technical Support Document, Table 5.18.

Lastly, LGC commented that since the choice of space heating fuel usually determines the choice of water heating, the relevant comparison is not between a small gas furnace and electric resistance heat, but, rather, it is between a small gas furnace with a gas water heater and electric resistance heat with an electric water heater. (LGC, No. 121, at 5).

While the Department agrees that water heating fuel choice is usually linked to space heating fuel in new construction, LBL-REM treats these end-uses separately. The model cannot handle these two appliance choices jointly, but, by modeling the results for small furnaces *vis a vis* electric heat, the Department believes that water heater sales are not an issue that affects the analysis.

C. Manufacturer Analysis

There were three areas of the manufacturer analysis for the proposed rule that drew comments. Comments were submitted dealing with the markup and prices that were used, the pricing and production of 71 percent AFUE furnaces after 1992, and the impacts of standards on gas furnace manufacturers.

Markup

The Energen Corporation (Energen) asserted that the manufacturer analysis "was based on manufacturing cost estimates instead of actual contractor pricing," and it did not take into account that higher efficiency furnaces receive higher markups. (Energen, No. 82, at 5–6).

In response, the Department notes that the manufacturer analysis takes into account, in a limited way, the fact that higher efficiency furnaces receive higher markups. Small gas furnaces of 90 percent AFUE, and higher, receive a manufacturer markup of 1.3, while lower efficiency furnaces receive a markup of 1.15. These markups are based on data gathered from contractors by DOE for the proposed rule. All large furnaces receive a markup of 1.3. After 1992, furnaces with lower than 80 percent AFUE rating will be the least efficient furnaces on the market, and thus will receive the lowest manufacturer markup. Most comments that provided data used current price and markup lists, but manufacturers testified that their costs, markups, and pricing will change when the Act's standards go into effect. (Rheem, No. 67, at 2; and GAMA, No. 129, at 3–4).

With regard to the analysis considering only "manufacturing cost estimates instead of actual contractor pricing," the Department has learned through discussions with contractors that "actual contractor pricing" is highly variable, and that the Department's estimates of price differences are fairly reasonable.

The Department had estimated that the current price difference between a 71 percent AFUE small gas furnace and a 78 percent AFUE one to be $137. Several gas utilities, e.g., Enserch (No. 51), Energen (#82), Laclede (No. 121), and PSCNC (No. 144), criticized that price difference as being too low. The submissions of those companies had price differences ranging from $200 (Laclede) to $467 (PSCNC).

On the other hand, one gas furnace manufacturer, Carrier Corporation (Carrier), supported the Department's estimate of the current price difference between a 71 percent AFUE and 78 percent AFUE furnace:

> We believe that the DOE estimate of $87 (sic) installed cost differential between atmospheric and induced draft furnaces of less than 45,000 BTU/H is reasonable. Carrier's estimate of installed cost differential is approximately $100. In no event would we expect the differential to exceed $150. (Carrier, No. 143, at 1).

While the Department does not doubt that the price differences submitted by the gas utilities have occurred, Carrier's support of DOE's estimate of the price difference between a 71 percent AFUE and 78 percent AFUE small furnace gives the Department confidence that its estimate is reasonable. In all likelihood there is a range of price differentials. In addition, because Carrier is a manufacturer of these appliances, the Department believes that its numbers are representative. Furthermore, gas furnace manufacturers stated in their comments that the price difference between 78 percent and 71 percent furnaces would certainly decrease in 1992 when NAECA standards go into effect. (Rheem, No. 67, at 2; Snyder General Corporation (Snyder), No. 73, at 3; and GAMA, No. 129, at 2–4).

The proposed rule had indicated that using current prices of those furnaces would overstate the retail price difference that would prevail after standards on larger gas furnaces went into effect 1992 because:

(1) Seventy-one percent AFUE furnaces would become more expensive in 1992 because they no longer would be the standard type of furnace, but instead would be a specialty product which would be produced in short production runs about twice a year, or be purchased from another manufacturer (thus incurring an extra level of markup).

(2) Seventy-eight percent AFUE furnaces will become less expensive in 1992 because they will be produced in even larger quantities then.

(3) Seventy-eight percent AFUE furnaces will become less expensive under a 78 percent standard because they will then be the "bottom of the line" furnace and receive the lowest markup, whereas they now receive a higher markup.

Impact on Manufacturers

Last, SCGC questions the Department's conclusion that a 78 percent AFUE minimum energy conservation standard on small gas furnaces would have a minimum impact on manufacturers. (SCGC, No. 134, at 4).

In response, the Department notes that SCGC has reservations about the assertion that manufacturers will be better off manufacturing like products, i.e., after 1992 all furnaces would be 78 percent AFUE or more, and that the overall impact is a high return on investment.

However, SCGC's assertion is in error. First, the proposed rule does not conclude that the overall impact of gas furnace standards is a high return on investment for manufacturers. In fact, LBL–MIM estimates that standards will cause a decrease in ROE of less than 0.01 percent. Second, the SCGC doubts that manufacturers can manufacture high efficiency furnaces and be better off, and then rebuts its own statement by citing Lennox as a company that produces high-efficiency furnaces and does well. In addition, manufacturers have stated that they are better off not having to maintain a separate production line for lower-efficiency small gas furnaces. (Rheem, No. 67, at 2; and GAMA, No. 129, at 2–4). Last, no gas furnace manufacturer has commented on the estimate that standards will have a minimum impact on such manufacturers.

As a result, the Department continues to believe that a 78 percent AFUE standard on small gas furnaces will have a minimum impact on manufacturers.

3. Utility Analysis

SCGC commented that the utility analysis should have included estimates of the lost revenues to gas utilities that would result from a 78 percent AFUE small gas furnace standard. (SCGC, No. 134, at 5).

In response the Department notes that a separate analysis of impacts on the gas utilities was not performed. The Department notes that an electric utility impacts analysis was performed to address significant economic impacts from appliance efficiency standards, based on calculations specific to the electric utility industry. The utility analysis also provides inputs to the environmental analysis.

Furthermore, the Act requires that the Department examine any possible shift to electric resistance heating. This is accomplished through the LBL–REM.

The electric utility analysis was originally undertaken because: (1) The expected economic impacts of standards on electric utilities were expected to be large; (2) it was important to estimate the peak demand and capacity savings from any standards, since electricity cannot be stored. In addition, power plant capacity has been increasing in cost, and has been more difficult to site and build in recent years; and (3) the environmental impact analysis required information about which generating plants would be curtailed in response to the changes in load brought about by any standards.

The Department's utility analysis did not include gas utilities because: (1) The expected economic impacts of small gas furnace standards on gas utilities are small on a national scale; (2) natural gas can be stored, so capacity savings, fixed costs, and the consequent potential revenue losses are not as large a problem for gas utilities as for electric ones. Gas utilities typically have 20–40 percent of their costs attributable to fixed costs, while electric utilities typically have upwards of 50 percent of their costs attributable to fixed costs. In addition, the costs of laying natural gas transmission and distribution pipelines, which represent the major share of the fixed costs in the natural gas industry, have not been increasing substantially over time (unlike power plant capital costs); and, (3) the environmental analysis calculates these impacts directly from the amount of natural gas consumed, without the need for an intervening utility analysis.

IV. Product Specific Discussion

a. Refrigerators

1. Efficiency Levels Analyzed

DOE examined a range of standard levels, including the 1990 NAECA standards. As discussed above, the impacts of any revised standards were compared to the 1990 NAECA standards; therefore, the impacts of the base case are generally not presented because they are calculated to be zero.

Table 4–1 presents the efficiency levels, other than the base case, selected for analysis for 1993. Alternate levels were selected to generate a range of impacts for analysis. Initially, the levels were selected for the class of top-mount, automatic defrost refrigerator-freezer without through-the-door ice service. Level 5 corresponds to the highest efficiency level considered in the engineering analysis. This is the maximum technologically feasible level. It was felt that manufacturers can assemble appliances at this efficiency. Level 4 generally corresponds to the minimum life-cycle cost point. Levels 1 through 3 correspond to efficiencies lower than that of level 4. Each level was analyzed discretely in the engineering analysis. Standard levels for each of the other classes of refrigerators were based on the combination of design options for the top-mount, automatic defrost refrigerator-freezer without through-the-door ice service. The top-mount automatic defrost refrigerator-freezer was used as the analytical model for the analysis because that class represents nearly 73 percent of new refrigerator and refrigerator-freezer sales.

TABLE 4.1.—ALTERNATIVE EFFICIENCY LEVELS FOR 1993 REFRIGERATORS, REFRIGERATOR-FREEZERS AND FREEZERS

[Energy Consumption KWh/Yr.]

Product class	Level analyzed				
	1	2	3	4	5
Refrigerators and refrigerator-freezers with manual defrost	105+25.2×AV	104+23.9×AV	98+19.9×AV	70+14.7×AV	70+14.7×AV
Refrigerator-freezer—partial automatic defrost	423+11.9×AV	420+11.2×AV	398+10.4×AV	383+7.1×AV	383+7.1×AV
Refrigerator-freezers—automatic defrost with:					
Top-mounted freezer without through-the-door ice service.[1]	391+18.9×AV	376+17.1×AV	355+16.0×AV	329+11.8×AV	290+10.4×AV
Side-mounted freezer without through-the-door ice service.	574+15.0×AV	539+13.7×AV	501+11.8×AV	444+8.8×AV	377+7.5×AV
Bottom-mounted freezer without through-the-door ice service.	397+18.0×AV	371+16.3×AV	364+14.2×AV	290+12.7×AV	248+10.9×AV
Top-mounted freezer with through-the-door ice service	431+20.8×AV	414+18.8×AV	391+17.6×AV	363+13.0×AV	310+11.0×AV
Side-mounted freezer with through-the-door ice service	594+20.6×AV	571+18.0×AV	527+16.3×AV	408+14.7×AV	347+12.5×AV
Upright freezers with:					
Manual defrost	286+13.1×AV	276+12.5×AV	264+10.3×AV	211+7.8×AV	211+7.8×AV
Automatic defrost	449+19.0×AV	425+17.6×AV	391+14.9×AV	322+10.7×AV	311+10.3×AV
Chest freezers and all other freezers	140+14.2×AV	139+13.8×AV	124+12.0×AV	85+7.3×AV	85+7.3×AV

[1] Including all refrigerators with automatic defrost.
AV = Total adjusted volume, expressed in Ft. 3.

2. Payback Period

Table 4–2 presents the payback period for the efficiency levels analyzed for the most prevalent size (20.8 cubic foot adjusted volume) automatic defrost refrigerator-freezer. As noted earlier, under "Selection of Candidate Standard Levels," paybacks are calculated for the 1993 time period which includes the assumption that CFC–11 and –12 are available.

For most classes, standard level 3 corresponds to the most stringent energy conservation standard level at which the additional expense of purchasing a product at this efficiency level will be less than three times the value of the energy savings that the consumer will receive during the first year. The payback period for refrigerators that meet standard level 1 efficiency ranges from a low of 0.10 year for a manual defrost refrigerator to a high of 1.62 years for a partial automatic defrost refrigerator-freezer; the payback period for refrigerators that meet standard level 2 efficiency ranges from a low of 0.90 year for a side by side automatic defrost refrigerator-freezer with through-the-door service to a high of 1.73 years for a partial automatic defrost refrigerator-freezer; at standard level 3, the paybacks range from a low of 1.27 years for an upright, manual defrost freezer to a high of 3.65 years for a manual defrost refrigerator; the payback period for units that meet level 4 efficiency ranges from 3.24 years for a partial automatic defrost refrigerator-freezer to 7.91 years for a manual defrost chest freezer; and, the standard level 5 paybacks range from allow of 3.24 years for a partial automatic defrost refrigerator-freezer to a high of 7.91 years for a manual defrost chest freezer. *See* Technical Support Document Tables 6.3 and 6.4.

TABLE 4.2.—PAYBACK PERIOD (YEARS) TOP MOUNT AUTO DEFROST REFRIGERATOR-FREEZER, WITHOUT THROUGH-THE-DOOR FEATURES

[Adjusted Volume = 20.8 Cu. Ft.]

Standard level	Payback period
1	0.76
2	1.40
3	2.46
4	5.[illegible]
5	6.93

The Department has also calculated paybacks for the later time period when, it is assumed, CFC–11 and –12 will not be available for refrigerator production. These paybacks are reported in Tables

6.24 and 6.25 of the Technical Support Document.

3. Significance of Energy Savings

To estimate the base case energy savings by the year 2015, the weighted average energy consumption of new refrigerators sold in the absence of revised standards is compared to 1990 when the legislated standards become effective. When revised energy conservation standards are imposed, the LBL–REM projects that over the period 1993–2015, the following savings would be attributable to the increased standards:

Level 1—2.4 Quads
Level 2—3.7 Quads
Level 3—5.2 Quads
Level 4—8.6 Quads
Level 5—10.8 Quads

(*See* Technical Support Document, Table 5.8)

On the basis of the above, DOE believes that each of the increased standard levels considered for refrigerators would result in a significant conservation of energy.

4. Economic Justification

A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 5 efficiency ranges from $65.30 for a 25.3 cubic foot AV upright automatic defrost freezer to $141.25 for a 31.9 cubic foot AV automatic defrost refrigerator-freezer with side freezer and through-the-door services. The cost for the most prevalent class of product (automatic-defrost refrigerator-freezer with top-mounted freezer) would increase $129.65. For level 4 efficiency, the per unit increased cost to manufacturers to meet that efficiency ranges from $47.30 for a 22.5 cubic foot chest freezer to $75.25 for a 31.9 cubic foot automatic defrost refrigerator-freezer with side freezer and through-the-door services. The cost for the most prevalent class of product (automatic-defrost refrigerator-freezer with top-mounted freezer) would increase $63.65. The per unit increased cost to manufacturers to meet the level 3 efficiency ranges from $25.20 to $50.85, while level 2 cost increases range from $8.10 to $20.25. For level 1, the cost increases are from $3.60 to $7.30. *See* Technical Support Document, Tables 3.14–3.23.

In the base case, the LBL–MIM, projects manufacturers' long-run ROE to be 9.73 percent for refrigerators and refrigerator-freezers and 8.60 percent for freezers. At level 5, the LBL–MIM predicts that a prototypical refrigerator and refrigerator-freezer manufacturer would have a gain in its ROE to 13.20 percent, a gain of 35.7 percent. The projected ROE's at levels 3 and 4, respectively, would be to 10.27 percent, a gain of 5.5 percent, and to 11.85 percent, a gain of 21.8 percent. At levels 1 and 2, the refrigerator and refrigerator-freezer manufacturers' ROE are expected to improve respectively, to 9.95 percent (an improvement of 2.3 percent) and to 10.24 percent (an improvement of 5.2 percent). For freezer manufacturers, the ROE is expected to improve to 8.97 percent (an improvement of 4.3 percent) and to 8.96 percent (an increase of 4.2 percent) for levels 1 and 2, respectively. *See* Technical Support Document, Tables 7.9 and 7.10.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical refrigerator, refrigerator-freezer and freezer designs are based on the combination of options presented in the Engineering Analysis. As discussed above, DOE revised the base case based on the comments received. However, manufacturers that use a different combination of design options to comply with the 1990 NAECA standard, may have a different financial position than the prototypical manufacturer in the LBL–MIM.

The sensitivity analysis indicates the refrigerator, refrigerator-freezer and freezer industry is sensitive to price and operating expense elasticities. For example, the high price and low operating cost scenario indicates that the effects of standards would be to decrease ROE for refrigerator, refrigerator-freezer manufacturers by nearly 3.3 percent, and 10.7 percent for freezer manufacturers, in the base case. *See* Technical Document, Tables 7.17 and 7.18.

For consumers, standard level 5 would cause price increases that would range from a low of $151.20 for an automatic defrost, upright freezer, to a high of $353.14 for an automatic defrost, side-by-side refrigerator-freezer with through-the-door services. The price would increase for the most prevalent class of product (automatic-defrost refrigerator-freezer with top-mounted freezer) by $172.34. The corresponding range of price increases at standard level 4 would be a low of $98.00 for a chest freezer and a high of $189.12 for an automatic defrost, side-by-side refrigerator-freezer. The price for the most prevalent class of product would increase $134.48. The price increase to consumers at standard level 3 ranges from $59.23 to $16.99, while level 2 price increases range from $19.00 to $46.36. For level 1, the price increases range from $8.40 to $112.10. *See* Technical Support Document, Tables 3.31–3.40.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that, for each possible standard level, the increase in purchase price would be offset by savings in operating expenses. Standard level 4 generally corresponds to the minimum for each of the life-cycle cost curves. *See* Technical Support Document, Figures 3.13–3.22. This indicates that the standard level would not cause any economic burden on the average consumer. DOE examined the effect of different discount rates, 5, 7 and 10 percent, on the LCC curves and generally found little impact.

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level.

The NPV analysis indicates that if a standard were adopted at level 5, there would be an NPV of $9.3 billion from energy savings over the period 1993–2015. At level 4, the corresponding NPV would be $11.8 billion; at level 3, $9.1 billion; at level 2, $7.7 billion; and, at level 1, the corresponding NPV would be $6.0 billion. *See* Technical Support Document, Table 5.14.

C. *Energy Savings.* As discussed above, DOE concludes that standards, at each candidate standard level, would result in a significant saving of energy.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance or refrigerators.

One of the design options, increased foam thickness on the refrigerator walls, could serve to reduce interior volume slightly. It has been argued that if manufacturers used this design option to achieve a level of refrigerator energy-efficiency, the impact on consumers could be some small loss of utility. DOE, however, does not believe that the small reduction in interior volume that may be caused by this standard will cause any utility losses among consumers. Furthermore, the Department notes that manufacturers need not use this design option, as they would be free to use other energy-conserving design options, e.g., dual compressors, to achieve a standard level, even if that level had been based on thicker sidewalls in the analysis.

E. *Impact of Lessening of Competition.* In accordance with the requirements of the Act, the Department of Justice (DOJ) evaluated the impacts on competition of the proposed rule. Based on its analysis and review of the proposed rule, DOJ concluded that the proposed standards (levels 1–3) would not lessen competition in the refrigerator, refrigerator-freezers and freezer markets. *See* DOJ, No. 162.

DOJ states that for standards to affect competition adversely, standards-induced cost increases would have to be sufficiently severe and asymmetrical that they would force from the market one or more significant competitors. In addition, levels of concentration would have to rise substantially because of such exits. Also other market conditions would have to be conducive to oligopolistic pricing or price fixing. DOJ concludes, based on available evidence, that such a lessening of competition would not likely occur if DOE adopts any of the proposed standards for refrigerators, refrigerator-freezers and freezers. DOJ did not examine the more efficient standard levels 4 and 5. Also, DOJ rejects the Department's assertion, in the proposed rule, that the proposed standards will increase profits. As discussed above, one reason LBL–MIM predicted an increase in ROE and profitability, was the LBL–REM's forecast of increased refrigerator, refrigerator-freezer, and freezer sales. This had been changed in the LBL-REM in the analysis for the final rule.

The Department notes, further, that the changes to the analysis that were done for the final rule should not affect the conclusions derived from the DOJ review on the proposed rule.

Therefore, based upon its review of the DOJ analysis, DOE concludes that standard levels 1, 2 and 3 would not adversely affect competition. However, the Department believes that standard levels 4 and 5, which would require the use of evacuated panels, could affect competition. No U.S. manufacturer has manufactured refrigerators with evacuated panels on a high volume basis. GE manufactured a limited number, 1,000 units, by hand, and subsequently discontinued the unit. The Department believes that the technological problems that exist in mass producing evacuated panel refrigerators are such that it is likely that major manufacturers would consider leaving the market. This industry has experienced numerous mergers.

DOE believes that one likely result of standards at level 5 could be to increase the rate of industry consolidation by merger of two significant competitors, which could result in a substantially larger firm. DOE believes that standards at level 5 could lessen competition by increasing levels of concentration. The Department further believes that standards at level 4, which involves efficiencies attained with evacuated panels, could lead to some firms leaving the industry, because of an inability to produce or purchase sufficient numbers of panels.

F. *Need of the Nation to Save Energy.* Refrigerators use electricity as their energy source. Nearly seven percent of the nation's total electricity (which required source energy of 29.5 Quads in 1988) powers refrigerators, and nearly 13 percent of that seven percent would be saved by standards for this product at level 3, while 21 percent of that seven percent would be saved at level 4, and over 26 percent of that amount would be saved at level 5. Levels 1 and 2 would save 6 and 9 percent, respectively. In addition, decreasing future electricity demand as a result of standards will decrease air pollution. The greatest decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For standard level 5, in the year 2010, the estimated SO_2 reduction would be 256,933 tons. This reduction represents 1.5 percent of the United States SO_2 emissions that are expected to be emitted by power plants in that year.

Standard level 5 would also result in a decrease in nitrogen dioxide (NO_2) emissions for the year 2010, of 173,715 tons. This decrease represents 1.7 percent of the total NO_2 emissions expected to be emitted by power plants in that year.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. Fossil fuel burning is believed to elevate CO_2 concentrations in the atmosphere, which is believed to trap heat from the sun that has been absorbed by the Earth and would normally be re-radiated. Although there is substantial scientific uncertainty concerning the magnitude and timing of this effect, this "greenhouse effect" is thought to raise the mean global temperature. Standard level 5 is estimated to reduce United States CO_2 emissions by about 0.88 percent for the year 2010.

In 2010, standard level 4 is expected to reduce SO_2, NO_2 and CO_2 emissions by 1.2, 1.35, and 0.7 percent, respectively. Standard level 3 reductions are expected to be 0.72, 0.81, and 0.42 percent for SO_2, NO_2 and CO_2, respectively in 2010.

Standard levels 2 and 1 would reduce SO_2 power plant emissions by 0.51 and 0.33 percent, respectively. NO_2 power plant emissions would be reduced by 0.58 and 0.38 percent for standard levels 2 and 1, respectively in 2010; CO_2 emissions at standard levels 2 and 1 would be 0.3 and 0.19 percent, respectively of the total U.S. amount.

G. Other Factors.

Refrigerators typically use CFCs–11 and –12. Both of these refrigerants are subject to an EPA rulemaking that places restrictions on the manufacture of certain CFCs. Furthermore, based on comments in this rulemaking, DOE believes that these CFCs would not be available after the year 2000, either as a result of amendments to the Montreal Protocol, further EPA restrictions or marketplace forces. DuPont, for example, announced that it intends to phase out production of these CFCs by 2000.

The use of CFCs in the manufacture of refrigerators currently accounts for approximately two percent of the restricted CFCs. The 50 percent reduction in CFC manufacture prescribed by EPA, will likely result in the use of CFCs in refrigerators to exceed five percent of U.S. consumption. This increase in the percentage of CFC consumption accounted for by refrigerators would be a result of the CFC production restriction along with increased CFC use to meet the legislated 1990 standards, and increased sale of these products. Presently, DOE is unaware of any currently available alternatives to CFC–11 or CFC–12 that have been demonstrated as acceptable replacements to the affected CFCs. However, as discussed above, likely alternatives have been identified. Based upon the comments on the proposed rule, DOE assumed that suitable alternatives will be developed; however, the schedule by which these alternatives will become available in sufficient quantities is unknown at this time. As discussed above, DOE's engineering analysis is based on alternatives, and DOE has assumed that these alternatives will be adopted by refrigerator manufacturers by 1996.

5. Conclusion

Section 325(1)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the "max tech" level of efficiency, i.e., standard level 5, for amended refrigerator standards.

Of the standard levels analyzed, level 5 saved the most energy (10.8 quads more than the base case). In addition, it

had the largest positive impact on the environment.

Two of the three technologies needed to meet this standard level, adaptive defrost and dual compressors, are available now in some refrigerators; however, the third item, evacuated panels, is not currently available on a mass produced basis. While some refrigerators with hand-built evacuated panels have been produced for sale, the Department does not believe that evacuated panels can be mass produced by the effective date of this standard, especially considering the need for additional capacity to manufacture fumed and precipitated silica, as previously discussed in the Engineering Analysis.

Furthermore, the cost of these three technologies is high, producing a relatively large increase in purchase price. While the life-cycle cost of Level 5 is lower than that of the base case, the purchase price pushes the payback to 6.9 years, and, by being beyond the minimum life-cycle cost point, would preclude consumers from buying models with the lowest life-cycle cost. The impact on manufacturers is expected to be positive, producing the highest long-run increase in net income and return-on-equity of all the standard levels analyzed. However, these results are based on the assumption that sufficient quantities of the necessary technologies will be available in 1993, and as noted above, the Department is doubtful that one of those technologies, evacuated panels, will be available in sufficient quantities by then. In addition, the Department also believes that the required use of evacuated panels could cause a lessening of competition. Overall, the Department finds the burdens, especially the technological uncertainties of level 5, to exceed the benefits, and, therefore, rejects level 5.

Standard level 4, also based on evacuated panels, saves the second greatest amount of energy, an estimated 8.7 Quads, and has the second most positive impact on the environment. However, the above discussion on evacuated panels also applies to level 4. While the purchase price is less than that of level 5, and while life-cycle cost is the lowest of any level analyzed, level 4 still produces a payback of 6.0 years. The impact on manufacturers is estimated to produce the second highest long-run increase in net income and return-on-equity of the standard levels analyzed. Overall the Department finds the burdens of level 4, especially the technological uncertainties, to exceed the benefits, and, therefore, rejects level 4, too.

Energy efficiencies approaching those of level 4 could be achieved by a reordering of the design options, e.g., by substituting dual compressors and adaptive defrost for evacuated panels. As noted above, however, design options were added on the basis of increasing time for payback, and dual compressors and adaptive defrost were added last because of their relatively long paybacks. Therefore, while a combination of the design options in standard level 3 with dual compressors and adaptive defrost designs could produce energy savings and environmental benefits approaching those of level 4, such a combination of designs would also probably have much higher consumer burdens than level 4, in the form of higher prices and longer paybacks. This would result because dual compressors and adaptive defrost have a higher initial price than evacuated panels, and produce similar energy savings. On balance, then, the Department finds that the burdens of this version of level 4 also exceed the benefits, and, therefore, rejects all combinations of level 4.

The next most energy-conserving standard level is standard level 3. After carefully considering all parts of the analysis, the Department is amending the NAECA-imposed 1990 standard for refrigerators with standard level 3 for refrigerators. The Department concludes that level 3 standards for refrigerators save a significant amount of energy, are technically feasible, and are economically justified.

As discussed above, there would be significant energy savings at this level of efficiency. During the period 1993–2015, these savings are calculated to be 5.2 Quads of primary electricity compared to the base case. Such savings would total nearly 13 percent of base case electricity use. In addition, the standards will have a positive impact on the environment by reducing the emissions of CO_2, SO_2, and NO_x by an estimated .42, .72, and .61 percent, respectively, by the year 2010.

The technologies that are necessary to meet this standard are presently available. This standard level may initially involve the use of additional amounts of ozone-depleting CFCs; however, these additional amounts will come at the expense of other products that presently use the restricted CFCs. The amounts needed for refrigeration manufacturing are relatively small and the Department believes they will be available, albeit at a higher price.

The Department finds the level to be economically justified. The standard level meets the rebuttable presumption test for economic justification by having a payback of 2.5 years. Furthermore, the standard level substantially reduces consumer life-cycle costs and only moderately increases initial price. Additionally, the standard is also expected to have a positive impact on manufacturers by producing long-run increases in their net income and return-on-equity of 21.8 and 5.4 percent, respectively.

b. Small Gas Furnaces

1. Efficiency Levels Analyzed.

Table 4–3 presents the efficiency levels selected for analysis for 1992. These levels are the same as those analyzed in the proposed rule. Level 3 corresponds to the highest efficiency level provided for in the Act, while levels 1 and 2 correspond to efficiencies lower than level 3, with level 1 being the lowest level provided for in the Act. The engineering analysis considered design options that would result in furnace efficiencies as great as 92 percent AFUE. As discussed in the proposed rule, more efficient

TABLE 4–3—STANDARD LEVELS ANALYZED FOR SMALL GAS FURNACES

Standard level	AFUE (Percent)
I	71
II	74
III	78

designs were not considered for potential standards, but rather were used as input to the LBL–REM in order that the energy forecasting analysis would have a complete set of data upon which to make projections.

2. Payback Period

Table 4.4 presents the payback period for the efficiency levels analyzed. The payback period for units that meet level 1 efficiency ranges from 3.01 years for a warm air indoor gas furnace to 3.21 years for a warm air outdoor gas furnace. The payback period for units that meet level 3 efficiency ranges from 5.78 to 6.58 years. *See* Technical Support Document, Table 6.6.

TABLE 4.4.—PAYBACK PERIODS (YEARS) OF DESIGN OPTIONS FOR GAS FURNACES (LESS THAN 45,000 BTU/HR.)

Standard level	Payback periods	
	Warm air indoor	Warm air outdoor
1	3.01	3.21
2	4.15	4.66

TABLE 4.4.—PAYBACK PERIODS (YEARS) OF DESIGN OPTIONS FOR GAS FURNACES (LESS THAN 45,000 BTU/HR.)—Continued

Standard level	Payback periods	
	Warm air indoor	Warm air outdoor
3	5.78	6.58

3. Significance of Energy Savings

By the year 2015, the weighted average energy efficiency of new small gas furnaces sold in the absence of standards is projected to be 79.9 percent AFUE. Standards, at standard levels 1 and 3, are expected to increase the average shipment weighted efficiency of small gas furnaces to between 81.0 and 83.4 percent AFUE, respectively. *See* Technical Support Document, Table 5.16. However, the aggregate annual energy consumption of small gas furnaces is projected to increase slightly. This is due to the increase in the market for small gas furnaces which comes at the expense of larger gas furnaces, heat pumps, and central electric furnaces. *See* Technical Support Document, Table 5.18. When energy conservation standards are imposed on small gas furnaces, the LBL–REM projects that, over the period 1992–2015, the following changes in energy consumption would occur:

TABLE 4.5.—CUMULATIVE RESIDENTIAL ENERGY CONSUMPTION OF GAS AND ELECTRICITY FOR SPACE HEATING, 1992–2015 (QUADRILLION BTU, PRIMARY)

	Base	Standard level		
		1	2	3
Gas heating systems:				
Small gas furnaces	1.05	1.06	1.08	1.09
All gas heating	91.7	91.7	91.8	91.8
Electric heating systems:				
Central electric furnaces	30.4	30.3	30.3	30.3
Electric heat pumps	14.9	14.8	14.8	14.8
Electric baseboard heat	14.2	14.2	14.2	14.2
All electric heating	59.5	59.3	59.3	59.3
Total gas and electric	151.2	151.0	150.9	150.9

Source: Technical Support Document, Table 5.18.

As Table 4.5 shows, standard level 1 would lead to an increase in small gas furnace energy consumption of .01 Quadrillion Btu (Quads), but would result in a net energy savings of .02 Quads. At standard levels 2 and 3, the net energy savings would total .03 Quads.

The Department finds these net energy savings to be significant.

4. Economic Justification

A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 3 efficiency ranges from $64 for an indoor gas furnace to $88 for an outdoor gas furnace. The per unit increased manufacturer cost to meet levels 1 and 2 are $21 and $96, respectively, for an indoor unit; for an outdoor unit, the per unit cost increases are $25 and $97 for levels 1 and 2, respectively. *See* Technical Support Document, Tables 3.24 and 3.25.

At standard level 3 of efficiency, the price to the consumer increases $217 for indoor gas furnaces and $247.90 for outdoor gas furnaces. The per unit increased consumer price at levels 1 and 2 are $77.91 and $208.39, respectively, for an indoor unit; for an outdoor unit, the per unit price increases are $84.83 and $228.94 for levels 1 and 2, respectively. *See* Technical Support Document, Tables 3.41 and 3.42.

The LBL–REM results indicate that standards at level 3 will result in nearly a four percent improvement in average shipment weighted efficiency when compared to standard level 1. This would result in a $178 drop in life-cycle costs for an indoor, warm air, small gas furnace; for an outdoor one, the LCC savings would be $154..

In the LBL–MIM results for small gas furnaces, it was found that standards would cause manufacturers to lose even more money on these furnaces than they are projected to lose in the base or no-standards case. In the base case, manufacturers' ROE are expected to be −2.02 percent for small furnaces, compared to an ROE of a −2.13 percent under standard level 3 and −2.03 percent under standard level 1. *See* Technical Support Document, Table 7.16.

Small gas furnaces tend to have very low profit margins and thus they contribute little or nothing to a gas furnace manufacturer's profitability. DOE believes this is because of marketing considerations, in that manufacturers find it important for marketing purposes to carry a complete line of furnace capacities. Thus, manufacturers tend to carry small gas furnaces in their product lines, although many of these firms carry only one or two models.

LBL–MIM projects that a standard of either 71, 74, or 78 percent AFUE for small gas furnaces would result in lower net income and ROE than would occur in the absence of standards.

The LBL–MIM predicts at level 3 that a prototypical furnace manufacturer would experience a .001 percent decrease in ROE. *See* Technical Support Document, Table 7.23. The sensitivity analysis, however, indicates the gas furnace industry results are sensitive to consumer price elasticities and unit variable cost increases. For example, the sensitivity analysis indicates that the effects of standards could be to decrease return-on-equity for small gas furnace manufacturers by nearly 1.2 percent or to raise it by nearly the same amount. However, there is only a one percent chance of either of these sensitivity results occurring.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that at each possible standard level, the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Table 6.7. Also, of the three candidate standard levels, level 3 had the lowest consumer life-cycle cost. The decreasing life-cycle-costs indicate that the standard level would have the greatest benefit to consumers.

The NPV analysis indicates that if a standard were adopted at level 3, there would be a net present value of $21 million to consumers. At levels 1 and 2, the respective NPV's would be $13

million and $16 million. *See* Technical Support Document, Table 5.23.

C. *Energy Savings.* As indicated above, standards will result in an increase of gas consumption for small gas furnaces, but, also, in an overall savings of natural gas. If, however, the marketplace continues to demand changes in efficiency at the same rate as historically, the LBL–REM projects that there would be no savings from standards over the 1992–2015 period. This result occurs because in the base case, the efficiency, or SWEF, of all new small gas furnaces is projected to exceed the 78 percent AFUE standard by the time it would come into effect. *See* Technical Support Document, Table 5.30, Reference 10.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of small gas furnaces. In addition, DOE believes that none of the design options considered will affect utility.

E. *Impact of Lessening of Competition.* The Department of Justice concluded that for small gas furnaces, the available evidence affirmatively suggests that no significant adverse competitive impact is likely. DOE, therefore, concludes that none of the candidate standard levels would lessen competition.

F. *Need of the Nation to Save Energy.* Small gas furnaces use natural gas as their energy source. Nearly 0.16 percent of the nation's natural gas consumption is used to operate small gas furnaces, and nearly four percent of that 0.16 percent would be saved by standards for this product at level 3. However, the sensitivity analysis on the LBL–REM indicates that if consumer awareness of and concern with appliance efficiency continues the projected savings would be the same as with level 3 standards.

Furthermore, the natural gas saved would result in a cumulative CO_2 emission savings in 2010 for standard level 3 of 312,000 tons, and 98,000 tons for level 1. Other environmental effects from furnace standards would be savings in 2010 of 3,822 tons of SO_2 and 2,976 tons of NO_2 at standard level 3; at standard level 1, the savings would be 1,200 tons of SO_2 and 927 tons of NO_2.

5. Conclusion

As noted above, the Act requires that, in establishing standards, the Department look first at that standard that maximizes energy savings, i.e., is the "max tech" level of efficiency for small gas furnaces, the "max tech" level is at 97 percent AFUE.

It was also noted above, however, that for this rulemaking, the Department is restricted in its consideration to an efficiency level between 71 percent AFUE and 78 percent AFUE. Therefore, the Department must begin its consideration for a standard at that level that is the most stringent level allowed, i.e., 78 percent AFUE.

After careful consideration of all the factors, the Department is establishing a 78 percent AFUE standard on small gas furnaces. This standard for small gas furnaces will result in a significant conservation of energy, and it is technologically feasible and economically justified.

In addition to producing the maximum unit energy savings of the candidate standards, this standard is beneficial to consumers and manufacturers alike.

The technology that would generally be used to meet this level of efficiency, i.e., induced draft combustion, is not only presently available, but it also will be installed on all other gas furnaces when this standard is to be effective.

For consumers, the 78 percent AFUE standard produces the lowest consumer life-cycle cost of the candidate levels. Furthermore, the standard's NPV of $21 million over the 1993–2015 period is the highest of the standard levels analyzed. Also, the designs necessary to achieve that level of efficiency, i.e., induced draft combustion, should have no effect on utility to the consumer.

Also, the initial purchase price increase may be lower than that which has been estimated. This result is possible, because the 78 percent AFUE standard on small gas furnaces is the same level of efficiency that the Act imposes on larger gas furnaces, which presently comprise more than 95 percent of furnace sales. Therefore, to the extent that manufacturers can produce these small units on the same production lines, with the same design options that will be used for the larger furnaces, there may be economies of scale in the production of these units.

Small gas furnace manufacturers have strongly supported the 78 percent AFUE standard on their products. The analysis indicates that such a standard should have relatively little economic impact on them. It is estimated that a 78 percent AFUE standard on small gas furnaces would cause the prototypical gas furnace manufacturer to suffer a loss of .1 percent in its ROE. The uniformity of a 78 percent AFUE standard on small furnaces and on larger units, however, may make the production process simpler for the manufacturers. This occurs because, as mentioned above, a uniform standard for all gas furnaces could result in fewer production lines.

In addition, as noted above, the Attorney General has determined that this standard should not have a significant adverse effect on competition among furnace manufacturers.

While the effects of a 78 percent AFUE standard are only slightly better than a 71 percent AFUE standard, the Department believes that the Act requires that the Department establish the most stringent standard that saves a significant amount of energy, is technologically feasible, and is economically justified. The 78 percent AFUE standard meets these requirements.

In comments on the proposed rule, several gas utilities contended that a 78 percent AFUE standard on small gas furnaces would cause them to lose market share to electric resistance heat. The analysis for this final rule, however, indicates that such a loss of market share is not a likely result from a 78 percent AFUE standard. The LBL–REM projects that market share for small gas furnaces is likely to increase as a result of the level 3 standard. *See* Technical Support Document, Table 5.20.

One drawback to the 78 percent AFUE standard on small gas furnaces is that it would eliminate units that may, in some circumstances, be the most cost-effective for some consumers. This is a result that could possible occur in some Southern-tier States, where the most cost-effective small gas furnace could be one that is less efficient and whose first cost is less than that of the minimum LCC unit. Nevertheless, while this is a possible outcome for some purchasers in some areas, the Department believes that such effects, should they occur at all, would be limited.

Another possible drawback is that some installations, particularly of replacement furnaces in some multi-family units could be somewhat complicated because of space limitations. The Department believes that these effects, too, would be limited, if they occur at all.

Lastly, 78 percent AFUE standards, over the forecast period (1993–2015), are expected to save 4,818,000 tons of CO_2, 65,112 tons of SO_2, and 48,393 tons of NO_2 emissions.

c. Television Sets

The Department received a number of comments concerning the engineering analysis for television sets. However, none of the comments included data or sufficient information for the Department to consider. In order to respond to the comments, DOE believes an in-depth analysis of televisions would likely need to be performed. And, since the data in a new analysis would be new data that was not previously subject to comment, the Department believes a new analysis and proposed rule for television sets would have to be published.

V. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews

The Department has reviewed today's final rule in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR part 1500 *et seq.*), and the Department's own NEPA guidelines (54 FR 49667, December 13, 1987);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights;
- Executive Order 12612 (54 FR 41685, October 30, 1987) which pertains to agency consideration of Federal actions that would have a substantial direct effect on States, on the relationship between the National Government and the States, and on the distribution of power and responsibility among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare a regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the Federal Register.

a. Environmental Review

In issuing the proposed rule, the Department prepared an Environmental Assessment (EA) (DOE/EA–0372) that was published within the Technical Support Document (DOE/CE–0239, November 1988). The environmental effects from different possible standard levels were found not to be significant, and a Finding of No Significant Impact (FONSI) was published along with the proposed rule. (53 FR 48826, December 2, 1988).

In conducting the analysis for the final rule, the Department re-ordered the refrigerator design options in order of increasing consumer payback periods, as noted above. As a result of this re-ordering, the environmental effects for the different refrigerator standard levels differ from those reported in the EA. *See* Technical Support Document, Environmental Effects.

Due to this re-ordering, and to greater efficiencies projected in the base case, standard level 3 for refrigerators will result in slightly lesser reductions in carbon dioxide (CO_2), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2) than those projected in the EA for this level.

In the proposed rule, the forecast period ended in the year 2010. The emissions savings of CO_2 in that year for standard level 3 for refrigerators were estimated to be 9.18 million tons, a reduction in emissions that was determined not to be significant.

For the standard level being finalized in this rulemaking, the expected CO_2 emissions savings in 2010 are 7.691 million tons, and, in the year of the greatest savings, 2015, the emissions reductions are expected to be 8.834 million tons. Both of these reductions in emissions are lower than the amount that was estimated for the proposed rule.

For standard level 3 for refrigerators, the proposed rule's SO_2 and NO_2 emissions savings in 2010 were estimated to be 151,000 tons and 100,000 tons, respectively. These reductions in SO_2 and NO_2 emissions were determined not to be significant.

For the standard level being finalized in this rulemaking, the expected reductions in SO_2 and NO_2 emissions in 2010 are 123,282 tons and 83,352 tons, respectively. In 2015, the year of the greatest expected reductions in SO_2 and NO_2 emissions, the savings are expected to total 126,365 tons and 94,624 tons, respectively. The SO_2 and NO_2 emissions reductions expected in 2010 and in 2015 from this final rule are lower than the amounts that were estimated for the proposed rule.

The Department believes that these environmental impacts are not sufficiently large to be considered "significant." These impacts fall within the range of impacts that were analyzed in the EA that was prepared for the proposed rule, and which were determined not to be significant in the FONSI that was issued for the proposed rule. Accordingly, DOE has determined that the impacts of re-ordering the refrigerator engineering design options are bounded by the analysis in the results of the EA, and that the original FONSI is still valid.

Furthermore, if the Clean Air Act Amendments that have been introduced in Congress were to become law, the amount of allowable powerplant emissions of SO_2 and NO_2 in the year 2010 would be reduced from the amount otherwise anticipated. The Department expects that there would be a corresponding drop in emissions reductions caused by these appliance standards. Under those conditions, the Department would expect that standard level 3 for refrigerators would lead to reductions in emissions of 64,881 tons of SO_2, and 62,013 tons of NO_2. Each of these reductions is less than what would be expected without the Clean Air Act Amendments, i.e., in the Department's forecast results, presented above.

The NRDC was critical of the Department's finding in the FONSI that the environmental effects that could result from appliance standards are not signficant. The NRDC contended, in fact, that the expected environmental benefits are significant, and that the Department should have prepared an Environmental Impact Statement. (NRDC, No. 81, at 120–124). NRDC has not taken exception to DOE's forecasts of emissions reductions.

The Department has determined that the environmental effects described, totaling less than 1 percent of U.S. powerplant emissions (for SO_2 and NO_2) and less than one-half of 1 percent of U.S. emissions of CO_2 in the year 2015, are not significant, and do not require preparation of an Environmental Impact Statement. Nevertheless, as noted above, the environmental effects were considered in selecting the final standard for refrigerators.

b. Regulatory Impact Review

Executive Order 12291 (46 FR 13193, February 19, 1981) directs that, in issuing a major rule,[18] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could substantially achieve the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed approach.

DOE has determined that this rule is a "major rule." Accordingly, a Final Regulatory Impact Review has been prepared and submitted to the Office of Management and Budget (OMB). OMB

[18] "Major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

has reviewed the Regulatory Analysis under Executive Order 12291.

The Regulatory Analysis is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete final "Regulatory Impact Analysis," which is contained in the Technical Support Document, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed approach.

It should be noted at the outset that none of the alternatives that were examined for these products saved as much energy as the rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action
  - —Product labeling
  - —Consumer education
- Prescriptive Standards
- Financial Incentives
  - —Tax credits
  - —Rebates
- Voluntary Energy Efficiency Targets
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs and has been compared to the effectiveness of the proposed approach.

If no new regulatory action were taken, then no new standards would be implemented for refrigerators or small gas furnaces. This is essentially the "base case" for each appliance. In this case, between the years 1992 and 2015, there would be expected energy use of 44.09 Quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by five percent for purchasers of these products. This resulted in no energy savings, with expected consumption equal to 44.09 Quads. The net present value is estimated to be $0.00.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For refrigerators, this involved assuming a 1.5 inch foam door and 5.0 EER compressor (4.0 EER compressor for manual defrost units) and, for small gas furnaces, a power burner. This resulted in energy consumption, between 1992 and 2015, of 40.37 Quads, and savings of 3.71 Quads. The net present value, in 1987 dollars, was $7.79 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased cost of higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed almost no change from the base case, i.e., this alternative would save less than 0.01 Quad with a net present value of $80 million. Consumer rebates however, would save 0.05 Quad with a net present value of $260 million.

The consumer rebate program and the tax credit program would return to the participating consumer exactly the same amount of money. However, it is expected that there will be more participants in the rebate program. Therefore, the rebate program would result in substantially more energy savings than the tax credit program would.

The most important differences to the consumer between rebate and tax credit programs is that a rebate can be obtained quickly, whereas a tax credit is delayed until income taxes are filed or a tax refund is provided by the Internal Revenue Service. This means that middle- and low-income purchasers, who generally have little ready cash to purchase more expensive products, are not as likely to take advantage of the program as are upper income purchasers. To simulate this impact, DOE has assumed that only 60 percent of consumers would purchase more energy efficient products as a result of the tax credit program.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient refrigerators and small gas furnaces. In this scenario, an investment tax credit (ITC) of 20 percent was assumed. The tax credits to manufacturers had almost no effect, since the energy consumption estimates are 44.09 Quads with no energy savings, and a net present value equal to $30 million.

The impact of this scenario is so small because the ITC was applicable only to the tooling and machinery costs of the firms, i.e., the firms' fixed cost, and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an ITC.

Two scenarios of voluntary energy efficiency targets were examined; in the first one, energy conservation standards were assumed to be adopted voluntarily by all the relevant manufacturers in five years, and, in the second scenario, the standards were assumed to be adopted in 10 years. In these scenarios, the five year delay would result in energy consumption by these appliances of 40.71 Quads, energy savings of 3.38 Quads, and a new present value of $5.69 billion; the 10 year delay would result in 42.27 Quads of energy being consumed, 1.82 Quads being saved, and a net present value of $3.43 million.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by the refrigerator and small gas furnace manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being prescribed by this rule. Such performance standards would result in energy consumption of refrigerators and small gas furnaces to total an estimated 38.89 Quads of primary energy over the 1992–2015 time period. Savings would be 5.20 Quads, and the net present value would be an expected $9.18 billion.

As noted at the beginning of this section, none of the alternatives that were considered for refrigerators and small gas furnace would save as much energy as today's rule.

c. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that today's rule would have on State governments. It would initially preempt inconsistent State regulations. However, DOE has concluded that the initially preemptive effect is not sufficient to warrant preparation of a federalism assessment for the following reason: the Act provides for subsequent State petitions for exemption, which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

d. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, two different products and, hence, industries, are being addressed. Regulatory flexibility issues are addressed for the two industries for which standards are being finalized.

First, the energy conservation standard of 78 percent AFUE on those small gas furnace manufacturers, who could be considered small businesses, is discussed. There is no indication that the impact of standards will be directly related to firm size. Although different size firms have different cost structures, industry sources indicate that, overall, neither large nor small firms have a cost advantage and that neither large nor small firms tend to have a higher proportion of fixed cost. A corollary to this observation is that profits are also not correlated to firm size. Some large firms are quite profitable, while others earn more modest profits, and the same is true for smaller firms.

The Engineering Analysis indicates that the measures necessary to meet the standards levels under consideration involve using additional purchased parts which do not require development costs of the appliance manufacturer. While larger firms may have some slight cost advantage from buying in larger quantites, the fact that the design options predominantly involve purchased parts tends to be an equalizing factor among different-sized firms.

Therefore, the fact that this energy conservation standard on small gas furnaces is not likely to "have a significant economic impact on a substantial number of small entities" suggests that the provisions of section 605.(b) of the Regulatory Flexibility Act pertain. These provisions state that neither an initial nor a final regulatory flexibility analysis need be performed for a proposed or final rule "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Of the eight small refrigerator firms reviewed for this analysis, three make custom refrigerators, three make compact units (largely for mobile homes and recreational vehicles), and two make 3-in-1 units with range tops and sinks.

The analysis of combined-unit manufacturers is straightforward. Three-in-one units are not covered by the present standards, so these manufacturers will not be affected.

The custom refrigerator manufacturers seem to be fairly well protected for two reasons; they are not exposed to either direct foreign competition or direct competition from major domestic firms, and because they produce custom units they have a greater ability to make design changes compared to a large manufacturer. These two facts indicate that standards will probably not hurt the custom manufacturer's control of its market; however, its market may shrink due to price increases. This cannot be estimated without engineering data and an estimate of the elasticity of demand in this market. One thing must be remembered when analyzing this problem: standards will increase the price of standard refrigerators and this will offset (partly or more than completely) the impact of the price increase of custom refrigerators.

The three small manufacturers of compact refrigerators are probably at the greatest risk, both without standards and from standards. They face stiff foreign competition from large foreign manufacturers.

In conclusion, since neither of the standards is expected to have a "significant economic impact on a substantial number of small entities," the Department has found that it was not necessary to prepare a regulatory flexibility analysis.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy consideration, Household appliances.

In consideration of the foregoing, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below.

Issued in Washington, DC, November 13, 1989.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, title III, part B, as amended by National Energy Conservation Policy Act, title IV, part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

2. Section 430.32 is amended by revising paragraph (a) as follows:

§ 430.32 [Amended]

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerator and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

Product class	Energy standards equations (Kwh/yr) Effective [illegible]	
	January 1, 1990	January 1, 1993
1. Refrigerators and Refrigerator-Freezers with manual defrost	(16.3AV+316)	(19.9AV+98)
2. Refrigerator-Freezer—partial automatic defrost	(21.8AV+429)	(10.4AV+398)
3. Refrigerator-Freezers—automatic defrost with: Top-mounted freezer without through-the-door ice service [illegible]	(23.5AV+471)	(16.0AV+355)
4. Refrigerator-Freezers—automatic defrost with: Side-mounted freezer without through-the-door ice service	(27.7AV+488)	(11.8AV+501)
5. Refrigerator-Freezers—automatic defrost with: Bottom-mounted freezer without through-the-door ice service	(27.7AV+488)	(14.2AV+364)

Product class	Energy standards equations (Kwh/yr) Effective dates	
	January 1, 1990	January 1, 1993
6. Refrigerator-Freezers—automatic defrost with: Top-mounted freezer with through-the-door ice service	(26.4AV+535)	(17.6AV+391)
7. Refrigerator-Freezers—automatic defrost with: Side-mounted freezer with through-the-door ice service	(30.9AV+547)	(16.3AV+527)
8. Upright Freezers with: Manual defrost	(10.9AV+422)	(10.3AV+264)
9. Upright Freezers with: Automatic defrost	(16.0AV+623)	(14.9AV+391)
10. Chest Freezers and all other Freezers	(14.6AV+223)	(12.0AV+124)

[1] Including all refrigerators with automatic defrost
AV = Total adjusted volume, expressed in Ft.[3], as determined in Appendices A1 and B1 of Subpart B of this Part.

3. Section 430.32(e) is amended by revising the Table headings and Item 3. in the table, and by adding footnote 1 to the table to read as follows.

* * * * *

(e) *Furnaces.*

Product class	AFUE [1] (percent)	Effective date
* * * * *		
3. Small furnaces (other than furnaces designed solely for installation in mobile homes) having an input rate of less than 45,000 Btu/hr		
(A) Weatherized (outdoor).	78	January 1, 1992.
(B) Non-weatherized (indoor).	78	January 1, 1992.

[1] Annual Fuel Utilization Efficiency, as determined in § 430.22(n)(2) of this part.

* * * * *

[FR Doc. 89-26965 Filed 11-13-89; 3:29 pm]
BILLING CODE 6450-01-M

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products; Energy Conservation Standards for Two Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Publication of Department of Justice Determinations and Analyses of Competitive Impacts.

SUMMARY: In today's Federal Register, the preamble to the final rule on energy conservation standards for small gas furnaces, and refrigerators, refrigerator-freezers and freezers presented the Attorney General's findings on the competitive impacts of the standards in the final rule. Section 325(1)(2)(B)(ii) of the Energy Policy and Conservation Act, as amended, requires the Attorney General's determinations and analyses to be published in the **Federal Register**. This notice presents the determinations and analyses.

Issued in Washington, DC, November 15, 1989.

B. Reid Detchon,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

Honorable Donna R. Fitzpatrick,
Acting Secretary of Energy, United States Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

Dear Ms. Fitzpatrick: By letter dated December 9, 1988, the Department of Energy ("DOE") transmitted to the Attorney General a Notice of Proposed Rulemaking (53 FR 48798) addressing energy standards for three classes of household appliances. Section 325 of the Energy Policy and Conservation Act, as amended in 1987 (42 U.S.C. 6295), requires the Attorney General to determine the impact, if any, of any lessening of competition likely to result from the proposed standards. Competitive impact is one of seven criteria to be considered by DOE in evaluating proposed standards. This letter contains the competitive impact determination of the Department of Justice ("Department").

Summary

The evidence available to the Department does not indicate that any significant lessening of competition is likely to result from the imposition of any of the proposed standards contained in DOE's Notice of Proposed Rulemaking. For small gas furnaces and television sets, the available evidence affirmatively suggests that no significant adverse competitive impact is likely. In the case of refrigerators, refrigerator-freezers, and freezers, it is the Department's best judgment based on the available evidence that no significant adverse competitive impact is likely; but, under certain limited conditions described below, an unquantifiable adverse competitive impact would be possible.

Discussion

In appraising the competitive effect of the proposed standards in the context of this statute, the Department has examined the relevant markets within which the standards will operate. The Department has then considered whether adoption of the standards would be likely to contribute to increased levels of concentration and, if so, whether the resulting concentration levels and other relevant market conditions would facilitate either oligopolistic pricing or actual price fixing. The Department also has considered whether, independent of or in conjunction with any increase in concentration, the standards would be likely to facilitate oligopolistic pricing or price fixing by increasing product homogeneity.

In this instance, the Department has utilized the HHI computations, commonly employed in market analysis and described in the Department's merger guidelines, as an initial "screen." This screen has permitted the Department to conclude that the proposed standards are unlikely to have a significant adverse impact on competition in two classes of appliances: small gas furnaces and television sets. In both instances, the DOE technical support document provides information that permits the Department to calculate HHI figures for the tentatively defined markets in question. For each market—small gas furances, color television sets, and black and white television sets—the HHI figure is below 1,800. In other words, none of these markets is highly concentrated.

At levels of concentration below 1,800, the number of competitors is ordinarily sufficient to make competitive pricing likely and to defeat oligopolistic pricing. Even if the standards resulted in increased costs and reduced the number of competitors, or increased product homogeneity in some measure, the Department would expect that the markets in question would continue to enjoy a substantial measure of competition. Although price fixing can occur in less concentrated markets, the conditions that accompany this threat do not appear to be present in the markets in question.

The analysis of refrigerators, refrigerator-freezers, and freezers is more complex because the risk of an adverse competitive impact is not diminished by the existing market structure as reflected in the HHI figures. Based on data contained in the technical support document, refrigerators and freezers have HHI figures, respectively, of over 2,200 and over 3,000. These figures reflect high levels of concentration, albeit at the lower end of the highly concentrated range (whose maximum is 10,000). It is thus prudent to examine more closely the possibility that the standards could increase concentration within a market, increase product homogeneity, or both.

The possibility that concentration might increase depends primarily on whether compliance with the standards both (1) increases costs significantly and (2) results in

such increased costs being felt more severely by some firms than others. Although increased costs may reduce demand, that alone would not necessarily affect market structure. However, concentration could increase if the cost increases are both significant and affect smaller firms more severely than large ones; costs that vary with output (e.g., added insulation) should not disadvantage smaller firms while costs independent of output (e.g., redesign of a freezer) might disadvantage a smaller firm with a lesser number of units across which to spread the same fixed costs.

Nevertheless, before such asymmetrical cost increases could affect competition adversely, the increases would have to be sufficiently severe and asymmetrical that they would force from the market one or more significant competitors. In addition, levels of concentration would have to rise substantially because of such exits; yet the more common result of exits is that each of the remaining significant competitors would be likely to improve its market share to a limited extent (unlike a merger where the acquiring firm is likely to become substantially larger). Finally, other market conditions (e.g., entry barriers) would have to be conducive to oligopolistic pricing or price fixing.

The available evidence in this instance does not demonstrate to the Department that such a lessening of competition would be likely to occur if DOE adopts the proposed standards for refrigerators, refrigerator-freezers, or freezers. This evaluation is based on information concerning the identity and size of the principal competitors and other market conditions. However, for these three products, the evidence does not wholly foreclose the possibility of an anticompetitive impact. There is, for example, some evidence that increases in fixed costs may occur and affect smaller competitors more severely than larger ones. If DOE concluded that its standards for refrigerators, refrigerator-freezers, or freezers would cause a reduction in the number of significant competitors, then a further review of the competitive impact would be warranted.

There does not appear to be a substantial threat that the standards for refrigerators, refrigerator-freezers, and freezers would threaten competition by increasing product homogeneity. The standards are performance rather than design standards, so that they can be met by different combinations of features. In addition, the energy-using characteristics of the appliances represent only one aspect of the products, and variation in other features would be expected to continue.

In making its determination, the Department has relied on the facts set forth in DOE's technical support document, as well as other information that could be collected by the Department in the time allowed and without the benefit of compulsory process. The Department does not, however, accept the assertion in the Notice of Proposed Rulemaking that competitive concerns are mitigated by the likelihood that the standards will result in increased profits for manufacturers. Apart from other difficulties with this inference, the evidence does not persuade the Department that the proposed standards will increase profits.

Sincerely,

Michael Boudin,

Acting Assistant Attorney General.

[FR Doc. 89-27254 Filed 11-16-89; 8:45 am]
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federal register

Friday
November 17, 1989

Part IV

The President

Proclamation 6068—National Diabetes Month, 1989

Proclamation 6069—Community Foundation Week, 1989

Proclamation 6070—National Farm-City Week, 1989

Proclamation 6071—National Philanthropy Day, 1989

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Federal Register
Vol. 54, No. 221
Friday, November 17, 1989

Presidential Documents

Title 3—

The President

Proclamation 6068 of November 15, 1989

National Diabetes Month, 1989

By the President of the United States of America

A Proclamation

Diabetes mellitus is one of the most serious public health problems challenging this country today. An estimated 11 million Americans have the disease, and about half of the them are not aware of their illness.

Each year, more than 500,000 new cases of diabetes are identified. All diabetics are at increased risk of developing eye, nerve, or kidney damage, as well as heart disease. These complications make diabetes a leading cause of death in the United States. Affecting individuals of all ages, regardless of gender or race, diabetes costs our Nation billions of dollars annually in health care and lost economic productivity. More important, however, and more tragic is the untold personal suffering endured by diabetics and their families.

Fortunately, however, the mystery of diabetes is beginning to unfold. Medical research has produced remarkable progress in understanding the causes and complications of diabetes and in devising treatments for it. In insulin-dependent diabetes, the immune system destroys insulin-producing cells. Recent research advances include the identification of markers that signal the onset of insulin-dependent diabetes years before it occurs—a discovery that may one day make early intervention possible.

Progress also has been made in unraveling the puzzle of non-insulin-dependent diabetes, with indications that this form of diabetes is actually many diseases with different causes related to cellular abnormalities. In this area of research, scientists are developing and applying the tools needed to examine what happens in diabetes at the cellular level.

Basic and clinical research advances have significantly reduced diabetes-related deaths and have improved the quality of life for people with diabetes. Nevertheless, much needs to be done before the cure and prevention of diabetes and its complications become a reality. The Federal Government, in cooperation with voluntary and professional health organizations, is continuing to conduct research aimed at eliminating diabetes as a threat to the health of present and future generations.

To enhance public understanding of diabetes and to recognize the efforts of those working to eliminate this public health problem, the Congress, by Senate Joint Resolution 131, has designated the month of November 1989 as "National Diabetes Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of November 1989 as National Diabetes Month. I call upon concerned Government agencies, public and private organizations, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set by hand this fifteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27313
Filed 11-16-89; 11:58 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6069 of November 15, 1989

Community Foundation Week, 1989

By the President of the United States of America

A Proclamation

Throughout our Nation's history, individual Americans have voluntarily joined together to meet important needs in their communities. This generosity, this willingness to work together toward a common goal, is a hallmark of the American character.

Today, private voluntary associations across the country make substantial contributions to our Nation's well-being in areas such as health care and social services, education and the arts, economic development, and environmental protection. Many of these associations are community foundations—charitable organizations formed to attract and distribute endowment funds.

Directed by volunteers, community foundations provide effective leadership in communities throughout the United States, often supplementing or assisting in the coordination of public programs and other private services. They are one of the fastest growing forms of philanthropy in the United States.

In grateful recognition of our Nation's charitable organizations and the concerned individuals who donate their time, talent, and material resources to them, the Congress, by House Joint Resolution 425, has designated the week of November 12 through 18, 1989, as "Community Foundation Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 12 through November 18, 1989, as Community Foundation Week. I call upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27314
Filed 11-16-89; 11:59 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6070 of November 15, 1989

National Farm-City Week, 1989

By the President of the United States of America

A Proclamation

Each year, during the week of Thanksgiving, we Americans pause to express our gratitude for the safe and abundant supply of food with which we have been blessed. This plenty has been brought to our tables not only by farmers, but also by many others who play vital roles in our agricultural production and distribution system. As we observe this 35th annual National Farm-City Week, we recognize these hard-working Americans for their important contributions to our Nation's well-being.

Our Nation's farmers are assisted in their work by the manufacturers and suppliers of equipment, seeds, and fertilizers; by those who transport and process the fruits of their labor; and by those who distribute and sell their final products in our rural towns and in our cities. The cooperative efforts of farmers and those who serve in farming-related industries enable American consumers to enjoy a rich variety of affordable, high-quality foodstuffs.

This rural-urban bond is being steadily strengthened as more and more American farmers become suppliers of not only food and fiber, but also a growing list of raw materials for new industrial uses. These materials include grains for ethanol fuels designed to improve our Nation's air quality, as well as starches for biodegradable plastics designed to reduce harmful wastes in the environment.

Americans are not the only beneficiaries of our farmers' efforts, however. Constituting less than 2 percent of the population, American farmers produce food and fiber for the rest of the country and much of the world as well. One-fifth of their production is marketed abroad. These exports provide needed agricultural goods to people in other nations while improving the United States' balance of trade. These exports also stimulate industrial growth and commerce.

Because all Americans, and millions of people around the world, benefit from the work of farmers and persons in farming-related industries, it is fitting that we honor them in a special way during this week of Thanksgiving.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 17 through November 23, 1989, as National Farm-City Week. I call upon all Americans, in rural areas and cities alike, to join in recognizing the accomplishments of our Nation's farmers and all those who cooperate in producing the abundance of agricultural goods that enrich and strengthen the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27315
Filed 11-16-89; 12:00 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6071 of November 15, 1989

National Philanthropy Day, 1989

By the President of the United States of America

A Proclamation

Noting the American people's willingness to work together in order to assist a neighbor or improve their communities, the great French social philosopher, Alexis de Tocqueville, once asked, "What political power could ever carry on the vast multitude of lesser undertakings which the American citizens perform every day, with the assistance of the principle of association?" This spirit of voluntary association and service to others continues to be a proud portion of the American character. Today, nonprofit philanthropic organizations in the United States number in the hundreds of thousands. These organizations employ millions of people, many of them volunteers. The American people give generously to all of them—not only through financial contributions but also through regular donations of their time, talents, and material resources.

Today, we recognize and salute the outstanding work done by members of our Nation's philanthropic organizations. Through their schools, churches, local museums, cultural centers, youth groups, hospitals, research institutions, and many other organizations, millions of concerned Americans are generously serving others. Whether bringing aid and comfort to the sick, the elderly, and the disadvantaged, or providing rewarding educational and recreational opportunities for everyone, these individuals are illustrating that there is no better exercise for the human heart than reaching out and lifting someone else up.

In recognition of all those who lead, staff, and support our Nation's charitable organizations, the Congress, by Senate Joint Resolution 86, has designated November 17, 1989, as "National Philanthropy Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 17, 1989, as National Philanthropy Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27316
Filed 11-16-89; 12:02 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 54, No. 222
Monday, November 20, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1957

Sale of Section 502 Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule; guidelines.

SUMMARY: The Farmers Home Administration (FmHA) revises the guidelines in preparation for the transfer of subservicing responsibilities to the private sector. This action is necessary for the protection of the rights of borrowers whose loans were sold to the private sector under the provisions of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509 (OBRA). The intended effect of this action is to notify the public of how these borrower's rights will be protected under private sector servicing.

DATES: Effective on November 20, 1989. Comments must be received on or before December 20, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Bldg., 14th and Independence Ave., SW., Washington, DC, 20250. All written comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Girard, Senior Loan Specialist, Single Family Housing, Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be nonmajor.

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because it is now impractical to do so because of the time contraints associated with the transfer of the Agency's subservicing responsibilities to the private sector as required by the Subservicing Agreement between the Master Servicer and FmHA. Congress mandated the sale of RH assets to yield $1.7 billion in proceeds by the end of FY 1987. The sale to the private sector, under provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA) occurred September 29, 1987. Servicing responsibilities shifted to the Master Servicer at the time of the sale as provided in Article III of the Pooling and Servicing Agreement. The Subservicing Agreement establishes that FmHA will act as subservicer for a transition period not to extend past September 30, 1989. Section 5.06 of the Loan Sale Agreement requires FmHA to effect an orderly transfer of servicing to the private sector. Because of the voluminous nature of the borrower loan files, an orderly transfer requires a staged turnover in order to complete the transaction ordered by OBRA by the September 30, 1989 deadline. This action provides basic information concerning the private sector's obligation to protect borrowers' rights as provided in FmHA regulations and of FmHA's limited involvement after transfer of subservicing responsibilities.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environment Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans (section 502 Rural Housing Loans), and is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and community development.

7 CFR Part 1957

Account servicing, Interest credit, Loan programs—housing and community development, Mortgages, Rural housing.

Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 and 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. In § 1900.51, paragraph (b) is revised to read as follows:

§ 1900.51 General.

* * * * *

(b) The Provisions of this subpart apply to program administrative decisions concerning all loans and grants made by FmHA. These include farmer program loans, housing loans (both single- and multi-family), community and business program loans, and all grant programs administered by FmHA. Hearings for single family housing loans sold to the Rural Housing Trust 1987–1 will be conducted by the Trust's Master Servicer acting through its subservicer. The borrower has the right to a review by the FmHA National Appeals Staff as defined in § 1900.58 of this subpart of hearing decisions made by the Master Servicer acting through its subservicer, except the State Director cannot be the initial review officer. The initial review will be conducted by the

Trust's Master Servicer acting through its subservicer.

* * * * *

3. Part 1957 is revised to read as follows:

PART 157—ASSET SALES

Subpart A—Rural Housing Asset Sales

1957.1 General.
1957.2 Transfer with assumptions.
1957.3 [Reserved]
1957.4 Graduation.
1957.5 [Reserved]
1957.6 Appeal reviews.
1957.7–1957.50 [Reserved]

Authority: Pub. L. 99–509, sec 2001(b)(1).

Subpart A—Rural Housing Asset Sales

§ 1957.1 General.

Pursuant to the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, the Farmers Home Administration sold certain of the portfolio of loans made under section 502 of the Housing Act of 1949 to the Rural Housing Trust, 1987–1. The sale was without recourse to FmHA except for certain provisions providing for FmHA's payment of interest credit amounts and agreement to compensate the Rural Housing Trust 1987–1 for future cash flow changes due to revised borrowers rights as set forth in FmHA regulations. The sale documents to Rural Housing Trust 1987–1 recognize that the FmHA loans were assigned subject to rights provided to these borrowers under documentation to recognize the rights of FmHA borrowers under regulations of FmHA as they may exist from time to time and to service the loans in accordance with then current FmHA regulations. In addition, as provided in § 1957.6 of this subpart, FmHA has retained review, but not hearing authority under the FmHA Appeal Procedure, 7 CFR part 1900, Subpart B. Failure of private servicers to comply with FmHA regulations in servicing loans sold to the Rural Housing Trust 1987–1 may be redressed in the review process under the Appeal Procedure.

§ 1957.2 Transfer with assumptions.

FmHA regulations governing transfers and assumptions will not apply to these loans. Individuals who what to purchase property securing a loan held by the Rural Housing Trust 1987–1, and who are eligible for an FmHA § 502 loan will be given the same priority by FmHA as a transferee of a § 502 loan if the property is then suitable for the FmHA RH program and is located in an eligible area. The Master Servicer of the Rural Housing Trust, 1987–1, may permit an assumption if it is deemed by the Master Servicer to be in the financial interest of the Trust, but in such case the transferee would not be eligible for FmHA loan servicing benefits under FmHA regulations.

§ 1957.3 [Reserved]

§ 1957.4 Graduation.

Borrowers will not be required to graduate to other credit.

§ 1957.5 [Reserved]

§ 1957.6 Appeal reviews.

The Master Servicer, acting through its subservicer, will have the responsibility to conduct hearings under the appeal process. Final review of an adverse decision upheld under the appeal process will remain with FmHA and be conducted by the Agency's National Appeal Staff, Washington, DC, under the FmHA Appeal Procedures, 7 CFR part 1900, subpart B. This review is final and will conclude the appellant's administrative appeal process.

§ 1957.7–1957.50 [Reserved]

Dated: September 21, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–26961 Filed 11–17–89; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1902, 1941, 1943, 1945, 1962, and 1980

Removal of Obsolete Forms From Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to remove references to several obsolete forms. The intended effect is to update references to forms in the Agency's regulations. This action is the result of an internal forms review.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Ferguson—Loan Specialist—Insured Loan Making Branch Farmer Programs—Loan Making Division, FmHA, USDA, Room 5428–S, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475–4018.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal agency management, making publication for comment unnecessary

The amended regulations remove the following forms: FmHA Forms 402–5, Deposit Agreement-Non FmHA Funds; 432–9, Social Security Taxes Paid During the Year for Hired Labor; 440–6, Severance Agreement; 443–2, Option for Purchase of Farm Land to be Subdivided; 443–3, Assignment of Interest in Option; 443–4, Designation of Assignee of Interest in Options; 443–5, Short Term Lease of Optional Land; 443–6, Short Term Lease; 443–8, Agreement (Between Seller, Purchaser and Tenant); 443–10, Acceptance of Option by Assignee; 443–11, Acceptance of Option by Buyer (Land to be Subdivided); 443–12, Farm Ownership and Individual Soil and Water Fund Analysis; 462–10, FmHA Answer to Request for Information; 1924–14, Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities; 1940–37, Economic Emergency Loan Analysis; 1941–7, OL and Other Credit Analysis; 1945–20, Applicant's Environmental Impact Evaluation; 1945–23, Applicant's Certification (Insured Economic Emergency); 449–12, Request for Loan Note Guarantee (Farmer Program Loans); 449–26, Certificates of Lender and Applicant (Emergency Livestock Loan); 449–31, Emergency Livestock Loan Analysis; and 1980–32, Lender's Certification. Form FmHA 1980–25, Request for Guarantee (Farmer Program Loans) is being combined with Form FmHA 449–12 to create a revised Form FmHA 1980–25. This will allow for the deletion of the Form FmHA 449–12 and will allow for the use of only one form instead of two.

This action affects the following programs listed in the catalog of Federal Domestic Assistance:

10.406 Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.404 Emergency Loans

This program/activity is not subject to the provisions of Executive Order 12372, which required intergovernmental consultation with State and local officials. See 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home

Administration Programs and Activities." (December 23, 1983).

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environment Policy Act of 1969, Public Law 91–190, and Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan Programs—Agriculture, Rural areas, Youth,

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—agriculture.

7 CFR Part 1962

Crops, Government property, Livestock, Loan Programs—Agriculture, Rural areas.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Therefore, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for Part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

2. Section 1902.1 (i) is revised to read as follows:

§ 1902.1 General.

* * * * *

(i) Supervised bank accounts referred to in this Subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between the borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402–1, "Deposit Agreement".

* * * * *

3. Section 1902.1 is amended by removing paragraph (k) and redesignating paragraph (l) as paragraph (k), and by inserting a period after the words "Form FmHA 402–1," and removing the remainder of the sentence, from newly redesignated paragraph (k).

§ 1902.2 [Amended]

4. Section 1902.2 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

§ 1902.10 [Amended]

5. Section 1902.10(c) is amended by inserting a period after the words "Form FmHA 402–1" and removing the remainder of the sentence.

PART 1941—OPERATING LOANS

6. The authority citation for part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.19 [Amended]

7. Section 1941.19(g)(2) is amended by inserting a period after the words "Consent and Subordination Agreement" and removing the remainder of the sentence.

Exhibit A to subpart A [Amended]

8. Exhibit A of subpart A is amended under the title "Docket Preparation" by removing from the table the entry for form numbers "440–6"and "1941–7," and in paragraph B under the title "Loan Approval and Closing" by removing from the table the entry for form number "402–5."

Subpart B—Closing Loans Secured by Chattels

§ 1941.60 [Amended]

9. Section 1941.60(d) is amended by inserting in the last sentence a period after the words "Consent and Subordination Agreement" and removing the remainder of the sentence.

§ 1941.67 [Amended]

10. Section 1941.67 is amended by deleting the phrase "severance agreement," from the introductory text, and by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

§ 1941.96 [Amended]

11. Section 1941.96(b) is amended in the first sentence by adding a period after the word "revised" and removing the remainder of the sentence.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

12. The authority citation for part 1943 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.25 [Amended]

13. Section 1943.25 is amended by removing paragraph (a)(3).

§ 1943.32 [Amended]

14. Section 1943.32(a) is amended in the table of forms by removing the entry for form numbers "443–12" and "443–8," and at the bottom of the table by removing "footnote [2]."

§ 1943.34 [Amended]

15. Section 1943.34(b) and (c) are revised to read as follows:

§ 1943.34 Requesting title service and accepting option.

* * * * *

(b) The applicant will sign Form FmHA 440–35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder.

(c) The applicant will arrange with the seller to take possession when land is being acquired.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.82 [Amended]

16. Section 1943.82 is amended in the table of forms by removing the entry for form number "443–12 [2]", and at the bottom of the table by removing "footnote [2]."

PART 1945—EMERGENCY

17. The authority citation for part 1945 is revised to read as follows:

Authority: U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Economic Emergency Loans

§ 1945.128 [Amended]

18. Section 1945.128(b) is amended in the first sentence by inserting a period after the words "(operating or real estate)" and removing the remainder of the sentence.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

19. Exhibit A of Subpart D, paragraph III A.5., is amended in the table of forms by removing the entry for form numbers "443–2," "443–3," "1924–14" and "1945–20."

20. Exhibit A of Subpart D, paragraph IV D., is amended in the table of forms by removing the entry for form number "440–6."

21. Exhibit A of Subpart D, paragraph V B. 2., is amended in the table of forms by removing the entry for form numbers "402–5" and "1924–14."

PART 1962—PERSONAL PROPERTY

22. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.14 [Amended]

23. Section 1962.14 (a) is amended by removing the last sentence.

PART 1980—GENERAL

24. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

§ 1980.13 [Amended]

25. Section 1980.13 (b)(2) is amended in the last sentence by removing the words "Form FmHA 449–12, 'Request for Loan Note Guarantee;' or" and by changing the title of Form FmHA 1980–25 to read "Request for Guarantee (Farmer Program Loans)."

§ 1980.83 [Amended]

26. Section 1980.83 (a) is amended in the second sentence by changing the title of Form FmHA 1980–25 to "Request for Guarantee (Farmer Program Loans)".

27. Appendix G of Subpart A of Part 1980 is revised to read as follows:

Appendix G—Request for Guarantee (Farmers Program Loans)

BILLING CODE 3410-07-M

Appendix G

Position 3

USDA-FmHA
Form FmHA 1980-25
(Rev. 10-89)

FORM APPROVED
OMB NO 0575-0079

REQUEST FOR GUARANTEE
(Farmers Programs Loans)

TO: Farmers Home Administration (FmHA)	Case No. (Borrower's Soc. Sec. or IRS Tax No.)	State
Type of Loan ☐ FO ☐ SW ☐ OL ☐ OL Line of Credit		County
Applicant's Name	Applicant's Address	
Lender Requests a Loan Note Guarantee Principal Amount of Loan $ _____	Lender Requests a Contract of Guarantee for a Line of Credit Line of Credit Ceiling $ _____ Principal Amount of Initial Advance $ _____	

The undersigned Lender requests issuance of a guarantee in the subject case.

THE FOLLOWING INFORMATION AND DOCUMENTS ARE SUBMITTED FOR YOUR CONSIDERATION:

1. Copy of Application for Loan with enclosures.
2. Cash flow sheet.
3. Any drawing and specifications for: ☐ construction ☐ major repairs ☐ major land development
4. Appraisal report on any real estate security.
5. Purposes for which guarantee loan funds will be used and the amounts to be used for such purposes are:

PURPOSES	AMOUNTS
	$

6. Interest rate to borrower is _____% per annum.
7. Loan fee payable by loan applicant is _____% of principal amount of loan or $ _____.[a]
8. Repayment period for the loan or line of credit is _____ year(s).
9. Proposed loan guarantee is _____% of the principal and interest.
10. Escrow account is required for: ☐ Taxes ☐ Insurance premiums ☐ Other *(specify)* _____
11. The undersigned Lender is subject to examination and supervision by

_____
(Insert name of agency of United States or State, or "None")

[a]Insert "None;" or if Lender charges a loan fee, insert percentage or dollars.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C. 20503.

12. Loan(s) will be ☐ made, and/or ☐ serviced, by the undersigned's:

☐ Main office address: _____

☐ Branch office: _____
(Name of office)

Branch office address: _____

☐ Agent: _____
(Name of Agent)

Agent's address: _____

13. Initial loan/line of credit is scheduled for repayment: _____
(Maturity date for line of credit agreement and/or dates of monthly, annual, or other installments)

14. Late payment charges, if any, are made on the following basis pursuant to a written agreement between the applicant and the undersigned Lender as required by 7 CFR 1980.22: _____

15. Types and amounts of insurance required are:

Types	Amounts
	$
	$

16. List of Required Security Property
(Including That on Hand and to be Acquired)

DESCRIPTION OF PROPERTY A. ON HAND*	APPRAISED VALUE	AMT. ANY PRIOR LIENS	EQUITY
	$	$	$
TOTAL	$	$	$

Appraiser's Certificate on Personal Property

Personal property listed above, if any, was appraised by me at the values set forth opposite the description thereof.

_____ _____
(Date) (Appraiser)

*Quantity and brief description. For example: "Smith farm 160 acres," (based on separate appraisal report)
"1-1972 John Deere 2520 Tractor," "25 Hereford range cows, 3-6 years."

B. TO BE ACQUIRED—FIRST LIEN IS REQUIRED	VALUE**
	$
TOTAL	$

**Value of Real Estate based on separate appraisal report.

17. Plan of Operation agreed upon by Lender and loan applicant for first full operating year

a. PLANNED CROPS, PASTURE, ETC.-PRODUCTION AND SALES

	CROPS, PASTURE, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	$/unit	VALUE
1.							$
2.							
3.							
4.							
5.							
					TOTAL		$

b. PLANNED LIVESTOCK AND PRODUCTS PRODUCTION AND SALES

	KIND	PRODUCTION PER ANIMAL	NUMBER	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	$/unit	VALUE
1.							$
2.							
3.							
4.							
5.							
					TOTAL		$

4

18. CASH OPERATING EXPENSES	TOTAL CREDIT NEEDED	TOTAL PLANNED EXPENSES
Hired Labor	$	$
Machinery Repair	$	$
Interest	$	$
Cash Rent	$	$
Feed	$	$
Seed	$	$
Fertilizer	$	$
Pesticides & Spray Materials	$	$
Livestock Expense	$	$
Machinery Hire	$	$
Fuel and Oil	$	$
Personal Prop. Tax	$	$
Real Estate Taxes	$	$
Water Charges	$	$
Property Insurance	$	$
Auto & Truck Expense (Farm)	$	$
Utilities	$	$
Feeder Livestock (Bought & sold during year)	$	$
Family Living Expenses	$	$
Other	$	$
TOTAL	$	$

19. Financial Summary of Typical Years Operation

A. Livestock Income (Table 17b)	$
B. Crop Income (Table 17a)	$
C. Other Farm Income	$
D. Non-Farm Income (net)	$
E. Total Gross Income (A + B + C + D)	$
F. Total Cash Expenses (Table 18)	$
G. Net Cash Income (E minus F)	$
H. Cash Carryover	$
I. Loans and Other Credit	$
J. Interest	$
K. Total Available (G + H + I + J)	$
L. Capital Expenditures	$
M. Balance Available to Debt Repayment (K-L)	$

20. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE FIRST YEAR (PRIN. & INT.)	PLAN PRIN. & INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
Income and Social Security Taxes	$			
TOTAL	$			

5

21. The loan will be properly closed and/or line of credit agreement will be properly executed and the required security obtained. The construction, relocation, repairs, or other development will be completed in accordance with approved drawings and specifications.

22. The borrower has marketable title to security property now owned (and will obtain such title to any additional property to be acquired with loan funds), subject only to the instruments securing the loan to be guaranteed and any other exceptions set forth below:

23. Security property now owned and any acquired is considered adequate security for the loan to be guaranteed. If inadequate, state in item 31 of this form, why you believe the borrower's farm or ranch operating plans will permit the borrower to pay the guaranteed loan or line of credit in full within the period specified, in item 8, on page one of this form. The security instruments will be properly filed or recorded prior to, or simultaneously with, the issuance of the guarantee; except that if security property is yet to be acquired in a jurisdiction in which an after acquired property clause is not valid, a security instrument covering such property will be obtained as soon as appropriate and legally permissible. Loan funds will be used for FmHA-approved purposes.

24. Proper hazard and any other required insurance will be obtained or is now in effect.

25. Truth in Lending requirements will be met.

26. All Equal Opportunity and Nondiscrimination requirements will be met (or any that cannot yet be met will be met at the appropriate time).

27. A Guarantee Fee Report on Form FmHA 1980-19 and a check for the amount of the guarantee will be provided at the time the Guarantee is issued.

28. The undersigned (a) considers the proposed loan or line of credit to be sound and within the borrower's repayment ability, (b) believes that all applicable requirements in Subparts A, B, C or F of Part 1980, 7 CFR have been or will be met and (c) will not make the loan or advances under the line of credit without an FmHA guarantee.

29. If loan funds are to be used at or after the time of loan closing for acquisition of substantial amounts of property, or for construction or substantial repairs or major land development, certification(s) on Form FmHA 449-11, "Certification of Acquisition or Construction," will be furnished on that part acquired at loan closing, and will be furnished to FmHA as soon as possible on such subsequent acquisitions, construction, repair or land development.

30. Lender's Planned Loan Servicing:

31. Other Relevant Information:

6

_____
(Name of Lender)

_____
(Date)

BY: _____

TITLE: _____

_____
(Lender's IRS ID Tax No.)

32. From an examination of information supplied by the Lender on the above proposed loan or line of credit, the county committee certification,or recommendation and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the FmHA agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," or Form FmHA 449-34, "Loan Note Guarantee," on the above loan or line of credit at the time, subject to the conditions and requirements specified in said regulations and Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," or Form FmHA 449-14, "Conditional Commitment for Guarantee," attached.

If the Contract of Guarantee or Loan Note Guarantee is executed and the guaranteed fee, if any, is paid by the Lender to FmHA, the loan subsidy rate, if any, payable by FmHA to the Lender, and the interest rate payable by the borrower in cases which that rate is limited by statute or is fixed from time to time pursuant to statute, will be those rates in effect on the date of this approval.

Rate payable by borrower _____ % per annum.

This approval will expire _____ days from the date hereof unless the time is extended in writing by FmHA, or upon the Lender's earlier notification in writing to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____
(Date)

BY: _____

TITLE: _____

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

§ 1980.113 [Amended]

28. Section 1980.113 (d)(3) is amended by removing the words "Form FmHA 449–12, 'Request for Loan Note Guarantee (Farmer Program Loans)' or" and by changing the title of Form FmHA 1980–25 to read "Request for Guarantee (Farmer Program Loans)."

Exhibit A to Subpart B—Approved Lender Program—Farm Ownership and Operating Loans [Amended]

29. Exhibit A, paragraph III. A. is amended in the seventh sentence by changing the reference "Form FmHA 449–12, 'Request for Loan Note Guarantee (Farmer Program Loans)' " to read "Form FmHA 1980–25, 'Request for Guarantee (Farmer Program Loans),' " and in the twelfth sentence by changing the reference "item 28 of Form FmHA 449–12" to read "item 20 of Form FmHA 1980–25."

Subpart C—Emergency Livestock Loans

§ 1980.246 [Amended]

30. Section 1980.246 is amended by removing paragraph (a)(4) and redesignating paragraphs (a)(5), (a)(6) and (a)(7) as paragraphs (a)(4), (a)(5) and (a)(6), respectively; by changing the reference in paragraph (a)(1), "Form FmHA 449–6, 'Application for Guaranteed Loan (Farmer Programs)' " to read "Form FmHA 410–1, 'Application for FmHA Services;' " and by changing the reference in the newly designated paragraph (a)(4), "Form FmHA 1980–25, 'Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)' " to read "Form FmHA 1980–25, 'Request for Guarantee (Farmer Program Loans).' "

§ 1980.247 [Amended]

31. Section 1980.247 *Administrative* B.2. is amended by changing the reference "Form FmHA 440–1" to read "Form FmHA 1940–1" (in three places), and by removing in the first sentence the words, "and Form FmHA 449–31, 'Emergency Livestock Loan Analysis.' "

32. Section 1980.247 *Administrative* C.2. is amended by changing the reference, "Form FmHA 440–1" to read "Form FmHA 1940–1."

Appendix A to Subpart C [amended]

33. In Appendix A of Subpart C, paragraph (a) is amended by removing the entry in the table for form numbers "449–26" and "449–31," by changing the form number and title, "449–6, 'Application for Guaranteed Loan (Farmer Programs)' " to read "410–1, 'Application for FmHA Services,' " by changing the title of form number 1980–25 to read, "Request for Guarantee (Farmer Program Loans)," and by changing the form number "440–1" to read "1940–1."

Subpart F—Economic Emergency Loans

§ 1980.511 [Amended]

34. Section 1980.511 is amended by removing paragraph (a)(4) and redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(4) and (a)(5), respectively; by changing the reference in paragraph (a)(1), "Form FmHA 449–6, 'Application for Guaranteed Loan (Farmer Programs)' " to read, "Form FmHA 410–1, 'Application for FmHA Services' "; and by changing the reference in paragraph (c)(2), "Form FmHA 1980–25, 'Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)' " to read "Form FmHA 1980–25, 'Request for Guarantee (Farmer Program Loans).' "

§ 1980.513 [Amended]

35. Section 1980.513 *Administrative* A.2. is amended in the first sentence by removing the reference "Form FmHA 1940–37, "Economic Emergency Loan Analysis."

§ 1980.577 [Amended]

36. Section 1980.577 (b) is amended by changing the reference "Form FmHA 449–6" to read "Form FmHA 410–1."

§ 1980.593 [Amended]

37. Section 1980.593 (b) is amended by removing from the first sentence the reference "FmHA 1980–32, 'Lender's Certification (Guaranteed Economic Emergency Loan),' " by revising the title of Form FmHA 1980–25 to read "Request for Guarantee (Farmer Program Loans)," and by removing the last sentence.

Appendix A to Subpart F [Amended]

38. In Appendix A of Subpart F, paragraph (a), is amended in the table of forms by removing the entry for form numbers "1980–32" and "1940–37," by changing the form number and title "449–6, 'Application for Guaranteed Loan (Farmer Programs)' " to read "410–1, 'Application for FmHA Services,' " and by changing the title of form number 1980–25 to read "Request for Guarantee (Farmer Progam Loans)."

Appendix B to Subpart F [Removed]

39. Appendix B of Subpart F is removed and reserved.

Dated: May 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–28980 Filed 11–17–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

INS Number: 1253–89

Adjustment of Status to That of Person Admitted for Permanent Residence: Interview

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Temporary rule.

SUMMARY: Existing regulations require that all applicants for adjustment of status to that of permanent resident be interviewed by an immigration officer, except those applicants who are under age 14 or who are clearly ineligible for having lived or worked illegally in the United States. This temporary rulemaking will suspend the interview requirement for one year with regard to applicants for adjustment of status under the provisions of the Cuban Adjustment Act of November 1, 1966. This action is necessary because of the large backlog of these cases now pending at certain offices of the Immigration and Naturalization Service ("the Service"). Suspension of the requirement will allow the Service to adjudicate these applications at Regional Service Centers located in other parts of the United States rather than at the overburdened offices and will enable those offices to eliminate their backlogs of pending cases.

DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: The Act of November 2, 1966 (80 Stat. 1161), commonly referred to as the Cuban Adjustment Act, as amended by the Act of October 20, 1976 (90 Stat. 2703) provides that the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United

States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The regulations pertaining to such applications for permanent residence are set forth in 8 CFR part 245 and require at 8 CFR 245.9 that each applicant over the age of 14 be interviewed by an officer of the Immigration and Naturalization Service. This temporary rulemaking suspends the interview requirement for a period of one year from the date of publication.

Suspension of the interview requirement is necessary in order to allow the Service to shift the existing workload from certain Service offices, notably those located in Florida, to offices in other parts of the United States which do not have comparable backlogs. Because of the extremely large proportion of Cuban refugees who settled in Florida and a few other locations, the number of applications for adjustment under the Cuban Adjustment Act has far exceeded the ability of Service offices located in that State to adjudicate. Offices located in other States which have the resources needed to adjudicate the applications are currently unable to do so due to the interview requirement.

Although the interview procedure can be a useful tool in obtaining information pertinent to the adjudication of the application, the Service has determined that the probability of gathering such information in applications for adjustment of status does not warrant the extremely long waiting periods now existing at the offices in Florida and other locations. Therefore, the Service is waiving the interview requirement for a period of time necessary to eliminate the backlogs at the overburdened offices.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

The Service has determined that notice and public comment regarding this final rule are unnecessary under 5 U.S.C. 553(d)(B) because this rule relates to agency management. These changes will reduce unnecessary and duplicative reporting burdens on the public.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Passports and visas.

Accordingly, Part 245 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255 and 1257; 8 CFR part 2.

2. Section 245.9 is revised to read as follows:

§ 245.9 Interview.

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. This interview may be waived in the case of a child under the age of 14; when the applicant is clearly ineligible under section 245(c) of the Act or § 245.1; or in the case of an applicant for adjustment of status under the provisions of the Act of November 2, 1966, provided such application is filed prior to November 20, 1990.

Dated: November 1, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-27126 Filed 11-17-89; 8:45 am]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards for Industries Without an Established Size Standard

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing as a final rule a residual size standard of $3.5 million in average annual receipts for 52 selected industries for which no size standard exists at present. Size standards are needed to establish eligibility for SBA's financial assistance, procurement assistance and other programs. A residual standard eliminates the necessity of separate rulemaking for each industry as requests arise. The present rule incorporates the size standard of $3.5 million average annual receipts established for the Commodity Contracts Brokers and Dealers industry in an interim rule published on August 9, 1988. The present residual rule does not incorporate or change the size standard of 500 employees established for Natural Gas Distribution in an interim rule published on November 25, 1988.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Economist, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the Federal Register on February 9, 1989 (54 FR 6298) which proposed establishing a residual size standard of $3.5 million in average annual receipts for 52 Standard Industrial Classification (SIC) industries for which no size standard now exists. This is the same size standard that is used as the residual size standard within SIC Division I—Services, for all service industries in that Division not specifically listed with a size standard. No comments have been received to date concerning the proposed rule, either during or after the public comment period which ended March 13, 1989.

The need for a residual size standard for these uncovered industries was originally signalled in late 1987, when an application for financial assistance was received by SBA from a firm in the commodity contracts brokers and dealers industry (SIC code 6221). This industry was one of 54 four-digit SIC industries (excluding Division J—Public Administration) for which SBA did not, at that time, have an established size standard. As a result, SBA established an emergency interim size standard for Commodity Contracts Brokers and Dealers on August 9, 1988 (53 FR 29876).

In the latter part of 1988, several Federal agencies contacted SBA regarding a number of current or planned solicitations for natural gas distribution (SIC code 4924). A size standard was needed to identify small and small disadvantaged businesses bidding on and receiving those procurements. Again, SBA responded by publishing an emergency interim size standard of 500 employees for Natural Gas Distribution on November 25, 1988 (53 FR 47663).

Until now, no size standard existed for eight four-digit SIC industries within SIC Division E (Transportation, Communications, Electric, Gas, and Sanitary Services); 43 four-digit industries within SIC Division H (Finance, Insurance and Real Estate); and SIC code 9999, Nonclassifiable Establishments (the only industry in SIC Division K (Nonclassifiable Establishments)). This final rule establishes a size standard of $3.5 million in average annual receipts for these industries. (SIC Division J—Public Administration, remains uncovered; it is totally outside the scope of any of SBA's programs.)

Although requests for SBA assistance under any of its programs in these 52 uncovered industries are rather rare, the incidents related above show that they do occasionally occur. Publication of a residual size standard eliminates separate rulemaking as the need recurs in each new industry.

The notice of February 9, 1989, proposing the residual size standard, pointed out that none of these 52 industries is included in the economic censuses compiled and published by the U.S. Bureau of the Census. Data from other sources are scanty and sometimes contradictory on the size structure of (and even the total number of firms in) many of these industries.

As explained in the proposed rule, it was judged more appropriate to apply one of the "anchor standards" to the uncovered industries, rather than to adopt and justify some other size standard weakly supported by available evidence.

"Anchor standards" refer to either of two size standards adopted by SBA's Size Policy Board in 1985 as reference points from which specific standards may vary when supported by statistical evidence. For all receipts-based size standards, the anchor standard is $3.5 million and for employee-based size standards, 500 employees was adopted as the anchor standard. The latter anchor size standard applies primarily to the manufacturing and mining industrial divisions. None of the 52 uncovered industries is in either manufacturing or mining.

The $3.5 million annual receipts anchor standard is the most common standard in effect today for the retail trade and services industries. It represents inflationary adjustments to a single standard of $1,000,000 average annual receipts established in 1963 for the entire retail trade and services industry divisions.

In addition, the standard adopted herein merely extends to the 52 industries, the same $3.5 million annual receipts figure already in use as the residual size standard for all industries within SIC Division I—Services which are not specifically listed in the size standards table (13 CFR part 121.2(d), Table 2) under that Division (49 FR 39998, October 12, 1984; 50 FR 10495, March 15, 1985). If more precise and complete data become available for one or more individual industries, SBA will use authorized rulemaking procedures, including opportunity for public comments, to effect the appropriate adjustments.

As indicated above, the initial impetus toward establishment of a residual size standard came from consideration of the Commodity Contracts Brokers and Dealers industry (SIC code 6221). The reasoning behind applying the $3.5 million annual receipts anchor size standard to this industry was identical to that used herein. In addition, no comments were received from the public about this interim $3.5 million size standard after publication on August 9, 1988. For these reasons, instead of a separate publication of a final rule for commodity contracts brokers and dealers, SBA has decided to incorporate that rule into the residual rule promulgated herein. Accordingly, the residual size standard of $3.5 million average annual receipts established in this rule applies also to Commodity Contracts Brokers and Dealers (SIC code 6221).

This final rule, however, does not apply to SIC code 4924—Natural Gas Distribution. The emergency interim size standard for natural gas distribution is 500 employees, and a final rule for this industry will either reaffirm the 500 employees or adopt some other employee-based standard as deemed appropriate. A standard of $3.5 million average annual receipts appears inordinately low for this industry based on a preliminary analysis of its size structure.

Compliance With Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

SBA certifies that this rule is not a major rule within the meaning of Executive Order 12291 because it is not expected to have an annual economic impact of $100 million or more. The economic impact study relating to this rule is summarized below since it was included in the proposed rule (54 FR 6299, February 9, 1989).

Based on data in the United States Establishment and Enterprise Microdata file (USEEM) of SBA's small business data base, there are about 46,700 firms in the 52 industries now without SBA size standards. The establishment of this residual $3.5 million annual receipts size standard makes an estimated 34,700 firms eligible for small business set-aside Federal contracts.

Because most firms in the finance, insurance and real estate industries are not eligible for loans under SBA's regulations, a much smaller number, estimated at 13,240 firms, will meet the size eligibility requirements for SBA financial assistance. Of those, only a small number of firms are likely to request financial assistance from SBA. Public utility firms supplying gas and electric services are usually regulated monopolies in their localities and are sufficiently creditworthy to be able to obtain financing without SBA guarantees. The same is presumably true of telegraph companies, security brokers, functions related to banking, services allied with the exchange of securities and commodities, and perhaps investment advisors.

Data from the Federal Procurement Data Center show $554.5 million of total Federal procurement in fiscal year 1988 from firms in the 52 industries. If one assumes that small firms with $3.5 million or less in receipts will participate in the Federal market in the same proportion as their share of total industry sales to all buyers, the expected small business share of Federal procurements would be about $23.3 million. (This 1988 figure is down from the fiscal year 1987 estimate of a $41 million small business share of Federal procurement of $467.7 million, as stated in the proposed rule, due mainly to an overestimate of the expected small business share for SIC code 4931, Electric and Other Services Combined.)

However, there are strong reasons for believing that the actual economic impact on firms of any size will be considerably less than $23.3 million. Examining Federal procurement data more closely reveals that of total Government procurement of $174.1 billion in fiscal year 1988, $26.7 billion (14.7 percent) went to small businesses under sole source, unrestricted or set-aside contracts. Of this figure, only $11.4 billion, or 42.9 percent was awarded through small business set-asides. Another $3.4 billion, or 13.2 percent of the small business total, was awarded under the 8(a) program. Thus, about 56.1 percent of all small business awards result from or are influenced by SBA programs and SBA size standards. The remaining 44 percent of small business contracts are either noncompetitive or are won by small firms in unrestricted competition.

Taking the above factors together, the expected maximum procurement impact from establishing this residual size standard can be estimated roughly at about $13 million instead of $23.3 million.

In the past, firms in these 52 industries have generally not requested SBA financial assistance. Based on requests

received to date in all programs, SBA anticipates that one of the 52 industry size standards would be required only three to four times a year.

Accordingly, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Similarly, this regulation is not likely to result in a major increase in costs or prices or have a significant effect on the United States economy. This rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., chapter 35. Finally, SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Recording and recordkeeping requirements, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6) and Pub. L. 99–591, 99–661 and 100–656.

§ 121.2 [Amended]

2. Section 121.2(d), Table 2, is amended by revising the column headings and adding a note after the column headings and before "Division A—Agriculture" as follows:

SIC	Description	Size
(* = New SIC code in 1987, not used in 1972).	(N.E.C. = Not Elsewhere Classified).	Standards in number of employees or millions of dollars.

NOTE.—For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $3.5 million in annual receipts.

* * * * *

Dated: September 25, 1989.

Susan Engeleiter,

Administrator, U.S. Small Business Administration.

[FR Doc. 89–27114 Filed 11–17–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 301 and 305

[Docket No. 90914–9214]

Public Works and Development Facilities Program; Supplementary Grant Rates

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule; nomenclature change.

SUMMARY: This rule amends EDA's rules on supplementary grant rates at §§ 301.2 and 305.5 by updating the reference to the Disaster Relief Act of 1974. This Act was amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 100–707 (1988). The Stafford Act recodifies and amends the Disaster Relief Act of 1974 (Pub. L. 93–288).

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, Room 7001, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230, (202) 377–4687.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR 301.2 and 305.5 to change the reference to the Disaster Relief Act of 1974 (Pub. L. 93–288) to the Disaster Relief and Emergency Assistance Act (Pub. L. 100–707).

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis had been or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

Since a notice and an opportunity for comment are not required to be given for the rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511). This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects

13 CFR Part 301

Freedom of information, Organization and functions (Government agencies).

13 CFR Part 305

Community development, Community facilities, Grant programs—community development, Indians, Loan programs—community development.

For the reasons set out in the preamble, title 13, chapter III, parts 301 and 305 are amended as set forth below.

PART 301—ESTABLISHMENT AND ORGANIZATION

1. The authority citation for part 301 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 301.2 [Amended]

2. In § 301.2 in the definition of "Disaster Area: remove the words "Act of 1970 (Pub. L. 91–606) or Disaster Relief Act of 1974 (Pub. L. 93–288)" and add in their place, the words "and Emergency Assistance Act (Pub. L. 100–707)".

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

3. The authority citation for part 305 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 305.5 [Amended]

4. In § 305.5(b)(3)(v) remove the words "Act of 1974 (Pub. L. 93–288)" and insert in their place, the words "and Emergency Assistance Act (Pub. L. 100–707)".

Dated: November 9, 1989.

James L. Perry,

Acting Assistant Secretary for Economic Development.

[FR Doc. 89–27185 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ASW–27]

Revision of Transition Area; Chickasha, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the tansition area located at Chickasha, OK. The development of a new NDB RWY 17 standard instrument approach procedure (SIAP) to the Chickasha Municipal Airport, Chickasha, OK, utilizing the Chickasha Nondirectional Radio Beacon (NDB), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the Chickasha Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administation, Fort Worth, TX 76192–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On August 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Chickasha, OK (54 FR 34528).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the transition area located at Chickasha, OK. The development of a new NDB RWY 17 SIAP to the Chickasha Municipal Airport, Chickasha, OK, utilizing the Chickasha NDB, has necessitated this amendment. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the Chickasha Municipal Airport. The original proposal incorrectly described the longitude of the Chickasha NDB as 99°58'15" W. The correct longitudinal coordinate is 99°58'15" W. This minor correction does not alter the airspace as depicted in the original proposal circulated for public comment. The legal description printed herein contains the correct latitudinal/longitudinal coordinates of the Chickasha NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "signficant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chickasha, OK [Amended]

By adding to the end of the current legal description: and within 3 miles each side of the 016° bearing of the Chickasha NDB (latitude 35°06'13" N., longitude 99°58'15" W.), extending from the 6.5-mile radius area to 8.5 north of the Chickasha NDB.

Issued in Forth Worth, TX, on October 31, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–27154 Filed 11–17–89; 8:45 am]

BILLING CODE 4910–13

14 CFR Parts 71 and 75

[Airspace Docket No. 89–ANM–10]

Alteration of VOR Federal Airways, Compulsory Reporting Points and Jet Routes; ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of all VOR federal airways, compulsory reporting points and jet routes that have been affected by the name change of McCall, ID, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) to Donnelly, ID, VORTAC. The actual VORTAC site remains the same. This action will alleviate pilots' confusion which was caused by the VORTAC having the same identifier as the airport.

EFFECTIVE DATE: 0901 u.t.c.,, January 11, 1990.

ADDRESSES: The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of these amendments to parts 71 and 75 of the Federal Aviation

BEST COPY AVAILABLE

Regulations (14 CFR parts 71 and 75) is to alter the descriptions of all VOR federal airways, compulsory reporting points, and jet routes that have been affected by the name change of the McCall, ID, VORTAC to the Donnelly, ID, VORTAC. The actual VORTAC site remains the same. This action will alleviate pilots' confusion which was caused by the VORTAC having the same identifier as the airport. Sections 71.123, 71.203, 71.207 and 75.100 of parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is a need for a regulation to alter the descriptions of VOR federal airways, compulsory reporting points, and jet routes that have been affected by the name change of the McCall, ID, VORTAC to the Donnelly, ID, VORTAC. Since the action does not alter the dimensions or operating requirements of the affected airspace and involves a matter in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, Compulsory reporting points, Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a); 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows: V-121, V-253, V-269, V-293, V-298

Wherever the words "McCall, ID" appear, substitute the words "Donnelly, ID"

§ 71.203 [Amended]

3. § 71.203 is amended as follows:

McCall, ID [Removed]
Donnelly, ID [New]

§ 71.207 [Amended]

4. § 71.207 is amended as follows:

McCall, ID [Removed]
Donnelly, ID [New]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

5. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a); 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

6. § 75.100 is amended as follows:

J-12, J-29, J-82 [Amended]

Wherever the words "McCall, ID" appear, substitute the words "Donnelly, ID"

Issued in Washington, DC, on November 7, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-26156 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89-AWA-3]

Alteration of VOR Federal Airways and Jet Routes; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action removes the DOLFN compulsory reporting point from Airspace Docket 89-AWA-3. The DOLFN compulsory reporting point was incorrectly spelled as "DOLFIN" and it was also described as being located in Michigan when it is actually located in Canada. Due to the location, the DOLFN compulsory reporting point should not have been published in this docket.

EFFECTIVE DATE: 0901 UTC, November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 89-22048, published on September 19, 1989, altered several airways, a jet route, and added the DOLFN compulsory reporting point (54 FR 38512). The DOLFN compulsory reporting point, which was incorrectly spelled as "DOLFIN," was described as being located in Michigan when it is actually located in Canada. Because of the location, this compulsory reporting point should not have been published in the final rule. This action corrects that final rule by removing all references to this compulsory reporting point.

The FAA finds good cause for making this correction effective in less than 30 days after publication since this rule is a minor amendment which simply notifies the public of a correction to final rule.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the preamble of the final rule (Federal Register Document No. 89-22048), as published on September 19, 1989 (54 FR 38512), is corrected to read as follows:

1. In the first sentence of the Summary section (page 38512, column 3), remove the words "and add the DOLFIN, MI, Compulsory Reporting Point located in the Detroit metropolitan area."

2. In the Supplementary Information section, under the History subsection (page 38513, column 1), in the sentence beginning with "Except for editorial changes," remove the words "and the addition of the DOLFIN, MI, Compulsory Reporting Point" and add the word "and" after "J-63,"

3. In the Supplementary Information section, under the Rule subsection (page 38513, column 1), next to the last sentence of the first paragraph, remove the words "and the DOLFIN, MI, Compulsory Reporting Point has been added" along with the preceding comma.

§ 71.203 [Corrected]

The regulatory text of the final rule is corrected to read as follows:

Under "§ 71.203 [Amended]" (page 38513, column 3), remove the following: "3. § 71.203 is amended as follows:

Dolfin, MI [New]"

Issued in Washington, DC, on November 3, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27157 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 89-AWP-14]

Subdivision of Restricted Areas R-3109A and R-3110A, Schofield-Makua, Oahu, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Restricted Areas R-3109A and R-3110A in Hawaii. This action allows large segments of the existing areas to be released for public use when not required for military use.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations subdivides Restricted Area R-3109A into R-3109A and R-3109C; and Restricted Area R-3110A into R-3110A and R-3110C. No additional special use airspace is established as a result of this action. The subdivisions will result in more efficient use of airspace by allowing more frequent release of the areas identified as R-3109C and R-3110C when not required for military use. This will serve to support civil operations and glider activity under the concept of joint-use of airspace. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R-3109A Schofield-Makua, Oahu, HI [Amended]

By removing the present boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 21°30'40" N., long. 158°08'50" W.; to lat. 21°31'15" N., long. 158°06'40" W.; to lat. 21°31'30" N., long. 158°05'35" W.; to lat. 21°31'14" N., long. 158°04'40" W.; to lat. 21°30'29" N., long. 158°04'09" W.; to lat. 21°29'25" N., long. 158°05'00" W.; to lat. 21°27'28" N., long. 158°05'55" W.; to lat. 21°29'11" N., long. 158°07'35" W.; to lat. 21°29'30" N., long. 158°08'40" W.; to the point of beginning.

Time of designation. Intermittent by NOTAM.

R-3109C Schofield-Makua, Oahu, HI [New]

Boundaries. Beginning at lat. 21°33'15" N., long. 158°08'40" W.; to lat. 21°32'14" N., long. 158°05'12" W.; to lat. 21°31'14" N., long. 158°04'40" W.; to lat. 21°31'30" N., long. 158°05'35" W.; to lat. 21°31'15" N., long. 158°08'40" W.; to lat. 21°30'40" N., long. 158°08'50" W.; to the point of beginning.

Designated altitudes. Surface to but not including 9,000 feet MSL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Honolulu FSS.

Using agency. U.S. Army, Schofield Barracks, HI.

R-3110A Schofield-Makua, Oahu, HI [Amended]

By removing the present boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 21°29'30" N., long. 158°08'40" W.; to lat. 21°31'00" N., long. 158°14'00" W.; to lat. 21°32'30" N., long. 158°14'30" W.; to lat. 21°33'15" N., long. 158°15'15" W.; to lat. 21°34'15" N., long. 158°15'15" W.; to lat. 21°32'50" N., long. 158°12'10" W.; to lat. 21°32'00" N., long. 158°11'00" W.; to lat. 21°31'25" N., long. 158°10'45" W.; to lat. 21°30'40" N., long. 158°09'40" W.; to lat. 21°30'40" N., long. 158°08'50" W.; to the point of beginning.

Time of designation. Intermittent by NOTAM.

R-3110C Schofield-Makua, Oahu, HI [New]

Boundaries. Beginning at lat. 21°34'30" N., long. 158°15'15" W.; to lat. 21°34'30" N., long. 158°13'15" W.; to lat. 21°33'15" N., long. 158°08'40" W.; to lat. 21°30'40" N., long. 158°08'50" W.; to lat. 21°30'40" N., long. 158°09'40" W.; to lat. 21°31'25" N., long. 158°10'45" W.; to lat. 21°32'00" N., long. 158°11'00" W.; to lat. 21°32'50" N., long. 158°12'10" W.; to lat. 21°34'15" N., long. 158°15'15" W.; to the point of beginning.

Designated altitudes. Surface to but not including 9,000 feet MSL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Honolulu FSS.

Using agency. U.S. Army, Schofield Barracks, HI.

Issued in Washington, DC, on November 7, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27155 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ANM-13]

Establishment of Jet Route J-589; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route J-589 between Roseburg, OR, and Victoria, BC, Canada. This action establishes a route by which aircraft may avoid arrival paths for airports in the Seattle, WA, area. Establishment of J-589 also enhances traffic management, decreases controller workload, and provides pilots with a more direct routing.

EFFECTIVE DATE: 0901 U.T.C., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On September 25, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish J–589 between Roseburg, OR, and Victoria, BC, Canada (54 FR 39193). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the Federal Aviation Regulations establishes Jet Route J–589 between Roseburg, OR, and Victoria, BC, Canada. This action will provide aircraft, traversing west of the Seattle-Tacoma International Airport, with a route to avoid arrival paths for airports in the Seattle, WA, terminal area. This action will enhance traffic management, decrease controller workload, and provide pilots with a direct routing.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–589 [New]

From Roseburg, OR; Corvallis, OR; to Victoria, BC, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on November 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–27159 Filed 11–17–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89–ANM–8]

Alteration of Jet Route J–54; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J–54 in the vicinity of Pendleton, OR, to create a more efficient traffic flow into and around the Seattle, WA, area. This action will save fuel, aid flight planning and reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On August 28, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter Jet Route J–54 in the vicinity of Pendleton, OR (54 FR 35501). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters Jet Route J–54 in the vicinity of Pendleton, OR. This action is in conjunction with Seattle Air Route Traffic Control Center's sector realignment to create a more efficient traffic flow around the Seattle, WA, area. Jet Route J–54 will provide aircraft with a more direct route and improve the traffic flow in this area. This action will save fuel, aid flight planning and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–54 [Amended]

By removing the words "Pendleton, OR" and substituting the words "Baker, OR".

Issued in Washington, DC, on November 7, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–27161 Filed 11–17–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89–AEA–12]

Alteration and Revocation of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–6 and eliminates Jet Route J–228. Jet Route J–6 is extended from Lancaster, PA, to Plattsburg, NY, along the present route of J–228. Concurrent with the extension of J–6, Jet Route J–228 is eliminated. The route along J–6 and J–228 is a heavily traveled route which requires the filing and issuance of more than one airway. This action reduces controller and pilot workload and improves flight planning.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On September 6, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J–6 and eliminate Jet Route J–228 (54 FR 36998). The route along J–6 and J–228 is a heavily traveled route which requires the filing and issuance of more than one airway. Therefore, J–6 is being altered and J–228 is being eliminated to reduce controller and pilot workload and improve flight planning. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of J–6 and eliminates J–228. Jet Route J–6 is extended from Lancaster, PA, to Plattsburg, NY, along the present route of J–228. Concurrent with the extension of J–6, Jet Route J–228 is eliminated. The route along J–6 and J–228 is a heavily traveled route which requires the filing and issuance of more than one airway. This action reduces controller and pilot workload by facilitating air-to-ground communications as well as improves flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

. Aviation safety, Jet routes

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–6 [Amended]

By removing the words "to Lancaster, PA." and substituting the words "Lancaster, PA; Broadway, NJ; Sparta, NJ; Albany, NY; to Plattsburg, NY."

J–228 [Removed]

Issued in Washington, DC, on November 7, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–27158 Filed 11–17–89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89–ANM–11]

Realignment of J–90

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns J–90 to enhance procedures for aircraft arriving and departing airports in the Seattle, WA, area. This action will reduce controller workload and aid flight planning.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On September 25, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign J–90 to enhance procedures for aircraft arriving at and departing from airports in the Seattle, WA, area (54 FR 39194). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, Seattle Air Route Traffic Control Center requested a slight bend in the jet route between Seattle, WA, and Moses Lake, WA, to provide the extra width needed to accomplish a parallel route structure. Their request is reflected in this rule. Except for the above change and editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the

Federal Aviation Regulations realigns J–90 between Moses Lake, WA, and Helena, MT. This action will create an outbound route for aircraft departing the Seattle, WA, terminal area. Arrival flights will utilize J–70. This amendment will enhance traffic management, reduce controller workload, and aid flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–90 [Amended]

By removing the words "via Ephrata, WA; Mullan Pass, ID; Lewistown, MT;" and by substituting the words "INT Seattle, WA, 091° and Moses Lake, WA, 285° radials; Moses Lake, WA; Helena, MT;"

Issued in Washington, DC, on November 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–27160 Filed 11–17–89; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors

AGENCY: United States Information Agency.

ACTION: Postponement of compliance date and request for comments.

SUMMARY: The definition of "sponsor" was first published at 14 FR 4592, July, 1949. It required that all designated sponsors of exchange visitor programs be United States agencies or institutions. On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be incorporated in the United States. On August 11, 1989, at 54 FR 32964 (corrected at 54 FR 34503, August 21, 1989, and amended at 54 FR 40386 October 2, 1989), the Agency adopted a final rule wherein the longstanding requirement of the United States citizenship of sponsors of exchange visitor programs was further defined and documentation of United States citizenship was required to be furnished to the Agency. By this notice the date by which current sponsors and responsible officers must document their citizenship is postponed. Further public comment as to the scope and impact of the rule is sought as an aid to possible redefinition.

DATES: Comments on the rule will be accepted until January 19, 1990. All written communications received on or before the closing date will be considered by the Agency before further action is taken regarding the citizenship of exchange visitor sponsors. In the interim, the Agency will not designate new responsible officers or sponsors which do not meet the criteria for citizenship as published at 54 FR 40386, October 2, 1989.

ADDRESS: Interested persons should submit relevant views or arguments to Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: In response to the May 29, 1987, notice of proposed rulemaking at 52 FR 20097, the Agency received nine comments from the public. These comments were discussed at length at 54 FR 32964, August 11, 1989, upon adoption of the final rule. Following that notice, which provides that current sponsors must comply with the definition of citizen, some sponsors complained that they did not have adequate notice. While it categorically rejects this charge, the Agency, nonetheless, now postpones the compliance date and reopens the proceeding for additional comments regarding the wording of the definition.

At the outset it should be noted that the Agency is under no legal requirement or obligation to seek public comment on the regulation. The Administrative Procedure Act at 5 U.S.C. 553(a)(1) specifically exempts from application of the Act a "foreign affairs function of the United States." There is no question that designation of exchange visitor sponsors for international exchange programs is a foreign affairs function. The operation and administration of the exchange program is an instrument of foreign policy. The J-visa was created by section 109 of the Mutual Educational and Cultural Exchange Act of 1961 to "serve solely the purposes of [that Act]." 1961 U.S. Code Cong. & Admin. News 2774. The Congressional intent behind the visa may be discerned from the statement that:

> In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people.

1961 U.S. Code Cong. & Ad. News 2760. Accordingly, the decision regarding the designation of an exchange organization is a foreign relations decision.

Thus, even though it was not required to do so but because the Agency has a long history of cooperation with its designated sponsors, the Agency announced publicly in 1987 that it proposed to amend the regulations and invited comments. It was not the Agency's intention to waive the exemption, rather, the Agency wanted to preserve its valuable working relationship with the sponsors. It was in this spirit of cooperation that comments were invited. The public was notified that the Agency perceived that it was restricting and wanted to continue to restrict designation of sponsors to United States organizations. Further, the

public was notified that the Agency was concerned about the designation of foreign corporations and organizations. At least one member of the public understood the Agency's concern and submitted a comment attempting to convince the Agency that foreign corporations should be designated as exchange visitor sponsors.

Consequently, the Agency's query to the public was, and remains, limited to a very narrow question—how to define "United States organization" for the purpose of the regulations. The Agency finds that it is axiomatic that designations must be limited to United States entities. It is clear that Congress intended that designations be so limited; since 1949 the regulations have reiterated this requirement.

The Authority To Designate

Under the United States Information and Educational Exchange Act of 1948, two programs—information dissemination and educational exchange—were established to carry out the purposes of the Act. The authority of the Director of the United States Information Agency to designate exchange visitor programs derives from two sources, the Immigration and Nationality Act and the Mutual Educational and Cultural Exchange Act. The Immigration and Nationality Act at 8 U.S.C. 1101(15)(J) defines an exchange visitor as:

> an alien * * * who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency * * * *

The description of the programs which the Director may designate is contained in section 102 of the Mutual Educational and Cultural Exchange Act of 1961.

Congress envisioned that "the private resources of this country and the cooperation of *United States citizens* abroad" would be enlisted to assist in the educational exchange. *Id.* at 1014 (emphasis added).

> [I]t is vital that the Department of State can and should cooperate with the efforts of private *citizens* and with profit and non-profit organizations interested in promoting the better understanding of the United States abroad and lasting friendship. Also, the areas of cooperation, consultation, and separate activity between the Department of State and private industry (e.g., films, radio, press, magazines, books) are sufficiently great to expect fruitful and harmonious relationships * * * * The importance of worthy private *United States* activities in the foreign field cannot be exaggerated.

Id. at 1015 (emphasis added).

Thus, from this legislative history it can be inferred that Congress contemplated that the assistance from the private sector would be assistance from the *United States* private sector. Further, it can be inferred that it is necessary that a designated organization may fairly be described as an "organization interested in promoting the better understanding of the United States abroad and lasting friendship." Upon the passage of the Mutual Educational and Cultural Exchange Act of 1961, the exchanges program in the 1948 Act was adopted by the 1961 Act. However, there was no substantial change in the underlying character of the exchanges. Rather, the 1961 Act was intended to expand and strengthen the programs established under the previous Act. 1961 U.S. Code Cong. & Ad. News 2760.

The Mutual Educational and Cultural Exchange Act requires that the schools and institutions of learning designated to participate in educational exchange be United States "schools and institutions." Section 102(1)(B). Consequently, it is necessary to define "United States schools and institutions" for educational exchanges.

It should also be noted that Congress intended that foreign governments would participate in the exchange program. However, Congress did not contemplate that these governments would be designated J–1 visa sponsors and have direct access to United States Government controlled documents. Rather, it is clear that Congress envisioned government-to-government agreements whereby the two governments would cooperate in the field of exchange. Congress did not intend that another government would have virtual control over exchange visitors to this country, as is evidenced by Section 103, which provides for agreements with foreign governments. If Congress intended that the powers of the USIA Director to determine exchange program policy and participants be vested in foreign governments, this section of the Act would be unnecessary and redundant. The rules of statutory construction preclude interpretations which would render a section of a statute either redundant or unnecessary.

The Agency Was Given Complete Discretion To Decide When To Work With Private Industry

The legislative history of the Smith-Mundt Act (1948 U.S. Code Cong. & Ad. News 1019) states:

> Section 1005 states the intention of Congress that the Department shall make use of the services of private agencies wherever practicable. The House committee report interprets this to mean that the Secretary of State should use a private agency "if a private agency can perform an activity as well as or better than a Government agency, and at no greater expense." This language should not, of course, enable any particular private agency to demand a contract or a grant of funds for participation in the purposes of this act. The discretion would seem to the committee to lie with the Secretary of State to determine what agencies should receive public funds through contracts or grants.

Similarly, the Agency has discretion to designate or to refuse to designate any private organization as an exchange visitor sponsor. The grant of discretionary power to the USIA Director is expressed in the broadest of terms. It provides only the barest standards or criteria by which the Agency is to administer educational and cultural exchanges.

As the Agency stated in its notice of August 11, 1989, 54 FR 32964, 32965:

> 8 U.S.C. 1101(a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency." No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the agency has been given broad authority to implement its legislation. The courts have found that this authority is—broader than that given to domestic agencies.
>
> Promulgation of regulations consistent with the Act and its legislative history are not considered an abuse of agency discretion. (See *Zemel* v. *Rusk*, 381 U.S. 1 (1965) and *Haig* v. *Agee*, 453 U.S. 280 (1981). See also *Slyper* v. *Attorney General*, 827 F.2d 821, 823 (D.C. Cir. 1987) wherein the court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority is 'clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face.")
>
> The Agency, in the exercise of its discretion, has determined that noncitizens should not be given excessive authority in making the foreign relations determination coupled with the strong visa issuance recommendation (which is inherent in the responsibility for filling out the IAP–66 forms) as to which aliens should be exchange visitors.

The Agency, in the exercise of its discretion and in interpreting its statute and legislative history, has determined, since 1949, that it must limit the designation of exchange visitor sponsors to United States entities. The question is how to define what constitutes a United States entity.

Thus, the question before the public is how to define "United States citizen" for the purpose of the regulations. The

present definition as promulgated on August 11, 1989 is:

"Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United states or of one of its possessions.

The Agency is concerned that the control of the entities which are designated as exchange visitor sponsors be vested in United States citizens. If the definition promulgated by the Agency excludes entities which are controlled by United States interests, the Agency will consider a new definition, provided that such definition ensures that designated sponsors will not be controlled by foreign interests. On the other hand, the Agency is also concerned that entities which have performed valuable service in the international exchange field may be excluded from the field as a result of the new definition.

Comments should address the question of whether a new definition can be drafted that will balance the requirement for United States control of the J–1 visa process with the need to preserve the international character of many of the successful exchange organizations.

The Agency is aware that some entities, such as universities, are neither corporations nor associations. Accordingly, the Agency may add the term "entity" to the definition. On the other hand, the addition of "entity created by state or local law" to the definition, may be more appropriate.

The Agency is also aware that some United States corporations do not know the citizenship of all of their stockholders. Consequently, the Agency is interested in learning whether there is another way to determine that the controlling interest is vested in United States citizens.

Additionally, the Agency understands that there are some very large partnerships in which only a very small portion of the partners are not United States citizens. On the other hand, in a small partnership, that same proportion of partners may wield considerable control. Thus, the question is whether there is a way to redefine United States partnerships to address this problem.

Dated: November 13, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89–27164 Filed 11–17–89; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8273]

RIN 1545–AM99

Group-Term Life Insurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This Treasury Decision amends final regulations and adds new temporary regulations to revise the uniform premium table used to calculate the cost of group-term life insurance coverage provided to an employee by an employer. This revision is necessary to conform to statutory changes concerning the cost of group-term life insurance for individuals over 63 years of age. These regulations provide guidance to employers who must use the uniform premium table to calculate the cost of group-term life insurance includible in the gross income of their employees. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These regulations are effective January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, 202–566–4465 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulation § 1.79–3T to part 1 of title 26 of the Code of Federal Regulations. It also amends § 1.79–3(d)(2) to provide a cross-reference to § 1.79–3T.

Explanation of Provisions

Section 79 of the Internal Revenue Code generally permits an employee (as well as a former employee) to exclude from gross income the cost of the first $50,000 of employer-provided group-term life insurance coverage. The remaining cost of group-term insurance is included in the employee's gross income. In general, the cost of group-term life insurance is determined on the basis of uniform premiums prescribed by regulations. These uniform premiums, computed on the basis of 5-year age brackets, are found in Table I of § 1.79–3(d)(2). Under prior law, section 79(c) allowed an employee older than age 63 to determine the cost of the insurance as if he or she were 63. For this reason, the present uniform premium table does not include rates for age brackets beyond the 60 to 64 age bracket.

Section 79(c) was amended by section 5013 of the Technical and Miscellaneous Revenue Act of 1988 to eliminate the special rule for employees over age 63, effective January 1, 1989. Accordingly, this document adds new temporary regulations to prescribe the cost of group-term insurance without any special rule for older employees. The rates in the new table for employees under age 65 are the same as in the existing table. The new rates for employees 65 and over have been developed using the same data as were used previously to develop the rates for employees under age 65. The new Table I appears in § 1.79–3T, and a cross-reference to that new section for group-term life insurance provided after December 31, 1988, appears in § 1.79–3(d)(2).

The Internal Revenue Service is now in the process of revising the rates in Table I for all age groups, and a study is being conducted to determine the sources of statistical data to be used for updating the rates. The public is invited to comment on this subject. Send written comments (preferably eight copies) concerning the study to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (EE–4–89), Room 4429, Washington, DC 20044.

Special Analyses

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for interpretative regulations. Therefore, these rules do not constitute regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6), and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Betty J. Clary, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 Through 1.281–4

Deductions, Exemptions, Income taxes, Taxable income.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 1, of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.79–3 is amended by revising paragraph (d)(2) to read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance on an employee's life.

* * * * *

(d) The cost of the portion of the group-term life insurance on an employee's life. * * *

(2) For the cost of group-term life insurance provided after December 31, 1988, see § 1.79–3T. For the cost of group-term life insurance provided before January 1, 1989, the following table sets forth the cost of $1,000 of group-term life insurance for one month, computed on the basis of 5-year age brackets. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year. However, if an employee has attained an age greater than age 64, the employee shall be treated as if he or she were in the 5-year age bracket 60 to 64.

TABLE I.—UNIFORM PREMIUMS, FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for 1-month period
Under 30	$0.08
30 to 34	.09
35 to 39	.11
40 to 44	.17
45 to 49	.29
50 to 54	.48
55 to 59	.75
60 to 64	1.17

Par. 3. There is added immediately after § 1.79–3 a new § 1.79–3T to read as follows:

§ 1.79–3T Uniform premium table (temporary).

For the cost of group-term life insurance provided after December 31, 1988, the following table sets forth the cost of $1,000 of group-term life insurance for one month, computed on the basis of 5-year age brackets. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for 1-month period
Under 30	$0.08
30 to 34	.09
35 to 39	.11
40 to 44	.17
45 to 49	.29
50 to 54	.48
55 to 59	.75
60 to 64	1.17
65 to 69	2.10
70 and above	3.76

Immediate guidance is needed under the provisions contained in this Treasury Decision so that employers can calculate the cost of group-term life insurance includible in their employees' gross income for reporting and for social security tax purposes. It is therefore found impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure under section 553(b) of title 5 of the United States Code.

Dated: November 2, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–27102 Filed 11–17–89; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8272]

RIN 1545–AK14

Mortality Table Used To Determine Exclusion for Deferred Payments of Life Insurance Proceeds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations that prescribe the mortality table to be used in determining the extent to which deferred payments of life insurance proceeds are excluded from gross income. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect beneficiaries of life insurance contracts who receive life insurance proceeds at a date later than the death of the insured and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective October 23, 1986, and apply to amounts received with respect to deaths occurring after October 22, 1986, in taxable years ending after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Barry S. Landau, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202) 566–3458 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 101(d) of the Internal Revenue Code of 1986 to reflect amendments made to section 101(d)(2)(B)(ii) of the Code by section 1001(b) of the Tax Reform Act of 1986 (100 Stat. 2085, 2387).

Section 101(d) provides rules relating to the payment by an insurer of life insurance proceeds at a date later than the death of the insured. Under section 101(d)(1), the amounts held by an insurer with respect to a beneficiary are prorated over the period or periods with respect to which the payments are to be made. A portion of each payment made to the beneficiary is excluded from the income of the beneficiary on the basis of this proration.

In determining the amount held by an insurer with respect to a beneficiary, section 101(d)(2)(A) provides that the amount must be held by the insurer under an agreement provided for in the life insurance contract to pay that amount on a date or dates later than the death of the insured. Section 101(d)(2)(B) provides that the amount held by the insurer is equal to the value of this agreement to the beneficiary determined as of the date of death of the insured, and as discounted on the basis of the interest rate used by the insurer in calculating payments made under the agreement and mortality tables prescribed by the Secretary

Explanation of Provisions

These regulations prescribe a mortality table, which does not distinguish among individuals on the basis of sex, to be used in determining the amount held by the insurer for purposes of section 101(d)(2) and in determining the period or periods with respect to which payments are to be made for purposes of section 101(d)(1). The mortality table prescribed in the regulation is the table set forth in § 1.72–7(c)(1), relating to the adjustment of investment in a contract for the refund feature in the case of a joint and survivor annuity. Life expectancy tables based on this mortality table are set forth in Tables V through VIII of § 1.72–9.

On September 21, 1987, the Federal Register published temporary regulations (T.D. 8161, 52 FR 35414) and a cross-reference notice of proposed rulemaking (52 FR 35447) proposing amendments to the regulations (26 CFR part 1) under section 101(d) of the Code. These amendments were proposed to conform the regulations to section 1001(b) of the Tax Reform Act of 1986. Only one comment was received. It stated that adoption of the table under the section 72 regulations in the temporary and proposed regulations appeared reasonable. No public hearing was held because none was requested. Accordingly, the proposed amendments are adopted by this Treasury Decision and redesignated as § 1.101–7 of the regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. Although a notice of proposed rulemaking soliciting public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations were interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.101–7 also issued under 26 U.S.C. 101(d)(2)(B)(ii).

Par. 2. The authority for part 1 is amended by removing the following citation:

Authority: Section 1.101–7T also issued under 26 U.S.C. 101(d)(2)(B)(ii).

Par. 3. The temporary regulations (§ 1.101–7T) published as T.D. 8161 at 52 FR 35414 are adopted as final regulations, with the following changes:

§ 1.101–7 [Redesignated from § 1.101–7T]

1. The section number is redesignated as § 1.101–7.

§ 1.101–7 [Amended]

2. Section 1.101–7 is amended by removing from its heading the language "(Temporary)."

Dated: September 21, 1989.
Approved:

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–27103 Filed 11–17–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3761/R1045; FRL–3659–9]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.364 to include residues of glyphosate resulting from the application of the monoammonium salt of glyphosate in the glyphosate tolerance. This regulation was requested by Monsanto Co.

EFFECTIVE DATE: November 20, 1989.

ADDRESS: Written objections, identified by the document control number [PP 9F3761/R1045], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on June 29, 1989 (54 FR 27422), in which it was announced that the Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed to amend 40 CFR 180.364 to include residues of glyphosate resulting from the application of the monoammonium salt of glyphosate in the glyphosate tolerance expression.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this reexpression.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and IV.

2. A 1-year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2-year oncogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with an equivocal (uncertain) oncogenic effect (a slight increase in the incidence of renal tubular adenomas, a benign tumor of the kidney, in males) at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/oncogenicity study in rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) and a systemic NOEL of 31 mg/kg/day.

5. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT); a maternal NOEL of 1,000 mg/kg/day based on weight gain deficits, altered physical appearance, and mortality during treatment at 3,500 mg/kg/day (HDT); and a fetotoxic NOEL of 1,000 mg/kg/day based on unossified sternebrae in fetuses from high-dose (3,500 mg/kg/day) dams.

6. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on altered appearance and mortality at the highest dose (350 mg/kg/day); and a fetotoxic NOEL of 350 mg/kg/day (HDT).

7. A three-generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day based on focal, unilateral, renal tubular dialation in the kidneys of male pups from high-dose dams (30 mg/kg/day). No effects on fertility or reproductive parameters were noted up to and including 30 mg/kg/day (HDT).

8. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S–9 activation); DNA repair in rat hepatocytes; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis;* reverse mutation test with *S. typhimurium;* Ames test with *S. typhimurium;* and a dominant-lethal mutagenicity test in mice (all negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published and unpublished but approved tolerances is 0.005094 mg/kg/day, which utilizes 5.0 percent of the ADI. The addition of the monoammonium salt of glyphosate does not increase the TMRC and will not increase the percentage of the ADI utilized.

Desirable data lacking are a repeat of the rat oncogenicity study. Because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided io request a repeat of the rat oncogenicity study at doses high enough to reach an MTD.

There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight of the Evidence" classification. After rereviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" having "inadequate animal evidence of oncogenicity," and recommended a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After a review of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. A subsequent review by the Agency of the data and additional information submitted concluded that the mouse oncogenicity study would not be required at this time. Once the rat oncogenicity study is received and reviewed, the need for a repeat mouse oncogenicity study will be reevaluated.

The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and may not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986, and by a letter dated July 9, 1989.

The nature of the residue in plants is adequately understood, and an adequate analytical method (gas-liquid chromatography with a flame photometric detector), is available for enforcement purposes in Volume II of the Food and Drug Administration Pesticide Analytical Manual. The established tolerances on liver and kidney of cattle, goats, hogs, horses, poultry, and sheep are considered adequate to cover residues of glyphosate and AMPA resulting from the proposed use of the monoammonium salt of glyphosate on registered crops.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (40 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364 is amended by revising the introductory texts of paragraphs (a) and (b), to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) Tolerances are established for the combined residues of glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the following agricultural commodities:

* * * * *

(b) Tolerances are established for combined residues of glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid resulting from application of the glyphosate isopropylamine salt and/or glyphosate monoammonium salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt

for growth regulater purposes in or on the following agricultural commodities:

* * * * *

[FR Doc. 89-27210 Filed 11-17-89; 8:45 am]

BILLING CODE 3560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-10; GP9-317; OR-19951(WASH)]

43 CFR Public Land Order 6752

Partial Revocation of the Executive Order Dated January 17, 1911; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 360.63 acres of land withdrawn for the Bureau of Land Management's Reservoir Site Reserve No. 1 within the Wenatchee National Forest. The Bureau of Land Management has determined that the lands are no longer needed for the purpose for which they were withdrawn. The revocation is needed to permit disposal of the lands through land exchange. This action will open the lands to surface entry. The lands have been and remain open to mineral leasing and are temporarily closed to mining by a Forest Service exchange proposal.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated January 17, 1911, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 26 N., R. 17 E.,
sec. 4, lots 1 and 2, and W½NE¼SE¼;
sec. 9, lots 2 and 3, NW¼, and NW¼SW¼.

The areas described aggregate 360.63 acres in Chelan County.

2. At 8:30 a.m., the lands will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law.

Dated: November 3, 1989.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89-27228 Filed 11-17-89; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

RIN 0980-AA36

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing final rules for the Developmental Disabilities program. These final rules implement the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 (Pub. L. 100-146). The rules include standards for determining whether a State has used Federal funds to supplement and not supplant State and local funds and a peer review process for applications under the University Affiliated Programs.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Will Wolstein, Deputy Commissioner, Administration on Developmental Disabilities, Telephone: (202) 245-2890.

SUPPLEMENTARY INFORMATION:

Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) was enacted to provide for planning activities and construction of facilities to provide services to the mentally retarded. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91-517) which constituted the first Congressional effort to address the needs of a group of persons with handicaps designated as developarental disabilities. The 1970 Amendments defined developmental disability to include individuals with mental retardation, cerebral palsy, epilepsy, and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial handicap. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; it also authorized grants for constructing, administering and operating University Affiliated Facilities.

The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following: (1) The 1975 Amendments (Pub. L. 94-103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System, and added a section on "Rights of the Developmentally Disabled;" (2) the 1978 amendment (Pub. L. 95-602) included a functional definition of developmental disabilities; and (3) the Developmental Disabilities Amendments of 1984 (Pub. L. 98-527) added a new emphasis regarding the purpose of the program, i.e., to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

The 1987 amendments extend authorization of appropriations for programs under the Developmental Disabilities Assistance and Bill of Rights Act (the Act) through FY 1990, and made other revisions to the Act. The amendments revise definitions of priority activities under State plans; require additional activities under State protection and advocacy systems; and require a variety of new reviews, studies, and reports. They also require the Secretary to consider applications for four new university affiliated programs or satellite centers each year through FY 1990.

Developmental Disabilities Program

Basic State Grants

Formula grants are made to States for planning, coordinating, and administering services for citizens with developmental disabilities. This program assists States in developing and implementing a comprehensive plan to ensure that persons with developmental disabilities have the range of services available to them which best promote self-sufficiency.

Protection and Advocacy

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of persons with developmental disabilities. This system must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of developmentally disabled individuals who are receiving, or who are eligible to receive, treatment or habilitation services.

University Affiliated Programs

Awards are made to universities, or public or nonprofit entities associated with universities, to establish University Affiliated Programs or Satellite Centers. Such programs carry out interdisciplinary training, conduct demonstrations of exemplary services, provide technical assistance, and disseminate information which will assist in improving the service delivery system.

Projects of National Significance

This program provides funding through grants and contracts for projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives and other projects of national significance which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities.

Notice of Proposed Rulemaking

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on December 7, 1988, (53 FR 49332-49335). Interested persons were given sixty days in which to send written comments regarding the proposed rules. During the sixty (60) day comment period, fifteen (15) letters containing seventeen (17) comments were received.

All written comments were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities programs. Part 1386 regulates the two formula grant programs: the Basic State Grant Program for Planning Priority Area Activities for Persons with Developmental Disabilities authorized by part B of the Act, and the Protection and Advocacy (P&A) program authorized by part C of the Act. Part 1387 applies to Projects of National Significance; and part 1388 applies to University Affiliated Programs authorized by part D of the Act.

Summary of Comments and the Departmental Response

The discussion which follows includes a summary of all comments, our responses to those comments, and a description of the changes that have been made in the final rule as a result of the comments.

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Section 1385.9(a) has been amended to add 45 CFR parts 86 and 92 to the list of references applicable to grants under parts 1386 through 1388. This is a technical and conforming change made by the Department.

PART 1386—FORMULA GRANT PROGRAMS

Subpart B—State System for Protection and Advocacy of Individual Rights

Section 1386.23 Periodic Reports: protection and Advocacy System

Section 1386.23 of the NPRM proposed new language in paragraph (c) which reiterated current reporting requirements for the submission of financial status reports and deleted the specifics regarding the time periods for submittal. We proposed that the time period requirements would be provided through a Program Instruction rather than through language in rules.

Comment: One commenter expressed the view that the rule would be revising current reporting requirements.

Response: The proposed rule did not revise current reporting requirements but deleted from the rule the specifics regarding the time periods for submittal. Therefore, no change will be made in § 1386.23(c).

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

Section 1386.30 State Plan Requirements

Section 1386.30(e)(4) proposed that each State Planning Council shall receive from the State administering agency funds to hire staff and obtain the services of other technical, professional, and clerical staff consistent with State law.

Comment: Twelve commenters stated that the proposed language in § 1386.30(e)(4) did not accurately reflect the role and the authority of the State Planning Council pursuant to section 124(c)(1) of the Act in regard to the hiring of Council staff. The commenters indicated that the State Planning Councils, not the designated agency or the State, have the authority to hire staff as long as it is done in a manner consistent with State law.

Response: The Department agrees that State Planning Councils have the authority to hire staff. Therefore, we have revised the language of the final rule to further clarify this fact.

Section 1386.33 Protection of Employee's Interests

Section 1386.33 of the NPRM regarding protection of employee's interests was amended to reflect a new statutory citation.

Comment: We received three comments regarding employee protection which interpreted this section as containing substantive changes.

Response: Since this section was revised only to include a new statutory citation in paragraph (a), we have not made a change in the final rule.

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

Section 1387.1 General Requirements

The NPRM proposed language for a new paragraph (b) in § 1387.1. The current regulatory language of § 1387.1(c) then became paragraph (d).

Comment: One commenter expressed the view that as all references to model demonstrations and direct services have been eliminated by the 1987 Amendments, projects funded under this part need not be "exemplary models" which can be "replicated," and therefore paragraph (d) should be deleted from the rules.

Response: The Department concurs with the comment that the word "model" does have a direct service delivery connotation and will delete such reference in the rule. However, we believe that projects of national significance must be exemplary and have potential for replication or otherwise clearly meet the goals of Part E of the Act. Therefore, paragraph (d) will be retained but revised accordingly.

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Section 1388.9 Peer Review

Section 1388.9(b) of the NPRM proposed that all applications for funding opportunities under Part D of the Act must be evaluated through the peer review process.

Comment: Following further consideration of the proposed language for Section 1388.9(b) we concluded that the phrase "including applications for" suggested that grants under the University Affiliated Programs (UAPs) provisions could be for purposes other than (1) core UAPs and Satellite Center funding, (2) feasibility studies, and (3) training projects in areas of emerging national significance.

Response: Since these are the only purposes for which funding is available

to UAPs under the Act, we have deleted the word "including" and substituted the term "consisting of."

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. These regulations primarily affect State agencies and University Affiliated Programs. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or meet the other threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act [5 U.S.C. Ch. 6], we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule. This proposed rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR 1387

Grant programs/education, Grant programs/social programs, Handicapped.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, university affiliated program, satellite center.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support and 13.631 Developmental Disabilities—Projects of National Significance, and 13.632 Developmental Disabilities—University Affiliated Program)

Dated: August 1, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Approved: November 1, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, chapter XIII of title 45 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for part 1385 is revised to read as follows.

Authority: 42 U.S.C. 6000 et. seq.

2. Section 1385.1 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1385.1 General.

* * * * *

(b) State Basic Program for Planning Priority Area Activities for Persons with Developmental Disabilities.

(c) Projects of National Significance; and

(d) University Affiliated Programs (UAPs)

3. Section 1385.3 is amended by revising the definition of "Act" and by adding the definition of "ADD" and "OHDS" to read as follows. The introductory text is republished for the convenience of the reader.

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq).

* * * * *

ADD means the Administration on Developmental Disabilities, within the Office of Human Development Services.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

4. Section 1385.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1385.4 Rights of persons with developmental disabilities.

* * * * *

(b) In order to comply with section 122(b)(6)(C) of the Act (42 U.S.C. 6022(b)(6)(C)), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

5. Section 1385.5 is amended by revising paragraph (b) to read as follows:

§ 1385.5 Recovery of Federal funds used for construction of facilities.

* * * * *

(b) The State Council or the appropriate UAP official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

* * * * *

6. Section 1385.9(a) is amended by adding 45 CFR parts 86 and 92 in numerical order to the list of references applicable to grants under sections 1386–1388.

§ 1385.9 Grants administration requirements.

* * * * *

45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

* * * * *

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

* * * * *

PART 1386—FORMULA GRANT PROGRAMS

7. The authority citation for part 1386 is revised to read as follows:

Authority: 42 U.S.C. 6000 et. seq.

Subpart A—Basic Requirements

8. Section 1386.2 is amended by revising paragraph (a) to read as follows:

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

* * * * *

Subpart B—State System for Protection and Advocacy of Individual Rights

9. Section 1386.23 is amended by revising paragraph (c) and the OMB statement to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

* * * * *

(c) Financial Status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

[Information collection requirements contained in paragraph (b) under control number 0980–0160 and paragraph (c) under control number 0348–0039 are approved by the Office of Management and Budget.]

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

10. Section 1386.30 is amended by revising paragraph (e)(4) to read as follows:

§ 1386.30 State plan requirements.

* * * * *

(e) * * *

(4) Each Planning Council may, at its option, hire staff and obtain the services of other technical, professional, and clerical staff, that the council determines is necessary to carry out its functions. The designated State Agency shall disburse funds for such personnel consistent with State Law.

11. Section 1386.32 is amended by revising paragraph (a) and the OMB statement to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial Officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

* * * * *

[Information collection requirements contained in paragraph (a) under control number 0348–0039 and paragraph (b) under control number 0980–0172 are approved by the Office of Management and Budget.]

12. Section 1386.33 is amended by revising paragraph (a) to read as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

* * * * *

13. In § 1386.35 a new paragraph (c) is added to read as follows:

§ 1386.35 Allowable and non-allowable costs for basic State grants.

* * * * *

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

14. Part 1387 is revised to read as follows:

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

Authority: 42 U.S.C. 6000 et. seq.

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 162 of the Act.

(b) Based on section 162(c), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the **Federal Register.**

(d) Projects of national significance must be exemplary models and have potential for replication or otherwise meet the goals of part E of the Act.

15. The heading of part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

16. The authority citation for part 1388 continues to read as follows:

Authority: 42 U.S.C. 6000 et. seq.

17. In part 1388 wherever the term UAF is used, it is changed to UAP, and wherever the term University Affiliated Facilities is used, it is changed to University Affiliated Programs.

18. Section 1388.5 is amended by revising paragraph (f)(3) to read as follows:

§ 1388.5 Program criteria—training

* * * * *

(f) * * *

(3) Training priorities must consider national manpower needs with particular attention to the following areas:

(i) Early intervention programs;

(ii) Programs for elderly persons with developmental disabilities; and

(iii) Community based programs.

19. A new § 1388.9 has been added to read as follows:

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP and Satellite Center applications.

(b) Peer review panels will evaluate all applications under Part D, Section 152, consisting of applications for:

(1) Core UAP and Satellite Center funding;

(2) Feasibility studies; and

(3) Training projects in areas of emerging national significance.

(c) Panels will be composed of individuals with expertise and experience in the field appropriate to the activities conducted by UAP and Satellite Centers.

[FR Doc. 89-26935 Filed 11-17-89; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 178, and 179

[Docket No. HM-166W, Amdt Nos. 171-104, 172-118, 173-216, 174-66, 178-90, and 179-42]

RIN 2137-AA44

Transportation of Hazardous Materials; Miscellaneous Amendments; Correction

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; corrections.

SUMMARY: This document makes certain corrections to a final rule issued under Docket HM-166W, which was published in the **Federal Register** on Wednesday, September 20, 1989 (54 FR 38790). The final rule amended the Hazardous Materials Regulations (HMR) by updating certain regulations, and adopting certain provisions which resulted in reducing RSPA's backlog of rulemaking petitions and eliminating the need for certain DOT approvals.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Morris, Standards Division, DHM-12, Office of Hazardous Materials Transportation, 400 Seventh St. SW., Washington, DC 20590. (202) 366-4488.

EFFECTIVE DATE: November 15, 1989.

SUPPLEMENTARY INFORMATION: This document corrects editorial, typographical and printing errors contained in a final rule published under Docket HM-166W, on September 20, 1989 (54 FR 38790). In addition, this document corrects an error of omission pointed out by the National Industrial Transportation League in a late-filed petition for reconsideration concerning 49 CFR 173.31. In changing requirements for coupler vertical restraint systems, RSPA provided a one year implementation period for upgrading non-specification tank cars. RSPA inadvertently failed to provide an equivalent period for upgrading DOT specification tank cars which previously were not required to have coupler vertical restraint systems, specifically those used for non-regulated materials. This error is corrected by adding a sentence to § 173.31(a)(5) to provide until November 15, 1990 for bringing these cars into compliance. The following section-by-section review addresses corrections to the September 20, 1989 final rule.

Section 171.7

In § 171.7, on page 38793, paragraph (d)(33) which incorporates by reference a publication of The Fertilizer Institute is redesignated as paragraph (d)(31).

Section 171.12

In place of revising the last sentence in § 171.12(b), the amendatory language to § 171.12, on page 38793, placed the new text incorrectly after the last sentence in paragraph (b). Paragraph (b) is corrected in this document.

Section 172.101

In § 172.101, the Hazardous Materials Table, beginning on page 38793, is amended by removing the letter "A" from column (1) for the entry "1,1-Difluoroethylene (R-1132A)." The description in the entry "Vinyl methyl ether" is corrected to read "Vinyl methyl ether" and a plus (+) sign is reinstated in column (1). By oversight, the entry "Life rafts, inflatable" which was replaced by the entry "Life-saving appliances, self-inflating" was not removed from the table. This oversight is corrected in this document.

A separate cross reference entry. "Perchloroethylene *See* Tetrachloroethylene" with the identification number "NA 1897" was added in the final rule. RSPA wishes to alert users that "Perchloroethylene" is not an international description and, therefore, the identification number is preceded with the "NA" prefix. Consistent with § 172.101(j), use of the "UN" prefix with the description "Perchloroethylene" will no longer be authorized after November 15, 1990. The entry "Tetrachloroethylene *or* Perchloroethylene" which appears with the identification number "UN 1897" is corrected to read "Tetrachloroethylene" in column (2). For this same reason, for the entry containing the description, "Tetraethylammonium perchlorate (dry)", which also is not an international description, the identification number prefix is changed from "UN" to "NA".

Section 173.31

In § 173.31(a)(5), on page 38794, the section is revised to include the effective date of November 15, 1990 for DOT specification tank cars used for non-regulated materials.

Section 173.264

In § 173.264(b)(1), on page 38795, the section reference "173.38" is corrected to read "178.38".

Section 173.304

In § 173.304(b), on page 38795, the description "1,1-Difluorethylene" is corrected to read "1,1-Difluoroethylene".

Section 174.510

In § 174.510, on page 38796, the fourth sentence rather than the third sentence, is amended by removing the phrase ", dated May 7, 1971".

Section 178.224-1

In § 178.224-1(a)(1) table, on page 38797, several editorial and printing errors are corrected.

Section 179.203-1

In § 179.203-1(c), which was omitted in item 48 on page 38799, the reference to "§ 179.105-6" is corrected to read "§ 179.14."

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Import and export shipments, Incorporation by reference.

49 CFR Part 172

Hazardous materials transportation, Hazardous materials table.

49 CFR Part 173

Hazardous materials transportation, Packagings and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Railroad safety.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous Materials transportation, Railroad safety, Tank cars.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 174, 178 and 179 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, on page 38793, paragraph (d)(33) is correctly designated as paragraph (d)(31).

3. In § 171.12, on page 38793, paragraph (b) is correctly revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) Except for Class A and Class B explosives and radioactive materials, a hazardous material which is classed and labeled in accordance with the conditions and limitations specified in § 172.102 of this subchapter when being imported into or exported from the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation and transported within the United States if it is otherwise offered, accepted, and transported in accordance with this subchapter. In addition—

(1) An appropriate shipping name specified for a material in § 172.102 of this subchapter may be substituted for its proper shipping name in § 172.101 of this subchapter (subject to the conditions and limitations of this paragraph and § 172.102 of this subchapter) if all or a portion of this transportation of the material is by vessel; and

(2) A hazardous material may be stowed and segregated in freight containers in conformance with the IMDG Code, when transported by motor vehicle or rail car, if a portion of the transportation of the material is by vessel.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 1.

§ 172.101 [Amended]

5. In § 172.101, beginning on page 38793, the amendments to the Hazardous Materials Table are corrected as set forth below:

a. For the added entry, "1,1-Difluoroethylene (R-1132A)", the letter "A" is removed in column (1).

b. For the added entry, "Tetraethylammonium perchlorate (dry)," the identification number prefix is changed from "UN" to "NA" in column (3A).

c. The revised description "Vinly methyl ether", appearing in column (2), is corrected to read "Vinyl methyl ether" and a plus (+) is added in column (1).

5a. In addition, § 172.101 is correctly amended by removing the line entry for "Life rafts, inflatable" and the description "Tetrachloroethylene *or* Perchloroethylene", appearing in column (2), is revised to read "Tetrachloroethylene".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

7. On page 38794, in the second column, paragraph (a)(5) of § 173.31 is correctly revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(5) Each DOT specification tank car shall be equipped with a coupler vertical restraint system that meets the requirements of § 179.14 of this subchapter. Prior to November 15, 1990, this requirement does not apply to a tank car used only for the transportation of materials not subject to the requirements of this subchapter.

* * * * *

§ 173.264 [Amended]

8. In amendatory instruction paragraph 20 for § 173.264, on page 38795, the reference to "173.38" is corrected to read "178.38".

§ 173.304 [Amended]

9. In § 173.304(b), on page 38795, the description "1,1-Difluoroethylene (R-1132A)" is correctly added to read "1,1-Difluoroethylene (R-1132A)".

PART 174—CARRIAGE BY RAIL

10. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

§ 174.510 [Amended]

11. In amendatory instruction paragraph 26, on page 38796, for § 174.510, the reference to "the third sentence" is corrected to read "the fourth sentence."

PART 178—SHIPPING CONTAINER SPECIFICATIONS

12. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808, 1808; 49 CFR part 1, unless otherwise noted.

13. The table, in § 178.224-1(a)(1), on page 38797, is correctly revised to read as follows:

§ 178.224-1 Construction requirements.

[a] * * *

[1] * * *

Net weight of contents (pounds) not over	Capacity, maximum (gallons) (not over)	Diameter inside maximum (inches)	Sidewall strength (lbs.) [1,2]	Fiber [3]		Steel, U.S. (gauge)	Wood thickness (inches)		Plastic
				Thickness (inches)	Strength		Solid [4,5,6]	Plywood at least 3-ply construction	Top thickness
60	5	11¼	500	0.090	800	28	[illegible]/16	3/11	[illegible]
60	20	18½	600	.120	900	26	[illegible]/16	3/10	.090
115	20	18½	700	.120	900	26	[illegible]/16	3/8	.090
115	75	25	500	.160	1100	24	[illegible]/16	7/16	.090
250	75	25	600	.200	1200	24	[illegible]/16	7/16	.090
400	75	25	1000	.220	1200	24	[illegible]/16	7/16	.090

Tops and bottoms

[1] Mullen or Cady Test. Either of the following test methods may be used. When more than single ply, test shall be determined from the summation of the tests of individual plies; or, when test is made on a complete drum, the punctures shall be made from the exterior to the interior surface in which case the values for sidewall shall be not less than 80 percent of the value in the above table and the values for fiber tops and bottoms shall be not less than the value in the above table. There shall be a minimum of six tests and the average shall be not less than the prescribed minimum requirements.

[2] Sidewalls. Sidewalls to be convolutely wound of fiberboard at least 0.012 inch thick the plies being secured together with adhesives; or may consist of an outer shell and an inner tube each convolutely wound with each fiberboard ply not less than 0.012 inch thick and secured together with adhesive. Drums may contain barrier or lining materials.

[3] When made of 2 or more discs, the discs must be fastened together with adhesive

[4] Joints in head must be Linderman joints, glued, except as specified in footnote 5.

[5] Wooden heads at least one-half inch thick having kraft paper glued on both sides at all contact areas with water-resistant adhesive are authorized provided tests prescribed in § 178.224–2 are successful. Joints of any type are authorized.

[6] Minimum thickness may be reduced to 2 13/32 inch for lumber dressed two sides

. . . . .

PART 179—SPECIFICATION FOR TANK CARS

14. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.203–1 [Amended]

15. In amendatory instruction paragraph 48 on page 38799, "§ 179.203–1(c)", should have appeared in the listing in column 3 between "179.106–4(b)" and "179.203–2(a)(1)".

Issued in Washington, DC on November 13, 1989 under authority delegated in 49 CFR part 1

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–27039 Filed 11–15–89; 11:08 am]

BILLING CODE 4910–60–M

Federal Highway Administration

49 CFR Part 383

RIN 2125–AB68

Commercial Driver Testing and Licensing Standards; Corrected Description of Vehicle Group "C"

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects the description of Vehicle Group C in 49 CFR 383.91 to conform with the definition of "commercial motor vehicle" in § 383.5. Group C will now explicitly include any vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B, but that is either designed to transport 16 or more passengers including the driver, or used in the transportation of hazardous materials requiring placarding. Figure 1 accompanying § 383.91 is revised accordingly.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Neil E. Moyer, Office of Motor Carrier Standards, (202) 366–5844, or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366–1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On the basis of section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (title XII of Pub. L. 99–570), 49 CFR 383.5 defines a "commercial motor vehicle (CMV)" in two ways: by weight, and by specific use. Any combination motor vehicle having a gross combination weight rating (GCWR) of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds—regardless of the commodities it carries or its passenger-handling capacity—is a CMV, and forms part of Vehicle Group A as defined in § 383.91. Similarly, any single motor vehicle having a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR, is a CMV regardless of its lading or its seating capacity, and belongs in Vehicle Group B according to § 383.91.

Section 383.5 further defines as a CMV—*regardless of size*—any motor vehicle or combination of motor vehicles that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 CFR part 172, Subpart F. Section 383.5 clearly intends that *all* vehicles not meeting the weight- and configuration-based requirements of Vehicle Group A or B, but fulfilling the seating capacity or hazardous materials use requirements, shall be CMVs, and their drivers shall hold commercial drivers' licenses (CDLs). It is precisely this group of vehicles and drivers that the FHWA intended to subsume under its definition of Vehicle Group C in § 383.91(a)(3).

As published July 21, 1988 (53 FR 27628), the Group C definition reads as follows:

> Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group comprises vehicles designed to transport 16 or more passengers including the driver, and vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

In thus defining Group C, the FHWA attempted to specifically delineate all vehicle configurations falling outside the definitions of Group A or B. The following configuration was, however, mistakenly omitted from the definition of Group C:

> Any vehicle less than 26,001 pounds GVWR towing a vehicle in excess of 10,000 pounds GVWR, *provided the GCWR of the combination is less than 26,001 pounds.*

This technical amendment corrects that error by redefining Group C to include any single vehicle, or combination of vehicles, that does not meet the definition of Vehicle Group A or B, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials requiring placarding under the Hazardous Materials Regulations.

To conform with this amendment to the regulatory text, the verbal description of Group C in Figure 1, incorporated in § 383.91(d), has been revised and a new version of the figure added.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is technical in nature and needed solely to correct existing regulations. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

Since the changes in this document are technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, and Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on November 15, 1989.

Larry L. Thompson,

Chief Counsel, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, Subchapter B, as set forth below.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES [AMENDED]

1. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: Title XII of Public Law 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.91 is amended by revising paragraph (a)(3) to read as follows:

§ 383.91 Commercial motor vehicle groups.

(a) * * *

(1) * * *

(2) * * *

(3) *Small vehicle (Group C)*—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

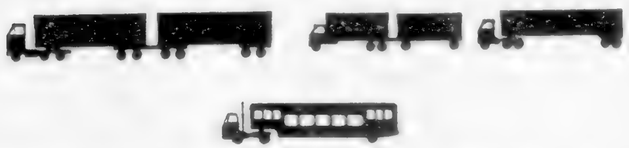
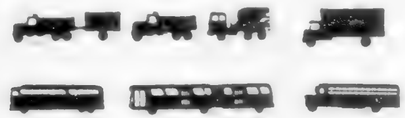
* * * * * *

3. Figure 1, incorporated in § 383.91, is amended by revising the verbal description of Group C. The figure, as revised, appears as follows.

BILLING CODE 4910–22–M

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to: 
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to: 
C	Any single vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B as contained herein, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials. Examples include but are not limited to: 

*The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

Proposed Rules

Federal Register
Vol. 54, No. 220
Monday, November 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket 89-197]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a proposed rule to amend the Plant Protection and Quarantine regulations by: (1) Allowing a hot water dip treatment for additional varieties of mangoes from certain areas where *Anastrepha* species of fruit flies exist; (2) allowing a hot water dip treatment for mangoes from certain areas where the Mediterranean fruit fly exists; (3) lowering slightly the required temperature of the hot water dip for "Francis"-type mangoes; and (4) allowing mangoes treated in accordance with Plant Protection and Quarantine Treatment Manual (as revised by the proposal) to be moved from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Consideration will be given only to comments received on or before December 20, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-132. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Staff Officer, Port Operations, PPQ, AZPHIS, USDA, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8646.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, we published in the **Federal Register** (54 FR 40116-40118, Docket No. 89-132) a document proposing to (1) allow a hot water dip treatment for additional varieties of mangoes from certain areas where *Anastrepha* species of fruit flies exist; (2) allow a hot water dip treatment for mangoes from certain areas where the Mediterranean fruit fly (Medfly) exists; (3) lower slightly the required temperature of the hot water dip for "Francis"-type mangoes; and (4) allow mangoes treated in accordance with the Plant Protection and Quarantine Treatment Manual (as revised by the proposal) to be moved from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States.

The proposed rule requested the submission of written comments on or before October 30, 1989. We have received a request from the California Department of Food and Agriculture for a copy of the research data that demonstrates the effectiveness of the hot water dip treatment for the Mediterranean fruit fly and a copy of the data that supports a lower treatment temperature for the "Francis" and "Carrot" varieties of mangoes. The commenter also requested that the comment period be extended to allow for a review of the research data requested and follow-up comment on the efficacy of the proposed treatments.

In response to this request, we are reopening and extending the comment period for Docket No. 89-132 for 30 days from the date for publication of this notice. We will consider all written comments received on or before December 20, 1989. This action will allow the requestor and all other interested persons additional time to prepare comments.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51 and 371.2(c).

Done in Washington, DC, this 15th day of November 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-27194 Filed 11-17-89; 8:45 am]
BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Fees Paid by Federal Credit Unions; Share Insurance and One Percent Capitalization Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: These are proposed rules to amend existing §§ 701.6 and 741.9 of the NCUA Rules and Regulations (12 CFR 701.6 and 741.9) to add a new subsection to each Section entitled "Assessment of Administrative Fee and Interest for Delinquent Payment." The proposed amendments provide for assessment of an adminstrative fee for any operating fee, insurance capitalization deposit, or insurance premium payment which is not received on its due date and is intended to compensate the NCUA for the additional administrative expenses which are incurred as a result of late payments. The proposed amendments also provide for interest on such late payments and are intended to compensate the NCUA for interest lost by NCUA on these funds due to late payment by a credit union.

DATE: Comments musts be received on or before December 22, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller, at the above address, telephone: (202) 682-9710, or Sheila A. Albin, Staff Attorney, at the above address, telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION: Section 105 and 202 of the Federal Credit Union Act (12 U.S.C. 1755 and 1782) authorize the NCUA Board to assess operating fees on all Federal credit unions and the insurance capitalization deposit and insurance premiums on all federally-

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insured credit unions. Sections 120 and 209 of the Federal Credit Union Act (12 U.S.C. 1766 and 1789) grant the NCUA Board general rulemaking authority. In addition, 31 U.S.C. 3717 grants Federal agencies the authority to impose fees and penalties for processing and handling delinquent claims and interest on such claims.

In December of every year, the NCUA sends invoices to all federally-insured credit unions for the amount due for their capitalization deposit, and annual insurance premium (if assessed). For Federal credit unions, the invoice also sets out the amount due for the credit union's operating fee. Each year, a significant number of credit unions fail to remit the required payments on time. As a result, the NCUA is required to undertake collection efforts which involve: identifying those credit unions that are delinquent; maintaining accounts receivable records; sending additional notices to the delinquent credit unions stating that the share insurance deposit, insurance premium, and/or operating fee are overdue; and, as necessary in some cases, making personal contact with the credit union through telephone calls or on-site visits to collect the delinquent fees. Also, delinquent payments must be processed individually rather than centrally, which results in additional processing burdens. Finally, when the operating fees and share insurance deposits/premiums are not received on time, the NCUA loses the interest it would otherwise receive on its investment of these funds in U.S. Treasury securities.

Pursuant to the authorities noted above, the Board has determined that these costs should be charged to the delinquent credit unions rather than borne by all credit unions. Because the administrative burden of identifying and providing initial notices to delinquent credit unions is essentially the same irrespective of the amount owing, the Board has determined that it is fair to charge a basic administrative fee for this cost. An internal study is currently in process to determine what the basic cost is. For payments due in 1990, the basic administrative fee for delinquent payments is not expected to exceed $100. This fee will be calculated on the basis of the actual staff time involved and direct costs of identifying delinquent credit unions and providing late notices to them and will be set forth in the final rule. In addition, delinquent credit unions will be charged for the actual cost of collection work by NCUA personnel calculated by multiplying the actual time expended by the hourly compensation of the NCUA staff members typcially involved in these activities. For 1990 payments, the hourly rate will be $20. This is based on the average hourly cost of salaries and benefits of NCUA staff. Finally, the proposed rule imposes interest charges on the delinquent payment as authorized under 31 U.S.C. 3717. Federal agencies are authorized under 31 U.S.C. 3717 to charge interest on outstanding claims at the average investment rate for Treasury tax and loan accounts. Interest will accrue from the date the payment is due; however, credit unions have a thirty-day grace period before the interest will be charged. The interest rate effective for 1990 payments is 9% (*see* 54 FR 45886 October 31, 1989.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions, primarily those under $1 million in assets. The reasons for this determination are that the administrative fee to be charged all credit unions irrespective of the amount due is not large and will not create a financial burden for the smaller credit unions. Further, the assessment of interest provides a built-in sliding scale because interest will be charged on the amount owing, which is smaller for the smaller credit unions. The proposed rule will not create any significant or disproportionate demands for legal, accounting, or consulting expenditures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The proposed change to § 741.9 will apply to both Federal credit unions and federally-insured, state-chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulation. As noted above, the Board believes that costs should be charged to delinquent credit unions rather than to all credit unions.

List of Subjects in 12 CFR Parts 701 and 741

Credit unions, Insurance requirements, Late fees.

By the National Credit Union Administration Board on November 13, 1989.

James J. Engel,

Acting Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755–57, 1759, 1761a, 1761b, 1766–67, 1782, 1784, 1787–89. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 3601–3610.

2. Section 701.6 is amended by adding paragraph (d) to read as follows:

§ 701.6 Fees paid by Federal credit unions.

* * * * *

(d) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each Federal credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is postmarked later than the date stated in the notice to the credit union provided under § 701.6(c), unless delinquent payment is due to circumstances beyond the control of the credit union.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the National Credit Union Administration Board based upon the administrative costs of such delinquent payments to the Administration in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by Administration personnel multiplied by the average hourly salary and benefits costs of such personnel as determined by the National Credit Union Administration Board.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

(4) If a credit union makes a combined payment of its operating fee and its share insurance deposit, as provided in section 741.9, and such payment is delinquent, then only one administrative fee will be charged and interest will be charged on the total combined payment.

3. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790. Section 741.9 is also authorized by 31 U.S.C. 3717.

4. Section 741.9 is amended by adding paragraph (k) to read as follows:

§ 741.9 Insurance premium and one percent deposit.

* * * * *

(k) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each federally-insured credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union unless delinquent payment is due to circumstances beyond the control of the credit union.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the National Credit Union Administration Board based upon the administrative costs of such delinquent payments to the Administration in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by Administration personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

[FR Doc. 89–27088 Filed 11–17–89; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 89–ANM–15]

Proposed Alteration of Jet Route J–534; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Jet Route J–534 in the vicinity of Bellingham, WA. This jet route would provide parallel route structures for aircraft departures and arrivals in the Vancouver, BC, Canada, area. This action would enhance the flow of air traffic and reduce controller workload.

DATES: Comments must be received on or before December 29, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 89–ANM–15, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ANM–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter Jet Route J–534 in the vicinity of Bellingham, WA. Altering this jet route would provide parallel route structures for aircraft departures and arrivals in the Vancouver, BC, Canada, area. This action would enhance the flow of air traffic and reduce controller workload. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-534 [Amended]

By removing the words "From Bellingham, WA," and substituting the words "From INT Seattle, WA, 033°T(011°M) and Bellingham, WA, 090°T(067°M) radials; Bellingham;"

Issued in Washington, DC, on November 7, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27162 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 91052-9252]

Requests for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy based export controls in the Export Administration Regulations (15 CFR parts 730 through 799) to determine whether they should be modified, rescinded or extended. To help BXA make this determination, BXA is seeking comments on how existing foreign policy based export controls maintained under section 6 of the Export Administration Act of 1979, as amended (EAA), have affected exporters and the general public.

DATE: Comments must be received by December 15, 1989 to assure full consideration in the formulation of export control policies.

ADDRESS: Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (Room 1622), Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4830.

SUPPLEMENTARY INFORMATION:

Generally, the foreign policy controls maintained by the Bureau of Export Administration relate to the following: human rights (§ 776.14), South Africa and Namibia (§ 785.4(a)), Libya (§ 785.7), anti-terrorism (§ 785.4(d)), chemical warfare (§ 785.4(e)), regional stability (§ 776.16), embargoed communist countries (§ 785.1), truck manufacturing equipment for the Soviet Union's Kama River and Zil truck plants (§ 785.2(e)), and technology used in developing missiles capable of delivering nuclear weapons (§ 776.18). The licensing policies for these control programs are described in part 776 and 785 of the Export Administration Regulations.

On January 19, 1989, the Secretary submitted a report to Congress extending foreign policy controls for another year. All foreign policy export controls in effect as of that date were extended. One new control since that date has been promulgated, pertaining to chemical and biological agents (§ 776.19). This control was published in the **Federal Register** on February 28, 1989 (54 FR 8281).

To assure maximum public participation in the review process, comments on the extension or revision of the existing foreign policy controls for another year are solicited. BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by the Department in reviewing the controls and developing the report to Congress. Among the criteria the Department considers in determining whether to continue or revise U.S. foreign policy export controls are the following:

1. The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that the foreign policy purpose cannot be achieved through negotiations or other alternative means;

2. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

3. The likelihood that the reaction of other countries to the extension of such controls by the United States will render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

4. Whether the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives;

5. The ability of the United States to enforce the proposed controls effectively; and

6. The foreign policy consequences of not extending the export controls.

The Department will accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communication between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-445 of December 29, 1981, Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861 of September 10, 1985).

Dated: November 14, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-27186 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-3-89]

RIN: 1545-AN51

Group-Term Life Insurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing final and temporary regulations relating to group-term life insurance. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to apply to taxable years beginning after December 31, 1988. Written comments and requests for a public hearing must be delivered or mailed by January 19, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (EE-3-89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, 202-566-4465 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** add a new temporary regulation § 1.79-3T to part 1 of title 26 of the Code of Federal Regulations. A cross-reference to that new section appears in § 1.79-3(d)(2). The final regulations that are proposed to be based on these temporary regulations would include the new provisions directly in § 1.79-3(d)(2). Those final regulations would provide rules to calculate the cost of group-term life insurance provided by an employer to an employee. For the text of the temporary regulations, see T.D. 8273 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed regulations will not be major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations have been sent to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Betty J. Clary, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Fred. T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89-27107 Filed 11-17-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175 and 181

[CGD 81-023]

RIN 2115-AA58

Equipment Requirement for Recreational Boats; Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: A pamphlet containing information about the selection, use and care of personal flotation devices (PFD's) is required to be packaged with each new PFD sold or offered for sale. The requirements for PFD pamphlets need to be revised and updated. The Coast Guard proposes to incorporate by reference the PFD pamphlet design and packaging requirements in Underwriters Laboratories Standard for Marine Buoyant Devices (UL 1123). This rulemaking will result in improved PFD pamphlets which will increase boater awareness and use of PFD's. The Coast Guard also proposes to revise other PFD related sections to reflect approval of special purpose Type V PFD's, and to remove an obsolete exemption from PFD carriage requirements.

DATES: Comments must be received on or before February 20, 1990.

ADDRESSES: Comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600), U. S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be deljvered to and will be available for examination and copying at the Marine Safety Council, Room 3600, 2100 Second Street, SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

A copy of UL 1123 PFD Pamphlet requirements and an example of a type III PFD pamphlet may be obtained by sending a self-addressed 8½" × 11" envelope with postage paid for 1 ounces

to Commandant (G–NAB/12), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001 (or by calling the Coast Guard at (202) 267–1077 for a copy of the example pamphlet only).

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Office of Navigation Safety and Waterway Services (G–NAB/12), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 0979, between 8 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments on these proposed rules. Persons submitting comments should include their names and addresses, identify this Notice (CGD 81–023) and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope. The proposal may be changed in light of comments received. All comments received by the end of the comment period will be considered before final action is taken on this proposal. No public hearing has been scheduled, but one may be held at a time and place to be set in a later notice in the **Federal Register**, if requested by persons raising a genuine issue and if it is determined that the rulemaking will benefit from oral presentations.

Drafting Information: The principal persons involved in drafting this proposed rule are Carlton Perry, Project Manager, and Christena Green, Project Attorney, Office of the Chief Counsel.

Background: The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 12, 1982 (47 FR 15606). That notice proposed to revoke an obsolete exception to PFD carriage requirements in effect for certain kayaks or canoes before October 1, 1977. It also proposed a number of editorial changes, including a revision of the specified text for PFD pamphlets. Interested persons were given until June 11, 1982, to submit comments. No public hearing was held.

Discussion of Comments: A total of 3 comments were received in response to the NPRM. The comments came from a State boating law administrator, a PFD manufacturer, and Underwriters Laboratories.

PFD size and fit. One comment suggested adding a phrase in 33 CFR 175.15 to require that each PFD carried must be of suitable size and fit for the intended wearer. This requirement already exists in § 175.21(c). However, the Coast Guard proposes to amend § 175.21 to make the size and fit requirements more apparent.

Type IV PFD description. One comment suggested that the term "Special Purpose Water Safety Buoyant Device" not be used in Table 175.23 for both Type III and Type IV PFD's, because the term, used to introduce Type III PFD's in the early 1970's, only confuses the individual consumer. This term is included in the equivalents table because that is the actual term on the device approval label. However, the Coast Guard now proposes to remove Table 175.23.

Removal of PFD pamphlets. One comment agreed that pamphlets should not be removed from PFD's prior to sale, but that in his experience, a mere statement on the PFD pamphlet would not prevent merchants frm removing the pamphlet from the device. Although manufacturers are required to enclose or attach a pamphlet to each PFD, there is no safeguard requirement to prevent removal of that pamphlet by others prior to sale of the PFD. The Coast Guard proposes to revise § 181.703 to prohibit the sale of a PFD unless a pamphlet meeting UL 1123 is attached.

Contents of PFD information pamphlet. Both the PFD manufacturer and Underwriters Laboratories suggested numerous specific text revisions to improve the descriptions and comparisons of various Types of PFD's and the information on care and use of PFD's generally.

In considering the extensive comments from the PFD manufacturer and Underwriters Laboratories, the Coast Guard worked with the National Boating Safety Advisory Council (NBSAC), Underwriters Laboratories (UL), and PFD manufacturers to develop improved text, illustrations and presentation. In November 1985, NBSAC endorsed development of a PFD pamphlet standard which could be incorporated by reference, rather than specifying text in Title 33 of the Code of Federal Regulations.

Since then, a number of PFD manufacturers, including the above commenter, have been actively involved with the Coast Guard and Underwriters Laboratories (UL) to develop an improved PFD information pamphlet to provide to purchasers of new PFD's. A public meeting (51 FR 3807; January 30, 1986) was held on March 7, 1986, in Tampa, Florida, to discuss revising the required PFD pamphlet text. UL 1123 was published on August 22, 1988, and became effective on March 1, 1989. The PFD pamphlet text and illustration requirements in UL 1123 provide the same type of information as currently required in 33 CFR 181.705, with updated technical performance information and an improved format more likely to be read and understood by the PFD purchaser. The PFD pamphlet packaging requirements in UL 1123 provide the same access to the PFD pamphlet by the purchaser as currently required in 33 CFR 181.703. The UL 1123 standard requires all manufacturers of PFD's using UL for PFD inspection (subscribers to UL's Listing Service for Marine Buoyant Devices) to provide with each PFD a pamphlet meeting the text and illustration requirements of UL 1123.

Because the pamphlet text and illustration requirements of UL 1123 contain all the revisions proposed in the April 12, 1982 (47 FR 15606) NPRM, the Coast Guard now proposes to incorporate by reference the PFD pamphlet text and illustration requirements in UL 1123, 5th edition, rather than revising the existing text and illustration requirements. This incorporation by reference would extend the PFD pamphlet text and illustration requirements of UL 1123 to *all* PFD manufacturers.

While the Coast Guard is considering comments to this proposal, and until a final action is taken and made effective, subscribers to UL's Listing Service for Marine Buoyant Devices would be forced to bear the burden of complying with two separate PFD pamphlet requirements serving the same purpose. To relieve this unnecessary burden in the interim, the Coast Guard published an exemption from the requirements of 33 CFR 181.703 and 181.705 (54 FR 7763; February 23, 1989) for any PFD manufacturer complying with the PFD pamphlet requirements of UL 1123. The exemption became effective February 23, 1989, and terminates on February 23, 1992, unless sooner superseded by a final rulemaking, rescinded or otherwise terminated by separate notice.

Disposition of Items Proposed in 1982 NPRM: The following is a discussion of the revisions proposed in the 1982 NPRM. The Coast Guard has retained two of these revisions in this SNPRM.

- Delete an obsolete exception for certain kayaks and canoes valid prior to October 1, 1977. Retained in SNPRM.
- Remove the word "pamphlet" and comparable references in § 175.703 to allow PFD manufacturers to provide required information on paper other than pamphlets. Inconsistent with PFD pamphlet requirements of UL 1123 proposed for incorporation by reference. Not retained in SNPRM.
- Make PFD carriage requirements more concise by adding the term "Type V" to the list of PFD Types in § 175.15; removing § 175.17, now unnecessary; and deleting references to § 175.17 in §§ 175.19 and 175.21. This proposal did not allow for a Type V PFD with Type IV characteristics. Not retained in SNPRM.
- Consolidate two paragraphs in § 175.15 on carriage requirements for Type I, II, and III PFD's and additional Type IV PFD into a single paragraph, 175.15(b), retained in SNPRM.
- Rewrite Table 175.23 for easier reading and include reference to Type V PFD. The Coast Guard believes this information table is no longer needed by the public and now proposes to remove it. Not retained in SNPRM.
- Rewrite § 181.703 for brevity and clarity. Superseded by incorporation by reference. Not retained in SNPRM.
- Revise § 181.705 to update pamphlet text and illustration requirements. Superseded by incorporation by reference. Not retained in SNPRM.
- Allow manufacturers to exhaust existing supply of printed text required by § 181.705 to lessen cost impact of new PFD pamphlet requirements. Most PFD manufacturers have complied with UL 1123 for PFD pamphlets since March 1, 1989. There is no known PFD pamphlet supply to be exhausted. Not retained in SNPRM.

Discussion of this supplemental proposal: The following is a topical discussion of the revisions proposed in this supplemental notice.

Carriage Requirements: Would revise § 175.15 to clarify that one Type IV PFD must be on board a recreational boat 16 feet in length or more in addition to a Type I, II, or III PFD for each person. Retained from 1982 NPRM.

Pre October 1, 1977, exception: Would remove paragraph 175.17(a). This provision, added in 1976, excepted operators of certain kayaks and canoes from the requirement to carry a Type I, II, III, or IV PFD prior to October 1, 1977, and is obsolete. Retained from 1982 NPRM.

Type V PFD Substitution: Would revise and combine paragraphs 175.17(b) and (c) into one paragraph, redesignated 175.17(a), to allow a Type V PFD to be used as a substitute for a Type I, II, III or IV PFD when used in accordance with the restrictions on the approval label, if any.

Stowage. Would revise PFD stowage requirements in § 175.19 to reflect that some Type V PFD's may be substituted for type IV PFD's.

PFD size and fit. Would revise § 175.21(c) to make current PFD size and fit requirements more apparent.

PFD Equivalents Table: Would remove § 175.23. In 1973, the Coast Guard required manufacturers to add the type designation in addition to the approval number on new PFD labels. Millions of PFD's, already approved, did not bear the PFD type designation, or had a type designation different than the one adopted in 1973. Table 175.23 provided an index showing the type designation a PFD met, as long as it remained in serviceable condition, based on the Coast Guard approval number. This table resolved the type classification of older PFD's with no type designations or type designations inconsistent with the new type designation system. The few of these PFD's still in use are now about 20 years old, or older. The Coast Guard believes this inforamtion table is no longer needed in the Code of Federal Regulations and now proposes to remove it.

Incorporation by Reference: Would add a new § 181.4 to incorporate by reference UL 1123 requirements for design of PFD pamphlets (replaces § 181.705 requirements) and packaging of PFD pamphlets (replaces § 181.703 requirements). Section 181.703 would be revised and § 181.705 would be removed.

Recreational Hybrid PFD Information Pamphlet: Would revise § 181.702 to delete references to § 181.705.

PFD Information Pamphlet Requirements: Would revise § 181.703 to reflect the changes proposed in this supplemental notice. A provision would be added to prohibit the sale of a PFD unless a pamphlet meeting UL 1123 is attached. The provision is intended to apply to individuals involved in selling new PFD's and not individuals subsequently reselling used PFD's.

Regulatory Evaluation

This proposed rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There is no change in the current requirement to carry flotation devices. Most PFD manufacturer's subscribe to UL's Listing Service for Marine Buoyant Devices and must already comply with UL 1123 requirements for PFD pamphlets. UL 1123 does not currently apply to manufacturers of Type I PFD's Although this proposal would require these manufacturers to comply with the UL 1123 requirements, it is not expected to add a significant amount to their current cost to produce a PFD pamphlet. For these reasons, the economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. Since the impact of the rulemaking is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirement for manufacturers to provide an information pamphlet with each PFD offered for sale is not subject to approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Since the PFD pamphlets are a public disclosure of information supplied to PFD manufacturers by the Coast Guard through its incorporation by reference of UL 1123, this requirement is not a "collection of information," under 5 CFR 1320.7(c)(2).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 181

Marine safety, Labeling, Reporting requirements, Incorporation by reference.

In consideration of the foregoing, the Coast Guard proposes to amend parts 175 and 181 of title 33, Code of Federal Regulations as follows:

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Section 175.15 is revised to read as follows:

§ 175.15 Personal flotation devices required.

Except as provided in § 175.17:

(a) No person may use a canoe or kayak of any length or any other recreational boat less than 16 feet in length unless at least one PFD of the following types is on board for each person:

(1) Type I PFD;
(2) Type II PFD;
(3) Type III PFD; or
(4) Type IV PFD.

(b) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless:

(1) One Type IV PFD is on board, and

(2) At least one PFD of the following types is on board for each person:
(i) Type I PFD;
(ii) Type II PFD; or
(iii) Type III PFD.

3. Section § 175.17 is revised to read as follows:

§ 175.17 Exceptions.

A Type V PFD may be carried in lieu of any PFD required under § 175.15 provided:

(a) The approval label on the Type V PFD indicates that the device is approved:

(1) For the activity in which the boat is being used; or

(2) As a substitute for a PFD of the Type required on the boat in use;

(b) The PFD is used in accordance with requirements on the approval label; and

(c) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

4. Section 175.19 is revised to read as follows:

§ 175.19 Stowage.

(a) No person may use a recreational boat unless each Type I, II, or III PFD required by § 175.15, or equivalent type allowed by § 175.17, is readily accessible.

(b) No person may use a recreational boat unless each Type IV PFD required by § 175.15, or equivalent type allowed by § 175.17, is immediately available.

5. Section 175.21 is revised to read as follows:

§ 175.21 Condition; size and fit; approval marking.

No person may use a recreational boat unless each PFD required by § 175.15 or allowed by § 175.17 is:

(a) In serviceable condition;

(b) Of an appropriate size and fit for the intended wearer, as marked on the approval label; and

(c) Legibly marked with its approval number, as specified in 46 CFR part 160.

§ 175.23 [Removed]

6. Section 175.23 is removed.

PART 181—MANUFACTURER REQUIREMENTS

7. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

8. Section 181.4 is added to read as follows:

§ 181.4 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the United States Coast Guard Recreational Boating Product Assurance Branch, Washington, DC 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

Underwriters Laboratories, Inc.

333 Pfingsten Road, Northbrook, IL 60062.
UL 1123, Marine Buoyant Devices, edition 5—June 1989, § 181.703.

9. Section 181.702 is revised to read as follows:

§ 181.702 Recreational Hybrid PFD Information Pamphlet Requirements.

(a) Notwithstanding the requirements in § 181.703, each manufacturer of recreational hybrid PFD's must furnish with each of these PFD's a pamphlet meeting 46 CFR 160.077–27.

(b) The requirements for PFD pamphlets in § 181.703 do not apply to recreational hybrid PFD's.

10. Section 181.703 is revised to read as follows:

§ 181.703 PFD information pamphlet requirements.

(a) Each manufacturer of a Type I, II, III, IV, or V personal flotation device must furnish with each PFD that is sold or offered for sale for use on a recreational boat an information pamphlet that meets the requirements of UL 1123, sections 33, 34 and 35.

(b) No person may sell or offer for sale for use on a recreational boat a Type I, II, III, IV, or V personal flotation device unless a PFD pamphlet required by this section is attached in such a way that it can be read prior to purchase.

§ 181.705 [Removed]

11. Section 181.705 is removed.

Dated: October 17, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–27165 Filed 11–17–89; 8:45 am]
BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6974]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. the elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
American Samoa	
Manua Islands, Tutuila Island (outlying areas)	
Unnamed Stream 4:	
At confluence with South Pacific Ocean	*4
Approximately 440 feet upstream of confluence with South Pacific Ocean	*31
Matava Stream:	
At confluence with South Pacific Ocean	*3
Approximately 70 feet upstream of confluence with South Pacific Ocean	*11
Approximately 400 feet upstream of confluence with South Pacific Ocean	[illegible]
Misa Stream:	
At confluence with Matavai Stream	[illegible]
Approximately 100 feet upstream of confluence with Matavi Stream	[illegible]
Leafu Stream (Leone):	
At confluence with Leone Bay	*1
At confluence with Pala Lagoon	*7
Approximately 2,300 feet upstream of confluence with Auala Stream	*15
Approximately 4,330 feet upstream of confluence with Auala Stream	*70
Fuafua Stream (Leone):	
At confluence with South Pacific Ocean	*5
Approximately 2,650 feet upstream of confluence with South Pacific Ocean	*105
At confluence with Vaitai Stream	*142
Approximately 3,100 feet upstream of confluence with Vaitai Stream	*155
Vaitai Stream (Leone):	
At confluence with Fuafua Stream	*137
Approximately 2,200 feet upstream of confluence with Fuafua Stream	*148
Drainageway 3:	
At confluence with South Pacific Ocean	*12
Approximately 200 feet upstream of confluence with South Pacific Ocean	*15
Approximately 2,600 feet upstream of confluence with South Pacific Ocean	*40
Approximately 5,200 feet upstream of confluence with South Pacific Ocean	*79
Approximately 7,900 feet upstream of confluence with South Pacific Ocean	*117
Drainageway 4:	
At confluence with South Pacific Ocean	*2
Approximately 1,020 feet upstream of confluence with South Pacific Ocean	*30
Approximately 2,200 feet upstream of confluence with South Pacific Ocean	*52
Drainageway 5:	
At confluence with South Pacific Ocean	*8
Approximately 250 feet upstream of confluence with South Pacific Ocean	*40
Approximately 1,700 feet upstream of confluence with South Pacific Ocean	*55
Approximately 4,200 feet upstream of confluence with South Pacific Ocean	*97
Unnamed Stream 15:	
At confluence with South Pacific Ocean	*6
Approximately 200 feet upstream of confluence with South Pacific Ocean	[illegible]
Approximately 1,800 feet upstream of confluence with South Pacific Ocean	*60
Approximately 4,300 feet upstream of confluence with South Pacific Ocean	*102
Vaipito Stream:	
At confluence with South Pacific Ocean at Pago Pago Harbor	*11
Approximately 1,800 feet upstream of confluence with South Pacific Ocean at Pago Pago Harbor	*15
At confluence with Pago Stream	*31
Just downstream of confluence with Fitiuli Stream	*51
Approximately 100 feet upstream of confluence with Ulumua Stream	*102
Fagaalu Stream:	
At confluence with South Pacific Ocean	*3
Approximately 700 feet upstream of confluence with South Pacific Ocean	*11
At confluence with Unnamed Stream 13	*31
Approximately 600 feet upstream of confluence with Unnamed Stream 13	*50
Approximately 1,400 feet upstream of confluence with Unnamed Stream 13	*70
Unnamed Stream 13:	
At confluence with Fagaalu Stream	*31
Approximately 300 feet upstream of confluence with Fagaalu Stream	*41
Vailoa Stream (Utuwit):	
At confluence with South Pacific Ocean	*4
Approximately 500 feet upstream of confluence with South Pacific Ocean	*10
Approximately 1,150 feet upstream of confluence with South Pacific Ocean	*21
Auvai Stream:	
At confluence with South Pacific Ocean	*4
At Highway Bridge approximately 50 feet upstream of confluence with South Pacific Ocean	[illegible]
Approximately 1,500 feet upstream of confluence with Unnamed Stream 10	*18
Unnamed Stream 10:	
At confluence with Auvai Stream	*14
Approximately 900 feet upstream of confluence with Auvai Stream	*20
Approximately 500 feet upstream of confluence with Auvai Stream	[illegible]
Sapapa Stream:	
At confluence with South Pacific Ocean	*2
Approximately 300 feet upstream of confluence with Fagaitua Bay	*10
Approximately 500 feet upstream of confluence with Fagaitua Bay	*12
[illegible]	
At confluence with South Pacific Ocean	*2
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 400 feet upstream of confluence with South Pacific Ocean	*11
Tialu Stream:	
At confluence with Vaalufai Stream	[illegible]
Approximately 350 feet upstream of confluence with Vaalufai Stream	*11
Televai Stream:	
At confluence with South Pacific Ocean	*2
At Highway Bridge approximately 150 feet upstream of confluence with South Pacific Ocean	*15
400 feet upstream of confluence with South Pacific Ocean	*17
Unnamed Stream 7:	
At confluence with South Pacific Ocean	*1
300 feet upstream of confluence with South Pacific Ocean	*15
Unnamed Stream 6:	
At confluence with South Pacific Ocean	*3
Approximately 50 feet upstream of confluence with South Pacific Ocean	*15
[illegible]	
At confluence with South Pacific Ocean	*3
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 700 feet upstream of confluence with South Pacific Ocean	*15
Approximately 1,800 feet upstream of confluence with South Pacific Ocean	*40
Approximately 2,000 feet upstream of confluence with South Pacific Ocean	*46
Vaitoa Stream (Tula):	
At confluence with South Pacific Ocean	*4
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 1,600 feet upstream of confluence with South Pacific Ocean	*13
Unnamed Stream 14:	
At confluence with South Pacific Ocean	*2
Approximately 1,150 feet upstream of confluence with Pala Lagoon	*5
Approximately 1,350 feet upstream of confluence with Pala Lagoon	*10
Approximately 1,820 feet upstream of confluence with Pala Lagoon	*20
Sagamea Stream:	
At confluence with Pala Lagoon	*1
Approximately 250 feet upstream of confluence with Pala Lagoon	*5
Approximately 450 feet upstream of confluence with Pala Lagoon	*11
Approximately 640 feet upstream of confluence with Pala Lagoon	*19
Papa Stream:	
At confluence with Pala Lagoon	*2
Approximately 350 feet upstream of confluence with Pala Lagoon	*5
Approximately 1,800 feet upstream of confluence with Pala Lagoon, just upstream of highway culvert	*20
Approximately 2,980 feet upstream of confluence with Pala Lagoon	*39
[illegible]	
At confluence with Pala Lagoon	*2
Approximately 300 feet upstream of confluence with Pala Lagoon	*5

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 1,450 feet upstream of confluence with Pala Lagoon, approximately 100 feet downstream of highway culvert	*20
Approximately 2,040 feet upstream of confluence with Pala Lagoon	*41
Sauno Stream:	
At confluence with Pala Lagoon	*2
Approximately 210 feet upstream of confluence with Pala Lagoon	*8
Approximately 1,400 feet upstream of confluence with Pala Lagoon	*15
Approximately 2,790 feet upstream of confluence with Pala Lagoon	*75
Vaitale Stream (Tafunafou):	
At confluence with Pala Lagoon	*2
Approximately 200 feet upstream of confluence with Pala Lagoon	*10
Approximately 1,750 feet upstream of confluence with Pala Lagoon	[illegible]
Approximately 5,000 feet upstream of confluence with Pala Lagoon	*92
Leaveave Stream:	
At confluence with Vaitele Stream	*15
Approximately 990 feet upstream of confluence with Vaitele Stream	*25
Approximately 3,800 feet upstream of confluence with Vaitele Stream	*59
At road crossing, approximately 5,550 feet upstream of confluence with Vaitele Stream	*76
Approximately 550 feet downstream of road, crossing Leaveave Stream, located approximately 1,200 feet southwest of high school in Mapusaga Village	*185
Taumata Stream:	
At confluence with Vaitele Stream	*41
Just downstream of road intersection, approximately 850 feet upstream of confluence with Vaitele Stream	*50
Approximately 2,900 feet upstream of confluence with Vaitele Stream	[illegible]
Approximately 400 feet upstream of confluence with Mapusagatuai Stream	*135
Approximately 5,300 feet upstream of confluence with Mapusagatuai Stream	*172
Mapusagatuai Stream:	
At confluence with Taumata Stream	*128
Approximately 1,600 feet upstream of confluence with Taumata Stream	*145
Approximately 3,600 feet upstream of confluence with Taumata Stream	*166
Drainageway 1:	
At confluence with Pala Lagoon	*5
Approximately 1,370 feet upstream of confluence with Pala Lagoon	*10
Approximately 2,000 feet upstream of confluence with Pala Lagoon	*15
Approximately 2,400 feet upstream of confluence with Pala Lagoon	*24
Drainageway 2:	
At confluence with Pago Pago International Airport Lagoon	*7
At confluence with Drainageway 2A	*45
Approximately 3,600 feet upstream from confluence with Drainageway 2A	[illegible]
Approximately 7,790 feet upstream of confluence with Drainageway 2A	*150
Approximately 200 feet east of intersection of Drainageway 2 and main north south highway, just north of Pavaiai Village	*258
Drainageway 2A:	
At confluence with Pago Pago International Airport Lagoon	*2
Approximately 600 feet upstream of Pago Pago International Airport Lagoon	*10
Approximately 3,200 feet upstream of Pago Pago International Airport Lagoon	*25
At confluence with Drainageway 2	*45
Gaoa Stream:	
At confluence with South Pacific Ocean	*3
Approximately 800 feet upstream of confluence with South Pacific Ocean	*11
Leafu stream (Vatia):	
At confluence with Gaoa Stream	*6
Approximately 480 feet upstream of confluence with Gaoa Stream	*11
[illegible]	
At confluence with South Pacific Ocean	*1
Approximately 450 feet upstream of confluence with South Pacific Ocean	*5
Approximately 1,100 feet upstream of confluence with Vatia Bay	*15
Tafu Stream Left Tributary:	
At confluence with South Pacific Ocean	*3
Approximately 450 feet upstream of confluence with Vatia Bay	*5
Approximately 950 feet upstream of confluence with Vatia Bay	*10
Mulivai Stream:	
At confluence with South Pacific Ocean	*3
Approximately 350 feet downstream of confluence with Tafu Stream Right Tributary	*10
Approximately 880 feet upstream of confluence with Tafu Stream Right Tributary	*25
Tafu Stream Right Tributary:	
At confluence with Mulivai Stream	*12
Approximately 400 feet upstream of confluence with Mulivai Stream	*12
At confluence with Tafu Stream	*15
Leasa Stream:	
At confluence with South Pacific Ocean	*4
Approximately 180 feet upstream of confluence with South Pacific Ocean	*11
[illegible]	
At confluence with South Pacific Ocean	*4
Approximately 140 feet upstream of confluence with Laiolamauta Stream	*15
[illegible]	
At confluence with Suaia Stream	[illegible]
Approximately 710 feet upstream of confluence with Suaia Stream	*10
Vaitele Stream (Laulitua):	
At confluence with South Pacific Ocean	[illegible]
Approximately 600 feet upstream of confluence with South Pacific Ocean	*10
Approximately 370 feet upstream of confluence with South Pacific Ocean	*20
Approximately 60 feet upstream of confluence with Lesea Stream	*30
Approximately 840 feet upstream of confluence with Lesea Stream	*42
South Pacific Ocean:	
On east end of island, at confluence with Mulivaitele Stream	*2
On north end of island at Massacre Bay	*3
On southwestern end of island, at confluence with Fusitua Stream	*5
In Pago Pago Harbor, at confluence of Pago Pago Harbor and Pago Stream	*11

Maps are available for review at the Public Works Department, American Samoa Government, Pago Pago, American Samoa.

Send comments to The Honorable A.P. Lutali, Governor, Government of American Samoa, American Samoa 96799.

CONNECTICUT

Goshen (town), Litchfield County

Marsbepeag River:	
At the downstream corporate limits	*1,075
At West Side Pond Dam	*1,283
West Side Pond Brook:	
At West Side Pond Dam	*1,283
At the downstream side of Hageman Sheen Road	*1,380
Hall Meadow Brook:	
Approximately 2.2 miles upstream of the Hall Meadow Brook Reservoir Dam	[illegible]
At the upstream corporate limits	*974

Maps available for inspection at the Office of the Town Clerk, North Street, Goshen, Connecticut.

Send comments to The Honorable Richard Kobylinski, First Selectman of the Town of Goshen, Litchfield County, North Street, Goshen, Connecticut 06756.

GEORGIA

Coffee County (Unincorporated Areas)

Indian Creek:	
Just upstream of mouth	*164
Just downstream of State Route 158	*203
[illegible]	
About 2.6 miles downstream of U.S. Route 221	*179
About 2.9 miles upstream of U.S. Route 441	*203
Twenty Mile Creek:	
At mouth	*189
About 3.2 miles upstream of mouth	*201

Maps available for inspection at the County Courthouse, Douglas, Georgia.

Send comments to The Honorable Frank Jackson, Chairman, Board of Commissioners, Coffee County, County Courthouse, Douglas, Georgia 31533.

IOWA

Bremer County (unincorporated areas)

Cedar River:	
About 1,400 feet upstream of Barrick Road	[illegible]
At northern county boundary	*951
[illegible]	
About 2.3 miles downstream of Fayette Street	[illegible]
About 0.4 miles upstream of Denver Dam	[illegible]
Little Wapsipinicon River:	
About 1.1 miles downstream of Division Street	*1,048
About 3000 feet downstream of Division Street	*1,051
West Fork Cedar River:	
Just upstream of Missouri, Kansas, Texas Railroad	[illegible]
About 1.1 miles upstream of Missouri, Kansas, Texas Railroad	[illegible]
Wapsipinicon River:	
At southern county boundary	*954
Just upstream of U.S. Highway 63	*1,027
East Fork Wapsipinicon River:	
About 0.8 mile downstream of the Sweet Marsh Dam	*1,001
At northern county boundary	*1,029

Maps available for inspection at the County Courthouse, 415 East Bremer Avenue, Waverly, Iowa.

Send comments to The Honorable Steve Reuter, Chairman, Board of Commissioners, Bremer County, 415 East Bremer Avenue, Waverly, Iowa 50677.

Fredericka (city), Bremer County

Wapsipinicon River: Within community	*1,021

Maps available for inspection at the City Hall, Fredericka, Iowa.

Send comments to The Honorable Stanley Feuchtwanger, Mayor, City of Fredricka, City Hall, Fredericka, Iowa 50631.

Janesville (city), Bremer and Blackhawk Counties

Cedar River:	
About 1,200 feet downstream of Seventh Street	[illegible]
About 1,500 feet upstream of Barrick Road	*906

Maps available for inspection at the City Hall, 227 Main Street, Janesville, Iowa.

Send comments to The Honorable James MacKay, Mayor, City of Janesville, City Hall, 227 Main Street, Janesville, Iowa 50647.

LOUISIANA

Caddo Parish (unincorporated areas)

[illegible]	
Approximately 550 feet downstream of downstream corporate limits	*170
At State Route 173	*225
Logan Bayou:	
At the confluence with Cross Lake	*176
At Pine Hill Road	*253

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Choctaw Bayou:	
At the confluence with Logan Bayou	*178
At Millwood Lane	*234
Page Bayou:	
At the confluence with Cross Lake	*176
At Jefferson Paige Road	*266
Page Bayou Tributary A:	
At the confluence with Page Bayou	[illegible]
Approximately 1,800 feet upstream of confluence	*220
Buchanan Bayou:	
At the confluence with Boggy Bayou	*159
At State Route 525	*265
Buchanan Bayou Tributary A:	
At the confluence with Buchanan Bayou	*233
At State Route 525	[illegible]
Brush Bayou:	
At the confluence with Boggy Bayou	*159
Approximately 0.6 miles upstream of upstream corporate limits	*163
Boggy Bayou:	
At the confluence with Cypress Creek	*159
Approximately 4.5 miles upstream of Providence Road	*278
Gilmer Bayou:	
At the confluence with Boggy Bayou	*167
At Bungombe Road	*218
Southwood High Lateral:	
At the confluence with Gilmer Bayou	*182
Approximately 1.3 miles upstream of confluence	*196
[illegible]	
At the confluence with Gilmer Bayou	*173
Approximately 200 feet upstream of State Route 526 (Industrial Loop Expressway)	*215
Lincoln Memorial Part Lateral:	
At the confluence with Industrial Part Lateral	*184
Approximately 0.8 mile upstream of State Route 526 (Flournoy Lucas Road)	*219
Boggy Bayou Tributary A	
At the confluence with Boggy Bayou	*198
At Bicknell Ranch Road	*271
Boggy Bayou Tributary B:	
At the confluence with Boggy Bayou	*205
Approximately 1.1 miles upstream of Buncombe Road	[illegible]
Bayou Pierre:	
At State Route 175	*153
At Union Pacific Railroad	*162
Sand Beach Bayou:	
At confluence with Bayou Pierre	*158
Approximately 1.5 miles upstream of Industrial Loop Expressway	*164
Gatsey Lateral:	
At the downstream corporate limits	*176
Approximately 110 feet upstream of upstream corporate limits	[illegible]
Bickham Bayou:	
Approximately 0.6 mile downstream of downstream corporate limits	*176
At Pines Road	*213
[illegible]	
At downstream corporate limits	*162
Approximately 0.7 mile upstream of East 70th Street	*167
Wallace Lake: Entire shoreline within community	*159
Caddo Lake: Entire shoreline within community	*184
Cross Lake: Entire Shoreline within community	*176

Maps available for inspection at the Caddo Parish Courthouse, 501 Texas Street, Room 402, Shreveport, Louisiana.

Send comments to The Honorable Francie Bickham, Caddo Parish Administrator Caddo Parish Courthouse, 501 Texas Street, Room 401, Shreveport, Louisiana 71101.

MAINE

Bar Harbor (town), Hancock County

Eastern Bay:	
At Hudley Point	*14
At Parker Point	[illegible]
Northeast Creek: At State Route 3	*11
Frenchmen Bay:	
At Dorr Point	*19
At Great Head	*33
Otter Cove:	
At Otter Creek	*12
At Otter Point	*44
Newport Cove:	
At Schooner Head Road extended	*12
At Thunder Hole	*44
Western Bay:	
At State Routes 102 and 198	*11
At Negro Point	*14
Mount Desert Narrows: At Israel Point	*14

Maps available for inspection at the Planning Department, 93 Cottage Street, Bar Harbor, Maine.

Send comments to The Honorable Jill Goldthwaite, Chairman of the Bar Harbor Town Council, Hancock County, 93 Cottage Street, Bar Harbor, Maine 04609.

Dexter (town), Penobscot County

[illegible]	
At downstream corporate limits (At Corinna Dexter Townline Road)	[illegible]
At confluence with Wassookeag Lake	*436
Lake Wassookeag: Entire shoreline within community	*436
Puffers Pond: Entire shoreline within community	[illegible]

Maps available for inspection at the Town Administrator's Office, Dexter, Maine.

Send comments to The Honorable Stephen Whitesel, Manager of the Town of Dexter, Penobscot County, Town Administration Office, P.O. Box 313, Dexter, Maine 04930

Leeds (town), Androscoggin County

Androscoggin River:	
At downstream corporate limits	[illegible]
At upstream corporate limits	*291
Allen Stream:	
At confluence with Androscoggin River	*271
At Church Hill Road	*283
[illegible]	
Approximately 1.4 miles downstream of [illegible] Route 106	[illegible]
At confluence with Androscoggin River	[illegible]

Maps available for inspection at the Town Hall Leeds, Maine.

Send comments to The Honorable Erroi Addton, First Selectman of the Town of Leeds, Androscoggin County, P.O. Box 1750, Green, Maine [illegible]

Mount Desert (town), Hancock County

Atlantic Ocean:	
Entire Shoreline of Goose Marsh Pond	*11
Shoreline of Blue Hill Bay at Eastern Point	*15
Shoreline of Blue Hill Bay at Western Point	*19
Shoreline of Somes Sound at Bar Island	*11
Shoreline of Eastern Way at Rhodes Cliff	*36

Maps available for inspection at the Assessor's Office, Town Offices, Northeast Harbor, Maine.

Send comments to The Honorable Durlin Lunt, Chairman of the Town of Mount Desert Board of Selectmen, Hancock County, Town Offices, Northeast Harbor, Maine 04662.

Tremont (town), Hancock County

Atlantic Ocean—Blue Hill Bay:	
At Crockett Point Road (extended)	*11
Bar Island	*14
At Nutter Point	*15
At Lopaus Point	*18
At Bass Harbor Head	[illegible]

Maps available for inspection at the Town Office, Municipal Building, Bernard, Maine.

Send Comments to The Honorable Harvey Kelly, Chairman of the Town of Tremont Board of Selectmen, Hancock County, P.O. Box 65, Bernard, Maine 04612.

Trenton (town), Hancock County

Union River Bay:	
At Loids Brook	*13
At Haynes Point	*17
Western Bay:	
At Haynes Point	*15
At Oak Point	*20
Mt. Desert Narrows:	
South of Thompson Island	*14
At Trap Rock	*16
Jordan River:	
Confluence with Fosters Brook	*12
Confluence with Cnppons Brook	*13

Maps available for inspection at the Municipal Building, R.F.D. 1, Ellsworth, Maine, between 4-6 p.m. on Monday, Wednesday, and Thursday

Send Comments to The Honorable James Cameron, Chairman of the Town of Trenton Board of Selectmen, Hancock County, Municipal Building, R.F.D. 1, Ellsworth, Maine 04605.

MISSISSIPPI

Clay County (unincorporated areas)

Chuquatonchee Creek Tributary:	
About 0.42 mile downstream of State Highway 50	*198
About 2.0 miles upstream of U.S. Highway 45 Alternate	*264
Town Creek:	
About 1.12 miles upstream of confluence of Town Creek Tributary No. 2	*188
About 2,350 feet upstream of Industrial Park Access Road	*247
Town Creek Tributary No. 1:	
Just upstream of Dunlap Road	*229
About 0.78 mile upstream of Dunlap Road	*247
Town Creek Tributary No. 2:	
About 0.66 mile above mouth	*187
About 750 feet downstream of Colony Drive	*231
Tombigbee River:	
At southern county boundary	*176
At northern county boundary	*186
[illegible]	
At confluence with Tombigbee River	*176
At confluence of Catalpe Creek	*181

Maps available for inspection at the Chancery Clerk's Office, County Courthouse, West Point, Mississippi

Send comments to The Honorable J.W. Stafford, President, Board of Supervisors, Clay County, P.O. Box 525, West Point, Mississippi 39773.

NEVADA

Winnemucca (city), Humboldt County

Humboldt River:	
At the western corporate limits	*4,268
At U.S. Route 95	*4,273
Approximately 500 feet upstream of Bridge Street	*4,274
Approximately 150 feet downstream of Railroad Bridge	*4,278
At the northern corporate limit	*4,279

Maps are available for inspection at the City/County Complex, Winnemucca, Nevada 89445.

Send comments to the Honorable Paul J. Vesco, Mayor, City of Winnemucca, City/County Complex, Winnemucca, Nevada 89445.

OHIO

Defiance County (unincorporated areas)

[illegible]	
About 2.1 miles downstream of Independence Dam	*867

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
About 800 feet upstream of confluence of Gordon Creek	[illegible]
Augtaize River:	
About 1,400 feet downstream of confluence of Beetree Creed	[illegible]
At the county boundary	*702
Tiffin River:	
About 1.3 miles downstream of County Route 1	*686
About 2,500 feet upstream of County Route 1	[illegible]
Preston Run:	
About 1,050 feet downstream of Dohoney Road	*700
About 2,800 feet upstream of Eunice Road	*712

Maps are available for inspection at the County Courthouse, 500 Second Street, Defiance, Ohio.

Send comments to the Honorable Darrell Jones, President, Board of Commissioners, Defiance County, 500 Second Street, Defiance, Ohio 43512.

PENNSYLVANIA

Adams (township), Cambria County

South Fork Little Conemaugh River:	
At downstream corporate limits	*1,500
At upstream corporate limits	*1,862
Sandy Run:	
At confluence with South Fork Little Conemaugh River	*1,542
Approximately 1,110 feet upstream of Palestine Road	*1,634
Unnamed Tributary:	
At confluence with South Fork Little Conemaugh River	*1,582
Approximately 1,370 feet upstream of State Routy 869 (LR. 11010)	*1,594
Otto Run:	
At confluence with South Fork Little Conemaugh River	*1,640
Approximately 1,020 feet upstream of State Routes 160 and 869 (L.R. 11014 Spur E)	*1,656
Little Paint Creek:	
Approximately 1,000 feet downstream of Old Bedford Pike	*2,034
Approximately 2,080 feet upstream of Villa Road	*2,068

Maps are available for inspection at the Township Building, 301 Lake Street, Sidman, Pennsylvania.

Send comments to the Honorable Charles E Weyandt, Jr., Chairman of the Township of Adams Board of Supervisors, Cambria County, P.O. Box 25, Dunlo, Pennsylvania 15930.

Beech Creek (borough), Clinton County

Beech Creek:	
Approximately 155 feet downstream of State Route 150	[illegible]
Approximately 150 feet upstream of the upstream corporate limits	[illegible]

Maps are available for inspection at the Borough Building, Beech Creek, Pennsylvania.

Send comments to the Honorable Melvin Coakley, Mayor of the Borough of Beech Creek, Clinton County, P.O. Box 216, Beech Creek, Pennsylvania 16822.

Conemaugh (township), Cambria County

Little Conemaugh River:	
Approximately 1,100 feet downstream of CSX Transportation	*1,186
Approximately 2.1 miles upstream of CSX Transportation at corporate limits	*1,245
Approximately .7 mile upstream of LR 11106	*1,386
Clapboard Run:	
Approximately .4 mile downstream of LR 11106	*1,756
Approximately 110 feet upstream of the upstream corporate limits	*1,823

Maps available for inspection at the Township Building, 104 Janie Street, Johnstown, Pennsylvania.

Send comments to The Honorable Rudy Galeyda, Jr., Chairman of the Township of Conemaugh Board of Supervisors, Cambria County, Route 2, Box 183, Johnstown, Pennsylvania 15904.

Croyle (township), Cambria County

Little Conemaugh River:	
Downstream corporate limits	*1,491
Approximately 200 feet upstream of the downstream corporate limits of Summerhill	*1,535
South Fork Little Conemaugh River:	
Downstream corporate limits	*1,500
Approximately 1,200 feet upstream of State Routes 160 and 869	*1,662
Approximately 400 feet downstream of State Route 869	*1,757
Upstream corporate limits	*1,862
Laurel Run:	
Confluence with South Fork Little Conemaugh River	*1,604
Approximately 570 feet upstream of State Route 160	*1,669

Maps available for inspection at the Township Building, Route 53, Croyle, Pennsylvania.

Send comments to The Honorable Vincent Beyer, Chairman of the Township of Croyle Board of Supervisors, Cambria County, R.D. 1, Box 219, Sidman, Pennsylvania 15955.

Dale (Borough), Cambria County

Solomon Run:	
At downstream corporate limits	*1,205
At upstream corporate limits	*1,234

Maps available for inspection at the Borough Office Building, 810 Bedford Street, Johnstown, Pennsylvania.

Sent comments to The Honorable Cecil K. Leberknight, President to the Borough of Dale Council, Cambria County, 810 Bedford Street, Johnstown, Pennsylvania 15902.

East Huntingdon (township), Westmoreland County

Jacobs Creek:	
Approximately 400 feet downstream of State Route 819	*1,022
Approximately 430 feet upstream of Overholt Drive	*1,037

Maps available for inspection at the Township Building, Alverton, Pennsylvania.

Send comments to The Honorable Joel Suter, Chairman of the Township of East Huntingdon Board of Supervisors, Westmoreland County, Box 9, Alverton, Pennsylvania 15612.

East Wheatfield (township), Indiana County

Conemaugh River:	
Approximately 2.0 miles downstream of Penelec Dam	*1,084
Approximately 3.5 miles upstream of State Routes 711 and 56	*1,137

Maps available for inspection at the East Wheatfield Township Building, Route 56, Armagh, Pennsylvania.

Send comments to The Honorable James Donelson, Chairman of the Township of East Wheatfield Board of Supervisors, Indiana County, P.O. Box 78, Armagh, Pennsylvania 15920.

Fairfield (township), Crawford County

French Creek:	
Approximately 0.3 mile downstream of downstream corporate limits	*1,056
At upstream corporate limits	*1067

Maps available for inspection at the Fairfield Township Building, Cochranton, Pennsylvania.

Send comments to The Honorable Richard McMaster, Chairman of the Township of Fairfield Board of Supervisors, Crawford County, R.D. 3, Cochranton, Pennsylvania 16314.

Greenfield (township), Erie County

West Branch French Creek:	
At most downstream corporate limits	*1,317
At State Line Road	*1,384
Townley Run:	
At downstream corporate limits	*1,317
Approximately 125 feet upstream of State Route 430	*1,418

Maps available for inspection at the Township Building, Greenfield, Pennsylvania.

Send comments to The Honorable Edward Chylinski, Chairman of the Township of Greenfield Board of Supervisors, Erie County, 8919 Wildman Road, North East, Pennsylvania 16428.

Hayfield (township), Crawford County

French Creek:	
Downstream corporate limits	*1,067
Upstream corporate limits	*1,133

Maps available for inspection at the Hayfield Township Building, Meadville, Pennsylvania.

Send comments to The Honorable Jack Mahoney, Chairman of the Township of Hayfield Board of Supervisors, Crawford County, R.D. 8, Box 226, Meadville, Pennsylvania 16335.

King (township), Bedford County

Bob Creek:	
Approximately 875 feet downstream of T-570	*1,135
Approximately 200 feet upstream of upstream corporate limits	*1,244

Maps available for inspection at the home of Goldie Imler, Box 174, R.D. 1, Osterburg, Pennsylvania.

Send comments to The Honorable Gerald Mowry, Chairman of the Township of King Board of Supervisors, Bedford County, R.D., Osterburg, Pennsylvania 16667.

Lorain (borough), Cambria County

Sams Run:	
At downstream corporate limits	*1,278
Approximately 0.4 mile upstream of Highland Drive	*1,407

Maps available for inspection at the Borough Office Building, 502 Valley Street, Johnstown, Pennsylvania.

Send comments to The Honorable Harold Berkebile, Mayor of the Borough of Lorain, Cambria County, 338 Oakland Avenue, Johnstown, Pennsylvania 15902.

Mont Alto (borough), Franklin County

East Branch Antietam Creek:	
Approximately 280 feet downstream of downstream corporate limits	*818
Approximately 150 feet downstream of L.R. 28069	[illegible]

Maps available for inspection at the Mont Alto Borough Building, Main Street, Mont Alto, Pennsylvania.

Send comments to The Honorable H. Dean Verdier, President of the Mont Alto Borough Council, Franklin County, P.O. Box 427, Mont Alto, Pennsylvania 17237.

New Bethlehem (borough), Clarion County

Redbank Creek:	
At downstream corporate limits	*1,063
At upstream corporate limits	*1,088
Leisure Run:	
At confluence with Redbank Creek	*1,067

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
At upstream corporate limits	*1,080

Maps available for inspection at the Borough Building, New Bethlehem, Pennsylvania.

Send comments to The Honorable Dan E. Shaffer, President of the New Bethlehem Council, Clarion County, 210 Lafayette Street, New Bethlehem, Pennsylvania 16242.

Oil Creek (township), Crawford County

Oil Creek:	
Downstream corporate limits	*1,201
Approximately 1,056 feet upstream of upstream corporate limits	*1,245

Maps available for inspection at the Township Building, Titusville, Pennsylvania.

Send comments to The Honorable Dillon T. Wescoat, Chairman of the Township of Oil Creek Board of Supervisors, Crawford County, Gaswell Road, R.D. 2 Titusville, Pennsylvania 16354.

Philipsburg (borough), Centre County

Mosheannon Creek:	
Intersection of Sixth and Alder Street	*1,422
At downstream corporate limits	*1,425
Upstream corporate limits	*1,429
Cold Stream:	
Intersection of Cherry Street and 13th Street	*1,423
Upstream side of Pine Street	*1,433
Upstream corporate limits	*1,440

Maps available for inspection at the Borough Office Building, Philipsburg, Pennsylvania.

Send comments to The Honorable Donald Enck, Manager of the Borough of Philipsburg, Centre County, 420 S. Centre Street, Philipsburg, Pennsylvania 16866.

Sligo (borough), Clarion County

Licking Creek:	
Downstream corporate limits	*1,083
Upstream corporate limits	*1,141
Little Licking Creek:	
Confluence with Licking Creek	*1,117
Upstream corporate limits	*1,171

Maps available for inspection at the Borough Building, Sligo, Pennsylvania.

Send comments to The Honorable James C. Barger, President of the Sligo Borough Council, Clarion County, P.O. Box 128, Sligo, Pennsylvania 16255.

Smithton (borough), Westmoreland County

Youghiogheny River:	
At State Route 981	*785
Approximately 275 feet upstream of upstream corporate limits	[illegible]

Maps available for inspection at the Borough Building, Smithton, Pennsylvania.

Send comments to The Honorable Fred Foster, President of the Borough of Smithton Council, c/o Borough Secretary, Westmoreland County, Box 537, Smithton, Pennsylvania 15479.

South Huntingdon (township), Westmoreland County

Youghiogheny River:	
At confluence of Sewickley Creek	[illegible]
Approximately 1.7 miles above upstream corporate limits of Borough of Smithton	*790
Sewickley Creek:	
At confluence with Youghiogheny River	[illegible]
Approximately 950 feet upstream of upstream corporate limits	[illegible]

Maps available for inspection at the Township Building, R.D. 1, Box 133, West Newton, Pennsylvania.

Send comments to The Honorable Thomas Troup, Chairman of the Township of South Huntingdon Board of Supervisors, Westmoreland County, R.D. 1, Box 133, West Newton, Pennsylvania 15089.

Sugar Grove (borough), Warren County

Stillwater Creek:	
At downstream corporate limits	*1,383
At upstream corporate limits	*1,425
Tributary No. 1 to Stillwater Creek:	
At downstream corporate limits	*1,380
At upstream corporate limits	*1,443
Tributary No. 2 to Stillwater Creek:	
At confluence with Stillwater Creek	*1,405
At upstream corporate limits	*1,439
Tributary No. 3 to Stillwater Creek:	
At confluence with Stillwater Creek	*1,409
At upstream corporate limist	*1,455

Maps available for inspection at the Borough Office, Sugar Grove, Pennsylvania.

Send commentrs to The Honorable Stuart Anderson, Mayor of the Borough of Sugar Grove, Warren County, 316 Main Street, Sugar Grove, Pennsylvania 16350.

Youngsville (borough), Warren County

Brokenstraw Creek:	
Approximately .9 mile downstream of confluence with Indian Camp Run	*1,186
At upstream corporate limits	*1,209
Indian Camp Run:	
At confluence with Brokenstraw Creek	*1,197
At upstream corporate limits	*1,245

Maps available for inspection at the Township Building, R.D. 1, Box 133, West Newton, Pennsylvania.

Send comments to The Honorable Thomas Troup, Chairman of the Township of South Huntingdon Board of Supervisors, Westmoreland County, R.D. 1, Box 133, West Newton, Pennsylvania 15089.

Sugar Grove (borough), Warren County

Stillwater Creek:	
At downstream corporate limits	*1,383
At upstream corporate limits	*1,425
Tributary No. 1 to Stillwater Creek:	
At downstream corporate limits	*1,380
At upstream corporate limits	*1,443
Tributary No. 2 to Stillwater Creek:	
At confluence with Stillwater Creek	*1,405
At upstream corporate limits	*1,439
Tributary No. 3 to Stillwater Creek:	
At confluence with Stillwater Creek	*1,409
At upstream corporate limist	*1,455

Maps available for inspection at the Borough Office, Sugar Grove, Pennsylvania.

Send commentrs to The Honorable Stuart Anderson, Mayor of the Borough of Sugar Grove, Warren County, 316 Main Street, Sugar Grove, Pennsylvania 16350.

Youngsville (borough), Warren County

Brokenstraw Creek:	
Approximately .9 mile downstream of confluence with Indian Camp Run	*1,186
At upstream corporate limits	*1,209
Indian Camp Run:	
At confluence with Brokenstraw Creek	*1,197
At upstream corporate limits	*1,245

Maps available for inspection at the Borough Building, Youngsville, Pennsylvania.

Send comments to The Honorable Robert P. Williams, President of the Youngsville Borough Council, Warren County, 231 Second Street, Youngsville, Pennsylvania 16371.

TENNESSEE

Union County (unincorporated Areas)

Bullrun Creek:	
Just upstream of Hansard Road	*920
Just downstream of Allor Gap Road	*1,015
North Fork Bullrun Creek:	
Just upstream of Allor Gap Road	*1,072
About 0.8 mile upstream of Johnson Road	*1,099
Flat Creek:	
About 2,350 feet downstream of Keystown Road	*1,014
About 1.3 miles upstream of Keystown Road	*1,040

Maps available for inspection at the County Executive's Office, County Courthouse, Maynardville, Tennessee.

Send comments to The Honorable Gerald Simmons, County Executive, Union County, County Courthouse, P.O. Box 278, Maynardville, Tennessee 37807

VIRGINIA

New Kent County (unincorporated areas)

York River & adjoining estuaries: Entire shoreline within community	*8.0
Pamunkey River & adjoining estuaries: Entire shoreline within community	*8.0
Chickahominy River & adjoining estuaries: Shoreline from County Route 618 to confluence of Diascund Creek	*8.5

Maps available for inspection at the Assistant County Administrator's Office, New Kent Courthouse, New Kent, Virginia.

Send comments to The Honorable H. Garrett Hart, County Administrator, New Kent County, P.O. Box 50, New Kent, Virginia 23124.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Middletown, City Middlesex County.	Coginchaug River	Approximately 550 feet upstream of State Route 66.	*24	*25
			Approximately 730 feet upstream of State Route 157.	*72	*71
		Sumner Brook	At confluence with Connecticut River	None	*23
			Approximately 840 feet upstream of Dam of Millbrook Road.	None	*181
		Longhill Brook	At confluence with Sumner Brook	None	*189
			Approximately 350 feet upstream of Wesleyan Road.	None	*189
		Roundhill Brook	At confluence with Longhill Brook	None	*84

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
			At confluences of West Roundhill Brook and East Roundhill Brook.	None	*124
		East Roundhill Brook	At confluence with Roundhill Brook	None	*124
			Approximately 660 feet upstream of Dam at exit of pond.	None	*245
		West Roundhill Brook	At confluence with Roundhill Brook	None	*124
			Approximately 540 feet upstream of Kelsey Street.	None	*198
		West Swamp Brook	At confluence with Swamp Brook	None	*23
			Approximately 560 feet upstream of Dam at Unnamed Pond.	None	*64
		East Swamp Brook	Just upstream of Tiger Lane (formerly Drive to School).	*25	*24
			Approximately 1,370 feet upstream of Congdon Street.	None	*48
		Miner Brook	At confluence with Mattabassett River	None	*24
			At confluences of West Miner Brook and East Miner Brook.	None	*182
		East Miner Brook	At confluence with Miner Brook	None	*182
			Approximately 170 feet upstream of Flynn Street.	None	*206
		West Miner Brook	At confluence with Miner Brook	None	*182
			Approximately 1,335 feet upstream of Miner Road.	None	*203
		Sawmill Brook	At confluence with Mattabassett River	None	*25
			Approximately 320 feet upstream of Bell Street.	None	190

Maps available for inspection at the City Hall, Planning and Zoning Office, Middletown, Connecticut.
Send comments to The Honorable Sebastian Garofalo, Mayor of the City of Middletown, Middlesex County, City Hall, P.O. Box 1300, Middletown, Connecticut 06457.

Idaho	Lemni county, unincorporated areas.	Salmon River	Approximately 500 feet upstream of confluence with North Fork Salmon River.	None	*3,617
			Approximately 1,150 feet upstream of confluence with Fourth of July Creek.	None	*3,685
			Approximately 1,400 feet upstream of confluence with Tower Creek.	None	*3,764
			Approximately 300 feet upstream of confluence with Wallace Creek.	None	*3,820
			Approximately 7,500 feet downstream of crossing of Interstate Highway 93.	None	*3,846
		Lemhi River	Approximately 2,900 feet downstream of confluence with Kitley Creek.	None	*3,900
			Just downstream of crossing of State Highway 28.	None	*4,180
			Approximately 200 feet downstream of crossing of Barracks Lane.	None	*4,240
			Approximately 200 feet upstream of confluence with Wimpey Creek.	None	*4,364
			Approximately 3,500 feet upstream of crossing of State Highway 28.	None	*4,400
		Hayden Creek	At confluence with Lemhi River	None	*5,141
			At crossing of unnamed road bridge	None	*5,158
			Approximately 13,400 feet upstream of confluence with Lemhi River.	None	*5,350
			Approximately 3,100 feet downstream of fish hatchery.	None	*5,370
			At fish hatchery	None	*5,406

Maps are available for review at the Lemhi County Courthouse, 206 Courthouse Drive, Salmon, Idaho. Send comments to The Honorable Quinton Snook, Chairman, Lemhi County Board of Supervisors, County Courthouse, 206 Courthouse Drive, Salmon, Idaho 83467.

Iowa	City of Plainfield, Bremer County.	Cedar River	About 2,000 feet downstream of Highway 188	None	*933
			Just upstream of State Highway 188	None	*934

Maps available for inspection at the City Hall, 711 Main Street, Plainfield, Iowa. Send comments to The Honorable Emmet Klahn, Mayor, City of Plainfield, City Hall, 711 Main Street, Plainfield, Iowa 50666.

Iowa	City of Waverly, Bremer County.	Dry Run Creek	At mouth. Just downstream of 12th Street Northwest.	*911	*909
				*920	*920
		Unnamed Creek	At mouth. About 1,800 feet downstream of State Highway 3.	*910	*908
				*910	*908
		Cedar River	About 2.2 miles downstream of 3rd Street Southwest.	*905	*903
			Just downstream of Bremer Ave Dam	*911	*910

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Bremer Ave Dam	*915	*915
			About 1.6 miles upstream of Horton Road	*920	*919

Maps available for inspection at the City Hall, 110 First Avenue, SW, Waverly, Iowa. Send comments to The Honorable Evelyn Rathe, Mayor, City of Waverly, City Hall, 110 First Avenue, SW, Iowa 50677.

Massachusetts	West Boylston, town, Worcester County.	Waushacum Brook	Approximately 150 feet upstream of confluence with Wachusett Reservoir.	None	*393
			Approximately 100 feet upstream of upstream corporate limits.	None	*431
		Tributary to Waushacum Brook.	At confluence with Waushacum Brook	None	*426
			Approximatley .4 mile upstream of Sterling Street.	None	*455

Maps available for inspection at the Town Office, 120 Prescott Street, West Boylston, Massachusetts.
Send comments to The Honorable Charles Hudson, Administrative Assistant for the Town of West Boylston, Worcester County, Town Office, 120 Prescott Street, West Boylston, Massachusetts 01583.

Mississippi	City of West Point, Clay County.	Town Creek	About 1800 feet upstream of Illinois Central Railroad.	*229	229
			About 1.18 miles upstream of Illinois Central Railroad.	None	*246
		Town Creek Tributary No. 1	Just downstream of Dunlap Road	*229	*229
			About 800 feet upstream of Dunlap Road	None	*232

Maps available for inspection at the City Hall, West Point, Mississippi. Send comments to The Honorable Kenneth D. Dill, Mayor, City of West Point, P.O. Box 1117, West Point, Mississippi 39773.

New York	Poughkeepsie, town, Dutchess County.	Casper Kill Creek	Downstream side of State Route 55	*154	*153
			Approximately 0.5 mile upstream of Friendly Lane/Burnett Boulevard.	None	*157
		Fall Kill Creek	Approximately 800 feet upstream of Howard Street.	None	*182
			Approximately 1,100 feet upstream of Smith Street.	*184	*183
		Branch 4 Wappinger Creek	Confluence with Wappinger Creek	None	*123
			Approximately 2,000 feet upstream of Pleasant Place.	None	*159

Maps available for inspection at the Office of the Town Clerk, Town Hall, Dutchess Turnpike, Poughkeepsie, New York
Send comments to The Honorable Anna Buchholz, Supervisor of the Town of Poughkeepsie, Dutchess County, Town Hall, P.O. Box 3208, Dutchess Turnpike Poughkeepsie, New York 12603.

Pennsylvania	Black, township, Somerset County.	Casselman River	Approximately 1,880 feet downstream of L.R. 55029 (Bridge Street).	None	*1,802
			Approximately 875 feet upstream of the confluence of Coxes Creek.	None	*1,813
		Coxes Creek	At downstream corporate limits	None	*1,811
			Approximately 175 feet upstream of L.R. 55038 (Day Street).	None	*1,816

Maps available for inspection at the Township Building, R.D. 1, Rockwood, Pennsylvania.
Send comments to The Honorable Earl Albright, Chairman of the Township of Black Board of Supervisors, Somerset County, R.D., Garrett, Pennsylvania 15542.

Texas	Del Rio, city, Val Verde County.	San Felipe Creek	Approximately 1,500 feet downstream of confluence with San Felipe Creek Tributary.	None	*972
			Approximately 240 feet upstream of upstream corporate limits.	None	*997
		San Felipe Creek tributary	Approximately 820 feet upstream of confluence with San Felipe Creek.	None	*980
			Approximately 350 feet upstream of upstream corporate limits.	None	*996

Maps available for inspection at the City Hall, 109 West Broadway Street, Del Rio, Texas 78840.
Send comments to The Honorable Alfredo Guiterrez, Jr., M.D., Mayor of the City of Del Rio, Val Verde County, 109 West Broadway Street, Del Rio, Texas 78840.

Virginia	Fairfax County, unincorporated areas.	Potomac River	At downstream county boundary	None	*8
			At upstream county boundary	None	*10

Maps available for inspection at the Department of Public Works, Utilities Planning and Design Division, Storm Drainage Branch, 3930 Pender Drive, Fairfax, Virginia.
Send comments to The Honorable J. Hamilton Lambert, Fairfax County Executive, 4100 Chain Bridge Road, Fairfax, Virginia 22030.

Issued: November 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-27205 Filed 11-17-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 206

RIN 3067-AB45

Disaster Assistance; Extension of Comment Period

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice amends the request for comments on the proposed rule for Hazard Mitigation Planning, subpart M of 44 CFR part 206, published at 54 FR 37953, September 14, 1989. The deadline for receipt of comments has been extended from November 13, 1989 to December 13, 1989.

DATE: Comment period extended to December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Disaster Assistance Programs, Federal Emergency Management Agency, Washington DC 20472 (202) 646-3681.

SUPPLEMENTARY INFORMATION: Notice is hereby given that comments on the proposed rule for Hazard Mitigation Planning, subpart M of 44 CFR part 206 will be accepted until December 13, 1989. The deadline for receipt of comments has been extended due to the number and extent of disasters declared during the comment period.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 89-27203 Filed 11-17-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89-20]

Definition of Shipper and Availability of Mixed Commodity Rates; Extension of Comment Period

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The proposed rule in this proceeding, published October 4, 1989 (54 FR 40891), would amend the Commission's tariff and service contract rules to define the term "shipper" and to address the availability of mixed commodity rates. Comments on the Notice of Proposed Rulemaking are now due on November 20, 1989. The Asia North America Rate Agreement ("ANERA") has requested that the time for filing comments be extended for two weeks. ANERA claims the additional time is necessary for the ANERA members to fully discuss and reach consensus on the various aspects of the proposed rule. This notice extends the time for filing comments to the Notice of Proposed Rulemaking to December 4, 1989.

DATE: Comments due December 4, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27113 Filed 11-17-89; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register

Vol. 54, No. 222

Monday, November 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Teton Village Land Exchange, Bridger-Teton National Forest, Teton County, WY; Amendment to Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Amendment to Original Notice of Intent to prepare Environmental Impact Statement dated August 1, 1989.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal to exchange National Forest land on the Jackson Ranger District for private land. The federal tract is located in Teton County, Wyoming described as: T42N, R117W, Sixth Principal Meridian, Section 24, Lot 1 (40.42 acres) Lot 2 (40.31 acres), and part of the E1/2E1/2W1/2NE1/4 (about 10 acres). All or a part of the above described land may be included in the proposed exchange. The offered non-Federal tracts are located in Teton County, Wyoming described as: H.E.S. No. 207 in T44N, R113W, Section 9 and 16 containing 159.67 acres and a conditional scenic easement on T42N, R116W, Section 19 N1/2NW1/4NW1/4, NE1/4 NW1/4 and that portion of the N1/2NE1/4 northwest of centerline State Highway 390 containing approximately 84 acres adjacent to Teton National Park.

DATE: Comments concerning the scope of the analysis should be received in writing by December 9, 1989.

ADDRESSES: Send written comments to District Ranger, Bridger-Teton National Forest, P.O. Box 1689, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Kris England, Realty Specialist, 307-733-4755.

SUPPLEMENTARY INFORMATION: The proposal is described as whether or not to exchange the federal 80.73 acres which is located at the base of the Jackson Hole Ski Area at Teton Village, Wyoming for the 159.67 acre non-federal tract, known as the Diamond L Ranch, and a conditional scenic easement on approximately 84 acres adjacent to Grand Teton National Park. The federal lands to be exchanged are encumbered with Special Use Permits authorizing occupancy for various purposes associated with the operation of the Jackson Hole Ski Corporation. These include a maintenance shed, gun ammo and explosives buildings, and corrals. Other uses on the tract are an electrical sub-station, snow ranger house, powerline, and cemetery. Two permits to the Ski Corp. dated 11/02/83 are 30-year permits. The exchange partner must recognize the continuance of the Special Use Permits or provide evidence that the permittee has agreed to relinquish the Special Use Permits.

The exchange partner was selected from 7 proposals which were submitted in exchange for the federal land.

Preliminary issues which have been expressed include:

1. Potential development that might occur on the federal tract.
2. Possible visual and other impacts from development of the federal tract.
3. Obligations to special use permittees.
4. Possible exchange of only part of the federal land; or exchange the federal land with deed restrictions; or scenic easements to mitigate potential impacts on visual quality due to development on the federal tract.
5. Avoid dividing existing land uses on the Federal tract by arbitrarily drawing the west boundary at the 80 acre subdivision of the section.

Alternatives for the Environmental Impact Statement have been formulated using the issues which surfaced during the previous scoping effort.

1. No action. Do not complete the land exchange.
2. Complete the land exchange with no restrictions on the federal tract. Teton County zoning requirements would be relied upon to mitigate the development and visual concerns.
3. Complete the land exchange using mitigation measures to alleviate potential development and visual concerns which have been expressed by the public. These mitigation measures could involve scenic easements given to a qualified public agency or non-profit conservation organization, deed restrictions, or reduction of acres. To equalize values reduced by mitigation measures additional federal land (10+ acres) would be added to the west side of the federal tract.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by May 1, 1990. The final environmental impact statement is scheduled to be completed by August 1, 1990. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: November 8, 1989.

Brian E. Stout,

Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 89-27190 Filed 11-17-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–89]

Proposed Foreign-Trade Zone; Evansville, Indiana, Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, requesting authority to establish a general-purpose foreign-trade zone at sites in Mount Vernon and Evansville, Indiana, adjacent to the Evansville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 1989. The applicant is authorized to make this proposal under Indiana Code, section 8–10–3–2.

The proposed foreign-trade zone calls for two sites. Site 1 (40 acres) is within the Southwind Maritime Centre (an Ohio River inland port facility owned and operated by the applicant), Mount Vernon, Indiana, about 15 miles west of the City of Evansville. Site 2 is the Central Warehouse facility (30,000 sq. ft.) located at 301 East Indiana Street in Evansville, Indiana.

The application contains evidence of the need for zone services in the Evansville area. Several firms have indicated an interest in using zones procedures for storage, testing, inspection and repackaging activity, involving products such as paper and food items. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel David E. Peixotto, District Engineer, U.S. Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201.

As part of its investigation, the examiners committee will hold a public hearing on December 12, 1989, beginning at 9:00 a.m., in Room 301, City Council Chambers, City/Council Building, 7th and Main Streets, Evansville, Indiana.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by December 5, 1989. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 12, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, New Federal Building, 101 North West Seventh, Rm. 238, Evansville, Indiana 47708

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: November 13, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27182 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 451]

Resolution and Order Approving the Application of the City of Mobile, AL, for a Special-Purpose Subzone at the Degussa Plant in Mobile County, AL—Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Mobile, Alabama, grantee of Foreign-Trade Zones 82, filed with the Foreign-Trade Zones Board (the Board) on November 23, 1987, requesting special-purpose subzone status for the methionine manufacturing facility of Degussa Corporation in Mobile County, Alabama, adjacent to the Mobile Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Establish a Foreign-Trade Subzone at the Degussa Plant in Mobile County, Alabama Adjacent to the Mobile Customs Port of Entry

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, has made application (filed November 23, 1987, FTZ Docket 39–87, 52 FR 46110), in due and proper form to the Board for authority to establish a special-purpose subzone at the methionine manufacturing facility of Degussa Corporation in Mobile County, Alabama, adjacent to the Mobile Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed November 23, 1987, the Board hereby authorizes the establishment of a subzone at the Degussa plant in Mobile County, Alabama, designated on the records of the Board as Foreign-Trade Subzone No. 82B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 9th day of November, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27187 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 449]

Resolution and Order Approving the Application of the Greater Dayton Foreign-Trade Zone, Inc., for Special-Purpose Subzones at General Motors Plants in Dayton and Kettering, OH; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, filed with the Foreign-Trade Zones Board (the Board) on June 28, 1988, requesting special-purpose subzone status at the industrial motors and automotive components plants of the Delco Products Division of General Motors Corporation, located in Dayton and Kettering, Ohio, adjacent to the Dayton Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided that privileged foreign status is elected on any foreign merchandise subject to antidumping and countervailing duty orders upon their admission to the plants, approves the application, subject to the foregoing condition.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Establish Foreign-Trade Subzones at the General Motors Plants in Dayton and Kettering, Ohio

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, has made application (filed June 28, 1988, FTZ Docket 24–88, 53 FR 25647) in due and proper form to the Board for authority to establish special-purpose subzones at plants of General Motors Corporation (Delco Products Division) located in Dayton and Kettering, Ohio, adjacent to the Dayton Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, Therefore, in accordance with the application filed June 28, 1988, the Board hereby authorizes the establishment of a subzone at the General Motors plants in Dayton and Kettering, Ohio, designated on the records of the Board as Foreign-Trade Subzone Nos. 100A and 100B at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 9th day of November 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27188 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–DC–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Holly Kuga or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1), (a)(2), (a)(3), and 355.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than October 31, 1990.

	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Italy:	
Pressure Sensitive Plastic Tape A–475–059	10–1–88—5–30–89
Boston	
Manuli	
NAR	
Japan:	
Tapered Roller Bearings, Over 4 Inches A–588–604	10–1–88—5–30–89
NTN	
Koyo Seiko	
Nippon Seiko	
Nachi Fujikoshi	
PRC:	
Shop Towels of Cotton A–570–003	10–1–88—5–30–89
Chinatex, CNART	
CNART/Cuisinniere	
CNART/Fabric Enterprise	
China Nat'l Native Produce Import & Export	
Chinatex/Transatlantic	
China Resources	
Countervailing Duty Proceedings	
Brazil:	
Certain Agricultural Tillage Tools C–351–406	1–1–88—12–31–88
India:	
Certain Iron-Metal Castings C–533–063	1–1–88—12–31–88

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(a) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.22(c) and 19 CFR 355.22(c)).

Dated: November 9, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–27184 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–808, C–122–809]

Alignment of Final Countervailing Duty and Antidumping Duty Determinations and Postponement of Countervailing Duty Public Hearing; Limousines From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are extending the due date for the final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping duty investigation of the same product, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1671d(a)(1)].

Based upon this request, we are postponing our final determination as to whether producers or exporters of limousines in Canada have received subsidies within the meaning of the countervailing duty law, until not later than March 19, 1990. We are also postponing our public hearing in the countervailing duty investigation until March 1, 1990.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers at (202) 377–2815 or 377–3217, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On October 25, 1989, we published a preliminary negative countervailing duty determination pertaining to limousines from Canada (54 FR 43,444, October 25, 1989). The notice stated that, if the investigation proceeded normally, we would make our final countervailing duty determination by January 2, 1990.

On September 18, 1989, in accordance with section 705(a)(1) of the Act, we received a request from petitioner to extend the due date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product. Accordingly, we are granting an extension of the final determination in this investigation from January 2, 1990, to not later than March 19, 1990.

Public Comment

In accordance with § 355.38 of our countervailing duty regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306, to be codified at 19 CFR 355.38), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination at 10:00 a.m. on March 1, 1990, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by February 22, 1990, for the hearing in the countervailing duty investigation. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by February 27, 1990, for the hearing in the countervailing duty investigation.

An interested party may make an affirmative presentation at the public hearing only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written arguments should be submitted in the countervailing duty investigation in accordance with § 355.38 of the Commerce Department's regulations, and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 705(d) of the Act. This notice is published pursuant to section 705(d) of the Act.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–27183 Filed 11–17–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–405]

Cellular Mobile Telephones and Subassemblies From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The review covers four manufacturers and/or exporters of this merchandise and the period June 11, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of review for three of the four manufacturers.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 19318) the preliminary results of its administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan (50 FR 51724, December 19, 1985). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully coverted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et. seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by this review are cellular mobile telephones ("CMTs"), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, *i.e.*, a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, *i.e.*, a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, *i.e.*, a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this antidumping duty order.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cutoff point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than five dollars, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this order: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

Cellular mobile telephones and subassemblies were classified under Tariff Schedules of the United States Annotated item numbers 685.28 and 685.33; they are currently classified under HTS item numbers 8525.20.60, 8525.10.80, 8527.90.80, 8529.10.60, and 8529.90.50, 8542.20.00, and 8542.80.00. The HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The review covers four manufacturers and/or exporters of Japanese CMTs and subassemblies and the period June 11, 1985 through November 30, 1986.

Fujitsu Limited ("Fujitsu") failed to respond to the Department's antidumping questionnaire. The Department consequently used the best information available for assessment and antidumping duties cash deposit purposes. The best information available was the highest rate from the fair value investigation, or 106.60 percent.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely

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comments from the petitioner, Motorola, and two respondents, Mitsubishi Electric Corporation and Japan Radio Company.

Analysis of Mitsubishi Electric Company's ("MELCO") Comments

Comment 1: MELCO argues that the Department should use constructed value ("CV") as the basis of comparison with the U.S. price of imported subassemblies because the imported subassemblies are not "such or similar" to the home market transceiver sold during the period of review. MELCO bases this argument on the large difference in merchandise adjustments necessary for the comparison. In addition, MELCO argues that the imported subassemblies do not meet the Department's own criteria established in the original investigation for determining similarity between the home market transceiver and the complete CMTs sold in the United States.

Department's Position: The Department established in the investigation of sales at less than fair value ("LTFV") (50 FR 45457, October 31, 1985) that the transceivers sold by MELCO in the home market were "such or similar," within the meaning of section 771(16)(C) of the Tariff Act, to the CMTs it sold in the United States. The Department has, likewise, concluded that the home market transceiver is "such or similar" to the CMT kit imported into the U.S., since the kit is the equivalent of an unassembled CMT.

MELCO's "imported subassemblies" are, in fact, complete or substantially complete kits of cellular mobile telephones, or unassembled cellular mobile telephones. MELCO itself describes these kits as "semi-knockdown kits" consisting of subassemblies and parts for CMTs, from which complete CMTs are produced in the United States (MELCO's questionnaire response dated 4/21/87, p. 30). In some cases, one subassembly may not be included in the kits; in the remaining cases, all necessary subassemblies are included. In arguing that the transceiver sold in the home market during the period of review is not similar to merchandise sold in the United States, MELCO relies on comparisons with discrete subassemblies within the imported kit rather than on comparisons with the kit as a whole, on which the Department has properly relied.

In this regard, we find the Customs doctrine of entireties, while not controlling on the Department, to be a useful analogy. That concept treats as an entirety separate items which are imported together and are intended to be used as a unit, or joined by assembly, with the result being that the individual identities of the separate items are subordinated to the identity of the resulting combined entity. The nature, intended use, and description of the "kits" being imported by MELCO point to their treatment as an entirety under this analysis and we believe that such a result is appropriate here. See, *e.g., Daisy-Heddon* v. *U.S.*, C.A.D. 1228 (1979); *Miniature Fashions* v. *U.S., 54 C.C.P.A. 11 (1966); Donalds LTD.* v. *U.S.*, 32 Cust. Ct. 310 (1954).

Comment 2: MELCO argues that the profit calculated for CV should be that for the same "general class or kind" of merchandise. MELCO provided profit data on a divisional basis, the wider universe of data required by the statute for the same general class or kind of merchandise.

Department's Position: The statute requires the Department to include in constructed value an "amount for general expenses and profit equal to that usually reflected in sales of the merchandise of the same general class or kind as the merchandise under consideration * * *" (section 773(e)(1)(B) of the Tariff Act). The Department may, however, use a profit and selling, general, and administrative expense ("SG&A") figure for a specific product when such data are more accurate or otherwise more appropriate. In these final results of review, we have used MELCO's divisional SG&A and profit data because this was the level at which consistent information was available. Therefore, this method is more appropriate than that used in the preliminary results of review.

In the preliminary results of review, the Department calculated a product-specific profit by totaling the cost of materials and fabrication of the home market transceiver with divisional general expenses, and comparing that figure to homemarket transceiver selling prices. However, because we are unable to determine precisely the transceiver-specific share of divisional general expenses, and because MELCO reported general expenses and profit consistently (*i.e.*, both based on the division's experience) and in the most precise manner allowed by its accounting records, the Department has revised its CV calculation in the final results of this review to use the divisional general expense experience and profit information provided by MELCO. Since MELCO's actual profit, however, was below the statutory minimum of eight percent of the sum of the cost of materials, fabrication and general expenses, the statutory minimum of eight percent for profit was used.

Comment 3: MELCO argues that some of the items it imported do not meet the definition of subassemblies covered by the scope of the order and, therefore, it would be unlawful for the Department to assess antidumping duties against these items, as the Department indicated would be done in the preliminary results.

Department's Position: The items referred to by MELCO as subassemblies not covered by the scope of the antidumping duty order are imported as part of a CMT kit; all items contained in the kit are properly within the scope of the antidumping order and subject to antidumping duties if sold at less than fair value. We have treated the kits imported by MELCO in their entirety just as we have treated the kits sold by Japan Radio Company. The contents of a kit are considered as a whole, the whole being the functional equivalent of an unassembled CMT subject to the antidumping duty order. (See also response to MELCO's Comment 1.)

Comment 4: If constructed value is not used as the basis of comparison with the U.S. price of imported subassemblies, MELCO contends that a proportion of profit must be subtracted on the home market side to prevent the creation of artificial dumping margins. MELCO believes that such an adjustment is necessary to offset the distortive effect of the large difference in merchandise adjustment resulting from the higher cost of producing the home market transceiver. In addition, since the Department deducted from the selling price of the CMT produced from the imported kit a portion of profit attributable to value added in the U.S., it should perform a corresponding adjustment for profit on the home market side.

Department's Position: Because the difference in merchandise adjustment was not of sufficient magnitude to eliminate use of the domestic transceiver as a basis of comparison, the Department has no reason to adjust further for profit as proposed by MELCO.

The Department's allocation of profit or loss for the U.S. exporter's sales price ("ESP") sales does not mandate any similar deduction from home market price. The adjustment to the U.S. price in the case of ESP sales of goods which have been further manufactured serves only to allow a more accurate calculation of the U.S. price for the kit as imported, prior to any value being added in the U.S. It deducts profit allocable to the value added in the U.S., but does not deduct profit from the U.S. price before that value is added. Thus, the Department's comparison of U.S. and home market prices is in accordance with the statute (section 772 of the Tariff Act), § 353.41(e)(3) of the Department's regulations, published at 54 FR 12742 (March 28, 1989), and the Department's own consistent administrative practice (see, *e.g., Final Determination of Sales at LTFV; Color Picture Tubes from Japan*, 52 FR 44171, 44173 (November 18, 1987)). We therefore determine that this method is reasonable and accurate without further adjustments.

Comment 5: MELCO claims that the Department should use an average difference-in-merchandise adjustment for price-to-price comparisons, on the basis that it would more accurately reflect the actual pricing policies of businesses. MELCO argues that job order to job order matching can result in adjustments that are not reflective of MELCO's "average" pricing decisions, which are set to recover costs over time, not to recover costs for a particular job order.

Department's Position: In our final results, as in our preliminary results of administrative review, difference in merchandise adjustments were based on the difference between the cost for the job order in which particular kits or complete CMTs were manufactured and the cost of the home market transceiver manufactured closest in time. The Department relied on this information since it provides the most accurate measure of respective cost differences between the merchandise being compared. Since difference in merchandise adjustments made on a job order basis constitute a reasonably accurate comparison insofar as costs in both markets at similar production stages should be similarly affected. Any cost reduction trends over time would apply to both home market and export models, as the evidence in MELCO's case demonstrates.

Comment 6: MELCO comments that the Department should average foreign market value over a period of six months or more, rather than using monthly weighted averages, because the former method more closely matches the way in which MELCO and other companies set prices, and would thereby avoid the artificial creation or elimination of dumping margins solely due to temporary price or cost fluctuations in the home market.

Department's Position: In accordance with section 773(a)(1), the Department seeks to compare U.S. price and foreign market value at times which are as contemporaneous as possible. The Department therefore uses home market sales closest in time to U.S. sales for comparison whenever possible. Where there are no home market sales in the same month as the U.S. sale, we use home market sales made up to 90 days prior and 60 days after the U.S. sale. This practice is further designed to utilize home market sales taking place before the U.S. sale prior to utilizing those that take place after. This prevents, as much as possible, the seller being unable to know what foreign market value will be at the time he sets his U.S. price. We followed this practice with respect to MELCO and found contemporaneous sales. The Department therefore expects MELCO to set its U.S. price given this knowledge regarding foreign market value. Moreover, if MELCO chooses to set an average price, it can do so in both markets.

Comment 7: MELCO argues that the Department should not have applied the ESP cap in the analysis of this administrative review since it is an "unneeded relic" that improperly distorts the margin calculation by limiting the indirect selling expenses to be deducted in the home market.

Department's Position: The ESP cap limits the amount of the home market (or third country) indirect selling expenses deducted in the calculation of foreign market value to the amount of indirect selling expenses incurred on sales in the United States. The use of the ESP cap is provided for by § 353.56(b)(2) of the Department's regulations and was previously provided for by § 353.15(c). The use of the cap is a well-established administrative practice of the Department (see, *e.g., Study of Antidumping Adjustments Methodology*, (November 1985)) and has been upheld by the courts as appropriate (see *e.g., Smith-Corona Group v. United States*, 713 F.2d 1568 (CAFC 1983); *Zenith Radio Corp. v. United States*, 783 F.2d 184 (CAFC 1986)). Although not relevant to our decision in this regard, for the majority of MELCO's sales during this review, indirect selling expenses incurred in the sale of the U.S. merchandise were not exceeded in the home market and therefore, for these sales, the ESP cap was not applied.

Comment 8: Given the rapid decline in the value of the dollar during the period of review and the long lag time between production and sale to unrelated parties, MELCO argues that the Department should apply an exchange rate other than the sale-date exchange rate applied by Commerce in this case. MELCO advocates the use of the exchange rate in effect 90 days before the date of sale for converting FMV to dollars and cites the *Melamine* case in support of its position. The use of the previous quarter's exchange rate is reasonable in this case since the period of review has been marked by a drastic and unpredictable decline in the value of the dollar.

Department's Position: The Department has applied the exchange rate certified by the Federal Reserve Board in all calculations in these final results of review. The Federal Reserve certifies the quarterly exchange rate except in instances where the daily rate varies by at least five percent from the quarterly rate, in which case the daily rate constitutes the rate certified by the Federal Reserve Board. These rates were applied in accordance with the Tariff Act, as codified at 31 U.S.C. section 5151, and with § 353.60 of the Department's regulations.

The Department's regulations provide for the application of exchange rates other than the quarterly or actual daily rates only when certain special circumstances, such as volatile, or sustained, exchange rate changes, occur during the period of a fair value investigation. However, no such provision applies in section 751 administrative reviews.

Comment 9: MELCO requests the Department to instruct U.S. Customs to refund in full antidumping duties on which MELCO received a duty drawback upon export of only 99 percent, and not to require payment of duties on items not covered by the antidumping duty order, including replacement parts and subassemblies.

Department's Position: As stated in our Final Determination of Sales at less than Fair Value (50 FR 45447, 45457, October 31, 1985), replacement subassemblies are not covered by the antidumping duty order. However, it remains the responsibility of the importer to satisfy Customs that subassemblies are imported only for replacement purposes. Inquiries regarding duty drawback should be directed to the U.S. Customs Service, which administers the duty drawback program.

Analysis of Japan Radio Company's ("JRC") Comments

Comment 1: In calculating constructed value, Commerce should use the profit attributable to all products of the same "general" class or kind of merchandise as JRC's U.S. CMT components. JRC considers certain telecommunication equipment to be of the same general class or kind of merchandise as its CMT components sold in the United States; this is the profit figure which they reported in their original constructed value response.

Department's Position: In spite of receiving identical instructions for the reporting of SG&A expenses and profit, JRC chose to report each differently. For its reporting of profit, which JRC now purports to be attributable to the same "general" class or kind of merchandise as its CMTs sold in U.S., JRC relied strictly on its financial statement. However, if the Department calculates the general expenses of the company based strictly on its financial statements (*i. e.*, on the same "general" class or kind of merchandise), a significantly larger percentage for SG&A than that reported by JRC would have resulted. The Department cannot accept differing methodologies for the calculation of general expenses and profit when, as is the case here, the amount for general expenses varies so greatly from that which would have been obtained had identical methodologies been utilized. Moreover, when JRC was specifically requested to provide general expense information on the class or kind of merchandise sold in the home market, JRC provided the Department with a product-specific general expense amount. JRC could have used this opportunity to provide the general expense information in the same manner as that reported for profit and which they now claim to be for the same "general" class or kind of merchandise.

For these reasons, the Department has determined that use of the product-specific SG&A figure reported as well as the financial statement-based profit figure would be inconsistent and distortive. The Department has, therefore, accepted the product-specific SG&A amount reported for sales of domestic transceivers which JRC supplied while continuing to use the product-specific amount calculated by the Department for profit. We believe that this provides for more reliable and internally consistent results than does the information supplied by JRC.

Comment 2: The exchange rate for converting constructed value to dollars for comparison with the U.S. sale made on November 28, 1985, is incorrect because it was based on the daily rather than quarterly exchange rate. The quarterly rate must be used in this case, JRC argues, since there is no Federal Reserve certified daily exchange rate for the exact date of sale, Thanksgiving Day, which varies from the quarterly rate by more than five percent.

Department's Position: The Department's statute and regulations direct it to use the exchange rate certified by the Federal Reserve Board. See § 353.60 of the Department's regulations and 31 U.S.C. section 5151(c). The Federal Reserve Board certifies the quarterly exchange rate, unless the daily exchange rate varies from the quarterly rate by more than five percent, in which case the daily rate is certified. See also the Department's Position in response to MELCO's Comment 8. Since the daily exchange rate for the day before Thanksgiving varied by more than five percent from the quarterly exchange rate and was, therefore, the rate certified by the Federal Reserve, the daily rate was used in converting constructed value to dollars. Because no Federal Reserve certified exchange rate was available for the holiday of Thanksgiving Day, we have used the rate in existence the day before the sales confirmation as a reasonable measure of the exchange rate the parties may be deemed to have considered on the date of sale itself.

Analysis of Motorola's Comments

Comment 1: Motorola argues that the Department erred in its preliminary results by assigning Fujitsu its cash deposit rate of 57.81 percent as best information available, claiming that the Department should have instead used the highest margin in effect at the time for any company subject to the antidumping duty order, or 106.60 percent. Motorola further argues that the incentive for companies to respond to the Department's questionnaire is severely diminished if the worst they have to fear is a continuation of their existing cash deposit.

Department's Position: We agree with the petitioner that sufficient incentive through the appropriate application of best information available ("BIA") should be utilized by the Department in order to encourage respondent cooperation and provide accurate dumping determinations. By failing to respond to the Department's questionnaire, Fujitsu made no attempt to provide the Department with information regarding their selling practices; this fact should be taken into account in determining what constitutes best information available for this manufacturer. We believe that, in such a situation, the best information rule is a rule of adverse inference (see *Shop Towels of Cotton from the People's Republic of China: Final Results of Administrative Review of Antidumping Duty Order*, (50 FR 26020, 26022, June 24, 1985)). Fujitsu's cash deposit rate of 57.81 percent is the "all other" rate from the original investigation, and does not reflect information specific to this manufacturer. Given the fact that Fujitsu failed to provide more accurate information, the Department must adversely infer that such information would, therefore, be detrimental to Fujitsu. Given these circumstances, the Department finds that the use of the highest rate of 106.60 percent from the fair value investigation is the appropriate application of best information available for Fujitsu.

Comment 2: Motorola argues that the Department should use JRC's home market sales of transceivers as the basis of FMV since the home market transceivers of two other Japanese respondents, MELCO and NEC, were determined by the Department in the original antidumping investigation to be "similar" merchandise. Furthermore, aside from the cost differences detailed by JRC between its home market transceiver and the CMT kit sold for export to the United States, little evidence has been provided to support JRC's contention that the two products are not "such or similar."

Department's Position: In both the preliminary and final results of review, the Department has used constructed value as the basis of comparison with JRC's CMT kits sold for export to the U.S. The cost differences between JRC's home market transceiver and the U.S. product were verified by the Department and determined to be of such magnitude as to preclude a reasonable comparison. As the Department stated in the *Final Determination of Sales at Less Than Fair Value in Certain Internal-Combustion, Industrial Forklift Trucks from Japan:*

> It is the Department's practice to disregard home market sales as the basis for foreign market value when the difference in merchandise adjustments claimed are of such a magnitude as to lead us to question whether the home market sales reported can serve as an appropriate measure of foreign market value. There are two basic reasons for this practice: (1) In determining whether U.S. sales are being made at less than fair value, we do not want the difference in merchandise adjustment either to falsely create dumping margins or to mask them; and (2) large difference in merchandise adjustments may indicate that the home market sale is not similar to the U.S. sale, thus, warranting a new comparison (53 FR 12552, 12567, April 15, 1988).

The cost differences existing between the transceiver and the CMT kit would have meant adjusting by an amount which exceeded the entire cost of producing the merchandise sold in the United States. An adjustment of such magnitude is inherently sufficient to question the appropriateness of such a comparison. The Department has continued to use the home market transceiver as the basis of foreign market value for MELCO, one respondent referred to by Motorola,

consistent with the finding of similarity within the original investigation, because the differences in merchandise adjustments for MELCO were not of the same magnitude as those for JRC. (See also the Department's response to MELCO's comment 1.)

Comment 3: Motorola states that, since it requested in a timely manner that the Department verify Nihon Dengyo's response, the Department is required by statute to conduct a verification before relying on that response in issuing its final results of administrative review.

Department's Position: In accordance with section 776 of the Tariff Act, the Department conducts verification in an annual administrative review under section 751(a) only when we receive a request for revocation from a respondent, when we receive a request for revocation from a respondent, when we receive a request from the domestic industry and have not conducted a verification during the two immediately preceding reviews and determinations, or when the domestic party has shown "good cause" for verifying the information received during the administrative review (see §353.36(a) of the Department's regulations and *Color Television Receivers from Korea; Final Results of Administrative Review*, FR 24975, 24978, (1988)). In the context of the first administrative review, therefore, the Department retains discretion as to whether to verify a respondent's information since two preceding unverified reviews and determinations have not as yet transpired. In reaching the decision not to verify this respondent, as was timely requested by the petitioner, the Department considered the substantial amount of detail and supporting cost documentation provided in Nihon Dengyo's questionnaire and supplemental submissions, and the fact that this information was also shown to be consistent with its audited financial statements. Furthermore, the only reason offered by the petitioner for requesting verification was that Nihon Dengyo had never previously been verified. The Department, therefore, does not find "good cause" for verification of Nihon Dengyo.

Comment 4: Motorola states that the Department should set the cash deposit rate for Nihon Dengyo equal to that of Fujitsu, which acquired majority interest in Nihon Dengyo during the review period. This would be in accordance with the Department's practice of establishing a single margin for related entities.

Department's Position: The Department does not agree with the petitioner that the administrative practice of the Department is automatically to establish a single margin for related entities based solely on the extent of their financial relationship. There are, in fact, additional factors which would contribute to a decision to "collapse" related producers (*i.e.*, to treat the two as a single entity). Such factors may include the fact that the two companies involved are capable, through their sales and production operations, of manipulating prices or affecting production decisions. See *e.g., Final Determination of Sales at LTFV; Brass Sheet and Strip from France*, 52 FR 812 (January 9, 1987); *Final Determination of Sales at LTFV; Granite from Spain*, 53 FR 24335 (June 28, 1988).

The sales made by Nihon Dengyo during the review period were made prior to their acquisition by Fujitsu. Aside from the degree of financial interest held by Fujitsu in Nihon Dengyo, we do not have sufficient information to enable us to conclude that the parties do not operate separate and independent sales and production operations. For this reason, the Department will continue to set separate cash deposit rates for each manufacturer.

Comment 5: Motorola argues that Nihon Dengyo's research and development ("R&D") costs were selectively allocated across different models resulting in a substantial allocation of such expenses to products sold outside the period of review and to products sold during the period of review at higher costs. The Department should require the company to use a consistent amortization rule for these expenses.

Department's Position: Although Nihon Dengyo reported its method of allocating R&D costs in the same manner as reflected in its books and records, the Department agrees with the petitioner that an identical allocation method would provide consistent treatment for similar expenses. Therefore, in our final results of administrative review, we have used the same allocation methodology for the development for all models.

Comment 6: Motorola argues that the Department should consider the general expenses and profit for the two respondents involved in the review as reflective of the experience of producers of the same general class or kind of merchandise in the country of exportation. Therefore, the Department should use these amounts from the preliminary results of review, rather than the lower statutory minima, in calculating a CV for Nihon Dengyo.

Department's Position: In the final results of review, the Department has used the statutory minimum for profit in calculating a CV for MELCO (see MELCO Comment 2). Irrespective of that fact, however, the general expense and profit experience of the two reviewed producers cast doubt on whether there is a common industry experience in Japan, since the experiences of these two producers are dissimilar for profit and general expenses. The use of the statutory minimum profit was upheld by the Court of International Trade in *Alhambra Foundry Co. v. U.S.*, 685 F. Supp. 1252, 1260 (1988). Therefore, in the absence of actual general expense and profit data for Nihon Dengyo, the Department has continued to use the statutory minima for general expenses and profit.

Comment 7: Petitioner argues that, despite the fact that the product sold in the U.S. by MELCO is a complete CMT unit with many advanced features while the product sold in Japan is an incomplete unit with only moderate features, the Department has nonetheless accepted the large difference in merchandise adjustment which reduces foreign market value. Instead, Motorola states that the Department should reject the difference in merchandise adjustment reported by MELCO since the U.S. model should have a higher market value than its domestic counterpart; therefore, its lower U.S. price cannot be due to physical differences. Motorola further faults the difference in merchandise adjustment reported by MELCO alleging that MELCO has not properly compiled or attributed all overhead costs. For example, engineering and capital equipment costs above a set amount were not included in overhead. In addition, some R&D was reported as an element of SG&A.

Department's Position: The petitioner's conclusion regarding the relative value of merchandise assumes that such a determination can be made simply by comparing the number of features available for each model. Such a conclusion is not substantiated by the facts on the record. The Department verified the differences in merchandise adjustment between U.S. and home market models reported by MELCO and determined that the amount reported was accurate and reflected actual cost differences based on differences in physical characteristics between the U.S. and home market merchandise. Because a difference in merchandise adjustment accounts only for differences in variable costs, capitalized costs such as MELCO's engineering, capital

equipment expenses, and general R&D expenses (which are included as an element of SG&A) are properly not part of this adjustment. For these reasons, the Department has allowed the difference in merchandise adjustment in its analysis.

Comment 8: Motorola alleges that sales made by MELCO to a trading company in Japan should be treated under the antidumping law as sales to a related party. Motorola argues that this is the proper determination since MELCO and the trading company are both members of the powerful Mitsubishi Group. As such, both are ultimately controlled in large part by a "group of persons" through cross ownerships within the Group, financial inter-dependencies, inter-locking and coordinated directors and officers, and de facto operation.

Department's Position: Motorola has not alleged that MELCO and the trading company are related in any of the ways set forth in § 353.45 of our regulations which reference section 771(13) of the Act. Motorola's claim is similar to that of the petitioner in *Television Receiving Sets, Monochrome and Color, from Japan,* 50 FR 24278 (June 10, 1985), who claimed that manufacturers and purchasers were related by virtue of participation in the groups of the Japanese "keiretsu" system. The Department rejected that argument, noting that "the requirements of the antidumping law are satisfied when the Department investigates whether there is a financial relationship between the seller and the buyer. To go further and investigate non-financial relationships is not required by the Act." *Id.* at 24280. This reasoning was endorsed by the Court of International Trade in *Zenith Radio Corp.* v. *the United States,* 605 F. Supp. 695 (CIT 1985). Therefore, we have not treated these transactions as if they were between related parties.

Comment 9: Motorola questions the amount of CMT sales revenue used by MELCO in allocating certain selling expenses during 1985 and 1986. Specifically Motorola points to the difference between that amount and the total for CMT sales shown on MELCO's submitted sales listing.

Department's Position: MELCO's sales revenue figure used for allocation purposes appropriately includes all CMT sales—*i.e.,* sales of CMTs entered before and sold after the suspension of liquidation; sales of CMTs manufactured in, and with parts from, the United States; and those CMTs covered by the antidumping duty order. The latter amount correlates with the specific sales being reviewed as indicated on MELCO's sales listing.

Comment 10: Motorola questions a wide variance in overseas shipping expenses reported for MELCO's U.S. sales.

Department's Position: MELCO's differences in freight expenses result from the different quantities involved in shipments as well as the fact that some shipments were air-freighted while others were sent by sea.

Comment 11: Motorola questions whether all parts imported by MELCO as part of a CMT kit are included in the analysis since MELCO's response distinguishes between "non-covered parts" and parts covered by the antidumping duty order.

Department's Position: The Department has not distinguished among parts within MELCO's kit and has treated the kits as a whole. All costs associated with each kit have been included in their entirety.

Comment 12: Motorola questions the use of a uniform sale date for a particular grouping of MELCO's sales since the sale terms do not appear to be fixed on that date.

Department's Position: MELCO's contracts on the sale date in question established the terms of sales including price, quantity and shipment schedule. Petitioner's question may stem from the fact that two sales prices for the same CMT were set forth in separate contracts on that date. Contracts provided to the Department by MELCO verify these facts.

Comment 13: Petitioner faults the Department's value added adjustment because it included losses attributable to U.S. inputs.

Department's Position: In arriving at a U.S. price for MELCO's kit at the time of importation, the Department adjusts for all U.S. value-added, including any proportional loss attributed to U.S. value. This adjustment is consistent with the statute, regulations, and the Department's administrative practice. (See Department's Position on MELCO's comment 4.)

Comment 14: Motorola argues that MELCO's start-up expenses for U.S. production were spread over projected capacity estimates that are excessive.

Department's Position: We disagree. The Department relied on three years of actual production experience in estimating the total five year production volume for allocating MELCO's start-up expenses. Since production during the initial years of operation was significantly below capacity, it is not unreasonable for the Department to accept a moderate growth in production thereafter considering MELCO's projections remained below full capacity. Moreover, the average annual production for the five year period, using the Department's methodology, remains below the last year of actual production provided by MELCO.

Comment 15: Motorola questions the average credit expense reported by MELCO in 1986 because the financial statement shows interest rates which would produce a higher average than that reported.

Department's Position: The interest rate derived by the petitioner results from a simple average of the high and low amounts reported for promissory rates from MELCO's financial statement. The average interest rate reported by MELCO is based on the average of actual borrowing rates experienced during the period by the company. Accordingly, we have used the interest rate reported by MELCO.

Comment 16: Motorola questions whether the interest income allowed as an offset to MELCO's interest expense was attributable to CMT operations.

Department's Position: The interest income claimed by MELCO as an offset to interest expense was for interest earned on compensatory balances. The Department does not require that such interest be exclusively related to the merchandise subject to review. Short-term interest income, such as that earned on compensatory balances, which is related to the ordinary course of business, is accepted as an offset to short-term interest expense. (See *Final Results of Administrative Review: Titanium Sponge from Japan,* (52 FR 4799, February 17, 1988.)) No offset was claimed on long-term instruments or investment income that is generally not allowed as an offset by the Department.

Final Results of the Review

As a result of the comments received, and correction of clerical errors, we have revised our preliminary results, and determine that the following margins exist for the period June 11, 1985 through November 30, 1986:

Manufacturer	Margin (percent)
Mitsubishi Electric Corporation	5.99
Nihon Dengyo	3.89
Japan Radio	17.71
Fujitsu	106.60

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for MELCO, Nihon Dengyo, Japan Radio Company, and Fujitsu. For shipments from the remaining known manufacturers or exporters not covered by this review, the cash deposit will continue to be at the rate established in the antidumping duty order (50 FR 51724, December 19, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 17.71 percent shall be required. These deposit requirements are effective for all shipments of Japanese cellular mobile telephones and subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: November 9, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-27189 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Monday, December 11, 1989, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 3 p.m. and ending at 5 p.m. on December 11, 1989, will be closed.

DATE: The meeting will convene December 11, 1989, at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: November 14, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-27207 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by George S. Chenault From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On August 28, 1989, George S. Chenault (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the South Carolina Coastal Council to the Appellant's consistency certification for a U.S. Army Corps of Engineers' (Corps) permit for the construction of a small pond in Burton, South Carolina. The State's objection precludes the Corps from issuing the permit to the Appellant pending the outcome of the Appellant's appeal.

The Appellant has requested a stay of the appeal and that request has been granted. The Appellant has until December 1, 1989 to file his brief and supporting information and data. If Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235 (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 9, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89-27220 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Jorge L. Guerrero-Calderon From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for comments.

On March 17, 1989, the Secretary of Commerce received a notice of appeal from Mr. Guerrero-Calderon (Appellant) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 U.S.C. part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for a United States Army Corps of Engineers (Corps) permit to build a private use timber pier, with mooring pilings and buoys, in Tamarindo Bay, Culebra, Puerto Rico. The PRPB's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

On June 6, 1989, the Department of Commerce published a Notice of Appeal in the Federal Register. 54 FR 24250. The Notice indicated that, if the Appellant perfected the Appeal by filing the supporting data and information required by the Department's implementing regulations, then public comments would be solicited by a notice in the Federal Register and by a notice in a local newspaper.

On June 16, 1989, the Department received the Appellant's brief and supporting data and information. On July 21, 1989, the Department received the response brief of the Puerto Rico Planning Board.

Section 307(c)(3)(A) of the CZMA provides that a timely objection by a state (defined to include Puerto Rico for purposes of the CZMA) to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). 16 U.S.C. 1456(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 15 CFR 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is permissible because it is "consistent with the objectives" of the CZMA, the Secretary must find that it satisfies the following four requirements: (1) the proposed activity furthers one or more of the national objectives or purposes contained in Sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington DC 20235. Copies of comments should also be sent to Lina M. Dueño, Acting President, Puerto Rico Planning Board, Minillas Governmental Center, North Building, De Diego Ave., Stop 22, P.O. Box 41119, San Juan, Puerto Rico 000940–9985, and to Mr. Jorge L. Guerrero-Calderon, Abogados Notarios, Calle de la Tanca Numero 300, Viejo San Juan, Puerto Rico 00901.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the Puerto Rico Planning Board and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR FURTHER INFORMATION CONTACT: Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 13, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89–27221 Filed 11–17–89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet December 7, 1989 from 2 p.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the development and application of both cryogenic and high temperature superconductivity to naval systems and related intelligence, particularly that related to integrated ship power and combat systems. The entire agenda of the meeting will consist of discussions of key issues regarding research requirements and risks, the ability of the industrial base, both here and abroad, to support these requirements and field prototype systems, and related intelligence analyses. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense, and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: 15 November 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27173 Filed 11–17–89; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Grant Partially Exclusive Patent; Razar Resources, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Razar Resources, Inc.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Razar Resources, Inc., a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,809,638, entitled "Ocean Location Marking Using Film Forming Polymers," issued March 7, 1989; inventors: Robert R. Kolesar and J. Terry Richard.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000.

DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington VA 22217–5000, telephone (202) 696–4001.

Dated: November 15, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27174 Filed 11–17–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Nuclear Energy

Certification of the Radiological Condition of Shippingport Atomic Power Station, Shippingport, PA

AGENCY: Office of Remedial Action and Waste Technology, DOE.

ACTION: Notice of certification.

SUMMARY: The U.S. Department of Energy has completed remedial action to decontaminate and dismantle the reactor and steam generating portions of the Shippingport Atomic Power Station. This Federal Register Notice summarizes those activities involved in the accomplishment of the remedial action.

FOR FURTHER INFORMATION CONTACT: J.J. Fiore, Director, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353–5272.

SUPPLEMENTARY INFORMATION: The Shippingport Atomic Power Station (Shippingport Station) was constructed during the mid-1950s as a joint project of the Federal Government and the Duquesne Light Company (DLC). The purposes of the project were to develop and demonstrate pressurized water reactor (PWR) technology and to generate electricity. The reactor and steam generating portions of the station were owned by the U.S. Department of Energy (DOE) and the electrical generating portion was owned by DLC. The station is located on the south bank of the Ohio River at Shippingport, Beaver County, Pennsylvania, on approximately seven acres of land leased from DLC by the U.S. Department of Energy.

The station achieved criticality in December 1957 and was operated by DLC under contract with the Atomic Energy Commission (AEC),[1] office of the Deputy Assistant Secretary for Naval Reactors. The Shippingport Station produced over 7.4 billion kilowatt hours of electricity from the time it began operation in December 1957 until operations were terminated on October 1, 1982. The station utilized three cores of reactor fuel, the last of which was a light water breeder reactor (LWBR) core. The LWBR core was installed in 1977 for the purpose of demonstrating the thermal breeding principle in a light water reactor and was shut down on October 1, 1982. The DOE had no further plans for the station and no utility had indicated an interest in continuing operation of the station to produce electricity. Thus, following end-of-life testing and defueling, the station was made available for decommissioning in September of 1984.

The station consisted of a pressurized water reactor (PWR) originally rated at 72-MWe, a turbine generator, and associated facilities. The principal elements of the reactor plant were the reactor pressure vessel, and four primary coolant loops and associated equipment which circulated the reactor coolant between the core and the steam generators. The entire primary coolant system was enclosed in a 1¼ inch minimum thick steel containment chamber system consisting of three cylinders and a sphere. The containment chambers were located inside heavily reinforced concrete enclosures, mostly underground, with walls and slabs ranging in thickness from 3 to 7 ft. Most radwaste facilities were located in buildings and buried vaults or trenches, while some facilities were out-of-doors.

The station also included a turbine building, a test and training building and a control room. These structures and their non-radiological enclosed systems are owned by DLC and were not dismantled during the decommissioning effort.

In 1984, the DOE's Surplus Facilities Management Program under the Assistant Secretary for Nuclear Energy took responsibility for decommissioning the station properties. Radioactive materials above acceptable residual levels were subsequently removed and transported to a DOE radioactive waste disposal site at Hanford, Washington. Radioactively clean asbestos was sent to a U.S. Environmental Protection Agency (EPA) permitted asbestos disposal site. Chemically hazardous materials were removed for disposal at U.S. EPA permitted hazardous waste treatment and disposal facilities. The structures remaining on site were decontaminated and demolished and interred at the site. Physical decommissioning was completed in June of 1989. Post-remedial action surveys have demonstrated, and DOE has certified, that radiological conditions on the affected property comply with DOE decontamination guidelines, and that the Shippingport Atomic Power Station site presents no radiological hazard to the general public or to site occupants as a result of DOE pedecessor activities. These findings are supported by information contained in the DOE Certification Docket for the remedial action performed at the site from 1985 through 1989. Independent verification of these findings was performed by Oak Ridge Associated Universities whose Radiological Site Assessment Program's corroborating report is also included in the Docket. Accordingly, the property comprising the reactor site is released from the DOE's Surplus Facilities Management Program.

The certification docket will be available for review between 8:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the Department of Energy Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

The Department of Energy, through the Richland Operations Office, Project Management Division, has issued the following statement:

Statement of Certification: The Property Comprising the Shippingport Atomic Power Station

The Richland Operations Office, Project Management Division has reviewed the radiological data obtained following remedial action at the subject property. Based on this review, the DOE has certified that the property is in compliance with DOE decontamination criteria and standards. Accordingly, the property known as the Shippingport Atomic Power Station on Duquesne Light Company land in the Borough of Shippingport, Beaver County, Commonwealth of Pennsylvania is released from the Surplus Facilities Management Program.

This certification of compliance provides assurance that use of the property will not result in radiological exposure to members of the general public or to site occupants above applicable DOE Guidelines.

Dated: October 31, 1989.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.

[FR Doc. 89–27227 Filed 11–17–89; 8:45 am]

BILLING CODE 6450-01-M

[1] The Atomic Energy Commission was a statutory predecessor agency of DOE.

Grants; Advanced Coal Research

AGENCY: Pittsburgh Energy Technology Center, DOE.

ACTION: Notice of Restricted Eligibility for the Program Solicitation No. DE–PS22–90PC90282 for Support of Advanced Coal Research at U.S. Colleges and Universities.

SUMMARY: The DOE announces that pursuant to 10 CFR 600.7(b)(1), it intends to conduct a competitive Program Solicitation to award, on a restricted eligibility basis, grants to U.S. colleges,

universities, and university-affiliated research institutions in support of advanced coal research. The grants will be awarded to a limited number of proposals selected on the basis of scientific merit, subject to the availability of funds.

SUPPLEMENTARY INFORMATION: Since the inception of the University Coal Research Program in FY–80 (by Congressional direction) it has been DOE's intent to maintain and upgrade educational, training and research capabilities of our universities and colleges in the fields of science and technology related to coal. Moreover, the involvement of professors and students to generate fresh research ideas and to ensure a future supply of coal scientists and engineers is a key purpose of this program. Therefore, U.S. colleges, universities, and university-affiliated research institutions may submit, in response to this solicitation, applications *only if* the Principal Investigator or a Co-Prinicpal Investigator listed on the application is a teaching professor at the university *and* at least one student registered at the university is to receive compensation for work performed in the conduct of research proposed in the application, *and* proposals for the university-affiliated research institutions are submitted through the college or university with which they are affiliated. So long as these conditions are met, other participants, Co-Principal Investigators or research staff who do not hold teaching or student positions may be included as part of the research team.

Eligibility for participation in this program in FY–90 is restricted to U.S. colleges and universities and university-affiliated research institutions as defined above.

All applications must relate to coal research in one of the following seven technical categories:

(1) *Coal Science:* Fundamental research on the structure, characteristics, and reactivity of coal and coal-derived materials; nature of the oxygen-, nitrogen-, and sulfur-bonding in coal; geochemical and geophysical properties of coal; techniques and instrumentation applicable to the analysis of coal, coal mineral matter, and coal-derived materials.

(2) *Coal Surface Science:* Research on surface properties of coal and mineral matter pertinent to weathering, preparation (i.e., cleaning, surface enhanced beneficiation, dewatering, and pelletizing), conversion, utilization, and the rheology of coal-oil/coal-water slurries.

(3) *Reaction Chemistry:* Fundamental research directed toward an understanding of organic, inorganic, and biochemistry of coal with respect to catalyzed and uncatalyzed conversion and utilization; chemical and microbiological coal cleaning, gasification, liquefaction, denitrification, denitrogenation, and desulfurization; novel reactions for depolymerizing coal; chemical reactions in supercritical fluids; and fuel cell chemistry.

(4) *Advanced Process Concepts:* Research on concepts of improved coal conversion and utilization processes through novel chemistry, engineering, reactors, or components.

(5) *Engineering Fundamentals and Thermodynamics:* Research on the effect of temperature and/or pressure on transport phenomena with or without chemical reactions; measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; and supercritical phase behavior.

(6) *Environmental Science:* Research on the formation, control, and elimination of pollutants arising from coal conversion and utilization reactions.

(7) *High Temperature Phenomena:* Investigation of the physical and chemical phenomena at high temperatures associated with combustion and gasification of coal and with electromagnetic generation of power; vaporization of alkalis and ash fusion in coal conversion and utilization processes; and high temperature separation techniques.

Awards: DOE anticipates awarding grants for each project subject to the availability of funds. Approximately $5.39 million is available for the program solicitation, which should provide support for about 30 proposals. Program solicitations are expected to be ready for mailing by December 5, 1989.

Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation. To be eligible, applications must be received by the Department of Energy by January 23, 1990.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: John N. Augustine.

Dated: November 8, 1989.

Sun W. Chun,

Director.

[FR Doc. 89–27217 Filed 11–17–89; 8:45 am]

BILLING CODE [illegible]

Federal Energy Regulatory Commission

[Docket Nos. CP89–634–000 and CP89–815–000; CP89–629–000]

Iroquois Gas Transmission System; Tennessee Gas Pipeline Co.; Iroquois/Tennessee Pipeline Project; Availability of Draft Environmental Impact Statement

November 14, 1989.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC), has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and related nonjurisdictional facilities.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The DEIS evaluates alternatives to the proposals.

Iroquois Gas Transmission System (Iroquois) proposed in its applications, Docket Nos. CP89–634–000 and CP89–815–000 to construct pipeline facilities and transport up to 533,900 thousand cubic feet per day (Mcfd) of nautral gas received from TransCanada PipeLines Limited. The gas would be delivered to local distribution companies (LDCs), cogeneration, and electric generation customers in New York, New Jersey, and southern New England areas. Iroquois would also deliver gas to Tennessee Gas Pipeline Company (Tennessee) near Wright, New York and Stratford, Connecticut, and to Algonquin Gas Transmission Company (Algonquin) near Brookfield, Connecticut for redelivery to certain LDCs, cogeneration, and power generation customers in Connecticut, Massachusetts, New Hampshire and Rhode Island. Iroquois would deliver additional gas at South Commack, New York, for exchange and redelivery by Texas Eastern Transmission Corporation to three LDCs in New Jersey. To deliver this gas Iroquois would construct a new, 369.4-mile pipeline system of 30- and 24-inch diameter pipe from the U.S./Canada border near Waddington, New York, extending through New York and Connecticut, across Long Island Sound and terminating at facilities of the Long Island Lighting Company (LILCO) near South Commack, New York.

Tennessee in its application, Docket No. CP89–629–000, proposed to transport 243,195 Mcfd of Canadian gas received from Iroquois for delivery to certain LDCs and congeneration customers in Massachusetts, Connecticut, New Hampshire, New York and Rhode Island; and Tennessee would transport 74,547 Mcfd of domestic gas for New England Power Company NEP and 2,000 Mcfd for an LDC customer of Champlain Pipeline Company. To deliver this gas, Tennessee would construct 117.6 miles of mainline loop, 23.5 miles of lateral loops and replacement pipe, 13.7 miles of new pipeline extensions and 9,900 horsepower of compression in Pennsylvania, New Hampshire, New Jersey, New York, Rhode Island and Massachusetts on its existing mainline system.

Algonquin proposed in its application, Docket No. CP89–861–000 to receive up to 20,000 Mcfd of Canadian gas from the Iroquois/Tennessee Pipeline Project and redeliver it to LDCs in Connecticut and New York. Algonguin also proposes to receive up to 74,547 Mcfd of domestic gas from Tennessee at Mendon, Massachusetts, and redeliver it to NEP. The environmental impact of these facilities is evaluated in a separate EIS prepared for the Champlain Pipeline Project.

The staff studied an alternative route called the Iroquois/Greater Northeast (Iroquois/GNE) route as part of a single pipeline alternative to the combined Iroquois/Tennessee and Champlain Pipeline Projects. This alternative route would deviate from the proposed Iroquois route near Canajoharie, New York (milepost 171) and head in an easterly direction 197.1 miles to Mendon, Massachusetts. This alternative is discussed in volume II of the DEIS.

Concurrent with this notice, a separate notice for the Champlain Pipeline Project is being issued. Anyone affected by both projects, including Federal, state and local entities, will be sent both notices. Anyone else can request a copy of the other notice by contacting the FERC Project Manager identified below.

Public Meeting Schedule

Public meetings will be held in January at the following locations to receive comments on the DEIS:

Date and Time	Locations
7:00 to 11:00 p.m.	Danbury High School, 43 Clapboard Road, Danbury, CT 06810.
Jan. 10, 1990: 12:00 to 4:00 p.m. 7:00 to 11:00 pm.	Executive Room, Albany Ramada Inn, 1228 Western Avenue, Albany, NY 12203.
Jan. 11, 1990: 12:00 to 4:00 p.m. 7:00 to 11:00 pm.	University of Massachusetts, Campus Center, Room 168 C, Amherst, MA 01003.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Anyone who would like to make an oral presentation at the meeting should contact the FERC Project Manager to have their name placed on the speakers' list. Priority will be given to persons representing groups. A second speakers' list will be available at the public meeting. Presentations will be limited to five minutes in length. Transcripts will be made of the meetings.

The U.S. Army Corps of Engineers (COE) will be issuing a separate notice for these meetings. The COE intends to use the same meetings to fulfill its own requirements under the Clean Water Act.

A copy of this notice has been distributed to Federal, State, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals.

Comment Procedure

Written comments are also welcome to help identify significant new issues or concerns related to the proposed action. All comments on specific environmental issues should contain supporting documentation rationale. Written comments must be filed on or before January 1, 1990, reference Docket Nos. CP89–634–000, CP89–815–000, and CP89–629–000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to the FERC Project Manager identified below.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the staff and distributed. The FEIS will contain the staff's responses to timely comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, Room 2200, 825 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties in this proceeding. Any person may file a motion to intervene on the basis of the Commission staff's DEIS (18 CFR 380.10 (a) and 285.214).

Copies of the DEIS are available from Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, or call (202) 357–9021 or FTS 357–9021.

Lois D. Cashell,

Secretary.

[FR Doc. 89–26885 Filed 11–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL90–5–000]

City and County of San Francisco, CA v. Pacific Gas & Electric Co.; Filing

November 13, 1989.

Take notice that on November 8, 1989, pursuant to Sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. 824d, 824e and 825e, and Rules 206, 209 and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, .209 and 212, the City and County of San Francisco (San Francisco) tendered for filing a Complaint and Motion for Issuance of an Order to Show Cause against Pacific Gas and Electric Company (PG&E). San Francisco also filed a Motion for Expedited Consideration.

In its Complaint, San Francisco alleges that on October 19, 1989, PG&E made an unexpected demand on San Francisco for payment of $2,886,112 as a "true-up" rate for service rendered directly to San Francisco and indirectly to Modesto Irrigation District, Turlock Irrigation District and NI Industries, Inc. under a series of agreements among PG&E, San Francisco, Turlock and Modesto. San Francisco represents that PG&E has not filed a rate with the Commission under which these charges can properly be collected. San Francisco further alleges that PG&E has improperly attempted to use the dispute resolution and arbitration procedures of the San Francisco-PG&E Agreement (PG&E's FERC Rate Schedule No. 114) to resolve this claim.

San Francisco requests the Commission grant the following relief: (i) That the Commission issue an order summarily requiring PG&E to show

cause why it is not required to file with this Commission and justify its proposed surcharge; (ii) that the Commission enjoin PG&E from invoking the arbitration provisions of the San Francisco-PG&E Agreement; and (iii) in the alternative, if the Commission does not summarily order PG&E to show cause, that the Commission issue an order initiating an evidentiary proceeding under section 206 of the Federal Power Act investigating the justness and reasonableness of the surcharge sought by PG&E for the Diablo true-up.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before December 1, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27146 Files 11-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-21-001]

CNG Transmission Corp.; Filing

November 13, 1989.

Take notice that on November 7, 1989, CNG Transmission Corporation (CNG) filed Substitute Second Revised Sheet No. 120 to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989.

CNG withdraws First Revised Sheet No. 120 of its October 30, 1989, and requests that it be replaced with Substitute Sheet No. 120.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27147 Filed 11-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-147-007]

United Gas Pipe Line Co.; Compliance Filing

November 13, 1989.

Take notice that on November 6, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain workpapers with narrative descriptions in response to the Commission's October 5, 1989 Order (October 5, 1989 Order) in this proceeding. The tariff sheets and workpapers are also consistent with the Commission's October 5, 1989 Order (Sea Robin) in Sea Robin Pipeline Company Docket No. RP89-141-001 (Sea Robin Order).

Effective May 1, 1989

Fourth Substitute Original Sheet No. 4-M
Third Substitute Original Sheet No. 4-N
Fourth Substitute Original Sheet No. 4-O
Third Substitute Original Sheet No. 4-P
Fourth Substitute Original Sheet No. 4-Q
Third Substitute Original Sheet No. 4-Q1
Third Substitute Original Sheet No. 4-R

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before November 20, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27148 Filed 11-17-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3681-3]

Stratospheric Ozone Protection Advisory Committee; Meeting

ACTION: Announcement of Meeting, November 28, 1989

SUMMARY: On Tuesday, November 28, 1989, from 12:00 to 1:30 p.m., the U.S. Environmental Protection Agency (EPA), Stratospheric Ozone Protection Advisory Committee, (54 FR 41677) will hold their second meeting. The meeting will take place at the EPA Auditorium, located at EPA Headquarters, 401 M St. SW., Washington, DC. The purpose of this meeting is to inform members and the public about the activities that took place at the recent workgroup meeting of the Parties to the Montreal Protocol

The EPA plans to hold the meeting by conference call, although some members of the committee who are located in the Washington area may prefer to attend in person. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Karla Perri, at (202) 382-7750 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, DC 20460.

Dated: November 14, 1989.

Bob Axelrad,

Acting Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 89-27212 Filed 11-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-845-DR]

Amendment to Notice of a Major Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-845-DR), dated October 18, 1989, and related determinations.

DATED: November 4, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of California, dated

October 18, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1989:

Marin County for Public Assistance.
Solano County and the cities of Isleton (in Sacramento County) and Tracy (in San Joaquin County) for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-27204 Filed 11-17-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Strachan Shipping Co. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200306

Title:
Strachan Shipping Company Terminal Handling Agreement,
Strachan Shipping Company (Strachan), South Atlantic Cargo Shipping N.V (SACS).

Synopsis: The Agreement provides for terminal handling services at Port Everglades for certain cargoes, with Strachan as terminal operator and SACS as ocean carrier.

Agreement No.: 224-200270-001

Title: Port of Oakland Terminal Agreement.

Parties:
Port of Oakland,
Mitsui O.S.K. Lines, Ltd.,
Nippon Liner System (North American), Inc.

Synopsis: The Agreement amends the basic agreement to provide that an amendment to the agreement will be filed with the FMC prior to the effectiveness of a rental revision during any hold over month-to-month tenancy following conclusion of the basic agreement's term.

By Order of the Federal Maritime Commission.

Dated: November 15, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27180 Filed 11-17-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 10573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200059-001
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland
Canadian Transport Company Limited (CTC)
Synopsis: The Agreement amends the basic agreement to provide for the temporary transfer of CTC's terminal operations from the Howard Terminal to the Ninth Avenue Terminal as a result of damage caused by the October 17th earthquake.

Agreement No.: 224-200157-002
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland
Marine Terminal Corporation
Synopsis: The Agreement amends the basic agreement to permit Canadian Transport Company Limited the temporary use of the Ninth Avenue Terminal as a result of damage caused by the October 17th earthquake.

Agreement No.: 224-200164-002
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland
Compagnie Maritime Belge (CMB)
Synopsis: The Agreement amends the basic agreement to provide for the temporary transfer of CMB's terminal operations from the Howard Terminal to the Transbay Terminal as a result of damage caused by the October 17th earthquake.

Agreement No.: 224-200274-001
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland
Pasha Properties, Inc.
Synopsis: The Agreement amends the basic agreement to permit Compagnie Maritime Belge the temporary use of the Transbay Terminal as a result of damage caused by the October 17th earthquake.

Agreement No.: 224-010968-004
Title: Maryland Port Administration Terminal Agreement
Parties:
Maryland Port Administration (MPA)
Hapag-Lloyd AG/Atlantic Division (HL)
Synopsis: The Agreement extends the terms of the basic agreement between MPA and HL for a term of three months.

Agreement No.: 224-200305
Title: New Orleans Steamship Association Terminal Agreement
Parties:
Cooper/T. Smith Stevedoring Co., Inc.
Transocean Terminal Operations
Anchor Stevedoring Co., Inc.
Synopsis: The Agreement provides for the establishment of New Orleans Steamship Association. It enables the parties to meet, discuss and agree upon rates, charges, rules, regulations, practices, terms and conditions of service for car, truck and barge loading/unloading, and other marine terminal matters pertaining to the receipt, handling and/or delivery of passengers and/or cargo at the public wharves in the Port of New Orleans and, in turn, to present recommendations and requests pertaining thereto to the Board of Commissioners of the Port of New Orleans, as well as, any other similar public port entity handling common carriers on the Mississippi River.

By Order of the Federal Maritime Commission.

Dated: November 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27112 Filed 11-17-89; 8:45 am]

BILLING CODE 6795-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Barnett Merchant Services, Inc., Jacksonville, Florida, in making, servicing, and acquiring loans, or other extensions of credit directly for the accounts of others, such as would be made by a credit card company pursuant to § 225.25(b)(1)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois, in establishing a branch in London, England, to engage in underwriting and dealing in obligations of the United States government and other bank eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Commercial Bancorp, Inc.*, Obion, Tennessee; to engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Obion, Tennessee.

2. *Sebastian Bankshares, Inc.*, Barling, Arkansas; to engage *de novo* through its subsidiary, Citizens Mortgage Company, Inc., Barling, Arkansas, in loan origination and packaging pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27166 Filed 11-17-89; 8:45 am]

BILLING CODE 6210-01-M

Richard F. Nogle et al.; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Richard F. and Beverley Nogle*, Chanute, Kansas; to acquire 25 percent of the voting shares of Fall River Bankshares, Inc., Fall River, Kansas, and thereby indirectly acquire Fall River State Bank, Fall River, Kansas. The Nogles will also acquire an option on the remaining 75 percent of Company's shares as part of the proposal.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27167 Filed 11-17-89; 8:45 am]

BILLING CODE 6210-01-M

Society for Savings Bancorp, Inc., et al., Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 7, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Society for Savings Bancorp, Inc.*, Hartford, Connecticut; to acquire Franklin Equity Leasing Company, St. Louis, Missouri, and thereby engage in the leasing of personal property, including motor vehicles and cellular telephones, on both a direct and an indirect basis, to individuals and business lessees, and including the acquisitions and disposition or re-leasing of such personal property pursuant to § 225.25(b)(5); the sale, on an agency basis only, of credit life insurance to FELCO lessees pursuant to § 225.25(b)(8); the provision of data processing to third parties by means of the sale or licensing of FELCO's proprietary software package for the financial management of vehicle leasing businesses, pursuant to § 225.25(b)(7); and the offering and sale, as agent for local repair shops, of motor vehicle warranty extension and maintenance contracts on an optional basis to FELCO's lessees, as an activity incidental to vehicle leasing pursuant to § 225.21(a)(2) of the Board's Regulation Y. These activities will be conducted within the metropolitan areas of FELCO's existing leasing offices in Boise, Idaho; Omaha, Nebraska; Portland, Oregon; Seattle, Washington; St. Louis, Missouri; and Tucson, Arizona and from proposed branch offices in Kansas City, Missouri; Nashville, Tennessee; Austin, Texas, and Tulsa, Oklahoma, with the exception of the data processing activities which will be conducted on a nationwide basis.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to acquire GEM Savings Assoication, Dayton, Ohio, and thereby engage in the savings and loan business pursuant to § 225.25(b)(9); and its subsidiaries, GEM Mortgage Corporation of North America, Dayton, Ohio, and thereby engage in mortgage banking pursuant to § 225.25(b)(1); GEM America Realty and Investment Corporation, Dayton, Ohio, and thereby engage in providing real estate loans pursuant to § 225.25(b)(1), real estate appraisal services pursuant to § 225.25(b)(13), and managing of GEM Savings Association real estate pursuant to § 225.22(b); GEM City Community Urban Redevelopment Corporation, Dayton, Ohio, and thereby hold real estate on which GEM Savings Association's main office is located pursuant to § 225.22(1)(2)(vi); GEM Financial Insurance Agency, Inc., Dayton, Ohio, which is an inactive company, and Applicant proposes to keep it as such; GEM Financial Corporation, Dayton, Ohio, and thereby engage in discount brokerage services pursuant to § 225.25(b)(15); Cen-Pro, Inc., Dayton, Ohio, and thereby engage in arranging commercial real estate equity financing pursuant to § 225.25(b)(14); and Dayton Arcade Community Urban Redevelopment Corp., Dayton, Ohio, and thereby engage in the business of holding for resale property acquired through foreclosure pursuant to § 225.21(c)(1) of the Board's Regulation Y. Comments on this application must be received by December 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27168 Filed 11-17-89; 8:45 am]

BILLING CODE 6210-01-M

Union Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Banking Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 8, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Union Bancshares, Inc.*, Blairsville, Georgia; to acquire 100 percent of the voting shares of Citizens Bank, Murphy, North Carolina.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas; to acquire 100 percent of the voting shares of ABT Bancshares Corporation, Hot Springs, Arkansas, and thereby indirectly acquire Arkansas Bank and Trust Company, Hot Springs, Arkansas. Bank engages in the sale of universal life, property and casualty insurance.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company*, San Francisco, California; to acquire 100 percent of the voting shares of Central Pacific Corporation, Bakersfield, California, and thereby indirectly acquire American National Bank, Bakersfield, California.

Board of Governors of the Federal Reserve System, November 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27169 Filed 11-17-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Board of Scientific Counselors, Center for Infectious Diseases; Establishment

ACTION: Notice of Establishment; Board of Scientific Counselors, Center for Infectious Diseases.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services of the following Federal advisory committee:

Designation: Board of Scientific Counselors, Center for Infectious Diseases.

Purpose: This Board will provide advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, Center for Infectious Diseases, regarding program goals and objectives, strategies, program organization and resources for infectious disease prevention and control, and program priorities including

surveillance, epidemiologic investigations, field studies, reference diagnostic services, technology transfer, education and training, consultation, information dissemination, professional interactions and collaborations (nationally and internationally), and applied research, including etiologic research, diagnostics research, epidemiologic research, and intervention research.

Authority for this Board will expire October 31, 1991, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: November 14, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-27150 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-18-M

Advisory Committee on Childhood Lead Poisoning Prevention; Establishment

ACTION: Notice of Establishment; Advisory Committee on Childhood Lead Poisoning Prevention.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services of the following Federal advisory committee:

Designation: Advisory Committee on Childhood Lead Poisoning Prevention.

Purpose: This Committee will provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, CDC, on revisions to the policy statement entitled "Preventing Lead Poisoning in Young Children" dated January 1985. The revised policy statement shall research findings since 1985.

Authority for this Board will expire October 31, 1991, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: November 14, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-27151 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: NCVHS Subcommittee on Minority Health Statistics

Time and Date: 10:00 a.m.-4:00 p.m., December 12, 1989.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Status: Open

Purpose: The Subcommittee will plan implementation of the 1990 work plan agenda.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: November 14, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-27152 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health; NIOSH Low Back Atlas of Standardized Tests/Measures: An Examination of Discriminate Validity; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC).

Name: NIOSH Low Back Atlas of Standardized Tests/Measures: An Examination of Discrimination Validity.

Time and Date: 9 a.m.-3:30 p.m.—November 30, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Status: Open to the public, limited only by the space available.

Purpose: To review a research protocol which will examine the discriminate validity of the individual tests/measures which collectively are known as the NIOSH Low Back Atlas of Standardized Tests/Measures.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Contact Person: Roger M. Nelson, Ph.D., Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, Telephone: Commercial: (304) 291-4810, FTS: 923-4810.

Dated: November 9, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-27153 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0486]

Bolar Pharmaceutical Co., Inc.; Proposal To Withdraw Approval of Abbreviated New Drug Application for Triamterene and Hydrochlorothiazide Capsules; Opportunity for a Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) proposes to withdraw approval of abbreviated new drug application (ANDA) 71-845 for Triamterene 50 milligrams (mg) and Hydrochlorothiazide 25 mg Capsules held by Bolar Pharmaceutical Co., Inc., P.O. Box 30, 33 Ralph Ave., Copiague, NY 11726-0030 (Bolar). The grounds for the proposed withdrawal are that (1) the application contains untrue statements of material fact, and (2) based on new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

DATES: A hearing request is due on December 20, 1989; data and information in support of the hearing request are due on January 19, 1990.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 89N-0486, and submitted to the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Division of Regulatory Affairs (HFD-366), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

Background

Bolar holds approved ANDA 71-845 for Triamterene 50 mg and Hydrochlorothiazide 25 mg Capsules. This product is a generic version of Smith Kline and French's (SFK's) Dyazide Capsules.

In support of approval of ANDA 71-845, Bolar submitted to FDA a bioequivalence study conducted by PharmaKinetics Laboratories, Inc., Baltimore, MD (PharmaKinetics). This study, purportedly utilizing product from Bolar's lot RD0054, demonstrated that Bolar's product was bioequivalent to Dyazide.

This showing was critical to the approval of Bolar's product. Dyazide, the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), was approved based on, among other things, adequate and well-controlled clinical studies showing that the product has the effects claimed for it. Bolar's generic version of Dyazide, Triamterene 50 mg and Hydrochlorothiazide 25 mg Capsules, was approved without the submission of clinical efficacy studies. Instead, Bolar's product was approved based on a finding that Bolar's product was bioequivalent to Dyazide. The finding of bioequivalence is necessary to support the conclusion that Bolar's product will be therapeutically equivalent to Dyazide.

In addition to the bioequivalence study purportedly conducted using product from lot RD0054, Bolar submitted to the ANDA dissolution data, a batch production record, and stability data on this lot, which were necessary for approval. FDA used the dissolution data to assess the comparability of Bolar's product and Dyazide and to establish an appropriate dissolution specification for future, commercial batches of Bolar's product. The dissolution specification helps provide assurance that commercial batches of Bolar's product remain bioequivalent to Dyazide.

The batch production record is significant because it characterizes the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the Bolar product shown to be bioequivalent to Dyazide. These same methods, facilities, and controls must be applied to production of commercial batches of Bolar's product to provide assurance that the product remains bioequivalent to Dyazide.

The stability data provide assurance that Bolar's product will retain its physical and chemical characteristics and its bioequivalence throughout its labeled shelf-life.

FDA discovered that there are untrue statements and discrepancies in Bolar's ANDA concerning the manufacture and testing of lot RD0054. These untrue statements and discrepancies constitute new information that raises serious questions about the identity and characteristics of the lot that was used to demonstrate the bioequivalence of Bolar's product and, thus, raises concerns about the actual bioequivalence of Bolar's marketed product to Dyazide. This new information is derived from (1) a recent inspection of Bolar, (2) meetings between FDA and Bolar representatives, (3) additional information provided by Bolar representatives, (4) a recent inspection of PharmaKinetics, and (5) information from the suppliers of the active ingredients purportedly used in lot RD0054. The scope and significance of these untrue statements and discrepancies call into question the reliability of all data submitted to FDA concerning lot RD0054.

FDA has also evaluated other pertinent new information consisting of FDA analyses of relevant samples and the results from a postapproval study submitted by Bolar to the State of Tennessee ("the Tennessee study") that casts further doubt on the bioequivalence of Bolar's product and on the reliability of data submitted on lot RD0054.

A discussion of the new information follows:

A. Information on the Manufacture and Testing of Lot RD0054

1. *Discrepancies regarding active ingredients.* A typed version of the batch record for lot RD0054 was submitted to the ANDA. This record shows the use of raw material number 5609 of triamterene on January 5, 1987. However, Bolar's raw material receiving log shows that raw material number 5609 was not received until January 21, 1987. The batch record in the ANDA also shows the use of raw material number 5556 of hydrochlorothiazide on January 5, 1987. However, Bolar's raw material receiving log shows that raw material number 5556 was not received until January 9, 1987.

Bolar has informed FDA that a handwritten version of the batch record for lot RD0054, which had not been submitted in the ANDA, was the original record prepared at the time Bolar manufactured the batch. This handwritten version shows the use of active ingredients identified by different Bolar raw material numbers than those shown in the typed version, i.e., raw material number FS 389-58-572 for triamterene and FS 98-6-HCT-2 for hydrochlorothiazide. Bolar had no records documenting the dates of receipt of these two raw materials.

The records of the suppliers of the active ingredient lots reportedly used by Bolar in lot RD0054 do not document a transfer to Bolar of any portion of those active ingredient lots until after the date Bolar's records indicate that lot RD0054 was made. The suppliers have informed FDA that they would have kept records of any shipment to Bolar. It thus appears that Bolar submitted untrue statements in ANDA 71-845 regarding lot RD0054.

FDA has determined that two individuals, Gaspare A. Albanese and Clifford S. Helt, who are identified in Bolar's records as having tested the active ingredient lots reportedly used in the manufacture of lot RD0054, were not employed by Bolar until after the dates of testing indicated in the records. These records include raw materials analytical reports for triamterene raw material numbers 5609 and FS 389-58-572 and for hydrochlorothiazide raw material numbers 5566 and FS 98-6-HCT-2. Both Mr. Albanese and Mr. Helt identified the signatures on these records as theirs but stated that the dates were not in their handwritting. Bolar submitted to FDA in ANDA 71-845 copies of the analytical reports for triamterene raw material number 5609 and hydrochlorothiazide raw material number 5566 that show testing by Mr. Albanese on dates prior to his employment at Bolar.

The untrue statements and discrepancies found in the ANDA and in Bolar's records raise questions about the identity and characteristics of the active ingredients used in lot RD0054 and the time at which this lot was manufactured, and cast doubt on the veracity of other representations made in the ANDA concerning lot RD0054.

2. *Batch record discrepancies.* The one-page handwritten version of the batch record for lot RD0054, purportedly the original version prepared contemporaneously with the manufacture of the batch, failed to include information about many production and control operations. As noted earlier, Bolar did not submit a copy of this handwritten batch record in the ANDA. Sometime after the batch was actually made, Bolar reportedly prepared a five-page typed version of the batch record for lot RD0054

containing substantial additional information and then submitted a copy of this typed version to ANDA 71–845. No original records were found to support the additional information in the typed version.

Because the typed version of the batch record for lot RD0054 was prepared after production of the batch and contains more information than the original handwritten version, there is a lack of adequate assurance that the record submitted to FDA accurately represents all the manufacturing steps used to produce lot RD0054. In the absence of adequate original documentation of how lot RD0054 was manufactured, the entries on the typed batch record that are not contained in the original batch record are questionable and cannot be relied upon to establish the methods of manufacture of the batch. Moreover, as discussed above, the two different versions of the batch record show the use of different raw material numbers for triamterene and hydrochlorothiazide. The discrepancies between the two records and the questionable entries on the typed version raise questions about how and when lot RD0054 was actually made and whether this lot is representative of the product approved in the ANDA or marketed by Bolar.

The copy of the typed batch record for lot RD0054 submitted to ANDA 71–845 shows that the production order was prepared by T. Vahidy on January 5, 1987, and checked by A. Walsh on January 5, 1987. These are untrue statements in that Susan Long reportedly entered all of the typed information on this five-page production order at an unspecified date sometime after lot RD0054 was manufactured on January 5 and 6, 1987, and subsequently returned it along with the one-page handwritten version to Mr. Vahidy to complete certain sections in writing on the typed production order. Thereupon, Mr. Vahidy reportedly signed and dated the typed version as having prepared it on January 5, 1987, and Mr. Walsh reportedly signed and dated it as having checked it on January 5, 1987.

For the typed version, all other entries showing dates of performance of each operation are misrepresented in that the batch record as submitted implies that the entries were made at the time of performance when in fact they were made later.

3. *Discrepancies regarding the identity of the bioequivalence test lot.* Bolar contends that lot RD0054 was used in conducting the bioequivalence study submitted to support approval of ANDA 71–845. However, there are various discrepancies in the records, some of which indicate that Bolar's lot RD0047 rather than lot RD0054 was used for the bioequivalence study submitted to FDA. Bolar's records indicate that the two lots were manufactured differently, including batch size, mixing time, and active ingredient lots used. Lot RD0054 was reportedly manufactured in accordance with the manufacturing procedures ultimately approved in the ANDA; lot RD0047 was manufactured using different procedures.

Bolar reportedly sent, on separate days, a sample of each lot to PharmaKinetics for bioequivalence testing. Each sample was compared, during separate bioequivalence tests, with a sample from a different lot of SKF's Dyazide Capsules. According to records at PharmaKinetics, the lot identified as RD0054 failed its bioequivalence test (study 30–86–02–7), but the lot identified as RD0047 passed its bioequivalence test (study 30–84–12–6). Bolar submitted a copy of PharmaKinetics' study 30–84–12–6 to ANDA 71–845, claiming the study was performed with lot RD0054. Bolar has admitted to FDA that it altered part of the certified copy of PharmaKinetics' study 30–84–12–6 to indicate that the study had been conducted using lot RD0054, but at least one page still identified the study lot as RD0047.

Bolar contends that it made a mistake when it labeled the bottles of the samples of the two different lots shipped to PharmaKinetics, inadvertently switching the labels for lots RD0054 and RD0047. Thus, Bolar contends, the lot identified in PharmaKinetics' report as RD0047 was in reality RD0054. Bolar has further indicated that it realized this mistake after receiving both study reports from PharmaKinetics, so it unilaterally altered the lot number shown at the beginning of study report 30–84–12–6 to show lot RD0054 (but neglected to change the lot number on a later page) before submitting the report to ANDA 71–845.

Bolar's batch records do not reflect the collection or labeling of the samples involved, nor do they contain any information about discovery of the purported error, or of any investigation, or of any corrective actions taken.

These various errors, omissions, discrepancies, and alterations in the records concerning the identity of the lot used for the bioequivalence study submitted to FDA raise questions about the identity and characteristics of the lot represented by Bolar as being bioequivalent to Dyazide. Furthermore, Bolar's alteration of PharmaKinetics' report that Bolar submitted to the ANDA rendered untrue its implied representation that the report was as prepared by PharmaKinetics.

4. *Lack of a representative sample.* Bolar's records and statements to the agency indicate that lot RD0054 was encapsulated on January 5 and 6, 1987, but that the sample from this lot reportedly used for bioequivalence testing was sent to PharmaKinetics on January 5, 1987. There is no record that Bolar performed any testing to assure the uniformity of the blend prior to encapsulation. Therefore, there is a lack of assurance that the bioequivalence sample was representative of the entire lot, and the bioequivalence study results cannot be presumed to be applicable to the marketed product.

B. Other New Information From Tests and Analyses

1. *FDA analyses of relevant samples.* FDA has recently conducted dissolution testing on samples of Bolar's lot RD0054, samples of some current production lots of Bolar's Triamterene 50 mg and Hydrochlorothiazide 25 mg Capsules, and samples of SKF's lot 1006E90 of Dyazide Capsules. (Bolar compared the dissolution of lot RD0054 with the dissolution of SKF's lot 1006E90, and submitted the results of this comparison of FDA in support of approval of ANDA 71–845.) In the data submitted by Bolar in ANDA 71–845, Bolar's lot RD0054 and SKF's lot 1006E90 showed a close similarity in dissolution. FDA's recent tests, however, show Bolar's lot RD0054 dissolving at a much faster rate than reported in the data submitted in the ANDA and show SKF's lot 1006E90 dissolving at a much slower rate than reported in the ANDA. Furthermore, FDA testing of three current production lots of Bolar's Triamterene 50 mg and Hydrochlorothiazide 25 mg Capsules shows the production lots dissolving at a much slower rate than the rate found in FDA testing of lot RD0054.

These recent test results fail to confirm the dissolution data submitted in support of ANDA 71–845 and raise further questions about the reliability of the data from lot RD0054.

2. The Tennessee study. Bolar sponsored a postapproval study in hypertensive patients comparing treatment with Dyazide against treatment with Bolar's generic version of the drug. This study was subsequently submitted to the State of Tennessee to support inclusion of Bolar's product in that State's formulary.

Although this study reportedly showed no statistically significant differences between the two products in the clinical control of hypertension, the bioequivalence data showed unacceptable differences between the Bolar production lot used and the SKF reference lot. Moreover, the concentration of active ingredients in the plasma, profiled over time, produced by the Bolar production lot used in the Tennessee study differs from the concentration of active ingredients in the plasma, profiled over time, reported in ANDA 71–845 for lot RD0054. The results in the Tennessee study show Bolar's product producing a 12 percent lower area under the curve for triamterene than SKF's reference product, whereas the results reported to the ANDA in the study on lot RD0054 show Bolar's product producing an 8 percent greater area under the curve for triamterene than SKF's product.

These results fail to confirm the bioequivalence data submitted in support of ANDA 71–845 and raise further questions about the reliability of the data submitted in the ANDA.

Conclusions, Findings, and Proposed Action

As discussed above, ANDA 71–845 contains a number of untrue statements concerning bioequivalence, dissolution, manufacturing procedures and controls, and stability. Statements on these matters are material in that they may affect the agency's decision to approve an application.

Moreover, these untrue statements, together with the aforementioned discrepancies, errors, missing information in Bolar's records, inconsistencies between Bolar's records and other sources of information, and new analyses and studies that fail to adequately support the earlier data, constitute new information that raises significant questions about the reliability and adequacy of the data provided on lot RD0054 in support of the approval of ANDA 71–845. Without reliable information concerning the identity, characteristics, and manufacture of the lot used for bioequivalence, dissolution, and stability studies necessary for approval, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating acceptable stability, dissolution, and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

Although ANDA's may be approved without the submission of adequate and well-controlled clinical efficacy studies, which are required under the substantial evidence standard in 21 U.S.C. 355(d), these approvals are supported by such clinical efficacy studies based on the submission of information to show bioequivalence to a listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated effective based on clinical efficacy studies satisfying the substantial evidence requirement or must be related through bioequivalence data to another drug that has been demonstrated effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelf-life, there is no basis for concluding that the clinical efficacy studies supporting the approval of the listed drug likewise support the claims of efficacy on the part of the generic drug.

Accordingly, the Director of the Center for Drug Evaluation and Research finds that (1) ANDA 71–845 contains untrue statements of material fact, and (2) on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. Based on these findings, the Director proposes to withdraw approval of ANDA 71–845, Triamterene 50 mg and Hydrochlorothiazide 25 mg Capsules.

Notice of Opportunity for Hearing

Notice is hereby given to the holder of the ANDA listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 355(e)), withdrawing approval of ANDA 71–845 and all amendments and supplements thereto on the grounds stated above.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before December 20, 1989, a written notice of appearance and request for hearing, and (2) on or before January 19, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submissions of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 (except that the requirement in 21 CFR 314.200(d) (1) and (2) that the applicant submit adequate and well-controlled clinical efficacy studies does not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug product. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under section 301(j) of the act or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Mondary through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drug subject to this notice is appropriate, FDA will announce its removal from the list in the Federal Register notice announcing the withdrawal of approval of the drug.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center

for Drug Evaluation and Research (21 CFR 5.82).

Dated: November 13, 1989.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 89-27176 Filed 11-15-89; 11:43 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0461]

Cook, Inc.; Premarket Approval of the VH8500 Volumetric Hyperthermia System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook, Inc., Bloomington, IN, for premarket approval, under the Medical Device Amendments of 1976, of the VH8500 Hyperthermia Treatment System. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 17, 1989, of the approval of the application.

DATE: Petitions for administrative review by December 20, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adrianne Galdi, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1050.

SUPPLEMENTARY INFORMATION: On February 21, 1989, Cook, Inc., Bloomington, IN 47402, submitted to CDRH an application for premarket approval of the VH8500 Hyperthermia Treatment System. The device is a resistive interstitial conductive hyperthermia device. The VH8500 Hyperthermia Treatment System is indicated for use in the palliative management of certain malignant brain tumors (i.e., glioblastoma multiforme, astrocytoma with anaplastic features, and metastatic) that are progressive, recurrent, or viable.

On July 11, 1989, the Radiological Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 17, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Adrianne Galdi (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 20, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 7, 1989.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 89-27175 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: SAN FRANCISCO DISTRICT OFFICE, chaired by Ronald M. Johnson, District Director. The topic to be discussed is food labeling.

DATES: Tuesday, November 28, 1989, 9 a.m. to 12 m.

ADDRESSES: Food and Drug Administration, 50 United Nations Plaza, Conference Rm. 406, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Lula M. Holland, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Rm. 524, San Francisco, CA 94102, 415-556-1364.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27177 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: DALLAS DISTRICT OFFICE, chaired by Douglas C. Payne, Acting District Director. The topic to be discussed is food labeling.

DATES: Tuesday, November 28, 1989, 1 p.m. to 3 p.m.

ADDRESSES: Arkansas Department of Health, 4815 West Markam St., Little Rock, AR 72205-3867.

FOR FURTHER INFORMATION CONTACT: Sheryl Baylor, Consumer Affairs Officer, Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008, 713-220-2322.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationship between local consumers and FDA's district offices, and to contribute to the agency's policy-making decisions on vital issues.

Dated: November 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27178 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MIAMI DISTRICT OFFICE, chaired by Douglas D. Tolen, District Director. The topic to be discussed is food labeling. The meeting will be conducted in the Spanish language.

DATES: Tuesday, November 28, 1989, 10 a.m. to 12 m.

ADDRESSES: Hialeah Neighborhood Center, 300 East First Ave., Hialeah, FL 33010.

FOR FURTHER INFORMATION CONTACT: Estela Niella-Brown, Consumer Affairs Officer, Food and Drug Administration, 6601 NW. 25th St., P.O. Box 59-2256, Miami, FL 33159, 305-526-2919.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27179 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1990:

Name: National Advisory Committee on Rural Health Care Financing Work Group.

Date and Time: January 22-24, 1990, 8:30 a.m.

Place: The Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501.

The meeting is open to the public.

Purpose: The Work Group is concerned with financing issues related to rural health care delivery.

Agenda: The Work Group will tour a frontier community of northern New Mexico (transportation will not be provided to the public), hear testimony from health care providers and consumers, and spend time working on the health care financing, health personnel, and health services delivery work group agenda.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the discussion should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0034.

Agenda Items are subject to change as priorities dictate.

Dated: November 14, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-27181 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 1, 1989, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on December 1 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on December 1 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: November 9, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-27287 Filed 11-16-89; 10:41 a.m.]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on November 30, 1989, in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public

BEST COPY AVAILABLE

Law 92-463, the meeting will be closed to the public from approximately 10 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institute of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-27288 Filed 11-16-89; 10:41 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on November 30-December 1, 1989 in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on November 30 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on November 30 from approximately 10 a.m. until adjournment on December 1 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable; material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: November 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-27289 Filed 11-16-89; 10:41 am]

BILLING CODE 4140-01-M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163-7, August 19, 1975, as amended by 53 FR 1414-15, January 19, 1988) is amended to reflect a reorganization of the National Institute of Mental Health, ADAMHA. The reorganization revises the functional statement for the Office of Policy Analysis and Coordination.

Section HM-B, Organization and Functions, is amended as follows:

Delete the funcitional statement for the *Office of Policy Analysis and Coordination (HMM13),* and substitute the following:

Office of Policy Analysis and Coordination (HMM13)

(1) Provides a focal point for developing goals and implementing strategies to influence Institute planning, policy, and program development by: (a) monitoring and analyzing Federal, State and local legislative, regulatory, and judicial activities; (b) stimulating interaction and information exchange with the scientific community and with professional and constituent groups; and (c) gathering and analyzing information on research and clinical human resource needs, and (2) oversees an evaluation process to examine and improve performance, identify needs, solve problems, and recommend resource allocations.

Dated: November 8, 1989.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 89-27110 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 54 FR 38289, September 15, 1989), is amended to reflect the following changes within the National Institutes of Health: (1) Establish the Division of Security Operations (HNAA9) in the Office of Research Services, Office of the Director, NIH. The establishment of this Division strengthens the ability of the National Institutes of Health to respond in the most expeditious and professional manner possible to a rising number of security threats to life and property on the NIH campus.

Section HN-B, Organization and Functions, is amended as follows:

(1) Under the heading *Office of Research Services,* insert the following after the statement for the *Division of Technical Services (HNAA8):*

Division of Security Operations (HNAA9). (1) Plans, directs, coordinates, and evaluates a comprehensive protection and security program that requires the development of protection and security criteria to eliminate or control protection and security vulnerabilities encountered in the construction, operation, and maintenance of NIH's health care facilities, research laboratories, administration and support facilities, and the physical plant; (2) is responsible for all security and protection programs including education, training, technical assistance, physical security, hospital security, parking and traffic control, law enforcement, and criminal investigation; (3) implements Federal and Departmental regulations and establishes NIH policies and procedures in the area of security and protection; (4) as the focal point for the receipt and transmittal of classified documents, verifies clearance levels prior to the delivery of classified documents, provides security briefings and debriefings for persons holding security clearances, and destroys outdated classified documents; (5) maintains liaison with international, national, State, and local law enforcement agencies, with particular emphasis on the Federal Bureau of Investigation, Drug Enforcement Agency, Montgomery County Police, and security directors of research facilities receiving NIH funds; and (6) ensures that all appropriate action is taken in civil and criminal cases affecting the NIH and its employees, patients, and visitors, both on and off the NIH Federal Reservation.

Dated: November 8, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-27111 Filed 11-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-2036; FR-2675-C-03]

Public Housing Drug Elimination Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Extension of time to file applications and statement of HUD policy regarding applications.

SUMMARY: On September 18, 1989, HUD published a Notice of Fund Availability soliciting applications for funding under the Public Housing Drug Elimination Program. Eligible applicants are public housing agencies (PHAs) and Indian Housing Authorities (IHAs). Today's notice extends the application deadline to December 15, 1989. Today's notice also states that HUD will consider for funding no more than one application per PHA or IHA. To comply with this notice, each PHA and IHA may submit no more than one application, in which they must identify the project(s) proposed for funding.

FOR FURTHER INFORMATION CONTACT: Howard Mortman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4110, Washington, DC 20410, telephone (202) 755-8101. (This is not a toll-free number)..

Application deadline: Applications must be received by 5:15 p.m., Eastern Standard Time, on December 15, 1989, at the Department of Housing and Urban Development, Room 4110, 451 Seventh Street, SW., Washington, DC 20410, Attention: Howard Mortman, Office of Public and Indian Housing. A copy of the application materials should be simultaneously forwarded to the HUD Field Office with jurisdiction over the Public Housing Agency (PHA), Attention: Chief, Assisted Housing Management Branch; or for Indian Housing Authorities (IHA), Attention: Director, Indian Programs. The Department will not consider any application that has been transmitted by facsimile ("FAX") machine.

SUPPLEMENTARY INFORMATION: On September 18, 1989 (54 FR 38496), HUD announced in the **Federal Register** the availability of $8,200,000 in grant funds appropriated by the Dire Emergency Supplemental Appropriations Act (Pub. L. 101-45, approved June 30, 1989). These funds are to be used in a manner consistent with the requirements of the Public Housing Drug Elimination Act of 1988 to provide grants to PHAs and IHAs. To receive funding under this program, PHAs and IHAs are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. The deadline for submitting applications to HUD had previously been extended to December 1, 1989. Today's notice further extends the deadline to December 15, 1989. Today's notice also states that HUD will consider for funding only one application per PHA or IHA. Each application must identify the public housing project(s) proposed for funding. The Department has made this determination to ensure an equitable evaluation and award process.

Any PHA or IHA that, prior to publication of this notice, submitted to HUD more than one application must now clarify their application with a letter to HUD that identifies the application to be considered for funding. An original plus one copy of the clarifying letters and any resultant revisions to the application (budgetary, programmatic, or otherwise) in response to this notice must be received by 5:15 p.m., Eastern Standard Time, on December 15, 1989, at the Department of Housing and Urban Development, room 4110, 451 Seventh Street SW., Washington, DC 20410, Attention: Howard Mortman. A copy of the letter and resultant revisions should be simultaneously forwarded to the HUD Field Office with jurisdiction over the PHA, Attention: Chief, Assisted Housing Management Branch; or for IHAs, Attention: Director, Indian Programs. The Department will not accept telephone calls of facsimile ("FAX") transmissions in response to this notice.

(Approved by the Office of Management and Budget under OMB control number 2577-0124).

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (Chapter 2, subtitle C, title V, Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 18, 1988); section 7(d), Department of Housing and Urban Development Act [41 U.S.C. 3535(d)].

Dated: November 9, 1989.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-27137 Filed 11-17-89; 8:45am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Hearing and 60-day Comment Period on the Draft Environmental Impact Statement, George Washington Memorial Parkway—Potomac Greens

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Park Service is releasing a Draft Environmental Impact Statement for a 60-day public comment period starting on November 30, 1989, and ending on January 29, 1990. During that period a public hearing will be held on Wednesday, January 10, at 7:00 p.m., at the Lee Center, 1108 Jefferson Street, Alexandria, Virginia.

The views of interested persons and organizations on the Draft Environmental Impact Statement are solicited, and may be expressed orally at the public hearing or in writing during the comment period. The Draft Environmental Impact Statement will be available for public review at the National Park Service, National Capital Region, Office of Land Use Coordination, 1100 Ohio Drive, SW., Room 201, Washington, DC.

The Draft Environmental Impact Statement is required by Public Law 100-446, and addresses the potential impacts to the George Washington Memorial Parkway which may result from the proposed private 38-acre Potomac Greens development located

immediately to the west of Daingerfield Island on the parkway in Alexandria, Virginia. The Draft Environmental Impact Statement focuses on the potential impacts of the planned Potomac Greens development on traffic and the visual, recreational, and historical integrity of the parkway. The Draft Environmental Impact Statement also presents mitigating alternatives for consideration.

SUPPLEMENTARY INFORMATION: Send comments or requests for further information to Mr. Albert J. Benjamin, Deputy Associate Regional Director, Office of Land Use Coordination, 1100 Ohio Drive, SW., Washington, DC, 20242.

Dated: November 14, 1989.

Ronald N. Wrye

Acting Regional Director, National Capital Region.

[FR Doc. 89-27215 Filed 11-17-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COMMUNICATIONS AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Office, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

OMB number: 0412-0035
Date submitted: November 6, 1989
Submitting agency: Agency for International Development
Form number: A.I.D. Form 1550-2
Type of submission: Renewal
Title: Computation of Percentage of Private Funding for PVO's International Activities.
Purpose: A.I.D. is required to collect information regarding the financial support of private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive A.I.D. funding.
Reviewer: Donald Arbuckle (202) 395-7340, Office of Mangement and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1989.

Janet L. Vogel,

Acting Planning and Evaluation Division.

[FR Doc. 89-27191 Filed 11-17-89; 8:45 am]

BILLING CODE 8115-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: W.A. Kendall and Company, Inc., 400 Farmer Court, P.O. Box 831, Lawrenceville, GA 30245.

2. Wholly-owned subsidiaries which still participate in the operations, and State(s) of incorporation: (i) Seelbach and Company, Inc. State of Incorporation: Georgia

Noreta R. McGee,

Secretary.

[FR Doc. 89-27092 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 483]

Railroad Revenue Adequacy—1988 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On November 17, 1989, the Commission served a decision announcing 1988 revenue adequacy determinations for 12 Class I railroads and providing an opportunity to comment on tentative conclusions for the three remaining Class I railroads. That decision announces tentative 1988 revenue adequacy determinations, which incorporate proposed adjustments, for three Class I carriers (Burlington Northern Railroad Company, Chicago and North Western Transportation Company, and Kansas City Southern Railway Company) whose revenue adequacy/inadequacy status is affected by the adjustments. The decision tentatively finds Burlington Northern and Chicago and North Western to be revenue adequate. It tentatively finds Kansas City Southern to be revenue inadequate.

The revenue adequacy status of the remaining Class I carriers is unaffected by the adjustments. Accordingly, the decision announces final revenue adequacy determinations for these carriers. Two carriers (Florida East Coast and Norfolk Southern) are found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

The Commission solicits comments on the adjustments (employed in making the tentative revenue adequacy/inadequacy findings) as they apply to the Commission's 1988 revenue adequacy determinations or may be applied to future revenue adequacy determinations.

DATES: This decision shall be effective on November 27, 1989. Comments are due by December 18, 1989.

ADDRESS: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275-7489. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: This is the annual determination of railroad revenue adequacy made in accordance with the standards developed in Ex Parte 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in Ex Parte 393 (Sub No. 1), *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986), and Ex Parte 393 (Sub No. 2), *Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes*, 5 I.C.C.2d 65 (1988). This decision applies those standards to data for the year 1988.

Broadly, a railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry. In applying its standard, the Commission has made adjustments to the financial statements submitted by eight carriers. Specifically the adjustments involve: (1) Valuation of the operating property of certain railroads whose assets have been written down incident to mergers and reorganizations at their acquisition cost (instead of predecessor cost); (2) exclusion from the calculation of net railway operating income (NROI) of special charges, such as employees reduction expenses; (3) exclusion from NROI calculations of the costs associated with antitrust settlements; (4) disallowance of current deferred income tax debits as an offset to long-term accumulated deferred income tax credits; and (5) for those railroads that implemented Financial Accounting Standards Board (FASB) Statement of Accounting Standards No. 96, *Accounting for Income Taxes* (FAS 96), adjustment of beginning of year accumulated deferred income tax credits reported under Accounting Principles Board Decision No. 11 (APB 11) to conform to the procedures promulgated in FAS 96.

Additional information is contained in a concurrent decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the Hearing Impaired is available through TDD services (202) 275-1721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: November 9, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner André dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27222 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31312]

The Shore Fast Line, Inc.—Trackage Rights Exemption—New Jersey Transit Corp.

New Jersey Transit Corporation (NJT) has agreed to grant local trackage rights to The Shore Fast Line, Inc. (SFL), between milepost 53.3, near Tuckahoe, NJ, and milepost 77.0, near Rio Grande, NJ. This agreement amends the original trackage rights agreement between NJT and SFL which was the subject of a notice of exemption in Finance Docket No. 31025, *The Shore Fast Line, Inc.—Trackage Rights Exemption—New Jersey Transit Corporation* (not printed), served May 1, 1987. These trackage rights will become effective when SFL and Consolidated Rail Corporation have entered into an interchange agreement, more than 7 days after the filing of this notice.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transacton. Pleadings must be filed with the Commission and served on: Eric M. Hocky, Rubin Quinn Moss & Heaney, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27223 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1096X)]

Consolidated Rail Corp.—Abandonment Exemption—In Union County, NJ

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.21-mile line of railroad between a point about 2,050 feet east of the centerline of Bayway Avenue, near milepost 0.59, to the end of the line near milepost 0.8, at Elizabeth, Union County, NJ.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 20, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, Room 1136, Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 24, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27224 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-55; Sub-No. 331X]

CSX Transportation, Inc.—Abandonment Exemption—in St. Clair County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 11.34.-mile line of railroad between milepost 470.87, at Walmar, and milepost 482.21, at East St. Louis, St. Clair County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 27, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 7, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commisson should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 22, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27225 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52; Sub-No. 65X]

The Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—in Fremont County, CO

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 2.44-mile line of railroad between milepost 1.0 and the end of the line, at Clelland, Fremont County, CO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemaption will be effective on December 21, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 1, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commisson should be sent to applicant's representative: Guy Vitello, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 24, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27226 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act; City of Tacoma

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 13, 1989 a proposed consent decree in *United States and the State of Washington Department of Ecology* v. *City of Tacoma*, was lodged with the United States District Court for the Western District of Washington. The proposed consent decree concerns a complaint filed by the United States and the State of Washington Department of Ecology against the City of Tacoma, Washington pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, to compel the City to carry out the remedial action contemplated by a Record of Decision, issued by the Environmental Protection Agency on March 31, 1988 for the Tacoma Landfill site. The Tacoma Landfill site is located in Tacoma, Washington and is owned and operated by the City of Tacoma. The Tacoma Landfill Site was placed on the National Priorities List in 1983. The consent decree provides that the City shall undertake the remedial action contemplated by the ROD and shall pay the past and future costs of the United States and the State of Washington which the United States and the State have incurred or will incur for response actions at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Tacoma, Washington*, D.J. Ref. 90-11-2-381.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington, and at the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27216 Filed 11-17-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Weyerhaeuser Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Weyerhaeuser Company*, Civil Action No. 89-C-873-C, has been lodged on November 8, 1989, with the United States District Court for the Western District of Wisconsin. The complaint filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, alleged that the defendant violated applicable provisions of the federally enforceable Wisconsin State Implementation Plan ("SIP") by emitting bursts of sulfur dioxide (SO_2) in concentrations injurious to public health and welfare.

The proposed Decree requires Weyerhaeuser to install additional pollution control equipment and to achieve, by June 15, 1991, over a ten-fold reduction in its emissions of SO_2. The decree also requires Weyerhaeuser to pay a civil penalty of $20,000, and provides for significant stipulated penalties in the event that Weyerhaeuser fails to comply with decree requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20503, and should refer to the *United States* v. *Weyerhaeuser Company*, D.J. Reference No. 90-5-1-1-3304.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 420, 120 N. Henry Street, Madison, Wisconsin 53703 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27229 Filed 11-17-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 7, 1989 a proposed consent decree in *United States* v. *Benson*, Civil Action No. 87-245-E, was lodged with the United States District Court for the Western District of New York. The proposed consent decreee concerns a complaint filed by the United States that alleged violations of the underground injection control ("UIC") program set forth at Part C of the Safe Drinking Water Act, 42 U.S.C. 300h *et seq.*, and its implementing regulations codified at 40 CFR parts 144, 146, and 147 Subpart HH, at the Benson-Zink lease in Allegany Township, Cattaraugus County, New York. The complaint alleged that defendant Benson operated enhanced recovery injection wells on the lease without authorization. The complaint sought injunctive relief to require compliance with the UIC program and civil penalties for past violations. Since the filing of the complaint, defendant Benson has obtained the authorizations required by the UIC program. The decree requires

the defendant to pay $9,000 in settlement of the United States' claims for civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Benson*, D.J. Ref. 90–5–1–1–2699.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of New York, 502 U.S. Courthouse, Court & Franklin Streets, Buffalo, New York 14202 and at the Region II Office of the United States Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27108 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on November 7, 1989 a proposed consent decree in *United States* v. *Tyson Foods, Inc.*, Civil Action No. 87–3010, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States against defendant Tyson Foods, Inc. ("Tyson") that alleged violations of section 307(d) of the Clean Water Act, 33 U.S.C. 1317(d), and its implementing regulations, 40 CFR 403.5. The United States alleged that defendant Tyson discharged pollutants into the City of Berryville's wastewater treatment works in excess of the treatment capacity of the works, thereby causing the treatment works to violate its discharge permit issued under the Clean Water Act. The United States further alleged that these excess discharges by Tyson interfered with the operation of the treatment works or passed through the treatment works or both, in violation of the pretreatment provisions of the Act. The complaint sought injunctive relief to required Tyson to comply with the pretreatment regulations and civil penalties for past violations. The consent decree requires Tyson to operate it pretreatment facilities in a manner that will prevent interference with or pass through the treatment works. Tyson is also required to pay civil penalty of $64,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the dte of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Berryville, Arkansas et al.*, D.J. Ref. 90–5–1–1–2777.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–27109 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 89–52]

Vincent F. Chicola; Alexandria, LA; Hearing

Notice is hereby given that on June 26, 1989, the Drug Enforcement Administration, Department of Justice, issued to Vincent F Chicola, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC3391644, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 23, 1990, commencing at 9:30 a.m., at the United States Tax Court, United States Custom House, 423 Canal Street, New Orleans, Louisiana.

Dated: November 9, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–27098 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 89–24]

Lewis K. Curtwright, D.O.; Orlando, FL; Hearing

Notice is hereby given that on March 17, 1989, the Drug Enforcement Administration, Department of Justice, issued to Lewis K. Curtwright, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 28, 1989, commencing at 10:00 a.m., at the United States Tax Court, Twiggs Building, 700 Twiggs Street, Tampa, Florida.

Dated: November 9, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–27099 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 89–48]

John T. Flanigan, D.D.S.; Tampa, FL; Hearing

Notice is hereby given that on June 5, 1989, the Drug Enforcement Administration, Department of Justice, issued to John T. Flanigan, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AF1043423, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 17, 1990, commencing at 10:00 a.m., at the United States District Court, 611 North Florida Avenue, Room 435, Tampa, Florida.

Dated: November 9, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–27100 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 89–38]

Kin Siu Tam, M.D.; Covington, GA; Hearing

Notice is hereby given that on May 26, 1989, the Drug Enforcement Administration, Department of Justice, issued to Kin Siu Tam, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BT1199480, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 14, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Washington, DC.

Dated: November 9, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–27101 Filed 11–17–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–89–158–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1403–9(b) (shelter holes) to its Dilworth Mine (I.D No. 36–04281) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shelter holes be readily accessible and be at least 5 feet in depth, not more than 4 feet in width (except crosscuts used as shelter holes) and at least 6 feet in height where the coal seam is 6 feet or more in height.

2. As an alternate method, petitioner proposes the following procedures:

(a) All persons operating track mounted mobile equipment would be instructed to yield to pedestrain traffic;

(b) Shelter holes would be provided every eighty feet;

(c) Crosscuts would be used as shelter holes wherever feasible;

(d) Roof coal would be left in shelter holes cut by the track mounted cutter; and

(e) No shelter hole would be less than 4.5 feet high by 1.7 feet wide by 3.2 feet deep, which allows adequate access and protection for an individual.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1989. Copies of the petition are available for inspection at that address.

Dated: November 8, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–27129 Filed 11–17–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–168–C]

Granny Rose Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Granny Rose Coal Company, P.O. Box 1098, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 3 Mine (I.D. NO. 15–16719) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A Summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30–40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1989. Copies of the petition are available for inspection at that address.

Dated: November 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-27130 Filed 11-17-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-165-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.303 (preshift examinations) to its Palco Mine (I.D. No. 15-14492) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake seals be examined during the preshift examination to determine if they are functioning properly.

2. Due to a low top, a wet bottom and danger from falling gob, petitioner proposes the following alternate method to reduce individual exposure to hazardous conditions:

(a) The three intake seals in the No. 11 coal seam would be physically examined as part of the weekly ventilation examination;

(b) A continuous monitoring station would be established inby the seals to monitor the air passing the seals for methane, carbon-monoxide, and oxygen. This monitoring station would be part of the mine-wide monitoring system;

(c) Audible and visible alarms would be activated at a surface location where a qualified person would be on duty at all times anyone is underground. The system would alarm (audible and visible) anytime methane, carbon-monoxide, and oxygen are not within established limits. The qualified person would respond to all alarms and would initiate immediate investigation of each alarm and would initiate the appropriate emergency action plan;

(d) All sensors would be calibrated at intervals not to exceed 30 days, and records would be maintained until the next calibration period has been completed; and

(e) All alarms would be printed out as they occur and all sensor readings would be printed out once each hour. These printouts would be maintained at the surface computer control point along with the sensor calibration records.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1989. Copies of the petition are available for inspection at that address.

Dated: November 7, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-27131 Filed 11-17-89; 8:45 am]

BILLING CODE 4510-43M

[Docket No. M-89-167-C]

Tudy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Tudy Coal Company, Route 2, Box 327B, Rockholds, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 to its Mine No. 1 (I.D. No. 15-16683) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1989. Copies of the petition are available for inspection at that address.

Dated: November 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-27132 Filed 11-17-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-164-C]

Utah Power & Light Co., Mining Division; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, Mining Division, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Deer Creek Mine, 3rd South location (I.D. No. 42-00121) located in Emergy County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On September 24, 1989, petitioner was granted a modification of 30 CFR 75.305 to establish air quality monitoring stations where air entering an exiting the 3rd South area would be monitored weekly (Docket No. M-89-56-C).

2. This petition concerns paragraph 1 of MSHA's Decision and Order which requires that air measuring stations be established, identified with a sign and monitored by a certified person on a daily basis.

3. Due to adverse ground control problems that are causing the roof supports to fail, Petitioner requests that air measuring stations be reestablished in the 3rd South area as outlined in the petition.

4. In support of this request petitioner states that moving the input station would not cause a diminution of safety. The input monitoring station would only be moved 200 feet and would still remain in currently approved No. 6 return entry.

5. For these reasons, petitioner requests an amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.305.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1989. Copies of the petition are available for inspection at that address.

Dated: November 8, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-27133 Filed 11-17-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-80]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee.

DATES: December 13, 1989, 9 a.m. to 5 p.m.; and December 14, 1989, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Building 200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. William Reynard, Office of Aviation Safety Reporting System, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/694-6467.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee, Aviation Safety Reporting System Informal Subcommittee was established to provide overall advice and recommendations to the Office of Aeronautics and Space Technology (OAST) on aviation safety needs. The Subcommittee, chaired by Captain C. R. Paty, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

December 13, 1989

9 a.m.—Opening Remarks.
9:30 a.m.—Background Orientation.
10:30 a.m.—Review of the Role of the Subcommittee.
11 a.m.—Operations Report.
2 p.m.—Research Report.
4 p.m.—Aviation Safety/Automation Research.
5 p.m.—Adjourn.

December 14, 1989

9 a.m.—Federal Aviation Administration Issues.
10 a.m.—Report Volume Increases and Consequences.
1 p.m.—Criteria for Incident Data Analysis, Retention, and Output.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

Dated: November 13, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-27193 Filed 11-17-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the second hearing of the National Commission on Children to be held in San Antonio, Texas.

Time: 9:00 a.m.-12:30 p.m., Tuesday, November 28, 1989.

Place: River Room, Henry B. Gonzales Convention Center, 200 East Market Street, San Antonio, Texas.

Status: 9:00 a.m.-12:30 p.m., open to the public.

Agenda: "Enhancing School Readiness: Support for Early Childhood Development".

Contact: Jeannine Atalay, (202) 254-3800.

Dated: November 14, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89-27197 Filed 11-17-89; 8:45 am]

BILLING CODE 6820-97-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act

Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public hearing to be held in the En Banc courtroom, on the Second floor, of the Robert N.C. Nix Federal Building, at 9th & Market Streets, in Philadelphia, Pennsylvania.

DATE: Tuesday, December 5, 1989, 10:00 a.m.–4:00 p.m.

Status: The hearing is to be open to the public.

Matters to be Discussed: The purpose of this public hearing is to enable Commission members to learn from policy makers and program operators on how to improve the effectiveness of the U.S. Employment Service. Interested parties may submit written comments either prior to or after the official hearing date, but no later than December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 13th day of November.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–27143 Filed 11–17–89; 8:45 am]

BILLING CODE 4510-30-M

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public hearing to be held in Courtroom #7, Room 41, on the fourth floor, of the U.S. District Court House, 811 Grand Avenue, Kansas City, MO.

DATE: Wednesday, December 6, 1989 10:30 am – 5:00 pm.

Status: The hearing is to be open to the public.

Matters To Be Discussed: The purpose of this public hearing is to enable Commission members to learn from policy makers and program operators on how to improve the effectiveness of the U.S. Employment Service. Interested parties may submit written comments either prior to or after the official hearing date, but no later than December 18, 1989.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed at Washington, D.C., this 13th day of November.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–27144 Filed 11–17–89; 8:45 am]

BILLING CODE 4510-30-M

Public Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Yard Bird A Room, on the Second floor, of the Allis Plaza Hotel in Kansas City, Missouri.

DATE: Thursday, December 7, 1989 8:00—3:00.

Status: The meeting is to be open to the public.

Matters to be Discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 13th day of November.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–27145 Filed 11–17–89; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1989; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences AOs (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be AOs using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 12, No. 2 ("Report to Congress on Abnormal Occurrences: April–June 1989"). This report will be available in the NRC's Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

89–6 Significant Deficiencies in Management Controls at Surry Nuclear Power Station

The third general AO criterion notes that major deficiencies in design, or management controls for licensed facilities or material can be considered

an abnormal occurrence. In addition, one of the AO examples noted that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—Early 1988 through March, 1989; Surry Units 1 and 2, Westinghouse-designed 3-loop pressurized water reactors, operated by Virginia Electric and Power Company (the licensee), and located in Surry County, Virginia.

Nature and Probable Consequences—Based on cumulative inspection findings from early 1988 to March 1989, the NRC concluded that major deficiencies existed in the management controls at the Surry Power Station. Serious safety concerns were raised regarding the licensee's ability to self-identify and correct deficiencies without NRC intervention. These deficiencies have generally involved: (1) Original design deficiencies that the licensee should have identified on its own; (2) inadequate evaluation of operating events, identified deficiencies and NRC Bulletins and Information Notices; (3) failure to take timely corrective action for know deficiencies; and (4) failure to take adequate corrective actions.

Background

NRC concerns, with regard to the licensee's adequacy of safety evaluations and implementation of its corrective action program, have been the subject of enforcement actions in the past. Since 1988, in addition to the $500,000 civil penalty discussed in detail below, there have been four escalated enforcement actions with civil penalties issued to the licensee that reflect on its failure to identify problems to take prompt and adequate corrective actions. These enforcement actions are briefly discussed as follows:

- On June 13, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000. In February 1988, NRC identified a violation involving the failure to maintain and verify operability of heat trace circuitry for boric acid flow paths. This problem had existed for an extended period of time without station personnel questioning the reason for continuously lit annunciators.
- In a separate action dated June 13, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000. In March 1988, an event had occurred that had a significant potential for a radiation overexposure during the licensee's attempt to-free an incore detector from a thimble tube. The licensee's response to the event was inadequate.
- On August 25, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000. In May 1988, an individual exceeded the whole body quarterly occupational radiation dose limit, due in part to inadequate corrective actions associated with a prior event.
- On November 10, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000. The violation involved insufficient cleanliness controls when working on safety related systems, as foreign material was found in the containment sumps that had gone undetected for an extended period of time. This could have resulted in damage to the low head safety injection and recirculation spray pumps.

Additional Inspections and Issues Identified

Additional inspections conducted from September 1, 1988 through March 4, 1989 identified additional violations. For many of the violations, information was available that if properly evaluated and acted upon, should have prevented or led to earlier correction of those violations. Other violations were related to significant design and evaluation issues. These inspections were: an NRC Augmented Inspection Team (AIT) inspection conducted from September 1–3, 1988; an NRC Safety System Functional Inspection (SSFI) conducted from September 12–16, September 26–30, and November 14–18, 1988; and NRC Resident Inspector inspections conducted from October 2–November 5, 1988, November 6–December 17, 1988, December 18, 1988–January 28, 1989, and January 29–March 4, 1989. The AIT inspection was conducted to review the facts and circumstances associated with the failure of the Unit 1 refueling cavity seal on May 17, 1988. The SSFI focused on the safety-related service water system and the recirculation spray system including associated electrical systems.

The violations identified in the inspections were grouped into five sections of the May 18, 1989 NRC letter forwarding the Notice of Violations and Proposed Imposition of $500,000 Civil Penalties. The sections are summarized below:

I. Cavity Seal Failure. Violations involved: (a) The inadequate design of the Unit 1 reactor cavity seal that failed on May 17, 1988, resulting in a refueling cavity water leak of about 30,000 gallons; and (b) inadequate licensee actions taken subsequent to the seal failure. The NRC was not informed of this event until August 30, 1988. The NRC AIT found that the licensee's response to NRC Bulletin No. 84–03, "Refueling Cavity Water Seal," was deficient in that the evaluation of the unique Surry cavity seal design did not assure that appropriate tolerances and installation instructions were provided.

The inflatable backup seal coincidently failed when a section of instrument air was isolated for unrelated local leak rate testing at a time when the backup nitrogen bottles were not correctly aligned. The AIT found that the station lacked procedures and drawings for these two systems and operations personnel had not been adequately trained on operation of these particular systems. The licensee's initial evaluation of the event failed to quantify both the amount and rate of leakage (30,000 gallons in 5 minutes). This inadequate evaluation of the scope and significance of the J-seal failure led to the licensee reloading the core three days later with the deficiencies uncorrected, thus placing the plant in an unanalyzed condition during the reloading period.

The violations in this section were assessed a civil penalty of $200,000.

II. Additional Corrective Action Violations. This section involved a number of problems that were not properly evaluated and corrected, even though the licensee had information available, either through NRC correspondence or the licensee's internal deficiency reporting system which should have prompted the licensee to act in a more timely manner.

Violations included: (a) Inadequate evaluation and disposition of NRC Information Notice No. 88–23, "Potential for Gas Binding of High-Pressure Safety Injection Pumps During a Loss of Coolant Accident," resulting in both Surry Units operating for a period of time with degraded, safety systems until mid-September 1988, when both units were shut down for unrelated reasons; (b) Control Room—Relay Room Ventilation Chiller capacity less than specified in the Final Safety Anyalsis Report (FSAR); (c) both trains of the Control Room and Emergency Switchgear Room Ventilation System incapable of performing their intended function; (d) use of unqualified replacement parts in some safety-related components; (e) recurring wetting of auxiliary feedwater pump motors during periods of heavy rains due to inadequately sealed roof plugs; and (f) various program deficiencies associated with assuring that quality

control inspection and quality assurance audit findings were adequately resolved.

The violations in this section were assessed a civil penalty of $175,000.

III. Design Control. The SSFI identified violations concerning a number of inadequate calculations performed to support certain plant modifications. The most significant example concerned inaccurate and nonconservative assumptions used for the 1988 recirculation spray heat exchanger replacement that was identified by the NRC and should have been identified by the licensee's review process. If left uncorrected, the plant would have continued to operate with the ultimate heat sink design outside of FSAR assumptions. The other violations demonstrated weaknesses in both the mechanical and electrical engineering disciplines.

The violations in this section were assessed a civil penalty of $25,000.

IV. Technical Specifications Operability Requirements. This violation concerned the operability of the emergency service water pumps. Both the FSAR and technical specification basis specified a 15,000 gpm capacity for each pump. However, pump capacity apparently degraded over the life of the plant to about 12,000 gpm and plant surveillance test acceptance criteria were changed on several occasions without performing an valuation for the change in system performance.

This violation was assessed a civil penalty of $100,000.

V. Other SSFI Identified Violations. These violations involved the adequacy of surveillance tests, incorporation of vendor recommendations into maintenance procedures, material traceability problems, and post maintenance testing.

These violations were classified at a lower severity level than those described in Sections I through IV above, and no civil penalty was assessed.

Cause or Causes—The causes were attributed to significant deficiencies in both site and corporate management controls over Surry Nuclear Power Station activities.

Actions Taken to Prevent Recurrence

Licensee—the licensee had shut down both Surry Unit 1 and Unit 2 in September 1988 (Unit 1 on September 13, due to emergency diesel generator operability concerns; and Unit 2 on September 9, for a refueling outage). The licensee agreed not to restart either unit until the NRC concurred.

During meetings held on February 26, March 30, April 26, and May 22, 1989, senior licensee management presented to the NRC an extensive corrective action plan that included both Design Reconstitution and Configuration Management Programs. For the immediate short term, the licensee performed an operational readiness review (verification of system configuration and document reviews), emergency power testing (similar to original startup testing), and functional testing. In addition, the licensee made a number of recent managemet changes at the site, and is in the process of enhancing its problem evaluation and corrective action capabilities.

The licensee did not contest the May 18, 1989, NRC Notices of Violations and Proposed Imposition of $500,000 civil penalties; the licensee has paid the civil penalty in full.

NRC—Significant NRC efforts were expended in identifying and documenting the numerous deficiencies previously discussed, and in reviewing and monitoring the corrective actions taken by the licensee.

On January 26, 1989, an Enforcement Conference was held at the NRC Region II Office to discuss design control and corrective action problems affecting various plant systems.

On March 9, 1989, the NRC issued a Confirmation of action Letter (CAL) to the licensee, which itemized the issues yet to be completed by the licensee, and reviewed by the NRC, prior to restart of both units.

Based on the satisfactory corrective actions taken by the licensee, on June 30, 1989, the CAL was lifted for Unit 1 by discussions between licensee and NRC management. Unit 1 was restarted on July 7, 1989. On September 6, 1989, the CAL was lifted for Unit 2. Unit 2 was restarted on September 16, 1989.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

89-7 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—March 13–27, 1989; Indiana University School of Medicine; Indianapolis, Indiana. The misadministration was reported to the NRC Region III office on April 10, 1989.

Nature and Probable Consequences—A 66-year old male patient suffering from metastatic lung disease involving the spine and both hips began receiving cobalt-60 treatments to the lumbosacral spine area on March 11, 1989. Treatment to the spine was given at 300 rads per day for ten days.

On March 13, the senior resident oncologist in the school changed the prescription to include cobalt-60 treatments to the patient's left hip. The new prescription was based on the result of a bone scan. Treatment was to consist of a total dose of 2,700 rads to the hip over a period of nine days.

In the simulation room where the patient's left hip was to be marked for eventnal treatment, the patient was placed in the "prone" position (face down) and his hip marked and fluoroscoped. However, the wrong hip was marked. The bone scan, which was the basis for the treatment, had been taken of the patient while he was in the "supine" position (face up). When the patient was placed on the table, face down, the patient was now in the opposite position for the bone scan. This mispositioning went unnoticed and the right hip, which was closest to the technologist, was erroneously marked and received the treatment.

Treatment began March 13 and ended March 27 when the resident oncologist discovered the error while reviewing the patient's chart. The patient and the patient's referring physicians were notified of the misadministration; however, the licensee did not notify the NRC until April 10, 1989, contrary to the requirements of 10 CFR Part 35.33(a) which states that initial notification must be made within 24 hours after discovery of the misadministration. Treatment on the patient's left hip was subsequently begun on April 10.

An NRC medical consultant was requested to evaluate the medical significance of the event. The consultant concluded that in view of the patient's widespread metastatic disease, the inadvertent 2,700 rads dose to the right hip would not result in a significant, untoward consequence to the patient.

Cause or Causes—It appears that the lack of a written prescription given to the simulator technologist contributed to the mispositioning of the patient on the simulator table and the wrong hip being treated. In addition, the absence of left or right side markers on the simulator radiograph and failure to audit positioning early in the treatment allowed the misadministration to go unnoticed during the treatment period.

In regard to the delay in reporting the event to the NRC, the licensee's communication system apparently broke down in that the facility's radiation protection officer was not told of the misadministration until April 10, 1989.

Actions Taken to Prevent Recurrence

Licensee—In response to the Region III CAL and the notice of violation, described below, on May 17, 1989, the licensee documented its specific corrective actions which have been implemented in regard to teletherapy procedures and reporting requirements.

In regard to teletherapy procedures, the licensee submitted a copy of its Radiation Oncology Department's quality assurance/quality control (QA/QC) procedure for external beam radiation therapy. The procedure describes precautionary steps to be taken before initiating treatments, a separate review by a physicist, and a weekly review of treatment charts for all patients undergoing treatment.

In regard to reporting requirements, each staff member signed a form that he or she has reviewed 10 CFR Part 35.33 requirements; the requirements were added to the departmental manual; and the requirements have been posted in the department. Training will be provided for new personnel.

NRC—An NRC inspection was conducted on April 18, 1989 to review the incident. On May 8, 1989, a notice of violation was issued for the licensee's failure to report the misadministration to the NRC within 24 hours of discovery.

On April 28, 1989, NRC Region III forwarded a CAL to the licensee documenting the licensee's agreement to (a) provide training to the radiation oncology staff in specific NRC reporting requirements, and (b) incorporate into the teletherapy QA/QC program comprehensive chart review procedure to be performed at least once a week for all patient charts.

Dated at Rockville, MD this 14th day of November 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-27196 Filed 11-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.—Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 78 to Facility Operating License No. NPF-10 and Amendment No. 66 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units Nos. 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revise Technical Specifications 3/4.1.3.4, "CEA Drop Time" and its associated Bases, to use both as arithmetic average control element assembly (CEA) drop time and a maximum individual CEA drop time. The maximum individual CEA drop time restriction would be used to limit the CEA drop time distribution from the arithmetic average. The amendments are in response to an application for amendment dated July 31, 1989 and designated as PCN 295.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which is set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1989 (54 FR 37172). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated July 31, 1989 (2) Amendment No. 78 to License No. NPF-10 and Amendment No. 66 to License no. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 9th day of November, 1989.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-27195 Filed 11-17-89; 8:45 am]

BILLING CODE 7590-01-M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Computer Matching Between the Selective Service and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100-503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89-22, the following information is provided:

1. Name of participating agencies: The Selective Service and the Department of Education (ED).

2. Purpose of the match: The purpose of this matching program is to ensure that the requirements of section 12(f) of the Military Selective Service Act (50 U.S.C. APP. 462) are met.

3. Authority for conducting the matching program: Computerized access to Selective Service Registrant Registration Records (SSS 10) enables ED to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et. seq.).* Computerized access to the Selective Service Registrant Registration Records (SSS 10) also enables ED to identify those recipients of Pell Grants prior to the 1988-89 award year (the first year of the applicant matching program) who may not have registered with Selective Service. Section 12(f) of the Military Selective Service Act, as amended (50 U.S.C. App. 462), denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself and submit to registration under Section 3 of the Military Selective Service Act who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, the Military Selective Service Act and 34 CFR Part 668.33 require any person required to present himself and submit

to registration under Section 3 of the Military Selective Service Act to file a statement that he is in compliance with the Military Selective Service Act. Furthermore, section 12(f)(3) of the Military Selective Service Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

4. Categories of records and individuals covered: (1) Federal Student Aid Application File (18-40-0014). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year; (2) Pell Grand Recipient File (18-40-0015). (Only for those recipients who applied for assistance prior to July 1988). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year; (3) Selective Service Registrant Registration Records (SSS 10).

5. Inclusive dates of the matching program: 18 months—commencing January 2, 1990.

6. Address for receipt of public comments or inquiries: Mr. Richard S. Flahavan, Associate Director for Operations, The Selective Service System, Washington, DC 20435.

Date: November 13, 1989.

Samuel K. Lessey Jr.,

Director of Selective Service.

[FR Doc. 89-27139 Filed 11-17-89; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2387; Amdt. 2]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Federal Emergency Management Agency's amendment of November 4, 1989 to the President's declaration, to include Solano County, the City of Isleton in Sacramento County, and the City of Tracy in San Joaquin County as a disaster area as a result of damages caused by an earthquake which occurred on October 17, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Napa and Yolo in California may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 18, 1989, and for economic injury until the close of business on July 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-27123 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2388; Amdt. 1]

Kentucky; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated November 3, 1989, to include the Knox County as a disaster area as a result of damages caused by severe storms, flooding, and mudslides on October 16-18, 1989.

In addition, applications for economic injury from small businesses located in the contiguous county of Whitley in Kentucky may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 18, 1989, and for economic injury until the close of business on July 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-27123 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council, Riverside, CA; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting from 7:30 to 9:30 a.m. on Thursday, December 7, 1989, at the Riverside Chamber of Commerce, 4261 Main Street, Riverside, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, Suite 160, Santa Ana, California 92703, phone (714) 836-2494.

Dated: November 13, 1989.

Jean M. Nowak

Director, Officer of Advisory Councils.

[FR Doc. 89-27116 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council, Boise, Idaho; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Boise, will hold a public meeting at 9:30 a.m. on Wednesday, November 29, 1989, at the Owhyee Plaza Regency room, 1109 Main Street, Boise, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho 83702, phone (208) 334-9841.

Region IX Advisory Council; Glendale, CA; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11:00 a.m. on Tuesday, December 5, 1989, at Churchill's Restaurant, 209 North Glendale Avenue, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. M. Hawley Smith, District Director, U.S. Small Business Administration, 330 North Brand Boulevard, Glendale, California 91203, phone (213) 894-2977.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27115 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27117 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council, Cedar Rapids, Iowa; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Cedar Rapids, will hold a public meeting at 10:00 a.m. on Wednesday, December 6, 1989, at the Sirloin and Brew Restaurant, 4407 First Avenue S.E., Cedar Rapids, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James N. Thomson, District Director, U.S. Small Business Administration, 373 Collins Road, NE., Cedar Rapids, Iowa 53402-3118, phone (319) 399-2571.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27118 Filed 11-17-89; 8:45am]

BILLING CODE 8025-01-M

Region VII Advisory Council, Wichita, Kansas; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Wichita, will hold a public meeting at 11:30 a.m. on Thursday, December 7, 1989, at the Executive Dining Room of Bank IV, Fourth Financial Center, 100 North Broadway, Wichita, Kansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, 110 East Waterman, Wichita, Kansas 67202, phone (316) 269-6566.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27119 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council, Livingston, N.J.; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Wednesday, November 29, 1989, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, phone (201) 645-3580.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27120 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council, New York, N.Y.; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 9:30 a.m. on Wednesday, November 29, 1989, in the Board Room of Pfizer, Inc., 235 East 42nd Street, New York, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, Room 3100, New York, New York 10278, phone (212) 264-1318.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27121 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council, Washington, DC; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Washington, DC, will hold a public meeting at 3:00 p.m. on Thursday, December 14, 1989, at the U.S. Small Business Administration's Washington District Office, 1111 18th Street, NW., Conference Room, 6th Floor, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas E. Gause, Assistant District Director for Business Development, U.S. Small Business Administration, 1111 18th Street, NW., Room 403, Washington, DC 20036, phone (202) 634-7839.

Dated: November 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-27122 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. William S. Becker, Associate Deputy Administrator for Special Programs.
2. Michael P. Forbes, Assistant Administrator for Congressional & Legislative Affairs.
3. Catherine B. Killian, Regional Administrator, Philadelphia.
4. David R. Kohler, Associate General Counsel for General Law.
5. Robert G. Lineberry, Deputy Associate Administrator for Investment.
6. Erline M. Patrick, Associate Administrator for Minority Small Business and Capital Ownership Development.
7. Frank M. Ramos, Associate Deputy Administrator for Management & Administration.
8. M. Hawley Smith, District Director, Los Angeles.
9. Richard L. Osbourn, Director of Personnel (non-voting technical advisor).
10. George H. Robinson, Director of Equal Employment Opportunity & Compliance (non-voting equal opportunity advisor).
11. John J. Connors, Deputy Inspector General, Department of Housing and Urban Development.
12. Michael R. Hill, Assistant Inspector General for Audit Policy and Oversight, Department of Defense.
13. Gene Richardson, Assistant Inspector General for Investigations, Agency for International Development.

Dated: November 8, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-27125 Filed 11-17-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 9, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46592.
Date filed: November 6, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1989.
Description: Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Act, applies for a certificate of public convenience and necessity authorizing service between Chicago, Illinois, and Tokyo, Japan.

Docket Number: 46594.
Date filed: November 6, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1989.
Description: Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for certificate authority to serve between Miami, Florida, on the one hand, and Madrid, Spain, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 89-27135 Filed 11-17-89; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on November 14, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on November 14, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Edward Clarke, or Wayne Brough, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register** listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on November 14, 1989.

DOT No: 3290
OMB No: 2120-0003
Administration: Federal Aviation Administration
Title: Malfunction or Defect Report
Need for Information: The collection of information is necessary to determine inservice performance of aeronautical products. (See use of information.)
Proposed Use of Information: Collection of this information is used by the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.
Frequency: On Occasion
Burden Estimate: 2,590 hours annually
Respondents: Repair stations certificated under Part 145, and air taxi operators.
Form(s): FAA Form 8010-4
Average reporting time: 18 minutes
DOT No: 3291
OMB No: New
Administration: Federal Aviation Administration
Title: General Aviation Pilot and Aircraft Activity Survey
Need for Information: The knowledge obtained in these surveys is needed to provide the agency with information about current general aviation pilot and aircraft activities.
Proposed Use of Information: Data collected will be used in:
a. Forecasting General Aviation operations
b. Evaluating the Agency's Flight Service modernization program
c. Performing environmental impact studies
d. Evaluating the flight impact of pilots
e. Reviewing the needs of airport development
f. Local planning and community development
g. Safety analysis
Frequency: Triennial
Burden Estimate: 1,000 hours
Respondents: General Aviation Pilots
Form(s): FAA Form 1800-OT
Average Burden Hours Per Response: 12 minutes
DOT No.: 3292
OMB No.: 2105-0522
Administration: Office of the Secretary
Title: Drug Testing Custody and Control Form
Need for Information: Forensic drug testing required under EO 12564
Proposed Use of Information: This information is needed to identify the individuals; also tracking the sample through collection, transportation, testing, and back to the Medical Review Officer
Frequency: On use
Burden Estimate: 2,500 hours
Respondents: Government employees, collection and laboratory contractors

Form(s): One
Average Burden Hours Per Respondent: 5 minutes
DOT No.: 3293
OMB No.: New
Administration: Urban Mass Transportation Administration
Title: Technical Activities Form
Need for Information: Data is needed to indicate how the planning process responds to identified goals, objectives, and policies of Congress and the Administration
Proposed Use of Information: Data is used by UMTA grantees to specify how funds are utilized for pre-defined work activities and on annual reports to Congress
Frequency: On occasion
Total Estimated Burden: 375
Respondents: State or local governments, Business or other for-profit
Form(s): None
Average Burden Per Response: 1 hour and 30 minutes
DOT No.: 3294
OMB No.: 2133-0506
Administration: Maritime Administration
Title: Merchant Marine Medals and Awards
Need for Information: To document request from the Public for various Merchant Marine Medals and Awards
Proposed Use of Information: To assist in processing and verifying requests for seamen's medals and awards
Frequency: On occasion
Burden Estimate: 2400 hours
Respondents: Individuals
Form(s): None
Average Burden Hours Per Respondent: 1 hour
DOT No.: 3295
OMB No.: 2115-0120
Administration: U.S. Coast Guard
Title: Transfer Procedures, Waste Management Plans
Need for Information: This information collection requirement is needed to ensure that the provisions concerning oil, hazardous materials and waste transfer procedures are complied with as required by the Port and Tanker Safety Act
Proposed Use of Information: Coast Guard uses this information to insure that equipment, methods and procedures to prevent discharges of oil and hazardous materials from vessels, onshore generated aboard the vessel must comply with established regulations
Frequency: On occasion
Burden Estimate: 444,074
Respondents: Vessels and facilities owners/operators
Form(s): N/A
Average Burden Hours Per Respndent: 9 hours
DOT No.: 3296
*OMB No.:*2127-0002
Administration: National Highway Traffic Safety Administration
Title: Motor Vehicle Importation
Need for Information: To aid importers of foreign made vehicles import cars that do not comply with FMVSS
Proposed Use of Information: These forms are required to implement Title 49 CFR Parts 591, 592, 593 and 594, Regulations for Motor Vehicle Importation which requires an imported vehicle to conform to applicable FMVSS, or to be brought into conformance within 120 days of importation
Frequency: On occasion
Burden Estimate: 25,432 burden hours
Respondents: Importers
Form(s): HS-7, 474, 475 and the Instruction Handbook
Average Burden Hours Per Respondent: Recordkeeping: HS-7 - 5 minutes, Instruction handbook - 4 hours, HS-474 - 6 minutes, HS-475 -18 minutes, Format 1 hour

Issued in Washington, DC on November 14, 1989.
Robert J. Woods,
Director of Information, Resource Management.
[FR Doc. 989-27134 Filed 11-17-89; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Meetings: Aviation Security Advisory Committee

AGENCY: Federal Aviation Administration.
ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of the second meeting of the Aviation Security Advisory Committee.

DATE: The meeting will be held December 13, 1989, from 9 a.m. to 1 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 13, 1989, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A review of the first committee meeting held October 20, 1989. A discussion of previously discussed and newly submitted items as they relate to designation of subcommittees by topical areas. A decision concerning subcommittee topics and membership.

Attendance at the December 13 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on November 9, 1989.

Raymond A. Salazar,
Director of Civil Aviation Security.
[FR Doc. 89-27163 Filed 11-17-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[RSGM-88-29]

Public Hearing; Herzog Contracting Corp.

The Herzog Contracting Corporation has petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223), for mobile railcar mover equipment, including the Switchmaster Model 10,000 and Trackmobile Model 95TM, now leased to various railroads. This proceeding is identified as FRA Railroad Safety Glazing Standard Number RSGM-88-29.

After examining the carrrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly a public hearing is hereby set for 10 a.m. on December 12, 1989, in Room 4234 of the Nassif Building located at 400 7th Street, SW., in Washington DC.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of

Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on November 14, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-27199 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket Nos. PB-89-4 and SA-89-8]

Burlington Northern Railroad; Public Hearing

The Burlington Northern Railroad (BN) has petitioned the Federal Railroad Administration (FRA) for waivers of compliance with certain provisions of the Railroad Power Brakes Regulation, 49 CFR part 232, and the Safety Appliance Standards, 49 CFR part 231, to the extent that it be permitted to operate RoadRailer units over its railroad commingled in trains behind double-stack container cars. These proceedings are identified as FRA Waiver Petition Docket Nos. PB-89-4 and SA-89-8, respectively. See original notice of waiver petitions at 54 FR 32415-32416 (Aug. 7, 1989).

The BN seeks this relief in order to successfully introduce a cost effective RoadRailer service on the BN; to develop a price competitive RoadRailer service for all shippers of general commodities (domestic as well as international); to continue to develop RoadRailer technology and its potential in the market place; and to provide an efficient shipper oriented operation by the integration of two innovative and market effective technologies (double-stack cars and RoadRailers).

After examining the carrier's proposals, documentation, and all other available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly, a public hearing is hereby set for 10 am on February 6, 1990, in room 401, Courtroom No. 7 of the U.S. Court House located at 811 Grand Avenue in Kansas City, Missouri.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been considered, those persons wishing to make brief rebuttal statement will be given an opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on November 13, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-27136 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Determination of Ship Values for War Risk Insurance, effective July 1, 1989.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR part 308. In accordance with Public Law 99-59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of July 1, 1989, by inserting in the space provided therefore, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period July 1, 1989 to December 31, 1989 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 App. U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: November 14, 1989.

Joel C. Richard,

Assistant Secretary.

FEDERAL REGISTER LIST OF SHIP VALUATIONS

Binder	Official	Vessel Name	Valuation
3721	1110697	1st Lt. Alex Bonnyman	(1)
3686	568348	Adabelle Lykes	$5,900,000
3344	533270	Admiralty Bay	9,000,000
3659	563691	Adonis	9,400,000
3537	513704	Alison C.	1,550,000
3511	5048	Alpha Sea	6,000,000
2764	523846	America Sun	9,000,000
3360	577343	American Heritage	4,500,000
3648	612715	American Resolute	13,000,000
3642	517617	American Trojan	2,335,000
3495	E14544	Arco Alaska	27,500,000
3048	548424	Arco Anchorage	17,500,000
3518	523291	Arco California	27,500,000
3194	559400	Arco Fairbanks	17,500,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel Name	Valuation
3004	590030	Arco Independence	40,000,000
3142	556669	Arco Juneau	17,500,000
2900	535456	Arco Prudhoe Bay	8,100,000
2948	539313	Arco Sag River	8,100,000
3605	580245	Arco Spirit	40,000,000
3591	549197	Arco Texas	13,000,000
3469	601377	Argonaut	13,000,000
1716	292191	Ashley Lykes	2,055,000
3345	535357	Aspen	9,000,000
3608	582348	Atlanta Bay	5,200,000
3337	530141	Austral Rainbow	5,000,000
3510	3234	Baltimore Sea	8,500,000
3464	600128	Bay Ridge	26,000,000
3357	572359	Beaver State	4,500,000
3315	582451	Biehl Trader	3,900,000
3316	554627	Biehl Traveler	3,900,000
3628	533428	Blue Ridge	25,300,000
3623	543461	CG-461	12,000
1624	543481	CG-481	12,000
3685	568340	Charlotte Lykes	5,900,000
3215	562416	Chelsea	3,000,000
3144	557503	Cherry Valley	3,000,000
3724	569194	Chesapeake Bay	28,500,000
3286	577738	Chestnut Hill	4,500,000
3394	589320	Chevron Arizona	8,500,000
2985	541563	Chevron California	8,100,000
3308	577358	Chevron Colorado	8,500,000
3372	584696	Chevron Louisiana	8,500,000
2992	542850	Chevron Mississippi	8,100,000
3309	566080	Chevron Oregon	8,500,000
3310	570709	Chevron Washington	8,500,000
3626	638709	Coast Range	28,300,000
3690	280243	Coho	13,000,000
3654	648470	Columbia Bay	5,200,000
3528	590414	Cornucopia	70,500,000
3749	578746	Courier	8,000,000
3704	279936	Cove Leader	4,500,000
3702	644295	Cove Liberty	4,500,000
370	279436	Cove Trader	4,000,000
3722	671960	Cpl Louis J. Hauge	(1)
3544	632750	Cygnus	11,000,000
3725	669193	Delaware Bay	28,500,000
2606	528587	Edgar M. Queeny	4,000,000
3686	500702	Elizabeth Lykes	1,850,000
3658	557540	Energy Independence	46,000,000
2980	541414	Export Freedom	6,500,000
3065	548442	Export Patriot	8,500,000
2593	282272	Exxon Baltimore	4,000,000
3056	524618	Exxon Baton Rouge	8,215,000
3583	658406	Exxon Baytown	75,500,000
3485	600478	Exxon Benicia	25,000,000
3668	658495	Exxon Charleston	66,000,000
3412	538443	Exxon Galveston	2,500,000
2601	297151	Exxon Houston	6,000,000
2600	275519	Exxon Jamestown	3,400,000
3729	692967	Exxon Long Beach	95,000,000
2606	286216	Exxon New Orleans	6,000,000
3460	600477	Exxon North Slope	25,000,000
3057	526702	Exxon Philadelphia	8,215,000
3717	647470	Exxon Princeton	95,000,000
3058	523628	Exxon San Francisco	8,215,000
3716	692966	Exxon Valdez	95,000,000
2609	273896	Exxon Washington	3,400,000
3670	558494	Exxon Wilmington	66,675,000
3718	656742	Exxon Yorktown	35,000,000
3706	663105	Falcon Champion	18,000,000
3709	536850	Falcon Countess	6,000,000
3710	533611	Falcon Dutchess	6,000,000
3712	658555	Falcon Leader	18,000,000
3713	538811	Falcon Princess	6,000,000
3609	640014	Florida Bay	9,385,000
3540	514906	Freeport I	5,000,000
3541	516720	Freeport II	5,000,000
3538	292748	Gale B.	1,385,000
2421	513140	Genevieve Lykes	1,850,000
3610	643009	Georgia Bay	5,060,000
3346	526588	Glacier Bay	9,000,000
3729	581433	Golden Endeavor	4,500,000
2701	526972	Golden Gate	6,670,000
3512	568096	Golden Monarch	4,500,000

BEST COPY AVAILABLE

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel Name	Valuation
3739	650771	Great Lakes	7,200,000
3783	507989	Green Bay	17,000,000
3784	561453	Green Harbour	9,000,000
3780	562594	Green Island	9,000,000
3787	507990	Green Lake	19,500,000
3790	934702	Green Ridge	7,700,000
3777	559623	Green Valley	9,000,000
3788	677648	Green Wave	7,700,000
3745	684689	Gus W. Darnell	(1)
387	280564	James Lykes	2,000,000
1304	287103	Jean Lykes	2,000,000
3396	500709	Joe Sevier	310,000
389	282772	John Lykes	2,000,000
390	281326	Joseph Lykes	2,000,000
3491	621042	Kauai	41,400,000
588	606730	Keystoner	2,150,000
3287	579572	Kittanning	4,500,000
3746	684692	Lawrence H. Gianella	(1)
3622	550598	LB-726	12,000
3623	550599	LB-727	12,000
1352	287416	Leslie Lykes	2,000,000
2403	512187	Letitia Lykes	1,850,000
2062	299938	Louise Lykes	1,850,000
3546	632749	Lyra	11,000,000
3730	2774	M.P. Grace	4,000,000
3701	655350	Maj Stephen W. Pless	(1)
2763	524219	Manukai	13,000,000
2809	526400	Manulani	13,000,000
3492	618705	Maoi	625,000
3687	656347	Margaret Lykes	5,900,000
2814	529398	Marine Chemist	4,500,000
2777	245851	Marine Duval	3,485,000
2133	246836	Marine Floridian	3,485,000
1513	289870	Marjorie Lykes	2,055,000
3539	299756	Martha B.	2,550,000
3415	501709	Maui	33,640,000
2109	246343	Maunalei	2,000,000
3740	650770	Michigan	4,630,000
3152	542028	Mobil Arctic	17,500,000
2442	286479	Mobil Meridian	4,000,000
3301	578288	Mormacsky	3,145,000
3302	569257	Mormacstar	3,145,000
3303	573770	Mormacsun	3,145,000
1243	286850	Nancy Lykes	2,000,000
3656	529781	New York Sun	22,400,000
3802	5093	Ocean Challenger	24,000,000
3801	8042	Ocean Conqueror	24,000,000
3804	8197	Ocean Explorer	35,000,000
3805	8259	Ocean Navigator	35,000,000
3803	8157	Ocean Victor	21,000,000
3506	5886	Ocean Voyager	10,140,000
2745	523341	Omi Champion	7,000,000
3470	522854	Omi Charger	7,000,000
3576	536899	Omi Dynachem	34,500,000
3577	642151	Omi Hudson	34,500,000
3471	520859	Omi Leader	7,000,000
2614	520728	Omi Wabash	7,000,000
2591	518738	Omi Willamette	7,000,000
2827	529795	Overseas Alaska	6,870,000
3672	514928	Overseas Alice	6,455,000
2852	530877	Overseas Arctic	6,870,000
3535	630050	Overseas Boston	18,600,000
3378	583412	Overseas Chicago	13,500,000
3409	590624	Overseas Harriette	5,950,000
3533	553137	Overseas Juneau	17,500,000
3406	590623	Overseas Marilyn	5,950,000
3386	588001	Overseas New York	13,500,000
3389	588647	Overseas Ohio	13,500,000
3671	517186	Overseas Valdez	6,455,000
3480	518125	Overseas Vivian	6,455,000
3399	588955	Overseas Washington	13,500,000
3747	571049	Patriot	5,000,000
3742	684688	Paul Buck	(1)
3700	541084	PFC Eugene A. Obregon	(1)
3719	676513	PFC James Anderson, Jr.	(1)
3741	674269	PFC William B. Baugh	(1)
3655	638073	Philadelphia Sun	22,400,000
3501	517120	President Adams	5,200,000
3690	573003	President Eisenhower	25,000,000
3689	674310	President F.D. Roosevelt	25,000,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel Name	Valuation
3483	530138	President Grant	12,000,000
3726	530139	President Harrison	12,000,000
3485	530137	President Hoover	12,000,000
3030	544900	President Jefferson	6,000,000
3121	552109	President Johnson	6,000,000
1947	296779	President Kennedy	2,955,000
3041	546725	President Madison	6,000,000
3678	655397	President Monroe	27,500,000
3120	552108	President Pierce	6,000,000
2795	511653	President Taft	3,150,000
3484	530140	President Tyler	12,000,000
3679	653424	President Washington	27,500,000
3705	634621	Pride of Texas	11,000,000
3396	570108	Prince William Sound	17,500,000
3720	664591	PVT Harry Fisher	(1)
3748	573810	Ranger	8,000,000
3743	684691	Richard G. Mathiesen	(1)
3607	644241	Richmond Bay	5,200,000
3147	557033	Robert E. Lee	9,000,000
3779	519102	Rover	8,500,000
3750	577241	Rover	8,000,000
2162	522928	Ruth Lykes	1,850,000
3179	559035	Sam Houston	9,000,000
3744	684690	Samuel L. Cobb	(1)
2918	535020	Sansinena II	8,100,000
3423	504015	Santa Adela	1,850,000
2752	502726	Santa Juana	1,850,000
3731	1876	Sasstown	1,975,000
3734	3459	Savannah Sea	6,500,000
3776	569153	Sea Cat	155,000
3786	588561	Sea Horse	155,000
3781	557400	Sea Lion	155,000
3782	530856	Sea Mule	155,000
3778	555604	Sea Ox	155,000
3785	565697	Sea Tiger	155,000
3453	594073	Sea-Land Adventure	8,200,000
3100	552818	Sea-Land Consumer	10,000,000
3488	604246	Sea-Land Defender	21,000,000
3513	604247	Sea-Land Developer	21,000,000
3534	606052	Sea-Land Endurance	21,000,000
3489	604248	Sea-Land Explorer	21,000,000
3514	604249	Sea-Land Express	21,000,000
3527	606065	Sea-Land Freedom	21,000,000
3516	606061	Sea-Land Independence	21,000,000
3529	606054	Sea-Land Innovator	21,000,000
3451	594374	Sea-Land Leader	8,200,000
3487	604245	Sea-Land Liberator	21,000,000
3526	606060	Sea-Land Mariner	21,000,000
3450	593980	Sea-Land Pacer	8,200,000
3486	604244	Sea-Land Patriot	21,000,000
3452	594375	Sea-Land Pioneer	8,200,000
3131	552819	Sea-Land Producer	10,000,000
3517	606063	Sea-Land Voyager	21,000,000
3699	641083	SGT. Matej Kocak	(1)
3568	568350	Sheldon Lykes	5,900,000
3627	641804	Sierra Madre	28 300,000
3611	645759	South Carolina Bay	9,200,000
3707	653210	Spirit of Texas	11,000,000
3708	642934	Star of Texas	11,000,000
3148	557034	Stonewall Jackson	9,000,000
3413	584459	Stuyvesant	26,000,000
233	277623	Syosset	3,500,000
3606	640635	Tallahassee Bay	5,200,000
3507	3460	Texas City Sea	6,500,000
2927	283897	Texas Sun	4,000,000
3536	516158	Theresa F	1,550,000
405	283413	Thompson Lykes	2,000,000
3732	1778	Timbo	1,975,000
3657	275583	Tropic Sun	2,960,000
3727	550200	Ultramar	7,000,000
3728	555146	Ultrasea	7,000,000
2270	505786	Valley Forge	6,175,000
3652	642452	Virginia Bay	9,385,000
3361	551001	WA-1-0001	12,000
3362	567451	WA-2-0451	17,000
3621	608713	WA-3-0576	23,000
3622	608714	WA-3-0577	23,000
3735	3233	Yorktown Sea	6,500,000
411	282126	Zoella Lykes	2,000,000

1 "Casualty" value as defined and determined by each individual MSC charter agreement.

Change of Name of Approved Trustee; Mercantile Bank National Association, St. Louis, MO

Notice is hereby given that effective September 29, 1989, Mercantile Bank National Association, St. Louis, Missouri, changed its name to Mercantile Bank of St. Louis National Association.

Dated: November 14, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-27128 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP 89-10; Notice 1]

Goodyear Tire & Rubber Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Goodyear Tire & Rubber Company (Goodyear), of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3.5 of Federal Motor Vehicle Safety Standard No. 109, requires the maximum inflation pressure to be molded into or onto both sidewalls, in letters and numerals not less than ½ inch high. During the period September 1987 thorugh October 1989, Goodyear manufactured and shipped 280,000 T105/70D14 Convenience Spare tires that do not comply with FMVSS No. 109. These tires were marked with the correct information but the lettering height was .394 inch (10mm) instead of the required ½ inch. Goodyear supports its petition with the following:

(1) The lettering is legible and prominent and while it is .10 less in height than the required minimum for this particular information, it is still five times larger than the .078 inch minimum height for other information required to be labelled on the sidewall of tires.

(2) The stamping was correct except for its size, and the stamping has no effect on the tire performance or safety.

Interested persons are invited to submit written data, views and arguments on the petition of Goodyear, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 20, 1989.

(Sec. 102 Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 15, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-27208 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Notice No. 89-9]

Availability of Proposed Changes to the International Atomic Energy Agency Regulations and Request for Public Comment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of availability and request for comment.

SUMMARY: The International Atomic Energy Agency's (IAEA) proposed Changes of Detail to IAEA Safety Series No. 6, entitled "Regulations for the Safe Transport of Radioactive Materials," are available for public review and comment. Any future changes to IAEA's Safety Series No. 6 may affect the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180).

DATE: Comments should be received by December 29, 1989.

ADDRESS: The IAEA's proposed changes are available for review in the Dockets Unit, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, Room 8421, 8:30-5:00, Monday through Friday. Additionally, comments on the proposed changes should be addressed to the Dockets Unit at the same address.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION: Many countries and international transport organizations throughout the world have adopted the standards of the IAEA's "Regulations for the Safe Transport of Radioactive Materials" (IAEA Regulations). These regulations are currently found in IAEA publication Safety Series No. 6, 1985 Edition (SS6-85). Section 171.12(e) of 49 CFR permits the import and export of radioactive materials, under certain conditions, if packages are prepared for shipment in accordance with the IAEA Regulations. Currently, § 171.21(e) references Safety Series No. 6, 1973 Revised Edition (As Amended). However, the HMR are periodically amended to allow conformance with most of the IAEA Regulations for domestic transportation. It is anticipated that the HMR will be amended to require conformance with SS6-85 by July 1, 1990. Thus any changes to SS6-85 may affect the HMR.

The IAEA has instituted a new process for the continuing review and revision of its regulations. This process will lead to supplements to the IAEA Regulations and its supportive documents being issued every 2 years, thereby allowing the IAEA Regulations to remain current with technology and needs.

As part of this process the IAEA convened a Technical Committee meeting from July 10-14, 1989, to consider proposals for amendments and identified problems submitted by IAEA Member States and international organizations in connection with the IAEA Regulations. Additionally, the Technical Committee considered advice and reports developed by consultant groups examining specific aspects of the regulatory standards for transport. The Technical Committee was charged with the tasks of examining the justifications for the proposed amendments and of recommending changes suitable for early adoption in the IAEA Regulations. To ensure that Member States were represented, the Technical Committee consisted of designated representatives of the Member States.

As a result of the meeting, the Technical Committee recommended 2 types of changes: (1) Those that were designated as "minor changes" that do not alter the substance of the IAEA Regulations; (2) those that were designated as "Changes of Detail." Minor changes comprise matters such as editorial corrections, drafting errors and internal consistencies. The consequent amendment to the IAEA's Regulations for this type of change will be promulgated in due course without the prior approval of Member States. Changes of Detail are considered to be essential by the IAEA to keep their Regulations current. These changes can only be promulgated by the Director General of the IAEA after giving Member States not less than 90 days notice to comment on the changes.

The Director General of the IAEA has invoked the 90 day notice procedure and has transmitted the changes to the U.S. and other Member States. Since amendments of the IAEA Regulations may have an effect on the HMR, the public is invited to review the changes and to submit comments on the proposed changes. To facilitate this process, a copy of the changes has been placed in RSPA's Docket Unit for use by the public. Copies of the proposed changes may be obtained upon request to the Dockets Unit. Comments submitted by the public will be considered and incorporated into the U.S. response to the changes.

Issued in Washington, DC on November 15, 1989, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-27202 Filed 11-17-89; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia Hoxie (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 485-2617;

or

Ms. Johnnie Lindahl (Co-Executive Secretary), Deputy Director, Office of Personnel, Voice of America, U.S. Information Agency, 330 Independence Avenue, SW., Washington, DC 20547, Tel: (202) 485-8053.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (P.L. 95454), the following list supersedes the U.S. Information Agency Notice (53 FR 36388, September 19, 1988).

Chairperson: Associate Director for Management—Henry E. Hockeimer (Presidential Appointee).

Deputy Chairperson: Director, Voice of America—Richard Carlson (Presidential Appointee).

Career SES Members:

Janice Brambilla, Director, Office of Personnel, Voice of America;

Edward DeFontaine, Director for Broadcast Operations, Voice of America;

Walter La Fleur, Director, Office of Engineering and Technical Operations, Voice of America;

William K. Jones, Director, Exhibit Service;

Harlan Rosacker, Director, Office of Personnel;

R. Wallace Stuart, Deputy General Counsel.

Alternate Career SES Members:

Donald J. Cuozzo, Worldnet Production Manager, Television and Film Service;

Alan Heil, Deputy Director for Programs, Voice of America.

This supersedes the previous U.S. Information Agency Notice (53 FR 36388, September 19, 1988).

Henry E. Hockeimer,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 89-27142 Filed 11-17-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 222
Monday, November 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 14, 1989, 54 FR 47446.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 15, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The Commission Meeting scheduled for November 15, 1989, at 10:00 a.m., has been cancelled.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27387 Filed 11-16-89; 11:26 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

TIME AND DATE OF MEETING: 10 a.m. (EST) Thursday, November 16, 1989.

PLACE OF MEETING: Tennessee Valley Authority (TVA), Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

A—Budget and Financing

1. Proposed Supplemental Resolution authorizing Tennessee Valley Authority Power Bonds.

2. Proposed resolution authorizing Chairman and certain Tennessee Valley Authority Officers to take further actions relating to issuance and sale of Power Bonds.

SUPPLEMENTARY INFORMATION: The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that a meeting be called at the time set out above and that no earlier announcement of this meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615 632-8000 or 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 479-4412.

William L. Osteen, Jr.,

Assistant Secretary and Associate General Counsel.

[FR Doc. 89-27292 Filed 11-16-89; 11:26 am]

BILLING CODE 8120-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1424)

TIME AND DATE: 10 a.m. (EST). November 22, 1989.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 17 and 18, 1989.

Action Items

Old Business

*1. Purchase Agreement with the Federal Financing Bank Covering Arrangements for Short-term Power Bond Financing.

*2. Supplemental Resolution Authorizing Tennessee Valley Authority Power Bonds First Short-term Series.

*3. Resolution Authorizing Chairman and Certain Tennessee Valley Authority Officers to Take Further Actions Relating to the Arrangements with the Federal Financing Bank.

New Business

A—Budget and Financing

A1. Fiscal Year 1989 Financial Statements (Unaudited).

B—Purchase Awards

*B1. Proposal RH-19054A-01—Integrated Computer System for Browns Ferry Nuclear Plant Unit 2.

B2. Requisition 78—Short-term Coal for Colbert Fossil Plant and Requisition 78—Short-term Coal for Johnsonville Fossil Plant

B3. Proposal YE-44983B-01—Indefinite Quantity Term Contract for Nuclear Plant Radio Systems for All TVA Nuclear Facilities.

B4. Negotiation GA-77750A—Waterwall Panels for Bull Run Fossil Plant.

B5. Proposal QC-00034B—Indefinite Quantity Term Agreement for Copy Paper—Office Products Services.

E—Real Property Transactions

E1. Sale of Excess Property Affecting Approximately 4.125 Acres of Fabius Coal Mining Land in Jackson County, Alabama

E2. Abandonment of Easement Affecting Approximately 1.2 Acres Located near Franklin, Tennessee.

E3. Sale of Permanent Easement Affecting Approximately 0.28 Acre of the Land of North Tullahoma and Northern Field Substations Located in Coffee County, Tennessee.

E4. Proposed 30-Year Term Easement Affecting Approximately 6.88 Acres of Wheeler Reservoir Land in Limestone County, Alabama.

E5. Proposed Deed Modification Affecting Approximately 12 Acres of Chickamauga Reservoir Land in Hamilton County, Tennessee.

F—Unclassified

*F1. Performance Increases for Employees on the Manager and Specialist Salary Schedule.

*F2. Revision to Pay Rates for Excluded Positions.

*F3. Recommendations Resulting from the Thirty-seventh Salary Policy Negotiations.

F4. Resolution Approving the Filing of Condemnation Cases.

F5. Exercise of Option to Contract No. TV-74577A with Coopers & Lybrand for Fiscal Year 1990 Audit Services.

F6. Relocation Expense Reimbursement for New Appointees and Reimbursement of Travel Expenses Incurred by New Appointees When Traveling on Behalf of TVA Prior to Date of Appointment—Management and Specialist Positions.

F7. Supplements to 12 Performance Based Task Contracts.

F8. Nickajack Reservoir Land Management Plan.

F9. Chickamauga Reservoir Land Management Plan.

F10. Agreement with Consolidated Communications Corporation for Fiber Optic Ground Wire with Guntersville-Fultondale 115-kV Transmission Line.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: November 15, 1989.

Edward S. Christenbury,

General Counsel and Secretary

[FR Doc. 89-27293 Filed 11-16-89; 11:26 am]

BILLING CODE 8120-01-M

*Item approved by individual Board members. This would give formal ratification to the Board's action

federal register

Monday
November 20, 1989

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Proposed rule and Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 90893-9193]

RIN: 0648-AC29

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Withdrawal of proposed regulations.

SUMMARY: NOAA withdraws from review the proposed regulations to implement Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). While NOAA has approved Amendment 2 to the FMP, it has concluded that the proposed regulations are not needed to implement the amendment. Notice of approval is published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act. Amendment 2 to the FMP was submitted by the Councils on July 19, 1989. A notice of availability of the amendment and request for comments was published on July 26, 1989 (54 FR 31063). A proposed rule to implement Amendment 2 was published on August 24, 1989 (54 FR 35212).

Amendment 2 has been approved. However, NOAA has concluded that regulatory language is not necessary to implement the amendment's procedure for the future implementation of specified types of gear and harvest restrictions applicable to the spiny lobster fishery in the exclusive economic zone. That procedure applies only to the Florida Marine Fisheries Commission, the South Atlantic and Gulf of Mexico Fishery Management Councils, and NMFS; the procedure is not regulatory in nature because it does not control the behavior or activities of fishermen. Accordingly, the proposed amendments to 50 CFR part 640 published in 54 FR 35212, August 24, 1989, are withdrawn.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service

[FR Doc. 89-27141 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90893-9248]

RIN 0648-AC29

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces approval of Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). Amendment 2 establishes a regulatory amendment procedure for the future implementation of specified types of gear and harvest restrictions applicable to the fishery in the exclusive economic zone (EEZ) and makes other minor changes to the FMP. The intended effects of the procedure are to provide a more flexible and timely system implementing rules governing the conduct of the spiny lobster fishery, enhance cooperative Florida (State)/Federal management, reduce Federal management costs, improve the effectiveness of necessary rules, and presumably increase productivity from the resource.

EFFECTIVE DATE: Amendment 2 was approved on October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 2 to the FMP was submitted by the Councils on July 19, 1989. A notice of availability of the amendment and request for comments was published on July 26, 1989 (54 FR 31063). A proposed rule to implement Amendment 2 was published on August 24, 1989 (54 FR 35212).

The FMP manages the spiny lobster fishery throughout the EEZ off the coastal states from the Virginia/North Carolina border south and through the Gulf of Mexico. The preamble to the proposed rule contained information on the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. That information is not repeated here.

Comments and Responses

Four written responses were received commenting on the proposed rule and amendment. Two Federal agencies, the U.S. Coast Guard and the Department of Interior, Fish and Wildlife Service, recommended approval of Amendment 2. The Organized Fishermen of Florida (OFF), an organization that represents commercial fishermen, recommended that changes to the commercial gear and harvest restrictions be made by amendment of the FMP rather than by regulatory amendment initiated by the Florida Marine Fisheries Commission (FMFC). OFF does not believe that the FMFC has the capability to evaluate potential economic and social impacts of the critical measures in the detail required to meet the Federal requirements and does not allow ample and fair opportunity for public input into the State rulemaking process. A local chamber of commerce expressed concerns about the potential for adverse impacts resulting from future changes to the gear and harvest restrictions. NOAA disagrees with both concerns.

Submission of proposed regulations addressing gear and harvest restrictions under the regulatory amendment process does not constitute automatic approval and implementation of such regulations in the EEZ. Supporting analyses prepared by the FMFC must meet the requirements of the Magnuson Act and other applicable Federal law before the proposed regulations can become effective in the EEZ. The public will have the same opportunity to comment on proposed gear and harvest restrictions, and to have those comments considered in NOAA's decision as to whether and in what form any proposed restrictions should be issued, as it does under all other proceedings carried out under the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553. Furthermore, the procedures established by Amendment 2 require that the FMFC also inform the Councils of each recommended rule and supporting analysis. If either Council determines that a rule is not consistent with the Magnuson Act or the FMP, and so informs the Regional Director, NOAA cannot proceed with rulemaking under Amendment 2 until the Council withdraws its objection.

Concomitant with the proposed regulatory amendment procedure for changing certain gear and harvest limitations, Amendment 2 also (1) amends and adds to the issues of the "Problems and Issues in the Fishery" identified in the FMP; (2) adds to the FMP a "Management Objective" to provide for a more flexible management system that minimizes regulatory delay, thus assuring more effective, cooperative State and Federal management of the fishery; (3) modifies the statement of optimum yield to remove numerically specified minimum legal carapace and tail lengths, thus permitting modification of those lengths by the regulatory amendment process contained in Amendment 2; (4) adds a "Vessel Safety" section; and (5) updates the "Habitat of the Stocks" section. No comments were received on these changes and additions.

Based on the comments received, NOAA finds no basis for disapproval of the amendment.

Changes From the Proposed Rule

The proposed rule would have codified the procedure for the future implementation of specified types of gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. That procedure would apply only to the Florida Marine Fisheries Commission, the Councils, and NMFS but is not regulatory in nature because it does not control the behavior of fishermen. Accordingly, NOAA has concluded that regulatory language is not necessary to implement the procedure. NOAA chose to publish the procedure as a proposed rule as the most effective means of notifying persons who would be affected and obtaining public comments. Accordingly, while Amendment 2 has been approved, the proposed rule has been withdrawn, by a notice appearing elsewhere in this issue, in view of NOAA's conclusion that regulatory language is unnecessary.

Classification

The Secretary of Commerce determined that Amendment 2 is necessary for the conservation and management of the spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment (EA) for Amendment 2 and, based on the EA, the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant adverse impact on the human environment as a result of Amendment 2.

Since Amendment 2 has no implementing regulations, preparation of and conclusions based on a regulatory impact review (RIR)/regulatory flexibility analysis (RFA), normally required by E.O. 12291 and the Regulatory Flexibility Act, are not required. It should be noted, however, that each future action initiated under

the procedure established in Amendment 2 will be accompanied by an RIR and, if it will have a significant economic impact on a substantial number of small entities, an RFA will be prepared.

The Councils determined that Amendment 2 is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not have approved coastal zone management programs. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, North Carolina, Mississippi, and South Carolina agreed with the Councils' determination. Alabama did not comment within the statutory time period, and, therefore, consistency is automatically implied.

Amendment 2 does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Deputy Assistant Secretary of Commerce for Intergovernmental Affairs determined that Amendment 2 and the proposed rule had sufficient federalism implications to warrant preparation of a Federalism Assessment (FA). The FA concluded that Amendment 2 is consistent with the principles, criteria, and requirements of E.O. 12612 and will reduce the governmental costs of managing the spiny lobster fishery in Florida's waters and the EEZ without increasing costs to the industry or consumers.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Wildlife Fisheries Service.

[FR Doc. 89-27140 Filed 11-17-89; 8:45 am]

BILLING CODE 3510-22-M

federal register

Monday
November 20, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 49, 75, and 77

Information Collection Requirements for Mine Rescue, Self-Rescuer, Fire Drill, and First-Aid Training for Supervisory Employees; Proposed Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 49, 75, and 77

RIN 1219-AA50

Information Collection Requirements for Mine Rescue, Self-Rescuer, Fire Drill, and First-Aid Training for Supervisory Employees

AGENCY: Mine Safety and Health Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules would reduce the information collection burden imposed by the Mine Safety and Health Administration (MSHA) on mine operators or other affected parties by revising reporting and recordkeeping requirements. In most cases, paperwork requirements would be replaced with certification provisions. Proposed for revision are the requirements for mine rescue equipment test and inspection records, records of fire drills, self-rescuer examination records and records of first-aid training for selected supervisory employees. Recordkeeping requirements are preserved for situations where hazardous conditions are discovered. The proposals are in accordance with the goals of the Paperwork Reduction Act of 1980.

DATES: Written comments on the proposals must be received on or before January 26, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., was enacted, in part, to minimize the Federal paperwork burden for individuals, small businesses and others on whom reporting and recordkeeping requirements are imposed. No agency may conduct or sponsor the collection of information unless approved by the Office of Management and Budget (OMB). Collections of information are generally subject to review and approval every three years. In exercising its responsibility to review MSHA paperwork requirements in 1987 and 1988, OMB approved extensions of the requirements related to mine rescue equipment, underground coal mine self-rescuers and first-aid training for selected supervisory employees on the condition that the Agency undertake regulatory review of these requirements. In addition, MSHA agreed to consider the fire drill record requirements for revision. These proposed rules address paperwork requirements only.

MSHA has reviewed these paperwork provisions and believes that the reporting and recordkeeping burden could be reduced while preserving the effectiveness of the underlying regulatory requirements and without reducing the protection afforded to miners. As discussed in more detail below, MSHA believes that recordkeeping and reporting for routine inspections and tests can be replaced in most cases with a certification that the inspection or test has been conducted; and that detailed records need only be maintained to document actual or potential hazardous conditions or other problems that require further attention.

II. Discussion of Proposed Revisions

A. Mine Rescue Equipment Test and Inspection Records (OMB No. 1219-0093)

The ready availability of a mine rescue capability in the event of an accident is vital for protection of miners. Mine operators are required to maintain mine rescue equipment in a manner which will assure this readiness. A person trained in the use and care of breathing apparatus is required to inspect and test the apparatus at intervals not exceeding 30 days. Under 30 CFR 49.6(b), records of the results of the inspections and tests are required to be kept. There are approximately 800 underground coal and metal and nonmetal mines that maintain mine rescue stations. Each station is required to have 12 breathing apparatus. MSHA safety specialists estimate that it takes 12½ minutes to conduct the required test and inspection of each piece of equipment for a total of 2½ hours per month per rescue station. MSHA estimates the burden hours for this recordkeeping requirement to be 24,000 hours. MSHA proposes to replace the recordkeeping requirement with a requirement that the person performing the inspection and test certify that the inspections and tests were done. A record would be required where deficiencies in equipment are found.

B. Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment (Underground Coal Mines) (OMB No. 1219-0054)

Under 30 CFR 75.1101-23, operators of underground coal mines must submit to MSHA for approval a specific firefighting and evacuation plan designed to acquaint miners on all shifts with procedures for evacuation of all miners not required for firefighting activities; rapid assembly and transportation of necessary persons, fire suppression equipment and rescue apparatus to the scene of the fire; operation of the fire suppression equipment available in the mine; and signals that will be given in the event of an emergency. The standard also requires the mine operator to conduct fire drills at intervals of not more than 90 days and to keep records of the fire drills which include the date on which the drill was held, the number of miners participating, the area of the mine involved in the drill, the procedures followed, and equipment used. The standard pertains to 2,328 underground coal mines. Fire drills are required every 90 days and it is estimated that it would take 15 minutes to conduct the fire drill and 5 minutes to make the record. The average underground coal mine has 2 sections and 10 miners per section. MSHA estimates the burden hours for this recordkeeping requirement to be 40,320 hours. MSHA proposes to replace the recordkeeping requirement with a requirement that the operator certify that fire drills were conducted in accordance with the approved plan.

C. First-Aid Training; Supervisory Employees (OMB No. 1219-0085)

Under 30 CFR 75.1713-3, and 77.1703, each operator of an underground and surface coal mine is required to conduct first-aid training courses for selected supervisory employees. In addition, within 60 days after selection, the operator is required to submit a written report to the District Manager containing the names, job titles, and dates of training of all supervisory employees. The standard pertains to 5,585 mining operations. It is estimated that there would be one record per mine per year and that the recordkeeping would take 30 minutes to record. MSHA estimates the burden hours for this recordkeeping requirement to be 2,793 hours. MSHA proposes to replace the recordkeeping requirement contained in these standards with a requirement that the mine operator certify the name of the employee and date on which the employee satisfactorily completed the first-aid training course.

D. Records of Results of Examinations of Self-Rescuers (Underground Coal Mines) (OMB No. 1219-0044)

Because of the rugged underground coal mining environment to which self-rescuers are subjected, the potential for these devices being rendered inoperative is high. In the event of a mine fire, mine explosion, or mine inundation, the use of self-rescuers can be the difference between life and death. Therefore, it is essential that these devices are examined regularly to achieve maximum assurance that they are maintained in usable and operative condition. Mine operators are required by 30 CFR 75.1714-3 to test self-rescue devices at 90-day intervals and to keep a record of the results of the tests. The estimated number of respondents per year is 2,328 underground coal mine operators with four reports annually by each respondent for a total of 9,312 responses. The estimated time per response for recordkeeping is 26 minutes and 38 minutes for examination for a total of 9,871 hours expended each year. MSHA proposes to replace the recordkeeping requirement with a requirement that the operator certify that the required tests were done. Records would be required only where defective devices are found.

III. Executive Order 12291 and the Regulatory Flexibility Act

These rules will not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, these rules do not fall within the criteria of major rules and Regulatory Impact Analyses are not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. These proposed rules would reduce paperwork burdens on all affected operations, including small mines. Accordingly, the Agency has not conducted an initial regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The collection of information requirements contained in these proposals have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. Comments regarding the collection of information requirements contained in these proposals should be sent to OMB, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for MSHA.

List of Subjects in 30 CFR Parts 49, 75 and 77

Mine safety and health, Reporting and recordkeeping requirements.

Dated: November 14, 1989.

William J. Tattersall,
Assistant Secretary for Mine Safety and Health.

Accordingly, Subchapters G and O, Chapter I, Title 30 of the Code of Federal Regulations, is proposed to be amended under 30 U.S.C. 811 as follows:

PART 49—MINE RESCUE TEAMS

1. The authority citation for part 49 is revised to read as follows:

Authority: 30 U.S.C. 811, 825(e) and 957.

2. Section 49.6(b) is revised to read as follows:

§ 49.6 Equipment and maintenance requirements.

* * * * *

(b) Mine rescue apparatus and equipment shall be maintained in a manner which will ensure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days and certify that the inspections and tests were done. When apparatus is removed from service for repair, the person shall record the reason for the removal and the corrective action taken. The certification and the record of removal shall be maintained at the mine rescue station for a period of one year.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 75.1101-23(c)(1) is revised to read as follows:

§ 75.1101-23 Program of instruction; location and use of firefighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills.

* * * * *

(c) * * *

(1) The operator shall certify that the fire drills were held in accordance with the requirements of this section. The certification shall be kept at the mine and made available on request to an authorized representative of the Secretary.

* * * * *

3. Section 75.1713-3 is revised to read as follows:

§ 75.1713-3 First-Aid training; supervisory employees.

The mine operator shall conduct first-aid training courses for selected supervisory employees at the mine. Within 60 days after the selection of a new supervisory employee to be so trained, the mine operator shall certify the name of the employee and date on which the employee satisfactorily completed the first-aid training course. The certification shall be kept at the mine and made available on request to an authorized representative of the Secretary.

4. Section 75.1714-3(e) is revised to read as follows:

§ 75.1714-3 Self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

* * * * *

(e) The operator shall certify that the tests required by paragraphs (c) and (d) of this section were done. Where self-rescue devices are removed for repair, the operator shall record the reason for the removal and the corrective action taken. The operator's certification and the record of removal shall be kept at the mine and made available on request to an authorized representative of the Secretary.

* * * * *

PART 77—MANDATORY SAFETY STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.1703 is revised to read as follows:

§ 77.1703 First-Aid training; supervisory employees.

The mine operator shall conduct first-aid training courses for selected supervisory employees at the mine. Within 60 days after the selection of a new supervisory employee to be so trained, the mine operator shall certify the name of the employee and date on which the employee satisfactorily completed the first-aid training course. The certification shall be kept at the mine and made available on request to an authorized representative of the Secretary.

[FR Doc. 89-27200 Filed 11-17-89; 8:45 am]
BILLING CODE 4310-43-M

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S.J. Res. 198/Pub. L. 101–151

Designating November 1989 as "An End to Hunger Education Month". (Nov. 14, 1989; 103 Stat. 931; 1 page) Price: $1.00

H.R. 3318/Pub. L. 101–152

To redesignate the Federal building in Houston, Texas, known as the Concorde Tower, as the "George Thomas 'Mickey' Leland Federal Building". (Nov. 15, 1989; 103 Stat. 932; 1 page) Price: $1.00

H.J. Res. 35/Pub. L. 101–153

Designating November 5–11, 1989, as "National Women Veterans Recognition Week". (Nov. 15, 1989; 103 Stat. 933. 1 page) Price: $1.00

H.J. Res. 435/Pub. L. 101–154

Making further continuing appropriations for the fiscal year 1990, and for other purposes. (Nov. 15, 1989; 103 Stat. 934; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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101	25.00	July 1, 1988
102–200	11.00	July 1, 1989
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
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4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
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1200–End	17.00	Oct. 1, 1988
46 Parts:		
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156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
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47 Parts:		
0–19	18.00	Oct. 1, 1988
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Vol. 54 No. 223

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Tuesday
November 21, 1989

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11-21-89
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federal register

Tuesday
November 21, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6072 of November 16, 1989

Hunger Education Month, 1989

By the President of the United States of America

A Proclamation

Famines create headlines. When famine strikes in any region of the world, millions of people rally to help those at risk of starving to death. Chronic hunger, however, often receives far less attention, even though millions of people around the world suffer daily from its effects. Hunger is particularly acute in a number of less developed countries where food supplies have been depleted by poverty, political strife, and civil war.

Over the years, the American people have responded generously to the needs of those affected by famine and chronic hunger. The United States has not only met but exceeded its pledge to the international Food Aid Convention. Through U.S. Food for Peace and other programs, Americans provided more than half of all the grain shipped worldwide through food aid programs during the year that ended in June—more than all other contributing nations combined.

However, we know that contributions of food alone will not provide a lasting solution to chronic hunger. As the ancient proverb so eloquently reminds us, "Give a man a fish, and you have fed him for a day. Teach a man how to fish, and you have fed him for a lifetime."

Poverty and hunger cannot be eliminated simply by donations of food. The development of free market economies also plays a vital role. The United States is working to alleviate hunger in poor nations by encouraging the development of policies that harness the power of individual initiative and free enterprise. We are working to help these countries increase their food production, and we are exploring ways to help them generate sufficient revenues to buy, store, and distribute essential agricultural goods.

If our Nation is to remain responsive to the needs of those who suffer from hunger, and if we are to continue to use our resources effectively in the fight against it, all Americans need to understand its causes and effects. Our schools and community organizations can play vital roles in heightening public awareness of world hunger by conducting educational programs designed to examine this tragic problem and the means we can use to help solve it.

To focus attention on the importance of education in the fight against world hunger, the Congress, by Senate Joint Resolution 198, has designated the month of November 1989 as "An End to Hunger Education Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of November 1989 as Hunger Education Month. I urge all Americans to take time to study the problem of world hunger and discover how they can help alleviate it.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27534
Filed 11-17-89; 4:15 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. 53; Docket No. 7423S]

General Crop Insurance Regulations; ELS Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by revising and reissuing 7 CFR 401.121, the ELS Cotton Endorsement. The intended effect of this rule is to: (1) Provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number; and (2) remove a reference to Late Planting Agreement Option being available.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the General Crop Insurance Regulations (7 CFR part 401), by revising and reissuing 7 CFR 401.121, the ELS Cotton Endorsement, effective for the 1990 and succeeding crop years, to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on (ASCS) Farm Serial Number.

Subsection 1.c.(2) contains language to clarify that FCIC will only insure that acreage of cotton allowed by mandatory limitations imposed by any program administered by the U.S. Department of Agriculture.

Minor editorial changes have been made to improve compatibility with the General Crop Insurance Policy. These changes do not affect meaning or intent of the provisions. In revising and reissuing the ELS Cotton Endorsement, FCIC makes other changes in the provisions for insuring ELS cotton as follows:

1. Section 1—Remove the reference to Late Planting Agreement Option. This reference was included in error in the current regulations. A Late Planting Agreement Option will not be offered on this crop.

2. Section 5—Change unit division language to allow division by share, section, and practice (irrigated-nonirrigated). ELS Cotton insureds were previously allowed unit division only by ASCS Farm Serial Number. The new unit division language for cotton will now be identical to the methods used for wheat, corn, etc.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the Federal Register at 54 FR 33562 to: (1) Provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division base on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number; and, (2) remove a reference to Late Planting Agreement Option being available.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 33562 is hereby adopted as a final rule.

After publication of the proposed rule FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for cotton, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

Since the date for filing policy changes is November 30, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance, ELS cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401) by revising and reissuing the ELS Cotton Endorsement (7 CFR 401.121), to be

effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.121, the ELS Cotton Endorsement, is revised and reissued, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.121 ELS Cotton Endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Extra Long Staple Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be Extra Long Staple cotton ("ELS") and American Upland lint cotton ("AUP") if the acreage was first planted in the crop year to ELS cotton.

b. The acreage of skip-row cotton insured will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated if it is grown:

(a) Where a hay crop was harvested in the same calendar year; or

(b) Where a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units as provided by the actuarial table.

4. Insurance Period

a. In lieu of subsection 7.(b) of the general crop insurance policy, (harvest of the unit) insurance will end upon removal of the cotton from the field.

b. The calendar date for the end of the insurance period is January 31.

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your cotton acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy:

a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

c. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length, and micronaire reading (price A) is less than 75 percent of price B. Price B is defined as the market price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the actuarial table for this purpose. The price quotations for prices A and B will be the market price quotations at the recognized market closest to the unit on the earlier of the day the loss is adjusted or the day the damaged ELS cotton is sold. In the absence of a price quotation on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation was listed for both prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of mature production by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length, and micronaire reading shown in our actuarial table. The prices will be determined at the closest recognized market to the insured unit of the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(5) Any appraisal of the AUP cotton on acreage originally planter to ELS cotton will be reduced by the factor determined in section 7.b.(2) above. If prices are not yet available, the previous year's season average price will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the guarantee may be made on acreage where the stalks have been destroyed without our consent.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

States	Cancellation and termination dates
New Mexico	April 15
All other states	March 31

9. Contract Changes

The date by which contract changes will be available in your service office is November 30 preceding the cancellation date.

10. Meaning of Terms

a. *Cotton* means Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

b. *ELS Cotton* means Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

c. *Harvest* means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

d. *Mature cotton* means ELS cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

e. *Replanted* means performing the cultural practices necessary to replant acreage to AUP cotton after ELS cotton was destroyed by an insured cause in the same growing season.

f. *Skip-row* means planting patterns consisting of alternating rows of cotton and fallow rows as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

Done in Washington, DC on November 1, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27259 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. 20; Docket No. 7452S]

General Crop Insurance Regulations; Tobacco (Guaranteed Plan) Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement. The intended effect of this rule is to provide the regulations for insuring tobacco in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, USDA, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, May 11, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 20392, amending 7 CFR 401 General Crop Insurance Regulations to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement to provide the provisions of crop insurance protection on tobacco in an endorsement to the general crop insurance policy.

On Monday, August 21, 1989, FCIC published a notice of additional proposed rulemaking in the **Federal Register** at 54 FR 35419, to further amend the Tobacco (Guaranteed Plan) Endorsement (7 CFR § 401.129) to remove restrictions in existing unit division language to standardize the unit structure to allow standard policy units currently in existence for all tobacco (guaranteed plan) program counties.

The public was given 30 days in which to submit written comments, data, and opinions on the additional notice of proposed rulemaking. One comment was received from the National Association of Crop Insurance Agents (NACIA) on the method of determining units on the basis of separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers (FSN's), and on commingling of production between optional units.

FCIC responds by stating the unit definition is now identical to most other row crops in the area where guaranteed types of tobacco are insured and provides a flexible approach for administering unit determination for guaranteed tobacco types. The unit definition will correspond to the ASCS FSN whether as a basic unit or an optional unit.

Under the insurance contract and for insurance purposes only the insured may elect to combine all FSNs into one basic unit. Coverage applicable to the single unit (or optional units) will be based on the insured's producer classification (representing the combined average production for all FSNs managed by the insured) or in a small number of cases, individually classified FSNs. For loss purposes, individual FSN production reported to and maintained by ASCS will be combined on the claim form for basic

units. For optional units by FSN, the individual ASCS information would be recorded on separate claim forms.

FCIC requires that production which is commingled between optional units will cause those units to be combined. This is consistent with FCIC's General Policy which provides consequences when separate unit production records are not maintained (indicating possible combination).

Further, for those types of tobacco where production is not controlled by ASCS, a very real possibility of combined production exists between FSN's. The provision contained in the rule is essential in order to deal with such instances allowing the combination of optional units. For those types which are tightly controlled by ASCS, the insured will continue to report acreage and production to ASCS on that basis.

In order to assure that insurance principles are maintained when production is commingled, FCIC has added the words "for insurance purposes only" to this provision to clarify that this restriction against commingling has no effect on ASCS requirements and is used for insurance purposes only. For the reasons stated above, the unit definition will remain unchanged.

Another comment from the National Crop Insurance Service (NCIS) questioned the requirement of record reporting to FCIC since the insured producer reports production records to ASCS.

FCIC's response is that the production reporting requirements of the rule will be considered met when the insured reports his production to the ASCS office. No additional reporting requirements will be required. In addition, the same commenter questioned the words "with the intent of marketing" in the definition of "Harvest," as creating an additional determination to be made at loss adjustment time since, if determining "intent" is not administratively possible, the statement should be removed from the rule.

FCIC's response is that establishing intent can be determined. If the harvested tobacco will be prepared to be, and is, cured, then intent to market would be established. FCIC has determined that this section will remain as published.

Accordingly, with the changes outlined above, the rule published at 54 FR 20392, as amended by the additional notice of proposed rulemaking published at 54 FR 35419, is hereby adopted as a final rule.

After publication of the proposed rule FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for tobacco, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

List of Subjects in 7 CFR Part 401

Crop insurance, Tobacco (Guaranteed Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1508, 1516.

2. 7 CFR part 401 is amended to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.129 Tobacco (Guaranteed Plan) Endorsement.

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Tobacco (Guaranteed Plan) Endorsement

1. Insured Crop and Acreage.

a. The crop insured will be any of the following tobacco types you elect which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured
Type 11A
Type 11B
Type 12
Type 13
Type 14
Maryland
Type 32
Cigar Filler
Type 41
Type 42
Type 44
Cigar Wrapper
Type 61
Type 55
Fire Cured
Type 21
Type 22
Type 23
Burley
Type 31
Dark Air
Type 35
Type 36
Type 37
Cigar Binder
Type 51
Type 52
Type 54

b. In addition to the acreage not insurable under section 2 of the general crop insurance policy, we do not insure any acreage:

(1) On which the tobacco was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) Planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Causes of Loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium.

a. The annual premium amount is computed by multiplying the production guarantee for the unit times the applicable price election, times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage for which you may qualify as shown on the actuarial table.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1986 crop year under the terms of the experience table contained in the guaranteed tobacco policy in effect for the 1986 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

(4) Once the loss ratio exceeds .60, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period.

In lieu of the provisions of section 7 of the general crop insurance policy the following will apply:

Insurance attaches on each unit or part of a unit when the tobacco is planted (see subsection 10(e)) and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or

immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. On the following dates of the crop year:

(1) Types 11 and 12—November 30;
(2) Type 13—October 31;
(3) Type 14—October 15;
(4) Types 31 & 36—February 28;
(5) Types 21, 35 and 37—March 15;
(6) Types 22 and 23—April 15;
(7) Type 32—May 15;
(8) All other types—April 30.

5. Unit Division.

1. Tobacco acreage of an insurable type that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured tobacco is located on land identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The tobacco is planted in such a manner that the planting pattern does not continue into an adjacent ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. If your tobacco acreage is not in a divided unit as provided above, your premium will be reduced as provided by the actuarial table. Production that is commingled between optional units will cause those units to be combined for insurance purposes only.

6. Notice of Damage or Loss.

For purposes of section 8 of the general crop insurance policy; the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of each field.

7. Claim for Indemnity.

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the applicable price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the market price per pound; and

(b) Multiplying that result by the number of pounds of such damaged harvested tobacco.

(c) If due to insurable causes there is no market price available for the grade being adjusted, the production to count will be reduced 20% for each grade that the production falls below the lowest grade with a market price (see subsection 10.d.(2)).

(2) All harvested tobacco production which is not damaged by insurable causes and cannot be sold in the current market year will be considered production to count.

(3) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(4) Appraised production to be counted will include:

(a) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(b) Not less than 35 percent of the guarantee for all unharvested acreage;

(c) Unharvested production on harvested acreage; and

(d) Potential production lost due to uninsured cause and to failure to follow recognized good tobacco farming practices.

(5) We may appraise any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed without our consent at not less than the guarantee.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us; or

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(7) The commingled production of units will be prorated to such units in proportion to our liability on the harvested acreage of each unit.

(8) No replanting payment will be made under this endorsement.

8. Cancellation and Termination Dates.

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; South Carolina; and Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina, and all North Carolina counties east thereof.	March 31
All other North Carolina Counties and all other states.	April 15

9. Contract Changes.

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms.

a. *"Average value per pound"* means the total value of all harvested production from the unit divided by the harvested pounds and may include the value of any harvested production which is not sold.

b. *"County"* means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. *"Harvest"* means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed with the intent of marketing.

d. *"Market price"*:

(1) For types, 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program (if for any crop year price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested); and

(2) For types 32, 41, 51, 52, and 61 means the season average price for the applicable type of tobacco, (such price will be the season average price for the current crop year for any unit or part thereof which is harvested) and may be established by including the value of sold and unsold production.

e. *"Planting"* means transplanting the tobacco plant from the bed into the field.

Done in Washington, DC on October 30, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27261 Filed 11-20-89; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. 31; Docket No. 7445S

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final Rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117) with respect to removing restrictions in existing unit division language to standardize the unit structure across commodity program corps.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not

constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1992.

John Marshall, Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Soybean Endorsement (7 CFR 401.117) to remove restrictions in existing unit division language to standardize the unit structure for soybeans, and to remove the reference to additional premium for optional units.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at FR 33566, to remove restrictions in existing unit division language. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 33566 is hereby adopted as a final rule, with changes as outlined below.

After publication of the proposed rule FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for soybeans, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

Since the date by which policy changes must be on file by November 30, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance, Soybeans.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1508, 1516.

2. The Soybean Endorsement (7 CFR 401.117) is amended by revising subsections 3. and 5. to read as follows:

§ 401.117

* * * * *

3. *Annual premium.*

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because:

(a) You have not selected optional units; or

(b) You are eligible for a good insuring experience discount.

* * * * *

5. *Unit Division.*

Soybean acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured soybeans is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The soybeans are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured soybeans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Soybeans planted on the irrigated acreage do not continue into non-irrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your soybean acreage is not divided into optional units as provided in this section, your premium amount will be reduced by the factor contained in the actuarial table.

* * * * *

Done in Washington, DC on October 24, 1989.

John Marshall,

Manager Federal Crop Insurance Corporation.

[FR Doc. 89-27260 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. 29; Docket No. 7484S]

General Crop Insurance Regulations; Fresh Market Tomato Minimum Value Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR § 401.137, the Fresh Market Tomato Minimum Value Option. The intended effect of this rule is to provide the provisions of crop insurance protection on minimum value tomatoes as an option to the Fresh Market Tomato Endorsement to the general crop insurance policy.

EFFECTIVE DATE: December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.137, the Fresh Market Tomato Minimum Value Option, effective for the 1991 and succeeding crop years, to provide the provisions for insuring minimum value tomatoes.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 33565, to provide the provisions of crop insurance protection on minimum value tomatoes as an option to the Fresh Market Tomato Endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the rule, but none were received. Therefore, FCIC herewith adopts the rule published at 54 FR 33565 as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance, Fresh market tomato minimum value option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows

Authority: 7 U.S.C. 1508, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.137, Fresh Market Tomato Minimum Value Option, effective for the 1991 and Succeeding Crop Years, to read as follows:

§ 401.137 Fresh Market Tomato Minimum Value Option.

The provisions of the Fresh Market Tomato Minimum Value Option for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Fresh Market Tomato Minimum Value Option

(This is a continuous option. Refer to section 15 of the General Crop Insurance Policy)

Insured's Name_____
Contract No._____
Address_____
Crop Year_____
Identification No._____
SSN_____ Tax_____

It is hereby agreed to amend the Dollar Plan of Fresh Market Tomato Endorsement in accordance with the following terms and conditions.

1. This option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your tomatoes under this Option.

2. You must have a Federal Crop Insurance General Policy and Dollar Plan Fresh Market Tomato Endorsement ("basic policy") in force.

3. You must select either Option I or II below by marking the appropriate space below. All insurable acreage in which you have a share in the county will be covered under the option you select.

[ ] Option I:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan of Fresh Market Tomato Endorsement will be amended to change the reference from $3.00 to $2.00 in determining the total value of harvested production to count.

(b) The premium rate for this option will be an additional 30 percent of your premium for basic coverage.

[ ] Option II:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan Fresh Market Tomato Endorsement will not apply to your tomato acreage. The total value of harvested production will be the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable costs as contained in the actuarial table; however, such price must not be less than zero for any carton.

(b) The premium rate for this option will be an additional 50 percent of your premium for basic coverage.

4. All provisions of the General Policy and Dollar Plan of Fresh Market Tomato Endorsement not in conflict with this Option are applicable.

5. All determinations under this Option will be made by us.

6. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the "basic policy," preceding such crop year.

Insured's Signature_____
Date_____
Corporation Representative's Signature and Code Number_____
Date_____

Done in Washington, DC on October 30, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27284 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. 52; Docket No. 7435S]

General Crop Insurance Regulation; Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by revising and reissuing 7 CFR 401.119, the Cotton Endorsement. The intended effect of this rule is to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the General Crop Insurance Regulations (7 CFR part 401), by revising and reissuing 7 CFR 401.119, the Cotton Endorsement, effective for the 1990 and succeeding crop years, to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on (ASCS) Farm Serial Number.

Minor editorial changes have been made to improve compatibility with the General Crop Insurance Policy. These changes do not affect meaning or intent of the provisions. In revising and reissuing the Cotton Endorsement, FCIC makes other changes in the provisions for insuring cotton as follows:

1. Section 1—Contains language in subsection 1.c.(2) intended to mean that FCIC will only insure that acreage of cotton allowed by mandatory limitations imposed on the insured by any program administered by the U.S. Department of Agriculture. The current Cotton Crop Insurance Endorsement contains the statement in subsection 1.c.(3) to the effect that FCIC does not insure any cotton * * * "Destroyed, designated to be destroyed, or put to another use to comply with other United States Department of Agriculture programs. FCIC has removed the words "designated to be destroyed" from this subsection because even if the crop is designated to be destroyed, this does not mean that it will not be harvested. FCIC assumes that the insured intends to insure all crops which will be harvested from acreage which is otherwise insurable.

2. Section 3—Add language to allow for a premium adjustment for insureds with good experience.

The applicable premium adjustment percentage will be shown on the actuarial table.

3. Section 5—Change unit division language to allow division by share, section, and practice (irrigated-nonirrigated). Cotton insureds were previously allowed unit division only by ASCS Farm Serial Number. The new unit division language for cotton will now be identical to the methods used for wheat, corn, etc.

4. Section 7—Change language to correspond with the way the Agriculture Marketing Service (AMS) identifies and reports spot cotton prices as codified in the Code of Federal Regulations (7 CFR part 27).

5. Section 10.—Add definition of "Growth Area" as the geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 33557 to provide cotton insureds a unit division by share, section, and practice (irrigated and non-irrigated) instead of the previous unit division based on Agricultural Stabilization and Conservation (ASCS) Farm Serial Number. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 33557 is hereby adopted as a final rule.

After publication of the proposed rule FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for cotton, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

Since the earliest date by which all policy changes must be placed on file in the service office is November 30, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401) by revising and reissuing the Cotton Endorsement (7 CFR 401.119), to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.119, the Cotton Endorsement, is revised and reissued, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.119 Cotton Endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be American Upland lint cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable under section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and, in the same calendar year, is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage.

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

e. A late planting agreement will be available for cotton.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment factor for which you may qualify as contained in the actuarial table, because: (1) You have not selected optional units; or (2) You are eligible for good insuring experience discount.

4. Insurance Period

a. In lieu of subsection 7.b of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar dates for the end of the insurance period are as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying South thereof.	September 30.
(2) Arizona, California, New Mexico, Oklahoma, and all other Texas counties.	January 31.
(3) All other states	December 31.

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your cotton acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include:

(1) All harvested production; and

(2) All appraised production which will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(e) Production on insured acreage for which we have given written consent to be put to another use, unless such acreage is:

(i) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested; and

(f) Production of not less than the harvested guarantee on acreage where the stalks have been destroyed without our written consent.

c. When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than 75 percent of price quotation "B." Price quotation "B" will be that day's growth area price quotation for the same area for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B."

8. Cancellation and Terminations Dates.

The cancellation and termination dates are:

State and County:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadelupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other States.	April 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other Counties.

10. Meaning of Terms

a. *"Cotton"* means only American Upland Cotton.

b. *"Crop year"* means the period beginning at planting and extending through the end of the insurance period shown in section 4 and is designated by the calendar year in which the crop is normally planted.

c. *"Harvest"* means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

d. *"Mature cotton"* means cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

e. *"Skip-row"* means planting patterns consisting of alternating rows of cotton and fallow rows or rows of another crop (not spring-planted) as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

f. *"Growth area"* means a geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

Done in Washington, DC, on November 1, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27263 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. 35; Docket No. 7453S]

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Rice Endorsement (7 CFR 401.120) to remove restrictions in existing unit division language to standardize the unit structure across commodity program crops. The intended effect of this rule is to standardize units among crops.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC hereby amends the Rice Endorsement (7 CFR 401.120) to remove restrictions in existing unit division language to standardize the unit structure.

On Monday, August 21, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 34518, to remove restrictions in existing unit division language to standardize the unit structure across commodity program crops. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, the proposed rule published at 54 FR 34518 is hereby adopted as a final rule.

After publication of the proposed rule FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for rice, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

Since the earliest date by which all policy changes must be placed on file in the service office is November 30, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Rice.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Rice Endorsement (7 CFR 401.120) is amended by revising subsections 3., 5., and 10., to read as follows:

§ 401.120 Rice Endorsement.

* * * * *

3. *Annual premium.*

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as contained in the actuarial table, because:

(a) You have not selected optional units; or

(b) You are eligible for a good insuring experience discount.

* * * * *

5. *Unit Division.*

Rice acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured rice is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The rice is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your rice acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

* * * * *

10. *Meaning of Terms.*

a. *"Harvest"* means the completion of combining or threshing of rice on the unit.

b. *"Mill center"* means any location in which two or more mills are engaged in milling rough rice.

c. *"Replanting"* means the performing of cultural practices necessary to replant insured acreage to rice.

d. *"Second crop rice"* means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

* * * * *

Done in Washington, DC, on October 30, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27265 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 454

[Amdt. 2; Docket No. 7461S]

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR part 454), effective for the 1990 and succeeding crop years, to: (1) Amend the Fresh Market Tomato Crop Insurance Regulations with respect to changing the end of the insurance period and the required date for submitting a notice of loss, to a later date to coincide with fresh market tomato production practices in California; and (2) include California in the cancellation and termination dates provision. The intended effect of this rule is to provide a corrected end of insurance period, change the date for notice of loss and intent to file a claim, and add California to the cancellation and termination dates provision.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action constitutes a review under USDA procedures established by Departmental Regulation 1512-1, as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance regulations is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Board of Directors recently authorized the expansion into California of fresh market tomato crop insurance under a guaranteed production plan. The present production practices for that crop in California are different from other areas where such insurance is offered. This necessitates changes in the present policy to accommodate this expansion.

The present end of insurance period affecting California is September 20. At that time, tomatoes have not yet reached the same stage as other states. For this reason, the date for the end of insurance should be later. A similar rationale is applicable to the date for filing notice of probable loss and intent to make a claim on a unit, and to the cancellation and termination date in the policy.

FCIC is changing, for California only, the end of insurance period from September 20 to November 20; the date for filing notice of loss and intent to file a claim from September 20 to November 20; and, include California under the cancellation and termination date provision. Further, FCIC removes the word "Pennsylvania" from the cancellation and termination date provision and substitutes the words "all other states", because this applies to all states where crop insurance on this crop is offered.

On Thursday, May 11, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 20394, to provide a corrected end of insurance period, change the date for notice of loss and intent to file a claim, and add California to the cancellation and termination dates provision. The public was given 30 days in which to submit written comments, data, and opinions on the rule, but none were received.

In the proposed rule, the authority citation was incorrectly cited. That error is corrected herein to revise the citation.

After publication of the proposed rule FCIC's Board of Directors adopted a change which will discount premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for tomatoes, appropriate explanatory language has been added to the annual premium section of this policy. This rule reflects the change in § 454.7(d)5.

Since the date by which policy changes is November 30, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR 454

Crop insurance, Fresh Market Tomato (Guaranteed Production Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR part 454), to be effective for the 1990 and succeeding crop years, in the following instances:

PART 454—[AMENDED]

1. The authority citation for 7 CFR part 454 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 454.7(d)) is amended by revising subsection 5, 7(g), 8a. (3)(e), and 15(d), to read as follows:

§ 454.7 Application and policy.

* * * * *

(d) * * *

5. *Annual premium.*

BEST COPY AVAILABLE

The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment factor for which you may qualify as contained in the actuarial table because you did not select optional units.

* * * * *

7. * * *

g. November 20 of the crop year in California and September 20 in all other states.

* * * * *

8. * * *

a. * * *

(3) * * *

(e) November 20 of the crop year in California and September 20 in all other states.

* * * * *

15. * * *

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California, Florida, Georgia, and South Carolina.	February 15.
All other states	April 15.

* * * * *

Done in Washington, DC, on October 30, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27286 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1032

[DA-89-041]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the months of November 1989 through January 1990. The action reduces the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. As Mid-Am indicates, the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk will be needed because of the sale of a distributing plant whose fluid milk accounts will be shifted to distributing plants that are regulated under other Federal orders. Absent a suspension, costly and inefficient movements of milk from supply plants would have to be made to continue to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension: Issued October 17, 1989; published October 23, 1989 (54 FR 43182).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on October 23, 1989 (54 FR 43182) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of November 1989 through January 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

Statement of Consideration

This action suspends certain provisions of the order for the months of November 1989 through January 1990. The action reduces the shipping standard for pool supply plants operated by cooperative associations.

Currently, the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. The suspension results in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during November 1989-January 1990.

The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirement for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for one of its supply plants by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that was sold are to be shifted to distributing plants that are regulated under other Federal orders and the distributing plant ceased receiving milk to supply its current accounts on October 19, 1989. As a result, there will be a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market.

As a result of this structural change in the market, the suspension is necessary to reduce the shipping standard to 25 percent of receipts during November 1989-January 1990. Absent a suspension, costly and inefficient movements of milk would have to be made in order to pool supply plants and the milk of producers who have historically supplied the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1032.7(b) of the Southern Illinois-Eastern Missouri order are hereby suspended for the months of November 1989 through January 1990.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1032.7 [Temporarily suspended in part]

2. In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at" are hereby suspended for the months of November 1989 through January 1990.

Signed at Washington, DC, on: November 15, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-27310 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-146-AD; Amdt. 39-6396]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which requires a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes, and rework of the fitting surface and bolt replacement, if necessary. This amendment is prompted by reports of incorrect perpendicularity between the bolt hole axis and the fitting surface. This condition, if not corrected, could lead to failure of the landing gear actuator attachment fitting bolts, which could result in the inability to retract the landing gear and failure to achieve an adequate climb gradient.

EFFECTIVE DATE: December 21, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which requires a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes, and rework of the fitting surface and bolt replacement, if necessary, was published in the **Federal Register** on August 22, 1989 (54 FR 34780).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $40,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Numbers 003 through 155, which have not been modified in accordance with Service Bulletin ATR42-32-0023, Revision 1, dated April 20, 1989, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the main landing gear (MLG) actuator fitting bolts due to an incorrect perpendicularity between the bolt hole axis and the fitting surface, accomplish the following:

A. Inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 21, 1989.

Issued in Seattle, Washington, on November 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-27273 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-213-AD; Amdt 39-6365]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires deactivation at the control wheel input to the Aircraft Integrated Data System (AIDS). This amendment is prompted by reports of binding of the pilot's control wheel in the full right-hand position. This condition, if not corrected, could result in unacceptable handling characteristics during takeoff or landing.

EFFECTIVE DATE: December 1, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dan R. Bui, Airframe Branch, ANM-120; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: One operator of a Boeing Model 767 series airplane reported an incident of binding of the pilot's control wheel in the full right-hand position while performing pre-flight ground checks. Investigation revealed that the aileron AIDS transducer input shaft had fractured, allowing the control rod to rotate freely and eventually to wedge in the gap between the transducer and transducer bracket; this situation caused the binding condition. Upon analysis of AIDS data, it was determined that the transducer input shaft had fractured approximately two weeks prior to the actual binding of the control wheel; however, the cause of the fracture is not known at this time. The AIDS is a supplemental data acquisition and storage system which is not required for operation of the airplane.

The lateral control system of the airplane is designed such that binding in one channel of the system can be overcome by breaking out of the detent and using the other channel to maintain control at a reduced level and with increased control forces. If the binding occurred with the wheel near maximum deflection, then control capability remaining through the unaffected channel of the control system could be insufficient for safe flight and landing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-31A0029, dated March 23, 1989, which describes procedures for deactivating the control wheel AIDS by removing the position transducer, crank assembly, and rod assembly.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires deactivating the control wheel AIDS by removing the position transducer, crank assembly, and rod assembly, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Alert Service Bulletin 767-31A0029, dated March 23, 1989, certificated in any category. Compliance is required within 45 days after the effective date of this AD, unless previously accomplished.

To prevent binding of the pilot's control wheel, accomplish the following:

A. Deactivate the control wheel Aircraft Integrated Data System (AIDS) by removing the position transducer, crank assembly, and rod assembly in accordance with Boeing Alert Service Bulletin 767-31A0029, dated March 23, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 1, 1989.

Issued in Seattle, Washington, on November 6, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-27274 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AEA-16]

Establish Control Zone; Wheeler Sack, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes the Wheeler Sack Control Zone for the Wheeler Sack Army Air Field (AAF), Fort Drum, NY. This action is necessary due to expanding operations at the field, and the Wheeler Sack AAF meets the requirements set forth in FAA Handbook 7400.2C for the establishment of a control zone.

EFFECTIVE DATE: 0901 UTC January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

The Department of the Army has requested that a control zone be established for the Wheeler Sack AAF, Fort Drum, NY in order to accommodate expanding operations at the field. On July 7, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a control zone at the Wheeler Sack AAF, Fort Drum, NY (54 FR 31700). In addition, a minor correction was made to the original proposal (54 FR 40126). The action will establish a control zone at Wheeler Sack, NY. This control zone will also accommodate existing and planned Instrument Approach Procedures into this airfield.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone at Wheeler Sack, NY, to contain expanding operations at the Wheeler Sack AAF, Fort Drum, NY. This control zone will accommodate existing and planned Instrument Approach Procedures into the airfield.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Wheeler Sack, NY [New]

Within a 5 mile radius of the center (lat. 44°03'11" N., long. 75°43'17" W.) of the Wheeler Sack Army Airfield, Fort Drum NY; within 2.5 miles each side of the 309°(T) 322°(M) bearing from the Fort Drum RBN (lat. 44°04'07" N. long. 75°44'11" W.), extending from the 5 mile radius zone to 5 miles northwest of the Fort Drum RBN and within 2 miles each side of the Watertown VORTAC (lat. 43°57'00" N. long. 76°04'00" W.) 065°(T) 078°(M) radial extending from the 5 mile radius zone to 12 (nautical) miles northeast of the watertown VORTAC.

Issued in Jamaica, New York, on October 31, 1989.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 89-27275 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AAL-1]

Amendment to Amchitka Island Control Zone and Transition Area; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the descriptions of the Amchitka Island, AK, Control Zone and 700-foot Transition Area due to the relocation of the airport reference point (ARP). This action is due to a change in the ARP for the Amchitka Island Airport.

EFFECTIVE DATE: 0901 UTC, January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the descriptions of the Amchitka Island, AK, Control Zone and 700-foot Transition Area. A new survey contracted by the Department of the Navy resulted in a new ARP for Amchitka Island Airport. As a result, the current descriptions of the Amchitka Island Control Zone and 700-foot Transition Area are technically incorrect and need to be amended to reflect this change. The amendment has no significant effect on the size or configuration of controlled airspace comprising the Control Zone and Transition Area. Accordingly, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Amchitka Island, AK [Amended]

By removing the words "lat. 51°22'37" N., long. 179°15'57" E." and substituting the words "lat. 51°22'43" N., long. 179°15'32" E."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Amchitka Island, AK [Amended]

By removing the words "lat. 51°22'37" N., long. 179°15'57" E." and substituting the words "lat. 51°22'43" N., long. 179°15'32" E."

Issued in Washington, DC, on November 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27276 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AEA-15]

Alteration of Transition Area; Great Bend, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the 700 foot transition area established at Great Bend, NY, to accommodate a new NDB Runway 15 Standard Instrument Approach Procedure (SIAP) to the Wheeler Sack Army Air Field (AAF), Fort Drum, NY. This action establishes that amount of controlled airspace necessary to accommodate the new procedure.

EFFECTIVE DATE: 0901 UTC January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Great Bend, NY, 700 foot transition area established for the Wheeler Sack AAF, Fort Drum, NY, to accommodate a new SIAP to the AAF (54 FR 31697). In addition, a correction was made to the subject proposal due to incorrect references to the magnetic variation used for the proposal (54 FR 41110). The proposed action will establish the amount of controlled airspace necessary to contain a new arrival procedure for aircraft executing a SIAP to the Wheeler Sack AAF, Fort Drum, NY.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments referencing the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the 700 foot transition area at Great Bend, NY, to accommodate a new NDB Runway 15 SIAP to the Wheeler Sack AAF, Fort Drum, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Great Bend, NY [Revised]

"That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center, lat. 44°03'00" N., long. 75°44'00" W., of Wheeler Sack A.A.F., NY; within an 8-mile radius of the center of the airport, extending clockwise from a 065°(T) 078°(M) bearing to a 135°(T) 148°(M) bearing from the airport; within an 11-mile radius of the center of the airport, extending within an 11-mile radius of the center of the airport, extending clockwise from a 135°(T) 148°(M) bearing to a 165°(T) 178°(M) bearing from the airport; within a 13.5-mile radius of the center of the airport, extending clockwise from a 165°(T) 178°(M) bearing to a 195°(T) 208°(M) bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 195°(T) 208°(M) bearing to a 242°(T) 255°(M) bearing from the airport; within 4.5 miles each side of the Watertown, NY VORTAC (lat. 43°57'07" N., long. 76°03'54" W.) 066°(T) 078°(M) radial, extending from the 7-mile radius area and the 10.5 mile radius area to the VORTAC, and within 5 miles each side of the Watertown, NY, VORTAC 069°(T) 081°(M) radial, extending from the 7-mile radius area and the 10.5-mile radius area to the VORTAC."

Issued in Jamaica, New York, on October 31, 1989.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 89-27277 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 89-ASW-3]

Alteration of Restricted Areas R-2401 and R-2402; Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action subdivides existing Restricted Area R-2401 Fort Chaffee, AR, into two areas, R-2401A and R-2401B. This action enables that portion of the area not being used by the military to be released for access by civil traffic. In addition, R-2402 is amended to reflect minor corrections to the boundary description and time of designation. The Continental Control Area is also amended to reflect R-2401A and R-2401B.

EFFECTIVE DATE: 0901 U.T.C., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Rich Uhrich, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7636.

SUPPLEMENTARY INFORMATION:

History

On July 24, 1989, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to subdivide Restricted Area R-2401 Fort Chaffee, AR, into two areas, R-2401A and R-2401B, effect minor corrections to the boundary of R-2402, and amend the time of designation for R-2402 (54 FR 30782). Additionally, this action amends the Continental Control Area to reflect R-2401A and R-2401B. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.54 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations divide Restricted Area R-2401 into two areas, R-2401A and R-2401B, and reflect minor corrections to the boundary description and time of designation of R-2402. Restricted Areas R-2401 and R-2402 are amended to allow greater flexibility and more efficient airspace use by both military and civilian users. Previously, when R-2401 was activated for fast-moving military aircraft, it greatly restricted the movement of air traffic inbound to Fort Smith Airport. Subdividing the area therefore, results in more efficient use of airspace by allowing increased access to Fort Smith Airport by civil traffic. Further, this action amends the time of designation for R-2402 resulting in a decreased restriction on the flying public. The Continental Control Area is amended to reflect Restricted Areas R-2401A and R-2401B. These amendments involve the subdivision of existing restricted areas and do not require any additional airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2401 Fort Chaffee, AR [Remove]

R-2401A Fort Chaffee, AR [New]

R-2401B Fort Chaffee, AR [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.24 [Amended]

4. § 73.24 is amended as follows:

R-2401 Fort Chaffee, AR [Remove]

R-2401A Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°18'17" N., long. 94°12'00" W.; to lat. 35°17'45" N., long. 94°15'35" W., to lat. 35°15'35" N., long. 94°18'00" W.; to lat. 35°13'50" N., long. 94°15'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to the point of beginning.

Designated altitudes: Surface to and including 30,000 feet MSL.

Time of designation: Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency: FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR.

R-2401B Fort Chaffee, AR [New]

Boundaries: Beginning at lat. 35°17'45" N., long. 94°15'35" W.; to lat. 35°17'37" N., long. 94°17'23" W.; to lat. 35°16'06" N., long. 94°19'03" W.; to lat. 35°15'35" N., long. 94°18'00" W.; to the point of beginning.

Designated altitudes: Surface to and including 30,000 feet MSL.

Time of designation: Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency: FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR.

R-2402 Fort Chaffee, AR [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries: Beginning at lat. 35°18'09" N., long. 94°03'00" W.; to lat. 35°17'00" N., long. 94°03'00" W.; to lat. 35°17'00" N., long. 94°01'00" W.; to lat. 35°10'20" N., long. 94°01'00" W.; thence west along Arkansas State Highway No. 10 to lat. 35°11'33" N., long. 94°12'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to lat. 35°18'10" N., long. 94°12'00" W.; to lat. 35°18'12" N., long. 94°09'51" W.; thence east along Arkansas State Highway No. 22 to the point of beginning.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Issued in Washington, DC, on November 9, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27278 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 26061; Amdt. No. 353]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Manager, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on November 9, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 G.m.t.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 353 EFFECTIVE DATE, NOVEMBER 16, 1989

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.95.102 AMBER FEDERAL AIRWAY 2		
IS AMENDED TO READ IN PART		
U S. CANADIAN BORDER *9000 - MOCA	NABESNA, AK NDB	*9600
EVANSVILLE, AK NDB *9000 - MOCA	BROWERVILLE, AK NDB	*10000
ATLANTIC ROUTES		
AR 8	**IS AMENDED TO DELETE**	
ELIZABETH CITY, NC VOR/DME	BACUS, NC FIX	20000 MAA-41000
A23	**IS AMENDED TO READ IN PART**	
KENNEDY, NY VORTAC	LEOES, OA FIX	15000 MAA-45000
LEOES, OA FIX	LINND, OA FIX	18000 MAA-45000
IS AMENDED TO DELETE		
LINND, OA FIX	FLANN, OA FIX	4000 MAA-45000
A300	**IS AMENDED TO READ IN PART**	
KENNEDY, NY VORTAC	OWENZ, OA FIX	6000 MAA-45000
IS AMENDED TO DELETE		
BERGH, OA FIX	CHAMP, OA FIX	4000 MAA-45000
B24	**IS ADDED TO READ**	
FISSH, NJ FIX	LYNUS, OA FIX	15000 MAA-45000
IS AMENDED TO READ IN PART		
SEA ISLE, NJ VORTAC	FISSH, NJ FIX	15000 MAA-45000

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.—Continued		
IS AMENDED TO DELETE		
LYNUS, OA FIX	CHAMP, OA FIX	30000 MAA-45000
R56		
LINND, OA FIX	SLATN, OA FIX	25000 MAA-45000
§95.6002 VOR FEDERAL AIRWAY 2		
IS AMENDED TO READ IN PART		
SALEM, MI VORTAC	U S. CANADIAN BORDER	3000
§95.6006 VOR FEDERAL AIRWAY 6		
IS AMENDED TO READ IN PART		
WATERVILLE, OH VOR/DME	SANDUSKY, OH VOR/DME	3000
SANDUSKY, OH VOR/DME	DRYER, OH VORTAC	3000
§95.6010 VOR FEDERAL AIRWAY 10		
IS AMENDED TO READ IN PART		
LITCHFIELD, MI VORTAC	CARLETON, MI VORTAC	3000
§95.6011 VOR FEDERAL AIRWAY 11		
IS AMENDED TO READ IN PART		
FORT WAYNE, IN VORTAC	EDGEE, OH FIX	3000
EDGEE, OH FIX *4000 - MRA	*PIONS, OH FIX	4000
PIONS, OH FIX *6000 - MRA	*HIRED, MI FIX	6000
HIRED, MI FIX *7500 - MRA	*CRUXX, MI FIX	7500
§95.6012 VOR FEDERAL AIRWAY 12		
IS AMENDED TO READ IN PART		
AMARILLO, TX VORTAC *4900 - MOCA	GAGE, OK VORTAC	*5500
§95.6013 VOR FEDERAL AIRWAY 13		
IS AMENDED TO READ IN PART		
BUTLER, MO VORTAC	NAPOLEON, MO VORTAC	2900

FROM	TO	MEA
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
JACKS CREEK, TN VORTAC	GRAHAM, TN VORTAC	2500
§95.6024 VOR FEDERAL AIRWAY 24		
IS AMENDED BY ADDING		
PEOTONE, IL VORTAC	KENLA, IN FIX	2400
KENLA, IN FIX	VAGES, IN FIX	2600
VAGES, IN FIX	*POTES, IN FIX	**4000
*4000 - MRA		
**2300 - MOCA		
POTES, IN FIX	JAKKS, IN FIX	*4000
*2300 - MOCA		
JAKKS, IN FIX	INDIANAPOLIS, IN VORTAC	2700
§95.6026 VOR FEDERAL AIRWAY 26		
IS AMENDED TO READ IN PART		
SALEM, MI VORTAC	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	DRYER, OH VORTAC	3000
§95.6030 VOR FEDERAL AIRWAY 30		
IS AMENDED TO READ IN PART		
LITCHFIELD, MI VORTAC	*HIRED, MI FIX	3000
*6000 - MRA		
HIRED, MI FIX	WATERVILLE, OH VOR/DME	3000
WATERVILLE, OH VOR/DME	SANDUSKY, OH VOR/DME	3000
SANDUSKY, OH VOR/DME	DRYER, OH VORTAC	3000
§95.6031 VOR FEDERAL AIRWAY 31		
IS AMENDED TO READ IN PART		
AIRCO, NY FIX	U.S. CANADIAN BORDER	6000
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
ERIE, PA VOPTAC	U.S. CANADIAN BORDER	3000
§95.6038 VOR FEDERAL AIRWAY 38		
IS AMENDED TO READ IN PART		
CLEFT, IN FIX	FORT WAYNE, IN VORTAC	2800
§95.6040 VOR FEDERAL AIRWAY 40		
IS AMENDED BY ADDING		
U.S. CANADIAN BORDER	*KITTY, OH FIX	4000
*4000 - MRA		
KITTY, OH FIX	DRYER, OH VORTAC	3000

FROM	TO	MEA
§95.6042 VOR FEDERAL AIRWAY 42		
IS AMENDED TO READ		
WATERVILLE, OH VOR/DME	VARYS, OH FIX	4000
VARYS, OH FIX	DROVE, OH FIX	3500
		MAA-14000
DROVE, OH FIX	YOUNGSTOWN, OH VORTAC	3000
§95.6045 VOR FEDERAL AIRWAY 45		
IS AMENDED TO READ IN PART		
APPLETON, OH VORTAC	DUSKY, OH FIX	3000
DUSKY, OH FIX	WATERVILLE, OH VOR/DME	2600
WATERVILLE, OH VOR/DME	*HIRED, MI FIX	3000
*6000 - MRA		
HIRED, MI FIX	JACKSON, MI VOR/DME	3000
SEEKS, MI FIX	ALPENA, MI VORTAC	*3500
*2600 - MOCA		
IS AMENDED TO DELETE		
YOUNGSTOWN, OH VORTAC	DROVE, OH FIX	3000
DROVE, OH FIX	VARYS, OH FIX	3500
VARYS, OH FIX	WATERVILLE, OH VOR/DME	*4000
*2300 - MOCA		
§95.6050 VOR FEDERAL AIRWAY 50		
IS AMENDED TO READ IN PART		
CAPITAL, IL VORTAC	DECATUR, IL VORTAC	3000
§95.6055 VOR FEDERAL AIRWAY 55		
IS AMENDED TO READ IN PART		
DAYTON, OH VOR/DME	FORT WAYNE, IN VORTAC	2800
§95.6068 VOR FEDERAL AIRWAY 68		
IS AMENDED TO READ IN PART		
MONTROSE, CO VOR/DME	CONES, CO VOR/DME	12000
CONES, CO VOR/DME	DOVE CREEK, CO VORTAC	12000
§95.6075 VOR FEDERAL AIRWAY 75		
IS AMENDED BY ADDING		
DRYER, OH VORTAC	VARYS, OH FIX	3000
VARYS, OH FIX	U.S. CANADIAN BORDER	3000

FROM	TO	MEA
§95.6077 VOR FEDERAL AIRWAY 77		
IS AMENDED TO READ IN PART		
SAN ANGELO, TX VORTAC	ABILENE, TX VORTAC	4000
HEYDN, KS FIX	TOPEKA, KS VORTAC	3500
TOPEKA, KS VORTAC	ST JOSEPH, MO VORTAC	2900
§95.6090 VOR FEDERAL AIRWAY 90		
IS AMENDED TO READ IN PART		
U.S. CANADIAN BORDER	DUNKIRK, NY VORTAC	3000
§95.6095 VOR FEDERAL AIRWAY 95		
IS AMENDED TO READ IN PART		
CASTI, AZ FIX	DERMA, NM FIX	*13000
*11400 - MOCA		
DERMA, NM FIX	FARMINGTON, NM VORTAC	
	E BND	*11000
	W BND	*13000
*8300 - MOCA		
TREES, CO FIX	*CHILT, CO FIX	
	SW BND	16300
	NE BND	12000
*13200 - MCA CHILT FIX, SW BND		
§95.6096 VOR FEDERAL AIRWAY 96		
IS AMENDED TO READ IN PART		
KOKOMO, IN VORTAC	FORT WAYNE, IN VORTAC	2600
IS AMENDED TO DELETE		
WATERVILLE, OH VOR/DME	U.S. CANADIAN BORDER	3000
§95.6098 VOR FEDERAL AIRWAY 98		
IS AMENDED BY ADDING		
DAYTON, OH VOR/DME	MIZAR, MI FIX	10000
IS AMENDED TO DELETE		
CARLETON, MI VORTAC	U.S. CANADIAN BORDER	2400
§95.6100 VOR FEDERAL AIRWAY 100		
IS AMENDED TO DELETE		
LITCHFIELD, MI VORTAC	ADRAN, MI FIX	3000
ADRAN, MI FIX	CARLETON, MI VORTAC	*2800
*2200 - MOCA		

FROM	TO	MEA
§95.6103 VOR FEDERAL AIRWAY 103		
IS AMENDED TO READ IN PART		
AKRON, OH VOR/DME	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	LANSING, MI VORTAC	8000
		MAA-16000
IS AMENDED TO DELETE		
CRIBS, OH FIX	U.S. CANADIAN BORDER	*2500
*1700 - MOCA		
SALEM, MI VORTAC	CHEMS, MI FIX	2800
CHEMS, MI FIX	LANSING, MI VORTAC	2900
§95.6116 VOR FEDERAL AIRWAY 116		
IS AMENDED TO READ IN PART		
SALEM, MI VORTAC	U.S. CANADIAN BORDER	*3100
*2400 - MOCA		
U.S. CANADIAN BORDER	MUSKK, OH FIX	3000
		MAA-16000
MUSKK, OH FIX	ERIE, PA VORTAC	3000
§95.6126 VOR FEDERAL AIRWAY 126		
IS AMENDED TO READ IN PART		
WATERVILLE, OH VOR/DME	SANDUSKY, OH VOR/DME	3000
SANDUSKY, OH VOR/DME	DRYER, OH VORTAC	3000
§95.6132 VOR FEDERAL AIRWAY 132		
IS AMENDED TO READ IN PART		
STEAL, KS FIX	HUTCHINSON, KS VORTAC	3200
§95.6133 VOR FEDERAL AIRWAY 133		
IS AMENDED TO READ IN PART		
MANSFIELD, OH VORTAC	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	SALEM, MI VORTAC	3000
SALEM, MI VORTAC	SAGINAW, MI VORTAC	3000
§95.6144 VOR FEDERAL AIRWAY 144		
IS AMENDED TO READ IN PART		
CLEFT, IN FIX	FORT WAYNE, IN VORTAC	2800
§95.6160 VOR FEDERAL AIRWAY 160		
IS AMENDED BY ADDING		
DENVER, CO VORTAC	PYNNE, CO FIX	10800
PYNNE, CO FIX	*TREES, CO FIX	**15000
*12100 - MCA TREES FIX, SW BND		
**13400 - MOCA		

FROM	TO	MEA
§95.6161 VOR FEDERAL AIRWAY 161		
IS AMENDED TO READ IN PART		
POLKA, TX FIX	MILLSAP, TX VORTAC	3000
NOVEL, OK FIX	OSWEGO, KS VORTAC	2800
BUTLER, MO VORTAC	NAPOLEON, MO VORTAC	2900
§95.6176 VOR FEDERAL AIRWAY 176		
IS DELETED		
PONTIAC, MI VORTAC	U.S. CANADIAN BORDER	*3000
*2400 - MOCA		
§95.6189 VOR FEDERAL AIRWAY 189		
IS AMENDED TO READ IN PART		
HOPEWELL, VA VORTAC	*WAIKS, VA FIX	**2000
*3000 - MRA		
**1400 - MOCA		
WAIKS, VA FIX	FRANKLIN, VA VORTAC	*2000
*1400 - MOCA		
§95.6210 VOR FEDERAL AIRWAY 210		
IS AMENDED TO READ IN PART		
FULLY, NM FIX	FARMINGTON, NM VORTAC	8300
LAMAR, CO VORTAC	LIBERAL, KS VORTAC	6000
ROLLS, OK FIX	*WAXEY, OK FIX	8400
*4400 - MRA		
§95.6214 VOR FEDERAL AIRWAY 214		
IS AMENDED TO READ IN PART		
MARION, IN VOR/DME	MUNCIE, IN VOR/DME	2800
§95.6216 VOR FEDERAL AIRWAY 216		
IS AMENDED TO READ IN PART		
MANKATO, KS VORTAC	PAWNEE CITY, NE VORTAC	*3600
*3100 - MOCA		
PECK, MI VORTAC	U.S. CANADIAN BORDER	5000
§95.6217 VOR FEDERAL AIRWAY 217		
IS AMENDED TO READ IN PART		
GREEN BAY, WI VORTAC	CECIL, WI FIX	*2700
*2200 - MOCA		

FROM	TO	MEA
§95.6218 VOR FEDERAL AIRWAY 218		
IS AMENDED TO DELETE		
LANSING, MI VORTAC	PONTIAC, MI VORTAC	3000
PONTIAC, MI VORTAC	NOVIE, MI FIX	2800
NOVIE, MI FIX	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	CRIBS, OH FIX	*3500
*1700 - MOCA		
CRIBS, OH FIX	AKRON, OH VOR/DME	3000
§95.6221 VOR FEDERAL AIRWAY 221		
IS AMENDED TO READ IN PART		
SALEM, MI VORTAC	DELOW, MI FIX	3000
DELOW, MI FIX	U.S. CANADIAN BORDER	4000
U.S. CANADIAN BORDER	ERIE, PA VORTAC	3000
§95.6231 VOR FEDERAL AIRWAY 231		
IS AMENDED TO READ IN PART		
SALMON, ID VOR/DME	TUFFY, MT FIX	12000
TUFFY, MT FIX	*MISSOULA, MT VORTAC S BND	12000
	N BND	9000
*1000 - MCA MISSOULA VORTAC, S BND		
§95.6232 VOR FEDERAL AIRWAY 232		
IS AMENDED TO DELETE		
CRIBS, OH FIX	MENTO, OH FIX	*3000
*2300 - MOCA		
MENTO, OH FIX	CHARDON, OH VORTAC	3000
§95.6260 VOR FEDERAL AIRWAY 260		
IS AMENDED TO READ IN PART		
HOPEWELL, VA VORTAC	*WAIKS, VA FIX	**2000
*3000 - MRA		
**1400 - MOCA		
WAIKS, VA FIX	FRANKLIN, VA VORTAC	*2000
*1400 - MOCA		
§95.6275 VOR FEDERAL AIRWAY 275		
IS AMENDED TO READ IN PART		
DAYTON, OH VOR/DME	KLINE, OH FIX	*6000
*3000 - MOCA		
IS AMENDED TO DELETE		
SONIL, MI FIX	SALEM, MI VORTAC	*3000
*2300 - MOCA		

FROM	TO	MEA
§95.6276 VOR FEDERAL AIRWAY 276		
IS AMENDED TO DELETE		
U.S. CANADIAN BORDER	ERIE, PA VORTAC	*8500
*3100 - MOCA		
§95.6277 VOR FEDERAL AIRWAY 277		
IS AMENDED TO READ IN PART		
FORT WAYNE, IN VORTAC	BAGEL, IN FIX	2800
BAGEL, IN FIX	KEELER, MI VORTAC	2700
§95.6280 VOR FEDERAL AIRWAY 280		
IS AMENDED TO READ IN PART		
AMARILLO, TX VORTAC	GAGE, OK VORTAC	*5500
*4900 - MOCA		
HEYDN, KS FIX	TOPEKA, KS VORTAC	2500
§95.6287 VOR FEDERAL AIRWAY 287		
IS AMENDED TO READ IN PART		
FORT JONES, CA VORTAC	KLAMA, OR FIX	*10000
*9700 - MOCA		
KLAMA, OR FIX	*MEDFORD, OR VORTAC SE BND	**10000
	NW BND	**8000
*7000 - MCA MEDFORD VORTAC, SE BND		
**8000 - MOCA		
§95.6297 VOR FEDERAL AIRWAY 297		
IS AMENDED TO READ IN PART		
AKRON, OH VOR/DME	*KITTY, OH FIX	3000
*4000 - MRA		
KITTY, OH FIX	U.S. CANADIAN BORDER	4000
§95.6304 VOR FEDERAL AIRWAY 304		
IS AMENDED TO READ IN PART		
LIBERAL, KS VORTAC	LAMAR, CO VORTAC	6000
§95.6320 VOR FEDERAL AIRWAY 320		
IS AMENDED TO READ IN PART		
PECK, MI VORTAC	U.S. CANADIAN BORDER	6000

FROM	TO	MEA	MAA
§95.7547 JET ROUTE NO. 547			
IS AMENDED TO READ IN PART			
FLINT, MI VORTAC	U.S. CANADIAN BORDER	18000	45000

FROM	TO	MEA
§95.6337 VOR FEDERAL AIRWAY 337		
IS AMENDED TO READ IN PART		
AKRON, OH VOR/DME	U.S. CANADIAN BORDER	5000
U.S. CANADIAN BORDER	PECK, MI VORTAC	7000
PECK, MI VORTAC	SAGINAW, MI VORTAC	3000
§95.6354 VOR FEDERAL AIRWAY 354		
IS AMENDED TO READ IN PART		
PIONEER, OK VORTAC	EMPORIA, KS VORTAC	8500
§95.6450 VOR FEDERAL AIRWAY 450		
IS AMENDED TO READ IN PART		
FLINT, MI VORTAC	KATTY, MI FIX	3000
KATTY, MI FIX	U.S. CANADIAN BORDER	4000
§95.6464 VOR FEDERAL AIRWAY 464		
IS AMENDED BY ADDING		
SALEM, MI VORTAC	DELOW, MI FIX	3000
DELOW, MI FIX	U.S. CANADIAN BORDER	4000
§95.6502 VOR FEDERAL AIRWAY 502		
IS AMENDED TO READ IN PART		
STEAL, KS FIX	HUTCHINSON, KS VORTAC	7200
EMPORIA, KS VORTAC	DESOT, KS FIX	3100
DESOT, KS FIX	NAPOLEON, MO VORTAC	3000
§95.6507 VOR FEDERAL AIRWAY 507		
IS AMENDED TO READ IN PART		
WAXEY, OK FIX	ROLLS, OK FIX	8400
§95.6522 VOR FEDERAL AIRWAY 522		
IS AMENDED BY ADDING		
DUNKIRK, NY VORTAC	U.S. CANADIAN BORDER	5000
§95.6578 VOR FEDERAL AIRWAY 578		
IS AMENDED BY ADDING		
ALMA, GA VORTAC	SAVANNAH, GA VORTAC	6000

[FR Doc. 89-27279 Filed 11-20-89; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, and Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by A. H. Robins Co., and Biocraft Laboratories, Inc. The NADA provides for the use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis, interdigital cysts, dermatologic disorders, and for dogs for the treatment of anal gland infections.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, and Biocraft Laboratories, Inc., 92 Route 46, P.O. Box 200, Elmwood Park, NJ 07407, filed NADA 140-889, which provides for the use of a nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis of varied etiologies, interdigital cysts and anal gland infections in dogs. The product is also indicated in the management of dermatologic disorders characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections. It is also indicated for treatment of exzematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation. The NADA is approved and 21 CFR 524.1600a is amended in paragraph (b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 524.1600a is amended by revising paragraph (b) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment.

* * * * *

(b) See Nos. 000031/000332 (cosponsors), 011519, 025463, 051259, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: November 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-27299 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8274]

RIN 1545-AN29

Treatment of Partnership Liabilities; Allocations Attributable to Nonrecourse Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that amend §§ 1.752-0T, 1.752-1t, 1.752-2T, 1.752-4T, and 1.704-1T. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATE: The amendments to §§ 1.752-0T, 1.752-1T, 1.752-2T, 1.752-4T and 1.704-1T are effective as of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Munday, 202-377-9470 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations that amend §§ 1.752-0T, 1.752-1T, 1.752-2T, 1.752-4T, and 1.704-1T to make certain clarifying and corrective changes to those regulations in response to questions and comments from taxpayers. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters. The Service solicits comment on the changes made to the temporary regulations by this document and the need for additional changes. Pursuant to the extension of time published in the **Federal Register** for Tuesday, June 20, 1989 (54 FR 25878), comments and requests for a public hearing on PS-229-84 must be delivered or mailed by January 19, 1990.

Explanation of Amendments to Temporary Regulations Under Section 752

The amendments to the temporary regulations under section 752 ("temporary section 752 regulations") are discussed below.

Nonrecourse Debt for Which Partner Has Assumed Obligation To Pay Interest

Under the temporary section 752 regulations, if a partner would be obligated to pay the interest that will accrue on an otherwise nonrecourse liability of the partnership if the partnership failed to pay such interest, then the partner's economic risk of loss for such liability is, under certain circumstances, increased by an amount equal to the present value of the remaining interest payments that such partner would be obligated to make. See § 1.752-1T(d)(3)(v). In cases to which this rule applies, it is intended to cause a partner to bear the economic risk of loss for an otherwise nonrecourse liability only to the extent that the partner is obligated to pay interest that will accrue economically on such liability after the time of such determination because only such interest may appropriately be taken into account in determining the present value of such liability. See proposed regulation § 1.446-2 for an economic accrual method of computing interest. Any interest that has already accrued economically on such liability but remains unpaid should be considered a separate indebtedness and will, in fact, be treated as a separate partnership liability if such accrued but unpaid interest is deductible by the partnership. See § 1.752-1T(g) regarding the definition of liability for purposes of section 752. Therefore, in order to avoid overstating the amount of a partner's economic risk of loss for an otherwise nonrecourse liability by taking into account interest that has already accrued economically on such liability (and which may itself constitute a separate partnership liability), paragraph (d)(3)(v) of § 1.752-1T has been amended by this document to provide that the economic risk of loss that a partner will be determined to bear for an otherwise nonrecourse liability under that paragraph must be computed with respect to interest accruing economically on such liability after the time of such determination.

For example, assume partner A agrees to pay all of the interest that is payable on an otherwise $100 nonrecourse liability of the partnership if the partnership fails to pay such interest, and that § 1.752-1T(d)(3)(v) applies to that obligation. At the time the liability is incurred, A will be considered to bear the economic risk of loss for that liability to the extent of the present value of all the interest payable on such liability during its term. At the end of the taxable year in which such liability is incurred, however, A will be considered to bear the economic risk of loss for the otherwise $100 nonrecourse liability only to the extent of the present value of the remaining interest payable on such liability that accrues economically after the end of such year. Any interest that accrued economically on the liability during that year but was not payable prior to the end of the year (and any interest that may thereafter accrue on such interest) is not taken into account in determining the economic risk of loss that A will be considered to bear for such liability at the end of the year (without regard to whether such accrued but unpaid interest is deductible under the partnership's method of accounting).

De Minimis Rule

Under the temporary section 752 regulations, if a partner (or a person related to a partner) makes a nonrecourse loan to the partnership, such partner is generally considered to bear the economic risk of loss for that liability. The regulations do, however, provide a de minimis exception to that rule. See § 1.752-1T(d)(3)(vii). The de minimis rule provides that if a partner (or person related to a partner) makes a loan to the partnership that would otherwise be treated as a nonrecourse liability, such partner will not be considered to bear the economic risk of loss for that liability if (1) the partner's interest (including the interest of any person related to such partner) in each item of partnership income, gain, loss, deduction, or credit is 10 percent or less, and (2) the loan constitutes qualified nonrecourse financing within the meaning of section 465(b)(6).

In situations in which a partner's interest in the partnership varies, taxpayers have asked whether a partner's interest in items of partnership income, gain, loss, deduction, or credit should be determined with reference to the partner's interest in such items for the current year or the partner's interest in such items over the life of the partnership. This document amends the de minimis rule to clarify that the rule is inapplicable unless the partner's interest in each item of partnership income, gain, loss, deduction, or credit that may be realized for any year during the life of the partnership is 10 percent or less.

In addition, since the rules of section 465(b)(6) apply solely to financing incurred in the activity of holding real property, the de minimis rule applies only to financing that is borrowed with respect to the activity of holding real property. This document modifies the definition of qualified nonrecourse financing for purposes of the de minimis rule. Under that modification, the determination of whether financing constitutes qualified nonrecourse financing for purposes of the de minimis rule is made without regard to the type of activity with respect to which the financing is borrowed.

Finally, the de minimis rule has also been amended to clarify the application of the rule to tiered partnerships. This modification clarifies that in any case in which the lender (or a person related to the lender) owns an interest in a partnership that is a partner in the partnership to which the loan is made, the de minimis rule is satisfied if the lender (or related person) has a 10 percent or less interest (directly or indirectly through one or more partnerships) in each item of income, gain, loss, deduction, or credit that may be realized by the partnership to which the loan was actually made.

Related Persons

The related person rules contained in § 1.752-1T(h) are amended by this document in several respects. First, in determining the percentage of related ownership between a person and a partner, natural persons are currently deemed to have a zero percent percentage of related ownership with respect to each other. In some cases, this rule inappropriately prevents partners who are natural persons from bearing a portion of the economic risk of loss for a partnership liability. For example, consider a partnership in which the general partner is an S corporation that is wholly-owned by a natural person and the limited partner is the brother of such natural person. If the partners' father made a loan to the partnership, the related party rules provide that there would be a 100 percent percentage of related ownership between the father and the S corporation (*i.e.*, the general partner) and a zero percent percentage of related ownership between the father and the limited partner. As a result, the general partner would bear the entire economic risk of loss for the loan. In this case, since the father is related to the S corporation solely because it is wholly-owned by one of his children, the percentage of related ownership between the father and the general partner and the father and the limited partner should be the same. Therefore, the temporary section 752 regulations are amended by this document to provide that related natural persons shall be deemed to have a 100 percent percentage of related ownership with respect to each other.

Second, the related person rules currently provide that if related persons own (directly or indirectly) interests in the same partnership, then such persons shall not be treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of such partnership. See § 1.752-1T(h)(4). The use of the term "indirectly" in the parenthetical has caused some confusion. The term is intended to refer only to interests owned indirectly through one or more partnerships and the regulations are amended accordingly.

The third amendment to the related person rules of § 1.752-1T(h) adds a new

paragraph (b)(5) that provides a special rule for loans from certain entities. Paragraph (h) generally provides that a person is related to a partner if the person and the partner bear a relationship to each other that is specified in section 267(b) or section 707(b)(1) (taking into account certain modifications made to those provisions for purposes of the temporary section 752 regulations). Under these rules as in effect prior to the amendments made by this document, if a partner makes a loan to the partnership through another entity in which the partner's interest is insufficient to cause such entity to bear a relationship to the partner that is specified in section 267(b) or section 707(b)(1) (as modified by the temporary regulations), the partner's interest in that entity will not be taken into account in determining whether such partner bears any of the economic risk of loss for the loan. Paragraph (h)(5) provides, however, that if (1) a liability of a partnership represents an obligation owed to another entity (*i.e.*, another partnership, an S corporation, a C corporation, or a trust), (2) a partner of such partnership owns more than a 20 percent interest (including any interest owned by a person related to such partner) in such other entity, and (3) such other entity is availed of to act as the creditor with respect to such liability (*e.g.*, to make a loan to the partnership) or to act as a guarantor of such liability with a principal purpose of avoiding the determination under § 1.752–1T(d)(3) that such partner bears the economic risk of loss for all or part of such liability, then such partner shall be treated as holding such other entity's interest as a creditor or guarantor to the extent of such partner's ownership interest in such entity.

Effective Dates and Transitional Rules

The effective dates and transitional rules contained in § 1.752–4T are amended by this document in several respects. First, the effective date of the regulations with respect to partner loans and guarantees set forth in paragraph (b) of that section is amended to clarify that the March 1, 1984 effective date specified in that paragraph applies only to certain nonrecourse loans made or guaranteed by partners and not to nonrecourse loans made or guaranteed by persons related to partners. In addition, paragraph (b) of § 1.752–4T is amended to provide that the temporary section 752 regulations do not apply to liabilities incurred or assumed by the partnership prior to March 1, 1984.

Second, a new paragraph is added to § 1.752–4T to address the application of the temporary section 752 regulations to situations in which taxpayers have filed tax returns that are inconsistent with the regulations. Under that new paragraph, if a partnership liability incurred before January 30, 1989 is subject to the provisions of §§ 1.752–1T, –2T, and –3T pursuant to paragraph (b) of § 1.752–4T, and a partner has filed a tax return reflecting taxable income that has been determined by claiming a share of that liability in excess of that allocable to such partner under the provisions of those sections, then the partner must file subsequent tax returns in a manner that is consistent with such prior return. To the extent that claiming an excessive share of the liability reduced the taxable income reported on the partner's return for a taxable year, the partner must determine taxable income for purposes of filing any subsequent tax returns in a manner that reflects the excessive share of the liability claimed by the partner in determining the taxable income included on such prior return unless the partner amends such prior return to comply with the rules of §§ 1.752–1T, –2T, and –3T. This consistency requirement will not preclude the Internal Revenue Service from examining the taxpayer's prior income tax return and determining a deficiency in the taxpayer's income tax liability for such prior year as a result of the failure to comply with the rules of §§ 1.752–1T, –2T, and –3T. In addition, the consistency requirement imposed by the temporary section 752 regulations under the circumstances described therein is not intended to limit the duty of consistency that may apply to taxpayers in other cases. See, *e.g.*, *Herrington* v. *Commissioner*, 854 F.2d 755 (5th Cir. 1988).

Miscellaneous Amendments

The definition of a liability for which a creditor's right to repayment is limited to one or more assets of the partnership is amended by this document to clarify the meaning of that term. See § 1.752–1T(d)(3)(ii)(B)(*4*)(*ii*). Among other things, the amendment clarifies the proper operation of the rules in certain situations. Under the temporary section 752 regulations, a partner may be considered to bear the economic risk of loss for a partnership liability to the extent that the partner is obligated to reimburse another partner for payments made with respect to that liability. The amendment clarifies that the result will be the same in a situation in which the partner's obligation to make the reimbursement is in the form of an obligation to make a contribution to the partnership and the partnership agreement provides for a distribution to the other partner as reimbursement for the partner's payment with respect to the liability.

This document amends the temporary section 752 regulations to clarify that an increase in a partner's share of partnership liabilities (or the partner's individual liabilities) and a decrease in a partner's share of partnership liabilities (or in partner's individual liabilities) that result from the same transaction may be offset against each other prior to determining the amount of any constructive contribution or distribution of money under section 752 and the regulations thereunder.

Example (1) in paragraph (b) of § 1.752–2T considers a situation in which a partner contributes property subject to a recourse liability to the partnership. This example assumes that the transferor of the property bears the economic risk of loss for the liability encumbering the property after the contribution because the transferor remains personally liable to the creditor. This example is amended to clarify that the transfer is assumed to bear the economic risk of loss for the liability encumbering the property after the contribution because the transferor remains personally liable to the creditor and none of the other partners bears any of the economic risk of loss for the liability under state law or otherwise.

Explanation of Amendments to Temporary Regulations Under Section 704

The amendments to the temporary regulations under section 704 ("temporary section 704 regulations") are discussed below.

Distribution of Nonrecourse Liability Proceeds Allocable to an Increase in Minimum Gain

Under the temporary section 704 regulations as in effect prior to the amendments made by this document, a partner's share of partnership minimum gain is increased by any distribution to such partner of proceeds of any nonrecourse liability of the partnership that are allocable to an increase in partnership minimum gain ("nonrecourse distribution rules"). See § 1.704–1T(b)(**4**)(iv) (*f*) and (*g*). The allocation of a share of partnership minimum gain to a partner to match a distribution to the partner of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain is premised on the assumption that a distribution of proceeds of a noncourse liability that is allocable to an increase in minimum gain generally reflects the manner in which the

partners have agreed to share the economic gain corresponding to such minimum gain. In recognition of the fact that this assumption is not always correct and that in cases in which the partnership does not maintain accurate capital accounts it is not clear whether this assumption will be satisfied, the nonrecourse distribution rules have been amended by this document.

As amended, the nonrecourse distribution rules provide that a distribution to the partners of the proceeds of any nonrecourse liability of the partnership may not be treated as a distribution that is allocable to an increase in partnership minimum gain unless (1) throughout the full term of the partnership requirements (*1*) and (*2*) of § 1.704–1(b)(2)(ii)(*b*) are satisfied and (2) all other material allocations and capital account adjustments under the partnership agreement are recognized under §§ 1.704–1(b) and 1.704–1T(b). In addition, the nonrecourse distribution rules, as amended, provide that a partnership may treat any distribution to a partner of the proceeds of a nonrecourse liability that would, but for the rule described in this sentence, be treated as a distribution that is allocable to an increase in partnership minimum gain as a distribution that is not allocable to an increase in partnership minimum gain to the extent that such distribution does not cause or increase a deficit balance in the partner's capital account that exceeds the amount of such deficit balance that the partner is obligated to restore. Therefore, to the extent that a distribution to a partner of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain causes a deficit balance in the partner's capital account that the partner is not obligated to restore, the partner must be allocated a share of the increase in minimum gain allocable to such distribution because the distribution has, in fact, fixed the partner's right to the economic gain corresponding to such minimum gain (*i.e.*, the distribution has fixed the partner's right to economic gain corresponding to the minimum gain because the partner is not obligated to restore the deficit caused by the distribution).

Effective Dates

The effective dates contained in § 1.704–1T(b)(4)(iv)(*m*) are amended by this document in three noteworthy respects. First, the effective dates have been amended to clarify the treatment of partnership agreements entered into on or before December 29, 1988. See § 1.704–1T(b)(4)(iv)(*m*)(*1*). As amended, the effective date provisions specifically state that if a partnership agreement entered into on or before December 29, 1988 complied with the provisions of § 1.704–1(b)(4)(iv)(*d*) on or before that date, when (1) the provisions of § 1.704–1(b)(4)(iv) (*a*) through (*f*) shall continue to apply to such partnership for any taxable year beginning after that date (unless the partnership otherwise elects) and ending before any subsequent material modification to the partnership agreement and (2) the provisions of paragraph (b)(4)(iv) (*a*) through (*g*) of § 1.704–1T shall not apply. Consequently, the regulations, as amended, make clear that paragraphs (*h*) through (*k*) of § 1.704–1T apply to all partnerships for partnership taxable years beginning after December 29, 1988.

Second, the effective date of the special rules applicable to nonrecourse debt for which a partner bears the economic risk of loss under § 1.704–1T(b)(4)(iv)(*h*) ("partner nonrecourse debt rules") has been amended to exclude from the application of those rules certain nonrecourse debt for which a partner bears the economic risk of loss through a related person. Under the temporary section 752 regulations, if a person that is related to a partner makes or otherwise assumes the economic risk of loss (*e.g.*, through a guarantee) for a nonrecourse loan to the partnership ("related party nonrecourse debt"), such partner is generally considered to bear the economic risk of loss for that liability. See § 1.752–1T(d)(3). As a result, the temporary section 752 regulations treat any related party nonrecourse debt as a recourse liability that must be allocated to the partner that is related to the lender or guarantor. The temporary regulations under section 752, however, are generally applicable to liabilities incurred or assumed by a partnership on or after January 30, 1989. See § 1.752–4T(a).

Accordingly, any related party nonrecourse debt incurred or assumed by a partnership before January 30, 1989, is generally treated as a nonrecourse liability of the partnership for purposes of section 752. Under the temporary section 704 regulations, however, deductions attributable to related party nonrecourse debt for partnership taxable years beginning after 1988 must be allocated to the partner that is related to the lender or guarantor without regard to when the liability was incurred or assumed by the partnership. See § 1.704–1T(b)(4)(iv) (*h*), (*k*), and (*m*). The Service has received numerous comments regarding the different effective dates applicable to related party nonrecourse debt under the temporary section 704 and section 752 regulations. Generally, those comments have asserted that the partner nonrecourse debt rules under the temporary section 704 regulations should only apply to related party nonrecourse debt incurred or assumed after the issuance of the temporary regulations because taxpayers have legitimately structured transactions based on the assumption that any new rules dealing with related party nonrecourse debt under sections 704 and 752 would only apply to liabilities incurred or assumed after those rules were issued. After careful consideration, the Service has determined that similar effective date rules should apply to related party nonrecourse debt under both the temporary section 704 and the temporary section 752 regulations. Therefore, the temporary section 704 regulations have been amended generally to provide that any related party nonrecourse debt that is not subject to the temporary section 752 regulations (*i.e.*, any related party nonrecourse debt incurred or assumed by a partnership before January 30, 1989) shall be treated as a "true" nonrecourse liability for purposes of the temporary section 704 regulations.

Third, for partnership taxable years beginning after December 31, 1986, §§ 1.704–1(b)(4)(iv) and 1.704–1T(b)(4)(iv) require that deductions attributable to an otherwise nonrecourse liability for which a partner bears the economic risk of loss (through obligations undertaken directly by such partner) must be allocated to that partner ("partner nonrecourse debt"). Under this rule, a partnership liability for a partner nonrecourse debt is not treated as a nonrecourse liability for purposes of section 704(b) for partnership taxable years beginning after December 31, 1986. This rule applies to all partner nonrecourse debt without regard to whether the debt is subject to the temporary section 752 regulations (those regulations generally apply to nonrecourse liabilities made or guaranteed by a partner on or after March 1, 1984 (see § 1.752–4T(b))). As a result, if for taxable years beginning before 1987, partners were allocated deductions attributable to a partner nonrecourse debt that is appropriately treated as a nonrecourse liability under the old section 752 regulations, the treatment of this debt as a liability that is not a nonrecourse liability for taxable years beginning after December 31, 1986 may trigger a minimum gain chargeback that would offset such nonrecourse deductions, effectively recapturing any tax benefits associated with such deductions. This result was unintended

and the temporary section 704 regulations are amended by this document to prevent this result. Under § 1.704–1T(b)(4)(iv)(*m*)(*4*) as amended by this document, a portion of any partner nonrecourse debt that is not subject to the temporary regulations under section 752 (*i.e.*, generally any partner nonrecourse debt incurred before March 1, 1984) and that is appropriately treated as a nonrecourse liability of the partnership under the old section 752 regulations will continue to be treated as a nonrecourse liability of the partnership for purposes of section 704 to the extent necessary to prevent this unintended minimum gain chargeback.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Mary Munday, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations of matters of both substance and style.

List of Subjects

26 CFR 1.701–1 through 1.771–1

Income taxes, Partnerships.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 1.752–0T [Amended]

Par. 2. Section 1.752–0T is amended as follows:

1. The captions listed under "§ 1.752–1T Treatment of partnership liabilities—General rules (temporary)" are amended by adding entries for paragraph (h)(5) to read as follows:

§ 1.752–1T Treatment of partnership liabilities—General rules (temporary).

* * * * *

(h) Related person.

* * * * *

(5) Special rule for loans from certain entities in which a partner owns an interest.

(i) In general.

(ii) Entity.

(iii) Ownership interest.

* * * * *

2. The captions listed under "§ 1.752–4T Effective dates and transition rules (temporary)" are revised to read as follows:

§ 1.752–4T Effective dates and transition rules (temporary).

(a) In general.

(b) Partner loans and guarantees.

(c) Duty of consistency.

(d) Election.

(e) Coordination with amendments to section 704(b) regulations.

(f) Cross reference.

§ 1.752–1T [Amended]

Par. 3. Section 1.752–1T is amended as follows:

1. Paragraph (d)(3)(ii)(B)(*4*)(*ii*) is amended by revising the first sentence thereof to read as follows:

* * * * *

(*ii*) A partnership liability is a liability with respect to which the creditor's right to repayment is limited to one or more assets of the partnership to the extent, but only to the extent, that the outstanding balance of such liability exceeds the maximum amount that the partners would be required to contribute to the partnership to discharge that liability (or to reimburse a partner or person related to a partner for a payment to a creditor or other person with respect to such liability (within the meaning of paragraph (d)(3)(ii)(A)(*2*)(*i*) of this section)) if—

(*A*) The partnership constructively liquidated (within the meaning of paragraph (d)(3)(iii) of this section, except that subdivision (A) of that paragraph shall be applied as if all of the partnership's assets (including any money or other property that is described in paragraph (d)(3)(ii)(A)(*2*)(*ii*) of this section were worthless) and no portion of such liability were treated as a liability for which the creditor's right to repayment is limited to one or more assets of the partnership for purposes of determining the consequences of such constructive liquidation; and

(*B*) The partners were to fail to discharge their obligations, if any, to make payments to a creditor or other person with respect to such liability (within the meaning of paragraph (d)(3)(ii)(A)(*2*) of this section), but only to the extent that such failure would increase the amount that the partners could be required to contribute to the partnership to discharge such liability (or to reimburse a partner or person related to a partner for a payment to a creditor or other person with respect to such liability (within the meaning of paragraph (d)(3)(ii)(A)(*2*)(*i*) of this section)).

* * * * *

2. Paragraph (d)(3)(v)(A) is amended by revising the first sentence thereof to read as follows:

* * * * *

(A) * * * For purposes of this section, if one or more partners (or persons related to such partners) would be obligated (whether pursuant to the partnership agreement, by operation of law, or otherwise) to pay more than 20 percent of the total interest that will accrue on any nonrecourse liability of the partnership during the term of such liability (or if the liability has an indefinite term, the expected term of such liability) if the partnership fails to pay such interest, then each such partner's economic risk or loss for such liability shall be increased by an amount equal to the sum of the present values of the remaining interest payments that such partner (or any person related to such partner) would be obligated to make if the partnership fails to make those payments, taking into account any payment of interest that such partner or related person may be required to make pursuant to that obligation only to the extent that such interest will accrue economically (determining when interest accrues economically for this purpose in accordance with section 446 and the regulations thereunder) after the time of the determination under this paragraph (d)(3)(v) and such partner or related person would not be entitled to be reimbursed (within the meaning of paragraph (d)(3)(ii)(C) of this section) for such payment.* * *

* * * * *

3. Paragraph (d)(3)(vii)(A) is amended by adding the words "directly or indirectly through one or more partnerships," at the beginning of the parenthetical immediately following the word "interest", by deleting the word "partnership" immediately after the words "item of" and by adding the words "that may be realized for any taxable year by the partnership to which the loan was actually made" immediately after the word "credit".

4. Paragraph (d)(3)(vii)(B) is amended by adding the parenthetical "(determined without regard to the type of activity with respect to which the financing is borrowed)" immediately after "section 465(b)(6)".

5. Paragraph (h)(3)(ii) is amended by removing the word "zero" from the third sentence and substituting in its place "100 percent" and by removing the parenthetical "(zero)" from the end of the fourth sentence and substituting in its place "(100 percent)".

6. Paragraph (h) is amended by removing from paragraph (h)(*4*) the parenthetical phrase "(directly or indirectly)" and adding in its place the parenthetical phrase "(directly or indirectly through one or more partnerships)" and by adding the following new paragraph (h)(5) to the end thereof:

* * * * *

(5) *Special rule for loans from certain entities in which a partner owns an interest*—(i) *In general.* For purposes of this section, if—

(A) A liability of a partnership represents an obligation owed to or guaranteed by another entity;

(B) A partner in such partnership owns a 20 percent or more ownership interest in such other entity; and

(C) Such other entity was availed of to act as the creditor with respect to such liability (*e.g.*, to make a loan to the partnership) or to act as a guarantor of such liability, as the case may be, with a principal purpose of avoiding the determination under paragraph (d)(3) of this section that such partner bears the economic risk of loss for all or part of such liability;

then such partner shall be treated as holding such other entity's interest as a creditor or guarantor to the extent of such partner's ownership interest in such entity.

(ii) *Entity.* For purposes of this paragraph (h)(5), the term "entity" means a partnership, S corporation, C corporation, or trust.

(iii) *Ownership interest.* For purposes of this paragraph (h)(5),

(A) A partner's ownership interest in a partnership shall equal the partner's highest percentage interest in any item of partnership loss or deduction that may be realized by the partnership for any taxable year;

(B) An S corporation shareholder's ownership interest in an S corporation shall equal the percentage of the issued and outstanding stock in the S corporation owned by the shareholder;

(C) A C corporation shareholder's ownership interest in a C corporation shall equal the percentage of the fair market value of the issued and outstanding stock in the C corporation owned by the shareholder;

(D) A beneficial owner's ownership interest in a trust shall equal the percentage of the actuarial interests in the trust owned by the beneficial owner;

(E) A person shall be considered to own the ownership interest in an entity that is owned by—

(*1*) Any person related to such person (within the meaning of this paragraph (h)); or

(*2*) Any other entity in which such person owns an interest and that is not related to such person (within the meaning of this paragraph (h)), in proportion to such person's ownership interest in such other entity.

* * * * *

7. Paragraph (j)(3) is revised to read as follows:

(3) *Increase and decrease in share of liabilities resulting from same transaction.* For purposes of section 752 and the regulations thereunder, if as a result of a single transaction (for example, a contribution by a partner to the partnership of property subject to a liability or the termination of the partnership under section 708(b)) a partner incurs both an increase in the partner's share of the liabilities of the partnership (or the partner's individual liabilities) and a decrease in the partner's share of the liabilities of the partnership (or the partner's individual liabilities)—

(i) Such increase and decrease must be offset against each other prior to the application of paragraph (b) or (c) of this section; and

(ii) Only the amount of the net increase or decrease, if any, in the sum of the partner's share of the liabilities of the partnership and the partner's individual liabilities resulting from such transaction shall be treated as a contribution of money by the partner to the partnership or a distribution of money by the partnership to the partner, respectively, under paragraph (b) or (c) of this section.

See § 1.752–2T (b) (Examples (1) and (2)).

* * * * *

8. Paragraph (k), Example (13)(ii), is amended by deleting from the seventh sentence thereof the words "the aggregate amount of the contributions that the partners would be obligated to make" and by substituting in their place the words "the maximum amount that the partners would be required to contribute".

§ 1.752–2T [Amended]

Par. 4. Section 1.752–2T is amended as follows:

1. Paragraph (b), *Example (1)*, is amended by removing from the end of the first sentence the words "a one-third interest in partnership" and adding in their place "an interest in the partnership" and by revising the sixth sentence thereof to read as follows:

"At the same time, however, A's share of the liabilities of the partnership increases by $150, assuming for purposes of this example that, after the contribution, A bears the economic risk of loss (within the meaning of § 1.752–1T(d)(3)) for the entire amount of such liability because A remains personally liable to the creditor and none of the other partners bears any of the economic risk or loss for such liability under state law or otherwise."

§ 1.752–4T [Amended]

Par. 5. Section 1.752–4T is amended as follows:

1. Paragraph (b) is revised to read as follows:

* * * * *

(b) *Partner loans and guarantees.* If at any time on or after March 1, 1984—

(1) A partner is the guarantor of the payment of or holds an interest as a creditor in any portion of a partnership liability that is incurred or assumed by the partnership on or after March 1, 1984 and is nonrecourse for purposes of § 1.1001–2; and

(2) Such partner bears the economic risk of loss (within the meaning of § 1.752–1T(d)(3)) for all or part of such liability as a result of making such guarantee or holding such interest as a creditor;

the rules of §§ 1.752–1T, —2T, and —3T shall apply to such liability beginning on the later of March 1, 1984 or the first date on which such partner bears the economic risk of loss with respect to the liability as a result of making such guarantee or holding such interest as a creditor. A liability incurred or assumed by a partnership pursuant to a written binding contract in effect prior to March 1, 1984, and at all times thereafter, shall be treated as a liability incurred or assumed prior to March 1, 1984 for purposes of the preceding sentence.

* * * * *

2. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f) and the following new paragraph (c) is added:

* * * * *

(c) *Duty of consistency.* If a partnership liability incurred before January 30, 1989 is subject to the provisions of §§ 1.752–1T, –2T, and –3T pursuant to paragraph (b) of this section and a partner has filed a tax return reflecting taxable income that has been determined by claiming a share of that liability in excess of that allocable to him under the provisions of those sections, then to the extent that claiming an excessive share of that liability reduced the partner's taxable income for such year, the partner must determine taxable income for purposes of filing any subsequent tax returns in a manner that reflects the excessive share of the liability claimed by the partner in detemining the taxable income included on such prior return unless the partner amends such prior return to comply with the rules of §§ 1.752–1T, 1.752–2T, and 1.752–3T.

Example. A partnership liability for a loan made by a partner to the partnership on March 1, 1984 is subject to the provisions of §§ 1.752–1T, –2T, and –3T pursuant to paragraph (b) of this section. A partner (other than the lending partner) determined the taxable income reported by the partner on the partner's 1986 income tax return by including a portion of that liability in the basis of such partner's interest in the partnership (even though the rules of § 1.752–1T allocate all of that liability to the lending partner) and using that additional basis to offset a distribution from the partnership, thereby avoiding the recognition of gain under section 731 and reducing the taxable income reported on the partner's 1986 return. The partner sells the partner's interest in the partnership in 1989. The partner should amend the partner's 1986 income tax return to reflect taxable income for the year that is determined in accordance with the rules of § 1.752–1T. If the partner's 1986 income tax return is not amended prior to filing the partner's 1989 income tax return, the partner must include the portion of the liability that the partner used to offset the 1986 distribution in the partner's amount realized from the sale of the partnership interest for purposes of determining the taxable income that must be reported on the partner's 1989 income tax return. This consistency requirement does not preclude the Internal Revenue Service from examining the taxpayer's 1986 income tax return and determining a deficiency in the taxpayer's income tax liability for 1986 as a result of the failure to comply with §§ 1.752–1T, 2T, and 3T.

* * * * *

3. Paragraph (d) [as redesignated by this Treasury Decision) is amended by adding "to which the provisions of those sections do not otherwise apply" immediately after the word "liabilities".

4. Paragraph (e) (as redesignated by this Treasury Decision) is amended by removing from the first sentence the reference to "paragraph (d)" and adding in its place the reference to "paragraph (e)" and by adding to the end of the first sentence the words "as long as the partnership does so for every partnership taxable year for which § 1.704–1T(b)(4)(iv) applies to such partnership."

Par. 6. Section 1.704–1T is amended as follows:

1. Paragraph (b)(0) is amended by revising the entries for § 1.704–1T(b)(4)(iv) (*m*) through (*m*)(*2*) and adding entries for paragraphs (b)(4)(iv)(*m*) (*3*) and (*4*) to read as follows:

* * * * *

(b) *Determination of partner's distributive share*—(0) *Cross-references.*

Heading	Section
* * * * *	
Effective dates	1.704–1T(b)(4)(iv)(*m*)
In general	1.704–1T(b)(4)(iv)(*m*)(*1*)
Special rule applicable to pre-January 30, 1989 related party nonrecourse debt.	1.704–1T(b)(4)(iv)(*m*)(*2*)
Transition rule for pre-March 1, 1984 partner nonrecourse debt.	1.704–1T(b)(4)(iv)(*m*)(*3*)
Election	1.704–1T(b)(4)(iv)(*m*)(*4*)
* * * * *	

2. Paragraph (b)(4)(iv)(*g*)(*1*) is revised to read as follows:

* * * * *

(*1*) *In general.* Except as otherwise provided in this paragraph (b)(4)(iv)(*g*), if—

(*i*) During a partnership taxable year a partnership makes a distribution to the partners that is allocable to the proceeds of any nonrecourse liability of the partnership;

(*ii*) Throughout the full term of the partnership, requirements (1) and (2) of § 1.704–1(b)(2)(ii)(*b*) are satisfied; and

(*iii*) All other material allocations and capital account adjustments under the partnership agreement are recognized under §§ 1.704–1(b) and 1.704–1T(b) (without regard to whether allocations of adjusted tax basis and amount realized under section 613A(c)(7)

(D) Are recognized under § 1.704–1(b)(4)(v)); such distribution shall be treated as a distribution that is allocable to an increase in partnership minimum gain to the extent of the amount of the net increase, if any, in partnership minimum gain for such taxable year that is allocated to such nonrecourse liability under paragraph (b)(4)(iv)(*g*)(*2*) of this section. A partnership may treat any distribution to a partner of the proceeds of a nonrecourse liability that would, but for this sentence, be treated as a distribution that is allocable to an increase in partnership minimum gain as a distribution that is not allocable to an increase in partnership minimum gain to the extent that such distribution does not cause or increase a deficit balance in such partner's capital account that exceeds the amount of such deficit balance that the partner is actually obligated or is deemed to be obligated to restore (without regard to any increase in the amount that such partner is deemed to be obligated to restore as a result of such distribution) as of the end of the partnership taxable year in which such distribution occurs.

* * * * *

3. Paragraph (b)(4)(iv)(*m*)(*1*) is amended by revising the third sentence to read as follows:

"If a partnership agreement entered into on or before December 29, 1988 complied with the provisions of § 1.704–1(b)(4)(iv)(*d*) on or before that date—

(*i*) The provisions of § 1.704–1(b)(4)(iv) (*a*) through (*f*) shall continue to apply to such partnership for any taxable year beginning after that date (unless the partnership makes an election under paragraph (b)(4)(iv)(*m*)(*2*) of this section) and ending before any subsequent material modification to the partnership agreement; and

(*ii*) The provisions of paragraph (b)(4)(iv) (*a*) through (*g*) of this section shall not apply to the partnership for any such taxable year.

* * * * *

4. Paragraph (b)(4)(iv)(*m*) is amended by redesignating paragraph (b)(4)(iv)(*m*)(*2*) as paragraph (b)(4)(iv)(*m*)(*4*) and by adding the following new paragraph (b)(4)(iv)(*m*)(*2*) and (*3*):

* * * * *

(*2*) *Special rule applicable to pre-January 30, 1989 related party nonrecourse debt.* For purposes of this paragraph (b)(4)(iv), if—

(*i*) A partnership liability would, but for this paragraph (b)(4)(iv)(*m*)(*2*), constitute a partner nonrecourse debt; and

(*ii*) Sections 1.752–1T, –2T, and –3T do not apply to such liability;

then such liability shall, notwithstanding paragraph (b)(4)(iv) (*h*) and (*k*) of this section, be treated as a nonrecourse liability of the partnership, and not as a partner nonrecourse debt, to the extent that such liability would be so treated under this paragraph (b)(4)(iv) if the determination of the extent to which one or more partners bears the economic risk of loss for such liability under § 1.752–1T were made without regard to the economic risk of loss that any partner would otherwise be considered to bear for such liability by reason of any obligation undertaken or interest as a creditor acquired prior to January 30, 1989 by a person related to such partner (within the meaning of § 1.752–1T(h)). For purposes of the preceding sentence, if a related person undertakes an obligation or acquires an interest as a creditor on or after January 30, 1989 pursuant to a written binding contract in effect prior to January 30, 1989 and at all times thereafter, such obligation or interest as a creditor shall be treated as if it were undertaken or acquired prior to January 30, 1989.

(*3*) *Transition rule for pre-March 1, 1984 partner nonrecourse debt.* If a partnership liability would, but for this paragraph (b)(4)(iv)(*m*)(*3*), constitute a partner nonrecourse debt and such liability constitutes grandfathered partner debt that is appropriately treated as a nonrecourse liability of the partnership under § 1.752–1 (as in effect prior to December 29, 1988)—

(*i*) Such liability shall, notwithstanding paragraph (b)(4)(iv) (*h*) and (*k*) of this section and § 1.704–1(b)(4)(iv), be treated as a nonrecourse liability of the partnership for purposes of this paragraph (b)(4)(iv) and for purposes of § 1.704–1(b)(4)(iv) to the extent of the amount, if any, by which the smallest outstanding balance of such liability during the period beginning at the end of the first partnership taxable year ending on or after December 31, 1986 and ending at the time of any determination under this paragraph (b)(4)(iv)(*m*)(*3*)(*i*) exceeds the aggregate amount of the adjusted basis (or book value) of partnership property that is allocable to such liability (determined in accordance with § 1.704–1(b)(4)(iv)(*c*) (*1*) and (2)) at the end of the first partnership taxable year ending on or after December 31, 1986); and

(*ii*) In applying this paragraph (b)(4)(iv) to such liability, paragraph (b)(4)(iv)(*c*) of this section shall be applied as if all of the adjusted basis of partnership property that is allocable to such liability is allocable to the portion of such liability that is treated as a partner nonrecourse debt and as if none of the adjusted basis of partnership property that is allocable to such liability is allocable to the portion of such liability that is treated as a nonrecourse liability under this paragraph (b)(4)(iv)(*m*)(*3*).

For purposes of the preceding sentence, a grandfathered partner debt is any partnership liability that is not subject to §§ 1.752–1T, –2T, and –3T but which would have been subject to those sections under § 1.752–4T[b] if such liability had arisen (other than pursuant to a written binding contract) on or after March 1, 1984. A partnership liability shall not be considered to be subject to §§ 1.752–1T, –2T, and –3T solely because a portion of such liability is treated as a liability to which such sections apply under § 1.752–4T(e).

* * * * *

5. Paragraph (b)(4)(iv)(*m*)(*4*) (as redesignated by this Treasury Decision) is amended by removing from the third sentence the reference to "paragraph (b)(4)(iv)(*m*)(*2*)" and by adding in its place the reference to "paragraph (b)(4)(iv)(*m*)(*4*)".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved: October 27, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–27106 Filed 11–20–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 621

Loan and Sale of Property

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a revision of the regulatory provisions granting the National Rifle Association exclusive purchase rights to M–1 (Garand) semiautomatic rifles. This revision is implemented at direction of the U.S. District Court decision of *Gavett* v. *Alexander*, issued on September 4, 1979 by Judge Harold Green. The decision struck down 10 U.S.C. 4308(a)(5), which directed the Department of the Army to sell firearms at cost to members of the National Rifle Association, on the grounds that it was a violation of the Constitution. This revision is reflected in Army Regulation 725–1, Special Authorization and Procedures for Issues Sales and Loans. 32 CFR part 621 was never revised.

EFFECTIVE DATE: December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Kris Keydel, Supply Policy Branch, DALO–SMP–S, Washington, DC 20310–0546, (202) 697–8355.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paper Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 621

Loan and sale of property.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

In 32 CFR Ch. V, subchapter H, part 621 is amended as follows:

PART 621—LOAN AND SALE OF PROPERTY

1. The authority citation for part 621 continues to read as follows:

Authority: Pub. L. 81–193: 10 U.S.C. secs. 2574, 4308, 4506, 4507, 4627, and 4655, and Pub. L. 92–249.

2. Section 621.2 is amended as set forth below by;

a. Revising paragraphs (e)(1) and (e)(5);

b. Removing paragraph (f)(1);

c. Redesignating paragraphs (f)(2) and (f)(3) as paragraphs (f)(1) and (f)(2) respectively;

d. Revising paragraphs (g)(1) and (h).

§ 621.2 Sales of ordnance property to individuals, non-federal government agencies, institutions, and organizations.

* * * * *

(e)(1) Sales of small arms weapons and ammunition are limited by statute (10 U.S.C. 4308). Such sales will be made in accordance with the provisions of this paragraph and with other rules and regulations approved by the Secretary of the Army.

* * * * *

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(5) Approved, non-profit summer camp organizations that are of a civic nature are allowed to purchase from the DCM at cost plus shipping and handling charges, 300 rounds of .22 caliber ammunition for each junior who is participating in a summer camp marksmanship program.

* * * * *

(g)(1) Individuals desiring to purchase National Match Grade M1 service rifles will submit requests to the Director of Civilian Marksmanship, Department of the Army, Washington, DC 20314–0110. The request should contain the name and address of the shooting club with which the purchaser is affiliated and appropriate evidence of status as a competitive marksman.

* * * * *

(h) Marksmanship clubs affiliated with the DCM and individuals who are members of those clubs are authorized to purchase from the Army targets of types not otherwise available from commercial sources. Request for such purchases will be submitted to the Director of Civilian Marksmanship for approval and processing. Individuals who have in the past purchased rifles from the Army under the authority of 10 U.S.C. 4308(a)(5), may purchase spare parts for those rifles if the parts are available. Requests for purchase of spare parts will be submitted to the Director of Civilian Marksmanship for approval. If he/she approves the application, she/he will forward it to ARRCOM for processing. If he/she disapproves the application, she/he will return it to the applicant stating the reasons for disapproval. Current DA transportation security measures for weapons will be applied under procedures contained in paragraphs (d)(1) (i) and (ii) of this section.

* * * * *

[FR Doc. 89–27357 Filed 11–20–89; 8:45 am]

BILLING CODE 3710–08–M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1697

Salary Offset

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: This part sets forth the Selective Service System's policy and procedures which implement 5 U.S.C. 5514 and 5 CFR part 550, Subpart K for the collection by administrative offset of a federal employee's salary with or without his/her consent to satisfy certain debts owed to the Federal government.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone: (202) 724–1167.

SUPPLEMENTARY INFORMATION: This part is not published for public comment because it relates to agency management and personnel matters.

List of Subjects in 32 CFR Part 1697

Administrative practice and procedure, Compensation, Debt collection, Personnel.

Dated: November 15, 1989.

Samuel K. Lessey Jr.,

Director.

Part 1697 is added to chapter XVI of title 32 CFR to read as follows:

PART 1697—SALARY OFFSET

Sec.

1697.1 Purpose and scope.
1697.2 Definitions.
1697.3 Applicability.
1697.4 Notice requirements.
1697.5 Hearing.
1697.6 Written decision.
1697.7 Coordinating offset with another Federal agency.
1697.8 Precedures for salary offset.
1697.9 Refunds.
1697.10 Statute of Limitations.
1697.11 Non-waiver of rights.
1697.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514, and 5 CFR Part 550, Subpart K.

§ 1697.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Selective Service System and to current employees of the Selective Service System who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act 31 U.S.C. 3711 et seq. 4 CFR Parts 101 through 105 and 45 CFR Part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 1697.2 Definitions.

For the purposes of the part the following definitions will apply:

"Agency" means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined in 5 U.S.C. 102; an agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; an agency of the legislative branch including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the federal government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

"Director" means the Director of Selective Service or his designee.

"Disposable pay" means the amount that remains from an employee's federal pay after required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

"Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of Selective Service.

"Paying Agency" means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

"Salary offset" means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774., 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1697.3 Applicability.

(a) These regulations are to be followed when:

(1) The Selective Service System is owed a debt by an individual currently employed by another federal agency;

(2) The Selective Service System is owed a debt by an individual who is a current employee of the Selective Service System; or

(3) The Selective Service System employs an individual who owes a debt to another federal agency.

§ 1697.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Director of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect or request and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1697.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset. (2) A hearing may be requested by filing a written petition addressed to the Director of Selective Service stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Director no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official. (2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1697.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule, if applicable.

§ 1697.7 Coordinating offset with another federal agency.

(a) *The Selective Service System as the creditor agency.* (1) When the Director determines that an employee of a federal agency owes a delinquent debt to the Selective Service System, the Director shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the government's right to collect the debt accrued, and that Selective Service System regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Director must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(v) If the employee is in the process of separating, the Selective Service System

must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee and send a copy of the certification and notice of the employee's separation to the creditor agency. If the creditor agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Director may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset as provided under 5 CFR 831.1801 or other provisions of law or regulation.

(b) *The Selective Service System as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Selective Service System has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Selective Service System shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim. (2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Selective Service System and before the debt is collected completely, the Selective Service System must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1697.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Director's notice of intention to offset as provided in § 1697.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lum sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made with the approval of the Director.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 1697.9 Refunds.

(a) The Selective Service System will refund promptly any amounts deducted to satisfy debts owed to the Selective Service System when the debt is waived, found not owed to the Selective Service System, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by the Selective Service System to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1697.10 Statute of Limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1697.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1697.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13

[FR Doc. 89-27256 Filed 11-20-89; 8:45 am]
BILLING CODE 8015-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL-027; FRL-3682-1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants in Florida; Total Reduced Sulfur (TRS) From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approved Florida's 111(d) plan for the control of total reduced sulfur (TRS) emission from Kraft Pulp Mills on August 10, 1988 (53 FR 30051). Final compliance for most TRS sources was due on May 12, 1989. Florida is extending the compliance date for Container Corporation of America, Fernandina Beach, Florida to June 1, 1990. EPA concurs with Florida that the extension is justified and is hereby approving the extended compliance schedule as a SIP revision.

DATE: This action will be effective January 22, 1990 unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the document relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland St. N.E., Atlanta, Georgia 30365

Florida Bureau of Air Quality Management, Twin Towers Office Bldg., 2600 Blair Stone Road, Tallahassee, Florida 32301

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley, EPA Region IV, Air Programs Branch at above listed address and telephone numbers 404-347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In accordance with section 111 of the Clean Air Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and noncriteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

A source in existence prior to the date on which EPA proposed new source performance standards for that particular source category is defined as an "existing source." Paragraph (d) of section 111 of the Clean Air Act requires states to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from such "existing" sources. The requirements for such plans are set forth in subpart B of 40 CFR part 60 (November 17, 1975; 40 FR 53346). Since total reduced sulfur (TRS) is a designated pollutant, regulated under section 111(d) of the CAA, states are required to develop section 111(d) plans for the control of TRS emissions from existing kraft pulp mills contained in the state.

The Florida Department of Environmental Regulations (FDER) submitted its section 111(d) plan for control of TRS emissions from kraft pulp mills and tall oil plants on May 24, 1985. This submittal contained certification that adoption of the plan had been preceded by adequate notice and public hearing.

The plan as submitted contained all the elements needed for an approvable section 111(d) plan pursuant to 40 CFR part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the guideline document. This plan submittal included: regulations establishing emission standards for all affected sources along with the adoption of necessary definitions; regulations establishing the procedures for the development of individual source compliance schedules to include increments of progress; regulations establishing test methods and procedures for determining compliance with the emission standards; an emission inventory of all designated facilities; regulations establishing procedures for monitoring the status of compliance with emission standards through record-keeping, periodic inspections, and testing; and documentation that the State had legal authority to carry out the plan.

EPA approved the plan on August 10, 1988 (53 FR 30051). As part of that plan, final compliance for digester systems, multiple effect evaporation systems, condensate stripper systems, smelt dissolving tank vents, tall oil plants and combustion devices subject to FDER's Rule 17-2.600(4)(c), FAC was due May 12, 1989. One of the affected sources was Container Corporation of America, Fernandina Beach, Florida, hereinafter referred to as CCA. On March 19, 1987, CCA petitioned the FDER to issue a variance extending the final compliance date for the No. 5 Multiple Effect Evaporator System (MEES), batch digester system and Kamyr digester system to June 1, 1990. CCA presently operates two lime kilns (Nos. 2 and 3). As part of CCA's current modernization program and proposed "TRS conceptual Compliance Plan" submitted to FDER on January 30, 1988, the source elected to replace the two lime kilns with a new lime kiln which will be subject to subpart BB (Standards of Performance for kraft pulp mills) of 40 CFR part 60 (Standards of Performance for New Stationary Sources). The new lime kiln will be subject to a TRS emission standard of 8 ppm corrected to 10% oxygen. The existing lime kilns would have had to meet a 20 ppm standard by volume on a dry basic at standard conditions corrected to 10% oxygen as a 12-hour average.

As part of the "TRS Conceptual Compliance" for CCA, the source also elected to install a TRS noncondensible gas (NCG) handling system for capturing and transporting TRS emissions from the existing No. 5 MEES, batch digester system, and Kamyr continuous digester system, to the new lime kiln (No. 4) for incineration. Since the 2 existing lime kilns will be replaced with the No. 4 lime kiln, CCA felt that it would be redundant and not cost-effective to install and operate a temporary or secondary TRS control system connected to the No. 2 or 3 lime kilns, for the existing No. 5 MEES, batch digester system and Kamyr digester. However, since the proposed new No. 4 lime kiln cannot be constructed and in compliance by May 12, 1989 (the final compliance date for the existing No. 5 MEES, batch digester system and Kamyr digester system), the source requested a variance to extend the final compliance date to June 1, 1990 to allow for completion of construction and start-up of the new No. 4 lime kiln. FDER held a public hearing on March 3, 1988 concerning the variance request and issued the variance on March 17, 1988. FDER then submitted the variance request as a SIP revision to EPA on April 15, 1988.

Final Action

EPA is approving the variance as a SIP revision which extends the final compliance date for the three emission sources at CCA from May 12, 1989 to June 1, 1990.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the officer of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.)

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307)b)(1) of the Act, petition for judicial review of this action must be filed in the United States Court of Appeals or the appropriate circuit by January 22, 1990. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Air pollution control, Inter governmental relations, Paper and paper products industry, Reporting and Recordkeeping requirements.

Dated: November 6, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

PART 62—[AMENDED]

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart K—Florida

1. The authority citation for Part 62 continues to read as follows:

Authority 42 U.S.C. 7401-7642.

2. Section 62.2350 is amended by adding paragraph (b)(4) to read as follows:

§ 82.2350 Identification of plan.

* * * * *

(b) * * *

(4) The final compliance date to achieve TRS emission limits for the No. 5 Multiple Effect Evaporation System, batch digester system and Kamyr digester system for Container Corporation of America in Fernadina Beach, Florida is June 1, 1990.

* * * * *

[FR Doc. 89-27329 Filed 11-20-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42103A; FRL 3662-9]

RIN 2070-AB07

C.I. Disperse Blue 79:1; Testing Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces that EPA has signed an enforceable Testing Consent Order with eight companies who have agreed to perform certain health and environmental effects tests with C.I. Disperse Blue 79:1 (DB-79:1)(CAS No. 3618-72-2). This action is in response to the TSCA Interagency Testing Committee's (ITC) recommendation of this substance for priority testing. EPA also announces its decision not to initiate rulemaking for C.I. Disperse Blue 79 (DB-79)(CAS No. 3956-55-6) and two of its analogs (CAS. Nos. 21429-43-6 and 3618-73-3) for health and environmental effects and chemical fate testing.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR part 790, eight manufacturers of DB-79:1, also known as acetamide, N-5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxyphenyl], have entered into a Testing Consent Order with EPA in which they have agreed to perform certain health and environmental effects tests using DB-79:1. This rule amends subpart C of 40 CFR part 799 to add DB-79:1 to the list of chemical substances and mixtures ("chemicals") subject to Testing Consent Orders for which the export notification requirements of 40 CFR part 707 apply.

I. ITC Recommendations

In its Nineteenth Report to EPA, published in the Federal Register of November 14, 1986 (51 FR 41417) the ITC recommended that DB-79 (CAS No. 3956-55-6) be tested for (1) chemical fate (water solubility, and aerobic and anaerobic biodegradation); (2) environmental effects (acute and chronic toxicity to algae, aquatic invertebrates, fish, and benthic organisms, and bioconcentration in fish); and (3) health effects (absorption and chemical disposition, and 90-day subchronic toxicity).

In its Twentieth Report to EPA published in the Federal Register of May 20, 1987 (52 FR 19020), the ITC also recommended DB-79:1 (CAS No. 3618-72-2), the chloro/methoxy analog of DB-79 (CAS No. 3618-73-3), and the chloro/ethoxy analog (CAS. No. 21429-43-6), for the same testing as DB-79.

II. Testing Consent Order Negotiation

In the Federal Register of October 12, 1988 (53 FR 34786) and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons interested in participating in or monitoring testing negotiations for DB-79:1 to contact EPA. EPA held public meetings on October 26, 1988, November 29, 1988, and January 24, 1989, to discuss testing appropriate for this chemical. On October 20, 1989 EPA and eight companies signed a Testing Consent Order for DB-79:1. The eight companies agreed to conduct or to provide for the conducting of the following studies: (1) subchronic oral toxicity in the rat, (2) sex-linked recessive lethal (SLRL) test in *Drosophila*, (3) developmental toxicity in the rat and rabbit, (4) metabolism in the rat, and (5) a rainbow trout fish partial life-cycle test. These tests are to be conducted by specific dates and according to the test standards and the Appendices of the Consent Order.

A group of companies who comprise the manufacturing and importing industry for DB-79:1 and DB-79 and its two analogs, have reported to EPA through the Ecological and Toxicological Association of Dyestuffs Manufacturing Industry (ETAD) that less than 1,000 pounds of DB-79 and less than 25,000 pounds of the chloro/methoxy analog were produced in 1985 (Ref. 1). The chloro/ethoxy analog was not manufactured or imported in 1985. The aggregated TSCA section 8(a) inventory update information supports this industry estimate (Ref. 2). Therefore, EPA is not initiating rulemaking proceedings for health, environmental, and chemical fate testing of these chemicals because there is little or no production.

However, because analogs of DB-79:1 could be used as substitutes for DB-79:1, EPA will monitor future manufacturing of these chemicals through the section 8(a) TSCA Inventory Update Rule, 40 CFR part 710, published in the Federal Register of June 12, 1986 (51 FR 21438), and section 5 TSCA premanufacture notification requirements, to determine whether further testing will be needed.

III. Technical Summary

A. Manufacture and Use

The estimated average annual production from 1980 to 1985 is 2 to 3 million pounds for DB-79:1 and related analogs as active colorants (Ref. 3). ETAD has estimated the current domestic sales market (1985) for DB-79:1 to be 1.8 million pounds of active colorant (Ref. 1). The aggregated TSCA section 8(a) inventory update data for 1987 support this industry estimate (Ref. 2).

Disperse Blue-79:1 and related products are used almost exclusively for dyeing or printing polyester fibers.

B. Human Exposure

1. *Occupational exposure.* Dermal and inhalation/ingestion exposure to DB-79:1 can occur during production, processing, and use of DB-79:1. A maximum of 180 workers (10 to 20 workers at 9 sites) are potentially exposed during production, while a maximum of 86 workers are exposed during processing (3 to 8 workers at 11 sites). In addition, from 1 to 3 dye weighers and 1 to 18 machine operators per site are potentially exposed to DB-79:1 during use according to an EPA engineering analysis of occupational exposure (Ref. 5). If the dye weighers are considered for potential worker exposure at 300 to 400 sites (ETAD estimate), then approximately 900 to 1,200 workers are potentially exposed via both inhalation/ingestion and dermal routes. If the machine operators are included, an additional 7,200 workers are potentially exposed via the dermal route. ETAD agrees that EPA's estimates of the number of workers potentially exposed through use are reasonable (Ref. 1).

The results from a preliminary review of a joint study on the occupational exposure of textile dye color on storeroom workers, conducted by the American Textile Manufacturers Institute (ATMI), EPA, and ETAD, support ETAD's supposition and reports that the average daily level of exposure to dye weighers is 0.08 mg (Ref. 7) and

average daily level of exposure to machine operators is negligible (Ref. 5). The potential remains for more significant single exposures in these cases.

Data available from the National Occupational Exposure Survey (NOES), from 1980 to 1983, reported that 1,450 workers in 26 plants were potentially exposed to DB-79:1 or related compounds. The National Occupational Hazard Survey (NOHS), from 1972 to 1974, reported that 2,305 workers in 107 plants were potentially exposed to DB-79 and related compounds (Ref. 8).

2. *Consumer exposure.* DB-79:1 and related products are fast dyes that are held tightly within the polyester fiber structure and therefore not easily removed (Refs. 5 and 6). Thus, consumer exposure to DB-79:1 and related products is low.

C. Environmental Fate and Exposure

1. *Chemical fate.* The water solubility of DB-79:1 is low (measured between 4.6\|1.9 and 6.2\|0.5 ug/l); the log octanol/water partition coefficient for DB-79:1 is 4.7\|0.1 (Ref. 9). DB-79:1 is not likely to volatilize or photodegrade.

Results of aerobic biodegradation studies using 13 percent liquid, and 26 percent and 52 percent granular formulations of DB-79:1 indicate that at higher concentrations less biodegradation occurs (Ref. 6).

EPA's Environmental Research Laboratory in Cincinnati is completing a study on the adsorption, aerobic, and anaerobic biodegradation of DB-79:1. Early results indicate that DB-79:1 partitions to sludge and is anaerobically biodegraded when added to a model sludge-treatment system in insoluble (particulate) form at its solubility limit (Ref. 10). A recent study from EPA's Environmental Research Laboratory in Athens Georgia reported rapid degradation of DB-79 in anaerobic sediment systems (Ref. 11). The half-life was on the order of minutes.

After reviewing this information, some of which was not available to the ITC, EPA has decided not to include testing for chemical fate as a part of the Consent Order for DB-79:1.

2. *Release and monitoring.* No effluent or ambient monitoring information is available. The majority of releases of DB-79:1 from its manufacturing and use will be to water. Estimated dyestuff pre-treatment losses to water during production are between 0.5 and 1 percent of production (Ref. 5). Estimated dyestuff pre-treatment losses during the use of textile dyestuffs are between 5 and 10 percent. Sludge containing DB-79:1 and products from wastewater treatment facilities or POTW's may be sent to landfills.

3. *Environmental exposure.* EPA has performed aquatic environmental modeling for DB-79:1 using engineering assessment- based estimated discharge data which suggest that the surface water concentrations of DB-79:1 are relatively low (Ref. 12). The industrial facilities producing DB-79:1 and related compounds were located, and the receiving streams were identified. Releases were estimated to be 1.4 kg per site for 100 days each year, which is the upper bound based on average batch size (Ref. 12). Using a measured log K_{ow} of 4.7, it was estimated that 80 percent of DB-79:1 would be removed by sorption either in the on-site wastewater treatment plant or in a POTW (Ref. 13). Five site-specific surface water concentrations were projected to range from 0.01 to 0.97 ug/l for mean flow conditions, and from 0.04 to 3.9 ug/l for low flow conditions.

4. *Bioconcentration.* The ITC pointed out that no experimental data on the potential for bioconcentration of DB-79:1 by aquatic organisms are available. However, 18 disperse monoazo dyes examined experimentally had log BCF values <1.8 even though the experimental log K_{ow} was 3 in seven out of nine, and the calculated K_{ow} was 3 in one of the remaining nine (Ref. 14). This suggests that the bioconcentration factor for DB-79:1 would be low. The reason proposed for this behavior was that the relatively high molecular weight (450 to 550 g/mole) of these disperse dyes made transport across the fish gill membrane difficult. Additional studies also suggest that high molecular weight and molecular size limit membrane penetration and thus accumulation through the gills (Refs. 16 and 17). After reviewing this information, some of which was not available to the ITC, EPA has decided not to include bioconcentration testing as a part of the Consent Order for DB-79:1.

IV. Testing Program

A. Environmental Effects

No experimental data on the toxic effects of pure DB-79:1 to fresh water fish are available. The 96-hour LC_{50} of a powder formulation of DB-79:1 was reported to be 390 mg/l in bluegill (*Lepomis macrochirus*) (Ref. 6). Converted to LC_{50} values, the 48-hour median tolerance limits of two granular formulations of 26 and 52 percent, and one liquid formulation of 13 percent of DB-79:1 were reported to be 320, 400, and 700 mg/l respectively in rainbow trout (*Salmo gairdneri*) (Ref. 6). The absence of specific descriptions of formulation compositions used in these studies precludes an accurate evaluation of the toxic potential of the test substances

EPA's predicted LC_{50}'s for fish, daphnid, and algae for DB-79:1 are all above the water solubility limit for DB-79:1, so no acute toxicity is likely at or below DB-79:1's solubility limit (Ref. 18). However, toxicity to fish is possible from long-term exposure at the limits of solubility for DB-79:1. No method is available to determine the effects of long term exposure to benthic invertebrates.

In the absence of useful fish toxicity data and any data on the effects of long-term exposure on fish life stages to disperse dyes, eight companies have agreed to conduct rainbow trout early life-cycle testing of DB-79:1, in accordance with 40 CFR 797.1600 as modified for DB-79:1 (Ref. 4) and contained in the public docket. The final report for this test is due 15 months after the effective date of the Testing Consent Order.

EPA will use the data generated by this test to determine the potential risk to the environment from exposure to DB-79:1 and to determine whether any additional testing of DB-79:1 is necessary.

B. Health Effects

Because of the lack of health effects data and the potential for worker exposure to DB-79:1, EPA and the eight companies have decided to include in the Consent Order subchronic toxicity testing, developmental toxicity testing, mutagenic effects testing (SLRL in *Drosophila*), and metabolism testing. The companies have agreed to conduct the following studies in accordance with the cited test guidelines:

(1) An oral subchronic study in the Sprague-Dawley rat.

(2) Developmental toxicity studies in the Sprague-Dawley rat and rabbit by the oral gavage route.

(1) An oral metabolism test in the Sprague-Dawley rat (Ref. 15), and (4) an SLRL test in *Drosophila*. If the SLRL indicates a hazard of genetic toxicity, EPA will consider the need for further testing.

Testing Plan for DB-79:1

Test	Test Standards in 40 CFR	Report Date[1]
SLRL in *Drosophila*.	§ 798.5275	12
Subchronic oral toxicity, rat.	§ 798.2650	15
Developmental toxicity, rat.	§ 798.4900	12

Testing Plan for DB-79:1—Continued

Test	Test Standards in 40 CFR	Report Date[1]
Environmental Toxicity, acaret.	§ 795.4000	24
Metabolism, rat	ETAD Protocol[2]	24

[1] Months after effective date of this rule.
[2] ETAD-provided rat oral metabolism protocol (Ref. 15)

The above Table delineates the tests, test standards, and final reporting dates for the health effects tests incorporated in the Testing Consent Order. The test standards with modifications are attached to the Order. EPA will use the data generated by these tests to determine the potential risk to human health from exposure to DB-79:1 and, if any additional testing of DB-79:1 is necessary.

V. Export Notification

The issuance of this Testing Consent Order subjects any person who exports or intends to export DB-79:1 to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR part 707. Chemicals subject to Consent Orders are listed at 40 CFR 799.5000. This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of Testing Consent Orders that 40 CFR part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order [docket number OPTS-42103]. This record contains the information EPA considered in developing this rule and Consent Order and includes the following:

A. Supporting Documentation

(1) Testing Consent Order for DB-79:1.
(2) Federal Register notices pertaining to this rule and the Consent Order consisting of:
(a) Notice containing the ITC recommendation of DB-79:1.
(b) Rules requiring TSCA section 8(a) and (d) reporting on DB-79:1.
(c) Notice soliciting interested parties for Testing Consent Order negotiation on DB-79:1.
(3) Communications consisting of:
(a) Letters.
(b) Contact reports of telephone conversations.
(c) Meeting summaries.

B. References

(1) ETAD. Ecological and Toxicological Association of Dyestuffs Manufacturing Industry. Letter from E.A. Clarke, Executive Secretary to R.H. Brink, Interagency Testing Committee-USEPA (February 12, 1987) on: Disperse Blue 79, with Appendix I: Disperse Blue 79 and DB79 analogs; and with enclosure: ETAD's comments on the ITC Testing Recommendations for C.I. Disperse Blue 79 (February 12, 1987).

(2) USEPA. Memo from N. Vogel, Confidential Data Branch, to H. Colbert, Test Rules Development Branch, on: Aggregated production volume figures (December 21, 1988).

(3) USEPA. U.S. Environmental Protection Agency. Technical Support Document for C.I. Disperse Blue 79, prepared by Syracuse Research Corp. for Test Rules Development Branch (1987).

(4) USEPA. OTS Guideline § 797.1600 Fish early life stage toxicity test, with modifications. (1989).

(5) USEPA. Memo from G. Heath, Chemical Engineering Branch, to John Walker, Test Rules Development Branch, on: Disperse Blue 79 with attached report-Engineering report worker exposure, and release analysis for Interagency Testing Committee (ITC) Disperse Blue 79 (May 30, 1986).

(6) ETAD. Letter from E. Clarke, Executive Secretary, to R. Brink, Interagency Testing Committee-USEPA on: Disperse Blue 79; with attachments: Comments by ETAD to Dynamec on the ITC recommendations for testing Disperse Blue 79 and added data (August 11, 1986).

(7) USEPA. Memo from G. Heath, Chemical Engineering Branch, to Mike McCommas, Test Rules Development Branch, on: Supplemental Engineering Report- Disperse Blue 79 (January 28, 1987).

(8) NIOSH. National Institute for Occupational Safety and Health. Computer printout of National Occupational Hazard Survey (1972–1974) and National Occupational Exposure Survey (1980–1982) data bases: C.I. Disperse Blue 79. Cincinnati, OH. Department of Health and Human Services (April 28, 1986).

(9) USEPA. Memo from G.L. Baughman, USEPA-ERL Athens, GA, to E. Bryan, Chief, Exposure Assessment Branch, on: Disperse Blue 79 (August 20, 1987).

(10) USEPA. "Aerobic and Anaerobic Treatment of C.I. Disperse Blue 79." D.A. Gardner, T.J. Holdsworth, Radian Corporation; G.M. Shaul, K.A. Dostal, Risk Reduction Engineering Laboratory-USEPA, Cincinnati, OH; and L.D. Betowski, Environmental Monitoring and Support Laboratory-USEPA, Las Vegas, NV; Contract No. 68-03-3371, Volume 1 and 2 (June 1989).

(11) ETAD. Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry. Letter from E.A. Clarke, Executive Secretary, to Document Processing Center-USEPA (April 8, 1988), with enclosure: E.J. Weber. Fate of textile dyes in the aquatic environment: degradation of Disperse Blue 79 in anaerobic sediment-water systems. Environmental Research Laboratory- USEPA, Athens, GA (1988).

(12) USEPA. Memo from M.H. Thomas, Exposure Assessment Branch, to John Walker, Test Rules Development Branch, on: Predicted surface water concentrations and drinking water exposure of C.I. Disperse Blue 79 (June 24, 1986).

(13) USEPA. Hand-written table from P. Harringan, Design and Development Branch, to M. McCommas, Test Rules Development Branch, on: Sewage treatment removal estimates for site specific releases of DB-79:1 (December 11, 1987).

(14) Anliker, R., Clarke, E.A., and Moser, P. "Use of the partition coefficient as an indicator of bioaccumulation tendency of dyestuffs in fish." *Chemosphere* 10:263–274 (1981).

(15) ETAD. Protocol outline for oral metabolism study in rats with disperse blue 79 (DB79), with modifications. (1989).

(16) Opperhuizen, A., Velde, E., Gobas, F., Liem D., Steen, J., and Huntzinger, O. "Relationship between bioconcentration in fish and steric factors of hydrophobic chemicals." *Chemosphere* 14:1871–1896 (1985).

(17) Gobas F., Shiu, W., Mackay, D., and Opperhuizen, A. "Bioaccumulation of PCDD's and OCDF in fish after aqueous and dietary exposure." *Chemosphere* 15:1985–1986 (1986).

(18) Memo from R. Jones, Toxic Effects Branch, to M. McCommas, Test Rules Development Branch, on: Review of Disperse Blue 79 (June 3, 1988).

Confidential Business Information (CBI) while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OTS Public Information Office, Rm. NE-G004, 401 M St., SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

Paperwork Reduction Act

OMB has approved the information collection requirements in this Testing Consent Order under the provision of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control 2070–0033.

Public reporting burden for this collection of information is estimated to average 564 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total estimated testing hours for DB-79:1 is 3386.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemical export, Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing procedures.

Dated: October 20, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding "C.I. Disperse Blue 79:1" to the table in CAS Number order, and the OMB control number to the end of § 799.5000 to read as follows:

§ 799.5000 Testing consent orders.

. . . . . .

CAS Number	Substance or Mixture Name	Testing	FR Citation
3618-72-2	C.I. Disperse Blue 79:1 Acetamide,N-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[(2-bromo-4, 6-dinitrophenyl)azo]-4-methoxyphenyl]-.	Health effects	November 21, 1989.
		Environmental effects	-Do-

. . . . . .

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 89-27211 Filed 11-21-89; 8:45am]
BILLING CODE 6560-50-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 19, and 52

[Federal Acquisition Circ. 84-52]

RIN 9000-AD31

Federal Acquisition Regulation (FAR); Competitive Thresholds; Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date of Federal Acquisition Circular (FAC) 84-52 published in the Federal Register on Tuesday, October 31, 1989 (54 FR 46004).

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-52 correction.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-25491 beginning on page 46004, in the first column of page 46004, under effective date, November 30, 1989, is correct. However, in the second column of page 46004, under "[Number 84-52]", the effective date statement issued under the authority of the DOD, GSA, and NASA is corrected to read as follows:

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-52 is effective November 30, 1989.

On pages 46009 and 46010, in the clauses at 52.219-11, 52.219-12, 52.219-17, and 52.219-18, and the Alternates I, II, and III of 52.219-18, the effective date is corrected to read as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219-11, 52.219-12, 52.219-17, and 52.219-18 [corrected]

Section 52.219-11, 52.219-12, 52.219-17, and 52.219-18 are corrected by removing in the title of each clause, and in Alternates I, II, and III of 52.219-18, the effective date "OCT 1989" and inserting in each place "NOV 1989".

List of Subjects in 48 CFR Parts 5, 6, 19, and 52

Government procurement.

Dated: November 14, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 89-27149 Filed 11-20-89; 8:45 am]
BILLING CODE 6820-JC-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service is correcting errors in the rule prescribing open seasons on waterfowl that appeared in the Federal Register on September 28, 1989 (54 FR 39940).

DATE: Effective on September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240, telephone 703-358-1714.

SUPPLEMENTARY INFORMATION: Public comment was received on proposed rules involving these seasons and was addressed in the September 19, 1989 Federal Register (54 FR 38614). In that document, final frameworks were published that would allow these seasons. However, there were several errors and omissions in the September 28, 1989 Federal Register (54 FR 39940), prescribing the late open seasons,

hunting hours, hunting areas, and daily bag and possession limits for certain migratory game birds in the United States. The corrections involve no change in the contents of prior proposed or final frameworks.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States published in the September 28, 1989, Federal Register (54 FR 39940).

§ 20.105 [Corrected]

1. On page 39949 under the heading *Illinois*, subheading "Canada geese(2)(3):" is corrected to read "Geese (2):" with bag and possession limits of 5 and 10, respectively, and followed by a line to read "Canada(3):".
2. On page 39953 under the heading *Wisconsin*, the bag and possession limits for Coots are corrected to read "5" and "10", respectively.
3. On page 39955 under the heading *Colorado*, the bag and possession limits for Geese in the North Park Unit are corrected to read "2" and "4", respectively.
4. On page 39957 under the heading *Texas*, the subheading "Ducks (except masked duck)" is corrected to read "Ducks:".
5. On page 39961 under the heading *Colorado*, the bag and possession limits for geese in Mesa County are corrected by deleting "6 geese per season".
6. On page 39961 under the heading *Colorado*, the subheading "Gunnison County, Saguache *City*, west of the Continental Divide" is corrected to read "Gunnison County, Saguache *County*, west of the Continental Divide".
7. On page 39963 under the heading *Washington*, under the subheading "Brant:" a line is added to read "Pacific County only (14)" with season dates of "Dec. 9, 13, 16, 20, and 23." and bag and possession limits of "2" and "4" respectively.
8. On page 39964 following footnote (13) a line is added to read "(14) Brant killed in Pacific County must be checked at the Willapa National Wildlife Refuge by 6 pm on the day of the kill."

Dated: November 14, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89-27269 Filed 11-20-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 223
Tuesday, November 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. 57; Docket No. 7419S]

General Crop Insurance Regulations; Fresh Plum Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 410), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.146, the Fresh Plum Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on plums in an endorsement to the general crop insurance policy.

DATES: Written comments, data, and opinions on this proposed rule should be received not later than December 21, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as September 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.146, the Fresh Plum Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring plums.

FCIC is soliciting public comments on this proposed rule for 30 days following publication in the Federal Register. Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Fresh plums.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended by adding a new section to be known as 7 CFR 401.146, Fresh Plum Endorsement, effective for the 1990 and succeeding crop years, to read as follows:

§ 401.146 Fresh Plum Endorsement.

The provisions of the Fresh Plum Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Fresh Plum Endorsement

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Earthquake;
(3) Fire;
(4) Wildlife;
(5) Volcanic eruption;
(6) An insufficient number of chilling hours to effectively break dormancy; or
(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

Unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured under section 1b of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard;
(2) Disease or insect infestation unless specifically caused by adverse weather;
(3) Fruit cullage caused by: Green; overripe; undersize condition; and mechanical damage which causes rejection of the crop at the packing house; or

(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. Insured Crop and Acreage

a. The crop insured will be plums grown for fresh market fruit or processing for which we provide a guarantee and premium rate:

b. In lieu of the provisions of subsection 2e of general crop insurance policy, we do not insure any plum acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production in the preceding crop year unless the acreage is inspected by us and approved for coverage;

(4) For which production records acceptable to use for at least the previous crop year are not provided;

(5) Which we consider not acceptable;

(6) Which is interplanted with another crop, unless we inspect such acreage and give our approval in writing;

(7) On which is grown a type or variety not established as adapted to the area; excluded by the actuarial table; not regulated for plums by the California Tree Fruit agreement, a related crop advisory board or the State;

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. Report of Acreage, Share, Type and Practice (Acreage Report)

The acreage report must be filed on or before January 31. You must report the crop type in addition to the information required by section 3 the general crop insurance policy for the acreage report.

4. Production Reporting, Coverage Level, Prices for Computing Indemnities, and Production Guarantees

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Tree damage or use of production practices which has or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year (In such event, the production guarantee will be reduced 1 percent, through adjustment to your average yield for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election for plums for the crop year.

5. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment factor contained in the actuarial table because you did not select optional units.

6. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1, following our inspection and determination of acceptability. Insurance ends at the earliest of:

a. Total destruction of the insured crop;

b. Harvest;

c. The date harvest would normally start;

d. Final adjustment of a loss; or

e. September 30 of the crop year.

7. Units

Plum acreage grown on non-contiguous land that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit, you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be maintained and be provided to us. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of the notices required in section 8.a. (2), (3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the causes of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim mujst be given to us. If a notice has been given, we must be notified of the expected time of harvest at the time of notice or not later than 72 hours before harvest begins.

9. Claim for Indemnity

In addition to section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of plums by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of plums to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalent) (see section 12.d.) to be counted for a unit will include all production harvested, and all appraised production. Such production must meet U.S. #1 standards as modified (before the date insurance attaches) by the latest California Tree Fruit Agreement Publication for fresh plums.

(1) Mature production of fresh plums damaged by insurable causes within the insurance period that could be marketed for any use as other than fresh packed plums, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the highest price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned or destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of plum becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested plums may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discountinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. In the absence of acceptable records to determine the disposition of harvested plums, we may elect to determine such disposition and the amount of such production to be counted for the unit.

d. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of any plums, whether insured or uninsured, whether this crop year or prior crop years, from the broker, shipper, advisory board, marketing order or any other source we deem necessary.

10. Cancellation and Termination Dates

The cancellation and termination dates are January 31.

11. Contract Changes

The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. Meaning of Terms

For the purpose of Plum crop insurance:

a. *"Appraisal"* means an estimate of the potential production determined by our representative using our prescribed procedures.

b. *"Crop Year"* means the period beginning with the date insurance attaches and extending through the normal harvest time, and will be designated by the calendar year in which the insured plums are normally harvested.

c. *"Harvest"* means the picking of mature plums from the trees by hand or machine.

d. *"Lug"* means a packed container of fresh plums weighing 28 pounds. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of 28 pounds of packed plums.

Done in Washington, DC, on October 30, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27262 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 405

[Amdt. 3; Docket. No. 7474S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Apple Crop Insurance Regulations (7 CFR part 405), effective for the 1990 and succeeding crop years, by changing the policy to provide that premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than December 21, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety, Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of subsection 5.c. of the Apple Crop Insurance Regulations (7 CFR part 405), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in the apple crop insurance policy in effect for the 1985 crop year. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1991 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study by made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC proposes to amend the apple crop insurance policy to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 405

Crop insurance, Apples.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Apple Crop Insurance Regulations (7 CFR part 405), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 405—[AMENDED]

1. The authority citation for 7 CFR part 405 is amended to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 405.7.(d) is amended by revising subsection 5.c.(1) to read as follows:

§ 405.7 The application and policy.

* * * * * *

(d) * * *

5. * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * * *

Done in Washington, DC on October 30, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-27267 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 415

[Amdt. 1; Docket No. 7388S]

Forage Production Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Forage Production Crop Insurance Regulations (7 CFR Part 415), effective for the 1991 and succeeding crop years, by: (1) adding insurance period ending dates for additional states; and, (2) providing that the premium reduction gained by insureds through good insuring experience will extend beyond the 1989 crop year expiration. The intended effect of this rule is to provide end of insurance dates in states recently added to the forage production crop insurance program, and to allow a continuation of good insuring experience

discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 21, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environment Impact Statement is needed.

FCIC proposes to amend the Forage Production Crop Insurance Regulations (7 CFR part 415), effective for the 1991 and succeeding crop years, to provide an end of insurance period for states recently added to the program, and provide that the premium reduction gained by insureds through good insuring experience will extend beyond the 1989 crop year expiration.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 415

Crop insurance, Forage production.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Forage Production Crop Insurance Regulations (7 CFR part 415), proposed to be effective for the 1991 and succeeding crop years, as follows

PART 415—[AMENDED]

1. The authority citation for 7 CFR part 415 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 415 is amended in section 5 by revising paragraph c.(1) and in section 7 by revising and reissuing paragraphs a. and b. to read as follows:

§ 415.7 The application and policy.

* * * * *

(d) * * *

5. Annual premium.

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year.

* * * * *

7. Insurance period.

a. Insurance attaches on acreage with an adequate stand:

(1) for the calendar year following the year of seeding on:

(a) February 1 for spring-seeded forage in California;

(b) April 15 for spring-seeded forage in Colorado, Idaho, Nebraska, Nevada, Oregon, Utah, and Washington;

(c) May 22 for spring-seeded forage in Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming and all other states;

(d) October 16 for fall-seeded forage in all states except California; and

(e) December 16 for fall-seeded forage in California.

(2) for subsequent years on:

(a) October 16 in all states except California; and

(b) January 1 in California.

b. Insurance ends at the earliest of:

(1) total destruction of the forage crop;

(2) removal from the windrow or the field;

(3) final adjustment of a loss; or

(4) the following dates of the calendar year in which the majority of the forage is normally harvested:

(a) All states except California..... October 15;

(b) California..... December 31.

Done in Washington, DC, on October 31, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–27268 Filed 11–20–89; 8:45 am]

BILLING CODE 3410–08–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Credit Union Service Contracts

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed amendment.

SUMMARY: As part of its ongoing regulatory review policy NCUA has reviewed § 701.26 of its regulations ("Credit Union Service Contracts"). NCUA has received few questions on the regulation since it was last amended in 1982. Major modification appears unnecessary. The Board is proposing one clarifying change.

DATE: Comments must be received by February 20, 1990.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street. NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Julie Tamuleviz, Staff Attorney, at the above address, or telephone: 202/682–9630.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed regulation does not contain any paperwork requirements. The provision in the regulation that credit union service contracts be in writing is consistent with ordinary business practice.

Background Information

Section 701.26 of NCUA's Rules and Regulations (12 CFR 701.26), "Credit Union Service Contracts," was last amended in 1982. The regulation authorizes a Federal credit union ("FCU") to contract for assets or services which relate to its daily operations. The regulation covers an FCU's contracts with third party vendors and other organizations offering services to credit unions. The regulation also allows one FCU to represent other credit unions in contractual arrangements with a third party and authorizes the sharing of fixed assets.

NCUA has received few questions on this regulation since its 1982 amendment. Since the regulation appears to be working, the Board does not believe that major modification is necessary. The one question that has been asked is whether the regulation authorizes an FCU itself to provide services and activities to other credit unions. Generally, it does not. The services and activities are to be provided by third parties with whom the FCU contracts. The Board is proposing to amend § 701.26(a) to clarify this point.

While § 701.26 does not generally authorize an FCU to provide services to other credit unions, the Board notes that, pursuant to various express powers in the FCU Act and the incidental powers clause (section 107(16) of the FCU Act, 12 U.S.C. 1757(16)), an FCU can provide certain services to other FCU's. For example, an FCU can, on a short-term basis, rent out excess space in its building pursuant to its authority to purchase, hold, and dispose of property (see section 107(4) of the FCU Act, 12 U.S.C. 1757(4), and the incidental powers clause). Similarly, an FCU has the limited authority under the incidental powers clause to sell data processing capacity in excess of the FCU's immediate needs.

The NCUA Board welcomes comments on the proposed amendment as well as on any other issues.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Section 701.26 of NCUA's Rules and Regulations applies only to FCU's.

List of Subjects in 12 CFR Part 701

Credit unions, Service contracts, Contracts.

By the National Credit Union Administration Board on November 13, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA is proposing to amend its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761a, 1766, 1767, 1782, 1784, 1787, and 1789.

In addition, § 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1782 and 42 U.S.C. 3601–3610.

2. Section 701.26 is revised to read as follows:

§ 701.26 Credit Union Service Contracts.

(a) A Federal credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in activities and/or services which relate to the daily operations of credit unions. Contracts for activities and services are limited to those where the service/activity is to be provided by a third party to a credit union and/or other parties. Agreements must be in writing, and shall advise all parties subject to the agreement that the goods and services provided shall be subject to examination by the NCUA Board to the extent permitted by law.

(b) Where any agreement calls for, or requires, the payment in advance of the actual or estimated charges for more than 3 months, such payment shall be deemed an investment in a credit union service organization and subject to the limitations delineated in sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act [12 U.S.C. 1757(7)(I) and 1757(5)(D)).

[FR Doc. 89–27244 Filed 11–20–89; 8:45 am]

BILLING CODE 7535–01–M

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Retirement Benefits for Employees of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Request for comments.

SUMMARY: The National Credit Union Administration ("NCUA") Board, as part of its periodic review of its regulations, has reviewed § 701.19—Retirement Benefits for Employees of Federal Credit Unions. The Board does not believe that the regulation is in need of modification. The NCUA Board requests comments on whether any amendments should be made to § 701.19.

DATE: Comments must be received on or before February 20, 1990.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael McKenna, Staff Attorney, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTAL INFORMATION: A Paperwork Reduction Analysis is not required since this section contains no paperwork requirements.

Background

Section 701.19 states that Federal credit unions (FCU's) are authorized to provide retirement benefits to employees and compensated officers. Since FCU's do not have general trust powers, the rule sets forth those limited situations where an FCU can occupy the position of trustee or custodian with respect to retirement accounts. The rule also requires that any FCU which occupies the position of fiduciary must provide for appropriate liability insurance. In 1986, Congress changed the types of retirement plans FCU's could offer their employees and officers. Prior to 1986, FCU's could offer deferred compensation plans pursuant to Internal Revenue Code section 401(k). Pursuant to the Tax Reform Act of 1986, tax-exempt employers, including Federal credit unions, who choose to offer deferred compensation plans must do so pursuant to Internal Revenue Code section 457. Section 457 of the Internal Revenue Code provides that if a deferred compensation arrangement qualifies as an "eligible deferred compensation plan", the employees are not taxed on the deferred amounts or any income attributable to it until the compensation is paid or otherwise made

available to the employee. To be eligible, the arrangement must meet the requirements set forth in Internal Revenue Code section 457(b).

Section 701.19 was last reviewed in 1983. (*See* 48 FR 55423 (6/13/89).) At that time, a technical amendment was made to the rule and it remains in that form today. The NCUA receives few, if any, inquiries concerning the interpretation of § 701.19. The NCUA has reviewed § 701.19 and does not believe any further changes are necessary at this time. Although the NCUA Board does not believe any changes are necessary, the NCUA Board invites public comment on any recommended changes to § 701.19.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that § 701.19 does not have a significant impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12812

This regulation applies only to federally-chartered credit unions. Any amendment to the regulation would have no effect on the regulation of state-chartered credit unions.

List of Subjects in 12 CFR Part 701.19

Credit unions, Retirement plans, Trustee.

By the National Credit Union Administration Board on November 13, 1989.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-27245 Filed 11-20-89; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 724

Trustees and Custodians of Pension Plans

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration ("NCUA") Board, as part of its periodic review of its regulations, has reviewed Part 724. The proposed rule authorizes Federal credit unions to offer self-directed IRA and Keogh accounts and act as the custodian of such accounts. The proposed rule is being added to reflect the guidance issued in Interpretive Ruling and Policy Statement Number 85-1.

DATE: Comments must be received on or before February 20, 1990.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael McKenna, Staff Attorney, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 724 of NCUA's Regulations (OMB No. 3133-0035) relating to Federal credit unions acting as trustees and custodians of pension plans. The proposed rule is within these collection requirements.

Background

Part 724 was last reviewed in 1981. At that time, the regulation was redesignated by NCUA. (*See* 43 F.R. 47437, September 28, 1981) No other changes have occurred. The NCUA receives few, if any, inquiries concerning the interpretation of part 724.

Part 724 allows Federal credit unions (FCU's) to act as custodians for Individual Retirement and Keogh Accounts provided that the funds are invested in share or share certificate accounts in the FCU. The regulation also requires that the plan provide for the appointment of a successor trustee other than a Federal credit union.

Interpretative Rule and Policy Statement 85-1

In 1985, the NCUA Board issued Interpretive Rule and Policy Statement 85-1 ("IRPS 85-1") (*See* 50 Fed. Reg. 48176 (11/22/85).). IRPS 85-1 permits Federal credit unions to offer and serve as trustee or custodian of IRA and Keogh accounts where all funds are initially deposited in a share or share certificate account at the FCU and any subsequent transfers of such funds are solely at the discretion and direction of the FCU member establishing the account. The proposed rule will incorporate this authorization to permit FCU's, at the direction of the member, to facilitate transfers of IRA or Keogh funds to other assets when the FCU is the trustee or custodian of the account.

As stated in the preamble to IRPS 85-1, the establishment of self-directed IRA and Keogh accounts at FCU's will require an FCU to engage only in custodial duties, with no exercise of investment discretion. Further, an FCU is not permitted to provide investment advice. An FCU simply arranges for the purchase or sale of assets upon the instructions of the member. The IRA or Keogh participants bear the risks of their investment decisions. The part of the IRA or Keogh account invested in other than shares or share certificates at the FCU is not insured by the National Credit Union Share Insurance Fund. An FCU should take appropriate measures to ensure that this fact is understood by the member.

IRPS 85-1 did not authorize FCU's to handle member orders to buy or sell securities or to otherwise engage in activities that would require registration by the FCU as a broker-dealer and trigger related responsibilities under Securities and Exchange Commission regulations and Federal securities laws. The proposal also does not authorize this type of activity. Thus, in order to offer self-directed IRA and Keogh accounts to members, and to serve as custodian or trustee for such accounts, it will be necessary for an FCU to have an arrangement with a securities broker-dealer, pursuant to which the broker-dealer receives all buy and sell orders from the member and executes the securities trade.

The NCUA Board invites comments on all aspects of part 724.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, should not have a significant impact on a substantial number of small credit unions. The proposed rule simply clarifies FCU's existing authority. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This regulation applies to federally-chartered credit unions. Any amendment to the regulation would have no affect on the regulation of state-chartered credit unions.

List of Subjects in 12 CFR part 724

Credit union, Trustees, Pension plans.

By the National Credit Union Administration Board on November 13, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR Part 724 as follows:

PART 724—[AMENDED]

1. The authority citation for part 724 is revised to read as follows:

Authority: 12 U.S.C. 1766 and 1787.

2. Section 724.1 is revised to read as follows:

§ 724.1 Federal Credit Unions Acting as Trustees and Custodians of Pension Plans.

A Federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. A Federal credit union is authorized to serve as custodian for self-directed IRA and Keogh accounts if funds are initially deposited in a share or share certificate account in the Federal credit union. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The Federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

[FR Doc. 89-27247 Filed 11-20-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWP-24]

Proposed Revision of Point Mugu, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revise the description of the Point Mugu, California, control zone. This action would eliminate the assumption by Point Mugu of the Oxnard-Ventura control zone when it is not effective.

DATE: Comments must be received on or before January 1, 1990.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 89-AWP-24, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, System Management Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for commenters will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the description of the Point Mugu, CA, control zone. Currently, Point Mugu assumes control of the Oxnard-Ventura County control zone when Oxnard Tower and weather service terminate operations. Since weather reporting service, which is a requirement of a control zone, will be available, control of Oxnard-Ventura will be terminated. The 700 foot transition area surrounding Oxnard-Ventura will provide sufficient controlled area for conduct of instrument approach procedures.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. It, therefore-(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Point Mugu, CA [Revised]

Within a 5-mile radius of NAS Point Mugu (lat. 34°07'05"N., long. 119°07'20"W.) and within the arc of a 12-mile radius circle centered on the Point Mugu TACAN, extending clockwise from the 200° radial to the 252° radial.

Issued in Los Angeles, California, on October 31, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-27283 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-38]

Proposed Alteration of VOR Federal Airway V-179; Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-179 by extending the airway from Dublin, GA, to Brunswick, GA, via a direct route. A study of air traffic in that area revealed a need for a direct airway to save fuel and to improve flight planning. This action would reduce controller workload.

DATE: Comments must be received on or before January 2, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-38, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend VOR Federal Airway V-179 from Dublin, GA, direct to Brunswick, GA. A study of air traffic activity revealed a need for a direct airway between Dublin and Brunswick to improve traffic flow in this area. This action would save fuel and reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Revised]

2. Section 71.123 is amended as follows:

V-179 [Revised]

From Brunswick, GA; Dublin, GA, to INT Dublin 309°T(310°M) and Athens, GA, 222°T(222°M) radials.

Issued in Washington, DC, on November 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27282 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-45]

Proposed Establishement of Transition Area; Taylor, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Taylor, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP), utilizing the Austin Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing this new SIAP to the Taylor Municipal Airport. Coincident with this proposal would be the changing of the status of the Taylor Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before January 5, 1990.

ADDRESS: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-45, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-45." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Taylor, TX. The development of a new VOR/DME-A SIAP, utilizing the Austin VORTAC, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing this new SIAP to the Taylor Municipal Airport. The proposed Taylor, TX, Transition Area will not infringe upon the existing Austin, TX, Transition Area or any other existing transition area. Coincident with this proposal would be the changing of the status of the Taylor Municipal Airport from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established boy of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Taylor, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Taylor Municipal Airport (latitude 30°34'12" N., longitude 97°27'00" W.)

Issued in Forth Worth, TX, on October 31, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-27284 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-AGL-15]

Proposed Alteration of Jet Route J-16

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-16 between St. Joseph, MO, and Joliet, IL. The realignment would allow for more efficient handling of air traffic departing the Chicago metropolitan area.

DATE: Comments must be received on or before January 2, 1990.

ADDRESSES: Send Comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 89-AGL-15, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekday, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J-18 between St. Joseph, MO, and Joliet, IL. The realignment would allow for more efficient handling of air traffic departing the Chicago metropolitan area. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follow:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-18 [Amended]

By removing the words "to Moline, IL." and substituting the words "Bradford, IL; to Joliet, IL."

Issued in Washington, DC, on November 8, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27285 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-19-89]

RIN 1545-AN30

Treatment of Partnership Liabilities; Allocations Attributable to Nonrecourse Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations concerning the treatment of partnership liabilities and the allocation of deductions attributable to nonrecourse debt. The temporary regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 22, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (PS-19-89), Room 4429, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mary Munday, 202-377-9470 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under sections 752 and 704(b) of the Internal Revenue Code of 1986.

For the text of the temporary regulations, see T.D. 8274 published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the amendments to the regulations.

Pursuant to the extension of time published in the **Federal Register** for Tuesday, June 20, 1989, (54 FR 25878), comments and requests for a public hearing on PS-229-84 must be delivered or mailed by January 22, 1990.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-27105 Filed 11-20-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Ventilation Review; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines.

DATE: Written comments must be received on or before February 9, 1990.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 25, 1989, (54 FR 35356) MSHA announced the availability of a report of findings and recommendations regarding belt conveyor entry ventilation in underground coal mines. Belt conveyor entry ventilation and related matters addressed in the new report are subjects of MSHA's proposed ventilation standards for underground coal mines. The Agency is currently preparing the final rule and believes that public comments on these issues will be useful in drafting the final rule.

Based upon requests from the mining community, the original deadline for submitting comments was extended from September 25, 1989, to November 27, 1989. Due to additional requests, the deadline is further extended to February 9, 1990. All interested parties are encouraged to submit comments prior to this date.

Dated: November 17, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-27473 Filed 11-20-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 8; Notice 89-23]

RIN 2105-AB55

Standard Time Zone Boundary in State of Kansas; Proposed Relocation

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Board of Commissioners of Kearny County, Kansas, DOT proposes to relocate the boundary between mountain and central time in the State of Kansas in order to place the entire county in the central time zone. Public comment on whether this proposal would "serve the convenience of commerce" is invited. In addition, we invite comment on the appropriate effective date for the change, if a final rule is adopted.

DATES: Comments must be received by January 22, 1990, to be assured of consideration. Comments received after that date will be considered to the extent practical. If the time zone boundary is changed as a result of this rulemaking, the expected effective date is 2 a.m. MST Sunday, April 1, 1990. We request comment, however, on making the change effective 2 a.m. MST, Sunday, October 28, 1990, in order to minimize the inconvenience of moving the clock forward two hours.

Public hearing. The public hearing will be held Thursday, November 30, 1989 at 7 p.m. (MST). The public hearing will be chaired by a representative of DOT. The hearing will be informal and will be tape-recorded for inclusion in the docket. Persons who wish to express opinions or ask questions at the hearing do not have to sign up in advance or give any prior notification. To the greatest extent practicable, the DOT representative will provide an opportunity to speak for all those wishing to do so. Priority will be accorded those who have not previously spoken.

ADDRESS: Comments should be sent to Documentary Services Division, Attention: OST Docket No. 8, Department of Transportation, C-55, Room 4107, Washington, DC 20590. Persons who wish acknowledgement

BEST COPY AVAILABLE

that their comments have been received should include a self-addressed stamped postcard, on which the Docket Clerk will note the date and time of receipt.

The public hearing will be held at the following location: The Memorial Building, 207 North Main Street, Lakin, Kansas.

FOR INFORMATION CONTACT:
Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street SW., Washington, DC 20590. (202) 9306.

SUPPLEMENTARY INFORMATION:

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 USC 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Time Observance in Kansas: Current Situation

The State of Kansas is currently in both the central and mountain time zones. Although most of the state is in the central time zone, all of Sherman, Wallace, Greely and Hamilton Counties, and most of Kearny County, are located in the mountain time zone. Kansas is not unique in spanning two time zones or in having split observance within the county. A total of twelve States are in two time zones, and eleven counties are split by time zone boundaries.

Time Observance in Kansas: History

The appropriate time zone for western Kansas has been the subject of some debate since time zones were first established. The time zone boundary was initially set by the Interstate Commerce Commission in 1919 (51 ICC 273, 555), and amended by the Commission in 1927 (129 ICC 289). The 1927 amendment moved the southern end of the boundary, south of Dodge City, westward to the Colorado border, and placed in the central zone Stanton, Grant, Haskell, Morton, and Stevens Counties, and portions of Gray, Ford, Seward, Meade and Clark Counties that had previously been in the mountain zone. These divisions were based on "the points at which the more important lines of railroad changed from one standard time to another."

In 1967, in response to a Joint Resolution of the State Legislature signed by the Governor of Kansas, the Department proposed to place all of Kansas in the central time zone and solicited public comments. Three-quarters of the approximately 2,000 comments filed opposed the change, and the Department withdrew the proposal.

In 1969, DOT conducted another proceeding in response to requests from local government officials, businessmen, and residents. The Department proposed to extend the central time zone to include all but the five western counties in Kansas. Over 6,000 comments, a majority supporting the change, were filed. It is interesting to note that nearly 20 percent of the population of Kearny County filed comments, with a ratio of 2.6 to 1 of the comments favoring retention of mountain time.

One month after that final rule was effective, the Department received a petition by 216 voters of Unified School District #216. The petition asked the Department to move the central time zone boundary from the Kearny County line to the school district line. The Department granted the petition and proposed placing the eastern third of Kearny County in the central time zone, and western two-thirds of the county in the mountain time zone. The NPRM noted that "While it is the policy of the Department to establish time zone boundaries along State or county lines, so far as possible, it should be noted that Kearny County presents a unique problem because of Deerfield's nearness to and its social and economic ties with Garden City, a community of significant size a few miles to the east in the Central time zone, and because of its corresponding remoteness from Lakin." Public comments were nearly unanimous in support of the proposal. In addition, the Board of County Commissioners wrote to the Department and stated that the proposed change would not present any problems in the administration of county government, and that the informal observance of two time zones within the county had not, in the past, presented any problems. The Department made the requested change in 1970.

The Current Proposal

The Board of County Commissioners of Kearny County passed a resolution requesting the Department of Transportation to move the central standard time zone line westward to include all of Kearny County. The resolution noted that the major industries of the county currently operate on central time and that the change would unify the whole county. A "straw poll" conducted in the county by the County Commissioners indicated that a majority (61 percent) of those people expressing their opinions favored the change. The resolution found that it would "serve the convenience of commerce" to move the time zone boundary and called upon the Department to make the change effective October 29, 1989. In a follow-up letter, the representative of the County Commissioners noted that all the state offices and businesses located to the east of the county operate on central time, and that the time difference results in the loss of up to three hours per day in telephone communication time. Both major gas production companies located in Kearny County operate their plants and schedule their field employees on central time. All three of the major feedlots in Kearny County operate on central time. All of the radio and television programming that is broadcast into the County is done so on a central time schedule. Finally, the letter noted that the school system entered into a cooperative agreement with other school systems in the area to obtain satellite television programming for classroom use. The letter noted that because part of the county is on mountain time, there have been numerous scheduling difficulties in implementing programming.

Procedure for Changing a Time Zone Boundary

Under the DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a prima facie case for the proposed change. The petitioners have made this showing. In this notice of proposed rulemaking, DOT is proposing to make a change and is requesting public comment. In order to gather the most complete information, we will be holding a public hearing in Kearny County. The decision of whether to actually make the change in Kearny County will be based upon the information received at the hearings, written comments and other information placed in the docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal.

As is usual in time zone proceedings, DOT reserves the right to grant more or less than what the Board of County Commissioners has requested. It is possible that the information gathered as part of this proceeding will support a time zone boundary change different from what is currently proposed. For example, the information gathered in this proceeding may support moving only part of the county, moving parts of adjoining counties, or making no time change at all. In addition, it is possible that the information may support moving other areas in western Kansas. DOT is free to act accordingly, and interested persons should direct their comments to these alternatives.

Impact on Observance of Daylight Saving Time

This time zone proposal does not affect the observance of daylight saving time (DST). Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance. A State in more than one time zone may have its exemption apply only to that part of the State that is in the more easterly time zone. Kansas has not exempted itself, in whole or in part, from observing daylight saving time. This proceeding will not affect any daylight saving time observance in Kansas.

Regulatory Impact

I certify under the criteria of the Regulatory Flexibility Act that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because of its highly localized impact. Furthermore, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason. The economic impact is so minimal that it does not warrant preparation of a full regulatory evaluation. The proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and I have determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because of the local impact of this proposal, we will, however, be soliciting the views of the local and state governments. Finally, I have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and that an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

In consideration of the foregoing, DOT proposes to amend title 49, Code of Federal Regulations, part 71 as follows:

(1) Authority for part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 15 U.S.C. 260–267.

(2) Revise paragraph (d) of § 71.7 to read as appears below:

§ 71.7 Boundary line between central and mountain zones.

* * * * *

(d) *Kansas-Colorado.* From the junction of the west line of Hitchcock County, Nebraska, with the Nebraska-Kansas boundary westerly along that boundary to the northwest corner of the State of Kansas; thence southerly along Kansas-Colorado boundary to the north line of Sherman County, Kansas; thence easterly along the north line of Sherman County to the east line of Sherman County; thence southerly along the east line of Sherman County to the north line of Logan County; thence westerly along the north line of Logan County to the east line of Wallace County; thence southerly along the east line of Wallace County to the north line of Wichita County; thence westerly along the north line of Wichita County to the east line of Greeley County; thence southerly along the east lines of Greeley County and Kearny Counties; thence westerly along the south line of Hamilton County to the Kansas-Colorado boundary; thence southerly along the Kansas-Colorado boundary to the junction of that boundary with the north boundary of the State of Oklahoma.

* * * * *

Issued in Washington, DC, on November 15, 1989.

Phillip D. Brady,
General Counsel.

[FR Doc. 89–27258 Filed 11–16–89; 10:15 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1314

[Ex Parte No. 290; Sub-No. 6] [1]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of the discontinuance of proceeding.

SUMMARY: In comments received in response to the Advance Notice of Proposed Rulemaking for this proceeding, (53 FR 31720, August 19, 1988) the publisher of the Rail Carrier Cost Recovery (RCCR) tariffs indicated that it sought an opportunity to demonstrate its willingness to give more consideration to the user public in the preparation and publication of the RCCR tariffs. Consequently, the Commission announced that further action on the proposal would be held in abeyance until September 5, 1989. During this 180-day period Commission staff would monitor the RCCR tariff filings and review any additional complaints filed by the tariffs' users. In view of the limited number of new complaints and our finding that most of the concerns which prompted the complaints and this proceeding have been alleviated, we will discontinue the proceeding.

DATE: This proceeding is discontinued effective November 21, 1989.

FOR FURTHER INFORMATION CONTACT:
Lawrence C. Herzig, (202) 275–7358, or Charles E. Langyher, (202), 275–7739, [TDD for hearing impaired, (202) 275–1721.]

SUPPLEMENTARY INFORMATION: In 1988 the Commission's staff received informal criticism from users of the Rail Carrier Cost Recovery (RCCR) tariffs asserting that the tariffs had become extremely cumbersome to follow and apply. Considering this, the Commission issued an Advance Notice of Proposed Rulemaking seeking comments and recommendations from interested parties regarding the manner in which information was being conveyed in the RCCR tariffs.

Comments were received which offered many suggestions for improvements of the tariffs. In light of those comments the publisher of the tariffs indicated its intent to make the tariffs more "user friendly." To allow the publisher the opportunity to demonstrate its intentions, we withheld further action for 180 days—until September 5, 1989. The notice of that decision, published at 54 FR 9863, stated that staff would monitor the RCCR filings during the observation period and anlayze the merits of any new complaints filed by the tariffs' users.

On September 12, 1989, the Commission received a statement from the publisher of the RCCR tariffs that details the actions taken to address the concerns of tariff users. In an accompanying letter the publisher indicated that copies of the report were sent to all parties to the proceeding. We have not received any comments or criticisms concerning the statement and

[1] As a result of the Commission's action in Ex Parte No. 444, *Electronic Filing of Tariffs*, 54 FR 42950, new regulations in 49 CFR Part 1314 became effective November 8, 1989, for rail carriers. 49 CFR 1314.17 is the new regulation dealing with rail carrier cost recovery tariffs.

have received very few complaints, either in writing or by telephone, from RCCR tariff users during the 180-day period.

The publisher indicates (and the Commission's staff confirms) that the presentation information in the RCCR tariffs has been considerably improved. Of particular significance: (1) the publisher has significantly reduced the use of partial item amendments in the tariffs (the excessive use of partial amendments was particularly troublesome to tariff users); (2) the indices shown in the tariffs are being presented in a much more useful fashion and users are now being provided with complete and fully updated references to any changes in the commodity listings; and (3) the publisher has adopted, as policy, our earlier suggestion that only five supplements to each RCCR tariff be in effect at any one time and that the amount of supplemental matter not exceed 70 percent of the total pages in the original tariff.

We understand that on occasion the number of carrier instructions for prompt amendments will lead to excessive supplemental matter. However, the publisher indicates that this will usually occur only in the first few weeks that a new RCCR tariff is in effect. Therefore, we are satisfied with the publisher's announced intention of meeting the 5 supplement/70-percent limitations is often as possible. This will be a significant improvement over the situation which existed prior to the initiation of this proceeding. We recognize that to place strict regulatory restrictions on the amount of supplemental matter could impede what is now a highly competitive process.

In view of the noteworthy improvements that have been made and the stated intentions of the publisher, we do not, at this point, see a need to continue this rulemaking. Therefore, we will discontinue the proceeding. Should staff receive future complaints concerning the format of RCCR tariffs, however, this proceeding could be reopened to consider regulatory remedies.

List of Subjects in 49 CFR Part 1314

Railroads.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant economic impact on a substantial number of small entities.

This notice is issued under authority of 49 U.S.C. 10321 and 10762 and 5 U.S.C. 553.

It is ordered:

1. This proceeding is discontinued.
2. This decision is effective November 21, 1989.

Decided: November 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27379 Filed 11-20-89; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 54, No. 223

Tuesday, November 21, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989–1990 Marketing Year Penalty Rate for Puerto Rican Cigar-Filler (Type 46) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination: 1989–1990 Marketing Year Penalty Rate for Puerto Rican Cigar-Filler (type 46) Tobacco.

SUMMARY: This notice sets forth the determination of the 1989–1990 marketing year penalty rate for excess Puerto Rican Cigar-Filler (type 46) Tobacco. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Agricultural Program Specialist, Tobacco and Peanuts Divisions, USDA–ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–4281.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposal rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion: Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tabacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. All Puerto Rican Cigar-Filler (type 46) Tobacco produced in the immediately preceding year was pledged to the Commodity Credit Corporation under the price support loan program. Consequently NASS market prices are not available. The penalty rate will be based on seventy-five (75) percent of the average loan value of Puerto Rican Cigar-Filler (type 46) Tobacco pledged to the Commodity Credit Corporation under the price support loan program.

Since the determination of the 1989–1990 marketing year rates of penalty reflects only a mathematical computation which is required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the 1989–1990 marketing year penalty rate for Puerto Rican Cigar-Filler (type 46) Tobacco subject to marketing quotas is as follows:

RATE OF PENALTY

(1989–1990 Marketing Year)

Kind of tobacco	Cents per pound
Puerto Rican Cigar-Filler (Type 46) Tobacco	57

Signed at Washington, DC, on November 14, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc 89-27247 Filed 11-20-89; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Proposed Determinations With Regard To Planting of Alternative Approved Non-Program Crops Under the 1990 Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Commodity Credit Corporation (CCC) on April 5 requested comments regarding the planting of approved non-program crops (ANPC) on "0/92" and "50/92" conserving use (CU) and acreage conservation reserve (ACR) acres for the 1990 crops. It was announced on August 7 that the production of ANPC's on land in CU and ACR would not be permitted. However, subsequent interest in this provision has prompted CCC to request additional comments on this isue and to obtain information on the need and net return potential of the ANPC's. Accordingly, CCC will further review this issue to determine the feasibility of planting ANPC's on CU and ACR and whether a charge should be established for the privilege of planting on CU and ACR.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act").

EFFECTIVE DATE: Comments must be received on or before December 11, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741-South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis

Division, USDA–ASCS, Room 3744-South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4418.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non-major".

This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs of prices for consumers, individual industries, Federal, State or local Governments, or geographical region, or (3) significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that this action will not increase the Federal paperwork burden for individual, small businessmen and other persons. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of propoosed rulemaking with respect to the subject matter of this proposed rule. Therefore, the Regulatory Flexibility Act is not applicable.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

BACKGROUND: On April 5, 1989 (FR Vol. 54, No. 64) a Notice of Proposed Determinations was published which set forth provisions common to the 1990 feed grains, wheat, upland cotton, ELS cotton, and rice price support and production adjsutment programs.

Comments were requested as to whether to permit the production of ANPC's on acreage otherwise required to be devoted to CU and ACR under the "0/92" and "50/92" programs and the annual acreage reduction programs. Five respondents favored the planting of ANPC's on CU acres while 10 opposed this provision. There respondents favored planting ANPC's on ACR acres with none opposed.

On August 7 in was announced that the production of ANPC's on land idled under the various acreage reduction programs will not be permitted for the 1990 crop. However, since this announcement, there has been renewed interest with regard to planting various ANPC's on CU and ACR.

Due to the inflexible planting requirements of the 1949 Act with regard to the program crops, the flexibility to plant non-program crops has been severely restricted. As an example, the national acreage of sunflowers has dropped from a high of 5.6 million acres in 1979–80 to 1.8 million acres for 1989/90. Decreased sunflower production has led to lower sun oil exports and has threatened the economic viability of crushing plants currently in operation.

Permitting the planting of ANPC's on CU and ACR acres would provide additional producer flexibility for 1990 crop plantings. Additionally, the planting of ANPC's on CU and ACR acres would provide increased producer net returns, as well as result in lower CCC program outlays.

In an effort to provide producers with a greater degree on planting flexibility, it has been determined that it may be appropriate to permit the production of ANPC's on "0/92" and "50/92" CU and ACR acreage.

Accordingly, CCC seeks further comments and information on the planting of ANPC's on "0/92" and "50/92" and ACR acres.

a. Planting of ANPC's on "0/92" and "50/92" CU Acreage

Sections 101A(c)(1)(G), 103(c)(1)(G), 105C(c)(1)(I), and 107D(c)(1)(K) provide that the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, any part of acreage otherwise required to be devoted to CU as a condition of qualifying for payments to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye or commodities for which no substantial domestic production or market exists but that could yield industrial raw material being imported, or likely to be imported into the United States, or commodities grown for experimental purposes (including kenaf), except that the Secretary may permit such acreage to be devoted to such production only if the Secretary determines that:

(1) The production is not likely to increase the cost of the price support program and will not effect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

Accordingly, it is proposed to permit the planting of ANPC's on "0/92" and "50/92" acres for the following commodities: Guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, industrial raw material commodities and experimental crops.

It is further proposed to either reduce or eliminate "0/92" and "50/92" program payments for the privilege of planting ANPC's on such acreage. Comments related to this issue should include:

(1) Whether the Secretary should permit the production of ANPC's on wheat, feed grain, upland cotton and rice program CU and ACR or just on specific program crops.

(2) Identify the industrial raw material commodities and experimental crops that should be permitted.

(3) Justification of planting various ANPC's.

(4) Production cost and market price associated with the ANPC.

(5) The impact that the production of the ANPC's may have on the existing production of program and non-program crops.

(6) The availability of processing facilities and marketing opportunities for the various ANPC's.

(7) Whether the Secretary should charge a fee or reduce the deficiency payment for the privilege of planting on ANPC and if so, how much.

(8) Other pertinent data.

b. Planting of ANPC's on ACR Land

Sections 101A(f)(3)(B), 103(f)(3), 103(h)(8)(A)(B), 105C(f)(4)(B), and 107D(f)(4)(B) of the 1949 Act provide that the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not adversely affect farm income.

Accordingly, it is proposed to allow ANPC plantings on ACR. Also, it is further proposed that a change should be levied for such privilege. Comments are requested with regard to this issue.

Consideration will be given to any data, views and recommendations that are received relating to these issues.

Authority: 7 U.S.C. 1441–1, 1444–1, 1444e, 1445b–3; 15 U.S.C. 714b and 714c.

Signed at Washington, DC, on November 15, 1989.

John A. Stevenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–27246 Filed 11–20–89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on the Black Population for the 1990 Census; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee on the Black Population for the 1990 Census. The meeting will convene on December 8, 1989 at the Howard Johnson Plaza Hotel, 8500 Annapolis Road, New Carrollton, Maryland 20784.

The Committee is composed of 12 members appointed by the Secretary of Commerce. The Committee provides an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The Committee will draw on the knowledge and insight of its members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the December 8 meeting that will begin at 8:45 a.m. and end at 5:00 p.m. is a continuation of issues of the meetings held October 26–27, 1989 (see **Federal Register**/Volume 54, No. 192/October 5, 1989). The meeting will cover: (1) Review of Census Bureau responses to Committee recommendations; (2) census promotion update; (3) census evaluation of outreach and promotion products, and other items of discussion.

The meeting is open to the public and a brief period is set aside at the end of the meeting for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Person wishing additional information regarding the meeting or who wish to submit written statements may contact Ms. Diana Harley, Decennial Planning Division, Bureau of the Census, Room 3541, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone: (301) 763–4275.

Dated: November 16, 1989.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–27356 Filed 11–20–89; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings on sablefish limited access alternatives and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) is soliciting comments on its draft Supplemental Environmental Impact Statement/Regulatory Impact Review (SEIS/RIR) which analyzes limited entry alternatives for the longline sablefish fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands. The document is available upon request from the Council at the address below.

DATES: Comments are invited through January 2, 1989. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the five information sessions followed by public hearings. The Council is scheduled to review public comments and take final action at its January 16–19, 1990, meeting.

ADDRESSES: The draft SEIS/RIR document is available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Comments should be sent to Dick Tremaine, at the Council address.

FOR FURTHER INFORMATION CONTACT: Dick Tremaine, 907–271–2809.

SUPPLEMENTARY INFORMATION: The five information sessions followed by public hearings are scheduled as follows:

1. November 20, 1989, 9:00 a.m., Senior Citizens Center, Kodiak, Alaska.

2. November 27, 1989, 7:00 p.m., City Council Chambers, Petersburg, Alaska.

3. November 28, 1989, 1:30 p.m., Centennial Building, Sitka, Alaska.

4. December 13, 1989, 9:00 a.m., NPFMC, 605 W. 4th Avenue, Third Floor, Anchorage, Alaska.

5. December 19, 1989, 9:00 a.m., NMFS Montlake Lab, Seattle, Washington.

Dated: November 15, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–27230 Filed 11–20–89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Postponement of Closed Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The closed meeting of the South Atlantic Fishery Management Council's Scientific and Statistical Selection Committee, scheduled for November 9, 1989, at the Council's headquarters, and previously published at 54 FR 46102, has been postponed. Information regarding rescheduling of the meeting will be published in the **Federal Register** at a later date.

For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: November 14, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–27231 Filed 11–20–89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council Rescheduling of Closed Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The closed meeting of the South Atlantic Fishery Management Council's Advisory Panel Selection Committee, scheduled for November 9–10, 1989, at the Council's headquarters, and previously published at 54 FR 46103, has been rescheduled. The agenda for the closed meeting has also been revised.

The Committee will meet on November 28, 1989, from 10 a.m., to noon at the Council's headquarters (address

below). Due to the shortened meeting time, only the membership of the Shark Advisory Panel will be reformulated. At a later date and closed session, the remaining advisory panels will be reformulated, and new members selected for the Billfish, King and Spanish Mackerel, Law Enforcement, Snapper/Grouper, Spiny Lobster, Swordfish, and Habitat and Environmental Protection Advisory Panels. Information regarding rescheduling of this meeting will be published in the **Federal Register**.

For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: November 14, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–27232 Filed 11–20–89; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Live Hog Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted a proposal to amend a number of the terms and conditions of its live hog futures contract relating to the contract's size, par delivery unit specifications, weight requirements and discounts for deliverable hogs, and locational differentials. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before December 21, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Reference should be made to the amendments to the CME live hog futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The live hog futures contract currently specifies a par delivery unit of 30,000 pounds of U.S. No. 1, 2, 3 and 4 grade hogs (barrows and gilts) in the weight range of 210 to 240 pounds. The contract stipulates that the average weight of the hogs in the delivery unit and at least 90 hogs in each delivery unit must fall within the 210 to 240 pound weight range. Delivery units containing live hogs weighing under 210 pounds but not less than 200 pounds and weighing over 240 pounds but not more than 250 pounds are deliverable on the current contract at a discount of 50 cents per hundredweight. Hogs weighing less than 200 pounds or more than 250 pounds are not deliverable on the contract.

The existing provisions of the futures contract also specify seven (7) delivery points. At present, the contract provides for par delivery only at Peoria, Illinois. Futures deliveries at Omaha, Nebraska; Sioux City, Iowa; and East St. Louis, Illinois are at a discount of 25 cents per hundredweight. Deliveries at Kansas City, Missouri; Sioux Falls, South Dakota; and St. Joseph, Missouri are at a discount of 50 cents per hundredweight. Delivery of live hogs at St. Paul, Minnesota is at discount of 75 cents per hundredweight.

The proposed amendments would: (1) Increase the size of the contract's delivery unit from 30,000 pounds to 40,000 pounds; (2) increase the par weight range of deliverable hogs from 210 to 240 pounds to a new par weight range of 230 to 260 pounds; (3) increase from 90 to 150 the number of hogs in a delivery unit which must fall into the par weight range; (4) impose a discount of $3.00 per hundredweight for delivery of hogs weighing under 220 pounds but not less than 215 pounds; (5) specify a discount of $1.00 per hundredweight for the delivery of hogs weighing under 230 pounds but not less than 220 pounds and for heavier hogs weighing over 260 pounds but not more than 270 pounds; (6) specify a discount of $2.00 per hundredweight for the delivery of hogs weighing over 270 pounds but not more than 280 pounds; (7) stipulate that hogs weighing under 215 pounds or over 280 pounds are not deliverable on the futures contract; and (8) allow par delivery of hogs at Omaha, Nebraska; Sioux City, Iowa; and Sioux Falls, South Dakota as well as at Peoria, Illinois, the existing par delivery point, with no changes in the discounts for the remaining delivery points.

The Exchange maintains that the proposed changes reflect current conditions and practices in the cash hog market. In regard to the proposed increase in the contract's size from 30,000 pounds to 40,000 pounds, the Exchange notes that the standard size truckload of hogs has become larger, making it inconvenient and costly to deliver hogs in units of 30,000 pounds. The CME indicates that transporting hogs in truckload sizes of 40,000 pounds is economically more efficient than in truckloads of 30,000 pounds and that hogs can be safely shipped in 40,000-pound truckloads.

The Exchange submits that increasing the par weigh range to 230-260 pounds from 210-240 pounds would reflect the average current commercial slaughter weight of hogs, as packers are slaughtering and producers are marketing hogs at heavier weights. In this respect, the CME notes that data on slaughter hog weights reported by the U.S. Department of Agriculture (USDA) for seven primary hog markets show that the average weekly slaughter weight for the period 1984 to 1988 fluctuated between 230 and 260 pounds. The Exchange also states that increasing to 150 from 90 the number of hogs in a delivery unit which fall within the par weight range is necessary because of the larger proposed contract size, and also because packers are demanding more uniform hogs in addition to heavier hogs. According to the CME, the proposed increase in the number of hogs that must fall within the par weight range will result in fewer hogs falling outside the range of weights which are desirable to packers.

The Exchange maintains that the proposed discounts for hogs that weigh outside the par weight range reflect prevailing cash market price differentials. In this regard, the CME indicates that USDA data on price differentials between heavier hogs (230–250 pounds) and lighter hog (210–220 pounds) for 1988 show discounts for the lighter weight hogs which range from $0.00 to $4.00 per hundredweight. The Exchange also indicates that packers have reported discounts ranging from 25 cents to $3.00 per hundredweight for hogs weighing in excess of the proposed par weight range.

As noted above, the Exchange is proposing to expand the number of the par delivery locations to include Sioux City, Iowa; Omaha, Nebraska; and Sioux Falls, South Dakota in addition to Peoria, Illinois, as currently specified in the futures contract. The CME indicates that these changes are consistent with prevailing cash market pricing relationships among the contract's delivery points. In particular, the CME indicates that its evaluation of data on cash price differentials between the contract's delivery points indicate that cash prices for hogs at Sioux City, Omaha and Sioux Falls are no longer at a discount to cash prices for hogs at Peoria. In addition, the Exchange notes that above 24 percent of the hog production and 28.2 percent of the U.S. hog slaughter occurs in Iowa and that Sioux City, Omaha and Sioux Falls directly serve the Iowa area. The CME also notes that receipts of salable hogs at Sioux City, Omaha and Sioux Falls are comparable to or greater than receipts of saleable hogs at Peoria.

The CME intends to make the proposed amendments effective for all newly listed contract months following Commission approval.

The Commission is seeking comments on the proposed amendments noted above. In particular, the Commission is requesting comment on the extent to which the proposed changes reflect cash market conditions or practices.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 16, 1989.

Steven Manaster,

Director.

[FR Doc. 89–27307 Filed 11–20–89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Bio Data Questionnaire; ATC Forms 161 and 161A; and OMB Control Number 0701–0118.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: On occasion.

Number of Respondents: 11,500.

Annual Burden Hours: 5,750/

Annual Responses: 11,500.

Needs and Uses: These forms are used by field recruiters and Air Force ROTC staff in the processing of Officer Training School and AFROTC applications. The data will be used to help determine applicants' potential adaptability to Air Force commissioned service.

Affected Public: Individuals or households.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: November 16, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–27341 Filed 11–20–89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on December 13, 1989, January 17, February 21, and March 22, 1990, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–27349 Filed 11–20–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B–2

ACTION: Change in location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Review of the B–2 scheduled for November 7, at the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 54, No. 194, Page 41495, Tuesday, October 10, 1989, FR Doc. 89–23748) will be held at Edwards Air Force Base, California.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27346 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Management

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Defense Management scheduled for October 16-17, October 30-31, November 14-15, November 28-29, and December 12-13, 1989 as published in the **Federal Register** (Vol. 54, No. 189, Page 40474, Monday, October 2, 1989, FR Doc. 89-23106) has been cancelled.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27345 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B-2

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Review of the B-2 scheduled for October 16-17, 1989 at Edwards Air Force Base, California as published in the **Federal Register** (Vol. 54, No. 194, Page 41495, Tuesday, October 10, 1989, FR Doc 89-23748) has been cancelled.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27344 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in close session on December 5, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27348 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for November 14, 1989 as published in the **Federal Register** (Vol. 54, No. 177, Page 37968, Thursday, September 14, 1989, FR Doc. 89-21628) will be held on November 20, 1989.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27347 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices, Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, December 14, 1989.

ADDRESS: The meeting will be held at Palisades Institutes for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Deaprtments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 15, 1989.

[FR Doc. 89-27342 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 7-8, May 23-24, and October 17-18, 1990 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982) and that accordingly these meetings will be closed to the public.

Dated: November 16, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27343 Filed 11-20-89; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the Indian River County, FL, Beach Erosion Control Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The SEIS concerns the Vero Beach Segment of the project. The authorized project includes nourishment to a 1.68 mile segment of beach along Sebastian Inlet State Park and restoration of 1.74 miles of Vero Beach. Restoration and nourishment of Vero Beach will be used to provide protection to beach front properties from wave damage and beach erosion.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be answered by: Mr. William J. Fonferek, (904) 791-1690, Environmental Resources Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32201-4970.

SUPPLEMENTARY INFORMATION: 1. A Beach Erosion Control Study for Indian River County, Florida, was authorized by section 304 of the 27 October 1965 River and Harbor Act, Public Law 89-298. A Final Environmental Impact Statement (FEIS) was filed with the Environmental Protection Agency on 12 June 1981. The FEIS addressed the alternative methods of accomplishing the project goals and the impacts associated with those alternatives. The project was authorized by section 501(a) of the Water Resources Development Act of 1986.

2. A Supplemental Design Memorandum and SEIS is currently being prepared for the Vero Beach segment due to newly acquired biological and engineering survey data. Scoping has consisted of several public meetings of interested local citizens. During scoping and coordination with the U.S. Fish and Wildlife Service, the near-shore rock outcrops have been identified as a significant resource. Several alternative design modifications to the authorized project are being considered. Impacts to the outcrops and mitigation for losses of this resource from these alternatives will be addressed in the draft SEIS, to be available for public review by January 1, 1990.

3. Comments on alternatives and environmental concerns are invited from any affected Federal, State, or local agency, group or individual.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-27333 Filed 11-20-89; 8:45 am]

BILLING CODE 3710-AJ-M

Department of the Navy

National Environmental Policy Act; Record of Decision To Establish Mid-Atlantic Electronic Warfare Range Within Restricted Airspace R-5306A at BT-11 Piney Island; Carteret County, NC

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the Department of the Navy announces its decision to modify existing BT-11 range facilities within special use airspace R-5306A to establish the Mid-Atlantic Electronic Warfare Range (MAEWR). The Navy will install electronic threat emitters, associated platforms, and communications data link equipment at Piney Island and Marine Corps Outlying Field Atlantic. The Navy will also install a Tactical Aircrew Combat Training System (TACTS) and effect other planned range improvements that are required for continued safe operation of the range.

These actions are directly related to the Department's overall objective of providing specialized training to achieve and maintain the highest degree of combat readiness for its forces, including tactical aircraft and associated crews.

Advances in technology have allowed the development of air defense measures which require that pilot training include acquisition of skills to detect, identify, and evade the radars that are utilized to guide weapons which threaten the effectiveness and survivability of our pilots. This type of training is referred to as electronic warfare (EW) training. To achieve readiness, attack crews must train in hostile electromagnetic environments similar to those that would be encountered during an actual combat mission. Aircraft survivability depends upon frequent training under such realistic conditions. There is presently, however, a lack of sufficient electronic warfare simulation equipment to provide adequate aircrew training. This shortage is particularly acute in the mid-Atlantic region where significant numbers of Department of the Navy aircraft are based.

The MAEWR will provide a realistic means of training combat aircrews in tactics and survival techniques when attacking a defended target. The threat emitters are state-of-the-art radar simulators that mimic anti-aircraft weapons. The TACTS enables an accurate real time determination of aircraft speed and direction, as well as its yaw, pitch, and roll and will enable scoring the effectiveness of countermeasures taken by the aircraft.

BT-11 was chosen for establishment of the MAEWR by use of a tiered selection process. Locations throughout the East Coast of the United States were initially considered. Screening criteria for potential sites were divided into (1) "essential", (2) "needed" and (3) "ratable" categories. Essential criteria were existing DOD airspace with surface to ceiling restrictions, DOD controlled surface, land background, and location within 150 miles proximity to one major strike or close air support squadron home base. Needed criteria were an impact area and the ability of existing airspace to absorb electronic warfare training without a significant detrimental effect on current mission. Ratable criteria were airspace size, carrying capacity of the range, safety, support facilities, environment, and total cost.

By successive application of the essential criteria and needed criteria, seven possible sites were identified. Applying the ratable criteria, BT-11 was identified as the location best meeting criteria. Environmentally, BT-11/ Piney Island is not as sensitive as two of the remaining locations which would have required significant loss of wetlands acreage to construct access roads through a pocosin and salt marsh. These two sites had other drawbacks. Both had insufficient airspace volume to support EW training. One presented significant safety risks and the other would be unable to accommodate the MAEWR without degrading other types of training. At the same time, BT-11 because of its location in Pamilico Sound is more environmentally sensitive than the four sites on high ground. Of these four, one is utilized to the point that it could not accommodate electronic warfare training without degrading some other type of existing training. Use of this site would also present safety risks as it is adjacent to a high density low altitude airway and the airspace immediately to the north is heavily used by civilian aircraft approaching Orlando and aircraft enroute between the Tampa/Lakeland area and Melbourne. The second site has insufficient airspace volume for

aircraft maneuvering. The third has insufficient airspace volume and an insufficient target area. The fourth has insufficient airspace volume and would be unable to accommodate electronic warfare training without degrading other training.

The "no action" alternative, relocation alternative, and technological alternative were also considered.

BT–11 is located on Piney Island in Carteret County, North Carolina, and consists of 10 fixed and 3 mobile targets. It is operated by Marine Corps Air Station, Cherry Point. Usage of BT–11 for conventional and special weapons delivery practice has been sustained for many years. Water surface restricted areas assure the safety of watercraft operating in adjacent waters. Outlying Field Atlantic is located near the town of Atlantic. It is currently home for the Marines supporting targets at BT–9 and BT–11 and is used for occasional military exercises. Both Piney Island and Outlying Field Atlantic are within Federal Aviation Administration designated special use airspace R–5306A. R–5306A covers 760 square miles from the surface to 17,999 feet. It has been the principal training area for the Second Marine Aircraft Wing, located at Marine Corps Air Station, Cherry Point, North Carolina, for more than thirty years.

BT–11 presently has a helicopter pad, sheltered boat dock, landing craft/barge ramps, scored targets, a road network, and a power distribution system. Threat emitters for the MAEWR at BT–11 will be constructed at the marsh edge within the existing road network. All emitters will be on 10 foot high tripod towers except for two that will be mounted on 60-foot high towers. Approximately 50% of the emitters will be manned. Threat emitters at Outlying Field Atlantic will be on towers at a height sufficient for signals to clear the treeline.

The Draft Environmental Impact Statement (EIS) was filed with the public and EPA in June 1988. As a result of public concerns over noise and electromagnetic radiation, supplements to the Draft EIS were produced and distributed in August and November 1988 respectively. Public information briefings were conducted on December 13 and 14, 1988. Comments were received over a 90-day period, and public hearings were held on February 1 and 2, 1989. As a result of public comments, the MAEWR was modified to further reduce wetlands impact and limit threat emitters to existing federal property.

The major issues identified concerning the installation, associated construction, and operation of the MAEWR were noise, electromagnetic radiation (EMR), economic impacts, loss of wetlands, bird strikes, access to airspace, and cumulative effects of other Department of Defense projects. The resulting analyses and conclusions reached regarding these issues are summarized as follows:

Operation of the MAEWR will result in a four-hour-per-week increase in the manned operation of the BT–11 range. Range use could increase 10 to 15 percent. Usage would be concentrated in the vicinity of BT–11. Further increases are limited by the finite number of daylight hours, weather conditions, and the number of aircraft that can effectively use the target at one time. Based on the number and types of aircraft using the range, noise would not increase more than 3 dB and may decrease in some areas.

Operation of the MAEWR will produce EMR. Outside the Department of the Navy property, the power densities of the EMR will in all cases be below the 1982 American National Standards Institute (ANSI) standards. They will also be below the lower standards presently proposed. This remains true even in a worstcase analysis in which beams are focused on a single point at zero elevation. The sum of the power densities would still remain within safety limits. In addition, the emitters will be elevated and placed on platforms to further reduce any possible exposure.

Public concern was also expressed regarding possible danger posed by human exposure to EMR within the exposure limits of frequency and specific absorption rate specified by ANSI. After reviewing current literature and consulting specialists in the field of EMR, the Department of the Navy is convinced that there is no scientifically verified report of injury to humans exposed to EMR levels specified in ANSI guidelines. It is therefore concluded that EMR resulting from operation of the MAEWR should not pose a threat to humans. This position comports with a letter of February 2, 1989, from the Region IV of the United States Environmental Protection Agency (filed at Final EIS Volume III, p. 3) which provided in pertinent part that:

> Based on our review of biological effects associated with activities noted in the EMR Supplement, we conclude that the exposures resulting from the operation of the MAEWR as described should not cause significant health effects in the general public. This conclusion is based on the determination that exposures in areas accessible to the public will not equal or exceed the 1986 NCRP (National Council on Radiation Protection and Measurement) guideline for the general public. The NCRP general population guideline is the most restrictive U.S. guideline and limits exposure to a dose rate of 0.06 W/kg. The NCRP guideline for the general public is equal to one-fifth of the 1982 ANSI (American National Standards Institute) guideline.

With regard to public concerns on economic effects of MAEWR implementation, there are too many factors to reliably determine whether aircraft noise or the existence of the MAEWR would have a "chilling effect" (as alluded by some commentors) on the economic growth in areas underlying R–5306A. There is one report which found that aircraft noise around an urban airport resulted in a small decrease in property values. Military aircraft have been flying in R–5306A since the 1940s. There has been economic growth in the area; however, the effect of noise on that growth cannot be quantified. Complicating analysis of noise as it may affect the area underlying R–5306A are other major factors which are believed to inhibit economic growth, such as expansive wetlands, unsuitable soil for septic systems, lack of wastewater treatment plants, and location within the 100-year flood plain.

The MAEWR has been designed to minimize destruction of wetlands. Construction and operation of the MAEWR and other range improvements will result in the destruction of about 1.7 acres of wetlands. This loss will be mitigated by replacement of wetlands, yielding a zero net loss.

Songbirds and wintering waterfowl, waterbirds, and raptors create a risk of bird strikes within R–5306A. The most active period of feeding for these birds is the dawn and dusk periods at altitudes below 500 feet. The bird population on Piney Island, however, is relatively small. Bird strikes by aircraft using R–5306A are rare and have not resulted in an accident. The Department of the Navy will continue to survey bird strikes at BT–11 for any increase in order to protect the public, crews, and aircraft.

The Marine Corps desires additional information on the specific effects of aircraft noise on migratory birds. To help provide this information, the Marine Corps will cooperate with the United States Fish and Wildlife Service and provide funding and other support to undertake a study which will assess the effects of aircraft noise on migratory waterfowl in R–5306A. This study is being pursued to provide information that will benefit future planning and operations on the Range. The Marine Corps will evaluate the study findings and, as appropriate, modify its operations consistent with national defense needs.

Marine Corps Air Station Cherry Point, which controls use of R–5306A, has letters of agreement with the North Carolina Departments of Agriculture and Forestry, the North Carolina Division of Fisheries, various Virginia and North Carolina companies, crop dusters, and the Bayboro/Pamlico County Airport lessee. These agreements permit use of R–5306A airspace even when the area is in use by the military. Law enforcement agencies also have access to the airspace.

In response to public requests, the Final EIS provided expanded documentation on the cumulative effects on the North Carolina coastal region brought about by the MAEWR and other military projects. The regionally significant cumulative socio-economic, safety, and natural environment impacts are identified in the final EIS. They include the following potential negative effectives:

—Socio-economic impacts from noise and perceived loss of airspace,

—Safety impact from potential air disasters arising from use of existing and proposed special use airspace and military training routes, and

—Natural environmental impacts from disruption of migratory waterfowl feeding and resting and from the loss of wetlands.

The following potential positive regional cumulative effects were identified:

—Socio-economic impact from the generation of jobs,

—Safety impacts from charting special use airspace or military training routes and from controlling aircraft using that airspace, and

—Natural environment impacts from protection of endangered species and preservation and management of their habitat.

All practical means of mitigating impacts of the proposal on environment, including replacement of wetlands, have been included in project development and will be included in design and construction.

In addition to comments on the Draft EIS, the Department of the Navy received comments after publication of the Final EIS. Besides individual comments, agency and organization comments were provided by the Albemarle Commission, the Pamlico County Health Department, the North Carolina Department of Justice, Home on the Range, Inc., the United States Environmental Protection Agency, Carteret County Crossroads, and the Department of Administration of the North Carolina State Clearinghouse.

The Department of the Navy has responded to each party making comments on the Final EIS. Major issues raised in comments on the Final EIS and connected to implementation of the MAEWR and responses thereto may be summarized as follows:

A. *Failure to include information and to respond to comments.* Council on Environmental Quality regulations implementing NEPA require federal agencies to assess and consider comments. Responses to comments may include, *inter alia,* modifying alternatives, supplementing or modifying analyses, making factual corrections, or explaining why no further response is warranted. The regulations clearly do not require individual discussion of every comment received. The written comment of the North Carolina Department of Justice (NCDOJ) was inadvertently omitted from the Final EIS, as were certain other pages of that document. Those comments and pages were circulated by separate correspondence dated August 23, 1989. The circulation was made to all those who had received the Final EIS. The Final EIS did not contain written responses to the NCDOJ written comments or to oral comments made during public hearings. Although all comments were considered, many were found to parallel those of other state and federal agencies, citizen groups, and individuals. Responses to duplicative comments were considered unnecessary. Nothing in the NCDOJ written comments or the public hearing comments were found to contain significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Written responses were made to the NCDOJ on September 8 and 26, 1989.

B. *Failure to address mitigation for prior actions and existing operations.* Several commentors suggested a requirement to mitigate for on-going operations and for wetland losses from actions occurring in the early 1970's. A number of measures to reduce the noise effects of existing operations on areas underlying R–5306A were also suggested. These effects are not a result of the MAEWR proposal; they occurred or will continue whether or not the MAEWR is implemented. As required, the MAEWR Final EIS provides mitigation for reducing the impacts that will result from that proposal. Several of the suggested measures were in effect prior to the release of the MAEWR Final EIS, e.g., removal of practice ordnance from target areas on BT–11, establishment of minimum operating altitudes, or requirement to avoid specific areas.

C. *Failure to acknowledge interrelationship of Cherry I and Core Military Operating Area (MOA) proposals to the MAEWR.* The Department of Navy consistently has stated that the MAEWA proposal is separate from and independent of *all* other proposals in North Carolina. The purpose of the MAEWR is to provide a realistic means to help aircrews acquire skill in detecting, identifying, and defending against threats from weapons systems that would be used against them in combat. The Core MOA is proposed to help pilots acquire skills in locating and attacking a land target from a seaward location while operating at low altitudes and speeds in excess of 250 knots. The Cherry I MOA is proposed to allow pilots to acquire skills in low altitude subsonic air-to-air combat. A land background is required for such training because during these operations a pilot relies on visual cues (vice his instruments) to safely fly the aircraft. The readily discernible land/sky horizon, depth perception, and geographic points of reference provided by a land background are needed to learn this skill. If the MAEWR proposal is not approved the needs for both the Cherry I and Core MOA's would still exist. The converse is equally true.

D. *Failure to adequately address the cumulative impacts of the MAEWR.* The cumulative impacts analysis examined effects from implementation of 9 military proposals and one reasonably foreseeable military action, together with current effects from existing facilities and training areas, to determine the extent of regional cumulative impacts. Scoping comments were provided by the State of North Carolina and citizens, and these comments were included in the analysis where valid and reliable data were available. Based on comments on the Draft EIS, the cumulative impacts analysis was expanded to provide improved evaluation of the impacts of the MAEWR proposal. The methodology and bases for conclusions were defined. The analysis followed the guidance contained in *Fritiofson* v. *Alexander* 772F.2d 1225 (5th Cir 1985). The analysis examined data and trends to draw general conclusions on socio-economic impacts, safety, and the natural environment. This analysis utilized the available, reliable data. Substantial amounts of data were gathered and evaluated in an attempt to make the cumulative impacts analysis as detailed as reasonably possible. To the extent practicable, and to an extent assuring

that further study would not yield different conclusions, the cumulative impacts analysis identifies real and potential regional impacts.

E. *Failure to circulate the cumulative impacts analysis for comment.* The quality of cumulative impacts analysis in the Draft EIS improved considerably in the Final EIS. Council on Environmental Quality regulations expressly allow an agency to supplement, improve, or modify its EIS analysis. As the expanded cumulative impacts analysis did not involve any significant new circumstances or information relevant to environmental concerns and bearing on the MAEWR or its impacts, it was not circulated for comments as a supplement to the Draft EIS. The cumulative impacts analysis was circulated upon publication of the Final EIS, and several comments were received and responded to as indicated above. The comments provided on the Final EIS and responses thereto have been considered in reaching the decision to proceed with the MAEWR.

F. *Failure to address uncertainty of the Navy's jurisdiction within R–5306A over airspace between the surface and 1,200 feet.* Restricted airspace from the surface to varying altitudes has existed in the vicinity of Piney Island/BT–11 for more than forty years. The Marine Corps is authorized by the Federal Aviation Administration to exercise control from the surface to 17,999 feet within R–5306A. The areas within R–5306A were the MAEWR would be constructed and where emitters would be located are owned by the Navy. These facts meet the selection criteria. The Federal Aviation Administration has confirmed the Marine Corps' continued use of airspace from the surface to 1,200 feet altitude within R–5603A. It is fully expected that military operations which have been conducted successfully in the past in R–5306A will continue in a manner compatible with limited civilian access.

G. *Failure to include or address incomplete or unavailable information, particularly with regard to noise and electromagnetic radiation.* Some agency comments demanded additional information either be extracted from existing or partially existing data bases or that new research be conducted. In most instances the data would add little to the description of the affected environment or consequences of the MAEWR proposal. Of a virtually infinite amount of information that could be amassed, there exists a point at which further information becomes insignificant, irrelevant, or redundant. Requirement for a detailed statement on the environmental impacts of a proposed major federal action arises from the purpose of ensuring that the decision-maker understands the environmental consequences of the action and can, thereby, reach a decision that minimizes adverse impacts. The Final EIS contains sufficient information to permit fulfillment of NEPA's purposes.

The Department of the Navy has used nationally accepted methodology to measure noise impacts. At the request of the State and others, single event sound exposure levels were included in the Final EIS. To the extent available, information about the effects of aircraft noise on humans and animals has been presented. Data on the specific effects of aircraft noise on waterfowl and wildlife is limited. The extensive Federal and state waterfowl areas and waterfowl habitat within R–5306A prompt the Marine Corps to cooperate with the United States Fish and Wildlife Service to develop and implement a study on the effects of aircraft noise on migratory waterfowl.

Analysis of EMR relies on scientific-based consensus. EMR was addressed in a supplement to the Draft EIS, at public information meetings, and at a meeting with state representatives hosted by the United States Environmental Protection Agency at Research Triangle Park, North Carolina. All sides of the EMR issue were presented.

The decision to proceed with the MAEWR was reached after deliberating on the appropriate balance to be struck between furthering the national security of the United States by developing an acutely needed electronic warfare range with the potentially regionally significant incremental socio-economic, safety, and environmental concerns associated with that project. Comparing the de minimus impacts (both local and regional) identified in the MAEWR environmental documentation with the benefit to be gained by training military pilots how to survive in electronic warfare combat situations, the construction and operation of the MAEWR is determined to be in the best interest of the United States. Since the Department of the Navy (DON) does not have a program to oversee the development and utilization of military training facilities (to include military special use airspace) in, above, and near coastal North Carolina, the decision to proceed with a cumulative impacts analysis as part of the MAEWR Final EIS voice the promulgation of a programmatic EIS for all projects and actions in the region is appropriate.

Dated: November 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27317 Filed 11–20–89; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet December 8, 1989 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title, 5, United States Code.

For further information concerning this meeting, contact: Faye Buchman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: November 17, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27436 Filed 11–20–89; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet on November 27, 1989 at 4401 Ford Avenue, Alexandria, Virginia. This meeting has been canceled because of operational necessity. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Dated: November 16, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89–27318 Filed 11–20–89; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet on December 11–12, 1989 at 4401 Ford Avenue, Alexandria, Virginia. This meeting has been canceled because of operational necessity. In accordance with 5 U.S.C. 55b2(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Dated: November 16, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89–27319 Filed 11–20–89; 8:45 am]

BILLING CODE 3810–AE–M

Privacy Act of 1974; Addition of a New Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of a new sysem of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to add one new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice December 21, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the Federal Register As follows:

51 FR 12906 Apr 16, 1986
51FR 18086 May 16, 1986 (Compilation, changes follow)
51 FR 19884 June 3, 1986
51 FR 30377 Aug 26, 1986
51 FR 30393 Aug 26, 1986
51 FR 45931 Dec 23, 1986
52 FR 2147 Jan 20, 1987
52 FR 2149 Jan 20, 1987
52 FR 8500 Mar 18, 1987
52 FR 15530 Apr 29, 1987
52 FR 22671 Jun 15, 1987
52 FR 45846 Dec 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun 8, 1988
53 FR 22028 Jun 13, 1988
53 FR 25363 Jul 6, 1988
53 FR 39499 Oct 7, 1988
53 FR 41224 Oct 20, 1988
54 FR 8322 Feb 28, 1989
54 FR 14377 Apr 11, 1989
54 FR 32682 Aug 9, 1989
54 FR 40160 Sep 29, 1989
54 FR 41495 Oct 10, 1989
54 FR 43453 Oct 25, 1989
54 FR 45781 Oct, 1989

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on Nov 7, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 15, 1989.

N12950–7

SYSTEM NAME:

Drug-Free Workplace Records.

SYSTEM LOCATION:

Records are located at the local naval activity or the local servicing civilian personnel offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees and applicants, urine specimens, drug test results, collection authentication and chain of custody documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–71 5 U.S.C. 7301; 21 U.S.C. 812; and E.O. 12564, "Drug-Free Federal Workplace" and E.O. 9397.

PURPOSE(S):

The system is established to maintain records relating to the selection and testing of Department of the Navy employees, and applicants for employment, for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

The records are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with the provisions of 5 U.S.C. 7301, the "Blanket Routine Uses" that appears at the beginning of the Navy's compilation do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of written materials and/or magnetic media.

RETRIEVABILITY:

Records are retrieved by name of employee, applicant for employment, Social Security Number, I.D. number assigned, date of birth, or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted. Chain-of-custody and other procedural and documentary requirements of Pub. L. 100–71 and the Department of Health and Human Services Guidelines will be followed in collection of urine samples, conducting drug tests, and processing test results.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or erasure in the case of magnetic media.

Urine specimens will be disposed of after six months in an ecologically safe manner.

Written records and test results, together with urine specimens, may be retained up to five years or longer when necessary due to challenges or appeals of adverse actions by the employee.

SYSTEM MANAGER(S) AND ADDRESS:

DON Drug Program Coordinator, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998.

NOTIFICIATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing civilian personnel office at which they are or were employed, or at which they made application for employee, and for which they provided a urine specimen for drug testing.

Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, and the month and year of the test.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing civilian personnel office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, and the month and year of the test.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection and notification of individuals to be tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–27350 Filed 11–20–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: November 15, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants under the Student Support Services Program
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 800
Burden Hours: 8,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State agencies to apply for funding under the Student Support Services Program. The Department uses the information to make awards.

[FR Doc. 89–27255 Filed 11–20–89; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Office of the Secretary

Regional Hearings To Solicit Views From Public Officials and Individuals With Expertise and Interest in the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to provide comments on the development of a National Energy Strategy.

SUMMARY: These hearings will be the sixth through eleventh hearings in a series being conducted throughout the country by the Department of Energy to solicit comments from interested parties on a range of energy topics. Oral testimony at these hearings will be presented by invitation only. Written testimony can be submitted by any interested party at either the hearing site or directly to the Department of Energy, Office of Policy, Planning and Analysis, c/o Mr. Scott Neitzel, 1000 Independence Avenue, SW., Room 7B–143, Washington, DC 20585. Please reference specific hearing(s) and topic(s).

These hearings are designed to solicit information, data, and analysis related to the development of national energy policy and objectives, strategies for achieving them, and the role that the Federal Government should play in meeting national energy, economic, and environmental objectives.

The Department is interested in obtaining specific suggestions as to options and obstacles to efficient production and use of energy. Written comments may address general policies, regulations, economic incentives or disincentives, research and development needs, energy science, technology transfer, education, technical assistance, role of State and Local Government, the role of industry in energy policy development and implementation, or any other issues that would enhance the national dialogue on national energy strategy.

Dates, locations, and topics of the hearings are as follows: December 1, 1989—Providence, RI; "Energy and Productivity: A Northeast Perspective" (factors affecting energy supply and use, and the role of advanced technology). The hearing will be held between 9 a.m. and 3 p.m. at Rhode Island College, Student Union Ballroom, 600 Mount Pleasant Avenue, Providence, Rhode Island.

December 4, 1989—Houston, TX; "Our Domestic Energy Resource Base" (fossil fuel and renewable energy supplies; technological and regulatory factors affecting supply).

December 8, 1989—Omaha, NE; "Agriculture as Consumer and Producer of Energy" (use of energy in crop production and processing; energy crops).

December 11, 1989—Detroit, MI; "Transportation and Energy" (fuel efficiency, advanced technology, and potential for systems changes).

December 13, 1989—Washington, DC; "Energy, Defense, and National Security Interests" (role of stockpiles; role of foreign suppliers, globally and in the Western Hemisphere; international relations; energy interdependence).

December 14, 1989—Atlanta, GA; "Energy and the Environment" (global climate change, reconciling energy and environmental objectives).

All testimony submitted in conjunction with these hearings will be entered into the National Energy Strategy development record and made available to the public.

A future announcement will be made regarding the specific locations and times for the hearings described in this announcement.

FOR FURTHER INFORMATION CONTACT: For further information please write or call William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7B–143, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89–27474 Filed 11–20–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER82–774–014, et al.]

Tapoco, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 9, 1989.

Take notice that the following filings have been made with the Commission:

1. Tapoco, Inc.

[Docket No. ER82–774–014]

Take notice that on October 31, 1989, Tapoco, Inc. ("Tapoco") tendered for filing with the Commission notification that it had made a further payment to Nantahala Power and Light Company ("Nantahala"), representing interest of $30,286 on power costs incurred by Nantahala in the year ending June 30, 1989.

Comment date: November 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER90–60–000]

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light, on November 7, 1989, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, PacifiCorp's Utah Division (PacifiCorp) Revised Appendix 1 for the state of Idaho and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Idaho (Boneville's Docket No. 5–A3–8903. The Revised Appendix 1 calculates the ASC for the state of Idaho applicable to the exchange of power between Bonneville and PacifiCorp.

PacifiCorp requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 10, 1989, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission and Bonneville's Direct Service Industrial Customers.

Comment date: November 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp, doing business as Utah Power & Light Company and Pacific Power & Light Company

[Docket No. ER90–62–000]

Take notice that on November 8, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (Utah) tendered for filing, in accordance with 18 CFR 35.12, a Power Purchase Agreement Between the Department of Water and Power of the City of Los Angeles (Los Angeles) and Utah Power & Light Company. The Agreement provides that Los Angeles will assume Utah's obligation to purchase its 4% entitlement from the Intermountain Power Project.

Utah requests a waiver of the Commission's notice requirement to permit the Agreement to become effective retroactively on July 1, 1989, the date service commenced.

Copies of this filing were served on the Department of Water and Power of the City of Los Angeles, the California Public Utilities Commission, and the Utah Public Service Commission.

Comment date: November 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER90–59–000]

Take notice that on November 7, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing as Appendix P of the Interconnection Rate Schedule (IRS, FERC Docket No. ER89–475–000), an agreement entitled "Facility Connection Agreement Between Pacific Gas and Electric Company and Sacramento Municipal Utility District" (SMUD).

The Facility Connection Agreement (FCA) fully discharges both parties' rights and obligations with respect to interconnections under several other agreements. The FCA also terminates and supersedes certain provisions of Appendix B of the IRs. The FCA provides for a new three-point interconnection between the parties' electrical systems, allocates costs and ownership of facilities, provides for the exchange and use of certain facilities

and rights-of-way, and establishes a maintenance charge for certain facilities. PG&E has requested an effective date of January, 1990.

Copies of this filing were served upon SMUD and the California Public Utilities Commission. A copy of this filing also is available for public inspection during normal business hours at PG&E's corporate headquarters, located at 77 Beale Street in San Francisco, California.

Comment date: November 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27250 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10468-000 Idaho]

Marsh Valley; Availability of Environmental Assessment

November 14, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing reviewed the application for a minor license for the proposed Marsh Valley Hydroelectric Project, which would be located on the Portneuf River in Bannock County, near McCammon, Idaho, and prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzed the potential environmental impacts of the proposed project and concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary

[FR Doc. 89-27253 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-198-000, et al.]

Sea Robin Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP90-198-000]

November 9, 1989.

Take notice that on October 31, 1989, Sea Robin Pipeline Company (Sea Robin) Post Office Box 1478, Houston, Texas 77251-1478 filed in Dcoket No. CP90-198-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for United Gas Pipe Line Company (United), an existing jurisdictional transportation customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that it was authorized, by Commission order issued February 15, 1977, in Docket No. CP76-418 to transport, on a firm basis, up to 13,650 Mcf of natural gas per day for United. Sea Robin further states that the transportation agreement dated June 24, 1976, provided for a term ending when United ceases purchasing gas in West Cameron Block 586, offshore Louisiana. Sea Robin asserts that it has not transported any gas for United in 1989. Sea Robin is not proposing any facility abandoned herein.

Commnt date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Transmission Company

[Docket No. CP90-168-000]

November 9, 1989.

Take notice that on October 30, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP90-168-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authority to abandon natural gas sales service provided to Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that by order issued April 30, 1970, in Docket No. CP70-19, 43 FPC 635 (1970), Great Lakes received a certificate of public convenience and necessity to provide a natural gas sales service to Natural; that the present Sales Service Agreement providing for sales service of up to 171,325 Mcf per day was certificated by the Commission's order issued October 21, 1981 in Docket No. CP61-241-000, 17 FERC ¶ 61,065 (1981); that the sales service is provided pursuant to Great Lakes' FERC Gas Tariff, First Revised Vol. No. 1, Rate Schedule CQ-2 and Sales Service Agreement dated November 2, 1981; and that the Sales Service Agreement terminates on November 1, 1990. Great Lakes states that, although it has approached Natural regarding long-term requirements beyond November 1, 1990, Natural has not provided a firm statement of its intention regarding conversion of its sales service to transportation.

Great Lakes states that it neither produces nor gathers natural gas; that it purchases Canadian natural gas from TransCanada PipeLines Limited (TransCanada) for resale to Natural; that Natural negotiates the applicable natural gas pricing directly with TransCanada; and that Great Lakes acts as a conduit of that gas from TransCanada to Natural. Great Lakes states that in recent past, it has unbundled its sales service to contracturally recognize and permit former sales customers to continue to negotiate directly with natural gas suppliers, and that Great Lakes currently provides transportation services to such former sales customers.

Great Lakes states that its natural gas purchase arrangements with TransCanada for supplies for Natural terminate on October 31, 1990; that Natural's Sales Service Agreement terminates on November 1990; that Great Lakes anticipates a cessation of its gas merchant function after November 1, 1990; and that Great Lakes would continue as a transporter of gas thereafter. Great Lakes states that because its gas merchant function is anticipated to cease at November 1, 1990, and to ensure proper and economic system operation after the date, Great Lakes must project its system requirements after termination of its merchant function.

Great Lakes states that it is hereby offering to Natural the *pro forma* Transportation Service Agreement attached to the application, which must be executed within 90 days of the filing date of this application. Great Lakes states that the *pro forma* Transportation Service Agreement is a typical agreement for firm transportation service on Great Lakes' system, and provides for a ten-year term. In the event that Natural executes the *pro forma* Transportation Service Agreement, Great Lakes states that it would supplement its Docket No. CP89-335-000 application to unbundle Natural's sales service. In the event that Natural does not execute the *pro forma* agreement in the time provided for, Great Lakes requests that the Commission grant it authority to abandon its FERC Gas Tariff, First Revised Vol. 1, Rate Schedule CQ-2 natural gas sals service to Natural, effective November 1, 1990.

Great Lakes request that the Commission issue its order authorizing the abandonment on or before May 1, 1990. Great Lakes states that the May 1, 1990 date would provide Natural, if necessary, the opportunity to arrange for alternate sales to transportation services, and would also permit Great Lakes some lead time to determine and appropriate utilization of any released capacity.

Great Lakes states that only a sales service obligation would be abandoned and the facilities would not be abandoned.

Comment date: November 30, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Sea Robin Pipeline Company

[Docket No. CP90-197-000]

November 9, 1989.

Take notice that on October 31, 1989, Sea Robin Pipeline Company (Sea Robin) Post Office Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP90-197-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for Natural Gas Pipeline Company of America (Natural), an existing juridictional transportation customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that it was authorized, by Commission order issued February 15, 1977, in Docket No. CP76-418 to transport, on a firm basis, up to 12,100 Mcf of natural gas per day for Natural. Sea Robin further states that the transportation agreement dated June 24, 1976, provided for a term ending when Natural ceases purchasing gas in West Cameron Block 586, offshore Louisiana. Sea Robin asserts that by letter dated February 21, 1989, Natural gave notice of its intent to terminate the transportation agreement. Sea Robin proposes an effective date for the abandonment of the transportation service of February 21, 1989.

Comment date: November 30, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. Southern Natural Gas Company

[Docket No. CP90-176-000]

November 9, 1989.

Take notice that on October 30, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP90-176-000 an application under section 7(b) of the Natural Gas Act, as amended, and the rules and regualtions of the Federal Energy Regulatory Commission (Commission) seeking authorization to abandon transportation of gas for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Southern requests approval to abandon the transportation of natural gas authorized by the Commission in Docket No. CP75-151 on July 19, 1979. The Commission authorized Southern to transport on a firm basis through its capacity rights on Trunkline Gas Company's system up to 20,000 Mcf of gas per day purchased by United from South Marsh Island Blocks 268, 269 and 281, offshore Louisiana, for redelivery to United by displacement at the pipelines' interconnection at Southern's Shadyside Compressor Station near Bayor Sale, Louisiana. Pursuant to the terms of the Transportation Agreement between the parties dated November 18, 1974, as amended, United notified Southern by letter dated May 10, 1989, that its purchases of gas in South Marsh Island Blocks 268, 269 and 281 terminated January 26, 1989, and requested immediate termination of the Transportation Agreement. Southern requests authority to abandon its transportation service for United on the date the Commission issues an order authorizing the abandonment requested herein. Southern further states that it does not propose to abandon any facilities in conjunction with the abandonment this transportation service.

Comment date: November 30, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Sea Robin Pipeline Company

[Docket No. CP90-199-000]

November 9, 1989.

Take notice that on October 31, 1989, Sea Robin Pipeline Company (Sea Robin) Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-199-000 an application pursuant to seciton 7(b) of the Natural Gas Act for permission and approval to abandon transportation service for Southern Natural Gas Company (Southern), an existing jurisdicitonal transportation customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that it was authorized, by Commission order issued February 15, 1977, in Docket No. CP76-418 to transport, on a firm basis, up to 4,550 Mcf of natural gas per day for Southern. Sea Robin further states that the transportation agreement dated June 24, 1976, provided for a term ending when Southern ceases purchasing gas in West Cameron Block 586, offshore Louisiana. Sea Robin asserts that by letter dated January 26, 1989, Southern gave notice of its intent to terminate the transportation agreement effective February 1, 1989. No facilities are proposed to be abandoned, herein.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Mid Louisiana Gas Company

[Docket No. CP90-138-000]

November 9, 1989.

Take notice that on October 27, 1989, Mid Louisiana Gas Company (Mid Louisiana), Five Post Oak Park, Suite 800, Houston, Texas 77027, filed in Docket No. CP90-138-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain existing compressors and related facilities in its DeSaird Compressor Station in Ouachita Parish, Louisiana, and pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of a new compressor unit and related facilities at the DeSaird Station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Mid Louisiana proposes to remove from the DeSaird Station seven compressor units named in the application and authorized to be abandoned in Docket No. CP87-219-000, 40 FERC ¶ 62,192 (1987), and totaling

8.625 horsepower.[1] Additionally, Mid Louisiana requests authorization to abandon and remove the four remaining original compressor units and related facilities having a total horsepower of 2,725 horsepower. It is stated that the compressor facilities are obsolete, worn out, and may not practically be used at the site. One of the units is described as a Chicago Pneumatic single stage FE–655 compressor with a rating of 525 horsepower. It is stated that this unit is not currently in service at this site and cannot practically and efficiently be applied for any current or contemplated future use by Mid Louisiana. It is further stated that Mid Louisiana plans to sell this compressor to its affiliate, Wintershall Pipeline Corporation, at net book value and to remove this compressor from the DeSaird Station site.

Mid Louisiana further proposes to install at the DeSaird Station one new multi-stage compressor unit, and related facilities, which has approximately 1,150 horsepower. It is stated that the new equipment is needed to provide efficient and adequate compression at the DeSaird Station.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP90–123–000]

November 9, 1989.

Take notice that on October 25, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application, as supplemented on November 2, 1989, pursuant to section 7(b) of the Natural Gas Act to partially abandon firm sales service to The Inland Gas Company, Inc. (Inland), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that as part of an overall settlement, Tennessee and Inland agreed that Inland would file pursuant to Order No. 490 to reduce the service levels under Tennessee's Rate Schedule CD–2 to 1,000 dt equivalent of natural gas per day, effective September 1, 1989. Tennessee states that on September 28, 1989, Inland filed its report with the Commission as to the agreed-upon permanent abandonment of service.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] The proposal in Docket No. CP87–219–000 involved the abandonment of compressor facilities in place. The proposal herein is to abandon the facilities by removal.

8. Transwestern Pipeline Company

[Docket No. CP90–179–000]

November 9, 1989.

Take notice that on October 31, 1989, Transwestern Pipeline Company (Transwestern) 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90–179–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a certain pipeline loop and to operate certain existing pipeline interconnections and measurement facilities originally installed for emergency use only as jurisdictional facilities in order to increase its operating flexibility in rendering transportation services and in making deliveries of interruptible sales gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transwestern proposes to construct and operate approximately four miles of 30-inch pipeline loop extending from the existing 30-inch section of its West Texas lateral to the Pyote Processing Plant, all located in Ward County, Texas.

Transwestern further requests that it be authorized to utilize for jurisdictional services other than emergency purposes two interconnections with El Paso Natural Gas Company (El Paso), one in Cibola County, New Mexico and one in Ward County, Texas which were authorized for emergency use only in Docket No. CP89–118–000 (40 FERC 1431) and Docket No. CP70–68–000 *et al* (43 FPC 1052), respectively.

Transwestern states that it would also construct and modify other facilities which would either be non-jurisdictional or would be constructed under Transwestern's blanket certificate issued in Docket No. CP82–534–000. This construction and modifications would take place at Transwestern's WT–2 Compressor Station, it's interconnection with Northern Natural Gas Company (Northern) in Ward County, Texas and on its 24-inch low pipeline in Ward County, Texas.

Transwestern estimates the cost of the proposed jurisdictional facilities to be $2,374,000. Transwestern will finance the project with internally generated funds.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Northwest Pipeline Corporation)

[Docket No. CP89–312–000]

November 9, 1989.

Take further notice that on October 31, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–312–002 an amendment to its pending application in Docket No. CP89–312–000, originally filed on November 30, 1988, that requested permission and approval to totally abandon service under all of Northwest's sales service agreements under Rate Schedules ODL–1, DS–1 and I–1 of Northwest's FERC Gas Tariff, Volume No. 1, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

The instant amendment revises the original application to withdraw the request for permission to abandon sales services under Rate Schedules ODL–1 and DS–1. Northwest continues to request approval to abandon its Rate Schedule I–1 interruptible sales service of 10,200 Dth of gas equivalent per day under three service agreements with customers, the City of Ellensburg, Washington, Utah Gas Service Company and Western Gas Supply Company.

Comment date: November 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP90–181–000]

November 13, 1989.

Take notice that on October 31, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–181–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate a sales tap to provide jurisdictional services, including transportation services under Subpart G of Part 284 of the Commission's Regulations, at an existing delivery point at an interconnection with Southern Union Gas Company (Southern Union) a local distribution company, in Hutchinson County, Texas, under the certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Natural installed one 2-inch tap on its 26-inch Amarillo mainline in Hutchinson County, Texas, at a total cost of $13,646. Natural explains that the facilities were constructed on existing right-of-way and placed in service on November 5, 1987 and have been used solely to provide transportation services pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 and Subpart B of Part 284 of the Commission's Regulations. Natural states that based on a typical operating range at the location, the maximum daily capacity of the facilities is from 3,000 Mcf to 4,000 Mcf per day.

It is stated that Natural is currently providing interruptible transportation services at the Hutchinson County, Texas, delivery point under Rate schedule ITS, pursuant to Subpart B of Part 284 of the Commission's Regulations. Natural states that it has receved requests to provide transportation services at this delivery point pursuant to Subpart G of Part 284 of the Commission's Regulations and Rate Schedule ITS. Natural states that it would also provide services under Rate Schedule FTS, if requested. Natural states that it has sufficient capacity to provide this service without detriment or disadvantage to Natural's peak day and annual delivery capability.

Comment date: December 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP90–182–000]

November 13, 1989.

Take notice that on October 31, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–182–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate a sales tap to provide jurisdictional services, including transportation services under Subpart G of Part 284 of the Commission's Regulations, at an existing delivery point at an interconnection with Hoechst Celanese Chemical Group, Inc. (Celanese), an end-user, in Gray County, Texas, under the certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Natural installed one 4-inch tap on its 30-inch Oklahoma Extension mainline in Gray County, Texas, and 1590 feet of 4-inch lateral interconnecting with Celanese at a total cost of $41,511. Natural explains that the facilities were placed in service on June 6, 1988 and have been used solely to provide transportation services pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 and Subpart B of the Commission's Regulations. Natural states that based on a typical operating pressure range at the location, the maximum daily delivery capacity of the facilities is from 20,000 Mcf to 25,000 Mcf per day.

It is stated that Natural is currently providing interruptible transportation services at the Gray County, Texas, delivery point under Rate Schedule ITS, pursuant to subpart B of part 284 of the Commission's Regulations. Natural states that it has received requests to provide transportation services at this delivery point pursuant to subpart G of part 284 of the Commission's Regulations and Rate Schedule ITS. Natural states that it would also provide services under Rate Schedule FTS, if requested. Natural states that it has sufficient capacity to provide this service without detriment or disadvantage to Natural's peak day and annual delivery capability.

Comment date: December 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Viking Gas Transmission Company

[Docket No. CP90–79–000]

November 13, 1989.

Take notice that on October 19, 1989, Viking Gas Transmission Company (Viking), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP90–79–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Poco Petroleum Ltd. (Poco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Viking proposes to transport on an interruptible basis up to 207,450 dt equivalent of natural gas per day for Poco in order to enable Poco to meet its existing market requirements and anticipated market growth. It is stated that Viking would receive the gas for Poco's account at an interconnection with TransCanada Pipelines Ltd. at the U.S.—Canada border near Emerson, Manitoba, and would deliver equivalent volumes for Poco's account at an interconnection with ANR Pipeline in Marshfield, Wisconsin. It is asserted that Viking would charge Poco the rate set forth in Viking's Rate Schedule IT–2. It is explained that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is asserted that Poco has the necessary authorization to import gas from Canada into the United States. It is further asserted that the authorization for any downstream transportation by ANR would be provided under either Section 311 of the Natural Gas Policy Act or pursuant to ANR's blanket certificate.

On November 2, 1989 Viking filed an amendment to its application to correct a mistake, stating that Viking would deliver the gas at designated points in Minnesota and Wisconsin, as stated in the appendix to the original application, instead of at an interconnection with ANR in Marshfield, Wisconsin, as stated originally.

Comment date: December 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP90–154–000]

November 13, 1989.

Take notice that on October 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–154—000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of a certain gas exchange service with United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Tennessee states that the exchange service is currently being performed under the Gas Exchange Agreement (Agreement) entered into with United on August 22, 1975, which is incorporated as Rate Schedule X–45 of Tennessee's Gas Tariff on file with the Commission. Tennessee explains that it no longer derives any significant benefit from the exchange service and, in accordance with the Agreement, has informed United by letter dated October 23, 1989, that it intends to terminate the service on April 1, 1990. Tennessee further explains that the proposed termination date represents a deferral of its cancellation rights under the Agreement and that it was given in consideration for United's agreement not to object to Tennessee's adandonment application. Finally, Tennessee asserts that it has agreed to use its best efforts to execute new transportation agreements to provide United with services similar to those provided under Rate Schedule X–15.

Comment date: December 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

BEST COPY AVAILABLE

14. CNG Transmission Corporation

[Docket No. CP88-712-002]

November 13, 1989.

Take notice that on October 31, 1989, CNG Transmission Corporation (CGN), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-712-002 an amendment to the application filed August 23, 1988, as amended, in Docket No. CP88-712-000, pursuant to section 7(c) of the Natural Gas Act, to construct and operate certain pipeline and compressor facilities, and certain sales, transportation, and interruptible storage services to be sold to Virginia Natural Gas, Inc., the City of Richmond, Virginia, Doswell Limited Partnership, and Virginia Electric and Power Company, (collectively Virginia customers) all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

CNG states that it filed in Docket No. CP88-871-000, an application for authority to construct and operate a 78-mile pipeline in Pennsylvania at a total estimated cost of $76,157,610 to render service to the Virginia customers as proposed in CNG's Docket Nos. CP88-712-000 and CP88-712-001. Texas Eastern Transmission Company (Texas Eastern) subsequently filed a competing application in Docket No. CP89-612-000. It is alleged that Texas Eastern's proposal would have included construction of facilities on its Penn Jersey System for the transportation of gas for CNG. It is averred that CNG and Texas Eastern have negotiated a settlement of the competing applications which would result in (i) the joint filing by CNG and Texas Eastern to expand Texas Eastern's CRP Project, (ii) the instant filing and (iii) the withdrawal by Texas Eastern and CNG of the applications in Docket Nos. CP89-612-000 and CP88-871-000 respectively.

CNG, in this filing, proposes to construct and operate a 6,000 horsepower compressor station and related facilities near Leesburg, Virginia, and a 6,000 horsepower compressor at CNG's Lambert Compressor Station near Lambert, West Virginia. CNG proposes to own measuring and regulating facilities at Texas Eastern's M&R Station 1745 at Chambersburg, Pennsylvania, which Texas Eastern would construct and operate. The two compressors would replace the previously proposed 4,390 horsepower compressor proposed for Doylesburg, Pennsylvania and the 4,390 horsepower compressor proposed for Leesburg, Virginia in the amended application.

It is stated that the estimated cost of the construction of the proposed facilities, including the filing fees, is $39,346,580. It is further stated, that in addition, CNG would own $27,073,500 of facilities jointly with Texas Eastern which are included in a companion application in Docket No CP90-189-000. It is averred that the facility costs would be financed from funds on hand or would be obtained from CNG's parent company, Consolidated Natural Gas Company.

Comment date: December 4, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

15. Amoco Production Company

[Docket No. CP90-215-000]

November 13, 1989.

Take notice that on November 3, 1989, Amoco Production Company (Amoco), Post Office Box 800, Denver, Colorado 80201, filed in Docket No. CP90-215-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order that natural gas delivery facilities described as the Converted Line and the New Line will be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act (NGA), and also gives notice of the scheduling according to which the construction of those lines is intended to commence, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Amoco states that it is drilling numerous wells to increase its production of coal seam natural gas from the Fruitland Coal Formation in southwest Colorado. Amoco states that its plans call for the gas from these new wells, and from existing wells in their vicinity, to be collected to a central point (the Section 25 Station) located in Section 25, Township 34 North, Range 9 West in La Plata County, Colorado. At that station, Amoco states that the gas is to be treated for the removal of carbon dioxide, and is to be dehydrated and compressed up to 900 psi. Amoco will operate the collection system, the CO_2-removal facilities and the dehydration facilities.

Amoco states that the principal transportation outlet for the gas is the interstate transmission system of El Paso Natural Gas Company (EPNG). Amoco states that the Section 25 Station is situated approximately 0.76 mile from the nearest appropriate point of interconnection with that transmission system. Amoco states that it anticipates that the subject gas will be carried across the 0.76 mile interval by one or both of the two lines, the Converted Line and the New Line, described below.

It is stated that the Section 25 Station is presently served by a 10-inch diameter line which is part of EPNG's San Juan Basin gathering system. Amoco states that EPNG agreed to convey to Amoco a segment of that 10-inch line, namely a segment running from the Section 25 Station to a point on near proximity to the interconnection. Amoco states that it plans for that segment to be converted into a spur feeding gas into EPNG's mainline system at the interconnection. According to Amoco, the converted segment will be referred to as the Converted Line. Amoco states that even after conversion, the line segment in question may, on occasion, be used to carry gas to EPNG's San Juan Basin gathering system. Amoco further states that when the compression facilities planned for the Section 25 Station are fully operational, the Converted Line may carry up to 70 MMcf of natural gas per day (MMcfd).

Amoco also states that it intends to construct, own and operate a 16-inch diameter spur line, the New Line, crossing the 0.76 mile interval and running parallel to the Converted Line. Amoco further states that when the compression facilities planned for the Section 25 Station are fully operational, the New Line may carry up to 180 MMcfd.

Amoco also gives notice that, in the belief that its lines are non-jurisdictional facilities, Amoco intends to begin construction of the New Line as early as the 31st day following the date on which its petition is received at the offices of the Commission. In addition, Amoco states that depending on the availability of interim compression, the work required to change the pipeline acquired from EPNG into the Converted Line could begin as early as that 31st day.

Comment date: December 4, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP90-218-000]

November 13, 1989.

Take notice that on November 7, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-218-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 2,700 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Phillips Inc. (Phillips), a producer of natural gas. The receipt points are located in Louisiana and Offshore Louisiana and the delivery points are located in Offshore Louisiana. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86-582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Phillips on September 1, 1989 at Docket No. ST90-410-000 for a one hundred and twenty (120) day period ending December 30, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: December 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Eastern Transmission Corporation and CNG Transmission Corporation

[Docket No. CP90-189-000]

November 13, 1989.

Take notice that on October 31, 1989, Texas Eastern Transmission Corporation (Texas Eastern) P.O. Box 2521, Houston, Texas 77252, and CNG Transmission Corporation (CNG) 445 West Main Street, Clarksburg, WV 26301 (collectively referred to as Applicants) filed in Docket No. CP90-189-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public conveyance and necessity authroizing the construction and operation of a certain pipeline facilities to be jointly owned by Applicants, and authorizing Texas Eastern to render firm transportation service for CNG, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants states that CNG filed in Docket No. CP88-871-000, for authorization to construct and operate 78 miles of 20-inch pipeline from Benezette, Pennsylvania to Perulack, Pennsylvania to be known as TL-472, a 8,400 horsepower compressor and related facilities at Ardell Station located near Benezette, Pennsylvania, 8.8 miles of 30-inch pipeline loop in Westmoreland and Armstrong Counties, Pennsylvania, and 12 miles of 30-inch pipeline loop in Armstrong County, Pennsylvania, at a total estimated cost of $76,157,650. Applicants further state that CNG sought such authorization in order to render long-term firm sales to Virginia Natural Gas, Inc. and the City of Richmond, Virginia and transportation and interruptible storage service to Hanover Energy Associates and Virginia Electric and Power Company (collectively referred to as Virginia customers), which services are the subject of a related certificate application at Docket No. CP88-712-000, as amended CP88-712-001, and that in particular, CNG's proposed facilities would terminate at and serve to extend its PL-1 pipeline which is presently interconnected with Texas Eastern's pipeline at its Perulack compressor station.

Applicants state that Texas Eastern filed at Docket No. CP89-612-000 an application for competitive alternative to CNG's application in Docket No. CP88-871-000, and that such alternative proposed the construction of pipeline facilities on Texas Eastern's PennJersey system and the transportation of gas for CNG.

Applicants allege that subsequent to the above applications, events have transpired which led to the filing of this joint application. Applicants state that on June 7, 1989, the Commission authorized Texas Eastern's Capacity Restoration Project (APEC Settlement) involving, *inter alia*, that construction of a new 36-inch high pressure pipeline between Texas Eastern's Station 21-A and Station 23, the terminus of CNG's PL-1 Pipeline. Applicants further allege, that subsequently, Texas Eastern and CNG entered into negotiations and studies to develop an alternative project to Docket Nos. CP88-871-000 and CP89-612-000, utilizing the new jointly owned 36-inch pipeline which could provide additional capacity as a link between CNG's system and its PL-1 line and which would be more efficient and compatible with CNG's system operations, and that these efforts resulted in this joint filing. Applicants contend that CNG would amend its applications in Docket Nos. CP88-712-000 and CP88-712-001, Texas Eastern would withdraw its application in Docket No. CP89-612-000, and CNG would withdraw its application in Docket No. CP88-871-000.

The Applicants request authorization in this filing to:

(1) construct and operate and joint ownership of the following facilities:

—Installation of 25.19 miles of 24-inch pipeline from Crayne Farm, Greene County, Pennsylvania to Station 21A replacing 25.19 miles of 20-inch pipeline, Line No. 20, previously placed in idle service;

—Installation of up to 11,000 HP gas turbine compressor at Station 21A;

—Installation of up to 6,500 HP electric motor compressor at Station 23

—Aerodynamic assembly changeout at Station 23; and

—Installation of metering and regulating facilities at Crayne Farm, Greene County, Pennsylvania.

(2) Texas Eastern to render for CNG firm transportation of natural gas of up to a maximum daily quantity (MAXDQ) of 112,000 dekatherms (dt).

Applicants state that installation of the proposed facilities would provide capacity of 224,000 dt per day plus applicable shrinkage from the interconnection of CNG's system with Texas Eastern near Crayne Farm in Greene County, Pennsylvania to the interconnection of Texas Eastern's system with CNG's PL-1 line at Station 23, near Chambersburg, Pennsylvania, that CNG would utilize its one-half interest of 112,000 dt per day capacity for service to the Virginia customers, and that Texas Eastern would utilize its one-half interest of 112,000 dt per day capacity to render firm transportation service for CNG.

Applicants state that the estimated total capital cost of the proposed facilities is $54,147,000 which they would initially finance from funds on hand or short term borrowing, and permanent financing would be undertaken as part of Applicants' overall long-term financing program at a later date.

Texas Eastern proposes to transport for the account of CNG on a firm basis a MAXDQ of 112,000 dt per day pursuant to the Precedent Agreement and a pro-form Gas Transportation Agreement. Texas Eastern would receive the volumes of natural gas from CNG at a location near Crayne Farm and would transport and redeliver equivalent quantities, less applicable shrinkage to CNG at the existing interconnection between Texas Eastern and CNG's Pipeline No. PL-1 located at Station 23 near Chambersburg, Pennsylvania.

Texas Eastern states it would charge CNG a monthly demand charge for firm quantities and an excess charge for deliveries in excess of the firm quantity. It is alleged that based upon the estimated annual cost of service for the proposed facilities, Texas Eastern estimated a monthly demand charge of $5.187 per dt and an excess charge of $0.171 per dt.

Comment date: December 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary,

[FR Doc. 89-27248 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-312-006 et al.]

Texas Eastern Transmission Corp. et al., Natural Gas Certificate Filings

November 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission

[Docket No. CP87-312-006]

Take notice that on October 31, 1989, Texas Eastern Transmission Corporation, (Texas Eastern), P.O. Box 2521, Houston, Texas 77252. filed in Docket No. CP87-312-006 and amended application pursuant to section 7(c) of the Natural Gas Act, and the Rules and Regulations of the Federal Energy Regulatory Commission, for a certificate of public convenience and necessity, requesting authorization to construct, replace and operate certain pipeline facilities to render firm transportation service pursuant to Rate Schedule FTS-5, Phases II and III, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that its amended application modifies its facilities and their in-service dates from its previous application in Docket No. CP87-312-004 to implement its participation in Phases II and III of the restructuring and unbundling of storage services previously proposed to be rendered under the PennEast Gas Services Company Rate Schedule PSS. It is stated that CNG Transmission Corporation (CNG) has advised Texas Eastern and its customers of a one year delay in the development of the storage fields supporting the proposed storage service to be rendered by CNG. Therefore, this amended application reflects a one year delay in the commencement of proposed FTS-5 Phases II and III transportation service to 1991 and 1992. It is further stated that the one year delay has required Texas Eastern to revise the construction sequence of the FTS-5 facilities and other pending projects, and such facility revisions are relected in this amended application.

Specifically, Texas Eastern requests authorization to: (1) render firm transportation service pursuant to Rate Schedule FTS-5, Phases II and III, up to the following Maximum Daily Transportation Quantities (MDTQ) listed below; and (2) construct, own, and operate pipeline facilities located in various counties in Pennsylvania.

Buyer	Phase II [1] increase (Dt/Day)	Phase III [2] increase (Dt/Day)	Aggregate MDTQ Dt/Day)
Bristol & Warren Gas Co	0	0	513
Central Hudson Gas & Electric Co	2,000	0	6,000
Colonial Gas Co	52	52	2,326
Elizabethtown Gas Co	10,000	0	10,000
Intercontinental Energy Corp. & Public Service Electric & Gas	0	0	24,508
Long Island Lighting Co	15,000	20,000	50,000
New Jersey National Gas Co	10,000	20,000	35,000
Penn Fuel Gas, Inc	1,000	1,000	4,000
Public Service Electric & Gas Co	0	0	45,084
South County Gas Co	0	0	240
Texas Eastern System Storage	0	20,000	20,000
Valley Gas Co	0	0	1,000
Yankee Gas Services Co	0	0	125
Totals	38,052	61,052	[3] 199,104

[1] Phase II—Commencing 11/15/91.
[2] Phase III—Commencing 11/15/92.
[3] FTS-5 Phase I quantity totals 100,000 Dt/Day.

Texas Eastern requests authorization to replace and operate 4.25 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Station 25 and Station 26 (M.P. 1394.47 to M.P. 1398.72) under Phase II (1991); and replace and operate 5.25 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Station 25 and Station 26 (M.P 1398.72 to M.P. 1403.97), and install and operate up to 6,500 HP electric compressor unit at Station 22-A under Phase III (1992). It is stated that the estimated capital cost of the proposed facilities is $8,289,000 for Phase II (1991) and $25,716,000 for Phase III (1992), and that the facilities will be financed from funds on hand and funds generated from operations.

It is stated that upon the later of November 15, 1991 (Phase II) and November 15, 1992 (Phase III) or the completion of all necessary facilities for each phase, transportation service under Rate Schedule FTS-5 (Phases II and III) shall consist of the transportation of gas for the account of Buyer received by Texas Eastern from Buyer for delivery to CNG and the transportation of gas for the account of Buyer received by Texas Eastern from CNG for delivery to or for the account of Buyer. In particular, Texas Eastern would receive gas for transportation under Rate Schedule FTS-5 (Phases II and III) from CNG, or deliver gas to CNG for storage for the account of Buyer, at the interconnection of CNG's proposed North Summit storage field pipeline and Texas Eastern's existing system. Texas Eastern would deliver gas received from CNG to points of delivery with Buyer, or in the case of the Algonquin customers, volumes to Algonquin at Measuring Station 087 near Lambertville, Pennsylvania. Texas Eastern would receive the gas from the Buyers for storage injection at their existing delivery points with Texas Eastern by displacement of quantities otherwise delivered and will redeliver such quantities to CNG at the CNG North Summit facility.

The cost of service associated with the incremental facilities required to render the FTS-5 service (Phases II and III) will be borne by all Buyers receiving the FTS-5 service. For all gas transported, commencing November 15, 1991 and November 15, 1992, Texas Eastern will charge a monthly demand rate of $5.464 and $6.665 per dt, respectively, and an authorized daily overrun rate of $0.180 and $0.219 per dt, respectively. The demand rates for Phases II and III involve the accumulation of cost of service attributable to Phases I and II and a uniform rate to all FTS-5 customers which Texas Eastern states is consistent with prior Commission's treatment of rates for Texas Eastern's other phased storage delivery services.

It is further stated that Consolidated Edison Company of NY (Con Ed) has advised CNG and that it does not require the 20,000 dt per day previously proposed for Phase III. Texas Eastern stated that it has agreed with CNG to purchase the storage capacity released by Con Ed for Texas Eastern's own storage requirements. Texas Eastern anticipates re-marketing the storage and transportation capacity released by Con Ed to other customers on the east coast, and that such re-marketing is permitted by Texas Eastern's agreement with CNG.

Comment date: December 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP90-207-000]

Take notice that on October 11, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-207-000 an application pursuant to section 7(c) of the Natural gas Act, for authorization to transport and deliver natural gas volumes to certain direct sale customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

United explains that the transportation authority is required to implement interruptible direct sales to Chevron, U.S.A., Inc., Chevron Chemical Company, GAF Building Materials Corporation, and South Mississippi Electric Power Association at locations in Alabama, Louisiana, and Mississippi. United states that the facilities needed to effectuate the sales are already in place. Because the sales would be provided on an interruptible basis, United does not expect them to impact its existing customers.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP90-193-000]

Take notice that on October 31, 1989, Williston Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP90-193-000 an application pursuant to section 7(b) of the Natural gas Act, for permission and approval to abandon a transportation service provided for ANR Production Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it was granted certificate authorization to transport natural gas for ANR in Docket No. CP85-534-000. Williston Basin states further that the transportation agreement between it and ANR has terminated under its own terms and as a result Williston Basin is no longer transporting gas for ANR. Williston Basin is therefore seeking permission and approval to abandon the transportation service.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP90-192-000]

Take notice that on October 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP90-192-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided for Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it was granted certificte authorization to transport natural gas for EES in Docket No. CP85-214-000. Williston Basin states further that the transportation agreement between it and EES has terminated under its own terms and as a result Williston Basin is no longer transporting gas for EES. Williston Basin is therefore seeking permission and approval to abandon the transportation service.

Comment date: December 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

5. Williston Basin Interstate Pipeline Company

[Docket No. CP90-194-000]

Take notice that on October 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP90-194-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided for K N Energy, Inc. (K N), all as more fully set forth in the application which is on file

with the Commission and open to public inspection.

Williston Basin states that it was granted certificate authorization to transport natural gas for K N in Docket No. CP85–534–000. Williston Basin states further that the transportation agreement between it and K N was terminated, pursuant to a September 28, 1989 letter from K N. Williston Basin is therefore seeking permission and approval to abandon the transportation service.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Williston Basin Interstate Pipeline Company

[Docket No. CP90–191–000]

Take notice that on October 31, 1989, Williston Basin Interstate pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP90–191–000, an appliction pursuant to Section 7(b) of the natural Gas Act for permission and approval to abandon a transportation service provided for Sugar Creek Resources, Inc. (Sugar Creek), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it was granted certificate authorization to transport natural gas for Sugar Creek in Docket No. CP86–43–000. Williston Basin states further that the transportation agreement between it and Sugar Creek has terminated under its own terms and as a result Williston Basin is no longer transporting gas for Sugar Creek. Williston Basin is therefore seeking permission and approval to abandon the transportation service.

Comment date: December 5, 1989, in accordance with Standard paragraph F at the end of this notice.

7. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP90–188–000]

Take notice that on October 31, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP90–188–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing: (a) the sale by AER on a firm basis of up to 75,000 MMBtu of natural gas per day to Texas Gas Transmission Corporation (Texas Gas) pursuant to a service agreement between AER and Texas Gas, under AER's Rate Schedule CD, and proposed terms and conditions of service applicable thereto, (b) the construction and operation of a sales tap and appurtenant facilities to be located near Glendale, Arkansas, on AER's proposed line AC, and (c) the use of these facilities and two other interconnections between AER and Texas Gas as delivery points for the volumes to be sold, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically, AER states that it has entered into a new service agreement with Texas Gas (the Agreement) which has a primary term of ten years, and continues year-to-year thereafter. It is anticipated that service would commence on the first November 1 following AER's acceptance of the requested certificate. It is stated that the contract demand level would be 50,000 MMBtu per day in the first year, increasing to 75,000 MMBtu per day in the second year. It is further stated that under various options available to Texas Gas, the contract demand could be increased up to 350,000 MMBtu per day. It is noted that Texas Gas also has the right, once its contract demand level has reached 100,000 MMBtu per day, to convert 25 percent of such contract demand annually to firm transportation service. These conversion rights, it is indicated, if not exercised would be cumulative.

AER states that deliveries under the Agreement would be made at three points: (a) a new interconnection to be constructed between AER's proposed Line AC and Texas Gas' proposed Crossover Line (a 70-mile, 30-inch pipeline that woud extend from Texas Gas' pipeline near Cleveland, Mississippi, to AER's Line AC); (b) a new interconnection to be constructed between AER's Line FT–18 and Texas Gas' mainline facilities near Perryville, Louisiana; and (c) an existing interconnection near Helena, Arkansas. AER states that it has filed in Docket No. CP89–2174–000 for authority to operate and provide service by means of its interests in Line AC and the tap which are being constructed pursuant to Section 311 of the Natural Gas Policy Act. It is indicated that Texas Gas would file in the near future for authority to construct the Crossover Line.

AER explains that the agreement can be cancelled, if within 18 months of the filing with the Commission of the applications required to implement the Agreement, AER and Texas Gas have not received all regulatory authorizations, on terms acceptable to both parties, for (a) the sale proposed herein, (b) AER's operation and utilization of Line AC under Section 7(c) of the NGA, and (c) Texas Gas's construction and operation of the Crossover Line.

AER states that during the primary term of the Agreement, the needs of Texas Gas and AER's other customers largely can be satisfied from reserves AER already has under contract. To the extent AER requires additional supplies to serve the ongoing needs to Texas Gas and AER's other customers, AER anticipates that it would be able to acquire sufficient additional long-term supplies from the supply areas to which it already is connected.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP90–226–000]

Take notice that on November 9, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–226–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texaco Gas Marketing, Inc. (Texaco) under its blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that the maximum daily, average daily and annual quantities that it would transport for Texaco would be 772,500 MMBtu equivalent of natural gas, 103,000 MMBtu equivalent of natural gas, and 37,595,000 MMBtu equivalent of natural gas, respectively.

El Paso states that it would transport natural gas for Texaco from any receipt point on El Paso's system to various delivery points at the borderline between Arizona and California.

El Paso indicates that in Docket No. ST89–4784 it reported that transportation service for Texaco had begun on September 4, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

ANR Pipeline Company

[Docket No. CP90–214–000]

Take notice that on November 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–214–000 an application pursuant to Section 7(b) of the Natural Gas Act , for permission and approval to abandon partially a firm transportation service provided to Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated July 19, 1983, it agreed to transport on a firm basis up to 20,000 Mcf per day of natural gas for the account of Bridgeline. ANR indicates that it received authorization to transport such gas for Bridgeline in Docket No. CP84–462–000. It is stated that ANR transports such gas from the production platform in High Island Area Block A–563, offshore Texas, to either an interconnection between ANR and Columbia Gulf Transmission Company or an interconnection between ANR and Riverway Gas Pipeline Company, both delivery points being located in St. Mary Parish, Louisiana.

ANR states that in a March 7, 1986, amendment to the agreement, Bridgeline's level of contract demand service was reduced from 20,000 Mcf per day to 18,000 Mcf per day, effective November 1, 1986. It is stated that such amendment also provided Bridgeline the option to further reduce its contract demand to 14,000 Mcf per day, effective November 1, 1989. ANR indicates that it received authorization to make the first reduction to 18,000 Mcf per day in an order issued November 28, 1986, in Docket No. CP84–462–004, and that in that order the Commission directed ANR to obtain the appropriate authority should Bridgeline choose to exercise the option to reduce its contract demand to 14,000 Mcf per day.

ANR states that Bridgeline has now chosen to exercise its option and has requested that ANR seek the appropriate authority to reflect a reduction in the contract demand to 14,000 Mcf per day to be effective November 1, 1989.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Oklahoma-Arkansas Pipeline Company

[Docket No. CP90–187–000]

Take notice that on October 31, 1989, Oklahoma-Arkansas Pipeline Company (Oklahoma-Arkansas), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP90–187–000, an application pursuant to section 7(c) of the Natural Gas Act and subpart E of part 157 and subpart G of part 284 of the Commission's Regulations for an optional certificate of public convenience and necessity and a blanket certificate of public convenience and necessity authorizing Arkansas-Oklahoma to: (1) engage in the transportation of natural gas in interstate commerce as a natural gas company; (2) to construct, own and operate a new natural gas pipeline to be used in the transportation of up to approximately 500,000 dekatherms per day (dtd) of natural gas from the Arkoma producing area of Oklahoma; (3) to transport gas on a self-implementing basis with pregranted abandonment authority; and (4) through the proposed facilities.

Oklahoma-Arkansas requests authority to construct, own and operate an interstate natural gas pipeline system commencing in Pittsburg County, Oklahoma and extending eastward 352 miles through Arkansas to a terminus at an interconnection with Trunkline Gas Company (Trunkline) in Tate County, Mississippi. Oklahoma-Arkansas proposes to transport volumes of natural gas up to the full 500,000 Dt design capacity of its system on a firm or interruptible basis, on behalf of shippers who may include producers, interstate pipelines, local distribution companies, cogenerators, marketers and end users.

Specifically, Oklahoma-Arkansas proposes:

(1) To engage in the receipt, transmission and redelivery of natural gas in interstate commerce and thus become a natural gas company, as defined in the NGA, subject to the jurisdiction of the Commission;

(2) To construct, own and operate a new transmission system to transport gas from the Arkoma Producing area;

(3) To perform self-implementing transportation under blanket authority pursuant to § 284.221 of the Commission's Regulations;

(4) For pregranted authority to abandon service upon expiration of the applicable transportation service agreements subject to the notice requirements of § 157.103(f)(2) of the Commission's Regulations; and

(5) For approval of initial rates as provided in pro forma Rate Schedules FTS–1, FTS–2 and ITS.

Oklahoma-Arkansas states that the proposed facilities would have a maximum capacity of 500,000 Dt of natural gas per day for a distance extending from the Arkoma Basin to existing facilities at Texas Eastern Transmission Corporation's (TETCO) Bald Knob Compressor Station in White County, Arkansas and at Trunkline Gas Company's (Trunkline) Independence Compresor Station in Tate County, Mississippi. It is indicated that additional interconnects with other interstate pipelines intersected by Oklahoma-Arkansas's proposed line will be proposed at a later date, under other authorizations, at points mutually agreeable to Oklahoma-Arkansas and the interstate pipelines.

Oklahoma-Arkansas states that the proposed facilities would consist of 240.15 miles of 36-inch pipe and 112.20 miles of 30-inch pipe. Specifically, 68.7 miles of 36-inch pipe would be installed in various counties in Oklahoma, 171.45 miles of 36-inch and 77.7 miles of 30-inch pipe would be installed in various counties in Arkansas and 34.5 miles of 30-inch pipe would be installed in various counties in Mississippi. It is stated that measurement facilities would be located at the interconnections with TETCO and Trunkline.

Oklahoma-Arkansas states that the peak design capacity of the proposed facilities would be 500,000 Dt per day, with a 259,000 Dt per day delivery capacity to TETCO and 241,000 Dt per day to Trunkline.

Oklahoma-Arkansas states that the estimated cost of the proposed facilities is $273,528,000. Oklahoma-Arkansas indicates that it would finance the cost of these facilities through partnership borrowing and partnership contributions at a debt to equity ratio of 70/30.

Oklahoma-Arkansas proposes to transport up to 500,000 Dt per day of natural gas on both a firm and interruptible basis by providing transportation services on an open-access basis pursuant to a Part 284, Subpart G blanket certificate. It is explained that firm transportation would be provided pursuant to proposed Rate Schedules FTS–1 and FTS–2. Interruptible service, it is indicated, would be available pursuant to proposed Rate Schedule ITS.

Oklahoma-Arkansas states that it is providing for multiple receipt and delivery points in its transportation service agreements. For firm service, it is indicated that shippers could designate multiple receipt points as long as the total volumes tendered for firm service from these points do not exceed the total volumes under the transportation agreement. As an added feature, Oklahoma-Arkansas states that shippers would be allowed to designate for the firm service additional "interruptible" receipt points which will be utilized on a capacity available basis. It is further indicated that shippers would not be required to provide necessary line pack, thereby avoiding a significant record keeping burden.

Oklahoma-Arkansas states that shippers electing Rate Schedules FTS–1 would be allowed to participate in a

transportation assignment program pursuant to the provisions of Section 7 of the proposed FTS–1 Rate Schedule. Oklahoma-Arkansas proposes to allow FTS–1 shippers to assign on either a firm or interruptible basis all or a portion of their firm transportation service pursuant to Rate Schedule FTS–1 to third parties, provided that such shippers submit a notice in writing to Oklahoma-Arkansas or Oklahoma-Arkansas's designated operator indicating their desire to engage in the assignment of transportation service. Oklahoma-Arkansas further proposes that assignees who have been assigned rights on a firm basis be permitted to reassign these firm rights on either a firm or interruptible basis.

Oklahoma-Arkansas states that in order to provide all potential shippers an opportunity to obtain initial transportation services, Oklahoma-Arkansas is establishing an "open season" to accept requests for both firm and interruptible transportation services on a first-come, first-served basis for all requests received on or before January 12, 1990.

Oklahoma-Arkansas states that the pro forma tariff and illustrative rates, are designed to conform to the requirements of part 284, subpart G and part 157, subpart E and to meet the varying needs of potential shippers. Oklahoma-Arkansas proposed to offer the same firm transportation service under two separate rate schedules, either of which shippers may elect at their discretion. Oklahoma-Arkansas states that it is indifferent as to which rate schedule a shipper might find preferential. It is asserted that high load factor shippers, such as cogenerators and certain industrial users, as well as shippers who anticipate lower system utilization would benefit greatly from having this "basket" rate selection available. It is stated that under either the FTS–1 rate schedule or the FTS–2 Modified Fixed Variable (MFV) rate schedule, shippers would have the same priority of service. It is anticipated that these rate schedules, as described below and in the pro forma tariff, meet or exceed the requirements of part 157, subpart E. Table 1 summarizes the characteristics of these firm rate schedules.

TABLE 1

Schedule	Design	Return	Load Factor LF	Rates	
				Demand	Commodity
FTS–1	Demand	ROE=15%	100%	$5.490	—0—
FTS–2	MFV	ROE=16%	00%	$6.513	$.1196

Oklahoma-Arkansas proposes that a one part firm demand rate is permissible under the provisions of Part 157, Subpart E when a shipper can freely choose between other equivalent services. It is explained that if the shipper so desires he could receive a benefit, ie, a lower rate, for absorbing a greater portion of the risk associated with the venture while alternatively, the shipper could elect to place Oklahoma-Arkansas at risk for certain fixed and variable costs through selection of the Rate Schedule FTS–2 service described below. It is stated that to ameliorate the risk the FTS–1 customers would absorb, Oklahoma-Arkansas would provide the transportation assignment program for FTS–1 shippers as previously described.

Oklahoma-Arkansas states that Rate Schedule ITS is designed as an interruptible service, consistent with the Party 284(G) blanket certificate requirements. Oklahoma-Arkansas proposes a one-part volumetric rate for interruptible service, discountable between maximum and minimum levels. It is indicated that the maximum interruptible rate of $0.3337 would be equal to the FTS–2 100% load factor rate.

Oklahoma-Arkansas's proposed facilities it is asserted, provide a cost efficient means to connect numerous and diverse markets with substantial new gas reserves. It is averred that the Arkoma Basin and the geographical formations located in the immediate vicinity represent significant reserves of natural gas and that recent estimates for the Arkoma Basin producing province indicate remaining reserves of 5.75 trillion cubic feet of natural gas. Oklahoma-Arkansas believes that development of these reserves would foster increased competition at the wellhead and that insufficient pipeline capacity currently exists to transport these available supplies of natural gas to interstate pipelines.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Williston Basin Interstate Pipeline Company

[Docket No. CP90–190–000]

Take notice that on October 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP90–190–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided for Koch Hydrocarbon Company (Koch), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it was granted certificate authorization to transport natural gas for Koch in Docket No. CP85–534–000. Williston Basin states further that the transportation agreement between it and Koch was terminated as of October 1, 1989 and as a result Williston Basin is no longer transporting gas for Koch. Williston Basin is therefore seeking permission and approval to abandon the transportation service.

Comment date: December 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP90–222–000]

Take notice that on November 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–222–000 a request pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis on behalf of Gulf South Pipeline Company (Shipper), under the blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 309,000 MMBtu on a peak day, 309,000 MMBtu on an average day and 112,785,000 MMBtu on an annual basis. United also states that pursuant to a Transportation Agreement dated May 12, 1989 between United and Shipper (Transportation Agreement) propose to transport natural gas for Shipper from points of receipt located in multiple counties in Louisiana and Texas and Clark County, Mississippi. The points of delivery and ultimate points of delivery are located in multiple counties in Louisiana and Alabama.

United further states that it commenced this service on September 29, 1989, as reported in Docket No. ST90–282–000.

Comment date: December 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Colorado Interstate Gas Company

[Docket No. CP90–234–000]

Take notice that on November 13, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–234–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Continental Natural Gas, Inc. (Continental) under CIG's blanket transportation certificate issued in Docket No. CP86–589, *et. al.* on March 28, 1988, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes, pursuant to an agreement dated September 1, 1989, to transport natural gas for Continental within the area of Beaver County, Oklahoma. CIG states that the maximum daily volumes of gas to be transported in 50,000 Mcf and the average day deliveries are estimated to be 5,000 Mcf of gas. CIG estimates annual deliveries of gas will be 1,825,000 Mcf of gas. CIG states that transportation service under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations commenced on September 1, 1989, as reported to the Commission in Docket No. ST90–64–000.

Comment date: December 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Tennessee Gas Pipeline Company

[Docket No. CP90–224–000]

Take notice that on November 8, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–224–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Maxus Exploration Company (Maxus), a producer, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection

Tennessee states that pursuant to a transportation agreement dated August 25, 1989, as amended effective September 1, 1989 and September 5, 1989, it would transport natural gas for Maxus from receipt points located offshore Louisiana. Tennessee further states that the ultimate points of delivery would be located in the states of New York, Pennsylvania, Mississippi and Alabama. Tennessee indicates that the peak day, average day and annual volumes that would be transported for Maxus would be 70,000 dekatherms, 70,000 dekatherms and 25,550,000 dekatherms, respectively.

Tennessee states that it commenced the transportation of natural gas for Maxus on October 1, 1989, as reported in Docket No. ST90–277, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations (18 C.F.R. 284.223(a)).

Comment date: December 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP90–223–000]

Take notice that on November 8, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP90–223–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Eagle Natural Gas Company (Eagle Natural). United explains that service commenced August 31, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–145. United explains that the peak day quantity would be 25,750 MMBtu, the average daily quantity would be 25,750 MMBtu, and that the annual quantity would be 9,398,750 MMBtu. United explains that it would receive natural gas for Eagle Natural's account at various receipt points in the states of Louisiana, Texas, Mississippi, Alabama and Offshore Louisiana. United states that it would redeliver the gas at various points in the state of Louisiana.

Comment date: December 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27245 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No.1953-003]

Consolidated Water Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

November 14, 1989.

The license for the Dubay Project No. 1953 located on the Wisconsin River in Marathon, Poitage, and Wood Counties, Wisconsin expires on June 30, 1991. Pursuant to section 15(c)(1) of the Federal Power Act, the statutory deadline for the submission of applications for relicense was June 30, 1989. An application for relicense has been filed as follows:

Project No.	Applicant	Contact
P-1953	Consolidated Water Power Company, 231 First Ave. North, P.O. Box 8050, Wisconsin Rapids, WI 54495.	Consolidated Water Power Company, 231 First Ave. North, P.O. Box 8050, Wisconsin Rapids, WI 54495.

The following dates and procedures will be used in processing the application.

Date	Action
November 15, 1989	Commission issues public notice of the application describing final proposals and establishing dates for filing interventions, public comments, agency recommendations, and fish and wildlife terms and conditions.
March 15, 1990	Commission notifies applicant of the need for additional information, if any, and the date information is due.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Robert W. Bell at (202) 357-0806.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27251 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-021]

Kentucky West Virginia Gas Co.; Fourth Amendment to Compliance Filing

November 14, 1989.

Take notice that on November 9, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed a fourth amendment to its March 30, 1989 compliance filing so as to extend the proposed effective date for the proposed tariff sheets to February 1, 1990.

Kentucky West states that the tariff sheets filed March 30, 1989, were filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued in the referenced proceedings on March 15, 1989, and in accordance with the mandate of the United States Court of Appeals of the Fifth Circuit, issued in *Kentucky West Virginia Gas Co. v. FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that, under the tariff sheets filed March 30, 1989, it would bill its customers directly for the difference between (1) the amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations. Kentucky West states further that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed 84 months; or (3) by a lump-sum payment during the installment period.

Kentucky West states that, by notice issued April 5, 1989, the Commission set April 14, 1989 as the deadline for motions to intervene or protests. However, on April 13, 1989, based on preliminary settlement discussions, Kentucky West filed it first amendment to the March 30, 1989 filing, changing the proposed effective date to September 1, 1989, and extending the deadline for interventions or protests until August 14, 1989. Subsequently, based uon further progress in settlement discussions, Kentucky West amended its filing so as to extend the effective date of the filing until November 1, 1989, and the date for filing interventions or protests until October 16, 1989. On October 12, 1989, Kentucky West filed its third amendment to the March 30, 1989 filing, changing the proposed effective date to December 1, 1989, and extending the deadline for interventions or protests until November 16, 1989.

Kentucky West states that during the past few months it has continued to make progress in settlement discussions but that if settlement is to be achieved, it will require further negotiations. Therefore, Kentucky West is amending its filing a fourth time so as to extend the proposed effective date of the tariff sheets filed to February 1, 1990. The deadline for interventions or protests will be extended to January 14, 1990. In this regard, Kentucky West asks that the provisions of Section 154.22 of the Commission's Regulations be waived to the extent necessary to permit such extension.

Kentucky West states that it has contacted all parties to these proceedings and the Commission Staff, and no party nor the Commission Staff have any objections to this extension.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before January 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27252 Filed 11-20-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of October 6 Through October 13, 1989

During the week of October 6 through October 13, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. This Notice includes a submission inadvertently omitted from an earlier list.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 6 through October 13, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 10, 1989	Bob Johnson, Cisco, TX	RR272-37	Request for modification/rescission in the crude oil refund proceeding. If granted: The Decision and Order (Case No. RF272-75161) issued to Bob Johnson would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Oct. 11, 1989	General Electric Company, Washington	LKA-0001	Appeal of an information request denial. If granted: The September 6, 1989 Freedom of Information Request Denial issued by the Office of Albuquerque Operations would be rescinded, and General Electric Company would receive access to certain documents concerning DOE involvement in the cleanup of the South Valley Superfund site.
Oct. 13, 1989	Amoco & Northeast Petroleum Industnes/Massachusetts, Boston, MA.	RM21-160, RM25-161	Request for modification/rescission in the Amoco & Northeast Petroleum Industries second stage refund proceeding. If granted: The Decision and Order issued to Massachusetts (Case Nos. RQ21-124 & RQ25-107) would be modified regarding the State's Application for Refund submitted in the Amoco & Northeast Petroleum Industries second stage refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of October 6 to October 13, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case number
10/10/89	Gene Smith	RF309-1374
10/11/89	Royal Jordanian Airlines Corp	RA272-14
10/04/89	J. P. Oil Company, Inc.	RF307-10066
10/04/89	J. P. Oil Company, Inc.	RF307-10067
10/12/89	Twin Towers Service Station	RF307-10070
10/10/89	Gene Smith	RF309-13742
10/06/89	R.C. Reyer	RC272-73
10/10/89	Fort Davis Exxon	RF307-10068
02/27/89	Spence W. Smith	RF307-10069
10/13/89	Walter S. Zong, Jr	RF300-10677
10/06/89 thru 10/13/89	Crude Oil refund, applicatons received	RF272-75752 thru RF272-75785
10/06/89 thru 10/13/89	Atlantic Richfield refund, applications received	RF304-10505 thru RF304-10516
10/06/89 thru 10/13/89	Shell Oil refund, applications received	RF315-7461 thru RF315-7553

[FR Doc. 89-27338 Filed 11-20-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of October 13 Through October 20, 1989

During the Week of October 13 through October 20, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. This Notice includes a submission inadvertently omitted from an earlier list.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publications of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of October 13 through October 20, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 16, 1989	Beacon/Coast Gas, Inc., Hardin, KY	RR238-3	Request for modification/rescission in the Beacon refund proceeding. If granted: The September 19, 1989 Decision and Order (Case No. RF238-88) issued to Coast Gas, Inc. would be modified regarding the firm's application for refund submitted in the Beacon refund proceeding.
Oct. 19, 1989	Franc Pajeck Company, Walnut Creek, CA	LFA-0002	Appeal of an information request denial. If granted: The September 27, 1989 Feeedom of Information Request Denial issued by James S. Hirhara would be rescinded and the Franc Pajeck Company would receive access to information regarding Labor Only Contract #5724900A at the Lawrence Livermore National Laboratory.
Oct. 20, 1989	William Albert Hewgley, Kingston, TN	LFA-0003	Appeal of an information request denial. If granted: The August 18, 1989 Freedom of Information Request Denial issued at Oak Ridge would be rescinded and William Albert Hewgley would receive access to his personnel and field personnel supplementary files, which are maintained by Martin Manetta Energy Systems, Inc., a DOE contractor.
Oct. 16, 1989	Puerto Rico, Santurce, Puerto Rico	LEE-0001	Application for exception. If granted: Puerto Rico would receive an exception from the provisions of 10 CFR 455 regarding the eligibility of buildings for grants under the Institutional Conservation Programs.
Oct. 19, 1989	Bi-Petro, Inc., Washington, DC	LEF-0001	Implementation of special refund procedures. If granted: The office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 210, subpart V, in connection with the September 30, 1985 Consent Order entered into with Bi-Petro, Inc.
Oct. 19, 1989	Public Service Electric & Gas Company, Newark, NJ	RR272-38	Request for modification/rescission in the crude oil refund proceeding. If granted: The November 30, 1988 Decision and Order (Case NO. RF272-290) issued to Public Service Electric & Gas Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Refund Applications Received

[Week of October 13 to October 20, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case number
0/2/01/89	Shockley's Exxon Service	RF307-10071
10/17/89	John T. Pryor	RF300-10880
10/17/89	Rayburn Auto Parts, Inc.	RF310-346
10/18/89	William L. Wegman	RF320-1
10/17/89	Zuniga's Gulf	RF300-10878
10/17/89	Madison Street Gulf	RF300-10879
10/17/89	Sid's Crown	RF313-311
10/13/89 thru 10/20/89	Crude Oil refund, applications received	RF272-75786 thru RF272-75849
10/13/89 thru 10/20/89	Atlantic Richfield refund, applications received	RF304-10517 thru RF304-10537
10/13/89 thru 10/20/89	Shell Oil refund, applications received	RF315-7554 thru RF315-7676

[FR Doc. 89-27339 Filed 11-20-89; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $4,351,589.43, plus accrued interest, obtained by the DOE under the terms of a settlement agreement entered into with United Refining Company and United Refining Company of Pennsylvania. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number KEF-0132.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $4,351,589.43 that has been remitted by United Refining Company and United Refining Company of Pennsylvania to the DOE to settle possible pricing violations with respect to certain sales of their refined petroleum products. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. through 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585. If commentors express sufficient interest in presenting their views orally, the DOE will convene a public hearing. In the event we determine to hold a hearing, notice will be given in the **Federal Register**.

Dated: November 14, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1989.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: United Refining Company, United Refining Company of Pennsylvania

Date of Filing: April 27, 1989

Case Number: KEF-0132

On April 27, 1989, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings between United Refining Company, United Refining Company of Pennsylvania (hereinafter referred to collectively as United) and the DOE. 10 CFR part 205, subpart V.

I. Background

United was a "refiner", as that term is defined in 10 CFR 212.31. United was therefore subject to the price regulations set forth in 10 CFR 212.82, *et seq.* During the period August 19, 1973 through January 28, 1981, United was a Pennsylvania Corporation, which refined and sold gasoline distillates and other refined petroleum products.[1] The ERA conducted an audit of United's compliance with the Mandatory Petroleum Price Regulations contained in 6 CFR 150, Subpart L and 10 CFR part 212 during the period August 1973 through December 1974 (the audit period). As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) to United Refining, Inc., United Refining Company and United Refining Company of Pennsylvania on August 3, 1984.[2] The ERA alleged that certain of United's pricing practices were in violation of 6 CFR 150.356 and 10 CFR 212.82, 212.83 and 212.126(b). The ERA calculated that these alleged violations resulted in overcharges in the amount of $29,070,251, which includes interest through September 16, 1983, in sales of United's [3] motor gasoline, distillates and general refinery products during specified months between November 1973 through April 1976. On September 16, 1983, United Refining Company and United Refining Company of Pennsylvania filed a petition for reorganization under Chapter 11 in The United States Bankruptcy Court for the Southern District of Texas.

In order to settle any potential civil liability for the alleged violations and overcharges referred to in the August 3, 1984 PRO, United and the DOE executed a Settlement Agreement on January 13, 1988.[4] The Settlement Agreement settles the liability of United Refining Company and United Refining Company of Pennsylvania for the violations specified in the PRO described above.[5] *See* Settlement Agreement, pp. 1-2, 5 at ¶ 5.

Pursuant to the Settlement Agreement, United issued a promissory note in the amount of $3,459,264.01, plus interest, to the DOE. On March 7, 1988, United prepaid the promissory note. The DOE received a total of $4,351,589.43. The Settlement Agreement funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan for distributing these funds to qualified purchasers of United's gasoline, distillates and general refinery products. Because the procedures set forth in this Decision are in a proposed form, no application should be filed at this time. A final determination will be issued at a later date announcing that the filing of United refund applications is authorized. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

A. Eligibility for Refunds

The settlement amount of $4,351,589.43, plus accrued interest, will be available for distribution to purchasers of United gasoline,

[1] Gasoline accounted for most of United's sales revenues. Other products sold by United include kerosene, diesel fuel, home heating oils, residual fuel oil, paving and roofing asphalt and to a lesser degree, liquified petroleum gas (LPG).

[2] During the audit and overcharge period, United Refining Company was a Pennsylvania corporation engaged in the refining and marketing of petroleum products. Coral Energy, Inc., a Pennsylvania corporation and wholly-owned subsidiary of the Houston, Texas based Coral Petroleum, Inc., purchased United Refining Company on February 28, 1981. United Refining Company therefore became a wholly-owned subsidiary of Coral Energy, Inc.

The refinery assets of United Refining Company were distributed to Coral Energy, Inc., in August and September 1981, as part of a partial liquidation and reorganization. In connection with this reorganization, Coral Energy, Inc. changed its name to United Refining Company. The marketing assets of the original United Refining Company stayed with the original United Refining Company under a new name, United Refining Company of Pennsylvania. United Refining Company of Pennsylvania remained a wholly-owned subsidiary of United Refining Company (formerly Coral Energy, Inc.). The ultimate parent company, Coral Petroleum, Inc., transferred all of its stock in the new United Refining Company (formerly Coral Energy, Inc.) to a wholly-owned Delaware corporation created in July 1981. This Delaware corporation became known as United Refining, Inc. on October 8, 1981.

The DOE believes that United Refining, Inc. is a holding company that owns all of the stock of the United Refining Company, a refiner of petroleum products. United Refining Company, in turn, owns all of the stock of United Refining Company of Pennsylvania, a marketer of petroleum products. United Refining, Inc. was not named as a party to the Settlement Agreement.

[3] During the violation period, United has a number of subsidiaries. These subsidiaries include: Beaver Gasoline Company; Kiantone Pipeline Corporation; Trans Penn Oil Company; United Oil Manufacturing Company; PPC, Inc.; Minute Man Service, Inc.; Kwik-Fill Corporation; Skat Oil Company; Six-Ninety Service Center, Inc. (became part of United some time after March 1, 1974); Osceola Refining Company (Osceola) (acquired by United on December 31, 1973); Ogar Pipe Line Company (wholly-owned by Osceola); Super Test Petroleum, Inc. (Super Test) (wholly-owned by Osceola); Bell Oil Company (wholly-owned by Super Test). During the period 1973 through 1976 United and it subsidiaries marketed their petroleum products through between 559 to 715 retail outlets. The outlets were either owned by United, held under long-term leases or supplied under contract. These outlets are known to have operated under a number of different brand names in regions of one or more of the following states: Delaware; Michigan; New York; Ohio; and Pennsylvania. United's subsidiaries are presumptively ineligible for a refund in this proceeding.

[4] The United States Bankruptcy Court for the Southern District of Texas approved the Settlement Agreement on January 22, 1988.

[5] The Settlement Agreement also involved Kiantone Pipeline Corporation (Kiantone), a subsidiary of United that was also in Chapter 11 bankruptcy. However, Kiantone was not a named party to the Proposed Remedial Order (PRO) that prompted the Settlement Agreement. The Settlement Agreement specifically states that it was entered into "for the express purpose of settling the Proof of Claim filed by the DOE against the bankruptcy estates of United [United Refining Company] and United-Pennsylvania [United Refining Company of Pennsylvania], by the DOE's covenanting not to sue United or United-Pennsylvania regarding certain alleged violations and transactions referred to by the DOE Proof of Claim and specified in a Proposed Remedial Order issued in case number 340S00445 by the DOE to United on August 3, 1984." Settlement Agreement, pp. 1-2. Kiantone was a wholly-owned subsidiary of United. The OHA believes that the PRO covered sales made in certain months by United and its subsidiaries. Accordingly, any company that was a subsidiary of United and sold covered products during the months specified in the PRO is included in the definition of United for purposes of this proceeding. *See* Footnotes 2 & 3 *See also* section II. A.

distillates [6] and general refinery products [7] who can show that they were injured by United's pricing practices in specific months during the period November 1973 through April 1976.[8] The months and product types that are covered by this proceeding are listed in the Appendix attached to this Proposed Decision and Order.

B. Calculation of Refund Amount

We propose adopting a volumetric method to apportion the United escrow account. We will derive the volumetric figure by dividing the $4,351,589.43 received from United by the total volume of covered products sold by the firm during the months listed in the Appendix. This yields a volumetric refund amount of $.0084 per gallon, exclusive of interest.[9] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by United during the months when the alleged overcharges occurred.[10]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from United during the months when the alleged overcharges occurred on those products, multiplied by the per gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the United funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ 82, 541 at 85,225 (1982) (*Uban*).

1. Showing of Injury

We propose that each claimant will be required to document its purchases of United's covered products during the months that the alleged overcharges occurred. In addition, we propose to require an applicant to demonstrate that it was injured by the alleged overcharges. In order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with United's alleged overcharges, a claimant will have to show that it maintained banks of unrecovered product costs. We realize that some applicants may be unable to provide actual cost bank records for the period covered by this proceeding. We are therefore willing to accept information establishing with reasonable likelihood that a claimant had banks. *See Seminole Refining Inc.*, 12 DOE ¶ 85,188 (1985); *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). The maintenance of banks does not establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982). In order to demonstrate injury, a claimant must show that market conditions would not permit it to pass through those increased costs to its customers. *See American Pacific International*, 14 DOE ¶ 85.158 at 88.295 (1986) (API). Such a showing might be made through a demonstration of a competitive disadvantage, lowered profit margin, decreased market share or depressed sales volumes during the period of purchases of United covered products. *See Gulf Oil Corporation*, 16 DOE ¶ 85,361 at 88,740 (1987).

2. Small Claims Presumption

We also propose to adopt a presumption, as we have in many cases, that purchasers seeking refunds of $5,000 or less were injured by United's pricing practices. *See Uban*, 9 DOE ¶ 82,541 (1982). We recognize that the cost to the applicant of gathering evidence of injury to support a refund claim of $5,000 or less could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. For example, some firms may have limited accounting and data-retrieval capabilities, and may therefore be unable to produce the records necessary to prove either the existence of banks of unrecovered costs, or that they did not pass the alleged overcharges on to their own customers. We also seek to insure that the cost to the applicant and to the government of compiling and analyzing information sufficient to establish a claim does not exceed the amount of the refund. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). Under the small claims presumption, an applicant seeking total refunds of $5,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of United covered products during the months that the alleged overcharges occurred.

3. End-Users

We propose to adopt the presumption that end-users, i.e. ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by United's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users were generally not subject to price controls during the period covered by this proceeding, and were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See id.* at 88,030; *see also Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). We therefore propose that end-users of United products need only document their purchase volumes of covered products during the months of the alleged overcharges to make a sufficient showing of injury.

4. Regulated Firms and Cooperatives

We propose that claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, will be presumed to have absorbed the alleged overcharges. Accordingly, such claimants need only documents the volume of covered products purchased by them, during the months when the alleged overcharges occurred, in order to receive a full volumetric refund. These firms would have routinely passed price increases through to their customers, and will now pass on the benefits of the refund of their customers. Accordingly, these firms will not be required to make a detailed demonstration of injury. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,514 (1986); *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will not require a public utility seeking a refund of $5,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

5. Indirect Purchasers

We propose that firms which made indirect purchases of covered United products during the months when the alleged overcharges occurred may also apply for refunds. If an applicant did not purchase directly from United, but believes that covered products it purchased from another firm were originally purchased from United during a month (or months) listed in the Appendix, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of United products passed through United's alleged overcharges to its own customers. *See Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

6. Spot Purchasers

We propose to adopt the rebuttable presumption that a claimant who made only spot purchases from United was not injured as a result of those purchasers. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered United products.[11] Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchasers from United.

[6] Distillates for the purposes of this proceeding shall mean No. 2 oils. No. 2 oils are defined as No. 2 heating oil and No. 2-D diesel fuel. 10 CFR 212.31.

[7] For purposes of this proceeding, general refinery products are defined as all covered products other than No. 2 oils, gasoline, and crude oil. This definition originated in 10 CFR 212.31, 40 FR 2795 (January 15, 1975), and was effective until its amendment in 41 Fed. Reg. 15330 (April 12, 1976).

[8] Applicants are only eligible to receive refunds based upon covered products purchased during the period in which each product was subject to federal price controls. Therefore, an applicant will not be eligible to receive a refund based upon paving and roofing asphalt purchased after March 31, 1974 because these products were decontrolled on April 1, 1974. 39 Fed. Reg. 12214 (April 3, 1974).

[9] To compute this figure, we estimated that United sold a total of 517,296,583 gallons of covered products during the months listed in the Appendix. This figure was obtained from PEO–86 data resubmitted to the DOE by United on May 31, 1979 and annual reports that the OHA located in the ERA's file of the United enforcement proceedings.

[10] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *See Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[11] Spot purchasers tend to have considerable discretion as to the timing of purchases and the market in which to make purchases. Accordingly, they generally would not have made spot purchases from United at increased prices unless they were able to pass through the full amount of any price increases to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

III. Distribution of Refunds Remaining After Consideration of All Refund Applications

In the event that money remains after all meritorious refund applications have been processed, the funds in the United escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. §§ 4501–4507 (West Supp. 1989).

IV. Conclusion

Applications for Refund in this proceeding should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any of the United Settlement Agreement funds, we intend to publicize the distribution process and to provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution procedures set forth in this Proposed Decision and Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Decision and Order in the **Federal Register**.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by United Refining Company and the United Refining Company of Pennsylvania pursuant to the Settlement Agreement executed on January 13, 1988 will be distributed in accordance with the foregoing Decision.

APPENDIX

Month	Year	Products [1]
November	1973	Distillate; Gasoline; GRP.
December	1973	Distillate; Gasoline; GRP.
January	1974	Distillate; Gasoline; GRP.
February	1974	Distillate; Gasoline; GRP.
March	1974	Gasoline; GRP.
April	1974	Gasoline.
September	1974	GRP.
October	1974	GRP.
November	1974	GRP.
December	1974	GRP.
February	1975	GRP.
October	1975	GRP.
January	1976	GRP.
February	1976	Distillate.
April	1976	Distillate.

[1] Refer to footnotes 6 & 7 in text.

[FR Doc. 89–27340 Filed 11–20–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

[FRL–3681–6]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application and Summary Report for an Emergency Exemption for Pesticides (EPA ICR #0596.03; OMB #2070–0032). This ICR requests reinstatement of a previously approved collection.

Abstract: Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, EPA may authorize states, territories, and federal agencies to temporarily ship and use unregistered pesticides under emergency situations. To ensure that an emergency actually exists and that use of the pesticide will not pose an unreasonable risk to human health or the environment, EPA requires exemption applicants to explain the circumstances necessitating the emergency use and to provide details on the pesticide and its proposed application. Afterwards, the respondents must describe the pesticide treatment and its effectiveness in a summary report.

Burden Statement: The public reporting burden for this collection of information is estimated to average 15 hours per response, which includes the initial request for an emergency exemption and the summary report after the pesticide application. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: States, territories, and federal agencies.

Estimated No. of Respondents: 60.

Estimated Total Annual Burden on Respondents: 5,355 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070–0057), Washington, DC 20503, (Telephone (202) 395–3084).

Dated: November 9, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–27325 Filed 11–20–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3681–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

EPA Region II: Air and Waste Management Division

Title: Gray Iron Foundry Information Request, (EPA ICR #1549.01). This is a new collection.

Abstract: EPA will require gray iron foundries in New York, New Jersey, and the Caribbean to respond by letter to questions concerning their generation, transport, treatment, storage, and disposal of hazardous wastes and the manner in which these activities were carried out. EPA will use the information as part of an initiative to

identify and take enforcement actions against non-notifiers in this industry.

Burden Statement: The estimated average public reporting burden for this collection of information is about 6 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the letter to the Agency.

Respondents: Owners or operators of gray iron foundries.

Estimated No. of Respondents: 150.

Estimated Total Annual Burden of Respondents: 900 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: November 9, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–27326 Filed 11–20–89; 8:45 am]

BILLING CODE [illegible]

[FRL 3681–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: RCRA Hazardous Waste Permit Application Part A (EPA ICR #262). This is a renewal, OMB #2050–0034.

Abstract: The RCRA permit application is used by owners and operators of hazardous waste treatment, storage, and disposal facilities in applying for permits as required by RCRA Section 3005. The permit application is also used to define the processes and the wastes that can be managed at the facility in interim status. The application asks for the characteristics and conditions of the site and of the hazarous waste handled. The application must be revised if certain changes are made to an interim status facility.

Burden Statement: The estimated average public reporting for this collection of information is about 8 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the form to the Agency.

Respondents: Owners and operators of hazardous waste treatment, storage and disposal facilities.

Estimated No. of Respondents: 765.

Estimated Total Annual Burden of Respondents: 6127 hours.

Frequency of Collection: One time per permit application.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducting the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1067.03; NSPS for Primary Aluminum Reduction Plants (Subpart 5) Recording and Recordkeeping; was approved 10/16/89; OMB #2060–0031; expires 10/31/90.

EPA ICR #1432.03; Protection of Stratospheric Ozone: Reporting and Recordkeeping Requirements; was approved 10/16/89; OMB #2060–0170; expires 01/31/92.

EPA ICR #1530.01; Water Quality Standards Regulation; was approved 10/17/89; OMB #2040.0049; expires 10/31/92.

EPA ICR #0664.03; NSPS for Bulk Gasoline Terminals—(Subpart XX); was approved 10/16/89; OMB #2060–0006; expires 10/31/92.

EPA ICR #0794.03; Notification of Substantial Risks Under Section 8(e) of the Toxic Substances Control Act; was approved 10/10/89; OMB #2070–0046; expires 10/31/92.

EPA ICR #0163.03; TSCA Inspection-Related Forms; was approved 10/11/89; OMB #2070–0007; expires 10/31/92.

Dated: November 7, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–27327 Filed 11–20–89; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3681–8]

National Drinking Water Advisory Council Request for Nomination of Members

The Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. This notice solicits names to fill these five vacancies.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current resume providing the nominee's background, experience, and qualifications.

This request for nominations does not imply any commitment by the Agency as to the procedure to be followed in making selections.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street SW., Washington, DC 20460, no later than December 8, 1989. The Agency will not formally acknowledge or respond to nominations.

Dated: November 7, 1989.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 89–27328 Filed 11–20–89; 8:45 am]

BILLING CODE [illegible]

[OPTS-44542; FRL 3666-8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,3-dichloro-2-propanol (CAS No. 96–23–1), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for 1,3-dichloro-2-propanol was submitted by the Dow Chemical Company pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on November 1, 1989. The submission describes a 13–week gavage toxicity study in rats. Toxicity testing is required by this test rule.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44542). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 8, 1989.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–27332 Filed 11–20–89; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

Turkey/United States Atlantic and Gulf Rate Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011207–002

Title: Turkey/United States Atlantic and Gulf Rate Agreement.

Parties: Farrell Lines, Inc., Lykes Bros. Steamship Co., Inc., Pharos Lines, S.A.

Synopisis: The proposed amendment would modify the Agreement's voting procedures for telephone and telex polls to require the unanimous vote of all parties entitled to vote.

By Order of the Federal Maritime Commission.

Dated: November 15, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27233 Filed 11–20–89; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P5-88]

Motor Vehicle Manufacturers Association of the United States, Inc.—Application for Exception of Vehicle Shipments From Portions of the Shipping Act of 1984; Enlargement of Time

Notice of filing of the petition for exemption in this matter was published October 5, 1989 (54 FR 41161). Counsel for the USA-North Europe and North Europe-USA Rate Agreement now has requested an enlargement of time for filing replies to the petition, to November 27, 1989. In support of the request, counsel notes that the time requested is only an additional five workdays, and submits that this extension would not unduly delay the proceeding, impair the Commission's discharge of its regulatory responsibilities or prejudice any interest. Counsel states that the additional time would enable the parties to the USA-North Europe and North Europe-USA Rate Agreement to present their views on the petition in a single, joint submission.

The request is supported by the South Europe/U.S.A. Freight Conference, the "8900 Lines, the Mediterranean/North Pacific Coast Freight Conference, the U.S. Atlantic and Gulf/Australia-New Zealand Conference, the United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference, and the Transpacific Westbound Rate Agreement.

In view of the exceptional circumstances cited, the time for filing replies to the petition is hereby enlarged to and including November 27, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27295 Filed 11–20–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Philip R. Akre; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available

for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 1989.

A. FEDERAL RESERVE BANK OF SAN FRANCISCO (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Philip R. Akre, M.D.*, Coronado, California; to acquire 18.43 percent of the voting shares of Crown Bancorp, Coronado, California, and thereby indirectly acquire Bank of Coronado, Coronado, California.

Board of Governors of the Federal Reserve System, November 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27271 Filed 11-20-89; 8:45 am]

BILLING CODE 6210-01-M

Farmers State Bank Corp., of Fort Morgan, Colorado, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulations Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Farmers State Bank Corporation of Fort Morgan, Colorado*, Fort Morgan, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Fort Morgan, Fort Morgan, Colorado.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *West One Bancorp*, Boise, Idaho; to acquire 100 percent of the voting shares of Bank of Tacoma, Tacoma, Washington.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27272 Filed 11-20-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Reestablishment; Extramural Science Advisory Board, NIMH et al.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770, and the Anti-Drug Abuse Act of 1986, Public Law 99-570, section 4003, 100 Stat. 3207-106 as amended by the Drug Abuse Treatment Technical Corrections Act of 1989, section 3(f) 103 Stat. 611, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces the reestablishment, effective November 14, 1989, of the following committees:

Extramural Science Advisory Board, NIMH,

Extramural Science Advisory Board, NIAAA.

The duration of these committees is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: November 15, 1989.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-27298 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Occupational Cumulative Trauma Disorders of the Upper Extremities

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), HHS.

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the health and safety aspects of cumulative trauma disorders (CTDs) resulting from the performance of repetitive manual tasks that involve the use of the upper extremities (hands, arms, and shoulders). Interested parties may submit information on the health and safety aspects of performing tasks that involve repetitive movements of the upper extremities, including but not limited to (1) the extent of the existing problem, (2) ergonomic designs and engineering controls in use today, (3) exposure/effect relationships, (4) health effects of repetitive motions, and (5) prevention and intervention procedures in use today. This information will be used by NIOSH to determine the extent of the health problems associated with CTDs and to develop strategies for preventing and controlling the problem.

DATE: Comments and secondary data concerning this notice should be submitted by January 22, 1990.

ADDRESS: Please submit any information, recommendations, suggestions, and comments in writing to: Dr. Richard W. Niemeier, Acting Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Austin Henschel, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-30, Cincinnati, Ohio 45226, (513) 533-8340 or FTS 684-8340.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1977 (30 U.S.C. 801, et seq.) and the Federal Mine Safety and Health Act of 1970 (29 U.S.C. 651, et seq.) NIOSH is directed to gather information and develop recommendations for improving occupational safety and health standards. NIOSH has been concerned with the health and safety consequences associated with the performance of occupational tasks that require frequent repetitive movements of the upper extremities. The term cumulative trauma disorders (CTDs) is used to identify a group of musculoskeletal disorders involving injuries to the tendons, tendon sheaths and related bones, muscles, and nerves of the hands, wrists, elbows, arms, and shoulders. Included are such disorders as tendonitis, tenosynovitis, carpal tunnel syndrome, tennis elbow, trigger finger, and DeQuervain's disease. The signs and symptoms associated with CTDs include pain, restricted movement of the involved part, and/or decreased performance and strength. Usually the worker requires medical treatment and time off the job. However, unless the task is redesigned to eliminate the need for excessive force, awkward posture, and frequent repetitive motions, the problem will reappear on return to work.

NIOSH is interested in obtaining existing and available materials, including reports and research findings, to evaluate the extent of the existing problem and to develop strategies to prevent and control CTDs. Examples of requested information include the following:

1. Descriptions of repetitive motion tasks.
2. Descriptions of tools and workplaces required to perform these tasks.
3. Biomechanical postural and force attributes of the task.
4. Number of repetitive movements made per hour and per workday.
5. Adverse health effects or injuries observed in workers performing repetitive motion tasks.
6. Epidemiologic data on prevalence and latency of health effects.
7. Prevention and intervention procedures in use today.
8. The role of personal factors (e.g., age, gender, strength, and endurance) in the development of CTDs.
9. The role of administrative factors (e.g., overtime, shiftwork, rest breaks, in-plant exercise programs) in the development of CTDs.
10. Medical monitoring strategies for early detection of CTDs.
11. Medical treatment of CTDs.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or personal identifying information contained in medical case reports or data, will be available for public examination and copying at the above address.

Dated: November 14, 1989.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 89-27296 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-19-M

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs, CDC, HHS.

Time and Date: 8 a.m.-5 p.m., Wednesday, December 6, 1989.

Place: The Quality Inn Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Status: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters To Be Discussed: The Committee will discuss the proceedings of the Second National Conference on Financing the Care of Diabetes Mellitus in the 1990s and related topics. Major conclusions and recommendations from the Conference will be presented. Proposed new projects and program updates will also be presented by staff from the Division of Diabetes Translation (DDT).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Frederick G. Murphy, Program Analyst, DDT, Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE, Mailstop E-08, Atlanta, Georgia 30333. Telephone: FTS: 236-1848; Commercial: 404/639-1848.

Dated: November 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89-27308 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 89N-0494]

Drug Export: Reagent Red Blood Cells, Ortho Ficin Panel System RESOLVE™ Panel C

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product Reagent Red Blood Cells, Ortho Ficin Panel System RESOLVE™ Panel C to Italy.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biological Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Raritan, NJ, has filed an application requesting approval for the export of the biological product Reagent Red Blood Cells, Ortho Ficin Panel System RESOLVE™ Panel C, to Italy. The Ortho Ficin Panel System RESOLVE™ Panel C is a qualitative test for the identification of unexpected blood group antibodies. The application

was received and filed in the Center for Biologics Evaluation and Research on October 19, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 1, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 6, 1989.

Peter Michael Dubinsky,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89-27303 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: BUFFALO DISTRICT OFFICE, chaired by Lois M. Meyer, District Consumer Affairs Officer, in conjunction with the New York State Assembly Committee on Consumer Affairs and Protection (Jerrold Nadler, Chairman), and the New York State Task Force on Food, Farm, and Nutrition Policy (Gloria Davis, Chairwoman). The topic to be discussed is food labeling.

DATES: Wednesday, November 29, 1989, 10 a.m.

ADDRESSES: New York State Legislative Office Bldg., Hamilton Hearing, Rm. B, Second Floor, Albany, NY 12248.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Food and Drug Administration, 599 Delaware Avenue, Buffalo, NY 14202, 716-846-4461.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 15, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27300 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, charied by John Feldman, District Director. The topic to be discussed is food labeling.

DATE: Monday, December 4, 1989, two sessions: 1 p.m. to 3 p.m. and 7 p.m. to 9 p.m.

ADDRESS: Rochester Community College, 851 30th Ave. SE., Rms. A206-208, Rochester, MN 55904-4999.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 15, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27301 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1990.

Name: Graduate Training in Family Medicine Review Committee.

Date and Time: January 29-30, 1990, 8:30 a.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 29, 8:30 a.m.-9:30 a.m. Closed for Remainder of Meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 29, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Graduate Training in Family Medicine Review Committee, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Agenda Items are subject to change as priorities dictate.

Dated: November 16, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-27306 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement for Cooperative Agreements for Area Health Education Centers Programs

The Health Resources and Services Administration announces that applications are now being accepted for Fiscal Year 1990 Cooperative Agreements for Area Health Education Centers (AHEC) Programs under the

authority of section 781(a)(1) of the Public Health Service Act, as amended by Public Law 100-607.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcment is a contingency action being taken to ensure that should funds become available for this purpose, they can be amended in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education center for the planning, development and operation of area health education center programs. Except as modified by the following paragraph, to be eligible to receive support for an Area Health Education Center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s). New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education programs. Applicants may request up to three years of support with the expectation that AHEC's planned and developed in years one and two would be operational no later than the third year.

The Health Professions Reauthorization Act of 1988 (title VI of Pub. L. 100-607) amended the authority for the Area Health Education Centers program by:

1. Providing for a waiver under specified circumstances of the provision now contained in section 781(a)(2)(C) prohibiting an AHEC from being a school of medicine or a school of osteopathic medicine, the parent institution of such a school, nor a branch campus or other subunit of a school of medicine or its parent institution, or a consortium of such entities. The waiver applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to "physician assistants, nurse practitioners and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

The Bureau of Health Professions, within the Health Resources and Services Administration has substantial programmatic involvement with the planning, developing, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions, schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing with project staff individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the AHEC's.

In addition, certain preferential actions may apply in the implementation of this grant program. Three categories of actions are defined below:

Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Priorities

Favorable adjustment of review scores when applications meet specified objective criteria.

Special Considerations

Enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Funding Preference for Fiscal Year 1990

The following funding preference, funding priorities and special consideration were established in Fiscal Year 1989 and are being extended in Fiscal Year 1990. In making awards for Fiscal Year 1990, a funding preference will be given to competing continuation applications.

The preference continues to be needed to maximize both Federal and non-Federal investments. The AHEC program requires a long-term strategy and commitment. Short-term funding of a year or two would allow most projects to complete only the planning and development of their program. For programmatic reasons this is the only preference needed at this time.

Funding Priorities for Fiscal Year 1990

Additionally, the following priorities will be given to: 1. Applications proposing centers in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or State designated clinic/center serving an underserved population.

2. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

3. Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Special Consideration for Fiscal Year 1990

Special consideration will be given to applications proposing centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics, than

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exists in the general population in the United States.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed application materials should be returned to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The standard application form PHS 6025–1 HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is January 9, 1990.

Applications will be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

This program is listed at 13.824 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 20, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–27305 Filed 11–20–89; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Funding Priorities for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces that applications for Fiscal Year 1990, Grants for Programs for Physician Assistants are being accepted under the authority of section 788(d) formerly section 783(a) of the Public Health Service Act, as amended by Public Law 100–607.

Section 788(d) authorizes the award of grants to accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Act.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure, that should funds become available for this purpose, grants can be awarded in a timely fashion consistent with the needs of the program as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of sections 701(8) and 788(d) of the Act and program regulations implementing these sections published at 42 CFR part 57, subparts H and I.

Each application must contain or be supported by assurances that the applicant institution has appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

"Program for the Training of Physician Assistants" is defined at 42 CFR 57.801–803 as a program which has, among other elements, the objective of training graduates who are capable of providing primary health care and training in the areas of primary care, disease prevention, health promotion, geriatric medicine and home health care.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;

2. The potential effectiveness of the project in carrying out the purposes of section 788(d) of the PHS Act and 42 CFR part 57 subparts H–I;

3. The capability of the applicant to carry out the proposed project;

4. The local, regional and national needs the project proposes to serve;

5. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

6. The soundness of the fiscal plan for assuring effective use of grant funds;

7. The potential of the project to continue on a self-sustaining basis after the period of grant support; and

8. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

The Administration does not intend to apply any funding preferences or special considerations in the review of applications for Fiscal Year 1990.

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to the following:

(1) Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or exceeding their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in a training program.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

(3) Applications that demonstrate sufficient curricula time and offerings devoted to assuming competence in the prevention, recognition and treatment of those with HIV infection-related diseases.

(4) Applications that demonstrate sufficient curricula time and offerings devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in FY 1989 and the Administration is extending them in FY 1990.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–21), Bureau of Health professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–13, Rockville, Maryland 20857, Telephone: (301) 443–6950.

To receive consideration, applications must meet the deadline of December 15, 1989, which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.886 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 20, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–27304 Filed 11–20–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, December 4–5, 1989, Building 31C, Conference Room 10, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

It may be necessary to close a portion of the Board meeting to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, MD 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Information and Cancer Control.

Executive Secretary: Mr. Paul Van Nevel, Building 31, Room 10A31, Bethesda, Maryland 20892 (301) 496–6631.

Date of Meeting: December 4, 1989.

Place of Meeting: Building 31C, Conference Room 7.

Open: 7:30 a.m. to adjournment.

Agenda: To discuss interim measures of progress toward meeting the Year 2000 goals.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301) 496–5515.

Date of Meeting: December 4, 1989.

Place of Meeting: Building 31C, Conference Room 8.

Open: Immediately following the NCAB meeting to adjournment.

Agenda: To discuss the Biennial Report and the 1990 budget.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 11A03, Bethesda, MD 20892 (301) 496–5147.

Date of Meeting: December 4–5.

Place of Meeting: Building 31C, Conference Room 10.

Open: December 4, 8:30 a.m. to recess.

Closed: December 5 (If necessary) approximately 1 p.m. to 2 p.m. for meeting on Subcommittee on Special Actions for Grants.

Open: December 5, 8:00 a.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; New Business, and if necessary discussion of grant applications.

Catalog of Federal Domestic Assistance Program Numbers: (13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control)

Dated: November 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–27290 Filed 11–20–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 11, 12 and 13, 1989. The meeting will be held in Conference Room 437, Building 4, National Institute of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 11 from 9 a.m. until 12 p.m. During this open session, the permanent staff of the Laboratory of Molecular Microbiology, and the Laboratory of Viral Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in Sec. 552b(c)(6), title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 11 from 8:30 a.m. until 9 a.m.

and from 12 p.m. until recess, on December 12 from 8 a.m. until recess and on December 13 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301-496-3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health.)

Dated: November 9, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-27291 Filed 11-20-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The National Park Service announces an upcoming meeting of the Subsistence Resource Commission of the Gates of the Arctic National Park.

The following agenda items will be discussed:

(1) Election of chairman and introduction of new members.
(2) Introduction of guests.
(3) Review of commission authorities and responsibilities.
(4) Review of minutes from last meeting.
(5) Review of the Secretary of the Interior's response to the Subsistence Hunting Plan Recommendations.
(6) Work on re-draft of Subsistence Hunting Plan Recommendations.
(7) Review of 1989 park plans and activities.
(8) New business.

DATE: The meeting will begin on November 16, 1989 at 8:30 a.m. and conclude on November 17, 1989 at approximately 12:30 p.m.

ADDRESS: The meeting will be held at the Regency Fairbanks Hotel, 95 10th Avenue, Fairbanks, Alaska 99701.

FOR FURTHER INFORMATION CONTACT: Roger J. Siglin, Superintendent, Gates of the Arctic National Park, P.O. Box 74680, Fairbanks, Alaska 99707 (phone (907) 456-0281).

SUPPLEMENTARY INFORMATION: The Gates of the Arctic National Park's Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Boyd Evison,

Regional Director.

[FR Doc. 89-27309 Filed 11-20-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 11, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 6, 1989.

Amy Federman,

Acting Chief of Registration, National Register.

ILLINOIS

Pulaski County

Olmstead Depot, Front St. & Caledonia Ave., Olmstead, 89002101

KENTUCKY

Clay County

Peabody—Forsdon Historic District, KT 66, S of Big Creek, Big Creek vicinity, 89002099

NEW YORK

Hamilton County

Whelan Camp, Mick Rd., Long Lake, 89002089

Kings County

St. Paul's Protestant Episcopal Church, 199 Carroll St., New York 89002086

Montgomery County

Bates—Englehardt Mansion, 19 Washington St., St. Johnsville, 89002091

Larrowe House, S. Main St./US 415, Cohocton, 89002088

New York County

Duke Residence, 1009 Fifth Ave., New York, 89002090

Mount Morris Bank, E. 125th St. and Park Ave., New York, 89002087

Oneida County

Weaver, Gen. John G., House, 711 Herkimer Rd., Utica, 89002093

Seneca County

Christ Evangelical and Reformed Church, Main St., Fayette, 89002092

PENNSYLVANIA

Armstrong County

Ford City Armory (Pennsylvania National Guard Armories MPS), 301 Tenth St., Ford City, 89002074

Blair County

Tyrone Armory (Pennsylvania National Guard Armories MPS), 956 S. Logan Ave., Tyrone, 89002083

Centre County

Bellefonte Armory (Pennsylvania National Guard Armories MPS), E. Bishop St., Bellefonte, 89002068

Clearfield County

Clearfield Armory (Pennsylvania National Guard Armories MPS), Coal Hill Rd., Clearfield, 89002072

Cumberland County

Carlisle Armory (Pennsylvania National Guard Armories MPS), 504 Cavalry Rd., Carlisle, 89002071

Delaware County

Media Armory (Pennsylvania National Guard Armories (MPS), 12 E. State St., Media, 89002077

Merion Golf Club, East and West Courses, Ardmore Ave., Ardmore, 89002085

Elk County

Ridgway Armory (Pennsylvania National Guard Armories MPS), 72 N. Broad St., Ridgway, 89002078

Erie County

Erie Armory (Pennsylvania National Guard Armories MPS), 6th and Parade Sts., Erie, 89002073

Franklin County

Waynesboro Armory (Pennsylvania National Guard Armories MPS), N. Grant St., Waynesboro, 89002080

Huntingdon County

Huntingdon Armory (Pennsylvania National Guard Armories MPS), Standing Stone Ave., Huntingdon, 89002075

Indiana County

Blairsville Armory (Pennsylvania National Guard Armories MPS), 119 N. Walnut St., Blairsville, 89002069

Lackawanna County

Scranton Armory (Pennsylvania National Guard Armories MPS), 900 Adams Ave., Scranton, 89002081

Luzerne County

Kingston Armory (Pennsylvania National Guard Armories MPS), 280 Market St., Wilkes-Barre, 89002084

Northumberland County

Sunbury Armory (Pennsylvania National Guard Armories MPS), Catawissa Ave., Sunbury, 89002082

Washington County

Canonsburg Armory (Pennsylvania National Guard Armories MPS), W. College St. and N. Central Ave., Canonsburg, 89002070

Westmoreland County

Latrobe Armory (Pennsylvania National Guard Armories MPS), 1017 Ridge Ave., Latrobe, 89002076

Mount Pleasant Armory (Pennsylvania National Guard Armories MPS), Eagel and Spring Sts., Mount Pleasant, 89002079

WASHINGTON

Benton County

Carey, J.W., House, Byron Rd., W. of Prosser, Prosser vicinity, 89002096

King County

Graham, J. S., Store, 119 Pine St., Seattle, 89002094

Walla Walla County

Walla Walla Valley Traction Company Car Barn, 1102 W. Cherry, Walla Walla 8902097

Whitman County

United Presbyterian Church, 430 Maple St., Pullman, 89002095

[FR Doc. 89-27405 Filed 11-21-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31543]

Missouri Pacific Truck Lines, Inc.—Merger Exemption—Union Pacific Motor Freight Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the requirements of 49 U.S.C. 11343 the merger of Union Pacific Motor Freight Company into Missouri Pacific Truck Lines, Inc., subject to standard labor protective conditions.

DATES: This exemption will be effective on November 28, 1989. Petitions for reconsideration must be filed by December 11, 1989.

ADDRESSES: Send pleadings referred to Finace Docket No. 31543 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered, Practitioner, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359.

(Assistance for hearing impaired is available through TDD services at (202) 275-1721.)

Decided: November 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andrè, Lamboley, and Phillips.

Noreta R. McGree,

Secretary.

[FR Doc. 89-27374 Filed 11-20-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Angelos Michalatos d/b/a Contraband Searches and Investigations, Denial of Applications for Registration

On May 26, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Angelos Michalatos, d/b/a Contraband Searches and Investigations, of 6822 Catina Street, New Orleans, Louisiana, proposing to deny his pending applications for registration as a Schelude I and II controlled substance researcher under 21 U.S.C 823(f). The statutory basis for denying the pending applications is that Mr. Michalatos is not currently licensed to handle controlled substances in the State of Louisiana.

The Order to Show Cause was sent registered mail, return-receipt requested to the address listed on pending applications for registration. Although more than 30 days have elapsed since the Order to Show Cause was received by Mr. Michalatos, DEA has received no request for a hearing or any other response to the Order to Show Cause. Therefore, in accordance with 21 CFR 1301.54(a), 1301.54(d), and 1301.54(e), the Administrator determines that Mr. Michalatos has waived his opportunity for a hearing on the issues raised in the Order to Show CAuse and enters this final order based upon the information contained in the DEA investigative file.

The Administrator finds that on January 7, 1988, Angelos Michalatos, d/b/a Contraband Searches and Investigations, executed an application for registration as a Schedule II controlled substance researcher. On March 14, 1988, Mr. Michalatos executed a second application for registration as a Schedule I controlled substance researcher. Mr. Michalatos alleged in attachments to his applications that Contraband Searches and Investigations was a "business in which canines were trained and leased to search for and locate concealed contraband narcotics in conjunction with various law enforcement agency investigations."

On November 1, 1988, the Louisiana Department of Health and Human Resources (now the Department of Health and Hospitals), Bureau of Health Services Financing, Health Standards Section, Narcotics and Dangerous Division, declined to renew Mr. Michalatos' license to handle controlled substances in the State of Louisiana. The decision not to renew Mr. Michalatos' license was made following an investigation which revealed that Mr. Michalatos lacked adequate security for storing and handling controlled substances, had inadequate training facilities and had no experience in training drug detection canines. The Department of Health and Human Resources also concluded that Mr. Michalatos' continued licensure posed a danger to the public health and safety.

The Drug Enforcement Administration has long held that an individual cannot be issued a DEA Certificate of Registration for handling controlled substances unless he is so authorized by the state in which he is seeking registration. *See* 21 U.S.C. 823(f); See also Emerson Emory, M.D., Docket No. 85-46, 51 FR 9543 (1986); Avner Kauffman, M.D., Docket No. 85-8, 50 FR 34208 (1985); and Agostino Carlucci, M.D., Docket No. 82-20, 49 FR 33184 (1984). Therefore, the Drug Enforcement Administration cannot consider registering Mr. Michalatos until he is licensed to handle controlled substances by the State of Louisiana.

In addition to Mr. Michalatos' lack of state authorization to handle controlled substances, the Administrator also finds, based upon the conclusions made by the Louisiana Department of Health and Human Resources, that Mr. Michalatos' registration would be inconsistent with the public interest. The

lack of security for storing and handling controlled substances at Contraband Searches and Investigations' place of business, the lack of facilities for training canines and Mr. Michalatos' inexperience in training canines for drug detection indicate that Mr. Michalatos is not in a position to handle controlled substances responsibly. Consequently, his registration would be contrary to the public interest and his pending applications for registration must be denied.

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that the pending applications for registration as a Schedule I and II controlled substance researcher, executed by Angelos Michalatos, d/b/a Contraband Searches and Investigations, be, and they hereby are, denied.

This order is effective November 21, 1989.

Dated: November 13, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-27236 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-36]

Angela Duncan, d/b/a Rainbow Treatment Center, Inc.; Revocation of Registration

On March 22, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Angela Duncan, d/b/a Rainbow Treatment Center, Inc. (Respondent), located at 3205 East 8th Avenue, Tampa, Florida, proposing to revoke DEA Certificate of Registration RR0128202, and to deny any pending applications for renewal of Respondent's registration as a narcotic treatment program under 21 U.S.C. 823(g). The grounds for seeking the revocation of Respondent's registration were that the narcotic treatment program was no longer authorized by the State of Florida to handle controlled substances and that its continued registration was inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Shortly after Respondent requested a hearing, Government counsel filed a motion for summary disposition based upon Respondent's lack of state authorization to handle controlled substances. Judge Bittner allowed Respondent an opportunity to respond to the Government's motion for summary disposition. Respondent's counsel subsequently filed a response to the motion urging that the matter not be summarily dismissed. In that response, Respondent's counsel admitted that Respondent lacked state authority to handle controlled substances, but argued that Respondent expected to prevail in a pending appeal of the state suspension action. Respondent's counsel also claimed that the grant of the motion for summary disposition would deprive her of due process.

On August 17, 1989, Judge Bittner issued an opinion and recommended decision of the administrative law judge. In her decision, Judge Bittner granted the motion for summary disposition and recommended that the Administrator revoke Respondent's DEA Certificate of Registration and deny any pending applications for renewal based upon her lack of state authority to handle controlled substances. Neither party filed exceptions to the administrative law judge's opinion and recommended decision.

After a careful review of the entire record in this matter, the Administrator adopts the findings and recommendation of the administrative law judge and concludes that Respondent's registration must be revoked and any pending applications for renewal of said registration must be denied.

The Administrator finds that Respondent is currently registered with the Drug Enforcement Administration as a narcotic treatment program. On October 10, 1988, the Florida Department of Health and Rehabilitative Services (DHRS) issued an emergency final order suspending Respondent's probationary license to operate a methadone treatment program in the State of Florida. DHRS found that, based upon numerous controlled substance violations discovered at the treatment program, Respondent's continued licensure posed an immediate danger to the public health, safety and welfare and that emergency action suspending Respondent's license was necessary to protect the public interest. On review, the Florida Court of Appeals upheld the emergency suspension of Respondent's license.

The Drug Enforcement Administrative does not have statutory authority under the Controlled Substances Act to allow Respondent to remain registered as a narcotic treatment program without proper state authorization to handle controlled substances. *See* generally, Wingfield Drugs, Inc., Docket No. 87-13, 52 FR 27070 (1987); Robert F. Witek, D.D.S., Docket No. 87-54, 52 FR 47770 (1987); and Bobby Watts, M.D., Docket No. 87-71, 53 FR 11919 (1988). Respondent has not been authorized by the State of Florida to handle controlled substances since October 10, 1988. Without such state authority, Respondent cannot maintain a DEA Certificate of Registration.

The Administrator finds no merit in Respondent's contention that the grant of summary disposition in this case would deprive her of due process. Under 21 U.S.C. 824(a)(3), a registration may be revoked or suspended based upon the suspension of the registrant's state controlled substance license or registration. Such action is appropriate, regardless of whether the state action is final or even whether a hearing was held before the state agency. *See*, Robert F. Witek, D.D.S., supra.

The Administrator finds that the motion for summary disposition was properly granted. It is well established that when no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not necessary, even though the pertinent statute calls for a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); Alfred Tennyson Smurthwaite, M.D., Docket No. 77-29, 43 FR 11873 (1978); Philip E. Kirk, M.D., Docket No. 82-36, 48 FR 32887 (1983); aff'd *sub nom Kirk* v. *Mullen, 749 F.2d 297 (6th Cir. 1984)*.

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration RR0128202, previously issued to Angela Duncan, d/b/a Rainbow Treatment Center, Inc., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are denied.

This order is effective November 21, 1989.

Dated: November 13, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-27237 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 28, 1989, and published in the **Federal Register** on March 9, 1989, (54 FR 10058), Stepan Chemical Co., Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Cocaine (9041)	II
Coca Leaves (9040)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 2, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27234 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Registration

By Notice Dated February 28, 1989, and published in the **Federal Register** on March 9, 1989, (54FR10057), Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, NJ 07607, made application to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 2, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27238 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated May 2, 1989, and published in the **Federal Register** on May 2, 1989, (54 FR 20650), Toxi-Lab, Inc., 2 Goodyear, Irvine, CA 92718 made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Phencyclidine (7471)	II
1-pipendinocyclohexanecarbonitrile (PCC) (8603)	II
Benzoylecgonine (9187)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 2, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27235 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Meeting; Advisory Policy Board National Crime Information Center

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 6-7, 1989, at the Hyatt Regency Phoenix, 122 North Second Street, Phoenix, Arizona 85004.

The major topics to be discussed will include the status of the NCIC 2000 Study and technical and operational specifications for certain concepts proposed in the NCIC 2000 Study.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. William A. Bayse, Committee Management Liaison Officer, technical Services Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-5350.

Dated: November 15, 1989.

William S. Sessions,

Director.

[FR Doc. 89-27297 Filed 11-20-89; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 13th day of November 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Accuride (Workers)	Henderson, KY	11/13/89	11/2/89	23,592	Truck Wheels.
Air Treads, Inc (Workers)	Miami, FL	11/13/89	10/23/89	23,593	Retread Air Line Tires Service.
B&L Electric Co., Inc. (Workers)	Seminole, OK	11/13/89	11/1/89	23,594	Oil & Gas.
Braun Banking Co. (Workers)	Pittsburgh, PA	11/13/89	10/5/89	23,595	Bread & Rolls.
Bundy Tubing (UAW)	Winchester, KY	11/13/89	10/31/89	23,596	Fabricated Automotive Tubing.
Cooper Coating, Inc. (Workers)	Ellinwood, KS	11/13/89	10/13/89	23,597	Repairs for Oil, Leakage.
Etonic-Tretoen (Company)	Belfast, ME	11/13/89	10/13/89	23,598	Sneakers.
George E. Failing Co. (Workers)	Enid, OK	11/13/89	11/2/89	23,599	Water Well Drilling Equip.
Harter Co/Fairmount Group (Workers)	Strugis, MI	11/13/89	10/26/89	23,600	Chairs.
(The) Holoscan Corp. (Company)	Edison, NJ	11/13/89	9/15/89	23,601	Lasier Printers.
John Brown E&C Inc. (Company)	Casper, WY	11/13/89	10/30/89	23,602	Oil & Gas.
Lindell Drop Forge Co. (Workers)	Lansing, MI	11/13/89	10/20/89	23,603	Drop Forgings.
New York Bronze Power, Co (Company)	Newark, NJ	11/13/89	10/21/89	23,604	Paints & Brushes.
New York Bronze Power, Co (Company)	Port Elizabeth, NJ	11/13/89	10/21/89	23,605	Paints & Brushes.
Packaging Resources, Inc. (Workers)	Cedar Grove, NJ	11/13/89	10/27/89	23,606	Food Containers & Lids.
Photech, Inc, (Workers)	Williams-town, MA	11/13/89	11/1/89	23,607	Lithographic Film & Paper.
Refill Filter Co. (Company)	Perth Amboy, NJ	11/13/89	11/2/89	23,608	Refill Cartridges.
Republic Hose Mfg. Corp. (URW)	Youngstown, OH	11/13/89	10/31/89	23,609	Hydraulic Hoses.
(The) Ridge Co. (Company)	Forks, WA	11/13/89	11/1/89	23,610	Lumber.
Security Heel Crop. (Workers)	Manchester, NH	11/13/89	11/2/89	23,611	Heels.
Sims Casting Corp. (USWA)	Syracuse, NY	11/13/89	10/30/89	23,612	Castings.
SWENCO-Western, Inc. (Company)	Denver, CO	11/13/89	11/3/89	23,613	Oil & Gas.
Williams & Hinton Well Serv., Inc. (Workers)	Delhi, LA	11/13/89	10/30/89	23,614	Oil & GAs

[FR Doc. 89-27354 Filed 11-20-89; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC, 20213.

Signed at Washington, DC this 6th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Aluminum Co. of America (ALCOA) (Workers)	Wenatchee, WA	11/6/89	10/24/89	23,567	Aluminum products.
American Shim Steel Co. (Workers)	New Kensington, PA	11/6/89	10/26/89	23,568	Steel strips.
American Trim Co. (ACTWU)	Rochester, NY	11/6/89	10/20/89	23,569	Buttons.
Baxters Health Products (Workers)	Kingstree, SC	11/6/89	10/13/89	23,570	Devices and gloves.
C.S.D.C. (Workers)	Branchville, NJ	11/6/89	10/20/89	23,571	Semiconductors.
Consolidated Coal Co. (UMWA)	Morgantown, WV	11/6/89	10/12/89	23,572	Coal.
Dexter Knitting Mills (Workers)	Wallington, NJ	11/6/89	10/24/89	23,573	Mens' and womens' sweaters.
Elco Dress Co., Inc. (ILGWU)	Holyoke, MA	11/6/89	10/23/89	23,574	Ladies' dresses.
Frank Saltz & Sons Co. (ACTWU)	Passaic, NJ	11/6/89	10/19/89	23,575	Mens' suits.
Frank Saltz & Sons Co. (ACTWU)	Wallington, NJ	11/6/89	10/19/89	23,576	Mens' suits.
General Motors-Fisher Guide (GM/UAW)	Detroit, MI	11/6/89	10/27/89	23,577	Auto hardware.
Grada Products Div. Louis M. Gerson Co., Inc. (Workers).	Chattanooga, TN	11/6/89	10/25/89	23,578	Yardsticks, paddles blocks.
Hercules, Incorp. (UPIU)	Covington, VA	11/6/89	10/24/89	23,579	Polypropylene film.
Leonard Hudson Drilling Co. (Workers)	Pampa, TX	11/6/89	9/29/89	23,580	Drilling for unaffiliated & companies.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Lithocraft, Inc. (Workers)	Carlstadt, NJ	11/6/89	10/19/89	23,581	Lithographic printed material.
Manhattan Fashions Inc. (Company)	Union, City, NJ	11/6/89	10/26/89	23,582	Ladies' coats.
Mauldin & Son Logging Co. (Company)	Jefferson, TX	11/6/89	10/17/89	23,583	Hardwood lumber.
O&K Trojan Industries, Inc.	Batauia, NY	11/6/89	10/24/89	23,584	Construction equipment.
Orweco Incorp. (Workers)	Shippensburg, PA	11/6/89	10/23/89	23,585	Ladies' sportswear and dresses.
Performance Treds, Inc. (Workers)	Suffern, NY	11/6/89	10/26/89	23,586	Retreaded tires.
Polycast Technology Corp	Hackensack, NJ	11/6/89	10/27/89	23,587	Acrylic sheets.
Smiths Industries-SLI Div. (Workers)	Florham Park, NJ	11/6/89	10/4/89	23,588	Aerospace material communication systems and components.
UNOCAL/Casper District (Workers)	Casper, WY	11/6/89	10/18/89	23,589	Oil and gas.
Union Pacific Resources (Workers)	Denver, CO	11/6/89	10/25/89	23,590	Oil and gas.
Unimnerals Corp. (Workers)	Houston, TX	11/6/89	10/22/89	23,591	Drilling fluids.

[FR Doc. 89-27351 Filed 11-20-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,575]

Amstar Sugar Corp., Bunker Hill Refinery, Charlestown, MA.

Notice of Negative Determination on Reconsideration Pursuant to a remand by the U.S. Court of International Trade, dated August 25, 1989, in *Sugar Workers Union, Local #1660, ILA, AFL-CIO,* v. *Secretary of Labor* (USCIT 88-08-00670) the Department makes the following negative determination on remand for workers of Amstar Sugar Corporation, Bunker Hill refinery, Charlestown, Massachusetts.

The workers at the Bunker Hill refinery produced refined cane sugar products for wholesale and retail customers, independent distributors and manufacturers of products containing sugar. The Bunker Hill refinery closed on March 18, 1988.

The Department's initial denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met. U.S. imports of refined cane and beet sugar were negligible and declined absolutely and relative to domestic shipments in 1987 compared to 1986. The Department also conducted a survey of major declining customers of the Bunker Hill refinery and found that their import purchases of refined sugar in the first quarter of 1988 were not important and did not contribute importantly to any employment declines at the subject refinery.

The USCIT's remand directs the Department in its reconsideration to respond to the GAO Report and examine the effects which imported sugar blends and sugar substitutes had on employment, production and sales declines at the Bunker Hill refinery.

On remand, the Department surveyed Bunker Hill's customers on imported sugar substitutes and imported sugar blends. The survey showed that none of the customers imported sugar substitutes during 1986, 1987 or in the first quarter of 1988.

With respect to sugar blends, investigation findings show that they include products containing mostly sugar—ice tea mixes, kool aid and products like "Pure Sweet"—a granulated blended sugar containing approximately 80 percent sucrose and 20 percent dextrose.

To determine whether the sugar blends are like or directly competitive with refined sugar, the Department looked at their end use. If sugar is incorporated into another product, like an ice-tea mix, kool aid etc., the sugar is viewed much like a component and would not be considered either like or directly competitive with refined sugar. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell,* 506 F.2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, refined sugar incorporated in the finished article (ice-tea mix and other products containing sugar) cannot be considered like or directly competitive with the finished article.

The investigative findings found on remand show that blended sugar, like "Pure Sweet", purchased by some of Bunker Hill's grocery customers is substitutable for refined sugar as a sweetener and is competitive in price with refined sugar. However, the Department's survey found that most of Bunker Hill's customers did not import blended sugar. The few customers who imported sugar had import purchases that were not impotant in the relevant time period surveyed. None of Bunker Hill's manufacturing customers imported blended sugar, only the grocery customers did.

Other findings on remand show that the June 1988 GAO Report (Sugar Program—Issues Related to Imports of Sugar Containing Products) did not address the issue of the magnitude of U.S. imports of sugar blends and substitutes. Rather that report concerns allegations of illegal activities whereby sugar is imported ostensibly for use in the manufacture of sugar blended products either for export or for entry into the U.S. market. There is very little in the GAO report that can be considered in the Department's determination.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers of Amstar Corporation's Bunker Hill Refinery in Charlestown, Massachusetts.

Signed at Washington, DC, this 13th day of November 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-27352 Filed 11-20-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-166-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Co., 250 West Main Street, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hamilton No. 2 Mine, 2nd Main North (I.D. No. 15-02706) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to hazardous roof conditions, the immediate vicinity of the five seals located in the two left entries of the 2nd Main North cannot be safely traveled.

3. Rehabilitation of the loose roof would expose miners to hazardous conditions, and there is no place to construct a new set of seals that would be effective in the immediate area.

4. As an alternate method, petitioner proposes to establish an evaluation point where weekly examinations would be made.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 21, 1989. Copies of the petition are available for inspection at that address.

Dated: November 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-27353 Filed 11-20-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-89]

American Gas Association Laboratories; Notice of Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the American Gas Association Laboratories for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATE: The last date for interested parties to submit comments is January 27, 1990.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program at the above address, Telephone: (202) 523-7193.

Notice of Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the American Gas Association Laboratories has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by the application are as follows:

American Gas Association Laboratories, Cleveland Laboratory, 8501 East Pleasant Valley Road, Independence (Cleveland), Ohio 44131; and

American Gas Association Laboratories, Los Angeles Branch Laboratory, 1425 Grande Vista Avenue, Los Angeles, California 90023.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The American Gas Association Laboratories (AGA Labs) states that it certifies appliances for compliance with the American National Standards Institute's (ANSI) American National Standards for Safety and Health. Specifically, it certifies appliances for compliance with the Z21 series dealing with gas-burning appliances, and with the Z83 series, which covers industrial gas equipment, and has requested recognition for these standards as they apply to the OSHA requirements for liquefied petroleum gas. The AGA Labs also serve as the administrative secretariat for those primary ANSI standards committees that have responsibility for residential and commercial gas appliances and their installation.

The applicant states that it has a written procedure for handling of complaints between the applicant and the AGA Labs. This procedure is incorporated in the Application for Certification which is the contract between the applicant for testing and the AGA Labs. Section 7, Appeal Procedures, details the options open to the manufacturer in case of a dispute. (See Ex. 2.A., pp. 159 and 165). Complaints from local and federal inspectors and the public are handled by either the Program Coordination and Development or the Follow-Up Services Managers. (See Exs. 3.A.(1), p. 8, item 7.4; 3.A.(2), p. 7, item 7.4; and 2.C., p. 2 and pp. 11-12).

The applicant also assures that it maintains effective procedures for producing creditable findings or reports that are objective and without bias.

The laboratories are equipped to conduct testing of commercial and industrial gas consuming appliances, and AGA Lab's Equipment Development and Calibration Department maintains calibration and National Institute of Standards and Technology (NIST), formerly National Bureau of Standards (NBS), traceability of the instruments and equipment used during the certification program and develops or acquires new test equipment and instruments as needed. Written lists of all instruments and equipment, as well as specific calibration procedures for various types of instruments and equipment, are also maintained. Actual calibration is carried out either in-house or by contractor.

The AGA Labs lists a large staff of qualified personnel, and has facilities which are adequate to store, handle and condition the products to be tested as well as any instruments and equipment to be utilized in the testing. Included in its application was an extensive list of test equipment maintained at both facilities (Ex. 2.A., pp. 1-35).

The applicant states that it has several steps in the control of the quality of testing and reporting to its client. All test work is reviewed on the job by the immediate supervisor of the test engineers to determine compliance with the test method prescribed in the ANSI test standard. All test data is further reviewed by a certification engineer responsible for the design certification of the appliance and the preparation of the report given to the client.

The applicant's copyrighted listing mark is required to be included on the rating plate of listed products. Manufacturers are required to maintain records of the distribution of products bearing these rating plates which are examined by AGA Labs during their manufacturing site inspections. (See Ex. 3.A(1), p. 10, item 8.4 and Ex. 3.A.(2)., p. 8, item 8.4).

The AGA Labs maintains that it carriers out mandatory factory follow-up and inspection programs to verify that products continue to meet the requirements of the test standards. These programs are as follows:

The "old" system, covering some 50% of the manufacturers currently listed, requires that at least one announced and one unannounced inspection be conducted at the manufacturing site each year for each representative model listed. Each representative model is required to be completely recertified and retested every 5 years.

The "new" system requires that quarterly inspections be made at the manufacturing site. It is mandatory for all new clients and optional for manufacturers presently having products listed. On July 1, 1991, it will be mandatory for all manufacturers. Three of the inspections are to be announced and samples of the listed products then in production are to be inspected and tested. A fourth inspection is announced so that the manufacturer can make available any representative models not inspected during the previous year. Products are not required to be periodically recertified and retested at the laboratory. (See Ex. 2.C., pp. 3-5; Ex. 3.A.(1), p. 9; and Ex. 3.A.(2), p. 7.).

AGA Labs states that products are, at times, obtained from retail outlets to check on field complaints. Complaints from competitors are frequently accompanied by sample products. Occasionally, products so obtained are also investigated or similar models are obtained from retail outlets for investigation.

The applicant states that it is completely independent of employers subjected to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for certification purposes. The American Gas Association (Association), the parent body, is a nonprofit organization whose laboratories use the fees charged for testing and certification to offset the actual cost of rendering such services. The only members of the Association which are entitled to vote at annual and special meetings are the gas company members and the service company members. Associates, which include manufacturers, receive AGA publications but have no input into the operation of the Association. AGA Labs does not test and certify equipment for either the gas company members or the service company members. Testing is conducted for members of the manufacturing community that are independent of the Association. (See Ex. 2.B., pp. 1-2 and 6-7).

In addition to all of the above, the AGA Labs, according to its application, enjoys recognition as a certification agency by many State, city and inspection agencies.

Background

According to the application, the American Gas Association Laboratories were formed in 1925. In 1927, the Canadian Gas Association appointed the AGA Labs as its official testing laboratory. In 1928, the Cleveland, Ohio test facilities were dedicated and two years later the Los Angeles Branch Laboratory was established. In the early 1950's, two additional wings were added to the Cleveland facility. Finally, in 1969, the Cleveland Laboratory moved to its present facilities in Independence, Ohio. To date, since 1925, the applicant states that more than 57,000 gas appliance designs have been certified under the AGA Blue Star certification seal program.

The Cleveland Laboratory occupies three buildings on a 33 acre site with more than 125,000 square feet of floor space, of which some 60,000 square feet of floor space is allocated to product testing and evaluation. Of the Laboratory's more than 200 employees at this site, approximately 89 are involved in its Certification Program, as follows:

5—Front Office Personnel
3—Managers, Certification
1—Manager, Inspection
1—Supervisor, Client Services
2—Section Supervisors, Inspection
1—Certification Staff Coordinator
14—Certification Engineers
2—Client Service Engineers, Inspection
1—Administrative Coordinator, Inspection
1—Scheduler, Inspection
1—Supervisor, Training
1—Manager, Equipment, Development & Calibration
1—Engineer, Equipment, Development & Calibration
17—Test Engineers
15—Test Technicians
7—Descriptionists
12—Inspectors
4—Equipment, Design & Calibration Personnel

The Los Angeles Branch Laboratory, consisting of three buildings, is situated on 0.8 acre of land and provides 30,000 square feet of floor space, of which approximately 10,000 square feet is devoted to product testing and evaluation. This Laboratory employs 23 persons engaged in product testing and evaluation in its Certification Program, as follows:

1—Associate Director
1—General Manager
1—Assistant General Manager
1—Manager, Inspection
4—Senior Section Engineers
8—Engineers
1—Technician
2—Draftspersons
1—Draftsperson—Descriptionist
3—Inspectors

The applicant desires recognition for testing and certification of new commercial and industrial liquified petroleum gas (LPG or LP-Gas) consuming appliances as specified in 29 CFR 1910.110(b)(20). Specifically, it requests recognition for the following appliances and accessories when tested for compliance with the indicated ANSI American National Standards for Safety and Health:

ANSI Z83.3—Gas Utilization Equipment in Large Boilers
ANSI Z83.4—Direct Gas-Fires Make-Up Air Heaters
ANSI Z83.6—Gas-Fired Infrared Heaters
ANSI Z83.7—Gas-Fired Construction Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Boilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Fired Service Equipment—Counter Appliances (Counter- or Floor-Mounted)
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5.2—Gas Clothes Dryers, Type 2, Volume II
ANSI Z21.10.3—Gas Water Heaters, Volume III Storage, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous Water Heaters
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.47—Gas-Fired Central Furnaces (Except Direct Vent Central Furnaces)
ANSI Z21.61—Gas-Fired Toilets
ANSI Z21.64—Direct Vent Central Furnaces

ANSI Z21.73—Portable Camp Lanterns for Use With Propane Gas
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliance
ANSI Z21.22—Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.66—Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated

Preliminary Finding

AGA Labs addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its Certification Program personnel and copies of descriptions of minimum qualifications for technical personnel; copies of its test reports, inspection reports, and a replica of the contract which it executes with a manufacturer; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a description of its quality control and calibration procedures and programs.

The onsite surveys of the AGA Labs testing facilities enabled the investigators to assess the practical application of these criteria. The survey reports identified attributes that indicated the capability within each facility to perform product safety testing according to nationally recognized standards, as well as, where applicable, areas where improvement in procedures, practices, or policies would enhance each facility's capabilities.

Nine major areas were examined in depth in carrying out the laboratory surveys: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team at both the Cleveland facility and the Los Angeles facility were corrected prior to the preparation of the survey report and, therefore, not included as a separate corrective action report section.

With the preparation of the final reports of the two AGA Labs, the survey teams were satisfied that both testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

After a review of the application file and the onsite survey reports of AGA Labs two testing facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that American Gas Association Laboratories can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 22, 1989, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the AGA Labs application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–2–89), are available for inspection and duplication at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any furher proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of section 1910.7.

Signed at Washington, DC, this 14th day of November 1989.

G.F. Scannell,

Assistant Secretary.

[FR Doc. 89–27355 Filed 11–20–89; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89–81]

National Environmental Policy Act; Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS, TIER–2): Ulysses Mission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS, TIER–2): Ulysses Mission.

SUMMARY: On November 30, 1987, NASA published a "Notice of Availability of a Supplemental Draft Environmental Impact Statement" (SDEIS) for the Galileo and Ulysses Missions (52 FR 45513) that addressed the proposed action of continuing preparation of the Galileo and Ulysses Missions for launch in October 1989 and October 1990, respectively, on board the Space Shuttle using the Inertial Upper State (STS/IUS) and, for Ulysses only, a third stage, the Payload Assist Module—Special (PAM–S). For purposes of the Ulysses Mission, the SDEIS (TIER–1) was necessitated by the cancellation of the Centaur G (Shuttle version) and the subsequent reconfiguration of the missions to use the IUS/PAM–S. The Final EIS (TIER–1) was published in November 1988 (53 FR 44684) and the Galileo Mission Final EIS (TIER–2) was published on June 2, 1989 (54 FR 23692). The Galileo Mission was successfully launched and deployed on October 18, 1989. NASA is preparing a DEIS (TIER–2) which will address the proposed action of completion of preparation and operation of the Ulysses Mission, including its planned launch in October 1990.

The Ulysses Mission is an international cooperative mission jointly of NASA and the European Space Agency (ESA) in which NASA will launch the mission and provide some of the scientific investigations and ESA will provide the spacecraft and its scientific investigations. The Ulysses Mission will, for the first time, explore the Sun and the heliosphere within a few astronomical units (i.e., Sun-to-Earth distances) of the Sun over the full range of heliographic latitudes, thereby providing the first characterization of the uncharted third dimension of the heliosphere. The mission will measure properties of the solar wind, the Sun/wind interface, the heliospheric magnetic field, solar radio bursts and plasma waves, solar x-rays, solar and galactic cosmic rays, and interplanetary and interstellar neutral gas and dust.

There is no combination of launch vehicles that can propel a spacecraft from Earth out of the ecliptic plane to the polar latitudes of the Sun. Therefore the spacecraft will conduct a gravity-assist flyby of Jupiter in order to gain the needed kinetic energy to swing out of the ecliptic plane, back toward the Sun. The trajectory is planned to carry the spacecraft over the Sun's South pole then up around the North pole and onward out of the solar system. During the 5-year duration of the mission, the spacecraft will never be closer to the Sun than is the Earth (i.e., it will never be closer than one astronomical unit (AU) to the Sun), and will be as far away as is the planet Jupiter (i.e., 5 AU).

The spacecraft will use a Radioisotope Thermoelectic Generator (RTG) to provide electric power and thermal control. Although Ulysses will study the Sun, its trajectory will carry it far from the Sun for an extended period. There are currently no feasible alternative power systems which could achieve this mission. At the time of launch, the RTG will contain approximately 24 pounds of plutonium dioxide, a ceramic form of the fuel.

The DEIS (TIER–2) for the Ulysses Mission will address: the proposed action of completion of preparation and operation of the mission, including its planned launch in October 1990 or in the back up opportunity in 1991; and the alternative of cancelling further work on the mission (i.e., the "No Action" alternative). The TIER–1 EIS included an alternative launch configuration, the Titan IV/IUS, in the context of a delay alternative. That launch configuration will, however, not be available to NASA until 1995; and even if one were made available at this time, it would not be possible to make mission-specific modifications to achieve either the 1990 or the 1991 launch opportunities. Delay of the mission beyond the earliest launch opportunities would add costs, threaten the viability of key scientific teams, and threaten the acquisition of key scientific data. The Ulysses Mission in the inner heliosphere is timed to collect data simultaneously with the Pioneer 10 and 11 and Voyager 1 and 2 spacecraft in the outer heliosphere. That configuration of spacecraft will enable a three-dimension study of the heliosphere.

Since the only launch configuration available is the STS/IUS, and the environmental impacts of an STS/IUS launch are the same whenever the launch occurs, the DEIS will not analyze a delay alternative. Such analysis would provide no new information.

The environmental effects of the proposed action are those associated with the launch vehicle and those associated with the Ulysses spacecraft. Environmental effects associated with the launch vehicle have been considered in the previously published EIS's on the Space Shuttle program (1978), the Kennedy Space Center (Revision 1979), the EIS for the Galileo and Ulysses Missions (TIER–1 1988), and the EIS (TIER–2) for the Galileo Mission (May 1989).

The EIS (TIER–2) for the Ulysses Mission will consider potential environmental effects related to the possible release of plutonium-238 from the spacecraft Radioisotope Thermoelectric Generator (RTG). The potential effects associated with the Ulysses spacecraft which will be considered in preparing the DEIS (TIER–2) for the Ulysses Mission include impacts on air and water quality and local land area; health and safety impacts; biotic resources; wetland areas or areas containing historical sites; and socioeconomic impacts. The analysis will use the latest information from a detailed Final Safety Analysis Report currently under preparation.

This DEIS (TIER–2) for the Ulysses Mission is expected to be released for review in January 1990. Written comments or suggestions concerning the scope of this EIS are solicited at this time.

DATE: Written comments must be submitted on or before January 22, 1990.

ADDRESS: Office of Space Science and Applications, Code EL, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, (202) 453–1587.

Dated: November 15, 1989.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 89–27331 Filed 11–20–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–7335

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503

Title: Survey of Scientific and Engineering Expenditures at Universities and Colleges, FY 1990–91–92

Affected Public: Non-profit institutions

Respondents/Burden Hours: 477 respondents—15.5 hours each response

Abstract: The survey provided academic R&D expenditures data by source and discipline, including research equipment. Data are used for planning and policy formulation related to academic science and engineering infrastructure. Users include Congress, Federal agencies, States, industry, universities, etc. Affected public—Higher education and associated federally funded R&D centers

Dated: November 15, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89–27311 Filed 11–20–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. Title of the information collection: Basic Quality Assurance Program, Records and Reports of Misadministrations or Events Relating to the Medical Use of Byproduct Material, revision to 10 CFR 35.

3. The form number if applicable: Not applicable.

4. How often the collection is required:

For the basic quality assurance program:

Reporting: Develop a written basic QA program, submit a certification to NRC by the effective date of the rule, and submit the QA program to NRC at the time of license renewal, one-time collection; audit and modify QA program, annually.

Recordkeeping: Maintain the written QA program for the duration of the license.

For records and reports of misadministrations or events:

Reporting: Whenever a misadministration or an event occurs.

Recordkeeping: Prescription, diagnostic referral, and clinical procedures manual, 3 years; reports of misadministrations or events, 10 years.

5. Who will be required or asked to report: Medical use licensees regulated by NRC and the Agreement States.

6. An estimate of the number of respondents: 7,500 respondents.

7. An estimate of the total nubmer of hours needed to complete the requirements or request: 64,650 hours annually for all medical use licensees.

8. The average burden per respondent is about: 9 hours per years.

9. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

10. Abstract: The NRC is proposing to amend its regulations (10 CFR 35) that would require medical use licensees to establish and implement a written basic QA program to prevent, detect, and correct the cause of errors in the administration of byproduct material. The proposed amendment would also require medical use licensees to submit a certification to NRC, by the effective date of the final amendment, indicating that the basic QA program has been implemented; and to submit the basic QA program to NRC at the time of license renewal. The QA amendment is proposed in order to enhance patient safety while allowing the flexibility necessary for proper medical care. The NRC is also proposing certain modifications to the definition of misadministration and the associated reporting and recordkeeping requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

Coments and questions should be directed by mail to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150–0010), Office of Management and Budget, Washington, DC 20503. Coments can also be submitted by telephone (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of November 1989.

For the Nuclear Regulatory Commission.

Joyce A. Ameta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–27335 Filed 11–20–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee) for operation of Vermont Yankee Nuclear Power Station located south of Brattleboro, Vermont.

The proposed amendment would change the Limiting Conditions of Operation (LCO) for the Uninterruptible Power Supply (UPS) out-of-service time. This change would be from 7-days to 30-days before requiring initiation of a plant shutdown. The UPSs provide power to certain Low Pressure Coolant Injection (LPCI) valves, and assure power is available in the event offsite power is lost and the diesel fails to function.

In conjunction with this request, on November 9, 1989, the licensee requested, and the staff granted a temporary waiver of compliance from the 7-day LCO in the ACTION STATEMENT for the Uninterruptible Power Supply (Technical Specification 3.5.A.4). Vermont Yankee entered this Action Statement November 5, 1989 due to a component failure in the power supply. The licensee had previous difficulty with these power supplies and was unsure of their ability to complete repairs within the limits of the LCO. The licensee requested the LCO be extended to 30-days for the duration of this fuel cycle (until fall 1990) when the UPSs will be replaced. Based on the licensee's submittal of November 9, 1989, the technical staff's evaluation, and after conferring with the Region, the Division of Reactor Projects issued a temporary waiver of compliance. By Friday, November 10, 1989, the licensee had returned the inoperative UPS to service; however, the staff intends to proceed with the requested amendment to the technical specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change utilizing the criteria specified in 10 CFR 50.92 and has provided an analysis that is summarized below.

The Vermont Yankee FSAR addresses the consequences and mitigation of any postulated accidents in conjunction with a single failure and loss of off-site power. The single failure of the DG and Loss of a UPS train is not currently bounded by the safety analysis. However, Vermont Yankee considers the loss of a UPS train to be addressed by the availability of an additional off-site power source immediately available and accessible from the Control Room. This is the tie-in to the Vernon Hydro Dam. Further, Vermont Yankee believes that the new LOCA analysis recently completed using the Vermont Yankee Analysis Method, which demonstrates that one core spray pump is sufficient to keep the PCT well below the 10 CFR 50.46 limit of 2,200°F, indicates that this proposed change does not significantly increase the probability or consequences of a previously evaluated accident.

This proposed change does not change the function of the LPCI System, only the LCO out of service time for the UPS power source to be used during the 1989/1990 operating cycle, and therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Recent analyses by the licensee demonstrates that one core spray pump is sufficient to keep the PCT well below the 10 CFR 50.46 limit of 2,200°F. The pumps and other active components of the system have been tested in accordance with Technical Specification Section 4.5.A.4. requirements. Therefore, this proposed change presents no reduction in margin of safety.

The licensee concludes that these proposed changes do not constitute a significant hazards consideration, as defined in 10 CFR 50.92.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this FEDERAL REGISTER notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitiner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determinaton is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Director: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General

Counsel. U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R. K. Gad, III Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 9, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 14th day of November, 1989.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Project Manager, Project Directorate II, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27336 Filed 11–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 128 to Facility Operating License No. DPR–3 issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station located in Franklin County, Massachusetts. The amendment was effective as of the date of issuance.

The amendment modifies specifications having cycle-specific parameter limits by replacing the values of those limits with a reference to the Core Operating Limits Report (COLR) for the values of those limits. The changes also include the addition of the COLR to the Definitions section and to the reporting requirements of the Administrative Controls section of TS.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on October 13, 1989 (54 FR 42119). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (54 FR 46495) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated September 14, 1989, (2) Amendment No. 128 to License No. DPR–3, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 14th day of November 1989.

For the Nuclear Regulatory Commission.

Patrick M. Sears,

Project Manager, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27337 Filed 11–20–89; 8:45 am]

BILLING CODE 7590–01–M

OVERSIGHT BOARD

Intent to Establish National and Regional Advisory Boards

Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the "Act"), Public Law No. 101–73, 103 Stat. 183, 382–383, directs the Oversight Board to establish one national advisory board and not less than six regional advisory boards (collectively the "advisory boards"). The advisory boards will function solely as advisory bodies in compliance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The advisory boards will provide information and advice on the policies and programs for the sale or other disposition of real property assets of depository institutions the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989, the date of enactment of the Act, and for which the Resolution Trust Corporation ("RTC") has been or will be appointed as a conservator or receiver pursuant to the Act between January 1, 1989 and three years from the date of enactment of the Act. The national advisory board will provide information and advice to the Oversight Board. The regional advisory boards will provide advice to the RTC.

Six regional advisory boards will be established as follows:

The Region I Advisory Board will be headquartered in New York, New York, and will represent the Northeast Region of the United States composed of Connecticut, the District of Columbia, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

The Region II Advisory Board will be headquartered in Atlanta, Georgia, and will represent the Southeast Region of the United States composed of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

The Region III Advisory Board will be headquartered in Kansas City, Kansas, and will represent the Midwest Region of the United States composed of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

The Region IV Advisory Board will be headquartered in Dallas, Texas, and will represent the Southwest Region of the United States composed of Oklahoma and Texas.

The Region V Advisory Board will be headquartered in Denver, Colorado, and will represent the Rocky Mountain Region of the United States composed of Alaska, Colorado, Montana, Idaho, New Mexico, Utah, Washington, and Wyoming.

The Region VI Advisory Board will be headquartered in Los Angeles, California, and will represent the Western Region of the United States composed of Arizona, California, Hawaii, Nevada, and Oregon.

The regional advisory boards will each consist of five members to be appointed by and serve at the pleasure of the Oversight Board for terms not to exceed two years. The regional advisory board members will be selected from those residents of the respective regions who will represent the views of low- and moderate-income consumers and small businesses, or who have knowledge and experience regarding business, financial, and real estate matters. The Oversight Board will select one appointed member from each regional advisory board to serve as chairperson of that board.

The national advisory board will consist of a chairperson appointed by the Oversight Board and the chairpersons of the regional advisory boards, and shall serve at the pleasure of the Oversight Board for terms not to exceed two years.

Interested persons are invited to submit comments and resumes regarding establishment of an appointment to the national advisory board or regional advisory boards to William Jasien, Office of Government Relations and Advisory Board Affairs, Oversight Board, Suite 906, 1825 Connecticut Ave., NW., Washington, DC 20232; telephone: (202) 376–5477.

Dated: November 15, 1989.

Daniel P. Kearney,

President and Chief Executive Officer, Oversight Board.

[FR Doc. 89–27312 Filed 11–20–89; 8:45 am]

BILLING CODE 2222–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27441; File No. SR–CSE–89–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Cincinnati Stock Exchange Relating to National Securities Trading System Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 11.10(h) which will change the National Securities Trading System ("NSTS") discount fee schedule.[1] The proposed fee schedule is as follows: [Additions italicized; deletions bracketed] Rule 11.10 National Securities Trading System Fees (h) No change to text.

Gross fees	Percentage [1]
[Up] *0* [to]–$[10,000] *5,000*	0%
[10] *5*–[25,000] *20,000*	[5] *10%*
[25] *20*–50,000	[10] *15%*
50–[75,000] *90,000*	[15] *20%*
[75] *90*–[100,000] *125,000*	[20] *25%*
[100] *125* & Above	[25] *30%*

[1] The percentage numbers indicate the discounts that will be applied to both Proprietary Members' and non-members' total gross fees charged in any month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends the Exchange's NSTS volume discount fee schedule as set forth in CSE Rule 11.10(h). The proposed change is intended to benefit those Proprietary Members who direct a substantial amount of order flow through NSTS, as well as to keep the Exchange's user fees competitive within the industry.

The proposed rule change is consistent with section 6(b)(4) of the Act which provides the Exchange with the ability to equitably allocate reasonable dues, fees and other charges among its members and other persons using its service.

[1] The NSTS is the CSE's electronic securities communication and execution facility through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC

20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-89-4 and should be submitted by December 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27323 Filed 11-20-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27442; File No. SR-NYSE-89-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Bond Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is revising listing fees for bonds. These revisions fall into two categories: outstanding issues and debt American Depository Receipts ("ADRs"). The current bond initial listing fees are as follows:

(Rates Per $ Million)

Issue Size ($ Million Par Value) [1]

	Basis	Additive		
Maturity range	$0-$500	$500-$750	$751-$1,000	$1,001+
1 to 5	$115	$90	$55	$30
6 to 14	230	160	110	80
15 to 25	260	180	130	110
26+	300	210	160	130

[1] To determine the initial listing fee, begin with the maturity range and multiply the appropriate fee for the first $0-$500 million ("mm") par value. Remaining par values at each level are charged at the next par value range rate.

The Exchange is adding new features to its outstanding issue program for listing currently outstanding debt.[1] The new structure will allow issuers to total par values of outstanding issues and average maturities, thus availing themselves of discounts for larger issues and earlier maturities.

Furthermore, the new fee structure for ADRs issued against foreign debt is based on a percentage of the total issue. Where ADRs representing debt of a foreign company or sovereign are listed on the Exchange, listing fees are to be based on the above proposed bond listing fees after applying the following calculation to determine the ratable par value: 10% of the U.S. dollar value of the worldwide outstanding float for an issue available through a single offering; or 12.5% of the U.S. dollar value of the worldwide outstanding float for an issue that may be added to through future offerings.[2]

[1] The fee structure for currently outstanding, unlisted issues is based on the bond listing fee schedule but utilizes the remaining life and size of an issue. Under the existing program, the fee for outstanding issues is half the dollar amount calculated using the above bond listing fees. *See* Securities Exchange Act Release No. 25313 (February 4, 1988) (Approving File No. SR-NYSE-87-50).

[2] A 7-year bond with U.S. dollar value of $1,000,000,000 will be the underlying issue for an ADR facility. The fee will be based on 10% of the total, or $100,000,000, and will equal $23,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is revising listing fees for bonds in the two areas of outstanding issues and debt ADRs. The fee structure for currently outstanding, unlisted issues is based on the bond listing fee schedule but utilizes the remaining life and size of an issue. Under the existing program, the fee for outstanding issues is half of the calculated dollar amount.[3]

If the same issue may be added to by future offerings, the fee will be based on 12.5% of the total outstanding, or $125,000,000, and will amount to $28,750.

[3] *See* Securities Exchange Act Release No. 25313 (February 4, 1988) (Approving File No. SR-NYSE-87-50).

The Exchange now proposes to add two new features to the fee structure. First, the Exchange will total par values of outstanding issues where more than one issue is being listed, thus availing issuers of existing size discounts for larger issues.[4] Second, where issuers are listing two or more outstanding issues, maturities will be averaged, thus availing issues of lower listing rates for shorter maturities.[5]

As previously required, to be eligible for this reduced listing fee, the bond issue must have been outstanding at least one year prior to application. This proposed program will be open to all eligible debt for 18 months and will, in addition, be extended for an additional 18 months to all equity issuers listing on the Exchange for the first time after the expiration of the first eighteen month period.

The restructured fees for outstanding issues and debt ADRs acknowledge the

[4] *Example:* An issuer is listing a 30-year, $500mm issue with 4 years remaining and a 15-year, $350mm issue with 5 years remaining. The fee ($41,500) is less than the fee for new issues of the same size and maturities ($97,750) and the fee for outstanding issues calculated individually ($48,875).

[5] *Example:* In the example illustrated in footnote 4, if the remaining life of the $350mm issue is 6 years, instead of 5 years, the remaining life of the total is averaged to 5 years. The fee is $41,500, rather than $69,000 which would be the correct fee if calculated individually without totalling or averaging maturities.

distinct characteristics of various categories of debt offerings and enhance the opportunity for their participation, through listing, in the Exchange's public secondary market for debt.

The statutory basis for the proposed rule change is section 6(b)(4) under the Act and its requirement that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and others using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-21 and should be submitted by December 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27321 Filed 11-20-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27444; File No. SR-OCC-89-13]

Self-Regulatory Organizations; the Options Clearing Corp.; Notice of Filing of Proposed Rule Change Relating to Netting of Cash Settlement Obligations

November 15, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1989, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-OCC-89-13) as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to reduce the number of funds transfers necessary to effect daily settlement with its clearing members, and would make other clarifying and conforming changes in OCC's rules relating to daily cash settlement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. In General

The primary purpose of the proposed rule change is to permit OCC to implement one of the recommendations made in a special study of OCC's backup system conducted by a Subcommittee of the Margin Committee of OCC's Board of Directors. That recommendation was that OCC net all cash obligations to be settled between it and any clearing member in OCC's regular morning settlement on any given day to one pay or collect amount. The Subcommittee's recommendation, consistent with the recommendations contained in Appendix D of the "Interim Report of the Working Group on Financial Markets," was intended to reduce the number of separate funds transfers, and the dollar value of the transfers, to the minimum necessary to effect regular morning settlement.

A secondary purpose of the proposed rule change is to conform the various provisions of OCC's rules that address cash settlement to each other in several respects, and thereby to clarify the settlement obligations of OCC and its clearing members.

2. Particular Changes to Permit Netting Cash Settlement Amounts

OCC's Rules 502, 503, 606 and 607 currently provide that OCC will make daily premium and margin settlement account by account. Rule 1605, in contrast, provides for foreign currency option exercise settlement on a net basis across all accounts, and Rules 1704 and 1806 provide that yield-based treasury options and index option exercise settlements, respectively, owing to the Corporation in any account may be netted against any other credit balance owned by the Corporation to the clearing member. The proposed rule change would amend these rules to permit OCC to net against each other: premiums due to and from the various accounts of a clearing member (Rules 502 and 503), excess cash margin amounts held by the Corporation and margin deficits in the various accounts of the clearing member (Rules 606 and 607), and settlement amounts due to and from the various accounts of the clearing member for exercises of foreign currency, yield-based treasury and index options (Rules 1605, 1704, and 1806).

Article VI, section 8 of OCC's By-laws currently provides that OCC may reject Exchange transactions in any account

for which OCC has not received all premiums owed to it by the clearing member. Since the proposed rule change would permit OCC to net all premiums across all accounts of a clearing member, OCC would be unable to determine to which account the failure to make settlement should be attributed if the clearing member failed to make regular morning settlement. The proposed rule change therefore amends Article VI, Section 8 to provide that the obligations of OCC to accept Exchange transactions of a clearing member and issue cleared securities to that clearing member are subject to the condition that OCC shall have received payment of all amounts owed to it by the clearing member on that morning.

Article VI, section 8 currently contains language that restricts OCC's ability, in the event that OCC in its discretion accepts an Exchange transaction for which a clearing member has failed to pay the premium, to apply customer funds to the payment of such a premium relating to an Exchange transaction arising in a non-customer account. This language was drafted before the Commission adopted Rule 15c3–3, and reflects commodities-style segregation concepts. The prohibition is not mandated by the Commission's hypothecation rules (which apply only to customer securities, and not to customer funds) or Rule 15c3–3, and becomes impossible to implement when cash settlements are netted across accounts. The proposed rule change therefore deletes this language from Article VI, Section 8.

3. Additional Changes

The proposed rule change makes other amendments to OCC's rules relating to cash settlement. Rule 203 is amended to reflect more expressly that a clearing member may (and most clearing members do) designate only one bank account for settlements in all the clearing member's accounts maintained with OCC.

Rule 501 states that OCC shall provide each clearing member information relating to the clearing member's transactions. The Rule is amended to reflect that the information provided to clearing members pursuant to the Rule is contained in three separate reports. OCC issues to each clearing member a "Daily Position Activity Report and Initial Transaction Statement" for equity options and a "Non-Equity Options Daily Position Activity Report and Initial Transaction Statement" for non-equity options. These reports show, among other things, all Exchange transactions of the clearing member in equity and non-equity options, respectively. OCC also issues to each clearing member a "Daily Margin Report—Settlement/Summary," which shows the net daily premium due to or from OCC in each account of the clearing member.

Rule 1605 describes procedures for settlement of foreign currency option exercises. The Rule is amended to delete sentences that describe the sequence of cross-account netting operations. These sentences are unnecessarily detailed in the foreign currency settlement context, where settlement is effected with OCC rather than broker-to-broker. In a broker-to-broker settlement context, these sentences have the effect of minimizing the total number of settlements by first netting customer and market-maker settlement obligations against each other, since these settlements are more likely to be odd-lot settlements than are settlements in the firm account. However, the sentences have no effect where settlements are made directly with OCC.

Rule 1606(a) (relating to foreign currency option exercise settlement), Rule 1704(d) (relating to yield-based Treasury option settlement), and Rule 1806(d) (relating to index option exercise settlement) are amended to state expressly, in parallel with similar provisions elsewhere in OCC's rules, that OCC's obligations to a clearing member in connection with exercise settlement are discharged upon the netting of settlement obligations between OCC and the clearing member or the performance by OCC of its obligation to make payment or (in the case of foreign currency settlement) to deliver the requisite currency.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it would enhance the safeguarding of funds in the custody or control of OCC by minimizing funds flows in the course of regular daily settlement between OCC and its clearing members and by clarifying the settlement obligations of OCC and its clearing members.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at OCC's principal office. All submissions should refer to the file number SR–OCC–89–13 and should be submitted by December 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27320 Filed 11–20–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17211; 811–5067]

Utah Farm Bureau Life Variable Account; Application for Order

November 13, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under Section 8(f) of the Investment Company Act of 1940 (the "1940 Act").

Applicant: Utah Farm Bureau Life Variable Account (the "Applicant").

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: September 12, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 on December 7, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, DC 20549. Applicant, Utah Farm Bureau Life Variable Account, 5300 South 360 West, Salt Lake City, Utah 84107.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2026, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2060 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On March 20, 1987 the Applicant filed a notification of registration as an investment company on Form N–8A pursuant to Section 8(a) of the Act, and a registration statement on Form N–8B–2 (File No. 811–5067) pursuant to Section 8(b) of the 1940 Act.

2. On March 20, 1987 the Applicant also filed a registration statement on Form S–6 (File No. 33–12790) with the SEC pursuant to the Securities Act of 1933 (the "1933 Act"). This registration statement covered the registration of certain flexible premium variable life insurance policies (the "Policies"). Pursuant to Rule 24f–2 under the 1940 Act, the Applicant registered an indefinite amount of securities under the 1933 Act with respect to the policies. A Pre-Effective Amendment to this registration statement was filed on September 4, 1987, and the registration statement was declared effective on October 15, 1987. A post-effective amendment was filed on April 28, 1988.

3. The Applicant was established by its depositor, Utah Farm Bureau Life Insurance Company ("Utah Farm Bureau"), as a segregated asset account for the purpose of funding variable life insurance policies pursuant to a resolution adopted by the Board of Directors of Utah Farm Bureau on February 18, 1987, in accordance with applicable Utah insurance law and regulation.

4. The Applicant is being terminated because its depositor, Utah Farm Bureau, is in the process of being dissolved. On December 29, 1988, the Board of Directors of Utah Farm Bureau adopted a resolution approving and authorizing the dissolution of Utah Farm Bureau, and the shareholders of Utah Farm Bureau consented to the dissolution. Effective December 31, 1988, all of Utah Farm Bureau's existing insurance business was reinsured with Farm Bureau Life Insurance Company and Utah Farm Bureau ceased conducting any business except that relating to the dissolution process. On September 12, 1989 Utah Farm Bureau also applied to the SEC pursuant to Rule 477 of the 1933 Act for withdrawal of its registration statement.

5. During the last 18 months, Applicant has not, for any reason, transferred any of its assets to a separate trust. The Applicant does not have, nor did it ever have, any assets. The Applicant does not have any debts or other liabilities which remain outstanding. The Applicant is not a party to any litigation or administrative proceeding. The Applicant has no security holders. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. The Applicant never sold any Policies or other securities of which it was the issuer.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27322 Filed 11–20–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 46609]

U.S.-Japan Route Authority; Order Requesting Comments

Issued by the Department of Transportation on the 16th day of November, 1989.

On November 6, 1989, the Governments of the United States and Japan signed a new *ad referendum* Memorandum of Understanding (MOU) which provides major new opportunities for combination and cargo service between the two countries. The Department intends to institute proceedings to award the new authority that has been authorized by this MOU. In order to facilitate this process, we are soliciting comments from all interested parties on how these route proceedings should be structured and conducted. We are also requesting that potential applicants provide us with information as to the route authority they intend to seek and the number of frequencies they will require.

The recent MOU provides, *inter alia*, that each country may designate up to three carriers to operate combination service over three routes between any point in the U.S. and any point in Japan. Under the terms of the MOU, only one U.S. carrier may be selected to serve each of these three routes. In addition, the MOU authorizes the U.S. to designate a carrier not currently operating all-cargo services to Japan to provide a new all-cargo service to Japan from any point in the U.S.

Each of these combination services, as well as the new all-cargo service, is limited by the MOU to no more than seven weekly roundtrip frequencies. Moreover, the U.S. is limited to an aggregate of 24 weekly roundtrip frequencies for all four of these services.

In addition to the combination services described above, the U.S. may authorize up to three combination services between any point in the U.S. and any point in Japan, other than Tokyo and Osaka, as well as a combination service to operate, on a turnaround basis, between a point in Alaska and a point in Japan, other than Tokyo and Osaka. The U.S. may designate only one carrier on each of these routes. The MOU limits service on each of these routes to seven weekly roundtrips.

The MOU also provides for the designation of an additional carrier to

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operate on routes between Guam/Saipan and Nagoya, Fukuoka, and Naha. The U.S. is not required to designate the same carrier for each of these routes. The U.S. may also designate up to two carriers on routes between Guam/Saipan and any two points in Japan other than Tokyo, Osaka, Nagoya, Fukuoka, and Naha.

Finally, the MOU provides that a U.S. carrier now authorized to provide all-cargo service to Japan may operate up to seven weekly frequencies to one additional point in Japan, to be selected from Sapporo, Nagoya, and Fukuoka, as a coterminal with Tokyo, Osaka, or Naha.[1]

The Department intends to institute shortly one or more certificate proceedings to select carriers to operate the route opportunities obtained in the MOU, as well as the gateway cities from which they will serve. All of the services described above become available on October 1, 1990, except for the Guam/Saipan routes which become effective on the date that the MOU enters into force. It is our intention to begin considering the issues involved in gateway and carrier selection promptly in order to permit U.S. carriers the opportunity to inaugurate service on the new routes as close to the effective date as possible. We recognize, however, that this may result in some of the applicants in the ongoing *U.S.-Japan Service Proceeding* filing duplicative applications in a case to allocate the 1989 MOU routes. We now believe that the benefits of commencing the selection process prior to reaching a final decision in the *U.S.-Japan Service Proceeding* outweigh its potential drawbacks.

Before initiating the carrier selection process we seek the commenters' advice on this matter and the following additional procedural points. First, we must decide whether to consider the selection of the various cargo and combination routes in a single proceeding or institute two or more separate proceedings to consider each category of service.

If we were to adopt the latter approach, and that is our inclination at the present time, we must initially resolve the issue of the allocation of frequencies between the all-cargo and combination services to Tokyo, since all four of these services will be limited to a total of 24 weekly roundtrips. To assist us in making this determination, we ask potential applicants, both for all-cargo and for combination routes, to specify the number of frequencies that they expect to request for this authority.[2]

If we were to predetermine the allocation of frequencies between cargo and combination services, we would still be required to allocate among the three combination services that are ultimately selected. We ask that commenters focus upon the criteria that we might use in determining the allocation of these frequencies. A subsidiary, but important question is whether we should, as an evidentiary matter in the interest of achieving direct comparability of exhibit materials, require filings reflecting a common level of frequencies by applicants for combination routes that are restricted by the aggregate frequency limitations contained in the MOU.[3] Because it may be impossible to grant all of the selected carriers the frequency levels they propose, it may prove useful for all applicants to submit their service proposals based upon a hypothetical common frequency level, while allowing carriers interested in other frequency levels to file alternative service proposals. Parties should comment on the desirability of such an approach and on what common frequency level, if any, should be set.

We also must consider whether to solicit applications for the three non-Tokyo/Osaka services at the same time that we require applications to be filed for the three combination services that fall within the 24-frequencies-per-week limit. An advantage to this approach would be to allow us the option of consolidating all applications for combination service into a single proceeding. However, we do not want any proceeding to become so unwieldy, in terms of the number of routes at issue and the number of parties participating, that it is likely to delay substantially our ability to conclude the case. Therefore, we seek an indication from carriers intending to apply for combination authority as to what markets they will propose to serve, in order that we might assess how many routes are likely to be contested and the number of applicants.

Service on all the Guam/Saipan routes, as noted above, can be instituted immediately. To the extent that we may receive contested applications, we would particularly like to expedite the selection process for these routes. Therefore, we ask carriers interested in service from Guam/Saipan, in addition to specifying which routes they intend to apply for, to comment on the desirability of considering the selection issues through non-oral hearing procedures.

Finally, we must consider whether to accept proposals for service to points other than Tokyo on the three combination routes that are restricted, together with the all-cargo service, to a total of 24 weekly roundtrip frequencies. We believe that the economic value of service to Tokyo may be significantly greater than to any other point in Japan. Moreover, we will also be considering applications for three separate routes that are restricted by the agreement to points other than Tokyo or Osaka. Therefore, it is our present view that we should entertain applications only for service to Tokyo on the three combination routes that are included in the aggregate frequency limitation.

We seek comments on the issues discussed in this order, as well as on any other procedural issues that commenters may feel we should consider prior to instituting gateway/carrier selection proceedings.

Interested persons should submit comments, as well as all other requested information, in this docket within 14 days of the service date of this order.[4] Reply comments are due five calendar days thereafter.

Accordingly,

1. We request comments from interested persons addressing the procedural issues discussed above, as well as information regarding the routes and number of frequencies that may be sought by potential applicants;

2. An original and 12 copies of all comments should be filed with the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 by December 4, 1989;

3. Any reply comments will be due December 11, 1989;

4. We will serve this order on all certificated air carriers, the Airport Operators Council International, and the U.S. Airports for Better International Air Service; and

5. This order will be published in the **Federal Register**.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-27418 Filed 11-17-89; 11:29 am]

BILLING CODE 4910-62-M

[1] The MOU also provides a significant increase in charter opportunities for U.S. carriers. We will consider the issue of the allocation of these additional charters in a separate order.

[2] Carriers currently applicants in the *U.S.-Japan Service Case*, Docket 46438, may indicate that they will also be applicants for authority under the MOU.

[3] We have previously required the filing of proposals reflecting a common level of frequencies in the *U.S.-Japan Gateways Case*, instituted by Order 85-11-29. (See 50 FR (47467) 11-18-85.)

[4] A separate docket or dockets will be opened for selection cases at the time that such cases are instituted. Therefore, applicants should not file to consolidate any applications in this comment docket.

Federal Aviation Administration

[Summary Notice No. PE-89-44]

Petition for Exemption, Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 11, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 13, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26009.
Petitioner: Jerry L. Chap.
Regulations Affected: 14 CFR 65.91(c).
Description of Relief Sought: To waive the requirement for holding an airframe and powerplant mechanic rating for at least 3 years prior to eligibility for receipt of an inspector's authorization.

Docket No.: 26031.
Petitioner: Rocky Mountain Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow properly tained personnel employed by petitioner to exchange medical oxygen cylinders after such cylinders have been depleted. The exemption would cover only those occurrences when a rated mechanic is not immediately available as a standard operating practice.

Docket No.: 26032.
Petitioner: Loken Aviation.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner's pilots to remove and install seats in petitioner's single-engine aircraft when performing certain types of flight operations.

Docket No.: 23921.
Petitioner: Flight Safety International.
Sections of the FAR Affected: 14 CFR 61.57(a)(1), (c), and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); Appendix A to part 61; Appendix H to Part 121.
Description of Relief Sought/Disposition: To amend Exemption No. 4058D to add a subparagraph vi.b.(4), which would be an alternative qualifier for persons eligible to instruct in petition's simulator programs. This alterantive would be for instructors to have a minimum of 2,500 hours of flight time, 500 of which is pilot-in-command time, in lieu of the flight instructor certificate. GRANT, November 8, 1989, Exemption No. 4058E.

[FR Doc. 89-27286 Filed 11-20-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information udner the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This doucment lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether seciton 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health services and Research Administration (136E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 15, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information, Management and Statistics.

Reinstatement

1. Veterans Health Services and Research Administration.
2. Patient Satisfaction Survey.
3. VA Forms 10-1465d through 10-1465f.
4. This survey is the only recurring, comprehensive evaluation of VA patients' satisfaction with the health care they receive. It meets medical, management and legislative requirements and helps assure that VA

maintains a high level of care to the Nation's veterans.

5. Quarterly.
6. Individuals or household.
7. 101,536 responses.
8. 10 minutes.
9. Not applicable.

[FR Doc. 89-27294 Filed 11-20-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 223
Tuesday, November 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:12 p.m. on Tuesday, November 14, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

A notice of an individual's proposal dual service as a director of two nonaffiliated depository institutions pursuant to section 205 of the Depository Institution Management Interlocks Act.

Administrative enforcement proceedings.

Matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. FL-89-0037
Silverado Bank, Savings and Loan Association, Denver, Colorado

Reports of the Inspector General:

Audit Report re:
Enforcement Action System Audit (Memo dated September 27, 1989)
Audit Report re:
Liquidation Overhead Allocation Audit (Memo dated September 26, 1989)
Audit Report re:
MVS Audit By Non-FDIC Users (Memo dated September 18, 1989)
Audit Report re:
Audit of Data Base Access (Memo dated September 18, 1989)
Audit Report re:
Audit of Legal Fees Incurred for Litigation of Directors and Officers Liability Cases, (Memo dated September 15, 1989)

Matters relating to the Corporation's corporate activities.

Matters relating to the possible closing of certain insured banks.

Application of Babcock & Brown Bank, a proposed new bank to be located at 1747 Pennsylvania Avenue, NW., Washington, D.C., for Federal deposit insurance.

In calling the meeting, the Board determined on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: November 16, 1989.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89-2746 Filed 11-17-89; 1:30 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 27, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment at two Federal Reserve Banks.
2. Proposed acquisition of automated material handling equipment within the Federal Reserve System.
3. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 30, 1989.)
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 17, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-27506 Filed 11-17-89; 3:36 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Week of November 20, 27, December 4, and 11, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 20

Tuesday, November 21

9:00 a.m.
Briefing on Implementation of the U.S. Environmental Protection Agency's HLW Disposal Standards (Public Meeting)

Wednesday, November 22

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 27—Tentative

Thursday, November 30

2:00 p.m.
Briefing on DOE Views on Advanced Light Water Reactor Design and Certification (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 4—Tentative

Tuesday, December 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 11—Tentative

Thursday, December 14

10:00 a.m.
Briefing on Status of Implementation of the Severe Accident Master Integration Plan and Status of Licensee Progress on IPE (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3-0 (Commissioner Roberts not present) on November 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Seabrook Procedural Order Involving Pleadings and Schedules for Filing with the

Commission" (PUBLIC MEETING), scheduled for November 16, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(303) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: November 16, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–27482 Filed 11–17–89; 2:30 pm]

BILLING CODE 3590–01–M

federal register

Tuesday
November 21 1989

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List of Uncontrolled Hazardous Waste Sites; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 3681-4]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Priorities List ("NPL"). The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today in the following way: (1) The addition of Radium Chemical Co. Inc., in Woodside, New York, New York, and Forest Glen Mobile Home Subdivision, in Niagara Falls, New York; (2) the addition of 27 Federal facility sites; and (3) the expansion of the definition of a previously listed Federal facility site. After carefully reviewing public comments on these sites, EPA has determined that they meet the eligibility requirements of the NPL and are consistent with the Agency's listing policies. Information supporting these actions is contained in the Superfund Public Dockets.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be December 21, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although INS v. Chadha, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the Federal Register.

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see section I of the "Supplementary Information" portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, 5 HS-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Lisa Nelson, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/768-1377.

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. Purpose and Implementation of the NPL
III. NPL Update Process
IV Contents of This NPL Update
V Response to Comments
VI. Regulatory Impact Analysis
VII. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites." Removal action involves cleanup or other measures that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA.

In addition to the application of the HRS, there are two other mechanisms for listing sites on the NPL. Under CERCLA section 105(a)(8)(B), each State may designate a single site as its top priority, regardless of the HRS score. According to 40 CFR 300.66(b)(4) of the NCP, the Agency also may list sites if the Agency for Toxic Substances and Disease Registry (ATSDR) recommends dissociation of individuals from the release; if EPA determines that the release poses a significant public health threat; and if EPA anticipates that it would be more cost-effective to use remedial rather than removal authorities for cleanup. The three mechanisms are described in more detail in section III of this preamble.

Based in large part on the HRS listing mechanism and pursuant to section 105(a)(8)(B) of CERCLA, as amended by

SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the final NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 4, 1989 (54 FR 41000/41015). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently October 26, 1989 (54 FR 43778).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 28 sites from the final NPL, most recently on September 22, 1989 (54 FR 38994) when Cecil Lindsey, Newport, Arkansas, was deleted.

This rule adds two sites and 27 Federal facility sites to the NPL, and expands the definition of 1 previously listed Federal facility site. The two non-Federal sites were proposed to the NPL pursuant to § 300.66(b)(4) of the NCP (August 16, 1989, 54 FR 33846). The comment period for that rule ended on September 15, 1989. The 27 Federal facilities were proposed to the NPL, on the basis of their HRS scores, on July 14, 1989 (54 FR 29820), as was the expansion of the definition of 1 listed Federal facility site. The comment period for that rule ended on September 12, 1989. The other Federal facility sites in the July 1989 proposed rule will be addressed in future final rules.

EPA read all comments received on the sites in today's final rule, including late comments. In past rules, EPA responded even to late comments. However, because of the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect, EPA was not able to respond to all late comments received for sites in this rule. (EPA had previously indicated that it may no longer be able to consider late comments (53 FR 23990, June 24, 1988 and 54 FR 19527, May 5, 1989).) In section V of this preamble, EPA addresses those comments received no later than October 11, 1989 for all sites included in this final rule. Although EPA has not responded to all late comments, it has read all late comments. The Agency has determined that none of the late comments received to date on the sites in today's final rule have brought to EPA's attention a fundamental error in the scoring of a site.

This rule results in a final NPL of 1,010 sites, 79 of them in the Federal section. In addition, 209 sites are currently in proposed status, 38 of them in the Federal section. With these changes, final and proposed sites now total 1,219.

EPA may include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL contain documents relating to the listing of these sites (see ADDRESSES portion of this notice). Appointments should be made to view these dockets. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Regional dockets are generally from 8 a.m. to 5 p.m., Monday through Friday excluding Federal holidays.

The Headquarters docket for the Federal facility sites added by this rule include the following documents: HRS score sheets; a Documentation Record describing the information used to compute the score; a list of documents referenced in the Documentation Record; and public comments received. The Headquarters docket for the two non-Federal sites contains the same documents in addition to, for each site, a Public Health Advisory issued by ATSDR, and an EPA memorandum addressing for each site, whether the release poses a significant threat to public health and whether it would be more cost-effective to use remedial rather than removal authorities at the sites.

The Regional docket includes all information available in the Headquarters docket, as well as the reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for these sites.

Copies of documents contained in the Headquarters or Regional dockets may be obtained by informal written request addressed to the appropriate docket contact as specified in the Addresses section of this preamble.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL assists EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Implementation

As outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a), Trust Fund monies can be spent for remedial actions only at sites that have been placed on the final NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65-300.67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action

and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL. Most sites are listed in the order of their HRS scores, and the Agency has recognized that the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.68(d)). Specifically, it evaluates the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It also is possible that EPA will conclude, after further analysis, that the site does not warrant remedial action. Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as an objective screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624–28, September 16, 1985), allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services issues a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The third mechanism was added to the NCP by rulemaking, during which the Agency explained that the HRS may not fully reflect the risk at certain types of sites. For example, direct contact is not included in calculating the total HRS score. Thus, some sites involving direct contact to residents may pose a serious threat but not receive a sufficiently high score to qualify for the NPL. Similarly, where a small number of people are exposed to a hazardous substance, the site may fail to qualify for listing due to the low targets score.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices also may consider candidate sites in addition to those submitted by States.

Federal agencies have the primary responsibility under CERCLA section 120(c) for identifying Federal facility sites. In conjunction with EPA Regional offices, the Federal agencies perform investigations, sampling, monitoring, and scoring of sites. Regional offices then conduct a quality control review of the candidate sites. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Contents Of This Final Rule

This rule adds to the final NPL Radium Chemical Co. Inc., in Woodside, Queens Borough, New York City, New York, and the Forest Glen Mobile Home Subdivision in Niagara Falls, New York. Both were proposed to the NPL on August 16, 1989 (54 FR 33846) based upon § 300.66(b)(4) of the NCP (54 FR 33846). The comment period for these sites ended on September 15, 1989. EPA addresses two comments received regarding one of these sites in Section V of this preamble. A description of these two sites was included in the proposed rule (54 FR 33846, August 16, 1989).

This rule also adds 27 Federal facility sites to the NPL, and finalizes the expansion of the definition of another previously listed Federal facility site. The comment period for these sites ended on September 12, 1989. EPA addresses comments received by October 11, 1989, on these Federal facility sites in section V of this preamble. A brief discussion of the Federal facility expansion is provided below. Table 1 lists sites added to the NPL by this rule. Other Federal facility sites proposed in July 1989 will be addressed in future final rules.

Mather Air Force Base

The Mather Air Force Base (AC&W Disposal Area) located in Sacramento, California, was proposed to the NPL on October 15, 1984 (49 FR 40320) and was listed on July 22, 1987 (52 FR 27620). On July 14, 1989 (54 FR 29822), the Agency proposed to expand the site definition at this facility because it believed that additional areas of the facility were contributing to contamination of the aquifer, and possibly to off-site contamination. At this time, the site is being expanded and renamed "Mather Air Force Base."

TABLE 1.—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, NEW FINAL (BY GROUP), NOVEMBER 1989

NPL Gr[1]	ST	Site name	City/county
2	OH	Feed Materials Prod Cent (USDOE).	Fernald
3	WA	Bonneville Power Adm Ross (USDOE).	Vancouver
4	ID	Idaho National Engin Lab (USDOE).	Idaho Falls
4	TN	Oak Ridge Reservation (USDOE).	Oak Ridge
5	CA	Treasure Island Nav Sta-Hun Pt An.	San Francisco
5	AK	Eielson Air Force Base.	Fairbanks N Star Bor
5	SC	Savannah River Site (USDOE)	Aiken
6	MA	Otis Air Nat Guard/Camp Edwards.	Falmouth
7	GA	Marine Corps Logistics Base.	Albany
7	CO	Air Force Plant PJKS.	Waterton
8	FL	Pensacola Naval Air Station.	Pensacola
8	MA	Fort Devens	Fort Devens
10	NY	Brookhaven National Lab (USDOE).	Upton
11	AZ	Williams Air Force Base.	Chandler
11	CA	Barstow Marine Corps Logist Base.	Barstow
12	UT	Monticello Mill Tailings (USDOE).	Monticello
13	WA	Fort Lewis Logistics Center.	Tillicum
13	OH	Mound Plant (USDOE).	Miamisburg
14	RI	Davisville Naval Constr Batt Cent.	North Kingstown
14	CA	Camp Pendleton Marine Corps Base.	San Diego County
16	MI	Newport Naval Educat Training Cen.	Newport
16	FL	Jacksonville Naval Air Station.	Jacksonville
16	FL	Cecil Field Naval Air Station.	Jacksonville
16	CA	March Air Force Base.	Riverside
17	MN	Naval Industrial Reserve Ordnance.	Fridley
18	NY	Plattsburgh Air Force Base.	Plattsburgh
18	CA	Travis Air Force Base.	Solano County

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Number of New Final Federal Facility Sites: 27.

NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), NOVEMBER 1989

NPL Gr[1]	NPL Rank	St	Site Name	City/County
19	930	NY	Forest Glen Mobile Home Subdivis	Niagara Falls
19	931	NY	Radium Chemical Co., Inc.	New York City

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Number of New Final Sites: 2.

The NPL, which is Appendix B of the NCP, and which appears after this preamble, is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk. The two sites listed pursuant to § 300.66(b)(4) of the NCP have HRS scores below 28.50 and are included in the last group on the NPL.

V. Response to Comments

EPA received two comments in favor of listing Radium Chemical Co., Inc. These comments resulted in no change in the HRS score for the site or the Agency's determination that the criteria given at § 300.66(b)(4) of the NCP have been met. No comments were received for the Forest Glen Mobile Home Subdivision.

With respect to the 28 Federal facility sites addressed by this rule, EPA received several comments in support of the listing of Otis Air National Guard Base/Camp Edwards in Falmouth, Massachusetts, Barstow Marine Corps Logistics Base in Barstow, California, and Idaho National Engineering Laboratory in Idaho Falls, Idaho. Some of these comments also included suggestions for cleanup or enforcement strategies. While the Agency appreciates these comments, they are not germane to listing these sites, and so will not be addressed at this time. No timely comments were received regarding the other Federal facility sites in today's final rule.

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's final rule to add two new non-Federal sites and 27 Federal facility sites to the NPL, and finds that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that follow the listing of a site on the NPL include a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternatives follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears the costs associated with responsible party searches. Responsible parties may bear some or all of the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as for publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State will pay for at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is implemented, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average total cost per site basis. EPA will continue with this approach, using the most recent cost estimates available (1988). These estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars
[2] Includes State cost-share
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. The State will assume the costs generated by O&M, following EPA's period of participation. The Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site are both privately-owned. Therefore, using the budget projections presented above, State costs arising from Federal remedial planning and action, excluding O&M costs, can be expected to reach approximately $2.5 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if these sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites.

Placing a hazardous waste site on the NPL does not itself cause firms responsible for the site to bear cleanup costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decision to take such actions are discretionary and made solely on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the site; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this final rule on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with adding two sites and 27 Federal facility sites to the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL can accelerate privately-financed, voluntary cleanup efforts. Identifying sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While these modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Placing sites on the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations will be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 14, 1989.

M.A. Gade,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. Appendix B of part 300 is revised to read as set forth below.

BILLING CODE [illegible]

Appendix B to Part 300

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 1 (HRS Scores 75.60 - 58.54)				
1	02	NJ	Lipari Landfill	Pitman
2	03	DE	Tybouts Corner Landfill *	New Castle County
3	03	PA	Bruin Lagoon	Bruin Borough
4	02	NJ	Helen Kramer Landfill	Mantua Township
5	01	MA	Industri-Plex	Woburn
6	02	NJ	Price Landfill *	Pleasantville
7	02	NY	Pollution Abatement Services *	Oswego
8	07	IA	LaBounty Site	Charles City
9	03	DE	Army Creek Landfill	New Castle County
10	02	NJ	CPS/Madison Industries	Old Bridge Township
11	01	NH	Nyanza Chemical Waste Dump	Ashland
12	02	NJ	GEMS Landfill	Gloucester Township
13	05	MI	Berlin & Farro	Swartz Creek
14	01	MA	Baird & McGuire	Holbrook
15	02	NJ	Lone Pine Landfill	Freehold Township
16	01	NH	Somersworth Sanitary Landfill	Somersworth
17	05	MI	FMC Corp. (Fridley Plant)	Fridley
18	06	AR	Vertac, Inc.	Jacksonville
19	01	NH	Keefe Environmental Services	Epping
20	08	MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge
21	08	SD	Whitewood Creek *	Whitewood
22	06	TX	French, Ltd.	Crosby
23	05	MI	Liquid Disposal, Inc.	Utica
24	01	NH	Sylvester *	Nashua
25	03	PA	Tysons Dump	Upper Merion Twp
26	03	PA	McAdoo Associates *	McAdoo Borough
27	06	TX	Motco, Inc. *	La Marque
28	05	OH	Arcanum Iron & Metal	Darke County
29	08	MT	East Helena Site	East Helena
30	06	TX	Sikes Disposal Pits	Crosby
31	04	AL	Triana/Tennessee River	Limestone/Morgan
32	09	CA	Stringfellow *	Glen Avon Heights
33	01	ME	McKin Co.	Gray
34	06	TX	Crystal Chemical Co.	Houston
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport
36	08	CO	Sand Creek Industrial	Commerce City
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston
38	01	MA	W.R. Grace & Co Inc (Acton Plant)	Acton
39	05	MN	Reilly Tar (St. Louis Park Plant) *	St. Louis Park
40	05	MN	New Brighton/Arden Hills	New Brighton
41	04	FL	Schuylkill Metals Corp.	Plant City
42	02	NJ	Vineland Chemical Co., Inc.	Vineland
43	02	NJ	Burnt Fly Bog	Marlboro Township
44	03	PA	Publicker Industries Inc.	Philadephia
45	02	NY	Old Bethpage Landfill	Oyster Bay
46	02	NJ	Shieldalloy Corp.	Newfield Borough
47	04	FL	Reeves Southeast Galvanizing Corp	Tampa
48	08	MT	Anaconda Co. Smelter	Anaconda
49	10	WA	Western Processing Co., Inc.	Kent
50	05	WI	Omega Hills North Landfill	Germantown

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 2 (HRS Scores 58.41 - 55.97, except for State top priority sites)				
51	04	FL	American Creosote (Pensacola Plt)	Pensacola
52	02	NJ	Caldwell Trucking Co.	Fairfield
53	02	NY	GE Moreau	South Glen Falls
54	06	OK	Tar Creek (Ottawa County)	Ottawa County
55	07	KS	Cherokee County	Cherokee County
56	05	IN	Seymour Recycling Corp. *	Seymour
57	05	OH	United Scrap Lead Co., Inc.	Troy
58	04	FL	Peak Oil Co./Bay Drum Co.	Tampa
59	02	NJ	Brick Township Landfill	Brick Township
60	02	NJ	Brook Industrial Park	Bound Brook
61	05	MI	American Anodco, Inc.	Ionia
62	10	WA	Frontier Hard Chrome, Inc.	Vancouver
63	05	WI	Janesville Old Landfill	Janesville
64	05	MI	Northernaire Plating	Cadillac
65	04	SC	Kalama Specialty Chemicals	Beaufort
66	04	SC	Independent Nail Co.	Beaufort
67	05	WI	Janesville Ash Beds	Janesville
68	04	FL	Davie Landfill	Davie
69	05	OH	Miami County Incinerator	Troy
70	10	WA	General Electric(Spokane Shop)	Spokane
71	04	FL	Gold Coast Oil Corp.	Miami
72	09	AZ	Tucson International Airport Area	Tucson
73	05	IN	International Minerals (E. Plant)	Terre Haute
74	05	WI	Wheeler Pit	La Prairie Township
75	09	CA	Operating Industries, Inc. Lndfll	Monterey Park
76	02	NY	Wide Beach Development	Brant
77	09	CA	Iron Mountain Mine	Redding
78	02	NJ	Scientific Chemical Processing	Carlstadt
79	05	MI	Gratiot County Landfill *	St. Louis
80	01	RI	Picillo Farm *	Coventry
81	01	MA	New Bedford Site *	New Bedford
82	06	LA	Old Inger Oil Refinery *	Darrow
83	05	OH	Chem-Dyne *	Hamilton
84	04	SC	SCRDI Bluff Road *	Columbia
85	01	CT	Laurel Park, Inc. *	Naugatuck Borough
86	08	CO	Marshall Landfill *	Boulder County
87	05	IL	Outboard Marine Corp. *	Waukegan
88	06	NM	South Valley *	Albuquerque
89	01	VT	Pine Street Canal *	Burlington
90	03	WV	West Virginia Ordnance *	Point Pleasant
91	07	MO	Ellisville Site *	Ellisville
92	08	ND	Arsenic Trioxide Site *	Southeastern ND
93	07	IA	Aidex Corp. *	Council Bluffs
94	05	WI	N.W. Mauthe Co., Inc. *	Appleton
95	04	TN	North Hollywood Dump *	Memphis
96	04	KY	A.L. Taylor (Valley of Drums) *	Brooks
97	09	GU	Ordot Landfill *	Guam
98	04	MS	Flowood Site *	Flowood
99	08	UT	Rose Park Sludge Pit *	Salt Lake City
100	07	KS	Arkansas City Dump *	Arkansas City

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 3 (HRS Scores 55.84 - 52.23)	
101	08	CO	California Gulch	Leadville
102	02	NJ	D'Imperio Property	Hamilton Township
103	05	MN	Oakdale Dump	Oakdale
104	05	IL	Parsons Casket Hardware Co.	Belvidere
105	05	IL	A & F Material Reclaiming, Inc.	Greenup
106	03	PA	Douglassville Disposal	Douglassville
107	05	MN	Koppers Coke	St. Paul
108	01	MA	Plymouth Harbor/Cannon Eng. Corp.	Plymouth
109	10	ID	Bunker Hill Mining & Metallurg	Smelterville
110	02	NY	Hudson River PCBs	Hudson River
111	02	NJ	Universal Oil Products(Chem Div)	East Rutherford
112	09	CA	Aerojet General Corp.	Rancho Cordova
113	10	WA	Com Bay, South Tacoma Channel	Tacoma
114	03	PA	Osborne Landfill	Grove City
115	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City
116	01	CT	Old Southington Landfill	Southington
117	02	NY	Syosset Landfill	Oyster Bay
118	02	NY	Circuitron Corp.	East Farmingdale
119	09	AZ	Nineteenth Avenue Landfill	Phoenix
120	10	OR	Teledyne Wah Chang	Albany
121	10	WA	Midway Landfill	Kent
122	02	NY	Sinclair Refinery	Wellsville
123	04	AL	Mowbray Engineering Co.	Greenville
124	05	MI	Spiegelberg Landfill	Green Oak Township
125	04	FL	Miami Drum Services	Miami
126	02	NJ	Reich Farms	Pleasant Plains
127	10	ID	Union Pacific Railroad Co.	Pocatello
128	02	NJ	South Brunswick Landfill	South Brunswick
129	03	PA	Raymark	Hatboro
130	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh
131	04	FL	Kassauf-Kimerling Battery	Tampa
132	05	IL	Wauconda Sand & Gravel	Wauconda
133	05	MI	Bofors Nobel, Inc.	Muskegon
134	06	TX	Bailey Waste Disposal	Bridge City
135	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston
136	05	MI	Ott/Story/Cordova Chemical Co.	Dalton Township
137	05	MI	Thermo-Chem, Inc.	Muskegon
138	09	CA	Brown & Bryant, Inc.(Arvin Plant)	Arvin
139	03	VA	Greenwood Chemical Co.	Newtown
140	02	NJ	NL Industries	Pedricktown
141	05	MN	St. Regis Paper Co.	Cass Lake
142	04	NC	Aberdeen Pesticide Dumps	Aberdeen
143	01	VT	Burgess Brothers Landfill	Woodford
144	02	NJ	Ringwood Mines/Landfill	Ringwood Borough
145	04	FL	Whitehouse Oil Pits	Whitehouse
146	04	GA	Hercules 009 Landfill	Brunswick
147	02	NY	Jones Sanitation	Hyde Park
148	05	MI	Velsicol Chemical (Michigan)	St. Louis
149	05	OH	Summit National	Deerfield Township
150	02	NY	Love Canal	Niagara Falls

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 4 (HRS Scores 52.15 - 49.09)	
151	03	DE	Coker's Sanitation Service Lndfls	Kent County
152	05	MI	Rockwell International (Allegan)	Allegan
153	05	MN	Pine Bend Sanitary Landfill	Dakota County
154	07	IA	Lawrence Todtz Farm	Camanche
155	05	IN	Fisher-Calo	LaPorte
156	04	FL	Pioneer Sand Co.	Warrington
157	05	MI	Springfield Township Dump	Davisburg
158	03	PA	Mranica Landfill	Buffalo Township
159	04	NC	Martin-Marietta, Sodyeco, Inc.	Charlotte
160	03	PA	Hellertown Manufacturing Co.	Hellertown
161	04	FL	Zellwood Ground Water Contamin	Zellwood
162	05	MI	Packaging Corp. of America	Filer City
163	05	WI	Muskego Sanitary Landfill	Muskego
164	10	ID	Kerr-McGee Chemical(Soda Springs)	Soda Springs
165	02	NY	Hooker (S Area)	Niagara Falls
166	03	PA	Lindane Dump	Harrison Township
167	08	CO	Central City-Clear Creek	Idaho Springs
168	02	NJ	Ventron/Velsicol	Wood Ridge Borough
169	04	FL	Taylor Road Landfill	Seffner
170	01	RI	Western Sand & Gravel	Burrillville
171	02	NY	Rosen Brothers Scrap Yard/Dump	Cortland
172	04	SC	Koppers Co Inc (Florence Plant)	Florence
173	02	NJ	Maywood Chemical Co.	Maywood/Rochelle Pk
174	02	NJ	Nascolite Corp.	Millville
175	05	OH	Industrial Excess Landfill	Uniontown
176	06	OK	Hardage/Criner	Criner
177	05	MI	Rose Township Dump	Rose Township
178	05	MN	Waste Disposal Engineering	Andover
179	02	NY	Liberty Industrial Finishing	Farmingdale
180	02	NJ	Kin-Buc Landfill	Edison Township
181	05	IN	Waste, Inc., Landfill	Michigan City
182	05	OH	Bowers Landfill	Circleville
183	06	TX	Brio Refining, Inc.	Friendswood
184	02	NJ	Ciba-Geigy Corp.	Toms River
185	05	MI	Butterworth #2 Landfill	Grand Rapids
186	02	NJ	American Cyanamid Co.	Bound Brook
187	03	PA	Heleva Landfill	North Whitehall Twp
188	02	NJ	Ewan Property	Shamong Township
189	02	NY	Batavia Landfill	Batavia
190	05	IL	Woodstock Municipal Landfill	Woodstock
191	05	MN	Boise Cascade/Onan/Medtronics	Fridley
192	01	RI	Landfill & Resource Recovery	North Smithfield
193	03	PA	Butler Mine Tunnel	Pittston
194	04	FL	Northwest 58th Street Landfill	Hialeah
195	02	NJ	Delilah Road	Egg Harbor Township
196	03	PA	Mill Creek Dump	Erie
197	02	NJ	Glen Ridge Radium Site	Glen Ridge
198	02	NJ	Montclair/West Orange Radium Site	Montclair/W Orange
199	01	CT	Precision Plating Corp.	Vernon
200	04	FL	Sixty-Second Street Dump	Tampa

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 5 (HRS Scores 49.09 - 46.77)	
201	05	MI	G&H Landfill	Utica
202	01	VT	Bennington Municipal Sanitary Lfl	Bennington
203	04	NC	Celanese(Shelby Fiber Operations)	Shelby
204	02	NJ	Metaltec/Aerosystems	Franklin Borough
205	05	MI	Schmalz Dump	Harrison
206	05	MI	Motor Wheel, Inc.	Lansing
207	09	CA	Southern Calif Edison (Visalia)	Visalia
208	02	NJ	Lang Property	Pemberton Township
209	06	TX	Stewco, Inc.	Waskom
210	02	NJ	Sharkey Landfill	Parsippany/Troy Hls
211	09	CA	Selma Treating Co.	Selma
212	06	LA	Cleve Reber	Sorrento
213	05	IL	Velsicol Chemical (Illinois)	Marshall
214	07	MO	Wheeling Disposal Service Co. Lf	Amazonia
215	05	MI	Tar Lake	Mancelona Township
216	02	NY	Johnstown City Landfill	Town of Johnstown
217	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh
218	08	CO	Lowry Landfill	Arapahoe County
219	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton
220	03	PA	Hunterstown Road	Straban Township
221	03	MD	Woodlawn County Landfill	Woodlawn
222	05	WI	Hechimovich Sanitary Landfill	Williamstown
223	07	IA	Mid-America Tanning Co.	Sergeant Bluff
224	07	NE	Lindsay Manufacturing Co.	Lindsay
225	02	NJ	Combe Fill North Landfill	Mount Olive Twp
226	01	MA	Re-Solve, Inc.	Dartmouth
227	02	NJ	Goose Farm	Plumstead Township
228	04	TN	Velsicol Chem (Hardeman County)	Toone
229	02	NY	York Oil Co.	Moira
230	04	FL	Sapp Battery Salvage	Cottondale
231	04	SC	Wamchem, Inc.	Burton
232	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport
233	05	WI	Master Disposal Service Landfill	Brookfield
234	07	KS	Doepke Disposal (Holliday)	Johnson County
235	02	NJ	Florence Land Recontouring Lndfll	Florence Township
236	01	RI	Davis Liquid Waste	Smithfield
237	01	MA	Charles-George Reclamation Lndfll	Tyngsborough
238	02	NJ	King of Prussia	Winslow Township
239	03	VA	Chisman Creek	York County
240	05	OH	Nease Chemical	Salem
241	08	CO	Eagle Mine	Minturn/Redcliff
242	02	NJ	Chemical Control	Elizabeth
243	04	NC	Charles Macon Lagoon & Drum Stor	Cordova
244	04	SC	Leonard Chemical Co., Inc.	Rock Hill
245	05	OH	Allied Chemical & Ironton Coke	Ironton
246	05	MI	Verona Well Field	Battle Creek
247	07	MO	Lee Chemical	Liberty
248	01	CT	Beacon Heights Landfill	Beacon Falls
249	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks
250	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 6 (HRS Scores 46.72 - 44.87)	
251	05	MI	Torch Lake	Houghton County
252	01	RI	Central Landfill	Johnston
253	03	PA	Malvern TCE	Malvern
254	02	NY	Facet Enterprises, Inc.	Elmira
255	03	DE	Delaware Sand & Gravel Landfill	New Castle County
256	03	PA	Tonolli Corp.	Nesquehoning
257	04	NC	National Starch & Chemical Corp.	Salisbury
258	03	PA	MW Manufacturing	Valley Township
259	03	VA	C & R Battery Co., Inc.	Chesterfield County
260	04	TN	Murray-Ohio Dump	Lawrenceburg
261	05	IN	Envirochem Corp.	Zionsville
262	05	IN	MIDCO I	Gary
263	05	OH	Ormet Corp.	Hannibal
264	05	OH	South Point Plant	South Point
265	01	CT	Gallup's Quarry	Plainfield
266	03	PA	Whitmoyer Laboratories	Jackson Township
267	04	FL	Coleman-Evans Wood Preserving Co.	Whitehouse
268	02	NJ	Dayco Corp./L.E Carpenter Co.	Wharton Borough
269	03	PA	Shriver's Corner	Straban Township
270	03	PA	Dorney Road Landfill	Upper Macungie Twp
271	03	PA	Berks Landfill	Spring Township
272	05	IN	Northside Sanitary Landfill, Inc	Zionsville
273	05	IL	Interstate Pollution Control, Inc	Rockford
274	09	CA	Pacific Coast Pipe Lines	Fillmore
275	02	NJ	Global Sanitary Landfill	Old Bridge Township
276	04	FL	Florida Steel Corp.	Indiantown
277	03	PA	Occidental Chem/Firestone Tire	Lower Pottsgrove Twp
278	03	VA	Culpeper Wood Preservers, Inc.	Culpeper
279	05	IL	Pagel's Pit	Rockford
280	05	MN	University Minn Rosemount Res Cen	Rosemount
281	05	MN	Freeway Sanitary Landfill	Burnsville
282	05	WI	Tomah Municipal Sanitary Landfill	Tomah
283	09	AZ	Litchfield Airport Area	Goodyear/Avondale
284	09	CA	Firestone Tire (Salinas Plant)	Salinas
285	02	NJ	Spence Farm	Plumstead Township
286	06	AR	Mid-South Wood Products	Mena
287	04	MS	Newsom Brothers/Old Reichhold	Columbia
288	09	CA	Atlas Asbestos Mine	Fresno County
289	09	CA	Coalinga Asbestos Mine	Coalinga
290	04	FL	Brown Wood Preserving	Live Oak
291	02	NY	Port Washington Landfill	Port Washington
292	05	IN	Columbus Old Municipal Lndfll #1	Columbus
293	02	NJ	Combe Fill South Landfill	Chester Township
294	02	NJ	JIS Landfill	Jamesburg/S. Brnswck
295	02	NY	Tronic Plating Co., Inc.	Farmingdale
296	03	PA	Centre County Kepone	State College Boro
297	04	FL	Agrico Chemical Co.	Pensacola
298	05	OH	Fields Brook	Ashtabula
299	01	CT	Solvents Recovery Service New Eng	Southington
300	08	CO	Woodbury Chemical Co.	Commerce City

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 7 (HRS Scores 44.86 - 42.69)				
301	02	NJ	Waldick Aerospace Devices, Inc.	Wall Township
302	01	MA	Hocomonco Pond	Westborough
303	04	KY	Distler Brickyard	West Point
304	02	NY	Ramapo Landfill	Ramapo
305	09	CA	Coast Wood Preserving	Ukiah
306	09	CA	South Bay Asbestos Area	Alviso
307	02	NY	Mercury Refining, Inc.	Colonie
308	04	FL	Hollingsworth Solderless Terminal	Fort Lauderdale
309	02	NY	Olean Well Field	Olean
310	09	CA	Fairchild Semiconduct(S San Jose)	South San Jose
311	05	MN	Joslyn Manufacturing & Supply Co.	Brooklyn Center
312	03	PA	York County Solid Waste/Refuse Lf	Hopewell Township
313	05	WI	Spickler Landfill	Spencer
314	08	CO	Denver Radium Site	Denver
315	02	NY	Tri-Cities Barrel Co., Inc.	Port Crane
316	03	PA	Route 940 Drum Dump	Pocono Summit
317	04	FL	Tower Chemical Co.	Clermont
318	01	VT	Darling Hill Dump	Lyndon
319	03	PA	C & D Recycling	Foster Township
320	07	MO	Syntex Facility	Verona
321	08	MT	Milltown Reservoir Sediments	Milltown
322	05	MN	Arrowhead Refinery Co.	Hermantown
323	10	OR	Martin-Marietta Aluminum Co.	The Dalles
324	08	CO	Uravan Uranium (Union Carbide)	Uravan
325	02	NJ	Pijak Farm	Plumstead Township
326	02	NJ	Syncon Resins	South Kearny
327	05	MI	Oak Grove Sanitary Landfill	Oak Grove Township
328	09	CA	Liquid Gold Oil Corp.	Richmond
329	09	CA	Purity Oil Sales, Inc.	Malaga
330	01	NH	Tinkham Garage	Londonderry
331	04	FL	Alpha Chemical Corp.	Galloway
332	02	NJ	Bog Creek Farm	Howell Township
333	01	ME	Saco Tannery Waste Pits	Saco
334	03	PA	River Road Lf/Waste Mngmnt, Inc.	Hermitage
335	02	PR	Frontera Creek	Rio Abajo
336	04	FL	Pickettville Road Landfill	Jacksonville
337	05	OH	Alsco Anaconda	Gnadenhutten
338	01	MA	Iron Horse Park	Billerica
339	03	PA	Palmerton Zinc Pile	Palmerton
340	05	IN	Neal's Landfill (Bloomington)	Bloomington
341	05	WI	Kohler Co. Landfill	Kohler
342	04	AL	Interstate Lead Co. (ILCO)	Leeds
343	04	FL	Standard Auto Bumper Corp.	Hialeah
344	07	KS	Hydro-Flex Inc.	Topeka
345	09	AZ	Hassayampa Landfill	Hassayampa
346	06	LA	Gulf Coast Vacuum Services	Abbeville
347	05	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin
348	01	MA	Silresim Chemical Corp.	Lowell
349	01	MA	Wells G&H	Woburn
350	01	CT	Nutmeg Valley Road	Wolcott

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 8 (HRS Scores 42.69 - 41.92)				
351	02	NJ	Chemsol, Inc.	Piscataway
352	05	WI	Lauer I Sanitary Landfill	Menomonee Falls
353	05	MI	Petoskey Municipal Well Field	Petoskey
354	05	MN	Union Scrap Iron & Metal Co.	Minneapolis
355	02	NJ	Radiation Technology, Inc.	Rockaway Township
356	02	NJ	Fair Lawn Well Field	Fair Lawn
357	05	IN	Main Street Well Field	Elkhart
358	05	MN	Lehillier/Mankato Site	Lehillier/Mankato
359	10	WA	Lakewood Site	Lakewood
360	03	PA	Industrial Lane	Williams Township
361	05	IN	Fort Wayne Reduction Dump	Fort Wayne
362	05	WI	Onalaska Municipal Landfill	Onalaska
363	03	PA	A.I.W. Frank/Mid-County Mustang	Exton
364	05	WI	National Presto Industries, Inc.	Eau Claire
365	02	NJ	Monroe Township Landfill	Monroe Township
366	03	PA	Commodore Semiconductor Group	Lower Providence Twp
367	02	NJ	Rockaway Borough Well Field	Rockaway Township
368	05	IL	Lenz Oil Service, Inc.	Lemont
369	05	IN	Wayne Waste Oil	Columbia City
370	03	MD	Mid-Atlantic Wood Preservers, Inc	Harmans
371	03	PA	Novak Sanitary Landfill	South Whitehall Twp
372	10	ID	Pacific Hide & Fur Recycling Co.	Pocatello
373	07	IA	Des Moines TCE	Des Moines
374	02	NJ	Beachwood/Berkley Wells	Berkley Township
375	02	NJ	South Jersey Clothing Co.	Minotola
376	02	NY	Vestal Water Supply Well 4-2	Vestal
377	02	PR	Vega Alta Public Supply Wells	Vega Alta
378	05	IL	Southeast Rockford Grnd Wtr Con	Rockford
379	05	IN	Galen Myers Dump/Drum Salvage	Osceola
380	05	MI	Sturgis Municipal Wells	Sturgis
381	05	MI	Barrels, Inc.	Lansing
382	05	MN	Washington County Landfill	Lake Elmo
383	06	TX	Odessa Chromium #1	Odessa
384	06	TX	Odessa Chromium #2 (Andrews Hgwy)	Odessa
385	07	IA	Electro-Coatings, Inc.	Cedar Rapids
386	07	NE	Hastings Ground Water Contamin	Hastings
387	09	AZ	Indian Bend Wash Area	Scottsdale/Tmpe/Phnx
388	09	CA	San Gabriel Valley (Area 1)	El Monte
389	09	CA	San Gabriel Valley (Area 2)	Baldwin Park Area
390	09	CA	San Fernando Valley (Area 1)	Los Angeles
391	09	CA	San Fernando Valley (Area 2)	Los Angeles/Glendale
392	09	CA	San Fernando Valley (Area 3)	Glendale
393	09	CA	T.H. Agriculture & Nutrition Co.	Fresno
394	10	WA	Com Bay, Near Shore/Tide Flats	Pierce County
395	05	IL	LaSalle Electric Utilities	LaSalle
396	05	IL	Cross Brothers Pail (Pembroke)	Pembroke Township
397	04	NC	Jadco-Hughes Facility	Belmont
398	05	IN	Southside Sanitary Landfill	Indianapolis
399	02	NJ	Monitor Devices/Intercircuits Inc	Wall Township
400	01	VT	BFI Sanitary Landfill(Rockingham)	Rockingham

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
Group 9 (HRS Scores 41.92 - 39.93)				
401	02	PR	Upjohn Facility	Barceloneta
402	04	NC	Koppers Co Inc (Morrisville Plnt)	Morrisville
403	09	CA	McColl	Fullerton
404	03	PA	Henderson Road	Upper Merion Twp
405	02	NY	Hooker Chemical/Ruco Polymer Corp	Hicksville
406	10	WA	Colbert Landfill	Colbert
407	06	LA	Petro-Processors of Louisiana Inc	Scotlandville
408	02	NY	Applied Environmental Services	Glenwood Landing
409	02	PR	Barceloneta Landfill	Florida Afuera
410	01	NH	Tibbets Road	Barrington
411	03	MD	Sand, Gravel & Stone	Elkton
412	03	PA	Delta Quarries/Stotler Landfill	Antis/Logan Twps
413	01	CT	Revere Textile Prints Corp.	Sterling
414	05	MI	Spartan Chemical Co.	Wyoming
415	02	NJ	Roebling Steel Co.	Florence
416	03	PA	East Mount Zion	Springettsbury Twp
417	04	GA	T.H. Agricul & Nutri (Albany)	Albany
418	04	TN	Amnicola Dump	Chattanooga
419	02	NJ	Vineland State School	Vineland
420	09	AZ	Motorola, Inc.(52nd Street Plant)	Phoenix
421	01	MA	Groveland Wells	Groveland
422	02	NY	General Motors (Cent Foundry Div)	Massena
423	01	NH	Mottolo Pig Farm	Raymond
424	03	VA	Buckingham County Landfill	Buckingham
425	04	SC	SCRDI Dixiana	Cayce
426	05	MI	Roto-Finish Co., Inc.	Kalamazoo
427	05	MN	Olmsted County Sanitary Landfill	Oronoco
428	07	MO	Quality Plating	Sikeston
429	05	IN	Prestolite Battery Division	Vincennes
430	07	MO	Fulbright Landfill	Springfield
431	02	NJ	Williams Property	Swainton
432	02	NJ	Renora, Inc.	Edison Township
433	04	NC	FCX, Inc. (Washington Plant)	Washington
434	03	PA	Jacks Creek/Sitkin Smelting & Ref	Maitland
435	06	NM	Cleveland Mill	Silver City
436	02	NJ	Denzer & Schafer X-Ray Co.	Bayville
437	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown
438	05	IN	Ninth Avenue Dump	Gary
439	03	MD	Bush Valley Landfill	Abingdon
440	04	SC	Golden Strip Septic Tank Service	Simpsonville
441	06	TX	Texarkana Wood Preserving Co.	Texarkana
442	06	AR	Gurley Pit	Edmondson
443	04	FL	Petroleum Products Corp.	Pembroke Park
444	01	RI	Peterson/Puritan, Inc.	Lincoln/Cumberland
445	07	MO	Times Beach Site	Times Beach
446	05	MI	Wash King Laundry	Pleasant Plains Twp
447	05	MN	Whittaker Corp.	Minneapolis
448	05	WI	Algoma Municipal Landfill	Algoma
449	05	MN	NL Industries/Taracorp/Golden	St. Louis Park
450	09	CA	Westinghouse Elec (Sunnyvale Plt)	Sunnyvale

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 10 (HRS Scores 39.92 - 38.10)				
451	01	CT	Kellogg-Deering Well Field	Norwalk
452	03	PA	Boarhead Farms	Bridgeton Township
453	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater
454	05	MI	H. Brown Co., Inc.	Grand Rapids
455	02	NY	Nepera Chemical Co., Inc.	Maybrook
456	02	NY	Niagara County Refuse	Wheatfield
457	04	FL	Sherwood Medical Industries	Deland
458	04	AL	Olin Corp. (McIntosh Plant)	McIntosh
459	05	MI	Southwest Ottawa County Landfill	Park Township
460	02	NY	Kentucky Avenue Well Field	Horseheads
461	02	NY	Pasley Solvents & Chemicals, Inc.	Hempstead
462	06	TX	Sol Lynn/Industrial Transformers	Houston
463	02	NJ	Asbestos Dump	Millington
464	04	KY	Lee's Lane Landfill	Louisville
465	06	AR	Frit Industries	Walnut Ridge
466	05	OH	Fultz Landfill	Jackson Township
467	04	NC	New Hanover Cnty Airport Burn Pit	Wilmington
468	05	OH	Coshocton Landfill	Franklin Township
469	03	PA	AMP, Inc. (Glen Rock Facility)	Glen Rock
470	04	NC	JFD Electronics/Channel Master	Oxford
471	04	TN	Arlington Blending & Packaging	Arlington
472	06	LA	PAB Oil & Chemical Service, Inc.	Abbeville
473	04	FL	Sydney Mine Sludge Ponds	Brandon
474	06	NM	Cimarron Mining Corp.	Carrizozo
475	01	RI	Davis (GSR) Landfill	Glocester
476	03	PA	Lord-Shope Landfill	Girard Township
477	10	WA	FMC Corp. (Yakima Pit)	Yakima
478	05	WI	Northern Engraving Co.	Sparta
479	06	TX	South Cavalcade Street	Houston
480	01	MA	PSC Resources	Palmer
481	05	MI	Forest Waste Products	Otisville
482	03	PA	Drake Chemical	Lock Haven
483	01	NH	Kearsarge Metallurgical Corp.	Conway
484	04	SC	Palmetto Wood Preserving	Dixiana
485	05	IL	Petersen Sand & Gravel	Libertyville
486	05	MI	Clare Water Supply	Clare
487	03	PA	Havertown PCP	Haverford
488	03	DE	New Castle Spill	New Castle County
489	07	MO	St Louis Airport/HIS/Fut Coatings	St. Louis County
490	08	MT	Idaho Pole Co.	Bozeman
491	03	DE	NCR Corp. (Millsboro Plant)	Millsboro
492	05	IN	Lake Sandy Jo (M&M Landfill)	Gary
493	05	IL	Johns-Manville Corp.	Waukegan
494	05	MI	Chem Central	Wyoming Township
495	05	MI	Novaco Industries	Temperance
496	05	MN	Windom Dump	Windom
497	01	RI	Rose Hill Regional Landfill	South Kingstown
498	02	NJ	Jackson Township Landfill	Jackson Township
499	05	IL	NL Industries/Taracorp Lead Smelt	Granite City
500	04	KY	Red Penn Sanitation Co. Landfill	Peewee Valley

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
Group 11 (HRS Scores 38.10 - 36.73)				
501	05	MI	K&L Avenue Landfill	Oshtemo Township
502	05	OH	TRW, Inc. (Minerva Plant)	Minerva
503	10	WA	Kaiser Aluminum Mead Works	Mead
504	01	CT	Barkhamsted-New Hartford Landfill	Barkhamsted
505	05	MN	Perham Arsenic Site	Perham
506	05	MI	Charlevoix Municipal Well	Charlevoix
507	02	NJ	Montgomery Township Housing Devel	Montgomery Township
508	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough
509	02	NJ	Cinnaminson Ground Water Contamin	Cinnaminson Township
510	02	NY	Brewster Well Field	Putnam County
511	02	NY	Vestal Water Supply Well 1-1	Vestal
512	03	PA	Bally Ground Water Contamination	Bally Borough
513	04	FL	Chemform, Inc.	Pompano Beach
514	04	FL	Wilson Concepts of Florida, Inc.	Pompano Beach
515	04	NC	Bypass 601 Ground Water Contamin	Concord
516	04	SC	Lexington County Landfill Area	Cayce
517	07	MO	Solid State Circuits, Inc.	Republic
518	07	NE	Waverly Ground Water Contamin	Waverly
519	08	UT	Utah Power&Light/American Barrel	Salt Lake City
520	09	CA	Advanced Micro Devices, Inc.	Sunnyvale
521	10	WA	Hidden Valley Lndfl (Thun Field)	Pierce County
522	10	WA	Yakima Plating Co.	Yakima
523	05	MN	Nutting Truck & Caster Co.	Faribault
524	02	NJ	U.S. Radium Corp.	Orange
525	05	MI	Carter Industrials, Inc.	Detroit
526	06	TX	Highlands Acid Pit	Highlands
527	03	PA	Resin Disposal	Jefferson Borough
528	08	MT	Libby Ground Water Contamination	Libby
529	04	KY	Newport Dump	Newport
530	03	PA	Moyers Landfill	Eagleville
531	01	NH	Savage Municipal Water Supply	Milford
532	05	MN	LaGrand Sanitary Landfill	LaGrand Township
533	05	IN	Poer Farm	Hancock County
534	03	PA	Brown's Battery Breaking	Shoemakersville
535	02	NY	SMS Instruments, Inc.	Deer Park
536	05	MI	Hedblum Industries	Osceola
537	06	TX	United Creosoting Co.	Conroe
538	02	NY	Byron Barrel & Drum	Byron
539	08	WY	Baxter/Union Pacific Tie Treating	Laramie
540	02	NY	Anchor Chemicals	Hicksville
541	05	MI	Waste Management-Mich (Holland)	Holland
542	06	TX	North Cavalcade Street	Houston
543	02	NJ	Sayreville Landfill	Sayreville
544	01	NH	Dover Municipal Landfill	Dover
545	02	NY	Ludlow Sand & Gravel	Clayville
546	03	VA	Saunders Supply Co.	Chuckatuck
547	05	WI	City Disposal Corp. Landfill	Dunn
548	02	NJ	Tabernacle Drum Dump	Tabernacle Township
549	07	MO	Minker/Stout/Romaine Creek	Imperial
550	04	KY	Howe Valley Landfill	Howe Valley

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
Group 12 (HRS Scores 36.72 - 35.57)				
551	01	CT	Yaworski Waste Lagoon	Canterbury
552	03	WV	Leetown Pesticide	Leetown
553	04	SC	Rochester Property	Travelers Rest
554	04	FL	Cabot/Koppers	Gainesville
555	02	NJ	Evor Phillips Leasing	Old Bridge Township
556	03	PA	William Dick Lagoons	West Caln Township
557	05	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka
558	03	PA	Lackawanna Refuse	Old Forge Borough
559	06	OK	Compass Industries (Avery Drive)	Tulsa
560	02	NJ	Mannheim Avenue Dump	Galloway Township
561	05	IN	Neal's Dump (Spencer)	Spencer
562	02	NY	Fulton Terminals	Fulton
563	06	LA	Dutchtown Treatment Plant	Ascension Parish
564	03	PA	Westinghouse Elevator Co. Plant	Gettysburg
565	01	NH	Auburn Road Landfill	Londonderry
566	03	WV	Fike Chemical, Inc.	Nitro
567	05	MN	General Mills/Henkel Corp.	Minneapolis
568	04	TN	Wrigley Charcoal Plant	Wrigley
569	05	OH	Laskin/Poplar Oil Co.	Jefferson Township
570	05	OH	Old Mill	Rock Creek
571	07	KS	Johns' Sludge Pond	Wichita
572	05	WI	Stoughton City Landfill	Stoughton
573	09	CA	Del Norte Pesticide Storage	Crescent City
574	01	VT	Tansitor Electronics, Inc.	Bennington
575	02	NJ	De Rewal Chemical Co.	Kingwood Township
576	03	PA	Middletown Air Field	Middletown
577	02	NJ	Swope Oil & Chemical Co.	Pennsauken
578	04	GA	Monsanto Corp. (Augusta Plant)	Augusta
579	01	NH	South Municipal Water Supply Well	Peterborough
580	01	ME	Winthrop Landfill	Winthrop
581	03	WV	Ordnance Works Disposal Areas	Morgantown
582	05	OH	Zanesville Well Field	Zanesville
583	02	NY	Suffern Village Well Field	Village of Suffern
584	02	NY	Endicott Village Well Field	Village of Endicott
585	03	DE	Dover Gas Light Co.	Dover
586	03	PA	Aladdin Plating	Scott Township
587	03	PA	North Penn - Area 1	Souderton
588	03	PA	North Penn - Area 7	North Wales
589	03	PA	North Penn - Area 6	Lansdale
590	03	PA	North Penn - Area 2	Hatfield
591	03	PA	North Penn - Area 5	Montgomery Township
592	04	FL	Harris Corp. (Palm Bay Plant)	Palm Bay
593	05	MN	Kummer Sanitary Landfill	Bemidji
594	05	OH	Sanitary Landfill Co. (IWD)	Dayton
595	05	WI	Eau Claire Municipal Well Field	Eau Claire
596	06	NM	Pagano Salvage	Los Lunas
597	07	MO	Valley Park TCE	Valley Park
598	09	CA	San Fernando Valley (Area 4)	Los Angeles
599	09	CA	Monolithic Memories	Sunnyvale
600	09	CA	National Semiconductor Corp.	Santa Clara

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 13 (HRS Scores 35.57 - 34.60)	
601	09	CA	Fresno Municipal Sanitary Lndfll	Fresno
602	09	CA	Newmark Ground Water Contamin	San Bernardino
603	04	GA	Powersville Site	Peach County
604	05	MI	Grand Traverse Overall Supply Co.	Greilickville
605	05	MI	Metamora Landfill	Metamora
606	05	MI	Whitehall Municipal Wells	Whitehall
607	03	DE	Standard Chlorine of Delaware,Inc	Delaware City
608	05	MN	South Andover Site	Andover
609	02	NJ	Diamond Alkali Co.	Newark
610	05	IN	Carter Lee Lumber Co.	Indianapolis
611	01	NH	Fletcher's Paint Works & Storage	Milford
612	03	VA	Avtex Fibers, Inc.	Front Royal
613	05	MI	Kentwood Landfill	Kentwood
614	05	MI	Electrovoice	Buchanan
615	09	CA	Jasco Chemical Corp.	Mountain View
616	02	NY	Katonah Municipal Well	Town of Bedford
617	09	CA	Teledyne Semiconductor	Mountain View
618	02	PR	Fibers Public Supply Wells	Jobos
619	03	VA	Dixie Caverns County Landfill	Salem
620	05	IN	Marion (Bragg) Dump	Marion
621	05	OH	Pristine, Inc.	Reading
622	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township
623	04	TN	American Creosote (Jackson Plant)	Jackson
624	08	CO	Broderick Wood Products	Denver
625	02	NY	C & J Disposal Leasing Co. Dump	Hamilton
626	05	OH	Buckeye Reclamation	St. Clairsville
627	02	NY	Preferred Plating Corp.	Farmingdale
628	06	TX	Bio-Ecology Systems, Inc.	Grand Prairie
629	08	UT	Monticello Rad Contaminated Props	Monticello
630	02	NJ	Woodland Route 532 Dump	Woodland Township
631	05	IN	American Chemical Service, Inc.	Griffith
632	01	MA	Salem Acres	Salem
633	02	NY	Richardson Hill Road Lndfll/Pond	Sidney Center
634	01	VT	Old Springfield Landfill	Springfield
635	03	PA	Bell Landfill	Terry Township
636	02	NY	Solvent Savers	Lincklaen
637	03	VA	U.S. Titanium	Piney River
638	05	IL	Galesburg/Koppers Co.	Galesburg
639	09	CA	J.H. Baxter & Co.	Weed
640	02	NY	Hooker (Hyde Park)	Niagara Falls
641	05	MI	SCA Independent Landfill	Muskegon Heights
642	02	NY	Action Anodizing,Plating Polish	Copiague
643	09	CA	MGM Brakes	Cloverdale
644	06	LA	Bayou Sorrel Site	Bayou Sorrel
645	05	MI	Duell & Gardner Landfill	Dalton Township
646	10	WA	Mica Landfill	Mica
647	02	NJ	Ellis Property	Evesham Township
648	04	KY	Distler Farm	Jefferson County
649	09	CA	Waste Disposal, Inc.	Santa Fe Springs
650	10	WA	Harbor Island (Lead)	Seattle

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 14 (HRS Scores 34.58 - 33.76)	
651	05	WI	Lemberger Transport & Recycling	Franklin Township
652	05	OH	E.H. Schilling Landfill	Hamilton Township
653	05	MI	Cliff/Dow Dump	Marquette
654	02	NY	Clothier Disposal	Town of Granby
655	03	PA	Ambler Asbestos Piles	Ambler
656	10	WA	Queen City Farms	Maple Valley
657	02	NJ	Curcio Scrap Metal, Inc.	Saddle Brook Twp
658	03	VA	L.A. Clarke & Son	Spotsylvania County
659	05	WI	Scrap Processing Co., Inc.	Medford
660	03	MD	Southern Maryland Wood Treating	Hollywood
661	05	IL	Ilada Energy Co.	East Cape Girardeau
662	05	WI	Sauk County Landfill	Excelsior
663	06	NM	Homestake Mining Co.	Milan
664	06	TX	Dixie Oil Processors, Inc.	Friendswood
665	09	CA	Beckman Instruments (Porterville)	Porterville
666	04	FL	Dubose Oil Products Co.	Cantonment
667	05	MI	Mason County Landfill	Pere Marquette Twp
668	05	MI	Cemetery Dump	Rose Center
669	07	IA	Red Oak City Landfill	Red Oak
670	05	IN	Lakeland Disposal Service, Inc.	Claypool
671	02	NJ	Hopkins Farm	Plumstead Township
672	04	NC	Cape Fear Wood Preserving	Fayetteville
673	01	RI	Stamina Mills, Inc.	North Smithfield
674	05	WI	Lemberger Landfill, Inc.	Whitelaw
675	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis
676	01	ME	Pinette's Salvage Yard	Washburn
677	01	CT	Durham Meadows	Durham
678	05	MI	Kysor Industrial Corp.	Cadillac
679	09	CA	Lorentz Barrel & Drum Co.	San Jose
680	02	NJ	Wilson Farm	Plumstead Township
681	02	NY	Conklin Dumps	Conklin
682	03	PA	Old City of York Landfill	Seven Valleys
683	03	PA	Modern Sanitation Landfill	Lower Windsor Twp
684	05	IL	Byron Salvage Yard	Byron
685	05	MI	North Bronson Industrial Area	Bronson
686	03	PA	Stanley Kessler	King of Prussia
687	07	MO	Kem-Pest Laboratories	Cape Girardeau
688	02	NJ	Imperial Oil/Champion Chemicals	Morganville
689	02	NJ	Cosden Chemical Coatings Corp.	Beverly
690	05	MN	St. Augusta San Lndfll/Engen Dump	St. Augusta Township
691	02	NJ	Myers Property	Franklin Township
692	02	NJ	Pepe Field	Boonton
693	04	KY	Tri-City Disposal Co.	Shepherdsville
694	10	WA	Northwest Transformer	Everson
695	02	NY	Genzale Plating Co.	Franklin Square
696	05	MI	Albion-Sheridan Township Landfill	Albion
697	05	WI	Sheboygan Harbor & River	Sheboygan
698	05	MI	Ossineke Ground Water Contamin	Ossineke
699	03	WV	Follansbee Site	Follansbee
700	03	PA	Keystone Sanitation Landfill	Union Township

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 15 (HRS Scores 33.76 - 32.38)	
701	04	NC	Carolina Transformer Co.	Fayetteville
702	02	NY	North Sea Municipal Landfill	North Sea
703	03	PA	Bendix Flight Systems Division	Bridgewater Township
704	09	CA	Koppers Co Inc (Oroville Plant)	Oroville
705	09	CA	Louisiana-Pacific Corp.	Oroville
706	03	VA	H & H Inc., Burn Pit	Farrington
707	05	MI	South Macomb Disposal (Lf 9 & 9A)	Macomb Township
708	05	MI	U.S. Aviex	Howard Township
709	03	PA	Walsh Landfill	Honeybrook Township
710	02	NJ	Landfill & Development Co.	Mount Holly
711	02	NJ	Upper Deerfield Township San Lndf	Upper Deerfield Twp
712	02	NY	Hertel Landfill	Plattekill
713	02	NY	Haviland Complex	Town of Hyde Park
714	02	NY	Malta Rocket Fuel Area	Malta
715	04	[illegible]	Cedartown Municipal Landfill	Cedartown
716	05	MI	Kent City Mobile Home Park	Kent City
717	05	[illegible]	Adrian Municipal Well Field	Adrian
718	06	NM	AT & SF (Clovis)	Clovis
719	07	KS	Strother Field Industrial Park	Cowley County
720	07	KS	Obee Road	Hutchinson
721	02	NJ	Fried Industries	East Brunswick Twp
722	02	NY	American Thermostat Co.	South Cairo
723	[illegible]	ND	Minot Landfill	Minot
724	04	TN	Lewisburg Dump	Lewisburg
725	05	MI	McGraw Edison Corp.	Albion
726	02	NY	Goldisc Recordings, Inc.	Holbrook
727	02	NY	Islip Municipal Sanitary Landfill	Islip
728	04	KY	Airco	Calvert City
729	03	PA	Metal Banks	Philadelphia
730	05	IL	Yeoman Creek Landfill	Waukegan
731	02	NY	Sarney Farm	Amenia
732	05	MI	Folkertsma Refuse	Grand Rapids
733	01	[illegible]	Rose Disposal Pit	Lanesboro
734	05	OH	Van Dale Junkyard	Marietta
735	[illegible]	MT	Montana Pole and Treating	Butte
736	04	NC	Geigy Chemical Corp(Aberdeen Plt)	Aberdeen
737	04	KY	B.F. Goodrich	Calvert City
738	05	WI	Organic Chemicals, Inc.	Grandville
739	02	NY	BioClinical Laboratories, Inc.	Bohemia
740	02	NY	Volney Municipal Landfill	Town of Volney
741	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby
742	05	WI	Tomah Fairgrounds	Tomah
743	[illegible]	MA	Sullivan's Ledge	New Bedford
744	04	KY	Smith's Farm	Brooks
745	10	OR	Joseph Forest Products	Joseph
746	[illegible]	PR	Juncos Landfill	Juncos
747	07	KS	Big River Sand Co.	Wichita
748	05	IN	Bennett Stone Quarry	Bloomington
749	10	WA	Wyckoff Co./Eagle Harbor	Bainbridge Island
750	02	NJ	Industrial Latex Corp.	Wallington Borough

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 16 (HRS Scores 32.37 - 31.62)	
751	[illegible]	FL	Munisport Landfill	North Miami
752	[illegible]	LA	O.L. Mud, Inc.	Abbeville
753	04	AL	Stauffer Chem (LeMoyne Plant)	Axis
754	[illegible]	NJ	M&T Delisa Landfill	Asbury Park
755	[illegible]	TX	Crystal City Airport	Crystal City
756	04	[illegible]	Geiger (C & M Oil)	Rantoules
757	05	WI	Moss-American(Kerr-McGee Oil Co.)	Milwaukee
758	05	WI	Waste Research & Reclamation Co.	Eau Claire
759	10	OR	Gould, Inc.	Portland
760	01	[illegible]	Union Chemical Co., Inc.	South Hope
761	02	NY	Cortese Landfill	Vil of Narrowsburg
762	09	CA	Montrose Chemical Corp.	Torrance
763	05	MN	St. Louis River Site	St. Louis County
764	05	MI	Auto Ion Chemicals, Inc.	Kalamazoo
765	[illegible]	PA	Recticon/Allied Steel Corp.	East Coventry Twp
766	[illegible]	WI	Hagen Farm	Stoughton
767	04	SC	Carolawn, Inc.	Fort Lawn
768	07	IA	Midwest Manufacturing/North Farm	Kellogg
769	03	PA	Berks Sand Pit	Longswamp Township
770	[illegible]	CA	Valley Wood Preserving, Inc.	Turlock
771	03	PA	Butz Landfill	Stroudsburg
772	04	FL	City Industries, Inc.	Orlando
773	05	MI	Sparta Landfill	Sparta Township
774	05	IL	Acme Solvent (Morristown Plant)	Morristown
775	[illegible]	NH	Holton Circle Ground Water Contam	Londonderry
776	02	NJ	Pomona Oaks Residential Wells	Galloway Township
777	[illegible]	NY	Rowe Industries Ground Water Cont	Noyack/Sag Harbor
778	03	PA	Hebelka Auto Salvage Yard	Weisenberg Township
779	04	FL	Hipps Road Landfill	Duval County
780	05	MN	Long Prairie Ground Water Contam	Long Prairie
781	05	MN	Waite Park Wells	Waite Park
782	09	CA	Applied Materials	Santa Clara
783	09	CA	Intel Magnetics	Santa Clara
784	09	CA	Intel Corp. (Santa Clara III)	Santa Clara
785	09	CA	Synertek, Inc. (Building 1)	Santa Clara
786	04	FL	Pepper Steel & Alloys, Inc.	Medley
787	02	NY	Mattiace Petrochemical Co., Inc.	Glen Cove
788	01	ME	O'Connor Co.	Augusta
789	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin
790	05	IN	Continental Steel Corp.	Kokomo
791	05	MI	Rasmussen's Dump	Green Oak Township
792	02	NY	Kenmark Textile Corp.	Farmingdale
793	04	FL	Wingate Road Munic Incinerat Dump	Fort Lauderdale
794	03	PA	Westline Site	Westline
795	04	KY	Maxey Flats Nuclear Disposal	Hillsboro
796	04	NC	Benfield Industries, Inc.	Hazelwood
797	[illegible]	MT	Mouat Industries	Columbus
798	05	MI	J & L Landfill	Rochester Hills
799	02	NY	Claremont Polychemical	Old Bethpage
800	05	OH	Powell Road Landfill	Dayton

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National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
Group 17 (HRS Scores 31.60 - 30.44)				
801	03	PA	Croydon TCE	Croydon
802	04	SC	Medley Farm Drum Dump	Gaffney
803	04	SC	Elmore Waste Disposal	Greer
804	07	IA	Vogel Paint & Wax Co.	Orange City
805	05	MN	Kurt Manufacturing Co.	Fridley
806	05	MI	Parsons Chemical Works, Inc.	Grand Ledge
807	03	PA	Revere Chemical Co.	Nockamixon Township
808	05	MI	Ionia City Landfill	Ionia
809	06	TX	Koppers Co Inc (Texarkana Plant)	Texarkana
810	08	CO	Lincoln Park	Canon City
811	08	CO	Smuggler Mountain	Pitkin County
812	05	IN	Wedzeb Enterprises, Inc.	Lebanon
813	02	PR	GE Wiring Devices	Juana Diaz
814	05	MI	Avenue "E" Ground Water Contamin	Traverse City
815	05	OH	New Lyme Landfill	New Lyme
816	02	NJ	Woodland Route 72 Dump	Woodland Township
817	02	PR	RCA Del Caribe	Barceloneta
818	05	MN	Koch Refining Co./N-Ren Corp.	Pine Bend
819	03	PA	Brodhead Creek	Stroudsburg
820	05	WI	Fadrowski Drum Disposal	Franklin
821	10	OR	United Chrome Products, Inc.	Corvallis
822	03	PA	Eastern Diversified Metals	Hometown
823	05	MI	Anderson Development Co.	Adrian
824	05	WI	Hunts Disposal Landfill	Caledonia
825	05	MI	Shiawassee River	Howell
826	06	OK	Tenth Street Dump/Junkyard	Oklahoma City
827	10	AK	Alaska Battery Enterprises	Fairbanks N Star Bor
828	03	PA	Taylor Borough Dump	Taylor Borough
829	03	DE	Halby Chemical Co.	New Castle
830	06	OK	Double Eagle Refinery Co.	Oklahoma City
831	04	GA	Mathis Bros Lf (S Marble Top Rd)	Kensington
832	03	DE	Harvey & Knott Drum, Inc.	Kirkwood
833	04	TN	Gallaway Pits	Gallaway
834	05	OH	Big D Campground	Kingsville
835	06	AR	Midland Products	Ola/Birta
836	02	NY	Robintech, Inc./National Pipe Co.	Town of Vestal
837	02	NY	BEC Trucking	Town of Vestal
838	03	PA	Strasburg Landfill	Newlin Township
839	06	OK	Fourth Street Abandoned Refinery	Oklahoma City
840	02	NJ	Witco Chemical Corp.(Oakland Plt)	Oakland
841	05	WI	Tomah Armory	Tomah
842	03	DE	Wildcat Landfill	Dover
843	05	MI	Burrows Sanitation	Hartford
844	03	PA	Blosenski Landfill	West Caln Township
845	03	VA	Rhinehart Tire Fire Dump	Frederick County
846	03	DE	Delaware City PVC Plant	Delaware City
847	03	MD	Limestone Road	Cumberland
848	02	NY	Hooker (102nd Street)	Niagara Falls
849	02	NJ	Higgins Farm	Franklin Township
850	10	WA	American Crossarm & Conduit Co.	Chehalis

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 18 (HRS Scores 30.36 - 29.07)				
851	06	NM	United Nuclear Corp.	Church Rock
852	03	PA	Reeser's Landfill	Upper Macungie Twp
853	03	VA	Rentokil, Inc. (VA Wood Pres Div)	Richmond
854	06	AR	Industrial Waste Control	Fort Smith
855	09	CA	Celtor Chemical Works	Hoopa
856	01	MA	Haverhill Municipal Landfill	Haverhill
857	04	AL	Perdido Ground Water Contamin	Perdido
858	02	NY	Marathon Battery Corp.	Cold Springs
859	02	NY	Colesville Municipal Landfill	Town of Colesville
860	04	FL	Yellow Water Road Dump	Baldwin
861	04	GA	Marzone Inc./Chevron Chemical Co.	Tifton
862	05	OH	Skinner Landfill	West Chester
863	03	VA	First Piedmont Quarry (Route 719)	Pittsylvania County
864	04	NC	Chemtronics, Inc.	Swannanoa
865	05	IN	MIDCO II	Gary
866	06	TX	Sheridan Disposal Services	Hempstead
867	07	KS	Pester Refinery Co.	El Dorado
868	03	MD	Kane & Lombard Street Drums	Baltimore
869	07	MO	Shenandoah Stables	Moscow Mills
870	04	GA	Firestone Tire (Albany Plant)	Albany
871	07	IA	Shaw Avenue Dump	Charles City
872	03	PA	Berkley Products Co. Dump	Denver
873	10	WA	Silver Mountain Mine	Loomis
874	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County
875	05	OH	Republic Steel Corp. Quarry	Elyria
876	07	MO	Conservation Chemical Co.	Kansas City
877	05	MN	Ritari Post & Pole	Sebeka
878	06	LA	Bayou Bonfouca	Slidell
879	09	CA	Intel Corp. (Mountain View Plant)	Mountain View
880	09	CA	Raytheon Corp.	Mountain View
881	05	MN	Agate Lake Scrapyard	Fairview Township
882	05	MI	Adam's Plating	Lansing
883	06	AR	Jacksonville Municipal Landfill	Jacksonville
884	06	AR	Rogers Road Municipal Landfill	Jacksonville
885	03	VA	Saltville Waste Disposal Ponds	Saltville
886	04	SC	Palmetto Recycling, Inc.	Columbia
887	01	MA	Shpack Landfill	Norton/Attleboro
888	03	PA	Kimberton Site	Kimberton Borough
889	04	TN	Mallory Capacitor Co.	Waynesboro
890	01	MA	Norwood PCBs	Norwood
891	02	NY	Warwick Landfill	Warwick
892	02	NY	Sidney Landfill	Sidney
893	10	WA	Pesticide Lab (Yakima)	Yakima
894	05	IN	Lemon Lane Landfill	Bloomington
895	05	IN	Tri-State Plating	Columbus
896	10	ID	Arrcom (Drexler Enterprises)	Rathdrum
897	01	NH	Coakley Landfill	North Hampton
898	04	NC	Potter's Septic Tank Service Pits	Maco
899	04	NC	ABC One Hour Cleaners	Jacksonville
900	03	PA	Fischer & Porter Co.	Warminster

National Priorities List (by Rank)
November 1989

NPL Rank	EPA Reg	St	Site Name	City/County
Group 19 (HRS Scores 28.98 - 28.50 , except for health-advisory sites)				
901	03	PA	Elizabethtown Landfill	Elizabethtown
902	06	AR	Arkwood, Inc.	Omaha
903	09	CA	Jibboom Junkyard	Sacramento
904	02	NJ	A. O. Polymer	Sparta Township
905	05	WI	Wausau Ground Water Contamination	Wausau
906	02	NJ	Dover Municipal Well 4	Dover Township
907	02	NJ	Rockaway Township Wells	Rockaway
908	02	NJ	Pohatcong Valley Ground Water Con	Warren County
909	02	NJ	Garden State Cleaners Co.	Minotola
910	03	DE	Sussex County Landfill No. 5	Laurel
911	05	WI	Delavan Municipal Well #4	Delavan
912	07	MO	North-U Drive Well Contamination	Springfield
913	09	CA	San Gabriel Valley (Area 3)	Alhambra
914	09	CA	San Gabriel Valley (Area 4)	La Puente
915	09	CA	Modesto Ground Water Contamin	Modesto
916	10	WA	American Lake Gardens	Tacoma
917	10	WA	Greenacres Landfill	Spokane County
918	10	WA	Northside Landfill	Spokane
919	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs
920	06	TX	Pesses Chemical Co.	Fort Worth
921	05	MN	East Bethel Demolition Landfill	East Bethel Township
922	06	TX	Triangle Chemical Co.	Bridge City
923	02	NJ	PJP Landfill	Jersey City
924	03	PA	Craig Farm Drum	Parker
925	05	IL	Belvidere Municipal Landfill	Belvidere
926	07	MO	Bee Cee Manufacturing Co.	Malden
927	03	PA	CryoChem, Inc.	Worman
928	02	NJ	Kauffman & Minteer, Inc.	Jobstown
929	03	PA	Lansdowne Radiation Site	Lansdowne
930	02	NY	Forest Glen Mobile Home Subdivis	Niagara Falls
931	02	NY	Radium Chemical Co., Inc.	New York City

Number of NPL Sites: 931

* = State top priority site

National Priorities List,
Federal Section (by Group)
November 1989

NPL Gr 1	St	Site Name	City/County
1	WA	Hanford 200-Area (USDOE)	Benton County
1	WA	Hanford 300-Area (USDOE)	Benton County
1	CO	Rocky Flats Plant (USDOE)	Golden
1	NM	Cal West Metals (USSBA)	Lemitar
1	MO	Weldon Spring (USDOE/Army)	St.Charles County
2	CO	Rocky Mountain Arsenal	Adams County
2	TN	Milan Army Ammunition Plant	Milan
2	PA	Naval Air Develop Center(8 Areas)	Warminster Township
2	CA	McClellan AFB (Ground Water Cont)	Sacramento
2	OH	Wright-Patterson Air Force Base	Dayton
2	OH	Feed Materials Prod Cent (USDOE)	Fernald
3	WA	Bonneville Power Adm Ross (USDOE)	Vancouver
4	ID	Idaho National Engin Lab (USDOE)	Idaho Falls
4	AL	Anniston Army Depot (SE Ind Area)	Anniston
4	GA	Robins AFB (Lndfll #4/Sludge Lag)	Houston County
4	TN	Oak Ridge Reservation (USDOE)	Oak Ridge
4	NE	Cornhusker Army Ammunition Plant	Hall County
4	NJ	Naval Air Engineering Center	Lakehurst
4	UT	Hill Air Force Base	Ogden
5	CA	Treasure Island Nav Sta-Hun Pt An	San Francisco
5	AK	Eielson Air Force Base	Fairbanks N Star Bor
5	SC	Savannah River Site (USDOE)	Aiken
5	NJ	W.R. Grace/Wayne Int Stor (USDOE)	Wayne Township
6	WA	Hanford 100-Area (USDOE)	Benton County
6	MA	Otis Air Nat Guard/Camp Edwards	Falmouth
6	UT	Ogden Defense Depot	Ogden
7	GA	Marine Corps Logistics Base	Albany
7	CA	Sacramento Army Depot	Sacramento
7	IL	Sangamo/Crab Orchard NWR (USDOI)	Carterville
7	ME	Brunswick Naval Air Station	Brunswick
7	CO	Air Force Plant PJKS	Waterton
8	FL	Pensacola Naval Air Station	Pensacola

1: Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

National Priorities List,
Federal Section (by Group)
November 1989

NPL Gr$_1$	St	Site Name	City/County
8	OK	Tinker AFB (Soldier Cr/Bldg 3001)	Oklahoma City
8	CA	Sharpe Army Depot	Lathrop
8	CA	Lawrence Livermore Lab (USDOE)	Livermore
8	MA	Fort Devens	Fort Devens
8	WA	McChord AFB (Wash Rack/Treatment)	Tacoma
8	IL	Savanna Army Depot Activity	Savanna
10	NY	Brookhaven National Lab (USDOE)	Upton
10	CA	Norton Air Force Base	San Bernardino
11	CA	Barstow Marine Corps Logist Base	Barstow
11	AZ	Williams Air Force Base	Chandler
11	CA	Castle Air Force Base	Merced
11	PA	Letterkenny Army Depot (PDO Area)	Franklin County
11	NJ	Fort Dix (Landfill Site)	Pemberton Township
11	AL	Alabama Army Ammunition Plant	Childersburg
12	WA	Hanford 1100-Area (USDOE)	Benton County
12	DE	Dover Air Force Base	Dover
12	UT	Monticello Mill Tailings (USDOE)	Monticello
13	WA	Fort Lewis Logistics Center	Tillicum
13	IL	Joliet Army Ammu Plant (LAP Area)	Joliet
13	OH	Mound Plant (USDOE)	Miamisburg
14	RI	Davisville Naval Constr Batt Cent	North Kingstown
14	PR	Naval Security Group Activity	Sabana Seca
14	PA	Letterkenny Army Depot (SE Area)	Chambersburg
14	NY	Griffiss Air Force Base	Rome
14	VA	Defense General Supply Center	Chesterfield County
14	CA	Camp Pendleton Marine Corps Base	San Diego County
14	WA	Fort Lewis (Landfill No. 5)	Tacoma
15	MO	Lake City Army Plant (NW Lagoon)	Independence
15	MN	Twin Cities Air Force(SAR Lndfll)	Minneapolis
15	WA	Naval Undersea Warf Sta (4 Areas)	Keyport
15	NC	Camp Lejeune Military Reservation	Onslow County
16	RI	Newport Naval Educat/Training Cen	Newport
16	FL	Jacksonville Naval Air Station	Jacksonville
16	IL	Joliet Army Ammu Plant (Mfg Area)	Joliet
16	FL	Cecil Field Naval Air Station	Jacksonville

National Priorities List,
Federal Section (by Group)
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NPL Gr$_1$	St	Site Name	City/County
16	WA	Fairchild Air Force Base(4 Areas)	Spokane County
16	CA	March Air Force Base	Riverside
16	TX	Lone Star Army Ammunition Plant	Texarkana
17	OR	Umatilla Army Depot (Lagoons)	Hermiston
17	MD	Aber Prov Ground-Michaelsville Lf	Aberdeen
17	MN	Naval Industrial Reserve Ordnance	Fridley
17	WA	Bangor Ordnance Disposal	Bremerton
18	NY	Plattsburgh Air Force Base	Plattsburgh
18	LA	Louisiana Army Ammunition Plant	Doyline
18	CA	Moffett Naval Air Station	Sunnyvale
18	CA	Travis Air Force Base	Solano County
19	CA	Mather Air Force Base	Sacramento

Number of NPL Federal Facility Sites: 79

[FR Doc. 89-27209 Filed 11-20-89; 8:45 am]
BILLING CODE 6560-50-C

federal register

Tuesday
November 21, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 25
Multiple-Shot Blasting Units; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 25

RIN 1219-AA42

Multiple-Shot Blasting Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule implements new procedures and requirements for testing and approval of multiple-shot blasting units used underground in coal mines and certain metal and nonmetal mines. It transfers certain existing provisions in 30 CFR part 25 to a new subpart in part 7 and revises and upgrades them to include current terminology, eliminate duplicative or unnecessary provisions, and provide alternative methods of compliance where possible. The rule also recognizes advances in technology and is consistent with the part 75, subpart N revisions to the Agency's safety standards for the use of explosives and blasting in underground coal mines, published on November 18, 1988 (53 FR 46768).

EFFECTIVE DATE: New subpart D in part 7 is effective January 22, 1990. Manufacturers who choose to proceed under the provisions of the previous rule may file requests for approval or extensions of approval of blasting units under part 25 until January 22, 1991. After January 22, 1991, 30 CFR Part 25 will no longer be effective and will be removed from title 30.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Blvd., Room 631, Arlington, Virginia 22203 (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Section 7.63 requires applicants seeking approval of multiple-shot blasting units to submit an application for approval. MSHA estimates there will be 1.1 applications for approval or extension of approval per year, each requiring 4 hours to prepare. At an estimated cost of $37 per hour, 1.1 applications would require 4.4 hours and cost $163. The application fee of $100 being charged under the revised fee schedule is applied toward the cost of processing the application, and therefore is not included as a cost of the application.

Under this rule, part 7, subpart A, § 7.4(a) requires records of test results and procedures to be retained for at least three years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing. Therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Under this rule, part 7, subpart A, § 7.5(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. Rarely would such a report be submitted; however, for the purpose of this analysis, based on a worst-case scenario, MSHA estimates an annual cost of $37 or 15 minutes per manufacturer.

The rule requires applicants to maintain records on the distribution of each blasting unit bearing an approval marking as set forth in part 7, subpart A, § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply. Therefore, MSHA has assigned no cost to this requirement.

Section 7.71 requires the applicant to include an approval checklist with each blasting unit bearing an approval marking. MSHA estimates that it will require two hours to develop the checklist. At $37 an hour, the one-time cost is $74 for each manufacturer, or $296 total. MSHA has also investigated the cost of inserting the checklist with each blasting unit and has determined that the cost is minimal. It takes only a few seconds to insert the checklist, and only about 544 blasting units are sold annually.

In accordance with § 3504(h) of the Paperwork Reduction Act of 1980, the collection of information requirements contained in §§ 7.63 and 7.71 of the final rule have been approved by OMB under control number 1219-0100.

Background

This final rule will replace, in one year, the current regulations covering the testing and approval of multiple-shot blasting units found in 30 CFR part 25. These revisions are issued pursuant to section 508 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957).

On June 5, 1984, MSHA published a notice of availability of its preproposal draft revisions concerning approval requirements for blasting units, 30 CFR part 25, and scheduled a public conference (49 FR 23281). The public conference, held July 11, 1984, in Pittsburgh, Pennsylvania, was well attended by representatives of the mining community. MSHA also received written comments from manufacturers of blasting units and other segments of the mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a proposed rule in the **Federal Register** on June 22, 1988 (53 FR 23506). The proposal did not retain the existing procedures for MSHA testing of multiple-shot blasting units submitted for approval under part 25. Instead, it proposed that blasting units be tested by the applicant or a third party selected by the applicant under the provisions of 30 CFR part 7, Underground Mining Equipment; Product Testing by Applicant or Third Party. Technical requirements and test procedures for blasting unit approval were proposed as subpart D to part 7.

MSHA reviewed all written statements submitted in response to the proposed rule. No public hearing was requested or held on subpart D. Comments were received from all segments of the mining community including equipment manufacturers, trade associations, and representatives of miners. This final rule was developed after a full evaluation of the entire public record.

The Agency's final rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

III. Discussion and Summary of the Final Rule

A. General discussion

MSHA's regulations found in 30 CFR part 25 governing the approval of blasting units were last revised in 1960. Since that time, technological advances in electronic components and circuitry have led to the development of improved blasting units suitable for use in underground mines having potentially explosive atmospheres.

Under this final rule, multiple-shot blasting units will be evaluated for approval under MSHA's new part 7 and subject to general provisions located in subpart A of that part. Blasting units meet the criteria for applicant or third party testing because they are a product possessing characteristics that can be objectively tested in a routine and readily reproducible manner without subjective analysis.

Part 7 revises MSHA's role in the evaluation and testing of selected products used in underground mines. Products approved under part 7 are required to be tested by the applicant or by a third party selected by the applicant to conduct the testing. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, any MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval-holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. MSHA will perform periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of the applicable subpart of part 7 or creates a hazard related to its use, MSHA will take immediate action to address the problem including revocation of the approval if necessary.

As subpart D to part 7, this rule specifies the technical requirements and test procedures for the approval of multiple-shot blasting units. It revises part 25 through improved, more up-to-date requirements, replacing subjective technical requirements with performance-oriented tests and introducing charts which specify maximum electrical values. These changes when compared to part 25, will provide better safety to miners. The tests are based on MSHA's engineering experience with the subjective criteria of approval requirements. Except where indicated, they are not intended to introduce more stringent testing methods, but rather to explicitly state the tests used in MSHA's current testing program which have proven to be effective. This rule provides objective criteria for applicant or third party testing. By using these test procedures, manufacturers can measure and evaluate their product with the performance portion of the technical requirements of this subpart in order to receive an MSHA approval.

The rule deletes requirements for generator-powered blasting unit designs which are no longer used in underground mines. Also deleted are the part 25 classifications referred to as 10- and 20-shot blasting units. The capacity of blasting units under the final rule is indicated by the maximum blasting circuit resistance displayed on the blasting unit label.

Section 25.9, which concerned observers at test and evaluations, is now addressed by the general product testing requirements in § 7.4 in subpart A of part 7. Similarly, revocation of blasting unit approval is governed by the provisions of § 7.9 located in subpart A of this part.

A commenter suggested adding a new section to the final rule to require that MSHA maintain a list of approved blasting units which would be available to the public. Lists of approved products are maintained by MSHA and are available to the public. This is not an issue that needs to be addressed by rulemaking.

New requirements and test procedures for the energy output of blasting units are contained in the final rule. Although these requirements are more stringent than the existing requirements, they address state-of-the-art design technology already incorporated in most blasting units currently approved for use. These requirements address potential hazards where NSHA believes that the incorporation of advanced technology improves safety.

There are three elements present in an electric blasting system: the explosive, the electric detonator, and the blasting unit. Degraded performance or malfunction of any one of these elements has the potential to cause incomplete or premature detonation and lead to a blasting accident. The Agency has based this rule on its field experience, testing under the existing approval standards, developmental research and the availability of improved technology.

B. Section-by-Section Discussion

The following section-by-section analysis discusses each provision of subpart D and addresses the comments received on the proposed rule.

Section 7.61 Purpose and effective date.

This section, derived from § 25.1, revises and simplifies the statement of purpose and requires that multiple-shot blasting units be approved under part 7. It applies to blasting units used underground in both coal mines and certain metal and nonmetal mines, as defined in subpart T of 30 CFR part 57, where MSHA approved blasting units are required (52 FR 24924, July 1, 1987; 52 FR 41394, October 27, 1987).

One commenter expressed concern and requested assurance that the requirements contained in 30 CFR part 57.22606 pertaining to blasting units used in certain metal and nonmetal mines to fire more than 20 detonators, would not change subsequent to the promulgation of subpart D. As indicated in the preamble discussion in the final rule on methane standards (52 FR 24924 July 1, 1987), some changes to § 54.22606 are necessary based on the revised technical specifications for approval of multiple-shot blasting units which allow for the approval of units capable of firing more than 20 shots. The Agency is currently considering certain conforming amendments to § 57.22606 resulting from the approval requirements in this subpart D final rule. Amendments to part 57 will be proposed in a future rulemaking and therefore subject to public comment.

Section 7.61 provides that the requirements of subpart D take effect 60 days after publication. It further provides that manufacturers may request approval or extension of approval of blasting units under part 25 until one year from the effective date of subpart D. After the one-year period, part 25 will be removed and all new applications for approval or extension of approval of blasting units will be evaluated under the provisions of subpart D of this part.

This phase-in period of one year will enable manufacturers and third-party laboratories to make arrangements to conduct the necessary blasting unit testing. During this period, both part 25 and subpart D will be in effect. Applicants can, therefore, choose to submit applications for approval under part 25 and have the blasting units tested by MSHA or under subpart D where the obligation to test will be with the applicant. Applicants must submit extensions of approval in accordance with the approval regulations under which the original approval was granted.

After the one-year phase-in period for this subpart and the removal of part 25, approvals for blasting units will be granted only under subpart D. At the expiration of the one year, all applications for extensions of approval of blasting units approved under part 25 will be treated as new applications, and applicants will be required to apply for an original approval under subpart D. MSHA will not revoke, except for cause, any blasting unit approvals previously granted. Blasting units approved under prior regulations and in compliance with those regulations, may continue to be manufactured as long as no changes are made which would deviate from conformance with the approval documentation. MSHA will audit these

blasting units based upon the technical requirements upon which the approval was issued.

Section 7.62 Definitions.

The following definitions applying to the approval of blasting units are new with the exception of the term "blasting unit" which is derived from § 25.2. They are designed to clarify the requirements of subpart D and respond to the issues identified by commenters.

Blasting circuit. This term identifies the items connected to the firing line terminals of the blasting unit. It is necessary to identify these items in order to determine the electrical parameters used in the acceptable performance section of the output energy test.

Blasting unit. This term essentially retains the definition given in part 25 but clarifies that the requirements of this subpart apply only to electric initiating systems which are the only types permitted in underground coal and gassy metal and nonmetal mines under MSHA's explosives and blasting safety standards.

Normal operation. This term specifies the electrical parameters to be used by the applicant to determine if the maximum power, voltage, current and temperature attainable under these conditions are in compliance with § 7.64 (f), (g), and (h).

One commenter on the proposed rule suggested retaining the preproposal draft's separate definitions for multiple-shot and large capacity blasting units, with the technical requirements for each separately identified. This, the commenter believed, would prevent misunderstanding and the potential for blasting units being used inappropriately for the specific mine application. This suggestion has not been adopted because the preproposal designation of a large capacity blasting unit was not intended to limit the use of such a unit to firing more than 20 shots. Instead, it was intended to designate those units which perform in all other respects like the multiple-shot unit but which would have additional capacity. The final rule requires that the maximum blasting circuit resistance for an approved blasting unit be at least 150 ohms which is equivalent to the capacity of the 20-shot unit defined in part 25. Therefore, when used with detonators of the type commonly used in underground mines today, blasting units approved under this subpart will have sufficient capacity to fire at least 20 shots. Further, all blasting units approved under this final rule, including those with greater capacity than 20 shots, may be used to safely fire from 1 to 20 shots. The applicable provisions of part 75 for underground coal mines and part 57 for underground gassy metal and nonmetal mines regulate the use of those blasting units approved under the final rule with the capacity to fire more than 20 shots. All blasting units approved under this subpart are required to have an approval marking identifying their capacity in terms of maximum blasting circuit resistance. This information will enable mine operators to determine the number of shots which can be safely fired with each blasting unit.

The same commenter urged that subpart D include a definition of "manufacturing site survey" as it appeared in the preproposal draft of part 25 and that MSHA conduct such surveys of applicants' manufacturing facilities. During rulemaking on the general provisions of subpart A of this part, MSHA determined that its resources are more appropriately used to evaluate approved products being distributed to underground mines rather than to evaluate an applicant's manufacturing site. Since this term is not used in part 7, no definition of "manufacturing site survey" has been added to subpart D.

A recommendation was also received to include a definition of "permissible" in subpart D. The term "permissible," used in part 25 and also in the preproposal to describe blasting units which have been approved by MSHA, has been replaced with the term a "approved." The terminology used to identify products which have been examined by the Agency to determine conformity with regulatory requirements must be standardized. The term which most appropriately reflects MSHA's action in this area is "approved." Therefore, the phrase "approved blasting unit" is used in subpart D of part 7 in lieu of "permissible blasting unit." However, since blasting units approved as permissible under part 25 may continue to be manufactured and used in underground mines requiring approved blasting units, the safety standard in part 75 defines the term "permissible blasting unit" as one approved by MSHA.

General definitions such as "applicant," "approval," and "post-approval product audit" which were contained in part 25 are not included in this subpart. They are defined in the general provisions of subpart A of part 7.

The following definitions, which appeared in part 25 or the preproposal draft, are not retained in the final rule. The acronyms "MESA" and "MSHA" are not defined since these terms are defined in 30 CFR part 1. The terms "permissible," "short-delay electric detonator," and "manufacturing site surveys" are not used and therefore are not defined.

Section 7.63 Application requirements.

Paragraph (a), derived from § 25.6(c), prescribes the documentation to be submitted with each multiple-shot blasting unit approval application. The required drawings and specifications are to demonstrate compliance with the rule and to identify the blasting unit.

A commenter recommended adding language to § 7.63(a) requiring that all applications for approval of blasting units be submitted in English. Current MSHA policy is to accept for approval evaluation only those applications submitted in English. The Agency has not experienced problems with this policy and therefore has not included this requirement in § 7.63(a).

The overall assembly drawing is one that describes pictorially how the unit is assembled, its physical dimensions, and the location of major subassemblies. The requirement for a schematic diagram and parts list demonstrates compliance with the electrical performance requirements of this subpart. The component layout drawing is to demonstrate compliance with the technical requirements of § 7.64 and will facilitate conducting post-approval audits of the blasting unit. Applicants may submit drawings specifically prepared for approval applications or may submit the actual drawings used in the assembly of the blasting unit. In either case, the drawings are required to represent the blasting unit exactly as it will be manufactured.

The Agency agrees with a commenter who suggested that the application for approval include the model number or other manufacturer's designation of the blasting unit in order to avoid confusion with similar products and to promote easier identification. Section 7.63(a)(5) has been added to the final rule to require applicants to submit this information with their application.

Paragraph (b) is derived from § 25.6(c) and requires that each drawing be titled, numbered, dated, and include the latest revision. This paragraph permits drawings to be combined into one or more composite drawings which would reduce the number of drawings that must be maintained both by the applicant and by MSHA. An example of a composite drawing is a parts list printed on a schematic diagram. All drawings that are required by this subpart could be combined into a single composite drawing.

Paragraph (c), which is new, requires applications for approval to contain a list of the drawings submitted. This list must include drawing titles, numbers, and revisions.

Paragraph (d) is derived from § 25.6(a). It requires that a description of the operation and use of the blasting unit be submitted with the application. Use instructions are necessary to establish the conditions under which the normal operation of the blasting unit is determined.

Fees

In accordance with 30 CFR part 5, Fees for Testing Evaluation and Approval of Mining Products, fees for MSHA processing of an application under part 7, subpart A will be subject to an hourly charge. Fee schedules are updated at least once every three years and published in the **Federal Register.**

The Agency will charge $35 per hour and an application fee of $100 for processing requests for approval or extension of approval for multiple-shot blasting units under subpart D of part 7.

Section 7.64 Technical requirements.

This section revises and updates the technical requirements for the approval of blasting units.

Paragraph (a) is derived from § 25.7 (g), (h), and (i) and specifies that blasting units meet the acceptable performance criteria of the output energy test in § 7.66. The acceptable performance criteria of that test increases the minimum firing current from an average current of 1.5 amperes, specified in part 25, to 2 amperes under this final rule. In addition, it decreases the voltage cut-off time from a maximum of 15 milliseconds, as required in part 25, to 10 milliseconds. Increasing the current from the blasting unit reduces the likelihood of misfires in the blasting circuit. Decreasing the maximum allowable time for voltage cut off reduces the likelihood that an incendive spark, created by the post-firing contact of wires in the blasting circuit, could ignite an explosive methane-air atmosphere. The acceptable performance criteria of the output energy test have been developed for approved blasting units to maintain compatibility with and reliably initiate electric detonators of the type currently used in gassy underground mines in the United States. This type electric detonator typically fires when an average current of 1.5 amperes is applied to the detonator for 5 milliseconds, does not misfire when up to an average of 100 amperes is applied to the detonator for 10 milliseconds, and has an electrical resistance less than 7 ohms.

Blasting units approved under part 25 can fire up to a maximum of 20 shots. Subpart D does not limit the number of shots a blasting unit can be designed to fire. The capacity of the blasting unit is determined by the maximum blasting circuit resistance as specified by the applicant. This final rule allows units capable of firing more than 20 shots to be approved.

Under paragraph (b), which is derived from § 25.25, the maximum blasting circuit resistance of a blasting unit is the highest value of resistance that can be connected to the firing line terminals of a blasting unit without exceeding its capacity. When a blasting unit is connected to a blasting circuit having a resistance that exceeds the unit's capacity, all detonators may not fire. This could result in dangerous conditions such as partially detonated rounds of explosives or erratic timing resulting in blown-out shots.

The final rule requires applicants for approval to specify the maximum value of blasting circuit resistance of their blasting units. However, only units with a maximum blasting circuit resistance capacity of at least 150 ohms will be approved. This aspect of the rule is derived from § 25.25, which requires that blasting units be capable of firing 20 electric detonators connected in a single series with a total resistance of 150 ohms. This requirement that the maximum firing resistance be at least 150 ohms ensures that blasting units approved under this subpart have at least the same energy output as blasting units approved under part 25.

The footnote included in the preamble of the proposed rule has been deleted. The footnote was a formula to calculate the maximum number of detonators that can be fired by a blasting unit. One commenter said the calculation implied that the number of detonators in the blasting circuit could exceed the recommendations of the detonator manufacturer. The purpose served by the footnote was to show the relationship of the maximum blasting circuit resistance to the number of detonators in the blasting circuit and not to determine the number of detonators to be used. The Agency recommends that the number of detonators connected in the blasting circuit not exceed the detonator manufacturer's recommendation.

Paragraph (c), derived from § 25.7(f), requires that a blasting unit have a visual indicator to alert the user when the unit is ready to be operated. In a typical blasting unit design, the visual indicator is activated when the unit's energy storage capacitors have been charged to the voltage necessary to produce the required firing current through the blasting circuit. The unit may not be capable of providing energy to the blasting circuit sufficient to initiate all the detonators prior to this time. Under § 7.64(h), the lamp used to visually indicate readiness cannot be an incandescent lamp or other type of lamp having a temperature greater than 302 °F (150 °C) because of methane gas and coal dust ignition hazards.

The majority of commenters on the proposed rule disagreed with MSHA's proposed § 7.64 (c)(2) and (d)(3) which required a high resistance circuit indicator and interlock of the firing switch of blasting units. These requirements were included in the proposed rule in response to a comment on the part 25 preproposal requesting additional safeguards to protect against firing into high resistance blasting circuits. The incorporation of an integral blaster's ohmmeter into the design of the blasting unit was suggested. Blasting units approved under part 25 have incorporated this feature with no safety problems resulting from its use.

The Agency, in response to this concern, incorporated these features into the proposed rule to address the hazard of misfires resulting from firing into blasting circuits exceeding the capacity of the blasting unit. One commenter stated that these proposed features would be an unnecessary complication of questionable value. Another commenter believed that the introduction of an additional current would create a potential hazard in that an electrical component fault in this circuit could result in detonation of the round when the blasting unit user is intending to check the resistance of the blasting circuit. Another commenter suggested that the interlock could be easily defeated and yet another stated that a blasting unit could be used in place of a blaster's galvanometer to determine the blasting circuit resistance.

The final rule deletes the proposed requirements in (c)(2) and (d)(3) that a high resistance indicator and interlock of the firing switch be included in approved blasting units. Recent rulemaking in the explosives and blasting safety standards requires that the resistance of the blasting circuit be measured by an appropriate device immediately prior to connecting the blasting circuit to the blasting unit. As a result of this rulemaking, the Agency's concern regarding the resistance of the blasting circuit has been addressed. Accordingly, the requirement for resistance verification and interlocking circuitry is not included in the final rule.

Paragraph (d) requires two safety features for the firing switch of blasting units. These requirements are derived from §§ 25.7(e) and 25.8(b)(3) and 25.7(f), respectively. First, the firing switch is required to operate by a deliberate action to prevent accidental firing. Recessing the switch in the blasting unit enclosure or protecting it with a raised guard are examples of switches which require a deliberate action. The other safety feature for the firing switch is that it not be operable when the voltage necessary to produce the required firing current is not available to the blasting circuit. The firing switch may be made inoperable by either mechanical or electrical means.

Paragraph (e)(1) is new and requires that the blasting unit firing line terminals provide a secure, low resistance connection to the blasting circuit as measured by the firing line terminals test in § 7.68. Although this requirement is new, it does not introduce a more stringent requirement than previously existed. Paragraph 7.64(e)(1) introduces minimum performance requirements to clarify ambigous language such as "suitable materials" and "sound engineering principles" in § 25.7(a) and "adequacy of design and construction," "practically in operation" and "suitability for underground service" in § 25.7(c). Performance requirements in § 7.68 provide that the contact resistance through each firing line terminal not exceed 1 ohm. Poor electrical connections to the firing line terminals can create additional blasting circuit resistance and increase the risk of misfires.

One commenter on the proposed rule suggested that, in addition to stating the requirements for maximum contact resistance, the internal resistance of the blasting unit also be addressed. The internal resistance limits the electric current that is available at the firing line terminals. This is an important parameter in the performance of the blasting unit. It is addressed by test and documentation requirements in the final rule. The performance-oriented output energy test of § 7.66 determines if sufficient electric current is available at the firing line terminals, within the specified capacity of the blasting unit. The parts list and schematic diagram, to be submitted by the applicant under § 7.63(a) (3) and (4), document the values of internal components used in the blasting unit. This information documents the designed internal resistance of the blasting unit.

Under paragraph (e)(2), which is derived from § 25.7(c), the firing line terminals must be constructed of corrosion-resistant material, such as nickel or chromium-plated copper. Blasting units are exposed to corrosive agents in underground mines which could cause deterioration of metal in the firing terminals. This condition could result in a high resistance connection to the blasting circuit and contribute to the risk of misfires.

Paragraphs (e)(3) and (e)(4) address the need for insulation on and around the firing line terminals and are derived from § 25.7(k). Paragraph (e)(3) requires that the firing line terminals be insulated so that no metal conductors are exposed. This protects the user from electric shock. Examples of well-insulated firing line terminals include binding posts which are covered with plastic or rubber and connectors recessed into an insulated blasting unit enclosure. Paragraph (e)(4) requires that an insulated barrier separate the firing line terminals of a blasting unit to prevent the uninsulated ends of the blasting cables from contacting each other when connected to the unit.

Paragraph (f) requires that in the normal operation of the blasting unit, no electric components, other than the batteries, be operated at more than 90 percent of their electrical ratings. It is derived from §§ 25.7(c) and 25.8(b)(1). Electric components operated at less than their power rating reduce the likelihood of component failure which could render the blasting units unsafe.

Paragraph (g) and (h) are derived from § 25.7 (d) and (c), respectively. They address the hazard of blasting units releasing sufficient electric or thermal energy to cause a methane ignition or fire. Blasting units, having the capacity necessary to reliably fire electric detonators, generate incentive energy that can cause such an ignition and may have components that operate at temperatures sufficient to ignite coal dust. These requirements are evaluated in the "normal operation" of the blasting unit as defined in § 7.62.

Paragraph (g) retains the existing requirement that blasting units be incapable of igniting an explosive mixture of methane and air when electric energy is released by making and breaking moveable electric contacts in the unit. Although the energy stored within the blasting unit is capable of igniting explosive gas mixtures, this energy is not to be released, under normal conditions, at operating electric contacts. To determine compliance with this requirement, the rule provides electric current and voltage limitations. These limitations are described by curves which relate electric current and voltage to that amount which will ignite an explosive mixture of methane and air. The curves appear as Figures D–1, D–2, and D–3. The curves address the electric current through an electric contact that interrupts a circuit not containing an inductive component, the voltage applied across an electric contact that discharges a capacitor, and the electric current through an electric contact that interrupts a circuit containing an inductive component. MSHA's Approval and Certification Center has developed these specifications from industry accepted minimum ignition curves for methane-air mixtures used by consensus standards. The Center's curves include a safety factor and have been utilized for a number of years in evaluating electric circuits. The specifications provide an objective basis upon which the applicant can determine whether or not the blasting unit is capable of causing ignition of an explosive methane atmosphere.

Paragraph (h) addresses the risk of fire caused by blasting units and requires that the maximum temperature of any electric component during normal operation not exceed 302 °F (150 °C). This is the maximum surface temperature allowed by 30 CFR 18.23 for electric equipment approved by MSHA and is the minimum ignition temperature of a coal dust layer. Combustible coal dust on heat-producing electric components can cause a fire. Compliance with this requirement can be determined by using a pyrometer or similar device to detect "hot spots" in blasting units and by measuring the temperature of components with a thermocouple or similar device. A commenter expressed concern that an incandescent bulb can ignite a methane-air atmosphere. The maximum temperature restriction of paragraph (h) prohibits the use of incandescent lamps.

Paragraph (i) is derived from § 25.8(b)(2). It requires that blasting units be equipped with an automatic means to dissipate any electric charge remaining in any capacitor after the blasting unit is deenergized and not in use. Dissipating the electric charge in the capacitors in blasting units reduces the risk of causing an ignition in a methane-air atmosphere.

Under paragraph (j), blasting units must meet the acceptable performance criteria of the construction test in § 7.67. This requirement is derived from § 25.7 (c) and (m). The enclosure of a blasting unit needs to be substantially constructed to prevent dust and moisture from being deposited on the electric circuits. Water and corrosive dusts can cause an internal short circuit, which can result in a fire or blasting unit malfunction. Details of these criteria are described in the explanation of that test.

Paragraph (k) requires that blasting units be equipped with a locking device to prevent unauthorized use and is derived from § 25.7(e). A device such as a key-operated firing switch, lockable cover, a padlock, or a removable firing pin over the firing switch meets the requirements of this paragraph.

Paragraph (l) is derived from § 25.7(m) and 25.8 (b)(4). It retains the requirements that blasting units be sealed to prevent tampering as well as designed and constructed to enable battery replacement without disturbing or damaging other electric components. The rule allows two alternative methods of compliance. Blasting unit enclosures, except for batteries, could be permanently sealed, for example, by continuous welding around the enclosure so that the unit would be destroyed if entered. Alternatively, the electric components could be sealed in a solidified insulating material, such as an epoxy. With this option, the rule requires that the enclosure be assembled with tamper-resistant hardware so that it could be opened only with special tools. Either method provides protection against tampering, such as substitution of inadequate electric components or improper adjustment of potentiometer settings in a blasting unit that may adversely affect its timing or energy output. Such changes in performance could lead to misfires or potential ignition hazards of methane or coal dust.

Section 7.64(l)(1) from the proposed rule has been modified to clarify the intent of the Agency. One commenter pointed out that the battery compartments need to be vented to allow the escape of chemical vapors which are liberated from batteries during charging or discharging. Based on this comment, the final rule does not require battery compartments to be sealed or watertight. Paragraph (b)(5) of the construction test in § 7.67 has also been revised to be consistent with this point. Paragraph (1)(2) of the proposal has been moved to the section on approval marking in § 7.69.

Paragraphs (m) (1) and (2) require that a blocking diode, or equivalent device, be in series with the battery and that the battery charging connector, if provided, be recessed into the blasting unit enclosure. These requirements are derived from § 25.7(d). A blocking diode prevents electric energy in the battery from being available at the charging connector. This energy could cause an ignition of a methane-air atmosphere or initiate an electric detonator. Also, the charging connector is required to be recessed into the blasting unit enclosure to prevent short-circuiting of the connector while the unit is on an electrically-conductive surface, such as a metal work table. Paragraph (m)(3) of the proposal has been relocated to the section on approval marking in § 7.69.

Section 7.65 Critical characteristics.

This section is new and lists the critical characteristics which are required to be inspected or tested on each blasting unit having an approval marking. As defined in subpart A of this part, a "critical characteristic" is a feature of a product that, if not manufactured as approved, could have a direct adverse effect on safety. The characteristics identified for inspection or testing on every blasting unit are the blasting unit's output current, voltage cut-off time, the components that control the voltage and current through each making and breaking electric contact, and the operation of the visual indicator and the firing switch.

Section 7.66 Output energy test.

The output energy test prescribed by this section is used to determine whether blasting units have energy output sufficient to safely initiate all of the detonators in a blasting circuit. The operating parameters of this test are predicated on certain performance characteristics of electric detonators historically used in underground mining. This test is to be performed on the blasting unit prior to the construction test. It is also performed after each of the three water baths conducted in the construction test.

Paragraph (a) is new and specifies test procedures for determining the output energy by connecting various resistive loads to the blasting unit. There are three different blasting circuit resistance test conditions within the range of the capacity of the blasting unit.

Paragraph (b) provides the criteria for acceptable performance of the blasting unit. Paragraph (b)(1) is derived from § 25.7 (g) and (l). It is revised to require that voltage be cut off at the firing line terminals 10 milliseconds after operation of the firing switch rather than 15 milliseconds as previously provided in § 25.7(g). An approved blasting unit must provide electric energy of sufficient quantity and duration to initiate the detonators in the blasting circuit. After the detonator initiation, the electric energy must be cut off to reduce the risk of generating a spark by the post-firing contact of wires in the blasting circuit. This can happen when the force of the blast disturbs the surrounding area. The blast also releases gas and raises and suspends explosive coal dust which could be ignited if such sparks are generated. The 10 milliseconds provide ample time for the blasting unit to initiate electric detonators and allow for timing variations caused by component tolerances, temperature variations, and component aging within the blasting unit.

Paragraph (b)(2)(i), derived from § 25.7(d), requires that electric current in excess of 50 milliamperes not be available except during firing of the blasting unit. This amount is approximately one-fifth of the maximum no-fire current for typical electric detonators used in underground mines in the U.S. today. According to the 16th edition of the Dupont Handbook, the Institute of Makers of Explosives (IME) has established the maximum "safe" current permitted to flow through an electric blasting cap without hazard of initiation as one-fifth of the minimum firing current, or 0.05 amperes (50 milliamperes). This provides a current safety factor of five or an energy factor of 25. This requirement minimizes the potential hazard of electrical shock to the user and premature firing of electric detonators.

Paragraph (b)(2)(ii) is derived from § 25.7(k) and requires that the electric current be available through the firing line terminals only. This minimizes the potential hazard of electric shock to the user and prevents the user from accidentally or deliberately firing electric detonators from any location on the blasting unit other than at the firing line terminals.

Under paragraph (b)(2)(iii), which is derived from §§ 25.7(h) and 25.26(a), a blasting unit is required to produce an average firing current of at least 2 amperes during the first 5 milliseconds after operation of the firing switch. This paragraph has been revised from the proposal in response to comments to clarify that the 2 ampere firing current is the average value over 5 milliseconds. The test is conducted with resistive loads up to the maximum blasting circuit resistance. An average of 2 amperes for 5 milliseconds represents the current and time necessary to consistently fire a typical electric detonator.

Paragraph (b)(2)(iv) is derived from §§ 25.7(j) and 25.26(b). It requires that the electric current from the blasting unit not exceed an average of 100 amperes during the first 10 milliseconds after the blasting unit is operated to prevent arcing in the detonator. An electric current greater than an average of 100 amperes through a typical electric detonator could result in erratic

detonator timing, a damaged detonator shell, or an ejected detonator sealing plug.

The test procedure, as contained in the proposed rule, included firing the blasting unit into a resistive load exceeding the unit's rating. As explained earlier, this load was to verify operation of the high resistance indicator and interlock of the firing switch, which are not required in this final rule. Therefore, the provisions concerning firing into this load in paragraphs (a) and (b) have been deleted and appropriate modifications and renumbering made to the remaining provisions of these paragraphs.

Section 7.67 Construction test.

This section requires that blasting units be tested to determine if they perform reliably when exposed to the physical stresses of the underground mining environment. The construction test provides objective criteria for determining whether a blasting unit is sufficiently rugged for use in mining. It is derived from § 25.7(m), which requires the housing to be mechanically strong for mine service, and § 25.7(c), where moisture resistance, drop test, durability of construction and suitability for underground service have been identified, among other factors, to determine the adequacy of design and construction. For clarity, a statement has been added to this section specifying that this test is to be performed subsequent to the output energy test of § 7.66.

Paragraph (a) sets forth the procedures for testing blasting units. The test is conducted by dropping the blasting unit 20 times from a height of 3 feet onto a concrete floor. The orientation of the blasting unit is to be varied each time it is dropped in an effort to have a different surface, corner, or edge strike the floor first for each drop. Three feet is the height at which a blasting unit is normally carried. If the blasting unit is not rugged, internal circuitry can be damaged and safe performance of the unit can be adversely affected, resulting in misfiring of detonators. Batteries or other components that are ejected from the unit or exposed can provide an ignition source.

This section also requires testing of blasting units for moisture resistance and the ability to operate properly at various temperatures. After being dropped, the blasting unit is required to be submerged for 1 hour under 1 foot of water at each of three temperatures. Operating blasting units at a temperature range of approximately 35 °F to 105 °F (1.7 °C to 40.6 °C) is representative of the broad range of temperatures that occur in the underground mining environment.

The submersion of a blasting unit in 1 foot of water for 1 hour provides an assessment criterion for the requirement, derived from § 25.7(c), that the blasting unit be resistant to moisture. Moisture within the blasting unit could cause corrosion, short circuiting, and physical damage to the components. The test is uncomplicated and does not require special or expensive test equipment to perform.

After operation with the firing line terminals open circuited and short circuited, the blasting unit is to be tested in accordance with the output energy test. This sequence is repeated following removal from each water bath. Operating the blasting unit under these conditions is a common event and should not cause damage to the unit.

One commenter stated that the construction test, as contained in the proposed rule, was too severe and found the requirement to test five units excessive. The construction test has been developed to provide uniform testing and to be representative of the mining environment in which blasting units are used. Blasting units approved under part 25 have been subjected to similar drop tests to determine their ruggedness. Similarly, MSHA utilizes a 3-foot drop test for approval of other hand-held devices such as methane detectors, portable transceivers and dust sampling devices.

The construction test has been modified in the rule to require one blasting unit to be dropped instead of the five units specified in the proposal. Also, the wording has been changed to better define the test procedures. As contained in the proposed rule, the blasting unit would have had to be dropped until each external surface, corner, or edge had struck the floor first at least one time. This criteria was derived to provide an objective means of testing the ruggedness of the blasting unit. This procedure could have, however, resulted in an inordinate number of tests being conducted on a blasting unit to ensure that each surface, corner, or edge struck the floor first. The 20 drops specified in the final rule is consistent with MSHA's procedures when conducting drop tests under other regulations.

The modification of the test enables verification of performance at the same operating parameters as proposed while reducing the number of units which are required to be subjected to this testing. During the development of this rule, the construction test has evolved to provide objective performance criteria for evaluating the ruggedness of blasting units. This test, combined with specific construction requirements contained in § 7.64, ensures a blasting unit design which will function property in the mining environment.

Paragraph (b) provides the criteria for evaluating blasting units tested under this section. Each blasting unit is required to meet the output energy test of § 7.66 after the drop and submersion portions of the construction test set out in (a) (1) and (2) have been conducted. The rule also requires that there be no damage to the firing line terminals which exposes an electric conductor, that the visual indicator be operational, that no batteries be separated from the blasting unit, and that no water be present inside the blasting unit enclosure, except for the battery compartment. Failure of the blasting unit to meet any of these criteria indicates a reduction in the ability of the blasting unit to perform reliably and safely in underground mines.

Section 7.68 Firing line terminals test.

This section is new and requires that firing line terminals on blasting units be tested to establish that they provide a secure, low resistance connection, as required by § 7.64(e)(1).

Paragraph (a) requires that the contract resistance through each firing line terminal be determined and that a 10-pound pull be applied to a No. 18 gauge wire that has been connected to each firing line terminal according to the manufacturer's instructions. A No. 18 gauge wire is commonly used for blasting cables. The 10-pound pull test permits the evaluation of the gripping strength of the connection at the firing line terminal to maintain electric contact.

Paragraph (b) sets forth the acceptable performance criteria for this test. Contact resistance through the firing line terminals shall be less than 1 ohm to minimize output energy losses that could reduce the total energy available to the blasting circuit. In the pull test, the wire connected to the blasting unit firing line terminals must remain connected.

A commenter suggested that spring-loaded binding posts not be permitted for blasting unit firing line terminals. The performance requirements of this section are sufficient to determine the suitability of a given type of connecting device. There is no evidence or field experience which suggests that spring-loaded binding posts are inappropriate for blasting units in mines.

Section 7.69 Approval marking.

This section is derived from § 25.11. It specifies the information to be marked on each approved blasting unit. This section requires that all blasting units be identified as MSHA approved with a permanent, legible marking securely attached, stamped or molded to the outside of the unit. The approval marking must contain (1) the assigned MSHA approval number, (2) the maximum blasting circuit resistance, (3) a warning that the unit's components not be disassembled or removed, and (4) depending on whether or not rechargeable batteries are used, either the replacement battery types or a warning placed next to the charging connector that the battery be charged only in a fresh air location. The warning against disassembly or removal of components and the requirement to specify replacement battery types are currently included on blasting units under § 25.11(a).

The provision in 7.69(e) is new. It requires that a marking be placed adjacent to the charging connector to warn that the battery is to be charged only in a fresh air location. The marking is intended to address two hazards: one created by ignitable hydrogen gas which may be present when batteries are charged and another created by incendive arcing which can occur during connecting and disconnecting of the charger in an explosive methane-air atmosphere. This warning is required on other MSHA-approved instruments containing chargeable batteries.

In addition, certain detonator characteristics with which the unit will produce reliable detonation must also be included on the marking. These are typical of blasting circuit parameters which must be present in order to ensure compatibility between the blasting unit and detonator so that reliable initiation can occur. The availability of this information to the user is critical to ensure that detonators within the blasting circuit are consistent with the design and demonstrated performance parameters of the blasting unit. These detonators characteristically fire when an average 1.5 amperes is applied for 5 milliseconds. They will not misfire when up to an average 100 amperes is applied for 10 milliseconds. They also will not fire when a current of 250 milliamperes or less is applied. Hazards are encountered when MSHA-approved blasting units are used with detonators not having these characteristics. These hazards are unintended or premature detonation of explosives and misfires resulting in undetonated explosives.

Part 75, subpart N has been revised to require the use of detonators which are compatible with the approved blasting unit. As a result, this final rule has been modified to include this information as necessary to notify the user of the characteristics a detonator must possess to be electrically compatible with the blasting unit as a required by 30 CFR part 75.1310(e).

Section 7.70 Post-approval product audit.

This section requires an approval-holder to make an approved blasting unit available to MSHA at a mutually agreeable site and time. The approval-holder may be required to provide, at no cost to MSHA, an approved blasting unit no more than once a year, except for cause. However, MSHA can obtain blasting units from the approval-holder or other sources such as mine suppliers or distributors at any time at MSHA expense.

All post-approval audits of blasting units approved under this part will be conducted in accordance with this section and with § 7.8 of subpart A of this part. Detailed discussion of this provision is found in 53 FR 23486, at 23493–23494 (June 22, 1988).

When deficiencies are found during MSHA audits of approved blasting units, MSHA will require that the approval-holder take the necessary corrective action to address the deficiencies. These actions include, but are not limited to, the approval-holder recalling or retrofitting the approved blasting units involved and issuing user notices. Consistent with part 7, § 7.9, revocation of the approval by MSHA may result when discrepancies in approved blasting units are not successfully corrected.

Section 7.71 Approval checklist.

This section requires that manufacturers provide, with each blasting unit, a description of what is necessary to maintain the blasting unit in an approved condition. Maintaining blasting units in an approved condition is fundamental to their safe use in underground mines and is required of all mine operators.

Section 7.72 New technology.

The technical requirements for blasting units include both design and performance requirements. MSHA is aware that design requirements can, at times, limit the introduction of technological improvements or hinder new applications of existing technology. To address this, the rule includes a "new technology" provision which applies to either new technology or new applications of existing technology to blasting units.

The rule therefore allows approval of blasting units that incorporate technology for which the specific requirements of this subpart are not appropriate if MSHA determines that the blasting units are as safe as those which have met the requirements of this subpart D. To implement this provision, MSHA will prescribe appropriate technical requirements and test procedures when such approval is sought.

Once MSHA approves a blasting unit under this section, the Agency will make the modified tests and requirements used by MSHA to evaluate a particular technology available to manufacturers and other interested persons. If, over a period of time, MSHA receives a number of applications for the same type of technology or newly adapted technology, MSHA will revise the blasting unit approval regulations through the rulemaking process to recognize such developments.

Derivation Table

The following derivation table lists: (1) Each section number of the final rule (new section) and (2) the section number of the standard from which the section is derived (old section).

New section	Old section
7.61	25.1.
7.62	25.2.
7.63 (a), (b)	25.6(c).
7.63(c)	New.
7.63(d)	25.6(a).
7.64(a)	25.7 (g)–(i).
7.64(b)	25.25.
7.64(c)	25.7(f).
7.64(d)(1)	25.7(e) and 25.8(b)(3).
7.64(d)(2)	25.7(f).
7.64(e)(1)	New.
7.64(e)(2)	25.7(c)
7.64(e) (3), (4)	25.7(k).
7.64(f)	25.7(c) and 25.8(b)(1).
7.64(g)	25.7(d).
7.64(h)	25.7(c).
7.64(i)	25.8(b)(2).
7.64(j)	25.7 (c), (m).
7.64(k)	25.7(e).
7.64(l)	25.7(m) and 25.8(b)(4).
7.64(m)	25.7(d).
7.65	New.
7.66(a)	New.
7.66(b)(1)	25.7 (g) and (l).
7.66(b)(2)(i)	25.7(d).
7.66(b)(2)(ii)	25.7(k).
7.66(b)(2)(iii)	25.7(h) and 25.26(a).
7.66(b)(2)(iv)	25.7(j) and 25.26(b).
7.67	25.7 (c) and (m).
7.68	New.
7.69	25.11
7.70	New.
7.71	New.
7.72	New.

Distribution Table

The following distribution table lists: (1) Each section number of the part 25 standard (old section) and (2) each section number of final subpart D of part 7 (new section). New section numbers marked with an asterisk (*) refer to subpart A—General Provisions of part 7 published in 53 FR 23486, at 23500–23502.

Old section	New section
25.1	7.1* and 7.61.
25.2	7.2* and 7.62.
25.3	Removed.
25.4	7.3(b).*
25.5	Removed.
25.6(a)	7.3(a)* and 7.63(d).
25.6(b)	Removed.
25.6(c)	7.63 (a) and (b).
25.7(a)	Removed.
25.7(b)	7.1.*
25.7(c)	7.64 (e) (2)–(4), (f), (h), (j), and 7.67.
25.7(d)	7.64 (g), (m) and 7.66(b)(2)(i).
25.7(e)	7.64 (d)(1), (k).
25.7(f)	7.64 (c), (d)(2).
25.7(g)	7.64(a) and 7.66(b)(1).
25.7(h)	7.64(a) and>7.66(b)(2)(iii).
25.7(i)	7.64(a).
25.7(j)	7.66(b)(2)(iv).
25.7(k)	7.64(e) (3), (4) and 7.66(b)(2)(ii).
25.7(l)	7.66(b)(1).
25.7(m)	7.64 (j), (l)(1) and 7.67.
25.7(n)	Removed.
25.8(a)	Removed.
25.8(b)(1)	7.64(f).
25.8(b)(2)	7.64(i).
25.8(b)(3)	7.64(d)(1).
25.8(b)(4)	7.64(l).
25.9	7.4.*
25.10 (a), (b)	7.5(b).*
25.10(c)	7.7(c).*
25.11(a)	7.6(a)* and 7.69.
25.11(b)	7.69.
25.11(c)	7.7(c)* and 7.69.
25.11(d)	7.5(a),* 7.7(c)* and 7.69.
25.12 (a), (b)	7.3(e).*
25.12(c)	7.3(e),* 7.6(b).*
25.13	7.9.*
25.20	Removed.
25.21	Removed.
25.25	7.64(b).
25.26(a)	7.66(b)(2)(iii).
25.26(b)	7.66(b)(2)(iv).

IV. Drafting Information

The principal persons responsible for preparing this final rule are: Kenneth A. Sproul, Arthur E. Page, and Roland Berry Ann, Approval and Certification Center, MSHA; Helen B. Caraway, Office of Standards, Regulations and Variances, MSHA; and Linda B. Fort, Office of the Solicitor, Department of Labor.

V. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify the potential costs and benefits associated with subpart D. This analysis has formed the basis for the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that this rule neither results in major cost increases nor has an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule, and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory rules. This rule does not significantly alter the existing technical requirements for multiple-shot blasting units.

This rule increases private-sector involvement in the approval of mining equipment. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant will test multiple-shot blasting units. The Agency anticipates that this new procedure will reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in equipment approvals. In addition, the procedure is expected to enhance the safety of miners through the more rapid introduction of technological advances in mining products.

Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The application procedures, quality assurance program, and annual audit do not impose significant costs. This subpart D clarifies the standards which must be met by industry for approval of multiple-shot blasting units and makes the approval process more efficient, thereby reducing costs for large as well as small businesses.

The Agency estimates that incremental annual cost increases totaling $8,659 are offset by an annual cost savings of approximately $3,699. The net incremental annual cost impact, therefore, is expected to be $4,960. In addition, the final rule imposes an incremental initial cost of $74 for each blasting unit manufacturer. There are no capital costs.

List of Subjects

30 CFR part 7.

Blasting units, Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

30 CFR part 25.

Explosives, Mine safety and health, Research.

Accordingly, chapter I of title 30, Code of Federal Regulations is amended as set forth below.

Dated: November 14, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Part 7, subchapter B, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. A new subpart D is added to part 7 to read as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

* * * * *

Subpart D—Multiple-Shot Blasting Units

Sec.
7.61 Purpose and effective date.
7.62 Definitions.
7.63 Application requirements.
7.64 Technical requirements.
7.65 Critical characteristics.
7.66 Output energy test.
7.67 Construction test.
7.68 Firing line terminals test.
7.69 Approval marking.
7.70 Post-approval product audit.
7.71 Approval checklist.
7.72 New technology.

* * * * *

§ 7.61 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of multiple-shot blasting units. It is effective January 22, 1990. Applications for approval or extensions of approval submitted after January 22, 1991 shall meet the requirements of this subpart.

§ 7.62 Definitions.

The following definitions apply in this subpart:

Blasting circuit. A circuit that includes one or more electric detonators connected in a single series and the firing cable used to connect the detonators to the blasting unit.

Blasting unit. An electric device used to initiate electric detonators.

Normal operation. Operation of the unit according to the manufacturer's instructions with fully-charged batteries, with electric components at any value within their specified tolerances, and with adjustable electric components set to any value within their range.

§ 7.63 Application requirements.

(a) Each application for approval of a blasting unit shall include the following:

(1) An overall assembly drawing showing the physical construction of the blasting unit.

(2) A schematic diagram of the electric circuit.

(3) A parts list specifying each electric component and its electrical ratings, including tolerances.

(4) A layout drawing showing the location of each component and wiring.

(5) The model number or other manufacturer's designation of the blasting unit.

(b) All drawings shall be titled, numbered, dated, and include the latest revision number. The drawings may be combined into one or more composite drawings.

(c) The application shall contain a list of all the drawings submitted, including drawing titles, numbers, and revisions.

(d) A detailed technical description of the operation and use of the blasting unit shall be submitted with the application.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.64 Technical requirements.

(a) *Energy output.* Blasting units shall meet the acceptable performance criteria of the output energy test in § 7.66.

(b) *Maximum blasting circuit resistance.* The maximum value of the resistance of the blasting circuit that can be connected to the firing line terminals of the blasting unit, without exceeding its capacity, shall be specified by the applicant. The specified maximum blasting circuit resistance shall be at least 150 ohms.

(c) *Visual indicator.* The blasting unit shall provide a visual indication to the user prior to the operation of the firing switch when the voltage necessary to produce the required firing current is attained.

(d) *Firing switch.* The switch used to initiate the application of energy to the blasting circuit shall—

(1) Require deliberate action for its operation to prevent accidental firing; and

(2) Operate only when the voltage necessary to produce the required firing current is available to the blasting circuit.

(e) *Firing line terminals.* The terminals used to connect the blasting circuit to the blasting unit shall—

(1) Provide a secure, low-resistance connection to the blasting circuit as demonstrated by the firing line terminals test in § 7.68;

(2) Be corrosion-reistant;

(3) Be insulated to protect the user from electrical shock; and

(4) Be separated from each other by an insulated barrier.

(f) *Ratings of electric components.* No electric component of the blasting unit, other than batteries, shall be operated at more than 90 percent of any of its electrical ratings in the normal operation of the blasting unit.

(g) *Non-incendive electric contacts.* In the normal operation of a blasting unit, the electric energy discharged by making and breaking electric contacts shall not be capable of igniting a methane-air atmosphere, as determined by the following:

(1) The electric current through an electric contact shall not be greater than that determined from Figure D–1.

(2) The maximum voltage that can be applied across an electric contact that discharges a capacitor shall not be greater than that determined from Figure D–2.

(3) The electric current through an electric contact that interrupts a circuit containing inductive components shall not be greater than that determined from Figure D–3. Inductive components include inductors, chokes, relay coils, motors, transformers, and similar electric components that have an inductance greater than 100 microhenries. No inductive component in a circuit with making and breaking electric contacts shall have an inductance value greater than 100 millihenries.

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FIGURE D–1

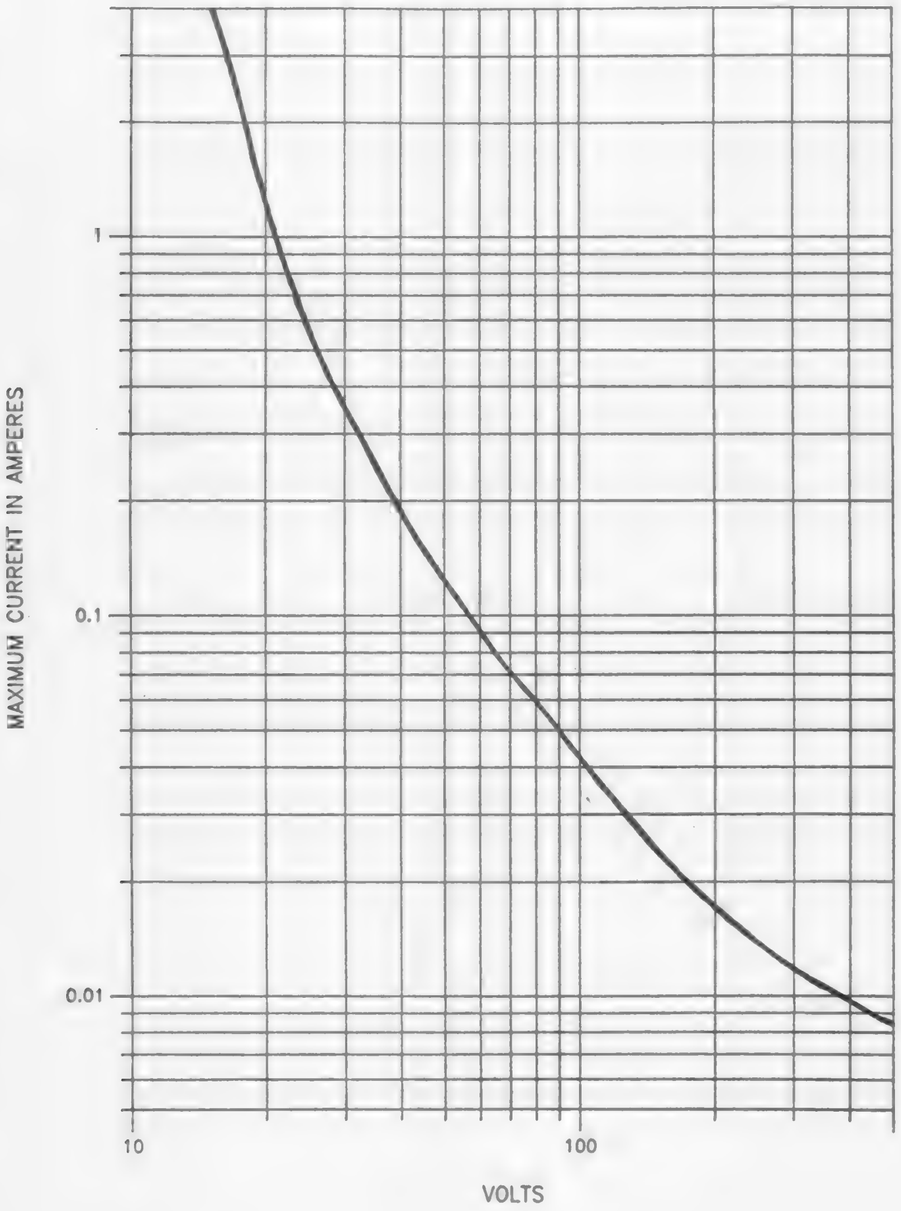


FIGURE D–2

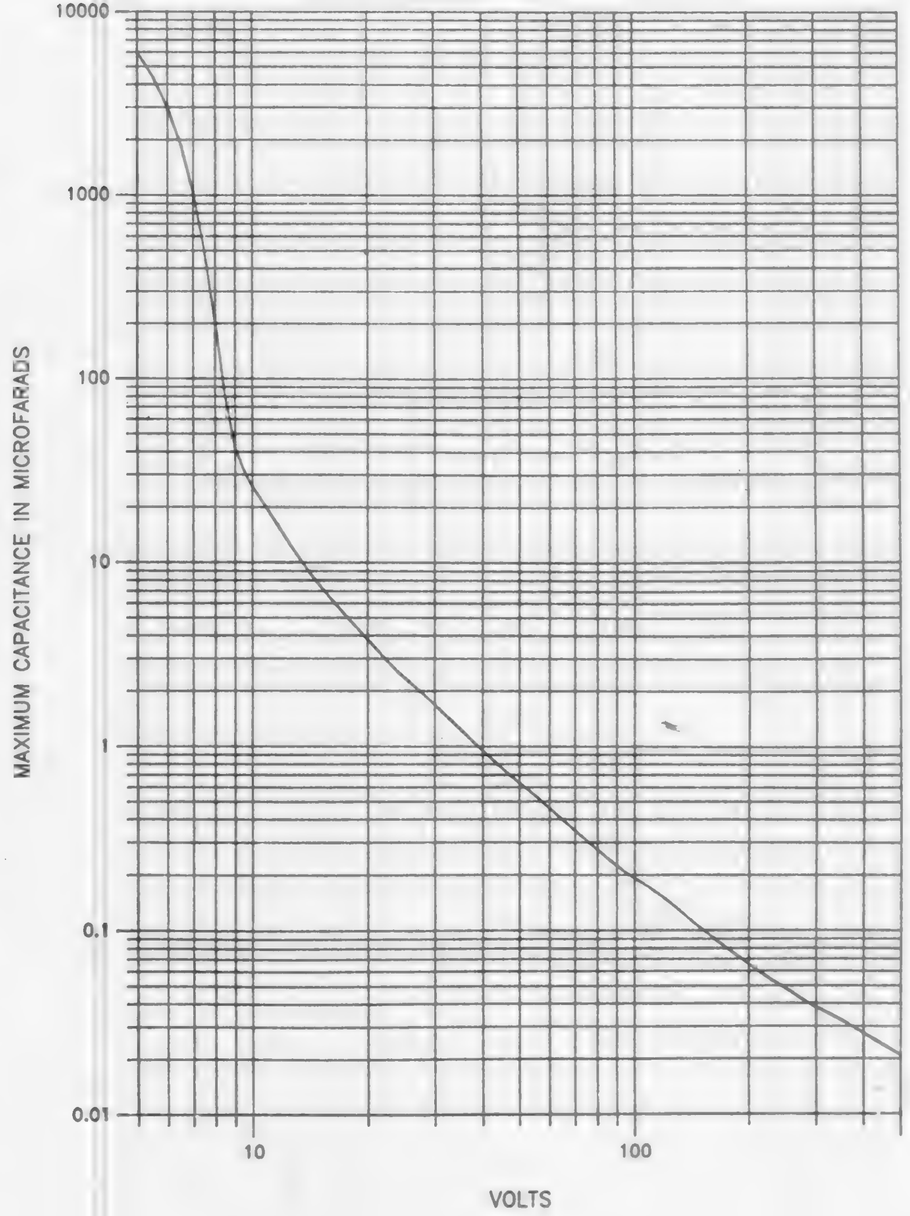
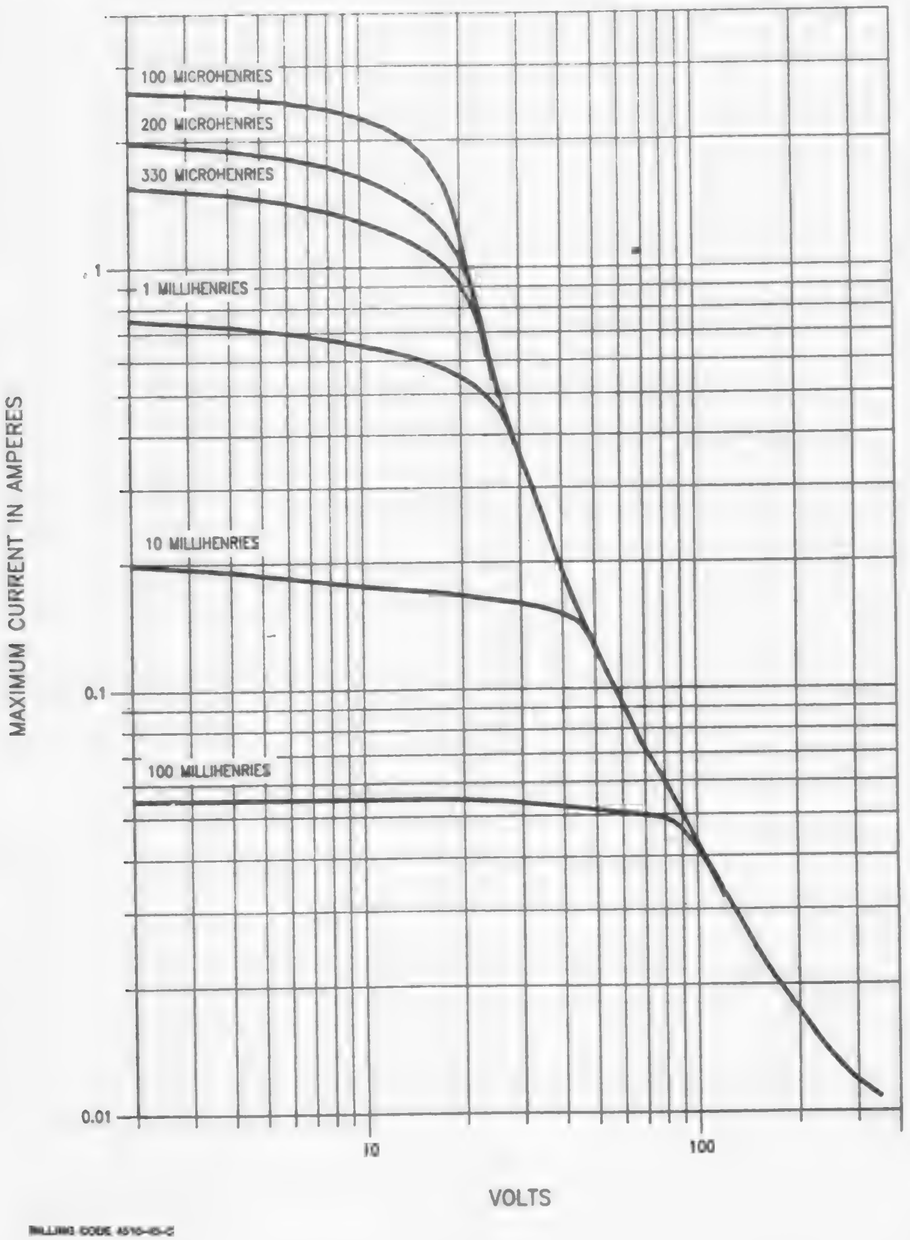


FIGURE D–3



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(h) *Maximum temperature.* In the normal operation of the blasting unit, the maximum temperature of any electric component shall not exceed 302 °F (150 °C).

(i) *Capacitor discharge.* The blasting unit shall include an automatic means to dissipate any electric charge remaining in any capacitor after the blasting unit is deenergized and not in use.

(j) *Construction.* Blasting units shall meet the acceptable performance criteria of the construction test of § 7.67.

(k) *Locking device.* The blasting unit shall be equipped with a locking device to prevent unauthorized use.

(l) *Enclosure.* The blasting unit enclosure shall be protected against tampering by—

(1) Sealing the enclosure, except the battery compartment, using continuous welding, brazing, soldering, or equivalent methods; or

(2) Sealing the electric components, other than batteries, in a solidified insulating material and assembling the enclosure with tamper-resistant hardware.

(m) *Battery charging.* Blasting units that contain rechargeable batteries shall have the following:

(1) A blocking diode, or equivalent device, in series with the battery to prevent electric energy in the battery from being available at the charging connector.

(2) The charging connector recessed into the enclosure.

§ 7.65 Critical characteristics.

The following critical characteristics shall be inspected or tested on each blasting unit to which an approval marking is affixed:

(a) The output current.

(b) The voltage cut-off time.

(c) The components that control voltage and current through each making and breaking electric contact.

(d) Operation of the visual indicator and the firing switch.

§ 7.66 Output energy test.

(a) *Test procedures.* The blasting unit shall be tested by firing into each of the following resistive loads, within a tolerance of ±1%:

(1) The maximum blasting circuit resistance.

(2) Any resistive load between 3 ohms and the maximum blasting circuit resistance.

(3) One ohm.

(b) *Acceptable performance.* (1) The voltage shall be zero at the firing line terminals 10 milliseconds after operation of the firing switch.

(2) The electric current from the blasting unit shall be:

(i) Less than 50 milliamperes except during firing of the blasting unit.

(ii) Available only through the firing line terminals.

(iii) At least an average of 2 amperes during the first 5 milliseconds following operation of the firing switch.

(iv) Not exceed an average of 100 amperes during the first 10 milliseconds following operation of the firing switch.

§ 7.67 Construction test.

The constuction test is to be performed on the blasting unit subsequent to the output energy test of § 7.66.

(a) *Test procedures.* (1) The blasting unit shall be dropped 20 times from a height of 3 feet onto a horizontal concrete floor. When dropped, the orientation of the blasting unit shall be varied each time in an attempt to have a different surface, corner, or edge strike the floor first for each drop.

(2) After the blasting unit has been drop tested in accordance with paragraph (a)(1) above, it shall be submerged in 1 foot of water for 1 hour in each of 3 tests. The water temperature shall be maintained within ± 5 °F (±2.8 °C) of 40 °F (4.4 °C), 70 °F (21.1 °C) and 100 °F (37.8 °C) during the tests.

(3) Immediately after removing the blasting unit from the water at each temperature, the unit shall be operated first with the firing line terminals open circuited, then operated again with the firing line terminals short circuited, and last, the output energy tested in accordance with the output energy test of § 7.66.

(b) *Acceptable performance.* (1) The blasting unit shall meet the acceptable performance criteria of the output energy test in § 7.66 each time it is performed.

(2) There shall be no damage to the firing line terminals that exposes an electric conductor.

(3) The visual indicator shall be operational.

(4) The batteries shall not be separated from the blasting unit.

(5) There shall be no water inside the blasting unit enclosure, except for the battery compartment.

§ 7.68 Firing line terminals test.

(a) *Test procedures.* (1) The contact resistance through each firing line terminal shall be determined.

(2) A 10-pound pull shall be applied to a No. 18 gauge wire that has been connected to each firing line terminal according to the manufacturer's instructions.

(b) *Acceptable performance.* (1) The contact resistance shall not be greater than 1 ohm.

(2) The No. 18 gauge wire shall not become disconnected from either firing line terminal.

§ 7.69 Approval marking.

Each approved blasting unit shall be identified as permissible by a legible and permanent marking securely attached, stamped, or molded to the outside of the unit. This marking shall include the following:

(a) The assigned MSHA approval number.

(b) The maximum blasting circuit resistance.

(c) A warning that the unit's components must not be disassembled or removed.

(d) The replacement battery types if the unit has replaceable batteries.

(e) A warning placed next to the charging connector that the battery only be charged in a fresh air location if rechargeable batteries are used.

(f) A warning that the unit is compatible only with detonators that will—

(1) Fire when an average of 1.5 amperes is applied for 5 milliseconds;

(2) Not misfire when up to an average 100 amperes is applied for 10 milliseconds; and

(3) Not fire when a current of 250 milliamperes or less is applied.

§ 7.70 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval holder shall make an approved blasting unit available for audit at no cost to MSHA.

§ 7.71 Approval checklist.

Each blasting unit bearing an MSHA approval marking shall be accompanied by a description of what is necessary to maintain the blasting unit as approved.

(Approved by the Office of Management and Budget under control number 1219–0100)

§ 7.72 New technology.

MSHA may approve a blasting unit that incorporates technology for which the requirements of this subpart are not applicable if the Agency determines that the blasting unit is as safe as those which meet the requirements of this subpart.

PART 25—[Removed]

1. Part 25 is removed effective January 22, 1991.

[FR Doc. 89–27201 Filed 11–20–89; 8:45 am]

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Tuesday
November 21, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 800

Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 88N-0443]

Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule to: (1) Define adulteration for patient examination and surgeons' gloves, and (2) establish the sample plans and test method the agency will use to determine if these gloves are adulterated as defined by the rule.

DATES: Written comments by December 21, 1989. The agency is proposing that any final rule based on the proposal become effective 30 days after the final rule is published in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments received will be available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In recent times, surgeons' gloves and patient examination gloves have been increasingly relied upon by health care workers as a barrier to the transmission of human immunodeficiency virus (HIV), which causes the fatal acquired immune deficiency syndrome (AIDS), and other blood- and fluid-borne infectious agents. As a result, FDA has looked more closely at the quality control procedures that manufacturers use in making these gloves. As a result of its inquiry, FDA is proposing to establish the sample plans and test method the agency will use to determine if a medical glove is adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(c)) (the act), because "its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess."

The proposed rule would not establish current good manufacturing practice (CGMP) requirements The manufacturer may follow any appropriate CGMP's in accordance with section 520(g) of the act (21 U.S.C. 360j(g)) and the regulations in 21 CFR part 820. The final products, however, must not exceed the adulteration levels in the proposed rule; if they do, the gloves would be adulterated under section 501(c) of the act.

The agency's active regulation of patient examination and surgeons' gloves is not new. In the **Federal Register** of October 21, 1980 (45 FR 69678 at 69723), FDA published a final rule classifying into class I (general controls) the patient examination glove (21 CFR 880.6250) using procedures in section 513 of the act (21 U.S.C. 360c). In that regulation, FDA identified the patient examination glove as an disposable device intended for medical purposes, worn on the examiners hand or finger to prevent contamination between the patient and examiner. As classified, the patient examination glove was exempt from premarket notification procedures and from CGMP requirements; however, FDA revoked these examinations in a final rule published on January 13, 1989 (54 FR 1602). In the **Federal Register** of June 24, 1988 (53 FR 23856 at 23875), FDA published a final rule classifying surgeons' gloves into class I (21 CFR 878.4460). In that regulation, FDA identified the surgeons' gloves as a device made of natural or synthetic rubber, intended to protect surgical wounds from contamination.

It is estimated that between 1 and 1.5 million persons in the United States are infected with HIV (Ref. 1). HIV is transmitted primarily through sexual contact; however, nonsexual transmission has occurred in health care settings as a result of contact with infected blood. Additionally, HIV has been isolated from other body fluids in addition to blood. With the above-mentioned prevalence of HIV infection and the risk of clinical transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection in health care settings is crucial.

The expectation of health care workers, as expressed by the Surgeon General, the Centers for Disease Control (CDC), and health professional organizations such as the American Medical Association (AMA), is that patient examination and surgeons' gloves, collectively referred to as medical gloves, will provide effective protection against exposure to the microorganisms in blood and other body fluids. Such reasonable expectations of barrier protection cannot be met if medical gloves contain rips, tears, small holes, or other defects, which allow the passage of fluids and fluid-borne microorganisms, and which ultimately permit exposure to health care workers and patients to pathogens that wearing of the gloves is intended to avoid. Although a large flaw in a glove may be visible and obvious to the user, the presence of small leakage defects can be determined only through testing. Testing is necessary to assure that gloves of appropriate quality are available for use by health care workers to lower the risk of transmission of HIV or other blood- and fluid-borne infectious agents for both health care workers and patients.

On August 21, 1987, CDC published a report that emphasized the need for all health care workers to routinely use appropriate precautions when contact with blood or other body fluids of any patient is anticipated (Ref. 2). The CDC report recommends that health care workers wear medical gloves (1) when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients, (2) in handling items or surfaces soiled with blood or other bodily fluids, and (3) in performing venipuncture and other vascular access procedures (Ref. 2).

Data are inconclusive regarding the relationship between leakage defects in medical gloves and transmission of HIV infection; however, the CDC recommendations clearly show that leakage defects in medical gloves have the potential for transmission of HIV between patients and health care workers.

The issuance of the CDC recommendations and the heightened concern among health care workers about HIV have created a burgeoning demand for medical gloves. Estimates of the number of medical gloves being manufactured for use by U.S. health care practitioners range in the billions per year. Preliminary FDA field testing of more than 300 samples of medical gloves collected from over 160 different foreign and domestic manufacturers revealed the inadequate quality of medical gloves on the market between September 1988 and February 1989. For manufacturers of patient examination gloves, the average defect rates ranged from 14 to 18 percent. For manufacturers of surgeons' gloves, the average defect rates ranged from 3 to 16 percent. For some manufacturers, more than half of the gloves examined were consistently found to be defective.

Because of the emphasis in the CDC recommendations on medical gloves as a barrier to HIV, as well as to Hepatitis B virus and other blood-borne and body fluid-borne infectious agents, and the general need for greater assurance

against transmission of pathogens between patients and health care workers, FDA believes it is imperative that the gloves worn by health care workers, including operating room personnel, provide an effective barrier to the transmission of infectious agents. Because medical gloves are intended as an effective barrier against the transmission of disease and because gloves labeled as medical gloves communicate that intended use to users, manufacturers should strive to produce medical gloves which are free from defects.

FDA has determined that glove defects, such as holes, which may not be readily detectable by the users of the gloves, can compromise the effectiveness of the glove barrier and result in patients and health care workers being exposed to infection. Articles written by health professionals who have studied the quality of gloves and their role as a barrier to infectious agents note that, although clinicians expect gloves to protect them, and routine appropriate use of gloves can reduce the risk of infections by blood or other body fluid-borne agents, this protection may not be provided by gloves with defects (Refs. 3 through 7).

FDA has taken regulatory actions, such as seizures and detentions, against medical gloves, when the agency determined that the gloves were adulterated under section 501(c) of the act (21 U.S.C. 315(c)), in that they contained defects, and thus were below the quality that they were purported or represented to possess. Although the agency has used its existing authority to seize and detain adulterated gloves on a case-by-case basis, these actions against specific lots of gloves from individual manufacturers are not an efficient use for agency resources, especially taking into account the rapid increase in both domestic production and importation of gloves to meet sharply increased demand due to concern about HIV. Although individual enforcement actions remove some of the adulterated products from the market, they do not communicate the clear information concerning test methodology and defect levels that allows manufacturers voluntarily to improve manufacturing processes and to produce unadulterated medical gloves and that enables purchasers to establish specifications to ensure that the gloves provide effective barriers to blood- and fluid-borne infectious agents. Any final rule based on this proposed rule will ensure that all such persons have sufficient information to manufacture and purchase gloves that are not adulterated.

For the reasons discussed above, FDA now believes it is necessary to promulgate a rule defining adulteration within the meaning of section 501(c) of the act. FDA has reviewed various sample plans and test methods for evaluating the quality of surgeons' gloves and patient examination gloves. Based on this review, FDA has selected a method that the agency will use on all material types of surgeons' and patient examination gloves. This method includes a visual examination for defects (such as tears, metal fragments, mold, embedded foreign objects, missing or fused components, etc.) plus a water-fill method to test for less obvious defects, expressed as leaks.

The water-fill method involves adding 1,000 milliliters of water to a glove that is attached to a plastic tube. Using this test method, FDA will consider any passage of water from the inside of the glove to its outside area to be a leak.

FDA proposed adulteration levels are based on the acceptable quality levels (AQL's) defined in the MIL-STD-105D (the military sampling standard, "Sampling Procedures and Tables for Inspection by Attributes," April 29, 1963), using general inspection level II. Based on the AQL's found in this standard, FDA's proposed adulteration levels have been set at 2.5 percent for surgeons' gloves and 4.0 percent for patient examination gloves. A single normal sampling plan will be used for lots of 1,200 gloves or less while a multiple normal sampling plan will be used for all larger lots.

Lots of gloves that are rejected based on FDA's sample plans and testing using the method in proposed § 800.20 would be adulterated within the meaning of section 501(c) of the act, and would be subject to regulatory action, such as detention of imported products, administrative detention of imported products held domestically, or seizure. FDA would also seek injunction or criminal prosecution of manufacturers and individuals responsible for such adulterated products.

Standards established by the American Society for Testing and Materials (ASTM), military specifications, and FDA regulations differentiate between performance levels for surgeons' gloves and those for patient examination gloves. The difference is based upon factors inherent in the intended use of these products. For purposes of sampling and testing, FDA has accepted this difference in defining adulteration in the proposed rule. Thus, surgeons' gloves have a lower per glove defect rate (2.5 percent) defining adulteration than patient examination gloves (4.0 percent). The primary reason for this difference relates to the greater exposure of surgeons and their gloves to blood and internal areas of the body and the longer periods of exposure to these conditions.

If FDA decides to substantively modify the sample plans or test method in the future, the agency will do so by amending 21 CFR 800.20. If interpretive statements regarding the sample plans or test method are necessary, the agency will issue guidance in accordance with 21 CFR 10.90(b).

The agency believes it must proceed expeditiously to promulgate this rule because delay in its implementation will increase the risk that gloves of inadequate quality will be relied upon by unsuspecting health care providers. As a result, such providers and their patients will be at an increased risk of infection.

FDA is providing 30 days for public comment on the proposed rule. The agency believes that the compelling public health advantages to be gained from issuing a final rule as quickly as possible constitute good cause under section 520(d) of the act and 21 CFR 10.40(b)(2) for providing less than the normal 60-day comment period. FDA is proposing that any final rule based on this proposal will apply to any patient examination or surgeons' glove initially introduced into interstate commerce 30 days after the date of the final rule's publication in the **Federal Register.** FDA invites comments on what effect, if any, an effective date 30 days after date of publication of the final rule would have on the manufacture and distribution of gloves and the availability of gloves on the market.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has analyzed the economic effects of the proposed rule in accordance with section (g)(1) of Executive Order 12291 and has determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Also, the proposed rule will not have a significant impact on a substantial number of small entities as defined by

the Regulatory Flexibility Act. Surgeons' gloves and patient examination gloves that contain holes are adulterated under section 501(c) of the act; the proposed rule merely sets forth the criteria by which FDA will judge whether a lot of gloves is actionable.

The agency believes that the impact of the proposed rule will be transitory in nature. While a high proportion of gloves currently offered for sale might be adulterated, using the adulteration levels specified in the proposed rule, the agency does not expect that high levels of defective gloves will continue to be the production norm. Most of the domestic manufacturers of medical gloves are currently producing gloves of a quality that would be accepted under the adulteration levels defined in this proposed rule. Thus, the technology and ability to produce gloves of acceptable quality clearly exist. However, many foreign glove manufacturers will have to make changes in their production process to avoid exceeding the adulteration levels defined in the proposed rule. The agency believes that competitive pressures will lead responsible manufacturers into making the changes necessary to improve the quality of their gloves.

The analysis upon which this economic impact statement is based can be found in the threshold assessment on file with the Dockets Management Branch (address above).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. CDC, "AIDS and Human Immunodeficiency Virus Infection in the United States: 1988 Update," Morbidity and Mortality Weekly Report Supplement, Vol. 38, No. S-4, May 12, 1989.

2. CDC, "Recommendations for Prevention of HIV Transmission in Health-Care Settings," Morbidity and Mortality Weekly Report, Vol. 36, No. 25, August 21, 1987, and "Update: Universal Precautions for Prevention of Transmissions of Human Immunodeficiency Virus, Hepatitis B Virus and Other Blood-Borne Pathogens in Health-Care Settings", Morbidity and Mortality Weekly Report, Vol. 37, No. 24, June 24, 1988.

3. Paulssen, J., T. Eiden, and R. Kristiansen, "Perforations in Surgeon's Gloves," The Journal of Hospital Infections, 11:82–85, January 1988.

4. Matta, H., A.M. Thompson and J.B. Rainey, "Does Wearing Two Pairs of Gloves Protect Operating Theater Staff from Skin Contamination?," British Medical Journal, 297:597–598, September 3, 1988.

5. Gonzalez, E., and C. Naleway, "Assessment of the Effectiveness of Glove Use as a Barrier Technique in the Dental Operatory," Journal of the American Dental Association, 117:467–469, September 1988.

6. Dalgleish, A.G., and M. Malkovsky, "Surgical Gloves as a Mechanical Barrier against Human Immunodeficiency Viruses," British Journal of Surgery, 75:171–172, February 1988.

7. Dascshner, D., and H. Habel, Letter to the Editor, Infection Control and Hospital Epidemiology, 9:184, 186, May 1988.

Interested persons may, on or before December 21, 1989, submit to the Dockets Management Branch written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 800 be amended as follows:

PART 800—GENERAL

1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: Secs. 201, 304, 501, 502, 505, 506, 507, 515, 519, 521, 601, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371).

2. New § 800.20 is added to subpart B to read as follows:

§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.

(a) *Purpose.* The prevalence of human immunodeficiency virus (HIV), which causes acquired immune deficiency syndrome (AIDS), and its risk of transmission in the health care context, has caused the Food and Drug Administration (FDA) to look more closely at the quality control of barrier devices, such as surgeons' gloves and patient examination gloves (collectively known as medical gloves) to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The Centers for Disease Control (CDC) recommend that health care workers wear medical gloves to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The CDC recommends that health care workers wear medical gloves when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients; when handling items or surfaces soiled with blood or other body fluids; and when performing venipuncture and other vascular access procedures. Among other things, CDC's recommendation that health care providers wear medical gloves demonstrates the proposition that devices labeled as medical gloves purport to be and are represented to be effective barriers against the transmission of blood- and fluid-borne pathogens. Therefore, FDA, through this regulation, is defining adulteration for patient examination and surgeons' gloves as a means of assuring safe and effective devices.

(1) For a description of a patient examination glove, see § 880.6250 of this chapter. Finger cots, however, are excluded from the test method and sample plans in paragraphs (b) and (c) of this section.

(2) For a description of a surgeons' glove, see § 878.4460 of this chapter.

(b) *Test method.* For the purposes of this regulation, FDA's analysis of gloves for leaks will be conducted by a water leak method, using 1,000 milliliters (mL) of water. Each medical glove will be analyzed independently. When packed as pairs, each glove is considering separately, and both gloves will be analyzed. A defect in one of the gloves is counted as one defect; a defect in both gloves is counted as two defects. Defects are defined as leaks, tears, mold, embedded foreign objects, etc. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure. Leaks within 1 and ½ inches of the cuff are to be disregarded.

(1) The following materials are required for testing: A 2 and ⅝-inch by 15-inch (clear) plastic cylinder with a hook on one end and a mark scored 1 and ½ inches from the other end; elastic strapping with velcro or other fastening material; automatic water-dispensing apparatus or manual device capable of delivering 1,000 mL of water; a stand with horizontal rod for hanging the hook end of the plastic tube. The support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 11 pounds.

(2) The following methodology is used: Examine the sample and identify code/lot number, size, and brand as appropriate. Examine gloves for defects as follows: carefully remove the glove from the wrapper, box, etc., visually examining each glove for defects. Visually defective gloves do not require further testing but are to be included in the total number of defective gloves counted for the sample. Attach the glove to the plastic fill tube by bringing the cuff end to the 1 and ½-inch mark and fastening with elastic strapping to make a watertight seal. Add 1,000 mL of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(3) Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimal manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking. If the glove does not leak immediately, keep the glove/filling tube assembly upright hand hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring). Make a second observation for leaks 2 minutes after the addition of the water to the glove. Use only minimal manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sample plans.* FDA will collect samples from lots of gloves to perform the test for defects described in paragraph (b) of this section in accordance with FDA's sampling inspection plans which are based on the tables of MIL–STD–105D (the military sampling standard, "Sampling Procedures and Tables for Inspection by Attributes," April 29, 1963). Based on the acceptable quality levels found in this standard, FDA has defined adulteration as follows: 2.5 or higher for surgeons' gloves and 4.0 or higher for patient examination gloves at a general inspection level II. FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. For convenience, the sample plans (sample size and accept/reject numbers) are shown in the following table:

Adulteration level at 2.5 for surgeons' gloves

Lot size	Sample	Sample size	Number examined	Number defectives	
				Accept	Reject
35,001 and above	First	125	125	[illegible]	[illegible]
	Second	125	250	7	14
	Third	125	375	13	19
	Fourth	125	500	19	25
	Fifth	125	625	25	[illegible]
	Sixth	125	750	31	33
	Seventh	125	875	37	[illegible]
35,000 to 10,001	First	80	80	1	7
	Second	80	160	4	10
	Third	80	240	[illegible]	13
	Fourth	80	320	12	17
	Fifth	80	400	17	[illegible]
	Sixth	80	480	21	[illegible]
	Seventh	80	560	25	[illegible]
10,000 to 3,201	First	50	50	0	[illegible]
	Second	50	100	3	[illegible]
	Third	50	150	[illegible]	10
	Fourth	50	200	[illegible]	13
	Fifth	50	250	11	15
	Sixth	50	300	14	17
	Seventh	50	350	[illegible]	19
3,200 to 1,201	First	32	32	0	[illegible]
	Second	32	64	1	[illegible]
	Third	32	96	3	[illegible]
	Fourth	32	128	5	10
	Fifth	32	160	7	11
	Sixth	32	192	10	12
	Seventh	32	224	13	14
1,200 to 501	Single Sample	[illegible]	50	[illegible]	[illegible]
500 to 281	Single Sample	[illegible]	50	[illegible]	[illegible]
280 to 151	Single Sample	[illegible]	32	[illegible]	3
150 to 51	Single Sample	[illegible]	20	1	2
50 to 0	Single Sample	[illegible]	5	0	1

Adulteration level at 4.0 for patient examination gloves

Lot size	Sample	Sample size	Number examined	Number defectives	
				Accept	Reject
10,001 and above	First	80	80	2	[illegible]
	Second	80	160	7	14
	Third	80	240	13	19
	Fourth	80	320	19	25
	Fifth	80	400	[illegible]	[illegible]
	Sixth	80	480	31	33
	Seventh	80	560	37	[illegible]
10,000 to 3,201	First	50	50	1	7
	Second	50	100	[illegible]	10
	Third	50	150	[illegible]	13

Adulteration level at 4.0 for patient examination gloves

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
	Fourth	50	200	12	17
	Fifth	50	250	17	20
	Sixth	50	300	21	23
	Seventh	50	350	25	26
3,200 to 1,201	First	32	32	0	5
	Second	32	64	3	6
	Third	32	96	6	10
	Fourth	32	128	8	13
	Fifth	32	160	11	15
	Sixth	32	192	14	17
	Seventh	32	224	18	19
1,200 to 501	Single Sample	50	50	7	8
500 to 281	Single Sample	32	32	5	6
280 to 151	Single Sample	32	32	3	4
150 to 91	Single Sample	20	20	2	3
90 to 26	Single Sample	13	13	1	2
25 to 0	Single Sample	8	8	0	1

(d) Lots of gloves which are tested and rejected using the test method according to paragraph (b) of this section, are adulterated within the meaning of section 501(c) of the act, and are subject to regulatory action, such as detention of imported products and seizure of domestic products.

Dated: October 5, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-27302 Filed 11-20-89; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
November 21, 1989

Part V

The President

Proclamation 6073—Thanksgiving Day, 1989

Federal Register
Vol. 54, No. 223
Tuesday, November 21, 1989

Presidential Documents

Title 3—

The President

Proclamation 6073 of November 17, 1989

Thanksgiving Day, 1989

By the President of the United States of America

A Proclamation

On Thanksgiving Day, we Americans pause as a Nation to give thanks for the freedom and prosperity with which we have been blessed by our Creator. Like the pilgrims who first settled in this land, we offer praise to God for His goodness and generosity and rededicate ourselves to lives of service and virtue in His sight.

This annual observance of Thanksgiving was a cherished American tradition even before our first President, George Washington, issued the first Presidential Thanksgiving proclamation in 1789. In his First Inaugural Address, President Washington observed that "No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States." He noted that the American people—blessed with victory in their fight for Independence and with an abundance of crops in their fields—owed God "some return of pious gratitude." Later, in a confidential note to his close advisor, James Madison, he asked, "should the sense of the Senate be taken on . . . a day of Thanksgiving?" George Washington thus led the way to a Joint Resolution of Congress requesting the President to set aside "a day of public Thanksgiving and Prayer, to be observed by acknowledging with grateful hearts the many and signal Favors of Almighty God."

Through the eloquent words of President Washington's initial Thanksgiving proclamation—the first under the Constitution—we are reminded of our dependence upon our Heavenly Father and of the debt of gratitude we owe to Him. "It is the Duty of all Nations," wrote Washington, "to acknowledge the Providence of Almighty God, to obey his Will, to be grateful for his Benefits, and humbly to implore His Protection and Favor."

President Washington asked that on Thanksgiving Day the people of the United States:

> unite in rendering unto [God] our sincere and humble Thanks for his kind Care and Protection of the People of this Country previous to their becoming a Nation; for . . . the great degree of Tranquility, Union and Plenty which we have since enjoyed; for . . . the civil and religious Liberty with which we are blessed, and . . . for all the great and various Favors which he hath been pleased to confer upon us.

Two hundred years later, we continue to offer thanks to the Almighty—not only for the material prosperity that our Nation enjoys, but also for the blessings of peace and freedom. Our Nation has no greater treasures than these.

As we pause to acknowledge the kindnesses God has shown to us—and, indeed, His gift of life itself—we do so in a spirit of humility as well as gratitude. When the United States was still a fledgling democracy, President Washington asked the American people to unite in prayer to the "great Lord and Ruler of Nations," in order to:

> beseech him to pardon our national and other Transgressions; to enable us all, whether in public or private Stations, to perform our several and relative Duties properly and punctually; to render our national Government a Blessing to all the People, by constantly being a Government of wise, just and constitutional Laws, discreetly and faithfully executed and obeyed; to protect and guide all Sovereigns and Nations . . . and to bless them with good Government, Peace and Concord.

Today, we, too, pause on Thanksgiving with humble and contrite hearts, mindful of God's mercy and forgiveness and of our continued need for His protection and guidance. On this day, we also remember that one gives praise to God not only through prayers of Thanksgiving, but also through obedience to His commandments and service to others, especially those less fortunate than ourselves.

While some Presidents followed Washington's precedent, and some State Governors did as well, President Lincoln—despite being faced with the dark specter of civil war—renewed the practice of proclaiming a national day of Thanksgiving. This venerable tradition has been sustained by every President since then, in times of strife as well as times of peace and prosperity.

Today, we continue to offer thanks and praise to our Creator, that "Great Author of every public and private good," for the many blessings He has bestowed upon us. In so doing, we recall the timeless words of the 100th Psalm:

Serve the Lord with gladness: come before His presence with singing.
Know ye that the Lord He is God: it is He that hath made us, and not we ourselves; we are His people, and the sheep of His pasture.
Enter into His gates with thanksgiving, and into His courts with praise: be thankful unto Him, and bless His name.
For the Lord is good; His mercy is everlasting; and His truth endureth to all generations.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Thursday, November 23, 1989, as a National Day of Thanksgiving, and I call upon the American people to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings God has bestowed upon us and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27568
Filed 11-20-89; 10:52 am]
Billing code 3195-01-M

Editorial note: For the President's remarks on Nov. 17, on signing Proclamation 6073, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 46).

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S. 750/Pub. L. 101–155

To extend the deadlines under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Washington. (Nov. 15, 1989; 103 Stat. 935; 1 page) Price: $1.00

S. 1827/Pub. L. 101–156

To revise and clarify the authority of the Administrator of General Services relating to the acquisition and management of certain property in the city of New York. Nov. 16, 1989; 103 Stat. 936; 2 pages) Price: $1.00

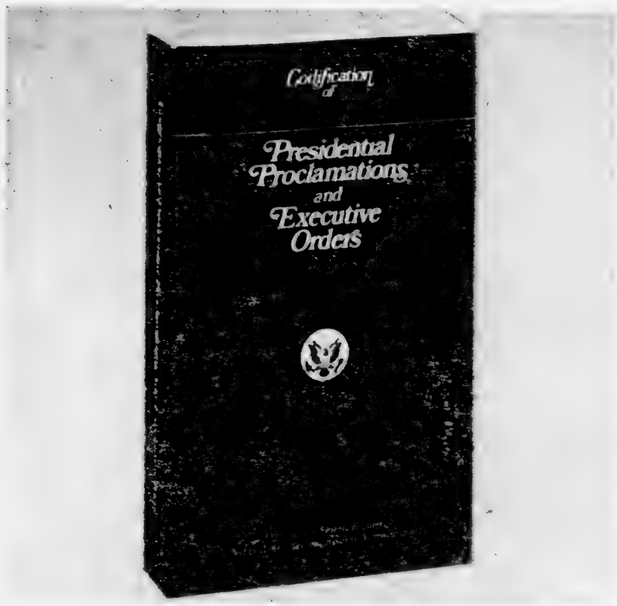
In the List of Public Laws printed in the **Federal Register** on November 16, 1989, S.J. Res. 194, Pub. L. 101–150, was incorrectly printed as S.J. Res. 149.

It should read as follows:

S.J. Res. 194/Pub. L. 101–150

Designating November 12, through 18, 1989 as "National Glaucoma Awareness Week". (Nov. 13, 1989; 103 Stat. 930; 1 page) Price $1.00

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Rules and Regulations

Federal Register
Vol. 54, No. 224
Wednesday, November 22, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1945 and 1980

Implementation of Provisions of the Disaster Assistance Act of 1989

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide special disaster assistance to eligible farmers and ranchers who sustained severe production losses to their 1988 or 1989 crop(s) as a result of natural disasters. This action is necessary to implement the provisions of the Disaster Assistance Act of 1989, (Pub. L. 101–82), dated August 14, 1989. The intended effect is to incorporate the law into existing FmHA regulations.

DATES: Interim rule effective November 22, 1989. Written comments must be submitted on or before December 22, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more. The language in the Disaster Assistance Acts of 1988 and 1989, pertaining to FmHA, are very similar. As of October 18, 1988, requests for 1689 counties were received by FmHA to be designated as disaster areas as a result of disasters occurring in 1988. There was 1565 primary and 212 contiguous counties approved as of that date. As of October 10, 1989, requests for 670 counties had been received by FmHA to be designated as disaster areas as a result of disasters occurring in 1989. There were 172 primary and 163 contiguous counties approved as of that date. Based upon the above information, it is evident there will be less demand for emergency assistance from FmHA under the 1989 Act than under the 1988 Act, even considering the anticipated loans to be made as a result of Hurricane Hugo. In Fiscal Year 1989, 2806 emergency (EM) loans were made, totaling $73.5 million. Only twelve farmers received guaranteed operating (OL) loan assistance in Fiscal Year 1989, under regulations developed as a result of the Disaster Assistance Act of 1988, totaling approximately $536,000.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice, 7 CFR part 3015, subpart V (48 FR 29115), June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 2983), Emergency Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHa programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. The "Disaster Assistance Act of 1989," (Pub. L. 101–82), dated August 14, 1989, amended FmHA's statutory loan making authorities. It is necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who have suffered major crop production losses as a result of natural disasters in 1988 or 1989. During the most recent major disaster, many farmers and ranchers suffered major crop production losses in the Virgin Islands, Puerto Rico, South Carolina and North Carolina as a result of Hurricane Hugo in September 1989.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to purchase livestock feed for replacement of feed crops lost as a result of the disaster(s), and to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts.

Also, farmers who do not qualify for Emergency (EM) loans may be in need of refinancing and reamortizing or rescheduling their 1989 operating loans and/or the annual installments due on other farm debt, which their present lenders will be reluctant to do without an FmHA guarantee.

The Act mandates changes in the emergency loan regulations and the guaranteed operating loan regulations. These changes ease the requirements for obtaining assistance under these programs, as did previous changes made as a result of the Disaster Assistance Act of 1988. By implementing these regulations immediately, assistance can be provided to many needy farmers and ranchers who, without this assistance,

would be in danger of losing their operations.

Background

The loan making, supervision and servicing of FmHA borrowers is governed primarily by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). The purpose for revising the FmHA regulations at this time is to implement various sections of the Disaster Assistance Act of 1989 (Pub. L. 101–82), as it applies to certain farmer program loans. The sections of the Act affecting FmHA are as follows:

Section 107—Crop Insurance Coverage for the 1990 Crops.
Section 301—Emergency Loans.
Section 302—1990 Farm Operating Loans.

Due to the urgent need of financial assistance for many farmers and ranchers, FmHA has expedited the implementation of these changes.

Changes

The existing emergency (EM) loan regulations state that applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 21, 1986, which was not insured, but could have been insured with Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). The Disaster Assistance Act of 1988 suspended this requirement for farmers and ranchers who suffered severe crop production losses due to drought and other natural disasters in 1988, and who otherwise qualified for emergency loan assistance due to crop production losses in 1988. The Disaster Assistance Act of 1989 again suspends this requirement for crop production losses in 1989. These Acts waive this requirement only for crops planted for harvest in 1988 and 1989.

While the 1989 Act provides for the waiver of crop insurance for the 1989 crop year, it requires that eligible applicants must agree to purchase multi-peril crop insurance for the 1990 crop or commodity which suffered disaster losses due to natural disasters in 1988 or 1989, and for which the EM loan is sought. However, if any of the following conditions exist, the applicant will not be required to obtain 1990 crop insurance:

(1) Crop insurance is not available for the crop for which the loan is sought. (This means that crop insurance must have been applied for during the open season for the crop(s) in question, and not that it was unavailable at the time of application for the EM loan).

(2) The applicant's annual premium rate for the crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1989 crop in the county where the applicant's farming operation is located:

(3) The annual premium for such crop insurance is greater than 25 percent of the amount of the EM loan sought.

(4) The applicant's 1989 production loss, with respect to the crop(s)/commodity(ies) for which the EM loan is made, does not exceed 65 percent.

(5) The applicant can establish, by appeal to the FmHA County Committee, that the purchase or crop insurance would impose an undue financial hardship, and that a waiver of the requirement to obtain crop insurance should be granted by the County Committee.

The crop insurance requirement on the new crop, along with the existence of any of the conditions to waive it, was also addressed under the Disaster Assistance Act of 1988, but this requirement has been superseded by the 1989 Act.

The law also requires FmHA to provide guaranteed operating loans, through September 30, 1990, to farmers and ranchers who are eligible for Agricultural Stabilization and conservation Service (ASCS) disaster program payments under subtitle A of title 1 of the Disaster Assistance Act, and who meet the existing eligibility requirements for a guaranteed operating loan. Such guaranteed loans may be made to refinance and reamortize 1989 annual operating credit, and/or 1989 and/or 1990 annual installments due and payable on real estate and chattel debt, to applicants who are unable to make payments as a result of losses casued by excess moisture, freeze, storm, or related condition occurring in 1989, or drought or related condition occurring in 1988 or 1989. The borrower's account(s) with such lender must have been current prior to 1989; the lender must allow the borrower to repay such refinanced loans and installments over a period of up to six years from the original due date of the loan(s) or the installment(s) refinanced; and the borrower must otherwise meet the criteria established for guaranteed opreating loan borrowers, as prescribed in subtitle B of the CONACT.

Additionally, the law requires FmHA to provide guaranteed operating loans, through September 30, 1990, to farmers and ranchers who have incurred major losses due to excess moisture, freeze, storm, or related condition occurring in 1989, or drought or related condition occurring in 1988 or 1989, and who cannot pay their 1989 operating debt and/or 1990 installments due on other farm debt. Guarantees under subtitle B of the CONACT would be available to borrowers who prove production losses of sufficient quantity to qualify for ASCS disaster program benefits.

The requirements for guaranteed loan assistance addressed under the Disaster Assistance Act of 1989 are similar to those addressed under the Disaster Assistance Act of 1988.

Several minor grammatical and typographical changes have been made for clarification purposes.

List of Subjects

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.167 is amended by revising paragraph (a) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans are not authorized for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1988, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). However, as a result of 1988 and 1989 natural disasters, the Disaster Assistance Acts of 1988 and 1989 provide for the waiver of this mandatory crop insurance requirement, but only for crops planted for harvest in 1988 or 1989. Under these waiver provisions, disaster related production losses sustained to 1988 or 1989 crops, planted for harvest in 1988 or 1989, will be counted in the eligibility calculation and the maximum EM loan entitlement determination, regardless of whether or not crop insurance was available to the applicant, or whether or not such insurance was purchased by the applicant. "Planted for harvest in 1988 or 1989" means:

(1) *For annual crops,* planted for harvest in 1988 or 1989; and

(2) *For perennial crops,* planted in 1989 or earlier and producing an annual crop for harvest in 1988 or 1989.

* * * * * *

3. Section 1945.169 is amended by revising the introductory text of paragraph (n)(5), and by revising paragraphs (n)(5) (ii), (iv) and (v), and (n)(6) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(n) * * *

(5) As a result of 1988 and 1989 natural disasters affecting 1988 or 1989 crops, the Disaster Assistance Acts of 1988 and 1989 provide that all recipients of EM loans, based on 1988 or 1989 production losses, must agree to obtain multi-peril crop insurance, under the Federal Crop Insurance Act, for the 1990 crop/commodity which suffered disaster losses in 1988 or 1989, and for which the EM loan is sought. However, applicants shall not be required to obtain crop insurance for a 1990 crop/commodity when any one of the following conditions exists:

* * * * *

(ii) The applicant's annual premium rate for crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1988 or 1989 crop (depending upon which year's losses are claimed) in the county where the applicant's farming operation is located;

* * * * *

(iv) The applicant's 1988 or 1989 production loss, with respect to the crop(s) for which the EM loan is made, does not exceed 65 percent. Calculations for this determination will be performed by ASCS and entered on Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," in part II, column (b). The ASCS County Office will enter all crops for which an application for disaster assistance has been filed in the disaster year for each farm unit, and enter the percent of loss after each crop listed. Any listed crop that has a loss greater than 65 percent must be insured for 1990, if it is planned to be planted. Any listed crop that does not have a loss greater than 65 percent will not have an insurance requirement, but EM borrowers should be encouraged to purchase insurance on all crops for which it is available;

(v) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance coverage would impose an undue financial hardship, i.e., the premium cost of the required insurance would prevent the applicant from projecting a positive cash flow, and thus disqualify the applicant for EM loan assistance. Each appeal to the County Committee for waiver of purchasing crop insurance for the 1990 crop(s) must be accompanied by a completed "Farm and Home Plan," Form FmHA 431–2, or comparable plan of operation for 1990, signed by the applicant and the County Supervisor. When the County Committee approves the waiver, it will be so stated on the "County Committee Certification or Recommendation," Form FmHA 440–2. If the County Committee denies the waiver, that decision will be documented on Form FmHA 440–2 and the applicant will be given fall appeal rights under subpart B of part 1900 of this chapter, "Farmers Home Administration Appeal Procedure."

(6) When an applicant purchases the necessary crop insurance for 1990 as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or cause it (them) to be canceled before completion of the 1990 production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made under the provisions of title I, subtitle A, section 107(d) of the Disaster Assistance Act of 1989. The loan approval official will insert this requirement in item 41 of Form FmHA 1940–1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

* * * * *

PART 1980—GENERAL

4. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmer Program Loans

5. Section 1980.101(*a*) is amended by revising the last sentence to read as follows:

§ 1980.101 Introduction.

* * * Exhibit G contains the policies and procedures modifying the Guaranteed Operating (OL) loan regulations (Loan Note Guarantees Only), as described in § 1980.175 of this subpart, to incorporate the provisions of Public Law 101–82, the "Disaster Assistance Act of 1989."

* * * * *

6. Exhibit G of subpart B is revised to read as follows:

Exhibit G of Subpart B—1990 Farm Operating Loans Authorized By The "Disaster Assistance Act of 1989"

I. General

This exhibit contains policies and procedures modifying the guaranteed operating (OL) loan regulations, Loan Note Guarantees Only, as described in § 1980.175 of this subpart, to implement the provisions of Public Law 101–82, the "Disaster Assistance Act of 1989." Subparts A and B of part 1980 are applicable to this program, except as modified by this exhibit. OL loan note guarantee requests from lenders, under this Exhibit, must be approved on or before September 30, 1990.

II. Introduction

The authorities contained in this exhibit enable FmHA to guarantee loans made by lenders, as set forth in subparts A and B of part 1980, under subtitle B of the Consolidated Farm and Rural Development Act, as modified by title III, section 302, of the "Disaster Assistance Act of 1989." The purposes of these OL loans include: refinancing and reamortizing 1989 annual operating loans, and/or 1989 and/or 1990 installments that are or will become due and payable during 1989 and/or 1990 on real estate debt (including buildings and storage facilities), farm equipment debt, livestock debt, or other operating debt of farmers and ranchers that otherwise cannot be repaid due to major production losses sustained as a result of drought or related condition occurring in 1988 or 1989, or excess moisture, freeze, storm or related condition occurring in 1989.

III. Definitions

A. *Farmer.* A producer of agricultural crops/commodities for sale in the market place. Includes crop farmers, livestock ranchers and producers of livestock products.

B. *Installment.* An amortized payment scheduled under the terms of a promissory note. For loans made as annual crop loans, the total amount due is the installment. For notes with a demand payment feature, refer to paragraph IV C(5) of this Exhibit for clarification of conditions that pertain to refinancing such notes.

C. *Major losses.* Production losses, as defined by ASCS, of sufficient magnitude to qualify a producer for ASCS emergency livestock assistance or disaster program payments.

D. *Operating loan.* A loan made for any authorized annual operating loan purpose, for calendar year 1989, as stated in § 1980.175(c) of subpart B, for which payment cannot be made due to drought or related condition occurring in 1988 or 1989, or excess moisture, freeze, storm or related condition occurring in 1989.

IV. Program Administration

Loan guarantee requests will not be approved until a determination is made by the Agricultural Stabilization and Conservation Service (ASCS) that the applicant is eligible for benefits under an ASCS livestock feed program or disaster payment program, or that the borrower incurred major production losses as determined by ASCS, but for other reasons is not eligible for ASCS disaster program benefits. The use of such benefits must be considered first for reducing the applicant's outstanding financial obligations incurred in the disaster year. This is to ensure that loan guarantees are not approved in excess of the farmer's actual financial needs.

A. *Eligibility.* Farmers and ranchers who are determined eligible to receive disaster program benefits from ASCS, based on production losses to any commercial crop grown for harvest in 1989, may receive loans from lenders, guaranteed by FmHA, subject to the eligibility requirements contained in § 1980.175(b) of this subpart, and the following:

(1) Guarantees will be approved only for those farmers unable to make scheduled payments on their 1989 annual operating loans and/or 1989 and/or 1990 scheduled installments on other farm debts, as a result of the conditions stated in paragraph II of this exhibit. If a request is made to refinance an installment not yet due and payable, the projected plan of operation must show that the applicant will be unable to meet the installment when it comes due.

(2) Farmers must otherwise be current with their obligations to the lender making the guaranteed loan, when the guarantee is approved. If a guarantee is approved to refinance installments due more than one creditor, the applicant must be current with all creditors refinanced, when the guarantee is approved.

(3) The lender's guarantee request package, as prescribed in § 1980.113 and Exhibit A of this subpart, will contain a properly executed (signed by an authorized ASCS official) Form CCC 441, "Application for 1989 Disaster Benefits," with attached worksheet, "1989 Disaster System Producer Calculated Payment Report," for each farm. This will establish that the farmer has been determined eligible by ASCS for a disaster program(s) payment(s).

(4) The FmHA County Committee will certify that the applicant meets the requirements contained in § 1980.175(b).

B. *Limitations.* Farmers will not be eligible for loan guarantees under this Exhibit, if their ASCS disaster benefits are only in the form(s) of:

1. Assistance for haying and grazing CRP acreage, as addressed in subtitle D of title I of the Act;
2. Assistance for orchard farmers, under subtitle B of title I of the Act;
3. Emergency livestock assistance, under title II of the Act;
4. Livestock water assistance, under section 502 of title V of the Act; or
5. Forest crop assistance, under subtitle C of title I of the Act.

C. *Loan Purposes.* Eligible loan purposes include any of the following:

1. Refinancing 1989 annual operating loans.
2. Refinancing 1989 loan installments.
3. Refinancing 1990 loan installments.
4. Loans or loan installments to be refinanced must be due or will become due and payable during 1989 or 1990, and must have been incurred for:

(a) real estate debt (including buildings and storage facilities);
(b) farm equipment debt;
(c) livestock debt; or
(d) other operating debt.

5. When a creditor or lender requests refinancing of a promissory note that contains a demand payment feature, and the debt was incurred for more than one purpose, e.g., operating expenses, machinery and/or equipment purchase, debt carryover, and other capital expenditures, only the annual operating expense portion, plus an amount equivalent to an annual installment(s) for each of the other purposes, can be included in the guaranteed loan.

D. *Terms.* 1989 annual operating loans and/or 1989 and/or 1990 installments refinanced will be scheduled for repayment on terms that will provide the borrower a reasonable opportunity to continue to receive new operating credit while repaying the guaranteed loan. When a loan is made to refinance more than one installment with the same creditor, or more than one installment with different creditors, the term of the guaranteed loan will be limited to not more than 6 years from the original due date of any installment being refinanced.

1. This Exhibit does not preclude participation by more than one lender.

2. Different lenders of the same applicant may request separate guarantees when refinancing their installments, provided:

(a) Separate notes are taken and repayment of each note does not exceed 6 years from the original installment due date; and

(b) The security requirements in § 1980.175 (g) and (h) are met, except as stipulated in paragraph IV E of this exhibit.

E. *Security.* Adequate security must exist and be maintained for the proposed debt(s) to be refinanced. A current market value appraisal will be completed in accordance with § 1980.113(d)(9) of this subpart to ensure that sufficient collateral equity exists to fully secure the loan being guaranteed.

1. Section 1980.175(d)(5) of this subpart, which requires separate and identifiable security, will not apply. Junior liens on collateral may be accepted when practical and agreeable with the lender proposing the loan.

2. When a lender requests a guarantee for refinancing its own debt secured by chattels, a new financing statement will be required to implement the requirements of § 1980.109(b) (1) and (2). A lien search will be made to show that the proposed collateral is, in fact, encumbered by the lender; and the subsequent filing will give the intended junior lien position. For these loans, the loan agreement, promissory note, and any new security instruments will include language stating:

(a) The security position of the guaranteed loan being made is junior to the lender's original lien, and

(b) The amount of the prior lien.

3. For real estate installments being refinanced, the best lien obtainable on the real estate serving as collateral for the loan, may be accepted, provided the junior lien position will afford sufficient collateral equity to fully secure the guaranteed loan being made. If the junior lien will not fully secure the new loan, lender must obtain additional collateral having sufficient equity to assure the new guaranteed loan will be fully secured. This will be accomplished by either subordination of an existing lien(s) on the real estate in question or a lien on other real estate having sufficient collateral equity to make up the deficiency in security value.

4. When a single loan is made to refinance more than one creditors' installments, the best lien obtainable may be taken, as a minimum, on the same items of collateral that serve as security for the loan installments being refinanced, provided the sum of the liens against the collateral does not exceed the present market value of the collateral.

F. *Servicing.* 1. Servicing of loans made under this Exhibit will be in accordance with § 1980.130 of this subpart, paragraph IX of form FmHA 449–35, "Lender's Agreement," and paragraph VII of exhibit A, attachment 1, "Approved Lender Program, Lender's Agreement."

2. If it becomes necessary for the lender to make a protective advance to protect or preserve the collateral, or if liquidation becomes necessary, the lender will determine whether a substantial recovery can be made.

G. *Appeals.* Adverse decisions by FmHA officials will be processed in accordance with subpart A of part 1980 and subpart B of part 1900 of this chapter.

Dated October 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–27447 Filed 11–21–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 299

[INS No. 1254–89]

RIN 1115–AB11

Immigration and Naturalization Service and Executive Office for Immigration Review; Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review by charging a new fee for Form I–765, Application for Employment. This change is necessary to place the financial burden of providing this special service and benefit which does not accrue to the general public at large on the recipients of this special service and benefit. The $35.00 fee reflects the current recovery cost of providing this special service and benefit, taking into account public policy and other pertinent facts.

DATES: This rule is effective November 22, 1989. Comments must be received on or before December 22, 1989.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone: (202) 633–4705. Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone: (703) 756–6470.

SUPPLEMENTARY INFORMATION: The Department of Justice published in the Federal Register on June 20, 1989, at 54 FR 25912 a draft of the I–765 and the following information about the form itself:

(1) The title of the form;
(2) The agency form number and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond;
(6) An estimate of the total public burden hours associated with the collection; and
(7) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Upon a review of comments received, the Form, which included a $35.00 filing fee, was approved by the Office of Management and Budget on August 21, 1989. Therefore, the following new fee is in effect.

1. A fee for filing form I–765, Permission for Non-immigrant Employment, in the amount of $35.00.

The reason for this procedure is to promptly make a change while allowing time for the Service to consider suggested changes and public comment.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act under OMB Control number 1115–0163.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 of title 8 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding in numerical order:

§ 103.7 [Amended]

* * * * *

(b) * * *

(1) * * *

Form I–765. For filing application for employment authorization pursuant to 8 CFR 274a.13. Applicants must pay a fee of thirty-five ($35.00) dollars to be remitted in the form of cash, check, or money order.

* * * * *

PART 299—[AMENDED]

3. The authority citation for part 299 of title 8 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR part 2.

4. Section 299.1, Prescribed forms, is amended by adding in numerical order:

§ 299.1 [Amended]

* * * * *

Form No., Title and Description

Form I–765 (8–24–88)—Application for Employment Authorization.

* * * * *

5. Section 299.5, Display of Control Numbers, is amended by adding in numerical order:

§ 299.5 [Amended]

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–765	Application for Employment Authorization	1115–0163
*	*	*

Dated: November 16, 1989.

Gene McNary,

Commissioner.

[FR Doc. 89–27536 Filed 11–21–89; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 702 and 741

Definitions; Reserves; Full and Fair Disclosure

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) requested comments in October 1987 (52 FR 38771, October 19, 1987), on proposed changes to NCUA Rules and Regulations defining the "loans and risk assets" that determine Federal credit union and federally insured state credit union reserve requirements. This initial comment period produced approximately 300 comments.

After review of the comments, the Board determined, at its April 14, 1988, meeting that a review of the statute, regulation and accounting procedures involving reserves, risk assets, and reserve transfers should be made and that NCUA should work with credit unions, state regulatory authorities and credit union organizations to develop a systematic approach to the issue of capital in credit unions. This final rule is a product of that process and an analysis of comments received from the credit union industry. The amendments to the rule are as follows:

(1) Investments with remaining maturities in excess of 3 years are included in the definition of risk assets, except for those identified as exclusions

(2) The Allowance for Investment Losses is included with the Regular Reserve, and Allowance for Loan Losses

when determining the minimum amount of gross income to be transferred to the Regular Reserve.

(3) Each Federal credit union board of directors is authorized to charge the Regular Reserve for investment losses, without regional director approval, as long as the capital ratio is above 6 percent prior to the charge and the amount of the charge reduces the ratio by no more than ½ percent. Federally insured state-chartered credit unions are also authorized to charge the statutory reserves for investment losses provided it meets the same requirements described above for Federal credit unions, is permitted by state law or procedures established by the state regulatory authority, and notifies the appropriate NCUA regional director. Capital is defined as the total of the Regular Reserve, Allowance for Loan Losses, Allowance for Investment Losses, other reserves and Undivided Earnings.

(4) The maintenance of a valuation allowance account for loan and investment losses does not eliminate the requirement for transferring a percentage of gross income to the Regular Reserve account before the payment of each dividend.

EFFECTIVE DATE: December 22, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Nicholas Veghts, Deputy Director, Office of Examination and Insurance at the above address or telephone (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Background:

Pursuant to section 116 of the Federal Credit Union Act (12 U.S.C. 1762), credit unions must set aside a certain percentage of their gross income for each accounting period as reserves, until the total reserve reaches a prescribed percentage of "risk assets". This is the primary method by which credit unions build capital. The statutory reserve requirement for each credit union, as established by section 116, is 6 or 10 percent of risk assets depending on the size of the credit union and the length of time it has been in operation. Section 700.1(j) of the NCUA Rules and Regulations (12 CFR 700.1(j)) defines risk assets by listing those assets which are not included. Presently, the definition of risk assets is essentially limited to loans to members.

The nature of credit union's balance sheet has changed dramatically since the reserve procedures (and risk asset definition) were established. At that time, member loans made up almost all of a credit union's assets and thus, the credit union made reserve transfers on what were essentially total assets. At present, a significant part of most credit unions' balance sheets consists of assets excluded for the definition of risk assets and therefore, excluded from those assets that determine minimum statutory reserve goals. Events of recent years have shown, however, that substantial losses can occur on these assets.

Accordingly, the NCUA Board made the decision to review the issues involving risk assets and reserve requirements. The Board's objective was to ensure consistency between credit union reserves against losses and the risk inherent in the present asset structure of credit unions. NCUA's first formal request for public comment on this issue in October 1987 (52 FR 38771, October 19, 1987) elicited comments that made four general points:

a. The definition of risk assets could be improved, particularly in the area of long-term assets;

b. No change should be made to the definition that would adversely affect credit unions;

c. Credit unions involved with riskier undertakings should be required to reserve at a higher rate; and

d. The statute and regulation need improvement.

A review of these comments indicated to the NCUA Board that the issue needed further review and in April 1988, the Board determined that a review should be made of the statute, regulations and accounting procedures involving reserves, risk assets and reserve transfers. The Board directed NCUA staff to work with the credit union industry to develop a systematic, cohesive approach to the broad issue of the capital position of credit unions.

Immediately after this decision, a Credit Union Reserves Study Commission was formed by the credit union trade organizations. NCUA staff members and state regulators participated in the work of the Commission on an advisory basis. The Commission published its findings in February 1989 and made two major recommendations: First, that the credit union movement should seek legislative and regulatory changes to replace the current system of required transfers to regular reserves with a system of required net capital contributions and second, that regulatory agencies consider several changes to strengthen the current required reserve transfer system.

The Board then issued proposed regulatory amendments in May of 1989 (54 FR 21961, May 22, 1989). A summary of the major aspects of the proposed rule follows.

The proposed amendment added the following assets that will be included in the definition of risk assets:

(1) Fixed assets in excess of 5 percent of total shares and retained earnings; and

(2) Investments with a remaining maturity in excess of 3 years unless they are carried at the lower of cost or market, or are marked to market value monthly.

In addition, the proposal includes the Allowance for Investment Losses with the Allowance for Loan Losses and Regular Reserve in determining the minimum reserve transfer and stated that charges to the Regular Reserve for losses other than loan losses must be approved by the regional director when certain conditions exist. When these same conditions exist, federally insured state-chartered credit unions can charge the Regular Reserve for losses other than loan losses, but only after the appropriate NCUA regional director has been notified. It was also proposed to add a provision that the maintenance of a valuation allowance for investments and other losses does not eliminate the requirement for a reserve transfer before dividends can be paid.

Public Comment

Seventy-seven comments were received on the proposed amendments. Sixty-nine comments were from federal and federally insured state-chartered credit unions. Ten comments were from credit union leagues and trade associations. Comments were also received from a federal agency, a national savings and loan trade organization, a law firm, and a broker. Two comments were from individuals.

The comments were generally in favor of the proposed changes to the regulation. Four major changes recommended by the commenters were:

(1) That the credit union board of directors be authorized to charge the regular reserve for investment losses;

(2) That the state supervisory authority be the approving entity in the case of federally insured state-chartered credit unions requiring a waiver for the purpose of charging reserves;

(3) That fixed assets in excess of 5 percent not be included in the definition of risk assets; and

(4) That special consideration be given to credit unions that experience undue hardship caused by implementation of the new regulation.

Explanation of Final Rule and Changes

Section 700.1(k) Definitions

Fixed Assets

Thirty-eight comments were received on the proposal to include as a risk asset the ownership of fixed assets in excess of 5 percent of total shares and retained earnings as defined by § 701.36 of the NCUA Rules and Regulations. Fourteen commenters approved of the proposal, while twenty-two commenters objected in some degree. Sixteen commenters objected altogether to the inclusion of fixed assets in excess of 5 percent, arguing that § 701.36 of the NCUA regulations already requires a credit union to obtain approval of investments to be made in excess of 5 percent of total shares and retained earnings. This allows NCUA to restrict a credit union from investing at a level of undue risk. The Board agrees, and accordingly, fixed assets in excess of 5 percent of total assets are not included in the definition of risk assets in the final rule.

Investments

Fifty-six commenters addressed the inclusion in risk assets of investments with a remaining maturity over 3 years that are not carried at the lower of cost or market, or are not marked to market on a monthly basis. Eight commenters expressed approval of the proposed changes because the current definition of risk assets does not accurately reflect the risk of long-term, non-loan assets. Nineteen commenters expressed total objection. Their reasons varied. Several commenters noted that the risks involved in long-term investments were interest rate related and that there was little or no risk to the principal value of the investment.

Eight commenters recommended that the maturity on long-term investments to be included in the risk asset definition be extended to 5 years or more, arguing that an investment of 5 years poses no more risk than a 3-year investment and that investments in the 10- to 30-year maturity range are where problems arise. Others stated that extending the maturity is desirable in order to avoid unnecessarily restricting capable credit unions with strong capital positions.

Eleven comments were received regarding the exclusion of investments that are carried at the lower of cost or market, or those that are marked to market value monthly. Five commenters agreed, noting the risk associated with this type of investment is eliminated at the end of the accounting period by bringing the security to market value. Several commenters stated that marking to market only recognized past loss and that to adequately reflect the risk of future loss, a reserve transfer based on the amount invested was needed.

The Board has decided to adopt its original proposal, i.e., to include as risk assets, investments with remaining maturities greater than 3 years that are not carried at the lower of cost or market or are not marked to market value monthly. The risks involved in investments with maturities greater than 3 years are recognized as twofold. First, interest rate risk can cause loss of income to a credit union when the instrument cannot be repriced. Second, market risk can cause the loss of principal value due to market fluctuations or by the sale of the instrument. The maturity length at which an investment becomes most vulnerable is dependent upon the market and the credit union's asset structure at any given point in time. Selection of the 3-year cut off in the definition of a long-term investment will provide for conservative reserving requirements.

Other Issues

One commenter noted that the proposed rule did not exempt investments in Federal Home Loan Mortgage Corporation securities with maturities of less than 3 years. Also, the deposit in the NCUSIF was not listed as being exempt from the definition of risk assets. These were oversights and have been corrected in the final rule.

Five comments were received on the inclusion of student loans in the definition of risk assets. The commenters argued that student loans should not be included since they are guaranteed by the U.S. Government. The commenters further suggested that additional reserve requirements would adversely affect credit union involvement in the student loan program. Student loans maturing in excess of 3 years will remain in the definition of risk assets. The risks associated with these loans are comparable to those of other long-term investments.

Section 702.2 Regular Reserve

Twenty-four comments were received regarding the proposal that credit unions obtain regional director approval prior to charging the Regular Reserve for investment losses. Thirteen commenters expressed opposition to this proposal. The commenters made two basic arguments. First, many believe that this provision infringes on the responsibilities of the credit union's board of directors. Second, because credit unions are adequately reserving for loan losses and responsibly exercising their authority to charge-off these losses without advance approval, they believe it is reasonable and prudent to allow credit unions to charge off investment losses in the same manner.

Six commenters specifically mentioned that in the case of federally insured state-chartered credit unions approval to charge off investments should come from the state regulator and not the regional director. Commenters expressed concern that the proposed rule does not take into account the different definitions of risk assets and permissible investments allowed by the various states. Other commenters stated that requiring the NCUA's regional director's approval for federally insured state-chartered credit unions infringes upon states' rights and is detrimental to the dual chartering system.

After review of these comments, the final rule has been revised in two aspects: First, the regional directors approval is not required on all investment losses charged to the Regular Reserve. Instead, a capital reduction limit and a minimum capital level are established for the purpose of determining prior approval from the regional director. Specfically, the credit union's board of directors will be authorized to charge investment losses without prior regional director approval if the credit union's capital ratio is above 6 percent and the charge will reduce the ratio by no more than ½ percent, and the board of directors authorization states the amount, cause and need for the charge. Second, the state supervisory authority will, if required by law or established procedures, make the final decision on those state-chartered credit unions requiring prior approval. The credit union will be required, however, to notify the appropriate regional director prior to the charge being made. The requirements and procedures for federally insured state-chartered credit unions are stated in § 741.7.

Seven commenters addressed the proposal that the Allowance for Investment Losses be included with the Allowance for Loan Losses and Regular Reserve in determining the applicable percentage of gross income to be transferred to the Regular Reserve. Four commenters were in favor of the proposal. Three commenters expressed disagreement with the proposal. In addition, several commenters requested clarification concerning the accounting for the Allowance for Investment Losses. The Allowance for Investment Losses will be funded through the Provision for Investment Loss expense

account which is in accordance with Generally Accepted Accounting Principles.

Section 702.3 Full and Fair Disclosure

Five commenters expressed an opinion on the addition to the full and fair disclosure section providing that the maintenance of a valuation allowance for investments and other losses does not eliminate the requirement for transferring a percentage of gross income before the payment of each dividend. Two commenters support the provision as proposed. Three commenters disagree with this provision, stating that the current regulation is adequate.

To provide for consistency within the reserving requirements and to clarify the inclusion of the Allowance for Investment Losses in the calculation of the total Regular Reserve, § 702.3(c)(1) has been revised to provide that the maintenance of the valuation allowance for loan losses and investment and other losses does not eliminate the requirement for transferring a percentage of gross income before the payment of each dividend to the Regular Reserve as required by section 116 of the Federal Credit Union Act.

Special Considerations

There were many comments made that recommended that special consideration be given to those credit unions who will be severely affected by these new reserving requirements. Special consideration will be given on a case-by-case basis by formal appeal to the appropriate regional director. The appealing credit union should provide a letter requesting special consideration, along with supporting documentation to justify the request.

Calculation for Reserve Transfer Requirements

To determine what the credit union's total statutory reserves are, the following calculation will be required:

ADD: The balances in the Regular Reserve, the Allowance for Loan Losses, and the Allowance for Investment Losses accounts together to determine "Total Regular Reserves".

Refer to section 116 of the Federal Credit Union Act for the percentage of risk assets applicable to your credit union. The Accounting Manual for Federal Credit Unions provides examples of the calculation of the amount of gross income to be transferred to the Regular Reserve.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that the final rule will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in asssets). Accordingly the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule makes no additional collection requirements; therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

The NCUA Board has considered the fact that this final rule will affect federally insured state-chartered credit unions (FISCUs) in the determination of transfers to reserves. It does not impose any additional cost or burden on the states, nor does it affect the states' ability to discharge traditional state government functions. The benefits provided and protection afforded by the NCUSIF are the same for FISCUs as for Federal credit unions. It is protection afforded through a federal system and the responsibility for administering that system lies with the NCUA Board. All federally insured credit unions should be subject to the same minimum reserve requirements.

List of Subjects

12 CFR Part 700

Credit unions; Risk assets; Reserve requirements

12 CFR Part 702

Credit unions; Regular Reserve charges; Full and fair disclosure

12 CFR Part 741

Credit unions; Reserve requirements

By the National Credit Union Administration Board on November 13, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757(6), and 1766.

§ 700.1 [Amended]

2. Section 700.1 is amended as follows:

a. Current § 700.1(k) is redesignated as § 700.1(l) and current § 700.1(j) is redesignated as § 700.1(k).

b. The following definition is added as § 700.1(j):

* * * * *

(j) "Remaining maturity" is the time period from the date of the required reserve transfer to the stated date of maturity of the instrument.

* * * * *

c. Section 700.1(k) is revised as follows:

* * * * *

(k) For the purposes of establishing the reserves required by Section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets:

(1) Cash on hand.

(2) Deposits and/or shares in federally or state insured banks, savings and loan associations, and credit unions that have a remaining maturity of 3 years or less.

(3) Assets that have a remaining maturity of 3 years or less and are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Mortgage Loan Corporation or the Government National Mortgage Association. Collaterized mortgage obligations that are comprised of government guaranteed mortgage loans shall be included in this asset category.

(4) Loans to other credit unions that have a remaining maturity of 3 years or less.

(5) Student loans insured under the provisions of title IV, part B of the Higher Education Act of 1965 (20 U.S.C. 1071, *et seq.*) or similar state insurance programs that have a remaining maturity of 3 years or less.

(6) Loans that have a remaining maturity of 3 years or less and are fully insured or guaranteed by the Federal or a state government or any agency of either.

(7) Shares or deposits in a central or corporate credit union that have a remaining maturity of 3 years or less. For purposes of defining risk assets a central or corporate credit union is defined as a credit union whose membership primarily consists of:

(i) Other credit unions organized under state or federal law,

(ii) Officials, committee members, and employees of any credit union organized under state or Federal law, or

(iii) Any combination of the categories described in paragraphs (k)(7) (i) and (ii) of this section.

(8) Common trust investments, including mutual funds, which deal exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly.

(9) Prepaid expenses.

(10) Accrued interest on non-risk investments.

(11) Loans fully secured by a pledge of shares in the lending Federal credit union, equal to and maintained to at least the amount of the loan outstanding.

(12) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration.

(13) National Credit Union Share Insurance Fund Guaranty Accounts established with the authorization of the National Credit Union Administration under the authority of section 208(a)(1) of the Federal Credit Union Act.

(14) Investments in shares of the National Credit Union Administration Central Liquidity Facility.

(15) Investments in numbered items 2, 3, 4, 5, 6, and 7, with maturities greater than 3 years are exempt from risk assets if the investment is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly.

(16) Fixed Assets as defined in § 701.36(b).

(17) Deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one percent of insured shares.

* * * * *

PART 702—RESERVES

1. The authority citation for part 702 is revised to read as follows:

Authority: 12 U.S.C. 1762 and 1766.

2. Section 702 is revised to read as follows:

§ 702.2 Regular reserve.

(a) Each federal credit union shall establish and maintain a Regular Reserve, as provided by section 116 of the Federal Credit Union Act. The totals of the Regular Reserve, the Allowance for Loan Losses Account, and the Allowance for Investment Losses shall be combined for determining the applicable percentage of gross income to be transferred to the Regular Reserve.

(b) Charges to the Regular Reserve for loan losses shall be made in accordance with full and fair disclosure and as set forth in the Accounting Manual for Federal Credit Unions.

(c) Charges to the Regular Reserve for losses other than loan losses shall also be subject to the following conditions:

(1) Charges for losses other than loan losses may be made pursuant to authorization of the board of directors if the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. The board of directors' authorization shall state the amount of and an explanation of the need for the charge. For the purposes of this section, capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(2) Charges for losses other than loan losses that do not meet the conditions of paragraph (c)(1) of this section must receive the written approval of the regional director for Federal credit unions.

(d) The Board may decrease the reserve requirements as set forth in section 116 of the Act when, in its opinion, such decrease is necessary or desirable.

§ 702.3 [Amended]

3. Section 702.3(c) is revised to read as follows:

* * * * *

(c)(1) The maintenance of a valuation allowance for loan losses and investment or other losses shall not eliminate the requirement for transferring a percentage of gross income before the payment of each dividend to the regular reserve as required by section 116 of the Federal Credit Union Act.

* * * * *

PART 741—[AMENDED]

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a) and 1781–1790; Pub. L. 101–73.

2. Section 741.7(a) is revised to read as follows:

§ 741.7 Criteria.

* * * * *

(a) *Adequacy of Reserves.*—(1) *General Rule.* State-chartered credit unions must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on federal credit unions by section 116 of the Federal Credit Union Act and part 702 of the NCUA Rules and Regulations.

(2) *Charges against reserves.* State-chartered credit unions may charge losses, including losses other than loan losses, against the statutory reserve in accordance with either state law or procedures established by the state supervisory authority. However, charges for losses other than loan losses shall be made only after notification to the NCUA regional director, unless the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. For purposes of this section capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(3) *Special reserve for nonconforming investments.* State-chartered credit unions are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Federal Credit Union Act or the Rules and Regulations.

* * * * *

[FR Doc. 89-27241 Filed 11-21-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AEA-12]

Alteration of Control Zone; Newburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the operating hours of the Newburgh, NY Control Zone. In addition, a minor change to the geographical coordinates of the Stewart Airport, Newburgh, NY, upon which the control zone is based, is made. This action establishes the operating hours of the control zone from part time to full time operation. In addition, this action changes the coordinates of the airport to reflect the actual geographic position of the airport. This is necessary due to the establishment of full time operation of the control tower and the availability of weather reporting at the airport on a continuous basis.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the hours of operation of the Newburgh, NY, Control Zone from part time to full time operation (54 FR 31698). In addition, on September 1, 1989, the proposal was amended to include revising the geographic position of the Stewart Airport upon which the control zone is based (54 FR 40125). The actions increase the operating hours of the Newburgh, NY Control Zone and update the geographic position of the Stewart Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments referencing this proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the operating hours of the Newburgh, NY Control Zone from part time to full time operation. In addition, the coordinates of the Stewart Airport, Newburgh, NY, are being updated to reflect the actual geographic position of the airport upon which the control zone is based.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Newburgh, NY [Amended]

Delete the last sentence which reads as follows:

"This control zone is effective from 0000–2359 hours, local time, Tuesday through Friday; 0000–2300 hours, local time, Saturday; 0700–2300 hours, local time, Sunday; 0700–2400 hours, local time, Monday"

Change the coordinates of the Stewart Airport, Newburgh, NY to read "lat. 41°30'14" N., long. 74°06'19" W."

Issued in Jamaica, New York, on October 31, 1989.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 89-27402 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 88-AEA-4]

Alteration of Restricted Area R-6601, Fort A.P. Hill; VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action enlarges Restricted Area R-6601, Fort A.P. Hill, VA., to accommodate additional Army training requirements, and revises the assigned controlling agency. This action also more accurately reflects the time of designation and revises the using agency.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

SUPPLEMENTARY INFORMATION:

History

On December 29, 1988, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to alter the boundaries and change the controlling agency for Restricted Area R-6601, Fort A.P. Hill, VA (53 FR 52725). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Virginia Department of Aviation submitted three comments. The first stated that the restricted area is already located in a major visual flight rules (VFR) north/south corridor. The FAA believes, however, that considering the present location of R-6601 and the relatively small expansion of the area, no adverse impact on north/south VFR traffic flow will result. The second comment concerned a possible negative impact on the Fredericksburg/Shannon Airport. The airport is located 13 miles to the northwest of R-6601. The nondirectional radio beacon approach is not affected and no negative impact is seen if R-6601 is enlarged. The third comment concerned the impact on the site selection process for a new airport in Essex County. The FAA believes that the site selection process would not be impeded by these extensions. No other comments were received. Except for clarification of the time of designation and editorial changes, this amendment is the same as that proposed in the notice. Section 73.66 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 73 of the Federal Aviation Regulations increases the size of Restricted Area R-6601 by approximately 2 miles to the northeast and about ⅛ mile to the southwest. This enlargement is needed to permit more effective utilization of terrain and installation facilities, and to provide increased training opportunities in establishing mortar and artillery firing positions during advance and retrograde operations. All additional land to be incorporated is owned by Fort A.P. Hill. The controlling agency is changed to Richmond Air Traffic Control Tower. The time of designation is amended to clarify both the actual use of the area and the provisions for activation of R-6601 by Notice to Airmen. The using agency is also changed to reflect the proper organization.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), an environmental impact statement (EIS) has been prepared and placed in the public docket. The EIS dated July 31, 1980, has a supplementing Record of Environmental Consideration, dated July 24, 1989, which certifies that the 1980 EIS is still valid. The proposed expansion of R-6601 will activate additional areas of the previously approved, but unused, airspace.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.66 [Amended]

2. Section 73.66 is amended as follows:

R-6601 Fort A.P. Hill, VA [Revised]

Boundaries. Beginning at lat. 38°04'37" N., long. 77°18'45" W.; thence along U.S. Highway 301; to lat. 38°09'45" N., long. 77°12'00" W.; thence along U.S. Highway 17; to lat. 38°07'50" N., long. 77°08'30" W.; to lat. 38°05'30" N., long. 77°09'06" W.; to lat. 38°04'40" N., long. 77°10'20" W.; to lat. 38°03'12" N., long. 77°09'35" W.; to lat. 38°02'22" N., long. 77°11'40" W.; to lat. 38°02'30" N., long. 77°14'40" W.; to lat. 38°01'50" N., long. 77°16'08" W.; to lat. 38°02'15" N., long. 77°18'04" W.; to lat. 38°02'40" N., long. 77°19'00" W.; thence to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of Designation. 0700 to 2300 local time daily. Other times when activated by NOTAM at least 48 hours in advance.

Controlling agency. FAA, Richmond ATCT.

Using agency. U.S. Army, Commander, Fort A.P. Hill, VA.

Issued in Washington, DC, on November 15, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-27403 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26060; Amdt. No. 1413]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment established, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of

immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 10, 1989.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective January 11, 1990

Audubon, IA—Audubon County, NDB RWY 32, Amdt. 3
Cedar Rapids, IA—Cedar Rapids Muni, RNAV RWY 13, Amdt. 8
Coldwater, MI—Branch County Memorial, VOR RWY 6, Amdt. 3
Coldwater, MI—Branch County Memorial, VOR/DME RWY 24, Amdt. 3
Fremont, MI—Fremont Muni, VOR RWY 36, Amdt. 6
Fremont, MI—Fremont Muni, VOR–A, Amdt. 10
Camdenton, MO—Camdenton Memorial, VOR–A, Amdt. 2
Lewiston, MT—Lewiston Muni, VOR RWY 7, Amdt. 13
Imperial, NE—Imperial Muni, NDB RWY 31, Amdt. 1
Reidsville, NC—Rockingham County NC Shiloh, VOR/DME–A, Amdt. 7
Reidsville, NC—Rockingham County NC Shiloh, SDF RWY 31, Amdt. 2
Reidsville, NC—Rockingham County NC Shiloh, NDB RWY 31, Amdt. 3
Reidsville, NC—Rockingham County NC Shiloh, RNAV RWY 31, Amdt. 3
Marion, OH—Marion Muni, VOR RWY 24, Amdt. 5, Cancelled
Marion, OH—Marion Muni, VOR–A, Orig.
Marion, OH—Marion Muni, NDB RWY 12, Amdt. 4
Klamath Falls, OR—Klamath Falls International, VOR/DME or TACAN RWY 32, Amdt. 3
Sparta, TN—Sparta-White County, SDF RWY 4, Amdt. 2
Sparta, TN—Sparta-White County, NDB RWY 4, Amdt. 2
Milwaukee, WI—Lawrence J. Timmerman, VOR RWY 4L, Amdt. 7
Milwaukee, WI—Lawrence J. Timmerman, VOR RWY 15L, Amdt. 12
Milwaukee, WI—Lawrence J. Timmerman, LOC RWY 15L, Amdt. 4

Effective December 14, 1989

Dubuque, IA—Dubuque Regional, RNAV RWY 36, Amdt. 4, Cancelled
Osage Beach, MO—Linn Creek-Grand Glaize Meml, VOR RWY 32, Amdt. 3
Greenville, NC—Pitt-Greenville, NDB RWY 19, Amdt. 12
Upper Sandusky, OH—Wyandot County, VOR–A, Amdt. 3
Aiken, SC—Aiken Muni, NDB RWY 24, Amdt. 8

Effective November 7, 1989

Gunnison, CO—Gunnison County, VOR–A, Amdt. 7

Effective November 6, 1989

Islip, NY—Long Island Mac Arthur, NDB RWY 6, Amdt. 17
Islip, NY—Long Island Mac Arthur, ILS RWY 6, Amdt. 20

[FR Doc. 89-27404 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 86P-0426]

Hip Joint Metal/Ceramic/Polymer Semi-Constrained Cemented or Nonporous Uncemented Prosthesis; Announcement of Reclassification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to a petitioner reclassifying the hip joint metal/ceramic/polymer semi-constrained cemented or nonporous uncemented prosthesis, and substantially equivalent devices of this generic type, from class III (premarket approval) into class II (performance standards). The order is being codified in the Code of Federal Regulations as specified herein.

EFFECTIVE DATES: The reclassification was effective December 5, 1988. The rule becomes effective December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On October 15, 1986, Protek, Inc., submitted to FDA under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)) and 21 CFR 860.120, a petition requesting reclassification of the hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis excluding the ceramic acetabular cup from class III into class II. Consistent with the act and regulations, the agency referred the petition to the Orthopedic and Rehabilitation Devices Panel (the Panel). On October 31, 1986, at an open public meeting, the Panel recommended that FDA reclassify the generic type of device from class III to class II.

On May 27, 1988 (53 FR 19340), FDA published a notice of the Panel recommendation and invited interested persons to submit comments by July 26, 1988. Three comments were submitted.

Summaries of the comments and agency responses were included in the order to the petitioner of December 5, 1988. A copy of the order is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number found in brackets in the heading of this rule.

On December 5, 1988, FDA sent Protek, Inc., a letter (order) reclassifying the hip joint metal/ceramic/polymer semi-constrained cemented or nonporous uncemented prosthesis, and substantially equivalent devices of this generic type, from class III into class II.

Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device from class III into class II. In addition, FDA is amending part 888 of title 21 of the Code of Federal Regulations to include the classification of the generic type of device.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291; nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition will not have a significant economic impact on a substantial number of small entities. The petitioner and all future manufacturers of substantially equivalent hip joint metal/ceramic/polymer semi-constrained cemented or nonporous uncemented prosthesis devices will be relieved of the costs of complying with the premarket approval requirement in section 515 of the act (21 U.S.C. 360e).

There are no offsetting costs that the petitioner or other manufacturers would incur from reclassification into class II other than those associated with meeting a standard once established. The magnitude of the economic savings attributable to this petition is dependent upon the number of premarket approval studies that the petitioner would have conducted and the number of future competitors satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended in part 888 as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 888.3353 is added to subpart D to read as follows:

§ 888.3353 Hip joint metal/ceramic/polymer semi-constrained cemented or nonporous uncemented prosthesis.

(a) *Identification.* A hip joint metal/ceramic/polymer semi-constrained cemented or nonporous uncemented prosthesis is a device intended to be implanted to replace a hip joint. This device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. The two-part femoral component consists of a femoral stem made of alloys to be fixed in the intramedullary canal of the femur by impaction with or without use of bone cement. The proximal end of the femoral stem is tapered with a surface that ensures positive locking with the spherical ceramic (aluminium oxide, Al_2O_3) head of the femoral component. The acetabular component is made of ultra-high molecular weight polyethylene or ultra-high molecular weight polyethylene reinforced with nonporous metal alloys, and used with our without bone cement.

(b) *Classification.* Class II.

Dated: November 3, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27375 Filed 11-21-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-5105]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Holiday in the City Boat Parade and Fireworks Display. The event will consist of a boat parade with approximately 75 vessels and a fireworks display at the conclusion of the parade. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 5 p.m. to 9 p.m., November 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Downtown Norfolk Council submitted an application dated September 6, 1989 to hold the Holidays in the City Boat Parade and Fireworks Display. The boat parade will be held in the Elizabeth River in the Town Point area between the Banana Landmass and the Berkley Bridge. The fireworks display will be launched from the Banana Landmass, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the boat parade and fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for

one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Dated: November 15, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-27431 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[OGD 05-89-5104]

Special Local Regulations for Marine Events; Sixth Annual Wrightsville Beach Holiday Flotilla; Banks Channel, Motts Channel, Intracoastal Waterway, Wrightsville and Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Sixth Annual Wrightsville Beach Holiday Flotilla. The event will be held in a section of Banks Channel between Wrightsville Channel Daybeacon 10 (LLNR 28025) and State Route 76 causeway bridge, in Motts Channel from Wrightsville Channel Daybeacon 14 (LLNR 28040) to Wrightsville Channel Daybeacon 25 (LLNR 28080) and the Intracoastal Waterway from Wrightsville Channel Daybeacon 25 (LLNR 28080) to the State Route 74–76 highway bridge. After the parade a fireworks display will be held within the regulated area. The special local regulations will govern vessel activities during the event. The regulations are necessary to control vessel traffic within the immediate area due to the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective from 4 p.m. to 11 p.m., November 25, 1989. If inclement weather causes the postponement of the event, the regulations are effective from 4 p.m. to 11 p.m., November 26, 1989.

FOR FURTHER INFORMATION CONTACT: QM1 Kevin R. Connors, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in this office until October 30, 1989, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Greater Wilmington Chamber of Commerce submitted an application on October 20, 1989 to hold the Sixth Annual Wrightsville Beach Holiday Flotilla Boat Parade and Fireworks Display. The boat parade will consist of approximately 50 vessels sailing a course beginning at the State Route 74–76 highway bridge over the Intracoastal Waterway and heading southwest to Wrightsville Channel Daybeacon 25 (LLNR 28080), turning southeast through Motts Channel to Wrightsville Channel Daybeacon 14 (LLNR 28040), turning northeast into Banks Channel to the State Route 76 causeway bridge, turning to the southwest through Banks Channel to Wrightsville Channel Daybeacon 10 (LLNR 28025) and then returning to Wrightsville Channel Daybeacon 25 (LLNR 28080) via Banks Channel and Motts Channel. The fireworks will be launched from an unnamed island west of Wrightsville Channel Daybeacon 14 (LLNR 28040). Any fallout from the fireworks display will be within the regulated area. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Because commercial vessels will be permitted to transit the regulated area between events, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–5104 is added to read as follows:

§ 100.35–5104 Intracoastal Waterway, Motts Channel, Banks Channel, Wrightsville and Wrightsville Beach, North Carolina.

(a) *Definitions*—(1) *Regulated area.* The waters of, and adjacent to Banks Channel between Wrightsville Channel Daybeacon 10 (LLNR 28025) located at 34°11'20.0" North, longitude 77°48'48.5" West, and State Route 76 causeway bridge with its center located at 34°12'33.0" North, longitude 77°47'51.0" West, Motts Channel from Wrightsville Channel Daybeacon 14 (LLNR 28040) located at 34°12'18.5" North, longitude 77°48'99.0" West to Wrightsville Channel Daybeacon 25 (LLNR 28080) located at 34°12'51.0" North, longitude 77°48'54.0" West and the Intracoastal Waterway from Wrightsville Channel Daybeacon 25 (LLNR 28080) to the State Route 74–76 highway bridge with its center located at 34°13'05.0" North, longitude 77°48'47.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations.* (1) Except for persons and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Period.* These regulations are effective from 4 p.m. to 11 p.m., November 25, 1989. If inclement weather causes the postponement of the event, the regulations are effective from 4 p.m. to 11 p.m., November 26, 1989.

Dated: November 15, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-27430 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 601

Procurement Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes numerous miscellaneous revisions of the Procurement Manual. The revisions are explained below in the Supplementary Information.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268–4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), is amended by the issue of Transmittal Letter 3, dated December 1, 1989. This Transmittal Letter contains numerous substantive and editorial changes, including all revisions made to the Procurement Manual since June 1, 1988, when Transmittal Letter 2 was issued. Accordingly, it picks up all changes published in the Postal Bulletin, and in PM Circulars 89–1 and 89–2, notices of which were previously published in the **Federal Register.**

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

Explanation of Changes

Chapter 1, Authority, Responsibility and Policy

1.5.2 Contracting Officers

Paragraph c. Selection, Appointment, Recertification, and Termination, Subparagraph 4, Termination, prohibits retroactive termination of a contracting officer's appointment.

1.7.2 Contracts with Postal Service Employees

Paragraph b requires contracting officers to provide a written waiver of the prohibition against contracting with Postal Service employees. Subparagraph b.4 is revised also to show that, in certain circumstances, the APMG, Delivery, Distribution and Transportation Department, must concur in the waiver.

1.9.4 Contractor's Statement of Contingent or Other Fees

This part is changed to require the use of Form 7319, *Contractor's Statement of Contingent or Other Fees,* when applicable.

1.10.2 Document Numbering

Paragraph a, Basic Number, Subparagraph 3: This revision changes the Unauthorized Commitment Code from the symbol "*" to the number "9".

1.10.4 Commodity Codes

This part corrects the definition of a commodity code and changes the code used for delivery orders and indefinite delivery contracts.

Chapter 2, Procurement Planning

2.1.6 Source Selection Plans

Paragraph c, Evaluation Criteria, is revised by deleting the word "numerically" from the first sentence in subparagraph 3.

Chapter 3, Sources

3.1.5 Other Government Sources

Paragraph a, Federal Prison Industries, Inc. is revised to show that services may be obtained from Federal Prison Industries, Inc.

3.2.1 Policy (Publicizing Purchase Actions)

Paragraph a is revised as previously published in *Postal Bulletin* 21722, 4/27/89.

3.3.2.e Causes for Debarment

A new subparagraph 3.(c) is added to show that violation of a contract clause concerning the maintenance of a drug-free workplace may be cause for debarment.

Paragraph g, Period of Debarment, is similarly revised.

Chapter 4, Purchasing Methods

4.1.3 Receipt of Proposals

Paragraph c, Modification and Withdrawal is revised to correct a conflict between this text and that in Provision A–3, *Modification and Withdrawal of Proposal.*

4.2.6 Delivery Agreements has been added to define and describe their use.

4.3.1 General (Noncompetitive Purchasing)

Paragraph c, Applicability has been revised as previously published in *Postal Bulletin* 21733, 7/13/89.

4.5.6 Protests received by Contracting Officers

Paragraph b is revised to show that a contracting officer may take appropriate action, without the consent of the General Counsel, when the contracting officer determines that a protest is obviously meritorious.

Chapter 5, Contract Pricing

5.1.10 Multiyear Contracts

Paragraph c is deleted to eliminate confusion and the implication that a one-year contract with options is a multiyear contract.

Chapter 6, Contract Administration

6.4.3 Payment

Changes are made throughout Paragraphs c, Payment of Interest, and d, Calculation of Interest, to reflect changes required by the passage of the Prompt Payment Act Amendments of 1988.

Chapter 7, Bonds, Insurance and Taxes

7.1.10 Sureties

Paragraph d, Deposit of Assets Instead of Surety Bonds, subparagraph 3, removes the requirement that the Postal Service pay interest on assets deposited in lieu of a surety bond.

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7.2.4.a Errors and Omissions Insurance

Paragraph a, Professional Services, deletes the requirement that appraisers, attorneys, brokers, title examiners, surveyors and nurses carry errors and omissions (malpractice) insurance.

Chapter 8, Special Categories of Contracts

Exhibit 8.1.2 Special and Procedural Authority

Exhibit 8.1.2 is revised to show that the Postal Service Treasurer is the policy-originating official authorized to issue supplemental policy and procedures for the acquisition of banking services.

Chapter 9, Patents and Data Rights

9.3.2 Data Rights Acquisitions Policy

Paragraph d is revised, and Paragraph e is deleted to clarify the Postal Service's liability for the use or disclosure of data prior to the addition of a restrictive legend by the submittor. The paragraphs following paragraph e have been recodified.

Chapter 10, Socioeconomic Policies

Throughout

Woman-owned businesses is added throughout this chapter to include them in the USPS Socioeconomic Program.

10.1.4 Contracting with Minority-owned and Woman-owned Businesses

Paragraph c is revised as previously published in *Postal Bulletin* 21733, 7/13/89.

10.1.5 Subcontracting with Small, Minority-owned and Woman-owned Businesses

This part is revised as previously published in *Postal Bulletin* 21727, 6/1/89.

10.5 Drug-Free Workplace

This new section is added in accordance with the decision by the Postal Service to voluntarily comply with the intent and purpose of the Drug-Free Workplace Act.

Chapter 11, Facilities.

11.2.2 Real Estate-Related Services

Paragraph a is changed to require that source lists be developed as needed, rather than maintained, and to provide for alternative methods of publicizing requests for qualifications statements. Paragraph c is revised to add a sentence permitting the use of oral solicitations using the simplified purchasing procedures.

11.4.1 General (Leasing of Interests in Facilities)

A new Paragraph a is added, defining "lease." Paragraph c is expanded to describe the scope of negotiations permitted and to limit the disclosure of information as to the number and identity of offerors. A new Paragraph d is added, describing evaluation criteria for the award of leases.

11.4.2 Leases of Existing Space

Subparagraphs d.1 and d.2 are combined and rewritten for clarity. A new subparagraph d.3 is added, allowing lessors to make improvements.

11.4.3 New Construction Leases

Paragraph b deletes the requirements that new construction lease solicitations agree with Procurement Manual requirements and substitutes a statement that requirements must be set forth in the solicitation.

11.5.1 Procurement of Construction

Paragraph a is revised to clarify that "construction," as defined, does not include a lease. A new Paragraph b is added, which provides that construction accomplished under a lease may be procured noncompetitively and without publicizing.

Subparagraph f.3 (old e.3) is to provide that when a "brand name or equal" description is used, and more than three acceptable brands are known, only three need be listed.

11.5.4 Contractor Prequalification

Subparagraph b.2 is revised so that the requirements for selection of firms to receive solicitations agree with the procedures in Handbook RE–14, *Design and Construction.*

Chapter 12, Mail Transportation

12.1.2 General

This part is revised to provide that the issuance of policies, procedures and information on other publications will be done only as an interim measure, pending incorporation in Chapter 12 or the Mail Transportation Handbook.

12.2.2 Definitions

This part is revised to eliminate descriptions of contract types and modes, which are now described in 12.4.6. c and d.

12.3.2 Authority of Contracting Officers

This part is revised to conform with 12.3.4 Delegations of Authority and to clarify ratification authority.

12.3.4 Delegations of Authority

This part is revised to clarify that delegations are for any category of mail transportation contract (regular, emergency, or temporary) of the modes specified, both advertised and negotiated.

12.3.5 Contracting Officer's Representatives

Subparagraph b.2 (c) is added to reflect that a contracting officer's representative may be authorized to review and sign contract modifications having no effect on price.

12.4.2 Procurement Planning

This part is revised to require that proposal evaluation criteria be established in accordance with 2.1.6.c.

12.4.4 Solicitation Mailing Lists, and 12.4.5 Publicizing and Distribution of Solicitations

These new parts contain detailed procedures replacing the previous 12.4.4 Publicizing Procurement Actions.

12.4.6 Procurement Methods

Paragraph a is revised to add Limited Competitive Procedures and Set-Rate Ordering Agreements. Paragraph c is revised to describe contract categories by term (regular, emergency, and temporary) and to provide guidance for their use. A new Paragraph e is added to provide for sequential receipt of best and final offers in certain situations.

12.4.7 Mistakes in Bids or Proposals

This part is revised to clarify language and references.

12.4.8 Protests

This part is revised to be consistent with 4.5.6 Protests Received by Contracting Officer.

12.4.9 Small, Minority-owned and Woman-owned Businesses

This part is revised to add women-owned businesses and to clarify references.

12.4.10 Renewal of Contracts, 12.4.11 Extension of Contracts, 12.4.12 Contract Changes, 12.4.13 Subcontracting, 12.4.14 Release of Contractor, 12.4.15 Service Deficiencies, 12.4.16 Death or Incompetence of Contractor

These parts were previously numbered 12.7.5 through 12.7.11. Because they apply mainly to negotiated contracts, they have been moved to Section 4.

Paragraph 10.d is revised to clarify restrictions on contract renewals.

Paragraph 10.e adds additional procedures and approval requirements.

Paragraph 11.a is revised to distinguish between contract extension and renewal. Paragraphs 11.b through 11.d are revised to clarify procedural and approval requirements.

Subparagraph 12.c.1 is revised to define a minor service change in terms of a compensation rate of $150,000 or less. Paragraph 12.e is revised to describe schedule changes for highway or inland domestic water contracts, and a new Paragraph 12.f is added for emergency contracts.

Part 12.4.13 is revised to provide separate coverage for highway or inland domestic water contracts and other surface contracts or air contracts.

Part 12.4.14 is revised to provide separate coverage for highway or inland domestic water routes and other routes.

12.5.2 Service Employees

Subparagraph a.8 makes ineligible persons whose behavior indicates they are potentially dangerous to other employees.

12.6.3 Major Irregularity

This part is revised to provide that, when a major irregularity occurs, the contracting officer may take immediate suspension or removal action without prior notice to the contractor, and that suspension may be with or without pay, as provided in the contract.

12.7 Advertised Contracts

This section is completely revised to add detailed policy and procedural requirements.

12.8 Negotiated Contracts

This section is deleted and its focus moved to Section 4, General Policies.

Exhibit 12.1.1 Applicability of Procurement Manual to Mail Transportation

This Exhibit is revised to correct and add applicability requirements and references.

Exhibit 12.4.6 International Ocean Transportation Schedule of Rates

This new Exhibit is added to supplement coverage in Subparagraph 12.4.6.b.2.

Appendix A, Solicitations

A.2.4 Representations and Certifications

Paragraph b, subparagraph 3, is revised to show that when proposals of $50,000 or more are anticipated, the solicitation must include Provision 10–4, *Equal Opportunity Affirmative Action Program.*

Provision A–8, Contract Award

Paragraph d of the provision is revised to show that under certain circumstances the Postal Service may, before the proposal's specified expiration time, accept a proposal whether or not there are discussions or negotiations after its receipt.

Provision A–20, Type of Business Organization

This provision is revised to include definitions.

Provision 10–4, Equal Opportunity Affirmative Action Program, and 10–5, Preaward Equal Opportunity Compliance Review reflect the revisions published in Procurement Manual Circular 89–1, 4/24/89.

Appendix B, Contract Clauses

Clause B–22, Interest, is revised to show that the Postal Service will pay interest on late payments and unearned discounts, in accordance with the Prompt Payment Act and the Prompt Payment Act Amendments.

Clause 2–1, Inspection—Fixed Price, and 2–2, Inspection—Non-Fixed Price, are revised to clearly delineate the minimum acceptable quality control system which a supplier may provide the Postal Service.

Clause 2–6, Definition of Delivery Terms and Contractor's Responsibilities, is revised to show that, on f.o.b. origin contracts, contractors may make shipments on endorsed commercial bills of lading when transportation charges for individual shipments do not exceed $100.

Clause 7–3, Deposit of Assets Instead of Surety Bonds. This clause is changed to delete the requirement that the Postal Service pay interest on these assets.

Clause 10–1, Participation of Small, Minority-owned and Woman-owned Businesses, and 10–2, Small, Minority-owned and Woman-owned Business Subcontracting Requirements reflect the Postal Service's inclusion of woman-owned businesses in its Socioeconomic Program.

Clause 10–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, 10–5, Davis-Bacon Act, 10–7, Contract Work Hours and Safety Standards Act—Safety Standards, and 10–12, Service Contract Act, reflect the revisions published in Procurement Manual Circular 89–1, 4/24/89.

Clause 10–20, Drug-Free Workplace. This clause is added in accordance with the decision by the Postal Service to voluntarily comply with the intent and purpose of the Drug-Free Workplace Act.

Appendix C, Forms and Formats, and Appendix D, Rules of Practice Relative to Debarment and Suspension from Contracting, are revised to change terminology.

Appendix F, Index, is updated to reflect the changes in this Transmittal Letter.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

PART 601—[AMENDED]

1. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

2. In consideration of the foregoing, the table at the end of 39 CFR 601.105 is revised to read as follows:

§ 601.105 Amendments to the Procurement Manual.

* * * * *

Transmittal letter	Dated	Federal Register publication
2	June 1, 1988	53 FR 24265
3	December 1, 1989.	54 FR (Insert FR Page Number)

Fred Eggleston,
Assistant General Counsel Legislative Division.

[FR Doc. 89–27440 Filed 11–21–89; 8:45 am]
BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3680–9]

Wisconsin: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Wisconsin has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Wisconsin's application and has made a decision, subject to public review and comment, that Wisconsin's hazardous waste program revision satisfies all of the requirements for final authorization. Wisconsin's application for program

revision is available for public review and comment.

DATES: Final authorization for Wisconsin's program revision will be effective January 22, 1990, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Wisconsin's program revision application must be received by the close of business December 22, 1989.

ADDRESSES: Copies of Wisconsin's program revision application are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Wisconsin Department of Natural Resources, Bureau of Solid Waste Management, 101 South Webster Street, Madison, Wisconsin 53707, Contact—St. Clair Thompson (608) 266–5376; U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact—Brian Barwick (312) 886–6085. Written comments should be sent to Brian Barwick, Wisconsin Regulatory Specialist, U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, (312) 886–6085 FTS 8–886–6085.

FOR FURTHER INFORMATION CONTACT: Brian Barwick, Wisconsin Regulatory Specialist, U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, (312) 886–6085 FTS 8–886–6085.

SUPPLEMENTARY INFORMATION

A. Background

States with final authorization under section 3006(b) of RCRA (or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim Measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their program to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, and 270.

B. Wisconsin

Wisconsin initially received final authorization on January 31, 1986. Wisconsin received authorization for revisions to its program effective on June 6, 1989. Today, Wisconsin is seeking approval of additional State program revisions in accordance with 40 CFR 271.21(b)(4).

On March 31, 1988, Wisconsin submitted an application that requested authorization for State regulatory revisions analogous to the following provisions of the Federal program:

Federal provision	Analogous state provision(s)
Interim Status Standards, Landfill Cover Design Standards, 50 FR 16044–16048, April 23, 1985.	Wisconsin Administrative Code, Sections NR 181: .415(2); .42(8)(d); .42(9i(b); .44(10) (b), (c), (f), and (k); .44(12)(a)1.a.5 and b.1; .44(14)(b); and .55(6)(c) (effective April 1, 1988).
Clarification of Spent Pickle Liquor Listing, 51 FR 19320, May 28, 1986, as amended by 51 FR 33612, September 22, 1986.	Wisconsin Administrative Code, Section NR 181: .16(2)(b) Table III (effective April 1, 1988).
Paint Filter Test, 50 FR 18370–18376, April 30, 1985 [1].	Wisconsin Administrative Code, Sections NR 181: .42(1) (d) and (e); .42(6)(b)1.d.; and .44(10)(e)2. (effective April 1, 1988).
Dust Suppression, 50 FR 28702–28755, July 15, 1985 [1].	Wisconsin Administrative Code, Sections NR 181: .16(3); .19; and .415 (effective April 1, 1988).
Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves 50 FR 28702–28755, July 15, 1985 [1].	Wisconsin Administrative Code, Section NR 181: .415(4) (effective April 1, 1988).
Standards for Generators; Waste Minimization Certifications, 50 FR 28702–28755, July 15, 1985, as Amended by 51 FR 55190–55194, October 1, 1986 [1].	Wisconsin Administrative Code, Sections NR 181: .23(2)(f), (h)9. (h).11 and (i); .24(1) (f) and (g); .42(6)(b)1.j.; .42(6)(c)1.; .53; and .55(8)(k)4. (effective April 1, 1988).
Cement Kilns 50 FR 28702–28755, July 15, 1985 [1].	Wisconsin Administrative Code, Sections NR 181: .16(3) and .19 (effective April 1, 1988).
Groundwater Monitoring, 50 FR 28702–28755, July 15, 1985 [1].	Wisconsin Administrative Code, Sections NR 181: .43(9)(a); .44(10)(u); .49(1); and .49(8) (effective April 1, 1988).
Listing of TDI, DNT, and TDA Wastes, 50 FR 42936–42943, October 23, 1985 [1].	Wisconsin Administrative Code, Sections NR 181: .16(2)(b) Table III; .16(3)(c) Table IV; and Appendix II (effective April 1, 1988).
Listing of Spent Solvents, 50 FR 53315–53320, December 31, 1985 [1].	Wisconsin Administrative Code, Section NR 181: .16(2)(a) Table II (effective April 1, 1988).
Listing of EDB Wastes, 51 FR 5330, February 13, 1986 [1].	Wisconsin Administrative Code, Sections NR 181: .16(2)(b) Table III; and Appendix II (effective April 1, 1988).
Listing of Four Spent Solvents (Still Bottoms) 51 FR 6541, February 25, 1986 [1].	Wisconsin Administrative Code, Sections NR 181: .16(2)(a) Table II; .16(3)(c) Table V; and Appendix II (effective April 1, 1988).
Small Quantity Generators, 51 FR 10174–10176, March 24, 1986 [1].	Wisconsin Administrative Code, Sections NR 181: .12; .13(1) through (5) and (8); .16(3)(c); .215(5)(a); and .42(1)(a)12. (effective April 1, 1988).

[1] Promulgated pursuant to HSWA.

In July 1988, EPA sent comments to the State concerning the application. The State responded by providing additional information with a letter dated September 14, 1988. On the basis of the application, as supplemented by the State's September 14, 1988, letter, EPA has determined Wisconsin's program revisions, with the exception of one State rule discussed below, satisfy the criteria for final authorization.

In addition to the provisions of the Federal program listed above, the State applied for authorization for the Federal ban on liquids in landfills. The Federal ban on liquids in landfills was promulgated on July 15, 1985, (50 FR 28702), and amended on May 28, 1986 (50 FR 19176). The State asserts that section NR 181.44(10)(e) of the Wisconsin Administrative Code, in effect, bans liquids in landfills. However, EPA is withholding authorization for this provision of the Federal program until the State clarifies section NR 181.44(10)(e) to provide more explicitly for a ban on liquids in landfills.

It should be noted that the Federal ban on liquids in landfills was promulgated pursuant to HSWA. Therefore, as explained in section C of this notice, the Federal ban remains in effect in Wisconsin and continues to be imposed by EPA. The State believes section NR 181.44(10)(e) requires a ban on liquids in landfills and will, under

State authorities, continue to impose a State ban on liquids in landfills.

State program revisions to incorporate the Federal ban on liquids in landfills were due on July 1, 1988. Wisconsin has received an extension for completing these and other revisions that were due on July 1, 1989. The extension is for six months and was granted by EPA pursuant to 40 CFR 271.21(e)(3). If at the end of the six month extension period the State has not completed the program revisions that were due on July 1, 1989, EPA may place the State on a schedule of compliance under 40 CFR 271.21(g). If the State is placed on a schedule of compliance, notice of that action will be published in the Federal Register.

EPA intends to grant final authorization to Wisconsin for its additional program revisions. The public may submit written comments on EPA's immediate final decision up until December 22, 1989. Copies of Wisconsin's application for these program revisions are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Wisconsin's program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of authorization. EPA will suspend issuance of any further permits under the provisions for which the State is authorized on the effective date of authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, and June 6, 1989, the effective dates Wisconsin's authorizations for the RCRA program.

Wisconsin is not authorized to operate the Federal Program on Indian land. This authority shall remain with EPA.

C. Effect of HSWA on Wisconsin's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized States, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to promulgate or enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Wisconsin. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA related requirements are in effect, EPA will administer and enforce those portions of the HSWA in Wisconsin until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Wisconsin is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Wisconsin's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified in the table in part B of this notice. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Decision

I conclude that Wisconsin's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA intends to grant Wisconsin final authorization to operate its hazardous waste program as revised.

Wisconsin will have expanded responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its revised program application and previously approved authorities. Wisconsin will also have expanded enforcement responsibilities, although EPA will retain the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification of Part 272

On February 21, 1989 (54 FR 7422), U.S. EPA published a Federal Register notice which codified the Wisconsin hazardous waste program that was in effect when U.S. EPA granted Wisconsin final authorization (see 51 FR 3783). One of the reasons U.S. EPA codified Wisconsin's hazardous waste program was to provide the public with notice of the scope of Wisconsin's authorized program. In a future Federal Register notice, U.S. EPA will codify Wisconsin's revised hazardous waste program.

Compliance With Executive Order 12291: The Office of Management and Budget has expected this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 29, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–27872 Filed 11–21–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

RIN 0905-AD09

Indian Health; Subpart E—Preference in Employment

AGENCY: Indian Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the definition of the term "Indian" for purposes of Indian preference in employment in the Indian Health Service (IHS) to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry. The amendment extends the previous expiration date of September 14, 1988 to January 4, 1990, to permit the tribe to organize and to establish current membership standards.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, (301) 443–1116. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: As a result of the April 22, 1977, decision of the U.S. District Court for the District of Columbia in *Tyndall* v. *U.S.*, the Department of Health and Human Services (HHS) is under continuing court order to apply the same definition of the term "Indian" for purposes of Indian preference in employment in the IHS as that adopted by the Department of the Interior (DOI) and to publish the definition as a regulation in the Federal Register within 30 days of the DOI's publication.

Rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 8553) generally involve publication of a notice of proposed rulemaking, affording interested persons the opportunity to comment, and publication of the final rule after consideration of the comments received. However, in this case, no notice of proposed rulemaking (NPRM) is required. As a result of the Court's order, the Department has no discretion in this matter and, therefore, pursuant to 5 U.S.C. 533(b)(B) the Department is waiving the proposed rulemaking requirements.

On July 11, 1978 (42 FR 29783), the HHS published a final rule which brought the definition of Indian for purposes of Indian preference in employment in the IHS into conformance with the DOI definition published January 17, 1978 (42 FR 2393). On July 17, 1981 (46 FR 37044, 45), on October 4, 1984 (49 FR 39157), on September 15, 1986 (51 FR 32631, 32), and most recently January 5, 1989 (54 FR 282), the DOI amended its definition to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry. The HHS rule was revised on November 4, 1981 (45 FR 54743), November 6, 1984 (49 FR 44288, 89), and July 24, 1987 to conform to the DOI's 1981 and 1984 and 1986 changes.

The membership rolls of the Osage Tribe of Oklahoma, like a number of other tribes, were closed by an act of Congress, and therefore, these tribes did not have current membership standards. The original regulation provided a 3-year period for such tribes to formally organize and establish membership standards and, in the interim, permitted persons of one quarter degree blood of such tribes to qualify for Indian preference rather than having to meet the normal one half degree requirement. This was extended three times to give the Osage Tribe additional time to establish membership standards. The new DOI regulation and this HHS revision again extend the expired date for one final year from the date of publication of the extension rule. The quarter degree standard will remain applicable through January 4, 1990 or until the Osage tribe has formally organized and established membership standards, whichever comes first.

Under terms of the Court's order and our conforming regulations the IHS has been obligated to apply the revised DOI definition of Indian for purposes of employment uninterruptedly since 1978.

The Department's definition varies slightly from that of the DOI in order to clarify that there is no gap in the application of the definition to people of Osage ancestry. People of Osage ancestry, who are employed by the IHS and who received perference in any previous appointment, will continue to be preference eligibles so long as they are employed in HHS positions governed by the Indian Preference Act.

The Department of Health and Human Services has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291.

The Department of Health and Human Services has determined that this document does not have a significant economic effect on a substantial number of small entities. This rule affects only persons of the Osage Tribe of Indians.

List of Subjects in 42 CFR Part 36

Alaska natives, Employees, Eskimos, Government employees, Health, Indian preference, and Indians.

Dated: July 13, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 1, 1989.

Louis W. Sullivan,

Secretary.

Accordingly, the Department of Health and Human Services revises 42 CFR 36.41(e) to read as follows:

Subpart E—Preference in Employment

1. The authority citation for subpart E continues to read as follows:

Authority: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83–568, 42 U.S.C. 2003.

2. Paragraph (e) of § 36.41 is revised as follows:

§ 36.41 Definitions.

* * * * *

(e) Until January 4, 1990 or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

[FR Doc. 89–27330 Filed 11–21–89; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6755

[CA-940-00-4214-10; CACA 26000]

Partial Revocation of Secretarial Order dated July 15, 1907; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes one Secretarial order insofar as it affects 40 acres of National Forest System land withdrawn for use of the Forest Service in connection with the Bear Canyon Administrative Site. This action will open the land to allow completion of a Forest Service exchange. This land is no longer needed for administrative site purposes. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Order dated July 15, 1907, which withdrew land for the Bear Canyon Administrative Site, is hereby revoked insofar as it affects the following described land:

San Bernardino Meridian

T. 2 N., R. 7 W.,
sec. 19, SE¼SW¼.

The area described contains 40 acres in San Bernardino County.

2. At 10 a.m. on December 22, 1989, the land described in paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. The land described in paragraph 1 remains withdrawn from operation of the mining laws by inclusion in an overlapping withdrawal under the Act of May 29, 1928.

Dated: November 13, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89–27419 Filed 11–21–89; 8:45 am]

BILLING CODE 4310-06-M

43 CFR Public Land Order 6756

[ID-943-00-4214-10; IDI-26913]

Partial Revocation of Secretarial Order Dated December 19, 1933; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 9.80 acres of National Forest System land withdrawn for Power Site Classification No. 280 in the Boise National Forest. The withdrawal is being revoked so the Forest Service can complete a proposed exchange, which is in the public interest. The land is not needed for the purpose for which it was withdrawn. This action will open the land to surface entry. The land has been and will remain open to the mining and mineral leasing laws.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated December 19, 1933, which withdrew land for Power Site Classification No. 280 is hereby revoked insofar as it affects the following described land:

Boise Meridian

A tract of land situated in the SE¼NW¼ and NE¼SW¼, Section 32, Township 18 North, Range 8 East, is more particularly described as follows:

Beginning at the NW ⅛₀ corner of section 32, T. 18 N., R. 8 E., monumented with a standard Forest Service aluminum monument, buried 6 inches below the ground in a cultivated field;

Thence, S. 60°36'58" E., 285 feet along the north boundary of the SE¼NW¼ to a point on the center of a wood rail fence;

Thence along the center line with a traverse,

S. 11°18'49" W., 873.94 feet,
S. 19°25'43" E., 368.25 feet,
S. 06°41'04" E., 430.34 feet,
S. 19°20'51" W., 218.41 feet,
S. 87°07'59" W., 71.23 feet, leave rail fence, traverse along west edge of road S. 46°40'45" W., 212.55 feet to a point on the W ⅛₀ line;

Thence, N. 00°06'02" E., 871.43 feet along said line to the C–W ¼₀ corner monumented by a standard Forest Service aluminum monument;

Continue along said W ⅛₀ line N. 00°03'02" E., 1,319.34 feet to the NW ⅛₀ corner hereinbefore described, the point of beginning.

The areas described contains 9.80 acres in Valley County.

2. At 9 a.m. on December 22, 1989, the land described in paragraph one above shall be open to such forms of disposition as may be law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and will continue to be open to the mining and mineral leasing laws.

Dated: November 13, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89–27420 Filed 11–21–89; 8:45 am]

BILLING CODE 4310-06-M

43 CFR Public Land Order 6754

[OR-943-00-4214-10; GP9-310; OR-19014, OR-19115]

Partial Revocation of the Executive Order Dated December 12, 1917, and Secretarial Order Dated December 12, 1917; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes one Executive order and one Secretarial order insofar as they affect 0.28 acre of land withdrawn for the Bureau of Land Management's Powersite Reserve No. 661, and Waterpower Designation No. 14. The land is no longer needed for power site or waterpower purposes. This action is needed to permit disposal of the land through public sale. This action will open the land to surface entry. The land has been and remains open to mineral leasing and is temporarily closed to mining by Notice of Realty Action.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated December 12, 1917, which established Powersite Reserve No. 661, and the Secretarial Order dated December 12, 1917, which established Waterpower Designation No. 14, are hereby revoked insofar as they affect the following described land:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 21 S., R. 2 W.,
Sec. 7, lot 2 (formerly described as part of the fractional SW¼NW¼).

The area described contains 0.28 acre in Lane County.

2. At 8:30 a.m., on December 22, 1989, the land will be opened to such forms of disposition as may by law be made on revested Oregon and California Railroad Grant land, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law.

Dated: November 13, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89–27421 Filed 11–21–89; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6753

[OR-943-00-4214-10; GP-314; OR-22065(WASH)]

Modification of the Secretarial Orders Dated January 21, 1908 and June 26, 1908; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies the land description in two Secretarial orders to conform to the official approved plat of survey as to the land withdrawn for the Sullivan Lake Ranger Station.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders dated January 21, 1908 and June 26, 1908, which withdrew land for administrative site purposes are hereby modified to conform the land description to the approved plat of survey insofar as they affect the following described land:

Willamette Meridian

Colville National Forest; (formerly part of the Priest River National Forest)

T. 39 N., R. 44 E. (formerly unsurveyed).
Sec. 29, lot 3 and SW¼SW¼ (formerly described by metes and bounds);
Sec. 30, lots 6 and 7, and S½SE¼ (Formerly described by metes and bounds);
Sec. 31, lots 4 and 5, and N½NE¼ (formerly described by metes and bounds);
Sec. 32, W½NW¼ (formerly described by metes and bounds).

The area described contains 422.19 acres in Pend Oreille County.

2. The land described in paragraph 1 has been and continues to be withdrawn from appropriation under the public land laws, including the United States mining laws (30 U.S.C. Ch. 2).

Dated: November 13, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89–27422 Filed 11–21–89; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–397, RM–6326]

Radio Broadcasting Services; Essex, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255B to Essex, California, as that community's first local broadcast service, in response to a petition filed by Howard B. Anderson. Coordinates for Channel 255B at Essex, California, are 34–45–51 and 115–15–07. *See* 53 FR 36786, September 22, 1988. With this action, the proceeding is terminated.

DATES: Effective December 29, 1989; the window period for filing applications on Channel 255B at Essex, California will open on January 2, 1990, and close on February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window application filing process at Essex, California, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 88–397, adopted October 19, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under California by adding Essex, Channel 255B.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27361 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–42; RM–5646, RM–5882, RM–5883, RM–5884]

Radio Broadcasting Services; Rockport, Gregory, Alice and Armstrong, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Rockport, Texas, and modifies the license of Station KPCB(FM) to specify operation on the higher class channel at the request of Aransas County Broadcasting. The community could receive its first wide-coverage area FM service. A site restriction of 26.6 kilometers (16.5 miles) southwest of the community is required, at coordinates 27–49–30 and 97–12–00. Concurrence of the Mexican government has been obtained. In addition, this action dismisses the petitions of Gregory Broadcasting (RM–5882) for Gregory, Texas, and Edgar L. Clinton (RM–5883) for Alice, Texas; and also denies the petition of Texas Media Group, Inc. (RM–5884) for Armstrong, Texas. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–42, adopted October 19, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite, 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Channel 272C2 and removing Channel 272A at Rockport.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27362 Filed 11–21–89; 8:45 am]

BILLING CODE 4712–01–M

47 CFR Part 73

[MM Docket No. 87–88; RM–5523, RM–5576, RM–5947]

Radio Broadcasting Services; Raymondville, Alice and Falfurrias, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271C2 for Channel 269A at Raymondville, Texas, and Channel 275C2 for Channel 272A at Alice, Texas, at the request of Edgar L. Clinton and Alice Broadcasting Corporation. This action also modifies the licenses of Station KSOX–FM at Raymondville and Station KBIC(FM) at Alice to specify operation on the higher-class adjacent channel, accordingly. In addition, this action allots Channel 277A to Falfurrias, Texas, as that community's second local FM service, at the request of Falfurrias Broadcasting Enterprises. Alice and Raymondville could receive their first wide-coverage area FM services. Channel 277A at Falfurrias can be allotted at that community's reference coordinates, which are 27–13–30 and 98–08–36. Channel 271C2 at Raymondville requires a site restriction of 17.3 kilometers (10.8 miles) north of the city, at coordinates 26–38–00 and 97–45–00. Channel 275C2 can be utilized at the present site of Station KBIC(FM) at Alice. The coordinates are 27–46–35 and 98–04–41. Concurrence of the Mexican government has been obtained. With this action, this proceeding is terminated.

DATES: Effective December 29, 1989. The window period for filing applications for Channel 277A at Falfurrias, Texas, will open on January 2, 1990 and close on February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–88, adopted October 19, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Channel 271C2 and removing Channel 269A at Raymondville; by adding Channel 275C2 and removing Channel 272A at Alice; and by adding Channel 277A at Falfurrias.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27360 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1103, 1104, 1182 and 1186

[Ex Parte No. 55 (Sub-No. 77)]

Implementation of 21 U.S.C. 853a—Denial of Federal Benefits to Drug Traffickers and Possessors

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: 21 U.S.C. 853a, enacted in the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), states that Federal benefits shall be withheld in certain circumstances from individuals who have been convicted of drug distribution or possession in Federal or State courts. In this proceeding, the Commission adopts a certification process to implement and enforce the requirements of 21 U.S.C. 853a. Since this matter involves agency practice and procedure, it is being issued as a final rule under 5 U.S.C. 553(b)(3)(A).

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275–7428, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Federal agencies must implement and enforce the requirements of 21 U.S.C. 853a, which provides that Federal benefits are not to be granted to certain individuals who are convicted in Federal or State courts of either distribution or possession of controlled substances, after September 1, 1989. A "Federal benefit" as defined in 21 U.S.C. 853a(d) "means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." Certificates, licenses and permits to operate as motor, water, or rail carriers, household goods freight forwarders or property brokers are "Federal benefits" as defined in 21 U.S.C. 853a(d). An Interstate Commerce Commission Practitioner's license is also a "Federal benefit" under 21 U.S.C. 853a(d).

We have determined that the appropriate means to ensure that authority is not issued to individuals who have been convicted after September 1, 1989, of drug trafficking or possession *and* who are subject to the Federal benefits ban of 21 U.S.C. 853a, is to establish a procedure through which applicants for ICC authority certify that they are not ineligible to receive authority because of drug convictions. Since the statute only applies to individuals,[1] this certification requirement will only affect an individual applicant who applies for authority in his or her name. Corporations, joint owners or partnerships will not be required to complete the certification. The certification will be required in all applications that involve requests for certificates, licenses or permits that authorize motor, water, rail, household goods freight forwarding or property broker operations.

This certification will be required in small carrier transfer proceedings or notice of exemption proceedings in which the transferee is an individual because, as a result of Commission approval in these proceedings, the transferee will receive a certificate, license or permit, which is a "Federal benefit" under 21 U.S.C. 853a(d). Likewise, an individual, who applies for a certificate authorizing the operation or the construction or extension of a rail line, also will have to include this certification. An individual who seeks to acquire a rail line through the offer of financial assistance procedures that are available under the Commission's rail abandonment rules or the Feeder Line Development procedures will be required to include this certification in his or her filing. All applicants for an ICC Practitioner's license also will have to complete the certification.

The certification will be in the following form:

[1] Although the statute applies technically only to individuals, we concluded that there is nothing which precludes its application to corporations that are simply alter egos of individuals who would otherwise be barred by 21 U.S.C. 853a from receiving Commission licenses or other benefits.

I, _____(Name)_____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

We will incorporate this certification in the Commission's application forms OP–1, OP–2, and OP–F–44 which are currently under revision. An attachment will be inserted in the OP–FC–1 form and the ICC Practitioner's application form. The certification will be incorporated into those forms when the forms are reprinted.

Since no application form is required for notice of exemption proceedings under 49 U.S.C. 11343 and applications involving purchase, merger and control of motor passenger and water carriers under 49 U.S.C. 11343 or 11344, we will modify our regulations in 49 CFR part 1182 and part 1186 to include this certification provision. Also, a new section, 49 CFR 1104.15 will be added to Part 1104—Pleadings, Generally, to provide for other instances for which the certification may be appropriate, such as rail proceedings which have no application forms.

If an individual applicant cannot complete this required certification, the Commission will reject the application or other filing.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

List of Subjects

49 CFR Part 1103

Administrative practice and procedure, Lawyers.

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1182

Administrative practice and procedure, Motor carriers, Maritime carriers.

49 CFR Part 1186

Administrative practice and procedure, Freight forwarders, Motor carriers.

It is ordered:

Title 49 of the Code of Federal Regulations is amended as set forth below:

Decided: November 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley and Phillips. Commissioner André concurred.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1103, 1104, 1182, 1186 of the Code of Federal Regulations are amended as follows:

PART 1103—PRACTITIONERS

1. The authority citation for part 1103 is revised to read as follows:

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559; 21 U.S.C. 853a.

2. Section 1103.3(c) is amended by renumbering the existing paragraph as (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

* * * * *

(c) * * *

(2) *Certification:* All applicants must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

* * * * *

PART 1104—PLEADINGS; GENERALLY

3. The authority citation for part 1104 is revised to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559; 21 U.S.C. 853a.

4. Section 1104.15 is added to read as follows:

§ 1104.15 Certification of Eligibility for Federal Benefits Under 21 U.S.C. 853a.

(a) An individual who is applying in his or her own name for a certificate, license or permit to operate as a motor, water, or rail carrier, household goods freight forwarder or property broker must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceedings under 49 U.S.C. 10926, § 11343, or § 11344 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

(b) Certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or by operation of law, pursuant to 21 U.S.C. 853a.

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS AND WATER CARRIERS

5. The authority citation for part 1182 is revised to read as follows:

Authority: 5 U.S.C. 559, 49 U.S.C. 10321, 11321, 11341, 11343, 11344, and 11345a; 21 U.S.C. 853a.

6. Section 1182.3 is amended by adding a new paragraph (a)(12) to read as follows:

§ 1182.3 Content of applications.

(a) * * *

(12) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name that individual must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

* * * * *

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

7. The authority citation for part 1186 is revised to read as follows:

Authority: 49 U.S.C. 11321, 11343(e); 5 U.S.C. 553; and 21 U.S.C. 853a.

8. Section 1186.2 is amended by adding a new paragraph (f) to read as follows:

§ 1186.2 Notice of exemption.

* * * * *

(f) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

[FR Doc. 89–27417 Filed 11–21–89; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 54, No. 224
Wednesday, November 22, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 968

[Docket No. AO FV-88-1; FV-88-110]

Seedless European Cucumbers Grown in the United States; Reopening and Extension of the Period to File Written Exceptions to Recommended Decision for Proposed Marketing Agreement and Order for Seedless European Cucumbers Grown in the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the period to file written exception sto recommended decision.

SUMMARY: Notice is hereby given that the time period for filing written exceptions to the recommneded decision to establish a proposed marketing agreement and order for seedless European cucumbers grown in the United States is reopened and extended to December 13, 1989.

DATES: Written exceptions must be received by December 13, 1989.

ADDRESSES: Interested persons are invited to submit written exceptions in triplicate to the Hearing Clerk, United States Department of Agriculture, room 1079, South Building, Washington, DC 20250–9200. All written exceptions will be available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued June 22, 1988, and published in the **Federal Register** on June 27, 1989, (53 FR 24070). Recommended Decision—Issued September 29, 1989, and published in the **Federal Register** on October 11, 1989 (54 FR 41601).

A Recommended Decision and Oppportunity to File Written Exceptions to Proposed Marketing Agreement and Order No. 968 for Seedless European Cucumbers Grown in the United States was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The deadline for the submission of written exceptions to the recommended decision was November 13, 1989.

The U.S. Department of Agriculture (USDA) has received two requests from interested persons that the USDA provide more time for interested persons, including growers and handlers of seedless European cucumbers, to analyse the recommneded decision.

Reopening and extending the period in which written exceptions may be filed will provide such interested persons more time to review the recommended decision and submit written exceptions thereto. Accordingly, the period in which to file written exceptions is reopened and extended until December 13, 1989.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Part 968

Cucumbers, Marketing agreements and orders, United States.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 17, 1989.

Daniel Haley,
Administrator.

[FR Doc. 89–27481 Filed 11–21–89; 8:45 am]
BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT–2]

Electronic Fund Transfers; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revision addresses questions that have arisen about the requirements of the regulation relating to preauthorized transfers.

DATE: Comments must be received on or before January 19, 1990.

ADDRESS: Comments should refer to Docket No. EFT–2 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B–1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Contact Mary Jane Seebach or Kurt Schumacher, Staff Attorneys, Division of Consumer Affairs, at (202) 452–3667 or (202) 452–2412. For the hearing-impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR part 205.)

The Board has published an official staff commentary (sup. II to 12 CFR part 205) to interpret the regulation. The commentary is designed to provide guidance to financial institutions and others in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. This notice contains the proposed eighth update, which the Board expects to adopt in final form in March 1990.

(2) Proposed revisions

Following is a brief description of the proposed revisions to the commentary:

Section 205.10—Preauthorized Transfers

Question 10–19.5 would be added to address the situation where a financial institution receives a stop-payment order from a consumer for preauthorized debits initiated by a designated payee. The question clarifies that whenever a financial institution is notified the consumer's authorization is no longer valid, it must stop future payments.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

Certain conventions have been used to highlight the revisions. New language is shown inside bold-faced arrows, and italicized, while language to be removed is set off with brackets.

(3) Text of proposed revisions

Pursuant to authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board proposes to amend the official staff commentary to Regulation E (12 CFR part 205, supp. II) as follows:

PART 205—[AMENDED]

1. The authority citation for part 205 continues to read:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Comment Q10–19.5 would be added to read as follows:

►*Q10–19.5: Preauthorized debits—stop-payment order.*

A consumer authorizes a designated payee to initiate electronic fund transfer from the consumer's account. The consumer later revokes that authorization, and orders the financial institution to stop payment of all future debits initiated by that payee. Must the financial institution honor the consumer's request, or may it wait for the designated payee to terminate the automatic debits?

A: Since the financial institution has been notified the consumer's authorization is no longer valid, it must honor the consumer's order by stopping all future payments initiated by the designated payee. The financial institution may require written confirmation of the consumer's revocation.◄

* * * * *

Board of Governors of the Federal Reserve System, November 15, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89–27410 Filed 11–21–89; 8:45 am]
BILLING CODE 6210–01–M

12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Proposed Update to Offical Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed offical staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the offical staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations. The majority of the proposed revisions address the amendments to Regulation Z issued in April 1989 to implement the Fair Credit and Charge Card Disclosure Act of 1988 and the amendments to the regulation issued in June 1989 to implement the Home Equity Loan Consumer Protection Act of 1988. The proposal incorporates much of the guidance provided when those regulatory changes were adopted and addresses additional questions that have been raised about application of the new requirements. The other proposals deal with other provisions of Regulation Z, including the rules on substitution of telephone credit cards.

DATES: Comments must be received on or before January 19, 1990.

ADDRESSES: Comments should refer to Docket No. TIL–1 and be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B–1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412:

Fair Credit and Charge Card Disclosure Act issues: Jane Ahrens, Michael Bylsma, Adrienne Hurt

Home Equity Loan Consumer Protection Act issues: Sharon Bowman, Leonard Chanin, Thomas Noto, John Wood

Other open-end credit issues: Jane Ahrens, Adrienne Hurt, John Wood

Closed-end credit issues: Michael Bylsma, Kurt Schumacher, Mary Jane Seebach

For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. There have been eight general updates and one limited update so far. This notice contains the proposed ninth general update. It is expected that it will be adopted in final form in March 1990 with optional compliance until the uniform effective date of October 1, 1990, for mandatory compliance.

(2) *Proposed revisions.* Within the last year the Board adopted two major sets of amendments to Regulation Z. The first of these were amendments published in the **Federal Register** on April 6, 1989 (54 FR 13855) to implement the Fair Credit and Charge Card Disclosure Act of 1988, Public Law No. 100–583, 102 Stat. 2960 (FCCCDA). (The Board also adopted technical amendments to Regulation Z, in further implementation of FCCCDA, published on August 11, 1989, 54 FR 32953.) The mandatory effective date for the major portion of FCCCDA was August 31, 1989, with the effective date for certain provisions delayed until November 29, 1990.

The second major set of amendments to Regulation Z comprised amendments published in the **Federal Register** on June 9, 1989 (54 FR 24670) to implement the Home Equity Loan Consumer Protection Act of 1988, Public Law No. 100–709, 102 Stat. 4725 (HELCPA). (See also the correction notice published on

July 7, 1989, 54 FR 28665.) The mandatory effective date of HELCPA was November 7, 1989.

The **Federal Register** notices containing the regulatory amendments implementing FCCCDA and HELCPA set forth a large amount of supplementary material interpreting the new regulations. In order to provide ongoing guidance, the proposed commentary revisions in this notice reflects, in large measure, that supplementary material. On some points the proposed commentary differs from the material published earlier this year; significant differences are noted below. The proposed commentary also addresses a number of issues that have arisen since the publication of the regulations.

In addition to the issues arising with regard to FCCCDA and HELCPA, additional revisions are proposed concerning other provisions of Regulation Z. For example, the proposed commentary revisions discusses tax refund anticipation loans; a possible new mortgage product, the price-level adjusted mortgage; and open-end credit advertising.

The text of all of the proposed revisions is presented below in the order in which it would appear in the commentary. To facilitate review and comment, however, the descriptions of the revisions are presented separately for the FCCCDA, the HELCPA, and the other provisions.

Fair Credit and Charge Card Disclosure Act Provisions

As mentioned above, the proposed commentary to the regulation incorporates much of the supplementary information that accompanied the final amendments when they were published in April 1989. Some new or revised material is included, however, as noted below.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

Comment 5a(b)(1)–6 would be added to state that premium initial rates would be required to be disclosed, although the rate that is otherwise applicable also may be disclosed. This interpretation differs from the disclosure required for a discounted initial rate, for which the otherwise applicable rate must be shown.

Comment 5a(b)(5)–1 would be added to state that a card issuer may, but need not, refer to the beginning and ending point and briefly state any applicable conditions for any grace period.

5a(c) Direct Mail Applications and Solicitations

Comment 5a(c)–1 discusses in detail the distinctions between applications and solicitations subject to the direct mail rule and those subject to the "take-one" rules.

5a(e) Applications and Solicitations Made Available to General Public

Comment 5a(e)(2)–1 would explain the general rule that the credit information provided to a consumer under this disclosure option must be current as of the time it is mailed or delivered to the general public. Comment 5a(e)(2)–2 would permit a card issuer to provide information that was current as of the time it was printed if the issuer also complies with § 226.5a(e)(1)(ii)—that is, states the date the required information was printed, including a statement that it was accurate as of that date and is subject to change thereafter.

Comment 5a(e)(3)–1 would prohibit card issuers from using this disclosure option if any kind of reference is made to a term or condition of credit required to be disclosed under § 226.5a(b) including statements such as "favorable rates" and "low costs."

5a(g) Balance Computation Methods Defined

Comment 5a(g)–2 would be added to discuss the applicability of the "two-cycle average daily balance" method. The interpretation incorporates a discussion of the technical clarification to the regulation about this method which was published on August 11, 1989 (54 FR 32953).

Section 226.9 Subsequent Disclosure Requirements

9(e) Disclosures Upon Renewal of Credit or Charge Card

Comments would address the renewal notices for credit and charge card accounts in which an annual fee is imposed. Using employee preferential rates as an example, comment 9(e)–3 would explain that renewal notices should state the terms actually imposed on the account.

Comment 9(e)–4 would clarify how a card issuer discloses a variable rate when the rate that will be in effect if the cardholder renews the account cannot be determined at the time the renewal notice is sent. Comment 9(e)–5 discusses disclosure alternatives for card issuers that bill renewal fees more often than annually.

Comment 9(e)(1)–1 discusses how issuers may comply with the requirement that cardholders who receive an advance notice must be given the lesser of 30 days or 1 full billing cycle both to make a decision about the renewal of the account and to use the card without having the fee billed to the account.

Section 226.28 Effect on State Laws

28(d) Special Rule for Credit and Charge Cards

Comments 28(d)–1 through 28(d)–3 would be added to provide guidance on the scope of preemption of state laws under the Fair Credit and Charge Card Disclosure Act. The comments discuss the field of preemption, explaining that it extends to any state law requiring disclosure of credit information in open-end consumer credit or charge card applications, solicitations, or renewal notices. To address the issue of state laws that apply to both consumer-and business-purpose credit cards, comment 28(d)–2 would provide that such laws would be preempted to the extent they apply to applications and solicitations for, and renewals of, open-end consumer credit and charge card accounts. What effect preemption as to consumer-purpose cards would have on the state law as it relates to business-purpose cards is a matter that would be determined under state law.

Home Equity Loan Consumer Protection Act Provisions

Much of the information in the proposed commentary was contained in the supplementary information to the final rule. Although much of the proposal is self-explanatory, several provisions have been highlighted below which given additional guidance. The rules for home equity lines differ from those set forth in several existing commentary sections. Accordingly, the proposed commentary would add several cross references to the new home equity provisions where it was thought that confusion might result.

Section 226.5b Requirements for Home Equity Plans

5b(a) Form of Disclosures

Section 226.5b(a) requires most of the disclosures to be grouped together and "segregated" from unrelated information. Greater flexibility is permitted in complying with the segregation standard than currently exists for closed-end credit. The commentary would provide examples of the type of additional information that would be permitted with the required disclosures, and would discuss alternative methods for providing the early disclosures.

5b(b) Time Disclosures

The commentary would offer guidance on when the disclosures are required in the case of general purpose applications, applications sent through the mail or made available to the public without need for a request (such as "take-ones"). It would address the case where creditors provide a response card instead of an application in solicitation materials sent to consumers; in such cases creditors need not provide the home equity disclosures and brochure with the response card if the only action taken by the creditor upon receiving the card is to send an application to the consumer (which would then be accompanied by the disclosures and a brochure), or to telephone the consumer regarding an application. The commentary would also discuss the action that may be taken in cases where an application is denied or withdrawn within a certain time period.

5b(c) Duties of Third Parties

In addition to requiring creditors to provide disclosures and a brochure to consumers at an earlier time, § 226.5b(c) of the regulation imposes a limited duty on third parties who provide applications to consumers. The commentary would discuss the duty of both third parties and creditors in such cases.

5b(d) Content of Disclosures

Section 226.5b(d) of the regulation lists the information to be given to consumers when they receive an application for home equity plans. The commentary would provide examples of how to disclose the payment information required under § 226.5b(d)(5) for reverse mortgages. In addition, more guidance would be offered on the types of fees that must be disclosed under § 226.5b(d) (7) and (8). The commentary would provide examples of the type of fees that need not be disclosed. The commentary would clarify that third party fees that must be disclosed include premiums for property insurance if such fees are required to open a plan. It states that creditors must provide a good faith estimate of such third party fees, and may provide a range or state the fees on the basis of a typical or representative credit line.

Creditors who offer variable-rate transactions must provide information about the variable-rate feature under § 226.5b(d)(12). Many of these disclosures are similar to those required under §226.19(b) for closed-end adjustable rate mortgages. The commentary would offer additional guidance on how to provide the maximum payment example required under § 226.5b(d)(12)(x), explaining that creditors should ignore any discounted or premium initial rates or periodic rate limitations for purposes of stating the payment amount. The commentary also would discuss the requirement that creditors disclose the time by which the maximum rate would be imposed. In making this disclosure, creditors would assume that the rate increases as rapidly as possible under the plan, and should factor in any discounted or premium initial rates or periodic rate limitations. Separate examples would be provided for the draw and any repayment phase and, in disclosing the time at which the maximum rate could be reached, creditors would assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Additional guidance regarding the historical example required under § 226.5b(d)(12)(xi) also is provided. The commentary would clarify that creditors should assume that the $10,000 balance upon which the disclosures are based is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. Creditors would not assume that an additional advance is taken at any time, including the beginning of any repayment period. In stating the payment information that must be provided in the historical example, the commentary also would clarify that, while calculations of payments should be based on the creditor's actual payment computation formula, the creditor may assume that all months have an equal number of days.

The commentary would make clear that, in setting forth the margin, a creditor must select for each index a representative margin in preparing the historical example. Thus, the margin used must be one that was used in conjunction with the specific index.

5b(f) Limitations on Home Equity Plans

Section 226.5b(f) imposes substantive limitations on home equity plans. Specifically, it indicates how rate changes may be implemented, when a creditor may terminate a line and accelerate payment of the outstanding balance, and when the original terms may be changed.

The commentary to § 226.5b(f)(2) would provide guidance regarding the ability of creditors to terminate and accelerate a home equity plan. Comment 5b(f)(2)(ii)–1 would be added to clarify what constitutes failure to meet repayment terms for purposes of termination and acceleration. Under the proposed comment, a creditor would be permitted to terminate and accelerate the balance on a home equity line if the consumer has not made a payment within 60 days of the due date. A failure to make payments also would be deemed to occur if the consumer is in default for failing to make a required payment and does not make the payment within 30 days after the creditor provides the consumer with a written notice of the missed payment and of the consequences of continued failure to pay. This comment would parallel the approach taken by several states (as well as regulations promulgated by the Federal Home Loan Bank Board dealing with certain home loans) which specify that a creditor must provide consumers with a right to cure before a creditor may accelerate payment of the balance of a debt or take other action. This provision would not override any state or other law that requires a right to cure notice, or any longer time period required by such state law.

The commentary to § 226.5b(f)(3) would be added to provide guidance on when certain changes can be made to a home equity agreement. For example, comment 5b(f)(3)–2 would provide that a creditor may pass on increases in real estate taxes, and charges for property and credit insurance imposed by third parties notwithstanding the general prohibition on changing the terms of a home equity agreement.

Comments 5b(f)(3)(vi)–1 through –10 would provide general guidance regarding a creditor's ability to suspend credit privileges and reduce the credit limit on a home equity line. Comment 5b(f)(3)(vi)–3 would clarify that charges incurred by a creditor for credit reports and appraisals to determine whether a condition justifying a freeze or reduction in the credit limit continues to exist may be passed on to the consumer. Material has been included in comment 5b(f)(3)(vi)–8 to provide examples of events that could constitute a default of a material obligation.

5b(g) Refund of Fees

Proposed comments 5b(g)–1 through –4 provide guidance on the requirement that creditors refund fees to consumers if the terms originally disclosed change after the disclosures are provided.

5b(h) Imposition of Nonrefundable Fees

Proposed comment 5b(h)–1 provides that an application fee or membership fee may be collected prior to the

consumer receiving the disclosures (for example, when an application contained in a magazine is mailed in with an application fee) only if such fees remain refundable for three days after the consumer receives the § 226.5b disclosures. This would parallel the approach taken in comment 5(b)(1)–1 for open-end plans other than home equity plans.

Proposed comment 5b(h)–2 provides that a fee may be collected after the disclosures and brochure are received by the consumer but that the fee must be refunded if, within three days of receiving the required information, the consumer decides not to enter into the agreement. The consumer in such a case must be notified that the fee is refundable for three days.

Section 226.6 Initial Disclosure Statement

Proposed comments 6(e)–1 through –4 clarify the requirement that additional disclosures be provided, with the disclosures required under § 226.6, for home equity lines of credit.

Section 226.9 Subsequent Disclosure Requirements

Comment 9(c)–1 would be revised to include a reference to the limitations on changes in terms for home equity lines of credit. Proposed comment 9(c)(1)–6 would be added to clarify that a change in terms notice is required if a creditor renews a home equity line on terms other than those agreed to originally. Comment 9(c)(3)–1 would be added to clarify that a creditor need not provide a notice if it freezes a line in circumstances that would permit it to terminate and accelerate.

Section 226.15 Right of Rescission

15(a) Consumer's Right to Rescind

Comment 15(a)(3)–2 would be revised to provide that the payment terms described in § 226.6(e)(2) for any repayment phase set forth in an initial agreement are "material disclosures" for purposes of rescission. However, neither the payment terms nor any other information given with the application disclosures would be a material disclosure for purposes of rescission.

Comment 15(a)(3)–3 would be modified to provide that the variable-rate information provided in footnote 12 to § 226.6(a)(2) for variable-rate repayment phases set forth in an initial agreement is a material disclosure. Therefore, the circumstances under which the rate may increase; any limitations on the increase; and the effects of an increase for a variable rate feature for both the draw and repayment phase would be material disclosures for purposes of rescission.

Section 226.16 Advertising

Comment 16(b)–2 would be revised to include a reference to the special advertising rules for home equity plans. Comments 16(d)–1 through –6 would be added to clarify these rules. Comment 16(d)–2 would clarify that the rules in § 226.5b applicable to disclosing required information, including third party fees to open a line, may be relied upon in stating the information in advertisements.

Section 226.30 Limitations on Rates

Comments 30–1 and 30–11 would be revised to clarify how the home equity rules affect the requirements of § 226.30. The revisions would make clear that some types of loans may not be entered into after November 7, 1989. For example, comment 30–1 would be revised to clarify that because the home equity rules prohibit creditors from reserving a contract right to increase the rate in a fixed-rate open-end home equity plan, only such loans entered into before November 7, 1989, would be subject to a rate ceiling.

Other Provisions of Regulation Z

Section 226.12 Special Credit Card Provisions

Comment 12(a)(2)–9 would provide guidance to multiple entities that share responsibility for a card, such as where a single card has been issued by a long-distance telephone company but both that company and a local telephone company participate in matters such as authorization and billing. The proposed commentary would restrict either entity from issuing an additional credit card unless the existing card is terminated, so that, for example, the local company could not issue a new card of its own without ensuring that the original card is terminated. Comments are specifically requested, however, on a less restrictive approach, such as permitting an additional credit card on the same account to be issued by any one of the entities, provided the cardholder's total liability for unauthorized use of the original and the additional card cannot exceed the liability limit set forth in § 226.12(b).

Section 226.16 Advertising

Comment 16(b)–7 would be revised to give further guidance on terms that trigger additional disclosures. For example, the comment explains that the phrase "small monthly service charge on the remaining balance" triggers additional disclosures because the statement discloses how the amount of the finance charge will be determined, not because the statement uses the term "small" in describing that a monthly service charge will be assessed. An additional example would be added to illustrate that a statement in an advertisement that no finance charge will be imposed for some limited period of time triggers additional disclosures because it refers to a period during which credit can be repaid without a finance charge.

Section 226.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Comment 17(c)(1)–11 would be revised to include "price level adjusted mortgages" (PLAMs) as an example of variable-rate transactions. (References to PLAMs would be added to the commentary to §§ 226.19 and 226.30 noting that certain provisions would be inapplicable.) PLAMs have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. The comment would apply to transactions that have been authorized to be insured by the Department of Housing and Urban Development (HUD) in a demonstration program. HUD's regulations for PLAMs have not yet been adopted, but rules are expected to be issued before the Regulation Z commentary revisions become final in the spring of 1990.

Comment 17(c)(1)–17 would be added to provide guidance on the basis for disclosures for income tax refund anticipation loans (RALs). RALs are loans made on the basis of a consumer's anticipated tax refund. Repayment of RALs is typically made by an offset to a consumer's account, into which the consumer's tax refund has been deposited by electronic transfer. The comment provides that if repayment of the loan is required at the time the refund is deposited into the consumer's account, this date must be estimated and used in the disclosures even if the loan contains a demand clause.

Section 226.19 Certain Residential Mortgage Transactions

Comment 19(b)–3 would be added to clarify what constitutes an "intermediary agent or broker." The new comment would make clear that a legal agent of the creditor (as determined by applicable state or other law) is not an intermediary agent. The comment would also provide several factors to be considered by the creditor when determining whether or not the transaction involves an intermediary agent. Such factors would include the percentage of applications received by a creditor from a particular broker and the amount of time and preparation the broker puts into an application.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

(3) *Text of proposed revisions.* Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend the official staff commentary to Regulation Z (12 CFR part 226 Supp. I) as follows:

PART 226 [AMENDED]

1. The authority citation for part 226 continues to read:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Public Law 100–583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Public Law 100–86, 101 Stat. 552.

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2. Comment 2(a)(15)–3 would be added to read as follows:

2(a) Definitions
2(a)(15) "Credit card"

* * * * * *

►3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term "charge care" is, however, distinguished from "credit card" in §§ 226.5a, 226.0(e), 226.9(f) and 226.28(d), and appendices G–10 through G–13. When the term "credit card" is used in those provisions, it refers to credit cards other than charge cards.◄

3. Comment 2(a)(2)–5 would be amended by adding parenthetical material before the last sentence of the introductory paragraph to read as follows:

2(a)(20) Open-end credit

* * * * * *

5. *Reusable line.* * * * ►(The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.)◄ * * *

* * * * * *

4. Comment 2(a)(24)–6 would be added to read as follows:

2(a)(24) "Residential Mortgage Transaction".

* * * * * *

►6. *Multiple purpose transactions.* If a transaction meets the definition of this section, it is a residential mortgage transaction even if only a portion of the loan proceeds will be used to finance the acquisition of initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residental mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchasr of the land on which the dwelling will be built.◄

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5. Comment 5(b)(1) would be amended by adding two sentences after the second sentence to read as follows:

5(b) Time of disclosures.
Paragraph 5(b)(1) Initial disclosure.
1. *Disclosures before the first transaction.* * * * ►The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.► * * *

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6. Comments 5a(a)(2)–1 through 5a(g)–2 and headings would be added to read as follows:

►*Section 226.5a—Credit and Charge Card Applications and Solicitations*

5a(a) General rules
5a(a)(2) Form of disclosures.
1. *Prominent location.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located—that is, readily noticeable to the consumer. There are, however, no requirements that the disclosures be in any particular location or in any particular type size or typeface.
2. *Multiple accounts or varying terms.* Where a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account. Similarly, where rates or other terms vary from state to state, card issuers may list the states and the various disclosures in a single table or in separate tables.
3. *Additional information.* In general, the table containing the disclosures required by § 226.5a should contain only the information required or permitted by this section. Additional information may, however, be presented on or with an application or solicitation outside the required table.
4. *Location of certain disclosures.* A card issuer has the option of disclosing some of the fees in § 226.5a(b)(8) through (10) in the required table and some outside the table.
5. *Terminology.* In general, § 226.5a(a)(2)(iv) requires that the terminology used for the disclosures specified in § 226.5a(b) be consistent with the used in the disclosures under § § 226.6 and 226.7. This standard requires that the § 226.5a(b) disclosures be closed in meaning to those under § § 226.6 and 226.7, but not necessarily identical. In addition, § 226.5a(a)(2)(i) requires that the headings, content, and format of the tabular disclosures be substantially similar, but not necessarily identical, to the tables in appendix G.A special rule applies to the grace period disclosure, however: the term "grace period" must be used, either in the heading or in the text of the disclosure.
6. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, delete inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the "Transaction fee for purchases" heading and box, showing "none" in the box, or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: Even if no grace period exists, that fact must be stated.
5a(a)(3) Exceptions.
1. *Coverage.* Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:
• Lines of credit accessed solely by account numbers
• Addition of a credit or charge card to an existing open-end plan
2. *Noncoverage of "consumer initiate" requests.* Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application. the application subsequently sent to the consumer need not contain the disclosures required under § 226.5a. Similary, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d).
3. *General purpose applications.* The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.
5a(a)(5) Certain fees that vary by State.
1. *Method of disclosing range.* If the card issuer discloses a range of fees instead of

disclosing the amount of the fee imposed in each state, the range may be stated as zero (for states where no fee applies) to the amount of the highest authorized fee.

5a(b) Required disclosures.

5a(b)(1) Annual percentage rate.

1. *Periodic rate.* The periodic rate, expressed as such, may be disclosed in addition to the required disclosure of the corresponding annual percentage rate.

2. *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the comentary to § 226.6(a)(2) for examples of variable-rate plans.)

3. *Variable-rate accounts—rates in effect.* For variable-rate disclosures in direct mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures for telephone applications and solicitations subject to § 226.5a(d), the card issuer must use the rate in effect at the time the disclosures are provided. For oral disclosures under § 226.5a(d)(1), this requires providing the annual percentage rate currently in effect. For the alternate disclosures under § 226.5a(d)(2), this requires providing the annual percentage rate in effect at the time the disclosures are mailed or delivered.

4. *Variable-rate accounts—other disclosures.* In describing how the applicable rate will be determined, the card issuer may identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included.

5. *Introductory rates—discounted rates.* If the initial rate is a temporary rate and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account in accordance with comment 5a(b)(1)–2. An initial discounted rate may be provided along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate. The issuer also may disclose the rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect.

5a(b)(2) Fees for issuance or availability.

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee need not be disclosed if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card registration services) need not be disclosed under this paragraph if the basic account may be opened without paying such fees.

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership fees. Therefore, the following need not be disclosed:

- Fees for reissuing a lost or stolen card
- Statement reproduction fees
- Application fees described in § 226.4(c)(1)

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in addition to the required fees if the card issuer also discloses how long the fees or waivers will remain in effect.

5. *Fees stated as annual amount.* Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to § 226.9(e) with regard to disclosure of such fees in renewal notices.)

5a(b)(4) Transaction charges.

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, would not be disclosed under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

4a(b)(5) Grace period.

1. *How disclosure is made.* The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read "30 days" or "30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date)."

5a(b)(6) Balance computation method.

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure should clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(a)(3). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining the appropriate balance computation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method but includes new purchases or covers two billing cycles, respectively. The card issuer should not assume the existence of purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) Statement on charge card payments.

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, "Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement."

5a(b)(8) Cash advance fee.

1. *Applicability.* The card issuer must disclose only those fees for a cash advance on a credit or charge card account that are finance charges under § 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no charge is imposed for ATM transactions not involving an extension of credit. (See comment 4(a)–5 for a description of such a fee.)

5a(b)(9) Late payment fee.

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late payment fees.)

5a(b)(10) Over-the-limit fee.

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded.

5a(c) Direct mail applications and solicitations.

1. *Coverage.* Applications and solicitations contained in catalogs, magazines, or other generally available publications mailed to consumers are subject to the requirements applicable to "take-ones" in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). A publication mailed to a limited list of addresses, however (for example, a catalog targeted to certain types of consumers based on prescreening), is not a "generally available" publication and therefore is subject to the direct mail rules. In addition, if a card issuer has a single application form that is sometimes used as a "take-one" (in racks in public locations, for example) and at other times mailed to consumers, the form is subject to § 226.5a(c) when sent by direct mail and to § 226.5a(e) when placed in public locations.

2. *Accuracy.* In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. See § 226.5a(b)(1)(ii), however, for special rules concerning the accuracy of the annual percentage rate disclosure on a variable-rate account.

5a(d) Telephone applications and solicitations.

1. *Coverage.* This paragraph applies if:

- A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a "preapproved" telephone solicitation).
- The card issuer initiates the contact and at the same time takes application information over the telephone.

This paragraph does not apply to:

- Telephone applications initiated by the consumer.
- Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

5a(e) Applications and solicitations made available to general public.

1. *Coverage.* Applications and solicitations made available to the general public include what are commonly referred to as "take-one" applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. *Cross-selling.* If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to § 226.5a(e). For example, the following are not covered.

- A consumer applies in person for a card loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation.
- An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively.

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

5a(e)(1) Disclosure of required credit information.

1. *Date of printing.* Disclosure of the month and year fulfills the requirements to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in § 226.5a(e) (i), (ii) and (iii) may appear either in or outside the table containing the required credit disclosures.

5a(e)(2) Inclusion of certain initial disclosures.

1. *Accuracy of disclosures.* The disclosures required by § 226.5a(e)(2) generally must be current as of the time they are made available to the public. Disclosures are considered to be made available at the time they are placed in public locations (in the case of "take-ones") or mailed to consumers (in the case of publications).

2. *Accuracy—exception.* If a card issuer discloses all the information required by § 226.5a(e)(1)(ii) on the application or solicitation, the disclosures under § 226.5a(e)(2) need only be current as of the date of printing.

3. *Combining disclosures.* Disclosure of the information required under this paragraph does not satisfy the initial disclosure requirements in § 226.6 of the regulation. If, however, the card issuer in complying with this paragraph provides all the applicable disclosures required under § 226.6, in a form that the consumer may keep and in accordance with the other requirements for that section, the issuer will have satisfied the initial disclosure requirements under § 226.6 as well as the disclosure requirements for § 226.5a(e)(2).

5a(e)(3) No disclosure of credit information.

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by § 226.5a(b). Statements such as "no annual fee," "low interest rate," "favorable rates," and "low costs" are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or applications, if the card issuer chooses to use this option.

5a(e)(4) Prompt response to requests for information.

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) or (2), and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(3), and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer may provide the information listed in either § 226.5a(e)(1) or (2). Information provided in writing need be in a tabular format.

5a(f) Special charge card rule—Card issuer and person extending credit not the same person.

1. *Duties of charge card issuer.* Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in § 226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.

2. *Duties of creditor maintaining open-end plan.* Section 226.5a does not impose disclosure requirements on a creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer (See comment 2(a)(7)–1.)

3. *Form of disclosures.* The disclosures required by § 226.5a(f) may appear either in or outside the table containing the required credit disclosures, in circumstances where tabular format is required.

5a(g) Balance computation methods defined.

1. *Daily balance method.* Card issuers using the daily balance method may disclose it using the name "average daily balance (including new purchases)" or "average daily balance (excluding new purchases)," as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)–5 for a discussion of the daily balance method.)

2. *Two-cycle average daily balance methods.* The "two-cycle average daily balance" methods described in § 226.5a(g)(2)(i) and (ii) include those methods in which the balances for two billing cycles may be added together to compute the finance charge. The method is a "two-cycle average daily balance" even if the finance charge will be based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a "two-cycle average daily balance method" if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name "two-cycle average daily balance (excluding new purchases)" should be used to describe a method in which the finance charge for the current cycle, figured as an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured as an average daily balance of only new purchases during that prior cycle.◄

7. Comments 5b–1 through 5b(h)–3 and headings would be added to read as follows:

►*Section 226.5b—Requirements for home equity plans*

1. *Coverage.* This section applies to all open-end credit plans secured by the consumer's "dwelling," as defined in § 226.2(a)(19), and is not limited to plans secured by the consumer's principal dwelling. (See the commentary to § 226.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on

whether a home equity plan is subject to Regulation Z.)

2. *Disclosure of repayment phase—applicability of requirements.* Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, creditors must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an APR under § 226.5b(d)(6) with regard to that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion—even if the rate during the repayment phase will be fixed—creditors must provide the information in § 226.5b(d)(12), as applicable.

3. *Disclosure of repayment phase—timing options.* Creditors have a choice about when the disclosure of the terms for the repayment phase may be given. Creditors may provide the information at the same time the application disclosures for the draw period required by § 226.5b are given to the consumer. As an alternative, creditors may disclose only the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the application disclosures, and defer the other disclosures about the repayment phase until the end of the draw period. Disclosures must be based on the information available at that later time. (See model form G–14C.) In either case, creditors are required to provide information about the repayment phase set forth in § 226.6(e)(2).

4. *Repayment phase—applicability of closed-end provisions and substantive rules.* Creditors providing disclosures about a repayment phase under §§ 226.5b and 226.6, whether at the time an application is provided or at the end of the draw period, are not required to provide additional disclosures under Subpart C of the regulation for closed-end credit. Creditors are required to continue providing periodic statements under § 226.7 and to comply with the other open-end credit provisions of subpart B of the regulation, including the substantive provisions in § 226.5b(f). If the original home equity plan agreement does not call for a repayment phase to follow the draw period, and the consumer and creditor later enter into a closed-end agreement to repay the outstanding balance, the creditor must give closed-end credit disclosures pursuant to subpart C. In such cases, the open-end provisions in subpart B, including the substantive rules, do not apply to the closed-end credit transaction.

5. *Spreader clause.* When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a "spreader clause" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan are subject to the rules applicable to home equity plans to the same degree as if a security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

5b(a) Form of disclosures.

5b(a)(1) General.

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(e) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

2. *Disclosure of annual percentage rate—more conspicuous requirement.* As provided in § 226.5(a)(2), when the term "annual percentage rate" is disclosed with a number, it must be more conspicuous than other required disclosures.

3. *Segregation of disclosures.* While the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

- Any prepayment penalty
- The manner in which a substitute index may be chosen
- Actions the creditor may take short of terminating and accelerating an outstanding balance
- Renewal terms
- Rebate of fees

An example of information that does not explain or expand on the required disclosures and cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. *Method of providing disclosures.* A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to § 226.5b(d)(5)(iii), § 226.5b(d)(12)(x), and § 226.5b(d)(12)(xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunctions with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period has the option of creating separate disclosure forms for the two payment options. The creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. This disclosure is required only for those programs generally available to the public. Thus, if the only other programs available are employees preferred-rate plans, for example, the creditor would not have to provide this statement. A creditor who receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

5b(a)(2) Precedence of Certain Disclosures.

1. *Precedence rule.* The list of conditions provided at the creditor's option under § 226.5b(d)(4)(iii) need not precede the other disclosures.

5b(b) time of disclosures.

1. *Mail and telephone applications.* If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. *General purpose applications.* the disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless the application or materials accompanying it indicate that it can be used to apply for a home equity plan. In all cases where an application is provided in response to a consumer's specific inquiry about a home equity plan, the disclosures and a brochure must accompany the application. In such instances, the disclosures and brochure must be provided whether or not the application or its accompanying materials specify that the application can be used for a home equity plan. (See the commentary to § 226.5b(h) regarding the imposition of a nonrefundable fee.)

3. *Publicly-available applications.* Some creditors make applications, such as "take-ones," available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. *Response cards.* A creditor may solicit consumers for its home equity plan by mailing a "response card" which the consumer returns to the creditor to indicate interest in the plan. The creditor need not always provide the disclosures and brochure in the solicitation materials. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.

5. *Denial or withdrawal of application.* In situations where footnote 10a permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. If the consumer withdraws the application within this three-day period, the creditor also need not provide the disclosures or brochure.

6. *Intermediary agent or broker.* In determining whether or not an application involves an "intermediary agent or broker" as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)–3.

5b(c) Duties of third parties.

1. *Disclosure requirements.* Although third parties who give applications to consumers for home equity plans must provide the brochure required under § 226.5b(e) in all cases, such persons need provide disclosures only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits such a person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to § 226.5b(h) about imposition of a nonrefundable fee.)

5b(d) Content of disclosures.

1. *Disclosures given as applicable.* The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be given.

5b(d)(1) Retention of information

1. *When disclosures not required.* The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable—for example, if the disclosures are not part of the application that must be returned to the creditor to apply for the plan.

5b(d)(2) Conditions for disclosed terms.

Paragraph 5b(d)(2)(i)

1. *Guaranteed terms.* the requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

2. *Date for obtaining disclosed terms.* The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "to obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure," provided the disclosure form also shows the date.

Paragraph 5b(d)(2)(ii)

1. *Relation to other provisions.* Creditors should consult the rules in § 226.5b(g) regarding refund of fees.

5b(d)(4) Possible actions by creditor.

Paragraph 5b(d)(4)(i)

1. *Fees imposed upon termination.* The creditor is not required to disclose that fees are imposed when the plan expires in accordance with the agreement. In addition, fees associated with collection of the debt, such as attorneys fees and court costs, as well any increase in the annual percentage rate linked to the consumer's failure to make payments, need not be disclosed. The creditor, however, would have to provide this disclosure if such fees as penalty or prepayment fees may be imposed upon termination. The actual amount of the fee need not be disclosed.

Paragraph 5b(d)(4)(ii)

1. *Request by consumer.* If the creditor receives a request from a consumer prior to the opening of a plan for information about possible actions that the creditor may take concerning the plan, the creditor must provide this information as soon as reasonably possible after the request.

Paragraph 5b(d)(4)(iii).

1. *Disclosure of conditions.* In making this disclosure, the creditor may provide a higlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in § 226.5b(f)(2) and § 226.5b(f)(3)(vi). In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as: "Our agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."

2. *Form of disclosure.* The list of conditions under § 226.5b(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, it need not comply with the precedence rule in § 226.5b(a)(2).

5b(d)(5) Payment Terms.

Paragraph 5b(d)(5)(i)

1. *Length of the plan.* The combined length of the draw period and any repayment period need not be stated. If the length of the plan is indefinite, the creditor must state that fact.

2. *Renewal provisions.* If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of the likelihood of renewal—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying § 226.9(c)(1) dealing with change in terms requirements.)

Paragraph 5b(d)(5)(ii)

1. *Determination of the minimum periodic payment.* This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.

2. *Fixed rate and term payment options during draw period.* If the home equity plan permits the consumer to pay off all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or the index and margin that will apply upon exercise of this choice. For example, the rate disclosure might state, "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the "Wall Street Journal" that is in effect at the date of conversion plus 2 percentage points." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with § 26.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in § 26.5b(d)(12)(xi).

3. *Balloon payments.* In programs where the occurrence of a balloon payment is uncertain or unlikely but possible, the creditor must disclose the possibility of a balloon payment. In such cases, the disclosure might read, "Your minimum payment may not fully repay the principal outstanding on your line. You may be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must reflect that fact. For example, the disclosure might read, "Your minimum payment will not fully repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under § 226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.

Paragraph 5b(d)(5)(iii)

1. *Minimum periodic payment example.* In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.)

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The example should reflect the payment comprised only of principal and interest, and can assume that all months have an equal number of days. Creditors may provide an additional example reflecting other charges which may be included in the payment, such as credit insurance premiums. For variable-rate plans, this example must be based on the last rate in the historical example required in § 226.5b(d)(12)(xi), or a more recent rate. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. *Representative examples.* In plans that have multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2 percent of the balance of 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period; required payment of past due amounts, late charges and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under § 226.5b(d)(5)(iii) for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to § 226.5b(d)(12)(x) and § 226.5b(d)(12)(xi) for a discussion of the use of representative examples for making those disclosures. Creditors choosing to use a representative example within each category must use the same example for purposes of the disclosure under § 226.5b(d)(5)(iii), § 226.5b(d)(12)(x), and § 226.5b(d)(12)(xi).) Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under § 226.5b(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period. Creditors may use representative examples under § 226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under § 226.5b(d)(5) (i) and (ii).

3. *Reverse mortgages.* Reverse mortages, also known as reverse annuity or home equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

- If the reverse mortgage has a specified period for draws and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single $10,000 draw.
- If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)
- In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."
- Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The appreciation feature must be disclosed in accordance with § 226.5b(d)(12).

5b(d)(6) Annual Percentage Rate

1. *Preferred-rate plans.* If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.

5b(d)(7) Fees Imposed by Creditor

1. *Applicability.* The fees referred to in § 226.5b(d)(7) include items such as application fees, points, annual fees, transaction fees, and fees imposed for converting to the repayment phase provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan even if such fees are passed on by the creditor to a third party. For example, if a creditor annually obtains a credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosures under § 226.5b(d)(8).

2. *Manner of describing fees.* Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to § 226.5b(f)(3)(i).)

3. *Fees not required to be disclosed.* Fees imposed for late payment, stopping payment, returned checks, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed under § 226.5b(f)(3)(vi)—are not required to be disclosed under this section or § 226.5b(d)(8).

4. *Rebates of closing costs.* If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

1. *Applicability.* Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorney fees as well as premiums for property insurance required by the creditor.

2. *Itemization of third party fees.* In all cases creditors must state third party fees as a single dollar amount or a range. A creditor has two options with regard to providing more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. Upon receiving a consumer's request for such an itemization prior to the consumer opening the plan, the creditor must provide the information as soon as reasonably possible. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures.

3. *Manner of describing fees.* A good faith estimate of the amount of fees must be provided. Creditors may provide a range for such fees or state the fees on the basis of a typical or representative amount of credit. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.

4. *Rebates of third party fees.* Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(d)(7).)

5b(d)(10) Transaction Requirements

1. *Applicability.* A limitation on automated teller machine usage need not be disclosed under this paragraph, unless that is the only means by which the consumer can obtain funds.

5b(d)(12) Disclosure for Variable-Rate Plans

1. *Variable-rate provisions.* Model forms G–14A, G–14B and G–14C provide illustrative guidance on the variable-rate rules.

Paragraph 5b(d)(12)(iv)

1. *Determination of annual percentage rate.* If the creditor adjusts its index through the addition of a margin, the disclosure might read, "Your annual percentage rate is based on the index plus a margin." The creditor is not required to disclose the specific value of the margin.

Paragraph 5b(d)(12)(viii)

1. *Preferred-rate provisions.* This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

Paragraph 5b(d)(12)((ix)

1. *Periodic limitations on increases in rates.* The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a six-month time period. If the creditor does not impose periodic limits (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

2. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18 percent) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitation also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

3. *Form of disclosures.* The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Paragraph 5b(d)(12)(x)

1. *Maximum rate payment example.* In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclosure the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for this disclosure. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Time the maximum rate could be reached.* In stating the date or time by which the maximum rate could be reached creditors should assume the rate increases as rapidly as possible under the plan. In calculating when this date or time could be reached, creditors should factor in any discounted or premium initial rates or periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. In calculating this disclosure for the draw and any repayment phase, creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 5b(d)(12)(xi)

1. *Index values.* Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values. If the length of the plan is less than 15 years, payments need only be shown for the number of years in the term, though all significant plan terms such as rate limitations must be shown for the entire 15 years. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available in giving a history and payment example and may start the example at the year for which values are first available. The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Selection of index values.* The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages would be used in the history, but if an index value as of a particular date is used, a single index value would be shown. The creditor is required to assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. *Calculation of payments.* The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. A creditor need show only one payment per year in the example, even though payments may vary during a year. (The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days.) The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate

payment information is selected. Information about balloon payments may, but need not, be reflected in the example.

4. *Representatives payment options.* The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to § 226.5(d)(5).)

5. *Reverse mortgages.* The historical example for reverse mortgages would reflect 15 years of index values and annual percentage rates, but the payment column would be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to § 226.5(d)(5) for a discussion of reverse mortgages.)

6. *Rate limitations.* Both periodic and maximum rate limitations must be reflected in the historical example. If ranges of rate limitations are provided under § 226.5(d)(120(ix), the highest periodic and maximum rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annual should be treated as if they are annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2 percent annual cap.

7. *Selection of margin.* A value for the margin must be assumed in order to prepare the example. A creditor must select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

8. *Amount of discount or premium.* In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

9. *Disclosures for repayment period.* In providing the historical example, creditors that choose to provide disclosures about the repayment period as part of the disclosures provided with an application (see the commentary to § 226.5b for a discussion of the options available on the giving of such disclosures) must reflect all features of the repayment period in the table, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index. Creditors that choose to provide information about the repayment period at the end of the draw period, rather than with the application disclosures, need not reflect the repayment period in the example (just as they may omit information about the repayment period for purposes of the disclosures under § 226.5b(d)(12) generally). In such cases, the index values and annual percentage rates relating to the draw period would be shown for the entire 15 years (even if the draw period is less than 15 years).

5b(e) Brochure

1. *Substitutes.* A brochure is a suitable substitute for the Board's home equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

5b(f) Limitations on Home Equity Plans

1. *Coverage.* Section 226.5b(f) limits both actions that may be taken and language that may be included in contracts, and applies to any assignee and holder as well as to the original creditor. The limitations apply to the draw period and any repayment period, and to any renewal or modification of the original agreement.

Paragraph 5b(f)(1)

1. *External index.* A creditor may change the annual percentage rate for a plan only if the change is based on an index outside the creditor's control. Thus, a creditor may not make rate changes based on its own prime rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate, such as that in the "Wall Street Journal", even if the bank's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not always be published in a newspaper, but it must be one the consumer can independently obtain and use to verify rates imposed under the plan.

3. *Provisions not prohibited.* This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, stepped-rate plans, in which specified rates are imposed for specified periods, are permissible. In addition, preferred-rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.

Paragraph 5b(f)(2)

1. *Limitations on termination and acceleration.* In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the three circumstances specified in § 226.5b(f)(2). Creditors are not permitted to specify in their contracts any other events that allow terminating an acocunt or accelerating payment of the outstanding balance beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

2. *Other actions permitted.* If one of the events permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.

Paragraph 5b(f)(2)(i)

1. *Fraud or material misrepresentation.* A creditor may terminate a plan and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Paragraph 5b(f)(2)(ii)

1. *Failure to meet repayment terms.* A creditor may terminate a plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement. Failure to make payments occurs if the consumer has not made the payment within 60 days of the payment due date. Failure to make payments also would be deemed to occur if the consumer is in default for failure to make a required payment (as provided for by state or other applicable law) and the consumer does not make the payment (plus any applicable late or deferral charges) within 30 days after a credtior provides a written notice of the missed payment and the consequences of continued failure to pay. A creditor may not terminate a plan or accelerate the balance if the consumer makes payment of the amount due (the payment plus any late or deferral charges) within the 30-day period. If the consumer has received such a notice more than twice in any one-year period, and then does not make a payment, the creditor may terminate the account and accelerate the balance without providing an additional written notice. To the extent that applicable state law provides that a creditor must send a particular right to cure notice before terminating a plan and accelerating the balance or provides for a period longer than 30 days, this provision does not supersede such a requirement. Failure to make payments does not occur if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Filing for bankruptcy permits

termination if the consumer fails to make payments under the plan.

Paragraph 5b(f)(2)(iii)

1. *Impairment of security.* A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not permit the creditor to terminate and accelerate.

2. *When permitted.* A creditor may terminate and accelerate, for example, if the consumer transfers title to the property or sells the property without the permission of the creditor, or if the consumer fails to maintain required insurance on the dwelling. A consumer's failure to pay taxes on the property or action by the consumer that results in a lien senior to that held by the creditor also permits the creditor to terminate and accelerate. Death of the sole consumer obligated on a plan, taking of property through eminent domain, and foreclosure by a prior lienholder permit termination and acceleration. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated. Illegal use of the property by the consumer would permit termination of the plan if it subjects the property to seizure. If the consumer moves out of the dwelling that secures the plan, the creditor may not terminate a plan and accelerate the balance unless the consumer's action adversely affects the security.

Paragraph 5b(f)(3)

1. *Scope of provision.* In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under the regulation. For example, a creditor may not increase the margin for a variable-rate plan. This provision also applies to charges imposed for later payment, for example, though this fee is not required to be disclosed under § 226.5b(d)(7).

2. *Charges not covered.* There are three charges not covered by this provision. A creditor may pass on any increases for property taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition a creditor may pass on increases in premiums for property insurance described in § 226.4(d)92) and increases in credit insurance premiums described in § 226.4(d)(1), provided such increased costs are imposed by a third party.

Paragraph 5b(f)(3)(i)

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement for specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee home equity plan, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract also could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract also may permit a consumer to switch among minimum payment options during the plan.

2. *Prohibited provisions.* A creditor may not include a general provision in its agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan. In addition, a creditor may not include any "triggering events" or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decrease in property value since the regulation allows that response only for a significant decrease.

Paragraph 5b(f)(3)(ii)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

Paragraph 5b(f)(3)(iii)

1. *Changes by written agreement.* A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The creditor must comply with the change in terms notice requirements in § 226.9(c), and the agreement is governed by the limitations in § 226.5b(f). For example, a creditor and consumer could not enter into a subsequent agreement to base changes in the annual percentage rate on the movement of an index controlled by the creditor. Similarly, an agreement could not specify events that will permit termination and acceleration other than those permitted by the regulation.

2. *Written agreement.* The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account constitutes acceptance of a proposed change under state law.

Paragraph 5b(f)(3)(iv)

1. *Beneficial changes.* Creditors may make changes that unequivocally benefit the consumer. Under this provision, a creditor may make changes that offer more options to consumers, as long as existing options remain. For example, a creditor could offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor could extend the length of the plan for any period, as long as it was extended or renewed on the same terms. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under § 226.9(c) when the rate or fees are returned to their original level). Creditors also may offer as an option additional means of access to the line even if fees are associated with using the device, provided that the consumer retains the ability to use prior access devices on the original terms.

Paragraph 5b(f)(3)(v)

1. *Insignificant changes.* A creditor is permitted to make insignificant changes after a plan is opened. This rule allows accommodation for operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.

2. *Examples of Insignificant changes.* Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding rules, in accordance with the tolerance rules set forth in § 226.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignifcant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).

Paragraph 5b(f)(3)(vi)

1. *Suspension of credit or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in seven circumstances. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and

accelerate the balance as described in § 226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.

2. *Temporary nature of suspension or reduction.* Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated.

3. *Imposition of fee.* If permitted by state law, a creditor may collect a bona fide and reasonable fee in connection with actual expenses incurred to investigate whether the condition permitting the freeze continues to exist; a creditor may collect only appraisal and credit report fees. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.

4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. A creditor must monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor investigates to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges. (See § 226.9(c)(3).) A consumer's request need not be in writing. Once the consumer has made such a request, the creditor must investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

5. *Suspension of credit privileges following request by consumer.* A creditor may honor a specific request by a consumer to suspend credit privileges. Thus, for example, if two consumers are obligated under a plan and each has the ability to take advances, the agreement may permit either of the two persons to direct the creditor not to make further advances. If the person who requested suspension subsequently requests reinstatement of draw privileges, the creditor must honor the request for reinstatement.

6. *Significant decline defined.* What constitutes a significant decline for purposes of § 226.5b(f)(3)(vi)(A) will vary accordingly to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of § 226.5b(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. Therefore, the creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000.

7. *Material change in financial circumstances.* Two conditions must be met for § 226.5b(f)(3)(vi)(B) to apply. First, there must be a "material change" in the consumer's financial circumstances, such as a significant decrease in the consumer's income. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. A creditor may, does not have to, rely on specific evidence (such as the failure to pay other debts) in concluding that the second part of the test has been met.

8. *Default of a material obligation.* Creditors may specify events that would qualify as a default of a material obligation under § 226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

9. *Government limits on the annual percentage rate.* Under § 226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

10. *Maximum annual percentage rate reached.* Under § 226.5b(f)(3)(vi)(G), a creditor may prohibit further advances or reduce the credit limit during any period in which the annual percentage rate reaches the maximum rate allowed under the plan. If the annual percentage rate subsequently declines below the maximum rate, the creditor must reinstate credit privileges.

5b(g) Refund of Fees

1. *Refund of fees required.* If any disclosed term changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees, appraisal fees, and insurance premiums, must be refunded whether such fees are paid directly to the creditor or to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).

2. *Variable-rate plans.* The right referred to in this paragraph does not apply to changes resulting from fluctuations in the index value in a variable-rate plan. This includes changes in the annual percentage rate and changes in the maximum rate if the maximum is expressed as an amount over the initial interest rate.

3. *Changes in disclosed terms.* If a disclosed term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 8 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information available in providing disclosures about such fees.

4. *Timing of refunds and relation to other provisions.* The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under the test set forth in comment 4(c)(1)–1.

5b(h) Imposition of Nonrefundable Fees

1. *Collection of fees before consumer receives disclosures.* An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the § 226.5b disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under § 226.5b.

2. *Collection of fees after consumer receives disclosures.* A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee must be refunded if, within three days of receiving the required information, the consumer decides not to enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. If the disclosures and brochure are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

3. *Relation to other provisions.* A fee collected earlier may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects not to enter into the plan because of a change in terms. (In addition, of course, all fees must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6—Initial Disclosure Statement

8. Comment 6(a)(2)–2 would be amended by adding a sentence after the first sentence in the third bullet paragraph to read as follows:

6(a) Finance Charge.

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Paragraph 6(a)(2)

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2. *Variable-rate disclosures—coverage.*

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* * *.● (See the rule in § 226.5b(f)(1) applicable to home equity plans, however, which prohibits "rate reservation" clauses.)◄

* * *

* * * * *

9. Comments 6(e)–4 and a heading would be added to read as follows:

►*6(e) Home equity plan information.*

1. *Additional disclosures required.* For home equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. This latter requirement can be met by providing a separate list or by identifying the provisions in the contract which contain such conditions. (See the commentary to § 226.5b(d)(4)(iii) regarding the form of this information.)

2. *Form of disclosures.* The additional home equity disclosures must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home equity disclosures provided under § 226.6.

3. *Disclosure of payment and variable-rate examples.* The payment example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (x), (xi), and (xii) need not be provided with the disclosures under § 226.6 if:

- The disclosures described in § 226.5b(d) were provided in a form a consumer could keep; and
- The disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

For example, if a creditor offers three payment options (one in each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or § 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures, the disclosures under § 226.5b(d)(5)(iii) and § 226.5b(d)(12)(viii), (x), (xi) and (xii) disclosures must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and § 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* If the creditor has included complete information about both the draw and repayment phases in the § 226.5b disclosures given at application, the creditor must provide disclosures about both phases when giving the disclosures under § 226.6. Specifically, a creditor must make the disclosures in § 226.6(e) and state the corresponding annual percentage rate and variable-rate information required in footnote 12 for the repayment phase. However, if the creditor defers providing the bulk of the § 226.5b disclosures for the repayment phase until conversion, the creditor need not provide any information about the repayment period under § 226.6 other than the payment terms listed in § 226.6(e)(2). Thus, for example, if the disclosures are delayed, the creditor would not have to give the variable-rate information set out in footnote 12 for the repayment phase.◄

Section 226.9—Subsequent Disclosure Requirements

10. Comment 9(c)–1 would be amended by adding a sentence at the end to read as follows:

9(c) Change in terms.

1. *"Changes" initially disclosed.*

* * * ►The rules in § 226.5b(f) relating to home equity plans, however, limit the ability of a creditor to change the terms of such plans.◄

11. Comment 9(c)(1)–6 would be added to read as follows:

9(c)(1) Written notice required.

* * * * * *

►6. *Home equity plans.* If a creditor renews the draw period for a home equity plan on terms different from the original plan, the requirements of § 226.9(c) apply to such a change. Thus, for example, a creditor must provide a notice of the changed terms at least 15 days before the change takes effect.◄

12. Comment 9(c)(3)–1 and a heading would be added to read as follows:

►*Paragraph 9(c)(3).*

1. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.◄

13. Comment 9(e)–1 through 9(e)(3)–2 and headings would be added to read as follows:

►*9(e) Disclosures upon renewal of credit or charge card.*

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(3) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment would send a renewal notice to employees disclosing the lower rate actually charged to employees rather than the rate charged to the general public.

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose any rate applicable to the account within the 30-day period prior to the mailing of the renewal notice.

5. *Periodic fees.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every twelve months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also disclose the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24 and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose that fact.

6. *Terminating credit availability.* The regulation does not address the form or the content of the card issuer's instructions on how and when a cardholder may terminate credit availability to avoid paying the renewal fee. State and other applicable law governs whether the card issuer may, for example, require the consumer's response to be in writing or the outstanding balance to be repaid in full.

9(e)(1) Notice Prior to Renewal

1. *Timing of advance notice.* If the card issuer chooses to give advance notice under § 226.9(e)(1), the renewal notice must be provided at least 30 days or one billing cycle, whichever is less, before the renewal date. Thus, for example, if a billing cycle is 28 days (February 1 through February 28) and an annual fee is posted to the account on the first day of the following billing cycle (March 1), the issuer must give notice so that the cardholder has at least 28 days both to make a decision about the renewal of the account and to use the card without having the fee billed to the account. If a cardholder sends timely notice (on February 28) of a decision not to renew the account and the fee is posted before the card issuer receives the notice (for example, March 3), the card issuer will be deemed to be in compliance if the fee is reversed or otherwise withdrawn during

the March billing cycle and the cardholder is not required to take any additional action to have the fee removed from the outstanding balance.

9(e)(3) Notification on Periodic Statements

1. *Interspersed disclosures.* The form of a periodic statement that contains renewal notices must comply with the rules in both § 226.5a and § 226.7. For example, "annual percentage rate" must be printed more conspicuously than other required disclosures to comply with the periodic statement requirements of § 226.7, even though the requirements of § 226.5a would not otherwise require the words to be highlighted. Similarly, the words "grace period" must be used and the name of the balance calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a, even though the use of those terms would not otherwise be required for periodic statements under § 226.7.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance notice option under § 226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.◄

14. Comments 9(f)–1 through 9(f)(3)–1 and headings would be added to read as follows:

►*9(f) Change in Credit Card Account Insurance Provider*

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance providers. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in providers, the card issuer must either explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to appendix G–13.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial Decrease in Coverage

1. *Determination.* Whether a substantial decrease in coverage will result from the change in providers is determined by the two-part test in § 226.9(f)(3): first, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.◄

Section 226.12—Special Credit Card Provisions

15. Comment 12(a)(2)–9 would be added to read as follows:

12(a) Issuance of Credit Cards

* * * * *

Paragraph 12(a)(2)

* * * * *

►9. *Multiple entities.* Where multiple entities have an arrangement to issue a credit card, none of them may replace the credit card on an unsolicited basis unless the original card is terminated.◄

Section 226.14—Determination of Annual Percentage Rate

16. The heading to comments under § 226.14(b) would be revised to read as follows:

14(b) Annual Percentage Rate for ►§ 226.5a and § 226.5b Disclosures, for◄ Initial Disclosures and for Advertising Purposes

17. Comment 14(b)–1 would be amended by revising the first sentence to read as follows:

1. *Corresponding annual percentage rate computation.* ►For purposes of §§ 226.5a, 226.5b, 226.6 and 226.16,◄ [For initial disclosures (under § 226.6) and for advertising (under § 226.16),] the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. * * *

Section 226.15—Right of Rescission

18. Comments to 15(a)(3) would be amended by adding two sentences at the end of comment 15(a)(3)–2; and by adding a sentence at the end of comment 15(a)(3)–3 to read as follows:

15(a) Consumer's right to rescind

* * * * *

Paragraph 15(a)(3)

* * * * *

2. *Material disclosures.* * * * ►The payment terms set forth in footnote 36 also apply to any repayment phase set forth in an initial agreement. Thus, the payment terms described in section 226.6(e)(2) for any repayment phase as well as for the draw period are "material disclosures."◄

3. *Material disclosures—variable-rate program.* * * * ►The disclosures listed in footnote 12 to § 226.6(a)(2) for any repayment phase also are material disclosures for variable-rate programs.◄

* * * * *

Section 226.16—Advertising

19. Comments to 16(b) would be amended by adding parenthetical material at the end of comment 16(b)–2 and by revising the last sentence in comment 16(b)–6 to read as follows:

16(b) Advertisement of terms that require additional disclosures

* * * * *

2. *Use of positive terms.* * * * ►(See, however, the rules in § 226.16(d) relating to advertisements for home equity plans.)◄

* * * * *

6. *Discounted variable-rate plans—disclosure of the annual percentage rates.* * * * The options listed in comment 16(b)–[4]►5◄ may be used in disclosing the current indexed rate.

* * * * *

20. Comment 16(b)–7 would be revised to read as follows:

7. *Triggering terms.* The following are examples of terms that trigger additional disclosures:

- "Small monthly service charge on the remaining balance [."] ►," which describes how the amount of a finance charge will be determined.◄
- "12 percent Annual Percentage Rate [."]►or◄ [•] "A $15 annual membership fee buys you $2,000 in credit [."] ►," which describe required disclosures using a positive numbers.
- "No finance charge until November," or "No finance charge for 90 days," which describe a time period during which credit extended may be repaid without incurring a finance charge.◄

21. Comments 16(d)–1 through –6 and a heading would be added to read as follows:

►*16(d) Additional Requirements for Home Equity Plans*

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states "no annual fee" or "no points" in an advertisement, additional information must be provided. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments. Advertisements for home equity plans must comply with all provisions in § 226.16—not solely the rules in § 226.16(d).

2. *References to terms.* In providing the information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. (See the commentary to § 226.5b(d)(7) and (8).)

3. *Fees to open the plan.* Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. It does not require a statement of fees to use or maintain the plan. Fees to use or maintain the plan (such as membership fees and transaction charges), however, may be required to be disclosed under § 226.16(b)(1) and (3).

4. *Statements of tax deductibility.* An advertisement referring to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest."

5. *Misleading terms prohibited.* Under § 226.16(d)(5), advertisements may not refer to home equity plans as "free money," or use other misleading terms. For example, an advertisement could not state "no closing costs" if consumers may be required to pay any closing costs, such as recordation fees.

6. *Inapplicability of closed-end rules.* Advertisements for home equity plans are governed solely by the requirements in section 226.16, and not by the closed-end advertising rules in section 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

Subpart C—Closed-End Credit

Section 26.17—General Disclosure Requirements

22. Comment 17(b)–2 would be amended by revising the first sentence to read as follows:

17(b) Time of disclosures

* * * * *

2. *Converting open-end to closed-end credit.* [If] Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction.

* * *

23. Comments to 17(c) would be amended by adding four sentences and parenthetical material at the end of the introductory paragraph of comment 17(c)(1)–4; by adding a fourth bullet paragraph before the last paragraph of comment 17(c)(1)–11; and by adding a new comment 17(c)(1)–17, to read as follows:

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

* * * * *

4. *Consumer buydowns.* * * * The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosures for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. (See comment 17(c)(1)–3 for the analogous rules concerning third-party buydowns.)

* * * * *

11. *Other variable-rate transactions.* * * * ►• "Price level adjusted mortgages," or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate.◄

* * * * *

►17. *Special rules for tax refund anticipation loans.* Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment when the refund is made, and if the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a pre-authorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors typically charge fees for RALs, which may include fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation:

- If repayment of the loan is required when the refund is delivered (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. (See comment 17(c)(5)–1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date, as determined by applicable law.)
- If the consumer is required to repay more than the amount borrowed, the difference is finance charge. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without any loan), the difference should be included in the finance charge.

* * * * *

Section 226.19—Certain Residential Mortgage Transactions

24. Comment 19(a)(1)–3 would be amended by adding parenthetical material after the third sentence to read as follows:

19(a)(1) Time of Disclosure

3. *Written application.* * * * (See comment 19(b)–3 for the factors to be considered in determining whether or not the transaction involves an intermediary agent or broker.)

* * *

25. Comments to 19(b) would be amended by adding parenthetical information after the second sentence and revising the fifth sentence to comment 19(b)–2; by redesignating comments 19(b)–3 and –4 to be comments 19(b)–4 nd –5, respectively; by adding new comment 19(b)–3; and by adding a third bullet before the last sentence of comment 19(b)–5 to read as follows:

19(b) Certain variable-rate transactions

* * * * *

2. *Timing.* * * * ►(See comment 19(b)–3 for the factors to be considered in determining whether or not the transaction involves an intermediary agent or broker.)◄ * * * ►Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, in ◄ [In] cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion. * * *

►3. *Intermediary agent or broker.* A legal agent of the creditor (as determined by applicable law) is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker," the following factors should be considered:

- The percentage of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total applications submitted by a broker in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" or the creditor during the next period.
- The percentage of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only when the creditor has such information.) The greater the percentage of the total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.
- The amount of work done by the broker on an application (such as negotiationg, processing, and closing). The more work that the broker performs on an application for a creditor (and thus the longer the time the application is held by the broker), the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

An example of an "intermediary agent or broker" is a broker who, customarily within a brief time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. During this time, the broker may request a credit report and an appraisal. Furthermore, the broker has been responsible

for only a small percentage of the applications received by the creditor.►

* * * * *

5. *Example of variable-rate transactions.* * * *

►• "Price level adjusted mortgages," or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans and disclosures concerning changes in the interest rate, such as under § 226.19(b)(2)(viii) and (x), also are not applicable. (See comment 30–1 regarding the inapplicability of interest rate limitations to price level adjusted mortgages.)◄

* * * * *

Section 226.23—Right of Rescission

28. Comment 23(f)–8 would be amended by revising the second sentence to read as follows:

23(f) Exempt transactions

* * * * *

8. *Converting open-end to closed-end credit.* * * * As provided in the commentary to § 226.17(b) ►concerning transactions not subject to § 226.5b◄, closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. * * *

* * * * *

Subpart D—Miscellaneous

Section 226.25—Record Retention

27. Comment 259(a)–4 would be added to read as follows:

25(a) General rule

* * * * *

► 4. *Home equity plans.* In home equity plans that are subject to the requirements of § 226.5b, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)–2 pertaining to permissible methods of retaining the required disclosures.)◄

* * * * *

Section 226.28—Effect on State Laws

28. Comments 28(d)–1 through 28(d)–3 and a heading would be added to read as follows:

►28(d) Special rule for credit and charge cards

1. *General.* The standard that applies to preemption of state laws as they affect transactions of the type subject to §§ 226.5a and 226.9(e) differs from the preemption standards generally applicable under the Truth in Lending Act. The Fair Credit and Charge Card Disclosure Act fully preempts state laws relating to the disclosure of credit information in consumer credit or charge card applications or soliciations. For example, a state law requiring disclosure of credit terms in direct mail solicitations for consumer credit card accounts would be preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also would be preempted, even as it applied to applications initiated by the consumer rather than the issuer, because the state law relates to the disclosure of credit information in applications or solicitations within the general field of preemption, that is, consumer credit and charge cards.

2. *Limitations on field of preemption.* Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law requiring disclosures in applications and solicitations for credit and charge cards that may be used for both consumer and business purposes would be preempted as it applied to applications and solicitations for consumer-purpose cards, but not as it applied to applications and solicitations for business-purpose cards. (Whether, as a result, the state law would be voided in its entirety would have to be determined under state law.) Preemption under this statute also does not extend to state laws applicable to home equity plans; preemption determinations in this area would be based on the Home Equity Loan Consumer Protection Act, as implemented in § 226.5b of the regulation.

3. *Laws not preempted.* State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or renewal notices are not preempted under § 226.28(d). In addition, state laws regulating the terms of credit and charge card accounts are not preempted, nor are laws preempted that regulate the form or content of information unrelated to the information required to be disclosed under §§ 226.5a and 226.9(e). Finally, state laws concerning the enforcement of the requirements of §§ 226.5a and 226.9(e) and state laws prohibiting unfair or deceptive acts or practices concerning credit and charge card applications, solicitations and renewals are not preempted. Examples of laws that would not be preempted include:

• A state law that requires card issuers to offer a grace period or that prohibits certain fees in credit and charge card transactions.

• A state retail installment sales law or a state plain language law, except to the extent that it regulates the disclosure of credit information in applications, solicitations and renewals of accounts of the type subject to §§ 226.5a and 226.9(e).

• A state law requiring notice of a consumer's rights under antidiscrimination or similar laws or a state law requiring notice about credit information available from state authorities.◄

* * * * *

Section 226.30—Limitations on Rates

29. Comment 30–1 would be amended by revising the second bullet paragraph; by revising the first sentence in the fourth bullet paragraph; and by adding a sixth bullet paragraph before the last paragraph to read as follows. The paragraph after the second bullet paragraph is republished.

1. *Scope of coverage.* * * * Examples of credit obligations subject to this section include: * * *

• Dwelling-secured open-end credit plans ►entered into before November 7, 1989,◄ that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate—periodic rate and corresponding annual percentage rate—during the term of the plan.

In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include: * * *

• Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may [but does not have a legal obligation to,] renew at maturity. * * *

►• Price level adjusted mortgages," or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation.◄

* * * * *

30. Comment 30–11 would be amended by revising the fourth sentence; by removing the fifth sentence; and by adding a sentence after the fourth sentence, to read as follows:

11. *Increasing the maximum interest rate—general rule.* * * * Furthermore, where an open-end plan has a fixed maturity and a creditor renews the plan at maturity, [converts the plan to closed-end credit, without having a legal obligation to renew or convert,] or ►enters into a closed-end credit transaction,◄ a new maximum interest rate may be set at that time. [If, under the initial agreement, the creditor is obligated to renew or convert the plan, the maximum interest rate originally imposed cannot be increased upon renewal or conversion (unless, of course, a new obligation is entered into).] If the open-end plan provides for a repayment phase, the maximum interest rate originally imposed cannot be increased when the repayment phase begins.◄ * * *

Appendix G—Open-End Model Forms and Clauses

33. Comments app. G–5 through app. G–7 would be added to read as follows:

►5. *Models G–10(A) through 10(C).* Models G–10(A) and G–10(B) illustrate the tabular format for providing the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(A) illustrates the permissible inclusion in the tabular format of all of the disclosures. Model G–10(B) contains only the disclosures required to be included in the table, while the three additional disclosures are shown outside of the table. The two forms also illustrate two different levels of detail in disclosing the grace period, and different arrangements of the disclosures. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table. Disclosures may be arranged in an order different from that in model forms G–10(A), (B), and (C); may be arranged vertically or horizontally; need not be highlighted aside from being included in the table; and are not required to be in any particular type size. Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G–10(B) may be used in any disclosure. While proper use of the model forms will be deemed to comply with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of "grace period") if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

6. *Models G–11 and G–12.* Model G–11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public. Model G–12 is a model clause for the disclosure required under § 226.5a(f) when a charge card accesses an open-end plan offered by another creditor.

7. *Models G–13(A) and G–13(B).* These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosure required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G–13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.◄

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Board of Governors of the Federal Reserve System, November 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–27270 Filed 11–21–89; 8:45 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 749

Records Preservation Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendment.

SUMMARY: Part 749 of the NCUA Regulations (12 CFR part 749) sets forth requirements for records preservation for federally-insured credit unions. The National Credit Union Administration Board, as part of its periodic review of its regulations, has reviewed part 749. Except for one technical change, the NCUA Board believes that part 749 is not in need of revision. The NCUA board requests public comment on whether any additional modification to part 749 is necessary.

DATE: Comments must be received on or before February 20, 1990.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Roy DeLoach, Staff Attorney, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The current control number for part 749 is 3133–0032. No change in the collection requirements is suggested.

Background

Part 749 establishes minimum requirements for records preservation with which all federally-insured credit unions must comply. The records preservation program of off-site storage of duplicate vital records is intended to provide financial and other necessary data for reconstruction purposes in the event of a catastrophe. The last major revision of part 749 was made in 1981. (*See* 46 FR 17188 (March 18, 1981).) At that time, the regulation was substantially deregulated. It remains in that form today. In 1982, the NCUA Board removed § 749.3 which addressed NCUA financed off-site storage of credit union vital records. [*See* 47 FR 8006 (February 24, 1982).) No other changes have occurred. The NCUA receives few, if any, inquiries concerning the interpretation of part 749.

Section 5190 of the Accounting Manual for Federal Credit Unions (NCUA Publication 8022) addresses records preservation and retention. Federal credit unions (FCU's) should use section 5190 of the Accounting Manual for additional guidance concerning records preservation and storage of vital records.

NCUA recently published Letter to Credit Unions #109 dated September 1, 1989, which outlined issues and risks associated with certain computer operations. Three policy statements issued by the Federal Financial Institutions Examination Council were attached. The third policy statement concerned contingency planning in the event of disaster. Credit unions may wish to review Letter 109 when formulating comments concerning part 749. Additional copies of Letter 109 may be obtained from NCUA's Administrative Office at the above address.

Presently, part 749 assigns the treasurer of the credit union the responsibility for storing duplicative vital records at a vital records storage center (*see* 12 CFR 749.1). The FCU Act and the Standard FCU Bylaws previously used the term "treasurer." The term "financial officer" is now used in the FCU Act and Bylaws. (*See* section 112 of the FCU Act, 12 U.S.C. 1761a, and article VIII, section 9 of the Standard FCU Bylaws.) In all rules issued, the NCUA Board substitutes the term "treasurer" with the term "financial officer." The financial officer of the FCU will be responsible for compliance with part 749. This change is the only change made in the proposed rule.

Regulatory Procedures

Regulatory Flexibility Analysis

The NCUA Board certifies that this proposed rule will not have a significant impact on a substantial number of small credit unions. No substantive changes to the current rule are proposed.

Executive Order 12612

This regulation currently applies to all federally-insured credit unions. No change is proposed to its application. Hence no new burdens are imposed on state entities. The NCUA Board continues to believe that this regulation should apply to state-chartered, federally-insured credit unions. All federally-insured credit unions must maintain duplicate vital records in the event original records are destroyed.

List of Subjects in 12 CFR Part 749

Credit unions, Records preservation, Vital records

By the National Credit Union Administration Board on November 13, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposed to amend 12 CFR part 749 as follows:

1. Part 749 is revised to read as follows:

PART 749—RECORDS PRESERVATION PROGRAM

Sec.

749.0 Records preservation.
749.1 Implementation.
749.2 Vital records to be stored.

Authority. 12 U.S.C. 1766, 1783 and 1789.

§ 749.0 Records preservation.

All federally-insured credit unions must maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed.

§ 749.1 Implementation.

The financial officer of the credit union is responsible for storing duplicate vital records at a vital records center. This responsibility may be delegated.

(a) The Records Preservation Program must be operational within 6 months after the credit union's insurance certificate is issued.

(b) The vital records center is defined as any location far enough from the credit union's office to avoid the simultaneous loss of both sets of records in the event of disaster.

(c) Records must be stored every 3 months, within 30 days after the end of the 3-month period. Previously-stored records may be destroyed when the current records are stored.

(d) A records preservation log will be maintained showing what records were stored, where the records were stored, when the records were stored, and who sent the records for storage.

(e) Stored records may be in any format which can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro film or fiche, magnetic tape, etc.

(f) Credit unions which have some or all of their records maintained by an off-site data processor are considered to be in compliance for the storage of those records.

§ 749.2 Vital records to be stored.

At least the following records, as of the most recent month-end, must be stored:

(a) A list of share and/or deposit and loan balances for each member's account.

(1) The list of balances will be individually identified by a name or number.

(2) Multiple loans of one account will be listed separately.

(b) A financial report which lists all of the credit union's asset and liability accounts.

(c) A list of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and be updated only when changes are made.

[FR Doc. 89-27243 Filed 11-21-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-07]

Airworthiness Directives; General Electric (GE) CF6-50/-45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require the installation of a center vent tube extension assembly on GE CF6-50/-45 series turbofan engines. The proposed AD is needed to prevent fire in the low pressure turbine (LPT) rotor cavity, which could result from a build up of combustible fuel/oil vapors due to a failed main fuel/oil heat exchanger. A fire in the LPT rotor cavity could lead to an uncontained LPT rotor failure.

DATE: Comments must be received on or before January 23, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-07, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89-ANE-07.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletin (SB) may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 270-2410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-07. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the build up of fuel/oil vapors in the LPT rotor cavity, due to a failed main fuel/oil heat exchanger, can result in a fire and possible uncontained LPT failure. There has been an incident in which the failure of a main fuel/oil heat exchanger resulted in an uncontained LPT failure and inflight shutdown due to a fire in the LPT rotor cavity. Internal leakage of the heat exchanger resulted in the build up of a combustible fuel/oil mixture. The FAA has also determined that this engine configuration did not have a center vent tube extension, thus the volatile vapors were not vented overboard. The addition of the center vent tube extension assembly will exhaust/isolate any sump fumes from the LPT cavity aft of the "D" sump. This is accomplished by extending the present center vent system through the LPT rotor and through the "D" sump either on wing or at next engine shop visit. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require installation of a center vent tube extension in the LPT rotor cavity on GE CF6-50/-45 series turbofan engines.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 397 engines, at a cost of approximately $13,500.00 per engine. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which GE CF6-50/-45 engines are installed, none of which is believed to be a small entity. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric: Applies to General Electric (GE) CF6-50/-45 series turbofan engines.

Compliance is required in accordance with the accomplishment instructions contained in GE Service Bulletin (SB) 72-395, Revision 3, dated June 30, 1989, at next shop visit after the effective date of this AD, but not later than January 1, 1992, unless already accomplished.

Note: Shop visit for the purposes of this AD is defined as induction of the engine into the shop for performance of maintenance.

To prevent failure of the low pressure turbine (LPT) due to a fire in the LPT rotor cavity, accomplish the following:

(a) Install the center vent tube extension assembly.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance time specified in this AD or approve an equivalent means of compliance with this AD.

Issued in Burlington, Massachusetts, on July 24, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-27401 Filed 11-21-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 791

[Docket No. 91162-9262]

RIN 0694-AA10

Revision of Foreign Availability Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Office of Foreign Availability (OFA) is proposing to revise part 791, "Foreign Availability," of the Export Administration Regulations. This revision is necessary in order to conform to requirements of the Omnibus Trade and Competitiveness Act of 1988 that affect the Foreign Availability program, and to reflect the Bureau's experience with the program.

DATE: All comments must received by January 8, 1990.

ADDRESS: Written comments should be sent to: Dr. Irwin M. Pikus, Director of the Office of Foreign Availability, Room SB-701, 14th Street and Pennsylvania Avenue NW., Department of Commerce, Bureau of Export Administration, Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

Comments regarding the burden estimate for the collection of the information should be sent to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; to the Office of Management and Budget, Paperwork Reduction Project (0694-0004), Washington, DC 20503; and the Director of the Office of Foreign Availability at the above address.

FOR FURTHER INFORMATION CONTACT: Joan M. Roberts, Office of Foreign Availability, U.S. Department of Commerce, Washington, DC 20230, Telephone (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Under section 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

With this notice the Department is proposing to revise part 791 of the EAR Comments from the public are desired concerning the proposed revisions. A person wishing to submit relevant information may submit it to OFA, Department of Commerce. OFA will carefully and fully consider all information received.

Background

The revision of the foreign availability regulations (part 791, EAR), is necessary because of legislative changes to the program by the Omnibus Trade and Competitiveness Act of 1988, (the "Trade Act"), and OFA's own experiences with the program. It is expected that this revision will improve the Foreign Availability process and the effectiveness of the program, thereby

enhancing national security and improving U.S. competitiveness.

In September 1988, the Department published a Federal Register notice (53 FR 36007, September 16, 1988) that amended the regulations by providing examples of evidence that claimants could provide to support claims of foreign availability. That notice sought public comment; however, the Department did not receive any. The Department has, therefore, incorporated the list of examples of evidence into part 791 of the regulations.

Omnibus Trade and Competitiveness Act of 1988

The Trade Act significantly amended section 5 (f) and (h) of the Export Administration Act of 1979. The major changes were:

—The creation of West-West foreign availability assessments both for decontrol and for denied licenses (section 5(f)(2) (A) and (B) of the EAA);
—The creation of an expedited licensing procedure for non-controlled countries (West-West) based upon foreign availability (section 5(f)(5) of the EAA);
—The establishment of new deadlines and the setting of consequences for failing to meet the statutory deadlines (i.e., automatic decontrol of the item) (section 5(f)(3)(B) of the EAA);
—A requirement for the publication of both the initiation of an assessment and the determination of foreign availability in the Federal Register (sections 5(f)(3)(B) and 5(f)(9) of the EAA);
—Different criteria for the different types of assessments (sections 5(f) (1) and (2) and 5(f)(5) of the EAA);
—The elimination of controls on items of equal or lower level of technology similar to items for which there is a finding of foreign availability (section 5(f)(8) of the EAA); and
—A definition of foreign availability for controlled countries and modifications of the definition for non-controlled countries (sections 5(f)(10) and 5(f)(2)(B) of the EAA).

The proposed regulations incorporate the above changes.

Rulemaking Requirements

1. This proposed rule is consistent with Executive Orders 12291 and 12661.

2. This proposed rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget has approved this collection under control number 0694–0004. Public reporting for this collection of information is estimated to average three hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0004), Washington, DC 20503.

3. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553, including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these proposed regulations, the rule is issued in proposed form and comments will be considered in the development of the final regulations.

Written comments should be sent to: Dr. Irwin M. Pikus, Director of Foreign Availability, Room SB–701, 14th Street and Pennsylvania Avenue NW., Department of Commerce, Bureau of Export Administration, Washington, DC 20230.

The period for comments will close January 8, 1990. The Department of Commerce will consider all comments received before the close of the comment period in developing the final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason.

The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records may be obtained from: Margaret Cornejo, Bureau of Export Administration Freedom of Information Center, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 791

Exports, Foreign availability, Science and technology, Technical advisory committees.

Accordingly, the Export Administration Regulations (15 CFR part 791) are proposed to be amended as follows:

Part 791 is revised as follows:

PART 791—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.
791.1 Introduction
791.2 Foreign Availability described
791.3 Foreign Availability assessment
791.4 Initiation of an assessment
791.5 Contents of Foreign Availability Submissions and Techical Advisory Committee Certifications
791.6 Criteria
791.7 Procedures
791.8 Eligibility for expedited licensing procedures for non-controlled countries
791.9 Appeals of negative Foreign Availability determinations
791.10 Removal of controls on less sophisticated items
Supplement No. 1—Evidence of Foreign Availability
Supplement No. 2—Items Eligible for Expedited Licensing Procedures [Reserved]

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–233 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 791.1 Introduction.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), the Under Secretary of Commerce for Export Administration directs the Office of Foreign Availability (OFA) in gathering and analyzing all the evidence necessary for the Secretary to determine foreign availability.

(b) *Scope.* These regulations apply only to the extent that items are controlled for national security purposes.

(c) *Types of programs.* There are two general programs of Foreign Availability:

(1) Foreign Availability to a controlled country. In this category are Denied License Assessments (see §§ 791.4(b) and 791.7) and Decontrol Assessments (see §§ 791.4(c) and 791.7).

(2) Foreign Availability to a non-controlled country. In this category are Denied License Assessments, Decontrol Assessments, and Evaluations of Eligibility for Expedited Licensing (see § 791.8).

(d) *Definitions.* The following are definitions of terms used in this part 791:

Allegation: See Foreign Availability Submission.

Applicant: Any person or firm as defined in § 770.2.

Assessment: An evidentiary analysis that OFA conducts concerning the foreign availability of a given item in light of the Assessment Criteria and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment Criteria: Statutorily established criteria that must be assessed for the Secetary to make a Determination with respect to foreign availability. The are "available-in-fact", "from a non-U.S. source", "in sufficient quantity so as to render the control ineffective", and "of comparable quality". (See § 791.6)

Available-in-fact: An item is available-in-fact to a country if it is produced within the country or if it may be obtained by that country from a third country. (Ordinarily, items will not be considered available-in-fact to Non-controlled Countries that are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the U.S. pursuant to the agreement of the group known as COCOM, or pursuant to an agreement under section 5(k) of the EAA ("COCOM" and "Cooperating Third Countries").) Items which are available only under a U.S. license for export or re-export are not considered available-in-fact.

Certification: A Technical Advisory Committee's statement pursuant to section 5(h)(6) of the EAA concerning the Foreign Availability of an item and the accompanying documentation for such a statement.

Claimant: Any applicant who makes a Foreign Availability Submission.

Comparable Quality: An item is of Comparable Quality to an Item controlled under these regulations if it possesses the characteristics specified in the Commodity Control List for that Item and is alike in key characteristics that include, but are not limited to:

(1) Function;
(2) technological approach;
(3) performance thresholds;
(4) maintainability and service life; and
(5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Controlled Countries: The Controlled Countries are: Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, Estonia, the German Democratic Republic (including East Berlin), Hungary, Laos, Latvia, Lithuania, Mongolian People's Republic, North Korea, Poland, Romania, the USSR, and Vietnam, and the People's Republic of China (PRC).

Decontrol: Removal of validated license requirements under the Export Administration Regulations (EAR).

Decontrol Assessment: An Assessment of the foreign availability of an Item to a country or countries for purposes of determining whether Decontrol is warranted. Such Assessments may be conducted after the Department receives a Foreign Availability Submission or a TAC Certification, or by the Secretary on his own initiative.

Denied License Assessment: A foreign availability Assessment conducted as a result of an Applicant's Allegation of foreign availability for an Item (or Items) for which the Department of Commerce has denied or intends to deny an export license. If the Secretary finds foreign availability, the Department's approval of a validated license will be limited to the Items, countries, and quantities in the application.

Determination: The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. The Determination may be preliminary or it may be final. (See § 791.7)

Expedited Licensing Eligibility Procedure Evaluation: An evaluation that OFA initiates for the purpose of determining whether an Item is eligible for the Expedited Licensing Procedure. (See § 791.8)

Expedited Licensing Procedures: Under Expedited Licensing Procedures, the Office of Export Licensing (OEL) reviews and processes an individual validated license application for the export of an eligible Item to a Non-controlled Country within statutory time limits. Licenses are deemed approved unless the OEL complies with the statutory time limits. (See § 791.8)

Foreign Availability Submission (FAS): An Allegation a Claimant makes of foreign availability, supported by Reasonable Evidence, and submits to OFA. (See § 791.5)

Item: Any good, technical data or software.

Item Eligible for Non-Controlled Country: Expedited Licensing Procedures: An Item is eligible for Expedited Licensing Procedures if it is described as such in Supplement No. 2 of section 791 of the EAR. (See § 791.8)

National Security Override (NSO): A Presidential decision to maintain export controls on an Item notwithstanding its foreign availability as determined under the EAA. The President's decision is

based on a determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, he must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 791.7.)

Non-controlled Countries: Any country not listed as a Controlled Country.

Non-U.S. Source/Foreign Source: A person located outside the United States (as defined in § 770.2 of the EAR) that makes available an Item.

Reasonable evidence: Relevant information that is credible.

Reliable Evidence: Relevant information that is credible and dependable.

Secretary: As used in this regulation, the Secretary refers to the Secretary of Commerce or his designee.

Similar Quality: An Item is of Similar Quality to an Item that is controlled under the EAR if it is substantially alike in key characteristics may that include, but are not limited to:

(1) Function;

(2) technological approach;

(3) performance thresholds;

(4) maintainability and service life; and

(5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Sufficient Quantity: The amount of an Item that would render the U.S. export control, or the denial of the export license in question, ineffective in achieving its purpose with respect to a particular country or countries. For a Controlled Country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC): A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the Export Administration Act on export control matters related to specific areas of controlled goods and technology.

TAC Certification: A statement that a TAC submits to OFA, supported by Reasonable Evidence, documented as in a Foreign Availability Submission, that foreign availability to a Controlled Country exists for an Item tht falls within the TAC's area of technical expertise.

§ 791.2 Foreign availability described.

(a) Foreign Availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, is available-in-fact to a country, is from a non-U.S. source, and is in sufficient quantities to render the U.S. export control on that item or the denial of an export license ineffective. For a Controlled Country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the export of goods or technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item or approve the license in question, unless the President exercises a National Security Override. (See § 791.7.)

(b) *Types of foreign availability.* There are two types of Foreign Availability:

(1) Foreign Availability to a controlled country; and

(2) Foreign Availability to a non-controlled country. (See § 791.7 for delineation of the Foreign Availability assessment procedures, and § 791.6 for the criteria used in determininig Foreign Availability.)

§ 791.3 Foreign availability assessment.

(a) A Foreign Availability assessment is an evidentiary analysis that OFA (OFA) conducts to assess the foreign availability of a given item under the assessment criteria. OFA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that Foreign Availability exists, the Secretary will decontrol the item or approve the license in question, unless the President exercises a National Security Override. (See § 791.7.)

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied License Assessment; and

(2) Decontrol Assessment.

(c) See § 791.8 for the evaluation of eligibility of an item for the Expedited Licensing Procedures.

§ 791.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment an applicant, claimant or Technical Advisory Committee must submit a Foreign Availability Submission or a TAC Certification of Foreign Availability to OFA. Technical Advisory Committees can only make certifications of foreign availability for controlled countries. Any denied license applicant or a claimant can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied license assessment.* An export license applicant whose export license the Department of Commerce has denied, or intends to deny on national security grounds may request OFA to initiate a Denied License Assessment by submitting a Foreign Availability Submission within 90 days of denial of the export license. As part of the Submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the validated license (or a request for reexport authorization) for the specific items, countries, and quantities listed on the application. The Denied License Assessment procedure, however, is not intended to trigger the removal of the U.S. export control on an item by incrementally providing a country with amounts that taken together would constitute a sufficient quality of an item. The Secretary will not approve on foreign availability grounds a denied export license (or a denied request for re-export authorization) if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose with respect to a particular country or countries. Moreover, the Secretary will determine whether on the bais of the Denied License Assessment a Decontrol Assessment is warranted. If so, then OFA will initiate a Decontrol Assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request OFA to initiate a Decontrol Assessment by making a Foreign Availability Submission alleging foreign availability to any country or countries to OFA.

(2) A TAC may request OFA to initiate a Decontrol Assessment at any time by submitting a TAC Certification to OFA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his own initiative, may initiate a Decontrol Assessment.

(d) All Foreign Availability Submissions and Certifications are to be submitted to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

§ 791.5 Contents of foreign availability submissions and technical advisory committee certifications.

(a) All Submissions must contain at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign Availability Submissions and TAC Certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. sources's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the item alleged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following: Foreign manufacturers' catalogs, brochures, operation or maintenance manuals; articles from reputable trade and technical publications; photographs; depositions based on eyewitness accounts; and other credible evidence. Examples of supporting evidence are provided in Supplmeent No. 1 of this part 791.

(d) Upon receipt of a Submission or TAC Certification, OFA will review it to determine whether there is sufficient evidence to support the belief that Foreign Availability may exist. If OFA finds the Submission or Certification to be lacking in supporting evidence, the Office will request additional evidence from the Claimant or Technical Advisory Committee. OFA will accept the Submission or Certification and will initiate the assessment when it determines that it has received sufficient evidence of that Foreign Availability supporting the belief that Foreign Availability may exist. For Claimant and TAC Committee initiated assessments, the time for conducting the Foreign Availability Assessment begins from the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria delineated in § 791.6 of the EAR and the examples of evidence set forth in Supplement No. 1 to this part 791 when assembling suporting evidence for inclusion in the Submission or Certification.

§ 791.6 Criteria.

(a) OFA evaluates the evidence contained in a Submission or Certification and all other evidence gathered in the assessment process in light of certain criteria that must be met before OFA can recommend a determination that foreign availability does or does not exist. In order to initiate an assessment, a Foreign Availability Submission or TAC Certification should address each of these criteria. The criteria are statutorily prescribed and are:

(1) Available-in-fact,

(2) non-U.S. source,

(3) sufficient quantity, and

(4) comparable quality.

The criteria are defined in Section 791.1(d) of these regulations.

§ 791.7 Procedures

(a) *Initiation of an assessment.* (1) Once OFA accepts a Submission or Certification of Foreign Availability, OFA will notify the claimant that it is initiating the assessment.

(2) The Bureau of Export Administration will publish in the **Federal Register** a notice that it received a Submission or TAX Certification and initiated an assessment.

(3) The Bureau of Export Administration will publish a **Federal Register** notice of the initiation of any assessment.

(4) OFA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which OFA has initiated an assessment. Each such department, agency, and contractor shall provide to OFA all relevant information that it has concerning the item. OFA will invite interested departments and agencies to participate in the assessment process (See § 791.7(e) for details).

(b) *Data gathering.* OFA will seek and consider all available information that bears upon the presence or absence of foreign availability including but not limited to that evidence set out in § 791.5 (b) and (c) of these regulations. As soon as Commerce initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* OFA conducts its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis for a recommendation for a determination that foreign availability does or does not exist.

(d) *Recommendation and preliminary determination.* (1) Upon completion of each assessment, OFA, on the basis of its analysis, recommends to the Secretary of Commerce that he make a determination either that there is or that there is not foreign availability, whichever the evidence supports. OFA's assessment upon which OFA based its recommendation accompanies the recommendation to the Secretary

(2) OFA will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing export control, or denial of the license application in question would be ineffective in achieving its purpose. For a controlled country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which

would prove detrimental to the national security of the United States.

(3) The Secretary makes his determination of foreign availability on the basis of the OFA assessment and recommendation; the Secretary's determination takes into account the evidence provided to OFA, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all Decontrol and Denied License Assessments (pursuant to section 5(f)(3) of the EAA) initiated by a Foreign Availability Submission, the Secretary makes a preliminary or initial determination within four months of the initiation of the assessment, and so notifies the applicant. The Secretary submits positive preliminary determinations for review to appropriate departments and agencies.

(5) For self-initiated or TAC-initiated decontrol assessments there is no preliminary determination; the deadlines for self-initiated and TAC-initiated assessments also are different than the deadlines for claimant-initiated assessments (See § 791.7(f) (2) and (3)).

(e) *Interagency review.* Commerce notifies all appropriate U.S. agencies and Departments upon the initiation of the assessment and invites them to participate in the assessment process. For claimant-initiated assessments, the Secretary of Commerce provides a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's preliminary determination of foreign availability. For self-initiated and TAC-initiated assessments, the Secretary will provide all interested agencies an opportunity to review and comment on the assessment.

(f) *Final determination and notification.* (1) For assessments initiated by a Foreign Availability Submission (claimant assessments), the Secretary makes a final determination of foreign availability for all Decontrol and Denied License Assessments no later than one month following his preliminary determination, and informs the applicant in writing. The Bureau of Export Administration submits for publication in the **Federal Register** a notice to the effect that:

(i) Foreign availability exists, and

(A) The requirement of a validated license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under COCOM, the U.S. Government will submit the proposed decontrol or approval of the license for COCOM review for a period of up to four months from the date of the publication of the determination in the **Federal Register** (The U.S. Government may remove the validated license requirement for exports to non-controlled countries pending completion of the COCOM review process.); or

(ii) Foreign availability does not exist.

(2) For all TAC Certification Assessments, the Secretary makes a foreign availability determination within 90 days following initiation of the assessment. OFA prepares and submits a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the requirement of a validated export license; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) For self-initiated assessments there is no established deadline for a foreign availability determination; however, the Department is committed to making and publishing the foreign availability determination for self-initiated assessments within 6 months upon initiation of the assessment.

(g) *COMCOM review.* When the Secretary determines that a COCOM-controlled item is available to a controlled country, OFA submits the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for COCOM approval of the license. The Department of State submits the proposal or the license to the COCOM review process. COCOM has up to four months for review of the proposal.

(h) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (h)(7) of this section), and NSO is effective for six months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the six month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to Section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to Section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise his authority under the Act to retain the controls not withstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated pursuant to section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise his authority under the Act to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the President will notify, in writing, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has initiated the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Bureau of Export Administration will publish notices in the **Federal Register** of:

(i) The Secretary's determination of foreign availability,

(ii) The President's decision to exercise the National Security Override,

(iii) a concise statement of the basis for the President's decision, and

(iv) an estimate of the economic impact of the decision.

(7) The six month effective period for an NSO may be extended up to an additional 12 months if prior to the end of the 6 months the President certifies to Congress that the negotiations are progressing, and if he determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, the Department of Commerce will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, the Department of Commerce will decontrol the item by removing the requirement for a validated export license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, Commerce will remove the validated license requirement for the export of the item to any country that is party to the agreement to eliminate foreign availability.

(i) *Changes in foreign availability.* If OFA becomes aware of conditions, including new evidence, that casts doubt upon a previous determination that foreign availability exists or does not exist, the Office of Foreign Availability may review the evidence. If the Office finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, the Office will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and the Bureau of Export Administration will publish a **Federal Register** notice of his determination.

§ 791.8 Eligibility for expedited licensing procedures for non-controlled countries.

(a) OFA determines the eligibility of an item for Expedited Licensing Procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) OFA will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a Foreign Availability Submission; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a Foreign Availability Submission or TAC Certification, the Bureau of Export Administration will notify the claimant or TAC of the receipt and initiation of an evaluation and publish a **Federal Register** notice of the initiation of the evalaution.

(d) The criteria for determining eligibility for Expedited Licensing Procedures are:

(1) The item must be available-in-fact to the specified non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S. controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce makes a determination of foreign availability on the basis of the OFA evaluation and recommendation which takes into account the evidence the Secretaries of Defense, State, and other interested agencies provided to OFA and any other information that the Secretary considers relevant. The Secretary of Commerce will provide all interested agencies an opportunity to review and comment on the evaluation.

(f) Within 30 days of the receipt of the Foreign Availability Submission or TAC Certification, the Bureau of Export Administration will publish the Secretary's determination in the **Federal Register**, inform the Office of Export Licensing that the item is/is not eligible for expedited licensing procedures to the stated countries, and, where appropriate, amend Supplement No. 2 part 791.

(g) Following completion of a self-initiated evalaution, OFA will notify the Office of Export Licensing of the Secretary's determination and, where appropriate, amend Supplement No. 2 to part 791. (Items exported to countries listed in Supplement No. 2 to 791 will be licensed in accordance with the procedures in Section 770.14, except that the initial licensing action will be within 20 working days.)

(h) Submissions and Certifications to initiate an Expedited Licensing Procedure evaluation must be clearly designated on their face as a request for Expedited Licensing Procedure purposes, must specify the items, quantities and countries alleged eligible, and should be sent to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Ave. NW, Washington, DC 20230.

§ 791.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures set forth in 15 CFR part 789. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability shall not be subject to appeal.

§ 791.10 Removal of controls on less sophisticated items.

Where the Secretary has decontrolled an item for foreign availability reasons, he will also remove national security controls on similar items that are controlled for national security reasons and whose function, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that Department of Commerce has decontrolled for foreign availability reasons.

Supplement No. 1 to Part 791—Evidence of Foreign Availability

Below is a list of examples of evidence that the Office of Foreign Availability has found useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected.

Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A Foreign Availability Submission should include as much evidence as possible on all four of the criteria listed below. OFA combines the submitted evidence with the evidence that it collects from other sources. OFA evaluates all evidence, taking into account factors that may include, but are not limited to: information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability or reasonableness of such evidence. OFA will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to OFA. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to OFA if the submitter cannot obtain a written memorandum from the source.

OFA will amend this informational list as it identifies new examples of evidence.

Examples of Evidence of Foreign Availability

The following are intended as examples of evidence that OFA will

consider in evaluating foreign availability. OFA will evaluate all evidence according to the provisions in § 791.7(c) in order for it to be used in support of a foreign availability determination. This list is illustrative only.

Available-in-Fact

—Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);
—Copies of sales receipts demonstrating sales to foreign countries;
—The terms of a contract under which the item has been or is being sold to a foreign country;
—Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;
—Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;
—Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);
—An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;
—Evidence of the presence of sales personnel or technical service personnel in a foreign country;
—Evidence of production within a foreign country;
—Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;
—A copy of the export control laws or regulation of the source country which shows that the item is not controlled;
—A catalog or brochure indicating the item is for sale in a specific country.

Foreign (Non-U.S.) Source

—Names of foreign manufacturers of the item including, and if possible, addresses and telephone numbers;
—A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;
—A list of the components in the U.S. item and foreign item indicating model numbers and their sources;
—A schematic of the foreign item identifying its components and their sources;
—Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);
—Evidence of indigenous technology, production facilities, and the capabilities at those facilities;
—Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. export licensing requirements by the Parts and Components provision (§ 776.12).

Sufficient Quantity

—Evidence that foreign sources have the item in serial production;
—Evidence that the item or its products is used in civilian applications in foreign countries;
—Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;
—Evidence of foreign inventories of the item;
—Evidence of excess capacity in a foreign country's production facility;
—Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;
—An estimate by a knowledgeable source of the foreign country's needs;
—An authoritative analysis of the worldwide market (i.e., demand, population rate for the item for various manufactures, plant capacities, installed tooling monthly production rates, orders, sales and cumulative sales over 5–6 years).

Comparable Quality

—A sample of the foreign item;
—Operation or maintenance manuals of the U.S. and foreign items;
—Records or a statement from a user of the foreign item;
—A comparative evaluation, preferably in writing, of the U.S. and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;
—A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;
—Evidence of the interchangeability of U.S. and foreign items;
—Patent descriptions for the U.S. and foreign items;
—Evidence that the U.S. and foreign items meet a published industry, national, or international standard;
—A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;
—Evidence concerning the foreign manufacturers' corporate reputation;
—Comparison of the U.S. and foreign end item(s) made from a specific commodity tool(s), technical data or device;
—Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance and other pertinent factors.

Supplement No. 2 to Part 791 Items Eligible for Expedited Licensing Procedures—[Reserved]

Dated: November 15, 1989.

James M. LeMunyon,

Deputy Assistant Secretary For Export Administration.

[FR Doc. 89–27257 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. R–129]

RIN 2133–AA81

46 CFR Part 308

War Risk Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is proposing to amend the war risk insurance regulations (46 CFR part 308) to permit certain vessels registered in the Republic of the Marshall Islands (RMI) to become eligible to apply for war risk insurance. MARAD administers these regulations as a standby emergency program. Under the existing regulations only vessels registered under the laws of the United States, as well as certain vessels that are owned or controlled by U.S. citizens and registered under the laws of Panama, Honduras, Liberia and the Bahamas, are eligible to apply for war risk insurance interim binders. These interim binders insure vessels against liabilities resulting from war or warlike actions when commercial war risk insurance is unavailable on reasonable terms and conditions. The proposed amendment would make certain vessels registered in the RMI eligible for war risk insurance and subject to the same considerations now applicable to vessels registered under the laws of Panama, Honduras, Liberia and the Bahamas.

DATE: Comments must be received on or before January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

SUPPLEMENTAL INFORMATION: The Authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under title XII, Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1281–1293 (Act), was extended by Public Law 101–115 which was enacted into law on October 13, 1989, and which will expire on June 30, 1995. Implementing war risk insurance regulations were reissued on December 9, 1985 (50 FR 50165) to provide the terms and conditions under which war risk insurance interim binders are issued for U.S.-flag vessels and certain foreign-flag vessels owned or controlled by U.S. citizens.

As authorized by section 1203 of the Act (46 App. U.S.C. 1283), the Secretary may provide war risk insurance adequate for the needs of the waterborne commerce of the United States, if such insurance coverage cannot be obtained on reasonable terms and conditions from companies authorized to conduct an insurance business in a state of the United States. The U.S. Government's war risk insurance program is a standby emergency program. It becomes effective simultaneously with the automatic termination of ocean marine commercial war risk insurance policies. Those policies are automatically terminated upon the outbreak of war, whether declared or not, between any of the five great powers (United States, United Kingdom, France, People's Republic of China, or the Union of Soviet Socialist Republics) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

This program makes it possible for applicants to obtain war risk insurance, underwritten by the U.S. Government, when such insurance is unavailable on reasonable terms and conditions in the commercial market. It assures the continued flow of essential U.S. trade, while protecting the shipowner from loss due to risks of war.

A war risk insurance interim binder is a contract under which the U.S. Government agrees to provide the applicant with war risk insurance coverage in the interim period, after termination of commercial insurance coverage, for a fee and upon the conditions set forth in 46 App. U.S.C. 1282. An agent of MARAD issues the interim binders. War risk insurance interim binder coverage is available for hull, protection and indemnity and second seamen's (crew life, disability, loss of effects and detention).

In 1976, Public Law 94–523 amended the prior war risk authority (46 App. U.S.C. 1283) by requiring that the Secretary shall determine whether to grant war risk insurance or reinsurance to foreign-flag vessels based upon consideration of "the characteristics, the employment, and the general management of the vessel by the owner or charterer." This authority was reinstated in 1979 and 1985, and has been implemented by regulations published in the **Federal Register** on April 3, 1980 (45 FR 22041), and December 9, 1985 (50 FR 50165), respectively.

MARAD's implementing regulations restrict foreign-flag vessel eligibility for war risk insurance interim binders. They provide for a case-by-case review of foreign-flag vessels applying for war risk insurance binders to assure the continued delivery of important U.S. cargoes when commercial war risk insurance is unavailable and to make it possible for the U.S. Government to obtain the use of certain foreign-flag vessels under a Voluntary Contract of Commitment (VCC). Vessels now eligible to apply under MARAD regulations are those that are documented under the laws of the United States (except sport fishing vessels), as well as vessels not more than 20 years old that are registered under the laws of Panama, Honduras, Liberia and the Bahamas.

Vessels registered under the laws of the RMI would become eligible under this proposed rule. Owners of these foreign-flag vessels must be U.S. citizens, or U.S. citizen-owned corporations, or the vessels must be under the operational control of U.S. citizens. These vessels cannot be subject to requisition for title or use by any national government, other than the U.S. Government. Further, the foreign country in which the vessel is registered may not have a statutory restraint preventing the U.S. Government from requisitioning a U.S. citizen-owned or controlled vessel registered in that foreign country.

Eligible foreign-flag vessels that qualify for war risk interim binders are those that are: (1) Substantially engaged in the foreign commerce of the United States (considered to be so if they carry 30 percent of net cargo tonnage, on a semiannual basis, in the U.S. foreign commerce); (2) product tankers up to 90,000 deadweight tons; (3) dry cargo vessels; (4) heavy lift vessels; (5) refrigerated vessels; (6) and other classes of vessels in short supply in the U.S.-flag fleet, with special capabilities.

If a vessel meets any of these criteria, the owner must affirm that it will: (1) Make the vessel available during a U.S. national emergency to serve the U.S. economy or cooperate with U.S. military authorities under section 902 of the Act (46 App. U.S.C. 1242); (2) maintain it in its eligible category; and (3) report its location to the U.S. Coast Guard.

Vessels owned or controlled by U.S. citizens and registered under the laws of a foreign government are subject to the laws of the country of registry. Such laws may prevent U.S. citizens or U.S. operators of a foreign-flag vessel from making that vessel available to the U.S. Government during periods of U.S. national emergency. MARAD's regulations require that applicants for war risk insurance on a foreign-flag vessel submit with their application a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a VCC with the U.S. Government (46 CFR 308.3(d)(4)). The VCC between the U.S. Government (MARAD) and the vessel's U.S. citizen applicant makes that vessel available to the United States during any period in which vessels may be requisitioned under section 902 of the Act (46 App. U.S.C. 1242), i.e., whenever the President proclaims that there is a national emergency or that security or the national defense make it advisable.

This NPRM is issued in recognition of legislation enacted by the RMI in 1987 creating a ship registry. The RMI became a sovereign nation on October 21, 1986, with the signing of a Compact of Free Association (Pub. L. 99–239), which creates a special relationship between the United States and the Republic of the Marshall Islands. Under the terms of the Compact, the RMI has turned over its defenses to the United States in return for a pledge of foreign aid for a period of 15 years. The Compact is renewable at the end of this period.

Under the Compact of Free Association, The Marshalls are embarking upon an aggressive program of economic development. Provisions of the Compact assure the support and cooperation of many U.S. Federal Agencies in creating for the Marshall Islands those social services and economic services enjoyed by U.S. citizens. As part of this development program, in 1987, the Marshall Islands

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passed a Maritime Act creating a ship registry. The Maritime Act has no statutory restraints preventing the U.S. Government from requisitioning a U.S. citizen-owned or controlled vessel registered in RMI.

Since the implementation of the Maritime Act of 1987, the Republic of the Marshall Islands has moved to adhere to Conventions of the International Maritime Organization (IMO) relating to maritime safety. To date, the following five treaties are in full force and effect for the Marshall Islands:

Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended, (COLREGS);
International Convention for the Safety of Life at Sea (1974) (SOLAS);
Protocol of 1978 amending International Convention for the Safety of Life at Sea;
International Load Line Convention (1966); and
International Convention for the Prevention of Pollution from Ships, 1973, as amended, (MARPOL).

The safety standards for the issuance of a permanent Certificate of Registration in the RMI are:

(1) A valid certificate issued by any of the authorized Classification Societies (American Bureau of Shipping, Lloyd's Register, Bureau Veritas, Germanischer Lloyd, Nippon Kaiji Kyokai, Norske Veritas) with respect to Cargo or Passenger Safety Equipment; Cargo or Passenger Ship Safety Construction; International Loadline; International Tonnage Measurement; Prevention of Pollution from Ships; and such other certificates as may be applicable pursuant to the IMO convention;
(2) A Certificate of Seaworthiness of the ship submitted to the Marshall Islands Maritime Authority (MIMA) by the respective authorized Classification Societies prior to the registration of the ship; and
(3) A Ship Radio Station License issued by MIMA upon completion of satisfactory inspection by a MIMA marine inspector or surveyors of authorized Classification Societies.

The following safety inspections are required:

(1) Prior to registration—A safety inspection shall be conducted to the satisfaction of a MIMA marine inspector;
(2) Annual—A MIMA Marine inspector shall conduct an annual safety inspection and also shall conduct a safety inspection at the time when a safety inspection is being carried by the surveyors of authorized classification societies: and
(3) Upon entering a U.S. port—Safety inspections by USCG may be conducted upon ship's entering U.S. ports.

As a result of a review of the RMI Maritime Act, the U.S. Navy now regards U.S. citizen-owned or controlled vessels registered in the RMI as providing available cargo capacity to be relief upon to contribute to the cargo sealift capability support complementing U.S. strategic defense requirements. The U.S. Navy has requested that MARAD provide war risk insurance for certain RMI vessels, as appropriate. MARAD believes that RMI registry would be an attractive option to some U.S. citizen owners of eligible vessel types that are now under foreign registry.

Accordingly, MARAD is proposing to amend its regulations at 46 CFR part 308 to provide that certain vessels registered in the RMI be eligible for war risk insurance interim binders. Such vessels could serve the national economy and the national defense needs of the United States.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, the economic impact has been found to be minimal.

This rulemaking does not involve any change in important Departmental policies, and is not considered significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). RMI law now allows entities registering their vessels in the RMI to qualify for U.S. Government issued war risk insurance binders, subject to enabling amendments to MARAD regulations. There are presently five vessels registered under the RMI-flag, none of which would be eligible for war risk insurance interim binders because none are owned by U.S. citizens or U.S. citizens owned corporations, or are under the operational control of U.S. citizens. The U.S. Navy has formally recommended to MARAD that eligibility for war risk insurance interim binders be extended to the RMI.

Since the rule principally affects the owners and operators of large commercial ships, the Maritime Administrator certifies that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612).

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

This rule would amend the regulations at 46 CFR part 308, which contain information collection requirements in §§ 308.3 and 308.6. The information collection for vessels that are registered in the RMI will be identical to that which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These new forms were approved for use in May 1989 (under OMB Control No. 2133–0011) and are now entitled: War Risk Insurance Application (Form MA–528); War Risk Insurance Binder (Form MA–942); Vessel Data (Form MA–828); and Underwriting Agency Agreement (Form MA–355).

List of Subjects in 46 CFR Part 308

Maritime carriers, War risks insurance.

Accordingly, 46 CFR part 308 is proposed to be amended as follows:

PART 308 [AMENDED]

1. The authority citation for part 308 continues to read as follows:

Authority: Secs. 204, 1202, 1203, 1209, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289); 49 U.S.C. 1.66.

§ 308.2 [Amended]

2. Section 308.2(a) is amended by inserting between the word "Bahamian," and the word "or," the words "Republic of the Marshall Islands."

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: November 16, 1989.

James E. Saari,

Secretary.

[FR Doc. 89–27304 Filed 11–21–89; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–491, RM–6945]

Radio Broadcasting Services; Brantley, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Crenshaw Broadcasting Company, seeking the allotment of Channel 282A to Brantley, Alabama, as that community's second local FM broadcast service. Reference coordinates for this proposal are 31–36–00 and 86–17–44.

DATES: Comments must be filed on or before January 5, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Crenshaw Broadcasting Company, Attn: Steven D. Lester, 627 Edgewood Acres, Luverne, AL 36049.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–491, adopted October 19, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27371 Filed 11–21–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–498, RM–6916]

Radio Broadcasting Services; Bethany Beach, DE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alfred R. Campagnone, proposing the allotment of Channel 278A to Bethany Beach, Delaware, as that community's second FM service. The coordinates for this allotment are North Latitude 38–32–22 and West Longitude 75–03–20.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Alfred R. Campagnone, G.M., c/o WNRK (AM) Radio Station, 496 Walther Road, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–498, adopted October 24, 1989, and released November 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27363 Filed 11–21–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–497, RM–6877]

Radio Broadcasting Services; Apalachicola, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Richard L. Plessinger, Sr., proposing the substitution of Channel 293C1 for Channel 285A at Apalachicola, Florida, and the modification of his license for Station WOYS (FM) to specify operation on the higher powered channel. Channel 293C1 can be allotted to Apalachicola in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.1 miles) east at WOYS's current transmitter site. The coordinates for this allotment are North Latitude 29–43–57 and West Longitude 84–53–24.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kenneth E. Hardman, 1200 29th Street, NW., Washington, DC 20007, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–497, adopted October 24, 1989, and released November 15, 1989. The full text of this Commission decision is

available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27367 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–485, RM–6942]

Radio Broadcasting Services; Creston, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by G.O. Radio, Ltd. seeking the substitution of Channel 267C3 for Channel 269A at Creston, Iowa, and the modification of its license for Station KITR–FM accordingly. Channel 267C3 can be allotted to Creston in compliance with the Commission's minimum distance separation requirements and can be used at Station KITR–FM's present transmitter site. The coordinates for this allotment are North Latitude 41–05–41 and West Longitude 94–22–30. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Creston or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Glenn R. Olson, President, G.O. Radio, Ltd., P.O. Box 550, Webster City, Iowa 50595 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–485, adopted October 19, 1989, and released November 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27369 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–492, RM–6900]

Radio Broadcasting Services; Detroit Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert D. Spilman, proposing the allotment of FM Channel 272C2 to Detroit Lakes, Minnesota. There is a site restriction 3.6 kilometers north of the community, Canadian concurrence will be sought for this allotment at coordinates 46–50–48 and 95–50–05.

DATES: Comments must be filed on or before January 5, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commision, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eugene T. Smith, 715 G Street, SE., Washington, DC 20003, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–492, adoped October 23, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27365 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–498, RM–6926]

Radio Broadcasting Services; Saint Robert and Sparta, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by James L. Gardner, proposing the substitution of FM Channel 243C2 for Channel 243A at Sparta, Missouri. Petitioner also requests modification of his license for Station KLTQ to specify operation on Channel 243C2. The coordinates for Channel 243C2 are 36–56–23 and 93–17–15. To accommodate the upgrade at Sparta, it is necessary to substitute Channel 255A for Channel 243A (vacant) at Saint Robert, Missouri. One application is on file for the channel at Saint Robert. The coordinates for Channel 255A are 37–49–41 and 92–10–39.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Colby M. May, May & Dunne, Chartered, 1000 Thomas Jefferson Street, NW., Suite 520, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–499, adopted October 24, 1989, and released November 15, 1989. The full text of this Commission decision is availabe for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27366 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–484, RM–6972]

Radio Broadcasting Services; Edinboro, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Wincapp Broadcasting, Inc. seeking the substitution of Channel 250B1 for Channel 250A at Edinboro, Pennsylvania, and the modification of its license for Station WMYJ accordingly. Channel 250B1 can be allotted to Edinboro in compliance with the Commission's minimum distance separation requirements with the exception of a short-spacing to Station CHTZ-FM, Channel 249B, St. Catharines, Ontario, Canada, and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 41–57–59 and West Longitude 80–06–40. Canadian concurrence as a specially negotiated allotment is required since Edinboro is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 5, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Sidney White Rhyne, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons & Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–484, adopted October 19, 1989, and released November 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27370 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–495, RM–6940]

Radio Broadcasting Services; Culebra, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Maria del Carmen Aviles seeking the allotment of Channel 293A to Culebra, Puerto Rico, as its first local FM service. Channel 293A can be allotted to Culebra in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 18–18–18 and West Longitude 65–18–06. Aviles is requested to furnish information to demonstrate that Culebra qualifies as a community for allotment purposes.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Maria del Carmen Aviles, Apt. 631, Fajardo, Puerto Rico 00648 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–495, adopted October 24, 1989, and released November 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27365 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–496, RM–6971]

Radio Broadcasting Services; Georgetown and Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coastline Communications of Carolina, Inc. seeking the Reallotment of Channel 249C2 from Georgetown, South Carolina, to Myrtle Beach, South Carolina, and the modification of its license for Station WBPR accordingly. Channel 249C2 can be allotted to Myrtle Beach in compliance with the Commission's minimum distance separation requirements and can be used at Station WBPR's present transmitter site. The coordinates for this allotment are North Latitude 33–35–27 and West Longitude 79–02–53. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Myrtle Beach.

DATES: Comments must be filed on or before January 8, 1990 and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christine D. McLaughlin, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–496, adopted October 24, 1989, and released November 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27364 Filed 11–21–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 54, No. 224

Wednesday, November 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Small Business Competitiveness Demonstration Program

AGENCY: Office of the Secretary, Assistant Secretary for Administration, USDA.

ACTION: Notice and request for information.

SUMMARY: Section 712(c) of the Business Opportunity Development Reform Act of 1988, Public Law 100–656 (the Act), as amended, requires ten participating agencies, including USDA, to "implement a program to expand small business participation in the agency's acquisition of selected products and services in 10 industry categories which have historically demonstrated low rates of small businsess participation." In accordance with the final policy directive issued by the Small Business Administration (SBA) and the Office of Federal Procurement Policy (OFPP) implementing title VII of the Act, USDA hereby announces and solicits comments on its program for expansion of small business participation in the 10 industry categories selected to be targeted. USDA also solicits information from firms wishing to participate in the program.

DATE: Comments are due in writing on or before December 22, 1989.

ADDRESS: Comments should be addressed to: Gerardo Franco, U.S. Department of Agriculture, Office of Advocacy and Enterprise, Small and Disadvantaged Business Utilization (SDBU), Room 124–W, Administration Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gerardo Franco at (202) 447–7117.

SUPPLEMENTARY INFORMATION:

Background

Title VII of the Business Opportunity Development Reform Act of 1988, Public Law 100–656, as amended, established a pilot program to test the competitiveness of small business in federal contracting know as the Small Business Competitiveness Demonstration Program (the Program). In summary, the Program is designed to test the ability of small businesses to compete in four designated industry groups (DIGS), without the assistance of set-asides and to measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's). The Program also is designed to demonstrate whether small business involvement can be increased in 10 industry categories traditionally lacking small business participation.

Ten agencies have been identified to participate in the program, which is to be conducted over a period of four years, ending on December 31, 1992.

The Program is to be conducted under the authority of section 15 of the Office of Federal Procurement Policy (OFPP) Act. The Small Business Administration (SBA) is to act as the executive agent for OFPP in conducting the test.

The policies and procedures for implementing the test are set forth in the joint SBA/OFPP final policy directive that was published in the **Federal Register** on September 12, 1989 (54 FR 37741).

The USDA Competitiveness Demonstration Program

I. Designated Industry Groups (DIGS)

The Designated Industry Groups as defined in the Act are: Construction (excluding dredging), refuse systems and related services (includng portable sanitation services), architectural and engineering services (including surveying and mapping) and non-nuclear ship repair services.

Small business set-aside procedures are not to be used to satisfy procurement requirements over $25,000 in a designated industry group, unless the USDA level of participation falls below a 40 percent level, as determined by quarterly reviews of procurement data. However, these requirements will still be considered for procurement under the 8(a) contracting authority. Quarterly reviews and reporting will be conducted by the USDA Office of Advocacy and Enterprise (OAE) Small and Disadvantaged Business Utilization (SDBU) Office, in conjunction with the Office of Operations (00). If the USDA level of participation falls below 40 percent in any designated industry group, set-aside procedures may be instituted at the discretion of OAE/SDBU. USDA agencies will be notified of any changes to Departmental solicitation practices applicable to the quarter following completion of the review indicating the need for such changes.

Procurement requirements of $25,000 or less within he DIGS are to be reserved for ESB's, provided that a reasonable expectation exists that competitive responses will be received from two or more responsible concerns. If no such expectation exists, requirements are to be procured in accordance with the set-aside provisions of Federal Acquisition Regulation (FAR) subpart 13.105, subpart 19.5 or 19.8.

USDA agencies shall undertake all practical efforts to identify potential ESB's for solicitation and inclusion in their source lists. Size information may be obtained from previous responses to solicitations; prescribed clauses concerning small business size; from outreach efforts conducted by the contracting activity or from any other alternative means including SBA, SDBU, Dun and Bradstreet or similar business profile lists.

II. Targeted Industry Categories (TICS)

The policy directive provides that the TICS for enhanced small business participation are to be determined by each participating agency, in consultation with SBA. Agencies are required to develop and implement a program consistent with its procurement needs and the requirements of the law. The products and services selected shall be drawn from industry categories that:

—Are the recipients of substantial purchases by the federal government;

—Have less than 10 percent of such annual purchases made from small businesses; and

—Have siginificant amounts of small business productive capacity that has not been utilized by the government.

a. Selection of the USDA TICS

In consultation with SBA, USDA has selected 10 Federal Procurement Data System (FPDS) codes suitable for inclusion in the program. The selected codes show less than 10 percent average rate of small business participation.

substantial agency procurements and potential small business capacity.

The extent of participation and of expenditures with small business was determined from historical procurement data for the previous three fiscal years (FY 86–88) and feedback from procuring activities on projected requirements. The determination as to the availability of small businesses was based on an analysis of previous small business activity in the USDA market place, consultation with SBA and Procurement Automated Source System (PASS) research by Standard Industrial Classification (SIC) and by Federal Procurement Data System codes.

The 10 Industry Categories selected for the program, as defined by FPDS codes and potential SIC codes that may be affected are:

FPDS [illegible]	Description	Four year goal (%)	Potential SIC code(s)	Applicable size standard
[illegible]	Technology Studies (Old R544)	20	8731	500 EMP
			[illegible]	$ 3.5 M
J070	Maintenance and Repair/ADP Equipment	10	7378	$12.5 M
N070	Installation of ADP Equipment	10	7373	$ 7.0 M
			7379	$12.5 M
T099	Other Photo/Mapping/Printing Services	20	2741	500 EMP
			2759	500 EMP
			7336	$ 3.5 M
			7389	$ 3.5 M
U006	Vocational/Technical Training	10	[illegible]	$ 3.5 M
			[illegible]	$12.5 M
			[illegible]	$ 3.5 M
W03[illegible]	Leasing Special Industrial Machinery	10	3555	500 EMP
			3823	500 EMP
			7359	$ 3.5 M
5810	Chemical Products	10	2813	1,000 EMP
			[illegible]	1,000 EMP
			[illegible]	500 EMP
			[illegible]	1,000 EMP
			[illegible]	500 EMP
			[illegible]	500 EMP
7021	ADP Central Processing Units	[illegible]	3571	1,000 EMP
			5734	$ 4.5 M
8105	Bags and Sacks	10	[illegible]	500 EMP
			2673	500 EMP
			2674	500 EMP
[illegible]405	Outwear—Men's	11	[illegible]	500 EMP
			2385	500 EMP

Notes: Dollar Values are in millions. EMP denotes number of employees.

For more information on size standards and definitions consult FAR Subpart 19.1 Size Standards.

b. Policy and Implementation Initiatives

- The USDA will aggressively promote increased small business participation in the targeted categories by encouraging joint efforts and teaming arrangements among capable small businesses, establishing realistic long term goals and aggresively monitoring achievements.

USDA agencies shall maximize their efforts in the selected categories and provide assistance to small businesses through increased use of set-asides and outreach activites. All TICs procurement requirements, regardless of dollar value, shall be considered for small business set-asides or 8(a) contracting pursuant to far 19.501 and 19.803, respectively. Contracting activities are required to notify the OAE/SDBU office if a requirement is not set-aside. A copy of the solicitation is to be sent along with the notification.

The SBA PASS will not be the primary source for retrieving information on available firms. In addition, the SDBU office will maintain a data base of firms capable fo performing requirements in the selected categories and will share the information with USDA agencies upon request.

Small businesses interested in participating in the Program are urged to register with PASS and to contact the SDBU office to indicate interest in the Program. When contacting SDBU please provide a brief capability statement and indicate the specific TIC, small business size and whether the firm is interested in particpating in joint ventures.

Dated: November 15, 1989.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 89–27385 Filed 11–21–89; 8:45 am]

[illegible] CODE 3410-[illegible]

Forest Service

DEPARTMENT OF THE INTERIOR

National Park Service

Cooperative Management of Greater Yellowstone Area, Montana, Idaho, and Wyoming

AGENCY: Forest Service, USDA and National Park Service, Interior.

ACTION: Notice: Plans to Develop an Interagency Framework for the cooperative management of the Greater Yellowstone Area.

SUMMARY: The Forest Service and the National Park Service give notice of plans to develop a coordination process that will result in a management document called "The Vision—A Management Framework for the Greater Yellowstone Area." The Greater Yellowstone Area is comprised of 11.7 million contiguous acres of federally owned and managed lands including

and surrouding Yellowstone and Grand Teton National Parks. National Forests wholly or partially contained in the Greater Yellowstone Area are the Targhee, Bridger-Teton, Shoshone, Custer, Gallatin, and Beaverhead National Forests. These Forests are administered from three different Forest Service Regional Offices: the Northern Region located in Missoula, Montana; the Rocky Mountain Region in Denver, Colorado; and the Intermountain Region in Ogden, Utah. Both Grand Teton and Yellowstone National Parks are administered through the Rocky Mountain Region of the National Park Service located in Denver, Colorado. The Parks and/or Forests are located in the states of Montana, Idaho, and Wyoming.

DATE: To ensure consideration, comments should be mailed to the address below by February 15, 1990.

ADDRESS: Send written comments to Greater Yellowstone Coordinating Committee, Box 2556, Billings, MT 59103.

FOR FURTHER INFORMATION CONTACT: Greater Yellowstone Coordinating Committee, Jack Troyer, Sandra Key, and Betty Schmitt, above address, or telephone (406) 657–6361 or FTS 585–6361.

SUPPLEMENTARY INFORMATION: The development of the Vision Document continues the coordination process between the Forest Service and National Park Service that began in the 1960's when Forest and Park Managers in the area formed The Greater Yellowstone Coordinating Committee. It is at the initiative of the Committee that this process is being undertaken and that its forerunner, "The Greater Yellowstone Area—An Aggregation of National Park and Forest Plans" (The Aggregation), was published in 1987. The Aggregation combines information from management plans for the National Forests and National Parks within the Greater Yellowstone Area and displays the condition and extent of resources and management activities within the Greater Yellowstone Area and projects the future condition of the region as management plans are implemented in the next 10 to 15 years.

The Aggregation will also serve as the information base for the coordinating process being announced in this **Federal Register** notice. There are presently two steps envisioned to this process. First, the agencies will develop a Vision Document that will contain goals that describe desired future conditions for the Greater Yellowstone Area and how they will be achieved (Coordinating Criteria). Implicit in these goals is the potential need to adjust current management practices so they are compatible with the goals contained in the Vision Document. This adjustment will be done through the second effort, comparison of National Park Service and Forest Service planning documents which is scheduled to begin when the Vision Document is completed in 1990.

The Vision will describe as goals the desired future conditions of lands and resources found in the Greater Yellowstone Area. The Coordinating Criteria will describe how each goal in the Vision will be reached or maintained. As appropriate, these criteria will be specific, measurable, and geographically identifiable. The Vision will also contain criteria for analyzing and monitoring resource conditions and the impact management actions will have on Park values and the values of the entire Greater Yellowstone Area. The missions of both the National Park Service and Forest Service will be preserved throughout the process. The goals and coordinating criteria will, however, provide the future emphasis for planning directions. The Vision Document and the coordinating criteria may be used as the basis for the development of uniform management prescriptions. It would be done as part of this process or as a separate process or document.

The second effort, comparison of agency planning documents such as the Regional Guides, Park Management Plans, and Forest Management Plans with the Vision Document, will be accomplished using existing planning processes and regulations while the Vision Document will be developed using a variety of public participation techniques.

The Vision will serve as an "umbrella" document which will provide a framework within which the management of the Greater Yellowstone Area can be coordinated. The document itself will contain four sections, one of which will be developed through intensive and extensive contact with the publics throughout the states of Montana, Wyoming and Idaho. It will also include contacts with publics and individuals on a national and international level.

The process of gathering and formatting the goals portion of the Vision Document will begin at once. Other sources of information that will be used to develop this document include, but are not limited to: state governments, other Federal entities, Forest and Park managers and staff, elected officials and national and international groups and agencies.

The Vision Document may contain goal statements and coordinating criteria relative to the following topics:

Wildlife management including threatened, endangered and game and non-game species; wildlife migration corridors; and biological diversity

Fire management, forest health, visual quality

Recreational use, cultural resources, and public use

Economic future of commodity users and the business community and the balance of multiple uses

Utility corridors, roadless areas, mineral leasing and geothermal and groundwater recharge areas.

Additional topics will likely be identified through the public participation process and through contacts with the other entities previously mentioned. The Vision Document will deal with issues that require management on a regional level or that transcend the existing boundaries.

It will not:

1. Serve as a Regional Plan,
2. Make specific land allocation decisions,
3. Preempt the legal decision making role of individual land managers, or
4. Address issues that are limited to the management of individual Forests or Parks.

Agencies, organizations, and other identifiable potentially affected interests and individuals will be invited by letter, newsletter, media notice, and publication of this notice to participate in identification of issues and development of goals for the Vision Document. A variety of public participation practices will be used. These include open houses, speaking engagements, seminars, conferences, newsletters, mailings, media releases, feature media events and personal contacts.

After the pubilc has had an opportunity to participate, the information will be synthesized into a draft Vision Document with draft goals and coordinating criteria. Upon completion of the draft, the public will once again be asked to comment using a more structured public participation process. Where differences exist, the Coordinating Committee will continue to work with interested parties to resolve them. Where resolution is not possible, the agencies will decide whether to include the goal and if so, how it will be written. Following this process, the Vision Document will be put in final form and will be distributed to the public.

Upon completion of the Vision Document, the second step of this process, comparison of Regional Guides and Forest and Park Plans to the Vision Document will begin. If subsequent

amendments or revisions of planning documents are indicated, they will be handled as a separate effort by each agency in compliance with applicable statutes and regulations.

The timeframe for development of the Vision Document is not extensive and the public should be cognizant of that as they plan their participation.

Specifically, the schedule is as follows:

1. Brief groups, agencies, and elected officials and invite their participation: June—October, 1989.
2. Draft goals for Vision Document: October—March, 1989–1990.
3. Publish draft Vision for public comment: Spring 1990.
4. Prepare the revised final Vision incorporating public comment: Summer 1990.

The National Park Service Manager for this process is Rocky Mountain Regional Director, Lorraine Mintzmyer. The three Regions of the Forest Service are represented by their respective Regional Foresters: Gary Cargill for Region 2, John Mumma for Region 1, and Stan Tixier for Region 4.

Dated: November 17, 1989.

For the Forest Service.

Glen E. Hetzel,

Acting Deputy Regional Forester.

Dated: November 16, 1989.

For the National Park Service.

Jack Neckels,

Acting Regional Director.

[FR Doc. 89–27413 Filed 11–21–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Report of Observations/Samples Collected by Oceanographic Programs

Form Number: NOAA Form 24–23; OMB–0648–0033

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 15 respondents; 75 reporting hours; average hours per response—.5 hours

Needs and uses: This form is used to collect information on oceanographic research that has been conducted. The information is made part of an international inventory that helps eliminate duplicate research efforts and make data more available to scientists

Affected public: State or local governments, Federal agencies or employees, non-profit institutions

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato 395–7430

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–27379 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Data Documentation Form

Form Number: NOAA Form 24–13; OMB–0648–0024

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 100 respondents; 100 reporting hours; average hours per response—.5 hours

Needs and uses: Organizations sending oceanographic data in digital form to the National Oceanographic Data Center are requested to document some scientific and ADP information about the data on the NOAA Form 24–13. The information helps make the data accessible and meaningful

Affected public: State or local governments, Federal agencies or employees, non-profit institutions

Frequency: On occasion

Respondent's obligation: Voluntary

OMB Desk Officer: Russell Scarato 395–7430

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–27380 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region)

Form number: None

Type of request: New collection

Burden: 60 respondents; 9 reporting hours; average time per response—5 minutes

Needs and uses: U.S. fish processors, joint venture companies, and fishermen's trade associations involved in the groundfish fishery in the Northwest Region of the U.S. are required to provide the tonnage of their actual and expected use of relevant species of groundfish. The information is used to establish groundfish quotas

Affected public: Individuals or households, business or other for-profit, and small businesses or organizations

Frequency: Semi-annually

Respondent's obligation: Mandatory

OMB Desk Officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–27381 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 28–89]

Proposed Foreign-Trade Zone, Grays Harbor County, Washington and Subzone for Lamb-Grays Harbor Company (Automatic Guided Vehicles); Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Grays Harbor (PGH), requesting authority to establish a general-purpose foreign-trade zone in Grays Harbor County, Washington, adjacent to the Aberdeen-Hoquiam Customs port of entry, and for subzone status at the manufacturing plant of Lamb-Grays Harbor Company (Lamb) in Hoquiam. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400), and was formally filed on November 13, 1989. The applicant is authorized to make this proposal under the Revised Code of Washington, Section 24.46.020.

The proposed general-purpose zone will involve five sites on Grays Harbor: Site 1 (292 acres), PGH Port Industrial Area, including marine terminal complex, Aberdeen and Hoquiam; Site 2 (45 acres), PGH Industrial Development District No. 1, harbor navigation channel, Hoquiam; Site 3 (132 acres), Bowerman Airfield and adjacent industrial park, Grays Harbor County; Site 4 (117 acres), PGH industrial parcel on State Highway 105, Westport; and Site 5 (2.8 acres), main dock, PGH Westport Marina, Westport.

The general purpose zone part of the application contains evidence of the need for zone services in the Grays Harbor County area. Several firms have expressed an interest in using zone procedures for warehousing/distribution of products including autos, steel, cement, and a variety of bulk metals and ores. No specific manufacturing approvals are being sought for the general-purpose zone sites at this time. Such requests would be made to the Board on a case-by-case basis.

The proposal also requests authority for subzone status for a portion (14 acres) of the manufacturing facility of Lamb-Grays Harbor Company (Lamb), located at Blain and Firman Streets in Hoquiam. The facility is used to produce automated guided vehicles (AGV's) used by paper manufacturing and publishing industries for moving large rolls of paper. Foreign-sourced components account for approximately 60 percent of the value of the finished AGV, and include electronic automatic data processing units, sensors, transmitters, controllers, steering drives, armatures, tachometers, and antennae.

Zone procedures would exempt Lamb from Customs duty payments on the foreign components used in AGV's that are exported. On domestic sales the company would be able to choose to pay duties at the rate applicable to the finished AGV's (duty-free) rather than at the rates on the components (3.7 to 8.0 percent). The applicant indicates that zone savings will help improve the company's international competiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Daniel C. Holland, District Director, U.S. Customs Service, Pacific Region, 909 First Avenue, room 2039, Seattle, Washington 98174; and Col. Philip L. Hall, District Engineer, U.S. Army Engineer District Seattle, P.O. Box C–3755, Seattle, Washington 98124–2255.

As part of its investigation, the examiners committee will hold a public hearing on December 14, 1989, beginning at 9 a.m., in the Port of Grays Harbor Commission Meeting Room, 111 South Wooding Street, Aberdeen, Washington.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by December 7, 1989. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 16, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, 421 West State Street, P.O. Box 268, Aberdeen, Washington 98520.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: November 15, 1989.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 89–27383 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration, Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and the Council's Administrative Committee will meet December 20–22, 1989, at the Hotel Pierre (De Diego Avenue), Santurce, Puerto Rico.

The Council will hold its 68th regular public meeting to discuss, among other topics, a final decision on management measures proposed in the first amendment to the Shallow-water Reef Fish Fishery Management Plan. The approximate schedulefor the Council's meeting is December 21 from 9 a.m. to 5 p.m., and December 22 from 9 a.m. to noon.

The Caribbean Council's Administrative Committee will meet December 20 from approximately 2 p.m. to 5 p.m., to discuss administrative matters related to Council operations.

Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding the agenda items. The public meetings will be conducted in English; however, simultaneous English/Spanish translations of the proceedings also will be conducted. For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–27359 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on November 16, 1989, the directive of December 16, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Macau:

Category	Adjusted 12-Mon. limit [1]
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	81,192,633 square meters equivalent.
Group I: 200–239, 300–369, 600–670 and 800–899, as a group.	78,443,416 square meters equivalent.
Sublevels in Group I: 333/334/335/833/834/835.	176,042 dozen of which not more than 82,063 dozen shall be in categories 333/335/833/835.
338	219,032 dozen.
339	929,875 dozen.
340	212,101 dozen.
341	138,349 dozen.
345	37,568 dozen.
347/348/847	536,417 dozen.
633/634/635	352,990 dozen.
640	78,155 dozen.
641/840	141/860 dozen.
642/842	78,260 dozen.
645/646	183,202 dozen.
647/648	369,577 dozen.
845/846	216,145 dozen.
Group II: 400–469, as a group	1,419,075 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–27433 Filed 11–21–89; 8:45 am]

BILLING CODE [illegible]

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral agreement between the Governments of the United States and Malaysia is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following restraint limits:

Category	12-mo restraint limit
218, 219, 220, 225–227, 313–315, 317, 326, 613/614/615/617, as a group.	65,763,089 square meters.
Sublevels within the group:	
218	4,227,627 square meters.
219	20,460,505 square meters.
220	20,460,505 square meters.
225	20,460,505 square meters.
226	20,460,505 square meters.
227	20,460,505 square meters.
313	24,426,290 square meters.
314	26,305,236 square meters.
315	20,460,505 square meters.
317	20,460,505 square meters.
326	2,818,418 square meters.
613/614/615/617	20,460,505 square meters.
Other specific limits:	
200	178,278 kilograms.
237	239,871 dozen.
300/301	1,890,825 kilograms.
331/631	1,298,213 dozen pairs.
333/334/335/835	148,877 dozen of which not more than 74,439 dozen shall be in Category 333, not more than 74,439 dozen shall be in Category 334, not more than 74,439 dozen shall be in Category 335 and not more than 74,439 dozen shall be in Category 835.
336/636	275,284 dozen.
338/339	682,495 dozen.
340/640	834,724 dozen.
341/641	1,081,832 dozen of which not more than 365,944 dozen shall be in Category 341.
342/642/842	259,122 dozen.
345	99,363 dozen.
347/348	279,489 dozen.
351/651	160,787 dozen.
363	4,764,064 numbers.
369–S [1]	515,958 kilograms.
435	14,125 dozen.
438–W [2]	11,561 dozen.
442	17,216 dozen.
445/446	27,326 dozen.
604	829,085 kilograms.
634/635	504,922 dozen of which not more than 220,338 dozen shall be in Category 635.
638/639	297,438 dozen.
645/646	227,499 dozen.
647/648	1,070,581 dozen of which not more than 749,406 dozen shall be in Category 647–K [3] and not more than 749,406 dozen shall be in Category 648–K. [4]
Group II: 201, 222–224, 229, 239, 330, 332, 349, 350, 352–354, 359–362, 369–O, [5] 400–434, 436, 438–O, [6] 439, 440, 443, 444, 447, 448, 459, 464–469, 600–603, 606, 607, 611, 618–622, 624–630, 632, 633, 643, 644, 649, 650, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group.	26,803,393 square meters equivalent.

[1] In Category 369–S, only HTS number 6307.10.2005.

[2] In Category 438–W, only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2048, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2020, 6106.90.3020, 6109.90.1540, 6110.10.2080, 6110.30.1560, 6110.90.0074 and 6114.10.0040.

[3] In Category 647–K, only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.0045.

[4] In Category 648–K, only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2010, 6104.69.2020, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050 and 6117.90.0046.

[5] In Category 369–O, only HTS numbers except 637.10.2005 in Category 369–S.

[6] In Category 438–O, only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0024.

Imports charged to these categories for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–22435 Filed 11–21–89; 8:45 am]

BILLING CODE [illegible]

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Pakistan

November 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota reopenings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral textile agreement between the Governments of the United States and Pakistan is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC [illegible]

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following restraint limits:

Category group [1]	Twelve-month restraint limit
226/313	71,585,886 square meters
315	49,433,593 square meters
331	796,278 dozen pairs
334	48,513 dozen
335	59,903 dozen
336	160,578 dozen
338	3,173,632 dozen
339	735,309 dozen
340	171,819 dozen
341	207,089 dozen
342	96,003 dozen
347/348	366,592 dozen
351	49,002 dozen
352	245,009 dozen
363	29,519,438 numbers
369–D [1]	1,111,341 kilograms of which not more than 416,753 kilograms shall be in piled dish towels—HTS number 6302.60.0010
369–R [2]	5,979,264 kilograms
300, 301, 314, 317, 326, 330, 332, 333, 345, 349, 350, 353, 354, 359, pt. 360–362, 369–S [3], and 369–O [4], as a group	69,115,775 square meters equivalent
Subgroup within Group II	
317	5,016,764 square meters
350	85,000 dozen
369–S	385,554 kilograms

Category group [1]	Twelve-month restraint limit
Group III	
218	2,257,544 square meters
219	3,762,573 square meters
220	3,344,509 square meters
229	306,481 kilograms
237	65,000 dozen
607	453,592 kilograms
613/614	14,041,360 square meters
615	14,937,616 square meters
617	3,511,735 square meters
631	535,957 dozen pairs
634	41,946 dozen
635	16,965 dozen
636	95,281 dozen
638/639	238,203 dozen
640	66,089 dozen
641	95,531 dozen
647/648	506,219 dozen
650/850	55,000 dozen
652	68,039 kilograms
665	1,133,981 kilograms

[1] In Category 369–D, dish towels in HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[2] In Category 369–R, only HTS number 6307.10.2020.
[3] In Category 369–S, only HTS number 6307.10.2005.
[4] In Category 369–O, all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (369–D); 6307.10.2020 (369–R) and 6307.10.2005 (369–S).

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral textile agreement between the Governments of the United States and Pakistan.

In carrying out the above directions, the Commissioners of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–27382 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of a Request for Bilateral Textile Consultations With the Government of the People's Republic of China to Review Trade in Category 836

November 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 6, 1989, pursuant to the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Government of the United States and the People's Republic of China, the Government of the United States requested consultations concerning dresses in Category 836, produced or manufactured in the People's Republic of China.

The U.S. Government has decided to implement a 15-month restraint limit on category 836 as set forth under the terms of the bilateral agreement. The limit will be implemented in two periods: October 6 through December 31, 1989 and January 1 through December 31, 1990. This directive establishes the level for the first period; the level for the second period will be published in a subsequent directive.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 836, under the agreement with the People's Republic of China, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will

be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 836. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States **(see Federal Register** notice 53 FR 44937, published on November 7, 1988).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 836—Dresses of Silk-Blend and Vegetable Fiber other than Cotton

September 1989.

Summary and Conclusions

U.S. imports of dresses of silk-blend and vegetable fiber other than cotton (Category 836) from China reached 166,592 dozen during the year ending June 1989, nearly four times the 44,406 dozen imported in the same period a year earlier. During the first six months of 1989 imports of silk-blend and vegetable fiber other than cotton dresses (Category 836) from China reached 138,950 dozen, more than five times the January-June 1988 level and more than double the 52,540 dozen imported in calendar year 1988. China is the number one supplier of silk-blend and vegetable fiber other than cotton dresses to the U.S. accounting for 64 percent of total category 836 imports in the first half of 1989. China accounted for 32 percent of total category imports in calendar year 1988.

Imports of dresses in Category 836 compete directly with domestically produced cotton and man-made fiber dresses (Category 336/636). The U.S. market for cotton and man-made fiber dresses (Category 336/636) is being disrupted by imports. The sharp and substantial increase of Category 836 imports from China is causing further disruption in the U.S. cotton and man-made fiber dress market.

Import Penetration and Market Share

U.S. production of cotton and man-made fiber dresses (Category 336/636) has been declining since 1982 and fell 15 percent in 1988 from 1987 to its lowest level ever. The ratio of imports to domestic production in Category 336/636 has risen from 10 percent in 1982 to 41 percent in 1988. The domestic manufacturers' share of the U.S. cotton and man-made fiber dress market declined 20 percentage points since 1982, falling from 91 percent in 1982 to 71 percent in 1988. Imports of Category 836 are exacerbating the disruption.

U.S. imports of silk-blend and vegetable fiber other than cotton dresses (Category 836) were 272,440 dozen in the year ending June 1989, 63 percent above the level in the same period in 1988. Imports continued to increase in 1989 reaching 216,461 dozen in the first six months of 1989, double the January-June 1988 level. When directly competitive Category 836 imports are included in the market analysis, the import to production ratio increases to 43 percent and the domestic manufacturers' market share falls to 70 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 99 percent of Category 836 imports from China during the first six months of 1989 entered under HTSUSA number 6204.49.0060—woven dresses of vegetable fiber other than cotton. These dresses entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable dresses.

Committee for the Implementation of Textile Agreements

November 16, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 24, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber textile products in Category 836, produced or manufactured in China and exported during the period which began on October 6, 1989 and extends through December 31, 1989, in excess of 50,293 dozen.[1]

[1] The limit has not been adjusted to account for any imports exported after October 5, 1989.

Textile products in Category 836 which have been exported to the United States on and after January 1, 1990 shall remain subject to the Group IV limit established for the period January 1, 1990 through December 31, 1990.

Textile products in Category 836 which have been exported to the United States prior to October 6, 1989 shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–27434 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Requests for Bilateral Consultations With the Government of Thailand on Certain Cotton and Man-Made Fiber Textile Products

November 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: *Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States requested consultations with the Government of Thailand regarding cotton and man-made fiber textile products in Categories 314 and 614 (October 30, 1989) and Categories 336/636 and 647/648 (October 31, 1989), produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Thailand, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 314, 614, 336/636 and 647/648, produced or manufactured in Thailand and exported during the twelve-month periods which began, in

the case of Categories 314 and 614, on October 30, 1989 and extends through October 29, 1990; and, in the case of Categories 336/636 and 647/648, on October 31, 1989 and extends through October 30, 1990, at the following levels:

Category	Call levels
314	25,191,959 square meters
336/636	93,787 dozen
614	12,026,288 square meters
647/648	542,063 dozen

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 314, 614, 336/636 and 647/648, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 314, 614, 336/636 and 647/648. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Shcedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 314–Cotton Poplin and Broadcloth Fabric

October 1989

Import Situation and Conclusion

U.S. imports of cotton poplin and broadcloth fabric–category 314–from Thailand reached 24,710 square meters in the year ending August 1989, 33 percent above the 18,155,690 square meters imported a year earlier. During the first eight months of 1989, Thailand shipped 17,060,055 square meters, 43 percent above their January-August 1988 level and 90 percent of their total calendar year 1988 level. In the year ending August 1989, Thailand was the third largest supplier and the largest uncontrolled supplier accounting for 13 percent of total category 314 imports.

The sharp and substantial increase of category 314 imports from Thailand is disrupting the U.S. market for cotton poplin and broadcloth fabric.

Import Penetration and Market Share

Between 1986 and 1988 U.S. cotton poplin and broadcloth fabric producers began to regain market share lost to imports as production increased and imports declined. However, in the first half of 1989, U.S. production dropped 11 percent below the January-June 1988 level and imports surged, increasing 35 percent in the first half of 1989 over the same period in 1988.

The U.S. producers' share of the cotton poplin and broadcloth fabric market dropped 10 percentage points in just six months as a result of the January-June import surge. The U.S. market share fell to 43 percent in the first half of 1989, down from 53 percent in the first half of 1988. The ratio of imports to domestic production increased to 135 percent during this same period, 52 percent above the 89 percent ratio in January-June 1988.

Duty Paid Value and U.S. Producers' Price

Approximately 94 percent of Category 314 imports from Thailand during January-August 1989 entered under HTS number 5210.11.6020–poplin and broadcloth fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing not more than 200 grams per meter square. These fabrics entered the U.S. at duty paid landed values below U.S. producers' prices for comparable fabrics.

Thailand—Market Statement

Category 614–Man-Made Fiber Poplin and Broadcloth Fabric

October 1989

Import Situation and Conclusion

U.S. imports of man-made fiber poplin and broadcloth fabric–category 614–from Thailand reached 12,319,174 square meters in the year ending August 1989, 82 percent above the 6,783,725 square meters imported a year earlier. During the first eight months of 1989, Thailand shipped 8,798,564 square meters, 77 percent above their January-August 1988 level and four percent above their total calendar year 1988 level. In the year ending August 1989, Thailand was the largest supplier accounting for nearly one-quarter of total category 614 imports.

The sharp and substantial increase of Category 614 imports from Thailand is disrupting the U.S. market for man-made fiber poplin and broadcloth fabric.

Import Penetration and Market Share

U.S. production of man-made fiber poplin and broadcloth fabric fell to a depressed 616,724,000 square meter level in 1988, 21 percent below the 1987 production level. During the first half of 1989, U.S. production of man-made fiber poplin and broadcloth fabric increased six percent above the depressed January-June 1988 level. Annualizing the first half production would result in a 1989 production level 10 percent above the depressed 1988 level, but 13 percent below the 1987 level. U.S. imports of category 614 followed U.S. production, declining in 1988 and increasing in the first half of 1989. In the case of imports, however, the January-June 1989 imports surged, doubling the January-June 1988 level. Annualizing first half category 614 imports would result in a 1989 record level of imports, 71 percent above the 1988 level and 33 percent above the 1987 level.

The U.S. producers' share of the man-made fiber poplin and broadcloth fabric market dropped three percentage points in just six months as a result of the January-June import surge. The ratio of imports to domestic production doubled during this same period.

Duty paid Value and U.S. Producers' Price

Approximately 93 percent of category 614 imports from Thailand during the January-August 1989 period entered under HTS number 5513.11.0020–poplin and broadcloth fabrics of man-made fibers containing 85 percent or less of such fibers, mixed mainly or solely with cotton, of a weight not exceeding 170 grams per meter square. These fabrics entered the U.S. at duty paid landed values below U.S. producers' prices for comparable fabrics.

Thailand—Market Statement

Category 336/636—Cotton and Man-Made Fiber Dresses

October 1989.

Summary and Conclusions

U.S. imports of cotton and man-made fiber dresses (Category 336/636) from Thailand reached 70,598 dozen during the year ending July 1989, more than two and a half times over the 27,145 dozen imported a year earlier. During the first seven months of 1989, imports of cotton and man-made fiber dresses (Category 336/636) from Thailand reached 57,567 dozen, two and a half times the January–July 1988 level and 59 percent above the 36,175 dozen imported in calendar year 1988.

The sharp and substantial increase in Category 336/636 imports from Thailand is causing disruption in the U.S. market for cotton and man-made fiber dresses.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber dresses (Category 336/636) has been on the decline, falling from 19,843,000 dozen in 1982 to 13,287,000 dozen in 1988, a decline of 33 percent. Production for the year ending March 1989 at 13,005,000 dozen was down 12 percent from the year ending March 1988 level. The domestic manufacturers' share of the cotton and man-made fiber dress market declined 20 percentage points since 1982, falling from 91 percent in 1982 to 71 percent in 1988. The domestic market share continued to decline, falling to 70 percent for the year ending March 1989.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber dresses (Category 336/636) almost tripled, increasing from 1,933,000 dozen in 1982 to 5,493,000 dozen in 1988. Imports continued to increase in 1989, reaching 3,875,606 dozen in the first seven months of 1989, 6 percent above the level imported during the same period in 1988. The ratio of imports to domestic production quadrupled, rising from 10 percent in 1982 to 41 percent in 1988. The import to productdion ratio increased further, reaching 43 percent in the year ending in March 1989.

Duty-Paid Value and U.S. Producers' Price

Approximately 69 percent of Category 336/636 imports from Thailand during the first seven months of 1989 entered under HTSUSA numbers 6204.42.3050—women's cotton woven dresses, other than of yarn dyed fabric, 6204.43.4040—girls' man-made fiber woven dresses, other than of yarn dyed fabric and 6104.43.2010—women's man-made fiber knit dresses. These dresses entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable dresses.

Thailand—Market Statement

Category 647/648—Man-Made Fiber Trousers, Slacks and Shorts

October 1989.

Summary and Conclusions

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) from Thailand reached 419,258 dozen in the year ending July 1989, almost double the 215,347 dozen imported a year earlier. Imports of man-made fiber trousers, slacks and shorts from Thailand for the first seven months of 1989 were 308,888 dozen, over two times the 140,224 dozen imported during the same period in 1988.

The sharp and substantial increase in Category 647/648 imports from Thailand is causing disruption in the U.S. market for man-made fiber trousers, slacks and shorts.

U.S. Production and Market Share

U.S. production of man-made fiber trousers, slacks and shorts (Category 647/648) remained relatively flat between 1982 and 1988, averaging 40,901,000 dozen per year. U.S. production has been declining since 1986, falling to 37,117,000 dozen in 1987 and to 32,634,000 dozen in 1988. The 1988 level was 12 percent below the 1987 level and 20 percent below the 1982–86 average level. Production for the year ending March 1989 fell to 341,838,000 dozen, 9 percent below the amount produced during the same period a year earlier. The domestic manufacturers' share of the U.S. market declined in every year since 1982. Their share dropped 15 percentage points in just six years, falling from 76 percent in 1982 to 61 percent in 1988. The domestic market share continued to decline, falling to 59 percent for the year ending March 1989.

U.S. Imports and Import Penetration

U.S. imports of man-made fiber trousers, slacks and shorts (Category 647/648) increased 58 percent between 1982 and 1988, increasing from 13,163,000 dozen in 1982 to 20,766,000 dozen in 1988. Imports during the year ending July 1989 reached 22,937,223 dozen, 18 percent above the 19,486,738 dozen imported during the same period a year earlier. Imports are up 18 percent in the first seven months of 1989 over the same period in 1988. The ratio of imports to domestic production doubled during the past six years, rising from 32 percent in 1982 to 64 percent in 1988. The import to production ratio increased to 68 percent in the year ending in March 1989.

Duty-Paid Value and U.S. Producers' Price

The majority of Category 647/648 imports from Thailand during the first seven months of 1989 entered under HTSUSA numbers 6203.43.4010—men's woven trousers of man-made fibers; 6203.43.4030—men's shorts of man-made fibers; 6104.63.2010—women's knit trousers and breeches of man-made fibers; 6104.63.2025—girls' knit trousers and breeches of man-made fiber other than those imported as parts of playsuits; 6104.63.2030—women's man-made fiber shorts, knitted or crochetted; 6204.63.3532—women's woven shorts of artificial fibers. These trousers and shorts enterd the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 27432 Filed 11–21–89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 230, Cost Accounting Standards; DD Form 1861; and OMB Control Number 0704–0267.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 10 Hours.

Frequency of Response: Annually.

Number of Respondents: 75.

Annual Burden Hours: 750.

Annual Responses: 75.

Needs and Uses: This information is needed to apply DoD profit policy which differentiates capital employed profit among asset categories. Higher profit will be paid on equipment than buildings; no profit will be paid on land. The basic information is already included under present Cost Accounting Standards.

Affected Public: Businesses or other for-profit.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: November 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–27463 Filed 11–21–89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on December 7, 1989.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on December 7, 1989 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27464 Filed 11-21-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meetings; National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reading Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Monday, November, 27, 1989.

TIME: 11:10 a.m. (e.s.t.) until adjournment.

PLACE: National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Reading Committee of the National Assessment Governing Board will meet via teleconference on Monday, November 27, 1989 from 11:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to update the Committee on the December 5, 1989 press conference and the reading consensus process.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-27358 Filed 11-21-89; 8:45 am]

BILLING CODE 4000-01-M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming Symposium on Simplification of Need Analysis and the Delivery System hosted by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATE: December 4, 1989 beginning at 9 a.m. and ending at 5 p.m.

ADDRESS: Hyatt Regency Washington on Capitol Hill, Yorktown Room, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB-3, 7th & D Streets SW., Washington, DC 20202-7582, (202) 732-3439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a thorough study of institutional lending policy in the Stafford Student Loan Program. The Congress also requested the Advisory Committee's assistance in preparing for reauthorization of the Higher Education Act. The Symposium on Simplification of Need Analysis and the Delivery System is the first in a series of activities related to reauthorization.

The Advisory Committee will meet in Washington, DC, from 9:00 a.m. to 5:00 p.m. on December 4.

The proposed agenda includes:

(a) Overview of analytical issues relating to need analysis and the delivery system

(b) Discussion sessions on the following issues:

—Simplifying and Integrating Federal Need Analysis and Program Eligibility Models

—Exempting Disadvantaged Populations from Federal Need Analysis and Program Eligibility

—Streamlining Application and Reapplication Processes

—Minimizing the Impact of Federal Simplification/Integration on State and Institutional Aid Delivery

—Issues for Further Analysis

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets SW., Washington, DC, from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: November 13, 1989.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 89-27469 Filed 11-21-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposal To Establish Transmission Rate for Third AC Intertie Non-Federal Participation and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and opportunity for review and comment. *BPA File No:* 3ACP-89. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation 3ACP-89.

SUMMARY: In June of 1987, BPA undertook a public to describe and evaluate options for non-Federal participation in the northern portion of the Third AC (alternating current) Intertie. The Third AC Intertie would add approximately 1600 megawatts (MW) of transfer capability to the Pacific Northwest-Pacific Southwest (PNW-PSW) Intertie. BPA released its "Proposal for Non-Federal Participation in the Northern Portion of the Third AC Intertie" (Proposal) in December 1988. In the proposal, BPA reserved its share of the first 800 MW increase for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities. BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities.

In order to proceed with its review and analysis of the Proposal and to reach a final decision whether participation will be offered, PBA is beginning a transmission rate proceeding to develop a rate for participation. The rate will be a formula (referred to as pricing methodology throughout this **Federal Register** Notice) which is based on the costs associated with non-Federal use of the existing facilities and new construction required to achieve the second 800 NW increase, and which will be used to determine the up-front payment participants would make to BPA. BPA seeks Federal Energy Regulatory Commission (FERC) approval of the pricing methodology.

After the record of this rate case is filed with FERC, BPA plans to request letters of intent from PNW non-Federal scheduling utilities to determine if there is interest in participation. BPA believes that the rate adopted for participation will be an important factor in utilities' decisions to participate. If there is sufficient interest in participation, BPA will proceed with preparation of an environmental impact statement (EIS) Upon issuance of its draft EIS to the public, BPA will begin contract negotiations with potential participants if it appears that BPA will offer participation. With issuance of the final EIS, BPA will decide whether to offer participation and, if participation is offered, its exact form. Participation contracts would be effective through 2016. Those contracts could be executed any time prior to the Third AC Intertie energization date, although BPA anticipates that participation contracts would be executed in late 1991 or early 1992. Participants would make an estimated payment when participation contracts are executed. After construction of the Third AC Intertie is completed, an adjustment to the payment would be made to reflect actual costs of construction, project energization date, and the timing of the estimated payment.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's wholesale power and transmission rates. DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated later in this notice. Petitions to intervene must be received by December 28, 1989, and should be addressed as follows: Honorable Dean F. Ratzman, Hearing Officer, c/o John Ciminello-APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel-APR, P.O. Box 3621, Portland, Oregon 97208.

BPA will prefile the testimony of its witnesses on December 11, 1989. Copies will be available in BPA's Public Information Center and will be mailed to all parties to the 1989 general rate proceeding and to others requesting it.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on January 3, 1990, in the BPA Hearing room, 1002 NE. Holladay, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting any necessary cross-examination. A notice of the dates and times of the hearings will be mailed to all parties of record. Objectons to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

Dec. 22, 1989	BPA Direct Case filed. Available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.
Dec. 28, 1989	Deadline for interventions to be filed.
Jan. 3, 1990	Prehearing Conference to set schedule and act on petitions to intervene. Technical Session to discuss testimony.
Jan. 24, 1990	BPA Witness Clarification.
Feb. 7, 1990	Parties' Direct Case and Rebuttal to BPA Direct Testimony filed.
Feb. 21, 1990	Parties' Witness Clarification.
Mar. 1, 1990	BPA and Parties' Rebuttal to Parties' Testimony filed.
Mar. 12-14, 1990	Cross Examination.
Apr. 11, 1990	Draft Record of Decision.
May 11, 1990	Final Record of Decision.

ADDRESS: Written comments should be submitted to the Public Involvement Manager-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 9712.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551

Mr. Robert N. Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

The present transmission capability of the PNW–PSW Intertie transmission lines is about 6300 MW, 3200 MW on two AC transmission lines and 3100 MW on a direct current (DC) transmission line. BPA owns 100 percent of the DC transmission line and shares ownership of the AC transmission lines with Pacific Power & Light Company (PP&L) and Portland General Electric Company (PGE). BPA owns 2100 MW of the AC transmission lines.

A consortium of California parties is planning the southern portion of the Third AC Intertie Project. The California–Oregon Transmission Project would add a planned 1600 MW of transmission capability to the AC Intertie system in California, increasing transmission capability to 4800 MW.

Modifications to existing facilities and transmission additions in the PNW are being planned by the current owners to upgrade the capacity of the northern portion of the AC Intertie to the same 4800 MW transmission capability planned for the southern portion.

BPA, PGE, and PP&L will share the costs of increasing the capability of the AC Intertie in the PNW by 1600 MW as set forth in the respective BPA-PGE and BPA-PP&L Intertie Agreements. The two Intertie Agreements settled disputes between the current owners and, among other things, resulted in a negotiated agreement as to how to share costs for the increase in AC Intertie capability. Each company's capacity rights based on ownership are also defined.

On June 22, 1987, BPA received a letter from the Chairman of the U.S. House of Representatives Committee on Energy and Commerce requesting information regarding non-Federal utility participation in the Third AC Intertie. BPA was asked to provide a study on non-Federal participation.

BPA released its "Final Study of Non-Federal Participation in the Northern Portion of the Third AC Intertie" (Study) in March 1988. The Study described the options BPA had identified and examined their consequences in light of various criteria. BPA did not make a recommendation in the Study regarding whether it would offer non-Federal participation or what type of non-Federal participation might be offered.

In December 1988, BPA released its Proposal. In the Proposal, BPA reserved its share of the first 800 MW increase for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities. BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities. BPA would offer contracts to PNW scheduling utilities for use of shares of the Third AC Intertie through the year 2016. Participants would make an estimated payment upon execution of participation contracts, rather than through annual payments over the term of the participation contracts.

The pricing methodology included in the Proposal was based on BPA's cost of the second 3300 MW of the Third AC Intertie Project (*see* § IV, ¶A, *infra*) plus the depreciated replacement cost of existing facilities (separately owned by BPA or PP&L) required for operation of the Third AC Intertie. The costs included land, BPA's normal allocation of corporate overhead, interest during construction (IDC) (which can also be referred to as Allowance for Funds Used During Construction (AFUDC) on new facilities, and indirect expenses. An adjustment was to be made, using depreciated replacement cost for both existing facilities and the Third AC Intertie Project, to account for the fact that participants' contract rights would extend through 2016 rather than for the life of the facilities.

Since publication of the Proposal, BPA has conducted further review and analysis and made two revisions to the cost basis for the proposed pricing methodology. First, instead of using depreciated replacement cost as the basis for pricing, BPA now proposes to use book value for pricing existing facilities and making the adjustment for contract rights extending through 2016. Book value represents capitalized investment cost less accumulated depreciation. Second, the Proposal had included IDC as a component of the pricing methodology. BPA uses AFUDC in estimating the interest on funds used during the construction period of capital facilities. Consequently, in determining the total costs of the facilities, the pricing methodology will use the term AFUDC rather than IDC.

Participants would make an estimated payment upon execution of participation contracts. When the Third AC Intertie project is completed and all costs accounted for, an adjustment will be made to account for actual costs and energization date as well as timing of the payment.

BPA's proposed pricing methodology does not include costs associated with operation and maintenance, general plant, or replacements and renewals. Those costs would be paid annually by participants. Payment provisions and the formula for calculating the annual payments would be included in the participation contracts and are not part of the rate for which BPA is seeking FERC approval.

The testimony supporting the proposed Third AC Intertie non-Federal participation transmission rate will be available on December 22, 1989, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th, Portland, Oregon. The testimony may also be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference.

Persons seeking to become parties should not wait until the prehearing conference to obtain copies of the testimony. Rather, parties should obtain the testimony earlier so they will be prepared for the technical session on January 3, 1990. At the technical session, BPA staff will be available to informally clarify information in the testimony.

To request the testimony by telephone, call BPA's document request line: 800–641–5867 for Oregon; 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478.

II. Relevant Statutory Provisions

Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the transmission of non-Federal power. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides that

> [s]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. § 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

Rates established by BPA are effective when approved by FERC. 16 U.S.C. § 839e.

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures include, among other things, issuance of a Federal Register notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (1986), which implements the statutory requirements.

The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings." BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, the opportunity for hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as persons who may submit comments without being subject to the duties of and having the privileges of parties. Participants' written and oral comments will be made part of the official record of the case and considered by the Amdinistrator. Participants are not entitled to participate in the prehearing conference (except to the extent that their petitions for party status may be ruled on); may not cross examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before March 14, 1990. Participants' written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Office.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal party to BPA's rate proceeding must notify BPA in writing of their request. Petitions to intervene shall state the name and address of the person requesting party status and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on petitions filed in conformity with § 1010.4. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the January 3, 1990, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, first floor, 905 NE. 11th, Portland, Oregon.

The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final proposed transmission rate based on the entire record. The basis for the final proposed transmission rate will be expressed in the Administrator's Record of Decision (ROD). The Administrator will serve copies of the ROD on all parties and will file the final proposed rate, together with the record, with FERC for confirmation and approval.

IV. Third AC Intertie Non-Federal Participation Transmission Rate

The proposed participation rate will be based on BAP's costs of facilities associated with the second 800–MW increment of the Third AC Intertie Project. First, BPA's costs of the new facilities and the book value of existing facilities required for the second 800–MW increment of the Third AC Intertie are determined. Second, the AFUDC associated with the costs of the new facilities is added. Then, in computing the rate, an adjustment will be made to compensate for a contract term less than the life of the facilities.

In order to determine which costs are appropriately assigned to the first and second 800 MW of the Third Intertie Project, studies were performed to determine which facilities are needed for the AC Intertie to operate reliably at 4000 MW. Costs were assigned to the first 800 MW on the basis of which facilities were needed for reliable operation at a transfer level of 4000 MW from the PNW to the PSW. The remainder of the costs were assigned to the second 800 MW. (*see* § V, ¶ B)

Following is a more detailed discussion of the components of the pricing methodology.

A. New Facilities

The new facilities associated with the Third AC Intertie Project are made up of two separate items: (1) Third AC Intertie System Reinforcement (Reinforcement) (which includes modifications to the existing AC Intertie plus a new substation (Captain Jack) and related facilities), and (2) the Alvey-Meridian Transmission Line and related facilities. Costs associated with the Reinforcement are assigned to both the first and second 800-MW increments of the Third AC Intertie. These reinforcements will be made to the existing AC Intertie and to existing main grid facilities that will become part of the Third AC Intertie. A portion of the Reinforcement costs are assigned to the second 800 MW.

All of BPA's costs associated with the new Alvey-Meridian Transmission Line are assigned to the second 800 MW. Alvey-Meridian will be jointly owned by BPA and PP&L: BPA's portion of the line will be dedicated solely to the Third AC Intertie, while PP&L's portion will be used to serve its obligations in southern Oregon and northern California.

B. Existing Support Facilities

A portion of two existing BPA transmission lines and associated substations (now dedicated to serve BPA loads and wheeling obligations in the Willamette Valley) and a portion of an existing PP&L transmission line and associated substation facilities (now dedicated to serve PP&L loads in southern Oregon and northern California) will become part of the Third AC Intertie upon completion of the Third AC Intertie Project. A portion of the book value of these facilities is included in BPA's pricing methodology for participation.

BEST COPY AVAILABLE

C. Allowance for Funds Used During Construction

The costs used in the proposed pricing methodology include AFUDC. For purposes of calculating the estimated payment, costs will include an estimate for AFUDC. When the Third AC Intertie Project is completed and all costs accounted for, AFUDC will be calculated and capitalized consistent with FERC requirements.

D. 2016 Adjustment

If participation is offered, the contract rights will extend through calendar year 2016 (*see* § V, ¶ A, *infra*). BPA proposes to make an adjustment to compensate for a contract term less than the life of the facilities involved by deducting from the costs the present value of the estimated remaining book value of the New Facilities and the Existing Support Facilities associated with the second 800 MW at the end of 2016. The remaining book value is discounted back to the year of completion (currently expected to be 1993) using BPA's borrowing rate.

E. Application of Proposed Pricing Methodology

For purposes of estimating the price that would result from applying the proposed pricing methodology, BPA assumes that participants' payments would not be made until the Third AC Intertie Project is complete (currently estimated to be early to mid-1993). Participants' payments would, however, be made to BPA when participation contracts are signed (currently estimated to be late 1991 or early 1992, if BPA decides to offer participation). BPA would provide an adjustment to the price to reflect the earlier receipt of the payment.

When the Third AC Intertie Project is completed and all costs accounted for, an adjustment would be made to reflect BPA's actual costs, the project energization date, and the timing of the original payments. Participants would then either receive a refund from BPA or make an additional payment to BPA.

Using BPA's most recent program planning estimates of the cost of the Third AC Intertie Project, the estimated price for participation is $252/kW (in 1993 dollars). This estimate is provided to show how the pricing methodology would be applied and to give potential participants information to assist them in determining whether they want to participate in the Third AC Intertie should BPA offer partcipation. The estimate follows:

THIRD AC INTERTIE PARTICIPATION ESTIMATED PRICE [1]

[1993 $]

Cost item	Cost (Millions of $)	Price per kW [2]
New Facilities	$199	
New Facilities needed for first 800 MW of 1600 MW	−62	
Cost of Second 800 MW	137	
AFUDC on Second 800 MW	23	
Existing Support Facilities	+31	
Subtotal	191	
2016 Adjustment	−8	
Total Price	183	$252

[1] Based on mid-1989 program planning levels.
[2] The Price per kW is derived by dividing the Total Price by 275 MW.

V. Major Issues

A. Term of Rate

BPA proposes to provide participants with contract rights (*i.e.,* the rate would be effective) through the year 2016, the year that certain BPA–PP&L agreements terminate, if BPA decides to offer participation. The agreements affect the AC Intertie, and BPA is uncertain of its rights to use PP&L facilities for AC Intertie purposes after that time. New agreements to extend operation of the Third AC Intertie after 2016 will have to be negotiated with PP&L.

Also contingent on offering participation through 2016, BPA may offer participants a limited, conditional option to participate after 2016. The rate for post-2016 participation would be determined through a rate proceeding at that time.

B. Which Facilities are Appropriately Included in Pricing Methodology

Planned transmission additions to facilities owned by BPA, PP&L, and PGE will upgrade the AC Intertie from 3200 MW to 4800 MW. Existing Intertie facilities can be upgraded to 4000 MW by making reinforcements at a relatively lower cost than the remainder of the upgrade because of previous investments made by the current owners. The second 800 MW requires additional reinforcements plus the Alvey-Meridian transmission line and associated facilities. Therefore, BPA's proposed pricing methodology for participation is based on its costs associated with the second 800 MW of the 1600 MW Third AC Intertie Project.

In addition to the cost of new facilities specifically required for the second 800 MW of the Third AC Intertie (*see* § IV, ¶ A, *supra*), BPA's proposed pricing methodology includes the book value of existing transmission and substation facilities which will become part of the Third AC Intertie upon its completion (*see* § IV, ¶ B, *supra*). The existing facilities are owned by either BPA or PP&L.

Of the BPA-owned facilities, those that would be assigned to the Third AC Intertie include one-half of one circuit of a double circuit 500-kV transmission line from Buckley to Marion, one-half of a single circuit 500-kV transmission line from Marion to Alvey, and one-half of the associated terminals at the Buckley and Marion substations. These facilities are currently considered part of BPA's main grid transmission system. The book value of these facilities, which are required to achieve the increase from 4000 MW to 4800 MW, is included in calculating BPA's rate of participation.

A portion of the existing PP&L transmission line and associated substation facilities from Meridian to Malin (specifically from Meridian to BPA's new Captain Jack substation) will be dedicated to BPA's use as part of the Third AC Intertie. BPA received the right to use this transmission path as part of negotiations with PP&L which included Intertie rights. For purposes of pricing the portion of the PP&L transmission line from Meridian to the Captain Jack substation, BPA proposes to use PP&L's book value associated with that segment of the transmission line and associated substation facilities.

C. Cost Basis for Proposed Pricing Methodology

BPA proposes to price Existing Support Facilities which will become part of the Third AC Intertie using the book value of those facilities. Similarly, BPA proposes to make the adjustment to account for contract rights that extend through 2016 using the estimated remaining book value of the New and Existing Support Facilities (see § IV, ¶ C, *supra*).

VI. Proposed Third AC Intertie Non-Federal Participation Rate Schedule

Section I. Availability

This schedule shall apply to all agreements which provide for non-Federal participation in BPA's portion of the second 800 MW of the Third AC Intertie.

Section II. Rate

The one-time payment, with an adjustment to be made after completion of the Third AC Intertie and after all costs have been accounted for, shall be made upon execution of participation contracts. The formula for the participation payment is shown below.

$$\frac{A-B+C+D-E}{725\ MW} = \text{Participation Price in } \$/kW$$

Participation Price in $/kW × number of kW contracted for by participant = Participants payment to BPA

Section III. Definitions

A. A=BPA's cost of new facilities for the Third AC Intertie, which will increase the transfer capability of the PNW–PSW Intertie by approximately 1600 MW, is the construction costs (including land, BPA's normal allocation of corporate overhead, and indirect expenses) of the facilities associated with the Third AC Intertie System Reinforcement and the Alvey-Meridian Transmission Line (referred to jointly as the Third AC Intertie Project), including the following: new Captain Jack substation and related facilities; a 500-kV single-circuit transmission line from the Captain Jack substation to the California-Oregon border; other required AC Intertie improvements; 50 percent of the construction costs associated with PP&L's proposed Alvey-Meridian 500-kV single-circuit transmission line and related facilities upon BPA's exercising its option to acquire 50 percent of the incremental capacity of that transmission line; and BPA staff and related costs for all work pertaining to the preparation and review of the Third AC Intertie non-Federal Participation Proposal, Third AC Intertie non-Federal participation rate case, contract negotiations, and environmental impact statement (including public involvement activities).

B. B=BPA's cost of new facilities needed for the first 800 MW increment of the 1600 MW Third AC Intertie Project is a portion of the construction costs (including land, BPA's normal allocation of overhead, and indirect expenses) associated with the new Captain Jack substation and related facilities; a 500-kV single-circuit transmission line from the Captain Jack substation to the California-Oregon border; and other required AC Intertie improvements.

C. C=AFUDC constitutes interest on the funds used for the Third AC Intertie Project while it is under construction. AFUDC is calculated and capitalized consistent with FERC requirements. The AFUDC is that amount capitalized on the second 800 MW increment of the 1600 MW Third AC Intertie Project, or A−B.

D. D=Book value of existing BPA or PP&L support facilities needed for the second 800-MW increment of the 1600 MW Third AC Intertie is made up of the book value of one-half of one circuit of BPA's Buckley-Marion double-circuit 500-kV transmission line; the book value of one-half of a single circuit of BPA's Marion-Alvey transmission line; one-half of the associated terminals at BPA's Buckley and Marion substations; the book value of a portion of PP&L's single-circuit 500-kV Meridian-Malin transmission line between Meridian and BPA's Captain Jack substation; and the book value of a portion of PP&L's Meridian substation facilities.

E. E=Adjustment for contract termination at the end of 2016, which is the remaining book value at the end of 2016 of the facilities needed for the second 800 MW increment of the Third AC Intertie, consisting of the new facilities determined in A−B plus the AFUDC calculated in C and the existing support facilities in D, discounted at BPA's borrowing rate to the completion of the Third AC Intertie, currently planned for 1993.

F. 725 MW=BPA's share of the second 800 MW of the Third AC Intertie.

Issued in Portland, Oregon, on November 4, 1989.

James J. Jura,
Administrator.

[FR Doc. 89-27479 Filed 11-21-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-6-000, et al.]

Centel Corp.; et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Centel Corp.;

[Docket No. ES90-6-000]

November 15, 1989.

Take notice that on November 13, 1989, Centel Corporation ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to Section 204 of the Federal Power Act, to issue up to 300,000 shares of its common stock, $2.50 par value, in connection with its Seventeenth Employee Stock Purchase Program.

Comment date: December 4, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Alaska Power Administration

[Docket No. EF89-1011-000]

November 15, 1989.

Take notice that on September 29, the United States Department of Energy, acting on behalf of the Alaska Power Administration, tendered for filing an extension, on a temporary basis, of the existing rates for the Eklutna Project for a period of up to 12 months beginning October 1, 1989.

Comment date: November 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Centel Corp.

[Docket No. ER89-676-000]

November 16, 1989.

Take notice that on November 7, 1989, Centel Corporation (Centel) tendered for filing a Notice of Cancellation of Rate Schedule 88-MWH-5, FERC No. 88 Supplement 13 between Centel and the City of Coats.

Comment date: November 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. ER89-627-000]

November 16, 1989.

Take notice that on November 13, 1989, Florida Power Corporation tendered for filing a supplement to its August 30, 1989 filing in this docket, which involves rate changes for the City of Wauchula, the Town of Havana, the City of Bartow, and the City of Newberry, all located in Florida. This supplement contains Period I data for the 12-month period ending August 31, 1989.

According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: November 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER90-64-000]

November 16, 1989.

Take notice that Orange and Rockland Utilities, Inc. (Orange and Rockland) November 13, 1989, tendered for filing as a rate schedule an executed agreement dated October 1, 1989, between Orange and Rockland and Central Hudson Electric and Gas Corporation for the sale of interruptible power and energy by and between Orange and Rockland and New York State Electric and Gas Corporation.

The rate schedule provides for an economy reservation charge not to exceed $15.000/MWH scheduled and an energy charge equal to the seller's marginal system cost.

Orange and Rockland requests waiver of the notice requirements of Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective October 1, 1989 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on Central Hudson Electric and Gas Corporation.

Comment date: November 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Co.

[Docket No. ER90–63–000]

November 16, 1989.

Take notice that Southwestern Public Service Company (Southwestern) on November 9, 1989, tendered for filing proposed changes in its rates for services to four full requirement customers, Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc. of New Mexico, Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

The proposed change results in a 10 percent decrease in overall revenues or a 19 percent decrease in base rate revenues for these four customers from the currently effective base rates. The proposed decrease has obtained requisite agreement from the four customers. Southwestern has offered the same decrease to its other full requirements customers. The decrease is proposed to become effective January 1, 1990. The purpose of the decrease is to reflect in the customers' base rates Southwestern's lower costs to provide service to its customers as of January 1, 1990. These lower costs of service result primarily from (1) the termination on December 31, 1989 of Southwestern's purchase of surplus energy from Public Service Company of New Mexico of which a portion of the current reservation fee is included in the customers' existing base rates, (2) reduced capital costs, and (3) reduced federal income taxes arising from the Tax Reform Act of 1986.

Copies of the filing were served upon the four customers and the New Mexico Public Service Commission.

Comment date: November 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Co.

[Docket Nos. ER89–557–000, ER89–594–000, ER89–632–000.]

November 16, 1989.

By letters dated July 18, August 7, and August 30, 1989, Commonwealth Edison Company (Edison) submitted for filing (1) Letter Agreements with Madison Gas and Electric Company (MG&E) and Wisconsin Public Service Corporation (WPSC) providing for the sale of Short Term Power and General Purpose Energy and (2) amendments to Edison's Interconnection Agreements with Wisconsin Electric Power Company (WEPC) and Wisconsin Power and Light Company (WP&L) providing for revised service schedules for Limited Term Power, Short Term Power, Emergency Energy, Economy Energy, and General Purpose Energy. Take notice that on November 13, 1989, Edison, MG&E, WEPC, and WP&L in response to request from Commission Staff, submitted additional cost and operational data to support their proposed rates as modified.

Comment date: November 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27389 Filed 11–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–230–000, et al.]

Algonquin Gas Transmitton Company, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission

[Docket No. CP90–230–000]

November 15, 1989.

Take notice that on November 9, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 filed in Docket No. CP90–230–000 an application pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Phibro Distributors Corporation (Phibro), a marketer of natural gas, pursuant to Algonquin's blanket transportation certificate issued in Docket No. CP98–948–900 on May 19, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes, pursuant to an agreement dated August 18, 1989, to transport for Phibro, on an interruptible basis, up to 50,000 MMBtu of natural gas per peak day. Algonquin states that the estimated daily and annual quantities of gas would be 50,000 MMBtu and 18,250,000 MMBtu of gas equivalent, respectively. Algonquin states it will receive the gas at various existing points in the States of New York, New Jersey, Connecticut and Massachusetts and redeliver the gas to Orange and Rockland Utilities, Inc. in Rockland County, New York. Algonquin indicates that the transportation service under the 120-day automatic authorization of § 284.223 of the Commission's Regulations commenced on September 17, 1989, as reported to the Commission in Docket No. ST90–223–000.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Co.

[Docket No. CP90–233–000]

November 15, 1989.

Take notice that on November 9, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a request with the Commission in Docket No. CP90–233–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for Total Minatome Corporation (Total Minatome), a natural gas marketer and shipper, under Algonquin's blanket certificate issued in Docket No. CP89–948–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Algonquin proposes an interruptible transportation service for Total Manatome of up to 73,000 MMBtu equivalent of natural gas on peak and average days, and 26,645,000 MMBtu equivalent per year. Algonquin states that it would receive gas for Total Minatome's account at various existing Massachusetts and New Jersey receipt points on its pipeline system and deliver the gas, less fuel and unaccounted line loss, to the Board of Public Utility Commissioners for Norwich, New London County, Connecticut. Algonquin states that it commenced transporting natural gas for Total Minatome on September 9, 1989, under § 283.223(a) of the Regulations as reported in Docket No. ST90–110.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Algonquin Gas Transmission Co.

[Docket No. CP87–554–003]

November 15, 1989.

Take notice that on November 9, 1989, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP87–554–003, a petition to amend the certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, issued on June 7, 1989, in this proceeding to provoide: (1) A limited term reduced level of firm transportation service authorized by the June 7, 1989, Order; (2) a best efforts, transportation service in excess of the reduced firm maximum daily transportation quantity (MDTQ) requested up to the MDTQ authorized; and (3) an interim firm service to Valley Gas Company (Valley Gas), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that by *Order Issuing Certificates* issued June 7, 1989 [1] (Order), Applicant was authorized in Docket No. CP87–554–001 to provide firm transportation service up to 8,408 MMBtu equivalent per day in 1989, under Rate Schedule PSS–T, to: Bristol and Warren Gas Company (Bristol and Warren); Central Hudson Gas & Electric Corporation (Central Hudson); Colonial Gas Company (Colonial); Connecticut Light and Power Company (CL&P) [2];South County Gas Company (South County); and Valley Gas, and to construct and operate 4.3 miles of 12-, 16-, and 20-inch pipeline loops, located in Massachusetts and Rhode Island, and a meter and regulator station at Cumberland, Rhode Island.

Applicant states that it has pursued obtaining permits and easement rights to construct the facilities authorized by the Order. Applicant further states that certain facilities have been constructed or are currently being constructed. However, Applicant submits that it has been unable to obtain wetland determinations related to 0.9 miles of 16-inch loop of Applicant's G–4 system and the Cumberland Meter Station located in the State of Rhode Island, and has not obtained right-of-way for 1.2 miles of 12-inch loop of Applicant's I–4 system in Massachusetts. Applicant further submits that because of these delays in obtaining access for construction activities, it would not be able to commence full service as originally contemplated by November 15, 1989.

Applicant proposes to utilize the Rate Schedule PSS–T facilities scheduled to be completed by December 15, 1989 to render a reduced firm service in the amount of 6,726 MMBtu equivalent per day to its Rate Schedule PSS–T customers and best efforts service above that level up to the full authorized quantity until the remaining facilities are placed in service. The proposed interim and authorized MDTQ amounts are as follows:

Customer	Rate schedule PSS–T MDTO in MMBtu equivalent per day	
	Interim	Authorized
Bristol and Warren	550	813
Central Hudson	3,200	4,000
Colonial	1,778	2,222
South County	198	248
Valley Gas	800	1,000
Yankee Gas	100	125
Total	6,726	8,408

Applicant requests authority to deliver quantities on behalf of Valley Gas to Providence Gas Company (Providence) if the Cumberland Meter Station being constructed to serve Valley Gas is not in service by December 15, 1989. Applicant proposes to provide those deliveries at the existing East Providence, Rhode Island delivery point to Providence which in turn would redeliver natural gas to Valley Gas at an existing interconnection between Providence and Valley Gas.

Applicant states that it has attached to this application a copy of its tariff filing to implement Rate Schedule PSS–T which was filed on November 9, 1989 in Docket No. RP90–40–000. Applicant further states that it has requested within Docket No. RP90–40–000 an effective date of December 15, 1989 which would coincide with the scheduled in-service date for facilities.

Applicant proposes to charge the following interim rates:

Rate component	Interim rate $ per MMBtu	Initial rate $ per MMBtu
D–1	2.905	4.4513
D–2	0.3486	0.6657
Commodity	0.6066	1.1868
Authorized Overrun	1.0507	1.[illegible]

Applicant indicates that the interim rates to provide the reduced level of service were based upon an investment of $4,097,000 which is the estimated cost of facilities scheduled to be complete December 15, 1989. Applicant further indicates that the rates calculated utilized factors and the methodology consistent with the Commission's Order of June 7, 1989. Applicant states that, upon completion of the remaining facilities, it would charge the initial rate specified in the Order or the rate established in Applicant's rate case in Docket No. RP90–22.

Comment date: November 27, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corp.

[Docket No. CP88–180–002]

November 16, 1989.

Take notice that on October 31, 1989, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP88–180–002 an application pursuant to sections 7(b) and (c) of the Natural Gas Act, requesting a certificate of public convenience and necessity, authorizing Applicant to render a firm sales and transportation service and to construct and operate facilities, which amended application reflects contractual and procedural modifications to the PennEast CDS Project, all as more fully set forth in the amendment, which is on file with the Commission and open to public inspection.

Applicant states that the original CDS Project was comprised of a series of applications by Applicant, PennEast Gas Service Company (PennEast) and Algonquin Gas Transmission Company (Algonquin), which sought authorization to implement a comprehensive project to

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[1] *Texas Eastern Transmission Corporation, et. al.*, Docket No. CP87–5–003, *et al., Order Issuing Certificates.*

[2] On July 1, 1989, Yankee Gas Service Company (Yankee Gas) assumed operation of CL&P's gas business.

reduce and restructure Applicant's Zone C firm sales contract commitments to CNG Transmission Corporation (CNG) and Columbia Gas Transmission Corporation (Columbia) and utilize the gas supply made available to serve the New York and New England area natural gas markets. Applicant submits that its original application in this proceeding sought authorization to restructure Applicant's existing sales obligation to CNG and Columbia, to sell quantities of natural gas to PennEast, and to provide to CNG, Columbia and PennEast a firm transportation service.

Applicant further submits that PennEast by its application in Docket No. CP88–181–000 sought authorization to sell and transport such gas to existing customers of Applicant and Algonquin while Algonquin, by its application in Docket No. CP88–185–000 sought authorization to render a transportation service for its customers of their gas purchased from or transported by PennEast.

Applicant states that since the filing of the original CDS Project applications, certain events have transpired which require contractual and procedural modifications of the CDS Project applications.

Applicant indicates that, by Order issued July 27, 1988, the Commission denied a certificate to PennEast for certain seasonal sales services but did authorize CNG and Applicant to "unbundle" and separately provide the sales and transportation services. Applicant further indicates that, in recognition of the Commission's position on the PennEast concept, Applicant and CNG have previously revised the structure of several other PennEast projects in order to comport with the policy set forth in the Commission's July 27, 1988 Order, and that accordingly, Applicant considers it appropriate to modify the contractual structure of the CDS Project as well.

Applicant states that, subsequent to filing the original application, Applicant and Columbia entered into a new precedent agreement dated May 26, 1988, to include the 75,000 dt equivalent per day sales reduction to Columbia, proposed in the original application, as part of Applicant's customer May 27, 1988, settlement offer in Docket No. RP85–177, *et al.*

Applicant further states that, by its September 29, 1988 Order, the Commission approved without modification the substantive provisions of the May 27 Settlement, and that therefore, the reduction of Columbia's 75,000 dt per day entitlement was accomplished and the original request for abandonment in this proceeding was moot.

Applicant also states that in conjunction with the original PennEast CDS Project, CNG and Applicant agreed pursuant to a precedent agreement dated January 14, 1988, contained in the original application, that CNG's contractual entitlement pursuant to Rate Schedule DCQ or CD–1, as appropriate, to purchase gas in Applicant's Rate Zone C would be terminated in part and permanently converted in part to firm transportation service under Applicant's proposed Rate Schedule FTS–3 and in part to a firm sales service under Applicant's proposed Rate Schedule PLD. Applicant further states that in conjunction with the settlement of Applicant's Docket No. RP85–177, *et al.*, CNG and Applicant agreed to convert *inter alia* the existing firm sales service under Applicant's Rate Schedule DCQ to a new sales service under Applicant's Rate Schedule CD–1 for a corresponding level of firm sales service, and a new firm transportation service under Rate Schedule FT–1. Applicant indicates that, to reflect the restructured CDS Project and the RP85–177 settlement and pursuant to a precedent agreement dated October 27, 1989, CNG and Applicant have restated the January 14, 1988 precedent agreement to reflect that upon authorization of its application, Applicant and CNG would enter into new CD–1 and FT–1 service agreements which would reflect a reduction of 75,000 dt equivalent per day and 37,000 dt equivalent per day, respectively.

Applicant states that in light of the above changed circumstances, Applicant would adopt the CDS Project in concept and, upon authorization, would render the firm long-term sale directly to the CDS Project customers of the 150,000 dt equivalent per day available from the Columbia and CNG reduction. Applicant further states that it would propose to sell on an interim best efforts basis the 75,000 dt equivalent per day now available from the Columbia reduction, and that the amended application incorporates procedural and contractual revisions together with proposed facilities necessary to implement Applicant's adoption of the PennEast CDS Project, now designated the CD–1 Adjustment Program.

Applicant requests authorization to render a firm sale for resale service to the indicated Buyers pursuant to Rate Schedules CD–1 and SGS. The following Buyers have subscribed to the proposed CD–1 and SGS services by executing precedent agreements which provide for firm sales service to commence on November 1, 1990. The quantities of natural gas to be rendered by the proposed sales service are:

Buyer	Daily contract quantity (DT/D)	Annual contract quantity (DT)	Maximum daily standby quantity (DT/D)	Maximum yearly standby quantity (DT)
Rate Schedule CD–1:				
Boston Gas Co	29,492	10,764,580	14,746	5,382,290
The Brooklyn Union Gas Co	4,213	1,537,745	2,106	768,872
Cairo, Illinois	253	92,345	126	46,172
Central Hudson Gas & Electric Corp	5,056	1,845,440	2,528	922,720
Chambersburg, PA	54	19,710	27	9,855
Fall River Gas Co	421	153,665	210	76,832
Long Island Lighting Co	6,320	2,306,800	3,160	1,153,400
Town of Middleborough, MA	337	123,005	168	61,502
Public Service Electric & Gas Co	52,664	19,222,360	26,332	9,611,180
Southern Connecticut Gas Co	16,853	6,151,345	8,426	3,075,672
Yankee Gas Services	3,118	1,138,070	1,559	569,035
Uncommitted	330,755	11,225,575	15,377	5,612,787
Rate Schedule SGS:				
Batesville, IN	253	92,345		
Smyrna, TN	211	77,015		
Total	150,000	54,750,000	74,765	27,290,317

Applicant states that Connecticut Light and Power Company, an original Buyer, has assigned its interest to Yankee Gas Services, and Huntingburg, IN has assigned its interest to Batesville, IN. Applicant further states that Connecticut Natural Gas Co. and New Jersey Natural Gas Co. elected not to execute precedent agreements for continued participation in the restructured project. It is indicated that, inasmuch as original CDS service requests substantially exceeded the 150,000 dt per day project volume, Applicant anticipates reallocating the uncommitted volume to the other customers on a pro rata basis.

Applicant proposes, pursuant to its Rate Schedule CD–1, to sell and cause to deliver natural gas to, or for the account of, Buyers at the delivery points to be specified in an executed service agreement.

Applicant requests authorization to render interim best efforts sales to Buyers pending completion of facilities for firm service. It is indicated that, commencing on the issuance of authorization and the execution of the CD–1 or SGS service agreements and continuing until the construction of all necessary facilities and commencement of firm sales, Applicant would use its best efforts to sell up to 75,000 dt equivalent per day to Buyers. Applicant submits that, for the interim sales to Buyers, Applicant would charge its Rate Schedule CD–1 interim rate.

Applicant requests authorization to render a long-term firm transportation service to the Buyers in accordance with Applicant's Rate Schedule FT–1. Applicant proposes, under Rate Schedule FT–1, to transport, to the extent a customer is not purchasing standby sales under Rate Schedule CD–1, on a daily basis natural gas up to the following quantities:

Buyer	Contract demand quantity (DTH/D)	Annual transp. quantity (DTH)	Maximum daily standby quantity (DTH/D)
Boston Gas Co	14,746	5,382,290	14,746
The Brooklyn Union Gas Co	2,106	768,872	2,106
Cairo, Illinois	126	46,172	126
Central Hudson Gas & Electric Corp	2,528	922,720	2,528
Chambersburg, PA	27	9,855	27
Fall River Gas Co	210	76,832	210
Long Island Lighting Co	3,160	1,153,400	3,160
Town of Middleborough, MA	168	61,502	168
Public Service Electric & Gas Co	26,332	9,611,180	26,332
Southern Conn. Gas Co	8,426	3,075,672	8,426
Yankee Gas Services	1,559	569,035	1,559
Uncommitted	15,377	5,612,787	15,377
Total	74,765	27,290,317	74,765

It is indicated that under Rate Schedule FT–1, and with Applicant's consent, Buyer may tender quantities of gas in excess of the maximum daily transportation quantity on any day if the tender and transportation of such gas can be accomplished by Applicant without detriment to any other Buyers under any of the Applicant's rate schedules, if such transportation is compatible to Applicant's system operation requirements, and if Buyer has not in said month transported a quantity of gas equivalent to the maximum daily transportation quantity times the number of days in the month.

Applicant states that the CD–1 Adjustment Program proposed is identical in concept to Applicant's prior DCQ Contract Adjustment Program approved by the Commission in Docket No. CP84–429 in 1985. It is submitted that the precedent agreement provide that Buyer agrees to pay for service consistent with the rate design methodology authorized by the Commission in the DCQ adjustment program. Applicant further states that, for all service rendered by Applicant to Buyers, Buyers would pay Applicant each month the effective rates under Rate Schedules CD–1, FT–1 (or SGS) in Applicant's FERC Gas Tariff. In addition, Applicant states that Buyers would pay Applicant each month a special one-part demand charge of $7.101 per dt derived from the incremental cost of service attributable to the facilities for which Applicant is requesting authorization. Applicant submits that the rationale underlying the Commission's approval of the one-part incremental demand charge in Docket No. CP84–429 would be equally appropriate to the rate methodology proposed.

In order to provide additional capacity to deliver 150,000 dt per day of natural gas to the indicated Buyers, Applicant requests authorization to construct and operate the following facilities in Pennsylvania and New Jersey:

—Replace 5.25 miles of existing 20-inch pipeline No. 2 with 36-inch pipeline between Station No. 25 and Station No. 26. (M.P. 1389.22 to M.P. 1394.47).
—6.95 miles of 36-inch pipeline in Morris County, New Jersey.
—Installation of up to 11,000 HP gas turbine compressor unit at Station 21–A.
—Upgrade two gas turbine/compressors from 4,000 HP to 5,100 HP each at Station No. [illegible]
—Modify Applicant's Measuring and Regulating Stations Nos. 949 and 1209.
—Install scraper traps and mainline piping inside yard limits at Compressor Stations 21–A, 21, 22, 22–A, 23, 24, 24–A and 25.
—Place in idle service 160.91 miles of 24-inch pipeline between Stations 21–A and 24–A.

Applicant states that it intends to commence construction activities upon receipt of authorization in order to enable Applicant to render firm service commencing November 1, 1990.

Applicant estimates the capital cost of the proposed facilities to be $68,379,000. Applicant indicated that it would initially finance the proposed facilities from funds on hand and fund generated from operations and may later be financed as part of Applicant's long-term financing.

Applicant requests authorization to abandon 74,000 dt equivalent per day of its contract obligation with CNG under Rate Scheduel CD–1 and 37,500 dt equivalent per day of its contract obligation under Rate Schedule FT–1, commencing November 1, 1990, or the placing in service of facilities proposed herein. Applicant states that, upon authorization, and in accordance with the October 27, 1989 precedent

agreement, Applicant and CNG would enter into new service agreement reflecting the authorized abandonment.

Applicant states that extensive market data was filed by the proposed CDS customers in response to the Commission's Staff market data request of March 21, 1988, in the Northeast Open Season proceedings, and in support of the CDS project application in Docket No. CP88–181–000, and that inasmuch as its amended application is a modification of the CDS contract structure only and proposes to serve the identical customers, Applicant incorporates by reference the market data previously filed in Docket No. CP88–181–000.

Applicant further states that there is a pressing need for the project supplies this winter and requests that, pending determination and approval of the firm service, the request for interim service be severed and a limited term certificate issued in order that interim service deliveries may commence for the 1989–90 winter season.

Comment date: December 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. CNG Transmission Corp.

[Docket No. CP90–177–000]

November 16, 1989.

Take notice that on October 31, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in the above docket an application pursuant to section 7 of the Natural Gas Act and § 157.5 *et seq.* of the Federal Energy Regulatory Commission's (FERC or Commission) regulations thereunder, for a certificate of public convenience and necessity authorizing CNG to construct and operate 7.1 miles of 30″ natural gas pipeline in Tompkins County, New York, and also a measuring and regulating station (M&R), at Woodhull, Steuben County, New York. CNG states that these facilities are necessary to render a proposed transportation service, for which it also seeks certificate authorization, on behalf of 5 LDC customers who are purchasing natural gas storage from a proposed storage pool in Steuben County, New York, being developed by the Steuben Gas Storage Company under an application filed at Docket No. CP89–1684–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG requests a certificate to perform transportation services necessary to access a storage pool being developed by the Steuben Gas Storage Company in Steuben County, New York. CNG states that Steuben Gas Storage has already field, at Docket No. CP89–1684–000, an application to perform the storage component of this service and to construct the facilities necessary for 6.2 Bcf of annual storage capacity. CNG states that it must construct facilities to perform the transportation component of this project; CNG states that certificate authority to do so is also requested.

CNG's role in this storage service, CNG states, is limited to the delivery of gas to a connection with Steuben Gas Storage at Woodhull, Steuben County, New York from a receipt point with the facilities of Transcontinental Gas Pipe Line Company (Transco), Texas Eastern Transmission Corporation (Texas Eastern) or Tennessee Gas Pipeline Company (Tennessee) during injection. During withdrawal from storage, CNG states that it will make deliveries from Woodhull back to the above intersate pipelines. CNG states that it has no ownership in the storage pool itself. CNG states that Steuben will construct 13.9 miles of 12″ pipeline to connect the storage pool with CNG's proposed M&R station at Woodhull.

To accomplish its proposed transportation service, CNG states that it will construct a M&R station at Woodhull to connect with the Steuben Gas Storage Company pipeline. CNG states that it will also build 7.1 miles of 30-inch pipeline from Cayuta, New York to the Benjamin Hill gate junction in Tompkins County, New York to render this service. The proposed CNG pipeline would loop CNG's existing Lines 1 and 31 and would be Extension 1 to existing TL–473. The new pipeline would be referred to generally as TL–473 Ext 1. CNG states that no land acquisition is necessary for the Woodhull M&R station. Where TL–473 Ext.1 parallels Lines 1 and 31, existing permanent right-of-way must be widened by 14 feet. Near Newfield, New York, where the new line will not parallel existing pipe, new right-of-way is necessary. Any environmental disturbance related to the proposed facilities will be of short duration and minimal impact, CNG states, and CNG submits that approval of this application will not constitute a major federal action significantly affecting the human environment.

CNG states that the cost of these two new facilities, the pipeline and M&R station, is estimated to be $7,975,600 exclusive of filing fees. These facilities will be financed from funds on hand or will be obtained from CNG's parent company, Consolidated Natural Gas Company.

Under its proposal, CNG states that CNG will be rendering transportation services for five LDC customers who are subscribing to storage at the new Steuben Gas Storage pool. These five customers are:

Public Service Electric & Gas Company,
Commonwealth Gas Company,
Elizabethtown Gas Company,
New Jersey Natural Gas Supply Company,
City of Union, South Carolina.

CNG states that as of this filing, executed copies of the transportation agreements had not been received by CNG from all parties. Receipt of executed agreements is believed imminent, and they will be filed immediately upon receipt.

CNG states that the points of receipts and delivery to and from CNG will be identical for all of the above customers except Commonwealth. CNG will receive the shipper's gas for transportation from either Transco or Texas Eastern at their respective Leidy interconnection with CNG. CNG will then deliver the gas to Woodhull for receipt by Steuben and, ultimately, injection into the storage pool. During withdrawal periods CNG will receive gas from Steuben at Woodhull and deliver to Transco at Leidy.

CNG states that the receipt and delivery points differ from those above for shipper Commonwealth Gas. CNG will receive Commonwealth's gas at the Morrisville connection between CNG and Tennessee in Madison County, New York, or at the existing connection between CNG and Tennessee at Ellisburg, Potter County, Pennsylvania. Commonwealth's gas will then be delivered to Steuben at Woodhull for injection. Withdrawal gas will be received by CNG at Woodhull and redelivered to Tennessee at Morrisville for Commonwealth's account.

CNG states that is has existing sales and/or transportation agreements, besides the draft service agreements being filed with its application, with several of the Steuben customers. CNG states that the service being proposed by this application is in addition to that contemplated in the existing service agreements, and an incremental rate is necessitated by the facilities CNG must construct to perform this new service. CNG states that the customers have agreed to an incremental rate design as depicted below.

The following chart depicts the maximum daily transportation quantities (MDTQ) at the injection and withdrawal points of receipt, the maximum annual transportation quantity (MATQ) and the monthly demand charge for each customer:

	MDTQ injection (Dt)	MDTQ withdrawal (Dt)	MATQ (Dt)	Monthly demand charge
New Jersey Natural	7,250	11,044	2,009,000	$24,162
Elizabethtown	3,625	5,522	1,004,500	12,018
Public Service	24,686	30,769	6,840,645	74,246
Commonwealth	9,052	11,295	2,511,250	27,256
City of Union	326	[illegible]	[illegible],405	1,087
Total	44,949	59,127	12,455,800	$138,832

The rate which CNG is proposing for this transportation service, as shown above, is a one-part demand rate, payable regardless of actual quantities transported. It is an incremental rate, based upon the cost of completing the Steuben Project and the pro rate share of capacity subscribed for by each customer. Revenue anticipated under the rate design fully compensates CNG for the costs of the project. Therefore, CNG's existing customers will not be required to subsidize this service in any way.

As stated previously, Steuben has already filed for a certificate authorizing it to render the storage service. CNG states that Transco may also be filing an application to certify its proposed service under this project. CNG states that Commonwealth will currently be shipping gas on Tennessee's system on an interruptible basis; however, in the event that a firm transportation agreement is reached in the future, Tennessee may be required to also file for a certificate. CNG states that Steuben represented in its application that it has filed with the state of New York for all necessary state authorizations, and CNG will be doing so in the near future. To the best of CNG's knowledge no other applications are necessary by any of the parties to implement this service.

Comment date: December 7, 1989 in accordance with Standard Paragraph F at the end of the notice.

6. Algonquin Gas Transmission Co.

[Docket No. CP 90–231–000]

November 16, 1989.

Take notice that on November 9, 1989, Algonquin Gas Transmission Company, (Algonquin) 1284 Soldiers Field Road, Boston, Massachusetts, 02135 filed in Docket No. CP90–231–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Dolphin Energy, Inc. (Dolphin), under its blanket authorization issued in Docket No. CP89–948–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin would perform the proposed interruptible transportation service for Dolphin, a shipper and marketer of natural gas, pursuant to a gas transportation agreement dated August 23, 1989 (Contract No. 8910029). The term of the transportation agreement became effective on August 23, 1989, and will continue in effect for a period of 120 days from the date of initial delivery, subject to appropriate authorization, and then continue in effect for a period ending on August 31, 1994, and month to month thereafter, unless terminated upon 30 days written notice by either party. Algonquin proposes to transport on a peak day up to 50,000 MMBtu; on an average day up to 50,000 MMBtu; and on an annual basis 18,250,000 MMBtu for Dolphin. Algonquin proposes to receive the subject gas from various existing points of receipt on its system located in New York, New Jersey, and Massachusetts. Algonquin would then transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to Providence Gas Company in Providence and Newport Counties, Rhode Island. The proposed rate to be charged is contained in Algonquin' AIT–1 rate schedule.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Algonquin commenced such self-implementing service on September 22, 1989, as reported in Docket No. ST90–220–000.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP 90–227–000]

November 16, 1989.

Take notice that on November 9, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–227–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of BP Gas Inc. (BP Gas), a marketer of natural gas, under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for BP Gas, pursuant to an interruptible transportation service agreement dated June 22, 1989 (Agreement No. IGP–1918). The transportation agreement is effective for a primary term ending June 22, 1994, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 100,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). BP Gas advised Natural that the volume anticipated to be transported on an average day is 25,000 MMBtu; and based on that average day figure, the annual volume to be transported is 9,125,000 MMBtu. Natural proposes to receive the subject gas at various points located in the states of Illinois, Kansas, Oklahoma, Nebraska and Texas. It is stated that the delivery points are located in Illinois, Iowa, Kansas, Oklahoma, Nebraska, New Mexico and Texas. Natural avers that no new facilities are required to provide the proposed service.[1]

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on September 8, 1989, as reported in Docket No. ST90–296–000.

[1] Natural states that Receipt Point No. 24 is incorrectly listed in Exhibit A to the transportation agreement as a 'proposed' point. According to Natural, this point was originally constructed as a facility to be utilized solely for transportation authorized by Section 311 of the NGPA and Subpart B of Part 284. Natural avers that use of Point No. 24 for jurisdictional service was reported in Natural's Annual Report for Blanket Certificate Activities filed May 1, 1989, in Docket No. CP82–402–000.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timtely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27392 Filed 11-21-89: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-004]

Transwestern Pipeline Co.; Filing

November 15, 1989.

Take notice that on November 9, 1989, Transwestern Pipeline Company (Transwestern) filed Second Substitute Original Sheet Nos. 25C and 32D to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1989.

Transwestern states that these tariff sheets correct typographical errors found on its tariff sheets filed October 30, 1989.

Transwestern requests waiver of the Commission's Regulations as may be necessary to permit these substitute tariff sheets to become effective on October 1, 1989, as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27390 Filed 11-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-35-001]

West Texas Gas, Inc.; Filing

November 15, 1989.

On November 6, 1989, West Texas Gas, Inc. (WTG) filed Sixteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1989. Take notice that on November 6, 1989, WTG filed a Substitute Sixteenth Revised Sheet No. 3a to correct errors in the August 22 filing. Substitute Sixteenth Revised Sheet No. 3a and the accompanying explanatory tariff sheets were filed by WTG in accordance with the transmittal rules under the Commission's purchased gas adjustments regulations and the Commission's letter order dated October 20, 1989.

In its November 6 compliance filing, WTG also seeks waiver of § 154.305(i)(1)(ii) with respect to a refund subaccount credit balance in the month of July 1988, where the amount of the credit balance slightly exceeded 1 cent per MMBtu.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before November 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27391 Filed 11-21-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-33-NG]

Niagara Mohawk Power Corp.; Conditional Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of conditional order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Niagara Mohawk Power Corporation conditional authority to import from Canada up to 51,000 Mcf per day of natural gas on a firm basis and up to an additional 105,000 Mcf per day on an interruptible basis over a term beginning the later of November 1, 1990, or the date all regulatory approvals are received and proposed new facilities are available.

Final approval of this import is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27477 Filed 11-21-89; 8:45 am]

BILLING CODE 6456-01-M

[FE Docket No. 89-61-NG]

Western Gas Processors, Ltd.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Correction.

SUMMARY: The **Federal Register** Notice of the application in this docket published on October 23, 1989 (54 FR 43203), incorrectly stated the proposed import and export volumes. Western Gas Processors, Ltd. (WGP) requests blanket authorization to import up to 100,000 MMBtu (approximately 100,000 Mcf) per day of Canadian natural gas and to export up to 100,000 MMBtu per day of domestic natural gas to Canada over a term of two-years commencing on the date of first delivery.

All parties should be aware that if this blanket import/export application is granted a total amount of authorized volumes may be designated for the term rather than a daily limit to provide the applicant with maximum flexibility of operation.

Due to this error, the period for filing protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments is being extended. They must be filed no later than 4:30 p.m., e.s.t., December 1, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585.

A copy of WGP's application is available for inspection and copying, in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tom Dukes, Office of Fuels Programs, (202) 586-9590.

Issued in Washington, DC, November 16, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27478 Filed 11-21-89; 8:45 am]

BILLING CODE 6456-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3662-5]

Availability of Information on Iron-Based Diesel Fuel Additive System for Particulate Trap Regeneration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Volkswagen of America, Inc. (VW) has submitted to EPA information regarding a new iron-based diesel fuel additive and particulate control system for diesel vehicles which it and/or other manufacturers might at some future date wish to use on certain vehicle models for sale in the U.S. The relevant information is available for review and comment.

ADDRESS: Copies of documents relevant to this are available for inspection in public docket (A-89-17) at the Air Docket of the EPA, room M-1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. and 12 noon, and 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. A copy of the docket is also available for inspection in Room 112 of EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Any comments or other documents to be submitted to the docket should be submitted in duplicate.

FOR FURTHER INFORMATION CONTACT: Craig A. Harvey, Mechanical Engineer, Technical Support Staff (TSS-11), U.S. Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105 (313) 668-4237.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 202(a)(4) of the Clean Air Act, effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

The purpose of the VW additive system is to reduce the ignition temperature of diesel particulates in a particulate trap so as to allow continuous trap regeneration. The VW system consists of (1) a small tank holding the organic iron additive dissolved in kerosene, (2) a fuel line connecting this task to the main fuel line which connects the diesel fuel tank to the main fuel injection pump, and (3) a pump to meter the additive from its tank into the main fuel line so as to achieve a constant additive to fuel ratio of approximately 1:2500.

VW has conducted studies on the effects of this system on regulated and various unregulated diesel emissions including emissions of the organic iron additive and mutagenic activity of the particulates.

VW or another manufacturer may later seek certification of a diesel vehicle using this system.

II. Discussion

This Federal Register notice and docket formation are supplemental to the EPA Fuel and Fuel Additive Registration program, which requires manufacturers of gasoline and diesel fuel additives to register their composition, expected use levels, and other information with the EPA, as required in 40 CFR part 80. This VW iron-based additive is receiving this additional opportunity for public comment due to its metallic nature and its similarity to an earlier VW manganese-based additive which received a high degree of public interest.

From an initial review of the available information, it does not appear that any unreasonable risk to health or welfare would exist as a result of commercial use of an iron-based diesel fuel additive system as proposed by VW. However, early identification and resolution of any factual issues relating to the use of this system and possible risks would be advantageous; therefore, comments on this system are invited. Comments may be submitted directly to the docket section identified in the address section of this notice.

Dated: November 15, 1989.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-27468 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3682-7]

Request for Suggestions of Candidates for Membership on the National Advisory Council for Environmental Technology Transfer

SUMMARY: The Environmental Protection Agency (EPA) hereby requests suggestions of candidates for membership on the National Advisory Council for Environmental Technology Transfer (NACETT), an Advisory Committee to EPA's Administrator established under the Federal Advisory Committee Act, U.S.C. (App. I) 9 (c). The Advisory Council assists the Agency in performing its duties prescribed in the Federal Technology Transfer Act of 1986 (FTTA), Executive Order 12591, and other legislation, executive orders and regulations which authorize or mandate EPA to engage in activities associated with technology transfer. New members will serve three-year terms.

The membership of the Advisory Council includes a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the Advisory Council drawn from business and industry; the academic, educational and training community; and governmental organizations, plus environmental organizations and professional associations.

DATE: Submit suggestions of candidates no later than December 7, 1989. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates must submit a resume of their background, experience and other relevant information as a a part of the consideration process.

ADDRESS: Submit suggestions for the list of candidates to: Office of Cooperative Environmental Management (A-101F6), U.S. Environmental Protection Agency, Fairchild Building, Suite 115, 499 South Capitol Street, SW., Washington, DC 20460, Attention: William V. Garetz.

FOR FURTHER INFORMATION CONTACT: R. Thomas Parker, or William V. Garetz at the above address or at 202-475-9741. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Copies of the Advisory Council charter and current membership are available upon request. The purpose of the Advisory Council is to provide advice and counsel to the Administrator of the Environmental Protection Agency (EPA) on the implementation of environmental programs, on technology transfer issues associated with the management of environmental problems, and on opportunities for EPA to better draw on the full intellectual and financial resources of the full array of U.S. and international institutions concerned with meeting pressing environmental needs within the U.S. and globally as EPA continues to move forward in carrying out its mission. The Advisory Council is a part of EPA's efforts to expand cooperative working relationships and to broaden the national environmental technology base. The Advisory Council addresses itself to such specific technology transfer needs and issues as: Identifying the barriers impeding environmental technology transfer and training efforts and possible approaches for reducing these barriers; creating a positive institutional climate within EPA with respect to technology transfer and training activities; promoting cooperative, mutually-supportive EPA-State relationships aimed at establishing more effective environmental management at Federal, State and loal levels; increasing and institutionalizing communication among all levels of government, the business community, the academic, educational and training community, the environmental advocacy community, the professional community, and the international environmental community; developing and applying an appropriate array of existing and new delivery mechanisms for meeting technology transfer and training needs; implementing the FTTA, Executive Order 12591, and other related or associated authorities; reviewing any periodic EPA reports describing the Agency's progress in implementing statutes, executive orders and regulations on technology transfer; and assessing alternative approaches for measuring the environmental benefits of technology transfer activities. NACETT has five standing Committees: Education and Training; State and Local Programs; International Technology Transfer; Technology Innovation and Economics; and the Environmental Financial Advisory Board. Each member of the Advisory Council will be appointed to serve on one of these Committees.

The Advisory Council meets twice each year, and its Committees meet as they deem necessary. No honoraria or salaries are provided for members on the Advisory Council, but compensation for travel and nominal daily expenses while attending meetings may be provided.

The Advisory Council's next meeting will be held on March 27-28, 1989.

Suggestions for the list of candidates should be submitted no later than December 7, 1989.

Dated: November 17, 1989.

R. Thomas Parker,

Director, Office of Cooperative Environmental Management.

[FR Doc. 89-27469 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3682-3]

National Drinking Water Advisory Council; Open Meeting

Under section (10)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99-339), will be held at 9 a.m. on December 7, 1989, and at 8:30 a.m. on December 8, 1989, at the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036. Council Subcommittees will hold their meetings on December 5 and 6, 1989.

The purpose of the meeting will be to provide the Council options being considered by the Office of Drinking Water for the Lead and Copper National Primary Drinking Water Regulations regarding the (a) regulatory approach, (b) means to ensure that public water systems are not held responsible for problems beyond their control, (c) monitoring requirements, (d) compliance schedules, and (e) lead service line replacement.

Other items for discussion include: An EPA drinking water enforcement initiative; state primacy; status of the Phase II, Phase V and Radionuclide regulatory packages; status of guidance on affordability and unreasonable risk to health; and updates on the Wellhead Protection Program and EPS Ground Water Task Force. A panel discussion on health related research as a basis for drinking water regulations will be held on December 7.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before December 4, 1989.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M Street, SW., Washington, DC 20460, or at 202/382-2285.

Dated: November 16, 1989.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 89-27470 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3682-4]

Science Advisory Board; Sediment Criteria Subcommittee and Ecological Processes and Effects Committee; Open Meetings

Under Public Law 92-463, notice is hereby given that meetings of the Sediment Criteria Subcommittee and of the Ecological Processes and Effects Committee of the Science Advisory Board will be held in consecutive sessions from December 11-13, 1989 in Salon C at the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202.

The Sediment Criteria Subcommittee meeting will start at 8:30 a.m. on December 11, and will adjourn no later than 12:30 p.m. December 12, and is open to the public. The main purpose of this meeting is to review a draft SAB subcommittee report on the Equilibrium Partitioning Method that was developed as a result of an earlier subcommittee meeting and to begin review of an Agency draft report entitiled "Sediment Classification Methods Compendium".

The Ecological Processes and Effects Committee (EPEC) meeting will start at 1:30 p.m. on December 12, and will adjourn no later than 5 p.m. December 13, and is open to the public. The main purpose of this meeting is to review the status of the Agency's Bioremediation Project in Prince William Sound Alaska and to discuss the potential activities of the EPEC for 1990.

An agenda for both meetings is available from Dorothy Clark, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202-382-2552). Members of the public desiring additional information should contact Dr. Edward S. Bender, Executive Secretary, Environmental Effects, Transport, and Fate Committee, by telephone at the number noted above, by FAX (202-4759693), or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than December 1, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender by December 1, 1989. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on a first come basis.

Dated: November 14, 1989.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 89-27471 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

Office of Pesticides and Toxic Substances

[OPP-30302, FRL 3664-4]

Certain Companies Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 22, 1989.

ADDRESS: By mail submit comments identified by the document control number (OPP-30302) and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Public Docket and Freedom of Information Section,
Field Operations Programs (H7506C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.

In person, bring comments to:

Environmental Protection Agency,
Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/telephone number	Address
PM 21, Susan Lewis (A)	Rm. 202, CM#2 (703-557-1900)	Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202
PM 25, Robert Taylor	Rm. 229, CM#2 (703-557-1800)	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 59441-R. Applicant: Eastman Kodak Co., Agricultural Unit, 343 State St., Rochester, NY 14650. Product name: F-Stop Biological Fungicide Concentrate. Fungicide. Active ingredient: *Trichoderma harzianum* Rifai Strain KRL-AG2 100 percent. Proposed classification/Use: General. For manufacturing use only. (PM 21)

2. File Symbol: 59441-E. Applicant: Eastman Kodak Co. Product name: F-Stop Biological Fungicide Seed Protectant. Fungicide. Active ingredient: *Trichoderma harzianum* Rifai Strain KRL-AG2 100 percent. Proposed classification/Use: General. For control of *Pythium* spp. damping off and seed rot. (PM 21)

3. File Symbol: 352-LGU. Applicant: E. I. Du Pont De Nemours and Co., Inc., Agricultural Products Dept, Walker Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880-0038. Product name: Du Pont Accent Herbicide. Herbicide. Active ingredient: 2-(((((4,6-Dimethoxypyrimidin-2-yl)aminocarbonyl1))aminosulfonyl))-*N,N*dimethyl-3-pyridinecarboxamide, monohydrate 75.0 percent. Proposed classification/Use: General. For the control of annual and perennial grass weeds on field corn. (PM 25)

4. File Symbol: 352-LGL. Applicant E. I. Du Pont De Nemours and Co., Inc. Product name: Du Pont Accent Technical. Herbicide. Active ingredient: 2-(((((4,6-Dimethoxypyrimidin-2-yl)aminocarbonyl1))aminosulfonyl))-*N,N*dimethyl-3-pyridinecarboxamide, monohydrate 88.5 percent. Proposed classification/Use: General. For formulation use on corn only. (PM 25)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: November 12, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-27214 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36140A; FRL 3667-6]

Inert Ingredients in Pesticide Products; Policy Statement; Revision and Modification of Lists

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is revising and modifying previously published lists of inert ingredients in pesticide products that are of toxicological concern and require priority testing. EPA is also addressing the period of time allowed to exhaust stocks of old formulations.

EFFECTIVE DATE: The modified lists are effective on November 22, 1989.

ADDRESSES: Three copies of written comments bearing the document control number [OPP-36140A] should be submitted, by mail, to: Public Docket and Freedom of Information Section, Field Operation Division (H7504C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked "confidential" will be included in the public docket without further notice. The public docket is available for public inspection in room 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Lynn M. Bradley, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)-703-557-7700.

SUPPLEMENTARY INFORMATION: EPA announced its policy on toxic inert ingredients in pesticide products in the **Federal Register** of April 22, 1987 (52 FR 13305). Through this policy, EPA encourages the use of the least toxic inert ingredients available and requires the development of data necessary to determine the conditions of safe use of products that contain toxic inert ingredients. In developing this policy, EPA categorized inert ingredients into the following four lists according to toxicity:

List 1 Inerts of toxicological concern
List 2 Potentially toxic inerts, with high priority for testing
List 3 Inerts of unknown toxicity
List 4 Inerts of minimal concern

List 1 and List 2 were published as part of the April 22, 1987 policy statement.

The criteria developed by EPA to categorize List 1 inerts were reviewed by the Federal Insecticide, Fungicide, and Rodenticide Act's Scientific Advisory Panel (FIFRA SAP). Chemicals were placed on the list of inerts of toxicological concern if they met any one of the following criteria.

(1) Carcinogenicity:
—A rating as a human carcinogen of probable human carcinogen (rating 1, 2A or 2B) by International Agency for Research on Cancer.
—Characterized by the National Toxicology Program as an animal carcinogen in at least one species and one sex.
—Being regulated by some Federal agency as a carcinogen.

(2) Neurotoxicity and other Chronic Effects:
—Identified in the Occupational Diseases, a Guide to their Recognition (1977), as causing neurotoxicological and other chronic effects in the workplace environment.
—Being regulated by some Federal agency as a neurotoxin.
—Peer reviewed study, included in the Toxicology Data Bank of the National Library of Medicine, reporting neurotoxic or other chronic effects.

(3) Adverse Reproductive Effects:
—Being regulated by some Federal agency as causing adverse reproductive effects.
—Peer reviewed study, included in the Toxicology Data Bank of the National Library of Medicine, reporting adverse reproductive effects.

(4) Ecological Effects:
—An LC50 of less than one part per million.

Revision of Lists of Inert Ingredients

Since the publication of the policy, EPA has received additional data on some of the listed inerts. EPA scientists have reviewed this information according to criteria previously developed and used in the creation of the initial lists. As a result of this recent examination of new data, EPA proposed modifications to the lists. These modifications were submitted to the FIFRA SAP for review. The FIFRA SAP concluded that the proposed changes were justified.

EPA is announcing the following revised List 1 and List 2.

LIST 1.—INERTS OF TOXICOLOGICAL CONCERN

CAS No.	Chemical name
62-53-3	Aniline
1332-21-4	Asbestos fiber
1332-21-9	1,4-Benzenediol
7440-43-9	Cadmium compounds
56-23-5	Carbon tetrachloride
67-66-3	Chloroform
106-46-7	p-Dichlorobenzene
103-23-3	Di-(2-ethylhexyl)adipate
78-87-5	1,2-Dichloropropane
117-87-8	Di-ethylhexylphthalate
68-12-2	Dimethylformamide
123-91-1	Dioxane
106-89-8	Epichlorohydrin
110-80-5	2-ethoxyethanol
111-15-9	Ethanol ethoxyacetate
107-06-2	Ethylene dichloride
109-86-4	Ethylene glycol monomethyl ether
140-88-5	Ethyl acrylate
110-54-3	n-Hexane
302-01-2	Hydrazine
78-59-1	Isophorone
7439-92-1	Lead compounds
569-64-2	Malachite green
591-78-6	Methyl n-butyl ketone
74-87-3	Methyl chloride
75-09-2	Methylene chloride
25154-52-3	Nonylphenol
127-18-4	Perchloroethylene
108-95-2	Phenol
90-43-7	o-Phenylphenol
75-56-9	Propylene oxide
8003-34-7	Pyrethrins
81-88-9	Rhodamine B
10588-01-9	Sodium dichromate
26471-62-5	Toluene diisocyanate
79-00-5	1,1,2-Trichloroethane
56-35-9	Tributyl tin oxide
79-01-6	Trichloroethylene
1330-78-5	Tri-orthocresylphosphate (TOCP)
78-30-8	Tri-orthocresylphosphate (TOCP)

LIST 2.—POTENTIALLY TOXIC INERTS/ HIGH PRIORITY FOR TESTING

CAS No.	Chemical name
85-68-7	Butyl benzyl phthalate
84-74-2	Dibutyl phthalate
84-66-2	Diethyl phthalate
131-11-3	Dimethyl phthalate
117-84-0	Dioctyl phthalate
95-49-8	2-Chlorotoluene
1319-77-3	Cresols
95-48-7	o-Cresol
106-44-5	p-Cresol
108-39-4	m-Cresol
108-94-1	Cyclohexanone
95-50-1	o-Dichlorobenzene
112-34-5	Diethylene glycol monobutyl ether
111-90-0	Diethylene glycol monoethyl ether
111-77-3	Diethylene glycol monomethyl ether
34590-94-8	Dipropylene glycol monomethyl ether
111-76-2	2-Butoxy-1-ethanol
5131-66-8	1-Butoxy-2-propanol
124-16-3	1-Butoxyethoxy-2-propanol
107-98-2	1-Methoxy-2-propanol
29387-86-8	Propylene glycol monobutyl ether
25498-49-1	Tripropylene glycol monomethyl ether
141-79-7	Mesityl oxide
108-10-1	Methyl isobutyl ketone
96-29-7	Methyl ethyl ketoxime
108-90-7	Monochlorobenzene
75-52-5	Nitromethane
108-88-3	Toluene
29385-43-1	Tolyl triazole
95-14-7	1,2,3-Benzotriazole
120-32-1	2-Benzyl-4-chlorophenol
75-00-3	Chloroethane
88-04-0	p-Chloro-m-xylenol
97-23-4	Dichlorophene
100-41-4	Ethyl benzene
149-30-4	Mercaptobenzothiazole
74-83-9	Methyl bromide
75-43-4	Chlorodifluoromethane
75-43-4	Dichloromonofluoromethane
75-45-6	Chlorodifluoromethane
75-37-6	1,1-Difluoroethane
75-68-3	1-Chloro-1,1-difluoroethane
25168-06-3	Isopropyl phenols Petroleum hydrocarbons
1330-20-7	Xylene
100-02-7	p-Nitrophenol
106-88-7	Butylene oxide
79-24-3	Nitroethane
75-05-8	Acetonitrile
71-55-6	1,1,1-Trichloroethane
102-71-6	Triethanolamine
111-42-2	Diethanolamine

LIST 2.—POTENTIALLY TOXIC INERTS/ HIGH PRIORITY FOR TESTING—Continued

CAS No.	Chemical name
97-88-1	Butyl methacrylate
80-62-6	Methyl methacrylate Xylene-range aromatic solvents
95-82-9	2,5-Dichloroaniline
95-76-1	3,4-Dichloroaniline
626-43-7	3,5-Dichloroaniline
554-00-7	2,4-Dichloroaniline
608-27-5	2,3-Dichloroaniline
608-31-1	2,6-dichloroaniline
101-84-8	Diphenyl ether
76-13-1	Trichlorotrifluoromethane
75-69-4	Trichlorotrifluoroethane
75-71-8	Dichlorodifluoromethane
79-14-2	Dichlorotetrafluoroethane

The changes made and the reasons for the changes are explained below.

Additions to List 1

Di-(2-ethylhexyl)adipate and dimethyl-formamide (DMF) were moved to List 1 from Lists 3 and 2, respectively. Based on a National Toxicology Program bioassay, positive results for oncogenicity were indicated for di-(2-ethyl-hexyl)adipate: This chemical caused increased incidences of hepatocellular carcinomas in female mice, and thus meets one of the criteria for categorization as a List 1 inert.

For dimethylformamide (DMF), hepatotoxicity has been reported at very low doses in animal studies and is commonly observed in case reports of industrial exposure. Developmental toxicity has also been reported to occur in animal studies in the literature. In addition, recent reports of clusters of testicular cancer associated with human exposure to DMF have added to the weight of evidence which supports upgrading this compound from List 2 to List 1.

Additions to List 2

Based on data available at the time of the April 22, 1987, FR Notice, monochlorobenzene was determined to be an oncogen as well as an ecotoxin. For these reasons, it was placed on List 1. The EPA Science Advisory Board has reviewed the oncogenicity data on monochlorobenzene and concluded that it is a class D oncogen, i.e., not classifiable. EPA scientists have reevaluated the ecotoxicity data and concluded that monochlorobenzene does not meet List 1 ecotoxicity triggers. Because of these determinations, monochlorobenzene is being moved from List 1 to List 2 and is now considered as a high priority for testing.

Methyl ethyl ketoxime has been moved from List 3 to List 2 because of its close structural relationship to

acetoxime, which has been reported as being carcinogenic in preliminary tests and is also positive in a mouse lymphoma test. Methyl ethyl ketoxime has been proposed for testing under section 4 of the Toxic Substances Control Act.

Additions to Lists 3 and 4

To accommodate revision of the lists, EPA has decided to subdivide List 4 into two parts. The previous List 4, representing inerts generally regarded as safe, has become List 4A, and a new List 4B has been created. List 4B is composed of inerts for which EPA has sufficient information to reasonably conclude that the current use patterns in pesticide products will not adversely affect public health and the environment. List 4B inerts in formulations proposed for new use patterns which cause significant increases in exposure will receive further scrutiny.

Two inerts, gammabutyrolactone and dioctyl sodium sulfosuccinate (DSS), are being removed from List 2 because EPA now has a complete human health effects data base indicating that they do not meet the criteria for List 1 and that their current use in pesticides should not adversely affect human health.

The placement of gammabutyrolactone on List 2 was based on structural analogy to the known oncogen, betabutyrolactone. Further review indicates this analogy is inappropriate. In addition, a review of toxicity data for gammabutyrolactone, including acute and subchronic data, developmental toxicity, mutagenicity, and oncogenicity indicates a low order of toxicity. Thus EPA has decided to remove gammabutyrolactone from List 2 and add it to List 4B because current use patterns pose minimal risk for human health. Because gammabutyrolactone has not been adequately tested for ecotoxicity, however, it is being placed on List 3 for these effects. EPA decided to list the inert on two lists to reflect the different degree of knowledge the Agency has about the inert's various effects. EPA considered it appropriate to place the inert on List 4B because it has sufficient information about human health effects, and to also place it on List 3 to reflect inadequate information concerning the ecotoxicity of this inert.

DSS was placed on List 2 because of developmental and reproductive toxicity concerns as well as ecotoxicity concern for surfactants. Data have now been reviewed for these effects, and indicate a low order of toxicity. Thus, DSS is added to List 4B for nonadverse effects on human health. Because of limited ecotoxicity testing, however, DSS remains on List 3 (unknown toxicity) for these effects.

Deletions From All Lists

Further investigation of ethylene thiourea, carbon disulfide, and 1, 1-dimethylhydrazine (UDMH, the impurity in Alar, which is in Special Review), has revealed that these are only impurities, not intentionally added inerts. Furthermore, betabutyrolactone, benzene, dichlorvos, 1, 2-dimethylhydrazine, pentachlorophenol and sodium pentachlorophenate, dinitro-o-cresol, dinitrophenol, ethyl methyl phenylglycidate,formaldehyde and paraformaldehyde, hexachlorophene, mercury oleate, 2-nitropropane, 1, 2-dichloropropane, and thiourea are not now used as inerts in any pesticide products. Therefore, these chemicals have been removed from all lists of inert ingredients and are not currently cleared for use as inerts in any pesticide product. Thus, in the event a registrant or applicant proposes to include one of these chemicals as an inert ingredient in a pesticide product, EPA will consider the chemical a new inert.

Impurities in registered products are contaminants from the manufacturing process for the active ingredient, rather than intentionally added inert ingredients. The presence and toxicity of impurities is routinely evaluated during the normal Agency review processes. Impurities are identified in the product chemistry review, and would probably have been present, as part of the test material, during testing considered for support of the registration. Thus, it is not appropriate to subject impurities to the Inerts Strategy.

As discussed in the April 22, 1987 Notice, registrants with products containing List 1 inert ingredients must amend their product registrations by adding the following statement to the label:

This product contains the toxic inert ingredient (name of inert).

The wording should be placed in close proximity to the ingredients statement in a type size comparable to other front panel text. Since dimethylformamide and di-(2-ethylhexyl) adipate have been added to List 1, registrants of products containing these inerts are required to submit applications to amend their product labels not later than May 22, 1990. Products containing one or more of these inert ingredients released for shipment after May 22, 1991 must have the amended label in place.

Registrants of products containing dimethylformamide have already received a Data Call-In. All registrants have either voluntarily cancelled or committed to reformulate the product. Most reformulations have been received; a few time extensions were granted to allow for necessary testing of the reformulated product.

A Data Call-In for di-(2-ethylhexyl) adipate will be issued, at the same time as for diethylhexylpthalate, since the uses are similar and we expect to find them in the same types of products. Data Call-Ins for other original List 1 inerts were mailed in March 1989.

Stocks of Old Formulations

Registrants are encouraged to substitute or remove any List 1 or List 2 inert ingredient from their products by submiting a new Confidential Statement of Formula as a proposed amendment to the registration. The April 22, 1987 Policy statement did not address provisions governing the sale of stock of old formulations. If a registrant reformulates its product to replace a List 1 or List 2 inert ingredient with a less toxic inert, EPA has determined that some limit on continued sale of stocks of the old formulation is appropriate.

Once a registrant submits the revised formulation, registrants may manufacture only the old formulation, properly labeled as containing a toxic inert as described above, until EPA accepts the new formulation. Stocks of the old formulation, bearing the required labeling, may be released for shipment by the registrant for a period not to exceed twelve months from the data EPA accepts the new formulation. Products already in channels of trade (retailers, distributors, dealers) are not subject to this limitation.

Dated: October 10, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-27213 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3678-4]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; United Scrap Lead Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed settlement under section 122(h) concerning the United Scrap Lead Co. Site in Troy, Ohio. The proposed settlement requires 52 potentially responsible parties to pay all of the $421,422.85 in costs incurred by U.S. EPA in performing an Immediate Removal Action at the Site. The proposed settlement would resolve the cost-recovery case related to this response action taken by U.S. EPA at the Site.

DATE: Comments must be provided on or before December 22, 1989.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: In the Matter of: United Scrap Lead Co.

FOR FURTHER INFORMATION CONTACT: T. Leverett Nelson, U.S. EPA, Office of Regional Counsel, 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6666.

Notice of section 122(h) Cost-Recovery Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, notice is hereby given that on August 28, 1989, a proposed administrative settlement was agreed to by 52 potentially responsible parties (PRPs). The proposed settlement requires these PRPs to pay all of the $421,422.85 in costs incurred by U.S. EPA in performing an Immediate Removal Action at the United Scrap Lead Site located at South County Road 25A in Troy, Ohio. The Emergency Removal Action was conducted from November 1985 to August 1986.

U.S. EPA is entering into this agreement under the authority of sections 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlement of a claim under section 107. Where total response costs incurred by the United States for the facility concerned exceed $500,000 (excluding interest), the Attorney General of the United States must also approve the Settlement. In this case, response costs incurred thus far exceed $1.3 million. Response costs also continue to be incurred. Accordingly, the Attorney General has approved this Settlement.

Under the terms of the Settlement, the 52 PRPs will pay the full amount within 30 days of the effective date of the agreement. In return, the U.S. EPA covenants not to sue these PRPs for those costs. U.S. EPA may pursue non-settling PRPs for the remaining costs at any time; settling PRPs may not be pursued for future costs for 1 year from the effective date of the agreement.

The Environmental Protection Agency will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the Settlement is available for review at this address.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

Dated: September 29, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-27472 Filed 11-21-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for 1 new AM station and 3 new FM stations:

I.

Applicant; city and [illegible]	File No.	MM Docket No.
A. Donald P. Harris d/b/a, Desert Broadcasters; Rosamond, CA.	BP-870328AH	89-490
B. Robert Burdette & Associates; West Covina, CA.	BP-870506AE	
C. Janice L. O'Brien d/b/a, San Marcos Radio; San Marcos, CA.	BP-870722AE	
D. KDOL Broadcasting Corp.; Rosamond, CA.	BP-870722AH	

Issue Heading and Applicants

1. 307(b), all applicants
2. Contingent Comparative, all applicants
3. Ultimate, all applicants

II.

Applicant; city and [illegible]	File No.	MM Docket No.
A. Lonnie W. Hutto d/b/a, IBC Broadcasting; Alexandria, LA.	BPH-871127MA	89-493
B. New South Communications, Inc.; Alexandria LA.	BPH-871201MD	
C. Alfred T. Moore, Jr., & William D. Hendrix, Jr., d/b/a, Central Broadcasting, Co.; Alexandria, LA.	BPH-871203ND	
D. A.E. Fryar, Jr. d/b/a, Fryar Communications; Alexandria, LA.	BPH-871203NG	

Issue Heading and Applicants

1. Comparative, A-D
2. Ultimate, A-D

III.

Applicant; city and [illegible]	File No.	MM Docket No.
A. Harold McEwen; Lawton, OK.	BPH-870827MA	89-505
B. Southwest Educational Media Foundation of Texas, Inc.; Lawton, OK.	BPED-870827MB	
C. Oklahoma Radio Limited Partnership; Lawton, OK.	BPH-870827MD	
D. American Indian Broadcast Group, Inc.; Lawton, OK.	BPH-870827NC	
E. Arthur Patrick; Lawton, OK.	BPH-870827NT	

Issue Heading and Applicants

1. Air hazard, B, C
2. (See Appendix), C
3. (See Appendix), C
4. (See Appendix), C
5. (See Appendix), C
6. Comparative, all applicants
7. Ultimate, all applicants

IV.

Applicant; city and [illegible]	File No.	MM Docket No.
A. Herrera Broadcasting Partnership; Merced, CA.	BPH-880301MD	89-506
B. Great Scott Broadcasting; Merced, CA.	BPH-880301MY	

Issue Heading and Applicants

1. See Appendix, A
2. See Appendix, A
3. See Appendix, A
4. Air Hazard, A
5. Comparative, all
6. Ultimate, all

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Lawton, Oklahoma).

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of C (ORLP).

3. To determine whether C (ORLP)'s organizational structure is a sham.

4. To determine whether C (ORLP) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to report: (1) the designation of character issues against another applicant in which one of its partners has an ownership interest; and (2) the dismissal of such applications with unresolved character issues pending.

5. To determine from the evidence adduced pursuant to Issues 2 through 4 above, whether C (ORLP) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Merced, California).

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to the application of Herrera Broadcasting Partnership.

2. To determine whether Herrera Broadcasting Partnership's organizational structure is a sham.

3. To determine, based on the evidence adduced pursuant to issues 1 and 2 above, whether Herrera Broadcasting Partnershp possesses the basic qualifications to be a Commission licensee.

[FR Doc. 89–27372 Filed 11–21–89; 8:45 am]

BILLING CODE 6715-21-M

FEDERAL ELECTION COMMISSION

[Notice 1989–17]

Filing Dates for Texas Special Runoff Election (18.C.D.)

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas Special Runoff Election.

SUMMARY: Texas has scheduled a special runoff election on December 9, 1989, in the 18th Congressional District to fill the seat that was held by the late Representative Mickey Leland.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Runoff Election must file reports according to the schedule in the following chart. Party committees and PACs that make contributions or expenditures in connection with the Special Runoff Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-election reports.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL RUNOFF ELECTION

[All Committees involved in the 12/9/89 Election Must File]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
Pre-Election	10/19/89–11/19/89	11/24/89	11/27/89
Post-Election and Year-End [3]	11/20/89–12/31/89	01/08/90	01/08/90

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[3] The Commission recommends that committees file a consolidated Post-Election and Year-End report by the filing date of the Post-Election report. Alternately, in lieu of a consolidated report, committees must file two separate reports: Post-Election, by 1/8/90; and the Year-End, by 1/31/90, which would cover 12/30/89 through 12/31/89.

Dated: November 15, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89–27377 Filed 11–21–89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Theresa J. Jackson, Director of Personnel and EEO, Federal Labor Relations Authority, 500 C St., SW., Washington, DC 20424, (202) 382–0751.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Cynthia A. Metzler, Office of the Acting Chairman, FLRA
Brenda M. Robinson, Office of General Counsel, FLRA
Johnny J. Butler, Equal Employment Opportunity Commission
Paul D. Mahoney, Merit Systems Protection Board
Peter J. Basso, Office of Management and Budget

Theresa J. Jackson,

Director of Personnel and EEO.

[FR Doc. 89–27468 Filed 11–21–89; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to engage *de novo* through its subsidiary, BT Securities Corporation, New York, New York, in acting as investment financial advisor to the extent set forth in § 225.25(b)(4); providing management consulting advice to nonaffiliated bank and nonbank depository institutions, subject to conditions set forth in § 225.25(b)(11); and providing advisory services in connection with merger, acquisition/divestiture and financing transactions, valuation services, rendering fairness opinions and providing ancillary services or functions incidental to the foregoing nonaffiliated financial and nonfinancial institutions. Applicant has made commitments identical to those accepted by the Board in *Signet Banking Corporation* [73 *Federal Reserve Bulletin* 59 (1987)].

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fidelity Financial Corporation of Michigan,* Birmingham, Michigan; to engage in making and acquiring loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27406 Filed 11–21–89; 8:45 am]

BILLING CODE 6210-01-M

Fed One Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been acepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fed One Corp.,* Griswold, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Griswold State Bancshares, Inc., Griswold, Iowa, and thereby indirectly acquire Griswold State Bank, Griswold, Iowa.

In connection with this application, Applicant also proposes to acquire Cass County Insurance Agency, Inc., Griswold, Iowa, and thereby engage in insurance agency and underwriting activities in small towns with a population of less than 5,000 pursuant to § 225.25(b)(iii)(A) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Exchange Bankshares Corporation of Kansas,* Atchison, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange National Bank and Trust Company of Atchison, Kansas.

In connection with this application, Applicant also proposes to acquire Bankers Exchange Life Insurance Company, Atchison, Kansas, and thereby engage in acting as principal, agent, or broker for credit insurance—insurance that is directly related to extensions of credit by its subsidiary bank and limited to ensuring the repayment of the outstanding balance due on the extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1989.

Jennifer J. Johnson

Associate Secretary of the Board.

[FR Doc. 89-27407 Filed 11-21-89; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 14, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein. Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of PTC Financial Corporation, Peru, Indiana, and thereby indirectly acquire The Peru Trust Company, Peru, Indiana.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *M & F Financial Corp.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Texas Bank, Brownwood, Texas, and Texas Bank, Weatherford, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company*, San Francisco, California; to acquire 100 percent of the voting shares of Torrey Pincess Group, Solano Beach, California, and thereby indirectly acquire Torrey Pines Bank, Solano Beach, California.

Board of Governors of the Federal Reserve System, November 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27408 Filed 11-21-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 6, 1989.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thomas Little Whaley*, Marshall, Texas; to acquire 2.74 percent of the voting shares of Firstshares of Texas, Inc., Marshall, Texas, and thereby indirectly acquire First National Bank of Marshall, Marshall, Texas.

Board of Governors of the Federal Reserve System, November 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27409 Filed 11-21-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10-30-89 AND 11-09-89

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
General Electric Company, PACCAR Inc., Railease, Inc	90-0103	10/30/89
Peter V. Ueberroth, John H. Magoon, Jr., HAL, Inc	90-0167	10/30/89
Rollance E. Olson, Brierley Investments Limited, Steego Parts Corporation and AEL Enterprises, Inc	90-0043	10/31/89
U S West, Inc., Financial Security Assurance Holdings Ltd., Financial Security Assurance Holdings Ltd	90-0048	10/31/89
Meggitt PLC, United Scientific Holdings PLC, United Scientific Holdings PLC	90-0052	10/31/89
Medical Care International, Inc., MediVision, Inc., MediVision, Inc	90-0097	10/31/89
Gannett Co., Inc., Saratoga Partners, L.P., AMNI America, Inc	89-2759	11/01/89
The Toro Company, Outboard Marine Corporation, Lawn-Boy, Inc	90-0020	11/01/89
Thomas & Betts Corporation, C.W. Holmberg, Jr., Holmberg Electronics Corporation	90-0045	11/03/89
American Exploration Company, Oryx Energy Company, Sun Operating Limited Partnership	90-0122	11/03/89
Communications Satellite Corporation, Sidney Shlenker, Denver Nuggets, Incorporated	90-0174	11/03/89
Derby International Corporation S.A., Peugeot S.A., Peugeot Cycles S.A	90-0178	11/03/89
John K. Cantrell, Mark B. Herman, Universal Guaranty Life Insurance Company and Alliance	90-0159	11/03/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10-30-89 AND 11-09-89—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Associated Insurance Companies, Inc., American General Corporation, American General Group Insurance Company of California	90-0104	11/03/89
Bell Atlantic Corporation, Control Data Corporation, Third Party Maintenance	90-0196	11/03/89
The Citizens and Southern Corporation, Security Pacific Corporation, Security Pacific Business Credit, Inc	90-0226	11/03/89
Jeffery G. Banks and Karen A. Banks, Saratoga Partners, L.P., AMNI America, Inc	90-0227	11/03/89
Roger Marriott, Glaxo Holdings p.l.c., Glaxo Holdings p.l.c	90-0230	11/03/89
Barry Forman, Glaxo Holdings PLC, Glaxo Holdings PLC	90-0231	11/03/89
Edisto Resources Corporation, NRM Energy Company, L.P., NRM Energy Company, L.P	90-0242	11/03/89
Fertilizer Industries, Inc., CNC Chemicals, Inc., CNC Chemicals, Inc	89-2516	11/06/89
Tribune Company, Sears, Roebuck and Co., Sears, Roebuck and Co	90-0087	11/07/89
Jaqui E. Safra, Franklin N. Groves, Western States Minerals Corporation	90-0088	11/07/89
Gaylord Container Corporation, Boise Cascade Corporation, Boise Cascade Corporation	90-0101	11/07/89
Louis J. Appell Residuary Trust, Canadian Pacific Limited, Syracuse China Corporation	90-0105	11/07/89
Engelhard Corporation, Canadian Pacific Limited, Processed Minerals Incorporated	90-0118	11/07/89
CMB Packaging S.A., Aluminum Company of America, GPS, Inc	90-0125	11/07/89
CMB Packaging S.A., CMB Packaging S.A., Genesis Packaging Systems	90-0126	11/07/89
Compagnie Parisienne de Chauffage Urbain, Trigen Energy Corporation, Trigen Energy Corporation	90-0156	11/07/89
Lyonnaise des Eaux, Trigen Energy Corporation, Trigen Energy Corporation	90-0157	11/07/89
Giant Group, Ltd., Rally's, Inc., Rally's, Inc	90-0166	11/07/89
United Cities Gas Company, 3555 Investments, L. P., Union Gas System, Inc	90-0163	11/07/89
Texaco Inc., TRT Energy Holdings, Inc., Tana Production Corporation	90-0206	11/07/89
Texaco Inc., Reese M. Rowling, RMR, Inc	90-0207	11/07/89
Texaco Inc., William E. Colson, William E. Colson	90-0208	11/07/89
Toyoda Machine Works, Ltd., Toyoda TRW Automotive, Inc., Toyoda TRW Automotive, Inc	90-0096	11/08/89
Crescott, Inc., Dataproducts Corporation, Dataproducts Corporation	90-0216	11/08/89
Charles S. Meyer, Newell Co., Anchor Hocking Corporation, Newell Operating Company	90-0072	11/09/89
Barnes Hospital, Andrew J. Signorelli, Faith Hospital Association	90-0121	11/09/89
Cadence Design Systems, Inc., Prabhakar Goel, Gateway Design Automation Corporation	90-0135	11/09/89
Prabhakar Goel, Cadence Design Systems, Inc., Cadence Design Systems, Inc	90-0136	11/09/89
BET Public Limited Company, Arlene Zacks Gaitz, Service Control Corporation	90-0138	11/09/89
Compagnie des Machines Bull, Zenith Electronics Corporation, 16 Zenith Entities	90-0150	11/09/89
LAC Minerals Ltd., Alan Bond, Bond International Gold, Inc	90-0153	11/09/89
Falcon Classic Cable Income Properties, L.P., Jack Kent Cooke, Cooke Cablevision Inc	90-0160	11/09/89
Evered plc, Richard R. Allen, Sr., D.R. Allen & Son, Inc	90-0177	11/09/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-27451 Filed 11-21-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Fiscal Year 1990 Draft Application Instructions for Minority Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects: Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) will convene a meeting to discuss the Fiscal Year 1990 draft application instructions for minority community-based human immunodeficiency virus (HIV) prevention projects.

Time and Date: 9 a.m.-2 p.m., Monday, December 4, 1989.

Place: CPS Conference Room, CDC, Freeway Office Park, 1644 Tullie Circle, NE, Atlanta, GA 30329.

Status: Open to the public, limited only by the space available.

Contact Person for More Information: Ms. Freda Weaver, Resource Analysis, Office of the Director, CPS, CDC, Atlanta, GA 30333, Telephone: Commercial: (404) 639-1823; FTS: 236-1823.

Dated: November 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-27412 Filed 11-21-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0488]

Drug Export; ADALAT® PA-10 (Nifedipine) 10-MG Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Miles Pharmaceutical Division, Miles, Inc., has filed an application requesting approval for the export of the human drug Adalat® PA-10 (nifedipine) 10-milligram (mg) tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency

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publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application.To meet this requirement, the agency is providing notice that Miles Pharmaceutical Division, Miles, Inc., 400 Morgan Lane, West Haven, CT 06516, has filed an application requesting approval for the export of the drug Adalat® PA–10 (nifedipine) 10–mg tablets, to Canada. This product is indicated in the mangement of moderate to severe hypertension when patients have failed to respond adequately to a combination of a diuretic and a beta-blocker. The application was received and filed in the Center for Drug Evaluation and Research on October 23, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 4, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30–day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 14, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 898–27438 Filed 11–21–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N–0489]

Drug Export, Survanta ® (Beractant, Surfactant TA)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ross Laboratories has filed an application requesting approval for the export of the human drug Survanta® (beractant, Surfactant TA) to Italy and for further export to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ross Laboratories, 625 Cleveland Ave., Columbus, OH 43215, has filed an application requesting approval for the export of the drug Survanta® (beractant, Surfactant TA), to Italy and for further export to the Federal Republic of Germany. This drug is indicated for use in acute respiratory distress syndrome in neonates. The application was received and filed in the Center for Drug Evaluation and Research on September 14, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 4, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 803 (21 U.S.C 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 14, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–27439 Filed 11–21–89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT–028–N]

RIN 0938–AE20

Medicare Program; Part A Premium for the Uninsured Aged for 1990

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for the uninsured aged for calendar year 1990 under Medicare's hospital insurance program (Part A). The monthly Medicare Part A premium for the 12 months beginning January 1, 1990 for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A is $175. Section 1818(d) of the Social Security Act specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966–6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 103 of the Medicare Catastrophic Act of 1988 (Pub. L. 100–360), requires the Secretary to determine and publish, during September of each calendar year, the amount of the monthly premium for the following calendar year for persons who voluntarily enroll in Medicare Part A.

Section 1818(d) of the Act, as amended by section 103 of Public Law 100–360, requires the Secretary to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and for related administrative costs incurred in the following year with respect to individuals age 65 and over who will be entitled to benefits under Part A. The Secretary must then, during September of each year, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and publish the dollar amount to be applicable for the monthly premium in the succeeding year. If the premium is not a multiple of $1.00, the premium is rounded to the nearest multiple of $1.00 (or if it is a multiple of 50 cents but not of $1.00, it is rounded to the next highest $1.00). The first premium under this new method was $156 and was effective January 1989. (See 53 FR 45161; November 8, 1988.)

II. Premium Amount for 1990

Under the authority of section 1818(d)(2) of the Act (42 U.S.C. 1395i–2(d)(2)), the Secretary has determined that the monthly Medicare Part A hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1990 is $175. This premium amount is based on the law in effect at the time we were required to make this determination. We recognize that Congress is considering amendments to the Medicare provisions in the law and that, if enacted, these amendments may affect the method of computation, estimated costs, or other amounts upon which this premium determination was made.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate

As discussed in section I of this notice, the monthly premium for the uninsured aged for 1990 is equal to the estimated monthly actuarial rate for 1990 rounded to the nearest multiple of $1. The monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 1990 for individuals age 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals age 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determine the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are (a) establishing the present cost of services provided to beneficiaries, by type of service, to serve as a projection base; (b) projecting increases in payment amounts for each of the various service types; and (c) projecting increases in administrative costs. Establishing historical Part A enrollment and projecting future enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 1990 on (a) current historical data and (b) projection assumptions from the Midsession Review of the President's Fiscal Year 1990 Budget. It is estimated that in calendar year 1990, 30.081 million people age 65 and over will be entitled to Part A benefits (without premium payment), and that these individuals will, in 1990, incur $63.278 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $175.30 and the monthly premium is $175.

IV. Costs to Beneficiaries

The 1990 Part A premium is 12 percent higher than the $156 monthly premium amount for the 12-month period beginning January 1, 1989. This increase results from the recalculation of the monthly actuarial rate described above.

The estimated costs of this increase to the approximately 19 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $4.33 million.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

Authority: Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: October 26, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–27378 Filed 11–21–89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Eye Institute; Meeting of the Vision Research Program Planning Subcommittee of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Vision Research Program Planning Subcommittee of the National Advisory Eye Council. The meeting will be held on December 12, 1989, in Building 16—The Stone House, National Institutes of Health, Bethesda, Maryland.

This entire meeting will be open to the public from 9 a.m. until 5 p.m. to discuss current policy issues and provide input and guidance to the Vision Research Program Planning Subcommittee concerning the development of Institute policies and programs. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; 13.871, Strabismus, Amblyopia, and Visual Processing Research; National Institutes of Health.)

Dated: November 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–27437 Filed 11–21–89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-942-00-4730-12: GPO-058]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

OREGON

T. 39 S., R. 13 E., accepted 10/27/89
T. 38 S., R. 13 E., accepted 10/27/89
T. 34 S., R. 4 W., accepted 11/3/89

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must filed with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director with thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 13, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-27473 Filed 11-21-89; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-283]

Japan's Distribution System and Options for Improving U.S. Access

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Diane Manifold, Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436, (202) 252-1271.

Background

The Commission instituted investigation No. 332-283 following receipt of a letter on October 23, 1989 from the House Committee on Ways and Means, requesting that the Commission conduct an investigation, in two phases, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to Japan's distribution system and options for improving U.S. access to that system. The Committee requested that the Commission submit Phase I of the report by June 22, 1990 and Phase II of the report by October 23, 1990.

Phase I of the Commission's study will provide an overview of the Japanese distribution system, including a discussion of its structural features, official policies and practices affecting it, and business practices. The first phase of the study will also analyze the composition of Japanese imports from the United States and other countries (e.g., capital goods, consumer goods), with a view to determining which types of changes in Japan's distribution system which are most likely to benefit U.S. exporters.

Phase II of the study will seek experts' views on options for improving U.S. access to the Japanese distribution system, including, but not limited to: (1) Experiences of U.S. and foreign businesses with the distribution system, (2) political, industry, or consumer forces likely to promote or oppose reform of the distribution system; and (3) products or services most likely to benefit from improved access to the distribution system.

Public hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on January 28, 1990. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, January 19, 1990. Prehearing briefs (original and 14 copies) should be filed not later than noon, January 20, 1990. Post-hearing briefs are required by February 2, 1990.

Written submission

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than February 2, 1990. All submissions should be addressed to the Secretary of the Commission at the Commission's office in Washington, DC. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-252-1107.

Issued: November 14, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-27455 Filed 11-21-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Decision To Review Certain Portions of Two Initial Determinations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of two initial determinations issued by the presiding administrative law judge (ALJ) in the above-captioned investigation on September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Calvin H. Cobb, III, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1103.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging direct, contributory, and induced infringement of certain claims of three U.S. patents by 14 proposed respondents. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the **Federal Register** on December 28, 1988 (53 FR 52515).

On September 28, 1989, the presiding ALJ issued an ID (Order No. 118) terminating the investigation for abuse of Commission process. On the same day, the ALJ issued a second ID finding no violation of section 337 (the "Violation ID") in the investigation.

On October 12, 1989, the Commission issued a notice and order extending the deadline for determining whether to review Order No. 118 to coincide with the deadline (November 15, 1989) for determining whether to review the Violation ID. 54 FR 43001 (October 19, 1989).

Petitions for review of Order No. 118 were filed by complainant Blum, and respondents Agostino Ferrari, S.p.A. (Ferrari) and Liberty Hardware Mfg. Corp. (Liberty). Responses to petitions for review were filed by Blum, Ferrari, Liberty, respondent IUSA Hardware Mfg. Corp., and the Commission investigative attorney (IA).

Petitions for review of the Violation ID were filed by complainant Blum and respondents Ferrari and Liberty. Responses were filed by Blum, Ferrari, Liberty, and the IA.

No government agency comments were received.

Having examined the record in the investigation, including the two IDs, the Commission has determined not to review the findings of fact made by the ALJ with respect to both IDs, but has determined to review certain legal issues. Specifically, the Commission will review the legal analysis of the ALJ in Order No. 118 and the legal analysis of the ALJ concerning the issue of domestic industry in the Violation ID. The Commission is particularly interested the following issues:

Order No. 118.

a. Whether the Commission is authorized by law to award attorneys fees, or other appropriate sanctions, for breach of the duty of candor announced by the Commission in its opinion issued in *Certain Indomethacin*, Inv. No. 337-TA-183.

b. Whether the findings of fact made by the ALJ in connection with Order No. 118 support a conclusion that complainant's prefiling activities were not "objectively reasonable" under Federal Rule of Civil Procedure 11.

c. Whether the findings of fact made by the ALJ in connection with order No. 118 support the ALJ's conclusion that complainant filed its complaint for an improper purpose.

d. Whether the sanction of termination of the investigation is directed at the misconduct of the complainant, Blum, its counsel, or both. The Commission is also interested in analysis of the extent to which the allocation of fault between Blum and its counsel corresponds to the appropriateness of the sanction of termination of the investigation.

e. Whether termination of the investigation is the least severe sanction appropriate to address the misconduct found in this case, and if not, what alternative sanction(s) would be more appropriate.

2. The Violation ID.

a. Whether, under the facts as found by the ALJ in the Violation ID, assessing the existence of a domestic industry for purposes of section 337(a), as amended, as of the time of the evidentiary hearing would be consistent with section 337, as amended, and prior Commission decisions.

b. Whether the ALJ's conclusion that two separate domestic industries exist, one corresponding to each patent at issue, is consistent with section 337(a), as amended, and prior Commission decisions.

c. Whether the ALJ's reliance on the relative (as distinguished from absolute) significance of complainant's domestic production activities, as compared with complainant's production activities abroad, is consistent with section 337(a), as amended, and prior Commission decisions. In addition, whether a conclusion of law that levels of investment and employment exist that will be deemed "significant" *per se* is consistent with section 337(a)(3), as amended, and prior Commission decisions.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written submissions

The parties to the investigation, interested government agencies, and any other persons are encouraged to file written submissions on the issues under review, remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Written submissions from the parties, including any proposed orders, must be filed by November 27, 1989, and reply submissions from the parties must be filed by December 4, 1989.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the

Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See*, 19 CFR 201.6, as amended by 54 FR 13677, 13678 (April 5, 1989). Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Additional information

Copies of nonconfidential versions of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 pm.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: 202–252–1000.

Issued: November 14, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–27457 Filed 11–21–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–451 (Preliminary)]

Gray Portland Cement and Cement Clinker From Mexico

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Mexico of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 511.14 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 26, 1989, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of members of the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of gray portland cement and cement clinker from Mexico. Accordingly, effective September 26, 1989, the Commission instituted preliminary antidumping investigation No. 731–TA–451 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 2, 1989 (54 FR 40531). The conference was held in Washington, DC, on October 17, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 13, 1989. The views of the Commission are contained in USITC Publication 2235 (November 1989), entitled "Gray Portland Cement and Cement Clinker from Mexico: Determination of the Commission in Investigation No. 731–TA–451 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 16, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–27458 Filed 11–21–89; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Newquist did not participate.

[Investigation No. 337–TA–301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processes Therefor; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Daniel M. Duty, Esq., of the Office of Unfair Import Investigations has been designated as the Commission investigative attorney in the above-cited investigation instead of Cheri M. Taylor, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: November 13, 1989.

Respectfully submitted,

Jeffrey R. Whieldon,

Acting Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 89–27459 Filed 11–21–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–304]

Certain Pressure Transmitters

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on November 27, 1989, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St., SW., Washington, DC., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 15, 1989.

Janet D. Saxon,

Chief Administrative Law Judge.

[FR Doc. 89–27460 Filed 11–21–89; 8:45 am]

BILLING CODE 7020-02-M

Probable Economic Effect of Redesignation of Certain Articles From Certain Countries as Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on October 31, 1989, of a request from the U.S. Trade Representative (USTR) under authority delegated by the President, the Commission instituted investigation No. 332–284 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to advise the USTR with respect to each article and country listed in the attached annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for such country and article under the Generalized System of Preferences (GSP).

As requested by the USTR, the Commission, in providing such advice, will assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) or (c)(2) of the Trade Act of 1974.

As requested, the Commission will provide its advice not later than February 1, 1990. To the extent possible, the Commission will include 1989 year-to-date statistics in its analyses and

report. In particular, these data will be used in estimating the application of any competitive need limits.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. C.B. Stahmer (202–252–1321)
(2) Textiles and apparel, Ms. Linda Shelton (202–252–1467)
(3) Chemical products, Ms. Elizabeth Nesbitt (202–252–1355)
(4) Minerals and metals, Mr. James Lukes (202–252–1426)
(5) Machinery and equipment, Mr. John Cutchin (202–252–1396)
(6) General manufactures, Mr. Eric Langer (202–252–1497)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Background: The letter from the USTR provided the following by way of background:

> Under the Generalized System of Preferences (GSP), a country which has become ineligible for duty-free treatment with respect to an eligible article by reason of the operation of the competitive need provisions may, under certain conditions, be redesignated by the President for duty-free treatment with respect to such article. Since the early 1980s, however, the Trade Policy Staff Committee (TPSC) has had a policy of recommending that the President deny such redesignation for most articles from beneficiary developing countries that are one of the Newly Industrialized Economies (NIEs) (for example, Taiwan, South Korea, Hong Kong, Singapore, Mexico, Brazil, and Israel) and for certain other articles for which redesignation was expected to have a negative impact on U.S. producers.
>
> In addition, a country which exceeds the competitive need limit for certain products may be eligible for a *de minimis* waiver of the competitive need limit if world imports of that product are below a statutory ceiling. TPSC policy has been to grant such waivers where there was no anticipated negative impact on U.S. producers. However, once a country is denied a *de minimis* waiver, usual practice has been to deny such a waiver in all subsequent years.
>
> With the graduation on January 1, 1989, of Taiwan, South Korea, Hong Kong, and Singapore from the GSP and the consequent possible redistribution of GSP benefits to the other beneficiary developing countries, and also with the introduction on January 1, 1989, of a new tariff structure, the Harmonized Tariff Schedule of the United States, the TPSC is re-examining its redesignation and *de minimis* waiver policies.

Written Submissions: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on December 15, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

Issued: November 16, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Annex I (HTS subheadings)

Redesignation for duty-free treatment under the GSP is being considered for the following articles from the designated exporting country.

0703.20.00 (Mexico)
0704.10.40 (Mexico)
0704.10.60 (Mexico)
0704.20.00 (Mexico)
0705.11.40 (Mexico)
0705.19.40 (Mexico)
0709.30.20 (Mexico)
0709.30.40 (Mexico)
0709.90.13 (Mexico)
0710.21.40 (Mexico)
0710.80.50 (Mexico)
0710.80.65 (Mexico)
0710.80.70 (Mexico)
0711.40.00 (Mexico)
0711.90.60 (Mexico)
0804.50.80 (Mexico)
0810.90.40 (Mexico)
0813.30.00 (Argentina)
1005.90.40 (Argentina)
1006.30.10 (Mexico)
1007.00.00 (Argentina)
1102.30.00 (Thailand)
1103.14.00 (Thailand)
1701.11.00 (Brazil)
1701.12.00 (Brazil)
1701.91.20 (Brazil)
1701.99.00 (Brazil)
1806.10.40 (Brazil)
1904.90.00 (Mexico)
2001.10.00 (Mexico)
2001.90.40 (Mexico)
2005.10.00 (Mexico)
2005.90.55 (Mexico)
2005.90.90 (Mexico)
2007.99.50 (Brazil)
2208.90.45 (Mexico)
2402.10.80 (Dom. Republic)
2529.22.00 (Mexico)
2603.00.00 (New Guinea)
2620.19.60 (Mexico)
2620.20.00 (Mexico)
2620.30.00 (Mexico)
2804.69.10 (Brazil)
2824.10.00 (Mexico)
2824.20.00 (Mexico)
2843.21.00 (Mexico)
2843.29.00 (Mexico)
2905.19.00 (Brazil)
2906.11.00 (Brazil)
2909.19.10 (Brazil)
2915.21.00 (Mexico)
2915.31.00 (Brazil)
2915.39.10 (Mexico)
2915.70.00 (Brazil)
2916.15.50 (Brazil)
2916.19.50 (Brazil)
2916.39.15 (Bahamas)
2917.13.00 (Brazil)
2917.14.10 (Brazil)
2917.19.50 (Brazil)
2917.35.00 (Brazil)
2918.11.10 (Brazil)
2918.22.50 (Bahamas)
2933.19.35 (Bahamas)
2933.90.31 (Bahamas)
3201.90.50 (Mexico)
3207.40.10 (Mexico)
3301.12.00 (Brazil)
3703.10.30 (Brazil)
3703.20.30 (Brazil)
3703.90.30 (Brazil)
3823.90.40 (Brazil)
3904.21.00 (Mexico)
3904.22.00 (Mexico)
3909.10.00 (Israel)
3921.13.50 (Mexico)
3921.90.50 (Mexico)
3922.10.00 (Mexico)
3922.20.00 (Mexico)
3922.90.00 (Mexico)
4011.10.00 (Brazil)
4011.20.00 (Brazil)
4011.40.00 (Brazil)
4011.91.50 (Brazil)
4011.99.50 (Brazil)
4012.10.50 (Brazil)
4104.21.00 (Argentina)
4104.22.00 (Argentina)
4104.29.50 (Argentina)
4104.29.90 (Argentina)
4104.31.50 (Argentina)
4104.31.60 (Argentina)
4104.31.80 (Argentina)
4104.39.50 (Argentina)
4104.39.60 (Argentina)
4104.39.80 (Argentina)
4105.20.60 (Argentina)
4106.12.00 (India)
4106.19.00 (India)
4106.20.30 (India)
4107.29.60 (Argentina)
4107.90.60 (Argentina)
4109.00.70 (Argentina)
4411.19.20 (Brazil)
4411.19.40 (Brazil)
4411.21.00 (Brazil)
4411.29.60 (Brazil)
4411.29.90 (Brazil)
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[FR Doc. 89-27456 Filed 11-21-89; 8:45 am]

BILLING CODE 7035-02-M

[Investigation No. 731-TA-341 (Final)]

Tapered Roller Bearings and Parts Thereof and Certain Housings Incorporating Tapered Rollers From Hungary

AGENCY: United States International Trade Commission.

ACTION: Notice of judicial remand and the procedures to be followed.

SUMMARY: Notice is hereby given that the U.S. Court of International Trade ("CIT") has issued a decision reversing the six-country cumulative injury causation analysis supporting the Commission's determination under section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1) (1982 and Supp. V 1987)) that an industry in the United States is materially injured by reason of imports from Hungary of tapered roller bearings, parts thereof, and certain housings incorporating tapered rollers, which are provided for in subheadings 8482.20.00, 8482.91.00 and 8482.99.30, and 8483.20.40 and heading 8708, respectively, of the Harmonized Tariff Schedule of the United States (previously under items 680.30, 680.39, 681.10, and 692.32 of the former Tariff Schedules of the United States) and were found by the U.S. Department of Commerce to have been sold in the United States at less than fair value. The CIT has remanded this matter to the Commission for a new determination as to whether there is material injury or threat thereof based on the volume and effects of Hungarian imports alone.

DATES: The deadline for the Commission to complete the remand proceedings and report its new injury determination to the CIT is December 21, 1989. The Commission will consider written comments from parties to the original investigation concerning the remand determination if they conform to the guidelines set forth below and are received in the Office of the Secretary no later than 5:15 p.m. on November 27, 1989.

ADDRESS: Written comments from the parties to the original investigation should sent to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: For further information concerning the remand proceedings or the original investigation, contact Lisa A. Zanetti, Office of Investigations, U.S. International Trade Commission, telephone 202-252-1189. For further information concerning the judicial proceedings that led to the remand, contact P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1081. Hearing-impaired individuals are advised that information on these matters can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: The original investigation was conducted in 1987 concurrently with a series of final antidumping duty investigations concerning imports of tapered roller bearings from various countries. See 52 FR 5841 (Feb. 26, 1987). See also 52 FR 11347 (Apr. 8, 1987). In the subject investigation of Hungarian imports, the Commission majority based its affirmative final injury determination on a cumulative assessment of the volume and price effects of imports from Hungary, Italy, Japan, The People's Republic of China, Romania, and Yugoslavia. See 52 FR 22399 (June 11, 1987); Tapered Roller Bearings and Parts Thereof * * * from Hungary, the People's Republic of China, and Romania, Invs. Nos. 731-TA-341, 344, and 345 (Final) USITC Pub. 1983 (June 1987) ("USITC Pub. 1983").

U.S. importer Marsuda-Rodgers International appealed that determination by initiating a civil action in the CIT pursuant to 19 U.S.C. 1516a(a)(2) (1982 and Supp. V 1987). On July 28, 1989, the CIT issued a decision reversing the Commission's six-country cumulative analysis. The Court held that the Commission's decision to cumulate Hungarian imports with imports from other countries under investigation was not supported by substantial evidence on the record and was based on an erroneous interpretation of the import/domestic product competition requirement for cumulation under 19 U.S.C. 1677(7)(C)(iv) (1984 and Supp. V 1987). The Court ordered a remand, instructing the Commission to make a new final injury determination based on the volume and effects of Hungarian imports alone. *Marsuda-Rodgers International* v. *United States*, 13 CIT _____, Slip Op. 89-106 (July 28, 1989) (Per Tsoucalas J.).

The CIT denied the Commission's subsequent motion to have the July 28th decision certified for discretionary review by the U.S. Court of Appeals for the Federal Circuit under 28 U.S.C. 1292(d)(1) (1982 and Supp. VII 1989). *Marsuda-Rodgers International* v. *United States*, 13 CIT _____, Slip Op. 89-150 (Oct. 24, 1989) (Per Tsoucalas J.).

A scheduling order entered by the CIT on November 6, 1989, set a 45-day deadline for the Commission to report its new injury determination to the Court and a 14-day deadline for parties to the litigation to file their responses to that determination with the Court. The procedures to be followed in the remand proceedings before the Commission are set forth below.

Entries of Appearances and the Service List

The entries of appearances that were filed in response to the notice announcing the original investigation (published at 52 FR 5841 (Feb. 26, 1987)) will remain in effect for purposes of the remand proceedings. The official service list from the original investigation will be used as well.

Staff Report

The report of information obtained in the original investigation contains data on the volume and price effects of uncumulated Hungarian imports, as well as other data that are relevant to the question of injury causation. (The nonconfidential version of that report appears in USITC Pub. 1983 *supra*.) The Commission will use the report from the

original investigation for purposes of the remand proceedings.

Hearing

The Commission will not conduct a public hearing concerning the subject matter of the remand proceedings. At the hearing in the original investigation on May 12, 1987, parties to the investigation had the opportunity to and did present arguments and testimony relevant to the question of whether an industry in the United States is materially injured or threatened with such injury by reason of uncumulated Hungarian imports. (See 52 FR 5841 and 5842 (Feb. 28, 1987).) The Commission will take into account the relevant portions of the transcript of that hearing, as well as the relevant exhibits and prehearing or posthearing submissions, for purposes of these remand proceedings.

Written Comments From the Parties

Parties to the original investigation—*i.e.*, parties who entered appearances in investigation No. 731–TA–341 (Final) in response to the notice published at 52 FR 5841 (Feb. 28, 1987)—may file written comments with the Commission concerning the single country injury determination to be made in these remand proceedings. The parties must submit such comments on or before the deadline listed above. Submissions may contain legal and factual arguments, but must be based on information or evidence on the record of the original investigation.

A signed original and fourteen (14) copies of each set of comments must be filed with the Commission Secretary in accordance with Commission rule 201.8 (19 CFR 201.8) and must meet all other requirements of that rule. Each set of comments must be accompanied by a certificate of service indicating that copies of the comments were served on other parties of record in accordance with Commission rule 201.16(b) (19 CFR 201.16(b)). (Parties will not be permitted to file responses to each other's comments, unless leave to do so is granted by the Commission.)

Any comments containing confidential record data must be filed separately. The envelope and all pages of such comments must clearly be labelled "Contains Confidential Business Information Covered by a Protective Order."

The protective orders issued in the original investigation and the agreements signed by counsel for the parties will remain in effect for purposes of the remand proceedings. Since these proceedings are being conducted by order of the CIT, the judicial protective orders issued in *Marsuda-Rodgers International* v. *United States*, Court No. 87–07–00772, shall also apply with respect to the use and handling of confidential record data by counsel for Marsuda-Rodgers and counsel for The Timken Co. (the petitioner in the original investigation and defendant-intervenor in the CIT appeal).

Public Inspection

Copies of the CIT decision ordering the remand, the CIT scheduling order setting a deadline for completion of the remand proceedings, and the nonconfidential versions of written comments from parties submitted pursuant to this notice will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m. Monday through Friday) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Docket Section—Room 112, Washington, DC 20436, telephone 202–252–1802.

Nonconfidential documents on the record of the original investigation will be made available for public inspection upon request. Such requests should be made by telephone or in writing at least two (2) full business days before the day on which the requester wishes to inspect the documents in question. The person to whom such requests should be directed is Ruby J. Dionne, Docket Section Chief, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 204536, telephone 202–252–1799.

Persons with mobility impairments who will need special assistance in gaining access to the Commission's premises and facilities should telephone the Office of the Secretary at 202–252–1000.

By Order of the Commission.

Issued: November 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–27583 Filed 11–21–89; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1507–A]

St. Louis Southwestern Railway Co.—Directed Service—Chicago, Missouri and Western Railway Co., Debtor (Daniel R. Murray, Trustee) [1]

AGENCY: Interstate Commerce Commission.

ACTION: Termination of directed service authority.

SUMMARY: Pursuant to 49 U.S.C. 11125, the Commission authorized the St Louis Southwestern Railway Company (SSW) to operate as a "Directed Rail Carrier"—uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5)—over the Chicago to St. Louis lines of the Chicago, Missouri and Western Railway Company (CMW) for 60 days, effective October 16, 1989.

Consummation of the sales transaction authorized in Finance Docket No. 31522, Rio Grande Industries, Inc., Et Al.—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Company Between St. Louis, MO and Chicago, IL., was effected on November 8, 1989, and operations have begun under that authority. Authority contained in Directed Service order No. 1507 (DSO 1507) is no longer needed and that order is being vacated. Similarly, petitions filed by Burlington Northern Railroad Company (BN) and Illinois Central Railroad Company (ICR) seeking modification and clarification of DSO 1507 are no longer viable and are hereby dismissed.

EFFECTIVE DATE: Directed Service Order No. 1507–A terminating the authority contained in DSO 1507, shall be effective on November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr. (202) 275–1559 or Joseph H. Dettmar (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The unsubsidized and uncompensated directed service authority, granted in DSO 1507, was based on a representation by the CMW Trustee that the railroad's cash position would not allow it to continue operations over its entire system, necessitating a cessation of service by CMW over a portion of its lines. To assure continued service to shippers affected by the discontinuance of operations, the Commission in DSO 1507, authorized the SSW to provide interim service over CMW between Chicago and St. Louis.

[1] In Finance Docket No. 31522, Rio Grande Industries, Inc., *et al.*—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Company Between St. Louis, MO and Chicago, IL., served September 29, 1989, the Commission granted authority for Rio Grande Industries, Inc., Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp., a recently incorporated subsidiary of Rio Grande Industries (collectively RGI), to acquire CMW's lines between East St. Louis, and Chicago, IL, East St. Louis and Godfrey, IL, and certain attendant trackage rights.

In view of RGI's consummation of its purchase of CMW's East St. Louis to Chicago line under its previously granted authority to acquire and operate those lines, the authority contained in DSO 1507 may now be vacated. Additionally, the consummation of the purchase has made moot the petitions filed by BN and ICR on October 19 and 20, 1989 respectively, requesting modification and clarification of DSO 1507. Those petitions are hereby dismissed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. Directed Service Order No. 1507 is vacated.

2. Petitions filed by BN and ICR seeking modification and clarification of DSO 1507 are dismissed.

3. Notice of this decision shall be given to the general public by publication in the **Federal Register**. The decision will also be served on the Federal Railroad Administration; the Association of American Railroads, Transportation Division; American Short Line Railroad Association; Amtrak; The Railway Labor Executives' Association, and all parties to Finance Docket No. 31522.

4. This decision and order shall become effective on November 21, 1989.

Decided: November 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27416 Filed 11–21–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31554]

Jack L. Hadley—Control Exemption—Kiamichi Railroad Co., Inc. and Chaparral Railroad Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control of Kiamichi Railroad Company, Inc., and Chaparral Railroad Company, Inc., by Jack L. Hadley, subject to standard labor protective conditions. The exemption is related to the notice of exemption in Finance Docket No. 31553.

DATES: This exemption is effective on November 25, 1989. Petitions to reopen must be filed by December 12, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31554 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Kevin M. Sheys, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: November 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27415 Filed 11–21–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to CERCLA, RCRA and the Clean Water Act

In accordance with section 122 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, and Departmental policy, 28 CFR 50.7, notice is hereby given that on November 9, 1989, a proposed consent decree in *United States* v. *Phoenix Capital Enterprises, Inc.*, Civil Action No. LR–C–87–833, an action consolidated with *United States* v. *Vertac Chemical Corp.*, Civil Action No. LR–C–80–109, was lodged with the United States District Court for the Eastern District of Arkansas. The decree resolves claims of the United States against Phoenix Capital Enterprises, Inc. ("Phoenix"), Inter-Ag Corporation, InterCapital Industries, Inc., C.P. Bomar, Jr., and J. Randal Tomblin (collectively referred to as "the Phoenix Parties") under CERCLA, 42 U.S.C. 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Federal Priority Statute, 31 U.S.C. 3713, in connection with the Vertac, the Graham Road, and the Rogers Road Superfund sites in Jacksonville, Arkansas. It also resolves the claims of the Arkansas Department of Pollution Control and Ecology against these defendants under various state and federal statutes.

These claims arose out of the alleged failure of Vertac Chemical Corporation ("Vertac"), a subsidiary of Phoenix, to comply with its obligations under a consent decree with the United States entered in 1982 to properly maintain the drums of hazardous substances on the Vertac site and otherwise respond to environmental conditions on the site, and the transfer of certain Vertac assets to another Phoenix subsidiary, Inter-Ag Corporation. Vertac is now governed by a court-appointed receiver.

Under this Consent Decree, the Phoenix Parties agree to pay $1,840,000 to a trust fund established under the Resource Conservation and Recovery Act to be used in cleaning up the Vertac site. The Phoenix Parties also agree to pay $126,000 toward the assessment of natural resource damages by the United States Department of the Interior in the off-site areas in the vicinity of the Vertac site. Finally, Phoenix and its subsidiaries agree to pay 33 percent of their combined pre-tax profit for each year from 1989 to 2000 to the Superfund. The Consent Decree identifies the accounting procedures to be used in calculating Phoenix's pre-tax profit. If Phoenix liquidates during that twelve year period, Phoenix agrees to pay 40 percent of its liquidation value.

The proposed decree may be examined at the office of the United States Attorney for the Eastern District of Arkansas, 327 Post Office & Courthouse Building, 600 West Capitol Street, Little Rock, AR 77203; at the Region 6, Office of Regional Counsel, Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Dallas, TX 75202 (contact: Seth Thomas Low, Esq.); and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $3.40 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and

should refer to *United States* v. *Phoenix Capital Enterprises, Inc.*, Civil Action No. LR–C–87–833 (E.D. Ark.), D.J. Reference No. 90–7–1–18A.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27424 Filed 11–21–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 27, 1989, a proposed Consent Decree in *United States* v. *Ward Court Development Company*, Civil Action No. *89–00828 DAE*, was lodged with the United States District Court for the District of Hawaii. The Complaint sought penalties and injunctive relief against Ward Court Development Company for violations of regulations issued under the Clean Air Act, 42 U.S.C. 7601 *et seq.*, regarding the handling and disposal of friable asbestos. 40 CFR 61.140–61.156.

The proposed Consent Decree imposes an injunction against future violations of the Clean Air Act, including specific steps to assure proper procedures are followed with respect to notification to regulatory agencies and with respect to the handling and disposal of asbestos. The proposed Consent Decree also imposes a civil penalty of $40,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Ward Court Development Company*, DJ No. 90–5–2–1–1334.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Hawaii, Room C-242, U.S. Courthouse, 300 Ala Moana Blvd. Honolulu, Hawaii, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.80 (10 cents per page reproduction cost) payable to the "Treasurer of the United States."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27426 Filed 11–21–89; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Conservation Project Support, Museum Assessment Program, and Museum Assessment Program II; Grant Application Availability

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant application availability notice for fiscal year 1990.

This grant application announcement applies to the Conservation Project Support (CP), Museum Assessment Program (MAP) and Museum Assessment Program II (MAPII) awards under 45 CFR part 1180 for Fiscal Year 1990.

Nature of Program

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of "Museum" includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: Aquariums and zoological parks; botonical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science and technology; and planetariums. The pupose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions.

Awards are made through the Conservation Support Program (CP) to assist with the conservation of museum collections, both living and non-living.

The Museum Assessment Program funds an overall assessment of a museum's operations. The Museum Assessment Program II funds an assessment of the museum's collection-related policies. Both of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Section 206 of the Museum Services Act, title II of Public Law 94–462, as amended, contains authority for these programs. (20 U.S.C. 965)

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

The deadline date for the Conservation Project Support Program is January 26, 1990. The deadline date for the Museum Assessment Program is April 27, 1990. The deadline dates for Museum Assessment Program II are January 26, 1990 and July 27, 1990.

Conservation Project Support Applications Delivered by Mail

The Conservation Project Support Program application that is sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated-cancelled by the U.S. Postal Service.

Conservation Project Support Applications Delivered by Hand

An application that is hand-delivered must be taken to the address listed above.

Hand-delivered applications will be accepted between 9:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Museum Assessment Program and Museum Assessment Program II Application Procedures

To participate in MAP or MAP II, a museum must apply to IMS through the American Association of Museums. IMS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMS approves applications meeting the MAP and MAP II requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds, until a given date published in the **Federal Register**. For Fiscal Year 1990, the deadline dates are: for MAP, April 27, 1990 and for Map II, January 26, 1990 and July 27, 1990. If a museum's MAP or MAP II application is received on or before the indicated dates, it will be processed together with other MAP or MAP II applications received during the period. Applications received after the indicated dates will be processed during the subsequent MAP or MAP II periods. In no event will MAP applications received after April 27, 1990 and MAP II applications received after July 27, 1990 be processed for Fiscal Year 1990 awards. Applicants should contact the American Association of Museums, 1225 Eye St., NE., Washington, DC 20005, for application packets.

Program Information

Program regulations for the Conservation Project Support Program are contained in 45 CFR 1180.20 (1988) and related provisions. Regulations for the Museum Assessment Programs are contained in 45 CFR part 1180, subpart D (1988). Further program information may be found in the Application forms and accompanying instructions in the Application. See paragraph on Application Forms.

Available Funds

Under the Interior Department and Related Agencies FY 90 Appropriations Act $2,650,000 is available for the Conservation Project Support program. However, as a result of the sequester mandated under the Balanced Budget and Emergency Deficit Control Act of 1985 the available funds have been reduced to $2,554,000. Normally, IMS makes matching conservation grants of no more than $25,000 in Federal Funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds. The Director may make such a determination with respect to a category of Conservation grants by notice published in the **Federal Register**. IMS awards conservation Project Support grants only on a matching basis. At least 50% of the costs of a project must be met with non-Federal funds. (See 45 CFR 1180.20(f)).

Under the Interior Department and Related Agencies FY 90 Appropriations Act $400,000 is available for the Museum Assessment Program and Museum Assessment Program II. However the sequester mandated under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the available funds to $385,000.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the **Federal Register**, may establish priorities among the types of projects. IMS Conservation Project Support guidelines identify four broad categories of museum collections: Non-living; systematics/natural history collections; living collections/animals; and living collections/plants. For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including, development of institutional long-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application forms

IMS mails application forms and program information in a Conservation Project Support program application packet to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 609, Washington, DC 20506, (202)/786–0539). To receive an application for the Museum Assessment Programs contact the American association of Museums, 1225 Eye St., NW., Washington, DC 20005, (202/289–1818).

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Public Information Officer, Institute of Museum Services, 110 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone: (202) 786–0536.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: November 15, 1989.

Daphne Wood Murray,

Director, Institute of Museum Service.

[FR Doc. 89–27450 Filed 11–21–89; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Staff Assessment of Proposed Amended Agreement Between the Nuclear Regulatory Commission

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Utah.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amended agreement received from the Governor of the State of Utah for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed amended program ofr control over sources of radiation is set foreth below as supplementary information to this notice. A copy of the proposed amended agreement, program narrative, including the referenced appendices, applicable State legislation and Utah regulations, is available for public inspection in the Commission's public document room at 2120 L Street, NW, Washington, DC. Exemptions from the Commission's regulatory authority, which would implement this proposed amended agreement, have been published in the Federal Register and codified as part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before December 15, 1989.

ADDRESSES: Submit comments to: the Secretary of the Commission, U.S. Nuclear Regualtory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone: 301–492–0326.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Utah Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Utah for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for land disposal of source, byproduct and special nuclear material received from other persons pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. On March 29, 1984, the Governor of Utah signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. In a letter dated July 17, 1989, Governor Norman H. Bangerter of the State of Utah requested that the Commission enter into an amended agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, under which the State would also assume responsibility for regulating the land disposal of these materials received from other persons. The Governor certified that the State of Utah has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Utah desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for permanent disposal of low-level waste containing the material for which Utah has assumed regulatory authority under the 1984 agreement but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act). The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The proposed amendment to the agreement covers the following areas:

1. Amending Article I of the Agreement of March 29, 1984 to add land disposal of source, byproduct and special nuclear material received from other persons to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of March 29, 1984 to delete land disposal of source, by product and special nuclear material received from other persons from the list of materials and activities over which the Commission continues to retain regulatory authority and responsibility.

3. Specifies the effective date of the amended agreement.

C. Utah Code Annotated (UCA) 26–1–27 through 26–1–29 authorizes the State Department of Health to issue licenses to, and perform inspections of (see, also, UCA 26–23–8), users of radioactive materials under the 1984 agreement and otherwise carry out a total radiation control program. Utah Radiation Control Rules UCA–10 through UCA–80 adopted November 8, 1982 under authority of 26–1–27 through 26–1–29 Utah Code Annotated 1953, as amended, provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These regulations have been determined to be compatible with the Commission's regulations. Utah Radiation Control Rules R447–10 through R447–70 were amended and recodified in July 1989. Regulations R447–25 were adopted in July 1988 for licensing requirements for land disposal of radioactive waste.

D. On March 29, 1984, under enabling legislation in UCA 26–1–29, Utah assumed regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. The program audits conducted since that time have resulted in an NRC finding that the Utah radiation control program is compatible with that of the NRC and is adequate to protect public health and safety. In addition to Utah's agreement program, Utah is involved in several environmental radiation issues including monitoring indoor radon, monitoring uranium mill tailings, particularly at the Vitro uranium mill, and monitoring and assessment of the State environmental program. In addition, the Department issued to Envirocare of Utah, Inc., a license to receive, store, and dispose, by shallow land burial, naturally occurring radioactive material (NORM) waste with a radium–226 concentration not to exceed 2,000 picocuries per gram. NORM material is not regulated by the Nuclear Regulatory Commission.

E. The State's proposed programs for low-level radioactive waste disposal are assessed under Criteria numbers 9, "Radioactive Waste Disposal" and 20 "Qualification of Regulatory and Inspection Personnel." Additional criteria relating to prior evaluation of uses of radioactive materials, inspection and administration,[2] are addressed as appropriate to supplement information found in the staff assessment of the original Utah proposed agreement published in the Federal Register on December 30, 1983 (48 FR 57674–57684).

II. NRC Staff Assessment of the Proposed Amendment to Utah Program for Control of Agreement Materials

Reference: Criteria for Guidance of states and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[3]

Objectives

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR part 61.

(b) Land Disposal of waste received from other persons. The State shall

[1] A. Byproduct materials as defined in 11e.(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

[2] Criteria 13, "Prior Evaluation of Hazards and Uses Exceptions," 14, "Evaluation Criteria," 16, "Inspection, Purpose, Frequency," and 27, "Coverage, Amendments reciprocity."

[3] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546). A correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requiremetns and applicable supporting sections set forth in 10 CFR part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97–425).

The Utah regulations contain provisions relating to the disposal of radioactive materials into the air, water ans sewer and burial in soil which are essentially uniform with those of 10 CFR part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Utah regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR part 61.

The Utah regulations provide for land disposal of low-level radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and supporting sections set out in 10 CFR part 61. The Utah regulations include provisions for financial arrangements for decontamination, closure and stabilization. Under the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425), the financial arrangements for long term monitoring and maintenance at specific sites in Utah will be subject to Commission review and approval prior to Utah relieving the site operator of licensed responsibility.

References: URC–R447–15–310, URC–R447–15–302, URC–R447–15–303, URC–R447–304, URC–R447–15–304, URC–R447–15–306, URC–R447–15–307, URC–R447–15–308, URC–R447–15–309, URC–R447–15–311, URC–R447–25; Section 151(a)(2), Pub. L. 97–425.

Prior Evaluation of Uses of Radioactive Materials

13. Prior Evaluation of Hazards and Uses, Exceptions

In the present state of knowledge, it it necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the disposal of radioactive materials, the Utah Bureau of Radiation Control will required the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: URC–447–25, Utah Program Statement, section III.D "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

14. Evaluation Criteria

In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal for disposal of radioactive material, the Utah Bureau of Radiation Control will make the findings required by URC–R447–25–11, including, among other, findings that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public and that the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life or property.

Other special requirements for the issiance of specific licenses are contained in the regulations.

References: URC–R447–25, *see*, especially, R447–25–11, Utah Program Statement, Section III.D. "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

Inspection

16. Purpose, Frequency

The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Utah low-level waste disposal icensees will be subject to inspection by the Bureau of Radiation Control. Upon instruction from the Bureau, licensees shall perform or permit the Bureau to perform such reasonable tests and surveys as the Bureau deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: Utah Program Statement, section III.E "Compliance Program for a Low-Level Radioactive Waste Disposal Facility."

Personnel

20. Qualifications of Regulatory and Inspection Personnel

The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—

their selection, use, and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology, and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear materials which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons performing a more limited function in evaluation and inspection. These pesons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or as its command, not only for routine functions, but also for emergency cases.

Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste—(a) Number of Personnel— (a) *Number of Personnel.* There are approximately 230 specific licenses in the State of Utah. The Bureau of Radiation Control has responsibility for the low-level waste (LLW) management regulatory program as a joint function of Radioactive Materials and Machine Licensing Section and Environmental Monitoring and Mill Tailings Management Section. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The Bureau of Radiation Control has identified seven staff members who will provide supervision, technical support and administrative assistance during the various phases of regulating a licensed low-level waste disposal facility. These personnel and summaries of their duties are:

Larry F. Anderson: Director, Bureau of Radiation Control. Responsible for administration of Bureau programs.

Mark S. Day: Environmental Health Engineer. Responsible for the Utah's inactive uranium mill tailings remedial action project.

Dane L. Finerfrock: Environmental Health Manager, Environmental Monitoring and Mill Tailings Management Section. Responsible for radon-in-residences monitoring, statewide environmental radiation monitoring, licensing and inspection of low-level radioactive waste disposal facilities, and inactive uranium mill tailings remedial action programs.

Blaine N. Howard: Health Physicist. Responsible for licensing and inspection in materials program.

John D. Hultquist: Environmental Health Scientist. Responsible for inspection of low:level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Craig W. Jones: Environmental Health Manager, Radioactive Materials and Machine Licensing Section. Responsible for the Agreement State program including licensing and inspection of low-level disposal facilities.

Raymond G. Nelson: Environmental Health Scientist. Responsible for regulation of low-level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Cindy Wignall: Environmental Health Technician. Responsible for supporting both sections as a technical assistant in meeting the Bureau's goals.

In addition, Utah has identified staff with expertise in various disciplines within the Department and other State agencies for support during the pre-operational and licensing stage. Expertise in disciplines not provided by Utah personnel either on staff or covered by agreements with other State agencies will be provided by contracts with the State.

(b) *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of low-level radioactive waste disposal facilities is shown below.

Larry F. Anderson—B.S. Chemistry, MPA (Health), Brigham Young University.

NIOSH Course 549, *Recognition, Evaluation, and Control of Occupational Hazards.* October 1972.

NIOSH Course 582, *Sampling and Evaluating Airbourne Asbestos Dust.* April 10–12, 1973.

Utah State Division of Health, *Visible Emission Evaluation Course.* June 19, 1973.

American Industrial Hygiene Association, *Industrial Toxicology Seminar.* A 24-hour course ending April 30, 1975.

OSHA, *Fundamentals of Occupational Injury Investigation.* Short course ending April 1, 1977.

U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending January 27, 1978.

U.S. Environmental Protection Agency, *Grants Administration Seminar.* A 16-hour course ending May 16, 1989.

Safety International Training Center, *Hydrogen Sulfide and EQuipment for Instructors.* A 12-hour course ending June 19, 1979.

Rocky Mountain Center for Occupational and Environmental Health, University of Utah, *Health and Exposures in the Smelter Environment.* A 20-hour course ending March 29, 1980.

U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course held in January 1984.

U.S. Nuclear Regulatory Commission, *Industrial Radiography.* A 40-hour course held May 1985.

Harvard School of Public Health, *Biological Effects of Ionizing Radiation.* A 40-hour course held in March 1989.

Mark S. Day—B.S. Civil and Environmental Engineering, Utah State University.

Center for Professional Advancement, *Hydraulic Conveying.* A 1-week course in 1974.

University of California, *Resolution of Construction Claims.* A 1-week course in 1983.

Management Consultants Incorporated, *Federal Procurement of Construction Projects.* A 1-week course in 1985.

Air Force Institute of Technology, *Contingency Engineering.* A 2-week course in 1986.

Air Force Institute of Technology, *Hazardous Waste Management.* A 2-week course in 1986.

Dane L. Finerfrock—B.S. Meteorology, B.S. Biology, University of Utah.

Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 10-week course ending April 1981.

U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.

U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course held in August 17, 1980.

Western Interstate Energy Board, *Workshop on Low-Level Radioactive Waste.* A 16-hour course ending July 16, 1980.

U.S. Department of Health, Education and Welfare, *Basic Course for Investigators: Diagnostic X-Ray Surveillance.* A 80-hour course ending March 14, 1980.

U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September, 1979.

U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in November 16, 1984.

U.S. Nuclear Regulatory Commission, *License Inspection Procedures.* A 40-hour course ending in June 18, 1985.

U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.

Blaine N. Howard—B.S. Math and Physics, Ricks College. M.S. Radiological Health, New York University. M.S. Physics and Math, Brigham Young University.

Bureau of Radiological Health, *Medical X-Ray Protection.* Held October 30-November 10, 1972.

U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course held in 1978.

National Legislative Conference, *States Role in Radioactive Material Management.* Held December 9–11, 1974.

U.S. Environmental Protection Agency, *Drinking Water Regulations and Radioanalytical Workshop.* Held January 10–12, 1978.

X-Ray Workshop, Richfield, Utah. March 14–15, 1979

Actinides in Man and Animals Workshop, Snowbird, Utah. October 15–17, 1979.

U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending September 12, 1980.

NWTS Annual Information Meeting, Columbus, Ohio. December 8–10, 1980.

Waste Management 1981—American Nuclear Society, Tucson, Arizona. February 23–27, 1981.

U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September 1982.

U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in July 30, 1982.

U.S. Nuclear Regulatory Commission, *Radon Monitoring.* A 40-hour course ending in November 1982.

Conference of Radiation control Program Directors, *Radiation Instruments.* A 24-hour course ending September 1983.

U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1985.

U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course ending in September 1989.

John D. Hultquist—B.S. Environmental Science/Biology, University of Tennessee.

U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in March 1988.

Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.

U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.

U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.

Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1989.

U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending August 1989.

U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.

Craig W. Jones—B.S. Biology, M.S.P.H. (Industrial Hygiene), University of Utah.

U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.

Department of Health and Human Services, *Radiopharmaceutical Quality Assurance.* A 16-hour course ending November 1984.

U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in February 1985.

U.S. Environmental Protection Agency, *Air Surveillance for Hazardous Materials.* A 40-hour course ending in April 1985.

U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending June 1985.

Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1985.

U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 40-hour course ending in September 1985.

U.S. Nuclear Regulatory Commission, *Radiation Protection Engineering.* A 40-hour course ending in November 1986.

U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1987.

U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in August 1988.

Raymond G. Nelson—Completed 2 years towards B.S. in Geophysics, University of Utah.

U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in September 1988.

Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.

U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.

U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.

U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in June 1989.

U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials. A 40-hour course ending in August 1989.*

U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending in August 1989.

U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.

Reference: Utah Program Statement, section II.D "Low-Level Radioactive Waste Management," section IV "Staffing, Supervision, and Equipment for a Low-Level Waste Program," and Appendix E.

Administration

27. Coverage, Amendments, Reciprocity

The proposed amendment to the Utah agreement provides for the assumption of regulatory authority over land disposal of source, byproduct and special nuclear material received from other persons.

Reference: Proposed Amendment to Agreement, section I.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this sectioon with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commisson finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with rspect tot he materials covered by the proposed agreement.

The staff has concluded that the State of Utah meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covereds by the proposed amendment to the Utah agreement. Since the State is not seeking authority over uranium milling activities, subsection O. is not applicable to the proposed amendment to the Utah amended agreement.

Dated at Rockville, Maryland, this 7th day of November 1989.

For the U.S. Nuclear Regulatory Commission.

Carlton Kammerer,

Directon, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs.

Appendix A

Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on April 1, 1984, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantitites not sufficient to form a critical mass; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 26–1–29 to enter into this amendment to the Agreement of March 29, 1984, between the Commission and the State of Utah; and

Whereas, The Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on *(date to be inserted)* that the State of Utah has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the land disposal within the State of source, byproduct and special nuclear material received from other persons and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on *(date to be inserted),* that the program for regulation of materials covered by the amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1989, is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended.

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, is amended by deleting "and" at the end of paragraph B., by adding ";and," after the words "critical mass" in paragraph C., and by inserting the following new paragraph immediately after paragraph C.:

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Section 2. Article II of the Agreement of March 29, 1984, is amended by deleting paragraph E. and by redesignating paragraph F. as paragraph E.

This amendment shall become effective on *(date to be inserted),* and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984.

Done at Salt Lake City, Utah, in triplicate, this ——— day of ———, 1989.

For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

Chairman

For the State of Utah.

Norman H. Bangerter,

Governor

[FR Doc. 89–26795 Filed 11–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 3.17 and 4.17. Specifically, the changes are as follows: (1) Two Control Room HVAC Systems shall be operable during all modes of operation, (2) addition of new limiting conditions for operation for the control room and (3) delete surveillance to determine the makeup air plus infiltration air (less than or equal to 2000 cfm) to the Control Room envelope for each Control Room HVAC system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2000 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 18, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 15th day of November 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27444 Filed 11–21–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57, issued to the Public Service Electric and Gas Company (the licensee), for operation of the Hope Creek Generating State located in Salem County, New Jersey. The application for amendment is dated October 11, 1989.

The amendment would revise Technical Specification 5.6.3 to permit the installation of sufficient rack modules to bring spent fuel storage capacity up to the original design value, i.e. to increase spent fuel storage capacity from the current limit of 1290 assemblies to 4006 assemblies.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. § 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions). The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated October 11, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 15th day of November 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27445 Filed 11–21–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF GOVERNMENT ETHICS

Public Information Collection Form Revision Submitted for OMB Approval

AGENCY: Office of Government Ethics.

ACTION: Notice of proposed revision of a public information collection form submitted to OMB for clearance.

SUMMARY: The Office of Government Ethics (OGE) has submitted to the Office of Management and Budget for approval, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), a proposed revised version of a form that collects information from the public.

DATE: Comments on this proposal should be received by December 22, 1989.

ADDRESS: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3002, Washington, DC 20503, telephone (202/FTS) 395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005–3917, telephone (202/FTS) 523–5757. A copy of OGE's request for approval from OMB, including the proposed revised form, may be obtained by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics, formerly part of the Office of Personnel Management, is now a separate agency in the executive branch of the United States government. This separate agency status, effective October 1, 1989, was provided for in sections 3 and 10 of OGE's 1988 reauthorization legislation, Public Law 100–598, amending the Ethics in Government Act, 5 U.S.C. Appendix IV, section 401.

Section 205(b) of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended), 5 U.S.C. appendix III, § 205(b), sets forth certain requirements to be met by a person requesting to inspect or obtain a copy of an SF 278 Executive Personnel Financial Disclosure Report filed by high-level executive branch officials. New proposed OGE Form 201, Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report, will serve as the standardized application form for this purpose. This form is being converted from an Office of Personnel Management (OPM) form (old OPM Form 1401) to an Office of Government Ethics form (OGE Form 201) and a public burden statement is also being added. Approximately 380 forms are completed at OGE each year at three minutes per response for a total public burden of 18 hours. The OGE Form 201 will be locally reproducible by executive branch agencies for their own use.

Approved: November 17, 1989.

Donald E. Campbell,

Acting Director, Office of Government Ethics.

[FR Doc. 89–27485 Filed 11–21–89; 8:45 am]

BILLING CODE 6345–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, November 30, 1989, from 9 a.m. to 5:30 p.m. and on Friday, December 1, 1989, beginning at 8:30 a.m. The meeting will be held at the Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW., in the New Hampshire I and II meeting rooms. Among the topics to be discussed are: expenditure targets, geographic issues related to the fee schedule, options for covering professional liability premium costs in the fee schedule, strategies to improve medical practice, and beneficiary financial protection. An agenda will be available November 28.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89–27411 Filed 11–21–89; 8:45 am]

BILLING CODE 6820–SE–M

BEST COPY AVAILABLE

RAILROAD RETIREMENT BOARD

1990 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The monthly compensation base under section 1(k) of the Act is $735 for months in calendar year 1990;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $1,837.50 for base year (calendar year) 1990;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $949 for months in calendar year 1990;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $1,837.50 for base year (calendar year) 1990;

5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $1,837.50 with respect to disqualifications ending in calendar year 1990;

6. The maximum daily benefit rate under section 2(a)(3) of the Act is $31 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1990.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1990. The determination made in notice (6) is effective for registration periods beginning after June 30, 1990.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mary R. Bartik, Bureau of Research and Analysis, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4786, (FTS) 386–4786.

SUPPLEMENTARY INFORMATION: The Board is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Public Law 100–647, to publish by December 11, 1989, the computation of the calendar year 1990 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the Board is required to publish by June 11, 1990, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1990.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1990 shall be equal to the greater of (a) $600 and (b) $600 [1+{(A+37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1990 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1990 tier 1 tax base is $50,400. Subtracting $37,800 from $50,400 produces $12,600. Dividing $12,600 by $56,700 yields a ratio of 0.22222222. Adding one gives 1.22222222. Multiplying $600 by the amount 1.22222222 produces the amount of $733.33, which must then be rounded to $735. Accordingly, the monthly compensation base is determined to be $735 for months in calendar year 1990.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1990 monthly compensation base of $735 produces $1,837.50. Accordingly, the amount determined under section 1(k) is $1,837.50 for calendar year 1990.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1990 monthly compensation base is $735. The ratio of $735 to $600 is 1.225. Multiplying 1.225 by $775 produces $949. Accordingly, the amount determined under section 2(c) is $949 for months in calendar year 1990.

Under section 3, an employee shall be a "qualified employee" if his base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1990 monthly compensation base of $735 produces $1,837.50. Accordingly, the amount determined under section 3 is $1,837.50 for calendar year 1990.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1990 monthly compensation base of $735 produces $1,837.50. Accordingly, the amount determined under section 4(a–2)(i)(A) is $1,837.50 for calendar year 1990.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1990, shall be equal to the greater of (a) $30 and (b) $25 [1+{(A+600)/900}], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1990 tier 1 tax base is $50,400. Dividing $50,400 by 60 yields $840. This amount is rounded down to $800, the nearest multiple of $100. Subtracting $600 from $800 produces $200. The ratio of $200 to $900 is 0.22222222. Adding 1 produces 1.22222222. Multiplying $25 by 1.22222222 produces $30.56, which must then be rounded to $31. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 1990, is determined to be $31.

Dated: November 14, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–27428 Filed 11–21–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27448; File No. SR–NYSE–89–38]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Extension of the Effectiveness of Auxiliary Closing Procedures for Expiration Fridays for an Additional Year

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program for auxiliary closing procedures for market-on-close ("MOC") orders for an additional year. These procedures were approved by the Commission on a pilot basis for one year beginning in November 1988 and extending through October 1989.[1]

The initial program specified auxiliary closing procedures for assisting in handling the order flow associated with the expiration of stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") in a list of pilot stocks.[2] These procedures were made applicable on the one day a month that the derivative products expire ("expiration day").

In regard to the stocks subject to the auxiliary closing procedures, which supersede any rules or policies inconsistent with them, the superseding procedures preclude: (1) Entry of any MOC orders relating to the liquidation of any positions that relate to a trading strategy involving any derivative instrument after 3 p.m.[3] and (2) entry of other MOC orders after the imbalance publication unless they offset the imbalance.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the effectiveness of the auxiliary closing procedures for MOC orders for an additional year.

Since September 1986, the Exchange has used auxiliary closing procedures for use on days when stock index futures, stock index options and options on stock index futures expire concurrently. Since November, 1988, the Exchange has used these auxiliary closing procedures for each monthly expiration Friday.[4] Currently, these procedures require the entry by 3 p.m. of all MOC orders in positions relating to any strategy involving any index derivative product.[5] In addition, the procedures require the specialist to make public MOC order imbalances of 50,000 shares or more in the pilot stocks as soon as possible after 3 p.m. and then again after 3:30 p.m. Any MOC orders entered after 3:30 p.m. must offset a published imbalance.

At the time the procedures were approved by the Commission in November 1988, the Exchange had hoped that during the pilot year all options and futures markets would base the settlement price of their derivative products on opening, rather than on closing, Exchange prices. Therefore, because the settlement price of certain derivative products continues to be based on closing NYSE prices, the Exchange believes it is appropriate to extend the pilot program for an additional year. These procedures have proven to be an effective and useful means of reducing some of the volatility related to index derivative product trading strategies which may result from entering MOC orders to liquidate stock positions. Accordingly, the Exchange believes it would be appropriate to continue to use these procedures on expiration Fridays.

The statutory basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying

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[1] *See* Securities Exchange Act Releases No. 26293 (November 17, 1988), 53 FR 47589 and No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37).

[2] Currently, there are 52 pilot stocks on the list consisting of the 50 highest-weighted Standard & Poor's 500 Index stocks, based on market values as of November 6, 1988, and any of the 20 Major Market Index stocks not among the 50 highest-weighted stocks

[3] The cut-off time for the pilot program was recently changed from 3:30 to 3:00. See Securities Exchange Act Release No. 27040 (July 17, 1989), 54 FR 30806 (approving File No. SR–NYSE–89–11).

[4] *See* note 1, supra.

[5] *See* note 3, supra.

in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–38 and should be submitted by December 13, 1989.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and, in particular, the requirements of section 6 [6] and the rules and regulations thereunder. The MOC procedures described herein have been utilized on previous quarterly expirations dating back to September 1986 and on monthly expirations on a pilot basis since November 1988.[7] These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index derivative instrument trading strategies. By requiring early submission of MOC orders and disseminating imbalances, the NYSE has been able to attract contra-side interest to alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. The procedures have proven to be an operational success, and have contributed significantly to the smooth handling of the increased order flow associated with expirations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis, and will allow the Exchange to apprise interested parties of the pilot program extension in advance of the November 17, 1989 expiration. In addition, the procedures proposed here are the identical procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved for a one-year period ending on October 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: November 16, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27443 Filed 11–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–17223; 812–7241]

PNC Fund; Application

November 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The PNC Fund (formerly, NCP Funds).

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 12(d)(3) of the 1940 Act.

Summary of Application: The Applicant seeks an order permitting the Applicant, its International Portfolio, Capital Appreciation Portfolio (formerly, the Equity Portfolio) and any other present or future investment portfolio of the Applicant to invest in securities of foreign securities firms.

Filing Date: The application was filed on February 13, 1989 and amended on November 13, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 11, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicant in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Jeffrey A. Dalke, Esq. or Eric C. Freed, Esq., Drinker, Biddle & Reath, 1100 PNB Building, Broad & Chestnut Streets, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker, (202) 272–3033 or Branch Chief Karen L. Skidmore, (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. The Applicant, a Massachusetts business trust, is an open-end management investment company registered under the 1940 Act. The Applicant is currently comprised of seven investment portfolios. The investment objective of the International Portfolio is long-term capital appreciation and, secondarily, income. The International Portfolio invests primarily in equity and debt securities of foreign issuers. The investment objective of the Capital Appreciation Portfolio (formerly, the Equity Portfolio) is long-term growth of capital and, secondarily, current income and dividend growth potential. The Capital Appreciation Portfolio invests primarily in high quality equity securities. The investment adviser of the International and Capital Appreciation Portfolios is Provident Institutional Management Corporation, a wholly-owned subsidiary of Provident National Bank. Provident Capital Management, Inc. serves as sub-adviser to the International Portfolio and The Central Trust Company, N.A. serves as sub-adviser to the Capital Appreciation Portfolio.

2. In order to diversify the Portfolios further, the Applicant proposes investments in equity and convertible debt securities of foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser. The Applicant will comply with each of the requirements of proposed amended Rule 12d3–1 under the 1940 Act, Investment Company Act Release No. 17096 (August 3, 1989) ("Proposed Amended Rule 12d3–1"), including those requirements for foreign securities set forth in Proposed Amended Rule 12d3–1(b)(5).

Applicant's Legal Analysis:

3. Section 12(d)(3) of the 1940 Act makes it unlawful for a registered investment company to purchase

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[6] 15 U.S.C. 78f (1982).

[7] See Securities Exchange Act Release No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37).

[8] No comments were received on the proposed rule which implemented these procedures, nor on the proposed rule change which changed the cut-off time for these procedures from 3:30 to 3:00. See Securities Exchange Act Releases No. 26408 (December 29, 1988), 54 FR 343 and No. 27040 (July 17, 1989), 54 FR 30806, respectively.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1989).

securities which are issued by a broker, dealer or underwriter of securities unless the issuer is, in turn, wholly owned by investment companies. Rule 12d3–1 currently provides in relevant part that an investment company may purchase securities issued by companies deriving more than 15% of their gross revenues from securities-related activities if certain quantitative and qualitative conditions are met. In the case of equity securities, one qualitative condition provides that the stock acquired be a "margin security," as defined in Regulation T issued by the Board of Governors of the Federal Reserve Board. The "margin security" requirement of Rule 12d3–1 limits the ability of an investment company to invest in securities issued by foreign securities companies. Proposed Amended Rule 12d3–1 is based upon the Commission's determination that broader exemptive relief from section 12(d)(3) is appropriate.

Applicant's Conditions:

The Applicant agrees to the following condition to any order granting the requested relief:

1. The Applicant will comply with the provisions of Rule 12d3–1, as such rule is currently proposed (Investment Company Act Release No. 17096, August 3, 1989; 54 FR 33027, August 11, 1989), and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27441 Filed 11–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17221; 811–1466]

Pioneer Scout; Application for Deregistration

November 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Pioneer Scout ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on July 6, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 60 State Street, Boston Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Max Berueffy, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is organized as a Massachusetts business trust and is registered as an open-end diversified management investment company under the 1940 Act. On May 18, 1984, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the 1940 Act. On that same date, Applicant filed a registration statement on Form N–1A under the Securities Act of 1933 with respect to an indefinite number of Applicant's common shares of beneficial interest. Applicant's registration statement was declared effective on July 16, 1984. Applicant has never made a public offering of its securities.

2. Applicant was organized as a wholly-owned subsidiary of Pioneer Fund, Inc. (812–5083), a registered investment company. See Investment Company Act Rel. Nos. 13862A and 13922A (April 3, 1984 and May 2, 1984). It was intended that Applicant would be spun off to Pioneer Fund's shareholders in 1989, but intervening changes in federal tax laws made the spin-off disadvantageous. The Trustees of Pioneer Fund, Inc. decided not to spin off the Applicant and the staff of the Division of Investment Management issued a "no-action letter" dated May 15, 1989 with respect to that decision. Applicant states that it was liquidated into its parent company, Pioneer Fund, Inc. on June 16, 1989.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27442 Filed 11–21–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting from 9:30 a.m. to 1 p.m. on Friday, December 8, 1989, in the Conference Room of the Birmingham District Office, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35205–2398, phone (205) 731–1341.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27393 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 10 a.m. on Friday, December 8, 1989, at the Small Business Administration office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the U.S.

Small Business Administration or others present.

For further information, write or call Abby H. Carter, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112–2890, phone (504) 589–2744.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27394 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9 a.m. on Friday, December 8, 1989, at the Business Resource Center, 4601 North 19th Street, Waco, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas 75242, phone (214) 767–0605.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27395 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:30 a.m. on Thursday, December 7, 1989, at the Inn at Essex, Essex Junction, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, phone (802) 828–4422.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27396 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

U.S. SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting at 1 p.m. on Tuesday, December 19, 1989, at the Government Plaza, 400 Mann Street, Suite 403, Fourth Floor, Corpus Christi, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call David Royal, Business Development Specialist, U.S. Small Business Administration, Government Plaza, 400 Mann Street, Suite 403, Corpus Christi, Texas 78401, phone (512) 888–3333.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27397 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley, will hold a public meeting at 9 a.m. on Wednesday, December 13, 1989, at the Small Business Administration Conference Room, NCNB Texas Bank Building, 222 E. Van Buren, Suite 500, Harlingen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Miguel A. Cavazos, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550, phone (512) 427–8625.

Dated: November 15, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–27398 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

Michigan Tech Capital Corp.; License Revocation

[License No. 05/05–0169]

Notice is hereby given that Michigan Tech Capital Corporation (MTCC), 601 Sharon Avenue, Houghton, Michigan 49931, has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). MTCC was licensed by the Small Business Administration on August 20, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the revocation was effective November 2, 1989 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 16, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–27399 Filed 11–21–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89–072]

National Offshore Safety Advisory Committee; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of subcommittee meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App 2), notice is hereby given of a meeting of the National Offshore Safety Advisory Committee (NOSAC) Subcommittee on Subchapter W (Lifesaving Equipment for Large Inspected Vessels, including MODUs and OSVs). The meeting will be held on December 4, 1989 in room 2317, 1010 Common St., New Orleans, Louisiana. The meeting is scheduled to begin at 9:00 a.m. The Subcommittee plans to discuss the subchapter W Notice of Proposed Rulemaking published on April 21, 1989 (CGD 84–069, 54 FR 16198). The Coast Guard will actively participate by explaining the proposal and answering questions. Comments for the record on the rulemaking will not be received at this meeting.

Attendance is open to the public. The meeting will be informal, and at the discretion of the Chairman, members of the public may participate in the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Chief, Survival Systems Branch, U.S. Coast Guard (G–MVI–3), 2100 Second St., SW., Washington, DC 20593–0001. Telephone: (202) 267–1444. Facsimile (24-hour automatic operation): (202) 267–1069.

Dated: November 15, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–27388 Filed 11–21–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD1 89–136]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on December 13, 1989, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Navy Homeport Project, Restricted Area in Anchorage Grounds 23–A and 23–B.
3. New Jersey State Police Marine Unit presentation.
4. Update Newark Bay dredging status.
5. Update Kill Van Kull Dredging Project.
6. Topics from the floor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668–7834.

Dated: November 13, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 89–27429 Filed 11–21–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Calhou and Union Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for the replacement of a bridge over the Ouachita River in Calhoun and Union Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: R.G. Fairbrother, Division Administrator, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201.

SUPPLEMENTARY INFORMATION: On March 17, 1989 the FHWA issued a notice of intent to prepare an environmental impact statement (EIS) on a proposal to replace an existing historic bridge structure over the Ouachita River on U.S. Highway 167 in Calhoun and Union Counties, Arkansas.

The decision to prepare an EIS was based upon the anticipation of a single significant impact—the removal of a historic bridge. Subsequent coordination with the State Historic Preservation Officer and the Advisory Council on Historic Preservation resulted in a determination that removal of the bridge is not a significant impact and therefore the preparation of an Envionmental Assessment and subsequent Finding of No Significant Impact is the appropriate avenue for processing this proposed project.

The U.S. Coast Guard, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency are cooperating agencies for this project. No significant environmental impacts have been identified so the notice of intent to prepare an EIS is recinded.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on November 13, 1989.

Ed Lydick,

District Engineer, Federal Highway Administration.

[FR Doc. 89–27427 Filed 11–21–89 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

[Number: 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Dated: October 27, 1989.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue
Director, Office of Thrift Supervision

4. The Tax Legislative Counsel and International Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

5. The Deputy Secretary is authorized, in that official's own capacity and at official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

6. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in their own capacity and their own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

7. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;
b. Under Secretary (International Affairs);
c. Under Secretary (Finance);
d. Assistant Secretary (Policy Management) and Counselor to the Secretary;
e. General Counsel; and
f. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

8. Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated July 25, 1989, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provison of this Order, the provisions of this Order shall govern.

Nicholas F. Brady,

Secretary of the Treasury.

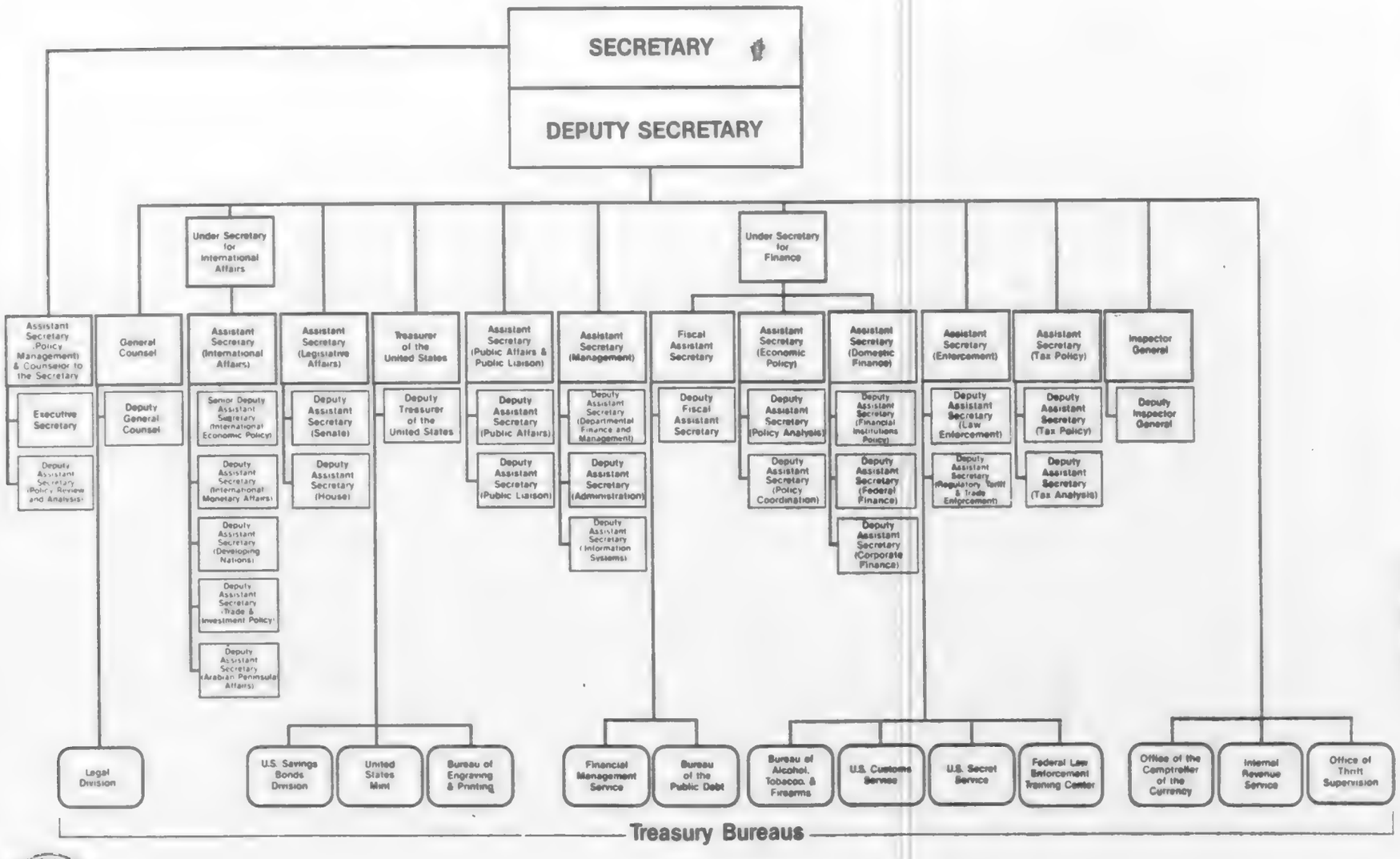
Attachment.

BILLING CODE 4810-25-M

TO 101-05
10-27-89

Attachment

THE DEPARTMENT OF THE TREASURY



October 27, 1989

[FR Doc. 89-27192 Filed 11-21-89; 8:45 am]

BILLING CODE 4810-25-C

Sunshine Act Meetings

Federal Register
Vol. 54, No. 224
Wednesday, November 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 17, 1989.

TIME AND DATE: 10:00 a.m., Thursday, November 30, 1989.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following.

1. *Dennis Wagner v. Pittston Coal Group, et al.*, Docket No. VA 88-21-D. (Issues include whether MSHA and its agent are "persons" under section 105(c) of the Mine Act and are subject to the discriminatory prohibitions of section 105(c).

2. Possible revisions to Commission Procedural Rules.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-27607 Filed 11-20-89; 1:16 pm]

BILLING CODE 6735-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, December 6, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1989.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: November 16, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89-27582 Filed 11-20-89; 11:29 am]

BILLING CODE 7550-01-M

federal register

Wednesday
November 22, 1989

Part II

Environmental Protection Agency

40 CFR Part 148 et al.
Land Disposal Restrictions For Third Scheduled Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148, 261, 264, 265, 268, and 271

[SWH-FRL-3643-4; EPA/OSW-FR-89-020]

Land Disposal Restrictions for Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to RCRA section 3004(g)(5), EPA is proposing to prohibit the land disposal of certain hazardous wastes listed in 40 CFR 268.12 (the third one-third of the schedule of restricted hazardous wastes, hereafter known as the Third Third). Today's action proposes treatment standards and prohibition effective dates for these wastes, as well as for some of the wastes listed in §§ 268.10 and 268.11 (First Third and Second Third), and for two newly listed wastes. The Agency also is proposing prohibition effective dates for these wastes when they are injected into deep underground wells regulated under 40 CFR 148. If these proposed actions are finalized, Third Third wastes can be land disposed after the applicable effective dates if the respective treatment standards are met, or if disposal occurs in units that satisfy the statutory no migration standard.

The Agency is also proposing certain interpretations of general applicability. The most important of these involve: implementation of the dilution prohibition; whether wastes formerly excluded by the Bevill Amendment are to be considered newly identified or listed for purposes of the land disposal restrictions; applicability of California list prohibitions to Third Third wastes that receive national capacity variances; and applicability of the California list prohibitions to newly identified or listed wastes. EPA is also proposing to clarify the scope of paragraphs (c) and (d) of 40 CFR 261.33 (commercial chemicals that are hazardous wastes when discarded) due to the possible lack of clarity that became apparent in the course of establishing treatment standards for these wastes.

DATE: Comments on this proposed rule must be submitted on or before January 8, 1990.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F-89-LD12-FFFFF on your comments. The EPA RCRA Docket is located in Room 2427, 401 M Street, SW, Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Telephone: 800-424-9346 (toll-free) or 202-382-3000 locally.

For information on specific aspects of this proposed rule, contact Robert Scarberry or Michaelle Wilson, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For specific information on BDAT treatment standards, contact Larry Rosengrant, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917. For specific information on the Underground Injection Control Program and hazardous waste injection wells, contact Bruce Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7275. For specific information on capacity determinations or national variances, contact Jo-Ann Bassi, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8673.

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I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless ". . . it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) sections 104 and 106 response actions, and RCRA corrective actions when the soil and debris contains listed spent solvent, dioxin, and California list hazardous wastes.

The amendments also require the Agency to set ". . . levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions, HSWA defines land disposal ". . . to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed

formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)). HSWA defines land disposal to include underground injection wells; therefore, disposal of hazardous wastes in injection wells is subject to the land disposal restrictions.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on ". . . the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels) are ". . . removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless ". . . such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

2. Applicability to Injected Wastes

As noted above, disposal of hazardous wastes in injection wells is subject to the provisions of HSWA. The injection of hazardous wastes is controlled by two statutes, RCRA and the Safe Drinking Water Act (SDWA). The regulations governing injection of these wastes have been codified along with other regulations of the Underground Injection Control (UIC) program under the SDWA in parts 124, 144, 145, 146, 147, and 148 of the Code of Federal Regulations.

3. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by deep well injection) of solvent-containing hazardous wastes numbered F001–F005 listed in 40 CFR 261.31 and dioxin-containing hazardous wastes numbered F020–F023 and F026–F028 (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule established the general framework for the land disposal restrictions program, and established treatment standards for the F001–F005 solvent wastes and F020–F023 and F026–F028 dioxin-containing wastes.

4. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following listed or identified wastes (RCRA section 3001) set out in RCRA sections 3004 (d)(1) and (d)(2) (42 U.S.C. 6924 (d)(1), (d)(2)):

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/1.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below: (i) arsenic and/or compounds (as As) 500 mg/ (ii) cadmium and/or compounds (as Cd) 100 mg/l; (iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l; (iv) lead and/or compounds (as Pb) 500 mg/l; (v) mercury and/or compounds (as Hg) 20 mg/l; (vi) nickel and/or compounds (as Ni) 134 mg/l; (vii) selenium and/or compounds (as Se) 100 mg/l; and (viii) thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition is in effect for the California list wastes containing free cyanides, metals, and the California list dilute HOC wastewaters.

5. Disposal of Solvents, Dioxins and California List Wastes in Injection Wells

Section 3004(f) of RCRA required that the Administrator prohibit the disposal of solvents, dioxins and California List wastes in deep wells, effective August 8, 1988, unless such disposal had been determined to be protective of human health and the environment for as long as the wastes remained hazardous, or unless a variance had been granted under RCRA section 3004(h). On July 26, 1988, the Agency established effective dates for the prohibition on injection of solvents and dioxin wastes (53 FR 28118). In another regulation, effective August 6, 1988 and published August 16, 1988 in the **Federal Register**, the Agency established effective dates for the prohibition on injection of California List wastes (53 FR 30908).

6. Scheduled Wastes

HSWA required the Agency to prepare a schedule by November 8, 1986 for restricting the land disposal of all hazardous wastes, including underground injected wastes, listed or identified as of November 8, 1984 in 40 CFR part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, ensures that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines: (A) At least one-third of all listed hazardous wastes by August 8, 1988; (B) at least two-thirds of all listed hazardous wastes by June 8, 1989; and (C) all remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR part 261 by May 8, 1990.

Furthermore, if EPA failed to set a treatment standard by the statutory deadline for any hazardous waste in the first third or second third of the schedule, the waste was required to be disposed in a landfill or surface impoundment that met the minimum technological requirements specified in RCRA section 3004(o) for new facilities (RCRA section 3004(g)(6)). (NOTE: In the August 17, 1988 First Third final rule, EPA interpreted the term "such facility" in section 3004(g)(6) to refer to the individual surface impoundment or landfill unit.) In addition, prior to disposal, the generator was required to certify to the Administrator that he had investigated the availability of treatment capacity and had determined that disposal in such landfill or surface impoundment was the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applied until EPA set a treatment standard for the waste, or until May 8, 1990, whichever was sooner. These requirements are collectively referred to as the soft hammer provisions. Other forms of land disposal, including underground injection, were not similarly restricted, and could continue to be used for disposal of untreated wastes until EPA promulgated a treatment standard, or until May 8, 1990, whichever was sooner.

If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the soft hammer provisions are superseded by the hard hammer. These wastes are automatically prohibited from all forms of disposal on May 8, 1990, unless the wastes are the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Note: RCRA section 3004(h)(2) permits extensions of the effective date such as national capacity extensions or case-by-case extensions beyond the hard hammer date.)

On May 28, 1986, EPA promulgated the schedule for setting treatment standards for the listed and identified hazardous wastes (51 FR 19300). All wastes that are identified as hazardous by characteristic are scheduled in the Third Third, as required by RCRA. This schedule is incorporated in 40 CFR 268.10, 268.11 and 268.12.

For the scheduled wastes, the statute does not provide different deadlines for restriction of wastes that are injected underground versus disposed of in surface land units. The Agency did, however, propose and promulgate First Third regulations for surface disposed and injected wastes on separate dates. The First Third final rule, promulgated on August 8, 1988 and published in the **Federal Register** on August 17, 1988 (53 FR 31138), set out the conditions under which wastes included in the first one-third of the schedule of restricted hazardous wastes listed in 40 CFR 268.10 may continue to be land disposed (other than by injection). Final regulations prohibiting deep well injection of certain First Third wastes were published on August 16, 1988 (53 FR 30908) and on June 14, 1989 (54 FR 25416).

The Second Third final rule, promulgated on June 8, 1989 and published in the **Federal Register** on June 23, 1989, (54 FR 26594) established treatment standards and prohibition effective dates for land disposal and underground injection for certain wastes included in 40 CFR 268.11. In addition, treatment standards and effective dates for certain First Third soft hammer wastes, Third Third wastes and newly listed wastes were promulgated.

Today's notice proposes the conditions under which wastes included in the third one-third of the schedule of restricted hazardous wastes, listed in 40 CFR 268.12, may continue to be land disposed including disposal in underground injection wells. Treatment standards for some restricted hazardous wastes listed in §§ 268.10 and 268.11 (First Third and Second Third wastes) and two newly listed waste (*i.e.*, listed after November 8, 1984) are also proposed.

7. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline. Today's notice proposes treatment standards for two newly listed wastes (see section III.A).

B. Regulatory Framework

By way of preface, we note that the following description of existing rules is for the readers' convenience, and is not intended to reopen any of these rules for public comments. The November 7, 1986 final rule (51 FR 40572) established the regulatory framework for implementing the land disposal restrictions program. Some changes to the framework were made in the July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes, as well as in the August 17, 1988 final rule. Some additional changes are also being proposed in today's rule. Regulations specifying how the framework applies to injected wastes were promulgated July 26, 1988 (53 FR 28118). The following discussion summarizes the major provisions of the land disposal restrictions framework.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment (51 FR 40577). Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in 40 CFR 268.4 and RCRA section 3005(j)(11). Also, the storage prohibition applies to wastes placed in storage after the effective dates.

The provisions of the land disposal restrictions apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste per calendar month, as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions (see 40 CFR 268.1).

The land disposal restrictions apply to all facilities subject to RCRA, including both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline, the Agency must establish the applicable treatment standards under 40 CFR part 268 subpart D for each restricted hazardous waste (RCRA section 3004(m)(1)). After the applicable effective dates, restricted wastes may be land disposed in subtitle C facilities only if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal (with the exception of First Third and Second Third scheduled hazardous wastes, which are subject to the soft hammer provisions of

RCRA section 3004(g)(6) until May 8, 1990).

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste (51 FR 40578). EPA may establish treatment standards either as specific technologies or as performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Capacity Variances from the Effective Dates

The Agency has the authority to grant national capacity variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make capacity determinations, EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available. During the period such a capacity variance is in place, if the waste is disposed in a landfill or surface impoundment, such disposal may be made only in a unit meeting the minimum technological requirements of RCRA section 3004(o) (53 FR 31186 and 40 CFR 268.5(h)(2)). It should be noted, however, that if a waste subject to a national capacity variance is treated to meet the applicable treatment standard, it may be disposed in a Subtitle C landfill or surface impoundment regardless of whether the unit meets minimum technological requirements.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a one-year extension (renewable only once) of a prohibition effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. During the period that such a case-by-case extension is in place, the waste may be land disposed only in a unit meeting the minimum technological requirements of RCRA section 3004(o).

5. "No Migration" Exemptions from the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (40 CFR 268.6). If a petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units, and for no longer than the term of the RCRA permit for disposal in permitted units (40 CFR 268.6(h)).

Section 148.20 of 40 CFR (promulgated on July 26, 1988, see 53 FR 28118) outlines in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways: the use of flow and transport models to show that injected fluids will not migrate vertically out of the injection zone for a period of 10,000 years; or, use of geochemical modeling to show that the waste is transformed so it will become nonhazardous at the edge of the injection zone. Also, a showing must be made that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of part 146.

6. Variances from the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes that cannot be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used (40 CFR 268.44). This variance is somewhat analogous to the fundamentally different factors variance in the Agency's Clean Water Act effluent limitations guidelines regulation. Among other things, petitions must demonstrate that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard, and the waste cannot be treated to the level or by the method specified by the treatment standard, or that such standard or method is inappropriate for the waste (51 FR 40605). This variance procedure can result in the establishment of a new treatability group and corresponding treatment standard that applies to all wastes meeting the criteria of the new waste treatability group. A site-specific variance from the treatment standard may also be granted administratively (without rulemaking), but the variance has no generic applicability to other wastes at other sites (53 FR 31199).

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (40 CFR 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with section 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal (40 CFR 268.50). A facility that stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. *Id.* EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. *Id.*

9. The "Soft Hammer" Provisions

First Third and Second Third wastes for which EPA has not promulgated treatment standards may continue to be disposed in landfill and surface impoundment units until May 8, 1990, or until EPA promulgates treatment standards, whichever is sooner. Such land disposal may occur only if certain demonstrations are made, and provided the landfill or surface impoundment units meet the minimum technology requirements of RCRA section 3004(o) (see 53 FR 31181, August 17, 1988). Other types of land disposal are not similarly restricted. On May 8, 1990, those wastes for which EPA has not established treatment standards are prohibited from land disposal and underground injection (the hard hammer provision). On May 8, 1990, therefore, the soft hammer provisions will no longer be in effect for the First, Second, or Third Third wastes.

II. Summary of Today's Proposed Rule

Today's notice describes the Agency's proposed approach to implementing RCRA Section 3004(g) requirements with respect to certain listed and identified (*i.e.*, characteristic) hazardous wastes included in 40 CFR 268.10–268.12. The Agency is required to promulgate regulations establishing conditions under which the Third Third wastes included in § 268.12 may be land disposed by the statutory deadline of May 8, 1990. Today's notice is the fifth rulemaking promulgated by the Agency in response to Congress' 1984 HSWA mandate.

A. Applicability of Proposed Treatment Standards

Today the Agency is proposing treatment standards and effective dates for all Third Third wastes (*i.e.*, those wastes included in 40 CFR 268.12) (see section III.A.2). The Agency is also proposing treatment standards and effective dates for all First and Second Third soft hammer wastes (currently subject to the requirements of 40 CFR 268.8), and for two newly listed wastes. The treatment standards being proposed today will apply to wastes that are land disposed (including those that are injected into deep wells).

In previous rulemakings, the Agency amended the schedule so that certain First and Second Third wastewater residues, derived-from wastes (*i.e.*, multi-source leachate), and mixtures of hazardous/radioactive wastes were moved to the Third Third of the schedule (see 53 FR 31214, § 268.12(b), (c), and (d); 54 FR 8264; and 54 FR 26648, § 268.12(b) and (c)). The Agency today is proposing treatment standards for these wastes. In addition, the Agency is proposing treatment standards for two newly listed wastes (*i.e.*, a waste listed after enactment of the Hazardous and Solid Waste Amendments of 1984) that fall into the F002 and F005 waste codes.

In the Second Third rulemaking, the Agency solicited comments, data, and specific suggestions regarding the regulation of lab packs. In today's rule, the Agency is proposing alternative treatment standards expressed as specified technologies for certain lab packs as a separate treatability group.

In the Second Third proposed rule, the Agency also solicited data and comments on the options and approaches that were being considered for establishing BDAT treatment standards for characteristic wastes. In today's rule, the Agency is proposing treatment standards for wastes that exhibit one or more of the characteristics.

B. Applicability of Today's Proposed Rule to Class I–H Hazardous Waste Injection Wells Regulated Under 40 CFR 148

The Agency has, on occasion, proposed and promulgated regulations and effective dates for underground injected hazardous wastes covered under RCRA sections 3004 (f) and (g) separately from regulations addressing wastes disposed in surface facilities. EPA is addressing all methods of land disposal of wastes in today's proposal, including injection wells regulated jointly under the Safe Drinking Water Act (SDWA) and RCRA.

C. Characteristic Wastes

In today's rule, EPA is proposing treatment standards for those wastes which exhibit one or more of the following characteristics: ignitability, corrosivity, reactivity or EP toxicity (40 CFR 261.21–24). EPA today is proposing methods of treatment for some characteristic wastes, and concentration levels for others. For certain characteristic wastes, EPA is proposing to require treatment below the level at which the waste ceases to exhibit the particular characteristic. A detailed discussion of these issues is provided in section III.C.

D. Proposed Treatment Standards for Multi-Source Leachate

On February 27, 1989, the Agency amended the schedule for prohibiting hazardous wastes from land disposal by placing multi-source leachate derived from hazardous waste in the Third Third (see 54 FR 8264). The Agency took this step to study more fully the most appropriate treatment standards for such leachate. The Agency's original approach to multi-source leachate was that the leachate carries the waste codes of all of the listed hazardous wastes from which it is derived and, therefore, is subject to the prohibitions and treatment standards for those wastes. In the event a particular constituent in the leachate is present in more than one prohibited waste, the stricter treatment standard applies (53 FR 31138, August 17, 1988).

Today the Agency is proposing two options for the development of treatment standards for multi-source leachate: (1) Continued application of the treatment standards developed for the underlying wastes from which the leachate is derived; or (2) establishment of one set of wastewater standards and one set of nonwastewater standards which would apply to all multi-source leachate. The Agency is specifically requesting comment on these two options.

A detailed discussion of the proposed options for the development of treatment standards for multi-source leachate is contained in section III.A of today's proposed rule.

E. Mixed (Hazardous/Radioactive) Wastes

EPA is proposing to grant a two-year national capacity variance under section 3004(h)(2) for mixed hazardous/radioactive wastes subject to today's rulemaking. The Agency bases the proposed national variance for these wastes upon a determination that there is inadequate treatment capacity available for these wastes. The Agency is continuing to evaluate the volumes, characteristics, and treatment options for such wastes. A detailed discussion of EPA's approach for mixed wastes subject to today's rulemaking is provided in section III.D of today's proposed rule.

F. Applicability of Today's Proposed Rule to Mineral Processing Wastes

Section 3001(b)(3)(A)(ii) of RCRA excludes from the hazardous waste regulations (pending completion of studies by the Agency) solid wastes from the extraction, beneficiation and processing of ores and minerals. On

September 1, 1989, EPA published a final rule in the **Federal Register** (54 FR 36592) that narrowed the scope of this temporary exclusion as it applies to mineral processing operations to 25 enumerated wastes that meet the exclusion criteria of "high volume/low hazard," as specified in the September 1 rule. EPA determined that five specific mineral processing wastes clearly remain within the scope of the exclusion, and that 20 additional specified mineral processing wastes remain within the exclusion pending collection of further volume and hazard data. All previously excluded mineral processing wastes, other than these 25 specified wastes, that exhibit one or more of the characteristics of hazardous waste will no longer be excluded from the hazardous waste regulations when the final rule becomes effective. (On September 25, 1989 (see 54 FR 39298–39318), EPA proposed to remove an additional 7 of these wastes from the exclusion based on additional volume and/or hazard data.)

EPA believes that the wastes withdrawn from the exclusion are "newly identified" for the purposes of these provisions. Although technically the wastes are not being identified by a new characteristic, they are being brought into the subtitle C system after the date of enactment of the HSWA on November 8, 1984. The Agency is proposing that these newly identified mineral processing wastes not be subject to the BDAT treatment standards proposed today for characteristic hazardous wastes. A detailed discussion is provided in section III.E.

G. Proposed Alternative Treatment Standards for Lab Packs

The Agency received many comments concerning the applicability of the land disposal restrictions to lab packs in response to previous rulemakings. The Agency maintains that these wastes cannot be exempt from the statutory requirements, since the plain language of the statute includes them, and there is no indication in the legislative history to exclude them from the land disposal restrictions if they contain prohibited wastes. In the Second Third final rule, however, the Agency solicited further comment, data, and specific suggestions to support treatment options for lab packs and modifications to the notification and certification requirements.

The Agency is today proposing alternative treatment standards for lab packs that contain certain organic constituents, and is specifying incineration as the treatment standard for these wastes. The Agency is also proposing stabilization as an alternative treatment standard for lab packs that contain certain inorganic constituents. The Agency believes that the proposed approach provides some of the administrative relief sought by the commenters, and minimizes the risks posed by land disposal of these small volumes of hazardous waste. Section III.A of today's proposed rule provides a detailed discussion of the alternate requirements for lab packs.

H. Nationwide Variances From the Effective Date

Due to lack of sufficient treatment or recovery capacity, EPA is proposing a national capacity variance for soil and debris contaminated with some of the waste codes covered by today's notice. EPA also is proposing a two-year national capacity variance for certain wastes disposed by deep well underground injection.

Such determinations are based on a comparison of the volumes of wastes requiring treatment to the amount of capacity available for such treatment (see section III.B). Although EPA does not require that BDAT technologies be used to meet the applicable treatment standards, unless otherwise specified, EPA assesses available capacity by evaluating the availability of technologies identified as BDAT.

The Agency is proposing to grant a two-year national capacity variance for the surface-disposed and deep well-injected hazardous wastes, and mixed hazardous/radioactive wastes listed in the following tables:

TABLE 1.—SUMMARY OF PROPOSED 2-YEAR NATIONAL CAPACITY VARIANCE FOR SURFACE-DISPOSED WASTES

Required alternative treatment technology	Waste code	Physical form
Combustion of sludge/solids.	[1] D001	Nonwastewater.
	[2] Leachate	Nonwastewater.
Incineration followed by Mercury retorting.	[3] D009	Nonwastewater.
	P065	Nonwastewater.
	P092	Nonwastewater.
Mercury retorting	[4] D009	Nonwastewater.
	K071	Nonwastewater.
	K106	Nonwastewater.
	U151	Nonwastewater.
Thermal recovery	[5] D006	Nonwastewater.
	P015	Nonwastewater.
	P073	Nonwastewater.
	P087	Nonwastewater.
Vitrification	D004	Nonwastewater.
	D010	Nonwastewater.
	K031	Nonwastewater.
	K084	Nonwastewater.
	K101	Nonwastewater.
	K102	Nonwastewater.
	P010	Nonwastewater.
	P011	Nonwastewater.
	P012	Nonwastewater.
	P036	Nonwastewater.
	P038	Nonwastewater.
	P103	Nonwastewater.
	P114	Nonwastewater.
	U136	Nonwastewater.
	U204	Nonwastewater.
	U205	Nonwastewater.
Wet-air oxidation	F019	Nonwastewater.

TABLE 1.—SUMMARY OF PROPOSED 2-YEAR NATIONAL CAPACITY VARIANCE FOR SURFACE-DISPOSED WASTES—Continued

[1] D001 (Ignitables).
[2] Multi-source Leachate.
[3] D009 (Organo-Mercury).
[4] D009 Inorganic Mercury).
[5] D006 (Cadmium batteries).

TABLE 2.—SUMMARY OF PROPOSED TWO-YEAR NATIONAL CAPACITY VARIANCE FOR UNDERGROUND INJECTED WASTES

Required alternative treatment technology	Waste code	Physical form
Alkaline chlorination.	[6] D003	Wastewater.
Chemical oxidation followed by chemical precipitation.	[7] D003	Wastewater.
Chromium reduction followed by chemical precipitation.	D007	Wastewater.
Mercury retorting	D009	Nonwastewater.
Neutralization	D002	Wastewater.
Treatment of reactives followed by chromium reduction & chemical precipitation.	[8] D003	Wastewater.
Wet-air oxidation	K011	Wastewater.
	K013	Wastewater.
	K014	Wastewater.
Wet-air oxidation followed by carbon adsorption.	Leachates[9].	Wastewater.

[6] D003 (Cyanides).
[7] D003 (Sulfides).
[8] D003 (Explosives, Reactives).
[9] Multi-Source Leachate.

I. Best Demonstrated Available Technologies (BDAT)

Today's proposed rule defines waste treatability groups by waste code, and identifies the Best Demonstrated Available Technology (BDAT) for each waste code within the treatability group (see section III.A.1). Treatment standards are based on the performance levels achievable by the BDAT identified for each waste code. Any technology not otherwise prohibited (*e.g.*, impermissible dilution) may be used to meet the concentration-based treatment standards. Where treatment standards are expressed as a technology, the waste must be treated using the specified technology prior to land disposal.

J. Determining When Dilution is Permissible

EPA believes that its existing rules regarding impermissible dilution of prohibited wastes require further clarification when applied to situations involving aggregation for centralized treatment of more than one waste. Therefore, the Agency is today amplifying its interpretation of permissible dilution to clarify that, with respect to prohibited wastes containing BDAT constituents at concentrations exceeding the treatment standard, aggregation for centralized treatment of such wastes must result in actual reduction in the toxicity or mobility of at least one BDAT constituent in each prohibited waste that is centrally treated. In many cases, such a reduction must occur for more than one BDAT constituent. In addition, given the site-specific nature of the determination, EPA retains its authority to deviate from this general principle in individual cases where centralized treatment is inadequate. A detailed discussion of this clarification is provided in section III.G of today's proposed rule.

K. Other Impermissible Dilution Issues

EPA today is proposing that: (1) Impermissible dilution of a waste that exhibits the characteristic of toxicity be prohibited; (2) impermissible dilution of listed wastes to achieve a delisting level be prohibited; and (3) impermissible dilution of a waste that exhibits the characteristic of ignitability, corrosivity, or reactivity be prohibited if EPA has established a method of treatment as the treatment standard for the waste. The Agency believes that these types of dilution are incompatible with the language, goals, and legislative history of HSWA, where Congress expressed clear intent that dilution not be used as a substitute for treatment standards promulgated pursuant to RCRA section 3004(m). A detailed discussion of these proposed prohibitions on dilution is provided in section III.H of today's proposed rule.

L. Storage Prohibition

Section 3004(j) provides that storage of prohibited hazardous waste is itself prohibited "... unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal." See § 268.50(a)(2), and 51 FR 1709, January 14, 1986. This language applies only to storage of prohibited wastes in non-land based storage units (*e.g.*, tanks and containers), land-based storage being a type of disposal. The Agency is today soliciting comment on its interpretation that the storage prohibition does not apply where storage precedes legitimate, protective treatment, recovery or disposal. A detailed discussion of this interpretation is provided in section III.I of today's proposed rule.

M. Generator Notification Requirements

The generator notification requirements set forth in 40 CFR 268.7 specify that when the generator has determined, either through testing or his knowledge of the waste, that the waste is restricted and does not meet the applicable treatment standards, the generator must, with each shipment of waste, notify the treatment facility in writing of the appropriate treatment standards. If the generator has determined that the waste he is shipping is restricted, but can be land disposed without further treatment, he must submit to the land disposal facility the same information, as well as a certification stating that the waste meets the applicable treatment standards. In today's rule the Agency is considering changing the interpretation of § 268.7 to allow referencing the treatment standards. In addition, the Agency is proposing to amend § 268.7 to allow a one-time notification and certification for small quantity generator (SQG) shipments subject to tolling agreements. A detailed discussion of these amendments is provided in section III.J of today's notice.

N. Waste Analysis Requirements

The Agency today is proposing to incorporate the approach to waste analysis promulgated in the First and Second Third final rules (53 FR 31146 and 54 FR 26594). Where BDAT is a destruction or removal technology, a total waste analysis is required because it is most appropriate for measuring such destruction or removal. The legislative history indicates a strong preference for treatment that destroys hazardous constituents (see, *e.g.*, 130 Cong. Rec., S9179, daily ed. July 25, 1984, statement of Senator Chaffee), and the only reliable way to verify that destruction has occurred is to measure the total waste. Similarly, where BDAT is identified as an immobilization technology such as stabilization, analysis of a TCLP waste extract is required because it is the most appropriate measure of immobilization. In cases where both technologies are identified as BDAT, both types of waste analysis are required.

In order for the initial generator to determine whether his waste meets the applicable treatment standard as generated, he should analyze the waste extract if a treatment standard is in 40 CFR 268.41, or he should analyze the total waste if the treatment standard is found in § 268.43 (see proposed section 268.35). The generator may also make this determination based on his knowledge of the waste (see § 268.7(a)), provided there is a reasonable basis for doing so (for example, the generator uses so little of a key constituent that it could not be found in the waste at levels exceeding a treatment standard). The Agency has discussed this principle in past rulemakings, and is not reopening it for comment here.

O. Modification to the Framework: Waste Analysis Plans and Treatment/Disposal Facility Testing Requirements

Today, the Agency is soliciting comment on proposed revisions to the treatment and disposal facility testing requirements contained in §§ 264.13(a), 265.13(a), 268.7(b), and 268.7(c). Currently, the comment contained in §§ 264.13(a)(2) and 265.13(a)(2) indicates that the owner/operator of a treatment or disposal facility may rely on the generator of the hazardous waste to supply part or all of the waste analysis information (provided that this information is sufficient for the treatment or disposal facility to meet the regulatory requirements imposed by part 268). This language has been mistakenly construed to preclude requiring the owner or operator of a treatment or disposal facility to conduct a detailed analysis of a representative sample of a waste. The Agency is today seeking comment on the following two approaches that would specify the circumstances under which EPA may require testing:

(1) The generator may supply the waste analysis information only if an EPA-approved waste analysis plan allows the generator to do so. The Agency is clarifying that the owner or operator of the treatment or disposal facility will be required to conduct this testing unless otherwise stated in an

EPA-approved waste analysis plan. The Agency is proposing to amend §§ 268.7(b) and 268.7(c), the waste analysis requirements under the land disposal restrictions, to reflect this change; or

(2) The owner/operator of the treatment or disposal facility is required to test the waste a minimum of once a year. The Regional Administrator may require more frequent testing, through the waste analysis plan, on a site-specific basis.

A detailed discussion of the two approaches is provided in section III.K.

The Agency is also addressing the testing requirements of wastes treated in so-called 90-day tanks (or containers). There is a regulatory gap with respect to treatment of prohibited wastes that is conducted in such tanks or containers regulated under § 262.34. This is because such tanks (or containers) are not subject to a waste analysis plan requirement. Thus, there is presently no regulatory vehicle for determining testing frequency in such circumstances (although the existing testing requirement obviously applies, and continues to apply, to persons conducting treatment of prohibited wastes in section 262.34 tanks and containers).

In order to close this regulatory gap, EPA is proposing today that persons treating prohibited wastes in section 262.34 tanks and containers must prepare a plan justifying the frequency of testing that they choose to adopt. A detailed discussion of the proposed requirements is provided in section III.L of today's proposed rule.

P. Clarification of "P" and "U" Solid Wastes

The Agency is proposing amendments to the existing language of 40 CFR 261.33 to clarify the regulations pertaining to "P" and "U" hazardous wastes. The first amendment involves § 261.33(c), a provision that lists residues from containers and inner liners of containers that have held commercial chemical products listed in § 261.33 (e). This language is partially in error, and the Agency is proposing to correct it. EPA is also proposing a change to clarify when contaminated soil, water, and spill debris contaminated with 40 CFR 261.33 (e) and (f) materials can be solid wastes. A detailed discussion of the Agency's proposed amendments is provided in section III.F of today's preamble.

Q. Applicability of California List Prohibitions After May 8, 1990

With the promulgation of the Third Third final rule, almost all of the California list prohibitions will be superseded by more specific prohibitions and treatment standards.[10] The only continued applicability of the California list appears to be (1) for liquid hazardous wastes that contain over 50 ppm PCBs; (2) for HOC-containing wastes identified as hazardous by a characteristic property that does not involve HOCs, as, for example, an ignitable waste that also contains greater than 1000 ppm HOCs (but not an EP toxic waste that exhibits the characteristic because it contains one of the six chlorinated organic pesticides covered by the EP toxicity characteristic; and (3) for liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l of nickel and/or 130 mg/l of thallium. In section III.M of today's proposal, the Agency is soliciting comment on whether the California list prohibitions should be applicable to newly listed or identified wastes and discusses this option at length.

Also, EPA is restating that the California list prohibitions apply to wastes which receive national capacity variances in later rulemakings. This discussion also appears in section III.M of this preamble.

III. Detailed Discussion of Today's Proposed Rule

A. Development and Identification of Treatment Standards

Today's notice proposes treatment standards for the remaining Third Third scheduled wastes for which treatment standards have not been promulgated. (Land disposal restrictions were promulgated ahead of schedule for 16 wastes originally scheduled in the Third Third: K100 nonwastewaters on August 8, 1988 (53 FR 31174, August 17, 1988), clarified on May 2, 1989 (54 FR 18836); and K005, K007, K023, K093, K094, P013, P021, P099, P109, P121, U069, U087, U088, U102 and U190 wastes on June 8, 1989 (54 FR 26594, June 23, 1989). Details of the development of treatment standards for these wastes can be found in the First Third and Second Third administrative records in the RCRA docket.) Treatment standards are also being proposed for the remaining First Third and Second Third wastes which are currently subject to the "soft hammer" provisions of 40 CFR 268.8.

Development and identification of the proposed treatment standards are presented on a waste code basis in sections III.A.2. through III.A.6. of today's notice. Section III.A.7. presents the development of proposed treatment standards for wastes identified as multi-source leachate and includes a reference table for the BDAT list constituents that correspond to a good portion of the U and P chemicals. This table is a handy reference to the discussion of the development of standards for these U and P chemicals and includes: an alphabetical list of the chemicals proposed for regulation in multi-source leachate, their corresponding U or P code (if applicable), and a reference to sections III.A.2. through III.A.6. that presents background on the development of treatment standards for the corresponding U or P code.

The bulk of the following discussion and that of section III.A.1. has appeared in previous preambles and is being repeated here as an aid to the reader's understanding, not to reopen these issues for comment. (The final paragraph in this section, relating to whether the standards proposed today are below levels that minimize threats to human health and the environment is a new discussion and is open for comment.)

The first step in the development of treatment standards is to divide the wastes to be regulated into groups based on similar physical and chemical properties. These waste treatability groups take into account differences in the applicability and effectiveness of treatment for those particular wastes. The Agency initially decides how wastes should be grouped by examining whether the wastes are generated by similar industries or from similar processes. This is a valid starting point because the waste characteristics that affect treatment performance are expected to be similar for these wastes even though the wastes themselves are somewhat different.

The next step in the development of treatment standards is to identify the Best Demonstrated Available Technology (BDAT) for each treatability group. A treatment technology is considered to be "demonstrated" primarily based on data from full-scale treatment operations that are currently being used to treat the waste (or a similar waste). Once the "demonstrated" technologies have been identified, the Agency determines whether these technologies may be considered "available". To be "available" the technology itself or the services of the technology must be able to be purchased, and the technology must substantially diminish the toxicity of the waste or reduce the likelihood of migration of the waste's hazardous constituents. EPA notes that it prefers to base BDAT on technologies that further the statutory goals of waste minimization and recycling. In some circumstances EPA may select this type of technology as BDAT over more conventional treatment, provided the disparity in performance of the technologies is not too pronounced, and the technology selected minimizes threats to human health and the environment by substantially diminishing waste toxicity and reducing mobility of toxic constituents.

Treatment data from "demonstrated" "available" technologies are then screened with regard to the design and operation of the equipment, the quality assurance/quality control (QA/QC) analyses of the performance and operating data, and the accuracy and precision of the analytical tests used to assess treatment performance. After this screening, the treatment data are adjusted for each constituent based on the analytical recovery of that constituent from treatment residuals. The Agency has chosen to perform this adjustment in order to account (in part) for analytical interferences associated with the chemical makeup of the treatment residual. Where data for more than one treatment technology exist, the individual performance data for each of the various treatment technologies are then statistically evaluated. The mean concentrations of constituents in the treatment residuals from each technology are compared using an analysis of variance test (referred to as "ANOVA") in order to determine if one technology performed significantly better than the other. (A detailed discussion of the methodology for identification of BDAT and the ANOVA test is provided in the November 7, 1986 final rule (51 FR 40572)). Where data exist for only one technology, the Agency uses best engineering judgement to assess whether that particular technology represents the best applicable technology for that particular waste and whether the data indicate that the treatment system was well-designed and well-operated.

Once BDAT is identified, EPA establishes the treatment standard as maximum constituent-specific concentrations allowed in the waste (or in an extract of the treated waste), as a specific technology (or group of technologies), or as combinations of these. Although the statute provides discretion to establish treatment standards as either levels or methods of treatment, EPA normally attempts to set concentration-based treatment standards whenever possible, because this allows the use of other technologies or combination of technologies that can achieve the same level of performance (as measured by compliance with these standards). Thus, concentration-based standards provide the regulated community some degree of flexibility in choosing treatment technologies and also allow the investigation and development of new and alternative technologies. In addition, establishing concentration-based standards provides a means of ensuring that the treatment technologies are operated at conditions that the Agency has determined will result in the best demonstrated performance.

(Note: EPA is presently studying its response to the Court's remand order in the land disposal prohibition framework case (*Hazardous Waste Treatment Council* v. *EPA*, No. 88-1657, D.C. Cir. Sept. 15, 1989). Although the Agency has not formulated its final response, we are finding for purposes of this proposal that, based on present knowledge, none of the treatment standards being proposed appear to be below levels where threats to human health and the environment are minimized. In many cases, the standards being proposed are greater than various standards developed pursuant to less exacting statutory directives. For example, most of the standards for metals are greater than, or in the same order of magnitude, as maximum contaminant levels established pursuant to the Safe Drinking Water Act, which take into account technical feasibility and cost. Other examples include the treatment standards for polyaromatic hydrocarbons in organic and petroleum refining wastes that are orders of magnitude higher than risk-based levels developed for purposes of the Clean Water Act's Water Quality Criteria. For other wastes, the Agency is presently unable to determine with confidence as to when threats would be minimized because of various uncertainties such as the amount of a carcinogen that can pose a risk, behavior of hazardous wastes in a land disposal environment, extrapolation of animal toxicity data to human data. Based on the information the Agency at this time views the technology-based standards proposed today as not being below levels where threats to human health and the environment are minimized.)

1. General Applicability of Treatment Standards and Overview of the Remainder of This Preamble Section

Section III.A.1. of today's preamble discusses certain general issues arising from developing or applying today's proposed treatment standards. In order to provide a comprehensive general discussion, sections III.A.1.a. through III.A.1.f. restate the Agency's position on certain issues pertinent to the development of today's proposed treatment standards. The Agency is also providing a clarification on how treatment standards compare to Practical Quantitation Limits (PQLs) (see section (III.A.1.e.)), and a clarification on the use of grab and composite samples for purposes of establishing and enforcing treatment standards (see section III.A.1.f.). The Agency is not reopening these issues for public comment, nor is it here presenting a complete discussion of these issues (references to previous **Federal Register** notices and background documents will be provided).

Sections III.A.1.g. and h. provide overviews of general issues and information on the applicability of treatment standards to all characteristic (D001 through D017) wastes and to all U and P wastes, respectively. Section III.A.1.i. presents procedures the public should follow for requesting copies of additional data that the Agency expects to receive during the public comment period, and the reasons that these procedures have been established.

a. Restrictions on the Use of Technologies Identified as BDAT. Compliance with a concentration-based treatment standard requires only that the treatment level be achieved; once achieved, the waste may be land disposed in a subtitle C unit. The waste need not be treated by the BDAT technology; in fact, a concentration-based treatment standard provides maximum flexibility in one's choice of treatment technology because any treatment, including recycling or any combination of treatment technologies, unless prohibited (e.g., impermissible dilution) or unless defined as land disposal (e.g., land treatment), can be used to achieve these standards.

Some treatment standards in today's proposed rule, however, are expressed as a technology rather than as a concentration-based standard. EPA typically establishes a treatment method as the standard when the Agency has no means of calculating valid concentration-based standards that can be used for compliance monitoring. In such cases, that particular technology must be used to treat that particular waste (including any mixture that contains the waste). After the waste is treated using the specified method it may be land disposed, unless EPA has specified otherwise in the rule (see for example, the proposed standard for certain mercury containing wastes), or

[10] See 52 FR 29993 (August 12, 1987) and 52 FR 25773 (July 8, 1987); see also 40 CFR 268.32(h) (HOC prohibition superseded by treatment standard and effective date for a particular HOC).

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(in some situations) if the residue exhibits a hazardous waste characteristic and does not meet BDAT for that characteristic.

In cases where EPA has specified the use of a technology (or technologies) a generator or treater can, however, demonstrate that an alternative technology can achieve the equivalent level of performance as that of the specified treatment method (40 CFR 268.42(b)). This demonstration is anticipated to typically be both waste-specific and site-specific and may be based on: (1) The development of a concentration-based standard that utilizes a surrogate or indicator compound that guarantees effective treatment of the hazardous constituents; (2) the development of a new analytical method for quantifying the hazardous constituents (see discussion of analytical complications in establishing concentration-based standards for U and P wastes in section III.A.1.h.(2) of today's preamble); and (3) other demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters.

As a result, a new treatment standard based on this demonstration, as well as any analytical methodology used in the demonstration, could then be proposed to be applicable to other wastes determined to be in the same treatability group. It should be noted that promulgating standards expressed as specified methods of treatment does not preclude the Agency from establishing concentration-based standards in the future without receiving specific variance requests from industry, if adequate data and information become available through other means.

In situations where wastes subject to concentration-based standards are mixed with wastes subject to treatment standards expressed as a method, the mixture must be treated by the specified method and must also meet the concentration-based treatment standards for any other prohibited waste contained in the matrix (see generally 53 FR 31146–7, August 17, 1988).

b. Applicability of Treatment Standards to Treatment Residues Identified as "Derived-From" Wastes and to Waste Mixtures. (1) "Derived-From" Wastes. The Agency emphasizes that all residues from treating the original listed F, K, U and/or P wastes are likewise normally considered to be the listed waste by virtue of the "derived-from" rule found in 40 CFR 261.3(c)(2). Consequently, all wastes generated in the course of treatment are prohibited from land disposal unless they comply with the treatment standard or are otherwise exempted from the prohibition, such as, through a no-migration petition or by a capacity variance.

Treatment operations including those identified as BDAT, typically generate wastewater and nonwastewater residuals that may require further treatment. For example, incineration generates two residues, ash and scrubber waters. In order to comply with the treatment standards, the ash may need to be stabilized in order to immobilize the metal constituents that have concentrated in the ash. In addition, subsequent treatment of the scrubber waters may generate additional inorganic residues that may contain metals that were captured in the scrubber water. Thus, these inorganic residues may also need to be stabilized prior to land disposal, in order to comply with the same treatment standards as the stabilized ash. (Note: The Agency has not tested every possible waste that may result from every subsequent part of the treatment train. However, since the treatment standards proposed today are generally based on treatment of a relatively concentrated form of the waste (i.e., the "original" waste), the Agency believes that residues from subsequent treatment are less difficult to treat.)

The "derived-from" rule does not apply to wastes that are identified as hazardous solely because they exhibit a characteristic of hazardous waste (see 40 CFR 261.3(d)(1)). Once these characteristic wastes are treated in compliance with today's proposed treatment standards (and in accordance with the restrictions on impermissible dilution of prohibited characteristic wastes), any residue (provided that it no longer exhibits the characteristic or a new characteristic) is no longer considered to be a RCRA hazardous waste. This does not necessarily mean, however, that treatment is curbed by the characteristic level. See section III.C. of today's preamble.

The Agency is also investigating "de minimis" levels for certain hazardous constituents in listed wastes below which the waste will no longer be a hazardous waste for purposes of subtitle C regulation. The Agency has yet to propose these "de minimis" levels; thus it has not completed its evaluation of the regulations that would be affected, in particular, the relationship of "de minimis" levels to treatment standards promulgated under the land disposal restrictions.

(2) Mixtures of Different Hazardous Waste Streams. Today's proposed treatment standards apply to mixtures of different waste streams. Where a waste mixture has more than one applicable concentration-based treatment standard for a particular constituent, the most stringent standard must be met prior to land disposal (see 40 CFR 268.41(b)). In the event that a waste mixture cannot be treated to meet the most stringent standard, one may petition the Agency for a variance from the treatment standard pursuant to 40 CFR 268.44.

c. Wastewater Versus Nonwastewater Standards. In today's proposed rule the treatment standards (both concentration-based and specified methods) are generally presented as applicable to wastewaters or to nonwastewaters. However, for certain wastes or waste treatability subcategories the Agency is not making a distinction between wastewater and nonwastewaters.

As an example, for some treatability subcategories of D001, D002, and D003 wastes, the definition of these wastes in 40 CFR 261.21, 261.22, and 261.23 establishes only a single treatability group (e.g., the characteristic of corrosivity only applies to "aqueous" wastes (i.e., water) and to "liquids" according to §§ 261.22(a) (1) and (2) respectively. In other cases, making such a distinction would be nonsensical (e.g., D001 ignitable compressed gases). Thus, the Agency is generally proposing to apply only one standard to these treatability subcategories for which the distinction between wastewater and nonwastewater cannot be made. (See discussion of proposed standards for each D001, D002, and D003 treatability subcategory in section III.A.4. of today's preamble.) The Agency believes that this is the most reasonable approach for these characteristic wastes because the difference between wastewater and nonwastewater may be difficult (or impossible) to establish, or is unnecessary to make because the same technology can be logically applied to the entire treatability subgroup.

(1) Definition of Wastewaters and Nonwastewaters. Generally, the Agency is adopting in this notice the definition of wastewaters that was used to promulgate treatment standards for the First and Second Third final rules. Wastewaters are defined as those wastes (listed wastes, including wastes generated as a result of the "mixture" and "derived-from" rules) that contain less than 1% total organic carbon (TOC) *and* less than 1% total suspended solids, except for those wastes identified as

F001, F002, F003, F004, and F005 solvent-water mixtures. (See 53 FR 31145 (August 17, 1988) which adopts this definition for most First Third wastes, and 51 FR 40579 (November 7, 1986) for the definition of F001, F002, F003, F004, and F005 solvent-water mixtures.) Those wastes (listed wastes, including wastes that are hazardous as a result of the "mixture" and "derived-from" rules) that do not meet these criteria are defined as nonwastewaters and thus would contain greater than or equal to 1% TOC, *or* greater than or equal to 1% total suspended solids. (Note, however, the discussion in III.B. of further subcategorization of nonwastewaters for purposes of national capacity variances based on a lack of solids incineration capacity.)

(2) Impermissible Switching of Applicable Wastewater and Nonwastewater Standards. It is not permissible to dilute or partially treat a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard, or vice versa (see 52 FR 21012 (June 4, 1987); but see 52 FR 25767 (July 8, 1987) noting special circumstances when California list wastes are involved). The Agency has established this principle because technologies applicable to nonwastewaters are not generally applicable to wastewaters, or require special designs (in the cases of incineration) in order to simultaneously handle wastewaters. Furthermore, treatment residues meeting the definition of nonwastewaters must comply with all applicable nonwastewater treatment standards; likewise, residual wastewaters must comply with all applicable wastewater treatment standards.

The Agency recognizes, however, that certain technologies are specifically designed to separate wastewaters from nonwastewaters. Such technologies may or may not be considered partial treatment under this principle, as discussed in the following paragraphs.

Dewatering technologies such as filtration and centrifugation are typically designed to remove suspended solid materials (TSS) from aqueous wastes. (Note: For the purposes of applying BDAT treatment standards, the Agency does not consider carbon adsorption a dewatering technology even though it may act as a filter for suspended material.) When these technologies are applied to a nonwastewater that contains greater than 1% TSS but less than 1% TOC, the resultant liquid residue will probably meet the definition of a wastewater (i.e., it will probably contain less than 1% TSS and less than 1% TOC). The Agency does not consider this impermissible switching of applicable treatment standards.

When the suspended material is organic and the overall untreated waste contains greater than 1% TOC, these dewatering technologies are also not precluded from use. The resultant residuals (i.e., the removed solids and the liquids) must comply with the applicable wastewater or nonwastewater treatment standards depending on their TOC and TSS content. If the liquid residues from these dewatering technologies meet the definition of wastewaters, the Agency does not consider this impermissible switching of applicable standards.

The importance of the TOC level in determining impermissible switching of applicable wastewater or nonwastewater treatment standard is apparent in the scenario of treatment of a waste containing less than 1% TSS and slightly more than 1% TOC (such as 2 or 3% TOC), and thereby being a nonwastewater by definition. If EPA has established concentration-based treatment standards for the corresponding wastewater form of this waste, it would be permissible to use carbon adsorption to treat this nonwastewater, so long as these concentration-based treatment standards for the wastewaters are ultimately achieved (i.e., if the residual wastewater contains hazardous constituents at levels above the concentration-based wastewater treatment standards, additional treatment with other technologies is necessary prior to land disposal.) However, if EPA has established a wastewater treatment standard expressed as "Carbon Adsorption as a Method of Treatment" for this waste code, the nonwastewater described above must comply with the standard for the nonwastewater form, despite the fact that the TOC content is only slightly greater than 1%. This is not just a mechanical application of the requirement that treatment must be conducted by the specified method, with the treatability group determined at the point of generation. EPA established "Carbon Adsorption as a Method of Treatment" standard for certain wastewaters based on the assumption that wastewaters typically contain TOC levels much less than 1%, so that removal of the organic constituents from these wastewaters was anticipated to be effective. If the nonwastewater previously described is subjected to carbon adsorption as a method of treatment, there would be no means of assuring optimum removal of the hazardous constituents. Thus, in such a situation, the use of carbon adsorption for this nonwastewater, is not permitted as a means of complying with BDAT. The Agency considers this an impermissible switching of applicable treatability groups and treatment standards.

(3) Application of Wastewater/Nonwastewater Standards To Residues Generated From Use of a Specified Method. When EPA specifies a treatment method as the treatment standard, residues resulting from the required treatment method are no longer prohibited from land disposal unless EPA should otherwise specify. Commenters during previous rulemakings suggested that EPA specifically clarify the applicability of the treatment standards expressed as a required method for certain residues generated from the use of the specified methods.

In the Second Third final rule (see generally 54 FR 26625, 26630, June 23, 1989), the Agency presented specific guidelines on this. This summary is repeated here for the reader's convenience. Where EPA has established "Incineration as a Method of Treatment" as a treatment standard for nonwastewaters and/or wastewaters, or where EPA has established "Carbon Adsorption as a Method of Treatment" for wastewaters, the following statements concerning residuals from treatment trains incorporating these technologies are true: (1) Scrubber waters from incinerators in compliance with the substantive provisions of 40 CFR 264 subpart O or 265 subpart O are considered to meet the treatment standard and can be land disposed; (2) the scrubber waters from incinerators in compliance with the substantive provisions of 40 CFR 264 subpart O or part 265 subpart O are not required to undergo "Carbon Adsorption as a Method of Treatment" when this specified wastewater treatment method also has been established; (3) incinerator ashes and residues from the subsequent treatment of scrubber waters from incinerators in compliance with the substantive provisions of 40 CFR 264 subpart O or 265 subpart O are considered to meet the required "Incineration" treatment standard, and can be land disposed; (4) incinerator equipment (such as fire brick) derived from sections of the incinerator that have been directly subjected to the high temperatures of the incinerator that was operated in compliance with the substantive provisions of 40 CFR 264 subpart O or 265 subpart O, or are downstream from the high temperature

zones, are considered to meet the treatment standards for these wastes and can be land disposed; (5) wastewater effluent and any subsequent nonwastewater treatment residues from carbon adsorption units treating wastewater forms of these wastes (i.e., wastes from downstream from the carbon column) are considered to meet the specified treatment standard and can be land disposed; and (6) where EPA specifies carbon adsorption as the treatment method for wastewaters, spent carbon, as well as any other nonwastewater residues from the wastewater treatment preceding carbon adsorption, are *not* considered to meet the treatment standard; such spent carbon and nonwastewater residues must be treated by the specified nonwastewater method prior to land disposal.

d. Transfer of Treatment Standards. Rather than testing the performance of BDAT on every waste, for certain wastes the Agency examines similarities in waste stream characteristics and constituents in order to transfer treatment standards from a tested waste to a similar untested waste. EPA believes that transferring treatment performance data for untested wastes is technically valid, particularly when the untested wastes are generated from similar industries or similar processing steps. EPA also believes that transferring treatment performance data for tested constituents in one waste to untested constituents in another similar waste is technically valid, particularly when the constituents and wastes have similar chemical and physical properties.

To determine whether wastes generated by different processes can be treated to the same performance levels, EPA reviews data on waste characteristics to identify parameters that are expected to affect treatment selection. When this analysis suggests that an untested waste can be treated with the same technology as a tested waste, the Agency examines a more comprehensive list of constituents that represent the most important waste characteristics that will affect treatment performance.

The complete methodology for transferring treatment standards, however, depends upon the waste itself and often differs from treatability group to treatability group. For a detailed discussion of the transfer methodology for the wastes presented in today's notice, refer to the background documents for each waste or treatability group and the background documents for the wastes from which the treatment standards were transferred.

EPA notes further that in the case of transfers of standards based on performance of incineration, EPA is most often transferring standards that were based on the ability of the incinerator to achieve destruction of organics to detection limits as measured in the ash and scrubber water. This is supported by data from approximately fourteen different test burns of a variety of different RCRA hazardous wastes. These wastes contained varying concentrations of many BDAT list organics. While not all of the organics on the BDAT list were present in the untreated wastes, the residues were analyzed for them and thus detection limits were calculated for a variety of incinerator residues. In developing concentration-based treatment standards for U and P wastes, the Agency considered all of these detection limits and determined which were the most representative of U and P wastes. In order to account for the anticipated variability in waste characteristics of untreated U and P wastes, the Agency typically selected the highest detection limits for the constituent that corresponded to the chemical represented by the U or P code. Thus, the Agency believes the resultant treatment standards should be achievable on a routine basis for the majority of U and P wastes.

However, in developing concentration-based treatment standards for specific F and K wastes containing organics, the Agency considered all of these data and determined which particular waste was the most representative of that particular F or K waste (based on the availability of waste characterization data for the untreated F or K waste). As a result, the Agency often transferred treatment standards that were significantly lower than those developed for the U and P wastes. The Agency believes that these lower treatment standards are achievable for these F and K wastes based on the achievability of detection limits in the waste matrix from which the standard was transferred.

e. Analytical Requirements and Relationship of PQLs to BDAT—(1) *Waste Analysis Requirements.* In today's proposed rule, BDAT has been identified as a destruction technology for organic constituents and cyanides in many wastes. For these wastes the best measure of treatment performance is one that reflects the extent to which these organics and cyanides have been destroyed. This approach is likewise consistent with the Congressional preference to destroy hazardous wastes where possible. See, e.g., 130 Cong. Rec. S 9179 (July 25, 1984) (statement of Sen. Chaffee) (wastes with high organic content should be incinerated). This approach is also consistent with the strong Congressional goal of eliminating uncertainty from land disposal of hazardous waste, see, e.g., RCRA section 3004(d)(1), because it ensures removal of hazardous constituents from the land disposal environment. Therefore, the corresponding treatment standards for these constituents are based on an analysis of total constituent concentrations in a representative sample of the treated waste. [NOTE: The land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) require analysis of waste extracts obtained from the Toxicity Characteristic Leaching Procedure (TCLP) as a measure of performance. At the time that the treatment standards for F001–F005 were promulgated, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP was considered to be the best available measure of performance.]

In cases where treatment standards for metals in nonwastewaters are based on stabilization, the use of the TCLP is typically required as the measure of the performance of the treatment technology. Where treatment standards for nonwastewaters are based on multiple treatment processes due to mixtures of organics and metals, or where recovery of metals is the basis of the treatment standards, analysis of total constituent concentrations and analysis of the TCLP extract (or EP extract depending upon the standard) must be performed prior to land disposal.

(2) The BDAT List. The Agency has established a list of chemicals, primarily derived from the constituents in 40 CFR 261 Appendix VII and Appendix VIII, that are evaluated for regulation as BDAT constituents (i.e., concentration-based treatment standards) when they are present in a listed waste. The rationale for selection of the particular constituents to be regulated can be found in the background document for each waste or waste treatability group. The Agency believes that it is not limited to regulating only those constituents for which a waste is listed (40 CFR 261 Appendix VII). Appendix VII sets forth only the constituents that were the basis for the listing and is not an exhaustive list of hazardous constituents in each waste. Additional support for taking this approach is found in RCRA section 3001(f), which specifies

that EPA must consider additional hazardous constituents other than those for which the waste was listed when evaluating delisting petitions. Section 3001(f) thus acknowledges that Appendix VII is only a partial list of the hazardous constituents that can be present in a listed waste.

(3) Relationship of Treatment Standards to PQLs. The regulated community has asked a number of questions about the relationship of treatment standards to the practical quantitation limits (PQLs) for a number of constituents. It is important, therefore, to clarify the definition of PQLs, their intended use, and their relationship to treatment standards.

In proposed revisions to the September 1986 edition of Test Methods for Evaluating Solid Wastes (also known as and herein referred to as SW-846), the Agency defines PQLs as " * * * the lowest level of quantitation that the Agency believes a competent laboratory can be expected to reliably achieve." The intended use of PQLs is mentioned in Method 8250 of SW-846 (the analytical method for the determination of semivolatile organics in wastes by gas chromatography/mass spectrometry). This discussion states: "Sample PQLs are highly matrix-dependent. The PQLs listed herein are provided for guidance and may not always be achievable" (SW-846, September, 1986, Table 2, p. 8250-5). The discussion further defines PQLs as the method detection limit in reagent water (from Table 1, pp. 8250-2, 8250-3, and 8250-4) multiplied by a matrix dependent factor that was estimated for four matrices (Table 2, p. 8250-5).

As is evident from the above citations, the PQLs are directly related to the amount of interferences that are present in the different waste matrices, and the PQLs listed in SW-846 are not always achievable for constituents as measured in untreated wastes. However, the Agency points out that most treatment processes, particularly destructive technologies such as incineration, destroy not only the hazardous constituents of the waste but also other organics that typically interfere with the analysis for constituents in untreated wastes as well. Thus, PQLs typically are significantly lower for treatment residuals such as incinerator ash than for untreated wastes. Such differences in PQLs for untreated versus treated wastes are demonstrated by the data for almost every incineration test burn performed by the Agency in developing BDAT treatment standards (see appropriate background documents for each waste treatability group).

Potential users of PQLs should keep in mind that the PQLs in SW-846 were established to provide guidance for the analysis of waste samples by acting as minimum performance criteria for analytical laboratories. The PQLs do not necessarily represent the lowest limits of analytical performance achievable for any given waste.

The PQLs in SW-846 were intended to be broadly applied to groups of wastes. As a result, matrix dependent correction factors were not developed for any particular waste code, and do not specifically apply to any particular treatment residuals (i.e., only correction factors for matrices identified as ground water, low-level soil, high-level soil, and non-water miscible waste were specified in Method 8250 of SW-846). Furthermore, the Agency is currently modifying and expanding the matrix correction factors, as well as modifying the detection limits from which the PQLs are derived.

The PQLs listed in SW-846 for some constituents are less stringent than some of the treatment standards. This apparent anomaly results primarily from the fact that the PQLs in SW-846 were not based on the same waste matrices (i.e., treatment residues) that were tested in developing the treatment standards. The treatment standards for a given waste code are based on analysis of the treatment residuals of the waste (or in some cases, a similar waste from which the treatment standards are transferred). Consequently, the resulting treatment standards appropriately reflect the level of analytical performance achievable for that waste. Thus, the PQLs in SW-846 are generally not used directly in developing the part 268 treatment standards.

The question has been raised whether constraints posed by the limits of applicable analytical methods allow treatment standards to be met reliably on a routine basis. The Agency points out that the laboratories used to develop the treatment standards are reliable and must maintain compliance with EPA's Quality Assurance/Quality Control requirements on a routine basis. The background documents for all wastes for which incineration has been established as BDAT provide additional support that treatment standards are above the limits of detection for regulated constituents on a routine basis. These documents provide data that indicate that the laboratories consistently obtain low detection limits for the regulated constituents in the wastes.

In cases where a facility believes that waste-specific treatment standards cannot be met because their laboratory is unable to achieve PQLs below the treatment standards on specific treatment residuals, the facility may submit a petition for a variance from the treatment standards for that particular waste code (EPA construes 40 CFR 268.44 as encompassing such petitions). The facility must demonstrate that the analyses are in compliance with all other BDAT QA/QC provisions (as outlined in the BDAT Generic Quality Assurance Project Plan (EPA/530-SW-87-011, March 1987). Moreover, the petitioner must also demonstrate that the treatment process is a well-designed and well-operated BDAT process.

(Note: The Agency may use analytical methods that are not specifically identified in SW-846 for setting treatment standards, provided that the methods comply with all appropriate detection limits, spike/surrogate recoveries, and other quality assurance criteria. Thus, a facility may also develop a petition in a similar manner.)

f. Treatment Standards Based on Single Facility Data, Grab Samples Versus Composite Samples, and Waste Analysis Plans—(1) Single Facility Data. As discussed in the August 17, 1988 final rule for First Third wastes, the Agency believes that the use of a small number of data sets from a single treatment facility can be representative of the treatment achieved by the particular treatment system. This is particularly true when no other treatment data are available, or when data exist but there is no verification that the treatment process from which the data were obtained was well-designed or well-operated. It is not possible for the Agency to sample every facility generating the waste or every treatment system treating the waste. For the purposes of determining treatment standards, the Agency has established a methodology for selecting particular facilities and treatment systems that it considers to be well-designed and well-operated. The Agency also selects wastes that are representative of those most difficult to treat.

The Agency recognizes that there is variability inherent in every treatment system, as well as variability in the characteristics of the wastes. The Agency accounts for these by multiplying the mean of the constituent concentrations by a correction factor known as the variability factor. This factor is derived through a quantitative procedure that determines the statistical 99th percentile for the treatment standard. This establishes a treatment standard that should be achievable 99 percent of the time by a well-designed,

well-operated system. The Agency further adjusts the treatment standard to account for variabilities due to analytical recovery. In addition, all analyses of hazardous constituents are performed in accordance with an established QA/QC plan as outlined in the BDAT Generic Quality Assurance Project Plan. The Agency is confident that this methodology will result in treatment standards that accurately represent the performance of a particular treatment system.

Standards based on incineration are always established above the limit of detection rather than at the detection limit. This is because the Agency prefers to account for the variability inherent in the treatment system and in the analysis of the recovery data. Therefore, following EPA's methodology for establishing treatment standards, the data (the average detection limit) are adjusted through use of the variability factor (typically 2.8) and a correction for recovery of a spiked analyte (or surrogate). The resulting treatment standards for the organic constituents are above the detection limits. The standards are thus actually greater than the achievable levels (which are at or below the detection limits) and should be easily met by a well-designed, well-operated incineration system.

(2) Grab versus Composite Samples. Where performance data exist based on both the analysis of composite samples and the analysis of grab samples, the Agency establishes the treatment standards based on the analysis of grab samples. Grab samples normally reflect maximum process variability, and thus would reasonably characterize the ranges of treatment system performance.

In cases where only composite data exist, the Agency considers the QA/QC of the data, the inherent efficiency of the process design, and the level of performance achieved. The Agency may then choose to use this composite data to develop the treatment standard. Where these data are used to establish the treatment standard, the treatment standard is identified as based on analysis of a composite sample. Enforcement of that standard thus would also be based on composite samples.

(3) Waste Analysis Plans. The waste analysis plan shall provide the basis for monitoring a disposal facility's compliance with promulgated treatment standards. This plan must be adequate to assure compliance with part 268. The disposal facility is, however, ultimately responsible if it disposes a waste that does not meet a treatment standard. Therefore, a disposal facility may violate the land disposal restrictions while at the same time complying with the provisions of its waste analysis plan. Put another way, a waste analysis plan may be written to authorize types of sampling and monitoring different from those used to develop the treatment standard(s). In such an instance, the disposal facility must demonstrate that the waste analysis plan (and the specific deviating feature) is adequate to assure compliance with part 268 (see 40 CFR 264.13). This might require, for example, a demonstration of statistical equivalence between a composite sampling protocol and one based on grab sampling, or a demonstration of why monitoring for a subset of pollutants would assure compliance of those not monitored.

In any case, enforcement of the land disposal restrictions is based on grab samples (except as described in the previous section) and analysis of all constituents regulated by the applicable treatment standards, not on the facility's waste analysis plan.

g. General Issues on Developing Treatment Standards for Characteristic Wastes. This section of today's preamble presents a discussion of general issues on establishing treatment standards for all characteristic wastes. EPA initially took the position that wastes that are hazardous exclusively by virtue of exhibiting a characteristic are not subject to the RCRA section 3004(g)(C) "hard hammer" (See 51 FR 1607 n.4., January 14, 1986). EPA no longer takes this position, and is now reading RCRA section 3004(g)(6)(C) to encompass all wastes for which EPA has an obligation to establish treatment standards for under paragraph (g)(5), which includes identified characteristic wastes. The legislative history also indicates that Congress intended EPA to include identified characteristic wastes (i.e., those identified as of the effective date of HSWA) by the statutory deadline (H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 88 (1984)). In any case, since EPA intends to promulgate treatment standards for these wastes, the issue has no practical significance.

The criteria for identifying a waste as a characteristic hazardous waste are defined in 40 CFR 261.21 through 261.24. These criteria identify five major groups of characteristic wastes: Ignitable (D001), Corrosive (D002), Reactive (D003), EP Toxic Metals (D004–D011), and EP Toxic Pesticides (D012–D017). There are several criteria within each of these major groups that define the particular characteristic. EPA used these individual criteria as the basis for identifying treatability groups (subcategories) within each major characteristic group.

There are a number of options for developing treatment standards for any characteristic waste code or subcategory. One option is to propose concentration-based standards when the Agency has data to support such an action. A second option is to propose a treatment standard expressed as a required method. A third option is to simply establish the characteristic level as the treatment standard. A fourth option is to establish a method of treatment along with a required performance level. (See preamble section III.C. for further discussion of EPA's authority to establish treatment standards for characteristic wastes.)

Section III.A.4. of today's preamble presents the proposed treatment standards for: ignitable (D001), corrosive (D002), and reactive (D003) characteristic wastes; their treatability subcategories; and related U and P reactive wastes. Proposed treatment standards for EP Toxic Metals (D004–D011) are presented in section III.A.5. along with proposed treatment standards for some K, U and P wastes that contain these metals. Proposed treatment standards for EP Toxic Pesticides (D012–D017) are presented in section III.A.2.c. along with treatment standards for related K, U, and P halogenated pesticides.

For many of the wastes that are hazardous only because they exhibit one of the characteristics in 40 CFR 261.3(c)(1) and (d)(1), the use of some BDAT technologies will result in a residue that no longer exhibits any of the characteristics. In some cases, however, the use of a BDAT treatment technology to remove one characteristic will result in a residue which has a different characteristic, and thus requires further treatment (e.g., incineration of an ignitable D001 waste may generate an ash that exhibits the characteristic of EP Toxicity for metals (D004–D011)). Furthermore, if the characteristic waste or its treatment residue is mixed with a listed hazardous waste, the entire mixture is considered to be the listed hazardous waste due to the derived-from rule, even if treated to remove all characteristics.

The Agency is today proposing that characteristic wastes and residues from treatment of characteristic wastes must be treated to meet all characteristic treatment standards prior to land disposal. When the treatment standard for one characteristic is expressed as a required method of treatment, the method must be used *and* the treatment standard for any additional characteristic in the residue must be met. See preamble section III.A.4.a. for a further discussion of this concept as it applies to ignitable, reactive, and corrosive characteristic wastes.

For purposes of complying with today's proposed treatment standards, dilution of characteristic wastes in order to remove the characteristic (in lieu of meeting the treatment standard) is not allowed. Dilution does not destroy the chemical constituents causing the characteristic; it is merely a physical process that provides temporary removal of the characteristic which can be reversed if the physical conditions are changed. The Agency understands, however, that dilution is sometimes necessary in order to facilitate treatment (e.g., in order to lower the BTU value of a D001 waste with a very high BTU value). This type of dilution to effect treatment is not prohibited as long as it is not used as treatment or to avoid compliance with treatment standards, or in the case of California list wastes, prohibition levels. (See preamble sections III.C. and III.D. for further discussion of issues relating to dilution.)

h. General Issues Pertaining to All Remaining U and P Wastes. Today's proposed rule addresses several issues pertinent to the development of concentration-based treatment standards for U and P wastes as defined in 40 CFR 261.33 (e) and (f). These include issues such as deficiencies in waste characterization, analytical complications, sporadic generation patterns, infrequent land disposal, potential necessity for dissolution prior to treatment, and difficulties in evaluation of recycling potential. EPA is also proposing two clarifying corrections to the existing scope of section 261.33: one change to correct an unintended gap in paragraph (c), and the other to clarify that contaminated soils and other spill residues are not automatically excluded from being solid wastes if recycled.

The Agency believes that concentration-based treatment standards can be developed for many of the U and P wastes based on existing data. EPA has grouped all of the U and P wastes into various treatability groups based on similarities in elemental composition (e.g., carbon, halogens and metals) and the presence of key functional groups (e.g., phenolics, esters, and amines) within the structure of the individual chemical represented by the U or P waste code. The Agency has also accounted for physical and chemical factors that are known to affect the selection of treatment alternatives and to affect the performance of the treatment, such as volatility and solubility, when developing these treatability groups. The use of the chemical (e.g., pesticides and pharmaceuticals) was also important in establishing these groups. Emphasizing the use of these chemicals allows the Agency to identify issues specific on these groups of chemicals, to target potential sources of data, and to solicit comments and data from specific industries and public interest groups.

(1) Waste Characterization of U and P Wastes. EPA has designated a specific U or P waste code number referring to the specific chemical constituent associated with that code. EPA's listing sorts these wastes into two general hazard categories. Those wastes identified as P wastes are defined as "acute hazardous" wastes and those wastes identified as U wastes are defined as "toxic" wastes. The Agency has determined that these distinctions generally have no significant bearing on treatability of the particular chemical or waste, and thus did not consider these distinctions between U and P wastes in developing the treatability groups identified in this section.

The U and P wastes are defined as out-of-date commercial products, chemical intermediates, off-specification (off-spec) products, container liners (or residues), or spill residues. (See 40 CFR 261.33.) These wastes can also exist as wastewater or nonwastewater treatment residues based on the derived-from or mixture rules. In addition, U and P wastes are often contained in lab packs as complex mixtures of discarded concentrated chemicals, contaminated laboratory samples, old analytical laboratory standards, and contaminated equipment.

The composition of these wastes can vary significantly. Some U and P wastes may not contain the same constituents or concentration of the specific U or P chemical that was present in the waste from which concentration-based standards may be proposed to be transferred. However, given the statutory time constraints that exist, the Agency cannot possibly test every single U and P chemical. The Agency believes that the transfer of data and development of concentration-based standards is the best alternative for these U and P wastes, and is therefore proposing such standards whenever possible.

(2) Analytical Complications. The Agency has determined that for many U and P wastes, as well as for some K wastes, there are several complications that arise in terms of how reliably the primary hazardous constituents can be quantified. These complications appear to preclude the establishment of concentration-based treatment standards. As a direct result of these complications, the Agency is compelled to establish a method (or methods) of treatment as a treatment standard rather than concentration-based constituent specific standards.

For any particular U or P chemical, there are four major reasons that these quantification complications exist: (1) there are no methods that are currently verified for the quantification of the constituent of interest in treatment residuals; (2) calibration standards (i.e., standard solutions of known purity for validating compliance with QA/QC procedures) of that chemical are not currently available on the commercial market; (3) the chemical may be unstable in water, or react with water; and (4) the chemical may not be listed as a single chemical entity (e.g., P030 is listed as "soluble cyanide salts, not otherwise specified"). Chemical specific complications are presented in the appropriate section of today's preamble that discusses the specific treatability group where the U or P chemical has been classified. Implications of these complications on the general procedures for establishment of concentration-based standards are outlined in greater detail below.

(a) Availability of a Verified Analytical Method. The September, 1986, edition of Test Methods for Evaluating Solid Wastes (also known as SW–846), does not include analytical methods that are currently verified for the quantification of some U and P chemicals in treatment residuals. This does not imply that an existing analytical method cannot be used to quantify that particular chemical, but rather, it indicates that the Agency has not verified the quantification of that U or P chemical in the specific treatment residuals of interest. However, in the absence of this verification and where the Agency has sufficient belief that a particular analytical method can analyze a particular chemical, the Agency is not precluded from establishing a concentration-based treatment standard for that U or P chemical. In fact, the Agency anticipates that for many U and P chemicals, analytical methods will be verified as appropriate for complex matrices such as treatment residuals. EPA is currently working to validate analytical methods for a growing number of chemicals in a variety of matrices. It is anticipated that treatment data obtained during the development of BDAT for specific waste codes will also assist in the validation of these methods.

For many U and P chemicals, the Agency has determined that only High Performance Liquid Chromatography (HPLC) analytical methods can be used to measure their concentration. Although HPLC techniques have been used to quantify certain chemicals in relatively clean aqueous matrices, the Agency has not completely verified that HPLC is appropriate for analysis of either untreated wastes or treatment residuals. There is only one HPLC method that is currently listed in SW-846 as applicable to analysis of solid wastes, with very limited applicability. However, the Agency is in the process of validating other HPLC methods, including multiple-column HPLC systems and HPLC units coupled with mass spectroscopy. Until this method validation work is completed, the Agency does not believe that it should establish concentration-based treatment standards for these particular U and P chemicals. Further, the Agency currently lacks data on treatment of hazardous wastes based on HPLC analyses.

The Agency also recognizes the existence of methods other than those specifically identified in SW-846, that can successfully quantify some U and P compounds in complex matrices, and for the purposes of today's proposed rule solicits information about them. In particular, the commenter should supply all available QA/QC information and the data must represent analysis of treated residuals from the use of technologies that are equivalent to that examined or specified in today's preamble as BDAT for that particular chemical. Commenters should specify that the submitted data are applicable to a particular waste code.

(b) Commercial Availability of Calibration Standards. Solutions of known purity and concentration of a chemical or mix of chemicals are often referred to as calibration standards. These are used by analytical laboratories to verify the accuracy and precision (QA/QC) of a particular analysis for a particular chemical or group of chemicals. The continued availability of these standards from commercial chemical suppliers is important in maintaining proper QA/QC of quantitative analysis for the chemical constituents in treatment residuals. For the purposes of routine compliance with treatment standards, the Agency believes that an analytical laboratory must be able to readily and consistently purchase these calibration standards.

EPA determined which compounds are commercially available by asking five major suppliers whether they had the chemicals in stock and whether they were available for shipping to prospective buyers. Only those chemicals thus found to be "commercially available" were included on the list of those for which EPA will set concentration-based standards and require analytical quantification. However, EPA realizes that some analytical reagents may exist for these chemicals, outside the commercial inventories of the major supply houses contacted. Nevertheless, unless a compound is consistently in stock at major suppliers, the Agency believes that the difficulties in obtaining these standards and in verification of their purity are sufficient cause to not establish concentration-based treatment standards for these U and P chemicals. This does not, however, preclude the Agency from promulgating a concentration-based standard at a later date.

While the use of calibration standards is an integral component of all analyses, the Agency's SW-846 methods do not typically require that a calibration standard be available for every compound being analyzed. Surrogate compounds are often used as calibration standards in many analytical methods. The Agency could establish concentration-based treatment standards for a surrogate compound in the waste or for some other waste characteristic that could act as an indicator of effective treatment (i.e., an indicator parameter), provided that a correlation of the concentration of the surrogate or indicator parameter to the concentration of the constituent of interest can be established. In general, the lack of waste characterization data and the variability in waste composition for U and P wastes interferes with the establishment of surrogate or indicator parameters for many U and P wastes.

This does not preclude the Agency from the use of surrogates or indicator parameters in establishing concentration-based treatment standards. Where deemed appropriate, the Agency has specifically identified these surrogates or indicators on a waste code specific basis in today's proposed rule. In fact, in the Land Disposal Restrictions for Second Third Wastes (54 FR 28614, June 23, 1989), treatment standards for total and amenable cyanides have already been promulgated for several U and P waste codes that are listed as specific cyanide salts. In general, commenters to the proposed rule for these wastes supported the use of these indicator parameters.

In cases where these U and P chemicals are no longer produced or used in this country, and are not reasonably expected to be detected in environmental or waste samples, the Agency may choose to not establish concentration-based treatment standards for particular constituents. In most cases, EPA does not wish to encourage a market for high-purity samples of these compounds, as might happen if it required that these compounds be analyzed, thus creating a demand for quantification reagent samples.

(c) Stability in Water. Some U and P compounds dissociate, decompose or otherwise significantly change their identity when exposed to water. EPA chooses not to set concentration-based BDAT standards for these compounds, because there is generally a high probability of the presence of water in many treatment residuals and particularly in wastes classified as wastewaters. Thus, while analytical methods may exist for some of these "unstable" chemicals when measured in nonaqueous matrices and even in aqueous samples (depending on their "half-life" of instability), accurate quantification of their concentration in treatment residuals where there is a reasonable expectation that water may be present would be severely hampered. For many of these chemicals, a high level of coordination of sampling and analytical personnel would be required in order to assure a consistency in holding times and thus highly variable analytical results might be expected.

In developing the list of chemicals to be analyzed for purposes of compliance with groundwater monitoring requirements of 40 CFR 264 (i.e., the chemicals listed in Appendix IX), EPA faced the same problem of identifying those chemicals that are "unstable" in water and therefore not amenable to these groundwater monitoring requirements. Consequently, EPA designates as "unstable" those U and P chemicals that were particularly excluded from Appendix IX for this reason. EPA is confident that it is correct in relieving the regulated community from the burden of undertaking analysis of hazardous waste treatment residuals for those U and P compounds excluded from Appendix IX because of their instability in water.

(d) Multiple or Ambiguous Identity. For several U and P waste codes, the specific listing for that waste code does not identify only one particular chemical for which the listing applies (e.g., P075 is listed as "Nicotine and salts" and P051 is listed as "Endrin and metabolites"). For purposes of compliance with the treatment standards, the Agency has determined which chemicals should be analyzed (if any).

In cases where the U or P listing did not specify particular isomers and there are a limited number of isomers, treatment standards are typically reported as applicable to all isomers, are isomer specific, or are applicable to the sum of the isomers depending upon whether the identity of isomers can be distinguished.

When the exact identity of the chemical for which the U or P waste code is listed is ambiguous, or where the listing specifies "and salts" or "and metabolites", the Agency typically chooses to set a technology rather than a concentration-based standard in order to preclude analysis for a particular chemical that may not have even been present originally. The Agency also may choose to establish an indicator compound for these wastes (or the primary listed compound) that would assure treatment of any additional chemical that may fall into the broad listing (See earlier discussion of P030 in this section of today's preamble).

(3) Current Generation and Land Disposal Practices. Data indicate that there are relatively few generators of many of the U and P wastes. Information from the 1986 TSDR survey also suggests that the majority of these U and P wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for many of these wastes. However, the sporadic nature of generation suggests that these wastes may be generated at any time and thus may require land disposal of treatment residues.

While establishing a treatment standard of "No Land Disposal Based on No Generation" allows generators to petition for a variance from the treatment standard (40 CFR 268.44), the Agency prefers to establish concentration-based standards or methods of treatment whenever a transfer of standards can be reasonably performed. However, for some U and P wastes that have a very low probability of generation, the "No Land Disposal Based on No Generation" alternative may be feasible. This alternative may be particularly attractive for a few U and P wastes for which the Agency cannot identify sufficient data to show that treatment technologies are demonstrated or even applicable.

(4) Dissolution for Treatment. Some of the discarded or off-spec U and P chemicals, when existing as concentrated chemicals or mixtures, may be dissolved in a suitable solvent or water prior to treatment. Because this is a form of dilution, the question arises whether it is a form of permissible dilution. Two such instances occur as follows: 1) concentrated organic liquids and solids are sometimes dissolved in appropriate organic solvents (or waste solvents) and then incinerated in a liquid injection system; and 2) concentrated inorganic chemicals and metal salts are sometimes dissolved in water or acidic media, chemically oxidized (or reduced), and precipitated as an insoluble salt. In all of these cases, this type of management is permissible because it renders the chemical suitable for treatment by the designated BDAT technology.

Where organic U and P wastes are generated in small amounts, however, incineration in a rotary kiln may be preferred over dissolution in order to reduce the risk from mixing and handling. However in other cases, dissolving the organic U and P chemicals in solvents may actually be desirable in order to reduce the maximum emission rate of halides or oxides of phosphorus, nitrogen, or sulfur that may occur from incinerating excessive amounts of the concentrated forms of these U or P chemicals. Thus, EPA does not wish to preclude dissolution for purposes of effective treatment.

(5) Recycling Potential. The Agency believes that it may be feasible to legitimately recycle some organic U and P wastes. For example, a true "off-spec" product could potentially undergo further on-site processing rather than land disposal, be sold as a low grade chemical product in the market, or be exchanged as a raw material to other industry participating in a hazardous waste exchange program. Indeed, these materials may not be solid wastes if legitimately recycled (see 40 CFR 261.33).

However, other forms of organic U and P wastes may require further treatment prior to recycling (e.g., organics that tend to polymerize or solidify may need to be stabilized prior to reuse). In addition, other organic U and P wastes may not be amenable to recycling for a variety of reasons. The major reason being that quite often other chemicals such as residual catalysts, unreacted reagent chemicals, by-products, or process contaminants are present in the waste that preclude their reuse. Because of the variety in possible contaminants per organic U and P waste, the Agency cannot identify specific waste characteristics per waste code that would allow the Agency to establish direct reuse as a treatment standard for the majority of U and P organic chemicals. The Agency solicits data and information to identify those wastes (or subcategories based on certain waste characteristics), that are amenable to direct reuse and recycling.

EPA does not intend to preclude the legitimate recycling of any of these wastes. EPA notes, however, that soil and other residues from spilling these commercial chemicals would ordinarily not be recyclable. Indeed, the spilling onto the land is itself a type of disposal. Thus, EPA is proposing as part of today's rule a clarifying change whereby such soils and other spill residues would be solid wastes unless they are recycled a short time after the spill event (see section II.P. above and III.F. below).

(6) Analysis of Existing and Newly Developed Treatment Data. Overall, there are over 300 organic chemicals represented by the U and P waste codes. Existing treatment data for wastewater and nonwastewater forms of specific U and P wastes are somewhat limited. The treatability data that does exist is primarily for the corresponding U or P constituents as they are present in other wastes (such as the K wastes tested by the Agency). Therefore, in the development of today's proposed treatment standards, EPA examined all of the available BDAT data for the corresponding U and P constituents in approximately fourteen different incineration test burns of RCRA hazardous wastes. In addition, the Agency examined available data on the treatment of wastewaters.

The majority of all of these data appear to be for the U and P treatability subcategories identified as halogenated aliphatics, aromatics, polynuclear aromatic hydrocarbons, and oxygenated hydrocarbons. This seems logical in that for wastewaters most of the available data are for those constituents that are also designated as priority pollutants under regulation by the Agency's Office of Water, and that for nonwastewaters most of the available data are for organic chemicals that are typically used as solvents or pesticides. More information on the development of treatment standards for these wastes can be found in the background document for each treatability group in the RCRA docket.

(a) Treatment Data for U and P Nonwastewaters. For the purpose of this rulemaking, the Agency examined the relative availability, expense, and ease of generating new incineration data for nonwastewater forms of the organic U and P waste codes. EPA decided to select for testing a limited number of compounds representative of the various classifications inherent to the structure of these chemicals. These new data

were used in conjunction with previous data to develop treatment standards that were then transferred to the remaining untested wastes. The compounds that were tested were carefully selected as representative of the treatability of each group of waste codes, based on similarities in chemical structure (i.e., presence of key functional groups, elemental composition (including chlorine, sulfur, and nitrogen), number of carbon atoms, arrangement and number of aromatic and nonaromatic rings, isomer and homologue series, and degree of chlorination).

These new performance data on the treatment of the representative compounds were obtained utilizing a rotary kiln incinerator and performed by EPA in June, 1989. The feed included three specific RCRA hazardous wastes that contained constituents in the halogenated pesticide and chlorobenzene treatability group, in concentrations of up to 8%. The hazardous wastes from this treatability group that were burned include: Heptachlor process waste (which contained Chlordane, Heptachlor, hexachlorobutadiene and hexachlorocyclopentadiene), D014 (EP Toxic for Methoxychlor), and D016 (EP Toxic for 2,4-D).

In addition to the three hazardous wastes, the feed contained fifteen commercial chemical products representing other various U and P waste codes. These commercial chemical products were used because the Agency was unable to obtain any wastes specifically identified as U or P wastes in the period of time required to perform the test.

The burn was designed such that the physical forms, concentrations, and soil content of the feed would represent a range of wastes likely to exist. The treatability test consisted of two 8-hour burns consisting of 11 liquids and 7 solids. Clean fill (i.e., dirt) was added to produce ash that is necessary in order to analyze for treated concentrations (or detection limits), and to simulate a waste spilled on soil. Four sample sets of ash and scrubber water were analyzed for BDAT list constituents. (More information on the test burn can be found in the Onsite Engineering Report of the Third Incineration Treatability Test, July, 1989.)

The Agency is proposing to use much of these data to transfer concentration-based standards from these compounds to the various U, P, K, and D waste codes where other data are unavailable or of questionable value. These data will also supplement existing data that have been judged to represent BDAT for other wastes.

(b) Treatment Data for U and P Wastewaters. Similar to the aforementioned test burn for nonwastewaters, the Agency is conducting wastewater treatment tests for selected U and P chemicals using wet air oxidation, powdered activated carbon treatment (PACT), and carbon adsorption. Since much of the currently available wastewater treatment data is from the treatment of relatively low concentrations of U and P constituents in industrial wastewaters, these studies have been particularly designed to examine the applicability of these technologies to wastewaters containing relatively high concentrations of U and P constituents. The data developed in these studies have been placed in the administrative record for inspection and comment.

For many of the U and P waste codes in today's rule, concentration-based standards for the wastewater forms have been developed based on concentrations of the constituents measured in incinerator scrubber waters. In general, when the Agency has appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it prefers to use these data rather than use scrubber water concentrations to develop wastewater treatment standards. This does not, however, preclude the Agency from establishing treatment standards for other wastes based on constituent concentrations in incinerator scrubber waters and given the time constraints imposed by the statutory deadline, the Agency believes that the use of scrubber water data for the development of wastewater standards is a viable alternative to developing no standard. Treatment standards for these wastewaters based on incinerator scrubber water may also be appropriate when one considers that incineration typically provides significant destruction (even for wastewaters) and that some of these wastewaters may actually contain *high concentrations* (near 1% TOC) of organics. Furthermore, commenters to the Second Third proposed rule, indicated that they were indeed incinerating many wastewaters and that they did not want to be precluded from doing so where EPA had proposed only carbon adsorption as a method of treatment for wastewater forms of certain U and P organo-phosphorus pesticides.

The Agency has recently gathered and analyzed wastewater treatment data from various sources including: (1) the Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge Elimination System (NPDES) data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) data base); (2) the Hazardous Waste Engineering Research Laboratory (HWERL) database; (3) the Office of Solid Waste's BDAT data (from previous land disposal restrictions rules); and (4) additional wastewater treatment data were gathered from literature articles on wet air oxidation and PACT. As expected, these data include the treatment of wastewaters that are not specifically listed as D, F, K, U, or P wastewaters, but do contain varying concentrations of many of the corresponding constituents. While these data were not available in time to incorporate into the discussion of individual treatability groups in sections III.A.2. through III.A.7. of today's notice, or into the background document for each treatability group, these data *are* being placed in the administrative record for today's notice and the Agency has been able to develop alternative standards for wastewaters based on these data.

These alternative wastewater treatment standards are presented in section III.A.7. of today's notice as treatment standards for wastewater forms of multi-source leachate. While these standards are presented on a constituent basis, they correspond to the respective waste code. [For example, the alternative standard for "U220 (toluene)" wastewaters based on these new data is presented simply as a standard for "toluene" for wastewater forms of multi-source leachate in section III.A.7.; the standard for U220 (toluene) presented in section III.A.3.b. is the standard based on analysis of scrubber water.) Thus, the Agency is proposing these standards as alternative standards for all U and P wastewaters for which concentration-based standards based on incinerator scrubber waters have been proposed in sections III.A.2. and III.A.3. of today's preamble and for some wastewater forms of EP Toxic metals. Further information on these alternative standards based on these data can be found in the "BDAT Background Document for Wastewaters Containing BDAT List Constituents" in the administrative record for today's notice.

Much of these new data for wastewaters include analysis of composite samples rather than grab samples. Thus, the Agency has developed many of the alternative concentration-based treatment standards based on an analysis of composite samples rather than grab samples. Where data from analysis of composite samples were used as the basis of the treatment standard, the Agency so indicates in the appropriate table of treatment standards.

The Chemical Manufacturing Association (CMA) has calculated suggested wastewater treatment standards for many constituents based on data contained in the OCPSF database, and has submitted these suggested limits to the Agency for review. However, standards based solely on these data may not be representative of the treatability of all wastewaters, in particular wastewater forms of U, P, and D wastes containing high concentrations of the respective chemicals. As an example, the standard suggested by CMA for chloroform in wastewaters is lower than that promulgated by the Agency specifically for K009 and K010 wastewaters. The Agency has not completed its review of CMA's suggested standards; however, it has placed this information in the administrative record for today's notice.

(7) Methods of Treatment as U and P Wastewater Standards. Based on analytical complications previously discussed in section III.A.1.h.(2.), the Agency is proposing certain methods of treatment as the treatment standard for many U and P wastewaters and nonwastewaters. Generally, for U and P nonwastewaters this process is relatively easy because incineration processes are relatively indiscriminate in the destruction of organics due to the high temperatures, efficient mixing, and consistent residence times. However, in the case of wastewater treatment technologies, there are more chemical specific factors that are involved such as: water solubility, instability, molecular size, volatility, elemental composition, and polarity of the specific chemical that is to be treated. Other waste characteristics will also affect the efficiency of treatment such as: total organic carbon, oil and greases, total dissolved solids, total suspended solids, pH, and alkalinity/acidity.

For these reasons, the Agency has grouped the organic U and P waste codes into treatability groups (as presented in sections III.A.2. and III.A.3.) that are designed to reflect similarities in wastewater and nonwastewater treatment besides similarities in structure or elemental composition. However, in some cases these similarities may not reflect similarities in treatability for all wastewater treatment technologies. As a result, the Agency has typically proposed more than one method of treatment as the treatment standard for these U and P wastewater treatability groups.

In all cases, the Agency believes that incineration, while not always practical for wastewaters, will provide an efficient destruction of these organic U and P constituents in wastewaters. While the Agency does not want to identify incineration as the primary BDAT treatment technology for these wastewaters, it also does not want to preclude its use. In addition, the Agency does not want to process needless variances for a technology that is recognized to be effective. Therefore, in all cases, "Incineration as a Method of Treatment" is proposed as one of the alternative treatment standards for wastewater forms of these organic U and P wastes.

The wastewater treatment technology that most closely resembles incineration is wet air oxidation. It is specifically designed to destroy organics in wastewaters and efficiently oxidizes organics in aqueous media by operating at relatively high temperatures and high pressures. Furthermore, wet air oxidation is typically performed on wastewaters that contain relatively high concentrations of organics (i.e., those that are at or near the 1% TOC cut-off for wastewaters). For wastewaters that contain significantly lower concentrations of organics, chemical oxidation and biodegradation can typically provide the necessary destruction of organics to levels that can then be adsorbed onto activated carbon (as a polishing step). Since these technologies are known to provide effective treatment for constituents that can be analyzed, the Agency is therefore proposing multiple treatment technologies for most of the organic U and P constituents that require specified methods of treatment. None of these technologies have been specifically identified as better than the others due to the current lack of data for these constituents that are difficult to analyze, or for any other surrogate/indicator parameters. However, the Agency is currently investigating the potential use of surrogates/indicators that could be used to ensure complete destruction and to determine which technology performs best for these U and P constituents in wastewaters. The Agency is soliciting comment on the selection of surrogates (such as COD, BOD, TOC, and etc.) that could be established per waste or technology, and any data that may aid in the comparison of these technologies for these wastes. The Agency reminds commenters that these particularly difficult to analyze U and P wastewaters are generated at relatively few facilities, and that surrogates that can be used to measure performance for these constituents may be best addressed in an individual facility's waste analysis plan.

For quite a few of the organic and some inorganic U and P wastes that require specified methods of treatment, concentration-based treatment standards have not been proposed because the compounds are relatively unstable in water. This instability implies that they should easily be destroyed with any chemical oxidant (and most probably at ambient temperature and air pressure). In a similar manner, biodegradation can be expected to result in oxidation of certain U and P organics. Again, due to the instability of these organic compounds in water, the Agency believes that biodegradation can provide effective removal of some of these organics from wastewaters.

(8) Regulated Constituents. The regulated constituents for the D, U, and P wastes generally are those specific constituents for which the D, U, or P waste is listed (as specified in 40 CFR 261.33 (e) and (f)). The regulated constituents for the F and K wastes were determined based on waste characterization, the constituents for which the F and K waste was listed, and compounds shown or expected to be present in the waste. Other than the D wastes, metals are typically regulated only for selected U, P, F, and K wastes in these treatability groups when they are expected to be present. More detail on the selection of regulated constituents can be found in the background documents for each treatability subcategory. The proposed regulated constituents for these wastes and the proposed treatment standards are presented in the tables at the end of each section.

i. Procedures for Requesting Additional Data on Specific Treatment Standards

The Agency is today proposing treatment standards according to a relatively rapid schedule. This schedule is statutorily imposed and requires that treatment standards must be developed for all remaining RCRA waste codes by May 8, 1990. If treatment standards are not developed by this so-called "hard hammer" date, the wastes are automatically prohibited from land disposal by statute.

Every effort has been made to develop treatment standards for all of these remaining waste codes in this proposed rule. In certain cases, however, EPA expects to receive additional data during the public comment period

pertaining to the proposed treatment standard. This additional data may be used to refine the proposed treatment standard. In order to give other interested parties the opportunity to comment on any data submitted during the public comment period, EPA will make these data available upon specific request.

In instances where EPA expects additional data to be submitted during the public comment period, the Agency identifies this potential in the appropriate section of the preamble. Commenters should attempt to identify all areas where additional data can be submitted without the Agency specifically requesting it. Commenters should view this proposal as their opportunity to provide the additional data required to develop these standards. Data submissions should be in compliance with all appropriate BDAT data requirements and should include all appropriate QA/QC information. The Agency also points out that treatment data must include analyses of treatment residuals and that operational evidence must be provided indicating that the treatment system was both well-designed and well-operated. Submission of such data does not guarantee that BDAT will be developed based on the submitted data. (EPA notes that commenters could have been legitimately aware of the need to generate such data since November, 1984. EPA thus will look with disfavor on comments protesting the lack of time to develop such data.)

Data submitted during the comment period must be properly noticed and available to the public. All new data must be submitted within 30 days of this notice in order for the Agency to give subsequent notice of these new data following the procedures outlined in this section. Data received after 30 days will be placed in the administrative docket for the final rule, but may not be considered in development of the final standards. Given the time constraints for this rule, data that are submitted as confidential business information limits the Agency's ability to incorporate into these treatment standards.

Commenters wishing to receive a copy of any additional data, should specifically request it in writing and submit it to the RCRA docket, identifying the request according to the specific preamble section numbers and title of interest (i.e., "III.A.5.g.—Arsenic Stabilization Data"). This request for additional data may be included as part of your comments on the overall proposed rule, or it may be made separately. The request for additional data (as well as all comments on the overall proposed rule) must be submitted to the RCRA docket during the 45-day public comment period—the Agency prefers that these requests be submitted early in the comment period, i.e., within 30 days of the notice, in order to expedite this subsequent notice of data as it arrives.

The Agency intends to send copies of additional data only to persons specifically requesting it, following the aforementioned procedures. It will be extremely burdensome for the Agency to process requests for data that are nonspecific (e.g., requests for all data submissions). The Agency also points out that all new data will be submitted to the RCRA docket for public viewing as rapidly as possible. The Agency will allow 21 days from the date the additional data are mailed to those requesting it for review and submittal of any written response. Subsequent comments on the additional data must be sent to the RCRA docket and be clearly identified as "Response to Additional Data Pertaining to * * *" [preamble sections numbers and specific treatment standard title].

2. Proposed Treatment Standards for Halogenated Organic Wastes

a. Introduction. Many of the chemicals represented by the U and P wastes and many of the major constituents present in several D, F, and K wastes fall under a general category of chemicals known as halogenated organics. For the purposes of assessing BDAT, the Agency has determined that within this general category, there are six major subcategories of wastes based primarily on similarities in the structure of these halogenated organic chemicals. These subcategories are also based partially on the industrial use and waste generation patterns of the wastes. These major subcategories include: chlorinated aliphatics, halogenated pesticides, chlorobenzenes, halogenated phenolics, brominated organics, and miscellaneous halogenated organics.

(1) Relationship to the California List Rule for HOCs. The Agency promulgated treatment standards for certain California list wastes on July 8, 1987 (52 FR 25760). Treatment standards were promulgated for certain halogenated organic compounds (HOCs) when present in hazardous wastes at a total HOC concentration of greater than 1,000 parts per million (ppm), as well as for liquid RCRA hazardous wastes containing greater than 50 ppm of polychlorinated biphenyls (PCBs). Although PCBs are also halogenated organics, this stricter limit for PCBs was mandated by HSWA.

There is a regulatory overlap between treatment standards for California list HOCs and treatment standards for halogenated organics proposed in today's rule. The Agency has stated in previous rulemakings (see 52 FR 25773; 53 FR 31187) that, in cases when there is a regulatory overlap, the more waste-specific treatment standard and effective date applies. This principle is set out in the rules in section 268.32(h). The concentration-based treatment standards being proposed today, when promulgated, will therefore supercede the California list treatment standards because they are more specific treatment standards. However, if there is a national capacity variance based on the new standards, the old standards will continue to apply during the period of the variance. [See further discussion of this final point in section III.M. below.]

(2) Specifying Incineration for Halogenated Nonwastewaters. As generated, the majority of the wastes listed in this section of the preamble are likely to contain greater than 1,000 ppm of HOCs, and thus land disposal of these wastes is most likely already restricted by the California list prohibition for HOCs. This prohibition further establishes that BDAT for these HOCs is Incineration as a Method of Treatment, with Fuel Substitution as a Method of Treatment (burning in a boiler or industrial furnace) allowed as an alternative. The Agency assumed that there was sufficient fuel content in many of the wastes that would fall under the broad definition of HOC wastes.

In the proposal for the Second Third wastes (54 FR 1056, (January 11, 1989)), the Agency presented advance notice that it was considering the transfer of performance data to the majority of the remaining waste codes that contain halogenated organics from the incineration of various other halogenated wastes (such as K019 and F024). In doing so, the Agency indicated that incineration was the appropriate treatment technology and would probably be determined to be BDAT for these halogenated organic wastes. (The Agency in fact, specifically indicated each waste code that was considered a halogenated organic.) No comments were received indicating that any other technology should be considered BDAT for the majority of these halogenated organic wastes.

Due to the high concentrations of specific, identified halogenated organics known or anticipated to be present in these U and P off-spec chemicals; the relatively high toxicity of some of the pesticides and miscellaneous halogenated organics; the anticipated low fuel value of these U and P wastes; and the need for control of HCl emissions from the destruction of halogenated organics, the Agency does not believe that fuel substitution is a viable alternative for the majority of specific U and P waste codes identified in this section.

In today's rule, the Agency is proposing that incineration represents BDAT for all of the halogenated organics presented in this section. Where the Agency is proposing "Incineration as a Method of Treatment" as the treatment standard for a particular halogenated organic waste code, it has not included fuel substitution as an alternative. However, where the Agency has proposed concentration-based standards, thermal destruction in fuel substitution units is not precluded.

(3) Additional Wastewater Treatment Data. Additional wastewater treatment data primarily from the Agency's Office of Water have been recently analyzed for incorporation into the treatment standards for many of the U and P wastes in this section. These data include the treatment of wastewaters that are not specifically listed as U or P wastewaters, but do contain many of the corresponding U, P, and metal constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h.(6.).

Alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multisource leachate. These standards are presented on a constituent basis and correspond to the respective U or P wastewater. Thus, the Agency is proposing these standards as alternative standards for all U and P wastewaters for which concentration-based standards based on incinerator scrubber waters have been proposed in the following sections.

(4) Specifying Technologies for Halogenated Wastewaters. Based on analytical complications previously discussed in section III.A.1.h.(2.), the Agency is also proposing certain methods of treatment as the treatment standards for many U and P wastewaters. In the following sections (III.A.2.b. through f.) of the preamble the Agency identifies twenty five specific halogenated organic U and P wastes for which the Agency is proposing three treatment technologies as alternative BDAT treatment standards: (1) Wet air oxidation followed by carbon adsorption; (2) Chemical oxidation followed by carbon adsorption; or (3) Incineration of wastewaters. Since these technologies are known to provide effective treatment for the halogenated organic constituents within each treatability group (as identified in III.A.2.) that can be analyzed, the Agency is therefore proposing these multiple treatment technologies for all of the twenty five U and P halogenated organics that require specified methods of treatment.

Biodegradation has not been specified as an alternative technology for halogenated organics, because they are generally thought of as more difficult to biodegrade than nonhalogenated organic due to the overall higher toxicity of the halogenateds compared to their nonhalogenated counterparts. However, the Agency solicits comment and data that would indicate that the twenty five specific U and P halogenated organics are similar to the biodegradability of other halogenated organics and/or other nonhalogenated organics, and thereby, potentially serving as surrogates or indicators of efficient destruction. While biodegradation is not specifically specified as BDAT, it is not precluded from use as part of a treatment train, provided that it is not elsewhere prohibited as land disposal.

Carbon adsorption has been specified as part of the treatment train because these particular twenty five halogenated U and P organics are believed to be adsorbable when present in low concentrations, as might be expected in an effluent from either wet air or chemical oxidation.

The Agency further recognizes that while difficulties can arise in specifying only one treatment method for these wastewaters (as outlined in greater detail in section III.A.1.h.(7.)), the Agency must develop a treatment standard for these wastes to avoid the hard hammer and at the same time, somehow justify that these technologies provide significant treatment. None of these technologies have been specifically identified as better than the others by the Agency because of the lack of data for these specific twenty five halogenated organic constituents (due to the identified analytical complications) or for any surrogate parameters.

b. Halogenated Aliphatics. This subcategory of halogenated organics consists of six K wastes from the production of various halogenated organics and nineteen U wastes. The individual waste codes are provided at the beginning of each subheading in this section. EPA grouped these waste codes together because the primary constituents for which the wastes were listed are halogenated aliphatic compounds. These compounds are all open chain, alkane or alkene hydrocarbons consisting of up to six carbons, with varying numbers of hydrogen atoms replaced by chlorine. The Agency is proposing to transfer standards for the organic constituents in these wastes based in part on this structural similarity. Thus, for purposes of BDAT, the Agency has grouped all of these wastes into one general treatability group identified as halogenated aliphatics.

(1) K017 and K073 Wastes.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.

Treatment standards for K017 and K073 wastes were originally scheduled to be promulgated as part of the First Third rulemaking (i.e., they were to be promulgated by August 8, 1988). The Agency did not promulgate standards for K017 or K073 by August 8, 1988, and as a result, land disposal of these wastes are currently subject to the "soft hammer" provisions of 40 CFR 268.8.

Concentration-based treatment standards for all wastewater and nonwastewater forms of K017 are proposed today based on the transfer of performance data from incineration of nonwastewater forms of F024 (wastes from the production of chlorinated aliphatics such as distillation residues, heavy ends, tars, and reactor clean-out wastes). Treatment standards for F024 were promulgated with the Second Third wastes on June 8, 1989 (54 FR 26594 (June 23, 1989)).

Concentration-based treatment standards for all wastewater and nonwastewater forms of K073 are proposed today based on the transfer of performance data from incineration of nonwastewater forms of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production). Treatment standards for K019 were promulgated with the First Third wastes on August 8, 1988.

The transfer of standards is dependent upon the constituents present in each waste and the corresponding concentrations and waste characteristics of K019 and F024. The Agency compared these data to

determine which of the constituents in each waste most resembled the anticipated treatability of the constituents in K017 and K073. Details of the transfers can be found in the Background Document for K017 and K073 Wastes in the RCRA docket.

The Agency reminds commenters that there are very few (if any) of these wastes that are currently being generated as originally listed and that in practice, the standards will probably only be necessary for residues from previous disposal. The Agency believes that these residues should be similar or less difficult to treat than the original waste as generated.

(2) K021 Waste.

K021—Aqueous spent antimony catalyst from fluoromethane production.

Treatment standards for K021 wastes were originally scheduled to be promulgated as part of the First Third rulemaking (i.e., K021 wastes were to be promulgated by August 8, 1988). A treatment standard of "No Land Disposal Based on No Generation" for K021 nonwastewaters was promulgated on August 8, 1988. This standard, however, was subsequently revised on May 2, 1989 (54 FR 18836) to be applicable only to "Nonwastewater forms of these wastes generated by the process described in the listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes [Based on No Generation]." The Agency did not promulgate standards for the wastewater forms of K021 by August 8, 1988, and as a result, land disposal of K021 wastewaters is currently subject to the "soft hammer" provisions of 40 CFR 268.8.

In the proposal for the Second Third wastes (54 FR at 1100 (January 11, 1989)), EPA stated its intention to develop concentration-based treatment standards for all forms of K021 prior to May 8, 1990, and has therefore decided to propose to revoke the promulgated treatment standard of "No Land Disposal Based on No Generation" for K021 nonwastewaters. This is because there is a reasonable chance that these nonwastewaters may be generated.

Concentration-based treatment standards for organics in wastewater and nonwastewater forms of K021 are proposed today based on the transfer of performance data from incineration of nonwastewater forms of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production). Treatment standards for K019 nonwastewaters were promulgated with the First Third wastes on August 8, 1988. Concentration-based treatment standards for antimony in nonwastewater forms of K021 are proposed today based on the transfer of performance data from the stabilization of ash from the incineration of nonwastewater forms of K048 (dissolved air flotation (DAF) float from the petroleum refining industry) and K051 (API separator sludge from the petroleum refining industry) wastes.

Because the concentration of antimony in the untreated incinerator ash was relatively low compared to concentrations of antimony that might be expected in a K021 waste or clean-up residue, the Agency is simultaneously proposing a concentration-based standard for antimony nonwastewaters of 5.6 ppm, based on the performance of vitrification of arsenic wastes (see section III.A.5.(a.) of today's notice describing the development of this arsenic standard for D004 wastes). The Agency believes that this transfer of treatment performance data may be appropriate due to the chemical similarity between arsenic and antimony. The Agency, however is seeking comment of which standard is more appropriate for K021 waste.

The treatment standard for antimony in K021 wastewaters is based on concentrations found in the scrubber water from the incineration of K048 and K051. However, additional data are available for the treatment of antimony in wastewaters and as a result the Agency is simultaneously proposing a concentration-based standard for antimony wastewaters of 1.9 ppm, based on the performance of lime precipitation, sedimentation, and filtration (see previous discussion on these additional data in III.A.2.a.(3.) above). Details on the transfers can be found in the Background Document for K021 wastes in the RCRA docket.

(3) K028, K029, K095 and K096 Wastes.

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.
K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane.
K095—Distillation bottoms from the production of 1,1,1-trichloroethane.
K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.

Treatment standards for K028, K029, K095, and K096 wastes were originally scheduled to be promulgated as part of the Second Third rule. Treatment standards were only promulgated, however, for the wastewater forms of K028 and the nonwastewater forms of K028, K029, K095 and K096. Since the Agency did not promulgate standards for the wastewater forms of K029, K095, and K096 by their statutory deadline, land disposal of these wastewaters are currently subject to the "soft hammer" provisions in 40 CFR 268.8.

Initially, the Agency stated that there was no need to develop wastewater standards for K029, K095, and K096 because it was unlikely that they were being generated due to the recycling and generation practices for these three wastes. However, comments were received that indicated that the likelihood for their generation was reasonably good. While the Agency agreed with the commenters, concentration-based treatment standards were not promulgated because none had been proposed.

In today's rule, the Agency is proposing concentration-based standards for organics in K029, K095 and K096 wastewaters based on the transfer of performance data from rotary kiln incineration of K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production) nonwastewaters. These treatment standards for organics have been developed similar to those promulgated for K028 wastewaters. The Agency is however, proposing to revoke the reserved status for metal standards in K029, K095 and K096 *wastewaters.* The Agency has determined that based on waste characterization data on the corresponding nonwastewaters, it is believed that these three wastes are essentially all organic and would not be expected to contain any BDAT list metal constituents.

The Agency stated that it intended to develop standards for metals in *nonwastewater* forms of K028 and propose them with the Third wastes prior to promulgation by May 8, 1990. The Agency reserved standards based on TCLP analyses for chromium and nickel in the promulgated standards for K028 nonwastewaters. While EPA proposed standards based on stabilization of K048 and K051 incinerator ash for K028 nonwastewaters as part of the Second Third proposed rule, the Agency did not promulgate these standards as proposed because new data on the stabilization of F024 incinerator ash were developed. However these data were received too late to be promulgated in the final rule for Second Third wastes (54 FR 26617). The Agency believes that these new data for stabilized F024 ash more closely resemble what would be expected for stabilized K028 ash. Thus, treatment standards for metal constituents in K028 nonwastewaters are proposed today based on the transfer of TCLP data from stabilization of F024 wastes. These treatment standards for metals are simultaneously being proposed for F024 nonwastewaters in today's rule. The Agency will consider all comments on the standards for F024 as they also relate to K028 nonwastewaters.

(3) U Wastes for Which EPA is Proposing Concentration-Based Standards.

U044—Chloroform
U074—1,4-Dichloro-2-butene
U076—1,1-Dichloroethane
U077—1,2-Dichloroethane
U078—1,1-Dichloroethylene
U079—1,2-Dichloroethylene
U080—Methylene chloride
U083—1,2-Dichloropropane
U084—1,3-Dichloropropene
U131—Hexachloroethane
U184—Pentachloroethane
U208—1,1,1,2-Tetrachloroethane
U209—1,1,2,2-Tetrachloroethane
U210—Tetrachloroethylene
U211—Carbon tetrachloride
U226—1,1,1-Trichloroethane
U227—1,1,2-Trichloroethane
U228—Trichloroethylene
U243—Hexachloropropene

In developing the treatment standards for these nineteen halogenated aliphatic U wastes, the Agency reviewed treatability and detection limit data from several different incineration test burns conducted by EPA for various F and K wastes. These data represented a myriad of different hazardous wastes that were generated and treated at several different incineration facilities.

The Agency determined that there was substantial treatment data for many of these halogenated aliphatics from the incineration of K019 and F024. Data from the test burns of both F024 and K019 wastes included detection limit information on the majority of the halogenated aliphatic chemicals which correspond to these U wastes. The waste characterization data for the untreated wastes showed concentrations of these halogenated aliphatic constituents ranging from very low levels in some wastes, to high levels in others. In general, the majority of the measured values for halogenated aliphatics in the incinerator residues were approximately at the detection limit for all of the constituents analyzed. In the incinerator ash, the measured values or detection limits ranged from <0.005 mg/kg to <10 mg/kg. In the scrubber water, the measured values or detection limits ranged from <0.005 ppm to <0.05 ppm.

The Agency also reviewed new performance data for carbon tetrachloride, methylene chloride, 1,1,1-trichloroethane, tetrachloroethane and hexachloroethane obtained from a rotary kiln incinerator test burn EPA performed in June, 1989. These five chemicals were specifically selected for this test burn as representatives of all of the U wastes in the halogenated aliphatic treatability group. See details of this test burn previously discussed in section III.A.1.h.(6.) of today's preamble. The Agency believes that these new data coupled with the previously mentioned data provide a sufficient range of concentration of halogenated aliphatic chemicals in untreated wastes to be considered representative of all halogenated aliphatic U wastes.

The Agency has reviewed both characterization and performance data for each of the halogenated aliphatics present in treated and untreated F024 wastes, K019 wastes, and wastes from the June, 1989, EPA incineration test burn, and has determined that the transfer of performance data primarily from the incineration of K019 nonwastewaters is appropriate for the development of the concentration-based treatment standards for all halogenated aliphatic waste codes proposed in today's rule. Details on the development of treatment standards can be found in the Background Document for Halogenated Aliphatics in the RCRA docket.

U074, U079 and U084 wastes are listed as 1,4-dichloro-2-butene, 1,2-dichloroethylene and 1,3-dichloropropene, respectively. Due to the position of the chlorines on these alkenes, all of the chemicals have stereoisomers identified as "cis-" and "trans-". For U074 and U084 wastes both the "cis-" and the "trans-" isomers can be quantified using verified SW-846 methods. Therefore, concentration-based treatment standards are being proposed for both isomers of the two compounds. While 40 CFR 261.33(f) lists U079 wastes as 1,2-dichloroethylene, the chemical abstracts identification number that is listed for this compound (156-60-5) is specific for trans-1,2-dichloroethylene. Since the trans-isomer is also specified in 40 CFR 261 Appendix VIII, the Agency is thus proposing concentration-based treatment standards only for trans-1,2-dichloroethylene for U079 wastes.

The treatment standards for wastewater forms of the U wastes presented in the tables following this section, have been calculated based primarily on the detection limits of these constituents in scrubber waters from incineration of K019 nonwastewaters. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.).)

BDAT Treatment Standards for K017

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
1,2-Dichloropropane	0.014
1,2,3-Trichloropropane	0.014
Bis(2-chloroethyl)ether	1.8

BDAT Treatment Standards for K017

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,2-Dichloropropane	0.014
1,2,3-Trichloropropane	0.014
Bis(2-chloroethyl)ether	0.037

BDAT Treatment Standards for K021

[Nonwastewaters]

[Revised from no land disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform	6.2
Carbon tetrachloride	6.2
	EP(mg/l)
Antimony	0.23

BDAT Treatment Standards for K021

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chloroform	0.008
Carbon tetrachloride	0.008
Antimony	0.60

BDAT TREATMENT STANDARDS FOR K028

[Nonwastewaters] [1]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (total)	0.073
Lead	0.021
Nickel	0.064

[1] These standards do not replace the standards for the organics in K028 nonwastewaters that were promulgated with the Second Third wastes.

BDAT TREATMENT STANDARDS FOR K029

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform	0.007
1,2-Dichloroethane	0.007
1,1-Dichloroethylene	0.033
1,1,1-Trichloroethane	0.007
Vinyl chloride	0.033

BDAT TREATMENT STANDARDS FOR K073

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Carbon tetrachloride	6.2
Chloroform	6.2
Hexachloroethane	28
Tetrachloroethene	6.2
1,1,1-Trichloroethane	6.2

BDAT TREATMENT STANDARDS FOR K073

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Carbon tetrachloride	0.007
Chloroform	0.007
Hexachloroethane	0.033
Tetrachloroethene	0.007
1,1,1-Trichloroethane	0.007

BDAT TREATMENT STANDARDS FOR K085

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,1,1,2-Tetrachloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethene	0.007
1,1,2-Trichloroethane	0.007
Trichloroethene	0.007
Hexachloroethane	0.033
Pentachloroethane	0.007

BDAT TREATMENT STANDARDS FOR K096

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,1,1,2-Tetrachloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethene	0.007
1,1,2-Trichloroethane	0.007
Trichloroethene	0.007
1,3-Dichlorobenzene	0.007
Pentachloroethane	0.007
1,2,4-Trichlorobenzene	0.023

BDAT TREATMENT STANDARDS FOR U044, U074, U076, U077, U078, U079, U080, U083, U084, U131, U184, U208, U209, U210, U211, U226, U227, U228, AND U243

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U044	Chloroform	6.2
U074	trans-1,4-Dichloro-2-butene	30
U074	cis-1,4-Dichloro-2-butene	30
U076	1,1-Dichloroethane	6.2
U077	1,2-Dichloroethane	6.2
U078	1,1-Dichloroethylene	6.2
U079	trans-1,2-Dichloroethylene	6.2
U080	Methylene chloride	31
U083	1,2-Dichloropropane	15
U084	cis-1,3-Dichloropropene	15
U084	trans-1,3-Dichloropropene	15
U131	Hexachloroethane	28
U184	Pentachloroethane	31
U208	1,1,1,2-Tetrachloroethane	6.2
U209	1,1,2,2-Tetrachloroethane	6.2
U210	Tetrachloroethylene	6.2
U211	Carbon tetrachloride	6.2
U226	1,1,1-Trichloroethane	6.2
U227	1,1,2-Trichloroethane	6.2
U228	Trichloroethylene	5.6
U243	Hexachloropropene	37

BDAT TREATMENT STANDARDS FOR U044, U074, U076, U077, U078, U079, U080, U083, U084, U131, U184, U208, U209, U210, U211, U226, U227, U228, and U243

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U044	Chloroform	0.007
U074	trans-1,4-Dichloro-2-butene	0.034
U074	cis-1,4-Dichloro-2-butene	0.034
U076	1,1-Dichloroethane	0.007
U077	1,2-Dichloroethane	0.007
U078	1,1-Dichloroethylene	0.007
U079	trans-1,2-Dichloroethylene	0.007
U080	Methylene chloride	0.037
U083	1,2-Dichloropropane	0.067
U084	cis-1,3-Dichloropropene	0.067
U084	trans-1,3-Dichloropropene	0.067
U131	Hexachloroethane	0.034
U184	Pentachloroethane	0.037
U208	1,1,1,2-Tetrachloroethane	0.007
U209	1,1,2,2-Tetrachloroethane	0.007
U210	Tetrachloroethylene	0.007
U211	Carbon tetrachloride	0.007
U226	1,1,1-Trichloroethane	0.007
U227	1,1,2-Trichloroethane	0.007
U228	Trichloroethylene	0.007
U243	Hexachloropropene	0.037

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

c. Halogenated Pesticides and Chlorobenzenes. This subcategory of halogenated organics consists of six characteristic D wastes, nine K wastes from the production of various halogenated pesticides and chlorobenzenes, and twenty six U and P wastes. EPA grouped these waste codes together because the primary constituents for which the wastes were listed are halogenated organic compounds that are (or have been) primarily used as pesticides. While other halogenated organics have been (or could be) used as pesticides, the Agency has grouped these particular halogenated organics together due to their similarities in their common use as pesticides, their ability to be analyzed, and similarities in structure. Thus, for purposes of BDAT, the Agency has grouped all of these wastes into one general treatability group identified as "halogenated pesticides and chlorobenzenes".

This subcategory has been further divided into five subcategories based primarily on similarities in chemical structure for the purposes of transferring treatability data. These subcategories include: 1) Chlorinated Norbornane and Norbornene Derivatives; 2) Chlorobenzenes; 3) Chlorophenoxycarboxylic Acids and Derivatives; 4) Chlorinated Diphenyls; and 5) Lindane and Hexachlorobutadiene. The individual waste codes within each subcategory are provided at the beginning of each subheading in section III.A.2.c.(3.) of today's preamble.

(1) Availability of Treatment Data for These Wastes. The Agency has determined that only a limited amount of treatability data on halogenated pesticides and chlorobenzenes exist. In section III.A.1.h.(6.) of today's preamble, the Agency presented information on an extensive June, 1989 test burn for multiple chemical wastes including several halogenated pesticides. The data obtained from this test burn were used in conjunction with other existing incineration data to develop proposed treatment standards for the pesticides tested. The Agency is also proposing to transfer these performance data to the remaining untested pesticide wastes.

The feed wastes for this test burn included three RCRA hazardous wastes that contained constituents in the halogenated pesticide and chlorobenzene treatability group present in concentrations of up to 8% by weight. These three wastes included: (1) a Heptachlor process waste which contained Chlordane, Heptachlor, hexachlorobutadiene and hexachlorocyclopentadiene; (2) a D014 (EP Toxic for Methoxychlor) waste; and (3) a D016 (EP Toxic for 2,4-D) waste. Specific details and additional information on the test burn can be found in the Onsite Engineering Report of the Third Third Incineration Treatability Test, July, 1989.

The Agency is proposing to transfer concentration-based standards from these compounds as well as from the other existing data to the remaining D, U, P, and K halogenated pesticide and chlorobenzene waste codes. More information on the development and transfer of treatment standards for these wastes can be found in the background document for these wastes in the RCRA docket.

(2) Treatment Standards for Wastewaters. The treatment standards for wastewater forms of the U wastes presented in the tables following this section, have been calculated based primarily on the detection limits of these constituents in scrubber waters from incineration of nonwastewaters containing halogenated pesticides. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.)).

(3) Regulation of EP Toxic Halogenated Pesticides The new data from EPA's June, 1989 testing of rotary kiln incineration on multiple wastes, including D014 and D016 wastes, (see section III.A.1.h.(6.)) indicate that all of the halogenated pesticides that were present in the feed can be incinerated to detection limits (as measured using analysis of total constituent concentrations in both the ash and scrubber water). As a result, concentration-based standards that are near the detection limits in their respective media (i.e., wastewaters and nonwastewaters) are being proposed today for all of the halogenated pesticides in the respective U, P, and K wastes of this treatability group. The Agency believes that the wastes tested represent the most difficult to treat wastes.

The Agency is proposing two options for treatment standards for EP Toxic halogenated pesticides wastes (D012, D013, D014, D015, D016 and D017). Based on the aforementioned data, the Agency is proposing one option of concentration-based treatment standards based on the ability of incineration to destroy these pesticides to detection limits. (Note: These proposed standards are based on the analysis of total constituents rather than analysis of EP or TCLP leachates.) The Agency believes that this provides a consistency in approach with the proposed treatment standards for the corresponding U, P and K wastes.

Because these data indicate that these D pesticides can be incinerated to detection limits, the Agency further believes that compliance with this standard can be demonstrated by performing a total constituent analysis of the ash samples for these pesticides rather than performing the more expensive and more time-consuming extraction procedure for these pesticides. One can then assume that the total concentration of the pesticide measured in the incinerator ash corrected for the appropriate dilution factor (which is part of the extraction procedure protocol) provides a reasonable surrogate for actual measurement of the concentration in an extract provided that the total concentration is expected to be near the detection limit.

As discussed in detail in section III.C. of today's preamble, the Agency has determined that it may have the authority to establish treatment standards below the characteristic level for these wastes. The Agency is also proposing a second option of limiting the treatment standard for D012, D013, D014, D015, D016 and D017 wastes to their respective characteristic levels. The Agency believes that the total constituent standards proposed in option one are preferable in that it assures the public that these chemicals are being destroyed to the best levels that are achievable. This comports with the statutory policy of reducing the uncertainties inherent in hazardous waste land disposal, as well as specific Congressional directives to destroy hazardous organic constituents, see, e.g., 130 Cong. Rec. S9179 (July 25, 1984) (statement of Sen. Chaffee), and results in minimization of threats to human health and the environment. EPA also finds it anomalous that standards for the same pesticides will be lower than the characteristic level when the pesticides are disposed in their U or P form, but cannot be so limited when the pesticides are discarded in the EP toxic form. This result does not appear to further any statutory policy. The Agency specifically solicits comments on these two options, and on the policy support for choosing a level based on the characteristic level.

The Agency points out to the commenters that there are not very many of these wastes being generated and that although the treatment standards are based on incineration for these wastes, the use of other technologies is permitted to achieve these concentration-based standards. In addition, the Agency refers commenters to section III.A.1.g. of today's preamble for a more complete discussion of other general issues pertaining to all characteristic wastes, including these D pesticides.

(4) Discussion of Individual Treatability Groups—(a) Chlorinated Norbornane and Norbornene Derivatives.

D012—EP Toxic for Endrin.
D015—EP Toxic for Toxaphene.
K032—Wastewater treatment sludge from the production of Chlordane.
K033—Wastewater treatment scrubber water from the chlorination of cyclopentadiene in the production of Chlordane.
K034—Filter solids from filtration of hexachlorocyclopentadiene in the production of Chlordane.
K041—Wastewater treatment sludge from the production of Toxaphene.
K097—Vacuum stripper discharge from the Chlordane chlorinator in the production of Chlordane.
K098—Untreated process wastewater from the production of Toxaphene.

P004—Aldrin
P037—Dieldrin
P050—Endosulfan
P051—Endrin and metabolites
P059—Heptachlor
P060—Isodrin
P123—Toxaphene
U036—Chlordane
U130—Hexachlorocyclopentadiene
U142—Kepone

The Agency has grouped these eighteen waste codes together because they all contain or represent halogenated pesticides that have the structural classification known as chlorinated norbornane and norbornene derivatives. This classification basically consists of compounds having multicyclical, fused-ring, hydrocarbon structures (one of which being a six-membered ring) that have varying numbers of hydrogen atoms replaced by chlorine, methyl groups or other simple functional groups. Hexachlorocyclopentadiene and Kepone, the compounds for which U130 and U142 were listed, are exceptions to the norbornene classification since they do not have a six-membered ring in their structure. However, their structures are somewhat similar to the norbornane and norbornene derivatives, and thus, are included in this subcategory of halogenated pesticides.

The Agency has data on incineration of Heptachlor, Chlordane, and hexachlorocyclopentadiene that were used in developing the standards for this subgroup of halogenated pesticides. The new data from EPA's June 1989 testing of rotary kiln incineration indicate that Heptachlor, Chlordane and hexachlorocyclopentadiene can be incinerated to detection limits (as measured in both the ash and scrubber water). As a result, concentration-based standards based on these detection limits (using analysis of total constituent concentrations) are being proposed today for P059, U036, and U130 wastes. Standards for P004, P037, P050, P051, P060, P123 and U142 are being proposed based on detection limits for the corresponding constituents from fourteen incineration treatment tests.

In a similar manner, concentration-based standards have been developed for the major hazardous constituents anticipated to be present in K032, K033, K034, K041, K097, and K098 wastes. The organic constituents selected for regulation in these K wastes are specified in the treatment standards at the end of this section. Details on the selection of constituents and the transfer of performance data for these wastes are provided in the background document for these halogenated pesticide wastes.

As discussed earlier in this section, the Agency is today proposing two sets of concentration-based standards for D012 and D015 characteristic wastes. One set of standards is based on the characteristic levels and the other set of standards were developed from incineration treatment data.

Endosulfan, the compound for which P050 was listed as a hazardous waste, commonly exists as a mixture of two isomers (i.e., Endosulfan I and Endosulfan II). Both can be analyzed by SW–846 Method 8080 for organochlorine pesticides. In fact, analytical laboratories typically report analysis for each. Accordingly, the concentration-based standards for P050 are proposed for Endosulfan I and II. In addition, Endosulfan can be converted to Endosulfan sulfate in environmental samples. The Agency anticipates that Endosulfan sulfate, which is also on the Priority Pollutant List used by the Agency's Office of Water, will be typically found in the presence of Endosulfan.

In a similar manner, Heptachlor (P059) can be commonly converted to Heptachlor epoxide in certain environmental conditions. Again analytical laboratories typically report results for Heptachlor and for Heptachlor epoxide (which is also on the Priority Pollutant List). Accordingly, concentration-based standards for P059 are today proposed for Heptachlor and Heptachlor epoxide.

P051 is specifically listed in 40 CFR 261.33(e) as "Endrin and metabolites". The most common metabolite of Endrin is the Priority Pollutant, Endrin aldehyde. Concentration-based standards for P051 are thus proposed for Endrin and Endrin aldehyde.

(b) Chlorobenzenes.

K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5–T.
K085—Distillation of fractionation column bottoms from the production of chlorobenzenes.
K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.
U037—Chlorobenzene
U070—1,2-Dichlorobenzene
U071—1,3-Dichlorobenzene
U072—1,4-Dichlorobenzene
U127—Hexachlorobenzene
U183—Pentachlorobenzene
U185—Pentachloronitrobenzene
U207—1,2,4,5-Tetrachlorobenzene

The Agency has grouped these three K wastes and eight U wastes together because they all contain or are represented by halogenated organics that have the structural classification known as chlorobenzenes. These chemicals consist of one benzene ring with increasing chlorine substitution and their associated isomers.

The Agency has data on the incineration of all of the chlorobenzenes with the exception of 1,3-dichlorobenzene. More information on these data can be found in the background document for these wastes. These data were used to develop standards for all of the chlorobenzene wastes in this treatability group. Treatment standards for 1,3-dichlorobenzene were developed from examination of detection limit data for this constituent from the fourteen incineration treatment tests.

The data indicate that these chemicals can be incinerated to at or near detection limits for these chemicals, which generally range in the treatment residuals from <0.005 ppm to <10 ppm in the ash and from <0.002 mg/l to <0.013 mg/l in the scrubber water. As a result, EPA is proposing concentration-based standards based on these detection limits (using analysis of total constituent concentrations) for the organic constituents in these waste codes. These incineration data are also the only available treatment data for these wastes. More information on the development of these standards can be found in the background document for these wastes in the RCRA Docket.

For K085 wastes the Agency determined that the untreated wastes often contained various concentrations of PCBs. As indicated in the proposed rule for Second Third wastes, there were some indications that some K085 wastes may contain greater than 50 ppm of PCBs. However, the Agency could not verify that these levels were always exceeded. Nevertheless, the Agency has decided to propose concentration-based treatment standards for PCBs for both wastewater and nonwastewater forms of K085. These standards are listed for seven of the common mixtures of PCBs known originally by the brand name of Aroclor (i.e., the proposed standards are listed for Aroclor 1016, 1221, 1232, 1242, 1248, 1254, and 1260). If K085 Wastes exceed 50 ppm PCBs, they must be incinerated in a TSCA permitted facility (several of the commercial facilities that are permitted for RCRA wastes are also permitted for PCB contaminated wastes under TSCA).

(c) Chlorophenoxycarboxylic Acids and Derivatives.

D016—EP Toxic for 2,4-D
D017—EP Toxic for 2,4,5-TP (Silvex)
U240—2,4-D, salts and esters

These three waste codes have been grouped together because they contain 2,4-dichlorophenoxyacetic acid (commonly referred to as 2,4-D), 2,4,5-trichlorophenoxypropionic acid (commonly referred to as 2,4,5-TP), or salts and esters of 2,4-D. All of these chemicals are classified as chlorophenoxy carboxylic acids or esters. The functional groups common to these compounds are an aromatic ring, a carbon-oxygen ester linkage, and several chlorine atoms (two or three) on the aromatic ring.

The Agency has data on the incineration of 2,4-D that were used in developing the standards for D016 and U240. The data indicate that 2,4-D can be incinerated to detection limits in the ash and in the scrubber water (based on analysis of total constituent concentrations). Detection limit data for 2,4,5-TP in fourteen incineration tests were used in developing treatment standards for D017. The Agency is proposing concentration-based standards for these wastes based on their respective detection limits.

According to 40 CFR 261.33(f), wastes identified as U240 are listed for the presence of 2,4-D or its various salts and/or esters. Because 2,4-D salts and esters are not analyzed as 2,4-D, the Agency is today proposing "Incineration as a Method of Treatment" for 2,4-D salts and esters identified as U240 nonwastewaters. For the wastewater forms of 2,4-D salts and esters, EPA is proposing a treatment standard of "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for halogenated organics in section III.A.2.a.(4.) above.) These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar U and P waste codes. The use of other technologies is not precluded prior to or following the use of these specified technologies provided the other technologies do not allow land disposal (i.e., land treatment). For U240 wastes expected to be simply 2,4-D, the Agency is also proposing concentration-based standards based on the analysis for only 2,4-D. Thus, where a facility can reasonably assume that only 2,4-D is being handled, only the concentration-based treatment standard for 2,4-D would be applied. However, should one expect that salts or esters could be formed during storage, treatment, or disposal, the U240 wastes would have to be treated according to the standard methodology for salts and esters.

As discussed earlier in this section, the Agency is today proposing two sets of concentration-based standards for D016 and D017 characteristic wastes. One set of standards is based on the characteristic levels and the other set of standards were developed from incineration treatment data.

Accuracy data for these compounds from the test burn data indicate a highly variable recovery of spiked ash samples. This, coupled with the fact that U240 is listed as 2,4-D, salts and esters, has led the Agency to simultaneously propose an alternative treatment standard of "Incineration as a Method of Treatment" for all three of these wastes. The Agency is specifically soliciting comment and data on the routine achievability of these standards for chlorophenoxy carboxylic acids and esters. In particular, the Agency is requesting QA/QC data as well as detection limit data (as measured in ash samples from the incineration of these or similar wastes) for not only 2,4-D and 2,4,5-TP, but also the salts and esters of 2,4-D.

(d) Chlorinated Diphenyls.

D014—EP Toxic for Methoxychlor
U038—Chlorobenzilate
U060—DDD
U061—DDT
U132—Hexachlorophene
U247—Methoxychlor

These six waste codes have been grouped together because they all contain halogenated pesticides classified as chlorinated diphenyl compounds. Diphenyls are compounds consisting of two benzene rings attached to a single, common carbon atom. (Diphenyls are not to be confused with biphenyls which have the structure of two benzene rings attached directly to each other.) The chlorinated diphenyls represented by these waste codes have varying degrees of chlorine substitution on the benzene rings and on the carbon in the middle.

The Agency has data on the incineration of Methoxychlor that were used in developing the standards for D014 and U247. The data indicate that Methoxychlor can be incinerated to detection limits in the ash and in the scrubber water. Standards for the remaining waste codes in this treatability group were developed using detection limit data from fourteen incineration treatment tests. As a result, concentration-based standards based on these detection limits (using analysis of total constituent concentrations) are being proposed today for U038, U060, U061, U132, and U247 wastes. As with the other characteristic pesticide D wastes, the standard for D014 (Methoxychlor) is being proposed as two sets of concentration-based standards. One set of standards is based on the characteristic levels and the other set of standards were developed from incineration treatment data.

DDD and DDT, the compounds for which U060 and U061 were respectively listed, can both exist as one of two isomers (i.e., o,p'-DDD and p,p'-DDD; o,p'-DDT and p,p'-DDT respectively). All of these isomers can be analyzed by SW–846 Method 8080 for organochlorine pesticides. Analytical results for DDD and DDT are often reported separately for each isomer. However, the predominant isomer for both is the p,p'-isomer. Because of this, the Agency is proposing that the concentration-based standards for U060 and U061 are based on the analysis for both isomers. In addition, DDD and DDE are common breakdown products of DDT. Accordingly, the Agency is today proposing to regulate the two isomers of DDD, DDE and DDT in U061 wastes. However, the Agency is soliciting comment on the need to regulate these waste codes for all isomers of the constituents and their breakdown products, and is not precluded from promulgating the standards for only the p,p'- isomers.

(e) Lindane and Hexachlorobutadiene.

D013—EP Toxic for Lindane
U128—Hexachlorobutadiene
U129—Lindane

Lindane (U129) is the gamma- isomer of a class of compounds known as hexachlorocyclohexanes (a cyclic six membered hydrocarbon ring with a chlorine substituted on each carbon) and is often referred to as "gamma-BHC" (Note: BHC is an abbreviation for benzene hexachloride—which is a misnomer because benzene is not part of the structure). Hexachlorobutadiene (U128) has been placed in this subcategory because it has the same number of chlorine atoms (six) and has a hydocarbon structure consisting of four carbon atoms linked by a conjugated double bond system. Both of these chemicals are thus chlorinated aliphatics and both were typically used as pesticides or in the production of pesticides. The three wastes represented by these chemicals have not been grouped with the chlorinated aliphatics due to the differences in use of the compounds. (The chlorinated aliphatics discussed in section III.A.2.a. are typically used as solvents.)

The Agency has incineration data for hexachlorobutadiene from the June, 1989 test burn. In addition to the data from

the June, 1989 test: burn, the Agency has detection limit data for hexachlorobutadiene in ash samples of K019. These K019 data consists of six sample sets of <10 ppm in the ash and <0.01mg/1 in the scrubber water from rotary kiln incineration. As a result, concentration-based standards based on detection limits for hexachlorobutadiene (using analysis of total constituent concentrations) are being proposed today for the U128 and U129.

Lindane is the most common isomer of hexachlorocyclohexane (BHC). Typical commercial mixtures of Lindane were manufactured such that three other isomers were present in reasonably high concentrations: alpha-, beta-, and delta-BHC. Analytical results for hexachlorocyclohexane are often reported for all four of these isomers (which are also Priority Pollutants). Accordingly, the Agency is today proposing concentration-based standards for all four isomers for wastes identified as U129. As with the other characteristic pesticide D wastes, the standard for D013 (Characteristic for Lindane) is being proposed as two sets of concentration-based standards. One set of standards is based on the characteristic levels and the other set of standards were developed from incineration treatment data.

BDAT Treatment Standards for K032

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene	2.0
Chlordane	0.13
Heptachlor	0.066
Heptachlor epoxide	0.066

BDAT Treatment Standards for K032

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Hexachlorocyclopentadiene	0.047
Chlordane	0.00033
Heptachlor	0.00022
Heptachlor epoxide	0.00022

BDAT Treatment Standards for K033

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene	2.0

BDAT Treatment Standards for K033

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Hexachlorocyclopentadiene	0.047

BDAT Treatment Standards for K034

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene	2.0

BDAT Treatment Standards for K034

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Hexachlorocyclopentadiene	0.047

BDAT Treatment Standards for K041

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Toxaphene	0.13

BDAT Treatment Standards for K041

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Toxaphene	0.00039

BDAT Treatment Standards for K042

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
1,2,4,5-Tetrachlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
Pentachlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4

BDAT Treatment Standards for K042

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,2,4,5-Tetrachlorobenzene	0.092
o-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
Pentachlorobenzene	0.092
1,2,4-Trichlorobenzene	0.092

BDAT Treatment Standards for K085

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
m-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4
1,2,4,5-Tetrachlorobenzene	4.4
Pentachlorobenzene	4.4
Hexachlorobenzene	4.4
Aroclor 1016	0.13
Aroclor 1221	0.13
Aroclor 1232	0.13
Aroclor 1242	0.13
Aroclor 1248	0.13
Aroclor 1254	0.13
Aroclor 1260	0.13

BDAT Treatment Standards for K085

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Benzene	0.092
Chlorobenzene	0.092
o-Dichlorobenzene	0.092
m-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
1,2,4-Trichlorobenzene	0.092
1,2,4,5-Tetrachlorobenzene	0.092
Pentachlorobenzene	0.092
Hexachlorobenzene	0.092
Aroclor 1016	0.00036
Aroclor 1221	0.00036
Aroclor 1232	0.00036
Aroclor 1242	0.00036
Aroclor 1248	0.00036
Aroclor 1254	0.00036
Aroclor 1260	0.00036

BDAT Treatment Standards for K097

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Hexachlorocyclopentadiene	2.0
Chlordane	0.13
Heptachlor	0.066
Heptachlor epoxide	0.066

BDAT Treatment Standards for K097

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Hexachlorocyclopentadiene	0.047
Chlordane	0.00033
Heptachlor	0.00022
Heptachlor epoxide	0.00022

BDAT Treatment Standards for K098

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Toxaphene	0.13

BDAT Treatment Standards for K098

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Toxaphene	0.00039

BDAT Treatment Standards for K105

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
2,4,5-Trichlorophenol	4.4
2,4,6-Trichlorophenol	4.4
2-Chlorophenol	4.4
Phenol	4.4

BDAT Treatment Standards for K105

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Benzene	0.092
Chlorobenzene	0.092
o-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
2,4,5-Trichlorophenol	0.092
2,4,6-Trichlorophenol	0.092
2-Chlorophenol	0.092
Phenol	0.092

BDAT Treatment Standards for P004, P037, P050, P051, P059, P060, P123, U036, U037, U038, U060, U061, U070, U071, U072, U127, U128, U129, U130, U132, U142, U183, U185, U207, U240, and U247

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
P004	Aldrin	0.066
P037	Dieldrin	0.13
P050	Endosulfan I	0.066
P050	Endosulfan II	0.13
P050	Endosulfan sulfate	0.13
P051	Endrin	0.13
P051	Endrin aldehyde	0.13
P059	Heptachlor	0.066
P059	Heptachlor epoxide	0.066
P060	Isodrin	0.010
P123	Toxaphene	1.3
U036	Chlordane	0.13
U037	Chlorobenzene	5.7
U038	Chlorobenzilate	1.8
U060	o,p'-DDD	0.087
U060	p,p'-DDD	0.087
U061	o,p'-DDT	0.087
U061	p,p'-DDT	0.087
U061	o,p'-DDD	0.087
U061	p,p'-DDD	0.087
U061	o,p'-DDE	0.087
U061	p,p'-DDE	0.087
U070	o-Dichlorobenzene	6.2
U071	m-Dichlorobenzene	6.2
U072	p-Dichlorobenzene	6.2
U127	Hexachlorobenzene	37
U128	Hexachlorobutadiene	18
U129	alpha-BHC	0.066
U129	beta-BHC	0.066
U129	delta-BHC	0.066
U129	gamma-BHC (Lindane)	0.066
U130	Hexachlorocyclopentadiene	4.8
U132	Hexachlorophene	1.1
U142	Kepone	0.043
U183	Pentachlorobenzene	37
U185	Pentachloronitrobenzene	4.8
U207	1,2,4,5-Tetrachlorobenzene	14
U240	2,4-D	10
U247	Methoxychlor	0.18

BDAT Treatment Standards for P004, P037, P050, P051, P059, P060, P123, U036, U037, U038, U060, U061, U070, U071, U072, U127, U128, U129, U130, U132, U142, U183, U185, U207, U240, and U247

[Wastewaters]*

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
P004	Aldrin	0.00024
P037	Dieldrin	0.00052
P050	Endosulfan I	0.00024
P050	Endosulfan II	0.00052
P050	Endosulfan sulfate	0.00052
P051	Endrin	0.00052
P051	Endrin aldehyde	0.00052
P059	Heptachlor	0.00022
P059	Heptachlor epoxide	0.00022
P060	Isodrin	0.00020
P123	Toxaphene	0.014
U036	Chlordane	0.00046
U037	Chlorobenze	0.014
U038	Chlorobenzilate	0.292
U060	o,p'-DDD	0.00036
U060	p,p'-DDD	0.00036
U061	o,p'-DDT	0.00036
U061	p,p'-DDT	0.00036
U061	o,p'-DDD	0.00036

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BDAT TREATMENT STANDARDS FOR P004, P037, P050, P05I, P059, P060, P123, U036, U037, U038, U060, U061, U070, U071, U072, U127, U128, U129, U130, U132, U142, U183, U185, U207, U240, AND U247—Continued

[Wastewaters]*

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U061	p,p'-DDD	0.00036
U061	o,p'-DDE	0.00036
U061	p,p'-DDE	0.00036
U070	o-Dichlorobenzene	0.056
U071	m-Dichlorobenzene	0.072
U072	p-Dichlorobenzene	0.058
U127	Hexachlorobenzene	0.055
U128	Hexachlorobutadiene	0.031
U129	alpha-BHC	0.00024
U129	beta-BHC	0.00024
U129	delta-BHC	0.00024
U129	gamma-BHC (Lindane)	0.00024
U130	Hexachlorocyclopentadiene	0.057
U132	Hexachlorophene	58
U142	Kepone	0.0011
U183	Pentachlorobenzene	0.055
U185	Pentachloronitrobenzene	0.055
U207	1,2,4,5-Tetrachlorobenzene	0.023
U240	2,4-D	0.013
U247	Methoxychlor	0.00036

*Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR D012, D013, D014, D015, D016, AND D017 BASED ON TREATMENT

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
D012	Endrin	0.13
D013	Lindane	0.066
D014	Methoxychlor	0.18
D015	Toxaphene	1.3
D016	2,4-D	10
D017	2,4,5-TP	2.8

BDAT TREATMENT STANDARDS FOR D012, D013, D014, D015, D016, AND D017 BASED ON TREATMENT

[Wastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
D012	Endrin	0.00052
D013	Lindane	0.00024
D014	Methoxychlor	0.00036

BDAT TREATMENT STANDARDS FOR D012, D013, D014, D015, D016, AND D017 BASED ON TREATMENT—Continued

[Wastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
D015	Toxaphene	0.014
D016	2,4-D	0.013
D017	2,4,5-TP	2.5

BDAT TREATMENT STANDARDS FOR U240—SALTS AND ESTERS OF 2,4-D

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR U240—SALTS AND ESTERS OF 2,4-D

[Wastewaters]

Wet air oxidation or chemical oxidation, followed by carbon adsorption; or incineration as methods of treatment

d. Halogenated Phenolics.

U039—p-Chloro-m-cresol
U048—2-Chlorophenol
U081—2,4-Dichlorophenol
U082—2,6-Dichlorophenol

EPA has grouped these four U wastes together because all of the chemicals represented by these waste codes are mono- and di-substituted phenols. These chemicals consist of a phenol (a benzene with a hydroxyl group attached) substituted with one or more chlorine atoms and/or a methyl group (U039) attached to the benzene ring.

The Agency is proposing concentration-based standards for these halogenated phenolics based on incineration treatment performance data for 2,4- and 2,6-dichlorophenol. These data were directly used to develop treatment standards for U081 and U082. Treatment standards for U039 and U048 were developed by examining the detection limit data for these constituents from the fourteen incineration treatment tests. More information on these data can be found in the background document for these wastes.

The treatment standards for wastewater forms of the U wastes presented in the tables following this section, have been calculated based primarily on the detection limits of these constituents in scrubber waters from incineration of 2,4- and 2,6-dichlorophenol nonwastewaters. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.)).

BDAT TREATMENT STANDARDS FOR U039, U048, U081, AND U082

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U039	p-Chloro-m-cresol	14
U048	2-Chlorophenol	5.7
U081	2,4-Dichlorophenol	14
U082	2,6-Dichlorophenol	14

BDAT TREATMENT STANDARDS FOR U039, U048, U081, AND U082

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U039	p-Chloro-m-cresol	0.062
U048	2-Chlorophenol	0.056
U081	2,4-Dichlorophenol	0.052
U082	2,6-Dichlorophenol	0.018

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

e. Brominated Organics.

P017—Bromoacetone
U129—Methyl Bromide
U030—4-Bromophenyl phenyl ether
U066—1,2-Dibromo-3-chloropropane
U067—Ethylene dibromide (EDB)
U068—Dibromomethane
U225—Bromoform

The chemicals represented by these six U wastes and one P waste are all hydrocarbons or oxygenated hydrocarbons that contain the halogen, bromine. The presence of bromine in the structure complicates the evaluation of incineration for these wastes: The primary complication is the release of significant quantities of molecular bromine (Br_2) from the incineration chambers. Thus, these seven wastes have been grouped together and identified as the brominated organics treatability group.

While cyanogen bromide (U246) is also an organic chemical containing bromine, it is not grouped with these other brominated organics due to its instability in water under alkaline conditions. It breaks down relatively quickly into soluble bromide and soluble cyanide. Consequently, the soluble cyanide must then be treated and thus, the Agency has grouped U246 with the cyanide wastes rather than with these brominated organics. Standards for U246 are proposed in section III.A.6.a.(4.) of today's notice.

EPA is proposing concentration-based standards for the six brominated organic compounds amenable to quantification in waste treatment residuals, namely U029, U030, U066, U067, U068 and U225. The methodology used to develop these standards differs from that used for other organic U and P wastes. Incineration data from an Office of Toxic Substances burn of ethylene dibromide included analysis of ethylene dibromide in the untreated waste as well as the ash and scrubber water treatment residuals, but did not include analysis for any of the other brominated organics. EPA used these data to develop the proposed treatment standards for U067 (EDB) wastes. At the same time, the Agency is proposing to directly transfer these standards to U029, U030, U066, U068 and U225 wastes.

Bromoacetone (P017) is relatively unstable in water and therefore cannot be reliably analyzed in wastewaters or other residues where contact with water might be expected. Based on this relative instability of bromoacetone, the resultant difficulty in analyzing treatment residues for bromoacetone, and the demonstration of incinerability of ethylene dibromide (which is more difficult to incinerate than bromoacetone), the Agency is proposing to establish "Incineration as a Method of Treatment" as a treatment standard for P017 nonwastewaters.

During the EPA-sponsored rotary kiln incineration of the ethylene dibromide wastes, the Agency determined that certain operating conditions were required in order to prevent the release of toxic bromine gas. In order to oxidize the bromine released in the organobromine compound combustion process to soluble bromide which can be removed effectively with an air pollution control device such as a scrubber, sulfur was added to modify flame stoichiometry to form soluble bromide rather than molecular bromine gas. These specific conditions are outlined in the background document for these wastes.

Federal regulations currently do not limit the amount of bromine emitted to the air. The Agency is specifically soliciting comment and data on whether these particular incinerator operating conditions can or should be specified as part of the incineration requirements for these wastes. The Agency recognizes that different incinerators have different designs, and that the conditions identified in the test burn may not be reasonably extrapolated to other incinerators.

As an alternative to specifying these conditions, the Agency is also considering establishing a maximum bromide level in the feed to the incinerators for these seven brominated organic wastes and thereby establish a blending requirement. However, the Agency has not identified a maximum level for bromide and thus has not determined the resultant blending requirements for these seven brominated organics. Another alternative to achieve the same results may be to establish an overall maximum loading of the concentrated brominated organics in the incinerator feed stream.

The Agency is therefore soliciting comment and data that would assist the Agency in determining the viability of these alternative standards for these wastes. Specifically, the Agency solicits supporting evidence on concentrations of bromine in waste feeds that have been successfully incinerated including substantiation that emissions of bromine gas do not pose significant risk to human health and the environment. This information should include specific design and operating conditions established to prevent these emissions and/or specific established restrictions (either regulatory or company policy) on the concentrations of total bromine in waste feeds. Prospective commenters are referred to section III.A.1.i. for explanation of the special procedures that the Agency intends to utilize to provide additional rapid notice and comment on any new data and information received prior to the closure of the comment period and should identify their interest in receiving notice on data for brominated organics specifically as III.A.2.e.

The Agency is currently investigating recent information suggesting that concentrated brominated organics can be processed through a specific thermal unit designed to break off the bromine for purposes of recovery of bromine. Sufficient details of this process were not available in time to describe it in this proposal. While the Agency may not be able to identify this process as BDAT in time for promulgation of the final rule, it is not precluded from establishing this as BDAT sometime in the future. Finally, the Agency reiterates that in-plant recycling preceding disposal is nowhere prohibited under RCRA.

The treatment standards for wastewater forms of these U wastes presented in the tables following this section, have been calculated based on the detection limits of these constituents in scrubber waters from incineration of the ethylenedibromide wastes. However, additional are available for the treatment of some of these constituents in wastewaters (see previous discussion in section III.A.2.a.(3.) on the proposed promulgation of standards based on these additional data) and will probably be used for the promulgation of the final standards.

While the Agency currently lacks data indicating the treatability of bromoacetone (P017) in water, its relative instability in water supports the inference that it should easily be destroyed with any chemical oxidant and most probably at ambient temperature and air pressure. Since wet air oxidation is typically operated at relatively high temperatures and pressures, the Agency believes that wet air oxidation should provide a more efficient oxidation than simple chemical oxidation. In order to ensure complete destruction, the Agency is therefore proposing that wet air oxidation represents BDAT for P017 wastewaters. However, because bromoacetone is relatively unstable in water, the Agency is also proposing chemical oxidation as an alternative method of treatment.

The Agency also believes that incineration, while not always practical for wastewaters, will provide an efficient destruction of P017 wastewaters. Since the Agency does not want to preclude the use of incineration for P017 wastewaters, it is also being proposed as an alternative treatment technology.

In a similar manner, while the Agency currently lacks data on the biodegradability of bromoacetone in wastewaters, biodegradation typically results in oxidation of organics. Again, due to the instability of this compound in water, the Agency believes that biodegradation can provide effective removal of P017 from wastewaters. EPA thus is also proposing biodegradation as an alternative treatment method. Since the Agency must specify treatment for P017 wastewaters and currently has no data or means of determining which of

the wastewater treatment technologies can provide the most effective treatment and since the technologies can theoretically provide efficient treatment for this relatively unstable compound, the Agency is proposing all four treatment technologies as BDAT.

BDAT TREATMENT STANDARDS FOR U029, U030, U066, U067, U068, U225

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U029	Methyl Bromide	15
U030	4-Bromopheny phenyl ether	15
U066	1,2-Dibromo-3-chloropropane	15
U067	Ethylene dibromide (EDB)	15
U068	Dibromomethane	15
U225	Bromoform	15

BDAT TREATMENT STANDARDS FOR U029, U030, U066, U067, U068, U225

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U029	Methyl Bromide	16
U030	4-Bromophenyl phenyl ether	16
U066	1,2-Dibromo-3-chloropropane	16
U067	Ethylene dibromide (EDB)	16
U068	Dibromoethane	16
U225	Bromoform	16

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR P017

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR P017

[Wastewaters]

Wet air oxidation; chemical oxidation; biodegradation; or incineration as a method of treatment

f. Miscellaneous Halogenated Organics. EPA has grouped all of the remaining halogenated organics (i.e., twenty-six U wastes and ten P wastes) together into a general category identified as miscellaneous halogenated organics. These U and P wastes represent a wide range of chemicals produced in a variety of individual processes. In general, these miscellaneous halogenated organics can be further distinguished by similarities in structure as were the previously mentioned halogenated organic treatability groups. To facilitate developing appropriate treatability standards, EPA thus divided this general category into seven subcategories: 1) chlorinated diphenyls; 2) chlorinated polynuclear aromatics; 3) chlorinated amines, amides, and nitriles; 4) chlorinated methylbenzenes; 5) halogenated aliphatics; 6) halogenated aldehydes, ethers and esters; and 7) halogenated organo-sulfur compounds.

EPA examined data from a total of fourteen test burns that were performed during the course of determining BDAT standards for First Third and Second Third wastes plus data generated in a rotary kiln incinerator test burn EPA performed in June, 1989. (See section III.A.1.h.(6.) of today's preamble for a more complete discussion of this test burn.) These data include analysis of untreated wastes and all residues, including ash and scrubber water, for virtually all the compounds which the BDAT program regulates by means of concentration-based standards (the "BDAT List" compounds) including the miscellaneous halogenated compounds in this subcategory. However, for most of these compounds the only data that were available were detection limits.

In today's notice, EPA is proposing concentration-based standards for fourteen of these thirty-six miscellaneous halogenated organic U and P nonwastewaters based on a transfer from other "surrogate" halogenated constituents that were determined to be similar in structure to the compounds within each subcategory of miscellaneous halogenated organics. EPA believes that nonwastewater forms of all thirty-six miscellaneous halogenated U and P compounds can be destroyed by incineration to detection limits. However, the Agency does not have specific data on the direct incineration of the majority of these miscellaneous halogenated U and P wastes or their corresponding constituents.

The treatment standards for wastewater forms of these U and P miscellaneous halogenated organics presented in the tables following this section, have been calculated based on the detection limits of these constituents or surrogate halogenated organics in scrubber waters from incineration. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.)).

For twenty-two of these miscellaneous halogenated organics there are analytical complications that preclude the establishment of concentration-based treatment standards. (See complete discussion of analytical complications for U and P wastes in section III.A.1.h.(2.) of today's preamble.) In addition, the quality of the data and resultant concentration-based standard for U017 (benzal chloride) is being re-examined to determine whether the concentration-based standard is valid. As a result EPA is specifying "Incineration as a Method of Treatment" for nonwastewater forms of twenty-three of these miscellaneous halogenated organic wastes and "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment" for the corresponding wastewater forms. (See discussion on selecting these technologies as BDAT for halogenated organics in section III.A.2.a. (2.) and (4.) above.) The specified technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar halogenated organic U and P waste codes. The Agency reminds commenters that there are very few (if any) of these twenty-three wastes that are currently being generated as originally listed and that in practice, the standards will probably only be necessary for residues from previous disposal. The Agency believes that these residues should be less difficult to treat than the original waste as generated.

(1) Chlorinated Diphenyls. There are two miscellaneous halogenated organics that are classified as chlorinated diphenyls; 3,3'-dichlorobenzidine (U073) and 4,4-methylene-bis-(2-chloroaniline) (U158). Diphenyls are compounds consisting of two benzene rings attached to a single, common carbon atom. (Diphenyls are not to be confused with biphenyls which have the structure of two benzene rings attached directly to each other.) The chlorinated diphenyls represented by these waste codes differ from those previously mentioned in the halogenated pesticide category (e.g., DDD, DDT, and Methoxychlor) because these diphenyls contain fewer chlorine atoms and also include methylene and amine functional groups.

DDD, DDT, and Methoxychlor are believed to be more difficult to destroy than the U073 and U158 because the chlorines at the carbon bridge in DDD, DDT, and Methoxychlor are believed to stabilize the aromatic ring. The Agency has data on the incineration of wastes containing Methoxychlor and another structurally similar halogenated organic known as Pronamide (U192) that were used in developing the standards for U073 and U158 wastes. The Agency believes that Pronamide, a halogenated organo-nitrogen compound (3,5-dichloro N-(1,1-dimethyl-2-propynyl)-benzamide), is more difficult to incinerate than these two chlorinated diphenyls.

Both of the chemicals represented by U073 and U158 are amenable to quantification in treatment residuals by verified SW-846 methods. EPA believes these can both be incinerated to detection limits in ash and scrubber water based on data indicating that DDD, DDT and methoxychlor can be incinerated to detection levels. Therefore EPA is proposing concentration-based standards for U073 and U158 wastewaters and nonwastewaters.

(2) Chlorinated Polynuclear Aromatics. Chloronaphazine (U026) and 2-chloronaphthalene (U047) are both classified as chlorinated polynuclear aromatic hydrocarbons. This means that both chemicals contain fused aromatic rings (i.e., polynuclear aromatics) with one having only one attached chlorine while the other has an attached chlorinated amine functional group. The Agency believes that both U026 and U047 can be incinerated to detection limits in ash and scrubber water because of their similarity to Pronamide. The Agency believes that Pronamide, a halogenated organo-nitrogen compound (3,5-dichloro N-(1,1-dimethyl-2-propynyl)-benzamide), is more difficult to incinerate than these chlorinated polynuclear aromatics. Therefore, EPA is proposing treatment standards for U026 and U047 based on incineration as BDAT.

Only U047 is amenable to quantification in treatment residuals by verified SW-846 methods. While chloronaphazine (U026) is amenable to analysis by HPLC, EPA currently rejects HPLC methods as the sole means of establishing treatment standards for reasons discussed in III.A.1.h.(2.). EPA is therefore proposing concentration-based standards for all forms of U047, "Incineration as a Method of Treatment" for nonwastewater forms of U026, and "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for all halogenated organics in section III.A.2.a.(4.) and in the introductory discussion for miscellaneous halogenated organics above.)

(3) Chlorinated Amides, Amines, and Nitriles.

P024—p-Chloroaniline
P027—3-Chloropropionitrile
P057—2-Fluoroacetamide
U049—4-Chloro-o-toluidine hydrochloride
U097—Dimethylcarbomyl chloride
U192—Pronamide
U222—o-Toluidine hydrochloride

These seven miscellaneous halogenated organics were grouped together because they contain an amide, amine, or nitrile group attached to a relatively simple hydrocarbon structure. Only p-chloroaniline (P024) and Pronamide (U192) are amenable to quantification in treatment residuals by verified SW-846 methods. EPA has data on the incineration of Pronamide that indicate Pronamide can be incinerated to detection levels in the ash and the scrubber water. Thus, concentration-based standards for U192 nonwastewaters are proposed in today's notice based directly on these data. The Agency believes p-chloroaniline (P024) resembles Pronamide closely enough that incineration will also destroy p-chloroaniline to detection limits, and is therefore proposing concentration-based standards for P024 based on a transfer of these data.

While 2-fluoroacetamide (P057) is amenable to analysis by HPLC, EPA currently rejects HPLC methods as the sole means of establishing treatment standards for reasons discussed in III.A.1.h.(2.). In addition, no analytical methods have been verified for 4-chloro-o-toluidine hydrochloride (U049), dimethylcarbomyl chloride (U097), or 3-Chloropropionitrile (P027). Information also indicates that o-Toluidine hydrochloride (U222) is unstable in water. EPA believes incineration is effective for P027, P057, U049, U097 and U222, because three are halogenated aliphatics and expected to be less stable than Pronamide (an aromatic molecule), and the other two are polar aromatics, similar in stability to Pronamide. Thus EPA is proposing a standard of "Incineration as a Method of Treatment" for P027, P057, U049, U097 and U222, based on the incineration data for Pronamide.

For the wastewater forms of P027, P057, U049, U097 and U222, EPA is proposing a treatment standard of "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for halogenated organics in section III.A.2.a.(4.) above.) These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar halogenated U and P waste codes.

(4) Chlorinated Methylbenzenes. Benzyl chloride (P028) and benzal chloride (U017) have been grouped together because they both consist of a toluene moiety with chlorines attached to the methyl group. In section II.A.6.(d.) of today's notice EPA is proposing concentration-based standards for benzal chloride in K015 wastes (still bottoms from the distillation of benzyl chloride) based on a transfer of K019 incineration data for p-dichlorobenzene. Wastewater standards for benzal chloride in K015 wastewaters were promulgated with the First Third Wastes. Therefore, the Agency is proposing these treatment standards for U017 wastewaters and nonwastewaters based on a similar transfer.

Benzal chloride (U017) is relatively unstable in water and the Agency is concerned that the analysis for this compound in treatment residuals may not be reproducible. As an alternative to the concentration-based standard for U017 nonwastewaters, the Agency is also proposing "Incineration as a Method of Treatment" as BDAT. Commenters on this approach should submit QA/QC data that verify their particular position of this matter. The Agency points out that it currently has no QA/QC data that support the reproducibility of the benzal chloride analysis for treatment residues, and that the Agency prefers to establish a method of treatment rather than a concentration-based standard for U017 wastewaters and nonwastewaters.

In a similar manner, benzyl chloride (P028) is unstable in water. The Agency is thus proposing a standard of "Incineration as a Method of Treatment" for P028 nonwastewaters, based on the incineration data that indicates p-dichlorobenzene and Pronamide can be destroyed to detection levels in incinerator ash. Both of these chemicals are more stable than P028.

For the wastewater forms of U017 and P028, EPA is also proposing a treatment standard of "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for halogenated organics in section

III.A.2.a.(4.) above.) These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar U and P waste codes.

(5) Halogenated Aliphatics.

U043—Vinyl chloride
U045—Chloromethane
U075—Dichlorodifluoromethane
U121—Fluorotrichloromethane
U138—Iodomethane

This subcategory of miscellaneous halogenated organics consists of five chemicals that have been grouped together because they have one or two carbon atoms with at least one chlorine, fluorine, or iodine attached. EPA believes that 1,1,1-trichloroethylene and carbon tetrachloride, which also contain one or two carbons with three or four chlorines attached, represent the degree of difficulty anticipated in incinerating the simple halogenated aliphatics belonging to this subgroup. While the carbon-fluoride bonds in U075 and U121 are known to be much stronger than the carbon-chlorine bond in carbon tetrachloride molecule, EPA believes that the overall degree of difficulty of incineration is similar enough to justify a transfer of these incineration data for the purposes of developing treatment standards for land disposal of these wastes.

Thus, EPA concludes incineration will reduce these wastes to detection limits in ash and scrubber water and is proposing concentration-based standards accordingly. Since all five of these compounds are amenable to quantification in treatment residuals by verified SW–846 methods, EPA is proposing concentration-based standards for wastewater and nonwastewater forms of U043, U045, U075, U121 and U138.

(6) Halogenated Aldehydes, Ethers and Esters.

P016—Bis-chloromethyl ether
P023—Chloroacetaldehyde
P058—Fluoroacetic acid, sodium salt
P095—Phosgene
U006—Acetyl Chloride
U024—Bis 2-chloroethoxymethane
U025—Dichloroethyl ether
U027—Bis-2-chloroisopropyl ether
U033—Carbonyl fluoride
U034—Trichloroacetaldehyde
U041—n-Chloro-2,3-epoxypropane
U042—2-Chloroethyl vinyl ether
U046—Chloromethyl methyl ether
U156—Methyl chlorocarbonate

This subcategory of miscellaneous halogenated organics consists of fourteen chemicals grouped together because they are relatively simple oxygenated hydrocarbons with various degrees of halogenation. The oxygenated hydrocarbons include ethers, esters, and aldehydes.

Of these fourteen chemicals, only bis 2-chloroethoxymethane (U024), dichloroethyl ether (U025), bis-2-chloroisopropyl ether (U027), and 2-chloroethyl vinyl ether (U042) are amenable to quantification in treatment residuals by verified SW–846 methods. However, EPA's data on the detection limits of 2-chloroethyl vinyl ether (U042) in incinerator ash are so variable that the resultant calculated treatment standard results in a standard that is in the low percent range. Since the data show that incineration can achieve detection limits for a variety of wastes, and since the resultant high treatment standard could potentially allow a waste with high concentrations of U042 to go untreated; the Agency has chosen to propose "Incineration as a Method of Treatment" as a treatment standard for U042 nonwastewaters. The Agency believes that this will ensure these wastes will be treated to levels that represent BDAT. For U024, U025, and U027 (which are also amenable to quantification) EPA is proposing concentration-based standards based on the ability of incineration technologies to destroy Pronamide and chlorobenzene to detection limits in ash and scrubber water. The Agency believes that Pronamide (a halogenated organo-nitrogen compound also identified as 3,5-dichloro N-(1,1-dimethyl-2-propynyl)-benzamide) and chlorobenzene are more difficult to incinerate than these halogenateds because both have more complex structures and stronger bonding than U024, U025, and U027 wastes.

There are currently no verified SW–846 methods for the constituents represented by P058, U034, or U156. In addition, constituents represented by P016, P023, P095, U006, U033, U041, and U046 are all unstable in water. As a result, EPA is proposing "Incineration as a Method of Treatment" as treatment standards for nonwastewater forms of P016, P023, P058, P095, U006, U033, U034, U041, U042, U046, and U156. Based on the simplicity of structure, EPA believes all of these compounds are easier to incinerate than chlorobenzene and/or Pronamide. This is particularly substantiated by the aforementioned relative instability of seven of these U and P wastes.

For the wastewater forms of P016, P023, P058, P095, U006, U033, U034, U041, U042, U046, and U156, EPA is proposing a treatment standard of "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for halogenated organics in section III.A.2.a.(4.) above.) These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar U and P waste codes.

(7) Chlorinated Organo-Sulfur.

P026—1-(o-Chlorophenyl) thiourea
P118—Trichloromethanethiol
U020—Benzenesulfonyl chloride
U062—Diallate

These four miscellaneous halogenated organics have been grouped together because they are chlorinated organo-sulfur chemicals. The majority of the organo-sulfur compounds are discussed in section III.A.3. of today's preamble. Note: The Agency is soliciting comment on the potential need for control of sulfur dioxide emissions from the incineration of these wastes.

The Agency is proposing a standard of "Incineration as a Method of Treatment" in nonwastewaters for all four of these wastes. While P026 and U062 are amenable to analysis by HPLC, EPA currently rejects HPLC methods as the sole means of establishing treatment standards for reasons discussed in "Analytical Considerations". In addition, no verified SW–846 analytical methods are available for the constituents represented by P118 or U020. The Agency bases this choice of incineration as a method on the incineration data that indicates 1,1,1-trichloroethane as well as tetrachloroethene, Pronamide, and chlorobenzenes can all be destroyed to detection levels in incinerator ash and scrubber water.

For the wastewater forms of P026, P118, U020, and U052, EPA is proposing a treatment standard of "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; or Incineration as Methods of Treatment". (See discussion on selecting these technologies as BDAT for halogenated organics in section III.A.2.a.(4.) above.) These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar U and P waste codes.

BDAT Treatment Standards for P024, U017, U024, U025, U027, U043, U045, U047, U073, U075, U121, U138, U158, and U192

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
P024	p-Chloroaniline	16
U017	Benzal chlonde	6.2
U024	Bis (2-chloroethoxy) methane	7.2
U025	Dichloroethyl ether	7.2
U027	Bis-2-chloroisopropyl ether	7.2
U043	Vinyl chlonde	0.035
U045	Chloromethane	[illegible]
U047	2-Chloronaphthalene	5.6
U073	3,3'-Dichlorobenzidine	16
U075	Dichlorodifluoromethane	10
U121	Fluorotnchloromethane	33
U138	Iodomethane	65
U158	4,4-Methylene-bis-(2-chloroaniline)	[illegible]
U192	Pronamide	1.5

BDAT Treatment Standards for P024, U017, U024, U025, U027, U043, U045, U046, U073, U075, U121, U138, U158, and U192

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for single grab sample, total composition (mg/l)
P024	p-Chloroaniline	[illegible]
U017	Benzal chlonde	[illegible]
U024	Bis (2-chloroethoxy) methane	0.064
U025	Dichloroethyl ether	0.013
U027	Bis-2-chloroisopropyl ether	0.064
U043	Vinyl chlonde	0.033
U045	Chloromethane	0.023
U047	2-Chloronaphthalene	0.073
U073	3,3'-Dichlorobenzidine	0.022
U075	Dichlorodifluoromethane	0.14
U121	Fluorotnchloromethane	0.13
U138	Iodomethane	[illegible]
U158	4,4-Methylene-bis-(2 chloroaniline)	0.74
U192	Pronamide	0.039

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT Treatment Standards for P016, P023, P026, P027, P028. P057, P058, P095, P118, U006, U017, U020, U026, U033, U034, U041, U042, U046, U049, U062, U097, U156, and U222

[Nonwastewaters]

Incineration as a Method of Treatment

BDAT Treatment Standards for P016, P023, P026, P027, P028, P057, P058, P095, P118, U006, U017, U020, U026, U033, U034, U041, U042, U046, U049, U062, U097, U156, and U222

[Wastewaters]

Wet air oxidation or chemical oxidation, followed by carbon adsorption; or incineration as methods of treatment

3. Proposed Treatment Standards for Additional Organic Wastes—a. Introduction. In the previous section of today's preamble (III.A.2.), the Agency identified that many of the chemicals represented by the U, P, and K wastes fall under a general category of chemicals known as halogenated organics. The majority of the remaining organic U and P wastes have been grouped together into seven additional subcategories of "nonhalogenated" organic wastes and a discussion of each is presented in this section (III.A.3.) of today's preamble. The seven major subcategories of wastes are based primarily on similarities in the structure of these organic chemicals (i.e., elemental composition and the presence of organic functional groups). These subcategories are also based partially on the industrial use (e.g., the wastes of a pharmaceutical nature) and waste generation patterns of the U and P wastes. These major subcategories include: aromatics and ther hydrocarbons, polynuclear aromatic hydrocarbons, phenolics, oxygenated hydrocarbons and heterocyclics, organo-nitrogen compounds, organo-sulfur compounds, and wastes of a pharmaceutical nature.

(1) Fuel Substitution as an Alternative Treatment Method. BDAT standards for the nonwastewater forms of these U and P nonhalogenated organics are proposed based primarily on performance data from incineration of similar wastes. Since many of the nonhalogenated chemicals represented by these U and P waste codes generally have reasonably high BTU values (e.g., the aromatics and the polynuclear aromatics) and since U and P wastes are typically off-specification or discarded products, they might be expected to be well suited for fuel substitution purposes. However, despite this fuel value and the fact that these compounds consist primarily of hydrogen and carbon, many of these wastes may be considered unacceptable for fuel substitution due to their relatively high toxicity and acid formation capability (due incineration). In addition, it appears that there is sufficient incineration capacity to accommodate these wastes, so that use of fuel substitution capacity is not needed to avoid granting a national capacity variance for these wastes. It also appears that only the oxygenated hydrocarbons and heterocyclics (seventeen of the eighty two U and P nonhalogenated wastes) are likely candidates for use as fuel substitutes. The Agency does not believe that fuel substitution is a viable alternative for the majority (sixty five) of the specific U and P waste codes identified in this section.

In today's rule, the Agency is proposing that incineration represents BDAT for all of the nonhalogenated organics presented in this section. Where the Agency is proposing "Incineration as a Method of Treatment" as the nonwastewater treatment standard for a particular organic waste code, it has not included fuel substitution as an alternative except for seventeen of the oxygenated hydrocarbon and heterocyclic wastes. However, where the Agency has proposed concentration-based standards (i.e., sixty one U and P nonhalogenated wastes), thermal destruction in fuel substitution units is not precluded. The Agency points out that all facilities incinerating these wastes must comply with 40 CFR 264 Subpart O or 265 Subpart O.

(2) Additional Wastewater Treatment Data. Additional wastewater treatment data primarily from the Agency's Office of Water have been recently analyzed for incorporation into the treatment standards for many of the U and P wastes in this section. These data include the treatment of wastewaters that are not specifically listed as U or P wastewaters, but do contain many of the corresponding U or P constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h.(6.).

Alternative standards based on these data are anticipated to be similar to those presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. These standards are presented on a constituent basis and correspond to what may be promulgated for the respective U or P wastewater. Thus, the Agency is proposing these

standards as alternative standards for all U and P wastewaters for which concentration-based standards based on incinerator scrubber waters have been proposed in the following sections.

(3) Specifying Technologies for Nonhalogenated Wastewaters. Based on analytical complications previously discussed in section III.A.1.h.(2.), the Agency is also proposing certain methods of treatment as the treatment standards for many of the nonhalogenated U and P wastewaters. In the following sections (III.A.3.b. through h.) of the preamble the Agency identifies eighty two specific nonhalogenated organic U and P wastes for which the Agency is proposing four treatment technologies as alternative BDAT treatment standards: (1) Wet air oxidation followed by carbon adsorption; (2) Chemical oxidation followed by carbon adsorption; (3) Biodegradation followed by carbon adsorption; or (4) Incineration of wastewaters. Since these technologies are known to provide effective treatment for the other nonhalogenated organic constituents within each treatability group (as identified in III.A.3.) that can be analyzed, the Agency is therefore proposing these multiple treatment technologies for all of the eighty two U and P constituents that require specified methods of treatment.

Biodegradation has been specified as an alternative technology for these nonhalogenated organics in wastewaters, because these chemicals are generally thought of as more easily biodegraded than the halogenated organics due to the overall higher toxicity of the halogenateds compared to their nonhalogenated counterparts. This is further supported by the fact that there are certain forms of biota that utilize the nitrogen or the sulfur contained in many of these nonhalogenated organics for metabolic purposes and that the hydrogen, carbon, and oxygen contained in the majority of the structures of these chemicals serve as a food source for many forms of the biota.

Carbon adsorption has been specified as part of the treatment train because the eighty two nonhalogenated U and P organics are believed to be adsorbable when present in low concentrations, as might be expected in an effluent from either wet air oxidation, chemical oxidation, or biodegradation. The Agency further recognizes that while difficulties can arise in specifying only one treatment method for these wastewaters (as outlined in greater detail in section III.A.1.h.(7.)), the Agency must develop a treatment standard for these wastes to avoid the hard hammer and at the same time, somehow justify that these technologies provide significant treatment. None of these technologies have been specifically identified as better than the others by the Agency, because of the lack of data for these constituents (due to the identified analytical complications) or for any surrogate parameters.

b. Aromatics and Other Hydrocarbons

U019—Benzene
U055—Cumene (isopropyl benzene)
U056—Cyclohexane
U186—1,3-Pentadiene
U220—Toluene (methyl benzene)
U239—Xylenes (dimethyl benzenes)

EPA grouped these waste codes together because the primary constituents for which the waste was listed are either aromatic or alicyclic compounds. This group of chemicals, except for cyclohexane (U056) and 1,3-Pentadiene (U186), all contain one benzene ring. Cumene (U055), toluene (U220), and xylenes (U239) consist of a benzene ring with aliphatic side chains. Cyclohexane (U056), a cycloalkane, has been included in this group because of its ability to be converted by catalytic reforming into aromatic hydrocarbons. Conversely, the addition of hydrogen (hydrogenation) to an aromatic compound yields cyclic aliphatic compounds, specifically cyclohexane derivatives, e.g., the hydrogenation of benzene yields pure cyclohexane. 1,3-pentadiene (U186) is a five carbon chain with two conjugated double bonds (i.e., a diene) that provide a certain degree of aromaticity to the chemical, making it somewhat similar to the others in the group. For the purpose of determining BDAT, all of these wastes have been grouped together into one treatability group identified as aromatics and other hydrocarbons. The proposed treatment standards for this waste group are presented expressed either as a concentration-based standard or as a method of treatment.

(1) Wastes for Which EPA is Proposing Concentration-Based Standards. In developing the standards for aromatics and other hydrocarbon wastes, the Agency incorporated into its analysis some chemical variability by reviewing data from several incineration test burns conducted by EPA for various F and K wastes. Analysis of these data identified extensive treatment and detection limit data for benzene (U019), toluene (U220), and xylenes (U239) from the test burns of K001, K037, K048, K051, K087, K101, and K102 wastes. These data represent a myriad of different hazardous waste types generated and treated at several different facilities. The waste characterization data indicates that for these three constituents, concentrations in the different wastes varied from very low levels in some wastes to high levels in others. For example, toluene concentrations in the wastes ranged from 17 ppm in K087 waste to 2,000 ppm in K037 waste.

Concentration-based treatment standards for U019, U220 and U239 wastes are thus proposed based on the analysis of data on the performance of incineration of: (1) K001 (bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol); (2) K037 (wastewater treatment sludges from the production of disulfoton); (3) K048 (dissolved air flotation (DAF) float from the petroleum refining industry); (4) K051 (API separator sludge from the petroleum refining industry); (5) K087 (decanter tank tar sludge from coking operations); (6) K101 (distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds) and (7) K102 (residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds) wastes.

Treatment standards for K001, K037, K048, K051, K087, K101 and K102 wastewaters and nonwastewaters were promulgated in the First Third final rule on August 8, 1988. These standards, measured as concentrations found in the ash and scrubber water, were based on the performance of rotary kiln or fluidized bed incineration.

EPA analyzed for benzene (U019), toluene (U220) and xylenes (U239) in the incineration residues (ash and scrubber water) from these test burns as follows: (1) six data sets for benzene and toluene in K001; (2) six data sets for xylene in K037; (3) six data sets for benzene and toluene in K048 and K051; (4) six data sets for benzene, toluene and xylene in K087; (5) six data sets for toluene in K101 and (6) six data sets for toluene and xylene in K102. In general, data from the test burns showed that the majority of the measured values for the three aromatic constituents were analyzed at concentrations below detection levels in the incineration residues. Detection limits for the ash ranged from 0.005 ppm to 10 ppm. The detection limits for the scrubber water ranged from 0.002 ppm to 0.010 ppm.

The Agency also reviewed performance data on the treatment of toluene and xylenes obtained from a rotary kiln incinerator test burn EPA performed in June, 1989. The feed also included other RCRA hazardous wastes that contained these constituents yielding total concentrations of these constituents at the percent level. (See further discussion of this test burn in section III.A.1.h.(6.) of today's preamble.)

The Agency believes that all of these data represent a sufficient range of concentrations of these aromatic hydrocarbons in the untreated wastes and are thus considered representative of what the Agency would anticipate to find present in the respective U wastes. The Agency has reviewed both characterization and performance data from all seven test burns to develop concentration-based treatment standards for U019, U220, and U239 and has determined, as explained in the background document, that K001 is most appropriate for the transfer to these U wastes.

The Agency is regulating xylenes (U239) by setting a single concentration-based treatment standard which will represent the sum of the concentrations of o-xylene, m-xylene, and p-xylene present in the waste treatment residual. The basis of concentration numbers therefore will be the sum of the areas under all peaks identified as o-xylene, m-xylene or p-xylene in the chromatographic spectrum. The forthcoming first update to the third edition of SW–846 includes Method 8260 (GC/MS for volatile organics using a capillary column) which can quantify the individual isomers of xylene. Nevertheless, the Agency chooses to regulate xylenes as a collective unit, rather than individually, to allow the regulated community to use SW–846 Method 8240 because it is already validated for xylenes, less cumbersome and available in current editions of SW–846. More information on the development of treatment standards can be found in the Background Document for Aromatic Compounds in the RCRA docket.

(2) Wastes for Which EPA is Proposing a Method of Treatment as BDAT. The Agency does not believe that concentration-based standards can be established for U055, U056 and U186 wastes at this time. The major problem in establishing concentration-based standards for these wastes is that EPA does not currently have a verified SW-846 analytical method that can analyze for the concentrations of cumene (U055), cyclohexane (U056), or 1,3-pentadiene (U186) in treatment residues. As a result, a concentration-based treatment standard for these waste codes is apparently not feasible and thus, the Agency is proposing a treatment standard of "Incineration as a Method of Treatment" for U055, U056 and U186 nonwastewaters. For U055, U056 and U186 wastewaters, EPA is proposing "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as a Method of Treatment." These wastewater technologies are appropriate for these constituents and have been demonstrated and/or promulgated for similar U and P waste codes (see preceding discussion in III.A.3.a.(3.)).

BDAT Treatment Standards for U019, U220, and U239

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U019	Benzene	50
U220	Toluene	[illegible]
U239	Xylene(s)	33

BDAT Treatment Standards for U019, U220, and U239

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U019	Benzene	0.035
U220	Toluene	0.028
U239	Xylene(s)	0.032

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT Treatment Standards for U055, U056 and U186

[Nonwastewaters]

Incineration as a Method of Treatment

BDAT Treatment Standards for U055, U056 and U186

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment
c. Polynuclear Aromatic Hydrocarbons.
U005—2-Acetylaminofluorene
U016—Benz(c)acridine
U018—Benz(a)anthracene
U022—Benzo(a)pyrene
U050—Chrysene
U051—Creosote
U063—Dibenzo(a,h)anthracene
U064—1,2,7,8-Dibenzopyrene
U094—7,12-Dimethyl benz(a)anthracene
U120—Fluoranthene
U137—Indeno(1,2,3,-c,d)pyrene
U157—3-Methylchloanthrene
U165—Naphthalene

EPA grouped these thirteen U wastes together because the primary constituents for which the wastes were listed are polynuclear aromatic hydrocarbons. All of these compounds are very similar in chemical composition and structure (i.e., they all consist of multiple fused-ring aromatic hydrocarbons). For purposes of determining BDAT, all of these wastes have been grouped together into one treatability group identified as polynuclear aromatic hydrocarbons.

(1) Wastes for Which EPA is Proposing Concentration-Based Standards. In developing the treatment standard for polynuclear aromatic wastes, the Agency incorporated into its analysis some chemical variability by reviewing data from incineration test burns conducted by EPA for various F and K wastes. Analysis of these data identified extensive treatability and detection limit data for many polynuclear aromatic constituents from the test burns of F024, K001, K019, K048, K051, and K087 wastes. These data represent a myriad of different hazardous waste types generated and treated at several different facilities. The characterization data for untreated wastes indicate that concentrations of these polynuclear aromatics varied from very low levels in some wastes to high levels in others. For example, chrysene waste concentrations ranged from 0.41 ppm in F024 to 6500 ppm in K087.

Concentration-based treatment standards for U005, U018, U022, U050, U063, U120, U137, U157, and U165 wastes are thus proposed based on data

on the performance of incineration of: (1) F024 (various wastes from the production of chlorinated aliphatics such as distillation residues, heavy ends, tars, and reactor clean-out wastes); (2) K001 (bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol); (3) K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production); (4) K048 (dissolved air flotation (DAF) float from the petroleum refining industry); (5) K051 (API separator sludge from the petroleum refining industry); and (6) K087 (decanter tank tar sludge from coking operations) nonwastewaters.

Treatment standards for K001, K019, K048, K051, and K087 wastewaters and nonwastewaters were promulgated in the First Third rule on August 8, 1988. Treatment standards for F024 wastes were promulgated in the Second Third rule on June 8, 1989. These standards, measured as concentrations found in the ash and scrubber water, were based on the performance of rotary kiln or fluidized bed incineration.

EPA analyzed for various polynuclear aromatic compounds in the incineration residues (ash and scrubber water) from these test burns as follows: (1) six data sets for benz(a)anthracene, benzo(a)pyrene, chrysene, and indeno(1,2,3-c,d)pyrene in F024; (2) six data sets for benz(a)anthracene, benzo(a)pyrene, chrysene, fluoranthene, and naphthalene in K001; (3) six data sets for naphthalene in K019; (4) six data sets for benz(a)anthracene, chrysene, and naphthalene for K048; (5) six data sets for benz(a)anthracene, chrysene, and naphthalene in K051; and (6) six data sets for benz(a)anthracene, benzo(a)pyrene, chrysene, fluoranthene, indeno(1,2,3-c,d)pyrene and naphthalene in K087. In general, the majority of the measured values for polynuclear aromatics were below detection for the six constituents analyzed.

The Agency has determined that the waste characterization and incineration performance data from F024, K001, K019, K048, K051, and K087 wastes were sufficient to develop concentration-based treatment standards for U005, U018, U022, U050, U063, U064, U120, U137, U157, and U165 wastes. While specific data were not available on all of these polynuclear aromatic chemicals, EPA is proposing concentration-based standards for the remaining wastes based on a transfer of performance data from structurally similar polynuclear aromatics where data do exist. More information on the development of treatment standards for these wastes can be found in the Background Document for Polynuclear Aromatic Compounds in the RCRA docket.

(2) Standards for U051 Waste. Treatment standards for U051 (creosote) wastes are proposed based on the transfer of performance data from incineration of K001 wastes. Treatment standards for K001 wastewaters and nonwastewaters were promulgated in the First Third final rule on August 8, 1988. The standards for organics in K001 wastes were based on the performance of rotary kiln incineration of K001 nonwastewaters. Treatment standards for the leachable metal constituents in K001 nonwastewaters were established based on the performance of stabilization. The metal constituents in K001 wastewaters were based on chemical precipitation.

The Agency is also proposing to revise the concentration-based treatment standards for K001 organics due to a mathematical error that was made in the calculation of the standards. The revised standards are being proposed along with the corrected standards for U051. Additional information on the revised standards can be found in the amendment to the K001 Background Document.

U051 wastes differ from other U wastes in the polynuclear aromatic group in that the waste is not defined by one chemical or constituent, but by a group of chemicals defined by the generic term of "creosote". Creosote is a derivative of coal that contains a wide range of constituents including cresols, phenols, naphthalene, benz(a)anthracene, benzo(a)pyrene, fluoranthene, chrysene, indeno(1,2,3-cd)pyrene and acenaphthalene. The presence of these polynuclear aromatics is the main reason why this waste code has been placed in this treatability group.

The transfer of performance data from K001 waste is particularly appropriate for U051 because data on the incineration of a K001-creosote waste and a K001-pentachlorophenol waste were used in the development of the treatment standards for that waste. Based on the similarities in concentration of the major hazardous organic constituents anticipated in creosote (U051) to those in K001, and the primary use of creosote as a wood preservative (and hence the relationship to K001) the Agency has decided to propose to regulate the same constituents in U051 as were regulated in K001.

Incineration in a rotary kiln will achieve a level of performance that represents BDAT for the organics in U051. Thus, EPA is proposing concentration-based standards for six organic constituents in U051. These are naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, and xylenes. Since the performance data for K001 indicate the presence of treatable quantities of lead in the incinerator ash and based on the anticipated similarities of U051 wastes to K001 wastes, EPA is also proposing treatment standards for lead. These standards are based on stabilization as BDAT for U051 nonwastewaters and chemical precipitation as BDAT for U051 wastewaters.

EPA notes, however, that if U051 is simply discarded before it is used, for example because it is off-specification, then it would be unlikely to have all of the same contaminants as K001 wastes. On the other hand, when U051 is spilled at a wood preserving site, then it could contain the same contaminants, in particular pentachlorophenol and lead, as K001 wastes due to the high potential for cross-contaminated due to prior use of pentachlorophenol at the site. Since the Agency anticipates that most of the U051 wastes come from spill residues at wood preserving sites, EPA is conservatively proposing standards that include those constituents that are likely to be present in this form of the waste. In situations where a facility never used pentachlorophenol or where the U051 is only anticipated to be generated as an off-spec product (and pentachlorophenol was never used in the production equipment), EPA anticipates that the facility's waste analysis plan could be revised so that only the constituents that are likely to be present in that form of the waste are monitored. (See also the discussion in section III.A.1.f.(3.) on waste analysis plans.)

(3) Wastes for Which EPA is Proposing a Method of Treatment as BDAT. The Agency has determined that currently there are no calibration reagents that are routinely available for the measurement of benzo(c)acridine (U016), 1,2,7,8-dimethylbenzo(a) anthracene (U064) and 7,12-dimethylbenzo(a)anthracene in treatment residuals. As a result, a concentration-based standard for these constituents is apparently not feasible. See section III.A.1.h.(2.)(b.) of today's preamble for a further discussion of the Agency's approach in such instances. Since 3004(m) allows the Agency to establish either levels or methods of treatment, the Agency is proposing a standard of "Incineration as a Method of Treatment" for U016, U064 and U094 nonwastewaters. For U016, U064, and U094 wastewaters the Agency is proposing "Wet Air Oxidation or Chemical Oxidation Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as a Methods of Treatment." The Agency believes that these technologies are appropriate for treatment of these constituents and have been demonstrated and/or promulgated for similar U and P waste codes (see preceding discussion in III.A.3.a.(3.)).

BDAT TREATMENT STANDARDS FOR U005, U018, U022, U050, U063, U120, U137, U157, AND U165

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U005	2-Acetylaminofluorene	13
U018	Benz(a)anthracene	3.6
U022	Benzo(a)pyrene	3.6
U050	Chrysene	3.6
U063	Dibenzo(a,h)anthracene	13
U120	Fluoranthene	3.6
U137	Indeno(1,2,3,-c,d)pyrene	3.6
U157	3-Methylcholanthrene	33
U165	Naphthalene	5.9

BDAT TREATMENT STANDARDS FOR U005, U01B, U022, U050, U063, U120, U137, U157, AND U165

[Wastewaters] [1]

Waste Code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U005	2-Acetylaminofluorene	0.059
U018	Benz(a)anthracene	0.030
U022	Benzo(a)pyrene	0.030
U050	Chrysene	0.15
U063	Dibenzo(a,h)anthracene	0.012
U120	Fluoranthene	0.030
U137	Indeno(1,2,3,-c,d)pyrene	0.030
U157	3-Methylcholanthrene	0.059
U165	Naphthalene	0.007

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR U051 AND K001

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Naphthalene	1.5
Pentachlorophenol	7.4
Phenanthrene	1.5
Pyrene	1.5
Toluene	28
Xylene(s)	28

	Maximum for any single grab sample TCLP (mg/l)
Lead	0.51

BDAT TREATMENT STANDARDS FOR U051 AND K001

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Naphthalene	0.031
Pentachlorophenol	0.18
Phenanthrene	0.031
Pyrene	0.036
Toluene	0.028
Xylene(s)	0.032
Lead	0.037

BDAT TREATMENT STANDARDS FOR U016, U064 AND U094

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR U016, U064 AND U094

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment

d. Phenolics.

P020—2-sec-Butyl-4,6-dinitrophenol (Dinoseb)
P034—2-cyclohexyl-4,6-dinitrophenol
P047—4,6-dinitrocresol and salts
P048—2,4-dinitrophenol
U052—Cresol (Cresylic Acid)
U101—2,4-Dimethyl phenol
U170—4-Nitrophenol
U188—Phenol
U201—Resourcinol

EPA grouped these four P wastes and five U wastes together because the chemicals they represent are all nonhalogenated organic compounds in which one or more hydroxyl groups (OH) are attached to the benzene ring (i.e., phenolics). These compounds are further divided into two subcategories based on whether or not a nitro group (NO_2) is attached to the phenolic compound.

EPA selected one compound that is representative of the treatability of both subcategories for the purpose of transferring standards. Dinoseb is a representative of the nitrophenolics and phenol is a representative of the other phenolics. Because the representative wastes are so similar to the other wastes in this treatability group, the Agency is proposing to transfer treatment performance data to the other waste codes they represent in each subcategory with the exception of P034, as discussed at the end of this section.

(1) P020, P047, P048, U101, U170, U188, and U201. The Agency has performance data on the treatment of Dinoseb and phenol obtained from a rotary kiln incinerator test burn EPA performed in June, 1989. The feed included three hazardous wastes and fifteen commercial chemical products representing a number of treatability groups. Dinoseb and phenol were present in the waste feed at concentrations of 8.9% and 1.4%, respectively. (More information on the test burn can be found in section III.A.1.h.(6.) of today's preamble as well as in the Onsite Engineering Report of the Third Third Incineration Treatability Test, July, 1989).

Additional treatment data exist for phenol and p-cresol. The wastes for which these data exist include: (1) K001 (bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol); (2) K019 (heavy ends from distillation of dichloride in ethylene dichloride production); (3) K022 (distillation bottom tars from the production of phenol/acetone from cumene); (4) K087 (decanter tank tar sludge from coking operations); and (5) K102 (residue from the use of activated carbon for

decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds).

These data represent different waste types containing phenol and p-cresol that were treated by incineration. Six sample sets were analyzed in K001, nine in K019, six in K022, and five samples in K102. In general, phenol and p-cresol were treated to the detection limits in the ash and scrubber water. The detection limits ranged from 0.50 ppm to 3.8 ppm for the ash, and 0.002 mg/l to 0.023 mg/l for the scrubber water. The concentrations in the untreated waste ranged from 4 ppm to 1000 ppm.

These data, along with the data from the June, 1989 test burn, were used to develop concentration-based standards for nonwastewater forms of P020, P047, P048, U101, U170, U188, and U201. These incineration data are also the only available treatment data for these wastes.

The Agency is in the process of conducting wastewater treatment tests for wastewater forms of these wastes using wet air oxidation, PACT (powdered activated carbon treatment), and carbon adsorption. These data are available in the administrative record for today's notice. Where the Agency has actual wastewater treatment data, it prefers to use that data rather than use scrubber water concentrations to develop wastewater treatment standards. Today's concentration-based wastewater standards are based on incinerator scrubber water.

(2) P034. Because no calibration standard exists for 2-cyclohexyl-4,6-dinitrophenol (P034), the compound cannot be routinely analyzed. When the Agency is unable to set a concentration-based treatment standard, the Agency prefers to set a method of treatment. Thus, the Agency is proposing a standard of "Incineration as a Method of Treatment" for P034 nonwastewaters. This is justified because of the structural similarity between 2-cyclohexyl-4,6-dinitrophenol and 2-sec-Butyl-4,6-dinitrophenol (P020—Dinoseb), and because the Agency has data on P020 demonstrating incineration can achieve detection limits for these phenolics.

For P034 wastewaters the Agency is proposing "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as Methods of Treatment." The Agency believes that these technologies are appropriate for treatment of P034 and have been demonstrated and/or promulgated for similar phenolics (see also preceding discussion in III.A.3.a.(3.)).

(3) P047. According to 40 CFR 261.33(e), wastes identified as P047 are listed for the presence of 4,6-dinitrocresol and salts. Because these salts are not analyzed as 4,6-dinitrocresol, the Agency is today proposing standards of "Incineration as a Method of Treatment" for P047 nonwastewaters identified as "salts of 4,6-dinitrocresol" and "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as Methods of Treatment" for P047 wastewaters identified as "salts of 4,6-dinitrocresol". This is justified because of the structural similarity between 4,6- dinitrocresol and 2-sec-Butyl-4,6-dinitrophenol (P020—Dinoseb), and because the Agency has data on P020. (See preceding discussion in sections III.A.3.a.(3.) on specifying treatment for wastewaters containing nonhalogenated organics and the related discussion of treatment standards for U240 wastes (2,4-D, salts and esters) in section III.A.2.c.(4.)(c.).)

For P047 wastes expected to be simply 4,6-dinitrocresol, the Agency is also proposing concentration-based standards based on the analysis for only 4,6-dinitrocresol. Thus, where a facility can reasonably assume that only 4,6-dinitrocresol is being handled, only the concentration-based treatment standard for 4,6-dinitrocresol would be applied. However, should one expect that salts or esters could be formed during storage, treatment, or disposal, the P047 wastes would have to be treated by the specified methods depending upon the form of the waste.

(4) U052. U052 is listed as "cresols (cresylic acid)". Cresylic acid is the name given to a mixture of three isomeric cresols (methyl phenols), in which the meta-cresol predominates. Thus, U052 typically contains various levels of ortho-cresol, meta-cresol and para-cresol. Analytical methods are usually reported for o-cresol and a combination of m- and p-cresol, because m-cresol and p-cresol cannot be distinguished by the analytical method. Thus, the Agency is today proposing concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol.

BDAT TREATMENT STANDARDS FOR P020, P047, P048, U052, U101, U170, U188, AND U201

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
P020	2-sec-Butyl-4,6-dinitrophenol	2.5
P047	4,6-dinitrocresol (incineration for salts)	140
P048	2,4-dinitrophenol	140
U052	o-Cresol	5.6
U052	Cresol (m- and p-isomers)	3.2
U101	2,4-Dimethyl phenol	14
U170	4-Nitrophenol	55
U188	Phenol	6.2
U201	Resourcinol	1.8

BDAT TREATMENT STANDARDS FOR P020, P047, P048, U052, U101, U170, U188, AND U201

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
P020	2-sec-Butyl-4,6-dinitrophenol	0.036
P047	4,6-dinitrocresol (wet air/carbon for salts)	0.18
P048	2,4-dinitrophenol	0.18
U052	o-Cresol	0.0056
U052	Cresol (m- and p- isomers)	0.027
U101	2,4-Dimethyl phenol	0.045
U170	4-Nitrophenol	0.18
U188	Phenol	0.091
U201	Resourcinol	8.2

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR P034 AND P047 (SALTS)

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR P034 AND P047 (SALTS)

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment

e. Oxygenated Hydrocarbons and Heterocyclics

P001—Warfarin (<3%)
P003—Acrolein
P005—Allyl alcohol
P088—Endothall
P102—Propargyl alcohol
U001—Acetaldehyde
U002—Acetone
U004—Acetophenone
U008—Acrylic acid
U031—n-Butanol
U053—Crotonaldehyde
U057—Cyclohexanone
U085—1,2:3,4-Diepoxybutane
U108—1,4-Dioxane
U112—Ethyl acetate
U113—Ethyl acrylate
U117—Ethyl ether
U118—Ethyl methacrylate
U122—Formaldehyde
U123—Formic acid
U124—Furan
U125—Furfural
U126—Glycidaldehyde
U140—Isobutanol
U147—Maleic anhydride
U154—Methanol
U159—Methyl ethyl ketone
U161—Methyl isobutyl ketone
U162—Methyl methacrylate
U166—1,4-Naphthoquinone
U182—Paraldehyde
U197—p-Benzoquinone
U213—Tetrahydrofuran
U248—Warfarin (<3%)

EPA grouped these five P wastes and twenty nine U wastes together because the primary constituents for which the wastes were listed are oxygenated hydrocarbons. The hydrocarbons contain at least one oxygen atom integrated into the chemical structure by a single or double bond to a carbon. As a result, this group includes functional groups such as ketones, aldehydes, and alcohols. These compounds are also distinguished from other nonhalogenated organics by the absence of nitrogen, sulfur, and/or phosphorous in their elemental composition.

(1) Wastes for Which Concentration-Based Standards are Proposed as BDAT. The Agency has identified incineration or fuel substitution as an applicable technology for treatment of nonwastewater forms of P003 (wastewaters), U002, U004, U031, U057, U108, U112, U117, U118, U140, U159, U161, U162, U166, and U197 wastes. While the Agency has been unable to obtain performance data based on incineration or fuel substitution for these particular U and P wastes, the Agency is aware that many facilities generating these wastes also incinerate them prior to land disposal. Therefore, the Agency believes incineration and fuel substitution are BDAT for these U and P wastes. As a result, EPA is proposing concentration-based treatment standards for these wastes based on the transfer of available incineration performance data on these constituents (or structurally similar constituents) as they appear in other RCRA hazardous wastes. Detailed information for EPA's rationale and the source of performance data for each waste are provided in the BDAT Background Document for U and P Hydrocabon and Heterocyclic wastes.

The Agency notes that the primary constituents for which U031, U112, and U117 are listed as hazardous wastes in the 40 CFR 261.33 (n-Butanol, ethyl acetate, and ethyl ether respectively) were not originally considered BDAT List Constituents. The primary constituents of these wastes are now considered BDAT List Constituents because EPA has identified several EPA SW–846 Test Methods that may be able to quantify them in wastewaters. The identified EPA SW–846 Test Methods are as follows: 8015 for U031 (GC/MS) and 8240 for both U112 (direct injection—GC/MS) and U117 (Purge and Trap—GC/MS). As a result, the Agency urges facilities that are unable to meet the proposed concentration based treatment standards to submit comments addressing the use of these EPA SW–846 test methods or test methods that are used routinely by them. The treatment standards for wastewater forms of the U wastes presented in the tables following this section, have been calculated based primarily on the detection limits of these constituents in scrubber waters. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.3.a.(2.)).

(2) Wastes for Which the Agency is Proposing a Method of Treatment as BDAT. The Agency had identified incineration and fuel substitution as BDAT for treatment of nonwastewaters forms of P001, P003, P005, P088, P102, U001, U008, U053, U085, U113, U122, U123, U124, U125, U126, U147, U154, U182, U213, and U248 wastes. For various reasons outlined in the background document for these wastes, all of these chemicals except P003 and U154 currently lack analytical methods that can satisfactorily analyze for their constituents of concern in complex waste matrices. Thus, as discussed in detail in section III.A.1.h.(2.) of today's preamble, the Agency is proposing a standard of "Incineration as a Method of Treatment" for these U and P nonwastewaters.

For wastewater forms of these wastes, the Agency is proposing "Wet Air Oxidation or Chemical Oxidation, Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as a Method of Treatment." The Agency believes that these technologies are appropriate for treatment of these constituents and have been demonstrated and/or promulgated for similar U and P waste codes (see preceding discussion in III.A.3.a.(3.)).

(3) Standards for P003 and U154 Wastes. EPA's limited data on the detection limits of acrolein (P003) in incinerator ash are highly variable. Since these data do show that incineration can achieve detection limits for acrolein in a variety of wastes, and since a high treatment standard could potentially allow a waste with high concentrations of P003 to go untreated; the Agency has chosen to propose both "Incineration as a Method of Treatment" P003 nonwastewaters. For methanol (U154) EPA lacks characterization data from incineration ash or scrubber water. However, EPA believes that methanol can be effectively treated by incineration based on the information that other alcohols of higher molecular weight can be incinerated. As a result, EPA is proposing "Incineration as a Method of Treatment" for U154 nonwastewaters and wastewaters. EPA notes that it prefers promulgation of a concentration-based standard for reasons discussed in section III.A.1.a. and therefore is soliciting comment and data that could be used as additional support for the establishment of an achievable concentration-based standard for acrolein and methanol in P003 and U154 wastes, respectively.

The main reason that the Agency lacks data on methanol is that it typically utilizes data for volatile compounds that are obtained through the analysis of samples by gas chromatography/mass spectrometry (GC/MS). The mass spectrum of methanol is difficult to distinguish from other low molecular weight species. Therefore the quantification of methanol by GC/MS techniques is difficult and as a result methanol is not routinely analysed.

The Agency is aware of GC methods that can analyze for methanol in wastewaters; however, it currently has no data for the analysis of nonwastewaters using GC methods. Additional data primarily from the Agency's Office of Water are available for the treatment of alcohols similar to methanol in wastewaters. A concentration-based standard for

methanol in wastewater forms of multi-source leachate has been calculated using these data and is presented in section III.A.7. of today's notice. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.)). The Agency may promulgate this standard for U154 wastewaters based on a transfer of these data. The Agency specifically solicits comment and data that support the establishment of a concentration-based standard for U154 wastes.

BDAT TREATMENT STANDARDS FOR U002, U004, U031, U057, U108, U112, U117, U118, U140, U159, U161, U162, U166, AND U197

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U002	Acetone	0.14
U004	Acetophenone	9.6
U031	n-Butanol	2.6
U057	Cyclohexanone	1.9
U108	1,4-Dioxane	[illegible]
U112	Ethyl acetate	5.6
U117	Ethyl ether	140
U118	Ethyl methacrylate	160
U140	Isobutanol	170
U159	Methyl ethyl ketone	[illegible]
U161	Methyl isobutyl ketone	33
U162	Methyl methacrylate	160
U166	1,4-Naphthoquinone	1.9
U197	p-Benzoquinone	180

BDAT TREATMENT STANDARDS FOR P003, U002, U004, U031, U057, U108, U112, U117, U118, U140, U159, U161, U162, U166, AND U197

[Wastewaters] [1]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
P003	Acrolein	3.6
U002	Acetone	0.25
U004	Acetophenone	0.17
U031	n-Butanol	0.56
U057	Cyclohexanone	1.4
U108	1,4-Dioxane	0.50
U112	Ethyl acetate	0.0052
U117	Ethyl ether	0.25
U118	Ethyl methacrylate	0.47
U140	Isobutanol	1.4
U159	Methyl ethyl ketone	0.14
U161	Methyl isobutyl ketone	0.028
U162	Methyl methacrylate	0.47
U166	1,4-Naphthoquinone	0.073
U197	p-Benzoquinone	13

[1] Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR P001, P003, P005, P088, P102, U001, U008, U053, U085, U113, U122, U123, U124, U125, U126, U147, U154, U182, U213, AND U248

[Nonwastewaters]

Incineration or fuel substitution as methods of treatment

BDAT TREATMENT STANDARDS FOR P001, P005, P088, P102, U001, U008, U053, U085, U113, U122, U123, U124, U125, U126, U147, U154, U182, U213, AND U248

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment

f. Organo-Nitrogen Compounds. EPA has grouped eleven P wastes and thirty seven U wastes together into a single general treatability category, identified as organo-nitrogen compounds. These P and U wastes represent a wide range of chemicals produced in a variety of individual processes. EPA's reasons for grouping these organic chemicals together is that they all contain nitrogen and do not contain chlorine or any other halogen. To facilitate transferring appropriate treatability data, EPA further divided this category into six subgroups based on structure, giving functional group similarities particular priority. These subgroups are: (1) Nitrogen Heterocyclics; (2) Amines and Amides; (3) Nitrogen-Bearing Diphenyls; (4) Nitriles; (5) Nitro Compounds and (6) Nitroso Compounds.

(1) Concentration-based Standards for Organo-Nitrogens. In today's notice, EPA is proposing concentration-based standards for these U and P nonwastewaters based on a transfer of performance data from other "surrogate" organo-nitrogen constituents that were determined to be similar in structure to the compounds within each subcategory of organo-nitrogen compounds. As a result, EPA believes all of these U and P constituents can be destroyed by incineration to detection limits. However, the Agency does not have specific data on the direct incineration of the majority of these specific U and P wastes or their corresponding constituents.

The concentration-based treatment standards for wastewater forms of these U and P organo-nitrogen compounds presented in the tables following this section, have been calculated based primarily on the detection limits of these constituents (or surrogates) as measured in scrubber waters from incineration of nonwastewaters containing these organo-nitrogen constituents. However, additional data are available for the treatment of these constituents in wastewaters and alternative standards based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. (See previous discussions on these data and alternative standards in section III.A.1.h.(6.) and III.A.2.a.(3.)).

(2) Technology-based Standards for Organo-Nitrogens. The Agency has determined that currently there are considerable difficulties in analyzing many of these organo-nitrogen compounds. As a result, concentration-based standards for these constituents are apparently not feasible. See section III.A.1.h.(2.)(b.) of today's preamble for a further discussion of the Agency's approach in such instances. Since 3004(m) allows the Agency to establish either levels or methods of treatment, the Agency is proposing a standard of "Incineration as a Method of Treatment" for the nonwastewater forms and "Wet Air Oxidation or Chemical Oxidation Followed by Carbon Adsorption; Biodegradation Followed by Carbon Adsorption; or Incineration as a Methods of Treatment" for wastewaters. The Agency believes that these technologies are appropriate for treatment of these constituents and have been demonstrated and/or promulgated for similar U and P waste codes (see preceding discussion for wastewaters in III.A.3.a.(3.)).

The Agency reminds commenters that there are very few (if any) of these wastes that are currently being generated as originally listed and that in practice, the standards will probably only be necessary for residues from previous disposal. The Agency believes that these residues should be less difficult to treat than the original waste as generated. EPA also requests comment on the choice of transfer data for concentration-based standards and on the validity of the subgroupings used to assign standards.

(3) Potential Air Emission Concerns with Organo-Nitrogens. Because the Agency expects that the incineration of these organo-nitrogen compounds may adversely impact air quality due to the emission of nitrogen oxides, EPA is considering the need to impose additional air quality controls on the incineration of these wastes, either under RCRA or under the Clean Air Act. For a more complete discussion of the alternatives under consideration, see the discussion of organo-sulfur compounds later in this section.

(4) Discussion of Individual Treatability Groups—(a) Nitrogen Heterocyclic Compounds.

P008—4-Aminopyridine
P018—Brucine
P054—Aziridine
P067—2-Methylaziridine
U011—Amitrole
U148—Maleic Hydrazide
U179—N-Nitrosopiperidine
U180—N-Nitrosopyrrolidine
U191—2-Picoline
U196—Pyridine

This subgroup consists of ten wastes grouped together because they contain a ring of carbon atoms which also includes a nitrogen atom. Three have aromatic rings, six have rings made of single bonds. Only N-nitrosopiperidine (U179), N-nitrosopyrrolidine (U180), and pyridine (U196) are amenab1e to quantification in treatment residuals by SW–846 methods. Therefore, EPA is proposing concentration-based standards for only these three wastes in this treatability subcategory. EPA believes incineration will reduce U179, U180 and U196 to detection limits in ash and scrubber water because of the Agency's incineration data that indicate destruction to detection levels of Pronamide. The Agency believes that Pronamide, a halogenated organo-nitrogen compound (3,5-dichloro N-(1,1-dimethyl-2-propynyl)-benzamide), is more difficult to incinerate than these ten nitrogen-containing heterocycles.

Based on this, the Agency is also proposing specified methods of treatment for both wastewater and nonwastewater forms of the seven members of the nitrogen heterocyclic subcategory which are not amenable to quantification in waste treatment residual matrices. P054, P067, U011 and U048 are amenable only to analysis by HPLC. (Note: EPA rejects HPLC methods for waste treatment residual matrices for reasons discussed in section III.A.1.h.(2.)(a.).) For P008, P018, and U191 there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

(b) Amine and Amide Compounds.

P046—alpha, alpha-Dimethylphenethylamine
P064—Isocyanic acid, ethyl ester
U007—Acrylamide
U012—Aniline
U092—Dimethylamine
U110—Dipropylamine
U167—1-Naphthylamine
U168—2-Naphthylamine
U194—n-Propylamine
U238—Ethyl carbamate

This subgroup consists of ten wastes grouped together because they contain either an amide or an amine group. Two are fused aromatic rings, four contain single benzene rings, three are amine groups attached to aliphatic carbon chains and three have amide groups attached to ether bonds or to double carbon bonds. Four of these wastes are amenable to quantification in waste treatment residual matrices by current SW–846 methods: acrylamide (U007), aniline (U012), 1-naphthylamine (U167), and 2-naphthylamine (U168); however, the Agency does not have adequate analytical data characterizing incinerator ash and scrubber water to set concentration-based standards based on detection limits for U007. Therefore, EPA is proposing concentration-based treatment standards only for U012, U167 and U168 nonwastewaters. These standards are based on data showing how 4-nitrophenol can be incinerated to detection limits in ash and scrubber water. EPA believes that 4-nitrophenol is more difficult to incinerate than the amines and amides identified as in this treatability group.

In a similar manner, for P046, P064, U092, U110, U194, and U238 (the six members of the amines and amides subcategory not amenable to quantification)—plus U007 which can be quantified but for which no analytical data is available—EPA is proposing treatment standards based on incineration as BDAT. U007 and U238 have amide groups and thus are easier to incinerate than 4-nitrophenol, which has been proven to be treated to detection levels by incineration. P064 has an amide-like structure with an attached nitrile group, where the nitrogen has a double bond to a carbonyl group which appears to be more amenable to destruction by incineration than 4-nitrophenol or pronamide. P046, U092, U11O, and U194, have amine groups which are more easily destroyed by incineration than nitro-groups.

Six wastes in this treatability group are not amenable to quantification for the following reasons: (1) calibration reagents are not commercially available for P046 and P064; (2) U238 is only quantifiable by HPLC methods (Note: EPA rejects HPLC methods for waste treatment residual matrices for reasons discussed in section III.A.1.h.(2.)(a.).); and (3) for U092, U110 and U194 there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

(c) Aminated Diphenyls and Biphenyls.

U014—Auramine
U021—Benzidine
U091—3,3-Dimethoxybenzidine
U093—p-Dimethylaminoazobenzidine
U095—3,3'-Dimethylbenzidine
U236—Trypan Blue

This subgroup consists of six wastes grouped together because they contain two benzene rings joined by a single bond or bridged by a single carbon or by a nitrogen-nitrogen double bond. Each biphenyl has at least one amine functional group. Trypan blue has a complex structure including a binuclear double benzene ring on each phenyl with Na_2S moieties on each double benzene ring.

Although three of these wastes are amenable to quantification in treatment residuals by SW–846 methods (U091, U093 and U095), EPA is only proposing concentration-based standards for U093 alone because the Agency encountered problems with analytical data in determining detection limits for U091 and U095. The concentration based treatment standards for U093 wastewaters and nonwastewaters are proposed based on incineration to detection limits transferred from data showing that methoxychlor (a chlorinated diphenyl believed to be more difficult to incinerate) and Pronamide can be destroyed to detection limits in incinerator ash and scrubber water.

EPA believes U014, U021, U091, U095 and U236 can be effectively incinerated for the same reason as U093. For these remaining five members of the aminated diphenyls and biphenyls subcategory, in addition to U091 and U095, EPA is proposing treatment standards based on incineration as BDAT. Three wastes, however, are not amenable to quantification for the following reasons: (1) U014 and U236 are only quantifiable by HPLC methods (Note: EPA rejects HPLC methods for waste treatment residual matrices for reasons discussed in section III.A.1.h.(2.)(a.).); and (2) U021 is unstable in water (see background discussion in III.A.1.h.(2.)(c.). The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

(d) Nitriles.

P069—Methyllactonitrile
P101—Propanenitrile
U003—Acetonitrile
U009—Acrylonitrile
U149—Malononitrile
U152—Methacrylonitrile

This subgroup consists of six wastes grouped together because they contain nitrile groups, which consist of a nitrogen carbon triple bond. All are straight-chain aliphatics; two have a carbon-carbon double bond in the chain and one has two attached nitrile groups.

EPA believes incineration will treat all six of these nitriles to detection limits in ash and scrubber water based on data showing that incineration treats 1,1,1-trichloroethylene and Pronamide to detection limits. The Agency believes both Pronamide and 1,1,1-trichloroethane are more difficult to incinerate than these six compounds. Four of these are amenable to quantification in treatment residuals by SW–846 methods: P101, U003, U009 and U152. Two of these nitriles are not amenable to quantification for the following reasons: (1) calibration reagents are not commercially available for P069 (see background discussion in III.A.1.h.(2.)(b.); and (2) for U149 wastes there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

(e) Nitro Compounds.

P077—p-Nitroaniline
U105—2,4-Dinitrotoluene
U106—2,6-Dinitrotoluene
U169—Nitrobenzene
U171—2-Nitropropane
U181—5-Nitro-o-toluidine
U234—sym-Trinitrobenzene

This subgroup consists of seven wastes grouped together because they contain at least one nitro functional group: a nitrogen atom attached to two oxygen atoms. Seven have single benzene rings and one has a three-carbon aliphatic chain.

Five of these wastes are amenable to quantification in treatment residuals by SW–846 methods: P077, U105, U106, U169, and U181. Concentration-based standards for wastewater and nonwastewater forms of U105 are proposed based directly on incineration data for 2,4-dinitrotoluene. Concentration-based standards for wastewater and nonwastewater forms of U169, U181, P077 and U106 are proposed based on incineration to detection limits in ash and scrubber water of 2,4-dinitrotoluene, 4-nitrophenol, and nitrobenzene. All three of these are structural representatives of this subcategory of organo-nitrogens identified simply as the Nitro Subcategory.

In a similar manner, the Agency is proposing incineration as the basis for treatment standards for U234 and U171. These two members of the Nitro Subcategory that are not amenable to quantification in waste treatment residuals because there are no verified SW–846 analytical methods available, therefore, the Agency is proposing specified methods of treatment for P084, U173, U176, U177, and U178. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

(f) Nitroso Compounds.

P082—N-Nitrosodimethylamine
P084—N-Nitrosomethylvinylamine
U111—Di-n-propylnitrosoamine
U172—N-Nitroso-di-n-butylyamine
U173—N-Nitroso-di-n-ethanolamine
U174—N-Nitrosodiethylamine
U176—N-Nitroso-N-ethylurea
U177—N-Nitroso-N-methylurea
U178—N-Nitroso- N-methylurethane

This subgroup consists of nine wastes grouped together because they contain a nitroso functional group: a nitrogen double bonded to an oxygen. In all nine of these U and P chemicals, the nitroso group is attached to another nitrogen molecule within a relatively small aliphatic structure. Four chemicals also contain oxygen in functional groups such as amides, ethers and ketones.

Four of these are amenable to quantification in treatment residuals by SW–846 methods: P082, U111, U172 and U174. EPA believes that all nine of these nitroso compounds are less difficult to incinerate than Pronamide and is therefore proposing concentration-based treatment standards based on detection limits for P082, U111, U172 and U174 and is proposing specified methods of treatment for P084, U173, U176, U177, and U178. These five members of the Nitroso Subcategory are not amenable to quantification in waste treatment residual matrices because there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-nitrogen U and P wastes are presented in section III.A.3.f.(3.).

BDAT TREATMENT STANDARDS FOR U179, U180, U196, U012, U167, U168, U093, P101, U003, U009, U152, P077, U105, U106, U169, U181, P082, U111, U172, AND U174

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U179	N-Nitrosopiperidine	220
U180	N-Nitrosopyrrolidine	220
U196	Pyridine	16
U012	Aniline	14
U167	1-Naphthylamine	15
U168	2-Naphthylamine	15
U093	p-Dimethylaminoazobenzene	29
P101	Propanenitrile	360
U003	Acetonitrile	0.35
U009	Acrylonitrile	0.28
U152	Methacrylonitrile	84
P077	p-Nitroaniline	28
U105	2,4-Dinitrotoluene	140
U106	2,6-Dinitrotoluene	28
U169	Nitrobenzene	14
U181	5-Nitro-o-toluidine	56
P082	N-Nitrosodimethylamine	56
U111	Di-n-propylnitrosoamine	14
U172	N-Nitroso-di-n-butylamine	54
U174	N-Nitrosodiethylamine	28

BDAT TREATMENT STANDARDS FOR U179, U180, U196, U012, U167, U168, U093, P101, U003, U009, U152, P077, U105, U106, U169, U181, P082, U111, U172, AND U174

[Wastewaters]*

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
U179	N-Nitrosopiperidine	1.3
U180	N-Nitrosopyrrolidine	1.3
U196	Pyridine	0.031
U012	Aniline	0.033
U167	1-Naphthylamine	0.37
U168	2-Naphthylamine	1.8
U093	p-Dimethylaminoazobenzene	0.74
P101	Propanenitrile	0.64
U003	Acetonitrile	0.42
U009	Acrylonitrile	0.64
U152	Methacrylonitrile	0.47
P077	p-Nitroaniline	0.28
U105	2,4-Dinitrotoluene	0.17
U106	2,6-Dinitrotoluene	0.051
U169	Nitrobenzene	0.066
U181	5-Nitro-o-toluidine	2.2
P082	N-Nitrosodimethylamine	0.67
U111	Di-n-propylnitrosoamine	0.067
U172	N-Nitroso-di-n-butylamine	0.67
U174	N-Nitrosodiethylamine	0.67

* Note: Alternative standards for these U and P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR P008, P018, P046, P054, P064, P067, P069, P084, U007, U011, U014, U021, U091, U092, U095, U110, U148, U149, U171, U173, U176, U177, U178, U191, U194, U234, U236, AND U238

[Nonwastewaters]

Incineration as a Method of Treatment

BDAT TREATMENT STANDARDS FOR P008, P018, P046, P054, P064, P067, P069, P084, U007, U011, U014, U021, U091, U092, U095, U110, U148, U149, U171, U173, U176, U177, U178, U191, U194, U234, U236, AND U238

[Wastewaters]

Wet Air Oxidation or Chemical Oxidation Followed by Carbon Adsorption; Biodegration Followed by Carbon Adsorption; or Incineration as Methods of Treatment

g. Organo-Sulfur Compounds.

P002—1-Acetyl 2-thiourea
P014—Benzene thiol (Thiophenol)
P022—Carbon disulfide
P045—Thiofanox
P049—2,4-Dithiobiuret
P066—Methomyl
P070—Aldicarb
P072—1-Naphthyl-2-thiourea (Bantu)
P093—N-Phenylthiourea
P116—Thiosemicarbazide
U114—Ethylene bis-dithiocarbamic acid
U116—Ethylene thiourea
U153—Methane thiol
U119—Ethyl methane sulfonate
U193—1,3-Propane sultone
U218—Thioacetamide
U219—Thiourea
U244—Thiram

The chemicals in the Organo-Sulfur treatability group are all basically hydrocarbons that contain sulfur. Some also contain nitrogen and/or oxygen in their structure. EPA is proposing treatment standards as specified methods for all eighteen of these organo-sulfur compounds. While several of these organo-sulfurs are amenable to quantification in waste treatment residual matrices by current SW–846 analytical methods, the Agency has not obtained any data characterizing either treated or untreated organo-sulfur wastes. In addition, the Agency has not determined a surrogate compound from which to transfer concentration-based standards.

The other members of the Organo-Sulfur treatability group are not amenable to quantification in waste treatment residual matrices because there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all organo-sulfur U and P wastes are the same as those for all of the organo-nitrogen subcategories. These technologies are presented in section III.A.3.f.(3.) as they relate to organo-nitrogens.

The Agency also points out that many of these compounds have very offensive or strong odors associated with them. In fact, the Agency attempted to include benzene thiol (Thiophenol-P014) and carbon disulfide (P022) as representatives of this treatability group in its massive test burn (see discussion of this burn in section III.A.1.h.(6)(a.)), however permitting problems arose (due to the odors specifically associated with these compounds) that could not be solved in a reasonable time frame. This jeopardized the completion of the test burn, so the Agency had to drop these chemicals from the list of chemicals to be burned. However, the Agency does believe that these odor problems could have been resolved with appropriate technical precautions (given the Agency had had more time). These odor problems also present a interesting reason for specifying technologies rather than concentration-based standards, i.e., the less handling of these compounds, the better. (Note: In case the reader has had no experience with these compounds, methane thiol (U153) has the distinct odor of rotten cabbage.)

EPA believes that these compounds are all amenable to treatment by incineration because they resemble aliphatic, aromatic and other organic compounds that have been successfully treated by incineration. EPA requests comments on the choice of incineration as the method of treatment for organosulfur wastes. Specifically, the Agency solicits supporting evidence on concentrations of sulfur in waste feeds that have been successfully incinerated. This information should include specific design and operating conditions established for incineration of these specific organo-sulfur compounds and/or specific established restrictions (either regulatory or company policy) on the concentrations of total sulfur in waste feeds. Prospective commenters are referred to section III.A.1.i. for explanation of the special procedures that the Agency intends to utilize to provide additional rapid notice and comment on any new data and information received prior to the closure of the comment period and should identify their interest in receiving notice on these data as "Organosulfur Wastes III.A.3.g.".

The Agency is concerned, however, with the potential nitrogen and sulfur emissions generated from the incineration of these wastes. The formation of nitrogen or sulfur oxides in the process of incinerating any of these compounds may require additional controls in order to meet air quality requirements pursuant to Section 108, 110, and 111 of the Clean Air Act or New Source Review under the CAA's Prevention of Significant Deterioration program. Therefore, EPA requests comment on incinerator design and operation. EPA particularly seeks operating data addressing nitrogen and sulfur oxide generation and control in burning wastes containing nitrogen or sulfur, information on combustion units equipped with nitrogen or sulfur oxide controls such as selective noncatalytic reduction or selective catalytic reduction, and information concerning the availability of facilities that can incinerate these wastes while meeting applicable air quality requirements for sulfur and nitrogen oxide emissions. (This information also bears on the issue of availability of sufficient treatment capacity for purposes of RCRA section 3004(h).) EPA also solicits comment on the advisability of invoking the omnibus permitting requirements of RCRA (section 3005(c), final sentence) for all sources burning these wastes, or restricting the treatment of these wastes to combustion units that have appropriate air pollution controls, in order to reduce the adverse human health and environmental effects of burning these wastes. See also Section V.D. in today's notice for further discussion of regulatory control mechanisms available under the Clean Air Act.

BDAT TREATMENT STANDARDS FOR P002, P014, P022, P045, P049, P066, P070, P072, P093, P116, U114, U116, U119, U153, U193, U218, U219, AND U244

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR P002, P014, P022, P045, P049, P066, P070, P072, P093, P116, U114, U116, U119, U153, U193, U218, U219, AND U244

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment

h. Wastes of a "Pharmaceutical" Nature.

P007—Muscimol (5-Aminoethyl 3-isoxazolol)
P042—Epinephrine
P075—Nicotine and salts
P108—Strychnine and salts
U010—Mitomycin C
U015—Azaserine
U035—Chlorambucil
U059—Daunomycin
U089—Diethyl stilbestrol
U090—Dihydrosafrole
U141—Isosafrole
U143—Lasiocarpine
U150—Melphalan
U155—Methapyrilene
U163—N-Methyl N-nitro N-nitroguanidine
U164—Methylthiouracil
U187—Phenacetin
U200—Reserpine
U202—Saccharin and salts
U203—Safrole
U206—Streptozotocin
U237—Uracil mustard

EPA has grouped these four P wastes and eighteen U wastes together into a single general treatability group, identified as "Pharmaceutical" Wastes. These U and P wastes are complex organic chemicals, many of which are typically generated by the pharmaceutical industry as discarded raw materials, byproducts or off-specification products. While some of these compounds may not be specifically identified as "drugs" and a few are not specifically generated by the pharmaceutical industry, EPA's main reasons for grouping these 22 waste codes together is the relative similarities in structures within this treatability group versus the compounds in the other treatability groups (i.e., all of twenty two of these chemicals are relatively large complex heavily substituted molecules). Eighteen of the twenty two compounds have aromatic rings, nine of which also contain nitrogen or sulfur incorporated into the ring. Six of these wastes include aromatic rings that are fused into polynuclear aromatic structures. All have multiple double bonds and all include oxygen, nitrogen or sulfur atoms.

The Agency has data on incineration of Isosafrole that were used in developing the standards for this treatability subgroup of "pharmaceutical" wastes. The new data from EPA's June, 1989 testing of rotary kiln incineration indicate that Isosafrole can be incinerated to detection limits as measured in both the ash and scrubber water. Given the size and complexity of these waste molecules, EPA believes they can all be incinerated to the limit of detection in ash and scrubber water and is therefore proposing wastewater and nonwastewater standards based on incineration as BDAT.

Four of these wastes, Isosafrole (U141), Methapyrilene (U155), Phenacetin (U187), and Safrole (U203) are amenable to quantification in treatment residuals by SW–846 methods. EPA is transferring the incineration performance data for Isosafrole to all four of these wastes and thus is proposing concentration-based standards. Although Strychnine (P108) is also amenable to quantification (by Method 8270 of SW–846), EPA is proposing incineration as a treatment standard in order not to stimulate generation of this acutely toxic chemical for use as a calibration reagent.

The Agency is proposing specified methods of treatment for the seventeen remaining "pharmaceutical" wastes which are not amenable to quantification in waste treatment residual matrices. All of these are large molecules with significant branching, less stable than similar polynuclear aromatic hydrocarbons and chlorinated aromatic pesticides known to be effectively treated by incineration. These seventeen chemicals are not amenable to quantification for the following reasons: (1) P007, P075, U010, U015, U035, U059, U089, U143, U150, U164, U200, U202 and U206 are only quantifiable by HPLC methods (Note: EPA rejects HPLC methods for waste treatment residual matrices for reasons discussed in section III.A.1.h.(2.)(a.).); (2) calibration reagents are not commercially available for U090 and U237 (see background discussion in III.A.1.h.(2.)(b.); and (3) for P042 or U163 wastes there are no verified SW–846 analytical methods available. The specified methods proposed as wastewater and nonwastewater treatment standards for all "pharmaceutical" U and P wastes are the same as those for all of the organo-nitrogen subcategories. These technologies are presented in section III.A.3.f.(3.) as they relate to organo-nitrogens.

BDAT TREATMENT STANDARDS FOR U141, U155, U187 AND U203

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
U141	Isosafrole	2.6
U155	Methapyrilene	0.5
U187	Phenacetin	16
U200	Safrole	22

BDAT TREATMENT STANDARDS FOR U141, U155, U187 AND U203

[Wastewaters]

Waste code	Regulated Constituent	Maximum for any single grab sample, total composition (mg/l)
U141	Isosafrole	0.076
U155	Methapyrilene	0.15
U187	Phenacetin	0.36
U203	Safrole	1.3

*Note: Alternative standards for these U an P wastewaters are also proposed and are presented in section III.A.7. as standards for the corresponding chemical in wastewater forms of Multi-source Leachate. See background on these alternative standards in section III.A.1.h.(6.)(b.).

BDAT TREATMENT STANDARDS FOR P007, P042, P075, P108, U010, U015, U035, U059, U089, U090, U143, U150, U163, U164, U200, U202, U206, AND U237

[Nonwastewaters]

Incineration as a method of treatment

BDAT TREATMENT STANDARDS FOR P007, P042, P075, P108, U010, U015, U035, U059, U089, U090, U143, U150, U163, U164, U200, U202, U206, AND U237

[Wastewaters]

Wet air oxidation or chemical oxidation followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration as methods of treatment

4. Proposed Treatment Standards for Ignitable, Corrosive, and Reactive Wastes—a. Introduction. This section of today's preamble presents a discussion of the proposed treatment standards for ignitable (D001), corrosive (D002), and reactive (D003) characteristic wastes. This section also presents proposed treatment standards for certain U and P wastes that either have the potential to be reactive, particularly in the concentrated form, or are structurally similar to one another. Discussion of the general issues related to all characteristic wastes and an overview of the major options that the Agency considered in proposing treatment standards for all characteristic wastes are presented in sections III.A.1.g. and III.C. of today's preamble.

Ignitable and reactive wastes are already subject to some restrictions on placement in surface impoundments, waste piles, land treatment units, and landfills according to 40 CFR 264.229, 264.256, 264.281, 264.312, 265.229, 265.256, 265.281, and 265.312. Additional requirements for disposing lab packs containing ignitable and reactive wastes in landfills are established in 40 CFR 264.316. Preamble section III.A.4.f. presents a discussion of the impact that today's proposed treatment standards will have on these provisions. When today's proposed rule is promulgated, these wastes are subject to the land disposal restrictions (40 CFR 268) including waste analysis, record keeping, and treatment standards.

(1) Treatment of All Characteristic Properties. The use of a specified treatment method for a particular characteristic waste does not necessarily ensure that the residues from this treatment are no longer a characteristic hazardous waste. In other words, treatment for a given characteristic may not, under today's proposal, completely satisfy the requirements to treat other characteristics in the waste or any new characteristics appearing in the treatment residue. For example, ash residues from the incineration of an ignitable waste will no longer be ignitable, but may exhibit the characteristic of EP toxicity for metals (due to the metals concentrating in the ash) even though the waste may not have been EP toxic prior to incineration; this residue may therefore require further treatment.

The Agency expects that residues from treating many corrosive or reactive wastes may exhibit EP toxicity for metals. As discussed in preamble section III.C., the Agency is therefore requiring that no characteristic wastes or their treatment residues may be land disposed unless the treatment standard for the particular characteristic is above the characteristic level or the residue has complied with the applicable specified method. Proposed treatment standards for EP toxic metal wastes (D004–D011) are presented in section III.A.5. of today's preamble.

Because of the nature of some subcategories of these D001, D002, or D003 wastes, the Agency is not distinguishing wastewater versus nonwastewater standards in all cases. Sometimes this is because there is no way to physically distinguish one from the other (e.g. D001 compressed gases are neither wastewaters nor nonwastewaters), or sometimes it is prudent to apply the same technology to both wastewaters and nonwastewaters. In other cases, only nonwastewater standards or only wastewater standards are proposed for subcategories of these characteristic wastes. The Agency solicits comment on the potential for generation of forms of these wastes where no standards are specified for that particular form or where the commenter believes that there is a different technology that should be specified.

(2) Treatment Below Characteristic Levels. The Agency is proposing two options for treatment standards for wastes in the D001 Ignitable Liquids, D002 Acid, D002 Alkaline, D002 Other Corrosives, D003 Reactive Cyanide, and D003 Reactive Sulfides treatability groups. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004(m). Therefore, the Agency is proposing such standards in particular for wastes in the D001 Ignitable Liquids, D002 Acid, D002 Alkaline, D002 Other Corrosives, D003 Reactive Cyanide and D003 Reactive Sulfides Subcategories. (The specific standards are presented in the respective discussions of the treatability subcategories below.) The Agency is soliciting comment on the option of treating to reach the characteristic level (i.e., removing the characteristic).

These particular subcategories of D001, D002, and D003 wastes are defined by specific testing requirements or narrative standards (i.e., reactive cyanides and reactive sulfides). Thus, the Agency is also proposing a second option of limiting these treatment standards to the respective characteristic levels for these D001, D002, or D003 subcategories only (i.e., other subcategories of these wastes do not have specific testing requirements or guidance). The Agency specifically solicits comments on these two options.

(3) Deactivation as a Treatment Standard. The Agency is proposing a general treatment standard of "Deactivation as a Method of Treatment" for several subcategories of D001, D002, and D003 wastes (i.e., D001 Ignitable Reactives, D001 Oxidizers, D002 Other Corrosives, D003 Explosives, D003 Water Reactives, and D003 Other Reactives). The Agency has determined that within each of these subcategories there appear to be a further variety of different waste groups, each with a certain degree of uniqueness with respect to hazard and handling requirements. Therefore, the Agency believes that the actual method of "Deactivation" chosen for each waste may be specific to that waste and may be best determined by the generator or the treater most knowledgeable as to the waste's unique hazards and handling requirements.

Further, the Agency currently has no information that suggests that one particular technology may be generally applicable to all the wastes within each particular characteristic subcategory, nor that there is one particular technology that can be identified as "Best".

Note: This does not preclude the Agency from making such a determination in the future should additional information and data become available.

However, information does suggest that all of these wastes can be treated by some form of deactivation (e.g., open detonation, thermal destruction, specialized incineration, chemical oxidation, chemical reduction, and controlled reaction with water) and that there apparently are no wastes that require land disposal without treatment to remove these particular characteristics (i.e., ignitable reactivity, oxidizing potential, explosivity, water reactivity, and other corrosivity or reactivity).

The Agency considered proposing a "No Land Disposal" standard to these subcategories of wastes; however, some commenters to previous land disposal restriction rules have raised concerns over the effect of these standards. (Note: This concern should be moot, in that, today's notice proposes to revoke all "No Land Disposal" standards that were previously promulgated.) There may be similar concerns that the proposed "Deactivation as a Method of Treatment" is also not a treatment standard per se. As a result, the Agency is proposing an alternative of specifying a treatment standard identified as

"Thermal Destruction, Specialized Incineration, Chemical Oxidation, Chemical Reduction, and Controlled Reaction with Water as Methods of Treatment" for all wastes in the characteristic subcategories identified as D001 Ignitable Reactives, D001 Oxidizers, D002 Other Corrosives, D003 Explosives, D003 Water Reactives, and D003 Other Reactives. The Agency is specifically soliciting comment and data on these technologies (or other technologies) that could assist the Agency in promulgating these as an alternative standard for these particular subcategories of characteristic wastes.

The Agency believes, however, the proposed standard of "Deactivation as a Method of Treatment" provides a needed flexibility in choice of protective treatment technology for the anticipated uniqueness of these wastes at specific sites, while at the same time allowing safe handling procedures for the waste because of their overall "reactive" nature. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (e.g., violent reactions and ignition) rather than on other criteria such as levels of hazardous constituents.

The Agency considered another option, that of specifying one technology (e.g., open detonation) for all the wastes that could be included in each subcategory and deal with cases where a waste could not be treated by that technology through the variance procedures of 40 CFR 268.44. The Agency does not prefer this option because of the time and resources that are necessary to process a large number of petitions for a variance from the treatment standard.

Furthermore, there are no known analytical methods to measure the characteristics for which the majority of these wastes are identified, nor a test that distinguishes the reactive chemical from the deactivated chemical in the treatment residues. The Agency solicits comment and data on the proposed overall approach for setting treatment standards for these subcategories of characteristic wastes.

B. Ignitable Characteristic Wastes. According to 40 CFR 261.21, there are four criteria for identifying a waste as D001 Ignitable. Paraphrasing these criteria, a waste is a D001 Ignitable if: (1) it is a liquid with a flash point less than 140 °F; (2) it is an ignitable compressed gas; (3) it is not a liquid and is capable of causing fire through friction, absorption of moisture, or spontaneous chemical changes and when ignited burns vigorously and persistently; or (4) it is an oxidizer. EPA has determined that these four criteria translate directly into four major D001 Subcategories. If a waste is classified as D001 because it fits under more than one D001 subcategory, the waste must be treated by the specified treatment method that is the treatment standard for each applicable subcategory.

(1) Ignitable Liquids Subcategory. The first D001 subcategory is described as the Ignitable Liquids Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(1). Data indicate that the majority of all D001 wastes generated fall into this subcategory and are typically described as solvents, paint thinners, contaminated oils, and various organic hydrocarbons.

These wastes are typically classified as nonwastewaters due to their high organic content (usually greater than 1% TOC). The major organic constituents in these wastes are volatile flammable hydrocarbons or oxygenated hydrocarbons that provide the characteristic of ignitability to the waste (i.e., a flash point of less than 140 °F). Some of these organics are water soluble and can theoretically be biodegraded in some wastewater treatment systems. Typically these constituents must be diluted to significantly lower concentrations in the wastewater in order for microorganisms to degrade them. Also, the biodegradation processes often require an aeration step. During the dilution and aeration steps, significant amounts of these volatile organic compounds (VOCs) can be emitted to the air. While biodegradation processes may be applicable for certain D001 Ignitable Liquids, the Agency believes this process is not as protective as thermal destruction technologies.

Thermal destruction technologies such as incineration and reuse as a fuel will completely remove the characteristic of low flash point by completely destroying the VOCs, thereby rendering the waste nonignitable. Based on the fact that these techniques remove the characteristic of ignitability permanently and completely, EPA is proposing a treatment standard of "Incineration, Fuel Substitution, or Recovery as Methods of Treatment" for D001 in the Ignitable Liquids subcategory. This standard will establish incineration, fuel substitution, or recovery as mandatory processes for handling D001 Ignitable Liquids.

The Agency has data showing that the majority of D001 Ignitable Liquids are already treated by incineration, reused as a fuel substitute due to their high BTU content, or recovered for reuse through processes such as distillation. The Agency does not want to preclude anyone from using distillation or other recovery techniques for these wastes. At the same time, the Agency does not believe that most of these wastes are necessarily recoverable by processes such as distillation. While recovery options may be preferable over incineration or fuel substitution for some of the D001 wastes in this subcategory, the end result is the same. The choice between incineration, fuel substitution, or recovery may then be made by the generator or treater, based on economics and on the ability of the particular recovery system to handle the waste. (Additional discussion on fuel substitution as a treatment method for these wastes is contained in the discussion of national capacity variances in section III.B.)

Some D001 Ignitable Liquids have been shown to contain organic constituents that are also constituents in F001–F005 solvents. The Agency studied the option of transferring the standards for these constituents from the corresponding F001–F005 standards promulgated in the November 7, 1986 final rule (51 FR 40642). However, the Agency believes that this option would create an unnecessary burden on the regulated community in several ways. The majority of D001 wastes in the Ignitable Liquids subcategory probably do not contain these constituents. It seems an unreasonable burden to require generators of D001 wastes to conduct the significant amount of testing and certification required under the land disposal restrictions, when it is likely that constituents are not present. Also, the F001–F005 standards are based on analysis of an extract obtained from use of the TCLP, not on analysis of the total concentration in a representative sample of the waste. Therefore, the Agency prefers to deal with this difference in required testing in a future rulemaking, by establishing treatment standards based on analysis of total constituent concentrations to replace the F001–F005 standards; the new standards could then be transferred to the appropriate wastes in the Ignitable Liquids subcategory. The Agency has not investigated all the technical issues associated with transferring data based on analysis of the TCLP extract to constituents measured by a total waste analysis. Therefore, the Agency is not proposing concentration-based D001 treatment standards based on a transfer of F001–F005 data at this time, although it may reevaluate this decision in the future.

The Agency is currently unable to determine whether any D001 wastes in this subcategory conform to the definition of wastewaters (i.e., containing less than 1% TOC and 1% TSS) as initially generated. The Agency believes, however, if wastewater forms are generated, the treatment standard proposed for nonwastewaters apply to these wastewaters as well, since the end result will be the removal of the ignitability characteristic and destruction of the hazardous constituents.

(2) Ignitable Compressed Gases Subcategory. The second subcategory is classified as the Ignitable Compressed Gases subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(3) and meet the definitions in 49 CFR 173.300. The Agency has very limited information on the generation and characterization of D001 wastes in this subcategory, but suspects that while these wastes may be generated, it is unlikely that they require placement in any type of land disposal unit. The Agency believes that there are no gas cylinders containing compressed ignitable gases placed in surface impoundments, and that it is physically impossible to dispose them by means of deep well injection. Some cylinders containing D001 ignitable gases may be placed in waste piles; however, such placement of a container in a storage unit is not land disposal under section 3004(k). In addition, these types of cylinders are usually returned to distribution facilities to be refilled. The Agency does not intend to prevent short-term storage of cylinders prior to refilling.

The Agency considered several options for proposing treatment standards for compressed ignitable gases. The preferred option is that of recovery by direct reuse, since typically, the cylinders are directly refilled. A second option is incineration by venting the gas into an incinerator. There may be cases when it is preferable to vent the gas into an appropriate adsorbent material (provided that air emissions can be controlled), and then incinerate the adsorbed gas/adsorbent material combination to permanently remove the characteristic, because this would reduce the risk of explosion. The Agency is not proposing to specify fuel substitution as a method because it knows too little about these wastes. EPA will reconsider this question if additional data adequately characterizing these wastes are submitted.

Today, the Agency is proposing a treatment standard of "Recovery or Incineration of Vented Ignitable Gases" for these wastes. This treatment standard will apply to all forms of the Ignitable Compressed Gases, since the definitions of wastewater and nonwastewater do not apply to this group of wastes (see section III.A.1.g of today's preamble).

(3) Ignitable Reactives Subcategory. The third subcategory is classified as the Ignitable Reactives subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(2). D001 wastes in the Ignitable Reactives subcategory are primarily inorganic solids or wastes containing reactive materials. These include materials such as reactive alkali metals or metalloids (such as sodium and potassium) and calcium carbide slags. All of these are very reactive with water and will generate gases that can ignite due to heat generated from the reaction with water. Other ignitable solids in this subcategory include metals such as magnesium and aluminum that, when finely divided, can vigorously react with the oxygen in the air when ignited.

There appears to be an overlap between wastes in this D001 subcategory and certain D003 (characteristic of reactivity) wastes. A close examination of the definitions in § 261.21(a)(2) for ignitable wastes and §§ 261.23(a) (2), (3) and (6) for reactive wastes reveals the distinction between these two groups. The key difference is in the definition of ignitable wastes which states: "* * * when ignited, burns vigorously and persistently." This phrase implies that the hazard is due primarily to the ignition potential rather than to the extreme reactivity.

D001 Ignitable Reactives are generated on a sporadic basis and generally in low volumes. They typically are not placed in surface impoundments because they often react with water, thus creating a fire hazard. Current management practices for some of these wastes, such as calcium carbide slag, involve placing the wastes in specially designed units for the purpose of controlled deactivation with water. EPA has determined previously that such deactivation does not constitute land disposal. See 51 FR at 40577 (Nov. 7, 1986) and 52 FR 21011 (June 4, 1987). Thus, this treatment practice is permissible. Where residues from deactivation in land disposal units (such as waste piles) leave an EP toxic residue on the land (within the meaning of section 3004(k)), a different method of deactivation may be necessary. EPA solicits comment on this point, including comment regarding implications for availability of adequate treatment capacity pursuant to the section 3004(h)(2) determination.

Other D001 Ignitable Reactives, such as those containing reactive alkali metals (sodium or potassium) are sometimes open-detonated. The Agency also has data indicating that these wastes are sometimes chemically deactivated.

Radioactive zirconium fines that are pyrophoric under 40 CFR 261.21(a)(2) (i.e., that cause fire through friction) have been included in this D001 subcategory. The Department of Energy submitted data that appears to indicate that this waste can be stabilized to remove the reactivity characteristic. Stabilization is not usually considered to be a method of deactivation, and EPA is concerned that this treatment may be a form of impermissible dilution rather than a chemical reaction (i.e., oxidation) that removes the reactivity characteristic. The Agency solicits comment and additional data on whether stabilization is appropriate for radioactive zirconium fines. Furthermore, the Agency requests comment on whether stabilization is an appropriate deactivation treatment for all zirconium fine wastes, as well as for the other reactive metals.

The Agency is proposing a treatment standard of "Deactivation as a Method of Treatment" for wastes in the D001 Ignitable Reactive subcategory. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., ignition and violent reaction) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove this characteristic. A more complete discussion of the implications of this standard is presented in section III.A.4.a.(2.) above, as well as an alternative proposed standard for wastes in this subcategory.

(4) Oxidizers Subcategory. The fourth subcategory is classified as the Oxidizers subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(4) and meet the definitions in 49 CFR 173.151. D001 wastes in the Oxidizers subcategory are primarily inorganic, and include such things as waste peroxides, perchlorates, and permanganates. The Agency has very limited information on the generation and characterization of D001 wastes in this subcategory. It is possible that certain aqueous solutions of these oxidizers may be useful in the treatment of other hazardous wastes. These wastes must, however, be used as treatment reagents in tanks and not in surface impoundments due to the potential release of heat and volatile

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organics during the oxidation/reduction reactions (see 40 CFR 264.229 and 265.229).

The Agency is proposing a treatment standard of "Deactivation as a Method of Treatment" for wastes in the D001 Oxidizers Subcategory. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., oxidizers can react violently with organics or other materials and result in the rapid generation of fires) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove this characteristic. A more complete discussion of the implications of this standard is presented in section III.A.4.a.(2.) above, as well as an alternative proposed standard for wastes in this subcategory.

(5) Need to Treat Rather Than Dilute Ignitable Wastes. In section III.D. below, EPA discusses the issue of dilution to remove a characteristic and proposes that a prohibited form of dilution that is used to remove a characteristic from a prohibited hazardous waste would be a violation of the dilution prohibition in section 268.3. In this section the Agency addresses policy concerns that lead to the conclusion that dilution is not automatically a legitimate mode of treatment of ignitable wastes (and therefore is not a prohibited form of dilution for purposes of the section 268.3 dilution prohibition).

On first impression, one might assume that it does not matter how the ignitability characteristic is removed so long as the waste ends up non-ignitable. Ignitability, however, reflects presence of volatile organic compounds (VOC), which are ozone precursors. If ignitable wastes are diluted, VOC will ordinarily be emitted in concentrations far exceeding those emitted by treatment processes in which these volatiles are destroyed. Control of VOC is a legitimate concern under RCRA (section 3004 (m)) specifically calls for minimizing threats to the environment as well as to human health, and the Agency has specifically called attention to control of VOC in the 1987 proposed rule implementing RCRA section 3004 (n)). Volatile emissions from dilution also may pose a reignition hazard. Dilution of ignitable wastes also fails to utilize the wastes' energy value, contravening a fundamental RCRA goal of encouraging recovery of energy from wastes (RCRA section 1002 (d)). EPA also believes that allowing dilution of D001 wastes will create an incentive for generators to miscode the listed, prohibited solvent wastes (F001–F005) as D001 wastes, frustrating the treatment requirements for those wastes.

Accordingly, the Agency believes that dilution should not be a legitimate method for treating ignitable wastes. Commenters on this point should address policy reasons for allowing dilution as treatment, or identify circumstances when dilution may occur as a legitimate adjunct to treatment.

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE LIQUIDS 261.21(a)(1)

Incineration; Fuel Substitution; or Recovery as Methods of Treatment

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE COMPRESSED GASES 261.21(a)(3)

Incineration of Vented* Ignitable Gases; or Recovery as Methods of Treatment

*Ignitable gases may be vented directly into an incinerator or vented into a suitable adsorbent prior to incineration. Although the gases, once vented, are no longer compressed in a cylinder the Agency does not consider that treatment has occurred until the ignitable gas has been incinerated. Adsorption of the ignitable gas into either a solid or liquid adsorbent is typically a reversible physical process. Thus, the ignitable chemical has not been destroyed.

BDAT TREATMENT STANDARDS FOR D001 IGNITABLE REACTIVES 261.21(a)(2)

Deactivation as a Method of Treatment

BDAT TREATMENT STANDARDS FOR D001 OXIDIZERS 261.21(a)(4)

Deactivation as a Method of Treatment

C. Corrosive Characteristic Wastes. Paraphrasing the criteria for defining a waste as a D002 Corrosive waste (40 CFR 261.22), a waste can be a D002 waste if it is aqueous and has a pH less than or equal to 2, or greater than or equal to 12.5; or it is a liquid and corrodes steel at a specified rate and temperature. EPA determined that these criteria translated into three subcategories for D002 wastes, the Acid Subcategory, the Alkaline Subcategory, and the Other Corrosives Subcategory.

(1) D002 Acid and Alkaline Subcategory. The Acid Subcategory and the Alkaline Subcategory, refer to those D002 wastes that exhibit the properties listed in 40 CFR 261.22(a)(1) and are distinguishable by the appropriate pH specifications. The Acid subcategory is defined as those wastes with a pH of less than or equal to 2.0, and the Alkaline Subcategory is defined as those with a pH of greater than or equal to 12.5. Also by definition, D002 wastes in these two subcategories only include wastes which are considered to be "aqueous", due to the fact that standard pH measurements can only be performed in the presence of significant amounts of water (i.e., pH is the measure of the concentration of hydronium ions in water).

D002 wastes in the Acid subcategory typically include concentrated spent acids, acidic wastewaters, and spent acid strippers and cleaners. Wastes in the Alkaline subcategory typically include concentrated spent bases, alkaline wastewaters, and spent alkaline strippers and cleaners. D002 wastes represent a significant portion of all hazardous wastes generated by almost every industry.

The Agency believes that many D002 wastes in both the Acid and Alkaline subcategories are already being treated by chemical neutralization. These subcategories have been defined as hazardous due to their extremes in pH; therefore, any chemical neutralization technology will completely remove the extremes of pH and thereby render the waste noncorrosive. The choice of neutralizing reagents are dependent upon the subcategory of the waste, i.e., the acid wastes will require bases for neutralization and alkaline wastes will require acids.

Based on this, EPA is proposing a treatment standard of "Base Neutralization to pH 6–9 and Insoluble Salts" for the D002 Acidic Subcategory. Likewise, EPA is proposing a treatment standard of "Acid Neutralization to pH 6 – 9 and Insoluble Salts" for the D002 Alkaline Subcategory.

Neutralization with chemicals is not the same as simple dilution to achieve a neutral pH. While dilution will change the pH (i.e., the concentration of the hydronium ions), neutralization with chemicals involves a chemical reaction. Dilution is merely the addition of significant quantities of water in order to arrive at a neutral pH with the anions associated with the acid (or base) remaining in solution. Neutralization with acids or bases involves a reaction which utilizes a chemical change to achieve neutral pH with the anions either remaining in solution or precipitating as a sludge.

The Agency is proposing a range of pH 6 to 9 instead of the characteristic

range of pH 2–12.5 for several reasons. First, hydronium ions from acids solubilize metals from clay liners, impacting their ability to act as barriers to migration. Moreover, acid wastes between pH 2 and 6 can increase the mobility of many hazardous constituents in groundwater relative to wastes in the pH range of 6 to 9. Another reason the Agency is proposing this range because this matches the buffering of natural aquatic systems based on carbonate/bicarbonate pH relationship (i.e., pH 5.5 and 8.5 are carbonate/bicarbonate pH levels indicating what is referred to as the acidity and alkalinity (respectively) of an aqueous environmental sample).

The Agency notes, however, that the pH range of 6 to 9 may not be appropriate for deep well injection into certain formations. A different pH range may be specified in permits to ensure that injected fluid flows properly through the injection zone without plugging. Moreover, deep well injection zones are not near surface aquatic ecosystems. The Agency does not want to create anomalous results in the context of injected wastes and solicits comments on whether any pH range specified in an underground injection control permit should supercede the proposed treatment standard range of pH 6 to 9.

The Agency prefers neutralization of corrosive wastes over simple dilution because dilution simply creates a larger volume of wastes but does not treat or remove hazardous constituents in the wastes. Moreover, neutralization is more conservative of natural resources and more protective of aquatic ecosystems. An example of how neutralization conserves natural resources (i.e., water) is shown in the following scenario. Dilution of one gallon of the most frequently used industrial acid, concentrated sulfuric acid, to a pH of just above 2 requires 3,600 gallons of water. Dilution to completely neutralize the concentrated sulfuric acid to a level that is expected to have no ecological impact on fresh water systems would require 360,000,000 gallons of water. On the other hand, one gallon of this acid can be neutralized to pH 7 with only 12 pounds of caustic (sodium hydroxide) or only 11 pounds of lime (calcium hydroxide). Treatment to achieve pH 2 actually requires slightly less caustic or lime; however, the amount is not substantially less than the amount required to neutralize to pH 7.

The Agency recognizes, however, that dilution in order to facilitate treatment may be necessary (i.e., the added water serves as a heat sink that is necessary to control very exothermic reactions or toxic air emissions). Dilution in order to facilitate treatment is not prohibited (see sections III.A.1.g. and III.H. for further discussion of dilution of characteristic wastes).

When selecting neutralization reagents, it is important to consider the solubility of the salts produced as a result of neutralization. This is illustrated by the following scenario. Chemical neutralization of one gallon of concentrated sulfuric acid with caustic (sodium hydroxide) results in 22 pounds of dissolved salts (in the form of sodium sulfate) that, if improperly managed, could adversely impact fresh water ecosystems. However, chemical neutralization with lime (calcium hydroxide) results in 19 pounds of relatively insoluble, nontoxic sludge which would have to be land disposed or otherwise recovered. (This solid waste could potentially be recycled or reused depending upon other constituents such as metals that may co–precipitate along with the solids.) In fact, data from the Toxic Release Inventory (TRI) indicates that sodium sulfate is the chemical being discharged in largest volumes to surface water. Therefore, the Agency prefers to neutralize D002 wastes such that relatively nontoxic solid wastes are generated rather than wastewater discharges with high dissolved solid contents that could potentially have adverse impacts on fresh water ecosystems. This is further illustrated by the discharge of soluble nitrate (from either neutralization or dilution of nitric acid, the second largest acid used in industry) and soluble phosphate (from phosphoric acid). Both of these ions are considered nutrients to aquatic ecosystems and at low levels contribute to the overall growth of fresh water ecosystems. However, the discharge of excessive amounts (or slugs of concentrations) of these ions could expedite algal growth and adversely impact the balance of the ecosystems.

It is important to point out that when neutralizing some concentrated acids such as nitric acid, the point that the acid enters the treatment reactor should be under the surface of water to avoid possible toxic gas generation (i.e., NOx). Some facilities generate waste streams which fluctuate from the Acid subcategory to the Alkaline subcategory depending upon what process is used on a given day. These facilities might be able to utilize these fluctuations in pH as a means of performing on-site neutralization.

(2) Recoverable Acids. Recovery options have been demonstrated for a variety of corrosive wastes. The Agency prefers recovery as a treatment standard, in that it results in no discharge of acidic constituents into the environment and conserves resources. The legislative history of the land disposal restriction provisions also indicates that recovery is the preferred management alternative. The Agency lacks waste characterization data which indicates the wastes that are most amenable to recovery, therefore, the Agency is establishing for this subcategory "Recovery as a Method" as the treatment standard. The choice between neutralization and recovery may be made by the generator or the centralized treatment operation, according to the applicability and performance of a given type of acid/base recovery system.

By establishing these treatment standards, the Agency is leaving open the opportunity to the regulated community to apply for a variance from the treatment standard to account for D002 wastes which cannot be effectively neutralized or recovered (40 CFR 268.44). Such a situation could occur for small quantities of corrosive materials that contain extremely toxic or otherwise hazardous chemicals that may cause an unnecessary risk during neutralization.

The Agency promulgated regulations for liquid hazardous wastes having a pH of less than or equal to 2.0 in the California list final rule (52 FR 25760, July 8, 1987) by codifying this statutory pH level into 40 CFR 268.32. This regulation, however, is not adequate to address the universe of D002 wastes. The California list restrictions apply only to liquid corrosive wastes without specifically identifying them as D002 wastes. Furthermore, the California list final rule did not specify neutralization as a required treatment standard; in fact, the waste may be merely rendered nonliquid prior to land disposal and still satisfy the California list requirements. Therefore, the Agency is today proposing treatment standards for D002 wastes that will supercede the California list regulations because they are more specific. (Note the discussion in section III.M.; however, regarding continued applicability of the California list prohibitions during the periods of a national capacity variance.)

(3) Other D002 Corrosives. The third major subcategory is classified as the Other Corrosives subcategory and is defined as those D002 wastes that exhibit corrosivity to steel as defined in § 261.22(a)(2). They often are nonaqueous corrosive wastes such as certain organic liquids, but can represent inorganic chemicals as well.

Wastes in the Other D002 Corrosives subcategory are generated on a sporadic basis and generally in low volumes. The Agency suspects that these wastes are often identified as corrosive without performing the specified testing with steel (i.e., the corrosivity of the waste may be assumed due the presence of known corrosive constituents). This may also be due, in part, to the high cost of testing and to the difficulties in identifying laboratories that are experienced in steel corrosion testing.

The physical and chemical characteristics of this group of wastes vary greatly. The wastes may be aqueous or they may be primarily organic. In addition, a large variety of corrosive chemicals may appear as constituents in this type of corrosive waste. Depending on the concentration of these corrosive chemicals, they may corrode SAE 1020 steel. Examples of chemicals that may contribute to corrosivity include ferric chloride, benzene sulfonyl chloride, benzotrichloride, acetyl chloride, formic acid, hydrofluoric acid, some catalysts, various resins, metal cleaners, and etchants. Highly concentrated acids that have no water content may also be included in this subcategory, since pH measurements are not possible on these wastes.

Wastes in the Other Corrosives subcategory are often treated by deactivating the corrosive constituents of the waste with an appropriate chemical reagent. Wastes that contain high concentrations of corrosive organics are often incinerated, however. Due to the great variety of potential corrosive organics, the Agency does not believe that it should establish concentration-based standards based on incineration for these D002 wastes. Removal and recovery of either organic or inorganic corrosive constituents may also be applicable technologies, since recovery could extract the corrosive constituents until the waste itself is no longer corrosive to steel.

EPA is proposing a treatment standard of "Deactivation: SAE 1020 Steel Corrosion Rate <6.35 mm/yr" for D002 wastes in the Other Corrosives subcategory. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., the corrosivity to steel may cause rupture of a tank or container, thus releasing the contents either suddenly or through leaks) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove this characteristic. A more complete discussion of the implications of this standard is presented in section III.A.4.a.(2.) above, as well as an alternative proposed standard for wastes in this subcategory.

The Agency is soliciting comments and data on the physical and chemical characterization of all three subcategories of D002 wastes, as well as on the applicability of chemical deactivation and recovery. Facilities with D002 wastes that are not amenable to neutralization or deactivation techniques should submit data on the characteristics of their wastes and technically justify why they are not amenable to neutralization or deactivation early in the comment period for this proposal.

BDAT TREATMENT STANDARDS FOR D002 ACID SUBCATEGORY 261.22(a)(1)

Neutralization with Bases to: 6<pH<9 and Insoluble Salts; or Recovery as a Method of Treatment

BDAT TREATMENT STANDARDS FOR D002 ALKALINE SUBCATEGORY 261.22(a)(1)

Neutralization with Acids to: 6<pH<9 and Insoluble Salts; or Recovery as a Method of Treatment

BDAT TREATMENT STANDARDS FOR D002 OTHER CORROSIVES 261.22(a)(2)

Deactivation to: SAE 1020 Steel Corrosion Rate <6.35 mm/yr as a Method of Treatment

d. Reactive Characteristic Wastes. According to 40 CFR 261.23, there are eight criteria for defining a waste as a D003 Reactive waste. Paraphrasing these criteria, a waste can be a D003 waste if: (1) It is unstable and readily undergoes violent changes without detonating; or (2) it reacts violently with water; or (3) it forms potentially explosive mixtures with water; or (4) when mixed with water, it generates toxic gases; or (5) it is a cyanide or sulfide bearing waste which under certain conditions can generate toxic gases; or (6) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or (7) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or (8) it is a forbidden explosive, a Class A explosive, or a Class B explosive.

EPA determined that these eight criteria translated into five subcategories for D003 wastes. The first subcategory is classified as the Reactive Cyanides subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(5) for cyanide. The second subcategory is classified as the Explosives subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(6) through 261.23(a)(8). The third subcategory is classified as the Water Reactive subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(2) through 261.23(a)(4). The fourth subcategory is classified as the Reactive Sulfides subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(5) for sulfide. The fifth subcategory is classified as the Other Reactives subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(1).

All of the known treatment processes for the five D003 subcategories can result in significant amounts of solid residues. These residues may or may not exhibit the characteristic of EP toxicity for metals. As discussed in preamble section III.C., no residue which is a characteristic waste may be land disposed unless the treatment standard is a level above the characteristic level or the residue has otherwise complied with the applicable specified methods.

For all subcategories of D003 wastes except the Reactive Cyanides, the Agency believes that development of concentration-based treatment standards would be difficult because there are no known analytical tests that are specifically designed to measure the particular reactivity associated with each D003 treatability subcategory, nor is there a test that distinguishes the reactive chemical from the deactivated chemical (e.g., sodium is always measured as "total").

The Agency is soliciting comments and data on the physical and chemical characterization of all five subcategories of D003 wastes. The Agency also requests comment on the applicability of chemical deactivation, incineration, open detonation, and any other type of chemical or physical deactivation technology to these wastes. Facilities with D003 wastes that are not amenable to treatment using these technologies should submit data on the characteristics of their wastes and technically justify why they are not amenable to the proposed treatment methods early in the comment period for this proposal.

(1) Reactive Cyanides. D003 wastes in the Reactive Cyanides subcategory are by definition those cyanide-bearing wastes that generate toxic gases (assumed to be hydrogen cyanide) when exposed to pH conditions between 2 and 12.5, in a sufficient quantity to present a danger to human health and the environment. The Reactive Cyanide wastes typically are generated by the electroplating and metal finishing industries, and include mixed cyanide salts, cyanide solutions, and cyanide-bearing sludges. Most of the volume of all D003 wastes that are generated can be identified as the Reactive Cyanides subcategory. Reactive cyanide wastes are not typically placed directly in most types of land disposal units without treatment; however, it is possible that some are placed in surface impoundments.

Reactive Cyanide wastes are already subject to special requirements prior to disposal in landfills, surface impoundments, and waste piles under existing regulations. Also, as of July 8, 1987 (the statutory deadline for the California list prohibitions), liquid hazardous wastes having a free cyanide concentration in excess of 1,000 mg/kg (ppm) were prohibited from land disposal. These existing regulations and prohibitions are insufficient, however, to apply to the Reactive Cyanides subcategory. The statute did not specifically identify the California list cyanides as D003 wastes, and furthermore, it did not specify a required method of treatment, nor did it establish the 1,000 mg/kg prohibition level as a "treatment standard".

The Agency is proposing to transfer concentration-based treatment standards for total and amenable cyanides from treatment standards developed in the Second Third final rule (54 FR 26594, June 23, 1989) for P030 nonwastewaters, to the Reactive Cyanides subcategory. The Agency believes that D003 wastes resemble P030 rather than the cyanide-containing F006–F009 wastes because D003 wastes are described as "reactive" cyanides and P030 is listed as "soluble" cyanides. Soluble cyanides are most likely to be reactive because they are dissolved. Reactive Cyanides are thus expected to be easily treated by treatment technologies such as alkaline chlorination and wet air oxidation to meet today's proposed treatment standard for total cyanide of 110 mg/kg and amenable cyanide of 9.1 mg/kg. (Note: The treatment standards for P030 were developed based on a transfer from data on the treatment of an F011 waste containing low levels of iron and high levels of simple, soluble cyanides (i.e., low levels of complexed cyanides). However, the principle of relating P030 wastes, i.e., "soluble" cyanides, to D003 "reactive" cyanides remains essentially the same.)

The Agency is also proposing that if data are submitted in public comments that clearly indicate that D003 wastes in the Reactive Cyanides subcategory more closely resemble F006 wastes containing high concentrations of iron or other complexed cyanide, the Agency will promulgate the higher F006 treatment standards for cyanides that were established in the Second Third rule which reflect the presence of iron cyanide complexes. The Agency believes that F006 wastes containing high concentrations of iron represent wastes that are more difficult to treat than those containing only reactive cyanides (or those containing low concentrations of iron). Thus, if D003 Reactive Cyanides are shown to be more similar to F006, they will be subject to a total cyanide level of 590 mg/kg and an amenable cyanide level of 30 mg/kg.

The Agency will not promulgate the higher (i.e., F006) treatment standards for D003 Reactive Cyanides unless the data clearly indicate that the wastes are not merely mislabeled F006, F007, F008, F009, F010, F011, F012, F019 or P cyanide wastes. The Agency suspects that some generators are currently misclassifying these wastes as D003. The Agency believes that this is primarily an issue for enforcement. However, by promulgating the lower treatment standards (transferred from P030) for D003 Reactive Cyanides, proper identification of the F and P cyanide wastes will be encouraged. Of greater importance is the fact that the Agency believes that *soluble* cyanide wastes (e.g., P030) and wastes containing low iron (e.g., some F011) are more likely to be similar to D003 *Reactive* Cyanides, so that the lower cyanide standards are achievable and therefore would apply. (See also section III.A.6.(a) of today's preamble for a further discussion of proposed cyanide treatment standards for other wastes and a proposed clarification of the analytical methodology for compliance with the promulgated standards.)

(2) Reactive Sulfides Subcategory. D003 wastes in the Reactive Sulfides subcategory are by definition those sulfide-bearing wastes that generate toxic gases (assumed to be H_2S) when exposed to a pH between 2 and 12.5, in a sufficient quantity to present a danger to human health and the environment. The Agency is in the process of developing a quantitative threshold for toxic gas generated from reactive sulfide wastes. The interim value the Agency is considering is 500 mg of H_2S generated per kilogram of waste. Although this number is only an interim guideline, for the purpose of BDAT determinations the Agency is proposing to use this number to identify the wastes in this subcategory (given the need for an objective means of determining the subcategory's applicability.

Reactive sulfides may be treated and chemically converted to relatively inert sulfur, to insoluble metallic sulfide salts, or to soluble sulfates that can be removed or recovered. Some data indicate that these wastes can be treated by alkaline chlorination, specialty incineration, or other chemical deactivation techniques. The Agency believes that some of these wastes may also be contaminated with organic sulfides known as mercaptans. These malodorous chemicals are believed to complicate the treatment of these reactive sulfide wastes. It is believed that these wastes have posed particular treatment problems for the petroleum refining industry and the paper and pulp industry.

The Agency is proposing a treatment standard of "Alkaline Chlorination, Chemical Oxidation, or Incineration Followed by Precipitation to Insoluble Sulfates" for the Reactive Sulfide subcategory. (Note: While alkaline chlorination is a form of chemical oxidation, the Agency did not want to specifically preclude the use of any particular oxidant.) The treatment standard is expressed as a required method of treatment rather than as a concentration-based standard because the Agency has not approved a standard analytical method for testing either sulfides or "reactive" sulfides in hazardous wastes or in treatment residues (however, as noted above, the Agency is working to develop a quantitative threshold for reactive sulfides). The Agency solicits waste characterization and treatment data that could potentially be used to develop concentration-based treatment standards for these wastes.

(3) Explosives subcategory. D003 wastes in the Explosives subcategory are by definition those wastes that are capable of detonation or explosive reaction under various conditions, or are forbidden, Class A, or Class B explosives (according to 49 CFR 173.52, 173.53, and 173.88 respectively). These wastes have typically been identified as being generated by the explosives industry and by the U.S. Department of Defense. While these wastes are not

generated as frequently as the Reactive Cyanides, they are generated more often than all other Reactive subcategories. Explosives are already subject to special requirements prior to disposal in landfills, surface impoundments, and waste piles under existing regulations. These explosive wastes are not typically placed in most types of land disposal units; rather, they are treated by either open burning, open detonation, or incineration in specially designed units. Such treatment is expected to permanently remove the explosive characteristic of this D003 waste.

Incineration also appears to be an applicable technology, so long as the incineration units must be specially designed and fitted with explosion-proof equipment. Such units are not typically found at commercial incineration facilities. The Agency is aware that these types of units are currently used by the Department of Defense to treat explosive wastes, and there appears to be a decrease in reliance on open detonation. Due to the large number of explosive formulations and the difference in applicable treatments (see Department of the Army Technical Manual TM9–1300–214, Military Explosives) the Agency is proposing a general standard of "Deactivation as a Method of Treatment" for the D003 Explosives subcategory. By establishing this standard, the Agency is allowing the regulated community to use that treatment technology (e.g., incineration, chemical deactivation) that best fits the type of explosive waste. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., explosivity) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove this characteristic. A more complete discussion of the implications of this standard is presented in section III.A.4.a.(2.) above, as well as an alternative proposed standard for wastes in this subcategory. (See also the Background Document for Characteristic Wastes for more information on explosive waste characterization.)

(4) Water Reactive and Other Reactives Subcategories. D003 wastes in the Water Reactive or Other Reactives subcategories can be either organic or inorganic. Water Reactive D003 wastes are either very reactive with water, or can generate toxic or explosive gases with water. These reactions are usually very vigorous and therefore difficult to control. Wastes in both of these subcategories are generated on a sporadic basis and generally in low volumes. These wastes are not typically placed in land disposal units nor are they placed in surface impoundments due to their violent reactivity.

The Agency has information that suggest that some water reactives are being open detonation. It is theorized that the reactive organic constituents are destroyed by the explosion, and the reactive inorganic constituents form less hazardous oxides or react with other chemicals in the explosion (such as moisture from the air).

In today's notice, the Agency is proposing a general standard of "Deactivation as the Method of Treatment" for the D003 Water Reactives and Other Reactives subcategories. The Agency believes this is an appropriate approach for these wastes since the hazardous characteristic is based on imminent hazard (i.e., potential violent reactions with water) rather than on other criteria such as levels of hazardous constituents, and that technologies exist that can completely remove these reactive characteristics. A more complete discussion of the implications of this standard is presented in section III.A.4.a.(2.) above, as well as an alternative proposed standard for wastes in these subcategories.

(5) Treatment of Reactive Wastes Does Not Automatically Include Dilution. As discussed with respect to ignitable wastes, EPA is proposing to classify dilution that removes a prohibited waste's characteristic as impermissible in certain circumstances (see section III.D. below). This part of the preamble addresses why dilution of reactive wastes should not automatically be considered to be a legitimate form of treatment.

For reactive wastes that contain cyanide or sulfides, the dilution prohibition should clearly apply for the same reason that it applies to any toxic waste. Indeed, the legislative history to the treatment standard provision states specifically that cyanides should be destroyed. 130 Cong. Rec. S 9178–79 (July 25, 1984) (statement of Sen. Chafee). With respect to other reactive wastes, most cannot be diluted without violent reaction so that dilution is not a viable management alternative in any event. It thus is the Agency's view that dilution is not automatically a permissible means of treating reactive hazardous wastes.

BDAT TREATMENT STANDARDS FOR D003 REACTIVE CYANIDES 261.23(a)(5)

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

BDAT TREATMENT STANDARDS FOR D003 REACTIVE CYANIDES 261.23(a)(5)

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

BDAT TREATMENT STANDARDS FOR D003 REACTIVE SULFIDES 261.23(a)(5)

Alkaline chlorination, chemical oxidation, or incineration followed by precipitation to insoluble sulfates as methods of treatment

BDAT TREATMENT STANDARDS FOR D003 EXPLOSIVES, WATER REACTIVES, AND OTHER REACTIVES 261.23(a)(6), 261.23(a)(2) THROUGH (4), AND 261.23(a)(1) RESPECTIVELY

Deactivation as a method of treatment

e. Effect of Treatment Standards on Disposal Provisions in 40 CFR 264 and 265 for Ignitable and Reactive Wastes. Management practices have been established for ignitable and reactive wastes in surface impoundments, waste piles, land treatment units, and landfills (see 40 CFR 264.229, 264.256, 264.281, and 264.312, as well as 265.229, 265.256, 265.281, and 265.312). When finalized, the treatment standards proposed today for ignitable (D001) and reactive (D003) wastes will supersede the above-mentioned provisions and exclusions for permissible land disposal of these waste outlined in Part 264 and 265; therefore, the Agency is proposing to amend these sections to reflect the new regulations in Part 268. Facilities handling ignitable and reactive wastes will have to comply with the promulgated treatment

standards for these wastes in order to land dispose them.

f. U and P Wastes That are Potentially Reactive. These wastes were grouped together because they are either highly reactive or explosive, or they are polymers that tend to be highly reactive. These wastes pose a significant risk during handling due to their reactivity; this is reflected in the fact that there are no standard SW–846 methods for analyzing reactivity. Because of the difficulties in handling and analyzing these wastes, the Agency is proposing treatment standards expressed as required methods of treatment (thus eliminating the need to analyze treatment residues).

The Agency investigated several options for developing treatment standards for these wastes, including incineration, open burning, open detonation, and chemical deactivation. Most of these wastes are currently managed by incineration. Other wastes included in this group can be recovered or recycled.

For the purpose of BDAT determinations, the Agency has identified four subcategories according to similarities in treatment, chemical composition, and structure. These groups are: (1) Incinerable Reactive Organics and Hydrazine Derivatives; (2) Incinerable Inorganics; (3) Fluorine Compounds; and, (4) Recoverable Metallics. The discussion of the treatment standards applicable to each subcategory are as follows.

(1) Incinerable Reactive Organics and Hydrazine Derivatives.

P009—Ammonium picrate
P081—Nitroglycerin
P112—Tetranitromethane
U023—Benzotrichloride
U096—a,a-Dimethyl benzyl hydroperoxide
U103—Dimethyl sulfate
U160—Methyl ethyl ketone peroxide
P068—Methyl hydrazine
U086—N,N-Diethylhydrazine
U098—1,1-Dimethylhydrazine
U099—1,2-Dimethylhydrazine
U109—1,2-Diphenylhydrazine
U133—Hydrazine

Incineration represents BDAT for the wastes in this treatability group. Data indicate that these wastes are currently incinerated by commercial, as well as military facilities. The Agency does not believe, however, that concentration-based treatment standards based on incineration can be established for these wastes at this time. The major problems in establishing concentration-based standards for these wastes are: (1) EPA does not currently have an analytical method for measuring many of these wastes in treatment residues; and (2) where the Agency does have methods, there are no data available on the treatment of these chemicals. In cases when there is no verified analytical method for a particular waste, EPA tries to find an appropriate measurable surrogate or indicator compound; however, no constituent has been identified in these wastes that could be used as a surrogate or indicator compound. (See section III.A.1.h.(2) for a detailed discussion of analytical problems.)

One of the specific problems encountered in analysis of P068, P112, U023, U098, U099, and U103 is that these wastes break down quickly in water (hydrolyze) and that the analysis of wastewater forms of these wastes is very difficult as well as often hazardous due to the intensity of the reaction. See further discussion on the impact of instability in water on the development of treatment standards in section III.A.1.h.(2.)(c.) of today's notice. In addition, the Agency lacks data on what effects the hydrolysis products would have on the environment. Besides, verified analytical methods do not currently exist for the quantification of these hydrolysis products in treatment residues.

Another analytical problem is created because P081 wastes are only quantifiable by HPLC methods (Note: EPA rejects HPLC methods for waste treatment residual matrices for reasons discussed in section III.A.2.h.(2.)(a.).) In addition, there are no verified SW–846 analytical methods for measuring P009 and U133 in treatment residues.

These analytical problems preclude setting concentration-based treatment standards. The Agency is thus proposing "Thermal Destruction" (e.g., incineration) as a required method of treatment for the nonwastewater forms of these U and P wastes. Although there is an SW–846 method for U109, the Agency is not proposing a numerical standard for this waste since it is very similar to P068, U086, U098, U099, and U133 (all are hydrazine compounds) and it is the Agency's belief that thermal destruction will be effective treatment for this waste.

The Agency is proposing "Carbon Adsorption" as a required method of treatment for the wastewater forms of this group of U and P wastes. Wastewater forms of these wastes can easily be adsorbed due to the branched and ionic nature of their structures. After adsorption (and before disposal) the contaminated carbon must be incinerated (in compliance with the proposed treatment standard for nonwastewaters).

Data indicate that some of these wastes (i.e., P068) can be treated by ozone/ultraviolet light oxidation. For complete removal and destruction of these wastes from wastewaters, however, ozone/ultraviolet light oxidation must be followed by carbon adsorption in order to meet the treatment standard when it is promulgated.

The Agency is unaware of any alternative treatment or recycling technologies that have been examined specifically for these U and P wastes and is, therefore, soliciting data and comments on such technologies. In any case, today's proposed treatment standard does not preclude recycling (provided the recycling does not involve burning as fuel or is not a use constituting disposal; see § 261.33, first sentence).

(2) Incinerable Inorganics.

P006—Aluminum phosphide
P096—Phosphine
P105—Sodium azide
P122—Zinc phosphide (<10%)
U135—Hydrogen sulfide
U189—Phosphorus sulfide
U249—Zinc phosphide (<10%)

These wastes were grouped together because they consist of compounds containing only inorganics such as sulfur, nitrogen, phosphorous, and metals. Data indicate that these wastes are currently being incinerated by some commercial facilities. The Agency does not believe, however, that numerical treatment standards based on incineration can be established for these wastes at this time. The major problem in establishing concentration-based standards for these wastes is that EPA does not currently have an analytical method for measuring these wastes in treatment residues. In cases when there is no analytical method for a particular waste, EPA tries to find an appropriate measurable surrogate or indicator compound; however, no constituent has been identified in these wastes that could be used as a surrogate or indicator compound for nonwastewaters. See section III.A.1.h.(2.) for a detailed discussion of analytical problems.

One of the specific problems encountered in analysis of P006 and P105 is that these wastes break down quickly in water (hydrolyze), making the analysis of wastewater forms of these wastes very difficult. In addition, SW–846 analytical methods do not exist for P105 and U189. In today's rule the Agency is proposing a treatment standard of "Thermal Destruction" for the nonwastewater forms of these wastes. While these wastes are inorganic, thermal destruction will convert these reactive and acutely toxic

materials to less toxic, nonreactive inorganic oxides. However, these wastes will probably contain high concentrations of sulfur and phosphorous when discarded as off-spec products, making their treatment more difficult. Incineration of these wastes will require the use of air pollution control equipment capable of controlling the emissions of phosphorous and sulfur to acceptable levels (see the discussion of this issue as it relates to organo-nitrogens and organo-sulfur U and P wastes in section III.A.3.g.).

For wastewater forms of P006, P096, P122, U135, U189, and U249, the Agency is proposing a standard of "Chemical Oxidation Followed by Precipitation as Insoluble Salts". For the wastewater forms of P105, the Agency is proposing "Chemical Oxidation" as a method of treatment because the sodium azide forms sodium ions in solution rather than forming salts.

The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these. The proposed rule, in any case, does not preclude recycling (provided the recycling does not involve burning as fuel or is not a use constituting disposal; see § 261.33, first sentence).

(3) Fluorine Compounds.

P056—Fluorine
U134—Hydrofluoric Acid

These wastes were grouped together because of their physical form and because they contain fluorine. Both of these chemicals may be generated as gases (although U134 is often generated as an aqueous acid). Both of these chemicals are also highly reactive and highly corrosive.

The Agency is proposing a treatment standard of "Solubilization in Water Followed by Precipitation as Calcium Fluoride" as a method for the nonwastewater form of these wastes, based on the chemical properties of aqueous fluoride ions and the insolubility of calcium fluoride. The Agency is also proposing that recovery as an alternative specified method. The Agency is requesting comments and data on these options.

The Agency has recently collected data for the wastewater forms of these wastes (see BDAT Background Document for Wastewaters Containing BDAT List Constituents in the RCRA Docket). Based on these data, the Agency is proposing a concentration-based treatment standard of 35 mg/l.

(4) Recoverable Metallics.

P015—Beryllium dust
P073—Nickel carbonyl
P087—Osmium tetroxide

The Agency has identified the wastes in this group as metal wastes that have a high potential for recovery. Because there are so little data on these wastes, characterization is very difficult. All the wastes in this group contain metallic elements (i.e., beryllium, osmium, and nickel) that can be recovered due to their high economic value. Information available to the Agency indicates that recovery of these metallic elements from these waste is feasible and is currently practiced. The Agency is proposing a standard of "Recovery as a Method of Treatment" for both nonwastewater and wastewater forms of these wastes. At this time the Agency is not aware of any treatment alternative applicable to these wastes and is soliciting comments and information that may help to identify alternative treatment.

BDAT TREATMENT STANDARDS FOR P009, P068, P081, P112, U023, U086, U096, U098, U099, U103, U109, U133, AND U160

[Nonwastewaters]

Thermal Destruction as a Method of Treatment

BDAT TREATMENT STANDARDS FOR P009, P068, P081, P112, U023, U086, U096, U098, U099, U103, U109, U133, AND U160

[Wastewaters]

Incineration or Carbon Adsorption as Methods of Treatment

BDAT TREATMENT STANDARDS FOR P006, P096, P105, P122, U135, U189, AND U249

[Wastewaters]

Chemical Oxidation Followed by Precipitation as Insoluble Salts as a Method of Treatment

BDAT TREATMENT STANDARDS FOR P006, P096, P105, P122, U135, U189, AND U249

[Nonwastewaters]

Thermal Destruction as a Method of Treatment

BDAT TREATMENT STANDARDS FOR P015, P073, AND P087

Recovery as a Method of Treatment

BDAT TREATMENT STANDARDS FOR P056 AND U134

[Nonwastewaters]

Solubilization in Water Followed by Precipitation as Calcium Fluoride; or Recovery as Methods of Treatment

BDAT TREATMENT STANDARDS FOR P056 AND 134

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Fluoride	35

5. Proposed Treatment Standards for Metal Wastes—a. Introduction. Metal wastes are hazardous wastes containing metallic compounds such as metallic salts, organometallics, and bimetallic compounds. Certain K, U, and P wastes were listed specifically for the presence of metallic compounds. Additionally, a waste can be identified as an EP toxic characteristic waste based on the concentration of one of eight different metals (see 40 CFR 261.24). Paraphrasing the criteria in 40 CFR 261.24, a waste exhibits the characteristic of EP toxicity if the extract from the EPA-specified extraction procedure (EP) contains arsenic, barium, cadmium, chromium, lead, mercury, selenium, or silver at a concentration equal to or greater than the levels presented in Table I—Maximum Concentration of Contaminants for Characteristic of EP Toxicity.

(1) General Characterization of Metal Wastes. There are also patterns encountered in characterizing metal compounds that had to be dealt with in order to propose treatment standards for these wastes. Some waste characterization data was gathered by EPA in the National Survey of Treatment, Storage, Disposal, and Recovery Facilities (the TSDR Survey); however, the major source of waste characterization data was the National Survey of Hazardous Waste Generators (the Generator Survey). The Generator Survey was statistically designed to represent a cross-section of all major hazardous waste generators. Results of this survey have been used to develop today's proposed treatability groups and corresponding treatment standards whenever possible. (However, one problem encountered was that the U and P wastes are generated sporadically; thus, characterization data on the U and P forms of these metal wastes are limited.)

Results of the Generator Survey indicate that many metalbearing wastes often exhibit another characteristic such as reactivity, or contain concentrations of other metals above their characteristic levels. For example, P065 (mercury fulminate) exhibits the characteristic of reactivity which must be removed prior to land disposal. Another example is that of P114 (thallium selenite), where proposed treatment standards address both total thallium and total selenium. If metal wastes exhibit multiple characteristics, treatment must address each characteristic (including the characteristic of EP toxicity for each metal where a waste is EP toxic for a number of metal constituents), in addition to the primary metal constituent. Generally, this requirement presents no problem in that most metals are amenable to conventional metal hydroxide or sulfide precipitation and stabilization. There are problems, however, associated with arsenic, barium, selenium, and mercury. These metals are discussed separately in subsequent sections due to their unique chemistries.

There are certain analytical difficulties associated with metal compounds that EPA had to deal with in order to propose treatment standards for these wastes. Analytical methods are capable of measuring the concentration of a specific toxic metal in a waste. There is no way, however, to measure the concentration of a specific metallic compound (e.g., a metal salt). For example, given a mixture of chromium nitrate and chromium sulfate, analytical methods will measure chromium but will not determine whether it is in the sulfate or nitrate form. Further complications in identifying the specific metallic compound arise because many of these compounds will dissociate in water. Therefore, treatment standards for metallic compounds are based on a quantitative analysis for the metal constituent only, and not on the metallic salt. The Agency believes that by regulating the metal, the primary toxic hazard associated with these metallic compounds will be controlled. For example, the Agency believes that by regulating total chromium in U032 (calcium chromate), the hazards associated with that waste will be addressed. The Agency requests comment on whether it is appropriate to regulate only the toxic metal constituents in these wastes.

(2) Development of Treatment Standards for Metals. Most metal wastes are generated in inorganic matrices such as inorganic solutions, wastewater treatment sludges, or incinerator ash-type residues. These wastes are typically amenable to conventional treatment such as metal hydroxide or sulfide precipitation and stabilization. Metal wastes may be present, however, in complex matrices such as contaminated soil or have significant quantities of organic constituents. Stabilization techniques may not always be effective treatment for these organometallic wastes; therefore, incineration is typically required to destroy the organic constituents prior to recovery or stabilization.

In today's notice, the Agency is proposing treatment standards for many of the D, F, K, U, or P wastes expressed as concentrations of specific metals. Performance data are available from treatment of various F and K wastes which contain these metals. Characterization data on many of these metal wastes are limited, and therefore, the Agency is proposing treatment standards for many metal-bearing wastes based on a transfer of performance data from other wastes containing these metals having similar waste characteristics. The Agency is soliciting comment on these transfers for metal wastes.

The Agency is proposing treatment standards for the characteristic metals expressed as concentration-based standards or as required methods of treatment. Consistent with the discussion in preamble section III.C., the Agency is, in some cases, proposing concentration-based treatment standards lower than the characteristic levels. In other cases, the Agency is specifying a method of treatment. EPA could possibly develop concentration-based treatment standards, however, if commenters submit data supporting such an action. The preamble sections that follow contain summaries of the Agency's initial conclusions. More detailed information is contained in the Background Document for each metal.

(3) *Relationship to California List Prohibitions.* There is regulatory overlap between the statutory levels in effect for California list metals and the treatment standards for characteristic metal wastes being proposed today. The Agency has stated in previous rulemakings (see 52 FR 25773 (July 7, 1987); and 53 FR 31187 (August 17, 1989)) that in cases where there is regulatory overlap, the more waste-specific treatment standard applies.

The Agency is today proposing treatment standards for characteristic EP toxic metal wastes. The proposed concentration-based wastewater and/or nonwastewater treatment standards, when promulgated, will supercede the California list statutory levels for these metals because they are more specific. The California list statutory levels will continue to apply to the land disposal of liquid hazardous wastes containing nickel and thallium (except for those F, K, U, or P listed wastes for which treatment standards for nickel and/or thallium are promulgated) because these toxic metals are currently not covered by the EP toxicity test. (See also section III.M. below dealing with the issue of continued applicability of California list prohibitions including during national capacity variance periods.)

b. Arsenic and Selenium

D004—EP toxic for arsenic
D010—EP toxic for selenium
K031—By-product salts generated in the production of MSMA and cacodylic acid.
K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
P010—Arsenic acid
P011—Arsenic (V) oxide
P012—Arsenic (III) oxide
P038—Dichlorophenylarsine
P038—Diethylarsine
P103—Selenourea
P114 Thallium selenite
U136 Cacodylic acid
U204—Selenious acid
U205—Selenium disulfide

These wastes are grouped together because they all contain either arsenic or selenium as the primary hazardous constituent. The Agency considers arsenic and selenium to be in the same general treatability group due to similarities in their chemical behavior.

Although arsenic and selenium exhibit positive valence states, they show little tendency to exist as solitary cationic species in aqueous matrices. Arsenic and selenium typically exist in aqueous conditions as oxo-anions (e.g., arsenic appears primarily as anionic arsenite (AsO_2^-) or arsenate (AsO_4^{-3})). This behavior is important, in that selection and performance of treatment technologies for other metals are based primarily on the cationic behavior of the metals in aqueous conditions. Thus, treatment technologies for both wastewaters ard nonwastewaters containing arsenic and selenium are often different compared to wastes containing only other metal constituents.

The treatment standards presented in today's preamble for all arsenic and selenium wastes are based on a limited amount of treatment data. In this notice the Agency is soliciting data on the characterization and treatment of wastes containing arsenic or selenium. Copies of any additional data pertaining to these proposed treatment standards that may be submitted during the public comment period can be specifically requested in writing by identifying the request for data as "Additional data on treatment of arsenic and selenium—Section III.A.5.b.". See section III.A.1.i. of today's preamble for additional information on procedures for requesting additional data on specific standards.

(1) Identification of BDAT for Wastewaters. When evaluating treatment technologies to establish wastewater treatment standards for arsenic and selenium wastes, the Agency believes that it must consider not only the efficiency of removal of these metals from the wastewater, but also the physical and chemical state of the arsenic and the selenium that ends up in the wastewater treatment residues. Wastewater treatment for most metals is typically based on precipitation with anionic species such as hydroxide or sulfide.

Soluble arsenic species have been reported to be removed from wastewaters by using lime (calcium hydroxide) as a precipitant, resulting in arsenic precipitation as a calcium salt (calcium arsenate) rather than as a hydroxide as is typical for most other metals. Sulfide precipitation using sodium sulfide or hydrogen sulfide as reagents has also been reported as being partially effective for wastewaters containing arsenic in the form of arsenates, but relatively ineffective for arsenites. The removal of arsenic through the addition of a sulfide is believed to be the result of a chemical reaction of the arsenate anions with the sulfide anions thereby converting the arsenate form to a relatively insoluble arsenic sulfide. While calcium arsenate is slightly soluble in water, arsenic sulfide is practically insoluble in water. Although lime may be effective in precipitating arsenic from wastewaters, sulfide precipitation should result in a precipitate that is less soluble in water than the calcium salt.

To further complicate matters, while arsenic sulfide is relatively insoluble in water under acid conditions, information indicates that the leachability (i.e., solubility) of the arsenic sulfide increases under alkaline conditions. Therefore, the decrease in solubility of arsenic sulfide versus the calcium arsenate must be balanced against the potential for leachability of the resulting wastewater treatment sludges during co-disposal with alkaline wastes or materials. This potential for increased leachability under these conditions is a legitimate concern, in that some operators of hazardous landfills co-dispose all "metal" wastes and it is typical practice to add excess lime to prevent migration of the other metals prior to disposal.

The Agency solicits comment on whether it should specify the use of sulfide as the precipitating reagent for all wastewaters containing arsenic as part of the treatment standard. In a similar manner, the Agency solicits comment on whether it should establish disposal requirements under 40 CFR parts 264 and 265 for all arsenic and selenium wastewaters that would require sulfide precipitation followed by segregation of the treatment residuals from alkaline materials (in either monofills or separate subcells within a landfill). Such a requirement would be a type of management standard designed to prevent co-disposal of incompatible wastes. By soliciting comment, EPA notes that these proposed requirements may be promulgated as additional requirements to meeting the proposed concentration-based standards.

Some arsenic and selenium wastewaters, such as those from wood preserving operations, may require more extensive treatment trains in order to treat hexavalent chromium, other metals, and organics which could possibly interfere with the treatment of the arsenic or selenium. A reduction step for hexavalent chromium and an oxidation step (with reagents such as hydrogen peroxide or hypochlorite) may be necessary to treat the organics. In addition, complexed organometallics which may be present will probably have to be oxidized or otherwise removed prior to conversion of the metals to their proper valence state for further metal treatment by precipitation. However, the Agency currently lacks data that indicate that the proposed concentration-based standards cannot be achieved for these types of wastes and anticipates that pretreatment steps such as hexavalent chromium reduction and chemical oxidation of organics could remove these potential interferences. This is further supported by the fact that quantitative analytical methods for arsenic and selenium in waste samples include such pretreatment steps to remove the interferences during analysis. The Agency specifically solicits comments on the applicability of these and other pretreatment technologies for arsenic and selenium wastewaters and data that indicate the achievability of the concentration-based standards proposed in the following sections.

(a) Proposed Standards for Arsenic-Containing Wastewaters. The Agency has data on precipitation of arsenic from wastewaters identified as D004 from the veterinary pharmaceutical industry using lime followed by manganese sulfate and ferric in a three stage alkaline process. The Agency believes that these data represent a matrix that is very difficult to treat since it consists of a mixture of organic and inorganic compounds, including organo-arsenicals and inorganic arsenic compounds in concentrations up to 1,600 ppm. The data show that this three stage alkaline precipitation process provides effective treatment and removal of arsenic from these wastewaters because it reduces the concentration of arsenic in the wastewater to levels below the characteristic level of 5.0 mg/l. Therefore, the Agency is proposing two options for treatment standards for D004 wastewaters.

Based on these treatment data, the Agency is proposing a treatment standard of 0.79 mg/l arsenic for all D004 wastewaters. The Agency believes that these wastes represent the most difficult to treat wastewaters. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004(m). The Agency is also proposing a second option of limiting the treatment standard for D004 wastewaters to the characteristic level of 5.0 mg/l. The Agency specifically solicits comments on these two options.

The constituents for which P010, P011, and P012 wastes are listed are all inorganic forms of arsenic. The constituents for which P036, P038, and U136 wastes are listed are all organic forms of arsenic. K031 and K084 are typically generated as process wastes that contain mixtures of both organic and inorganic forms of arsenic. While all of these wastes are typically generated as nonwastewaters, the Agency expects that wastewater forms of these wastes may be generated from incidental spills or from the treatment process itself and thus would require treatment standards. The Agency expects that untreated wastewaters will be more dilute than the untreated D004 wastewaters that were used to develop the treatment standards, and thus would be expected to be less difficult to treat. Further, while K031, K084, P036, P038, and U136 wastes all contain organic forms of arsenic, the Agency believes that they can be chemically oxidized (using peroxides, permanganates, persulfates, or perchlorates) to destroy the organometallic bond prior to precipitation.

The Agency is proposing to transfer the D004 performance data and concentration-based treatment standard of 0.79 mg/l for K031, K084, P010, P011, P012, P036, P038, and U136 wastewaters. This is a reasonable approach given that: (1) The D004 wastewater that was tested by the Agency contained organo-arsenicals similar in structure to (or more complex than) those contained in K031, K084, P036, P038, and U136; (2) the D004 wastewater also contained inorganic arsenic compounds similar to those contained in K031, K084, P010, P011, and P012; (3) the untreated wastewater forms of these wastes are expected to be more dilute than the untreated D004 wastewater; and (4) the performance data demonstrate that the arsenic in the D004 wastewater can effectively be removed.

Additional wastewater treatment data primarily from the Agency's Office of Water have been recently analyzed for incorporation into the treatment standards for arsenic wastewaters. These data include the treatment of wastewaters that are not specifically listed as RCRA hazardous wastes, but do contain many of the corresponding U, P, and metal constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h. (6.).

An alternative standard for arsenic based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. This standard is based on single step chemical precipitation process. Thus, the Agency is proposing these standards as alternative standards for wastewaters for which concentration-based standards based on incinerator scrubber waters have been proposed in the following sections.

(b) Proposed Standards for Selenium-Containing Wastewaters. The Agency has no specific treatment data on RCRA hazardous wastewaters containing selenium. However, based on the similarities in chemical behavior of arsenic and selenium, the Agency is proposing to extrapolate the performance data for arsenic contained in D004 wastewaters to the selenium contained in D010 wastewaters and is thus proposing two options for treatment standards for D010 wastewaters.

Based on these treatment data, the Agency is proposing a treatment standard of 0.79 mg/l selenium for all D010 wastewaters. This is based on a level of treatment achieved for wastewaters that are representing the most difficult to treat. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of Section 3004(m). The Agency is also proposing a second option of limiting the treatment standard for D010 wastewaters to the characteristic level of 1.0 mg/l. The Agency solicits comments regarding the transfer of these performance data to D010 wastewaters and is specifically soliciting additional treatment data for wastewaters containing treatable levels of selenium that would classify the wastewaters as D010 prior to treatment.

Similar to the preceding discussion and the discussion for U and P arsenic wastewaters, the Agency is also proposing to transfer the D004 performance data for arsenic to the selenium in P103, P114, U204, and U205 wastewaters. Thus, the treatment standard for these wastewaters is proposed as 0.79 mg/l selenium.

Additional wastewater treatment data primarily from the Agency's Office of Water have been recently analyzed for incorporation into the treatment standards for selenium wastewaters. These data include the treatment of wastewaters that are not specifically listed as RCRA hazardous wastes, but do contain many of the corresponding U, P, and metal constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h.(6.).

An alternative standard for selenium based on these data are presented in section III.A.7. of today's notice for wastewater forms of multi-source leachate. This standard is also based on single step chemical precipitation process. Thus, the Agency is proposing these standards as alternative standards for wastewaters for which concentration-based standards based on incinerator scrubber waters have been proposed in the following sections.

(2) Identification of BDAT for Nonwastewaters. The success of conventional stabilization processes for hazardous wastes containing metals is due partly to the ability of the alkaline cementitious reagents to chemically bind the cationic metal species. The Agency attempted pozzolanic stabilization of K031 nonwastewaters that contained relatively high concentrations of arsenic (133,000 ppm). The resultant data indicate that in some cases arsenic leachability from the treated residues was 10% *higher* than that from the untreated wastes. The increase in arsenic leachability after stabilization is probably due to the anionic character of the arsenic complexes that may be present in the waste, the inapplicability of stabilization processes to anionic metal species, and to the probable increase in solubility of some forms of arsenic at higher pH. This increase in leachability appears to indicate that the arsenic is not being chemically bound by the conventional stabilization reagents that were chosen for examination.

Some data indicate that cementitious or pozzolanic stabilization of wastes containing low concentrations of arsenic can be performed. These stabilization data using cement, lime, and other proprietary binder mixtures are inconclusive in demonstrating stabilization of arsenic. Although the amount of leachable arsenic is sometimes reduced, the results are not reproducible and, in some cases, can be attributed to dilution with the binders (high binder to waste ratios). While the

Agency has not fully investigated these potential problems in solidification for high concentrations of selenium, the Agency believes, based on selenium's chemical similarities to arsenic, that these same complications will occur.

Some data also indicate that asphalt stabilization of inorganic, low level arsenic waste can be performed, and may be especially appropriate for stabilizing arsenic in waste matrices containing other metals, because cementitious stabilization may increase the arsenic leachability. The two major concerns the Agency has regarding the application of this technology to arsenic and selenium wastes are: (1) the possibility that hazardous organic constituents (such as polynuclear aromatic hydrocarbons) that may be present in the asphalt itself will leach; and (2) the lack of performance data on this technology for arsenic and selenium wastes. An analysis of a TCLP extract from a sample of asphalt binder showed no sign of leaching organics, seemingly eliminating one of these concerns. Additional information regarding performance of this technology on arsenic and selenium wastes still remains necessary. The Agency therefore solicits comment and data on this technology.

No attempt was made by the Agency to differentiate between low level and high level arsenic or selenium wastes in the development of the proposed nonwastewater standards. The Agency does not have the data to properly make a distinction between a high level and a low level subgroup, or to determine applicable treatment for wastes in each subgroup. However, the Agency recognizes that a high level and a low level treatability group may exist and that treatment technologies for wastes in each group may be different. Therefore, the Agency is requesting data and comments identifying applicable treatment technologies for these potential subgroups. If no data is received, the standards proposed in today's rule will apply to all forms of nonwastewaters containing arsenic and selenium, regardless of the concentration of these metals in the waste.

As an alternative to cementitious stabilization for arsenic and selenium wastes, the Agency has identified vitrification as a stabilization technology that is applicable to nonwastewaters. Vitrification is a technology that uses high temperatures (1200 °C to 1500 °C) generated by electrodes or direct flame to melt a mixture of glass formers and waste materials into a molten slag which then cools and incorporates the metals and other materials into this glass/slag matrix. The waste materials are usually added after the glass is liquefied. This technology can be applied to wastes containing organic as well as inorganic forms of arsenic since it operates at temperatures that will destroy the organics present in the wastes. When the glass/slag matrix cools and solidifies, it forms a relatively impermeable mass. (See the Arsenic/Selenium Background Document for additional discussion of this technology).

Vitrification uses high operating temperatures that may cause the arsenic and selenium in the waste to volatilize. The glass melting furnaces, however, are designed so that any volatiles will condense in the cooler areas at the top of the furnace that falls back down into the molten glass, thus being further treated. Additional information indicates that precalcination of materials containing arsenate (ferric or calcium) at temperatures close to 400 °C has been found to reduce potential losses of arsenic due to vaporization during vitrification. After these arsenate materials have been calcined as a pretreatment step, they were dissolved in an iron silicate slag at temperatures up to 1290 °C without volatilization of arsenic oxides. Therefore, this appears to demonstrate that for certain arsenic wastes volatilization resulting from the vitrification treatment process should not be an air pollution problem. Vitrification has been used successfully by the nuclear industry for the disposal of low level radioactive waste containing metallic elements. The Agency is soliciting comments and data on this stabilization technique for arsenic and selenium wastes. Of particular interest is data for those wastes that are known to contain organo-complexes of these metals.

Arsenic and selenium are produced as a by-product of copper and gold mining operations. The Agency believes that for some wastes, recovery of arsenic and selenium is feasible using high temperature metal recovery technologies used by mining operations, provided the metal has been first chemically converted to an easily recoverable form. Information available to the Agency indicates that recovery of elemental selenium out of certain types of scrap material and other type of wastes is currently practiced in the United States. The Agency is requesting comments and data on the applicability of these, and any other, recovery technologies for wastes containing arsenic or selenium. While recovery options may be preferable over vitrification or stabilization for some of these wastes, the choice of treatment options must be made by the generator or treater based on the ability of the particular recovery system to handle the waste.

(a) Proposed Standards for Arsenic-Containing Nonwastewaters. Data available to the Agency indicate that vitrification can incorporate arsenic in concentrations up to 23.5% into a glass/slag matrix with a maximum leachability of arsenic at 1.8 mg/l (using the EP toxicity protocol). In all, these data consist of 14 separate data points, with arsenic concentration in the untreated wastes ranging from 0.3% to 23.5% and leachate concentrations ranging from 0.007 mg/l to 1.8 mg/l. The Agency is specifying that the EP toxicity test be performed to measure compliance with today's proposed nonwastewater standards. The EP should be used rather than the TCLP because all of the performance data from vitrification upon which EPA is relying used the EP to evaluate the technology's performance. However, a facility is not precluded from demonstrating the statistical equivalency of the TCLP to EP test for these wastes. The Agency views the continued use of the EP test as a measure of compliance with treatment standards as unfortunate. We strongly encourage the submission of TCLP performance data for arsenic that will eliminate the need for a separate analytical protocol for this metal. In addition, as noted in other rulemakings, EPA views the TCLP as the most appropriate protocol for measuring the effectiveness of stabilization as BDAT).

All of these data indicate that the vitrification can achieve stabilization of arsenic to leachate levels below the characteristic level (5.0 mg/l). However, using the analytical recovery data transferred from the Agency's analysis of K102 incinerator ash (which had the appearance of a slag) and a variability factor of 2.8, a concentration-based treatment standard for arsenic of 5.6 mg/l in the leachate (measured by the EP toxicity test) was calculated.

The Agency is also proposing to transfer the concentration-based treatment standard of 5.6 mg/l arsenic to K031, K084, P010, P011, P012, P036, P038, and U136 nonwastewaters. We believe that the performance of the vitrification technology, and analytic variability of treatment residues, also will not change for different arsenic-containing wastes. Thus, we think this transfer is legitimate.

(b) Proposed Standards for Selenium-Containing Nonwastewaters. The Agency has no treatment data on D010 nonwastewaters. However, based on the similarities in chemical behavior of arsenic and selenium, the Agency is extrapolating the performance data for vitrification of arsenic to D010 nonwastewaters and thus is proposing the same concentration-based standard, 5.6 mg/l selenium as measured in the leachate generated by the EP toxicity test. In a similar manner, the Agency is proposing to transfer this concentration-based treatment standard of 5.6 mg/l selenium to P103, P114, U204, and U205 nonwastewaters. The Agency solicits comment on the transfer of these performance data to D010 nonwastewaters, and requests data on any treatment or recovery technologies applicable to these nonwastewaters.

Because this treatment standard (5.6 mg/l) is above the level of leachable selenium that defines the waste as D010 (1.0 mg/l), D010 wastes that are generated at a level between 5.6 mg/l and 1.0 mg/l are considered to meet the treatment standard, but are still considered hazardous wastes and, therefore, must be land disposed in a subtitle C facility.

(3) Revisions to K101 and K102 Treatment Standards. In the First Third final rule (53 FR 31170, August 17, 1989), the Agency established two subcategories of K101 and K102 nonwastewaters based on the concentration of arsenic in the waste. A low arsenic subcategory was established for waste containing less than 1% arsenic and a high arsenic subcategory for waste containing 1% or greater. EPA believed this distinction establishing a subcategory for high arsenic K101 and K102 nonwastewaters was necessary to ensure that facilities did not burn arsenic-containing wastes that could potentially create a significant risk due to stack emissions of arsenic.

Treatment standards for the organics contained in these wastes were developed based on incineration of K101 and K102 nonwastewaters in the low arsenic subcategory. The corresponding nonwastewater standards included the regulation of certain metals based on stabilization. However, EPA did not establish a nonwastewater treatment standard for arsenic because the data did not indicate treatment for the arsenic.

In today's notice the Agency is proposing to change the nonwastewater standards for K101 and K102 promulgated in the First Third final rule by eliminating the low and high level arsenic subcategories and by replacing the existing standards with a concentration-based treatment standard for arsenic of 5.6 mg/l (measured in the EP extract) based on the performance of vitrification. The Agency believes that the organic constituents present in these wastes (for which treatment standards were based upon incineration) will be destroyed by the high temperatures at which vitrification operates (temperatures comparable to incineration). Therefore, the Agency is proposing to remove the organic standards for K101 and K102 nonwastewaters. In addition, EPA is proposing to eliminate the existing metal standards for nonwastewaters because they were based on performance of a different stabilization technology.

The Agency is also proposing new wastewater treatment standards for K101 and K102 in today's rule. Standards for K101 and K102 wastewaters were promulgated in the First Third rule (53 FR 31170, August 17, 1988) and were applicable to all forms of K101 and K102 wastewaters (i.e., they did not distinguish between high arsenic or low arsenic subcategories). These promulgated standards were based on the same D004 wastewater treatment data used in today's proposal to establish arsenic standards for other K, U, and P wastes. In the process of reevaluating the D004 wastewater treatment data for today's proposed rule, however, EPA discovered an error in the calculation of the promulgated K101 and K102 wastewater standards for the metal constituents. The Agency is proposing today to correct this error by amending the wastewater standards for the metal constituents (arsenic, cadmium, lead, and mercury) in K101 and K102. Therefore, a new treatment standard of 0.79 mg/l for arsenic, 0.24 mg/l for cadmium, 0.17 mg/l for lead, and 0.82 mg/l for mercury is being proposed. These proposed standards are based on the same D004 data but using a different data set than that used for the development of the promulgated standards. Since there was no error in the calculation of the promulgated standards for the organic constituents, the Agency is not proposing to change the standards for the organics present in K101 and K102 wastewaters. The promulgated standards for the organics are being presented for convenience of the reader and are not being reconsidered. Therefore, no comment on this subject will be accepted.

BDAT TREATMENT STANDARDS FOR D004, K031, K084, P010, P011, P012, P036, P038, AND U136

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Arsenic	[illegible]

BDAT TREATMENT STANDARDS FOR D004, K031, K084, P010, P011, P012, P036, P038, AND U136

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, EP leachate (mg/l)
Arsenic	5.6

BDAT TREATMENT STANDARDS FOR D010, P103, P114, U204 and U205

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Selenium	5.7[illegible]

BDAT TREATMENT STANDARDS FOR D010, P103, P114, U204 and U205

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, EP leachate (mg/l)
Selenium	5.6

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Ortho-nitroaniline	0.27
Arsenic	[illegible]
Cadmium	0.24
Lead	0.17
Mercury	[illegible]

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total Composition (mg/l)
Ortho-nitrophenol	0.028
Arsenic	0.79
Cadmium	0.24
Lead	0.17
Mercury	0.082

BDAT TREATMENT STANDARDS FOR K101 AND K102

[Nonwastewaters*]

Regulated constituent	Maximum for any single grab sample, EP leachate (mg/l)
Arsenic	5.6

* This proposes to remove subcategories based on high and low arsenic content

c. Barium. The Agency has identified two hazardous wastes that potentially contain high levels of barium. These include P013 (barium cyanide) and D005 (EP toxic for barium; 100 mg/l barium as measured in an EP leachate). Treatment standards for cyanides contained in P013 wastes were promulgated with the Final Rule for second Third Wastes (54 FR 26614 (June 23, 1989)). At the same time, treatment standards for barium in P013 wastewaters were not promulgated based on the lack of treatment data. Today's notice proposes treatment standards for P013 wastewaters and all D005 wastes.

According to the periodic chart of elements, barium is a group II element that has chemical properties similar to magnesium and calcium. In aqueous conditions it typically exists as a divalent, cationic species. This behavior is important, in that selection and performance of treatment technologies for barium is somewhat similar to most other metals based on this cationic behavior in aqueous conditions. However, due to differences in solubilities of certain salts of barium compared to other metals, treatment technologies for both wastewaters and nonwastewaters containing barium are slightly different compared to wastes containing only other metal constituents.

The treatment standards presented in today's preamble for all barium wastes are based on a limited amount of treatment data. In this notice, the Agency is soliciting data on the characterization and treatment of all wastes containing barium. Copies of any additional data pertaining to these proposed treatment standards that may be submitted during the public comment period, can be specifically requested in writing by identifying the request for data as "Additional data on treatment of barium—Section III.A.5.c.". See section III.A.1.i. of today's preamble for additional information on procedures for requesting additional data on specific standards.

(1) Identification of BDAT for Wastewaters. When evaluating treatment technologies to establish wastewater treatment standards for barium wastes, the Agency believes that it must consider not only the efficiency of removal of barium from the wastewater, but also the physical and chemical state of the precipitated barium salts that end up in the wastewater treatment residues.

While some data indicate that barium can be removed from wastewaters by using lime (calcium hydroxide) or caustic (sodium hydroxide) as a precipitating reagent (resulting in precipitation of the barium as a hydroxide salt (barium hydroxide)), barium is typically precipitated as a sulfate salt (barium sulfate) using sodium sulfate, ferric sulfate, or aluminum sulfate as a precipitating reagent. Most other cationic metals are typically removed from wastewaters based on precipitation as hydroxides or sulfides. While barium hydroxide is slightly soluble in water, barium sulfate is practically insoluble in water. Although lime or caustic may be effective in precipitating barium from wastewaters, sulfate precipitation should result in a precipitate that is less soluble in water than the hydroxide salt.

To further complicate matters, the resultant nonwastewater treatment residues containing barium sulfate salts may not be effectively stabilized by conventional stabilization reagents. This is primarily due to the anticipated presence of excess soluble sulfate (used as the precipitating reagent) which is known to interfere with the cementitious reactions. (Note: Conventional stabilization processes are typically applied to wastes containing primarily metal hydroxide salts). Therefore, in development of the appropriate BDAT treatment standards for wastewaters containing barium, the decrease in solubility of the resultant nonwastewaters containing barium sulfate (versus the more soluble barium hydroxide) must be balanced against the potential difficulty in conventional stabilization processes for the barium sulfate nonwastewaters. However, there are stabilization reagents (such as certain types of Portland cements) that have been developed that are specifically designed to handle materials containing high sulfates.

Due to a well established chemical relationship known as the "common ion effect" and due to the relatively higher solubility of barium hydroxide (compared to barium sulfate), there exists a reasonable potential for an increase in leachability of the resulting wastewater treatment sludges (either the barium hydroxide or the barium sulfate) during co-disposal with alkaline wastes or materials. This potential for increased leachability under these conditions is a legitimate concern, in that some operators of hazardous landfills co-dispose all "metal" wastes and it is typical practice to add excess lime to prevent migration of the other metals prior to disposal.

Thus, EPA solicits comments on whether it should (as part of the treatment standard) specify the use of sulfate as the precipitating reagent for all wastewaters containing barium. In a similar manner, the Agency solicits comment on whether it should establish disposal requirements under 40 CFR Parts 264 and 265 for all barium wastewaters that would include sulfate precipitation followed by segregation of the treatment residuals from alkaline materials (i.e., in either monofills or separate subcells within a landfill). EPA notes that these proposed requirements may then be promulgated as additional requirements to meeting the proposed concentration-based standards.

Additional information indicates that barium could be precipitated as barium carbonate at pH 10–10.5, with lime used for pH adjustment, as an alternative treatment technology for barium wastewaters. Ion exchange also has been reported as achieving extremely high removal efficiencies. The Agency, however, lacks data to support these treatment technologies as being BDAT for D005 wastes.

For some barium wastewaters, more extensive treatment trains may be necessary in order to treat hexavalent chromium, other metals, and organics which could possibly interfere with the treatment of the barium. A reduction step for hexavalent chromium and an oxidation step (with reagents such as hydrogen peroxide or hypochlorite) may be necessary to treat the organics. However, the Agency currently lacks data indicating that the proposed concentration-based standards cannot be achieved for these type of wastes, and anticipates that pretreatment steps such as hexavalent chromium reduction and chemical oxidation of organics could remove these potential interferences. The Agency specifically solicits comments on the applicability of these and other pretreatment technologies for barium wastewaters, as well as data indicating the achievability of the concentration-based standards proposed in the following sections.

The Agency has very little data on precipitation of barium from RCRA hazardous wastewaters identified as P013 or D005. However, the Agency's Office of Water does have data from its analysis of various treated wastewaters under the Agency's Effluent Guidelines Program. In the absence of treatment data specific to P013 or D005 wastewaters, the Agency believes that these data from the Effluent Guidelines Program can be transferred to develop treatment standards for P013 and D005 wastewaters.

Based on these treatment data, the Agency is proposing a treatment standard of 1.15 mg/l barium for all D005 wastewaters. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of Section 3004(m). The Agency is also soliciting comments on an option of limiting the treatment standard for D005 wastewaters to the characteristic level of 100 mg/l.

Based on Effluent Guidelines data, the Agency is also proposing a treatment standard for barium in P013 wastewaters of 1.15 mg/l barium. While P013 wastes (barium cyanide) are typically generated as nonwastewaters, the Agency expects that wastewater forms of these wastes may be generated from incidental spills or from the treatment process itself and thus would require treatment standards. The Agency expects that untreated wastewaters will be relatively dilute, and thus would not expect to be difficult to treat. The Agency points out that it is not reopening the promulgated treatment standards for cyanides in P013 for comment.

(2) Identification of BDAT for Nonwastewaters. For nonwastewater forms of P013 and D005, which primarily consist of inorganic barium salts other than hydroxides or sulfates, the Agency believes that the barium can be dissolved and reprecipitated as the sulfate or carbonate in order to generate a treatment residual meeting the characteristic level. In addition, barium may be able to be leached from these wastes by concentrated strong acid solutions, with the acid leachate subsequently neutralized and treated by sulfate or carbonate precipitation. The Agency is proposing a required method as the treatment standard for these barium wastes. D005 nonwastewaters must be treated by acid or water leaching followed by chemical precipitation as sulfate or carbonate followed by stabilization.

For D005 wastes that are generated containing high levels of organics the Agency believes that these wastes can be incinerated prior to stabilization of the ash. The Agency is soliciting information on whether these wastes actually exist, the concentration of barium and organics within these wastes, and treatment data for these wastes. If the Agency finds that these wastes do exist and treatment data is submitted, the Agency may define these wastes as a separate treatability group based on the level of organics and barium and promulgate the resultant concentration-based standards based on these data. However, information is submitted that these wastes exist but no treatment data are submitted from which concentration-based standards can be developed, the Agency may promulgate "Incineration Followed by Stabilization as a Method of Treatment" for these wastes.

BDAT TREATMENT STANDARDS FOR D005 AND P013

[Nonwastewaters]

Acid or water leaching followed by chemical precipitation as sulfate or carbonate or stabilization as methods of treatment

BDAT TREATMENT STANDARDS FOR D005 AND P013

[Wastewaters]

Regulated constituent	Maximum for any 24 hour composite sample Total composition (mg/l)
Barium	1.15

d. Cadmium. The criterion for classifying a solid waste as a D006 hazardous waste is the presence of cadmium in a concentration exceeding 1.0 mg/l, as measured in an EP leachate. On July 8, 1987, a 100 mg/l statutory prohibition level went into effect for liquid hazardous wastes containing cadmium (see the California list final rule, 52 FR 25760). The Agency received data during the comment period for the California list rule (that it presented in a subsequent Notice of Data Availability) indicating that the full range of California list wastes containing cadmium, except those containing high levels of oil and grease, could be treated to a concentration level of 1.0 mg/l through precipitation of wastewaters and stabilization of nonwastewaters. The 1.0 mg/l level was not promulgated at that time, but EPA has used the data received in response to both the California list proposal and the Notice of Data Availability, along with other waste specific data, to develop today's proposed treatment standards.

Based on information from the 1986 Bureau of Mines report on the production of cadmium and cadmium salts, cadmium is typically extracted from sulfide minerals bearing zinc, lead, and copper. Cadmium is used primarily in electroplating and in the production of nickel/cadmium rechargeable batteries (as well as other types of batteries), pigments, and plastics. Other uses of cadmium include television picture tube and fluorescent light phosphors, catalysts for primary ester and alcohol production, nuclear reactor controls, fire detection alloys, alloys and solders, and copper hardening agents.

The treatment standards presented in today's preamble for all cadmium wastes are based on a limited amount of treatment data. In this notice, the Agency is soliciting data on the characterization and treatment of all wastes containing cadmium. Copies of any additional data pertaining to these proposed treatment standards submitted during the public comment period can be requested in writing by identifying the request for data as "Additional data on treatment of cadmium—Section III.A.5.d.". See section III.A.1.i. of today's preamble for information on procedures for requesting additional data on specific standards.

Treatment data indicate that cadmium follows treatment patterns of most other metallic waste in that conventional metal hydroxide or sulfide precipitation and stabilization appear effective for cadmium-bearing wastes. Based on all available waste characterization and treatment data, the Agency is proposing to group all D006 wastes into one of three treatability groups: (1) Wastewaters, (2) nonwastewaters, and (c) cadmium-containing batteries. The Agency is requesting data that will assist in further categorizing D006 wastes into these (and any other) treatability groups.

(1) Identification of BDAT for Wastewaters. This treatability group

encompasses the largest volume of cadmium wastes, which are generated primarily as electroplating rinsewaters. The technologies typically used for treating these wastewaters include chemical precipitation (as a hydroxide, carbonate, phosphate, sulfide, or ferrous sulfate coprecipitant), ion exchange, activated carbon adsorption, and evaporative and electrolytic recovery.

The Agency has very little data on precipitation of cadmium from RCRA hazardous wastewaters identified as D006. However, the Agency's Office of Water does have data from its analysis of various treated wastewaters under the Agency's Effluent Guidelines Program. In the absence of treatment data specific to D006 wastewaters, the Agency believes that these data from the Effluent Guidelines Program can be transferred to develop treatment standards for D006 wastewaters. The data show that the treatment provided by these industries can reduce the concentration of cadmium in the wastewater to levels below the characteristic level of 1.0 mg/l. Therefore, the Agency is proposing a concentration based treatment standard for D006 wastewaters based on the performance of precipitation in treating cadmium wastewaters.

Based on these treatment data, the Agency is proposing a treatment standard of 0.20 mg/l cadmium for all D006 wastewaters. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004 (m). The use of other technologies to achieve this concentration-based treatment standard is not prohibited by today's rule.

(2) Identification of BDAT for Nonwastewaters. Wastes which are comprised of concentrated cadmium metal, such as the residuals from the recovery of K061 (electric arc furnace dust containing cadmium) and zinc mining wastes, are amenable to recovery, direct reuse, or stabilization.

The Agency has data on the stabilization of nonwastewaters indicating that cadmium can be effectively stabilized to levels below the characteristic level. For example, the Agency has data on the stabilization of K061 (electric arc furnace dust containing cadmium primarily in the form of cadmium oxides) nonwastewaters indicating that cadmium can be stabilized to a level of 0.14 mg/l using TCLP extraction (53 FR 31164). Furthermore, the Agency has data indicating that stabilized cadmium in F006 (wastewater treatment sludges containing primarily cadmium in the form of cadmium hydroxides) can achieve a TCLP extract level of 0.066 mg/l (53 FR 31153). Based on these available data, the Agency believes that all cadmium nonwastewaters can either be stabilized such that the technologies reduce the leachability and total composition of cadmium in D006 nonwastewaters to below the characteristic level.

As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it may have the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004 (m). The Agency is proposing two options for the development of treatment standards for D006 nonwastewaters.

The first option is to propose a concentration-based treatment standard for D006 nonwastewaters of 0.14 mg/l based on a transfer of K061 data. The Agency believes that this transfer is technically feasible due to fact that K061 wastes probably contain cadmium oxides which appear to be slightly more difficult to stabilize than the cadmium hydroxide found in a F006 wastes. Waste K061 is also a particularly difficult matrix to stabilize (see e.g., Comments of Steel Bar Mills Association and other steel producers) in the First Third rulemaking. The second option is to propose a method of treatment of stabilization or metals recovery. The Agency is soliciting comments on the concentration of cadmium that can be recovered and whether the Agency can identify a concentration of cadmium in nonwastewaters that is not amenable to metals recovery.

(3) Identification of BDAT for Cadmium-Containing Batteries. Nickel/cadmium rechargeable batteries are widely used in many household electronic products and are also used industrially in railroad signaling, diesel locomotive starting, commercial and jet aircraft starting, satellites, missile guidance systems, television and camera lighting, portable hospital equipment, computer memories, pinball machines, and gasoline pumps. Variations of this battery are the silver/cadmium cell and the mercury/cadmium battery, which are more costly and limited in their use.

Because the Agency does not have adequate data to establish a concentration-based standard, the Agency is proposing a treatment standard for cadmium-containing batteries expressed as "Recovery as a Method of Treatment". The Bureau of Mines has conducted studies on pyrometallurgical techniques for recycling nickel/cadmium batteries. Data indicates that cadmium-containing batteries may be recycled through the use of smelting technologies. More information on this data can be found in the background document for cadmium wastes. EPA is specifically requesting data on the recovery of cadmium-containing batteries.

BDAT TREATMENT STANDARDS FOR D006

[Wastewaters]

Regulated constituent	Maximum for any 24 hour composite sample
	Total Composition (mg/l)
Cadmium	0.20

BDAT TREATMENT STANDARDS FOR D006

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample
	TCLP (mg/l)
Cadmium	0.14

BDAT TREATMENT STANDARDS FOR D006

[Cadmium Batteries]

Thermal recovery as a method of treatment

e. Chromium. U032 (calcium chromate) and D007 (EP toxic for chromium; 5.0 mg/l) are two of the many RCRA hazardous wastes that are listed for their chromium content. Typically, these wastes contain chromium as trivalent or hexavalent cations. Primarily in untreated wastewaters, chromium is present in its hexavalent state and is reduced by treatment to the trivalent state. The Agency is proposing to regulate chromium in wastes as "total" chromium rather than distinguishing between these two valence states. This is primarily because of the difficulty in analyzing treatment residues for hexavalent chromium. (Note: Concentrations of trivalent chromium are determined by subtracting the concentration of hexavalent chromium from total chromium concentrations).

The Agency has data treatment of chromium in wastewaters such as K062 wastes that contain significant concentrations of chromium and other metals. These data on K062 wastes indicated treatment of up to 7,000 ppm of total chromium. This is similar to waste characterization data on other wastewaters (such as those generated in battery manufacturing) indicating concentrations of up to 10,000 ppm of total chromium in untreated waste. The data for treatment of nonwastewaters (sludges or solids) indicate that high levels of chromium in hydroxide sludges, incinerator ash, and in furnace dust, can be treated by conventional stabilization processes to below the characteristic level for D007.

(1) Identification of BDAT for D007 Wastewaters. Treatment data available to the Agency indicate that chemical reduction processes can convert a significant range of concentrations of hexavalent chromium in wastes to chromium in the trivalent state using chemical reducing agents such as sulfur dioxide, sodium bisulfite, metabisulfite, hydrosulfite, or ferrous sulfate. The trivalent chromium is then removed, usually by hydroxide precipitation. The Agency has treatment data on chromium reduction followed by precipitation and sludge dewatering for K062 wastes. The Agency believes that K062 would be similar or more difficult to treat than D007 wastes because of the high concentration of chromium and other metals in K062 wastes. Therefore, the Agency is transferring the performance data for K062 to D007 wastewaters and is proposing a treatment standard of 0.32 mg/l. The Agency is soliciting additional treatment performance data, including data on ion exchange processes which can remove hexavalent chromium directly from wastewaters.

(2) *Identification of BDAT for D007 Nonwastewaters.* Treatment data available to the Agency indicate that D007 nonwastewaters can be treated by stabilization provided the chromium has been reduced to the trivalent state. The Agency has performance data from the stabilization of F006 wastes that contain high concentrations of chromium. The data indicates that total chromium can be stabilized to 5.2 mg/l as analyzed by the TCLP analysis. For the K062 nonwastewaters, the concentration of total chromium in the nonwastewaters did not need to be stabilized. The reason was during the precipitation step, the treater added lime such that it reduced the mobility of chromium and other metals that were present in the wastes. This information justifies that fact that chromium wastes can be easily stabilized.

Therefore, the Agency has two sets of treatment data for chromium containing nonwastewaters. The Agency believes that the F006 wastes could have contained hexavalent chromium as opposed to trivalent chromium. The reason for this is that the Agency believes that a F006 wastes is generated from the treatment of electroplating rinsewaters by alkaline chlorination treatment rather than a chromium reduction treatment. An alkaline chlorination process would not reduce the hexavalent chromium to trivalent. Therefore the Agency is proposing a treatment standard for D007 nonwastewaters of 0.094 mg/l based on an analysis of TCLP extracts and based on the performance of chromium reduction followed by lime and sulfide precipitation and dewatering for K062 wastes. The Agency is soliciting comments and treatment data from industry on whether this treatment standard is achievable for all D007 nonwastewaters. If comments indicate that the standard is not achievable, the Agency may promulgate the 5.2 mg/l treatment standard based on a transfer of the performance of stabilization for the F006 wastes.

(3) *Identification of BDAT for Calcium Chromate.* In today's proposed rule, the Agency is proposing wastewater and nonwastewater concentration-based treatment standards for chromium in this waste (U 032). BDAT for wastewaters and nonwastewaters are based on a transfer of the treatment performance of chemical reduction followed by lime/sulfide precipitation and filtration for K062 wastes.

The Agency believes that the transfer of the performance data for the treatment of K062 to calcium chromate wastewaters is technically feasible due to the high concentration of chromium in K062 wastewater.

BDAT TREATMENT STANDARDS FOR D007 AND U032

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample
	TCLP (mg/l)
Chromium (Total)	0.094

BDAT TREATMENT STANDARDS FOR D007 AND U032

[Wastewaters]

Regulated constituent	Maximum for any single grab sample
	Total composition (mg/l)
Chromium (Total)	0.32

f. Lead

D008—EP toxic for lead
P110—Tetraethyl lead
U144—Lead acetate
U145—Lead phosphate
U146—Lead subacetate

Lead appears in Group IV of the periodic table. Lead, as a metal, is used as an industrial raw material in the manufacture of batteries, pigments, leaded glass, fuels, photographic materials, matches, explosives, and in electroplating baths. Lead is also used in the iron and steel industry and in the mining industry. Typically the lead in the D008 nonwastewaters may appear as lead in its elemental form (i.e., solid lead) or as chemical salts. In aqueous solutions (such as wastewaters), lead can easily be precipitated by adding lime, carbonate, or sulfides. This behavior is important, in that selection and performance of treatment technologies for lead is somewhat similar to other metals, based on this cationic behavior in aqueous conditions. Lead salts typically contain lead in the divalent state and are mostly insoluble in water. The nitrate, $Pb(NO_3)_2$, and the acetate, $Pb(C_2H_3O_2)_2$, are the only common soluble salts. The solubility of these two salts form the basis for certain analytical determinations of lead concentrations in some particular matrices.

The treatment standards presented in today's preamble for all lead wastes are based on a limited amount of treatment data. In this notice, the Agency is soliciting data on the characterization and treatment of all wastes containing lead. Copies of any additional data pertaining to these proposed treatment standards that may be submitted during the public comment period can be requested in writing by identifying the request for data as "Additional data on treatment of lead—Section III.A.5.e.". See Section III.A.1.i. of today's preamble for information on procedures for requesting additional data on specific standards.

(1) Treatment Standards for Wastewaters. When evaluating

treatment technologies to establish wastewater treatment standards for lead wastes, the Agency believes that it must consider not only the efficiency of removal of lead from the wastewater, but also the chemical state of the precipitated lead salts that end up in the wastewater treatment residuals.

Most of the data indicates that lead oxides can be removed from wastewaters by using carbonate or hydroxide as precipitating reagent. In most precipitation treatment systems, two factors influence lead removal. These are lead solubility and lead precipitate settleability. Lead oxides are more insoluble in carbonate rather than lead hydroxide. (Note: Lead hydroxide is actually amphoteric and will become more soluble as the pH moves beyond optimum insolubility.) This suggests that a method of treatment for lead in wastewaters should be precipitation with carbonate, followed by sludge dewatering. The Agency is requesting comments on the approach of specifying a precipitant with the method of treatment.

The Agency has data on the treatment of wastewaters containing lead by precipitation with lime and sulfide filtration, and settling for K062 and D008 mixed wastes. The Agency believes that these data represent a matrix that is very difficult to treat since it consists of other dissolved metals in concentrations up to 7,000 ppm. While the lead concentration in K062 waste ranged up to only 200 ppm, treatment by precipitation acts to concentrate the lead in the sludge. K062 wastewaters were treated by chemical reduction, followed by precipitation with lime and sulfide and sludge dewatering. The sludge generated from this process contained leachable lead concentrations of less than 0.10 mg/l, indicating that the sludge did not need further treatment. The wastewater residual from this treatment contained lead concentrations of less than 0.01 mg/l. These data indicate that the performance of precipitation with lime and sulfide can achieve concentration levels lower than the EP toxic concentration for lead (i.e., 5 mg/l).

Therefore, the Agency is proposing two options for treatment standards for D008 wastewaters. The first option is a treatment standard of 0.04 mg/l 1ead for all D008 wastewaters. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of Section 3004 (m). However, the Agency is proposing a second option of limiting the treatment standards for D008 wastewaters to the characteristic level of 5.0 mg/l. The Agency specifically solicits comments on these two options. The Agency also solicits comment on use of the standards developed for the secondary and primary lead industries as part of the Agency's effluent limitations guidelines program.

The constituents for which U144, U145, and U146 wastes are listed are all soluble salt forms of lead. The constituents for which P110, U144, and U146 are listed are organic forms of lead. While all of these wastes are typically generated as nonwastewaters, the Agency expects that wastewater forms of these wastes may be generated from incidental spills or from a treatment process itself, and thus would require treatment standards. The Agency expects that untreated wastewaters will be more dilute than the untreated K062 wastewaters that were used to develop the treatment standards, and thus would be expected to be less difficult to treat.

Given that: (1) U144, U145, and U146 are all soluble lead compounds, (2) untreated K062 wastewaters are expected to be more difficult to treat than untreated P110, U144, U145, and U146 wastewaters, and (3) the performance data demonstrate that the lead in K062 wastewaters can effectively be removed, EPA is proposing to transfer K062 performance data and concentration-based treatment standard of 0.04 mg/l for P110, U144, U145, and U146 wastewaters.

(2) Treatment Standards for Nonwastewaters Containing Lead. The Agency has identified many types of D008 nonwastewaters that are different, and can be classified as those wastes that can be stabilized, recycled, and incinerated. The Agency has proposed a cut-off concentration of 2.5% total lead as a means of distinguishing between those essentially inorganic nonwastewaters containing recyclable levels of lead and those which can be effectively stabilized. This cut-off level has been proposed based on a limited amount of data from both recycling and stabilization of wastes containing lead.

(a) Standards for Wastes in the Low Lead Subcategory. For D008 nonwastewaters, the Agency has identified two sets of stabilization data on electroplating wastewater treatment sludges (F006) and wastewater treatment sludges from explosives manufacturing (K046). Data on electroplating nonwastewaters indicate that wastes with total lead concentration of 24,500 can be reduced to lead concentrations of 0.51 ppm using the TCLP extract test. At the same time, the Agency has treatment data for K046 wastes that contain total lead concentrations of 1,000 ppm with reductions to 0.l8 ppm of leachable lead. Both of these data sets for diverse waste types indicate that conventional stabilization processes can reduce the leachability of lead to concentrations lower than the EP levels.

Therefore, using the treatment data for F006 wastes, the Agency is proposing a treatment standard of 0.51 mg/l 1eachable lead for D008 wastes that can be effectively stabilized. In order to define this subcategory, the Agency examined the available data and determined that total concentrations of lead up to 2.5 percent can be effectively stabilized. The Agency is proposing this level as a cut-off for those D008 nonwastewaters that can be stabilized. Based on this 2.5% level, the Agency is identifying these wastes that can be stabilized as wastes in the D008 Low Lead Subcategory. The Agency believes that these data for F006 and K046 represent the treatment of wastes that are more difficult to stabilize (due to the presence of organo-lead initiating compounds and residuals organics in the K046 wastes, and high dissolved metals and oil and grease in the F006 wastes).

As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004 (m). However, the Agency is proposing a second option of limiting the treatment standard for these D008 nonwastewater treatment sludges to the characteristic level. The Agency is soliciting comments on this approach and on the definition of stabilized D008 nonwastewaters based on a 2.5 percent cutoff concentration of lead.

(b) Standards for High Lead Subcategory. In determining which D008 lead wastes are amenable to thermal recovery, the Agency has data that indicate that wastes containing concentrations of lead as low as 5 percent can be recovered.

(Note: This 5% level correlates well with the proposed cut-off level of 2.5% based on the performance of stabilization.)

Thus, the Agency is defining wastes in the High Lead Subcategory as those wastes containing greater than or equal to 2.5% lead (based on an analysis of total lead concentration in the waste).

The Agency has identified some particular D008 wastes which appear to have good recovery potential, such as lead acid batteries, lead dross, and electric arc furnace dust.

Data available to the Agency indicates that lead can be recovered from electric arc furnace dust (K061) by high temperature metals recovery. Some K061 wastes contained total lead concentrations up to 14 percent, and were reduced to leachate levels well below the characteristic level of 5.0 mg/l. Based on these data, the Agency believes that residues from thermal recovery of D008 wastes containing high levels of lead will no longer leach lead above the EP toxic level. (See also the discussion on recovery of lead acid batteries and the solicitation of comments and data below.) Therefore, the Agency is proposing a treatment standard of "Thermal Recovery as a Method of Treatment" for wastes in the High Lead Subcategory.

(c) Standards for Lead Acid Batteries Subcategory. Currently, the Agency does not have waste characterization and treatment data from the recycling of lead acid batteries (i.e., influent lead concentrations and total and leachable residual data). Therefore, the Agency is soliciting recovery data of lead from secondary smelting operations. In particular, the Agency is interested in the minimum concentration of lead that can be recovered from other D008 wastes, the resultant waste characteristics associated with the slag (assuming that the slag is either a D008 waste, or comes from smelting a waste that is not indigenous to the industrial furnace), and any treatment data on the slag.

As a result, the Agency is proposing treatment standards for non-indigenous recyclable D008 wastes (identified as the D008 High Lead Subcategory) based on the performance of the high temperature metals recycling of K061 wastes that contain significant concentrations of lead. (Residues from recycling indigenous D008 materials would be subject to the D008 standard if such residues exhibit EP toxicity for lead, and their subcategory would be determined at the time of their generation.)

Incidentally, the Agency notes in response to inquiries from the affected industries that lead acid batteries themselves, when stored before land disposal, are not considered to be land disposed. This is because the battery is considered to be a container (see 40 CFR 264.314(d)(3)). Battery storage, however, typically is subject to the subpart J storage standards (relating to secure storage, secondary containment in some instances, and other requirements).

For the lead acid batteries treatability group, the Agency is proposing metals recovery as a method of treatment. The Agency believes that most of the treaters for lead acid batteries are using a recovery process. These standards only apply for lead acid batteries that are identified as RCRA hazardous wastes and that are not elsewhere excluded from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).

(d) Standards for P110, U144, and U146 Nonwastewaters. The Agency has determined that some nonwastewater forms of lead wastes including P110, U144, U146, and some D008 wastes, would need to be incinerated prior to stabilization due to the presence of high concentrations of organics in order to achieve a treatment standard based on stabilization. This is primarily because the organics typically interfere with conventional stabilization processes (particularly at concentrations exceeding 1% TOC). The Agency has data on the incineration of organic wastes containing up to 1,000 mg/kg lead (such as K048/K051 and K087 wastes) followed by stabilization of the ash. These data indicate that the proposed standard (i.e. 0.51 mg/1 leachable lead) for D008 nonwastewaters in the Low Lead Subcategory based on stabilization can be achieved for wastes that also contain significant concentrations of organics, provided the organics are destroyed by pretreatment. The Agency is therefore proposing that this standard is applicable to those U and P lead wastes that are organo-lead compounds, i.e., P110, U144, and U146. This is further supported by the fact that the lead contained in the K048–K052 petroleum refinery wastes that were incinerated, probably was present as tetraethyl lead thus supporting the extrapolation to P110, off-specification tetraethyl 1ead. Lead acetate (U144) and lead subacetate (U146) are anticipated to be less difficult (or at least of similar difficulty) to treat than tetraethyl lead.

(e) Standards for Radioactive Lead Solids Subcategory. The Agency is also proposing treatment standards for radioactive lead solids. These lead solids include, but are not limited to, all forms of lead shielding, lead "pigs", and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and then stabilized as ash. These wastes are different than the other D008 nonwastewaters containing high levels of lead, because of their radioactivity.

EPA does not believe that metal recovery (i.e., smelting) is an available technology for radioactive solids. Any lead recovery would be radioactive, and thus unusable. If the radioactive lead was smelted along with normal lead, the entire mass recovered would be unusable.

However, conventic nal stabilization technologies generally should not be impacted by the presence of radioactive versus nonradioactive lead. As a result, the Agency is not subcategorizing wastewater treatment residues and incinerator ash containing radioactive lead or other metals except for purposes of determining availability of treatment capacity (i.e., stabilization processes for radioactive materials should employ special safety precautions due to the radioactivity). Therefore, the Agency has developed a separate treatability group and BDAT for the specified radioactive lead solids.

For these radioactive lead solids, the Agency is proposing a treatment standard of "Surface Deactivation or Removal of Radioactive Lead Portions Followed by Encapsulation; or Direct Encapsulation as Methods of Treatment". The Agency believes that most radioactive lead results from the use of the elemental lead (a solid) either directly or indirectly as a shield from radioactivity. Typically, the radioactivity penetrates slowly into one side of the lead (shield), thus providing the necessary protection. Therefore, depending upon the thickness of the lead shield the radioactive portion of the lead may be able to be shaved off from the nonradioactive portion. The remaining nonradioactive lead would then be subject to the treatment standard for High Lead wastes, "Thermal Recovery as a Method of Treatment". The radioactive portion (or in some cases the entire shield or solid) would then be either macro- or micro-encapsulated into a protective material that would prevent the lead from leaching in the disposal environment.

BDAT TREATMENT STANDARDS FOR D008, P110, U144, U145, U146

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, final composition (mg/l)
Lead	0.040

BDAT TREATMENT STANDARDS FOR P110, U144, U145, AND U146

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Lead	0.51

BDAT TREATMENT STANDARDS FOR D008 LOW LEAD SUBCATEGORY—LESS THAN 2.5%

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Lead	0.51

BDAT TREATMENT STANDARDS FOR D008 HIGH LEAD SUBCATEGORY GREATER THAN OR EQUAL to 2.5% LEAD

[Nonwastewaters]

Thermal recovery as a method of treatment

BDAT TREATMENT STANDARDS FOR D008

[Lead Acid Batteries*]

Thermal recovery as a method of treatment

*This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).

BDAT TREATMENT STANDARDS FOR D008

[Radioactive Lead Solids*]

Surface deactivation or removal of radioactive lead portions followed by encapsulation; or direct encapsulation of radioactive lead solids as methods of treatment

*These lead solids include, but are not limited to, all forms of lead shielding, lead "pigs", and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and then stabilized as ash.

g. Mercury.

D009—EP toxic for mercury
K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used
K106—Wastewater treatment sludges from the mercury cell process in chlorine production
P065—Mercury fulminate
P092—Phenylmercury acetate
U151—Mercury

These six wastes are grouped together because they contain mercury as the primary hazardous constituent. The Agency is grouping these wastes together in order to simplify the explanation of the chemistry of mercury and the operational treatment principles of technologies for treating the related mercury wastes.

(1) Review of Applicable Technologies for Nonwastewaters—(a) Thermal Recovery Processes. Based on the available treatment data from thermal recovery processes for K071, K106, and for cinnabar ores, EPA is proposing thermal recovery as part of the treatment standards for many of the nonwastewater forms of these six mercury wastes. EPA has examined data on the mercury content of residues from roasting/retorting of K071 and K106 wastes, and believes that it shows substantial reductions in mercury mobility. The data indicated that mercury can be recovered from these wastes such that the residues contain less than 16 mg/kg of total mercury.

In addition, EPA believes the thermal processing of cinnabar ores simulates the roasting/retorting of mercury sulfide containing wastes. These additional data indicates that the thermal processing of cinnabar ores yields a calcinated residue containing 100 mg/kg total mercury, and none of treated residues exceed EP toxicity Levels for mercury. As a result, EPA is proposing to use the lowest concentration based number achieved by these two sets of thermal recovery data, i.e., the 16 mg/kg, to reflect the level of mercury amenable to recovery.

It is not clear from the available data whether organo-mercury wastes (like P065 and P092) can be retorted directly, or if the organic fraction must be destroyed first. Consequently, for certain organo-mercury wastes, EPA is proposing an initial treatment step to destroy the organics followed by thermal recovery of mercury if the incineration residues contain sufficient mercury to be amenable to recovery.

The Agency is aware of other thermal processes, such as scrap metal distillation incorporating steam stripping and vacuum distillation, that are used for recovery of mercury from debris and equipment. However, the Agency has no particular data from these processes for use in the development of treatment standards. Therefore, the Agency is soliciting data and information on these technologies.

(b) Acid Leaching. The promulgated treatment standards for K071 nonwastewaters in the First Third rule based on the performance of a treatment process involving acid leaching to solubilize and extract the mercury contained in the K071 brine sludge and later convert the mercury to a relatively insoluble mercury sulfide sludge. (See further discussion of proposed rule for K071 in 53 FR 11758–11759 (April 8, 1988) and final rule in 53 FR 31166–31167 (August 17, 1988).) The Agency is using these data and promulgated standards for transfer to wastes that contain less than 16 mg/kg total mercury as generated (i.e., wastes with insufficient mercury to warrant recovery). Residues from this acid leaching process must be evaluated for mercury content to determine whether they must undergo thermal recovery.

(c) Stabilization. Existing stabilization data for K106 nonwastewaters containing over 2% total mercury (by weight) indicate that the overall leachability of mercury from the K106 wastes actually increases with the addition of the alkaline stabilization reagents. Thus, conventional cementitious and pozzolanic stabilization processes (all of which involve alkaline materials) are not considered BDAT for wastes containing concentrations above 2% total mercury.

No data have been received on K106 stabilization using proprietary binders such as asphalts, silicates, or sulfide. While some vendors have expressed their interest in submitting data to EPA, these data have not been submitted at the time of this rule. If these data become available, anyone interested in reviewing performance data for the stabilization of K106 wastes (mercury sulfides), must request such data following the procedures described in section III.A.1.i. of today's preamble. This request should be identified as "III.A.5.g. Stabilization of Mercury Wastes".

(d) Incineration. EPA has information from a few facilities that indicate routine incineration of some wastes containing organo-metallics. EPA believes that these include organo-mercury wastes such as spent organo-mercury catalysts, organo-mercurials in lab packs, and paint sludges containing mercury. Thus, incineration is considered to be demonstrated to treat a vast array of mercury-containing wastes. The mercury from these wastes is not destroyed by the incineration process but rather accumulates as inorganic mercury compounds in the ash, the scrubber water, and the wastewater treatment sludges from the treatment of the scrubber waters. Thus, the Agency is specifying further treatment of incineration residues in order to reduce the mobility or concentration of mercury to levels that more fully minimize threats to human health and the environment.

(2) Complications of Co-disposal with Alkaline Materials. Mercury sulfide is relatively insoluble in water under acid conditions. However, the information on the attempted pozzolanic stabilization of K106 (which is primarily mercury sulfide) indicates that the leachability (i.e., solubility) of the mercury increases under alkaline conditions. Therefore, the low solubility of mercury sulfide must be balanced against the potential for leachability of the resulting wastewater treatment sludges during co-disposal with alkaline wastes or materials. This potential for increased leachability under these conditions is a legitimate concern, in that some operators of hazardous landfills co-dispose all "metal" wastes and it is typical practice to add excess lime to prevent migration of the other metals prior to disposal.

The Agency solicits comment on whether it should establish disposal requirements under 40 CFR parts 264 and 265 for all mercury sulfide wastewater treatment residuals in the Low Mercury Subcategory which would require segregation of the treatment residuals from alkaline materials (in either monofills or separate subcells within a landfill). Such a requirement would be a type of management standard designed to prevent co-disposal of incompatible wastes. By soliciting comment, EPA notes that these proposed requirements may be promulgated as additional requirements to meeting the proposed concentration-based TCLP standards.

The Agency also solicits comment on an alternative of simply classifying D009, K071, K106, P065, P092, and U151 nonwastewaters in the Low Mercury Subcategory as "incompatible" with alkaline wastes like hydroxide sludges. The basis would be the increased potential for leachability of the mercury when exposed to alkaline pH.

(3) Standards for All Wastewaters. The Agency has identified ion exchange, carbon disulfide sorption, chemical oxidation/reduction, chemical precipitation, or combinations of these technologies as applicable technologies to treat inorganic mercury wastewaters. Chemical oxidation/reduction processes typically alter the chemical valence of mercury species for subsequent precipitation or removal by ion exchange or carbon disulfide sorption.

While ion exchange and carbon disulfide sorption may be used directly on a mercury-containing wastewater, all of the mercury must be in the proper valence state. Typically these two removal technologies are used primarily as polishing steps after precipitation. Several facilities are believed to be treating mercury wastewaters with ion exchange or carbon disulfide sorption. However, the Agency lacks sufficient wastewater treatment data based on the use of these two technologies.

The Agency has data on precipitation of mercury from wastewaters identified as K071 from the chlor-alkali industry using sulfide as the precipitant. The Agency believes that these data represent a matrix that is difficult to treat since it consists of a mixture of different forms of inorganic mercury. The data show that this precipitation process provides effective treatment and removal of mercury from these wastewaters because it reduces the concentration of mercury in the wastewater to levels below the characteristic level of 0.2 mg/l.

Based on these treatment data, the Agency is proposing a treatment standard of 0.030 mg/l mercury for all D009 wastewaters. The Agency believes that these wastes represent the most difficult to treat wastewaters. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004(m). The Agency is also proposing a second option of limiting the treatment standard for D009 wastewaters to the characteristic level of 0.2 mg/l. The Agency specifically solicits comments on these two options.

The Agency is also proposing to transfer these performance data and standards to K106, P065, P092, and U151 wastewaters. EPA is soliciting and data on the achievability of these standards for all mercury wastewaters. In particular, the Agency solicits data characterizing the untreated and treated mercury-contaminated wastewaters that are routinely generated, information pertinent to the design and operation of their wastewater treatment technologies, and information pertinent to the manufacturing processes generating these mercury-bearing wastewaters.

Some mercury-containing wastewaters may require more extensive treatment trains in order to treat hexavalent chromium, other metals, and organics which could possibly interfere with the treatment of the mercury. A reduction step for hexavalent chromium and an oxidation step (with reagents such as hydrogen peroxide or hypochlorite) may be necessary to treat the organics. In addition, complexed organometallics which may be present will probably have to be oxidized or otherwise removed prior to conversion of the mercury to their proper valence state for further metal treatment by precipitation. However, the Agency currently lacks reliable data that indicate that the proposed concentration-based standards cannot be achieved for these types of wastes. Nevertheless, EPA anticipates that pretreatment steps such as hexavalent chromium reduction and chemical oxidation of organics may be necessary and these pretreatment steps could remove these potential interferences. This is further supported by the fact that quantitative analytical methods for mercury in waste samples include such pretreatment steps to remove the interferences during analysis. The Agency specifically solicits comments on the applicability of these and other pretreatment technologies for mercury-containing wastewaters and data that indicate the achievability of the proposed wastewater standard.

(4) Standards for K106 and U151 Nonwastewaters. The Agency previously proposed treatment standards for K106 wastes based on retorting in the First Third proposed rule (53 FR 17578, May 17, 1988). The proposed standards, however, were not promulgated because, at that time, there was insufficient information to support the transfer from the retorting of mercury sulfide ores or other mercury wastes that the Agency believed were similar to the K106 wastes (53 FR 31173–31174, August 17, 1988). The Agency has since collected performance data on the thermal processing of cinnabar ores that the Agency believes simulates the roasting/retorting of mercury sulfide containing wastes. (See section III:A.5.g.(1.)(a.) above).

The Agency is proposing to establish a High Mercury Subcategory and a Low Mercury Subcategory for K106 and U151 nonwastewaters based on a cut-off of 16 mg/kg. For wastes in the High Mercury Subcategory (i.e., containing greater than or equal to 16 mg/kg total mercury) the Agency is proposing a treatment standard of "Roasting or Retorting as a

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Method of Treatment". Since it is likely that K106 and U151 wastes will be considered indigenous to the thermal recovery processes, the residues from these processes would no longer be considered K106 or U151. However, if these wastes are EP toxic for mercury (D009) they must then comply with the appropriate standards for D009 wastes (i.e., High or Low Mercury Subcategory) presented below.

For K106 and U151 nonwastewaters in the Low Mercury Subcategory (i.e., less than 16 mg/kg total mercury) the Agency is proposing a treatment standard of 0.025 mg/l mercury measured in a TCLP leachate based on the transfer of performance of acid leaching data for K071 nonwastewaters. (See section III.A.5.g.(1.)(b.) above.) Residues from this acid leaching process must be evaluated for mercury content to determine whether they must undergo thermal recovery. K106 and U151 nonwastewaters that contain less than 16 mg/kg total mercury and that also leach less than 0.025 mg/l mercury (as measured in the TCLP extract) are considered to have met the BDAT and can be land disposed.

(5) Proposed Revisions of K071 Nonwastewaters. The Agency promulgated treatment standards for K071 nonwastewaters with the First Third Final Rule based on the performance of a treatment process involving an acid leaching to solubilize and extract the mercury contained in the K071 brine sludge and later convert the mercury to a relatively insoluble mercury sulfide sludge. (See further discussion of proposed rule for K071 in 53 FR 11758–11759 (April 8, 1988) and final rule in 53 FR 31166–31167 (August 17, 1988).)

The Agency is proposing to create a new subcategory identified as K071 High Mercury Subcategory and is thus proposing to partially replace the K071 nonwastewater treatment standard previously promulgated. Thus, for K071 nonwastewaters in the High Mercury Subcategory (i.e., greater than or equal to 16 mg/kg total mercury) the Agency is proposing a treatment standard of "Roasting or Retorting as a Method of Treatment". (See also discussion for K106 and U151.) The Agency is also proposing to create a new subcategory identified as Low Mercury Subcategory, i.e., less than 16 mg/kg total mercury, for K071 nonwastewaters and is retaining the promulgated standard (0.025 mg/l mercury based on analysis of a TCLP extract) for these wastes.

(6) Standards for P065 and P092 Nonwastewaters. Mercury fulminate (P065) and phenylmercury acetate (P092) are mercury compounds containing carbon. The Agency has determined that incineration represents part of the BDAT for P065 and P092 nonwastewaters. This is because incineration is demonstrated for destruction of carbon-metal bonds in organo-metallics, and may be necessary to make mercury available for recovery. (See discussion of incineration in section III.A.5.g.(1.)(a.) and (c.) above.) Also, the Agency notes that available information for P065 indicates that mercury fulminate can be destroyed in an incinerator designed to destroy explosive wastes. (Detailed information on the treatment methods identified for mercury fulminate can be found in the Department of the Army Technical Manual, TM–9–1300–214, Military Explosive, September 1984).

Incineration of P065 and P092 will not destroy mercury, which will end up in the residues. The residues therefore must be treated further. This is reflected in the proposed standard for these wastes: "Incineration followed by roasting or retorting of incinerator nonwastewater residues (ash and wastewater treatment sludges from the treatment of incinerator scrubber waters) provided such residues exceed 16 mg/kg total mercury; and scrubber waters from incineration must comply with the 0.030 mg/l wastewater standard" for D009, K106, P065, P092, and U151 wastewaters.

In other words, residues from incinerating these wastes (including wastewater treatment sludges from the treatment of scrubber waters) require further treatment for mercury. For nonwastewaters, if the residues contain sufficient mercury to warrant recovery (16 mg/kg total mercury) they would have to be roasted or retorted. If not, they would have to meet the standard for low mercury wastes. Scrubber waters would be required to meet the same standard applicable to all wastewaters within the mercury treatability group. Thus, for these wastes, incineration serves as a type of pretreatment, and nonwastewaters from incineration are then evaluated to determine if they are in the High or Low Mercury Subcategory, and the appropriate treatment standard for mercury applies.

(7) Standards for D009 Nonwastewaters. Treatment standards for D009 nonwastewaters in the High Mercury Subcategory are being proposed based on a combination of the standard for K106 and that for P065 and P092. The main reason for this is that D009 wastes may be contaminated with organics or other organo-mercury constituents (along with inorganic mercury). EPA is thus proposing a standard for D009 nonwastewaters in the High Mercury Subcategory of "Roasting or retorting as a method of treatment; or incineration followed by roasting or retorting of incinerator nonwastewater residues (ash and wastewater treatment sludges from the treatment of incinerator scrubber waters) provided such residues exceed 16 mg/kg total mercury". As a result, if the organic content is too high for the retorting or roasting, incineration would be required as a pretreatment step. The Agency considered proposing a subcategory of organic-mercury wastes; however, the Agency had no means of establishing a definition for these wastes. Thus, the Agency is soliciting data and comment that would assist the Agency is subdividing this standard according to the organic content.

(8) Standards for Radioactive Wastes Containing Mercury. Information provided recently to EPA by the United States Department of Energy (DOE) indicates the generation of two particular mixed radioactive/hazardous wastes that contain mercury. This information also suggests that the BDAT technologies and standards proposed for the corresponding nonradioactive wastes may not be applicable. The Agency, therefore, has developed alternative treatment standards for these wastes which are presented in the following section.

(a) Elemental Mercury. Elemental mercury is typically found in vacuum pumps and related manometers. In the nuclear industry, this form of mercury has been contaminated with radioactive tritium (a radio-isotope of hydrogen). These wastes are often identified as D009 or U151. The treatment standard proposed for the nonradioactive wastes of this type is "Roasting or Retorting as a Method of Treatment". However, the Agency has no data or information that would indicate that these processes would be able to separate the mercury from the radioactive material (i.e., tritium) resulting in a reusable mercury. Thus, the Agency believes that these processes would not necessarily be applicable to these wastes and therefore developed a proposed standard based on the following information.

As a result of the high vapor pressure associated with elemental mercury in the liquid form, the predominant safety concern with the mercury in these wastes is from air emissions. One method that has been developed to handle spills of nonradioactive liquid mercury involves the application of elemental zinc powder to areas that have been contaminated with the mercury (the visible droplets of liquid mercury are physically collected in a separate step before application of the zinc). The zinc is dampened with dilute sulfuric acid (5–10%) until a paste is formed. This paste is then collected for disposal. The mercury forms an amalgam with the zinc providing a significant reduction in air emissions of mercury. (EPA prefers this procedure over the conventional spill cleanup procedures involving addition of calcium polysulfide or flowers of sulfur because use of zinc results in lower air emissions of mercury.)

The Agency currently has no information on whether this procedure will reduce the overall leachability of mercury. However, the Agency has determined that this procedure does provide significant treatment due to the decrease in air emissions, the change in mobility from liquid mercury to a paste-like solid, and the potential reduction in leachability due to the amalgamation with the zinc. Based on this information, the general lack of treatment data, the lack of alternative technologies, and the unique handling problems associated with the radioactivity, the Agency is proposing a treatment standard for D009 and U151 elemental mercury wastes contaminated with radioactive materials of "Amalgamation with Zinc as a Method of Treatment". Roasting, retorting or other recovery process are not precluded from use by this standard as long as all residuals from these recovery processes comply with the amalgamation treatment standard prior to land disposal.

(b) Hydraulic Oil Contaminated with Mercury. The DOE also indicated the generation of a hydraulic oil that is contaminated with mercury and tritium. EPA is assuming that the hydraulic oil referred to by DOE is organic and can be incinerated. EPA has determined that the technologies applicable to nonradioactive mercury wastes that contain high levels of organics are incineration followed by roasting or retorting of all of the inorganic residues and wastewater treatment for the scrubber waters. (See the exact proposed standards for P065 and P092 nonwastewaters above.)

The Agency is proposing to modify this standard for this type of radioactive mercury waste by removing the requirement to recover mercury from the inorganic residues. Because the Agency is uncertain that roasting or retorting will be able to recover a reusable mercury (i.e., nonradioactive) from these residues, the Agency is proposing a treatment standard of "Incineration as a Method of Treatment with incinerator residues meeting the following: (1) Ash and wastewater treatment sludges from the treatment of scrubber waters must comply with a TCLP concentration of 0.025 mg/l; and (2) Scrubber waters must comply with a total concentration of 0.030 mg/l wastewater standard" for D009 Hydraulic Oil Contaminated with Radioactive Materials.

BDAT TREATMENT STANDARDS FOR D009, K106, P065, P092, AND U151

[Wastewaters]

Regulated constituent	Maximum for any single grab sample Total composition (mg/l)
Mercury	0.030

BDAT TREATMENT STANDARDS FOR K106 AND U151

[Nonwastewaters]

[High Mercury Subcategory—Greater than or equal to 16 mg/kg total mercury]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Roasting or Retorting as a Method of Treatment	

BDAT TREATMENT STANDARDS FOR K106 AND U151

[Nonwastewaters]

[Low Mercury Subcategory—Less than 16 mg/kg total mercury]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Mercury	0.025

BDAT TREATMENT STANDARDS FOR K071*

[Nonwastewaters]

[High Mercury Subcategory—Greater than or equal to 16 mg/kg total mercury]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Roasting or Retorting as a Method of Treatment	

* This standard creates a new subcategory identified as K071 High Mercury Subcategory and would replace the K071 nonwastewater treatment standard promulgated August 17, 1988 (53 FR 31167) for wastes that would now fall into this new subcategory.

BDAT TREATMENT STANDARDS FOR K071*

[Nonwastewaters]

[Low Mercury Subcategory—Less than 16 mg/kg total mercury]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Mercury	0.025

* This standard is the same as the standard for K071 nonwastewaters promulgated August 17, 1988 (53 FR 31167), but now would only be applicable to the new subcategory identified as the K071 Low Mercury Subcategory.

BDAT TREATMENT STANDARDS FOR P064 AND P092

[Nonwastewaters]

Incineration Followed by Roasting or Retorting of Incinerator Nonwastewater Residues (Ash and Wastewater Treatment Sludges from Treatment of the Incinerator Scrubber Waters) Provided Such Residues Exceed 16 mg/kg Total Mercury; and Scrubber Waters from Incineration Must Comply With the 0.030 mg/l Wastewater Standard

BDAT TREATMENT STANDARDS FOR D009

[Nonwastewaters]

[High Mercury Subcategory—Greater than or equal to 16 mg/kg total mercury]

Roasting or Retorting as a Method of Treatment; or Incineration Followed by Roasting or Retorting of Incinerator Nonwastewater Residues (Ash and Wastewater Treatment Sludges from Treatment of the Incinerator Scrubber Waters) Provided Such Residues Exceed 16 mg/kg Total Mercury

BDAT TREATMENT STANDARDS FOR D009

[Nonwastewaters]

[Low Mercury Subcategory—Less than 16 mg/kg total mercury]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Mercury	0.025

BDAT TREATMENT STANDARDS FOR D009 AND U151 ELEMENTAL MERCURY CONTAMINATED WITH RADIOACTIVE MATERIALS

Amalgamation with Zinc as a Method of Treatment

BDAT TREATMENT STANDARDS FOR D009 HYDRAULIC OIL CONTAMINATED WITH MERCURY AND RADIOACTIVE MATERIALS

Incineration as a Method of Treatment with Incinerator Residues Meeting the Following: (1) Ash and Wastewater Treatment Sludges from Treatment of the Incinerator Scrubber Waters Must Comply with a TCLP Concentration of 0.025 mg/l; and (2) Scrubber Waters must Comply with a Total Concentration of 0.030 mg/l Wastewater Standard)

h. Silver. The Agency has identified three hazardous wastes that potentially contain high levels of silver. These include P099 (potassium silver cyanide), P104 (silver cyanide), and D011 (EP toxic for silver; 5.0 mg/l silver as measured in an EP leachate). Treatment standards for cyanides contained in P099 and P104 wastes were promulgated with the Final Rule for Second Third Wastes (54 FR 26614 (June 23, 1989)). At the same time, treatment standards for silver in P099 and P104 wastewaters were not promulgated based on the lack of treatment data. Today's notice proposes treatment standards for P099 and P104 wastewaters and all D011 wastes.

Silver is part of the Group I elements and has chemical properties similar to lead and mercury. In aqueous conditions silver typically exists as a monovalent, cationic species. This behavior is important, in that selection and performance of treatment technologies for silver is somewhat similar to most other metals based on this cationic behavior in aqueous conditions. However, due to differences in solubilities of certain salts of silver compared to other metals, treatment technologies for both wastewaters and nonwastewaters containing silver are slightly different compared to wastes containing only other metal constituents.

The treatment standards presented in today's preamble for all silver wastes are based on a limited amount of treatment data. In this notice, the Agency is soliciting data on the characterization and treatment of all wastes containing silver. Copies of any additional data pertaining to these proposed treatment standards that may be submitted during the public comment period, can be specifically requested in writing by identifying the request for data as "additional data on treatment of silver—section III.A.5.h.". See section III.A.1.i. of today's preamble for additional information on procedures for requesting additional data on specific standards.

(1) Identification of BDAT for Wastewaters. When evaluating treatment technologies to establish wastewater treatment standards for silver wastes, the Agency believes that it must consider not only the efficiency of removal of silver from the wastewater, but also the physical and chemical state of the precipitated silver salts that end up in the wastewater treatment residues.

Some data indicate that silver can be removed from wastewaters by using lime (calcium hydroxide) or caustic (sodium hydroxide) as a precipitating reagent (resulting in precipitation of the silver as a hydroxide salt (silver hydroxide)). However, silver is typically precipitated as a chloride salt (silver chloride) using a soluble chloride salt as a precipitating reagent. Most other cationic metals are typically removed from wastewaters based on precipitation as hydroxides, carbonates or sulfides. While silver hydroxide is slightly soluble in water, silver chloride is relatively insoluble in water. Although lime or caustic may be effective in precipitating silver from wastewaters, chloride precipitation should result in a precipitate that is less soluble in water than the hydroxide salt.

Due to the relatively higher solubility of silver hydroxide (compared to silver chloride), there exists a reasonable potential for an increase in leachability of silver from the resulting wastewater treatment sludge containing silver as a chloride during co-disposal with alkaline wastes or materials. This potential for increased leachability under these conditions is a legitimate concern, in that some operators of hazardous landfills co-dispose all "metal" wastes and it is typical practice to add excess lime to prevent migration of the other metals prior to disposal.

Thus, EPA solicits comments on whether it should (as part of the treatment standard) specify the use of chloride as the precipitating reagent for all wastewaters containing silver. In a similar manner, the Agency solicits comment on whether it should establish disposal requirements under 40 CFR parts 264 and 265 for all silver wastewaters that would include chloride precipitation followed by segregation of the treatment residuals from alkaline materials (i.e., in either monofills or separate subcells within a landfill). In doing so, EPA notes these proposed requirements may then be promulgated as additional requirements to meeting the proposed concentration-based standards.

The Agency has information that sulfide has been used to precipitate silver contained in photoprocessing wastewaters. Also, ion exchange of silver has been reported as achieving extremely high removal efficiencies. The Agency is soliciting data on the efficiency of these treatment technologies for D011 wastes.

For some silver wastewaters more extensive treatment trains may be necessary in order to treat hexavalent chromium, other metals, and organics which could possibly interfere with the treatment of the silver. A reduction step for hexavalent chromium and an oxidation step (with reagents such as hydrogen peroxide or hypochlorite) may be necessary to treat the organics. However, the Agency currently lacks data that indicate that the proposed concentration-based standards cannot be achieved for these type of wastes and anticipates that pretreatment steps such as hexavalent chromium reduction and chemical oxidation of organics could remove these potential interferences. The Agency specifically solicits comments on the applicability of these and other pretreatment technologies for silver wastewaters and data that indicate the achievability of the concentration-based standards proposed in the following sections.

The Agency has very little data on precipitation of silver from RCRA hazardous wastewaters identified as P099, P104, or D011. However, the Agency's does have data from its analysis of various treated wastewaters under the Agency's Effluent Guideline Program. In the absence of treatment data specific to P099, P104, or D011 wastewaters, the Agency believes that these data from the Effluent Guidelines Program can be transferred to develop treatment standards for P099, P104, or D011 wastewaters. The data show that the treatment provided by these industries can reduce the concentration of silver in the wastewater of levels below the characteristic level of 5.0 mg/l.

Therefore, the Agency is proposing two options for treatment standards for D011 wastewaters. Based on these treatment data, the Agency is proposing a treatment standard of 0.29 mg/l silver for all D011 wastewaters as one option. As discussed in detail in section III.C. of today's preamble, the Agency has initially determined that it has the authority to establish treatment standards below the characteristic level for these wastes or at least to make failure to treat to the lower level a violation of section 3004(m). The Agency is also proposing a second option of limiting the treatment standard for D011 wastewaters to the characteristic level of 5.0 mg/l. The Agency specifically solicits comments on these two options.

Based on this same data, the Agency is also proposing a treatment standard for silver in P099 and P104 wastewaters of 0.29 mg/l of silver. While P099 (potassium silver cyanide) and P104 (silver cyanide) wastes are typically generated as nonwastewaters, the Agency expects that wastewater forms of these wastes may be generated from incidental spills or from the treatment process itself and thus would require treatment standards. The Agency expects that untreated wastewaters will be relatively dilute, and thus would not be expected to be difficult to treat. The Agency points out that it is not recpening the promulgated treatment standards for cyanides in P099 and P104 for comment.

(2) Identification of BDAT for Nonwastewaters. The Agency is proposing several options for treatment standards for D011 nonwastewaters. These options are based on the inherent economic value of silver and the general lack of treatment data for wastes containing various levels of silver.

For nonwastewater forms of D011, the Agency believes that the silver can be dissolved or leached using an appropriate media (each chemical form of silver may require a different dissolving media) and either reprecipitated as the chloride or hydroxide or better yet, recovered for its inherent economic value through processes involving electro-deposition or electro-winning. As an example, while silver chloride is generally insoluble in dilute acids, it is considerably soluble in strong ammonia (NH_4OH) and could theoretically be leached by ammonia and recovered. The Agency believes that due to the relatively high economic value of silver, an economic incentive already exists for most generators to investigate all recovery options as well as source reduction techniques to prevent generation. The Agency is thus proposing one option for D011 nonwastewaters treatment standards as "Recovery as a Method of Treatment".

However, the Agency does not think that at very low concentrations (i.e., just above the EP level) and low waste volumes, recovery may not be a viable alternative for D011 wastes. Therefore, the Agency investigated the availability of stabilization data for wastes containing silver. Treatment standards for silver in nonwastewater forms of P099 and P104 were promulgated in the Second Third Rule (53 FR 28615, (June, 23, 1989)). These standards were transferred from stabilization data for F006 nonwastewaters. However, these data represent the stabilization of a waste that originally contained low concentrations of silver. The Agency received no comments disputing the achievability of the silver standards for P099 and P104 wastes, even though the Agency anticipates that these wastes could contain reasonably high levels of silver. As a result, the Agency is proposing the same concentration-based standards for silver in D011 nonwastewaters. However, the Agency is concerned about the validity of the transfer of these standards to D011 wastes that contain high levels of silver, and is thus proposing "Recovery or Stabilization as Methods of Treatment".

EPA is currently unaware of any silver wastes contaminated with high levels of organics being generated on a routine basis. If these wastes do exist, the Agency believes that these wastes can be incinerated prior to stabilization of the ash. The Agency is soliciting information on whether these wastes actually exist, the concentration of silver and organics within these wastes, and treatment data for these wastes. If the Agency finds that these wastes do exist and treatment data is submitted, the Agency may define these wastes as a separate treatability group based on the level of organics and silver and promulgate the resultant concentration-based standards based on these data. However, information is submitted that these wastes exist but no treatment data are submitted from which concentration-based standards can be developed, the Agency may promulgate "Incineration Followed by Stabilization as a Method of Treatment" for these wastes.

BDAT TREATMENT STANDARDS FOR D011, P099, AND P104

[Wastewaters]

Regulated constituent	Maximum for any 24 hour composite sample, total composition (mg/l)
Silver	[illegible]

BDAT TREATMENT STANDARDS FOR D011

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Silver	0.072

i. Thallium

P113—Thallic oxide
P114—Thallium selenite
P115—Thallium (I) sulfate
U214—Thallium (I) acetate
U215—Thallium (I) carbonate
U216—Thallium (I) chloride
U217—Thallium (I) nitrate

In today's notice, the Agency is proposing wastewater and nonwastewater treatment standards for P113, P114, P115, U214, U215, U216, and U217 thallium wastes. The Agency has been able to identify only one manufacturer of Thallium wastes. (In fact, the Bureau of Mines estimates the production of thallium as only 4,000 pounds per year.) Most of thallium compounds are used in research, in the electrical industry for the production of thallium activated sodium iodide crystals, in the glass industry as low melting alloys, and as catalysts in the organic chemical industry.

(1) Wastewaters. The Agency has reviewed characterization data from the Generator Survey and the TSDR Survey for thallium wastewaters. Based on the information from these surveys, most thallium wastewaters are characterized as metallic acidic liquids. There may be other metals such as lead, nickel, and zinc present within the wastes. The concentration of thallium in these wastes range from 0.1–10 ppm.

The Agency has information indicating that thallic hydroxide compounds are very insoluble. The Agency is proposing to use this information to extrapolate treatment standards to these thallium wastes. The Agency believes that because thallic hydroxide is so insoluble, if these thallium wastes are treated by chemical oxidation followed by chemical precipitation with hydroxide reagents, settling and filtration, most of the thallic compounds will precipitate out in the sludge. Therefore, BDAT for thallium wastewaters is chemical oxidation followed by chemical precipitation with hydroxide reagents, settling and filtering. The treatment standard being proposed today is based on the detection limit of thallium in wastewaters.

As an alternative, the Agency has recently analyzed additional wastewater treatment data primarily from the Agency's Office of Water for incorporation into the treatment standards for many of the U and P wastes in this section. These data include the treatment of wastewaters that are not specifically listed as U or P wastewaters, but do contain many metal constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using

these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h.(6.). The resultant alternative standard calculated for thallium in wastewaters is 1.400 mg/l.

(2) Nonwastewaters. The Agency is proposing several options for treatment standards for P113, P114, P115, U214, U215, U216, and U217 nonwastewaters. These options are based on the inherent economic value of thallium and the general lack of treatment data for wastes containing various levels of thallium.

Based on information from the Generator Survey, most of the thallium nonwastewaters are characterized as inorganic salts used as research chemicals, off-specification, or out-dated materials. Because of the insolubility of thallic hydroxide compounds and the information that suggest that these thallium compounds are mostly inorganic, the Agency believes that P113, P114, P115, U214, U215, U216, and U217 nonwastewaters are also primarily inorganic and therefore can be stabilized. Thus, the Agency is proposing that stabilization is also BDAT for the nonwastewaters. In addition, the Agency believes that due to the relatively high economic value of thallium, an economic incentive already exists for most generators to investigate all recovery options as well as source reduction techniques to prevent generation. However, the Agency does not think that at very low concentrations and low waste volumes, recovery may not be a viable alternative for thallium wastes. The Agency is thus proposing for a nonwastewater treatment standard of "Recovery or Stabilization as a Method of Treatment" for P113, P114, P115, U214, U215, U216, and U217.

The Agency is also soliciting comments on the regulation of P114 (thallium selenite). In section III.A.5.b. of today's rule, the Agency is proposing a concentration-based treatment standard for D010 nonwastewaters based on vitrification data for arsenic. Thus, the Agency is proposing "Vitrification *or* Stabilization as a Method of Treatment" for P114 nonwastewaters and is soliciting comments on whether vitrification is necessary to immobilize both thallium and selenium. The Agency is soliciting comments on potential cut-off levels for thallium wastes that can be recovered versus those that can be stabilized and any stabilization data on wastes containing thallium.

BDAT TREATMENT STANDARDS FOR P113, P114*, P115, U214, U215, U216, AND U217

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Thallium	0.14

*Treatment standards for selenium in P114 wastewaters are presented in section III.A.5.b.

BDAT TREATMENT STANDARDS FOR P113, P115, U214, U215, U216, AND U217

[Nonwastewaters]

Recovery or stabilization as a method of treatment

BDAT TREATMENT STANDARDS FOR P114

[Nonwastewaters]

Vitrification or stabilization as a method of treatment

j. Vanadium.

P119—Ammonium vanadate
P120—Vanadium pentoxide

Vanadium compounds are used primarily as alloying materials in iron and steel production or as catalysts in several chemical manufacturing processes such as adipic acid, sulfuric acid, synthetic rubber, and crude oil. Most of the vanadium produced in the United States comes from mined ores or recovery processes. Vanadium is recovered from mining ores by calcining and leaching of the calcined material. Recovery processes usually recover the vanadium in its pentoxide state. Vanadium is recovered in uranium production via liquid/liquid extraction; and the product is usually in the form of ammonium metavanadate.

The Agency believes that these wastes comprise one treatability group because they are produced from the same mined ores and are used as catalysts in similar industries. Vanadium wastes such as P119 and P120, can be generated as a fly ash or slag from the iron and steel industry or as a spent catalyst from the chemical manufacturing process. Based on information from the Generators Survey, these wastes could be classified as inorganic solids, organic liquids, or used bags or drums.

(1) Wastewaters. The Agency believes that P119 and P120 wastewaters could be generated from recovery or incineration of the nonwastewater forms of P119 and P120, and as leachate from landfill closure operations. A review of the literature indicates that vanadium compounds can be treated with ferric sulfate. By treating with ferric sulfate, the vanadium is removed from the wastewaters and ferric metavanadate, which is relatively insoluble, remains in the filter cake.

The Agency has recently analyzed additional wastewater treatment data primarily from the Agency's Office of Water for incorporation into the treatment standards for many of the metal wastes in this section. These data include the treatment of wastewaters that are not specifically listed as P119 or P120 wastewaters, but do contain many metal constituents. While these data were not available in time to incorporate into this discussion or into the background document for these wastes, these data are being placed in the administrative record for today's notice. Therefore, the Agency is not precluded from using these data in promulgating the standards for these wastes. Further information on these data can be found in section III.A.1.h.(6.). The resultant alternative standard calculated for vanadium in wastewaters is 0.042 mg/1.

(2) Nonwastewaters. The Agency believes that P119 and P120 nonwastewaters can be generated as spent catalysts from chemical production or as fly ash from the iron and steel industry. The Agency has information indicating that nonwastewaters containing greater than seven percent of vanadium can be recovered. The Agency is proposing a treatment standard for P119 and P120 nonwastewaters of "Thermal Recovery as a Method of Treatment" based on the following: (1) P119 and P120 are generated primarily as off-spec products and would probably contain greater than seven percent vanadium due to their elemental composition, thus making them technically viable to recovery; (2) Due to these high levels of vanadium, P119 and P120 contain an inherent high economic value that acts as an incentive for most generators to investigate all recovery options as well as source reduction techniques to prevent generation; and (3) The Agency has no other treatment data for nonwastewaters containing vanadium.

However, the Agency does not think that at very low concentrations and low waste volumes, recovery may not be a viable alternative for vanadium wastes. Because these vanadium compounds are inorganic, the Agency believes that P119 and P120 nonwastewaters could be easily stabilized. Thus, the Agency is also proposing that stabilization is BDAT for the nonwastewaters. The Agency is thus proposing a treatment standard of "Recovery of Stabilization as a Method of Treatment" for P119 and P120 nonwastewaters. The Agency is soliciting comments on potential cut-off levels for vanadium wastes that can be recovered versus those that can be stabilized and any stabilization data on wastes containing vanadium.

BDAT TREATMENT STANDARDS FOR P119 AND P120

[Wastewaters]

Regulated constituent	Maximum for any 24 hour composite sample
	Total Composition (mg/l)
Vanadium	0.042

BDAT TREATMENT STANDARDS FOR P119 AND P120

[Nonwastewaters]

Thermal Recovery or Stabilization as a Method of Treatment

6. Proposed Treatment Standards for Additional Waste Code Specific Treatability Groups.—a. Cyanide Wastes. In the June 23, 1989 Second Third final rule, the Agency promulgated treatment standards for amenable and total cyanide constituents for the electroplating, heat treating, and acrylonitrile F and K wastes (54 FR 26610–615). The Agency transferred certain of these treatment standards to the cyanide wastes listed as P waste codes. The analytical method used to measure cyanide concentrations in treatment residues (thereby determining compliance with the treatment standard) was SW–846 Method 9010.

After promulgation of the Second Third rule, the National Association of Metal Finishers (NAMF) requested that the Agency confirm that generators of F006 nonwastewaters containing cyanides will be in compliance with the Second Third Land Disposal Restrictions if the total cyanide treatment standard (590 mg/kg) is measured using Method 9010 as currently written, that is analyzing the largest sample size practical, distilling for approximately one (1) hour, and one (1) liter distillation flask. NAMF asserted that for certain F006 nonwastewaters the total cyanide concentration varied significantly depending on the length of distillation time and the sample size used for the analysis. Data submitted by NAMF indicated that as the sample size increased and distillation time decreased, the concentration of total cyanide increased.

EPA regards the lack of specificity as to the sample size and distillation time in the description of Method 9010 to be potential loopholes that could allow persons to misuse the analytical method in order to demonstrate compliance without treating the waste. The Agency believes that a generator or treater could analyze a large sample size (i.e., greater than 10 grams) and shorten the length of the distillation time—thereby impacting the amount of cyanides that ultimately is analyzed—in order to comply with the treatment standard. Most of the samples being analyzed for cyanides are treatment residues containing significant amounts of alkaline materials, such as lime and metal hydroxides. The analytic method uses a fixed amount of sulfuric acid (as specified in Method 9010) which amount is supposed to be sufficient to neutralize alkaline materials and to acidify the sample such that the cyanide is converted to HCN and subsequently distilled and analyzed as total cyanide. However, the method does not limit the sample size nor the distillation time, and too large of a sample size could result in incomplete neutralization of the alkalinity, thus reducing the amount of HCN released and a resultant lower analysis of total cyanide. Similarly, too short a distillation time would also result in a lower analysis of total cyanide. To prevent this from happening, EPA is proposing an amendment to 40 CFR 268.43 that would require amenable and total cyanide concentration in wastes to be analyzed by Method 9010 of SW–846 with a sample size and a distillation time ranging from 0.5 to 10 grams and one hour to one hour and fifteen minutes, respectively. By proposing these constraints on sample size and distillation time, the Agency believes that compliance of the BDAT treatment standard will be done by actual treatment. Also, based on information from commercial laboratories, these values represent a range of sample size and distillation time that is commonly used for cyanide analysis.

EPA does not believe that this proposed clarification to the analytical method affects the achievability of the cyanide standards already promulgated. In fact, the sample size and the distillation time used to develop the treatment standards for F006, F007, F008, and F009 nonwastewaters were 10 grams and one hour and fifteen minutes, respectively (see RCRA Docket LD10–L0032, letter dated May 1, 1989). The Agency subsequently has solicited information from several treaters of cyanide wastes, who indicated to the Agency during the Second Third rulemaking that they were achieving the F006 nonwastewater cyanide standard as to the sample size and distillation time they are using. These facilities stated that they use a sample size of less than 5 grams and a distillation time of 1 hour (see administrative record for cyanide wastes in today's notice), again within the range being proposed today. Therefore, the Agency believes that the data in the Second Third rule documenting achievability of the cyanide treatment standard reflects the analytic procedure being proposed today.

(1) F006 Wastewaters. Today's rule proposes wastewater treatment standards for amenable and total cyanides and metal constituents for F006 wastewaters. (Nonwastewater standards for F006 metal constituents were promulgated in the First Third final rule, and nonwastewater standards for F006 cyanides were promulgated in the Second Third final rule.) Wastewater treatment standards are based on the performance of alkaline chlorination for the amenable and total cyanides, and chromium reduction followed by chemical precipitation using lime and sulfides and sludge dewatering for the metals. Detailed information on F006 waste characterization and the technical feasibility of the transfer of the performance of the treatment systems can be found in the Proposed Addendum to the Best Demonstrated Available Technology (BDAT) Background Document for F006.

F006 wastewaters are expected to result primarily from waste treatment operations in the electroplating or metal finishing industries. For example, the filter and/or clarifier overflow from treated electroplating wastewaters may be considered F006 wastewaters. F006 wastewaters may also be generated at a CERCLA site, during corrective action at a RCRA facility, or as a result of spills.

The Agency is proposing amenable and total cyanide standards for F006 wastewaters based on the performance of alkaline chlorination. The Agency is transferring these standards from the F007, F008, and F009 wastewaters. This transfer is based on the similarities in concentrations of cyanides in these

wastewaters and on the fact that F006 wastewaters, like F007, F008, and F009 wastewaters, are generated from electroplating operations. The Agency also believes that the F006 wastewaters contain lower or at most, similar, concentrations of amenable and total cyanides than F007, F008, and F009 wastewaters and are therefore less difficult to treat.

The Agency is proposing four metal standards (cadmium, total chromium, lead, and nickel) for F006 wastewaters based on the transfer of treatment standards for metals in K062. These standards are based on chromium reduction followed by chemical precipitation using lime and sulfide and sludge dewatering. (In fact, the Agency has information that certain facilities currently using these same treatment processes on F006 wastewaters.) The Agency believes that this transfer is technically feasible because the metals in K062 wastewaters are more difficult to treat (due to the high acidity of K062 wastes and the higher overall concentrations of total dissolved salts and metals) than the F006 wastewaters (e.g., individual metal concentrations in K062 ranged up to 7,000 ppm).

During the process of determining today's proposed standards, the Agency also evaluated performance data that were developed by EPA's Office of Water for hydroxide precipitation, sedimentation, and filtration for wastes from the metal finishing industry. However, the Agency did not use these data in the development of today's proposed F006 metal standards because the metal finishing waste characterization data indicated that the untreated concentrations of these metals in these wastewaters were low compared to those in F006 wastewaters. In fact, the individual metal concentrations in F006 wastewaters ranged up to 400 ppm and overall were typically orders of magnitude higher than those in the database for metal finishing raw wastewaters. The Agency believes, therefore, that these treatment data for the metal finishing wastewater streams do not represent treatment of F006 wastewaters and may result in wastewater treatment standards that would be unachievable for the F006 wastewaters. Thus, the Agency is not proposing F006 wastewater treatment standards based on these data.

BDAT TREATMENT STANDARDS FOR F006

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (total)	1.9
Cyanides (amenable)	0.10
Cadmium	1.6
Chromium	0.32
Lead	0.040
Nickel	0.44

(2) F019. Today's rule proposes treatment standards for amenable and total cyanides and metals in F019 wastewaters and nonwastewaters. Treatment standards for the wastewaters are based on the performance of wet air oxidation for the amenable and total cyanides. Treatment standards for metals in wastewaters are based on chromium reduction, chemical precipitation with lime and sulfide, and sludge dewatering. Treatment standards for the nonwastewaters are based on the performance of wet air oxidation for amenable and total cyanides, and stabilization for the metals.

In the Second Third final rule, the Agency stated that F019 wastes are a different treatability group than F006, F007, F008, and F009 electroplating wastes or F010, F011, and F012 heat treating wastes. This difference is primarily due to the presence of high concentrations of iron-cyanide complexes (ferric or ferrous cyanides) in F019 wastes (54 FR 26613, June 23, 1989). The source of the iron-cyanide complexes is the soluble ferrocyanide compounds used in the coating baths and in components of the coating. A detailed technical description of the generation and characterization of F019 wastes and discussion of the applicable technologies can be found in the Background Document for F019 wastes.

For the F019 wastes, the Agency investigated the technologies of ultraviolet (UV) ozonation and wet air oxidation. For the UV ozonation test, the Agency treated a F009 waste that contained primarily complex cyanides at a concentration of 60 to 63 ppm. This waste was then spiked with approximately 1,900 ppm of the ferricyanide, in order to simulate an F019 wastewater. The performance data from the UV ozonation technology indicated that the total cyanide concentration was not substantially reduced, indicating that UV ozonation was not an effective treatment for these wastes.

The Agency also investigated wet air oxidation of F019 wastes. The original F019 wastes collected by the Agency contained a total concentration of cyanide of 5,000 ppm. The waste was then diluted four to one with water in order to fluidize and charge the waste through the wet air oxidation process. Therefore, the theoretical influent concentration of cyanide should have been 1,250 ppm. However, the analysis of the influent concentration of cyanides indicated a concentration of 300 ppm (which was analyzed as mostly amenable cyanides). Because of these apparent discrepancies in the analytical data, the Agency is proposing two options for the development of treatment standards for total and amenable cyanides for F019 wastewaters and nonwastewaters.

The first option proposes concentration-based treatment standards for cyanides based on the performance data for wet air oxidation. Although there apparently are some discrepancies (noted above) with the cyanide analyses for F019, these data do represent treatment of an F019 waste and indicate that significant destruction of cyanides was achieved by the technology. Since wet air oxidation is an applicable technology and has been demonstrated on other cyanide wastes, the Agency believes that these standards based on wet air oxidation can be achieved.

As an alternative, the Agency is also proposing to transfer the concentration-based treatment standards for F006–F009 based on the performance of alkaline chlorination for F006 through F009 wastes. In the Second Third Final Rule (54 FR 26611), the Agency promulgated a treatment standard for total cyanide in F006 through F009 nonwastewaters as 590 mg/kg. While the Agency stated that F019 wastes were different from F006–F009 wastes because the F019 wastes contained high concentrations of iron-cyanide complexes, review of the waste characterization data for F006 wastes indicates that many F006 wastes also contain high concentrations of iron-cyanide complexes that are somewhat similar. Based on this information and the fact that F019 wastes could be diluted to levels similar to those found in the high iron F006 wastes in order to effect treatment, the Agency believes that the alternative proposed treatment standards for F019 based on a transfer from these F006 high iron wastes may be appropriate. The Agency is requesting comments on these two options for developing treatment standards for F019 wastes.

In addition, the Agency is proposing a treatment standard for amenable cyanides in F019 nonwastewaters based on the reproducibility of the analytical method for total cyanides. Details of the calculation of the amendable cyanide standards can be found in the background document. The Agency used a similar procedure for developing treatment standards for amenable cyanides in F006–F012 wastes in the Second Third Final Rule (see 54 FR 26611).

The Agency is proposing treatment standards for total chromium based on a transfer of treatment performance data for K062 wastewaters. These data are from a treatment train that included chromium reduction followed by precipitation with lime or sulfide and dewatering. In addition, generators of F019 wastes have indicated to the Agency that this treatment train is consistent with the onsite treatment of F019 wastewaters that is currently being performed. The Agency believes that this transfer is technically feasible because the metals in K062 wastewaters are more difficult to treat (due to the high acidity of K062 wastes and the higher overall concentrations of total dissolved salts and metals) than the F006 wastewaters (e.g., individual metal concentrations in K062 ranged up to 7000 ppm).

The Agency is also proposing treatment standards for total chromium in F019 nonwastewaters based on a transfer of performance data from the stabilization of F006 wastes. The Agency believes that the transfer of the performance of stabilization data from F006 to F019 is technically feasible due to the higher concentration of metals within F006 wastes.

BDAT TREATMENT STANDARDS FOR F019

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (Total)	0.27
Cyanides (Amendable)	0.11
Chromium (Total)	0.32

BDAT TREATMENT STANDARDS FOR F019

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Cyanides (Total)	[illegible]
Cyanides (Amendable)	30
	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total)	5.2

(3) K011, K013 and K014. In the Second Third final rule, the Agency promulgated treatment standards for the K011, K013, and K014 nonwastewaters (54 FR 26614, June 23, 1989). Treatment standards for the nonwastewaters were based on the performance of incineration. In addition, the Agency proposed treatment standards for K011, K013, and K014 wastewaters in the Second Third proposed rule on January 11, 1989 (54 FR 1056). Commenters on the proposed wastewater standards indicated that they were in the process of developing wet air oxidation data for these wastewaters. Since the Agency concurred that wet air oxidation was an applicable technology for these wastes and since the other data that was available to the Agency for treatment of these wastewaters was relatively incomplete, the Agency chose not to promulgate the proposed wastewater treatment standards at that time. After the close of the comment period, commenters submitted these performance data for treatment of K011, K013, and K014 wastewaters using wet air oxidation. As a result, the Agency is proposing treatment standards for organics and total cyanides in K011, K013, and K014 wastewaters. Treatment standards are based on the performance of wet air oxidation for the organics and cyanides.

The Agency is defining K011, K013, and K014 wastewaters (as generated) as containing less than 3.5% Total Organic Content (TOC) and less than 1% Total Suspended Solids (TSS). The Agency believes that the 3.5% cutoff level is applicable based on the available waste characterization data for K011, K013, and K014 wastes. As generated all of these wastes are liquid and contain primarily water, yet they sporadically contain over 1% TOC (but not more than 3%) and would have been classified as nonwastewaters based on the Agency's standard cut-off of 1% TOC.

The Agency originally established the 1% TOC cut-off based on evaluation of waste characterization data for solvent-water mixtures. These data indicated that the majority (99%) of the wastewaters containing solvents were significantly lower in total organics. These lower concentrations also corresponded to the appropriate concentrations of feed streams for the technologies applicable to the solvent-water mixtures (i.e., steam stripping, biodegradation, and carbon adsorption). The proposed 3.5% TOC cutoff for K011, K013, and K014 wastewaters is based on similar logic and calculation. In addition, the technology of choice for K011, K013, and K014 liquids with less than 3.5% TOC is wet air oxidation. Since wet air oxidation is typically designed to handle similar or slightly higher TOC levels although 10% TOC is cited in guidance as a typical maximum level for wet air oxidation, but, wet air oxidation systems are usually designed for lower levels, the Agency determined that it is an appropriate technology for these wastes and that the TOC cut-off for K011, K013, and K014 wastewaters should be adjusted accordingly.

BDAT TREATMENT STANDARDS FOR K011, K013, K014

[Wastewaters <3.5% TOC and <1% TSS]

Regulated constituent	Maximum for any single grab sample, [illegible] composition (mg/l)
Acetonitrile	[illegible]
Acrylamide	19.
Acrylonitrile	[illegible]
Benzene	0.02
Cyanides (total)	21.

(4) U and P Waste Codes Containing Cyanides

P031—Cyanogen
P033—Cyanogen chloride
U246—Cyanogen bromide

Today's rule proposes alkaline chlorination or incineration as a method of treatment for amenable and total cyanides for P031, P033, and U246 Wastes. For these wastes, the Agency is proposing a technology rather than concentration-based standards due to the high toxicity of these wastes and due to the imprecision of the analytical method for these wastes.

In a cyanide oxidation process such as alkaline chlorination, the cyanide present within a waste is converted to carbon dioxide and nitrogen. Before the carbon dioxide and nitrogen are formed, there are two intermediate reactions

that occur. The first reaction is the reaction of cyanide with chlorine to form cyanogen compounds. The second reaction is cyanogen compounds hydrolyzed to cyanate compounds. These cyanate compounds are further oxidized with excess chlorine to carbon dioxide and nitrogen. Based on information from the "Standards Method for the Examination of Wastewater," the cyanogen compounds are highly toxic and have limited solubility. At alkaline pH, these compounds hydrolyze to the cyanate compound and the rate of reaction is pH and time dependent. However, these cyanogen compounds convert rapidly to the cyanate compound when there is excess chlorine.

The Agency believes that because the cyanogen compounds are very unstable, these compounds are destroyed by incineration. Since the Agency has data that indicate that other more stable cyanide wastes can be completely destroyed to the detection limits, the Agency is proposing that incineration is an option for these cyanogen U and P wastes.

BDAT TREATMENT STANDARDS FOR P031, P033, U246

[Nonwastewaters and Wastewaters]

Regulated constituent	Alkaline Chlorination or Incineration as Methods of Treatment

b. F024 and F025

(1) Addition of Standards for F024 Wastes. Concentration-based treatment standards for organics in F024 wastewater and nonwastewater were promulgated in the Second Third final rule (54 FR 26615, June 23, 1989). The treatment standards were based on the performance of rotary kiln incineration for organic constituents, and chemical precipitation followed by vacuum filtration for metal constituents in wastewaters.

After the close of the comment period, the Agency completed an analysis of TCLP extracts obtained from the stabilization of F024 incinerator ash residues. The results of this analysis showed substantial reduction of metals; however, because these data were not available for public notice and comment and the resultant treatment standards were significantly different from the proposed standards, the Agency decided to reserve treatment standards for metals in F024 nonwastewaters.

Stabilization is an available technology for metals in F024 nonwastewaters because this technology is commercially available and can be purchased from a proprietor, and provides substantial reduction of metal hazardous constituents in the TCLP extract. The stabilization data obtained from the Agency's BDAT treatment test of F024 incinerator ash residues is the only available data on treatment of metal constituents in F024 nonwastewaters. EPA therefore considers stabilization to be BDAT for metals in F024 nonwastewaters.

The specific constituents being proposed by EPA for regulation and the proposed treatment standards are presented in the table at the end of this section. For a detailed description of the reductions exhibited by stabilization of these wastes refer to the Addendum to the BDAT Background Document for F024.

EPA has received anecdotal information that some treatment facilities which previously treated F024 wastes are now refusing to do so because the treatment standard for the waste includes standards for various chlorinated-dibenzo dioxins and furans. EPA has not had the opportunity to pursue whether this is the case, or the extent of the problem, if any. EPA solicits comment on these points here. In addition, the Agency solicits comment on whether the other treatment standards for organics in F024 serve as an adequate surrogates for these chlorinated-dibenzo dioxins and furans (i.e., whether achieving the treatment standards for the other organic constituents in the waste means that the treatment standards for chlorinated-dibenzo dioxins and furans will also be achieved). Based on these comments, the Agency may amend the treatment standard for chlorinated-dibenzo dioxins and furans in F024 wastewaters and nonwastewaters.

(2) Proposed Standards for F025 Wastes. Although the listing of F025 as a RCRA hazardous waste has not been promulgated as of today's rule, the Agency believes that promulgation of the listing for F025 will occur prior to the promulgation of the Third Third final rule, and has therefore decided to propose concentration-based treatment standards for F025 wastes at this time. The proposed concentration-based standards for F025, however, may change or become further refined as a result of the final listing of the waste. (EPA would not, however, establish an effective date for a prohibition and treatment standard for this waste before the effective date of the F025 waste listing.)

F025 wastes have been characterized as condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of chlorinated aliphatics. For the purposes of establishing treatment standards, the wastes have been grouped into two subcategories: condensed light ends and filters/aids and desiccants. Available characterization data suggest that different constituents may be contained in each of these subcategories. Therefore, the Agency is proposing concentration-based treatment standards to reflect these differences in physical and chemical composition. Concentration-based treatment standards for all wastewater and nonwastewaters forms of F025 are proposed today based of the transfer of performance data used in the development of treatment standards for specific U and P wastes that are constituents in the various F025 subcategories. (See sections III.A.2.c. and III.A.2.d. for additional information). The Agency believes that the constituents expected to be contained in F025 wastes can be incinerated to below detection limits. Those constituents for which the Agency has not set concentration-based standards can also be incinerated to below detection limits because the Agency believes that these constituents are easier to treat than those constituents for which EPA is proposing concentration-based treatment standards. Further information on the development of treatment standards can be found in the Addendum to the Background Document for F024 Wastes in the RCRA docket.

BDAT TREATMENT STANDARDS FOR F024

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total)	0.073
Lead	0.021
Nickel	0.005

BDAT TREATMENT STANDARDS FOR F025

[Nonwastewaters]

Light Ends Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform	6.2
1,2-Dichloroethane	6.2
1,1-Dichloroethylene	6.2

BDAT TREATMENT STANDARDS FOR F025—Continued

[Nonwastewaters]

Light Ends Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Methylene chloride	31
Carbon tetrachloride	6.2
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
Vinyl chloride	0.035

BDAT TREATMENT STANDARDS FOR F025

[Wastewaters]

Light Ends Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chloroform	0.035
1,2-Dichloroethane	0.007
1,1-Dichloroethylene	0.007
Methylene chloride	0.037
Carbon tetrachloride	0.007
1,1,2-Trichloroethane	0.007
Trichloroethylene	0.007
Vinyl chloride	0.033

BDAT TREATMENT STANDARDS FOR F025

[Nonwastewaters]

Spent Filters/Aids and Desiccants Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Chloroform	6.2
Methylene chloride	31
Carbon tetrachloride	6.2
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
Vinyl chloride	0.035
Hexachlorobenzene	37
Hexachlorobutadiene	28
Hexachloroethane	30

BDAT TREATMENT STANDARDS FOR F025

[Wastewaters]

Spent Filters/Aids and Desiccants Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Chloroform	0.035
Methylene chloride	0.037
Carbon tetrachloride	0.007

BDAT TREATMENT STANDARDS FOR F025—Continued

[Wastewaters]

Spent Filters/Aids and Desiccants Subcategory

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
1,1,2-Trichloroethane	0.007
Trichloroethylene	0.007
Vinyl chloride	0.033
Hexachlorobenzene	0.055
Hexachlorobutadiene	0.031
Hexachloroethane	0.034

c. Wastes from Inorganic Pigment Production. These wastes are generated by facilities manufacturing and processing inorganic pigments, as well as from the treatment of the wastes themselves. Detailed technical descriptions of the specific production processes generating these wastes can be found in the Listing Background Document for these wastes, as well as the BDAT Background Document for Inorganic Pigment Wastes.

(1) Nonwastewaters. In the Final Second Third Rule (53 FR 26594; June 23, 1989), EPA promulgated treatment standards of "No Land Disposal Based on No Generation" for K005 and K007 wastes. In today's proposed rule, the Agency is revoking these standards because a source wishing to manufacture these pigments in the future would be forced to apply for a variance from the treatment standard (40 CFR 268.44) in order to do so.

In the First Third final rule, EPA also promulgated a standard of "No Land Disposal Based on No Generation" for K004 and K008. EPA modified this standard to apply only to certain newly generated waste as part of the May 2, 1989 final rule (54 FR 18836). On January 11, 1989 EPA also proposed to modify this designation to "No Land Disposal Based on Recycling". During the comment period for the Second Third proposed rule, EPA received information that the recycling operation under consideration for these wastes may involve a limited captive market for the waste by-product; therefore, not all generators would be able to sell their processed K004 and K008. As a result, EPA revoked the "No Land Disposal Based on No Generation" standard in the Second Third final rule (54 FR 26617).

For K002, K003, and K006 (anhydrous) EPA considered proposing a treatment standard based on total recycling using secondary lead smelting. However, this process could also produce residues which may be subject to land disposal restrictions. Therefore, the Agency is proposing to transfer the performance of chromium reduction followed by precipitation and filtration from K062 to K002, K003, K004, K005, K006 (anhydrous), and K008. The filter cake that is generated from this treatment train may need further treatment such as stabilization in order to prevent immobilization of toxic metals.

EPA is proposing to transfer the K062 nonwastewaters standards to K002, K003, K004, K005, K006, and K008 nonwastewaters because the wastewaters from which K062 sludge are derived are similar in nature to the inorganic pigment wastewaters (i.e., consisting of inorganic constituents). The concentrations of heavy metals in the untreated wastewaters are also similar. The only difference is that K062 wastewaters contain higher concentrations of nickel and chromium (see the BDAT Background Document for Inorganic Pigments). The Agency, however, is soliciting TCLP data on treated inorganic pigment sludge.

In the case of hydrated K006, one facility is manufacturing this pigment, hydrated chrome oxide green, using a boric acid process. Due to the presence of boron, the sulfide precipitation results for K062 sludges may not be transferrable to this waste. Therefore, EPA is proposing to transfer the chromium standard from F006 to hydrated K006. This level is achievable for hydrated K006 nonwastewaters. Data submitted by the manufacturer of hydrated K006 indicates that five different stabilizing agents can reduce the hexavalent chromium to its trivalent stage. The process wastewaters underwent chromium reduction and lime precipitation, then the sludge was stabilized using various mixes of cement, fly ash, gypsum, ground burnt lime, and silicate gel (a combination of fly ash and gypsum was the most successful). All of the five mixes easily met the chromium standard for F006. The Agency is soliciting further TCLP data on treated hydrated K006.

(2) Wastewaters. The treatment of pigment sludge can generate wastewaters. These wastewaters are similar to treated and untreated wastewaters from the inorganic pigment manufacturing processes, depending on the type of pigment being processed. EPA is therefore proposing regulations based on the chrome pigment effluent guidelines for discharges from this industrial category regulated under the National Pollutant Discharge Elimination System (NPDES) (40 CFR

415.340). The proposed standards are taken directly from the concentrations as stated in the "Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category", June, 1982. These standards are based on chromium conversion and lime precipitation to remove toxic metals. Because the effluent limitations guidelines and standards contain both 30 day and one day numbers, the RCRA treatment standard likewise requires compliance with 30 day and one day standards. The minimum sampling frequency recommended is once a week. The basis of the 30 day limit is consecutive calendar days and not sampling days. The statistical basis for these one and 30 day values is set forth in the Development document cited above.

BDAT TREATMENT STANDARDS FOR K002, K003, K004, K006 (ANHYDROUS), AND K008

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total)	0.094
Lead	0.37

BDAT TREATMENT STANDARDS FOR K006 (HYDRATED)

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total)	5.2

BDAT TREATMENT STANDARDS FOR K005 AND K007

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium (Total)	0.094
Lead	0.37

5BDAT TREATMENT STANDARDS FOR K002, K003, K004, K006, AND K008

[Wastewaters]

Regulated constituent	Total concentration (in mg/l)	
	30 day maximum	24 hour maximum
Chromium (Total)	1.2	0.9
Lead	1.4	3.4

BDAT TREATMENT STANDARDS FOR K005 AND K007

[Wastewaters]

Regulated constituent	Total concentration (in mg/l)	
	30 day maximum	24 hour maximum
Chromium (Total)	1.2	.0
Lead	1.4	3.4
Cyanides (Total)	0.31	0.74

d. K015

In the final First Third Rule (53 FR 31154), the Agency promulgated a treatment standard of "No Land Disposal Based on No Ash" for K015 nonwastewaters. Concentration-based standards for K015 wastewaters were promulgated at that time. After promulgation, a facility generating K015 nonwastewaters submitted information indicating that their K015 waste generated an ash residue upon combustion. Therefore, the Agency's assessment of these wastes not having an ash content was incorrect. As a result, EPA is proposing to revoke the "No Land Disposal Based on No Ash" standard for the nonwastewater forms of K015 (as well as the subcategorization based on ash content), and is proposing numerical treatment standards for all K015 nonwastewaters today.

The Agency is proposing treatment standards for five organic and two metal constituents. Treatment standards for the organic constituents are based on a transfer of the performance data of incineration for similar wastes. Treatment standards for metal constituents are based on a transfer of the performance of stabilization of incinerator ash for similar wastes. Six sample sets from the treatment of K019 and five sample sets from the treatment of K087 had been collected for rotary kiln incineration. These data sets were transferred to K015 nonwastewaters based on structural similarities. The constituent p-Dichlorobenzene is being used as a surrogate for benzal chloride; p-dichlorobenzene treatment data from K019 will be transferred to benzal chloride in K015. These constituents are similar in that they are both chlorinated benzenes.

The proposed toluene standards for KO15 are transferred directly from K019 treatment data. Toluene is present at higher levels in untreated K019 waste than in untreated K015 waste. Therefore, treatment by incineration should result in at least as low a level of toluene in K015 nonwastewater as in K019. The proposed standards for benzo(b/k)fluoranthene in K015 are transferred from K087 treatment data. Both the b and k forms are found in K087, whereas only the k form is present in K019. In addition, the untreated benzo(b/k)fluoranthene in K087 should be more difficult to treat than in K019, hence K087 is a better source of transferred incineration data for benzo(b/k)fluoranthene. Proposed standards for anthracene and phenanthrene are transferred from K087 data. These constituents are also found in untreated K019 waste; however, the concentrations of these constituents in K019 are not as high as in untreated K015. Anthracene and phenanthrene are, however, present at higher concentrations in K087 than in K015. Therefore, treatment by incineration should result in at least as low a level of these constituents in K015 as in K087. The Addendum to the Background Document for K015 describes how each standard was developed and presents the K019 and K087 treatability data used to generate these standards.

No performance data are available for treatment of metals in K015 nonwastewaters. However, data are available for stabilization of metals in the incinerator ash of K048–K052. Based on the similarity of the constituents and their concentrations expected to be found in the untreated K015 incineration ash compared to K048–K052 ash, K015 ash appears to be sufficiently similar to the ash generated by incinerating K048–K052. No data exist characterizing metal concentrations in untreated KO15 ash; however, nickel and chromium were found in the incinerator scrubber water. Hence, nickel and chromium should be expected in the ash and consequently EPA is proposing to regulate them in K015 nonwastewaters.

BDAT TREATMENT STANDARDS FOR K015

[Nonwastewaters; Revised from no land disposal]

Regulated constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Anthracene	3.4	
Benzal chloride	6.2	
Benzo(b/k)fluoranthene	3.4	
Phenanthrene	3.4	
Toluene	5.0	
Chromium (Total)	1.7	
Nickel	0.048	

e. K022, K025, K026, K035, and K083. All of these wastes generally contain similar treatable concentrations of aromatic organics and hydrocarbons. They thus are amenable to similar treatment technologies and present similar technical difficulties in developing treatment standards. Thus, these wastes have been grouped together under the same section for purposes of discussion. K022, K035, and K083 are scheduled First Third wastes, K025 is a Second Third waste, and K026 is a Third Third waste. EPA promulgated nonwastewater treatment standards for K022, K025, and K083 in the First Third final rule (53 FR 31138). EPA later deferred treatment for K083 nonwastewaters containing ash to the Third Third in the May 2, 1989, final rule (53 FR at 18837).

(1) Development of Treatment Standards. EPA has data that indicate nonwastewater forms of K025 and K026 are no longer generated in the United States. These wastes are currently subject to a treatment standard expressed as "No Land Disposal Based on No Generation". The Agency is proposing to revoke these standards in order that a source wishing to manufacture commercial products by the manufacturing processes described in the listing document for these wastes will not be forced to apply for a variance from the treatment standard in order to do so.

K025 is generated from the nitration of benzene which is a similar process to that which generates K111, K112, K103, and K104. Each one of these wastes has constituents which are as difficult to treat as those constitutents in K025. Available data characterizing the chemical composition of K025 are very limited, therefore the Agency is proposing to transfer performance data from K103 and K104 wastes to K025 in order to establish, as one option, concentration-based treatment standards, and as another option, a treatment standard expressed as a method.

For K035 wastewaters, EPA is proposing standards based on process wastewaters from the distillation of coal-tars as a surrogate waste for developing treatment standards. These process wastewaters are the precursors of K035 wastewater treatment sludges listed as hazardous wastes in 40 CFR § 261.32. These process wastewaters contain the same constituents for regulation as those identified in the K035 nonwastewaters with the exception of o-cresol, p-cresol, and phenol. These three constituents were identified in the process wastewaters at treatable concentrations and EPA is proposing to regulate them.

EPA is proposing concentration based standards for the organics identified in K022, K026, K035, and K083 wastes. These treatment standards are based on the incineration of similar nonwastewaters. As a result, EPA is also proposing incineration of these wastes as a prerequisite for land disposal. The concentration based standards for K026, K035, and K083 nonwastewaters are based on the concentration of organics achieved in the residual ash of the waste tested by EPA. Similarly, treatment standards for the K022, K026, K035, and K083 wastewaters are supported by the concentration organics achieved in the incineration scrubber waters.

For K025, EPA is proposing concentration based treatment standards for organics. The proposed treatment standards for the organics in K025 wastewaters are based on liquid-liquid extraction followed by stream stripping followed by carbon adsorption. As an alternative, the agency believes that the organics in these wastes can be effectively treated and removed by either direct carbon adsorption or wet air oxidation followed by carbon adsorption. The proposed treatment standards for K025 nonwastewaters are based on incineration. Alternatively, EPA is proposing requiring these methods of treatment as a prerequisite for land disposal of K025. Incineration of K025 wastewaters is also proposed as an equivalent method of treatment for K025 wastewaters. EPA prefers establishing methods of treatment for K025 and K026 because the lack of characterization data for them makes our approach uncertain in whether other constituents in the uncharacterized wastes that may be at treatable concentrations will or will not be regulated by the constituents proposed for regulation.

Available characterization for all these wastes show that only K022 and K083 have treatable concentrations of metals. As a result, EPA is proposing concentration based treatment standards for the metals identified in K022 and K083. The proposed treatment standards for K022 and K083 wastewaters are based on chemical precipitation of a similar waste to K022 and K083 wastewaters. For the metals in K083 nonwastewaters, the proposed treatment standards are based on stabilization. Alternatively, EPA is proposing for K022 and K083 treatment standards expressed as methods of treatment. The methods of treatment would be those BDAT technologies supporting the proposed concentration based standards for these two wastes. To determine the applicability of the proposed treatment standards, the standard BDAT criteria should be used to classify K022, K026, K035, and K083 as wastewaters or nonwastewaters. These standard BDAT criteria classify a waste as a wastewater if it contains less than one percent total suspended solid (TSS) and less than one percent total organic content (TOC). In contrast, K025 wastes are classified as wastewaters if they contain less than one percent TSS and less than 4 percent TOC. These wastes are classified as nonwastewaters if the TSS or TOC percent levels are exceeded. EPA is proposing a different wastewater definition for K025 because, upon study, it appears that normal liquids carrying this waste code that are amenable to wastewater treatment can legitimately contain up to 4% TOC (see BDAT Background Document of K025).

The BDAT Background Documents for these wastes provide further discussion on the constituents proposed for regulation as well as the development of the treatment standards proposed today. The BDAT Background Document for K022 is referred as a Proposed Amendment to the Final BDAT Background Document for K022. The tables at the end of this section summarize the proposed concentration based treatment standards for these wastes as well as the proposed constituents for regulation.

BDAT TREATMENT STANDARDS FOR K022

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, [total composition (mg/l)
Toluene	0.017
Acetophenone	0.006
Diphenylamine/diphenylnitrosamine	0.006
Phenol	0.091
Chromium (Total)	0.35
Nickel	0.47

BDAT TREATMENT STANDARDS FOR K025

[Wastewaters; <1% TSS and <4% TOC]

Incineration, or liquid-liquid extraction followed by steam stripping followed by carbon adsorption as a method of treatment.	

BDAT TREATMENT STANDARDS FOR K025

[Nonwastewaters]

Incineration as a method of treatment.	

BDAT TREATMENT STANDARDS FOR K025

[Wastewaters; Alternative proposal]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/l)
2,4-Dinitrotoluene	0.67
Nitrobenzene	0.064
4-Nitrophenol	0.67

BDAT TREATMENT STANDARDS FOR K025

[Nonwastewaters; Alternative proposal]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/kg)
2,4-Dinitrotoluene	2.3
Nitrobenzene	2.3
4-Nitrophenol	2.3

BDAT TREATMENT STANDARDS FOR K026

[Wastewaters and Nonwastewaters]

Incineration as a method of treatment.	

BDAT TREATMENT STANDARDS FOR K026

[Nonwastewaters; Alternative proposal]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/kg)
Pyridine	14

BDAT TREATMENT STANDARDS FOR K026

[Wastewaters; Alternative proposal]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/l)
Pyridine	0.017

BDAT TREATMENT STANDARDS FOR K035

[Wastewaters]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/l)
Benz(a)anthracene	0.028
Chrysene	0.14
o-Cresol	0.028
p-Cresol	0.028
Fluoranthene	0.028
Naphthalene	0.028
Phenanthrene	0.028
Phenol	0.028
Pyrene	0.028

BDAT TREATMENT STANDARDS FOR K035

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/kg)
Acenaphthene	3.4
Anthracene	3.4
Benz(a)anthracene	3.4
Benzo(a)pyrene	3.4
Chrysene	3.4
Dibenz(a,h)anthracene	3.4
Fluoranthene	3.4
Fluorene	3.4
Indeno(1,2,3-cd)pyrene	3.4
Naphthalene	3.4
Phenanthrene	3.4
Pyrene	8.2

BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters; Revised from no land disposal]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/l)	TCLP (mg/l)
Benzene	5.6	
Aniline	14.0	
Diphenylamine/ diphenylnitrosamine	14.0	
Nitrobenzene	14.0	
Phenol	5.6	
Cyclohexanone	30.0	
Nickel		0.066

BDAT TREATMENT STANDARDS FOR K083

[Wastewaters]

Regulated constituent	Maximum for any single grab sample: Total composition (mg/l)
Benzene	0.006
Aniline	0.017
Diphenylamine/ diphenylnitrosamine	0.017
Nitrobenzene	0.017
Phenol	0.007
Cyclohexanone	0.036
Nickel	0.47

f. K036 and K037

Today's rule proposes revised treatment standards for the wastewater forms of K037 and the nonwastewater forms of K036. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. These compounds were included in the organophosphorus pesticides treatability group in the Second Third proposed rule (54 FR 1085).

The Agency promulgated a treatment standard of "No Land Disposal Based on No Generation" for K036 nonwastewaters in the First Third final rule on August 8, 1988 (53 FR 31174, August 17, 1988). EPA amended this standard on May 2, 1989, to apply to wastes generated from the process described in the listing description and disposed after August 17, 1988 (54 FR 18836). In today's rule the Agency is proposing to transfer a concentration based standard from K037 nonwastewaters to other forms of K036 nonwastewaters, such as K036 spill residues, and is proposing to revise the K037 wastewater standards. (The Agency promulgated concentration-based treatment standards for K037 wastewaters and nonwastewaters in the First Third final rule.)

(1) Development of Standards. In the January 11, 1989, proposed rule for Second Third wastes (54 FR 1056), the Agency proposed a direct transfer of the concentration-based standards from the incineration of K037 wastes (wastewater treatment sludge from the production of Disulfoton) to a number of organophosphorus pesticide wastes. The basis for transferring the K037 standards is the similarity in structure and elemental composition of Disulfoton, the principal hazardous constituent of concern in K037 wastes, to all of the organophosphorus pesticides. In addition, the Agency believes that Disulfoton is one of the most difficult chemicals in that group of organophosphorus pesticides to incinerate. Given that Disulfoton can be effectively treated by incineration, the Agency believes that all the other wastes in the organophosphorus pesticides treatability group can be effectively treated by incineration, and the concentration-based standard for each representative regulated organophosphorus pesticide can be identical to that achieved by incineration of Disulfoton in K037 wastes. Therefore, the Agency believes that the performance achievable by incineration represents BDAT for nonwastewater forms of K036 and is proposing concentration-based standards based on a transfer from the incineration of K037 nonwastewaters.

In the Second Third final rule, the Agency promulgated concentration-based treatment standards for the wastewater forms of the organophosphorus pesticides. These standards were proposed based on the concentrations found in scrubber water from a K037 incineration test burn. The Agency received data during the comment period on biological treatment of wastewaters containing Parathion, a constituent similar to Disulfoton, that were used as the basis of the promulgated treatment standards. Today the Agency is proposing to revise the wastewater treatment standards for K037 to be consistent with the other wastewater standards for organophosphorus pesticides.

(2) Identification of BDAT and Regulated Constituents. Standards applicable to K036 nonwastewaters are based on the performance achieved by rotary kiln incineration and the concentration of organophosphorus pesticide measured in the ash residuals. Standards applicable to K037 wastewaters are based on the performance achieved by biological treatment and the concentration of the regulated constituent (Disulfoton or Toluene) measured in the resultant effluent wastewaters. Where the treatment standards are expressed as concentration-based standards, other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. The regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

The Agency points out that the promulgated concentration-based treatment standards for K037 wastewaters are based on the analysis of composite samples rather than grab samples. These performance data used to develop the standard for Disulfoton were received during the comment period for the Second Third Proposed Rule, and were based on the analysis of composite effluent samples. The data used to develop the standard for Toluene is from the Office of Water's Industrial Technology Division Database. See further discussion of composite samples in section III.A.1.f. of today's preamble. These data are a preferable measure of treatment performance because where the Agency has performance data that conform with BDAT methodology on wastewater treatment processes as well as data on incineration as measured by constituent concentrations in scrubber water, the Agency prefers to establish treatment standards based on the wastewater treatment processes. (Note: This does not preclude the Agency from establishing treatment standards for other wastes based on constituent concentrations in incinerator scrubber waters.)

Today's rule proposes revised concentration-based standards for the wastewater forms of K037 and the nonwastewater forms of K036.

BDAT TREATMENT STANDARDS FOR K036

[Nonwastewaters]

[Revised From No Land Disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Disulfoton	0.1

BDAT TREATMENT STANDARDS FOR K037

[Wastewaters]

[Revised Based on Biotreatment Data]

Regulated constituent	Maximum for any single composite sample, total composition (mg/l)
Disulfoton	0.025
Toluene	0.080

g. K044, K045, K046, K047—(1) K044, K045, K047. Today's rule proposes to revoke the "No Land Disposal Based on Reactivity" treatment standard for K044, K045, and K046 wastes and proposes to set a method of treatment rather than concentration-based standards for these wastes. In the May 2, 1989, final rule (54 FR 18836), the Agency indicated that it would not amend the standard for these wastes because the wastes are listed for exhibiting the characteristic of reactivity. Although this is true, the Agency believes that by revoking the standard and setting "Deactivation as a Method of Treatment", a generator or treater can continue to dispose of this waste after the removal of the characteristic hazard.

(2) K046. In the August 17, 1989, final rule (53 FR 31158), the Agency developed two subcategories for the K046 nonwastewaters identified as the Reactive and Nonreactive Subcategories. The Agency based this subcategorization on the comments received by industry indicating that K046 Reactive wastes were not similar to the K046 Nonreactive wastes due to their reactivity. The nonreactive K046 wastes could be directly stabilized; however, stabilization of the reactive K046 wastes would result in a residual that could remain reactive. The Agency agreed and promulgated a treatment standard for lead in K046 Nonreactive nonwastewaters, but did not promulgate a standards for the K046 Reactive nonwastewaters nor did it promulgate wastewater standards for any K046 wastewaters. The Agency indicated in the First Third Rule that it would examine the data from testing of Nonreactive K046 nonwastewaters, and would determine whether these data could be extrapolated to Reactive K046 wastes or whether new data had to be obtained to set treatment standards for open detonation, open burning, or specialized incineration.

In this rule, the Agency is proposing a nonwastewater treatment standard for lead in the K046 Reactive Subcategory. BDAT for this waste is based on information that indicates that the K046 nonreactive waste for which the treatment standard was promulgated, originally started out as reactive wastewaters. The Agency believes that by removing the reactivity of these wastewaters, the resultant nonwastewater K046 will not be reactive and thus will be similar to the K046 nonreactive wastes for which the Agency promulgated standards (see 54 FR 26607–608 (June 23, 1989) regarding waste treatment that may occur before the listed waste is generated). In addition, the Agency believes that if the K046 nonwastewaters are generated as reactive, they could also be slurried in water and then treated by the same controlled chemical oxidation processes, again resulting in a nonreactive K046 nonwastewater. Thus, the nonwastewater standard for K046 reactive wastes is based on data transferred from the performance of stabilization of the K046 nonreactive wastes. BDAT is based on the performance of deactivation for the reactive wastewaters followed by alkaline precipitation, settling, and filtration to form a nonreactive K046 nonwastewater that is then stabilized for lead.

For all of the K046 wastewaters, BDAT is based on the performance of alkaline precipitation, settling, and filtration. The Agency is transferring the performance of this treatment system

from K062 wastes. The Agency believes that the K062 wastewaters are just as difficult to treat based on the concentration of lead in K062 (up to 212 ppm) which is the same or higher than that which has been found in K046 wastewaters (up to 200 ppm).

BDAT TREATMENT FOR K044, K045, K047

[Nonwastewaters and Wastewaters]

[Revised From No Land Disposal]

Deactivation as a method of treatment

BDAT TREATMENT STANDARDS FOR K044, K045, K046 AND K047 SUBCATEGORIES

[Wastewaters]

Regulated constituent	Maximum for any single composite sample, total composition (mg/l)
Lead	0.037

BDAT TREATMENT STANDARDS FOR K046 REACTIVE SUBCATEGORY

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample, TCLP (mg/l)
Lead	0.18

h. K060. In the August 17, 1989 final rule (53 FR 31174), the Agency promulgated "No Land Disposal Based on No Generation" for K060 nonwastewaters. EPA amended this standard in the May 2, 1989 final rule to apply only to certain newly generated wastes (54 FR 18838). Today, the Agency is proposing to revoke this standard since a facility might legitimately use ammonia as a reagent in the coking process and therefore may generate this waste. For more detailed technical information about waste characterization and treatment technologies refer to the Best Demonstrated Available Technology (BDAT) Background Document for K060.

(1) Wastewaters. Today, the Agency is proposing wastewater standards based on the performance of biological treatment followed by settling and clarification. These treatment standards are transferred from the Office of Water Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Industry Manufacturing Point Source Category Coke Making Subcategory.

The Agency evaluated two types of treatment processes: dephenolization followed by alkaline chlorination and biological treatment followed by settling and clarification. Both data sets were available from the Office of Water Development Document for Effluent Guidelines and Standards for the Iron and Steel Industry Manufacturing Point Source Category Coke Making Manufacture. The Agency believes that the performance data from biological treatment followed by settling and clarification were best because the untreated values were higher and the treated values were lower. Therefore, this treatment system treated a more difficult waste and therefore the system's performance should be transferrable to K060.

For the cyanide constituents in the wastewaters, the treatment standards are based on the performance of alkaline chlorination for F006 through F009 wastes. The Agency believes that this is technically feasible due to the fact that the F006 through F009 wastes are more difficult to treat because of the higher cyanide concentrations (i.e., 30,000 ppm) and presence of non-cyanide complexes.

(2) Nonwastewaters. In today's rule, the Agency is proposing nonwastewater treatment standards for organic and cyanides based on a transfer of the performance of incineration for K087. K087 wastes are generated from the same industry (coking industry) as K060 wastes and have similar or higher concentrations of K060. Therefore, the Agency believes that this technology transfer is feasible.

BDAT TREATMENT STANDARDS FOR K060

[Wastewaters]

Regulated constituent	Maximum for any 24 hour composite sample, total composition (mg/l)
Benzene	0.17
Benzo(a) pyrene	0.035
Naphthalene	0.028
Phenol	0.042
	Maximum for any single grab sample, total composition (mg/l)
Cyanides (Total)	1.9

BDAT TREATMENT STANDARDS FOR K060

[Nonwastewaters]

[Revised From No Land Disposal]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	0.071
Benzo(a) pyrene	3.6
Naphthalene	3.4
Phenol	3.4
Cyanides (Total)	1.2

i. K061. In the August 17, 1988 final rule (53 FR 31162), the Agency promulgated treatment standards for K061 nonwastewaters but did not promulgate treatment standards for K061 wastewaters. K061 wastewaters can be generated from dewatered sludges, CERCLA sites, and during corrective action at RCRA facilities. Based on single source leachate information from the Generator's Survey, K061 wastewaters generally have low concentrations of dissolved metals (i.e., less than 100 ppm). Because of these low concentrations of dissolved metals, the Agency believes that a transfer of the performance of hexavalent chromium followed by precipitation with lime or sulfide and sludge dewatering for K062 wastewaters is technically feasible. In addition, the Agency believes that the K062 wastewaters are more difficult to treat than the K061 wastewaters because of the high concentration of dissolved metals, i.e. 5,000 ppm of dissolved metals.

EPA promulgated treatment standards for nonwastewater forms of K061 as part of the First Third final regulation. In this rule, two subcategories for nonwastewaters forms of K061 were defined. The low zinc subcategory (less than 15%) and the high zinc subcategory (greater than 15%) were defined as separate treatability groups. BDAT for the low zinc subcategory was based on the performance of stabilization. For the high zinc subcategory, the final standard was "No Land Disposal Based on High Temperature Metals Recovery as a Method of Treatment" technology (53 FR 31221). The standard takes effect in August, 1990 and due to a shortage of treatment capacity, an interim numerical standard based on performance of stabilization technology is in force until that time.

Today, EPA is proposing to revise the promulgated treatment standard for the high zinc subcategory to be "Resmelting in a High Temperature Zinc Metal Recovery Furnace." Specifying this treatment method more accurately reflects the Agency's intentions in promulgating the first third regulation, and does not reflect a change in regulatory approach.

EPA also notes that in establishing resmelting technology as a treatment method, residues from the process may be land disposed without further treatment. (54 FR 28631–32, June 23, 1989) (Where EPA specifies a method of treatment under section 3004(m), residues from that treatment process may be land disposed without further treatment.) That result is appropriate here. Data gathered as part of the First Third rulemaking (and part of this rulemaking record) indicate that the slag that results from high temperature metals recovery has metals mobility levels comparable to (and in some cases, lower than) that achieved by stabilization technologies. To the extent that stabilization may perform somewhat better, EPA still views high temperature metals recovery as superior because it furthers the statutory objectives of recycling and waste minimization while still achieving significant reductions of metal mobility. (See H. Rep. No. 198, 98th Cong. 1st Sess. 31 describing a preferred hierarchy of management options, and ranking recycling and materials recovery as preferable options to conventional treatment.) Since stabilization potentially adds to the volume of waste requiring land disposal (through addition of cementitious binding agents), and does not perform significantly better in reducing metals mobility, EPA does not believe that it constitutes the ultimate best available technology for K061.

To assure that the metals recovery process performs efficiently, however, EPA is also reiterating that any residues must not exhibit any of the characteristics of hazardous waste (see also the general discussion of this issue in preamble section III.C). If they do, they would have to meet the treatment standard for that characteristic. None of the residues from recovery of K061 in EPA's existing data base exhibit any hazardous waste characteristic.

EPA is further soliciting comment regarding the advisability of extending the duration of the existing, interim treatment standard (based on performance of stabilization technology) for another year. EPA is doing so because available information suggests that there is insufficient high temperature metals recovery capacity to handle demand for this waste. If this were the sole treatment standard, generators could apply for and potentially receive case-by-case variances and the waste would not be required to be treated before being land disposed. EPA is also concerned about the administrative costs and burdens of applying for a case-by-case variance, and the difficulties faced by waste generators while variance petitions are being evaluated.

On the other hand, the Agency does not wish to create a disincentive to construction of new metal recovery capacity. Nor does the Agency wish to reward companies that have not prepared for meeting a treatment standard based on high temperature metals recovery. Accordingly, EPA seeks information about efforts made to construct and operate this type of technology, and what arrangements are being made to enter into binding contractual arrangements to utilize this technology (cf. RCRA Section 3004(h)(3) where this is part of the test for granting a case-by-case variance). Based upon this information (and other relevant information that may develop), the Agency will determine whether to extend the existing standard as an alternative to high temperature metals recovery.

BDAT TREATMENT STANDARDS FOR K061

[Nonwastewaters—High Zinc Subcategory]

[Revised from No Land Disposal]

Resmelting in high temperature zinc metal recovery furnace as a method of treatment.

BDAT TREATMENT STANDARDS FOR K061

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cadmium	1.61
Chromium	0.32
Lead	0.04
Nickel	0.44

j. K069. In today's rule, the Agency is proposing treatment standards for K069 nonwastewaters in the Calcium Sulfate Subcategory, and for wastewater forms of K069. In addition, the Agency is proposing to revoke the no land disposal based on recycling treatment standard for the Non Calcium Sulfate Subcategory for K069 nonwastewaters and is proposing "Recycling as a Method of Treatment".

(1) Wastewaters. BDAT treatment standards for K069 wastewaters are based on the performance of precipitation with lime and sulfide and sludge dewatering for K062 wastes.

Waste characterization data available to the Agency indicate that K069 wastewaters contain cadmium and lead. The concentration of cadmium is less than 2 ppm and the concentration of lead ranges up to 80 ppm. The Agency believes that this transfer is technically feasible due to the higher concentration of dissolved metals that are present in K062 wastes. Therefore, the Agency believes that the K062 waste is a more difficult waste to treat and thus the performance of the treatment system can be legitimately transferred.

(2) Nonwastewaters. BDAT for K069 nonwastewaters in the Calcium Sulfate Subcategory is stabilization. The Agency believes that there is only one generator of this waste and that this waste cannot be directly recycled to recover lead. The waste characterization data from the one generator indicate that this waste contains metal constituents such as cadmium and lead. The metal concentrations range up to 3300 ppm.

For the K069 nonwastewaters in the Calcium Sulfate Subcategory, the Agency is proposing to transfer the treatment performance of stabilization for K061 waste to the K069 nonwastewaters. The Agency believes that this is a technically feasible transfer because the K061 waste is a more difficult waste to treat. In fact, the metal concentrations in K061 waste ranges up to 20,300 ppm. Therefore, the Agency believes that K069 nonwastewaters can be treated to similar concentration levels as K061, thus the performance of the treatment system can be ligitimately transferred.

BDAT TREATMENT STANDARDS FOR K069

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cadmium	1.61
Lead	0.04

BDAT TREATMENT STANDARDS FOR K069 CALCIUM SULFATE SUBCATEGORY

[Nonwastewaters]

Regulated constituent	Maximum for any simple Grab sample TCLP (mg/l)
Cadmium	0.14
Lead	0.24

BDAT TREATMENT STANDARDS FOR K069 ON CALCIUM SUBCATEGORY

[Nonwastewaters]

[Revised from No Land Disposal]

Recycling as a method of treatment

k. Revisions to K086. Revisions are being proposed today for the K086 solvent washes treatment standards that were promulgated in the First Third final rule (53 FR 31168, August 17, 1988). Treatment standards for the other K086 treatability groups that have been subject to the "soft hammer" provisions of 40 CFR 268.8, are also being proposed. For a description of K086 wastes, see 40 CFR 268.33 and the K086 Listing Background Document.

Since promulgation of the First Third rule, EPA has collected samples of K086 caustic sludges and water sludges for the purposes of waste characterization and determination of BDAT. Based on the treatment of these samples, EPA believes that it is unnecessary to subcategorize this waste code (beyond subcategorization for wastewaters and non-wastewaters).

The majority of the facilities generating K086 claim they are phasing out or no longer formulating inks derived from chromium and lead based materials. Current management practices include solvent recoveries (from solvent washes and sludges), incineration (corrosive K086 wastes), and fuel substitution (solvent and metal-containing wastes). These technologies are demonstrated and applicable to K086.

Treatment data for wastes believed similar to K086 show that all K086 wastes—solvent, caustic, and water washes, and their sludges—can be treated by incineration. These treatment data also show that a wide range of technologies are available to recover valuable constituents or energy from K086 wastes. (These recovery technologies, however, frequently result in residues that require further treatment prior to land disposal.) Based on these data, EPA is proposing treatment standards for organics in K086 wastewaters and nonwastewaters based on incineration. For the metal constituents, the Agency is proposing treatment standards based on the performance of hexavalent chromium reduction to trivalent chromium followed by excess lime precipitation, filtration. Except for methanol, the development of the treatment standards for the organics in K086 wastes is consistent with the corresponding U and P treatment standards. Both the BDAT Background Document for K086-Solvent Washes and its November 1989, Addendum further discusses the treatment data supporting the proposed treatment standards for the organic and inorganic constituents in K086 wastes.

The Agency is proposing to expand the list of regulated constituents in K086 to include acetophenone, di-n-butylphthalate, and cyanide. Bis (2-ethylhexyl) phthalate is currently subject to regulation in the current K086 solvent wash treatability group. New characterization data indicate that K086 also contains treatable concentrations of di-n-butylphthalate; therefore, the Agency is proposing to add this constituent for regulation. In addition, the Agency is proposing to include other phthalates identified in the BDAT list in order to prevent the regulated community from simply switching to other phthalates for the purpose of avoiding regulation.

BDAT TREATMENT STANDARDS FOR K086

[Nonwastewaters]

Constituent	Maximum for any single grab sample, [illegible] composition (mg/kg)
Acetone	0.14
Acetophenone	9.6
Bis(2-ethylhexyl)phthalate	[illegible]
n-Butyl alcohol	2.6
Butylbenzylphthalate	[illegible]
Cyanide (total)	1.5
Cyclohexanone	1.9
1,2-Dichlorobenzene	6.2
Diethyl phthalate	[illegible]
Dimethyl phthalate	[illegible]
Di-n-butyl phthalate	[illegible]
Di-n-octyl phthalate	[illegible]
Ethyl acetate	5.6
Ethylbenzene	[illegible]
Methanol	140
Methyl isobutyl ketone	[illegible]
Methyl ethyl ketone	[illegible]
Methylene chloride	31
Napthalene	5.9
Nitrobenzene	14
Toluene	[illegible]
1,1,1-Trichloroethane	6.2
Trichloroethylene	5.6
Xylenes (Total)	33

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Chromium	0.094
Lead	0.37

BDAT Treatment Standards for K086

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, [illegible] composition (mg/1)
Acetone	0.25
Acetophenone	0.17
Bis(2-ethylhexyl)phthalate	0.54
n-Butyl alcohol	[illegible]
Butylbenzylphthalate	0.54
Cyclohexanone	1.4
1,2-Dichlorobenzene	[illegible]
Diethyl phthalate	0.54
Diethyl phthalate	0.54
Di-n-butyl phthalate	0.54
Di-n-octyl phthalate	0.54
Ethyl acetate	0.0052
Ethylbenzene	0.032
Methanol	0.033
Methyl isobutyl ketone	[illegible]
Methyl ethyl ketone	0.14
Methylene chloride	0.037
Napthalene	0.007
Nitrobenzene	0.033
Toluene	0.032
1,1,1-Trichloroethane	0.007
Trichloroethylene	0.007
Xylenes (Total)	0.026
Cyanides (Total)	1.9
Chromium (Total)	0.32
Lead	0.037

[1] Standard for methanol is based on analysis of a composite sample using SW-846 Method 8000.

1. K100. Treatment standards for K100 wastes were originally scheduled to be promulgated as part of the Third Third rulemaking. However, a treatment standard of "No Land Disposal Based on No Generation" for K100 nonwastewaters was promulgated on August 8, 1988 and subsequently revised on May 2, 1989 (54 FR 18836) to be applicable only to "Nonwastewater forms of these wastes generated by the process described in the listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes [Based on No Generation]."

In the proposal for the Second Third Wastes (54 FR 1056 (January 11, 1989)), EPA stated its intention to develop concentration-based treatment standards for all forms of K100 prior to May 8, 1990, and has decided to propose to revoke the promulgated treatment standard of "No Land Disposal Based on No Generation" for K100 nonwastewaters. EPA prefers to set concentration-based treatment standards in lieu of this standard and is today proposing these for K100 nonwastewaters.

Concentration-based treatment standards for all wastewater forms of K100 are proposed today based on the transfer of performance data for metals precipitation from K062 wastewaters and data for metals stabilization from f006 nonwastewaters.

The Agency reminds commenters that there are very few (if any) of these wastes that are currently being generated as originally listed and that the standards will probably only be applied to residues from previous disposal that should be less difficult to treat than the original waste as generated.

BDAT TREATMENT STANDARDS FOR K100

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cadmium	1.61
Chromium	0.32
Lead	0.040

BDAT TREATMENT STANDARDS FOR K100

[Nonwastewaters]

(REVISE FROM NO LAND DISPOSAL)

Regulated constituent	Maximum for any single grab sample, TCLP (mg/l)
Cadmium	[illegible]
Chromium	5.2
Lead	0.51

m. Gases

P076—Nitric oxide
P078—Nitrogen dioxide
U115—Ethylene oxide

While all three of these U and P wastes are highly toxic, it is unlikely that they will exist as wastes which require land disposal. The wastes listed below are typically found as gaseous materials when existing at high concentrations. Since it is difficult to "spill" a gas on soil or in water, it is unlikely that these wastes could exist as spill residues. While these compounds may exist as aqueous or organic solutions, the solutions may not be considered the listed product. The original listing specifically excluded chemical products that simply contained U or P constituents. However, EPA is concerned about the possibility that full containers of these wastes may have to be disposed of in a cleanup situation. EPA solicits comments from anyone who feels they may be land disposing these wastes or may have to do so in the future.

Since all three of these wastes are probably generated as gases and since industry typically reuses or recovers compressed gases directly, the Agency is proposing a treatment standard of "Recovery as a Method of Treatment" for all P076, P078, and U115 wastes. Besides, the Agency currently has no specific data on the treatment of P076 or P078, nor can it determine a treatment technology that would be applicable. Thus, the Agency solicits comment on these issues for these wastes and also whether there is even a need to promulgate treatment standards for these wastes.

Concentration-based standards for these wastes would be complicated by the fact that these compounds are gases. While some analytical techniques do exist, the fact that they are gases complicates the analysis of treatment residuals. (The sampling and analysis procedures for these constituents would have to minimize potential losses.)

However, the Agency has recently received data from a facility that had generated a U115 wastewater and nonwastewater. Under the soft hammer provisions, the facility had to demonstrate treatment for these wastes prior to land disposal. The wastes contained up to 26.5 ppm of ethylene oxide. Treatment included incineration of the nonwastewaters and chemical oxidation of the wastewaters. In all cases, the ethylene oxide was reduced to detection limits. These data were received too late for the Agency to develop concentration-based treatment standards for U115 wastes. However, these data are being placed in the administrative record for today's notice and treatment standards for U115 wastes may be promulgated based on these data.

BDAT TREATMENT STANDARDS FOR P076, P078, AND U115

Recovery as a method of treatment

n. Revision of Petroleum Refining Wastes. On August 8, 1988, EPA promulgated treatment standards for regulated constituents in K048–K052 wastewaters and nonwastewaters. The promulgated BDAT treatment standards were based on data that were collected by EPA on incineration of these wastes, data that were submitted to the Agency on solvent extraction of the wastes, and data for treatment of metals in the wastewater and nonwastewater residuals. However, some of the solvent extraction data were not submitted to the Agency in time to allow them to be fully evaluated before the promulgation date. As a result, EPA reserved the treatment standards for several organic constituents in K048–K052 nonwastewaters. Since promulgation of K048–K052 treatment standards, the Agency has received additional data on treatment of these wastes. The Agency has also recently collected data on solvent extraction of these wastes.

Where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. RCRA Section 3004(m)(1) states specifically that treatment standards are to be revised as appropriate. EPA believes that revision of these standards is appropriate and timely. Therefore, the EPA is today proposing revised BDAT treatment standards based on a re-evaluation of the currently available data and is proposing that these revised standards, with five exceptions, take effect exactly one year following the Third Third Rulemaking promulgation date to allow the petroleum refining industry sufficient time to adjust to changes from the K048–K052 BDAT treatment standards previously promulgated. The five exceptions are benzo(a) pyrene, ortho- and para-cresols, di-n-butyl phthalate, and phenol. These standards would increase based on the revised data, and therefore, are proposed to be effective on August 8, 1990. Until the revised standards take effect for all other constituents, the previously promulgated standards which, due to the 2 year capacity variance issued for K048–K052 wastes as part of the First Third rule, become effective on August 8, 1990, will remain in effect. Specific changes to the BDAT treatment standards that are being proposed today are discussed below.

The Agency is today proposing to add cyanide as a regulated constituent for K048–K052 wastewaters and is proposing a BDAT treatment standard for cyanide based on incineration of these wastes. At the time of proposal for the First Third wastes, the Agency did not have data on treatment of cyanide for K048–K052 wastewaters and did not have data on treatment of cyanide in other wastes that could be transferred to K048–K052 wastewaters. Data on cyanide in combustion gas scrubber water from incineration of K048 became available to the Agency late in the regulatory schedule for the First Third

wastes. These data have now been used to develop the proposed Third Third treatment standards for cyanide in K048–K052 wastewaters. Thus, for K048–K052 wastes containing cyanide, the Agency expects treatment to occur using incineration technologies. Solvent extraction, although considered a BDAT technology for all other organic constituents regulated in K048–K052 nonwastewaters, has not been demonstrated to treat cyanide. The proposed treatment standard for cyanide in K048–K052 wastewaters is shown in the table at the end of this section.

After the close of the comment period for the proposed regulations for First Third wastes, EPA received additional data on solvent extraction treatment of K048–K052 wastes. These data were received too late to allow a full evaluation and inclusion in the development of the promulgated BDAT treatment standards. Since promulgation of the land disposal restrictions for First Third wastes in August 1988, the Agency has reviewed these data as well as additional new data submitted following promulgation. The Agency has also recently completed a solvent extraction treatment test on a mixture of K048 and K051 waste. For most of the regulated organic constituents in K048–K052 nonwastewaters, the new solvent extraction data show better or similar treatment than the data used to develop the previously promulgated standards. Overall, the Agency believes that the new data provide the most substantial treatment for the greatest number of organic constituents of concern than all of the other solvent extraction data available to the Agency. Therefore, the Agency is proposing revised treatment standards for the organics already covered in the K048–K052 nonwastewater treatment standards based on the results of this treatment test. The Agency has not reevaluated the selection of solvent extraction and incineration as BDAT for organics in nonwastewaters but has instead incorporated the additional solvent extraction performance data into the revision of these treatment standards. As before, these wastes may be treated by any treatment technology capable of achieving the treatment standard.

The Agency also is proposing nonwastewater treatment standards for two constituents for which it reserved treatment standards in the First Third rule, naphthalene and xylene. The results from the recently completed Agency-sponsored solvent extraction test provide treatment performance data for solvent extraction of these constituents as well (as the other regulated organic constituents in K048–K052 nonwastewaters). There are important environmental reasons to develop treatment standards for xylene and naphthalene in these wastes. These solvents have been found to be present at high concentrations in these wastes (0.1 percent or higher), and at these levels can readily mobilize other land disposed constituents or degrade landfill liners resulting in increased mobilization. The Agency also is concerned about the potential contribution of these constituents to VOC emissions from land disposal facilities. Thus, treatment of these constituents will clearly serve to reduce the mobility of land disposed K048–K052 wastes (and any wastes with which they are co-disposed) (see Section 3004(m)(1)).

EPA has recently received treatment performance data, and a separate rulemaking petition, from Exxon Company, U.S.A. and the American Petroleum Institute (API). The thrust of the petition is that certain of the promulgated treatment standards are unachievable. These data were not received by the Agency in time to be fully evaluated for this proposed rulemaking. The data are mentioned here and included in the administrative record for this proposed rulemaking to provide sufficient notice to commenters of their availability. These data will be fully evaluated by the Agency and may be used by the Agency to provide further revisions to the K048–K052 BDAT treatment standards, if appropriate, in the Third Third final rule.

The revised BDAT treatment standards that are being proposed for organic constituents in K048–K052 nonwastewaters and for cyanide in K048–K052 wastewaters are listed in the tables at the end of this section. The Agency is not proposing revisions to promulgated BDAT treatment standards for constituents in K048–K052 wastewaters other than cyanide, nor for any metal constituents in either K048–K052 wastewaters or nonwastewaters.

BDAT TREATMENT STANDARDS FOR K048, K049, K050, K051 AND K052

[Wastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/l)
Cyanides (Total)	0.028

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K048

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	3.9
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Di-n-butyl phthalate	4.3
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylenes (Total)	8.5

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K049

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Anthracene	1.4
Benzene	3.9
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylenes (Total)	8.5

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K050

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzo(a)pyrene	1.4
Phenol	4.3

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K051

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Anthracene	1.4
Benzene	3.9
Benzo(a)anthracene	1.4

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K051—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Di-n-butyl phthalate	4.3
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylenes (Total)	8.5

REVISED BDAT TREATMENT STANDARDS FOR ORGANICS IN K052

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	3.9
Benzo(a)pyrene	1.4
o-Cresol	0.8
p-Cresol	5.6
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Toluene	3.9
Xylenes (Total)	8.5

o. Additional Treatment Standards for F002 and F005. The Agency promulgated treatment standards for F001–F005 listed wastes in the Solvents and Dioxins Rule (51 FR 40572, November 7, 1986). On February 25, 1986 the Agency amended the listing of F002 and F005 to include four new constituents: 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane (51 FR 6737). These are organic compounds that are usually used for their solvent properties.

Although HSWA directs the Agency to restrict the disposal of these new constituents six months after they were listed, EPA was unable to propose or promulgate treatment standards because there were no SW–846 analytical methods that could satisfactorily analyze 2-ethoxyethanol and 2-nitropropane in complex waste matrices. Therefore, the Agency has been unable to propose treatment standards for these constituents until today's notice.

The Agency synthesized several wastewaters containing these constituents in order to conduct treatability studies and to identify appropriate analytical methods. To develop today's proposed treatment standards, the Agency modified existing SW–846 analytical methods so that they were applicable to 2-ethoxyethanol and 2-nitropropane. (For further information on the synthesis of these wastewaters and the development of these analytical methods, consult the F002 and F005 Background Document in the administrative record for today's proposal.)

The Agency has determined that biological treatment represents BDAT for treatment of 1,1,2-trichloroethane, benzene, and 2-ethoxyethanol. Wastewater treatment standards are being proposed today for 1,1,2-trichloroethane of 0.03 mg/l, benzene of 0.07 mg/l, and 2-ethoxyethanol of 73.3 mg/l based on the performance of biological treatment.

The Agency has determined that liquid-liquid extraction followed by steam stripping followed by carbon adsorption represents BDAT for 2-nitropropane wastewaters. Based on the performance of this treatment train the Agency is proposing a treatment standard of 0.056 mg/l for this constituent in wastewaters. The Agency also examined the performance of steam stripping alone for treatment of 2-nitropropane wastewaters and developed a treatment standard of 1.35 mg/l. The Agency is concerned about the validity of the steam stripping data because the holding times of the samples supporting the 1.35 mg/l limit were exceeded. The Agency is also evaluating the need for recreating the steam stripping test studies of 2-nitropropane because the reduction of 2-nitropropane was achieved at the expense of significant amounts of energy. The high energy demands may have been a result of an inappropriate steam stripper design or the azeotropic behavior of 2-nitropropane with water. As a result, the Agency is proposing the 0.056 mg/l level, and solicits comment on this proposed approach.

Incineration represents BDAT for all of the newly listed F002 and F005 constituents in nonwastewaters. The Agency does not have incineration data from the treatment of the four newly-listed F002 and F005 organics. However, the Agency has performance data from incineration of nonwastewaters containing treatable concentrations of the same or similar constituents. (See preamble section III.A.1.d. for further discussion of the transfer of treatment standards.) Nonwastewater treatment standards are being proposed today for 1,1,2-trichloroethane of 7.6 mg/kg, benzene of 3.72 mg/kg, and 2-ethoxyethanol of 47.5 mg/kg, and 2-nitropropane of 5.6 mg/kg, based on the transfer of incineration performance data.

BDAT TREATMENT STANDARDS FOR F002

[Nonwastewaters]

Regulated Constituent	Maximum for any single grab sample, total composition (mg/kg)
1,1,2-Trichloroethane	6.2

BDAT TREATMENT STANDARDS FOR F002

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total Composition (mg/l)
1,1,2-Trichloroethane	0.054

BDAT TREATMENT STANDARDS FOR F005

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample, total composition (mg/kg)
Benzene	3.72
2-Ethoxyethanol	47.5
2-Nitropropane	5.6

BDAT TREATMENT STANDARDS FOR F005

[Wastewaters]

Regulated constituent	Maximum for any composite sample, total composition (mg/l)
Benzene	0.07
2 Ethoxyethanol	73.3
2-Nitropropane	0.073

7. Development of Treatment Standards for Multi-Source Leachate—a. Background. In the final rule for the First Third Wastes (August 17, 1988 (53 FR 31146–31150)) the Agency reiterated that leachate derived from the disposal of listed wastes is a hazardous waste based on the derived-from rule. The Agency took the position that the waste code-specific treatment standards for the land disposed waste(s) from which the leachate is derived applied to the leachate (this idea has acquired the

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label of "waste code carry-through principle", although this label is something of an oversimplification because it merges the ideas of carry-through of a treatment standard with carry-through of a waste label for permitting purposes; these issues need not be identical, as discussed in section e. below). EPA later revisited the issue of leachate treatability and determined that there were significant unresolved issues regarding availability of leachate treatment capacity, and that further study of treatability of leachate derived from the co-disposal of multiple waste codes (i.e., more than two waste codes) was warranted. These wastes have thus been designated as multi-source leachate (see 54 FR 8264 (Feb. 27, 1989)). Single-source leachate must meet the wastewater and nonwastewater standards for the underlying waste code from which it was derived. *Id.*

The Agency consequently rescheduled most multi-source leachate to the third-third of the schedule. *Id.* The only type of multisource leachate not rescheduled is that derived from disposal of the listed dioxin-containing hazardous wastes. Such leachate remains the subject of a judicial stay order entered by a panel from the District of Columbia Circuit Court of Appeals which stays the applicability of the waste code carry-through principle to multi-source leachate whose prohibition date was not rescheduled by the Agency.

(1) Definition of Multi-source Leachate. Leachate is defined in 40 CFR 260.10 as any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste. Leachate that is derived from the disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.3(c)(2). Multi-source leachate is leachate that is derived from the disposal of more than one listed hazardous waste (i.e., more than one waste code). 54 FR 8264 (February 27, 1989). EPA is soliciting comment below on considering leachate derived exclusively from F021–F023, and F025–F028 dioxin-containing wastes to be single-source leachate. EPA also solicits comment on a narrower definition of multi-source leachate which would say that leachate must be derived from more than one treatability group (rather than more than one waste code) to be considered "multi-source". EPA is soliciting comment on this point both because it appears that leachate derived exclusively from wastes within a single treatability group would be able to meet the treatment standards for that treatability group because it is more dilute, and because members of the regulated community have voiced concern at being subject to standards encompassing all toxic pollutants (a virtually inevitable consequence of classifying multi-source leachate as any leachate derived from more than one waste code). By "treatability group, EPA is referring to the groupings of wastes in this proposed rule such as "halogenated aliphatics", or "phenolics". Scheduled wastes from earlier rulemakings would be part of a single treatability group if grouped within an industry grouping in § 261.32 (hazardous wastes generated from specific sources). For example, the K048–052 series of wastes would constitute a single treatability group since all the wastes come from the petroleum refining process.

(2) Applicability. Leachate can become subject to the land disposal restrictions if it is removed from a land disposal unit for disposal after the prohibition effective date for the underlying waste (see *Chemical Waste Management* v. *EPA*, 869 F. 2d. 1526, 1536 (D.C.Cir. 1989)). Furthermore, to the extent that such leachate is derived from wastes that were listed as hazardous on November 8, 1984 (the date of the HSWA amendments), it is subject to the statutory hard hammer in section 3004(g) which applies to all wastes that were listed as hazardous on the date of enactment of the HSWA amendments. The time the waste was originally disposed is irrelevant to this analysis; the status of wastes as listed hazardous wastes (and wastes derived from them as listed hazardous wastes) is determined by what the wastes are, not by when they were initially disposed (*Chemical Waste Management*, 869 F. 2d at 1536–37).

To further clarify the applicability of the treatment standards to multi-source leachate, the Agency points out the following: (1) Groundwater contaminated with multi-source leachate must comply with the multi-source leachate standards (see e.g. *Chemical Waste Management* v. *EPA*, *supra*, 869 F.2d at 1539–40); (2) Single-source leachate (i.e., leachate derived-from only one waste code such as might be expected from a monofill) cannot be combined to create multi-source leachate; and (3) Single-source leachate from separate facilities cannot be combined to create multi-source leachate. These last two interpretive principles are needed to prevent abuses that would forestall treatment of prohibited wastes.

b. Development of Proposed Treatment Standards. The Agency is today proposing two options for applicability of BDAT treatment standards for multi-source leachate and residues from leachate treatment: (1) Continued application of only those treatment standards for the waste codes that were land disposed; and (2) application of one fixed set of wastewater treatment standards and one set of nonwastewater treatment standards for all multi-source leachate and treatment residues. These options are discussed later in this preamble section. The Agency is specifically requesting comment on both of these options.

For both options, the number of applicable concentration-based constituent standards could be very large (i.e., there could be more than 200 individual constituent concentrations that would have to be met). This is a consequence of viewing multi-source leachate as its own treatability group; it thus potentially contains any or all of the BDAT list constituents which consequently must be addressed in treatment standards. It is important to point out that under either option, EPA envisions the rule being implemented by leaving the frequency of monitoring for constituents (or indicator parameters) to the judgement of the permit writer, who would specify monitoring frequency in the facility's waste analysis plan. (See further discussion of waste analysis plans in section III.A.1.f.(3.) of today's preamble). As with all BDAT treatment standards, this provides site-specific consideration of the need for monitoring regulated pollutants likely to be present.

EPA is in the process of reviewing these constituents to determine if treatment of the BDAT list of constituents will assure treatment of these other one hundred or so Appendix VIII constituents. If the BDAT list is not adequate as a surrogate for all constituents contained in multi-source leachate, a treatment train could also be specified to assure adequate treatment of all codes.

(1) Continued Application of Only Those Treatment Standards for the Waste Codes that were Land Disposed. The first option is to continue to apply the derived-from rule to multi-source leachate for only those treatment standards for the waste codes that were land disposed. As discussed earlier in this section, the derived-from rule would require that leachate meet the standards set for the waste codes from which the leachate is derived. In previous rules, the Agency stated that these treatment standards could be appropriate because leachate is expected to be more dilute than the original wastes on which the standards were based. At that time, the available waste characterization data for leachate indicated that the concentrations of hazardous constituents in untreated leachate were slightly higher but very similar to the concentrations of hazardous constituents that would meet the promulgated treatment standards. Thus, the Agency concluded that leachate is easier to treat than the original wastes and so could be treated to comply with BDAT.

Administrative complications can arise from applying these standards based on the vast number of potentially applicable treatment standards and the various combinations and permutations of applicable treatment standards. This is further complicated if more than one standard exists for a particular constituent, since the most stringent standard then applies (see § 268.41(b)). Because of the variety in potential applicable treatment standards due to the wide variety of combinations of waste codes, the Agency cannot present, in today's preamble, all of the options of treatment standards that would apply for all combinations of wastes.

EPA solicits comment regarding applicability of treatment standards that are specified methods of treatment should the Agency decide to adopt this option in the final rule. The Agency's tentative resolution is that, for leachate wastewaters, any treatment standard that is a method should apply. This is because all of the specified treatment methods for wastewaters (typically wet air oxidation or chemical precipitation and filtration) are readily applicable wastewater treatment methods to which leachate wastewaters should be amenable.

The situation for leachate non-wastewaters, i.e. the residues from treating leachate, is more complicated. The nonwastewater treatment methods that EPA has specified most frequently are incineration to destroy organics and chemical stabilization for inorganics. Since these are generally-applicable treatment technologies (and form the basis for most of the numerical standards in any case), EPA does not see any difficulty in applying these methods. EPA, however, has also required deactivation and recovery as methods for certain wastes. These methods are less likely to be appropriate to leachate nonwastewaters. As a practical matter, however, EPA expects that the property of reactivity will be removed by treating the leachate itself, so that the treatment residue would never require deactivation. Thus, EPA is not proposing to require this treatment method for leachate nonwastewaters (should it ultimately adopt standards based on this option). EPA has specified or proposed recovery as a method for certain wastes that contain zinc, lead, or mercury (see section III.A.5. of today's preamble). These treatment methods are required for waste treatability groups that contain recoverable amounts of the target metal. For zinc in K061 wastes the percentage is 15%; for lead in the D008 High Lead Subcategory, the percentage is greater than 2.5 %; for mercury in D009 High Mercury Subcategory, the concentration is l6 mg/kg. EPA is proposing to apply these same thresholds to leachate nonwastewaters derived from wastes subject to these treatment methods. Should the leachate nonwastewater contain less than these concentrations of the target metal, the concentration level based on stabilization would apply. (See also 54 FR 18836 (May 2, 1989) where the Agency adopted a similar approach in revising certain of the no land disposal treatment standards.)

(2) Establishing One Set of Wastewater Standards and Nonwastewater Standards for Multi-Source Leachate and Treatment Residues. The Agency received several comments during the first third rulemaking alleging that multi-source leachate can be difficult to treat due to its complex waste matrix (i.e., each leachate and treatment residue has various combinations and concentrations of different hazardous constituents). The commenters suggested that multi-source leachate should be a specific treatability group with its own separate waste code, and that one set of treatment standards (i.e., one standard per constituent) should be established for this group. At that time, however, insufficient data were available to substantiate that multi-source leachate and treatment residues constitute a separate treatability group.

Since the time this issue was first raised, the Agency has received data on the physical and chemical composition of various multi-source leachates and on current multi-source leachate treatment. These data were submitted from various TSDFs to show that multi-source leachate is more difficult to treat than EPA originally thought, and that it deserves classification as a separate treatability group. The Agency is examining waste characterization data and some treatment data to determine the frequency that leachate (both treated and untreated) fails to achieve the existing treatment standards. The treatment data are from treatment systems that are currently being applied to leachate collected from several sources. These data are being placed in the administrative record for today's proposed rule and will be considered in the promulgation of treatment standards for leachate.

Based on a preliminary analysis of industry data and the various complications that arise in applying the treatment standards to a seemingly endless array of waste combinations, the Agency is proposing, as one option, the applicability of one set of wastewater treatment standards and one set of nonwastewater standards for all multi-source leachates as a means of complying with the waste code carry-through. Although this option may ease the burden of compliance for those facilities land disposing numerous waste codes, it may increase the burden for those facilities land disposing only a few waste codes, who, under this second option, would have to analyze for the entire BDAT list of constituents. (See the earlier solicitation of comment on redefining multi-source leachate as a means of dealing with this potential problem.)

The Agency also is specifically requesting comment on the treatability data submitted by industry that can be found in the administrative record for today's proposed rule. These data may be used by the Agency to develop or to revise the proposed standards based on the second approach (although initial indications are that these data do not come from optimized treatment systems). If any person desires a copy of any additional data pertaining to this proposed treatment standard that is received during the public comment period, please request it in writing by identifying the data of interest as III.A.7 Development of Treatment Standards for Multi-Source Leachate. See section III.A.1.l. for more information on requesting data.

c. Proposed Treatment Standards Based on Option Two. In today's notice, EPA is proposing one set of nonwastewater and one set of wastewater treatment standards based on the data currently available according to option two discussed above. As noted previously, the final treatment standards based on this option will depend upon the analysis of additional treatment data received just prior to proposal (these data have been placed in the administrative record for today's notice but have not yet been analyzed for impact on the treatment standards proposed in this notice) and any additional data or comments received during the comment period.

These treatment standards propose the regulation of the entire BDAT list of constituents. The reasoning behind this is that commenters have previously stated that their multi-source leachate is typically derived from the land disposal of every listed hazardous waste, and thus can potentially contain any or all of the BDAT list constituents. More information on how these standards were developed can be found in sections of today's preamble and various background documents. The proposed wastewater and nonwastewater multi-source leachate standards for option two are included in tables at the end of this preamble section.

It is EPA's tentative conclusion that establishing treatment standards for each BDAT constituent obviates the need to specify methods of treatment, should the Agency adopt this option. In other words, the BDAT list would serve as a surrogate for those constituents for which there are no analytic methods. The Agency solicits comment on this point, and specifically requests documentation of the validity of using the BDAT list as surrogates.

(1) Nonwastewaters. The Agency is proposing to transfer most of the concentration-based nonwastewater standards for multi-source leachate (option two) based on a direct transfer of existing and proposed nonwastewater treatment standards for the U and P waste codes that correspond to the proposed regulated constituents. For convenience of the reader, the Agency presents a table at the end of this section entitled Basis of Transfer for Multi-Source Leachate Treatment Standards which gives the waste code from which the standard has been proposed to be transferred. This table also includes a reference to further discussion of the development of the proposed standard either in the administrative record, the preamble of today's notice, or the appropriate background document for that particular standard.

Almost all of the nonwastewater standards for organic constituents are based on incineration as BDAT. These constituent concentrations are transferred from treatment standards for U and P waste codes promulgated in the Second Third Rule or proposed in today's preamble. The metal constituent concentrations (except for arsenic, selenium and mercury) are primarily based on a transfer of the performance achieved by stabilization for F006.

(2) Wastewaters. Most of the concentration-based wastewater standards were transferred from treatment data on those constituents developed for various other regulatory programs administered by the Agency, and are based on data from numerous sources. (Since these data apply to the development of treatment standards for other wastewaters besides multi-source leachate, further discussion of these data is presented in section III.A.1.h.(6.) of today's notice.) Some of the treatment standards for wastewater forms of multi-source leachate have been transferred from other listed RCRA wastes. Details on the development or transfer of these wastewater standards per constituent can be found in the administrative record for multi-source leachate.

EPA also has recently conducted a study of the treatment of wastewaters by wet air oxidation followed by PACT or activated carbon. Subsequent to this proposal, these data will be examined for applicability to wastewater constituents in multi-source leachate. In the interim, these data can be found in the administrative record for today's proposed rule. EPA specifically solicits comment on the appropriate use of these data in establishing standards for leachate.

d. Multi-Source Leachate That Exhibits a Characteristic of Hazardous Wastes. EPA is not proposing separate standards under option 2 for multi-source leachate that exhibits a characteristic of hazardous wastes. This is because, by proposing standards for all of the BDAT list constituents, the treatment standards will address all of the constituents and properties that the treatment standard for characteristics address. As described more fully in section III.C below, the Agency's proposed resolution of situations where prohibited listed wastes also exhibit a characteristic is that the specific treatment standard for the listed waste would control because it is more specific. As stated further in that section, however, should multi-source leachate or its treatment residues exhibit a characteristic at the point of disposal, it would have to be treated to meet the treatment standard for that characteristic.

Under option 1, if multi-source leachate exhibited a characteristic, one would have to ascertain if the treatment standard for the listed wastes from which the leachate is derived addressed the same constituents or properties identified by the characteristic. If so, the treatment standard for the listed waste would supercede the standard for the characteristic. If not, the leachate and/or treatment residues would have to be treated to meet the treatment standard for both the listed wastes and the characteristic. See section III.C. This same result would obtain for single source leachate that exhibits a characteristic.

Finally, if leachate simply exhibits a characteristic of hazardous waste without being derived from a listed waste, it is subject to the treatment standard for that characteristic.

e. Multi-Source Leachate Containing Dioxins and Furans. A final set of issues pertaining to multi-source leachate involves the status of multi-source leachate that contains chlorinated dibenzo-p-dioxins and furans ("dioxins" and "furans"). Specific points for discussion are applicability of the waste code carry-through principle where the leachate may be derived in part from treatment, storage, or disposal of listed dioxin-containing wastes, applicability of the dioxin land disposal prohibitions, applicability of management standards for acute hazardous wastes, and a need for treatment standards for dioxins and furans.

The most recent characterization data for multi-source leachate indicates presence of dioxins at low concentration levels. These data are gathered from several very large commercial facilities that treat a great number of different wastes: these data should thus be representative of the majority of leachate that may be generated. Based on a review of waste characterization data for fifteen different sources of untreated multi-source leachate, only two data points indicated detectable concentrations of dioxins (based on a range of detection limits of 0.0001 ppb to 0.01 ppb): concentrations of 0.031 ppb tetrachlorodibenzo-p-dioxin in one sample, and .026 ppb pentachlorodibenzo-p-dioxin in another sample (TCDD equivalence: .013 ppb, based on a Toxic Equivalence Factor of 0.5, see 51 FR 19661, June 3, 1986). All other samples showed nondetectable levels for hexa-, penta-, and tetra-chlorodibenzo-furans and dioxins. (It is not known if any of the leachates tested derived in part from disposal of listed dioxin-containing wastes.)

These concentration levels are very low, and below the level the Agency believes warrants the special concerns which prompted special management standards for the F021–F023 and F025–F028 wastes, and which prompted Congress to prioritize the dioxin waste land disposal prohibitions (see 51 FR 19859, June 3, 1986). Based on these data, EPA is proposing that the dioxin waste codes not apply to multi-source leachate. Thus, the leachate would remain a hazardous waste but would not be classified under these waste codes. These waste codes trigger extraordinary regulatory and nonregulatory burdens in the form of extra management standards (50 FR 1978, January 17, 1985), permitting obstacles due to public perceptions, extra management costs, and prioritized land disposal prohibitions. These extraordinary consequences should be reserved for situations where the concentrations of dioxin merit the need for extraordinary controls. This does not appear to be the case for multi-source leachate. (EPA notes that the derived-from rule does not bar the type of reclassification that we are proposing here. The derived-from rule, and the interpretive waste-code carry through principle, establish presumptions that can be rebutted either by an individual party, or by the Agency. Indeed, EPA itself indicated in the original dioxin waste listing regulation that not all wastes derived from managing the listed dioxin-containing wastes are acute hazardous. EPA thus listed waste F028, which is a residue from treating listed dioxin-containing wastes, as a toxic hazardous waste under its own waste code.)

However, to guard against situations where leachate might have higher concentrations of dioxins and furans as a result of management of the listed dioxin-containing wastes (the only circumstance under the existing rules when presence of dioxins would trigger acute hazardous waste status for the leachate), EPA is proposing that leachate that is derived from any or all of the listed dioxin-containing wastes (F021–F023 and F025–F028) and no other hazardous waste continue to be classified as multi-source even if it was derived exclusively from these dioxin-containing wastes, provided more than one was involved.

A consequence of the proposal is rescheduling to the Third multi-source leachate that could have been classified under the dioxin waste code. EPA does not see a legal impediment to this action. As the Agency determined with respect to multi-source leachate that contains listed solvent wastes, EPA does not believe that either the solvent or dioxin statutory prohibitions (RCRA section 3004(e)) are so definite as to the prohibition effective date for multi-source leachate not directly attributable to disposal of a particular solvent or dioxin that the Agency is without discretion to determine an alternative prohibition effective date (see 54 FR 8265, February 27, 1989). Rather, the Agency sees some ambiguity in the classification of multi-source leachate and thus some discretion to reschedule. Because existing data show that the levels of dioxins and furans are so low or nondetectable, EPA does not presently believe it would be appropriate to classify those multi-source leachates that technically are derived in part from disposal of the listed dioxin-containing waste codes under the dioxin waste prohibition.

For the same reasons, imposition of the special standards for acute hazardous wastes do not appear appropriate for multi-source leachate. Indeed, EPA has already made determinations (or proposed them) that comparable levels of dioxins are not properly classifiable as acute hazardous wastes (see 51 FR 30271 (July 25, 1985); 53 FR 7903 (March 11, 1988); 53 FR 20100 (June 2, 1988); 54 FR 27167 (June 28, 1989)).

The final issue is whether the treatment standards for multi-source leachate should include a treatment standard for dioxins and furans. The Agency is proposing a treatment standard of 1 ppb in the waste, the routinely achievable analytical detection limit. However, it may be that there is no need for a dioxin standard (or a standard for many of the other BDAT list constituents) if control of other constituents will also control the dioxins and furans. Given the apparent low level of dioxins and furans in the untreated leachate, these would appear to be possible candidates for indicator pollutant status since most of the samples could meet the treatment standard even as generated. EPA notes, however, that the issue of indicator pollutants for multi-source leachate treatment standards is not unique to dioxin and potentially includes any of the BDAT list pollutants. EPA accordingly solicits comment on this issue not only for dioxins and furans, but as part of the general issue. EPA also solicits comment on the other issues discussed in this part of the preamble, including any more raw leachate characterization data that may be available.

f. Separate Waste Code for Multi-Source Leachate. EPA also solicits comment on one remaining issue: whether multi-source leachate should be redesignated by a separate waste code. This issue is not necessarily related to the question of the treatment standards that should apply to multi-source leachate, since EPA could still determine that the treatment standards proposed under either option 1 or option 2 could apply to multi-source leachate (although, should the Agency adopt an approach based on option 1—carry through of treatment standards—then waste generators and treatment facilities probably could comply with § 268.7 (a) and (b) only by listing numerical treatment standards on the land disposal prohibition tracking document). Members of the commercial waste management industry have urged the Agency to establish a separate waste code for multi-source leachate on the grounds that it is a distinct type of waste different from the underlying wastes from which it is derived. In addition, they assert that they will face fewer administrative obstacles, particularly with respect to permit modifications if multi-source leachate and treatment residues have a separate waste code.

EPA solicits comment on this approach, provided it is understood that a decision on this issue does not determine what the treatment standard(s) for multi-source leachate and treatment residues should be. In addition, EPA solicits comment on the possible effect on RCRA permitting of designating multi-source leachate (and treatment residues derived therefrom) by a separate waste code. It would appear that this necessitates amending all RCRA permits that do not already include a narrative description for leachate and leachate treatment residues. EPA also solicits comment on whether designating multi-source leachate by a single waste code should be considered a HSWA regulation immediately effective in authorized states.

BDAT Treatment Standards for Multi-Source Leachate

(Nonwastewaters.)

Regulated organic constituents	Maximum for any single grab sample, total composition (mg/kg)
Acetone	0.14
Acenaphthalene	3.4
Acenaphthene	9.1
Acetonitrile	1.35
Acrolein	1.9
Acetophenone	9.6
Acrylamide	1.5
2-Acetylaminofluorene	13
Acrylonitrile	0.28
Aldrin	0.066
4-Aminobiphenyl	13
Aniline	14
Anthracene	7.7
Aramite	2.5
Aroclor 1016	0.92
Aroclor 1221	0.92
Aroclor 1232	0.92
Aroclor 1242	0.92
Aroclor 1248	1.3
Aroclor 1254	1.8
Aroclor 1260	1.8
alpha BHC	0.066
beta-BHC	0.066
delta-BHC	0.066
gamma-BHC	0.066

BDAT Treatment Standards for Multi-Source Leachate—Continued

[Nonwastewaters]

Regulated organic constituents	Maximum for any single grab sample, total composition (mg/kg)
Benzene	36
Benzal chloride	6.2
Benzene thiol	6.2
Benzo(a)anthracene	3.6
Benzo(b)fluoranthene	3.4
Benzo(k)fluoranthene	3.4
Benzo(g,h,i)perylene	1.8
Benzo(a)pyrene	3.6
p-Benzoquinone	100
Bromodichloromethane	16
Bromoform	16
Bromomethane (methyl bromide)	16
4-Bromophenyl phenyl ether	16
n-Butanol	2.6
Butyl benzyl phthalate	15
2-sec-Butyl-4,6-dinitrophenol	2.5
Carbon tetrachloride	6.2
Chlordane	0.13
p Chloroaniline	16
Chlorobenzene	5.7
Chlorobenzilate	2.8
2-Chloro-1,3-butadiene	28
Chlorodibromomethane	16
Chloroethane	6.0
bis-(2-Chloroethoxy) methane	7.2
bis-(2-Chloroethyl) ether	7.2
Chloroform	6.2
bis-(2-Chloroisopropyl) ether	7.2
p-Chloro-m-cresol	14
Chloromethane	5.6
2-Chloronaphthalene	5.6
2-Chlorophenol	5.7
3-Chloropropene	100
Chrysene	3.6
o-Cresol	5.6
Cresol (m- and p-isomers)	3.2
Cyclohexanone	1.9
1,2-Dibromo-3 Chloropropane	15
1,2-Dibromoethane (Ethylene dibromide)	16
Dibromomethane	15
2,4-Dichlorophenoxyacetic acid (2,4-D)	10
o,p'-DDD	0.087
p,p'-DDD	0.087
o,p'-DDE	0.087
p,p'-DDE	0.087
o,p'-DDT	0.087
p,p'-DDT	0.087
Dibenzo(a,h)anthracene	13
1,2,7,8-Dibenzopyrene	37
tris-(2,3-Dibromopropyl) phosphate	0.1
m-Dichlorobenzene	6.2
o-Dichlorobenzene	6.2
p-Dichlorobenzene	6.2
3,3'-Dichlorobenzidine	10
cis-1,4-Dichloro-2-butene	30
trans-1,4-Dichloro-2-butene	30
Dichlorodifluoromethane	10
1,1-Dichloroethane	6.2
1,2-Dichloroethane	6.2
1,1-Dichloroethylene	6.2
trans-1,2-Dichloroethylene	6.2
2,4-Dichlorophenol	14
2,6-Dichlorophenol	14
1,2-Dichloropropane	15
cis-1,3-Dichloropropene	15
trans-1,3-Dichloropropene	15
Dieldrin	0.13

BDAT Treatment Standards for Multi-Source Leachate—Continued

[Nonwastewaters]

Regulated organic constituents	Maximum for any single grab sample, total composition (mg/kg)
Diethyl phthalate	28
p-Dimethylaminoazobenzene	25
2,4-Dimethyl phenol	14
Dimethyl phthalate	28
Di-n-butyl phthalate	28
1,4-Dinitrobenzene	2.3
4,6-Dinitrocresol	140
2,4-Dinitrophenol	140
2,4-Dinitrotoluene	140
2,6-Dinitrotoluene	28
Di-n-octyl phthalate	28
Diphenylamine	13
Diphenylnitrosoamine	13
Di-n-propylnitrosoamine	14
1,4-Dioxane	200
Disulfoton	0.1
Endosulfan I	0.066
Endosulfan II	0.13
Endosulfan sulfate	0.13
Endrin	0.13
Endrin aldehyde	0.13
Ethyl acetate	5.6
Ethyl benzene	6.0
Ethyl ether	140
bis-(2-Ethylhexyl) phthalate	28
Ethyl methacrylate	160
Famphur	0.1
Fluoranthene	3.6
Fluorene	7.7
Fluorotrichloromethane	30
Heptachlor	0.066
Heptachlor epoxide	0.066
Hexachlorobenzene	37
Hexachlorobutadiene	28
Hexachlorocyclopentadiene	4.8
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Hexachloroethane	30
Hexachlorophene	1.1
Hexachloropropene	37
Indeno(1,2,3,-c,d)pyrene	3.6
Iodomethane	65
Isobutanol	170
Isodrin	0.010
Isosafrole	2.6
Kepone	0.043
Methacrylonitrile	84
Methanol	140
Methapyrilene	5.6
Methoxychlor	0.18
3-Methylcholoanthrene	33
4,4-Methylene-bis-(2-chloroaniline)	29
Methylene chloride	31
Methyl ethyl ketone	200
Methyl isobutyl ketone	33
Methyl methacrylate	160
Methyl Parathion	0.1
Naphthalene	5.6
1,4-Naphthoquinone	1.9
1-Naphthylamine	15
2-Naphthylamine	15
p-Nitroaniline	28
Nitrobenzene	14
5-Nitro-o-toluidine	28
4-Nitrophenol	55
N-Nitrosodiethylamine	28
N-Nitrosodimethylamine	56
N-Nitroso-di-n-butlyamine	54
N-Nitrosomethylethylamine	2.3

BDAT Treatment Standards for Multi-Source Leachate—Continued

[Nonwastewaters]

Regulated organic constituents	Maximum for any single grab sample, total composition (mg/kg)
N-Nitrosomorpholine	2.3
N-Nitrosopiperidine	220
N-Nitrosopyrrolidine	220
Parathion	0.1
Pentachlorobenzene	37
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachloroethane	31
Pentachloronitrobenzene	4.8
Pentachlorophenol	37
Phenacetin	16
Phenanthrene	3.4
Phenol	6.2
Phorate	0.1
Phthalic anhydride (measured as phthalic acid)	28
Propanenitrile	360
Pronamide	1.5
Pyrene	9.1
Pyridine	16
Resourcinol	1.8
Safrole	22
Silvex (2,4,5-TP)	2.1
2,4,5-T	2.1
1,2,4,5-Tetrachlorobenzene	19
Tetrachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
1,1,1,2-Tetrachloroethane	6.2
1,1,2,2-Tetrachloroethane	6.2
Tetrachloroethylene	6.2
2,3,4,6-Tetrachlorophenol	37
Toluene	10
Toxaphene	1.3
1,2,4-Trichlorobenzene	19
1,1,1-Trichloroethane	6.2
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
2,4,5-Trichlorophenol	37
2,4,6 Trichlorophenol	37
1,2,3-Trichloropropane	85
1,1,2-Trichloro-l,2,2 trifluoro-ethane	28
Vinyl chloride	0.035
Xylene(s)	33
Cyanides (Total)	1.5
Cyanides (Amenable)	0.10

Regulated inorganic constituents	Maximum for any single grab sample, TCLP (mg/l)
Antimony	0.23
Arsenic	5.0
Barium	100
Cadmium	0.066
Chromium (Total)	5.0
Lead	0.51
Mercury	0.2
Nickel	0.32
Selenium	5.6
Silver	0.072
Thallium	5.6

BDAT Treatment Standards for Multi-Source Leachate

[Wastewaters]*

Regulated organic and inorganic constituents	Maximum for any 24 hr. composite, total composition (mg/l)
Acetone	0.162
Acenaphthalene	0.059
Acenaphthene	0.059
Acetonitrile	0.097
Acrolein	0.162
Acetophenone	41.198
Acrylamide	1.042
2-Acetylaminofluorene	0.040
Acrylonitrile	0.242
Aldrin	0.021
4-Aminobiphenyl	0.095
Aniline	0.807
Anthracene	0.059
Aramite	0.020
Aroclor 1016	0.013
Aroclor 1221	0.014
Aroclor 1232	0.013
Aroclor 1242	0.017
Aroclor 1248	0.013
Aroclor 1254	0.014
Aroclor 1260	0.014
alpha-BHC	0.00014
beta-BHC	0.00014
delta-BHC	0.023
gamma-BHC	0.00168
Benzal chloride	0.040
Benzene	0.136
Benzene thiol	0.219
Benzo(a)anthracene	0.059
Benzo(a)pyrene	0.061
Benzo(b)fluoranthene	0.040
Benzo(g,h,i)perylene	0.004
Benzo(k) fluoranthene	0.059
p-Benzoquinone	0.020
Bromodichloromethane	0.190
Bromomethane (methyl bromide)	0.065
4-Bromophenyl phenyl ether	0.040
n-Butanol	0.137
Butyl benzyl phthalate	0.012
2-sec-Butyl-4,6-dinitrophenol	1.436
Carbon tetrachloride	0.032
Carbon disulfide	0.179
Chlordane	0.00327
p-Chloroaniline	43.796
Chlorobenzene	0.032
Chlorobenzilate	0.072
2-Chloro-1,3-butadiene	0.032
Chlorodibromomethane	0.032
Chloroethane	0.268
bis-(2-Chloroethoxy) methane	0.008
bis-(2-Chloroethyl) ether	0.024
2-Chloroethyl vinyl ether	0.035
Chloroform	0.046
bis-(2-Chloroisopropyl) ether	0.040
p-Chloro-m-cresol	0.053
Chloromethane (methyl chloride)	0.190
2-Chloronaphthalene	0.040
2-Chlorophenol	0.051
3-Chloropropene	0.021
Chrysene	0.059
o-Cresol	0.189
Cresol (m- and p- isomers)	1.315
Cyclohexanone	0.020
1,2 Dibromo-3-chloropropane	0.065
1,2-Dibromoethane	0.016
Dibromomethane	0.065
2,4-Dichlorophenoxyacetic acid	0.721
o,p'-DDD	0.023
p,p'-DDD	0.023
o,p'-DDE	0.031
p,p'-DDE	0.031
o,p'-DDT	0.00352
p,p'-DDT	0.00352
Dibenzo(a,e)pyrene (1:2;7:8)	0.041

Regulated organic and inorganic constituents	Maximum for any 24 hr. composite, total composition (mg/l)
Dibenzo(a,h)anthracene	0.040
tris-(2,3-Dibromopropyl) phosphate	0.080
m-Dichlorobenzene	0.014
o-Dichlorobenzene	0.054
p-Dichlorobenzene	0.090
3,3'-Dichlorobenzidine	0.085
cis-1,4-Dichloro-2-butene	0.021
trans-1,4-Dichloro-2-butene	0.021
Dichlorodifluoromethane	0.130
1,1-Dichloroethane	0.059
1,2-Dichloroethane	0.211
1,1-Dichloroethylene	0.025
trans-1,2-Dichloroethylene	0.054
2,4-Dichlorophenol	0.078
2,6-Dichlorophenol	0.078
1,2-Dichloropropane	0.482
cis-1,3-Dichloropropene	0.021
trans-1,3-Dichloropropene	0.021
Dieldrin	0.017
Diethyl phthalate	0.200
3,3-Dimethoxybenzidine	0.095
p-Dimethylaminoazobenzene	0.095
3,3'-Dimethylbenzidine	0.095
2,4-Dimethyl phenol	0.036
Dimethyl phthalate	0.047
Di-n-butyl phthalate	0.057
1,4-Dinitrobenzene	0.231
4,6 Dinitrocresol	0.277
2,4-Dinitrophenol	0.123
2,4-Dinitrotoluene	0.235
2,6-Dinitrotoluene	0.396
Di-n-octyl phthalate	0.012
Di-n-propylnitrosoamine	0.400
Diphenylamine	0.375
1,2-Diphenyl hydrazine	0.053
Diphenylnitrosoamine	0.290
1,4-Dioxane	25
Disulfoton	0.770
Endosulfan I	0.023
Endosulfan II	0.029
Endosulfan sulfate	0.029
Endrin	0.00279
Endrin aldehyde	0.025
Ethyl acetate	0.195
Ethyl benzene	0.012
Ethyl ether	0.057
bis-(2-Ethylhexyl) phthalate	0.279
Ethyl methacrylate	0.037
Ethylene oxide	127.4
Famphur	0.236
Fluoranthene	0.068
Fluorene	0.059
Fluorotrichloromethane	0.023
Heptachlor	0.00116
Heptachlor epoxide	0.016
Hexachlorobenzene	0.040
Hexachlorobutadiene	0.040
Hexachlorocyclopentadiene	0.041
Hexachlorodibenzo-furans	0.000035
Hexachlorodibenzo-p-dioxins	0.000031
Hexachloroethane	0.040
Hexachlorophene	0.00111
Hexachloropropene	0.025
Indeno(1,2,3,-c,d)pyrene	0.004
Iodomethane	0.152
Isobutanol	0.125
Isodrin	0.021
Isosafrole	0.542
Kepone	0.0095
Methacrylonitrile	24.
Methanol	0.005
Methapyrilene	0.542
Methoxychlor	0.252
3-Methylcholoanthrene	0.004
4,4-Methylene-bis-(2-chloroaniline)	0.358
Methylene chloride	0.089
Methyl ethyl ketone	0.516
Methyl isobutyl ketone	0.092

Regulated organic and inorganic constituents	Maximum for any 24 hr. composite, total composition (mg/l)
Methyl methacrylate	0.032
Methyl Parathion	0.338
Naphthalene	0.059
1,4-Naphthoquinone	0.520
1-Naphthylamine	0.376
2-Naphthylamine	0.378
p-Nitroaniline	0.020
Nitrobenzene	0.068
5-Nitro-o-toluidine	0.230
4-Nitrophenol	0.124
N-Nitrosodiethylamine	0.290
N-Nitrosodimethylamine	0.295
N-Nitroso-di-n-butylamine	0.290
N-Nitrosomethylethylamine	0.290
N-Nitrosomorpholine	0.290
N-Nitrosopiperidine	0.010
N-Nitrosopyrrolidine	0.010
Parathion	0.338
Pentachlorobenzene	0.040
Pentachlorodibenzo-furans	0.000232
Pentachlorodibenzo-p-dioxins	0.000018
Pentachloroethane	0.040
Pentachloronitrobenzene	0.040
Pentachlorophenol	0.082
Phenacetin	9.542
Phenanthrene	0.059
Phenol	0.026
Phorate	0.770
Phthalic anhydride (measured as phthalic acid)	0.020
Propanenitrile (ethyl cyanide)	29.8
Pronamide	0.281
Pyrene	0.067
Pyridine	0.014
Resorcinol	0.042
Safrole	9.542
Silvex (2,4,5-TP)	0.721
2,4,5-T	0.721
1,2,4,5-Tetrachlorobenzene	0.040
Tetrachlorodibenzo-furans	0.000232
Tetrachlorodibenzo-p-dioxins	0.000052
1,1,1,2 Tetrachloroethane	0.032
1,1,2,2-Tetrachloroethane	0.032
Tetrachloroethylene	0.056
2,3,4,6-Tetrachlorophenol	0.051
Toluene	0.080
Toxaphene	0.0095
Tribromomethane (bromoform)	0.357
1,2,4-Trichlorobenzene	0.046
1,1,1-Trichloroethane	0.054
1,1,2-Trichloroethane	0.054
Trichloroethylene	0.054
2,4,5-Trichlorophenol	0.181
2,4,6-Trichlorophenol	0.035
1,2,3-Trichloropropane	0.852
1,1,2-Trichloro-1,2,2-trifluoroethane	0.057
Vinyl chloride	0.360
Xylene(s)	0.150
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Fluoride	35.
Sulfide	14.
Antimony	1.930
Arsenic	1.390
Barium	1.150
Beryllium	0.820
Cadmium	0.200
Chromium (Total)	0.370
Copper	1.280
Lead	0.249
Mercury	0.150
Nickel	0.569
Selenium	0.820
Silver	0.290
Thallium	1.400
Vanadium	0.042

Regulated organic and inorganic constituents	Maximum for any 24 hr. composite, total composition (mg/l)
Zinc	1.020

*Note: These proposed standards for wastewater forms of Multi-source leachate represent alternative standards for the U and P wastewaters that correspond to chemicals listed in this table. As an example: the standard for acetone listed above is an alternative standard for U002 (acetone) wastewaters, etc. Not all constituents listed in the above table have a corresponding U or P waste codes. These generally represent other Appendix VIII (40 CFR 261) constituents that were not listed as U or P wastes. See background information on the development of these alternative standards in section III.A.1.h.(6.)(b.).

Basis of Transfer for Non-wastewater Treatment Standards

Nonwastewater for Multi-Source Leachate

Regulated organic constituents	Refer to waste code	Reference for standard
Acetone	U002	K
Acenaphthalene		B
Acenaphthene		B
Acetonitrile	U003	C
Acrolein	P003	A
Acetophenone	U004	A
Acrylamide	U007	C
2-Acetylaminofluorene	U005	D
Acrylonitrile	U009	C
Aldrin	P004	E
4-Aminobiphenyl		B
Aniline	U012	C
Anthracene		B
Aramite		B
Aroclor 1016	K085	E
Aroclor 1221	K085	E
Aroclor 1232	K085	E
Aroclor 1242	K085	E
Aroclor 1248	K085	E
Aroclor 1254	K085	E
Aroclor 1260	K085	E
alpha-BHC	U129	E
beta-BHC	U129	E
delta-BHC	U129	E
gamma-BHC	U129	E
Benzene	U019	F
Benzal chloride		B
Benzo(a)anthracene	U018	D
Benzo(b)fluoranthene		B
Benzo(k)fluoranthene		B
Benzo(g,h,i)perylene		B
Benzo(a)pyrene	U022	D
p-Benzoquinone	U197	A
n-Butanol	U031	A
Butyl benzyl phthalate		B
2-sec-Butyl-4,6-dinitrophenol	P020	I
Carbon tetrachloride	U211	G
Chlordane	U036	E
p-Chloroaniline	P024	H
Chlorobenzene	U037	E
Chlorobenzilate	U038	E
2-Chloro-1,3-butadiene		B
Chloroethane		B
bis-(2-Chloroethoxy) methane	U024	C
bis-(2-Chloroethyl) ether	U025	C
2-Chloroethyl vinyl ether	U042	C
Chloroform	U044	G
bis-(2-Chloroisopropyl) ether	U027	C
p-Chloro-m-cresol	U039	E

Basis of Transfer for Non-wastewater Treatment Standards—Continued

Regulated organic constituents	Refer to waste code	Reference for standard
Chloromethane	U045	C
2-Chloronaphthalene	U047	H
2-Chlorophenol	U048	S
3-Chloropropene		B
Chrysene	U050	D
o-Cresol	U052	I
Cresol (m- and p- isomers)	U052	I
Cyclohexanone	U057	A
2,4-Dichlorophenoxyacetic acid (2,4-D).	U240	E
o,p'-DDD	U060	E
p,p'-DDD	U060	E
o,p'-DDE	U061	E
p,p'-DDE	U061	E
o,p'-DDT	U061	E
p,p'-DDT	U061	E
Dibenzo(a,h)anthracene	U063	D
1,2,7,8-Dibenzopyrene	U064	D
tris-(2,3-Dibromopropyl) phosphate.	U235	J
m-Dichlorobenzene	U071	E
o-Dichlorobenzene	U070	E
p-Dichlorobenzene	U072	E
3,3'-Dichlorobenzidine	U073	H
cis-1,4-Dichloro-2-butene	U074	G
trans-1,4-Dichloro-2-butene	U074	G
Dichlorodifluoromethane	U075	H
1,1-Dichloroethane	U076	G
1,2-Dichloroethane	U077	G
1,1-Dichloroethylene	U078	G
trans-1,2-Dichloroethylene	U079	G
2,4-Dichlorophenol	U081	S
2,6-Dichlorophenol	U082	S
1,2-Dichloropropane	U083	G
cis-1,3-Dichloropropene	U084	G
trans-1,3-Dichloropropene	U084	G
Dieldrin	P037	E
Diethyl phthalate	U088	K
3,3-Dimethoxybenzidine	U091	C
p-Dimethylaminoazobenzene	U093	C
3,3'-Dimethylbenzidine	U095	C
2,4-Dimethyl phenol	U101	I
Dimethyl phthalate	U102	K
Di-n-butyl phthalate	U069	K
1,4-Dinitrobenzene		B
4,6-Dinitrocresol	P047	I
2,4-Dinitrophenol	P048	I
2,4-Dinitrotoluene	U105	C
2,6-Dinitrotoluene	U106	C
Di-n-octyl phthalate	U107	K
Diphenylamine		B
Diphenylnitrosoamine		B
Di-n-propylnitrosoamine	U111	C
1,4-Dioxane	U108	A
Disulfoton	P039	J
Endosulfan I	P050	E
Endosulfan II	P050	E
Endosulfan sulfate	P050	E
Endrin	P051	E
Endrin aldehyde	P051	E
Ethyl acetate	U112	A
Ethyl benzene	1	B
Ethyl ether	U117	A
bis-(2-Ethylhexyl) phthalate	U028	K
Ethyl methacrylate	U118	A
Famphur	P097	J
Fluoranthene	U120	D
Fluorene		B
Fluorotrichloromethane	U121	H
Heptachlor	P059	E
Heptachlor epoxide	P059	E
Hexachlorobenzene	U127	E
Hexachlorobutadiene	U128	E

Basis of Transfer for Non-wastewater Treatment Standards—Continued

Regulated organic constituents	Refer to waste code	Reference for standard
Hexachlorocyclopentadiene	U130	E
Hexachlorodibenzo-furans		M
Hexachlorodibenzo-p-dioxins		M
Hexachloroethane	U131	G
Hexachlorophene	U132	E
Hexachloropropene	U243	G
Indeno(1,2,3,-c,d)pyrene	U137	D
Iodomethane	U138	H
Isobutanol	U140	A
Isodrin	P060	E
Isosafrole	U141	L
Kepone	U142	E
Methacrylonitrile	U152	C
Methanol	K050	A
Methapyrilene	U155	L
Methoxychlor	U247	E
3-Methylchloanthrene	U157	D
4,4-Methylene-bis-(2-chloroaniline).	U158	H
Methylene chloride	U080	G
Methyl ethyl ketone	U159	A
Methyl isobutyl ketone	U161	A
Methyl methacrylate	U162	A
Methyl Parathion	P071	J
Naphthalene	U165	D
1,4-Naphthoquinone	U166	A
1-Naphthylamine	U167	C
2-Naphthylamine	U168	C
p-Nitroaniline	P077	C
Nitrobenzene	U169	C
5-Nitro-o-toluidine	U181	C
4-Nitrophenol	U170	I
N-Nitrosodiethylamine	U174	C
N-Nitrosodimethylamine	P082	C
N-Nitroso-di-n-butlyamine	U172	C
N-Nitrosomethylethylamine		B
N-Nitrosomorpholine		B
N-Nitrosopiperidine	U179	C
N-Nitrosopyrrolidine	U180	C
Parathion	P089	J
Pentachlorobenzene	U183	E
Pentachlorodibenzo-furans		M
Pentachlorodibenzo-p-dioxins		M
Pentachloroethane	U184	G
Pentachloronitrobenzene	U185	E
Pentachlorophenol		B
Phenacetin	U187	L
Phenanthrene		B
Phenol	U188	I
Phorate	P094	J
Phthalic anhydride (measured as phthalic acid)	U190	K
Propanenitrile	P101	C
Pronamide	U192	H
Pyrene		B
Pyridine	U196	C
Resourcinol	U201	I
Safrole	U203	L
Silvex (2,4,5-TP)		B
2,4,5-T		B
1,2,4,5-Tetrachlorobenzene	U207	E
Tetrachlorodibenzo-furans		M
Tetrachlorodibenzo-p-dioxins		M
1,1,1,2-Tetrachloroethane	U208	G
1,1,2,2-Tetrachloroethane	U209	G
Tetrachloroethylene	U210	G
2,3,4,6-Tetrachlorophenol		B
Toluene	U220	F
Toxaphene	P123	E
1,2,4-Trichlorobenzene		B
1,1,1-Trichloroethane	U226	G
1,1,2-Trichloroethane	U227	G
Trichloroethylene	U228	G

Basis of Transfer for Non-wastewater Treatment Standards—Continued

Regulated organic constituents	Refer to waste code	Reference for standard
2,4,5-Trichlorophenol		B
2,4,6-Trichlorophenol		B
1,2,3-Trichloropropane		B
1,1,2-Trichlore-1,2,2-trifluoroethane.		B
Vinyl chloride	U043	H
Xylene(s)	U239	F
Cyanides (Total)	D003	N
Cyanides (Amenable)	D003	N
Arsenic	D004	O
Barium	D005	P
Cadmium	D006	Q
Chromium (Total)	D007	U
Lead	D008	V
Mercury	D009	R
Nickel		P
Selenium	D010	O
Silver	D011	W
Thallium		T

(REFERENCES)

A—See development of standards presented in section III.A.3.e. Oxygenated Hydrocarbons and Heterocyclics

B—See previous discussion in III.A.7. and Basis for Multi-Source Leachate Transfers in the Administrative Record for today's proposal

C—See development of standards presented in section III.A.3.f. Organo-Nitrogen Compounds

D—See development of standards presented in section III.A.3.c. Polynuclear Aromatics Hydrocarbons

F—See development of standards presented in section III.A.2.c. Halogenated Pesticides and Chlorobenzenes

F—See development of standards presented in section III.A.3.b. Aromatics and Other Hydrocarbons

G—See development of standards presented in section III.A.2.b. Halogenated Aliphatics

H—See development of standards presented in section III.A.2.f. Miscellaneous Halogenated Organics

I—See development of standards presented in section III.A.3.d. Phenolics

J—See discussion on Organophosphorus wastes in Second Third Final Rule (54 FR 26628)

K—See discussion on Phthalate wastes in Second Third Final Rule (54 FR 26820)

L—See development of standards presented in section III.A.3.h. Wastes of a Pharmaceutical Nature

M—Transferred from F020, F021, F022, F023, F025, F026 and F027

N—See development of standards presented in section III.A.6.a. Cyanides

O—See development of standards presented in section III.A.5.b. Arsenic and Selenium

P—See development of standards presented in section III.A.5.c. Barium

Q—See development of standards presented in section III.A.5.d. Cadmium

R—See development of standards presented in section III.A.5.g. Mercury

S—See development of standards presented in section III.A.2.d. Halogenated Phenolics

T—See development of standards presented in section III.A.5.i. Thallium

U—See development of standards presented in section III.A.5.e. Chromium

V—See development of standards presented in section III.A.5.f. Lead

W—See development of standards presented in section III.A.5.h. Silver

8. Clarification of Applicability of Treatment Standards to Soil and Debris. Soil and debris contaminated with wastes subject to the land disposal restrictions are likewise subject to the restrictions. Contaminated soil and debris must meet the promulgated treatment standards for the contaminating hazardous wastes prior to land disposal.

The Agency realizes, however, there are certain problems associated with regulating hazardous wastes in soil and debris matrices. It is often difficult to determine the level of contaminant concentrations found in soil and debris because it may be difficult to obtain a representative sample of the waste. Another problem is posed by the wide variety of soil and debris that could be subject to the land disposal restrictions. In the case of debris, the size ranges from clay-sized particles to large contaminated tanks and buildings. Therefore, a seperate rulemaking is being prepared that will establish treatability groups and treatment standards for contaminated soil and debris.

Until contaminated soil and debris can be better organized into treatability groups, alternate treatment standards for these wastes can be established as a site-specific variance from the treatment standards (see 53 FR 3122, August 17, 1988). Categorizing such waste according to type, volume, form, and contaminant concentration poses several problems best resolved on a site-specific basis. To be granted a site-specific variance from the treatment standard, the petitioner must demonstrate that because the physical (or chemical) properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

A particularly difficult problem arises with respect to scrap metal contaminated with some listed wastes. When BDAT standards for these listed wastes limit metal concentrations to relatively low leachable levels based on stabilization, it can be infeasible to achieve these standards, in some cases, due to the presence of metals scrap in the waste mixture. Therefore, EPA solicits coastment as to whether these scrap metal/listed waste mixtures should be exempt from BDAT standards associated with the listed wastes for metal contained in the scrap prior to contamination with the listed waste. Any comments supporting this approach should address the obvious difficulties in demonstrating which metals were present (and at what concentrations) in the uncontaminated scrap. We also solicit comment on whether the definition of scrap in 40 CFR 261.1 provides an adequate basis for the purposes of this exemption.

EPA wishes to emphasize that, under this scenario, the contaminated scrap metal would remain a listed hazardous waste for the purposes of other Subtitle C requirements. In addition, any such scrap/listed waste mixture that exhibits a hazardous characteristic (such as EP toxicity) would be subject to the BDAT standards for those characteristic wastes. We also believe that the dilution prohibition properly extends to this situation. Unless EPA requires that the exemption applies only scrap unavoidably contaminated with listed waste (such as materials generated by remedial clean-ups or discarded treatment equipment that contained the waste), there would be an obvious incentive to mix scrap with listed wastes that have BDAT metal standards to avoid the need to comply with those standards. Therefore, EPA intends to restrict the exemption to scrap metal that (1) has been unavoidably contaminated and (2) has had all listed waste removed by rinsing or other demonstrated decontamination techniques.

EPA requests comment on whether it should, in the near term, establish specific measures for "unavoidably contaminated" and "all listed waste removed". We think that these concepts will prove difficult to establish in the near term, and, therefore, expect to leave these determinations to permit writers to establish on a site-specific basis in waste analysis plans. In the longer term, however, EPA will be developing BDAT standards for contaminated soil and debris that may well establish the proper methods of decontamination. Because of an apparent need to resolve this issue on a rapid basis to avoid impacting needed remedial cleanups and corrective actions, EPA today is rescheduling the F006, F007, F008, F009, F010, F011, and F012 standards for cadmium, chromium, lead, nickel, and silver to the "third third". This rescheduling applies only to

scrap which has been determined to be unavoidably contaminated and to no longer contain listed waste. Because of the urgent need for action and specific statutory language exempting such decisions from review, we do not intend to solicit comment on the rescheduling and, instead, are making the action effective today. The effect of this rescheduling is to provide temporary relief for these wastes while EPA considers the comments on these issues.

9. Treatment Standards for Lab Packs. The Agency received several comments in response to the Second Third proposed rule on the regulatory status of lab packs. The commenters stated that lab packs are typically used by industry to dispose of small quantities of commercial chemical products (U and P wastes) and analytical samples that may contain F and K wastes. These lab packs may contain hundreds of restricted wastes, and the applicable treatment standards (or soft hammer requirements until May 8, 1990) must be achieved for each waste code contained in the lab pack. The commenters stated that these requirements pose an administrative burden that is incommensurate with the amount of waste land disposed.

In the Second Third final rule (54 FR 26594), the Agency restated its position that all restricted wastes placed in lab packs and land disposed must comply with the land disposal restrictions. However, the Agency solicited comments, data, and specific suggestions to support treatment options for lab packs. The Agency is today proposing an approach for lab packs that establishes alternate treatment standards expressed as technologies for those lab packs meeting certain criteria. Lab packs that do not meet these criteria must meet the applicable treatment standard for each waste contained in the lab pack. The Agency notes that the proposed approach would not be mandatory and that generators of lab packs who wish to comply with the current implementation of the land disposal restrictions regulatory framework as it applies to lab packs would be free to do so.

The approach proposed in today's rule establishes incineration as the alternate treatment standard for lab packs containing certain characteristic waste and listed organic hazardous waste codes only, and stabilization for lab packs containing certain EP toxic metals only. The Agency has developed appendices to 40 CFR part 268 for the purpose of identifying waste codes and constituents to which the alternate treatment standards are applicable. Appendix IV to part 268 identifies waste codes that may be included in an "organic lab pack." Appendix V to part 268 lists inorganic constituents that may be included in an "inorganic lab pack." Where lab packs contain organic or inorganic waste other than those specified in Appendix IV or V (including non-hazardous waste), or where organic and inorganic wastes are commingled in a lab pack, the treatment standards and other restrictions for each waste code in the lab pack must be achieved.

The Agency believes its proposed approach, although narrowly defined, provides some administrative relief sought by the commenters. It simplifies the management system for these wastes because owners/operators will not be required to analyze the treatment residue for compliance with individual treatment standards. However, generators must continue to list each waste code contained in the lab pack on the notification form according to the requirements of § 268.7. Lab packs that are treated by the specified technology may be disposed of in Subtitle C facilities without further testing or analysis.

Agency data indicate that organic constituents can be effectively destroyed by incineration in well-designed, well-operated incinerators that meet the requirements of part 264 or 265 subpart O. For example, treatment standards for most solvents, dioxins, California list halogenated organic compounds (HOCs), and First, Second, and Third Third organic wastes are expressed as a numerical standard derived from incineration of the waste. In some cases, the treatment standard is specified as incineration (e.g., for most California list HOCs). Although the Agency lacks specific treatability data for lab packs containing organic waste, it believes that incineration of organic lab pack waste will significantly reduce the risks posed by land disposal, and simplify the management of these small volume wastes. Therefore, the Agency is proposing to specify incineration as the treatment standard for lab packs containing these wastes.

The Agency is limiting the applicability of this alternate standard for organics to wastes that have a promulgated or proposed treatment standard based on the performance of incineration, or where incineration only is specified as the treatment standard. Appendix IV to part 268 contains a list of F, K, P, and U wastes and characteristic wastes that meet these criteria. These wastes must be incinerated in accordance with the requirements of part 264 subpart O and part 265 subpart O. Ignitable and corrosive wastes may be included in the "organic lab pack" provided they comply with the requirements for incompatible wastes in § 264.316(d) or 265.316(d). Reactive wastes are excluded from placement in the organic lab pack. These wastes remain subject to the applicable treatment standards.

The Agency is proposing to include California list PCBs and dioxin-containing waste (F020–F023, F026–F028) in the "organic lab pack" treatability group, but emphasizes that treatment of these wastes requires more stringent performance standards than wastes included in part 268 Appendix IV (i.e., dioxins must achieve a destruction and removal efficiency of 99.9999 percent and PCBs must meet the technical standards in 40 CFR 761.70). Where generators choose to commingle one or both of these wastes with "organic lab pack" waste listed in Appendix IV, the entire lab pack must be incinerated to meet the more stringent standard. For example, a lab pack containing dioxin-containing waste, California list PCBs, and Appendix IV waste must be incinerated according to the technical standards of 40 CFR 761.70 and the applicable requirements of parts 264, 265, and 266 (including all applicable performance standards for dioxin-containing waste).

The Agency recognizes that generators may also dispose of inorganic (metals-bearing) wastes in lab packs. Therefore, the Agency is proposing an alternate treatment standard of stabilization for the following EP toxic metals listed in Appendix V to part 268: barium, cadmium, lead, silver, and trivalent chromium. The Agency believes that stabilization of these metals that are removed from the vials and lab packs can be accomplished using Portland cement in a 20 percent binder-to-waste ratio (by weight). The Agency believes this to be a demonstrated and available technology for these constituents. The Agency would like to allow other stabilizing agents that are "equivalent" to Portland cement to also be used, but has been unable to develop a method of demonstrating equivalence that does not involve review and approval. The Agency is soliciting suggestions for demonstrating such equivalence. The Agency, therefore, is proposing a treatment standard of stabilization (i.e., the wastes must be removed from the containers and stabilized), performed in the manner described above, for lab packs containing only those inorganic constituents specified in Appendix V to part 268 (i.e., "inorganic lab packs").

In cases where non-hazardous wastes are commingled with Appendix V inorganic constituents prior to stabilization, the lab pack is ineligible for the alternate treatment standard due to possible interferences caused by these non-hazardous constituents. The alternate treatment standard for "inorganic lab packs" is not applicable where generators or owners/operators commingle "inorganic lab pack" waste with wastes listed in part 268 Appendix IV, dioxin-containing waste, PCBs, or other wastes.

The Agency is not establishing an alternate treatment standard expressed as a specified technology for lab packs containing the remaining EP toxic metals (i.e., arsenic, selenium, mercury, and hexavalent chromium) because of concern regarding the successful stabilization of these inorganic constituents. Agency data indicate that there is difficulty in stabilizing these constituents, and a TCLP analysis is necessary to verify the results. In cases where the Agency specifies a technology as the treatment standard, however, treatment using the specified technology satisfies the land disposal restriction requirements, and analysis of the treatment residues is not required. Consequently, lab packs containing constituents other than those specified in Appendix V to part 268 must comply with the treatment standards for each of the restricted wastes included in the lab pack.

The Agency's proposed alternate treatment standards for lab packs applies only if the following conditions are met:

(1) The lab pack contains only organic hazardous waste codes, the waste codes are listed in Appendix IV to part 268, and the "organic lab pack" is incinerated according to the provisions in part 264 or 265 subpart O; or

(2) The lab pack contains only inorganic constituents listed in Appendix V to part 268, and the "inorganic lab pack" is stabilized with Portland cement in a 20 percent binder-to-waste ratio by weight. Again, the Agency is aware that equivalent technologies to Portland cement stabilization exist. Therefore, the Agency is soliciting comment on methods for establishing equivalency that are short of establishing a variance procedure.

Lab packs that contain PCBs or dioxin-containing wastes must continue to meet the applicable treatment standards for these wastes. Examples are provided for clarification:

(1) A lab pack that contains only dioxin-containing waste (F020–23 and F026–28) *or* a mixture of dioxin-containing waste and organic hazardous waste codes listed in Appendix IV to part 268 must be incinerated according to the provisions in part 264 or 265 subpart O (including the applicable performance standards for dioxin-containing waste).

(2) A lab pack containing California list PCBs and dioxin-containing waste must be incinerated according to the technical standards of 40 CFR 761.70 and the applicable standards of parts 264, 265, and 266 (including the performance standards for dioxin-containing waste).

Generators or owners/operators who dispose of hazardous organic waste according to the provisions in today's proposed rule must also meet the requirements for lab packs specified in §§ 264.316 and 265.316, whichever is applicable. Such persons must also comply with the notification, certification, and recordkeeping requirements of § 268.7. The Agency is continuing to require generators to list each hazardous waste code on the notification form according to the requirements in § 268.7. The Agency is also proposing to require generators to certify that organic and inorganic lab packs destined for treatment as described in today's notice contain only the applicable waste codes or constituents listed in Appendix IV or Appendix V, whichever is applicable. The Agency emphasizes that lab packs containing wastes other than those listed in Appendix IV or Appendix V to part 268, including nonhazardous wastes, are excluded from the alternate treatment standards for lab packs proposed in today's rule.

The Agency is requesting comments on all aspects of its proposed approach for lab packs.

III.B Capacity Determinations

1. Determination of Alternative Capacity and Effective Dates for Surface Land-Disposed Wastes

a. Total Quantity of Land-Disposed Wastes

The capacity analyses for wastes for which EPA is today proposing treatment standards were conducted using the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being disposed of in or on the land (i.e., land disposal). Survey data are part of the record for this proposed rule.

Other major sources of data include the National Survey of Hazardous Waste Generators, conducted by EPA during 1988 and 1989. It includes data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting. These data are used to support this proposal and are part of the record for this proposed rule.

For mixed RCRA/radioactive wastes, EPA has used data supplied by the U.S. Department of Energy. State and State compact low-level radioactive waste survey data were also used, as were data summaries in several overview reports on mixed radioactive waste.

The various land disposal methods used in 1986 and the quantities of waste they handled (excluding mixed radioactive wastes) are presented in Table III.B.1.(a). The data indicated that about 5,566 million gallons of the wastes for which standards are proposed today were disposed of in or on the land. This estimate includes less than 1 million gallons of wastes that were stored in surface impoundments and 76 million that were stored in waste piles. These stored wastes will eventually be treated, recycled, or permanently disposed of in other units. To avoid double counting, the volumes of wastes reported as being stored in surface impoundments or waste piles have not been included in the volumes of wastes requiring alternative treatment. Furthermore, this rule proposes prohibitions on the placement of wastes affected by this rule in waste piles or surface impoundments for storage.

EPA estimates that about 11 million gallons of treatment residuals from minimum technology impoundments or from impoundments that were replaced by a tank (e.g., standard cement, steel tanks, or filter presses) will require alternative treatment. EPA assumes that this waste is now being sent off-site for treatment. Consequently, this amount is included as treatment capacity required in today's rule.

In addition, 29 million gallons of wastes were treated in waste piles, 20 million gallons were disposed of in surface impoundments, 246 million gallons were disposed of in land treatment units or landfills, and 5,184 million gallons were injected underground. All of these wastes will require alternative treatment capacity.

TABLE III.B.1.(a) VOLUME OF WASTES BY LAND DISPOSAL METHOD FOR WHICH STANDARDS ARE BEING PROPOSED

[Millions of gallons/year]

Land disposal method	Volume
Storage:	
Waste piles	71
Surface impoundments	<1
Treatment:	
Waste piles	[illegible]
Surface impoundments	11
Disposal:	
Landfills	[illegible]
Land treatment	[illegible]
Surface impoundments	20
Underground injected	5,184
Total	5,566

EPA notes, however, that the TSDR survey may overstate demand for treatment capacity for wastewaters that were treated or disposed in surface impoundments at the time of the survey (1987 and early 1988). This is because such impoundments must now be retrofitted to meet minimum technology requirements, or taken out of service, as a result of RCRA section 3005(j). If the impoundment continues to operate after being retrofitted, it would be a section 3005(j)(11) impoundment if the wastewaters are treated and residues are removed annually. Wastewaters that are not treated or disposed in surface disposal units, or that are treated in section 3005(j)(11) impoundments, do not create any demand for alternative treatment capacity. Thus, the Agency solicits comment on what wastewaters currently disposed of in surface units do require alternative treatment capacity. Based on the above analysis, EPA believes that the volume is low and that, as a result, no capacity variance ordinarily is required for wastewaters destined for surface disposal. (This discussion obviously does not apply for wastewaters destined for deepwell disposal.)

There is one exception to the discussion in the preceding paragraph. This involves wastewaters that exhibit a characteristic of hazardous waste but that are diluted before they reach surface disposal units. As discussed in detail in section III.C below, EPA believes that such dilution normally is impermissible (although the Agency is soliciting comment on the issue). As a result, these wastes may require alternative treatment capacity and the volumes of these wastes would likely not be reflected in the TSDR survey (because the waste would not exhibit a characteristic by the time it reaches a surface disposal unit). EPA solicits comment on the volumes of wastes potentially affected by this interpretation and whether a national capacity variance would be required for such wastes. (Readers should be aware, however, of potential implications of the California list prohibitions for characteristic wastes receiving a national capacity variance. See the discussion in section III.M below.)

EPA is also requesting comments on the quantity of P and U RCRA waste codes currently being disposed of in deepwells. The TSDR Survey data include some large volume waste streams containing P and U RCRA codes. However, P and U wastes are by definition discarded off-specification products or residues and are usually generated in small volumes. Facilities disposing of these large volume waste streams in deepwells have indicated that small volumes of U and P wastes were mixed with large volumes of other wastes. However, the facilities were not able to provide a specific volume for the deepwell-disposed P and U wastes. Since the facilities generally described the volume of U and P wastes deepwell-disposed as "very small", EPA has assumed for the analysis of alternative treatment capacity that the volume of P and U wastes needing alternative capacity is less than 100,000 gallons; therefore, EPA is not proposing to grant a national variance to P and U wastes that are deepwell-disposed. EPA requests information of the generation and management of P and U wastes, especially on the disposal of P and U wastes in deepwells. EPA also requests comments on the assumption that the volume of P and U wastes being deepwell-disposed are less than 100,000 gallons.

The following sections provide a summary of the capacity analysis for the proposed rule; the detailed analyses are presented in the background document, and all data are included in the public docket.

b. Required Alternative Capacity for Surface Land-Disposed Wastes

EPA assessed the requirements resulting from today's proposed rule for alternative treatment capacity for surface land-disposed wastes. Using primarily the TSDR and Generator Survey data, EPA first characterized the volumes of wastes for which treatment standards are being established. Waste streams were characterized on the basis of land disposal method, waste code, physical and chemical form, and waste characterization data. Using this information, EPA placed the wastes in treatability groups identifying applicable treatment technologies. The waste volume were then summed by treatability group to determine the amount and type of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being proposed today.

Based on this analysis, EPA estimates that today's proposal could affect about 5,556 million gallons of wastes that are landdisposed annually. This total includes wastes that were stored only, that already meet BDAT, or that can be treated on-site. Consequently, only about 5,411 million gallons will require alternative treatment capacity. Of this total, 266 million gallons were surface-disposed (i.e., excluding underground injection), and the remaining 5,184 million gallons were underground injected. (See section 2 for determinations of alternative capacity and effective dates for wastes injected underground.) EPA estimates that treatment of these wastes will generate approximately 48 million gallons of residuals requiring treatment before land disposal.

In addition, EPA realizes that petroleum-refining wastes (K048, K049, K050, K051, and K052 wastes) will increase demand for capacity. The two-year capacity variance that was granted to petroleum refining wastes in the First Third rule will expire on August 8, 1990, three months after the promulgation of the Third Third rule. The best demonstrated available technology (BDAT) standard for these wastes is based on sludge incineration followed by stabilization of the ash, or on solvent extraction and stabilization of the residuals. EPA anticipates that available capacity for these technologies may be insufficient for handling the total volume of K048–K052 land-disposed wastes. Thus, EPA is requesting comments on current generation and management practices, industries' plans for treating and disposing of K048–K052 wastes, and the quantities of K048–K052 wastes disposed of based on current and planned management practices. EPA will analyze this information to estimate the impact of K048–K052 wastes on available capacity after August 8, 1990.

The volumes of surface-disposed wastes that require alternative commercial treatment and/or recycling capacity are presented in Table III.B.1.(b). This table does not include wastes that can be treated on-site by the generator, nor does it contain volumes of mixed radioactive wastes.

As explained in section III.A of this preamble, EPA is proposing treatment standards expressed either as concentration limits based on the performance of the BDAT, or as a specific treatment technology. When a treatment standard is expressed as a concentration limit, a specific treatment method is not required to achieve that concentration level. However, the BDAT (and technologies that EPA finds perform comparably), as discussed in section III.A., were used as the basis for determining available capacity. When the treatment standard is expressed as a specific technology (rather than a concentration limit), that technology must be used.

Table III.B.1.(b) REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE-DISPOSED WASTES

[Million gallons/year]

Waste code	Capacity required for surface-disposed
First Third Code	
F006	5.1
F019	4.9
K004	0.1
K017	<0.1
K021	<0.1
K031	0.6
K035	<0.1
K071	5.9
K073	<0.1
K084	0.2
K085	<0.1
K106	0.5
P001	<0.1
P004	<0.1
P005	<0.1
P010	<0.1
P011	<0.1
P012	<0.1
P015	<0.1
P018	<0.1
P020	<0.1
P037	<0.1
P048	<0.1
P050	<0.1
P058	<0.1
P059	<0.1
P069	<0.1
P070	<0.1
P081	<0.1
P087	<0.1
P092	<0.1
P105	<0.1
P108	<0.1
P115	<0.1
P120	<0.1
P123	<0.1
U007	<0.1
U009	<0.1
U010	<0.1
U012	<0.1
U019	<0.1
U022	<0.1
U029	<0.1
U031	<0.1
U036	<0.1
U037	<0.1
U043	<0.1
U044	<0.1
U050	<0.1
U051	0.1
U061	<0.1
U066	<0.1
U067	<0.1
U077	<0.1
U078	<0.1
U103	<0.1
U105	<0.1
U108	<0.1
U122	<0.1
U129	<0.1
U133	<0.1
U134	<0.1
U151	<0.1
U154	<0.1
U158	0.3
U159	<0.1
U177	<0.1
U180	<0.1
U185	<0.1
U188	0.3
U192	<0.1
U209	<0.1
U210	<0.1
U211	<0.1
U219	<0.1
U220	0.1
U226	<0.1
U227	2.7
U228	<0.1
U237	<0.1
U238	<0.1
U248	<0.1
U249	<0.1
Second Third Code	
F024	<0.1
K105	<0.1
P002	<0.1
P003	<0.1
P014	<0.1
P066	<0.1
P067	<0.1
U002	<0.1
U003	<0.1
U005	<0.1
U008	<0.1
U014	<0.1
U021	<0.1
U032	<0.1
U047	<0.1
U057	<0.1
U070	<0.1
U073	<0.1
U080	2.7
U083	<0.1
U092	<0.1
U093	<0.1
U101	<0.1
U106	<0.1
U109	<0.1
U114	<0.1
U116	<0.1
U119	<0.1
U127	<0.1
U131	0.1
U140	<0.1
U142	<0.1
U144	<0.1
U146	<0.1
U147	<0.1

Table III.B.1.(b) REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE-DISPOSED WASTES—Continued

[Million gallons/year]

Waste code	Capacity required for surface-disposed wastes
U149	<0.1
U161	<0.1
U162	<0.1
U165	<0.1
U169	<0.1
U170	<0.1
U196	<0.1
U208	<0.1
U213	<0.1
U214	<0.1
U217	<0.1
U218	<0.1
U239	0.2
U244	<0.1
Third Third Code	
D001	19.7
D002	[illegible]
D003	9.2
D004	12.8
D005	16.4
D006	16.3
D007	117.0
D008	73.0
D009	4.0
D010	2.0
D011	2.5
D012	0.5
D013	0.4
D014	1.9
D015	<0.1
D018	0.2
D017	0.4
K002	0.2
K003	0.2
K005	0.1
K006	0.2
K069	<0.1
K083	<0.1
P008	<0.1
P022	<0.1
P024	<0.1
P028	<0.1
P031	<0.1
P047	<0.1
P051	<0.1
P064	<0.1
P073	<0.1
P075	<0.1
P077	<0.1
P098	<0.1
P093	<0.1
P119	<0.1
U001	<0.1
U004	<0.1
U006	<0.1
U017	<0.1
U030	<0.1
U039	<0.1
U048	<0.1
U052	<0.1
U055	0.2
U056	<0.1
U071	<0.1
U072	0.2
U075	<0.1
U076	<0.1
U079	<0.1
U081	<0.1
U082	<0.1
U112	<0.1

Table III.B.1.(b) Required Alternative Commercial Treatment/Recycling Capacity for Surface-Disposed Wastes—Continued

[Million gallons/year]

Waste code	Capacity required for surface-disposed wastes
U117	<0.1
U118	<0.1
U120	<0.1
U121	<0.1
U123	<0.1
U125	<0.1
U126	<0.1
U148	<0.1
U156	<0.1
U167	<0.1
U181	<0.1
U182	<0.1
U201	<0.1
U202	<0.1
U204	<0.1
U225	<0.1
U234	<0.1
U240	<0.1
U247	<0.1
Leachate	34.5

The TSDR Survey contains data on specific treatment processes at facilities. The data enable EPA to identify specific BDAT treatment (and treatment that EPA has determined performs comparably) in its assessment of both off-site and on site capacity. Therefore, EPA believes that the capacity identified as available for a specific treatment technology will be capable of meeting the BDAT standard, which has been developed such that a well-designed and well-operated BDAT treatment process should be capable of meeting it.

EPA is concerned that there may be insufficient incineration capacity to treat the sludge and solid hazardous wastes that must be incinerated to meet BDAT standards. To establish criteria for differentiating between a liquid and a solid waste as it pertains to the adequacy of existing incineration capacity, EPA examined the way in which these materials are fed into combustion systems. Solids are typically fed in a containerized form or through an auger system. Liquids are atomized and fed through burners or nozzles (sometimes referred to as feed guns). Some facilities burn sludges that are not handled as either solids or liquids in the conventional feed mechanisms mentioned above. Sludges are typically fed to an incinerator by pumping them through a lance (i.e., essentially an open-ended pipe).

EPA considers sludges to be solids in the context of the adequacy of existing incineration capacity. Sludges are pumpable but generally not atomizable. As such, the key to differentiating between solid and liquid feed materials is whether or not the feed material can be atomized.

The Agency believes that viscosity of the waste can be used to determine if it can be atomized. Wastes with a viscosity of greater than 1500 to 2500 centipoise are generally considered too viscous to be atomized. Given that a waste with high viscosity can be blended with a waste with low viscosity so that the mixture can be atomized, the Agency is proposing a viscosity representing the high end of the range—2500 centipoise—to identify "non-liquid" waste (i.e., wastes that cannot be atomized).

The Agency considered other criteria for distinguishing between liquid and solid wastes with respect to how wastes are fed into incinerators. Criteria such as solids content, particle size, and salt content of the waste were considered but ultimately rejected. Although the Agency recognizes that these waste parameters are important factors in incinerator design and operation, we believe that viscosity alone is an adequate parameter for the purpose at hand. EPA requests comments on this approach for differentiating between a liquid and a solid waste as it pertains to the adequacy of existing incineration capacity.

With respect to variances based on lack of solids incineration capacity, EPA is only proposing to grant national capacity variances for *non-atomizable* solids (as defined above). Thus, for this purpose, EPA is proposing to further subcategorize the wastewater and nonwastewater treatability groups that are used as the basis for treatment standards. Only the nonatomizable nonwastewaters would receive the variance. This is because (for most waste codes) there is ample treatment capacity in liquid injection furnaces, and in boilers and industrial furnaces, for atomizable nonwastewaters. EPA realizes that this approach is different from and more sophisticated than that utilized in previous rulemakings. However, there is clearly no reason to grant national capacity variances when EPA can define a reasonable subcategory for prohibited wastes for which there exists treatment capacity.

c. Capacity Currently Available and Effective Dates

Table III.B.1.(c) presents an estimate of the volumes of wastes that will require alternative treatment before land disposal to comply with the standards proposed today. The amount of capacity that is available at commercial facilities in each case is also presented. Available capacity is equal to the specific treatment system's maximum capacity minus the amount used in 1986; available capacity was calculated using the TSDR Survey data. In addition, the available capacity presented in this section was adjusted to account for wastes previously restricted from land disposal by subtracting the capacity required for land-disposed solvent wastes, First Third wastes, and Second Third wastes.

In general, Table III.B.1.(c) indicates that there is inadequate capacity for certain technologies: combustion of sludges and solids, mercury retorting, thermal recovery, vitrification, and wet-air oxidation. EPA requests information on available treatment capacity for these specific treatments.

Table III.B.1.(c) Required Alternative Commercial Treatment (Including Recycling) Capacity for Surface Land-Disposed Wastes

[Millions of gallons/yr.]

Technology	Available capacity	Required capacity	Variance
Alkaline Chlorination	2	<1.0	No.
Alkaline Chlorination and by Chemical Precipitation	11	4.6	No.
Biological and Carbon Adsorption	[illegible]	1.0	No.
Carbon Adsorption and [1]Chemical Precipitation	41	<1.0	No.
Chemical Oxidation and Chemical Precipitation	[illegible]	6.9	No.
Chemical Precipitation	[illegible]	25.5	No.
Chromium Reduction and Chemical Precipitation	79	[illegible]	No.
Combustion of Atomizable Liquids	[illegible]	16.3	No.
Combustion of Sludge/Solids	4	52.7	Yes.

Table III.B.1.(c) Required Alternative Commercial Treatment (Including Recycling) Capacity for Surface Land-Disposed Wastes—Continued

[Millions of gallons/yr.]

Technology	Available capacity	Required capacity	Variance
Mercury Retorting	<1.0	[illegible]	Yes.
Neutralization	36	[illegible]	No.
Secondary Smelting	37	1.7	No.
Stabilization	[illegible]	134.5	No.
Thermal Recovery	[illegible]	<1.0	Yes.
Treatment of Reactives and Chromium Reduction and Chemical Precipitation	2	1.9	No.
Vitrification	0	[illegible]	Yes.
Wet-Air Oxidation	<1.0	6.1	Yes.
Wet-Air Oxidation and Carbon Adsorption and Chemical Precipitation	<1.0	<1.0	No.
Wet-Air Oxidation and Chemical Precipitation	<1.0	<1.0	No.
Wet-Air Oxidation and Chromium Reduction	<1.0	<1.0	No.

For combustion of sludges and solids, there is not available capacity for D001 sludges and solids or for leachate sludges and solids. However, there is adequate capacity for all other wastes needing combustion of sludges and solids. For mercury retorting, there is not adequate capacity for D009, K071, K106, and U151. However there is adequate capacity for other wastes needing this technology. Also, for wet-air oxidation, there is not enough capacity for F019, but there is adequate capacity for other wastes needing this technology.

It is important to note that some of the wastes, because of their actual physical form, cannot be treated to meet standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a treatment train. EPA assumes that the resultant residuals will also need to be treated using alternative technologies before land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

The following sections discuss the results of the individual capacity analyses and effective dates for each waste code included in today's proposal. Table III.B.1.(d) summarizes all the surface-disposed wastes for which EPA is proposing to grant a two-year variance. The detailed basis for the Agency's conclusions, however, are set forth in the capacity background document for this proposal.

Table III.B.1.(d) Summary of Proposed Two-Year National Capacity Variance for Surface Land-Disposed Wastes

Required alternative treatment technology	Waste code	Physical form
Combustion of Sludge/Solids (i.e., non-atomizable wastes)	[1] D001	Nonwastewater.
	[2] Leachate	Nonwastewater.
Mercury Retorting	D009	Nonwastewater.
	K071	Nonwastewater.
	K106	Nonwastewater.
	P065	Nonwastewater.
	P092	Nonwastewater.
	U151	Nonwastewater.
Thermal Recovery	[3] D006	Nonwastewater.
	P015	Nonwastewater.
	P073	Nonwastewater.
	P087	Nonwastewater.
Vitrification	D004	Nonwastewater.
	D010	Nonwastewater.
	K031	Nonwastewater.
	K084	Nonwastewater.
	K101	Nonwastewater.
	K102	Nonwastewater.
	P010	Nonwastewater.
	P011	Nonwastewater.
	P012	Nonwastewater.
	P036	Nonwastewater.
	P038	Nonwastewater.
	P103	Nonwastewater.
	P114	Nonwastewater.
	U136	Nonwastewater.
	U204	Nonwastewater.
	U205	Nonwastewater.
Wet-Air Oxidation	F019	Nonwastewater.

[1] D001 (Ignitables Liquids Mixed with Sludges and Solids).
[2] Multi-source Leachate.
[3] D006 (Cadmium Batteries).

(1) Halogenated organic wastes. This treatability group includes halogenated aliphatics, halogenated pesticides and chlorobenzenes, halogenated phenolics, brominated organics, and miscellaneous halogenated organics. These treatability groups will require the following technologies: incineration; incineration and stabilization; stabilization; and wet-

air oxidation or chemical oxidation and carbon adsorption. Sufficient capacity exists for treatment of the halogenated organic wastes by these technologies; therefore, EPA is not proposing to grant a national capacity variance for these wastes. (These wastes needing alternative incineration capacity do not need a variance, because there is adequate capacity for all atomizable liquids as well as adequate capacity for the small quantities for sludges and solids in this category.) The following sections present the waste codes and the proposed treatment standards for each of the halogenated organic waste groups.

(a) Halogenated Aliphatics

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin
K021—Aqueous spent antimony catalyst from fluoromethane production
K028—1,1,1-Trichloroethane production wastes
K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane
K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production
K095—Distillation bottoms from the production of 1,1,1 trichloroethane
K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane
U044—Chloroform
U074—1,4-Dichloro-2-butene
U076—1,1-Dichloroethane
U077—1,2-Dichloroethane
U078—1,2-Dichloroethylene
U079—1,2-Dichloroethylene
U080—Methylene chloride
U083—1,2-Dichloropropene
U084—1,3-Dichloropropene
U131—Hexachloroethane
U184—Pentachloroethane
U208—1,1,1,2-Tetrachloroethane
U209—1,1,2,2-Tetrachloroethane
U210—Tetrachloroethylene
U211—Carbon tetrachloride
U226—1,1,1-Trichloroethane
U227—1,1,2-Trichloroethane
U228—Trichloroethylene
U243—Hexachloropropene

For the halogenated aliphatics, incineration is the BDAT for both wastewater and nonwastewater forms of K017, K073, K021 (organics), U044, U074, U076, U077, U078, U079, U080, U083, U084, U131, U184, U208, U209, U210, U211, U226, U227, U228, and U243. K021 (inorganics) nonwastewaters with a high level of metal constituents also require incineration and stabilization of metal constituents as a BDAT. Treatment standards were promulgated for the wastewater and nonwastewater forms of K028 in the Second Third rule; however, today EPA is proposing treatment standards for the metal constituents in K028 nonwastewaters. The treatment standards for these wastes are based on stabilization. The nonwastewater forms of K029, K095, and K096 were promulgated in the Second Third rule. Today, EPA is proposing concentration standards for organics in K029, K095, and K096 wastewaters based on incineration. Sufficient capacity exists for treatment of the halogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes. (These wastes needing alternative incineration capacity do not need a variance, because there is adequate capacity for all atomizable liquids as well as adequate capacity for the small quantities for sludges and solids in this category.)

(b) Halogenated Pesticides and Chlorobenzenes

D012—Characteristic of EP Toxic for Endrin
D013—Characteristic of EP Toxic for Lindane
D014—Characteristic of EP Toxic for Methoxychlor
D015—Characteristic of EP Toxic for Toxaphene
D016—Characteristic of EP Toxic for 2,4-D
D017—Characteristic of EP Toxic for 2,4,5-TP
K032—Wastewater treatment sludge from the production of chlordane
K033—Wastewater treatment scrubber water from the chlorination of cyclopentadiene in the production of chlordane
K034—Filter solids from filtration of hexachlorocyclopentadiene in the production of chlordane
K041—Wastewater treatment sludge from the production of toxaphene
K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T
K085—Distillation of fractionation column bottoms from the production of chlorobenzenes
K097—Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane
K098—Untreated process wastewater from the production of toxaphene
K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes
P004—Aldrin
P037—Dieldrin
P050—Endosulfan
P051—Endrin
P059—Heptachlor
P060—Isodrin
P123—Toxaphene
U036—Chlordane, technical
U037—Chlorobenzene
U038—Chlorobenzilate
U060—DDD
U061—DDT
U070—1,2-Dichlorobenzene
U071—1,3-Dichlorobenzene
U072—1,4-Dichlorobenzene
U127—Hexachlorobenzene
U128—Hexachlorobutadiene
U129—Lindane
U130—Hexachlorocyclopentadiene
U132—Hexachlorophene
U142—Kepone
U183—Pentachlorobenzene
U185—Pentachloronitrobenzene
U207—1,2,4,5-Tetrachlorobenzene
U240—2,4-D salts and esters
U247—Methoxychlor

For the following halogenated pesticides and chlorobenzenes, the BDAT for wastewaters and nonwastewaters is incineration: D012 D013, D014, D015, D016, D017, K032, K033, K034, K041, K042, K085, K097, K098, K105, P004, P037, P050, P051, P059, P060, P123, U036, U037, U038, U060, U061, U070, U071, U072, U127, U128, U129, U130, U132, U142, U183, U185, U207, and U247.

For U240, the BDAT for nonwastewaters is incineration as a method; for wastewaters the BDAT is wet-air oxidation or chemical oxidation and carbon adsorption or incineration as methods of treatment. Sufficient capacity exists for treatment of the halogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(c) Halogenated Phenolics

U039—p-Chloro-m-cresol
U048—2-Chlorophenol
U081—2,4-Dichlorophenol
U082—2,6-Dichlorophenol

For U039, U048, U081, and U082, the BDAT for wastewaters and nonwastewaters is incineration. Sufficient capacity exists for treatment of the halogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(d) Brominated Organics

P017—Bromoacetone
U029—Methyl Bromide
U030—4-Bromophenyl phenyl ether
U066—1,2-Dibromo-3-chloropropane
U067—Ethylene dibromide (EDB)
U068—Dibromomethane
U225—Bromoform

For U029, U030, U066, U067, U068, and U225, incineration is the BDAT for nonwastewaters and wastewaters. For P017 nonwastewaters, the BDAT is incineration as a method of treatment. For P017 wastewaters, wet-air oxidation, biodegradation, chemical oxidation, or incineration are the proposed methods of treatment. Sufficient capacity exists for treatment of the halogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(e) Miscellaneous Halogenated Organics

P016—bis-(Chloromethyl) ether
P023—Chloroacetaldehyde
P024—p-Chloroaniline
P026—1-(o-Chlorophenyl) thiourea
P027—3-Chloropropionitrile
P028—Benzyl chloride
P057—Fluoracetamide
P058—Fluoracetic acid sodium salt
P095—Phosgene
P118—Trichloromethanethiol
U006—Acetyl chloride
U017—Benzal chloride
U020—Benzenesulfonyl chloride
U024—bis-(2-Chloroethoxy) methane
U025—Dichloroethyl ether
U026—Chloronaphazine
U027—bis-(2-Chloroispropyl) ether
U033—Carbonyl fluoride
U034—Trichloroacetaldehyde
U041—n-Chloro-2,3-epoxypropane
U042—2-Chloroethyl vinyl ether
U043—Vinyl chloride
U045—Methyl chloride
U046—Chloromethyl methyl ether
U047—2-Chloronaphthalene
U049—4-Chloro-o-toluidine hydrochloride
U062—Diallate
U073—3,3'-Dichlorobenzidine
U075—Dichlorodifluoromethane
U097—Dimethylcarbamoyl chloride
U121—Trichloromonofluoromethane
U138—Iodomethane
U156—Methyl chlorocarbonate
U158—4,4-Methylene-bis-(2-chloroaniline)
U192—Pronamide
U222—o-Toluidine hydrochloride

For P016, P023, P026, P027, P028, P057, P058, P095, P118, U006, U017, U020, U026, U033, U034, U041, U042, U046, U049, U062, U097, U156, and U222, EPA is proposing incineration as a method of treatment for nonwastewaters and incineration, wet-air oxidation and carbon adsorption, or chemical oxidation and carbon adsorption as methods of treatment for wastewaters. For wastewater and nonwastewater forms of P024, U024, U025, U027, U043, U045, U047, U073, U075, U121, U138, U158, and U192, EPA is proposing treatment standards based on incineration.

In addition to the methods of treatment proposed for U017, EPA is proposing a treatment standard based on incineration. EPA is soliciting comments concerning the options for U017 and will make a decision at a later date. For the capacity analysis, the alternative treatment technology for U017 is incineration. Sufficient capacity exists for treatment of the halogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(2) *Additional organic wastes.* This group includes aromatic and other hydrocarbons, polynuclear aromatic hydrocarbons, phenolics, oxygenated hydrocarbons and heterocyclics, organo-nitrogen compounds, organo-sulfur compounds, and pharmaceuticals.

In today's proposed rule, EPA is proposing incineration as BDAT for all of the nonhalogenated organics presented below. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(a) Aromatics and Other Hydrocarbons

U019—Benzene
U055—Cumene
U056—Cyclohexane
U186—1,3-Pentadiene
U220—Toluene (methyl benzene)
U239—Xylenes (dimethyl benzene)

For U019, U220, and U239 wastes, EPA is proposing to transfer standards based on incineration for wastewaters and nonwastewaters. For U055, U056, and U186 nonwastewaters, EPA is proposing incineration as a method of treatment. For U055, U056, and U186 wastewaters, EPA is proposing wet-air oxidation or chemical oxidation or biological degradation followed by carbon adsorption, or incineration as methods of treatment for wastewaters. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(b) Polynuclear Aromatic Hydrocarbons

U005—2-Acetylaminofluorene
U016—Benz(c)acridine
U018—Benz(a)anthracene
U022—Benzo(a)pyrene
U050—Chrysene
U051—Creosote
U063—Dibenzo(a,h)anthracene
U064—1,2,7,8-Dibenzopyrene
U094—7,12-Dimethyl benz(a)anthracene
U120—Fluoranthene
U137—Indeno(1,2,3,-d,d)pyrene
U157—3-Methylchloanthrene
U165—Naphthalene

For U005, U018, U022, U050, U063, U120, U137, U157, and U165 wastewaters and nonwastewaters, EPA is proposing incineration as a BDAT. For U016, U064, and U094 wastes, EPA is proposing to require the use of incineration as a method of treatment for nonwastewaters and wet-air oxidation and carbon adsorption or chemical oxidation and carbon adsorption, or biological degradation and carbon adsorption, or incineration as methods of treatment for wastewaters. For the organics in U051 wastewaters and nonwastewaters, the concentration standards are based on incineration. EPA is also proposing treatment standards for lead in U051. These standards are based on stabilization as the BDAT for nonwastewaters and chemical precipitation as the BDAT for wastewaters. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(c) Phenolics

P020—2-sec-Butyl-4,6-dinitrophenol (Dinoseb)
P034—2-cyclohexyl-4,6-dinitrophenol
P047—4,6-dinitrocresol and salts
P048—2,4-dinitrophenol
U052—Cresols
U101—2,4-Dimethyl phenol
U170—4-Nitrophenol
U188—Phenol
U201—Resorcinol

For P020, P048, U052, U101, U170, U188, and U201, EPA is proposing treatment standards based on incineration. For P034 and P047, EPA is proposing to require the use of incineration as a method of treatment for nonwastewaters and wet-air oxidation and carbon adsorption, chemical oxidation and carbon adsorption, or biodegradation and carbon adsorption, or incineration as methods of treatment for wastewaters. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(d) Oxygenated Hydrocarbons and Heterocyclics

P001—Warfarin (>3%)
P003—Acrolein
P005—Allyl alcohol
P088—Endothall
P102—Propargyl alcohol
U001—Acetaldehyde
U002—Acetone
U004—Acetophenone
U008—Acrylic acid

U031—n-Butanol
U053—Crotonaldehyde
U057—Cyclohexanone
U085—1,2,3,4-Diepoxybutane
U108—1,4-Dioxane
U112—Ethyl acetate
U113—Ethyl acrylate
U117—Ethyl ether
U118—Ethyl methacrylate
U122—Formaldehyde
U123—Formic acid
U124—Furan
U125—Furfural
U126—Glycidaldehyde
U140—Isobutanol
U147—Maleic anhydride
U154—Methanol
U159—Methyl ethyl ketone
Ul61—Methyl isobutyl ketone
U162—Methyl methacrylate
U166—1,4-Naphthoquinone
U182—Paraldehyde
U197—p-Benzoquinone
U213—Tetrahydrofuran
U248—Warfarin (<3%)

For U002, U004, U031, U057, U108, U112, U117, Ul18, U140, U154, U161, U162, U166, and U197 wastes, EPA is proposing treatment standards based on the performance of incineration or fuel substitution for nonwastewaters and incineration for wastewaters. For P001, P003, P005, P088, P102, U001, U008, U053, U085, Ul13, U122, U123, U124, U125, U126, U147, U154, U182, U213, and U248 wastes, EPA is proposing to establish incineration or fuel substitution as a method of treatment for nonwastewaters (unlike other wastes in the additional organic wastes category, this proposed standard does not preclude the use of fuel substitution), and wet-air oxidation, chemical oxidation, or biodegradation and carbon adsorption, or incineration as methods of treatment for all wastewaters except P003. Treatment standards for P003 wastewaters are based on incineration. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes. (These wastes needing alternative wet-air oxidation and incineration capacities do not need a variance, because there is adequate capacity for the small quantity of wastes in this category.)

(e) Organo-Nitrogen Compounds
(i) Nitrogen Heterocyclic Compounds
P008—4-Aminopyridine
P018—Brucine
P054—Aziridine
P067—2-Methylaziridine
U011—Amitrole
U148—Maleic Anhydride
U179—N-Nitrosopiperidine
U180—N-Nitrosopyrrolidine
U191—2-Picoline
U196—Pyridine
(ii) Amine and Amide Compounds
P046—alpha, alpha-Dimethylphenethylamine
P064—Isocyanic acid, ethyl ester
U007—Acrylamide
U012 Aniline
U092—Dimethylamine
U110—Dipropylamine
U167—1-Naphthylamine
U168—2-Naphthylamine
U194—n-Propylamine
U238—Ethyl carbamate
(iii) Aminated Diphenyls and Biphenyls
U014—Auramine
U021—Benzidine
U09l—3,3-Dimethoxybenzidine
U093—p-Dimethylaminoazobenzidine
U095—3,3'-Dimethylbenzidine
U236—Trypan Blue
(iv) Nitriles
P069—Methyllactonitrile
P101—Propanenitrile
U003—Acetonitrile
U009—Acrylonitrile
U149—Malononitrile
U152—Methacrylonitrile
(v) Nitro Compounds
P077—p-Nitroaniline
U105—2,4-Dinitrotoluene
U106—2,6-Dinitrotoluene
U169—Nitrobenzene
U171—2-Nitropropane
U181—5-Nitro-o-toluidine
U234—sym-Trinitrobenzene
(vi) Nitroso Compounds
P082—N-Nitrosodimethylamine
P084—N-Nitrosomethylvinylamine
U111—Di-n-propylnitrosoamine
U172—N-Nitroso-di-n-butylamine
U173—N-Nitroso-di-n-ethanolamine
U174—N-Nitrosodiethylamine
U176—N-Nitroso-N-ethylurea
Ul77—N-Nitroso-N-methylurea
U178—N-Nitroso-N-methylurethane

For P077, P082, P1O1, U003, U009, U012, U093, U105, U106, U111, U152, U167, U168, U169, U172, U174, U179, U180, U181, and U196 wastes, EPA is proposing BDAT treatment standards based on the performance of incineration. For P008, P018, P046, P054, P064, P067, P069, P084, U007, U011, U014, U021, U091, U092, U095, U110, U148, U149, U171, U173, U176, U177, U178, U191, U194, U234, U236, and U238 wastes, EPA is proposing to establish incineration as a method of treatment for nonwastewaters; for wastewaters, the proposed BDATs are: wet-air oxidation and carbon adsorption, chemical oxidation and carbon adsorption, biodegradation and carbon adsorption, or incineration as methods of treatment. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(f) Organo-Sulfur Compounds
P002—1-Acetyl 2-thiourea
P014—Benzene thiol (Thiophenol)
P022—Carbon disulfide
P045—Thiofanox
P049—2,4-Dithiobiuret
P066—Methomyl
P070—Aldicarb
P072—1-Naphthyl-2-thiourea (Bantu)
P093—N-Phenylthiourea
P116—Thiosemicarbazide
U114—Ethylene bis-dithiocarbamic acid
U116—Ethylene thiourea
U119—Ethyl methane sulfonate
U153—Methane thiol
U193—1,3-Propane sulfone
U218—Thioacetamide
U219—Thiourea
U244—Thiram

For all of these organo-sulfur wastes, EPA is proposing to establish incineration as a method of treatment for nonwastewaters and wet-air oxidation and carbon adsorption, chemical oxidation and carbon adsorption, biodegradation and carbon adsorption, or incineration as methods of treatment for wastewaters. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes. (These wastes needing alternative wet-air oxidation and incineration capacities do not need a variance, because their is adequate capacity for the small quantity of wastes in this category.)

(g) Pharmaceuticals
P007—Muscimol (5-Aminoethyl 3-isoxazolol)
P042—Epinephrine
P075—Nicotine and salts
P108—Strychnine and salts
U010—Mitomycin C
U015—Azaserine
U035—Chlorambucil
U059—Daunomycin
U089—Diethyl stilbestrol
U090—Dihydrosafrole
U141—Isosafrole
U143—Lasiocarpine
U150—Melphalan
U155—Methapyrilene
U163—N-Methyl N-nitro N-nitroquanidine
U164—Methylthiouracil
U187—Phenacetin
U200—Reserpine
U202—Saccharin and salts
U203—Safrole
U206—Streptozotocin
U237—Uracil mustard

For all of these pharmaceutical wastes except U141, U155, U187, and U203, EPA is proposing to establish incineration as a method of treatment for nonwastewaters and wet-air oxidation and carbon adsorption, chemical oxidation and carbon adsorption, or biodegradation and carbon adsorption, or incineration as methods of treatment for wastewaters. For U141, U155, U187, and U203, EPA is proposing BDAT treatment standards based on the performance of incineration for wastewaters and nonwastewaters. Sufficient capacity exists for treatment of these nonhalogenated organic wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(3) Ignitable, corrosive, and reactive characteristic wastes, and reactive U and P wastes. This group includes ignitable characteristic wastes (D001), corrosive characteristic wastes (D002), reactive characteristic wastes (D003), and potentially reactive P and U wastes.

(a) *Ignitable Characteristic Wastes (D001).* EPA has identified four treatability groups for D001 wastes: ignitable liquids, ignitable reactives, oxidizers, and ignitable gases. For ignitable liquids, EPA is proposing incineration, fuel substitution, or recovery as a method of treatment, rather than proposing numerical standards. EPA believes that the majority of these wastes are already being either incinerated or reused as fuel or recovered for reuse. Sufficient treatment capacity exists for the D001 ignitable liquid wastes destined for surface disposal; therefore, no capacity variance is being proposed for them.

EPA notes, that there may be inadequate treatment capacity for these ignitable liquid wastes if fuel substitution capacity were not considered. Since it makes environmental sense for ignitable wastes to be used as fuel substitutes, since final boiler and furnace RCRA air emission permit standards should be in place relatively soon (standards were re-proposed on October 26, 1989), since ignitable wastes are likely to be destroyed in such units, and because the Agency believes it is important not to grant a national capacity variance for this waste treatability group (during which time the wastes would most likely be used as fuel substitutes anyway, or be land-disposed), EPA believes it preferable to include fuel substitution as a method of treatment for these wastes.

However, significant volumes of D001 sludges and solids are being surface-disposed. These wastes would require incineration or reuse as fuel. Presently, EPA believes that adequate capacity does not exist for them. Therefore, EPA is proposing to grant a two-year national capacity variance only to the subcategory of D001 sludges and solids (which is defined as having a viscosity of greater than 2,500 centipoise) requiring incineration or reuse as fuel. Planned capacity could possibly become available by May 1990 for D001 ignitable wastes. If planned facilities become operational by May 1990, there may be adequate capacity for these wastes and a variance would not be needed. EPA requests comments on the need for and availability capacity for incineration of non-atomizable sludges and solids as well as comments on the use of a subcategory of D001 waste based on viscosity as the basis for granting a national capacity variance.

EPA is proposing deactivation as a method of treatment for D001 ignitable reactives and oxidizers. EPA has determined that sufficient capacity exists for these wastes; therefore, EPA is not proposing to grant a national capacity variance for them.

For D001 ignitable gases, EPA is proposing recovery or incineration of vented ignitable gases as a method of treatment. EPA believes that adequate capacity exists for this waste form; therefore, EPA is not proposing a national capacity variance for this waste.

(b) *Corrosive Characteristic Wastes (D002).* EPA has identified three treatability groups for D002 wastes: acids, alkalines, and other corrosives. For the acid and alkaline subcategories, EPA is proposing neutralization as a method of treatment. These wastes must be treated with chemicals and neutralized into an insoluble salt. However, EPA is also considering the use of recovery of acids for these wastes, and EPA requests comments on the current use of recovery of acids. By definition, wastes in these subcategories are liquids; therefore, based on the minimum technology requirements for surface impoundments and the ban on liquids in landfills, EPA believes that few, if any, of these wastes are surface-disposed. EPA believes sufficient neutralization capacity does exist for acid and alkaline D002 wastes that are surface-disposed; therefore, EPA is not proposing a national capacity variance for them.

For the D002 other corrosives category, EPA is proposing deactivation as a method of treatment. These wastes can be deactivated using chemical reagents. In addition, EPA believes that these wastes are generated sporadically and in low volumes. Therefore, it is not proposing to grant a national capacity variance for them.

(c) *Reactive Characteristic Wastes (D003).* For D003 wastes, EPA has identified five treatability groups: reactive cyanides, explosives, water reactives, reactive sulfides, and other reactives. For D003 reactive cyanides, EPA is considering the transfer of numerical standards from cyanide wastes from electroplating, heat treating, or acrylonitrile production. Although reactive cyanides account for the majority of the quantity of D003 generated, EPA believes that most are already being treated by alkaline chlorination, wet-air oxidation, or electro-oxidation. Furthermore, these wastes are already restricted from landfills by existing regulations (40 CFR part 264.312, 265.312). EPA believes that sufficient capacity does exist for the volume of surface-disposed D003 cyanide reactive wastes and is not proposing a national capacity variance for them.

For D003 reactive sulfides, the Agency is proposing to require chemical oxidation and chemical precipitation, alkaline chlorination and chemical precipitation, or incineration and chemical precipitation to insoluble sulfates rather than proposing numerical standards. EPA believes sufficient capacity does exist for the volume of surface-disposed D003 sulfide wastes and is not proposing a national capacity variance for them.

For D003 explosive wastes, the Agency is proposing deactivation as a method of treatment. Because these wastes are already restricted from land disposal by existing regulations and are commonly burned and/or detonated openly, EPA is not proposing to grant a national capacity variance for their surface disposal.

The proposed method of treatment for D003 water-reactive wastes is also deactivation. EPA believes that these wastes are generated sporadically and in low volumes and are not typically land-disposed. Therefore, EPA is not proposing to grant a national capacity variance for their surface disposal.

For other reactive D003 wastes, EPA is proposing deactivation as a method of treatment. EPA believes these wastes could be incinerated or open detonated. EPA believes that there is adequate capacity for the treatment of small volumes of these wastes that are surface-disposed. Therefore, EPA is not proposing to grant a national capacity variance to surface disposal.

(d) *Potentially Reactive P and U Wastes.* This subgroup includes the following waste codes:
P006—Aluminum phosphide (R,T)
P009—Ammonium picrate (R)

P015—Beryllium dust
P056—Fluorine
P068—Methyl hydrazine
P073—Nickel carbonyl
P081—Nitroglycerin (R)
P087—Osmium tetroxide
P096—Phosphine
P105—Sodium azide
P112—Tetranitromethane (R)
P122—Zinc phosphide (>10%) (R,T)
U023—Benzotrichloride (C,R,T)
U086—N,N-Diethylhydrazine
U096—a,a-Dimethyl benzyl hydroperoxide (R)
U098—1,1-Dimethylhydrazine
U099—1,2-Dimethylhydrazine
U103—Dimethyl sulfate
U109—1,2-Diphenylhydrazine
U133—Hydrazine (R,T)
U134—Hydrofluoric acid (C,T)
U135—Hydrogen sulfide
U160—Methyl ethyl ketone peroxide (R,T)
U189—Phosphorus sulfide (R)
U249—Zinc phosphide (<10%)

These wastes are either highly reactive or explosive or are polymers that also tend to be highly reactive.

For the purpose of BDAT determinations, EPA has identified four subgroups: incinerable reactive organics and hydrazine derivatives (P009, P068, P081, P112, U023, U086, U096, U098, U099, U103, U109, U133, and U160); incinerable inorganics (P006, P096, P105, P122, U135, U189, and U249); fluorine compounds (P056 and U134); and recoverable metallic compounds (P015, P073, and P087). For incinerable organics, EPA is proposing to require the use of thermal destruction (i.e., incineration) as a method of treatment for nonwastewaters and carbon adsorption or incineration as methods of treatment for wastewaters, rather than establishing numerical standards. Because EPA believes sufficient treatment capacity exists for the small volume of surface-disposed incinerable organic wastes (P009, P068, P081, P112, U023, U086, U096, U098, U099, U103, U109, U133, U160, and U186), EPA is not proposing to grant a national capacity variance for them.

For incinerable inorganic wastes, EPA is proposing a standard based on thermal destruction (i.e., incineration) for nonwastewaters and chemical oxidation followed by precipitation to insoluble salts (rather than numerical standards) for wastewaters. EPA believes sufficient treatment capacity does exist for the small volume of surface-disposed incinerable metallic wastes (P006, P096, P105, P122, U135, U189, and U249) and is not proposing a national capacity variance for them.

For fluorine compounds, P056 and U134 nonwastewaters, EPA is proposing to require chemical precipitation as a method of treatment. For P056 and U134 wastewaters, EPA is proposing concentration standards based on chemical precipitation. EPA believes that adequate treatment capacity exists for these wastes and is therefore not proposing to grant a capacity variance for their surface disposal.

For recoverable metallic compounds (P015, P073, and P087), EPA is proposing recovery as a method, rather than numerical standards. EPA has determined that there is not enough capacity available for the volumes of these wastes. Therefore, EPA is proposing to grant a capacity variance for them.

(4) Metal Wastes. This group includes arsenic, selenium, barium, cadmium, chromium, lead, mercury, silver, thallium, and vanadium wastes.

(a) *Arsenic and Selenium Wastes.*

D004—EP Toxic for arsenic
D010—EP Toxic for selenium
K031—By-product salts generated in the production of MSMA and cacodylic acid
K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds
K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds
K102—Residues from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds
P010—Arsenic acid
P011—Arsenic (V) oxide
P012—Arsenic (III) oxide
P036—Dichlorophenylarsine
P038—Diethylarsine
P103—Selenourea
P114—Thallium selenite
U136—Cacodylic acid
U204—Selenious acid
U205—Selenium disulfide

For arsenic and selenium nonwastewaters, EPA is proposing concentration standards based on vitrification. The TSDR Survey indicates that no commercial vitrification capacity exists. Therefore, EPA is proposing to grant a two-year capacity variance to all of the surface-disposed arsenic and selenium nonwastewaters listed above. However, the Agency is requesting information on commercial vitrification capacity.

For arsenic and selenium wastewaters, EPA is proposing treatment standards for which chemical precipitation may be used as an alternative treatment. The TSDR survey indicates that adequate chemical precipitation capacity exists; therefore, EPA is not proposing to grant arsenic and selenium wastewaters a capacity variance.

(b) *Barium Wastes.* For D005 and P013 barium wastes, EPA is proposing acid or water leaching followed by chemical precipitation as sulfate or carbonate or stabilization as methods of treatment for nonwastewaters, and a concentration standard based on chemical precipitation for wastewaters. EPA is not reopening promulgated treatment standards for cyanides in P013 for comment. Sufficient capacity exists to treat surface-disposed D005 and P013 wastes. Therefore EPA is not proposing to grant a national capacity variance for these wastes.

(c) *Cadmium Wastes.* For D006 wastes, EPA is proposing treatment standards for three categories: cadmium batteries, wastewaters, and nonwastewaters. For D006 cadmium batteries, EPA is proposing thermal recovery as a method of treatment. For D006 wastewaters, EPA is proposing concentration standards based on chemical precipitation. For D006 nonwastewaters, EPA is proposing two options: (1) Concentration standards based on stabilization, and (2) stabilization or recovery as a method of treatment. EPA believes that sufficient capacity exists to treat surface-disposed cadmium nonwastewaters and wastewaters. Therefore, EPA is not proposing to grant a national capacity variance for them. Because cadmium batteries are land-disposed but there is no capacity for thermal recovery, EPA is proposing to grant a national capacity variance for cadmium batteries.

(d) *Chromium Wastes.* For D007 chromium waste and U032 (calcium chromate) wastewaters and nonwastewaters, EPA is proposing concentration treatment standards based on chromium reduction and lime or sulfide precipitation and sludge dewatering. EPA believes sufficient treatment capacity exists for the volume of these wastes. Therefore, EPA is not proposing to grant a national capacity variance for them.

(e) *Lead Wastes.*

D008—EP toxic for lead
P110—Tetraethyl lead
U144—Lead acetate
U145—Lead phosphate
U146—Lead subacetate

For D008 high-concentration lead wastes, EPA is proposing thermal recovery as a method of treatment for nonwastewaters. For D008 low-concentration lead wastes, EPA is proposing treatment standards based on stabilization for nonwastewaters. For D008 low-concentration nonwastewaters containing significant concentrations of organics, EPA is proposing that these wastes be pretreated by incineration prior to stabilization. For all U145 and D008 wastewaters, treatment standards are proposed based on chemical precipitation with lime or sulfide, and sludge dewatering. For D008 lead acid batteries, EPA is proposing thermal recovery as a method of treatment. EPA believes sufficient capacity exists for surface-disposed D008 wastes. Therefore, EPA is not proposing to grant a national capacity variance for them.

EPA solicits comment, however, on the need for a national capacity variance for lead-bearing wastes that are stored in land disposal units such as piles *before* being resmelted. EPA has limited information suggesting that secondary lead smelters may use storage piles for lead-bearing wastes prior to smelting. This storage is a form of land disposal under section 3004(k). (As noted earlier, however, batteries themselves are containers and so placement of a battery in a storage pile is not land disposal under section 3004(k), any more than placement of a 55-gallon drum. The storage standards for containers still apply to battery storage areas, however. See 40 CFR part 266 subpart G.) Consequently, there must be alternative storage (i.e., tanks or no-migration piles) for these materials. EPA therefore solicits comment on the volumes of lead-bearing wastes that are stored in land disposal units prior to treatment by metal recovery facilities, and the need for a national capacity variance for such materials.

For P110, U144, U145, and U146, EPA is proposing treatment standards based on chemical reduction and precipitation with lime or sulfide and sludge dewatering for wastewaters, and stabilization for nonwastewaters. For P110, U144, U145, and U146 nonwastewaters containing significant concentrations of organics, EPA is proposing pretreatment by incineration prior to stabilization. EPA believes sufficient capacity exists for the small volume of these wastes that are surface-disposed; therefore, EPA is not proposing to grant a national capacity variance for them.

(f) *Mercury Wastes.*

D009—EP toxic for mercury
K071—Chlorine production wastes
K106—Wastewater treatment sludges from the mercury cell process in chlorine production
P065—Mercury fulminate
P092—Phenylmercuric acetate
U151—Mercury

For D009, K071, K106, P065, P092 and U151 wastewaters, EPA is proposing concentration standards based on chemical precipitation. Mercury-bearing wastewaters containing hexavalent chromium may require chromium reduction prior to treatment of the mercury. Likewise, wastewaters containing organics may require chemical oxidation prior to treatment of the mercury.

For K106 and U151, EPA is proposing to establish a low mercury subcategory and high mercury subcategory for nonwastewaters. For the high mercury subcategory, EPA is proposing roasting or retorting as a method of treatment. For the low mercury subcategory, EPA is proposing concentration standards based on acid leaching. Residues from the acid leaching of the low mercury subcategory may require thermal recovery of mercury.

Treatment standards for K071 nonwastewaters were originally promulgated in the First Third rule. EPA is proposing to revise the standards for the high mercury concentration subcategory. For these high mercury nonwastewaters, EPA is now proposing roasting or retorting as a method. For the low mercury subcategory, promulgated standards are unchanged.

For D009, P065, and P092 nonwastewaters, EPA is proposing roasting or retorting as a method for high mercury concentrations. If the organic content is too high for the roasting or retorting, incineration would be required as a pretreatment step for these nonwastewaters.

EPA believes sufficient capacity exists to treat the volume of all surface-disposed mercury wastewaters. Thus, EPA is not proposing to grant a variance for them. Current data do not provide sufficient information on the volume of mercury wastes that contain high and low concentrations of mercury. Although EPA does not have any data on these mercury waste volumes, there is no commercial acid leaching capacity and there is insufficient mercury retorting capacity for D009, K071, K106, P065, P092, and U151 nonwastewaters. Thus, EPA is proposing to grant a two-year national variance for mercury nonwastewaters.

(g) *Silver Wastes.* Treatment standards for P099 and P104 nonwastewaters were promulgated in the Second Third final rule. For D011, P099, and P104 wastewaters, EPA is proposing concentration standards based on chemical precipitation. For D011 nonwastewaters, EPA is proposing two alternatives: (1) A concentration standard based on stabilization; or (2) recovery or stabilization as a method of treatment. EPA believes adequate capacity exists to treat surface-disposed D011, P099, and P104 wastes. Therefore, EPA is not proposing a capacity variance for them.

(h) *Thallium Wastes.*

P113—Thallic oxide
P114—Thallium selenite
P115—Thallium (I) sulfate
U214—Thallium (I) acetate
U215—Thallium (I) carbonate
U216—Thallium (I) chloride
U217—Thallium (I) nitrate

For treating P113, P115, U214, U215, U216, and U217, EPA is proposing recovery or stabilization as a method of treatment for nonwastewaters and concentration standards based on chemical oxidation followed by chemical precipitation and filtration for wastewaters. For P114, EPA is proposing stabilization or vitrification for nonwastewaters, and concentration standards based on chemical oxidation followed by chemical precipitation and filtration for wastewaters. Based on the TSDR Survey, adequate capacity exists for surface-disposed thallium wastewaters. Therefore, EPA is not proposing to grant a national capacity variance for thallium wastewaters. No commercial capacity exists for vitrification; therefore, EPA is proposing to grant P114 nonwastewaters a national capacity variance. Capacity is available to treat other thallium nonwastewaters; therefore, EPA is not proposing to grant other thallium nonwastewaters a national capacity variance.

(i) Vanadium Wastes.

P119—Ammonium vanadate
P120—Vanadium pentoxide

For treating these wastes, EPA is proposing thermal recovery or stabilization as a method of treatment for nonwastewaters, and concentration standards based on chemical precipitation for wastewaters. Although no commercial vanadium recovery capacity has been identified, adequate stabilization capacity exists for treating P119 and P120 nonwastewaters. Therefore, EPA is not proposing to grant a two-year national capacity variance for P119 and P120 nonwastewaters. Adequate capacity exists for chemical precipitation, and therefore, EPA is not proposing to grant P119 and P120 wastewaters a national capacity variance.

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(5) Specific Treatability Groups. These groups include wastes from pigment production (K002 through K008); cyanide wastes (F006, F019, K011, K013, K014, P031, P033, U246); K015; gases (P076, P078, U115); K086; F002 and F005; K022, K025, K026, K035, and K083; K036 and K037; F024 and F025; K044, K045, K046, K047; K060; K061; K069; K100 wastes; and K048 through K052.

(a) *Cyanide Wastes.* For F006 wastewaters, EPA is proposing BDAT treatment standards based on alkaline chlorination for cyanides and chemical reduction and precipitation with lime and sulfide and sludge dewatering for metals. EPA believes that adequate capacity exists for the volume of surface-disposed F006 wastewaters. Therefore, EPA is not proposing a variance for them.

Treatment standards for F019 wastewaters are based on the performance of wet-air oxidation for cyanides. Treatment standard for metals in wastewaters are based on chromium reduction, chemical precipitation with lime and sulfide, and sludge dewatering. Treatment standards for the nonwastewaters are based on the performance of wet-air oxidation for cyanides and stabilization for metals. EPA believes that inadequate capacity exists for wet-air oxidation; therefore, EPA is proposing to grant a two-year variance to F019 nonwastewaters. Because sufficient wet-air oxidation capacity exists to treat the F019 wastewaters, EPA is not proposing to grant a national capacity variance for F019 wastewaters.

Treatment standards for the surface disposal of nonwastewater forms of K011, K013, and K014 were promulgated in the Second Third rule. For K011, K013, and K014 wastewaters, EPA is proposing BDAT treatment standards based on wet-air oxidation. The TSDR Survey shows that sufficient capacity exists for the volume of surface-disposed K011, K013, and K014 wastewaters. Therefore, EPA is not proposing to grant a capacity variance for them.

For the P and U wastes containing cyanide, P031 (Cyanogen), P033 (Cyanogen chloride), and U246 (Cyanogen bromide), EPA is proposing incineration or alkaline chlorination as methods for both wastewaters and nonwastewaters. EPA has determined that sufficient capacity exists to treat these wastes; therefore, EPA is not proposing to grant a national capacity variance for these wastes.

(b) *F024 and F025 Wastes.* EPA promulgated standards for F024 wastewaters and nonwastewaters in the Second Third rule based on rotary kiln incineration for organic constituents and chemical precipitation and vacuum filtration for metal constituents in wastewaters. Today, EPA is proposing stabilization as the BDAT for treatment of metal constituents in F024 nonwastewaters. The TSDR Survey indicates that adequate treatment capacity exists for the volume of surface-disposed F024 nonwastewaters requiring treatment. Therefore, EPA is not proposing to grant a capacity variance for them. However, the standard for F024 includes a standard for dioxins. There is concern that there may not be adequate capacity for these wastes, because facilities may not be accepting wastes that must meet a dioxin standard. EPA is soliciting comments on the need for and the availability of capacity for F024, including information on capacity needed and available to meet dioxin standards.

Although listing of F025 waste (condensed light ends, spent filters and filter aids, and spent dissicant wastes from the production of certain chlorinated aliphatics) has not been promulgated as a RCRA hazardous waste, EPA believes that promulgation of the listing for F025 will occur prior to the promulgation of the Third Third final rule. Most generators already treat F025 as if it were hazardous, and some facilities comingle F024 and F025. Today EPA is proposing concentration treatment standards for all categories of F025 wastewaters and nonwastewaters. The BDAT for F025 wastewater and nonwastewater light ends, spent filters, filter aids and dessicants is incineration. EPA has determined that no alternative treatment capacity is needed for F025 wastes. Therefore, EPA is not proposing to grant these wastes a national capacity variance.

(c) *Wastes from Inorganic Pigment Production.* EPA is proposing to revoke the no land disposal standard previously promulgated for K004, K005, K007, and K008 nonwastewaters. EPA is proposing BDAT based on chromium reduction and precipitation and filtration for K002, K003, K004, K005, K006, K007, and K008 wastewaters and nonwastewaters. EPA believes that sufficient capacity exists for surface-disposed K002, K003, K004, K005, K006, K007, and K008 wastewaters and nonwastewaters. Therefore, EPA is not proposing to grant a capacity variance for them.

(d) *K015 Wastes.* EPA is proposing to revoke the no land disposal based on no generation standard previously promulgated for K015 (benzyl chloride distillation wastes) nonwastewaters because of the reported generation of ash containing this waste. Consequently, for this waste, EPA is proposing treatment standards for five organic and two metal constituents. Treatment standards for the organic constituents are based on a transfer of the performance data of incineration for similar wastes. Treatment standards for metal constituents are based on a transfer of the performance of stabilization of incinerator ash for similar wastes. These technologies both have available capacity; therefore, EPA is not proposing a variance for K015 nonwastewaters.

(e) *K022, K025, K026, K035, and K083 Wastes.* EPA promulgated treatment standards for K022, K025 and K083 nonwastewaters in the First Third rule. For organics in K022 wastewaters and nonwastewaters, EPA is proposing treatment standards based on incineration. For metals in K022 wastewaters, EPA is proposing treatment standards based on chemical precipitation. Alternatively, EPA is proposing K022 treatment standards expressed as methods of treatment.

For K025 nonwastewaters, EPA is revising the treatment standard of no land disposal based on no generation. For K025 wastewaters, EPA is proposing concentration treatment standards for organics based on liquid-liquid extraction and steam stripping and carbon adsorption. The proposed treatment standards for K025 nonwastewaters are based on incineration. Alternatively, EPA is proposing to require these methods of treatment as a prerequisite for land disposal of K025 wastewaters and nonwastewaters. Incineration of K025 wastewaters is also proposed as an equivalent method of treatment for K025 wastewaters.

For K026 and K035, the treatment standards for wastewaters and nonwastewaters are based on incineration. Alternatively, EPA is proposing to require incineration as a prerequisite for land disposal of K026 wastewaters and nonwastewaters. EPA is revising the standard of no land disposal for K083 nonwastewaters. For organics identified in K083 wastewaters and nonwastewaters, EPA is proposing treatment standards based on incineration. For metals in K083 wastewaters, EPA is proposing treatment standards based on chemical precipitation. For metals in K083 nonwastewaters, EPA is proposing treatment standards based on stabilization. Alternatively, EPA is proposing K083 treatment standards expressed as methods of treatment.

EPA believes that adequate capacity exists for K022 wastewaters, K025 wastewaters and nonwastewaters, K026 wastewaters and nonwastewaters, K035 wastewaters and nonwastewaters, and K083 wastewaters and nonwastewaters, and therefore, EPA is not proposing to grant these wastes a capacity variance.

(f) *K036 and K037 Wastes.* EPA promulgated a treatment standard of no land disposal based on no generation for K036 nonwastewaters in the First Third rule. EPA also promulgated treatment standards based on incineration for K037 wastewaters and nonwastewaters in the First Third rule. Today, EPA is proposing revised treatment standards for the nonwastewater form of K036 (still bottoms from toluene reclamation distillation in the production of disulfoton) and the wastewater form of K037 (wastewater treatment sludges from the production of disulfoton). EPA is proposing to transfer the concentration standards from K037 nonwastewaters based on incineration to other forms of K036 nonwastewaters (e.g., K036 spill residues). EPA believes that adequate capacity exists for these surface-disposed K036 nonwastewaters. Therefore, EPA is not proposing to grant a national capacity variance for them.

For K037 wastewaters, EPA is proposing a revised concentration standard from one based on rotary kiln incineration to one based on biological treatment. EPA believes that adequate capacity exists for surface-disposed K037 wastewaters; therefore, EPA is not proposing a capacity variance for them.

(g) *K044, K045, K046, K047 wastes.* For K044, K045, and K047, EPA is proposing to revoke the no land disposal based on reactivity standard promulgated in the First Third rule. EPA is proposing deactivation as a method of treatment for wastewaters and nonwastewaters. EPA believes adequate capacity exists to treat these wastes; therefore, EPA is not proposing to grant them a national capacity variance.

In the First Third rule, EPA promulgated treatment standards based on stabilization for K046 nonreactive nonwastewaters. Today EPA is proposing standards for K046 reactive nonwastewaters based on stabilization. For K046 reactive wastewaters, EPA is proposing the use of deactivation and chemical precipitation, settling, and filtration as a BDAT. For K046 non-reactives wastewaters, EPA is proposing chemical precipitation, settling and filtration for wastewaters as a BDAT. EPA believes that adequate capacity exists for these wastes and, therefore, EPA is not proposing to grant them a national capacity variance.

(h) *K060 Wastes.* Today EPA is proposing to revoke the no land disposal based on no generation standards promulgated for K060 nonwastewaters in the First Third rule. For K060 nonwastewaters, EPA is proposing incineration as the BDAT. EPA is proposing BDAT standards for K060 wastewaters based on biological treatment. For K060 arsenic nonwastewaters, EPA is proposing BDAT standards based on vitrification. EPA believes that adequate capacity exists for the volume of surface-disposed K060 wastewaters and nonwastewaters requiring treatment. Therefore, it is not proposing to grant a capacity variance for them.

(i) *K061 Wastes.* In the First Third final rule, EPA promulgated treatment standards for K061 nonwastewaters. In this rule, two subcategories for nonwastewater forms of K061 were defined. The low zinc subcategory (less than 15 percent) and the high zinc category (greater than 15 percent) were defined as separate treatability groups. BDAT for the low zinc subcategory was based on the performance of stabilization. For the high zinc subcategory, the final standard was "No Land Disposal Based on High Temperature Metals Recovery as a Method of Treatment" technology. Today, EPA is proposing to revise the promulgated treatment standard for the high zinc subcategory to be resmelting in a high temperature zinc metal recovery furnace. For the First Third final rule, K061 nonwastewaters were granted a national capacity variance. Today's proposed refinement in the treatment standard does not change the schedule for the capacity variance for K061 nonwastewaters.

Today, EPA is proposing the BDAT standard based on chromium reduction and chemical precipitation with lime and sulfide and sludge dewatering for wastewaters. EPA believes adequate capacity exists for the volume of surface-disposed K061 wastewaters. Therefore, EPA is not proposing to grant a variance for them.

(j) *K069 Wastes.* Today, EPA is proposing to revoke the no land disposal based on recycling standard promulgated in the First Third rule for the non-calcium sulfate subcategory for K069 nonwastewaters. For calcium sulfate nonwastewaters, EPA is proposing a standard based on the performance of stabilization. For non-calcium sulfate nonwastewaters, EPA is proposing recycling as a method of treatment. For wastewaters, EPA is proposing a BDAT standard based on chemical precipitation. EPA believes adequate capacity exists to treat the volume of surface-disposed K069 wastewaters and nonwastewaters; therefore, EPA is not proposing a capacity variance for them.

(k) *Revisions to K086 Wastes.* EPA promulgated treatment standards for K086 solvent washes in the First Third Rule based on incineration and stabilization of ash for nonwastewaters and incineration and chromium reduction, chemical precipitation and filtration for wastewaters. Today EPA is proposing to revise these standards and propose standards for the caustic sludges and water sludges subcategories. EPA is proposing treatment standards for all K086 wastewater and nonwastewater wastes based on incineration for organics and chromium reduction, followed by excess lime precipitation, and filtration for metals. As a "worst-case" analysis, EPA included in the capacity analysis conducted for First Third wastes all of the K086 wastes identified in the TSDR Survey. Consequently, no additional capacity will be required by today's proposal, and no capacity variance is being proposed for K086 wastes.

(l) *K100 Wastes.* For K100 nonwastewaters, EPA is proposing to revoke the no land disposal based on no generation standards promulgated in the First Third rule. Today, EPA is proposing treatment standards based on stabilization for nonwastewaters and chemical precipitation for wastewaters. EPA believes adequate capacity exists to treat the volume of surface-disposed K100 wastes. Therefore, EPA is not proposing a capacity variance for them.

(m) *Gases.* This treatability group includes the following groups: P076 (Nitric oxide), P078 (Nitrogen dioxide), and U115 (Ethylene oxide). For P076, P078, and U115 wastewaters and nonwastewaters, EPA is proposing recovery as a method of treatment. EPA believes that these wastes are generated as gases and industry typically reuses or recovers compressed gases directly. EPA also believes that these gases are not land disposed. Although no commercial capacity exists for recovery of these gases, EPA is not proposing to grant a national capacity variance for these wastes, because the Agency believes these wastes will not require commercial alternative treatment.

(n) *Revisions to Petroleum Refining Wastes (K048–K052).* For the First Third rule, EPA promulgated treatment standards for K048 through K052 based on data from incineration, solvent extraction, and treatment of the metals in wastewater and nonwastewater residuals. Today, EPA is proposing additional treatment standards based on a reevaluation of the data and is proposing that these revised standards,

with five exceptions, take effect exactly one year following the Third Third rulemaking promulgation date. The five exceptions, whose standards have been increased based on the revised data are: benzo (a) pyrene, ortho and para cresols, di-n-butyl phthalate, and phenol. For these exceptions, EPA is proposing that the new standards become effective on August 8, 1990, when the capacity variance issued on K048 through K052 wastes expires.

EPA is proposing treatment standards for cyanide K048 through K052 wastewaters based on incineration. EPA is also proposing BDAT concentration standards for organics in K048 through K052 nonwastewaters based on solvent extraction. The Agency is not proposing revisions to promulgated BDAT treatment standards for wastewater constituents in K048 through K052 wastewaters, other than cyanide, nor for any metal constituents in the K048 through K052 wastewaters or nonwastewaters. The Agency has only revised the concentration-based treatment standards for K048 through K052 nonwastewaters; EPA has not reevaluated the selection of solvent extraction and incineration as BDAT for organics in nonwastewaters. Because the capacity analysis was conducted for these wastes in the First Third rule and the technologies needed to achieve BDAT treatment standards are not being revised, EPA did not reevaluate the alternative capacity requirements for K048 through K052 wastes.

(o) *Additional Treatment Standards for F002 and F005 Wastes.* Treatment standards for F002 and F005 were promulgated in the Solvents and Dioxins rule. Today EPA is proposing revisions to the treatment standards for F002 and F005 to account for four newly listed F002 and F005 constituents. The BDAT for wastewaters is based on biological treatment, and liquid-liquid extraction and steam stripping and carbon adsorption. The BDAT for nonwastewaters is based on incineration. The Agency believes that adequate treatment capacity exists for these wastes and therefore, EPA is not proposing a national capacity variance for these wastes.

(p) *Capacity Determination for Multi-Source Leachate*—(1) *Definition and Applicability.* EPA defines multi-source leachate as leachate that is derived from the treatment, storage, disposal, or recycling of more than one listed hazardous waste. Under today's proposed rule, such leachate will be restricted from land disposal. Residues from treating such leachate, as well as residues such as soil and ground water that are contaminated by such leachate, are also restricted from land disposal under this rule. Leachate deriving from a single source must meet the standard developed for the waste code from which it is derived; therefore, such leachate is not subject to the standards developed for multi-source leachate. (EPA is also soliciting comment on modifying the definition of multi-source leachate.)

(2) *Previous Treatment Standards.* EPA originally imposed a land disposal restriction on multi-source leachate under the First Third of the land disposal restrictions (LDRs). Under the LDRs, multi-source leachate would have to be treated to satisfy all the standards applicable to the original wastes from which the leachate is derived (see 53 FR 31146–150 (August 17, 1988)). EPA revisited the issue of treatability of multi-source leachate to address concerns raised by the hazardous waste management industry, and rescheduled promulgation of a land disposal restriction for multi-source leachate to the Third Third of the LDRs in order to fully study the most appropriate section 3004(m) treatment standards for multi-source leachate (see 54 FR 8264 (January 27, 1989)). Leachate derived from disposal of the listed dioxin-containing hazardous wastes and California list wastes were not rescheduled.

(3) *Proposed Treatment Standards.* In section 7.b of this preamble, EPA is proposing two options for the development of treatment standards for multi-source leachate. Under the first option, EPA would continue the application of the carry-through principle under which multi-source leachate must meet the standards established for all the waste codes from which it is derived. Under the second option, EPA would establish one set of wastewater standards and one set of nonwastewater standards for multi-source leachate; these standards would also apply to residuals derived from the storage, treatment, or disposal of multi-source leachate. For treating multi-source leachate in the form of wastewater, EPA is considering recommending the treatment of wastewaters by wet-air oxidation or biological treatment, followed by carbon adsorption, or incineration. For nonwastewaters derived from treating multi-source leachate, EPA is considering a treatment standard based on incineration for organic constituents and on stabilization for metals.

(4) *Determination of Volumes Requiring Alternative Treatment or Recovery Capacity.* EPA relied primarily on data from the TSDR Survey and from the Generator Survey to determine whether sufficient alternative treatment or recovery capacity is available for multi-source leachate. Multi-source leachate is primarily generated in landfills. All the active regulated facilities generating and managing leachate are accounted for in the TSDR and Generator Surveys because (1) the TSDR Survey is a census of all the hazardous waste treatment, storage, disposal, and recycling facilities in the country; and (2) the Generator Survey, while it is a sample of hazardous waste generators, includes every facility that responded to the TSDR Survey.

EPA recognizes that multi-source leachate can also be generated at closed facilities. However, only sparse data characterizing leachate currently exist for those facilities and how much is presently land-disposed in surface disposal units. The Agency requests comments on the characterization of multi-source leachate at closed facilities and how much is presently land-disposed in surface disposal units.

EPA also welcomes the submission of current data from interested parties on the volumes of multi-source leachate generated, the current management of such leachate, the amount of residuals generated, and the waste constituent composition of multi-source leachate.

In addition to data from the TSDR and Generator Surveys, EPA examined data submitted as part of a leachate study plan by four major companies managing hazardous wastes at 17 facilities. These companies included Chemical Waste Management (CWM)/Waste Management of North America (WMNA), Browning Ferris Industries (BFI)/CECOS, DuPont, and Dow Chemical.

Based on evaluation of this information, EPA estimated volume of multi-source leachate requiring alternative treatment or recovery. EPA recognizes that the actual total quantity of multi-source leachate generated, managed, and land-disposed may be much larger than the volumes reported in the surveys upon which this analysis is based. Consequently, EPA welcomes comments by interested parties on the current generation, management, and land disposal of multi-source leachate.

(5) *Determination of National Variances for Multi-Source Leachate.* EPA analyzed the alternative treatment or recovery capacity for two categories of multi-source leachate: wastewaters and nonwastewaters.

Treatment standards for wastewaters are based on wet-air oxidation and carbon adsorption, biodegradation and carbon adsorption, and incineration for organic constituents; for inorganic constituents, treatment standards are based on chemical precipitation. Given the very low volumes of surface-disposed multi-source leachate wastewaters and the adequate capacity to treat these wastes using the above treatment technologies, EPA is not proposing to grant a variance for surface-disposed multi-source leachate wastewaters.

Treatment standards for nonwastewaters are based on incineration as a method for wastes containing organic constituents, and on stabilization for wastes containing inorganic constituents. EPA is proposing to grant a two-year variance for surface-disposed multi-source leachate nonwastewaters in the form of non-atomizable sludges and solids, because there is insufficient incineration capacity for these wastes. However, EPA is not proposing to grant a national capacity variance to nonwastewater multi-source leachate in the form of atomizable organic liquids because there are very low volumes of such wastes and there is sufficient capacity for them.

(q) *Capacity Determination for Mixed Radioactive Wastes*—(1) *Background.* EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045, 37046, September 23, 1988). Regardless of the type of radioactive constituents that these wastes contain (e.g., high-level, low-level, or transuranic), they are subject to RCRA hazardous waste regulations, including the land disposal restrictions.

Radioactive wastes that are mixed with spent solvents, dioxins, or California list wastes are subject to the land disposal restrictions already promulgated for those hazardous wastes. EPA has determined, however, that radioactive wastes that are mixed with First Third and Second Third wastes will be included in the Third Third rulemaking (40 CFR 268.12(c)). Thus, today's proposal addresses radioactive wastes that contain First Third, Second Third, and Third Third wastes.

(2) *Data Sources.* The Department of Energy (DOE) is a major generator of mixed RCRA/radioactive wastes. For data on DOE wastes, EPA used a data set submitted by DOE. The data set, which is based on a recent DOE survey, contains information on mixed RCRA/radioactive waste inventories, generation rates, and existing and planned treatment capacity at 21 DOE facilities.

A variety of non-DOE facilities also generate mixed RCRA/radioactive wastes, including nuclear power plants, academic and medical institutions, and industrial facilities. A variety of information sources were used to identify the non-DOE generators, estimate the quantities and types of mixed RCRA/radioactive wastes that they generate, and determine current management practices and treatment capacity. These sources included the TSDR Survey, the Generator Survey, and other studies.

EPA believes that these sources provide the best available information on non-DOE mixed RCRA/radioactive wastes. However, EPA is interested in obtaining additional information on their generation, characterization, and management.

(3) *Determinations of National Variances for Mixed RCRA/Radioactive Wastes.* After investigating the data sources noted above, EPA estimated that approximately 363 million gallons of radioactive waste mixed with First, Second, and Third Third wastes will require treatment. This volume includes wastes generated annually as well as untreated wastes in storage and contaminated soil and debris. EPA has also determined that alternative treatment capacity is not available for mixed RCRA/radioactive wastes. Consequently, EPA proposes to grant a national variance for mixed RCRA/radioactive wastes. Although DOE has plans to increase its capacity to treat mixed RCRA/ radioactive wastes, data supplied by DOE indicate that DOE currently lacks adequate capacity to treat its mixed RCRA/radioactive wastes. In addition, adequate commercial treatment capacity is not available. Thus, EPA has determined that sufficient alternative treatment capacity is not available and is proposing a two-year national capacity variance for mixed RCRA/radioactive wastes.

EPA recognizes that its information on mixed RCRA/radioactive wastes generated and managed by non-DOE facilities may be incomplete. Consequently, the Agency requests comments by interested parties on the current generation of mixed RCRA/radioactive wastes. Of particular interest to EPA is information on mixtures of radioactive wastes and First, Second, or Third Third waste streams.

2. Determination of Alternative Capacity and Effective Dates for Underground Injected Waste. The Agency is today proposing effective dates for the restrictions against the underground injection of virtually all remaining RCRA section 3004(g) wastes, including characteristic wastes, for which no effective dates have been set. EPA is not acting on certain newly listed or newly identified wastes. EPA solicits comment on the volumes and characteristics of the wastes represented in this section, as well as any information on the characteristics and volumes of any multi-source leachate that is currently being injected.

a. Proposed Effective Date Determinations for Wastes With Treatment Standards Proposed in Today's Rule

Consistent with the policy established in previous land disposal restrictions, the Agency is proposing to restrict on May 8, 1990, the underground injection of all wastes, with treatment standards proposed in today's rule, that are not currently being deepwell-injected. This decision is consistent with the intent of RCRA in moving hazardous wastes away from disposal and toward treatment. Wastes that are not currently being deepwell-injected are listed in Table III.B.2.(a).

The volumes of deepwell-injected wastes that require alternative commercial treatment and/or recycling capacity are presented in Table III.B.2.(b). This table does not include wastes that are currently being deepwell-injected, and the facility has an appropriate on-site alternative treatment technology for treating the waste.

The Agency is proposing effective date determinations for all underground injected wastes in treatability groups. If there is adequate available alternative treatment capacity for all the injected volume in a single treatability group, then every waste in that group will be restricted from underground injection on May 8, 1990. If there is inadequate available alternative treatment capacity for the injected volume in a single treatability group, then the Agency is proposing to allocate as much of the available capacity to the wastes requiring treatment. All remaining wastes in the treatability group, for which no capacity exists, will receive a two-year national capacity variance. EPA believes this is most consistent with Congressional intent, which both favors treatment over disposal, and minimal use of capacity variances. EPA specifically solicits comment on this approach. Table III.B.2.(c) indicates the amount of capacity available for treating underground injected wastes, the

demand from these injected wastes on each treatability group, and which treatability groups require capacity variances. More information on the Agency's procedure for apportioning treatment capacity in these treatability groups can be found in the Third Thirds Background Document for the treatability groups.

TABLE III.B.2.(a)— WASTES (WITH PROPOSED TREATMENT STANDARDS)THAT ARE NOT UNDERGROUND INJECTED

[Banned from underground injection on May 8, 1990]

First Third Codes:
K004, K008, K015 (nonwastewaters, K017, K021 (wastewaters), K022 (wastewaters), K035, K036 (nonwastewaters), K037 (wastewaters), K044, K045, K046 (reactive nonwastewaters and all wastewaters), K047, K060 (wastewaters), K061 (wastewaters), K069 (CaSO4 nonwasterwaters and all wastewaters), K071 (nonwastewaters), K073, K084, K085, K101 (high arsenic nonwastewaters), K102 (high arsenic nonwastewaters), K106, P001, P004, P010 P012, P015, P016, P018, P036, P037, P068, P070, P081, P082, P084, P087, P092, P105, P108, P110, P115, P120, P123, U010, U016, U018, U020, U022, U029, U036, U041, U043, U046, U050, U051, U053, U061, U063, U064, U066, U067, U077, U078, U086, U089, U108, U115, U124, U129, U130, U137, U155, U158, U171, U177, U180, U209, U237, U238, U248, U249

Second Third Codes:
K025 (Wastewaters), K029 (wastewaters), K041, K042, K095 (wastewaters), K096 (wastewaters), K098, K105, P002, P003, P007, P008, P013 (wastewaters), P014, P026, P027, P049, P054, P060, P066, P067, P072, P099, K028 (wastewaters), P112, P113, P114, U003, U005, U011, U014, U015, U021, U023, U025, U026, U035, U047, U049, U057, U059, U060, U062, U073, U083, U092, U093, U094, U095, U097, U098, U099, U101, U109, U110, U111, U114, U116, U119, U127, U128, U131, U135, U142, U143, U144, U146, U149, U150, U161, U163, U164, U168, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218

Third Third Codes:
K003, K005 (wastewaters), K006, K007 (wastewaters), K028, K033, K034, K100 (wastewaters), P006, P009, P017, P022, P023, P024, P028, P031, P033, P034, P038, P042, P045, P046, P047, P064, P065, P073, P076, P077, P078, P088, P093, P095, P098, P101, P103, P116, P118, P119, U004, U006, U017, U024, U027, U030, U033, U038, U039, U042, U048, U052, U068, U071, U072, U075, U076, U079, U081, U082, U084, U085, U090, U091, U096, U117, U120, U121, U123, U125, U126, U132, U136, U139, U141, U145, U148, U152, U153, U156, U166, U167, U181, U182, U183, U184, U186, U187, U191, U201, U202, U204, U207, U222, U225, U234, U236, U240, U243, U247

Newly Listed Wastes:
F025

Table III.B.2.(b)—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR UNDERGROUND INJECTED WASTES

[Million gallons/year]

Waste code	Capacity required for underground injected [illegible]
First Third Code:	
F006	5.0
F019	<0.1
K011	433.2
K013	407.2
K014	131.0
K031	1.1
K086	0.2
P005	<0.1
P011	<0.1
P020	0.1
P048	0.1
P050	0.4
P058	<0.1
P059	0.4
P069	0.1
P102	<0.1
P122	<0.1
U007	0.1
U009	<0.1
U012	0.1
U019	0.8
U031	0.1
U037	<0.1
U044	0.1
U074	<0.1
U103	<0.1
U105	0.1
U122	0.1
U133	0.1
U134	0.2
U151	0.1
U154	0.3
U157	0.1
U159	<0.1
U185	1.0
U188	0.4
U192	0.1
U200	0.3
U210	1.0
U211	0.1
U219	<0.1
U220	<0.1
U226	0.1
U227	2.7
U228	<0.1
Second Third Code:	
K097	<0.1
P057	<0.1
U002	0.1
U008	0.1
U032	<0.1
U070	0.1
U080	2.8
U106	0.1
U138	0.1
U140	1.0
U147	<0.1
U162	0.1
U165	<0.1
U169	0.1
U170	0.3
U239	0.2
U244	<0.1
Third Third Code:	
D001	6.9
D002	1924.5
D003	1709.2
D004	8.3
D005	1.3
D006	1.6
D007	201.2
D008	3.7
D009	1.2
D010	95.2
D011	0.3
D012	2.3
D013	2.3
D014	2.4
D015	2.3
D016	2.3
D017	2.3
K002	0.1
K032	<0.1
K083	5.0
P051	<0.1
P056	<0.1
P075	<0.1
U001	0.5
U034	<0.1
U045	<0.1
U055	0.1
U056	<0.1
U112	<0.1
U113	<0.1
U118	<0.1
U160	<0.1
U194	<0.1
U197	0.1
Leachate	13.4

TABLE III.B.2.(c)—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT (INCLUDING RECYCLING) CAPACITY FOR UNDERGROUND INJECTED WASTES

[Millions of gallons/yr.]

Technology	Available capacity	Required capacity	Variance
Alkaline Chlorination	1.8	11	Yes.
Alkaline Chlorination and Chemical Precipitation	6.4	<1	No.
Carbon Adsorption and Chemical Precipitation	41	5	No.
Chemical Oxidation and Chemical Precipitation	22	1,684	Yes.

TABLE III.B.2.(c)—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT (INCLUDING RECYCLING) CAPACITY FOR UNDERGROUND INJECTED WASTES—Continued

[Millions of gallons/yr.]

Technology	Available capacity	Required capacity	Variance
Chemical Precipitation	339	117	No.
Chromium Reduction and Chemical Precipitation	12	[illegible]	Yes.
Combustion of Atomizable Liquids	[illegible]	43	No.
Mercury Retorting	<.01	<.02	Yes.
Neutralization	13	1,6[illegible]	Yes.
Stabilization	3[illegible]	3	No.
Treatment of Reactives and Chromium Reduction and Chemical Precipitation	<1	1[illegible]	Yes.
Wet-Air Oxidation	<1	1,027	Yes.
Wet-Air Oxidation and Carbon Adsorption	<1	<1	No.
Wet-Air Oxidation and Carbon Adsorption and Chemical Precipitation	<1	13.4	Yes.
Wet-Air Oxidation Followed by Chemical Precipitation	<1	<1	No.

A number of the following treatability groups account for relatively small (less than 100,000 gallons/year) amounts of underground injected wastes. The Agency believes that these small streams place little demand on nationwide treatment capacity.

Presented below are the BDATs for treating deepwell-injected wastes.

(1) *Alkaline Chlorination.* Treatment standards based on alkaline chlorination are today being proposed for D003a (cyanide) and P056 wastes. As shown in Table III.B.2.(c), the 1.9 million gallons per year of available capacity are inadequate to address the quantity of hazardous waste annually deepwell-injected requiring this type of treatment. Excluding D003a (cyanide), however, adequate capacity exists for the remaining waste. The Agency is proposing to grant a two-year capacity variance to D003a (cyanide) wastewaters. This waste will be restricted from injection on May 8, 1992.

(2) *Alkaline Chlorination and Chemical Precipitation.* Treatment standards based on alkaline chlorination and chemical precipitation are today being proposed for F006 cyanide wastewaters. As shown in Table III.B.2.(c), the 6.4 million gallons of available capacity is adequate to treat the quantity of hazardous waste annually deepwell-injected requiring this type of treatment.

(3) *Carbon Adsorption and Chemical Precipitation.* Treatment standards based on carbon adsorption (or wet air oxidation) and chemical precipitation are today being proposed for metals in K022 and K083 wastewaters. As shown in Table III.B.2.(c), the 41 million gallons of available capacity are adequate to treat the quantity of hazardous waste annually deepwell-injected requiring this type of treatment.

(4) *Chemical Oxidation and Chemical Precipitation.* The treatment standards based on a "treatment train" of chemical oxidation and chemical precipitation are today being proposed for D003b (sulfides) and P122 wastes. As shown in Table III.B.2.(c), the 24 million gallons per year of available capacity are inadequate to address the quantity of hazardous wastes annually deepwell-injected requiring this type of treatment. Excluding D003b (sulfide), however, adequate capacity exists to treat the remaining waste. The Agency is proposing a two-year capacity variance to D003b (sulfide) wastewaters. This waste will be restricted from injection on May 8, 1992.

(5) *Chemical Precipitation.* Wastewater forms of D004, D005, D008, D008a, (lead-non-battery), D009a (inorganic mercury), D010, D011, F006, K031, P011, U134, and U151 represent those wastes best treated by chemical precipitation. As shown in Table III.B.2.(c), the 339 million gallons per year of available chemical precipitation are adequate to treat the quantity of hazardous waste annually deepwell-injected requiring this type of treatment. The Agency is proposing to restrict these wastes from underground injection on May 8, 1990.

(6) *Chromium Reduction and Chemical Precipitation.* Treatment standards based on chromium reduction and chemical precipitation are today being proposed for wastewater forms of D007, K002, K088, and U032. As shown in Table III.B.2.(c), the 48 million gallons per year of available chromium reduction and chemical precipitation are inadequate to treat the quantity of hazardous waste annually deepwell-injected requiring this type of treatment. Excluding D007, however, adequate capacity exists to treat the remaining wastes. The Agency is proposing to grant a two-year treatment capacity variance to D007, restricting this waste from underground injection on May 8, 1992.

(7) *Combustion of Liquids.* Combustion of liquids is the BDAT for D001a (ignitables), D012, D013, D014, D015, D016, D017, K032, K097, P005, P020, P048, P050, P051, P057, P059, P089, P075, P102, U001, U002, U007, U008, U009, U012, U019, U031, U034, U037, U044, U045, U055, U056, U070, U074, U080, U103, U105, U106, U112, U113, U115, U118, U122, U133, U138, U140, U147, U154, U157, U159, U160, U162, U165, U169, U170, U185, U188, U192, U194, U197, U200, U210, U211, U219, U220, U226, U227, U228, U239, and U244. Although U041, U077, U083, U084, and U213 are also underground injected, because they will be treated on-site, their quantities are not included in required capacity for combustion of liquids. As shown in Table III.B.2.(c), the 233 million gallons per year of available capacity are adequate to treat the quantity of hazardous waste annually deepwell-injected requiring this type of treatment. These wastes will be restricted from underground injection on May 8, 1990.

(8) *Mercury Retorting.* Treatment standards based on mercury retorting are today being proposed for nonwastewater forms of D009 wastes. As shown in Table III.B.2.(c), the less than .01 million gallons per year of available mercury retorting capacity are inadequate to treat the quantity of this waste annually deepwell-injected requiring this type of treatment. The Agency is proposing to grant a two-year treatment capacity variance to the nonwastewater forms of D009, restricting this waste from underground injection on May 8, 1992.

(9) *Neutralization.* Neutralization is the treatment standard for D002 wastes. As shown in Table III.B.2.(c), the 15 million gallons per year of available neutralization capacity are inadequate to treat the quantity of hazardous waste annually deepwell-injected requiring

this type of treatment. The Agency is proposing to grant a two-year treatment capacity variance to the D002 wastewaters, restricting this waste from underground injection on May 8, 1992.

(10) *Stabilization.* For residuals containing D005, D006, D007, D008a (Lead-non-battery), D011, K002, P058, U002, U032, U055, and U188, the treatment standard being proposed is based on stabilization. As shown in Table III.B.2.(c), the 345 million gallons per year of available capacity are adequate to treat the quantity of hazardous waste residuals requiring this type of treatment. These residuals will be restricted from land disposal on May 8, 1990.

(11) *Treatment of Reactives and Chromium Reduction and Chemical Precipitation.* Treatment standards based on treatment of reactives and chromium reduction and chemical precipitation are today being proposed for D003 (explosives/reactives). As shown in Table III.B.2.(c), the less than 1 million gallons per year of available capacity are inadequate to treat the quantity of D003 (explosives/reactives) waste annually deepwell-injected requiring this type of treatment. The Agency is proposing to grant a two-year treatment capacity variance to this waste, restricting D003 (explosives/reactives) wastewaters from underground injection on May 8, 1992.

(12) *Wet-Air Oxidation.* K011, K013, and K014, represent all of the underground injected hazardous wastes addressed in today's rule that are best treated by wet-air oxidation. As shown in Table III.B.2.(c), the less than 1 million gallons of available capacity are inadequate to treat the quantity of K011 wastewaters, K013 wastewaters, and K014 wastewaters annually deepwell-injected requiring this type of treatment; therefore, EPA is proposing to grant a two-year treatment capacity variance to the wastewater forms of K011, K013, and K014, restricting these wastes from underground injection on May 8, 1992.

(13) *Wet-Air Oxidation And Carbon Adsorption.* For P058 wastewaters, treatment standards based on wet-air oxidation and carbon adsorption are being proposed today. As shown in Table III.B.2.(c), the less than 1 million gallons of available capacity are adequate to treat the quantity of P058 annually deepwell-injected requiring this type of treatment; therefore, EPA is not proposing to grant a national capacity variance for this waste.

(14) *Wet-Air Oxidation And Chemical Precipitation.* Treatment Standards based on wet-air oxidation and chemical precipitation are today being proposed for F019 wastewaters. As shown in Table III.B.2.(c), the less than 1 million gallons of available capacity are adequate to treat the quantity of F019 wastewaters annually deepwell-injected requiring this type of treatment; therefore, the Agency is not proposing to grant a two-year treatment capacity variance to F019 wastewaters, restricting this waste from underground injection on May 8, 1990.

Table III.B.2.(d) summarizes the wastes for which EPA isproposing to grant a two-year national capacity variance for underground injected wastes.

b. A Request for Data on Underground Injected K014 Nonwastewaters

EPA addressed the underground injection of K011 and K013 nonwastewaters in the June 8, 1989, Second Third final rule. In that rule, a two-year capacity variance was granted due to the lack of alternative incineration capacity (54 FR 26642). Action of K014 nonwastewaters was deferred so that the Agency could evaluate information on the composition, characteristics, and volumes associated with this waste. EPA currently has no information indicating that K014 nonwastewaters are being underground injected. The Agency specifically solicits information on this situation. EPA is proposing to restrict the underground injection of K014 nonwastewaters on May 8, 1990. EPA will take into account any data received before finalizing this date.

TABLE III.B.2.(d)—SUMMARY OF PROPOSED TWO-YEAR NATIONAL CAPACITY VARIANCE FOR UNDERGROUND INJECTED WASTES

Required alternative treatment technology	Waste code	Physical form
Alkaline Chlorination	D003[4]	Wastewater.
Chemical Oxidation and Chemical Precipitation	D003[5]	Wastewater.
Chromium Reduction and Chemical Precipitation	D007	Wastewater.
Mercury Retorting	D009	Nonwastewater.
Neutralization	D002	Wastewater.
Treatment of Reactves and Chromium Reduction & Chemical Precipitation	D003[6]	Wastewater.
Wet-Air Oxidation	K011	Wastewater.
	K013	Wastewater.
	K014	Wastewater.
Wet-Air Oxidation and Carbon Adsorption, Biological Treatment and Carbon Adsorption, or Incineration.	Leachate[7]	Wastewater.

[4] D003 (Cyanides).
[5] D003 (Sulfides).
[6] D003 (Explosives, Reactives).
[7] Multi-Source Leachate.

c. *Deepwell Injected Multi-Source Leachate.* EPA is estimating that multi-source leachate containing both organic and inorganic constituents are currently underground injected. The Agency is proposing a treatment standard for multi-source leachate wastewaters based on wet-air oxidation followed by carbon adsorption, biological treatment followed by carbon adsorption, or incineration for wastes containing organic constituents, and on chemical precipitation and filtration for wastes containing inorganic constituents. Because there is insufficient capacity to treat wastewaters based on these treatment technologies, EPA is proposing to grant a two-year variance for multi-source leachate that is underground injected.

d. *Mixed Radioactive Wastes.* EPA requires radioactive wastes mixed with RCRA regulated solvents and dioxins to meet LDRs and treatment standards established for those solvents and dioxins when mixed with radioactive wastes. EPA currently has no information on mixed radioactive wastes that are underground injected; therefore, EPA is not proposing to grant a national capacity variance for these wastes. EPA is requesting comments on mixed radioactive wastes that are being underground injected.

3. Capacity Variances for Contaminated Soil and Debris

EPA is proposing today to grant an extension of the effective date for certain First, Second, and Third Third contaminated soil and debris for which the treatment standards proposed today are based on combustion, wet-air oxidation, vitrification, or mercury retorting. RCRA section 3004(h)(2) allows the Administrator to grant an extension to the effective date based on the earliest date on which adequate alternative capacity will be available, but not to exceed two years " * * * after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g)." For First Third and Second Third wastes that have heretofore been subject to the "soft hammer" provisions (see section I.B.9) but for which treatment standards are being promulgated today, EPA is interpreting the statutory language " * * * effective date of the prohibition that would otherwise apply to be the date treatment standards are promulgated for these wastes (i.e., May 8, 1989), rather than the date on which the "soft hammer" provisions took effect (i.e., August 8, 1988, and June 8, 1989, respectively)." EPA finds this the best interpretation for two reasons. Extensions of the effective date are based on the available capacity of the BDAT for the waste, so it is reasonable that such an extension begin on the date on which treatment standards based on performance of the BDAT are established. Furthermore, EPA does not intend, in effect, to penalize generators of First Third and Second Third wastes by allowing less time (i.e., 28 months and 37 months, respectively) for the development of needed capacity, while generators of Third Third wastes in the same treatability group are allowed the maximum 48 months (assuming capacity does not become available at an earlier date). The proposed capacity extension would therefore commence for First, Second, and Third Third wastes on May 8, 1990, and would extend (at maximum) until May 8, 1992.

For the purpose of determining whether a contaminated material is subject to this capacity extension, soil is defined as materials that are primarily geologic in origin, such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases, soils will be mixed with liquids or sludges. EPA will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil (52 FR 31197, November 8, 1988).

Debris is defined as materials that are primarily non-geologic in origin, such as grass, trees, stumps, shrubs, and man-made materials (e.g., concrete, clothing, partially buried whole or crushed empty drums, capacitors, and other synthetic manufactured items).

Debris may also include geologic materials (1) identified as not indigenous to the natural environment at or near the site, or (2) identified as indigenous rocks exceeding a 9.5mm sieve size that are greater than 10 percent by weight, or that are at a total level that, based on engineering judgment, will affect performance of available treatment technologies. In many cases, debris will be mixed with liquids or sludges. EPA will determine on a case-by-case basis whether all or portions of such mixtures should be considered debris.

Analysis of the TSDR Survey data indicated that a volume of approximately 17 million gallons of soil contaminated with wastes subject to this proposal were land-disposed in 1986. However, the Superfund remediation program has expanded significantly since that time. Plans for remediation at Superfund sites indicate that the excavation of soil and debris requiring treatment (including incineration and subsequent land disposal) will be far greater in 1990 than in 1986. Because of the major increase in the Superfund remediation program, EPA believes that capacity is not adequate for combustion of Third Third contaminated soil and debris. In addition, the TSDR Survey indicates that inadequate capacity exists for soils requiring vitrification, mercury retorting, and wet-air oxidation. A two-year extension of the effective date is proposed for Third Third contaminated soil and debris for which BDAT is combustion, vitrification, mercury retorting, or wet-air oxidation.

EPA is also proposing to grant a two-year national capacity variance to all soil and debris contaminated with mixed RCRA/radioactive waste. EPA has estimated that insufficient treatment capacity exists to handle soil and debris contaminated with mixed radioactive waste.

EPA notes that if soil and debris are contaminated with Third Third prohibited wastes whose treatment standard is based on incineration and also with other prohibited wastes whose treatment standard is based on a non-combustion type of technology, the soil and debris would remain eligible for the national capacity variance. This is because the contaminated soil and debris would still have to be treated by some form of combustion technology that EPA has evaluated as being unavailable at present. However, there is one exception to this principle. If the soil and debris are contaminated with a prohibited waste (or wastes) that is no longer eligible for a national capacity extension, such as certain types of prohibited solvent wastes, then the soil and debris would have to be treated to meet the treatment standard for that prohibited waste (or wastes). Any other interpretation would result in EPA's extending the date of a prohibition beyond the dates established by Congress, and therefore beyond EPA's legal authority.

C. Characteristic Wastes

1. General Considerations

In today's rule, EPA is proposing treatment standards for those wastes which exhibit one or more of the following characteristics: ignitability, corrosivity, reactivity or EP toxicity (40 CFR 261.21–24). For the purpose of setting BDAT treatment standards, each characteristic waste is subdivided into subcategories which correspond to waste treatability groups. For example, an ignitable characteristic waste may be subcategorized as an ignitable liquid, ignitable reactive, oxidizer or ignitable gas.

EPA is developing a new toxicity characteristic, known as the toxicity characteristic leaching procedure (TCLP), that is scheduled for promulgation in late 1989. Upon its effective date, this revised characteristic will include a number of additional organic hazardous constituents, and a new extraction protocol will replace the current extraction procedure (EP). The revised toxicity characteristic will include the same 14 hazardous constituents (six pesticides and eight toxic metals) that are now regulated under the existing EP toxicity characteristic. EPA is proposing that the BDAT levels for wastes that exhibit EP toxicity for these 14 hazardous constituents remain the same when the TCLP replaces the EP toxicity characteristic since the extent of achievable treatment should not change.

The Agency received several comments in response to its solicitation in the Second Third rulemaking regarding treatment standards for characteristic wastes. These comments addressed two general areas. First, several commenters questioned the Agency's assertion that the hard hammer provision applies to characteristic wastes. The Agency continues to believe that the statutory

language is unclear, but that the legislative history for HSWA clearly indicates that wastes which exhibited a characteristic of hazardous waste on November 8, 1984 are subject to the hard hammer provision. The issue is of no practical significance in any case, since EPA is promulgating treatment standards for all hazardous wastes that exhibited characteristics as of the date of enactment of HSWA.

Second, several commenters also questioned the use of a "No Land Disposal" treatment standard in any of its forms for characteristic wastes. EPA is not using this standard for characteristic wastes in the proposal.

2. Treatment Below Characteristic Levels

EPA is today proposing standards for certain characteristic wastes which require treatment below the characteristic level. The issues concerning this approach are discussed below.

The threshold question in establishing treatment standards for characteristic wastes that are prohibited from land disposal is whether the treatment standard can be established at a level that is lower than the characteristic level. The legal argument would be that the characteristic level itself imposes a jurisdictional limitation on the extent of treatment because section 3004(m) applies only to wastes that are hazardous, and by EPA's regulations, wastes that no longer exhibit a characteristic are not hazardous wastes.

An alternative reading, however, is that once wastes become subject to section 3004(m), they remain subject to the requirements of that section until the section 3004(m) standard is satisfied. This is in fact the most literal reading of section 3004(m). In the context of toxic characteristic hazardous wastes, this alternative reading also supports the statutory goals and policies of seeking to reduce the uncertainties inherent in the land disposal of hazardous waste by substituting a system whereby hazardous wastes are pretreated in such a way that minimizes threats to human health and the environment associated with land disposal. See RCRA sections 1002(b)(7), 3004 (d), (e), (f), (g), and (m).

There are a number of differences between characteristic wastes and listed wastes that make it important to consider the issue of further treatment for characteristic wastes. First, the EP toxicity characteristic is defined by levels higher than the health-based levels that have been the basis for delisting many hazardous wastes. The Agency has always stated that the EP toxicants' concentrations are levels at which a waste clearly presents a substantial hazard, and that the lower levels also may pose a hazard (see, e.g., 45 FR 33066, May 19, 1980). Thus, in most cases, treatment below the characteristic level would clearly result in further minimization of threats to human health and the environment. Second, delisting is a waste-specific process that allows EPA to consider a number of factors, including concentrations of all Appendix VIII constituents in the waste. On the other hand, characteristic wastes are no longer hazardous when they stop exhibiting a single property or fall below a constituent concentration level. Thus, only under a broad reading of section 3004(m) could EPA address treatment for all Appendix VIII constituents in characteristic wastes, and thus reduce the prohibited waste's toxicity and mobility in a way that further minimizes the threat to human health and the environment. These features of the characteristic waste designation compel the Agency to carefully evaluate the reach of Agency authority under section 3004(m).

EPA believes one permissible construction of the statute is that waste which is hazardous at the point of generation and is destined for land disposal (i.e. a prohibited hazardous waste) remains subject to the requirements of section 3004(m) regardless of its concentration at any subsequent time, or at least must be treated to the section 3004(m) level to avoid violation of section 3004(m). Indeed, this construction is a necessary approach to vindicate the Congressional admonition against dilution in lieu of treatment. *See* Section III(D) below. Once subject to section 3004(m), such wastes must be treated by methods which substantially reduce toxicity and minimize threats to human health and the environment.

Thus, EPA believes it is a permissible construction of RCRA that Congress did not intend to curtail treatment under this standard by the definitional provisions relating to the term "hazardous waste" in 40 CFR part 261. Indeed, the authority in section 3004(m) to subject characteristic wastes to treatment methods contemplates treatment to levels below the characteristic level, since treatment methods—for example, combustion—often cannot be neatly curtailed at the characteristic level. EPA has also stated in other contexts that Subtitle C regulations can continue to apply to management of wastes that no longer exhibit a characteristic. For example, the clean closure standards for regulated units that hold characteristic wastes require removal of hazardous constituents even if the waste no longer exhibits a characteristic. See 53 FR 8705 (March 19, 1987). Thus, the continued regulation of such units under Subtitle C depends on the degree of environmental hazard but not on the continued presence of "hazardous waste". EPA also believes the recent decision in *Hazardous Waste Treatment Council* v. *U.S. Environmental Protection Agency*, No. 86-1657 (D.C. Cir. September 15, 1989) supports the view that EPA has considerable flexibility in setting standards under section 3004(m) and that section 3004(m) can operate independently of other RCRA provisions which do not have the same ultimate standard.[1]

Significant technical differences and gaps in data, however, can make the task of utilizing a more expansive view of EPA authority under section 3004(m) for characteristic wastes—*i.e.*, developing treatment standards that minimize threats below characteristic levels, or that address other toxic constituents—very difficult at this time. The task is not the same as for listed wastes. A listed waste comprises relatively discrete waste types. EPA often segregates listed waste into treatability groups to set section 3004(m) standards. Wastes under a single characteristic designation, however, can cover an enormous range of waste matrices. Segregating the matrices into treatability groups is a difficult task even when considering treatment of only the single characteristic property, let alone the treatment of other BDAT list constituents. Moreover, specifying the lowest achievable level that

[1] EPA has, thus far, set section 3004(m) performance standards for listed hazardous wastes based on the limits of demonstrated available technology, and not on standards adopted under other statutory standards and provisions. This approach was challenged by industry petitioners in *Hazardous Waste Treatment Council* v. *U.S. Environmental Protection Agency*, No. 86-1657 (D.C. Cir. September 15, 1989). In this recent opinion, the Court found EPA's approach to be a permissible construction of RCRA. Specifically, the Court held that section 3004(m) requires EPA to set treatment standards so that "threats to human health and the environment are minimized." The Court found that this standard provides EPA flexibility to establish treatment standards that need not be identical to other regulatory decisions establishing health-based screening levels pursuant to different statutory standards.

Although the Court found EPA's approach to be permissible, it also held that EPA had not adequately articulated a rationale for the Agency's policy choice between a technology-based regime and one which capped treatment levels by risk-based screening levels. The Court thus remanded the rule (leaving treatment standards in place) and directed EPA to articulate the rationale behind any policy choice in this area. EPA is thoroughly studying the Court's decision and its own policies to respond to the Court's remand.

minimizes threats may vary from matrix to matrix. As more data are gathered, the Agency may be in a better position to consider more constituents, different treatability groups, and more specific or lower treatment standards.

There are also significant technical and policy questions which may differentiate the limits of treatment for wastes with the properties of ignitability, corrosivity, and reactivity, as opposed to those with specific concentrations of hazardous constituents. The definitions and units of measurement for the properties ignitability, corrosivity, and reactivity are different from the measurement of EP toxic constituents. For example, EP toxic wastes are defined by a concentration level for a given constituent. Wastes with the characteristic of ignitability, on the other hand, are defined by a flash point below 60 degrees Celsius, and other narrative descriptions. See 40 CFR 261.21. Similarly, wastes with the characteristic of reactivity are described by narrative standards. See 40 CFR 261.23. It is easy to describe a lower concentration as a potentially more protective standard. Changing narrative standards, on the other hand, would involve considerably different technical and policy considerations.

In today's proposal, EPA is both proposing methods of treatment and proposing concentration levels for characteristic wastes. Where EPA is proposing a constituent concentration level it is based on the lowest achievable level without regard to the characteristic level. Where EPA is proposing methods of treatment for certain characteristic wastes the Agency believes that these treatment methods, such as incineration of organics or stabilization of metals, will also treat some of the other BDAT list constituents which may be present. In addition, if a waste is identified as carrying more than one characteristic, it would need to meet each treatment standard or utilize each method.

In light of the above discussion, the Agency requests several types of comments. First, commenters should carefully read the technical background documents and comment on what they believe to be the lowest achievable treatment level. Second, commenters should comment on any legal or policy reasons to curtail the treatment requirement at the characteristic level. It may be that the policy considerations make setting standards lower than the characteristic level difficult in light of EPA's current regulations and enforcement mechanisms. These regulations may simply need revision. Thus, EPA may consider providing a final rule which does not go below characteristic levels as an interim approach until EPA can fully address any significant implementation problems. Commenters should address the validity of a final rule which does not require treatment below characteristic levels as a potential interim approach. Finally, commenters should suggest levels beyond which there is no further minimization of risks to human health and the environment.

For some of the EP toxic wastes, the Agency is considering a treatment level higher than the EP toxic level. In this case, if a waste is treated to meet BDAT, but still exceeds the characteristic level, the waste is still a RCRA hazardous waste and remains subject to subtitle C regulation. In the event treatment reduces the toxic constituent concentration to below the characteristic level, and the waste does not exhibit any other characteristic, the waste is no longer considered a RCRA hazardous waste.

3. Overlap of Standards for Listed Wastes That Also Exhibit A Characteristic

Whichever option EPA chooses, further issues remain regarding situations where a waste could be identified for more than one characteristic waste code, and situations where a listed waste also could be identified for one or more characteristic waste code. In the event a waste could carry more than one characteristic waste code, the Agency proposes that the waste must be treated to meet the treatment standard for each characteristic. EPA believes this reading satisfies the goal of significantly reducing waste toxicity or mobility for the untreated constituent, and consequently satisfies the mandate of section 3004(m).

If a listed waste could also be identified for one or more characteristic waste codes, EPA proposes that the waste would have to be treated to meet the treatment standard for each (of those) waste code(s), with one exception. Under that exception, if the relevant constituents or narrative characteristics are specifically addressed in the treatment standard for the listed waste, then the standard for the listed waste operates in lieu of the standard for the relevant characteristics.

Thus, if nonwastewater F006 is EP toxic for lead, it would not have to be treated to meet the EP toxicity lead standard because the treatment standard for nonwastewater F006 already contains a standard for lead. On the other hand, if the F006 waste were EP toxic for mercury, it would have to be treated to meet the mercury EP toxicity treatment standard, since mercury is not addressed in the F006 standard. The general principle EPA is proposing is that the more specific treatment standard takes precedence. Treatment standards for listed wastes are the more specific because they reflect the Agency's waste-specific determination. This is the same principle EPA adopted with respect to California list wastes that are covered by another treatment standard, an analogous situation. See 52 FR at 25773, 25776 (July 8, 1987). At the same time, when a listed waste exhibits a characteristic that is not addressed by the listed waste's treatment standard, EPA believes it necessary for that characteristic to be treated to meet the characteristic treatment standard. To ignore the characteristic would mean that the Third Third prohibition for that characteristic is being ignored, and that with respect to that constituent, the waste's toxicity or mobility is either not being reduced or not being minimized. Since this outcome would satisfy neither the statutory language nor its policy, EPA is proposing to require treatment. (For the same reason, EPA would also require treatment of listed wastes that are ignitable, reactive, or corrosive to address the characteristic property.) As with the California list wastes, EPA would apply this principle at the point of generation, since otherwise the treatment standard for the characteristic constituent could be ignored by removing the characteristic (assuming the Agency ultimately adopts an approach whereby treatment standards for characteristic hazardous wastes are lower than the characteristic level). See 52 FR at 25766.

EPA notes that under this approach, waste generators must determine not only whether their waste falls under a prohibition for a listed waste, but also a prohibition for a characteristic. EPA is not proposing any amended language to § 268.7(a) to require generators to make this examination (*i.e.*, determining if the listed waste also exhibits a characteristic) because the existing regulatory language requires the generator to determine the "appropriate" treatment standards (*i.e.*, those that are applicable). EPA, however, solicits comment on whether it should promulgate explicit regulatory language in § 268.7 (or perhaps in § 262.11) to address this issue.

Finally, EPA is proposing to implement one further principle with respect to potential overlap of treatment

standards for listed wastes that also exhibit a characteristic. This is where the listed waste does not address a characteristic constituent or property, disposal of a waste which at the point of disposal exhibits a characteristic is prohibited unless the treatment level for that characteristic component is above the characteristic level. This approach is again essentially the same that EPA adopted for the analogous situation involving California list wastes (see 52 FR at 25767), and is needed to insure that the statutory prohibition against disposal of characteristic hazardous wastes is not violated. Although EPA does not anticipate that this type of situation will arise often, if it should, EPA believes that further treatment to address the characteristic would normally be feasible, and therefore necessary to minimize threats to human health and the environment.

EPA solicits comment on the best implementation mechanism for ensuring against disposal of these characteristic wastes. The Agency's preference would be for treatment facilities to test, or otherwise determine that residues sent to disposal have not somehow acquired a characteristic not previously present, and certify that the wastes have not done so.

The following examples illustrate the principles involved in the paragraphs above:

Example 1. Generator A generates a listed, prohibited waste "A" which has a wastewater standard for lead of 1 ppm in the TCLP extract. Waste "A" is also EP toxic for lead, and the treatment standard for lead characteristic wastes (for the sake of this example) is .5 ppm in the TCLP extract. The treatment residue from waste "A" is EP toxic for chromium, a constituent not addressed by the standard for the listed waste "A".

The treatment standard for lead in the wastewater is 1 ppm, because this is the more specific standard for lead in the waste. However, the treatment residue must be treated to meet the treatment standard for chromium before it can be disposed, since there is no more specific treatment standard for that constituent.

Example 2. Generator B generates a listed waste for which the nonwastewater standard for mercury is 1 ppm. The waste exhibits the EP toxicity characteristic for mercury, and the treatment standard for that characteristic (for the sake of this example) is a specified treatment method.

The more specific treatment standard would still control, even though a treatment method is the standard for the characteristic. Thus, this waste would have to be treated to below 1 ppm, the numerical limit.

EPA solicits comments on the legal and policy implications of the above approach. Moreover, EPA requests comments which discuss mechanisms which can provide for enforcement and monitoring of the above scheme.

D. Mixed Hazardous/Radioactive Wastes

On July 3, 1986 (51 FR 4504), EPA determined that mixed wastes (waste that satisfies the definition of radioactive waste subject to the Atomic Energy Act and contains hazardous waste that is either listed as a hazardous waste in Subpart D of 40 CFR part 261 or exhibits any of the hazardous waste characteristics identified in Subpart C of 40 CFR part 261) were subject to the RCRA regulations. This created a dual regulatory framework for mixed wastes because the hazardous component would be regulated under RCRA, and the radioactive component would be regulated under the Atomic Energy Act (AEA). RCRA applies to all radioactive mixed waste, independent of the classification of the radioactive component as low level, high level, or transuranic, but only to the hazardous portions of the mixed waste stream.

Statutorily and administratively, the management of the radioactive component differs. While EPA may develop ambient health and environmental standards, the specific standards for radioactive material management developed under the Atomic Energy Act are administered through the Department of Energy (DOE) for government-owned facilities, and through regulations of the Nuclear Regulatory Commission (NRC) for commercially owned facilities.

There are approximately 30 DOE installations that generate mixed waste. Of these, 13 generate the majority of waste containing low-level, high-level, and transuranic radionuclides. These installations have complex and diverse waste management facilities and generally have RCRA interim status. The site audits, sampling, and analytical studies that have been performed by DOE at these sites provide some information to characterize the mixed wastes.

Approximately 26,000 NRC licensees, including hospitals, universities, and nuclear power plants, generate mixed waste. The radioactive component of this mixed waste primarily consists of low-level radionuclides. The principal RCRA hazardous constituents include solvents, lead, chromium, and other hazardous constituents generated by the biomedical and nuclear power industries. It is estimated that commercially generated mixed waste constitutes about 2 to 30 percent of the low-level radioactive waste generated annually.

There are not adequate government or commercial facilities permitted by both NRC and EPA to dispose of mixed waste. As a result, much of the mixed waste is being managed by either recycling (*e.g.*, mixed wastes containing lead) or incineration, (*e.g.*, scintillation cocktails containing solvents). Most mixed waste is being stored by generators, who require a RCRA permit for storage beyond 90 days.

As noted in section III–B above, after reviewing data collected in the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities, the Agency has determined that there is inadequate nationwide capacity available for mixed wastes. Therefore, EPA is proposing to grant a two-year national capacity variance under section 3004(h)(2) for the scheduled wastes. Since adequate treatment capacity is not expected to be available immediately, these wastes will continue to be stored. Mixed wastes containing listed hazardous waste are expected to be generated in small volumes. Larger volumes of mixed wastes which contain spent solvents and EP toxic metals, such as lead and chromium, are expected to be generated. Mixed wastes containing spent solvents or dioxins, or that are California list wastes, are still subject to the applicable treatment standards once the effective date has passed. For mixed wastes containing certain spent solvents and dioxins, or that are California list wastes, the Agency may also consider petitions for one-year extensions of the effective date. HSWA provides a maximum of two one-year extensions under section 3004(h)(3). Such extensions are determined on a case-by-case basis after consultation with appropriate State agencies, and public notice and comment.

The Agency is performing studies to characterize the mixed waste volumes, characteristics, and treatment options. The Agency also expects to receive treatment data for mixed waste from DOE for review. DOE has been studying how to treat, store, and dispose of waste at its sites. Once received, such data will be made available for public notice and comment.

E. Applicability of Today's Proposed Rule to Mineral Processing Wastes

Section 3001(b)(3)(A)(ii) of RCRA excludes from the hazardous waste regulations (pending completion of studies by the Agency) solid wastes from the extraction, beneficiation and processing of ores and minerals. On September 1, 1989, EPA published a final rule in the **Federal Register** (54 FR 36592) that narrowed the scope of this temporary exclusion as it applies to mineral processing operations to 25 enumerated wastes that meet the exclusion criteria of "high volume/low hazard," as specified in the September 1 rule. EPA determined that five specific mineral processing wastes clearly remain within the scope of the exclusion, and that 20 additional specified mineral processing wastes remain within the exclusion, pending collection of further volume and hazard data. All previously excluded mineral processing wastes, other than these 25 specified wastes, that exhibit one or more of the characteristics of hazardous waste will no longer be excluded from the hazardous waste regulations when the final rule becomes effective. (On September 25, 1989 (see 54 FR 39298–39318), EPA proposed to remove an additional 7 of these wastes from the exclusion based on additional volume and/or hazard data.)

EPA believes that the wastes are "newly identified" for the purposes of determining applicability of the land disposal prohibitions. Although technically the wastes are not being identified by a new characteristic, they are being brought into the subtitle C system after the date of enactment of the HSWA on November 8, 1984. The clear sense of RCRA section 3004(g)(4) is that wastes brought into the system after the 1984 RCRA amendments are to be prohibited from land disposal under a potentially different schedule than those wastes that were hazardous on the date of enactment of HSWA, and are not to be subject to the statutory hard hammer. Because these wastes are newly identified, the Agency must develop treatment standards for them within six months of their being identified as hazardous wastes (RCRA section 3004(g)(4)(C)).

However, as stated above, these wastes are hazardous because they exhibit one or more of the characteristics of hazardous waste. Today's rule proposes treatment standards for characteristic wastes. The question, therefore, is whether the treatment standards for characteristics should apply to these mineral processing wastes recently determined not to fall within the Bevill exclusion. Put another way, although as newly identified wastes they are not subject to the hard hammer, EPA still has the choice of whether or not to apply the treatment standards for characteristic wastes to them at this time.

The Agency has not yet performed the technical analyses necessary to determine if the treatment standards proposed today as BDAT for EP toxic hazardous wastes can be achieved in treating the various mineral processing wastes. Therefore, EPA is proposing that these newly identified mineral processing wastes *not* be subject to the BDAT standards proposed today for characteristic hazardous wastes. The Agency plans to study the mineral processing wastes in the near future to determine BDAT for these newly identified hazardous wastes. EPA also solicits comment on whether the BDATs proposed today for the EP toxic metals are appropriate for the newly identified mineral processing wastes. Commenters should provide data showing whether particular mining wastes can be treated to meet the proposed standards.

There are circumstances when newly identified mineral processing wastes can, however, be subject to existing hazardous waste prohibitions. Thus, if the mineral processing waste is mixed with other prohibited wastes (*i.e.*, any prohibited solvent, dioxin, First or Second Third hazardous waste), it becomes subject to the prohibition for the prohibited waste with which it is mixed. EPA also is soliciting comment on the applicability of California list prohibitions to newly identified and listed hazardous wastes. See section III.M below.

Whether any of these prohibitions would have immediate regulatory effect would be determined by the authorization status of the State in which the waste is managed. Because the final rule removing wastes from the scope of the Bevill exclusion is not being adopted pursuant to HSWA, it does not take effect immediately in authorized States. Thus, in these States, these mineral processing wastes would only be hazardous wastes if they are included within the scope of the State's authorized program. If they are not, they would not be hazardous wastes until an amended State's program including them is authorized. Only after authorization would the land disposal prohibitions apply in that State. These mineral processing wastes would be hazardous wastes in unauthorized States as soon as the rule removing them from the exclusion becomes effective. At that time, any land disposal prohibitions that apply to them also would take effect.

F. Clarification of "P" and "U" Solid Wastes

EPA is proposing amendments to clarify the existing language of 40 CFR 261.33. The first amendment involves § 261.33(c), a provision that lists residues from containers and inner liners of containers that have held commercial chemical products listed in § 261.33(e). This language is partially in error in that it does not also include residues and inner liners contaminated with the § 261.33(f) materials. All of the other provisions in 40 CFR 261.33 refer to both § 261.33 (e) and (f) wastes, and there is no reason that § 261.33(c) should not as well. The omission results in fact from an oversight, and is not based on any choice by the Agency.

EPA is also proposing a change to clarify when contaminated soil, water, and spill debris contaminated with 40 CFR 261.33 (e) and (f) materials can be solid wastes. Ordinarily, § 261.33 materials are solid wastes only when "discarded" by being abandoned, or by being burned or placed on the land when this is not the materials' normal manner of use (see first sentence of § 261.33). Thus, these materials are not normally classified as RCRA solid wastes when they are recycled. See § 261.2(c) and Table 1. Contaminated spill residues, water, and debris resulting from clean-up actions normally result from the abandonment of § 261.33 materials that have been spilled on land or water, remained there, and eventually necessitate clean-up. Certainly, the reasons behind the statement that § 261.33 materials are not solid wastes when recycled—their near product-like status due to being unused commercial chemical products and their easy means of recycling—do not apply to contaminated soils and other contaminated clean-up residues covered by § 261.33(d). Not only are these materials difficult to recycle and not product-like, but delaying their classification as solid wastes to the moment when a determination as to recycling is made could encourage uncontrolled or haphazard spilling of these materials onto land or water, and discourage their clean-up.

Although such spilled materials already may be considered to be abandoned, the Agency is proposing to amend the rules to make clear that spill residues, and other materials covered by § 261.33(d), are considered to be solid wastes. There could conceivably, however, be some circumstances when a material can be spilled and the contaminated soil or water matrix could be quickly returned to production. EPA

believes that some allowance ought to be made for such situations to avoid interfering with production-related spills that can be returned to the process, or otherwise put to direct use, in a short time. The maximum period for which a spill residue could be returned to the process would appear to be 90 days. This is the maximum length of accumulation time the Agency has recognized, in other contexts, as providing a legitimate accommodation between avoiding disruption with production decisions versus the environmental protection afforded under the RCRA permit process. See 40 CFR 262.34 and 45 FR 12730 (February 26, 1980). Thus, under the clarified proposed regulation, unless contaminated soils or other § 261.33(d) residues are recycled within 90 days of the spill, they would be considered to be solid wastes even if there is a bona fide intent to recycle. Absent a bona fide intent to recycle, the materials are solid wastes immediately upon being spilled because they have been abandoned. The person claiming that spill residues are not solid wastes would have the burden of showing that the spill will be recycled and that recycling has occurred within the specified period (see 40 CFR 261.2(f)—the Agency's *prima facie* case is established by the fact of the spill itself, which is a type of disposal). In addition, any § 261.33(d) material that is not recycled is being disposed, thus triggering all of the Subtitle C requirements for hazardous wastes that are disposed. See 50 FR 28712–713 (July 15, 1985).

EPA further solicits comment on whether the spill residues should automatically continue to be considered solid wastes if they are removed after 90 days for legitimate recycling (even if the spill area itself would be a regulated unit after that time). For example, if the spill residue were to be used as a feedstock in an industrial process, then should the spill residue still be considered to be a solid waste once it is removed? (Cf. 40 CFR 261.1(c)(8), final sentence, noting that materials that are accumulated speculatively do not necessarily remain solid wastes once they are removed from accumulation.) EPA also solicits comment on whether such spill residues should be considered to be inherently waste-like pursuant to § 261.2(d), in which case they would remain solid wastes regardless of their method of subsequent recycling.

G. Determining When Dilution Is Permissible

EPA believes that its existing rules regarding impermissible dilution of prohibited wastes require further clarification when applied to situations involving aggregation for centralized treatment of more than one waste. By way of background, current regulations provide that wastes that are prohibited from land disposal may not be diluted "* * * as a substitute for adequate treatment to achieve compliance with [a treatment standard] * * *, to circumvent the effective date of a prohibition. * * *, to otherwise avoid a prohibition * * *, or to circumvent a [statutory] prohibition. * * *" (see § 268.3). Section 268.41(b), which was added as a means of making this dilution prohibition workable (see 51 FR 40623, Nov. 7, 1986), states that "* * * when wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern."

EPA has further stated in preambles that not all dilution of prohibited wastes is impermissible, and acknowledged a number of times that dilution that occurs as a necessary part of the process to treat a waste is permissible. 51 FR 40592 (Nov. 7, 1986); see also 54 FR 26601–602 (June 23, 1989). EPA has also indicated that certain forms of treatment that result in phase separations that make each phase easier to treat can be permissible forms of treatment. 53 FR 31145 (August 17, 1988) and 54 FR 26603, 26612 (June 23, 1989).

The Agency's concern, echoing Congress' concern in indicating that dilution to avoid proper treatment was impermissible (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 38 (1983)), is that individual prohibited wastes not be mixed with larger volumes of other wastes (whether prohibited or not) to meet treatment standards without undergoing treatment that substantially reduces the prohibited wastes' toxicity or mobility. Another of the Agency's objectives is that heavily concentrated streams amenable to a particular type of treatment technology should be segregated for treatment by that technology rather than being aggregated for less appropriate treatment that does not substantially reduce the waste's toxicity or mobility. See 52 FR 25766, middle column (July 8, 1987).

Consequently, it appears to the Agency that any dilution that fails to meet the standard in § 3004(m) of substantially reducing the prohibited waste's toxicity or mobility is impermissible. To achieve this objective, the Agency believes that there must be some actual reduction in the toxicity or mobility of at least one BDAT constituent in each prohibited waste that is treated, to the extent that these constituents are present in initial concentrations that exceed the treatment standard for that prohibited waste. Further, with respect to organic constituents, "reduction in toxicity" means actual removal of or chemical change to the constituent.

The following examples illustrate how the Agency would apply this interpretation:

Example 1. Facility A mixes a small volume of prohibited nonwastewater containing five percent TOC with a larger volume of wastewaters containing less than one percent TOC. The wastes all contain organic BDAT constituents, but the only treatment the mixture undergoes is for removal of total suspended solids, not for removal of the organic constituents. The treatment system generates a nonwastewater and wastewater treatment residue. The nonwastewater is treated further to achieve BDAT. The wastewater meets the treatment standard for wastewaters.

EPA views this situation as involving impermissible dilution because the treatment system is not removing BDAT constituents, but simply diluting them, such that they are below a BDAT level. Moreover, the initial nonwastewater ordinarily would be amenable to direct treatment and need not be mixed. The result is simply the dilution of the initial nonwastewater. Cf. 53 FR 31145 (Aug. 17, 1988) ("* * * a facility is not allowed to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard or vice versa.").

Example 2. Facility B generates a prohibited nonwastewater that is a bi-layered waste with an organic phase and a liquid phase. The BDAT constituent in the waste is cyanide. These phases can be separated by skimming the organic phase, after which the nonwastewater organic phase is amenable to incineration treatment and the wastewater phase to wastewater treatment. Instead of doing so, generator B mixes the waste with other wastewaters and generates a wastewater that meets all cyanide treatment standards, although cyanide is not being removed by the treatment system.

This example also involves impermissible dilution due to the lack of removal of the BDAT constituent.

EPA solicits comment on this issue, and asks that commenters provide specific examples where they believe that aggregation for centralized treatment is legitimate even if some dilution is involved. EPA also notes, as recently explained in a correction notice to the First Third final regulation, that the dilution prohibition in § 268.3 generally only applies to prohibited wastes disposed via a prohibited form of land disposal. See 54 FR 36967–36972 (September 6, 1989). In applying this principle, one looks to the treatability group that is generated and ascertains whether that treatability group is destined for management in a prohibited form of land disposal. For example, if a generator generates a hazardous wastewater that is being mixed in tanks before discharge to a POTW or to waters of the United States, the wastewater is not a prohibited hazardous waste, and the dilution prohibition would not apply to it. (If non-wastewaters are derived from the management of the wastewater, those non-wastewaters are prohibited hazardous wastes because they are destined for a prohibited form of land disposal.) On the other hand, if the wastewater were to be managed in any type of surface impoundment before its discharge, it would be a prohibited hazardous waste, and the dilution prohibition would apply.

Of course, even where one BDAT constituent is treated to reduce its toxicity or mobility, impermissible dilution might occur. For example, a waste with treatable concentrations of metals as well as extremely high concentrations of hazardous organics could be mixed with large volumes of other metal-bearing wastes for metals treatment. To the extent that the high concentrations of organics are diluted by this treatment to below treatable levels, this would constitute impermissible dilution if there is an appropriate organics treatment technology that could be applied prior to metals treatment. In this example, there is an actual reduction in the toxicity or mobility of one BDAT constituent, but dilution to avoid treating organics.

Thus, the requirement that one BDAT constituent be treated so as to substantially reduce its toxicity or mobility is a minimum requirement in all cases. It should not be interpreted as validating all other dilution that may occur.

H. Other Dilution Issues

The second major issue regarding dilution on which EPA is soliciting comment is whether dilution can be used as a means of supplanting a section 3004(m) treatment standard by being used to render a prohibited waste non-hazardous in lieu of actually treating the prohibited hazardous waste prior to land disposal. The issue is most pressing with respect to wastes that exhibit a characteristic of hazardous waste, but can also arise with respect to listed wastes for which delisting is sought.

EPA believes that the standards of section 3004(m) apply to all wastes destined for a prohibited form of land disposal. It is not permissible to dilute a waste to render it nonhazardous in lieu of proper treatment under section 3004(m) (unless dilution is a part of proper treatment under section 3004(m)).

With respect to dilution of characteristic hazardous wastes, EPA is clearly given authority to establish treatment standards for hazardous wastes that exhibit a characteristic. RCRA section 3004(g)(4)(C). This authority includes prescribing methods of treatment for characteristic hazardous wastes. Section 3004(m) (1) and (2). Yet this authority would be largely meaningless if a person could dilute the waste to remove the characteristic rather than treating it (even assuming EPA determines that treatment standards are bounded jurisdictionally by characteristic levels). The same reasoning holds true for listed wastes, except it is more difficult to remove listed wastes from the subtitle C system because delisting requires an administrative determination. Nevertheless, the possibility exists for evading a treatment standard for a listed waste by diluting the waste and seeking a delisting.

The legislative history of HSWA clearly indicates Congress' intention that dilution not be used as a substitute for treatment standards of the land disposal restrictions program promulgated pursuant to RCRA section 3004(m). The legislative history further indicates that a prohibition of this type of dilution "is particularly important where regulations are based on concentrations of hazardous constituents." (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 38 (1983)). This is consistent with the overall policy of requiring hazardous wastes to be *treated* before they are land disposed.

EPA therefore is of the view that it is illegal to render a prohibited waste non-hazardous by engaging in impermissible dilution. An important issue raised by this proposal is the relation of the section 3004 treatment standards and corollary dilution prohibition and the rules implementing RCRA section 3001 that define a hazardous waste. These rules do not prohibit dilution to remove a hazardous waste characteristic or to achieve a delisting level. See §§ 261.3(d)(1) and 260.22 (c) and (d). EPA does not intend to address today the broad question about whether dilution should ever be allowed as a means of rendering a waste non-hazardous. (Were the Agency to regulate such dilution, it might do so based on concerns about mass loadings of hazardous constituents and the statutory preference for proper treatment of hazardous wastes, as well as the statutory goal of waste minimization.) Rather, today's proposal is limited to a context where the land disposal prohibitions apply and is intended to preserve the integrity of treatment standards for prohibited hazardous wastes.

Consequently, under the rules proposed today, if an impermissible form of dilution occurs that renders a toxic hazardous waste non-hazardous, the act of dilution would be illegal but the waste would be non-hazardous for subsequent management purposes. That is, EPA is not today redefining hazardous waste, but is instead imposing a condition on how hazardous wastes can be managed. Thus, penalties for impermissibly diluting a prohibited hazardous waste could include fines and injunctive relief such as digging up the waste and treating it properly. However, a unit receiving a diluted waste which is no longer defined as hazardous would not become a regulated unit subject to subtitle C regulation.

EPA solicits comment on this approach, and also on the broader question of whether the Agency should approach this question as a section 3001 issue relating to whether certain impermissibly diluted hazardous wastes would still be considered to be hazardous in order to reduce mass loadings of toxic constituents. EPA is also interested in comments on what mechanism the Agency should use to determine whether a hazardous waste is to be managed by means other than land disposal, and is thus able to be diluted.

EPA realizes that this interpretation could require some changes in existing hazardous waste management practices, particularly for wastewaters that exhibit a hazardous waste characteristic and that are diluted to remove the characteristic before reaching a land disposal unit. To the extent such wastewater streams are small volume, they could be drummed for off-site treatment or treated on a batch basis. Larger volume wastewaters could require segregated pretreatment. It appears to the Agency that that is a necessary corollary of prohibiting dilution of prohibited hazardous wastes. EPA solicits comment, however, on the volumes of wastes that may be affected and the availability of treatment for waste streams that may need to be

diverted. In addition, the Agency solicits comment on whether the reasons for the dilution prohibition apply equally to the non-toxic characteristic hazardous wastes or whether dilution should be considered to be a permissible type of treatment in some circumstances for these wastes (see the earlier discussion in section III.A.5 regarding the Agency's reasons for believing that such dilution is not appropriate treatment).

I. Storage Prohibition

Section 3004(j) provides that storage of prohibited hazardous wastes is itself prohibited "unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal." This language applies only to storage of prohibited wastes in non-land based storage units (like tanks and containers), land-based storage being a type of disposal.

The intent of RCRA section 3004(j) and 40 CFR 268.50 is to prohibit use of long-term storage to circumvent treatment requirements imposed by the LDRs. 129 Cong. Rec. H8139 (daily ed. October 6, 1983. As the court recently stated in *Hazardous Waste Treatment Council* v. *EPA* ("*HWTC III*") (No. 86–1657, D.C. Cir. September 15, 1989):

> Congress believed that permitting storage of large quantities of waste as a means of forestalling treatment would involve health threats equally serious to those posed by land disposal, and therefore opted in large part for a "treat as you go" regulatory regime.

Slip op. at 5.

No firm time limit is established. Generators and owners or operators can store as long as necessary if such storage is solely for the purpose stated above. However, if prohibited wastes are stored beyond one year, the owner/operator has the burden of proving (in the event of an enforcement action) that such storage is for the allowable reason; prior to one year, EPA maintains the burden of proving that storage has occurred for the wrong reason.

Because EPA is aware of concerns that some legitimate storage technically may be prohibited under the current approach, the Agency is requesting comment on alternative approaches for prohibiting storage. Under one alternative, where prohibited wastes are stored in tanks or containers pending the utilization of proper treatment, recovery or disposal capacity, the storage would not be prohibited. Two examples of allowable storage under this alternative approach are provided below:

(1) Where a generator is storing wastes in tanks for six weeks because of a backup at an incinerator which the generator has a contract to use; and

(2) Where a treatment facility treats a prohibited waste to a level that does not meet the treatment standard and then stores the waste before treating it again to meet the standard.

EPA is soliciting views on these issues today because a literal reading of the statute would likely condemn such storage as unlawful. This is because the statutory language and 40 CFR 268.50 draw a connection between the amount of waste being stored and the purpose of facilitating proper management. Virtually no storage except that undertaken to promote under-utilized proper management capacity would satisfy this literal reading of the provision.

EPA recognizes that under the alternative approach proposed today, the phrase "utilization of proper treatment, recovery or disposal capacity" would need to be further defined. The Agency also seeks comment on how a temporal element might be added to the phrase "pending the utilization * * *" in order to define the limits of the proposed approach.

Accordingly, EPA is soliciting comment on the alternative interpretation (*i.e* that the storage prohibition only applies if storage is surrogate disposal, for example due to failure to utilize existing treatment capacity, or if storage is otherwise undertaken for purposes of evading a land disposal prohibition). Commenters should also address other potential situations where they believe that an overly literal reading of section 3004(j) may have consequences they believe Congress did not intend.

J. Generator Notification Requirements

The generator notification requirements set forth in 40 CFR 268.7 specify that when the generator has determined, either through testing or through knowledge of the waste, that the waste is restricted and does not meet the applicable treatment standards, the generator must, with each shipment of waste, notify the treatment facility in writing of the appropriate treatment standards. This notice must include the EPA Hazardous Waste Number, the corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d), the manifest number associated with the shipment of waste, and waste analysis data, where available (40 CFR 268.7(a)(1)). If the generator has determined that the waste being shipped is restricted, but can be land disposed without further treatment, he must submit to the land disposal facility the same information, as well as a certification stating that the waste meets the applicable treatment standards (40 CFR 268.7(a)(2)).

The Agency has had a number of questions on whether the actual treatment standards (*i.e.*, the actual number or method) must be placed on the generator notification form, or if it is sufficient to reference the appropriate treatment standards by citation to the applicable part of 40 CFR 268.41, .42, or .43. EPA's interpretation has been that all applicable treatment standards must be listed completely on the generator notification form sent to the treatment, storage or disposal facility. A number of commenters have indicated that they believe the current regulations can be interpreted to allow referencing, rather than listing the specific treatment standards as part of the generator notification. The commenters argue that referencing the standards serves the same purpose as listing the specific treatment standards. Furthermore, they find that the notification forms are becoming longer, more complicated, and unwieldy as new wastes and corresponding treatment standards are added to the list of wastes restricted from land disposal, and thus pose a burden on the generator when each treatment standard must be listed on the notification form.

The Agency is considering changing the interpretation of § 268.7 to allow referencing the treatment standards. The following information would be included in the reference: EPA Hazardous Waste Number, the treatability group(s) of the waste(s) (*e.g.*, wastewater or non-wastewater), and the CFR section where the treatment standards appear. This information replaces only the listing of the applicable treatment standards; all other information would still be required in the notification. EPA is soliciting comment on this proposed re-interpretation to determine if the regulated community anticipates any problems with allowing the option of referencing the treatment standards, and to determine the effect this action would have on hazardous waste generators.

In addition, some commenters have raised concerns about notification requirements in § 268.7, particularly shipments subject to the March 24, 1986 small quantity generator (SQG) rule. This rule exempts SQGs (100–1000 kg/mo.) with tolling agreements (as defined in 40 CFR 262.20(e)) from the full part 262 manifesting requirements pursuant to 40 CFR 262.20(e). EPA is proposing to amend § 268.7 to require a one-time notification and certification for SQG shipments subject to tolling agreements.

Such agreements, as well as the one-time notifications and certifications, must be maintained by the generator for five years in keeping with the five-year retention period established in the First Third rule.

The Agency is proposing this amendment because it believes the subsequent handler of the waste under the contractual tolling arrangement has sufficient notification and knowledge of the nature of the wastes being handled. Tolling agreements provide for the collection and reclamation of a specified waste and for redelivery of regenerated material at a specified frequency. The Agency believes that since the same waste is picked up at regular intervals, one notice will suffice for the duration of the agreement to apprise the subsequent handler of the land disposal restrictions applicable to the waste.

K. Modification to the Framework: Waste Analysis Plans and Treatment/Disposal Facility Testing Requirements

Treatment and disposal facilities managing prohibited hazardous wastes must test the wastes for compliance with treatment standards at a frequency specified in the facility's waste analysis plan (§§ 268.7 (b) and (c)). The waste analysis plan must be sufficient to comply with all requirements of part 268 (§ 264.13(a)(1)).

A comment in section 264.13(a)(2) states that "* * * the owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the [waste analysis] information required by paragraph (a)(1) of this section." This language has been mistakenly construed to preclude requiring the owner or operator of a treatment or land disposal facility to conduct a detailed chemical and physical analysis of a representative sample of the waste at a specific rate of frequency, without regard to whether information supplied by the generator is sufficient to assure compliance with part 268. Although there are certainly situations where the data submitted by the generator, or the knowledge of the generator, may constitute an essential part of the necessary information, the Agency is today proposing to amend the rules to more clearly specify the circumstances when EPA may require the owner or operator of a treatment or disposal facility to conduct such testing.

The Agency believes that, ordinarily, treatment and disposal facilities should do some corroborative testing to ensure compliance with treatment standards. This is because a crosscheck that treatment has been conducted successfully is needed to ensure that ultimate disposal does not violate the statute and regulations. Corroborative testing will maximize the likelihood of ultimate disposal being legal. The testing will also provide useful records for ascertaining compliance. The Agency does not have the resources to perform such facility-by-facility testing itself; thus, the normal situation should be that treatment and disposal facilities should do some independent testing of prohibited wastes, even if the generator also tests or otherwise certifies. See *Hazardous Waste Treatment Council* v. *EPA* (No. 86–1657, D.C. Cir. September 15, 1989) (slip op. pp. 31–2) finding it reasonable for EPA to require treatment and disposal facilities to do back-up testing.

The Agency further believes that the frequency of testing is best determined on a case-by-case basis by the permit writer. This is because the range of variables (e.g., variety of wastes treated, different types of matrices, number of treatment processes involved) is too broad to realistically evaluate on a national level. Allowing permit writers to make the determination as to frequency of testing as part of the waste analysis plan allows maximum flexibility to take individual facility's circumstances into account, and so clearly appears to EPA to be the correct way to proceed. The Agency is seeking comment on the following two approaches that would specify the circumstances under which EPA may require testing.

The first approach is to amend the comment in 40 CFR 264.13(a)(2) to specify that the owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the waste analysis information only if an EPA-approved waste analysis plan affirmatively allows the generator to supply this information. Further, the Agency is proposing to amend §§ 268.7 (b) and (c) to reflect this change. Specifically, the Agency is specifying that the frequency with which the owner or operator is required by the Regional Administrator or his designee to test will be based on, but not limited to, the criteria included in § 264.13. EPA believes that today's amendment only clarifies existing requirements, since the waste analysis plan regulations already require that the plans be adequate to ensure compliance with part 268, and EPA considers it unlikely that a plan requiring no testing at all could adequately ensure such compliance. If EPA selects this option in the final rule, the sentence in the § 261.13(a)(2) comment that allows the owner or operator of an interim status facility to arrange for the generator to supply part or all of the waste analysis information will be deleted because waste analysis plans for interim status facilities are self-implementing, and approval by EPA is not required. Consequently, under this approach, interim status facilities would no longer be able to rely on the generator's knowledge of the waste.

The second approach also seeks maximum flexibility to take into account individual facilities' circumstances by providing that, for purposes of compliance with part 268, testing frequency will be determined by the Regional Administrator or his designate, but requires that owners/operators of treatment and disposal facilities must conduct waste analyses a minimum of once each year. Under this approach, the requirement to obtain a detailed chemical and physical analysis of a representative sample of the waste (§§ 264.13(a)(1) and 265.13(a)(1)), would be revised to require owners/operators of treatment and disposal facilities to conduct detailed chemical and physical analyses of a representative sample, and to do so a minimum of once each year. In addition, § 268.7 (b) and (c) would be revised to reflect this change. The Agency notes that this second approach would be self-implementing, and would not require revision to existing permits. The Agency also notes that the Regional Administrator or his designate would have the discretion to require more frequent testing in the waste analysis plan based on site-specific circumstances. The Agency believes that the testing being proposed under the second approach is already being conducted by the regulated community since the current waste analysis plan regulations require the plans to be adequate to ensure compliance with part 268. Therefore, although a minimum testing frequency is being established under the second approach, the Agency does not believe that any new requirements are actually being imposed upon the regulated community.

L. Testing of Wastes Treated in 90-Day Tanks or Containers

Under § 268.7(b), treatment facilities treating prohibited hazardous wastes must test the treatment residues that they generate at a frequency determined by their waste analysis plan in order to ascertain compliance with the applicable treatment standards. All treatment facilities operating pursuant to interim status or a full permit must have a waste analysis plan.

There is a regulatory gap, however, with respect to treatment of prohibited wastes that is conducted in so-called 90 day tanks (or containers) regulated

under § 262.34. This is because such tanks (or containers) are not subject to a waste analysis plan requirement. Thus, there is presently no regulatory vehicle for determining testing frequency in such circumstances (although the existing testing requirement obviously applies, and continues to apply, to persons conducting treatment of prohibited wastes in § 262.34 tanks and containers).

In order to close this regulatory gap, EPA is proposing today that persons treating prohibited wastes in § 262.34 tanks and containers must prepare a plan justifying the frequency of testing that they choose to adopt. This plan would be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and must contain all information necessary to treat the waste(s) in accordance with requirements of part 268 (this language is drawn from the standard for waste analysis plans in §§ 264.13 and 265.13), including the selected testing frequency. The plan would be self-implementing, in the sense that there is no requirement of prior approval from any regulatory entity. There would, however, be a requirement that the plan be retained as a facility record, where it would serve as the means of justifying to enforcement officials why the frequency of testing selected by the facility is reasonable. Examples of factors EPA would expect to be included in the plan would be discussion of the number of prohibited wastes treated, their variability, and the variability of the treatment process.

M. Relation of California List Prohibitions to Other Standards and Effective Dates

One further issue meriting discussion is what remains of the California list regulatory and statutory prohibitions after promulgation of the Third Third final rule. The Agency has already indicated that California list prohibitions are superseded by more specific prohibitions and treatment standards. See 52 FR 29993 (August 12, 1987) and 52 FR 25773 (July 8, 1987); see also 40 CFR 268.32(h) (HOC prohibition superseded by treatment standard and effective date for a particular HOC). Thus, almost all of the California list prohibitions will be superseded when the Third Third rule is promulgated. The only continued applicability of the California list appears to be for: (1) Liquid hazardous wastes that contain over 50 ppm PCBs, where PCBs are not regulated by the treatment standard; (2) HOC-containing wastes identified as hazardous by a characteristic property that does not involve HOCs, as, for example, an ignitable waste that also contains greater than 1000 ppm HOCs (but not an EP toxic waste that exhibits the characteristic because it contains one of the six chlorinated organic pesticides covered by the EP toxicity characteristic or for liquid wastes that exhibit the EP toxicity characteristic for metals and also contain greater than California list metal concentrations); and (3) liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/1 of nickel and/or 130 mg/1 of thallium. As discussed in detail below, California list prohibitions also normally apply during national capacity variance periods for wastes in the First, Second, or Third Third.

1. Applicability of California List Prohibitions During Capacity Variances Based on Superseding Standards

The Agency has previously indicated that California list regulatory and statutory prohibitions are superseded by more specific prohibitions and treatment standards. See 52 FR 29993 (August 12, 1987), 52 FR 25773 (July 8, 1987) and 53 FR 31187 (August 17, 1988); see also 40 CFR 268.32(h) (HOC prohibition superseded by treatment standard and effective date for a particular HOC). The Agency continues to believe this general approach is appropriate. In order to make clear to the regulated community the implications of the California list for the Third Third prohibitions (particularly characteristic wastes) and effective dates, the Agency wishes to reiterate how this approach operates during the period of a national capacity variance for a waste subject to a superseding standard.

As established in the First Third final rule, more specific standards supersede the California list prohibitions only after the actual effective date of the more waste-specific prohibition. During the period of any capacity variance for the more specific waste, however, the California list prohibition would continue to apply. See 53 FR 31188 (August 17, 1988). As discussed below, the Agency believes this approach avoids having a window of time where the waste is not subject to any standards. In some cases, this approach also avoids situations of the Agency effectively granting a capacity variance of over two years to certain California list wastes.

As an example, the prohibition on surface disposal of California list mercury wastes above 20 mg/1 level was in effect on July 8, 1987 and would be in effect on August 8, 1990 for injected wastes. See 52 FR 25760 (July 8, 1987); 40 CFR 148.12(b). Today, EPA is proposing BDAT methods and standards for wastes exhibiting the characteristic of EP toxicity for mercury and proposing a two-year national capacity variance for both certain surface disposed and injected wastes. BDATs for other wastes may also specifically address treatment of mercury. Under EPA's current approach, these superseding BDAT standards would take effect after the date of the capacity variance. During the period of any variance, however, the California list prohibition would remain in effect, so that liquid wastes containing greater than 20 mg/1 of mercury could not be land disposed.

As another example, EPA has previously provided a two-year capacity variance for injected wastes subject to the California list prohibition on liquid hazardous wastes with pH less than 2. See 52 FR 30908 (August 10, 1988). The effective date for this California list prohibition for injected wastes is August 8, 1990. Today, EPA is proposing to set neutralization to a pH level in the range of 6 to 9 as the BDAT standard for wastes which exhibit the characteristic of corrosivity under 40 CFR 261.22. EPA is also proposing a national capacity variance to May 8, 1992, for injected corrosive wastes, but is proposing no capacity variance for corrosive wastes disposed in surface units.

Under the Agency's current approach, injected California list waste with a pH of less than 2 would be prohibited from land disposal on August 8, 1990. Injected corrosive waste with a pH of 9 or above would not be prohibited until May 8, 1992 (the effective date of the corrosivity characteristic BDAT standard for injected wastes) because there is no California list prohibition on this waste. Surface-disposed waste with a pH of 6 or less and 9 or above would be prohibited from land disposal on May 8, 1990 because the more specific standards for corrosive wastes apply.

The legal basis for EPA's existing approach is that without it, in the case of a waste which received a national capacity variance under the California list rule, EPA would effectively grant a national capacity variance for a California list wastes for longer than two years. For instance, in the example involving corrosive acids given above, the injected corrosive wastes would receive a national capacity variance for three years and nine months from the otherwise applicable California list statutory prohibition. This result may be inconsistent with the express language of section 3004(h)(2). In situations where a California list prohibition has already taken effect but EPA promulgates a later treatment standard with a national capacity variance that overlaps the California list waste, it makes little sense for the California list prohibition (with which people are already complying) to be nullified by a later treatment standard until the treatment standard actually takes effect. See 53 FR at 31188. The Agency repeats that in such cases, some interim prohibition is better than none at all, and that the express role of the California list prohibitions is to serve as an interim prohibition level or standard. See S. Rep. No. 284, 98th Cong. 2d Sess. 17.

The Agency believes, however, that it is a permissible reading of RCRA that Congress gave the Agency independent authority to reevaluate national capacity for corrosive waste with a pH of less than 2 when setting standards for such wastes, since the Agency has authority to make such determinations for corrosive wastes. If the Agency reads the California list prohibition as controlling for this specific group of wastes, it effectively deprives itself of its section 3004(g)(4) authority to make capacity determinations for corrosive acids in the Third Third rule. Thus, EPA specifically solicits comments on the legal and policy issues as they may relate to California list wastes with a pH of less than 2.

EPA's approach may not be fully clear from a simple reading of the language currently codified at 40 CFR 268.32(h) for HOC wastes. Under that provision, the California list prohibitions for HOC-containing wastes specified in 40 CFR 268.32(a) (3) and (e) do not apply where the waste is subject to a more waste-specific prohibition and effective date. The Agency notes, however, that none of the several examples in the preamble to the California list rule at 52 FR 25760, 25773, 25775, and 25776 (July 8, 1987) addressed the situation where there is a subsequent waste-specific standard which also has a capacity variance. Indeed, one of the functions of the rule at 40 CFR 268.32(h) was "to avoid situations where the Agency would be granting a national capacity variance for a period longer than two years." *Id. at 25773. Moreover, EPA's clarification in the First Third rule was clear and unchallenged.*

Accordingly, EPA is proposing to modify the language of 268.32(h) explicitly to preclude any periods of time where neither California list nor superseding HOC standards would operate.

2. Application of California List Prohibitions to Newly Identified or Listed Wastes

EPA also solicits comment on whether the California list prohibitions apply to newly identified and listed hazardous wastes. The California list statutory prohibitions, on the one hand, can be read as applying to all hazardous wastes, regardless of when they become identified or listed. In addition, Congress viewed these prohibition levels as a first step in the prohibition process, and so the California list prohibitions and treatment standards might be viewed as appropriate to fill the gap until the Agency develops more specific treatment standards for the newly identified or listed wastes.

On the other hand, the statute contemplates that the Agency will have six months to develop treatment standards for newly identified and listed wastes, and that there will be no statutory hammer if the Agency fails to establish such treatment standards. (RCRA section 3004(g)). Given this scheme, it does not appear that Congress necessarily contemplated that these wastes be subject to an immediate California list prohibition. Furthermore, the fact that the California list provision contains a 1987 hard hammer suggests that the provision only was meant to apply to wastes hazardous at that time, rather than to wastes not yet identified or listed.

It thus appears to the Agency that it has a choice as to whether California list prohibitions apply to newly identified or listed wastes. Policy reasons supporting the reading that the prohibitions apply would be the earlier implementation of either treatment standards or interim controls on certain types of land disposal (such as treatment in minimum technology surface impoundments). On the other hand, the Agency is concerned that there not be massive dislocations in the regulated community due to legitimate expectations that land disposal prohibitions for newly identified or listed wastes not take effect until EPA had taken some action specifically directed toward those wastes, normally a waste-specific rulemaking establishing treatment standards.

If EPA determines that California list prohibitions do apply to newly identified or listed wastes, the Agency anticipates the necessity of granting a two-year national capacity variance for certain wastes (*e.g.*, sludge-solids contaminated with HOCs) exhibiting the revised toxicity characteristic that are newly subject to subtitle C.

In addition, if EPA issues a national capacity variance, the Agency would have to reconcile the four-year impoundment retrofit provision in RCRA section 3005(j)(6) with the requirement in section 3004(h) that national capacity variance wastes be placed in minimum technology surface impoundment units. It appears to the Agency, at least at this time, that the two provisions are in conflict. EPA therefore has discretion to craft a reading that best furthers statutory goals. *Citizens to Save Spencer County* v. *EPA*, 600 F. 2d. 844 (D.C. Cir. 1979). EPA's proposed resolution would be to allow impoundments up to four years to retrofit, but to require the wastes to use available treatment capacity if it becomes available sooner (*i.e.*, if no case-by-case variance were to be granted after the two-year national capacity variance is over).

On the other hand, if the Agency ultimately determines that California list prohibitions do not apply to newly identified or listed wastes, then the Agency would delete the existing requirement that California list HOCs be treated in either boilers, furnaces, or incinerators (see 53 FR 31138–31222, August 17, 1988), and instead limit the treatment method to burning in incinerators. EPA amended the treatment standard for HOCs to include boilers and furnaces in significant part to assure available treatment capacity for HOCs and to allow a prohibition to take effect at an earlier date (U.S. EPA, "Comment Response Background Document for the First Third Proposed Land Disposal Restrictions, Volume I," August 8, 1988, page 12–4). Once the Third Third rule is promulgated, and assuming that California list prohibitions do not apply to newly identified and listed wastes, there are virtually no wastes (and possibly none at all) to which the HOC standard would apply. Therefore, it is not necessary that there be additional combustion capacity in the form of boilers and furnaces for these wastes, and EPA can determine on a more particularized basis whether fuel substitution should be a basis for BDAT. EPA therefore solicits comment on whether it should delete the August 17, 1988 rule amending the treatment standard for HOCs to include burning in boilers and industrial furnaces should it determine that California list prohibitions do not apply to newly identified and listed hazardous waste.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and

7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

With one exception, today's rule is proposed pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). Therefore, it will be added to Table I in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table I, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

The exception is the proposed clarifying amendments to §§ 261.33 (c) and (d). These clarifications are not effective in authorized States since the requirements are not imposed pursuant to HSWA. Thus, these requirements will be applicable only in those States that do not interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the promulgation of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation of today's proposal and impact State actions on the regulated community:

1. Under part 268, subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under part 268, EPA is proposing to grant two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes

analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of a new waste treatability group. All wastes meeting the criteria of these new waste treatability groups may also be subject to the treatment standard established by the variance. Granting such variances may have national impacts; therefore, this aspect of the program is not delegated to the States at this time.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the **Federal Register**.

V. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted Third Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of Third Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

There could be a potential demand for some of the hazardous wastes included in today's proposed rulemaking to be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could seem to be an attractive alternative. In addition, ocean-based disposal could seem attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing, authorized dumpers until December 31, 1991, after which " * * * it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters * * *". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Wellhead Protection Regulated Under the Safe Drinking Water Act

Section 1428 of the SDWA contains requirements for the development and implementation of state Wellhead Protection (WHP) Programs to protect wells and wellfields which are used, or may be used to provide drinking water to public water systems. Under section 1428, each state must adopt and submit to EPA for approval a WHP program that, at a minimum:

(1) Specifies the duties of state agencies, local governments, and public water systems in the development and implementation of the WHP program;

(2) For each wellhead, determines the wellhead protection area (WHPA), as defined in section 1428(e) of SDWA, based on all reasonably available hydrogeologic information on ground-water flow, recharge, and discharge and other information the state deems necessary to adequately determine the WHPA;

(3) Identifies within each WHPA all potential human sources of contaminants which may have any adverse health effects;

(4) Describes provisions for technical assistance, financial assistance, implementation of control measures, and education, training, and demonstration projects to protect the water supply within WHPAs from such contaminants;

(5) Includes contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants;

(6) Requires that state and local governments and public water systems consider all potential sources of human contamination within the expected wellhead area of a new water well which serves a public water system; and

(7) Requires public participation in developing the WHP program.

SDWA required all states to submit a WHP program to EPA by June 19, 1989, for EPA review and approval. EPA has received 29 state submittals for review. SDWA requires that all Federal agencies having jurisdiction over any potential source of contaminants identified by a state program under this section shall comply with all the requirements of the state program.

Any private or public entity subject to the land disposal restrictions regulations must also be in compliance with the appropriate state's wellhead protection program. The Agency reiterates that the land disposal of hazardous wastes must comply not only with the land disposal restrictions and other RCRA regulations, but with other environmental programs, such as the Wellhead Protection Program under the Safe Drinking Water Act.

D. Air Emissions Regulated Under the Clean Air Act (CAA)

There are two air emission concerns with respect to the land disposal restrictions. The first is a cross-media concern about air emissions that occur as a result of waste treatment such as incineration of metal-bearing wastes causing metal emissions to the atmosphere. Another concern is with air emissions from the land disposal of the treatment residue. Air emission control programs are under development using both the CAA and RCRA to address these concerns as discussed below.

Specific cross-media air emission concerns have been identified for treatment technologies applicable to

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Third Third wastes, but EPA believes that existing Clean Air Act controls adequately address the potential problems. Retorting of mercury sulfide wastes can result in air emissions of both elemental mercury and sulfur dioxide (SO_2). The Agency has promulgated a National Emission Standard for Hazardous Air Pollutants (NESHAP) for mercury emissions under section 112 of the CAA (40 CFR part 61, subpart E). There are no industry-specific national CAA control standards for SO_2 emissions from retorting mercury sulfide wastes. There are, however, regulations for the prevention of significant deterioration (PSD) of air quality that would address not only these SO_2 emissions but also any mercury emissions that are not regulated by the NESHAP.

The NESHAP limits mercury emissions to the atmosphere from mercury processing facilities, mercury cell chlor-alkali plants, and plants that incinerate and/or dry wastewater treatment plant sludges. In all these cases, the NESHAP limits mercury emissions across the entire processing facility to the extent necessary to protect human health. The NESHAP would not apply to a dedicated mercury sulfide waste retorting facility that is not located in an ore processing or a mercury cell chlor-alkali plant.

Under section 165(a) of the CAA, all new major stationary sources and major modifications to existing sources of air pollution must obtain a PSD permit. If the mercury or SO_2 emissions from the retorting process were to come from a major stationary source or a major modification subject to the PSD regulations and would be emitted in significant amounts (greater than 0.1 tons per year of mercury or 40 tons per year of SO_2), then such emissions would be subject to best available control technology (BACT) requirements. An air quality analysis for mercury and SO_2 would also be required under PSD. Moreover, an air quality analysis must be conducted to demonstrate that the SO_2 emissions would neither cause nor contribute to violations of any national ambient air quality standard (NAAQS) or PSD increment for SO_2. Facilities that are located in areas that have failed to meet any NAAQS for SO_2 (i.e., designated nonattachment areas) and emit more than 100 tons per year of SO_2, must not only apply emission controls that meet the lowest achievable emission rate but also offset their remaining SO_2 emissions by acquiring federally enforceable emission reductions from other nearby SO_2 emissions sources.

The Agency is also concerned whether incineration of wastes containing brominated organics or organo-nitrogen compounds may adversely affect air quality. The presence of bromine complicates the evaluation of incineration of these wastes. A detailed discussion of the Agency's approach for brominated organics is contained in section III.A.2.e of today's preamble. A discussion of potential nitrogen oxide emissions from organo-nitrogen wastes is contained in section III.A.3.f.

There are several general regulatory development programs under RCRA that address treatment technology air emissions. The Agency has initiated a three-phased program under section 3004(n) of RCRA to address air emissions from hazardous waste management units other than incinerators. The first phase addresses organic air emissions as a class from two types of emission sources. The first source category is process equipment (pumps, valves, etc.) that contact hazardous waste that contain greater than 10 percent organic compounds, including such as distillation units and incinerators. The second source category is certain vents on various treatment technologies, such as air or steam strippers. These standards were proposed in the **Federal Register** on February 5, 1987 (52 FR 3748) and are scheduled to be promulgated in fall of 1989.

The second phase of standards development under section 3004(n) of RCRA addresses organic air emissions as a class from tanks, containers, and surface impoundments. Treatment technologies that occur in tanks or containers that are not controlled by the Phase I standards would be controlled by these standards. Wastes that would be prohibited from land disposal may continue to be managed in a surface impoundment as long as the treatment residuals that do not meet the applicable treatment standards are removed from the impoundment within one year of entry into the impoundment. These standards will control air emissions from the management of wastes in the surface impoundment. These standards are scheduled to be proposed in the **Federal Register** in fall of 1989.

In the third phase of the section 3004(n) standards development, the Agency will develop additional standards for the sources addressed in the first two phases as necessary to address residual risks.

In addition to the section 3004(n) standards, general standards to control both organic and metal emissions from the combustion of hazardous waste in incinerators and other types of combustion devices are under various stages of development.

In certain cases, waste treatment may occur in treatment technologies that are not required to obtain RCRA permits. Guidance for the control of air emissions from these sources, such as exempt biological treatment tanks and recycling units, is being developed under the CAA.

None of the regulatory efforts discussed above address air emissions from the land disposal of treatment residue in landfills, land treatment units, or waste piles because the Agency presently presumes that these units will only receive wastes that have been treated to meet the BDAT requirements and that this level of treatment comments on this presumption. In a separate rulemaking, the Agency is considering to propose regulations limiting air emissions from land disposal units seeking to land dispose of wastes under a no migration variance.

E. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

The land disposal restrictions may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). There are three primary areas in which these effects may occur.

One area that may be affected by the land disposal restrictions is in the selection of treatment standards at the remedial action site. The cleanup standards set at CERCLA sites are risk-based, while treatment standards developed under the land disposal restrictions program are technology-based. Therefore, the technology-based treatment standards may be more stringent than the risk-based cleanup standards developed based on the CERCLA selection of remedy criteria, and vice versa. Another matter that may be affected is the treatment of soil and debris contaminated with wastes restricted from land disposal. Contaminated soil and debris are a primary type of waste that must be remediated at most CERCLA sites. In many cases, the soil matrix is different from that of the industrial wastes for which treatment standards are set. CERCLA site managers must either comply with the treatment standards or request and be granted a variance from the treatment standard (§ 268.44) or request and be granted a "no-migration" variance (§ 268.6).

Finally, even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves removal of restricted wastes after the prohibition effective date, the land disposal restrictions are legally applicable (51 FR 40577, November 7, 1986). See also *Chemical Waste Management* v. *EPA*, 869 F.2d at 1535–37 (D.C. Cir. 1989). For example, if a waste is excavated from a unit, treated, and redisposed, EPA has indicated that "placement" (see RCRA section 3004(k)) of the waste in a land disposal unit has occurred, and the applicable treatment standards must be met (see 53 FR 51444 and 51445, December 21, 1988). However, if the waste is capped in place, removal or "placement" has not occurred, and the treatment standards are not legally applicable.

F. Applicability of Treatment Standards to Wastes From Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of generators of pesticide waste that have heretofore been comparatively unaware of the land disposal restrictions may be regulated when today's proposed rulemaking is promulgated. This will require that the Agency develop guidance materials and provide training on how to comply with the requirements of the land disposal restrictions.

Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide applicators. The provisions of 40 CFR 262.70 and 268.1 exempt farmers from regulation under the land disposal restrictions program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. Subsequent to promulgation of today's proposed rule, these generators must comply with the requirements of the land disposal restrictions if they dispose a restricted hazardous waste.

G. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substance Control Act (TSCA) and RCRA

Certain P and U listed wastes contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA (although it may also be a California list waste, and subject to RCRA regulation (both substantive and administrative as well)), while the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. Such a waste must go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed waste component prior to land disposal.

VI. Regulatory Requirements

A. Regulatory Impact Analysis—Surface Disposed Wastes

In accordance with Executive Order No. 12291, the Agency has reviewed the costs and benefits of today's rule and has determined that today's rule constitutes a "major regulation" because it is likely to result in an annual cost to the economy in excess of $100 million. As a result of this determination, the Agency has conducted a regulatory impact analysis (RIA) in support of today's rule. The complete RIA document, "Regulatory Impact Analysis of the Land Disposal Restrictions for Third Third Scheduled Wastes Proposed Rule (Draft)," is available for review in the public docket for today's rule. The complete document was also submitted to the Office of Management and Budget for review, as required by Executive Order No. 12291.

This section of the preamble summarizes the results of the regulatory impact analysis of the proposed rule, as detailed in the draft RIA document. Section VI.A.1 below describes the universe of wastes and facilities affected by today's rule. Section VI.A.2 below summarizes the analysis of human health and environmental benefits attributable to today's rule. Section VI.A.3 summarizes the economic cost and impact analysis performed for today's rule.

It is important to note that the summary analysis presented in this section of the preamble and in the draft RIA document does not completely reflect the current status of the proposed rule or the regulated community. For example, when the RIA was begun, the latest data available to describe the universe of facilities managing Third Third wastes was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities." Between the time of data collection for this survey and today, there have been changes at particular facilities regarding waste practices and volumes. The most dramatic change has been with surface impoundments that have subsequently been closed or no longer receive hazardous wastes. The Agency has updated the data base to reflect these changes wherever possible, but some differences may still exist. Because the data were revised, the Agency believes that this source of discrepancy is small.

As another example, proposed treatment standards had not been established for all affected wastes when the RIA began. Thus, in order to complete the regulatory analysis in time to accompany the proposed rule, the Agency had to make certain assumptions as to what would be selected for proposed treatment standards. Consequently, the standards modelled in the regulatory impact analysis and the standards actually proposed were not identical for 17 of the more than 300 waste codes addressed in the proposed rule. The differences are not expected to have a significant effect on the cost estimates because the technologies assumed for these 17 waste codes were similar in cost to that actually proposed. These and other discrepancies will be addressed in the regulatory impact analysis of the Third Third final rule.

The Agency analyzed benefits, costs and economic impacts using the same approach and methodology that was used for the August 17, 1988, First Third final rule (53 FR 31138).[1] The effects of the proposed rule were estimated by comparing post-regulatory management practices and conditions with those occurring under baseline conditions. The baseline was defined as continued land disposal of wastes in units meeting minimum technological requirements. The baseline for future years was not adjusted to reflect hard hammer provisions that would prohibit land disposal in the absence of the proposed rule after May 8, 1990.

The Agency did adjust reported waste management practices to reflect compliance with the provision of promulgated land disposal restriction rules covering solvents and dioxins, California list wastes, and First and Second Third scheduled wastes. In making these adjustments, EPA assumed that facilities would comply with these other rules by the least costly methods allowable.

1. Overview of Affected Wastes, Facilities, and Management

The universe of waste and facilities examined for the RIA was developed from EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities" (hereafter, the TSDR Survey) and EPA's

[1] For detailed information on the cost methodology, see *Regulatory Impact Analysis of the Land Disposal Restrictions on First Third Wastes: Final Report*, August 1988, ICF Incorporated.

1984 "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981" (hereafter, the RIA Mail survey). Data regarding waste management in surface impoundments in the TSDR Survey has been adjusted to reflect changes in industry practices since 1986. Most treatment and storage surface impoundments in the TSDR Survey have been closed or have been exempted from hazardous waste management regulations.

As with past land disposal restrictions RIAs, the TSDR and RIA Mail surveys provide an overview of the number of facilities treating, storing, or disposing of waste; the quantities and types (by RCRA waste code) of waste managed at each facility; and the current practice or method of treatment. The adjusted information contained in the two surveys is accepted as the baseline (i.e., pre-Third Third rule) practice for this RIA.

Quantity of Affected Waste. Today's rule will potentially affect approximately 379 million gallons of waste per year as shown in Figure VI–1.

TABLE VI–1.—THIRD THIRD RULE QUANTITY BY WASTE TYPE

[In million gallons per year]

	Vol.
Ignitable (D001), Corrosive (D002), and Reactive Wastes (D003)	56
EP Toxic Wastes (D004–D017)	141
Listed Wastes	[illegible]
Mixtures of Wastes	135
CBI Wastes	[illegible]
Total	[illegible]

Characteristic wastes constitute the largest volume of wastes covered by the proposed rule. In addition to the 47 percent identified as D001–D017, the waste mixtures category is dominated by characteristic wastes. For instance, two mixtures of characteristic wastes (D002/D007/D009 and D002/D006/D008) alone account for 110 million gallons, more than 80 percent of the waste mixtures volume. Table VI–2 gives the volumes of the predominant characteristic wastes affected by the proposed rule.

TABLE VI–2.—Predominant Characteristic Wastes by Volume

[In million gallons per year]

	Vol.
Mixture of D002, D007 & D009	[illegible]
D008 (EP Toxic for lead)	[illegible]

TABLE VI–2.—Predominant Characteristic Wastes by Volume—Continued

[In million gallons per year]

	Vol.
D007 (EP Toxic for chromium)	47
D001 (Ignitable)	15
D002 (Corrosive)	14
D004 (EP Toxic for arsenic)	12
Mixture of D002, D006, D008	11
Other characteristic wastes and mixtures	52
Total	312

Affected Facilities. A total of 111 waste management facilities and over 1,300 waste generators are affected by today's proposed rule. Table VI–3 provides a breakdown of affected facilities and their volumes managed.

TABLE VI–3.—Third Third Rule Volumes by Facility Type

[In million gallons per year]

TSDF facilities	Vol.	No. of affected facilities
Commercial Facilities	[illegible]	31
Noncommercial Facilities	150	84
Subtotal TSDFs	[illegible]	*111
Generators	**N/A	1,389
Total	[illegible]	1,500

* Some TSDFs are both commercial and noncommercial.

** All generator volumes are managed at commercial facilities.

The affected facilities represent a wide variety of industries in 23 major industrial groups. A further examination of the TSDR survey data reveals the following information about the range of industries with large volumes of Third Third wastes.

The volume of noncommercial process waste, which accounts for 39.6 percent of the total waste volume, is distributed across the following Standard Industrial Code (SIC) groups:

- SIC 28, Chemical and Allied Products (71%)
- SIC 33, Primary Metals Industries (11%)
- SIC 49, Electric, Gas, and Sanitary Services (8%)
- SIC 29, Petroleum Refining and Related Industry (4%)
- CBI (4%)
- other industry groups (2%).

The volume of commercial process waste, which accounts for 60.4 percent of the total waste volume, is distributed across the following SIC groups:

- SIC 49, Electric, Gas, and Sanitary Services (39%)
- CBI (28%)
- SIC 99, Nonclassifiable Establishments (8%)
- SIC 89, Services, not classified (8%)
- SIC 28, Chemicals and Allied Products (6%)
- SIC 33, Primary Metals Industries (5%)
- other industry groups (8%).

Waste Management Practices. Based on the TSDR survey, the RIA examined five land disposal baseline management practices: disposal in landfills, disposal by land treatment, disposal in surface impoundments, treatment in waste piles, and storage in waste piles. Table VI–4 provides a breakdown of these baseline management practices by volume and number of facilities. As shown on the table, almost two thirds of the waste volume covered by the proposed rule is currently managed in landfills or disposal surface impoundments. Landfills are also the most prevalent baseline practice, occurring at over 35 percent of the affected facilities. About 30 percent of the wastes are managed in disposal surface impoundments.

TABLE VI–4.—THIRD THIRD RULE BASELINE MANAGEMENT PRACTICES

Baseline Practice	Vol.(MG)	Facilities
Landfill	134.0	35.4
Land treatment	5.0	21.0
Storage waste piles	35.0	22.0
Treatment waste piles	27.0	14.0
Disposal surface impoundments114	7.1	12.0
Confidential business information	64.0	18.0
Total	379.0	111.0

Treatment practices in compliance with today's rule significantly redistribute the quantities of waste among management practices. Most important, while 379 million gallons of waste per year are land disposed under baseline management practices, 209 million gallons of waste per year would be disposed of in landfills after treatment as a result of today's rule. Thus, the proposed rule would result in a 45 percent reduction in the volume of Third Third wastes being land disposed. Most of the wastes covered by the proposed rule would be treated by precipitation or stabilization.

2. Benefits of the Proposed Rule

The proposed rule would result in several benefits including reduced human health risks, improved safety at facilities, and reduced ecological effects. As with previous land disposal restrictions, the Agency quantified the human health benefits and conducted a qualitative analysis of the other benefits.

Human-Health Benefits. The quantitative benefits analysis estimated that over a 70 year lifetime, the proposed rule would reduce cancer cases by 148 and reduce the number of people exposed to at least one noncarcinogens above health based criteria by about 34,700.

Approximately 85% of cancer cases averted are due to reduced exposure to benzene, acrylonitrile, dichloromethane and other carcinogenic constituents in D001 ignitable wastes and arsenic in D004. Treatment of these wastes account for about 10% of the costs of the rule. About 99% of noncarcinogenic benefits are due to reduced exposure to D001 ignitable wastes, cadmium (D006) and chromium (D007) as well as mixtures with these metals or nickel, mercury or barium. Treatment of these wastes account for about 44% of the cost of the rule.

The Agency notes that these estimates are uncertain and may overstate or underestimate the human-health benefits of the proposed rule. The RCRA Risk-Cost Analysis model does not contain enough data to model about 90 of the more than 250 constituents found in the Third Third wastes. As a result, benefits of regulating wastes with one or more of these missing constituents may be underestimated. At the same time, benefits may be overestimated due to conservative exposure assumptions. Exposure scenarios are based on drinking 2 litres/day for seventy years of contaminated water or inhalation of 20 cubic meters/day of air for seventy years.

Safety Benefits. In addition to adverse human-health effects, ignitable (D001) and reactive (D003) wastes may pose a general safety hazard. Land disposal of these wastes are currently only allowed if the waste is either deactivated or precautions are taken to prevent accidental ignition or reaction. Approximately 22 million gallons of D001 and D003 are currently being land disposed without deactivation. Until they are deactivated, there is some ongoing risk that the safety precautions may fail, resulting in fires, explosions, or release of toxic gases. The proposed rule would require deactivation, thereby terminating the safety risk.

Environmental Benefits. The proposed rule would result in an overall reduction in toxic releases to the environment, thereby reducing adverse effects to ecosystems. The resulting improvement in ecological health is extremely difficult to quantify due to uncertainty in estimating exposure levels and species populations. However, the sensitivity of certain species to hazardous constituents of wastes covered by the proposed rule suggest a very high potential for ecological effects.

As an example, aquatic species are at least two orders of magnitude more sensitive than humans to arsenic (D004), mercury (D009), silver (D011), lindane (D013), methoxychlor (D014), and toxaphene (D015). Therefore, to the extent that these wastes are released to waterbodies, aquatic ecosystems may be at some risk even when there is no human health risk.

Another way to look at the potential for ecological effects is to consider the proximity of land disposal facilities to waterbodies. A recent Agency study on ecological risks showed that for a sample of 52 National Priorities List sites, almost 90 percent of the sites posed a threat to freshwater ecosystems due to their proximity to waterbodies. [3] Wastes removed from some of these sites may be subject to the treatment standards proposed in this rule. Thus, the proposed rule would reduce ecological risk associated with any Third Third wastes managed at these sites.

3. Costs

The proposed rule would result in an annual incremental costs of approximately $259 million, and would affect over 1400 facilities in 17 industrial sectors. Table VI–5 summarizes the estimated incremental costs associated with today's rule by waste type.

As expected based on volumes, the largest incremental cost is attributed to the management of characteristic wastes. Although the listed wastes are a small volume and have the lowest total cost, expensive treatment technologies such as incineration result in a much higher cost per volume treated. Conversely, the corrosive wastes and mixtures with corrosive wastes are very inexpensive to neutralize, resulting in a very low cost per volume treated.

TABLE VI–6.—THIRD THIRD RULE VOLUMES AND INCREMENTAL COST BY WASTE TYPE

[In million gallons and million dollars per year]

	Volume	Incremental	
		Cost	$/Vol.
Ignitable (D001), corrosive (D002), and reactive wastes (D003)	56	[illegible]	[illegible]
EP toxic wastes (D004–D017)	141	110.5	0.78
Listed wastes	[illegible]	18.4	6.13

[3] *Summary of Ecological Risks, Assessment Methods, and Risk Management Decision in Superfund and RCRA* (EPA–230–03–89–046) June 1989.

TABLE VI–6.—THIRD THIRD RULE VOLUMES AND INCREMENTAL COST BY WASTE TYPE—Continued

[In million gallons and million dollars per year]

	High-volume	Incremental	
		Cost	$/Vol.
Mixtures of wastes	135	89.7	[illegible]
CBI wastes	64	66.5	1.02
Total	379	258.8	[illegible]

Five characteristic wastes contribute over 40 percent of the incremental cost of the rule as shown in Table VI–7. EP Toxic wastes for chromium (D007) and lead (D008) are the two single wastes that would incur the most incremental cost, primarily due to their volumes. By volume, D007 and D008 are the two largest individual wastes addressed by the proposed rule. D007 wastes are generally treated by chromium reduction in combination with other treatment steps depending on their characteristics.

Similarly, D008 wastes would be treated by several different techniques, primarily involving precipitation and stabilization.

TABLE VI–7.—WASTES INCURRING THE MOST INCREMENTAL COST

	Cost ($Mill./yr)	% of total incr. cost
CBI Wastes	66	25
D007, EP toxic for chromium	36	14
D008, EP toxic for lead	36	14
D004, EP toxic for arsenic	16	[illegible]
D001, ignitable	13	5
D003, reactive	11	[illegible]

The cost of treating D002 corrosive wastes attributed to the proposed rule may be overestimated by as much as $6 million per year because some of these wastes may be treated due to the California List Land Disposal Restrictions rule (52 FR 25760). That rule established a performance standard prohibiting land disposal of wastes with a pH less than 2, while the proposed rule would establish a technology-based standard of neutralization. The Agency does not have data on how facilities are meeting the California List standard. Rather than make assumptions about the post-California List practices, the Agency chose to overestimate costs by attributing the entire cost of neutralizing D002 acidic wastes to this proposed rule.

4. Economic Impacts

Table VI–8 summarizes the cost and economic impact of the proposed rule.

Compliance costs are the tax-adjusted revenue requirements needed to fund the incremental costs discussed above. Significantly affected facilities are those who either need to increase costs by more than 5 percent or their compliance costs exceed 5 percent of their cash from operations.

TABLE VI-8.—SUMMARY OF ECONOMIC IMPACT BY TYPE OF FACILITY

Economic impact	Type of facility			Total
	Noncommercial	Commercial	Generator	
Compliance cost ($Mill.)	25	230	221	* 251
Affected facilities	72	39	1,389	1,461
Significantly affected	5	NA	554	559
Estimated closures	2	NA	10	12
Affected industry groups	15	15	17	** 23

* Total tax-adjusted compliance cost is less than the sum of compliance cost by facility type because there are noncommercial processes at commercial facilities.

** Some industry sectors are included under more than one type of facility. Therefore the sum of the three facility types is more than the total.

The economic analysis estimates that the effects of the proposed rule would be distributed over a wide range of industries rather than concentrated in a few. Facilities in 23 major industrial groups (two-digit SIC) are affected by the proposed rule. Significantly affected facilities are found in 8 of these industrial groups. The two groups most affected by the proposed rule are SIC 34 and SIC 28, with 168 and 64 significantly affected generators, respectively.

The analysis estimates that 12 facilities would close as a result of the proposed rule. By comparison, the First Third rule was estimated to result in almost 200 closures.

Generators are the type of facility that incurs the largest economic impact. The analysis estimates that 88 percent of the compliance cost will be borne by generators. Also, almost 40 percent of the affected generators will be significantly affected. Of the 12 potential closures discussed above, 10 are generators, which is less than 2 percent of the 554 significantly affected generators.

The TSDR survey identified only 3 small businesses that currently land dispose Third Third waste. None of the 3 are significantly affected under the proposed rule.

For the Third Thirds Final Rule RIA, the Agency expects the results of the 1988 "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA" to be available to support the analysis. Also, a plant-specific analysis for generators will be considered if the data are available in time for the analysis. Additional small businesses possibly affected by the rule may be identified at that time.

B. Regulatory Flexibility Analysis—Surface Disposed Wastes

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish a notice of rulemaking for a proposed rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of the proposed rule on small entities, here defined as firms employing fewer than 50 persons. Because of data limitations, the Agency was unable to include generators of large quantities of Third Third wastes. The small business population therefore included only two groups: all noncommercial TSDFs employing fewer than 50 persons and all small quantity generators (SQGs) that were also small businesses. As a result, the effect of the proposed rule on small businesses is underestimated. However, the Agency would not expect the conclusions of the small business analysis to change significantly if the generator data were available.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the Agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA has examined the proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act.

The economic analysis identified only six small businesses potentially affected by the proposed rule. None of these six would be significantly affected. The Administrator therefore certifies that Part 268 will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Regulatory Impact Analysis—Underground Injected Wastes

The Agency has completed a separate regulatory impact analysis for underground injected wastes affected by today's proposed rule.

Sixty-five injection facilities, injecting approximately 6.5 billion gallons of Third Third wastes annually, will be required to either treat wastes or file "no migration" petitions as outlined in 40 CFR 148.20 (See 53 *FR* 28118). The addition of these facilities will contribute substantially to compliance costs already incurred by injection well owners and operators managing hazardous wastes regulated by previous rulemaking.

The Agency analyzed costs and benefits using the same approach and methodology developed in the "Regulatory Impact Analysis of the Underground Injection Control Program: Proposed Hazardous Waste Disposal Injection Restrictions" used for the July 26, 1988, final rule (53 FR 28118) and subsequent rulemaking. An analysis was performed to assess the economic effect of associated compliance costs for the additional volume of injected wastes attributable to today's proposed rule. Total compliance costs for injected wastes are estimated at $54 million annually. Alternative treatment costs are estimated at $53.7 million annually and petition costs are annualized at $0.3 million.

The RIA estimates that 17 facilities will eventually treat their wastes, and therefore be significantly affected economically by today's proposed rule.

The benefits outlined in the RIA are generally defined as the reduced human health risk resulting from fewer instances of groundwater contamination. Potential health risks from Class I hazardous waste injection wells are low, except in a few isolated cases depending on proximity to well location, the geologic setting, unplugged boreholes, and injection well grout seal failure.

D. Regulatory Flexibility Analysis—Underground Injection Wastes

The economic analysis identified only six small businesses potentially affected by part 268 of the proposed rule. None of these six would be significantly affected.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical, and other manufacturing companies. The Agency is not aware of any small entities of injection wells that would be affected by part 148 of today's proposed rule.

The Administrator therefore certifies that part 148 and part 268 will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

E. Paperwork Reduction Act

All information collection requirements in this proposed rule were promulgated in previous land disposal restrictions rulemakings and approved by the Office of Management and Budget (OMB) at that time. Since there are no new information collection requirements being promulgated today, (including those for the Underground Injection Control Program) an Information Collection Request has not been prepared.

F. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities" (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981" (April 1984).

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR part 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR part 261," Vols. I and II (August 1985);
- RCRA background and listing documents for 40 CFR part 261;
- RCRA Section 3007 industry studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984);
- Source assessment documents for various industries; and
- "1986–1987 Survey of Selected Firms in the Commercial Hazardous Waste Management Industry: Final Report" (March 1988).

Financial information for the economic impact analysis was obtained from the 1982 Census of Manufacturers and 1984 Annual Survey of Manufacturers. Producer price indices were used to restate 1984 dollars in 1987 terms. For the final rule RIA, the Agency will use these producer price indices to restate 1984 dollars in 1990 terms.

VII. List of Subjects in 40 CFR Part 148, 261, 264, 265, 268, and 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 9, 1989.

F. Henry Habicht,

Acting Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 148.14 is amended by redesignating paragraphs (d), (e), (f), and (g) as paragraphs (e), (f), (g), and (i); by revising the introductory text of newly redesignated paragraph (i); and by adding new paragraphs (d) and (h) to read as follows:

§ 148.14 Waste specific prohibitions—first third wastes.

* * * * *

(d) Effective May 8, 1990, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste number F006 wastewaters and F019 wastewaters; the wastes specified in 40 CFR 261.32 as K004, K008, K014 nonwastewaters, K015 nonwastewaters, K017, K021 wastewaters, K022 wastewaters, K031, K035, K046 reactive nonwastewaters and all wastewaters, K060 wastewaters, K061 wastewaters, K069 calcium sulfate nonwastewaters and all wastewaters, K073, K083, K084, K085, K086 all but solvent washes, K101 high arsenic nonwastewaters, K102 high arsenic nonwastewaters, and K106; and the wastes specified in 40 CFR Part 261.33 as EPA Hazardous Waste numbers P001, P004, P005, P010, P011, P012, P015, P016, P018, P020, P036, P037, P048, P050, P058, P059, P068, P069, P070, P081, P082, P084, P087, P092, P102, P105, P106, P110, P115, P120, P122, P123, U007, U008, U010, U012, U016, U018, U019, U022, U029, U031, U036, U037, U041, U043, U044, U046, U050, U051, U053, U061, U063, U064, U066, U067, U074, U077, U078, U086, U089, U103, U105, U108, U115, U122, U124, U129, U130, U133, U134, U137, U151, U154, U155, U157, U158, U159, U171, U177, U180, U185, U188, U192, U200, U209, U210, U211, U219, U220, U226, U227, U228, U237, U238, U248, and U249 are prohibited from underground injection.

* * * * *

(h) Effective May 8, 1992, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K011 wastewaters, K013 wastewaters, and K014 wastewaters are prohibited from underground injection.

(i) The requirements of paragraphs (a) through (h) of this section do not apply:

* * * * *

3. Section 148.15 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f); by revising the introductory text of newly redesignated paragraph (f); and by adding adding new paragraph (d) to read as follows:

§ 148.15 Waste specific prohibitions—second third wastes.

* * * * *

(d) Effective May 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K025 wastewaters, K029 wastewaters, K041, K042, K095 wastewaters, K096 wastewaters, K097, K098, and K105; and the wastes specified in 40 CFR 261.33 as P002, P003, P007, P008, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114, U002, U003, U005, U008, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U114, U116, U119, U127, U128, U131, U135, U138, U140, U142, U143, U144, U146, U147, U149, U150, U161, U162, U163, U164, U165, U168, U169, U170, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218, U239, U244 are prohibited from underground injection.

* * * * *

(f) The requirements of paragraphs (a) through (f) of this section do not apply:

* * * * *

4. Section 148.16 is amended by redesignating paragraph (c) as paragraph (g); by revising the introductory text of newly redesignated paragraph (g); and by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 148.16 Waste specific prohibitions—third third wastes.

* * * * *

(c) Effective May 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K002, K003, K005 wastewaters, K006, K007 wastewaters, K023, K026, K032, K033, K034, K093, K094 and K100 wastewaters; the wastes specified in 40 CFR 261.33 as P006, P009, P017, P022, P023, P024, P028, P031, P033, P034, P038, P042, P045, P046, P047, P051, P056, P064, P065, P073, P075, P076, P077, P078, P088, P093, P095, P096, P099, P101, P103, P109, P116, P118, P119, U001, U004, U006, U017, U024, U027, U030, U033, U034, U038, U039, U042, U045, U048, U052, U055, U056, U068, U071, U072, U075, U076, U079, U081, U082, U084, U085, U087, U088, U090, U091, U096, U112, U113, U117, U118, U120, U121, U123, U125, U126, U132, U136, U139, U141, U145, U148, U152, U153, U156, U160, U166, U167, U181, U182, U183, U184, U186, U187, U191, U194, U197, U201, U202, U204, U207, U222, U225, U234, U236, U240, U243, and U247; and the wastes identified in 40 CFR 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D001, D002 (nonwastewaters), D003 (nonwastewaters), D004, D005, D006, D007 (nonwastewaters), D008, D010, D011, D012, D013, D014, D015, D018, and D017 are prohibited from underground injection.

(d) Effective May 8, 1992, the wastes identified in 40 CFR 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D002 wastewaters, D003 wastewaters, D007 wastewaters, and D009 nonwastewaters are prohibited from underground injection.

(e) Effective May 8, 1992, multi-source leachate that is derived from disposal of any listed waste and leachate that exhibits a characteristic of hazardous waste is prohibited from underground injection.

(f) Effective May 8, 1990, mixed radioactive/hazardous waste in 40 CFR 268.10, 268.11, and 268.12, that are mixed radioactive and hazardous wastes, are prohibited from underground injection.

(g) The requirements of paragraphs (a) through (f) of this section do not apply:

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

I. In Part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

§ 261.2 [Amended]

2. Section 261.2(b) is amended by adding paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) Residues from spills of commercial chemical products (as defined in § 261.33(d)) that are not legitimately recycled in accordance with § 261.2(e) within 90 days of the date of the spill. Such residues that are legitimately recycled in accordance with § 261.2(e) after 90 days of the date of the spill will cease to be solid wastes when recycled.

* * * * *

3. Table 1 in § 261.2(c) is revised by adding a line at the end to read as follows:

* * * * *

Residues from spills of commercial chemical products as described at 40 CFR 261.2(b)(4)	(*)	(*)	(*)	(*)

* * * * *

4. The introductory text and paragraph (c) of § 261.33 are revised to read as follows (the comment paragraph remains):

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in § 261.2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land or are contained in products that are applied to the land in lieu of their original intended use or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel, or when they are residues described in § 261.33(d) and are not recycled in accordance with § 261.2(e) within 90 days of the initial spill event.

* * * * *

(c) Any residue remaining in a container or inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, unless the container is empty as defined in § 261.7(b)(3) of the chapter.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

I. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

2. The comment following paragraph (a)(2) of § 264.13 is revised to read as follows:

§ 264.13 General waste analysis.

(a)(1) * * *

(2) * * *

[*Comment:* For example, the facility's records of analysis performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by paragraph (a)(1) of this section. For purposes of compliance with Part 268, however, the generator may supply such information only if EPA has specifically authorized the generator to do so in approving the waste analysis plan. If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this section.]

* * * * *

Subpart K—Surface Impoundments

3. The introductory text of § 264.229 is revised to read as follows:

§ 264.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless the waste or impoundment satisfies all requirements of part 268, and:

* * * * *

Subpart L—Waste Piles

4. The introductory text of § 264.256 is revised to read as follows:

§ 264.256 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a waste pile unless the waste or waste pile satisfies all requirements of part 268, and:

* * * * *

Subpart M—Land Treatment

5. The introductory text of § 264.281 is revised to read as follows:

§ 264.281 Special requirements for ignitable or reactive waste.

The owner or operator must not apply ignitable or reactive waste to the treatment zone unless the waste or the treatment zone meets all applicable requirements of part 268, and:

* * * * *

Subpart N—Landfills

6. The introductory text of paragraph (a) of § 264.312 is revised to read as follows:

264.312 Special requirements for ignitable or reactive waste.

(a) Except as provided in paragraph (b) of this section, and in § 264.316, ignitable or reactive waste must not be placed in a landfill, unless the waste or landfill meets all applicable requirements of part 268 and:

* * * * *

7. In § 264.316, paragraph (f) is added to read as follows:

§ 264.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).

* * * * *

(f) Hazardous waste in the inside containers meets the applicable treatment standards under §§ 268.41 and 268.43. [Lab packs which contain only waste codes listed in Appendix IV to part 268 may be incinerated according to the provisions of § 268.42. The residuals from such incineration are no longer prohibited from land disposal. Lab packs which contain only waste codes listed in Appendix V to part 268 may be stabilized according to the provisions of § 268.42. The residuals from such stabilization are no longer prohibited from land disposal.]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

I. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

2. The comment at the end of paragraph (a) of § 265.13 is revised to read as follows:

§ 265.13 General waste analysis.

(a)(1) * * *

(2) * * *

[Comment: For example, the facility's records of analysis performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this section.]

* * * * *

Subpart K—Surface Impoundments

3. The introductory text of § 265.229 is revised to read as follows:

§ 265.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless the waste or impoundment satisfies all requirements of part 268, and:

* * * * *

Subpart L—Waste Piles

4. The introductory text of § 265.256 is revised to read as follows:

§ 265.256 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a waste pile unless the waste or waste pile satisfies all requirements of part 268, and:

* * * * *

Subpart M—Land Treatment

5. The introductory text of § 265.281 is revised to read as follows:

§ 265.281 Special requirements for ignitable or reactive waste.

The owner or operator must not apply ignitable or reactive waste to the treatment zone unless the waste or the treatment zone meets all applicable requirements of part 268, and:

* * * * *

Subpart N—Landfills

6. The introductory text of § 265.312 is revised to read as follows:

§ 265.312 Special requirements for ignitable or reactive waste.

(a) Except as provided in paragraph (b) of this section, and in § 265.316, ignitable or reactive waste must not be placed in a landfill, unless the waste or landfill meets all applicable requirements of part 268, and:

* * * * *

7. In section 265.316, paragraph (f) is added to read as follows:

§ 265.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).

* * * * *

(f) Hazardous waste in the inside containers meets the applicable treatment standards under §§ 268.41 and 268.43. [Lab packs which contain only waste codes listed in Appendix IV to part 268 may be incinerated according to the provisions of § 268.42. The residuals from such incineration are no longer prohibited from land disposal. Lab packs which contain only waste codes listed in Appendix V to part 268 may be stabilized according to the provisions of § 268.42. The residuals from such stabilization are no longer prohibited from land disposal.]

PART 268—LAND DISPOSAL RESTRICTIONS

I. In part 268:

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.7, paragraphs (a) (7), (8), and (9) are added, and paragraphs (b) introductory text and (c)(2) are revised to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(7) If a generator is managing a lab pack which contains only organic hazardous wastes specified in Appendix IV of this part, with each shipment of waste the generator must certify that the lab pack contains only the waste codes identified in Appendix IV. The generator must also comply with the requirements in (a)(1), (b)(2) and (c) of this section.

(i) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that to support this certification I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste, and that the lab pack contains only waste codes specified in Appendix IV to part 268. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(8) If a generator is managing a lab pack that contains only the constituents identified in Appendix V to this part, the generator must certify that the lab pack contains only constituents identified in Appendix V. The generator must also comply with the requirements in (a)(1), (b)(2) and (c) of this section.

(i) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that to support this certification I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste, and that the lab pack contains only those constituents specified in Appendix V to part 268. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of such notification and certification, together with the tolling agreement, for at least five years from the date of the original shipment. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) The frequency with which treatment facilities must test their waste will be determined by the Regional Administrator or his designate, and will be based on the criteria included in §§ 264.13 or 265.13, and will be specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

* * * * *

(c) * * *

(2) Test the waste, or an extract of the waste or treatment residue developed using the test method described in Appendix I of this part or using any methods required by generators under § 268.32 of this part, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subpart D of this part and all applicable prohibitions set forth in § 268.32 of this part or in RCRA section 3004(d). The frequency with which disposal facilities must test their waste will be determined by the Regional Administrator or his designate, and will be based on the criteria included in § 264.13 or § 265.13, and will be specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

* * * * *

3. Section 268.9 is added to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator must determine each waste code applicable to the waste in order to determine the applicable treatment standards under subpart D. For purposes of part 268, waste will carry a waste code designation for any listing under part 261 subpart D, where appropriate, and also one or more waste code designations under part 261 subpart C, where the waste exhibits the relevant characteristic.

(b) Where a prohibited waste is both listed under part 261 subpart D and exhibits a characteristic under part 261 subpart C, the treatment standard for the waste code listed in part 261 subpart D will operate in lieu of the standard for the waste code under part 261 subpart C, provided that the treatment standard for the listed waste covers the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all applicable waste codes.

(c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under part 261 subpart C may be land disposed unless the treatment level under part 268 is higher than the relevant level in part 261 subpart C and the waste meets the part 268 level.

Subpart C—Prohibitions on Land Disposal

4. Section 268.35 is added to read as follows:

§ 268.35 Waste specific prohibitions-third third wastes.

(a) Effective May 8, 1990, the following wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F006 (wastewaters) F019 (wastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K002; K003; K004 (wastewaters); K005 (wastewaters); K006; K008 (wastewaters); K011 (wastewaters); K013 (wastewaters); K014 (wastewaters); K017; K021 (wastewaters); K022 (wastewaters); K025 (wastewaters); K026; K029 (wastewaters); K031 (wastewaters); K032; K033; K034; K035; K041; K042; K046 (wastewaters); K060 (wastewaters); K061 (wastewaters); K069 (wastewaters); K071 (wastewaters); K073; K083 (wastewaters); K084 (wastewaters); K085; K095 (wastewaters); K096 (wastewaters); K097; K098; K100 (wastewaters); K101 (wastewaters); K102 (wastewaters); K105; K106 (wastewaters); K111; and K112; the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Nos. P001; P002; P003; P004; P005; P006; P007; P008; P009; P010 (wastewaters); P011 (wastewaters); P012 (wastewaters); P014; P015 (wastewaters); P016; P017; P018; (wastewaters); P019 (wastewaters); P020; P022; P023; P024; P026; P027; P028; P031; P033; P034; P036 (wastewaters); P037; P038 (wastewaters); P042; P045; P046; P047; P048; P049; P050; P051; P054; P056; P057; P058; P059; P060; P064; P065 (wastewaters); P066; P067; P068; P069; P070; P072; P073 (wastewaters); P075; P076; P077; P078; P081; P082; P084; P087 (wastewaters); P088; P092 (wastewaters); P093; P095; P096; P101; P102 P103 (wastewaters); P105; P107; P108; P109; P110; P112; P113; P114 (wastewaters); P115; P116; P118; P119; P120; P122; and P123; and the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Nos. U001; U002; U003; U004; U005; U006; U007; U008; U009; U010; U011; U012; U014; U015; U016; U017; U018; U019; U020; U021; U022; U023; U024; U025; U026; U027; U029; U030; U031; U032; U033; U034; U035; U036; U037; U038; U039; U041; U042; U043; U044; U045; U046; U047; U048; U049; U050; U051; U052; U053; U055; U056; U057; U059; U060; U061; U062; U063; U064; U066; U067; U068; U070; U071; U072; U073; U074; U075; U076; U077; U078; U079, U080; U081; U082; U083; U084; U085; U086; U089; U090; U091; U092; U093; U094; U095; U096; U097; U098; U099; U101; U103; U105; U106; U108; U109; U110; U111; U112; U113; U114; U115; U116; U117; U118; U119; U120 (wastewaters); U121; U122; U123; U124; U125; U126; U127; U128; U129; U130; U131; U132; U133; U134; U135; U136 (wastewaters); U137; U138; U139; U140; U141; U142; U143; U144; U145; U146; U147; U148; U149; U150; U151 (wastewaters); U152; U153; U154; U155; U156; U157; U158; U159; U160; U161; U162; U163; U164; U165; U166; U167; U168; U169; U170; U171; U172; U173; U174; U176; U177; U178; U179; U180; U181; U182; U183; U184; U185; U186; U187; U188; U189; U191; U192; U193; U194; U196; U197; U200; U201; U202; U203; U204 (wastewaters); U205 (wastewaters); U206; U207; U208; U209; U210; U211; U213; U214; U215; U216; U217; U218; U219; U220; U222; U225; U226; U227; U228; U234; U236; U237; U238; U239; U240; U243; U244; U246; U247; U248; U249; and the following wastes identified as hazardous based on a characteristic alone: D001 (other than combusted sludge/solids) D002, D003, D004 (wastewaters), D005, D006 (wastewaters); D007, D008, D009 (wastewater), D010 (wastewaters), D011, D012, D013, D014, D015, D016, and D017 are prohibited from land disposal.

(b) Effective August 8, 1990, the following constituents contained in wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048 (nonwastewaters); K049 (nonwastewaters); K050 (nonwastewaters); K051 (nonwastewaters); and K052 (nonwastewaters) are prohibited from land disposal: benzo(a)pyrene; ortho-cresols; para-cresols; di-n-butyl phthalate; and phenol.

(c) Effective May 8, 1991, the following constituent contained in wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048 (wastewaters); K049 (wastewaters); K050 (wastewaters); K051 (wastewaters); and K052 (wastewaters) is prohibited from land disposal: cyanide.

(d) Effective May 8, 1991, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048 (nonwastewaters); K049 (nonwastewaters); K050 (nonwastewaters); K051 (nonwastewaters); and K052 (nonwastewaters) are prohibited from land disposal, except as provided in paragraph (b) of this section.

(e) Effective May 8, 1992, the following waste specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F019 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K031 (nonwastewaters); K071 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); K106 (nonwastewaters); the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Nos. P010 (nonwastewaters); P011 (nonwastewaters); P012 (nonwastewaters); P015 (nonwastewaters); P019 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P073 (nonwastewaters); P087 (nonwastewaters); P092 (nonwastewaters); P103 (nonwastewaters); P114 (nonwastewaters); the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Nos. U136 (nonwastewaters); U151 (nonwastewaters); U204 (nonwastewaters); and U205 (nonwastewaters); and the following wastes identified as hazardous based on a characteristic alone: D001 (nonatomizable sludge/solids); D004 (nonwastewaters); D006 (nonwastewaters); D009 (nonwastewaters); and D010 (nonwastewaters) are prohibited from land disposal.

(f) Effective May 8, 1992, multi-source leachate nonwastewaters in the form of non-atomizable sludges and solids that are derived from disposal of any listed waste and leachate that exhibits a characteristic of hazardous waste is prohibited from land disposal.

(g) Effective May 8, 1992, hazardous wastes listed in 40 CFR 268.10, 268.11, and 268.12 that are mixed radioactive/hazardous wastes are prohibited from land disposal.

(h) Effective May 8, 1992, the wastes specified in this section having a treatment standard in subpart D of this part based on incineration, mercury retorting, vitrification, or wet-air oxidation and which are contaminated soil and debris are prohibited from land disposal.

(i) Between May 8, 1990 and August 8, 1990, wastes included in paragraph (b) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(j) Between May 8, 1990 and May 8, 1991, wastes included in paragraphs (c) and (d) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(k) Between May 8, 1990, and May 8, 1992, wastes included in paragraphs (e), (f), (g), and (h) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(l) The requirements of paragraphs (a), and (b) of this section do not apply if:

(1) The wastes meet the applicable standards specified in subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition.

(m) To determine whether a hazardous waste listed in §§ 268.10, 268.11, and 268.12 exceeds the applicable treatment standards specified in §§ 268.41 and 268.43, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

5. In § 268.41, Table CCWE is amended by adding the following subtables to Table CCWE in alphabetical/numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *

	Concentration (in mg/l)
D004 nonwastewaters (based on EP leachate):	
Arsenic	5.6
D006 nonwastewaters:	
Cadmium	14
D007 nonwastewaters	
Chromium (Total)	.094
D008 nonwastewaters; Low Lead Subcategory—less than 2.5% Lead:	
Lead	.51
D009 nonwastewaters; Low Mercury Subcategory—less than 16 mg/kg Hg:	
Mercury	.025
D010 nonwastewaters (based on EP leachate):	
Selenium	5.6
D011 nonwastewaters:	
Silver	.072
F019 nonwastewaters:	
Chromium (Total)	5.2
F024 nonwastewaters (See also Table CCW in 268.43):	
Chromium (Total)	.073
Lead	.021
Nickel	[illegible]
K001 nonwastewaters (see also Table CCW in 268.43):	
Lead	.51
K002 nonwastewaters:	
Chromium (Total)	.094
Lead	.37
K003 nonwastewaters:	
Chromium (Total)	.094
Lead	.37
K004 nonwastewaters:	
Chromium (Total)	.094
Lead	.37
K005 nonwastewaters:	
Chromium (Total)	.094
Lead	.37
K006 (anhydrous) nonwastewaters:	
Chromium (Total)	[illegible]
Lead	.37
K006 (hydrated) nonwastewaters:	
Chromium (Total)	5.2
K007 nonwastewaters:	
Chromium (Total)	[illegible]
Lead	.37
K008 nonwastewaters:	
Chromium (Total)	.094
Lead	.37
K015 nonwastewaters (see also Table CCW in 268.43):	
Chromium (Total)	1.7
Nickel	.048
K021 nonwastewaters (based on EP leachate) (see also Table CCW in 268.43):	
Antimony	.23

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

	Concentration (in mg/l)
K026 nonwastewaters (see also Table CCW in 268.43):	
Chromium (Total)	.073
Lead	.021
Nickel	.088
K031 nonwastewaters (based on EP leachate):	
Arsenic	5.6
K046 nonwastewaters:	
Lead	.18
K069 nonwastewaters; Calcium Sulfate Subcategory:	
Cadmium	.14
Lead	.24
K071 nonwastewaters; Low Mercury Subcategory—less than 16 mg/kg Hg:	
Mercury	.025
K083 nonwastewaters (see also Table CCW in 268.43):	
Nickel	[illegible]
K084 nonwastewaters (based on EP leachate):	
Arsenic	5.6
K096 nonwastewaters (see also Table CCW in 268.43):	
Chromium (Total)	[illegible]
Lead	.37
K100 nonwastewaters:	
Cadmium	[illegible]
Chromium (Total)	5.2
Lead	.51
K101 nonwastewaters (based on EP leachate):	
Arsenic	[illegible]
K102 nonwastewaters (based on EP leachate):	
Arsenic	5.6
K106 nonwastewaters; Low Mercury Subcategory—less than 16 mg/kg Hg:	
Mercury	.025
P010 nonwastewaters (based on EP leachate):	
Arsenic	[illegible]
P011 nonwastewaters (based on EP leachate):	
Arsenic	5.6
P012 nonwastewaters (based on EP leachate):	
Arsenic	5.6
P036 nonwastewaters (based on EP leachate):	
Arsenic	5.6
P038 nonwastewaters (based on EP leachate):	
Arsenic	5.6
P103 nonwastewaters (based on EP leachate):	
Selenium	5.6
P110 nonwastewaters:	
Lead	.51
P114 nonwastewaters (based on EP leachate):	
Selenium	5.6
U032 nonwastewaters:	
Chromium (Total)	.094
U051 nonwastewaters (see also Table CCW in 268.43):	
Lead	.51
U136 nonwastewaters (based on EP leachate):	
Arsenic	5.6
U144 nonwastewaters:	
Lead	.51
U145 nonwastewaters:	
Lead	.51
U146 nonwastewaters:	
Lead	.51
U151 nonwastewaters; Low Mercury Subcategory—less than 16 mg/kg Hg:	
Mercury	.025
U204 nonwastewaters (based on EP leachate):	
Selenium	5.6
U205 nonwastewaters (based on EP leachate):	
Selenium	5.6
Multi-Source Leachate nonwastewaters (see also Table CCW in 268.43):	
Antimony	.23
Arsenic	[illegible]
Barium	100
Cadmium	[illegible]
Chromium (Total)	5.0
Lead	.51
Mercury	.2
Nickel	.32
Selenium	[illegible]
Silver	.072
Thallium	[illegible]

6. In § 268.42, paragraphs (a)(5), (6), and (7) are added to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(5) Lab packs as defined in 40 CFR 264.316 and 265.316 that contain only organic hazardous wastes specified in Appendix IV of this Part may be incinerated. Such incineration must be in accordance with the requirements of part 264, subpart O, or part 265, subpart O. These treatment standards *do not apply* where the individual waste contained therein meets the applicable treatment standards in §§ 268.41 and 268.43, or the lab pack contains hazardous waste codes listed in Appendix V, or other wastes not specified in Appendix IV to this part. Such lab packs must also comply with the requirements for lab packs specified in 40 CFR 264.316 and 265.316, whichever is applicable.

(6) Lab packs as defined in 40 CFR 264.316 and 265.316 that contain only inorganic hazardous constituents identified in Appendix V of this part may be stabilized using Portland cement in a 20 percent binder-to-waste ratio. These treatment standards *do not apply* where individual constituents contained therein meet the applicable treatment standards in §§ 268.41 and 268.43, or the lab pack contains any constituents other than those specified in Appendix V to this part. Such lab packs must also comply with the requirements for lab packs specified in 40 CFR 264.316 and 265.316, whichever is applicable.

(7) The following wastes identified in §§ 261.21, 261.22, 261.23, 261.24, 268.10, 268.11, and 268.12 must be treated by the specified technologies:

Thermal destruction as a method of treatment for nonwastewater forms of:

P006—Aluminum phosphide
P009—Ammonium picrate
P068—Methyl hydrazine
P081—Nitroglycerin
P096—Phosphine
P105—Sodium azide
P112—Tetranitromethane
P122—Zinc phosphide (>10%)
U023—Benzotrichloride
U086—N,N-Diethylhydrazine
U096—α,α-Dimethyl benzyl hydroperoxide
U098—1,1-Dimethylhydrazine
U099—1,2-Dimethylhydrazine
U103—Dimethyl sulfate
U109—1,2-Diphenylhydrazine
U133—Hydrazine
U135—Hydrogen sulfide
U160—Methyl ethyl ketone peroxide
U189—Phosphorus sulfide
U249—Zinc phosphide (<10%)

Incineration as a method of treatment for nonwastewater forms of:

K025—nonwastewaters
P002—1-Acetyl 2-thiourea
P007—Muscimol (5-Aminoethyl 3-isoxazolol)
P008—4-Aminopyridine
P014—Benzene thiol (Thiophenol)
P016—Bis-chloromethyl ether
P017—Bromoacetone
P018—Brucine
P022—Carbon disulfide
P023—Chloroacetaldehyde
P026—1-(o-Chlorophenyl) thiourea
P027—3-Chloropropionitrile
P028—Benzyl chloride
P034—2-cyclohexyl-4,6-dinitrophenol
P042—Epinephrine
P045—Thiofanox
P046—alpha, alpha-Dimethylphenethylamine
P047—4,6-dinitrocresol salts
P049—2,4-Dithiobiuret
P054—Aziridine
P057—2-Fluoroacetamide
P058—Fluoroacetic acid, sodium salt
P064—Isocyanic acid, ethyl ester
P066—Methomyl
P067—2-Methylaziridine
P069—Methyllactonitrile
P070—Aldicarb
P072—1-Naphthyl-2-thiourea (Bantu)
P075—Nicotine and salts
P084—N-Nitrosomethylvinylamine
P093—N-Phenylthiourea
P095—Phosgene
P108—Strychnine and salts
P116—Thiosemicarbazide
P118—Trichloromethanethiol
U006—Acetyl Chloride
U007—Acrylamide
U010—Mitomycin C
U011—Amitrole
U014—Auramine
U015—Azaserine
U016—Benz(c)acridine
U017—Benzal chloride
U020—Benzenesulfonyl chloride
U021—Benzidine
U028—Chloronaphazine
U033—Carbonyl fluoride
U034—Trichloroacetaldehyde
U035—Chlorambucil
U041—n-Chloro-2,3-epoxypropane
U042—2-Chloroethyl vinyl ether
U046—Chloromethyl methyl ether
U049—4-Chloro-o-toluidine hydrochloride
U055—Cumene (isopropyl benzene)
U056—Cyclohexane
U059—Daunomycin
U062—Diallate
U064—1,2,7,8-Dibenzopyrene
U089—Diethyl stilbestrol
U090—Dihydrosafrole
U091—3,3-Dimethoxybenzidine
U092—Dimethylamine
U094—7,12-Dimethyl benz(a)anthracene
U095—3,3'-Dimethylbenzidine
U097—Dimethylcarbomyl chloride
U110—Dipropylamine
U114—Ethylene bis-dithiocarbamic acid
U116—Ethylene thiourea
U119—Ethyl methane sulfonate
U143—Lasiocarpine
U148—Maleic Hydrazide
U149—Malononitrile
U150—Melphalan
U153—Methane thiol
U156—Methyl chlorocarbonate
U163—N-Methyl N-nitro N-nitroguanidine
U164—Methylthiouracil
U171—2-Nitropropane
U173—N-Nitroso-di-n-ethanolamine
U176—N-Nitroso-N-ethylurea
U177—N-Nitroso-N-methylurea
U178—N-Nitroso-N-methylurethane
U186—1,3-Pentadiene
U191—2-Picoline
U193—1,3-Propane sultone
U194—n-Propylamine
U200—Reserpine
U202—Saccharin and salts
U206—Streptozotocin
U218—Thioacetamide
U219—Thiourea
U222—o-Tolnidine hydrochloride
U234—sym-Trinitrobenzene
U236—Trypan Blue
U237—Uracil mustard
U238—Ethyl carbamate
U240—salts and esters of 2,4-D
U244—Thiram

Incineration or fuel substitution as methods of treatment for nonwastewater forms of:

P001—Warfarin (>3%)
P003—Acrolein
P005—Allyl alcohol
P085—Endothall
P102—Propargyl alcohol
U001—Acetaldehyde
U008—Acrylic acid
U053—Crotonaldehyde
U085—1,2:3,4-Diepoxybutane
U113—Ethyl acrylate
U122—Formaldehyde
U123—Formic acid
U124—Furan
U125—Furfural
U126—Glycidaldehyde
U147—Maleic anhydride
U154—Methanol
U182—Paraldehyde
U213—Tetrahydrofuran
U248—Warfarin (<3%)

Incineration, fuel substitution, or recovery as methods of treatment for all forms of:

D001—Ignitable liquids subcategory based on 261.21(a)(1)

Incineration or carbon adsorption as a method of treatment for wastewater forms of:

P009—Ammonium picrate
P068—Methyl hydrazine
P081—Nitroglycerin
P112—Tetranitromethane
U023—Benzotrichloride
U086—N,N-Diethylhydrazine
U096—α,α-Dimethyl benzyl hydroperoxide
U098—1,1-Dimethylhydrazine
U099—1,2-Dimethylhydrazine
U103—Dimethyl sulfate
U109—1,2-Diphenylhydrazine
U133—Hydrazine
U160—Methyl ethyl ketone peroxide

Incineration, or liquid-liquid extraction followed by steam stripping followed by carbon adsorption as a method of treatment for wastewater (<1% TSS and <4% TOC) forms of:

K025—wastewaters

Incineration of vented* ignitable gases; or recovery as methods of treatment for all forms of:

*—Ignitable gases may be vented directly into an incinerator or vented into a suitable adsorbent prior to incineration. Although the gases, once vented, are no longer compressed in a cylinder the Agency does not consider that treatment has occurred until the ignitable gas has been incinerated. Adsorption of the ignitable gas into either a solid or liquid adsorbent is typically a reversible physical process. Thus, the ignitable chemical has not been destroyed.

D001—Ignitable compressed gases based on 261.21(a)(3)

Incineration followed by roasting or retorting of incinerator nonwastewater residues (ash and wastewater treatment sludges from treatment of the incinerator scrubber waters) provided such residues exceed 16 mg/kg total mercury; and scrubber waters from incineration must comply with the 0.030 mg/l wastewater standard as methods of treatment for nonwastewater forms of:

P065—Mercury fulminate
P092—Phenyl mercury acetate

Incineration as a method of treatment with incinerator residues meeting the following: (1) ash and wastewater treatment sludges from treatment of the incinerator scrubber waters must comply with a TCLP concentration of 0.025 mg/l; and (2) scrubber waters must comply with a total concentration of 0.030 mg/l wastewater standard:

D009—Hydraulic oil contaminated with mercury radioactive materials subcategory

Vitrification or stabilization as methods of treatment for nonwastewater forms of:

P114—Thallium (I) selenite

Deactivation as a method of treatment for all forms of:

D001—Ignitable reactives based on 261.21(a)(2)
D001—Oxidizers based on 261.21(a)(4)
D003—Explosives based on 261.23(a) (3), (6), (7) and (8)
D003—Water reactives based on 261.23(a) (2), (3), and (4)
D003—Other reactives based on 261.23(a) (1) and (4)

Deactivation as a method of treatment for nonwastewater forms of:

K044—nonwastewaters
K045—nonwastewaters
K047—nonwastewaters

Deactivation to: SAE 1020 steel corrosion rate <6.35 mm/yr; as a method of treatment for all forms of:

D002—Other corrosives based on 261.22(a)(2)

Surface deactivation or removal of radioactive lead portions followed by encapsulation; or direct encapsulation of radioactive lead solids as methods of treatment for all forms of:

D008—Radioactive Lead Solids (Note: These lead solids include, but are not limited to, all forms of lead shielding, lead "pigs", and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and then stabilized as ash.)

Amalgamation with zinc as a method of treatment for all forms of:

D009—Elemental mercury contaminated with radioactive materials
U151—Elemental mercury contaminated with radioactive materials

Thermal recovery as a method of treatment for nonwastewater forms of:

D008—High lead subcategory—greater than or equal to 2.5% total lead
D008—Lead acid batteries (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 266 or exempted under other EPA regulations (see 40 CFR 266.80).
D006—Cadmium batteries

. Thermal recovery or stabilization as methods of treatment for nonwastewater forms of:

P119—Ammonium vanadate
P120—Vanadium pentoxide

Resmelting in high temperature zinc metal recovery furnace as a method of treatment for nonwastewater forms of:

K061—High zinc subcategory (greater than 15% total zinc)

Roasting or retorting as a method of treatment; or incineration followed by roasting or retorting of incinerator nonwastewater residues (ash and wastewater treatment sludges from treatment of the incinerator scrubber waters) provided such residues exceed 16 mg/kg total mercury for nonwastewater forms of:

D009—High mercury subcategory—greater than or equal to 16 mg/kg total mercury

Roasting or retorting as a method of treatment for nonwastewater forms of:

K106—High mercury subcategory—greater than or equal to 16 mg/kg total mercury
U151—High mercury subcategory—greater than or equal to 16 mg/kg total mercury
K071—High mercury subcategory—greater than or equal to 16 mg/kg total mercury (Note: This standard creates a new subcategory identified as K071 High Mercury Subcategory and would replace the K071 nonwastewater treatment standard promulgated August 17, 1988 (53 FR 31167) for wastes that would now fall into this new subcategory.)

Recycling as a method of treatment for nonwastewater forms of:

K069—Non-Calcium Sulfate Subcategory

Recovery as a method of treatment for all forms of:

P015—Berylium dust
P073—Nickel carbonyl
P076—Nitric oxide
P078—Nitrogen dioxide
P087—Osmium tetroxide
U115—Ethylene oxide

Recovery or stabilization as methods of treatment for nonwastewater forms of:

P113—Thallic oxide
P114—Thallium (I) selenite
P115—Thallium (I) sulfate
U214—Thallium (I) acetate
U215—Thallium (I) carbonate
U216—Thallium (I) chloride
U217—Thallium (I) nitrate

(Wet air oxidation or chemical oxidation) followed by carbon adsorption; or incineration as methods of treatment for wastewater forms of:

P016—Bis-chloromethyl ether
P023—Chloroacetaldehyde
P028—1-(o-Chlorephenyl) thiourea
P027—3-Chloropropionitrile
P028—Benzyl chloride
P057—2-Fluoroacetamide
P058—Fluoroacetic acid, sodium salt
P095—Phosgene
P118—Trichloromethanethiol
U006—Acetyl Chloride
U017—Benzal chloride
U020—Benzenesulfonyl chloride
U026—Chloronaphazine
U033—Carbonyl fluoride
U034—Trichloroacetaldehyde
U041—n-Chloro-2,3-epoxypropane
U042—2-Chloroethyl vinyl ether
U046—Chloromethyl methyl ether
U049—4-Chloro-o-toluidine hydrochloride
U062—Diallate
U097—Dimethylcarbomyl chloride
U156—Methyl chlorocarbonate
U222—o-Toluidine hydrochloride
U240—salts and esters of 2,4-D

(Wet air oxidation or chemical oxidation) followed by carbon adsorption; biodegradation followed by carbon adsorption; or incineration; as methods of treatment for wastewater forms of:

P001—Warfarin (>3%)
P002—1-Acetyl 2-thiourea
P005—Allyl alcohol
P007—Muscimol (5-Aminoethyl 3-isoxazolol)
P008—4-Aminopyridine
P014—Benzene thiol (Thiophenol)
P017—Bromoacetone
P018—Brucine
P022—Carbon disulfide
P034—2-cyclohexyl-4,6-dinitrophenol
P042—Epinephrine
P045—Thiofanox
P046—alpha, alpha-Dimethylphenethylamine
P047—4,6-dinitrocresol salts
P049—2,4-Dithiobiuret
P054—Aziridine
P064—Isocyanic acid, ethyl ester
P066—Methomyl
P067—2-Methylaziridine
P069—Methyllactonitrile
P070—Aldicarb
P072—1-Naphthyl-2-thiourea (Bantu)
P075—Nicotine and salts
P084—N-Nitrosomethylvinylamine
P088—Endothall
P093—N-Phenylthiourea
P102—Propargyl alcohol
P108—Strychnine and salts
P116—Thiosemicarbazide
U001—Acetaldehyde
U008—Acrylic acid
U007—Acrylamide
U010—Mitomycin C
U011—Amitrole
U014—Auramine
U015—Azaserine
U016—Benz(c)acridine
U021—Benzidine
U035—Chlorambucil
U053—Crotonaldehyde
U055—Cumene (isopropyl benzene)
U056—Cyclohexane
U059—Daunomycin
U064—1,2,7,8-Dibenzopyrene
U085—1,2,3,4-Diepoxybutane
U089—Diethyl stilbestrol
U090—Dihydrosafrole
U091—3,3-Dimethoxybenzidine
U092—Dimethylamine
U094—7,12-Dimethyl benz(a)anthracene
U095—3,3'- Dimethylbenzidine
U110—Dipropylamine
U113—Ethyl acrylate
U114—Ethylene bis-dithiocarbamic acid
U115—Ethylene oxide
U116—Ethylene thiourea
U119—Ethyl methane sulfonate
U122—Formaldehyde
U123—Formic acid
U124—Furan
U125—Furfural
U126—Glycidaldehyde
U143—Lasiocarpine
U147—Maleic anhydride
U148—Maleic Hydrazide
U149—Malononitrile
U150—Melphalan
U153—Methane thiol
U154—Methanol
U163—N-Methyl N-nitro N-nitroguanidine
U164—Methylthiouracil
U171—2 Nitropropane
U173—N-Nitroso-di-n-ethanolamine
U176—N-Nitroso-N-ethylurea
U177—N-Nitroso-N-methylurea
U178—N-Nitroso-N-methylurethane
U182—Paraldehyde
U186—1,3-Pentadiene
U191—2-Picoline
U193—1,3-Propane sultone
U194—n-Propylamine
U200—Reserpine
U202—Saccharin and salts
U206—Streptozotocin
U213—Tetrahydrofuran
U218—Thioacetamide
U219—Thiourea
U234—sym-Trinitrobenzene
U236—Trypan Blue
U237—Uracil mustard
U238—Ethyl carbamate
U244—Thiram
U248—Warfarin (<3%)

(Alkaline chlorination, chemical oxidation, or incineration) followed by precipitation to insoluble sulfates as methods of treatment for all forms of:

D003—Reactive sulfides subcategory based on 261.23(a)(5)

Alkaline chlorination or incineration as methods of treatment for all forms of:

P031—Cyanogen
P033—Cyanogen chloride
U246—Cyanogen bromide

Acid or water leaching followed by chemical precipitation as sulfate or carbonate or stabilization for nonwastewater forms of:

D005—EP toxic for barium
P013—Barium cyanide

Chemical oxidation followed by precipitation to insoluble salts as a method of treatment for wastewater forms of:

P006—Aluminum phosphide
P096—Phosphine
P105—Sodium azide
P122—Zinc phosphide (<10%)
U135—Hydrogen sulfide
U189—Phosphorus sulfide
U249—Zinc phosphide (<10%)

Neutralization with acids to: 6< pH <9 and insoluble salts; or recovery for all forms of:

D002—Alkaline subcategory based on 261.22(a)(1)

Neutralization with bases to 6< pH <9 and insoluble salts; or recovery for all forms of:

D002—Acid Subcategory based on 261.22(a)(1)

Solubilization in water followed by precipitation as calcium fluoride; or recovery as methods of treatment for nonwastewater forms of:

P056—Flourine
U134—Hydrogen flouride.

* * * * *

7. In § 268.43, paragraph (a) Table CCW is amended by adding the following subtables in alphabetical/numerical order by EPA Hazardous Waste number, and paragraph (b) is amended by removing waste codes: K044, K045, K047, K060, K069, and K100 from the Subtable for No Land Disposal.

§ 268.42 Treatment standards expressed as waste concentrations.

(a) * * *

TABLE CCW.—CONSTITUENT CONCENTRATION IN WASTES

[* * * * *]

	Concentration (in mg/kg)
D003 nonwastewaters (Reactive Cyanides Subcategory): As analyzed using SW-846 Method 9010; sample size: 0.5–10; distillation time: one hour to one hour fifteen minutes	
Cyanides (Total)	110
Cyanides (Amenable)	9.1
	Concentration (in mg/l)
D003 wastewaters (Reactive Cyanides Subcategory): As analyzed using SW-846 Method 9010; sample size: 0.5–10; distillation time: one hour to one hour fifteen minutes	
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
D004 wastewaters:	
Arsenic	0.73
	Concentration (in mg/l) 24 hour composite
D005 wastewaters:	
Barium	1.15
	Concentration (in mg/l)
D006 wastewaters:	
Cadmium	0.20

TABLE CCW.—CONSTITUENT CONCENTRATION IN WASTES—Continued

[* * * * *]

	Concentration (in mg/kg)
D007 wastewaters:	
Chromium (Total)	0.32
D008 wastewaters:	
Lead	0.040
D009 wastewaters:	
Mercury	0.030
D010 wastewaters:	
Selenium	0.79
D011 wastewaters:	
Silver	0.29
	Concentration (in mg/kg)
D012 nonwastewaters:	
Endrin	0.13
	Concentration (in mg/l)
D012 wastewaters:	
Endrin	0.00052
	Concentration (in mg/kg)
D013 nonwastewaters:	
Lindane	0.060
	Concentration (in mg/l)
D013 wastewaters:	
Lindane	0.00024
	Concentration (in mg/kg)
D014 nonwastewaters:	
Methoxychlor	0.18
	Concentration (in mg/l)
D014 wastewaters:	
Methoxychlor	0.000016
	Concentration (in mg/kg)
D015 nonwastewaters:	
Toxaphene	1.3
	Concentration (in mg/l)
D015 wastewaters:	
Toxaphene	0.014
	Concentration (in mg/kg)
D016 nonwastewaters:	
2,4-D	10
	Concentration (in mg/l)
D016 wastewaters:	
2,4-D	0.013

TABLE CCW.—CONSTITUENT CONCENTRATION IN WASTES—Continued

[* * * * *]

	Concentration in mg/kg
D017 nonwastewaters:	
2,4,5-TP	7.9
	Concentration (in mg/l)
D017 wastewaters:	
2,4,5-TP	2.5
	Concentration (in mg/kg)
F002 nonwastewaters:	
1,1,2-Trichloroethane	7.2
	Concentration (in mg/l)
F002 wastewaters:	
1,1,2-Trichloroethane	0.054
	Concentration (in mg/kg)
F005 nonwastewaters:	
Benzene	3.72
2-Ethoxyethanol	47.5
2-Nitropropane	5.6
	Concentration (in mg/l)
F005 wastewaters:	
Benzene	0.07
2-Ethoxyethanol	73.3
2-Nitropropane	0.073
F006 wastewaters:	
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Cadmium	1.6
Chromium	0.32
Lead	0.040
Nickel	0.44
F019 wastewaters:	
Cyanides (Total)	0.27
Cyanides (Amenable)	0.11
Chromium (Total)	0.32
	Concentration (mg/kg)
F019 nonwastewaters: As analyzed using SW-846 Method 9010 using a sample size: 0.5–10 grams distillation time: 1 hr to 1:15 hr	
Cyanides (Total)	380
Cyanides (Amenable)	20
F025 nonwastewaters: Light Ends Subcategory	
Chloroform	6.2
1,2-Dichloroethane	6.2
1,1 Dichloroethylene	6.2
Methylene chloride	31
Carbon tetrachloride	6.2
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
Vinyl chloride	0.035

	Concentration (in mg/l)
F025 wastewaters:	
Light Ends Subcategory	
Chloroform	0.035
1,2-Dichloroethane	0.007
1,1-Dichloroethylene	0.007
Methylene chloride	0.037
Carbon tetrachloride	0.007
1,1,2-Trichloroethane	0.007
Trichloroethylene	0.007
Vinyl chloride	0.033

	Concentration (in mg/kg)
F025 nonwastewaters:	
Spent Filters/Aids and Desiccants Subcategory	
Chloroform	6.2
Methylene chloride	31
Carbon tetrachloride	5.7
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
Vinyl chloride	0.035
Hexachlorobenzene	37
Hexachlorobutadiene	28
Hexachloroethane	30

	Concentration (in mg/l)
F025 wastewaters:	
Spent Filters/Aids and Desiccants Subcategory	
Chloroform	0.035
Methylene chloride	0.037
Carbon tetrachloride	0.007
1,1,2-Trichloroethane	0.007
Trichloroethylene	0.007
Vinyl chloride	0.033
Hexachlorobenzene	0.055
Hexachlorobutadiene	0.031
Hexachloroethane	0.034

	Concentration (in mg/kg)
K001 nonwastewaters (see also Table CCWE in 268.41):	
Naphthalene	1.5
Pentachlorophenol	7.4
Phenanthrene	1.5
Pyrene	1.5
Toluene	28
Xylenes (Total)	33

	Concentration (in mg/l)
K001 wastewaters:	
Naphthalene	0.031
Pentachlorophenol	0.18
Phenanthrene	0.031
Pyrene	0.028
Toluene	0.028
Xylene (Total)	0.032
Lead	0.037

	Concentration (in mg/l)	
	30 day maximum	24 hour maximum
K002 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4
K003 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4

	Concentration (in mg/l)	
	30 day maximum	24 hour maximum
K004 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4
K005 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4
Cyanides (Total)	0.31	0.74
K006 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4
K007 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4
Cyanides (Total)	0.31	0.74
K008 wastewaters:		
Chromium (Total)	1.2	0.9
Lead	1.4	3.4

	Concentration (in mg/l)
K011 wastewaters:	
Acetonitrile	38
Acrylamide	19
Acrylonitrile	0.06
Benzene	0.02
Cyanides (Total)	21
K013 wastewaters:	
Acetonitrile	38
Acrylamide	19
Acrylonitrile	0.06
Benzene	0.02
Cyanides (Total)	21
K014 wastewaters:	
Acetonitrile	38
Acrylamide	19
Acrylonitrile	0.06
Benzene	0.02
Cyanides (Total)	21

	Concentration (in mg/kg)
K015 nonwastewaters (see also Table CCWE in 268.41):	
Anthracene	3.4
Benzal chloride	6.2
Benzo(b/k)fluoranthene	3.4
Phenanthrene	3.4
Toluene	6.2
K017 nonwastewaters:	
1,2-Dichloropropane	0.014
1,2,3-Trichloropropane	0.014
Bis(2-chloroethyl)ether	1.8

	Concentration (in mg/l)
K017 wastewaters:	
1,2-Dichloropropane	0.014
1,2,3-Trichloropropane	0.014
Bis(2-chloroethyl)ether	0.037

	Concentration (in mg/kg)
K021 nonwastewaters (see also Table CCWE in 268.41):	
Chloroform	6.2
Carbon tetrachloride	5.7

	Concentration (in mg/l)
K021 wastewaters:	
Chloroform	0.006
Carbon tetrachloride	0.004
Antimony	0.60

	Concentration (in mg/l)
K022 wastewaters:	
Toluene	0.017
Acetophenone	0.005
Diphenylamine/ diphenylnitrosamine	0.036
Phenol	0.001
Chromium (Total)	0.35
Nickel	0.47

	Concentration (in mg/l)
K025 wastewaters:	
2,4-Dinitrotoluene	0.67
Nitrobenzene	0.014
4-Nitrophenol	0.67

	Concentration (in mg/kg)
K025 nonwastewaters:	
2,4-Dinitrotoluene	2.3
Nitrobenzene	2.3
4-Nitrophenol	2.3

	Concentration (in mg/kg)
K026 nonwastewaters:	
Pyridine	14

	Concentration (in mg/l)
K026 wastewaters:	
Pyridine	0.017
K029 wastewaters:	
Chloroform	0.007
1,2-Dichloroethane	0.007
1,1-Dichloroethylene	0.033
1,1,1-Trichloroethane	0.007
Vinyl chloride	0.033

	Concentration (in mg/l)
K031 wastewaters:	
Arsenic	0.79

	Concentration (in mg/kg)
K032 nonwastewaters:	
Hexachlorocyclopentadiene	2.0
Chlordane	0.13
Heptachlor	0.066
Heptachlor epoxide	0.066

	Concentration (in mg/l)
K032 wastewaters:	
Hexachlorocyclopentadiene	0.047
Chlordane	0.00003
Heptachlor	0.00022
Heptachlor epoxide	0.00022

	Concentration (in mg/kg)
K033 nonwastewaters:	
Hexachlorocyclopentadiene	2.0

	Concentration (in mg/l)
K033 wastewaters:	
Hexachlorocyclopentadiene	0.047

	Concentration (in mg/kg)
K034 nonwastewaters:	
Hexachlorocyclopentadiene	2.0

	Concentration (in mg/l)
K034 wastewaters:	
Hexachlorocyclopentadiene	0.047

	Concentration (in mg/l)
K035 wastewaters:	
Benz(a)anthracene	0.028
Chrysene	0.14
o-Cresol	0.028
p-Cresol	0.028
Fluoranthene	0.028
Naphthalene	0.028
Phenanthrene	0.028
Phenol	0.031
Pyrene	0.028

	Concentration (in mg/kg)
K035 nonwastewaters:	
Acenaphthene	3.4
Anthracene	3.4
Benz(a)anthracene	3.4
Chrysene	3.4

	Concentration (in mg/kg)
K035 nonwastewaters:	
Dibenz(a,h)anthracene	3.4
Fluoranthene	3.4
Fluorene	3.4
Indeno(1,2,3-cd)pyrene	3.4
Naphthalene	3.4
Phenanthrene	3.4
Pyrene	8.2

	Concentration (in mg/kg)
K036 nonwastewaters:	
Disulfoton	0.1

	Concentration (in mg/l)
K037 wastewaters (based on composite sample):	
Disulfoton	0.025
Toluene	0.080

	Concentration (in mg/kg)
K041 nonwastewaters:	
Toxaphene	0.13

	Concentration (in mg/l)
Toxaphene	0.00009

	Concentration (in mg/kg)
K042 nonwastewaters:	
1,2,4,5-Tetrachlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
Pentachlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4

	Concentration (in mg/l)
K042 wastewaters:	
1,2,4,5-Tetrachlorobenzene	0.092
o-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
Pentachlorobenzene	0.092
1,2,4-Trichlorobenzene	0.092
K044 wastewaters:	
Lead	0.037
K045 wastewaters:	
Lead	0.037
K046 wastewaters:	
Lead	0.037
K047 wastewaters:	
Lead	0.037
K048 wastewaters:	
Cyanides (Total)	0.028

	Concentration (in mg/kg)
K048 nonwastewaters:	
Benzene	3.9
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Di-n-butyl phthalate	4.3
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylene(s)	8.5

	Concentration (in mg/l)
K049 wastewaters:	
Cyanides (Total)	0.028

	Concentration (in mg/kg)
K049 nonwastewaters:	
Anthracene	1.4
Benzene	3.9
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylene(s)	8.5

	Concentration (in mg/l)
K050 wastewaters:	
Cyanides (Total)	0.028

	Concentration (in mg/kg)
K050 nonwastewaters:	
Benzo(a)pyrene	1.4
Phenol	4.3

	Concentration (in mg/l)
K051 wastewaters:	
Cyanides (Total)	0.028

	Concentration (in mg/kg)
K051 nonwastewaters:	
Anthracene	1.4
Benzene	3.9
Benzo(a)anthracene	1.4
Benzo(a)pyrene	1.4
Bis(2-ethylhexyl)phthalate	4.3
Chrysene	0.84
Di-n-butyl phthalate	4.3
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Pyrene	1.1
Toluene	3.9
Xylene(s)	8.5

	Concentration (in mg/l)
K052 wastewaters:	
Cyanides (Total)	0.028

	Concentration (in mg/kg)
K052 nonwastewaters:	
Benzene	3.9
Benzo(a)pyrene	1.4
o-Cresol	5.6
p-Cresol	5.6
Ethylbenzene	0.08
Naphthalene	0.84
Phenanthrene	0.84
Phenol	4.3
Toluene	3.9
Xylene(s)	8.5

	Concentration (in mg/l)
K060 wastewaters (based on composite samples):	
Benzene	0.17
Benzo(a)pyrene	0.035
Naphthalene	0.028
Phenol	0.042

	Concentration (in mg/l)
K060 wastewaters (based on grab samples):	
Cyanides (Total)	1.9

	Concentration (in mg/kg)
K060 nonwastewaters:	
Benzene	0.071
Benzo(a)pyrene	3.6
Naphthalene	3.4
Phenol	3.4
Cyanides (Total)	1.2

	Concentration (in mg/l)
K061 wastewaters:	
Cadmium	1.61
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44

	Concentration (in mg/l)
K069 wastewaters:	
Cadmium	1.61
Lead	0.040

	Concentration (in mg/kg)
K073 nonwastewaters:	
Carbon tetrachloride	6.2
Chloroform	6.2
Hexachloroethane	[illegible]
Tetrachloroethane	6.2
1,1,1-Trichloroethane	6.2

	Concentration (in mg/l)
K073 wastewaters:	
Carbon tetrachloride	0.008
Chloroform	0.008
Hexachloroethane	0.033
Tetrachloroethene	0.008
1,1,1-Trichloroethane	0.008

	Concentration (in mg/kg)
K083 nonwastewaters (see also Table CCWE in 268.41):	
Benzene	6.6
Aniline	14
Diphenylamine/diphenylnitrosamine	14
Nitrobenzene	14
Phenol	5.6
Cyclohexanone	30

	Concentration (in mg/l)
K083 wastewaters:	
Benzene	[illegible]
Aniline	0.017
Diphenylamine/diphenylnitrosamine	0.017
Nitrobenzene	0.017
Phenol	0.007
Cyclohexanone	0.036
Nickel	0.47

	Concentration (in mg/l)
K084 wastewaters:	
Arsenic	0.79

	Concentration (in mg/kg)
K085 nonwastewaters:	
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
m-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
1,2,4-Trichlorobenzene	4.4
1,2,4,5-Tetrachlorobenzene	4.4
Pentachlorobenzene	4.4
Hexachlorobenzene	4.4
Aroclor 1016	0.13
Aroclor 1221	0.13
Aroclor 1232	0.13
Aroclor 1242	0.13
Aroclor 1248	0.13
Aroclor 1254	0.13
Aroclor 1260	0.13

	Concentration (in mg/l)
K085 wastewaters:	
Benzene	0.092
Chlorobenzene	0.092
o-Dichlorobenzene	0.092
m-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
1,2,4-Trichlorobenzene	0.092
1,2,4,5-Tetrachlorobenzene	0.092
Pentachlorobenzene	0.092
Hexachlorobenzene	0.092
Aroclor 1016	0.00036
Aroclor 1221	0.00036
Aroclor 1232	0.00036
Aroclor 1242	0.00036
Aroclor 1248	0.00036
Aroclor 1254	0.00036
Aroclor 1260	0.00036

	Concentration (in mg/kg)
K086 nonwastewaters (see also Table CCWE in 268.41):	
Acetone	0.14
Acetophenone	9.6
Bis(2-ethylhexyl)phthalate	28
n-Butyl alcohol	2.6
Butylbenzylphthalate	[illegible]
Cyclohexanone	1.9
1,2-Dichlorobenzene	6.2
Diethyl phthalate	[illegible]
Dimethyl phthalate	29
Di-n-butyl phthalate	[illegible]
Di-n-octyl phthalate	28
Ethyl acetate	5.6
Ethylbenzene	33
Methanol	140
Methyl isobutyl ketone	33
Methyl ethyl ketone	[illegible]

	Concentration (in mg/l)
Methylene chloride	31
Napthalene	5.9
Nitrobenzene	14
Toluene	[illegible]
1,1,1-Trichloroethane	6.2
Trichloroethylene	5.6
Xylenes (Total)	33
Cyanides (Total)	1.5

	Concentration (in mg/l)
K086 wastewaters:	
Acetone	0.25
Acetophenone	0.17
Bis(2-ethylhexyl)phthalate	0.54
n-Butyl alcohol	[illegible]
Butylbenzylphthalate	0.54
Cyclohexanone	1.4
1,2-Dichlorobenzene	0.058
Diethyl phthalate	0.54
Dimethyl phthalate	0.54
Di-n-butyl phthalate	0.54
Di-n-octyl phthalate	0.54
Ethyl acetate	0.0052
Ethylbenzene	0.032
Methanol (based on composite sample)	0.033
Methyl isobutyl ketone	0.028
Methyl ethyl ketone	0.14
Methylene chloride	0.037
Napthalene	0.007
Nitrobenzene	0.033
Toluene	0.032
1,1,1-Trichloroethane	0.007
Trichloroethylene	0.007
Xylenes (Total)	0.028
Cyanides (Total)	1.9
Chromium (Total)	0.32
Lead	0.037

	Concentration (in mg/l)
K095 wastewaters:	
1,1,1,2-Tetrachloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethene	0.007
1,1,2-Trichloroethane	0.007
Trichloroethene	0.007
Hexachloroethane	0.033
Pentachloroethane	0.007

	Concentration (in mg/l)
K096 wastewaters:	
1,1,1,2-Tetrachloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethene	0.007
1,1,2-Trichloroethane	0.007
Trichloroethene	0.007
1,3-Dichlorobenzene	0.008
Pentachloroethane	0.007
1,2,4-Trichlorobenzene	0.023

	Concentration (in mg/kg)
K097 nonwastewaters:	
Hexachlorocyclopentadiene	2.0
Chlordane	0.13
Heptachlor	0.066
Heptachlor epoxide	0.66

	Concentration (in mg/l)
K097 wastewaters:	
Hexachlorocyclopentadiene	0.047
Chlordane	0.00031
Heptachlor	0.00022

	Concentration (in mg/kg)
Heptachlor epoxide	0.00022

	Concentration (in mg/kg)
K098 nonwastewaters:	
Toxaphene	0.13

	Concentration (in mg/l)
K098 wastewaters:	
Toxaphene	0.00039
K100 wastewaters:	
Cadmium	1.61
Chromium (Total)	0.32
Lead	0.040
K101 wastewaters:	
Ortho-nitroaniline	0.27
Arsenic	0.79
Cadmium	0.24
Lead	0.17
Mercury	0.082
K102 wastewaters:	
Ortho-nitrophenol	0.027
Arsenic	0.79
Cadmium	0.24
Lead	0.17
Mercury	0.082

	Concentration (in mg/kg)
K105 nonwastewaters:	
Benzene	4.4
Chlorobenzene	4.4
o-Dichlorobenzene	4.4
p-Dichlorobenzene	4.4
2,4,5-Trichlorophenol	4.4
2,4,6-Trichlorophenol	4.4
2-Chlorophenol	4.4
Phenol	4.4

	Concentration (in mg/l)
K105 wastewaters:	
Benzene	0.092
Chlorobenzene	0.092
o-Dichlorobenzene	0.092
p-Dichlorobenzene	0.092
2,4,5-Trichlorophenol	0.092
2,4,6-Trichlorophenol	0.092
2-Chlorophenol	0.092
Phenol	0.092
K106 wastewater	
Mercury	0.010
P003 wastewaters:	
Acrolein	3.6

	Concentration (in mg/kg)
P004 nonwastewaters:	
Aldrin	0.066

	Concentration (in mg/l)
P004 wastewaters:	
Aldrin	0.00054
P010 wastewaters:	
Arsenic	0.79
P011 wastewaters:	
Arsenic	0.79
P012 wastewaters:	
Arsenic	0.79

	Concentration (in mg/1) 24 hour composite
P013 wastewaters:	
Barium	1.15

	Concentration (in mg/kg)
P020 nonwastewaters:	
2-sec-Butyl-4,6-dinitrophenol	2.5

	Concentration (in mg/l)
P020 wastewaters:	
2-sec-Butyl-4,6-dinitrophenol	0.030

	Concentration (in mg/kg)
P024 nonwastewaters:	
p-Chloroaniline	16

	Concentration (in mg/l)
P024 wastewaters:	
p-Chloroaniline	0.20
P036 wastewaters:	
Arsenic	0.79

	Concentration (in mg/kg)
P037 nonwastewaters:	
Dieldrin	0.13

	Concentration (in mg/l)
P037 wastewaters:	
Dieldrin	0.00052
P038 wastewaters:	
Arsenic	0.79

	Concentration (in mg/kg)
P047 nonwastewaters: (see also 268.42 for salts and esters)	
4,6-dinitrocresol	140

	Concentration (in mg/l)
P047 wastewaters: (see also 268.42 for salts and esters):	
4,6-dinitrocresol	0.18

	Concentration (in mg/kg)
P048 nonwastewaters:	
2,4-dinitrophenol	140

	Concentration (in mg/l)
P048 wastewaters:	
2,4-dinitrophenol	0.18

	Concentration (in mg/kg)
P050 nonwastewaters:	
Endosulfan I	0.066
Endosulfan II	0.13
Endosulfan sulfate	0.13

	Concentration (in mg/l)
P050 wastewaters:	
Endosulfan I	0.00028
Endosulfan II	0.00052
Endosulfan sulfate	0.00052

	Concentration (in mg/kg)
P051 nonwastewaters:	
Endrin	0.13
Endrin aldehyde	0.13

	Concentration (in mg/l)
P051 wastewaters:	
Endrin	0.00052
Endrin aldehyde	0.00052
P056 wastewaters:	
Flouride	35

	Concentration (in mg/kg)
P059 nonwastewaters:	
Heptachlor	0.066
Heptachlor epoxide	0.066

	Concentration (in mg/l)
P059 wastewaters:	
Heptachlor	0.00022
Heptachlor epoxide	0.00022

	Concentration (in mg/kg)
P060 nonwastewaters:	
Isodrin	0.010

	Concentration (in mg/l)
P060 wastewaters:	
Isodrin	0.00020
P065 wastewaters:	
Mercury	0.030

	Concentration (in mg/kg)
P077 nonwastewaters:	
p-Nitroaniline	28

	Concentration (in mg/l)
P077 wastewaters:	
p-Nitroaniline	0.25

	Concentration (in mg/kg)
P082 nonwastewaters: N-Nitrosodimethylamine	[redacted]

	Concentration (in mg/l)
P082 wastewaters: N-Nitrosodimethylamine	0.67
P092 wastewaters: Mercury	0.030
P099 wastewaters: Silver	0.29

	Concentration (in mg/kg)
P101 nonwastewaters: Propanenitrile	360

	Concentration (in mg/l)
P101 wastewaters: Propanenitrile	0.64
P103 wastewaters: Selenium	0.79
P104 wastewaters: Silver	0.29
P110 wastewaters: Lead	0.040
P113 wastewaters: Thallium	0.14
P114 wastewaters: Selenium	0.79
Thallium	0.14
P115 wastewaters: Thallium	0.14
P119 wastewaters: Vanadium	0.042
P120 wastewaters: Vanadium	0.042

	Concentration (in mg/kg)
P123 nonwastewaters: Toxaphene	1.3

	Concentration (in mg/l)
P123 wastewaters: Toxaphene	0.014

	Concentration (in mg/kg)
U002 nonwastewaters: Acetone	0.14

	Concentration (in mg/l)
U002 wastewaters: Acetone	0.25

	Concentration (in mg/kg)
U003 nonwastewaters: Acetonitrile	0.35

	Concentration (in mg/l)
U003 wastewaters: Acetonitrile	0.42

	Concentration (in mg/kg)
U004 nonwastewaters: Acetophenone	9.6

	Concentration (in mg/l)
U004 wastewaters: Acetophenone	0.17

	Concentration (in mg/kg)
U005 nonwastewaters: 2-Acetylaminofluorene	13

	Concentration (in mg/l)
U005 wastewaters: 2-Acetylaminofluorene	0.058

	Concentration (in mg/kg)
U009 nonwastewaters: Acrylonitrile	0.28

	Concentration (in mg/l)
U009 wastewaters: Acrylonitrile	0.64

	Concentration (in mg/l)
U012 nonwastewaters: Aniline	[redacted]

	Concentration (in mg/kg)
U012 wastewaters: Aniline	0.033
U017 nonwastewaters: Benzal chloride	6.2

	Concentration (in mg/l)
U017 wastewaters: Benzal chloride	0.28

	Concentration (in mg/kg)
U018 nonwastewaters: Benz(a)anthracene	3.6

	Concentration (in mg/l)
U018 wastewaters: Benz(a)anthracene	0.030

	Concentration (in mg/kg)
U019 nonwastewaters: Benzene	36

	Concentration (in mg/l)
U019 wastewaters: Benzene	0.035

	Concentration (in mg/kg)
U022 nonwastewaters: Benzo(a)pyrene	3.6

	Concentration (in mg/l)
U022 wastewaters: Benzo(a)pyrene	0.030

	Concentration (in mg/l)
U024 nonwastewaters: Bis-(2-chloroethoxy)methane	7.2

	Concentration (in mg/l)
U024 wastewaters: Bis-(2-chloroethoxy)methane	0.064

	Concentration (in mg/kg)
U025 nonwastewaters: Dichloroethyl ether	7.2

	Concentration (in mg/l)
U025 wastewaters: Dichloroethyl ether	0.013

	Concentration (in mg/kg)
U027 nonwastewaters: Bis-(2-chloroisopropyl) ether	7.2

	Concentration (in mg/l)
U027 wastewaters: Bis-(2-chloroisopropyl) ether	0.064

	Concentration (in mg/kg)
U029 nonwastewaters: Methyl Bromide	15

	Concentration (in mg/l)
U029 wastewaters: Methyl Bromide	16

	Concentration (in mg/kg)
U030 nonwastewaters: 4-Bromophenel Phenyl Ether	15

	Concentration (in mg/l)
U030 wastewaters: 4-Bromophenel Phenyl Ether	16

	Concentration (in mg/kg)
U031 nonwastewaters: n-Butanol	2.6

	Concentration (in mg/l)
U031 wastewaters: n-Butanol	0.56

	Concentration (in mg/l)
U032 wastewaters: Chromium (Total)	0.32

	Concentration (in mg/kg)
U036 nonwastewaters: Chlordane	0.13

	Concentration (in mg/l)
U036 wastewaters: Chlordane	0.00044

	Concentration (in mg/kg)
U037 nonwastewaters: Chlorobenzene	5.7

	Concentration (in mg/l)
U037 wastewaters: Chlorobenzene	0.014

	Concentration (in mg/kg)
U038 nonwastewaters: Chlorobenzilate	[redacted]

	Concentration (in mg/l)
U038 wastewaters: Chlorobenzilate	0.292

	Concentration (in mg/kg)
U039 nonwastewaters: p-Chloro-m-cresol	14

	Concentration (in mg/l)
U039 wastewaters: p-Chloro-m-cresol	0.062

	Concentration (in mg/kg)
U043 nonwastewaters: Vinyl chlonde	0.035

	Concentration (in mg/l)
U043 wastewaters: Vinyl chlonde	0.033

	Concentration (in mg/kg)
U044 nonwastewaters: Chloroform	[redacted]

	Concentration (in mg/kg)
U044 wastewaters: Chloroform	0.007

	Concentration (in mg/kg)
U045 nonwastewaters: Chloromethane	5.6

	Concentration (in mg/l)
U045 wastewaters: Chloromethane	0.023

	Concentration (in mg/kg)
U047 nonwastewaters: 2-Chloronaphthalene	5.6

	Concentration (in mg/l)
U047 wastewaters: 2-Chloronaphthalene	0.073

	Concentration (in mg/kg)
U048 nonwastewaters: 2-Chlorophenol	5.7

	Concentration (in mg/l)
U048 wastewaters: 2-Chlorophenol	0.056

	Concentration (in mg/kg)
U050 nonwastewaters: Chrysene	3.6

	Concentration (in mg/l)
U050 wastewaters: Chrysene	0.15

	Concentration (in mg/kg)
U051 nonwastewaters (see also Table CCWE in 268.41):	
Naphthalene	1.5
Pentachlorophenol	7.4
Phenanthrene	1.5
Pyrene	1.5
Toluene	[redacted]
Xylenes (Total)	33

	Concentration (in mg/kg)
U051 wastewaters:	
Naphthalene	0.031
Pentachlorophenol	0.18
Phenanthrene	0.031
Pyrene	0.025
Toluene	0.028
Xylene (Total)	0.032
Lead	0.037

	Concentration (in mg/kg)
U052 nonwastewaters:	
o-Cresol	5.6
Cresols (m- and p- isomers)	3.2

	Concentration (in mg/l)
U052 wastewaters:	
o-Cresol	0.0066
Cresols (m- and p- isomers)	0.028

	Concentration (in mg/kg)
U057 nonwastewaters: Cyclohexanone	1.9

	Concentration (in mg/l)
U057 wastewaters: Cyclohexanone	1.4

	Concentration (in mg/kg)
U060 nonwastewaters:	
o,p'-DDD	0.087
p,p'-DDD	0.087

	Concentration (in mg/l)
U060 wastewaters:	
o,p'-DDD	0.00036
p,p'-DDD	0.00036

	Concentration (in mg/kg)
U061 nonwastewaters:	
o,p'-DDT	0.087
p,p'-DDT	0.087
o,p'-DDD	0.087
p,p'-DDD	0.087
o,p'-DDE	0.087
p,p'-DDE	0.087

	Concentration (in mg/l)
U061 wastewaters:	
o,p'-DDT	0.00036
p,p'-DDT	0.00036
o,p'-DDD	[redacted]
p,p'-DDD	0.00036
o,p'-DDE	0.00036

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	Concentration (in mg/kg)
p,p'-DDE	0.00036

	Concentration (in mg/kg)
U063 nonwastewaters: Dibenzo(a,h)anthracene	13

	Concentration (in mg/l)
U063 wastewaters: Dibenzo(a,h)anthracene	0.012

	Concentration (in mg/kg)
U066 nonwastewaters: 1,2-Dibromo-3-Chloropropane	15

	Concentration (in mg/l)
U066 wastewaters: 1,2-Dibromo-3-Chloropropane	16

	Concentration (in mg/kg)
U067 nonwastewaters: Ethylene Dibromide	15

	Concentration (in mg/l)
U067 wastewaters: Ethylene Dibromide	16

	Concentration (in mg/kg)
U068 nonwastewaters: Dibromomethane	15

	Concentration (in mg/l)
U068 wastewaters: Dibromomethane	16

	Concentration (in mg/kg)
U070 nonwastewaters: o-Dichlorobenzene	[illegible]

	Concentration (in mg/l)
U070 wastewaters: o-Dichlorobenzene	[illegible]

	Concentration (in mg/kg)
U071 nonwastewaters: m-Dichlorobenzene	[illegible]

	Concentration (in mg/l)
U071 wastewaters: m-Dichlorobenzene	0.072

	Concentration (in mg/kg)
U072 nonwastewaters: p-Dichlorobenzene	6.2

	Concentration (in mg/l)
U072 wastewaters: p-Dichlorobenzene	[illegible]

	Concentration (in mg/kg)
U073 nonwastewaters: 3,3'-Dichlorobenzidine	16

	Concentration (in mg/l)
U073 wastewaters: 3,3'-Dichlorobenzidine	0.022

	Concentration (in mg/kg)
U074 nonwastewaters: cis-1,4-Dichloro-2-butene	[illegible]
trans-1,4-Dichloro-2-butene	30

	Concentration (in mg/l)
U074 wastewaters: cis-1,4-Dichloro-2-butene	0.034
trans-1,4-Dichloro-2-butene	0.034

	Concentration (in mg/kg)
U075 nonwastewater: Dichlorodifluoromethane	10

	Concentration (in mg/l)
U075 wastewaters: Dichlorodifluoromethane	0.14

	Concentration (in mg/kg)
U076 nonwastewaters: 1,1-Dichloroethane	6.2

	Concentration (in mg/l)
U076 wastewaters: 1,1-Dichloroethane	0.007

	Concentration (in mg/kg)
U077 nonwastewaters: 1,2-Dichloroethane	6.2

	Concentration (in mg/l)
U077 wastewaters: 1,2-Dichloroethane	0.007

	Concentration (in mg/kg)
U078 nonwastewaters: 1,1-Dichloroethylene	6.2

	Concentration (in mg/l)
U078 wastewaters: 1,1-Dichloroethylene	0.007

	Concentration (in mg/kg)
U079 nonwastewaters: trans-1,2-Dichloroethylene	6.2

	Concentration (in mg/l)
U079 wastewaters: trans-1,2-Dichloroethylene	0.007

	Concentration (in mg/kg)
U080 nonwastewaters: Methylene chloride	31

	Concentration (in mg/l)
U080 wastewaters: Methylene chloride	0.037

	Concentration (in mg/kg)
U081 nonwastewaters: 2,4-Dichlorophenol	14

	Concentration (in mg/l)
U081 wastewaters: 2,4-Dichlorophenol	0.052

	Concentration (in mg/kg)
U082 nonwastewaters: 2,6-Dichlorophenol	14

	Concentration (in mg/l)
U082 wastewaters: 2,6-Dichlorophenol	0.018

	Concentration (in mg/kg)
U083 nonwastewaters: 1,2-Dichloropropane	[illegible]

	Concentration (in mg/l)
U083 wastewaters: 1,2-Dichloropropane	0.067

	Concentration (in mg/kg)
U084 nonwastewaters: cis-1,3-Dichloropropene	15
trans-1,3-Dichloropropene	[illegible]

	Concentration (in mg/l)
U084 wastewaters: cis-1,3-Dichloropropene	0.067
trans-1,3-Dichloropropene	0.067

	Concentration (in mg/kg)
U093 nonwastewaters: p-Dimethylaminoazobenzene	[illegible]

	Concentration (in mg/l)
U093 wastewaters: p-Dimethylaminoazobenzene	0.74

	Concentration (in mg/kg)
U101 nonwastewaters: 2,4-Dimethyly phenol	14

	Concentration (in mg/l)
U101 wastewaters: 2,4-Dimethyl phenol	0.045

	Concentration (in mg/kg)
U105 nonwastewaters: 2,4-Dinitrotoluene	140

	Concentration (in mg/l)
U105 wastewaters: 2,4-Dinitrotoluene	0.17

	Concentration (in mg/kg)
U106 nonwastewaters: 2,6 Dinitrotoluene	[illegible]

	Concentration (in mg/l)
U106 wastewaters: 2,6-Dinitrotoluene	0.051

	Concentration (in mg/kg)
U108 nonwastewaters: 1,4-Dioxane	[illegible]

	Concentration (in mg/l)
U108 wastewaters: 1,4-Dioxane	[illegible]

	Concentration (in mg/kg)
U111 nonwastewaters: Di-n-propylnitrosoamine	14

	Concentration (in mg/l)
U111 wastewaters: Di-n-propylnitrosoamine	0.065

	Concentration (in mg/kg)
U112 nonwastewaters: Ethyl acetate	5.6

	Concentration (in mg/l)
U112 wastewaters: Ethyl acetate	0.0052

	Concentration (in mg/kg)
U117 nonwastewaters: Ethyl ether	140

	Concentration (in mg/l)
U117 wastewaters: Ethyl ether	[illegible]

	Concentration (in mg/kg)
U118 nonwastewaters: Ethyl methacrylate	160

	Concentration (in mg/l)
U118 wastewaters: Ethyl methacrylate	0.47

	Concentration (in mg/kg)
U120 nonwastewaters: Fluoranthene	3.6

	Concentration (in mg/l)
U120 wastewaters: Fluoranthene	[illegible]

	Concentration (in mg/kg)
U121 nonwastewaters: Fluorotrichloromethane	[illegible]

	Concentration (in mg/l)
U121 wastewaters: Fluorotrichloromethane	0.19

	Concentration (in mg/kg)
U127 nonwastewaters: Hexachlorobenzene	37

	Concentration (in mg/l)
U127 wastewaters: Hexachlorobenzene	0.055

	Concentration (in mg/kg)
U128 nonwastewaters: Hexachlorobutadiene	[illegible]

	Concentration (in mg/l)
U128 wastewaters: Hexachlorobutadiene	0.031

	Concentration (in mg/kg)
U129 nonwastewaters: alpha-BHC	[illegible]
beta-BHC	[illegible]
delta-BHC	[illegible]
gamma-BHC (Lindane)	[illegible]

	Concentration (in mg/l)
U129 wastewaters: alpha-BHC	0.00024
beta-BHC	0.00024
delta-BHC	[illegible]
gamma-BHC (Lindane)	0.00024

	Concentration (in mg/kg)
U130 nonwastewaters: Hexachlorocyclopentadiene	4.8

	Concentration (in mg/l)
U130 wastewaters: Hexachlorocyclopentadiene	0.096

	Concentration (in mg/l)
U131 nonwastewaters: Hexachloroethane	[illegible]

	Concentration (in mg/l)
U131 wastewaters: Hexachloroethane	0.034

	Concentration (in mg/kg)
U132 nonwastewaters: Hexachlorophene	1.1

	Concentration (in mg/l)
U132 wastewaters: Hexachlorophene	58
U134 wastewaters: Fluoride	35
U136 wastewaters: Arsenic	0.79
	Concentration (in mg/kg)
U137 nonwastewaters: Indeno(1,2,3,-c,d)pyrene	3.6
	Concentration (in mg/l)
U137 wastewaters: Indeno(1,2,3,-c,d)pyrene	0.030
	Concentration (in mg/kg)
U138 nonwastewaters: Iodomethane	[illegible]
	Concentration (in mg/l)
U138 wastewaters: Iodomethane	[illegible]
	Concentration (in mg/kg)
U140 nonwastewaters: Isobutanol	170
	Concentration (in mg/l)
U140 wastewaters: Isobutanol	1.4
	Concentration (in mg/kg)
U141 nonwastewaters: Isosafrole	[illegible]
	Concentration (in mg/l)
U141 wastewaters: Isosafrole	0.076
	Concentration (in mg/kg)
U142 nonwastewaters: Kepone	0.043
	Concentration (in mg/l)
U142 wastewaters: Kepone	0.0011
U144 wastewaters: Lead	0.040

	Concentration (in mg/l)
U145 wastewaters: Lead	0.040
U146 wastewaters: Lead	0.040
U151 wastewaters: Mercury	0.030
	Concentration (in mg/kg)
U152 nonwastewaters: Methacrylonitrile	[illegible]
	Concentration (in mg/l)
U152 wastewaters: Methacrylonitrile	0.47
	Concentration (in mg/kg)
U155 nonwastewaters: Methapyrilene	[illegible]
	Concentration (in mg/l)
U155 wastewaters: Methapyrilene	0.15
	Concentration (in mg/kg)
U157 nonwastewaters: 3-Methylcholanthrene	[illegible]
	Concentration (in mg/l)
U157 wastewaters: 3-Methylcholanthrene	[illegible]
	Concentration (in mg/kg)
U158 nonwastewaters: 4,4'-Methylene-bis-(2-chloroaniline)	[illegible]
	Concentration (in mg/l)
U158 wastewaters: 4,4'-Methylene-bis-(2-chloroaniline)	0.74
	Concentration (in mg/kg)
U159 nonwastewaters: Methyl ethyl ketone	[illegible]
	Concentration (in mg/l)
U159 wastewaters: Methyl ethyl ketone	0.14

	Concentration (in mg/l)
U161 nonwastewaters: Methyl isobutyl ketone	33
	Concentration (in mg/l)
U161 wastewaters: Methyl isobutyl ketone	[illegible]
	Concentration (in mg/kg)
U162 nonwastewaters: Methyl methacrylate	160
	Concentration (in mg/l)
U162 wastewaters: Methyl methacrylate	0.47
	Concentration (in mg/kg)
U165 nonwastewaters: Naphthalene	5.9
	Concentration (in mg/l)
U165 wastewaters: Naphthalene	0.007
	Concentration (in mg/kg)
U166 nonwastewaters: 1,4-Naphthoquinone	1.9
	Concentration (in mg/l)
U166 wastewaters: 1,4-Naphthoquinone	0.073
	Concentration (in mg/kg)
U167 nonwastewaters: 1-Naphthylamine	15
	Concentration (in mg/l)
U167 wastewaters: 1-Naphthylamine	0.37
	Concentration (in mg/kg)
U168 nonwastewaters: 2-Naphthylamine	15
	Concentration (in mg/l)
U168 wastewaters: 2-Naphthylamine	1.8

	Concentration (in mg/kg)
U169 nonwastewaters: Nitrobenzene	14
	Concentration (in mg/l)
U169 wastewaters: Nitrobenzene	0.033
	Concentration (in mg/kg)
U170 nonwastewaters: 4-Nitrophenol	65
	Concentration (in mg/l)
U170 wastewaters: 4-Nitrophenol	0.18
	Concentration (in mg/kg)
U172 nonwastewaters: N=Nitroso-di-n-butlyamine	[illegible]
	Concentration (in mg/1
U172 wastewaters: N-Nitroso-di-n-butlyamine	0.67
	Concentration (in mg/kg)
U174 nonwastewaters: N-Nitrosodiethylamine	28
	Concentration (in mg/l)
U174 wastewaters: N Nitrosodiethylamine	0.07
	Concentration (in mg/kg)
U179 nonwastewaters: N–Nitrosopiperidine	220
	Concentration (in mg/l)
U179 wastewaters: N-Nitrosopiperidine	1.3
	Concentration (in mg/kg)
U180 nonwastewaters: N-Nitrosopyrrolidine	220
	Concentration (in mg/l)
U180 wastewaters: N-Nitrosopyrrolidine	1.3
	Concentration (in mg/kg)
U181 nonwastewaters: 5-Nitro-o-toluidine	56

	Concentration (in mg/l)
U181 wastewaters: 5-Nitro-o-toluidine	[illegible]
	Concentration (in mg/kg)
U183 nonwastewaters: Pentachlorobenzene	37
	Concentration (in mg/l)
U183 wastewaters: Pentachlorobenzene	[illegible]
	Concentration (in mg/kg)
U184 nonwastewaters: Pentachloroethane	[illegible]
	Concentration (in mg/l)
U184 wastewaters: Pentachloroethane	0.037
	Concentration (in mg/kg)
U185 nonwastewaters: Pentachloronitrobenzene	4.8
	Concentration (in mg/l)
U185 wastewaters: Pentachloronitrobenzene	[illegible]
	Concentration (in mg/kg)
U187 nonwastewaters: Phenacetin	16
	Concentration (in mg/l)
U187 wastewaters: Phenacetin	0.36
	Concentration (in mg/kg)
U188 nonwastewaters: Phenol	[illegible]
	Concentration (in mg/l)
U188 wastewaters: Phenol	[illegible]
	Concentration (in mg/kg)
U192 nonwastewaters: Pronamide	1.5
	Concentration (in mg/l)
U192 wastewaters: Pronamide	[illegible]

	Concentration (in mg/kg)
U196 nonwastewaters: Pyridine	16
	Concentration (in mg/l)
U196 wastewaters: Pyridine	0.031
	Concentration (in mg/kg)
U197 nonwastewaters: p-Benzoquinone	180
	Concentration (in mg/l)
U197 wastewaters: p-Benzoquinone	13
	Concentration (in mg/kg)
U201 nonwastewaters: Resourcinol	1.8
	Concentration (in mg/l)
U201 wastewaters: Resourcinol	[illegible]
	Concentration (in mg/kg)
U203 nonwastewaters: Safrole	22
	Concentration (in mg/l)
U203 wastewaters: Safrole	1.3
U204 wastewaters: Selenium	0.79
U205 wastewaters: Selenium	0.79
	Concentration (in mg/kg)
U207 nonwastewaters: 1,2,4,5-Tetrachlorobenzene	19
	Concentration (in mg/l)
U207 wastewaters: 1,2,4,5-Tetrachlorobenzene	0.023
	Concentration (in mg/kg)
U208 nonwastewaters: 1,1,2,2-Tetrachloroethane	6.2
	Concentration (in mg/l)
U208 wastewaters: 1,1,1,2-Tetrachloroethane	0.007

	Concentration (in mg/kg)
U209 nonwastewaters: 1,1,2,2-Tetrachloroethane	6.2
	Concentration (in mg/l)
U209 wastewaters: 1,1,2,2-Tetrachloroethane	0.007
	Concentration (in mg/kg)
U210 nonwastewaters: Tetrachloroethylene	6.2
	Concentration (in mg/l)
U210 wastewaters: Tetrachloroethylene	0.007
	Concentration (in mg/kg)
U211 nonwastewaters: Carbon tetrachloride	6.2
	Concentration (in mg/l)
U211 wastewaters: Carbon tetrachloride	0.007
U214 wastewaters: Thallium	0.14
U215 wastewaters: Thallium	0.14
U216 wastewaters: Thallium	0.14
U217 wastewaters: Thallium	0.14
	Concentration (in mg/kg)
U220 nonwastewaters: Toluene	28
	Concentration (in mg/l)
U220 wastewaters: Toluene	0.028
	Concentration (in mg/kg)
U225 nonwastewaters: Bromoform	15
	Concentration (in mg/l)
U225 wastewaters: Bromoform	14

	Concentration (in mg/kg)
U226 nonwastewaters: 1,1,1,-Trichloroethane	6.2
	Concentration (in mg/l)
U226 wastewaters: 1,1,1,-Trichloroethane	0.007
	Concentration (in mg/kg)
U227 nonwastewaters: 1,1,2-Trichloroethane	6.2
	Concentration (in mg/l)
U227 wastewaters: 1,1,2-Trichloroethane	0.007
	Concentration (in mg/kg)
U228 nonwastewaters: Trichloroethylene	5.6
	Concentration (in mg/l)
U228 wastewaters: Trichloroethylene	0.007
	Concentration (in mg/kg)
U239 nonwastewaters: Xylenes (Total)	33
	Concentration (in mg/l)
U239 wastewaters: Xylenes (Total)	0.032
	Concentration (in mg/kg)
U240 nonwastewaters (see also 268.42 for salts and esters): 2,4-D	10
	Concentration (in mg/l)
U240 wastewaters (see also 268.42 for salts and esters): 2,4-D	0.013
	Concentration (in mg/kg)
U243 nonwastewaters: Hexachloropropene	37
	Concentration (in mg/l)
U243 wastewaters: Hexachloropropene	0.047

	Concentration (in mg/kg)
U247 nonwastewaters: Methoxychlor	0.18
	Concentration (in mg/l)
U247 wastewaters: Methoxychlor	0.00036

Multi-source leachate nonwastewaters	Total composition (mg/kg)
Acetone	0.14
Acenaphthalene	3.4
Acenaphthene	9.1
Acetonitrile	0.35
Acrolein	2.8
Acetophenone	9.6
Acrylamide	1.5
2 Acetylaminofluorene	13
Acrylonitrile	0.28
Aldrin	0.066
4-Aminobiphenyl	13
Aniline	14
Anthracene	7.7
Aramite	2.5
Aroclor 1016	0.92
Aroclor 1221	0.92
Aroclor 1232	0.92
Aroclor 1242	0.92
Aroclor 1248	0.92
Aroclor 1254	1.8
Aroclor 1260	1.8
alpha-BHC	0.066
beta-BHC	0.066
delta-BHC	0.066
gamma-BHC	0.066
Benzene	26
Benzal chloride	6.2
Benzene thiol	6.2
Benzo(a)anthracene	3.6
Benzo(b)fluoranthene	3.4
Benzo(k)fluoranthene	3.4
Benzo(g,h,i)perylene	1.8
Benzo(a)pyrene	3.6
p-Benzoquinone	180
Bromodichloromethane	16
Bromoform	16
Bromomethane (methyl bromide)	16
4-Bromophenyl phenyl ether	16
n-Butanol	2.6
Butyl benzyl phthalate	15
2-sec-Butyl-4,6-dinitrophenol	2.5
Carbon tetrachloride	6.2
Chlordane	0.13
p-Chloroaniline	16
Chlorobenzene	5.7
Chlorobenzilate	6.6
2-Chloro-1,3-butadiene	28
Chlorodibromomethane	16
Chloroethane	6.0
bis-(2-Chloroethoxy) methane	7.2
bis-(2-Chloroethyl) ether	7.2
Chloroform	6.2
bis-(2-Chloroisopropyl) ether	7.2
p-Chloro-m-cresol	14
Chloromethane	5.6
2-Chloronaphthalene	5.6
2-Chlorophenol	5.7
3-Chloropropene	24
Chrysene	3.6
o-Cresol	5.6
Cresol (m- and p- isomers)	3.2
Cyclohexanone	1.9

Multi-source leachate nonwastewaters	Total composition (mg/kg)
1,2-Dibromo-3-Chloropropane	16
1,2-Dibromoethane (Ethylene dibromide)	16
Dibromomethane	16
2,4-Dichlorophenoxyacetic acid (2,4-D)	10
o,p'-DDD	0.087
p,p'-DDD	0.087
o,p'-DDE	0.087
p,p'-DDE	0.087
o,p'-DDT	0.087
p,p'-DDT	0.087
Dibenzo(a,h)anthracene	13
1,,2,7,8-Dibenzapyrene	22
tris-(2,3-Dibromopropyl) phosphate	0.1
m-Dichlorobenzene	6.2
o-Dichlorobenzene	6.2
p-Dichlorobenzene	6.2
3,3'-Dichlorobenzidine	16
cis-1,4-Dichloro-2-butene	30
trans-1,4-Dichloro-2-butene	30
Dichlorodifluoromethane	10
1,1-Dichloroethane	6.2
1,2-Dichloroethane	6.2
1,1-Dichloroethylene	6.2
trans-1,2-Dichloroethylene	6.2
2,4-Dichlorophenol	14
2,6-Dichlorophenol	14
1,2-Dichloropropane	15
cis-1,3-Dichloropropene	15
trans-1,3-Dichloropropene	15
Dieldrin	0.13
Diethyl phthalate	28
p-Dimethylaminoazobenzene	29
2,4-Dimethyl phenol	14
Dimethyl phthalate	28
Di-n-butyl phthalate	28
1,4-Dinitrobenzene	2.3
4,6-Dinitrocresol	140
2,4-Dinitrophenol	140
2,4-Dinitrotoluene	140
2,6-Dinitrotoluene	28
Di-n-octyl phthalate	28
Diphenylamine	13
Diphenylnitrosoamine	13
Di-n-propylnitrosoamine	14
1,4-Dioxane	280
Disulfoton	0.1
Endosulfan I	0.066
Endosulfan II	0.13

Multi-source leachate nonwastewaters	Total composition (mg/kg)
Endosulfan sulfate	0.13
Endrin	0.13
Endrin aldehyde	0.13
Ethyl acetate	5.6
Ethyl benzene	6.0
Ethyl ether	140
bis-(2-Ethylhexyl) phthalate	28
Ethyl methacrylate	160
Famphur	0.1
Fluoranthene	3.6
Fluorene	7.7
Fluorotrichloromethane	33
Heptachlor	0.066
Heptachlor epoxide	0.066
Hexachlorobenzene	37
Hexachlorobutadiene	28
Hexachlorocyclopentadiene	4.8
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Hexachloroethane	30
Hexachlorophene	1.1
Hexachloropropene	37
Indeno(1,2,3,-c,d)pyrene	3.6
Iodomethane	65
Isobutanol	170
Isodrin	0.010
Isosafrole	2.6
Kepone	0.043
Methacrylonitrile	84
Methanol	140
Methapyrilene	5.0
Methoxychlor	0.18
3-Methylchloanthrene	15
4,4-Methylene-bis-(2-chloroaniline)	30
Methylene chloride	31
Methyl ethyl ketone	200
Methyl isobutyl ketone	33
Methyl methacrylate	160
Methyl Parathion	0.1
Naphthalene	5.9
1,4-Naphthoquinone	1.9
1-Naphthylamine	15
2-Naphthylamine	15
p-Nitroaniline	28
Nitrobenzene	14
5-Nitro-o-toluidine	28
4-Nitrophenol	65
N-Nitrosodiethylamine	40
N-Nitrosodimethylamine	40
N-Nitroso-di-n-butylamine	54

Multi-source leachate nonwastewaters	Total composition (mg/kg)
N-Nitrosomethylethylamine	2.3
N-Nitrosomorpholine	2.3
N-Nitrosopiperidine	35
N-Nitrosopyrrolidine	35
Parathion	0.1
Pentachlorobenzene	37
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachloroethane	31
Pentachloronitrobenzene	4.8
Pentachlorophenol	37
Phenacetin	16
Phenanthrene	3.4
Phenol	6.2
Phorate	0.1
Phthalic anhydride (measured asphthalic acid)	28
Propanenitrile	360
Pronamide	1.5
Pyrene	9.1
Pyridine	16
Resorcinol	1.8
Safrole	22
Silvex (2,4,5-TP)	2.1
2,4,5-T	2.1
1,2,4,5-Tetrachlorobenzene	19
Tetrachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
1,1,1,2-Tetrachloroethane	6.2
1,1,2,2-Tetrachloroethane	6.2
Tetrachloroethylene	6.2
2,3,4,6-Tetrachlorophenol	37
Toluene	28
Toxaphene	1.3
1,2,4-Trichlorobenzene	19
1,1,1-Trichloroethane	6.2
1,1,2-Trichloroethane	6.2
Trichloroethylene	5.6
2,4,5-Trichlorophenol	37
2,4,6-Trichlorophenol	37
1,2,3-Trichloropropane	30
1,1,2-Trichloro-l,2,2-trifluoro-ethane	30
Vinyl chloride	0.035
Xylene(s)	33
Cyanides (Total)	1.5
Cyanides (Amenable)	0.10

Multi-source leachate wastewaters [1]	Total Composition (mg/l)
Acetone	0.162
Acenaphthalene	0.059
Acenaphthene	0.059
Acetonitrile	0.097
Acrolein	0.162
Acetophenone	41.196
Acrylamide	1.042
2-Acetylaminofluorene	0.040
Acrylonitrile	0.242
Aldrin	0.021
4-Aminobiphenyl	0.016
Aniline	0.807
Anthracene	0.059
Aramite	0.020
Arocior 1016	0.013
Arocior 1221	0.014
Arocior 1232	0.013
Arocior 1242	0.017
Arocior 1248	0.013
Arocior 1254	0.014
Arocior 1260	0.014
alpha-BHC	0.00014
beta-BHC	0.00014
delta-BHC	0.023
gamma-BHC	0.00188
Benzal chloride	0.040
Benzene	0.136
Benzene thiol	0.219
Benzo(a)anthracene	0.059
Benzo(a)pyrene	0.061
Benzo(b)fluoranthene	0.040
Benzo(g,h,i)perylene	0.004
Benzo(k)fluoranthene	0.059
p-Benzoquinone	0.020
Bromodichloromethane	0.136
Bromomethane (methyl bromide)	0.065
4-Bromophenyl phenyl ether	0.040
n-Butanol	0.137
Butyl benzyl phthalate	0.012
2-sec-Butyl-4,6-dinitrophenol	1.436
Carbon tetrachloride	0.032
Carbon disulfide	0.179
Chlordane	0.00327
p-Chloroaniline	43.736
Chlorobenzene	0.032
Chlorobenzilate	0.072
2-Chloro-1,3-butadiene	0.032
Chlorodibromomethane	0.032
Chloroethane	0.270
bis-(2-Chloroethoxy) methane	0.006
bis-(2-Chloroethyl) ether	0.024
2-Chloroethyl vinyl ether	0.035
Chloroform	0.046
bis-(2-Chloroisopropyl) ether	0.040
p-Chloro-m-cresol	0.053
Chloromethane (methyl chloride)	0.190
2-Chloronaphthalene	0.040
2-Chlorophenol	0.051
3-Chloropropene	0.021
Chrysene	0.059
o-Cresol	0.156
Cresol (m- and psomers)	1.315
Cyclohexanone	0.020
1,2-Dibromo-3-chloropropane	0.001
1,2-Dibromoethane	0.016
Dibromomethane	0.065
2,4-Dichlorophenoxyacetic acid	0.721
o,p'-DDD	0.023
p,p'-DDD	0.023
o,p'-DDE	0.031
p,p'-DDE	0.031
o,p'-DDT	0.00002
p,p'-DDT	0.00002
Dibenzo(a,e)pyrene (1:2;7:8)	0.041
Dibenzo(a,h)anthracene	0.040
tris-(2,3-Dibromopropyl) phosphate	0.080
m-Dichlorobenzene	0.014
o-Dichlorobenzene	0.064
p-Dichlorobenzene	0.068
3,3'-Dichlorobenzidine	0.095
cis-1,4-Dichloro-2-butene	0.021
trans-1,4-Dichloro-2-butene	0.021
Dichlorodifluoromethane	0.190
1,1-Dichloroethane	0.059
1,2-Dichloroethane	0.211
1,1-Dichloroethylene	0.025
trans-1,2-Dichloroethylene	0.054
2,4-Dichlorophenol	0.076
2,6-Dichlorophenol	0.076
1,2-Dichloropropane	0.482
cis-1,3-Dichloropropene	0.021
trans-1,3-Dichloropropene	0.021
Dieldrin	0.017
Diethyl phthalate	0.200
3,3-Dimethoxybenzidine	0.095
p-Dimethylaminoazobenzene	0.095
3,3'-Dimethylbenzidine	0.095
2,4-Dimethyl phenol	0.036
Dimethyl phthalate	0.047
Di-n-butyl phthalate	0.057
1,4-Dinitrobenzene	0.231
4,6-Dinitrocresol	0.277
2,4-Dinitrophenol	0.123
2,4-Dinitrotoluene	0.235
2,6-Dinitrotoluene	0.398
Di-n-octyl phthalate	0.012
Di-n-propylnitrosoamine	0.400
Diphenylamine	0.378
1,2-Diphenyl hydrazine	0.063
Diphenylnitrosoamine	0.200
1,4-Dioxane	20
Disulfoton	0.770
Endosulfan I	0.029
Endosulfan II	0.029
Endosulfan sulfate	0.029
Endrin	0.00276
Endrin aldehyde	0.025
Ethyl acetate	0.195
Ethyl benzene	0.032
Ethyl ether	0.067
bis-(2-Ethylhexyl) phthalate	0.279
Ethyl methacrylate	0.032
Ethylene oxide	127.4
Famphur	0.336
Fluoranthene	0.068
Fluorene	0.059
Fluorotrichloromethane	0.020
Heptachlor	0.00116
Heptachlor epoxide	0.016
Hexachlorobenzene	0.040
Hexachlorobutadiene	0.040
Hexachlorocyclopentadiene	0.041
Hexachlorodibenzo-furans	0.000035
Hexachlorodibenzo-p-dioxins	0.000031
Hexachloroethane	0.040
Hexachlorophene	0.00111
Hexachloropropene	0.025
Indeno(1,2,3,-c,d)pyrene	0.004
Iodomethane	0.152
Isobutanol	0.125
Isodrin	0.021
Isosafrole	9.542
Kepone	0.0095
Methacrylonitrile	29.
Methanol	0.033
Methapyrilene	9.542
Methoxychlor	0.252
3-Methylchloanthrene	0.004
4,4-Methylene-bis-(2-chloroaniline)	0.358
Methylene chloride	0.089
Methyl ethyl ketone	0.018
Methyl isobutyl ketone	0.032
Methyl methacrylate	0.032
Methyl Parathion	0.336
Naphthalene	0.059
1,4-Naphthoquinone	0.020
1-Naphthylamine	0.378
2-Naphthylamine	0.378
p-Nitroaniline	0.020
Nitrobenzene	0.068
5-Nitro-o-toluidine	0.230
4-Nitrophenol	0.124
N-Nitrosodiethylamine	0.290
N-Nitrosodimethylamine	0.290
N-Nitroso-di-n-butylamine	0.290
N-Nitrosomethylethylamine	0.290
N-Nitrosomorpholine	0.290
N-Nitrosopiperidine	0.010
N-Nitrosopyrrolidine	0.010
Parathion	0.336
Pentachlorobenzene	0.040
Pentachlorodibenzo-furans	0.0000023
Pentachorodibenzo-p-dioxins	0.0000015
Pentachloroethane	0.040
Pentachloronitrobenzene	0.040
Pentachlorophenol	0.062
Phenacetin	9.542
Phenanthrene	0.059
Phenol	0.026
Phorate	0.770
Phthalic anhydride (measured as phthalic acid)	0.020
Propanenitrile (ethyl cyanide)	23.8
Pronamide	0.063
Pyrene	0.067
Pyridine	0.008
Resorcinol	0.042
Safrole	9.542
Silvex (2,4,5-TP)	0.721
2,4,5-T	0.721
1,2,4,5-Tetrachlorobenzene	0.040
Tetrachlorodibenzo-furans	0.0000060
Tetrachlorodibenzo-p-dioxins	0.0000062
1,1,1,2-Tetrachloroethane	0.032
1,1,2,2-Tetrachloroethane	0.032
Tetrachloroethylene	0.056
2,3,4,6-Tetrachlorophenol	0.051
Toluene	0.080
Toxaphene	0.0095
Tribromomethane (bromoform)	0.357
1,2,4-Trichlorobenzene	0.046
1,1,1-Trichloroethane	0.054
1,1,2-Trichloroethane	0.054
Trichloroethylene	0.054
2,4,5-Trichlorophenol	0.008
2,4,6-Trichlorophenol	0.008
1,2,3-Trichloropropane	0.482
1,1,2 Trichloro-1,2,2-trifluoroethane	6.496
Vinyl chloride	0.268
Xylene(s)	0.182
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Fluoride	35.
Sulfide	14.
Antimony	1.930
Arsenic	1.390
Banum	1.150
Beryllium	0.820
Cadmium	0.200
Chromium (Total)	0.370
Copper	1.280
Lead	0.280
Mercury	0.150
Nickel	0.550
Selenium	0.820
Silver	0.290
Thallium	1.400
Vanadium	0.042
Zinc	1.020

[1] Note: These proposed standards for wastewater forms of Multi-source leachate represent alternative standards for the U and P wastewaters that correspond to chemicals listed in this table. As an example: the standard for acetone listed above is an alternative standard for U002 (acetone) wastewaters, etc. Not all constituents listed in the above table have a corresponding U or P waste codes. These generally represent other Appendix VIII (40 CFR 261) constituents that were not listed as U or P wastes. See background information on the development of these alternative standards in section III.A.1.h.(6.)(b.).

* * * * *

8. Appendix IV is added to Part 268 to read as follows:

APPENDIX IV—ORGANIC LAB PACKS

Hazardous waste with the following EPA waste codes may be placed in an "organic lab pack."

P001, P002, P003, P004, P005, P007, P008, P014, P016, P017, P018, P022, P023, P024, P026, P027, P028, P034, P037, P039, P040, P041, P043, P044, P045, P046, P047, P048, P049, P050, P051, P054, P057, P058, P059, P060, P062, P064, P066, P067, P069, P070, P071, P072, P075, P077, P082, P085, P088, P089, P093, P094, P101, P108, P109, P111, P116, P118, P123

U001, U002, U003, U004, U005, U006, U008, U010, U011, U012, U014, U015, U016, U017, U018, U019, U021, U022, U024, U025, U026, U027, U030, U031, U034, U035, U036, U037, U039, U041, U042, U044, U046, U047, U048, U049, U050, U051, U052, U053, U055, U056, U057, U058, U059, U060, U061, U062, U063, U064, U066, U067, U068, U070, U071, U072, U073, U074, U076, U077, U078, U079, U080, U081, U082, U083, U084, U085, U087, U089, U090, U091, U092, U093, U094, U095, U097, U101, U105, U106, U108, U110, U111, U112, U113, U114, U116, U117, U118, U119, U120, U122, U123, U124, U125, U126, U127, U128, U129, U130, U131, U132, U137, U138, U140, U141, U142, U143, U147, U148, U150, U154, U156, U157, U158, U159, U161, U165, U166, U169, U170, U171, U172, U173, U174, U176, U177, U178, U179, U180, U181, U182, U183, U184, U185, U187, U188, U191, U192, U193, U194, U197, U200, U201, U202, U203, U206, U207, U208, U209, U210, U211, U213, U218, U219, U220, U222, U225, U226, U227, U228, U235, U236, U237, U238, U239, U240, U243, U244, U247, U248

F001, F002, F003, F004, F005, F010, F020, F021, F023, F026, F027, F028

K009, K010, K014, K015, K016, K017, K018, K019, K020, K021, K023, K024, K030, K031, K032, K033, K034, K035, K036, K038, K039, K040, K041, K042, K043, K054, K073, K085, K093, K094, K095, K096, K097, K098, K105, K107, K111, K112, K113, K114, K115, K116, K071

D001, D012, D013, D014, D015, D016, D017.

9. Appendix V is added to part 268 to read as follows:

APPENDIX V—INORGANIC LAB PACKS

Inorganic hazardous waste streams which contain only the following constituents may be placed in an "inorganic lab pack."

Barium
Cadmium
Trivalent chromium
Lead
Silver

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
[Insert date of publication].	Land Disposal Restrictions for Third Third wastes.	[Insert page numbers].	May 8, 1990.

3. Section 271.1(j) is amended by revising the entry for May 8, 1990 in Table 2 to read as follows:

§ 271.1 Purpose and Scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
May 8, 1990.	Prohibition on land disposal of 3/3 of listed wastes.	3004(g)(6)(C)	[Insert date of publication and page numbers of this document.]

[FR Doc. 89-27028 Filed 11-21-89; 8:45 am]

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Wednesday
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Part III

Office of Management and Budget

Rescissions and Deferrals; Cumulative Reports; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1989.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of November 1, 1989, of seven deferrals contained in the first special message of FY 1990. This message was transmitted to Congress on October 2, 1989.

Rescissions

As of the date of this report, no rescission proposals are pending before Congress.

Deferrals (Table A and Attachment A)

As of November 1, 1989, $1,370.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** cited below:
54 FR 41410, Friday, October 6, 1989.

Richard G. Darman,

Director.

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TABLE A
STATUS OF 1990 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	1,380.4
Routine Executive releases through November 1, 1989.....	-10.2
Overturned by the Congress.....	0
Currently before the Congress.....	1,370.2

Attachments

Attachment A - Status of Deferrals - Fiscal Year 1990

As of November 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D90-1	271,000		10-02-89	10,200				260,800
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D90-2	188,680		10-02-89					188,680
Cooperative work	D90-3	410,189		10-02-89					410,189
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D90-4	1,047		10-02-89					1,047
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D90-5	7,078		10-02-89					7,078
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D90-6	44		10-02-89					44

Attachment A - Status of Deferrals - Fiscal Year 1990

As of November 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-89
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D90-7	502,361		10-02-89					502,361
TOTAL, DEFERRALS		1,380,400	0		10,200	0		0	1,370,200

[FR Doc. 89-27376 Filed 11-21-89; 8:45 am]

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Federal Register

Wednesday
November 22, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Standards for Approval for High Altitude Operation of Subsonic Transport Airplanes; Notice of Proposed Rulemaking

Proposed Advisory Circular 25-XX, High Altitude Subsonic Flight; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 25]

[Docket No. 26070, Notice No. 89-31]

RIN 2120-AB18

Standards for Approval for High Altitude Operation of Subsonic Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an amendment to the Federal Aviation Regulations (FAR) to specify airplane and equipment airworthiness standards for subsonic transport airplanes to be operated up to an altitude of 51,000 feet. This proposal is prompted by an increase in the number of applications received to raise the maximum certificated operating altitude for transport category airplanes. This action is intended to ensure an acceptable level of safety for airplanes operated at high altitudes.

DATES: Comments must be received on or before May 21, 1990.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26070, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: Docket No. 26070. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2118.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26070." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The higher operational altitudes made feasible by the advent of turbojet transport airplanes introduced certain risks with respect to crew and passenger breathing that were not experienced with earlier propeller-driven airplanes. Accordingly, certification standards were developed in the early 1950s to permit safe operation of early turbojet transport airplanes up to certain maximum operating altitudes—typically 41,000 or 42,000 feet. Subsequent to the type certification of the early turbojet transport airplanes, applicants requested approval to operate certain later airplanes at higher altitudes.

The operation of airplanes at altitudes above 40,000 feet usually involves a number of novel or unusual design features that are not addressed by the airworthiness requirements in the current regulations. In order to ensure a level of safety equivalent to that established by part 25 of the FAR, §§ 21.16 and 21.101 of part 21 require that additional standards be developed in the form of special conditions and that compliance with the special conditions be demonstrated.

The greatly increased operational altitudes envisioned for supersonic transport (SST) airplane designs prompted extensive investigation, beginning in the early 1960s, of the additional standards that would be necessary to allow safe operation at even higher altitudes. Although development of the U.S. SST was discontinued, the Anglo-French Concorde SST was eventually certificated for operation to a maximum altitude of 60,000 feet.

During this same time, the FAA concluded that requirements for safe operation of executive transport airplanes at higher altitudes would also be needed. (It is recognized that certain larger, airline-type transport airplanes have been modified for executive use; however, the term "executive transport airplanes," as used herein, refers to the smaller transport airplanes designed expressly for such use.) This conclusion was based primarily on the rapid decompression rate associated with a relatively small cabin volume of an executive transport airplane and the physiological limitations of persons using the oxygen systems typically used in those airplanes. As an interim measure, beginning in 1967, certain executive transport airplanes were permitted to operate to 45,000 feet provided that all occupants wore oxygen masks during all operations above 41,000 feet. Later standards, based on the SST high altitude studies, were developed and applied as special conditions to certificate operation of certain executive transport airplanes to altitudes up to 51,000 feet.

The regulatory changes proposed in this notice would codify and consolidate the different high-altitude criteria that have been made applicable by special conditions to previously certificated subsonic transport airplanes. Unlike the special conditions, the proposed changes would establish objective

standards for high altitude operations, rather than address specific design features. In addition, the proposed changes acknowledge a human physiological limit of 34,000 feet (see Glossary), the level above which persons not using supplementary oxygen are in serious peril. To assure compatibility or equivalency with other provisions of part 25, which were amended after many of the special conditions discussed herein were implemented, these proposed changes are written so that terminology relating to the probability of certain failures is consistent with those other provisions. Generally, the intent of those provisions is to recognize that the degree of hazard of any given failure is inversely related to the probability of occurrence of that failure. Failures that are considered to be catastrophic must be shown to be extremely improbable, and hazardous failures must be shown to be improbable (see Glossary). Examples of these terms are found in §§ 25.671, 25.672 and 25.1309.

It must be noted that widespread operation of transport category airplanes at altitudes greater than 51,000 feet is not currently envisioned. A major factor in an approval for operation up to 51,000 feet is an emergency descent during a decompression, which must be shown to result in a maximum cabin altitude of no more than 40,000 feet. At the present time, technology has not been sufficiently developed to permit an emergency descent from an altitude above 51,000 feet that would meet the cabin altitude requirement. Accordingly, the changes proposed in this notice have been developed to provide adequate standards for safe operation of such airplanes up to that altitude. Should an applicant seek approval to operate a transport category airplane above 51,000 feet, additional standards may be needed for safe operation. If so, appropriate special conditions would be adopted to require compliance with those standards.

Discussion

The changes proposed in this notice involve ventilation, cabin cooling, pressurization and pressure vessel integrity, and oxygen equipment.

1. Ventilation (Airflow and Contamination)

Section 25.831(a) requires each passenger and crew compartment to be ventilated and each crew compartment to have enough fresh air to enable crewmembers to perform their duties without undue discomfort or fatigue. A minimum of 10 cubic feet of fresh air per minute per crewmember is required. Section 25.1309 (specifically, §§ 25.1309(b)(2) and 25.1309(d)(3)) requires that the effects on occupants of any failures of required systems be analyzed, but § 25.1309 is a general rule and does not specifically address minimum airflow requirements.

The executive transport special conditions that have been applied in the past supplemented § 25.831(a) by specifying that the minimum fresh airflow of 10 cubic feet per minute per crewmember was to be provided to each occupant during normal operation. The special conditions also required that each occupant be furnished with enough uncontaminated air to provide reasonable comfort during normal operating conditions and also after any probable failure of any system that would adversely affect the cabin ventilation air. This proposal would amend § 25.831 to include the additional airflow requirements currently contained in previous special conditions.

Some airplanes now incorporate ventilation systems in which fresh air is augmented with conditioned and recirculated air. The proposed § 25.831(a) would permit a ventilation system that uses a mixture of the minimum amount of fresh air and any desired quantity of recirculated air that is shown to be uncontaminated by odors, particulates, or gases. In this regard, the minimum amount of fresh air would be specified by weight rather than by volume in order to provide a parameter independent of altitude. Ten cubic feet of standard air at a typical cabin altitude of 8,000 feet and typical cabin temperature of 75°F. weighs approximately 0.6 pounds. The proposed § 25.831 therefore requires a fresh airflow of 0.6 pounds per minute per occupant. This standard would be equivalent to the present requirement for crewmembers.

2. Cabin cooling

During the SST review in the 1960s, it was noted that certain pressurization system failures, whether considered by themselves or in combination with the use of hot ram air for emergency pressurization, could lead to cabin temperatures exceeding human tolerance. The FAA therefore concluded that any failure or combination of failures that could lead to temperature exposures that would cause undue discomfort must be shown to be improbable. Minor corrective actions (e.g., selection of alternate equipment or procedures) would be allowed if necessary for probable failures. The FAA also concluded that any failure or combination of failures that could lead to intolerable temperature exposures must be extremely improbable. Major corrective actions (e.g., emergency descent, configuration changes) would be allowed for an improbable failure condition. Temperature limits were incorporated into the special conditions imposed on executive transport airplanes when approved for high altitude operation. The SST and executive transport special conditions contained two graphs which explained the requirements for the probable and improbable cases. In formulating this proposal, the "undue discomfort" requirement (improbable case) was determined by the FAA to be adequately addressed by the language of proposed § 25.831(a) without using a specific failure curve. The graph and explanatory information associated with intolerable temperature exposures in the extremely improbable failure condition have been retained and are being proposed as § 25.831(g). This proposal would not allow the time of exposure at any given temperature to exceed the values given in the chart.

3. Pressurization and Pressure Vessel Integrity

Proposed § 25.365(d), which seeks to increase the fuselage pressure relief valve safety factor of 1.33 by 25 percent to 1.67, codifies the standard that was originally contained in the SST special conditions to account for the thermal affects on structure caused by the high operating speeds. This increased structural safety factor was also included in the executive transport special conditions to reduce the likelihood of structural failure and to limit the size of the opening if a failure occurs. It is included in the proposed rule for this reason.

The FAA had considered proposing both pressurization standards similar to those previously required by the special conditions for executive transport and separate standards similar to those required for large transport airplanes. The separate standards were thought to be necessary because of the inherent differences in pressurized volume of the two types of transports, and the belief that a larger airplane may decompress more slowly than a smaller airplane. Upon further review, this approach was deemed impractical because certain larger transport airplanes have decompression characteristics more analogous to smaller transport airplanes and vice versa. Therefore, the proposal would apply the same standard to all transport airplanes.

It should be noted that the special conditions required consideration of

specific failures; these are addressed later in this discussion. Subsequent to the issuance of the special conditions, reliability, probability, and damage tolerance concepts addressing other failures and methods of analysis were incorporated into part 25. The proposed rule allows the use of these additional methods of analysis and failure considerations.

The earlier executive transport special conditions required a pressure demand mask (see Glossary). Later special conditions included, pursuant to the recommendations of the FAA Civil Aeromedical Institute (CAMI), a requirement for a pressure demand mask with a mask-mounted regulator (see Glossary). The requirement for the use of the same type of equipment is proposed herein. There are several advantages to using this type mask when operating at high altitudes, including the following:

a. The pilot receives oxygen immediately without having to first purge the air that would be trapped in the hose between the mask and the regulator of a non-mask-mounted regulator system. The pilot's chances of functioning or recovering from dysfunction (loss of consciousness) are much better when he or she receives oxygen earlier during a decompression.

b. The minimum oxygen flow schedule is higher, starting at 40 percent in lieu of the zero percent oxygen provided by standard diluter demand equipment.

c. In the event that the pilot is using the diluter demand setting prior to decompression where the cabin altitude exceeds 34,000 feet, some hypoxia protection is provided.

d. At 39,000 feet cabin pressure, positive oxygen pressure is supplied at the mask thus reducing hypoxic effects at those altitudes.

e. If either the 100 percent or the full positive pressure (sometimes called "test") setting is selected, protection from smoke within the cockpit would be provided.

The objective of proposed § 25.841(a) (presurization) when applied in conjunction with proposed § 25.1447(c) (oxygen equipment) is to provide airworthiness standards that would allow subsonic airplanes to operate at their maximum achievable altitudes. This would be the highest altitude for which an applicant chooses to demonstrate that, after decompression caused by a single failure or combination of failures that are not shown to be extremely improbable: (1) The flightcrew will remain alert and be able to fly the airplane; (2) the cabin occupants will be protected from the effects of hypoxia; and (3) in the event that some occupants do not receive oxygen, they nevertheless will be protected against permanent physiological damage from hypoxia.

Proposed § 25.841(a)(1) would be equivalent to the existing § 25.841(a) with the exception of editorial changes and elimination of the words "reasonably" and "or malfunctions." The proposed "probable" failure criteria are the same as those contained in § 25.1309. The term "combination of failures" has been added to the section to clarify that failure combination that lead to probable depressurization event must also be considered.

Proposed § 25.841(a)(2) would limit exposure of the airplane occupants, after decompression, to a cabin altitude no greater than 40,000 feet. This requirement is unchanged from that previously established in Part 25 for certification of transport category airplanes using diluter demand (flightcrew) and continuous flow (passenger) oxygen equipment (see Glossary).

Proposed § 25.841(a)(2) is a combination of the later executive transport high altitude special conditions and § 25.1309, i.e., the degree of the hazard must be inversely related to the probability of the failure condition. Proposed § 25.841(a)(2) was developed from the recommendations of CAMI and was based on the concept of "Time of Safe Unconsciousness" documented by James G. Gaume (see Reference 1). The use of continuous-flow oxygen masks by passengers following rapid decompression to cabin altitudes above 34,000 feet may fail to provide protection from hypoxia, as noted in the discussion under paragraph 4. "*Oxygen Equipment*," below. Additionally, some passengers might be exposed to high cabin altitudes following decompression without the use of oxygen. A few passengers may lose consciousness at 34,000 feet cabin altitude, and more may lose consciousness at greater altitudes even with the use of continuous-flow oxygen equipment. Exposure to cabin altitudes in excess of 25,000 feet for more than 2 minutes without supplemental oxygen may cause permanent physiological (brain) damage. Therefore, in order to demonstrate compliance with this rule, approved emergency descent procedures and a cabin altitude analysis must be prepared to ensure that these altitude limits are not exceeded following a decompression failure that is not shown to be extremely improbable.

Proposed § 25.841(a)(3) describes the failure conditions that must be considered in evaluating cabin decompression. Possible modes of failure to be evaluated include malfunctions and damage from external sources such as tire burst, wheel failure, engine rotor burst, engine fan, compressor or turbine multi-blade failure, and loss of antennas. Sections 25.1309 and 25.571, and associated advisory material, provide guidance in determining the sources of failure. System failures (both latent and active failures), combinations of system failures, system failures combined with pressure vessel leaks, system failures causing engine shutdown, engine failures causing structural and system damage, and structural failures without system failures must all be evaluated. Typical systems include engine bleed air systems, air conditioning systems, power sources, outflow valves and control systems. Failures which expose the occupants to cabin altitudes in excess of either 25,000 feet for more than 2 minutes of 40,000 feet for any amount of time must be shown to be extremely improbable.

The executive transport airplane special conditions required evaluation of engine rotor burst (including fan, compressor and turbine blades, and rotor disc) and complete loss of thrust from all engines. The FAA policy has been to presume that these failures will occur and permit the use of analyical methods to assess the damage. Multiple engine failures have occurred because of secondary effects from engine failure and from operational errors. Multiple fan blade, rotor, and other engine failures have occurred during cruise conditions and have caused cabin decompression. The service history of airplane decompressions resulting from engine failure has been acceptable; but the benefits of this service history are limited because service history of existing engines may not be applicable to new engines. However, flight levels for most transport airplanes have been at a altitude where oxygen equipment is capable of providing adequate protection. Engine burst is most likely to occur during takeoff and climb; however, approximately 20 percent of the known bursts have occurred in cruise mode, not including those caused by bird strikes. The possibility of an engine burst in cruise mode cannot be ignored, and the damage resulting in depressurization must be assessed.

Structural failures in large transport airplanes which would result in decompression are generally considered to include the loss of a typical skin panel bound by a crack stopper pattern, a door seal, window, or windshield, unless the design is such that loss of the windshield is shown to the extremely improbable when operating at the higher altitudes. Structural failures in executive transport airplanes leading to decomprssion, discussed in the various special conditions, included the following:

1. Any single failure in the pressurization system combined with the occurrence of a leak produced by the complete loss of a door seal element, or a fuselage leak through an opening having an area 2.0 times the area which produces the maximum permissible fuselage leak rate approved for normal operation in accordance with § 25.841(a).

2. The maximum pressure vessel opening resulting from crack propagation for a period encompassing four normal inspection intervals, where the length of the crack at the time of the initial inspection must be at least one-half the affected panel width. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be evaluated.

3. Pressure vessel openings resulting from tire burst, engine rotor burst, loss of antennas, or stall warning vanes, or any probable equipment failure. The effects of such damage while operating under maximum cabin pressure differential must be evaluated.

Subsequent to the initial development and issuance of high altitude special conditions, § 25.571 was amended by Amendments 25–45 (1978) and 25–54 (1980) to require damage-tolerance and fatigue evaluation of airplane primary structure. Section 25.571 requires a showing that a catastrophic failure due to fatigue, corrosion, or accidental damage will not occur throughout the operational life of the airplane (§ 25.571 (a)). The failure conditions described in § 25.571 are related to depressurization. Compliance with § 25.571 requires the development of inspection intervals and procedures for the detection of crack lengths associated with the decompression of critical vent areas. Any event that would expose the occupants to cabin pressure altitudes in excess of the limits established under this proposal must be shown to be extremely improbable.

In demonstrating compliance with proposed § 25.841, the crew is presumed to be using the oxygen equipment prior to a decompression that results in a cabin altitude greater than 34,000 feet, and would presumably perform an emergency descent in accordance with an approved emergency procedure. The time required for the crew to recognize a decompression emergency and don their oxygen masks has been established by tests to be 17 seconds. See proposed Advisory Circular (AC) 25–XX, High Altitude Subsonic Flight, for a discussion of this recognition time. (Public comments concerning this proposed AC are invited by separate notice.) This 17-second delay would be imposed between the cabin altitude warning and the beginning of action for descent. The critical failure case (probable system failure) must be demonstrated by system failure tests at the maximum airplane altitude. For improbable failures, the cabin altitude could be established by analysis, and verified, if necessary, by tests at a much lower altitude, with the results extrapolated to the higher altitude.

4. Oxygen Equipment.

Both diluter demand and pressure demand oxygen equipment have proven satisfactory for cabin pressure altitudes of 40,000 feet or less when the person using the oxygen equipment is exposed gradually to increased altitudes. However, rapid decompression to cabin pressure altitudes that exceed 34,000 feet temporarily negates the protective qualities of such equipment, unless the mask and oxygen are being used prior to the decompression. This loss of protection is caused by the escape of expanding gases from the lungs, and the presence of air in the hose of an oxygen system with panel-mounted regulators which delays oxygenation of the lungs. In addition, during rapid decompression, an oxygen reversal phenomenon which causes brain deoxygenation occurs unless a high concentration of oxygen is being breathed prior to decompression. Carbon dioxide diffusion into the lungs, accelerated by rapid decompression, further reduces oxygen partial pressure in the lungs. Current experimental data demonstrate that moderate to severe decreases in flightcrew performance can be expected under these circumstances (see Reference 2, § 1.18). To prevent such performance decrements, the use of 100 percent oxygen is proposed for flightcrews operating at airplane altitudes which may expose them to cabin altitudes exceeding 34,000 feet following a pressurization failure.

A pressure demand mask with a mask-mounted regulator will provide oxygen at a minimum flow rate of 40 percent, in accordance with the regulator flow schedule, and will reduce the time needed to displace the carbon dioxide and nitrogen from the lungs. In addition, the regulator can be set to deliver 100 percent oxygen regardless of altitude.

Section 25.1447(c)(3) currently contains a reference to a washroom. This terminology has been replaced in other sections of part 25, and it is proposed that this reference be deleted for consistency and that the existing provisions of § 25.1447(c)(3) be incorporated into a revised § 25.1447(c)(1). The proposed regulation would not specify demand equipment under § 25.1447(c)(2), because proposed § 25.1447(c)(3)(i) would allow the option of using either diluter demand or pressure demand equipment for airplanes to be operated above an altitude of 25,000 feet, and proposed § 25.144(c)(3)(ii) would require pressure demand equipment for airplanes where decompression may expose the flightcrew to cabin altitudes in excess of 34,000 feet.

Proposed § 25.1447(c)(4) requires that the flight manual contain the limitation that at least one flight crewmember wear and use 100 percent oxygen during flight at airplane operational altitudes at which the findings of the decompression analysis indicate the cabin altitude may exceed 34,000 feet after pressurization failure.

To complement the proposed changes to part 25 discussed above, additional material is proposed in advisory circular form (proposed AC 25–XX, High Altitude Subsonic Flight) as an acceptable, but not the only, means of compliance. As noted above, public comments concerning this proposed advisory circular are invited by separate notice.

References

Reference 1. "Factors Influencing the Time of Safe Unconsciousness (TSU) for Commercial Jet Passengers Following Cabin Decompression" by James G. Gaume, Aerospace Medicine, April 1970.

Reference 2. Aerospace Information Report (AIR) No. 822 and 825B (Physiology Section); SAE Committee A–10.

Copies of pertinent portions of these documents have been placed in the Rules Docket and are available for public inspection.

Glossary

Physiological Altitude Limits. The response of human beings to increased altitude varies with the individual. People that smoke or are in poor health will be affected at a much lower altitude than people who are young and in good physical condition. Without supplementary oxygen, most people will begin to experience a reduction in night vision or general visual acuity at approximately 5,000 feet altitude. At an altitude of approximately 10,000 feet, a person will begin to display measurable deterioration in mental abilities and physical dexterity after a period of several hours. At 18,000 feet, the mental deterioration may result in

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unconsciousness, and the time of useful consciousness (TUC) is generally about 15 minutes. At 25,000 feet, the TUC for most people is about 3–10 minutes. At altitudes above 25,000 feet, the TUC decreases very rapidly, becoming only a few seconds at 40,000 feet. If a person is breathing 100 percent oxygen, however, the partial pressure of oxygen in the lungs at 34,000 feet altitude is the same as that for a person breathing air at sea level. At 40,000 feet, a person breathing 100 percent oxygen will have the same partial pressure of oxygen in the lungs as a person breathing air at 10,000 feet. Therefore, 34,000 feet is the highest altitude at which a person would be provided complete protection from the effects of hypoxia, and 40,000 feet is the highest altitude at which 100 percent oxygen will provide reasonable protection for the time period needed to descend to a safe altitude.

Hypoxia. Hypoxia is a condition caused by insufficient oxygen. It results from the reduced oxygen partial pressure in the inspired air caused by the decrease in barometric pressure with increasing altitude.

Diluter Demand Oxygen System. A flightcrew oxygen system consisting of a close-fitting mask with a regulator that supplies a flow of oxygen proportional to cabin altitude. Regulators are usually designed to provide zero percent oxygen and 100 percent cabin air at cabin altitudes of 8,000 feet or less, with the ratio changing to 100 percent oxygen and zero percent cabin air at approximately 34,000 feet cabin altitude. Oxygen is supplied only when the user inhales, reducing the amount of oxygen that is required.

Pressure Demand Oxygen System. Similar to diluter demand equipment, except that oxygen is automatically supplied to the mask under pressure at cabin altitudes above approximately 34,000 feet. This pressurized supply of oxygen provides some additional protection against hypoxia at altitudes up to 39,000 feet.

Pressure Demand Mask with Mask-Mounted Regulator. A pressure demand mask with the regulator attached directly to the mask, rather than mounted on the instrument panel or other area within the flight deck. The mask-mounted regulator eliminates the problem of a long hose which must be purged of air before oxygen is delivered to the mask.

Continuous Flow Oxygen System. The oxygen system typically provided to passengers. The passenger mask contains a rebreather bag, which collects the user's exhaled air, which is then re-inhaled. The oxygen in the rebreather bag is replenished by a continuous flow of oxygen which is metered similarly to the demand oxygen equipment (zero percent flow below 8,000 feet, and 100 percent at approximately 34,000 feet). Because only a portion of the inspired oxygen is consumed during each breath, the air in the rebreather bag remains highly saturated with oxygen, and is drawn into the lungs at the beginning of inhalation. If the bag is depleted before the breath is completed, cabin air is used for the remainder of the inhalation.

Probable Failures. Probable failures may be expected to occur several times during the operational life of each airplane. The probability of occurrence is on the order of 1×10^{-5} or greater (Advisory Circular 25.1309–1A). The consequences of the failure or the required corrective action may not significantly impact the safety of the airplane or the ability of the crew to cope with adverse operating conditions. Systems that operate within this category are referred to as nonessential systems.

Improbable Failures. Improbable failures are not expected to occur during the total operational life of a random single airplane of a particular type, but may occur during the total operational life of all airplanes of a particular type. The probability of occurrence is on the order of 1×10^{-5} or less. The consequences of the failure or the required corrective action must not prevent the continued safe flight and landing of the airplane. Systems that operate within this category are referred to as essential systems.

Extremely Improbable Failures. Extremely improbable failures are so unlikely that they need not be considered to ever occur, unless engineering judgement would require their consideration. The probability of occurrence is on the order of 1×10^{-9} or less. This category includes failures or combinations of failures that would prevent the continued safe flight and landing of the airplane. Systems that operate within this category are referred to as critical systems.

Regulatory Evaluation

The proposals contained in this notice would establish standards in Part 25 for certification of airplanes to operate at high altitude. The areas covered include ventilation, cabin cooling, pressurization and pressure vessel integrity, and oxygen equipment standards. The proposals codify the special conditions or similar requirements which have been issued for airplanes certificated for high altitude operations.

One proposal sets structural strength requirements for airplanes which are approved for operation above 45,000 feet. Four proposals deal with ventilation and involve the rewording of probability standards and the codification of special conditions. The proposal concerning allowable cabin altitude following decompression codifies one special condition. Finally, proposals dealing with standards for oxygen dispensing units may necessitate a change in required oxygen systems for certain new airplanes yet to be type certificated. The required oxygen equipment would add no more than $240 to the cost of newly-certificated airplanes with certain design characteristics (i.e., those which may be affected by engine rotor burst because of the location of the engines). Operating costs on these new airplanes are also presumed to increase only minimally. For example, the FAA has received data from one of the major air carriers indicating that its hourly operating costs would be increased by only $9.50 per hour, assuming a 5-hour flight.

It is not feasible to estimate the total incremental costs for the entire industry that could be attributed to these proposed regulations because of the large number of unquantifiable and highly variable factors involved. Such a cost analysis would require detailed knowledge of the airplane design characteristics which affect the likelihood of sudden decompressions as well as probable operational parameters (i.e., flight altitudes). In any event, the scope of any possible economic impact would be narrowed considerably by the fact that engine burst, considered the most significant failure mode for purposes of this proposal, would affect only a relatively small number of airplanes, i.e., the newly-certificated airplanes with engines located such that fragments from an engine burst would affect the pressure vessel. Moreover, certification for high altitude flight is optional; any minor costs associated with the oxygen systems required by these proposed regulations would be balanced by operational benefits (i.e., lower fuel consumption) accruing to those who seek such certification.

These proposals do not involve additional costs of certification of new airplanes (with the exception of the minimal expected cost of getting oxygen equipment certified) since, in the alternative, high altitude standards would have to be met as special conditions for certification to high altitude operation. Where a marginally higher safety standard would be established by the proposal, as in the case of a requirement under certain conditions for a pressure demand oxygen mask, there is an increase (though unquantifiable) in safety benefits.

Regulatory Flexibility Determination

Under the criteria of the Regulatory Flexibility Act of 1980, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Since the Act applies to U.S. entities, only U.S. manufacturers of transport category airplanes would be affected. In the United States, there are two manufacturers that specialize in commercial transport category airplanes, the Boeing Company and the McDonnell Douglas Corporation. In addition, there are a number of general aviation (GA) entities that manufacture other transport category airplanes such as large business jets, including Cessna Aircraft and Learjet.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees; any U.S. airplane manufacturer with more than 75 employees is considered not to be a small entity. None of the transport category airplane manufacturers is known to be a small entity. Thus, there would not be a significant economic impact on a substantial number of small entities as the result of the implementation of this proposal.

International Trade Impact Assessment

This proposal is not expected to have an adverse impact either on the trade opportunities of U.S. manufacturers of transport category airplanes doing business abroad or on foreign aircraft manufacturers doing business in the U.S. Since the certification rules are applicable to both foreign and domestic manufacturers selling airplanes in the U.S., there would be no competitive trade advantage to either.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this document involves proposals which are not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and are not major as defined in Executive Order 12291. In addition, it has been determined under the criteria of the Regulatory Flexibility Act that these regulations, at promulgation, would not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend part 25 of the Federal Aviation Regulations (FAR) (14 CFR part 25) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

2. By amending § 25.365, by revising paragraph (d), to read as follows:

§ 25.365 Pressurized cabin loads.

* * * * *

(d) The airplane structure must be designed to be able to withstand the pressure differential loads corresponding to the maximum relief valve setting multiplied by a factor of 1.33 for airplanes to be approved for operation to 45,000 feet or by a factor of 1.67 for airplanes to be approved for operation above 45,000 feet, omitting other loads.

* * * * *

3. By amending § 25.831 by revising paragraphs (a), (c), and (d) and adding paragraph (g) to read as follows:

§ 25.831 Ventilation.

(a) Under normal operating conditions and in the event of any probable failure or failure combinations of any system which would adversely affect the ventilating air, the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort. For normal operating conditions, each occupant must be provided with an airflow containing at least 0.6 pounds of fresh air per minute.

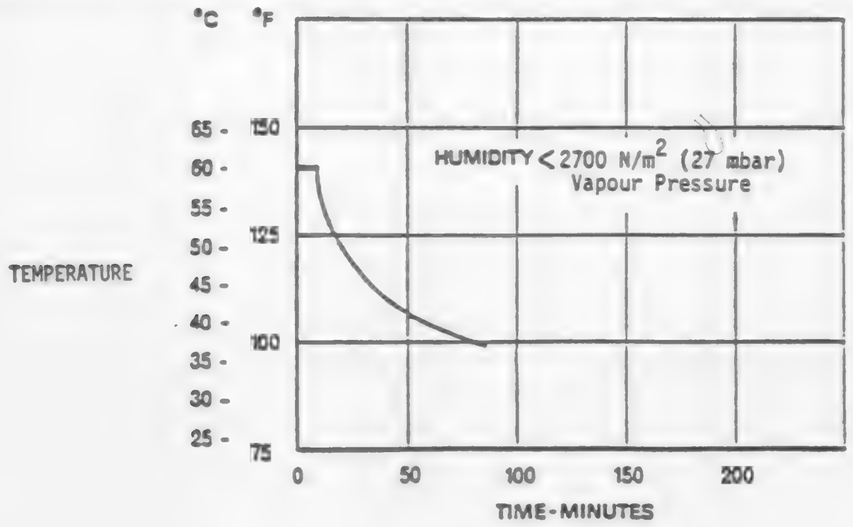
* * * * *

(c) There must be provisions in the design to ensure that the conditions prescribed in paragraph (b) of this section are met after any failures or failure combinations that are not extremely improbable.

(d) If the accumulation of hazardous quantities of smoke in the cockpit area is not extremely improbable, smoke evacuation must be readily accomplished starting with full pressurization and without depressurizing beyond safe limits.

* * * * *

(g) The exposure time at any given temperature must not exceed the values shown in the following graph after any improbable failure or failure combinations.



TIME - TEMPERATURE RELATIONSHIP

4. By amending § 25.841, by revising paragraph (a), to read as follows:

§ 25.841 Pressurized cabins.

(a) Pressurized cabins and any other occupied compartments must be equipped to provide a cabin pressure altitude of not more than 8,000 feet at the maximum operating altitude of the airplane under normal operating conditions.

(1) If certification for operation above 25,000 feet is requested, the airplane must be designed so that occupants will not be exposed to cabin pressure altitudes in excess of 15,000 feet after any probable failure or failure combinations in the pressurization system.

(2) The airplane must be designed so that occupants will not be exposed to a cabin pressure altitude that exceeds the following after decompression from any failure or failure combinations not shown to be extremely improbable:

(i) Twenty-five thousand (25,000) feet for more than 2 minutes; or

(ii) Forty thousand (40,000) feet for any duration.

(3) Fuselage structure, engine and system failures are to be considered in evaluating the cabin decompression.

* * * * *

5. By amending § 25.1447, by revising paragraphs (c) (1)–(4) and adding (c)(5), to read as follows:

§ 25.1447 Equipment standards for oxygen dispensing units.

* * * * *

(c) * * *

(1) There must be an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant, wherever seated, and at least two oxygen dispensing units connected to oxygen terminals in each lavatory. The total number of dispensing units and outlets in the cabin must exceed the number of seats by at least 10 percent. The extra units must be as uniformly distributed throughout the cabin as practicable. If certification for operation above 30,000 feet is requested, the dispensing units providing the required oxygen flow must be automatically presented to the occupants before the cabin pressure altitude exceeds 15,000 feet. The crew must be provided with a manual means of making the dispensing units immediately available in the event of failure of the automatic system.

(2) Each flight crewmember on flight deck duty must be provided with a quick-donning type oxygen dispensing unit connected to an oxygen supply terminal. This dispensing unit must be immediately available to the flight crewmember when seated at his station, and installed so that it:

(i) Can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand, within five seconds and without disturbing eyeglasses or causing delay in proceeding with emergency duties; and

(ii) Allows, while in place, the performance of normal communication functions.

(3) The oxygen dispensing equipment for the flight crewmembers must be:

(i) The diluter demand or pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type for airplanes to be operated above 25,000 feet.

(ii) The pressure demand (pressure demand mask with a diluter demand pressure breathing regulator) type with mask-mounted regulator for airplanes operated at altitudes where

decompressions that are not extremely improbable may expose the flightcrew to cabin pressure altitudes in excess of 34,000 feet.

(4) The flight manual must contain a limitation that requires at least one flight crewmember to use 100 percent oxygen at airplane operational altitudes at which the cabin altitude could exceed 34,000 feet after pressurization failures that are not extremely improbable.

(5) Portable oxygen equipment must be immediately available for each cabin attendant.

Issued in Washington, DC, on November 14, 1989.

William J. Sullivan,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-27280 Filed 11-21-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–XX, High Altitude Subsonic Flight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25–XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC). The AC provides guidance on acceptable means, but not the only means, of demonstrating compliance with the requirements being proposed in a separate notice pertaining to type certification of transport category airplanes for operation up to 51,000 feet. This notice provides interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before March 21, 1990.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration, Attention: Transport Standards Staff (ANM–110), Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Thor, Transport Standards Staff, at the above address, telephone (206) 431–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Communications should indentify AC 25–XX and be submitted, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

As a result of the changes to part 25 proposed in Notice No. 89–31, additional material is being published in this non-regulatory advisory circular form as a possible, but not required, means of compliance. Issuance of this AC is contingent on final adoption of the proposed changes to part 25.

Issued in Seattle, Washington, on November 3, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 89–27281 Filed 11–21–89; 8:45 am]

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federal register

Wednesday
November 22, 1989

Part V

Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-2049; FR-2688-N-1]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 (1937 Act) requires that the assistance contracts signed by owners participating in the Department's section 8 Housing Assistance Payments Programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This Notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the section 8 Housing Assistance Payment Programs.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Existing Housing Division, Office of Elderly and Assisted Housing (202) 755-6887; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 426-3970; for technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 755-5577. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents (FMRs) prevailing in particular market areas or be based on a reasonable formula.

This Notice establishes revised Annual Adjustment Factors (AAFs) based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS). The revised AAFs are to be used to adjust Contract Rents under the section 8 Housing Assistance Payments Programs. HUD regulations provide that the AAFs will be published annually in the **Federal Register** (24 CFR 888.202). The annual anniversary date for publication of the AAFs is November 8. These revised AAFs apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1989.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for section 8 units. The following provides a general description of how AAFs apply under the several section 8 Housing Assistance Payments Programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, AAFs are not used to adjust Contract Rents. AAFs are not used for section 8 Certificate Program units under a HAP contract for subsidized units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to section 8 Certificate Program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units placed under HAP contract in recent years under the section 202/section 8 Program. Instead, rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving section 8 subsidies under the Loan Management provisions of 24 CFR part 886, subpart A, and for projects receiving section 8 subsidies under the Property Disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19 (e)(2) and (e)(4).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the section 8 Moderate Rehabilitation Program, the public housing agency (PHA) should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to a specified geographical area, as indicated in the Table at the end of this document. Program participants should refer to the Table that provides the list of states included in each of the four Census Regions and the metropolitan areas with separate local CPI surveys (defined by counties or New England towns) to make certain that they are using the correct factors. Units located in metropolitan areas with separate local CPI surveys must use the corresponding AAFs for that metropolitan area. Units that are located outside those metropolitan areas with separate local CPI surveys must use the AAFs for the respective Census Region within which the state is located.

Application of an AAF to the prior Contract Rent for a unit may not result in material differences between the rents charged for assisted units and unassisted units of similar quality and age in the same market area, as determined by the Secretary. (See 42 U.S.C. 1437f(c)(2)(C), and the applicable program regulations in 24 CFR chapter VIII.) Thus, an AAF for an entire primary metropolitan statistical area (PMSA) may not be uniformly applicable to all rental housing within that broad area, if a project-specific rent comparability test shows that a material difference exists between the rents charged for assisted projects and unassisted projects of similar quality and age in the same market area.

In certain cases, however, the AAF established for a particular area may result in rents that are substantially lower than rents charged for comparable units not receiving assistance under the section 8 Program. If this occurs, a PHA or private owner may apply to the HUD Field Office for consideration of a revised AAF for the area, as provided in 24 CFR 888.204.

Owners of section 8 units (other than units assisted under the section 8 Certificate and FmHA Programs) who have HAP Contracts with anniversary dates falling on November 8, 1989 through November 22, 1989 may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts. Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication of the factors as required by 24 CFR 888.202. For units assisted under the section 8 Certificate and the FmHA Programs, the factors are not applied retroactively; the annual adjustments, as of any anniversary date, are determined using the AAFs most recently published in the **Federal Register** (see 24 CFR 882.108(a)(1) and 884.109(b)(2).

Calculation of Adjustment Factors

AAFs are provided for the four Census Regions, the states of Alaska and Hawaii, and the 72 metropolitan areas with local CPI surveys (listed in alphabetical order).

As a result of decreases in the local CPI surveys, the Department is publishing AAFs that are less that 1.00 for two metropolitan areas in Colorado and five metropolitan areas in Texas. These areas are: the Denver PMSA; the Boulder PMSA; the Houston PMSA; the Brazoria PMSA, the Galveston-Texas City PMSA; the Dallas PMSA; and the Fort Worth-Arlington PMSA. The AAFs for the state of Alaska, also less than 1.00, are based on a reduction in the Anchorage CPI.

AAFs that are less than 1.00 normally would result in rent reductions. However, section 8(c)(2)(C) of the 1937 Act, as amended by section 142(d) of the Housing and Community Development Act of 1987, prohibits the reduction of contract rents for newly constructed, substantially rehabilitated, or moderately rehabilitated projects (including projects assisted under section 8 as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Therefore, contract rents for newly constructed, substantially rehabilitated or moderately rehabilitated projects (including projects assisted under section 8 as in effect prior to November 30, 1983) in areas with factors of less than 1.00 will not be reduced as a result of such factors.

Except for rent adjustments for manufactured home space rents under the section 8 Certificate Program, the formula for calculating the AAFs for each area was developed as follows: (1) The increases in the residential rent component and the fuel and utilities component of the CPI were based on the most recent available average annual changes; (2) a shelter rent factor was calculated by eliminating the effect of heating costs on the CPI residential rent component as determined by Bureau of Labor Statistics data; (3) a gross rent factor for each of the metropolitan areas covered by the CPI and for each of the four Census Regions was calculated by weighting the shelter rent and the fuel and utility changes in accordance with updated 1980 Census State weights of these component parts of rent; (4) AAFs for Contract Rents including the highest cost utility were calculated by adjusting the gross rent factors to reflect variations by rent range in each area, based on variations developed from 1987 national AHS data as applied to the local FMR levels; and (5) AAFs for Contract Rents excluding the highest cost utility were calculated by developing updated shelter rents from the updated gross rents, by rent ranges, and then dividing the updated shelter rents by that of the previous year.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

This Notice contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the section 8 Housing Assistance Payments Program as set forth in the following tables:

Dated: November 13, 1989.

Peter H. Monroe,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-27-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 100289

NORTH EAST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.076	1.092
$ 280 TO 339	1.072	1.084
$ 340 TO 399	1.068	1.078
$ 400 TO 449	1.064	1.073
$ 450 TO 509	1.060	1.060
$ 510 TO 569	1.055	1.050
$ 570 TO 679	1.047	1.038
$ 680 TO 799	1.039	1.028
$ 800 TO 909	1.030	1.028
$ 910 PLUS	1.022	1.028

MIDWEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.044	1.052
$ 230 TO 269	1.042	1.052
$ 270 TO 319	1.039	1.044
$ 320 TO 359	1.037	1.038
$ 360 TO 409	1.035	1.031
$ 410 TO 449	1.032	1.030
$ 450 TO 539	1.027	1.024
$ 540 TO 629	1.022	1.017
$ 630 TO 719	1.018	1.016
$ 720 PLUS	1.013	1.016

SOUTH CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.035	1.035
$ 220 TO 259	1.033	1.033
$ 260 TO 299	1.031	1.029
$ 300 TO 349	1.029	1.022
$ 350 TO 389	1.027	1.022
$ 390 TO 429	1.025	1.015
$ 430 TO 519	1.022	1.011
$ 520 TO 609	1.018	1.005
$ 610 TO 689	1.014	1.005
$ 690 PLUS	1.010	1.005

WEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.052	1.053
$ 300 TO 369	1.049	1.051
$ 370 TO 429	1.046	1.047
$ 430 TO 489	1.043	1.041
$ 490 TO 549	1.040	1.033
$ 550 TO 609	1.038	1.033
$ 610 TO 729	1.032	1.027
$ 730 TO 849	1.026	1.019
$ 850 TO 969	1.021	1.012
$ 970 PLUS	1.015	1.012

STATE ALASKA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	.951	.921
$ 230 TO 269	.951	.921
$ 270 TO 319	.951	.921
$ 320 TO 359	.951	.921
$ 360 TO 409	.951	.921
$ 410 TO 449	.951	.921
$ 450 TO 539	.951	.921
$ 540 TO 629	.951	.921
$ 630 TO 719	.951	.921
$ 720 PLUS	.951	.921

STATE HAWAII

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.075	1.083
$ 320 TO 379	1.071	1.077
$ 380 TO 449	1.067	1.075
$ 450 TO 509	1.062	1.071
$ 510 TO 569	1.058	1.065
$ 570 TO 639	1.054	1.056
$ 640 TO 759	1.046	1.046
$ 760 TO 889	1.038	1.038
$ 890 TO 1019	1.030	1.027
$1020 PLUS	1.022	1.027

PMSA AKRON, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.046	1.050
$ 220 TO 259	1.043	1.046
$ 260 TO 309	1.041	1.042
$ 310 TO 349	1.038	1.036
$ 350 TO 399	1.036	1.029
$ 400 TO 439	1.033	1.029
$ 440 TO 529	1.028	1.014
$ 530 TO 619	1.023	1.014
$ 620 TO 699	1.018	1.014
$ 700 PLUS	1.013	1.014

PMSA ANAHEIM-SANTA ANA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 410	1.070	1.073
$ 410 TO 489	1.066	1.069
$ 490 TO 569	1.062	1.064
$ 570 TO 649	1.059	1.056
$ 650 TO 729	1.055	1.045
$ 730 TO 809	1.051	1.045
$ 810 TO 969	1.043	1.037
$ 970 TO 1129	1.036	1.028
$1130 TO 1299	1.028	1.018
$1300 PLUS	1.020	1.018

PMSA ANN ARBOR, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.029	1.046
$ 290 TO 349	1.027	1.044
$ 350 TO 409	1.026	1.039
$ 410 TO 469	1.024	1.034
$ 470 TO 529	1.023	1.030
$ 530 TO 589	1.021	1.030
$ 590 TO 699	1.018	1.025
$ 700 TO 819	1.015	1.021
$ 820 TO 939	1.012	1.020
$ 940 PLUS	1.008	1.020

MSA ATLANTA, GA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.032	1.041
$ 270 TO 319	1.030	1.037
$ 320 TO 379	1.029	1.037
$ 380 TO 429	1.027	1.030
$ 430 TO 489	1.025	1.030
$ 490 TO 539	1.023	1.025
$ 540 TO 649	1.020	1.022
$ 650 TO 759	1.016	1.016
$ 760 TO 859	1.013	1.016
$ 860 PLUS	1.009	1.016

PMSA AURORA-ELGIN, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.059	1.086
$ 310 TO 369	1.056	1.079
$ 370 TO 429	1.053	1.075
$ 430 TO 489	1.050	1.063
$ 490 TO 549	1.046	1.056
$ 550 TO 609	1.043	1.055
$ 610 TO 739	1.037	1.037
$ 740 TO 859	1.030	1.036
$ 860 TO 979	1.024	1.036
$ 980 PLUS	1.017	1.036

MSA BALTIMORE, MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.058	1.073
$ 270 TO 319	1.055	1.064
$ 320 TO 369	1.052	1.061
$ 370 TO 429	1.048	1.057
$ 430 TO 479	1.045	1.048
$ 480 TO 529	1.042	1.042
$ 530 TO 639	1.036	1.032
$ 640 TO 749	1.029	1.023
$ 750 TO 849	1.023	1.023
$ 850 PLUS	1.017	1.023

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
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PMSA BEAVER COUNTY, PA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 220	1.021	1.030
$ 220 TO 259	1.020	1.025
$ 260 TO 309	1.019	1.025
$ 310 TO 349	1.018	1.021
$ 350 TO 389	1.017	1.016
$ 390 TO 439	1.015	1.016
$ 440 TO 519	1.013	1.010
$ 520 TO 609	1.011	1.010
$ 610 TO 699	1.008	1.009
$ 700 PLUS	1.006	1.009

PMSA BERGEN-PASSAIC, NJ

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 390	1.075	1.091
$ 390 TO 469	1.071	1.084
$ 470 TO 549	1.067	1.075
$ 550 TO 619	1.062	1.068
$ 620 TO 699	1.058	1.061
$ 700 TO 779	1.054	1.050
$ 780 TO 929	1.046	1.049
$ 930 TO 1089	1.038	1.029
$1090 TO 1249	1.030	1.028
$1250 PLUS	1.022	1.028

PMSA BOSTON, MA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 410	1.081	1.097
$ 410 TO 489	1.076	1.084
$ 490 TO 569	1.072	1.079
$ 570 TO 649	1.068	1.074
$ 650 TO 729	1.063	1.062
$ 730 TO 809	1.059	1.049
$ 810 TO 969	1.050	1.038
$ 970 TO 1139	1.041	1.027
$1140 TO 1299	1.032	1.027
$1300 PLUS	1.023	1.027

PMSA BOULDER-LONGMONT, CO

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 220	.986	.982
$ 220 TO 259	.986	.982
$ 260 TO 309	.986	.982
$ 310 TO 349	.986	.982
$ 350 TO 389	.986	.982
$ 390 TO 439	.986	.982
$ 440 TO 519	.986	.982
$ 520 TO 609	.986	.982
$ 610 TO 699	.986	.982
$ 700 PLUS	.986	.982

PMSA BRAZORIA, TX

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 390	.993	.981
$ 390 TO 469	.993	.981
$ 470 TO 549	.993	.981
$ 550 TO 619	.993	.981
$ 620 TO 699	.993	.981
$ 700 TO 779	.993	.981
$ 780 TO 929	.993	.981
$ 930 TO 1089	.993	.981
$1090 TO 1249	.993	.981
$1250 PLUS	.993	.981

PMSA BRIDGEPORT-MILFORD, CT

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 310	1.072	1.089
$ 310 TO 369	1.068	1.082
$ 370 TO 429	1.064	1.077
$ 430 TO 489	1.060	1.061
$ 490 TO 559	1.056	1.061
$ 560 TO 619	1.052	1.053
$ 620 TO 739	1.044	1.041
$ 740 TO 859	1.036	1.030
$ 860 TO 989	1.028	1.029
$ 990 PLUS	1.021	1.029

PMSA BROCKTON, MA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 320	1.081	1.097
$ 320 TO 379	1.076	1.086
$ 380 TO 449	1.072	1.077
$ 450 TO 509	1.068	1.073
$ 510 TO 579	1.063	1.062
$ 580 TO 639	1.059	1.051
$ 640 TO 769	1.050	1.040
$ 770 TO 899	1.041	1.028
$ 900 TO 1029	1.032	1.028
$1030 PLUS	1.023	1.028

PMSA BUFFALO, NY

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 220	1.079	1.080
$ 220 TO 259	1.075	1.075
$ 260 TO 299	1.071	1.071
$ 300 TO 349	1.066	1.052
$ 350 TO 389	1.062	1.051
$ 390 TO 429	1.058	1.041
$ 430 TO 519	1.049	1.029
$ 520 TO 599	1.040	1.018
$ 600 TO 689	1.032	1.017
$ 690 PLUS	1.023	1.017

PMSA CHICAGO, IL

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 300	1.066	1.089
$ 300 TO 359	1.062	1.082
$ 360 TO 419	1.058	1.074
$ 420 TO 479	1.055	1.062
$ 480 TO 539	1.051	1.061
$ 540 TO 599	1.048	1.053
$ 600 TO 719	1.040	1.044
$ 720 TO 839	1.033	1.033
$ 840 TO 959	1.026	1.032
$ 960 PLUS	1.019	1.032

PMSA CINCINNATI, OH-KY-IN

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 200	1.059	1.078
$ 200 TO 239	1.056	1.077
$ 240 TO 279	1.053	1.069
$ 280 TO 319	1.050	1.057
$ 320 TO 359	1.046	1.047
$ 360 TO 399	1.043	1.047
$ 400 TO 479	1.037	1.041
$ 480 TO 559	1.030	1.029
$ 560 TO 639	1.024	1.029
$ 640 PLUS	1.017	1.029

PMSA CLEVELAND, OH

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 230	1.046	1.052
$ 230 TO 269	1.043	1.052
$ 270 TO 319	1.041	1.044
$ 320 TO 369	1.038	1.038
$ 370 TO 409	1.036	1.028
$ 410 TO 459	1.033	1.028
$ 460 TO 549	1.028	1.014
$ 550 TO 639	1.023	1.013
$ 640 TO 729	1.018	1.013
$ 730 PLUS	1.013	1.013

PMSA DALLAS, TX

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 300	.989	.974
$ 300 TO 359	.989	.974
$ 360 TO 419	.989	.974
$ 420 TO 479	.989	.974
$ 480 TO 539	.989	.974
$ 540 TO 599	.989	.974
$ 600 TO 719	.989	.974
$ 720 TO 839	.989	.974
$ 840 TO 959	.989	.974
$ 960 PLUS	.989	.974

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PMSA DANBURY, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.072	1.095
$ 330 TO 399	1.068	1.082
$ 400 TO 469	1.064	1.076
$ 470 TO 539	1.060	1.063
$ 540 TO 599	1.056	1.063
$ 600 TO 669	1.052	1.052
$ 670 TO 799	1.044	1.041
$ 800 TO 939	1.036	1.030
$ 940 TO 1069	1.028	1.030
$1070 PLUS	1.021	1.030

PMSA DENVER, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	.986	.982
$ 230 TO 269	.986	.982
$ 270 TO 319	.986	.982
$ 320 TO 369	.986	.982
$ 370 TO 409	.986	.982
$ 410 TO 459	.986	.982
$ 460 TO 549	.986	.982
$ 550 TO 639	.986	.982
$ 640 TO 729	.986	.982
$ 730 PLUS	.986	.982

PMSA DETROIT, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.029	1.049
$ 270 TO 319	1.027	1.044
$ 320 TO 369	1.026	1.041
$ 370 TO 429	1.024	1.035
$ 430 TO 479	1.023	1.031
$ 480 TO 529	1.021	1.030
$ 530 TO 639	1.018	1.026
$ 640 TO 749	1.015	1.022
$ 750 TO 849	1.012	1.021
$ 850 PLUS	1.008	1.021

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.047	1.052
$ 280 TO 339	1.045	1.045
$ 340 TO 389	1.042	1.038
$ 390 TO 449	1.039	1.038
$ 450 TO 509	1.037	1.031
$ 510 TO 559	1.034	1.030
$ 560 TO 679	1.029	1.024
$ 680 TO 789	1.024	1.011
$ 790 TO 899	1.019	1.011
$ 900 PLUS	1.014	1.011

PMSA FORT WORTH-ARLINGTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	.989	.974
$ 230 TO 269	.989	.974
$ 270 TO 319	.989	.974
$ 320 TO 369	.989	.974
$ 370 TO 409	.989	.974
$ 410 TO 459	.989	.974
$ 460 TO 549	.989	.974
$ 550 TO 639	.989	.974
$ 640 TO 729	.989	.974
$ 730 PLUS	.989	.974

PMSA GALVESTON-TEXAS CITY, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	.993	.981
$ 270 TO 319	.993	.981
$ 320 TO 369	.993	.981
$ 370 TO 429	.993	.981
$ 430 TO 479	.993	.981
$ 480 TO 529	.993	.981
$ 530 TO 639	.993	.981
$ 640 TO 749	.993	.981
$ 750 TO 849	.993	.981
$ 850 PLUS	.993	.981

PMSA GARY-HAMMOND, IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.059	1.088
$ 240 TO 289	1.056	1.079
$ 290 TO 339	1.053	1.076
$ 340 TO 389	1.050	1.063
$ 390 TO 439	1.046	1.055
$ 440 TO 489	1.043	1.045
$ 490 TO 589	1.037	1.035
$ 590 TO 679	1.030	1.035
$ 680 TO 779	1.024	1.035
$ 780 PLUS	1.017	1.035

PMSA HAMILTON-MIDDLETOWN, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.059	1.082
$ 220 TO 269	1.056	1.078
$ 270 TO 309	1.053	1.069
$ 310 TO 359	1.050	1.057
$ 360 TO 399	1.046	1.050
$ 400 TO 449	1.043	1.049
$ 450 TO 539	1.037	1.038
$ 540 TO 629	1.030	1.031
$ 630 TO 719	1.024	1.030
$ 720 PLUS	1.017	1.030

PMSA HOUSTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	.993	.981
$ 270 TO 319	.993	.981
$ 320 TO 369	.993	.981
$ 370 TO 429	.993	.981
$ 430 TO 479	.993	.981
$ 480 TO 529	.993	.981
$ 530 TO 639	.993	.981
$ 640 TO 749	.993	.981
$ 750 TO 849	.993	.981
$ 850 PLUS	.993	.981

PMSA JERSEY CITY, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.075	1.094
$ 270 TO 319	1.071	1.081
$ 320 TO 369	1.067	1.075
$ 370 TO 429	1.062	1.070
$ 430 TO 479	1.058	1.059
$ 480 TO 539	1.054	1.049
$ 540 TO 639	1.046	1.041
$ 640 TO 749	1.038	1.030
$ 750 TO 859	1.030	1.030
$ 860 PLUS	1.022	1.030

PMSA JOLIET, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.066	1.089
$ 310 TO 369	1.062	1.082
$ 370 TO 429	1.058	1.077
$ 430 TO 489	1.055	1.063
$ 490 TO 549	1.051	1.063
$ 550 TO 619	1.048	1.053
$ 620 TO 739	1.040	1.043
$ 740 TO 859	1.033	1.034
$ 860 TO 979	1.026	1.034
$ 980 PLUS	1.019	1.033

PMSA KANSAS CITY, MO-KS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.030	1.036
$ 220 TO 269	1.029	1.033
$ 270 TO 309	1.027	1.028
$ 310 TO 359	1.025	1.024
$ 360 TO 399	1.024	1.018
$ 400 TO 449	1.022	1.018
$ 450 TO 529	1.019	1.008
$ 530 TO 619	1.015	1.008
$ 620 TO 709	1.012	1.008
$ 710 PLUS	1.009	1.008

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 100289

PMSA KENOSHA, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.064	1.084
$ 240 TO 289	1.061	1.083
$ 290 TO 329	1.057	1.071
$ 330 TO 379	1.054	1.065
$ 380 TO 429	1.050	1.064
$ 430 TO 479	1.046	1.053
$ 480 TO 569	1.039	1.044
$ 570 TO 669	1.032	1.034
$ 670 TO 759	1.025	1.034
$ 760 PLUS	1.018	1.033

PMSA LAKE COUNTY, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.066	1.091
$ 310 TO 379	1.062	1.081
$ 380 TO 439	1.058	1.078
$ 440 TO 499	1.055	1.062
$ 500 TO 559	1.051	1.062
$ 560 TO 629	1.048	1.052
$ 630 TO 749	1.040	1.043
$ 750 TO 879	1.033	1.033
$ 880 TO 999	1.026	1.033
$1000 PLUS	1.019	1.033

PMSA LAWRENCE-HAVERHILL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.081	1.098
$ 330 TO 399	1.076	1.085
$ 400 TO 459	1.072	1.077
$ 460 TO 529	1.068	1.073
$ 530 TO 589	1.063	1.061
$ 590 TO 659	1.059	1.051
$ 660 TO 789	1.050	1.040
$ 790 TO 919	1.041	1.027
$ 920 TO 1059	1.032	1.027
$1060 PLUS	1.023	1.027

PMSA LORAIN-ELYRIA, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.046	1.050
$ 220 TO 259	1.043	1.046
$ 260 TO 299	1.041	1.043
$ 300 TO 349	1.038	1.037
$ 350 TO 389	1.036	1.030
$ 390 TO 429	1.033	1.027
$ 430 TO 519	1.028	1.015
$ 520 TO 609	1.023	1.014
$ 610 TO 689	1.018	1.014
$ 690 PLUS	1.013	1.014

PMSA LOS ANGELES-LONG BEACH, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.070	1.076
$ 350 TO 419	1.066	1.068
$ 420 TO 489	1.062	1.066
$ 490 TO 559	1.059	1.055
$ 560 TO 629	1.055	1.047
$ 630 TO 699	1.051	1.047
$ 700 TO 839	1.043	1.038
$ 840 TO 979	1.036	1.027
$ 980 TO 1119	1.028	1.018
$1120 PLUS	1.020	1.018

PMSA LOWELL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.081	1.096
$ 310 TO 369	1.076	1.085
$ 370 TO 429	1.072	1.077
$ 430 TO 489	1.068	1.072
$ 490 TO 559	1.063	1.061
$ 560 TO 619	1.059	1.051
$ 620 TO 739	1.050	1.040
$ 740 TO 859	1.041	1.027
$ 860 TO 989	1.032	1.027
$ 990 PLUS	1.023	1.027

PMSA MIAMI-HIALEAH, FL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.047	1.052
$ 280 TO 339	1.045	1.045
$ 340 TO 389	1.042	1.038
$ 390 TO 449	1.039	1.038
$ 450 TO 509	1.037	1.031
$ 510 TO 559	1.034	1.024
$ 560 TO 669	1.029	1.024
$ 670 TO 789	1.024	1.011
$ 790 TO 899	1.019	1.011
$ 900 PLUS	1.014	1.011

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 360	1.075	1.092
$ 360 TO 429	1.071	1.081
$ 430 TO 499	1.067	1.075
$ 500 TO 569	1.062	1.071
$ 570 TO 649	1.058	1.062
$ 650 TO 719	1.054	1.051
$ 720 TO 859	1.046	1.041
$ 860 TO 999	1.038	1.029
$1000 TO 1149	1.030	1.029
$1150 PLUS	1.022	1.029

PMSA MILWAUKEE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.050	1.059
$ 230 TO 279	1.048	1.055
$ 280 TO 329	1.045	1.052
$ 330 TO 369	1.042	1.040
$ 370 TO 419	1.039	1.040
$ 420 TO 469	1.037	1.034
$ 470 TO 559	1.031	1.027
$ 560 TO 649	1.026	1.020
$ 650 TO 749	1.020	1.019
$ 750 PLUS	1.015	1.019

MSA MINNEAPOLIS-ST. PAUL, MN-WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.035	1.031
$ 280 TO 329	1.033	1.026
$ 330 TO 389	1.031	1.025
$ 390 TO 439	1.029	1.022
$ 440 TO 499	1.027	1.017
$ 500 TO 549	1.025	1.013
$ 550 TO 659	1.022	1.007
$ 660 TO 769	1.018	1.003
$ 770 TO 879	1.014	1.002
$ 880 PLUS	1.010	1.002

PMSA MONMOUTH-OCEAN, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.075	1.091
$ 320 TO 389	1.071	1.082
$ 390 TO 449	1.067	1.076
$ 450 TO 519	1.062	1.070
$ 520 TO 579	1.058	1.060
$ 580 TO 639	1.054	1.051
$ 640 TO 769	1.046	1.040
$ 770 TO 899	1.038	1.030
$ 900 TO 1029	1.030	1.029
$1030 PLUS	1.022	1.029

PMSA NASHUA, NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.081	1.098
$ 320 TO 389	1.076	1.087
$ 390 TO 449	1.072	1.079
$ 450 TO 519	1.068	1.074
$ 520 TO 579	1.063	1.062
$ 580 TO 649	1.059	1.050
$ 650 TO 779	1.050	1.041
$ 780 TO 909	1.041	1.027
$ 910 TO 1039	1.032	1.027
$1040 PLUS	1.023	1.027

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PMSA NASSAU-SUFFOLK, NY

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 380	1.075	1.091
$ 380 TO 459	1.071	1.086
$ 460 TO 529	1.067	1.075
$ 530 TO 609	1.062	1.068
$ 610 TO 689	1.058	1.060
$ 690 TO 759	1.054	1.050
$ 760 TO 909	1.046	1.049
$ 910 TO 1069	1.038	1.028
$1070 TO 1219	1.030	1.028
$1220 PLUS	1.022	1.028

PMSA NIAGARA FALLS, NY

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 210	1.079	1.079
$ 210 TO 249	1.075	1.074
$ 250 TO 289	1.071	1.070
$ 290 TO 329	1.066	1.052
$ 330 TO 369	1.062	1.051
$ 370 TO 409	1.058	1.038
$ 410 TO 499	1.049	1.029
$ 500 TO 579	1.040	1.017
$ 580 TO 659	1.032	1.016
$ 660 PLUS	1.023	1.016

PMSA ORANGE COUNTY, NY

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 280	1.075	1.092
$ 280 TO 339	1.071	1.084
$ 340 TO 399	1.067	1.076
$ 400 TO 449	1.062	1.071
$ 450 TO 509	1.058	1.058
$ 510 TO 569	1.054	1.058
$ 570 TO 679	1.046	1.048
$ 680 TO 799	1.038	1.030
$ 800 TO 909	1.030	1.029
$ 910 PLUS	1.022	1.029

PMSA PITTSBURGH, PA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 230	1.021	1.029
$ 230 TO 279	1.020	1.027
$ 280 TO 319	1.019	1.023
$ 320 TO 369	1.018	1.020
$ 370 TO 419	1.017	1.018
$ 420 TO 459	1.015	1.016
$ 460 TO 549	1.013	1.014
$ 550 TO 649	1.011	1.010
$ 650 TO 739	1.008	1.010
$ 740 PLUS	1.006	1.010

PMSA NEW YORK, NY

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 290	1.075	1.091
$ 290 TO 339	1.071	1.086
$ 340 TO 399	1.067	1.076
$ 400 TO 459	1.062	1.070
$ 460 TO 519	1.058	1.059
$ 520 TO 569	1.054	1.059
$ 570 TO 689	1.046	1.049
$ 690 TO 799	1.038	1.030
$ 800 TO 919	1.030	1.029
$ 920 PLUS	1.022	1.029

PMSA NORWALK, CT

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 360	1.072	1.089
$ 360 TO 429	1.068	1.084
$ 430 TO 499	1.064	1.077
$ 500 TO 569	1.060	1.062
$ 570 TO 639	1.056	1.062
$ 640 TO 709	1.052	1.052
$ 710 TO 849	1.044	1.041
$ 850 TO 989	1.036	1.029
$ 990 TO 1139	1.028	1.029
$1140 PLUS	1.021	1.029

PMSA OXNARD-VENTURA, CA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 350	1.070	1.076
$ 350 TO 419	1.066	1.068
$ 420 TO 479	1.062	1.064
$ 480 TO 549	1.059	1.054
$ 550 TO 619	1.055	1.046
$ 620 TO 689	1.051	1.046
$ 690 TO 829	1.043	1.037
$ 830 TO 969	1.036	1.028
$ 970 TO 1109	1.028	1.018
$1110 PLUS	1.020	1.018

PMSA PORTLAND, OR

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 240	1.055	1.060
$ 240 TO 289	1.052	1.057
$ 290 TO 339	1.049	1.054
$ 340 TO 389	1.046	1.047
$ 390 TO 439	1.043	1.041
$ 440 TO 489	1.040	1.039
$ 490 TO 589	1.034	1.031
$ 590 TO 679	1.028	1.017
$ 680 TO 779	1.022	1.017
$ 780 PLUS	1.016	1.017

PMSA NEWARK, NJ

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 300	1.075	1.093
$ 300 TO 359	1.071	1.082
$ 360 TO 419	1.067	1.077
$ 420 TO 479	1.062	1.071
$ 480 TO 539	1.058	1.061
$ 540 TO 599	1.054	1.049
$ 600 TO 719	1.046	1.041
$ 720 TO 839	1.038	1.029
$ 840 TO 959	1.030	1.029
$ 960 PLUS	1.022	1.029

PMSA OAKLAND, CA

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 400	1.070	1.067
$ 400 TO 479	1.066	1.061
$ 480 TO 559	1.062	1.058
$ 560 TO 639	1.059	1.053
$ 640 TO 719	1.055	1.040
$ 720 TO 799	1.051	1.038
$ 800 TO 959	1.043	1.030
$ 960 TO 1109	1.036	1.020
$1110 TO 1269	1.028	1.011
$1270 PLUS	1.020	1.011

PMSA PHILADELPHIA, PA-NJ

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 260	1.073	1.087
$ 260 TO 319	1.069	1.083
$ 320 TO 369	1.065	1.072
$ 370 TO 419	1.061	1.061
$ 420 TO 469	1.057	1.061
$ 470 TO 529	1.053	1.050
$ 530 TO 629	1.045	1.040
$ 630 TO 739	1.037	1.029
$ 740 TO 839	1.029	1.029
$ 840 PLUS	1.021	1.029

PMSA RACINE, WI

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
UNDER $ 220	1.050	1.062
$ 220 TO 269	1.048	1.057
$ 270 TO 309	1.045	1.052
$ 310 TO 359	1.042	1.042
$ 360 TO 399	1.039	1.042
$ 400 TO 439	1.037	1.033
$ 440 TO 529	1.031	1.027
$ 530 TO 619	1.026	1.019
$ 620 TO 709	1.020	1.019
$ 710 PLUS	1.015	1.019

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 100289

PMSA RIVERSIDE-SAN BERNARDINO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.070	1.072
$ 280 TO 339	1.066	1.071
$ 340 TO 399	1.062	1.065
$ 400 TO 449	1.059	1.056
$ 450 TO 509	1.055	1.048
$ 510 TO 569	1.051	1.046
$ 570 TO 679	1.043	1.037
$ 680 TO 789	1.036	1.027
$ 790 TO 909	1.028	1.018
$ 910 PLUS	1.020	1.018

MSA SAN DIEGO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.046	1.051
$ 330 TO 399	1.043	1.047
$ 400 TO 469	1.041	1.044
$ 470 TO 539	1.038	1.042
$ 540 TO 599	1.036	1.033
$ 600 TO 669	1.033	1.033
$ 670 TO 799	1.028	1.026
$ 800 TO 939	1.023	1.020
$ 940 TO 1069	1.018	1.014
$1070 PLUS	1.013	1.014

PMSA SANTA CRUZ, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 390	1.070	1.066
$ 390 TO 469	1.066	1.063
$ 470 TO 549	1.062	1.057
$ 550 TO 619	1.059	1.048
$ 620 TO 699	1.055	1.039
$ 700 TO 779	1.051	1.039
$ 780 TO 939	1.043	1.029
$ 940 TO 1089	1.036	1.020
$1090 TO 1249	1.028	1.011
$1250 PLUS	1.020	1.011

PMSA STAMFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 430	1.072	1.087
$ 430 TO 509	1.068	1.083
$ 510 TO 599	1.064	1.079
$ 600 TO 679	1.060	1.063
$ 680 TO 769	1.056	1.062
$ 770 TO 859	1.052	1.052
$ 860 TO 1029	1.044	1.041
$1030 TO 1199	1.036	1.030
$1200 TO 1369	1.028	1.030
$1370 PLUS	1.021	1.030

PMSA ST. LOUIS, MO-IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.026	1.029
$ 230 TO 279	1.024	1.027
$ 280 TO 329	1.023	1.026
$ 330 TO 369	1.022	1.020
$ 370 TO 419	1.020	1.020
$ 420 TO 469	1.019	1.018
$ 470 TO 559	1.016	1.012
$ 560 TO 649	1.013	1.008
$ 650 TO 739	1.010	1.008
$ 740 PLUS	1.007	1.008

PMSA SAN FRANCISCO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 440	1.070	1.065
$ 440 TO 519	1.066	1.060
$ 520 TO 609	1.062	1.057
$ 610 TO 699	1.059	1.052
$ 700 TO 789	1.055	1.039
$ 790 TO 869	1.051	1.039
$ 870 TO 1049	1.043	1.029
$1050 TO 1219	1.036	1.019
$1220 TO 1399	1.028	1.011
$1400 PLUS	1.020	1.011

PMSA SANTA ROSA-PETALUMA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.070	1.066
$ 340 TO 409	1.066	1.064
$ 410 TO 479	1.062	1.058
$ 480 TO 549	1.059	1.052
$ 550 TO 619	1.055	1.039
$ 620 TO 689	1.051	1.038
$ 690 TO 819	1.043	1.030
$ 820 TO 959	1.036	1.020
$ 960 TO 1099	1.028	1.011
$1100 PLUS	1.020	1.011

PMSA TACOMA, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.058	1.072
$ 220 TO 269	1.055	1.065
$ 270 TO 309	1.052	1.059
$ 310 TO 349	1.048	1.055
$ 350 TO 399	1.045	1.045
$ 400 TO 439	1.042	1.045
$ 440 TO 529	1.036	1.037
$ 530 TO 619	1.029	1.023
$ 620 TO 709	1.023	1.021
$ 710 PLUS	1.017	1.021

PMSA SALEM-GLOUCESTER, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 360	1.081	1.098
$ 360 TO 429	1.076	1.084
$ 430 TO 499	1.072	1.077
$ 500 TO 579	1.068	1.072
$ 580 TO 649	1.063	1.062
$ 650 TO 719	1.059	1.051
$ 720 TO 869	1.050	1.038
$ 870 TO 1009	1.041	1.028
$1010 TO 1149	1.032	1.028
$1150 PLUS	1.023	1.027

PMSA SAN JOSE, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 410	1.070	1.066
$ 410 TO 499	1.066	1.062
$ 500 TO 579	1.062	1.056
$ 580 TO 659	1.059	1.047
$ 660 TO 739	1.055	1.039
$ 740 TO 829	1.051	1.038
$ 830 TO 989	1.043	1.030
$ 990 TO 1159	1.036	1.020
$1160 TO 1319	1.028	1.011
$1320 PLUS	1.020	1.011

PMSA SEATTLE, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.058	1.073
$ 250 TO 309	1.055	1.068
$ 310 TO 359	1.052	1.057
$ 360 TO 409	1.048	1.055
$ 410 TO 459	1.045	1.046
$ 460 TO 509	1.042	1.045
$ 510 TO 609	1.036	1.037
$ 610 TO 709	1.029	1.021
$ 710 TO 819	1.023	1.021
$ 820 PLUS	1.017	1.021

PMSA TRENTON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.076	1.095
$ 330 TO 399	1.072	1.085
$ 400 TO 469	1.068	1.078
$ 470 TO 529	1.064	1.074
$ 530 TO 599	1.060	1.062
$ 600 TO 669	1.055	1.050
$ 670 TO 799	1.047	1.039
$ 800 TO 929	1.039	1.029
$ 930 TO 1069	1.030	1.029
$1070 PLUS	1.022	1.029

SCHEDULE C. - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 100289

PMSA VALLEJO-FAIRFIELD-NAPA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.070	1.067
$ 300 TO 359	1.066	1.061
$ 360 TO 419	1.062	1.056
$ 420 TO 479	1.059	1.053
$ 480 TO 539	1.055	1.039
$ 540 TO 599	1.051	1.039
$ 600 TO 719	1.043	1.030
$ 720 TO 839	1.036	1.021
$ 840 TO 959	1.028	1.011
$ 960 PLUS	1.020	1.011

MSA WASHINGTON, DC-MD-VA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.099	1.115
$ 340 TO 409	1.094	1.109
$ 410 TO 479	1.088	1.097
$ 480 TO 549	1.083	1.089
$ 550 TO 619	1.077	1.075
$ 620 TO 689	1.072	1.075
$ 690 TO 819	1.061	1.062
$ 820 TO 959	1.050	1.035
$ 960 TO 1099	1.039	1.035
$1100 PLUS	1.029	1.035

PMSA VANCOUVER, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.055	1.060
$ 220 TO 259	1.052	1.058
$ 260 TO 309	1.049	1.056
$ 310 TO 349	1.046	1.048
$ 350 TO 389	1.043	1.041
$ 390 TO 439	1.040	1.041
$ 440 TO 529	1.034	1.031
$ 530 TO 609	1.028	1.025
$ 610 TO 699	1.022	1.017
$ 700 PLUS	1.016	1.017

COUNTY WESTCHESTER, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.075	1.092
$ 340 TO 409	1.071	1.085
$ 410 TO 479	1.067	1.074
$ 480 TO 549	1.062	1.070
$ 550 TO 609	1.058	1.059
$ 610 TO 679	1.054	1.059
$ 680 TO 819	1.046	1.049
$ 820 TO 959	1.038	1.029
$ 960 TO 1089	1.030	1.028
$1090 PLUS	1.022	1.028

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.076	1.090
$ 270 TO 319	1.072	1.085
$ 320 TO 369	1.068	1.078
$ 370 TO 429	1.064	1.072
$ 430 TO 479	1.060	1.062
$ 480 TO 539	1.055	1.051
$ 540 TO 639	1.047	1.039
$ 640 TO 749	1.039	1.029
$ 750 TO 859	1.030	1.029
$ 860 PLUS	1.022	1.029

PMSA WILMINGTON, DE-NJ-MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.070	1.092
$ 280 TO 339	1.066	1.081
$ 340 TO 389	1.062	1.074
$ 390 TO 449	1.059	1.064
$ 450 TO 499	1.055	1.053
$ 500 TO 559	1.051	1.042
$ 560 TO 669	1.043	1.029
$ 670 TO 779	1.036	1.029
$ 780 TO 889	1.028	1.029
$ 890 PLUS	1.020	1.029

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE

PREPARED ON 100289

AREA	FACTOR
NORTH EAST CENSUS REGION	1.063
SOUTH CENSUS REGION	1.022
STATE ALASKA	.921
PMSA AKRON, OH	1.038
PMSA ANN ARBOR, MI	1.037
PMSA AURORA-ELGIN, IL	1.067
PMSA BEAVER COUNTY, PA	1.022
PMSA BOSTON, MA	1.065
PMSA BRAZORIA, TX	.981
PMSA BROCKTON, MA	1.065
PMSA CHICAGO, IL	1.064
PMSA CLEVELAND, OH	1.038
PMSA DANBURY, CT	1.064
PMSA DETROIT, MI	1.037
PMSA FORT WORTH-ARLINGTON, TX	.974
PMSA GARY-HAMMOND, IN	1.067
PMSA HOUSTON, TX	.981
PMSA JOLIET, IL	1.064
PMSA KENOSHA, WI	1.065
PMSA LAWRENCE-HAVERHILL, MA-NH	1.065
PMSA LOS ANGELES-LONG BEACH, CA	1.049
PMSA MIAMI-HIALEAH, FL	1.034
PMSA MILWAUKEE, WI	1.045
PMSA MONMOUTH-OCEAN, NJ	1.062
PMSA NASSAU-SUFFOLK, NY	1.062
PMSA NEWARK, NJ	1.062
PMSA NORWALK, CT	1.064
PMSA ORANGE COUNTY, NY	1.062
PMSA PHILADELPHIA, PA-NJ	1.066
PMSA PORTLAND, OR	1.041
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.049
PMSA SALEM-GLOUCESTER, MA	1.065
PMSA SAN FRANCISCO, CA	1.043
PMSA SANTA CRUZ, CA	1.043
PMSA SEATTLE, WA	1.047
PMSA TACOMA, WA	1.047
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.043
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.065
COUNTY WESTCHESTER, NY	1.062

AREA	FACTOR
MIDWEST CENSUS REGION	1.039
WEST CENSUS REGION	1.035
STATE HAWAII	1.058
PMSA ANAHEIM-SANTA ANA, CA	1.049
MSA ATLANTA, GA	1.030
MSA BALTIMORE, MD	1.051
PMSA BERGEN-PASSAIC, NJ	1.062
PMSA BOULDER-LONGMONT, CO	.982
PMSA BRIDGEPORT-MILFORD, CT	1.064
PMSA BUFFALO, NY	1.056
PMSA CINCINNATI, OH-KY-IN	1.060
PMSA DALLAS, TX	.974
PMSA DENVER, CO	.982
PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC	1.034
PMSA GALVESTON-TEXAS CITY, TX	.981
PMSA HAMILTON-MIDDLETOWN, OH	1.060
PMSA JERSEY CITY, NJ	1.062
PMSA KANSAS CITY, MO-KS	1.024
PMSA LAKE COUNTY, IL	1.064
PMSA LORAIN-ELYRIA, OH	1.038
PMSA LOWELL, MA-NH	1.065
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.062
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.020
PMSA NASHUA, NH	1.065
PMSA NEW YORK, NY	1.062
PMSA NIAGARA FALLS, NY	1.056
PMSA OAKLAND, CA	1.043
PMSA OXNARD-VENTURA, CA	1.049
PMSA PITTSBURGH, PA	1.022
PMSA RACINE, WI	1.045
PMSA ST. LOUIS, MO-IL	1.021
MSA SAN DIEGO, CA	1.034
PMSA SAN JOSE, CA	1.043
PMSA SANTA ROSA-PETALUMA, CA	1.043
PMSA STAMFORD, CT	1.064
PMSA TRENTON, NJ	1.065
PMSA VANCOUVER, WA	1.041
MSA WASHINGTON, DC-MD-VA	1.079
PMSA WILMINGTON, DE-NJ-MD	1.067

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF REGIONS

AREA TITLE	DEFINITION
NORTHEAST CENSUS REGION	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST CENSUS REGION	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
SOUTH CENSUS REGION	Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia
WEST CENSUS REGION	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming
OUTLYING AREAS	Puerto Rico and Virgin Islands use the south census region factors Guam and Trust Territories use the west census region factors

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Akron, Oh	COUNTY(IES) Portage, Summit Oh
Anaheim-Santa Ana, Ca	COUNTY(IES) Orange Ca
Ann Arbor, Mi	COUNTY(IES) Washtenaw Mi
Atlanta, Ga	COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga
Aurora-Elgin, Il	COUNTY(IES) Kane, Kendall Il
Baltimore, Md	COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md
Beaver County, Pa	COUNTY(IES) Beaver Pa
Bergen-Passaic, Nj	COUNTY(IES) Bergen, Passaic Nj
Boston, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Boulder-Longmont, Co	COUNTY(IES) Boulder Co
Brazoria, Tx	COUNTY(IES) Brazoria Tx
Bridgeport-Milford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
Brockton, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Easton COUNTY Norfolk, Ma (PART): TOWNS OF Avon COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman
Buffalo, Ny	COUNTY(IES) Erie Ny
Chicago, Il	COUNTY(IES) Cook, Du Page, Mchenry Il
Cincinnati, Oh-Ky-In	COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh
Cleveland, Oh	COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh
Dallas, Tx	COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx
Danbury, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford
Denver, Co	COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co
Detroit, Mi	COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi
Fort Lauderdale-Hollywood-Pompano Beach, Fl	COUNTY(IES) Broward Fl
Fort Worth-Arlington, Tx	COUNTY(IES) Johnson, Parker, Tarrant Tx
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Gary-Hammond, In	COUNTY(IES) Lake, Porter In
Hamilton-Middletown, Oh	COUNTY(IES) Butler Oh
Houston, Tx	COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx
Jersey City, Nj	COUNTY(IES) Hudson Nj
Joliet, Il	COUNTY(IES) Grundy, Will Il
Kansas City, Mo-Ks	COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo
Kenosha, Wi	COUNTY(IES) Kenosha Wi
Lake County, Il	COUNTY(IES) Lake Il

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Lawrence-Haverhill, Ma-Nh	COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham
Lorain-Elyria, Oh	COUNTY(IES) Lorain Oh
Los Angeles-Long Beach, Ca	COUNTY(IES) Los Angeles Ca
Lowell, Ma-Nh	COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham
Miami-Hialeah, Fl	COUNTY(IES) Dade Fl
Middlesex-Somerset-Hunterdon, Nj	COUNTY(IES) Hunterdon, Middlesex, Somerset Nj
Milwaukee, Wi	COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi
Minneapolis-St. Paul, Mn-Wi	COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi
Monmouth-Ocean, Nj	COUNTY(IES) Monmouth, Ocean Nj
Nashua, Nh	COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry
Nassau-Suffolk, Ny	COUNTY(IES) Nassau, Suffolk Ny
New York, Ny	COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland Ny
Newark, Nj	COUNTY(IES) Essex, Morris, Sussex, Union Nj
Niagara Falls, Ny	COUNTY(IES) Niagara Ny
Norwalk, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton
Oakland, Ca	COUNTY(IES) Alameda, Contra Costa Ca
Orange County, Ny	COUNTY(IES) Orange Ny
Oxnard-Ventura, Ca	COUNTY(IES) Ventura
Philadelphia, Pa-Nj	COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa
Pittsburgh, Pa	COUNTY(IES) Allegheny, Fayette, Washington, Westmoreland Pa
Portland, Or	COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or
Racine, Wi	COUNTY(IES) Racine Wi

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Riverside-San Bernardino, Ca	COUNTY(IES) Riverside, San Bernadin Ca
St. Louis, Mo-Il	COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo
Salem-Gloucester, Ma	COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham
San Diego, Ca	COUNTY(IES) San Diego Ca
San Francisco, Ca	COUNTY(IES) Marin, San Francisc, San Mateo Ca
San Jose, Ca	COUNTY(IES) Santa Clara Ca
Santa Cruz, Ca	COUNTY(IES) Santa Cruz Ca
Santa Rosa-Petaluma, Ca	COUNTY(IES) Sonoma Ca
Seattle, Wa	COUNTY(IES) King, Snohomish Wa
Stamford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford
Tacoma, Wa	COUNTY(IES) Pierce Wa
Trenton, Nj	COUNTY(IES) Mercer Nj
Vallejo-Fairfield-Napa, Ca	COUNTY(IES) Napa, Solano Ca
Vancouver, Wa	COUNTY(IES) Clark Wa
Vineland-Millville-Bridgeton, Nj	COUNTY(IES) Cumberland Nj
Washington, Dc-Md-Va	COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va
Wilmington, De-Nj-Md	COUNTY(IES) New Castle De; Cecil Md; Salem Nj

[FR Doc. 89-27480 Filed 11-21-89; 8:45 am]
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federal register

Wednesday
November 22, 1989

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 44

Termination of Waivers Granted Under the Federal Metal and Nonmetallic Mine Safety Act of 1966

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 44

Termination of Waivers Granted Under the Federal Metal and Nonmetallic Mine Safety Act of 1966

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of termination.

SUMMARY: This notice terminates variances granted under the 1966 Federal Metal and Nonmetallic Mine Safety Act, (Metal and Nonmetal Act), Public Law 89–577, under procedures formerly codified in 30 CFR 55.24–1, 56.24–1, and 57.24–1. The termination of the variances will be stayed for mine operators or miners' representatives desiring continued relief from an existing mandatory safety standard upon the submission of a petition for modification under section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The petition must be filed within 180 days of the publication of this notice and according to the procedures found at 30 CFR part 44.

DATES: This action is effective as of April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Standards promulgated under the Metal and Nonmetal Act granted authority to Metal and Nonmetal district managers to issue variances in accordance with the procedures and subject to the limitations and restrictions formerly set forth in 30 CFR 55.24, 56.24, and 57.24. The Metal and Nonmetal Act, including these provisions for granting variances, was repealed by the Federal Mine Safety and Health Act of 1977. A review of all existing variances granted under the Metal and Nonmetal Act is necessary because many of the regulations on which the variances were based have been subsequently revised. Termination of variances granted under the Metal and Nonmetal Act will require that all variances be processed under the petition for modification procedures in 30 CFR part 44, Rules of Practice for Petitions for Modification. This will assure that MSHA, mine operators and miners' organizations update requirements; it will also eliminate confusion as to mine specific requirements.

Mine operators or the representatives of miners desiring continued relief from an existing mandatory safety standard may submit a petition for modification under section 101(c) of the 1977 Mine Act. The procedures for applying for a modification of a standard are outlined in 30 CFR part 44, Rules of Practice for Petitions for Modifications of Mandatory Safety Standards. MSHA has set an effective date for the termination of the variances of 180 days from the date of this notice, which will allow petitioners sufficient time to file a petition for modification.

Dated: November 15, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89–27446 Filed 11–21–89; 8:45 am]

BILLING CODE 4510–43–M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2710/Pub. L. 101–157

Fair Labor Standards Amendments of 1989. (Nov. 17, 1989; 103 Stat. 938; 8 pages) Price: $1.00

H.R. 3267/Pub. L. 101–158

District of Columbia Revenue Bond Act of 1989. (Nov. 17, 1989; 103 Stat. 946; 2 pages) Price: $1.00

H.J. Res. 425/Pub. L. 101–159

Designating November 12 through 18, 1989, as "Community Foundation Week". (Nov. 17, 1989; 103 Stat. 948; 1 page) Price: $1.00

S.J. Res. 215/Pub. L. 101–160

Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 20, 1989, as "National Military Families Recognition Day". (Nov. 17, 1989; 103 Stat. 949; 2 pages) Price: $1.00

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11-24-89
Vol. 54 No. 225

federal register

Friday
November 24, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
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SECOND CLASS NEWSPAPER
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Vol. 54 | No. 225
Pages 48565-48732

federal register

Friday
November 24, 1989

Briefings on How To Use the Federal Register
For information on briefings in San Francisco, CA, Seattle, WA, and Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SAN FRANCISCO, CA

WHEN: November 29; at 9:00 a.m.
WHERE: Room 15138,
450 Golden Gate Avenue,
San Francisco, CA.
RESERVATIONS: Call Mary Walters at the San Francisco Federal Information Center,
415–556–6600.

SEATTLE, WA

WHEN: November 30; at 1:00 p.m.
WHERE: South Auditorium, 4th Floor,
915 2nd Avenue,
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RESERVATIONS: Call Carmen Meler or Peggy Groff at the Portland Federal Information Center on the following numbers:
Seattle: 206–442–0570,
Tacoma: 206–383–7970,
Portland: 503–326–2222.

WASHINGTON, DC

WHEN: December 7, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Title 3—

The President

Proclamation 6074 of November 20, 1989

National Military Families Recognition Day, 1989

By the President of the United States of America

A Proclamation

Our Nation's military families embody the strength, loyalty, and love of country that have enabled the American people to build and defend this great Nation. While all families face certain challenges, the families of those who serve in the United States Armed Forces face unique hardships—and they do so with courage and resolve.

In the Armed Forces, frequent moves are a fact of life. Some military families move to installations far from home and loved ones in order to accompany their military members on assignment. Duty may take them not only across the country, but also around the world. These moves often require the sacrifice of promising careers or personal ties to a community, or both. For children, they often bring fears about making new friends and attending new schools.

Wherever they reside, military families live with the knowledge that active service has its risks. Military personnel are frequently required to be absent from home on duty—sometimes their families do not know where they are or what their mission is. And America's service men and women are always prepared to put themselves in harm's way for the sake of our national security. Few Americans are more aware of that fact than our military families.

In spite of such hardships, America's military families are independent, persevering, and patriotic. As informal ambassadors abroad, they bring great honor to the United States. Through the love and support they give their military members, they help keep our Armed Forces strong and proud. Today, we salute them and express our gratitude for the many sacrifices they make.

To this end, the Congress, by Senate Joint Resolution 215, has designated November 20, 1989, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 20, 1989, as National Military Families Recognition Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27739
Filed 11-21-89; 2:28 pm]
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Presidential Documents

Proclamation 6075 of November 21, 1989

National Family Week, 1989 and 1990

By the President of the United States of America

A Proclamation

As individuals, we find in our families a sense of identity, purpose, and security. As a Nation, we find in our families the vision and strength we need to remain a truly free and just society.

A family is more than a group of individuals related by blood, marriage, or adoption—a family is a community of persons united by their love and their commitment to one another. It is through family life that our Nation's most cherished values and traditions are passed from one generation to the next. Through our experience as members of a family, we learn important lessons about love and faith, duty and fidelity, personal responsibility and concern for others. Because those lessons are conveyed to the community at large, and because the family gives us a model of human relationships after which all other social institutions are fashioned, the strength and integrity of the family are vital to our well-being as a Nation.

Over the years, the family has withstood every assault upon it. It has endured in societies where rulers have sought to subject individuals to the collectivism of the state, and it has survived more subtle attempts to distort or belittle its value as an institution. As one expert on public policy and the family has so eloquently expressed it, "It is as if the family, as the fundamental reality of human society, is the small but stubborn rock that breaks the ideologues' plow of abstractions about human nature."

While the family is the most resilient and enduring of all human institutions, it needs protection and encouragement. Today, our Nation is confronted by problems that are, in large part, consequences of the breakdown of the traditional family. Drug abuse, child abuse, domestic violence, illegitimacy, teen pregnancy, and poverty cost the United States billions of dollars each year in social programs alone. But the waste in dollars pales before the most tragic loss—the waste of human spirit and potential.

As a Nation, we must remain committed to policies and programs that recognize and reinforce the family as the primary source of love and support that every individual needs. We must ensure that our families enjoy the benefits of economic opportunity and political representation, and we must recognize that parents have primary authority in the education of their children. American families need and deserve a cultural and legal framework that encourages and supports stable marriages and family life.

In the inimitable shelter of home and family, we learn how to give and receive love. There we discover the inestimable worth and unalienable rights God has granted each of us; and there we discover the responsibilities we have toward others. Thus, the integrity of the family is essential to our ability to remain a strong and stable Nation. During National Family Week, we renew our determination to strengthen and support the American family. Our children's future, and the future of the United States, depend on it.

The Congress, by Senate Joint Resolution 117 (Public Law 101–111), has designated the week of November 19 through November 25, 1989, and the week of November 18 through November 24, 1990, as "National Family Week"

and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of November 19, 1989, and November 18, 1990, as National Family Week. I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27740
Filed 11-21-89; 2:29 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 90-4 of November 8, 1989

Certification Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989 (Public Law 101-45)

Memorandum for the Secretary of State

Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989, Public Law 101-45, and for the reasons stated in the justification for this Determination, I hereby determine that:

(1) each of the signatories to the Agreement Among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, signed at the United Nations on December 22, 1988, is in compliance with its obligations under the Agreement;

(2) the Government of Cuba has complied with its obligations under Article 1 of the Agreement Between the Governments of the People's Republic of Angola and the Republic of Cuba for the Termination of the International Mission of the Cuban Military Contingent, signed at the United Nations on December 22, 1988 (relating to the calendar for redeployment and withdrawal of Cuban troops), specifically with respect to its obligations as of August 1, 1989;

(3) the Cubans have not engaged in any offensive military actions against UNITA, including the use of chemical warfare,

(4) the United Nations and its affiliated agencies have terminated all funding and other support, in conformity with the United Nations impartiality package, to the South West Africa People's Organization (SWAPO); and

(5) the United Nations Angola Verification Mission is demonstrating diligence, impartiality, and professionalism in verifying the departure of Cuban troops and the recording of any troop rotations.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority and to provide them with copies of the justification explaining the basis for this Determination. You are further directed to publish this Determination in the **Federal Register**

George Bush

THE WHITE HOUSE,
Washington, November 8, 1989.

[FR Doc. 89-27781
Filed 11-21-89; 4:42 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-202]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 17, 1989. Consideration will be given only to comments received on or before January 23, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-202. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the **Federal Register** on September 20, 1989 (54 FR 38643-38645, Docket Number 89-169), we amended the regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. Also, in an interim rule effective October 11, 1989, and published in the **Federal Register** on October 17, 1989 (54 FR 42478-42480, Docket Number 89-182), we amended the regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. These areas remain infested with Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles County, California.

Specifically, inspectors collected four adult Mediterranean fruit flies in Los Angeles County, near Sylmar, California, during the period of October 25, 1989, to November 5, 1989.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as a quarantined area the following area in Los Angeles County, California:

Los Angeles County

That portion of the county in the Sylmar area bounded by a line drawn as follows: Beginning at the intersection of Balboa Boulevard and Foothill Boulevard; then easterly and southerly along Foothill Boulevard to its intersection with Maclay Avenue; then southwesterly along this avenue to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with San Fernando Mission Boulevard; then southwesterly along this boulevard to its intersection with Woodley Avenue; then northwesterly along this avenue to its intersection with Balboa Boulevard; then northeasterly along this avenue to the point of the beginning.

There does not appear to be any reason to designate other additional quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5

U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles County, California. Approximately 61 entities will be affected by this rule. All would be considered small entities. They include 37 groceries, 14 nurseries, 1 swap meet, 1 community garden, 3 vegetable/farm gardens, 3 citrus groves, and 2 olive groves. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 301.78–3(c), the designation of the quarantined area is amended by adding the following immediately before the description for San Bernardino County:

§ 301.78–3. Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Sylmar area bounded by a line drawn as follows: Beginning at the intersection of Balboa Boulevard and Foothill Boulevard; then easterly and southerly along Foothill Boulevard to its intersection with Maclay Avenue; then southwesterly along this avenue to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with San Fernando Mission Boulevard; then southwesterly along this boulevard to its intersection with Woodley Avenue; then northwesterly along this avenue to its intersection with Balboa Boulevard; then northeasterly along this avenue to the point of the beginning.

* * * * *

Done in Washington, DC, this 17 day of November 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–27602 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–89–105FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Handling Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum size requirements for domestic and import shipments of pink seedless grapefruit, and increases the minimum size requirements for export shipments of early and midseason oranges, navel oranges, Valencia and similar late maturing oranges, tangelos, temple oranges, and Robinson tangerines. This action is based on an analysis of the 1989–90 season Florida citrus crop and current and prospective market conditions.

DATES: The grapefruit minimum size reduction becomes effective November 17, 1989. The orange, tangerine, and tangelo minimum size increase becomes effective November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida, and about 28 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and importers may be classified as small entities.

A proposed rule regarding changing the minimum size requirements for fresh Florida citrus was issued on November 1, 1989, and published in the **Federal Register** (54 FR 46621, November 6, 1989). That rule provided that interested persons could file written comments through November 16, 1989. No comments were received. The Citrus Administrative Committee (committee), which administers the program locally, met September 19, 1989, and recommended these actions.

Section 905.306 (7 CFR 905.306) of the rules and regulations specifies minimum grade and size requirements for most varieties of Florida oranges, grapefruit, tangerines, and tangelos for both the domestic and export markets. The requirements for the domestic markets are specified in that section in Table I of paragraph (a) and for export markets in Table II of paragraph (b). The domestic markets were redefined as the 48 contiguous States and the District of Columbia of the United States and export markets as any destination other than the 48 contiguous States and the District of Columbia of the United States by an amendment to the marketing order (54 FR 37290, September 8, 1989), which revised §§ 905.9 and 905.52. Section 905.306 was subsequently amended by an interim final rule, published in the **Federal Register** (54 FR 46596, November 6, 1989) concurrently with the proposed rule, which reflected those changes to the order.

This final rule reduces the minimum size requirements for domestic shipments of pink seedless grapefruit to 3$^{9}/_{16}$ inches in diameter from 3$^{9}/_{16}$ inches in diameter. The committee reports that this season's grapefruit crop is maturing earlier, that the fruit is smaller than normal, and that a multiple bloom will require spot picking during most of the season. The committee recommended this action due to these current crop conditions, since it will permit domestic shipments of smaller fruit early in the season. The size reductions for domestic and import shipments of pink seedless grapefruit are being made effective upon signature of the final rule rather than upon publication in the **Federal Register**, as specified in the proposed rule. The size reductions need to made effective as soon as possible to be of maximum benefit to the industry.

This final rule also increases the minimum size requirements for export shipments of early and midseason oranges, navel oranges, Valencia and similar late maturing oranges, tangelos, and temple oranges to 2$^{9}/_{16}$ inches in diameter from 2$^{9}/_{16}$ inches, and Robinson tangerines to 2$^{9}/_{16}$ inches in diameter from 2$^{9}/_{16}$ inches. Canada is a major export market for Florida oranges, tangerines, and tangelos and shipments of these fruits to that market have historically been limited to the larger sizes consistent with market requirements. The September 8 amendment designated Canada as an export market rather than a domestic market. The increased size requirements for export shipments of oranges, tangerines, and tangelos are the same as those applicable to shipments to Canada prior to the amendment.

The committee meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Some Florida citrus fruit shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including oranges and grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action reduces minimum size requirements for domestically produced Florida pink seedless grapefruit, the reduced size requirements also apply to imported pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed $^{4}/_{5}$–bushel cartons exempt from the import requirements.

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under § 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those established in § 906.365 for Texas oranges under M.O. 906 (7 CFR part 906). Accordingly, the findings and determinations for imported oranges contained in part 944 are not changed by this action and no changes to these provisions of part 944 would be necessary. Thus, orange import requirements continue to be based upon the Texas orange requirements under M.O. 906.

This action reflects the committee's and the Department's appraisal of the need to make these size requirement changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow Florida citrus handlers to ship those sizes of fruit needed to meet buyer requirements consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Florida citrus handlers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the requirements; (2) shipment of the 1989–90 season Florida citrus crop is currently underway; (3) this action reduces size requirements currently in effect for Florida and imported grapefruit, and handlers and importers should be given an opportunity to take advantage of such reduced requirements as soon as possible; (4) this action needs to become effective as soon as possible to be of maximum benefit to the Florida citrus industry and allow the handlers to take advantage of an anticipated strong holiday market; and (5) the proposed rule provided a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements and orders, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended to read as follows:

[Note: This action will be published in the Code of Federal Regulations].

A. In paragraph (a), Table I, the entry for pink seedless grapefruit is revised to read as set forth below.

B. In paragraph (b), Table II, the entries for all varieties of oranges, for Robinson tangerines, and for tangelos are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum (Diameter inches)
(1)		(3)	(4)
Grapefruit (Seedless, pink)	11/17/89–10/21/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 3/16
	On and after 10/22/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/16

(b) * * *

Table II

Variety	Regulation period	Minimum grade	Minimum (diameter inches)
(1)		(3)	(4)
Oranges (Early and Midseason)	On and after 11/24/89	U.S. No. 1	2 5/16
Navel	On and after 11/24/89	U.S. No.1 Golden	2 5/16
Valencia and other late type	On and after 11/24/89	U.S. No.1	2 5/16
Temple	On and after 11/24/89	U.S. No.1	2 5/16
Tangerines (Robinson)	On and after 11/24/89	U.S. No.1	2–4/16
Tangelos (Tangelos)	On and after 11/24/89	U.S. No. 1	2 5/16

Dated: November 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–27533 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, and 274a

[INS NO. 1130–89]

RIN 1115–AB05

Nonimmigrant Classes Pursuant to the United States-Canada Free-Trade Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the United States-Canada Free-Trade Agreement (FTA) which entered into force on January 1, 1989. It established procedures for temporary entry of Canadian citizen business persons into the United States and facilate temporary entry on a reciprocal basis between the United States and Canada, while recognizing the continued need to ensure border security, and to protect indigenous labor and permanent employment in both countries.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Immigration & Naturalization Service, 425 Eye Street NW., Washington, DC 20536, Telephone (202) 633–3946.

SUPPLEMENTARY INFORMATION: On January 3, 1989, at 54 FR 12, the Immigration and Naturalization Service published an interim rule with request for comments from interested parties by February 2, 1989.

The Service received nine comments from attorneys, and from professional and business associations. All of the comments were reviewed and considered in writing this final rule. The discussion which follows groups the comments into major subject areas where comments were made, provides the Service position on the issues, and indicates any revisions made based on the comments.

Visitors for Business—8 CFR 214.2(b)(4)

In drawing up the regulation pertaining to the admission of Canadian citizen visitors for business pursuant to the FTA, the Service incorporated Schedule 1 to Annex 1502.1 of the agreement into the regulation. The schedule was then enhanced by occasional parenthetical annotations to provide for clarity and consistent interpretation. However, two commenters noted instances where the annotations needed further clarification or where new annotations were needed for conformity with existing Service policy.

The commenters observed that the parenthetical annotation pertaining to tourism personnel needed further clarifying information to comply with historic Service policy in this area. There was some concern that the annotation was more limiting than current policy.

The Service has recognized the necessity for expansion of the parenthetical statement, and has expanded it in the final regulation. The regulation now states the circumstances under which a tour may begin in the United States, and acknowledges that an operator may enter the United States with an empty conveyance and that a tour guide may enter and join the conveyance.

One of the commenters also observed that the parenthetical annotation relating to transportation operators needed further clarification. That annotation has now been rewritten to indicate that intermediate deliveries in the United States of commodities or passengers loaded in Canada are permissible and that intermediate loading of commodities and passengers in the United States for delivery in Canada is permissible. However, the final regulation also reflects that this provision does not allow for purely domestic service where Canadian citizen operators would be in direct competition with United States operators.

Additionally, although not as a result of written comment, the Service has clarified through annotation what the negotiators and the immigration officials of both countries mean by the term "harvester owner" under the "Growth, Manufacture and Production" section of Schedule 1. The parenthetical annotation in the final rule indicates that this term is limited to the harvesting of agricultural crops.

One commenter noted that the references to professionals otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (Act) and computer specialists indicated that there shall be no salary or other remuneration from a United States source, but did not state that an expense allowance or other reimbursement for incidental expenses were permissible. These latter distinctions are currently found not only in the Service's Operations Instructions but also in the Department of State's Foreign Affairs Manual.

The language employed in the regulation regarding professionals otherwise classifiable as H–1s and computer specialists was taken, without annotation, from the language of the FTA. The final regulation contains parenthetical language in both instances to provide for an expense allowance or other reimbursement for incidental expenses.

One commenter posed the question as to whether Canadian citizen supervisors could come to the United States, under the B–1 classification, as trainers, while continuing to be paid by their foreign employers. The commenter wondered whether these individuals would fall into the category of management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada. He further posited whether Canadian citizen trainers could be admitted as B–1s under similar circumstances.

The term "commercial transactions" will be clarified in the Service s Operations Instructions relating to the regulation. In short, it does not include training. Without specifically listing trainers under this provision, there are provisions whereby trainers may enter the United States under the B–1 classification. Two examples would be under the after-sales service provision or under the general service provision, specifically professionals otherwise classifiable as H–1s. The specific inclusion of trainers in Schedule 1 or Schedule 2 would be a topic to be considered within the consultative process called for by the agreement.

This commenter also sees no reason for distinction between professionals otherwise classifiable as H–1s and computer specialists similarly classifiable. These two provisions come specifically from the FTA and can only be changed or consolidated through the consultative process. The regulation, therefore, will not tamper with these provisions.

Intracompany Transferees—8 CFR 214.2(1)(17)

The FTA does not require any changes in the regulations in order to implement the intracompany transferee

provisions of Annex 1502.1. The interim regulation, therefore, contained nothing new which would change the basic requirements of a petition and supporting documentation. Allowing port-of-entry adjudication of petitions (Form I–129L) and certificates of eligibility (Form I–129S) is simply an improvement of entry procedures for Canadian citizens and follows the long-standing Canadian procedure of making such determinations at the border.

One commenter felt that determination of eligibility for individuals under blanket petitions should be made at ports of entry for all visa-exempt aliens, not just Canadian citizens. The Service will not extend this privilege. The procedure of accepting Form I–129S at ports was established in the spirit of the FTA. The provisions and privileges of chapter 15 of the agreement are open only to citizens of Canada, and this regulation will not extend them further.

In this same vein, the commenter argued that non-Canadian citizen spouses and unmarried minor children of Canadian citizen L–1s who require nonimmigrant L–2 visas should be visa-exempt. This will also not be done, since to do so would extend the privileges of the FTA to those beyond its scope. In such cases, the Service would advise advance filing of an I–129L or I–129S with a Regional Service Center with subsequent application for L–2 visas at the appropriate United States consulate abroad.

Another commenter noted that the regulations are silent on situations where a petition or certificate of eligibility is presented at a port of entry and the petition or certificate is not approvable. The commenter suggested that the petition or certificate be returned to the applicant for admission for direct submission to a Regional Service Center.

The Service will amend the interim regulation on this matter. In a case where necessary supporting documentation is missing or the petition or certificate of eligibility is otherwise deficient, the petition or certificate will be returned to the applicant for admission in order to obtain additional documentation from the petitioner or to overcome the deficiency.

On the other hand, if the case is clearly deniable, the port of the entry will forward the petition or certificate to the appropriate Regional Service Center (RSC) for a final decision. In a case such as this, the appropriate RSC would be the RSC of the same Service region as the port. In doubtful cases, petitioners or their authorized representatives would be well advised to submit petitions or certificates of eligibility in advance to the appropriate Regional Service Center.

Finally, one commenter observed that the regulation should state more specifically whether Canadian citizen intracompany transferees are still subject to the five-year limitation for such nonimmigrants. This commenter also felt that the regulation should be more specific in stating that petitions for intracompany transferees may still be filed in advance with Regional Service Centers.

As already noted, the FTA itself does not require any regulatory changes regarding intracompany transferees. Nothing in the agreement or the regulation removes or will remove the five-year limitation for Canadian citizen intracompany transferees (unless of course, they fall under any of the existing exceptions).

Regarding advance filing at Regional Service Centers, the Service feels that the interim regulation was quite clear in stating that advance filing in accordance with extant regulations is not precluded.

Canadian Citizens Seeking Temporary Entry To Engage in Activities at a Professional Level—8 CFR 214.6

On the new nonimmigrant classification (TC) for Canadian citizens seeking temporary entry to engage in business activities at a professional level, one commenter felt that, in its prefatory remarks to the interim rule, the Service was arbitrary and inconsistent in stating that TC classification does not imply that such a person would otherwise qualify as a professional under sections 101(a)(15(H)(i) or 203(a)(3) of the Act.

In answer, the Service notes that the majority of the occupations in Schedule 2 might well be deemed professions under sections 101(a)(15)(H)(i) or 203(a)(3); however, certain occupations have been included in Schedule 2 of the agreement which clearly would not fit as professions under either classification. Furthermore, in the legislative history of the FTA, the bill report of the Senate's Committee on the Judiciary states categorically that "the definition and treatment of business persons engaged in business activities at a professional level . . . are considered to have no bearing upon any other nonimmigrant or immigrant category, including INA (Immigration and Nationality Act) sections 101(a)(15)(H)(1) [sic] and 203(a)(3)."

The same commenter maintains that a reading of chapter 15 of the FTA and the interim regulations supports a contention that an applicant for TC classification need not have an offer of employment with a specific employer in the United States. The commenter noted that the words in the interim regulation that the supporting documentation for TC classification "may be in the form of a letter from the prospective employer(s) in the United States" reinforces this contention. The commenter further maintains that requiring a specific employer is inconsistent with the FTA, was not intended by Congress, and is not in similar Canadian provisions.

The Service answers that the intention throughout the negotiations on Chapter 15 of the FTA was that citizens of either the United States or Canada going to the other country to engage in business activities at a professional level would be going pursuant to prearranged offers of employment. The wording in the agreement, perhaps, could be clearer, but the Service contends that the words "to engage" imply prearrangement of employment, not the seeking of employment. Certainly, there are legitimate situations where a visitor to the United States might explore business or employment opportunities, but such activities would be inappropriate as the sole purpose of entry under the TC classification. This view is shared by the Service's Canadian counterparts and is reflected in Canadian field instructions. It is more clearly stated in this final regulation.

This commenter also feels that questionable TC cases should be referred for resolution to the District Director having jurisdiction over the port of entry. The Service's position is that the TC procedure is an application for admission to the United States. Existing law and regulation are adequate procedurally with regard to admission procedures. There is no need for special review procedures for the TC classification.

Three commenters objected to the requirements in Schedule 2 to Annex 1502. 1 that a journalist possess a baccalaureate and three years' experience for classification as a business person coming to engage in business activities at a professional level. This requirement is reflected in the regulation; however, since it is in the agreement, it can only be changed through the consultative procedure of Article 1503 of chapter 15 of the FTA. The objection has been noted and will be discussed in consultation.

Two commenters noted that certain occupations or professions of interest to them were not included in Schedule 2. Of specific interest were occupational therapists, physical therapists, pharmacists, and respiratory care practitioners. Adding these and other professions or occupations to Schedule 2 will be discussed during the annual consultation between immigration officials of both countries.

Another commenter felt that the regulations should clearly indicate that, if a prospective TC nonimmigrant can also qualify for H–1 classification, the prospective employer has the option of filing a petition for H–1 classification at a Regional Service Center. The FTA did not close H–1 classification to Canadian citizens. Certainly, the option remains for filing a petition for H–1 classification. The Service feels that specific reference in the regulation to this alternative is unnecessary.

This commenter also felt that the regulation should clarify under what circumstances a Canadian citizen in TC classification can transfer from one affiliated company to another without filing an application for extension with an accompanying letter from the new or additional employer. Transfers where an application for extension would not be required are covered in the final regulation. Such transfers are permitted only to branches or other offices of the same employer, not to separately incorporated subsidiaries or affiliates.

Another commenter felt that the regulation implied that the source of remuneration for a TC nonimmigrant could be from a foreign or a United States source. As previously noted, the intention of the negotiators of Chapter 15 was that the person coming to engage in business activities at a professional level would be coming to prearranged employment in the other country. The implication is, therefore, that for a TC Canadian citizen coming to the United States the source of remuneration would be in the United States. If the source of remuneration were from outside the United States, the proper nonimmigrant classification would usually be B–1. Of course, the Service has often encountered cases where the source of remuneration is cloudy or where "indirect remuneration" is involved (i.e., where services are performed in the United States, and remuneration is sent to a foreign country). In doubtful cases of this type, TC might be a more appropriate classification.

Miscellaneous

One commenter felt that requiring visitor visas of non-Canadian citizen spouses and unmarried minor children (unless otherwise exempt) of TC nonimmigrants was excessive and not in the spirit of facilitation. As previously noted, the privileges of the FTA are available only to Canadian citizens. The regulation reflects this restriction.

This commenter also felt that the regulation should specify that B–2 spouses and unmarried minor children of TC nonimmigrants may receive more than one extension of temporary stay. The final regulation reflects that more than one extension is possible.

This commenter also stated that the regulation should outline the mechanism for implementation of the consultative process prescribed in Article 1503 of chapter 15.

The Service and Employment/Immigration Canada are actively in the process of establishing the consultative procedure. Consequently, the Service is not in a position, at this time, to publish the procedure in regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act and are cited under 8 CFR 299.5.

These regulations will recognize the exemption granted qualifying Canadian citizens from the ordinary documentary requirements for nonimmigrant admission. The 30 day notice requirement, therefore, is not necessary, and the regulations will take effect upon publication in the **Federal Register**. 5 U.S.C. section 553(d)(1).

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Fees, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedures, aliens.

8 CFR Part 214

Administrative practice and procedures, aliens, employment, reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, aliens.

The interim rule published at 54 FR 12–16 on January 3, 1989, amending parts 103, 212, 214, and 274a, is adopted as final with the following changes:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR Part 2.

2. In § 214.2, paragraphs (b)(1), (b)(4), and (l)(17) are revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) *Visitors*—(1) *General.* Any B–1 visitor for business or B–2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. The B–2 spouse or unmarried minor child of a Canadian citizen admitted under section 214(e) of the Act in accordance with the United States-Canada Free-Trade Agreement may be admitted for a period not to exceed one year and may be granted extensions of temporary stay in increments of not more than one year, providing the principal alien is maintaining status. Those B–1 and B–2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed fifteen days and are not eligible for extension of stay.

* * * * *

(4) *Admission of aliens pursuant to the United States-Canada Free-Trade Agreement (FTA).* A citizen of Canada seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of Canadian citizenship, a description of the purpose of entry, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements are those requirements which were in effect at the time of entry into force of the FTA. Additionally, nothing shall preclude the admission of a citizen of Canada who

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meets the requirements of paragraph (b)(4)(ii) of this section.

(i) Occupations and professions set forth in Schedule 1 to Annex 1502.1 of the FTA.

(A) *Research and design.* Technical, scientific, and statistical researchers conducting independent research for an enterprise located in Canada.

(B) *Growth, manufacture and production.* (1) Harvester owner supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: grain, fiber, fruit, and vegetables.)

(2) Purchasing and production management personnel conducting commercial transactions for an enterprise located in Canada.

(C) *Marketing.* (1) Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in Canada.

(2) Trade fair and promotional personnel attending a trade convention.

(D) *Sales. (1)* Sales representatives and agents taking orders or negotiating contracts for goods or services but not delivering goods or providing services.

(2) Buyers purchasing for an enterprise located in Canada.

(E) *Distribution. (1)* Transportation operators delivering to the United States or loading and transporting back to Canada, with no intermediate loading or delivery within the United States. (These operators may make intermediate deliveries in the United States if all commodities or passengers to be delivered were loaded in Canada. Furthermore, they may load from intermediate locations in the United States if all commodities or passengers to be loaded will be delivered in Canada. Purely domestic service or solicitation, in competition with United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) *General service. (1)* Professionals who are otherwise classifiable under section 101(a)(15(H)(i) of the Immigration and Nationality Act, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay).

(2) Management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada.

(3) Computer specialists who are otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, but receiving no salary or remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay).

(4) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in Canada.

(5) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(6) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in Canada. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance, and a tour guide may enter on his/her own and join the conveyance.)

(7) Translators or interpreters performing services as employees of an enterprise located in Canada.

(ii) *Occupations and professions not listed in Schedule 1 to Annex 1502.1 of the FTA.* Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Schedule 1 to Annex 1502.1 of the FTA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

* * * * *

(l) * * *

(17) *Filing of individual petitions and certifications under blanket petitions for citizens of Canada under the United States-Canada Free-Trade Agreement (FTA)*—(i) *Individual petitions.* Except as provided in paragraph (1)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition to duplicate on Form I–129L in conjunction with the application for admission of the citizen of Canada. Such filing must be made with an immigration officer at a Class A port of entry, a United States airport handling international traffic, or at a United States airport handling international traffic or at a United States pre-clearance/pre-flight station. The petitioning employer need not appear, but Form I–129L must bear the authorized signature of the petitioner.

(ii) *Certification of eligibility for intracompany transferree under the blanket petition.* An immigration officer at a location identified in paragraph (1)(17)(i) of this section may determine eligibility of individual citizens of Canada seeking L classification under approved blanket petitions. At these locations, such citizens of Canada shall present the original and two copies of Form I–129S, Intracompany Transferee Certificate of Eligibility, prepared by the approved organization, as well as three copies of Form I–171C (or Form I–797), Notice of Approval of Nonimmigrant Visa Petition.

(iii) Nothing in this section shall preclude or discourage the advance filing of petitions and certificates of eligibility in accordance with paragraph (l)(2) of this section.

(iv) *Deficient or deniable petitions or certificates of eligibility.* If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified on Form I–292 of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Regional Service Center (RSC) for final action. For the purposes of this provision, the appropriate RSC will be the one within the same Service region as the location where the application for admission is made.

(v) *Spouse and dependent minor children accompanying or following to join.* (A) The Canadian citizen spouse and Canadian citizen unmarried minor children of a Canadian citizen admitted under this paragraph shall be entitled to the same nonimmigrant classification and same length of stay as the principal alien.

They shall not be required to present visas, and they shall be admitted under the classification symbol L–2.

(B) A non-Canadian citizen spouse or non-Canadian citizen unmarried minor child shall be entitled to the same nonimmigrant classification and the same length of stay as the principal, but shall be required to present a visa upon application for admission as an L–2 unless otherwise exempt under § 212.1 of this chapter.

(C) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

* * * * * *

3. Section 214.6 is revised to read as follows:

§ 214.6 Canadian citizens seeking temporary entry to engage in business activities at a professional level.

(a) *General.* Under section 214(e) of the Act, a citizen of Canada who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the United States-Canada Free-Trade Agreement (FTA).

(b) *Definitions.* (1) The term "Business person," as defined in the FTA, means a citizen of Canada who is engaged in the trade of goods or services or in investment activities.

(2) The term "Business activities at a professional level" means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

(3) The term "Temporary entry," as used in the FTA, means entry without the intent to establish permanent residence.

(c) *Application for admission.* A citizen of Canada seeking admission under this section shall make application for admission with an immigration officer at a United States Class A port of entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. No prior petition, labor certification, or prior approval shall be required.

(d) *Evidence.* A visa shall not be required of a Canadian citizen seeking admission as a nonimmigrant under section 214(e) of the Act. Upon application for admission at a United States port of entry, an applicant under this section shall present the following:

(1) *Proof of Canadian citizenship.* Unless traveling from outside the Western Hemisphere, no passport shall be required; however, an applicant for admission must establish Canadian citizenship.

(2) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications*—(i) *General.* The applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission, that the applicant is seeking entry to the United States to engage in business activities for a United States employer(s) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer and may be required to be supported by licenses, diplomas, degrees, certificates, or membership in professional organizations. This documentation shall fully affirm:

(A) The business activity to be engaged in;

(B) The purpose of entry;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian citizen has professional level status;

(E) That the Canadian citizen complies with all applicable state laws and/or licensing requirements for the business activity to be engaged in; and

(F) The arrangements for remuneration for services to be rendered.

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in Schedule 2 to Annex 1502. Unless otherwise specified below, a baccalaureate degree is the minimum requirement for the following professions as listed in Schedule 2:

Schedule 2 (Annotated)

—Accountant
—Engineer
—Scientist
  —Biologist
  —Biochemist
  —Physicist
  —Geneticist
  —Zoologist
  —Entomologist
  —Geophysicist
  —Epidemiologist
  —Pharmacologist
  —Animal scientist
  —Agriculturist (agronomist)
  —Dairy scientist
  —Poultry scientist
—Soil scientist
—Research assistant (working in a post-secondary educational institution)
—Medical/allied professional
  —Physician (teaching and/or research only)—M.D., provincial license, or state license
  —Dentist—D.D.S., provincial license, or state license
  —Registered nurse—provincial license, or state license
  —Veterinarian—D.V.M., provincial license, or state license
  —Medical technologist
  —Clinical lab technologist
—Architect
—Lawyer—member of bar in province or state, L.L.B., or J.D.
—Teacher
  —College
  —University
  —Seminary
—Economist
—Social worker
—Vocational counselor
—Mathematician
—Hotel manager—baccalaureate degree and three years experience in hotel management
—Librarian—Master's degree in Library Science
—Animal breeder
—Plant breeder
—Horticulturist
—Sylviculturist (forestry specialist)
—Range manager (range conservationist)
—Forester
—Journalist—baccalaureate degree and three years' experience in journalism
—Nutritionist
—Dietician
—Technical publications writer
—Computer systems analyst
—Psychologist
—Scientific technician/technologist
  —Must work in direct support of professionals in the following disciplines: chemistry, geology, geophysics, meteorology, physics, astronomy, agricultural sciences, biology, or forestry
  —Must possess theoretical knowledge of the discipline
  —Must solve practical problems in the discipline
  —Must apply principles of the discipline to basic or applied research
—Disaster relief insurance claims adjuster—baccalaureate degree or three years' experience in the field of claims adjustment
—Management consultant—baccalaureate degree or five years' experience in consulting or related field

(e) *Procedures for admission.* A Canadian citizen who qualifies for admission under this section shall be

provided confirming documentation (Service Form I–94), and shall be admitted under the classification symbol TC for a period not to exceed one year. Form I–94 shall bear the legend "multiple entry." The fee prescribed under § 103.7 of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the FTA. Upon remittance of the prescribed fee, the Canadian citizen applicant shall be provided a Service receipt (Form G–211, Form G–711, or Form I–797).

(f) *Readmission.* A Canadian citizen in this classification may be readmitted to the United States for the remainder of the period authorized on Form I–94, without presentation of the letter or supporting documentation described in paragraph (d)(2) of this section, and without remittance of the prescribed fee, provided that the original intended business activities and employer(s) have not changed. An alien who seeks readmission to the United States under this section to continue in business activities at a professional level who is no longer in possession of a valid, unexpired Form I–94 and whose period of initial admission has not lapsed, shall present alternate evidence entitling the alien to readmission as TC. This alternate evidence may be in the form of a Service fee receipt for admission as TC or a previously issued admission stamp as TC in a passport, and a confirming letter from the United States employer(s).

(g) *Extension of stay.* A Canadian citizen admitted under this section may apply for an extension of stay on Form I–539, as provided in § 214.1(c) of this chapter. Extensions of stay may be granted in increments of one year. The application shall be accompanied by a letter(s) from the United States employer(s) confirming the continued need for the Canadian citizen's services and stating the length of additional time needed.

(h) *Request for change or addition of United States employer(s).* A Canadian citizen admitted under this paragraph who seeks to change or add a United States employer during the period of admission shall file an application for extension of stay on Form I–539. The application shall be accompanied by a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms of remuneration for services. Employment with a different or with an additional employer is not authorized prior to Service approval of the request for extension of stay. No action shall be required on the part of a Canadian citizen who is transferred to another location by the United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer, not to a separately incorporated subsidiary or affiliate. In the latter cases, an application for extension of stay with a new employment letter is required.

(i) *Spouse and unmarried minor children accompanying or following to join.* (1) The terms and conditions set forth under § 214.2(b)(1) of this chapter shall apply to the admission and the extension of temporary stay of the spouse or unmarried minor child of a Canadian citizen admitted under this section.

(2) The spouse or unmarried minor child shall be required to present a valid, unexpired nonimmigrant visa or a valid, unexpired Canadian border crossing identification card unless otherwise exempt under § 212.1 of this chapter.

(3) The spouse and dependent minor children shall be issued confirming documentation (Form I–94). Form I–94 shall bear the legend "multiple entry." There shall be no fee required for admission of the spouse and dependent minor children.

(4) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

Dated: November 17, 1989.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–27536 Filed 11–24–89; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 110, 114, and 9034

[Notice 1989–19]

Affiliated Committees, Transfers, Prohibited Contributions; Annual Contribution Limitations and Earmarked Contributions

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On August 17, 1989 (54 FR 34098), the Commission published the text of revised regulations governing affiliated committees, transfers, contributions in the name of another, annual contribution limits and earmarked contributions. 11 CFR 110.3, 110.4, 110.5, and 110.6. These regulations implement the contribution limitations and prohibitions established by 2 U.S.C. 441a, 441e, 441f and 441g, provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* In addition, the Commission published several conforming amendments to 11 CFR 100.5, 102.2, 110.1, 110.8, 114.5, 114.8, and 9034.4. The Commission announces that these rules are effective as of November 24, 1989.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, and 26 U.S.C. 9039(c), require that any rule or regulation prescribed by the Commission to implement title 2 or title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before final promulgation. The revisions to 11 CFR 110.3, 110.4, 110.5, and 110.6 and the conforming amendments to 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g), and 9034.4(d) were transmitted to Congress on August 14, 1989. The thirty legislative day period for rules implementing title 2 of the Act is calculated separately from the thirty legislative day period for title 26 rules. For the title 2 regulations, thirty legislative days expired in the Senate on October 17, 1989, and in the House of Representatives on October 23, 1989. For the title 26 regulations thirty legislative days expired on October 25, 1989.

Announcement of Effective Date

11 CFR 100.5(g), 102.2(b), 110.1(f), 110.3, 110.4, 110.5, 110.6, 110.8(d),114.5(g), 114.8(g), and 9034.4(d) as published at 54 FR 34098 are effective as of November 24, 1989.

Dated: November 17, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89–27509 Filed 11–22–89; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Part 110

[Notice 1989–18]

Contributions and Expenditures; Prohibited Contributions

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.4(a), which prohibit foreign nationals from making contributions and other persons from accepting such contributions in connection with any election for local, State or Federal public office. The revisions to section 110.4(a) add corresponding references to expenditures, and clarify that foreign nationals may not participate in certain election-related activities. These regulations are based on the prohibitions set forth in section 441e of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 110.4, which concern election-related activity undertaken by foreign nationals. On June 7, 1989 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations (54 FR 24351). No written comments were received in response to the Notice.

The NPRM also sought comment on possible revisions to other unrelated provisions of the Commission's regulations which exempt certain unreimbursed payments for transportation and subsistence costs from the definitions of "contribution" and "expenditure" (11 CFR 100.7(b)(8) and 100.8(b)(9)). After further consideration, the Commission has decided not to amend those provisions at this time.

Section 438(d) of title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on November 17, 1989.

Explanation and Justification

The Commission is revising 11 CFR 110.4(a) concerning foreign nationals in two respects. First, an explicit prohibition on expenditures by foreign nationals is being added, which parallels the current prohibition on contributions by such persons. Second, new language is being added to clarify that foreign nationals may not participate in the election-related activities of others, including decisions regarding contributions or expenditures by political committees, corporations, labor organizations or other persons.

Section 441e of the FECA prohibits foreign nationals, directly or through another person, from making contributions in connection with any election for political office or in connection with any primary election, convention or caucus held to select candidates for any political office. 2 U.S.C. 441e. While the Act does not explicitly refer to expenditures by foreign nationals, FECA generally prohibits expenditures when it prohibits contributions by a specific category or persons, thereby ensuring that the persons cannot accomplish indirectly what they are prohibited from doing directly. *See, e.g.,* 2 U.S.C 441b. To foreclose the indirect violation of Section 441e and implement the general intent of the statute, the Commission is now revising 11 CFR 110.4(a)(1) to explicitly prohibit expenditures by as well as contributions from foreign nationals. The new language covers independent expenditures by foreign nationals as well as other kinds of expenditures.

The revisions also add new paragraph (a)(3) to prohibit foreign nationals from participating in election-related decisions by corporations, labor organizations, political committees or other persons, including decisions concerning contributions and expenditures. Accordingly, former paragraph (a)(3) has been renumbered as paragraph (a)(4).

The prohibition on contributions by foreign nationals has its origin in legislation that predates the FECA, the 1966 amendments to the Foreign Agents Registration Act (80 Stat. 248). In 1976 Congress incorporated into the FECA the foreign nationals provision, previously codified at 18 U.S.C. 613. The only change that Congress made was to replace the earlier statute's criminal penalties with new criminal and civil penalty and enforcement provisions.

Nothing in Section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion. *See* S. Rep. No. 94–677, 94th Cong., 2d Sess. 1, 11 (1976). *Cf.* H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 11 (1979) ("Since all of these provisions are specific exemptions to the definition of contribution, exemptions from the expenditure definition are not necessary.") Further, under the 1976 amendments to the FECA "contribution" and "expenditure" are interrelated terms. For example, an expenditure made by a person in cooperation, consultation, or concert with a candidate or a candidate's committee is an in-kind contribution (2 U.S.C. 441a(a)(7)(B)). Also, a political committee receiving an in-kind contribution reports the amount as both a contribution and an expenditure pursuant to 11 CFR 104.13(a)(2). In general, a political committee reports the contributions that it makes to candidates as expenditures. *See* 11 CFR 100.8(a)(1) and 104.3(b).

The Commission faced an analogous situation in 1977 when it promulgated regulations to implement Section 441c(a) of the Act, which prohibits contributions by Government contractors. *See* Explanation and Justification of 11 CFR 115.2, found in "Communications from the Chairman," H.R. Doc. No. 95–44, 95th Cong., 1st Sess. 121 (January 12, 1977). An explicit prohibition on expenditures was included in those regulations.

Prior to this rulemaking, the Commission has not directly addressed the legality of expenditures by foreign nationals. For example, several advisory opinions concerning corporations owned by foreign principals have relied upon representations by the requesters that no foreign national would participate in the separate segregated funds' decisions regarding contributions or expenditures. Cf. Advisory Opinions 1980–100 and 1982–10. Thus, although the Commission has never directly ruled on the propriety of expenditures by foreign nationals or other election-related activity undertaken by foreign nationals directly or through a political committee, the Commission has consistently assumed that the statutory prohibition governing foreign nationals extends to these areas. The Commission has now decided to revise 11 CFR 110.4(a) to state expressly that foreign nationals are prohibited from making such expenditures and from undertaking these types of election-related activities.

List of Subjects in 11 CFR Part 110

Aliens, Political committees and parties.

For the reasons set out in the

preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

2. Section 110.4 is amended by revising paragraph (a) to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions or expenditures by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution or an expenditure, or expressly or impliedly promise to make a contribution or an expenditure, in connection with a convention, a caucus, or a primary, general, special, or runoff election in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(4) For purposes of this section, "foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

* * * * *

Dated: November 17, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-27510 Filed 11-22-89; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-33; Amdt 39-6401]

Airworthiness Directives; Sikorsky Aircraft Model S-58 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and verification as to whether or not an engine compartment fire extinguishing system is installed on certain Sikorsky Aircraft Model S-58 series helicopters. If this system is found not to be installed, the AD imposes interim operating limits until one is installed. The AD is needed to conform these aircraft to their approved type design configuration and thereby to prevent or reduce the hazards of an in-flight fire which could result in the loss of the helicopter.

EFFECTIVE DATES: December 26, 1989.

Comments must be received on or before January 8, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, at the above address.

Comments delivered must be marked: Docket No. 89-ANS-33. Comments may be inspected at the above location in Room 158 of Building 3B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, ANE-153, Systems and Propulsion Branch, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: The FAA has found that several Sikorsky Aircraft Model S-58 helicopters, certificated in categories other than restricted and equipped with a reciprocating engine, do not have the required engine compartment fire extinguishing system. Evidence shows that these helicopters, which were convered to a standard Model S-58 from a military model, did not have an approved fire extinguishing system installed as required by the Model S-58 series type design data. An engine fire extinguishing system is required by the applicable certification basis which is Civil Air Regulation (CAR) part 6. Amendment 6-4, § 6.488, states in part: "On all rotorcraft having engines or more than 1,500 cu. in. displacement, fire extinguisher systems shall be provided to serve all engine compartments and engine induction systems." The lack of a fire extinguishing system prevents extinguishing an in-flight engine compartment fire which could cause the loss of the helicopter.

Since this condition is likely to exist on other helicopters of the same type design, an AD is being issued which requires, within 1 year, the installation of an approved engine compartment fire extinguisher system on Sikorsky S-58 series helicopters with reciprocating engines installed. In the interim, new operating limitations are imposed until an approved system is installed. In addition, the AD imposes a limitation that allows only passengers who are essential to utility type operations. In conjunction with the AD operating limitations, the 1-year period is allowed for installation due to the helicopter service history, which includes only one reported engine compartment fire in a civil version of this helicopter.

The FAA has been advised that Model S-58 extinguishing systems and parts are not presently available but could be available within 1 year. This information is provided by California Helicopters, which is the sole U.S. licensee for S-58 helicopters. In light of all of these circumstances, the FAA has determined that an operable fire detection system, in conjunction with new interim operating limitations, will provide adequate safety until approved extinguishing systems can become available and are installed. This is further based on the fact that Model S-58 helicopters with reciprocating engines are generally used for utility operations, such as forest fire fighting and external cargo hauling, and not for passenger operations.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Request for Comments

Although this action is a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the FAA. This rule may be subsequently amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented would be particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, and energy aspects that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interest persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ASW-33. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S-58 series helicopters equipped with reciprocating engines, certificated in any category except restricted. (Docket 89-ASW-33.)

Compliance is required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent or reduce the hazards of an in-flight fire which could result in loss of the helicopter, accomplish the following:

(a) Inspect the helicopter for the installation of an approved engine compartment fire extinguishing system.

(b) If an approved engine fire extinguishing system is installed, no further action is necessary.

(c) If an approved engine fire extinguishing system is not installed, accomplish the following:

(1) Prior to further flight, install a placard, decal, or markings, in full view of and legible to the pilot in daylight which states "Engine Fire Extinguishing System Not Installed."

(2) Prior to further flight, revise the helicopter's FAA-Approved Rotorcraft Flight Manual (RFM) Operating Limitations Section by attaching or placing in front of the RFM a durable card or paper which contains the following additional limitations:

(i) "No passengers allowed, except required crew and passengers necessary to accomplish a work program when carried on the flights to and from the work site."

(ii) "Prior to the first flight of the day, test and determine that the fire detector system is properly functioning in accordance with the normal procedure section of the RFM."

Note: An engine fire detector system is part of the approved type design and is required by the certification basis. Installation and proper operation are necessary for a determination of airworthiness in accordance with FAR § 91.29.

(3) Prior to November 30, 1990, install an approved engine compartment fire extinguishing system in accordance with technical data approved by the Administrator. When the fire extinguishing system has been installed, the placard, etc., required by paragraph (c)(1) and the RFM limitations required by paragraph (c)(2) may be removed.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803.

Note: An operator's request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

This amendment becomes effective on December 26, 1989.

Issued in Fort Worth, Texas, on November 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 27547 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-24; Amdt. 39-6400]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires certain inspections and the removal of damaged parts, as necessary, of the tail rotor transmission/tail boom extension mounting studs on all McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters. This amendment alleviates an unnecessary check and record-keeping requirement on the pilot and updates reference information.

EFFECTIVE DATES: December 26, 1989.

Compliance: As indicated in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797;

telephone (602) 891–6484, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5233.

SUPPLEMENTARY INFORMATION: A proposal to amend AD 88–17–09, Amendment 39–5964 (53 FR 30023; August 10, 1988), was published in the **Federal Register** on July 31, 1989 (54 FR 31532).

This AD currently requires a preflight check of the tail rotor transmission installation for security in accordance with MDHC Service Information Notices on MDHC Model 369D, E, F, and FF helicopters. After issuing Amendment 39–5964, the FAA determined that: (1) Performing the preflight check of the tail rotor transmission installation and recording the entry as required by § 43.9 prior to each flight, has placed an unnecessary burden on the pilot; (2) properly torqued studs are highly unlikely to loosen significantly in such short periods of time; and (3) less frequent checks are warranted without affecting the level of safety. Therefore, the FAA is amending Amendment 39–5964 by reducing the frequency of the checks to intervals of 25 hours' time in service on MDHC Model 369D, E, F, FF helicopters.

It was also proposed to update the address given in the incorporation by reference paragraph. The incorporation by reference of MDHC Service Information Notice (SIN) DN–151/EN–39/FN–28, dated October 10, 1987, was previously approved by the Director of the Federal Register as of August 10, 1988 (53 FR 30023).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–5964 (53 FR 30023; August 10, 1988), AD 88–17–09, by revising paragraphs (a)(2) and (b)(2); and by revising the address of MDHC in the incorporation by reference paragraph that follows paragraph (d).

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs, Part Number (P/N) MS51992A803–13 or –14, installed.

(Docket No. 88–ASW–24)

Compliance is required as indicated, unless already accomplished.

* * * * *

(a) * * *

(2) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

* * * * *

(b) * * *

(2) Within the next 25 hours' time in service after the effective date of this amended AD, and at intervals not to exceed 25 hours' time in service from the last check, conduct a check of the tail boom extension installation for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

* * * * *

These inspection and check procedures shall be done in accordance with MDHC Mandatory SIN DN–151/EN–39/FN–28, dated October 10, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205–9797, telephone (602) 891–6484. A copy may also be inspected at the Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective December 28, 1989.

This amendment amends Amendment 39–5964 (53 FR 30023; August 10, 1988), AD 88–17–09.

Issued in Fort Worth, Texas, on November 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–27548 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ASW–17; Amendment 39–6329]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 222 helicopters by individual letters. The AD requires inspection and replacement (if necessary) of the main rotor spline plate, drive hub, and associated nuts and washers. The AD was necessary to prevent helicopters from flying with cracked drive hub studs which could fail and result in loss of flight control.

EFFECTIVE DATES: December 22, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 87–09–02, issued April 24, 1987, and 87–09–02R1, issued April 28, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: Applicable AD related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Roach, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Forth Worth, Texas 76193–0170, telephone (817) 624–5179.

SUPPLEMENTARY INFORMATION: On April 24, 1987, Priority Letter AD 87–09–02 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 222 helicopters. The AD required inspection and replacement (if necessary) of the main rotor spline plate, drive hub, and associated nuts and washers. The AD was subsequently amended by Priority Letter AD 87–09–02R1, issue date April 28, 1987, which reduced the nut torque specification from 100 inch-pounds to 50 inch-pounds. The AD was prompted by a report of failure of the lower six studs of the main rotor swashplate drive hub. AD action was necessary to prevent helicopters from flying with cracked drive hub studs which could fail. This failure would result in loss of flight control and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued April 24, 1987, and April 28, 1987, to all known U.S. owners and operators of certain BHTI Model 222 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to all BHTI Model 222 helicopters, certificated in any category, with drive hub assembly, part number (P/N) 222–010–417–009, installed.

Compliance with paragraphs (a) and (b) is required immediately upon receipt of this AD, unless already accomplished.

To prevent possible failure of the drive hub studs which could result in loss of flight control and subsequent loss of the helicopter, accomplish the following:

(a) Remove nuts and washers from the studs which attach spline plate, P/N 222–310–418–105/–107, to the drive hub assembly, P/N 222–010–417–009.

(b) Visually inspect washers, P/N AN960–416, and mating surface on the spline plate, P/N 222–310–418–105/–107, for any signs of fretting, cracking, or wear.

(1) If any fretting or wear is found, replace spline plate, P/N 222–310–418–105/–107, and drive hub assembly, P/N 222–010–417–009.

(2) If no fretting or wear is found, install new nuts, P/N MS21042L4, and washers, P/N AN960–416, and torque nuts to 100 inch-pounds plus friction (tare) torque.

(c) After completing the requirements of paragraphs (a) and (b) and at intervals not to exceed 50 hours' time in service thereafter; apply 50 inch-pounds of torque to the spline plate, P/N 222–310–418–105/–107, retaining nuts.

(1) If the nuts do not move, the nut torque is sufficient.

(2) If one or more nuts move prior to reaching 50 inch-pounds, replace spline plate, P/N 222–310–418–105/–107, and drive hub assembly, P/N 222–010–417–009. (Maintenance manual 222–MM–1, section 65–20–00, paragraphs 65–33 and 65–35 applies to this.)

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, Forth Worth, Texas.

(e) In accordance with FAR §§ 21 197 and 21 199, flight is permitted to a base where inspections required by this AD may be accomplished.

This amendment becomes effective December 22, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 87–09–02, issued April 24, 1987, and 87–09–02R1, issued April 28, 1987, which contained this amendment.

Issued in Fort Worth, Texas, on November 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–27546 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ANE–01]

Amendment to Control Zone, Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment changes the description of the Lebanon New Hampshire Control Zone so as to provide protected airspace for instrument flight rules aircraft executing a new Instrument Flight Rules (IFR) Standard Instrument Approach Procedure (SIAP) to Runway 18 at Lebanon Municipal Airport. Lebanon, New Hampshire.

EFFECTIVE DATE: 0901 u.t.c., December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Systems Management Branch, ANE–530, Federal

Aviation Administration, Burlington, MA 01803; Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Lebanon, New Hampshire Control Zone (54 FR 29907) so as to provide protected airspace for Instrument Flight Rules (IFR) aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at Lebanon, Municipal Airport, Lebanon, New Hampshire. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the Notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment of part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for Instrument Flight Rule aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lebanon, NH [Revised]

Within a 5-mile radius of the center, (Latitude 43 37'35"N, Longitude 72 18'17"W.), of the Lebanon Municipal Airport, Lebanon, NH; within 4 miles each side of the DV OM 351 (True) bearing extending from the 5 miles radius zone to 9.5 miles northeast of the DV OM. Within 3 miles each side of the Hanover HDB 231 and 051 bearings, extending from the 5-mile radius zone 8.5 miles northeast of the NDB; within 2 miles either side of the centerline of Runway 18 extended 5.5 miles from the end of the runway; within 2 miles either side of the White River NDB 060 bearing extending from the 5 mile radius zone to 7.5 miles from the end of Runway 07.

Issued in Burlington, Massachusetts on November 15, 1989.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc 89-27549 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1214 by revising subpart 1214.3, "Payload Specialists for Space Transportation System (STS) Missions." This revision redefines the title of the subpart and the payload specialist responsibilities, and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew. The effect of this amendment is to restrict STS flight opportunities for other than professional NASA astronauts to only those situations where the presence of such personnel clearly contributes to the operational and scientific objectives of the particular mission and flight.

EFFECTIVE DATE: November 24, 1989.

ADDRESS: Director, Transportation Services, Code MC, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Robert L. Tucker, 202/453-2347.

SUPPLEMENTARY INFORMATION: On March 10, 1978, NASA published its final rule, 14 CFR part 1214 subpart 1214.3, "Payload Specialists for NASA or NASA-Related Payloads," in the **Federal Register** (43 FR 9780). This amendment revises that regulation by redefining "payload specialist," and NASA's policy and procedures for selection and utilization of payload and other mission specialists on a Space Transportation System (STS) mission. This does not apply to the standard NASA STS flight crew, nor will it govern the crews of the Space Station Freedom, the composition and selection of which will be the subject of a separate regulation.

The notice and public procedures of 5 U.S.C. 553 were not followed since the policy and procedures are determined to be exempt under 5 U.S.C. 553(a)(2) as a "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

This regulation does not constitute a major rule for the purpose of Executive Order 12291; and it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space Transportation System, Payload specialist, Mission, Mission specialist, NASA-related payload.

For reasons set forth in the Preamble, 14 CFR part 1214 is amended as follows:

PART 14—[AMENDED]

1. The authority citation for 14 CFR part 1214 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87-624, 76 Stat. 421 (47 U.S.C. 721(b)), unless otherwise noted.

2. Subpart 1214.3 is revised to read as follows:

Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

Sec.

1214.300 Scope.
1213.301 Definitions.
1214.302 Background.
1214.303 Policy.
1214.304 Process.
1214.305 Payload specialist responsibilities.
1214.306 Payload specialist relationship with sponsoring institutions.

Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

§ 1214.300 Scope.

(a) This revision of subpart 1214.3 redefines the title of payload specialist and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew.

(b) This subpart does not apply to the selection of crew for the Space Station Freedom. It is recognized that the Space Station has unique requirements regarding its crew and that a separate, specifically tailored policy will need to be developed in the future.

§ 1214.301 Definitions.

(a) *Payload specialists.* Individuals other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required on board the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(b) *NASA or NASA-related payload.* A specific complement of instruments, space equipment, and support hardware, developed by a NASA Program Office or by another party with which NASA has a shared interest, and carried into space to accomplish a mission or discrete activity in space.

(c) *Mission.* The performance of a coherent set of investigations or operations in space to achieve program goals. A single mission might require more than one flight or more than one mission might be accomplished on a single flight.

(d) *Mission manager.* The official responsible for the implementation of the payload portion of an STS flight(s).

(e) *Mission specialist.* A career NASA astronaut trained and skilled in the operation of STS systems related to payload operations and thoroughly familiar with the operational requirements and objectives of the payloads with which the mission specialist will fly. The mission specialist, when designated for a flight, will participate in the planning of the mission and will be responsible for the coordination of overall payload/STS interaction. The mission specialist will direct the allocation of STS and crew resources to the accomplishment of the combined payload objectives during the payload operations phase of the flight in accordance with the approved flight plan.

(f) *Investigator Working Group (IWG).* A group composed of the Principal Investigators, or their representatives, whose primary purpose is facilitating or coordinating the development and execution of the operational plans of an approved NASA program or reporting the progress thereof.

(g) *Payload sponsor.* For NASA and NASA-related payloads the payload sponsor is the Associate Administrator of the sponsoring Program Office whose responsibilities are most closely related to the particular scientific or engineering discipline associated with a payload. For all other payloads, the payload sponsor is identified by the Associate Administrator who contracts with the agency or organization, whether foreign or domestic, private-sector or governmental, to fly a payload on the STS.

(h) *Unique requirements.* The need for a highly specialized or unusual technical or professional background or the need for instrument operations requiring a highly specialized or unusual background that is not likely to be found in the group of mission specialists or cannot be attained in a reasonable training period.

§ 1214.302 Background.

(a) The Space Transportation System (STS) has been developed to expand the Nation's capabilities to utilize the unique environment of space. It provides opportunity for individuals other than career astronauts to participate as onboard members of the flight crew under specified conditions. The purpose of such participation by these individuals is to ensure the achievement of the payload or mission-related objectives.

(b) The STS will provide these additional crew members with a habitable working environment and support services in such a way as to require a minimum of dedicated space flight training, allowing them to concentrate their efforts on the accomplishment of their scientific, technical, or mission objectives.

§ 1214.303 Policy.

(a) *General.* (1) The Challenger accident marked a major change in the U.S. outlook and policies with respect to the flight of other than NASA astronauts. NASA and interested external parties, domestic and international, must re-examine previous understandings, expectations, and commitments regarding flight opportunities in light of the new policies now being enunciated.

(2) NASA policies and their implementation recognize that:

(i) Every flight of the Shuttle involves risks;

(ii) Flight opportunities will now generally be limited to professional NASA astronauts and payload specialists essential for mission requirements; and

(iii) Top priority must be given to:

(A) Establishing, proving, and maintaining the reliability and safety of the Shuttle system;

(B) Timely and efficient reduction of the backlog of high priority scientific and national security missions; and maximum utilization of the Shuttle capacity for primary and secondary payloads that require transportation to or from orbit by the Space Shuttle.

(3) All Shuttle flights will be planned with a minimum NASA crew of five astronauts (commander, pilot, and three mission specialists). When payload or other mission requirements define a need and operational constraints permit, the crew size can be increased to a maximum of seven. Any such additional crew members must be identified at least 12 months before flight and be available for crew integration at 6 months.

(4) NASA policy and terminology are revised to recognize two categories of persons other than NASA astronauts, each of which requires separate policy treatment. They are:

(i) "Payload specialists," redefined to refer to persons other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required onboard the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(ii) "Space flight participants," defined to refer to persons whose presence onboard the Space Shuttle is *not* required for operation of payloads or for other essential mission activities, but is determined by the Administrator of NASA to contribute to other approved NASA objectives or to be in the national interest.

(b) *Payload specialists.* Payload specialists may be added to Shuttle crews when more than the minimum crew size of five is needed and unique requirements are involved. In the case of foreign-sponsored missions and payloads, the need and requirements for payload specialists will be negotiated and mutually agreed between the foreign sponsors and NASA. The selection process for additional crew members to meet approved requirements will first give consideration to qualified NASA mission specialists. When payload specialists are required, they will be nominated by the appropriate NASA, foreign, or other designated payload sponsor. In the case of NASA or NASA-related payloads, the nominations will be based on the recommendations of the appropriate Investigator Working Group (IWG).

(c) *Space flight participants.* NASA remains committed to the long-term goal of providing space flight opportunities for persons outside the professional categories of NASA astronauts and payload specialists when this contributes to approved NASA objectives or is determined to be in the national interest. However, NASA is devoting its attention to proving the Shuttle system's capability for safe, reliable operation and to reducing the backlog of high priority missions. Accordingly, flight opportunities for space flight participants are not available at this time. NASA will assess Shuttle operations and mission and payload requirements on an annual basis to determine when it can begin to allocate and assign space flight opportunities for future space flight participants, consistent with safety and mission considerations. When NASA determines that a flight opportunity is available for a space flight participant, first priority will be given to a "teacher in space," in fulfillment of space education plans.

§ 1214.304 Process.

(a) Determining the need for additional crew members. The payload sponsor will be responsible for recommending the number of addition crew members and for establishing the technical or scientific need, the selection criteria, uniqueness of qualifications, the proposed training, and other requirements for the additional crew members. The payload sponsor's requirements for additional crew members, their qualifications, and the proposed duration for training will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(b) Selection of additional crew members for NASA and NASA-related payloads. After the requirement for additional crew members has been established, the IWG will be tasked by the payload sponsor to commence the selection process. The IWG review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) Prior to the payload sponsor's recommendation for additional crew members and at his/her direction, the IWG will have studied the requirements of the selected investigations, the number, qualifications, training requirements and other requirements of payload specialists, and backups necessary to support the payload objectives, and made recommendations to the payload sponsor.

(2) Members of the mission specialist cadre will be considered first. The payload mission manager, on behalf of the IWG, will convey the selection criteria for the proposed additional crew members to the Chief, Astronaut Office. The IWG, the mission manager, and the Astronaut Office will coordinate the review of the proposed candidates and the mission manager will forward recommendations to the payload sponsor. Recommendations from the payload sponsor will be submitted to the Associate Administrator for Space Flight for approval.

(3) If mission specialists meeting the requirements cannot be provided because of the uniqueness of requirements or impracticability of the resultant training obligation, or if backup payload specialists are required, the IWG may then solicit candidate payload specialists from outside the career astronaut corps. The solicitation will require, as a minimum, that a summary of professional qualifications be submitted to the IWG. In addition, a medical history, and the results of the physical examination described in paragraph (b)(3)(iii) of this section will be required. The IWG will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialists through the mission manager to the payload sponsor who in turn will determine final recommendations which will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(4) The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the payload specialist selections.

(c) Selection of additional crew members for foreign payloads. The need and requirements for payload specialists will be negotiated and mutually agreed to between the foreign sponsor and NASA. This negotiating process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria. After agreement is reached, the payload sponsor will initiate the selection process. Subject to the negotiated agreement, subsequent steps in the process will be similar to those described in § 1214.304(b) modified as follows:

(1) The IWG functions will be performed by a selection committee or other procedure designated by the payload sponsor.

(2) The payload sponsor will designate an individual to perform the mission manager functions.

(3) The committee or procedure in paragraph (c)(1) of this section and the person named in paragraph (c)(2) of this section will be established during the negotiations between the foreign sponsor and NASA, consistent with the specific circumstances.

(4) The payload sponsor will also be responsible for submission to NASA by an appropriate authority of written assurance that an inquiry has been made into the recommended payload specialist's background and suitability on the basis of standards similar to those applied to NASA payload specialist candidates and a statement by the selected candidate asserting a willingness to accept the applicable provisions of § 1214.306. These written assurances must be received and accepted by NASA before selection and before any NASA training can begin.

(d) Selection of additional crew members for other payloads. After the request for additional crew members is approved, the payload sponsor will commence the selection process. The payload sponsor review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) The payload sponsor will first consider members of the mission specialist cadre. A representative of the payload sponsor selection committee will convey the selection criteria for the proposed payload specialists to the Chief, Astronaut Office, and coordinate on the recommendations for mission specialists to satisfy the requirements. The recommendations will be submitted to the Associate Administrator for Space Flight for approval who will then advise the Administrator of the selections.

(2) If mission specialists meeting the requirements cannot be provided because of the uniqueness of qualifications or impracticability of the resultant training obligation, the payload sponsor selection committee, with concurrence from the payload sponsor and the Associate Administrator for Space Flight, may then consider other candidate payload specialists. The payload sponsor will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at the Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialist selection to the Associate Administrator for Space Flight for approval.

(e) Preflight activities for additional crew members. Mission specialists serving as additional crew for the payload, once selected, will be primarily responsible to the mission manager who, together with the IWG (or comparable body designated by the payload sponsor) and the Director, Flight Crew Operations, will determine the integrated training and work schedules as appropriate to the areas of responsibilities outlined in the following paragraphs.

(1) The IWG for NASA and NASA-related payloads or the Payload Sponsor for all other payloads is responsible for defining the training necessary for payload elements within its cognizance. The mission manager is responsible for the total integrated payload training and will assist the IWG as necessary in carrying out the defined training activities.

(2) The Director, Flight Crew Operations, is responsible for establishing the training requirements for payload specialists on Orbiter, Spacelab, and STS-provided payload support systems as appropriate. In order to enhance the crew integration process, the additional crew members (payload specialists and additional mission specialists) will be based at the Johnson Space Center 6 months prior to flight, unless otherwise agreed between the payload sponsor and the Director, Flight Crew Operations, Johnson Space Center.

(3) The payload specialists must be certified for flight by the Director, Flight Crew Operations, upon satisfactory completion of all required training and demonstrated performance of assigned tasks. Certification of the payload specialist's readiness for flight will be made to the payload mission manager and will include an assessment by the crew commander of the payload specialist's suitability for space flight.

(4) The mission manager is responsible for verifying to the payload sponsor that all crew members are properly trained for in-flight payload operations.

(i) The medical program for payload specialists will be continued during the preflight period in accordance with the NASA Class III Space Flight Medical Selection Standards.

(ii) If, during the preflight period, the number of additional crew members is reduced to fewer than that agreed to, or an additional crew member does not meet the certification requirements, the necessary reprocessing may be initiated to provide replacements consistent with the above described selection process and the STS training requirements.

(f) Designation of primary and backup payload specialists (when required). At an appropriate time designated by the mission manager (not later than 9 months prior to flight), the IWG for NASA and NASA-related payloads or payload sponsor for all other payloads will recommend which payload specialists should be designated as prime and which as backup. However, in cases where mission specialists have been selected for the payload specialist position(s), they will be considered as primary at the time of selection. The recommendations will be forwarded by the mission manager to the Program Office which will review the recommendations and forward them to the Associate Administrator for Space Flight for concurrence. The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the selections.

(g) Effective date. The described selection process will apply to all STS missions for which selections have not been approved prior to December 31, 1988.

§ 1214.305 Payload specialist responsibilities.

(a) Relationship with flight crew. The crew commander has overall responsibility for crew integration and the safe and successful conduct of the mission. With respect to crew and vehicle safety, the commander has ultimate responsibility and authority for all assigned crew duties. The payload specialist is responsible to the authority of the commander and operates in compliance with mission rules and Payload Operation Control Center directives. Payload specialists are expected to operate as an integral part of the crew and will participate in crew activities as specified by the crew commander.

(b) Operation of payload elements. The payload specialist will be responsible for the operation of the assigned payload elements. Onboard decisions concerning assigned payload operations will be made by the payload specialist. A payload specialist may be designated to resolve conflicts between the payload elements and approve such deviation from the flight plan as may arise from equipment failures or STS factors. In the instance of STS factors, the mission specialist will present the available options for the payload-related decisions by the payload specialist.

(c) Operation of STS equipment. The payload specialist will be responsible for knowing how to operate certain Obiter systems, such as hatches, food, and hygiene systems, and for proficiency in those normal and emergency procedures which are

required for safe crew operations, including emergency egress and bail out. The responsibility for on-orbit management of Orbiter systems and attached payload support systems and for extravehicular activity and payload manipulation with the Remote Manipulator System will rest with the NASA flight crew. The NASA flight crew will operate Orbiter systems and standard payload support systems, such as Spacelab and Internal Upper Stage systems. With approval of the commander, payload specialists may operate payload support systems which have an extensive interface with the payload.

§ 1214.306 Payload specialist relationship with sponsoring institutions.

Specialists who are not U.S. Government employees must enter into a contractual or other arrangement establishing an obligatory relationship with an institution participating in the payload as designated by the payload sponsor prior to selection and before entering into training at a NASA installation or NASA-designated location. Payload specialists who are not otherwise U.S. Government employees will not become U.S. Government employees by virtue of being selected as a payload specialist. Except as specified in the following paragraphs of this section, NASA will not enter into any direct contractual or other arrangement with individual payload specialists. Any exception must be approved by the NASA Administrator.

(a) Payload specialists who are not citizens of the United States will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(b) Payload specialists who are citizens of the United States and who are not employees of the U.S. Government, will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(c) Payload specialists who are employed by a branch, department, or agency of the U.S. Government other than NASA may (pursuant to the exercise of judgment by the NASA General Counsel) be required to enter into an agreement with NASA to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

Richard H. Truly,

Administrator.

[FR Doc. 89-27545 Filed 11-22-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands

Issued: November 17, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 (May 14, 1987)). The final rule revised the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1989)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adopting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1989 through September 30, 1990, the fees in this notice are effective as of October 1, 1989. The fees will apply to fiscal year 1990 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Olive Wallace, Chief, Management System Branch, Office of the Controller, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8282.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communciations software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located at 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

PART 11—[AMENDED]

Accordingly, the Commission, effective October 1, 1989, amends part 11 of chapter I, title 18 of the Code of Federal Regulations, as set forth below.

1. The authority citation for part 11 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In part 11, Schedule A is revised to read as follows:

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR

State and County	Fee per-acre per-year
Alabama: All counties	$19.84
Arkansas: All counties	$14.88
Arizona:	
Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River	[illegible]
Coconino South of Colorado River, Greenlee, Maricopa, Pinal, Santa Cruz	$19.84
California:	
Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino	[illegible]
Siskiyou	[illegible]
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Sanata Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	[illegible]
Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura	[illegible]

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State and County	Fee per-acre per-year
Colorado:	
Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma	[illegible]
Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel	$9.91
Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Denver, Delta, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller	[illegible]
Connecticut: All counties	$4.96
Florida:	
Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington	[illegible]
All other counties	[illegible]
Georgia: All counties	[illegible]
Idaho:	
Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls	$4.96
Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington	[illegible]
Kansas:	
All other counties	[illegible]
Morton	[illegible]
Illinois: All counties	[illegible]
Indiana: All counties	[illegible]
Kentucky: All counties	[illegible]
Louisiana: All counties	[illegible]
Maine: All counties	[illegible]
Michigan:	
Alger, Baraga, Chippewa, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Shoolcraft	[illegible]
All other counties	[illegible]
Minnesota: All counties	[illegible]
Mississippi: All counties	[illegible]
Missouri: All counties	[illegible]
Montana:	
Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone	$4.96
Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Park Powell, Ravalli, Sanders, Silver Bow, Stillwater Sweet Grass	[illegible]
Nebraska: All counties	$4.96
Nevada:	
Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine	[illegible]
Carson City, Douglas, Storey	[illegible]
New Hampshire: All counties	[illegible]
New Mexico:	
Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance	[illegible]
Rio Arriba, Sandoval, Union	[illegible]
Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia,	[illegible]

FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE YEAR—Continued

State and County	Fee per-acre per-year
New York: All counties	[illegible]
North Carolina: All counties	[illegible]
North Dakota: All counties	[illegible]
Ohio: All counties	[illegible]
Oklahoma:	
All other counties	[illegible]
Beaver, Cimarron, Roger Mills, Texas	$9.91
Le Flore, McCurtain	[illegible]
Oregon:	
Harney, Lake, Malheur	[illegible]
Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	[illegible]
Coos, Curry, Douglas, Jackson, Josephine	[illegible]
Benton Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill	[illegible]
Pennsylvania: All counties	[illegible]
Puerto Rico: All	[illegible]
South Dakota: Butte, Custer, Fall River, Lawrence, Meed, Pennington	[illegible]
All other counties	[illegible]
South Carolina: All counties	[illegible]
Tennessee: All counties	[illegible]
Texas:	
Culberson, El Paso, Hudspeth	[illegible]
All other counties	[illegible]
Utah:	
Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Jaub, Kane, Millard, San Juan, Tobele, Uintah, Wayne	[illegible]
Washington	[illegible]
Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber	[illegible]
Vermont: All counties	[illegible]
Virginia: All counties	[illegible]
Washington:	
Adams, Asotin, Benton, Chelan, Coumbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanagan, Spokane, Walla Walla, Whitman, Yakima	[illegible]
Ferry, Pend Oreille, Stevens	[illegible]
Clalem, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom	[illegible]
West Virginia: All counties	[illegible]
Wisconsin: All counties	$14.88
Wyoming:	
Albany, Campbell, Cargon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheriden, Sweetwater, Fremont, Sublette, Uinta, Washakie	[illegible]
Big Horn, Crook, Park, Teton, Weston	[illegible]
All other zones	[illegible]

[FR Doc. 89-27527 Filed 11-22-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, are 11 percent for underpayments and 10 percent for overpayments for the quarter beginning October 1, 1989. It is being published for the convenience of the importing public and Customs personnel.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. This method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of October 1, 1989–December 31, 1989 are 11 percent for underpayments and 10 percent for overpayments. These rates will remain in effect through December 31, 1989, and are subject to change on January 1, 1990.

Dated: November 15, 1989.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 89-27514 Filed 11-22-89; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Commissioner of Food and Drugs from the Assistant Secretary for Health. The authorities pertain to the disposition of rights to patents and inventions under the Government Patent Policy Act of 1980 as amended by the Federal Court Reorganization Act of 1984.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 1988 (53 FR 27767), the Public Health Service published a notice of a delegation of authority, effective July 15, 1988, from the Assistant Secretary for Health to Public Health Service agency heads, including the Commissioner of Food and Drugs, under the Government Patent Policy Act of 1980 (35 U.S.C. 202 *et seq.*) as amended by the Federal Court Reorganization Act of 1984 (Pub. L. 98–620), as amended hereafter. This delegation of authority deals with the disposition and determination of patent and invention rights, and supplements the February 4, 1988, delegation of authority under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*) as amended by the Federal Technology Transfer Act of 1986 and under Executive Order No. 12591 of April 10, 1987, as amended hereafter. FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) to add to FDA's regulations new paragraph (a)(31) concerning these authorities delegated to the Commissioner of Food and Drugs.

Further redelegation of the authority delegated has not been authorized by the Commissioner of Food and Drugs.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Government Patent Policy Act of 1980, the Federal Court Reorganization Act of 1984, and the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149 467f, 679(b), 801–886, 1031–1309; secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.10 is amended by adding new paragraph (a)(31) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(31) Functions vested in the Secretary under the Government Patent Policy Act of 1980 as amended by the Federal Court Reorganization Act of 1984, as they pertain to the functions of the Food and Drug Administration (FDA). The delegated authorities, to be exercised in compliance with all existing rules and regulations regarding patent and invention rights and responsibilities, are restricted to the extent that 35 U.S.C. 203, as amended, may not be redelegated and that under 35 U.S.C. 207(a), the Assistant Secretary for Health is to be notified of any significant invention, patent, or license, so that the Assistant Secretary for Health may decide whether or not documentation concerning any such invention, patent, or license should be submitted to the Assistant Secretary for Health for signature. All other authorities may be redelegated to officials at the level equivalent to bureau and institute directors.

(i) Disposition of rights, 35 U.S.C. 202(c)(7), as amended: The authority to permit a nonprofit organization to assign the rights to a subject invention in the United States to organizations which do not have as one of their primary functions the management of inventions.

(ii) Disposition of rights, 35 U.S.C. 202(d), as amended: The authority to permit a contractor to grant requests for retention of rights by the inventor.

(iii) Disposition of rights, 35 U.S.C. 202(e), as amended: The authority to transfer or assign whatever rights FDA may acquire in the subject invention in any case when an agency employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm. Such rights may be transferred or assigned from the FDA employee to the contractor subject to the conditions set forth in this chapter.

(iv) March-in-rights, 35 U.S.C. 203, as amended: The authority to require the contractor to grant nonexclusive, partially exclusive, or exclusive licenses to responsible applicant(s), or the authority for FDA to grant such licenses, provided such action would be in the best interest of FDA, in accordance with all provisions of this section.

(v) Preference for United States industry, 35 U.S.C. 204, as amended: The authority to waive the preference for U.S. industry requirement.

(vi) Domestic and foreign protection of federally owned inventions, 35 U.S.C. 207(a) as amended, the authority to:

(A) Apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(B) Grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of title 35 as determined appropriate in the public interest;

(C) Undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(D) Transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(vii) Determination as to domestic rights and notice to employee of determination, 45 CFR 7.3 and 7.7, as amended, authority to:

(A) Leave title to invention in the FDA employee inventor where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein; and

(B) Notify the FDA employee inventor of the determination in writing.

* * * * * *

Dated: October 5, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–27576 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Sulfadimethoxine-Ormetoprim Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffman-La Roche, Inc. The NADA provides for the safe and effective use of tablets containing four concentrations of sulfadimethoxine-ormetoprim for treating skin and soft tissue infections in dogs.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Hoffman-La Roche, Inc., Nutley, NJ 07110, filed NADA 100–929 which provides for use in dogs of Primor® (sulfadimethoxine-ormetoprim) Tablets for treating skin and soft tissue infections caused by *Staphylococcus aureus* and *Escherichia coli*. Tablets are available containing four concentrations of ormetoprim-potentiated sulfadimethoxine ranging from 120 to 1200 milligrams (mg) (e.g., 100 mg of sulfadimethoxine and 20 mg of ormetoprim). The drug is restricted to use by or on the order of a licensed veterinarian.

The NADA is approved and the regulations are amended by adding new 21 CFR 520.2220d to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and §514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FOR NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

New § 520.2220d is added to read as follows:

§ 520.2220d Sulfadimethoxine-ormetoprim tablets

(a) *Specifications.* Each tablet contains 120 milligrams (100 milligrams of sulfadimethoxine and 20 milligrams of ormetoprim), 240 milligrams (200 milligrams of sulfadimethoxine and 40 milligrams of ormetoprim), 600 milligrams (500 milligrams of sulfadimethoxine and 100 milligrams of ormetoprim), or 1200 milligrams (1,000 milligrams of sulfadimethoxine and 200 milligrams of ormetoprim).

(b) *Sponsor.* See No. 000004 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* On the first day of treatment, administer 25 milligrams per pound (55 milligrams per kilogram) of body weight. Then follow with a daily dosage of 12.5 milligrams per pound (27.5 milligrams per kilogram) of body weight.

(2) *Indications of use.* Treatment of skin and soft tissue infections (wounds and abscesses) in dogs caused by strains of *Staphylococcus aureus* and *Escherichia coli* susceptible to ormetoprim-potentiated sulfadimethoxine.

(3) *Limitations.* Continue treatment until patient is asymptomatic for 48 hours, but do not exceed a total of 21 consecutive days. Maintain adequate water intake during the treatment period. Safety in breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 15, 1989

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–27485 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

28 CFR Part 68

[A.G. Order 1377–89]

Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices

AGENCY: Executive Office for Immigration Review—Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule sets forth procedures for implementation of sections 274A and 274B of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA). 8 U.S.C. 1324a and 1324b.

Specifically, these regulations adopt as final and revise part 68 of title 28 of the Code of Federal Regulations which will provide the rules of practice and procedure in administrative hearings regarding:

(1) Allegations of unlawful hiring, recruiting or referring for a fee, for employment in the United States, of aliens knowing that such aliens are not authorized to work in the United States; or the continued employment of aliens in the United States knowing such aliens are (or have become) unauthorized to work in the United States; or failure to comply with the employment verification requirements;

(2) Allegations of unfair immigration-related employment practices; or

(3) Allegations of the unlawful imposition of any requirement that an individual post bond, security, or otherwise guarantee or indemnify

against potential liability for unlawful hiring, recruiting or referring of such individual.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, (703) 756–6470.

SUPPLEMENTARY INFORMATION: Sections 274A and 274B of the INA require that hearings be held by Administrative Law Judges in certain cases involving allegations of knowingly hiring, recruiting or referring for a fee, for employment in the United States, unauthorized aliens; or continuing to employ aliens not authorized to work in the United States; or failure to comply with certain employment verification requirements; and in situations where unfair immigration-related employment practices are alleged. On November 24, 1987, the Department of Justice published an interim final rule to implement sections 274A and 274B of the INA. 52 FR 44972 (November 24, 1987). The interim final rule designated hearing procedures to guide in the conduct of section 274A and 274B proceedings. The interim final rule established a set of rules for all cases properly brought before the Administrative Law Judges which comply with the requirements of the INA.

The interim final rule provided for responsive pleadings with complaints lodged with the Office of the Chief Administrative Hearing Officer. Time limits were established for the various pleadings. Discretionary pre-hearing statements and conferences designed to streamline the proceedings were also provided.

A discovery process was set forth to assist the Administrative Law Judge and the parties in the development of the facts and a complete record. Consistent with the INA, the rules provided the Administrative Law Judge with subpoena power and included a provision that a subpoena may be enforced in the appropriate federal district court.

Representation by any licensed attorney in good standing was allowed in all cases. Individuals may also appear pro se. In unfair immigration-related employment cases, any person who believed that he/she had been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized in writing to act on such person's behalf could petition the Administrative Law Judge to intervene or appear under certain circumstances. Intervenors as parties and amicus curiae were also permitted under certain circumstances.

The actual mechanics of the hearing were set forth. After the close of the hearing, the Administrative Law Judge was given the full authority to make appropriate awards, grant relief, and issue other appropriate orders as provided by statute.

In cases involving knowingly hiring, recruiting or referring for a fee, for employment in the United States, of aliens not authorized to work in the United States, and failure to comply with employment verification requirements and prohibition of indemnity bond cases, the Administrative Law Judge's decision was subject to review by the Chief Administrative Hearing Officer. This official had the authority to vacate or modify the decision, but had no review authority over other immigration-related matters. Thereafter, judicial review was available. Failure to request that the Chief Administrative Hearing Officer review a decision by the Administrative Law Judge did not prevent a party from seeking judicial review. In cases involving unfair immigration-related employment practices, only judicial review was available. Recourse to the Chief Administrative Hearing Officer was not available.

Although not required under the Administrative Procedures Act for the promulgation of rules of agency procedure or practice, the Executive Office of Immigration Review published the interim final rule with a request for comments. 52 FR 44973 (November 24, 1987). The comment period ended on December 24, 1987. A total of three comments were received and considered in preparing this final rule. Changes were made in this final rule based on consideration of the comments received and experience gained by the agency in implementing the hearing procedures. What follows is a section-by-section analysis of the final revisions to the interim final rule and a discussion of comments concerning the sections to which they apply.

Section 68.1 briefly sets out the scope of the rules of practice and is revised to state that the Federal Rules of Civil Procedure shall be used as general guidelines in any situation not otherwise provided for by these rules, or by any statute, executive order, or regulation. The interim final rule stated that the Federal Rules of Civil Procedure shall be used in such situations. This provision was changed to give the Administrative Law Judge flexibility in applying the appropriate procedure in a hearing or proceeding. While the Federal Rules of Civil Procedure are the general guidelines to be followed, this section recognizes that there may be situations in which it would be more appropriate for another standard to be applied. In particular, such standards would apply if it would be less expensive for the parties expedite the matter, and meet the ends of justice without prejudicing any party.

Section 68.2 subsection (d) was revised to include an Acting Chief Administrative Hearing Officer in the definition of the Chief Administrative Hearing Officer. Language repeating the administrative review authority of such officials under § 63.51 was removed from subsection (d) as surplusage.

Section 68.2 subsection (m) was revised to remove requests for discovery from the definition of a pleading. Consistent with this revision, §§ 68.17 through 68.19 of the final rule are also revised. The purpose of these revisions is to remove the administrative burden which resulted from the interim requirement of filing discovery requests and responses with the court. Finally, this section was revised to allow a party to submit a pleading to the Chief Administrative Hearing Officer before a case is assigned to an Administrative Law Judge.

Section 68.3 was revised and reorganized. Under the final rules this provision applies only to service of documents by the Chief Administrative Hearing Officer or the Administrative Law Judge assigned to the case. Section 68.4 was revised and now deals with notice of date, time, and place of hearing. Section 68.5 covers service and filing of documents by parties. Such procedures were previously included in interim final rule § 68.3. The revisions change the sequence of the rules and they will be renumbered accordingly.

Section 68.6 governs the form of pleadings and documents. The revisions require complaints to contain a more complete statement of facts and law. Complainants are also required to attach certain administrative records to the complaint to allow the Office of the Chief Administrative Hearing Officer to confirm proper jurisdiction. The final rule aids respondents in preparing answers to complaints by reducing the need for filing a motion for a more definite statement.

Section 68.7 provides rules for time computations and allows a party, served by mail, an additional five days beyond the prescribed period to file a response. This section was revised and no longer adds five days to the prescribed filing period when a party files a pleading by

mail. This revision is consistent with the Administrative Procedure Act and the Federal Rules of Civil Procedure.

Regarding § 68.8(c), concern was expressed by a commenter that requiring a respondent to answer each allegation of the complaint was duplicative and burdensome because 8 CFR 274a.9(d) requires a respondent to answer each allegation in the Notice to Fine. Section 274a.9(d) of 8 CFR has been revised and an answer to the allegations in the Notice to Fine is not mandatory. Since this is a more formal proceeding a detailed answer is necessary. Consequently, § 68.8(c) is not revised.

Section 68.9 deals with motions and requests and is revised to clarify the Chief Administrative Hearing Officer's authority to act on non-adjudicatory matters prior to the appointment of an Administrative Law Judge. The title of subsection (b) "[a]nswers to motions," was changed to "[r]esponses to motions." The term responses is more accurate than the term answers, which could be confused with answers to complaints.

Section 68.12 deals with the form and submission of consent findings or dismissals. This section was previously entitled Consent order or settlement. The title of this section was changed to clarify that the section deals with consent findings and dismissals. In addition, this section was reorganized for further clarification. Subsection: (a) Dealing with deferments of proceedings was deleted as surplusage in view of the general powers of the Administrative Law Judge under § 68.26(a) and the Administrative Procedure Act. A change was made to correct a technical deficiency by referring to an order submitted by the parties as a proposed order. A further change was made in subsection (c) to provide for "decision and order" rather than just "order." This change was made for administrative efficiency so that the Administrative Law Judge does not have to rewrite the submission. Finally, this section was revised to provide that dismissal of an action by consent of the parties is subject to the Administrative Law Judge's approval.

Section 68.13 was revised by removing the regulatory provision granting the Special Counsel the right to intervene at any time in section 274B proceedings. Section 68.13 now provides that Special Counsel, like interested private persons or organizations, may intervene at the Administrative Law Judge's discretion. This revision was made because the statute does not expressly provide for intervention as a matter of right by the Special Counsel.

Section 68.16 governs the scope of discovery and provides for orders to protect a party from annoyance, harassment, embarrassment, oppression, undue burden or expense. A commenter suggested that the regulations be revised to impose a requirement limiting the number of interrogatories and other discovery requests. Section 68.16 has been revised to clarify the Administrative Law Judge's authority to limit the frequency or extent of the discovery methods upon his/her initiative or upon motion by a party. In addition, a party may move for a protective order under this section. Section 68.16 has also been revised to remove a provision allowing certain discovery stipulations.

Sections 68.17, 68.18, and 68.19, which deal with written interrogatories, requests for production of documents, things, inspection of land, and admissions, were revised to eliminate the unnecessary burden and expense of filing such documents and answers thereto with the Administrative Law Judge.

One commenter expressed concern about the costs associated with adjudication of section 274A of the INA recordkeeping violations. Specifically, concerns were expressed about costs incurred regarding: (1) Answering each allegation of the complaint; (2) pleading facts supporting affirmative defenses; (3) responding to a variety of discovery requests; (4) responding to any motions or subpoenas arising from the discovery process; (5) responding to any motions for summary decision; and (6) hearing and participating at the formal hearing. It was suggested that the procedures for adjudication of section 274A recordkeeping and indemnity bond violations be "streamlined." After careful consideration, it was determined that the final rules will not reflect "different" procedures for recordkeeping and indemnity bond cases than for other section 274A cases. These rules were promulgated primarily for the purpose of establishing an equitable and orderly procedure for conducting a hearing or proceeding under sections 274A and 274B of the INA. Accordingly, certain costs associated with adhering to the rules of practice are unavoidable. Moreover, § 68.16 provides the parties with protective remedies in the event discovery becomes unduly burdensome or expensive.

A commenter suggested that discovery be governed by Rule 16 of the Federal Rules of Criminal Procedure in section 274A cases where the government is prosecuting the respondent in collateral criminal proceedings (and where the respondent asserts a potential for criminal prosecution arising from the same facts alleged in the civil complaint). Since proceedings under section 274A are civil in nature, the existing discovery rules patterned after the Federal Rules of Civil Procedure are both appropriate and efficient. The rules provide for an exchange of information not otherwise available and thereby make for a fairer proceeding. Where there has been a criminal investigation reasonably likely to result in a prosecution or when a prosecution is imminent, a section 274A respondent is afforded protections similar to those available in a civil proceeding in a United States district court. Most importantly, there is nothing novel or extraordinary about the juxtaposition of civil and criminal liability arising out of identical circumstances. Vulnerability of respondents in civil proceedings to criminal prosecution has existed under the jurisdiction of many Federal agencies for a considerable number of years. Any problem in this respect is best treated on a case-by-case basis.

It was also suggested that in cases where the proposed fine is $10,000 or less, and the respondent qualifies as a small employer within the meaning of the Equal Access to Justice Act, that no pre-trial discovery be allowed. The Administrative Conference of the United States (ACUS) in recommending that agencies provide for prehearing discovery in adjudicatory proceedings stated that discovery "insures that the parties to the proceeding have access to all relevant, unprivileged information prior to hearing." 1 CFR 305.70–4. The ACUS noted that the primary objectives of discovery include a more expeditious hearing, the encouragement of settlement between the parties, and greater fairness in adjudication. *Id.* An exception to the discovery rules for small employers is contrary to such objectives and will not be created. Moreover, an exception is unnecessary because under section 68.16 any party may seek a protective order from the Administrative Law Judge if discovery becomes oppressive.

Section 68.20(c) dealing with taking and receiving depositions in evidence is revised to allow witnesses to waive signature of depositions. This is a common practice and this revision is included for the convenience of the witness and his/her attorney.

Section 68.23, which deals with subpoenas, is revised to clarify the Administrative Law Judges' statutory power to issue subpoenas for investigatory purposes prior to and subsequent to the filing of a complaint.

We note that the Administrative Law Judges' authority to issue subpoenas under § 68.23 and section 274A(e) of the INA does not restrict the Immigration and Naturalization Service's concurrent authority to issue subpoenas pursuant to section 235 of the INA.

Section 68.25 deals with continuances and subsection (c) is revised to make the timeframes for filing a continuance consistent with the timeframe set forth in subsection (b).

Section 68.31, which deals with appearances and representation, was revised and reorganized for clarification purposes.

Section 68.32 states that the Office of the Chief Administrative Hearing Officer does not have the authority to appoint legal counsel. The interim final rules stated that such office did not have the authority to appoint counsel or refer parties to counsel. One commenter expressed concern that a prohibition from providing parties with referrals to lawyers was unduly broad because it would apply not only to employer sanctions cases but to hearings regarding individuals who allege unfair immigration-related employment practices. It was suggested that the provision be revised to include referrals to legal services programs to individuals who allege unfair immigration-related employment practices. Section 68.32 has been revised, and the prohibition regarding referrals to lawyers has been removed. Section 68.32 of the final rules will not include a requirement that parties be provided with referrals to lawyers.

Section 68.46 deals with the record of hearings and was revised to establish the length of time permitted for filing corrections of the original transcript. In addition, this provision was revised to eliminate the requirement of a written record in cases which are terminated by consent or settlement order. The revision removes the unnecessary administrative burden of retaining the record in cases terminated by the parties.

Section 68.51 was revised to remove language requiring that upon issuance of a final order by an Administrative Law Judge in a section 274A case, a copy of the decision and the record of proceeding be forwarded to the Chief Administrative Hearing Officer for such review as he/she deems appropriate. This section was revised to improve administrative efficiency. The final rule retains the procedure whereby a party may request review of an Administrative Law Judge's decision within five days of the date of decision.

One commenter suggested that review by the Chief Administrative Hearing Officer does not adequately insure independent and impartial review of Administrative Law Judges' orders because such official's responsibility for supervision of Administrative Law Judges will increase the probability of bias or prejudice in favor of Administrative Law Judges' orders. It was suggested that final administrative review of Administrative Law Judges' final orders be assigned to an individual or panel with no review authority over immigration-related matters and no responsibility for the supervision of Administrative Law Judges. The commenter's suggestions were carefully reviewed, but rejected because there is no indication that general supervision of Administrative Law Judges has created bias or prejudice in favor of the Administrative Law Judges' orders. Concern was also expressed that these rules make administrative review of orders unlikely because review is conducted only at the discretion of the Chief Administrative Hearing Officer and only if that individual acts within 30 days. The Immigration Reform and Control Act of 1986 mandates that the administrative review be completed within 30 days of the date of decision. Thus, the 30-day period cannot be extended by regulatory revision. It was suggested that the rules be revised to make administrative review mandatory in section 274A cases. The Immigration Reform and Control Act of 1986 clearly does not provide for mandatory administrative review in section 274A cases.

Section 68.52 deals with the filing of the official record and removes the interim final rules requirement that the Chief Administrative Hearing Officer certify and file the record. This revision was made in order to improve administrative efficiency.

A commenter suggested that the final regulations include a provision providing interpreters for non-English speaking parties in section 274B hearings. The commenter further suggested that interpreters be provided at the Government's expense to indigent section 274B complainants. There is no statutory requirement to provide interpreters at section 274B hearings and such a generally applicable requirement would unduly burden the Government.

This is not a major rule within the meaning of Executive Order No. 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities because it is procedural in nature.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-Discrimination.

Accordingly, part 68 is revised as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.

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Sec.
68.44 Authenticity.
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68.46 Record of hearings.
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68.50 Decision and order of the Administrative Law Judge.
68.51 Administrative and judicial review.
68.52 Filing of the official record.

Authority: 5 U.S.C. 301; 5 U.S.C. 554; 8 U.S.C. 1103; 8 U.S.C. 1324 a and b.

§ 68.1 Scope of rules.

These rules of practice are generally applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office of Immigration Review, United States Department of Justice, with regard to unlawful employment cases and unfair immigration-related employment practice cases under sections 274A and 274B of the INA. Such proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Rules of Civil Procedure for the District Courts of the United States shall be used as a general guideline in any situation not provided for or controlled by these rules, or by any statute, executive order, or regulation.

§ 68.2 Definitions.

For purposes of these rules:

(a) *"Adjudicatory proceeding"* means a judicial-type proceeding leading to the formulation of a final order;

(b) *"Administrative Law Judge"* means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *"Administrative Procedure Act"* means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

(d) *"Chief Administrative Hearing Officer,"* or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the direction of the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, and exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer;

(e) *"Commencement of Proceeding"* is the filing of a complaint with the Office of the Chief Administrative Hearing Officer;

(f) *"Complainant"* means the Immigration and Naturalization Service in cases arising under section 274A of the INA. In cases arising under section 274B of the INA, "complainant" means the Special Counsel (as defined in § 68.2(o)), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

(g) *"Complaint"* means the formal document initiating proceedings;

(h) *"Consent order"* means any written document containing a specified remedy or other relief agreed to by all parties and entered as an Order by the Administrative Law Judge;

(i) *"Hearing"* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(j) *"Motion"* means an oral or written request, made by a person a party, for some action by an Administrative Law Judge;

(k) *"Order"* means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(l) *"Party"* includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding;

(m) *"Pleading"* means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement or amendment submitted to the Administrative Law Judge or when no judge is assigned the Chief Administrative Hearing Officer;

(n) *"Respondent"* means a party to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

(o) *"Special Counsel"* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 274B of the INA, or his or her designee;

(p) *"Unlawful employment cases"* means cases involving knowingly hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of section 274A of the INA;

(q) *"Unfair immigration-related employment practice cases"* means cases involving discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment, or the discharging of the individual from employment:

(1) Because of such individual's national origin, or

(2) In the case of a citizen or intending citizen, because of the individual's citizenship status, in violation of section 274B of the INA.

(r) *"Prohibition of indemnity bond cases"* means cases where a person or entity unlawfully requires, as a condition to the hiring, recruiting or referring (for a fee) of an individual for employment in the United States, that the individual post a bond or otherwise provide a financial guarantee or indemnify for potential liability as a result of the hiring, recruiting, or referring of the individual.

§ 68.3 Service of complaint, notice of hearing, written orders and decisions.

Service of complaint, notice of hearing, written orders and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(a) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or

(b) By leaving a copy at the principal office, place of business, or residence of a party; or

(c) By mailing to the last known address of such individual, partner, officer, or attorney.

(d) Service of complaint and notice of hearing is complete upon receipt by addressee.

§ 68.4 Notice of date, time, and place of hearing.

(a) *Generally.* The Administrative Law Judge to whom the case is assigned shall notify the parties of a date, time, and place set for hearing thereon or for a prehearing conference, or both within thirty (30) days of receipt of respondent's answer to the complaint.

(b) *Place of hearing.* Due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing. In this regard, section 274A of the INA requires that hearings in unlawful employment cases be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

§ 68.5 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Office of the Chief Administrative Hearing Officer. An original and two copies of all other pleadings, including any attachments, shall be filed with the Office of the Chief Administrative Hearing Officer by the

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parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(b) The parties shall not file requests for discovery, answers or responses thereto with the Administrative Law Judge; however, the Administrative Law Judge may, upon motion of a party or on his/her own initiative, order that such requests for discovery, answers or responses thereto be filed.

§ 68.6 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleading shall be on standard size (8 ½×11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A or section 274B of the INA shall contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

(5) Complainants in cases arising under section 274A of the INA shall attach to the complaint a copy of the Notice of Intent to Fine and Request for Hearing. Complainants in cases arising under section 274B of the INA shall attach to the complaint a copy of the charge filed with Special Counsel pursuant to section 274B(b)(1) and a copy of the Special Counsel's letter of determination regarding the charges.

(c) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(d) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

§ 68.7 Time computations.

(a) *Generally.* In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or legal holiday observed by the Federal Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) Computation of time for filing by mail. Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case.

(c) Computation of time for service by mail.

(1) Service of all pleadings other than complaints is deemed effective at the time of mailing; and

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

§ 68.8 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he/she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted; and

(2) A statement of the facts supporting each affirmative defense.

(d) Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If and whenever a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 68.9 Motions and requests.

(a) *Generally.* The Chief Administrative Hearing Officer is authorized to act on non-adjudicatory matters relating to a proceeding prior to the appointment of an Administrative Law Judge. After the complaint is referred to an Administrative Law Judge, any application for an order or any other request shall be made by motion which shall be made in writing unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally. The motion or request shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before an Administrative Law Judge shall be stated orally and made part of the transcript. Whether a motion is made orally or in writing, all parties shall be given reasonable opportunity to respond or to object to the motion or request.

(b) *Responses to motions.* Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file a response in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence upon which he/she desires to rely. Unless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Administrative Law Judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

§ 68.10 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Administrative Law Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Administrative Law Judge:

(1) Issues involved in the proceedings;

(2) Facts stipulated to together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's or parties' case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Administrative Law Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 68.11 Conferences.

(1) *Purpose and scope.* (1) Upon motion of a party or in the Administrative Law Judge's discretion, the judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing, or in a conference during the course of the hearing, when the Administrative Law Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by conference telephonic communication unless, in the opinion of the Administrative Law Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given.

(2) At the conference, the following matters may be considered:

(i) The simplification of issues;

(ii) The necessity of amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitations on the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters, including the disposition of pending motions, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference will not be kept unless directed by the Administrative Law Judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written order, unless the Administrative Law Judge concludes that a stenographic report shall suffice, or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Law Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 68.12 Consent findings or dismissal.

(a) *Submission.* The parties or their authorized representatives or their counsel may:

(1) Submit a proposed agreement containing consent findings and a proposed decision and order for consideration by the Administrative Law Judge; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge.

(b) *Content.* Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

(1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;

(2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) *Disposition.* In the event an agreement containing consent findings and a proposed decision and order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision and order based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed decision and order.

§ 68.13 Intervenor in unfair immigration-related employment cases.

The Special Counsel, or any interested person or private organization, other than an officer of the Immigration and Naturalization Service, may petition to intervene as a party in unfair immigration-related employment cases. The Administrative Law Judge may, in his or her discretion, grant such a petition, if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and is likely to contribute materially to the proper disposition of the proceedings.

§ 68.14 Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Administrative Law Judge assigned may, upon motion by any party, or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may

be considered as introduced in the others, and a separate or joint decision shall be made at the discretion of the Administrative Law Judge.

§ 68.15 Amicus curiae.

A brief of an amicus curiae may be filed by leave of the Administrative Law Judge upon motion or petition of the amicus curiae. The amicus curiae shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

§ 68.16 Discovery—general provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or extent of these methods may be limited by the Administrative Law Judge upon his/her own initiative or pursuant to a motion under subdivision (c).

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify, and the substance of his/her testimony.

(2) A party is under a duty to amend timely a prior response if he/she later obtains information upon the basis of which:

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

§ 68.17 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served on all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons of objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer or objections upon all parties to the proceeding within thirty (30) days after service of the interrogatories, or within such shorter or longer period as the Administrative Law Judge upon motion may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Administrative Law Judge may upon motion order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) A person or entity upon whom interrogatories are served may respond by the submission of business records, indicating to which interrogatory the documents respond, if they are sufficient to answer said interrogatories.

§ 68.18 Production of documents, things, and inspection of land.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated documents or things or to inspect land, in the possession, custody, or control of the party upon whom the request is served; and

(2) Permit the party making the request, or a person acting on his/her behalf, to enter the premises of the party upon whom the request is served to accomplish the purposes stated in paragraph (1) of this section.

(b) The request may be served on any party without leave of the Administrative Law Judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties.

§ 68.19 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable the party to admit or deny.

(d) Any matter admitted under this section is conclusively established unless the Administrative Law Judge upon motion permits withdrawal or amendment of the admission.

(e) A copy of each request for admission and each written response shall be served on all parties.

§ 68.20 Depositions.

(a) *When, how and by whom taken.* Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. All costs involved with the taking of depositions, including the cost of a certified court reporter and the original transcripts, shall be paid by the party seeking the despositions.

(b) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and all other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less than twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(c) *Taking and receiving in evidence.* Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, certified by the person administering the oath, read by or to, and subscribed by the witness unless the witness and the parties by stipulation waive such signature.

(d) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his/her objections to the deposition conduct or proceedings.

§ 68.21 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§ 68.16 through 68.20, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. Likewise, a party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his/her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he/she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) If a party or an officer or agent of a party fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or responding to request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevent issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(1) Infer and conclude that the admissions, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence should have been shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.23(e); and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he/she is authorized to enter on a motion made pursuant to § 68.40.

§ 68.22 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the prupose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles

from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him/her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(b) *Objections to admissibility.* Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

§ 68.23 Subpoenas.

(a) Except as provided in paragraph (b) of this section, an Administrative Law Judge may issue subpoenas as authorized by statute or law, either prior to or subsequent to the filing of a complaint, and upon written application of a party requiring attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by overnight courier service or overnight mail, certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding.

(b) If a party's written application for subpoena is submitted three (3) working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the presiding Administrative Law Judge, as appropriate.

(c) The subpoena shall identify the person or things subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested.

(d) Any person served with a subpoena issued by an Administrative Law Judge who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon him or her, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties to the hearing. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition the party who applied for such subpoena may respond to such petition and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause to be served a copy of the final determination of the petition upon the petitioner and all parties.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or a subpoena issued under this Section, the Administrative Law Judge may, where authorized by statute or by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

§ 68.24 Designation of Administrative Law Judge.

Hearings will be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. In unfair immigration-related employment practice cases, only Administrative Law Judges specially designated by the Attorney General as having special training respecting employment discrimination may be chosen by the Chief Administrative Hearing Officer to preside.

§ 68.25 Continuances.

(a) *When granted.* Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date set for hearing.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or hearing. Copies shall be served on all parties. Any motions for continuances filed less than fourteen (14) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of his/her staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall issue a written order in advance of the scheduled proceeding date which either allows or denies the request. Otherwise, the ruling made orally by telephonic communication to the party requesting same who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

§ 68.26 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by statute or law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefor;

(8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts, issued from time-to-time and amended pursuant to 28 U.S.C. 2072; and

(9) Do all other things necessary to enable him/her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

§ 68.27 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

§ 68.28 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

§ 68.29 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.

§ 68.30 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

§ 68.31 Appearance and representation.

(a) Appearances. Any party shall have the right to appear at a hearing to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Representation.* (1) A party may be represented by an attorney qualified under paragraph (b)(4) of this section, at no expense to the Government.

(2) Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel.

(3) The Department of Justice may be represented by the appropriate counsel in these proceedings.

(4) *Qualifications of attorneys.* An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(5) Each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be accompanied by a certification indicating that such notice was served on all parties of record.

(6) *Authority for representation.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his/her authority to act in such capacity.

(c) *Withdrawal or substitution of an attorney.* Withdrawal or substitution of an attorney may be permitted by the Administrative Law Judge upon written motion.

§ 68.32 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel.

§ 68.33 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The Administrative Law Judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative.

§ 68.34 Ex parte communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

(b) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion

from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

§ 68.35 Waiver of right to appear and failure to participate or to appear.

(a) *Waiver of right to appear.* If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his/her representative appears at the time and place fixed for the hearing and either

(1) Prior to the time for hearing, such party does not show good cause as to why neither he/she nor his/her representative can appear; or

(2) Within ten (10) days after the time for hearing such party does not show good cause for such failure to appear.

(c) *Default—Failure to appear.* A default decision, under § 68.8(b), may be entered, with prejudice, against any party failing, without good cause, to appear at a hearing.

§ 68.36 Motion for summary decision.

(a) Any party may, at least twenty (20) days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve supporting or opposing papers with affidavits if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(d) *Form of summary decisions.* Any final decision issued as a summary decision shall conform to the requirements for all final decisions. An initial decision and a final decision made under this paragraph shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the rule or order.

(e) Hearings on issue of fact. Where a genuine question of material fact is raised, the Administrative Law Judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 68.37 Formal hearings.

(a) *Public.* Hearings shall be open to the public. The Administrative Law Judge may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

(b) *Jurisdiction.* The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the right to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

(d) *Rights of participation.* Every party shall have the right to make a written or oral statement of position. At the discretion of the Administrative Law Judge, participants may file proposed findings of fact, conclusions of law, and a post hearing brief.

(e) *Amendments to conform to the evidence.* When issues not raised by the request for hearing, prehearing stipulation, or prehearing order are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 68.38 Evidence.

(a) *Applicability of Federal rules of evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.

(b) *Admissibility.* All relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence. Stipulations of fact may be introduced in evidence with respect to any issue. Every party shall have the right to present his/her case or defense by oral or documentary evidence, depositions, and duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall have the right in his/her discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily, and unduly burden the record. Material and relevant evidence shall not be excluded because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrative Law Judge and to the other parties. Only the

excerpts, so prepared and submitted, shall be received in the record. However, the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and to the extent permitted by the Administrative Law Judge, the transcript shall include argument or debate thereon. Rulings on such objections shall be made at the time of objection or prior to the receipt of further evidence. Such ruling shall be a part of the record.

(d) *Exceptions.* Formal exceptions to the rulings of the Administrative Law Judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the Administrative Law Judge is made or sought, makes known the action he/she desires the Administrative Law Judge to take or his/her objection to an action taken, and his/her grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the Administrative Law Judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 68.39 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 68.40 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or issue such protective or other orders as in his/her judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his/her judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. Where the Administrative Law Judge determines that information in documents containing sensitive matter should be made available to a respondent, he/she may direct the party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, he/she may advise the parties and provide opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

§ 68.41 Exhibits.

(a) *Identification.* All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervener by whom the exhibit is offered.

(b) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the Administrative Law Judge, unless the parties previously have been furnished with copies or the Administrative Law Judge directs otherwise. If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(c) Substitution of copies for original exhibits. The Administrative Law Judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

§ 68.42 Records in other proceedings.

In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Law Judge directs otherwise.

§ 68.43 Designation of parts of documents.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering the same shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would necessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material parts thereof may be read into the record, or if the Administrative Law Judge so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

§ 68.44 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

§ 68.45 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or by stipulation made orally at the hearing, agree upon any pertinent facts in the processing. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be recieved in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

§ 68.46 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept, except in cases where the proceedings are terminated in accordance with § 68.12. All evidence upon which the

Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript by the Administrative Law Judge or such other time as may be permitted by the Administrative Law Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Law Judge.

§ 68.47 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing unless the Administrative Law Judge directs otherwise.

(b) If any party waives a hearing, the record shall be closed on the date set by the Administrative Law Judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the Administrative Law Judge shall make part of the record any motions for attorney's fees authorized by statutes, and any supporting documentation, any determinations thereon, and any approved correction to the transcript.

§ 68.48 Receipt of documents after hearing.

Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Law Judge. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon. Copies shall be received not later than twenty (20) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers should be assigned by counsel or the party.

§ 68.49 Restricted access.

On his/her own motion, or on the motion of any party, the Administrative Law Judge may direct that there be a restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

§ 68.50 Decision and order of the Administrative Law Judge.

(a) *Proposed decision and order.* Within twenty (20) days of filing of the transcript of the testimony, or such additional time as the Administrative Law Judge may allow, a party may file proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision.* Unless an extension of time is given by the Chief Administrative Hearing Officer on good cause, the Administrative Law Judge shall make his/her decision within sixty (60) days after receipt of the hearing transcript or of receipt by the Administrative Law Judge of post-hearing briefs, proposed findings of fact, and conclusions of law, if any. The decision of the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence. Such decision shall be in accordance with the regulations and rulings of the statute or regulations conferring jurisdiction.

(c) *Order.* (1) Unfair Immigration-Related Employment Practice Cases.

(i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has occurred, the order shall include a requirement that the respondent cease and desist from such practice. The order may also require the respondent—

(A) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(B) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(C) To hire individuals directly and adversely affected, with or without back pay; and

(D) To pay a civil penalty of not more than $1,000 for each individual discriminated against; and in the case of a respondent previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint with the Administrative Law Judge. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(iii) In applying this section in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, and not under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) If upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has not occurred, then the order shall dismiss the complaint.

(v) *Attorneys' fees.* The Administrative Law Judge may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(2) *Unlawful employment of unauthorized aliens.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A (a)(1)(A) or (a)(2) of the INA, the order shall include a requirement that the respondent cease and desist from such violations and to pay a civil penalty in an amount of

(A) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

(B) Not less than $2,000 and not more than $5,000 for each unauthorized alien in the case of a respondent previously subject to one order under this subparagraph; or

(C) Not less than $3,000 and not more than $10,000 for each unauthorized alien in the case of a respondent previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(iii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) With respect to a violation of section 274A(a)(1)(B) of the INA, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(3) *Prohibition of indemnity bonds.* If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(l) of the INA, the order may require the respondent to pay a penalty of $1,000 for each individual with respect to whom such violation occurred and require the return of any amounts received in such violation to the individual, or, if the individual cannot be located, to the general fund of the Treasury.

§ 68.51 Administrative and judicial review.

(a) Review of the final order and decision of an Administrative Law Judge in unlawful employment and prohibition of indemnity bond cases arising under section 274A of the INA. Any party may file with the Chief Administrative Hearing Officer, an official having no review authority over other immigration-related matters, within five (5) day of the date of decision, a written request for review of the decision together with supporting arguments. After such a request is made, and within thirty (30) days from the date of decision, the Chief Administrative Hearing Officer shall issue an order which adopts, affirms, modifies or vacates the Administrative Law Judge's order.

(1) The order of the Chief Administrative Hearing Officer shall become the final order of the Attorney General. If no review is requested under § 68.51(a), the order of the Administrative Law Judge becomes the final order of the Attorney General.

(2) A person or entity adversely affected by a final order respecting an assessment or penalty may, within forty-five (45) days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order. Failure to request review by the Chief Administrative Hearing Officer of a decision by an Administrative Law Judge shall not prevent a party from seeking judicial review.

(b) Review of the final order and decision of an Administrative Law Judge in unlawful immigration-related employment practice cases arising under section 274B of the INA. Any person aggrieved by an order issued under § 68.50(c)(1) may, within 60 days after entry of the order, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the respondent resides or transacts business. If an order issued under § 68.50(c)(1) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than an Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

§ 68.52 Filing of the official record.

Upon timely receipt of notification that administrative review is to be conducted or that an appeal has been taken, a certified copy of the record will be promptly filed with the appropriate United States Court.

Dated: November 14, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-27425 Filed 11-22-89; 8:45 am]

BILLING CODE 4151-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 62

[CGD 88-018]

RIN 2115-AD36

United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has completed conversion of all federal aids in the U.S. Aids to Navigation System to harmonize with the IALA Maritime Buoyage System. This rule makes minor editorial changes and removes the parenthetical references to the pre-IALA marking system now that the conversion is complete.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade J.B. Favero, Project Manager, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, Room 1416, 2100 Second Street SW., Washington, DC 20593-0001. Telephone: (202) 267-1979.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation. This rulemaking does not substantively change the existing regulations. It merely removes parenthetical references to the previous U.S. Aids to Navigation System. Therefore, the Coast Guard finds that an opportunity for notice and comment is unnecessary under 5 U.S.C. 553(b)(B).

Drafting Information: The principal persons involved in drafting this rulemaking are Lieutenant G.R. Wulfkuhle and Lieutenant Junior Grade J.B. Favero, Project Managers, and Christena Green, Project Counsel, Office of the Chief Counsel.

Background: In 1982, the United States, along with most of the world's other maritime nations, became a party to the agreement which implemented the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System promotes safety of navigation by establishing a worldwide harmonious buoyage system.

On November 7, 1987, the Coast Guard published the final rule incorporating changes to harmonize with the IALA Buoyage System, leaving all of the parenthetical references to the previous system in the final rule during the conversion period. (52 FR 42839)

The Coast Guard has completed conversion of all federal aids in the U.S. Aids to Navigation System to harmonize with the IALA Maritime Buoyage System. Widespread publicity and public education efforts since 1983 have resulted in U.S. mariners already becoming familiar with the new marking system. This final rule is primarily editorial and removes the unnecessary parenthetical references to the pre-IALA system now that the conversion is complete.

Regulatory Evaluation: This rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT regulatory policies and procedures (44 FR 11034 February 26, 1979). The economic impact of this proposed rule has been found to be so minimal that further evaluation is unnecessary.

Federalism: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 33 CFR Part 62

Navigation (water).

For the reasons set out in the preamble, 33 CFR part 62 is amended as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for Part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

2. Section 62.1 paragraph (b) is revised to read as follows:

§ 62.1 Purpose.

* * * * *

(b) This part describes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. Regulations concerning the marking of wrecks, structures, and other obstructions are found in 33 CFR part 64. Regulations concerning private aids are found in 33 CFR part 66. Regulations concerning the marking of artificial islands and structures which are erected on or over the seabed and subsoil of the Outer Continental Shelf of the United States or its possessions are found in 33 CFR part 67. Regulations concerning the marking of bridges are found in 33 CFR part 118. Regulations concerning aids to navigation at deepwater ports are found in subchapter NN of this chapter.

* * * * *

3. In § 62.21 paragraphs (a) and (c)(4) are revised and new paragraph (h) is added to read as follows:

§ 62.21 General.

(a) The navigable waters of the United States are marked to assist navigation using the U.S. Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity in buoyage systems worldwide. IALA buoyage is divided into two regions made up of Region A and Region B. All navigable waters of the United States follow IALA Region B, except U.S. possessions west of the International Date Line and south of 10 degrees north latitude, which follow IALA Region A. Lateral aids to navigation in Region A vary from those described throughout this Subpart. Non-lateral aids to navigation are the same as those used in Region B. See § 62.25. Appropriate nautical charts and publications should be consulted to determine whether the Region A or Region B marking schemes are in effect for a given area.

* * * * *

(c)* * *

(4) The Notice to Mariners is a national publication similar to the Local Notice to Mariners, published by the Defense Mapping Agency, and available by writing: Director, Defense Mapping Agency, Combat Support Center, Code PMSA, Washington, DC 20315–0010. A letter of justification should be included in the request. This publication provides ocean going vessels significant national and international navigation and safety information.

* * * * *

(h) Until 1994, some private aids to navigation may display characteristics at variance with the U.S. Aids to Navigation System. Mariners should exercise caution when using private aids to navigation because private aids are often established to serve the needs of specific users rather than general navigation and their purpose may not be obvious to casual users; and, discrepancies to private aids are often detected, reported, and corrected less promptly than discrepancies to Coast Guard aids to navigation.

* * * * *

§§ 62.25 and 2.27 [Amended]

4. Part 62 is amended by removing the word "(black)" wherever it appears in the following paragraph,

a. Section 62.25(b)(1)

b. Section 62.25(c)

c. Section 62.27

§ 62.29 [Amended]

5. Section 62.29 is amended by removing the last sentence in the section.

§ 62.43 [Amended]

6. Section 62.43 is amended by removing the words "(or black)" wherever it appears in the following paragraph,

a. Section 62.43(a)

b. Section 62.43(e)

§ 62.45 [Amended]

7. Section 62.45 is amended by removing the words "(or black)" and "(or white)" from paragraph (b)(1), by removing the words "(or white)" from paragraph (b)(2), and by removing the words "(or white or amber)" from paragraph (d)(5).

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–27589 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3682–2]

Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Michigan has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a decision, subject to public review and comment, that Michigan's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Michigan's hazardous waste program revisions. Michigan's application is available for public review and comment.

DATES: Final authorization for Michigan shall be effective January 23, 1990, unless EPA publishes a prior Federal Register action withdrawing this final rule. All comments on Michigan's program revision application must be received by the close of business on December 26, 1989.

ADDRESSES: Copies of Michigan's program revision application are available from 8:30 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Michigan Department of Natural Resources, 608 W. Allegan, South Ottawa Tower, Lansing, Michigan. Contact: Jim Roberts, Phone: (517) 373–2487; U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: Judy Greenberg, Phone: (312) 886–4179. Written comments should be sent to Judy Greenberg at the address below:

FOR FURTHER INFORMATION CONTACT: Judy Greenberg, Michigan Regulatory Specialist. U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604, Phone: (312) 886–4179 [FTS 886–4179].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Michigan

Michigan initially received final authorization for its base RCRA program on October 30, 1986 (51 FR 36804–36805, October 16, 1986). On September 12, 1988, Michigan submitted an application for approval of program revisions. Today, Michigan is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3). Specific provisions included in the Michigan program revision application are listed in the table below. Several provisions included in Michigan's September 12, 1988, application are not included in this table: Small Quantity Generators (50 FR 28702, July 15, 1985, and 51 FR 10174, March 24, 1986) and Dioxin Waste Listing and Management Standards (50 FR 1978). Further rulemaking is needed in order for Michigan's program to be equivalent to these Federal provisions; the State will resubmit its application for authorization for these provisions once equivalence has been achieved.

EPA has reviewed Michigan's application and has made an immediate final decision, subject to public review and comment, that Michigan's hazardous waste management program revisions (except for those provisions noted above) satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan for its program revisions. The public may submit written comments on EPA's immediate final decision up until December 26, 1989. Copies of Michigan's application for program revisions are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Michigan's program revision shall become effective in 60 days, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Michigan will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to certain provisions of the Federal program. The State regulations are published in the 1987 Annual Supplement to the Michigan Administrative Code and the Michigan Register, April 1988. The provisions are as follows:

Federal provisions	Analogous State provisions
[1] Paint Filter Test 50 FR 18370, April 30, 1985).	Rule 299.9502, 299.9601, 299.9605, 299.9609, 299.9618, 299.11003
[1] Omnibus Provision (50 FR 28702, July 15, 1985).	Rule 299.9521(3)
[1] Location Standards for Salt Domes, Salt Beds and Caves (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9601, 299.9605, 299.11003
[1] Liquids in Landfills (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9504, 299.9601, 299.9619, 299.11003
[1] Exposure Information (50 FR 28702, July 15, 1985).	Rule 299.9504, 299.9510
[1] Double Liners (50 FR 28792, July 15, 1985).	Rule 299.9502, 299.9601, 299.9614, 299.9616, 299.9619, 299.11003
[1] Ground-Water Monitoring (50 FR 28702, July 15, 1985).	Rule 299.9612, 299.9616, 299.9617, 299.9619, 299.11003
[1] Permit Life (50 FR 28702, July 15, 1985).	Rule 299.9516, 299.9519, 299.11003
[1] Interim Status (50 FR 28702, July 15, 1985).	Rule 299.9502, 299.9510, 299.9521, 299.9601, 299.11003
[1] Correction to the Definition of Solid Waste (50 FR 33542, August 20, 1985).	Rule 299.9202, 299.9206, 299.9602, 299.9604
[1] Listing of TDI, TDA, DNT (50 FR 42936, October 23, 1985).	Rule 299.9216, 299.9222, 299.9225, 299.11003
[1] Spent Solvents Listing (50 FR 53315, December 31, 1985).	Rule 299.9220 Table 203(a), 299.9213
[1] Correction: Spent Solvents Listing (51 FR 2702, January 21, 1986).	Rule 299.9220 Table 203(a)
[1] EDB Waste Listing (51 FR 5330, February 13, 1986).	Rule 299.9213, 299.9216, 299.9222 Table 204(a), 299.11003
[1] Four Spent Solvents Listing (51 FR 6541, February 25, 1986).	Rule 299.9213, 299.9214, 299.9216, 299.9220 Table 203(a), 299.9225 Table 205(b), 299.9623, 299.11003
[1] Closure, Post-Closure and Financial Responsibility Requirements (51 FR 16443, May 2, 1986).	Rule 299.9101, 299.9103, 299.9104, 299.9106, 299.9502, 299.9504, 299.9519, 299.9522, 299.9601, 299.9613, 299.9702, 299.9703, 299.9704, 299.9705, 299.9706, 299.9708, 299.9709, 299.9710, 299.11003
[1] Correction: Paint Filter Test (51 FR 19176, May 28, 1986).	Rule 299.9511
Listing of Spent Pickle Liquor (K062) (51 FR 19320, May 28, 1986).	Rule 299.9502
Radioactive Mixed Wastes (51 FR 24504, July 3, 1986).	Michigan Statute 1979 Public Acts 64, § 4(3); Michigan Compiled Laws 299.504(3); Michigan Statutes Annotated 13.30(4)(3).
Liability Coverage: Corporate Guarantee (51 FR 25350, July 11, 1986).	Rule 299.9710, 299.9502

Federal provisions	Analogous State provisions
[1] Hazardous Waste Tank Systems (51 FR 25470, July 14, 1986).	Rule 299.9101–299.9109, 299.9204, 299.9306, 299.9502, 299.9504, 299.9506, 299.9615
[1] Correction: Biennial Reports (51 FR 28556, August 8, 1986).	Rule 299.9308, 299.9601, 299.9610
[1] Exports of Hazardous Wastes (51 FR 28664, August 8, 1986).	Rule 299.9102, 299.9103, 299.9106, 299.9204, 299.9205, 299.9206, 299.9301, 299.9304, 299.9306, 299.9309, 299.9310, 299.9406
[2] Correction: Hazardous Waste Tank System (51 FR 29430, August 15, 1986).	Rule 299.9504, 299.9506, 299.9615
Correction: Listing of Spent Pickle Liquor (51 FR 33612, September 22, 1986).	Rule 299.9222 Table [F04](a)
[1] Standards for Generators: Waste Minimization Certifications (51 FR 55190, October 1, 1986).	Rule 299.9304
[2] Land Disposal Restrictions (51 FR 40572, November 7, 1986).	Rule 299.9101, 299.9109, 299.9202, 299.9203, 299.9204, 299.9205, 299.9206, 299.9207, 299.9211, 299.9212, 299.9213, 299.9309, 299.9311, 299.9502, 299.9601, 299.9608, 299.9627, 290.11003

[1] Denotes HSWA regulations
[2] Denotes both non-HSWA and HSWA provision

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Michigan's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on October 30, 1986, the date of Michigan's final authorization for the RCRA base program.

Michigan is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Michigan's Authorization

Prior to HSWA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in all States, whether authorized or non-authorized, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still adopt HSWA-related provisions as State law, following established timeframes, to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Michigan. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Michigan until the State is authorized to do so. Among other things, this will entail the issuance of Federal permits for those HSWA requirements for which the State is not yet authorized, in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Michigan.

Once EPA authorizes the State to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Unit that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Michigan's program revisions for several HSWA provisions, which are noted in the table in section B above.

EPA has published a Federal Register notice that explains in detail the HSWA and its effect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Michigan's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA intends to approve Michigan's application for final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and dispoal facilities within its borders and for carrying out other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

On February 21, 1989, U.S. EPA published a Federal Register notice which codified the Michigan hazardous waste program that was in effect when U.S. EPA granted Michigan final authorization. (51 FR 36804) One of the reasons U.S. EPA codified Michigan's hazardous waste program was to provide the public with notice of the scope of work of Michigan's revised hazardous waste program. In a future Federal Register notice, U.S. EPA will codify Michigan's revised hazardous waste program.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated October 23, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–27467 Filed 11–22–89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Subtitle F

[FTR Temp. Reg. 3]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Centrally-Billed Accounts, and Travelers Checks

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This rule extends the expiration date of FTR Temp. Reg. 3, "Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Centrally-Billed Accounts, and Travelers Checks," to November 29, 1990. This extension will keep FTR Temp. Reg. 3 in effect while GSA proceeds to permanently codify its provisions.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major Rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

By the Administrator's authority (sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)), FTR Temporary Regulation 3 in the appendix to subtitle F of title 41 of the Code of Federal Regulations is amended by revising item 3 to read as follows:

Federal Travel Regulation Temporary Regulation 3

* * * * *

3. **Expiration date.** This regulation expires November 29,1990, unless sooner canceled or revised.

* * * * *

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–27544 Filed 11–22–89; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–604, RM–6271]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Prairie Grove, Arkansas, as that community's first local broadcast service, in response to a petition filed by C.R. Crisler d/b/a Southside Broadcasting. Coordinates used for Channel 235A at Prairie Grove are 35–53–52 and 94–19–29. With this action, the proceeding is terminated.

DATES: Effective January 2, 1990, the window period for filing applications on Channel 235A at Prairie Grove, Arkansas, will open on January 3, 1990, and close on February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window application filing process at Prairie Grove, Arkansas, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket 88–604, adopted October 24, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under Arkansas by adding Prairie Grove, Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27492 Filed 11–22–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 916 and 970

Acquisition Regulation Amendment; Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule

SUMMARY: The Department of Energy today adopts a final rule which will amend the Department of Energy Acquisition Regulation (DEAR) regarding management and operating (M&O) contracts. The rule provides a mandatory contract clause and instructions for its use in award fee M&O contracts, incorporating certain desirable features heretofore used in individual contracts throughout the agency, as well as suggestions resulting from the public comment process. The contract clause provides for contractor self-assessments which will be used in the Government's evaluation of contractor management efforts, establishes controls on the carry-over of unearned award fee from one period to the next, sets standards for the number of award fee periods per year, and establishes the Government's right to withhold all award fee for unsatisfactory performance in any area set forth in the Government's Performance Evaluation Plan.

EFFECTIVE DATE: This rule will be effective December 26, 1989.

FOR FURTHER INFORMATION CONTACT:
Charles A. Dan, Procurement Policy Division (MA–421), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–8247.
Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585; (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Procedural Requirements
a. Review Under Executive Order 12291
b. Review Under the Regulatory Flexibility Act
c. Review Under the Paperwork Reduction Act
d. Review Under the National Environmental Policy Act
e. Review Under Executive Order 12612
f. Public Hearing
II. Comments on Proposed Rule
a. Publication of Proposed Rule
b. Discussion of Comments Received

I. Procedural Requirements

a. Review Under Executive Order 12291

This final rule is exempt from the requirement for review by the Office of Management and Budget under E.O. 12291 pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7 of December 14, 1984.

b. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–345), which requires preparation of a regulatory flexibility analysis for any rule expected to have significant economic effect on a substantial number of small entities. The Department has concluded that this final rule is expected to have no significant effect on interest rates, tax policy or liabilities, the cost of goods or services, or other direct economic considerations, nor is it expected to have a significant effect on indirect economic considerations. The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

c. Review Under the Paperwork Reduction Act

The information collection requirement contained in this final rule is approved under OMB Control Number 1910–4100. It imposes no additional paperwork burden.

d. Review Under the National Environmental Policy Act

The Department has concluded that this final rule does not constitute a major Federal action having a significant effect on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) or DOE guidelines (10 CFR part 1021). Therefore, an environmental assessment is not required pursuant to the Act.

e. Review Under Executive Order 12612

This final rule does not involve issues which are expected to have a substantial direct effect on traditional state functions or their institutional interest and, thus, the "federalism" assessment requirements of Executive Order 12612 [52 FR 41685, October 30, 1987) do not apply.

f. Public Meeting

The Department has concluded that this final rule does not involve a substantial issue of fact or law, nor should it have a substantial effect on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department has not held a public hearing on this final rule.

II. Comments on Proposed Rule

a. Publication of Proposed Rule

The Department of Energy issued a proposed rule (54 FR 30230, July 19, 1989) announcing its intention to revise certain portions of the DEAR dealing with M&O contracts' award fee provisions. Comments were requested through August 18, 1989.

The proposed rule included a contract clause which combined elements of five clauses which are included in the DEAR at 916.405, but which are not mandatory for use in management and operating contracts. The clause set forth in the proposed rule included a provision which would have allowed the Government to withhold all award fee for unsatisfactory performance by the contractor in any important area, even if that performance area were not mentioned in the Government's PEP. In addition, the clause would have deleted a provision of the current clauses which allowed the Fee Determination Official to carry over unearned award fee from one period to later periods. Also, the clause established a new requirement for the contractor to submit a self-assessment after each award fee evaluation period, which would be judged by the Government in its evaluation of the contractor's management efforts. These provisions of the proposed rule resulted in comments and responses which are discussed below.

In response to the proposed rule, the Department received comments from eight parties. Of those, all but two were either from the Department's M&O contractors or from contractors which may be interested in proposing on the Department's M&O contracts. Of the two remaining parties, one was the Office of Federal Procurement Policy, and the other was a trade association representing the aerospace industries.

The comments received, along with the responses thereto, are presented below.

b. Discussion of Comments Received

One commenter disagreed with the identification of the Fee Determination Official (FDO) in the contract clause at 970.5204–54(b)(2), suggesting that it should be provided in the PEP. Identification of the FDO, by title, is provided primarily as a convenience. In almost all cases, the FDO will be the cognizant DOE Operations Office Manager. Identification of the FDO by title provides for continuity in the event that the individual occupying this position is replaced. Because this occurs relatively infrequently, and could be accomplished under the proposed contract language without the need for contract modification, we believe the contract clause is the appropriate place to identify the FDO. In the final clause, this provision has been placed at 970.5204–54(c)(2).

Several commenters objected to language at 970.5204–54(b)(3) in the draft clause which would have allowed the FDO to withhold all award fee whenever it was determined that the contractor's performance was unsatisfactory in any performance area, even if the particular performance area was not mentioned in the PEP. In proposing this provision, DOE was concerned that the FDO must be able to withhold award fee for any performance failure which seriously jeopardizes the successful performance of the contract. At the same time, we recognize that the PEP should place emphasis on performance areas which are worthy of priority treatment by the contractor. Accordingly, the clause has been revised to allow the FDO to withhold all award fee when a contractor's performance is determined to be unacceptable in any performance area specified in the PEP, even though there may be no weight or percentage of award fee specifically assigned to such area. In the prescription for use of the clause, located at 970.1509–8(g), we have added instructions to the FDO to ensure that all important areas of contract performance are included in the PEP, even if such areas are not assigned specific weights or percentages of award fee.

Some commenters objected to language at 970.5204–54(b)(3), which allows the FDO to consider all information available to him or her in reaching a final fee determination. The FDO, because of his/her position within the Department's management structure, may well have information regarding the contractor's performance or the impacts of the contractor's performance which is unavailable to the staff which prepares a fee recommendation to the FDO. For this reason, the contract clause must allow the FDO to consider such information in making his/her fee decision. However, to address the concern that the award fee determination might be made on the basis of information not related to the PEP, language has been added to this paragraph, now at 970.5204–54(c)(3), to make it clear that such information must be related to performance areas set forth in the PEP in order to have an effect on the FDO's fee decision. We note that this provision puts into regulation what has been the practice within DOE.

One commenter objected to the requirement at 970.5204–54(c) for a 30–day notice of unilateral changes by the Government in the PEP, suggesting instead a minimum of 90 days notice. The commenter is "concerned that misinterpretation of performance requirements due to such short 30–day notice may result in an ineffective response by a contractor and higher costs to DOE," and recommends a 90–day notice. The 30–day notice is not a new requirement, and is in place on most of DOE's award fee M&O contracts, without any noticeable problem. Based on this, we have continued the requirement for a 30–day notice, now located at 970.5204–54(d).

One commenter suggested that changes to the PEP issued unilaterally by the FDO in accordance with proposed 970.5204–54(c) should be consistent with the contract Statement of Work. We agree and have incorporated such language at 970.5204–54(d)(3).

Three commenters took exception to the proposed approach to evaluating contractor self-assessments set forth in 970.5204–54(e). All three were concerned with the potential disadvantages to the contractor of revealing performance problems or deficiencies which had not been discovered by Government monitors. One commenter suggested the use of a formal presentation of a contractor self-assessment, rather than submission of a written self-assessment. For various reasons, we see no need to require a formal presentation of a contractor's self-assessment in all contracts. No restrictions are being placed upon the length of a contractor's self-assessment, although it is logical to assume that an unnecessarily lengthy self-assessment might not be well-received. Contractors will be provided ample opportunity to explain themselves in a written self-assessment. We would also like to point out that the clause does not prohibit formal presentations; it merely does not suggest the need for them. The FDO has always been free to call for such a presentation if he or she feels it necessary. If a contractor feels that such presentations are needed, this might be suggested to the FDO for his/her consideration. If the FDO is agreeable to a presentation, however, the contractor should be ready to accept the delays in the ultimate fee decision and payment which this might entail.

Also, two commenters suggested that the contractor should not be "penalized" for a frank, honest self-assessment which reveals performance problems not discovered already by the Government. We do not believe that the contractor would be penalized as a result of an honest and open self-assessment and using the self-assessment as a basis for a penalty is not our intention. The FDO should be aware of a contractor's deficiencies in performance even before the submission of a self-assessment. The self-assessment will provide the contractor with a forum to explain the deficiencies and present a description of its own initiatives and plans to correct such deficiencies and prevent their recurrence. By doing so, the contractor may convince the FDO that its management efforts have mitigated the impact of the deficiencies. Granted, there is the possibility that the contractor's self-assessment will reveal deficiencies or problems which the Government performance monitors have overlooked in their reports to the FDO. However, this is viewed as a benefit, since it should result in more accurate evaluations of a contractor's performance.

Some commenters objected to the use of six-month evaluation periods, set forth in the Note following the clause at 970.5204–54 as the standard for the Department. The use of semiannual evaluation periods was based upon a comprehensive study of the Department's existing award fee practices and procedures, which revealed that more frequent evaluation periods were more costly without providing additional benefits. The study revealed indications that more frequent evaluations did not provide enough time for a thorough evaluation, and the evaluations were not as effective a management technique as possible. Some contractors noted that conversion to six-month evaluation periods would result in losses associated with less frequent award fee payments. Some suggested interim payments of award fee. Our estimate of the cost of award fee appraisals indicates that an average of six man-years of effort is dedicated to each award fee contract, most of which is spent on award fee appraisals. These costs appear to outweigh the costs to the contractors. The Department has decided that the benefits of more thorough and effective evaluations outweigh the additional costs. The Note at the end of the clause has been deleted and replaced by language in section 970.5204–54(b) requiring six-month evaluation periods.

A number of commenters disagreed with the omission of a provision which would allow the FDO to carry over unearned award fee from one period to a later period. After further consideration, the Department has decided that such carry-over provisions are appropriate, provided certain controls are in place. The following controls are included at 970.5204–54(c)(4) in this final rule. First, unearned award fee may only be carried over within the same fee negotiation cycle. Award fee unearned in one fee cycle cannot be carried over to a later fee cycle. This will discourage carry-over of funds from one fiscal year to the next. Second, unearned award fee can be carried over only to the next period. Finally, in order to earn any fee carried over from a prior period, the contractor's overall performance must be rated higher than in the prior period. The contractor should not benefit simply because the award fee pool is greater.

One commenter suggested that the proposed clause should provide for a specific payment due date. This commenter suggests the last day of each month should be the due date for payments of base fee increments, and that the award fee payment due dates should be specified in the PEP. In the vast majority of DOE's M&O contracts, the payment of award fee is allowed on the date the award fee determination is presented to the contractor. The commenter suggests an "interest penalty" for payments made more than 15 days after the due date for the award fee determination and notice. We feel that this comment has merit, since the incentive of an award fee arrangement is most effective if the payment or withholding of an award fee to the

contractor is timely. We have added a new paragraph to the clause at 970.5204–54(f), to establish a schedule for award fee determinations. Because the submission of a contractor's self-assessment will be an important aspect of the Government's evaluation process, we have established that award fee determinations must be made not later than sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment. We have included an agreement to pay interest on award fee determinations made after such date, based upon the "Renegotiation Board Interest Rate," which is the rate used under the Contract Disputes Act and the Prompt Payment Act.

Two commenters suggested that the FDO's fee determination should be subject to some sort of appeal, perhaps an administrative appeal, by the contractor. Appeal procedures are inconsistent with the award fee system of Government contracting, which is based on the premise of a unilateral decision by the FDO. Therefore, we have not incorporated such procedures in this final rule.

Two commenters suggested that the revisions included in the proposed clause reflect a more rigorous standard of performance which should be rewarded by additional incentives in the form of fees beyond those allowed in existing Departmental regulations. The Department is currently studying its fee schedules, and will consider these comments in that study. Accordingly, we do not believe it appropriate to provide additional fees as a part of this final rule.

One commenter suggested that this final rule should only apply to contracts awarded after the effective date of the amendments, because contractors would not have had an opportunity to negotiate their contracts accordingly. The clause issued in this final rule will be mandatory in M&O contracts using an award fee arrangement which are entered into after the effective date of this final rule. Existing contracts will be modified on the occasion of the next fee negotiations, typically conducted on an annual basis. This will provide contractors the opprotunity to negotiate fees with a full understanding of the new requirements which are included in the clause.

In addition to the above comments, certain comments were made which did not relate specifically to this proposed rule. These comments will not be addressed in this discussion, but have been forwarded to the appropriate parties in the Department for consideration.

It should be noted that certain changes have been made at our own initiative, in the interest of clarity. For example, throughout 970.5204–54, we have revised the language of the contract clause to recognize that M&O contract fees are almost universally negotiated on an annual basis, requiring contract modifications to incorporate the results of these negotiations. The Note following the contract clause at 970.5204–54 has been deleted, both to recognize the need for annual fee negotiations, as previously discussed, and to delete confusing language which might have been interpreted as allowing deviations from the standard six-month evaluation periods through means other than the Department's existing deviation procedures. Deviations from the standard six-month evaluation periods must be accomplished in accordance with the procedures set forth in DEAR subpart 901.4. In addition, a sentence was added to 970.5204–54(b) to clarify that if DOE and the contractor cannot agree on a reasonable fee, the contracting officer will determine a fee in accordance with the Disputes clause.

List of Subjects in 48 CFR Parts 916 and 970

Government contracts, DOE management and operating contracts.

Dated: November 16, 1989.

Berton J. Roth,

Director, Directorate of Procurement and Assistance Management.

PART 916—TYPES OF CONTRACTS

1. The authority citation for part 916 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

2. The introductory text of paragraph (e) in section 916.405 is revised to read as follows:

916.405 Contract clause.

(e) For other than management and operating contracts, award fee contracts should include in the contract schedule the ARTICLES shown below. The ARTICLES may be modified to meet individual situations and any ARTICLE or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

2A. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420); and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

3. Section 970.1509–8 is amended by adding new paragraphs (f) and (g).

970.1509–8 Special considerations—award fee.

* * * * *

(f) When a management and operating contract is to be awarded on an award-fee basis, the contract shall include the clause at 970.5204–54.

(g) Fee Determination Officials must be careful to ensure that all important areas of contract peformance are mentioned in the Performance Evaluation Plan, even if such areas are not assigned specific weights or percentages of award fee.

4. Section 970–5204–16 is amended by redesignating the Note following paragraph (a) as Note 1, and adding directly thereafter, as Note 2, the Note set out below. The Note after paragraph (d) is hereby redesignated Note 3, and the Note after paragraph (e) is hereby redesignated Note 4.

970.5204–16 Payments and advances.

* * * * *

Note 2.—When award-fee provisions are used, the clause should be modified by replacing subparagraph (a) with the following:

(a) Payment of Base Fee and Award Fee. The base fee shall become due and payable in equal monthly installments on the last day of each month. Award fees earned shall become due and payable following the issuance by the government Fee Determination Official (FDO) of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled Award Fee.

* * * * *

5. Section 970.5204–54 is added as follows:

970.5204–54 Award fee.

Award Fee (Date to be Entered)

(a) *Base Fee and Award Fee* It is herewith agreed that a base fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the clause of this contract entitled Payments and Advances.

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the contracting officer and contractor shall enter into negotiation of a base and award fee in accordance with appropriate provisions for management and operating contract fees set forth in the Department of Energy Acquisition Regulation. This contract shall be modified at the conclusion of each negotiation to reflect the negotiated amounts for base and award fees. It is herein agreed the award fee amount shall be assigned to evaluation periods six months in duration. If the parties are unable to agree on a reasonable fee, the contracting officer shall determine the base and award fee unilaterally, in accordance with the clause of this contract entitled Disputes.

(c) *Determination of Award Fee Earned.* (1) The Government shall at the conclusion of each specified evaluation period evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the Government Fee Determination Official (FDO) will be (Insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (d), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available to him or her which relates to the contractor's performance of contract requirements. In the event that the contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

(4) Unearned award may be carried over within a single fiscal year, or other two-period fee negotiation cycle as may have been agreed upon. The FDO may, at their sole discretion, specify in a fee determination that award fee not earned during the first evaluation period of a two-period fee cycle may be allocated to the second fee period in that fee cycle. The contractor shall not, however, be entitled to earn any of this "carry-over" fee it its overall performance in the latter evaluation period does not reflect an improvement over the prior evaluation period. Overall performance evaluations in the second period which are equal to or the same as those in the first period shall not be considered as improvements providing entitlement to the carry-over portion of the award fee pool. If the single negotiation of a base and award fee amount (fee cycle) will be for more than two evaluation periods, unearned award fees in any one of the evaluation periods established by that negotiation may be carried over only to the next period covered by that negotiation. Fees unearned under one fee cycle may not be carried forward to another fee cycle.

(d) *Performance Evaluation Plan.* (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of award fee shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. A copy of the plan shall be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost functions selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(e) *Contractor Self-Assessment.* Following each evaluation period, the contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's self-assessment as part of their evaluation of the contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

(f) *Schedule for Award Fee Determinations.* The FDO shall issue the final award fee determination in accordance with a schedule set forth in the Performance Evaluation Plan. However, a determination must be made within sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment discussed in paragraph (e), above. If the determination is delayed beyond that date, the contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the scheduled determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

[FR Doc. 89–27476 Filed 11–22–89; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. 90-1]

RIN 2125-AC49

Parts and Accessories Necessary for Safe Operation; Front Wheel Brakes on Mexican Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: The FHWA is amending part 393, Parts and Accessories Necessary for Safe Operation, to allow Mexican motor carriers operating commercial motor vehicles in border commercial zones additional time to comply with the requirement that every commercial motor vehicle be equipped with brakes acting on all wheels. This action will facilitate the flow of trade and traffic between the two countries without interruption. The FHWA is requesting comments from all interested parties concerning this issue. The FHWA is also removing the exception (paragraph (b)) to § 393.1 which deferred application of part 393 to certain Mexican commercial motor vehicles until November 18, 1989.

EFFECTIVE DATE: November 24, 1989. Written comments will be accepted until January 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2983; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9102(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act) required the Department of Transportation (DOT) to delay the applicability of part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs) to Mexican motor carriers for a period of 1 year beginning on November 18, 1988. The requirement was implemented by the FHWA with a final rule that was published in the **Federal Register** on March 24, 1989 [to be codified at 49 CFR 393.1(b), 54 FR 12200, 12202-12203].

Section 9102 also required the Secretary of Transportation to submit a report to Congress on the effects of the delay in application of part 393 together with recommendations on the extent to which Mexican motor carriers may or should be required to comply with all or any of the requirements contained in part 393. The required report was forwarded to Congress on September 29, 1989. In that report, the Secretary recommended:

> The part 393 exemption created by section 9102 of the 1988 Act should be allowed to lapse, with the exception of the front wheel brake requirement. A transition period, to January 1, 1991, should be established for Mexican motor carriers operating in border commercial zones to comply with the front brake standard. A similar transition period was provided to both Canadian and U.S. carriers when the requirement was instituted in 1987. This will provide sufficient time to the Mexican carriers who have operated in commercial zones with the exemption to comply with the front wheel brake requirement. The requirements should apply to all Mexican commercial motor vehicles manufactured after July 24, 1980, the same date applicable to U.S. and Canadian vehicles. This date was chosen because it is the effective date of the Federal Motor Vehicle Safety Standard which requires brakes acting on all axles and is now applicable to all other carriers operating in the United States.
>
> Continuing to grant an exemption from part 393 for Mexican motor carriers operating in border municipalities otherwise appears unwarranted, and would compromise safety. The appearance of an exemption creates unnecessary complexity for foreign carriers operating in border jurisdictions when, in fact, States continue to enforce their own safety regulations. State personnel presently conduct the predominant share of transborder inspections. All vehicles, no matter of what origin, should be required to comply with part 393 with the exception of the transitional period for front brakes.

The FHWA is therefore amending § 393.42, Brakes required on all wheels, by adding a new paragraph (b)(4) which will implement the Secretary's recommendation to Congress. This rulemaking action will also assure the uninterrupted flow of trade and traffic between the two countries.

The 1-year delay in the applicability of part 393 of the FMCSRs to Mexican motor carriers operating commercial motor vehicles in U.S. border commercial zones lapses on November 18, 1989. The FHWA is therefore removing that exception, § 393.1(b), from part 393.

Regulatory Impact

Because the one-year delay discussed above expires on November 18, 1989, the braking requirements of part 393 would otherwise be fully applicable to Mexican motor carriers absent this action. If the orderly flow of traffic and goods between the United States and Mexico is to continue, this amendment to part 393 must become effective immediately. The amendment imposes no additional regulatory burden on industry or the general public. The FHWA therefore finds good cause to promulgate the amendment as an interim final rule without prior notice. However, in order to provide an opportunity for public response to the retrofitting provision, the FHWA will accept comments until January 14, 1990. The transition period for vehicles not equipped with front-wheel brakes will not be extended beyond January 1, 1991.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

Issued on: November 17, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, CFR, subtitle B, chapter III, part 393 as set forth below:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 393.1 is revised to read as follows:

§ 393.1 Scope of the rules of this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.42 [Amended]

3. In § 393.42, a new paragraph (b)(4) is added to read as follows:

§ 393.42 Brakes required on all wheels.

* * * * * *

(b) * * *

(4) Trucks or truck tractors having three or more axles and being operated by or under the control of a Mexican motor carrier must be retrofitted to meet the requirements of paragraph (a) of this section by January 1, 1991 if the vehicle was manufactured on or after July 25, 1980.

[FR Doc. 89-27541 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 90809-9259]

RIN 0648-AC28

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing Amendment 3 to the Fishery Management Plan for the American Lobster Fishery (FMP). This rule (1) delays implementation of an increase in the escape vent size scheduled for January 1, 1990 to January 1, 1992 and (2) requires that effective January 1, 1992, lobster traps contain a biodegradable escape panel, or equivalent mechanism, to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. Ghost fishing describes the action of fishing gear which continues to operate after all control of that gear is lost by the fishermen. This requirement becomes effective 12 months after the New England Fishery Management Council (Council) specifies and the Regional Director publishes a list of acceptable escape mechanisms. The earliest implementation date is January 1, 1992. The purpose of this action is to allow the maximum utilization of the resource through maximum retention of legal sized lobsters during the period of scheduled size increases and to reduce mortality caused by lost or abandoned traps.

EFFECTIVE DATE: This regulation is effective December 24, 1989, except for § 649.21(c)(3) which will be effective 12 months after a list of acceptable mechanisms has been published in the **Federal Register**, but not before January 1, 1992.

ADDRESSES: Copies of the amendment, which incorporates the environmental assessment and the regulatory impact review, are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01960.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, 508-281-9331.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR part 649. The objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified regional management program for American lobsters (*Homarus americanus*), which is designed to promote conservation, to reduce the possibility of recruitment failure, and to allow full utilization of the resource by the U.S. fishing industry. Efforts to better achieve this objective have resulted in Amendment 1 to the FMP in 1986 (51 FR 19210) and Amendment 2 to the FMP in 1987 (52 FR 46088). Amendment 3 to the FMP was submitted to the Secretary of Commerce (Secretary) on August 1, 1989, and a notice of availability published on August 10, 1989 (54 FR 32834). The proposed rule for Amendment 3 was published on September 7, 1989 (54 FR 37138) and public comments were invited until October 16, 1989.

Amendment 3: (1) Delays the implementation of the increase in the escape vent size scheduled for January 1, 1990 until January 1, 1992; and (2) requires that lobster traps contain an escape panel or equivalent mechanism which degrades and allows lobsters to escape after a trap has been abandoned or lost for 12 months or more.

Amendment 2 increased the minimum legal carapace length of lobsters to 3 9/16 inches, in four steps over a five year period between 1988 and 1992. Amendment 2 also required that on January 1, 1992 lobster trap escape vents were to become compatible with a minimum carapace length of 3 9/16 inches. Scientific guidance for the exact specification of this vent size was not available at the time the original schedule was set and was to be promulgated by later rulemaking. Guidance was provided to the Council by the NMFS in April 1988. Based on this guidance, and consistent with the objective of the FMP to promote conservation, the Council opted for an escape vent size that maximizes escapement of lobsters smaller than the legal size. Requiring that this vent size be implemented in 1990, could cause an unintended loss in revenue to the fishery, and erode the cooperation and compliance needed to achieve the objectives of the FMP. Therefore, Amendment 3 delays the increase in the vent size requirement until January 1, 1992.

Amendment 3 also requires that lobster traps contain a biodegradable escape panel, or equivalent mechanism, to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. The purpose of this proposal is to reduce fishing mortality caused by lost traps ("ghost fishing") on all sizes of lobster.

This requirement becomes effective January 1, 1992, only if the Council specifies, and the Regional Director publishes, consistent with the rulemaking provision of the Administrative Procedure Act (5 USC § 553) and at least 12 months prior to this date, a list of acceptable escape mechanisms. If a list is not available, or has not been published in final form in the **Federal Register** by January 1, 1991, implementation will occur 12 months after publication.

The preamble to the proposed rule to implement Amendment 2 described these measures and their rationale and is not repeated here.

Comments and Responses

No comments were received either in support or opposition to this amendment.

Changes From the Proposed Rule

In § 649.21, paragraph c, text is being added that was not included in the proposed rule.

Classification

The Director, Northeast Region, NMFS, has determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared within Amendment 3 an environmental assessment (EA). Based on this EA, the

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Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. A copy of the EA and finding of no significant impacts may be obtained from the Council at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the affected states. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Connecticut, Maine, Delaware, and North Carolina have agreed with the Council's determination. None of the other states commented within the statutory time period, and therefore, consistency is automatically implied. All measures approved were included in this amendment; therefore this determination remains applicable.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12621.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: November 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.2, the definition of "escape vent" is added in alphabetical order to read as follows:

§ 649.2 Definitions.

* * * * *

Escape Vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

* * * * *

3. Section 649.20, the table in paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) Carapace length.

* * * * *

Effective dates	Minimum carapace length
January 1, 1985, through December 31, 1987.	3 9/16 inches.
January 1, 1988, through December 31, 1988.	3 5/32 inches.
January 1, 1989, through December 31, 1990.	3 1/4 inches.
January 1, 1991, through December 31, 1991.	3 5/32 inches.
January 1, 1992, and beyond.[1]	3 9/16 inches.

[1] By January 1, 1992, escape vents in traps must be compatible with a minimum carapace length of 3 9/16 inches.

* * * * *

4. Section 649.21, is amended by revising paragraph (c)(1) introductory text and paragraph (c)(2) and by adding paragraph (c) introductory text and paragraph (c)(3) to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

* * * * *

(c) *Escape vents.* All lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) Until January 1, 1992, all lobster traps must contain one of the following:

* * * * *

(2) On January 1, 1992, all lobster traps must contain one of the following:

(i) A rectangular escape vent compatible with an unobstructed opening not less than 1 13/16 inches high (49.2 mm) by 6 inches wide (152.2 mm), if the escape vent is made by cutting meshes on a wire mesh trap the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2 7/16 inches (61.9 mm) in diameter; or

(iii) Any other type of escape vent which the Regional Director finds to be consistent with paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(3) On January 1, 1992, lobster traps must contain an escape panel or equivalent mechanism to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. This requirement shall become effective on or before January 1, 1991, only if the Council specifies, and the Regional Director consistent with 5 U.S.C. 553 publishes in the **Federal Register**, a list of acceptable methods for complying with this requirement, including the minimum dimensions of the escape path.

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[FR Doc. 89-27462 Filed 11-22-89; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 225
Friday, November 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. AO-102-A6; FV-88-132]

Peaches Grown in Mesa County, Colorado; Recommended Decision on Proposed Amendment of Marketing Agreement and Order No. 919

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed further amendment of the Marketing Agreement and Marketing Order No. 919, covering peaches grown in Mesa County, Colorado. The amendment proposals would: (1) Authorize regulation of shipments of fresh peaches within the State of Colorado as well as shipments to locations outside of the State; (2) amend six existing definitions and add three new definitions to the order; (3) reapportion committee membership (increasing number of independent handler members and reducing number of cooperative handler members), add informal rulemaking authority to reapportion committee membership and change the size and composition of the committee; (4) revise the committee nomination and selection process and add informal rulemaking authority to make changes in the process, and establish limits on the tenure of committee members; (5) increase the amount of committee compensation, add informal rulemaking authority to revise that compensation, and revise the voting procedures of the committee; (6) authorize a late payment charge and an additional interest rate charge on overdue assessments; (7) consolidate provisions regarding the regulation of shipments; (8) authorize establishment and funding of production research projects; (9) add provisions for verification of reports and records and for maintaining confidentiality of handler records; (10) add informal rulemaking authority to change the minimum quantity of peaches per shipment exempt from regulation and include an additional requirement that peaches purchased under such exemption be removed from the seller's premises on the day of the sale; (11) require a periodic referendum to determine whether growers favor continuance of the order; and (12) make necessary conforming changes. The amendment proposals are designed to improve the administration, operation, and functioning of the marketing order.

DATES: Written exceptions must be filed by December 26, 1989.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they shall be made available for public inspection during regular business hours. Exceptions should refer to the **Federal Register** publication date, page number and docket reference number.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3919, or Joseph C. Perrin, Officer-In-Charge, Northwest Marketing Field Office, Green-Wyatt Federal Building, 1220 SW Third Ave., Room 369, Portland, Oregon 97204, telephone: (503) 221-2724.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued November 1, 1988, and published in the **Federal Register** on November 3, 1988 (53 FR 44407).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Marketing Order No. 919, as amended [7 CFR Part 919], regulating the handling of peaches grown in Mesa County, Colorado, hereinafter referred to collectively as the order.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900).

This proposed amendment of the order is based on the record of a public hearing held in Palisade, Colorado, on November 16 and 17, 1988. All but one of the amendment proposals considered at the hearing were submitted by the Administrative Committee (committee) established under the order. The United States Department of Agriculture (Department) proposed that it be authorized to make any necessary conforming changes.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-602), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $500,000. Small agricultural service firms, which include shippers under this marketing agreement and order, are defined as those firms with annual receipts of less than $3,500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities. Interested persons were invited in the notice of hearing to present evidence at the hearing on the probable regulatory and informational impact of the proposed changes on small businesses.

During the 1988 season, approximately 28 handlers of Mesa County peaches were subject to regulation under the order. In addition, there are approximately 260 peach producers in Mesa County. The majority of these handlers and producers may be classified as small entities.

The Federal marketing order for peaches grown in Mesa County, Colorado, began in 1939 and was last amended in 1969. Peach acreage in Mesa County totals around 1,800 acres. Inspected production volume in 1988 was 134,275 bushels with a value of approximately $2.75 million. In addition to the inspected production, an estimated 40,000 bushels was sold within Mesa County at packing sheds, local roadside stands and farmers' markets. These sales were not subject to grade or size requirements. Two-thirds of the crop is handled by independent producer/handlers and one-third by a cooperative handler organization. Currently, no Mesa County peaches are exported or used in processed markets.

The Federal marketing order for peaches operated jointly with a State order until March 1, 1989, when the State order was terminated after failing a State-run termination referendum. All programs conducted under the State program, such as paid advertising and production research, have ceased with the termination of the State order. In conjunction with this, official notice is taken of that termination. The Federal order regulates the sale of interstate peaches (approximately 70 percent of the annual crop) and requires that peaches shipped out of the State meet U.S. No. 1 or better standards and be at least 2⅛ inches in diameter.

The proposal amending § 919.9 (redesignated as § 919.10) would revise the definition of the term "ship" to include the handling of peaches in the current of commerce within the production area and to any points outside the production area. This would require the inspection of all commercial shipments of Mesa County peaches and ensure minimum standards for all such peaches marketed. This proposal should improve the market for peaches handled within the county and the State, as well as those markets outside the State. This could benefit both producers and handlers because minimum quality and size requirements established under the order are important to the industry in fostering consumer satisfaction and increasing the demand for Mesa County peaches.

Six additional definitions are proposed to be revised and three new definitions are proposed to be added to this marketing order. Section 919.4, which currently defines "peaches," would be amended to define the new term "production area." The revised definition of the term "peaches" would be inserted as § 919.5. Current §§ 919.5 through 919.11 would be amended and/or redesignated as §§ 919.6 through 919.12. Redesignated § 919.6 would change the name of the Administrative Committee to the Colorado Peach Administrative Committee to more closely associate the name of the committee with the commodity regulated. This action would necessitate numerous conforming changes throughout the order. The proposed amended definitions for producer, redesignated § 919.7 and handler, redesignated § 919.8, would further clarify these two terms. The definitions of fiscal period, redesignated § 919.11, and district, redesignated § 919.12, would allow the committee, with the approval of the Secretary, to establish new operating periods and new district alignments for the efficient operation of the program. New definitions would be added for grade, § 919.13, and size, § 919.14, to provide an appropriate basis for determining grade and size standards for peaches grown in the production area. These changes in definitions and the addition of new definitions are meant to further define and clarify terms used in the order, and would not have a significant impact on small business entities in the industry.

The proposed amendment to § 919.20 would reapportion committee membership to reflect the position of the cooperative marketing association and independent and independent handler segments of the industry. Section 919.20 also would include a requirement that committee members shall represent and be selected from segments of the industry (producers, independent handlers and cooperative handlers) of which they are members. Additionally, the proposed amendment to § 919.22 would provide the committee with informal rulemaking authority to: (1) Recommend reapportionment of committee membership among producer and handler members; (2) change the size of the committee; and (3) change the composition of the committee to reflect future structured changes in the industry should a new segment develop in the future. These proposals would provide for appropriate representation of the various industry segments, and would allow the committee, with the approval of the Secretary, to respond to future structured changes in the industry. These proposals should benefit small entities.

Several proposed amendments would revise and consolidate the nomination and selection process for committee members under § 919.21. The new proposals would provide more appropriate lengths of time for the committee to nominate and the Department to select new members (§ 919.21) and fill vacancies (§ 919.29); revise and qualification process (§ 919.26), and standardize the length of terms and limit tenure for committee members (§ 919.27). Existing sections covering the nomination and selection of independent handler members (§ 919.22), and cooperative handler members (§ 919.23), and the eligibility for membership of all members (§ 919.24), would be removed and the requirements of these three sections would be consolidated in the nomination and selection process under § 919.21. Section 919.22 would be revised to include informal rulemaking authority to: (1) Reapportion the committee; (2) change the size of the committee; (3) revise the composition of the committee; and (4) redefine the districts. Sections 919.23 and 919.24 would be removed and reserved. These proposals are intended to improve the committee nomination and selection process, and would have no significant impact on small business entities in the industry.

Proposed § 919.30, regarding compensated and expenses for committee members, would provide for an increase in the amount of money which members receive while attending committee meetings from $5.00 to $10.00. The proposed changes would not present a financial burden on operating expenses. The proposed amendment would authorize the committee, with the approval of the Secretary, to change the compensation rate as necessary. Section 919.33 on committee voting procedures would be amended by lowering the quorum requirement for committee meetings. It would also provide, with certain safeguards, for committee votes to be cast by mail, telegraph, telephone or other means of communication. This provision is expected to improve the committee's ability to respond expeditiously to needs of the industry and should therefore be beneficial to small entities.

The proposed amendment to § 919.41 would authorize the committee, with the Secretary's approval, to establish a late payment charge and an additional interest rate charge on overdue handler assessment accounts. Such authority should provide handlers with an incentive to make assessment payments in a timely manner and would not have a significant impact on small entities.

Revisions would be made to four sections regarding the committee's annual marketing policy and the regulation of peach shipments. Various provisions in §§ 919.32, 919.50, 919.51 and 919.52 would be reorganized.

The proposed amendment to § 919.60 would authorize the establishment of production research projects. This would be added to the current order authority for market research and development projects. Under the proposal, production research projects, as well as market research and development projects, would be paid for, with the approval of the Secretary, using assessment funds and other sources of income as approved by the Secretary. Such projects would benefit producers and handlers and would not adversely affect small entities. Any costs associated with this provision would be outweighed by the benefits of such projects. In addition, proposed § 919.40, regarding expenses incurred by the committee, would allow the committee, with the approval of the Secretary, to use funds, other than those collected from assessments, for production research and market research and development projects. Such authority should provide increased opportunity for the committee to conduct production and market research projects.

The proposed addition of § 919.67 regarding verification of reports and records would authorize the Secretary and the committee to verify the corrections of reports filed by handlers, and to verify handler compliance with recordkeeping requirements. The requirement would not have a significant impact on small entities in the industry. Additionally, new § 919.68 would require confidential information provided by handlers to be protected from disclosure. It would not adversely affect small entities.

The proposal to amend § 919.71, regarding peaches not subject to inspection and assessment regulations, would authorize the committee, with the approval of the Secretary, to revise the minimum quantity of peaches per shipment not subject to such regulations. This proposal is intended to provide that the exempted volume of peaches remain in line with quantities normally sold for home use. Additionally, testimony indicates that the current exemption should require that the 19 bushels per day, sold to any single individual, be removed from the seller's premises on the day of the sale. This would help to provide that only legitimate roadside sales to local producers and consumers be exempted from regulation. The authorized exemptions are intended to help small producers market their fruit directly to consumers at retail stands near where the fruit is grown, at nearby packinghouses or at local farmers' markets.

Amendment of § 919.81 would require periodic continuance referenda which would provide producers an opportunity to periodically vote on whether the order should be continued. Such referenda would not have a significant impact on small entities in the industry.

All of the proposed changes set forth in this document are designed to enhance the administration, operation, and functioning of the order. The proposed amendments to the order would not have a significant impact on the recordkeeping and reporting burdens of Mesa County peach handlers. The proposed revisions would change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), which have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0139. This action would require information to be retained by handlers for at least two years. The evidence of record indicates that handlers generally maintain such information in the normal course of business for periods longer than two years. The information collection requirements contained in this proposed action will be submitted to the OMB for approval. Such requirements will not become effective prior to OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether the definition of "ship" should be revised to regulate shipments of fresh peaches within Colorado as well as shipments to locations outside the State;

(2) Whether to revise existing definitions for peaches, committee, producer, handler, fiscal period, and district, and add new definitions for production area, grade, and size;

(3) Whether to reapportion the committee to more accurately reflect the relative position of handler segmetns in the industry, and whether to provide informal rulemaking authority to further reapportion the committee and make future changes in committee size and composition as necessary;

(4) Whether to make changes in the committee nomination and selection process, provide informal rulemaking authority to make future changes as necessary, and establish tenure limits for committee members;

(5) Whether to revise the provisions for committee compensation and voting procedures;

(6) Whether to authorize late payment and penalty charges on past due handler assessments;

(7) Whether to reorganize and consolidate provisions regarding marketing policy and the regulation of peach shipments;

(8) Whether to authorize esteblishment and funding of production research projects;

(9) Whether to add provisions for the Secretary and the committee to verify the correctness of reports filed by handlers and to protect the confidentiality of information provided by handlers;

(10) Whether to provide informal rulemaking authority to change the minimum quantity of peaches per shipment not subject to regulation;

(11) Whether to require a continuance referendum every eight years; and

(12) Whether conforming changes should be made.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

(1) Section 919.9 should be amended to provide for the regulation of shipments of fresh peaches within the State of Colorado as well as shipments of peaches to locations outside the State. Currently the term "ship" in § 919.9 means to sell, transport or ship fresh peaches by rail, truck or any other means whatsoever in the current of commerce between the State of Colorado and any point outside thereof. That definition should be revised to include the preparation for market of fresh peaches and the movement of such peaches into the current of commerce within the production area or between the production area and any points outside the production area. In addition, the term "ship" should be changed to "handle" to be consistent with common industry usage and the two terms should be made synonymous. The new definition should include the terms "pack" and "consign" which are common handling functions in the industry. The terms are intended to clarify the definition of the term "ship." Also, in the definition of "ship" printed in the notice of hearing, the word "ship" appearing in the fourth line, should be changed to the word "transport" for clarity. Finally, "handle" would not include the transportation within the production area of peaches from the orchard where grown to a packing

facility located within the production area for preparation for market. This exception recognizes that it is customary for producers to sell and deliver their peaches to handlers for packing and handling functions.

Mesa County peaches are sold in Colorado and throughout several western and midwestern States. Evidence presented at the hearing indicates that an estimated 70 percent (approximately 94,000 bushels in 1988) of Mesa County's inspected peach production was shipped to Denver and then on to markets outside Colorado. The remaining 30 percent of inspected peaches was shipped to markets within Colorado. A very small percentage of inspected peaches was marketed through one major grocery store chain in the production area. No Mesa County peaches are exported or sent to processed markets.

Record evidence indicates that the price of peaches in State markets has a direct and immediate effect on prices in markets outside the State. Therefore, the handling of peaches within the production area and within Colorado directly burdens, obstructs and affects the handling of peaches in interstate commerce to such an extent as to make appropriate the regulation of peaches marketed fresh in Mesa County and throughout Colorado under Federal marketing order 919.

The proposed change in the order would authorize regulation of all shipments of peaches from the production area except for small quantities of peaches that are sold directly to consumers at roadside stands and farmers' markets, that are removed from the premises on the day of the sale and which are not-for-resale, peaches sold to charitable institutions, and peaches for processing.

It is therefore concluded that § 919.9 should be amended to specify that "handle" is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or transport peaches in fresh form by any means whatsoever, in the current of commerce within the production area or between the production area and any points outside thereof. However, the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

(2) Six current definitions should be revised and three new definitions should be added to the order. The addition of the definition for "production area" should logically be inserted at the beginning of the list of definitions. This necessitates the redesignation of current §§ 919.5 through 919.11 as §§ 919.6 through 919.12. Current § 919.8 "variety" is not proposed to be amended, but would be redesignated as § 919.9. The redesignated and amended sections would read as follows:

a. The term "production area" should be defined in § 919.4 to mean all territory included within Mesa County, Colorado. That section now defines the term "peaches," which would be moved to § 919.5. The production area of Mesa County, Colorado, is referred to in the current definition of peaches, § 919.4. The proposed new definition specifies the area in which peaches are grown that are subject to regulation under the marketing order. This proposal would not change the location, size, or in any other way revise, the production area as currently defined.

b. The definition for "peaches" in § 919.4 should be modified and designated § 919.5. The new definition would mean all varieties of peaches grown in the production area, classified botanically as Prunus persica. The addition of the botanical name is desirable to specifically identify the commodity regulated under the marketing order.

c. The name of the administrative agency established under the order should be changed from the "Administrative Committee" to the "Colorado Peach Administrative Committee." Adding the name of the State and the commodity covered under the program to the current title would more precisely identify the committee. Therefore the amended and redesignated definition of "committee" in § 919.6 should mean the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

There are 14 sections which make reference to the Administrative Committee. The provisions in these sections should be revised to reference the term "committee." These conforming changes should be made in § 919.31 Powers, § 919.32 Duties, § 919.34 Rights of the Secretary, § 919.35 Funds and other property, § 919.41 Assessments, § 919.43 Suit to enforce collection, § 919.53 Exemptions and exemption certificates, § 919.54 Inspection and certification, § 919.55 Modification, suspension, or termination, § 919.65 Reports, § 919.66 Liability of Administrative Committee members, § 919.71 Peaches not subject to regulation, § 919.82 Proceedings after termination, and § 919.94 Amendments.

d. Currently, § 919.6 defines the term "producer" to mean any person engaged in growing peaches in the county of Mesa in the State of Colorado for market. That definition should be redesignated as § 919.7 and revised to more precisely determine who may be considered a producer of peaches in the production area. A clearer definition is needed to better identify those who may take part in the committee nomination procedures, and serve on the committee. The phrase "* * * is synonymous with 'grower' * * *" is proposed to be added to clarify that the term "grower," commonly used in the production area, and the term "producer," used in the Act and order, are the same. The phrase "* * * for market in fresh form * * *" is proposed to be added to further distinguish between fresh market peaches and those peaches that might be produced for personal or processed market use. The phrase "* * * and who has a proprietary interest therein." Is added in the definition to exclude from the definition persons performing as employees for peach producers and handlers and persons delivering to handlers.

The record evidence thus indicates that the amended definition should be more precise than to merely define a peach producer as someone who grows peaches. Evidence indicates that producers are those who own and operate their own farms or rent farmland, with a proprietary interest in the peaches grown, to produce peaches for fresh market. Individuals who produce peaches only for personal or family use would not be considered producers under the order. Partnerships, corporations, associations and any other business unit is included in the definition of "person" under the Act. Therefore, any such entity that produces peaches for fresh market would also be considered producers under the order.

Thus, redesignated § 919.7 should provide that the term "producer" is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

e. Currently, the term "handler" in § 919.7 means any person (except a common or contract carrier of peaches owned by another person) who, as grower, agent, or otherwise, ships peaches, or causes peaches to be shipped. That definition should be amended to make the term "handler" synonymous with "shipper" and should clarify that persons are handlers when they perform the functions contained in the proposed amended definition of "handle" in redesignated § 919.10. As amended, the new definition of handler would be redesignated as § 919.8 and would be synonymous with "shipper" to mean any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches or causes peaches to be handled as defined in § 919.10.

f. Currently, § 919.10 specifies that "fiscal period" is synonymous with "fiscal year" and means the 12-month period beginning on November 1 and ending on October 31 of the following year, or such other period that may be approved by the Secretary pursuant to recommendation by the committee. This term should be redesignated and amended to mean the 12-month period beginning and ending on the dates recommended by the committee and approved by the Secretary. Record evidence indicates that the fiscal period, currently specified, no longer coincides with the period currently used by the committee.

g. The definition for "District," § 919.11, should be redesignated as § 919.12 and amended by removing the specific descriptions of the five producer districts and inserting general rulemaking authority to change district boundaries. This authority will allow the committee, with the approval of the Secretary, to redefine districts when necessary, to accurately reflect peach production between the districts and provide equitable representation on the committee. The proposed revision would also remove the obsolete boundaries in the current definition. Thus, the term district should be defined to mean any one of the geographical areas into which the production area is divided as recommended by the committee and approved by the Secretary.

h. The term "grade" should be defined in new § 919.13 to mean any one of the officially established grades of peaches as defined and set forth in the United States Standards for Grades of Peaches (§§ 55.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary. The grades established in the United States Standards for Grades of Peaches have been used by Colorado peach producers and handlers since promulgation of the order. The grades provide an appropriate and meaningful basis for describing the quality requirements utilized under the order. The use of amendments or modifications of the grades provide the industry the flexibility necessary to cope with problems of quality due to adverse weather or other conditions affecting the crop.

i. The term "size" should be defined in new § 919.14 to mean the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary. The minimum size requirements established under the order are based on the minimum diameter of peaches packed in various types and styles of containers. It is common to refer to peaches by their size such as 2⅛ minimum, 2¼ minimum, 2⅛ minimum and larger. Therefore, it is appropriate to indicate how the minimum diameter is measured. Under the proposal, the committee would have the flexibility to recommend changes in size-measurement methods to the Secretary.

The six amendments to existing definitions are designed to increase industry members' understanding of the terms thereby improving the application of the order's provisions.

(3) Section 919.20 regarding establishment and membership of the committee should be amended to revise representation on the committee to reflect the amount of peach production handled by the cooperative and independent handler segments of the industry. As proposed, this amendment would also add a paragraph (b) which would provide informal rulemaking authority for the committee, with the approval of the Secretary, to revise the composition and size of the committee and to reapportion its membership.

The committee is composed of nine members and nine alternate members. Of the nine members, five are nominated by and represent peach producers. Each producer member is selected from and represents one of five production districts in the production area. The proposal would not alter the number or representation of producer members on the committee.

Four committee members are nominated by and represent peach handlers in the production area. The current handler representation on the committee has been in effect since 1939. Currently, one handler member is selected by and represents handlers and producer/handlers in the production area who are not affiliated with the one cooperative marketing association. This member is referred to as the "independent member." The remaining three handler members are nominated by and represent the cooperative marketing organization active in the production area.

Proponents testified that the current handler apportionment should be reversed. According to the record, the independent handler portion of the industry handled approximately 66 percent of the production over the last five years. The one cooperative marketing organization has handled approximately one third, or 34 percent, of the industry's production over the same period.

Therefore, a change in handler representation is necessary to more accurately reflect the amount of production handled by these two segments of the industry. To accomplish this § 919.20 should be revised to specify that the Colorado Peach Administrative Committee should be established consisting of five members, one for each district, who represent and are selected from producers; one member who represents and is selected from the cooperative marketing association of producers, and three members who represent and are selected from independent handlers and producer/handlers. In addition, these provisions are also applicable to alternate members to assure that all persons serving on the committee are equally qualified.

As proposed, a new paragraph (b) of § 919.20 would specify that every two years the committee, with the approval of the Secretary, may revise the composition of the committee and reapportion the committee membership among industry groups pursuant to § 919.22. Testimony indicates that this informal rulemaking authority should apply to changes in the size of the committee as well. Thus, it is recommended that the words "and size" should be added after the word "composition" in paragraph (b) as published in the notice of hearing (53 FR 44408). According to the record, this new provision would allow more timely and cost efficient changes in committee representation. The committee could therefore be more representative of and responsive to structural changes in the industry.

(4) The current provisions of the order regarding nomination and selection of committee members should be revised to consolidate order language, improve the efficiency of the selection process and establish limits on the tenure of committee members. These changes would encourage wider industry participation on the committee.

Time periods in which the nomination process are to take place are proposed to be revised. Section 919.20 currently provides that members and alternates must be nominated at least 30 days prior to the beginning of the term of office for which the nomination is made. However, experience has shown that a longer period of time would be beneficial for completing the selection

process prior to the beginning of a new term. The record indicates that the time period of 30 days should be extended to 45 days and the revised language should be inserted in the amended provision. Thus, paragraph (a)(1) of § 919.21 should be added to specify that the committee shall hold, or cause to be held, meetings of producers and handlers not less than 45 days prior to the expiration date of the committee member and alternate member terms of office.

Paragraphs (c) in §§ 919.21, 919.22 and 919.23 currently specify that two nominations for each member and alternate member position being filled must be submitted for the Secretary's consideration. Paragraph (a)(2) of amended § 919.21 should require that at least one nominee be submitted for each position to be filled. Record evidence indicates that because the industry is small and is divided into three separate segments, it has difficulty providing two qualified nominations for both member and alternate member positions. Proponents indicated that there are a small number of producers in some districts, and even fewer who are interested in serving on the committee.

Therefore, paragraph (a)(2) would specify that, at each meeting, at least one nominee shall be nominated for each member or alternate member position to be filled. Also, paragraph (a)(2) would provide that the nominations may be by ballot or by motion, at the option of the eligible voters who are present. The person receiving the highest number of votes would be the nominee for each position to be filled. Proxy voting would be prohibited.

The evidence of record indicates that the current order's nomination language is repetitive because nomination procedures for membership on the committee are described for producer members (§ 919.21), the independent handler member (§ 919.22), and cooperative handler association members (§ 919.23). These three sections are proposed to be consolidated under amended § 919.21, "Nomination and selection." Nomination of producer members should be addressed in paragraph (b), independent handler members in paragraph (d), and cooperative handler members in paragraph (c) of amended § 919.21. Criteria regarding eligibility for membership for these three segments of the industry currently in § 919.24 also should be included in paragraphs (b), (c) and (d) of amended § 919.21 to consolidate the nomination and selection provisions under one section. The consolidation of these provisions under one section would make the nomination and selection process easier to understand.

Paragraph (b) of amended § 919.21 should specify that nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer should be entitled to cast only one vote for each position to be filled in the district that producer produces peaches. No producer should participate in the election of nominees in more than one district in any one fiscal year.

Paragraph (c) of amended § 919.21 should specify that nominations for cooperative handler members and their respective alternates shall be made as follows: (1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner the members of that association deem appropriate; and (2) When there is more than one cooperative marketing association, and there is a lack of agreement on who should be nominated, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

Paragraph (d) of amended § 919.21 should specify that nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each position to be filled.

In the notice of hearing, the provisions on voting for producer and independent handler members specified that those voting shall be entitled to cast one vote for each nominee to be elected. Testimony indicates that those voting should cast one vote for each vacant position to be filled. Changes have been made to proposed paragraphs (b) and (d) accordingly. Based on testimony received at the hearing, wording in proposed paragraph (c)(2) has been revised to clarify that a lack of agreement among two cooperative handler organizations refers to a lack of agreement on who should be nominated. Further, a provision regarding the weighting of votes by two or more cooperative marketing associations is included that would provide a process for breaking a deadlock if the associations cannot agree on the nominees.

Evidence of record indicates that authority should be added for the committee to recommend changes in these nomination and selection procedures to recognize changing industry structure and needs. Therefore, new paragraph (e) should specify that the committee, with the approval of the Secretary, may recommend rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

Finally, new paragraph (f) should specify that in the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions should be treated as vacancies and the provisions of § 919.29 regarding vacancies should apply.

Revised § 919.22 regarding committee reapportionment and reestablishment should take the place of current § 919.22. Section 919.22 now includes procedures on the nomination and selection of the independent member on the committee. These procedures have been recommended to be moved to § 919.21.

Currently, § 919.23(e) provides for the reapportionment of cooperative handler membership to equitably provide representation to present and future cooperatives associations engaged in handling Mesa County peaches. Any such reapportionment under that section must be based so far as practicable upon the volume of peaches handled by the respective associations. Also, paragraph (1) of § 919.32 provides for redefining the producer districts and reapportioning producer district representation. Any changes under that section must reflect, in so far as practicable, shifts in peach production within the districts and the production area.

Evidence of record indicates that it is desirable that the authority for making such changes be included in one section of the order for easier reference and to improve order organization. Evidence also indicates that the current authority for making such changes is too narrow because it only applies to the producer and cooperative marketing association segments of the industry. Consequently, the proponents requested that the authority for making such changes be broadened to reflect structural changes in all three segments of the industry and the relative importance of these segments of the industry. In order to keep abreast of structural changes within the industry, the proponents indicated that it may be necessary: (1) To increase or decrease the size of the committee; (2) to change the ratio between grower and handler members including their alternates; and (3) to change the industry groups represented on the committee should a new segment develop in the future. Any such changes should reflect, in so far as practicable, structural changes within the peach industry and shifts in peach production within the production area.

To provide a mechanism for such changes to be made through the informal rulemaking process, paragraph (a) of § 919.22 should specify that the committee may recommend, with the approval of the Secretary, reapportioning representation on the committee to reflect changes in the relative size of producer, cooperative marketing association, and independent handler segments of the industry. Also, it is proposed that the committee may recommend for the Secretary's approval that the size of the committee may be increased or decreased and the industry groups represented on the committee may be changed. Any such changes would reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area. Also, the word "grower" is replaced with the word "producer" in paragraph (a) as published in the notice of hearing (53 FR 44409) to remain consistent with the changes in this recommended decision.

The provisions in paragraph (1) of § 919.32 should be incorporated into the revised paragraph (b) of § 919.22. Revised paragraph (b) of § 919.22 should also specify the criteria on which to base such changes. In recommending any such changes the committee should consider (a) the relative importance of production and the number of growers in each district, (b) the geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and (c) other relevant factors. All changes recommended by the committee would have to be approved by the Secretary to be implemented.

Current paragraphs (c) and (d) of § 919.22 pertain to committee nomination procedures, and would be contained in revised § 919.21, which specifies all nomination procedures.

Section 919.25 should provide that the Secretary may select members without regard to nominations if the committee fails to nominate new members 30 days prior to the new term of office, rather than the current 15-day period. Evidence indicates that this amendment would provide a more appropriate time period for the Secretary to make such nominations and would facilitate the selection process.

Section 919.26 regarding the qualification by members and alternates should be amended to simplify the selection process. Revised § 919.26 would require each nominee to submit a written acceptance indicating that the nominee will serve on the committee. This acceptance would be submitted to the Secretary at the same time that the nominee submits a background statement. Currently, a nominee must submit a background statement prior to selection and then must submit an acceptance statement after the Secretary makes the selection. Thus, § 919.26 should provide that each nominee shall provide, prior to selection, a written background and acceptance statement indicating that that person agrees to serve in the position for which nominated if selected.

Additionally, the word "members" should be added to the title of the section after the word "alternate" for consistency and clarity.

Currently, paragraph (a) of § 919.27 specifies that the terms of office of producer members and their alternates shall be for two years while the terms of office of the independent producer/handler member and cooperative handler members and alternate members shall be one year. The terms of all members and alternates begin on January 1 and end on December 31. Authority is provided for the committee, with the approval of the Secretary, to prescribe other beginning and ending dates when needed.

The evidence of record indicates that the terms of office of all members and all alternate members of the nine member committee should be for two years beginning January 1 and ending on December 31 and that the terms should continue to be staggered. Testimony provided at the hearing indicates the possible inequity of having members serve for different term lengths. Also, experience has shown that a two-year term provides an opportunity for new members to becme familiar with the operations of the committee so that they can actively participate for a longer period of time.

Provisions for requiring staggered terms of office for the cooperative handler and independent handler members as well as producer members would improve the continuity of committee planning and operations by assuring that a portion of the members who had served during the previous year would remain on the committee for an additional year. Two-year term lengths would provide for staggering the terms of member positions currently limited to one-year terms. There can be no overlap with one year terms.

Authority allowing the committee, with the approval of the Secretary, to change the beginning and ending dates of the terms of office should be continued in paragraph (a). Evidence indicates that in the event it becomes necessary to make size or composition changes or to reapportion the committee pursuant to § 919.22, this amendment would provide for corresponding changes in the terms of office.

If the size or compostion of the committee is changed, or if the committee membership is reapportioned pursuant to § 919.22, the terms of some members may have to be shortened to conform with the new structure of the committee. Thus, provisions should also be included in paragraph (a) of § 919.27 to provide that the terms of office may be shorter than specified if the size or composition of the committee is changed or if the committee membership is reapportioned. In order to effectuate the intent expressed by the proponents at the hearing, the word "composition" is removed from the last proviso of paragraph (a) of § 919.27 as published in the notice of hearing (53 FR 44409). This change will provide that the terms of office may be shorter if the committee membership is revised pursuant to § 919.22, whether the change be through size, composition, or a reapportionment of the membership.

To affect a transition to the new committee, it will be necessary for approximately one-half of the members and alternates selected for terms of office in 1990, to serve during that year. This will allow approximately one-half of the members and alternates to be replaced each year. Determination of which of the members of the committee should serve during 1990 should be by lot; the same process currently used by the committee.

Provisions in existing paragraph (a) of § 919.27 regarding the dates of the initial selection of producer members and alternates are obsolete and should be removed. In addition, miscellaneous changes for clarity have been made to proposed § 919.27 from the provisions that appeared in the notice of hearing (53 FR 44409).

Paragraph (b) of § 919.27 should be amended to limit the tenure of committee members to no more than three consecutive two-year terms, or a total of six years. Currently, members

and alternates may serve an indefinite number of consecutive terms. Evidence of record indicates that this proposal would broaden industry participation in program administration and improve committee representation by bringing additional persons with different viewpoints and experiences into active roles on the committee.

Provisions limiting each member's tenure should apply starting with the next term of office beginning with 1990. Any person after having served six consecutive years as member shall be eligible to serve as an alternate member but shall not be eligible to serve as a member until the term of office which begins two years later.

While proponents recognize the benefits of this planned rotation of membership, testimony indicates that the committee has had difficulty in finding interested producers and handlers who are willing to serve on the committee. Proponents further indicated that if active members must step down after six years, the committee would have an even more difficult time finding willing members. However, it is the Department's belief that a periodic turnover of committee members and alternate members is essential to the vitality and representative nature of the committee. Further, a nine-member committee with six-year tenures would require as few as three new members every other year. Likewise, as few as three new alternate members would be needed every other year. The Department concludes that with a total industry of over 260 members, there should be enough interest in the marketing order to recruit as few as three new members and alternate members to serve every other year. Moreover, the benefits of this requirement, in terms of active representation and creativity, far outweigh the difficulty of finding new members to serve.

However, to guard against the possibility of a position remaining vacant because of a lack of eligible nominees or eligible persons willing to serve, it is proposed that the Secretary should have the authority to exempt a person from the tenure limitation.

Therefore, paragraph (b) of § 919.27 should specify that, beginning in 1990, no member shall serve more than three consecutive terms as member.

Section 919.29 regarding vacancies on the committee should be amended to facilitate the filling of unexpected vacancies in the producer member, cooperative handler member and independent handler member positions. Currently, § 919.29 requires vacancies to be filled through nomination and selection procedures set forth in §§ 919.20 to 919.26. If a nomination to fill a vacancy is not made and submitted to the Secretary within 20 days after the vacancy occurs, the Secretary may fill the vacancy without regard to nomination.

To facilitate the filling of vacancies, amended § 919.29 should provide that the committee must nominate the alternate member to fill a vacant position if the vacancy is in a member position, and if the alternate member for that position agrees to serve in a member capacity. Record evidence indicates that because of the possibility of a limited number of candidates, the committee should automatically offer a vacant member position to the alternate member. If the alternate member declines the nomination, the committee would either hold a nomination meeting to solicit candidates for the vacant position, or would nominate another industry member. This provision differs from that published in the notice of hearing (53 FR 44409) which specified that the incumbent member should recommend the replacement member or alternate member. Based on the evidence presented it is the Department's view that this responsibility should be given to the committee. Thus, the committee should be authorized to solicit the names of qualified candidates from producer, cooperative handler and independent handler organizations and submit to the Secretary the candidate's name which the committee considers most highly qualified. In such instances, only producers would be allowed to be nominated to fill producer member vacancies, cooperative handlers would be allowed to be nominated to fill the vacancy of a cooperative handler association member, and only an independent handler would be allowed to be nominated to fill the vacancy of an independent handler member.

The proposed amendment to § 919.29 should also extend the period of time, from 20 to 45 days, which the committee would have to nominate a new member to fill a vacancy. As proposed, if the committee fails to nominate a new member or alternate member after 45 days of the position becoming vacant, the Secretary may fill the vacancy without regard to nominations. Testimony indicates that this amendment would provide the committee with necessary time to meet and nominate a new member.

Therefore, in view of the foregoing § 919.29 should be amended to provide for filling vacancies on the committee.

(5) Two sections concerning compensation for committee members and for voting procedure are proposed to be amended.

Section 919.30 regarding compensation and expenses is proposed to be amended to increase the amount that committee members and alternates may be compensated for attendance at committee meetings from $5.00 per day plus 10 cents per mile to a rate of $10.00 per day and no mileage allowance. Such compensation is intended to at least partially offset costs that members and alternate members incur while they are on committee business. The $5.00 limit plus mileage not to exceed 10 cents per mile was set 32 years ago. Reimbursement for travel expenses is proposed to be deleted because committee members live very close to the committee office where meetings are held. Evidence of record indicates that the amount of compensation should be able to be adjusted upon recommendation of the committee and approval by the Secretary to bring it more in line with current circumstances. These proposed changes in compensation would not present a financial burden on the order's operating budget.

Therefore, § 919.30 should specify that the members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10.00 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

Section 919.33 on committee voting procedures should be amended by changing the quorum and voting requirements for committee meetings. New paragraph (a) should require all decisions of the committee at assembled meetings to be by majority vote of the members present. The presence of a majority of members should be required to constitute a quorum and such majority should also be required to pass any motion or approve any committee action. Six of the nine members are currently required for a quorum. The industry considers the presence of a simple majority of members, including alternates acting as members, sufficient to conduct business and be representative of the industry. Testimony indicates that this change would simplify procedures in the event the size of the committee is changed.

A new paragraph (b) should be added to § 919.33 to permit the committee to vote by mail, telegraph, telephone, or other means of communication. The record indicates that this procedure would not be used if an assembled meeting is held. Additionally, votes cast orally would be required to be confirmed promptly in writing to prevent any misunderstanding as to how the members voted. This provision would improve the committee's abilty to respond expeditiously to needs of the industry.

In the notice of hearing, the last sentence in paragraph (b) specified that if any assembled meeting is held, all votes should be cast in person. The proponents testifed that this sentence should be modified slighlly and be moved to the end of paragraph (a) to more clearly apply to assembled meetings. This recommendation is accepted for proposal in this recommended decision. Also, a typographical correction should be made to the first word in paragraph (b) as published in the notice of hearing. The word "Each" should be changed to "The."

(6) Section 919.41, requires each handler to pay assessments to the committee for its maintenance and functioning. That section should be amended by adding a new paragraph (b) to provide that the committee may impose a late payment charge, and an additional charge in the form of interest payments on any outstanding amounts, on any handler who fails to pay any assessment within a prescribed time.

Under present procedures, the committee collects inspection reports during the two-month harvest season. Within two weeks of the end of the season, a single invoice for assessments due, payable within 30 days, is sent to each handler. The one-time payment would come after the handlers have collected payments for the peaches they handled during the season.

Under the order, there is no provision for imposing on handlers a late payment charge or interest on overdue assessments. The evidence of record is that handlers normally pay their assessments when invoiced. However, there have been occasions when payments have been late. When this occurs, handlers who pay their assessment promptly are at a disadvantage relative to the delinquent handlers. The objective of this proposal is to encourage all handlers to pay assessments promptly thereby avoiding additional collection costs.

Under the proposal, if a handler does not pay all assessments within the time prescribed by the committee, the unpaid portion of the account would be considered delinquent and the handler would be subject to a late payment charge. The committee would advise the handler of the late payment charge, and that failure to pay the assessment and late payment charge prior to a specified date will result in additional charges in the form of interest on the unpaid balance each month thereafter, including accrued interest on the late payment charge. Accordingly, handlers would be charged late payment fees on unpaid assessments and interest fees on any unpaid charges until the total obligation is paid in full.

According to the record, the amount of interest charges should reflect the current interest rate on loans in the production area.

The committee, with the approval of the Secretary, should have the authority to establish the rates of such charges and to later modify those rates through the informal rulemaking process. This amended provision would provide the committee with the flexibility needed to implement such charges. Record evidence indicates that this proposal would act as an incentive for handlers to pay assessments on time.

Therefore, new paragraph (b) of § 919.41 should specify that the committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

(7) Four sections covering marketing policy and the regulation of shipments should be consolidated and revised to improve organization and allow for easier reference.

Paragraph (d) of § 919.32 should be revised by moving factors required to be covered in the committee's marketing policy to amended § 919.50. New paragraph (d) of § 919.32 would require the committee to submit a marketing policy pursuant to § 919.50 as one of its duties. Additionally, paragraph (1) of § 919.32 regarding district reapportionment would be removed from that section and inserted in § 919.22, as previously discussed in Material Issue (4). The remainder of § 919.32, except for conforming changes, would remain the same.

Current § 919.50 entitled "Regulation of shipments" should be revised and retitled "Marketing policy" to include the provisions of paragraph (d) of § 919.32 as discussed immediately above. The intent of the change is to emphasize the importance of the marketing policy report and provide easier reference within the order. The requirement for an annual marketing policy has been a part of the order since it's promulgation.

Evidence of record indicates that the marketing policy report should provide an overview of all available information relating to supply and demand for peaches which may have a bearing on the type of regulations the committee may recommend. Changes are proposed for purposes of clarity. Six components of the revised marketing policy are currently contained in paragraph (d) of § 919.32 (estimated total production, expected grades and sizes, demand conditions, supplies of competitive commodities, analysis of these factors, and any recommended regulations). Four new components would be added to the marketing policy report (anticipated marketing problems, trends in consumer income, orderly marketing conditions that will be maintained in the public interest, and other relevant factors). The additional components should provide a more comprehensive analysis of anticipated marketing conditions and require the committee to fully consider anticipated marketing problems. Moreover, it would address a declared policy of the Act to establish and maintain orderly marketing conditions which are in the public interest. The proposed revised provision would require the committee to make an additional report if a marketing policy is modified due to changes in demand and supply conditions. The revised provision would also require the committee to make copies of marketing policies available to the industry.

Therefore, revised § 919.50 should specify that for each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth the marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions

thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following: (a) The estimated total production of peaches within the production area; (b) The expected general quality and size of peaches in the production area; (c) The expected demand conditions for peaches in different market outlets; (d) the expected shipments of peaches from other production areas; (e) Anticipated marketing problems; (f) Supplies of competing commodities; (g) Trend and level of consumer income; (h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest; (i) The type of regulations expected to be recommended during the season; and (j) Other relevant factors having a bearing on the marketing of peaches.

Current § 919.51 should be renamed and revised to provide for regulation of peaches by grade and size or by minimum standards of quality and maturity. The changes consolidate the subject matter and eliminate repetitive language currently in §§ 919.50 and 919.51. The section heading should be changed from "Recommendation of the Administrative Committee" to "Recommendations for regulation." The provisions currently in § 919.50 on regulation of shipments would be moved and inserted in proposed new paragraph (a) of § 919.51. The first sentence of paragraph (b) of existing § 919.51 would remain in paragraph (b) with one minor change: the words "grades, sizes," would be specified as standards which can be recommended by the committee, and approved by the Secretary, to further the goals of the marketing order. This additional language makes provisions of new paragraph (b) consistent with paragraph (a) of the section. The last sentence of existing paragraph (b) would be removed from the proposed section. This sentence refers to grade and size regulations and was covered by the rewording of sentences already referenced. In its place, the second sentence of paragraph (a) of existing § 919.51 would be inserted requiring the committee to give adequate notice of any recommendations for regulation that the committee may make to the Secretary. As proposed, § 919.51 also would be consistent with proposed § 919.52 on the Secretary's responsibilities with regards to regulations recommended by the committee.

As revised, paragraph (a) of § 919.51 should specify that whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one of more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary. Also, as revised, paragraph (b) of § 919.51 should specify that, at the time of submitting each such recommendation for regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

Section 919.51 should be amended to consolidate the provisions in paragraph (a) and paragraph (b) into a single paragraph. The intent is to establish guidelines and procedures by which the Secretary may regulate peaches grown in the production area. Thus, amended § 919.52 should specify that whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified therein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, or any variety or varieties of peaches grown in the production area.

(8) Section 919.60 regarding market research and development should be amended to permit the committee, with the approval of the Secretary, to provide for the establishment of projects involving production research. Also, the proposal should permit the committee to pay expenses of market research and development and production research projects from assessment funds or from other sources approved by the Secretary. The authority for additional funding sources would provide the committee with additional funding flexibility.

The record indicates that proponents intended this proposal to provide similar language to that contained in the State marketing order. Testimony indicates that the State order had funded production research beneficial to the industry. The testimony suggests that similar benefits could be derived from production research conducted under the Federal marketing order.

Record evidence shows that the marketing of high quality peaches includes all the operations of growing, picking, packaging, handling, and marketing as a finished product. Research could develop more efficient production and marketing techniques that could benefit the industry. Thus, the proposed amendment could have a positive impact on the industry.

The record indicates that procedures for selecting, approving, reviewing and administering production research projects would be in accordance with, and subject to, the same procedures covering market research and development projects currently authorized under § 919.60.

Therefore, § 919.60 should specify that the committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

Currently, § 919.40 provides that the committee may use only assessment funds to pay authorized expenses. A provision should be added to the end of § 919.40 to allow the committee the authority, with the approval of the Secretary, to use funds, other than those collected from assessments, for projects implemented pursuant to proposed § 919.60.

(9) Two new provisions should be added to provide for verification of reports and to assure confidentiality of information provided by handlers. New § 919.67 should expressly state the authority of the Secretary to verify the correctness of reports filed by handlers and to check handler compliance with reporting and recordkeeping requirements. Such right should also be conferred on the committee. New § 919.68 should specify the procedures to be used by the committee to protect from disclosure, information provided by handlers.

The record indicates that the proposal on verification would merely specify in the order the investigative authority already provided by the Act. Section 919.67 would specify that the Secretary and the committee, through its duly authorized employees, would have access to any premises where handlers' peaches are held and, at any time during normal business hours, would be permitted to examine any such peaches and any and all records with respect to

issues within the purview of this marketing order. Representatives of the Secretary and duly authorized committee employees would have the authority to examine records of all handlers to determine compliance with provisions of this marketing order. The results of such examinations and audits would be reported to the Secretary.

The second sentence of the proposed new § 919.67, as published in the notice of hearing, requires that handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. During testimony the proponents requested that this requirement be deleted from the proposed new section because it is already understood by handlers. However, the record indicates that this information should remain in the order for future reference for those who are not now handlers. Also, experience has shown that minimal labor is needed to facilitate the examination of peaches held and complete records of quantities held, sold and shipped.

Each handler would be required to maintain complete records which accurately show that handler's acquisition and disposition of peaches, including the quantity held, sold and shipped. Opponent testimony was received contending that the maintenance of such records would be a burden on handlers. However, the record indicates that such information is generally contained in records compiled by handlers in the normal course of their business.

Opposition to the proposal was expressed by some in the industry who testified that the authority provided for would constitute an unwarranted intrusion by the Federal government and the committee into the private business of those who handle peaches. Record evidence indicates, however, that any burden of such record keeping requirements would be outweighed by the benefits received from the improved, accurate and efficient administration of the order through the use of such records. The record further indicates that this amendment should aid in the prevention of order violations.

One witness in opposition to the proposal suggested that investigations could be conducted at any time during the busy harvest season. Under normal circumstances, an investigation of a handler's records would be conducted if handler reports fail to coincide with inspection reports supplied by the inspection service. Additionally, the proposal specifies that any investigation would be conducted during normal business hours.

The proposed new § 919.67 provides further that the committee, with the approval of the Secretary, should have the authority to recommend regulations which would establish the type of records to be maintained. Handlers should be required to keep such records for at least two years following the end of each fiscal period. A two-year period should afford the committee's employees adequate time for examining and reviewing such records in the event of alleged program violations by handlers. The record indicates that this requirement should not impose an undue burden on handlers, since such records are likely to be retained for a similar or longer period under normal business practices.

In addition to the proposed provision for verification of reports, a new § 919.68 should be added to specify that confidential information provided to the committee would be protected from disclosure. Section 919.68 should specify that all data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary, except as required by law. Under certain circumstances, the release of composite information compiled from data and information submitted by handlers may be helpful to the committee in planning operations under the marketing order. Such composite information would not disclose the identities of the individual handlers or their separate business operations.

Therefore, the two proposed new provisions should be added to the order.

(10) Section 919.71 should be amended to provide for informal rulemaking authority to revise the quantity of peaches that may be sold exempt from regulation. Currently, exemption (c) of § 919.71 provides that 19 bushels of peaches or less may be sold without inspection or assessment charges, if such peaches are sold to any one person, on any one day, and provided such peaches are not intended for resale.

This exemption dates back to the 1930's. Farm families traveled to Mesa County from other parts of Colorado and other mountain and western States to purchase a wagon load or truck load of peaches—approximately 19 bushels—for winter canning purposes. With improved transportation and marketing technologies, few if any, 19-bushel lots are sold to families or individuals for their own personal use.

To remain current with industry conditions, proponents recommended that authority should be provided to the committee, with the approval of the Secretary, to revise minimum quantity of peaches per shipment that may be sold exempt from regulations.

According to testimony presented at the hearing, authority for changing the quantity of exempted peaches through informal rulemaking was inadvertently omitted from the committee's amendment proposals and thus not included in the notice of hearing. Based on the evidence discussed above, authority to make such changes should be added. Thus, the words "or other such amounts as recommended by the committee and approved by the Secretary" should be added to the end of exemption (c) of § 919.71 as published in the notice of hearing.

Additionally, the evidence of record indicates that the exemption should require that any exempted fruit purchased should be removed from the sales premises at the time of purchase. This requirement would help to limit the application of the exemption to consumers and roadside stand operators as intended by the proponents. The words "on any one conveyance" were proposed to be added to the restrictions already listed in exemption (c). However, the Department has determined that this addition would not effectuate the intent of the proponents as indicated in the hearing record. It is therefore recommended that the words "are removed from the seller's premises on the day of the sale" be added to exemption (c) as published in the notice of hearing (53 FR 44411).

Finally, the words "or an equivalent amount" should be added to indicate that a measure other than "bushels" could be exempted under this provision. For example, testimony indicates that a bushel is equivalent to roughly 50 pounds. This amendment would give the committee more flexibility in applying the exemption.

(11) Section 919.81 regarding termination of the marketing order should be amended by revising paragraph (d) to require that a referendum on continuance of the order be held eight years after the effective date of the amendment and continuance referenda be held a minimum of every six years thereafter. The remaining paragraphs would not be amended.

Currently, the order provides that the Secretary shall terminate any or all of the provisions of the marketing order whenever it is determined that any or all

of the provisions of such order obstruct or do not tend to effectuate the declared policy of the Act. Additionally, the Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a termination referendum it is shown that a majority of all producers in the industry favor termination, and that majority produced more than 50 percent of the commodity for market during a representative period. Since less than 50 percent of all producers usually participate in a referenda, it is difficult to determine producer support for an order. Thus, to provide a basis for determining whether producers favor continuance of the order, continuance referenda are now being required by the Secretary.

The order does not currently specify that a continuance referenda may be conducted. Record evidence indicates that the conduct of continuance referenda would be an effective means for ascertaining whether producers favor continuation of the marketing order program. The requirement for passage of a continuance referendum is the same as that for issuance of an order in a promulgation, ie., approval would be based upon a favorable vote of at least two-thirds of the producers voting in the referendum, or by a favorable vote representing at least two-thirds of the volume of the commodity produced by those voting in the referendum. The Secretary would consider termination of the order only if those favoring continuance are less than two-thirds of the producers voting in the referendum and are producers of less than two-thirds of the volume of the commodity represented in the referendum. This requirement is considered adequate to measure producer support to continue the marketing order.

In evaluating the merits of continuance versus termination, the Secretary would consider not only the results of the referendum but also would consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

Testimony on the merits of this proposed amendment indicates that some feel that the proposed amendment is unnecessary, some favor the eight year interval between continuance referenda as published in the notice of hearing, while others testified that a shorter time period of six years would be preferable. Those opposing the amendment contend that sufficient authority already exists for the Secretary to conduct a referendum at any time and therefore a set schedule for such continuance referenda is not necessary. Those in favor of an eight year interval between referenda testified that, because of the five-year maturing period of new peach seedlings, the industry is not subject to short term changes or a large turnover of producers, as might be expected in other crops that are replanted every year or two. Additionally, they contend that an interval of less than eight years would not provide new producers, or those who have replanted their orchard, with a chance to evaluate their vote based on a full production level. Those preferring a shorter interval between continuance referenda contend that a six year interal is long enough for producers in the industry to wait in order to vote on continuance of the marketing order.

It is the Department's view that over the long term an interval of eight years between continuance referenda is too long a period to insure that the referenda will reflect producer support or opposition to the order in the face of changing market conditions. However, based on the record evidence, holding the first referendum within eight years of ratification of the amendment, and then a minimum of every six years thereafter, would be appropriate. Allowing an eight year period between the ratification of the amendment and the first continuance referendum would provide producers the additional time necessary to determine the initial effects of the amendments upon the industry. Once the initial effects are determined, a referendum every six years after the first referendum would allow producers opportunity to vote for or against the continuance of the order as changes occur in the industry. A six-year interval would allow producers adequate opportunity to evaluate the marketing order based on full production from their orchards and based on performance of the committee. Thus, the order should be amended by revising paragraph (d) of § 919.81 to provide for periodic continuance referenda to be held within each six year period after the first such continuance referendum is held. The first such referendum would be conducted within eight years after ratification of this amendment by the industry. The Secretary has the authority, if deemed necessary, to conduct a termination referenda at any time, without waiting for the stated time period to expire.

(12) The Department proposed in the notice of hearing that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition. Such conforming changes as necessary and stated herein have been incorporated in this recommended decision.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed January 16, 1989, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. None were filed. However, one letter regarding the proposed amendments was received on July 27, 1989. While the letter was not timely received and cannot therefore be considered in this recommended decision, it has been placed in the docket file and will be considered as a timely filed comment to the recommended decision in any further rulemaking proceeding.

General Findings

Upon the basis of the record, it is found that:

(1) The findings, hereinafter set forth are supplementary to, and in addition to, the previous findings and determination which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations herein, they are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of fresh peaches grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production are would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh peaches grown in the production area; and

(6) All handling of fresh peaches grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 919

Colorado, Marketing agreement and order, Mesa County, Peaches.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

1. The authority citation for 7 CFR part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 919.4 is revised to read as follows:

§ 919.4 Production area.

Production area means all territory included within Mesa County, Colorado.

§§ 919.6 through 919.12 [Redesignated from §§ 919.5 through 919.11]

3–9. Sections 919.5 through 919.11 are redesignated as §§ 919.6 through 919.12; newly redesignated §§ 919.6, 919.7, 919.8, 919.10, 919.11, 919.12 are revised; and a new § 919.5 is added to read as follows:

§ 919.5 Peaches.

Peaches means all varieties of peaches grown in the production area, classified botanically as Prunus persica.

§ 919.6 Committee.

Committee means the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

§ 919.7 Producer.

Producer is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

§ 919.8 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches of causes peaches to be handled as defined in § 919.10.

§ 919.10 Handle.

Handle is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or transport peaches in fresh form by any means whatsoever in the current of commerce within the production area or between the production area and any points outside thereof: Provided, That the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

§ 919.11 Fiscal period.

Fiscal period is synonymous with "fiscal year" and means the 12-month period beginning and ending on the dates as recommended by the committee and approved by the Secretary.

§ 919.12 District.

District means any one of the geographical areas into which the production area is divided as recommended by the committees and approved by the Secretary.

10. A new § 919.13 is added to read as follows:

§ 919.13 Grade.

Grade means any one of the officially established grades of peaches as defined and set forth in the United States Standards for Grades of Peaches (§§ 51.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary.

11. A new § 919.14 is added to read as follows:

§ 919.14 Size.

Size means the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary.

12. Section 919.20 is revised to read as follows:

§ 919.20 Establishment and membership.

(a) A Colorado Peach Administrative Committee is hereby established consisting of nine members, each of whom shall have an alternate. The provisions of this part applicable to number, nomination, eligibility, qualification, and selection of the members shall also apply to the number, nomination, eligibility, qualification, and selection of the alternate members. Five (5) of the members, one for each district established pursuant to § 919.11 or modified pursuant to § 919.22(b), shall represent and be selected from producers or officers or employees of producers and be referred to as "producer members;" one (1) member shall represent and be selected from the cooperative marketing association of producers, and be a member or director, officer, or employee of such an association exercising a supervisory or managerial function for that association, and be referred to as a "cooperative handler member;" and three (3) members shall represent and be selected from handlers or producers who are also handlers or directors, officers, or employees exercising supervisory or managerial functions of handlers, not affiliated with the cooperative marketing association of producers, and be referred to as "independent handler members." The members of the committee and their respective alternatives shall be nominated in accordance with the provisions of § 919.21.

(b) Every two years the committee, with the approval of the Secretary, may revise the composition and size of the committee and reapportion the committee membership among industry groups pursuant to § 919.22.

13. Section 919.21 is revised to read as follows:

§ 919.21 Nomination and selection.

(a) Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(1) The committee shall hold or cause to be held, meetings of producers and handlers, not less than 45 days prior to the expiration date of the terms of office, or the date in which vacancies otherwise occur in the producer or independent handler member position.

(2) At each meeting at least one nominee shall be nominated by producers pursuant to paragraph (b) of this section and by independent handlers pursuant to paragraph (d) of this section for each member or alternate member position to be filled.

Such nominations may be by ballot or by motion at the option of those present in voting capacity. The person receiving the highest number of votes shall be the nominee for each position to be filled. Proxy voting shall be prohibited.

(b) Nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer shall be entitled to cast only one vote for each position to be filled in the district that producer produces peaches. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(c) Nominations of cooperative handler members and their respective alternates shall be made as follows:

(1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner as the members of that association deem appropriate; and

(2) When there is more than one cooperative marketing association, and there is a lack of agreement on who should be nominated, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

(d) Nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each position to be filled.

(e) The committee, with the approval of the Secretary, may issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

(f) In the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions shall be treated as vacancies and the provisions of § 919.29 shall apply.

14. Section 919.22 is revised to read as follows:

§ 919.22 Reapportionment of committee and reestablishment of districts.

(a) The committee may recommend, and pursuant thereto the Secretary may approve, reapportioning producer, cooperative marketing association, and independent handler member representation on the committee to reflect changes in the relative importance of these segments of the industry, and, if necessary, the size of the committee may be increased or decreased; the ratio between producer and handler members including their alternates may be changed; and the industry groups represented on the committee may be changed. Any such changes shall reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area.

(b) The Committee, with the approval of the Secretary, may redefine the districts into which the production area is divided, increase or decrease the number of districts, and reapportion representation among the various districts: Provided, That in recommending any such changes, the committee shall consider:

(1) The relative importance of production and the number of producers in each district,

(2) The geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and

(3) Other relevant factors.

§ 919.23 [Removed and Reserved]

15. Section 919.23 is removed and reserved.

§ 919.24 [Removed and Reserved]

16. Section 929.24 is removed and reserved.

17. Section 919.25 is revised to read as follows:

§ 919.25 Failure to nominate.

In the event the committee fails to report nominations to the Secretary in the manner specified in § 919.21 at least 30 days prior to the beginning of the term of office, the Secretary may select the members and alternate members without nomination. Such selections shall be from the groups and in the numbers specified pursuant to this subpart.

18. Section 919.26 is revised to read as follows:

§ 919.26 Qualification by members and alternate members.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to selection, qualify by filing a written background and acceptance statement advising the Secretary that that person agrees to serve in the position for which nominated for selection.

19. Section 919.27 is revised to read as follows:

§ 919.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for two years beginning January 1 and ending December 31, or such other beginning and ending dates as recommended by the committee and approved by the Secretary: Provided, That members and alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve on the committee until their successors have qualified and been selected: And provided further, That a portion of the members and alternates of the new committee under the amended order shall be selected so that approximately one-half of the members and alternate members may be replaced each year; And provided further, That such terms may be shorter than specified if the committee is changed pursuant to § 919.22.

(b) Committee members and alternate members shall serve during the term of office for which they have qualified and are selected, and until their successors have qualified and are selected: Provided, That no member shall serve more than three consecutive terms as member; and Provided further, That the Secretary shall have authority to exempt a person from the tenure limitation when deemed necessary.

20. Section 919.29 is revised to read as follows:

§ 919.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member shall be nominated and selected in the manner specified in §§ 919.20, 919.21 and 919.26: Provided, That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 919.20 without conducting a formal nomination. If the vacancy is in a member position, the committee shall recommend appointment of the alternate member if that person is willing to serve in that position. In the case of a declination to serve or to fill the alternate member vacancy, the committee's recommended nominee for a producer member or alternate producer member position to represent a particular district shall be a producer recommended to the committee by the producers from that particular district; the recommended nominee for a handler member or alternate handler member position representing the cooperative marketing association, with which the former member or employee was associated, shall be recommended to the committee by the cooperative marketing association; and the recommended nominee for an independent handler member or alternate independent handler member position shall be a person recommended to the committee by independent handlers in the production area. If the committee's recommendation to fill such vacancy is not submitted to the Secretary within 45 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

21. Section 919.30 is revised to read as follows:

§ 919.30 Compensation and expenses.

The members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necessarily incurred by them in performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

22. Section 919.31 is amended by changing the words "Administrative Committee" in the introductory paragraph to "committee."

23. Section 919.32 is amended by revising paragraph (d) and removing paragraph (l) to read as follows:

§ 919.32 Duties.

* * * * *

(d) Prepare and submit a marketing policy pursuant to § 919.50.

* * * * * *

24. Section 919.33 is revised to read as follows:

§ 919.33 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action. When an assembled meeting is held, all votes shall be cast in person.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing.

§ 919.34 [Amended]

25. Section 919.34 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

§ 919.35 [Amended]

26. Section 919.35 is amended by changing the words "Administrative Committee" in paragraphs (a) and (b) to "committee."

27. Section 919.40 is revised to read as follows:

§ 919.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning under this part during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 919.41. For projects conducted pursuant to § 919.60, other funds approved by the Secretary may also be used.

28. Section 919.41 is amended by designating the existing paragraph as "(a)," changing the words "Administrative Committee" in the first sentence to "committee," and adding a new paragraph "(b)" to read as follows:

§ 919.41 Assessments.

* * * * *

(b) The committee may impose a late payment charge on any handler who fails to pay any assessment within the term prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

§ 919.43 [Amended]

29. Section 919.43 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

30. Section 919.50 is revised to read as follows:

§ 919.50 Marketing policy.

Each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth the marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand for or supply of peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following:

(a) The estimated total production of peaches within the production area;

(b) the expected general quality and size of peaches in the production area;

(c) The expected demand conditions for peaches in different market outlets;

(d) The expected shipments of peaches from other production areas;

(e) Anticipated marketing problems;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest;

(i) The type of regulations expected to be recommended during the season; and

(j) Other relevant factors having a bearing on the marketing of peaches.

31. Section 919.51 is revised to read as follows:

§ 919.51 Recommendation for regulation.

(a) Whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

(b) At the time of submitting each such recommendation for regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

32. Section 919.52 is revised to read as follows:

§ 919.52 Establishment of regulation.

Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified herein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, of any variety or varieties of peaches grown in the production area. The Secretary shall promptly notify the committee of each such regulation and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 919.53 [Amended]

33. Section 919.53 is amended by changing the words "Administrative Committee" in paragraphs (a), (e), and (f) to "committee."

§ 919.54 [Amended]

34. Section 919.54 is amended by changing the words "Administrative Committee" in the last sentence to "committee."

§ 919.55 [Amended]

35. Section 919.55 is amended by changing the words "Administrative Committee" in the first sentence to "Committee."

36. Section 919.60 is revised to read as follows:

§ 919.60 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

§ 919.65 [Amended]

37. Section 919.65 is amended by changing the words "Administrative Committee" to "committee."

§ 919.66 [Amended]

38. Section 919.66 is amended by changing the words "Administrative Committee" in the title and the text of the section to "committee."

39. A new § 919.67 is added to read as follows:

§ 919.67 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held, and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The committee, with the approval of the Secretary, may establish the types of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each such fiscal period.

40. A new § 919.68 is added to read as follows:

§ 919.68 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position, or business condition of a particular handler, shall be treated as confidential and shall at all times, be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

41. Section 919.71 is revised to read as follows:

§ 919.71 Peaches not subject to regulation.

Nothing contained in this part shall be construed to authorize any limitation of the right of any person to ship (a) peaches for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency; (b) peaches for processing on a commercial scale; or (c) peaches to any one person during any one day, if such peaches are removed from the sellers premises on the day of the sale, are not for resale and do not aggregate more than 19 bushels, or an equivalent amount, or other such amounts as recommended by the committee and approved by the Secretary. The inspection and assessment provisions of this subpart shall not be applicable to peaches so shipped. The committee may prescribe adequate safeguards to prevent peaches, shipped for such purposes, from entering commercial channels of trade contrary to the provisions of this part.

42. Section 919.81 is amended by revising paragraph (d) to read as follows:

§ 919.81 Termination.

* * * * *

(d) Within eight years of the effective date of the amendment of this paragraph the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted within every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of peaches in the production area. Such termination shall be announced on or before February 1 of the current fiscal period.

§ 919.82 [Amended]

43. Section 919.82 is amended by changing the words "Administrative Committee" in paragraphs (a), (b), and (d) to "committee."

§ 919.94 [Amended]

44. Section 919.94 is amended by changing the words "Administrative Committee" in the first sentence to "committee."

Dated: November 20, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-27593 Filed 11-24-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 317, 318, 319, and 381

[Docket No. 86-042C]

RIN 0583-AA64

Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is correcting several omissions in the proposed rule which appeared in the **Federal Register** on October 6, 1988 (53 FR 39307). As a result of the omissions, FSIS is providing an additional 30 days for public comment.

DATE: December 28, 1989.

ADDRESS: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Ashland Clemons, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447-4293.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments in response to this action. Written comments should be sent to the Policy Office. Please include the docket number that appears in the heading of this document.

Any person desiring an opportunity for an oral presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), should make such request to Mr. Clemons so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. Comments submitted will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On October 6, 1988, FSIS published a proposed rule in the **Federal Register** (53 FR 39307) to amend the Federal meat and poultry products inspection regulations to permit the use of wheat gluten, tapioca dextrin, whey protein concentrate and sodium caseinate as binders in various meat and poultry products. FSIS also proposed to transfer text references for specific binders from individual product standards to the tables of approved substances. In addition, FSIS proposed to provide for the use of binders in the standardized product "Chili con Carne with Beans." In the proposed rule, a labeling provision for the use of binders and information in the tables of approved substances were inadvertently omitted. These omissions are discussed briefly below, and FSIS is requesting comments on these aspects of the proposed rule.

Done at Washington, DC, on November 18, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

PART 317—[AMENDED]

1. The following labeling requirement is currently in § 317.8 of the Federal meat inspection regulations (9 CFR 317.8) but does not list the substances "wheat gluten, tapioca dextrin or sodium caseinate" nor does it provide the examples "Sodium Caseinate Added" and "Tapioca Dextrin Added" as shown below. Because binders and extenders are not expected ingredients in sausages, FSIS requires that any use of binders or extenders be prominently disclosed on the product label. This provision was inadvertently omitted from the proposed rule. Section 317.8 (b)(16) is revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(16) When cereal, vegetable starch, starchy vegetable flour, soy flour, soy protein concentrate, isolated soy protein, dried milk, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced minerals whey, whey protein concentrate, calcium reduced dried skim milk, wheat gluten, tapioca dextrin, or sodium caseinate is added to sausage within the limits prescribed in part 319 of this subchapter, there shall appear on the label, in a prominent manner, contiguous to the name of the product, the name of each such added ingredient as, for example, "Cereal Added," "With Cereal," "Potato Flour Added," "Cereal and Potato Flour Added," "Soy Flour Added," "Soy Protein Concentrate Added," "Isolated Soy Protein Added," "Nonfat Dry Milk Added," "Sodium Caseinate Added," "Tapioca Dextrin Added," "Calcium Reduced Dried Skim Milk Added" or "Cereal and Nonfat Dry Milk Added" as the case may be.

2. The table that appeared on page 39310 across from the entry "Sodium caseinate" is corrected in four places as shown in the table reprinted below. In each of these four entries under "Amount," across from the entry "Sodium caseinate," the phrase referencing the Food and Drug Administration's (FDA) conditions of use for sodium caseinate was inadverently omitted. Conditions of use for the other three binders, whey protein concentrate, tapioca dextrin and wheat gluten, were included in the proposed rule. Therefore, the table has been corrected to add the reference to FDA's conditions of use for sodium caseinate which is 21 CFR 182.1748.

3. In addition, in this same section of the table across from the entry "Sodium caseinate" and regarding the products "Imitation sausage, nonspecific loaves, soups, stews" the "Amount" column is further corrected, as shown in the table reprinted below, by including an additional reference to FDA's definition of "good manufacturing practice" which appears at 21 CFR 172.5. This reference is intended to direct the user to the restrictions with regard to the use of sodium caseinate in imitation sausage, nonspecific loaves, soups, and stews, because FSIS has not provided a specific use level for the use of sodium caseinate in these products.

4. In the preamble of the proposed rule, on page 39309, in the middle column, in the first full paragraph the term "sufficient for purpose" should have been followed by "in accordance with 21 CFR 172.5," the reference to FDA's definition of good manufacturing practice.

5. On page 39309, in the middle column of text on that page, lines eleven through fifteen are reprinted below in corrected form.

"This proposed rule would also correct a printing error in the table of substances at § 318.7(c)(4) by changing the allowable amount of xanthan gum from "8 percent" to "Sufficient for purpose in accordance with 21 CFR 172.5."

6. On page 39309, in the middle column of text on that page, lines fifteen through twenty-three are repinted below in corrected form.

"This proposed rule would also correct printing errors in the same table for the substances "Carrageenan" by changing the products in which carrageenan can be used to "Breading mix; sauces" and by changing the amount that may be used to "Sufficient for purpose in accordance with 21 CFR 172.5."

7. On pages 39309 and 39310 in the table with respect to the following substances: Algin, Carrageenan, Isolated soy protein (in imitation sausage, nonspecific loaves, soups, stews); Dry or dried whey (in imitation sausage, soups, stews, nonspecific loaves), Reduced lactose whey, Reduced minerals whey, the entry "Sufficient for purpose" should be followed with "in accordance with 21 CFR 172.5." This reference is intended to direct the user to the restrictions with regard to the uses of the substances listed above, because FSIS has not provided a specific use level for the use of these substances. These corrections are shown in the table reprinted below

8. On page 39308, in the middle column of text under item 4. "Whey Protein Concentrate," the first word in the second sentence should be changed from "When" to "Whey."

9. On page 39312, in the third column of text under item 13., the amendatory language should be changed to read as follows:

"13. The table of substances in § 381.147(f)(4) would be amended by adding the substances gelatin, sodium caseinate, tapioca dextrin, and wheat gluten, in alphabetical order, under the class of substances entitled "Binders and Extenders" as set forth below:"

PART 318—[AMENDED]

§ 318.7 [Amended]

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders	Agar-agar	To stabilize and thicken	Thermally processed canned jellied meat food products.	0.25 percent of finished product.
	Algin	To extend and stabilize product.	Breading mix; sauces	Sufficient for purpose in accordance with 21 CFR 172.5.
	A mixture of sodium alginate, calcium carbonate and calcium lactate/lactic acid (or glucono delta-lactone).	To bind meat pieces	Restructured meat food products	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Ingredients of mixture must be added dry.
	Bread	To bind and extend product.	Bockwurst	3.5 percent individually or collectively with other binders.
	Calcium lactate	....do	Sausage as provided in Part 319.	Do.
	Calcium reduced skim milk.	....do	....do	Do.
	....do	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	....do	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders.
	Carrageenan	To extend and stabilize product.	Breading mix; sauces	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carboxymethyl cellulose (cellulose gum).	....do	Baked pies	Do.
	Cereal	To bind and extend product.	Sausages as provided in Part 319, bockwurst.	3.5 percent individually or collectively with other binders.
	....do	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Dried milk	....do	Sausages as provided in Part 319.	3.5 percent individually or collectively with other binders.
	....do	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product.	Sausages as provided for in Part 319	3.5 percent total finished product. (Calcium lactate required at rate of 10 percent of binder)
	....do	....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 10 percent of binder).
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 25 percent of binder).
	Gums, vegetable	....do	Egg roll	Sufficient for purpose in accordance with 21 CFR 172.5.
	Methyl cellulose	To extend and to stabilize product (also carrier).	Meat and vegetablek patties	0.15 percent.
	Isolated soy protein	To bind and extend product.	Sausage, as provided for in Part 319	2 percent.
	....do	....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 172.5.
	....do	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	....do	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders.
	Sodium caseinate	....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 182.1748 and 21 CFR 172.5.
	....do	....do	Sausage as provided in Part 319.	2 percent in accordance with 21 CFR 182.1748.
	....do	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders in accordance with 21 CFR 182.1748.

Class of substance	Substance	Purpose	Products	Amount
	....do	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders in accordance with 21 CFR 182.1748.
	Dry or dried whey	To bind or thicken	Sausage as provided in Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	Dry or dried whey	....do	Imitation sausages, soups, stews, nonspecific loaves.	Sufficient for purpose in accordance with 21 CFR 172.5.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	Dry or dried whey	....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders.
	Reduced lactose whey	....do	....do	Do.
	Reduced minerals whey	....do	....do	Do.
	Whey protein concentrate	....do	....do	In accordance with 21 CFR 184.1979c.
	....do	To bind meat pieces	Restructured meat food products, whole muscle meat cuts.	3.5 percent individually or collectively with other binders and extenders. In accordance with 21 CFR 184.1979c.
	Soy flour	To bind and extend product.	Sausage as provided in Part 319, bockwurst.	Do.
	Soy protein concentrate	....do	....do	Do.
	Starchy vegetable flour	....do	....do	Do.
	Vegetable starch	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Soy flour	....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders.
	Soy protein concentrate	....do	....do	Do.
	Starchy vegetable flour	....do	....do	Do.
	Vegetable starch	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Soy flour	....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders.
	Soy protein concentrate	....do	....do	Do.
	Wheat gluten	....do	....do	In accordance with 21 CFR 184.1322.
	Tapioca dextrin	....do	....do	In accordance with 21 CFR 184.1277.
	Xanthan gum	To maintain uniform viscosity; suspension of particulate matter, emulsion stability; freeze-thaw stability.	Meat sauces, gravies or sauces and meats, canned or frozen and/or refrigerated meat salads, canned or frozen meat stews, canned chili or chili with beans, pizza topping mixes and batter or breading mixes.	Sufficient for purpose in accordance with 21 CFR 172.5.

PART 381—[AMENDED]

§ 381.147 [Amended]

10. The table that appears on page 39312 with respect to the following substances: Algin; Carrageenan; Carboxymethly cellulose; Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate; Enzyme (rennet) treated sodium caseinate and calcium lactate; Gums, vegetable; Isolated soy protein; Whey (dried); and Xanthan gum; the text in the amount column is changed to read: "Sufficient for purpose in accordance with 21 CFR 172.5." This reference is intended to direct the user to the restrictions in regard to the uses of the substances listed above, because FSIS has not provided a specified use level for the use of these substances. These corrections are shown in the table reprinted below.

11. The table that appears on page 39312 across from the entry "Sodium caseinate" is corrected as shown in the table reprinted below. In the entry under "Amount," across from the entry "Sodium caseinate and the phrase referencing FDA's good manufacturing practice were inadvertently omitted. Therefore, the table has been corrected to add the references to FDA's conditions of use for sodium caseinate and good manufacturing practice which are 21 CFR 182.1748 and 172.5.

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders	Algin	To extend and stabilize product.	Various	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carrageenan	....do	....do	Do.

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Class of substance	Substance	Purpose	Products	Amount
	Carboxymethyl cellulose (cellulose gum).	....do	....do	Do.
	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product.	....do	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 10 percent of binder.)
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	....do	....do	Sufficient for purpose in accordance with 21 CFR 172.5. (Calcium lactate required at rate of 25 percent of binder.)
	Gelatin	....do	....do	3 percent in cooked product, 2 percent in raw product.
	Gums, vegetable	....do	....do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Methyl cellulose	To extend and to stabilize product (also carrier).	....do	0.15 percent.
	Isolated soy protein	To bind and extend product.	....do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Sodium caseinate	....do	....do	3 percent in cooked product, 2 percent in raw product, and in accordance with 21 CFR 172.5 and 182.1748.
	Tapioca dextrin	....do	....do	Sufficient for purpose in accordance with 21 CFR 172.5. and 184.1277.
	Whey (dried)	....do	....do	Sufficient for purpose in accordance with 21 CFR 172.5.
	Wheat gluten	....do	....do	3 percent in cooked product, 2 percent in raw product, and in accordance with 21 CFR 184.1322.
	Xanthan gum	To maintain: Uniform viscosity; suspension of particulate matter; emulsion stability; freeze-thaw stability.	Various, except uncooked products or sausages or other products with a moisture limitation established by Subpart P of this Part.	Sufficient for purpose in accordance with 21 CFR 172.5.

[FR Doc. 89-27449 Filed 11-22-89; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ANE-31]

Proposed Alteration of Transition Area, Biddeford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to amend the description of the Biddeford, Maine 700 foot Transition Area so as to provide protected airspace for instrument flight rules helicopters executing a new Copter TACAN 135/ Copter TACAN 315 Standard Instrument Approach Procedure (SIAP) to the Walker's Point Heliport, Kennebunkport, Maine.

DATES: Comments must be received no later than January 15, 1990.

ADDRESSES: Send comments on the Rule in triplicate to: Manager, Systems Management Branch, Air Traffic Division, New England Region, Docket No. 88-ANE-31, Department of Transportation, Federal Aviation Administration, Burlington, MA 01803.

The Official Docket may be examined in the Office of Assistant Chief Counsel, New England Region, Federal Aviation Administration, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, Systems Management Branch, ANE-530, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANE-31." The postcard will be date/time stamped and returned to commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules and Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Biddeford, ME 700 foot transition area so as to provide protected airspace for Instrument Flight Rules Helicopters executing a new Standard Instrument Approach Procedure to the Walker's Point Heliport, Kennebunkport, Maine. Section 181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves a established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Biddeford, ME [Amended]

Line five, after the word, bearing, add: and within 5 miles each side of the Kennebunk VORTAC 118 radial (135 magnetic), extending from the 8.5 mile radius area and the 10 mile radius area to 16.5 miles southeast of the Kennebunk VORTAC, excluding that airspace which coincides with the Sanford, ME 700 foot transition area.

Issued in Burlington, Massachusetts, on November 14, 1989.

James I. Lucas,

Manager, Air Traffic Div. ion.

[FR Doc. 89-27550 Filed 11-22-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-47-89]

RIN 1545-AN72

Alcohol Fuels Credit; Definition of Mixture

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 40 interpreting the term "mixture" as used in that section. The proposed regulations provide that a product derived from alcohol and other components is considered to be a mixture of that alcohol and those other components even if the alcohol is chemically transformed in producing the product so that the alcohol is no longer present as a separate chemical in the final product. Thus, the proposed regulations provide that a product is considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is produced by blending a chemical compound derived from alcohol with gasoline or a special fuel, so long as there is no significant loss of energy content of the alcohol. For example, a blend of gasoline and ethyl tertiary butyl ether (ETBE), a compound derived in part from ethanol, is considered for purposes of section 40(b)(1)(B) to be a mixture of gasoline and the ethanol used to produce the ETBE, even though the ethanol is chemically transformed in the production of ETBE and is not present in the final mixture.

DATES: Written comments and/or requests to appear (with an outline of the oral comments to be presented) at a public hearing scheduled for Thursday, January 4, 1990, at 10:00 a.m., must be delivered by December 26, 1989. These regulations are proposed to be effective for sales or uses after September 30, 1980, in tax years ending after September 30, 1980.

ADDRESS: Send comments and requests to appear at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-47-89), Room 4429, Washington, DC 20044. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202-566-4077 (not a toll-free call). For further information concerning the hearing, contact Angela Wilburn, Regulations Unit, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Introduction

The Internal Revenue Service has been asked by taxpayers and other interested parties to rule as to whether alcohol used in the production of ethyl tertiary butyl ether (ETBE) is eligible for the alcohol mixture credit determined under section 40. Because no regulations have been issued under section 40, and because the answer to this question is not clear under the statutory language of section 40, the Treasury Department has determined that this matter should be resolved by reference to policy considerations. After weighing the relevant policy considerations, the Treasury Department is proposing that section 40 should be interpreted so as to allow the alcohol mixture credit for alcohol used in the production of ETBE.

Background

Section 40(a) provides for an alcohol fuels credit equal to the sum of the alcohol mixture credit and the alcohol credit. Section 40(b)(1) provides that the alcohol mixture credit is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture during the taxable year. The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which either (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (ii) is used as a fuel by the taxpayer producing the mixture. For purposes of section 40 the term "alcohol" does not include alcohol produced from petroleum, natural gas, or coal.

ETBE is a chemical compound produced in a reaction between ethanol (an alcohol that is not produced from petroleum, natural gas, or coal), and isobutylene (a by-product of petroleum refining). ETBE is then blended with gasoline as an octane enhancer. There is no significant loss in the energy content

of ethanol when it is used to produce ETBE.

Eligibility of Ethanol Used To Produce ETBE for Credit

Whether ethanol used in the production of ETBE is eligible for the alcohol mixture credit depends in part on how the term "mixture" used in section 40(b)(1)(B) is interpreted. If this term were interpreted in the narrow technical sense in which it is used in chemistry or in the tariff laws, then ethanol used in producing ETBE would not be eligible for the credit. In chemistry, and in the tariff laws, a mixture is a substance consisting of two or more ingredients that is distinguished from a compound in that the ingredients are not in fixed proportions, do not lose their physical characteristics, and can be separated by physical means. *See Webster's New World Dictionary of the English Language* 912 (2d college ed. 1972); Tariff Schedules of the United States, Schedule 4, Headnote 3(a). Under this narrow definition, no mixture of alcohol is produced, either when ETBE is created or when it is blended with gasoline.

In nontechnical use, however, the term mixture may have a broader meaning, and overlaps with the term compound. *See* "American Heritage Dictionary of the English Language" 842 (New college ed. 1976). Under such a nontechnical interpretation, ETBE could be considered to be a mixture of isobutylene and ethanol, and thus gasoline into which ETBE has been blended could be considered to be a mixture of gasoline, isobutylene and ethanol. Therefore, under such an interpretation, ethanol used to produce ETBE may qualify for the credit determined under section 40, even though it is chemically transformed in the reaction in which ETBE is produced.

Because the term mixture as used in section 40 is reasonably susceptible to either of two different interpretations, the Treasury Department believes that this issue must be resolved by reference to the policy objectives that section 40 was intended to achieve, and to broader considerations of public policy. The legislative history of the Crude Oil Windfall Profit Tax Act of 1980, which enacted the section 40 credit, indicates that the purpose of the credit is to encourage the development of energy sources other than petroleum products for use in motor fuels by providing a tax benefit for alcohol (other than alcohol produced from petroleum, natural gas or coal) used in motor fuel. *See* S. Rep. No. 394, 96th Cong., 2d Sess. 91, 1980–3 C.B. 209; H.R. Rep. No. 817, 96th Cong., 2d Sess. 142–43, 1980–3 C.B. 302–03. To the extent that ETBE or any other chemical compound is derived from ethanol, and there is no significant loss of energy content of the alcohol in producing such compound, this purpose is accomplished by the use of such compound in motor fuel, despite the fact that ethanol loses its chemical identity when used to produce the compound; from a policy standpoint, this chemical change has no significance. Therefore, consideration of the policy objectives of section 40 leads to the conclusion that ethanol used to produce ETBE should qualify for the section 40 credit.

In addition, this interpretation of the term mixture, which would extend the section 40 credit to ETBE, is consistent with Administration policy. Several government agencies have written the Treasury Department to point out the benefits of ETBE use. Allowing the section 40 credit for ETBE will have the following benefits. First, allowing the credit will increase the substitution of ETBE for other octane enhancers that cause more pollution. Second, it makes ETBE a more viable means of increasing the oxygen content of gasoline, which should help smooth the transition to oxygenated fuels in those areas that are not in compliance with carbon monoxide standards. Third, it encourages the substitution of ETBE-gasoline blends for ethanol-gasoline blends (gasohol). ETBE does not absorb water, which means it is easier to transport than gasohol, and it can be blended into the gasoline with less pollution than the "splash blending" of gasohol. Fourth, it may increase the demand for domestic ethanol because ETBE is easier to use than ethanol, which would expand this alternative market for America's farmers. Fifth, ETBE is a fuel, not just an octane enhancer, and it will displace some gasoline consumption. Substituting a renewable and domestically-produced fuel for imported petroleum will enhance national energy security and will improve the trade balance.

The Treasury Department has carefully weighed policy arguments against interpreting section 40 to allow a credit for ethanol used to produce ETBE. In particular the Treasury Department understands the possibility that such an interpretation will provide an advantage for ethanol used to make ETBE that is not available for methanol used to make methyl tertiary butyl ether (MTBE), a competing octane enhancer with properties similar to ETBE. This competitive advantage for ethanol relative to methanol, however, is a logical consequence of the decision made by Congress in 1980 to favor alcohols derived from renewable sources (such as ethanol) over alcohols derived from nonrenewable sources (such as methanol).

Explanation of Provisions

The proposed regulations provide that a product is considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is a chemical compound derived from alcohol and gasoline or from alcohol and a special fuel, or if such product is produced by blending a chemical compound derived from alcohol with gasoline or a special fuel, provided that there is no significant loss in energy content of the alcohol. Therefore, under the proposed regulations, ETBE is considered to be a mixture of ethanol and isobutylene, and a mixture of ETBE and gasoline is considered to be a mixture of gasoline, ethanol, and isobutylene. Consequently a taxpayer that uses ethanol to produce ETBE, blends the ETBE with gasoline, and then either uses the resulting mixture as a fuel, or sells the resulting mixture to any person for use as a fuel, has produced a qualified mixture within the meaning of section 40(b)(1)(B). Provided that such sale or use is in a trade or business of the taxpayer, the taxpayer would be eligible for a credit of 60 cents per gallon of ethanol used.

The proposed regulations do not address the question of whether a taxpayer that produces ETBE, but does not blend it with gasoline, has produced a qualified mixture. In Rev. Rul. 88–64, 1988–2 C.B. 10, however, the Service considered a similar question. The taxpayer in this ruling produced an octane enhancer by mixing ethanol with other ingredients. The taxpayer did not blend the octane enhancer with gasoline, but instead sold it to another person for blending with gasoline. The Service ruled that the octane enhancer was not itself a qualified mixture because it was not sold for use as a stand-alone fuel, but rather for use as an octane enhancer. Therefore the taxpayer was not eligible for the alcohol mixtures credit. Rather, the person purchasing the octane enhancer for blending with gasoline was the producer of a qualified mixture and was eligible for the credit with respect to the ethanol component of the octane enhancer. Under the reasoning of this ruling, a taxpayer that produces ETBE, but does not blend it with gasoline, would not be eligible for the credit. However, a person purchasing ETBE and blending it with gasoline would be eligible for the credit.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations proposed in this document will be submittd to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible after the end of 1989, a public hearing will be held at 10:00 a.m. on January 4, 1990, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

Drafting Information

The principal author of these proposed regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.0–1 through 1.56–8

Income taxes, Tax liability, Tax rates, Credits.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.40–1 is revised to read as follows:

§ 1.40–1 Questions and answers relating to the meaning of the term "qualified mixture" in section 40(b)(1).

Q–1. What is a "qualified mixture" within the meaning of section 40(b)(1)?

A–1. A "qualified mixture" is a mixture of alcohol and gasoline or of alcohol and a special fuel which (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture.

Q–2. Must alcohol be present in a product in order for that product to be considered a mixture of alcohol and either gasoline or a special fuel?

A–2. No. A product is considered to be a mixture of alcohol and gasoline or of alcohol and a special fuel if the product is derived from alcohol and either gasoline or a special fuel even if the alcohol is chemically transformed in producing the product so that the alcohol is no longer present as a separate chemical in the final product, provided that there is no significant loss in the energy content of the alcohol. Thus, a product may be considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" within the meaning of section 40(b)(1)(B) if such product is produced in a chemical reaction between alcohol and either gasoline or a special fuel. Similarly a product may be considered to be a "mixture of alcohol and gasoline or of alcohol and a special fuel" if such product is produced by blending a chemical compound derived from alcohol with either gasoline or a special fuel.

Thus, for example, a blend of gasoline and ethyl tertiary butyl ether (ETBE), a compound derived from ethanol (a qualified alcohol), in a chemical reaction in which there is no significant loss in the energy content of the ethanol, is considered for purposes of section 49(b)(1)(B) to be a mixture of gasoline and the ethanol used to produce the ETBE, even though the ethanol is chemically transformed in the production of ETBE and is not present in the final product.

Fred. T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–27515 Filed 11–20–89; 1:51 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD65

Veterans Education; the Veterans' Benefits and Programs Improvement Act of 1988 and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed Regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include permitting cooperative training in this program, permitting refresher, remedial and deficiency training in this program, providing tutorial assistance to veterans in this program, liberalizing the standards for determining extensions to a veteran's basic period of eligibility, and reducing benefits to veterans who are incarcerated by reason of a felony conviction. Some of these changes are liberalizing. Some are more restrictive. This proposal will acquaint the public with the way in which the Department of Veterans Affairs will administer the new provisions of law.

DATES: Comments must be received on or before December 26, 1989. Comments will be available for public inspection until January 3, 1990. It is proposed that the amendments to § 21.5021 (r) and (s) and § 21.5230 (a) and (b) become effective 30 days after the date of publication of the final rules. It is proposed that the effective dates of the remainder of these changes coincide with the effective dates of the sections of the law upon which they are based. Consequently, it is proposed to make the amendments to §§ 21.5021 (t), (u) and (v), 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296 and the proposed new regulations §§ 21.5072 (f) and (g), 21.5139 and 21.5141 retroactively effective on November 18, 1988. It is proposed to make § 21.5230(c) effective on August 15, 1989, and to make all other changes retroactively effective on January 1, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the

hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: William C. Susling, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs and the Department of Defense are proposing to amend various regulations and to add other regulations in order to implement several provisions of Public Law 100–689, the Veterans' Benefits and Programs Improvements Act of 1988, which affect VEAP. These provisions provide for cooperative training in VEAP; permit refresher and remedial training in that program; allow for the payment of tutorial assistance to veterans enrolled under VEAP; provide that the disabling effects of chronic alcoholism will not be considered to be the result of willful misconduct when the Department of Veterans Affairs determines whether or not veteran training in VEAP is entitled to an extension of the period of eligibility due to a disability; and provide for a reduction or termination of VEAP benefits when a veteran is incarcerated due to conviction of a felony. The changes in law concerning willful misconduct as to disabling effects of chronic alcoholism do not apply to the compensation and pension programs.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the final amendments to §§ 21.5021 (t), (u) and (v), 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296 and the final new regulations §§ 21.5072 (f) and (g), 21.5139, and 21.5141, like the sections of Public Law 100–689 they implement, retroactively effective on November 18, 1988. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making § 21.5230(c), like the section of law it implements, effective on August 15, 1989. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the remainder of the regulations (other than § 21.5021 (r) and (s) and § 21 5230 (a) and (b)) retroactively effective on January 1, 1989. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial or improper payment of a benefit to a veteran or servicemember. Moreover, the above sections simply interpret and implement statutory provisions.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense certify that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 10, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: 29 September 1989.

Donald W. Jones,

Lieutenant General, USA Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy)

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.5021, paragraphs (r) through (v) are added to read as follows:

§ 21.5021 Definitions.

* * * * *

(r) *"Educational objective"*—An educational objective is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 1602(2), 1652(b)).

(s) *"Professional or vocational objective"*—A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 1602(2))

(t) *"deficiency course"*—The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 1641; Pub. L. 100–689)

(u) *"Referesher course"*—The term "refresher course" means-

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the techological advances which have occurred in the individual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U S C. 1641(a); Pub. L. 100–689)

(v) *Disabling effects of chronic alcoholism.*

(1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 100–689)

2. In § 21.5042, paragraphs (c) (1) and (2) are redesignated as paragraphs (c) (3) and (4) respectively; paragraph (a)(2) is revised and paragraphs (c) (1) and (2) and (d)(4) are added so that revised and added text reads as follows:

§ 21.5042 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

(c) *Qualifying period of disability.*

(1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under § 21.5030(c)(3) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 105; Pub. L. 100–689)

* * * * *

(d) *Commencing date.* * * *

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99–576, Pub. L. 100–689)

3. In § 21.5072, paragraph (a) heading and paragraph (a)(1) are revised and paragraphs (e), (f), and (g) are added to read as follows:

§ 21.5072 Entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (g) of this section, VA will make a charge against the period of entitlement as follows:

* * * * *

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5136(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1631(d); Pub. L. 100–589]

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

(Authority: 38 U.S.C. 1631(e); Pub. L. 100–609]

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1634; Pub. L. 100–689)

4. In § 21.5130, paragraphs (a) and (d) are revised to read as follows:

§ 21.5130 Payments-educational assistance allowance.

* * * * *

(a) § 21.4131 (except paragraph (e))—Commencing dates.

(Authority: 38 U.S.C. 1641)

* * * * *

(d) § 21.4135 (except paragraphs (b), (c), (d), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * * * *

5. Section 21.5131 is revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account.

(Authority: 38 U.S.C. 1641; Pub. L. 94–502, 99–576, 100–689)

6. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training, and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

7. In § 21.5138 paragraph (a)(4) is added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * *

(a) * * *

(4) For cooperative training the VA will compute the entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period. (1) _____

(II) Enter the number of full days in excess of the number of full months. (a) _____

(iii) Divide line a by 30. Enter the quotient. (2) _____

(iv) Total lines 1 and 2. (3)
(v) Multiply line 3 by .80. Enter the result. (4)
(This is the entitlement factor).

(Authority: 38 U.S.C. 1631; Pub. L. 100-689)

8. Sections 21.5139 and 21.5141 are added to read as follows:

§ 21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of § 21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.*

VA will pay no educational assistance to an individual who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or a State or local program, and

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 1631(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.*

(1) VA will pay a reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the individual pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or

(ii) The monthly rate for the individual as determined by § 25.5138(c) of this part.

(Authority: 38 U.S.C. 1631(e))

§ 21.5141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.* (1) An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services if he or she—

(i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and

(ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1634, 3001; Pub. L. 100-689)

(c) *Approval of tutorial assistance.* The Department of Veterans Affairs will approve an application for tutorial assistance when—

(1) The educational institution where the individual is pursuing a program of education certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the individual; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

(d) *Limitations on tutorial assistance* (1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed $100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of $1,200.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

9. Section § 21.5230 is revised to read as follows:

§ 21.5230 Programs of education.

(a) *Approving the selected program of education.* Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education under chapter 32, title 38, United States Code, only if it—

(1) Meets the definition of a program or education stated in § 21.5021(q) of this part,

(2) Has an objective as described in § 21.5021(r) or (s) of this part;

(3) The courses or subjects in the program are approved for VA training; and

(4) The veteran or serviceperson is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 1602(2)

(b) *Programs which include secondary school training.* VA may aprove the enrollment of a veteran or serviceperson in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a)(2))

(c) *Refresher training for those already qualified.* The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or aftr the veteran's active duty.

(Authority: 38 U.S.C. 1641(a)(2); Pub. L. 100-689)

10. In § 21.5250 paragraphs (h) through (n) are revised and paragraph (o) is added to read as follows:

§ 21.5250 Courses.

* * * * *

(h) § 21.4257—Cooperative courses.

(Authority: 38 U.S.C. 1602(2); Pub. L. 100-689)

(i) § 21.4258—Notice of approval.

(Authority: 38 U.S.C. 1641, 1778; Pub. L. 94-502, Pub. L. 99-576)

(j) § 21.4259—Suspension or disapproval.

(Authority: 38 U.S.C. 1641, 1779; Pub. L. 94-502)

(k) § 21.4260—Courses in foreign countries.

(Authority: 38 U.S.C. 1641, 1676; Pub. L. 94-502)

(l) § 21.4261—Apprentice courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(m) § 21.4262—Other training on-the-job courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(n) § 21.4265 (except paragraph (g))—Practical training approved as institutional training.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94-502)

(o) § 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1641, 1772, 1789(c); Pub. L. 94-502)

11. In § 21.5270 paragraph (a) is revised to read as follows:

§ 21.5270 Assessment and pursuit of course.

* * * * *

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training)—Measurement of courses. For the purpose of benefits payable under Chapter 32 that training identified in § 21.4270 of this part as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 94-502, Pub. L. 99-576, Pub. L. 100-689)

* * * * *

12. In § 21.5296, paragraphs (a) (2) and (c) introductory text are revised to read as follows:

§ 21.5296 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or hereself was prevented by reason of physicial or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

[FR Doc. 89-27490 Filed 11-22-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AC73

Training Outside the United States

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendment.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to clarify the range of services which may be furnished to a veteran pursuing a vocational rehabilitation program outside the United States and the factors which must be considered in authorizing these services. The effect of the change is to help assure that necessary services are furnished in a manner which is in the veteran's and the government's best interest.

DATES: Comments must be received on or before December 26, 1989. Comments will be available for public inspection until January 3, 1990. It is proposed to make these amendments effective upon final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service (226), Veterans Benefits Administration, (202) 233-6496.

SUPPLEMENTARY INFORMATION: The conditions under which training is furnished outside a State under the vocational rehabilitation program and the types of services which may be provided are contained in § 21.130. The rule authorizes the provision of educational and vocational courses, and supportive services. We propose to clarify the types of services which are included in the term "supportive services". The proposed clarification specifies that employment services are included under "supportive services". In addition the factors which must be considered in providing "supportive services" are also clarified.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that the proposed regulatory amendments implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 31, 1989.

Edward J. Derwinski,

Secretary.

PART 38—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising § 21.130(b)(3) to read as follows:

§ 21.130 Educational and vocational courses outside the United States.

* * * * *

(b) * * *

(3) All necessary supportive and follow-up services, including medical care and treatment and employment

services, reasonably can be provided by or through VA, considering such factors as the availability, accessibility and cost of such services.

(Authority: 38 U.S.C. 1514)

[FR Doc. 89-27489 Filed 11-22-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

RIN 2900-AE21

Loan Guaranty: Discrimination on the Basis of Handicap or Family Status

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to conform to the requirements of the Fair Housing Amendments Act of 1988 which prohibit discrimination on the basis of handicap or family status.

DATES: Comments must be received on or before December 26, 1989. Comments received will be available for public inspection until January 3, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominum, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

VA regulations at 38 CFR 36.4253 and 36.4350 prescribe the estate which the veteran is required to obtain in the property which serves as security for the loan, generally a fee simple estate, with exceptions for certain easements and other restrictions. These regulations presently permit restrictions on title which limit the sale, lease or occupancy of a dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children. The regulations were designed to enable older veterans to purchase homes in retirement communities containing restrictions on the age of persons who could own and/or occupy dwellings in the community. Under these regulations, the Secretary reserved the right to reject any such restriction if its operation would work an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of default.

Under the Fair Housing Amendments Act of 1988, Public Law 100-430, approved September 13, 1988, it is unlawful to discriminate in residential real estate transactions against any person because of handicap or familial status. However, the law provides an exception for certain age restricted communities which meet the definition provided in the law for "housing for older persons." That definition is now contained in section 807 of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601 et seq, as amended by Public Law 100-430. "Housing for older persons" is essentially defined as including housing provided under a Federal or State program specifically designed to assist elderly persons and housing intended for and solely occupied by persons 62 years of age or older. It is also defined to include housing intended and operated for occupancy by at least one person 55 or older per unit, provided there are significant facilities and services specifically designed for older persons, and at least 80 percent of the units are occupied by at least one person 55 years of age or older.

VA proposes to amend §§ 36.4253(b)(7) and 36.4350(b)(5)(iv)(B) to provide that age restrictions will be considered acceptable limitations on the veteran's estate in the property only if they are acceptable under the provisions of the Fair Housing Act. This will assure that VA's home loan program conforms to the requirements of the law.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These proposed regulations simply conform VA regulations to the requirements of the Fair Housing Act. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The Secretary hereby determines that these proposed regulations do not contain a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

These amendments are promulgated under authority granted the Secretary by 38 U.S.C. 210(c), 1803(c)(1) and 1812(g).

List of Subjects in 38 CFR Part 36:

Condominium, Handicapped, Housing loan program-housing and community development, Manufactured Homes, Veterans.

Approved: October 26, 1989.

Edward J. Derwinski,

Secretary.

38 CFR Part 36, LOAN GUARANTY, is proposed to be amended as set forth below:

PART 36—[AMENDED]

1. In § 36.4253, pargraph (b)(7) is revised to read as follows:

§ 36.4253 Title and lien requirements.

* * * * *

(b) * * *

(7) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a manfuactured home loan processed on the automatic basis;

(Authority: 38 U.S.C. 210(c), 1803(c)(1), 1812(g))

* * * * *

§ 36.4350 [Amended]

2. In § 36.4350, the following paragraphs are redesignated as shown in the table:

Paragraph	Redesignated as
(b)(5)(i)(*a*)	(b)(5)(i)(A)
(b)(5)(i)(*b*)	(b)(5)(i)(B)
(b)(5)(i)(*c*)	(b)(5)(i)(C)
(b)(5)(ii)(*a*)	(b)(5)(ii)(A)
(b)(5)(ii)(*b*)	(b)(5)(ii)(B)
(b)(5)(iv)(*a*)	(b)(5)(iv)(A)
(b)(5)(iv)(*b*)	(b)(5)(iv)(B)
(b)(5)(iv)(*c*)	(b)(5)(iv)(C)

3. In § 36.4350, the undesignated flush paragraph following paragraph (b)(5)(iv)(A)(*3*) and newly redesignated paragraph (b)(5)(iv)(B) are revised, and newly redesignated paragraph (b)(5)(iv)(C) is removed, to read as follows:

§ 36.4350 Estate of veteran in real property.

* * * * * *

(b) * * *

(5) * * *

(iv) * * *

(A) * * *

(3) * * *

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or

(Authority: 38 U.S.C. 1803(c))

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis:

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

* * * * *

[Fr Doc. 89-27491 Filed 11-22-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8270

[AA-340-00-4332-02]

RIN 1004-AA27

Paleontology; Negotiated Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a negotiated rulemaking.

SUMMARY: The Director, Bureau of Land Management, will convene a negotiated group to participate in a negotiated rulemaking on the management of paleontological resources on the public lands. The negotiating group will include Federal and State officials, representatives of professional and scientific groups, commercial collectors, amateur hobbyists, and others. This notice solicits expressions of interest in participating by individuals or groups that believe (1) they would be substantially affected by the rule, and (2) they are not already adequately represented in the group. The Bureau of Land Management has obtained the services of a facilitator through a competitive bidding procurement process. The negotiation will be followed by a proposed rule published in the **Federal Register** with an opportunity for public comment.

DATES: Additional persons or groups wishing to be represented at the negotiation should submit a request to Frank Snell, (202) 343-9353, by November 29, 1989. The meeting of the negotiating group is scheduled on December 4, 5, and 6, 1989, in Boulder, Colorado. Due to limitations of space, the meeting is not open to the public. Other meetings may be recommended and scheduled by the Department, if necessary.

ADDRESS: Persons desiring additional information about the issues to be discussed at the negotiating meeting may contact Frank Snell, Chief, Division of Recreation, Cultural, and Wilderness Resources, Bureau of Land Management, (340), Room 3360 MIB, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Frank Snell, (202) 343-9353.

SUPPLEMENTARY INFORMATION:

Background

On August, 17, 1982, the Bureau of Land Management published a proposed rulemaking on the collection of geologic and hobby mineral materials (47 FR 35914). This rule would have combined isolated existing regulations on the private collection of common invertebrate fossils and on the management and sale of petrified wood with new provisions on hobby collection of vertebrate fossils. Due to the concerns expressed in a great number of comment letters, the Bureau deferred action on a final rulemaking until the issues could be further studied. The National Academy of Sciences initiated a 2-year study on what role, if any, the Federal Government should play in the management of fossil collection. The Academy report, "Paleontological Collecting," is now complete, and it is the intention of the Bureau of Land Management to use the findings in this report as a starting point in formulating new regulations.

However, from the experience of analyzing the approximately 1,200 comments received in response to the 1982 proposal, the Bureau is cognizant of the many varying, competing, and conflicting views on the role of Government in the management of paleontological resources. Therefore, the Bureau has, through a competitive contracting process, engaged the services of a neutral third party to facilitate a negotiated proposed rulemaking, involving representatives of as many competing viewpoints as possible and seeking their agreement and cooperation in formulating new regulations.

This third party assists in arranging and convening meetings, helping participants to articulate their most important concerns, encouraging them to listen to the views of others, and working to facilitate creative and cooperative problem solving. The neutral third party does not make decisions or pass judgment on the equity or fairness of agreements or decisions. The Bureau reserves the right to make

final decisions regarding the regulations, but it is committed to honoring understandings reached through this negotiating process to the fullest extent possible. All parties to the negotiations should realize that all understandings reached are tentative and subject to policy and legal review, but that everything possible will be done to meet concerns and objectives on which concensus is reached during the negotiations.

The Bureau of Land Management has contracted with CDR Associates of Boulder, Colorado, to manage this regulatory negotiation process. For the past several months, CDR staff have interviewed interested parties in an attempt to understand the issues involved, determine what form the negotiating process should take, and assist parties in determining what role they should take in the process, who should represent their views, and what strategies would best serve their interests as well as the field of paleontology.

Items Selected for Negotiation

The following recommendations from the National Academy of Sciences report on paleontological collecting have been selected for the negotiated rulemaking process. They were choosen because they are the recommendations that will require regulations to implement.

1. "All public lands should be open to fossil collecting for scientific purposes. Except in cases involving quarrying or commercial collecting, and except in National Parks, collecting fossils on public land should not be subject to permit requirements or other regulation."

2. "Fossils of scientific significance should be deposited in institutions where there are established research and educational programs in paleontology. These repositories will ensure that specimens are accessioned, maintained, and remain available for study and education. There is no justification for requiring that fossils be deposited in an institution in the same State in which they were found; such requirements discourage paleontological research."

3. "Commercial collecting of fossils from public lands should be regulated to minimize the risk of losing fossils and data of importance to paleontology. Permit applications must be subject to review by paleontologists qualified to assess the projects' potential impact on related research programs. Applications must receive the endorsement of a paleontologist who is willing to supply guidance to the commercial operation. Specimens deemed to be of special scientific interest must be deposited in a public institution, such as a museum, college, or university."

Discussions at the negotiated rulemaking session may cover other subjects as necessary or as raised by participants.

Participants

Following is a list of participants who have been invited by the Bureau of Land Management to participate in the negotiation. If, in response to this notice, an additional individual or representative of an interest group requests representation, the Bureau, in consultation with the facilitators, will determine whether that individual or representative will be added to the group. Such decisions will be based on whether the individual or representative: (1) Would be substantially affected by the rule; and (2) is not already adequately represented by the group.

Federal Agencies—Bureau of Land Management, U.S. Forest Service, U.S. Geological Survey, National Park Service.

Commercial Collectors—American Association of Paleontological Suppliers.

Amateur Collectors—American Federation of Mineralogical Societies.

Professional, academic, and scientific paleontologists—Paleontological Society, Society for Vertebrate Paleontology.

Also included will be representatives of concerned State government agencies and congressional staffs.

As discussed above, individuals and group representatives are encouraged to express their views to the appropriate organization listed above if they have concerns additional to those stated in this notice, or if they have suggestions for resolution of these concerns. Alternatively, suggestions may be submitted to the Director (140), Bureau of Land Management, Room 5555, U.S. Department of the Interior, Washington, DC 20240.

The Bureau of Land Management will keep a record of the December meeting. This record will be placed in the public record for this rulemaking.

Dated: November 17, 1989.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 89-27453 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 587

[Docket No. 89-24]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commmission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its Rules of Practice and Procedure, which govern procedures in proceedings before the Commission. The purpose of the amendments is to clarify certain filing and service requirements and to add a provision regarding the handling of confidential materials filed in Commission proceedings.

DATE: Comments due on or before December 26, 1989.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern procedures in proceedings before the Commission. Experience under the rules suggests certain provisions are either unclear, conflicting or inadequate to achieve their desired purpose. To remedy these deficiencies, the Commission proposes to make several revisions to its rules. In addition, the Commission proposes to fill a current void in the rules by adding a new section regarding the handling of confidential materials in Commission proceedings.

A section by section explanation of the proposed rule changes follows.

Section 502.51 is proposed to be amended to make clear that the $50 filing fee required by § 502.69(b) for petitions generally is also applicable to petitions for rulemaking.

Section 502.53 is proposed to be amended to clarify that when replies or a second round of comments are permitted in rulemaking proceedings, they must be served on all parties who have previously submitted comments in the proceeding.

Section 502.62 is proposed to be amended to make clear that complaints filed thereunder must be verified. This requirement is in keeping with section 11(a) of the Shipping Act of 1984, 46 U.S.C. app. 1710(a), which authorizes the filing of "sworn complaints." Similarly, the general information on filing formal complaints, contained at subpart E, Exhibit 1, is proposed to be amended to specify that verification of a complaint is required whether or not the complainant is represented by an attorney or other person qualified to practice before the Commission. The small claim form at subpart S, Exhibit 1, would be changed in the same manner, and for the same purpose.

Section 502.111 is proposed to be amended to make clear that facsimile copies of documents may not be filed. Facsimile filings are normally not necessary in view of the provision in § 502.114 which permits filing deadlines to be met by depositing of the filing in the mail or by delivery of it to a courier. Additionally, facsimile filings do not provide the quality of copy which is needed for long term record keeping purposes. Finally, such filings usually are deficient in that they do not comply with the Commission's requirements regarding submission of multiple copies.

The Commission proposes to amend its service requirements in § 502.114 to make clear that service must be effected on all prior participants when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings such as petitions for reconsideration, for stay or to reopen (including replies thereto) in all general notice proceedings. This requirement would apply in proceedings involving disposition of petitions for rulemaking (46 CFR 502.51), petitions for declaratory order (46 CFR 502.68), petitions general (46 CFR 502.69), and notices of proposed rulemaking (46 CFR 502.53), including proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5) (Part 587). An amendment to § 587.1 is also proposed to conform that rule with this clarification.

Section 502.118 is proposed to be amended to clarify that the Commission requires fifteen (15) copies of answers to complaints filed pursuant to § 502.64 and of filings on which it appears that the Commission may ultimately rule on review, even when the matter is to be initially determined by the administrative law judge. Motions to dismiss and petitions to intervene are examples of filings to be governed by this rule.

The Commission proposes to add a new § 502.119 outlining requirements for submitting filings containing confidential material. The new rule would provide that all confidential filings be clearly marked on the cover page and identified as confidential in a transmittal letter which describes the nature and extent of confidentiality sought, and that the public portions of such filings be separated from the confidential portions and identify where confidential materials are excluded.

Finally, § 502.167 is proposed to be amended to eliminate the requirement for a written motion when, at a hearing, testimony has been ordered withheld from the public pursuant to objection. Experience indicates that such a motion is often unnecessary and, in practice, the requirement to file a written motion is often waived by the administrative law judge. Even without such an express requirement in the rules the presiding administrative law judge may order such a written motion in his or her discretion.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this Notice of Proposed Rulemaking because the amendments to part 502 of title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Part 502 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 28 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

§ 502.51 [Amended]

2. Section 502.51 Petition for issuance, amendment, or repeal of rule, is amended by adding a new sentence immediately before the last sentence, reading as follows:

* * * Petitions shall be accompanied by a $50 filing fee.* * *

§ 502.53 [Amended]

3. Section 502. 53, Participation in Rulemaking, is amended by adding the following to the end of paragraph (a):

(a) * * * In the event that replies or a second round of comments are permitted, copies shall be served on all prior participants in the proceeding. A list of participants may be obtained from the Secretary of the Commission.

* * * * * *

4. In § 502.62, paragraph (a) is amended to read as follows:

§ 502.62 Complaints and fee.

(a) The complaint must be verified and shall contain the name and address of each complainant, the name and address of each complainant's attorney or agent, the name and address of each person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought.

* * * * * *

Subpart E, Exhibit 1—[Amended]

5. The first sentence of the fifth paragraph of subpart E, Exhibit 1, "Information to Assist in Filing Formal Complaint," is amended to read as follows:

* * * * * *

The format of Exhibit No. 1 to subpart E must be followed and a verification must be included. (See §§ 502.21-502.32, 502.62 and 502.112.) * * *

Subpart S, Exhibit 1 [Amended]

6. The first sentence of the fifth paragraph of subpart S, Exhibit 1, "Information to Assist in Filing Informal

Complaints," is amended to read as follows:

* * * * *

The format of Exhibit No. 1 must be followed and a verification must be included (See §§ 502.21–502.32, 502.112, and 502.304.) * * *

§ 502.111 [Amended]

7. Section 502.111 is amended by adding a new last sentence ot read as follows:

* * * Facsimile transmission copies will not be accepted.

8. Section 502.114 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) reading as follows:

§ 502.114 Service and filing by parties.

* * * * *

(b) Service on all prior participants shall be shown when submitting comments or replies beyond the initial round, or when submitting post-decisional pleadings and replies such as petitions for reconsideration, or for stay under § 502.261 or to reopen under § 502.230 in all general notice proceedings, including those involving disposition of petitions for rulemaking (§ 502.51), petitions for declaratory order (§ 502.68), petitions general (§ 502.69), notices of proposed rulemaking (§ 502.53), proceedings under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(1)(b) (part 585), and proceedings under section 13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. § 1712(b)(5) (part 587). A list of all participants may be obtained from the Secretary of the Commission.

* * * * *

9. Section 502.118 is amended by revising paragraph (b)(1)(iv) and adding a new paragraph (b)(1)(v) to read as follows:

§ 502.118 Copies of documents for use of Commission.

* * * * *

(b) * * *

(1) * * *

(iv) All motions, replies and other filings for which a request is made of the administrative law judge for certification to the Commission or on which it otherwise appears it will be necessary for the Commission to rule either directly or upon review of the administrative law judge's disposition thereof, pursuant to § 502.227;

(v) Answers to complaints filed pursuant to § 502.64.

* * * * *

10. A new § 502.119 is added to read:

§ 502.119 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all briefs, motions or other filings submitted for consideration by the administrative law judge or the Commission, which contain information previously designated as confidential pursuant to §§ 502.167, 502.201(i)(l)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i)(1)(vii) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as "confidential" and describes the nature and extent of the authority for requesting confidential treatment.

(b) Such filings shall consist of public and confidential copies. The public copies shall exclude confidential materials and shall indicate on the cover page and on each affected page "confidential materials excluded." The confidential copies shall consist of the complete filing and shall include a cover page marked "confidential," with the confidential materials clearly marked on each page.

(c) Any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a decision in the proceeding. (Rule 119.)"

11. Section 502.167 is revised to read as follows:

§ 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the presiding officer may in his or her discretion order that the witness shall disclose such information only in the presence of those designated and sworn to secrecy by the presiding officer. The transcript of testimony shall be held confidential. Copies of said transcript need be served only upon the parties to whose representatives the information has been disclosed and upon such other parties as the presiding officer may designate. Any confidential information may be used by the presiding officer or the Commission if deemed necessary to a decision in the proceeding. [Rule 167.]

PART 587—[AMENDED]

Part 587 of title 46, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation of part 587 continues to read:

Authority: 5 U.S.C. 533; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714, and 1716).

2. In § 587.1, paragraph (b)(2) is revised to read as follows:

§ 587.1 Purpose; general provisions.

* * * * *

(b) * * *

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contracts (§ 502.11 of this chapter) and governing service of documents and copies of documents (§§ 502.114(b) and 502.118 of this chapter), and except as the Commission may otherwise determine by order.

* * * * *

Joseph C. Polking,

Secretary.

[FR Doc. 89–27512 Filed 11–22–89; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–515, RM–6898]

Radio Broadcasting Services; Clarkesville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Clara Morris Martin, seeking the substitution of Channel 275C3 for Channel 275A at Clarkesville, Georgia, and modification of her construction permit (BPH–871026ML) to specify the higher class channel. Channel 275C3 can be allotted to Clarkesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.7 miles) south. The coordinates for this allotment are North Latitude 34–30–00. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require the petitioner demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christopher J. Reynolds, Audrey L. Allison, Peper, Martin, Jensen, Maichel and Hetlage, 1875 Eye Street, NW., Suite 1200, Washington, DC 20006, (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–515, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27494 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–512, RM–6973]

Radio Broadcasting Services; Fairfield and Norwood, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WLLT, Inc., seeking the reallotment of Channel 235B from Fairfield, Ohio, to Norwood, Ohio, as the community's first local FM service, and the modification of its license for Station WOFX accordingly. Channel 235B can be allotted to Norwood in compliance with the Commission's minimum distance separation rules and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 39–18–41 and West Longitude 84–30–45. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Norwood.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before February 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 700, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–512, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27500 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–510, RM–6860]

Radio Broadcasting Services; Beeville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lovelace Associates, Inc., licensee of Station KIBL–FM, Channel 285A at Beeville, Texas, proposing the substitution of Channel 289C3 for Channel 285A at Beeville, and the modification of its station's license to specify operation on the higher powered channel. Channel 289C3 can be allotted to Beeville in compliance with Section 73.207 of the Commission's Rules, with a site restriction of 9.8 kilometers (6.1 miles) northwest of the city. The coordinates are 28–27–00 and 97–49–51. Concurrence by the Mexican government is required for the proposal.

DATES: Comments must be filed on or before January 8, 1990; and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Larry G. Fuss, P.O. Box 159, Fayetteville, GA 30214 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–510, adopted October 31, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27501 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-509, RM-6816]

Radio Broadcasting Services; Denison-Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Transcontinental Broadcasting Company, Inc., licensee of Station KDSQ(FM), Channel 269A, Denison-Sherman, Texas, proposing the substitution of Channel 269C3 for Channel 269A at Denison-Sherman, and the modification of its station's license accordingly. A site restriction of 13.6 kilometers (8.4 miles) southwest of Denison is required. The coordinates are 33-41-24 and 96-40-28. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before January 8, 1990 and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Steve M. Kramer, P.E., Stephan M. Kramer, P.E. and Associates, 10500 Bighorn Trail, Suite 100, McKinney, TX 75070 (Consultant to petitioner); and Transcontinental Broadcasting Company, Inc., 444 Florida St., Baton Rouge, LA 70821 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-509, adopted October 31, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of— Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27502 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-508, RM-6975]

Radio Broadcasting Services; Gilchrist, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James Owens, d/b/a Gilchrist Community Broadcasting proposing the allotment of Channel 268C3 to Gilchrist, Texas, as that community's first local FM service. The allotment can be made consistent with the Commission's minimum separation requirements at the city reference coordinates, which are 29-30-48 and 94-29-00.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James Owens, Gilchrist Community Broadcasting, 306 Stratford Drive, #12, Houston, TX 77006 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-508, adopted October 31, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27503 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-511; RM-6941]

Radio Broadcasting Services; Shawano, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wheeler Broadcasting, Incorporated, licensee of Station WOWN(FM), Channel 257A, Shawano, Wisconsin, proposing the substitution of Channel 257C3 for Channel 257A at Shawano, and the modification of its station's license accordingly. The proposal could provide the community with its first wide coverage area FM service. A site restriction of 17.6 kilometers (10.9 miles)

northeast is required, at coordinates 44-50-52 and 88-24-28.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lyle Robert Evans, Broadcast Consultant, 124 North Main Street, Mayville, Wisconsin 53050 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-511, adopted October 31, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1-1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27504 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 89-514; FCC 89-310]

Use of narrow-Band Direct-Printing Frequencies in the Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The proposed rules require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB-DP) frequencies in the Maritime Services. Applicants would be required to show at least 40 percent channel usage on existing licensed frequencies or series of frequencies. The purpose of this showing is to prevent "warehousing" of these frequencies.

DATES: Comments are due on or before January 4, 1990 and Reply Comments on or before January 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) adopted November 2, 1989, and released November 14, 1989. The full text of this Commission document and the proposed rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Proposed § 80.361 -Frequencies for narrow-band direct-printing (NB-DP) and data transmissions.

Action: New collection.

Respondents: Individuals, state or local governments, businesses (including small business), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 2 responses; 4 hours total; 2 hours per response.

Needs and Uses: Rule is needed to ensure spectrum efficiency by requiring applicants to provide justification for frequency assignment.

Summary of Notice of Proposed Rulemaking

It appears desirable to require a need showing for applicants wanting to obtain new or additional NB-DP frequencies. A need showing is instrumental in our efforts to weed out licensees who do not use their frequencies and in reassigning them to those who will. For example, to guard against frequency warehousing the rules require licensees to place frequencies in operation within eight months of the date of grant. *See* 47 CFR 80.49. Public coast stations are common carriers and therefore already maintain traffic records for billing purposes. Further, they must file tariffs with the Commission for the communication services provided. Thus, requiring a showing should not be on added burden.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), our initial analysis is as follows:

Reason for Action

This action is being taken to incorporate into the Commission's Rules a requirement for applicants for narrow-band direct-printing frequencies to justify the need for those frequencies.

Objectives

The proposed action would prevent granting NB-DP frequencies to public coast stations that do need or will not use them efficiently thereby keeping them available for public coast stations that will.

Legal Basis

The proposed action is authorized under sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r).

Reporting, Recordkeeping and Other Compliance Requirements

Public coast station applicants will be required to include in their application for additional frequencies a traffic showing based on records kept for other purposes.

Federal Rules which Overlap, Duplicate, or Conflict with this Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The only impact of this proposal will be on public coast station applicants and licensees. The requirement will be a small incremental addition to the application. There are currently less than ten licensees providing NB–DP services. The proposals contained herein have been analyzed with respect to the Paper Reduction Act of 1980 and found to impose a new information collection requirement on a small number of licensees. The information that must be submitted is similar to a prior requirement and based on records kept for other purposes. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Any Significant Alternative Minimizing the Impact on Small Entities and Existing Licensees and Consistent with the Stated Objective

None. The only alternative for determining a need for these frequencies is a showing. A similar showing has been required in the past.

Ordering Clause

Authority for issuance of this Notice is contained in sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) 303(f) and (r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before January 4, 1990, and reply comments on or before January 19, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC.

A copy of this NPRM shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

Maritime services, Coast stations, private.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–27493 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–513; RM–6897]

Radio Broadcasting Services; Dublin, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by State Broadcasting Company, Inc. proposing the substitution of Channel 240C1 for Channel 240C2 at Dublin, Georgia, and modification of its license to specify the higher class channel. Channel 240C1 can be allotted to Dublin in compliance with the Commission's minimum distance separation requirements with a site restriction of 37.2 kilometers (23.1 miles) east. The coordinates for this proposed allotment are 32–39–51 and 82–32–18. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest, nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition of filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1100 17th Street, NW., suite 900, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–513, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27495 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–514; RM–6978]

Radio Broadcasting Services; Gardner, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition by David B. Knoll, proposing to allot Channel 293A to Gardner, Illinois, as the community's first local FM service. The coordinates for this allotment are North Latitude 41–10–49 and West Longitude 88–16–52.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before, January 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David B. Knoll, 1305 Smokey Row Lane, Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–514, adopted October 30, 1989, and released November 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regualtory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27496 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–507; RM–6946]

Radio Broadcasting Services; Breaux Bridge, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by JBC, Inc., proposing the substitution of Channel 243C3 for Channel 243A at a Breaux Bridge, Louisiana, and the modification of its construction permit to specify operation on Channel 243C3 in lieu of Channel 243A. A site restriction of 18.9 kilometers (11.7 miles) west of the city to required, a coordinates 30–13–00 and 92–05–00. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission. Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David Tillotson, Esquire, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–507, adopted October 31, 1989, and released November 16, 1989. The Full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27497 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–500, RM–6976]

Radio Broadcasting Services; Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Stephenson Radio Company, proposing the substitution of FM Channel 272C2 for Channel 272A (vacant), at Stephenson, Michigan. Canadian concurrence will be requested at coordinates 45–35–31 and 87–36–10. The allotment of Channel 272C2 at Stephenson requires a site restriction 19.7 kilometers (12.2 miles) north of the community.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows Lawrence Roberts, Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–500, adopted October 24, 1989, and released November 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27498 Filed 11–22–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89-501; RM-7041]

Radio Broadcasting Services; Mora, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John James Godfrey proposing the substitution of FM Channel 238C3 for Channel 237A at Mora, Minnesota. Petitioner also requests modification of his construction permit for Channel 237A to specify Channel 238C3. Canadian concurrence will be requested at coordinates 45-49-18 and 93-22-18.

DATES: Comments must be filed on or before January 8, 1990, and reply comments on or before January 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John James Godfrey, R.R. 5, Box 186, Mora, Minnesota 55051.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurele, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-501, adopted October 24, 1989, and released November 16, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibits in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-27499 Filed 11-22-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-181, Notice No. 89-10]

RIN 2137-AA01

Classification of Gases Which Are Toxic by Inhalation; Reopening of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), (DOT).

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On July 28, 1989, RSPA published a supplemental notice of proposed rulemaking (Docket HM-181, Notice No. 89-5) in the **Federal Register** (54 FR 31158) concerning the classification of anhydrous ammonia. RSPA has received a joint request from the Railway Labor Executives' Association and the Environmental Policy Institute/Friends of the Earth for additional time to submit comments. The requesters indicate that additional time is needed "* * * for getting informed, genuine and widespread commens from our members and constituents in the general public." The comment period has previously been reopened and extended based on requests from other sectors of the affected public, particularly the agricultural community, and closed on October 24,1989. RSPA notes that this issue has a significant public interest and many late-filed comments are being received. RSPA believes that reopening the comment period is in the public interest and, by this notice, is reopening the comment period for Notice No. 89-5 to January 30, 1990.

DATES: Comments must be received on or before January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Boylan or Beth Romo, Standards Division, telephone (202) 366-4488, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 am to 5:00 pm Monday through Friday, except public holidays.

Issued in Washington, DC on November 17, 1989 under authority delegated in 49 CFR part 1.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-27543 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 91164-9264]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1990 fishing quotas.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1990. These quotas were selected from a range defined a optimum yield (OY) for each fishery and will be adjusted to reflect 1989 fishing activity at the conclusion of the year. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1990.

DATE: Comments will be accepted until December 20, 1989.

ADDRESS: Send comments on the proposed 1990 fishing quotas to Richard B. Roe, Regional Director, National Marine Fisheries mark the outside of the envelope "Surf Clam Quota Comments". Information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508-281-9252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values in this action, the Secretary considered the latest available stock assessments prepared by NMFS, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing. This information was presented in a written report prepared by the Council and adopted by the Regional Director, Northeast Region, NMFS. The Secretary has also received and taken into account specific recommendations from the Council.

For the surf clam fisheries, the annual quotas are divided into quarterly quotas under § 652.21 (a), (b)(2), and (c)(2). Surf clam quotas are adjusted under § 652.21 (a)(3), (b)(3), and (c)(3) to reflect the amount of underharvest or overharvest in each designated surf clam fishery for 1990. At the conclusion of the 1989 fishing season, the Secretary will publish by notice in the **Federal Register**, the final adjusted quotas for the fishery.

As of October 16, 1989, surf clam landings from the Mid-Atlantic Area were 2,005,000 bushels out of an adjusted annual quota of 2,563,000 bushels. Landings or surf clams from the Georges Bank Area were 56,000 bushels out of an adjusted annual quota of 503,000. The Georges Bank Area fishery was closed, for three months beginning August 11, 1989, (54 FR 33700, August 16, 1989) by emergency action of the Secretary due to the presence of paralytic shellfish poisoning (PSP) in the surf clams harvested there. Monitoring has determined that the PSP toxin is still present a higher than acceptable levels and the Secretary extended (54 FR 47364, November 14, 1989) the emergency closure of the Georges Bank Area fishery for an additional three months, or until the toxin is no longer present or is reduced to acceptable levels. As of October 16, 1989, Nantucket Shoals Area surf clam landings were 174,000 bushels out of an annual quota of 200,000 bushels. Ocean quahog landings were 4,021,000 bushels out of a quota of 5,200,000 bushels. The adjusted surf clam quotas were derived from base quotas of 2,650,000 bushels for the Mid-Atlantic Area and 300,000 bushels for the Georgas Bank Area. No adjustment was necessary for the Nantucket Shoals Area.

The proposed quotas for the surf clam and ocean guahog fisheries for 1990 are:

1990 PROPOSED SURF CLAM OCEAN QUAHOG QUOTAS

Fishery areas	1990 proposed quotas (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	95,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,300,000

The proposed surf clam quotas for the Mid-Altantic and Nantucket Shoals Areas are the same as those which have been in place for the past 4 years. The Council recommended that the surf clam quota for the Georges Bank Areas be held to 300,000 bushels including any rollover of unharvested amounts, which is the maximum OY. The proposed quota for this area of 56,000 bushels, plus a 244,000 bushel rollover from the 1989 fishery reflects this position. The 244,000 bushel rollover is the unharvested portion of the 1989 quota that was not able to be taken due to the early closure of the Georges Bank Area. Under § 652.21(c)(3) any unharvested amounts from previous quarters or years are added proportionately to the remaining quarters. If further harvesting occurs, the Georges Bank Area quota may be increased at the time of final specifications to compensate for lower unharvested amounts. The proposed ocean quahog quota has been increased to 5,300,000 bushels from 5,200,000 bushels to reduce the likelihood of an early closure and reflects anticipated 1990 landings based upon what occurred in the 1989 fishery.

The proposed quarterly surf clam quotas, by area, are:

1990 SURF CLAM/OCEAN QUAHOG QUARTERLY QUOTAS

Fishery areas	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	662,500	662,500	662,500	662,500
Georges Bank surf clam	14,000	14,000	14,000	14,000
Nantucket Shoals surf clam	40,000	80,000	80,000	40,000

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If adopted, the proposed surf clam quotas and associated quarterly quotas will be adjusted based upon the final 1989 harvest data and notice will be published in the **Federal Register**. The amount of adjustment will be determined from the difference between the base 1989 quotas and the amount actually harvested. The regulations implementing the FMP do not provide for an adjustment of the ocean quahog quota, unless quarterly quotas have been established. To date, the Regional Director has not made a determination that quarterly quotas are necessary in the ocean quahog fishery.

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final amount quotas for each fishery and publish those quotas by notice in the **Federal Register**.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 17, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-27611 Filed 11-20-89; 2:29 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 225

Friday, November 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988

November 13, 1989.

AGENCIES: Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description of the lands transferred between the Bureau of Land Management and the U.S. Forest Service pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988 (Public Law 100-550) enacted October 28, 1988.

EFFECTIVE DATE: April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Regarding land transferred to the U.S. Forest Service, contact Bob Larkin, Officer, Land Management and Planning, U.S. Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431. Regarding land transferred to the Bureau of Land Management, contact Bob Stewart, Chief, Public Affairs Staff, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The legal description of the lands transferred pursuant to Public Law 100-550, 102 Stat. 2749, is as follows:

Land transferred from the U.S. Forest Service to the Bureau of Land Mangement:

Sierra Foothills Area

Mount Diablo Meridian, Nevada

T. 6 N., R. 29 E.,
Sec. 5, Lots 3 and 4, S½NW¼, N½SW¼, SW¼SW¼, that portion north of Lucky Boy Pass Road;
Sec. 6, SE¼SE¼, that portion north of Lucky Boy Pass Road, Lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 7, Lots 3 and 4, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, that portion north of Lucky Boy Pass Road, Lots 1 and 2, NE¼NW¼.
T. 5 N., R. 31 E.,
Secs. 13-15, and 22-28, all.
T. 2 N., R. 32 E.,
Sec. 5, Lots 1-4, S½N½, S½;
Sec. 6, Lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1-4, E½, E½W½;
Sec. 15-17, all;
Sec. 18, Lots 1-4, E½, E½W½;
Sec. 19, Lots 1-4, E½, E½W½;
Sec. 20-22, all.

The area described above aggregates 15,059.35 acres in Mineral County. Land transferred from the Bureau of Land Management to the U.S. Forest Service:

Sierra Foothills Area

Mount Diablo Meridian, Nevada

T. 19 N., R. 18 E.,
Sec. 10, SE¼SE¼;
Sec. 17, Lots 2, 4, W½SW¼, SE¼SW¼.
T. 20 N., R. 18 E.,
Sec. 2, Lot 4, S½NW¼, that portion west of the westerly boundary of highway right-of-way for U.S. Highway 395;
Sec. 10, S½, except Patents 20957 and 1188159;
Sec. 13, Lot 1, S½SE¼, except Patents 27218 and 906058;
Sec. 14, S½NE¼, W½, SE¼;
Sec. 22, E½;
Sec. 24, Lots 5-7, NE¼SW¼, except Patents 2614, 26498, 27218 and 906058, Lots 1-4, W½NW¼, SE¼SW¼.
T. 21 N., R. 18 E.,
Sec. 34, SW¼NW¼, N½SW¼, NW¼SE¼, that portion west of the westerly boundary of highway right-of-way for U.S. Highway 395.
T. 12 N., R. 19 E.,
Sec. 26, Lots 7,11;
Sec. 36, Lot 8.
T. 14 N., R. 19 E.,
Sec. 1, W½ of Lot 1 of NE¼, Lot 1 of NW¼, E½ of Lot 2 of NW¼, except five acres withdrawn by Secretarial Order of July 29, 1903, SW¼, W½SE¼;
Sec. 2, SE¼NE¼, E½SW¼, SE¼;
Sec. 11, E½, N½NW¼, SW¼NW¼;
Sec. 12, W½, W½E½, E½SE¼;
Sec. 13, all;
Sec. 14, E½E½, NW¼NE¼, W½SE¼;
Sec. 22, SW¼;
Sec. 23, NE¼;
Sec. 24, N½, N½SW¼, N½NE¼SE¼, NE¼NW¼SE¼, W½NW¼SE¼;
Sec. 27, N½N½N¼.
T. 15 N., R. 19 E.,
Sec. 2, N½SE¼;
Sec. 13, S½SE¼;
Sec. 24, SW¼NE¼, E½NW¼, SW¼, W½SE¼;
Sec. 25, NW¼NE¼, S½NE¼, NW¼, SE¼;
Sec. 35, N½NE¼, SE¼NE¼;
Sec. 36, NE¼NE¼, S½N½, N½S½, S½SE¼.
T. 16 N., R. 19 E.,
Sec. 26, NE¼SW¼.
T. 18 N., R. 19 E.,
Sec. 11, SW¼SE¼;
Sec. 24, W½SE¼,SE¼SE¼;
Sec. 25, W½NE¼SW¼SW¼,E½NW¼SW¼,W½SW½SW¼SW¼,W½SE¼SW¼SW¼,SW¼SE¼SW¼;
Sec. 26, E½NW¼NW¼SW¼,E½NE¼NW¼SW¼,E½SW¼NW¼SW¼,W½NW¼NE¼SW¼,E½SW¼NE¼SW¼,W½SE¼SE¼SW¼,W½SE¼SW¼,W½NE¼NW¼SE¼,W½W½NW¼SE¼,E½SE¼NW¼SE¼,N½N½SE¼SE¼,S½NW¼SE¼S¼,E½NE¼SW¼SE¼,W½SE¼SW¼SE¼,S½NE¼SE¼SE¼;
Sec. 27, NE¼NE¼SE¼,W½NW¼NE¼SE¼,W½SE¼NE¼SE¼;
Sec. 34, N½NW¼NE¼,N½S½NW¼NE¼,S½SW¼NW¼NE¼,SW¼SE¼NW¼NE¼,N½,NE¼NE¼SE¼,SW¼NE¼NE¼SE¼,E½NE¼NW¼SE¼,NE¼NW¼NW¼SE¼,NW¼SW¼NW¼SE¼,SW¼SW¼SW¼SE¼,E¼SE¼SW¼E¼,SW¼SW¼SW¼SE¼,N½SE¼SW¼SE¼;SE¼SE¼SW¼SE¼,SW¼NE¼SW¼SE¼,SE½SW¼SE¼,S½NW¼NE¼SW¼SE¼;
Sec. 36, E½,N½NE¼NE¼NW¼,S½N½NE½NW¼,S½NE¼NW¼,S½NW¼NW¼NW¼,S½NE¼SW¼NW¼,SW¼SW¼NW¼,N½NW½NW¼SW¼,N½SE¼NW¼SW¼,E½SE¼SW¼.
T. 20 N., R. 19 E.,
Sec. 7, S½ of Lots 1 and 2 of SW¼;
Sec. 16, SW¼,SW¼SE¼;
Sec. 17, NW¼NE¼SE¼,E½NW½SE¼,N½SW¼SE¼,SW¼SW¼SE¼,SE¼SE¼SW¼;
Sec. 18, Lot 1 of NW¼, Lot 1 of SW¼, Lots 3-7, E½;
Sec. 20, all;
Sec. 21, N½N½NE¼NE¼,S½NW¼NE¼NE¼,S½NE¼NE¼,S½NE¼,W½, SE¼;
Sec. 22, NE¼SW¼NW¼,E½NW¼SW¼NW¼,NW¼SE¼NW¼,SW¼,SW¼SE¼,N½SE¼SE¼;
Sec. 27, Lot 3, E½NE¼NE¼,N½NW¼NE¼NE¼,SE¼NW¼NE¼NE¼,E½SW¼NW¼NE¼NE¼,E½NE¼NW¼NE¼,S½SW¼NE¼NE¼,S¼N½SW¼NE¼NE¼,N½NE¼SW¼NE¼NE¼,S½NW¼NE¼NW¼, S½NE¼NW¼NW¼, S½NW¼NW¼, S½NW¼SW¼NW¼, S½NW¼SW½NW¼, S½NW¼SE¼NW¼,N½SW½SE¼NW¼, W½SW¼, SE¼SW¼;
Sec. 28, E½NE¼, SW¼NE¼, W½, SE¼;

Sec. 29, all;
Sec. 30, Lots 1 and 2 of NW¼, Lots 1 and 2 of SW¼, E½;
Sec. 31, all, except Patents 93701, 944731, 87033, 487586, and 1224709;
Sec. 32, all;
Sec. 33, N½, N½SW¼, SW¼SW¼, NW¼SE¼.
T. 11 N., R. 20 E.,
Sec. 1, Lots 1 and 2 of NE¼, Lots 1 and 2 of NW¼, S½;
Sec. 2, Lots 1 and 2 of NE¼, E½ of Lots 1 and 2 of NW¼, S½SW¼, N½SE¼, SE¼SE¼;
Sec. 4, Lots 1 of NW¼, SW¼;
Sec. 5, E½ of Lot 2 of NE¼;
Sec. 9, Lots 1, 2, 4, NW¼, SE¼;
Sec. 10, SW¼NW¼, W½SW¼, E½SE¼;
Sec. 11, N½NE¼, SW¼NE¼, W½, W½SE¼;
Sec. 12, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 13, E½, E½W½, SW¼NW¼, SW¼SW¼;
Sec. 14, NE¼, N½SE¼, SW¼SE¼;
Sec. 15, Lot 3, E½NE¼, SE¼;
Sec. 16, Lots 12, 16, NE¼NE¼;
Sec. 22, Lots 15, 16;
Sec. 23, Lot 4, E½NE¼, NE¼SE¼;
Sec. 24, N½.
T. 12 N., R. 20 E.,
Sec. 23, SW¼SW¼;
Sec. 25, SW¼NE¼, E½NW¼, W½SE¼, SE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, SW¼;
Sec. 26, SE¼NE¼, NW¼, NW¼SW¼, S½SE¼; NE¼SE¼;
Sec. 27, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 28, SE¼;
Sec. 33, NE¼, N½SE¼, SE¼SE¼;
Sec. 34, N½NE¼, SW¼NE¼, W½, NW¼SE¼;
Sec. 35, NE¼, E½W½, W½SE¼;
Sec. 36, all.
T. 14 N., R. 20 E.,
Sec. 6, Lot 8, E½SE¼NW¼SE¼, that portion west of the westerly bundary of the highway right-of-way for U.S. Highway 395, W½NW¼SE¼, W½SE¼NW¼SE¼;
Sec. 7, Lot 2 of SW¼;
Sec. 18, S½ of Lot 1 of SW¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, S½ of Lot 2 of SW¼.
T. 15 N., R. 20 E.,
Sec. 18, S½ of Lot 1 of SW¼, except Patent 1222468, S½ of Lot 2 of SW¼;
Sec. 30, S½ of Lots 1 and 2 of NW¼, Lots 1 and 2 of SW¼, NW¼SE¼, W½SW¼ SE¼, N½NE¼SW¼SE¼, N½SE¼SW¼ SE¼;
Sec. 31, E½SE¼NE¼NE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, Lots 1 and 2 of NW¼, N½ of Lot 1 of SW¼, Lot 2 of SW¼, NW¼SE¼, S½SW¼NE¼.
T. 16 N., R. 20 E.,
Sec. 31, N½ of Lot 1 of SW¼, N½ of Lot 2 of SW½, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395.
T. 17 N., R. 20 E.,
Sec. 6, Lots 3,5,8–17, W½SE¼, SE¼NE¼.
T. 18 N., R. 20 E.,
Sec. 30, Lots 9, 22, 37, 38, 41, 44–50, 55–58, 60, 63–65, 67–70, 81, 87, 88;
Sec. 32, Lots 3,4, W½SW¼, SE¼SW¼, E½SE¼, SW¼SE¼.
T. 10 N., R. 21 E.,
Sec. 5, Tract 39;
Sec. 9, Lots 5–7;
Sec. 11, SW¼;
Sec. 12, NW¼NE¼;
Sec. 23, Lots 4, 5;
Sec. 24, Lots 4, 5;
Sec. 25, Lots 6, 7.
T. 11 N., R. 21 E.,
Sec. 6, Lots 4, 5;
Sec. 15, SW¼;
Sec. 16, S½;
Sec. 17, NW¼NW¼;
Sec. 19, Lots 3, 4, E½NE¼, E½SW¼;
Sec. 30, Lots 3, 4.
T. 12 N., R. 21 E.,
Sec. 31, Lots 1, 2, SE¼NW¼, NE¼SW¼, SE¼, that portion west of the westerly boundary of the highway right-of-way for U.S. Highway 395, Lots 3, 4, SE¼SW¼.
T. 9 N., R. 22 E.,
Sec. 3, Lots 3, 4, S½NW¼, N½SE¼;
Sec. 4, Lots 1, 2, 8–11, S½NE¼.
T. 10 N., R. 22 E.,
Sec. 7, Lots 3, 4;
Sec. 19, Lots 2, 3, S½NE¼, E½W½, SE¼;
Sec. 20, all;
Sec. 21, S½;
Sec. 27, N½, N½S½;
Sec. 28, N½;
Sec. 29, N½N½N½, S½N½NE¼, SE¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, E½SW¼SW¼NE¼, E½SW¼NE¼NW¼, SE¼NE¼NW¼, N½NE¼SE¼NW¼, S½NW¼SE¼NW¼, NW¼SE¼SE¼NW¼;
Sec. 30, Lots 6–14, NE¼NE¼, SW¼NE¼;
Sec. 31, Lot 3;
Sec. 32, Lot 7, E½NE¼NE¼SE¼;
Sec. 33, SW¼NW¼, W½SW¼;
Sec. 34, S½NE¼, SE¼NW¼,, S½;
Sec. 35, W½NE¼, E½NW¼, SW¼NW¼, SW¼NW¼SE¼.
T. 9 N., R. 23 E.,
Sec. 4, Lots 11–14;
Sec. 9, Lots 1–8, E½W½;
Sec. 16, Lots 1–7, E½W½;
Sec. 20, Lots 1–11, S½SE¼, SE¼NE¼;
Sec. 21, W½.
T. 10 N., R. 23 E.,
Sec. 10, W½NW¼, SE¼;
Sec. 11, Lots 1, 2, 7, 8, SW¼NE¼, S½NW¼;
Sec. 13, Lots 1, 2, 5, SW¼NE¼;
Sec. 15, E½NE¼, NW¼NE¼;
Sec. 21, Lots 1–4, 7–10, S½NE¼;
Sec. 22, Lots 1–4, S½N½;
Sec. 28, Lots 1–4, E½W½;
Sec. 33, Lots 1–5, E½NW¼, NE¼SW¼.
T. 9 N., R. 24 E.,
Sec. 1, Lots 1, 2, S½NE¼, W½, SE¼;
Sec. 2, all;
Sec. 3, Lots 3, 4, E½, S½NW¼, SW¼;
Sec. 4, Lots 1, 2, S½NE¼, SE¼;
Sec. 5, Lot 4, SW¼NW¼, W½SW¼;
Secs. 10–15, all.
T. 10 N., R. 24 E.,
Secs. 1 and 2, all;
Sec. 3, Lots 1, 2, S½N½, S½;
Sec. 4, SE¼;
Sec. 9, N½NE¼, SE¼NE¼, NE¼SE¼;
Secs. 10–15, all;
Sec. 16, Lots 1–4, W½SE¼;
Sec. 19, Lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 20, S½SW¼;
Sec. 21, SE¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼;
Secs. 22–28, all;
Sec. 29, E½E½, W½;
Sec. 30, Lots 1–4, SE¼NE¼, NW¼NE¼, E½W½, NW¼SE¼, SE¼SE¼;
Sec. 31, Lots 1–4, SE¼NE¼, W½NE¼, E½W½, SE¼;
Sec. 32, NE¼NE¼, W½W½, NE¼NW¼;
Sec. 33, N½, NE¼SW¼, SE¼;
Secs. 34–36, all.
T. 11 N., R. 24 E.,
Sec. 14, S½SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 23, NW¼, NW¼NE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, S½;
Sec. 24, N½N½, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, S½N½, S½;
Secs. 25 and 26, all;
Sec. 27, E½SE¼;
Sec. 34, E½E½;
Secs. 35 and 36, all.
T. 9 N., R. 25 E.,
Sec. 6, W½;
Sec. 7, W½.
T. 10 N., R. 25 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½;
Sec. 18, Lots 1–4, E½W½;
Sec. 19, Lots 1–4, E½W½;
Sec. 30, Lots 1–4, E½W½;
Sec. 31, Lots 1–4, E½W½.
T. 11 N., R. 25 E.,
Sec. 8, SE¼SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 11, E½SE¼;
Sec. 12, that portion west of Pine Grove Flat Road;
Sec. 13, NE¼, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, NE¼SE¼, S½ SE¼;
Sec. 14, E½, NW¼NW¼, S½NW¼, SW¼;
Sec. 15, Lots 1–6, N½, N½SW¼;
Sec. 16, Lots 1–4, S½N½, S½;
Sec. 17, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 18, SE¼SE¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208;
Sec. 19, Lot 1, N½NE¼, NE¼NW¼, that portion south of the southerly boundary of the highway right-of-way for State Highway 208, Lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 20–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–36, all.

T. 6 N., R. 26 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 12, all.
T. 7 N., R. 26 E.,
Sec. 25, Lots 1–4, W½E½, SW¼;
Sec. 36, E½, SE¼NW¼, SW¼.
T. 9 N., R. 26 E.,
Sec. 1, that portion west of Pine Grove Flat Road and County Road 3C;
Sec. 12, that portion west of County Road 3C;
Secs. 13, 24, 25, and 36, all.
T. 10 N., R. 26 E.,
Sec. 3, W½SW¼, that portion west of Pine Grove Flat Road;
Sec. 4, Lots 1,2, SE¼NE¼, NE¼SE¼, that portion west of Pine Grove Flat Road, Lots 3,4, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1,2, NE¼, E½NW¼;
Secs. 8 and 9, all;
Sec. 10, W½, SW¼SE¼, that portion west of Pine Grove Flat Road;
Sec. 15, E½, that portion west of Pine Grove Flat Road, W½;
Sec. 16, all;
Sec. 17, E½;
Secs. 21 and 22, all;
Sec. 23, W½W½, E½SW¼, that portion west of Pine Grove Flat Road;
Sec. 26, W½, SW¼SE¼, that portion west of Pine Grove Flat Road;
Sec. 27, all;
Sec. 34, NE¼;
Sec. 35, all;
Sec. 36, W½SW¼, that portion west of Pine Grove Flat Road.
T. 11 N., R. 26 E.,
Sec. 7, Lot 4, that portion west of Pine Grove Flat Road;
Sec. 17, SW¼SW¼, that portion west of Pine Grove Flat Road;
Sec. 18, Lot 1, SW¼NE¼, E½NW¼, N½SE¼, SE¼SE¼, that portion west of Pine Grove Flat Road, Lots 2–4, E½SW¼, SW¼SE¼;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, E½W½, W½SE¼, that portion west of Pine Grove Flat Road, W½W½;
Sec. 28, SW¼SW¼, that portion west of Pine Grove Flat Road;
Sec. 29, NE¼, E½SE¼, that portion west of Pine Grove Flat Road, W½, W½SE¼;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Sec. 32, all;
Sec. 33, NW¼NW¼, S½NW¼, NE¼SW¼, SE¼SW¼, that portion west of Pine Grove Flat Road, W½SW¼.
T. 5 N., R. 27 E.,
Sec. 1, Lots 1, 2, 4, S½NE¼, SW¼NW¼, NE¼SW¼, SE¼;
Sec. 2, Lots 1–4, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 11, W½W½, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 12, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 13, all;
Sec. 14, W½, W½E½, SE¼SE¼;
Secs. 23–25, all;
Sec. 26, Lots 1–7, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 35, Lot 1;
Sec. 36, Lots 1–6, E½NE¼, NW¼NE¼, NE¼NW¼.
T. 6 N., R. 27 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 4, Lots 3, 4, S½NW¼, SW¼, SW¼SE¼;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Secs. 8 and 9, all;
Sec. 10, NE¼NE¼, S½NW¼, SW¼, S½SE¼;
Sec. 11, N½N½, S½NW¼, SE¼NE¼;
Secs. 12 and 13, all;
Sec. 14, S½, W½NW¼;
Secs. 15–17, all;
Sec. 18, Lots 1–4, E½, E½W½;
Secs. 20–23, all;
Sec. 24, NE¼NE¼, NW¼NW¼, S½N½, N½S½, S½SW¼;
Sec. 25, W½;
Sec. 26, E½, E½W½, W½NW¼, NW¼SW¼;
Sec. 35, SE¼NE¼, N½NE¼, W½NW¼, SW¼NW¼, S½;
Sec. 36, S½NE¼, W½, SE¼.
T. 7 N., R. 27E.,
Sec. 1, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, W½SW¼, SE¼;
Sec. 7, Lots 1, 2, 5–8, E½, E½NW¼;
Secs. 8–11, all;
Secs. 12 and 13, that portion west of County Road 3C;
Secs. 14–17, all;
Sec. 18, Lots 1–8, E½W½, SE¼;
Sec. 19, Lots 1–4, NE¼NE¼, SE¼NW¼, E½SW¼;
Secs. 20–23, all;
Secs. 24 and 25, that portion west of County Road 3C;
Secs. 26–29, all;
Sec. 30, Lots 1–4, E½;
Sec. 31, Lots 1–10, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Secs. 32–36, all.
T. 8 N., R. 27 E.,
Sec. 6, Lot 1, SE¼NE¼, E½NE¼, that portion west of County Road 3C;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 8, NW¼NW¼, SE¼NW¼, N½SE¼, SE¼SE¼, that portion west of County Road 3C, SW¼NW¼, SW¼, SW¼SE¼;
Sec. 14, SW¼SW¼, that portion west of County Road 3C;
Sec. 15, NW¼SW¼, S½SE¼, that portion west of County Road 3C, S½SW¼;
Sec. 16, W½NE¼, NE¼NW¼, NE¼SE¼, that portion west of County Road 3C, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 21, all;
Sec. 22, Lots 1–5, N½NE¼, SE¼NE¼, NW¼;
Sec. 23, NW¼NW¼, SE¼NW¼, NE¼SW¼, SE¼NW¼, that portion west of County Road 3C, W½SE¼, SE¼SE¼;
Secs. 25 and 26, that portion west of County Road 3C;
Sec. 27, Lots 1–12, SW¼;
Sec. 28, Lots 1–8, W½;
Sec. 33, Lots 1–8, W½;
Sec. 34, Lots 1–12, NW¼;
Sec. 35, W½;
Sec. 36, NE¼NE¼, that portion west of County Road 3C, NW¼NE¼, S½NE¼, NW¼NW¼, SE¼.
T. 9 N., R. 27 E.,
Sec. 7, Lot 4, that portion west of County Road 3C;
Sec. 18, Lot 1, E½NW¼, W½SE¼, SE¼SE¼, that portion west of County Road 3C, Lots 2–4, E½SW¼;
Sec. 19, E½NE¼, that portion west of County Road 3C, Lots 1–4, E½W½, W½E½, NE¼SE¼;
Sec. 20, SW¼NW¼, that portion west of County Road 3C;
Sec. 30, Lots 1–4, E½W½;
Sec. 31, Lots 5–12.
T. 4 N., R. 28 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 5, Lots 1–5, S½N½, E½SW¼, SE¼;
Sec. 6, Lots 1–8, SE¼NE¼;
Sec. 8, Lots 1, 2, N½NE¼, SE¼NE¼;
Sec. 9, Lots 1, 2, N½, NE¼SW¼, SE¼;
Sec. 10–12, all;
Sec. 13, NW¼;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, Lots 1–4, NE¼NE¼.
T. 5 N., R. 28 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1, 2, S½N½, S½;
Sec. 5, Lots 2–4, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 6, Lots 1–7, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 7, SW¼SE¼, except Patent 561306, Lots 1–4, NE¼, E½W½, NW¼SE¼;
Sec. 8, SE¼SW¼, except Patent 652473, N½, N½S½, SE¼;
Sec. 9, all;
Sec. 10, SE¼, N½, SW¼, except Patents 17802, 17803, 17804, and 17805;
Sec. 11, NE¼, N½NW¼, SW¼NW¼, S½;
Secs. 14 and 15, all;
Sec. 16, E½, E½W½, NW¼NW¼, SW¼SW¼;
Sec. 17, W½, S½SE¼, except Patents 909, 933, 1373, 2783, 5340, 5341, 16001, 17372, 22217, 409046, 436951, 561308, 613890, 646882, and 768039, Lots 17–20, N½NE¼;
Sec. 18, E½, E½SW¼, except Patents 933, 1373, 2783, 2784, 16001, 17372, 18358, 18359, 39391, 296555, 436951, 556195, 561308, 646882, and 768039, Lots 1–4, E½NW¼;
Sec. 19, E½, E½NW¼, SW¼, except Patents 91, 92, 93, 226, 870, 871, 933, 1246, 1374, 1377, 5081, 5084, 17798, 17800, 17801, 17806, 39389, 39391, 296555, 409048, 502795, 502796, 503172, 586243, and 652473, Lots 1 and 2;
Sec. 20, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, except Patents 225, 226, 909, 933, 2783, 20066, 20067, 39389, 39391,

409046, 409048, 512861, 586243, and 768039, Lot 4, N½NE¼, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Secs. 21–23, and 25, all;
Sec. 26, N½, SW¼, N½SE¼;
Sec. 27, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 28, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, Lot 1, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, except Patents 91, 92, 3004, 502795, 503172, and 592992, Lots 2–4, E½NE¼, SE¼SW¼, NE¼SE¼, SW¼SE¼;
Sec. 31, Lots 1–4, W½NE¼, SE¼NE¼, E½W½, SE¼;
Sec. 32, NE¼NE¼, W½SW¼, SE¼SW¼;
Sec. 33, NE¼, E½NW¼, SW¼NW¼, E½SW¼, N½SE¼, SE¼SE¼;
Sec. 34, NE¼, W½, N½SE¼, SE¼SE¼;
Sec. 35, W½, SE¼.

T. 6 N., R. 28 E.,
Sec. 6, Lot 3, SE¼NW¼, E½SW¼, that portion west of County Road 3C, Lots 4–7;
Sec. 7, E½W½, that portion west of County Road 3C, Lots 1–4;
Secs. 13 and 14, that portion south of Lucky Boy Pass Road;
Sec. 18, E½W½, that portion west of County Road 3C, Lots 1–4;
Sec. 19, Lots 1–3, NE¼NW¼, that portion west of County Road 3C, Lot 4, SE¼SW¼, that portion west of County Road 028, NE¼SE¼, S½SE¼, that portion south of Lucky Boy Pass Road;
Secs. 20–24, that portion south of Lucky Boy Pass Road;
Secs. 25–29, all;
Sec. 30, NW¼NE¼, NE¼NW¼, that portion south of County Road 028 and Lucky Boy Pass Road, Lots 1–4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32 and 33, all;
Sec. 34, N½NE¼, SE¼NE¼, NW¼, NW¼SW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 35, N½, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 36, all.

T. 7 N., R. 28 E.,
Sec. 6, Lots 2, 6, 7, SW¼NE¼, SE¼NW¼, NE¼SW¼, that portion west of County Road 3C, Lots 3–5;
Sec. 30, Lots 3, 4, that portion west of County Road 3C;
Sec. 31, Lots 1, 2, SE¼NW¼, E½SE¼, that portion west of County Road 3C, Lots 3, 4.

T. 8 N., R. 28 E.,
Sec. 31, Lots 1, 2, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼ that portion west of County Road 3C, Lots 3, 4, SE¼SW¼.

T. 7 N., R. 29 E.,
Sec. 23, that portion south of Lucky Boy Pass Road;
Sec. 24, that portion south of Lucky Boy Pass Road;
Sec. 25, E½SW¼;
Secs. 26–28, and 32–33, that portion south of Lucky Boy Pass Road;
Sec. 34, except Patent 27–76–0015;
Sec. 35, all;
Sec. 36, S½NE¼, W½, SE¼.

T. 5 N., R. 30 E.,
Sec. 1, Lots 1, 2, SW¼NE¼, SE¼SW¼, W½SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359 (also known as Pole Line Road), Lots 3, 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 2, Lots 1–4, S½NE¼, SW¼, S½SE¼;
Sec. 11, all;
Secs. 12–14, 23, and 26, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359.

T. 6 N., 30 E.,
Sec. 1, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95;
Sec. 2, Lots 1, 2, SE¼NE¼, NE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, Lot 3, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Secs. 8–11, all;
Sec. 12, W½NE¼, E½NW¼, SE¼, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½NW¼, SW¼;
Sec. 13, E½E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½E½, W½;
Secs. 14–17, all;
Sec. 24, E½E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½E½, W½;
Sec. 25, E½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½;
Sec. 36, W½E½, E½W½, that portion west of the westerly boundary of the highway right-of-way for Highway U.S. 95, W½ W½.

T. 7 N., R. 30 E.,
Sec. 18, SW¼SE¼, that portion south of Lucky Boy Pass Road;
Sec. 19, Lot 1, N½NE¼, NE¼NW¼, that portion south of Lucky Boy Pass Road, Lots 2–3, SE¼NW¼;
Sec. 20, NW¼NW¼, that portion south of Lucky Boy Pass Road, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 21, E½, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359;
Sec. 27, SW¼, SW¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359;
Sec. 28, E½NE¼, NE¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359, W½NE¼, N½NW¼, SE¼ NW¼, NW¼SE¼;
Sec. 29, E½NE¼;
Sec. 30, NE¼SW¼;
Sec. 31, Lot 4, E½NE¼, SW¼NE¼, E½ SW¼, NE¼SE¼, S½SE¼;
Sec. 32, NW¼NW¼, SW¼;
Sec. 33, S½SE¼;
Sec. 34, N½NW¼, SE¼NE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359, SW¼NW¼, E½NW¼, N½ SE¼;
Sec. 35, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼, that portion west of the westerly boundary of the highway right-of-way for State Highway Route 359.

T. 3 N., R. 31 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½, E½W½;
Secs. 8–17, all;
Sec. 18, Lots 1–4, E½W½, E½.

T. 4 N., R. 31 E.,
Secs. 25–28, all;
Sec. 29, except Patent 959088;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½, except Patent 959088;
Sec. 32, except Patent 959088;
Secs. 33–36, all.

T. 5 N., R. 31 E.,
Secs. 13–15, and 22–28, all.

T. 1 N., R. 32 E.,
Sec. 1, Lots 2–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, N½, NE¼SW¼, SW¼SW¼;
Sec. 9, NE¼, N½NW¼, N½SE¼;
Secs. 10–12, all;
Sec. 13, NE¼, W½, W½SE¼;
Secs. 14 and 15, all;
Sec. 16, S½NE¼, NW¼, W½SW¼, SE¼ SW¼, SE¼;
Secs. 17, 20, and 21, all;
Sec. 22, N½, E½SW¼, N½NW¼SW¼, N½S½NW¼SW¼, S½SW¼NW¼ SW¼, S½SW¼SW¼, S½NE¼SW¼ SW¼, SE¼;
Secs. 23–27, all;
Sec. 28, N½N½, SE¼NE¼, SW¼NW¼, SE¼;
Sec. 29, Lots 1–3, N½, NE¼SW¼;
Sec. 30, Lots 1–5, NE¼NE¼;
Sec. 33, Lots 1–3, N½, NE¼SW¼, N½ SE¼, SE¼SE¼;
Sec. 34, all.

T. 2 N., R. 32 E.,
Sec. 29, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all;
Sec. 36, W½, W½E½, NE¼NE¼.

T. 1 N., R. 33 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1,2, S½NE¼, W½SE¼;
Sec. 5, Lots 2–4, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 8, W½;
Sec. 9, SE¼;
Sec. 10, NE¼, S½NW¼, S½;
Secs. 11 and 12, all.

T. 2 N., R. 33 E.,
Sec. 31, Lot 1, N½NE¼, NE¼NW¼, SE¼ SE¼;
Sec. 32, NE¼, N½NW¼, SW¼, N½SE¼;
Sec. 33, N½, N½S½;
Secs. 34–36, all.

T. 2 S., R. 34 E.,

Sec. 1, Lots 1–4, S½SW¼, NE¼SE¼, S½ SE¼;
Sec. 2, Lots 1–4, SW¼NE¼, S½NW¼, SW¼, S½SE¼;
Sec. 3, Lots 1,2, S½NE¼, W½, SE¼;
Secs. 4, 9–14, 23–26, and 36, all.

T. 3 S., R. 34 E.,
Secs. 1 and 12, all.

T. 2 S., R. 35 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½.

T. 3 S., R. 35 E.,
Secs. 6, 7, and 18, all.

Hot Creek Area

Mount Diablo Meridian

T. 8 N., R. 49 E.,
Sec. 1, all;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Secs. 8–17, all;
Secs. 20–25, 28, and 29, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

T. 9 N., R. 49 E.,
Secs. 1–4, all;
Sec. 9, N½NE¼, SW¼NE¼, W½, W½SE¼;
Sec. 10, E½, E½W½, NW¼NW¼;
Secs. 11–14, all;
Sec. 15, E½, E½W½, W½SW½;
Secs. 10, and 21–28, all.

T. 10 N., R. 49 E.,
Sec. 1, Lots 1, 2, S½NE¼, W½, SE¼;
Sec. 2, E½, SW¼NW¼, SE¼SW¼;
Sec. 3, Lots 1, 2, S½NE¼, W¼, SE¼;
Sec. 4, all;
Sec. 5, E½;
Sec. 8, E½;
Secs. 9 and 10, all;
Sec. 11, E½, E½NW¼, NE¼SW¼;
Secs. 12 and 13, all;
Sec. 14, NE¼, NW¼NW¼, S½NW¼, NW¼SW¼, W½SE¼;
Secs. 15 and 16, all;
Sec. 17, E½;
Sec. 20, E½;
Sec. 21, all;
Sec. 22, W½NE¼, W½, E½SE¼;
Secs. 23–26, all;
Sec. 27, E½E½, W½NW¼, SW¼SE¼;
Secs. 28, and 33–36, all.

T. 11 N., R. 49 E.,
Sec. 13, NW¼, W½SW¼, NE¼SE¼, S½SE¼;
Secs. 14–16, all;
Sec. 20, Lots 1–3, 6, 7, W½NE¼, NW¼SE¼;
Secs. 21–23, all;
Sec. 24, E½, W½NW¼, NE¼SW¼, S½SW¼;
Sec. 25, all;
Sec. 26, N½, NE¼SW¼, N½SE¼, SE¼SE¼;
Secs. 27 and 29, all;
Sec. 29, E½;
Sec. 32, E½;
Sec. 33, NE¼, N½NW¼, SW¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 34, all;
Sec. 35, E½, E½SW¼;
Sec. 36, all;

T. 9 N., R. 49½ E.,
Secs. 1, 2, 11–14, 23–26, 35, and 36, all.

T. 10 N., R. 49½ E.,
Secs. 11–14, 23–26, and 35–36, all.

T. 8 N., R. 50 E.,
Secs. 1–11, and 16–21, all;
Secs. 12–15, 22, and 27–30, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

T. 9 N., R. 50 E.,
Secs. 1–36, all.

T. 10 N., R. 50 E.,
Secs. 7–36, all.

T. 11 N., R. 50 E.,
Secs. 1–4, all;
Sec. 5, Lots 3, 4, NE¼, S½NW¼, S½;
Secs. 8–17, all;
Sec. 18, Lots 1, 2, NE¼, E½NW¼, S½;
Secs. 19–36, all.

T. 12 N., R. 50 E.,
Secs. 1, 12–14, 23–27, and 34–36, all.

T. 13 N., R. 50 E.,
Sec. 36, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

T. 8 N., R. 51 E.,
Secs. 5–7, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

T. 9 N., R. 51 E.,
Secs. 1, 2, 11, 14–16, 21, 28, 32, and 33, that portion identified on the map entitled Nevada Interchange "C" dated August 1988;
Secs. 3–10, 17–20, and 29–31, all.

T. 10 N., R. 51 E.,
Sec. 7, Lots 1–4;
Sec. 8, Lots 1–4;
Sec. 9, Lots 1–4;
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20, 21, 28, and 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.

T. 11 N., R. 51 E.,
Sec. 4, W½, W½E½;
Secs. 5–8, all;
Sec. 9, W½, W½E½;
Sec. 16, W½, W½E½;
Secs. 17–20, all;
Sec. 21, W½, W½E½;
Sec. 28, W½, W½E½;
Secs. 29–32, all;
Sec. 33, W½, W½E½.

T. 12 N., R. 51 E.,
Secs. 4, 5, 9, and 16, that portion identified on the map entitled Nevada Interchange "C" dated August 1988;
Sec. 6, Lots 1–7, S½NE¼, SE¼W¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, all;
Sec. 21, W½, W½E½;
Sec. 28, W½, W½E½;
Sec. 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Sec. 32, all;
Sec. 33, W½, W½E½.

T. 13 N., R. 51 E.,
Secs. 31 and 32, that portion identified on the map entitled Nevada Interchange "C" dated August 1988.

Red Rock Area

Mount Diablo Meridian

T. 17 S., R. 53 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 10, all;
Sec. 11, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 12, N½, NE¼SW¼, S½SW¼, SE¼;
Secs. 13–15, and 22–25, all;
Sec. 26, N½N½, SE¼NE¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 27, N½, SW¼, W½SE¼;
Sec. 34, except Patent 42815;
Sec. 35, all;
Sec. 36, N½, W½SW¼, SE¼SW¼, SE¼.

T. 18 S., R. 53 E.,
Sec. 1, Lots 1–4, S½N½, S½.

T. 17 S., R. 54 E.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8 and 9, all;
Sec. 10, W½;
Secs. 15–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 25–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–36, all.

T. 18 S., R. 54 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–17, 20–28, and 33–36, all.

T. 19 S., R. 54 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Secs. 9–15, all.

T. 17 S., R. 55 E.,
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–22, and 27–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all;
Sec. 36, W½, W½E½.

T. 18 S., R. 55 E.,
Sec. 1, Lots 1–4, S½N½, SW¼, S½SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8 and 9, all;

Sec. 10, W½;
Sec. 15, W½;
Secs. 16 and 17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–22, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.
T. 19, S., R. 55 E.,
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–10, and 15–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 20, E½;
Secs. 21–23, 25–27, and 34–36, all.
T. 20 S., R. 55 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–14, 24, and 25, all.
T. 17 S., R. 56 E.,
Sec. 31, Lots 1–4, NE¼, NE¼NW¼, SE¼SW¼, E¼SE¼.
T. 18 S., R. 56 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–4, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½W½, E½;
Secs. 8–11, all;
Sec. 12, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 13, E½, S½NW¼, SW¼;
Sec. 14, NW¼NE¼, S½NE¼, W½, SE¼;
Secs. 15–17, 23, and 24, all.
T. 20 S., R. 56 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, E½W½, E½;
Secs. 8–10, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–26, all;
Sec. 27, N½NE¼, SE¼NE¼, NW¼, W½SW¼, NE¼SE¼, S½SE¼;
Secs. 28 and 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Secs. 32–36, all.
T. 21 S., R. 56 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5 Lots 1–4, S½N½, S½;
Secs. 8–17, 20–28, and 33–36, all.
T. 18 S., R. 57 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5 Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–11, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20–23, 26–29, and 32–35, all.
T. 19 S., R. 57 E.,
Sec. 1, Lots 5–20;
Sec. 2, Lots 5–20;
Sec. 3, Lots 5–20;
Sec. 4, Lots 5–20;
Sec. 9, N½NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, N½NW¼NE¼NE¼, SW¼NW¼NE¼NE¼, W½SW¼NE¼NE¼, NW¼, W½NE¼SW¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, S½NE¼SE¼NE¼, SE¼NW¼SE¼NE¼, S½SE¼NE¼, S½;
Sec. 10, N½NE¼NW¼, E½SE¼NE¼NW¼, N½NW¼NW¼, S½N½SW¼NW¼, S½SW¼NW¼, NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, S½NW¼SE¼NW¼, S½SE¼NW¼, S½;
Sec. 11, Lots 1–16;
Sec. 12, Lots 1–16;
Secs. 13–16, and 21–26, all;
Sec. 27, N½N½, E½SW¼NE¼, N½NW¼SW¼NE¼, S½SW¼SW¼NE¼, SE¼NE¼, SW¼NW¼, N½NE¼SE¼NW¼, SW¼NE¼SE¼NW¼, W½SE¼NW¼, NW¼SE¼SE¼NW¼, S½SE¼SE¼NW¼, S½;
Sec. 28, N½NE¼, NW¼, NW¼SW¼, S½SW¼,NE¼SE¼,S½SE¼;
Sec. 34–36, all.
T. 20 S., R. 57 E.,
Sec. 1, Lots 1–4, S½NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–17, all;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26, all;
Sec. 27, N½, N½S¼, SE¼SW¼, S½SE¼;
Sec. 28, NE¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Secs. 32–33, all;
Sec. 34, E½, SW¼NW¼, SW¼;
Sec. 35, all.
T. 21 S., R. 57 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8–11, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
Secs. 32–35, all.
T. 22 S., R. 57 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1–4, S½N½, S½;
Secs. 10–14, all;
Sec. 15, N½; E½SW¼, SE¼;
Secs. 22–27, and 35–36, all.
T. 23 S., R. 57 E.,
Sec. 1, Lots 3, 4, S½NW¼, SW¼, except Patent 648859, SE¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 11, all;
Sec. 12, except Patents 2203 and 648859;
Secs. 13, 14, 24, and 25, all.
T. 19 S., R. 58 E.,
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½.
T. 20 S., R. 58 E.,
Sec. 6, Lots 1, 5–7, S½NE¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 7, Lots 1–4, E½W½, E½.
T. 22 S., R. 58 E.,
Sec. 19, Lots 1–4, E½W½, NE¼, except Patent 200252, NW¼SE¼, S½SE¼;
Sec. 20, NW¼, E½NW¼SW¼SW¼, NW¼SE¼SW¼, W½SW¼SE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 29, Lots 1–10, S½NE¼NE¼, SW¼NE¼, E½NE¼SE¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 30, Lots 5–20;
Sec. 31, Lots 5–12.
T. 23 S., R. 58 E.,
Sec. 5, Lots 1, 2, S½NE¼, S½;
Sec. 6, Lots 3–7, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Secs. 8, and 14–17, all;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Secs. 20–23, and 26–29, all;
Sec. 30, Lots 1–4, E½W½, E½.

The area described above aggregates 704,482.785 acres in Carson City, Clark, Douglas, Esmeralda, Lyon, Mineral, Nye and Washoe Counties (Sierra Foothills Area aggregates 270,405.883 acres, Hot Creek Area aggregates 180,653.958 acres and the Red Rock Area aggregates 253,422.944 acres).

A copy of the legal description and the maps depicting the involved lands are on file for public inspection in the following offices:

Governor of Nevada, State of Nevada, Carson City, Nevada 89710
Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431
Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California 93514
State Director, Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89502
Chief, U.S. Forest Service, U.S. Department of Agriculture, South Building, 12th and Independence Avenue, SW., Washington, DC 20250
Director (322), Room 3643, MIB, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240

R.M. (Jim) Nelson,

Supervisor, Toiyabe National Forest, U.S. Forest Service.

Edward F. Spang,

State Director, Nevada Bureau of Land Management.

[FR Doc. 89–27516 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 17, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- National Agricultural Statistics Service
  Milk and Milk Products
  None
  Monthly; Quarterly; Annually
  Farms; Businesses or other for-profit; 167,493 responses; 19,747 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447–7737
- Forest Service
  Determination of Financial Status of Contractors and Prospective Contractors
  FS–6500–24, FS–6500–25
  On Occasion
  Businesses or other for-profit; Small businesses or organizations; 350 responses; 6,714 hours; not applicable under 3504(h)
  William Helmer (703) 235–8466

Extension

- Foreign Agricultural Service
  CFR Part 1493—Regulations Covering CCC's Export Credit Guarantee Program (GSM–102) and CCC's Intermediate Export Credit Guarantee Program (GSM–103)
  None
  Recordkeeping; On Occasion
  Businesses or other for-profit; 13,920 responses; 14,344 hours; not applicable under 3504(h)
  L.T. McElvain (202) 447–6225
- National Agricultural Statistics Service
  Egg, Chicken, and Turkey Surveys
  None
  Weekly, Monthly, Quarterly, Annually
  Farms; Businesses or other for-profit; 42,775 responses; 6,638 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447–7737

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–27532 Filed 11–22–89; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

West Branch and Bruin II Timber Sales, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest approximately 1,800 acres of timber and construct approximately 21 miles of road in the West Branch of the South Fork of Big Creek Drainage. The drainage is located approximately 12 air miles north of Libby, Montana. All of the proposed timber harvest and road construction would occur within the Rare II Gold Hill Roadless Area. Some road reconstruction would occur outside the West Branch Drainage.

The primary purpose and need for the proposed action is to access and harvest primarily high risk (to mountain pine beetle infestation) Lodgepole pine (LPP). This proposed project would salvage and regenerate mature LPP stands, create diversity to prevent future mountain pine beele outbreaks, and improve habitat diversity for wildlife.

DATE: Comments concerning the scope of the analysis should be received in writing on or before January 8, 1990.

ADDRESSES: Send written comments to: District Ranger, Rexford Ranger District, 1299 Hwy. 93 N., Eureka, MT. 59917.

FOR FURTHER INFORMATION CONTACT: Bob Seidel, Timber Management Assistant or Reta Laford, EIS Team Leader, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Kootenai Forest Plan Final EIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The activities associated with timber harvest and road construction will be conducted in a manner that will maintain high quality wildlife, fisheries, and watershed objectives.

Some preliminary analysis work was initiated for this project in 1984 and has been on-going since that date. The Forest Service is seeking information and comments from Federal, State, local agencies, and other organizations or individuals who may be interested in or affected by the proposed actions. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

The timber sales and road construction under consideration would occur in an area encompassing approximately 5,500 acres of National Forest lands in the West Branch of the South Fork of the Big Creek Drainage on the Rexford Ranger District. All 5,500 acres are within the 10,200 acre Gold Hill (West) Roadless Area (#1X176).

Included in the area of analysis are all or portions of the following: Sections 15, 16, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, T33N, R30W and Sections 4, 5, 6, T32N, R30W Montana Principle Meridian.

The areas of proposed harvest and reforestation are within Management Area (MA) 12. Forest Plan direction states MA 12 is productive timber land. The management goal is to maintain or enhance summer/fall big game habitat and produce a programmed yield of timber. MA 21 (Big Creek Riparian Ecosystem) is also within the analysis area, but no timber harvesting or road construction activities are planned in this MA.

To date we have identified some primary issues we feel will have to be analyzed to determine the effects the proposed project will have on these resources. These issues are as follows:

1. To what extent would the proposed action affect big game security habitat within and adjacent to the analysis area?

2. To what extent would harvest methods and fuel reduction measures affect soil productivity?
3. How would the proposed action affect water quality and watershed stability?
4. To what extent would the proposed action allow us to harvest the LPP stands killed by or at risk of Mountain Pine Beetle infestations?
5. To what extent would the proposed action reduce or allow us to manage the potential fire hazard associated with large areas of LPP at risk for insect infestation?
6. To what extent would the proposed action affect the Grizzly Bear?
7. How would the proposed action affect the roadless character of the area?

The Forest Service will analyze and disclose in the DEIS/FEIS the environmental effects of the proposed action and a reasonable range of alternatives, including no action. The alternatives to the proposed action will be developed responsive to the purpose and need for the action and to the environmental issues raised during the scoping process. The DEIS/FEIS will disclose the direct, indirect, and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process, on or before January 8, 1990 and during the review of the DEIS in March, 1990.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. We will adhere to requirements of the Endangered Species Act as they pertain to the proposed action and its estimated effects on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by March, 1990. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the notice of availability is published in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS.

Dated: November 13, 1989.

H. Drew Bellon,

District Ranger, Rexford Ranger District, Kootenai National Forest.

[FR Doc. 89-27564 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

Scientific Advisory Board Mount St. Helens National Volcanic Monument; Gifford Pinchot National Forest; Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 8:30 a.m., March 13, 1990, at the David A. Johnston Cascades Volcanic Observatory, 5400 McArthur Blvd., Vancouver, WA 98661, to receive information on and discuss the following:

1. Coldwater Lake—Johnston Ridge update.
2. Castle Lake containment plans.
3. Status of the 1990 NVM 10th year research thrust.
4. Observatory tour.
5. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: November 16, 1989.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 89-27563 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

FRH 0595-AB06

Recreation Residence Authorization

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed policy; extension of public comment period.

SUMMARY: On September 20, 1989, at 54 FR 38700, the Forest Service gave notice of its intent to reconsider its policy for administering privately-owned recreation residences on National Forest System lands. The reconsideration responds to an appeal decision by the Assistant Secretary for Natural Resources and Environment. In the September notice, the agency requested public comment on alternatives to various provisions of the current interim policy. The public comment period was to close on November 20. However, a number of organizations and individuals have indicated that the 60-day review period was not sufficient time to review and analyze the complex new alternatives and have requested additional time to prepare comments. Accordingly, the Forest Service has decided to extend the comment period an additional 60 days to January 19, 1990.

DATES: Comments must be received in writing and postmarked no later than January 19, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Betty J. Blair, Lands Staff, (703) 235-2160.

Dated: November 17, 1989.

David G. Unger,

Associate Deputy Chief, National Forest Service System.

[FR Doc. 89-27565 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

Adson Timber Sale, Swamp Creek Timber Sale, Harriet Lou Timber Sale

ACTION: Notice of withdrawal of decisions.

SUMMARY: The Beaverhead National Forest has withdrawn the decisions to implement the Adson Timber Sale, Swamp Creek Capital Investment Road and Timber Sale, and the Harriet Lou Timber Sale. Future management activities in the areas will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decisions to proceed with activities in the areas will be appealable under Forest Service Regulations 36 CFR part 217. The following Notices of Withdrawal have been executed.

DATES: The effective dates for the Notices of Withdrawal are October 27, 1989 for the Adson Timber Sale, October 27, 1989 for the Swamp Creek Timber Sale, and December 7, 1989 for the Harriet Lou Timber Sale.

ADDRESS: The individual withdrawal notices were executed by the District Ranger, Wise River Ranger District, Box 100, Wise River, Montana 59762.

FOR FURTHER INFORMATION CONTACT: Ed Levert, District Ranger, Wise River Ranger District, Beaverhead National Forest, Telephone (406) 832-3178.

SUPPLEMENTARY INFORMATION: The text of the Notice of Withdrawal of Decision on the Adson and Swamp Creek sales as they will appear in the local newspaper, The Dillon Tribune, is as follows:

Notice

Withdrawal of Decision

for

Adson Timber Sale

USDA—Forest Service

Beaverhead National Forest

Wise River Ranger District

Beaverhead County, Montana

On June 30, 1987, I signed a Decision Notice to implement the Adson timber sale on the Beaverhead National Forest, Wise River Ranger District.

This notice constitutes the withdrawal of my decision to proceed with the Adson timber sale. Future management activities in the area will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decision to proceed with activities in the area will be accompanied by a new decision notice and will be appealable under Forest Service regulations 36 CFR part 217.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the 1987 Adson Decision Notice and Environmental Assessment. Further, this notice is being published November 7, 1989 as a legal notice in the Dillon Tribune newspaper and will be published in the **Federal Register**. All parties on the 1987 mailing list and those requesting to be notified will be given notice if management activities are proposed in the future in this area. Consequently, the public will have the opportunity to ask for administrative review pursuant to Forest Service regulations of any future decisions in the area.

Dated: October 27, 1989.

Ed Levert,

District Ranger, Wise River Ranger District.

Notice

Withdrawal of Decision

for

Swamp Creek Capital Investment Road and Timber Sale

USDA—Forest Service

Beaverhead National Forest

Wise River Ranger District

Beaverhead County, Montana

On June 30, 1987, I signed a Decision Notice to implement the Swamp Creek capital investment road and timber sale on the Beaverhead National Forest, Wise River Ranger District.

This notice constitutes the withdrawal of my decision to proceed with the Swamp Creek capital investment road and timber sale. Future management activities in the area will occur only after further environmental analysis and documentation pursuant to NEPA. Any new decision to proceed with activities in the area will be accompanied by a new decision notice and will be appealable under Forest Service regulations 36 CFR part 217.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the 1987 Swamp Creek Decision Notice and Environmental Assessment. Further, this notice is being published November 7, 1989 as a legal notice in the Dillon Tribune newspaper and will be published in the **Federal Register**. All parties on the 1987 mailing list and those requesting to be notified will be given notice if management activities are proposed in the future in this area. Consequently, the public will have the opportunity to ask for administrative review pursuant to Forest Service regulations of any future decisions in the area.

Dated: October 27, 1989.

Ed Levert,

District Ranger, Wise River Ranger District.

The text of the Notice of Withdrawal of Decision for the Harriet Lou Timber Sale that was sent to all persons, groups, and agencies on the mailing list for the Environmental Assessment and to appellants of the original decision was as follows:

Notice

Withdrawal of Decision

Harriet Lou Timber Sale

On August 19, 1988, I signed a Decision Notice to implement the Harriet Lou Timber Sale. As identified in the Environmental Assessment, portions of the proposed action are located in Roadless Area, 1-006-F.

My decision to implement the Harriet Lou Timber Sale received two appeals within the 45 day appeal period provided by the Forest Service administrative appeal regulations (36 CFR 211.18). One appeal was filed jointly by the Wise River Sportsmen and Montana Wildlife Federation, on September 30, 1988. The second appeal was filed October 3, 1988, by the American Wilderness Alliance. Among the issues raised by the appeals by both appellants was the issue of the adequacy of the analysis of the roadless resource. In accordance with the administrative appeal regulations the appeals are presently being considered by the Forest Supervisor.

On August 15, 1988, the Chief of the Forest Service issued a decision on the roadless issue on the Idaho Panhandle National Forest. This decision outlines the steps which must be taken at the project level to implement the Forest Plan when proposed actions are located in inventoried roadless lands.

In reviewing the Environmental Assessment for the Harriet Lou Timber Sale, I find the disclosure of impacts on the roadless resource do not meet the current direction.

Therefore, I withdraw the August 19, 1988, Decision Notice to implement the Harriet Lou Timber Sale. I am directing the Interdisciplinary Team to reanalyze the proposed sale in compliance with the Chief's direction. No further action will be taken on the proposal until a new decision, if any, is made to proceed with timber harvesting in the Harriet Lou area. Any decision that adopts other than the "no action" alternative will comply with NEPA, will be

accompanied by a new Decision Notice, and will be reviewable under applicable Forest Service regulations.

Copies of this notice are being sent to all persons, groups, and agencies on the mailing list for the Harriet Lou Timber Sale Environmental Assessment and the above named appellants.

Dated: December 7, 1988.

Ed Levert,

District Ranger, Wise River District.

Dated: November 2, 1989.

Gerald W. Alcock,

Acting Forest Supervisor, Beaverhead National Forest.

[FR Doc. 89-27562 Filed 11-22-89; 8:45 am]

BILLING CODE 3410-11-M

ARCTIC RESEARCH COMMISSION

Meetings

Notice is hereby given that the United States Arctic Research Commission will hold its 20th Meeting in Seattle, Washington, on December 11-12, 1989. On December 11, the morning session will start at 8:30 a.m. in Room 2104, Building 3, Pacific Marine Environmental Lab, NOAA, located at 7600 Sand Point Way NE, Seattle, Washington.

On Monday, December 11th, at 1:30 p.m. in Room 310C of the Atmospheric Sciences Building at the University of Washington, the Commission will hold a Public Meeting on Arctic Research Priorities. At 5:30 p.m. the Commission will host a reception for arctic scientists at the Meany Towers Hotel in Seattle.

On Tuesday, December 12th, the Commission will meet in Room 2104 at the Pacific Marine Environmental Lab at NOAA. The Commission will meet in Executive Session following the conclusion of regular business.

Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee; (3) Comments from the Alaska Congressional Delegation; (4) Comments from the Alaska Governor's Office; (5) Consideration of a Statement on Arctic Engineering Research; (6) Consideration of a Health Initiative; (7) National Bipolar Research Plan; (8) International Arctic Research Cooperation; (9) Items emerging from Public Meeting, and (10) Status of Annual Report.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, (202) 371-9631.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 89-27517 Filed 11-22-89; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00016." A summary of the application follows.

Summary of the Application

Applicant: National Geothermal Association (NGA), P.O. Box 1350, Davis, California 95617. Contact: Arthur John Armstrong, Counsel, Telephone: (202) 625-6731.

Application No.: 89-00016.

Date Deemed Submitted: November 7, 1989.

Members (in addition to applicant): Air Drilling Services, Inc., Englewood, CO; American Line Builders, Inc., Dayton, WA; Barber-Nichols Engineering Co., Arvada, CO; The Ben Holt Company, Pasadena, CA; Bridwell Controls, Martinez, CA; Dames & Moore, Los Angeles, CA; Eastman Christensen, Santa Rosa, CA, and its controlling entity Norton Company, Worcester, MA; EnergyLog Corporation, Sacramento, CA; Foster Oilfield Equipment Company, Houston, TX, and its controlling entity Masco Industries, Inc., Taylor, MI; Geothermal Management Company, Inc., Evergreen, CO; Geothermal Power Company, Inc., Elmira, NY; GeothermEx, Inc., Richmond, CA; Grace Drilling Company, Dallas, TX; H & H Oil Tool Company, Inc., Santa Paula, CA; Halliburton Services, Houston, TX; Kern Steel Fabrication, Inc., Bakersfield, CA; Loffland Brothers Company, Tulsa, OK; Mesquite Group, Inc., Fullerton, CA; Ormat Energy Systems, Inc.; Sparks, NV; Oxbow Power Corporation, Dedham, MA; Petrorentas Internacionales, Inc., Houston, TX; Pruett Industries, Inc., Bakersfield, CA; Technology Export Company, Houston, TX, and its controlling entity Masco Industries, Inc., Taylor, MI; Trans-Pacific Geothermal Corporation, Oakland, CA; University of Utah Research Institute, Salt Lake City, UT; and Unocal Geothermal Division, Los Angeles, CA, and its controlling entity Unocal Corporation, Los Angeles, CA.

Export Trade:

Products

Equipment, instrumentation, and supplies for (1) exploration (including geological, geophysical geochemical, and software); (2) drilling and completion; (3) reservoir assessment; (4) environmental monitoring; (5) production and power generation including pumps, separators and condensers; power generation systems, and miscellaneous equipment and supplies; (6) non-electric direct-use (including downhole pumps, heat exchangers, and miscellaneous equipment and software); (7) general and technical geothermal information and publications; and (8) all other products related to geothermal exploration, development, and production (including heavy duty transportation equipment and stress relief equipment and supplies).

Services

Engineering, design, and other services related to (1) exploration (including geophysical photography and remote sensing, geologic field studies, subsurface studies, geochemical and hydrological analysis and interpretation, aquifer assessment, thermal studies, magnetic surveys, gravity surveys and interpretations, seismic studies, electrical studies, and geodata synthesis and numerical simulation); (2) drilling and completion; (3) reservoir assessment (including geological and geophysical well-logging, reservoir engineering, and well testing); (4) field development (including environmental systems evaluation and monitoring and environmental problems mitigation); (5) project analysis for electric and non-electric direct-use projects; (6) engineering studies and design; (7) plant management and operations; (8) financing; and (9) servicing, training, and other services related to the sale, use, or maintenance of Products or to projects that substantially incorporate Products; and all other Services related to geothermal exploration, development, and production.

Export Trade Facilitation Services (as they relate to the export of Products)

Consulting; international market research, marketing, and trade promotion; trade show participation; trade missions and reverse trade missions; insurance; legal assistance; accounting assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; and liaison with foreign government and multinational agencies, trade associations, and banking institutions.

Technology Rights

Patents; trademarks; service marks; trade names; copyrights (including neighboring rights); trade secrets; know-how; semiconductor mask works; utility models (including petty patents); industrial designs; and *sui generis* forms of computer software protection associated with Products, Services, or Export Trade Facilitation Services.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: NGA and/or one or more of its Members may:

1. Engage in joint selling arrangements for Products and/or Services in Export Markets, including, but not limited to, joint marketing negotiation, offering, bidding and financing, and allocating sales resulting from such arrangements;

2. Establish export prices for sales of Products and/or Services by the Members in Export Markets;

3. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers in Export Markets;

4. Refuse to quote prices for, or to market or sell in Export Markets, Products and/or Services;

5. Solicit non-Member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through NGA and/or its Members;

6. Coordinate the development of projects in Export Markets in which Products and/or Services shall be exported, including, but not limited to, exploration, scientific and/or technical assessment, transportation and/or delivery, installation, construction, ownership (including, but not limited to, transfer of ownership) operations, servicing, and establishing joint warranty, service, parts warehousing, and training centers in such markets;

7. License associated Technology Rights in conjunction with the sale of Products and/or Services, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NGA or any other Member;

8. Engage in joint promotional activities aimed at developing existing or new Export Markets, including, but not limited to, advertising and trade missions, demonstrations, field trips, and trade shows;

9. Bring together, from time to time, groups of Members to plan and discuss how to fulfill the technical Product and/or Service requirements of specific export customers or particular Export Markets;

10. Establish and operate joint ventures and jointly owned entities, including, but not limited to, corporations or other joint venture entities, owned exclusively by Members, to export Products and/or Services to Export Markets;

11. Jointly provide and/or jointly negotiate with non-Member and Member Suppliers to provide Export Trade Facilitation Services to Member and/or non-Member Suppliers;

12. Jointly establish, or arrange to have NGA and/or one or more of its Members and/or non-Members to act as exclusive or non-exclusive Export Intermediaries on the Members' behalf in Export Markets. Any such exclusive Export Intermediary may agree not to represent any other Supplier of Products and/or Services in the relevant Export Market, and the Members may agree that they will not export independently, either directly or through any other Export Intermediary or other party;

13. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member;

14. Act as a shippers' association to negotiate favorable transportation rates and other terms with individual ocean common carriers and individual conferences;

15. On a country-by-country basis for the Export Markets, jointly establish and/or negotiate with purchasers regarding specifications for Products;

16. Enter into agreements wherein:

a. One or more Members or a jointly owned entity may agree to act in certain Export Markets as the Member's exclusive or non-exclusive Export Intermediary for Products and/or Services in that Export Market. In such agreements, (i) the Member(s) acting as exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant Export Market, and (ii) Members may agree that they will export for sale in the relevant Export Market only through the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant Export Market either directly or through any other Export Intermediary. NGA and/or any Member(s) and/or a jointly owned entity when acting as an exclusive Export Intermediary shall supply its services on a non-discriminatory basis to those Members that are parties to the exclusive arrangement, and which request such servicing, and shall not unreasonably refuse to supply such services;

b. A non-Member Supplier may agree to act in certain Export Markets as the Member's exclusive or non-exclusive Export Intermediary for Products and/or Services in that Export Market;

c. One or more Members or a jointly owned entity may agree to purchase for export to the Export Markets Products and/or Services from Suppliers on such terms as the parties to the agreement may determine;

d. NGA and/or one or more Members or a jointly owned entity may enter into exclusive or non-exclusive agreements with persons, including Members and non-Members, whereby consulting and professional services may be procured and provided to Members;

e. One or more Members or a jointly owned entity may enter into contracts which provide for transportation services to Members, including, but not limited to, the chartering and space chartering of vessels, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a United States export terminal, port, or gateway; and

f. Members may agree to export for sale in one or more Export Markets only directly through other Members, and/or through designated Export Intermediaries;

17. Exchange and discuss the following types of information about Export Trade, Export Markets, Export Trade Activities and Methods of Operation, and the agreements related thereto:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, and terms of domestic marketing or sale of United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts in Export Markets, activities and opportunities for sales of Products and/or Services in Export Markets, pricing in Export Markets, projected demands (quality and quantity) in Export Markets, customary terms of sale in Export Markets, the types of Products and/or Services available from competitors for sale in particular Export Markets, market strengths and economic and business conditions in Export Markets, and the prices for Products and/or Services in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export; provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transactions;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to Export Markets, including, but not limited to, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation, regulations, and executive actions affecting the sales of Products and/or Services in Export Markets, including, but not limited to, U.S. Federal and State programs affecting sales to and in Export Markets;

h. Information about Members' export operations, including, but not limited to, sales and distribution networks established by the Members in Export Markets, and prior export sales by Members including, but not limited to, export price information;

i. Information relevant to the conduct of Export Trade and Export Trade Activities and Methods of Operation in the Export Markets; and

j. Information on the organization, governance, financial condition, and membership of NGA;

18. Forward to the appropriate individual Member requests for information received from a foreign government or its agent (including, but not limited to, private pre-shipment inspection firms) concerning that Member's domestic or export activities (including, but not limited to, prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information;

19. License and sub-license Technology Rights in Export Markets to non-Members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member without coordination with NGA or any other Member. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose restrictions as to the prices at which Products and/or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licenses and sub-licenses as to fields of use, or maximum sales, or operations in Export Markets; impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights in Export Markets to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights;

20. Refuse to provide Export Trade Facilitation Services or participation in the other activities described herein to non-Members;

21. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and/or Services to Export Markets. This may be accomplished by NGA itself, or by agreement with one or more Members or other parties; and

22. Meet to engage in the activities described herein.

Definitions: 1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, consultant, provider of professional services, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology Right, and/or Export Trade Facilitation Service, whether a Member or non-Member.

3. "Member" means a person who has membership in the NGA and who has been certified as a "Member" within the meaning of § 325.2 (1) of the Regulations.

4. "Non-Member" means a person other than a Member.

Dated: November 17, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 27513 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Denver, CO

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period April 1, 1990 to March 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Denver, Colorado standard metropolitan statistical area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDC's. Based on a standard rate of $50 per hour, MBDC's will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and agency priorities.

CLOSING DATE: The closing date for applications is December 15, 1989. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before December 15, 1989.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held at the Denver Federal Center, Sixth and Kipling, Building 41, in the South Dakota Room, Number 212, starting at 1:00 p.m..

(11.800 Minority Business Development Catalog of Federal Domestic Assistance.)

Melda Cabrera,

Regional Director, Dallas Regional Office, Regional Offices.

Section B—Project Specifications

(To be completed by the Regional Offices)

PROJECT IDENTIFICATION

1. Program Number and Title: 11.800 Minority Business Development
2. Poject Name: Denver, Colorado (Geographic Area of SMSA) MBDC
3. Project Identification Number: 08-10-9000-01

BUDGET PERIOD DURATION

1. Budget Period (Check One): First X Second _____ Third _____
2. Start Date: April 1, 1990
3. End Date: March 31, 1991
4. Budget Period Duration (Months): Twelve

PROJECT COST

1. Required Federal Funding Level: $184,200
2. Minimum Non-Federal Contribution: $32,516
3. Total Project Cost: $216,776

PROJECT MINIMUM PERFORMANCE GOAL LEVELS

1. Combined Financial Package and Procurement Minimum Goal Level: $12,454,000
2. Billable SM&TA Minimum Goal Level: $125,000
3. Number of Clients Minimum Goal Level: 125

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: December 15, 1989
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Denver, Colorado, Standard Metropolitan Statistical Area
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDC based upon

the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 89-27567 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Richmond, VA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period April 1, 1990 to March 31, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Richmond, Virginia geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding wil be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the available of funds and agency priorities.

Closing date: The closing date for applications is December 28, 1989. Applications must be postmarked on or before December 28, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202-377-8275.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Acting Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: November 15, 1989.

John F. Iglehart,

Acting Regional Director, Washington Regional Office.

[FR Doc. 89-27519 Filed 11-22-89; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11-13 December 1989.

Time: 0900-1600 hours, daily.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene to continue a review of the program. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-27483 Filed 11-22-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18-20 December 1989.

Time: 0900-1600 hours, daily.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene for the purpose of preparing a report documenting the results of their review of the program. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for futher information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-27484 Filed 11-22-89; 8:45am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the potential modifications at Marmet Locks and Dam on the Kanawha River near Charleston, WV

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District is currently involved in navigation studies on the Kanawha River. These studies are to determine the need to, and ways to modify the existing Marmet navigation structure to maintain a modern, safe and efficient system on the Kanawha. Traffic congestion at Marmet Locks is a recurring problem. Preliminary studies indicate that by 2010 the problem will be chronic. Lock closures for outages and maintenance are becoming increasingly frequent at the structure. Alternatives to add, or replace at least one chamber with a larger, more efficient chamber; or to replace the entire project are being evaluated. Construction activities and disposal of excavated materials will cause significant environmental impacts. These effects are being assessed. The possibility of significant secondary impacts to the river ecosystem caused by changes in tow configurations and traffic is also being studied. Consequently, the Huntington District Engineer has determined that preparation of a Draft Environmental Impact statement is required.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS should be addressed to: Mr. Tom O'Neil, Planning Division (CEORH-PD-R), Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, West Virginia 25701-2070, Phone: 304-529-5712.

SUPPLEMENTARY INFORMATION:

Project Authorities

Marmet Locks and Dam is located on the Kanawha River, 67.7 above the river's mouth, about 10 miles upstream of Charleston, WV. The project was authorized by the River and Harbor Act of 3 July 1930 and the Public Works Administration in 1933. It was completed in 1934. The present study for navigation improvements at Marmet is the second of three interim reports for the multiphased Kanawha River Navigation Study which the Senate Committee on Environment and Public Works authorized by resolution on 1 October 1979.

Proposed Action

Currently no single alternative has been proposed for implementation.

Reasonable Alternatives

Eight lock improvement alternatives involving construction were considered during the initial planning phase. Four of these alternatives, plus a no action alternative are being evaluated in the detailed plan formulation studies. Each of the remaining alternative includes one or two locks with a range of potential lock chamber sizes. Each alternative is being evaluated to determine the optimum number and size lock. The basic construction alternatives being considered are:

a. A new main lock at the existing site along the right bank.

b. A new lock at mid-river.

c. A new main lock at the left bank.

d. A new lock(s) and dam project downstream near Rand, WV.

Implementation of a no action alternative will lead to the future without project condition. The future without project condition will be the condition to which all alternatives will be compared.

Excavated Materials Disposal

Disposal of material excavated for construction of the new lock(s) would adversely impact environmental resources in the dispoasl area. Several disposal sites are being studied.

Public Involvement

The District has actively sought the views of several federal, state, and local agencies, and groups likely to have ecological, recreational, cultural, social, or industrial concerns. District staff have been consulting and/or meeting regularly with the US Fish and Wildlife Service (US FWS), the West Virginia Department of Natural Resources (WV DNR), the US and WV Departments of Agriculture, the US Environmental Protection Agency (US EPA), the US and WV Departments of Energy, the WV Housing Development Funds, WV Department of Commerce, the Governor's Office of Economic and Community Development, and the Huntington District Waterways Advisory Committee (a navigation industry organization). In February 1987, the various agencies were invited to become cooperating agencies in the study. An initial public meeting and workshops to obtain the views of agencies, groups, and individuals will be conducted. These meetings will be conducted near the Marmet Locks. A second public meeting will be scheduled after the distribution of the draft report and DEIS.

Significant Issues

Several potentially significant issues have been identified. Studies are presently underway to assess and quantify the significance of each issue. Potentially significant issues are: (1) The economic effects of continuing and increasing lockage delays at Marmet Locks to the shippers, the industries in the Kanawha Valley, and the regional and national economy, (2) The probability of chemical spills due to tow accidents increases as lock congestion increases, (3) Local residents are concerned about the effects of displacement and relocation of their homes, jobs, and shopping places, (4) Local businesses and industries are concerned about the effects of displacement and relocation of their facilities, employees and clients, (5) Impacts to cultural, biological and recreational resources at the project construction and disposal sites may be significant, (6) Impacts to the river ecosystem caused by changes in the Marmet Pool tow traffic and tow configurations are also an issue.

Agency Involvement

The cooperating agencies, WV DNR, the Huntington District Waterways Advisory Committee, and other interested agencies will contribute information to the Corps of Engineers for use in preparing the DEIS. The cooperating agencies, VW DNR and the Waterways Advisory Committee will also provide preliminary document review before the district finalizes and circulates the DEIS.

Environmental Requirements

Full compliance with all applicable environmental protection statutes and regulations will be accomplished prior to, or as a part of, the National Environmental Policy Act procedure. The federal, state and local entities responsible for enforcing these laws will be consulted throughout the planning process.

Scoping Meetings

It is anticipated that the initial public scoping meeting and workshops will be conducted in November 1989. A public notice will announce each public scoping meeting.

DEIS Availability

It is anticipated that the DEIS should be made available for public review early in 1992.

Dated: November 9, 1989.
Thomas E. Farewell,
Colonel, Corps of Engineers, District Engineer.
[FR Doc. 89-27520 Filed 11-22-89; 8:45 am]
BILLING CODE 3710-GE-M

Department of the Navy

Intent To Prepare Environmental Impact Statement for Proposed Operation of Electromagnetic Pulse Radiation Environment Simulator for Ships (Empress II) in Gulf of Mexico

Pursuant to procedural requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed operation of the Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II) in both fixed point and underway station-keeping configurations in the Gulf of Mexico.

EMPRESS II, a transportable, barge-mounted, ocean-capable Electromagnetic Pulse (EMP) simulator, is an essential element in identifying U.S. Navy electronic systems that are vulnerable to EMP and in validating those systems for which EMP protection has been provided. EMP is a brief, intensive burst of electromagnetic energy of the kind that would be generated by a nuclear explosion. EMP from a high altitude detonation is able to penetrate, and upset or damage; unprotected critical electronic systems. EMPRESS II simulates only the EMP output of a nuclear detonation; other phenomena assocated with a nuclear detonation (blast energy, heat and ionizing radiation) are not simulated by the test facility.

EMPRESS II had been operating periodically at a single-point moor about 15 miles off the North Carolina coast following the completion of a Final Environmental Impact Statement (FEIS) in April 1988 and a Record of Decision (ROD) issued on 27 May 1988. EMPRESS II has also been operating periodically in an underway station-keeping configuration aout 15 to 20 miles off the North Carolina Coast following completion of an Environmental Assessment (EA) in June 1989 and a Finding of No Significant Impact (FONSI) on 19 June 1989. The underway station-keeping configuration is accomplished by towing the EMPRESS II vessel on a prescribed course within the confines of a designated area while the ship under test maintains distance and aspect by maneuvering.

As a consequence of weather and sea conditions, the Atlantic Ocean operations are restricted to the months of June, July and August. A winter operating site is desired to meet testing requirements and provide for scheduling flexibility. The proposed operating areas for EMPRESS II in the Gulf of Mexico are located 25 to 70 miles from the nearest land masses at the Alabama/Mississippi state boundary.

The Navy held meetings with various Federal, state and local agencies in May 1989 to scope the issue of operating EMPRESS II in the Gulf of Mexico. Public meetings were held in July 1989 by the Navy in Slidell, Louisiana, Biloxi, Mississippi, and Mobile, Alabama to present an overview of the EMPRESS II project.

A letter describing the Navy's intentions to prepare an EA for operation of EMPRESS II in the Gulf of Mexico was sent in July 1989 to about 175 interested and potentially affected citizens, as well as Federal, state and local agencies. Comments regarding the Navy's intentions were solicited. About 25 comments were received.

The Navy held another series of public meetings in September and October 1989 in Slidell, Louisiana, Biloxi, Mississippi, Pascagoula, Mississippi, Mobile, Alabama, and Dauphin Island, Alabama.

Because the proposed action would result in EMPRESS II operations at a new site about 1,500 miles form the existing sites off North Carolina, and in order to more formally include interested citizens and agencies to the maximum extent possible, the Navy has decided that an EIS would be more appropriate than an EA for this proposed action.

Site selection criteria includes Navy control of surface/air operations; minimal impact on commercial shipping/air operations; relatively isolated environment; maneuvering room with at least 40 feet of water; avoidance of defined shipping channels; minimal socio-economic/environmental impact; proximity to Navy ships, Navy and commercial shipbuilding yards, and Navy training areas; acceptable transit time from berth to operating areas; ability to allow an exclusion area, two nautical miles in radius and 6000 feet above the EMPRESS II facility.

Alternative operational areas to be considered in the EIS, as specified by the Latitude and Longitude of their corners and their associated Warning area designation, include:

Alternative	Latitude	Longitude	Warning Area Designation
1	29°17'00" N	88°30'00" W	Eagle Gulf 1
	29°17'00" N	88°01'30" W	
	29°32'00" N	88°30'00" W	
	29°32'00" N	88°01'30" W	
2	29°36'00" N	88°01'00" W	W-155A
	29°48'30" N	87°37'00" W	Lanes 5 & 6
	29°48'30" N	88°01'00" W	
	29°32'30" N	87°37'00" W	
3	29°00'30" N	88°01'00" W	W-155B
	29°13'30" N	87°37'00" W	Lane 7
	29°13'30" N	88°01'00" W	
	28°51'00" N	87°37'00" W	

The EIS will also include consideration of the No Action alternative. The No Action alternative would preclude operations in the Gulf of Mexico and would result in EMPRESS II operations continuing as currently conducted in the operating areas off the coast of North Carolina.

Typical usage of EMPRESS II in the Gulf of Mexico would be about 60 days per year. Testing would typically be conducted during daylight hours for test periods of one, three, or ten days from November through April.

Public input is solicited to help identify any environmental issues meriting in-depth study during preparation of the EIS. Information regarding areas of concern, specific interest or expertise should be sent within 30 days of the date of publication of this notice to Commander, Naval Sea Systems Command (Attn: LT Jay Rose, Code PMS-423), Washington, DC 20362-5101.

Dated: November 20, 1989.
Sandra M. Kay,
Department of the Navy, Alternate Federal Register Liaison Officer.
[FR Doc. 89-27558 Filed 11-22-89; 8:45 am]
BILLING CODE 3810-AE-M

Government-Owned Inventions; Availability of Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (703) 487-4650. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT:
Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,452,123: COMPOSITE ROUND/RAPID FIRE GUN; filed 1 March 1982; patented 5 June 1984.
Patent 4,550,601: METHOD FOR DETERMINING THE MAGNITUDE OF EARTH'S GRAVITY; filed 27 February 1984; patented 5 November 1985.
Patent 4,639,399: NICKEL, OXIDE, CERAMIC INSULATED HIGH TEMPERATURE COATING; filed 26 November 1985; patented 27 January 1987.
Patent 4,698,635: TERRAIN REFLECTIVITY CONTOUR MAPPING; filed 31 March 1986; patented 6 October 1987.
Patent 4,722,825: METHOD OF FABRICATING A METAL/CERAMIC COMPOSITE STRUCTURE; filed 1 July 1987; patented 2 February 1988.
Patent 4,728,682: METAL TERNARY SULFIDES; filed 30 September 1985; patented 1 March 1988.
Patent 4,736,175: POLARIZED ROTARY SOLENOID; filed 9 February 1987; patented 5 April 1988.
Patent 4,736,439: IMAGE PREPROCESSING BY MODIFIED MEDIAN FILTER; filed 24 May 1985; patented 5 April 1988.
Patent 4,737,740: DISCONTINUOUS-TAPER DIRECTIONAL COUPLER; filed 26 May 1983; patented 12 April 1988.
Patent 4,738,412: AIR-STABILIZED GIMBAL PLATFORM; filed 24 August 1987; patented 19 April 1988.
Patent 4,740,628: 2,4,4,5,5,6,6-HEPTAFLUORO-2-TRIFLUOROMETHYL-3-OXAHEPTANE-1,7-DIOL POLYFORMAL AND METHOD OF PREPARATION; filed 5 May 1987; patented 26 April 1988.
Patent 4,741,742: DIAZIDO ALKANES AND DIAZIDO ALKANOLS AS COMBUSTION MODIFIERS FOR LIQUID HYDROCARBON RAMJET FUELS; filed 3 July 1986; patented 3 May 1988.
Patent 4,747,673: HIGH POWER OPTICAL ATENUATOR; filed 1 June 1987; patented 31 May 1988.
Patent 4,775,729: CURABLE POLYETHER COMPOSITIONS; filed 23 May 1986; patented 4 October 1988.
Patent 4,778,871: HIGH TEMPERATURE INSULATOR; filed 25 August 1987; patented 18 October 1988.
Patent 4,799,202: COMPLIMENTARY INTERFEROMETRIC HYDROPHONE; filed 27 September 1982; patented 17 January 1989.
Patent 4,815,858: REFLECTOMETER; filed 9 October 1987; patented 28 March 1989.
Patent 4,816,881: TIW DIFFUSION BARRIER FOR AUZU OHMIC CONTACTS TO P-TYPE INP; filed 27 June 1985; patented 28 March 1989.
Patent 4,818,661: METHOD FOR FABRICATING THIN FILM METALLIC MESHES FOR USE AS FABRY-PEROT INTERFEROMETER ELEMENTS, FILTERS, AND OTHER DEVICES; filed 31 July 1987; patented 4 April 1989.
Patent 4,819,190: VIDEO LINE PROCESSOR; filed 18 June 1986; patented 4 April 1989.
Patent 4,821,302: METHOD AND APPARATUS FOR TRANSIENT UNIT CELL MEASUREMENT; filed 29 February 1988; patented 11 April 1989.
Patent 4,827,414: MONITORING SYSTEM FOR NUCLEAR WARFARE DETECTION AND DAMAGE ASSESSMENT; filed 8 July 1985; patented 2 May 1989.
Patent 4,828,935: A PASSIVATING LAYER FOR III-V SEMICONDUCTOR MATERIALS; filed 30 March 1988; patented 9 May 1989.
Patent 4,829,521: TEST CIRCUIT FOR DETECTING DIGITAL PULSES; filed 11 September 1987; patented 9 May 1989.
Patent 4,843,965: THERMALLY ACTIVATED SAFETY AND ARMING DEVICE; filed 23 February 1988; patented 4 July 1989.
Patent 4,845,508: ELECTRIC WAVE DEVICE AND METHOD FOR EFFICIENT EXCITATION OF A DIELECTRIC ROD; filed 1 May 1986; patented 4 July 1989.
Patent 4,846,209: SCUTTLE VALVE; filed 13 November 1987; patented 11 July 1989.
Patent 4,846,545: FIBER OPTIC CABLE SPLICE; filed 17 February 1988; patented 11 July 1989.
Patent 4,847,628: FREQUENCY INDEPENDENT CONSTANT BEAMWIDTH LENS DIRECTIONAL ANTENNA FOR VERY WIDEBAND AND MULTI-CHANNEL ELECTROMAGNETIC COMMUNICATIONS; filed 7 July 1988; patented 11 July 1989.
Patent 4,847,817: BROADBAND SONAR SIGNAL PROCESSOR AND TARGET RECOGNITION SYSTEM; filed 10 March 1987; patented 11 July 1989.
Patent 4,848,210: ELASTOMERIC IMPULSE ENERGY STORAGE AND TRANSFER SYSTEM; filed 1 July 1987; patented 18 July 1989.
Patent 4,848,233: MEANS FOR PROTECTING ELECTROEXPLOSIVE DEVICES WHICH ARE SUBJECT TO A WIDE VARIETY OF RADIO FREQUENCY; filed 1 October 1985; patented 18 July 1989.
Patent 4,848,262: PRESSURE SENSITIVE RELEASE DEVICE; filed 25 August 1988; patented 18 July 1989.
Patent 4,849,540: PENTAFLUOROTHIO POLYNITROALIPHATIC EXPLOSIVES; filed 24 June 1988; patented 18 July 1989.
Patent 4,849,925: MAXIMUM ENTROPY DECONVOLVER CIRCUIT BASED ON NEURAL NET PRINCIPLES; filed 15 January 1988; patented 18 July 1989.
Patent 4,850,098: METHOD AND APPARATUS TO ENHANCE THE SENSITIVITY OF CYLINDRICAL MAGNETOSTRICTIVE

TRANSDUCERS TO MAGNETIC FIELDS; filed 15 April 1988; patented 25 July 1989.

Patent 4,851,661: PROGRAMMABLE NEAR-INFRARED RANGING SYSTEM; filed 26 February 1988; patented 25 July 1989.

Patent 4,851,664: NARROW BAND AND WIDE ANGLE HEMISPHERICAL INTERFERENCE OPTICAL FILTER; filed 27 June 1988; patented 25 July 1989.

Patent 4,851,848: FREQUENCY AGILE SYNTHETIC APERTURE RADAR; filed 1 February 1988; patented 25 July 1989.

Patent 4,853,294: CARBON FIBER REINFORCED METAL MATRIX COMPOSITES; filed 28 June 1988; patented 1 August 1989.

Patent 4,853,339: METHOD OF SENSITIZING PB–SALT EPITAXIAL FILMS FOR SCHOTTKY DIODES; filed 27 July 1988; patented 1 August 1989.

Patent 4,853,650: SYMMETRIC WAVEGUIDE JUNCTION COMBINER; filed 4 October 1988; patented 1 August 1989.

Patent 4,853,771: ROBOTIC VISION SYSTEM; filed 8 April 1988; patented 1 August 1989.

Patent 4,853,900: STABILIZED SUSPENSION FOR IMMERSIBLE APPARATUS; filed 19 October 1987; patented 1 August 1989.

Patent 4,854,174: COLINEAR FLUCTUATING WALL SHEAR STRESS AND FLUCTUATING PRESSURE TRANSDUCER; filed 25 April 1988; patented 8 August 1989.

Patent 4,856,095: OPFET DEMODULATOR–DOWNCONVERTER FOR DETECTING MICROWAVE MODULATED OPTICAL SIGNALS; filed 28 May 1987; patented 8 August 1989.

Patent 4,857,894: LIQUID LEVEL MEASUREMENT SYSTEM FOR ANALOG AND DIGITAL READOUT; filed 27 June 1988; patented 15 August 1989.

Patent 4,857,912: INTELLIGENT SECURITY ASSESSMENT SYSTEM; filed 27 July 1988; patented 15 August 1989.

Patent 4,859,059: THERMAL MODULATION OF LIGHT BEAMS; filed 13 January 1988; patented 22 August 1989.

Patent 4,860,013: AUTOMATIC THRESHOLDING MULTICHANNEL DIGITAL RADAR EARLY WARNING SYSTEM; filed 4 April 1988; patented 22 August 1989.

Patent 4,861,298: ACTUATION SYSTEM OF AN ENCAPSULATING LIFE RAFT; filed 24 June 1988; patented 29 August 1989.

Patent 4,861,859: CONDUCTIVE POLYMERS OF TRANSITION–METAL COMPLEXES COORDINATED BY DIAMINOBEZENEDITHIOL; filed 28 March 1988; patented 29 August 1989.

Patent 4,862,115: OPTICAL BEAMFORMERS; filed 12 February 1988; patented 29 August 1989.

Patent 4,862,116: ACTIVE PHASE AND AMPLITUDE MODULATOR; filed 17 October 1988; patented 29 August 1989.

Patent 4,862,406: ADAPTIVE ASSOCIATIVE–PROCESSING OPTICAL COMPUTING ARCHITECTURES; filed 29 January 1986; patented 29 August 1989.

Patent 4,862,456: HIGH SPEED MODEM; filed 4 May 1988; patented 29 August 1989.

Patent Application 266,955: HELMET–MOUNTED HEAD RESTRAINT; filed 3 November 1988.

Patent Application 275,873: LARGE APERTURE SPARSE ARRAY ANTENNA SYSTEM OF / MODERATE BANDWIDTH FOR MULTIPLE EMITTER LOCATION; filed 25 November 1988.

Patent Application 304,442: GYROKLYSTRON DEVICE HAVING MULTI–SLOT BUNCHING CAVITIES; filed 31 January 1989.

Patent Application 342,919: INTERFEROMETRIC SURFACE DISTORTION DETECTOR; filed 20 April 1989.

Patent Application 343,762: COATING AND COMPOSITION CONTAINING LIPID MICROSTRUCTURE TOXIN; filed 14 April 1989.

Patent Application 347,132: MONOLITHIC LASER DIODE STRUCTURE FOR MICROWAVE GENERATION; filed 4 May 1989.

Patent Application 364,416: TEMPERATURE STABLE CERAMIC DIELECTRIC COMPOSITIONS; filed 12 June 1989.

Patent Application 370,521: A SCHEINER–PRINCIPLE VERNIER OPTOMETER; filed 23 June 1989.

Patent Application 371,778: METHOD OF MAKING SELF–ALIGNED GAAS/ALGAAS FET'S; filed 27 June 1989.

Patent Application 372,961: MULTIBAND PHOTOCONDUCTIVE DETECTOR BASED ON LAYERED SEMICONDUCTOR QUANTUM WELLS; filed 29 June 1989.

Patent Application 372,963: FOCAL PLANE ANTENNA ARRAY FOR MILLIMETER WAVES; filed 29 June 1989.

Patent Application 373,979: NOISE SUPPRESSING HYDROPHONE; filed 30 June 1989.

Patent Application 373,980: IMPROVED METHOD FOR STABILIZATION OF PAN–BASED CARBON FIBERS; filed 30 June 1989.

Patent Application 374,035: FABRICATION OF NBN BASED ELECTRONIC DEVICES WITH SILICON BARRIERS; filed 30 June 1989.

Patent Application 374,119: HIGH POWER TRANSDUCERS; filed 30 June 1989.

Patent Application 376,278: METHOD FOR DETERMINING ASTRONOMIC AZIMUTH; filed 5 July 1989.

Patent Application 377,997: METAL FILM COATINGS ON AMORPHOUS METALLIC ALLOYS; filed 11 July 1989.

Patent Application 387,048: VOLATILE DIVALENT METAL ALKOXIDES; filed 31 July 1989.

Patent Application 389,218: SILVER COMPOSITE CATHODES FOR ALKALINE SECONDARY BATTERIES; filed 2 August 1989.

Patent Application 389,219: ELECTROCHEMICAL PREPARATION OF SILVER OXIDE ELECTRODES HAVING HIGH THERMAL STABILITY; filed 2 August 1989.

Patent Application 389,220: SILVER COATED SUPERCONDUCTING CERAMIC POWDER; filed 2 August 1989.

Patent Application 394,457: LASER DETECTION AND DISCRIMINATION SYSTEM; filed 16 August 1989.

Patent Application 394,547: SILVER–NICKEL COMPOSITE CATHODES FOR ALKALINE SECONDARY BATTERIES; filed 16 August 1989.

Patent Application 400,197: FLUOROALIPHATIC POLYAMIDES SYNTHESIZED VIA PEPTIDE BLOCKING GROUP AND COUPLING TECHNIQUES; filed 28 August 1989.

Patent Application 401,197: A METHOD OF SOLDERING ALUMINUM; filed 29 August 1989.

Patent Application 408,337: LASER COMMUNICATION SYSTEM WITH WIDE BAND MAGNETOSTRICTIVE MODULATION; filed 15 September 1989.

Patent Application 408,970: RECONFIGURABLE N–DIMENSIONAL COMPUTER MEMORY FOR SERIAL AND PARALLEL PROCESSORS; filed 18 September 1989.

Dated: November 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27557 Filed 11–22–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

AGENCY: Advisory Council on Education Statistics (ACES), Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: December 14, 9:00 a.m.–4:45 p.m. and December 15, 1989, 9 a.m.–4:45 p.m.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Carrol B. Kindel, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 308E, Washington, DC 20208–5574, telephone: (202) 357–6329.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Data Quality—A Three-Part Discussion: NCES standards revision; NCES management indicators; and, Trade-offs between data quality and timeliness
- Review of Progress: Sharing Data and Confidentiality Issues
- Education Indicators Panel: Work-in-Progress

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 308E, Washington, DC 20208–5574.

Dated: November 15, 1989.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–27560 Filed 11–22–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89–242–001]

Tennessee Gas Pipeline Co.; Filing

November 16, 1989.

Take notice on November 9, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 26, 1989:

Substitute Second Revised Sheet No. 106
Second Substitute Second Revised Sheet No. 111
Second Substitute Original Sheet No. 111A
Second Substitute Third Revised Sheet No. 114
Third Substitute Second Revised Sheet No. 305
Substitute Second Revised Sheet No. 208
Substitute First Revised Sheet No. 208A
Substitute First Revised Sheet No. 208B
Substitute Second Revised Sheet No. 247
Substitute Second Revised Sheet No. 249
Substitute Second Revised Sheet No. 252
Substitute Second Revised Sheet No. 339
Substitute Second Revised Sheet No. 347

Tennessee states that this filing is made to comply with the Commission's order on October 25, 1989, which directed Tennessee (1) to revise the tariff sheets filed in this proceeding to make them effective as of October 26, 1989; (2) to remove that portion of section 5.1 of Rate Schedule FT–A that provides that the reservation and commodity rate is incapable of reduction, but subject to increase; (3) to clarify that a shipper will not be penalized twice for the same imbalance infraction; and (4) to remove sections 7(g) and 7(h) of the General Terms and Conditions.

Tennessee also requested that the Commission waive the imposition of the scheduling penalties in sections 7(e) and 7(f) of its General Terms and Conditions filed in this proceeding until December 1, 1989. Tennessee states that such a limited waiver is required to enable it to notify its customers of the new penalties.

Tennessee has also requested an extension of time until December 22, 1989, to file tariff sheet(s) which will set forth the minimum throughput required for the operation of the compressor stations located on its system based upon design compressor ratios and minimum design suction pressures.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before November 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27561 Filed 11–22–89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket No. 88–71–NG]

Intalco Aluminum Corp.; Order Amending Conditional Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending a conditional authorization to import natural gas by allowing use of existing facilities.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that is has issued an order amending a conditional authorization granting Intalco Aluminum Corporation (Intalco) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No 88–71–NG authorizes Intalco to import up to 2 Bcf per year of Canadian natural gas using existing facilities over a two-year period for use as fuel in its aluminum smelting plant located near Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of

BEST COPY AVAILABLE

Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 14, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27608 Filed 11-22-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of October 20 Through October 27, 1989

During the Week of October 20 through October 27, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 20 through October 27, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 24, 1989	Georgia-Pacific Corporation, Atlanta, GA	RR272-39	Modification/rescission in the crude oil refund proceeding. If granted: The August 24, 1989 Decision and Order (Case No. RF272-153) issued to Georgia-Pacific Corporation would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
Oct. 26, 1989	Ben Glaser's Service Station, Inc., Buffalo, NY	RR272-40	Request for modification/rescission in the crude oil refund proceeding. If granted: The Decision and Order issued to Ben Glaser's Service Station would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.
Oct. 26, 1989	William Albert Hewgley, Kingston, TN	LFA-0004	Appeal of an information request denial. If granted: The October 17, 1989 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and William A. Hewgley would receive access to certain DOE information.
Oct. 27, 1989	Petraco-Valley Oil Company, Washington, DC	LEF-0002	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with February 15, 1984 consent order which the DOE entered into with Petraco-Valley Company.

REFUND APPLICATIONS RECEIVED

[Week of October 20, 1989 to October 27, 1989]

Date	Name of firm	Date received
10/20/89	Independent Oil & Fire Company	RF250-2750
10/20/89 thru 10/27/89	Crude oil refund, applications received	RF272-75850 thru RF272-76125
10/20/89 thru 10/27/89	Atlantic Richfield refund, applications received	RF304-10538 thru RF304-10561
10/20/89 thru 10/27/89	Shell oil refund, applications received	RF315-7677 thru RF315-7778
10/23/89	Douglas Dowson	RF300-10881
10/23/89	Glenn Dowson	RF300-10882
10/25/89	Robert L. & Irene Anderson	RF310-347
10/25/89	J.M. & R.D. Lapinski	RF300-10883
10/25/89	Hammond Spur	RF309-1375
10/26/89	Winding Ridge Gulf	RF300-10884

[FR Doc. 89-27609 Filed 11-22-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FM 3682-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Quality Control Samples Form (EPA ICR #0941.03). This is a renewal.

Abstract: The Quality Control Samples Forms are completed and used by the laboratories conducting water and waste analysis to offer independent checks on their quality control activities. The information required is name, address, and quality control samples or calibration standard types. The information is used as the basis for laboratory quality assurance.

Burden Statement: The estimated average public reporting burden for this collection of information is about 10 minutes per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and reviewing the form.

Respondents: Laboratories conducting water or waste analyses.

Estimated No. of Respondents: 5000.

Estimated total annual Burden of Respondents: 800 hours.

Frequency of collection: on occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: November 14, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-27606 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3683-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed November 13, 1989 Through November 17, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890322, Draft, COE, WV, Petersburg Local Flood Protection Plan, Implementation, Grant County, WV, Due: January 8, 1990, Contact: J. William Haines (301) 962-8154.

EIS No. 890323, Draft, FRC, MA, CT, NH, NY, RI, and TN, Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI, TN, Due: January 19, 1990, Contact: Mark W. Jensen (202) 357-9021.

EIS No. 890324, Draft, FRC, MA, NH, VT, Champlain Pipeline and Algonquin Gas Transmission Pipeline, Construction and Operation, Section 10 and 404 Permits, MA, VT, and NH, Due: Open Indefinitely, Contact: Lonnie Lister (202) 357-8891.

If you have comments on the Algonquin Facilities which is also a part of the Iroquois/Tennessee Pipeline EIS, please be sure to submit them to Mr. Mark Jensen, Environmental Policy/Project Branch, Office of Pipeline/Producer Regs, Rm 7312, 825 North Capitol St, NE, Wash, DC 20426, by January 19, 1990.

EIS No. 890325, Draft, FRC, NJ, Mount Hope Pumped Storage Hydroelectric Project, Construction, Operation and Maintenance, License, Section 404 Permit, Morris County, NJ, Due: January 8, 1990, Contact: Mr. Paul Carrier (202) 376-9213.

EIS No. 890326, Final, BLM, AK, Utility Corridor Planning Area Resource Management Plan and Central Arctic Management, WSA Recommendations Implementation, AK, Due: December 26, 1989, Contact: Tom Dean (907) 474-2302.

EIS No. 890327, Draft, UAF, CA, Mather Air Force Base (AFB) Closure, 323rd Flying Training Wing Relocation to Beale AFB, Implementation, Sacramento, County, CA, Due: January 8, 1990, Contact: Catherine Hitchins (512) 652-3240.

EIS No. 890328, DSuppl, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Updated Information, Special Use Permit, White Mountain National Forest, Grafton County, NH, Due: January 8, 1990, Contact: Dain Maddox (414) 291-3305.

EIS No. 890329, FSuppl, AFS, AK, 1981-86 and 1986-90 Alaska Pulp Long-Term Timber Sale Operating Plan, Phase I and II, Implementation Tongass National Forest, AK, Due: December 26, 1989, Contact: James W. Price (907) 586-8871.

EIS No. 890330, Draft, UAF, CA, Norton Air Force Base (AFB) Closure, 63rd Military Airlift Wing, Relocation to March AFB, Implementation, San Bernardino County, CA, Due: January 8, 1990, Contact: Patricia Calliott (681) 256-5764.

Dated: November 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27614 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3683-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 6, 1989 through November 10, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-APH-A82120-00, Rating EO2, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA.

Summary

EPA has environmental objections to the implementation of the program because of significant impacts to water resources and non-target species by pesticide use.

Final EISs

ERP No. F-FHW-D40239-MD, US 1 Improvements, Silver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD.

Summary

EPA believes that the environmental concerns have been adequately addressed. EPA has offered to participate in the development of the wetland mitigation plan.

Dated: November 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-27615 Filed 11-22-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3683-4]

Negotiated Rulemaking Advisory Committee for the Volatile Organic Chemical Equipment Leaks

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of open meetings of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks.

The second meeting will be held on December 6, 1989 from 10:00 a.m. to 5:00 p.m., and on December 7, 1989 from 9:00 a.m. to 4:00 p.m., at the Embassy Suites Hotel, 2000 N St., NW., Washington, DC. The purpose of the meeting is to continue to address the substantive issues.

The third meeting is scheduled for January 17 and 18, 1990, at the Pickett Inn, 2515 Meridan Street, Raleigh Durham, NC.

Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541–5579. Persons needing further information on committee arrangements or procedures should contact Deborah Dalton, Regulatory Negotiation Project, U.S. EPA, (202) 382–5495 or the Committee's facilitator, Philip Harter, (202) 887–1033.

Dated: November 20, 1989.

Paul Lapsley,

Acting Director, Office of Standards and Regulations, OPPE.

[FR Doc. 89–27665 Filed 11–22–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Port of New Orleans Terminal Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commisson regarding a pending agreement.

Agreement Nos.: 224–200060–013

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans
Coastal Cargo Company

Synopsis: The Agreement amends the basic lease agreement to provide for the re-letting of ten sections of the leased premises.

By Order of the Federal Maritime Commission.

Dated: November 17, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27566 Filed 11–22–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Alameda Bancorp., Inc.; Formation of; Acquisition by; and Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of the hearings, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 13, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alameda Bancorporation, Inc.*, Alameda, California; to acquire 100 percent of the voting shares of Westside Bank, Tracy, California.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27553 Filed 11–22–89; 8:45 am]

BILLING CODE 6210-01-M

Bankamerica Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(v)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.12(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 15, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BankAmerica Corporation*, San Francisco, California; Bankers Trust New York Corporation, New York, New York; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; Continental Bank Corporation, Chicago, Illinois; First Chicago Corporation, Chicago, Illinois; The Bank of New York Company, Inc., New York, New York; J.P. Morgan & Co., Incorporated, New York, New York; Manufacturers Hanover Corporation, New York, New York; The HongKong and Shanghai Banking Corporation Limited, Hong Kong; HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; Marine Midland Banks, Incorporated, Buffalo, New York; Midland Bank PLC, London, England; and Westpac Banking Corporation, Sydney, Australia; to acquire Market Vision Corporation, New York, New York, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if (i) the data to be processed or furnished are financial, banking or economic, and the services are provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith is offered only in connection with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *PSB Financial Corporation*, Many, Louisiana; to retain an H & R Block franchise in Many, Lousiana, and thereby continue to engage in providing individuals, businesses, and nonprofit organizations with tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in West Louisiana and East Texas.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27554 Filed 11–22–89; 8:45 am]

BILLING CODE 6210-01-M

South Carolina National Corp.; Application to Engage de novo in Permissible Nonbanking Activites

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* in community development activities by investing in one or more community develoment projects which will provide safe and affordable rental housing to low- to moderate-income persons in South Carolina pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27555 Filed 11–22–89; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., Providence, RI; Proposal To Conduct Private Placements as Agent of All Types of Securities and Engage in Investment Advisory and Full Service Brokerage Activities; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 89–26543) published at page 47269 of the issue for November 13, 1989.

On page 47269, in the second column, the first paragraph under the heading is amended to read as follows:

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and its wholly-owned subsidiary, Fleet/Norstar New York, Inc., Albany, New York (together "Fleet/Norstar"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through their wholly-owned subsidiary, Adams McEntee, Fleet Norstar Securities, Inc., New York, New York ("Company"), in the placement, as agent for issuers, of all types of securities (not including securities that are registered under the Securities Act of 1933), buying and selling all types of securities on the order of investors as a "riskless principal", and providing investment advisory services.

Comments on this application must be received by November 30, 1989.

Board of Governors of the Federal Reserve System, November 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27556 Filed 11–22–89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 842–3103]

Jeep Eagle Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement accepted subject to final Commission approval, would require, among other things, the Highland Park, Mi. successor to American Motors Corp. to implement a redress program to benefit purchasers of new 1983, 1984 and 1985 model year Renault Alliance automobiles and new 1984 and 1985 Renault Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid and engine oil leaks and related problems.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Lydia Parnes, FTC/H–238, Washington, DC 20580. (202) 326–3126.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Jeep Eagle Corporation, a Successor Corporation to American Motors Corporation; Agreement to Cease and Desist

The Federal Trade Commisson having initiated an investigation of certain acts and practices of American Motors Corporation, which has been succeeded by Jeep Eagle Corporation (hereinafter referred to as "proposed respondent" or "Jeep Eagle"), and it now appears that proposed repondent is willing to enter into an agreement to cease and desist containing the following Order,

It is hereby agreed by and between proposed respondent, by its duly authorized officer, and attorneys, and counsel for the Federal Trade Commission that:

1. Jeep Eagle Corporation is a Maryland corporation, with its principal office and place of business located at 12000 Chrysler Drive, Highland Park, Michigan 48288–1919.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. In accordance with § 2.34 of the Commission's Rules, if this agreement is accepted by the Commission, the agreement, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with attached draft complaint and its decision containing the following Order in disposition of the proceeding, and (b) make relevant information public in respect thereto, except that proposed respondent does not waive any claim of confidentiality for any information submitted in Commission File Number 842 3103. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. By its final acceptance of this agreement, the Commission waives its right to commence a civil action against proposed respondent, its successors and assigns, under sections 13 and 19 of the Federal Trade Commission Act, as amended, 15 U.S.C. 53 and 57b, and section 110 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2310, with respect to any acts or practices under investigation in Commission File Number 842 3103 that occurred prior to the date of final acceptance of this agreement.

8. Proposed respondent has read the attached draft complaint and the following Order and understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

1. *"Original Owner"*—"Original Owner" shall mean any consumer who purchased a new 1983, 1984, or 1985 model year Alliance automobile or a new 1984 or 1985 model year Encore automobile for his or her personal, family or household use.

2. *"Eligible Claimant"*—"Eligible claimant" shall mean any original owner who files a properly completed claim form with proposed respondent on or before the return dates established in Parts I.C., I.D., and I.E. of this Order with respect to a vehicle that underwent more than three repair visits.

3. *"Repair Visit"*—"Repair visit" shall mean a single trip to an authorized dealership for a warranty repair. Each individual repair visit shall be identified by referring to the computerized list prepared by the proposed respondent pursuant to subpart I.A. of this part. Each entry in a Warranty Claim History contained in the list that references a Technical Information Code identifying an automatic transmission fluid leak or engine oil leak shall be compared to the other entries in the same Warranty Claim History referencing any such Technical Information Codes. An individual entry shall qualify as a single visit if the Julian date, dealer code, zone code, repair order date, or mileage of the record are different from the other records in the vehicle's warranty claim file, except that if the dealer code, zone code, repair order date, and mileage are the same but the Julian date is greater than 30 days from the otherwise identical claim record, then the claim is assumed to be a resubmission of a previously denied claim and not counted as a separate repair visit.

I. It is ordered that proposed respondent, its successors and assigns, shall cease and desist from failing to take the following actions:

(A) Conduct a computer search of its warranty claims files to identify and prepare a list of the vehicles whose original owners are eligible to file a claim, using the following criteria:

(1) 1983, 1984, and 1985 model year Alliance and Encore vehicles;

(2) Warranty claims paid through February 29, 1988;

(3) Repairs within the first 24 months or 24,000 miles of warranty coverage; and

(4) More than three repair visits for an automatic transmission fluid or engine oil leak or any combination of the two as reflected by the indication of the Technical Information Codes that identify automatic transmission fluid leaks or engine oil leaks.

The list of Technical Information Codes, dated February 9, 1989, placed on the public record in File No. 842 3103, shall constitute all of the Technical Information Codes that identify automatic transmission fluid leaks or engine leaks, as required by Definition 3 and part I.A.4. The list of the vehicles whose original owners are eligible to file a claim, dated February 9, 1989, prepared by the proposed respondent and placed on the public record in File No. 842 3103 shall constitute the list required by this part.

(B) Within forty-five (45) days of the date of service on proposed respondent of this Order:

(1) Using the list prepared pursuant to subpart A, compile from its own records a mailing list that includes the name and last-known address of each original owner of a new 1983, 1984, or 1985 model year Alliance or a new 1984 or 1985 model year Encore that underwent more than three repair visits.

(2) Calculate a payment for each eligible original owner identified pursuant to subparts A and B(1) of this part in the amount of $40.00 for each repair visit in excess of three.

(C) Within sixty (60) days of the date of service on proposed respondent of this Order, send by first class mail to the last known address of each original owner identified by proposed respondent from its records pursuant to subparts A and B(1) of this part, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment A with the return date and amount of payment filled in; (ii) a copy of a claim form attached to this Order as Attachment B with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Forwarding Postage Guaranteed by Sender," and "Payment Offer." For purposes of this subpart, the return date shall be the date one hundred fifty (150) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark of the envelope in which the claimant returns the claim form.

(D) For a period of two hundred ten (210) days following the date of service on proposed respondent of this Order, provide to original owners not identified by proposed respondent pursuant to subparts A and B(1) of this part who present to proposed respondent records of repair visits evidencing their eligibility for payment under the criteria contained in subpart A of this part, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment C with the return date and amount of payment filled in; (ii) a copy of a claim form attached to this Order as Attachment D with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Return Postage Guaranteed by Sender," and "Payment Offer." For purposes of this Subpart, the return date shall be the date two hundred seventy (270) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark on the envelope in which the claimant returns the claim form.

(E) For a period of two hundred ten (210) days following the date of service on proposed respondent of this Order, provide to each original owner identified by proposed respondent from its own records pursuant to subparts A and B(1) of this part, who has not returned the claim form pursuant to subpart C of this part and who writes proposed respondent concerning this Order, a notice package consisting of: (i) A copy of the letter attached to this Order as Attachment A with the return date and amount of payment filled in; (ii) a copy of a claim form attached to the Order as Attachment B with the amount of payment filled in; (iii) a self-addressed, first class, postage-paid return envelope; and (iv) an envelope containing the materials described in subsections (i)–(iii) marked "Address Correction Requested," "Forwarding Postage Guaranteed by Sender," and "Payment Offer." For purposes of this subpart, the return date shall be the date two hundred seventy (270) days after the date of service of this Order. Compliance with the return date shall be determined by the postmark on the envelope in which the claimant returns the claim form.

(F) Within three hundred (300) days of the date of service on proposed respondent of this Order, send to each eligible claimant by first-class mail a payment in the amount determined as provided in subpart B.2 of this part.

(G) Proposed respondent's obligations under this part shall terminate upon expenditure of the sum of money equal to the total amount needed to award payments calculated pursuant to subparts A and B of this part, or within one (1) year from the date of service on proposed respondent of this Order, whichever occurs earlier.

II. It is further ordered that proposed respondent, its successors and assigns, shall, on or before one (1) year after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with this Order.

III. It is further ordered that proposed respondent, its successors and assigns, shall maintain records demonstrating the manner and form of proposed respondent's compliance with part I of this Order. These records shall be retained and made available to the Commission for inspection and copying upon reasonable notice until such time as the Order terminates pursuant to the part IV of this Order.

IV. It is further ordered that this Order shall terminate six (6) years after the date of service of this Order on proposed respondent.

Attachment A

[corporate letterhead]

[date]

Dear _____:

Our records show that you are the original owner of an 1983–1985 Alliance or 1984–1985 Encore. Pursuant to an agreement with the Federal Trade Commission, Jeep Eagle as the successor corporation to American Motors Corporation is offering payments to certain original owners of particular vehicles that underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks. Our records indicate that you are eligible for a payment of $_____ under this program provided that you follow the steps discussed below. Please read this letter and follow the steps listed below in order to apply for payment.

How To Apply

In order to apply for a payment, you must do the following:

1. Fill out the enclosed claim form completely.

2. Return the completed claim form to us in the enclosed envelope. You must mail the claim form back to us by [return date] to make sure you are considered for this program.

3. The claim form contains a release, which you must sign in order to receive a payment. By signing the release, you will give up your right to sue Jeep Eagle for any warranty claims you may have relating to the engine, transmission, or transaxle of your vehicle.

4. Please write us at the address below if you change your address in the next several months so we can contact you again.

If you have any questions about this program, please contact:
[Jeep Eagle] [address] [telephone]
or
Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, [telephone].

Remember: You must mail the completed claim form to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,
Jeep Eagle Corporation
Enclosure

Attachment B—Claim Form

Name:_____
Address: _____
_____
_____

Telephone: (_____) _____ (home)
(_____) _____ (business)

1. Model Year: _____
2. Model Description: Alliance Encore
(Circle one)

I bought the vehicle described above as new for my personal use or the use of my family or household. During the period that I owned this vehicle, it underwent more than three visits to repair certain automatic trasmission fluid and engine oil leaks.

I hereby accept Jeep Eagle's payment, as contained in its letter of _____, in the amount of $_____.

In consideration of this payment, I hereby release and discharge Jeep Eagle, its successors and assigns, and its directors, officers, agents, representatives, and employees, and its divisions and other subsidiaries, from any and all warranty claims relating to the engine, transmission, or transaxle of the vehicle described above.

_____
Date

_____
Owner's Signature

Attachment C

[corporate letterhead]

[date]

Dear_____:

Thank you for writing us regarding your 1983–1985 Alliance or 1984–1985 Encore. Pursuant to an agreement with the Federal Trade Commission, Jeep Eagle as successor corporation to American Motors Corporation is offering payments to certain original owners of particular vehicles that underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks. The records you submitted indicate that you may be eligible for a payment of $_____ under this program. Please read this letter and follow the steps listed below in order to apply for payment.

How To Apply

In order to apply for a payment, you must do the following:

1. Fill out the enclosed claim form completely. This will be used to determine your eligibility for a payment.

2. Return the completed claim form to us in the enclosed envelope. You must mail the claim form back to us by [return date] to make sure you are considered for this program.

3. Once we receive your completed claim form, we will determine if you are eligible for a payment. If you are eligible we will send you a check. Please write us at the address below if you change your address in the next several months so we can contact you again.

4. The claim form contains a release, which you must sign in order to receive a payment. By signing the release, you will give up your right to sue Jeep Eagle for any warranty claims you may have relating to the engine, transmission, or transaxle of your vehicle.

If you have any questions about this program, please contact:
[Jeep Eagle] [address] [telephone]
or
Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, [telephone].

Remember: You must mail the completed claim form to us by [return date]. Also, please remember to let us know if you change your address.

Sincerely yours,
Jeep Eagle Corporation
Enclosure

Attachment D—Claim Form

Name:_____
Address: _____
_____
_____

Telephone: (_____) _____ (home)
(_____) _____ (business)

1. Date of Purchase: ____(mo); ____(day); ____(year)
2. Model Year: _____
3. Model Description: Alliance Encore
(Circle one)
4. Vehicle Identification Number:

_____
(This seventeen-digit number appears on an embossed plate on the upper left-hand side of the instrument panel.)

I bought the vehicle described above as new for my personal use or the use of my family or household. During the period that I owned this vehicle, it underwent more than three visits to repair certain automatic transmission fluid and engine oil leaks.

I hereby accept Jeep Eagle's payment, as contained in its letter of _____, in the amount of $_____.

In consideration of this payment, I hereby release and discharge Jeep Eagle, its successors and assigns, and its directors, officers, agents, representatives, and employees, and its divisions and other subsidiaries, from any and all warranty claims relating to the engine, transmission, or transaxle of the vehicle described above.

_____
Date

_____
Owner's Signature

Jeep Eagle Corporation, File No. 842 3103 (JO6)

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jeep Eagle Corporation ("Jeep Eagle"), the successor corporation to American Motors Corporation ("AMC") and American Motors Sales Corporation ("AMSC"), with its principal place of business at 12000 Chrysler Drive, Highland Park, Michigan 48288–1919.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that AMC's authorized Renault dealers often failed to repair successfully automatic transmission fluid and engine oil leaks and problems related to such leaks in 1983, 1984, and 1985 model year Renault Alliance automobiles and 1984 to 1985 model year Renault Encore automobiles, as required by the written warranties issued by AMSC. The complaint alleges AMC's failure to honor warranty obligations was a breach of contract which caused substantial injury to consumers. The complaint alleges that AMC's failure to honor its warranty obligations constituted and unfair trade practice in violation of section 5 of the FTC Act.

The proposed consent agreement requires Jeep Eagle, as successor corporation to AMC and AMSC, to implement a redress program to benefit approximately 2,000 purchasers of new 1983, 1984, and 1985 model year Renault Alliance automobiles and new 1984 to 1985 Renault Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid and engine oil leaks and related problems.

The redress program provides for:

1. Cash redress to be calculated as follows: $40.00 per documented repair visit beginning with the fourth visit, to each purchaser of a new 1983, 1984, or 1985 model year Alliance automobile or a new 1984 or 1985 model year Encore automobile who experienced four or more dealer repair visits for certain specified automatic transmission fluid leak problems, engine oil leak problems and related problems during the term of their full and limited warranties (24 months/24,000 miles).

2. Notice of the redress program mailed to the last known address of the approximately 2,000 purchasers shown to be eligible for redress by AMC's warranty records. The checks will be mailed to eligible purchasers as soon as possible, but no later than 10 months from the date that the order becomes final.

3. Jeep Eagle also agrees to pay purchasers who do not receive notice of the redress program but who submit documented evidence to Jeep Eagle of four or more automatic transmission fluid, engine oil leak repairs and related problems which fall within the specified categories during the term of their full and limited warranties.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga

In the Matter of AMC-Renault

Having failed to find reason to believe that AMC-Renault or Jeep-Eagle Corporation, its successor, has violated the law as alleged in this complaint, I dissent from the Commission's decision to accept this consent agreement for public comment. Although I have substantial sympathy for the plight of consumers affected by the conduct alleged, the Commission can impose a remedy only when it has reason to believe that a violation of law has occurred. Here that burden has not been met.

Concurring Statement of Commissioner Andrew J. Strenio, Jr. AMC-Renault, File No. 842 3103

The Commission has accepted for public comment the consent agreement negotiated with Jeep Eagle Corporation, the successor to American Motors Corporation ("AMC"). This agreement is in response to allegations that AMC breached its full and limited warranties—and thereby committed an unfair practice in violation of section 5 of the FTC Act—by failing within a reasonable time to repair successfully fluid and oil leaks in the automatic transmissions and engines of many 1983 to 1985 Renault Encore and Alliance vehicles.

In her dissenting statement, Commissioner Machol commends staff's diligence in attempting to resolve this matter but criticizes the Commission for accepting the settlement. I join in her words of thanks to current staff for the arduous work completed, but respectfully conclude instead that the Commission is justified in provisionally accepting the proposed consent and placing it on the public record for comment. In essence, although I agree with most of the cautionary principles espoused by Commissioner Machol as a general matter, to me this particular settlement on these particular facts appears compatible with those principles.

To be sure, the proposed consent may be imperfect in some regards. If we were writing upon a cleaner slate rather than this one which has been smudged by numerous tracings and erasures over the five-plus years since the investigation began, I might be tempted to send the consent back for renegotiation.[1] As it is, though, in this context the responsible choice is between provisionally accepting the consent intact or closing the investigation. Since the Commission has reason to believe sufficient to issue the related complaint, and none of the "policy" arguments justifies rejection in toto of the relief obtained in the agreement for the injured consumers, I favor provisionally accepting the consent intact.

Regarding the "reason to believe" aspect, I find on balance that staff at this point has presented adquate evidence to meet the three-pronged test for issuance of an unfairness complaint based upon Section 5.[2] The net effect of the evidence provides reason to believe that the consumer injury flowing from the conduct in question was: (1) substantial; (2) not outweighed by any offsetting consumer or competitive benefits that the practice produced; and (3) not something consumers reasonably could have avoided. More evidence on each of these points might well have been adduced had this matter gone into litigation, yet the existing evidence suffices in conjunction with the signed consent before us.

Finally, allow me to elaborate upon two points. Point one involves the substantial nature of the consumer injury here. No doubt, this case is far from the biggest the FTC has ever handled and the numbers are lower than might have been expected earlier. Still, with approximately 2,000 consumers eligible for some $120,000 in redress payments, the absolute numbers are respectable and exceed the figures in a great many cases the Commission brings.

It is true that the class of purchasers who suffered through four or more repair attempts during the time the warranties were in effect ("redress class") is a small subset of all purchasers of 1983 to 1985 Renault Encore or Alliance vehicles with automatic transmissions ("total purchasers"). But I do not consider this first comparison determinative. A no less applicable comparison would look to the ratio of the redress class to the set of all purchasers who invoked their warranty protection for serious leakage difficulties with their automatic transmissions and engines. On the evidence before us, this ratio indicates substantial injury to consumers.[3]

We should not place excessive weight in this setting upon either type of comparison made in the paragraph above. After all, whether the incidence of four-plus repair odysseys was relatively greater or lesser, these repeatedly unsuccessful efforts may well have constituted a breach of AMC's warranty in substantial numbers (i.e. some 2,000 times) on a system critical to a car's operation. AMC made a promise to purchasers that it would repair or replace covered components "within a reasonable time." This is not a promise that was inferred from AMC's conduct or implied by AMC's language; it is a promise that AMC expressly made in so many words in its warranties. AMC's failure—time and time again—to honor this express promise is the crux of the case. I am satisfied that staff's suggestion, and Jeep Eagle's acceptance, of four repair visits as the threshold for relief is a defensible reading of "a reasonable time" on the evidence presented here.

Point two is that accepting this consent is sensible from a policy perspective. To begin with, the settlement terms represent a unique negotiated solution to a complicated and specific set of circumstances. These terms do not establish four as the threshold of an unreasonable number of attempts to fix a warranty problem under other circumstances.[4] Indeed, in the abstract at least, a high or lower threshold could be justified under other circumstances. Accordingly, the facts of any subsequent case properly will be decisive should this threshold issue recur.

In addition, while I will not belabor the twists and turns that the investigation took once AMC resisted providing requested information, this consent hardly is likely to "intimidate" the industry in any fashion—let alone into adopting four as a de facto threshold standard. Attributing excessive zeal to the FTC is not an apt description for this situation where the warranty program, the manufacture of Encores and Alliances, and AMC itself all had gone out of existence before the Commission began contemplation of the consent. For that matter, in light of this history, the consent is more likely to be interpreted by the industry as a slap on the

---

[1] In particular, I question the terms of the consent which do not require sending notice of the settlement to all owners, yet would permit any unclaimed redress to revert to the proposed respondent. Further, it is not self-evident that either the lack of prospective injunctive relief or the omission of the potential Magnuson-Moss Warranty Act basis for this case is desirable.

[2] In this regard, I respectfully differ with Commissioner Azcuenaga's conclusion.

[3] To explore why this type of comparison is no less relevant to the question at hand than the first type of comparison, assume that AMC had sold one million cars in 1983 and offered a warranty only on its windshield wiper blades and on leaks from its transmissions. Assume, further, that over the years AMC received 100,000 warranty complaints on its 1983 vehicles. Of these, say that 94,000 involved windshield wiper blades and that every such complaint was handled to the customer's satisfaction on the first repair visit. But of the 6,000 transmission leak complaints, say that at least 1,000 required four or more repair visits.

It would theoretically be possible to characterize this transmission warranty problem as "non-substantial" since only 6 percent of all complaining purchasers had problems with their transmissions and only 1 percent encountered the four-plus repairs situation. But such a characterization would not be compelling given the importance of transmissions as a warranty item and the relative frequency with which a transmission complaint became a transmission nightmare.

[4] Had this case been based upon Magnuson-Moss, of course, the possibility of establishing binding precedent might not have been so remote.

wrist than a kick in the pants. On the other hand, to reject the consent in its entirety would run a serious risk of sending a message of complete indifference by the Commission regarding AMC's alleged behavior toward consumers.

Moreover, this consent does not venture into the swamp of dictating to the industry a particular combination of automobile reliability and warranty coverage. As this settlement has been crafted, it merely says that AMC (or its successor) must live up to the warranty coverage that it chose to offer in the marketplace. This does not look like a case where AMC said (exclicitly or implicitly) to the prospective purchasers, "You can save some money here by buying our car, but the tradeoff is you will incur a higher risk of flaws and/or narrower warranty protection." To the contrary, apart and aside from the detailed coverage guaranteed in the full and limited warranties accompanying the vehicles, AMC's marketing emphasizing the asserted superiority of its warranties as an inducement to purchase. A corporation that makes specific claims of warranty protection (not to mention claims of warranty superiority) ordinarily ought to later be excused from honoring those claims on the ground that by some overall measure its performance is roughly average.

In this sense, rejection of the consent by the Commission could do more than deprive consumers injured by AMC's alleged breaches of some redress funds. It also could lead to inefficiency and distortion in the automobile market if consumers no longer can rely upon written warranties as a basis for comparison shopping. Rejection also could inflict injury upon car manufacturers who abide by their warranties yet lose sales to competitors who promise more coverage than they deliver.

For the above reasons, I have voted to provisionally accept the proposed consent agreement and place it, along with the draft complaint, on the public record for comment.

Dissenting Statement of Commissioner Margot E. Machol, AMC-Renault, File No. 842-3103

I would have preferred to close this investigation rather than accept the settlement submitted by staff. Warranty and reliability issues are complex, and compiling the relevant information is difficult. Although I oppose the staff recommendation, I commend their diligence in attempting to resolve this matter.

When this investigation began five years ago, it looked as though it would be a good case. Tens of thousands of consumers apparently were plagued by leaks in their AMC/Renault Alliances and Encores. Only after the general framework of the settlement had been negotiated did it become apparent that relatively few consumers had persistent leaks as covered by the order.

I was at first tempted to accept the settlement. Commission action will lead to a major automobile manufacturer paying $120,000 to approximately 2,000 consumers. These consumers clearly were inconvenienced by an unexpectedly high number of dealer visits to have leaks repaired Despite its initial appeal, however, I have voted against accepting the settlement. I do not believe section 5 has been violated because I do not believe that AMC's conduct meets our unfairness criteria. In addition, I believe that accepting the settlement is not in the public interest because it sets a deleterious precedent.

The Commission has previously stated that it will find a practice unfair only when, *inter alia*, the practice produced substantial consumer injury. Injury is weighed in the context of the market in which the injury is alleged to have occurred. In this matter, the consumer injury is not substantial. Fewer than 1 percent of purchasers of Alliances and Encores made 4 or more visits to repair leaks and fewer than 3 tenths of 1 percent had 5 or more visits to repair leaks.

Further, consumers may not actually have been injured. *Consumer Reports* indicates that, although Alliances and Encores had worse-than-average to much-worse-than-average incidence of repair during their warranty periods, the cars had less-than-average to average cost of repairs. Thus, the warranty coverage was successful in shifing the cost of repairs from car owners to AMC. Commissioner Azcuenaga has previously stated that it "seems inappropriate to term a car 'defective' unless its overall repair costs are significantly greater than those of comparable cars."[1] Similarly, here it seems inappropriate to find warranty coverage defective unless overall repair costs are significantly greater than those of comparable cars.

I believe that this settlement sets an undesirable precedent because it articulates a standard that four or more attempts to repair transmission and engine leaks is an unfair practice under section 5. Some play down the precedent by arguing that the order provision here should not be viewed as anything more than the result of negotiations that led to successful resolution of a difficult case. I respectfully disagree. The underlying theory of the complaint is that some number of repair visits (in this case, four) constitutes a breach of contract in violation of section 5. There is no reason to believe, however, that the FTC or any other government agency would do as well as the market in deciding the most desirable combination of automobile reliability and warranty coverage. The Commission should reserve action to those cases in which it has some evidence that a company behaved unreasonably.

Other Commission cases demonstrate the kind of evidence that would, in my mind, justify Commission action. In *International Harvester* (104 F.T.C. 949), for example, the company knew that fuel geysering could maim or kill tractor operators, yet it failed to provide simple, low-cost warning labels. In *Orkin* (108 F.T.C. 263), the company had a widespread, systematic program to breach its contracts. The breach unilaterally shifted costs to its customers and harmed competition in addition to harming consumers.

Such conduct is conspicuously absent in this case. Unlike *International Harvester*, safety issues are not involved. Unlike *Orkin*, AMC did not unilaterally shift costs to its customers. AMC did not refuse to provide warranty service; in fact, AMC repaired leaks on some vehicles up to 12 times. Repairing transmission leaks is often expensive; AMC undoubtedly would have adopted more reliable repairs if they had been available. Further, AMC did not gain a competitive edge by its actions. Alliances and Encores are no longer produced and AMC was well along its way toward bankruptcy when Chrysler purchased it in 1987. Consumers appropriately punished AMC and rewarded more efficient competitors.

My final objection to this consent is that it obtains relief that we would not be able to obtain in litigation. Neither a section 19 action nor a section 13(b) action predicated on section 19 principles would produce monetary relief because there is no evidence of dishonest or fraudulent conduct. As a matter of policy, I believe that relief obtained in consents should be limited to the potential relief available through litigation. Therefore, I have voted against accepting the settlement.

[FR Doc. 89-27452-31-11-22-89; 8:45 am]

BILLING CODE 6750-01-M

[1] "Defects Cases: What Legal Theories, Evidentiary Standards and Remedies Should Apply?" Speech Before the Sixteenth Annual Meeting of the National Advertising Review Board. New York, New York. December 9, 1967, page 9.

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

New Item Introductory Schedule (NIIS) Gets a Partner

The Tools Commodity Center is introducing a new program to provide an informal evaluation for tools being offered to the Government. The New Product Evaluation Program (NPEP) provides an opportunity for suppliers to offer samples of new or redesigned tools to the Tools Commodity Center for evaluation. The Tools Center will then distribute the samples to the customers who have previously agreed to evaluate new products. The customers will use the tools in the work environment and report back to the Tools Center with recommendations to either include the item in the supply system, not consider the items for inclusion in the system, broaden the scope of the test evaluation to include other activities or to extend the test period.

This program is not a replacement for the New Item Introductory Schedule but is simply an informal way in which suppliers, customers, and GSA can consider the potential applications in the Government for new products.

If the recommendation of the evaluators is to include the item in the supply system or to expand the evaluation, the supplier will be asked to make a formal offer to be included on the New Item Introductory Schedule. This will provide the supplier with a contract for up to three years while a permanent location in the supply system is found. During this period, the supplier can attempt to sell his product to potential users. The NIIS contract facilitates purchases by the Government users. If the recommendation of the evaluators is that the item is not suitable for Government application the supplier will be so advised.

For further information on NPEP please contact the Tools Commodity Center Ombudsman, Mrs. Linda Edwards at (703) 603-1301.

Dated: November 13, 1989.

Walter L. Eckbreth,

Director, Tools Commodity Center.

[FR Doc. 89-27521 Filed 11-22-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Ann C. Agnew
Duane F. Alexander, M.D.
Joseph R. Antos, Ph.D.
Michele W. Applegate
William H. Aspden, Jr.
Michael J. Astrue
Paul D. Barnes
James S. Benson
Joyce T. Berry, Ph.D.
Katherine L. Bick, Ph.D.
Lyle W. Bivens, Ph.D.
Annette H. Blum
Eileen Bradley
Samuel Broder, M.D.
Kathleen A. Buto
Ronald H. Carlson
Bruce A. Chabner, M.D.
Gerald Chader, M.D.
Philip S. Chen, Jr., Ph.D.
Andria T. Childs
Pamela A. Coughlin
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Don J. Davis
John L. Decker, M.D.
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Walter R. Dowdle, Ph.D.
John C. Eberhart, Ph.D.
Joyce D. Essien, M.D.
Anthony S. Fauci, M.D.
Jorgen Fex, Ph.D.
Dennis J. Fischer
J. Michael Fitzmaurice
Florence B. Fiori, Ph.D.
Barbara J. Gagel
George J. Galasso, Ph.D.
John I. Gallin, M.D.
Donna N. Givens
Murray Goldstein, M.D.
Phillip Gorden, M.D.
Alexander R. Grant
Jerome G. Green, M.D.
Joseph A. Gribben
Gerald B. Guest, D.V.M.
George E. Hardy, Jr.
Louis B. Hays
Michael Heningburg
Alan R. Hinman
Ada Sue Hinshaw, Ph.D.
George R. Holland
Sharon Smith Holston
Constance Horner
Robert A. Israel
Barry L. Johnson, Ph.D.
Elaine M. Johnson, Ph.D.
Lewis L. Judd, M.D.
Martha F. Katz
John M. Kelso
Eugene Kinlow
Ruth L. Kirschstein, M.D.
Irwin J. Kopin, Ph.D.
Jeffrey P. Koplan, M.D.
Edward D. Korn, Ph.D.
Carl Kupfer, M.D.
Richard P. Kusserow
Claude J. Lenfant, M.D.
Joseph R. Leone
Alan L. Leshner
Arthur S. Levine, M.D.
Huldah Lieberman
Donald A.B. Lindberg, M.D.
Harald A. Loe, D.D.S.
Donald H. Luecke, M.D.
Stephanie A. Lynch
John D. Mahoney
Thomas E. Malone, Ph.D.
Dorothy H. Mann, M.P.H.
Norman D. Mansfield
Naomi B. Marr
George Martin, M.D.
Larry G. Massanari
Thomas S. McFee
Bryan B. Mitchell
Henry Metzger
Kevin E. Moley
Larry D. Morey
Jay Moskowitz, Ph.D.
Clennie H. Murphy
Stuart L. Nightingale
Abner L. Notkins, M.D.
Jack Orloff, M.D.
Carl C. Peck, M.D.
Roy W. Pickens, Ph.D.
Betty H. Pickett, Ph.D.
Arnold W. Pratt, M.D.
Alan S. Rabson, M.D.
David P. Rall, M.D.
Joseph E. Rall, M.D.
Juan Ramos, Ph.D.
Wiliam F. Raub, Ph.D.
Luana L. Reyes
William A. Robinson, M.D.
Martin Rodbell, Ph.D.
Mary E. Ross
Jesse Roth, M.D.
Philip E. Schambra, Ph.D.
Matthew G. Schwientek
Lawrence E. Shulman, M.D.
Robert Singyke
Marvin Snyder, Ph.D.
Dale W. Sopper
Joan F.M. Steward
Robert E. Stovenour
Robert A. Streimer
Boris Tabakoff, Ph.D.
John M. Taylor
Stephen B. Thacker, M.D.
Robert L. Trachtenberg
James A. Walsh
S. Timothy Wapato
Kenneth R. Warren, Ph.D.
John C. West
Storm H. Whaley
Daniel F. Whiteside, D.D.S.
Robert A. Whitney, Jr., D.V.M.
T. Franklin Williams, M.D.
Will Wolstein.

Dated: November 13, 1989.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

Summary Statement

ACTION: Listing of members of this Department's Senior Executive Service Performance Review Boards.

DATE: Performance Review Boards effective November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Brenda J. Clinton, (202) 245-6536.

[FR Doc. 89-27206 Filed 11-22-89; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 89N-0490]

Drug Export; Didronel® (Etidronate Disodium 200 MG Tablets, U.S.P.)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norwich Eaton has filed an application requesting approval for the export of the human drug Didronel® (Etidronate Disodium 200 mg Tablets, U.S.P.) to Australia and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet his requirement, the agency is providing notice that Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815–0191, has filed an application requesting approval for the export of the drug Didronel® (Etidronate Disodium 200 mg Tablets, U.S.P.), to Australia and New Zealand. This product in conjunction with adequate calcium intake is indicated for the prevention and treatment of bone loss observed in patients with postmenopausal osteoporosis while reducing the risk of osteoporotic fracture. The application was received and filed in the Center for Drug Evaluation and Research on October 30, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 4, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 14, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–27486 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0471]

Allergan Optical; Premarket Approval of Allergan® Preserved Saline Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Allergan Optical, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of Allergan® Preserved Saline Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 16, 1989, of the approval of the supplemental application.

DATE: Petitions for administrative review by December 26, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On April 3, 1989, Allergan Optical, Irvine, CA 92715–1599, submitted to CDRH a supplemental application for premarket approval of Allergan® Preserved Saline Solution indicated for use for rinsing after cleaning and before lens application in a heat, chemical, or hydrogen peroxide lens care system, for use to keep lenses hydrated during heat disinfection and for storage after heat disinfection for soft (hydrophilic) contact lenses.

On June 23, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 16, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 26, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 13, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–27487 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: New York District Office, chaired by Edward T. Warner, District Director. The topic to be discussed is proposed changes to food labeling.

DATES: Thursday, November 30, 1989, 1 p.m. to 3 p.m.

ADDRESSES: Jacob K. Javits Federal Bldg., Rm. 305C, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Herman B. Janiger, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232–1593, 718–965–5043.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 16, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–27488 Filed 11–22–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPD–656–N]

Medicare and Medicaid Program; ICD–9–CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATE: The meeting will be held on Monday and Tuesday, December 4 and 5, 1989, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 503A–529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrice Robins, (301) 966–9364.

SUPPLEMENTARY INFORMATION: The ICD–9–CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD–9–CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for inpurt concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: rate responsive pacemakers; additional inclusion terms for replacement of cardioverter/defibrillator leads; combined heart/lung transplant; Mitrofanoff procedure; removal of remnant of cystic duct in conjunction with cholecystectomy; transesophageal pacing with thallium stress electrocardiogram; laser fragmentation of gallstones; additional inclusion terms for implantation of cochlear prosthetic device; injection or ligation of esophageal varices; clamping of the aorta in conjunction with aortocoronary bypass graft; excludes notes for percutaneous transluminal coronary angioplasty (PTCA) with concurrent intravenous (IV) therapy; chemotherapy; genetic-related disorders; hepatitis B, anti-negative, anti-positive, viral-non B; neurofibromatosis; V codes V56 (aftercare involving intermittent dialysis) and V58.0 (radiotherapy); cystic kidney diseases; diabetes mellitus; index items; and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13–774, Medicare—Supplementary Medical Insurance)

Dated: November 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–27516 Filed 11–22–89; 8:45 am]

BILLING CODE 4120–01–M

[IOA–22–N]

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATE: The meeting will be held on December 7, 1989, from 1 p.m. to 5:30 p.m. Eastern Standard Time (E.S.T.), and on December 8, 1989, from 8 a.m. to 4 p.m. E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held at the DuPont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Darleen DiGirolamo, Administrative Officer, Advisory Council on Social Security, (202) 245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and

survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildings in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignani, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting on December 7 and early on December 8 will include the presentation of background information and general discussion related to Social Security, the OASDI trust funds, and options with regard to the projected buildings in those funds. The meeting on December 8 will include discussion of health financing reform for the elderly and nonelderly populations.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance.)

Dated: November 20, 1989.

Deborah J. Chollet,

Executive Director, Advisory Council on Social Security.

[FR Doc. 89-27622 Filed 11-22-89; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606-N-47]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 24, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-7300; TDD number for the hearing-and speech-impaired (202) 755-5965. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of Interior: John Moresko, Department of Interior, 18th and C Sts. NW., Mailstop 5512, Washington, DC 20240, (202) 343-2704; U.S. Army Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW, Washington, DC 20415-1000, (202) 272-1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405 (202) 535-7067.

Dated: November 20, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Land (by State)

(Number of Properties [ ])

Colorado

Land [1]
13627 County Road 501
LaPlata, CO
Landholding Agency: Interior
Location: approx. 20 miles northeast of Durango County at the Vallecito Reservoir
Comment: 4.07 acres; steep slope rises almost directly from edge of highway

Illinois

Wm. L. Springer Lake [1]
Section 36, T17N, R3E, 3rd PM
Decatur, IL
Landholding Agency: COE
Location: Macon County (excess)
Comment: 2.96 acres; no road access/access right of way needs to be obtained

Wm. L. Springer Lake [1]
Section 34, T17N, R3E, 3rd PM
Decatur, IL
Landholding Agency: COE
Location: Macon County (excess)
Comment: 0.52 acres; no utilities or improvements

Mississippi River Lock and Dam No. 18 [1]
Section 12, T1ON, R6W, 4th PM
Gladstone, IL
Landholding Agency: COE
Location: (excess)
Comment: 11.31 acres; partially leased until 4/90

Minnesota

Leech Lake Tract B [1]
Federal Dam
Cass, MN
Landholding Agency: COE
Location: (excess)
Comment: 10 acres; current use—parking

Leech Lake Tract 98 [1]
Hubbard County
Benedict, MN
Landholding Agency: COE
Location: (excess)
Comment: 7.3 acres; portion submerged

Pine River Parcel D [1]
Crow Wing County
Crosslake, MN
Landholding Agency: COE
Location: (excess)
Comment: 17 acres; reservoir flowage problem

Sandy Lake Tract 92 [1]
Aitkin County
McGregor, MN
Landholding Agency: COE
Location: (excess)
Comment: 4 acres; partially submerged

Texas

Part of Tract 340 [1]
Joe Pool Lake
Tarrant County, TX
Landholding Agency: COE
Location:
Comment: one acre; no utilities or improvements

Suitable Building (by State)

(Number of Properties [ ])

Illinois

Brandon Rock Lock and Dam [1]
1100 Brandon Road
Joliet, IL
Landholding Agency: COE
Location: Will County (excess)
Comment: two-story frame; 720 sq ft; off-site use only

Michigan

Former Coast Guard Lightkeeper's Dwell. [1]
Little Rapids Channel
Sault Ste. Marie, MI
Landholding Agency: COE
Location:
Comment: two-story wood frame; .62 acres; need extensive repairs; utils. disconnect

Minnesota

Duluth Vessel Year [1]
900 Minnesota Avenue
Duluth, MN
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story wood frame; utilities disconnected; 1,568 sq. ft.

Wisconsin

Appleton 1st Lock [1]
905 South Oneida Street
Appleton, WI
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story wood frame; need extensive repairs; utilities disconnected

Little Kaukauna Lock [1]
Little Rapids
Lawrence, WI
Landholding Agency: COE
Location: (Former Lockmaster's Dwelling)
Comment: two-story brick/wood frame; need extensive repairs; utils. disconnected

Rapid Croche Lock [1]
Lock Road
Wrightstown, WI
Landholding Agency: COE
Location: Ontagamie and Brown Counties
Comment: two-story wood frame; need extensive repairs; utilities disconnected.

Unsuitable Land (by State)

(Number of Properties [ ])

Minnesota

Pine River Parcel G [1]
Crosslake, MN
Landholding Agency: COE
Location: (excess)
Reason: Other
Comment: highway right-of-way

Texas

Part of Tract 201-3 [1]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: 18 acres; floodwater release area

Tracts 104, 105-1, 105-2, 118 [4]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: floodwater release area

Part of Tract 323 [1]
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Location:
Reason: Other
Comment: floodwater release area

Tract W-A33 [1]
Portion of Whitney Lake Project
Hill County, TX
Landholding Agency: GSA
Location: GSA # 7-GD-TX-505-F
Reason: Other
Comment: not government owned; easement for railroad use only

[FR Doc. 89-27610 Filed 11-22-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-00-4320-14]

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meetings.

SUMMARY: The Richfield District Grazing Board will hold a meeting on December 14, 1989. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah.

The agenda will be:

1. Approval of range projects
2. Drought update
3. Supplemental feeding
4. Electronic Combat Test Capability
5. Deep Creek Exchange-Grazing allocation
6. Predator Control
7. AMP/Allotment change

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District

Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801–896–8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

Dated: November 17, 1989.

Jerry Goodman,

Richfield District Manager.

[FR Doc. 89–27585 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DQ-M

[MT–930–00–4212–13; MTM 76695]

Conveyance and Order Providing for Opening of Public Land in Teton County, MT; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The land description in the notice published in the **Federal Register** on October 20, 1989 (54 FR 43143–44), is corrected as follows:

The land description in the second column on page 43144, which reads "T. 16 N., R. 22 E., sec. 13, lots 1–2, W½NE¼, E½NW¼, SW¼NE¼," should read T. 13 N., R. 22 E., sec. 13, lots 1–2, W½NE¼, E½NW¼, SW¼NW¼.

Dated: November 14, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–27571 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DN-M

[ID–050–00–4920–10; IDI–26669]

Amendment to Notice of Realty Action (NORA) IDI–26669 Classification; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action (NORA) I–26669; Exchange of public and private lands in Blaine County, Idaho.

SUMMARY: The original NORA was published in the **Federal Register**, Vol. 54, No. 45, Thursday, March 9, 1989, page 10054. This amendment addresses only the description of the private lands to be acquired by the United States (U.S.).

The lands described in the original NORA are no longer desired by the U.S. In their place, the U.S. will acquire the following described land from the American Public Land Exchange Co., Inc.:

Boise Meridian, Blaine County, Idaho

T. 4 N., R. 17 E., Section 12: fractional portion SE4SE4 described as Lot 2 of INDUSTRIAL EAST, a subdivision of Tax Lot 4807; containing 1.94 acres.

No other elements of the NORA published as noted above are affected by this amendment.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed exchange to the District Manager, BLM Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Jon H. Idso,

Associate District Manager.

[FR Doc. 89–27524 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-GG-M

[UT–943–00–4212–13; U–49298]

Issuance of Land Exchange Conveyance Document; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 142.02 acres of public land out of Federal ownership. This action will also open 320 acres of reconveyed lands to surface entry, mining, and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Salt Lake City, Utah 84111, 801–539–4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to the Pace 1984 Irrevocable Children's Trust, for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756, 43 U.S.C. 1716:

Salt Lake Meridian, Utah

T. 40 S., R. 16 W.,
Sec. 17, lot 1; Sec. 19, SE¼NE¼, E½NE¼SE¼; Sec. 20, SW¼NW¼, NW¼SW¼.
Containing 142.02 acres.

2. In exchange for these lands, the United States acquired the surface and mineral estate of the following described lands.

Salt Lake Meridian, Utah

T. 40 S., R. 16 W.,
Sec. 2, S½.
Containing 320.00 acres.

3. At 8 a.m., on December 11, 1989, the lands described in paragraph 2 will be open to operation of the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m., on December 11, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8 a.m., on December 11, 1989, the lands described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State Law where not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

5. At 8 a.m., on December 11, 1989, the lands describe in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Ted D. Stephenson,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 89–27597 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY–930–00–4212–13; WYW 89429]

Conveyance and Opening Order; Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and opening order.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States of America, Bureau of Land Management, and Joseph R. Hicks, and opens the private land acquired by the United States to operation of the public land laws.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–772–2074.

SUPPLEMENTARY INFORMATION:

1. The following public land, surface estate only, has been conveyed to Joseph R. Hicks under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1982):

Sixth Principal Meridian

T. 34 N., R. 108 W.,
Sec. 26, SE¼SE¼.
The land described contains 40.00 acres.

2. In exchange for the above land, the United States acquired the following private land, surface estate only, from Joseph R. Hicks:

Sixth Principal Meridian

T. 36 N., R. 110 W.,
Sec. 5, E½NE¼NE¼SW¼SE¼, E½SW¼NE¼SW¼SE¼, SE¼NE¼SW¼SE¼, E½NE¼SW¼SW¼SE¼, E½SW¼SW¼SW¼SE¼, SE¼SW¼SW¼SW¼SE¼, and SE¼SW¼SE¼.
The land described contains 20.00 acres.

3. The land described in paragraph 2 was acquired for stock driveway and public recreation access purposes. The selected public land and the offered private land are both valued at $2,000.00. All minerals in the selected public land were reserved to the United States. All minerals in the offered private land are owned by the United States. The land described in paragraph 2 became public land under administrative jurisdiction of the Bureau of Land Management upon acceptance of title by the United States on October 2, 1989.

4. At 10 a.m. on December 4, 1989, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to existing rights and the requirements of applicable law. All applications received at or prior to 10 a.m. on December 4, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The land described in paragraph 1, including the Federal mineral estate, and the Federal mineral estate in the land described in paragraph 2 were segregated from all forms of appropriation under the public land laws, including the mining laws, on June 2, 1989, by publication of Notice of Realty Action WYW 89429 in the **Federal Register**. The segregative effect of that notice terminated on October 4, 1989, insofar as it affected the land in paragraph 2. The Federal mineral estate in the land described in paragraph 1 remains segregated to operation of the general mining laws pending issuance of regulations by the Secretary of the Interior.

Dated: November 6, 1989.

James K. Murkin,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–27573 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-22-M

[WY–040–000–4212–14; WYW–81094]

Realty Action; Modified Competitive Sale of Public Lands in Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Sublette County, WY.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713):

Sixth Principal Meridian

T. 30 N., R. 111 W.,
Sec. 19, W½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼, SE¼SE¼NW¼NE¼.
The land described contains 25.00 acres.

FOR FURTHER INFORMATION CONTACT: David E. Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the surface estate, under the above cited authority. The lands are being sold under modified competitive sale authority to resolve an unauthorized residential occupancy of public lands by James F. Mickelson and Jay Carlson.

The price of these lands will be determined at market value.

The proposed sale is consistent with the Pinedale Resource Management Plan. The land does not possess any known public values and is not required for any federal purpose. The Planning Document/Environmental Assessment for the proposed sale will be available for review at the BLM Pinedale Resource Area Office, Pinedale, Wyoming.

The sales patent will be subject to all valid existing rights and will contain reservations to The United States for ditches, canal and all minerals. The exact wording of these reservations, as well as specific conditions of the sale and the appraised market Value, are available for review in the Pinedale Resource Area Office, Pinedale, Wyoming.

Upon publication of this notice in the Federal Register, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws. The segregation will end 270 days from the date of this publication.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82901. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 14, 1989.

Arlan G. Hiner,

Area Manager.

[FR Doc. 89–27596 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-22-M

[OR–100–07–6332–02: GPO–038]

Camping Limits, Roseburg District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping limit for campgrounds and undeveloped public lands, Roseburg District, OR

SUMMARY: Persons may camp within designated campgrounds for a total period of not more than 14 consecutive days at a campground, subject to payment of camping use fees at the site.

At developed campgrounds where no fee is charged the camping limit is also 14 consecutive days, and repeated re-occupation of the same campground is not permitted except after a period of non-occupancy of 20 days.

Within the North Umpqua River corridor camping or overnight use is prohibited on BLM lands outside designated campgrounds except by special permit issued by an authorized BLM officer.

Camping by hikers or riders along the North Umpqua Trail is permitted but must be at least 100 feet from the trail. Campfires are permitted in the center of an area cleared of duff down to mineral soil in a six-foot radius around the campfire during open fire season.

Campfires are prohibited during closed fire season as established by Douglas Forest Protective Association. Propane backpacker stoves may be used during fire closures in the center of a three-foot radius area cleared of duff down to mineral soil.

On public lands not closed to camping outside designated campgrounds persons may camp for a total period of not more than fourteen days at the same location. After an initial 14-day occupancy, persons may return only after 20 days of non-occupancy.

The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands. Under special circumstances and upon request, the authorized officer may give written permission for extensions to the 14-day limit.

Additionally, except for vehicles or trailers parked at trailheads, no person may leave personal property unattended in designated day use areas for a period of more than 24 hours or in designated campgrounds or recreation developments for a period of more than 48 hours, or elsewhere on public lands for a period of more than 10 days without written permission from the authorized officer.

DATE: This camping occupancy limit shall be effective December 1, 1989, and remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, N.W. 777 Garden Valley Blvd., Roseburg, Oregon 97470. Telephone (503) 672–4491.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to reduce the incidence of long-term unauthorized occupancy, while permitting legitimate camping on the public lands administered by the I oseburg District of the Bureau of Land Management. Authority for this camping occupancy limit is contained in CFR title 43, chapter II, part 8360, subpart 8364.1, § 8365.1–2 and § 8365.2–3.

Persons who fail to comply with the provisions of this closure may be subject to the penalties provided in 43 CFR 8360.0–7 and 43 CFR 9262.1, which include a fine not to exceed $1000.00 and/or imprisonment for not to exceed 12 months.

Dated: November 16, 1989.

Richard Burch,

Acting District Manager.

[FR Doc. 89–27572 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-33-M

[AK-060-00-4410-08]

Availability of the Proposed Utility Corridor Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of proposed resource management plan and final environmental impact statement.

SUMMARY: The proposed resource management plan and final environmental impact statement (RMP/EIS) for approximately 6,080,000 acres of Federal land located in and near the Trans Alaska Pipeline Utility Corridor north of Fairbanks, Alaska, is available for distribution to the public. These lands are located within the Bureau of Land Management (BLM) Arctic District. A copy of the RMP/EIS will be mailed to individuals, government agencies and groups who requested copies or otherwise expressed an interest in the Utility Corridor planning effort.

This action is being announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of BLM, 18th and C Streets NW., Washington, DC 20240, within thirty days after the date of publication of Notice of Availability for the EIS in the **Federal Register** by the Environmental Protection Agency.

The RMP will guide management of the public lands and resources in: the Utility Corridor north of the Yukon River; the "Venetie block", located outside the Corridor immediately north of the Yukon Flats National Wildlife Refuge; and the Central Arctic Management Area (CAMA), located north of the Brooks Range. The RMP provides comprehensive management for the lands described above and would designate thirteen Areas of Environmental Concern (ACECs). The RMP also incorporates the CAMA wilderness recommendation submitted to the President and Congress in December of 1988.

The final EIS presents the proposed plan in detail and summarizes the four alternatives considered in detail and presented in the draft RMP/EIS. Comments on the draft EIS have been considered in preparation of this document. Each alternative recognizes the transportation of energy resources as the primary function of the Utility Corridor and addresses the following issues:

1. Mineral and commercial (node) development,
2. Land disposals and acquisitions,
3. Recreation,
4. Access,
5. Subsistence,
6. Wilderness,
7. Wildlife resources.

The proposed plan emphasizes development of the recreational development opportunities within the Utility Corridor. Alternative A is the "no action" alternative; it proposes continuation of present management throughout the planning area. Alternative B emphasizes environmental protection and enhancement with much of CAMA managed as wilderness. Alternative C focuses on the development of economic opportunities in the planning area and maximizes land available for mineral development; it also provides at least as many opportunities for recreational development as the proposed plan. Alternative D is a land disposal option; all currently withdrawn lands would be opened to state selection and present management would continue on remaining lands.

The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

Areas of Critical Environmental Concern

Thirteen Areas of Critical Environmental Concern (ACEC) including one Research Natural Area (RNA) would be designated under the proposed plan. The ACECs and a summary of use limitations are listed below:

1. *Galbraith Lake ACEC (approximately 56,000 acres).* This area has the highest concentration of historic and prehistoric resources of any area yet surveyed within the Utility Corridor. The area also provides crucial lambing habitat areas and mineral licks for Dall's sheep. Particular care will be exercised in permitting activities in this area, no surface occupancy will be allowed, and the area will be closed to mineral entry.

2. *Ivishak River ACEC (approximately 3,800 acres).* The lower Ivishak River contains the highest concentration of overwintering arctic char in CAMA. Mineral material extraction in the area will be restricted, no-surface-occupancy stipulations will apply to oil and gas leasing, and the northern portion of the ACEC is closed to mineral entry.

3. *Jim River ACEC (approximately 200,000 acres).* The Jim River drainage is an excellent sport fishery, contains a rich concentration of archaeological sites, is of high scenic quality and contains raptor nesting sites including peregrine falcon. Gravel extraction within the Jim River floodplain will be restricted, plans of operations with protective stipulations and mitigation measures will be applied to all mining operations regardless of size, and seasonal use and surface occupancy restrictions will be applied to oil and gas and other activities which may affect identified resource values.

4. *Kanuti Hot Springs ACEC (approximately 40 acres).* This is an undeveloped hot springs about 8 miles west of the Dalton Highway. There is an immediate need for special management of this area to protect and preserve this spring and the surrounding meadow. Leasing and development will be restricted to actions which will not directly affect the springs, no-surface-occupancy stipulations will apply to mineral leasing, and the area will remain closed to mineral entry.

5. *Nigu-Iteriak ACEC (approximately 64,000 acres).* The area contains known archaeological resources, including two potential national register sites. The area also contains unique geological resources including ice cored-kame terraces and a collapsed pingo. The southern portion of the ACEC is bordered by two part system wilderness areas and exhibits high scenic values. A portion of this ACEC will be closed to mineral entry and leasing, managed as VRM class I, and closed to recreational ORV use.

6. *Nugget Creek ACEC (approximately 3,300 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations would apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation would be required and protective stipulations and mitigation measures would be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

7. *Poss Mountain ACEC (approximately 8,000 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

8. *Sagwon Bluffs ACEC (approximately 42,200 acres).* This is habitat for several species of raptors, including peregrine falcon; includes significant riparian habitat; and at least one sensitive plant species is present. All BLM-authorized activities shall follow the protective measures for the peregrine falcon as specified in the *Peregine Falcon Recovery Plan, Alaska Population* (1982). No-surface-occupancy stipulations will be applied to mineral leasing activities within sensitive plant habitat and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid unduly disturbing peregrine falcons and their habitat.

9. *Slope Mountain ACEC (approximately 5,100 acres).* This is a Dall's sheep lambing area and contain a mineral lick. It also is an area of high potential for future peregrine falcon nest sites. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat. All BLM-authorized activities shall follow the protective measures for peregrine falcon as specified in the *Peregrine Falcon Recovery Plan, Alaska Population* (1982).

10. *Snowden Mountain ACEC (approximately 28,000 acres).* This area exhibits important geologic and associated paleontological resource including excellent exposures of Devonian corals and Cambrian trilobites. This area is also a Dall's sheep lambing area and contains two known mineral licks. The area immediately sorrounding each lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations will apply to mineral leasing at the lick sites. Within the ACEC, but outside the lick sites, plans of operation will be required and protective stipulations and mitigation measures will be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat or other identified resources.

11. *Sukakpak Mountain (approximately 3,500 acres).* This mountain exhibits unique geologic structures, folds and faults and is the site of a rare plant species. Because of its proximity to the Dalton Highway it also offers highway travelers an outstanding view from the highway. The ACEC will remain closed to mineral location and gravel extraction will not be allowed in areas visible from the highway. No-surface-occupancy stipulations will be applied to mineral leasing activities.

12. *Toolik Lake ACEC (82,200 acres).* This area is representative of the north slope lake and tundra biome. A large number of research projects have been based in and around this lake area and the University of Alaska maintains a research facility at this site. Additionally a sensitive plant species, *Montia bostockii*, is located in the ACEC. The area will be closed to mineral location, gravel extraction will be restricted and no recreational camping will be permitted.

13. *West fork Atigun ACEC (8,500 acres).* This is a Dall's sheep lambing area and contains a mineral lick. The area immediately surrounding the lick site (160 acres) will be closed to mineral entry and the extraction of mineral materials. No-surface-occupancy stipulations would apply to mineral leasing at the lick site. Within the ACEC, but outside the lick site, plans of operation would be rerquired and protective stipulations and mitigation measures would be applied to all surface disturbing activities to avoid restricting sheep movement or unduly impacting sheep habitat.

DATES: Protests on the Proposed Plan-Final ELS must be postmarked by December 26, 1989.

ADDRESSES: Protests or comments on the Proposed Plan/Final EIS should be sent to Director (760), Bureau of Land Management , 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: M. Thomas Dean, District Manager, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844; (907) 474–2301.

Date: November 15, 1989.

Lester Rosendrance,

State Director, Acting.

[FR Doc. 89–27414 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-84-M

[OR-943-00-4214-11; GPO-061; ORE-03468, et al.]

Proposed Continuation of Withdrawals; Oregon; Correction

The land descriptions in FR Doc. 89-25253, published on page 43629, in the issue of Thursday, October 26, 1989, are hereby corrected as follows:

On page 43629 under 9. ORE-013403, as reads "Jefferson County, 24 miles west" and is corrected to read "Deschutes County, 1 mile northwest"; as reads "T. 15 S., R. 7 E.," and is corrected to read "T. 15 S., R. 10 E.,"; and as reads "Jefferson County, 35 miles", and is corrected to read "Deschutes County, 35 miles."

Dated: November 15, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-27575 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Louisiana pearlshell (Margaritifera hembeli) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Louisiana pearlshell. This species occurs in headwaters of Bayou Boeuf in Rapides Parish, Louisiana. Most of the known range is streams on U.S. Forest Service land. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before January 23, 1990 to receive consideration by the Service.

ADDRESS: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965-4990).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Louisiana pearlshell (*Margaritifera hembeli*). The area of emphasis for recovery actions is the Bayou Boeuf system in Kisatchie National Forest, Rapides Parish, Louisiana. Habitat protection and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 16, 1989.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 89-27570 Filed 11-22-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-432]

Drafting Machines and Parts Thereof From Japan; Commission Determination to Conduct a Portion of a Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigation, the Commission (Commissioner Lodwick dissenting) has determined to conduct a portion of its hearing scheduled for November 4, 1989, *in camera*. *See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1116. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in this investigation such as it is appropriate to hold a portion of the hearing *in camera*. Because petitioner is the only domestic manufacturer of drafting machines, and there is a single foreign manufacturer/importer of subject drafting machines, much of the information collected by the Commission is business proprietary information (BPI). In light of this, the Commission has determined that a full discussion of petitioner's financial condition and of many of the other indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning

petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, and (2) personnel of petitioner Vemco, if any. *See* 19 CFR 201.35(b)(1), (2). In the *in camera* session, respondents will make a presentation, limited to a discussion of petitioner's BPI, to be followed by questions from the Commission as appropriate. Petitioner will then have an opportunity to respond, and will also be questioned by the Commission as appropriate.

Following these presentations and questions concerning petitioner's BPI, if requested by either petitioner or respondents, the Commission will allow *in camera* presentations concerning BPI submitted by respondents (with or without accompanying discussion of the BPI of petitioner for comparative purposes). For these presentations, personnel of Vemco who are not under the Commission's APO will be excused from the room. Following any presentations concerning respondents' BPI, the Commission may question either or both sides as appropriate. Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Drafting Machines and Parts Thereof from Japan*, Inv. No. 731-TA-432 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

Issued: November 13, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-27507 Filed 11-22-89; 8:45 am]

BILLING CODE 7035-02-M

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures and Prospects for Future U.S.-Mexican Trade Relations, Phase I, Commission Determination To Change Date Of Hearing

AGENCY: United States International Trade Commission.

ACTION: Change in hearing date.

SUMMARY: The Commission has determined to change the date of its hearing in connection with the above-captioned investigation to 9:30 a.m., December 5, 1989. The hearing will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, November 27, 1989. The deadline for filing prehearing briefs (original and 14 copies) is November 27, 1989. Post hearing briefs are due on December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202)-252-1263, Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: November 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-27542 Filed 11-22-89; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Four-M Properties, Inc., 301 East Indiana Street, Evansville, Indiana 47711.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation: Replas, Inc., Indiana.

B. 1. Parent Corporation: Inland Container Corporation I, Fortune Park, 4030 Vincennes Road, Indianapolis, IN 46268-0937.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation.

i. Anderson Box Company, Inc., Indiana
ii. El Morro Corrugated Box Corporation, Delaware
ii. El Morro Corrugated Box Corporation, de Puerto Rico
iv. Indisc, Inc., Indiana
v. Inland Paper Company, Inc., Indiana
vi. Inland Real Estate Investment, Inc., Indiana
vii. Inland Rome, Inc., Delaware
viii. Inland Orange, Inc., Delaware
ix. Sabine River & Northern Railroad, Inc., Texas
x. Inland Container Corporation, Delaware

C. 1. The parent corporation and address of principal office is: Insteel Industries, Inc., 1373 Boggs Drive, Mount Airy, NC 27030.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation are:

i. Forbes Steel & Wire Corporation, Delaware
ii. Expo Wire Company, North Carolina
iii. Rappahannock Wire Company, North Carolina
iv. Federal Nail Mfg. Company, North Carolina

Noreta R. McGee,

Secretary.

[FR Doc. 89-27598 Filed 11-22-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31564]

Georgia Pacific Corp. and NM Acquisition Corp.—Acquisition of Control Exemption—Nonconnecting Railroads

Georgia Pacific Corporation (Georgia Pacific) and its new wholly owned noncarrier subsidiary, NM Acquisition Corp. (NM), have filed a notice of exemption under 49 CFR 1180.4(g) regarding an exempt transaction under 49 CFR 1180.2(d)(2).

Pursuant to a public tender offer, NM, on behalf of Georgia Pacific, seeks to acquire control of Great Northern Nekoosa Corp. (GNN) by purchasing 100

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percent of its outstanding common stock.[1] Although GNN is not a carrier, it controls the following Commission-regulated shortline railroads: Chattahoochee Industrial Railroad (located in Georgia); Marinette, Tomahawk and Western Railroad (located in Wisconsin); Old Augusta Railroad (located in Mississippi); and Valdosta Southern Railroad (located in South Carolina) (collectively, GNN railroads). Georgia Pacific, also a noncarrier, controls the following Commission-regulated shortline railroads: Ashley, Drew and Northern Railway Company (located in Arkansas); Fordyce & Princeton Railroad Company (located in Arkansas); Gloster Southern Railroad Company (located in Louisiana and Mississippi); and Amador Central Railroad Company (located in California) (collectively, Georgia Pacific railroads).

The lines of the Georgia Pacific railroads do not connect with the lines of the GNN railroads, and the proposed transaction is not a part of a series of anticipated transactions that would connect any of the GNN railroads with one another or with the Georgia Pacific railroads. No Class I railroad is involved in the transaction. Accordingly, the acquisition of control is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Ave., NW., Washington, DC 20036.

Decided: November 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27590 Filed 11-22-89; 8:45 am]

BILLING CODE 7035-01-M

[1] On November 13, 1989, GNN filed a petition seeking revocation of the exemption on grounds that the Notice of Exemption filed by applicants is procedurally defective, misleading, and inaccurate. GNN's petition will be addressed in a separate decision.

DEPARTMENT OF JUSTICE

Extension of Public Comment Period on Proposed Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice was published in the **Federal Register** on October 11, 1989, that a complaint was filed on September 27, 1989, in *United States* v. *Browning-Ferris Chemical Services, Inc., et al.*, Civil Action No. B-89-859, in the United States District Court for the Eastern District of Texas, Beaumont Division, and, simultaneously, a consent decree between the United States, Browning-Ferris Chemical Services, Inc., Chevron Chemical Company, E.I. DuPont De Nemours, French Limited, French Ltd., of Houston, Luther P. Hendon, George A. Whitten, Gulf Utilities Company, Owens-Illinois, Inc., Phillips Petroleum Company, Sun Refining and Marketing Company, Inc., Texaco Chemical Company, and The Uniroyal Goodrich Tire Company was lodged with the court. The prior notice stated that public comments on the proposed consent decree would be received for a period of thirty (30) days from the date of publication of the notice. In response to a request submitted on behalf of several potentially responsible parties, the public comment period on the proposed consent decree is being extended until November 24, 1989.

Accordingly, the Department of Justice will receive comments relating to the proposed consent decree until November 24, 1989. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Browning-Ferris Chemical Services, Inc., et al.*, D.J. Ref. 90-11-2-390.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120;

United States Attorney's Office

United States Attorney, Eastern District of Texas, 700 North Street, Suite 102, Beaumont, Texas 77701.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $17.00 payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27522 Filed 11-22-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pursuant to the Comprehensive Enviromental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on October 23, 1989, a Proposed Consent Decree in *United States* v. *Hancock County, Mississippi*, Civil Action No. SS88-0496(M) was lodged with the United States District Court, Southern District of Mississippi, Southern Division. The proposed Consent Decree concerns payment to the United States by Hancock County, Mississippi for costs incurred by the United States in connection with the clean-up of hazardous substances located in Hancock County, Mississippi. The hazardous substances were located at Lot 5A of the Port Bienville Industrial Park, Pearlington, Mississippi owned by Hancock County, Mississippi. The Consent Decree provides that Hancock County will pay the United States two equal installments of $82,500. The first payment is due within forty-five (45) days of the entry of this Consent Decree. The second payment is due on or before the first anniversary of the entry of the Consent Decree. The Consent Decree shall terminate upon the United States' certification to the court that all payments have been made and received in accordance with the terms of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hancock County, Mississippi*, D.J. Ref. 90-11-3-360.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Mississippi, United States Courthouse, Biloxi, Mississippi and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia. Copies of the Consent Decree may be examined at the Enviromental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27523 Filed 11-22-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 12, 1989, 9:30 p.m.-12:00 p.m., Rm. S2217, Frances Perkins, Department of Labor Building, 200 Constitution Ave, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and U.S.C. section 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Labor Advisory Committee Group, Phone: (202) 523-2752.

Signed at Washington, DC, this 15th day of November.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 89-27600 Filed 11-22-89; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Iowa, IA89-11 ..... p. 63, p. 64
Kansas
KS89-10 ..... p. 382a, p. 382b
KS89-11 ..... p. 382c, p. 382d
Texas
TX89-55 ..... p. 1136m, p. 1136n
TX89-56 ..... p. 1136o, p. 1136p
TX89-57 ..... p. 1136q, pp. 1136r-1136t
TX89-58 ..... p. 1136u, p. 1136v

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Pennsylvania
PA89-6 (Jan. 6, 1989) ..... p. 893, pp. 894-895
PA89-12 (Jan. 6, 1989) ..... p. 941, p. 942
PA89-23 (Jan. 6, 1989) ..... p. 1005, p. 1007
PA89-24 (Jan. 6, 1989) ..... p. 1011, p. 1013

Volume II

Arizona, AZ89-2 (Jan. 6, 1989) p. 15, p. 19

Volume III

California, CA89-2 (Jan. 6, 1989) p. 43, pp. 53-64

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s) be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of November, 1989.

Alan L Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-27475 Filed 11-22-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-21,765 et al.]

Tesoro Drilling Co., Laurel, MS and Affiliated Companies Located in San Antonio, TX and in Other Locations of Texas; Amended Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of
TA-W-21,765A Tesoro Petroleum Corporation
TA-W-21,765B Tesoro Crude Oil Company
TA-W-21,765C Tesoro Pipeline Company
TA-W-21,765D Tesoro Refining, Marketing & Supply Co.
TA-W-21,765E Land & Marine Rental Company and
TA-W-21,765F Tesoro Petroleum Corporation, All Locations in Louisiana

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Tesoro Drilling Company, Laurel, Mississippi; Tesoro Petroleum Corporation; Tesoro Crude Oil Company; Tesoro Pipeline Company; Tesoro Refining, Marketing & Supply Company and the Land & Marine Rental Company all in San Antonio, Texas. Workers at Tesoro Drilling Company, Tesoro Petroleum Corporation, Tesoro Crude Oil Company and Tesoro Pipeline Company were certified eligible to apply for adjustment assistance. Workers at Tesoro Refining and Land & Marine Rental Company were denied adjustment assistance. The notice was published in the **Federal Register** on May 23, 1989 (54 FR 22382).

The Department is amending the notice to show the correct location of the certified worker groups. The notice, therefore, is amended by including all other locations in Texas besides San Antonio, Texas for the certified worker groups. The amended notice applicable to TA-W-21,765 is hereby issued as follows:

All workers of Tesoro Drilling, Company, Laurel, Mississippi (TA-W-21,765) who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

All workers of Tesoro Petroleum Corporation (TA-W-21,765A); Tesoro Crude Oil Company (TA-W-21,765B) and Tesoro Pipeline Company (TA-W-21,765C) in San Antonio and all other locations in Texas and all workers of Tesoro Petroleum Corporation (TA-W-21,765F) in all locations in Louisiana who became totally or partially separated from employment on or after October 17, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Tesoro Refining, Marketing & Supply Company (TA-W-21,765D) and of Land & Marine Rental Company (TA-W-21,765E) both in San Antonio, Texas are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of November 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-27601 Filed 11-22-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL CRITICAL MATERIALS COUNCIL

National Commission on Superconductivity (NCOS); Meeting

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on December 11, 1989, in the second floor theater of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, from 3:00 p.m. until 5:00 p.m.

The proposed agenda is the following:

1. Status reports on working groups.
2. An open period for public comment and discussion.

The entire meeting will be open to the public.

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 89-27770 Filed 11-21-89; 4:28 pm]

BILLING CODE 3130-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Advancement Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Advancement Section) to the National Council on the Arts will be held on December 11, 1989, from 9:30 a.m.-5:30 p.m. and on December 12, 1989, from 9:30 a.m.-4:00 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 12, 1989, from 2 p.m.-4 p.m., time permitting. The topic for discussion will be policy issues.

The remaining portions of this meeting on December 11, 1989, from 9:30 a.m.-5:30 p.m. and on December 12, 1989, from 9:30 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-27538 Filed 11-22-89; 8:45 am]

BILLING CODE 7537-01-M

Office of Public Partnership Advisory Panel (Locals Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Section) to the National Council on the Arts will be held on December 7, 1989, from 9 a.m.-5 p.m. and on December 8, from 9 a.m.-4:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, 1989, from 9 a.m.-5 p.m. and on December 8, 1989, from 9:00 a.m.-1:30 p.m. The topic for discussion will be application review.

The remaining portion of this meeting on December 8, 1989 from 1:30 p.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-27537 Filed 11-22-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel (Narrative Film Development Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Narrative Film Development Section) to the National Council on the Arts will be held on December 13, 1989, from 9:15 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 9, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

FR Doc. 89-27539 Filed 11-22-89; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel (Support to Individuals/Fellowships for Playwrights Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Support to Individuals/Fellowships for Playwrights Section) to the National Council on the Arts will be held on December 7, 1989 from 9:30 a.m.-6:00 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, 1989, from 9:30 a.m.-10 a.m. and from 4:30 p.m.-6 p.m. The topic for discussion will be opening remarks and category and guidelines overview.

The remaining portion of this meeting on December 7 from 10 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: November 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–27540 Filed 11–22–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Unit 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Unit 3, located in San Diego County, California.

ENVIRONMENTAL ASSESSMENT

Identification of Proposed Action

The proposed amendment would revise Technical Specification 3/4.7.6, "Snubbers." Surveillance Requirement 4.7.6.b requires a visual inspection of all snubbers on a regular basis. The interval for visual inspections is decreased as a function of the number of inoperable snubbers discovered. With no inoperable snubbers found, a maximum interval of 18 months plus or minus 25% is allowed. With one inoperable snubber per inspection period, the interval is 12 months plus or minus 25%. The proposed change would allow a one–time extension of the 12 month interval to 20 months plus or minus 25%, for the case where one inoperable snubber was found.

The Need for the Proposed Action

The proposed amendment is required to prevent unnecessary unit shutdown. Performance of these inaccessible snubber inspections would require unit shutdown due to their location in high radiation zones and the need to erect ladders or scaffolding for inspection.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1989 (54 FR 37171). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 26, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16 day of November 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–27603 Filed 11–22–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 177, 177, and 174 to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee), which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (the facility) located in Oconee County, South Carolina. The amendments were effective as of the date of issuance.

The amendments revise the Technical Specifications to establish requirements for movement of a dry storage fuel transfer cask in Oconee Units 1, 2 and 3 spent fuel pools. In addition, the changes authorize storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation (ISFSI). Authorizations for the ISFSI required under the provisions of 10 CFR part 72 are being handled by the Commission's Office of Nuclear Material Safety and Safeguards.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1988 (53 FR 26122). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment (54 FR 43369).

For further details with respect to the action see (1) the application for amendments dated March 31, 1988, (2) Amendment Nos. 177, 177, and 174 to License Nos. DPR–38, DPR–47, and DPR–55 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 16th day of November, 1989.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Project Directorate II–3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27604 Filed 11–22–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–433]

University of California at Santa Barbara L–77 Research Reactor; Order Terminating Facility Operating License

By application dated September 9, 1985, as supplemented on November 20 and December 9, 1985, and March 24 and June 27, 1986, the University of California at Santa Barbara (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its L–77 Research Reactor located in Santa Barbara, California and to terminate Facility Operating License No. R–124. A Notice of "Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License," was published in the **Federal Register** on October 30, 1985, (50 FR 45180). No request for a hearing or petition for leave to intevene was filed followig notice of the proposed action. By Order dated August 26, 1986, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor fuel has been removed from the core and shipped to a Department of Energy facility. The reactor facility has been completely dismantled and all requirements particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated August 26, 1986. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR chapter 1, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the University of California at Santa Barbara, located in Santa Barbara, California, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R–124 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on November 16, 1989 (54 FR 47743).

For further details with respect to this action see (1) the application for termination of Facility Operating License No. R–124, dated September 9, 1985 as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on October 30, 1985 (50 FR 45180). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 17th day of November 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27605 Filed 11–22–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27445; File No. S7–29–89]

Automated Systems of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission today announces publication of an Automation Review Policy in which it states its view that self-regulatory organizaiton should, on a voluntary basis, establish comprehensive planning and assessment programs to determine systems capacity and vulnerability.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Persons wishing to submit comments should file ten copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–29–89 and will be available at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Assistant Director, 202/272–2405, Christine Sakach, Branch Chief, 202/272–2857, or Tonya Noonan Herring, 202/272–2415, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTAL INFORMATION:

I. Background

From the early 1960s through 1982, securities market trading increased steadily. Since 1982, a dramatic acceleration has occurred.[1] For

[1] Trading volume dropped in 1988 to 40.8 billion shares, however, following an all-time high of 47.8 billion shares for 1987. Annual trading volume for 1988 still was higher than in 1986, when 35.7 billion shares were traded. *See* New York Stock Exchange Fact Book (1989) at 71.

example, the volume of trading on the New York Stock Exchange ("NYSE") during only two days in October 1987, October 19 and 20 (1.2 billion shares), exceeded the annual NYSE trading volume for each year up to 1963. In addition, the aggregate NYSE trading volume for only five days in October 1987, October 16–22 (2.4 billion shares), was equivalent to 21.3% of the NYSE's annual volume for 1980 and 17.4% of its annual volume.[2] The over-the-counter ("OTC") and options markets also have experienced tremendous volume growth during the past decade.[3]

Institutional investors and broker-dealers increasingly have employed trading strategies that involve the purchase or sale of a large number of stocks simultaneously ("basket trading").[4] These trading strategies have not only contributed to the increase in trading volume noted above, but also "the velocity and concentration of stock trading." [5] The events of Friday, October 13, 1989, when the Dow Jones Industrial Average ("DJIA") fell 165 points in little more than an hour, and on Tuesday, October 24, 1989, when the DJIA fell more than 60 points in 30 minutes, demonstrate that concentrated surges of trading volume can occur. During the last hour of trading on October 13, 108,170,000 shares were traded on the NYSE, for a daily total of 251,170,000 shares. On Monday, October 16, the DJIA fell more than 63 points in the first 40 minutes of trading. More than 141 million shares were traded in the first hour, and more than 225 million shares were traded over the first two hours. The total NYSE volume for the day was 416,493,810 shares, the fourth highest in NYSE history.

In order to accommodate this growth in trading activity and the volume surges associated with basket trading strategies, the self-regulatory organizations ("SROs") have replaced manually intensive order routing and execution procedures with automated systems that permit electronic routing and execution of certain orders.[6] These automated systems, which generally handle only small orders, successfully have increased the capacity of U.S. securities markets and have improved the efficiency and timeliness with which transactions are executed.[7] Indeed, the SROs have exercised foresight in anticipating future volume levels and designing and continually monitoring and enhancing automated systems to accommodate anticipated volume levels.

The increase in trading volume noted above also has had a ripple effect on the degree of automation of other SRO functions auxiliary to order execution. Specifically, the SROs have developed and continue to enhance automated systems for the dissemination of transaction and quotation information [8] and the comparison of trades prior to settlement.[9] These systems, in conjunction with automated trading systems, allow investors to receive and act on market information in a timely fashion and ensure that trades are settled in an accurate and efficient manner. The Commission commends the SROs for their efforts to develop and constantly improve these systems.

While the SROs' development of execution, market information and comparison systems substantially has improved the efficiency of their markets, the October 1987 Market Break exposed the continuing vulnerability of these systems to operational problems during extreme high volume periods. The following problems were among those encountered by automated trading systems during the October 1987 Market Break. First, inadequate computer capacity caused queues of unprocessed orders to develop that, in turn, resulted in significant delays in order execution.[10] Second, the SROs did not have adequate contingency plans to free-up or create additional computer-file space to accommodate the increase in order traffic.[11] Third, delays were experienced by some SROs in the transmission of transaction reports to both member firms and market information dissemination systems. Fourth, delays in order processing caused the expiration of ITS commitments to trade before they reached the applicable specialist post. Finally, due in large part to capacity strains, some SROs lowered the order-eligibility size of their systems or asked member firms not to route orders through their systems. The disengagement of these systems, in turn, hampered order execution throughout the market as a whole, because orders that would otherwise have been processed electronically were required to be processed manually.[12]

The market decline on October 13, 1989, demonstrated that the systems worked substantially better than two years ago, but there were still problems with some systems. A few of the exchanges again experienced queuing problems, while some exchanges had other systems problems that may or may not have been related to the volume surge during that volatile period.[13]

The NASD experienced problems with SOES. On October 16, trading on SOES totaled 13,483 transactions and 4.7 million shares. A variety of factors, such as mandatory participation in SOES, the penalties for market-maker withdrawals, and the efforts of market-makers to unlock and uncross their markets, resulted in an unprecedented flow of market-maker quotation changes to NASDAQ. As a preliminary matter, it appears that this may have produced a communications delay between the computers that operate the basic NASDAQ System and the computers that operate SOES, causing orders to be executed based on delayed quotations.[14]

The effect of the earthquake in Northern California on the PSE during the week of October 16–20, 1989, demonstrates the vulnerability of the securities markets to external circumstances. The earthquake and the resultant loss of power caused the PSE in San Francisco to substantially scale down operations until October 23, 1989.[15] To ensure that trading in PSE options could continue, the Commission permitted trading in PSE options on the American, New York, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange, on October 19–20.

In addition, on November 10, 1989, the NYSE delayed opening until 10:30 a.m. due to an electrical fire in the building that houses SIAC, causing the NYSE to rely on its back-up generators. The options and futures markets also halted trading during that period.

II. Automation Review Policy

Because of the impact systems failures have on public investors, broker-dealer risk exposure, and market efficiency, the Commission believes it is appropriate for the SROs to take certain steps to ensure that their automated systems [16] have the capacity to

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[2] *Id.*

[3] For example, the average daily share volume on NASDAQ, the primary OTC market, has grown from 11 million shares per day in 1978 to 122.8 million shares per day in 1988, a 1,116% increase. *See* NASDAQ Fact Book (1988) at 7. In the standardized options market, contract volume for 1987 and 1988, in comparison to 1978, was, respectively, 497% and 319% larger. *See* SEC Monthly Statistical Review, April 1981 at 5 and February 1989 at 4.

[4] *See* Division of Market Regulation, *The October 1987 Market Break* (Feb. 1988) ch. 1, at 1–7 for a description of some of the basic trading strategies that employ basket trading ("Market Break Study").

[5] *Id.* at 3–17.

[6] Prior to the automation of the markets, orders to purchase or sell exchange-listed securities generally were processed in the following manner. A customer would place an order with his or her registered representative at a branch office of a broker-dealer who, in turn, would telephone the order to the broker-dealer's order desk. The order desk would then route the order by telephone or pneumatic tube to the firm's trading booth on the exchange floor and the firm's floor trader would take the order to the applicable specialist post for execution. If the order was not executable (*e.g.*, a non-marketable limit order), then it was given to the specialist's and transcribed by hand onto the specialist's book for future execution. *See* Special Study of Securities Markets, Report of the Securities and Exchange Commission (1963), *reprinted in* H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963), Pt. 2 at 41–42 ("Special Study Report"), and Market Break Study, *supra* note 4, ch. 7 at 16. Orders for OTC securities were handled in a manner similar to exchange-listed securities except that once they reached the broker-dealer's trading desk, they could be filled out of the firm's inventory (principal transactions) or through telephone negotiations with other broker-dealers (agency transactions). *See* Special Study Report, Pt. 2 at 552.

[7] The NYSE and the American Stock Exchange ("Amex") have developed automatic order routing systems, termed DOT and PER, respectively, that permit orders to be routed directly from member firm branch offices to the applicable specialist post, thereby by-passing the member firm's trading desk and floor broker. After orders are executed, DOT and PER generate and transmit execution reports to the member firms and other automated systems that disseminate market information. For a more complete description of these systems and their enhancements, *see* Market Break Study, *supra* note 4, ch. 7 at 16–21 and 24–25. The Boston, Midwest, Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges have developed systems called BEACON, MAX, SCOREX, and PACE, respectively, that automatically route and execute small orders (generally up to 1,099 shares). These four systems basically operate in the same manner. After an order is routed to the system, it is priced based on the best bid or offer displayed on the Intermarket Trading System ("ITS") at the time the order was received by the system, and then routed to the applicable specialist post. The order is then displayed on a video terminal at the post for 15 seconds to permit the specialist and/or trading crowd to improve upon the assigned ITS execution price. If no floor trader intervenes within the 15 seconds, the order is automatically executed against the specialist at the predetermined price. Under the PACE system, however, orders are executed once priced and are not displayed for price improvement. The four systems also transmit transaction reports to members and market data vendors. For a more complete description of these systems, *see* Market Break Study, *supra* note 4, ch. 7 at 26–28 and Adkins & Ruder, Appendix to "Automation of Information and Trading in the U.S. Securities Market" at 6–13 ("Annenberg Forum Paper") (paper presented by Chairman Ruder to the Annenberg Washington Program's 1989 Forum, "Technology and Financial Markets," on February 27, 1989). *See also* "Automation in U.S. and Foreign Securities Markets: A Report by the Division of Market Regulation of the United States Securities and Exchange Commission" (September 1989).

The Amex and the Chicago Board Options Exchange ("CBOE") have developed automated order execution systems, termed RAES and Auto-Ex, respectively, for the execution of small public customer option orders. The Phlx has developed an automated order routing system for small customer options orders called Autom. In the OTC market, the national Association of Securities Dealers ("NASD") has developed a system called the Small Order Execution System ("SOES") that permits the automatic execution of small customer orders. For a more complete description of these systems, *see* Market Break study, *supra* note 4, ch. 8 at 8–10 and ch. 9 at 12–13 and Appendix to Annenberg Forum Paper, *supra* at 14–17 and 20–22.

Finally, the Cincinnati Stock Exchange ("CSE") has established a fully automated electronic trading system, National Securities Trading System ("NSTS"), that permits CSE members, without having to maintain a physical presence on the CSE floor, to enter agency or principal orders into the system through remote terminals. Once entered, orders are stored, queued, and executed by the system according to price and time priorities. Public agency orders, however, are granted priority over other orders at the same price, regardless of time of entry. The screens for each security traded in the system are updated instantaneously to reflet the entry, revision, cancellation and execution of orders.

[8] Through a coordinated and cooperative effort, SROs developed the Consolidated Transaction Reporting System and the Consolidated Quotation Reporting System in 1974 and 1978, respectively. These systems provide for the electronic collection and dissemination of real-time trade and quotation information (*i.e.*, immediately or soon after the event, rather than at the end of the trading day) in NYSE and Amex listed securities, as well as certain regional securities. Under these plans, quotation and trade reports are submitted by particular markets electronically to a central processor, the Securities Information Automation Corporation ("SIAC"). SIAC, in turn, processes this information and broadcasts it to financial information vendors for dissemination to investors. For options, transaction and quotation information is collected and disseminated pursuant to a plan administered by the Options Price Reporting Authority ("OPRA"). As with equity securities, each options exchange electronically collects and transmits to OPRA last sale information and bids and offers for the options that it trades. OPRA, in turn, processes this information and disseminates it to vendors. In the OTC market, NASDAQ, Inc., a subsidiary of the NASD, operates a system that collects quotations that are electronically submitted by market makers from computer terminals in their offices and then disseminates them to vendors and other market makers. For the largest and most actively traded NASDAQ companies, which are known as NASDAQ/NMS securities, the NASD provides real-time last sale reports.

[9] Trade comparison, the matching of the buy and sell sides of a securities transaction, is the process after a trade has been executed by which broker-dealers confirm with each other the trade's terms (*e.g.*, security, number of units, and price) and the existence of a contract. Comparison is the first of three basic steps in processing a securities transaction, the other two being clearance and settlement. For a more complete discussion of trade comparison, see Market Break Study, *supra* note 4., ch. 10 at 1–5.

The NASD has developed a system, called Automated Confirmation Transaction ("ACT"), that facilitates the automated clearing of pre-negotiated trades. *See* Securities Exchange Act Release No. 28991 (June 29, 1989), 54 FR 28531. ACT is a facility for same-day comparison of inter-dealer, over-the-counter equity trades. Participants must enter trade reports within specific time frames, which are then compared and submitted to clearing as matched, "locked-in" trades. The NASD also has introduced a system called the Order Confirmation Transaction ("OCT") System. *See* Securities Exchange Act Release No. 25263 (January 11, 1988), 53 FR 1430. OCT permits negotiation through screen terminals of trades of all sizes between market makers, and brokers and the automated, locked-in comparison of those trades once agreed upon. The system in effect replaces telephone negotiation with negotiation through computer links and screen. If an order is accepted, the system generates locked-in comparison reports, as well as publicly-disseminated trade reports.

The NYSE and the National Securities Clearing Corporation ("NSCC") recently have developed an automated comparison system called the Overnight Comparison System ("OCS"). This system, which is being implemented in stages, consists of two subsystems, called the Correction System and the Comparison Redesign System. The Correction System computerizes the NYSE's processing of uncompared trades. The Exchange's Correction System began operation on April 27, 1989, and by July 18, 1989, all uncompared or "Questioned Trades" were being resolved through the System. *See* Securities Exchange Act Release No. 27096 (August 3, 1989), 54 FR 33299. The Comparison Redesign System permits all transactions to be compared or closed out by the close of the business day following trade date, T+1, as required by new NYSE Rule 130.

[10] In some cases, the queuing problems adversely affected the priority of orders placed in the system. For instance, in one system, once an order file was full, incoming orders would replace, or "wrap-over," orders previously placed in the system.

[11] While some of the markets, such as the MSE, were able to make certain adjustments in their systems to continue operations, two markets, the PSE and the Phlx, asked members to refrain from using their automated systems for several periods of time during the week of October 29, 1987, because the systems were overloaded. *See* Market Break Study, *supra* note 4, ch. 7 at 15–41.

[12] The OTC and options markets' automated execution systems, however, did not experience operational strains during the market break, in part because order flow was diverted from these systems for reasons unrelated to the operation of the computer facilities themselves. For a more thorough discussion of the problems encountered by these markets, *see* Market Break Study, *supra* note 4, at chs. 7–9. With regard to trade comparison systems, the number of uncompared trades on all securities markets increased substantially, thereby placing great stress on the clearance and settlement process. This was not, however, a systems capacity problem, except for the NYSE's odd-lot system, the Automated Pricing and Reporting Service ("APARS"). APARS reports were delayed significantly on October 20 and 21, 1987, and the system as a whole experienced problems on October 20 when no member odd-lot trades were reported to NSCC (however, those trades were reported the next day and were entered into NSCC's clearance systems without further effect on timely settlements). APARS also experienced capacity overload problems on October 20, which caused a computer failure and, in switching over to a backup computer, loss of approximately 8,000 to 9,000 orders. The lost trades were re-established through the NYSE's trade correction process. *See id.* ch. 10 at 5–12. In December 1987, the Commission approved a NYSE rule change that modified pricing procedures for standard odd-lot market orders. The APARS system was eliminated, and standard odd-lots now are routed through the Exchange's Limit Order File ("LMT"). *See* Securities Exchange Act Release No. 25177 (December 7, 1987), 54 FR 47472. Finally, there were delays at several of the regional exchanges in transmitting trade information to the Securities Industry Automation Corporation ("SIAC"). See *id.* ch. 7 at 3–7.

[13] Not surprisingly, those exchanges that had conducted prior testing of their automated systems seemed to fare better than those that had not.

[14] Apparently, the computer receiving quote updates was so fast that the computer could not read and send the quotes to the computer which processes executions. Therefore, the computer or the link was shut off for approximately 20 minutes from 9:38 to 10:04 am.

[15] The equities floor in San Francisco remained open on a limited basis with orders being routed to and executed in Los Angeles, while some workers at the PSE's main floor in San Francisco executed orders by flashlight. W.S.J. Oct. 19, 1989 at C14.

[16] The Commission believes that the Policy Statement is consistent with and in furtherance of Sections 2 and 11A(a)(1) (B) and (C) of the

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accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions. For this reason, the Commission today announces its Automation Review Policy ("Policy").[17] It is the Commission's belief that the SROs should establish comprehensive planning and assessment programs to test systems capacity and vulnerability. These programs should have three primary objectives. First, the Commission believes the SROs should formally establish current and future capacity estimates ("Capacity Estimates") for their automated order routing and execution, market information, and trade comparison systems. Second, the SROs should conduct capacity stress tests ("Stress Tests"), periodically, to determine the behavior of automated systems under a variety of simulated conditions.[18] Third, we believe that the SROs should contract with independent reviewers to assess annually whether these systems can perform adequately at their estimated current and future estimated capacity levels and whether these systems have adequate protection against physical threat.[19]

Securities Exchange Act of 1934. Specifically, Section 2 states in pertinent part that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, . . . to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective. . . ." In Section 11A(a)(1), Congress found that: (1) "securities markets are an important national asset which must be preserved and strengthened"; (2) "new data processing and communications techniques create the opportunity for more efficient and effective market operations"; and (3) "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . [the] economically efficient execution of securities transactions."

[17] The Commission notes that compliance with this policy statement by the SROs is voluntary. The Commission's examination program, however, will review carefully the preparedness of SRO systems to handle substantial volume spikes. If the Commission becomes concerned over the level of voluntary compliance with this Policy Statement, it may propose a rule that would place an affirmative obligation on the SROs to obtain a periodic review of their automated systems.

While this Policy Statement does not directly discuss the obligations of broker dealers, proprietary trading systems, service bureaus, and vendors, the Commission believes all should engage in systems testing, and this Policy Statement should be used as a guideline. The Commission staff will review these entities' systems preparedness in the coming months and, if appropriate, the Commission may consider the issuance of a second Policy Statement thereafter.

[18] We note that, in fact, the SROs already have begun a testing program. For example, on Saturday, April 30, 1988, the NYSE and SIAC tested the key computer systems that experienced difficulties in October 1987. During the test the participants replayed actual data from October 29, 1987, compressed into five hours (8:00 a.m. to 1:00 p.m.) to achieve the peak volumes required to stress the systems. Beginning at 8:00 a.m., incoming market orders were accepted into the Opening Automatic Reporting System ("OARS") and limit orders were sent to display books and card printers. At 9:30 a.m., specialist personnel opened the "market" and simulated normal (but intense) trading activity by reporting executions and entering additional order from the floor.

The NYSE reported that the test showed that the improvements made since October 19 (for example, expanding the trading floor, adding input/output devices, greatly increasing the use of display books, and upgrading hardware and software) have resulted in higher capacity, increased flexibility and better performance. The NYSE's systems processed a traffic flow comparable to that of October 19, 1987, in much less time and at much higher message rates. *See* Report from NYSE and SIAC, 600-Million-Share-Day Volume and Stress Test on April 30, 1988 (May 23, 1988).

On Saturday, November 12, 1988, the NYSE and SIAC, in conjunction with the member-firm community and the financial service vendors, tested the Exchange's switching and order-processing systems. The test, according to the report of the NYSE and SIAC, met its five objectives. Specifically, it:

1. proved that the Common Message Switch (CMS) interface to member firms can accommodate message rates up to those expected on a 600-million-share day;
2. demonstrated that member firms can deliver orders to and receive reports from the NYSE at 600-million-share-day message rates;
3. identified potential weak lines when many systems were stressed at rates in excess of 600-million-share-day levels; collected extensive information about systems' behavior under heavy loads;
4. used the market-data systems to distribute trade and quote data to financial-service vendors in preparation for the 1989 test; and
5. helped NYSE/SIAC identify requirements for system tools and procedures to conduct similar tests routinely.

Report from NYSE and SIAC, 600-Million-Share-Day Member-Firm Interface Test on November 12, 1988 (December 16, 1988).

The 1988 tests focused on the National Market System ("NMS"), and consisted of three phases. On Saturday, May 13, 1988, NYSE and SIAC, with the cooperation of other market centers, conducted a vendor test. The NYSE and SIAC reported that the May test successfully transmitted test market data, previously recorded, from all market-center sources to the financial-service vendors and that the test met its two objectives by:

1. distributing trade and quote data to the vendor community at 600-million-share-day rates to test vendors' ability to receive and process at these rates; and
2. identifying the SIAC and vendor tools needed to conduct similar tests routinely.

Report from NYSE and SIAC, 600-Million-Share-Day Financial Service Vendor Test on May 13, 1988 (June 9, 1988).

On June 24, 1988, a stress test was conducted to examine the Consolidated Trading and Consolidated Quote Systems. According to the report issued by the NYSE and SIAC on August 4, 1988, the test met its two objectives by:

1. demonstrating that the Consolidated Trading System and the Consolidated Quote System can handle 600-million-share-day message rates when all participants are active; and
2. identifying the SIAC and participant tools needed to conduct similar tests routinely.

At 600-million-share-day rates, all SIAC operations ran smoothly, with minimal queuing. Report from NYSE and SIAC, 600-Million-Share-Day Consolidated Trade and Quote Systems Test on June 24, 1988 (August 4, 1988).

A third stress test conducted in September 1988, tested ITS. Reports of this third test are not yet available, although preliminary results indicated that the systems accommodated simulated volume levels that exceed those of the October 1987 Market Break.

[19] These objectives are discussed in greater detail in Section III, *infra*.

III. Discussion

The Commission believes this Policy Statement is consistent with and in furtherance of a Congressional finding that one of the two paramount objectives of a national market system is "the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements."[20] In light of the operational difficulties experienced by SRO automated systems during the October 1987 Market Break, predicted future capacity requirements based on past increases in trading volume, the need to maintain accurate trade and quote information, and the degree to which computer automation has become, and is likely to increase as, an integral part of securities trading, the Commission believes that the SROs should take certain steps to ensure that their automated systems have adequate capacity to process reasonably predictable volume levels.[21]

The Commission's announcement of these guidelines does not mean the Commission believes SRO automated systems are inadequate or that enhancements made to these systems since the October 1987 Market Break have not been sufficient or beneficial. On the contrary, the Commission believes the SROs have made great strides since October 1987 to increase the capacity of their systems and the Commission is encouraged that planned enhancements to these systems will further strengthen the integrity of the securities markets.[22] The Commission does believe, however, that a periodic review and test of each SRO's systems capacity will help indentify potential weak points and reduce the risk of serious system failures. The Commission's Policy reflects its desire to ensure that market movements are the result of market participants' changing expectations about the direction of the market for a particular security, or group of securities, and not the result of investor confusion or panic resulting from operational failures or delays in SRO automated trading or market information systems.

The Commission believes that each SRO should formulate current Capacity Estimates for the maximum number of transactions its order handling and execution systems can process daily without unreasonable delays, the maximum number of transactions its system can handle over a fifteen-minute surge in volume, and future capacity requirements based on projected volume figures.[23] Similarly, the Commission believes that the SROs should formulate daily and fifteen-minute Capacity Estimates for their automated market information and trade comparison systems, along with future Capacity Estimates. In addition, the SROs should formulate contingency protocols ("Contingency Protocols")[24] designed to provide back-up facilities in the event of on-line system failures and additional processing capacity during high volume periods.[25] Furthermore, the SROs should prepare an evaluation of any implementation of system enhancements needed to accommodate future trading levels. The SROs should consider preparing planning statements anticipating such enhancements ("Planning Statements").

The SROs also should institute procedures to continue periodic Stress Tests of all of their automated systems and report the results of those tests to the Division. The SROs should use standards generally set by the computer industry to develop, and evaluate the results of, Stress Tests and should specify in their report the specific standards they are applying. In this connection, the Commission requests comments on whether the Commission should in the future mandate specific standards, and if so, what those standards should be.

The Commission also requests that the SROs periodically assess the vulnerability of their automated systems to external and internal threat ("Vulnerability Studies"). The Commission believes that such studies should address the susceptibility of automated systems to computer viruses, unauthorized use, computer vandalism, and failures as a result of catastrophic events (*i.e.*, fire, power outages, earthquakes). In addition, the Commission requests that the SROs promptly notify the Division of any instances in which unauthorized persons gained or attempted to gain access to their systems, and follow-up with a written report of the problem, its problem, its cause, and the steps taken to prevent a recurrence.

The Commission believes that review of SRO actions relating to automation systems will be important in monitoring SRO performance. Accordingly, the Commission, pursuant to its oversight authority, expects to request that the SROs provide to the Division Capacity Estimates, Planning Statements, Stress Tests, Contingency Protocols, Vulnerability Studies, and reports of any incidents of unauthorized access which they have prepared.

Finally, as part of a capacity planning and assessment program, SRO automated systems also should receive, periodically, a comprehensive, critical, and independent review. The Capacity Estimates, Planning Statements, Stress Tests, Contingency Protocols, and Vulnerability Studies previously produced by the SROs, along with the actual automated systems themselves, should form the basis on which independent reviewers will be able to critique automated systems.[26] The Commission believes that each SRO should have its automated systems reviewed annually by an independent reviewer starting in 1991.[27] Pursuant to its oversight examination authority, the Commission expects to request the SROs to provide the Commission copies of the reports, which have been prepared, describing the findings of the independent reviewer.[28] Areas which appear appropriate for independent review include: (1) Whether current and future SRO Capacity Estimates are accurate; (2) whether the automated systems can perform at estimated capacity levels; (3) whether planned system enhancements realistically will accommodate future capacity requirements; (4) whether Contingency Protocols are well designed and likely to be effective; (5) whether SRO automated systems are vulnerable to systems integrity failures; and (6) recommendations to address deficiencies found in areas (1)–(5) above.

[20] Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179. *See also* § 11A(a)(1)(B) and (C), 15 U.S.C. 78*l* (1982).

[21] The term "automated systems" or "automated trading systems", as used in this release, refers collectively to computer systems for listed and OTC equities, as well as options, that electronically route orders to applicable market makers and systems that electronically route and execute orders, including the data networks that feed the systems. The term "automated systems" also encompasses systems that disseminate transaction and quotation information and conduct trade comparisons prior to settlement, including the associated communication networks. Moreover, because lack of adequate communications capacity can be as damaging to the overall performance of an exchange during peak periods as poorly designed order processing, capacity tests of the data networks that feed the computer systems also should be conducted.

[22] *See* Letter from David S. Ruder, Chairman, SEC, to the Honorable William Proxmire, Chairman, Committee on Banking, Housing, and Urban Affairs dated March 4, 1988 (discussing contingency planning and coordination and operational capacity enhancements).

[23] Future capacity estimates also should take into consideration increased message traffic resulting from planned modifications to existing systems or the introduction of new systems. For example, if the NYSE were to expand the instances where DOT automatically would execute orders or if the CBOE were to increase the order eligibility size for RAES, then they would have to incorporate the anticipated increase in order flow into their capacity estimates.

[24] A contingency protocol is a plan to deal with extreme market conditions which potentially could overburden automated order routing and execution systems.

[25] The Commission understands that many of the SROs already have produced similar capacity estimates, planning statements, and protocols that they will be able to use them to comply with this Policy.

[26] In the future, the Commission may suggest expansion of this Policy to other SRO computer-driven support systems for, among other things, clearance and settlement, and market surveillance, if the Commission finds it necessary to ensure the maintenance of fair and orderly markets.

[27] In view of the voluntary nature of this Policy, the Commission has not mandated specific requirements for determining whether a reviewer is independent. The Commission, however, requests comments on whether it should mandate such standards in the future, and if so, what those standards should be.

[28] In addition, the Commission requests that each SRO include a general discussion of its automation review in its Exchange Act Form 1–A submitted annually to the Commission.

Dated: November 16, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27531 Filed 11-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27446; File No. SR-MCC-89-02]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving Proposed Rule Change Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

November 16, 1989.

On April 11, 1989, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (SR-MCC-89-02) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder.[2] The proposal would limit the personal liability of MCC directors in certain instances. The Commission published notice of the proposal in the Federal Register on June

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1989).

1, 1989.[3] No public comments were received. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposal would limit the personal liability of MCC directors to the fullest extent permissible under Section 102(b)(7) of the General Corporation Law of Delaware (MCC's state of incorporation),[4] except that violations of the federal securities laws would be excluded from the liability limitation. Under section 102(b)(7), MCC may limit a director's personal liability to MCC or its shareholders for a breach of that director's fiduciary duty of care.[5] Section 102(b)(7) precludes MCC from limiting liability for: (1) Breach of the director's duty of loyalty; [6] (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (3) unlawful dividend payments or unlawful stock purchases or redemptions; (4) transactions from which a director derived improper personal benefit; (5) acts or omissions occurring prior to effectiveness of the liability limitation; and (6) director action in a capacity other than as a director, such as that of an officer or majority stockholder. The limit also may not apply to claims for non-monetary relief, such as injunction or rescission.[7] In addition, as noted above, MCC's proposed director liability provisions would exclude violations of the federal securities laws from the liability limitation.

II. Rationale for the Proposed Rule Change

MCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act. Specifically, MCC believes the proposal is necessary to promote the recruitment and retention of competent directors. MCC argues that without the protections offered by the proposal, decisions by directors would be deterred.

III. Discussion

The Commission believes the proposal is consistent with the Act and therefore is approving the proposal. Specifically, the Commission believes that because the proposal excludes violations of the federal securities laws from liability limitation, it is not designed to affect adversely MCC director compliance with the federal securities laws.

Section 17A of the Act [8] and Division of Market Regulation standards interpreting section 17A [9] require clearing agencies to be organized and have the capacity to comply with the Act and rules and regulations thereunder. Accordingly, clearing agency directors must exercise their duties consistent with the Act and clearing agency rules must be designed to promote such compliance. Directors also have a duty to promote clearing agency and clearing member compliance with clearing agency rules.[10]

Clearing agency directors exercising their duties in a manner inconsistent with the Act and clearing agency rules may be subject to Commission sanction. Under section 19(h)(4) of the Act,[11] the Commission can remove from office or ensure any clearing agency director who has: (1) Willfully violated any provision of the Act; (2) willfully violated any rules or regulations under the Act; (3) willfully violated clearing agency rules; (4) willfully abused his authority; or (5) without reasonable justification, failed to enforce compliance with clearing agency rules by any clearing agency member. Congress directs the Commission to use this authority to ensure clearing agencies do not exercise their delegated power "in a manner inimical to the public interest or unfair to private interests." [12]

To facilitate compliance with the federal securities laws by clearing agency directors, clearing agencies generally must have an audit committee which either selects, or makes a recommendation to the board of directors regarding the selection of, the clearing agency's independent public accountant.[13] The audit committee must include nonmanagement directors who "review the nature and scope of the work performed by the independent public accountant and results thereof." [14]

The Commission believes MCC's proposal is consistent with the Act. As noted above, the proposal excludes violations of the federal securities laws from liability limitation. Therefore, the proposal would not limit the ability of the Commission or private litigants to seek monetary relief for violations of the federal securities law. The proposal also would not affect the Commission's authority to remove from office or censure a director under section 19(h)(4) of the Act for reasons enumerated in that section. Moreover, the Commission notes that MCC's board has audit, executive, and nominating committees designed to promote director compliance with the Federal securities law.[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission believes that because violations of the federal securities laws are excluded from the proposed liability limitation, the proposal is not designed to affect adversely MCC director compliance with the federal securities laws.[16]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–MCC–89–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27530 Filed 11–22–89; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 26866 (May 23, 1989), 54 FR 23556.

[4] *See* Del. Code Ann. tit. VIII 102(b)(7) (1988).

[5] Pursuant to their fiduciary duty of care, directors must act on an informed basis, in good faith, and in honest belief that action taken is in the best interests of the company. *See* Grobow v. Perot, 539 A.2d 180 (Del. 1988).

[6] Pursuant to their duty of loyalty, directors must act in good faith without self-interest. *See* Cede & Co. v. Technicolor, Inc., 542 A.2d 1188 (Del. 1988).

[7] Under Section 102(b)(7), a corporate provision limiting director liability must receive shareholder approval prior to effectiveness.

[8] 15 U.S.C. 78q–1 (1988).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[10] *See* section 19(g) of the Act (15 U.S.C. 78s(g)(1988)).

[11] 15 U.S.C. 78s(h)(1988).

[12] *See* Securities Acts Amendments of 1975: Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs, 94th Cong., 1st Sess. 185 (1975).

[13] *See* Standards Release at 45 FR 41928.

[14] *Id.*

[15] The audit committee serving MCC's board is a board committee of the Midwest Stock Exchange ("MSE") designed to serve all MSE subsidiaries.

[16] *Cf.* Baker Watts & Co. v. Miles & Stockbridge, 876 F.2d 1101 (4th Cir. 1989); King v. Gibbs, 876 F.2d 1275 (7th Cir. 1989).

[Release No. 34–27447; File No. SR–NSCC–89–16]

Self-Regulatory Organizations: National Securities Clearing Corp.; Notice for Filing of Proposed Rule Change Amending the Rule Regarding the Clearing Fund

November 16, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1989, National Securities Clearing Corporation ("NSCC"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's Rules and Procedures as follows:

Italics Indicate additions

[Brackets] Indicate deletions

Amend Procedure Section XV *Other Matters* as follows:

A.II. Alternative Clearing Fund Formula

Each Member of the Corporation who is eligible and elects to utilize the Alternative Clearing Fund Formula is required to contribute to the Clearing Fund maintained by the Corporation an amount equal to:

* * * * * *

(c) $20,000 if the Member has daily Fund/Serv settlement debits of more than $500,000 with respect to any one Fund Member[;].

A.III. Cash Requirement

[provided, however, that] *With respect to either Clearing Fund formula* each Member, except for a Fund/Serv Broker-Dealer, shall be required to contribute a minimum of $10,000 (the "minimum contribution"). Except with respect to a Fund/Serv Broker-Dealer, the first $10,000 of a Member's contribution is required to be in cash unless all or part of the Member's open account indebtedness is collateralized with Letters of Credit, in which case, the *greater of $50,000 or 10 percent of the Member's Clearing Fund Required Deposit up to a maximum of $1,000,000* [first $50,000 of the Member's contribution] is required to be in cash; a Fund/Serv Broker-Dealer's entire deposit is required to be in cash.

A.IV. Non-CNS Factor for Members

For the purposes of Section XV, subsection A.I.(ii), the factor for broker/dealer Members shall be calculated as follows:

* * * * * *

Amend Rule 4, Clearing Fund, section 1 as follows:

Clearing fund

Rule 4. SEC. 1. Each Member shall and each Fund Member may be required to make a deposit to the Clearing Fund; such deposits to the Clearing Fund shall be held by the Corporation to be applied as provided in this Rule. The amount of each Member's and Fund Member's required deposit shall be fixed by the Corporation in accordance with one or more formulas specified by the Board of Directors and included in the Procedures (the "Required Deposit"). The basis of each formula shall be use of the Corporation's facilities. The minimum *Required* Deposit for each Member (except Fund/Serv Broker-Dealers) shall be $10,000 unless changed by the Board of Directors and shall be in cash unless changed by the Board of Directors. The minimum *Required* Deposit for Fund/Serv Broker-Dealers shall be $5,000 unless changed by the Board of Directors and shall be in cash unless changed by the Board of Directors. The Corporation may require a Member or Fund Member to deposit additional amounts to the Clearing Fund pursuant to Rule 15 and such amounts shall be part of the Member's or Fund Member's Required Deposit.

The Corporation, in its discretion, may permit part of a Member's (except Fund/Serv Broker-Dealers) or Fund Member's [actual] deposit to be evidenced by an open account indebtedness (a) secured by unmatured bearer bonds which are either direct obligations of, or obligations guaranteed as to principal and interest by, the United States or its agencies or general obligations of, or obligations guaranteed as to principal and interest by, a State or political subdivision thereof which are in the first or second rating of any nationally known statistical service (the "qualifying bonds") and or (b) secured by one or more irrevocable Letters of Credit issued on behalf of the Member or Fund Member in favor of the Corporation under which a bank, trust company or United States branch or agency of a foreign bank, in each case approved by the Corporation for such purpose, is obligated to honor drafts up to a specified amount drawn on it by the Corporation, provided that the terms and conditions of any such Letter of Credit are deemed acceptable to the Corporation in its sole discretion[.], *and provided further, that only 70% of a Member's Required Deposit may be collateralized with Letters of Credit.*

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

(a) The purpose of the proposed rule change is to modify the amount of a Member's Clearing Fund Required Deposit that may be collateralized by letters of credit. Specifically, the rule change will increase the minimum cash contribution for those Members who use letters of credit from $50,000 to the greater of $50,000 or 10 percent of their Clearing Fund Required Deposit up to a maximum of $1,000,000. In addition, the rule change will provide that only 70 percent of a Member's Required Deposit may be collaterlized with letters of credit. Finally, the rule change has added headings to the Clearing Fund formula section for clarity and other nonsubstantive drafting changes have been made. The intended effect of the rule change is to increase the liquidity of the Clearing Fund and limit exposure to NSCC of any unusual risk from the reliance on letters of credit. This is a goal that the Commission has endorsed to insure the liquidity of the clearing system in the event of a major Member insolvency, catastrophic loss, or a major settlement suspense.

(b) Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and protect the public interest, it is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to a self-regulating organization.

B. *Self-Regulatory Organization's Statement on Burden on Competition.*

NSCC does not believe that the propsoed rule will have an impact or impose a burden on competition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.*

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–89–16 and should be submitted by December 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27529 Filed 11–22–89; 8:45 am]

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[Release No. 35—24986]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 16, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 11, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Inc. (70–6971)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration filed under Sections 6(a) and 7 of the Act.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts ("Swap Agreement(s)") with one or more parties ("Counterparty"), on or before December 31, 1985 covering a total principal amount of up to $150 million for a term or terms ranging between three and seven years. By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the total principal amount increased to $200 million. Subsequently, by Commission order, dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements or other types of interest rate protection mechanisms on or before December 31, 1989. The total principal amount that could be covered under all of these arrangements at any one time could not exceed $200 million. To date, NEEI has entered into a five-year Swap Agreement with Harris Trust and Savings Bank covering a principal amount of $25 million. NEEI now requests that this authority to enter into all such arrangements, under the same terms and conditions, be extended through December 21, 1991.

Columbia Gas System, Inc. et al. (70–7586)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company and its subsidiary companies, Columbia Gas of Ohio Inc. ("Columbia Ohio"), Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), Columbia Gas of New York, Inc. ("Columbia New York"), Columbia Gas of Maryland, Inc. ("Columbia Maryland"), Commonwealth Gas Services, Inc. ("Commonwealth Services"), all located at 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Company ("Columbia Gulf"), 3805 West Alabama Avenue, Houston, Texas 77027; Columbia Gas Development Corporation ("Development"), 5847 San Felipe, Houston, Texas 77057; Columbia Gas Development of Canada Ltd. ("Development Canada") 639—5th Avenue, S.W. Calgary, Alberta, Canada T2P 0M9; Commonwealth Propane, Inc. ("Commonwealth Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; Columbia Gas System Service Corporation ("Service"), Columbia LNG Corporation ("Columbia LNG"), Columbia Hydrocarbon Corporation ("Hydrocarbon"), Columbia Atlantic Trading Corporation ("Columbia Atlantic"), Columbia Coal Gasification Corporation ("Coal Gasification"), The Inland Gas Company, Inc. ("Inland"), Tristar Ventures Corporation ("Tristar Ventures"), all located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corporation ("Columbia Transmission"), Columbia Natural Resources, Inc. ("Columbia Natural"), and Commonwealth Gas Pipeline Corporation ("Commonwealth Pipeline'), all located at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314 (collectively, "Subsidiaries") have filed an application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) under the Act and Rules 43, 45 and 50(a)(5) thereunder.

The Columbia system companies seek authorization through December 31, 1991 of the Subsidiaries long-term and short-term intercompany financing programs, Columbia's external short-term financing program and the continuation of the Intrasystem Money Pool.

Certain of the Subsidiaries propose to issue and sell, and Columbia proposes to acquire, their common stock at par value and/or installment promissory notes ("Installment Notes") up to the amounts indicated below:

Company	1990–1991 Long term financing		
	Common stock	Long-term debt	Total
Columbia Kentucky	$1,400	$10,100	$11,500
Columbia Maryland		4,000	4,000
Columbia New York		8,900	8,900
Columbia Ohio		82,800	82,800
Columbia Pennsylvania		37,400	37,400
Commonwealth Services		20,500	20,500
Columbia Natural		111,000	111,000
Development	80,000	125,400	205,400
Development Canada	54,000		54,000
Commonwealth Propane	2,200	3,400	5,600
Hydrocarbon	5,000	16,000	21,000
Coal Gasification	6,000		6,000
Service	4,600	5,400	10,000
Commonwealth Pipeline	25,000	27,000	52,000
Columbia Gulf		86,000	86,000
Total	190,200	545,900	736,100

The Installment Notes will be unsecured, will be dated the date of their issue, and will have similar provisions as the installment promissory notes heretofore approved by the Commission. The interest rate on the Installment Notes will approximate the effective cost of money to Columbia with respect to its most recent issuance of long-term debt. The principal amount of the Installment Notes will be repaid over a term, not exceeding thirty years, which will approximate the term of Columbin's last issued long-term debt instrument. All of the Installment Notes will be purchased by Columbia by December 31, 1991.

Columbia Transmission will finance its long-term needs by issuing first mortgage bonds ("Bonds") to Columbia. Bonds will be issued in two series secured by a first lien on certain of Columbia Transmission's assets. Up to $400 million of Series A Bonds will be issued on a revolving basis to fund Columbia Transmission's short-term financing needs (other than for gas inventory). Prior to December 31, 1991, long-term Series F Bonds in the principal amount of up to $295 million will be issued to repay a like amount of Series A Bonds and to fund Columbia Transmission's longer-term requirements. Interest rates on these securities will be: (1) For Series A Bonds, the same as those on the short-term advances to other Subsidiaries; and (2) for Series F Bonds, the same as those on the Installment Notes issued by the other Subsidiaries.

Columbia Transmission will finance its gas inventory under an inventory financing note issued to Columbia, as previously authorized under the order dated June 7, 1985 (HCAR No. 23724). Up to $400 million of these loans will be outstanding, will be secured by Columbia Transmission's gas in storage, will bear the same rate of interest as Columbia's short-term advances to the other Subsidiaries, and will be repayable no later than April 30 of the year following the advance.

The Subsidiaries' (except Columbia Transmission) short-term requirements are estimated to be $597 million for 1990 through 1991, to be funded first through borrowings from the Intrasystem Money Pool ("Money Pool") and/or borrowings from Columbia funded by the issuance and sale of commercial paper and/or issuance of short-term notes under bank lines of credit ("Bank Loans"). It is proposed that the Money Pool, which was extended through December 31, 1989 by order of the Commission dated August 30, 1988 (HCAR No. 24706), be continued through December 31, 1991. Borrowings from Columbia will be limited to a maximum amount outstanding at any one time for 1990 through 1991 for each of the Subsidiaries as shown below:

	Short-term debt
Columbia Kentucky	$45,000
Columbia Maryland	7,000
Columbia New York	14,000
Columbia Ohio	290,000
Columbia Pennsylvania	105,000
Commonwealth Services	40,000
Commonwealth Pipeline	10,000
Columbia Natural	19,000
Development	15,000
Inland	5,000
Commonwealth Propane	4,000
Hydrocarbon	5,000
Coal Gasification	10,000
Service	9,000
Columbia Gulf	10,000
Columbia LNG	10,000
Total	597,000

The funds would be advanced, repaid and reborrowed, as required through 1991 with all such advances to be fully repaid by April 30, 1992. The Subsidiaries' cost of money on all such short-term advances will be the composite weighted average effective cost incurred by Columbia on its own short-term transactions.

Columbia's 1990–1991 short-term financing program will involve either commercial paper or Bank Loans not to exceed $525 million. In order to issue and sell such an amount, Columbia requests, pursuant to Section 6(b) of the Act, an increase in the Section 6(b) exemption from the requirements of Section 6(a) to a limitation of 37 percent of the principal amount and par value of Columbia's outstanding securities. Columbia's current Section 6(b) exemption and related short-term financing authorizations expire December 31, 1989. The proposed new Section 6(b) exemption effectively extends the existing short-term authority through December 31, 1991.

Columbia currently has a $500 million Credit Agreement with a group of banks and proposes to continue to borrow under this Credit Agreement, as permitted by its terms, through 1991. The interest rates on the Bank Loans under the $500 million Credit Agreement are based on either the Prime Rate, Adjusted Certificate of Deposit ("CD") Rate plus ½ percent, or the London Interbank Offer Rate ("LIBOR") plus ⅜ percent. Maturities on loans under the CF rate option may be 30, 60, 90 or 180 days. Maturities on loans under the LIBOR rate option may be 1, 2, 3 or 6 months. In addition, an annual commitment fee of ¼ percent on undrawn amounts is payable quarterly.

In addition to the Bank Loans, Columbia proposes to issue and sell commercial paper in the form of unsecured notes to one or more commercial paper dealers. Columbia will normally issue and sell commercial paper when its effective rate is less than the effective interest cost on the Bank Loans. Commercial paper will be issued in denominations of not less than $50,000 and will be reoffered by the dealer(s) in non-public offerings. The commercial paper will be sold to the dealer(s) at the then prevailing discount rate for similar commercial paper. The dealer(s) may reoffer the paper at a discount rate of up to ⅛ of 1 percent per annum less than the rate borne by Columbia as issuer. Columbia requests an exception from the competitive bidding requirements of Rule 50 pursuant to subsection 50(a)(5) for the proposed sale of commercial paper by Columbia.

Entergy Corp., et al. (70–7679)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company; its service company subsidiary, Entergy Services, Inc. ("Services"), 639 Loyola Avenue, New Orleans, Louisiana 70113; Arkansas Power & Light Company ("Arkansas"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company

("Mississippi"), P.O. Box 1640, Jackson, Mississippi 39215–1640 and New Orleans Public Service Inc., 317 Baronne Street, New Orlenas, Louisiana 70112, each an operating subsidiary of Entergy (collectively, "Operating Companies"); the Operating Companies' fuel supply subsidiary, System Fuels, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113; and System Energy Resources, Inc. ("System Energy"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, Entergy's generating company subsidiary, have filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder an amendment to their application-declaration previously filed under Sections 6(a), 7, (9a), 10, 12(b) and 13(b) of the Act and Rules 45, 86–91, 93 and 94 thereunder.

On November 9, 1989 (HCAR No. 24982), the Commission issued a notice in this matter, which was jointly filed on September 25, 1989 by Entergy and four of its subsidiaries, Arkansas, Louisiana, Mississippi and System Energy, seeking authorization from the Commission to form, organize and have Entergy acquire the capital stock of a newly proposed wholly-owned subsidiary of Entergy to be incorporated in Delaware and called Entergy Operations, Inc. ("EOI"). EOI is to be a service company subsidiary of Entergy with the overall operational responsibilities for the nuclear power plants owned by Arkansas, Louisiana and System Energy. EOI sought authority to finance its interim capital needs by entering into a Loan Agreement with Entergy ("Loan Agreement") pursuant to which EOI would be permitted to borrow and reborrow from Entergy, from time to time through June 30, 1992, up to an aggregate principal amount of $15 million at any one time outstanding, reserving the right to increase this amount to $20 million upon receipt of appropriate authorization from the Commission.

By amendment herein filed on November 15, 1989, EOI seeks additional and alternative authority to finance its interim capital needs through Entergy's system money pool ("Money Pool") as a participant ("Participant") following EOI's organization. The Money Pool will continue to be administered on behalf of the Participants by Services under the direction of its treasurer. EOI's participation in the Money Pool will be for the same purposes and structured in the same manner as last authorized by the Commission (HCAR No. 24798, December 30, 1988) for each of the other Participants, except that it is not currently contemplated that EOI issue and sell unsecured short-term promissory notes to commercial banks and/or dealers in commercial paper.

The aggregate principal amount of borrowings by EOI at any one time through the Money Pool, pursuant to the Loan Agreement and through such other borrowing arrangements as may hereafter be entered into by EOI pursuant to authorization of the Commission shall not exceed $15 million, subject to increase to $20 million upon receipt of appropriate authorization from the Commission. The aggregate principal amount of borrowings by EOI outstanding at any one time through the Pool shall not exceed an amount equal to the aggregate unused portion of the line(s) of credit then available to EOI pursuant to the Loan Agreement and/or such other borrowing arrangements as may hereafter be entered into by EOI pursuant to the authorization of the Commission.

National Fuel Gas Co. et al. (70–7691)

National Fuel Gas Company ("National"), a registered holding company, 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, and its wholly owned subsidiary companies: National Fuel Gas Supply Corporation ("Supply"), Penn-York Energy Corporation ("Penn-York"), National Fuel Gas Distribution Corporation ("Distribution"), Empire Exploration, Inc. ("Empire"), Highland Land & Minerals, Inc. ("Highland"), Enerop Corporation ("Enerop"), each located at 10 Lafayette Square, Buffalo, New York 14203; Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania 16424; and Seneca Resources Corporation ("Seneca"), M Corp. Plaza, 333 Clay Street, Suite 4150, Houston, Texas 77002 (collectively "Subsidiary Companies"), have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45, 50(a)(5) thereunder.

By orders dated December 30, 1983 (HCAR No. 23183), February 12, 1985 (HCAR No. 23598), December 20, 1985 (HCAR No. 23958), August 3, 1987 (HCAR No. 24435), December 29, 1987 (HCAR No. 24551), January 7, 1988 (HCAR No. 24551A), and December 20, 1988 (HCAR No. 24785), National and its Subsidiary Companies were authorized, in relevant part, to participate in the National system money pool ("Money Pool"), to be administered by National, and to make short-term loans of surplus funds generated by National and its Subsidiary Companies, through December 31, 1989. National and its Subsidiary Companies now propose to continue to participate in, and incur short-term borrowings through the Money Pool, through December 31, 1991. Total outstanding short-term borrowings through the Money Pool will not exceed a principal amount of: (1) $230 million for Distribution; (2) $125 million for Supply; (3) $125 million for Seneca; (4) $35 million for Empire; (5) $35 million for Penn-York; (6) $5 million for UCI; (7) $5 million for Highland; and (8) $2 million for Enerop. National will not borrow through the Money Pool or from any Subsidiary Company.

In addition, in the event that intrasystem sources of funds are insufficient to meet short-term loan needs of the Subsidiary Companies, National proposes, from time-to-time through December 31, 1991, to: (1) issue and sell, under an exception from the competitive bidding requirements of Rule 50 under Subsection (a)(5) thereunder, up to $120 million aggregate principal amount at any one time outstanding of commercial paper ("Commercial Paper") through Merrill Lynch Money Markets, Inc. ("Dealer") and the Chase Manhattan Bank, N.A. ("Placement Agent"); and/or (2) issue an aggregate principal amount of up to $350 million short-term unsecured notes ("Notes") to certain banks under bank lines of credit. The aggregate principal amount of such Commercial Paper and Notes shall not exceed $350 million outstanding at any one time. The proceeds of such external borrowings by National shall be made available to its Subsidiary Companies through the Money Pool. In addition, National proposes that up to $10 million of its external borrowing be made available for its own corporate purposes.

The interest rate applicable to all loans of surplus funds through the Money Pool will be the lower of (1) the rate for Commercial Paper placed by the Dealer/Placement Agent, having the same rating as National and having a term most nearly equal to the particular Money Pool loan in question, or (2) the prime rate at Chase Manhattan Bank, N.A. The interest rate applicable to funds borrowed by National, either through Commercial Paper or bank loans, and loaned through the Money Pool will be equal to National's net cost for such external borrowings. In the event that both surplus funds and external funds are concurrently borrowed through the Money Pool, the interest rate applicable to all funds borrowed will be equal to the net cost of funds borrowed externally from the Money Pool.

The Commercial Paper will have varying maturities not to exceed nine months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the Commercial Paper; however, the Dealer/Placement Agent will reoffer and sell the Commercial Paper at a discount rate of one-eighth of 1 percent per annum less than the prevailing discount rate granted by the Dealer/Placement Agent to National. The Notes will mature not later than twelve months from the date of issuance and will be prepayable at any time, in whole or in part, without penalty or premium. The Notes will bear interest at the prime rate of interest in effect at each individual bank, or will be negotiated at a rate lower than prime. The borrowing arrangements with these banks may require compensating balances, commitment fees on amounts borrowed, or no fees whatsoever. National may incur, if necessary, commitment fees not to exceed one-half of 1 percent of average daily line of credit used and compensating balances not to exceed 20 percent of lines of credit established. National, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or commitment fees. National will issue and sell Commercial Paper when its effective rate is less than the effective interest cost of the issuance of Notes under available bank lines of credit on the date of such borrowing. Assuming National borrowed the full amount under each bank line of credit and maintained a compensating balance of 10 percent under each line, the effective cost of money, based on a 10.5 percent prime rate, would be 11.6 percent.

Eastern Edison Co. et al. (70–7692)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, and EUA Service Corporation ("Service"), P.O. Box 2333, Boston, Massachusetts 02107, (collectively, "Subsidiaries"), subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed a declaration pursuant to Sections 6(a) and 7 of the Act.

The Subsidiaries each propose to issue and sell short-term notes to banks ("Notes"), from time to time during the period from December 28, 1989, to December 31, 1991, in aggregate amounts outstanding at any one time not to exceed $25 million for Eastern, $40 million for Montaup, $12 million for Blackstone and $5 million for Service. The Notes will be issued to banks and renewed from time to timne prior to December 31, 1991, provided no such Notes wil mature after September 30, 1992.

Each Note will be dated as of the date of issuance and will be issued no later than December 31, 1991. Some Notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other Notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees and/or compensating balance requirements. The existing bank credit lines expire at various times in 1990 and their continued availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased, decreased or changed and additional lines may be obtained from other banks. The existing credit line arrangements include: (1) Borrowing at the prime rate or money market rates, if lower; and (2) borrowing at the prime rate or money market rates, if lower, together with a commitment fee equal to 1/4 of 1 percent multiplied by the credit line. Any such commitment fee will be allocated among the four declarants in proportion to their respective borrowing authorizations hereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27528 Filed 11–22–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM–8/1324]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee, National Committee; Meeting

The Department of State announces that the National Committee for the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), will meet on December 1, 1989 in the East Auditorium (Room 2925), Department of State, 2201 C Street, NW., Washington, DC. The meeting will be from 9:00 a.m. to 1:00 p.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to discuss with CCITT Director Th. Irmer his views concerning the future relationship between CCITT and other standard organizations.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647–5220. All attendees must use the C entrance to the building.

Dated: November 9, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 89–27524 Filed 11–22–89; 8:45 am]

BILLING CODE 4710-07-M

[CM–8/1326]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee, Study Group D; Meetings

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 5 and January 30, 1990 at 10:00 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meetings will be to review proposed U.S. and company contributions for the upcoming meetings of CCITT Study Group VII (5–16) February, Study Group VIII (28 March–4 April) and Study Group XVII (19–27 April); to review other country contributions relevant to these meetings,

to discuss Study Group organization and working methods, including rapporteur's activities, to nominate delegations for these meetings, and to discuss any other business that may be raised from the floor relevant to any topics within the purview of U.S. Study Group D.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: November 8, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 89–27525 Filed 11–22–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1327]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: January 18, 1990; February 15, 1990; April 19, 1990; and June 21, 1990. These meetings will be held in room 9230 of the Department of Transportation, 400 Seventh, SW., Washington, DC 20950–0001.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and to prepare for the 35th and 36th Sessions of the International Maritime Organization Subcommittee on Radiocommunications. Agenda items also include GMDSS implementation in the U.S., improved dissemination of maritime safety information, and Chapter 9 of the Torremolinos International Convention for the Safety of Fishing Vessels.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: November 8, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–27526 Filed 11–22–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Scott Aviation, Inc. d/b/a Scott Air Charter d/b/a Scott Express

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89–11–40, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Scott Aviation, Inc. d/b/a Scott Air Charter d/b/a Scott Express is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: November 17, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–27511 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Tug-Barge Construction, Certification and Operations of the Towing Safety Advisory Committee (TSAC). The subcommittee meeting will be held on January 16, 1990, at the Houston Marriott Hotel-Greenspoint, 255 North Belt Drive, Houston, Texas (713) 879–4000. The meeting is schedule to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Development of suggested improvements in the provisions of 46 CFR part 151.
2. Evaluation of the adequacy of current 46 CFR part 31 inspection intervals for tank barges.
3. Evaluation of the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges regularly plying "Lakes, Bays and Sounds" route or on "Oceans" route within the boundary line.
4. Evaluation of the requirement for a buckling analysis for existing barges with "Rivers" scantling as a condition of continuing operation on "Lakes, Bays and Sounds" or "Oceans" routes within the boundary line.
5. Evaluation of the requirement for high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.
6. Evaluation of the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage.

Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: CDR John Hersh, U.S. Coast Guard Headquarters (G–MVI–2), 2100 2nd Street, SW, Washington, DC 20593–0001, (202) 267–1181.

Dated: November 17, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Enironmental Protection.

[FR Doc. 89–27592 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Meetings; Bangor, ME Terminal Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is proposing to replace the Bangor, ME Terminal Radar Service Area (TRSA) by designating Bangor as an Airport Radar Service Area (ARSA). An informal airspace meeting has been scheduled to provide the opportunity to gather additional facts relevant to the aeronautical effects of the proposal, and provide interested persons an opportunity to discuss objections to the proposal. All comments received from these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking (NPRM).

DATE: February 14, 1990.

Time: p.m.

Location: Operations Building #491, Bangor Air National Guard Base, Bangor, ME.

Point of contact: Send or deliver comments by March 15, 1990, to: Federal Aviation Administration, Air Traffic Division ANE–530, 12 New England Executive Park, Burlington, MA 01803.

For further information contact Eileen Seaman, Air Traffic Division, ANE–533, (617) 273–7132.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA New England Region. Representatives from the FAA will present a formal briefing on problems and proposals for change that have been received from the public. All other participants will be given an opportunity to make a presentation.

(b) Any person wishing to make a presentation to the FAA Team will be asked to sign in and estimate the amount of time needed for such a presentation. This will permit the Team to allocate an appropriate amount of time for each presenter. The Team may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(c) Any person who wishes to present a position paper to the Team, pertinent to the topic of the Bangor ARSA, may do so. Persons wishing to hand out pertinent position papers to the attendees should present two copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(d) The meeting will not be formally recorded, however, informal tape recordings will be made of presentations to ensure that each respondent's comments are noted accurately. A summary of the comments at the meeting will be made available to all interested parties.

Materials relating to the proposed Bangor, ME, ARSA will be accepted at the meeting. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the Team until March 15, 1990.

Agenda

Opening Remarks and Discussion on Meeting Procedures
Briefing on Identified Problems and Change Proposals
Public Presentations
Closing Comments

Issued in Burlington, MA, on November 15, 1989.

James I. Lucas,

Manager, Air Traffic Division, ANE–500.

[FR Doc. 89–27551 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station At Eau Claire County Airport, Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on November 7, 1989, the Flight Service Station (FSS) at Eau Claire, Wisconsin was closed. Services to the aviation public in the Eau Claire flight plan area, formerly provided by Eau Claire FSS, are being provided by the automated flight service station (AFSS) at Green Bay, Wisconsin. This information will be reflected in the FAA organization statement the next time it is reissued. [Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.]

Timothy P. Forte,

Regional Administrator, Great Lakes Region.

[FR Doc. 89–27552 Filed 11–22–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 17, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0068.
Form Number: CF 28.
Type of Review: Extension.
Title: Request for Information.
Description: Customs Form 28 is used to request additional information from importers if sufficient information is not provided on the invoice or entry documentation for Customs to carry out their responsibilities.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 150,000.
Estimated Burden Hours Per Response/Recordkeeping: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 82,500 hours.
OMB Number: 1515–0091.
Form Number: None.
Type of Review: Extension.
Title: Importers of Merchandise Subject to Actual Use Provision.
Description: This part of the Regulation provides that certain items may be admitted duty-free, such as farming implements, seed potatoes, etc. providing the importer can prove these items were actually used as contemplated by the law. The importer must maintain detailed records and furnish a statement of use.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Number of Respondents: 12,000.
Estimated Burden Hours Per Response/Recordkeeping: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 13,000 hours.
Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–27584 Filed 11–22–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of the Treasury has made revisions and resubmitted the following public information collection

requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0051.
Form Number: IRS Form 990–C.
Type of Review: Resubmission.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 5,600.
Estimated Burden Hours Per Response/RecordKeeping:
Recordkeeping—75 hrs., 34 mins.
Learning about the law or the form—23 hrs., 4 mins.
Preparing the form—40 hrs., 13 mins.
Copying, assembling, and sending the form to IRS—4 hrs., 17 mins.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 801,640 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC. 20224.
OMB Review: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–27585 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: November 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0197.
Form Number: IRS Form 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description. IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).
Respondents: Individuals or households, Businesses or other for-profit, Small Businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 300,000.
Estimated Burden House Per Response/Recordkeeping:
Recordkeeping—25 hrs. 58 mins.
Learning about the law or the form—6 hrs., 41 mins.
Preparing the form—9 hrs., 13 mins.
Copying, assembling, and sending the form to IRS—32 mins.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,823,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB: Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–27586 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0220.
Form Number: ATF F 5170.4.
Type of Review: Extension.
Title: Application for Importer's and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.
Description: Form 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcoholic beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.
Respondents: Individuals or household, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,300.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,900 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–27587 Filed 11–22–89; 8:45 am]
BILLING CODE 4815–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 13, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0007.
Form Number: SP 1199–A.
Type of Review: Extension.
Title: Direct Deposit Sign-Up Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have processed the form.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies and employees, Non-profit institutions.
Estimated Number of Respondents: 3,850,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 654,500 hours.
Clearance Officer: Mary MacLeod (301) 436–5300, Financial Management Service, Room 500–A, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89–27588 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–25–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATE: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, December 14, 1989, at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Tel.: (202) 566–8435.

SUPPLEMENTARY INFORMATION: Agenda items for the fifth meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on December 14, 1989, will include:

I. Old Business

1. Update on the user fee legislation.
2. Triangle processing: report on the project and status of the proposed legislation.

II. New Business

1. Review of the Annual Report to Congress of the Advisory Committee.
2. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566–8435, no later than Friday, December 8, 1989.

Salvatore R. Martoche,
Assistant Secretary (Enforcement).
[FR Doc. 89–27559 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–25–M

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 32–89]

8⅛% Treasury Bonds of 2019

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 32–89, dated November 2, 1989, descriptive of 8⅛% Treasury Bonds of 2019, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 32–89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 14, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 13, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 89–27581 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–40–M

[Amendment to Department Circular—Public Debt Series—No. 30–89]

Treasury Notes, Series U–1992

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 30–89, dated November 2, 1989, descriptive of Treasury Notes of Series U–1992, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 30–89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Thursday, November 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 8, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of chapter 31 of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 89–27577 Filed 11–22–89; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 30–89]

Treasury Notes, Series U–1992

Washington, November 13, 1989.

The Secretary announced on November 9, 1989, that the interest rate on the notes designated Series U–1992, described in Department Circular—Public Debt Series—No. 30–89 dated November 2, 1989, as amended, will be 7¾ percent. Interest on the notes will be

BEST COPY AVAILABLE

payable at the rate of 7¾ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27578 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

[Amendment to Department Circular—Public Debt Series—No. 31-89]

Treasury Notes, Series D-1999

Washington, November 9, 1989.

Department of the Treasury Circular, Public Debt Series No. 31-89, dated November 2, 1989, descriptive of Treasury Notes of Series D-1999, is hereby amended effective November 9, 1989.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 31-89, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 12:00 noon, Eastern Standard time, Monday, November 13, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Sunday, November 12, 1989, and received no later than Wednesday, November 15, 1989.

The foregoing Amendment was effected under authority of chapter 31 of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27579 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 31-89]

Treasury Notes, Series D-1999

Washington, November 14, 1989.

The Secretary announced on November 13, 1989, that the interest rate on the notes designated Series D-1999, described in Department Circular—Public Debt Series—No. 31-89 dated November 2, 1989, as amended, be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27580 Filed 11-22-89; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 225

Friday, November 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.-1:00 p.m.

PLACE: African Development Foundation.

DATE: Friday, 8 December 1989.

STATUS: Open.

Agenda

1. Chairman's Report.
2. President's Report.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Ms Janis McCollim, 673-3916.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 89-27660 Filed 11-20-89; 4:51 pm]

BILLING CODE 6116-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, November 22, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-27707 Filed 11-21-89; 2:07 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

* * * * * *

DATE AND TIME: Tuesday, November 28, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g. Audits conducted pursuant to 2 U.S.C. § 437g and § 438(b) and Title 26 U.S.C. Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * * *

DATE AND TIME: Thursday, November 30, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Mintues.
Draft Advisory Opinions:
Draft AO 1989-23
David T. Wright on behalf of Coopers & Lybrand.
Draft AO 1989-24 (Tentative)
Kay Yarbrough on behalf of First Florida Partners for Good Government.
Draft AO 1989-25
John P. Stabile, II on behalf of New Hampshire Republic State Committee.
Draft AO 1989-26
Trey Rogers on behalf of Dick Bond for Congress.
Status of Presidential Audits.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-27741 Filed 11-21-89; 3:14 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

DATE AND TIME: The Board of Directors meeting will be held on December 1, 1989. The meeting will commence at 10:00 a.m.

PLACE: Holiday Inn Capitol, Columbia Room North, 550 "C" Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c)(4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
—June 13, 1989
3. Discussion and Approval of Fiscal Year 1991 Budget Proposal.
4. Report on President Wear's Trip to Address the California Legal Services Trust Fund Commission.
5. Report and Accounting of the Use of Outside Law Firms by Corporation Staff.
6. Report and Accounting of the Pursuit of Lobbying activities by Corporation Staff.
7. Requests for Emergency Funding.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: November 21, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89-27733 Filed 11-21-89; 2:08 pm]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Thursday, November 16, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 20, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-27705 Filed 11-21-89; 8:45 am]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 48056 (November 20, 1989).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EST) Wednesday, November 22, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

CHANGE IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—Budget and Financing

1. Redemption Prior to Maturity of Certain High-Interest Debt Held by the Federal Financing Bank.

Item A1 in the previously announced agenda is redesignated as A2.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

William L. Osteen, Jr.,

Assistant Secretary and Associate General Counsel.

[FR Doc. 89–27673 Filed 11–21–89; 10:58 am]

BILLING CODE 8120-01-M

federal register

Friday
November 24, 1989

Part II

Department of the Interior

Fish and Wildlife Service

Endangered Species Act Notification: Tibetan Argali, People's Republic of China; Notice

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Status of Argali Sheep; Notice of Status Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Act Notification; Tibetan Argali, People's Republic of China

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information No. 20.

Subject: Tibetan argali (*Ovis ammon hodgsoni*)—People's Republic of China.

SUMMARY: The Fish and Wildlife Service (Service) has determined that the endangered wild sheep known as the Tibetan argali (*O. a. hodgsoni*) occurs in Xizang Province, Qinghai Province, and portions of Xinjiang, Sichuan, and Gansu Provinces, People's Republic of China, and in other areas of the Tibetan Plateau. Due to a recent investigation involving the import of several Tibetan argali, the Service wishes to notify the public that *O. a. hodgsoni* occurs in these areas and is afforded the full protection of the Endangered Species Act. In particular, the Service warns big-game hunters traveling to China for the purpose of taking argali sheep that *O. a. hodgsoni* may not be imported into the United States without a permit from the Service. The Service will closely scrutinize all specimens of *Ovis ammon* that are imported to determine if they are the listed subspecies.

DATE: This notice is effective November 24, 1989 and remains in effect until revoked.

ADDRESS: Questions regarding this notice should be addressed to the Director, U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Clark R. Bavin, Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, at the above address, Telephone (703) 358–1949, FTS 921–1949.

SUPPLEMENTARY INFORMATION: On March 6, 1973, the Tibetan argali (*Ovis ammon hodgsoni*) was listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249). Federal regulations (50 CFR part 23) state that species listed on Appendix I may not be imported into the United States unless the Service has issued an import permit upon finding that the import would not be detrimental to the survival of the species.

On June 14, 1976 (41 FR 24064, effective July 14, 1976), the Service listed the Tibetan argali as endangered under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*; 50 CFR 17.11). The Act provides that species listed as endangered may not be imported into the United States without a permit from the Service (16 U.S.C. 1538(a)(1)(A).

In 1988, a group of big-game hunters traveled from the United States to Gansu Province, People's Republic of China, and shot several argali sheep. On their return to the United States, the hunters presented export permits from the Chinese government and declared the sheep only as *Ovis ammon*, without identifying the subspecies involved. The Service detained the trophies and consulted several world experts on wild sheep, who identified them as the endangered subspecies *O. a. hodgsoni*. Subsequently, the Service seized the argali trophies and submitted the matter to the United States Attorney and the Field Solicitor, Department of the Interior, for the appropriate action.

A dispute over the identification and taxonomic classification of the trophies arose during the investigation. While the Service ultimately concluded that the trophies were properly identified as *O. a. hodgsoni*, the unavoidably long delay in the adjudication process resulted in court rulings that finally caused the Service to return the trophies to the hunters. In order to avoid future situations of a similar nature, the Service is currently reviewing the status of *Ovis ammon* and other taxa listed under the Endangered Species Act to determine if any changes are needed to further clarify the present classification of the species or subspecies involved.

Action by the Fish and Wildlife Service

The Service reaffirms that the Tibetan argali (*Ovis ammon hodgsoni*) ranges throughout the Tibetan Plateau, including but not limited to Xizang Province, Qinghai Province, and portions of Xinjiang, Sichuan, and Gansu Provinces, People's Republic of China. This subspecies is listed as endangered and will be afforded the full protection of the Endangered Species Act.

Specifically, *O. a. hodgsoni* may not be imported into the United States without a permit from the Service. All specimens of *Ovis ammon* that are imported will be closely scrutinized to determine if they are the listed subspecies. The Service will continue to rigorously enforce the Endangered Species Act and will refuse import clearance for specimens of any species listed as endangered or on Appendix I of CITES that are imported without a permit from the Service.

This notice was prepared by Senior Special Agent Michael Sutton, Division of Law Enforcement.

Dated: November 16, 1989.

Richard N. Smith,

Deputy Director.

[FR Doc. 89–27505 Filed 11–22–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Status of Argali Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The Service announces a review of the status of the argali sheep of Central Asia. At present, only a single subspecies, *Ovis ammon hodgsoni*, is classified as endangered. There are questions as to the systematics and distribution of this subspecies, and also as to whether other subspecies may warrant addition to the List of Endangered and Threatened Wildlife.

DATE: Comments and information may be submitted until March 26, 1990.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and other information received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: The argali sheep (*Ovis ammon*) is a relative of the North American bighorn sheep (*Ovis canadensis*). It is found in mountainous parts of Central Asia, including Kazakhstan, southern Siberia, northern and western China, Tibet, Nepal, and northern India. As many as 17 subspecies have been recognized (Nadler *et al.* 1973).

In the **Federal Register** of June 14, 1976 (41 FR 24064), the U.S. Fish and Wildlife Service (Service) classified the subspecies *Ovis ammon hodgsoni* as endangered. This listing was in response to a petition requesting endangered classification for all taxa that were already on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, but that then were not on the U.S. Lists of Endangered and Threatened Wildlife and Plants.

According to some authorities, such as Ellerman and Morrison-Scott (1966) and Nadler *et al.* (1973), the subspecies *O. a. hodgsoni* is found in the Himalayan region and parts of the Chinese province of Xizang (Tibet), while another subspecies, *O. a. dalailamae*, occurs farther north and east in the Chinese provinces of Xinjiang, Qinghai, Gansu, and Sichuan. Other authorities, including Pfeffer (1967) and Valdez (1982) consider *O. a. dalailamae* to be only a synonym of *O.a. hodgsoni*, and thus the range of the latter actually includes that of the former. In the U.S. List of Endangered and Threatened Wildlife, the range of *hodgsoni* is given as "China (Tibet, Himalayas)."

As pointed out in the notice by the Service's Division of Law Enforcement, in this same issue of the **Federal Register**, a recent legal action involved the importation of trophies of argali sheep killed in Gansu Province. In the course of this action, a dispute arose as to whether the trophies represented *O. a. hodgsoni*. The Service eventually concluded that the trophies were properly identified as *hodgsoni*.

The Service now is considering changes to the List of Endangered and Threatened Wildlife, so that the range of *O. a. hodgsoni* is fully and accurately delineated, and that any appropriate synonyms are taken into account. The Service also has received information suggesting that additional subspecies of *O. ammon*, including both possible synonyms of *hodgsoni* and other subspecies, are of serious bioconservation concern and may warrant U.S. classification as endangered or threatened. The International Union for Conservation of Nature and Natural Resources currently classifies the entire species *O. ammon* as "indeterminate," meaning that it is known to qualify for one of that organization's categories of "endangered", "vulnerable," or "rare," but that information is not yet sufficient to determine which designation is most appropriate. In order to help clarify the situation and resolve its own listing questions, the Service now solicits relevant data, comments, and publications dealing with the taxonomy, distribution, and bioconservation status of all subspecies of *O. ammon*.

Literature Cited

Ellerman, J.R., and T.C.S. Morrison-Scott. 1966. Checklist of Palaearctic and Indian mammals. British Museum (Natural History), London, 810 pp.

Nadler, C.F., K.V. Korobitsina, R.S. Hoffmann, and N.N. Vorontsov. 1973. Cytogenetic differentiation, geographic distribution, and domestication in Palearctic sheep (*Ovis*). Z. Saugetierkunde 38:109–125.

Pfeffer, P. 1967. Le mouflon de Corse (*Ovis ammon musimon*) Schreber, 1782); position systematique, ecologie et ethologie comparees. Mammalia 31, suppl., 262 pp.

Valdez R. 1982. The wild sheep of the world. Wild Sheep and Goat International, Mesilla, New Mexico, 186 pp.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: November 16, 1989.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 89–27506 Filed 11–22–89; 8:45 am]

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federal register

Friday
November 24, 1989

Part III

Federal Trade Commission

Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Statement Concerning Hart-Scott-Rodino Filing Fees; Notice

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Statement Concerning Hart-Scott-Rodino Filing Fees

AGENCY: Federal Trade Commission.

ACTION: Notice

SUMMARY: On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for Fiscal 1990. Section 605 of that statute, as enacted, requires the payment of a filing fee of $20,000 by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and regulations promulgated thereunder. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute also specifies that no such notification shall be considered filed until the required fee has been paid. The Commission has issued this statement in order to advise the public about the filing fee obligation.

EFFECTIVE DATE: The filing fee requirement is effective as of November 29, 1989. Premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 will be deemed effected on November 29, 1989.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Chief, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue NW., Room 300), Federal Trade Commission, Washington, DC 20580, 202–326–2862.

SUPPLEMENTARY INFORMATION:

Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees

On November 8, 1989, the United States Congress, as part of the Commerce, Justice, and State Appropriations Bill [1], mandated that a fee of $20,000 must be paid by "persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder" (the Act).[2] President Bush signed the Bill into law on November 21, 1989. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute further specifies that "[f]or purposes of said Act, no notification shall be considered filed until payment of the fee required by this Section." In other words, as of November 29, 1989, the waiting period required under the Act will not begin until payment of a filing fee.

The Commission issues this statement in order to advise the public about the filing fee obligation, and to set out procedures for payment of the filing fee

I. Persons With a Fee Payment Obligation

The statute requires persons acquiring voting securities or assets who are required to file premerger notifications by the Act and the regulations [3] promulgated thereunder to pay a filing fee. "Acquiring person" is defined, for purposes of the Act, in Rule 801.2.

In most transactions the Act and Rules specify only one acquiring person who is required to file a premerger notification, and who therefore is obligated by the statute to pay a filing fee. However, in some transactions more than one person is required under the Act and Rules to file a premerger notification. In these circumstances, each acquiring person required to file a premerger notification will be obligated by the statute to pay a filing fee. Some of the more common transactions in which this is likely to occur are set out below

For consolidations in which more than one person is an acquiring person required to file a premerger notification, each such person must separately pay a filing fee. (*See* Rule 801.2(d)).

Example [4]: (1) Assume corporations A and B (each being its own ultimate parent entity) will be consolidated pursuant to an agreement in which a newly formed corporate entity, C, will be the surviving entity The shareholders of A and B will receive newly issued shares of C as a result of the transaction. Under the Act and Rules A and B are each an acquiring person required to file a premerger notification and pay a filing fee. Any shareholder of A or B who is also an acquiring person required to file a premerger notification under Rule 801.2(a) and (e) must also pay a filing fee.

To the extent the formation of a joint venture or other corporation is reportable pursuant to Rule 801.40, each acquiring person (contributor) required to file a premerger notification under the Act and Rules must pay a filing fee.

When an entity making an acquisition is controlled by more than one person (*e.g.*, a joint bid is being made), each acquiring person required to file a premerger notification under the Act and Rules must pay a filing fee.

Example: (2) Assume corporation A has two ultimate parent entities, "X" and "Y" under Rule 801 1(c). "X" and "Y" will cause A to make a cash tender offer for B's outstanding voting securities. "X" and "Y" must each file a premerger notification and pay a filing fee.

A person acquiring voting securities in secondary acquisitions, separately reportable under Rule 801.4, shall pay a filing fee for each secondary acquisition for which it is required by the Act and Rules to file a premerger notification. This fee shall be in addition to any filing fee that is required in the primary acquisition.

When persons file documents and information with the Commission pursuant to section 7A(c)(6) and (8) of the Act and Rules 802.6(a) and 802.8 in order to obtain an exemption from the filing requirements of the Act, no filing fee is required.

II. Mechanics of Payment

Filing fees shall be paid in accordance with the procedures set forth below

(A) The filing fee requirement is effective as of November 29, 1989. Pursuant to Rule 803.10(c)(1) premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 are deemed effected on November 29, 1989. Premerger notification and report forms received prior to November 29, 1989, and which the Commission's Premerger Notification Office has certified in writing are complete (*See* part (I) below), are not affected by the filing fee requirement.

(B) Fees are due and payable at the time of filing premerger notification and report forms. Fees are payable to the "Federal Trade Commission", omitting the name or title of any official of the Commission, by electronic wire transfer, United States postal money order, bank money order, bank cashier's check or certified check in U.S. currency

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[1] Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for the Fiscal Year Ending September 30, 1990 (H.R. 2991), section [illegible].

[2] References to "the Act" refer to section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 95–435, 90 Stat. 1390.

[3] References to "Regulations" and "Rules" in this statement refer to the Premerger Notification Rules, 16 CFR parts 801–803.

[4] Throughout the examples, persons are designated ("A" "B" etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks. Unless otherwise indicated, assume the size-of-person, size-of-transaction and commerce tests are satisfied.

(C) Fees paid by electronic wire transfer shall be deposited to the Treasury's account at the New York Federal Reserve Bank (the "Bank"). To insure fees paid are attributed to the proper acquiring person, the following information must be given at the time of transfer by the payor to the Bank:

1. Treasury's ABA number: 021030004
2. Commission's ALC number: 29000001
3. Commission's Clearing Account: 29X3875.2
4. The payor's name, the acquiring person's name (or a pseudonym if preferred), and an identification of the payment as a "Pre-Merger Filing Fee."

(D) Fees paid by United States postal money order, bank money order, bank cashier's check, or certified check shall be submitted to the Commission's Premerger Notification Office along with the required premerger notification and report forms.

(E) A person required to pay a filing fee shall include in the letter of transmittal that accompanies its premerger notification and report forms a statement that a filing fee has been paid, the method of payment and, if payment was made by electronic wire transfer, the date of transfer and any pseudonym used to identify the acquiring person.

(F) Any filing that is not accompanied by payment of a filing fee is deficient. See Rule 803.10(c)(2). Payment of a filing fee does not preclude a determination that a filing is deficient for any other reason.

(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned.

(H) Filing fees are to be paid solely to the Commission. No additional fee is required to be submitted to the Antitrust Division of the Department of Justice.

(I) In accordance with past policy, the Commission staff will send a letter to persons filing under the Act to verify the receipt of completed notification and report forms and to identify the expiration date of the waiting period. Such notice will henceforth acknowledge receipt of a filing fee.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 89–27783 Filed 11–22–89; 9:55 am]

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federal register

Friday
November 24, 1989

Part IV

The President

Proclamation 6076—National Adoption Week, 1989

Federal Register
Vol. 54, No. 225
Friday, November 24, 1989

Presidential Documents

Title 3–

The President

Proclamation 6076 of November 21, 1989

National Adoption Week, 1989

By the President of the United States of America

A Proclamation

During this week of Thanksgiving, most of us will gather with our families to offer thanks to God, not only for His gift of life but also for the many blessings we enjoy as individuals and as a Nation. Tragically, however, thousands of American children do not have a family to call their own this Thanksgiving. These are children waiting to be adopted.

Adoption is a generous and loving act that benefits everyone involved: the little ones who need a permanent home, the couples hoping to become parents, and the young women who face a crisis pregnancy. Each year, many babies are given the chance to be loved when their mothers choose adoption over abortion. Each year, some 60,000 children in the United States are adopted. However, some 30,000 children who are legally available for adoption still wait in foster care for a family of their own. Many of these are children with special needs—children who have physical, mental, or emotional disabilities; older children; minority children; and children with siblings who need to be adopted by the same family. All of these children, however, have a wealth of love to share with their adoptive families. Encouraging their adoption is worthy of our greatest commitment.

Adoption provides a loving family and a lasting home to children who may have neither. It also can help address some of the most pressing issues facing our Nation today: issues such as teen pregnancy, welfare dependency, drug addiction, and child abuse.

Many Americans longing for a child are willing to adopt, yet they, too, wait. We must eliminate the public and private barriers to adoption opportunities, and we must heighten public awareness about adoption. Within the Federal Government, I have asked the heads of the departments and agencies to support the adoption plans and needs of civilian and military employees, and I have asked them to promote adoption among the work force. I have also proposed The Special Needs Adoption Assistance Act of 1989, designed to encourage and help facilitate the adoption of children with special needs.

During this National Adoption Week, as we acknowledge the importance of adoption to waiting children, let us also recognize the many Americans who work to place needy children in loving homes. These concerned individuals include thousands of foster parents, child welfare workers, pregnancy counselors, judges, lawyers, physicians, members of the clergy, legislators, volunteers, and adoptive family support groups. This week, let us also renew our determination to support both the courageous women who choose life for their children and the generous adoptive families who welcome needy children into their homes.

In order to encourage public awareness of adoption, and in recognition of all those who work to place waiting children with loving families, the Congress, by House Joint Resolution 278, has designated the week beginning November 20, 1989, as "National Adoption Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning November 20, 1989, as National Adoption Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-27797
Filed 11-22-89, 10:14 am]
Billing code 3195-09-M

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federal register

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federal register

Monday
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Federal Register
Vol. 54, No. 226
Monday, November 27, 1989

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Title 3—

The President

Proclamation 6077 of November 22, 1989

National Family Caregivers Week, 1989

By the President of the United States of America

A Proclamation

Each day, an estimated two million Americans help older relatives maintain their dignity and independence. They buy groceries for them or take them shopping; they help them maintain their homes; and they assist them with personal care. In many cases, family members provide home nursing care for an older relative who is incapacitated by illness or disability.

These caregivers are unsung heroes and heroines. Rendering service without pay, and often in addition to meeting the demands of their own careers and immediate families, these men and women provide a powerful example of faithfulness and generosity. Family caregivers—whether they are spouses, daughters, sons, grandchildren, or in-laws—offer invaluable help to older relatives who might otherwise be forced to live in an institutional setting.

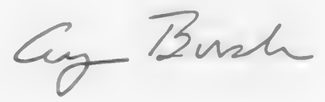
All of us owe a debt of gratitude to the hardworking men and women who give older members of our society the love, respect, comfort, and assistance they need and deserve. More important, however, these men and women merit our recognition and support.

Throughout the United States, family caregivers are aided in their efforts by homemaker programs, by respite and day care services, and by agencies that provide home-delivered meals. This week, we acknowledge the importance of such community support services and reaffirm our commitment to ensuring that family caregivers have greater access to them.

In grateful recognition of the contributions that caregivers make to their families and the Nation, the Congress, by House Joint Resolution 282, has designated the week of November 19 through November 25, 1989, as "National Family Caregivers Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 19 through November 25, 1989, as National Family Caregivers Week. I call upon the American people to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-27906
Filed 11-24-89; 10:10 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 228
Monday, November 27, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) will amend the United States Standards for Wheat by replacing the single class White wheat with two classes, Hard White wheat (HWW) and Soft White wheat (SWW). The class SWW will have three subclasses, Soft White wheat, White Club wheat and Western White wheat. The Class HWW will have no subclasses. These changes will provide greater consistency in applying the standards, make the standards easier to interpret, and facilitate trade in both hard and soft white wheats.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Background

The current United States Standards for Wheat include the following seven classes: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, Unclassed wheat, and Mixed wheat. White wheat has four subclasses which are Hard White wheat, Soft White wheat, White Club wheat, and Western White wheat. The recent development of white wheat varieties with hard endosperms and the establishment of a market for them creates a need to revise the United States Standards for Wheat.

Milling and baking studies demonstrate a significant difference in milling properties and in end-use functions between hard and soft endosperm wheats. Hard and soft endosperm wheats are marketed as separate products to meet specific end-use needs. To reflect the specific end-use needs, the standards should address, to the extent practicable, hard and soft endosperm wheats as separate wheat classes and consider the mixing of the two wheat types as Mixed wheat.

A HWW classification subcommittee of U.S. Wheat Associates, representing the HWW producers and the Pacific Northwest SWW producers, recommended changes in the class White wheat to: Create new classes called Hard White wheat and Soft White wheat; eliminate the class White wheat; eliminate the 75 percent hard kernel definition; and eliminate the subclass HWW.

Accordingly, on June 6, 1989, FGIS proposed in the **Federal Register** (54 FR 24176) to amend the United States Standards for Wheat (7 CFR 810.2202) by replacing the single class White wheat with two classes, HWW and SWW. The proposal included subdividing SWW into three subclasses, Common White wheat, White Club wheat, and Western White wheat. The class HWW was to have no subclasses.

It was also proposed to define the classes HWW and SWW as all hard endosperm White wheat varieties and all soft endosperm White wheat varieties, respectively. In conjunction with the change to varietal kernel characteristics rather than hardness, it was proposed to eliminate the definition that the subclasses of hard and soft White wheat be determined by the percentage of hard kernels. Classification would be based on visual examination of the varietal kernel characteristics. Additionally, it was proposed that the presence of HWW in SWW or SWW in HWW be treated as "wheat of other classes." The classes HWW and SWW would be treated as "contrasting classes" with respect to Durum, HRS, and HRW. Soft Red Winter wheat would be treated as "contrasting classes" HWW and SWW due to color contrast rather than "wheat of other classes" as is currently the case in the class White wheat.

Final Action

FGIS received a total of 56 comments during the 60-day comment period. The comments were submitted from all segments of the wheat industry including grain handlers, State wheat commissions, State wheat grower organizations, domestic millers, foreign buyers, wheat producers, and university officials.

The public comments overwhelmingly supported elimination of the current class White wheat and replacement with two classes, HWW and SWW, as proposed. This final rule implements that change. A total of 14 commenters did not support the subclass name "Common White wheat" because of possible misunderstanding in the trade and the possible negative marketing image associated with the word common. They recommended the name "Soft White wheat," instead. The comments recommending that the subclass name "Common White wheat" be replaced with the name "Soft White wheat" are consistent with the current definition and trade perception of the subclass. Thus, FGIS has determined that the standards will be amended so that the new class SWW will have three subclasses, Soft White wheat, White Club wheat, and Western White wheat.

One commenter felt strongly that HWW needs two subclasses: Hard White Winter wheat and Hard White Spring wheat. Three commenters suggested that subclasses in HWW will probably be needed in the future as the

market for hard white wheats expands and more HWW varieties are developed. But five commenters said no distinction should be made between hard white wheat grown in the winter or spring in the class HWW. One commenter noted that no clear milling and baking distinction exists between winter and spring grown HWW at this time.

The majority of commenters supported the class HWW without subclasses or had no comment on the issue. Since at this time, no clear milling and baking differences exist at equal protein content between spring and winter white wheats, FGIS will not establish spring and winter subclasses in the class HWW in this rulemaking proceeding. If clear quality or market distinctions develop between spring and winter wheat, FGIS will consider establishing HWW subclasses at a future date.

Two commenters recommended that HWW in SWW or SWW in HWW be treated as "contrasting classes" rather than as "wheat of other classes," as proposed. However, for uniformity in the definitions of "wheat of other classes" and "contrasting classes," as applied to all wheat classes, HWW in SWW or SWW in HWW will be treated as "wheat of other classes," as proposed. Further, the classes HWW and SWW will be "contrasting classes" with respect to Durum, HRS, and HRW as proposed. Soft Red Winter wheat will be treated as "contrasting classes in HWW and SWW, as proposed.

Several commenters stressed the need to develop an objective classification system for all classes of wheat that will be accurate, valid, and repeatable as soon as possible. FGIS has determined that classification by varietal kernel characteristics rather than vitreousness of the kernel is practicable at this time for HWW and SWW since only a few hard endosperm white white varieties are being produced.

FGIS recognizes that if more hard endosperm varieties are released into the marketplace in the future, the classification system may become less practical. Therefore, FGIS is investigating the use of alternative testing methods as the basis of a possible future classification system.

FGIS determined that minor changes in the proposed definition of White Club wheat and Western White wheat will clarify the distinction between the two subclasses and more closely match terminology used in current marketing practices. As proposed, the definition of White Club wheat was "Club headed soft endosperm, white wheat varieties containing not more than 10 percent of other soft white wheats." Accordingly, the definition of White Club wheat will read "Soft endosperm white club wheat varieties containing not more than 10 percent of other soft white wheats." As proposed, the definition of Western White wheat was "Soft White wheat containing more than 10 percent of white club wheat." The definition of Western White wheat, as amended will read "Soft White wheat containing more than 10 percent of white club wheat and more than 10 percent of other soft white wheats." This wording of the subclass Western White wheat clarifies the distinction between Western White and White club wheat.

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Twenty-four commenters requested that the proposed amendments become effective as soon as possible, especially for growers producing HWW for commercial markets in 1990. In addition, harvesting begins on or about May 1, 1990. In accordance with section 4(b) of the Act, it is determined that the public interest requires that these amendments become effective less than one calendar year after promulgation. Accordingly, this final rule will be effective on May 1, 1990.

List of Subjects in 7 CFR Part 810

Exports, Grains.

For reasons set forth in the preamble, 7 CFR part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart L—United States Standards for Wheat

Sections 810.2202 (a) and (b) are revised to read as follows:

§ 810.2202 Definition of other terms.

(a) *Classes.* There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, Hard White wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses.

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(5) *Hard White wheat.* All hard endosperm white wheat varieties. There are no subclasses in this class.

(6) *Soft White wheat.* All soft endosperm white wheat varieties. This class is divided into the following three subclasses:

(i) *Soft White wheat.* Soft endosperm white wheat varieties which contain not more than 10 percent of white club wheat.

(ii) *White Club wheat.* Soft endosperm white club wheat varieties containing not more than 10 percent of other soft white wheats.

(iii) *Western White wheat.* Soft White wheat containing more than 10 percent of white club wheat and more than 10 percent of other soft white wheats.

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes:

(i) Red durum wheat.

(ii) Any wheat which is other than red or white in color.

(8) *Mixed wheat.* Any mixture of wheat that consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, Hard White wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat, in the classes Hard White wheat and Soft White wheat.

* * * * *

Dated: November 2, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89-27692 Filed 11-24-89; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 695]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 24 through November 30, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 695 [7 CFR part 907] is effective for the period from November 24 through November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-90 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1988-89 production is 73,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 68 percent of the 1989-90 crop of 73,350 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (10 percent) or processed (22 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee at its November 21, 1989, meeting, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The

Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** [54 FR 42966]. The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Comments were received from Mr. Carl Pescosolido, Jr., Sequoia Orange Company, Inc., Mr. Richard J. Pescosolido, Foothill Farms, and Mr. James A. Moody, coordinator for Farmers Alliance for Improved Regulation. The Department will analyze all comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on November 21, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of eight to one, that 1,400,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989–90 marketing policy. This recommended amount is 200,000 cartons less than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 1,400,000 cartons, 1,344,000 are allotted for District 1, and 56,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 16, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,540,000 cartons compared with 913,680 cartons shipped during the week ending on November 17, 1988. Export shipments totaled 184,000 cartons compared with 52,000 cartons shipped during the week ending on November 17, 1988, and processing and other uses accounted for 381,000 cartons compared with 256,000 cartons shipped during the week ending on November 17, 1988.

Fresh domestic shipments to date this season total 3,861,609 cartons compared with 1,815,000 cartons shipped by this time last season. Export shipments total 547,000 cartons compared with 78,000 cartons shipped by this time last season. Processing and other use shipments total 1,038,000 cartons compared with 542,000 cartons shipped by this time last season.

For the week ending on November 16, 1989, handlers in District 1 had net undershipments of 65,000 cartons and handlers in District 3 had net undershipments of 10,000 cartons. Thus, undershipments of 95,000 cartons will be carried over into the week ending on November 23, 1989. Preliminary adjusted allotment for the week ending on November 23, 1989, is 1,595,000 cartons. Estimated shipments for the week ending on November 23, 1989, are 1,625,000 cartons.

The average f.o.b. shipping point price for the week ending on November 16, 1989, was $8.66 per carton based on a reported sales volume of 1,154,000 cartons compared with last week's average of $8.23 per carton on a reported sales volume of 611,000 cartons. The season average f.o.b. shipping point price to date is $9.17 per carton. The average f.o.b. shipping point price for the week ending on November 17, 1988, was $10.97 per carton; the season average f.o.b. shipping point price at this time last season was $10.74 per carton.

The Committee reports that overall demand for navel oranges has declined and inventories for choice quality and smaller sized fruit are building.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.88 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 68 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 24 through November 30, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market. By using provisions contained in the navel orange marketing order, handler shipments could exceed an estimated 1,775,000 cartons during the week.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 21, 1989, and this action needs to be effective for the regulatory week which begins on November 24, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.995 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulation.

§ 907.995 Navel Orange Regulation 695.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 24 through November 30, 1989, is established as follows:

(a) District 1: 1,344,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 56,000 cartons;
(d) District 4: unlimited cartons.

Dated: November 22, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–27863 Filed 11–24–89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 693]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 693 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period from November 26 through December 2, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 693 [7 CFR part 910] is effective for the period from November 26 through December 2, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producerts in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on November 21, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S. C. 601–674.

2. Section 910.993 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.993 Lemon Regulation 693.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 26, 1989, through December 2, 1989, is established at 300,000 cartons.

Dated: November 22, 1989.

Charles Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–27862 Filed 11–24–89 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 971

[Docket No. FV–89–110]

South Texas Lettuce; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 971 for the 1989–90 fiscal period. Authorization of this budget will allow the South Texas Lettuce Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989 through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley of South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers and 20 producers of South Texas lettuce covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined at those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Lettuce Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of lettuce. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of lettuce. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on October 3, 1989, and unanimously recommended a 1989–90 budget of $51,531.49. Last season's budget was $34,305. Major expense items include increases in committee staff salaries, travel and marketing development and production research projects.

The committee also unanimously recommended an assessment rate of $0.05 per carton, the same rate as last season's. This rate, when applied to anticipated shipments of 1,011,500 cartons of lettuce, would yield $50,575 in assessment revenue. This amount when added to $956.49 from the reserve fund would be adequate to cover budgeted expenses.

While this action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on October 31, 1989 (54 FR 45737). That document contained a proposal to add § 971.229 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through November 10, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in August, and the marketing order requires that the rate of assessment apply to all assessable lettuce handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements and orders, South Texas.

For the reasons set forth in the preamble, 7 CFR part 971 is amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 971.229 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 971.229 Expenses and assessment rate.

Expenses of $51,531.49 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of lettuce is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: November 21, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–27689 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 380

Projects or Actions Categorically Excluded

CFR Correction

In title 18 of the Code of Federal Regulations, parts 280 to 399, revised as of April 1, 1989, paragraph (b) was incorrectly removed from § 380.4. It is republished as follows:

§ 380.4 [Corrected]

* * * * *

(b) *Exceptions to categorical exclusions.* (1) In accordance with 40 CFR 1508.4, the Commission and its staff will independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission:

(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 885

[Docket No. N–89–2066; FR–2698–N–1]

Section 202 Loans for Housing for the Elderly or Handicapped; Fiscal Year 1990 Loan Interest Rate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of section 202 Loan Interest Rate—Fiscal Year 1990.

SUMMARY: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). This document establishes 8.375 percent as the annual interest rate for Fiscal Year 1990. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street SW., room 6116, Washington, DC 20410–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) The annual interest rate announced by HUD under § 885.410(g)(1); or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment under § 885.410(g)(2). The citations in this document are to the interim rule published June 1, 1988 (53 FR 19899) and the final rule published November 9, 1988 (53 FR 45265).

This document announces HUD's determination of the annual interest rate. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

The annual interest rate under § 885.410(g)(1) may not exceed:

(1) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent) plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (0.25 percent) per annum for both the construction and permanent loan periods); and

(2) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses. (§ 885.410(g)(1)(ii).) The current statutory ceiling is 9.25 percent per annum.

The average yield on the described interest-bearing obligations of the United States during the last three months of Fiscal Year 1989 was 8.125 percent. This rate plus the 0.25 percent allowance for administrative costs and probable losses allowance for administrative costs and probable losses yields an interest rate of 8.375 percent. Accordingly, this Notice establishes the annual interest rate for section 202 loans made during Fiscal Year 1990 at 8.375 percent per annum.

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutory required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR part 50.

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 13, 1989.

Peter H. Monroe,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–27676 Filed 11–24–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD11 89–19]

Safety Zone Regulations; Outer Continental Shelf; Santa Barbara Channel

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an error in the temporary safety zone regulations for oil platform Heritage which were published in the Federal Register on Thursday, November 2, 1989 (54 FR 46230).

FOR FURTHER INFORMATION CONTACT: Commander N. S. Porter, Chief of the Marine Environmental Protection/Port Safety and Security Branch, Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822–5399, (213) 499–5330.

SUPPLEMENTARY INFORMATION: The Coast Guard established a temporary 500 meter safety zone around oil platform Heritage on October 13, 1989, to protect vessels and the public from safety hazards associated with installation of the platform. The safety zone regulations were published in the Federal Register on Thursday, November 2, 1989 (54 FR 46230).

Subsequent to establishment of the zone, the platform owner advised the Coast Guard that the actual location of the platform was several yards different from the position they had previously provided and which had been included in the regulations. Correction of the regulations is therefore necessary to accurately reflect the platform's location. As this is a technical correction that does not alter the substance of the regulations, publication of this change for comment is not required by 5 U.S.C. 553. However, persons wishing to comment on the regulations, as corrected, may still do so in accordance with the instructions provided in the preamble to the regulations which were published in the **Federal Register** on Thursday, November 2, 1989 (54 FR 46230).

Correction

The following correction is made to the temporary safety zone regulations for oil platform Heritage (33 CFR part 147) published in the **Federal Register** on Thursday, November 2, 1989 (54 FR 46230).

Paragraph (a) of § 147.T1192 is correctly added to read as follows:

§ 147.T1192 Platform Heritage safety zone.

(a) *Description.* All waters of the Pacific Ocean enclosed by a line drawn 500 meters around position 34–21–01.41N 120–16–45.06W

* * * * *

Dated: November 9. 1989.

Terry Lucas,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 89–27590 Filed 11–24–89: 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3681–9]

Plan for American Cyanamid Co. Fortier Plant, Westwego, LA

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). This volatile organic compound (VOC) Bubble uses credits from the change of service of three storage tanks from VOC to non-VOC usage. These credits are used to offset reductions required by controlling one methanol storage tank. The Emission Reduction Credits (ERCs) were determined to be valid, consistent with EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982 (47 FR 15076), and the final ETPS of December 4, 1986 (51 FR 43814).

DATE: This rulemaking is effective December 27, 1989.

ADDRESSES: Copies of the State's submittal are available for public inspection during normal business hours at:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Building, 625 North 4th Street, P.O. Box 44096, Baton Rouge, Louisiana 70804–4096;

Public Information Reference Unit, Environmental Protection Agency, Library, 401 M Street, SW., Washington, DC 20460;

Environmental Protection Agency, Region 6 Office, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan Section: Air Programs Branch: Air, Pesticides & Toxics Division: EPA Region 6 Office, 1445 Ross Ave., Dallas, Texas 75202, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION:

A. Background

A brief background of the American Cyanamid Bubble is provided here. For a more comprehensive description of the details of this Emissions Trade see the proposed approval, Plan for American Cyanamid Company Fortier Plant, Westwego, LA (53 FR 40460, October 17, 1988).

American Cyanamid Company's Fortier Plant would like to use emission reductions from the change of service of three dimethylamine tanks. These tanks were used to store dimethylamine, a raw material in the manufacture of synthetic resins. The tanks are now used for non-VOC storage. The proposal stated in error that the VOC emissions are limited to one ton per year each. It is correct that the emissions are limited to 0 tons per year each. These credits from this change of service are used in lieu of controlling the emissions from one methanol storage tank. The entire trade is summarized below:

Credits from change of service		Noncompliance emissions and air quality benefit		Progress toward attainment
(−12.63) TPY	+	(11.16 + 1.21) TPY		(−0.26) TPY

Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Non-VOC 36–79	6.06	0.00	−6.06	6.06	0.00	6.06
Non-VOC 37–79	5.26	0.00	−5.26	5.26	0.00	−5.26
Non-VOC 38–79	1.31	0.00	−1.31	1.31	0.00	−1.31
Methanol 12–73	12.13	12.13	0.00	0.97	12.13	+11.16
Air Quality Benefit					1.21	+1.21
Total	24.76	12.13	−12.63	13.60	13.34	−0.26

B. Discussion

The Bubble was reviewed for compliance with the requirements of Section 110 of the Clean Air Act, 40 CFR Part 51, EPA's Proposed Emissions Trading Policy Statement (ETPS) published in the **Federal Register** on April 7, 1982 (47 FR 15076) and the Final ETPS published in the **Federal Register** on December 4, 1986 (51 FR 43814).

The State issued a permit to American Cyanamid, # 1896 (M–1), on May 8, 1986. Close examination of the detailed calculations of emissions authorized by that permit revealed that some of the emission factors where incorrect. EPA notified the State that these needed to be corrected. The State did correct the calculations and reflected the appropriate emission levels in a new permit, #1896 (M–2), issued to American Cyanamid on July 20, 1989. In addition to correcting the emission factors in two of the three dimethylamine tanks, the State also adjusted the emissions of the methanol tank to more accurately reflect the throughput as it is currently. This raised the credit needed from 7.62 to 11.16 TPY. This resulted in the credit donating sources having less credit to give, and the credit consuming source requiring more credit. The amount of unused credit went from 8.0 TPY in the proposal to 0.26 TPY in the final trade.

As stated in the proposal (53 FR 40461–40462), several points of concern and enforceability needed to be included in the revised permit #1896 (M–2) before EPA gave final approval to the Bubble. EPA received the revised permit with these points of concern and enforceability included, as follows:

1. Comment: The Bubble prohibits the storage of VOC's in tanks 36–79, 37–79, and 38–79. The legally enforceable recordkeeping requirements must require data that makes definitive that no VOCs are being stored in these tanks. The permit must be changed to reflect 0 TPY for tanks 36–79, 37–79, and 38–79 for the post-bubble allowable emissions.

Response: These items have been included in Attachment I and Specific Condition 1, of the permit.

2. Comment: The company must be required by the permit to keep sufficient records to determine compliance and retain them for a minimum of two years.

Response: This permit requirement has been included under Specific Condition 1.

3. Comment: Assurances that there was no shifting demand situation that lead to credit was needed.

Response: A letter from the Administrator of the Air Quality Division, LDEQ, dated June 6, 1989, stated the LDEQ position that the VOCs that have been shifted out of tanks 36–79, 37–79, and 38–79 have not been shifted elsewhere in the nonattainment area.

EPA received no public comments, beyond the responses from the State, on the October 17, 1988, proposed rulemaking.

C. Final Action

Because the State has fulfilled the requirements stipulated in the October 17, 1988, proposed approval, and because all other requirements have met compliance, EPA approves the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana SIP. The approved LDEQ permit for this trade is #1896 (M–2) dated July 20, 1989.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 28, 1989.

Robert E. Layton, Jr.,

Regional Administrator (6A).

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

Subpart T—Louisiana

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(53) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(53) On May 5, 1986, the Governor submitted a request to revise the Louisiana SIP to include an alternate Emission Reduction Plan for the American Cyanamid Company Fortier Plant located at Westwego, Jefferson Parish. A permit was issued by LDEQ on October 17, 1984 (#1896), but after several revisions, the final permit for the trade is #1896 (M–2), issued July 20, 1989. This Bubble uses credits obtained from the change of service of three storage tanks from VOC to non-VOC usage to offset reductions required by controlling one methanol storage tank.

(i) Incorporation by reference

(A) LDEQ permit number 1896 (M–2) issued July 20, 1989, a Revision to Bubble Permit No. 1896 (M–1)—American Cyanamid Company, Westwego, Jefferson Parish, Louisiana.

(ii) Additional material

(A) Letter dated June 6, 1989, from the Administrator of the Louisiana Office of Air Quality, giving the State position that the Volatile Organic Compounds that have been shifted out of the emission reduction credit donating tanks have not been shifted elsewhere in the nonattainment area.

(B) Letter received by EPA on March 31, 1989, from Mr. Addison Tatum of the State of Louisiana, including calculations for the permit.

[FR Doc. 89–27734 Filed 11–24–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP8E3682 and 9E3715/R1044; FRL–3665–8]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide glyphosate in or on the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables and in or on the raw agricultural commodities longan, mamey sapote, lychee, sapodilla, and passion fruit. The regulation to establish maximum permissible levels for residues of the herbicide was requested pursuant to petitions by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: November 27, 1989.

ADDRESSES Written objections, identified by the document control number, [PP8E3682 and 9E3715/R1044], may be submitted to: Public Docket and Freedom of Information Section, Environmental Protection Agency Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of September 6, 1989 (54 FR 37010), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 8E3682 and 9E3715 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Florida, Michigan, and New York (PP 8E3682) and the Agricultural Experiment Station of Florida (PP 9E3715) requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine), and its metabolite aminomethyl-phosphonic acid (AMPA) in or on certain raw agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 1989.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364(a) is amended by adding and alphabetically inserting the crop group *Brassica* (cole) leafy vegetables and the raw agricultural commodities longan, lychee, mamy sapote, passion fruit, and sapodilla, to read as follows:

§180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Longan	0.2
Lychee	0.2
Mamy sapote	0.2
* * * * *	
Passion fruit	0.2

—Continued

Commodity	Parts per million
* * * * *	
Sapodilla	0.2
* * * * *	
Vegetables, leafy, Brassica (cole)	0.2
* * * * *	

* * * * * *

[FR Doc. 89–27724 Filed 11–24–89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[PP6E3409/R1043; FRL–3666–1]

Pesticide Tolerance for Terbufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a permanent tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) bananas. This regulation to establish a maximum permissible level for residues of the insecticide/nematicide was requested pursuant to a petition by the American Cyanamid Co.

EFFECTIVE DATE: November 27, 1989.

ADDRESSES: Written objections, identified by the document control number, [PP6E3409/R1043] may be submitted to: Public Docket and Freedom of Information Section, Environmental Protection Agency Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: William H. Miller, Product Manager (PM) 16, Registration Division, Environmental Protection Agency, 401 M St.; SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2600.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 30, 1989 (54 FR 35896), which announced that the American Cyanamid Co., P.O. box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 6E3409 proposing to establish a permanent tolerance for the combined residues of the insecticide/nematocide terbufos (S-[(1,1-dimethylethyl)thio]methyl-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the RAC bananas at 0.025 part per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 24, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.352 is amended in paragraph (a) by adding and alphabetically inserting an entry for bananas and by removing paragraph (b) and designating it '[Reserved]' to read as follows:

§180.352 Terbufos; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas	0.025
* * * * *	

(b) [Reserved]

[FR Doc. 89–27726 Filed 11–24–89; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 88–13; Notice 2]

RIN 2127–AC72

Consumer Information; Vehicle Owner's Manuals

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Consumer Information Regulations to require vehicle manufacturers to include information in the owner's manual for each vehicle about NHTSA's toll-free Auto Safety Hotline and its defect investigation and remedy and recall authority. This requirement will allow NHTSA to obtain more information, more expeditiously about potential safety-related defects and noncompliances with safety standards.

DATES: *Effective Date:* The amendments made in this rule become effective on September 1, 1990.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than December 27, 1989.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours: 8:00 a.m. to 4:00 p.m.). It is requested that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: James P. Talentino, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5212).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1987, Motor Voters, a consumer organization interested in motor vehicle safety, petitioned the agency to require manufacturers of passenger vehicles to include information about NHTSA in the vehicle owners' manual. Specifically, the petitioner requested that the agency require information advising owners about NHTSA's safety defect authority and urging them to contact the agency about potential safety defects in their vehicles. To facilitate contacting the agency, the petitioner requested that the agency require manufacturers to include the toll-free telephone number of the Auto Safety Hotline and the agency's address. The petitioner suggested that the message explain that while the agency has authority to investigate defects and order recall and remedy campaigns, it does not become directly involved in the dealings of a particular consumer with a manufacturer of a motor vehicle regarding a defect in that vehicle.

Notice of Proposed Rulemaking

In response to the petition, on November 10, 1988, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend title 49 CFR part 575, *Consumer Information Regulations*, (53 FR 45527). The NPRM explained that the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act," 15 U.S.C. 1381 *et seq.*) requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy vehicles and equipment that are determined by the manufacturer or NHTSA to contain either a safety-related defect or a failure to comply with a Federal motor vehicle safety standard issued under the Vehicle Safety Act. The NPRM further noted that the agency's most important source of data used to identify defects which relate to motor vehicle safety is the consumer complaints made by persons calling the agency's toll-free Auto Safety Hotline. In 1987, the agency received 332,659 calls on the Hotline, of which 75 percent concerned alleged defects or recall information. In addition, over 15,092 of these Hotline callers followed up by completing and returning to NHTSA detailed Vehicle Owner Questionnaires which were mailed by the agency to callers reporting defects and seeking recall information. The NPRM also noted that a longstanding agency goal is to enhance publication of the Auto Safety Hotline and so improve the process of getting information from consumers about potential safety

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defects. The NPRM explained the agency's plans to publicize the Hotline through public service announcements in the media, through consumer and corporate safety offices, in telephone books, and through programs with State transportation agencies.

NHTSA's tentatively concluded that the inclusion of the requested information in each owner's manual would be an important addition to NHTSA's public information campaign to increase consumer awareness of the Hotline and the agency's efforts to strengthen its defect investigation activities. The agency stated its tentative belief that including the Hotline number in owner's manuals would put that number in the hands of millions of motor vehicle purchasers at virtually no additional cost. Moreover, the NPRM noted that since owners typically refer to their manuals periodically throughout the ownership of their vehicles, especially when they are experiencing vehicle problems, the Hotline number printed in the manuals would be seen many times. The agency stated that inclusion of the Hotline number in manuals would be particularly important for new car owners, since it would produce a higher volume of calls about potential safety defects earlier in a vehicle's life. The agency believed that this would be particularly important to detect defects in newly introduced models.

The NPRM accordingly proposed to amend § 575.6 of the Consumer Information Regulations to require motor vehicle manufacturers to include information about NHTSA's recall and remedy authority and about the Auto Safety Hotline in the owner's manual. The agency proposed requiring that all new motor vehicles, not just "passenger vehicles," be subject to the proposed amendment. The agency explained that facilitating owner reporting of potential safety defects would be important for all types of motor vehicles. The agency also made minor changes in the information requirements requested in the petition.

The proposed amendment required a manufacturer to state in each owner's manual that consumers may contact NHTSA if they believe that their vehicle contains a safety defect. The proposed amendment also required that the manuals include the toll-free Hotline telephone number and agency address. Finally, the proposed amendment required that manufacturers include in the manuals a statement about the agency's authority to order a safety recall if it finds that a safety defect exists in a group of vehicles.

Comments and the Agency's Response

NHTSA received 24 comments in response to the NPRM. Commenters included 15 automotive manufacturers and automotive affiliates; four academic, medical, and insurance groups; and five consumers and consumer organizations. The agency considered all these comments in developing this final rule.

General Comments

American Honda, American Insurance Association (AIA), Cagiva Motorcycle of North America, Children's Mercy Hospital, the National Consumers League (NCL), the University of Maryland's Center for Business and Public Policy, US Public Interest Research Group ("US Pirg"), and several citizens favored the proposal. US Pirg stated that the proposal would be a cost-effective and efficient way to improve consumer awareness of the Hotline. NCL commented that this measure would further the agency's need to receive information about safety defects so that the agency can protect the consumer.

On the other hand, Chrysler, Ford, General Motors (GM), General Tire, Mercedes, Michelin, the Motor Vehicle Manufacturers Association (MVMA), the National Automobile Dealers Association (NADA), Navistar, Volkswagen and Volvo opposed the proposal. NADA stated that there was no need for the rule and suggested NHTSA reevaluate the proposal. MVMA similarly commented that there was no safety need for this requirement. Ford, Michelin, MVMA, Chrysler, General Tire, GM, and Volkswagen elaborated that the proposal was unnecessary, might adversely affect customer manufacturer relations, delay corrective action, and overburden the agency's resources to respond to calls. Mercedes stated that the proposal would give consumers the false impression that they could receive immediate action related to their problems and that resolution of the problem would be delayed. Volvo commented that the rule would not be in the best interests of the vehicle owners, who would be better served by contacting the manufacturer rather than NHTSA.

Upon considering these comments in light of current trends in consumer awareness, NHTSA concludes that the benefits of increasing the availability of information about consumer remedies support the inclusion of information about the agency in the owner's manuals. Calls to the Hotline decreased from about 332,000 in 1987 to 252,000 in 1988, a reduction of about 24 percent. In turn, receipt of Vehicle Owner's Questionnaires decreased from about 15,000 in 1987 to about 12,000 in 1988. The agency believes that this new information will increase consumer awareness about the Hotline and the agency's defect investigation activities, especially for newly introduced models, and thus will improve the agency's information about potential safety defects and noncompliances. The agency is accordingly adopting the proposals. The increased dissemination of information about NHTSA will enable the agency to identify, investigate, and resolve potential problems more rapidly, because the agency will have a more extensive and more timely data base for analyzing owners' experiences with a given problem.

Chrysler, MVMA, and Volkswagen disagreed with the statement in the NPRM that the Hotline was the agency's most important source of data used to identify safety-related defects. Although the commenters are correct in noting that many recalls are initiated by manufacturers based on their own tests and field evaluations, the statement referred to NHTSA's own investigations, which continue to influence a high percentage of the total vehicles recalled and which rely heavily on consumer contacts through the Hotline.

Message's Language

The NPRM proposed to require the following message in the owner's manual:

> If you believe that a vehicle or item of motor vehicle equipment (such as tires, lamps, etc.) has a potential safety-related defect, you may notify the National Highway Traffic Safety Administration (NHTSA). You may either call toll free at 800-424-9393 (or 366-0123 in Washington, D.C.) or write Administrator, NHTSA, 400 Seventh Street, S.W., Washington D.C. 20590. NHTSA investigates alleged safety-related defects and may order a recall and remedy campaign if it finds that a safety defect exists in a group of vehicles and the manufacturer does not voluntarily conduct a recall and remedy campaign. However, NHTSA does not become directly involved in the dealings between a particular consumer and a vehicle manufacturer regarding a defect in the consumer's vehicle.

Mercedes and other manufacturers commented that this proposed language would hinder their relationship with their customers by delaying the correction of vehicle problems and by providing the unrealistic expectation that NHTSA can remedy the problem. According to these commenters, a consumer should contact the manufacturer before contacting the agency because the manufacturer is in a better position to actually remedy a safety related defect.

In response to this comment, NHTSA iterates that requiring this message will help to publicize the Auto Safety Hotline and NHTSA's related activities. The agency believes that NHTSA might lose valuable information from owners if the message did not initially focus on the agency's information collection responsibilities. For instance, in order for NHTSA to react quickly to reports of a defect trend, it is necessary for the agency to receive the information as soon as possible. The agency believes that this invitation for early consumer communication to NHTSA will also encourage manufacturers to act quickly to address consumer concerns. The agency further notes that even if NHTSA is contacted first, a manufacturer still will become aware of a problem because the agency will notify them about these complaints.

NHTSA nevertheless agrees with the commenters that the public should be instructed to also contact the manufacturer. Therefore, the agency has revised the message to state that a consumer should also contact the manufacturer or its designate (e.g., its authorized dealer) to resolve safety-related or other problems with the vehicle. In addition, the final rule explains NHTSA's authority and limitations more clearly. NHTSA believes that these modifications will increase the effectiveness of the message.

The agency emphasizes that NHTSA's message is mandatory, and thus a manufacturer cannot modify or otherwise vary it. Nevertheless, the agency notes that a manufacturer may place additional language elsewhere in the owner's manual encouraging a vehicle owner to contact them, provided that this additional information is not included in the message required by NHTSA and does not otherwise dilute the content of the required message.

GM suggested that the message be written in a "plain English" style. After reexamining the proposal's wording, NHTSA agrees with GM that to increase the final rule's effectiveness, the message should be written in an easily understood style. Accordingly, the final rule adopts more simplified wording whenever such wording does not misstate the legalities or realities of NHTSA's defect investigation and recall and remedy program.

Volkswagen commented that listing examples of equipment would result in consumers overreporting those items of equipment. In response to this comment, NHTSA has decided to eliminate these examples in the required message. The agency agrees with Volkswagen that including examples might bias the reporting and thus provide an inaccurate record of overall complaints about equipment. Accordingly, the final rule deletes reference to "tires, lamps, etc."

Several commenters noted that the proposed message should include more information than the NPRM proposed. The American Insurance Association (AIA) and Gillis and Associates stated that the final rule should contain information about other NHTSA activities such as drunk driving and odometer fraud. The NCL commented that NHTSA should expand the message to inform consumers that they should contact other consumer organizations such as the Better Business Bureau. NADA suggested that the required message should state that consumers should initially refer to the warranty booklet's section concerning dispute resolution and then contact the manufacturer.

After reviewing these comments, NHTSA has decided to include a general statement that a consumer can "get other information about motor vehicle safety from the Hotline." Nevertheless, the agency believes that the final rule should not include detailed information about NHTSA's other consumer protection matters. The agency notes that the principal purpose of this rule is to disseminate information about the Auto Safety Hotline and NHTSA's defect investigation authority which will lead to the increased reporting of potential safety defects and noncompliances with safety standards. The agency further notes that the rule is not intended as an all-encompassing source of consumer information. NHTSA believes that if the message were required to address all the agency's activities and consumer protection, then the most important information about this rulemaking (the Hotline and NHTSA's defect investigation authority) would be obscured.

The agency notes that upon contacting the Auto Safety Hotline, the caller will receive information about NHTSA's other activities. As for consumer protection information (e.g., warranty information), NHTSA notes that this type of activity is beyond the agency's statutory mandate.

Applicability of Requirement

Motor Voter's petition requested that NHTSA require "passenger vehicle manufacturers" to include information about the Hotline and the agency's defect investigation authority. The NPRM expanded the applicability of this requirement to "all new motor vehicles," reasoning that "facilitating owner reporting of potential safety defects is important for all types of motor vehicles."

US Pirg agreed with NHTSA's decision to expand the requirement's applicability to all motor vehicles. The Truck Trailer Manufacturers Association (TTMA) commented that the rule would create problems for small truck trailer manufacturers, some of which currently do not provide an owner's manual.

After reviewing these comments, NHTSA concludes that the final rule should be applicable to all motor vehicles, because any vehicle type may experience a safety-related defect. However, to accommodate a manufacturer that does not provide an "owner's manual," as defined in § 572.2(c) of the final rule, the rule provides that the manufacturer may provide the information in a separate one-page document to be included with the sales documents. In other words, a manufacturer must include the required information in the owner's manual if it provides one, or in a separate document if it provides no manual.

Placement of Information

The NADA suggested that a manufacturer be given the option of including the required information in the warranty booklet rather than in the owner's manual, claiming that consumers would more likely look in the warranty booklet for assistance with defect matters. GM stated that the manufacturer was in the best position to determine placement of the required information, suggesting that this information be placed in its "Warranty and Owner Assistance Information" booklet. GM stated that a manufacturer should not be required to place this information in the owner's manual.

After reviewing these comments, NHTSA has determined that the manufacturer must include this information in the owner's manual. The agency believes that requiring the information to be placed in the owner's manual will promote uniformity among manufacturers. In addition, NHTSA notes that placing the information in the warranty book would be less effective because the warranty lasts for a finite time (often much less than the life of the vehicle), after which a vehicle owner would have little reason to retain the book. In contrast, many manufacturers state in the owner's manual that this document should stay with the vehicle for its life, even if it sold. Thus, it is more likely that a vehicle's owner or owners will retain the owner's manual for a longer time period than the

warranty booklet. The agency notes that a manufacturer may place this information in any additional document provided that it includes this information in the owner's manual.

The agency is aware that manufacturers refer to such documents by many terms, including "Owner's Guide," "Owner's Handbook," or "Operating Instructions." Accordingly, the final rule expressly defines an "owner's manual" in § 575.2(c) as "the document which contains the manufacturer's comprehensive vehicle operating [and maintenance] instructions, and which is intended to remain with the vehicle for the life of the vehicle."

Several organizations commented about the placement of this information within the owner's manual. Volvo Truck stated that a manufacturer should have discretion about where it places the information. Volkswagen stated that this information be placed near the information on customer assistance. Gillis and the Center for Business and Policy did not suggest a specific location in the manual but noted that the agency should require that a manufacturer refer to it in the table of contents. US Pirg suggested that the agency require the information to be placed in a prominent location such as the front or back cover to prevent a manufacturer from "bury(ing)" it. NCL stated that the agency should specify the location to reduce reporting discrepancies. It suggested in order of preference that the information be placed opposite the first page of the table of contents, on the inside front cover, in the text preceding the maintenance schedule, or on the inside back cover.

After reviewing these comments, NHTSA agrees with Volvo Truck that a manufacturer should be given discretion about where it places the information. The agency believes that requiring the table of contents to include reference to the Hotline will adequately ensure that vehicle owner's will see this information. Accordingly, § 575.6(a)(2)(B) of the final rule also requires that the table of contents in the owner's manual specify the location of the information about NHTSA. In particular, the heading must be entitled "Reporting Safety Defects" and include the corresponding page number to effectively alert consumers and to provide uniformity as to the heading.

Two commenters offered their views on the type size. Volvo GM Heavy Truck requested that the type size be left to the manufacturer's discretion. NCL commented that the rule should specify a minimum point size for the type. It further stated that NHTSA should specify a minimum amount of space not less than one-half page for this information.

NHTSA has concluded that to be easily readable the required message must be written in letters and numbers not smaller than 10 point type, and has incorporated that requirement in the final rule. The agency notes that the point type size is consistent with the labeling requirements in S5.5.2 of Standard No. 213. The agency concludes that it is superfluous to specify a minimum page length because the final rule specifies the type size and the message itself.

Effective Date

The NPRM proposed that the rule would become effective "180 days after the publication of the final rule." Several manufacturers requested that the effective date coincide with the start of the model year to avoid unnecessary costs that would result in reprinting manuals during the middle of a model year. American Honda suggested that the effective date coincide with the change in model year. Volvo GM Heavy Truck requested that the effective date be changed to "January 1, or at the option of the manufacturer, the time of model year change-over." Cagiva, which changes its motorcycle models every two to four years, requested an effective date that would "allow us adequate lead time to incorporate the regulatory language" at the start of its model run. Chrysler recommended an effective date of the "first day of September occurring 180 days after publication of the final rule." Navistar requested an effective date of 270 days after the final rule's publication. US Pirg noted that the agency should "act promptly."

After reviewing these comments, NHTSA determines that the effective date will be September 1, 1990, which typically is the beginning of a model year for most vehicles. The agency believes that this effective date will allow the timely inclusion of this information at little or no cost to the manufacturers.

Cagiva requested that the final rule allow it to exhaust its supply of already printed manuals, explaining that its model runs may extend up to four years. A manufacturer whose models run for more than one year may comply with the final rule by placing an add-on-sticker on its existing manuals, until this supply is exhausted. The agency believes that this will ensure that consumers receive the information while minimizing the costs related to this rule for manufacturers like Cagiva.

Costs

The NPRM tentatively concluded that the proposal would result in minimal costs related to printing an additional half-page of material.

Several commenters addressed the final rule's cost impacts. NADA stated that the costs of this measure would not be a significant burden on manufacturers provided that it was phased in for new manuals. US Pirg commented that this rule would be a cost-effective way to improve consumer awareness of the Hotline. On the other hand, the MVMA stated that NHTSA underestimated the final rule's indirect costs to both NHTSA and manufacturers, especially costs resulting from the delay in handling consumer complaints. Volkswagen recommended that the agency further study the proposal, stating that the agency underestimated the number of consumer complaints, which would result in a large volume of additional contacts.

After reexamining the proposal in light of these comments, NHTSA concludes that the final rule will impose only minimal costs on motor vehicle manufacturers and the agency. The agency anticipates that a manufacturer will have to devote only on-half page in the manual at a cost of a few cents per manual for printing. The agency disagrees with MVMA and Volkswagen that there will be significant costs beyond the direct printing costs. The agency believes that MVMA's concern that consumer complaints will be handled inefficiently is adequately addressed by language in the final rule emphasizing that a consumer should contact the vehicle manufacturer first.

NHTSA does not anticipate that additional calls to the Hotline will result in unreasonable costs to the agency. First, the Hotline is well equipped to handle additional calls without increased costs. Second, it is in NHTSA's (and the general public's) interests to receive additional calls potentially related to safety defects. The agency believes that these additional calls will lead to defect investigations and the earlier remedy of safety problems.

Miscellaneous

NHTSA has examined the impacts of this regulation and determined that this final rule does not qualify as a major regulation within the meaning of Executive Order 12291 or as a significant regulation under Department of Transportation regulatory policies or procedures. The agency also has determined that the economic and other impacts of this rule are minimal so that a regulatory evaluation is not required. The information required to be placed in the vehicle's owner's manual will result in only minimal costs for vehicle manufacturers and will not likely result in any cost increase for consumers.

The agency also considered the impacts of this rule under the provisions of the Regulatory Flexibility Act. I hereby certify that the regulation will not have a significant economic impact on a substantial number of small entities. As discussed above, the cost of including the information in the owner's manual will be only a few cents per manual. Accordingly, there will be little economic effect on any small organizations or governmental units which purchase motor vehicles. Few if any vehicle manufacturers qualify as small entities under the Act.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no Federalism implication that warrants preparation of a Federalism report.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 1382, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

2. Section 575.2(c) is amended by adding alphabetically the following definition of "Owner's manual" to read as follows:

§ 575.2 Definitions.

* * * * *

(c) Definitions used in this part.

* * * * *

"Owner's manual" means the document which contains the manufacturer's comprehensive vehicle operating and maintenance instructions, and which is intended to remain with the vehicle for the life of the vehicle.

* * * * *

3. Section 575.6 is amended by redesignating the existing text in paragraph (a) as paragraph (a)(1), and adding a new paragraph (a)(2), to read as follows:

§ 575.6 Requirements.

(a)(1) * * *

(2)(i) At the time a motor vehicle manufactured on or after September 1, 1990 is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following statement in the owner's manual, or, if there is no owner's manual, on a one-page document:

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

To contact NHTSA, you may either call the Auto Safety Hotline toll-free at 1–800–424–9393 (or 366–0123 in Washington, D.C. area) or write to: NHTSA, U.S. Department of Transportation, Washington, D.C. 20590. You can also obtain other information about motor vehicle safety from the Hotline.

(2)(ii) The manufacturer shall specify in the table of contents of the owner's manual the location of the statement in 575.6(a)(2)(i). The heading in the table of contents shall state "Reporting Safety Defects."

* * * * *

Issued on November 21, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–27731 Filed 11–24–89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB23

Endangered and Threatened Wildlife and Plants; Delisting of Echinocereus engelmannii var. purpureus (Purple-Spined Hedgehog Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service removes *Echinocereus engelmannii* var. *purpureus* (purple-spined hedgehog cactus) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a "species" as defined by the Endangered Species Act of 1973, as amended, and therefore, was listed in error. *Echinocereus engelmannii* var. *purpureus* is a sporadically occurring dark-colored and short-spined phase of the *Echinocereus engelmannii* var. *chrysocentrus* population localized in the Virgin River Basin of southwestern Utah. *Echinocereus engelmannii* var. *chrysocentrus* is common and has a broad distribution in the Mojave Desert of Arizona, California, Nevada, and Utah.

EFFECTIVE DATE: December 27, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Utah State Office, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Larry England, botanist, at the above address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Echinocereus engelmannii var. *purpureus* was described in the scientific literature in 1969 from specimens collected near St. George, Utah, in 1949 (Benson 1969). *E. e. purpureus* differs from *E. e. chrysocentrus* (see Benson 1982) largely by the characteristics of the lower descending central spine which is darker (all the central spines of *E. e. purpureus* are dark purple), shorter, and more slender in *E. e. purpureus*. *E. e. purpureus* was listed as endangered on October 11, 1979 (44 FR 58866). Since the Federal listing of *E. e. purpureus* as endangered in 1979, no populations of the taxon have been located. Individual plants exhibiting characteristics described for *E. e. purpureus* occur sporadically within the population of *E. e. chrysocentrus* in southwestern Utah (Woodbury and England 1988).

Woodbury and England (1988) demonstrated that many morphological variations occur within the population of *E. e. chrysocentrus* in southwestern Utah and that none of these variations exhibit any population integrity independent of *E. e. chrysocentrus* as described by Benson (1982) and Taylor (1985). Miller (1988) considers *E. e. purpureus* to be a betalain color phase

within the southwestern Utah population of *E. engelmannii* that may be of no more than horticultural interest. In the newly published "A Utah Flora," Welsh et al. (1987) reduces *E. e. purpureus* to synonymy with *E. e. chrysocentrus*. Field observations by Bureau of Land Management and Fish and Wildlife Service (Service) biologists and botanists have confirmed the findings described above. Based on the information discussed above, the Service proposed the delisting of the purple-spined hedgehog cactus on January 19, 1989 (54 FR 2173).

Summary of Comments and Recommendations

In the January 19, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in The Daily Spectrum on February 19, 1989, and in the Deseret News and the Salt Lake Tribune on February 20, 1989. Four comments were received: one from the Governor of Utah, two from local governmental groups, and one from a professional botanist. All comments agreed with the Service's proposal to remove the purple-spined hedgehog cactus from the List of Endangered and Threatened Plants.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinocereus engelmannii* var. *purpureus* should be removed from the List of Endangered and Threatened Plants found at 50 CFR 17.12. Procedures found at Section 4(a)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus engelmannii* (Parry) Lemaire var. *purpureus* L. Benson (purple-spined hedgehog cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The purple-spined hedgehog cactus (*E. e. purpureus*) has been determined to be no more than a sporadically occurring vegetative phase, based primarily on spine characteristics, of *E. e. chrysocentrus*. *E. e. chrysocentrus* is a common species in the vegetative composition of the Mojave Desert in southwestern Utah (see Benson 1982, Welsh et al. 1987). *E. e. chrysocentrus*, which includes *E. e. purpureus*, is not significantly threatened with destruction, modification, or curtailment of its habitat throughout a significant portion of its range. The final rule (44 FR 58866) designating *E. e. purpureus* as an endangered species identified the urban sprawl of St. George, Utah, and human disturbance as threats contributing to the endangerment of that species. If *E. e. purpureus* were a valid taxon and met the definition of a "species" as described by the Endangered Species Act of 1973, as amended, then these factors would be relevant. However, since the entity shows no population integrity independent of *E. e. chrysocentrus*, it cannot be scientifically defended as a species, subspecies, or taxonomic variety.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Cylindrical cacti, in general, are of horticultural interest. However, *E. e. chrysocentrus*, which includes *E. e. purpureus*, is abundant enough throughout its range so as not to be jeopardized at present, or in the foreseeable future, by horticultural exploitation of its wild population. Here again, as stated above in Section A, if *E. e. purpureus* were a valid taxon, then this factor would be relevant.

C. *Disease or predation.* Disease or predation is not a threat to *E. e. chrysocentrus*, which includes *E. e. purpureus*.

D. *The inadequacy of existing regulatory mechanisms.* All native cacti are on Appendices I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) *E. e. purpureus* is included on Appendix II of the Convention. The Convention regulates and, in some cases, prohibits the export and international trade in species on its appendices. A recent law in Utah authorizes the Department of State Lands and Forestry to provide for protection of plant species designated as either threatened or endangered by the Federal Government under authority of the Act. The Bureau of Land Management, in its land use planning documents, has recognized the species and has provided guidelines for its conservation. This rule will necessitate the reevaluation of *E. e. purpureus* in State and Federal land use planning documents.

E. *Other natural and manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *E. e. purpureus* in determining to make this rule final. Based on this evaluation, the preferred action is to remove *Echinocereus engelmannii* var. *purpureus* from the List of Endangered and Threatened Plants in 50 CFR 17.12, thereby removing it from the protection of the Endangered Species Act of 1973, as amended.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. e. purpureus* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in Section 3(16) of the Act. Therefore, *Echinocereus engelmannii* var. *purpureus* was listed in error.

Effects of Rule

This action will result in the removal of *Echinocereus engelmannii* var. *purpureus* from the List of Endangered and Threatened Plants. Federal agencies will no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. e. purpureus*. There is no designated critical habitat for this entity. Federal restrictions on taking will no longer apply. There are no specific preservation or management programs for this cactus that will be terminated. Last, since *E. e. purpureus* is being delisted because it does not qualify as a "species," and not because it has recovered, there is no reason to monitor it for five years following delisting.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Benson, L. 1969. The cacti of the United States and Canada—new names and nomenclatural combinations. Cactus & Succulent Journal 41:126–127.

Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press. Stanford, California. 1044 pp.

Miller, J.M. 1986. Floral pigments and phylogeny in *Echinocereus* (Cactaceae). Systematic Botany 13(2):173–183.

Taylor, N.P. 1985. The genus *Echinocereus*. Timber Press, Portland, Oregon. 160 pp.

Walsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs No. 9, Brigham Young University Press, Provo, Utah. 894 pp.

Woodbury, L.A., and J.L. England. 1988. Morphological variation in *Echinocereus engelmannii* in Washington County, Utah. Unpublished report, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Author

The author of this final rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Echinocereus engelmannii* var. *purpureus* Purple-spined hedgehog cactus" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: October 23, 1989.

Sam Marler,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–27674 Filed 11–24–89; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 54, No. 226
Monday, November 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) invites comments and suggested changes to the United States Standards for Wheat under the United States Grain Standards Act.

DATE: Comments must be submitted on or before January 26, 1990.

ADDRESSES: Written comments must be submitted to Lewis Lebakken, Jr., Federal Grain Inspection Service, USDA, Room 0628–S, Box 96454, Washington, DC 20090–6454. Telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7607351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr. address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This periodic review of the United States Standards for Wheat in 7 CFR part 810, is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512–1.

During this review, FGIS will assess such issues as the continued need for various sections of the standards, potential for improvements, and language clarity. Specific items to be reviewed include: the tolerance for stones in the definition of sample grade, the tolerance for pieces of glass in the definition of sample grade, the tolerance which defines the special grade ergoty, the definition of unclassed wheat which includes red durum wheat, the definition of wheat of other classes, and the definition of contrasting classes. FGIS invites all other comments and suggestions on changes to the wheat standards.

FGIS is investigating the use of alternative testing methods as the basis of a future classification system. At this time no comments are being requested on the various technologies being researched for a wheat classification system.

Public comments on all other changes to the wheat standards are requested and any data, views or arguments are welcome.

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76)

Dated: November 1, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89–27693 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV–90–108]

South Texas Onions; Expense and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 959 for the 1989–90 fiscal period. Authorization of this budget would allow the South Texas Onion Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by December 7, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers and 75 producers of South Texas onions covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Onion Committee (committee), the agency responsible for local

administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by divising anticipated expenses by expected shipments of South Texas onions. Because that rate would be applied to actual shipments, it must be established at a rate which would produce sufficient income to pay the committee's expected expenses.

The committee met on October 31, 1989, and unanimously recommended a 1989–90 budget of $376,966. Last season's budget was $379,675. Major expense items include promotion and research projects which, at a total of $280,066, account for over 70 percent of the budget. Changes in this year's budgeted expenses include increases in committee staff salaries and research and decreases in committee travel and promotion activities.

The committee also unanimously recommended an assessment rate of $0.055 per 50-pound container, the same rate as last year. This rate, when applied to anticipated shipments of 6,075,000 containers, would yield $334,125 in assessment revenue. This amount, when added to $42,841 from the reserve, would be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 959 be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 959–230 is added to read as follows:

§ 959.230 Expenses and assessment rate.

Expenses of $376,966 by the South Texas Onion Committee are authorized and an assessment rate of $0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: November 21, 1989.

William J. Doyle,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–27690 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1138, 1106, 1120, 1126 and 1132

[Docket Nos. AO–335–A34, etc., DA–89–033]

Milk in the Rio Grande Valley and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing Area	Docket Nos.
1138	Rio Grande Valley.	AO–335–A34
1106	Southwest Plains	AO–210–A50
1120	Lubbock-Plainview, Texas.	AO–328–A28
1126	Texas	AO–231–A58
1132	Texas Panhandle	AO–262–A38

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by a cooperative association and dairy processors to amend the above-listed Federal milk marketing orders. A proposal by Associated Milk Producers, Inc., would merge the marketing areas of the Rio Grande Valley; Lubbock-Plainview, Texas; and the Texas Panhandle orders under one order. The merged area also would be expanded to include all of the State of New Mexico and Lipscomb and Parmer Counties, Texas. The provisions of the proposed "New Mexico and West Texas" order are patterned after the adjacent Southwest Plains order, including that order's payment plan, but with modifications in other provisions. Such modifications include the producer-handler definition and provisions concerning the order under which a plant should be regulated if it meets the regulatory standards of more than one order. The proposal also provides for some price restructuring that would reduce the Class I price by five cents per hundredweight in southern New Mexico and west Texas and increase the Class I price by 15 cents in eastern New Mexico.

The Dairy Products Institute of Texas on behalf of regulated handlers, has proposed changing the Class I price relationship between the Texas order and the three orders included in the merger proposal. The proposal would reduce the difference between the New Mexico and Texas Class I prices by 50 cents per hundredweight. The handlers have proposed that the price change be accomplished by a combination of some reduction to the Texas order Class I price and some increase to southeastern New Mexico Class I price. Three handlers have also proposed location adjustment changes in northern and eastern Texas pricing zones under the Texas order that are conditioned in part on whether the Texas order Class I differential is reduced by 30 cents or more under the Dairy Products Institute's proposal. Proponents contend that the changes are needed to reflect changed marketing conditions.

DATES: The hearing will convene at 9:00 a.m., local time, on December 6, 1989.

ADDRESSES: The hearing will be held at the El Paso Airport Hilton, 2027 Airway Boulevard, El Paso, Texas 79925 (915/778–4241).

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist,

USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the El Paso Airport Hilton, 2027 Airway Boulevard, El Paso, Texas 79925 (915/778-4241) beginning at 9:00 a.m., on December 6, 1989, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Rio Grande Valley and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Proposal No. 1, a proposal to combine the Rio Grande Valley; Lubbock-Plainview, Texas; and the Texas Panhandle marketing areas under one order, raises the issue of whether the provisions set forth in that proposal would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and expanded marketing area, and, if not, what modifications of the provisions would be appropriate.

The issues raised by proposal No. 1 include whether the declared policy of the Act would tend to be effectuated by:

(a) Merger of one or more of the marketing areas, or any combination thereof, including also the redefinition of marketing areas for separate or combined orders which include part or all of the areas presently defined in the respective orders or proposed herein to be regulated; and

(b) Adoption of any of the proposed provisions, or appropriate modifications thereof, for any separate order or any combination of such orders including a review of the appropriate pricing and pooling provisions of the orders whether separate or in any combination.

The proposal No. 1 merger of orders also raises the issue of the appropriate disposition of the producer-settlement fund, marketing service funds, and administrative funds accumulated under the respective orders.

Proposal No. 1 also raises the issue of conforming modifications to § 1106.52, Plant location adjustments for handlers in the Southwest Plains order, since this section refers to the Texas Panhandle, Lubbock-Plainview, Texas, and Rio Grande Valley marketing areas.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Public Law 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 5 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1138, 1106, 1120, 1126 and 1132

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR parts 1138, 1106, 1120, 1126 and 1132 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc.:

Proposal No. 1:

Merge the marketing areas of the Rio Grande Valley (part 1138), Lubbock-Plainview, Texas (part 1120), and Texas Panhandle (part 1132) orders, and expand such marketing area to include all unregulated territory in New Mexico and Lipscomb and Parmer Counties, Texas, to form a "New Mexico and West Texas" marketing area (part 1138) with terms and provisions as follows:

PART 1138—MILK IN NEW MEXICO AND WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1138.1 General provisions.

Definitions

1138.2 New Mexico and West Texas marketing area.
1138.3 Route Disposition.
1138.4 Plant.
1138.5 Distributing plant.
1138.6 Supply plant.
1138.7 Pool plant.
1138.8 Nonpool plant.
1138.9 Handler.
1138.10 Producer-handler.
1138.11 [Reserved]
1138.12 Producer.
1138.13 Producer milk.
1138.14 Other source milk.
1138.15 Fluid milk product.
1138.16 Fluid cream product.
1138.17 Filled milk.
1138.18 Cooperative association.
1138.19 [Reserved]
1138.20 Product prices.

Handler Reports

1138.30 Report of receipts and utilization.
1138.31 Payroll reports.
1138.32 Other reports.

Classification of Milk

1138.40 Classes of utilization.
1138.41 Shrinkage.
1138.42 Classification of transfers and diversions.
1139.43 General classification rules.
1138.44 Classification of producer milk.
1138.45 Market administrator's reports and announcement concerning classification.

Class Prices

1138.50 Class prices.
1138.51 Basic formula price.
1138.52 Basic Class II formula price.
1138.53 Plant location adjustments for handlers.
1138.54 Announcement of class prices.
1138.55 Equivalent price.

Uniform Price

1138.60 Handler's value of milk for computing uniform price.
1138.61 Computation of uniform price.
1138.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1138.70 Producer-settlement fund.
1138.71 Payments to the producer-settlement fund.
1138.72 Payments from the producer-settlement fund.
1138.73 Payments to producers and to cooperative associations.
1138.74 Butterfat differential.
1138.75 Plant location adjustments for producers and on nonpool milk.
1138.76 Payments by a handler operating a partially regulated distributing plant.

Sec.
1138.77 Adjustment of accounts.
1138.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1138.85 Assessment for order administration.
1138.86 Deduction for marketing services.

Subpart—Order Regulating Handling

General Provisions

§ 1138.1 General Provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

The "New Mexico and West Texas marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1: Following counties—Dona Ana, Grant, Hidalgo, Luna, Otero and Sierra, all in the State of New Mexico, and El Paso county in Texas.

Zone 2: Following counties—Archuleta, LaPlata and Montezuma in Colorado, and San Juan county in New Mexico.

Zone 3: Following counties—Cibola, Eddy, Lea, Chaves, Roosevelt, Curry, De Baca, Lincoln, Quay, Guadalupe, Bernalillo, Harding, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Miguel, Santa Fe, Socorro, Taos, Torrance, Valencia, Colfax, Union and Catron, all in the State of Mexico.

Zone 4: Following counties—Dallas, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, Yoakum, Terry, Lynn, Garza and Gaines, all in the state of Texas.

§ 1138.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlets (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

§ 1138.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1138.5 Distributing plant.

"Distributing plant" means any plant:

(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption.

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition in the marketing area during the month.

§ 1138.6 Supply plant.

"Supply plant" means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(a) during the month.

§ 1138.7 Pool plant.

"Pool plant" means: (a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant, and not less than 10 percent of such receipts are disposed of as fluid milk products on routes in the marketing area; or

(2) A plant located in the marketing area that qualifies pursuant to paragraph (a)(1) of this section which also meets the pooling requirements of another federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at the same location even though the plant may have greater route disposition in the other marketing area than in the New Mexico and West Texas marketing area.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1138.13, but excluding milk diverted to such plant) and handlers described in § 1138.9(c) is transferred to plants described in paragraph (a) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to qualify in each of the following months of February through August.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and 35 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1138.30.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant, a governmental agency plant, or an exempt handler plant.

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and form which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part; or

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic polling status under another Federal order.

§ 1138.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1138.7.

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

(f) "Exempt Handler" means any handler that has a monthly route disposition of 150,000 pound or less that may be exempt from the pricing and pooling provisions of this order if such handler files timely reports as specified by the market administrator and maintains adequate books and records that are made available to the market administrator which will enable determination of the exempt status of such handler.

§ 1138.9 "Handler".

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1138.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered.

(d) Any person who operates a partially regulated distributing plant; and

(e) Any person who qualifies as a producer-handler or exempt handler.

§ 1138.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month fluid milk products, except filled milk, are disposed of on routes in the marketing area, and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exist. All designations shall remain in effect until cancelled pursuant to paragraph (c) of this section.

(a) *Requirements for designations.* (1) the producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) His designated milk production resources and facilities,

(ii) Pool plants within the limitation specified in paragraph (c)(2) of this section, or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in another producer's operation (in this or any federal order).

(5) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with paragraphs (a) (1), (2), (3) and (4) of this section for a period of one month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler.

(2) As milk handling, processing and distribution resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) In which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be cancelled under any of the conditions set forth in paragraphs (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a) (1), (2), (3) and (4) of this section are not continuing to be met. Such cancellation is to apply to any month in which the requirements are not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer-milk to another handler under this or any other Federal order.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which does not exceed the lesser of 5 percent of his Class I disposition during the month or 5,000 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been cancelled and the effective dates of producer-handler status or loss of producer-handler status for each.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant or by a handler described in § 1138.9(c) or

(2) Diverted pursuant to § 1138.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to § 1138.8(e);

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1139.44(a)(8)(iii) and the corresponding step of § 1138.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order;

(5) Any person that delivers milk to or receives milk from a producer-handler or an exempt handler specified in § 1138.8(f), or who has disposition of fluid milk products to consumers at the farm in excess of 110 pounds per day during the month, or

(6) An exempt handler that operates a plant pursuant to § 1138.8(f).

§ 1138.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant directly from such producer. Any milk picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1138.9(c), is the handler for such milk.

(b) Received by a handler described in § 1138.9(c).

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month. Such milk shall be priced at the location of the plant to which diverted.

(d) Diverted by the operator of a pool plant or by a cooperative association frm a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:

(1) In each of the months of September through January, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a cooperative association in any month shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month;

(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month shall not exceed the total quantity of milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be

excluded until all diversions in excess of the prescribed limits are accounted for;

(5) If a dairy farmer loses his producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant; and

(6) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1138.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1138.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey, and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1138.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1138.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the milk product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1138.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or milk products for its members.

§ 1138.19 [Reserved]

§ 1138.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1138.51(a);

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average for the first 15 days of the month of the daily price per pound of cheddar cheese in 40-pound blocks. The price used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average price shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price." means the simple average, for the first 15 days of the month, of the daily price per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1138.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handler described in § 1138.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report for each of the handler's plants with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b) and (c) who pays producers pursuant to § 1138.73 shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The name and address of each producer;

(2) The amount paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1138.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

§ 1138.32 Other reports.

(a) On or before the 21st day of each month, each handler described in § 1138.9(a) who is required pursuant to § 1138.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1138.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 7th day after the end of each month, each handler described in § 1138.9 (a), (b) and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month.

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim and butterfat received from a handler described in § 1138.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and § 1138.30 and § 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(3) Each handler other than a cooperative association who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

Classification of Milk

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce;

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custard, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1138.44(a) (11) or (12) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the class to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the class to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provision of § 1138.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt handler and governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt handler and a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipt of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, an exempt handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (a) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1138.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator.

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administration determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants to other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1138.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1138.9(c) to another handler's plant shall be classified pursuant to § 1138.44 pro rata with producer milk received at the transferee-handler's plant and the value thereof at the class prices shall be included in the pool plant handler's value of milk pursuant to § 1138.60.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41 and 1138.42. The combined pounds of skim milk and butterfat so determined in each Class for a handler described § 1138.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pound of skim milk ion such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1138.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1138.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts.

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk, in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following;

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5) and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant and an exempt handler plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1138.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III;

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and

then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1138.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1138.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity pro-rated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pound of skim milk in receipts of fluid milk products form an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk;

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1138.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received.

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such

excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such product pursuant to § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1138.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1138.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b) estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the amount and class utilization of milk received by each handler from producers whose milk is being marketed by such cooperative association. For the purpose of this report, the milk caused to be so delivered by a cooperative association shall be pro-rated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

§ 1138.50 Class Prices.

Subject to the provisions of § 1138.53 the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) Class II price. A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1138.52 for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price.

(1) Determined for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1138.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1138.52.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1138.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times and simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1138.52 Basic class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1138.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1138.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1138.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1138.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1138.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (3) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1138.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Minus 10 cents.
Zone 3	Plus 5 cents.
Zone 4	Plus 14 cents.

(2) For a plant located outside the marketing area, the adjustment shall be an amount that will equate to the Class I price applicable at such plant location pursuant to the Federal order regulating milk marketing in such area;

(3) For a plant located outside any Federal order marketing area, the location adjustment per hundredweight shall be computed at 1.5 cents per 10 miles times the distance that such plant is located from the closer of Albuquerque, New Mexico or Amarillo, El Paso or Lubbock, Texas.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1138.44(a)(12) the pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of skim milk in Class I by 105 percent;

(3) Subtract the pounds of skim milk in receipts of milk at the transferee-plant from producers, handlers described in § 1138.9(c), and diverted milk from other pool plants;

(4) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(5) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(4) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee plant, and add the resulting amounts;

(6) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(5) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1138.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(5) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(5) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(7) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (6) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the final Class II price and the Class III price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month:

§ 1138.55 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1138.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1138.9(c) that were classified in each class pursuant to §§ 1138.43(a) and 1138.44(c) by the

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applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1138.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of 1138.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract for a handler described in § 1138.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1138.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed in § 1138.30 for the month and who made the payments pursuant to § 1138.71 for the preceding month;

(b) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1138.75;

(d) Divide the resulting amount by the sum of the following for all handlers included in the computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for milk received from producers.

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price pursuant to § 1138.61 for such month.

Payments for Milk

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77, except that payments to a cooperative association pursuant to § 1138.72 shall be offset by any payments due from such cooperative assocation pursuant to § 1138.71 that have not been received by the market administrator.

§ 1138.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75 of such handler's receipt of producer milk and milk received from handlers pursuant to § 1138.9(c). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1138.73(d), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1138.60(f).

(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1138 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to § 1138.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1138.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments

prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payment shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payment determined by the marked administrator to be due the cooperative association pursuant to § 1138.73(b) and (d).

§ 1138.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to § 1138.71(c) the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1138.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided and to cooperative associations in the same manner as provided in § 1138.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1138.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1138.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 25th day of each month to each producer who did not discontinue shipping milk to such handler before the 23rd day of the month, an amount equal to not less than the previous month's uniform price (adjusted for location of such plant) multiplied by the pounds of milk received from such producer during the first 15 days of the month, less proper deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by lthe hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1138.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer: Provided, That if by such date such handler had not received full payment from the market administrator pursuant to § 1138.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producer shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determined is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1138.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers for whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section.

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds, and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(d) Except as provided in § 1138.71(c) and paragraph (f) of this section, each handler pursuant to § 1138.9(a) who receives milk from a cooperative association as a handler pursuant to § 1138.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 23rd day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to § 1138.74 and § 1138.75, less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in § 1138.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 23rd day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may

be adjusted by the butterfat differential specified in § 1138.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1138.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1138.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of § 1138.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1138.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to § 1138.73, the uniform price computed pursuant to § 1138.61 shall be adjusted by the amounts set forth in § 1138.53 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted by the amount set forth in § 1138.52 that is applicable at the location of the nonpool plant from which the milk was received (except that the adjusted uniform price shall not be less than the Class III price).

§ 1138.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1138.30(b) and § 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with its report filed pursuant to §§ 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated.

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distrubiting plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1138.77 Adjustment of account.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which results in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which the error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to § 1138.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1138.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1138.71, 1138.73, 1138.76, 1138.77, 1138.85, or 1138.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1138.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler including a producer-handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1138.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1138.9(c);

(c) Other source milk allocated to Class I pursuant to § 1138.44(a)(7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computation pursuant to § 1138.60(d) and (f); and

(d) Route distribution from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1138.76(a)(2).

§ 1138.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determiend by the Secretary. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producer as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

Proposed by Lane's Dairy, Inc.:

Proposal No. 2:

Establish a producer-handler definition that reads as follows:

§ 1138.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route distribution in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except receipts from other order plants and by increasing the nonfat milk solids content of the fluid milk products received from his own

farm production, pool plants, or other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

Proposed by the Dairy Products Institute of Texas:

Proposal No. 3:

Decrease the difference between the Southeastern New Mexico Class I differential and the East Texas Class I differentials by 50 cents per hundredweight to be accomplished in part by reducing the Texas order Class I differential, and in part, by increasing the Southeastern New Mexico Class I differential.

Proposed by MorningStar Foods, Inc., The Borden Company, Inc., and Hygeia Dairy Company:

Proposal No. 4:

If the Texas order Zone 1 Class I differential is decreased by 30 cents or more, revise Section 1126.2 to include a zone 8–A consisting of the Texas counties of Jefferson and Orange and revise the schedule of location adjustments in § 1126.52(a)(1) by changing the Zone 2 adjustment from zero to plus 6 cents; changing the Zone 4 adjustment from plus 18 cents to plus 24 cents; and providing a Zone 8–A adjustment of plus 60 cents.

Proposal No. 5:

Revise the schedule of location adjustments in § 1126.52(a)(1) to make the minus location adjustment for Zone 1–A to be one-half the difference in the Dallas and Oklahoma City Class I differentials.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 6:

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Richard E. Arnold, P.O. Box 701440, Tulsa, Oklahoma 74170–1440, or Market Administrator Richard Fleming, P.O. Box 110938, Carrollton, Texas 75011–0939, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator of each of the 5 orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on November 21, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89–27684 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Part 1980

Receiving and Processing Applications for Making Farmer Program Loans Guaranteed by the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to change the processing of applications for guaranteed Farmer Program loans. This action would require credit bureau reports on new guaranteed loan applications. The intended effect of this action is to provide each FmHA office with the necessary credit information to make a sound credit decision, thereby reducing the Government's exposure to losses.

DATE: Comments must be submitted on or before December 27, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6346, South Agriculture Building, Washington, DC 20250. Written comments made pursuant to this notice will be made available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5507, South Agriculture Building, Washington, DC 20250. Telephone (202) 475–4425.

SUPPLEMENTARY INFORMATION: This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined "non-major" since the annual effect on the economy is less than $100 million and there will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Background:

In so much as FmHA is the lender of last resort, it is incumbent on FmHA to have sound credit management policies. What is set forth in this proposed rule is fundamental to all financial institutions that make loans. Once a lender has secured a completed loan application, the next logical step is to secure a credit report. This is generally standard operating procedure in the industry. Since it is incumbent on the lender to determine the history of both the applicant's willingness and ability to repay any and all debts incurred, a credit report is often an excellent source for this type of information. Since the Farmers Home Administration guarantees these loans, this should enhance the decision making ability of FmHA employees, thus reducing the Government's exposure to losses.

Environmental Impact Statement:

This proposed rule has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following program that is subject to intergovernment consultation with state and local officials:

10.416—Soil and Water Loans

In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Farmer Program Loans

2. Section 1980.113 is amended by revising paragraph (a)(3) to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

(a) * * *

(3) Credit bureau report, where available, and other pertinent information concerning an applicant's credit history obtained by the lender.

* * * * *

3. Section 1980.124 is amended by adding a new paragraph (a)(8) to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing, and deferral.

(a) * * *

(8) A credit report is obtained by the lender.

* * * * *

Dated: October 12, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–27691 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–07–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3961–1]

Approval and Promulgation of State Implementation Plans; Colorado; Oxygenated Fuels and Inspection/Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Colorado Carbon Monoxide (CO) and Ozone State Implementation Plan (SIP) submitted on November 17, 1988, by the Governor of Colorado. The CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program). The Regulations apply to the Boulder, Colorado Springs, Denver metropolitan, Fort Collins, and Greeley areas. The revisions are being proposed for approval because they are improvements to existing control measures, reduce CO and ozone levels and, therefore, strengthen the existing SIPs. Other amendments were also submitted on November 17, 1988, including revisions to Colorado Regulations No. 1, No. 3 and the Common Provisions Regulation, which are addressed in other Federal Register Notices.

DATES: Comments must be received on or before December 27, 1989.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver Colorado 80202–2405.

Copies of the State submittal are available for public inspection between 8:00 a.m. to 4:00 p.m., Monday through Friday, at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1773 (FTS) 564–1773.

SUPPLEMENTARY INFORMATION: On July 29, 1987, the Governor of Colorado submitted revisions to the Colorado CO and Ozone SIP which are the subject of a separate Federal Register Notice. These revisions provided for requirements for an enhanced I/M program using computerized analyzers and the use of oxygenated fuels in the winter months (November 1 through March 1).

The November 17, 1988, revisions included amendments to both Regulation No. 11 and Regulation No. 13. The Regulation 11 amendments were necessary because the Colorado Air Pollution Control Division found that progress towards attaining the CO standard was not adequate to meet the December 31, 1987, Clean Air Act deadline. The 1987 Colorado Legislature passed several bills requiring improvements to Regualation 11. The revisions to Regulation 11 include: (1) Mandatory inspection of vehicles owned by non-residents who reside in the I/M area for at least 90 days, (2) redefining motor vehicle so that Collector Series-plated vehicles less than 25 year old are included, (3) the inclusion of portions of Weld County in the I/M area and (4) continuing emissions standards for 1987 model year vehicles into the 1988 model year. EPA is proposing to approve the revisions to Regualation 11 because they stgrengthen the I/M program.

The November 11, 1988, revisons to Regulation No. 13 include the extension of EPA's waiver and "substantially similar" requirements for oxygenated fuels which only apply to unleaded gasoline to leaded gasoline. The State's wavier for leaded gasoline allows an oxygen content under the "substantially similar" provision of up to 2.7% oxygen. While oxygenated fuels are required in the program area only from November 1 through March 1, the State's waiver and substantially similar requirements apply to leaded gasoline all year long. The State has adopted there requirements, which include ASTM volatility standards, to protect vehicle components and performance, including emission control components. The ASTM volatility stanndard for Colorado varies from 15 pounds per square inch (psi) in the winter to 9 psi in the summer.

The federal waivers for unleaded oxygenated fuel requires that these fuels

meet ASTM volatility standards, and are granted under section 211(f) of the Clear Air Act (CAA). EPA has also promulgated volatility requirements for all gasoline sold from May through September 15 of each year under section 211(c) of the CAA (40 CFR 80.27 et. seq.). These requirements limit the volatility of all gasoline sold in Colorado to a maximum of 10.5 psi in May, and 9.5 psi June 1 through September 15 each year.

Since oxygenated leaded fuel is thus covered only under the State waiver (and not the federal 211(f) (waiver) the question arises as to whether the volatility requirement in the state waiver (as it applies to leaded gasoline) is thus preempted by the federal volatility regulation.

Section 211(c)(4)(A) of the CAA provides that:

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

The State has adopted these volatility requirements primarily for the purposes of protecting vehicle components and performance (drivability). Since the primary purposes of the State volatility control is not "for purposes of emission control", it is not preempted under section 211(c)(4)(A). Consequently, both the federal and the State volatility standards remain in effect.

On July 14, 1987 (52 FR 26419), EPA proposed to disapprove the Colorado CO SIP for the metroplitan Denver area for failing to demonstrate attainment of the CO standard by December 31, 1987, or any fixed date in the near term after 1987. In the General Preamble of that same notice, EPA also stated its intention to review the adequacy of the CO and Ozone SIPs in other areas. The proposal described below does not alter the July 14, 1987, proposed action. As discussed in that notice, the July 29, 1987, revisions are not sufficient to provide for attainment of the CO standard in the Denver/Boulder area in the near term and neither are the November 17, 1988, revisions. When a revised SIP is submitted that does address the issue of the attainment of the CO standard, the amount of emission reduction from Regulation 11 and 13 will then be calculated. No emission reduction credit is being given to the revisions at this time.

Proposed Action

EPA proposes to approve the revisions to Regulation No. 13, "Oxygenated Fuels Program", and the revisions to Regulation No. 11, the I/M program, because they are improvements to existing control measures and strengthen the existing CO SIP. The Regulation No. 11 and 13 amendments are also being proposed for approval as strengthening the Ozone SIP.

Interested parties are invited to comment on all aspects of these proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12292.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401—7642.

Dated: April 11, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–27725 Filed 11–24–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP8E3616/P493; FRL–3667–5]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues (free and bound) of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity bell peppers. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number, [PP8E3616/P493], must be received on or before December 27, 1989.

ADDRESSES: By mail submit comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 'Confidential Business Information' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3616 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Arkansas, Oklahoma, Florida, and Texas, and the U.S. Department ofAgriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues (free and bound) of the herbicide metolachlor (2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-meylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodity bell peppers at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 parts per million (ppm) (12.5 milligrams (mg)/kilogram (kg)).

2. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg).

3. A rat teratology study with no maternal, teratogenic, or fetotoxic effects at all levels tested (0, 60, 180, and 360 mg/kg/day).

4. A rabbit teratology study with a NOEL for maternal effects at 120 mg/kg and no teratogenic or fetotoxic effects at all levels tested (0, 36, 120, 360 mg/kg/day).

5. A 2-year oncogenicity study in mice with no observed oncogenic potential under the conditions of the study at 30, 1,000, and 3,000 ppm (highest dose level equivalent to 428 mg/kg); and a systemic NOEL of 1,000 ppm; and a repeated mouse oncogenicity study with no observed oncogenic potential under the conditions of the study at the same dose levels as the original study.

6. A two-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and a lowest effect level (LEL) of 1,000 ppm (50 mg/kg).

7. Mutagenicity studies including: a mouse dominant-lethal study, negative for mutagenic effects; a mouse lymphoma mutation assay, not a mutagen in both presence and absence of metabolic activator; two DNA damage/repair in fibroblasts and in rat hepatocytes, both negative; an Ames assay, negative for mutagenic effects; and a Chinese hamster micronucleus assay with no evidence of mutagenicity at dosage levels tested (0, 1,250, 2,500, and 5,000 mg/kg).

8. A 2-year chronic feeding/oncogenicity study (IBT validated) in the rat conducted at dietary doses of 0, 30, 300, and 3,000 ppm with a statistically significant increase in primary liver neoplasms in females at the high dose (equivalent 150 mg/kg).

9. A repeated 2-year chronic feeding/oncogenicity study in the rat conducted at the same dietary doses as the original study with a systemic NOEL of 300 ppm (15 mg/kg), a systemic LEL of 3,000 ppm (150 mg/kg) (testicular atrophy), and a statistically significant increased incidence of neoplastic liver nodules and proliferative hepatic lesions in females in the high-dose group (equivalent to 150 mg/kg/day).

The Agency has concluded that the available data constitute limited evidence for carcinogenicity of metolachlor. Metolachlor has been tentatively classified as a Category C carcinogen (limited evidence of carcinogenicity in animals) based on the following considerations:

1. The oncogenic responses observed in rats were confined to the high-dose females at one site (liver).

2. The proliferative liver lesions observed in rats were primarily benign (neoplastic nodules in 8 of 60 animals) rather than hepatocellular carcinomas (1 of 60 animals). There was no apparent difference in the time-to-occurrence of the lesions (almost all liver tumors were observed at terminal sacrifice).

3. Metolachlor was not oncogenic to mice under the conditions of the 2-year mouse oncogenicity studies.

4. An Ames mutagenicity assay and a dominant-lethal study were negative for mutagenic effects.

An oncogenic risk assessment for metalochlor has been completed by the Agency based on the available information. The potential oncogenic risk from dietary exposure resulting from the proposed use on bell peppers and existing uses of metalochlor is calculated at 2 X 10–6. The dietary risk assessment is based on a potency estimator (Q^*) of 2.1 X 10–3 (mg/kg/day)–1 and dietary exposure as calculated by the theoretical maximum residue contribution (TMRC) for established tolerances (0.001167 mg/kg/day).

Tolerances previously have been established for residues of metolachor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 30.0 ppm in peanut forage and hay. Tolerances have also been established for residues of metolachlor on both chili and tabasco peppers at 0.5 ppm. Based on the rat chronic feeding study with a NOEL of 300 ppm (15 mg/kg/day) for nononcogenic effects and using a 100-fold uncertainty factor, the reference dose (Rfd) is 0.15 mg/kg/day. The theoretical maximal residue contribution (TMRC) for existing tolerances is 0.001167 mg/kg/day. The proposed use will contribute an additional 0.000003 mg/kg/day (0.3 percent increase). Published tolerances utilize 0.78 percent of the RfD. The Agency concludes that the amount of the pesticide added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by the proposed rule is considered to pose a negligible incremental risk.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography with an electrolytic detector specific for nitrogen, is available for enforcement purposes. Analytical enforcement methods are currently available in the Pesticide Analytical Manual, (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that bell peppers are not considred an animal feed commodity, the tolerance established by amending 40 CFR 180.368 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3616/P493]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Repording and recordkeeping requirements.

Dated: November 12, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.368(a) is amended by adding and alphabetically inserting the raw agricultural commodity bell peppers, to read as follows:

§180.368 Metolachlor; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peppers, bell	0.1
* * * * *	

[FR Doc. 89–27727 Filed 11–24–89; 8:45 am]
BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–523, RM–6929]

Radio Broadcasting Services; Royston, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition by Oculus Broadcasting Corporation requesting the substitution of Channel 279C3 for Channel 279A at Royston, Georgia, and modification of its license for Station WBIC(FM) to specify the higher powered channel. Channel 279C3 can be allotted to Royston in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) northwest. The coordinates for this allotment are North Latitude 34–19–59 and West Longitude 83–12–17. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Royston or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Charles P. Sims, President, Oculus Broadcasting Corporation, 431 Turner Street, Royston, Georgia 30662.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–523, adopted October 31, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27625 Filed 11–24–89; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–521, RM–6963]

Radio Broadcasting Services; Lancaster, WI; Clinton, IA; and Morrison, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by K to Z, Ltd., licensee of Station WAXL(FM), Channel 249A, Lancaster, Wisconsin, proposing the substitution of Channel 249C3 for Channel 249A at Lancaster, and the modification of its license to specify operation on the higher class co-channel. In addition, the proposal requires the substitution of Channel 234A for Channel 249A at Clinton, Iowa, and the modification of the license of Station KCLN–FM at Clinton, as well as the substitution of Channel 271A for Channel 236A at Morrison, Illinois, and the modification of the construction permit for Station WZZT(FM) at Morrison. The substitutions can be accomplished at each station's present transmitter site. The coordinates for Channel 249C3 at Lancaster are 42–50–18 and 90–40–14. The coordinates for Channel 234A at Clinton are 41–54–32 and 90–13–20. The coordinates for Channel 271A at Morrison are 41–50–16 and 89–55–29. The proposal could provide Lancaster with its first wide coverage area FM service.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James L. Zimmerman, President, K to Z, Ltd, 130 West Elm Street, P.O. Box 587, Lancaster, WI 53813 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–521, adopted October 31, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27624 Filed 11–24–89; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–517, RM–6979]

Radio Broadcasting Services; Ogelsby, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by David B. Knoll, proposing the allotment of Channel 271A to Ogelsby, Illinois, as that community's first local FM service. The coordinates for this allotment are North Latitude 41–17–43 and West Longitude 89–03–34.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David B. Knoll, 1305 Smokey Row Lane, Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–517, adopted October 30, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27627 Filed 11–24–89; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–516, RM–6927]

Radio Broadcasting Services; Hardinsburg, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by J & J Broadcast Partners, proposing to allot Channel 282A to Hardinsburg, Kentucky, as its second FM service. The coordinates for this allotment are North Latitude 37–48–32 and West Longitude 86–25–48.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher D. Imlay, Julian P. Freret, Booth, Freret & Imlay, 1920 N Street, NW., Suite 150, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–516, adopted October 30, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27629 Filed 11–24–89; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–522, RM–6967]

Radio Broadcasting Services; Jackson, TN, and Caruthersville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by CR Broadcasting, Inc., licensee of Station WMXX-FM, Channel 276A, Jackson, Tennessee, proposing the substitution of Channel 276C2 for Channel 276A at Jackson, and the modification of its license to specify operation on the higher class co-channel. In addition, the proposal requires the substitution of Channel 286A for Channel 276A at Caruthersville, Missouri, and the modification of the license for Station KLOW(FM) at Caruthersville. A site restriction of 13.1 kilometers (8.1 miles) south of Jackson is proposed for the allotment of Channel 276C2. The coordinates are 35–30–00 and 88–36–00. Channel 286A can be used at the present transmitter site of Station KLOW(FM). The coordinates are 36–12–50 and 89–41–25.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27630 Filed 11–24–89; 8:45 am]
BILLING CODE 6712–01–M

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marnie K. Sarver, Esquire, Reed Smith Shaw & McClay, 1200 18th Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–522, adopted October 31, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27628 Filed 11–24–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–520, RM–6966]

Radio Broadcasting Services; Levelland, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KLVT Radio, Inc., proposing the allotment of Channel 253A to Levelland, Texas, as that community's second local FM service. The channel allotment can be made consistent with the Commission's minimum separation requirements at the city reference coordinates, which are 33–35–12 and 102–22–42.

DATES: Comments must be filed on or before January 11, 1990, and reply comments on or before January 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kathryn R. Schmeltzer, Esquire, John Joseph McVeigh, Esquire, Fisher, Wayland, Cooper and Leader, 1255 Twenty-third Street, NW., Suite 800, Washington, DC 20037–1125 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–520, adopted October 31, 1989, and released November 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–27628 Filed 11–24–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 29]

RIN 2127–AD18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment of the humidity test procedures for replaceable bulb and integral beam headlamps specified in paragraph S8.7 of Motor Vehicle Safety Standard No. 108. The test requirements would remain unchanged. The purpose of the proposal is to improve the repeatability of the humidity test. It seeks to accomplish this by specifying the test fixture to be used, the position of the lamp in the test chamber, and the air velocity of the air flow test portion of the humidity test. This implements previous grants of petitions for rulemaking submitted by Hella K.G., Robert Bosch, and Koito Mfg. Co.

DATES: Comment closing date for the proposal is January 11, 1990. Effective date of the amendment would be 6 months after publication of the final rule in the **Federal Register**. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period (49 CFR 553.19).

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh St. SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1983, NHTSA amended 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to permit headlamps other than sealed beam units (48 FR 24690). One of the tests specified for headlamps with replaceable bulbs concerned resistance to humidity (now paragraph S8.7 of Standard No. 108). Shortly after the issuance of those amendments, some

parties expressed concerns about that test. This notice responds to those concerns.

Hella Petition

On July 11, 1983, Hella KG of the Federal Republic of Germany petitioned for reconsideration of the amendments. Because the agency did not receive the petition until more than 30 days following publication of the amendment in the **Federal Register**, NHTSA treated it as a petition for rulemaking pursuant to 49 CFR part 552, in accordance with the provision in its regulations on petitions for reconsideration regarding timeliness, 49 CFR 553.35(a). The portion of the petition relevant to this rulemaking action concerned the appropriateness of the humidity test procedures for vented headlamps. Specifically, Hella viewed the test as inappropriate, and stated that modified dust and moisture requirements should be substituted for it. While the agency did not agree, it was concerned about the effect of the test on vented plastic headlamps. NHTSA believed that venting of plastic headlamps had a relationship to the performance of these lamps in Standard No. 108's internal heat test, and thus might be desirable for some headlamp system designs. The agency wished to be able to distinguish inferior venting systems from superior ones. Therefore, NHTSA granted this aspect of the Hella petition, in so far as it related to a closer study of tests for ventilated headlamp systems, and initiated research on this subject.

Bosch Petition

On October 21, 1985, Robert Bosch GmbH, a headlamp manufacturer in Stuttgart, Germany, petitioned for a modification in the humidity test for replaceable bulb headlamps. In its view, the test did not fully account for actual operating conditions typical of vented headlamps. As a result of the heat generated in the test, the air in the interior of the lamp expands, with pressure compensation occurring through the ventilation openings. When the lamp cools, air enters the headlamp interior carrying moisture which is deposited in the interior of the headlamp. If there is no flow of air within the humidity test box, the 1-hour soak period is insufficient " to establish a well-balanced proportion between the humidity inside the headlamp and the outside conditions". Accordingly, Bosch argued that for judging compliance of vented headlamps "it is necessary that there is a flow of air inside the test box during the soak period". It believed that a flow of between 3 and 6 feet per second (2 to 4 m.p.h.) would be sufficient, when directed to the headlamp from the front.

NHTSA granted both the Hella and Bosch petitions on March 18, 1987 (52 FR 8482). Shortly thereafter, on April 30, 1987, Koito Manufacturing Co. Ltd., a headlamp manufacturer in Japan, filed its own supporting petition for rulemaking to amend the humidity test. This petition was granted on July 14, 1989.

Koito Petition

Koito submitted test data on humidity and dust tests for many designs of vented headlamps. It found that if vents to eliminate water accumulation are too large, dust intrudes into the headlamps. Conversely, if the vents are too small, the lamps do not pass the humidity test. From the Koito test data, it appeared that headlamps could be designed to pass a humidity test with axial flow of air over the headlamp of between 2 m.p.h. and 4 m.p.h., the values recommended by Bosch, though without support at that time. Koito's data indicate that by modifying the existing humidity test procedure to specify air flow velocity, the repeatability of the humidity test is improved.

Proposed Changes in Test Procedures

As NHTSA stated in March 1987, it had initiated its own test program on humidity testing, and submitted a copy of its test work to Docket 81–11; Notice 22. It had verified that moisture in lamps affects photometric performance. This test work led to further test programs to eliminate instances of inconsistent test results. On the basis of these tests, NHTSA has developed the changes that this notice proposes in the humidity test.

The first change proposed is to the initial high-humidity "soak period". Currently, a 5-day high-humidity conditioning period is specified for headlamps before the low-humidity (dry-box) test is conducted. The high-humidity test consists of 20 on-off cycles during each of which the headlamp is energized for 1 hour and de-energized for 5 hours. NHTSA's research has demonstrated that headlamps cool off within 2 hours, so 3 hours of unproductive "off time" can be eliminated each cycle without affecting the test results. Accordingly, it is proposed that the high-humidity soak period consist of 24 cycles of 3 hours each, with the headlamps activated for 1 hour and deactivated for 2 hours. The specification of 24 consecutive cycles allows the test to start and end at the same time of day.

The agency has also tentatively determined that repeatability would be improved by specification of a special test fixture for the humidity test. This fixture is simple and inexpensive. It would consist of a flat steel plate, at least ¼ inch thick, to which 3 threaded steel rods of ¼ inch diameter are mounted (at variable locations, depending on the headlamp). The headlamp would be affixed to the fixture by clamps from behind, which are out of the air stream. The steel plate would be as wide as the headlamp, and long enough to extend from the forwardmost edge of the headlamp past the rear of the headlamp sufficiently far to allow mounting to the three vertical mounting rods. Steel would be necessary in the mounting plate to provide stability for the headlamp. Steel rods would be necessary to assure adequate strength since the headlamp may be cantilever mounted with lateral steel rods to it. Threaded rods would be necessary to screw into the mounting plate to allow easy thumb screw attachments to horizontal ¼ inch mounting rods. Flat sections at the end of the horizontal rods could be employed to allow screw or bolt attachment to the headlamps assembly.

However, Standard No. 108 presently requires that a photometric test be conducted following the humidity test, and in some cases headlamps might have aim stability problems using this fixture for a photometric test. If a choice must be made, the agency would prefer to drop the photometric test because it believes that the special fixture is critical to running a repeatable air flow test to evaluate headlamp venting, and a sufficient criterion of failure would be water in the headlamp. Water affects photometric performance by degrading the reflector and spotting the inside of the lens. Althought the photometric test concludes the proposed test procedures, the agency wishes to have comment on the compatability of the special test fixture with the conducting of the photometric tests, and whether a criterion of failure in addition to the presence of moisture would be desirable in the interests of safety.

In the proposed test procedure, detailed requirements are specified for air flow uniformity, air velocity, the position of the lamp in the air flow test chamber, and the humidity tolerance. The test and fixture would assure that undue turbulence is not present in the air flow test. The air flow uniformity should be plus or minus 10 percent of the average of velocities measured over the test grid 4 inches from the duct outlet over a 4-inch square grid at the plane of the front edge of the lamp. The velocities would be measured at 8 discrete points around the periphery of

the lens, and the average velocity should be 330 ft/min +0–20 ft/min, which is an equivalent of 3.75 m.p.h. The fixtured lamp should be centered in the test chamber with at least 3 inches clearance on all sides between the lamp (exclusive of the fixture), and any part of the chamber, and located with the forwardmost edge of the lamp at least 4 inches from the air entry point. To enhance repeatability, the tolerances on humidity after the soak period should be reduced from the present 20 to 40 percent, to 30 to 40 percent. A test report showing fixtures and details of the set-up for the humidity test has been placed under Notice 22 in Docket No. 81–11.

A 45-day comment period is specified to provide adequate time for interested persons to conduct tests and make informed comments.

The existing test requirements would remain unchanged.

Assessment of Impacts and Request for Comments

NHTSA has preliminarily considered the economic impacts of this rulemaking proposal and has made a tentative determination that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. The proposal would modify in minor respects an existing test procedure for an optional type of headlamp. The costs associated with the special test fixture are minimal, and could be offset by the slight reduction in costs associated with reduction of the pre-test period from 5 days to 3 days. Therefore, preparation of a full regulatory evaluation is not required.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal should have no effect on the human environment since it retains an existing test procedure.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. The parties affected by the proposal, i.e., manufacturers of motor vehicles and headlamps, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and headlamps would be minimally impacted.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been established that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the closing date indicated above, will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S8.7 would be revised to read as follows:

S8.7 *Humidity.* (a) The test fixture consists of a horizontal plate of steel to which three threaded steel rods of ¼ inch diameter are imbedded vertically behind the headlamp. The headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 2 inches laterally of a vent inlet or outlet.

(b) The mounted headlamp assembly is oriented as it would be on the vehicle for which it is designed, and is placed in a controlled environment at a temperature of 100+7−0 degrees F (38+4−0 C) with a relative humidity of not less than 90 percent. All drain holes, breathing devices, and other openings are in their normal operation positions for all phases of the humidity test. The headlamp shall be subjected to 24 consecutive 3-hour test cycles. In each cycle, it shall be energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal, it shall flash at 90 flashes per minute with a 75+/−2 percent current "on-time."

(c) Within 3 minutes after the completion of the 24th cycle, the mounted assembly shall be removed, wrapped in a thermal blanket, and placed in an axial air flow chamber. The thermal blanket shall be removed when the assembly is placed in the chamber. The orientation of the assembly with respect to the air flow shall be identical to that of its position on any vehicle for which the headlamp is intended. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 3 inches clearance on all sides, and at least 4 inches to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 3 inches are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 73+7−0 degrees F (23+4−0 degrees C) with a relative humidity of 30+10−0 percent. The headlamp is not energized.

(d) Before the test specified in paragraph (e) of this section, the uniformity of the air flow in the empty test chamber at a plane 4 inches downstream of the air entry duct shall have been measured over a 4-inch square grid. The uniformity of air flow at each grid point is +/− 10 percent of the average air flow specified in paragraph (e) of this section.

(e) The mounted assembly in the chamber shall be exposed, for one hour, to an average air flow of 330+0−20 ft/min. as measured with an air velocity measuring probe having an accuracy of +/−3 percent in the 330 ft/min range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: at the center of the lens, construct a horizontal plane. The first two points are located in the plane, 1 inch outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, one inch above the top edge of the lens, and one inch below the bottom edge of the lens.

(f) After one hour, the headlamp is removed and inspected for moisture. The headlamp shall then be tested immediately for photometrics. The photometric testing of the headlamp shall begin within 10+/−1 minutes of its removal from the chamber.

Issued on November 21, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–27732 Filed 11–24–89; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043 and 1084

[Ex Parte No. MC-5 (Sub-No. 10)]

Removal of Regulations Governing Cargo Liability Insurance, Surety Bonds or Other Security Required by Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise its regulations at 49 CFR parts 1043 and 1084 governing financial responsibility requirements for motor carriers, property brokers and freight forwarders. Specifically, the Commission proposes to eliminate its regulations that require motor common carriers of property and freight forwarders to file with the Commission and maintain on a continuous basis evidence of cargo liability insurance for the protection of the public. The present minimum cargo security requirement may impose unnecessary burdens and costs on carriers and freight forwarders in obtaining and filing evidence of such security. If the proposed rule revision is adopted, shippers would be free to negotiate directly with carriers and freight forwarders for the protection of their goods against loss or damage.

DATE: Comments are due on December 27, 1989.

ADDRESS: Send an original and 10 copies of comments referring to Ex Parte No. MC–5 (Sub-No. 10) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay (202) 275–0854, or Heber P. Hardy (202) 275–7148 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Under the provisions of 49 U.S.C. 10927(a)(3) and 10927(c)(2), the Interstate Commerce Commission is given the discretion to impose security requirements for the protection of cargo being placed in the custody of motor carriers and freight forwarders, respectively. The Commission, in accordance with the regulations prescribed in 49 CFR part 1043 and 49 CFR part 1084, requires all motor common carriers, unless excluded from regulation by the exemption in 49 CFR Part 1043.1(b),[1] and all freight forwarders, including those not required to hold ICC operating authority,[2] to file with the Commission and to maintain on a continuous basis evidence of cargo liability insurance. These motor carriers and forwarders are required to have insurance coverage for cargo liability in the amounts of $5,000 for losses sustained on any one vehicle and an aggregate of $10,000 for losses occurring at any one time or place. Carriers and forwarders may meet these requirements by filing certificates of insurance, surety bonds, proof of qualification to self-insure, or other evidence of acceptable securities or agreements.

All segments of the motor carrier industry are continuing to encounter problems in purchasing or maintaining evidence of security. However, the problems associated with obtaining cargo security are unique to motor carriers of property and freight forwarders, since they are the only types of carriers required to have cargo insurance coverage. When these entities are unable to induce an insurance or surety company to file evidence of cargo insurance with the Commission, they are precluded from competing in the marketplace.

Further, we believe our minimum cargo security requirement does little to protect shippers, who would be better served by negotiating cargo security provisions with carriers as they do now on service, price and credit options. These regulations are costly both in terms of administration as well as compliance, and needlessly interfere with the evolution of marketplace resolutions.

The Commission believes that it can best alleviate problems associated with insurance availability and affordability by providing regulated transportation entities with alternative methods of complying with the requirements of 49 U.S.C. 10927 and, where possible, by eliminating unnecessary Federal regulations. Therefore, to ensure that these carriers and forwarders may continue to provide adequate services to the shipping public, the Commission is instituting this rulemaking proceeding to consider whether the existing cargo insurance requirements should be eliminated.

Accordingly, the Commission proposes to remove all references to cargo liability insurance from 49 CFR 1043.5; 1043.7; 1084.3; and 1084.7(a), and to remove, in their entirety, the regulations prescribed in 49 CFR 1043.1(b); 1043.2(c); 1043.6(b); 1084.2(a); and 1084.4(a), from title 49 of the Code of Federal Regulations. The Commission proposes to revise 49 CFR 1003.3 by eliminating forms that are used in connection with cargo insurance, namely, Form BMC–34—Motor Carrier Cargo Liability Certificate of Insurance; Form BMC–83—Motor Common Carrier Cargo Liability Surety Bond; and Form BMC–32—Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability.

[1] Some motor common carriers of property, because they are engaged solely in the transportation of low-valued, heavy-loading commodities, are exempted from cargo insurance requirements.

[2] The Surface Freight Forwarder Deregulation Act of 1986, Public Law No. 99–521, exempted freight forwarders, other than forwarders of household goods, from the Commission's licensing requirements. However, the Commission exercised its discretionary authority by requiring these forwarders to comply with its cargo insurance requirements.

We believe that if this proposal is adopted, many motor carriers and forwarders will continue to maintain voluntarily, as prudent business practice dictates, some form of cargo security. However, because these entities will not be required to make burdensome filings with the Commission and obtain endorsement forms from insurers, which override conditions and limitations normally contained in insurance policies, the premium rates for cargo liability should be substantially reduced.

It is requested that the written comments of interested parties address whether the benefits derived from these regulations justify the costs and burden of compliance. Further, proponents of cargo security requirements should present evidence addressing problems that they believe are likely to occur absent such requirements.

A copy of this notice may be obtained by writing to the Office of the Secretary, Room 2215, Interstate Commerce Commission, 12th Street and Constitution Avenue, NW., Washington, DC 20423 or by calling (202) 275–7428. (Assistance for the hearing impaired is available through TDD Services at (202) 275–1721).

Energy and Environmental Considerations

We preliminarily conclude that the proposed rules will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We preliminarily conclude that the proposed elimination of prescribed cargo liability regulations will have a beneficial, although modest, economic impact on a substantial number of small entities by reducing regulatory burdens. At the same time, we are convinced that small entities that rely on motor common carrier and freight forwarder service have sufficient commercial protection available to ensure that acceptable cargo liability security levels will be observed, absent Commission regulation of the subject. The proposed rule revisions will not require the filing of reports or recordkeeping by small entities. The proposal will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects

49 CFR Part 1003

Insurance, Surety bonds

49 CFR Part 1043

Motor carriers, Insurance, Surety bonds

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds

Decided: November 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1003, 1043 and 1084 are proposed to be amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for 49 CFR part 1003 would continue to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), and 49 U.S.C. 10321.

§ 1003.3 [Amended]

2. Section 1003.3 is proposed to be amended by removing Forms B.M.C. 32; B.M.C. 34; and B.M.C. 83.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for 49 CFR part 1043 would continue to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; and 5 U.S.C. 553.

§ 1043.1 [Amended]

4. Section 1043.1 is proposed to be amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

§ 1043.2 [Amended]

5. Section 1043.2 is proposed to be amended by removing paragraph (c).

6. Section 1043.5(a), introductory paragraph is proposed to be revised to read as follows:

§ 1043.5 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The Commission will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the Commission the ability of the motor carrier to satisfy its obligation for bodily injury liability and property damage liability. Application Guidelines: In addition to filing Form BMC 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the Commission to determine:

* * * * *

§ 1043.6 [Amended]

7. Section 1043.6 is proposed to be amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

8. Section 1043.7 paragraphs (a)(2) and (a)(3) are proposed to be revised to read as follows:

§ 1043.7 Forms and procedures.

(a) * * *

(1) * * *

(2) *Aggregation of insurance.*[1] When insurance is provided by more than one insurer in order to aggregate security limits for carriers operating only freight vehicles under 10,000 pounds Gross Vehicle Weight Rating, as defined in § 1043.2(b)(1), a separate Form BMC 90, with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, and Form BMC 91X certificate is required of each insurer. For aggregation of insurance for all other carriers to cover security limits under § 1043.2 (b)(1) or (b)(2), a separate Department of Transportation prescribed form endorsement and Form BMC 91X certificate is required of each insurer.

For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under § 1043.2(b)(4), a separate Form BMC 90 with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and Form BMC 91MX certificate is required for each insurer.

(3) *Use of certificates and endorsements in BMC Series.* Form BMC 91 certificates of insurance will be filed with the Commission for the full security limits under § 1043.2 (b)(1) or (b)(2).

Form BMC 91X certificate of insurance will be filed to represent full coverage or any level of aggregation for the security limits under § 1043.2 (b)(1) or (b)(2).

Form BMC 90 endorsement will be used with each filing of Form BMC 91 or Form 91X certificate with the Commission which certifies to coverage not governed by the requirements of the Department of Transportation.

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under § 1043.2(b)(4).

* * * * *

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

9. The authority citation for 40 CFR part 1084 would be revised to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; and 5 U.S.C. 553.

§ 1084.2 [Amended]

10. Section 1084.2 is proposed to be amended by removing paragraph (a) and the designation (b).

11. Section 1084.3 is proposed to be revised to read as follows:

§ 1084.3 Limits of liability.

The prescribed minimum amounts for public liability security referred to in § 1084.2 are identical with these minimum limits prescribed for motor carriers in § 1043.2 of this chapter.

§ 1084.4 [Amended]

12. Section 1084.4 is proposed to be amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

13. Section 1084.7(a) is proposed to be revised to read as follows:

§ 1084.7 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will give consideration to and will approve the application of a freight forwarder to qualify as a self-insurer if such freight forwarder furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such freight forwarder to satisfy its obligations for bodily-injury liability and property-damage liability without affecting the stability or permanency of the business of such freight forwarder.

* * * * *

[FR Doc. 89-27698 Filed 11-24-89; 8:45 am]

BILLING CODE 7035-01-M

[1] See NOTE for Rule 1043.6. Also, it should be noted that DOT is considering prescribing adaptations of the Form MCS 90 endorsement and the Form MCS 82 surety bond for use by passenger carriers and Rules §§ 1043.6 and 1043.7 have been written sufficiently broad to provide for this contingency when new forms are prescribed by that Agency

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018–AB38]

Endangered and Threatened Wildlife and Plants; Proposal To Determine Lepidium barnebyanum (Barneby Ridge-cress) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a Utah plant species, *Lepidium barnebyanum* (Barneby ridge-cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *L. barnebyanum* is known from one small limited population in Duchesne County, Utah. Continued uncontrolled off-road vehicle use and future development of oil and gas resources in the habitat of *L. barnebyanum* have the potential to cause the species to become extinct if adequate protective measures are not taken. This proposal, if made final, would implement Federal protection provided by the Act for *L. barnebyanum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 26, 1990. Public hearing requests must be received by January 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, botanist, at the above address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

In June 1947, a unique mustard was discovered by Rupert Barneby in the lower portions of Indian Creek Canyon in Utah's Uinta Basin. This plant was described first in the scientific literature as *Lepidium montanum* ssp. *demissum* (Hitchcock 1950). James Reveal reviewed the type specimen of *L. m. demissum* and obtained additional specimens of that taxon from the type locality. As a consequence of his evaluation of this taxon, Reveal described the mustard as *Lepidium barnebyanum* (Reveal 1967).

The common name used for *L. barnebyanum* in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on September 27, 1985 (50 FR 39526), was "Barneby pepper cress." Stanley Welsh gave this species the common name of "ridgecress" in *A Utah Flora* (Welsh et al. 1987). The Service has adapted Welsh's common name because it is cress (mustard) endemic to ridges and has retained the specific epitaph to honor the species' discoverer, thus the common name "Barneby ridge-cress." The Soil Conservation Service uses the common name "Barneby pepperweek" for this species.

L. barnebyanum is a perennial, herbaceous plant in the mustard family (Brassicaceae). It is approximately 2 to 6 inches (5 to 15 cm) high and usually forms raised clumps or cushions (pulvinate growth form) up to 8 inches (20 cm) wide. The species arises from a deep woody taproot; its stems are smooth and hairless with narrow leaves clustering at the base of the plant. The species' cream-colored flowers are about 0.25 inch (5 to 7 mm) across and alternate along a stem rising 1 to 2.5 inches (2.5 to 6 cm) above the base of the plant. The flowers begin to bloom in early May. *L. barnebyanum* seeds are quite small, about 1 mm across, and are borne in elliptical seed pods called silicles, which are about 0.2 inch (4 to 5 mm) long. The seeds are shed beginning in June and continuing into July.

The habitat of *L. barnebyanum* is a discontinuous series of marly shale barrens on three ridgelines on either side of Indian Creek on the northeast margin of Indian Creek Canyon about 3 miles south of Starvation Reservoir and the town of Duchesne, Utah. The species' habitat occurs at an elevation of 6,200 to 6,500 feet (1,850 to 1,950 m) on poorly developed soils derived from marly shales in a zone of interbedding geologic strata from the Uinta and Green River Formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). The vegetation of the shale barrens, on which *L. barnebyanum* occurs, is dominated by plant species with pulvinate growth forms including: *Hymenoxys acaulis, Arenaria hookeri, Townsendia mensana, Parthenium ligulatum,* and *L. barnebyanum* itself. Other associated plant species include: *Eriogonum batemanii, Astragalus*

spatulatus, and *Castilleja scabrida*. The shale barren pulvinate plant community of *L. barnebyanum* is a small inclusion within the broader pinon juniper woodland community, dominated by pinon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*) which characterize the general area (Welsh 1978, U.S. Fish and Wildlife Service 1989).

L. barnebyanum is known from one population with three distinct stands with a total range that is about 4 miles across on the Uintah and Ouray Reservation (Reservation) of the Ute Indian Tribe (Tribe). The entire population of *L. barnebyanum* is experiencing or vulnerable to off-road vehicle damage and is directly adjacent to active oil and gas fields. Continued unrestricted off-road vehicle use and future development of those oil and gas fields is likely to jeopardize the continued existence of this species unless specific measures are taken to protect the occupied habitat of *L. barnebyanum*. The total population of *L. barnebyanum* is estimated to be about 5,000 individuals with an occupied habitat of less than 500 acres (U.S. Fish and Wildlife Service 1989).

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition to list those taxa named therein under Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act), and its intention to review the status of thos plants. *L. barnebyanum* was included in the July 1, 1975, notice on list "A" as endangered.

L. barnebyanum was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 FR 70796), including *L. barnebyanum*.

The July 1975 notice was updated by notices in the **Federal Register** on December 15, 1980 (45 FR 82480), and again on September 27, 1985 (50 FR 39526). Both of the later notices included *L. barnebyanum* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Since the 1975 Smithsonian report and the Service's 1980 and 1985 notices were accepted as petitions, all the taxa contained in those notices, including *L. barnebyanum*, were treated as being newly petitioned on October 13, 1982. The deadline for a finding on such petitions, including that for *L. barynebyanum*, was October 13, 1983. Beginning on October 13, 1983, the Service has made successive 1-year findings that the petition to list *L. barnebyanum* was warranted, but precluded by other listing actions of higher priority. This proposal constitutes the next 1-year petition finding for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepidium barnebyanum* Reveal (Barneby ridge-cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The past distribution of *L. barnebyanum* is unknown (Welsh 1978). The species is evidently a narrow soil endemic, being restricted to a white-colored marly shale lens near the contact of Green River and Uinta geologic formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). Similar shale barren habitat occupied by many of the same species sympatric with *L. barnebyanum* (see "Background" section above) have been searched for additional populations of *L. barnebyanum* in the Uinta Basin of northeast Utah and adjacent Colorado; however, no populations of the plant are known except for the one in the northern portion of Indian Creek Canyon (Reveal 1967, Welsh 1978, U.S. Fish and Wildlife Service 1989). The total population of *L. barnebyanum* is estimated to be about 5,000 individuals on marly shale barrens on three ridgelines in the northeast portion of Indian Creek Canyon in Duchesne County, Utah (U.S. Fish and Wildlife Service 1989).

The occupied habitat of *L. barnebyanum* is being impacted by trampling from off-road vehicles such as motorcycles and four-wheeled all-terrain vehicles which concentrate on the sparsely vegetated ridgelines which are *L. barnebyanum's* only habitat (U.S. Fish and Wildlife Service 1989). In addition, the habitat of *L. barnebyanum* is adjacent to a developed oil and gas field with several wells within 5 miles of the species' habitat. The location of the sites of *L. barnebyanum* habitat on the top of relatively level ridgelines in an area of very steep general topographic relief exposes those populations to an increased likelihood of habitat destruction from off-road vehicle trail riding, and road and well site construction in connection with oil and gas development (Welsh 1978, U.S. Fish and Wildlife Service 1989). With such a small population and limited occupied habitat, any destruction, modification or curtailment of the habitat would have a highly negative impact on the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threats to *L. barnebyanum* from overutilization for commercial, recreational, scientific, or educational purposes are currently known.

C. *Disease or predation.* No significant threats to *L. barnebyanum* from disease or predation are currently known.

D. *The inadequacy of existing regulatory mechanisms. L. barnebyanum* is not currently protected by any Federal or State law or regulation. The Bureau of Indian Affairs is aware of the precarious status of this species and as a matter of policy attempts to direct activities which may threaten the species away from its habitat on the Uintah and Ouray Reservation of the Ute Indian Tribe. However, the Bureau of Indian Affairs lacks the explicit, statutory authority necessary to protect the species. The listing of *L. barnebyanum* will significantly assist the Bureau of Indian Affairs in providing for the protection of this species and its habitat and will encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* Compared to closely related taxa in the same genus, recent studies have shown *L. barnebyanum* to have a reduced seed/ovule ratio, i.e., a smaller percentage of ovules (embryonic seeds) becoming mature seeds (C. Davern, University of Utah, pers. comm., 1988). This would tend to lower reproductive success and reduce population viability. The restricted range and population of *L. barnebyanum* increases the possibility that inadvertent disturbance, either natural or man caused, could destroy a significant portion of this species' population and habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *lepidium barnebyanum* as endangered. The species is threatened by surface disturbance that is currently occurring from off-road vehicles and will probably intensify in the near future and by future energy development within its habitat. These factors could cause the species to become extinct within the foreseeable future throughout all or a significant portion of its range. Given the species' highly restricted distribution and the likelihood of future habitat destruction, the proposed designation of endangered is considered by the Service to be a more prudent designation than threatened for *L. barnebyanum*. For the reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for *L. barnebyanum* is not prudent because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. barnebyanum* occupies limited habitat on the top of three relatively level ridgelines. Designation of critical habitat would entail publication of a detailed description and map of this habitat in the **Federal Register**, exposing the species to the threat of vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the single small *L. barnebyanum* population with an off-road vehicle.

Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered, particularly as the entire population is located on lands under Federal jurisdiction. Any Federal action that would impact the plant's habitat would affect the plants as rooted organisms and, consequently, would be addressed through section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any such area. The Tribe, Bureau of Indian Affairs, and Bureau of Land Management are aware of the occurrence of *L. barnebyanum* on Tribal lands and of their obligations under the Act. Protection of species' habitat will also be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The entire known population of *L. barnebyanum* is on the Uintah and Ouray Reservation of the Ute Indian Tribe. The Bureau of Indian Affairs is responsible for assisting the Tribe in the resource management of Reservation lands and as such would be responsible for the conservation of the plant on Tribal lands under authority of the Act. The Bureau of Land Management is responsible for the leasing of minerals under Federal jurisdiction, including those on Indian reservations. Both of these Federal agencies would be responsible for ensuring that land actions in general, and those associated with mineral leasing specifically, are not likely to jeopardize the continued existence of *L. barnebyanum*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. barnebyanum* since the species is not common in cultivation or in the wild. Requests for

copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *L. barnebyanum*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Hitchcock, C.L. 1950. On the subspecies of *Lepidium montanum*. Madroño 10:155–159

Reveal, J.L. 1987. A new name for a Utah *Lepidium*. Great Basin Naturalist 27(3):176–181

U.S. Fish and Wildlife Service. 1989. *Lepidium barnebyanum* status report. Salt Lake City, Utah. 4 pp.

Welsh, S.L. 1978. Status Report: *Lepidium barnebyanum*. Brigham Young University Herbarium, Provo, Utah. 4 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Welsh, S.L., and J.L. Reveal. 1977. Utah flora: Brassicaceae (Cruciferae). Great Basin Naturalist 37(3):279–365.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430, see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1362–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h)* * *

SPECIES		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard Family						
Lepidium barnebyanum	Barneby ridge-cress (-pepper cress)	U.S.A. (UT)	E		NA	NA

Dated: October 23, 1989.

Sam Marler,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–27675 Filed 11–24–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 54, No. 226

Monday, November 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Export Enhancement Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth criteria for determining the overall annual program level for Commodity Credit Corporation's (CCC) Export Enhancement Program (EEP) and for determining the review and selection of individual EEP sales initiatives.

FOR FURTHER INFORMATION CONTACT: John J. Reddington, Deputy Assistant Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, Room 5087–S South Building, Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–7791 for information regarding the criteria and Lawrence McElvain at (202) 447–6211 for information on participation in EEP.

ADDRESS: Comments should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA.

SUPPLEMENTARY INFORMATION: On June 5, 1985, CCC published in the **Federal Register** (50 FR 23750) a Notice with respect to the conduct of an EEP. Under the program, agricultural commodities owned by CCC are made available as a bonus to U.S. exporters to expand export sales of specified U.S. agricultural commodities in targeted markets. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage trading partners to begin serious negotiation on agricultural trade problems. The Notice set forth a list of the criteria that each EEP initiative would be required to meet.

After experience with the operation of EEP for over four years and suggestions from the public and other interested federal agencies, CCC has adopted revised criteria which will now be used to determine the overall annual program level for EEP sales initiatives. These criteria will replace the EEP criteria previously published in the **Federal Register**. The other provisions of the previous notice remain unchanged.

EEP Criteria

The following criteria are interrelated and are to be considered together to result in the selection of commodities and countries for EEP sales opportunities which best meet the program's objectives.

- *Trade Policy Effect*—The expected contribution of proposed EEP initiatives in furthering the Uruguay Round and other trade policy negotiations shall be considered. All EEP initiatives must further the U.S. trade policy negotiating strategy of countering competitors' subsidies and other unfair trade practices by displacing such countries' subsidized exports in targeted countries. Targeted countries are those where U.S. sales have been non-existent or displaced, or market share has been lost because of competition from subsidized exports.
- *Export Effect*—Consideration shall be given to the contribution which EEP initiatives will make toward realizing U.S. agricultural export goals. All EEP initiatives must demonstrate a potential to develop, expand, or maintain markets for U.S. agricultural commodities with consideration being given to the United States' historical market share and long-term commercial relationships of the U.S. and targeted countries. Efforts will be concentrated on export sales of those commodities which would be competitive in the absence of competitors' export subsidies.
- *Effects on Nonsubsidizers*—The effect that EEP sales have on nonsubsidizing exporters of agricultural products shall be considered. Individual EEP initiatives will not be approved if it is determined that sales under which a proposed EEP bonus would be paid would have a more than a minimal effect on nonsubsidizing exporters in the market. CCC will consult with representatives of targeted countries, where practical and appropriate, to review this potential effect.
- *Subsidy Requirements*—The subsidy requirements of EEP initiatives compared to expected benefits shall be considered. The overall program level for EEP, as well as the amount of bonus awarded under individual EEP initiatives, will be maintained at the minimum levels necessary to achieve the expected benefits of the program's export expansion objective, as well as the anticipated long-term benefits from multilateral agricultural trade policy reform.

Signed at Washington, DC November 3, 1989.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 89–27685 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

New Minimum Fee for Special-Use Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of a new minimum annual fee for special-use authorizations.

SUMMARY: The Regional Forester, Northern Region, Forest Service, is adopting a new general minimum fee for special-use authorizations on National Forest System (NFS) lands in Montana, North Dakota, part of South Dakota and north Idaho. As required by the Federal Land Policy and Management Act of 1976 (FLPMA), this fee is determined under sound business management principles. The general minimum fee is, when applicable, the least amount of annual rent that will be billed and collected for special use privileges on NFS lands within the Northern Region.

EFFECTIVE DATE: Immediately for new special-use authorizations issued on and after the date of this notice. Special-use authorizations issued prior to the date of this notice shall become subject to the new fee with annual fee billings for calendar year 1991.

FOR FURTHER INFORMATION CONTACT: Jim Schoenbaum (406–329–3601) or Jim Hathaway (406–329–3110).

SUPPLEMENTARY INFORMATION: On August 3, 1989, the Regional Forester for the Northern Region announced, by notice published in the **Federal Register** (54 FR 31976), a proposed new general minimum annual special use rental fee of $45. Written comments on the

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proposal were solicited and due on or before September 18, 1989.

A minimum fee is defined as the lowest fee established by the Forest Service for particular uses. The among set for a specific type of use reflects, amount other things, fair market value as established by sound business management principles. The general minimum fee discussed in this Notice applies to all special uses in the Northern Region, unless a higher minimum fee has been established for a specific kind of use.

The proposed general minimum fee was developed by adjusting the former $25 amount, adopted in 1979, through application of the cumulative change in the Implicit Price Deflator—Gross National Product (IPD–GNP) index to June 1989. Further, the proposal provided for periodic minimum fee adjustments at 5-year intervals. The next periodic adjustment would be based on the cumulative IPD–GNP index for the third quarter 1989 through the second quarter 1995. That next change would become effective in calendar year 1996.

Notice of the proposal was provided to all Northern Region special-use authorization applicants and holders who, prospectively, might be effected by the new fee. Notices were mailed to holders currently paying annual fees of $45 and less whether the amount was a minimum, partially waived, or full fair market value fee. Holders whose fees are presently set aside by virtue of previously existing "free use" authorities, such as the Secretary of Agriculture's former L–2, U–11, and 36 CFR 251.1 regulations, were also provided copies.

There are approximately 6000 special-use authorizations in the Northern Region. Of these, the following estimated numbers of special-use authorizations stand to be affected by a new minimum fee:

1. Authorizations with fees still being administered under the former "free use" authorities	200
2. Authorizations for which the former minimum fee ($25) is being charged	1400
3. Authorizations for which the current fee ($26–$45) will be affected by the new $45 minimum fee	280
Total	1880

Analysis of Public Comment

The Northern Region received 53 responses to the proposal, four of which came from non-holders. Overall, this represents less than a three (3) percent return. The number and percent of respondents, by category of special-use authorization, are:

Category	Number	Percent
Non-holders & State Government Representatives	4	7
Holders:		
Recreation related	1	2
Agricultural related	3	5
Cultural Resources	2	4
Oil & Gas Pipelines	1	2
Aviation related	1	2
Transportation—roads	18	34
Communications	2	4
Water Transmission	20	38
Water Impoundment	1	2
	53	100

All comments received have been reviewed and given consideration in reaching a decision. A summary of the major comments received and the Forest Service response by topic follows.

1. Fee Levels

Many respondents (45) felt that the proposed $45 minimum fee was excessive, primarily because of the $20 increase from $25 to $45. Several suggested that the fees remain at $25, pointing out that an 80% ($20) annual increase all at once was excessive. Seven respondents felt that an increased minimum fee would impact senior citizens on fixed incomes. A few persons commented that if the minimum fee were increased, they would give up their special-use authorizations since other alternatives were available to them which did not require use of NFS lands. Three respondents indicated they would relinquish their special-use permit in the event of a minimum fee increase, apparently since their need and value of the use were not commensurate with the cost.

Four respondents stated they had no objections to the proposed fee increase.

Five respondents said that the facility authorized by special-use permit was only available for seasonal, not year-round, use due to weather or need, and that Forest Service fees should consider such use limitations. One respondent commented that a minimum fee increase would raise his cost of doing business.

In analyzing these comments the Forest Service recognizes normal concerns involving a fee increase of any amount. Although the proposed increase is 80%, this amounts to a $20 annual increase. Earlier minimum fee policies have not provided for periodic reviews and adjustments to maintain minimum fees at a level reasonably current with values and forces in the economy. The periodic adjustment procedure outlined in the proposal will assure that future adjustments are timely and the amount of adjustment limited.

Many minimum fee special-use authorizations provide benefits of a private and personal nature to the holders, often in connection with the holder's private land. Permit holders having alternatives available which do not require the use of NFS lands may wish to consider relinquishing their special-use permits and avoid a fee entirely. These are individual decisions which may be mutually beneficial to the holder and Forest Service in some cases. Commentors on seasonal use may not recognize that, while their personal use may be seasonal or of short duration, their authorized facilities often occupy and encumber NFS lands and are available for their use year long. The presence of these facilities may also limit a full range of National Forest management options and alternatives.

The term "sound business management principles" is used in relation to the establishment of fair market value. These principles include, but are not limited to, appraisals, market studies, competitive bid, negotiation, and administrative costs as components of the process used to obtain the appropriate charge for the various kinds of special uses. These principles and procedures are common in the private sector as well as with Federal, state and local agencies.

The Northern Region Minimum Fee Study included consideration of a great deal of information gathered in a 1985 minimum study which reviewed minimum fee policies and charges of large landowners, such as timber and ranch companies, and state agencies within and adjoining the Northern Region. That study concludes that landowners (companies and agencies) with demands upon their property which impact both the property and the manager's time are rapidly moving toward easily applied fee schedules for such uses, recognizing minimum fees as sound business.

The use of a general minimum fee is common in the private sector, and represents the intrinsic fair market value for the use. Fair market value incorporates several interrelated factors, which may include the suitability of the location for the use, planned investment cost, projected income, the number of available alternatives, competition for the site, and the administrative costs involved. For smaller uses, in areas of low demand, and where there is an adequate supply of available sites, the administrative cost of the use makes up a significant percentage of the market value. This sets the floor or minimum for the rental fee for these uses.

Of the approximately 1880 notices mailed out, it is important to note that less than 3%, or 53 parties, responded with comments, and 4 did not object to an increase. The very low number of permit holders responding suggests that a large majority have no concern with a proposed new minimum fee of $45. Those responding offered no new information that was not considered and evaluated in developing the Northern Region's general minimum fee. The minimum fee study recognized that while there was support for a general minimum fee of $57, a lower fee of $45 coupled with regular updating was considered most equitable to the holders and would result in a fair and equitable fee for the use of NFS lands. That study recommended a general minimum fee of $45, which is well below a fee of $57 also supported by the study.

With consideration to all information available, including the comments of all respondents, a $45 general minimum fee is found to be equitable in the Northern Region, and is adopted.

2. Fee Basis

A number of respondents also commented on various aspects relative to the basis of Forest Service fees. Nine felt that their authorized use did not involve any costs to the Forset Service and asserted that, therefore, no fee should be charged them. Several respondents felt that fees should not be based on agency administrative costs, and that administrative efficiencies through centralized procedures and consolidated permits be considered as an alternative to fee increases. Three respondents suggested that there should be no fee when NFS lands and not impacted, and several others suggested there be a second fee schedule for small, low-impact users.

From an administrative perspective, recognizing the National Forest management responsibilities Congress has required of the Forest Service, it is very difficult to identify special-use authorizations which do not impact the land and its resources and also not affect agency administrative costs. As outlined in the proposal, Congress has provided specific direction regarding the charging of fees for the use of NFS lands and facilities, and the minimum fee proposal reflects sound business management principles.

Three respondents expressed concern for the requirement of a fee on the basis that the Forest Service occupied their lands without payment of a fee. Similarly, two persons felt that no fee should be charged in exchange for granting the Forest Service reciprocal use of their lands.

Secretary of Agriculture's Regulations 36 CFR 251.57(b)(5) provides for waiver of fees in reciprocity for a right-of-way conveyed to the United States. These comments will be referred to Forest Supervisors for further consideration.

3. Fee Waiver

Three respondents, including one Federal agency and one State government agency, requested fee waivers. Federal agencies are exempt from fees, as provided by Secretary of Agriculture's Regulation 36 CFR 251.57(c). State governmental agencies may qualify for a fee waiver under authority of § 251.57(b). As stated in the proposal, a change in minimum fees has no effect on authority or procedures for fee waiver. Decisions on fee waivers will remain with the authorized officer; however, no partially waived (reduced) fee shall be less than the established minimum fee for the user.

4. Adjustment Indexing

One respondent disagreed with use of the IPD–GNP index on the grounds that it does not accurately portray economic conditions in the mid-section of the country. While we recognize that there are regional differences in price increases for various products and services, we find that a National index is commonly used to adjust rents in the private market. We selected the IPD–GNP index over the much-publicized Consumer Price Index-Urban (CPI–U) because it relates more closely to land values.

Implementation

The general minimum fee of $45 will apply on the date of this publication in the **Federal Register** to new special-use authorizations. Holders of outstanding special-use authorizations affected by this change will be provided written notification by 12/31/89 that the new minumum fee will be effective and included with billings for Calendar Year 1991 fees. This procedure will provide approximately one year of advance notice to current permit holders and allow them to adjust for any increase from past fees.

Those permit holders to be provided with notice of this change in general minimum fees include: (1) Holders currently charged a fee, minimum or otherwise, of $25 and less; (2) Holders currently charged fees of $26 to $45 whose fees may be adjusted to $45; and (3) Holders of older special-use authorizations issued under rescinded authorities for free use, such as Secretary of Agriculture's Regulations L–2, U–11, or 36 CFR 251.2. For this latter category, all existing free special-use authorizations will be reviewed within five years of the effective date of this notice for determination as to whether a full fee is appropriate or qualification for fee waiver might exist. All permit holders in this category will be provided advance notice of this review when initiated by Forest Supervisors.

Minimum Fee Adjustments

In the future, the Northern Region's general minimum fee will be reviewed at 5-year intervals beginning with 1995 for implementation with Calendar Year 1996 fees, and updated by application of the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP) index as of June 30 of the review year.

Situations may arise where a special minimum fee is appropriate due to the unique nature of a proposed use or availability of credible information supporting a different basis for a minimum fee. Such cases will be few in number; however, Forest Supervisors are authorized to base minimum fees for unique kinds of uses on alternative methods, after consultation with and concurrence of the Regional Review Appraiser.

Dated: November 14, 1989.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 89–27709 Filed 11–24–89; 8:45 am]

BILLING CODE 3410–11–M

Commission on Agricultural Workers

This notice announces the first formal meeting of the Commission.

Time: 9:30 a.m.–1:30 p.m., December 14, 1989.

Place: The Highland Hotel, Churchill Room, 1914 Connecticut Avenue, NW, Washington, DC 20009.

Status: Open meeting except portions may be closed to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code.

Contact: Richard Peterson, Telephone (202) 673–5348.

Dated: November 21, 1989.

Richard R. Peterson,

Acting Executive Director, Commission on Agricultural Workers.

[FR Doc. 89–27795 Filed 11–22–89; 10:21 am]

BILLING CODE 6820–42–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 14 December 1989 at 10 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 17 November 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–27710 Filed 11–24–89; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990: Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 16, September 15, 29 and October 6, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 25601, 38266, 40160 and 41327) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

File, Work Organizer
- 7520–00–286–1724
- 7520–00–286–1725
- 7520–00–286–1726

Detergent, General Purpose
- 7930–00–515–2477
- 7930–00–526–2919
- 7930–00–526–2920

Services

Janitorial/Custodial, Edward Zorinsky Federal Building, U.S. Post Office and Courthouse, Omaha, Nebraska.

Janitorial/Custodial, Building 2740, Naval Air Station, Whidbey Island, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–27697 Filed 11–24–89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990: Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 27, 1989.

ADDRESS: Committee for Purchase from the Blind and other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Commodities

Slacks, Woman's
- 8410–01–107–0262
- 8410–01–107–0263
- 8410–01–107–0264
- 8410–01–107–0265
- 8410–01–107–0266
- 8410–01–107–0267
- 8410–01–107–0268
- 8410–01–107–0269
- 8410–01–107–0270
- 8410–01–107–0271
- 8410–01–107–0272
- 8410–01–107–0273
- 8410–01–107–0274
- 8410–01–107–0275
- 8410–01–107–0276
- 8410–01–107–0277
- 8410–01–107–0278
- 8410–01–107–0279
- 8410–01–107–0280
- 8410–01–107–0281
- 8410–01–107–0282
- 8410–01–107–0283
- 8410–01–107–0284
- 8410–01–107–0285
- 8410–01–107–0286
- 8410–01–107–0287
- 8410–01–107–0288
- 8410–01–107–0289
- 8410–01–107–0290
- 8410–01–107–0291
- 8410–01–107–0292
- 8410–01–107–0293
- 8410–01–107–0294
- 8410–01–107–0295
- 8410–01–107–0296
- 8410–01–107–0297
- 8410–01–107–0298
- 8410–01–107–0299
- 8410–01–107–0301
- 8410–01–107–0302

Services

Cutting and Assembly of FTESFB System for C–130
Robins Air Force Base, Georgia

Janitorial/Custodial, Air National Guard, Portland Air National Guard Based, Portland, Oregon.

Janitorial/Custodial, Fort Meade, Maryland.

Janitorial/Custodial, Lafayette Building, 811 Vermont Avenue, NW., Washington, DC.

Deletions

It is proposed to delete the following commodities and services from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Commodities

Pallet, Material Handling
- 3990–00–L77–0044

Clothing, Operating Room
- 6530–00–009–7174
- 6530–00–158–8890
- 6530–00–172–3506
- 6530–00–172–3507
- 6530–00–172–3509

Gown, Operating, Surgical
- 6532–00–009–2034
- 6532–00–009–2035

Suit, Convalescent
- 6532–01–076–7389
- 6532–01–076–8683
- 6532–01–076–8684
- 6532–01–076–8769

Frame, Picture
- 7105–00–149–1276

Services

Grounds Maintenance, Hill Air Force Base, Utah.

Janitorial/Elevator Operator, VA Clinic Building, 17 Court Street, Boston, Massachusetts.

Major Mechanical Operation, The Carter Presidential Library, Atlanta, Georgia.

Repair Service for Electrode Holder Assemblies, Bremerton, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–27698 Filed 11–24–89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: National Security Assessment of Defense Subcontractor Foreign Dependency, OMB No. 0694–0061

Form Number: BXA–9061

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 3,000 respondents; 4,500 reporting hours. Average time per respondent is 1.5 hours.

Needs and Uses: Information will be collected from 3,000 firms at the defense contractor level to determine the magnitude and impact of foreign dependency on surge/mobilization capabilities. Vulnerabilities and other problems related to foreign dependency will be identified and corrective options recommended to the Defense Community.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One time

Respondent's Obligation: Mandatory

OMB Desk Officer: Donald Arbuckle

OMB Phone Number: 377–7340

Copies of the above information collection proposal can be obtained by calling or writing the DOC Clearance Officer, Edward Michals (202) 377–3271, U.S. Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 20, 1989.

Edward F. Michals,

Departmental Clearance Officer, Office of Management and Clearance.

[FR Doc. 89–27634 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Pacific Billfish Angler Survey

Form Number: NOAA Form 88–10; OMB–0648–0020

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 2,400 respondents; 168 reporting hours; average hours per response—.07 hours

Needs and Uses: Recreational fishermen who fished in the Pacific for billfish are asked to supply information on their previous year's effort and catch. The information is used in studies of the fishery and to help make management decisions.

Affected Public: Individuals, businesses or other for-profit, small businesses or organizations

Frequency: Annual

Respondent's Obligation: Voluntary

OMB Desk Officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 20, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–27635 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held December 19, 1989, at 9:30 a.m., in the Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C.

552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202–377–4959.

Dated: November 20, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–27632 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

Export Administration

[Docket Nos. 9126–01 and 9127–01]

Action Affecting Export Privileges: Thomas Lee, a.k.a. Yuk Sang Lee, and National Electronics

Summary

The Order of Dismissal of the Administrative Law Judge dated October 18, 1989, dismissing the cases against Thomas Lee and National Electronics is vacated, and the cases are remanded to the Administrative Law Judge for further proceeding consistent with this Order.

The Administrative Law Judge, in an Order of Dismissal dated October 18, 1989, dismissed the cases against the respondents on the grounds that the agency had not proceeded with default submissions. The Administrative Law Judge stated that default proceedings would be the proper procedure even in a situation, such as this one, in which there is evidence the respondent had no actual notice of the charges, because the charging letters had been returned to the agency. The Administrative Law Judge noted that the respondent might have remedies under 15 CFR 788.18 (request for reconsideration). Because of due process concerns with proceeding against a respondent whom the agency is aware does not have notice of the charges, the cases are remanded to the Administrative Law Judge with instructions to stay the proceedings against the respondents in order to allow the agency to effect service upon the respondents.

Order

On October 18, 1989, the Administrative Law Judge entered an Order of Dismissal in the cases referred to above. The Order of Dismissal was referred to me pursuant to the Export Administration Amendments Act of 1985. 50 U.S.C. App. 2412, and 15 CFR 788.17(a), for final action. I hereby vacate the Order of Dismissal, and remand the cases to the Administrative Law Judge for further consideration. The proceedings are to be stayed while the agency continues its efforts to locate the respondents.

Dated: November 17, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Order of Dismissal

The above are two of five related cases. Charging letters in these two cases were filed with this office at the time of issuance, on June 27, 1989. After some communication with and between Counsel, the Agency gave notice that it was withdrawing the charging letters in the other three related cases on September 28, 1989. In these remaining two cases it is represented that service has never been made upon the Respondents and that correspondence has been returned.

Agency Counsel contends that a default order is not appropriate because the Respondents are known not to have been actually served because the correspondence addressed to them was returned undelivered. On the other hand the regulations 50 CFR 788.4(b) provides "A charging letter, * * * shall be served upon respondent:

(2) By mailing a copy by registered or certified mail addressed to the respondent at his last known address:

If, as I perceive the program, the aim is principally to inform exporters to avoid transactions with those who disregard the statute and regulations, then changes of address, names, or other devices which avoid identification and or service upon charged individuals, whether intended to effect that result or not, should not be honored. While adjudication is in absentia or without actual notice is distasteful, the integrity of the system and the protection of legitimate businesses sometimes warrants a draconian approach. The Respondent in such situation is not without remedy or relief. If such action is taken the regulations specifically provide a process for reopening and reconsideration (15 CFR 788.18).

In any event, this matter has been before this Tribunal for more than three months and the Agency has elected not to proceed until it finds Respondents, which may be soon, or may be never. The docket should not be tied up, or appear to carry ghost cases, which cannot be moved to adjudication. I have repeatedly counseled that the Agency should ascertain the current addresses of parties before attempting to initiate proceedings. However, those admonitions have been ignored. Dealing with old, stale cases is difficult. Inability to notify the parties is but one of the troublesome aspects. No purpose is to be served by wasting substantial and continuing effort in matters such as this.

The request to further stay these proceedings indefinitely is Denied.[1] The cases are Dismissed.

Dated: October 18, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89–27636 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

Bureau of Export Administration

Fiber Optics Subcommittee, Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 14, 1989, 1:30 p.m., at the Herbert C. Hoover Building, Room 2830B, 14th Street & Constitution Avenue, NW., Washington, DC. The Fiber Optics Subcommittee was formed to study fiber optic communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening Remarks by the Chairman
2. Presentation of Papers or Comments by the Public
3. Future Meeting Dates

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: November 20, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–27669 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

Radio Subcommittee, Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Radio Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 14, 1989, 1:30 p.m., Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Ave., NW. Washington, DC. The Radio Subcommittee was formed to study radio equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening Remarks by the Chairman
2. Presentation of Papers or Comments by the Public
3. Future Meeting Dates

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portion thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: November 20, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–27670 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

Switching Subcommittee, Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 14, 1989, 1:30 p.m., Herbert C. Hoover Building, Room 1617F, 14th Street & Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

Open Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Future meeting dates

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, 4069A, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or

[1] In his Motion, Agency Counsel alludes to one of the cases which has been withdrawn and takes issue with my comment that proceeding against the defunct and lapsed corporation, in these circumstances, is ludicrous. His comments are devoid of merit. It serves no purpose to proceed against long dead persons in this situation whether they are human beings or corporations. The Table of Denied parties must be maintained as a viable useful list to the business community. It is occasionally purged of obsolete and deceased parties. To clutter the list with dead bodies simply serves no purpose.

portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: November 20, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–27671 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-01-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 14, 1989, 9:30 a.m., Room 1617–F, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Old business: Combining Radio and Fiber Optics Subcommittees.
4. Review of Regulations: Annual review of the list pursuant to sections 5(c)(3) and 5(c)(4) of the Act:
   i. ECCN 1501A (Navigation, direction finding, radar and airborne communication equipment)
   ii. ECCN 1502A (Communication, detection or tracking equipment using ultra-violet radiation, infrared radiation or ultrasonic waves).
5. New Business.
6. Future Meeting Dates.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Note: The Telecommunications Equipment Technical Advisory Committee is considering modernization of ECCN's 1516, 1517, 1519, and 1520. The emphasis is on eliminating inconsistencies and on coverage of state-of-the-art equipment. It is not the intent of this review to recommend relaxation of controls except as incidental to the modernization. Comments from the public are invited.

Dated: November 20, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–27672 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held December 13, 1989 at 9:30 a.m., in the Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

Agenda: General session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of Working Group Activities on the following:
   (a) Compliance with Decontrol Mandates of the Export Administration Regulations (EAA).
   (b) Rationalize Controls on Intangible Technical Data Transfers.
   (c) Remove U.S. Controls on Reexports from COCOM.
   (d) Review and Monitor the List Review Process and TAC Utilization.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: November 20, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–27633 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 29–89]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone Sites, Polaroid Corporation, Massachusetts

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority (Massport), grantee of FTZ 15, requesting special-purpose subzone status for seven Polaroid Corporation production facilities in Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 1989.

Polaroid Corporation is an international producer and distributor of instant photographic cameras, film, photographic supplies and electronic imaging/recording devices. It has plants in the United States, Netherlands, United Kingdom, and Mexico, and has annual sales of some $1.8 billion.

The proposed sites include most of the company's production, packaging, warehouse/distribution, and research facilities (12,000 employees) in the Boston and New Bedford areas: (1) Norwood Plant (224 acres), 1 Upland Road, Norwood; (2) Needham Plant (36 acres), Needham Industrial Park, Needham; (3) New Bedford Plant (126 acres), 100 Duchaine Blvd., New Bedford; (4) Waltham Plant (212 acres—3 sites), 868 Winter Street., 1265 Main St., and 103 Fourth St., Waltham; (5) Freetown Plant (171 acres), 238 Main St., Assonet; (6) Boston Plant (.5 acres), 716 Columbus Ave., Boston; and (7) Cambridge Plant (Corporate headquarters (22 acres), Main & Osborne Sts., Cambridge.

The Polaroid facilities are primarily engaged in the production and distribution of cameras and related equipment, film, photographic chemicals, and information recording devices. Foreign materials account for some 50 percent of the value of the finished products. For cameras, foreign materials include camera bodies, circuit boards, capacitors, motors, lens and miscellaneous camera parts. For film, the foreign materials involve a variety of chemicals including PSD 15 dye, hexadecylsalfanimido indole, acetates, toluenes, and alcohol and benzene compounds. For the electronic recording devices, the foreign components include capacitors, resistors and transformers.

Zone procedures would exempt Poloraoid from Customs duty payment of the foreign materials used in its exports. On its domestic sales, it would be able to choose the duty rates that apply to finished products (cameras—3.0%; film—3.9%; electronic imaging equipment—4.2%). The duty rates on the foreign camera materials range from 2.8 to 10.0 percent, the rates on the foreign chemicals used in film production range from 3.8 to 20 percent, and the rates on the foreign components used in electronic device production range from 6.0 to 10.0 percent. The application indicates that the savings from zone procedures will help improve the international competitiveness of the company's U.S. plants.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, Boston, Massachusetts 02222–1056; and, Colonel Daniel M. Wilson, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, Massachusetts 02254–9149.

Comments concerning the proposed foreign-trade subzone are invited in writing from interested parties. The shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 7, 1990.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, World Trade Center, Suite 307, Commonwealth Pier Area, Boston, Massachusetts 02210.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 17, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27637 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 3–88]

Foreign-Trade Zone 134—Chattanooga, Tennessee; Withdrawal of Application for Proposed Subzone at the Komatsu Construction/Industrial Equipment Plant

Notice is hereby given of the withdrawal of the application submitted by the partners for Economic Progress, Inc., grantee of Foreign-Trade Zone 134, for a subzone at the construction/industrial equipment plant of Komatsu America Manufacturing Corporation in Chattanooga, Tennessee. The application was filed on January 18, 1988 (53 FR 2261, 1/27/88).

The case has been withdrawn without prejudice and FTZ Board Docket 3–88 is closed.

Dated: November 17, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27638 Filed 11–24–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–122–016]

Choline Chloride from Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On January 31, 1989, the Department of Commerce initiated an administrative review of the antidumping duty order on choline chloride from Canada (54 FR 4872). The Department is now terminating that review.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Richard Rimlinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1131.

Termination of Review

On January 31, 1989, we published a notice of initiation of administrative review of the antidumping duty order on

choline chloride from Canada (54 FR 4872). That notice stated that we would review Chinook Chemicals Company, Ltd. for the period January 9, 1988 through October 31, 1988.

We subsequently published a notice of "Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Order" (54 FR 41316). The revocation became effective on January 8, 1988. As a result, we are terminating the review for the period January 9, 1988 through October 31, 1988.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.25 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25).

Dated: November 15, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-27640 Filed 11-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-402]

Dried Heavy Salted Codfish From Canada;

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Final results of changed circumstances administrative review, revocation of antidumping duty order, and termination of administrative review.

SUMMARY: The Department of Commerce (the Department) has determined to revoke the antidumping duty order on certain dried heavy salted codfish from Canada. The revocation covers all shipments of the subject merchandise from Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986, and any other shipments of the subject merchandise by other producers/ exporters entered, or withdrawn from warehouse, for consumption on or after July 1, 1987.

We gave interested parties an opportunity to comment on our preliminary results of the changed circumstances administrative review. We received no comments. Therefore, the revocation becomes effective as stated above.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Richard Rimlinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/1190.

SUPPLEMENTARY INFORMATION:

Background

By letter dated August 31, 1989, Codfish Corporation, the petitioner in this administrative proceeding, stated that it was no longer interested in maintaining the antidumping duty order covering the subject merchandise. As a result, on October 10, 1989, the Department of Commerce published in the **Federal Register** (54 FR 41479) a "Notice of Initiation and Preliminary Results of Changed Circumstances Administrative Review; Consideration of Revocation; and Intent to Revoke Antidumping Duty Order" on certain dried heavy salted codfish from Canada (50 FR 27836, July 6, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Under section 751 (b) and (c) of the Tariff Act, as well as § 353.25(d) of the Department's regulations (54 FR 12766, March 28, 1989) (to be codified at 19 CFR 353.25(d)), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by this review are shipments of certain dried heavy salted codfish, including soft-dried codfish, from Canada. The term "certain dried heavy salted codfish" covers dried heavy salted codfish, including soft dried, whole or processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof, but not otherwise processed, and not in airtight containers. During the review period, such merchandise was classifiable under item 111.2200 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under items 0305.30.60 and 0305.51.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

The changed circumstances administrative review and revocation cover all shipments of the subject merchandise from Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986, and any other shipments of the subject merchandise by other producers/ exporters entered, or withdrawn from warehouse, for consumption on or after July 1, 1987.

Final Results of Review and Revocation of Antidumping Duty Order

We invited interested parties to comment on the preliminary results of the changed circumstances administrative review and tentative determination to revoke the antidumping duty order. We received no comments. Therefore, we are revoking the order on certain dried heavy salted codfish from Canada. This revocation applies to all shipments of the subject merchandise from Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986, and any other shipments of the subject merchandise by other producers/ exporters entered, or withdrawn from warehouse, for consumption on or after July 1, 1987. We selected these dates as the effective dates of the revocation in accordance with section 751(c) of the Tariff Act because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

The Department will instruct the Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of this merchandise from Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986, and any other shipments of the subject merchandise by other producers/exporters entered, or withdrawn from warehouse, for consumption on or after July 1, 1987. We will further instruct the Customs Service to refund with interest any estimated antidumping duties collected with respect to entries described above.

As a result of this revocation, we are terminating the administrative review covering the period July 1, 1987 through June 30, 1988, which was initiated by the Department on August 30, 1988 (53 FR 33163).

This changed circumstances administrative review, revocation of antidumping duty order, termination of review, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and §§ 353.22(f) and 353.25(d) of the Department's regulations (54 FR 12778-12781, March 28, 1989, to be codified at 19 CFR 353.22(f) and 353.25(d)).

Dated: November 16, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-27639 Filed 11-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Improving U.S. Participation in International Standards Activities; Opportunity for Interested Parties to Comment

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of hearing.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) will hold a public hearing to gather information, insights, and comments related to improving U.S. participation in international standards-related activities and to possible Government actions.

DATE: The hearing will be held at 9:30 a.m. on Tuesday, April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, Room A-603, Gaithersburg, MD 20899; (301) 975-4000.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is required to oversee and promote U.S. participation in international standards activities under Section 413 of the Trade Agreements Act of 1979. That legislation also authorizes the Secretary of Commerce to make appropriate arrangements to ensure adequate representation of U.S. interests as necessary.

Consistent with the Secretary's responsibilities and the growing importance of international standardization to the United States, NIST will hold a public hearing to solicit views and recommendations concerning the Government's role. The central purpose of the hearing is to assess the current situation and to seek suggestions for improvement, especially regarding mechanisms for coordinating U.S. participation in international standards activities. Government policy is to improve the acceptance overseas of U.S. technology and manufacturing practice and to promote more effective U.S. contributions to international standardization, certification, quality assurance, and testing activities.

The hearing is expected to include expressions of views on potential models for government-private sector interactions, such as the Standards Council of Canada or any others. Views are solicited with respect to currently experienced effectiveness and the likely improvements from possible changes in procedures or areas of responsibility.

The following representative subjects may be discussed by participants in the hearing. They are offered as general guidelines to stimulate contributions from interested parties, but are not intended as limitations on subject matter or documented points of view.

Overview

Does the U.S. standards systems, as presently constituted, adequately serve the Nation's trading needs in today's international climate? Identify any weaknesses that require strengthening.

Is there adequate participation by representatives of the public and private sectors? In other countries governments play a more formal role in standards. Are their systems more effective than ours? What should be the U.S. Government's role? If more coordination is needed among the many U.S. interests concerned with standards and trade, what changes might be beneficial? Is the Standards Council of Canada a model which the United States should consider?

Standards Participation

Does your organization send representatives to participate in international standards committee meetings? On a regular and continuing basis? Cite mechanisms which permit such participation and describe deterrents and possible techniques for improvement.

Who in your organization has responsibility for international standards activities? Describe the degree to which committee organization and procedures facilitate or hinder adequate participation and compare with efforts from other countries. Is the current U.S. standards infrastructure sufficiently supportive of and adequate for your organization's interests? Suggest any mechanisms that might improve the situation for your organization.

Are you an active participant in one or more technical advisory groups (TAGs)? Is there broad and adequate representation from the various U.S. interests? Describe the success or failure of the TAG in providing the needed forum for developing the U.S. position, and the ability of U.S. delegates to gain international acceptance of a U.S. TAG position. What factors contribute to success and/or failure?

How can we best ensure appropriate technical and financial support for international standardization activities? Should the Government help finance participation, especially by small and medium-sized companies?

Standards Usage

What is the relative utility of domestic and international standards for your operations? What standards do you use for trading in foreign markets? Describe any problems you encounter with language, units of measure, obsolescence, etc.

Have you encountered any standards-related trade barriers? Document experiences.

Testing and Certification

Describe any problems associated with acceptance of your products in foreign markets, including any burdensome testing or re-testing that you have experienced. Do you rely on any existing agreements for acceptance of U.S. test data? Do you use the services of domestic testing and certification bodies, and have you relied on self-certification for either domestic or foreign sales?

Describe any barriers to the acceptance of your product in foreign markets, including the role of testing. What is the impact of the cost of testing and/or certification on your gaining produce acceptance? What strategies do you recommend for improving export potential?

The information and comments obtained from the public hearing will be used to make recommendations to the Secretary of Commerce to improve the effectiveness of U.S. participation in international standards-related activities, coordination with the private sector, and delegation of any appropriate responsibilities to achieve these objectives.

The hearing will be held at 9:30 a.m. on April 3, 1990, in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Persons who wish to participate in the hearing must submit a written request to Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administrative Building, Room A-603, Gaithersburg, MD. 20899. Requests should contain: (1) The person's name, address, telephone and facsimile numbers, and affiliations; (2) the number of participants; (3) the reason for attending; and (4) a list of points to be discussed. Oral presentations will be limited to topics specified in the written requests. Individuals who are unable to attend the hearing may submit written comments

to Dr. Stanley Warshaw at the above address. Both requests and comments must be received by March 22, 1990. Those persons wishing to appear at the hearing will be notified of the time allotted for their presentations.

Dated: November 21, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-27699 Filed 11-24-89; 8:45 am]

BILLING CODE 3510-08-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Delaware, Rhode Island, and Maine Coastal Management Programs, and the New York (Hudson River), Alabama (Weeks Bay), and California (Tijuana River) National Estuarine Research Reserves. Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A)–(I) of the CZMA. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone 202/673–5104).

Federal Domestic Assistance Catalog 11.419. Coastal Zone Management Program Administration.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-27729 Filed 11-24-89; 8:45 am]

BILLING CODE 3510-08-M

Intent to Evaluate the Performance of Several Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Guam Coastal Management Program (CMP), Northern Marianas CMP, and Oregon CMP, the interstate allocation award to the National Coastal Resources Research and Development Institute and the Rookery Bay (Florida) National Estuarine Research Reserve through March 31, 1990. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings regarding the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the interstate allocation award under CZMA section 309 will be conducted under CZMA section 312, which requires the review of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserve will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and with members of the public. Public meetings will be held as part of the site visits. The respective state will issue notice of these meetings. Copies of each state's most recent performance report, as well as OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs are encouraged at this time. Please direct comments to John H. McLeod (see further information contact below). OCRM will place a subsequent notice in the Federal Register announcing the availability of the Final Findings based on each evaluation.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: November 15, 1989.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-27730 Filed 11-24-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements regarding Contractor's Signature Authority.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, GSA (202) 523–5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Entities doing business with the Government must identify those persons who have authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding.

The information is used by the contracting officer to ensure that authorized persons sign contracts.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 12,000; responses per respondent, 10; total annual responses, 120,000; hours per response, .017; and total response burden hours, 2,040.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0033, Contractor's Signature Authority.

Dated: November 17, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-27711 Filed 11-24-89; 8:45 am]

BILLING CODE 6820-JC-M

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements regarding Authorized Negotiators.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, GSA (202) 523–5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals.

The information collected is referred to before contract negotiations and it becomes part of the official contract file.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 61,875; responses per respondent, 8; annual responses, 495,000; hours per response, .017; and total response burden hours, 8,415.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators.

Dated: November 17, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-27712 Filed 11-24-89; 8:45 am]

BILLING CODE 6820-JC-M

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Information Regarding Previous Contracts.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, GSA (202) 523–5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components. This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

b. Annual Reporting Burden:

The annual reporting burden is estimated as follows: Respondents, 2,000; responses per respondent, 10; total annual responses, 20,000; hours per response, 25; and total response burden hours, 5,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0036, Information Regarding Previous Contracts.

Dated: November 17, 1989

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-27713 Filed 11-24-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-68-000, et al.]

Portland General Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 17, 1989.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER90-68-000]

Take notice that on November 15, 1989, Portland General Electric Company (PG&E) tendered for filing its revised Average System Cost (ASC) rate which became effective with service on and after October 14, 1987. This filing includes a revised Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement the tariff change from the Public Utility Commission of Oregon.

Comment date: December 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER90-67-000]

Take notice that Union Electric Company on November 14, 1989, tendered for filing Substitute Power Agreements with varying dates in 1989, with the Cities of Clarksville, Perry, Hannibal, Farmington, Centralia, Kirkwood, Rolla, St. James, and Owensville, Missouri; Citizens Electric Corporation; Sho-Me Power; and West Point Municipal Utility System, providing for the sale of substitute electric service.

Comment date: December 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER90-66-000]

Take notice that on November 13, 1989, Public Service Company of Oklahoma (PSO) submitted for filing an executed Letter Agreement, dated September 20, 1989, between PSO and the Southwestern Power Administration (SWPA) amending the contract, dated November 10, 1977, between PSO and SWPA. The amendment is technical in nature, modifying certain scheduling arrangements between the two parties. PSO seeks an effective date of September 29, 1989, and, according seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon SWPA and the Oklahoma Corporation Commission. Copies of the transmittal letter only were served on PSO's other wholesale customers.

Comment date: December 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER90-6-000]

Take notice that on November 14, 1989, Iowa Public Service Company amended its filing regarding a Letter Agreement dated August 18, 1989, whereby Iowa Public Service Company (IPS) will sell to Dairyland Power Cooperative (Dairyland) energy for a period commencing September 16, 1989 and ending October 13, 1989. IPS requests that the negotiated Agreement be made effective as of September 16, 1989.

Copies of this filing were served on Dairyland and the Iowa Utilities Board.

Comment date: December 4, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Oklahoma Gas and Electric Company

[Docket No. ER90-71-000]

Take notice that on November 16, 1989, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Amended Appendices between OG&E and the Oklahoma Municipal Power Authority (OMPA).

The Amendments modify the Transmission Service Agreement Appendix "A", Appendix "B" and Appendix "D".

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: December 4, 1989, in accordance with Standard Paragraph E at the end of this noltice.

6. Long Lake Energy Corporation

[Docket No. EL90-4-000]

Take notice that on November 6, 1989, Long Lake Energy Corporation (Long Lake) submitted for filing a petition for a declaratory order. Long Lake requests the Commission to declare that Long Lake's present ownership interest in Commonwealth Atlantic Limited Partnership (Commonwealth), an entity that intends to build and operate a 240 MW powerplant by March 1992, will not affect the status under the Public Utility Regulatory Policies Act of 1978 of the qualifying facilities that Long Lake now owns. In addition, Long Lake requests that the Commission determine that its ownership interest in Commonwealth does not trigger section 292.206(b) of the Commission's regulations, 18 CFR 292.206(b) (1989), with respect to Long Lake and any other person.

Comment date: December 15, 1989, in accordance with Standard Paragraph E end of this notice.

7. Consumers Power Company

[Docket No. ER90-69-000]

Take notice that Consumers Power Company (Consumers Power) on November 15, 1989 tendered for filing proposed changes in its FERC Electric Service Tariff, First Revised Volume No. 1. Consumers Power states that the following wholesale customers in the State of Michigan would be affected by the changes: City of Eaton Rapids, City of Charlevoix, Edison Sault Electric Company, City of Harbor Springs, City of Petoskey, Village of Chelsea, City of Portland, City of St. Louis, Wolverine Power Supply Electric Cooperative, Inc., City of Bay City, Southeastern Michigan Rural Electric Cooperative, Alpena Power Company, City of Lowell, and City of Hart.

Consumers Power states that the proposed changes in capacity and energy charges, based on agreements with each of its wholesale electric customers, are designed to permit Consumers Power to secure 3.25 percent annual increase in base wholesale rates over the 1990–1996 period. The filing also contains various tariff changes large to clarify provisions governing the application of the Maximum Demand, On-Peak Billing Demand, Metering Adjustment, Substation Ownership, and Transmission Charge for Service from the Delivery Point to Additional Metering Points as well as various rules in the Standard Rules and Regulations applicable to Wholesale for Resale Electric Service. The requested effective date of the proposed changes is January 1, 1990.

Consumers Power states that the increase in rates is necessary to recover increased operating costs, fixed costs including a reasonable return on investment, and fifty percent of its prudent investment in its abandoned Midland nuclear plant consistent with the formula prescribed in FERC Opinion No. 295.

Copies of the filing were served upon Consumers Power's jurisdictional customers and on the Michigan Public Service Commission.

Comment date: December 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Royster Phosphates, Inc.

[Docket No. QF90-24-000]

On November 3, 1989, Royster Phosphates, Inc. (Applicant) of, P.O. Drawer 797, Mulberry, Florida 33860, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Manatee County, Florida. The facility will consist of a boiler and an extraction/condensing steam turbine generating unit. Extraction steam will be used to supply a portion of the thermal needs of a fertilizer manufacturing process. The electric power production capacity of the facility will be 40 MW. The primary energy source will be waste heat from the phosphate fertilizer manufacturing plant. Installation will begin between January and July, 1990.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

9. Arkansas Power & Light Company

[Docket No. ER90-65-000]

Take notice that on November 13, 1989, Arkansas Power & Light Company (AP&L) submitted for filing a proposed plan to distribute $330,347 to its wholesale customers resulting from FERC approval of an Offer of Settlement filed in FERC Docket Nos. FA86-19-002, *et al.*

Copies of the filing have been served on AP&L's wholesale customers.

Comment date: December 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. EL90-6-000]

Take notice that Illinois Power Company (Illinois Power) on October 26, 1989, filed a Petition for Waiver of Regulations.

By this Petition Illinois Power requests waiver, in the event the Commission determines that a waiver is required, of § 35.14(a)(6) of the Commission's Regulations and any other regulations of the Commission necessary to permit Illinois Power to recover through its wholesale fuel adjustment clause: (i) certain amounts paid in consideration for release from a coal supply agreement and related transportation agreements; and (ii) certain charges from Electric Energy Incorporated which charges reflected amounts paid in consideration for release from coal supply contracts. Illinois Power states that the coal supply contract buyout costs were related only to the purchase and transportation of coal and contained no litigation or administrative expenses. Further, Illinois Power states that the sole purpose of the coal supply contact buyout was to enable Illinois Power to take advantage of an opportunity to purchase coal from another supplier at significantly lower costs. As a result of the coal supply contract buyout, Illinois Power states that both its retail and wholesale customers realized significant cost savings.

Comment date: December 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27687 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1432-004, et al.]

Hydroelectric Applications; Wards Cove Packing Co., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: New Minor License.

b. Project No.: 1432-004.

c. Date Filed: June 22, 1989.

d. Applicant: Wards Cove Packing Company.

e. Name of Project: Dry Spruce Bay.

f. Location: On Dry Spruce Bay partially within land administered by the Bureau of Land Management, in the Kodiak Island Borough of Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. R. Eldridge Hicks, Hicks, Boyd, Chandler & Falconer, 550 W. 7th Avenue, Suite 1530, Anchorage, AK 99501.

i. FERC Contact: Mr. William Roy-Harrison (202) 357-0845.

j. Comment Date: January 2, 1990.

k. Description of Project: The existing project has the following facilities: (1) Two ditches diverting runoff from the sides of two unnamed creeks into the project, one is 50-foot-wide and 920-foot-long, the second is 50-foot-wide and 1,055-foot-long; (2) an upper storage pond with 62-acre-foot capacity controlled by an earthen dam, 200-foot-long and 60-foot-wide with a maximum height of 6 feet; (3) a water conveyance system from the upper pond to a lower pond consisting of: a 170-foot-long wooden flume; a 275-foot-long, 12-inch-diameter wood stave pipe and a 200-foot-long overflow ditch; (4) a lower storage pond with 9-acre-foot capacity controlled by an earthen dam 200-foot-long and 60-foot-wide with a maximum height of 6 feet; (5) a 6,772-foot-long pipeline from the lower pond to the powerhouse consisting of an upper section of 8-inch-diameter pvc pipe inside the original wood stave pipe and the remaining section a 4,482-foot-long, 12-inch-diameter steel pipe; (6) a powerhouse on a concrete slab foundation containing a Pelton wheel turbine generating unit with a rated capacity of 75 kilowatts; and (7) related facilities. The applicant estimates an average annual energy generation of 300,000 KWh, and will use this energy on site at the Port Bailey seafood processing plant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2a. Type of Application: New License.

b. Project No.: 1953-003.

c. Date Filed: June 29, 1989.

d. Applicant:: Consolidated Water Power Company.

e. Name of Project: DuBay Project.

f. Location: On the Wisconsin River in Marathon, Portage, and Wood Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Kenneth K. Knapp, Consolidated Water Power Company, 231 First Ave. North, P.O. Box 8050, Wisconsin Rapids, WI 54485, (715) 422-3073.

i. FERC Contact: Robert Bell (202) 357-0806.

j. Comment Date: January 26, 1990.

k. Description of Project: The project as licensed consists of the following: (1) A 730-foot-long concrete gravity dam comprising 2 non-overflow sections; a spillway section with 11 tainter gates and an intake section varying in height from 20 feet to 36 feet; a 7,900-foot-long

earthen dike on the west abutment and a short earthen dike at the east abutment; (2) an impoundment having a surface area of 7,800 acres with a storage capacity of 128,000 acre-feet and normal water surface elevation of 1,116.2 feet msl; (3) an integral intake powerhouse containing four generating units having a total installed capacity of 7,200 kW; (4) a substation containing three single-phase OA/FA type, 2,500 kVA oil-filled transformers at a voltage rating of 4.14/46 kV; (5) a 21-mile-long, 46-kV transmission line; and (6) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 43.2 GWh and own all existing project facilities. All project energy generated would be utilized by the Applicant for sale to its customers.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the license expiration of June 30, 1991, the Applicant's estimated net investment in the project would amount to $1,345,000.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

3a. Type of Application: Amendment of License

b. Project No: 2233–019.
c. Date Filed: February 24, 1989.
d. Applicant: James River Corporation.
e. Name of Project: Willamette Falls Project.
f. Location: Clackamas, Oregon.
g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).
h. Applicant Contact: Mr. R.E. Bennett, Plant Manager, James River Corporation, 4800 Mill St., West Linn, OR 97068, (503) 656–2951.
i. FERC Contact: Robert Crowley, (202) 357–0664.
j. Comment Date: December 22, 1989.
k. Description of Amendment: The licensee requests the Commission to allow the removal of 10 hydroelectric generating units because of excessive operation and maintenance costs and agency restrictions on the use of stream flow for power generating purposes.

Granting the licensee's request would reduce the project's installed capacity from 47,000-hp to 34,600-hp.

T3lT1. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. Type of Application: Amendment of License

b. Project No: 2741–007.
c. Date Filed: July 31, 1989.
d. Applicant: Kings River Conservation District.
e. Name of Project: Pine Flat.
f. Location: On the Kings River in Fresno County California.
g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).
h. Applicant Contact: Mr. Jeff Taylor, 4886 East Jensen Avenue, Fresno, CA 93725, (209) 237–5567.
i. FERC Contact: John Warner, (202) 357–0662.
j. Comment Date: December 21, 1989.
k. Description of Project: The Kings River Conservation District requests to amend the license for the Pine Flat Project to delete license article 35.
l. Purpose of Project: The licensee proposes to have article 35, which requires that the licensee release a continuous minimum flow of 25 cubic feet per second (cfs) into the Kings River below the project, deleted from its license. The licensee states that the U.S. Army Corps of Engineers (Corps) has total control of the dam's sluice gates. The licensee states that it cannot control flow releases when the project is not operating. Although the Corps routinely releases a 25 cfs minimum flow at all times, the licensee cannot control these releases and therefore requests the elimination of this requirement from its license.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

5a. Type of Application: Surrender of License

b. Project No.: 2803–010.
c. Date filed: August 7, 1989.
d. Applicant: Pennsylvania Hydroelectric Development Corporation.
e. Name of Project: Flat Rock Dam.
f. Location: On the Schuylkill River on the border between Philadelphia and Lower Marion Township, Pennsylvania.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Lawrence Gleeson, President, Pennsylvania Hydroelectric Development Corporation, P.O. Box 814, King of Prussia, PA 19046, (215) 337–1333.
i. FERC Contact: Mary Nowak, (202) 376–9634.
j. Comment Date: December 27, 1989.
k. Description of Project: The license for this project was issued on August 16, 1988, for an installed capacity of 3,250 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

1. This notice also consists of the following standard paragraphs: B and C.

6a. Type of Application: Amendment of License

b. Project No.: 2997–013.
c. Date filed: June 26, 1989.
d. Applicant: South Sutter Water District.
e. Name of Project: Camp Far West Project.
f. Location: On the Bear River in Placer and Yuba Counties, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Robert L. Melton, South Sutter Water Disctrict, 2464 Pacific Avenue, Trowbridge, CA 95659, (916) 656–2242.
i. FERC Contact: Nanzo T. Coley, (202) 357–0840.
j. Comment Date: December 18, 1989.
k. Purpose of Proposed Action: On July 2, 1981 a major license was issued to South Sutter Water District (licensee) to operate and maintain the Camp Far West Project No. 2997. The licensee propose to amend its license be deleting from the license the 1.92-mile long, 60-kV transmission line, which was constructed by Pacific Gas and Electric Company (PG&E). The licensee also propose that the transmission line be owned, operated and maintained by PG&E. This proposal will be acted on under separate action.

l. This notice also consists of the following standard paragraphs: B and C.

7a. Type of Application: Surrender of License

b. Project No.: 4060–007.
c. Date Filed: October 10, 1989.
d. Applicant: Willwood Irrigation District.
e. Name of Project: Willwood Hydroelectric.
f. Location: At the Willwood Diversion Dam on the Shoshone River in Park County, Wyoming.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).
h. Applicant Contact: Mr. Laness Northrup, Willwood Irrigation District, Powell, Wyoming 82435.
i. Commission Contact: Mr. James Hunter, (202) 357–0843.
j. Comment Date: December 18, 1989.
k. Description of Proposed Action: The licensee requests surrender of its license because of a lack of financing and/or a purchase agreement at an economical price for the project output.

The project would have consisted of: (1) A penstock connecting to an existing closed off 7-foot-diameter conduit through the dam; (2) a powerhouse at the toe of the dam containing a generating unit rated at 1,870 kW; (3) a transmission line; and (4) an access road.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

8a. Type of Application: Transfer of License

b. Project No.: 5264–004.
c. Date Filed: October 3, 1989.
d. Applicant: L. Maurice Baker (Licensee) and Pacific Oregon Corp. (Transferee).
e. Name of Project: Stone Creek/Shellrock Creek.
f. Location: On Shellrock Creek and Oak Grove Fork, tributaries of the Clackamas River within the Mount Hood National Forest, in Clackamas County, Oregon.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).
h. Applicant Contact:
Mr. L. Maurice Baker, 804 Spalding Building, 319 Southwest Washington, Portland, OR 97204, (503) 224–3020;
Mr. McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, (202) 371–5785.
i. FERC Contact: Julie Bernt, (202) 357–0839.
j. Comment Date: December 7, 1989.
k. Description of Project: On September 15, 1989, a new license was issued to L. Maurice Baker for the construction, operation, and maintenance of the Stone Creek/Shellrock Creek Project No. 5264. It is proposed to transfer the license to Pacific Oregon Corp. The purpose of this proposed license transfer is to facilitate financing for project development.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

9a. Type of Application: Major License

b. Project No.: 5984–000.
c. Date Filed: February 16, 1987.
d. Applicant: Niagara Mohawk Power Corporation.
e. Name of Project: Oswego Falls Project.
f. Location: On the Oswego River in Oswego and Onondaga Counties, New York.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) 825(r).
h. Applicant Contact: Mr. Michael Murphy, Niagara Mohawk Power Corporation, 300 Erie Boulevard West Syracuse, NY 13202
i. FERC Contact: Robert Bell (202) 376–9237.
j. Comment Date: February 13, 1990.
k. Competing Application: Project No. 10457–000.
Date Filed: August 18, 1987
l. Description of Project: The proposed project would consist of: (1) The existing 2 section Oswego Falls Dam, 1 208-foot-long, 12-foot 8-inch high weir section and a 108-foot-long, 15-foot-high spillway section; (2) 1.5-foot-high flashboards; (3) an impoundment having a surface area of 580 acres with a storage capacity of 5540-acre-feet and a normal water surface elevation of 353.3 feet USGS; (4) two gated forebay structures; (5) two intake structures; (6) two powerhouses: The East powerhouse containing 3 generating units with a total installed capacity of 4500 kW, The West powerhouse containing 5 generating units with a total installed capacity of 7010 kW; (7) two 2.4-kV transmission lines 500-feet-long; (8) the existing tailrace; and (8) appurtenant facilities. The dam and existing power facilities. The dam and existing power facilities are owned by Niagara Mohawk Power Corporation and the lock structure is owned by the New York State Department of Transportation. The applicant estimates the average annual generation would be 60,390 MWh.
m. Purpose of Project: All project energy generated would be used for distribution to its customers.
n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10a. Type of Filing: Transfer of License

b. Project No.: 10198–008.
c. Date Filed: October 10, 1989.
d. Applicants: Pelican Utility Company and PUI Acquisition Corporation.
e. Name of Project: Pelican Hydroelectric Water Power Project.
f. Location: On Pelican Creek within the Tongass National Forest in the borough of Sitka, on Chichagof Island, Alaska.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)
h. Applicant Contact: Michael J. Danaher, Wilson, Sonsini, Goodrich & Rosati, Professional Corporation, Two Palo Alto Square, Suite 900, Palo Alto, California 94306, (415) 493–9300.
i. FERC Contact: Thomas Dean, (202) 357–0841.
j. Comment Date: December 18, 1989.
k. Description of Application: Pelican Utility Company (transferor) proposes to transfer its license issued on April 27, 1988, to PUI Acquistion Corporation (transferee). The transferee is a corporation organized under the laws of the State of Alaska, and domesticated in the State of Alaska, with its head office in Seattle, Washington.

1. This notice also consists of the following standard paragraphs: B and C.

11a. Type of Application: Minor License

b. Project No.: 10684–000.
c. Date Filed: November 1, 1988.
d. Applicant: Lansing Board of Water and Light.
e. Name of Project: Moores Park Dam.
f. Location: On the Grand River in the City of Lansing, County of Ingham, Michigan.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).
h. Applicant Contact: Mr. Joe Pandy, Jr., P.O. Box 13007, Lansing, MI 48901, (517) 371–6710.
i. FERC Contact: Charles T. Raabe (202) 376–9778.
j. Comment Date: December 27, 1989.
k. Description of Project: The existing project consists of: (1) A 190-foot-long, 21-foot-high reinforced-concrete gravity-type dam having three 20-foot-long tainter gates and having a 117-foot-long overflow-type spillway surmounted by wooden flashboards; (2) a reservoir having a 240-acre surface area and a 2,000 acre-foot storage capacity at normal water surface elevation 833.5 feet; (3) an integral powerhouse at the left (north) abutment containing two 540-kW generating units each operated under a 15-foot head and at a flow at 600 cfs; (4) a 200-foot-long, 4,160-volt underground transmission line and a 4,160/13,200-volt transformer; and (5) appurtenant facilities.

The existing hydroelectric facilities were constructed in 1908. No change to the current run-of-river operation is proposed. The average annual electrical generation has approximated 2,210,000 kWh. The primary function of the facility is to provide cooling water and house service power for the nearby Eckert Station-a coal-fired power plant.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: Preliminary Permit

b. Project No.: 10835–000.
c. Date Filed: October 16, 1989.
d. Applicant: Coon Rapids Dam Associates.
e. Name of Project: Coon Rapids Dam.
f. Location: On the Mississippi River, near Coon Rapids, in Anoka and Hennepin Counties, Minnesota.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (301) 268–8820.

i. FERC Contact: Mary Nowak (202) 357–0804.

j. Comment Date: January 16, 1990.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing dam comprising 2 dikes, one 75 feet long and the other 450 feet long, a 1,005-foot-long gated spillway section with 28 bays, each 33 feet wide, and an 85-foot-long non overflow section; (2) an existing reservoir that has a surface area of 485 acres and a normal elevation of 830.1 feet mean sea level; (3) a new powerhouse containing two generating units with a total rated capacity of about 10.5 megawatts; (4) a transmission line approximately 1,600 feet long; and (5) appurtenant facilities. The existing dam is owned by Hennepin County Park Reserve District. The applicant estimates that the cost of the studies is approximately $100,000. The applicant estimates that the average annual generation is 47.5 gigawatthours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. Type of Application: Preliminary Permit

b. Project No.: 10820–000.

c. Date filed: September 18, 1989.

d. Applicant: JDJ Company.

e. Name of Project: Lake Livingston Hydro Project.

f. Location: On the Trinity River near Livingston, Polk County, Texas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Doyle W. Jones, P.E., Route 5, Box 483, Malvern, AR 72104, 501–844–4435; Stewart Noland, P.E., 5210 Sherwood Road, Little Rock, AR 72207, 501–661–9228.

i. FERC Contact: Ed Lee (202) 357–0300.

j. Comment Date: January 3, 1990.

k. Description of Project: The proposed project would consist of: (1) The existing 14,400-foot-long and 90-foot high Lake Livingston Dam; (2) the existing 82,600-acre Lake Livingston reservoir; (3) proposed 800-foot-long headrace; (4) a proposed intake structure connected to two 19-foot-diameter and two 15.5-foot-diameter steel penstocks, each about 450-foot-long; (5) a new concrete powerhouse located east of the east abutment and housing two 10–MW and two 15–MW generating units for a total installed capacity of 50 MW; (6) a proposed 2,000-foot-long tailrace; (7) a new 2-mile-long, 138–kV transmission line; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 178 GWh. The cost of the work and studies to be performed under the permit would be $50,000. The site is owned by the Trinity River Authority of Texas, 5300 South Coleus Street, Box 60, Arlington, Texas 76010. The Applicant proposes that all power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2

14a. Type of Application: License for Transmission Line Only

b. Project No.: 10821–000.

c. Date filed: August 29, 1989.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Camp Far West Transmission Line Project.

f. Location: On the Bear River in Placer and Yuba Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Rodney J. Strub, Pacific Gas and Electric Company, 77 Beale Street, Room F–759, San Francisco, CA 94106, (415) 972–5310.

i. FERC Contact: Mr. Nanzo Coley, (202) 357–0840.

j. Comment Date: December 18, 1989.

k. Purpose of Proposed Action: On July 2, 1981, a major license for the Camp Far West Project No. 2997 was issued to South Sutter Water district (licensee). The license includes a 1.92-mile long, 60–KV transmission line, which was constructed by Pacific Gas and Electric Company (PG& E). It is proposed that PG&E be granted a license to own, operate and maintain this line. Under a separate proposed action, the licensee has requested that its license be amended by deleting the transmission line.

l. This notice also consists of the following standard paragraphs: B and C.

15a. Type of Application: Preliminary Permit

b. Project No.: 10827–000.

c. Date filed: October 3, 1989.

d. Applicant: North Jersey District Water Supply Commission.

e. Name of Project: Monksville Dam.

f. Location: On the Wanaque River, Monksville Reservoir, in Passaic County, New Jersey.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Michael Restaino, Executive Director, North Jersey District Water Supply Commission, 1 F.A. Orechio Drive, Wanaque, NJ 07465, (201) 835–3600.

i. FERC Contact: Mary Nowak (202) 357–0804.

j. Comment Date: January 3, 1990.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing concrete gravity dam 150 feet high and 2,200 feet long; (2) an existing reservoir with a surface area of 505 acres and a total storage capacity of 21,500 acre-feet at a crest elevation of 400 feet mean sea level; (3) an existing penstock 40 feet long and 4 feet in diameter; (4) a proposed powerhouse containing one generating unit at a total installed capacity of 960 kilowatts; and (5) appurtenant facilities. The existing dam is owned by the North Jersey District Water Supply Commission and the Hackensack Water Company. The applicant estimates that the cost of the studies under permit would be about $200,000. The applicant estimates that the average annual generation would be approximately 3.35 gigawatthours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing commetns, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 21, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27686 Filed 11–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI76–804–001 et al.]

Conoco Inc. et al.; Applications for Certificates and Abandonment of Service [1]

November 16, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI76-804-001, B, November 2, 1989.	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Tennessee Gas Pipeline Co., West Cameron Area, Offshore Louisiana.	The lease covering West Cameron Blk. 69 expired on January 31, 1988.
CI77-492-000, C, November 3, 1989.	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corp., West Cameron Blocks 593 and 594, Offshore Louisiana.	Application to add depths pursuant to a contract amendment dated March 13, 1989.
CI90-4-000 (CI66-176), F, October 23, 1989.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221-2819.	Arkla Energy Resources, a Division of Arkla, Inc., Wilburton Field, Latimer County, OK.	Acreage acquired September 1, 1987 from Texaco Producing Inc.
CI90-11-000, E, November 3, 1989.	Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251-1513.	Tennessee Gas Pipeline Co., Bethany Field, Panola County, TX.	Acreage acquired October 1, 1988 from Petroleum Production Management, Inc.
CI90-12-000, A, November 6, 1989.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Northern Natural Gas Co., Division of Enron Corp., Hugoton Field, Morton County, KS.	New lease acquired for acreage previously dedicated by OXY USA Inc. in Docket No. G-4579.
CI90-13-000, A, November 6, 1989.	Mesa Operating Limited Partnership	Williams Natural Gas Co., Hugoton Field, Morton County, KS.	New lease acquired for acreage previously dedicated by Amoco Production Co. in Docket No. G-4904.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-27651 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-220-000, et al.]

Panhandle Eastern Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-220-000]

November 16, 1989.

Take notice that on November 7, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001 filed in Docket No. CP90-220-000, a request pursuant to sections 7(b) of the Commission's Regulations under the Natural Gas Act, as amended, for authorization to abandon a part of the sales service provided to United Cities Gas Company (United Cities), and existing jurisdictional sales customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that the abandonment represents a 15% reduction of United Cities' sales contract demand level, which was converted to firm transportation service n October 1, 1989, pursuant to § 284.10 of the Commission's Regulations. The resulting firm transportation is being performed in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm.

Panhandle also requests an October 1, 1989 effective date for the abandonment authorization which will coincide with the date of the conversion.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: December 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Co. of America

[Docket No. CP90-219-000]

November 16, 1989.

Take notice that on November 7, 1989, Natural Gas Pipeline Company of America (Natural), file in Docket No. CP90-219-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-582-000 on behalf of Anthem Energy Company (Anthem), a marketer, all as more fullyset forth in the request on file with the Commission and open to public inspection.

Natural indicates that service commenced September 1, 1989, as reported in Docket No. ST90-411-000 and estimates the volumes transported to be 100,000 MMBtu on a peak day, 20,000 MMBtu on an average day and 7,300,000 MMBtu annually. Natural also states that consistent with its Rate Schedule, Anthem may request and Natural may agree to accept additional quantities as overun gas.

Natural avers that there will be no new facilities constructed to perform the service.

Comment date: December 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP90-225-000]

November 16, 1989.

Take notice that on November 8, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-225-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for V.H.C. Gas Systems, L.P. (V.H.C.), a broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated September 1, 1989, under its Rate Schedule T-1, it proposes to transport up to 515,000 MMBtu per day equivalent of natural gas for V.H.C. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Colorado, New Mexico, Oklahoma, and Texas, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced October 7, 1989, as reported in docket No. ST90-174. El Paso further advises that it would transport 515,000 MMBtu on an average day and 187,975,000 MMBtu annually.

Comment date: January 2, 1990, in accordance with Standard Paragsaph G at the end of this notice.

4. Algonquin Gas Transmission Co.

[Docket No. CP90-232-000]

November 16, 1989.

Take notice that on November 9, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP90-232-000, a request pursuant to §§ 17.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP89-948-000, a maximum of 255,000 MMBtu of natural gas for Citizens Gas Supply Corporation, all as more fully set forth in the request on file with the Commission and open to public inspection.

Algonquin states that service commenced September 22, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-220-000 and estimates the volumes transported to be 255,000 MMBtu per day on peak day and average day and 93,075,000 MMBtu on an annual basis.

Algonquin indicates that it will receive the gas from various existing points of receipt located in New York, New Jersey, Connecticut and Massachusetts. Algonquin would then transport and redeliver the gas, less fuel and unaccounted for line loss gas, to Tennessee Gas Pipeline Company in Bergen County, New Jersey and Worcester County, Massachusetts.

Algonquin also states that no new facilities are required to provide this service.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corp.

[Docket No. CP90-244-000]

November 17, 1989.

Take notice that on November 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-244-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Eaton Corporation (Eaton), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 2,000 MMBtu per day for Eaton. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 2,000 MMBtu, 1,400 MMBtu and 504,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-167.

Comment date: January 2, 1990 in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-247-000]

November 17, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-247-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated September 22, 1989, under its Rate Schedule PT, it proposes to transport up to 150,000 dekatherms (dt) per day equivalent of natural gas for Entrade. Panhandle states that it would transport the gas from receipt points in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming, and deliver such gas, less fuel used and unaccounted for line loss, to redelivery points in Adams County and Well County, Indiana.

Panhandle advises that service under § 284.233(a) commenced October 1, 1989, as reported in Docket No. ST90-318 Panhandle further advises that it would transport 150,000 dt on an average day and 54,750,000 dt annually

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-249-000]

November 17, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-249-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 24, 1989, under its Rate Schedule PT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to Northern Natural (Greensburg) in Kiowa County, Kansas.

Panhandle advises that service under § 284.223(a) commenced October 6, 1989, as reported in Docket No. ST90-188. Panhandle further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: January 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

BEST COPY AVAILABLE

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27655 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-11879-000 et al.]

Texaco Inc. et al., Applications for Termination or Amendment of Certificates [1]

November 16, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-11879-000, D, Oct. 27, 1989	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Texas Eastern Transmission Corp., Del Grullo, et al. Fields, Kleberg and San Patricio Counties, TX.	Assigned June 1, 1989 to Jim Monk Corp.
CI61-1436-000, D, Nov. 6, 1989.	Texaco Inc	Florida Gas Transmission Co., Lake Mongoulois Field, St. Martin Parish, LA.	Assigned Jan. 1, 1989 to Plains Resources Inc.
CI62-942-001, D, Oct. 27, 1989.	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Northern Natural Gas Co., Division of Enron Corp., Eumont-Monument Field, Lea County, NM.	Assigned Sept. 1, 1989 to Morexco, Inc.
CI72-878-001, D, Oct. 24, 1989.	Enron Oil & Gas Co., P.O. Box 1188, Houston, TX 77251.	Northwest Pipeline Corp., Natural Buttes Field, Uintah County, UT.	Assigned Sept. 1, 1988 and Jan. 1, 1989 to Bar Mesa Resources, Inc.
CI83-411-001, D, Nov. 6, 1989	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Florida Gas Transmission Co., Lake Mongoulois Field, St. Martin Parish, LA.	Assigned Jan. 1, 1989 to Plains Resources Inc.
CI90-6-000 (CI79-628), D, Oct. 20, 1989.	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	ANR Pipeline Co., High Island Area, Offshore	Assigned July 1, 1989 to Phillips Petroleum Co.
CI90-9-000 (CI74-370), D, Oct. 24, 1989.	Columbia Gas Development Corp., P.O. Box 1350, Houston, TX 77251.	Columbia Gas Transmission Corp., St. Paul Bayou Field, Terrebonne Parish, LA.	Assigned May 19, 1988 to Castex Energy, Inc.
CI90-10-000 (G-5312), D, Oct. 30, 1989.	Texaco Producing Inc	Tennessee Gas Pipeline Co., Logansport Field, Desoto Parish, LA.	Assigned Dec. 15, 1988 to Marshall Exploration Inc.
CI90-14-000 (CI68-1429-001), D, Nov. 2, 1989.	Columbia Gas Development Corp.	Natural Gas Pipeline Co. of America, West Cameron Block 225, Offshore Louisiana.	Assigned Nov. 1, 1984 to Tenneco Oil Co. and July 1, 1989 to CNG Producing Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-27652 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-40-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 16, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 9, 1989 submitted as part of its FERC Gas Tariff, Second Revised Volume No. 1 tariff sheets which set forth the terms and conditions of a new Rate Schedule PSS-T pursuant to which Algonquin will render a firm transportation service for six proposed Algonquin Shippers. Algonquin's related facilities and the first phase of Rate Schedule PSS-T service were authorized by the Commission in its Order issued on June 7, 1989 (47 FERC ¶ 61,341). Algonquin's Filing which includes Rate Schedule PSS-T and related Form of Service Agreement, Index Sheets and Rate Sheet reflecting an interim rate proposed in a concurrent filing is on file with the Commission and available for public inspection.

Algonquin states that it is concurrently filing an application to amend the June 7, 1989 certificate ("Amendment") requesting authority to provide firm service at a reduced level and best efforts service above that level to the authorized delivery quantities. Algonquin states that the Amendment reflects the fact that construction delays result in Algonquin being unable to complete all certificated facilities in time to offer full firm service this winter. Pending completion of all authorized facilities Algonquin is offering firm service at a reduced level at a rate consistent with investment in facilities which are scheduled to be complete December 15, 1989, all as more fully set forth in Algonquin's application to amend.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27654 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-239-013]

Boundary Gas, Inc.; Proposed change in FERC Gas Tariff

November 17, 1989.

Take notice that on November 14, 1989, Boundary Gas, Inc. ("Boundary") tendered for filing a proposed change to its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Tariff Sheet No. 43 to supersede First Revised Tariff Sheet No. 43.

Boundary states that the purposes of this filing are: (i) To correct an inadvertent mistake in First Revised Tariff Sheet No. 43, which was filed on September 21, 1989 and stated incorrectly that one Boundary Repurchaser, National Fuel Gas Supply Corporation, would pay its Gas Research Institute surcharge directly to the FERC, rather than to the Gas Research Institute; and (ii) to change the effective date of all of the revised tariff sheets filed on September 21, 1989 from November 1, 1989 to January 1, 1990.

Copies of the filing have been served upon each of the Boundary Repurchasers, their respective state regulatory agencies and all intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27644 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-63-002]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 17, 1989.

Take notice that on November 14, 1989, Carnegie Natural Gas Company ("Carnegie") submitted for filing in compliance with the Commission's Order of October 30, 1989, in the above-referenced docket, the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Corrected Sixteenth Revised Sheet No. 47
Corrected Sixteenth Revised Sheet No. 48

These sheets contain the rates applicable to Carnegie's refiled Annual PGA, and Carnegie states that these sheets accurately reflect the rates that Texas Eastern Transmission Corporation originally proposed to become effective September 1, 1989. Further, Carnegie states that the rates on these sheets have been superseded by subsequent PGA filings.

Carnegie states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27645 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-026]

Colorado Interstate Gas Co.; Compliance Tariff Filing

November 17, 1989.

Take note that on November 14, 1989, Colorado Interstate Gas Company ("CIG") tendered for filing certain tariff sheets which reflect the approval by the Commission of CIG's July 26, 1989 Offer of Settlement. CIG states that it is not at this time agreeing that the November 8, 1989 Order is acceptable to CIG under the terms of the Stipulation and Agreement. CIG states that it will seek clarification of the November 8 Order with respect to the application of the Policy Statement on Interstate Pipeline Rate Design to the settlement. CIG further states that it is placing into effect the settlement rates only through December 31, 1989 pending receipt of clarification acceptable to CIG, including clarification that no policy statement changes will have any impact on any rates in effect prior to the date of the final order requiring such changes. Should CIG not receive such clarification, it states that the rates in effect on September 30, 1989 inclusive of all PGA, surcharges, ACA and GRI adjustments shall become effective on January 1, 1990 unless CIG extends the term of the interim rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27646 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. CP89-2180-000]

Columbia Gulf Transmission Co.; Notice of Application

November 17, 1989.

Take notice that on September 28, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed an application pursuant to section 7(b) of the Natural Gas Act for permission to abandon a firm transportation service for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that by Commission order issued July 6, 1983, in Docket No. CP83-232 Columbia Gulf is authorized to transport for United on a firm basis volumes produced from the United Trahan No. One Well. Columbia Gulf states that Columbia Gulf receives up to 2,000 Mcf per day from United at a point of interconnection with Columbia Gulf's line in Vermillion Parish, Louisiana and redelivers the gas to United at the outlet of Sea Robin Pipeline Company's (Sea Robin) measuring station at or near the terminus of Sea Robin's offshore pipeline near Erath, Louisiana. Columbia Gulf states that United invoked its contractual right to terminate the service by letter dated March 28, 1989. Columbia Gulf indicates that it has been informed that United expects to replace the firm transportation service with an interruptible transportation service to be performed under Columbia Gulf's blanket certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27650 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

November 17, 1989.

Take notice that on November 13, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Twenty-First Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on November 1, 1989.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that CNG filed changes in its Rate Schedule GSS rates in Docket No. RP85-169-45 on October 30, 1989 for effectiveness on November 1, 1989. According to Granite State, the revised rates for its Rate Schedule GSS service on Twenty-First Revised Sheet No. 8 track the changes filed by CNG for its Rate Schedule GSS service.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1989. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27647 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-47-002]

Natural Gas Pipeline Co. of America; Change in PGA Tariff Procedure

November 17, 1989.

Take notice that on November 13, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective January 1, 1989.

Substitute Fifth Revised Sheet Nos. 121C and 121D

Substitute Third Revised Sheet Nos. 121E and 121F

Natural states that this filing complies with the Commission's July 11 and August 22, 1989 letter orders issued at Docket Nos. RP89-47-000 and RP89-47-001. Said orders granted Natural's request for waiver of Section 154.305(h)(3)(ii)(D) of the Commission's Regulations effective January 1, 1989. The waiver will allow Natural to calculate carrying charges on the Account No. 191 balance using Natural's Temporary LIFO Liquidation Account as the offset rather than the rolling weighted average method set forth in the Regulations. The orders required Natural to file revised tariff sheets to § 18.85 of its tariff to clearly set forth the methodology which Natural will use to compute its carrying costs on Account No. 191, including a description of how the Temporary LIFO Liquidation Account is determined.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. In accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27648 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-005]

Trunkline Gas Co.; Notice of Compliance Filing

November 17, 1989.

Take notice that on November 13, 1989 Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets as listed on Appendices A and B attached to the filing.

Trunkline states that on September 29, 1989 Trunkline filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 in the above-referenced proceeding to comply with the Commission's Order dated May 31, 1989. By Order bearing an October 31, 1989 issue date, the Commission rejected those tariff sheets. In its Order on Rehearing, also bearing an October 31, 1989 issue date, the Commission permitted Trunkline to recover certain LNG charges in the demand component of its rates.

Trunkline further states that the tariff sheets submitted herewith reflect Trunkline's originally filed classification of the LNG Minimum Bill costs to the demand component of Trunkline's sales rates as approved by the Commission in the aforementioned Order.

Trunkline states that this filing by Trunkline satisfies the requirements of the Commission's Orders dated May 31, 1989 and October 31, 1989 in this proceeding and is made under compulsion of such latter Orders. This filing is without prejudice to Trunkline's rights on rehearing or in any judicial review proceeding or its position in this proceeding. Trunkline expressly reserves the right to implement its originally filed rates in this case effective November 1, 1989 upon securing appropriate approvals and to surcharge to recover (through direct billing or other appropriate means) the amounts eliminated by the Commission's October 31, 1989 Orders or other amounts which are thereby excessively attributed to Trunkline's off-peak rate levels.

Copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before November 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27649 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-221-000]

Trunkline Gas Co. and Panhandle Eastern Pipe Line Co.; Notice of Application

November 17, 1989.

Take notice that on November 8, 1989, Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed jointly in Docket No. CP90-221-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon firm and interruptible transportation service provided to United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to Rate Schedule T-56, Trunkline provides 40,000 Mcf per day of firm transportation service and 20,000 Mcf per day of interruptible transportation service for United. Trunkline further states that pursuant to Rate Schedule T-78, Trunkline provides 10,000 Mcf per day of firm transportation service for United. Panhandle also indicates that pursuant to Rate Schedule T-53, it provides 1,200 Mcf per day of firm transportation service and 800 Mcf per day of interruptible transportation service for United.

Panhandle states that pursuant to Panhandle's Rate Schedule T-33, which is in conjunction with Trunkline's Rate Schedule T-53, Panhandle provides 1,200 Mcf per day of firm transportation service and 800 Mcf per day of interruptible transportation service for United.

Trunkline and Panhandle state that pursuant to Letters of Agreement dated November 6, 1989, between United, Trunkline and Panhandle, the parties have agreed to terminate transportation service under each of aforementioned rate schedules effective December 1, 1989.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline and

Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27653 Filed 11-24-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Presidential Permit PP-85-A Authorizing Westmin Mines, Inc. To Construct, Connect, Operate, and Maintain Electric Transmission Facilities Across the International Border Between the United States and Canada

Background

On July 17, 1987, Westmin Resources Limited filed an application with the Economic Regulatory Administration (ERA) [1] of the Department of Energy (DOE) for a Presidential permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038. The applicant requested authority to construct, connect, operate, and maintain a 35-kilovolt (kv) transmission line which would cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Columbia at a second point on the U.S. international border. The proposed line would cross the U.S.-Canadian border in the city of Hyder, Alaska, traverse about 7.4 miles of U.S. territory and re-enter Canada at a point approximately 8 miles north of Hyder, Alaska. All construction in Alaska would be within the right-of-way of the Granduc Road, a pre-existing gravel road.

Subsequent to this filing, the applicant requested that, if the ERA should determine it to be in the public interest to issue the subject permit, the permit be issued in the name of Westmin Resources, Inc. (Westmin), the wholly owned U.S. subsidiary of Westmin Resources Limited.

In connection with the DOE's responsibilities under the National Environmental Policy Act of 1969 (NEPA), the DOE reviewed an Environmental Assessment (EA) published on May 17, 1988, by the U.S. Forest Service (USFS). The USFS prepared this EA in connection with its issuance of a special use permit to construct a portion of the proposed line through a National Forest. The DOE, after staff review and analysis of USFS' EA, determined that the EA adequately addressed the environmental effects of Westmin's proposal. On July 28, 1988, the DOE adopted this EA and determined that the issuance of this permit would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA, 42 U.S.C. 4321, *et seq.*

After review and evaluation of the information submitted by the applicant, it was determined that the operation of the proposed transmission line would not impair the reliability of the electric power supply system of the U.S. Details of this determination were made part of the permanent docket file.

The Secretary of State by letter dated September 8, 1988, and the Secretary of Defense by letter dated September 6, 1988, recommended that the Presidential permit be granted. Accordingly, on October 5, 1988, Presidential Permit PP-85 was issued to Westmin Resources, Inc.

On May 20, 1989, Westmin Resources, Limited (Westmin), on behalf of its wholly-owned subsidiary Westmin Resources, Inc. (WRI), applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for the reissuance of Presidential Permit PP-85 to Westmin Mines, Inc. (WMI), a new U.S. corporation which is indirectly controlled by Westmin. This request was occasioned by a reorganization within the Westmin group of companies.

Since the reissuance of this permit does not require new construction or a change in the operation of the previously authorized facilities, the conclusion reached from the environmental and electric reliability analyses prepared for the original permit remain valid for this action. Also the Secretary of Defense and the Secretary of State have concurred in the reissuance of the permit. Accordingly, the DOE finds that the reissuance of Presidential Permit PP-85 to Westmin Mines, Inc., is consistent with the public interest.

Authorization

Pursuant to the provisions of Executive Order No. 10485, as amended by Executive Order No. 12038, and the Rules and Regulations thereunder (title 10, Code of Federal Regulations, § 205.320 *et seq.*), permission hereby is granted to WMI to construct, connect, operate, and maintain at the international border of the United States and Canada, one 35-kV, alternating current (ac) transmission line as further described in *Article 2* below, upon the following conditions:

Article 1. The facilities herein described shall be subject to all conditions, provisions and requirements of this permit. This permit may be modified or revoked by the President of the United States without notice, or by the DOE after public notice, and may be amended by the DOE after proper application thereto.

Article 2. The facilities covered by and subject to this permit shall include the following facilities, and all supporting structures within the right-of-way occupied by such facilities:

One 35-kilovolt, 3-phase electric transmission line which will cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Columbia at a second point on the U.S. international border. The proposed line shall pass through Alaska for about 7.4 miles, most of which shall be located in the Tongass National Forest. Approximately 2.5 miles of the proposed 7.4 miles of transmission line shall be constructed underground, using 300 MCM (thousand circular mils) cable, and the remaining 4.9 miles constructed above ground on wooden poles, using 266.8 ACSR (aluminum cable, steel reinforced) conductor. All construction in Alaska shall be within the right-of-way of the existing Granduc Road (also known as the Salmon River Highway).

These facilities are more specifically shown and described in the application filed by the applicant on July 17, 1987.

Article 3. No change shall be made in the facilities covered by this permit or in the authorized operation of these facilities unless such change shall have been approved by the DOE.

Article 4. WMI or its agent shall at all times maintain the facilities covered by this permit in a satisfactory condition such that all requirements of the National Electric Safety Code in effect at the time of construction are fully met.

Article 5. The operation and maintenance of the facilities covered by this permit shall be subject to the inspection and approval of a properly designated representative of the DOE, who shall be an authorized representative of the United States for such purposes. WMI shall allow officers or employees of the United States with written authorization free and unrestricted access into, through, and across any lands occupied by these facilities in the performance of their duties.

Article 6. WMI shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this permit. WMI shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the center of the transmission circuit are the only ones that must be resolved. WMI shall maintain written records of all complaints received and of the corrective actions taken.

Article 7. The United States shall not be responsible or liable: For damages to or loss of the property of, or injuries to, persons; for damages to or loss of the facilities covered by this permit; or for damages to, or loss of the property of, or injuries to the person of WMI officers, agents, servants or employees, or of others who may be on said premises; any of which may arise from or be incident to the exercise of the privileges granted herein; and WMI shall hold the United States harmless from any and all such claims.

Article 8. WMI shall arrange for the installation and maintenance of appropriate metering equipment to record permanently the hourly flow of all electric energy transmitted between the United States and Canada over the facilities authorized herein. WMI shall prepare, maintain and preserve complete and accurate records concerning the transfer of such electric energy; and shall furnish the DOE an annual report, which will be due on or before February 15th of each year, detailing the transmission of such electric energy, as follows: (1) The gross amount of kilowatt-hours of electric energy received or delivered; (2) the maximum hourly rate of transmission in kilowatts; and (3) the consideration paid or received for such energy during each month of the preceding calendar year.

Article 9. Neither this permit nor the facilities covered by this permit, or any part thereof, shall be transferable or assignable, except in the event of the involuntary transfer of the facilities by the operation of law. In the case of such an involuntary transfer, this permit shall continue in effect for a period of 60 days and then shall terminate unless an application for a new permit pursuant to title 10, Code of Federal Regulations, section 205.323, has been received by the DOE. Upon recepit by the DOE of such an application, this existing permit shall continue in effect pending a decision on the new application. During this decision period, the facilities authorized herein shall remain substantially the same as before the transfer.

Article 10. Upon the termination, revocation or surrender of this permit the 35-kV ac transmission line, which is owned, connected, operated, and maintained by WMI and described in Article 2 of this permit, shall be removed within such time as DOE may specify and at the expense of WMI. If WMI fails to remove such facilities or any portion thereof authorized by this permit, DOE may direct that such actions be taken for the removal of the facilities or the restoration of the land associated with the facilities at the expense of WMI. WMI shall have no claim for damages by reason of such possession, removal or repair. However, upon a showing by the relevant owner that certain facilities authorized herein, such as portions of its rights-of-way or the transmission line within the United States, are useful to other utility operations within the bounds of the United States, the DOE will not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

Article 11 This permit shall be valid upon receipt by the DOE of the Testimony of Acceptance properly executed.

In witness whereof, I, Constance L. Buckley, Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy, hereunto sign my name, this 13 day of November, 1989, in the city of Washington, District of Columbia.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 89-27706 Filed 11-24-89; 8:45 am]

BILLING CODE 6450-01-M

[1] On January 6, 1989, the authority to issue Presidential permits was transferred from the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

U.S. ENVIRONMENTAL PROTECTION AGENCY

[FRL 3691-2]

Science Advisory Board; Environmental Engineering Committee, Leachability Subcommittee, Open Meeting: December 15-16, 1989

Under Public Law 92-463, notice is hereby given that the Science Advisory Board's Leachability Subcommittee of the Environmental Engineering Committee (EEC), will meet December 15-16, 1989 in Room 909 of the Houston Medical Center Hilton, 6633 Travis; Houston, Texas 77030-9945. The meeting will begin at 3:15 p.m. on Friday and 8:00 a.m. on Saturday and adjourn no later than 12:00 noon on Saturday, December 16.

The purpose of the meeting is to conduct a planning and scoping session on the generic topic of leachability. This meeting is being conducted in consort with a workshop in Houston at the Houston Medical Center Hilton to identify, summarize and evaluate potential methods that can be used to estimate the migration potential of inorganics and organics found at hazardous waste sites. The workshop is a cooperative effort of Dr. Raymond Loehr and the University of Texas, the National Center for Ground Water Research, the Electric Power Research Institute, and the U.S. Environmental Protection Agency's Robert S. Kerr Environmental Research Laboratory in Ada, Oklahoma. While leachability phenomena will be discussed generically, it is expected that topics related to this area such as TCLP (Toxicity Characteristic Leaching Procedure), will be discussed.

The Science Advisory Board meeting of December 15 and 16 is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, or Mrs. Marie Miller, Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by December 8, 1989. Seating at the meeting will be on a first come basis.

Dated: November 16, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-27728 Filed 11-24-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3683-3]

Public Water Supply Supervision Program; Program Revision for State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Alabama is revising its approved State Public Water Supply Supervision Primary Program. Alabama has adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight Volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are

no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

DATES: All interested parties are invited to request a public hearing. A request for a public hearing must be submitted on or before December 27, 1989, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made on or before December 27, 1989, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 27, 1989.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Public Water, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109; and

Regional Administrator, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce, EPA, Region IV, Drinking Water Section at the Atlanta address given above; telephone 404/347-2913, (FTS) 257-2913.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended, (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: November 15, 1979.

W. Ray Cunningham,

Director, Water Management Division.

[FR Doc. 89-27664 Filed 11-24-89; 45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before January 11, 1990. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, Room 2220, 1801 L Street, NW., Washington, DC 20507; Telephone: (202) 663-4279.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; Telephone: (202) 395-7316.

Type of Request: Extension (No change)

Title: Employer Information Report EEO-1

Form Number: Standard Form 100

Frequency of Report: Annually

Type of Respondent: Private employers with 100 or more employees and certain Federal government contractors with 50 or more employees.

Standard Industrial Classification (SIC) Code: Multiple

Description of Affected Public: IND/HHID and Farms and Businesses/INST

Responses: 126,700

Reporting Hours: 528,500

Federal Cost: $675,000

Applicable under Section 3504(h) of Public Law 96-511: Not applicable

Number of Forms: 1

Abstract-Needs/Users: EEO-1 data are used by EEOC to investigate charges of discrimination against employers in private industry. Data are shared with several Federal government agencies, particularly the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. Under Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-1 data are also shared with approximately 127 State and local FEPC agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 89-27708 Filed 11-24-89; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 17, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0003.

Title: Application for Amateur Radio Station and/or Operator License.

Form Number: FCC 610.

Action: Revision.

Respondents: Individuals or households.

Frequency of Response: On occasion.

Estimated Annual Burden: 95,050 Responses; 7,889 Hours.

Needs and Uses: FCC Rules require that applicants file FCC Form 610 to apply for a new, renewal, or modified amateur radio station and/or operator license. Commission personnel will use the data to determine eligibility for radio

station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-27630 Filed 11-24-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: New collection.

Title: Application to participate in a conversion transaction.

Form Number: None (letter application).

Frequency of Response: On occasion.

Respondents: Any insured depository institution applying for approval from the FDIC to participate in a conversion transaction which involves the transfer of deposits between a member of the Savings Association Insurance Fund and a member of the Bank Insurance Fund.

Number of Respondents: 35.

Number of Responses Per Respondent: 1.

Total Annual Responses: 35.

Average Number of Hours Per Response: 3.

Total Annual Burden Hours: 105.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistance Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to implement a new collection of information from certain insured depository institutions. The proposed collection of information involves requiring a depository institution that wishes to obtain the FDIC's approval to participate in a conversion transaction to submit a letter application. Such transactions generally involve the transfer of deposits between the Savings Association Insurance Fund and the Bank Insurance Fund. The new application requirement is based on statutory requirements contained in the recently enacted Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Under FIRREA (section 206(a)(7), Pub. L. 101-73), no insured depository institution may participate in a conversion transaction without the prior approval of the FDIC. The letter application enables the FDIC to give such approval.

Dated: November 20, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-27661 Filed 11-24-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American President Lines, Ltd. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-038

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment would permit the parties to expand the scope of the Agreement and to establish a separate section covering the trade to India, Pakistan, Bangladesh, and Burma from U.S. ports and points via such ports. Membership in this section will be open to all carries operating in the "sub-continent trade," whether or not the carrier is a party to the remainder of the Agreement. The amendment would permit the parties to this section to discuss and agree upon specified matters, including rates, in the sub-continent trade. However, adherence to any agreement reached would be voluntary.

Agreement No.: 232-011258

Title: Chiquita Brands, Inc. Chiquita/Promotora de Navigacion Space Charter and Sailing Agreement.

Parties:

Chiquita Brands, Inc.
Promotora de Navigacion, S.A.

Synopsis: The proposed agreement would permit the parties to charter space aboard one another's vessels in the trade between ports and points in the United States (including Alaska, Hawaii and all U.S. territories and possessions) and ports and points in Costa Rico. It would also permit the parties to coordinate sailings in the trade and to agree upon the formation of a joint service between themselves in the Agreement trade.

By Order of the Federal Maritime Commission.

Dated: November 20, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27642 Filed 11-24-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations,

Federal Maritime Commission, Washington, DC 20573.

Modern Cargo Services, Inc, 8358 N.W. 66th Street, Miami, FL 33166, Officer: Arnold E. Arrazola, President;

Seibu Transportation Co., Ltd., dba Seibu Air & Sea Services; 752 So. Glasgow Ave., Inglewood, CA 90301, Officers: Yoshiaki Tsutsumi, Chairman, Hiroshi Nagai, President, Kazuma Goto, Managing Director, Kinya Yajima, Managing Director, Yashuhiro Tsutsumi, Director;

International Express Cargo Services, Inc., 18141 SW 84th Ave., Miami, Florida 33157, Officers: Dora Del Castillo, President, Walter Boria, Vice President, Juan Boria, Vice President;

Nakamura (U.S.A.), Inc., 1326 Fifth Ave, #426, Seattle, WA 98101, Officers: Nazamusa Okamura, President & Director, Terasu Nakahara, V. President/Director/ Treasurer, Nakamura Stevedores & Transportation Co. Ltd., Stockholder;

Kil Moon Chang, 17224 Betty Place, Cerritos, CA 90701, Officer: Sole Proprietor;

Queirolo USA, Inc., 102–03 101 St., Ave., Ozone Park, NY 11416, Officers: Michelle Lupo, President & Director, Fabio Domenichini, Vice President, Paolo Queirolo, Vice President;

New Wave Transport (U.S.A.), Inc., 444 West Ocean Boulevard, Suite 1508, Long Beach, CA 90802, Officers: Keiichi Kanemitsu, President/Treasurer/Director, Brian J. McQuade, Asst. Vice President;

Apex Int'l. Forwarding Co., Inc., 2580 St. Cloud Dr., San Bruno, CA 94066, Officer: Vicky P. Cheung, President;

Cortez Customhouse Brokerage Company, 4950 W. Dickman Road, Battle Creek, MI 49015, Officers: David P. Taylor, President/ Secretary, Harold Henderson, Vice President/Gen. Manager, Margaret B. Henderson, Director, Mary Ann Crete, Director;

Compass Marine Services (U.S.A.) Inc., dba Compass Marine (USA), 16040 Christensen Road, Suite 208, Seattle, WA 98188, Officers: John F. Cunningham, Director, Lorraine S. Cunningham, Director, Thomas M. Alderson, Manager;

Transit King City/Northway Forwarding, Ltd., 5441 Notre-Dame Ouest, Montreal, Quebec, Canada H4C–1T7, Officers: Gerald P. Gamache, President, Michel O. Berard, Director;

C & Y International Inc., 701 5th Ave., Suite 3488, Seattle, WA 98104, Officers: Gordon J. Yeh, President/Treasurer, Yiel-Hung Chen Yeh, Secretary, Yuan Hong Chen, Vice President, Whitney Bowles, Vice President Operations;

Kook Joo Song Freight Forwarding, 1800 Studebaker Rd., Suite 765, Cerritos, CA 90701, Officer: Kook Joo Song, Sole Proprietor;

Ocean Air International, 5333 Tally Green Dr., Marietta, GA 30068, Officer: Gunter Wegner, Sole Proprietor;

Wisco International, Forwarders, Inc., 114–16 Rockaway Blvd, So. Ozone Park, NY 11420, Officer: Angel Ithier, President.

By the Federal Maritime Commission.

Dated: November 20, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27643 Filed 11–24–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Greater Ohio River Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 15, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Greater Ohio River Corporation,* Columbus, Ohio; to merge with Tonti Financial Corporation, Columbus, Ohio, and thereby indirectly acquire First Bank of Ohio, Tiffin, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Beacon Capital Corporation,* Henderson, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin National Bank, Louisburg, North Carolina, a *de novo* bank, and acquire Vance National Bank, Henderson, North Carolina, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Tremont Bancorp, Inc.,* Tremont, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Tremont, Tremont, Illinois.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ISBC Holding Company,* Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Independent State Bank of Colorado, Denver, Colorado.

Board of Governors of the Federal Reserve System, November 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27666 Filed 11–24–89; 8:45 am]

BILLING CODE 6210–01–M

Northern Missouri Bancshares, Inc., et al; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f), of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Northern Missouri Bancshares, Inc.,* Unionville, Missouri; to acquire Harrison County Bancshares, Inc., Bethany, Missouri, and thereby engage in the sale of general lines of insurance in Bethany, Missouri, a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A); and providing securities brokerage services to the public ("discount brokerage") pursuant to § 225.25(b)(15) of the Board's Regulation Y. Applicant has previously applied to acquire Harrison County Bancshares, Inc. banking subsidiaries.

Board of Governors of the Federal Reserve System, November 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27667 Filed 11–24–89; 8:45 am.]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks of Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *William E. Welch,* Chillicothe, Missouri; to acquire an additional 0.18 percent of the voting shares of Citizens Bancshares Company, Chillicothe, Missouri, and thereby indirectly acquire Citizens Bank & Trust, Chillicothe, Missouri, and First Bank of Maryville, Maryville, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James W. Priour, III,* Kerrville, Texas, to acquire 20 percent; Stanley C. Jones, Houston, Texas, to acquire 15 percent; Tex D. Hood, Kerrville, Texas, to acquire 20 percent; Paul L. Sachleben, Austin, Texas, to acquire 2.5 percent; Brett W. Smith, Kerrville, Texas, to acquire 7.5 percent; Bobby G. Waddell, Kerrville, Texas, to acquire 7.5 percent; John and Lynda Comegy's Family Trust, Kerrville, Texas, to acquire 10 percent; and Premier Bancshares Employee Stock Ownership Plan, Kerrville, Texas, to acquire 7.5 percent of the voting shares of Premier Bancshares, Inc., Kerrville, Texas, and thereby indirectly acquire Bank of Kerrville, Kerrville, Texas, and Texas National Bank of Victoria, Victoria, Texas.

Board of Governors of the Federal Reserve System, November 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27668 Filed 11–24–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15.5% for the quarter ended September 30, 1989. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: November 17, 1989.

Dennis Fisher,

Deputy Assistant Secretary, Finance.

[FR Doc. 89–27623 Filed 11–24–89; 8:45 am]

BILLING CODE 4150–04–M

Social Security Administration

Revised Redelegations of Authorities Concerning Social Security Coverage for Employees of State/Local Governments and Interstate Instrumentalities

Under section 218 of the Social Security Act, as amended (the Act), the Secretary of Health and Human Services (the Secretary) shall enter into an agreement (Social Security coverage agreement) with any State, at the request of that State, and may enter into an agreement with an instrumentality of two or more States (interstate instrumentality), at the request of that interstate instrumentality, for the purpose of extending the social insurance system established by title II of the Act to services performed by individuals as employees of the State or any of its political subdivisions, or as employees of the interstate instrumentality. Section 218 of the Act also provides the Secretary with authority for other program functions required to carry out the purposes of these Social Security coverage agreements. Subject to specified reservations of authority to the Secretary, the Secretary's authority under section 218 of the Act has been delegated to the Commissioner of Social Security (the Commissioner), with authority to redelegate (see Statement of Organization, Functions and Delegations of Authority published in the **Federal Register** at 33 FR 5838–37 on April 16, 1968).

As appropriate, the then Acting Commissioner redelegated various authorities under section 218 of the Act to subordinate Social Security Administration (SSA) positions on February 3, 1981. Since that time, however, section 218(g) of the Act was amended by section 103 of Public Law No. 98–21 (the Social Security Amendments of 1983) to prohibit termination of Social Security coverage agreements, either in their entirety or with respect to any coverage group, on or after April 20, 1983. Section 218(g) of the Act was subsequently redesignated as section 218(f) by section 9002(c)(1) of Public Law No. 99–509 (the Omnibus Budget Reconciliation Act of 1986). Also, sections 9129 and 13205 of Public Law No. 99–272 (the Consolidated Omnibus

Budget Reconciliation Act of 1985) extended Medicare coverage and applied the hospital insurance tax portion of the Federal Insurance Contributions Act to wages for services rendered after a specified time by newly hired employees of State Governments and their political subdivisions. For certain other State and local Government employees, optional coverage can be provided by voluntary agreements with the Secretary under section 218(n) of the Act. Section 218(v) was redesignated as section 218(n) by section 9023(c) of Public Law No. 100–203 (the Omnibus Budget Reconciliation Act of 1987).

In addition, Public Law No. 99–509 (the Omnibus Budget Reconciliation Act of 1986) repealed certain subsections of section 218 of the Social Security Act, effective with respect to payments due on wages paid after December 31, 1986. The subsections repealed were 218 (e), (h), (i), (j), (q), (r), (s), (t) and (w).

As a result of the above changes in the law and SSA organizational realignments, I hereby rescind the existing redelegtions of authorities related to Social Security coverage agreements under section 218 of the Act and replace them with the following revised redelegations.

Authorities

1. Authority to enter into Social Security coverage agreements with States or interstate instrumentalities, under sections 218(a)(1) and 218(g)(1) of the Act.

2. Authority to execute modifications of existing Social Security coverage agreements with States or interstate instrumentalities, under sections 218(c)(4) and 218(g)(1) of the Act.

3. Authority to enter into Social Security coverage agreements with States or interstate instrumentalities for the purpose of extending the health insurance system established by title XVIII of the Act and sections 226 and 226A of title II of the Act to services performed by employees of State/local Governments or interstate instrumentalities under section 218(n) of the Act.

4. Authority to execute modifications of existing Social Security coverage agreements with States or interstate instrumentalities for the purpose of extending the health insurance system established by title XVIII of the Act and sections 226 and 226A of title II of the Act to services performed by employees of State/local Governments or interstate instrumentalities under section 218(n) of the Act.

5. Authority to approve the removal of a legally dissolved entity from coverage under a Social Security coverage agreement.

6. Authority, under section 218(e)(1) of the Act, to grant extensions of time filing contribution returns (limited to period prior to July 1, 1980 and to periods covered by agreements or modifications for new coverage under Social Security coverage agreements) or relevant wage reports (for all periods), where States or interstate instrumentalities request extensions and show "good cause" for such action.

7. Authority, under section 218(s) of the Act, to grant States or interstate instrumentalities extensions of time, if requested by them and upon their showing "good cause," for submission of additional information or argument on requests for reviews of:

a. Assessments of amounts due;

b. Disallowances of claims for credits/refunds of overpayments; or

c. Allowances or credits/refunds for overpayments.

8. Authority to enter into agreements with States or interstate instrumentalities on extensions of time limitations for assessments of amounts due or allowances/disallowances of credits/refunds of overpayments under sections 218(q)(4)(A) and 218(r)(2)(A) of the Act.

9. Authority, under sections 218(e)(1) and 218(j) of the Act, to issue to States or interstate instrumentalities notices overpayments/underpayments for reports of earnings, Federal determinations of errors, and corrections/adjustments to reports of earning filed and interest charges due.

10. Authority to issue statutory assessment notices of amounts due from States or interstate instrumentalities under section 218(q) of the Act.

11. Authority to allow/disallow States or interstate instrumentalities credit or refund of overpayments under section 218(r) of the Act.

12. Authority, under section 218(s) of the Act, to review and decide appeals filed by States or interstate instrumentalities concerning assessments of amounts due by them, disallowances of their claims for credits or refunds of overpayments, or allowances to them of credits or refunds of overpayments.

13. Authority to grant or deny requests by States or interstate instrumentalities for additional time to file appeals pursuant to section 218(s) of the Act.

Delegates	Scope of authority
a. Deputy Commissioner for Programs.	a. Authorities 1–8, 10–13.
b. Associate Commissioner and Deputy Associate Commissioner for Retirement and Survivors Insurance.	b. Authorities 1–8, 10 and 11.
c. Director and Deputy Director, Division of Earnings and Adjustments, Office of Central Records Operations.	c. Authorities 9–11.
d. Regional Commissioners and Deputy Regional Commissioners.	d. Authorities 1–5 and 8 for cases within their respective regional jurisdiction.
e. Assistant Regional Commissioners and Deputy Assistant Regional Commissioners for Programs.	e. Authorities 2, 4, 5 and 8 for cases within their respective regional jurisdiction.
f. District Managers and Assistant District Managers serving as liaison between SSA and State agencies (District/Assistant District Managers of Parallel Social Security offices).	f. Authority 8 for agreements within the jurisdiction of District/Assistant District Managers of parallel Social Security offices, except those agreements which extend a period previously extended.
g. All positions in the direct line of management above the positions specified in items c., d. and f. above.	g. The authorities redelegated to the positions specified in items c., d. and f. above respectively.

Conditions

(1) The Commissioner, Deputy Commissioner for Programs or Associate Commissioner for Retirement and Survivors Insurance shall refuse to enter into a proposed Social Security coverage agreement, or a proposed modification of an existing coverage agreement, because the proposed agreement/modification is inconsistent with Federal or State law.

(2) The offset authority contained in section 218(j) of the Act, which relates to deductions for failure by States or interstate instrumentalities to make timely payments, is reserved to the Secretary.

(3) The Office of the General Counsel, Department of Health and Human Services, shall review agreements and modifications of agreements under section 218 of the Act for legal form and substance before they may be approved by the above delegates.

(4) As the result of section 9002(d) of Public Law No. 99–509, authorities 6–13 and condition (2) will remain in effect only until all matters regarding payments due on wages paid before January 1, 1987 are resolved, subject to the statute of limitations and any extension(s) of those time limitations. Statutory references in authorities 6–13 and condition (2) reflect provisions in effect prior to the enactment of section 9002 of Public Law 99–509.

(5) These revised redelegations must be exercised in accordance with all pertinent provisions of law, regulations, policies, procedures, operating instructions and other requirements.

(6) Further redelegations are not authorized.

These revised redelegations are effective on the date that they are published in the **Federal Register** and replace those previous redelegations approved by the Acting Commissioner on February 3, 1981. I hereby affirm and ratify any actions by the above delegates which may constitute the exercise of any of the subject authorities before the date that these revised redelegations are published in the **Federal Register**.

Dated: November 6, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 89–27682 Filed 11–24–89; 8:45 am]

BILLING CODE 4190–11–M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is hereby given that subchapter S5E, subsections S5E.10 and S5E.20 are being amended. The titles of a regional component as well as a position title used in a functional statement are being changed to more accurately describe the organization and function. Also, Standard Administration Codes are being realigned for the Office of External Affairs. The changes are as follows:

Subsection S5E.10 *The Office of Public Affairs*—(Organization):

G. The Office of External Affairs (S5EM):

Revised the Standard Administrative Code (SAC) to (S5EK).

1. The Community Affairs Staff (S5EP1): Revise the SAC code to (S5EK3).

2. The External Liaison Staff (S5EM2): Revise the SAC code to (S5EK4).

3. The Regional External Affairs Staff (S5EM3): Revise the title and SAC code to: The Regional Public Affairs Staff (S5EK6).

4. The Regional Support and Special Projects Staff (S5EM4).

Revise the SAC code to (S5EK5).

Subsection S5E.20 *The Office of Public Affairs*—(Functions):

G. The Office of External Affairs (S5EM):

Revise the SAC code to (S5EK).

1. The Community Affairs Staff (S5EP1): Revise the SAC code to (S5EK3).

2. The External Liaison Staff (S5EM2): Revise the SAC code to (S5EK4).

3. The Regional External Affairs Staff (S5EM3): Revise the title and the SAC code to: The Regional Public Affairs Staff (S5EK6).

a. Second line, last word—substitute "public" for "external."

4. The Regional Support and Special Project Staff (S5EM4):

Revise the SAC code to (S5EK5).

a. Change the first sentence to read: Serves as primary liaison with the Regional Public Affairs Officer keeping them informed of SSA and HHS public information policy, plans and activities.

Dated: November 7, 1989.

John R. Dyer,

Deputy Commissioner for Management.

[FR Doc. 89–27683 Filed 11–24–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 CFR part 83.

OMB Approval number: 1076–0104.

Abstract: The regulations contain seven criteria to be addressed by American Indian groups seeking Federal acknowledgment. The process provides groups and opportunity to present their arguments for recognition.

Bureau Form Number: BIA–8304, BIA–8305, BIA–8306.

Frequency: One-time.

Description of Respondents: Unrecognized American Indian groups.

Estimated Completion Time: 2,629.50 hours.

Annual Responses: 4.

Annual Burden Hours: 10,518.

Bureau clearance officer: Cathie Martin 202–343–3577.

Dated: November 16, 1989.

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 89–27714 Filed 11–24–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–010–00–4212–13, CA 25889]

Realty Action: Exchange of Public and Private Lands in El Dorado County, California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land is being considered for acquisition by the United States via and exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note: Not all of the land identified below will be exchanged. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

Selected Public Land

El Dorado County

T. 9N., R. 9E., MDM
- Parcel—A (120ac.)
- Sec. 22: E½NW¼, NE¼SW¼
- Parcel B— (22.70 ac.)
- Sec. 29: lot 7 (cancelled M.S. 1453)
- Sec. 32: lot 3 (cancelled M.S. 1453)
- Parcel C (160ac.)

T. 9N., R. 11E., MDM
- Sec. 12: W½NW¼, N½SW¼

In exchange for Federal land listed above, the United States proposes to acquire one or more of the following properties through the American River Land Trust, 8913 Highway 49, Coloma, Ca. 95613.

Offered Private Land

El Dorado County

T. 11 N., R. 9E., MDM
- Sec. 21: that portion of the W½ lying west of the centerline of the South fork of the American River.
- Sec. 28: that portion of the N½NW¼ lying west of the centerline of the S.F. of the American River.
- Sec. 29: that portion of the SE¼, and the S½SW¼ lying southeast of the

centerline of the S.F. of the American River.
T. 11 N., R. 10 E., MDM
Sec 27: E½, E½W½, NW¼NW¼

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal land located on the South Fork of the American River that is valuable for public recreation.

The Federal lands which are also located in El Dorado County would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1980 (43 U.S.C. 945). Parcel B (former M.S. 1453) may include an additional reservation whereby the patent would issue subject to the valid existing rights of the following mining claims: CA MC 188658, CA MC 188659.

All necessary clearances including clearances for archaelology, rare plants and animals would be completed prior to any conveyance of title by the U.S.

The slected Federal land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the Federal Register.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, (916) 985-4474 or at the address below.

ADDRESS: For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the District Manager c/o Area Manager, Folsom Resource Area, 63 Natoma St., Folsom, Ca. 95630.

Dated: November 16, 1989.
D.K. Swickard,
Area Manager.
[FR Doc. 89-27715 Filed 11-24-89; 8:45 am]
BILLING CODE 4310-40-M

[OR 45444; OR-120-00-4212-13; GPO-060]

Exchange of Public Lands in Coos County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land, located on the North Spit of Coos Bay, Oregon is being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meidian, Oregon
T. 25 S., R. 13 W.
Sec. 18: Lot 7, E½NE¼NW¼, E½SW¼ NE¼NW¼, SE¼NW¼
Sec. 7: Lot 6, SE¼SE¼SW¼, portion Lot 5 lying northwest of Trans Pacific Parkway and southeast of existing effluent lagoon, portion Lot 7 and SE¼NE¼ lying south and east of effluent lagoon, portion lot 8 lying west of Trans Pacific Parkway

In exchange for all or a portion of these lands, the United States could acquire all or a portion of the following described lands from the exchange proponent:

Willamette Meridian, Oregon
T. 25 S., R. 13 W.
Sec. 18: Lot 4, NE¼SW¼, portion of accreted land adjacent to Lot 3
Sec. 19: Lot 4, portion of accreted land adjacent to Lot 4
T. 25 S., R. 14 W.
Sec. 24: Lot 4
Sec. 25: Lot 1
T. 29 S., R. 15 W.
Sec. 35: Lots 1, 2, SE¼SW¼

The exchange proponent, the Oregon International Port of Coos Bay, has submitted a written proposal concerning the land noted above indicating a public need for the federal lands for industrial expansion and development. The siting of a pulp mill is the intended use to be made of the federal lands. The private lands being considered could add important scenic quality, recreation and wildlife habitat values to adjoining Federal lands.

The final determination on disposal will await the completion of an appraisal, environmental analysis and other investigations and reports which will analyze potential impacts associated with the disposal of the federal lands and determine whether the exchange is in compliance with regulations, statutory laws, executive orders, and that the public interest will be well served by making this exchange.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

DATE: For a period of at least 60 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the Coos Bay District Manager at the address shown below. No particular form of comment is required. An "Open House" presentation of the proposal will be held at the Coos Bay District Office (address shown below) on Tuesday, December 5, 1989 at 2:00 p.m. and 7:00 p.m., all interested persons are encouraged to attend.

ADDRESS: Detailed information concerning this proposed exchange is available from the Coos Bay District Office, BLM, 1300 Airport Lane, North Bend, Oregon 97459.

FOR FURTHER INFORMATION CONTACT: Richard Popp or Thom Green, Coos Bay District Office, at (503) 756-0100.

Dated: November 14, 1989.
Cary A. Osterhaus,
Acting District Manager.
[FR Doc. 89-27716 Filed 11-24-89 8:45 am]
BILLING CODE 4310-33-M

[ID-942-09-4730-12]

Idaho: Filing of Plats of Survey

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., November 16, 1989.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, Mineral Survey No. 6 and Mineral Survey No. 11, and the subdivision of certain sections, T. 3 N., R. 17 E., Boise Meridian, Idaho, Group No. 673, was accepted November 2, 1989.

The plat representing the dependent resurvey of portions of the east boundary and subivisional lines, and subdivision of section 24, T. 9 S., R. 11 E., Boise Meridian, Idaho, Group No. 690, was accepted November 7, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of sections 18, 19, and 30, T. 9 S., R. 12 E., Boise Meridian, Idaho, Group No. 691, was accepted November 7, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 16, 1989.
Gary T. Oviatt,
Acting Chief, Cadastral Surveyor for Idaho.
[FR Doc. 89-27717 Filed 11-24-89; 8:45 am]
BILLING CODE 4310-GG-M

DEPARTMENT OF INTERIOR

[WY-930-90-4332-09]

Availability of Mineral Survey Reports

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of availability of seven mineral survey reports produced by the U.S. Geological Survey and Bureau of Mines on nine Bureau of Land Management Wilderness Study Areas (WSA's) in Wyoming. Announcement of a sixty-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94-579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain BLM WSA's to determine the mineral values, if any, that may be present. The reports are for the Medicine Lodge, Alkali Creek, and Trapper Creek WSA's in Big Horn County; the Bobcat Draw Badlands WSA in Big Horn and Washakie Counties; the Encampment River Canyon, Prospect Mountain WSA's in Carbon County; the Sweetwater Canyon WSA in Fremont County; the Honeycomb Buttes WSA in Fremont and Sweetwater Counties; and the Owl Creek WSA in Hot Springs County, Wyoming. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on these nine WSA's.

DATES: The public review of the seven mineral survey reports named in this Notice shall begin on November 27, 1989, and continue for sixty days (January 25, 1990).

ADDRESSES: All data and written comments should be directed to the State Director (WY-910), Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Copies of these reports must be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, Colorado 80255.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Wilderness Coordinator, (307) 772-2073, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

SUPPLEMENTAL INFORMATION: The seven mineral reports are available for review or purchase from the Geological Survey. When ordering, the bulletin number and name should be used. The price listed is that charged by the Books and Open-File Reports Section, U.S. Geological Survey, (303) 276-7476, and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Medicine Lodge, Alkali Creek, Trapper Creek WSA's
(U.S.G.S. 1756-A) $3.25; Big Horn County
Bobcat Draw Badlands WSA
(U.S.G.S. 1756-E) $3.25; Big Horn & Washakie Counties
Encampment River Canyon WSA
(U.S.G.S. 1757-F) $1.25; Carbon County
Prospect Mountain WSA
(U.S.G.S. 1757-E) $1.25; Carbon County
Sweetwater Canyon WSA
(U.S.G.S. 1757-D) $3.50; Fremont County
Honeycomb Buttes WSA
(U.S.G.S. 1757-B) $1.75; Fremont & Sweetwater Counties
Owl Creek WSA
(U.S.G.S. 1756-D) $1.50; Hot Springs County

The reports are also available for review in the offices of the BLM in Cheyenne, Rawlins, Rock Springs, and Worland, Wyoming. County libraries in Laramie County (Cheyenne), Big Horn County (Basin), Washakie County (Worland), Hot Springs County (Thermopolis), Sweetwater County (Green River), Fremont County (Lander) and Carbon County (Rawlins). Any new public comment information/data will be screened by the BLM. The Wyoming State Director may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. The Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of Interior by the BLM. The Secretary shall, in turn, make recommendations to the President, who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

Dated: November 15, 1989.
Ray Brubaker,
State Director, Wyoming.
[FR Doc. 89-27594 Filed 11-24-89; 8:45 am]
BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Assessment (EA); Bear River Migratory Bird Refuge, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary for preparation of a development and management plan and related environmental assessment (EA) for the Bear River Migratory Bird Refuge near Brigham City, Box Elder County, Utah. The development and management plan and related EA will address long-term wildlife management objectives, public use, new structural developments, water management, and additional land acquisition. The EA will evaluate alternatives and disclose environmental impacts of the plan. This notice is prepared as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EA. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 27, 1989. Notices will be provided in local news media for any scheduled public meetings.

ADDRESS: Written comments should be addressed to: Galen Buterbaugh, Regional Director, Region 6, U.S. Fish and Wildlife Service (RW), P.O. Box 25486, DFC, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Al Trout, Refuge Manager, Bear River Migratory Bird Refuge, 862 South Main, Suite 9, Brigham City, Utah 84302. Telephone: (801) 723-5887.

SUPPLEMENTARY INFORMATION: The Service and Department of the Interior, propose to prepare a development and management plan and associated EA for the Bear River Migratory Bird Refuge near Brigham City, Utah. The plan will establish wildlife and wetland management objectives, wetland preservation and public use objectives, identify needs for structural developments, water management development, educational, public use development, and wetland habitat acquisition. The EA will evaluate the alternatives and disclose environmental impacts of the plan. The Service has identified the concept of a $23 million restoration, development, and land acquisition plan. About 30,000 acres are being considered for addition to the refuge. Fee and easement acquisition will be considered.

The Service is initiating this action subsequent to major flood damage caused by the rise of the Great Salt Lake. Many structural developments at the refuge were severely damaged or destroyed by the flood. Wetlands of

international significance to millions of shorebirds, waterfowl, and marsh birds are beginning to recover from the flood. The Service is now reevaluating the purposes of the existing refuge and the value of wetlands adjacent to the refuge to establish a long-term plan for development, management, and protection of lands at the Bear River delta.

The primary identified alternatives are:

(1) *No Action:* The Service would manage the existing refuge for migratory birds and restore only existing management structures. No land acquisition would occur.

(2) *Abandonment:* The Service would abandon the refuge. This may include management by other entities.

(3) *Enhanced Management for Migratory Birds:* This alternative would focus on the continued management emphasis for migratory waterfowl, shorebirds, and marsh birds with only limited management objectives for public uses and wetland ecosystem values. New development will focus on development within existing refuge. No land acquisition would occur.

(4) *Enhanced Management for Migratory, Birds, Wetland Ecosystem and Public Use Values:* This alternative would broaden management objectives beyond migratory birds where possible. Public uses such as wildlife observation, education, interpretation, and hunting would be more common and receive management emphasis along with migratory birds. This alternative includes land acquisition for multiple resource values. Acquisition could include fee and easement.

The concept of acquiring additional land near Bear River Refuge was identified in the 1970's by the Utah Division of Wildlife Resources and the Service. The Service considered an attempt to acquire one ownership in the 1970's but was not successful. Management emphasis of the existing refuge and adjacent land has not been methodically evaluated since the Refuge establishment in 1928.

Major impacts of the development, management, and acquisition alternatives could be:

- Increased protection of wetland and wildlife resources.
- Increased access and use by people.
- Loss of waterfowl and migratory bird habitat to public uses and developments.
- Increased disturbance of waterfowl and migratory birds from increased public uses.
- Competition with agriculture and municipal interest for water.
- Increased economic stimulus to local economy with public uses and development.
- More protection of wetland ecosystem values.
- Loss of agriculture production with land acquisition.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA, as amended (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), and other appropriate Federal regulations, and Service procedures for compliance with those regulations.

We expect the draft plan and EA to be available to the public by April 1990.

Dated: November 13, 1989

Galen Buterbaugh,

Regional Director.

[FR Doc. 89–27617 Filed 11–24–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

November 20, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Guam Visa Waiver Agreement.

(2) I–760. Inspections Division, Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit, non-profit institutions, small businesses or organizations. Public Law 99–396 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into and stay on Guam as a visitor under certain conditions. This form is the agreement between the carrier of the alien and the United States. Application by the alien is made on another form, the I–736.
(5) 5 respondents at one hour per response.
(6) 5 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Temporary Replacement Card.

(2) I–695. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The Immigration Reform and Control Act of 1986, Public Law 99–603, provides for the procedures to be used for the application for replacement of form I–688, Temporary Resident Card.
(5) 195,000 estimated annual respondents at .166 hours per response.
(6) 32,370 estimated annual public burden hours.
(7) Not applicable under 3504(h).,

(1) Notice of Appeal.

(2) I–694. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used in considering appeals of denials of temporary and permanent residence status by legislation applicants and special agricultural workers.
(5) 13,000 estimated annual rsponses at .5 hours per response.
(6) 6,500 estimated annual public burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89–27718 Filed 11–24–89; 8:45 am]

BILLING CODE 4410-10-M

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has granted a further extension of the date for submitting written comments and requests for a hearing concerning the application by the Las Vegas Sun and the Las Vegas Review-Journal for approval of a joint operating arrangement (JOA) under the Newspaper Preservation Act, 15 U.S.C. 1801, *et seq.*

The original notice that the two newspapers had filed an application appeared in 54 FR 33984 on August 17, 1989. The deadline for public comments and/or requests for a hearing, as well as for submission by the Antitrust Division of a report responding to the JOA, is normally 30 days from that date. However, in an order signed on October 25, 1989, the Attorney General extended the public comment period and the time for submission of the Antitrust Division's report to November 20, 1989.

On November 17, 1989, the Attorney General granted an additional extension of the reporting and public comment deadline, until December 4, 1989. Interested persons may now file their comments or requests for a hearing by mailing or delivering five (5) copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, by that date.

Any replies to comments or hearing requests filed in accordance with the December 4, 1989 deadline must be made within 30 days after the filing of such comment or request, or by January 3, 1990.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202–633–3452.

Dated: November 20, 1989.

Harry J. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89–27662 Filed 11–24–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–23,574]

Elco Dress Co., Inc., Holyoke, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 6, 1989 in response to a worker petition which was filed on November 6, 1989 by the International Ladies' Garment Workers Union on behalf of workers at Elco Dress Company, Incorporated, Holyoke, Massachusetts.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued [TA–W–23,468]. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 17th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–27702 Filed 11–24–89; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA–W–23,557]

North American Textile, Inc., Covington, VA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 1989 in response to a worker petition which was received on October 30, 1989 on behalf of workers at North American Textile, Inc., Covington, Virginia. The workers produced window valances.

The investigation revealed that North American Textile, Inc., Covington, Virginia was in operation from June 26, 1989 through August 16, 1989. Since North American Textile, Inc. was in business less than two months, employees of the firm would not able to qualify for benefits under the Trade Act of 1974. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 17th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–27703 Filed 11–24–89; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a grant on a noncompetitive basis to the Manpower Demonstration Research Corporation (MDRC) for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by December 15, 1989, and will be funded for two years. Submit comments by 4:45 p.m. (Eastern Time), on December 12, 1989.

ADDRESS: Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams; Reference FR–DAA–101.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Manpower Demonstration Research Corporation. The proposed grantee's follow-up analysis was extended from two years to four years. This extension will make it possible to have a meaningful evaluation of the effect of skills trainings and basic education which appears over a long period of time; will provide for valuable data for cost/benefit analysis; and will provide timely information on the likely outcome of the proposed changes in the JTPA programs. Funds for this activity are authorized by the Job Training Partnership Act (JTPA), as amended, Title IV-Federally Administered Programs. The proposed funding is approximately $250,000 and the project will be completed in two years.

Signed at Washington, DC, on November 17, 1989.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 89-27700 Filed 11-24-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a grant on a noncompetitive basis to the National Governor's Association for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by December 20, 1989, and will be funded for two years. Submit comments by 4:45 p.m. (Eastern Time), on December 12, 1989.

ADDRESS: Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Gwendolyn Simms; Reference FR-DAA-101.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the National Governor's Association. This project is comprised of two distinct parts with two separate purposes:

(1) *Coordination/Linkages*—grantee will provide technical assistance to States/substate service providers on successful efforts to coordinate/link public and private sector programs serving dislocated workers; and (2)

Financial Resource Management—grantee will provide technical assistance and training to program administrators and operators on programmatic aspects of financial resources management for programs under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) provision of the Job Training Partnership Act (JTPA). Funding for this activity is authorized by the Job Training Partnership Act (JTPA), as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $475,000 for a period of twelve (12) months.

Signed at Washington, DC on November 17, 1989.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 89-27701 Filed 11-24-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. I), will convene on January 10, 1990, at 8:30 A.M. at the Holiday Inn Hotel, (Ballston) Route I-66 & Glebe Road, 4610 North Fairfax Drive, Arlington, VA 22203. This meeting is open to the public. The meeting will adjourn on January 11, 1990, at approximately 4:00 P.M. This meeting was originally scheduled for October 11 and 12, 1989, but was rescheduled to allow members more time to review the available materials. The agenda is as follows:

I. Call to order.
II. Review transcript of June 6-7, 1989 meeting.
III. Old Business. Discussion of the following standards:
(a) Confined Space Entry on Vessels and in the Shipyard.
(b) Lockout/Tagout Aboard Vessels and in the Shipyard including 29 CFR part 1915, subpart J, Ship's Machinery and Piping System.
(c) 29 CFR part 1915, subpart F, General Working Conditions.
(d) Working committee report to full committee on suggested revision to 29 CFR part 1915, subpart G, Material Handling, adding §§ 1910.179, 1910.180, and ANSI standards.
(e) 29 CFR part 1915, Electrical Standards Revisions.
IV. New Business. Discussion of the following standards, as time permits.
(a) 29 CFR part 1915, subpart P, Fire Protection.
(b) 29 CFR part 1915, subpart Q, Hazardous Materials, covering §§ 1915.211 to 1915.221.
(c) 29 CFR part 1915, subpart R, Commercial Diving, covering §§ 1915.231 to 1915.244.
(d) 29 CFR part 1915, subpart T, Special Industries, covering §§ 1915.261 to 1915.263.
(e) 29 CFR part 1915, subpart Z, Toxic and Hazardous Substances, covering §§ 1915.1000 to 1915.1001.

The Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, December 29, 1989. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 523-8617.

Signed at Washington, DC this 20th day of November, 1989.

G.F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 89-27641 Filed 11-24-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 13, 1989, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on November 17, 1989:

Jonathan Berg	John Fanshawe
Mark Kurz	David Baron
Malcolm Browne	Alan Hall
Michael Lemonick	

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89-27618 Filed 11-24-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Information, Robotics, and Intelligent Systems Advisory Committee

In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information, Robotics, and Intelligent Systems

Date and Time: December 4-5, 1989, 8:30 to 5:30 daily

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: All Open

Contact Person: Dr. Y.T. Chien, Division Director, Division of Information, Robotics, and Intelligent Systems, Room 316, National Science Foundation, 1800 G Sreet, NW., Washington, DC 20550. Telephone: (202) 357-9572. Anyone planning to attend this meeting should notify Dr. Chien no later than November 29, 1989.

Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.

Agenda:

December 4—Overview of the Division and Programs; (1) Discussion on International Cooperative Programs; (2) Discussion on Reserach trends/opportunities

December 5—Discussion on Strategic Issues and Divisional Initiatives: (1) Committee Business

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-27619 Filed 11-24-89; 8:45 am]

BILLING CODE 7555-01-M

Division of Microelectronic Information Processing Systems Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Division of Microelectronic Information Processing Systems Advisory Committee

Date and Time: December 12, 1989, 8:30 a.m.—5:30 p.m. December 13, 1989, 8:30 a.m.—3:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Conference Room 543

Type of Meeting: Open

Contact Person: John R. Lehmann, Deputy Division Director, Microelectronic Information Processing Systems, National Science Foundation, 202/357-7853.

Minutes: May be obtained from contact person listed above.

Purpose of Committee: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.

Agenda: Overview of the Division since the last meeting. Continuation of strategic planning for initiatives.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-27620 Filed 11-24-89; 8:45 am]

BILLING CODE 7555-01-M

Science and Technology Research Centers Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Science and Technology Research Centers Panel of the Advisory Committee for Science & Technology Centers.

Date and Time: December 14-15, 1989, 8:30 a.m. to 5:00 pm.

Place: Rooms 642, 643, 1242, 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: William C. Harris, Director, Office of Science & Technology Centers Development (202) 357-9808, Room 533, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from Contact Person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for Science and Technology Research Centers.

Agenda: Review and evaluation of Science & Technology Research Centers Proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-27621 Filed 11-24-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG—0090, Vol. 12, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1989. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

For this reporting period, there was one abnormal occurrence at nuclear power plants licensed to operate, involving significant deficiencies in management controls at Surry Nuclear Power Station. There was one abnormal occurrence under other NRC—issued licenses; the event involved a medical therapy misadministration. One other abnormal occurrence, involving industrial radiography overexposures, was reported by an Agreement State (Texas).

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG—0090, Vol. 12, No. 2 (or any of the previous reports in this series), may be purchased form the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG—0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased form the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 17th day of November 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-27612 Filed 11-24-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste Nuclear Regulatory Commission; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 15th meeting on Wednesday, December 20, 1989, Room P-110, 7920 Norfolk Avenue,

Bethesda, MD, 8:30 a.m.—5:00 p.m. This meeting will be open to public attendance.

The purpose of the meeting will be to review and discuss the NRC staff's reevaluation of the U.S. Environmental Protection Agency's high-level waste disposal standards development, prepare a report to the Nuclear Regulatory Commission on ACNW Activities for the upcoming four months, and the Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: November 17, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–27613 Filed 11–24–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 114 to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to provide up-to-date pressure/temperature limits for the operation of the reactor coolant system during heatup, cooldown, criticality and hydrotest.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 23, 1989 (54 FR 3167). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (54 FR 47277) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 2, 1988 (2) Amendment No. 114 to License No. DPR–36 and (3) the Commission's related Safety Evaluation and Environmental Assessement.

All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 17th day of November, 1989.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Project Manager, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27695 Filed 11–24–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request for Public Service Electric and Gas Company (the licensee) to withdraw a portion of its March 23, 1989 application for proposed amendments to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The Amendment requested approval of deletion of the table in the Unit 2 Technical Specifications that listed containment penetration overcurrent protection devices. Requirements were to be added to the Unit 1 and Unit 2 Technical Specifications for testing and control of these devices, including fuses. By letters dated August 25, 1989 and September 22, 1989, the licensee requested withdrawal of that portion of the March 23, 1989 application associated with fuses.

The Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which was published in the **Federal Register** on May 31, 1989 (54 FR 23323).

For further details with respect to this action, see the application for amendment dated March 23, 1989, supplemental letter dated April 14, 1989, and the licensee's letters dated August 25, 1989 and September 22, 1989 that withdrew the portion applicable to fuses. The above documents are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 16th day of November 1989.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27696 Filed 11–24–89; 8:45 am]

BILLING CODE 7590–01–M

Office of Management and Budget

Availability of Summary of Comments on Second Advance Notice of Further Policy Development on Dissemination of Information

AGENCY: Office of Management and Budget.

ACTION: Solicitation of public comment.

SUMMARY: On June 15, 1989, the Office of Management and Budget (OMB) published a notice soliciting further public comment regarding proposed changes to OMB Circular No. A–130, Management of Federal Information Resources, and the development of policy concerning the dissemination of information by executive branch agencies. This notice announces that members of the public may obtain a copy of OMB's summary of comments on the notice of June 15, 1989, from the address below.

For Copies of the Summary Contact: Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–4814.

James M. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89–27719 Filed 11–24–89; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27449; File No. SR–GSCC–89–12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Amending Rule 7

November 17, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1989, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's Rules and Procedures as per Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(1) To date, GSCC has not made eligible for netting any Treasury Bills ("Bills"), largely because the volume of regular way trading in Bills is relatively small. While it plans to do so in the near future, GSCC proposes, in order to be able to provide a more effective netting operation for members, to change the comparison operation to facilitate the netting of forward-settling trades (such as when-issued trades) in Bills.

Currently, data on forward-settling trades do not pend in the system past the processing cycle during which the data are compared. Thus, forward-settling trades that are compared prior to the processing cycle before settlement day for the underlying transactions do not go into the net, and must be settled outside GSCC's Netting System.

Under the proposal, data on forward-settling Bill trades would not be dropped from the system upon comparison but, rather, would pend in the system until the processing cycle before the settlement date for the underlying securities, when such data would go into the net.

No changes to the netting operation are proposed. Novation of obligations would continue to occur only during the night before the settlement date. However, GSCC recognizes that netting forward-settling trades potentially poses multi-day market exposure to GSCC at the time of settlement because GSCC does not margin such trades during the period in which they are pending in the Comparison System. This concern would be addressed by GSCC in several ways.

First, the only securities subject to the proposed enhanced comparison feature are Treasury Bills, which have relatively limited price volatility. These securities (as well as all other securities that are eligible for netting) currently are margined on a "gross" position basis, without consideration of off-setting positions.

Also, GSCC would monitor the daily price movement of each Bill that is eligible for the net. If the price movement of a particular security breaks certain parameters, which would be set in consultation with the Membershp and Standards Committee with the help of historical price volatility data, GSCC could call for additional margin from members.

Moreover, GSCC would monitor, on a daily basis, member positions in forward-settling Bills; should a particular member's net settlement positions in forward-settling Bills reach a level that is of concern to GSCC, it would have the ability to request additional margin frm the member and/or make such member's trades in those securities ineligible for the net.

Furthermore, should a member become insolvent during the comparison period, that member's trades in forward-settling Bills could be made ineligible for the net.

Implementation of this proposal will provide GSCC members with the usual risk reduction and cost savings benefits enjoyed by them when additional securities are made eligible for netting. In addition, various other benefits will be realized. First, the prospect of having their forward-settling Bill trades netted will provide incentive for members to submit more Bill trades for comparison, thus increasing the comparison rate for such securities. Also, this would provide GSCC with experience and data that will be helpful in devising a sound approach to the netting of forward-settling Notes and Bonds. Moreover, in general, greater terminal usage by members would be encouraged.

(b) The proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of the 1934 Act, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

BEST COPY AVAILABLE

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impse a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified on the rule filing, and comments will be solicited, by an Important Notice. GSCC will notfy the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons at invited to submit written data, views and agruments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-GSCC-89-12 and should be submitted by December 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Exhibit A

Additional language is italicized.
Deleted language is in [brackets].

Rule 7—Comparison System

Section 1—General

A Member *of the Comparison System* may submit to the Corporation for comparison trade data on any transaction calling for delivery of [Cleared] *Eligible* Securities between it and another [person] *Member of the Comparison System.* The Corporation will, in accordance with this Rule and the Procedures, handle the comparison of transactions reflected in trade data so submitted to it.

Section 2—Responsibilities of Members

Trade data submitted to the Corporation by a Member pursuant to Section 1 of this Rule shall be submitted in the form and manner, and in accordance with the time schedules, prescribed by, or pursuant to, this Rule or the Procedures.

The name of a Member printed, stamped or written on any form, document or other item issued by him pursuant to this Rule or the Procedures shall be deemed to have been adopted by him as his signature and shall be valid and binding upon him in all respects as though he had manually affixed his signature to such form, document or other item.

Each Member shall promptly check each document he receives from the Corporation pursuant to this Rule or the Procedures.

Any trade data submitted to the Corporation by a Member pursuant to Section 1 of this Rule which is not compared by the Corporation, or any such item compared by the Corporation which is subsequently deleted and not later compared, shall be adjusted directly between the parties.

Section 3—Binding Nature of Comparisons

Comparisons generated by the Corporation shall constitute the sole comparison for all trades in [Cleared] *Eligible* Securities for which Members have submitted data and which the Corporation has identified as compared trades. Each comparison generated by the Corporation as to any such correctly compared trade shall evidence a valid, binding and enforceable contract between the Members in respect of such trade. Any confirmations, comparison or other documentary evidence of any such trade, other than the comparison generated by the Corporation, shall not affect the existence or terms and conditions of such a valid, binding and enforceable contract between the Members in respect to such trade.

Section 4—Deletion of Trade Data

(a) Trade data submitted to the Corporation by a Member will pend in the Comparison System until the data is either compared or deleted, *except that data on forward-settling Treasury Bill trades will pend in the Comparison System until the processing cycle before the settlement day for the underlying securities.*

(b) Trade data submitted to the Corporation by a Member on transactions other than when-issued transactions that are not compared will be deleted from the Comparison System by the end of the processing cycle before the settlement day for the underlying securities.

(c) Trade data submitted to the Corporation by a Member on when-issued transactions entered into prior to auction date that are not compared will be deleted from the Comparison System by the end of the processing cycle before the auction date for the underlying securities. If the data have been compared, such data must be resubmitted by the Member parties to the transaction after the auction for comparison of final price and settlement money information. Resubmitted data, and data on when-issued transactions either not previously compared or not previously submitted, that is submitted on or after the auction date will be deleted from the Comparison System if not compared by the settlement date for the underlying securities.

Section 5—Maximum Period for the Pending of Data

Notwithstanding the above, the Corporation may establish in its Rules or Procedures alternative maximum time periods for the pending of trade data prior to deletion.

Section 6—Comparison of As-Of Transactions

Trade data on transactions that have been settled may be submitted for comparison. Such data will pend in the Comparison System until compared or deleted.

Section 7—Deletion of Data by One Party

A Member that has submitted to the Corporation trade data that has not been compared may have such data deleted from the Comparison System upon providing appropriate instruction to the Corporation. Trade data that has been compared may be deleted upon receipt by the Corporation of appropriate instructions from both parties to the underlying transaction. Any trade data that is deleted from the Comparison System may be resubmitted at the later date.

Section 8—Reports to Reflect Deletions

Reports made available by the Corporation to Members delineating trade data that has been submitted for comparison shall also reflect any deletions of such data.

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II. Trade Comparison Service
A. Introduction
B. Regular Way and Forward Settling Transactions
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D. Forward—Settling Treasury Bill Transactions
[D] *E.* As-of Transactions.
* * * * * *
B. Regular Way (Next-Day Settlement) and Forward Settling Transactions
* * * * * *
2. *Resolution of Uncompared Trades*

(a) Pending compare data (see subparagraph 1(c) above) indicate trade data as submitted by the contra party. A Member will need to enter all data elements with respect to the trade to obtain a comparison against a pending compared trade.

(b) Members may delete uncompared trade data; Members also may correct uncompared trades by correcting trade input to resolve conflicts with data entered by contra parties.

(c) Compared trades cannot be modified by a Member if the modification would cause the trade to become uncompared. Compared trades can be canceled only by the mutual consent of both parties to the trade.

(d) All uncompared trade data automatically will be deleted at the earliest of the following: (i) the processing cycle during which the data are compared; (ii) the processing cycle before settlement day for the underlying securities; or (iii) the processing cycle during which the data reach the System maximum pend time as set by the Corporation.

C. When-Issued Transactions

Trade data for when-issued trades executed on a yield basis is submitted at the same time and in the same manner as specified in paragraph 1 of subsection B. The comparison operation is conducted in the same manner as comparison of regular-way transactions. Subsequent to the auction, Members resubmit the transaction for comparison on a price basis. This subsequent comparison also is conducted in the same manner as comparison of regular-way transactions. Trade data on when-issued transactions submitted on or before the auction date will be deleted by the earlier of the processing cycle during which the data are compared or the processing cycle after the auction date. Trade data on when-issued transactions submitted after the auction date will be deleted during the earlier of the processing cycle during which the data are compared or the processing cycle before the issue date for the underlying securities.

D. Forward-Settling Treasury Bill Transactions

Data on forward-settling Treasury Bill trades will pend in the Comparison System until the processing cycle before the settlement day for the underlying securities, unless deleted as provided for in Rule 7 or in these Procedures other than because of the comparison of such data.

[D] E. As-Of Transactions

Trade data submitted on or after the trades' settlement date may be submitted in the same manner as specified in Paragraph 1 of subsection B. Such trade data will be deleted during the earliest of the following: (i) the processing cycle during which the data are compared; (ii) the processing cycle before the underlying securities reach their maturity date; or (iii) the processing cycle during which the data reach the System maximum pend time as set by the Corporation.

[FR Doc. 89-27722 Filed 11-24-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 10:00 a.m. on Friday, December 8, 1989, in Room 1406 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session wil not be open to the public; the afternoon session (2:00 p.m. to 3:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the joint United States/Soviet initiative to expand the compulsory jurisdiction of the International Court of Justice and Iran's case against the United States for the downing of Iran Air 655. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to December 7, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-6771) of their name, affiliation, address and telephone number in order to arrange admittance.

Dated: November 7, 1989.
Bruce C. Rashkow,
Executive Director.
[FR Doc. 89-27721 Filed 11-24-89; 8:45 am]
BILLING CODE 4710-26-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-11-43; Docket 44844]

Application of Brian Thompson Air Service For a Transfer of Certificate Authority to Koyukon Air, Inc. d/b/a Koyukon Airlines

AGENCY: Office of the Secretary, DOT.
ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Koyukon fit and approving the transfer of the domestic section 401 certificate issued to Brian Thompson Air Service to Koyukon Air, Inc. d/b/a Koyukon Airlines, a newly formed corporation.

DATES: Persons wishing to file objections should do so no later than December 5, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 44844 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: November 20, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–27681 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applicantions for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week ended November 17, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46607

Date filed: November 16, 1989

Due Date for Answers, Conforming Applications, or Motion of Modify Scope: December 14, 1989

Description: Application of Aviation Asset Acquisition, Inc. pursuant to section 401 and 418, of the Act and subpart Q of the regulations requests that before December 1, 1989 it be granted and/or transferred all of the authority held by OLS (Primark Corporation) so that AAA can continue to provide all of the services previously held and operated by the predecessor company.

Docket Number: 46610

Date filed: November 17, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 15, 1989

Description: Application of Aerovias, S.A. pursuant to section 402 of the Act and subpart Q of the regulations requests amendment of its foreign air carrier permit to engage in foreign transportation of persons, property and mail between Guatemala City, on the one hand and Houston, Tx, on the other.

Docket Number: 46615

Date filed: November 17, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 15, 1989

Description: Joint Application of AMR Eagle, Inc., and Executive Air Charter, Inc. pursuant to section 401(h) of the Act and subpart Q of the Regulations, for approval of the transfer of Executive Air's certificate for Route 537 following acquisition of Executive Air Charter by AMR Eagle.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–27680 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 89–098]

Public Hearing; Proposed Widening of Newport Boulevard Bridge across Newport Bay, Mile 3.3, at Newport Beach, CA

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, Eleventh Coast Guard District, at Newport Beach, California. The purpose of the hearing is to consider an application by the State of California and the city of Newport Beach to widen the Newport Boulevard Bridge across the Newport Bay, mile 3.3, at Newport Beach, California.

All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed project on navigation and the human environment.

DATE: January 23, 1990, from 1 p.m. to 4 p.m. and from 7 p.m., until all speakers in attendance wishing to comment have provided comments.

ADDRESS: City of Newport Beach, Council Chambers, 3300 West Newport Boulevard, Newport Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry P. Olmes, Eleventh Coast Guard District (oan-br), building 10, room 214, Coast Guard Island, Alameda, California 94501–5100, telephone (415) 437–3514.

SUPPLEMENTARY INFORMATION: The purpose of the proposed project is to widen the bridge by 29 feet between 32nd Street and Pacific Coast Highway in the city of Newport Beach. The proposed widening will increase the width of the bridge from the existing 87 feet to 116 feet. Presently, the bridge provides 8.0 feet of vertical clearance above mean high water and 40.6 feet horizontal clearance between pier faces. These navigational clearances will not be changed by the proposed bridge widening. The Federal Highway Administration, as lead federal agency, has approved an Environmental Impact Statement (EIS) for this project on July 8, 1985, and a reevaluation of the EIS on June 29, 1989. Copies of the EIS and the reevaluation are available for review at the office of the Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, Alameda, California 94501–5100, from 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

The hearing will be informal. Representatives from the Coast Guard will preside at the hearing, make a brief opening statement and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify Mr. Jerry P. Olmes, at the above address by January 12, 1990. Such notification should include the appropriate time required to make the presentation. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated each person. Any limitation of time allocated will be announced at the beginning of the hearing. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or to the Commander, Eleventh Coast Guard District, through February 9, 1990. A transcript of the hearing, will be available for public review at the office of the Eleventh Coast guard District approximately 30 days after the hearing date.

All comments, whether received in writing or presented orally at the public hearing, will be fully considered before final agency action is taken on the permit application

Authority: Sec. 502, 60 Stat. 847, as amended; 33 U.S.C. 525; 49 U.S.C. 1655(g)(c); 49 CFR 1.45(c).

Dated: November 20, 1989.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 89–27656 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

Petitions for Exemption or Waiver

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

Connecticut Central Railroad (CCR)

FRA Waiver Petition Docket No. HS–89–9

The CCR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CCR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CCR provides service over 32 miles of trackage between New Haven and Middleton, with branch lines extending the operation to Cromwell and Portland, all within the state of Connecticut.

The petitioner indicates that granting the exemption is in the public interest and will not adversely effect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Delaware Railroad (M&D)

FRA Waiver Petition Docket No. HS–89–10

The M&D seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The M&D states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The M&D provides service over 119 miles of trackage on the Delmarva Peninsula, which is located on the eastern shore of the states of Delaware, Maryland and Virginia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely effect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

AT&L Railroad Company (AT&L)

FRA Waiver Petition Docket No. HS–89–11

The AT&L seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AT&L states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The AT&L provides switching service between Watonga and El Reno, Oklahoma, a distance of 39.7 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely effect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

City of Prineville Railway (COP)

FRA Waiver Petition Docket No. HS–89–12

The COP seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The COP states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The COP provides service over 25 miles of trackage from Prineville to Prineville Junction, Oregon, where it connects with both Burlington Northern and Union Pacific Railroads.

The petitioner indicates that granting the exemption is in the public interest and will not adversely effect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this waiver.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA, in writting, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–89–12) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before January 12, 1990 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on November 16, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–27679 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–06–M

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before January 12, 1990 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

The Housatonic Rail Road Company (Waiver Petition Docket Number RSGM–89–7)

The Housatonic Rail Road Company (HRR) seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The petitioner states that the locomotive will operate approximately two days per week over 34.16 miles of track between Canaan and New Milford, Connecticut. HHR indicates that the area of operation is mostly wooded and includes four small towns. The petitioner states that vandalism in this location has not been a problem and therefore the application of certified glazing would not enhance either railroad or public safety.

New Jersey Transit Rail Operations (Waiver Petition Docket Number RSGM–89–9)

The New Jersey Transit Rail Operations (NJTRO) seeks a temporary waiver of compliance from the provisions of the Safety Glazing Standards (49 CFR part 223) for up to 81 Arrow III passenger cars. The petitioner states that all cars are equipped with FRA Type I glazing material in the end facing engineman's locations and with FRA type II material in the collision post and fireman's windows. The temporary waiver is requested through February 1990, to allow time to complete an ongoing glazing retrofit program.

Tennessee Southern Railroad (Waiver Petition Docket Number RSGM–89–10)

The Tennessee Southern Railroad (TSRR) seeks a permanent waiver of compliance from the provisions of the Safety Glazing Standards (49 CFR part 223) for six locomotives. The TSRR operates two lines, one between Columbia and Mount Pleasant, Tennessee, a distance of approximately 34 miles; and the other between Columbia, Tennessee and Florence, Alabama, a distance of approximately 80 miles. The areas of operation include the city limits of Columbia, Mount Pleasant, Pulaski and Lawrenceburg, Tennessee; several rural communities, through sparsely populated areas; and the city limits of Florence, Alabama. The maximum track speed is 20 miles per hour and the service schedule is weekly, Monday through Friday. The TSRR began operations in February 1989 and states that they operate with a brush free environment.

Parr Terminal Railroad (Waiver Petition Docket Number (RSGM–89–11)

The Parr Terminal Railroad seeks a permanent waiver of complicance with the provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive, PRT 1402. The locomotive, used primarily for switching service, operates over 1.9 miles of track in the confines of the Levin-Richmond Terminal Corporation, Richmond, California, with occasional switching to interchange tracks .25 mile outside property boundaries. The locomotive averages five yard movements per day and movements to interchange tracks approximately three times per week. Petitioner records indicate no accident/incident reports concerning vandalism.

The Quad-City Rocket, Inc. and the Iowa Interstate Railroad Ltd. (Waiver Petition Docket Number RSGM–89–12)

The Quad-City Rocket, Inc. and the Iowa Interstate Railroad Ltd. seek a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for five passenger cars. The passenger cars operate as part of an excursion dinner train over approximately 26 miles of the Iowa Interstate Railroad between Rock Island, Illinois and Wilton, Iowa.

The Denver Railway Car Company and the Galveston, Houston and Henderson Railroad Company (Waiver Petition Docket Number RSGM–89–13)

The Denver Railway Car Company and the Galveston, Houston and Henderson Railroad Company seek a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one passenger car. The car will operate in excursion service over approximately 56 miles of track on the Harrisburg and Houston Railroad, located between Houston and Galveston, Texas. The temporary waiver is requested for a period of two years to allow time to complete the rebuilding of cars scheduled to be utilized in this excursion service.

Napa Valley Railroad Company (Waiver Petition Docket Number RSGM–89–15)

The Napa Valley Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for nine passenger cars and four locomotives. The equipment operates in the Napa Valley Wine Train over approximately 21.5 miles of track between Napa and St. Helena, California. The maximum authorized speed is 30 miles per hour. The petitioner indicates that since they began operations in 1986, there have been no reported accidents or broken glazing due to acts of vandalism. The carrier, therefore, feels that the application of certified glazing material would be an unnecessary financial burden.

Ogeechee Railway Company (Waiver Petition Docket Number RSGM–89–16)

The Ogeechee Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The petitioner, a newly formed short line railroad, plans to operate this equipment over two sections of track totaling approximately 43 miles. One section extends from Dover to Metter, Georgia, approximately 21 miles. The second section includes approximately 22 miles of track between Sylvania and Ardmore, Georgia. Both operating areas are primarily within sparsely populated rural regions, occasionally encountering small communities. Maximum operating speeds will be restricted to 20 miles per hour. There is no history of vandalism in either operating area. The carrier states that the installation of certified glazing in this equipment would present a substantial burden to its operating budget.

Youngstown and Southern Railway Company (Waiver Petition Docket Number RSGM–89–17)

The Youngstown and Southern Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The petitioner states that the total length of the railroad is 34 miles and that the locomotive operates mainly over a 10-mile section located between North Lima and Youngstown, Ohio. The area of operation is light industrial, commercial and rural. The carrier operates an average of two freight trains per week at a maximum speed of 10 miles per hour. The petitioner states that during the past 10 years, there have been no reported incidents of rock throwing or damage to locomotives due to vandalism. The carrier requests this waiver based on its financial condition and frequency of operation.

Eureka Southern Railroad Company, Inc. (Waiver Petition Docket Number RSGM–89–18)

The Eureka Southern Railroad Company, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for 15 passenger cars. The petitioner, a short line railroad, operates approximately 142 miles of track through a rural area between Willits and Eureka, California. There are approximately 300 public and 200 private crossings at grade. The equipment is operated in seasonal passenger service between May and October each year. The maximum authorized speed is 40 miles per hour. During train operations over the 5 years, there have been no reported accidents or broken glazing due to acts of vandalism. Vandalism has occurred to the cars during winter months while stored at Willits, California.

Issued in Washington, DC on November 16, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 27678 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–06–M

[BS–Ap–No. 2872]

Public Hearing; Union Pacific Railroad Co.

The Union Pacific Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of 57 automatic signals from the automatic block signal system between Page and Fish Lake, Washington. This proceeding is identified as FRA Block Signal Application Number 2872.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on January 24, 1990, in Room 3 at Great Northwest Federal Savings and Loan located at North 222 Wall Street in Spokane, Washington.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on November 16, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–27677 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. IP89–04; Notice 2]

Denial of Petition for Determination of Inconsequential Noncompliance; Union City Body Co., Inc.

This notice denies the petition by Union City Body Company, Inc. (Union City) of Union City, Indiana, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the petition was that noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petiton was published on July 24, 1989, and an opportunity afforded for comment (54 FR 30814).

Standard No. 101 requires that the symbol for a combined windshield washing/wiping control be illuminated. Union City produced 447 X–950 walk-in vans from March 1988 through May 1989, that did not have illuminated windshield wash/wipe controls. Union City supported its petition for inconsequential noncompliance with the following:

(1) The Union City Body Company always strives to be in compliance with the regulations.

(2) The wash/wipe control contained the ISO symbol.

(3) These vehicles are driven by professional route drivers who are familiar with the controls of their vehicle.

(4) The number of controls in the instrument panel area is minimized to reduce confusion.

(5) The vehicles are sold primarily for the [sic] use in the franchised mobile tool business. Most vehicles retain the same ownership through the vehicle life.

No comments were received on the petition.

The purpose of the illumination requirements is to minimize the time a vehicle operator is diverted from the primary task of safe operation of the vehicle. If illumination is absent from the identification of a control, the time that a driver shifts attention from the road may be increased. The agency does not give much weight to the argument that only experienced drivers will operate the vehicles. Initially, the vehicles themselves will be new to experienced drivers, and in the course of the life of the vehicles, new drivers will be hired to operate them. Accordingly, the agency has concluded that the petitioner has not met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: November 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–27657 Filed 11–24–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Mint

OMB Number: New
Form Number: MF 1006
Type of Review: New Collection
Title: Qualitative Research/Purchasers of Numismatic Products
Description: This information collection will provide the U.S. Mint with valuable data on customer needs and behavior, and will aid in development and refinement of product positioning, creative strategy and creative executions for direct mail and print advertising. The U.S. Mint requires this collection as part of a direct marketing program for numismatic products.
Respondents: Individuals or households
Estimated Number of Respondents: 90
Estimated Burden Hours Per Response: 2 hours
Frequency of Response: One time only

Estimated Total Reporting Burden: 180 hours
Clearance Officer: Robert Parker, (202) 376–0557; United States Mint, Room 639, 633 3rd Street, NW., Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27658 Filed 11–24–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 20, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0008
Form Number: IRS Forms W–2, W–2P, W–2C, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3PR, W–3SS
Type of Review: Revision
Title: Wage and Tax Statements
Description: Employers report income and withholding information on Form W–2. Payers report pension, annuity, retirement, and IRS distributions on Form W–2P. Forms W–2AS, W–2GU, W–2VI, and W–2CNMI are the U.S. Possessions versions of Form W–2. The Form W–3 series is used to transmit W–2s to the Social Security Administration (SSA). Individuals use Form W–2 to prepare their income tax return.
Respondents: Individuals or households, State and local governments, Farms, Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
Estimated Number of Respondents: 6,192,000
Estimated Burden Hours Per Response:

W–2	28 minutes.
W–2P	18 minutes.
W–2AS	10 minutes.
W–2GU	20 minutes.
W–2VI	19 minutes.
W–3	25 minutes.
W–3c	20 minutes.
W–3CPR	20 minutes.
W–3PR	18 minutes.
W–3SS	19 minutes.

Frequency of Response: Annually
Estimated Total Reporting Burden: 1 hour
OMB Number: 1545–0160
Form Number: IRS Form 3520–A
Type of Review: Extension
Title: Annual Return of Foreign Trust with U.S. Beneficiaries
Description: U.S. persons who transfer property to a foreign trust (and the foreign trust has or acquires U.S. beneficiaries) file Form 3520–A. IRS uses Form 3520–A to determine the tax liability of the grantor if the trust has a U.S. beneficiary. The grantor or transferor of the trust is taxed under grantor trust rules.
Respondents: Individuals or households; Businesses or other for-profit; Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 500
Frequency of Response: Annually
Estimated Burden Hours per Response/ Recordkeeper:
Recordkeeping: 25 hrs., 25 mins.
Learning about the law or the form: 53 mins.
Preparing and sending the form to IRS: 1 hr., 25 mins.
Estimated Total Reporting Burden: 15,860 hours
OMB Number: 1545–0909
Form Number: IRS Form 8210
Type of Review: Extension
Title: Self-Assessed Penalties Return
Description: Form 8210 is used by payers of interest and dividends to self-assess a penalty for each Form 1099–DIV, 1099–INT, 1099–PATR they did not file timely, filed with incorrect information, filed without a TIN, or each instance which they did not supply a copy to the payee.
Respondents: Individuals or households; State or local governments, Farms, Businesses or other for-profit; Small businesses or organizations
Estimated Number of Respondents: 291
Frequency of Response: Annually
Estimated Burden Hours Per Response:
Recordkeeping: 4 hrs., 4 mins.
Learning about the law or the form: 47 mins.
Preparing, copying, assembling and sending the form to IRS: 54 mins.
Estimated Total Reporting Burden: 1,676 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27659 Filed 11–24–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 226
Monday, November 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

November 21, 1989.

FCC To Hold Open Commission Meeting, Tuesday, November 28, 1989

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 28, 1989, which is scheduled to commence at 1:00 p.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Further Notice of Inquiry in the matter of advanced technologies for the Public Safety Radio Services (GEN Docket No. 88–441). Summary: The Commission will consider action regarding the use of advanced technologies for the Public Safety Radio Services.

General—2—Title: A Notice of Inquiry relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum. Summary: The Commission will consider a proceeding to generate public comment regarding its preparations for 1992 World Administrative Radio Conference dealing with Frequency Allocation Issues.

Private Radio—1—Title: Amendment of Part 90 of the Commission's Rules to provide for the use of the 220–222 MHz Band by the Private Land Mobile Radio Services. Summary: The Commission will consider a Notice of Proposed Rule Making proposing to adopt service rules for the use of the 220–222 MHz Band by the Private Land Mobile Radio Services.

Private Radio—2—Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated filing Areas in the 896–901/935–940 MHz Bands Allotted to the Specialized Mobile Radio Service. Summary: The Commission will consider a Notice of Proposed Rule Making proposing changes to the rules relating to the Specialized Mobile Radio Service.

Common Carrier—1—Title: Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85–166, Phase II, Part 1. Summary: The Commission will consider the lawfulness of certain special access rates.

Common Carrier—2—Title: Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85–166, Phase II, Part 1. Summary: The Commission will consider petitions for reconsideration of its Memorandum Opinion and Order in this docket, 4 FCC Rcd 4797 (1988).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632–5050.

Issued: November 21, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–27837 Filed 11–22–89; 12:32 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, November 21, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) Administrative enforcement proceedings; (2) matters relating to the Corporation's corporate activities; and (3) personnel matters.

At that same meeting the Board also considered a recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets (Case No. FL–89–0033 FirstSouth Savings and Loan Association, Pine Bluff, Arkansas).

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Mr. Jonathan Fiechter, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 22, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–27838 Filed 11–22–89; 12:32 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—November 30, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities.
2. Docket No. 89–07—Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89–27839 Filed 11–22–89; 12:28 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m. Wednesday, November 29, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed 1990 Federal Reserve Bank of Kansas City employee salary structure adjustments.

2. Proposed 1990 Federal Reserve Bank of San Francisco employee salary structure adjustments.

Discussion Agenda

3. Proposed 1990 Federal Reserve Board budget.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 22, 1989.

Jeannie J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27788 Filed 11–22–89; 9:50 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 29, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27789 Filed 11–22–89; 9:50 am]

BILLING CODE 6210–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 4:00 p.m.—Monday, December 4, 1989.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Eighth Floor—Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary, 376–2400.

Agenda

I. Call to Order and Remarks of Chairman
II. Approval of Minutes, September 7, 1989
III. Executive Director's Activity Report
IV. Personnel Committee Report
V. Budget Committee Report
VI. Treasurer's Report
VII. Appointment of Assistant Secretary

Martha A. Diaz,

Assistant Secretary.

[FR Doc. 89–27796 Filed 11–22–89; 10:14 am]

BILLING CODE 7570–02–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 13, 1989.

A closed meeting will be held on Tuesday, November 28, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 28, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.
Opinion.
Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive actions.
Institution of administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Underhill at (202) 272–2000.

Dated: November 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27825 Filed 11–22–89; 12:31 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 226
Monday, November 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[Docket No. 121RA-LDR; FRL-3625-9]

National Oil and Hazardous Substance Pollution Contingency Plan: Applicability of RCRA Land Disposal Restrictions to CERCLA Response Actions

Correction

Document 89-23721, beginning on page 41586 in the issue of Tuesday, October 10, 1989, was published in the "Notices" section of the issue. It should have appeared in the "Proposed Rules" section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-10-4212-13/GPO-0001]

Albuquerque District, NM; Realty Action on Proposed Land Exchange in San Juan County, NM

Correction

In notice document 89-24177 beginning on page 42050 in the issue of Friday, October 13, 1989, make the following corrections:

1. On page 42050, in the third column, under the second New Mexico Principal Meridian heading, the second line should read "Sec. 29, S½NW¼NE¼, 20.0 acres".

2. On the same page, under the same heading, the 10th line should read "Sec. 29, W½NW¼NW¼SW¼, 5.0 acres".

3. On the same page, under the same heading, the 11th line should read "SE¼SE¼SW¼SW¼, 2.334 acres".

4. On the same page, under the same heading, the 14th and 15th lines should read "E½NW¼SW¼.....18.426 acresE½W½SW¼SW¼".

5. On the same page, in the third column, the last line should read "E½SW¼SW¼.....27.71 acres".

BILLING CODE 1505-01-D

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federal register

Monday
November 27, 1989

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 270 et al.

Implementation of Technical and Miscellaneous Revenue Act of 1988; Pipe Tobacco; Temporary Rule and Notice of Proposed Rulemaking

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295, and 296

[T.D. ATF-289]

Implementation of the Technical and Miscellaneous Revenue Act of 1988; Pipe Tobacco

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, Temporary rule.

SUMMARY: This temporary rule amends regulations in 27 CFR parts 270, 275, 290, 295, and 296 to provide (1) for the taxation of pipe tobacco manufactured in or imported into the United States and (2) for the collection of floor stocks tax on all pipe tobacco held for sale on January 1, 1989, by any person. In addition, this document provides rules for the grandfathering of existing manufacturers of pipe tobacco into the current regulatory framework for other tobacco product manufacturers, and for the "use up" of current stocks of pipe tobacco package markings before compliance with new package marking requirements is mandatory.

The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject. A notice of proposed rulemaking inviting comments with respect to the temporary rule appears elsewhere in this issue of the Federal Register.

The amendments made by this Treasury decision implement section 5061 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647).

DATES: The effective date of the temporary rule is retroactive to January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Tax on Pipe Tobacco

The Technical and Miscellaneous Revenue Act of 1988 ("TMRA" or the "Act"), (Pub. L. 100-647), was enacted on November 10, 1988. Section 5061 of the Act amended 26 U.S.C. 5701, to impose a tax at the rate of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound), on all pipe tobacco manufactured in or imported into the United States. The tax is determined upon pipe tobacco removed from the factory or from internal revenue bond, or from Customs custody after December 31, 1988.

Pipe tobacco is defined in the Act to mean "any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe." The term does not include smoking tobacco products, such as roll your own cigarette tobacco, that are not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe. The act also contains a transitional rule which allows those who on the date of enactment, November 10, 1988, were engaged in the manufacture of pipe tobacco and who made an application for a permit prior to January 1, 1989, to continue to engage in such business pending final action on the application. In addition, by amending the definitions of the terms "Tobacco products" and "Manufacturer of tobacco products" to include pipe tobacco, the Act subjects manufacturers of such products to all the statutory and regulatory controls set forth in chapter 52 of the Internal Revenue Code of 1986 (IRC). These controls include tax payment, permit qualification, bonding, recordkeeping, and civil and criminal sanctions. This rule contains temporary regulations implementing the provisions of section 5061 of the TMRA described above. In addition, this temporary rule prescribes the packages, marks, labels, and notices for pipe tobacco.

Specifically, these regulations require that every package of pipe tobacco shall, before removal subject to tax, have imprinted thereon or on a label securely affixed to the package the designation "pipe tobacco," as well as a statement of the pounds and ounces of the product contained in the package. As an alternative to the designation "pipe tobacco," the package may be designated "Tax Class L." The Bureau believes that allowing the use of this alternative designation will avoid consumer confusion and facilitate the relabeling of many tobacco products which are subject to tax but which are currently labeled as "smoking tobacco" rather than "pipe tobacco." This document also contains a transitional rule for package markings for pipe tobacco which will allow manufacturers and importers to use up current stocks of packaging materials before compliance with the new package marking requirements is mandatory. Packages in use prior to January 1, 1989, may be used until March 31, 1990.

Floor Stocks Tax

Section 5061 of the TMRA also imposed a one-time floor stocks tax at the rate of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound) on all pipe tobacco manufactured in or imported into the United States which is removed from a domestic factory or from customs custody before January 1, 1989, and held for sale on such date by any person. The person who held such pipe tobacco for sale was liable for payment of this tax on February 14, 1989. Rules for the collection of the pipe tobacco floor stocks tax are set forth in this document.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document, because it is not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553(b), or any other statute, and because the revenue effects of the rulemaking on small businesses flow directly from the underlying statute. The temporary regulations contained in this rule are not expected to have any significant secondary or incidental effects on a substantial number of small entities Further, they will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

This rule is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information imposed by this rule have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35 (OMB Control Number 1512-0502). The estimated average burden associated with this collection of information is 5 hours and 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms.

Administrative Procedure Act

Because this temporary rule merely extends existing procedures concerning tobacco products to the taxation of pipe tobacco, as provided by statute, it is found to be unnecessary and impracticable to issue these regulations with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Floor stocks tax, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

Authority and Issuance

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

PART 270—[AMENDED]

Section A. The regulations in 27 CFR part 270 are amended as follows:

Paragraph 1. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of contents for part 270 is amended by adding new §§ 270.25a, 270.61b, 270.216b, and 270.216c to read as follows:

Sec.

* * * * *

270.25a Pipe tobacco tax rate.

* * * * *

270.61b Transitional rule.

* * * * *

270.216b Notice for pipe tobacco.

270.216c Transitional rule.

* * * * *

§ 270.11 [Amended]

Par. 3. Section 270.11 is amended by adding the definition of "Pipe tobacco" and by revising the definitions for "Manufacturer of tobacco products," "Package" and "Tobacco products" to read as follows:

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco or pipe tobacco, except that such term shall not include (a) a person who produces tobacco products solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Package. The container in which tobacco products are put up by the manufacturer and offered for sale or delivery to the consumer.

* * * * *

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Par. 4. Section 270.25a is added to read as follows:

§ 270.25a Pipe tobacco tax rate.

A tax of 45 cents per pound and a proportional tax at the like rate on all fractional parts of a pound is imposed on pipe tobacco manufactured in or imported into the United States.

(Pub. L. 100-647, 102 Stat. 3342, 26 U.S.C. 5701)

Par. 5. Section 270.61b is added to read as follows:

§ 270.61b Transitional rule.

Any person who (a) on November 10, 1988, was engaged in business as a manufacturer of pipe tobacco, and (b) before January 1, 1989, submits an application, as provided in this part to engage in such business, may continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture pipe tobacco under such chapter 52.

Par. 6. Section 270.72 is amended by revising the language beginning with the word "Provided" to read as follows:

§ 270.72 Use of factory premises.

* * * *Provided,* That tobacco products manufacturers who maintain adequate records in respect to the manufacture and storage of smoking tobacco that is not subject to tax (as well as with respect to tobacco products), showing the date and total quantity in pounds of the tobacco received, shipped or delivered, lost, and destroyed, may continue such operations on the tobacco products factory premises, without application for authorization as prescribed in § 270.47.

Par. 7. Section 270.133 is amended by revising the third sentence to read as follows:

§ 270.133 Amount of individual bond.

* * * The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed $250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed $150,000 for a manufacturer producing or receiving

cigars, smokeless tobacco, or pipe tobacco in bond; and need not exceed $250,000 for a manufacturer producing or receiving, any combination of tobacco products in bond.

* * *

Par. 8. Section 270.182 is amended by revising paragraph (a) to read as follows:

§ 270.182 Record of tobacco.

* * * * *

(a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco and pipe tobacco), together with the name and address of the person from whom received;

* * * * *

§ 270.183 [Amended]

Par. 9. Section 270.183 is amended by revising the introductory paragraph to read as follows:

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco):

* * * * *

Par. 10. Section 270.216b is added to read as follows:

§ 270.216b Notice for pipe tobacco

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "pipe tobacco." As an alternative, packages of pipe tobacco may be designated "Tax Class L."

(b) *Product weight.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein.

Par. 11. Section 270.216c is added to read as follows:

§ 270.216c Transitional rule.

Notwithstanding the provisions of §§ 270.212 and 270.216b as they relate to pipe tobacco, manufacturers of pipe tobacco may continue to use packages in use prior to January 1, 1989, until March 31, 1990.

Par. 12. The second sentence of § 270.231 is revised to read as follows:

§ 270.231 Consumption by employees.

* * * Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff or pipe tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. * * *

Par. 13. The second sentence of § 270.252 is revised to read as follows:

§ 270.252 Reduction of tobacco products to materials.

* * * If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco and the kind of quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. * * *

Par. 14. The first sentence of § 270.255 is revised to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e. small cigarettes, large cigarettes, small cigars, large cigars, chewing tobacco, snuff, or pipe tobacco), the manufacturer shall enter such shortage or overage in the records required by § 270.183. * * *

PART 275—[AMENDED]

Section B. The regulations in 27 CFR part 275 are amended as follows:

Paragraph 1. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703–5705, 5708, 5722, 5723, 5741, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The table of contents to part 275 is amended by adding new §§ 275.30, 275.72b, and 275.72c; to read as follows:

Sec.

* * * * *

275.30 Pipe tobacco.

* * * * *

275.72b Notice for pipe tobacco.
275.72c Transitional rule.

* * * * *

Paragraph 3. Section 275.11 is amended by revising the definitions of "Computation or computed," "Determined or determination," "Manufacturer of tobacco products," and "Tobacco products," and by adding a definition for "Pipe tobacco" to read as follows:

* * * * *

Computation or computed. When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff or pipe tobacco) of tobacco products and the wholesale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or Determination. When used with respect to the internal revenue tax on tobacco products and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, or pipe tobacco) of tobacco products and the wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco or pipe tobacco, except that such term shall not include (a) a person who produces tobacco products solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Pipe tobacco. Any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Paragraph 4. Section 275.30 added to read as follows:

§ 275.30 Pipe tobacco.

A tax of 45 cents per pound and a proportional tax at the like rate on all fractional parts of a pound is imposed on pipe tobacco imported or brought into the United States.

(Pub. L. 100–647, 102 Stat. 3342, 26 U.S.C. 5701)

Paragraph 5. Section 275.72b is added to read as follows:

§ 275.72b Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely fixed thereto, the designation "pipe tobacco." As an alternative, packages of pipe tobacco may be designated "Tax Class L."

(b) *Product weight.* Every package of pipe tobacco shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein.

Paragraph 6. Section 275.72c is added to read as follows:

§ 275.72c Transitional rule.

Notwithstanding the provisions of § 275.72b as they relate to pipe tobacco, importers of pipe tobacco may continue to use packages in use prior to January 1, 1989, until March 31, 1990.

§ 275.8 [Amended]

Par. 7. Section 275.81 is amended by adding a new paragraph (c)(6) to read as follows:

* * * * *

(c) * * *

(6) For pipe tobacco: The importer will show the designation "pipe tobacco" or "Tax Class L," the number of pounds and ounces, the rate of tax and the tax due.

* * * * *

§ 275.107 [Amended]

Par. 8. Section 275.107 is amended by revising paragraphs (e) and (f), and by adding a new paragraph (g) and an undesignated paragraph immediately following (g) to read as follows:

* * * (e) the number of cigarette tubes, (f) the pounds and ounces of chewing tobacco and snuff, and (g) the pounds and ounces of pipe tobacco.

If the district director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the tobacco products and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

§ 275.110 [Amended]

Par. 9. Section 275.110 is amended by redesignating existing paragraphs (e) and (f) as (f) and (g), and by adding a new paragraph (e) to read as follows:

* * * * *

(e) The pounds and ounces of pipe tobacco to be shipped,

* * * * *

Par. 10. Section 275.117 amended by revising paragraphs (c) and (d), and by adding a new paragraph (e) and an undesignated paragraph immediately following (e) to read as follows:

* * * * *

(c) The number of large cigars with a wholesale price of more than $235.294 per thousand, (d) the pounds and ounces of chewing tobacco and snuff, and (e) the pounds and ounces of pipe tobacco.

If the district director of customs finds that the full amount of tax has not been computed, he will require the difference due to be paid to him prior to release of the tobacco products. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

Par. 11. Section 275.121 is amended by revising the first sentence, beginning with the word "*Provided,*" to read as follows:

§ 275.121 Amount of bond.

* * *: *Provided,* That the amount of any such bond need not exceed $250,000 where payment of tax on cigarettes or on any combination of tobacco products is deferred; and need not exceed $150,000 where the tax on cigars, smokeless tobacco or pipe tobacco is deferred.

* * * * *

§ 275.139 [Amended]

Par. 12. Section 275.139 is amended by revising paragraph (a) to read as follows:

* * * * *

(a) Date, quantity, kind of cigars, cigarettes, smokeless tobacco and pipe tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff; pounds and ounces of pipe tobacco).

* * * * *

PART 290—[AMENDED]

Section C. The regulations in 27 CFR part 290 are amended as follows:

Paragraph 1. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5148, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

§ 290.11 [Amended]

Par. 2. Section 290.11 is amended by adding the definition for "Pipe tobacco" and by revising the definitions for "Manufacturer of tobacco products" and "Tobacco products" to read as follows:

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Par. 3. Section 290.143 is revised to read as follows:

§ 290.143 General.

(a) Every export warehouse proprietor shall make a true and accurate inventory on ATF Form 3373 (5220.3) to the Regional Director (Compliance), of the numbers of (1) small cigars, (2) large cigars, (3) small cigarettes, (4) large cigarettes, (5) cigarette papers, and (6) cigarette tubes; and the pounds and ounces of (7) chewing tobacco, (8) snuff, and (9) pipe tobacco held by him at the times specified in this subpart.

(b) This inventory shall be subject to verification by an ATF officer. A copy of

each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon request.

PART 295—[AMENDED]

Section D. The regulations in 27 CFR part 295 are amended as follows:

Paragraph 1. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. The table of contents for part 295 is amended by adding new §§ 295.45a and 295.45b to read as follows:

Sec.

* * * * *

295.45a Notice for pipe tobacco.
295.45b Transitional rule.

* * * * *

Par. 3. Section 295.11 is amended by adding the definition for "Pipe tobacco" and by revising the definitions for "Manufacturer of tobacco products," and "Tobacco products" to read as follows:

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Par. 4. Section 295.45a is added to read as follows:

§ 295.45a Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "pipe tobacco." As an alternative, packages of pipe tobacco may be designated "Tax Class L."

(b) *Product weight.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein.

Par. 5. Section 295.45b is added to read as follows:

§ 295.45b Transitional rule.

Notwithstanding the provisions of §§ 295.42 and 295.45a as they relate to pipe tobacco, manufacturers of pipe tobacco may continue to use packages in use prior to January 1, 1989, until March 31, 1990.

PART 296—[AMENDED]

Section E. The regulations in 27 CFR part 296 are amended as follows:

Par. 1. The overall authority citation for 27 CFR part 296 is added to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7608, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

Par. 2. Part 296 subparts A, C, F, and G are amended by removing the authority citation from the beginning of each subpart.

Par. 3. The table of contents for part 296 is amended by adding a new subpart H to read as follows:

Sec.

* * * * *

Subpart H—Floor Stocks Tax on Pipe Tobacco Held For Sale On January 1, 1989

296.171 Scope of Subpart.
296.172 Meaning of terms.
296.173 Scope of tax.
296.174 Rate of tax.
296.175 Payment of tax.
296.176 Return.
296.177 Inventory.
296.178 Retention of records.
296.179 Refund of floor stocks tax.
296.180 Penalties and interest.
296.181 Authority of ATF officers.

Par. 4. Section 296.72 is amended by revising the definition of "Tobacco products" to read as follows:

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Par. 5. Section 296.74 is revised to read as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on AFT Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the applicable instructions on the form, and filed with the Regional Director (Compliance) of the region in which the tobacco products or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the number of small cigars, large cigars, (itemized separately as to the taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, cigarette tubes, the pounds and ounces of chewing tobacco and snuff, and the pounds and ounces of pipe tobacco, as the case may be, and the rate and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below:

Example

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$0.75 per thousand.	$15.00
1,000	Large cigars—wholesale price $100 per thousand.	8½ pct of wholesale price.	8.50
500	Large cigars—wholesale price $236 per thousand.	$20 per thousand.	10.00
10,000	Small cigarettes.	$8 per thousand.	80.00
5,000	Large cigarettes.	$8.40 per thousand.	42.00
2,000 sets	Cigarette papers—50 each set.	$0.005 per set.	10.00
1,000 sets	Cigarette papers—100 each set.	$0.01 per set.	10.00
1,000	Cigarette tubes.	$0.01 per 50 tubes.	0.20
100 lbs.	Chewing tobacco.	$.08 per lb.	8.00
200 lbs.	Snuff	$.24 per lb.	48.00
100 lbs.	Pipe tobacco	$.45 per lb.	45.00
Total claimed.			$276.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

Par. 6. Section 296.163 is amended by revising the definitions for "Manufacturer of tobacco products" and "Tobacco products" to read as follows:

* * * * *

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

* * * * *

Tobacco products. Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

* * * * *

Par. 7. A new subpart H is added to read as follows:

Subpart H—Floor Stocks Tax on Pipe Tobacco Held for Sale on January 1, 1989

§ 296.171 Scope of subpart.

The regulations in this subpart relate to the floor stocks tax imposed by Public Law 100–647 on pipe tobacco held for sale on January 1, 1989.

§ 296.172 Meaning of terms.

When used in this subpart, terms shall have the meaning prescribed below:

ATF Officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Controlled Group. Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(a) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(3).

(b) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(2).

(c) Combined groups as defined in 26 CFR 1.1563–1(a)(4)

Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

Person. This term includes an individual, a trust, estate, partnership, association, company, or corporation. It also includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

Pipe tobacco. Any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Regional Director (Compliance). The principal regional official responsible for administering regulations in this part.

§ 296.173 Scope of tax.

(a) *General.* Except as provided in paragraph (b) of this section, the floor stocks tax is imposed on all pipe tobacco manufactured or imported into the United States, which is removed from the factory or from Internal Revenue bond, or from Customs custody before January 1, 1989, and held on such date for sale by any person. Pipe tobacco subject to the floor stocks tax is regarded as held for sale by the one who owns such tobacco at the first moment of January 1, 1989. Pipe tobacco in transit, or in a warehouse, storeroom, or distributing depot must be included in the return and inventory of the owner. If ownership does not pass to the consignee until delivery, pipe tobacco in transit at the first moment of January 1, 1989, shall be regarded as owned or held for sale by the consignor at that time. The floor stocks tax does not apply to pipe tobacco held in ATF or Customs bond on the first moment of January 1, 1989.

(b) *Exemption.* No floor stocks tax shall be imposed on any person who does not have a tax liability in excess of $1,000. For purposes of determining the application of the $1,000 exemption, all persons who are treated as a single taxpayer under 26 U.S.C. 5061(e)(3) (pertaining to "controlled groups") shall be treated as one person.

(c) *Treatment of pipe tobacco in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provisions of law, pipe tobacco, which is located in a foreign trade zone on January 1, 1989, shall be subject to floor stocks tax and shall be treated for purposes of this Subpart as held on such date for sale if—

(1) Internal Revenue taxes have been determined, or Customs duties liquidated, with respect to such pipe tobacco before such date pursuant to a request made under the first provision of section 3(a) of such Act, or

(2) Such pipe tobacco is held on such date under the supervision of a Customs officer pursuant to the second proviso of section 3(a).

§ 296.174 Rate of tax.

The rate of floor stocks tax on pipe tobacco is 45 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

§ 296.175 Payment of tax.

The floor stocks tax is payable by every person who holds for sale, at the first moment of January 1, 1989, pipe tobacco, except those persons exempt under § 296.171(b). The tax shall be paid on or before February 14, 1989, and shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Bureau of Alcohol, Tobacco and Firearms or ATF, and shall show the taxpayer's name and employer identification number.

§ 296.176 Return.

(a) *General.* Each person who holds for sale, at the first moment of January 1, 1989, pipe tobacco which is not exempt under § 296.171(b), shall make and file a return for the pipe tobacco so held. The return shall be made on ATF Form 5200.23, Pipe Tobacco Floor Stocks Tax Return. The return shall be prepared in duplicate, in accordance with the instructions on the form. The original shall be filed no later than February 14, 1989, with the Bureau of Alcohol, Tobacco and Firearms at the address indicated on the form. A copy shall be retained by the taxpayer as prescribed in § 296.176. Subject to 26 U.S.C. 7502, any floor stocks tax return that is postmarked on or before February 14, 1989, shall be considered to have been timely filed.

(b) *Consolidated return for a single taxpayer having multiple locations.* Where pipe tobacco subject to floor stocks tax is held at more than one location or place of business, a consolidated return representing the total liability of the taxpayer shall be filed if each location shares a common identification number. On the consolidated return the taxpayer shall show, on the form or an attachment, the name and address of each place of business where pipe tobacco subject to

floor stocks tax is held and the amount of pipe tobacco so held at each such place.

(c) *Controlled group.* When pipe tobaacco subject to floor stocks tax is held at more than one location or place of business by members of a controlled group, a consolidated return representing the total liability may be filed if the members share a common employer identification number. A separate return is required to be filed by each member having an individual employer identification number. If a consolidated return is filed, the controlled group shall show, on the form or an attachment, the name and address of each place of business where pipe tobacco is held subject to floor stocks tax, and the quantity of pipe tobacco held at each such place.

(Approved by the Office of Management and Budget under control number 1512–0498)

§ 296.177 Inventory.

(a) *General.* The pipe tobacco floor stocks tax liability required to be shown on the floor stocks tax return shall be established by physical inventory. All persons holding pipe tobacco for sale, including those holding pipe tobacco exempt from floor stocks tax under the provisions of § 296.173(b), shall take a complete inventory at each location where pipe tobacco is held. The inventory shall be the basis for establishing the quantity of all pipe tobacco subject to floor stocks tax, held as of the first moment of January 1, 1989. Pipe tobacco in transit on the first moment of January 1, 1989, shall be included in the inventory of the owner of the articles at that moment.

(b) *Record of inventory.* The inventory shall be recorded in writing as it is being taken by the taxpayer and retained as prescribed in § 296.178.

(c) *Time of taking inventory.* The inventory shall be taken as of the beginning of business January 1, 1989. Workback inventories will be acceptable if they are supported by adequate commercial records of receipt and disposition of pipe tobacco retained at the place of business to which the inventory pertains.

§ 296.178 Retention of records.

Each person liable for floor stocks tax shall keep a copy of the floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, or when one return is filed on behalf of a controlled group, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains. Such documents and records shall be retained at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The Regional Director (Compliance) may also require these documents and records to be retained for an additional period of not more than 3 years in any case where he deems such retention to be necessary or advisable for the protection of the revenue.

§ 296.179 Refund of floor stocks tax.

A claim for refund may be filed by any person who has paid a floor stocks tax on pipe tobacco and who claims that he made an overpayment of that tax. Such a claim shall be filed on ATF F 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based. The claim shall be filed with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the region in which the inventory was held and on which the tax was paid. Claims filed under this section shall comply with the provisions of subpart A of this part.

§ 296.180 Penalties and interest.

(a) *Penalties.* All civil and criminal penalties and forfeiture provisions of the Internal Revenue Code (title 26 U.S.C.), which are applicable to excise taxes on pipe tobacco, are applicable also to the pipe tobacco floor stocks tax.

(b) *Interest.* Interest shall accrue at the rate established by the Internal Revenue Service, compounded daily, on all floor stocks tax that is not paid on or before February 14, 1989.

(26 U.S.C. 6601, 6622)

§ 296.181 Authority of ATF officers.

(a) *Entry of premises; penalties for interference.* Any ATF officer may enter, in the daytime, any premises where pipe tobacco subject to floor stocks tax is kept, so far as may be necessary for the purpose of examining such product. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his official duties. If the owner or other person in charge of such premises refuses to admit any ATF officer, or to permit him to examine such pipe tobacco, he shall be subject to the penalties prescribed by 26 U.S.C. 7342. Further, any person who corruptly, or by force or threat of force, attempts to intimidate or impede any ATF officer in the performance of the officer's official duties, shall, upon conviction, be subject to the penalty prescribed by 26 U.S.C. 7212.

(b) *Examination.* With respect to ATF examination of books and witnesses in connection with ascertaining, determining, or collecting floor stocks tax, see 27 CFR 70.22.

Authority: (26 U.S.C. 7212, 7342, 7602, 7606, 7608).

Signed: August 4, 1989.

Stephen E. Higgins,

Director.

Approved: August 30, 1989.

Salvatore R. Martoche,

Assistant Secretary, (Enforcement).

[FR Doc. 89–27239 Filed 11–24–89; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 270, 275, 290, 295, and 296

[Notice No. 691]

Implementation of the Technical and Miscellaneous Revenue Act of 1988; Pipe Tobacco

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking; cross-referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of section 5061 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342) which provides for the implementation of an excise tax on the manufacture or importation of pipe tobacco. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATE: Written comments must be received by December 27, 1989.

ADDRESS: Send comments to the Chief, Distilled Spirits and Tobacco Branch; Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, (Attn: Notice No.). Any person may inspect written comments during normal business hours at: Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566–7531.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this documents, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the general revenue effects of this rulemaking on small businesses flow directly from the underlying statute.

Likewise, any significant secondary or incidental effects, and any significant reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Executive Order 12291

These temporary regulations are not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because they will not have an annual effect on the economy of $100 million or more; they will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this document have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35.

The estimated average burden associated with this collection of information is 5 hours and 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. All comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not excempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in the light of all circumstances, to determine whether a public hearing should be held.

The temporary regulations in this issue of the **Federal Register** revise and add new regulations in 27 CFR parts 270, 275, 290, 295, and 296. For the text of the temporary regulations see T.D. ATF–289, published in this issue of the **Federal Register.**

Signed: August 4, 1989.

Stephen E. Higgins,

Director.

Approved: August 30, 1989.

Salavtore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–27240 Filed 11–24–89; 8:45 am]

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federal register

Monday
November 27, 1989

Part III

Office of Management and Budget

Publication of Schedules for OMB Cost Comparison Schedules; Notice

OFFICE OF MANAGEMENT AND BUDGET

Publication of Schedules for OMB Cost Comparison Schedules

AGENCY: Office of Management and Budget.

ACTION: Publication of schedules for OMB Circular No. A–76 cost comparison schedules.

SUMMARY: This Notice contains the schedules of cost comparisons that will be completed in 1990 for the Department of Commerce, Department of Labor, and the United States Army Corps of Engineers. Executive Order 12615, "Performance of Commercial Activities," dated November 19, 1987, requires OMB to publish the schedules as they become available. This is the initial submission; additions to these schedules, where the goals required by the Executive Order have not been met, and schedules from other agencies will be forthcoming.

The agency goals and number of positions scheduled for study are listed below:

Agency	Goal	Scheduled
Commerce	1,142	343.9
Labor	555	[illegible]
Corps of Engineers	843	1197.2

General questions relating to the cost comparisons should be referred to the following individuals:

Commerce, John O'Brien, (202) 377–4115;
Labor, Jim Booth, (202) 523–6318;
U.S. Army Corps of Engineers, Fred Copeland, (202) 272–0044;
Office of Federal Procurement Policy, Linda Mesaros, (202) 395–3300.

Dated: October 24, 1989.

Frank Hodsoll,

Executive Associate Director.

DEPARTMENT OF COMMERCE

List of Cost Comparisons That Will Be Completed in FY 1990

Unit	Geographic location	Commercial activity	FTE
BEA	Washington, DC	Computer Ops	8.3
EDA	Washington, DC	Loan Application Review	59.0
EDA	Washington, DC	Computer Ops	9.3
EDA	Washington, DC	Computer Support	10.3
EDA	Washington, DC	Accounting Services	18.0
NIST	Gaithersburg, MD	Consct. Admin. Svcs.	23.0
NIST	Gaithersburg, MD	Instrument Shops	31.0
NIST	Gaithersburg, MD	Tech. Support Scientific	16.0
NOAA	Norfolk, VA/Seattle, WA	Atlantic & Pacific Marines Centers (Shore Support)	118.0
NOAA	Washington, DC	Financial Services	51.0
Total			343.9

Affected Unit: BEA—Bureau of Economic Analysis. EDA—Economic Development Administration. NIST—National Technical Information Service. NOAA—National Oceanic and Atmospheric Administration.

DEPARTMENT OF LABOR

List of Cost Comparisons That Will Be Completed in FY 1990

[illegible]	Geographic location	Commercial activity	FTE
MSHA	Beckley, WV	Audio Visual	15
Total			15

Affected Unit: MSHA—Mine Safety and Health Administration.

Corps of Engineers

List of Cost Comparisons That Will Be Completed in FY 1990

Geographic location	Commercial activity	FTE
Anchorage, AK	Mail/Messenger	1.0
Anchorage, AK	Storage	1.0
Portland, OR	Operation of ADP Equipment	9.0
Willamette Valley, OR	O & M Dams and Maint	80.0
Willamette Valley, OR	Resource Maint	8.1
Seattle, WA	Word Processing Centers	18.0
Walla Walla, WA	Motor Vehicle O & M	4.0
Starbuck/Pomeroy, WA	O & M of Res Facil	16.9
Ahsahka, ID	O & M of Res Facil	9.0
Mariemont, OH	Sys Design, Devel Svc	5.0
Cincinnati, OH	Visual Information Svc	1.0
OH, WV, KY, TN, PA	Data Process Svcs	15.3
Mariemont, OH	Building Equipment Maint	2.0
Cincinnati, OH	Word Processing Center	5.0
Marietta, OH	Emergency Rpr Critical Locks	52.0
Huntington, WV	Sys, Des, Dev & Prog Svcs	6.0

Geographic location	Commercial activity	FTE
Huntington, WV	Mail & File Svcs	5.0
Huntington, WV	Printing & Repro	[illegible]
Huntington, WV	Word Processing	15.0
Jacksonville, FL	Audio Visual Svcs	7.5
Palatka/Clewiston, FL	Fac/Grnds/Util Maint	[illegible]
Panama City, FL & GA, AL	O & M Locks/Bridges	[illegible]
Ft. Gaines, GA & AL	O & M W.F. George G.W. Andrews	[illegible]
Mobile, AL	Computer Operations	4.0
Mobile, AL	Sys. Design/Develop/Prgm Svcs	[illegible]
Ft. Gaines, GA & AL	O & M West Point Lake	2.0
Mobile, AL	Graphics Arts	2.0
Savannah, GA	Data Processing Svcs	6.0
Bassett, VA	Natural Res Mgt	9.5
Wilksboro, NC	Natural Res Mgt	[illegible]
Los Angeles, CA	Office Services	7.5
San Francisco, CA	Admin Svcs	3.5
San Francisco, CA	Drift and Debris Removal	10.0
Dallas, TX	Mail & Messenger Svc	2.0
Louisville, KY	Sys Design Dev & Progr	3.0
Louisville, KY	Word Processing	7.0
Louisville, KY	Rpr Station/Op Flt Plant	42.0
Louisville, KY	O & M Ky Lochs River	14.0
Warren, OH/Grafton WV	Op Rec Areas	19.0
Franklin, PA	Op Rec Areas	13.0
Pittsburgh, PA	Systems & Pgming Svcs	7.0
Freeport, PA	O & M Lock 5	6.0
Freeport, PA	O & M Lock 6	4.0
Kittanning, PA	O & M Lock 7	3.0
Templeton, PA	O & M Lock 8	3.0
Widnoon, PA	O & M Lock 9	1.0
Morgantown, WV	O & M Hildebrand	4.0
Morgantown, WV	O & M Morgantown	[illegible]
Fairmont, WV	O & M Opkisha	4.0
Pittsburgh, PA	Regulatory Functions	3.5
Nashville, TN	Sys Design & Devel	2.0
Nashville, TN	Routine Maint	42.4
Charleston, SC	ADP Svcs	7.0
Palatka, FL	O & M Locks/Dams/Bridges	5.0
Jacksonville, FL	Mail/Messenger & Pubs	10.0
VA, NY, MD, PA	ADP Svcs	17.0
New York, NY	Admin Support Svcs	2.0
VA, NY, MD, PA	ADP Sys Design, Dev, Prog	15.0
New York, NY	Admin Support Svcs	11.0
Caven Pt, NJ	O & M Floating Plant	14.0
Jersey City, NJ	O & M Floating Plant	[illegible]
NY, OH	O & M Floating Plant	20.5
Buffalo, NY	Data Processing	1.0
Chicago, IL	ADP Operations	4.0
Detroit, MI	ADP Operations	3.5
Detroit, MI	Boatyard Section	13.0
Marie, MI	Maintenance Hydropower	4.0
Marie, MI	Maintenance Locks	19.0
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Rock Island, IL	O & M Rec Areas	[illegible]
St Paul, MN	ADP Programming	4.0
St Paul, MN	Mail & Messenger Svc	6.0
Fountain City, WI	Svc Base	13.0
Washington, DC	Mailroom	4.0
LA & AR	Monroe Navigation Field Office	[illegible]
Memphis, TN	Storage/Warehousing	[illegible]
Memphis, TN	OP Floating Plant	6.4
Memphis, TN	Reprographics Section	8.7
Memphis, TN	Travel Branch	6.0
Memphis, TN	Occup. Health	1.0
Memphis, TN	Appraisal Branch	3.0
Memphis, TN	ADP Oper & Sys & Progs	[illegible]
Memphis, TN	Admin Support	7.0
New Orleans, LA	O & M Motor Pool	[illegible]
New Orleans, LA	Operation of Floating Plant	[illegible]
New Orleans, LA	Word Processing	[illegible]
Upper MS & IL Rivers	Channel Patrol & Towing	4.0
Monroe City, MO	Cannon Power Plant Maint	3.5
MO & IL	Locks & Dams Maint	21.5
Warsaw, MO	Hydropower Maint	12.0
Fort Worth, TX	Survey & Mapping	13.5
Fort Worth, TX	Communications Center	1.0
Fort Worth, TX	O & M Hydropower	7.0
Council Grove, KS	O & M Recreation	4.7
Independence, KS	O & M Recreation	4.5
Fall River, KS	O & M Recreation	5.5
Waurika, OK	O & M Recreation	6.2
Ft Supply, OK	O & M Recreation	3.7

Geographic location	Commercial activity	FTE
Canton, OK	O & M Recreation	[illegible]
Marion, KS	O & M Recreation	4.5
Sand Spring, OK	O & M Recreation	[illegible]
Gore, OK	O & M Recreation	13.5
Porum, OK	O & M Recreation	14.7
Fort Gibson, OK	O & M Recreation	14.3
Total		1187.3

[FR Doc. 89-27729 Filed 11-24-89; 8:45 am]

BILLING CODE 3710-01-M

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H.R. 2883/Pub. L. 101-161
Rural Development, Agriculture, and Related Agencies Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 951; 37 pages) Price: $1.25

H.R. 2991/Pub. L. 101-162
Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 986; 53 pages) Price: $1.50

H.R. 3014/Pub. L. 101-163
Legislative Branch Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1041; 28 pages) Price: $1.00

H.R. 3015/Pub. L. 101-164
Department of Transportation and Related Agencies Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1068; 43 pages) Price: $1.25

H.R. 3072/Pub. L. 101-165
Department of Defense Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1112; 47 pages) Price: $1.50

H.R. 3566/Pub. L. 101-166
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1158; 36 pages) Price: $1.25

H.R. 3743/Pub. L. 101-167
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1195; 72 pages) Price: $2.00

H.R. 3746/Pub. L. 101-168
District of Columbia Appropriations Act, 1990. (Nov. 21, 1989; 103 Stat. 1267; 18 pages) Price: $1.00

H.J. Res. 278/Pub. L. 101-166
To designate the period commencing on November 20, 1989, and ending on November 26, 1989, as "National Adoption Week". (Nov. 21, 1989; 103 Stat. 1285; 2 pages) Price: $1.00

H.J. Res. 282/Pub. L. 101-170
Designating November 19-25, 1989, as "National Family Caregivers Week". (Nov. 21, 1989; 103 Stat. 1287; 2 pages) Price: $1.00

H.R. 2642/Pub. L. 101-171
Southeast Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1989. (Nov. 22, 1989; 103 Stat. 1289; 2 pages) Price: $1.00

H.R. 3544/Pub. L. 101-172
To authorize the transfer of a specified naval landing ship dock to the Government of Brazil under the leasing authority of chapter 6 of the Arms Export Control Act. (Nov. 22, 1989; 103 Stat. 1291; 1 page) Price: $1.00

CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

[INS No. 1224-89]

Field Officers; Powers and Duties

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule will permit proof of official records of Canada to be treated in an identical manner as domestic records. This will help expedite the obtaining of records for use in a variety of Service proceedings such as deportation, exclusion and recission. The Service is attempting to accelerate the obtaining of records to quicken the removal of criminal aliens who are citizens or nationals of Canada. In many instances, this will save the Service detention costs while awaiting the receipt of documents authenticated in accordance with 8 CFR 287.6(b).

EFFECTIVE DATE: November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Room 7240, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 786-4502.

SUPPLEMENTARY INFORMATION: This final rule will aid in expediting the receipt of Canadian governmental records. This is particularly important to the Service when seeking to obtain criminal convictions. Presently, records are requested by an immigration officer through an INS district office closest to the location where the records are located. When the records are received by that office, it is sent to the appropriate American consulate for authentication. It is then returned to INS to be forwarded to the officer originally requesting the record. By eliminating the authentication, one time consuming step is removed. It is deemed that the record keeping system of the Canadian governmental records—federal, provincial and local are comparable to our own and that authentication by an American consulate is an unnecessary step in the process. Shortening the time to obtain records can conserve resources by reducing the time and expense necessary to detain Canadian citizens and nationals facing expulsion from the United States because of their history of criminal conduct.

The Service published a proposed rule in the **Federal Register** on September 18, 1989 at 54 FR 38387. The comment period for the proposed rule ended on October 18, 1989. The Service received only one comment. The commenter stated that the language of the proposed rule would appear to suggest that only records from the federal government of Canada are affected. The commenter recommended that the words "issued by a Canadian governmental entity" appearing in the proposed rule be substituted by the words "issued by the Government of Canada or any political subdivision thereof." It was the intention of the Service that all Canadian governmental entities be included in the rule—federal, provincial and local. In considering the commenter's proposed language, it was felt that local governments were not political subdivisions of Canada but rather subdivisions of the provinces. An analogy might be made that the United States government could not normally interfere with a redrawing of county lines by a State absent some discriminatory purpose since the county is a subdivision of the State and not of the United States federal government. However, to alleviate any conceivable misinterpretation of the proposed rule, it has been amended to read " * * * issued by a Canadian governmental entity within the geographical boundaries of Canada * * * " which should make it clear that federal, provincial and local government documents are included within the reach of the rule.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12866, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 287

Administrative practice and procedure, Aliens, Subpoenas, Deportation.

Accordingly, part 287 of Chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for part 287 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1252, 1252, 1357; 8 CFR part 2.

2. In § 287.6, a new paragraph (d) is added to read as follows:

§ 287.6 Proof of official records.

* * * * *

(d) *Canada.* In any proceedings under this chapter, an official record or entry therein, issued by a Canadian governmental entity within the geographical boundaries of Canada, when admissible for any purpose, shall be evidenced by a certified copy of the original record attested by the official having legal custody of the record or by an authorized deputy.

Dated: October 31, 1989.

Clarence M. Coster,

Associate Commissioner, Enforcement Immigration and Naturalization Service.

[FR Doc. 89-27853 Filed 11-27-89; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 89-15]

Rules, Policies, and Procedures for Corporate Activities; Receivership and Conservatorship

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule articulates, for the first time in a regulation, certain of

the factors the Office of the Comptroller of the Currency ("OCC") may consider in determining whether to appoint a receiver for a national bank. These factors are a national bank's net worth and/or its liquidity. In addition, this final rule changes the OCC's method of measuring net worth for insolvency purposes. The major change in measuring a bank's net worth is the use of equity capital, rather than primary capital. By using equity capital as the measure, a bank's allowance for loan and lease losses ("ALLL"), also known as the loan loss reserve, is excluded from the calculation of net worth. This change is intended to bring the OCC's measurement of net worth more closely in line with generally accepted accounting principles ("GAAP"). This final rule does not alter the method of determining insolvency on a liquidity basis. In adopting this amendment, the OCC does not limit its discretion to consider other factors in assessing the solvency of a national bank. Further, the OCC expects to continue its long-standing practice of satisfying itself of a bank's insolvency on a case-by-case basis, taking into account all relevant facts and circumstances involving the particular bank under consideration.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447–1882, or Kennard L. Page, National Bank Examiner, Special Supervision Division, (202) 447–1719.

SUPPLEMENTARY INFORMATION:

Background

The OCC published a notice of proposed rulemaking ("NPRM") in connection with this amendment on July 5, 1989 (54 FR 28072). Subsequently, Banking Bulletin 89–28 was issued to bring the NPRM to the attention of the banking community.

The OCC is issuing this rule for two reasons. First, as 12 U.S.C. 191 is not specific as to what constitutes "insolvency," the OCC has great latitude in determining whether a national bank is insolvent. Therefore, the OCC believes it will be helpful to specify, in the form of a regulation, certain of the factors it may consider in determining insolvency. Second, the OCC wants to notify the public of a change in the method by which it will measure national banks' net worth in making insolvency determinations.

The OCC's decision to change its method of measuring a bank's net worth for the purpose of determining solvency is based upon the following considerations:

- The OCC's experience indicates that the public interest will be better served by closing a bank when the institution's equity capital has been depleted. Events during the past several years have shown that once a bank's equity capital is exhausted, the bank has virtually no chance of recovery without government or outside intervention. Recapitalization by existing ownership has been rare. Moreover, it has been the OCC's experience that permitting an institution to continue operations when its owners no longer have any financial interests at stake encourages imprudent operations, including occasional abuse of high-cost funding sources, and results in increased losses. Such continued operations also adversely affect the industry as a whole, placing healthy competitors at a disadvantage.
- The change in calculating net worth is needed to make the OCC's practices conform more directly with GAAP.
- The OCC believes that the final rule will facilitate the sale of insolvent instututions and result in savings to the Federal Deposit Insurance Corporation ("FDIC").
- The OCC believes that banks with no equity capital may experience a loss in customer confidence and therefore may not be influenced by constraints ordinarily imposed by market discipline. By using equity capital to measure a bank's net worth, such situations may occur less frequently.

Legal Discussion

(1) *Statutory Authority.* Under 12 U.S.C. 191, "[w]henever the comptroller * * * become[s] satisfied of the insolvency of a national banking association, he may * * * appoint a receiver, who shall proceed to close up such association." Case law interpreting this authority has established that the Comptroller has a great deal of discretion in reaching a determination of insolvency. *Adams* v. *Nagle*, 303 U.S. 532 (1938) ("*Adams*"); *Liberty National Bank of South Carolina* v. *McIntosh*, 16 F.2d 906 (4th Cir. 1927).

(2) *Insolvency Factors.* The factors the OCC has ordinarily considered in determining whether a national bank is insolvent are net worth and liquidity. Under the net worth factor, a national bank may be declared insolvent when its liabilities exceed its assets. *Commercial National Bank in Shreveport* v. *Connolly*, 176 F.2d 1004 (5th Cir. 1949). Under the liquidity factor, a bank may be declared insolvent when it is unable to meet its obligations as they mature. *Smith* v. *Witherow*, 102 F.2d 638 (3d Cir. 1939) ("*Smith*"); *In re Liquidation of Franklin National Bank*, 381 F. Supp. 1390 (E.D.N.Y. 1974) ("*Franklin*").

In the past, the OCC has considered these factors in declaring banks insolvent, using case-by-case analyses. *See In re Conservatorship of Wellsville National Bank*, 407 F.2d 223 (3d Cir.), *cert. denied*, 396 U.S. 832, *reh. denied*, 396 U.S. 949 (1969) ("*Wellsville*"); *Franklin*, 381 F. Supp. 1390 (E.D.N.Y. 1974) (use of either factor appropriate under 12 U.S.C. 191). A bank can be insolvent under both factors. *See Golden Pacific Bancorp* v. *Clarke*, No. 85–2384 (D.D.C. 1986), *aff'd*, 837 F.2d 809 (D.C. Cir.), *cert. denied*, 109 S. Ct. 233 (1988). The OCC is not limited to these two factors and may employ others to determine insolvency. However, this final rule discusses only the net worth and liquidity factors. In its current form, § 5.49 does not set forth any criteria for determining the insolvency of a national bank.

The Final Rule

This final rule amends the receivership provisions and deletes the conservatorship provisions of 12 CFR 5.49. Section 5.49 deals with the appointment of receivers under 12 U.S.C. 191 and conservators under 12 U.S.C. 201 *et seq.*, the Bank Conservation Act ("BCA").

On August 9, 1989, the BCA was substantially amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 ("FIRREA"). The current conservatorship provisions in § 5.49 are inconsistent with the language of the BCA, as amended. Therefore, these provisions are deleted, and the authority citation and title of the regulation are amended accordingly. The OCC may exercise its authority under the BCA without a regulation; thus, this authority is not limited or otherwise affected by the changes implemented by this regulation.

The receivership provisions of § 5.49 set forth the OCC's authority to appoint a receiver. In most cases, the OCC appoints the FDIC as receiver. *See* 12 U.S.C. 1821(c). Section 5.49 also establishes certain procedures for the payment of claims in cases in which the OCC does not appoint the FDIC as receiver.

The final rule changes the receivership provisions of § 5.49 to articulate the net worth and liquidity factors for determining national bank insolvency. In addition, this final rule establishes a new method of measuring a national bank's net worth for insolvency purposes, but does not change the method of measuring liquidity for insolvency purposes.

Primary Capital and Equity Capital

The OCC has declared national banks insolvent on a net worth basis when primary capital is depleted, *i.e.*, when a bank's liabilities exceed its assets plus its ALLL. For this purpose, the OCC has used the definition of "primary capital" found at 12 CFR 3.2(c). The OCC has considered a bank's primary capital to be a functional substitute for its net worth. This approach has not been required by law, but has been used as an internal guideline.

With this final rule, the OCC is conforming its definition of net worth to GAAP. Now, the OCC will measure net worth as the bank's equity capital, *i.e.*, its assets minus its liabilities. The ALLL will not be counted. Thus, the OCC may declare a bank insolvent when its equity capital (rather than its primary capital) is exhausted. For the purpose of determining insolvency, the bank's equity capital will include:

(1) Common shareholders' equity. "Common shareholders' equity" means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign currency translation, less any net unrealized loss on marketable equity securities.[1]

(2) Preferred stock and related surplus.

This measure of equity omits items with characteristics of both debt and equity. For example, long-term subordinated debt and mandatory convertible debt instruments are not counted as equity. However, debt may convert to equity capital as defined above; upon conversion, it will be included in a bank's equity capital.

The major difference between the OCC's past use of primary capital for measuring a bank's net worth and the final rule's use of equity capital for the same purpose is the exclusion of the bank's ALLL. This revised measurement of net worth does not alter the OCC's requirement that all national banks maintain an adequate ALLL. A bank's failure to maintain an adequate ALLL is unsafe or unsound banking practice that may result in a cease and desist order under 12 U.S.C. 1818(b). Such failure may also constitute a violation of 12 U.S.C. 161 which may result in the imposition of civil money penalties under 12 U.S.C. 93(b) and 12 U.S.C. 1818(i).

Comments received

The OCC received 15 comments in response to the NPRM. The commenters include national banks, thrift and banking industry trade associations, and a committee comprised of members from academia and the industry. Generally, this committee analyzes numerous issues facing the financial services industry. Nine commenters generally favored the OCC's proposal; six commenters generally opposed the new regulation.

The major issues raised by the commenters fall into five categories. These categories are: (1) The OCC's use of different definitions of capital; (2) exclusion of the ALLL from the net worth calculation; (3) treatment of hybrid debt-equity instruments; (4) case-by-case application of the new rule; and (5) additional comments and suggestions. Each comment category is discussed below.

(1) The OCC's Use of Different Definitions of Capital

A number of commenters objected to the use of different definitions of capital. Some commenters suggested that the OCC should use the definition of capital adopted in the Risk-Based Capital ("RBC") Guidelines for determining insolvency on a net worth basis.

The OCC is aware that differing definitions of capital could cause some confusion, and has considered adopting the RBC definition of capital for the purpose of determining net worth insolvency. For the reasons discussed below, however, the OCC has determined that the definition of capital for determining net worth insolvency serves a different purpose than determining the adequacy of a bank's capital on an ongoing basis. In this regard, the RBC definition of capital is inappropriate as a measure for determining a bank's solvency.

In a net worth calculation, the amount of capital available to a business is one measure of its viability at a specific time. For all businesses, equity capital represents the shareholders' ownership interest. To the extent of this ownership interest, shareholders may participate in losses from business operations.

Unlike most businesses, however, some liabilities of national banks, *i.e.*, deposits up to a statutory limit, are insured. Thus, not only national bank owners risk losses as a result of bank actions; FDIC funds are also at stake. As equity capital is diminished through losses, greater and greater risk of loss is shifted to FDIC funds. By its nature, this shifting of risk occurs in failing banks and may encourage less sound decisions and operations. To minimize the possibility of significant losses to the FDIC funds, the OCC has concluded that a definition of capital that emphasizes equity, and thus, *owner* participation in business losses, is appropriate.

In contrast, the RBC Guidelines consider the amount of capital necessary to support the credit risk inherent in a bank's assets, and require the minimum capital-to-risk-weighted-assets ratio to be met over the operating life of the bank. Thus, the RBC definition includes limits on *some* intangible assets, such as qualifying mortgage servicing rights and goodwill. The definition of equity capital under the net worth factor, however, does not specifically exclude intangible assets. This treatment reflects the fact that all assets—tangible and intangible—are subject to the same GAAP and regulatory accounting requirements for recognizing impairments in their value. Specifically, such an impairment must be recorded as a current charge to earnings, in turn reducing equity capital. Thus, equity capital reflects only unimpaired asset values, the most meaningful measure for insolvency purposes.

Further, unlike the requirements of RBC, it is not necessary or appropriate to make qualitative distinctions or place quantitative limitations on the components eligible to make up net worth for insolvency purposes. Therefore, to calculate the net worth of a national bank, the OCC will consider all of its preferred stock instruments without limitation, regardless of their perpetual or limited life nature. This treatment is appropriate for a determination of the solvency of a bank at a specific time. Limited life preferred instruments that have not matured still represent shareholders' ownership. Thus, these instruments should be included in the measure of the bank's net worth for solvency purposes.

Additionally, under RBC, a bank may include Tier 2 capital components only to the extent of its Tier 1 total. If the bank has Tier 2 elements that exceed its Tier 1 total, it may not include that excess in calculating its risk-based capital ratio. This limitation is unnecessarily restrictive in the context of a solvency determination, because some of the components of Tier 2 represent shareholders' ownership. This final rule does not limit the use of any capital component that qualifies as equity for determining the insolvency of a national bank.

[1] The final clause in this definition, "less any net unrealized loss on marketable securities," has been altered slightly from the language in the NPRM. This change is not substantive. It has been made to conform the final rule with the instructions for Consolidated Reports of Condition and Income (call report instructions) promulgated by the Federal Financial Institutions Examination Council.

(2) Exclusion of the ALLL from the Net Worth Calculation

Many commenters addressed the OCC's exclusion of the ALLL from the net worth calculation. Most of these commenters supported the exclusion. Commenters who opposed the exclusion argued that the OCC should include at least part of the ALLL in the definition of capital for the purpose of the net worth factor.

Under GAAP and regulatory accounting principles ("RAP"), all banks are required to maintain an ALLL adequate to cover estimated losses inherent in their loan portfolios. The ALLL is a "valuation reserve" account, measuring the amount of impairment over the lives of the loans in a bank's portfolio. Because the ALLL is dedicated to absorbing estimated loan and lease losses, and its level is set to reflect the estimated value impairment in the loan portfolio, it is not appropriate to include any portion of the ALLL in the measure of equity capital used for insolvency purposes.

A number of the commenters preferred using the RBC definition of capital. These commenters apparently assumed that, as a result, ALLL up to a maximum of 1.25% of a bank's risk-weighted assets could be counted toward a bank's equity capital. These commenters may not have fully considered the application of the RBC definition in the context of net worth insolvency. An example may help to illustrate this application, and the accounting treatment of the ALLL.

Assume that a bank experiencing substantial loan losses has depleted its ALLL through charge-offs. To comply with GAAP and RAP requirements, the bank must replenish its ALLL to reflect remaining estimated losses in its loan portfolio. The ALLL is replenished through a provision expense charged against current earnings, and ultimately is reflected as a decrease in undivided profits. Because undivided profits are an element of common shareholders' equity, replenishing the ALLL decreases the bank's equity capital. If the OCC used the RBC definition of capital for the determination of net worth insolvency, this decrease would reduce the amount of the bank's Tier 1 capital. Having reduced its Tier 1 capital, the bank would also have to reduce the amount of any Tier 2 capital that it could use to calculate total capital. Thus, as a bank approaches insolvency, fewer and fewer of its Tier 2 capital components are included in determining net worth, because most of its Tier 1 capital becomes exhausted.[2]

(3) Treatment of Hybrid Debt-Equity Instruments

Hybrid capital instruments such as subordinated, perpetual and mandatory convertible debt combine the characteristics of debt and equity. Some commenters suggested that the OCC count hybrid debt-equity instruments as equity in determining solvency. These commenters pointed to the treatment of these instruments in the RBC Guidelines to support this view.

The OCC recognizes that these instruments often improve the overall strength of a bank's capital position. Thus, the final RBC guidelines allow banks to include hybrid debt-equity instruments in Tier 2 capital. These instruments may be counted as capital (up to a specified proportion of Tier 1 capital) in meeting the RBC requirements. However, as explained above, as Tier 1 disappears due to losses, those hybrid instruments in Tier 2 are no longer included in the sum of capital items for RBC calculations. Thus, excluding these instruments from the sum of accounts that determine a bank's solvency is consistent with their treatment in the RBC guidelines.

Another important consideration for the purpose of determining insolvency is that these instruments are not available to protect against losses while the issuer is operating as a going concern. That is, they do not provide the ability to defer payments, which might be needed when a bank experiences losses or is confronted by other financial pressures. Thus, the OCC has determined that hybrid instruments should not be treated as equity for the purpose of determining solvency. However, as noted above, debt may convert to "equity capital", as that term is defined in the final rule; upon conversion, it will be included in a bank's equity capital.

Finally, hybrid debt-equity instruments should not be included in the definition of equity capital for insolvency purposes because the rights and interests of a bank's debtholders are different from those of its shareholders. Debtholders do not have the voting rights of common shareholders, and therefore exercise little control over the bank. In addition, after their contractual interest payments are received, debtholders have no claim on a bank's residual profits. Thus, the rights and interests of a bank's debtholders are similar to those of its uninsured depositors, rather than its shareholders.

(4) Case-by-Case Application of the New Rule

Several commenters expressed concern that the new rule will be applied in a rigid manner. These commenters suggested that the OCC will not take into account all relevant facts of a particular situation in determining solvency. In this regard, the OCC expects to continue its long-standing practice of making determinations of insolvency on a case-by-base basis, taking into account all relevant facts and circumstances involving the particular bank under consideration.

One commenter expressed the opinion that the OCC's reservation of the right to consider factors other than the two factors set forth in the regulation undermines the OCC's goal of stating the "specific" measurements that it usually uses in determining national bank insolvency. With regard to this point, the OCC is responsible for ensuring the safety and soundness of the national banking system and needs flexibility in its decision-making. That flexibility is granted by the language of 12 U.S.C. 191 and case law, and is merely reaffirmed in this final rule. The OCC will continue its practice of making determinations of insolvency on a case-by-case basis. The OCC anticipates that the two factors set forth in the new regulation will cover the vast majority of situations. Thus, the OCC is being as specific as possible in giving guidance, while maintaining the necessary flexibility to respond to diverse situations.

Two commenters suggested that, under the amended regulation, the OCC might close a bank prematurely before adequate recapitalization or the most advantageous sale, merger or other disposition of the bank could be arranged. Clearly, the submission of an adequate recapitalization plan, or the existence of a feasible merger, purchase and assumption, sale, or other agreement which will likely result in the successful disposition of the bank, may be considered by the OCC as part of its insolvency decision-making process. Twelve U.S.C. 191 provides that when the OCC becomes satisfied of the insolvency of a national bank, it "*may* * * * appoint a receiver." Thus, it is established that the OCC is not required by law to close an insolvent bank

[2] In addition to the issues discussed above, several commenters were concerned over the determination of the adequacy of the ALLL given its exclusion from the net worth factor. In response to this concern, it should be noted that bankers and examiners must follow the guidelines currently set forth in Banking Circular 201, and in section 217 of the *Comptroller's Handbook for National Bank Examiners*.

immediately. *Easton* v. *Iowa*, 188 U.S. 220 (1903). This final rule is consistent with the statute and relevant case law.

Another commenter thought that the new rule would result in the closing of solvent banks, because the ALLL in a particular bank may be more than adequate to cover its estimated loan losses. In this regard, it should be noted that the issue of whether a bank's ALLL is adequate will be one of the factors the OCC will consider in satisfying itself that the bank is insolvent.

Some commenters are concerned that the OCC would close a national bank without notice at the moment the bank exhausts its equity capital. In the absence of fraud, insider abuse or other unusual circumstances, the OCC generally notifies bank management and directors of the need for additional capital in advance of possible closure. This practice gives the bank a chance to raise capital. In fact, in the vast majority of cases, the OCC has worked very closely with bank management and directors in an effort to recapitalize and correct deficiencies cited by national bank examiners. In sum, a determination of insolvency and closing are usually the final actions after the OCC has worked with the bank over time in an effort to help the bank solve its problems and increase its capital.

(5) Additional Comments and Suggestions

In addition to the general categories of comments discussed above, several commenters raised issues that cannot be placed into a particular category. One commenter expressed the opinion that the new rule will apply to savings associations because section 301 of FIRREA provides that the capital standards prescribed by the Director of the Office of Thrift Supervision "shall be no less stringent than the capital standards applicable to national banks." This regulation is being adopted by the OCC to set forth insolvency factors for national banks. The definition of "equity capital" in the regulation is intended to apply only to national banks. Furthermore, this final rule has been developed pursuant to its statutory authority in 12 U.S.C. 191, a statute very different from the insolvency statute which applies to thrifts.

Two commenters suggested a phase-in period for the new regulation. As noted above, this final rule is consistent with the OCC's authority under 12 U.S.C. 191 and relevant case law, which provide the OCC a great deal of discretion in determining whether a national bank is insolvent. The OCC could have implemented this change in its practice without promulgating a formal regulation. The OCC's use of the rulemaking process has effectively served the same purpose as a phase-in period, by notifying the banking community of the proposed change in the OCC's practice and providing an opportunity to comment on the proposal.

Another commenter suggested that the OCC should measure equity capital on the basis of current market values rather than book values. This is not precluded by the amended regulation. The OCC may use market values and other measurements of value, under appropriate circumstances. Further, as noted above, this final rule does not alter the OCC's discretion to consider other factors in assessing the solvency of a national bank.

One commenter requested the deletion of the word "usually" in Banking Bulletin 89–26 and the preamble to the notice of proposed rulemaking. This word had been used in these documents, but not in the proposed regulation itself, in the context of a discussion of the factors "usually" considered by the OCC in determining insolvency of a national bank. The word "usually", like the word "may" used in the proposed and final regulation, is intended to preserve the OCC's flexibility and discretion in making insolvency decisions. The same commenter also felt that different insolvency standards are applied to small and large banks. This perception is inaccurate. While the solvency of each national bank is determined on a case-by-case basis, all banks are judged according to the same insolvency factors, regardless of their size.

Another commenter suggested that the OCC adopt an additional, "profitability" standard of insolvency. In the alternative, the commenter proposed expanding the net worth factor to recognize a profitable going concern. As expressed above, the final rule does not preclude the OCC's consideration of other factors, including profitability. After the final rule is adopted, the OCC will continue its current practice of satisfying itself of a bank's insolvency on a case-by-case basis.

This commenter also proposed that the OCC implement a notice and rebuttal mechanism, whereby banks would be notified when they may be declared insolvent by the OCC, and would be given a right to rebut and appeal the determination of insolvency. In this respect, neither 12 U.S.C. 191 nor case law provides for a hearing and review procedure. It is well-established that the special character of bank insolvencies justifies the absence of pre-insolvency hearings. *See, e.g., Franklin*, 381 F. Supp. at 1392; *Cf. Fahey* v. *Mallonee*, 332 U.S. 245, 253 (1947).

Further, national banks are aware of their level of equity capital and are on notice of the basic factors the OCC usually considers in making insolvency determinations. Moreover, as discussed above, in the absence of fraud, insider abuse or other unusual circumstances, the OCC works with bank management and directors over a period of time in an effort to recapitalize the bank and avoid its insolvency. Thus, numerous mechanisms are already in place to "warn" banks of trouble and to give banks the opportunity to respond to the OCC's concerns.

Similarly, under the better-reasoned authorities, the OCC's declaration of insolvency is not subject to judicial review. *See, e.g., Wellsville*, 407 F.2d 223 (3d Cir.), *cert. denied*, 396 U.S. 832, *reh. denied*, 396 U.S. 949 (1969); *Wannamaker* v. *Edisto National Bank of Orangeburg*, 62 F.2d 696 (4th Cir. 1933); *Munro* v. *Post*, 23 F. Supp. 308 (E.D.N.Y. 1938), *aff'd*, 102 F.2d 686 (2d Cir. 1939). The OCC's insolvency determination involves "agency action * * * committed to agency discretion by law" and, thus, is exempt from judicial review under the Administrative Procedure Act, 5 U.S.C. 701(a)(2).

Moreover, the plain language of 12 U.S.C. 191 places the determination of national bank insolvency within the Comptroller's discretion because insolvency occurs "whenever the comptroller shall become satisfied of" its existence. The need for prompt action and the nature of the decision to close a national bank, involving agency expertise on a wide range of economic and policy matters, strongly support non-reviewability. *See, e.g., Adams*, 303 U.S. at 540–541 (1938); *Suntex Dairy* v. *Block*, 666 F.2d 158, 164 (5th Cir.), *cert. denied*, 459 U.S. 826 (1982).

The proposed rule does not change this principle of non-reviewability. Specifically, the OCC is not restricting its discretion with respect to determining insolvency in such a manner as to permit judicial review. The language in the proposed rule has been modified to make clear this intent. Accordingly, the final rule does not articulate definite standards that rigidly define insolvency. Rather, the rule publicly describes factors that may, among others, be considered by the OCC in determining whether it is satisfied that insolvency exists.

A few commenters expressed doubt concerning OCC's reference to a loss in customer confidence as a reason in support of its proposal. The OCC believes that deposit withdrawals have

occurred in banks having no equity capital due to declines in depositor confidence in such institutions.

Certain commenters questioned the impact on the FDIC funds of the proposed regulation. The OCC anticipates that the FDIC will benefit from the new rule in two ways. First, the FDIC receives the benefit of any amounts held in a failed bank's ALLL intended to cover estimated losses in the bank's loan portfolio. This factor should reduce the FDIC's costs connected with the disposition of the institution. Second, the OCC believes that this final rule will increase the number of potential investors for insolvent national banks. Investor interest should be greater in a bank which is closed before it accrues substantial operating losses in excess of its capital.

Finally, one commenter was concerned that the liquidity factor is too imprecise. The language in the final rule for the liquidity factor is consistent with established practice under 12 U.S.C. 191. *See Smith*, 102 F.2d 638 (3d Cir. 1939); *Franklin*, 361 F. Supp. 1390 (E.D.N.Y. 1974).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this amendment will not have a substantial economic impact on a significant number of small entities. As noted above, the OCC will make each determination of insolvency on a case-by-case basis. Under the new regulations, such determination will be based on a national bank's liquidity or equity position, not its size. The new rule is consistent with the intent of the Regulatory Flexibility Act, and the application of the rule will not be unduly burdensome to small banks.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

List of Subjects in 12 CFR Part 5

National banks, Banking, Receivership, Conservatorship, Insolvency.

Authority and Issuance:

For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. Section 5.49 is revised to read as follows:

§ 5.49 Receivership.

(a) *Authority.* 12 U.S.C. 191–200.

(b) *Procedures.* Sections 5.8 through 5.14 do not apply to receiverships.

(c) *Receivership.* If the Office becomes satisfied that a national bank is insolvent, it may appoint a receiver for such bank.

(1) *Factors for determining insolvency.* Pursuant to 12 U.S.C. 191, a receiver may be appointed to close up the affairs of a national bank whenever the Office shall become satisfied of the bank's insolvency. In determining whether it is satisfied that a bank is insolvent, the Office may consider the following factors, among others:

(i) *Net worth.* The Office may consider whether the bank's liabilities exceed its assets. A bank's liabilities shall exceed its assets when its equity capital is eliminated by losses. For the purpose of reaching a determination of insolvency, the bank's equity capital shall consist of:

(A) *Common shareholders' equity.* "Common shareholders' equity" means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign currency translation, less any net unrealized loss on marketable equity securities.

(B) *Preferred stock and related surplus.*

(ii) *Liquidity.* The Office may deem a national bank insolvent when it is unable to meet its obligations as they mature.

(2) *Federal Deposit Insurance Corporation as receiver.* In cases in which the Office is required to appoint the Federal Deposit Insurance Corporation as receiver, that corporation prescribes the procedures it follows in liquidation of the insolvent bank.

(3) *Other receivers.* In those cases in which the Office does not appoint the Federal Deposit Insurance Corporation as receiver, it may appoint a receiver of its choice. The Office prescribes a form of proof of claim. The receiver appointed by the Office issues a certificate of proof of claim to claimants who prove their claims to the satisfaction of the Office or establish their claims by litigation.

Dated: November 21, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–27751 Filed 11–27–89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-225-AD; Amdt. 39-6402]

Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes Equipped With CFM International CFM56-3 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, equipped with CFM International CFM56-3 series engines, which requires modification of the engines idle circuitry to inhibit the in-flight low idle capability. This amendment is prompted by four incidents of engine flameouts that occurred during descent through thunderstorm activity. This condition, if not corrected, could result in additional dual engine flameouts and thus jeopardize safe flight and landing.

EFFECTIVE DATE: December 11, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There have been four incidents, two recent, of engine flameouts of Model 737-300 series airplanes during inadvertent thunderstorm encounters. In the first of the two recent incidents, an airplane experienced a single engine flameout during descent through 18,000 feet after entering sudden rain and hail. At 11,000 feet, the pilots nosed the airplane over and obtained a successful windmill restart. In the second recent incident, an airplane experienced a dual engine flameout after encountering hail and ice (no rain) at 17,000 feet, during the descent into the destination airport. The airplane was in the vicinity of thunderstorm activity. The engines recovered from their sub-idle condition without pilot action at 14,000 feet. Both of these incidents were caused by airplane immersion into surrounding thunderstorm activity. This condition, if not corrected, could result in additional dual engine flameouts due to an inadvertent encounter with thunderstorm activity.

The FAA has reviewed and approved Boeing Alert Service Bulletins 737-77A1026 (for the Model 737-300), Revision 2, dated October 27, 1989, and 737-77A1025 (for the Model 737-400), dated October 12, 1989, which describe the modification procedures necessary to inhibit the engines' in-flight low idle capability, thus increasing the engine minimum percent N_1 flight idle to the existing High Idle (approximately 28% to 33% N_1). This modification increases the engines' flameout margin approximately 50%, thus significantly reducing the possibility of engine flameout during an inadvertent thunderstorm encounter. These Alert Service Bulletins provide instructions to add the engine high idle control and indication system on the Model 737-300 series airplanes, and incorporate the minimum high idle modification into the existing engine idle control and indication system on the Model 737-400 series airplanes.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires modification of the engine idle circuitry to remove in-flight low idle capability, in accordance with the alert service bulletins previously described.

This is considered further interim action, in conjunction with AD 88-13-51-R1, Amendment 39-6088 (53 FR 49978; December 13, 1988). That previously issued AD is applicable to Model 737-300 series airplanes and requires, among other things, a revision to the Airplane Flight Manual (AFM) to require operation with an minimum N_1 engine speed of 45 percent; engine ignition in the FLIGHT position when flying in or near moderate to heavy rain, hail, or sleet; and the avoidance of flight in moderate to severe thunderstorm activity. The requirements of that AD action were incorporated into the basic Model 737-400 type design prior to its certification. Experimental engine design solution(s) are currently under evaluation. Pending the result of these engineering evaluations and flight tests, the FAA may consider further rulemaking to require incorporation of a final engine design change into the existing Boeing Model 737-300 and 737-400 fleet.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 and -400 series airplanes, identified in Boeing Alert Service Bulletins 737-77A1026, Revision 2, dated October 27, 1989, and 737-77A1025, dated October 12, 1989, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of engine flameout during inadvertent airplane immersion into thunderstorm activity, accomplish the following:

A. For Model 737-300 series airplanes: Modify the engine idle circuitry in accordance with Boeing Alert Service Bulletin 737-77A1026, Revision 2, dated October 27, 1989.

Note: This action is in addition to the actions required by AD 88-13-51-R1, Amendment 39-6088, for the Model 737-300 series airplanes.

B. For Model 737-400 series airplanes: Modify the engine idle circuitry in accordance with Boeing Alert Service Bulletin 737-77A1025, dated October 12, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 11, 1989.

Issued in Seattle, Washington, on November 15, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-27832 Filed 11-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 177

[Docket No. 88F-0376]

Indirect Food Additives; Adhesives and Components of Coatings and Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydroxybutyltin oxide, monobutyltin tris(2-ethylhexoate), and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food. This action is in response to a petition filed by M&T Chemicals, Inc.

DATES: Effective November 28, 1989; written objections and requests for a hearing by December 28, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 7, 1988 (53 FR 49359), FDA announced that a food additive petition (FAP 8B4113) had been filed by M&T Chemicals, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) and § 177.2420 *Polyester resins, cross-linked* (21 CFR 177.2420) be amended to provide for the safe use of hydrated monobutyltin oxide, monobutyltin trioctoate, and dibutyltin oxide in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The polyesters are intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency finds that monobutyltin tris-(2-ethylhexoate) and hydroxybutyltin oxide are more specific terms for the additives monobutyltin trioctoate and hydrated butyltin oxide, respectively. Thus, the agency is adopting this preferred nomenclature for the proposed food additives. The agency also concludes that the three catalysts, hydroxybutyltin oxide, monobutyltin tris(2-ethylhexoate), and dibutyltin oxide, are safe for use in the production of polyester resins to be used in resinous and polymeric coatings and cross-linked polyester resins. The agency is amending the food additive regulations by listing these three catalysts in new § 175.300(b)(3)(vii)(*e*) and by including these catalysts in the table in § 177.2420(b), as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 28, 1989 file with the Dockets Management Branch (address above) written objections thereto.

Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center the Food Safety and Applied Nutrition, 21 CFR parts 175 and 177 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.300 is amended by adding new paragraph (b)(3)(vii)(*e*) to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(*e*) Catalysts:

Dibutyltin oxide [CAS Reg. No. 818–08–6], not to exceed 0.2 percent of the polyester resin.

Hydroxybutyltin oxide (CAS Reg. No. 2273–43–0), not to exceed 0.2 percent of the polyester resin.

Monobutyltin tris(2-ethylhexoate) (CAS Reg. No. 23850–94–4), not to exceed 0.2 percent of the polyester resin.

* * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

3. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

4. Section 177.2420 is amended in the table in paragraph (b) by alphabetically adding under item "3. Catalysts:", three new entries to read as follows:

§ 177.2420 Polyester resins, cross-linked.

* * * * *

(b) * * *

List of substances	Limitations (limits of addition expressed as percent by weight of finished resin)
* * * * *	
3. Catalysts:	
* * * * *	
Dibutyltin oxide (CAS Reg. No. 818–08–6).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	
Hydroxybutyltin oxide (CAS Reg. No. 2273–43–0).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	
Monobutyltin tris(2-ethylhexoate) (CAS Reg. No. 23850–94–4).	For use in the polycondensation reaction at levels not to exceed 0.2 percent of the polyester resin.
* * * * *	

* * * * *

Dated: November 16, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–27809 Filed 11–27–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 436 and 442

[Docket No. 89N–0412]

Antibiotic Drugs; Cephalexin Hydrochloride Monohydrate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, cephalexin hydrochloride monohydrate tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 28, 1989; written comments, notice of participation, and request for hearing by December 28, 1989; data, information, and analyses to justify a hearing by January 29, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cephalexin hydrochloride monohydrate tablets. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR 436.215 by adding a new entry to the table in paragraph (b) and adding new paragraph (c)(11), and by adding new §§ 436.367, 442.28, and 442.128 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective December 28, 1989. However, interested persons may, on or before December 28, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 28, 1989, a written notice of participation and request for hearing, and (2) on or before January 29, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) whose request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 436

Antibiotics.

Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 436.215 is amended by alphabetically adding a new entry to the table in paragraph (b), and by adding a new paragraph (c)(11) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate [1]	Sampling time(s)	Apparatus
Cephalexin hydrochloride monohydrate tablets	900 mL distilled water	100	45 min	1

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(11) *Cephalexin hydrochloride monohydrate.* Assay for cephalexin activity of the cephalexin hydrochloride monohydrate as directed in § 442.28 of this chapter, and use U.S.P. dissolution apparatus 1 (10 mesh basket). Use the sample as it is removed from the dissolution vessel.

* * * * *

3. New § 436.367 is added to Subpart F to read as follows:

§ 436.367 Thin-layer chromatographic identity test for cephalexin hydrochloride.

(a) *Equipment*—(1) *Chromatography tank.* Use a rectangular tank approximately 23 X 23 X 9 centimeters, with a glass solvent trough in the bottom and a tight-fitting cover. Line the inside walls of the tank with Whatman #3 MM chromatographic paper or equivalent.

(2) *Plates.* Use 20 X 20 centimeter thin layer chromatographic plates coated with silica gel 60F–254 or equivalent to a thickness of 250 microns.

(b) *Developing solvent.* Mix ethylacetate, acetonitrile, water and glacial acetic acid in volumetric proportions of 42:14:18:14, respectively.

(c) *Preparation of the spotting solutions.* Prepare a solution of the sample containing 25 milligrams per milliliter of cephalexin hydrochloride in water. Prepare a solution of cephalexin monohydrate reference material at a concentation of 25 milligrams per milliliter. Add water and 0.1*N* hydrochloric acid in a dropwise mode until the material is completely dissolved.

(d) *Procedure.* Pour the developing solvent into the glass trough at the bottom of the chromatography tank. Cover and seal the tank. Allow it to equilibrate for 1 hour. Prepare a plate as follows: On a line 2 centimeters from the base of the plate, and at intervals of 2 centimeters, spot approximately 5 microliters of the standard solution to points 1 and 3 and approximately 5 microliters of the sample solution to point 2. After all spots are thoroughly dry, place the plate directly into the glass trough of the chromatography tank. Cover and seal the tank. Allow the solvent front to travel approximately 15 centimeters from the starting line. Remove the plate from the tank and allow it to air dry.

(e) *Evaluation.* View the dry plate under ultraviolet light (254 nanometers). Measure the distance the solvent front traveled from the starting line and the distance the spots are from the starting line. Calculate the R_f value by dividing the latter by the former. The sample and standard should have spots of corresponding R_f values of approximately 0.35.

PART 442—CEPHA ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

5. New § 442.28 is added to Subpart A to read as follows:

§ 442.28 Cephalexin hydrochloride monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephalexin hydrochloride monohydrate is the hydrochloride salt of 7-(*D-alpha*-amino-*alpha*-phenylacetamido)-3-methyl-3-cephem-4-carboxylic acid monohydrate. It is so purified and dried that:

(i) Its potency is not less than 800 micrograms and not more than 880 micrograms of cephalexin per milligram on an "as is" basis.

(ii) Its moisture content is not less than 3.0 nor more than 6.5 percent.

(iii) The pH of an aqueous solution containing 10 milligrams per milliliter is not less than 1.5 nor more than 3.0.

(iv) It gives a positive identity test.

(v) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cephalexin potency, moisture, pH, identity, and crystallinity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Cephalexin potency.* Proceed as directed in § 442.40(b)(1)(ii), except that "cephalexin" is substituted at each occurrence of "cephradine".

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(4) *Identity.* Proceed as directed in § 436.367 of this chapter.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

6. New § 442.128 is added to subpart B to read as follows:

§ 442.128 Cephalexin hydrochloride monohydrate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephalexin hydrochloride monohydrate tablets are composed of cephalexin hydrochloride monohydrate and one or more suitable and harmless lubricants, colorings and coating substances. Each tablet contains cephalexin hydrochloride monohydrate equivalent to 250 milligrams, 333 milligrams or 500 milligrams of cephalexin. Its cephalexin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cephalexin that it is represented to contain. Its moisture content is not more than 8.0 percent. The tablets pass the dissolution test. It passes the identity test. The cephalexin hydrochloride monohydrate used conforms to the standards prescribed by § 442.28(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cephalexin hydrochloride monohydrate used in making the batch for cephalexin potency, moisture, pH, identity, and crystallinity.

(B) The batch for cephalexin content, moisture, dissolution, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research.

(A) The cephalexin hydrochloride monohydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Cephalexin content.* Proceed as directed in § 442.140c(b)(1)(ii), except that "cephalexin" is substituted at each occurrence of "cephradine".

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity *Q* (the amount of cephalexin dissolved) is not less than 75 percent at 45 minutes.

(4) *Identity.* Proceed as directed in § 436.367 of this chapter.

Dated: November 15, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–27763 Filed 11–27–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Release of Official Information for Litigation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This regulation assigns responsibilities to Department of the Navy (DON) personnel in responding to requests from members of the public for official DON information (testimonial, documentary, or otherwise) in connection with litigation. It does not apply to requests unrelated to litigation or pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. The publication of this DON instruction will assist members of the public in submitting such requests. It implements Department of Defense Directive 5405.2 of July 23, 1985, codified in 32 CFR part 97, regarding the release of official information in connection with litigation. It restates the requirements contained in Secretary of the Navy Instruction 5820.8 of August 11, 1987, and is intended to conform to that instruction in all respects.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Commander R.F. Walsh, JAGC, USN, (Program Officer for Litigation Requests), Office of the Judge Advocate General, General Litigation Division, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone: (202) 325–9870.

SUPPLEMENTARY INFORMATION: (a) *Purpose of the regulation.* This regulation establishes policy, assigns responsibilities, and prescribes procedures for responding to requests for the release of official DON information, including testimony by DON personnel as witnesses, in connection with actual or contemplated litigation. In addition to providing an orderly means for obtaining information needed in litigation to members of the public, its provisions also protect the interests of the United States, including the safeguarding of classified and privileged information. This regulation ensures that responses to litigation requests are provided in a manner that does not prevent the accomplishment of the mission of the command or activity affected. It sets forth the proper content of a request received from a member of the public for release of official DON information in connection with litigation and indicates the factors to be considered in deciding whether to authorize the release of official DON information or the testimony of DON concerning official information.

(b) *Impact of the regulation.* The regulation is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The DON certifies that this regulation will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no regulatory flexibility analysis has been prepared. The regulation has no collection of information requirements and does not require the approval of OMB under 44 U.S.C. 3501 *et seq.* This regulation is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

(c) *Request for comments.* Because it merely imposed technical requirements in which the public is not particularly interested or involved, this regulation appeared in the **Federal Register** on June 22, 1989 (54 FR 26189), as an interim rule, effective on publication. No comments were received from the public about this regulation in the 30 day period designated for that purpose in the interim rule ending on July 24, 1989. No substantive changes have been made to the regulation. In response to recommendations made by intra-agency personnel, however, § 725.10 dealing with fees has been modified to clarify the guidance to Department of the Navy personnel contained therein. Additionally, several technical errors in titles, addresses, etc., have been corrected. Since these changes involve no new information, and because no comments were recieved from the public in response to the interim rule, no additional period for comment will be made available.

List of Subjects in 32 CFR Part 725

Courts, Government employees.

For the reasons set out in the preamble, title 32, chapter VI, subchapter C, of the Code of Federal Regulations is amended by adopting as final and revising part 725 to read as follows:

PART 725—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL AS WITNESSES

Sec.

725.1 Purpose.
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725.7 Considerations in responding to a request.
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Authority: 5 U.S.C. 301, 10 U.S.C. 5013, 31 U.S.C. 9701, 32 CFR part 97.

§ 725.1 Purpose.

This instruction implements 32 CFR part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates the information contained in Secretary of the Navy Instruction 5820.8 of August 11, 1987, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, however, without the authorization required by this instruction.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United

States or a party represented by the Department of Justice, or with the written special authorization required by this instruction.

(d) Paragraphs (b) and (c) of this section constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel-and is the basis for appropriate administrative procedures with respect to civilian employees. All DON personnel, military and civilian, present and former, are subject to prosecution under 18 U.S.C. 201–207 for certain violations of this instruction.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates (hereafter "determining authorities") described in §§ 725.8 and 725.9, shall respond to litigation requests or demands for official DON information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities' responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, responses may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.10; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

(c) The DOD General Counsel may notify DOD components that his or her office will assume primary responsibility for coordinating all litigation requests or demands for official DOD information or testimony of DOD personnel in litigation involving terrorism, espionage, nuclear weapons, and intelligence sources or means. Accordingly, determining authorities who receive requests pertaining to such litigation shall notify the DON Associate General Counsel (Litigation) or the Deputy Assistants Judge Advocate General for International Law or General Litigation, who shall consult and coordinate with DOD General Counsel prior to any response to such requests.

§ 725.4 Definitions.

(a) *Request or Demand (Legal Process).* Subpoena, order, or other request by a federal, state, or foreign court of competent jurisdiction, by any administrative agency thereof, or by any party or other person (subject to the exceptions stated in § 725.5) for production, disclosure, or release of official DOD information or for the appearance, deposition, or testimony of DON personnel as witnesses.

(b) *DON Personnel.* Active duty and former military personnel of the naval service including retirees; personnel of other DOD components serving with a DON component; Naval Academy midshipmen; present and former civilian employees of the DON including non-appropriated fund activity employees; non-U.S. nationals performing services overseas for the DON under provisions of status of forces agreements; and other specific individuals or entities hired through contractual agreements by or on behalf of DON, or performing services under such agreements for DON (e.g., consultants, contractors and their employees and personnel).

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving, or reasonably anticipated to involve, litigation.

(d) *Official Information.* All information of any kind, however stored, in the custody and control of the DOD and its components (including the DON); or relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components, while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces. The determination of whether "official information" (as opposed to non-DOD information), in whole or part, is sought, rests with the determining authority rather than the requester. The requester must still comply with the requirements of § 725.6 to support the contention that only non-DOD information is at issue.

(e) *Factual and Expert or Opinion Testimony.* DON policy favors disclosure of factual information if disclosure does not violate the criteria stated in § 725.7 and is not classified, privileged, or otherwise subject to withholding under statute, executive order, or regulation. The distinction between factual matters, and expert or opinion matters (where DON policy favors non-disclosure), is not always clear and involves the exercise of discretion. The following considerations pertain:

(1) DON personnel may merely be percipient witnesses to an incident, in which event their testimony would be purely factual. On the other hand, they may be involved with the matter only through an after-the-event investigation (e.g., investigation under the Manual of the Judge Advocate General), and asking them to identify conclusions in their report would likewise constitute factual matters to which they might testify. In contrast, asking them to adopt or reaffirm their findings of fact, opinions, and recommendations, or asking them to form or express any other opinion, particularly one based upon matters submitted by counsel or going to the ultimate issue of causation or liability, would clearly constitute precluded testimony under the foregoing policy.

(2) DON personnel, by virtue of their training, often form opinions because they are required to do so in the course of their duties. If their opinions are formed prior to, or contemporaneously with, the matter in issue, and are routinely required of them in the course of the proper performance of their professional duties, they essentially constitute factual matters (i.e., the opinion they previously held). Opinions formed after the event in question, however, generally constitute the sort of opinion or expert testimony which this instruction is intended to restrict severely.

(3) Characterization of expected testimony by a requester as fact, opinion, or expert is not binding on the determining authority. When there is doubt as to whether or not expert or opinion (as opposed to factual) testimony is being sought, advice may be obtained informally from, or the request forwarded, to the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for resolution.

(f) *Determining Authority.* The cognizant DON or DOD official designated to grant or deny a litigation request. In all cases in which the United States is, or might reasonably become, a party, or in which expert testimony is requested, the Judge Advocate General or the General Counsel of the Navy, depending on the subject matter of the request, will act as determining authority. In all other cases, the responsibility to act as determining authority has been delegated to certain commands and activities. Further guidance on the essential contents of a request and indicating where members of the public should forward litigation requests is contained in §§ 725.8 and 725.9.

§ 725.5 Applicability.

(a) *Applicable Situations.* This instruction applies to the following personnel and situations:

(1) To all present and former civilian and military personnel of the DON whether employed by, or assigned to, DON, temporarily or permanently. Categories of personnel affected are defined more fully in § 725.4(b).

(2) This instruction applies only to situations involving existing or reasonably anticipated litigation, as defined in § 725.4(c), when DOD or DON information or witnesses are sought, whether or not the United States, the DOD, or its components are parties thereto. It does not apply to formal or informal requests for information in other situations.

(3) This instruction provides guidance for the operation of the DON and for present and former DON personnel in responding to litigation requests. It is not intended, does not, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, DOD, or DON.

(4) This instruction is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(5) This instruction does not supersede or modify existing laws, DOD or DON regulations, directives, or instructions governing testimony of DON personnel or release of official DOD or DON information during grand jury proceedings.

(6) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. It does not preclude treating any written request for DON records not in the nature of legal process as a request under the FOIA or Privacy Act. DON activities are encouraged to process requests for records under the FOIA or Privacy Act if they are invoked by the requester either explicitly or by fair implication as provided in 32 CFR 701.3(d) and 701.103(i).

(b) *Exceptions and Exclusions.* This instruction does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such a DOD component;

(2) Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party);

(4) As part of the assistance required by the Defense Industrial Personnel Security Clearance Program Under DOD Directive 5220.6; [1]

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

(5) Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent Naval personnel;

(6) Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure. (In the latter event, compliance with 32 CFR Part 97 and this instruction is required);

(7) Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR part 581 and Secretary of the Navy Instruction 7200.16; [2]

(8) Pursuant to release of information to federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization;

(9) This instruction does not preclude official comment on matters in litigation in appropriate cases.

§ 725.6 Contents of a proper request or demand

(a) *Written (i.e., routine) requests.* If official information, through testimony or otherwise, is sought, a detailed request must be submitted in writing to the appropriate determining authority far enough in advance to allow prompt and thorough evaluation of the request and avoidance of adverse effects on the mission of the command or activity which must respond. A request that is deficient in providing necessary information may be returned to the requester by the determining authority, with an explanation of the deficiencies and a statement that no further action will be taken until they are corrected. If the circumstances so indicate, the determining authority should provide an information copy to the court issuing legal process as well. Litigation requests must provide the information—as applicable to the case under consideration—as follows:

(1) A statement as to whether the United States is, or is reasonably anticipated to become, a party to the matter;

(2) The caption of the case, including names of the parties, docket number, court, and the date the action commenced;

(3) Name, address, and telephone number of all counsel to the parties, or

[2] See footnote 1 to § 725.5(b)(4).

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to other persons likely to become parties;

(4) A brief summary of the facts of the case and the present posture of the case;

(5) A description, in as much detail as possible, of the documents, information, or testimony sought;

(6) A statement of whether factual, opinion, or expert testimony is sought;

(7) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances exist justifying such testimony, including why such testimony is not reasonably available from any other source;

(8) A statement of the relevance of the matters sought to the proceedings at issue;

(9) The name, address, and telephone number of the person, from whom the documents, information, or testimony is sought (if applicable);

(10) The date(s) on which the documents, information, or testimony sought must be produced; the requested location of production; and the estimated length of time that attendance of the DON personnel will be required (if applicable);

(11) A statement of the requester's willingness to pay in advance, in accordance with § 725.10, all reasonable expenses and costs of searching for and producing documents, information, or personnel, including travel expenses and accommodations (if applicable);

(12) A statement of understanding that the search and production will be at no expense to the Government;

(13) In cases in which deposition testimony is sought, a statement of whether later deposition testimony or attendance at trial is anticipated and requested;

(14) Agreement to notify the determining authority at least 10 days in advance of all interviews, depositions, or testimony. Additional time for notification may be required where the witness is located overseas;

(15) Agreement to conduct the deposition at the location of the witness, unless the witness and his commanding officer or cognizant superior, as applicable, stipulate otherwise;

(16) In the case of former DON personnel, a brief description of the length and nature of their duties while in DON employment, and a statement of whether such duties involved, directly or indirectly, the information or matters as to which the person will testify;

(17) An agreement to provide free of charge to any witness a signed copy of any written statement he or she may make, or, in the case of an oral deposition, a copy of that deposition transcript (if taken by a stenographer) or a video tape copy if taken solely by video tape, if not prohibited by applicable rules of court;

(18) An agreement that if the local rules of procedure controlling the litigation so provide, the witness will be given an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government; and

(19) A statement of understanding that the United States reserves the right to have a representative present at any interview or deposition.

(b) *Oral (i.e., emergency) requests.* Written requests allowing reasonable lead time for evaluation and processing are normally required. However, in emergency situations where response time is severely limited and a written request is impractical, the following procedures should be followed:

(1) The determining authority has discretion to waive the requirement of a written request and expedite a response in the event of a bona fide emergency under conditions which could not be anticipated in the course of proper pretrial planning and discovery. Oral (i.e., emergency requests) and subsequent determinations should be reserved for instances where factual matters are sought and insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the litigation for which the information is sought. No requester has a right to make an oral request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the determining authority, unless overruled by the General Counsel or the Judge Advocate General, as appropriate.

(2) If the determining authority concludes that the request, or any portion of it, meets the foregoing criteria, the requester must agree to the applicable conditions set forth in paragraph (a) of this section and § 725.7(c). The determining authority will then orally advise the requester of the approval and seek written confirmation of the oral request. The determining authority will make a written record of the disposition of the oral request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(3) This emergency procedure should not be utilized where the requester refuses to agree to the appropriate conditions set forth in §§ 725.6(a) and 725.7(c) or indicates unwillingness to abide by the limits of the oral grant, partial grant, or denial.

(c) *Visits and views.* A request to visit a DON activity, ship, or unit, or to view materials or spaces located there, will be forwarded to the appropriate determining authority for resolution. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit affected, or with his or her staff judge advocate (if applicable). The authority of the commanding officer of any activity, ship, or unit at issue, over the personnel or property of that activity, ship, or unit is not limited by this instruction. Visits and views involving DON units and activities in connection with litigation requests should not be accompanied by interviews of personnel unless separately requested and granted. The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography.

(d) *Requests for interviews.* No witness may be required by legal process to submit to interview. DON personnel may voluntarily consent to be interviewed on official matters, with the permission of the appropriate determining authority. In deciding whether to agree to an interview, DON personnel should be advised that if a request for an interview is refused, the requester may seek to compel testimony at a deposition or at trial.

(e) *Requests for Privacy Act protected information.* In addition to complying with the requirements of this instruction, litigation requests for official DON records contained in a "system of records" must satisfy the requirements for release imposed by the Privacy Act, 5 U.S.C. 552a. *See* 32 CFR 701.100–701.120. Normally, this is accomplished by producing:

(1) The written consent of the subject of the record,

(2) A court order or subpoena from a court of competent jurisdiction signed by a state or federal judge directing disclosure of the information, or

(3) As indicated in 32 CFR 701.105, a demonstration of the applicability of some other Privacy Act exemption authorizing release of official DON records containing personal information to third parties.

When records contained in a "system of records" are released, disclosure accounting requirements contained in 32 CFR 701.105(c) (Secretary of the Navy Instruction 5211.5C) [8] must be complied with.

(f) *Service of Process.* 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all books, records, papers and property of the DON. Under 32 CFR 257.5(c), the Navy's sole delegate for service of process is the General Counsel of the Navy, whose address for this purpose is Office of the General Counsel, Department of the Navy, Washington, DC 20350–1000. To be effective for judicial enforcement purposes, all legal process for official DON documents must be served upon the General Counsel, who will in most cases refer the matter to the proper delegate for action. Process for DON documents directly served on a subordinate officer within any DON activity or command, not also properly served on the General Counsel, is insufficient to constitute an enforceable legal demand but shall be processed and acted upon by DON activities and determining authorities as a litigation request by counsel.

§ 725.7 Considerations in responding to a request.

(a) *General Considerations.* In deciding whether to authorize release of official information and the testimony of DON personnel concerning official information (hereafter referred to as "the disclosure"), under a request satisfying the requirements of § 725.6, the determining authority shall consider the following factors:

(1) The DON policy regarding disclosure set forth in § 725.2 of this instruction;

(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;

(3) Whether disclosure, including release *in camera* (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;

(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction or notice. In this regard it is noted that this instruction is not intended to place unreasonable restraints upon the post-employment conduct of former military members and civilian employees of DON. Accordingly, requests for expert or opinion testimony by such personnel will normally be granted unless that testimony would constitute a violation of statute (e.g., 18 U.S.C. 201 et. seq.), regulation (e.g., DOD Directive 5500.7 [4] and Secretary of the Navy Instruction 5370.2H [5] (Standards of Conduct)), or disclose properly classified or privileged information;

(5) Whether disclosure, in the absence of a court order or written consent would violate the Privacy Act, as explained previously in § 725.6(e);

(6) Whether disclosure, including release *in camera*, is appropriate or necessary under relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, deliberative process, or, in the case of civilian personnel, physician-patient);

(7) Whether disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DOD Directive 5200.1–R [6] (Information Security Program Regulation), unclassified technical data withheld from public release pursuant to DOD Directive 5230.25,[7] privileged Naval Aviation Safety Program information (such as mishap investigation report witness statements), matters exempt from disclosure under the Privacy Act, or other matters exempt from unrestricted disclosure. Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP–09N) in accordance with OPNAVINST 5510.1G.[8]

(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate an individual's constitutional rights, reveal the identity of an intelligence source, informant, or source of confidential information, conflict with United States obligations under international agreement, or would otherwise be inappropriate under the circumstances; and

(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command.

(b) *Considerations Pertaining to Medical Records of Civilian Employees.* With respect to requests for medical and other records of civilian employees, production of medical certificates or other such records is controlled by the Federal Personnel Manual, chapter 294 and chapter 339.1–4.[9] Records of civilian employees, other than medical records, may be produced upon receipt of a court order and a request complying with § 725.6, provided no classified or for-official-use-only information, such as loyalty or security records, are involved. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor are governed by Secretary of the Navy Instruction 5211.5C (Privacy Act implementation) and Secretary of the Navy Instruction 5720.42D [10] (Freedom of Information Act implementation), as appropriate. The provisions of § 725.7(e) pertain to the release of original or copies of records in response to a court order, subpoena or litigation request.

(c) *Contents of responses to litigation requests.* (1) The determination letter should respond solely to the specific disclosures requested, stating a specific determination on each particular request. A denial of a request, in whole or part, should fully inform the requester—and ultimately a court if the denial is challenged—of the reasons underlying the determination.

(2) Whenever a litigation request, or compliance with a court order or subpoena duces tecum, is denied, a copy of the denial letter and all associated documents will be promptly forwarded to the Deputy Assistant Judge Advocate General (General Litigation) or to the Associate General Counsel (Litigation), as appropriate. Telephonic notification is particularly appropriate where a judicial challenge or contempt action is anticipated.

(3) The determination letter should state, or adopt by reference, conditions set forth in § 725.6(a)(11)–(a)(19). Reiterating, it should advise the requester of the following conditions, as appropriate:

(i) All costs will be borne and advanced by the parties; no cost to the Government or the witness may result from the grant of disclosure;

(ii) The determination is solely as to the matters stated; no other determination is expressed or implied. No determination as to expert, opinion, or policy matters have been made if none has been requested or implicated;

(iii) Any deposition shall be at the witness's location unless otherwise agreed to by the witness and his or her commanding officer (if applicable);

(iv) The grant is for a single deposition or interview only; subsequent depositions are not encompassed or authorized and normally will not be granted. Permission for subsequent trial testimony must be separately requested and determined;

(v) The determining authority shall be informed at least 10 working days prior to any interview, deposition, or

[3] See footnote 1 to § 725.5(b)(4).
[4] See footnote 1 to § 725.5(b)(4).
[5] See footnote 1 to § 725.5(b)(4).
[6] See footnote 1 to § 725.5(b)(4).
[7] See footnote 1 to § 725.5(b)(4).
[8] See footnote 1 to § 725.5(b)(4).
[9] See footnote 1 to § 725.5(b)(4).
[10] See footnote 1 to § 725.5(b)(4).

testimony, and may appoint counsel therefor. No such deposition or interview may be conducted in the absence of that counsel unless an express waiver of this requirement has been obtained from the determining authority; and

(vi) Other counsel of record will be provided a copy of the determination so they may apply to participate or broaden the request. Failure to so apply within the stated 10 working day period shall constitute waiver of that right.

(vii) If the authority to whom the matter is referred determines that compliance with a court order or subpoena duces tecum is indicated, it will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of unusual circumstances, an original record must be produced by a DON custodian, the original will be retained in the custody of the person producing it, and copies should be placed in evidence.

§ 725.8 Responsibilities of DON personnel.

(a) *Matters proprietary to the DON.* If a litigation request or demand for official DOD information or for testimony concerning such information is presented, the individual to whom the request or demand is made will immediately notify the cognizant DON official, as indicated in this section, who will determine availability and respond to the request or demand.

(b) *Matters proprietary to another DOD component.* If a DON activity receives a litigation request or demand for official information originated by another DOD component or for personnel presently or formerly assigned to another DOD component, the DON activity will forward appropriate portions of the request or demand to the DOD component originating the information, to the components where the personnel are assigned, or to the components where the personnel were formerly assigned, for action under 32 CFR part 97. The forwarding DON activity will also notify the requester and court (if appropriate), or other authority, of its transfer of the request or demand.

(c) *Litigation matters to which the United States is, or might reasonably become, a party and requests for expert or opinion testimony.* Such requests shall be forwarded for a determination to the Judge Advocate General or the General Counsel of the Navy according to their respective areas of cognizance as discussed in § 725.9 and, in more detail, in Secretary of the Navy Instruction 5820.8.[11]

(d) *Litigation matters to which the United States is not, and is reasonably not expected to become a party.* (1) With respect to matters within the purview of the Judge Advocate General, such requests shall be forwarded to and determined by the Navy or Marine Corps officer exercising general court-martial jurisdiction in whose chain of command the prospective witness or requested documents lie. Further guidance in identifying the proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

(2) As to matters within the cognizance of the General Counsel, those requests involving issues of Navy policy shall be forwarded for determination to the Associate General Counsel (Litigation). All other requests shall be forwarded for determination to one or more of the respective counsel for Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Military Sealift Command, Naval Facilities Engineering Command, Space and Naval Warfare Command, Office of the Navy Comptroller, Commandant of the Marine Corps, Office of the Chief of Naval Research, or Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, depending upon who has cognizance over the information or personnel at issue. Further guidance with respect to proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

(3) The foregoing guidance shall not prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester shall be notified of the referral. Further, each determining authority specified in this paragraph may delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor.

(e) *Requirement for prompt determination.* A determination to grant or deny should be made expeditiously to provide the requester and the court with the information requested or with a statement of the reasons for denial. The decisional period, absent exceptional or particularly difficult circumstances, should not exceed 10 working days from receipt of a request complying with the requirements of § 725.6. The requester (and if circumstances so indicate, the court) should also be informed promptly of the referral of any portion of the request to another determining authority within DOD for determination.

(f) *Scope of disclosure.* DON personnel shall not produce, disclose, release, comment upon, or testify concerning any official DOD information in response to a litigation request or demand without prior written approval of an appropriate DON official. If a request has been made, and granted, in whole or in part under 32 CFR part 97 and this instruction, DON personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in the request and properly approved by the determining authority designated.

(g) *Action pending determination.* If, after DON personnel have received a litigation request and submitted it to the appropriate determining authority, a response is required before a determination by the responsible official has been received, the Deputy Assistant Judge Advocate General or Associate General Counsel (Litigation) who has cognizance over the matter shall be notified. That official, as necessary, will furnish the requester, the court, or other authority with a copy of this regulation or Secretary of the Navy Instruction 5820.8, inform the requester, the court, or other authority that the request or demand is being reviewed, and seek a stay pending a final determination.

(h) *Response to court order pending determination.* If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under paragraph (g) in this section, or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly.

§ 725.9 Proper forwarding of a request.

As indicated in § 725.8(c), in all cases in which the United States is, or might reasonably become, a party, or in which

[11] See footnote 1 to § 725.5(b)(4).

expert or opinion testimony is requested, the Judge Advocate General or the General Counsel of the Navy will act as determining authority on litigation requests. In all other cases, the responsibility to act as determining authority has been delegated to certain subordinate commands and activities. Requests by members of the public for official DON information should be sent directly to the naval command or activity which holds the documents desired or at which the witness is employed or assigned for duty. The guidance contained in 32 CFR 701.31 regarding proper addresses for Freedom of Information Act requests for specific categories of records and information applies equally to litigation requests and should be consulted. The following guidelines also apply in ascertaining the proper addressee of a litigation request. If in doubt, however, requests may be forwarded to either the Associate General Counsel (Litigation) or the Deputy Assistant Judge Advocate General (General Litigation) depending on the subject matter and their respective areas of cognizance in providing legal advice to the DON.

(a) *Matters under the cognizance of the General Counsel.* The General Counsel has cognizance over matters related to the employment and records of present and former DON civilian employees, litigation involving asbestos exposure, and business and commercial law aspects of DON operations including, but not limited to:

(1) Acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services for DON;

(2) Operations of the Military Sealift Command, Office of the Comptroller of the Navy, and the Naval Data Automation Command;

(3) All matters in the fields of patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(4) Procurement aspects of foreign military sales and matters related to the Arms Exports Control Act; and

(5) DON litigation before the Armed Services Board of Contract Appeals.

(b) Requests dealing with subjects under the cognizance of the General Counsel, or known to be within the purview of the commands listed in paragraph (b)(3) in this section, should be forwarded directly for determination to counsel in accordance with the following guidelines:

(1) In all requests involving issues of Navy policy, cases in which the United States or DON is a party, or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Office of the General Counsel, Department of the Navy, Litigation Office, Washington, DC 20360–5110.

(2) For matters involving asbestos litigation:

Office of Counsel, Naval Sea Systems Command Headquarters, Personnel and Labor Law Section (Code OOLD), Washington, DC 20362–5101.

(3) When the request does not involve issues of Navy policy it should be forwarded directly for determination to one of the following commands having cognizance over the subject matter of the request:

Office of Counsel, Naval Sea Systems Command Headquarters, Department of the Navy, Washington, DC 20362–5101.
Office of Counsel, Naval Air Systems Command Headquarters, Department of the Navy, Washington, DC 20361–0002.
Office of Counsel, Naval Supply Systems Command Headquarters, Department of the Navy, Washington, DC 20376–5000.
Office of Counsel, NAVFAC, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300.
Office of Counsel, Space and Naval Warfare Systems Command, Washington, DC 20363–5100.
Office of Counsel, Navy Comptroller, Department of the Navy, Washington, DC 20350–1100.
Office of Counsel, Naval Research, Chief of Naval Research, Ballston Center Tower #1, 800 North Quincy Street, Arlington, VA 22217–5000.
Office of Counsel, Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, Department of the Navy, Washington, DC 20350–2000.
Commandant of the Marine Corps, Office of Counsel, Headquarters Marine Corps, Washington, DC 20380–0001.
Office of Counsel, Military Sealift Command, Department of the Navy, Washington Navy Yard, Bldg. 210, Washington, DC 20398–5100.

(4) For matters involving the Armed Forces Board of Contract Appeals, requests shall be forwarded for determination to the respective counsel set forth in paragraph (b)(3) in this section, except where the determination may involve the assertion of the deliberative process privilege before that Board. In that event, the matter shall be forwarded for determination to the Associate General Counsel (Litigation).

(c) *Matters under the cognizance of the Judge Advocate General*—The Judge Advocate General is responsible for providing legal advice in all matters related to the operations and administration of military shipboard and shore commands and present and former active-duty DON personnel and their records. Requests dealing with the following subjects or known to be within the purview of the following commands should be forwarded directly for determination to the following addressee:

(1) In all cases in which the United States or DON is a party or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Judge Advocate General, General Litigation Division, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

(2) For medical and service records of former Navy and Marine Corps personnel:

Director, National Personnel Records Center, National Archives and Records Administration, 9700 Page Blvd., St. Louis, MO 63132.

Litigation requests, including court orders and subpoenas duces tecum, demanding information from, or production of, service or medical records in the custody of the National Personnel Records Center of former Navy and Marine Corps personnel will be served upon the Director at the foregoing address. If records responsive to the request are identified and maintained at the National Personnel Records Center, that Center shall forward such matters, along with the request, in the case of Navy personnel, to:

(1) Commander, Naval Military Personnel Command (Code 06), Washington, DC 20370–5000, or his delegate, who will respond, or

(2) In the case of Marine Corps personnel, to the Commandant of the Marine Corps (MMRB–10), Quantico, VA 22134–0001, who will respond.

(3) For pay records of active-duty, reserve, retired, or former Navy members:

Commanding Officer, Navy Finance Center, 1240 East 9th St., Cleveland, OH 44199–2055.

(4) For pay records of active-duty, reserve, retired, or former Marines:

Commanding Officer, Marine Corps Finance Center, Code OC, Kansas City, MO 64197–0001.

(5) For copies of reports of investigation conducted in accordance with the Manual of the Judge Advocate General (JAGMAN investigation reports);

Judge Advocate General, Investigations Division, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

(6) The majority of Navy and Marine Corps Commanders in the United States and overseas have been designated as determining authorities. A complete listing of these authorities and their official addresses is contained in

Secretary of the Navy Instruction 5820.8 and can be obtained by writing to the Judge Advocate General at the address indicated in paragraph (c)(1) of this section. Some determining authorities frequently called on to determine litigation requests include:

Chief of Naval Operations (OP–OOJ), Department of the Navy, Washington, DC 20350–2000.
Vice Chief of Naval Operations (OP–09BL), Department of the Navy, Washington, DC 20370–5000.
Commandant of the Marine Corps (Code JAR), Headquarters Marine Corps, Washington, DC 20380–0001.
Chief, Bureau of Medicine and Surgery/Office of the Surgeon General (MED 00D3), Washington, DC 20372–5120.
Commander, Naval Military Personnel Command (06), Washington, DC 20370–5000.
Commander, Naval Investigative Service Command, Washington, DC 20388–5000.
Commander in Chief, U.S. Atlantic Fleet, Norfolk, VA 23511.
Commander in Chief, U.S. Pacific Fleet, Box OOJ, Pearl Harbor, HI 96860–7000.
Commander, Naval Air Force, U.S. Atlantic Fleet, Norfolk, VA 23511–5188.
Commander, Naval Air Force, U.S. Pacific Fleet, Naval Air Station, North Island, San Diego, CA 92135–5100.
Commander, Naval Surface Force, U.S. Atlantic Fleet, Norfolk, VA 23511–6292.
Commander, Naval Surface Force, U.S. Pacific Fleet, Naval Amphibious Base, Coronado, San Diego, CA 92155–5035.
Commander, Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511–6792.
Commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor, HI 96860–6550.
Commander, Naval Reserve Force, New Orleans, LA 70146–5000.
Commanding General, Fleet Marine Force, Atlantic/Europe, Norfolk, VA 23511–5001.
Commanding General, Fleet Marine Force, Pacific, Camp H. M. Smith, HI 96861–5001.

§ 725.10 Fees.

The determining authority shall charge reasonable fees and expenses to parties seeking official DOD and DON information under this instruction. The following guidelines are prescribed for fee assessment:

(a) *Documents.* A complete list of applicable charges is established at 32 CFR 288.10. Fees associated with searching for, reviewing and duplicating documents shall be charged unless waived in accordance with paragraph (f) in this section.

(b) *Witnesses.*—(1) *Witness fees.* The requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule shall apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(2) *Witness travel and per diem.* Travel and per diem expenses of witnesses in cases in which the United States is not a party shall be fully reimbursed by the requesting litigant, but shall not be assessed in an amount exceeding the applicable rule of court, or the Federal rule if there is no local rule. In certain cases in which the United States is not a party, but in which it has an official interest, Joint Federal Travel Regulations and Navy Travel Instructions pertaining to entitlements of DON personnel summoned as witnesses should be consulted for guidance in ascertaining whether fees are payable by the United States and, if applicable, to which appropriation costs of travel should be charged.

(3) *Cost of processing and responding to requests for witness testimony and interviews.* As authorized by 31 U.S.C. 9701 and 32 CFR 97.6(d), when a request is granted to permit DON personnel to testify or be interviewed as to factual, expert, opinion, or policy matters, the requester shall pay a fee calculated to fully reimburse the government for the expense of processing the request and providing the witness. Fees and expenses shall include:

(1) Costs of the time expended by DON employees to process and respond to the request or demand;

(2) Costs of attorney time expended in reviewing the request or demand and any information located in connection with the request or demand; and

(3) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information.

All costs for personnel shall be calculated on the hourly pay of the witness (including all pay, allowances, and benefits) plus a three percent rate administrative surcharge as prescribed by 31 U.S.C. 9701 and DOD Instruction 7230.7,[12] and shall include such hourly fee for each hour (or portion) of the normal work day when the witness is in travel, in attendance, testifying or being interviewed.

(c) *Views and Visits.* The requester shall pay a fee calculated to reimburse the command for any expense or effort incurred as a result of the view or visit. Such fees and expenses normally shall include the cost of escort personnel and special preparations (if any). Costs shall be calculated upon the full hourly pay of the personnel necessarily involved (including all pay, allowances, and benefits) plus a three percent administrative surcharge as prescribed by 31 U.S.C. 9701 and DOD Instruction 7230.7.

(d) *Payment.* Fees for documents shall be paid directly to the DON. Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall be deposited thereafter in the General Fund. If applicable travel regulations allow use of government funds and the government pays for the travel, witnesses are expected to utilize a travel claim to obtain proper reimbursement from the Navy. In all other cases, the private litigant requesting a DON witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds, with appropriate monitoring by determining authorities, and the DON witness shall be provided with permissive no-cost orders covering the period in which testimony will be provided.

(e) *Matters in Which the United States is a Party.* Fees or expenses, other than those permitted by the Federal Rules of Civil or Criminal Procedure and related case law, shall not be charged in matters to which the United States is a party.

(f) *Waiver.* A waiver of any fees in connection with a litigation request may be granted by the determining authority at his or her discretion provided that waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that DON favors one private litigant over another.

Dated: November 21, 1989.

John J. Geer, Jr., JAGC, USN,

Assistant Judge Advocate General, Department of the Navy.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Officer.

[FR Doc. 89–27800 Filed 11–27–89; 8:45 am]

BILLING CODE 3810–AE

[12] See footnote 1 to § 725.5(b)(4).

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AB28

Lake Chelan National Recreation Area and Ross Lake National Recreation Area, WA; Target Practice

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The regulations set forth below are necessary to designate time and locations where weapons may be carried, possessed and used for target practice within Lake Chelan National Recreation Area and Ross Lake National Recreation Area pursuant to a requirement of the National Park Service General Regulations. The intent of this rulemaking is to allow local residents and occasional visitors to continue the established practice of recreational target practice and sighting-in of hunting weapons while at the same time providing for public safety and protection of park resources.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: John J. Earnst, Superintendent, North Cascades National Park, 2105 Highway 20, Sedro Woolley, WA 98284, Telephone: (206) 856–5700.

SUPPLEMENTARY INFORMATION:

Background

As stated in the enabling legislation, Public Law 90–544, one of the primary reasons for establishment of the recreation areas was " * * * to provide for the public outdoor recreation use and enjoyment * * * " of these areas. Recreational target shooting is an established outdoor recreational activity in both recreation areas. The legislation also specifically allows hunting in accordance with applicable laws of the United States and of the State of Washington. Hunting weapons must be periodically sighted-in to be used safely and effectively. There are long established facilities for these activities on Federal lands in both recreation areas.

Residents of the communities of Stehekin, Newhalem and Diablo, located within the recreation areas, have no reasonable alternative to these facilities. Private land holdings are generally limited, and no facilities for these activities have been, nor are they likely to be, developed on them. Access to facilities outside the recreation area would be extremely difficult for Stehekin residents since access is only by water, air or trail. It would be a needless and unreasonable burden for residents of Newhalem and Diablo since a facility already exists within the recreation area. The Newhalem range was built by local residents who were members of a local gun club. No facilities for these activities exist within a 55-mile radius of any of these communities.

The existing facility within Ross Lake National Recreation Area is located in the SE ¼ of sec. 19 and the NE ¼ of sec. 30, T. 37 N., R. 12 E., WM, approximately 200 yards northwest of State Route 20 near mile marker 119.

The existing facility within Lake Chelan National Recreation Area is located in the SE ¼ of sec. 8, T. 33 N., R. 17 E., WM, approximately 100 yards east of mile point 7 on the Stehekin Valley Road in a converted borrow pit.

Both of these sites are screened by trees and other vegetation. There are no other recreational developments or activities in their immediate vicinity which would conflict with their proposed use. The ranges are adequately removed from public roads and firing is away from the roads toward hillsides.

The section-by-section analysis of the final rulemaking for 36 CFR 2.4 published in the **Federal Register** on April 30, 1984, page 18446, states that target ranges which have been developed with adequate facilities to provide for public safety and which were in use prior to the effective date of the regulation can be designated for continued use by special regulations. This final rule is based on the intent of that analysis.

The Superintendent has determined that the designation of these locations and facilities is consistent with the purposes for which the recreation areas were established, will not adversely affect park resources and that the design and operation procedures are annually inspected and maintained to assure that adequate safety measures are in place, and that standard range safety rules are posted.

Summary of Comments

The proposed rule was published on May 9, 1985, (50 FR 19547). The public comment period closed on June 10, 1985. Notice of the proposed rule was also published in local news media in May 1985. The National Park Service did not receive any comments regarding the proposed regulations. During this review period, the Superintendent determined that the level of use of these facilities did not warrant the designation of two target ranges in the Lake Chelan National Recreation Area. Therefore, the number of target ranges at Lake Chelan National Recreation Area is reduced to one in the final rule.

Drafting Information

The following persons participated in the writing of these regulations: Jerry D. Lee, Assistant District Manager; Daniel L. Allen, Resource Management Specialist; Curt Sauer, District Manager; James S. Rouse, Assistant Superintendent, North Cascades National Park.

Paperwork Reduction Act

This rulemaking contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 *FR* 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department makes this finding because the regulations will impose no significant costs on any class or group of small entities.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the National Park Service has prepared an Environmental Assessment and Finding of No Significant Impact on these regulations. Both are available at the address noted above.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR, chapter 1 is amended as follows:

PART 7—SPECIAL REGULATIONS: AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.62 add a new paragraph (c) as follows:

§ 7.62 Lake Chelan National Recreation Area.

* * * * *

(c) *Weapons.* The following location is designated for target practice between the hours of sunrise and sunset, subject to all applicable Federal, State, and local laws: in the SE ¼ of sec. 8, T. 33 N., R. 17 E., WM, approximately 100 yards east of mile point 7 on the Stehekin Valley Road, a converted borrow pit.

3. In § 7.69 add a new paragraph (c) as follows:

§ 7.69 Ross Lake National Recreation Area.

* * * * *

(c) *Weapons.* The following location is designated for target practice between the hours of sunrise and sunset, subject

to all applicable Federal, State, and local laws: in the SE ¼ of sec. 19, and the NE ¼ of sec. 30, T. 37 N., R. 12 E., WM, approximately 200 yards northwest of State Route 20 near mile marker 119, the area known as the Newhalem rifle range.

Dated: October 16, 1989.

Maryanne C. Bach,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–27748 Filed 11–27–89; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–3526–5]

Requirements for Implementation Plans; Surface Coal Mines and Fugitive Emissions; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The EPA is taking final action under section 302(j) of the Clean Air Act (Act) on a rulemaking proposed October 26, 1984 (49 FR 43211) to add surface coal mines (SCM's) to the list of source categories for which fugitive emissions are included in major source threshold applicability determinations (TAD's) regarding EPA's new source review (NSR) permitting requirements, which includes prevention of significant deterioration (PSD) permitting requirements. The EPA is also taking final action to resolve issues concerning the review of fugitive emissions from surface coal mines which are not specifically listed under section 302(j) but which may be subject to review under certain limited circumstances, such as when collocated with other major sources.

EFFECTIVE DATE: December 28, 1989.

ADDRESSES: A docket, number A–84–33, containing information considered by EPA in the development of this rulemaking is available for public inspection between 8:30 a.m. and 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Lamason at Mail Drop 15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5374 (FTS 629–5374).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are provided in the following outline:

I. Summary of Today's Action
II. Background
  A. The NSR Applicability Determinations and Fugitive Emissions
  B. Regulatory Basis
  C. DOI Authority to Regulate
III. Discussion of Today's Action
  A. No Listing of SCM's
  B. Collocated Sources
  C. Modifications to Existing Sources
IV. Major Issues
  A. Basis for No List Decision
  B. Fugitive Dust Issues Related to SCM's
  C. Applicability of Section 302(j) to Modifications
  E. Miscellaneous
V. Administrative
  A. Docket
  B. Office of Management and Budget Review
  C. Economic Impact Assessment
  D. Federalism Implications
  E. Regulatory Flexibility Act Compliance

I. Summary of Today's Action

Today, EPA is taking final action on an October 26, 1984 rulemaking proposal (49 FR 43211) to "list" fugitive emissions from SCM's and on related fugitive dust emissions issues. The "list" referred to, found at 40 CFR 51.166(b)(1)(iii) and 52.21(b)(1)(iii), is of those stationary source categories for which fugitive emissions are included in determining whether a prospective new source or modification is "major." New major stationary sources and major modifications to existing major stationary sources are required to obtain major source NSR permits. The EPA is also taking final action to resolve issues concerning the review of fugitive emissions from SCM's which are not specifically listed but which are subject to review under certain limited circumstances.

In this notice, EPA announces its conclusion that SCM's should not be added to the list of sources for which fugitive emissions are considered in TAD's for major source NSR (including PSD) permits. The EPA notes that the extensive authorities and regulations administered by the Department of the Interior (DOI) under the Surface Mining Control and Reclamation Act (SMCRA) and the Federal Coal Management Program (FCMP) adequately address the potential air quality problems in natural resource areas of special concern that a decision to list SCM's affecting these areas would seek to address. Although EPA has considered the effect of DOI authorities in deciding not to list SCM's, EPA is not granting preemptory authority to DOI for the control of air pollution from SCM's. The Act still requires State implementation plans (SIP's) to contain emission limitations, permit programs, and other measures to ensure that ambient standards and PSD increments are attained and maintained and that there is no manmade visibility impairment in any mandatory Federal Class I area (see sections 110, 161, 169A, and 172 of the Act).

Today's notice that EPA will not list SCM's does not preclude EPA from reconsidering listing SCM's at a later date, if sufficient evidence is provided to EPA of a threat of reduced visibility or other adverse air quality impacts in national parks, wilderness areas, national memorial parks, and international parks that are Class I PSD areas. Such evidence should also show that DOI authorities will not protect visiblity and other air quality values within these areas.

The EPA also announces that it is maintaining the status quo regarding inclusion of fugitive emissions from SCM's where SCM's are collocated with listed sources or otherwise presently subject to NSR regulations. The EPA believes that emissions from SCM's will be subject to review in this fashion only in limited circumstances, if at all, since SCM's themselves are not listed. The EPA is also retaining the interpretation that the definition of major source in section 302(j) of the Act does not extend to modifications and would therefore not affect SCM's collocated with an existing major source undergoing modification.

II. Background

This section briefly summarizes the events leading to today's action but does not repeat in detail previous discussions already published in the **Federal Register**. The reader is referred to these previous notices, specifically August 25, 1983 (48 FR 38742), October 26, 1984 (49 FR 43202 and 43211), and February 28, 1986 (51 FR 7090), for a more detailed discussion.

A. *The PSD and NSR Applicability Determinations and Fugitive Emissions*—1. *Scope of Applicability.* The review and permitting requirements of PSD provisions in Part C of the Act apply to "major" new stationary sources and major modifications to existing major sources. Similar NSR requirements under Part D of the Act apply to major sources locating in designated "nonattainment" areas. The EPA and State permitting authorities conduct emissions assessments to determine whether a source is major and therefore subject to the PSD and NSR requirements of Parts C and D of the Act. The EPA refers to these assessments as TAD's. Section 302(j) of the Act, 42 U.S.C. 7602(j), defines both "major stationary source" and "major emitting facility" as follows:

> Any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).[1]

The EPA regulations define "fugitive emissions" as emissions that could not reasonably pass through a stack or other functionally equivalent opening. (See 40 CFR 52.21(b)(20).)

2. *Importance of Fugitive Emissions.* Sources in many types of industrial categories exceed major source thresholds solely by virtue of their stack emissions. Other source categories, however, such as SCM's, have relatively few stack emissions. Since a source could be major if fugitive emissions are included in TAD's, but nonmajor if fugitive emissions are not included, treatment of fugitive emissions for applicability purposes can be important. A determination that a source is or will be "major" subjects a project to all PSD or nonattainment permit requirements and/or a construction ban under section 110(a)(2)(I) of the Act.[2]

3. *Mines, Strip Mines, and SCM's.* The terms "mine," "strip mines," and "SCM's" are used in this notice to refer to mining operations. Today's action is limited to SCM's, which were proposed for listing in October 1984 (49 FR 43211). The terms mines and strip mines are more general but include SCM's. Strip mining may refer to open surface operations for mining coal and other materials. Mines may refer to all mines, including underground material extraction. Although today's action focuses on SCM's, comments and discussion may refer to issues applicable to other mines. For example, some DOI regulations pertain to all mining activities, above and below ground.

B. *Regulatory Basis*—1. *Clean Air Act Section 302(j).* Following enactment of the Act Amendments of 1977, which added part C and Part D, EPA issued in 1978 and 1979 various regulations and guidelines under 40 CFR parts 51 and 52 to implement these new provisions. In each action, EPA assumed without discussion that the fugitive emissions of a source or modification were to be included in quantifying its emissions rate in order to determine whether it is "major" (see, e.g., 43 FR 26382–83, 26403–04 (June 19, 1978)). The EPA regarded the Part C definition of "major emitting facility" as exclusively governing the meaning of that term for PSD purposes. Since that definition does not distinguish between fugitive and nonfugitive emissions, EPA concluded that fugitive emissions are as eligible for inclusion in the threshold determinations of PSD applicability as nonfugitive emissions.

One of the consequences of this assumption was that sources of predominantly fugitive emissions, such as SCM's, could be "major" and, hence, subject to PSD and NSR permitting requirements or the construction ban.

2. *Alabama Power* v. *Costle.* In December 1979, the U.S. Court of Appeals for the District of Columbia Circuit held that EPA's interpretation of "major emitting facility" in Part C was incorrect, and, thus, EPA may require the inclusion of fugitive emissions in TAD's for projects in a particular category only if it first satisfied the rulemaking requirement of section 302(j) as to that category (*Alabama Power Company* v. *Costle*, 636 F.2d 323, 369). The court did not specify what it thought EPA had to consider in such a rulemaking. It did say, however, that:

> The EPA's regulation of fugitive emissions has been of special concern to the mining and forestry industries which contend, without serious opposition, that they are incapable of meeting the strict limitations on the emission of particulate matter set by the PSD provisions. * * *
>
> * * * * *
>
> The legislative history of this rulemaking provision [Section 302(j)] is sparse, but it may well define a legislative response to the policy considerations presented by the regulation of sources where the predominant emissions are fugitive in origin, particularly fugitive dust. Whatever the motivation of the "rule" provision of 302(j), its existence is unmistakable. Even if the origin of this provision is fortuitous, the provision may well be welcomed as serendipitous, for it gives EPA flexibility to provide industry-by-industry consideration and appropriate tailoring of coverage. [id.]

3. *August 7, 1980 Rulemaking.* In response to the U.S. Court of Appeals for the District of Columbia Circuit ruling in *Alabama Power Company* v. *Costle*, EPA proposed amendments to both the PSD and nonattainment regulations that would comply with the rulemaking requirements of section 302(j) by excluding fugitive emissions from TAD's except as to certain specifically listed categories of sources (e.g., 44 FR 51924, 51948 (September 5, 1979)). Most listed categories corresponded generally to those in the Part C definition of "major emitting facility;" the remaining categories encompassed any source subject on August 7, 1980 to an emission standard under either section 111 or 112 of the Act, 42 U.S.C. 7411 or 7412. [The SCM's were not among the listed categories (id. at 51931)]. The EPA explained that it was proposing to require the inclusion of fugitive emissions for the listed categories because (1) emissions from sources in those categories deteriorate air quality regardless of how they emanate, and (2) the Agency's experience in quantifying fugitive emissions from such sources was in general greater than its experience in quantifying fugitive emissions from other sources (id).

Numerous issues were raised in the course of proposal. In response, EPA maintained its initial interpretation of section 302(j) as reflected in the September 1979 proposal and concluded that the rulemaking it was conducting had afforded sources the opportunity to comment on the proposed inclusion of fugitive emissions in threshold calculations (id. at 52961). Hence, in August 1980, EPA promulgated the substance of the amendments it had proposed (e.g., 45 FR 52739).[3]

4. *Chemical Manufacturer's Association* v. *EPA and Settlement Agreement.* In late 1980, the American Mining Congress (AMC) and other industry organizations (collectively, the "industry petitioners") petitioned the D.C. Circuit to review the provisions that require the fugitive emissions of projects in the listed categories to be taken into account in TAD's. These challenges were subsequently consolidated into *Chemical Manufacturer's Association* v. *EPA*, No. 79–1112 (D.C. Circuit) (*CMA*).

The industry petitioners argued that EPA, before it established those

[1] For PSD purposes, section 169(1) effectively modifies section 302(j) by establishing the threshold amount of emissions as 100 tons per year for certain designated source categories and 250 tons per year for sources in other categories.

[2] A threshold applicability determination is distinct from a pollutant applicability determination, which is a determination of which pollutant streams from a "major" source or "major" modification are subject to the substantive requirements of the regulations in question. The PSD requirements, for instance, apply to each regulated pollutant that a "major" source emits in "significant" amounts, e.g., 40 CFR 52.21(j)(1984). The regulations do not distinguish between stack and fugitive emissions for this purpose. Construction ban regulations are codified at 40 CFR 51.24.

[3] The EPA simultaneously promulgated a wide array of other changes to the various new source review regulations in effect at the time; not only the Part 51 and 52 PSD regulations, the Offset ruling, and the construction ban, but also 40 CFR 51.165(a), which set forth the requirements of the Part D permit program and which EPA had first promulgated in May 1980 (45 FR 31307).

The EPA did not include SCM's on the list of categories, although the Sierra Club in its comments had argued for their inclusion.

provisions, should have considered the problems of measuring, modeling, and controlling fugitive emissions that are peculiar to each category and then provided (in the words of the *Alabama Power* opinion) "appropriate tailoring of coverage." They also contended that the Act required the EPA to consider, on an industry-by-industry basis, the social, economic, health, and welfare impacts of including fugitive emissions in TAD's. They suggested that EPA could decline to require the inclusion of fugitive emissions as to a particular category on the grounds that growth in that industry was important to the economy and that the emissions posed low risks to human health and welfare. Finally, the industry petitioners asserted that EPA entirely failed to meet those requirements of the Act [Petitioners Brief on Fugitive Emissions and Certain Other Issues, at 12–19 (February 11, 1981)]. In June 1981, EPA began negotiations with the industry petitioners to settle the issues relating to fugitive emissions in the *CMA* case. In February 1982, EPA entered into a settlement agreement with these petitioners in which it agreed to propose to delete the requirement for including fugitive emissions and to take final action on that proposal. Subsequently, the court granted a stay of the case pending implementation of the agreement. The EPA proposed the change called for in this portion of the agreement on August 25, 1983 (48 FR 38742).

5. *Sierra Club v. Gorsuch.* In addition to challenges by various industry representatives, the Sierra Club and other environmental groups petitioned the D.C. Circuit to review the 1980 regulations, including the provisions relating to fugitive emissions. In response to industry contention that EPA, in requiring the inclusion of fugitive emissions for the listed categories, had failed to conduct the rulemaking the court had contemplated, the Sierra Club countered that EPA, in failing to list SCM's, had acted arbitrarily and capriciously. The court consolidated the industry challenges under *CMA* v. *EPA* (No. 79–1112), and kept the Sierra Club challenge on its own track.

On August 26, 1983, in response to the Sierra Club petition, the D.C. Circuit ruled that under the logic of its 1980 action, EPA appeared to have no good reason for listing categories without including SCM's (715 F.2d 653). The court subsequently ordered EPA to propose to list or not list SCM's.

6. *October 26, 1984—The "Safety Valve."* In the October 26, 1984 Federal Register, EPA completed its obligations regarding SCM's under the *CMA* settlement agreement by deciding not to promulgate the fundamental changes proposed in August 1983. The EPA instead determined that its initial 1980 interpretation regarding the nature of the section 302(j) rulemaking requirement was correct (49 FR 43202). On the same day, EPA fulfilled its obligation under *Sierra Club* v. *Gorsuch* by proposing to list SCM's (49 FR 43211). The EPA characterized congressional intent as requiring EPA to make only two determinations before requiring fugitive emissions to be included in TAD's. For sources in a particular category, EPA must show that: (1) The sources have the potential to degrade air quality significantly, and (2) no unreasonable socioeconomic impacts relative to the benefits would result from subjecting the sources to the relevant PSD or nonattainment programs. Thus, a finding that the sources in a category pose a threat of significant air quality degradation is enough to propose listing, though EPA must consider broader-based objections raised by commenters during the rulemaking before taking final action.

The interpretation of section 302(j) that EPA espoused in 1980 and essentially reaffirmed in 1984 reasonably responds to different congressional intents. A determination by EPA that the sources in a category pose a threat of significant air quality degradation, in effect, establishes a presumption that the sources should be subject to PSD and nonattainment review. This is because the primary purpose of that review is to prevent the construction of new projects that would interfere materially with timely attainment and maintenance of the national ambient air quality standards (NAAQS) and PSD increments. Commenters then may seek to rebut this presumption by producing a record that unreasonable social or economic costs relative to the anticipated benefits would occur if PSD or nonattainment review were applied to a particular category of sources. The EPA's role is to resolve any clash of views and, therefore, engage in a deliberative process that can go far beyond the virtually ministerial decision making that some environmental groups advocate. However, the decision-making process need be extensive only if there are legitimate cost-benefit concerns. Under this interpretation, section 302(j) functions as a useful "safety valve," while at the same time minimizing the expenditure of EPA resources. The EPA's position and reasoning is discussed in further detail in Federal Register notices published on October 26, 1984 (49 FR 43202) and February 28, 1986 (51 FR 7000).[4]

The October 26, 1984 proposal also reopened the public comment period on the existing list of source categories for which fugitive emissions are included in determining major source status. Further, the notice solicited comment on an interpretive ruling involving section 302(j) of the Act in relation to the review of modifications involving fugitive emissions at sources that are already "major."

7. *AMC Administrative Petition (1984).* Additional petitions for administrative reconsideration of EPA's October 1984 final action were filed by the AMC, Peabody Holding Co., Inc., and the *NCA* (collectively, "AMC"). The petitions expressed several concerns related to the prospect that SCM's could be subjected to PSD and NSR even if EPA made a final determination not to list SCM's as such. The industry concerns included the interaction between the definition of "source" for PSD and NSR purposes and the currently listed fugitive emissions source categories, and the applicability of section 302(j) to major modifications. To the extent that SCM's would be indirectly subject to PSD and NSR, mining interests sought regulatory relief, either through a change in the definition of source, or through deletion of certain currently listed fugitive emissions source categories. By letter dated June 28, 1985, EPA granted the AMC petition and stated that EPA would complete its reconsideration, and dispose of the other petitions, in conjunction with its final action on the listing of SCM's. The EPA's disposition of these petitions is set forth later in this notice.

8. *February 28, 1986—Alternatives Proposed for Listing SCM's.* On February 28, 1986 (51 FR 7000), the EPA reopened the public comment period to solicit comments on four possible regulatory alternatives for fugitive emissions from SCM's. Alternative I maintained the status quo (no listing of SCM's). Alternative II would list all new SCM's but "grandfather" (i.e., not count) increment consumption for existing mines.[5] Alternative III would list all new SCM's and not grandfather increment consumption for existing mines. Alternative IV would list only SCM's impacting Class I and mandatory Class II areas.[6] The EPA also proposed to list SCM's unless public comment affirmatively demonstrated that unreasonable socioeconomic impacts would result.

[4] Both industry and environmental groups petitioned for judicial review of EPA's October 1984 final action setting the criteria for rulemaking under section 302(j). Those cases were consolidated as *National Coal Association (NCA) v. EPA*, No. 84–1609 (D.C. Cir.), and are still pending as of this date.

[5] Increments published in 40 CFR 52.21(c) are the allowable maximum increase in pollutant concentrations over baseline concentrations—ambient levels that existed in an area on the baseline date after August 7, 1977 as defined under 40 CFR 52.21(b) (13 through (15).

The notice announced that the public comment period with respect to the existing list of source categories and to the relevance of section 302(j) to review of modifications was closed and was not reopened. However, EPA solicited any additional comments on the SCM proposal, the regulatory impact analysis (RIA) of the possible alternatives, and other generic fugitive emissions issues not specifically foreclosed. The EPA noted that other programs, notably the one operated by the DOI pursuant to the SMCRA, 30 U.S.C. 1201 et seq., could address similar problems. The EPA sought comment on the effectiveness of such programs in protecting Class I and mandatory Class II areas and requested an analysis of this issue from DOI.

All comments were placed in the official rulemaking docket [Docket No. A–84–33] and made available for inspection and copying at the EPA offices in Washington, DC. The comment period was extended twice, closing on June 30, 1986.

9. *The RIA.* The EPA prepared an RIA for the proposed SCM rulemaking alternatives, in part, to comply with Executive Order 12291, which provides that major rulemakings consider economic consequences. The EPA has broad discretion in its use of the study, however, since the Act requires many other factors to be considered in this rulemaking. The EPA Administrator relies on the entire rulemaking record in making a final decision.

The RIA evaluated the projected consequences of the proposed alternatives to regulating new and modified SCM's as major sources under PSD and NSR. It considered benefits, costs, and general environmental and economic impacts.

The effects of the four possible regulatory alternatives were considered in the RIA by examining potential impacts at several SCM's typical in size and location for selected coal mining regions. Five important coal basins were investigated to determine the impacts of Alternative II: Powder River, San Juan, Fort Union, Illinois, and Appalachian. Powder River also served as a case study for Alternative III. Impacts of hypothetical mines on Bryce Canyon National Park and Chaco Culture National Historic Park were reviewed relative to Alternative IV. The analysis of costs and benefits for Alternative IV in the RIA was conducted with an assumption that no other regulatory program would protect Class I and mandatory Class II areas from SCM's.

Benefits and costs in these areas were evaluated for the year 1995.[7] The costs evaluated arise from application of best available control technology and, more importantly, from size limitations in SCM's because of ambient constraints. Benefit categories include mortality, morbidity, and soiling for Alternatives II and III, and visibility for Alternative IV. The study also examined national impacts involving coal price and production, and the cost of electricity.

Costs estimated under Alternative II considerably exceed benefits for the five basins analyzed in the RIA and were considered to be unreasonable relative to the costs and benefits of other alternatives. Factors mostly responsible for these results include: the relatively low ambient particulate matter contribution from SCM's nationally and low background particulate matter concentrations around SCM's, the limited distance from SCM's that ambient impacts occur, and the general absence of populations exposed to SCM particulate matter.

The Powder River Basin estimated costs under Alternative III are also considerably larger than benefits. Furthermore, costs for the Powder River Basin increased rapidly under Alternative III relative to Alternative II because existing SCM's would be regulated under the third alternative. Relative cost estimates would presumably be even larger if the five basins analyzed under Alternative II were analyzed similarly to the one coal basin under Alternative III. Therefore, Alternative III costs also appear unreasonable relative to benefits provided by other available lower cost options. As under Alternative II, the results for Alternative III are explained by such factors as relatively low SCM-induced particulate concentrations, the limited size of the ambient impact area, and the general absence of large populations in the vicinity of SCM's.

Because Alternative IV potentially affects far fewer coal reserves than either Alternatives II and III, a different cost approach was undertaken. The social costs of removing the lease tracts at Bryce Canyon and Chaco Culture out of available reserves were estimated. Unlike Alternatives II and III, the benefits considered under Alternative IV reflect only visibility benefits to park users. However, the benefits achieved by Alternative IV are highly variable and depend upon assumptions regarding visibility impacts of mining activities after implementation of this alternative. Also, unlike Alternatives II and III, Alternative IV may yield significant additional benefits not addressed in the RIA. In particular, large potential visibility benefits could not be accurately estimated and were therefore excluded. Other difficult-to-estimate benefits, such as reduced mining noise and water pollution, could further increase benefits realized under Alternative IV. The RIA concludes that the results of the analysis for Alternative IV are ambiguous, but that in any event, the costs of Alternative IV are more nearly in balance with potential benefits than is the case with Alternatives II and III which yielded substantial negative net benefits. However, it is unclear that the costs of Alternative IV are reasonable considering that many if not all of the visibility and other benefits which might accrue from PSD and NSR coverage would already be realized through compliance with DOI regulations.

Several factors limit the precision of the RIA. These limitations are discussed in the February 28, 1986 Federal Register and in greater detail in the RIA. The EPA must take account of the RIA limitations and weigh many considerations, including comments on the RIA and proposed alternatives, in making a final decision.

10. *Modified Alternatives.* On May 4, 1987, EPA placed in Docket A–84–33 two additional alternatives based on modifications to Alternative IV. These were identified as Alternatives IV' (IV prime) and IV" (IV double prime). These options were designed to obtain the major benefits expected under Alternative IV, specifically the protection of significant national land areas (e.g., national parks), while limiting the economic costs incurred by focusing NSR coverage more directly on these areas. The EPA specifically solicited the views of several parties who had previously demonstrated an interest in the issue surrounding Alternative IV. Responses were received, placed in the rulemaking docket, and compiled in the summary of comments for the rulemaking which was also placed in the docket. Alternatives

[6] Protected areas created after August 7, 1977 (larger than 10,000 acres) are "mandatory Class II areas" and would have been designated Class I if they had been established as of August 7, 1977. These areas can only be reclassified as Class I or remain Class II but cannot be reclassified to Class III. [40 CFR 52.21(e)].

[7] For Alternative IV, Chaco Culture National Historic Park was evaluated for 1989 and Bryce Canyon was evaluated for 1996.

IV' and IV" are discussed in greater detail in the May 4, 1987 memorandum to the docket (document number IV–C–6).

Alternative IV' proposed that PSD review of a mine be triggered, not by a fixed ambient concentration, but by prediction of adverse impact. Under Alternative IV', an increase in ambient particulate matter (PM) concentration of 1 microgram per cubic meter predicted by modeling would trigger an "ambient impact assessment," not a PSD review. Only if the "ambient impact assessment" indicated a potential adverse impact, as determined by the appropriate Federal land manager (FLM) for the affected mandatory Class I [9] and II PSD areas, would PSD be triggered. The adverse impact assessment is a process already used by FLM's. This alternative was considered a way to protect areas of special natural significance while reducing the number of mines subject to PSD determinations.

Alternative IV" included the same adverse impact test as Alternative IV' but covered only impacts on mandatory Class I PSD areas. To remove uncertainties as to the application of the adverse impact analysis test, the 1 microgram per cubic meter increase in PM concentration test was dropped and all mines within 50 kilometers of a mandatory Class I area would be subject to an "adverse impact assessment." This option would also provide protection of the most important natural areas but only a consultation process between the FLM and the States would be established for many other natural areas designated as mandatory Class II. This proposal would have reduced costs of compliance but would also produce reduced benefits with minimal, if any, protection of mandatory Class II areas.

C. *DOI Authority to Regulate.*—1. *Provisions to Regulate Fugitive Dust From SCM's.* The DOI has demonstrated to the EPA that under existing DOI statutory authorities, regulations, and policies, DOI can adequately protect against adverse effects from SCM's, including fugitive dust emissions. The DOI's authority is particularly effective with respect to national parks and other areas of special concern, which are the focus of Alternative IV. The authorities identified by DOI include the following:

a. SMCRA Performance Standards

Section 515(b)(4) of the SMCRA, 30 U.S.C. 1201 et seq., establishes a performance standard for control of air pollution from all SCM's, wherever located. The SCM's operators must stabilize and protect all surface areas, including spoil piles affected by the mining, and reclaim areas to effectively control erosion and attendant air and water pollution (30 U.S.C. 1265(b)(4)). The DOI has promulgated mandatory performance standards for SCM's under this statutory requirement at 30 CFR 816.95(a). These standards are implemented in turn through 30 CFR 780.15, which provides that each application for a surface coal mining and reclamation permit must include "[a] plan for fugitive dust control practices" describing all measures the applicant proposes to use to stabilize exposed surface areas to control fugitive dust.

Section 515(b)(17) of SMCRA addresses pollution associated specifically with erosion from access roads into and across SCM sites. To implement this provision, and to clarify the reach of 30 CFR 780.15 and 816.95, DOI recently promulgated regulations establishing a performance standard for road dust generated at SCM's:

> [b] Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
>
> [1] Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
>
> [2] Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
>
> * * * * *
>
> [6] Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress. [53 FR 45190, 45213 (November 8, 1988) (to be codified at 30 CFR 817.150(b)(1), (2) and (6)].

* * * * *

b. SMCRA Section 522(e) Prohibitions

Section 522(e)(1) of SMCRA, 30 U.S.C. 1272(e), and 30 CFR 761.11 prohibit SCM's in certain designated areas, subject to valid existing rights (VER) and except where SCM's existed on August 3, 1977. Lands designated by section 522(e)(1) and DOI's regulations include any lands within the boundaries of the National Parks System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress. Subject to VER, and with other exceptions, section 522(e) (2), (4) and (5) likewise prohibits SCM's on Federal lands within National Forests, within 100 feet of public roads and cemeteries, and within 300 feet of occupied dwellings, public buildings, schools, churches, community or institutional buildings, and public parks. In addition, section 522(e)(3) prohibits SCM's in any other location where the SCM will "adversely affect" any publicly-owned park or any place listed in the National Register of Historic Sites. The VER are discussed in detail below.

Provision for a determination of adverse effect under section 522(e)(3) is included in the review process for the SMCRA permit that all SCM's must obtain. Upon receipt of an application for operations that may affect a National Park System Unit (NPSU), the SMCRA regulatory authority (either DOI, or a State acting under an approved program) provides the National Park Service (NPS) written notice and an opportunity to comment (30 CFR 773.13(a)(3)(ii)). Where the regulatory authority preliminarily determines that the proposed operation would adversely affect an NPSU, under 30 CFR 761.12(f)(1) it must request the approval or disapproval of the NPS before it can issue a SMCRA permit.

c. SMCRA Section 522(c) Unsuitability Designations

Section 522(c) of SMCRA grants any person "having an interest which is or may be adversely affected * * * the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations * * *" Section 522(a) and 30 CFR 762.11(b) set out the criteria under which an area may be, but is not required to be, designated as unsuitable for SCM operations. These include a finding that mining would affect fragile, historic, natural hazard, or renewable resource lands. Fragile lands include "areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged" by SCM operations; historic lands include "areas containing historic, cultural, or scientific resources."

d. The Federal Coal Management Program

The Bureau of Land Management (BLM) administers the FCMP, which applies to SCM's on all Federal lands. According to DOI, the BLM effectively controls approximately 80 percent of western coal through the FCMP. During the land-use planning stage of the FCMP, BLM applies four "screens" to public lands where SCM's potentially could be located, including unsuitability criteria and multiple-use decisions (43 CFR 3420.1–4(e)). Under unsuitability Criterion 5, "Class I visual resource management areas," areas of outstanding scenic quality or high visual sensitivity are considered unsuitable for leasing under the FCMP unless the BLM determines that SCM operations will not significantly diminish or adversely affect the scenic quality of the area (43 CFR 3461.1(e)). The multiple-use decision process balances uses and resources to decide if protection is needed (43 CFR 1601.0–5(f)). The DOI rules provide that the BLM "shall place particular emphasis on protecting * * * air and water quality * * *" in making multiple-use decisions. Where coal development on BLM lands may impact lands under the jurisdiction of the NPS and the Fish and Wildlife Service (FWS), the rules direct the BLM to consult with those agencies to jointly determine whether the lands should be acceptable for further consideration for coal leasing.

In addition to the above provisions, DOI identified various other statutory and regulatory provisions that could be used to regulate SCM operations for the purpose of protecting air quality. Some of these authorities are discussed in Section IV.

2. *Proposed VER Rules.* The DOI proposed rules for determining VER on December 27, 1988 (53 FR 52374) which, when final, will effectively grandfather specified mining rights from provisions of SMCRA section 522(e). The EPA reviewed the proposed rule and determined that the grandfathered exemptions from SMCRA, as proposed, do not appear to significantly affect DOI authority to regulate fugitive emissions from SCM's. The DOI will still be empowered to make "unsuitability designations" under section 522(c) and VER will only exempt mines from appeals under section 522(e) by affected interest groups. In any event, SCM's established by a VER determination will still be subject to construction and maintenance standards under 30 CFR 816.95(a) that DOI may use to mitigate fugitive dust emissions.

III. Discussion of Today's Action

A. No Listing of SCM's

Today, EPA announces that SCM's will not be added to the list of source categories for which fugitive emissions must be considered in determining if a source is "major." The effect of this decision is to maintain the status quo for SCM's under the Act. Since nearly all of an SCM's emissions are fugitive, a decision to continue not to consider fugitive emissions means that few, if any, SCM's will be classified as major sources or major modifications. Although they may not be classified as major sources or major modifications, emissions from new or modified SCM's, particularly in areas near national parks and other areas of special natural significance, will continue to be regulated by EPA, under other applicable provisions of the Act, and by the DOI under the SMCRA and all other authorities of the DOI. The EPA has reviewed all relevant information in the rulemaking docket and the regulatory and legislative powers available to DOI in making the determination that DOI has adequate authority to regulate fugitive dust emissions from SCM's. The EPA also finds that while overlapping regulation of SCM's under the Act is possible and not prohibited, such regulation is burdensome to the affected industry while likely achieving limited additional benefits.

Although EPA has considered the effect of DOI authorities in deciding not to list SCM's, EPA is not granting preemptory authority to DOI for the control of air pollution from SCM's. The Act will requires SIP's to contain emission limitations, permit programs, and other measures to ensure that ambient standards and PSD increments are attained and maintained and that there is no manmade visibility impairment in any mandatory Federal Class I area (sections 110, 161, 169A, and 172). The EPA and the States cannot abrogate their responsibility to regulate the emissions from SCM's. The only question here is whether or not new or modified SCM's should, as a category of sources in and of itself, be subject to the PSD/NSR permit programs for "major sources." However, this decision cannot affect the requirement that SIP's regulate "* * * the modification, construction and operation of any stationary source * * *". (section 110(a)(2)(D)). Neither SMCRA nor the Act contain any special dispensations for SCM's that grant them categorical exemptions from having to comply with ambient standards, PSD increments, or visibility protection requirements. Hence, with EPA's decision not to add SCM's to the list of PSD sources, EPA must still ensure that emissions from SCM's comply with all requirements of the Act.

The comments received on the EPA proposals and the EPA analysis of the rulemaking record are summarized below in Section IV and contained in the rulemaking docket.

B. Collocated Sources

In deciding to maintain the "status quo" regulation of SCM's, the EPA also announces that it is not exempting SCM's from review under other circumstances possible under PSD and NSR procedures, specifically SCM's collocated with sources subject to review. The EPA believes these circumstances are limited in number and economic impact and do not warrant establishing the precedent of creating exemptions for specific sources. The EPA has determined to reaffirm its longstanding position that the decision whether to include fugitive emissions from collocated SCM's in these circumstances should be decided on a case-by-case basis, depending on the "primary activity" of the operation as a whole. The EPA also concludes that it has no obligation to depart from its longstanding use of the Standard Industrial Classification (SIC) code and other aspects of the definition of "source" for PSD and NSR purposes in order to satisfy its rulemaking obligations under section 302(j) or to otherwise craft a reasonable and lawful set of PSD and NSR rules. These decisions resolve issues affecting SCM's raised in petitions for reconsideration. Comments and analysis of this issue are summarized below in section IV.

C. Modifications to Existing Sources

In today's action, EPA reaffirms its October 1984 interpretation that section 302(j) does not apply to modifications. Commenters have not persuaded the EPA either that Congress had a contrary specific purpose in adopting section 302(j), or that EPA's interpretation, as explained in the October 1984 proposal, is inconsistent with the Act's purposes. Accordingly, EPA believes that its interpretation is a reasonable one, and thus proper under the law. In any event, EPA believes that this interpretation should have little general impact at this time, because today's central decision to not list SCM's means that few mines should be brought under PSD and NSR solely by virtue of EPA's interpretation of the nonapplicability of section 302(j) to modifications. Comments and

[9] Areas listed under section 162(a) of the Act cannot be reclassified and are generally referred to as mandatory Class I areas. The 158 areas are national parks over 6000 acres, national wilderness areas over 5000 acres, and international parks, all in existence on the PSD codification date, August 7, 1977. Only three nonmandatory Class I areas, all in Montana, have been created by redesignation of Class II areas and a fourth area in Washington has been proposed. All are Indian lands.

analysis of this issue are summarized in Section IV and the Federal Register [October 1984 (49 FR 43202) and February 1986 (51 FR 7090)].

IV. Major Issues

A. *Basis For No Listing Decision*—1. *Comments on The RIA.* Numerous comments were received on the RIA and were summarized into four categories: (1) The presence of health and welfare effects associated with SCM's, (2) air quality impacts, (3) cost estimates, and (4) benefit estimates. Comments from industry and some government entities universally asserted that ambient impacts and costs were understated while benefits were either nonexistent or at least overstated. Comments from environmental groups maintained the opposite point of view and were critical of EPA's use of cost-benefit analysis. Conversely, industry commenters contended that the legislative history of section 302(j), and the D.C. Circuit Court's interpretation of that provision in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979), support EPA's use of cost-benefit analysis. Most of the comments were originally addressed in the RIA under qualification of the various analytical components of the RIA. Those not addressed in the RIA are covered in detail in two reports in the docket: (1) Summary of Comments, and (2) Response to Technical Comments. While these documents can be reviewed for a thorough discussion of comments and responses, a summary of major comments and responses is presented below.

a. Health and Welfare Effects

Several commenters argued that since the NAAQS are set at levels below which there are no known adverse health or welfare effects, there would be no benefits from listing SCM's because they are primarily located in areas where air quality is already better than the NAAQS for PM. The commenters are correct to note that the intent of the NAAQS requirements was to direct the Administrator to set air quality standards at pollution levels below those at which quantifiable adverse health and welfare effects have been found or might be expected to occur in sensitive groups. However, experience with the requirements has shown that the scientific data are often so inconclusive that it is difficult to identify with confidence the lowest pollution level at which an adverse effect will occur. Moreover, in cases such as the present one regarding PM, the evidence suggests that there is a continuum of effects, with the risks, incidence, or severity of harm decreasing, but not necessarily vanishing, as the level of pollution decreases (52 FR 24641, July 1, 1987).

Other commenters argued that fugitive emissions from SCM's do not pose any health risks because such PM is less toxic than particles in urban areas where most of the health and welfare effects information used to establish the PM standards was obtained. This comment has limited merit because the NAAQS for PM nominally 10 micrometers or less in diameter (PM–10) NAAQS focuses on particles capable of penetrating the sensitive thoracic region of the respiratory tract. While the toxicity of various particles differ, the exhaustive review of the available health effects information supporting the PM–10 standards suggests that all particles equal to or less than a nominal 10 micrometers in diameter are of concern regardless of source characteristics. Moreover, it is not clear that coal dust (certainly a constituent of SCM fugitive dust) per se is nontoxic. Indeed, coal dust may contain toxic impurities, such as metals. In any event, "inert" particles may be responsible for a variety of health effects, from deposition throughout the respiratory tract and by several possible mechanisms. For example, nonspecific irritation in the tracheobronchial region may alter respiratory function or clearance mechanisms, clearly of health concern, particularly for sensitive subgroups of the population (e.g., asthmatics and elderly persons with chronic respiratory disease). [52 FR 24641, July 1, 1987]

b. Air Quality Impacts

A number of comments noted deficiencies in the Industrial Source Complex (ISC) model used to estimate ambient impacts around SCM's. While several well-documented analyses have shown that the ISC model has both systematic and random error associated with its use, the model still remains the preferred method for simple terrain stationary source analyses as specified in EPA's *Guideline on Air Quality Models*, Revised (EPA–450/2–78–027R, July 1986). In the RIA, the model was applied consistently, and the EPA believes the results are valid for relative comparisons across regulatory alternatives.

c. Cost Estimates

Different opinions from commenters were noted regarding the RIA cost estimates. For example, costs were asserted to be low by some commenters because the impacts on the largest mines in each basin analyzed were not assessed. Conversely, another set of comments maintained that costs were overstated because such controls as paved haul roads and speed restrictions were not considered. Regarding the first comment above, mine costs were estimated using the average size SCM in each basin. The EPA felt such an approach was better for assessing the most likely costs of listing SCM's. Using either the largest or smallest SCM's for cost assessment would have clearly biased the cost estimates presented.

The recommendation to analyze paving haul roads and speed restrictions was considered in the planning stages of the RIA. However, best engineering judgment based on Wyoming's best available control technology (BACT) analyses was used to eliminate the former from consideration because of the increased cost of paving roads that would support the enormous trucks used to transport coal around a surface mine. Furthermore, continuous construction and demolition of haul roads would be required as the pit changes location. This could exacerbate the pollution problem and would be expensive. Speed restrictions were not considered a viable option since reducing speed, for a constant production rate, would effectively require more equipment which would create more emissions. Therefore, gains from reducing speed would be offset by adding additional trips to maintain production rate (speed and number of trips equally affect SCM emission rates).

More specific concerns were raised by commenters in regard to the quantity of coal reserves, and subsequent cost effects, affected under Alternative IV. Industry maintained that approximately 8.5 billion tons of coal reserves would be affected by Alternative IV—six times larger than EPA's estimate of 1.4 billion tons. It is true that the original EPA estimate is low due to the exclusion of reserves on Indian lands. However, even the industry estimate of 8.5 billion tons affected represents less than 6 percent of the 157 billion tons of total reserves estimated in the RIA. Furthermore, the total reserve estimates in the RIA were selected as a conservative estimate since current estimates of demonstrated coal reserves exceed 400 billion tons.

d. Benefit Estimates

Several commenters maintained that benefit estimates, particularly, visibility benefits, were overstated. For example, it was asserted that willingness to pay (or contingent valuation) studies of visual range improvement were biased upwards because respondents exaggerate their responses when they do not actually have to pay. In response, EPA notes that recent comparisons between contingent valuation studies and market studies involving actual payments do not support the hypothesis that contingent valuation is consistently upward biased (*Response to Technical Comments on RIA for EPA Proposal to List Surface Coal Mines for New Source Review*, PEI Associates Inc., EPA Contract No. 68–02–4394, January 1989). While these studies have been found to contain potential biases, the direction of bias can be either upward or downward depending on the specifics of the study design.

Other comments argued conversely that benefits estimates presented were understated relative to costs because it is far easier to measure costs than to quantify benefits. There is merit in this comment, but the RIA explicitly recognizes this by listing benefit categories, such as nonresidential soiling, which are currently not quantifiable. Furthermore, where some benefit categories are quantifiable, but highly uncertain, potential magnitude is presented in the text of the RIA. A good example of this is the valuation of existence value benefits for Alternative IV. While the value of this benefit category is not used to compute the net benefit number in the RIA, a first order approximation of the value is presented in the text and is appropriately qualified.

2. *Comments on Proposed Alternatives.* In addition to the comments on the RIA summarized above, comments were received on the viability and legality of SCM regulatory alternatives proposed by EPA. The proposed alternatives were summarized in Section II above. After considering comments on Alternatives II–IV, deferring at that time the question of duplicative regulation under SMCRS, EPA decided to modify Alternative IV in an attempt to design a clearly beneficial rulemaking. Comments on these modified alternatives are also discussed below.

The comments below are organized by several categories: (1) Existing regulations, (2) implementation of alternatives, (3) majority recommendations, (4) minority recommendations, and (5) EPA analysis.

a. Existing Regulations

Most commenters argued that EPA is not legally bound to list SCM's and that SCM's are already subject to sufficient air pollution regulation by State governments and other Federal agencies. Commenters noted that some State laws and regulations require control of emissions from SCM's equivalent to BACT. Comments from the U.S. Department of Agriculture (USDA) asserted that mining operations on Federal lands adjacent to wilderness areas are controllable by USDA administrative policy. The existing authority most frequently cited as providing the protection sought by EPA under the proposed alternatives were programs administered by the DOI. Comments on DOI authorities and EPA analysis of the authorities are discussed below.

b. Implementation of Alternatives

Numerous comments were received on how the proposed alternatives would be implemented. For example, industry claimed that EPA's proposal would effectively create large "buffer zones" around Class I areas which are of no special natural value but where SCM's would be prohibited to prevent possible impacts within the Class I area. A State commenter asserted that some of EPA's proposed regulatory mechanisms were not consistent with State permitting procedures.

Comments on specific procedures were also received. As an example, the USDA suggested that a PSD review trigger, based on acreage disturbed at a specified time, would be simpler to apply than an emissions criteria. The mining industry suggested several changes to Alternative IV' such as excluding the FLM in the determination of adverse impact, reducing the mine impact review criteria distance to between 10 and 15 kilometers, and excluding any provisions for mandatory Class II PSD areas. Environmental groups also criticized including the FLM in the determination of significant adverse impact and implied that Indian Tribes, States, and EPA were better suited to make such decisions. These groups noted that Alternative IV" provided no protection for Class II PSD areas and that mines located greater than 50 kilometers from Class I PSD areas would escape review regardless of their impact on these areas. Several commenters from government agencies criticized the 1 microgram PM per cubic meter ambient impact criteria for initiating review in the Alternative IV' proposal because of uncertainties in the modeling analysis required for estimating the impact. Commenters expressing a preference for Alternative IV" cited the 50 kilometer distance criterion in IV" as a solution to the modeling problems associated with the IV ambient impact trigger.

c. Majority Recommendations

Most commenters emphatically supported Alternative I (no listing of SCM's, therefore, fugitive emissions would not be included in the PSD and NSR applicability determinations for SCM's). Some of the commenters supporting Alternative I included industry, State governments, Ute Mountain Indian Tribe, and several Federal agencies. The consensus of these commenters was that the costs of Alternatives II–IV exceeded the benefits of the proposed regulation.

These commenters continued to support Alternative I over modifications to Alternative IV. However, of the options requiring some listing of SCM's Alternative IV" was favored by a number of commenters. Industry commenters noted that Alternative IV", with several changes, "* * * more faithfully adheres to the Agency's objective of protecting special resources * * *" (AMC) and, as applied to Class I areas designated by the Act, is the only proposed alternative which may have positive benefits (Sunbelt Mining Co.).

The DOE considered Alternative IV' (applied only to mandatory Class I PSD areas) to be most consistent with the analytical results. Two environmental regulation agencies in coal mining States expressed similar opinions. Although these commenters expressed some preference for Alternative IV" among Alternatives II–IV, there was also a consensus that other existing regulatory authorities could provide benefits projected from Alternative IV".

d. Minority Recommendations

Robust, differing points of view were also expressed by two smaller groups of commenters. One group, composed mostly of environmental groups, favored listing of SCM's under either Alternative II or III, the most stringent regulatory options. These commenters argued that regardless of the costs projected, EPA should tightly limit fugitive emissions from SCM's under PSD and NSR regulations. Environmental groups generally viewed the proposed Alternatives IV' and IV" as less acceptable than the original Alternative IV which they rejected. The environmental groups' rejection of proposed variations of Alternative IV was shared with DOI. The DOI emphatically rejected Alternatives IV' and IV" and contested the distance criteria of Alternative IV" for PSD applicability as "legally questionable," arbitrary and lacking any empirical basis. In contrast to the environmental groups' recommendations for stringent EPA regulation, DOI joined the majority in supporting Alternative I, no listing.

e. The EPA Analysis of Comments On Proposed Alternatives

The EPA's review of both the RIA and the comments indicate that Alternatives II and III are economically impractical. Although industry appears to have overestimated costs, the RIA still predicts very substantial adverse socioeconomic impacts from these alternatives. Therefore, EPA rejected Alternatives II and III.

Based on a review of public comments and the RIA, EPA concludes that, while more appealing economically than Alternatives II and III, Alternative IV, as originally proposed, is not clearly beneficial given the uncertainty in benefits and cost estimates. Industry assumptions produced very high impact estimates of as much as 1 microgram per cubic meter up to 100 miles from the source, which resulted in very high industry cost estimates. While EPA does not agree with all of the assumptions used in the industry studies, EPA does agree that, in some locations, costs of Alternative IV may be considerable. However, EPA concludes that on a national basis, benefits and costs cannot be firmly estimated.

The final listing options EPA considered were Alternative I, no listing of surface coal mines, and Alternative IV or some variation of it designed to provide visibility and other benefits for natural areas of special significance (e.g., Yellowstone National Park). In considering these options, EPA placed substantial weight on the legal authorities available to the DOI which could also provide protection for areas of "special natural significance."

The EPA does not necessarily agree with commenters that variations of Alternative IV are impractical from a technical or legal perspective. However, it is not necessary to respond to the merits of these comments, because they are moot with the selection of Alternative I. The reasons for choosing Alternative I are not related to the technical and legal adequacy of Alternatives IV' and IV". The EPA did consider the ability of Alternatives IV'–IV" to protect NPSU's and other areas of special, natural significance in evaluating the intent and potential benefits of DOI authorities to regulate fugitive dust emissions from SCM's that might affect such areas. Comments concerning the costs of duplicative regulation under the Act and SMCRA are of concern to EPA and are discussed in greater detail below.

3. *DOI Authorities.* Several commenters, including the DOI and industry representatives, urged EPA to not list SCM's on the ground that under existing DOI statutory authorities, regulations, and policies, DOI can adequately protect against adverse effects from SCM's. The commenters stated that these authorities are particularly effective with respect to the national parks and other areas of special concern which are the focus of Alternative IV. The DOI authorities were summarized above in Section II.

a. Government and Industry Comments

Comments submitted by DOI, other Federal agencies, and mining industry groups supported the position that statutes, regulations, and policies administered by DOI would capture most or all of the social benefits that may result from listing SCM's in the vicinity of Class I and mandatory Class II areas. Hence, these commenters opposed Alternative IV and other narrowly focused regulatory options on this basis alone.

Two events in particular involving DOI have resolved any doubts regarding its ability to prevent adverse air quality impacts from SCM operations. First, in *National Wildlife Federation (NWF)* v. *Hodel*, 839 F.2d 694, 765 (D.C. Cir. 1988), the Court of Appeals affirmed that DOI has authority under SMCRA section 515(b)(4) to regulate air pollution that is attendant to erosion. Second, DOI has promulgated a performance standard under SMCRA to control dust due to both wind erosion and dust created by vehicle traffic (53 FR 45190, Nov. 8, 1988).

Regarding SMCRA section 522(e), DOI remarked that it provides significant protection to NPSU's and other publicly owned parks from potential impacts on air quality and related values. Moreover, the term "adversely affect" in section 522(e)(3) is not limited geographically by the location of the prospective mine or the nature of the adverse effect, but is applied on a case-by-case basis in consultation with the manager of the potential affected resource.

As to the unsuitability designation provisions of SMCRA section 522(c), an unsuitability designation could be made for lands inside or *outside* of the boundaries of NPSU's. Furthermore, excessive levels of fugitive dust emissions from potential SCM's could form the basis for an unsuitability designation where those emissions would significantly damage the fragile or historic lands.

b. Comments from Environmental Groups

In comments submitted prior to the decision in *NWF* v. *Hodel* and DOI's promulgation of road dust rules, a coalition of environmental groups argued that there is currently no governmental authority effectively regulating fugitive emissions from SCM's. In particular, the coalition disputed DOI's claimed ability to protect Class I and mandatory Class II areas, asserting that DOI has failed to fully exercise its authority in any meaningful fashion. Regarding the prohibition in SMCRA section 522(e)(3) against SCM's that would adversely affect parklands, the environmental groups pointed out that the SMCRA regulatory authority is required only to consider the views of the NPS, and that NPS has no authority to enforce its recommendations. These groups also noted that no finding of adverse effect or unsuitability under SMCRA has ever been made due to the impacts of mining on air quality.

The environmental groups stated that "[a]ll interested parties agree that the major percentage of fugitive emissions generated by surface coal mining operations occurs as a result of traffic on haul roads." However, the groups focused on the absence of a performance standard for road dust as representative of DOI's purported failure to adopt any substantive regulatory scheme to control fugitive emissions from SCM's.

c. Analysis of Comments

The EPA has carefully considered the presentations made by all interested parties concerning the breadth of DOI's regulatory program for SCM operations. Based on this review, EPA agrees with the views of DOI (and others) that, as a whole, the various DOI authorities governing SCM's, while procedurally quite different from PSD and NSR requirements, have the potential to provide adequate protections against adverse air quality impacts in mandatory Class I and mandatory Class II areas. EPA believes that DOI authorities substantially overlap with those which would be provided under Alternative IV or variations of that regulatory option. Consequently, it would be superfluous to list SCM's for the purpose of protecting the NPSU's and other areas of special concern that are the subject of Alternative IV and its variations. Given the rough equivalence of costs and benefits for Alternative IV that emerged from EPA's RIA and analysis of comments on the RIA, EPA believes that the existence of DOI regulatory authority providing much the same benefits as would be afforded by EPA under the Act, but without the administrative costs that the Clean Air Act coverage could entail, is an adequate basis on which to reject Alternative IV and its variations

pursuant to the rules for listing decisions under section 302(j).

The EPA believes that under the range of authorities discussed above, DOI and State regulatory authorities, have extremely broad powers to prevent the potential harms addressed by Alternative IV and its variations. These powers are at least as broad, and in some instances, broader, than those afforded to DOI and other Federal agencies in their role as FLM's, and to State governments and EPA itself in their role as permitting authorities under the PSD and NSR provisions of Parts C and D of the Act. For example, under Clean Air Act section 165(d)(2)(C)(ii), if the FLM demonstrates to the satisfaction of a permitting authority that emissions from a prospective facility would "have an adverse impact on the air quality-related values (including visibility)" of a Class I area, the State may not issue a PSD permit. Similarly, under SMCRA section 522(e)(3), if the SMCRA regulatory authority determines that a prospective SCM would "adversely affect" a publicly-owned park, the mine cannot be built if the responsible government agency agrees in that finding. Thus, under SMCRA Federal land management agencies are powerful stewards of the public trust, charged with the responsibility and authority to protect public lands of special concern.

The VER could provide some exceptions to SMCRA section 522(e), although the extent of any such exemption is unclear pending completion of DOI rulemaking on VER. However, any mine constructed in areas near NPSU's would still be subject to performance standards under SMCRA section 515 (b)(4) and (b)(17) and codified in 30 CFR 780.15, 816.150 and 816.95. Any mine operating near an NPSU would be expected to meet stringent construction and maintenance standards. Indeed, DOI regulations provide the flexibility to require such stringency for SCM's affecting NPSU's under DOI's policy of control in response to local conditions. In any case, nothing would prevent the Federal government from buying back VER when there is significant public interest in protecting an NPSU and Congress appropriates funds for purchasing VER of concern. DOI has given notice in a statement of policy that to prevent coal mining in areas covered by SMCRA section 522(e), DOI will use available authorities to acquire VER through "exchange, negotiated purchase or condemnation" subject to appropriation (53 FR 52384).

The EPA also concludes that questions raised by comments from environmental groups concerning DOI's ability and willingness to protect the public trust by pursuing regulation of SCM's under the DOI authorities have been adequately answered by events subsequent to the submission of those comments. *NWF* v. *Hodel* upheld DOI's authority to promulgate general SCM performance standards requiring a plan for fugitive dust control practices under SMCRA section 515(b)(4). The reasoning of that decision validates regulations promulgated under other sections of SMCRA to address air pollution attendant to erosion. Thus, DOI cited the *NWF* v. *Hodel* decision in promulgating its road dust rules under SMCRA section 515(b)(17) (53 FR 45202).

In addition, DOI's adoption of road dust rules shows its willingness to take strong regulatory action on air pollution from all SCM's. As the environmental group commenters noted, all parties agree that a significant amount of fugitive dust from SCM operations is generated as a result of haul road traffic. In commenting on the DOI proposed rule, EPA related its understanding that in addition to fugitive dust attributed directly to wind, the rule would cover erosion-related pollution resulting from the movement of overburden and coal haul trucks, light and medium duty vehicles, and other equipment operating outside of the mine pit using on-site roads and surfaces. The DOI accepted this comment and made EPA's suggested change to the final rule clarifying that performance standards apply to dust created by vehicle traffic (53 FR 45203).

Evidence of DOI's specific commitment to protect the air quality related values of national parks and other sensitive areas is evident in the SMCRA programs governing adverse effect determinations and unsuitability designations. As noted above, DOI has interpreted the unsuitability determination process as extending to damages caused by fugitive dust emissions from prospective SCM's. Although the environmental groups are correct that DOI has not designated any Federal lands as unsuitable for mining based on potential adverse effects on air quality, DOI has rarely been called upon to do so.[9] Thus, EPA has every reason to believe that DOI will responsibly pursue petitions alleging that a prospective SCM would adversely affect parklands.

Regarding the FCMP, DOI rules direct the BLM to place particular emphasis on the air quality portion of the multiple use decision, and require the BLM to consult with the NPS and FWS prior to a joint determination of whether BLM lands should be accepted for further consideration for coal leasing (52 FR 48469).

3. *Comparison of Cost and Benefits Under the Act and SMCRA.* The EPA's "safety valve" interpretation of section 302(j) clearly calls for the Agency's deliberative process to address legitimate cost/benefit concerns in reaching a listing decision (49 FR 43202). This approach to listing decisions is under review in *NCA* v. *EPA* and is not at issue here. As discussed elsewhere in this notice, EPA believes that commenters have confirmed that the benefits of adopting Alternatives II or III are greatly outweighed by the costs associated with those options. The EPA disagrees with these commenters' similar arguments regarding Alternative IV. Nevertheless, the EPA is not compelled to adopt Alternative IV or some variation of it. As it addressed Alternative IV, the RIA did not take into account the prospect that DOI could provide equivalent environmental benefits. However, for the reasons set forth above, EPA now believes that the various DOI authorities already in place can provide much the same degree of environmental protection as would PSD under the Act. Thus, few, if any, additional socioeconomic benefits would be provided by a decision to list SCM's under Alternative IV or its variations. Conversely, a decision to list could entail additional costs sufficient to justify not taking that course of action.

By accepting that DOI's programs will provide benefits equivalent to Alternative IV through the mitigation or prevention of adverse effects on air quality related values in national parks and other areas of special concern, EPA is assuming a roughly similar mix of pollution control measures, reductions in SCM size, and SCM relocations as was assumed would accompany Alternative IV. It follows that EPA should also assume that the DOI programs will also entail roughly similar costs to producers and others in realizing those benefits. One might argue that it also follows that the addition of PSD under Alternative IV would add no additional costs beyond those already required by the DOI programs, and, thus, EPA must promulgate regulations under its "safety valve" interpretation of section 302(j). But, in practical terms, this is not true. Such an argument ignores the fact that the DOI programs are already in place, and that the addition of another set of regulatory requirements is inherently

[9] The one instance in which this issue was raised, regarding the Alton Coal Field and Bryce Canyon National Park, resulted in a determination of unsuitability based on other grounds.

costly. Thus, even if the addition of Alternative IV required no sources to re set (or change their plans to avoid) PSD requirements because DOI programs would have already obviated the need for such actions, there would still be the built-in administrative costs of the EPA program to contend with. For example, under Alternative IV the SCM owner might be required to undertake a separate modeling analysis for the sole purpose of demonstrating that it would not exceed the PSD coverage threshold of a 1 microgram per cubic meter ($\mu g/m^3$) impact on a Class I or mandatory Class II area.

To give another example, if pursuant to Alternative IV a prospective SCM were brought under PSD because it exceeded the 1 $\mu g/m^3$ threshold at a Class I national park located at a considerable distance from the SCM site, it would trigger an adverse impact determination by the FLM under the Act, section 165(d)(2)(C)(ii). If the FLM found, and the permitting authority agreed, that an adverse impact would occur, the mine could not be built. However, as discussed above, the responsible State or Federal agency may conduct a similar analysis under SMCRA, and the SCM could not be permitted if that agency and the SMCRA regulatory authority agreed there would be an adverse affect on the park. Thus, in this example also, PSD would entail costs to the prospective source in applying for a PSD permit and to the FLM in making a separate adverse impact determination under the Act, yet these costs would not provide any benefits not already present under the DOI authorities.

In short, nothing in the Act or EPA's interpretation of section 302(j) requires EPA to promulgate regulatory requirements that provide no benefits where there are some, albeit modest, costs. Indeed, under such circumstances, even modest costs are unreasonable precisely because they are not counterbalanced by benefits. In taking due account of the environmental protections provided by SMCRA, the FCMP, and other DOI authorities, EPA believes that today's section 302(j) decision is an appropriate exercise of the "flexibility to provide industry-by-industry consideration and appropriate tailoring of coverage" which the D.C. Circuit envisioned in *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 369 (D.C. Cir. 1979). At present, EPA has no basis to question the adequacy of DOI's authorities. Of course, if in the future EPA is presented with a petition for rulemaking containing appropriate evidence that the various DOI authorities do not in fact provide environmental protection equivalent to that available under the Act, EPA will carefully reconsider the basis for today's action.

B. Fugitive Dust Issues Related to SCM's

The EPA's actions in October 1984 (49 FR 43202) and February 1986 (51 FR 7090) reaffirmed the Agency's 1980 interpretation regarding the nature of the section 302(j) rulemaking requirement, and retained the list of sources whose fugitive emissions must be considered in making PSD and NSR TAD's. Although EPA believed its 1980 rulemaking met the procedural standards of section 307(d)(8), 42 U.S.C. 7607(d)(8), as a matter of policy the Agency solicited further comment on the listing of source categories. The EPA stated that, consistent with its "safety valve" interpretation of section 302(j), it would not remove a category from the list unless commenters showed adverse consequences to the broad national interest in continuing the listing. Public comment on these matters was generally limited during the initial round of comments. However, mining industry representatives expressed several concerns related to SCM's which could result in a source being subjected to PSD and NSR even if EPA made a final determination not to list SCM's. The industry's concerns included the interaction between the definition of "source" for PSD and NSR purposes and the currently listed fugitive emissions source categories and the applicability of section 302(j) to major modifications. To the extent that SCM's would be indirectly subject to PSD or NSR, several industry representatives filed petitions for administrative reconsideration of EPA's October 1984 action (see "AMC Petitions", section II above) seeking relief, either through a change in the definition of source, or through deletion of certain, currently listed fugitive emissions source categories. Accordingly, in reopening the public comment period in February 20, 1986 **Federal Register**, EPA solicited comment on whether, if EPA decided not to list SCM's, some exemption from or interpretation of the "source" definition as it relates to section 302(j) rulemaking would be appropriate.

The following discussion of the SIC code definition of source and listed source issues constitutes EPA's substantive disposition of industry comments and the applicable petitions for reconsideration.

1. SIC Code Definition of Source

The 1980 PSD and NSR regulations established the SIC Manual as the principal definitional tool for identifying the types of pollutant-emitting activities that shall be considered part of the same industrial grouping for purposes of determining the scope of a stationary source for NSR purposes. Specifically, activities within the same Major Group, i.e., the same two-digit SIC code, are aggregated [see, e.g., 40 C.F.R. 52.21(b)(6)]. As EPA noted in the February 28, 1986 **Federal Register** (51 FR 7090), use of the SIC code has implications for the mining industry by virtue of the fact that SIC Major Group 12, "bituminous coal and lignite mining," includes not only the mine proper but also coal cleaning and other coal preparation activities. "Coal cleaning plants (with thermal dryers)" are on the list of fugitive emissions source categories [see, e.g., 40 CFR 52.21(b)(1)(iii)(a)]. Coal preparation plants are also listed because a new source performance standard regulating them (40 CFR Part 60, Subpart Y) was promulgated prior to August 7, 1980 [see, e.g., 40 CFR 52.21(b)(1)(iii)(aa)]. The mining industry raised two principal issues stemming from this aspect of the definition of source: applicability of substantive PSD and NSR requirements to SCM's considered to be part of a major source because they are collocated with such sources, and inclusion of fugitive emissions from SCM's in the PSD and NSR threshold applicability determinations of collocated sources.

a. Industry Comments. Mining interests contend that SCM's are not a type of stationary source that Congress intended to be subject to PSD and NSR requirements. In their view, EPA's error in considering regulation at all is compounded by the Agency's attempts to impose on SCM's the SIC code and other attributes of the PSD/NSR definition of source that may be appropriate for other industries but cannot be properly applied to SCM's through a "definitional quirk." Any regulation of SCM's by virtue of the source definition is arbitrary and in excess of EPA's authority, they assert, unless EPA complies with the rulemaking requirements of section 302(j). Industry commenters claimed that consideration of SCM fugitive dust emissions as the "secondary emissions" of an off site support facility in determining the air quality impact of a major stationary source is also precluded absent compliance with section 302(j).

b. Analysis. The EPA disagrees fundamentally with the industry contention that rulemaking under section 302(j) is a broad prerequisite to any regulation of SCM's under the Act and PSD/NSR programs.[10] To the contrary, EPA continues to believe section 302(j) has only a limited "safety valve" function. Once the Administrator determines that sources in a given source category have the potential to degrade air quality significantly, commenters have an opportunity to present factual and policy arguments sufficient to convince the Administrator that it would not be appropriate to include fugitive emissions from sources in that category in TAD's. Section 302(j) is irrelevant in defining the scope of the term "source" and in applying substantive PSD and NSR requirements. Thus, in *Alabama Power* v. *Costle*, the D.C. Circuit upheld EPA's position that section 302(j) has no bearing whatsoever on the applicability of substantive PSD requirements under section 165 after a source is determined to be major (636 F.2d at 369). In addition to establishing the limited reach of section 302(j), the *Alabama Power* decision is highly informative of the limited scope and discretionary nature of those rulemakings which must be conducted under that section. Consequently, in both the 1980 and 1984 final rulemakings, EPA reasonably concluded that Congress consigned any problems of measurement, modeling, and pollution control regarding fugitive emissions to individual permit proceedings (45 FR 52690–92 and 49 FR 43203). Similarly, in its final action on the rulemaking proceeding arising out of Exhibit A of the *CMA* Settlement Agreement, EPA concluded that where SCM's function as off site support facilities for a major stationary source, the mine's reasonably quantifiable fugitive dust emissions must be included in the air quality impact analysis for the major source, and that it is not necessary to conduct a section 302(j) rulemaking to make this finding [54 FR 27286, 27290, (June 28, 1989)].

Based on the above, EPA concludes that it has no obligation to depart from its longstanding use of the SIC code and other aspects of the definition of "source" for PSD and NSR purposes in order to satisfy its rulemaking obligations under section 302(j) or to otherwise craft a reasonable and lawful set of PSD/NSR rules. The EPA also reaffirms its interpretation of section 302(j). Moreover, EPA believes that the results of this conclusion reflect adequate consideration of the particular characteristics of the SCM industry, consistent with EPA's obligation to administer and enforce the Act. In addition, EPA does not believe that the effects of today's action will be unduly burdensome to industry.

2. *Listed Collocated Sources.* As discussed in the February 1986 (51 FR 7090) reopening of the public comment period, EPA's position has been that stack emissions and fugitive emissions from a coal cleaning plant or coal preparation plant must be summed in determining whether it would be a major stationary source. If, standing alone, such a plant were "major," and therefore subject to review, then a collocated SCM generally would also be considered part of the major source and subject to substantive PSD and NSR requirements regardless of whether SCM's are listed. (See Alabama Power, 636 F.2d at 369). Such operations typically must be aggregated as a single source under EPA's rules because they belong to the same SIC two digit code, and typically are located on adjacent or contiguous properties and are under common control.[11]

The EPA believes that the structure and function of its regulations in the above examples are reasonable and appropriate under the Act. Indeed, industry commenters have presented no evidence of adverse practical consequences from this view, because coal preparation plants and coal cleaning plants apparently do not usually exceed major source size thresholds. A more difficult question is presented by whether the fugitive emissions of a collocated SCM must also be considered for threshold applicability purposes. Industry comments and EPA's February 1986 notice pointed out that a strict construction of the regulations with respect to the SIC code could result in the entire operation, including the SCM, being considered as part of the "listed" coal preparation or coal cleaning plant. The EPA has determined to reaffirm its longstanding position that the decision whether to include fugitive emissions from collocated SCM's in these circumstances should be decided for each occurrence, depending on the "primary activity" of the operation as a whole. As stated in the preamble to the 1980 regulations, "[e]ach source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered" (45 FR 52695).[12]

Under this primary activity test, EPA or the permitting authority should review all the facts and circumstances of the particular case to determine what is the main purpose and function of the overall operation, and make an applicability determination based on the status (listed vs. nonlisted) and tonnage threshold (100 tons per year vs. 250 tons per year) of the primary activity. Thus, as SCM's continue to be a nonlisted source category, where coal mining is the primary activity, a mine's fugitive emissions are not considered in determining threshold applicability for a source consisting of the mine and some other collocated activity. In both of the final determinations cited above, EPA concluded that the coal mine was the primary activity, and EPA anticipates that this would be the case in most, if not all, future examples involving coal processing activities. In terms of both the purpose of the enterprise and the economic value of the newly mined coal as compared with the processed coal, it is the mining that is the focus of the overall effort.

3. Support Facilities—a. Collocating Sources of Differing SIC's. Mining industry commenters also raised closely related questions arising from the collocation of listed sources and SCM's that are under different two-digit SIC codes. They noted that when EPA articulated the primary activity test in the 1980 regulations, the Agency stated: "one source classification encompasses both primary and support facilities, even when the latter includes units with a different 2-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product" (45 FR 52695). These commenters noted, that in 1980, EPA stated, in response to a specific comment, that a power plant and a SCM connected by a 20-mile railroad would be considered separate sources because of the distance and the different two-digit SIC codes, but sought clarification as to a SCM and a closer or adjacent coal-fired power plant. As stated above, these matters must be

[10] Industry representatives must present their arguments on the listed source issues as requests for clarification or reconsideration of EPA's definition of source and current list of fugitive emissions source categories. In so doing, they at least tacitly acknowledge that these issues are separate from the limited question presented by the proposal to list SCM's under section 302(j).

[11] For the same reasons, stack emissions from the mine must also be added to the emissions of the preparation or cleaning plant in determining threshold applicability.

[12] See also Memorandum, Edward E. Reich, Director, Stationary Source Compliance Division, EPA to John M. Daniel, Assistant Executive Director, Virginia Air Pollution Control Board, May 31, 1983; Memorandum, Edward E. Reich to Allyn Davis, Director, Air and Hazardous Materials Division, EPA Region VI, June 8, 1980.

decided on a case-by-case basis. However, EPA anticipates that it would, in most cases, conclude that a SCM and an adjacent mine-mouth power plant controlled by the same entity would be considered a single source, the primary activity of which is either the generation of electrical power or the mining of coal, depending on the most likely overall purpose of the facility. If the mine and power plant were isolated in a remote area, for which the power plant is designed to support mining operations, the primary activity would likely be determined to be mining. However, if the facility is not isolated and service capacity of the power plant obviously exceeds the needs of the mine alone, and the facility will generate power for a public utility, then EPA would likely find that both the central purpose of the enterprise and the principal locus of its economic value is power generation. In the latter example, because power plants in excess of 250 million BTU heat input per hour are listed sources (see, e.g., 40 CFR 52.21(b)(1)(iii)(z)), the fugitive emissions of the SCM would be included in TAD's, and the SCM would be subject to substantive PSD and NSR requirements.

Industry commenters object to this possible outcome for two reasons. First, they contend that unless SCM's are separately listed, use of the factor of geographic proximity to consider a SCM as part of a single source that also includes a power plant violates the rulemaking requirements of section 302(j). However, as suggested above, section 302(j) does not require rulemaking as to SCM's in order to make such a finding. Regarding the listing of fossil-fuel fired steam electric plants as such, commenters have not demonstrated that considering SCM's as part of a source that also includes a power plant is, for the threshold applicability purposes of section 302(j), unreasonable. In practical terms, virtually all power plants in excess of 250 million BTU heat input exceed the major source threshold without consideration of fugitive emissions from collocated SCM's. Also, as discussed previously, *Alabama Power* conclusively determined that once a source is found to be major and subject to review substantive PSD and NSR requirements "apply with equal force to fugitive emissions and emissions from industrial point sources" (636 F.2d at 369). Thus, today's action should have no impact on existing coverage of collocated SCM's and power plants.

b. Economically Forced Relocation Sources. Industry's second objection is that including a SCM and a listed power plant as a single source would encourage relocation of the power plant to a distant location and thereby cause adverse energy and environmental impacts. Although there is some surface plausibility to this notion, commenters did not clearly demonstrate that such a result would occur. More importantly, this objection does not relate to the proper scope of a section 302(j) inquiry, but rather to EPA's definition of "source," and these commenters have not shown that it is unreasonable for EPA to adhere to its consistent and longstanding construction of this term rather than create a special exemption for SCM's. Similarly, the commenters have not shown that it would be unreasonable to retain the current list of fugitive emissions source categories.

4. Continuance of Status Quo. Finally, as to both the support facility issue and the SIC code issue, it is clear that the central thrust of the mining industry's objections to PSD and NSR coverage is the special pleading that SCM's would be unable to meet applicable air quality requirements in an economical fashion. As discussed elsewhere in this notice, it is no longer clear that this is universally the case. Moreover, the net result of today's action is not to add any new regulatory requirements, but merely to retain the status quo, under which only certain SCM's collocated with certain other listed sources must meet substantive PSD and NSR requirements, including ambient impact requirements. However, the need to demonstrate that SCM's collocated with listed sources will not exceed applicable NAAQS and increments, the focus of industry's concerns, is already in place by virtue of EPA's prior action on "secondary emissions." As explained in the preamble to that action, EPA concluded that the Act mandates the inclusion of such secondary emissions as a general matter (54 FR 27290). The EPA today reaffirms that conclusion.

C. *Applicability of Section 302(j) to Modifications*—1. *Background.* In the 1984 rulemking proposal, EPA solicited comment on its interpretation that section 302(j) applies to TAD's only for major new sources, and not for major modifications to existing major stationary sources (49 FR 43213). The EPA pointed out that the language of section 302(j) explicitly attaches the rulemaking requirement only to existing or proposed major sources, and says nothing about major modifications to existing units. The EPA also noted that the PSD and nonattainment NSR definitions of modification in section 169(2)(C), 42 U.S.C. 7479(2)(C), and section 171(4), 42 U.S.C. 7501(4), are both nonsubstantive, and refer to section 111(a)(4) of the Act's new source performance standards (NSPS) provisions, 42 U.S.C. 7411(a)(4). Section 111(a)(4), in turn, defines modification solely in terms of the total amount of pollution that a source change would produce, indicating that Congress intended to establish no qualitative distinction between stack and fugitive emissions. Moreover, EPA stated, the legislative history on section 302(j) does not refer directly to modifications, although the conference report on the PSD construction and modification definitions in section 169(2)(C) does provide that Congress' general intent was "to conform to usage in other parts of the Act" [123 Cong. Rec. H 11957, col. 3 (daily ed.) (November 1, 1977)]. The EPA reasoned that this passage referred not only to section 111(a)(4), but to usage of these terms in extant EPA regulations under the NSPS and PSD/NSR programs. Those regulations did not distinguish between fugitive and stack emissions. Thus, EPA concluded that section 302(j) ran counter to longstanding practice, and that if Congress had intended a legislative change as to modifications, it would have said so explicitly. In addition, EPA related that its interpretation likely would not impose new regulatory burdens because fugitive emissions from modifications would still be excluded from TAD's unless the modifications occurred at a major stationary source. Thus, if SCM's continue to be nonlisted, and therefore generally deemed not to be major sources, a modification that significantly increased fugitive emissions at a SCM still would not trigger PSD and NSR.

In reopening the comment period in February 1986, EPA reiterated its view that the nonapplicability of section 302(j) to modifications would not affect PSD and NSR applicability in the general case, but pointed out that resolution of the "listed source" issues could affect this outcome (51 FR 7093).

2. *Industry Comments.* Mining industry representatives commented that section 302(j) should apply to modifications. They disagreed with EPA's interpretation of the legislative history, believing instead that congressional silence on the subject disclosed a lack of guidance. The AMC asserted that since new sources and modifications are generally treated the same in most respects under the Act, there is no basis to treat them differently under section 302(j).

Industry commenters also argued that EPA must resolve, in the context of a separate rulemaking under section

302(j), certain ambiguities as to what "physical change or change in the method of operation" would result in a "significant net emissions increase" at a major stationery source and therefore constitute a major modification subject to NSR. (See, e.g., 40 CFR 52.52(b)(2)(i).) In their view, EPA's October 1984 proposal was inadequate to apprise the interested public of the purpose and intent of the proposal and how it relates to other existing regulatory requirements.

Peabody Holding Co., pointed out that due to the nature of SCM's, there must constantly be movement of mining operations as mining progresses along the coal deposits, possibly requiring the addition of new equipment or even the development of a new pit as the reserves in the existing pit are mined out. The NCA similarly asserted that physical or operational changes of this nature are a normal part of strip mining. Peabody suggested that EPA adopt a test which provides that any activity or change at a mine that represents a logical mining sequence of the mine's production pursuant to the mining plan used by State authorities in issuing air quality permits, or mining and reclamation permits in instances where air quality permits were not required, can serve as a guide to whether a modification would occur. Thus, activity in conformance with the mining plan should not be considered a modification when the mine owner has previously used that plan as a basis for securing all required permits. Peabody noted, however, that in some cases, especially in the eastern half of the United States, the mining plan will not cover the future movement of the mine for more than a few years because such movement depends upon the future acquisition of mineral rights in adjoining land. The movement of the mine to those sites in the future should not be considered a modification of the existing mine for NSR purposes so long as it represents a logical progression of mining activities. In Peabody's view, changes such as the addition of more haul roads or a change in pit sequences, would be routine and not constitute a modification.

The NCA asserted that increases in production up to maximum design production capacity of a mine and increases in emission up to the maximum allowed in air quality permits should not be considered a major modification. The AMC contended that since many existing mines have not been required to have permits, there is some question as to whether emissions decreases occurring at a mine are "federally enforceable" and, therefore, whether the owner or operator could obtain credit for decreases (such as from a haul road that is no longer in use) in making netting calculations. The AMC also pointed out that actual emissions baseline issues must be addressed.

3. *Environmental Group Comments.* The Sierra Club agreed with EPA that section 302(j) does not apply to modifications. However, this commenter contended that EPA should not "grandfather" modifications that occur prior to today's action, on the ground that EPA's view to the contrary was contained only in the August 1983 proposal and was never promulgated.

4. *EPA Analysis.* Upon consideration of the comments, EPA reaffirms its October 1984 interpretation that section 302(j) does not apply to modifications. Commenters have not persuaded the Agency either that Congress had a contrary specific purpose in adopting section 302(j), or that EPA's interpretation, as explained in the October 1984 proposal, is inconsistent with the Act's purposes. Accordingly, EPA believes that its interpretation is a reasonable one, and thus proper under the law [See *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council (NRDC)*, 467 U.S. 837 (1984)]. In any event, EPA believes that this interpretation should have little general impact at this time, because today's central decision to not list SCM's means that very few mines should be brought under NSR solely by virtue of EPA's interpretation of the nonapplicability of section 302(j) to modifications.

The EPA's interpretation, in conjunction with today's resolution of the "listed source" issues could in theory have the effect of subjecting certain modifications at existing SCM's to PSD and NSR in some fashion. For example, increases in fugitive emissions resulting from physical or operational changes at mines collocated with coal preparation plants and coal cleaning plants that are deemed to be major sources would be considered in determining whether there was a "significant net increase in emissions," and, hence, a major modification. However, industry commenters have identified no instances in which coal preparation or cleaning plants would, under EPA's resolution of the "listed source" issues, be considered major sources. Even if there are such cases, EPA's interpretation would have a practical effect on the ambient impact analysis requirements of PSD and NSR only in those instances, if any, where there were changes in mining operations that increase fugitive emissions significantly without associated significant increases in emissions from the coal preparation or coal cleaning facilities standing alone.

Significant increases in fugitive emissions at mine collocated with power plants also could result in PSD and NSR coverage by virtue of the reaffirmation of the current list of fugitive emissions source categories. However, as is the case with major new sources as explained above in the discussion of the "listed source" issues, this result does not flow from any decision as to the application of section 302(j) to SCM's. In addition, as a practical matter, today's decision would have an impact only in those instances, if any, where significant increases in fugitive emissions from mines were not accompanied by significant increases at collocated power plants.

The EPA also rejects industry comments that the Agency must engage in a separate section 302(j) rulemaking to resolve issues relating to the application of existing regulatory concepts associated with the definition of modification to the particular circumstances presented by SCM's. These issues do not relate directly to EPA's interpretation of the rulemaking requirements of section 302(j), to the decision whether to list SCM's, to the applicability of section 302(j) to modifications, or to the "listed source" issues that are the principal subject of this rulemaking. Rather, as industry commenters concede, their concerns relate to the interpretation of EPA's existing modification regulations.[13] Accordingly, EPA is under no obligation to address industry's concerns in order to conclude this rulemaking. Moreover, as a general matter, since the comments in question essentially call for an interpretative ruling, the Administrative Procedure Act exempts EPA altogether from any legal obligation to engage in notice-and-comment rulemaking before addressing them.[14] Nevertheless, because these comments do raise questions of potential importance in the event that modifications to SCM's should, in practice, be subject to review, EPA addresses some of them here.

In sum, EPA believes that the general applicability concepts associated with its definition of "major modification" may be readily adapted to SCM's. The EPA rejects the inference of industry commenters that these concepts are

[13] See, e.g., Comments of Peabody Holding Co., Inc., Docket Entry No. A-84-33-IV-L-36 (May 28, 1986), at 38.

[14] In any event, it is evident from the cogent and focused comments summarized above that mining industry representatives have been given ample opportunity to address this matter.

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somehow alien to the practical realities of SCM's. Nevertheless, it is appropriate to clarify certain general matters regarding the use of these regulatory concepts in the context of mining operations. Specific application of these concepts can only be addressed from the posture of a particular mine and of necessity are beyond the scope of this discussion.

The EPA agrees with the basic thrust of Peabody's comments as to when changes at an existing SCM should be deemed physical or operational changes for purposes of the PSD and NSR major modification rules. When a prospective new source in a traditional industrial source category receives air quality permits, as, for example, under the Act's PSD provisions, the permit allows construction and operation of specified facilities at specified levels. So long as the source constructs and operates in accordance with the permit terms, the ebb and flow of its activities will not trigger a major modification. Conversely, if, after initial construction and operation under the permit, the source institutes a physical or operational change resulting in a significant net increase in emissions, it will be subject to review as a major modification. These general concepts may be applied to SCM's.

Thus, if there are instances where a specific mining plan specifies the location, methods, and extent of mining activities, and forms the basis of permitting decisions by State or Federal agencies under air quality or surface mining laws and regulations, a source generally could engage in the mining activities set forth in that plan without triggering a major modification. For example, where the mining plan contemplates that the pit will move to specified new areas over time and contemplates the new, extended, or modified haul roads will be constructed to accommodate that movement, such haul roads could in the normal course be considered part of the source as originally constructed, and not as a modification. Likewise, if the original mining plan provides for increases in production over time and discusses in detail associated changes in the mining operations in order to accommodate such increased production, including any changes necessary under applicable law in order to address air quality concerns, such changes generally would not trigger PSD review.

Conversely, where a mining operation moves to a new area not part of the original mine plan, because, for example, mineral rights to the area in question were not secured prior to filing the original plan, construction of a new, modified, or extended haul road would be deemed a physical or operational change that may trigger review. Similarly, a mining operation may move to an area that, while nominally part of the original plan, has not undergone complete consideration of air pollution control requirements or air quality impacts to the extent necessary under applicable laws or regulations. This might occur because, for example, the regulatory authority could not adequately foresee the environmental impact of such future operations at the time of original approval and therefore retained the right to give additional consideration to such matters at some future time. Under such circumstances, changes in the mining operations could be deemed a physical change or change in the method of operation, and potentially trigger review. In addition, an original mining plan may provide for a particular level of production and specify the means by which that production may be achieved. However, if it later becomes the case that physical or operational changes not contemplated by the original mining plan are necessary in order to achieve the maximum production design capacity, emissions increases associated with such increased production may be subject to PSD review.

However, where changed operations such as those discussed above are cognizable for NSR purposes, a mine owner or operator would also be entitled to seek offsetting, federally enforceable decreases in current actual emissions in order to avoid review. This could be accomplished, for example, through a State construction permit acknowledging the cessation of operations on a haul road no longer needed. In general, as this discussion illustrates, EPA believes that the usual concepts by which major modification applicability is determined can be readily applied to SCM operations. Of course, some consideration must be given to the circumstances of the strip mining industry, as often must be done for other specific industries. In addition, the applicability in a particular case must be determined on the basis of the facts and circumstances surrounding that case.

V. Administrative

A. Docket

This regulatory action is subject to the provisions of Clean Air Act section 307(d) [see section 307(d)(1) (i) and (n)]. The docket for this regulatory action is A–84–33. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The docket allows interested parties a means to identify and locate documents to effectively participate in the rulemaking process and now serves as the record in case of judicial review (except for interagency review materials ([section 307(d)(7)(A)]). The docket is available for public inspection at EPA's Central Docket Section, which is listed under the ADDRESSES section of this notice.

B. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major" and therefore subject to the requirement of an RIA. Although the proposed regulation was considered major and an RIA was prepared on the proposal, the final action is not major because it will not result in an adverse economic effect set forth in section 1 of E.O. 12291 as grounds for finding a regulation to be major. This regulation was submitted to the OMB for a 10-day review as required by E.O. 12291. In addition to being considered minor, this action is also subject to a court required publication deadline for final action in *Sierra Club v. Thomas*, No. 88–1847 (D.C. Cir.). Any written comments from OMB to EPA and any EPA responses to those comments are included in Docket A–84–33.

No additional reporting and record keeping requirements will occur as a result of today's action. All record keeping and reporting requirements resulting from the Federal PSD and NSR regulations have been submitted to OMB for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. and have been assigned OMB clearance No. 2060–0003. Today's action does not add substantively to the existing regulations and focuses primarily on resolving issues which result from EPA not listing a source category for consideration of fugitive dust emissions under section 302(j).

C. Economic Impact Assessment

The requirement for performing an Economic Impact Assessment under section 317 of the Act (42 U.S.C. 7617) does not apply, because this action does not make "substantial revisions" to existing regulations. The action is not substantial because it does not add to the current regulatory burden and simply retains existing provisions.

D. Federalism Implications

Under Executive Order 12612 (E.O. 12612), EPA must determine if a rule has federalism implications. Federalism implications refer to substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a federalism assessment is to be made.

The E.O. 12612 also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with State prior to taking actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The E.O. 12612 provides for preemption of State law, however, if there is a clear congressional intent for EPA to do so. Any such preemption, however, is to be limited to the extent possible.

Today's action will not affect States beyond the current requirements under Federal PSD and NSR regulations. Under these existing regulations, States may adopt strategies if the strategies, taken as a whole, accomplish the statutory purposes of the Act. In addition, the regulations that EPA has will allow States to develop approvable methods of implementing the existing regulations.

In summary, no modifications are being made to the existing EPA-State relationship by today's action. Consequently, there are not federalism implications of this action.

E. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have significant economic impact on a substantial number of small business entities (see 46 FR 8709).

List of Subjects

40 CFR Part 51

Administrative procedures and practices, Intergovernmental relations, Air pollution control, Prevention of significant deterioration, National parks and wilderness area, Fugitive emissions, Coal strip mining, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

40 CFR Part 52

Air pollution control, Prevention of significant deterioration, National parks and wilderness areas, Fugitive emissions, Coal strip mining, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

Dated: November 16, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–27883 Filed 11–27–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–1–FRL–3691–5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Alternative Reasonably Available Control Technology for Frismar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision provides an alternative reasonably available control technology (RACT) determination for the control of volatile organic compound (VOC) emissions from one paper coating line at Frismar, Incorporated in Clinton, Connecticut. The intended effect of this action is to approve the State's request to amend its SIP. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 28, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Room 2311, Boston, MA 02203 and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David E. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On July 22, 1988 (53 FR 27711), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8001 for Frismar, Incorporated as a revision to the Connecticut SIP. No public comments were received on the proposed approval.

The final State Order was submitted by Connecticut as a formal SIP revision on November 5, 1987. This State Order was issued pursuant to provisions found in subdivision 22a–174–20(cc)(3) of Connecticut's regulations which allow the DEP to impose alternative limitations on a source that has demonstrated it cannot meet the RACT limitations in the SIP for technological and economic reasons.

EPA approved the provisions in subdivision 22a–174–20(cc)(3) for making alternative RACT determinations on June 7, 1982 (47 FR 24552) as part of Connecticut's Ozone Attainment Plan. As part of that SIP revision, Connecticut submitted a letter dated January 11, 1982 in which the State committed to submit all alternative RACT determinations to EPA as SIP revisions.

Frismar is a paper coating facility utilizing two coating lines. The facility is subject to subsection 22a–174–20(q), "Paper coating" of Connecticut's SIP regulations which requires each coating line to meet an emission limitation of 2.9 pounds VOC/gallon of coating (minus water). This emission limitation is identical to the limitation specified in the applicable EPA control techniques guideline (CTG) document for this source category (EPA–450/2–77–008). Under Connecticut's regulations, a source subject to subsection 22a–174–20(q) must comply with the emission limitation contained in that regulation no later than July 1, 1985. Frismar has installed an inert atmosphere solvent recovery system on one of its coating lines (coater #2). Its other coating line (coater #1) presently has no control equipment.

As alternative RACT for one of Frismar's coating lines (coater #1), the State Order requires Frismar to comply with an emission rate of 5.32 pounds VOC/gallon of coating (minus water) for all first-pass coatings and an emission rate of 6.42 pounds VOC/gallon of coating (minus water) for all second-pass coatings. Additionally, to further limit the use of the higher VOC-containing second-pass coatings, the State Order requires Frismar to adhere to a limitation of 20 pounds VOC/ream (3000 square feet) of material coated when utilizing second-pass coatings. Frismar's other coating line (coater #2) is still required to comply with the SIP emission rate (as set forth in subsection 22a–174–20(q) of Connecticut's regulations) of 2.9 pounds VOC/gallon of coating (minus water). Coaters #1, and #2 are required to maintain compliance with their applicable RACT emission rates on an instantaneous basis. Further, the State Order requires Frismar to achieve and maintain a minimum overall reduction level of ninety-three percent (93%) from the inert atmosphere solvent recovery system installed on coater #2.

Additionally, the State Order requires Frismar to maintain daily and monthly caps of 918 pounds and 2.833 tons, respectively, for coater #1 and daily and monthly caps of 286.47 pounds and 2.87 tons, respectively, for coater #2. The monthly cap on coater #1 is required to be maintained on an average basis over every two consecutive month period. The daily and monthly caps insure that the VOC emissions from this facility will not interfere with reasonable further progress (RFP) towards attaining the National Ambient Air Quality Standard (NAAQS) for ozone in Connecticut.

To justify the above limitations as an alternative RACT determination, Frismar has submitted an extensive amount of technical and economic information to the DEP showing that it cannot reasonably attain daily compliance with the emission limitations contained in Connecticut's federally-approved SIP for coater #1. EPA's evaluation of this information confirms that add-on control equipment is economically infeasible for coater #1. (A copy of EPA's analysis is contained in the Technical Support Document prepared for this revision and is available from the EPA Regional Office listed in the *Addresses* section of this notice.)

Furthermore, Frismar has researched the feasibility of reformulating its coatings used on coater #1 to complying levels. Through these efforts, Frismar was able to realize a 28% increase in the content of coating solids in the coatings used on coater #1. Frismar cannot use any higher solids-containing coatings since the stencil manufacturing operation that it uses involves saturation as much as coating, and it is simply not possible for the tissue paper to absorb such coatings. The result of using any higher solids coatings is "skipping" which renders the product useless for subsequent sale and use.

EPA has reviewed the requirements of State Order No. 8001 and has determined that they constitute alternative RACT for Frismar. Further justification and rationale for approving this revision are contained in the Technical Support Document prepared by EPA for this revision. Copies of that document may be obtained from the EPA Regional Office listed in the *Addresses* section of this notice.

At the time of the State's November 5, 1987 submittal, although Connecticut was not in attainment of the ozone NAAQS, EPA had approved the SIP for the area, including the attainment demonstration, as providing for attainment by 1987. Thus, at that time, Connecticut was considered a nonattainment area with an approved demonstration. As discussed above, Frismar will be achieving reductions in VOC comparable to what were anticipated by Connecticut's 1982 ozone attainment demonstration. Therefore, the SIP revision being approved for Frismar today does not change Connecticut's original ozone attainment demonstration which was approved by EPA on March 21, 1984.

EPA now knows, however, that Connecticut's 1982 ozone attainment plan does not provide for attainment by the end of 1987. In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed sufficient exceedances of the ozone standard in Connecticut and that a SIP call would be issued. (See 52 FR 45044). A SIP call is a finding by EPA under Clean Air Act section 110(a)(2)(H) that the SIP does not provide for attainment by the required date, and thus amounts to a revocation (for certain purposes) of EPA's approval of the SIP and the attainment demonstration. Since publishing this notice, the review of data from air quality monitors in the State have revealed additional exceedances of the standard during 1987. On May 25, 1988, EPA issued a SIP call for Connecticut.

EPA does not believe, however, that this precludes EPA from approving the SIP revision for Frismar. Section 172(b) of the Clean Air Act lists the requirements, in addition to those listed in section 110(a)(2), which a nonattainment area SIP must meet. Section 172(b)(3) requires that states must demonstrate reasonable further progress toward attainment through the adoption, at a minimum, of reasonably available control technology (RACT). The Connecticut DEP and EPA have determined, based on substantial documentation from Frismar, that the level of control required by the DEP's State Order represents the most stringent level of control possible at Frismar taking into consideration economic and technological feasibility. Unless and until the DEP determines that to make an RFP demonstration consistent with EPA's Post-1987 policy, the DEP needs reductions from Frismar beyond RACT which would cause the plant to close, it is reasonable to impose RACT in the meantime to meet the requirements of section 172(b)(3).

Consistent with this approach, the DEP has made it clear it will account for Frismar's emissions under State Order No. 8001 in any new attainment demonstration. The State has told EPA it will use the daily cap being imposed on Frismar as representing the actual daily VOC emissions from Frismar for purposes of showing reasonable further progress with the original ozone attainment demonstration. The emission limitations (including the cap) for Frismar will be included in any new SIP and associated control strategy demonstration that Connecticut prepares. Furthermore, the alternative RACT determination for Frismar does not constrain the State's ability to obtain any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards. Moreover, on September 12, 1988, Connecticut submitted a letter to EPA stating that it is making reasonable efforts to develop a complete approvable SIP and provided EPA with a schedule for such development (including dates for completion of emissions inventory, correction of deficient regulations, and subsequent increments of progress). EPA believes that since the State has adequately made these representations, EPA is able to approve this alternative RACT determination on grounds that it does not interfere with attainment and maintenance of the ozone NAAQS, in accordance with section 110(a)(2) of the Clean Air Act.

Final Action

EPA is approving Connecticut's State Order No. 8001 as a revision to the Connecticut SIP. The provisions of Connecticut's State Order No. 8001 impose alternative RACT on Frismar, Incorporated pursuant to subdivision 22a–174–20(cc)(3) of Connecticut's regulations. EPA is approving this revision based on justification received from Frismar showing that it is economically infeasible for Frismar to install add-on control equipment on coater #1. The provisions contained in the State Order for this coater restrict the overall use of this coater. This requires Frismar to utilize its controlled coater (i.e., coater #2) for a large majority of its production. Under the State Order, coater #2 must continue to meet the RACT limit of 2.9 pounds VOC/gallon of coating (minus water) of subsection 22a–174–20(q), and is not, therefore, approved for an alternative RACT emission rate. Approval of Connecticut State Order No. 8001 covers only Frismar, Incorporated of Clinton, Connecticut and should not be construed as a national precedent for other paper coating facilities.

Further, it is EPA's policy to disallow a relaxation from RACT in an area needing but lacking an approved attainment demonstration. EPA believes, however, it is appropriate to approve this request under the grand fathering provision set forth in the June 27, 1988 memorandum signed by Gerald Emison, Director of the Office of Air Quality Planning and Standards, because the request was submitted to EPA prior to the post-1987 SIP call when the area had an approved attainment demonstration.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 8, 1989.

William K. Reilly,

Administrator.

Subpart H, part 52 of chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.370 is amended by adding paragraph (c)(47) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on November 5, 1987.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated November 5, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8001 and attached Compliance Timetable for Frismar, Incorporated in Clinton, Connecticut. State Order No. 8001 was effective on October 20, 1987.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the alternative reasonably available control technology determination imposed on the facility.

[FR Doc. 89-27850 Filed 11-27-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3691-4; KY-060]

Approval and Promulgation of Implementations Plans—Kentucky: 401 KAR 50:010, Definitions and Abbreviations and 401 KAR 51:017, Prevention of Significant Deterioration of Air Quality

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves as State Implementation Plan (SIP) revisions amendments to Kentucky regulations 401 KAR 50:010 (Definitions and Abbreviations), and 401 KAR 51:017, Prevention of Significant Deterioration (PSD) of Air Quality. The first regulation, 401 KAR 50:010, is being amended to delete the applicability of the definition of volatile organic compounds (VOC) from the regulations for PSD and new source review (NSR) in nonattainment areas, and to change the definition of VOC to make it consistent with the federal definition for purposes of the new source performance standards. In order to reduce ambiguity regulation 401 KAR 51:017 is being amended to delete a sentence in section 8(3) relating to monitoring requirements for sources of VOC. The approval of these amendments will eliminate the remaining deficiencies in Kentucky's PSD regulations identified in the approval notice for 401 KAR 51:017 on September 1, 1989 (see 54 FR 36307).

DATE: This action will be effective on January 29, 1990, unless notice is received on or before December 28, 1989, that someone wishes to submit adverse or critical comments. Such notice may be submitted to Richard A. Schutt at the EPA Regional Office address listed below.

ADDRESSES: Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Building #2, Fort Boone Plaza, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Richard Schutt of the EPA Region IV Air Programs Branch at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On December 28, 1988, the Commonwealth of Kentucky submitted to EPA two regulations: 401 KAR 50:010, Definitions and Abbreviations, and 401 KAR 51:017, Prevention of Significant Deterioration (PSD). A public hearing was held to receive comments on these regulations on November 21, 1988. EPA requested that these amendments be made to eliminate the remaining deficiencies in Kentucky's PSD regulations. The deficiencies were identified in EPA's approval of the PSD regulations on September 1, 1989 (see 54 FR 36307).

Regulation 401 KAR 50:010 is being amended to change the definition of volatile organic compound (VOC) and delete the applicability of the definition of VOC from the regulations for PSD and NSR. Upon changing this definition of VOC, there will be no definition of VOC for the PSD and NSR regulations, just as there is no definition of VOC in the federal regulations for purposes of PSD and NSR. The new VOC definition is similar to the definition that is used in 40 CFR part 60, the federal regulation for New Source Performance Standards (NSPS). Furthermore, VOC remains defined in certain Kentucky regulations in chapters 59 and 61 for new and existing sources, where it is applicable.

Kentucky also incorporates a list of eleven (11) VOC's which are not considered by EPA to be photochemically reactive into regulation 401 KAR 50:010. The compounds on this list are exempt from any VOC regulatory action for the purpose of PSD and NSR. The list is incorporated by reference in 401 KAR 50:016. Kentucky is also excluding from the definition of VOC five (5) compounds that are not considered to be organic compounds under the previous definition.

Since the definition of VOC in some Kentucky regulations in chapters 59 and 61 appears to conflict with the definition in 401 KAR 50:010, Kentucky states that the more specific definition shall apply. At the present time, no sources are affected by 401 KAR 50:010. Should any

source subject to PSD and NSR construct, reconstruct, or modify, it would not be required to adhere to the existing VOC definition.

Regulation 401 KAR 51:017, Prevention of Significant Deterioration of air quality, applies to major stationary sources and major modifications constructing in areas which are designated as attainment or unclassified. This regulation is being amended to delete the following sentence in Section 8(3): "Major volatile organic compound sources locating in an area unclassified for ozone may choose to accept the nonattainment area review requirement immediately pursuant to 401 KAR 51:052 and conduct post-approval monitoring for ozone." A similar exemption is available under federal regulations governing state regulations, but is restricted to exemptions from preconstruction monitoring. The Kentucky exemption can be interpreted to exempt the source from all PSD requirements, rather than only the preconstruction monitoring requirements. EPA requested that this change be made for clarification purposes.

Final Action

Since the amendments to 401 KAR 50:010 and 401 KAR 51:017 are the amendments requested by EPA to be consistent with EPA policy and requirements, the amendments are hereby approved.

EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective January 29, 1990, unless, within 30 days of its publication, notice is received that adverse or critical comment will be submitted. If such notice is received, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, and volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 5, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(63) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(63) Revisions to Kentucky Regulations 401 KAR 50:010, Definitions and abbreviations and 401 KAR 51:017, Prevention of Significant Deterioration of Air Quality, submitted on December 29, 1988, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) *Incorporation by reference.* (A) Revisions in Kentucky Regulations are as follows. 401 KAR 50:010, Definitions and abbreviations section 1(49), and 401 KAR 51:017 Prevention of Significant Deterioration of Air Quality, Section 8(3). These revisions were state effective December 2, 1988.

(ii) *Other material.* (A) Letter of February 9, 1988, from the Kentucky Natural Resources and Environmental Protection Cabinet.

[FR Doc. 89–27851 Filed 11–27–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 99; FRL-3692-1]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the approval of a request by New York to revise its State Implementation Plan (SIP) for ozone. This revision was prepared by the New York State Department of Environmental Conservation pursuant to a SIP commitment to implement appropriate actions in order to reduce ozone levels as required under section 110 and part D of the Clean Air Act. The revision incorporates into the New York SIP a revised regulation, part 230, "Gasoline Dispensing Sites and Transport Vehicles," which will reduce volatile organic compound emissions due to motor vehicle refueling at certain gasoline stations in the New York City metropolitan area.

EFFECTIVE DATE: This action will be effective December 28, 1989.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1005, New York, New York 10278

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

New York State Department of Environmental Conservation Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1005, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1988 (53 FR 50975) the Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPR) for revisions of the New York State Implementation Plan (SIP) for ozone. These revisions add requirements for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations (known as Stage II) and were adopted by the State on March 2, 1988 as revisions to part 230, title 6 of the New York Code of Rules and Regulations, entitled "Gasoline Dispensing Sites and Transport Vehicles." The revisions and the rationale for EPA's proposed approval were fully explained in the NPR and will not be restated here since this final action does not differ from that discussed in the NPR. No public comments were received on the NPR.

Conclusion

EPA has reviewed the State's submittal and finds that the Stage II program adopted by the State is equivalent to the program committed to in the SIP and, thus, adequately fulfills the State's SIP commitment. Therefore, EPA is approving New York's request to revise its SIP for ozone to revise part 230, "Gasoline Dispensing Sites and Transport Vehicles."

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2).].

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 31, 1989.

William K. Reilly,

Administrator, Environmental Protection Agency.

Title 40, chapter I, subchapter C, part 52, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart HH—New York

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 paragraph (c) is amended by adding new paragraph (c)(80) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(80) Revisions to the New York State Implementation Plan (SIP) for ozone submitted on July 9, 1987 and April 8, 1988 by the New York State Department of Environmental Conservation (NYSDEC).

(i) *Incorporated by reference:* Amendments to part 230, title 6 of the New York Code of Rules and Regulations entitled "Gasoline Dispensing Sites and Transport Vehicles," adopted on March 2, 1988.

(ii) *Additional material:* (A) Explanation of Stage II Applicability Cut-offs, prepared by the NYSDEC, dated June 20, 1988.

(B) NYSDEC testing procedures for Stage II Vapor Recovery Systems.

3. Section 52.1679 is amended by revising the entry for part 230 to the table to read as follows:

§ 52.1679 EPA—approved New York regulations.

State regulation	State effective date	EPA approved date	Comments
*	*	*	*
Part 230 "Gasoline Dispensing Sites and Transport Vehicles.".	3/2/88	11–28–89, 54 FR 48888	
*	*	*	*

[FR Doc. 89–27847 Filed 11–27–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL–3691–9]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Louisiana application and has made a decision, subject to public review and comment, that the Louisiana hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving the Louisiana hazardous waste program revision application unless adverse public comment shows the need for further review. The Louisiana application is available for public review and comment.

DATES: Final authorization for the Louisiana revisions shall be effective January 29, 1990, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the Louisiana program revision application must be received by the close of business December 28, 1989.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Louisiana Department of Environmental Quality, 625 North 4th Street, Baton Rouge, Louisiana 70804, phone (504) 342–9072; U.S. EPA, Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6444; and U.S. EPA, Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460, phone (202) 382–5926. Written comments, referring to Docket Number LA–89–1, should be sent to Ms. Lynn Prince, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA, Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6760.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA, Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6760..

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous

waste program that is equivalent to the Federal program, consistent with the Federal or State programs applicable in other States, and provides adequate enforcement of compliance with the requirements of RCRA. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. These State program revisions are necessitated by changes to EPA's regulations.

B. Louisiana

The State of Louisiana received final authorization on February 7, 1985, (50 FR 3348, published on January 24, 1985) to implement its base hazardous waste management program. On May 16, 1989, the State of Louisiana submitted a complete program revision application for additional program revisions. Louisiana is seeking approval of these program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the Louisiana application, and has made a decision that the Louisiana hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for these modifications to the Louisiana program.

The public may submit written comments on EPA's decision to authorize the revisions in an immediate final rule until December 28, 1989.

Copies of the Louisiana application for program revision and the materials which EPA used in evaluating the revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Louisiana program revision application will become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the 30 day comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final rule or (2) a notice containing a response to comment which either affirms that the immediate final rule takes effect or reverses the decision.

The Louisiana program revision application included State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 260 through 266, 124, and 270 that were published in the **Federal Register** through May 28, 1986. EPA is not authorizing the State's provisions which are analogous to the Hazardous and Solid Waste Amendments of 1984 (HSWA) provisions, including the availability of information provisions, with this notice. This proposed approval is, therefore, limited to the non-HSWA provisions that are listed in the chart below. This chart lists the State rules that are being recognized as equivalent to the appropriate Federal rules.

Federal citation	State analog
1. Permit Rules—Settlement Agreement—change to 40 CFR part 270, as published in the FEDERAL REGISTER on April 24, 1984.	1. Louisiana Hazardous Waste Regulations (LHWR) sec. 4303(F), effective April 13, 1988.
2. Listing of Warfarin & Zinc Phosphide as a hazardous waste—changes to 40 CFR part 261—as published in the FEDERAL REGISTER on May 10, 1984.	2. LHWR secs. 4901.E., effective April 13, 1988.
3. Exclusion of Stabilized Pickle Liquor Sludge—changes to 40 CFR part 261—as published in the FEDERAL REGISTER on June 5, 1984.	3. LHWR sec. 105.D, effective April 13, 1988.
4. The Exclusion of Household Waste as a Hazardous Waste—change to 40 CFR part 261, subpart A—as published in the FEDERAL REGISTER on November 13, 1984.	4. LHWR sec. 105.D.10, effective April 13, 1988, as amended November 21, 1988.
5. Applicability of Interim Status Standards to Owners and Operators of Treatment, Storage and Disposal Facilities—changes to 40 CFR part 265, subpart A—as published in the FEDERAL REGISTER on November 21, 1984.	5. LHWR sec. 4301.A and B, effective April 13, 1988, as amended November 21, 1988.
6. Corrections to the Test Methods Manual—changes to 40 CFR parts 260, subparts B and C and 270, subpart A—as published in the FEDERAL REGISTER on December 4, 1984.	6. LHWR sec. 105.I.1., effective April 13, 1988, as amended November 21, 1988.
7. Satellite Accumulation Rule—changes to 40 CFR part 262, subpart C—as published in the FEDERAL REGISTER on December 20, 1984.	7. LHWR sec. 1109.E.4, effective April 13, 1988, as amended November 21, 1988.
8. Redefinition of Solid Waste—changes to 40 CFR parts 260, subparts B and C; 261, subparts A and D; 264, subparts A and O; 265, subparts A, O, and P; and 266, subparts C, D, F, and G—as published in the FEDERAL REGISTER on January 4, 1985.	8. LHWR secs. 105.B; 105.D.28–35; 109; 3105; 3907; 4105.A and B; 4113; 4115; 4139.A.2; 4139.B.2 and 3; 4141.A.1 and 2; B.1,C.1 and 2, D, E, and F; 4143.A,B,C and D; 4513; 4523; 4901.A and C, effective April 13, 1988, as amended November 21, 1988.
9. Interim Status Standards for Landfills—changes to 40 CFR part 265, subparts K, M, and N—as published in the FEDERAL REGISTER.	1. LHWR sec. 2521.A and B; 2517.A and B, effective April 13, 1988.
10. Financial Responsibility: Settlement Agreement—changes to 40 CFR parts 260, subpart B; 264, subparts G and H; 265, subparts G and H; and 270, subparts B, D, and G—as published in the FEDERAL REGISTER on May 2, 1986.	2. LHWR secs. 109; 321.C and C.4 517.N–P; 3501.B and C; 3507 3511.3517; 3521–3527; 3703.A.7; 3705.A–C; 3707.A.10,B.4, C.5, D.8, E.5, F.1, I; 3709.A–C; 3711.A.11, B.4, C.5, D.9, E.5 F.1 and 2, I; 3715.E; 3719.13; 4377–4387; 4389.A–D; 4391–4395; 4397.A; 4399; 4401; 4403.A.10, B.4, C.1 and C.8, D.5, E.1 and 2, H; 4405.A–C; 4407.A.11, B.4 D.5 and 9, E.1 and 2, H; 4411.E, effective April 13, 1988, as amended November 21, 1988.
11. Listing of Spent Pickle Liquor from Steel Finishing Operations—changes to 40 CFR part 261, subpart D—as published in the FEDERAL REGISTER on May 28, 1986.	11. LHWR sec. 4901.C, effective April 13, 1988.

The State of Louisiana is not authorized to operate its hazardous waste program on Indian lands.

C. Decision

I conclude that the Louisiana program revision application meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana will be granted final authorization to operate its hazardous waste program as revised. Louisiana's responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, will be subject to the limitation of its revised program application and previously approved authorities. Louisiana has primary enforcement responsibilities and EPA will exercise its enforcement responsibilities in accordance with the Memorandum of Agreement between EPA and Louisiana.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize the Louisiana program and for incorporation by reference of those provisions of the Louisiana statutes and regulations that EPA will enforce under subtitle C of RCRA. Therefore, EPA will soon amend part 272, subpart T, under a separate notice.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Compliance Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization does not create any new requirements, but simply approves requirements that are already State law. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Sec. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended in 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: August 22, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 89–27848 Filed 11–27–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6855]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646–2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Nebraska: Seward County, unincorporated areas	310474	Oct. 4, 1989	June 7, 1977.
Tennessee: Benton County, unincorporated areas	470218	do.	Jan. 10, 1975.
Iowa: Corwith, city of, Hancock County [1]	190407	Oct. 11, 1989	Oct. 22, 1976.
Missouri: Lawson, city of, Clay County	290705	Oct. 19, 1989	June 4, 1976.
New Eligibles—Regular Program			
Nevada: Storey County, unincorporated areas	320093	Oct. 4, 1989	Feb. 19, 1987.
Ohio: Butler County, unincorporated areas [1]	390037	Oct. 5, 1989	Oct. 16, 1983.
California:			
Highland, city of, San Bernardino County	060732	Oct. 19, 1989	Sept. 29, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Hesperia, city of, San Bernardino County	[illegible]	....do	Do.
North Carolina: Walnut Creek, village of, Wayne County	370435	....do	Oct. 19, 1989.
Regular Program Reinstatements			
Maryland: Emmitsburg, town of, Frederick County	240028	May 6, 1975, Emerg.; Sept. 17, 1980, Reg.; May 4, 1989, Susp.; Oct. 2, 1989, Rein.	Sept. 17, 1980.
New York: Newcomb, town of, Essex County	361390	Apr. 15, 1976, Emerg.; June 5, 1985, Reg.; June 15, 1988, Susp.; Oct. 2, 1989, Rein.	June 5, 1985.
Wyoming: Rock Springs, city of, Sweetwater County	560041	Sept. 1, 1972, Emerg.; July 16, 1979, Reg.; Sept. 15, 1989, Susp.; Oct. 2, 1989, Rein.	Sept. 15, 1989.
Utah: Escalante, town of, Garfield County	490067	Apr. 22, 1975, Emerg.; Aug. 28, 1979, Reg.; Sept. 6, 1989, Susp.; Oct. 3, 1989, Rein.	Aug. 28, 1979.
West Virginia: Bath (Berkeley Springs), town of, Morgan County	540016	May 20, 1980, Emerg.; Sept. 2, 1980, Reg.; Sept. 15, 1989, Susp.; Oct. 4, 1989, Rein.	Sept. 2, 1980.
New York: Catskill, village of, Greene County	360267	May 13, 1975, Emerg.; Sept. 6, 1989, Reg.; Sept. 6, 1989, Susp.; Oct. 4, 1989, Rein.	Sept. 6, 1989.
Maryland: Brunswick, town of, Frederick County	240028	Aug. 16, 1974, Emerg.; Jan. 7, 1977, Reg.; May 4, 1989, Susp.; Oct. 4, 1989, Rein.	Jan. 7, 1977.
Ohio: Amesville, village of, Athens County	390015	Feb. 24, 1977, Emerg.; Sept. 29, 1989, Reg.; Sept. 29, 1989, Susp.; Oct. 9, 1989, Rein.	Sept. 29, 1989.
Missouri: Anniston, city of, Mississippi County	290229	May 11, 1977, Emerg.; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.; Oct. 12, 1989, Rein.	Jan. 18, 1989.
Florida: Ocean Breeze Park, town of, Martin County	120163	Apr. 15, 1976, Emerg.; Dec. 15, 1983, Reg.; Apr. 3, 1984, Susp.; Oct. 12, 1989, Rein.	Dec. 15, 1983.
Pennsylvania:			
Penn, township of, Butler County	421241	June 10, 1974, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp.; Oct. 23, 1989, Rein.	Aug. 15, 1989.
Fishing Creek, township of, Columbia County	421550	Aug. 7, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp.; Oct. 23, 1989, Rein.	Aug. 3, 1989.
Mississippi: Holmes County, unincorporated areas	280211	Apr. 11, 1974, Emerg.; Sept. 15, 1989, Reg.; Sept. 15, 1989, Susp.; Oct. 23, 1989, Rein.	Sept. 15, 1989.
Kentucky: Clay City, city of, Powell County	210195	Mar. 22, 1976, Emerg.; Sept. 6, 1989, Reg.; Sept. 6, 1989, Susp.; Oct. 23, 1989, Rein.	Sept. 6, 1989.
California: Grover City, city of, San Luis Obispo County	060308	Mar. 27, 1975, Emerg.; Aug. 1, 1984, Reg.; Aug. 1, 1984, Susp.; Oct. 24, 1989, Rein.	Aug. 1, 1984.
Iowa: Carter Lake, city of, Pottawattamie County	190430	Sept. 19, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; Oct. 27, 1989, Rein.	June 19, 1989.
North Dakota:			
Mooreton, township of, Richland County	380064	July 12, 1982, Emerg.; Sept. 18, 1986, Reg.; July 4, 1989, Susp.; Oct. 30, 1989, Rein.	Sept. 18, 1986.
Noonan, city of, Divide County	380191	Mar. 26, 1976, Emerg.; Apr. 21, 1981, Reg.; Sept. 6, 1989, Susp.; Oct. 30, 1989, Rein.	Apr. 21, 1981.
Region III			
Pennsylvania:			
Bedford, township of, Bedford County	421331	Oct. 17, 1989, suspension withdrawn	Oct. 17, 1989.
Franklin, township of, Susquehanna County	422007	....do	May 17, 1989.
Lilly, Borough of, Cambria County	421430	....do	Oct. 17, 1989.
West Virginia:			
Marlington, town of, Pocahontas County	540159	....do	Do.
Pocahontas County, unincorporated areas	540283	....do	Do.
Durbin, town of, Pocahontas County	540158	....do	Do.
Region VI			
Texas: Muleshoe, city of, Bailey County	480019	....do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.
[1] Declared disaster areas.

Issued: November 16, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-27845 Filed 11-27-89; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. 78-10; Notice 10]

RIN 2127-AC95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice revises and reissues the existing regulation contained in 49 CFR part 512—Confidential Business Information. Revisions to the existing regulation are necessary to ensure efficient processing and proper protection of business information received by the National Highway Traffic Safety Administration (NHTSA). This action is intended to clarify certain provisions, to revise certain sections to conform to statutory and case law, to include additional class determinations and to add a presumptive class determination.

DATE: This rule is effective November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. E. William Fox, Office of the Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION: NHTSA published part 512, entitled "Confidential Business Information," as a final rule on June 7, 1982, 47 FR 24587. This regulation has not been amended or revised since that time. The agency believes that the procedures for submitting confidential business information have generally worked well since 1982, but practical experience in processing this information has shown that some improvements and clarifications are advisable. The proposed modifications were published in the **Federal Register** on July 7, 1989 (54 FR 28696) (the NPRM).

Six organizations responded to the agency's solicitation for public comments. Although five minor revisions have been made in the final regulation in response to comments, the comments generally reflect approval of the proposed changes. NHTSA has also modified Appendices A and B and § 512.5(b) to make clarifications in response to comments.

Discussion of Comments

The agency's proposals for which commenters expressed support or no opinion have not been included in the Discussion of Comments. The explanation of such proposals contained in the NPRM is incorporated by reference for the purposes of this Notice.

Impairment of Protectable Government Interests

The revision in § 512.5 relating to the impairment of protectable government interests attracted the attention of Ford Motor Company. While basically agreeing with need for a change, Ford suggested expanding this section to include the concept that confidentiality should be granted if disclosure was likely to impair a "private interest." Ford proposed to accomplish this by inserting the words "or private" after "government" in § 512.4(b)(3)(viii) and § 512.5(c) in recognition of dicta in cases cited in the NPRM. The agency is reluctant to make this change in the absence of clear judicial decisions which determine that the disclosure of confidential information causes a private harm other than a substantial harm to the competitive position of the submitter. The addition of § 512.5(c) and § 512.4(b)(3)(viii) in the NPRM responds to a genuine need for protection of government interests that are not otherwise recognized, i.e., the impairment of program effectiveness or compliance. However, the agency believes that the regulation sufficiently covers private interests in § 512.4(g) and § 512.5(a), and therefore will not incorporate Ford's proposed amendment.

Submitter's Supporting Certification

Volkswagen of America, Inc., and Ford requested changes to the certification in Appendix A. Volkswagen wanted Appendix A to include both the form of the affidavit and the form of the certification if the agency was truly willing to accept either format. By expressing willingness in the NPRM to accept affidavits which contain the statements contained in the proposed Appendix A, the agency did not intend to formally create an optional format. NHTSA is satisfied with one format, but a certification in that format, that is also notarized, will not be rejected as insufficient.

Ford asserted that the qualifying words "to the best of my information, knowledge and belief," which were deleted from paragraph (8) of the certification, should be retained. Ford also questioned whether it was possible for a busy company executive to make the "personal inquiry" indicated in paragraph (3) of the certification without the use of such qualifying language. NHTSA agrees to correct this oversight by adding the words "information and belief," after "knowledge" in paragraph (4). The agency believes that this will adequately address Ford's concern for fairness to the declarant who may use subordinates to aid him in his inquiries, and yet, not interfere with the statutory requirements of 28 USC 1746 and 18 USC 1001 concerning unsworn declarations to the government under penalty of perjury.

New Class Determinations

All of the commenters provided suggestions concerning the class determinations listed and proposed for listing in Appendix B. If the agency determines that public release of a particular class of information typically would result in substantial competitive harm and publishes that determination in Appendix B, a rebuttable presumption is created about the likelihood of such harm if information of that type were publicly released. This presumption has the effect of eliminating the requirement that the submitter initially demonstrate the elements contained in § 512.4(b)(3)(vi).

The commenting automobile manufacturers generally supported the General Motors Corporation's petition for the agency to make a class determination about cost information. General Motors offered an amendment to its original draft limiting "cost" to "manufacturer's cost." Volkswagen suggested that the presumptive determination include "future actual as well as estimated cost." Ford asked that the agency craft a presumption that includes the kinds of cost data that the agency generally has withheld. Chrysler Motors Corporation asserted that no distinction should be made between general cost estimates, ranges of costs and specific actual cost data relating to a product because all could be damaging if disclosed.

However, these suggestions do not adequately address the concern of the agency that a highly inclusive presumption may erroneously encompass costs that under certain circumstances are not entitled to confidential protection. Public Citizen and the Freedom of Information Clearinghouse echoed this concern, stating that it is difficult to draft a determination relating to cost that is not overbroad. While the presumption would be rebuttable, NHTSA wants to avoid confusion, misunderstanding and wasteful effort considering claims involving, for example, meaninglessly overbroad estimates of future costs or cost elements which may have inadvertently been introduced into the public domain. NHTSA does not believe that it will suffer an impaired ability to obtain cost information without the presumption, as one commenter suggested, nor does it believe that the evidence on cost submissions is clear enough to permit the drafting of a sufficiently narrow provision at this time. The agency therefore has decided that a new class determination relating to costs is not advisable. General Motors' suggested class determination is, therefore, not adopted.

Three companies made comments on NHTSA's proposed amendments to paragraphs (2) and (3) of the current class determinations in Appendix B. General Motors and Volkswagen suggested that "model year" be clarified to mean the vehicle production period. Ford proposed that product plans be protected until the date on which the last of the specific models to which the product plans pertain is first offered for sale.

All of these comments demonstrate the necessity for clarification of the terminology "product plans" and "model year." The phrase "first offered for sale" is more precise than "the beginning of the model year" in paragraph (2). Also the concept of "production period" is better suited for explaining the presumption in paragraph (3). NHTSA believes that paragraphs (2) and (3)

have been simplified and more correctly stated by the adoption of these changes.

In addition, Volkswagen wanted model plans protected to the end of the production period, not the beginning, because certain specific products or features are scheduled for introduction some time after such period begins. The agency does not agree with Volkswagen's suggestion to protect model plans until the end of the model production period. If there is a specific change that is scheduled to take place relating to a certain model vehicle after production of such model begins, it should be pointed out by the submitter when such change will be offered to the public. The specific change can then be protected until it is offered to the public, while the remainder of the information pertaining to that vehicle will be released when the vehicle is first offered to the public.

Miscellaneous Provisions

The amendment relating to voluntary submissions in § 512.5 was the subject of comments from both Ford and General Motors. Ford suggested that this section be expanded to include the concept that confidentiality should be granted if disclosure was likely to impair the ability of NHTSA to obtain necessary similar information in the future, even though NHTSA could compel disclosure of such information. General Motors made the point that material that is ostensibly obtainable via compulsory process might be considered, in some instances, the equivalent of a voluntary submission. However, as was stated in the NPRM on page 28698 and by General Motors in its comments, whether future submissions of information could be compelled is only a factor to be considered in deciding if governmental access to information will be impaired by disclosure, but it is not necessarily dispositive. *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 n. 29 (D.C. Cir. 1983); *Washington Post Co.* v. *HHS*, 690 F.2d 252 (D.C. Cir. 1982). Moreover, the agency recognizes that courts have given great weight to agency determinations that the release of information will not cause impairment. *General Electric Co.* v. *NRC*, 750 F.2d 1394, 1402 (7th Cir. 1984); *AT&T Information Systems* v. *GSA*, 627 F. Supp. 1396, 1401 (D.D.C. 1986), reversed and remanded on procedural grounds, 810 F.2d 1233 (D.C. Cir. 1987).

The changes proposed in the NPRM were intended to reflect more accurately the established case law but not to enumerate every factor to be considered when deciding whether information should be protected from disclosure. Furthermore, this regulation is intended to be procedural, and not substantive. Because of these factors, the agency believes that it is inappropriate to attempt to amend the regulation according to the ongoing judicial development of highly specific disclosure exceptions under the Freedom of Information Act. Consequently, the agency is satisfied that the regulation should provide broad categories and a flexible framework based upon well established judicial precedent. In order to respond to the concerns expressed by Ford and General Motors and to avoid future confusion about voluntary submissions of information as outlined in recent judicial decisions, the regulation has been modified to delete entirely the references to voluntary submissions in § 512.5(b). The agency will, however, make no change to § 512.4(b)(3)(vii) which permits the submitter to explain impairment when the information is submitted voluntarily. This modification of the proposal also accommodates precisely the issues raised by General Motors and Ford, reflects accurately the established case law and maintains a broad, flexible framework for submitters using the regulation.

Public Citizen and the Freedom of Information Clearinghouse expressed concern about the timing of NHTSA's confidentiality determinations. On this point, the NPRM did not propose any substantive changes from the original regulation. Nevertheless, these commenters suggested that the agency should decide on and publish a date certain by which confidentiality determinations will be made. Ten days were recommended to be a reasonable period of time. The commenters said that without further clarification, § 512.6(b), which requires placing in the public file copies of documents from which information claimed to be confidential or privileged has been deleted pending resolution of such claim, is likely to mislead the public.

The agency does not agree that the procedures in § 512.6(b) are misleading. All persons having an interest in files from which information has been redacted, may, and frequently do, make further inquiries about additional information pursuant to the Freedom of Information Act. In these situations, NHTSA's practical experience with the regulation has been excellent, as explained below, and the agency is satisfied that the public has pursued information under this statute in instances where more information was wanted. In such instances, as noted in § 512.6(c), the agency must respond within the statutory time periods. It is also important to point out that because of practical manpower restraints, the agency would not always be able to meet a self-imposed deadline for redacted information about which there was no expressed public interest and also fulfill its obligations to persons requesting information under statutory deadlines. Moreover, the agency believes that the processing of voluminous files for which confidential treatment has been requested has been expeditious and orderly under the applicable provisions of the existing regulation. Accordingly, the agency declines to make the suggested changes.

Public Citizen and the Freedom of Information Clearinghouse also objected to the proposed change in § 512.4(j) (currently § 512.4(i)). In this section, the agency proposed to replace the provision requiring the denial of confidential claims when information is submitted without the certification required by § 512.4(e) with a provision making it discretionary to deny or accept such claims. General Motors commented in support of the change, noting that the automatic denial of confidential treatment is "an unnecessarily harsh penalty for what may be an inadvertent omission."

The provisions of § 512.4(e) mandate that the submitter's certification be included with every request to the agency for the confidential protection of information. The agency continues to believe that the certification is the best method by which a submitter can demonstrate compliance with the requirements of the Freedom of Information Act. Furthermore, NHTSA is prepared to deny claims which do not reasonably comply with § 512.4(e). However, it is not justifiable for the agency to be compelled to deny a claim for confidential treatment which includes no certification but which is clearly exempt from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552(b)(4). In circumstances where the agency is absolutely satisfied that a submitter has made a serious claim for confidential protection of information, the information has not been released to the public, and the information is properly protectable under Exemption 4, the agency should not require itself to disclose the information. The proposed modification realistically retains the certification requirement without creating the potentially improper technical conflict between the regulation's procedures and the demands of the Freedom of Information Act. For this reason, NHTSA believes that this comment lacks merit.

Accordingly, the proposed change has been adopted.

General Motors questioned whether documents submitted under a claim of confidentiality would be adequately protected until the Chief Counsel has made a determination and suggested that the regulation provide appropriate safeguards to prevent inadvertent disclosure of documents. NHTSA is satisfied that this concern is covered by the regulation in § 512.6(h) which provides that no information will be released prior to the time that the Chief Counsel makes a decision under the regulation. Furthermore, the purpose of this rule is to establish procedures to consider claims of confidentiality and not to specify internal agency procedures for document protection. Consequently, no change is being made in the Final Rule.

Ford raised an issue relating to whether § 512.4(j)(l) should reference paragraph (a) or subparagraphs (a)(1), (a)(2) and (a)(3) of this section. The agency considered this suggestion, but believes that all of the subparagraphs of paragraph (a) are sufficiently inter-related to justify the reference to the entire paragraph. The agency believes that the submitter should be responsible for providing a correctly sanitized second copy of information in accordance with subparagraphs (a)(4) and (a)(5), or suffer the consequences of waiver arising out of an inadvertent disclosure. NHTSA cannot agree to be responsible for finding errors in such second copies, and believes that waiver of the claim is fair and is the proper result of such submitter error.

Finally, Ford suggested that in § 512.9(a) the word "and" be replaced with "or" in the series "§§ 512.4, 512.6 and 512.7" because such sections would never be invoked simultaneously in claiming or determining confidentiality. The agency agrees with this comment and has adopted it in this Final Rule.

Federalism Assessment

The agency has considered whether this action would have any federalism implications. We have determined that this Notice would not have any impact upon the principles of federalism.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The amendments would have a minimal effect on submitters of alleged confidential information to the agency. This determination has been made because the regulation is essentially procedural. It will not have an appreciable impact on the cost of seeking confidential treatment for data submitted to the agency. It will also not have an appreciable impact on what information is or is not accorded confidential protection. Therefore, neither a draft Regulatory Analysis nor a full Regulatory Evaluation is required.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. For the reasons stated above, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements of part 512 are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, the exisitng requirements of part 512 have been submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB clearance number is 2127–0025.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 512 is revised to read as follows:

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Sec.

512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.
512.4 Asserting a claim for confidential treatment of information.
512.5 Substantive standards for affording confidential treatment.
512.6 Determination of confidential treatment.
512.7 Petitions for reconsideration upon denial of a request for confidential treatment.
512.8 Modification of confidentiality determinations.
512.9 Release of confidential business information.
512.10 Class determinations.
Appendix A to part 512—Certificate In Support of Request for Confidentiality
Appendix B to part 512—Class Determinations
Appendix C to part 512—OMB Clearance

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 15 U.S.C. 1401; 15 U.S.C. 1402; 15 U.S.C. 1407; 15 U.S.C. 1418; 15 U.S.C. 1914; 15 U.S.C. 1944; 15 U.S.C. 1990d; 15 U.S.C. 2005; 15 U.S.C. 2029; delegation of authority at 49 CFR 1.50.

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§ 512.3 Definitions.

Administrator means the Administrator of the National Highway Traffic Safety Administration.

Chief Counsel means the Chief Counsel of the National Highway Traffic Safety Administration.

Confidential business information means information described in 5 U.S.C. 552(b)(4).

NHTSA means the National Highway Traffic Safety Administration.

Substantial competitive harm encompasses "significant competitive damage" under title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall:

(1) Stamp or mark "confidential," or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) of this section, mark each item of information

which is claimed to be confidential with brackets"[ ]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part.

(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the resolution of the claim for confidential treatment.

(b)(1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and paragraph (b)(3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the **Federal Register.**

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(vii) If information is voluntarily submitted, why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraph (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to § 512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in Appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated in accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d) and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when

provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(l) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section, or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in § 512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

§ 512.5 Substantive standards for affording confidential treatment.

Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) Failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future; or

(c) Disclosure of the information would be likely to impair other protectable government interests.

§ 512.6 Determination of confidential treatment.

(a) The decision as to whether an item of information shall be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) Copies of documents submitted to NHTSA under § 512.4(a)(5), from which information claimed to be confidential or privileged has been deleted, are placed in the public file or docket pending the resolution of the claim for confidential treatment.

(c) When information claimed to be confidential or privileged is requested under the Freedom of Information Act, the determination of confidentiality is made within ten working days after NHTSA receives such a request, or within twenty working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6).

(d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

(e) The time periods prescribed in paragraph (c) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension is made only in accordance with 5 U.S.C. 552, and is accompanied by a written statement setting out the reasons for the extension.

(f) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel:

(1) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class; and

(2) Renders a determination of confidentiality in accordance with paragraph (g) of this section.

(g) A person submitting information to NHTSA with a request that the information be withheld from public disclosure as confidential or privileged business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing of that determination and of any appropriate limitations.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that decision, and is informed that the information will be made available to the public not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(h) There will be no release of information processed pursuant to this section until the Chief Counsel advises the appropriate office(s) of NHTSA that the confidentiality decision is final according to this section, § 512.7 or § 512.9.

§ 512.7 Petitions for reconsideration upon denial of a request for confidential treatment.

(a) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial. Petitions for reconsideration must be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If the submission of a petition for reconsideration is not feasible by the date on which the information would otherwise be made available to the public, a request for an extension of time in which to submit a petition, accompanied by an explanation describing the reason for the request and the length of time needed, must be received by the Office of Chief Counsel by that date. The Chief Counsel determines whether to grant or deny the extension and the length of the extension.

(c) Upon receipt of a petition or request for an extension, the Chief Counsel shall postpone making the information available to the public in order to consider the petition, unless the Chief Counsel determines in writing that disclosure would be in the public interest.

(d) If a petition for reconsideration is granted, the petitioner is notified in writing of that determination and of any appropriate limitations.

(e) If a petition for reconsideration is denied in whole or in part or a request for an extension for additional time to submit a petition for reconsideration is denied, the petitioner is notified in writing of that denial, and is informed that the information will be made available to the public not less than ten working days after the petitioner has received notice of the denial of the petition, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires

that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the petition.

§ 512.8 Modification of confidentiality determinations.

(a) A determination that information is confidential or privileged business information remains in effect in accordance with its terms, unless modified by a later determination based upon:

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under § 512.10, or

(4) A finding that the prior determination is clearly erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraph (a)(1) through (a)(4) of this section, the submitter of the information is notified in writing that NHTSA has modified its earlier determination and of the reasons for that modification, and is informed that the information will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The submitter may seek reconsideration of the modification pursuant to § 512.7.

§ 512.9 Release of confidential business information.

(a) Information that has been claimed or determined to be confidential business information under §§ 512.4, 512.6 or 512.7 may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under the part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to motor vehicle safety defects, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

(3) Information obtained under title I, V or VI of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is normally given at least ten working days before the day of release, although the Administrator may provide shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for determining to disclose the information, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administrator may also give notice of the contemplated release of information to other persons, and may allow these persons the opportunity to comment. When a decision is made to release information pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information which has been determined or claimed to be confidential business information, may be released:

(1) To Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information;

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

§ 512.10 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the **Federal Register**.

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part,

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, and is therefore eligible for confidential treatment, or,

(4) Satisfies one of the substantive criteria during a certain period of time, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

Appendix A to Part 512—Certificate in Support of Request for Confidentiality

Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provisions of 49 CFR 512, state as follows:

(1) I am (official) and I am authorized by (company) to execute documents on behalf of (company);

(2) The information contained in (pertinent document[s]) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. § 522(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted.)

(3) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company).

(4) Based upon such inquiries, to the best of my knowledge, information and belief the information for which (company) has claimed confidential treatment has never been released or become available outside (company) except as hereinafter specified:

(5) I make no representations beyond those contained in this certificate and in particular, I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

(signature of official)

Appendix B to Part 512—Class Determinations.

The Administration has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

(1) Blueprints and engineering drawings containing process of production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale);

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains).

Appendix C to Part 512—OMB Clearance

The OMB Clearance number for this regulation is 2127–0025.

Issued on November 21, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89–27774 Filed 11–27–89; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 227
Tuesday, November 28, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

Milk in the Iowa Marketing Area; Decision of Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision expands the Iowa marketing area to include certain unregulted areas in Iowa, Illinois, and Missouri, and two Wisconsin counties not included in the marketing area for the Chicago Regional Order.

Also adopted in a lock-in provision that would continue to fully regulate under the Iowa order a distributing plant that also meets the pooling requirements of another Federal order, until the third consecutive month that the plant's Class I milk dispositions in the other order are larger than such dispositions in the Iowa marketing area. However, if the other order does not recognize the lock-in, the plant would shift to regulation under the other order in the first month of such greater sales. A proposal to permanently pool under the Iowa order a distributing plant located in the Iowa marketing area is denied.

The amendments are based on evidence received at a public hearing held in August 1988 to consider proposals by Swiss Valley Farms, Co., a dairy farmer cooperative. The amendments are necessary to reflect current sales distribution patterns of handlers regulated under the Iowa order and to maintain stable and orderly marketing conditions in the market. Cooperative associations will be polled to determine whether producers favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Richard A Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Under the actions adopted herein, one currently unregulated handler that is a small business may become partially regulated under the Iowa order. The order provides partially regulated plants with options that could tend to minimize the impact of such regulation. In any event, any impact of adopting the proposed changes is expected to be minimal for this plant.

Prior documents in this proceeding:

Notice of Hearing: Issued July 11, 1988; Published July 13, 1988 (53 FR 26446).

Correction of Notice of Hearing: Published July 20, 1988 (53 FR 27450).

Notice of rescheduled Hearing: Issued July 21, 1988; published July 25, 1988 (53 FR 27863).

Recommended Decision: Issued April 12, 1989; published April 18, 1989 (54 FR 15417).

Correction of Recommended Decision: published May 3, 1989 (54 FR 18979).

Proposed Termination: Issued April 12, 1989; published April 18, 1989 (54 FR 15413).

Extension of time to file Exceptions to the Recommended Decision and Comments of Proposed Termination: Issued May 8, 1989; published May 12, 1989 (54 FR 20605).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Iowa marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR part 900), at Bettendorf, Iowa, on August 9-11, 1988. Notice of such hearing was issued on July 21, 1988 and published July 25, 1988 (53 FR 27863).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on April 12, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rules, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to typographical corrections and the following modifications:

1. Under the heading "Background statement," the third and fourth paragraphs are revised.

2. Under issue number 1, "Regulation of a distributing plant with greater Class I route sales in the marketing area of another order.", two new paragraphs are added after the last paragraph.

3. Under issue number 2, "Expansion of the Iowa marketing area.", paragraphs are revised or added as follows:

(a) Nine new paragraphs are added after paragraph number 36;

(b) Under the subleading "(c) Missouri territory:", paragraphs 7, 9, and 10 are revised and three new paragraphs are added after paragraph number 10;

(c) Under the subheading "(d) Wisconsin territory:", paragraphs 3, 6, 17, and 18 are revised, four new paragraphs are added after paragraph number 6, and two new paragraphs are added after paragraph number 18.

4. Under issue number 4, "Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions with respect to issue number.", one new paragraph is added.

The material issues on the record of the hearing relate to:

1. Regulation of a distributing plant with greater Class I route sales in the marketing area of another order.

2. Expansion of the Iowa marketing area.

3. Location adjustment revision.

4. Whether emergency conditions warrant the omission of a recommended decision and the opportunity to file

written exceptions with respect to issue number 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Background Statement

Swiss Valley Farms, Co. (SVF), is a dairy farmer cooperative that operates a distributing plant located in Dubuque, Iowa, which is a pool plant regulated by the Iowa order. The plant has route dispositions in both the Iowa and Chicago Regional marketing areas. Class I route disposition from the Dubuque plant in the Chicago Regional (Order 30) marketing area exceeds that in the Iowa (Order 79) marketing area. However, both orders recognize sales to pool plants qualified on the basis of route disposition in the marketing area in determining which order will regulate the plant as a pool plant. In ordeer to maintain the Dubuque plant's regulation under the Iowa order, SVF handles milk that is moved as Class I milk to another pool plant under the Iowa order. It is through this mechanism that the SVF plant has been pooled on the Iowa order. SVF testified that this procedure is costly and that there is no guarantee that the arrangement with other handlers for shipping milk to another plant or plants will continue. The cost was reported to be about $16,000 to $20,000 per month. If it were not for sales to other plants, the Dubuque plant would shift from regulation under the Iowa order to regulation under the Chicago order. SVF maintains that such a switch would be "devastating" to its producers because regulation under the Chicago order would jeopardize SVF's ability to remain competitive in attracting milk to the Dubuque plant.

The record indicates that SVF procures milk in competition with about 40 other handlers and has producers in four states. The handlers and the orders that they are regulated under are not identified, although there can be little doubt that other handlers regulated under the Iowa order are included. There also can be little doubt that many of the Dubuque plant's producers are in Iowa. However, the record does not provide enough data to determine the origin of SVF's receipts of farm milk at the Dubuque plant, although the proponent's principal witness did express a belief that " * * * more than two-thirds of their producers * * * " are in Iowa. Thus, it is not possible from data in the record to determine the exact magnitude of the impact that regulation under the Chicago order would have on SVF's ability to maintain supplies for its Dubuque plant. SVF maintained that it could cost in excess of $1 million per year if the Dubuque plant were regulated under the Chicago order.

The blend, or "uniform" price, is higher under the Iowa order, than it is under the Chicago order. The location adjustment under the Chicago order further reduces the blend price at Dubuque. Thus, the monies available to SVF to pay producers in the procurement area (wherever it is) for the Dubuque plant would be less under the Chicago order than under the Iowa order. It is because of this that SVF wants to have the Dubuque plant continue its pool status under the Iowa order and this is the reason that SVF proposed a lock-in provision.

The main issue at this proceeding involves defining the marketing area to appropriately reflect that territory within which Iowa handlers are the principal distributors of milk. The marketing area issue cannot be decided on the basis of a handler's ability to attract milk to its plant. The resolution of this issue is totally independent from the issue of a lock-in provision.

1. Regulation of a Distributing Plant With Greater Class I Route Sales in the Marketing Area of Another Order

A modified version of the two-month lock-in provision originally proposed by SVF should be adopted. However, it must be recognized that such provision would have no effect unless the other order involved has a complementary provision that recognizes the lock-in. Thus, even though adopted, the provision would not prevent an Iowa pool distributing plant from shifting to the Chicago order until such time that the Chicago order may be changed to recognize the Iowa provision.

The witness for SVF testified that their proposal number 2 would establish a lock-in for Order 79 so that a handler regulated under that order would continue to be pooled there until the third consecutive month of greater Class I route sales by the handler in another marketing area.

The witness said that since monthly reports are due promptly after the end of the month it is difficult to make an accurate determination in time to file the report as to within which area a plant has the greater volume of sales. He said that the retroactive impact of a plant changing orders is irreparable to the plant's customers and its producers. Producers, he said, may not want to deliver to the plant anymore, but that they may not be aware of the plant's change in regulation until six to seven weeks later.

The witness for the proponent stated that their lock-in proposal should be modified to provide that the market administrator announce the names of distributing plants that qualify pursuant to this provision.

The representative for SVF testified that some lead time is needed to serve the interests of handlers, producers end customers. He said that in the case of their Dubuque plant, a change in regulation would not be just a simple one-plant switch in regulation. This, he said, is because it would effect supply plants, milk diverted to nonpool plants and pumpover stations. Furthermore, he said, different qualifying and pooling provisions would have to be applied.

Proponent's witness testified that SVF was modifying its lock-in proposal to make the lock-in permanent. The modified proposal, he said would apply so long as the Order 79 Class I price that applies at a plant location is not less than the other order's Class I price that would apply to that same location. He said that this modified proposal would avoid the shifting of an Order 79 plant to another order having a lower Class I price with the consequent impairment of the plant's ability to maintain its producer milk supply.

The witness for SVF said that if its Dubuque plant became regulated under Order 30, it would have to increase the over order premium so as to bring the producer pay price up to what would be payable if the plant had been regulated by Order 79 for the same period. He said that if the Dubuque plant became regulated by Order 30, its Class I price would decrease 21 cents and the producer blend price would decrease even more.

The witness for the proponent said that SVF cannot expect its dairy farmers in the Corydon, Iowa area to accept a 13-to-15 cent lower blend price and a minus 36-cent location adjustment for a total reduction of 50 cents. He said that the same would be true for producers in the Cedar Rapids area.

Proponent's witness said that SVF has a cheese plant in Clayton County and the milk diverted to this plant receives the Iowa blend price less a 24-cent location adjustment. He said that if milk diverted to this plant became regulated by Order 30, the blend price would be 13 to 15 cents lower than the Iowa blend, and a minus location adjustment of 36 cents would apply. Thus, returns to producers would be 26 cents per hundredweight lower than the Iowa blend price at that location.

The witness for SVF said they must now pay more than the Iowa blend price to procure milk. He said that if the

Dubuque plant were to become regulated under Order 30 with its lower blend price and applicable location adjustments, it would be unable to compete for the procurement of milk from the farms now serving it. Regulation under Order 30, he said, would cost SVF approximately one million dollars per year because of the additional payments that would be necessary to maintain its current producers.

The proponent's witness stated that although the Department, in the past, has generally pooled a distributing plant in the order in which it has the largest volume of sales, it recently has departed from that policy because of changes in the marketplace. He said that recently the Department has locked in several distributing plants in markets where they were located even though they had a larger volume of sales in other markets. He noted recent such decisions involving the Louisville-Lexington-Evansville and Ohio Valley orders and also the Nashville, Tennessee order.

A dairy farmer who is a member of SVF testified that regulation under Order 30 would cost him about $4,900 a year, therefore, he would have to find another market.

A witness for Central Milk Producers Cooperative (CMPC) testified that he was appearing on behalf of AMPI-Morning Glory Farms Region, Golden Guernsey Cooperative, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Midwest Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative and Woodstock Progressive Milk Producers Association. The CMPC witness indicated that CMPC is a federation of cooperatives whose members pool about 93 percent of the producer milk on Order 30 and that in addition about 94 percent of the Class I milk is priced through CMPC's premium pool.

The CMPC witness testified that the lock-in proposal should be modified to make it clear that SVF does not intend to lock-in a pool supply plant. Furthermore, he said, there must be a corollary lock-out provision in Order 30 in order to accommodate this proposal. He said without the lock-out provision, both orders would be required to regulate the plant. The CMPC witness proposed a modification to the proposed lock-in provision that was intended to insure that the Order 30 language not be superseded by the Order 79 language.

A witness for the National Farmers Organization stated at the hearing that there may be some justification for a one-month lock-in.

The order currently provides that the term "pool plant" shall not apply to a plant that qualifies as a pool plant but which has a greater quantity of Class I dispositions in the marketing area of another order than in the Iowa marketing area. However, the dispositions included in making this comparison include route dispositions plus dispositions to other plants that qualify as pool plants under the respective orders. So long as a plant's route dispositions in the Iowa marketing area plus dispositions to other plants that are pool plants based on in-area route dispositions are greater than similar dispositions to another order, the plant will be pooled under the Iowa order. The Chicago order has essentially the same provision. Thus, SVF's Dubuque plant has been able to remain fully regulated under the Iowa order.

As originally proposed, the lock-in would potentially create an impasse where a distributing plant meets the pooling requirements of two orders. The impasse would exist because each order would claim the plant as a pool plant and neither order would yield to the other one. At the hearing, a modification was proposed such that the Iowa order lock-in would not take effect unless the other order had a provision that recognized the lock-in.

At this time the only prospective application of a lock-in is in conjunction with the Chicago order. Some opponents expressed the view that a lock-in should not be adopted since it could not function anyway.

The basic purpose for a two-month lock-in is to prevent a plant from flip-flopping regulatory status between two orders and to allow some time for sales adjustments to be made in the event a plant has an unexpected change in its distribution pattern that would cause a shift in regulation from one order to another. Thus, such a provision may be helpful in preserving market stability at unforeseen times and circumstances that may develop in the future, since some other nearby orders would recognize a two-month lock-in.

A lock-in provision should be applicable only to a distributing plant. This point was raised by CMPC, and is consistent with the intent of the provision as revealed in the testimony of the proponent's witness. There was no indication that proponent intended any application to plants other than distributing plants.

A suggestion by proponent that the market administrator publicly announce the name of each handler qualifying a plant as a pool plant under the lock-in provision should not be adopted. The purpose of this suggestion was so that producers, handlers, and customers would have advance notice of a possible switch in regulatory status of such a plant.

The evidence on the need for such a provision is sparse. It may be, as proponent contends, that producers need to know that a plant has switched from one order to another. On the other hand, it does not necessarily follow that a plant pooled under the two-month lock-in will necessarily be regulated under another order in the next succeeding month. It may be that the lock-in provision has been applicable in a situation where the handler has made adjustments in operations that will result in the plant continuing to be pooled under the Iowa order. Given the possible range of conditions that application of the lock-in may reflect, it does not appear that an announcement by the market administrator would be particularly useful. The lock-in provision adopted in this decision does not contain such a requirement.

As adopted, a plant that had been a pool distributing plant under the Iowa order for the preceding month, but which in the current month has greater Class I dispositions (route sales and/or transfers to plants) in another marketing area, would continue to be a pool plant until the third consecutive month of such greater dispositions in the other area, unless the other order nevertheless regulates the plant.

A further proposed modification by the proponent should not be adopted. SVF proposed an additional provision to permanently lock a distributing plant located in the Iowa marketing area into the Iowa order so long as the Iowa order's Class I price at that plant's location is not less than the price at that location under the order in which the plant had the greater route disposition. Such a provision was adopted recently in the Louisville-Lexington-Evansville order, with a corollary change in the Ohio Valley order, and in the Nashville order with a corollary change in the Georgia order. SVF maintains that the market situations that led to such amendments to these orders are similar to SVF's procurement problems involved in this proceeding. This latter proposed modification also was widely opposed.

The two recent proceedings involving other orders that were cited by both proponents and opponents have no bearing on this proceeding. Whether or not there are certain similarities in the situation that concerns SVF and those that existed in the other orders cannot be decisive in this proceeding. Moreover, without regard to the merit of any evidence submitted by SVF or opponents, further consideration at this time is unwarranted because a corollary amendment to the Chicago order clearly would be required. However, such an amendment to the Chicago order is not an issue in this proceeding. Therefore, adoption of a permanent lock-in provision would serve no purpose.

At the hearing, the witness for the proponents expressed his view that absent a corollary amendment of the Chicago Regional order to recognize a lock-in provision in the Iowa order, the lock-in nevertheless could be implemented by terminating certain provisions of the Chicago order.

If this were done, it would change the Chicago order's present application where the order does not recognize any lock-in provision, to potentially having to recognize lock-in provisions in any order having such provisions. The merits of such an action have not been explored on the record of this proceeding. There simply is no record evidence supporting such a change, nor any other evidence that would lead to a conclusion that such action was necessary because the provision to be terminated obstructs or does not tend to effectuate the declared policy of the Act.

SVF took exception to the above finding in the recommended decision, noting that the recommended decision recognized that if the Dubuque plant became pooled under the Chicago order, SVF would be "competitively disadvantaged." The exception maintains that this is evidence that the Chicago order's "unconditional lock-in" obstructs the declared policy of the act, which is to effect orderly marketing. The exception argues that it cannot be the policy of the Act to perpetuate an order that effectively bars a plant that is subject to a higher Federal order Class I milk price from expanding its distribution into the Chicago order marketing area. Further, it is argued that the Secretary must take action to remove inconsistencies and that, therefore, the Iowa order should be amended to provide a permanent lock-in, and that an accommodating change should be made to the Chicago order.

A lock-in provision in the Iowa order cannot be effective with regard to the Chicago order until a corollary amendment of the Chicago order has been made. The reasons for not terminating a provision of the Chicago order to achieve the same thing has already been discussed. The exceptions of proponent are denied.

2. Expansion of the Iowa Marketing Area

The Iowa marketing area should be expanded to incorporate additional territories where it is clear that a majority of the milk distributed therein was distributed by plants fully regulated under the Iowa order. The specific territories that should be added are identified on a state-by-state basis later in the discussion of this issue.

Swiss ValleyFarms, Co. (SVF), proposed that the Iowa marketing area be expanded to include the following counties:

1. In Iowa, the counties of Des Moines, Henry, Lee and Van Buren.

2. In Illinois the counties of Hancock and Henderson, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lynden, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

3. In Missouri, the counties of Clark, Grundy, Harrison, Lewis, Mercer, Putnam, Schuyler and Scotland.

4. In Wisconsin, the counties of Crawford and Grant.

At the hearing, SVF modified the proposal by deleting Hancock County in Illinois and Lewis and Clark Counties in Missouri.

The witness for the proponents testified that SVF markets milk of approximately 2300 dairy farmer members and that most of the milk is pooled under the Iowa marketing order (Order 79) through its fluid milk plant in Dubuque and its supply plants that assemble milk for transfer to the Dubuque distributing plant.

The proponent's witness said that SVF distributes a substantial amount of packaged fluid milk products into the Chicago Regional marketing area (Order 30) and that any further expansion into Order 30 will regulate their Dubuque plant under Order 30. He said that the impact of that change in regulation would be devastating because of the location adjustment provisions and the unit qualification for supply plant provisions of Order 30. He stated that the price that SVF would be able to return to its members under Order 30 would not allow it to be competitive in the supply area for their Dubuque plant.

SVF witness stated that its proposals would allow it to continue pooling their Dubuque plant under Order 79 and avoid jeopardizing its supply of milk.

The proponent's witness said that SVF is not attempting to secure a lower price on the Class I milk distributed from its Dubuque plant. He said that the Class I price fixed by the Iowa order at the Dubuque location is 21.9 cents higher than the Class I price fixed by Order 30 at this same location. The witness stated that the plants that SVF competes with in the Order 30 marketing area are not placed at a competitive price disadvantage with the Dubuque plant being pooled under Order 79 rather than Order 30.

The witness for the proponent said that the location adjustment under Order 30 fixes the minimum Order 30 Class I price and blend price at Dubuque below the prices set by Order 79. Order 79, he said, like most orders, establishes a lower price to the north and a higher price to the west and south whereas Order 30 establishes a lower price west and south.

The proponent's witness said that the Agricultural Marketing Agreement Act of 1937 requires the Secretary to fix the price at locations that will insure an adequate supply of milk at that location. He said that this standard is not met under both orders by having a lower price at Waterloo, Iowa, under Order 30, than the price at this same location under Order 79. The net effect of this misalignment, he said, is to create an artificial trade barrier.

The witness stated that proponent's exhibit shows that as the distance from Chicago increases in westerly direction through Davenport, Iowa, the price difference increased from 29.2 cents at Davenport to 52.3 cents in Jasper County (Iowa) and points west. He said that these price differences have stopped Iowa producers from supplying plants regulated by Order 30. There is no Iowa producer milk moving to Order 30 regulated plants, he said, except from the extreme northeast counties of Iowa.

Proponent's witness indicated that in order for a distributing plant to compete for sales, it must have raw product costs reasonably in line with others selling in the area. He said that raw product costs are a combination of the order's class prices and the additional payment that it takes to attract milk to the plant. He stated that the additional payment must be made to all producers supplying the plant; otherwise there would be instability (disorderly marketing) in the procurement area. Thus, a plant located in Iowa cannot pay the Order 30 price reduced by location adjustments and procure milk in competition with plants paying the Order 79 price, he said.

The witness for the proponent indicated that the Department in the past has recognized this inconsistency in other markets and has resolved the problem by snubbing the price in a marketing area to the price fixed by the order for that area. He said that would require a major overhaul of the Order 30 pricing system and the support of the

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majority of the Order 30 producers and that a more expedient way to dealing with the problem is to revise the Order 79 marketing area to fit the distribution pattern of plants subject to regulation by the order. In his opinion, the SVF proposals do not completely resolve this inconsistency in prices and that this problem eventually must be resolved by an appropriate amendment to Order 30. In the meantime, proponents are looking for other ways to keep the plant pooled under the Iowa order.

The proponent's witness testified that the distribution patterns of fluid milk plants have changed substantially since the marketing orders in Iowa and neighboring states were established. He said that distributing plants, such as the SVF Dubuque plant, distribute fluid milk products over a much greater geographical area and that this benefits the milk suppliers, plant operators and consumers by way of a lower per unit processing cost.

The witness for SVF testified that a survey conducted by SVF indicated that Iowa handlers have approximately 92 percent of the sales in that portion of Whiteside County that is proposed being added to the marketing area. In Henderson County, he said, Iowa handlers have about 53 percent of the sales. In Hancock County, he said Order 32 handlers (Southern Illinois) have the majority of sales. Hancock County, he said, is included in the proposal for the convenience of Iowa handlers because of the requirements for reporting in-area and out-of-area sales.

Iowa handlers, he said, have about 95 percent of the sales in Henry County; about 72 percent in Des Moines County; about 64 percent in Lee County and about 94 percent of the sales in Van Buren County. He said in total, Iowa handlers have about 74 percent of the sales in the Iowa counties proposed to be added.

In the Missouri counties of Harrison, Mercer, Putnam, and Schuyler, Iowa handlers, he said, have 100 percent of the sales. In Grundy, he said, Iowa handlers have 55 percent of the sales. He said that in Scotland County sales are divided equally between Iowa and Illinois plants. Order 32 plants, he said, have the majority of sales in Lewis and Clark Counties. The inclusion of these two counties, he said, also is for the convenience of the Iowa handlers who have to report separately in-area and out-of-area sales. In total, he said, Iowa handlers have 62 percent of the sales in the Missouri counties proposed being added to the Order 79 marketing area.

The witness for SVF said that for Grant and Crawford Counties, Iowa handlers have 61 percent of the sales. Upper Midwest handlers have 20 percent and Chicago handlers have 14 percent. He said that adding these two counties to the Order 79 marketing area will not change the current status of any plant under either order or the classification of milk or the blend price in either order.

The proponent's witness stated that SVF wished to modify its expansion proposal by deleting Hancock, Lewis, and Clark Counties because the survey showed that Order 79 handlers do not have the majority of sales in these counties.

Anderson Erickson Dairy Co., although it did not present testimony at the hearing, filed a brief in support of the SVF proposals.

The first of many witnesses to testify in opposition to the proposals was a representative for Prairie Farms Dairy (PFD). The PFD witness said that their organization, although it has a joint venture interest in an Order 30 pool plant as well as a joint venture interest in two plants regulated under Orders 79, was testifying on behalf of their solely owned plants pooled on the Southern Illinois market (Order 32).

The opponent's witness stated that PFD has over 500 producers located in the Order 32 marketing area and that it also acquires milk from cooperatives whose members are located in Iowa, Minnesota, Wisconsin and Illinois. He said that the SVF proposal could adversely impact on these cooperatives and their ability to provide milk to their Order 32 plants.

The PFD witness said that their immediate concern was their distributing plant located at Quincy, Illinois (Adams County). He said that the Quincy plant receives about 8 million pounds of milk per month and utilizes about 70 percent of this milk in Class I. The Quincy plant, he said, is in an unregulated county with large unregulated areas around Quincy.

The witness for PFD testified that for the past 12 months the Quincy plant sales averaged about five percent in Central Illinois (Order 50), about 19 percent in Order 32 and about 76 percent in non-regulated areas. He said that SVF proposal for the expansion of the marketing area, prior to its modification deleting several counties, would have made it very difficult for it to remain pooled under Order 32. He maintained that the expansion proposal would not solve the SVF problem but would shift the problem from one cooperative to another.

The witness for PFD testified that although they did not do their own survey of the proposed expansion, it did compare its sales in the various counties with SVF estimated PFD sales. He said that there is no economic, historical, practical, or beneficial justification for including any of the Missouri, Illinois or Iowa counties in the expansion except for the Iowa counties of Henry, Des Moines, and the Illinois county of Henderson.

The opponent's witness testified that its exhibit shows that for Henderson and Hancock counties in Illinois in total, SVF had 15.1 percent of the sales in these two counties and that SVF estimated that PFD had 82 percent of the sales in the two counties while PFD's exhibit shows actual sales as 25.7 percent.

The representative for PFD said that their exhibit shows for the eight Missouri counties in total, SVF has 7.8 percent of the sales in those counties and that SVF estimated PFD had 29.6 percent of the total county sales. PFD's exhibit shows actual sales as 25.5 percent.

The witness said that the PFD exhibit shows that for the four Iowa counties in total, SVF had 21.4 percent and SVF estimated that PFD had 8.9 percent of those sales compared to PFD's actual sales of 19.1 percent.

The witness for the opponent testified that for March 1988, the Quincy plant had 18.8 percent of its sales in Order 32 and if all of the counties originally proposed by SVF would become part of the Order 79 marketing area, their Quincy plant would have had 15.6 percent of their sales in Order 79. He said that the 4.2 percent difference, which equates to about 200,000 pounds of milk, is unacceptable to PFD.

The opponent's witness proposed that only Henderson County (Illinois) and Henry and Des Moines Counties (Iowa) be included in the expanded marketing area. These three counties, he said, would give SVF about 53 percent of their sales in all of the 14 proposed counties. He said that allowing the 11 other counties to remain as unregulated would allow PFD a reasonable sales cushion between Orders 32 and 79. Of the 11 counties, he said, the Quincy plant would have had about 34 percent of the total sales compared to 13 percent for SVF. He said that for the three counties that PFD suggests be added to the marketing area, SVF would have about 23 percent of the total and the Quincy plant less than one percent. He also indicated that PFD could support adding the townships named in Whiteside County, Illinois, to the marketing area.

Land O'Lakes, Inc., although not presenting testimony at the hearing, filed a brief in support of PFD's modified proposal.

The witness for PFD testified that the 120 Quincy producers are located in southeast Iowa, northeast Missouri, and western Illinois. He said that the central locations in the proposed two Illinois counties are on the average only 66 miles from Quincy while they are 154 miles from Dubuque. Central locations in the proposed Iowa counties, he said, are on the average 74 miles from Quincy compared to an average of 154 miles from Dubuque. He said that central locations in the proposed Missouri counties show that on average they are 99 miles from Quincy while being 236 miles from Dubuque. Efficiency of distribution alone, he said, should support the concept that this area is best served by the Quincy plant compared to the Dubuque plant.

The witness for the opponent testified that regulation of its Quincy plant by Order 79 would be devastating to PFD and its dairy farmers. For example, he said that the blend price to dairy farmers associated with the Quincy plant would have averaged 45 cents less if the plant had been regulated by the Iowa order. A 45-cent reduction in blend prices would amount to over $560,000 for one year, according to the witness Land-O-Lakes and Associated Milk Producers, Inc., he said, have told PFD that they could not deliver milk to Quincy at these prices.

The representative for PFD said that since May 1987 PFD has been receiving milk from SVF into its joint venture pool distributing plants located in Iowa City and Des Moines, Iowa, for the purpose of helping SVF continue to qualify the Dubuque plant on Order 79.

The expansion proposal, he said, would encourage SVF to increase its sales into this newly expanded area, so as to be able to increase its sales into Order 30. He said that PFD would be discouraged from expanding into the area that has been home country for the Quincy plant for over 50 years.

Numerous interested parties that are either dairy farmer cooperatives or proprietary handlers regulated under the Chicago order presented testimony in opposition to the SVF proposals. In general, such opposition expressed views that: (1) SVF should be regulated under the Chicago order because it has greater Class I route dispositions in the Chicago marketing area than in the Iowa marketing area; (2) SVF, due to the higher Iowa blend prices, has a competitive advantage over Order 30 regulated handlers in obtaining raw milk supplies in some areas of Wisconsin and Illinois; (3) because SVF has a milk procurement advantage, it also has an advantage in selling packaged milk (lower sales price). Chicago handlers have lost sales accounts to SVF; (4) SVF's problems are its own doing since SVF actively has expanded sales outlets in the Chicago market; (5) expansion of the Iowa marketing area now will lead to further expansion in the future; (6) the Chicago and Iowa marketing areas should be merged; (7) SVF actively seeks (and obtains) contracts to supply milk to schools and colleges in the Chicago marketing area; (8) adding Crawford and Grant Counties in Wisconsin to the Iowa marketing area would increase the Iowa blend price and decrease the Chicago order blend price, and thus take away about $1.6 million per year from Order 30 producers; and (9) the evidence shows an overlap in the milk procurement areas of the Chicago and Iowa orders such that the Chicago marketing area should be expanded. Therefore, the record should be kept open so that additional proposals on this issue could be submitted.

In addition, CMPC witnesses specifically opposed all the SVF proposals for the following reasons:

(1) Failure of the Department of Agriculture (USDA) to notify all interested persons that a hearing request had been made and to invite comments on additional proposals;

(2) USDA's refusal to consider that because a marketing area proposal would be heard, then all other provisions of the order would be open for proposed amendments;

(3) Removing two counties from the Chicago marketing area and adding them to the Iowa marketing area would, in effect, amend the Chicago order without providing Order 30 interested parties an opportunity to submit additional proposals; and

(4) The proposal's attempt to circumvent the pool plant provisions of the Chicago order without a proper notice to amend the order's pool plant definition.

Most of the testimony by interested parties regulated under the Chicago order concerned opposition to continued pool status under the Iowa order for SVF's Dubuque plant. However, most of that testimony more nearly relates to the issue of a lock-in provision. That issue has been dealt with earlier in this document. Therefore, only a brief summary of the Chicago parties' positions has been noted here.

A witness for Deters All Star Dairy, Inc. (Deters), said that Deters operates an unregulated distributing plant in Quincy, Illinois, with about 15 percent of its sales in the Iowa Counties of Lee, Des Moines, Henry and Van Buren; the Missouri Counties of Scotland, Putnam, Schuyler, and the Illinois Counties of Hancock and Henderson. He said that Deters is opposed to all of the proposals except for adding the Wisconsin Counties of Crawford and Grant, the Illinois County of Whiteside or the Missouri Counties of Grundy, Harrison or Mercer. The expansion proposal, he said, would cause Deters to become regulated, resulting in an increase in its reporting and bookkeeping costs.

Exceptions to the recommended expansion of the Iowa marketing area were filed by seven interested parties. The exceptions ranged from expressions of frustration because additional proposals were not invited prior to the hearing to allegations that the Dairy Division [AMS–USDA] has erred in its judgment and condoned pooling a plant based on a "sham" qualification mechanism. Some exceptions also claimed that the procedure to terminate two counties from the Chicago marketing area is illegal since it would amend the Chicago orders without a hearing.

The question of whether the Secretary has authority to terminate a provision of an order was discussed in the Recommended Decision. As we stated therein, such authority is clear. Furthermore, the procedures followed in announcing and conducting the hearing were in accordance with the Department's Rules of Practice and Procedure.

The only exceptions that require further response relate specifically to the marketing area issue. Associated Milk Producers, Inc., Morning Glory Farms Region, again raised questions about the proponent's data that were relied on in reaching the Recommended decision. The exception objected to the marketing area expansion because (1) there was no way to verify SVF's sales figures; (2) no method was noted for calculating percent of sales by other handlers; (3) no listing of retail establishments was made available, and (4) there was no consideration of changes in sales over time. The following observations are made in response to these objections:

1. Given that proponent's sales data represent confidential information, it would be very unusual for the record of an amendment proceeding to contain information that would allow verification of proponent's sales data;

2. As noted in the Recommended Decision, estimates of sales by other handlers in the various counties were based on discussion with SVF customers and on in-store observations;

3. A listing of retail establishments was not provided at the hearing; however, the proponent's witness

indicated that the survey included visits to most stores; and

4. Since the SVF sales figures were derived from annual data divided by 12 to arrive at an average monthly figure, the element of time was reflected, at least with respect to proponent's data.

In its exception, CMPC argues that SVF maintains its Dubuque plant as a pool plant under the Iowa order through a "sham" mechanism, and states, as it did in its brief, that the record fails to disclose details of SVF's operations.

It should be noted that the Chicago Regional order, in its definition of "pool plant" (§ 1030.7), provides that the term "pool plant" will not include a plant that has route disposition and disposition to pool plants qualified on the basis of route dispositions that are greater under another order than under the Chicago order. This mechanism, the combining of route disposition with shipments to other plants, which is what SVF has relied on to keep the Dubuque plant pooled on the Iowa order, is clearly recognized under the Chicago order.

The amount of information about its operations that SVF revealed for the record was adequate to make the decision regarding marketing area. Thus, we find no basis in the exceptions for reaching any conclusions different from those set out in the Recommended Decision.

In its exceptions, the National Farmers Organization (NFO) opposed the Iowa market area expansion. NFO claimed that the evaluation of producer blend price disparities between the Iowa and Chicago orders was arbitrary and capricious because it ignored the blend price advantage that SVF has in Grant and Crawford counties. The exception also stated that SVF should not be allowed to increase distribution of large amounts of milk in the Chicago marketing area without being subject to pooling under the Chicago order.

On the first point, the record clearly indicates, with respect to Iowa producers, that if the Dubuque plant becomes pooled under the Chicago order, SVF would be disadvantaged in competing for local milk supplies. On the other hand, SVF has the benefit of a higher blend price under the Iowa order when competing against Chicago handlers for Wisconsin milk supplies. However, the record shows that handlers regulated under other orders that have blend prices higher than the Chigao order also compete for supplies in Wisconsin. In any event, these facts are not of utmost importance in deciding the marketing area questions.

On the second point, this decision does not convey to SVF any immunity against the Dubuque plant becoming fully regulated under the Chicago order. That could still happen if Class I dispositions in the Chicago marketing area in the future became greater than Class I dispositions in the Iowa marketing area. This was clearly stated in the recommended decision and is repeated here. The exceptions are therefore denied.

Specific territories to be added to the marketing area.—(a) *Illinois territory:* The unregulated townships in Whiteside County and Henderson County should be added to the Iowa marketing area. In Whiteside County, the 13 townships are predominantly served by Iowa handlers, whose Class I sales in the area are estimated at over 90 percent of the total.

In Henderson County, SVF reported its own sales and estimated sales for one other Order 79 handler to comprise 53 percent of total Class I sales. SVF's survey resulted in an estimate that Prairie Farms (Quincy) had about 28 percent of the sales and that another Order 32 plant had 19 percent. The only other data submitted at the hearing was by the Prairie Farms Dairy representative. His data showed that the Quincy plant's sales amounted to only one percent of the estimated total in Henderson County. This is a large discrepancy (28 percent versus one percent). The SVF estimate of the Quincy plant's sales were larger than actual. Since it is clear the survey did not over-estimate the Order 79 sales, it is probable that the 53 percent of total estimate may be too low. Henderson County's Class I sales appear to come mostly (more than half, at least) from Iowa handlers' plants. Accordingly, Henderson County should be identified as part of the marketing area for the Iowa order.

(b) *Iowa territory:* Henry, Des Moines, and Van Buren Counties, which now are unregulated, should be included in the Iowa marketing area. Iowa handlers are estimated to have about 90 percent of the Class I sales in Henry and Van Buren Counties, and about 70 percent in Des Moines County. The Prairie Farms representative presented data on its sales in Henry and Van Buren Counties, which showed less sales than estimated by SVF. A witness for Deters Dairy, Quincy, Illinois, indicated that any sales from its plant in these counties would be very small. Therefore, there is no reason to question whether Iowa handlers predominate in service to these counties. No one offered any data other than SVF's estimate of sales in Des Moines County.

Lee County also was proposed to be in the marketing area. SVF's estimated total distribution in this county was 804,358 pounds, of which SVF distributed 173,339 pounds and estimated another 43 percent of the total to have been distributed by two other Iowa handlers. SVF estimated that Prairie Farms Dairy, Quincy, Illinois, had another 20 percent, which left 16 percent divided almost equally among three other non-Iowa order handlers. However, the Prairie Farms witness testified that actual sales in Lee County from its Quincy plant amounted to 398,352 pounds, or 49.3 percent of estimated total consumption, rather than the 20 percent figure noted above. This discrepancy cannot be explained from information available in the record. Thus, assuming that the estimated total consumption figure for Lee County is reasonable, it cannot be concluded that Iowa handlers have a majority of Class I distribution in the County. Accordingly, Lee County should not be identified as part of the marketing area for the Iowa order.

(c) *Missouri territory:* Five of the eight proposed unregulated Missouri counties should be added to the marketing area. They are: Grundy, Harrison, Mercer, Putnam, and Schuyler Counties. The other three (Clark, Lewis, and Scotland) should remain unregulated.

Class I consumption in Grundy County was estimated by SVF to be about 223,000 pounds per month. SVF's sales in Grundy County are small, at about 6,000 pounds, while sales by other Iowa handlers were projected by SVF to be more than 50 percent of the total. However, SVF overestimated the amount of milk distributed in Grundy County by Prairie Farms of Quincy. At the hearing, Deters Dairy indicated that they had no problem with Grundy County being added to the marketing area of the Iowa order. Thus it appears that Iowa handlers have at least 55 percent of the Class I disposition in Grundy County. Harrison and Mercer Counties also should be included in the marketing area. SVF's survey indicated virtually all of the Class I milk in both counties was distributed by plants regulated under the Iowa order. There was no contrary evidence concerning these counties.

SVF's survey of Putnam County indicated that virtually all the Class I milk was distributed in the County by Iowa order handlers. The witness for Deters Dairy indicated that any milk distributed from the Quincy plan would be small, and was not sure whether it would include any Class I milk at all. Thus, there is a sound basis in the record to include Putnam County.

The preceding paragraph could apply to Schuyler County as well, since the SVF survey found only products

distributed by Iowa handlers. However, the representative for Deters Dairy indicated that here, too, there might be a very small amount of Class I milk dispositions by a distributor, but not any direct distribution by Deters. So, in Schuyler County, the evidence leads to a conclusion that Iowa handlers have nearly all, if not all, of the Class I sales.

Clark, Lewis, and Scotland Counties, should not be added to the Iowa marketing area. The first two were dropped from the proposal by the proponents. Moreover, the sales data would not support the proposal. The later, Scotland County, should not be included because there is at least a 50 percent discrepancy in sales survey results. SVF's survey indicated 100 percent of the sales in Scotland County came from Iowa order plants. Prairie Farms, on the other hand, indicated that it's Quincy plant had route sales equal to 58 percent of the estimated consumption. This discrepancy remains unresolved. The available data do not permit a conclusion that Scotland is served primarily by Iowa plants. Therefore, the inclusion of Scotland County must be denied.

In several of these counties, the sales by SVF are a small proportion of the total. However, what is most important in this case is whether the predominant distributors of Class I milk are handlers regulated by the Iowa order.

Deters, in its testimony and in its brief, took the view that several of the proposed counties should not be added to the marketing area because no evidence can be found that disorderly marketing conditions exist. It is not necessary that disorderly marketing conditions exist before a county or other parcel of territory may be annexed to a marketing area. While other factors may be involved, the principal basis for defining marketing areas under the Federal milk marketing order program long has been that a marketing area defines a common sales area served primarily by competing handlers. If that condition exists, and it does in most of the counties discussed thus far, then the absence of market disorder is of no consequence. A major purpose of the Agricultural Marketing Agreement Act of 1937 is to promote orderly marketing. It is not a prerequisite that disorderly marketing must exist before this goal of the Act may be achieved.

The territory in Illinois, Iowa, and Missouri that should be added to the Iowa marketing area should have no impact on the regulatory status of the Prairie Farms plant at Quincy, and only minimal impact upon Deters Dairy, which is unregulated.

The representative of Prairie Farms introduced and exhibit showing the route sales by its Quincy, Illinois, plant in the counties proposed to be part of the Iowa marketing order. The total shown for March 1988 was 871,842 pounds. The witness expressed concern that this amount was large enough that any increase in sales in the Iowa order could cause the plant to flip over to regulation under the Iowa order. However, the plant's sales in the nine counties adopted in this decision amounted to only 115,273 pounds, or only 13 percent of the total sales in the counties originally proposed by SVF. This should minimize any concern of Prairie Farms that expanding the Iowa order could cause its Quincy plant to shift to the Iowa order.

Mid-American Diarymen, Inc. and Prairie Farms Dairy, Inc., both took exception to including the five Missouri counties in the marketing area. Both pointed out that SVF does not have a large volume of sales in the Missouri counties. Also, they claimed that handler costs would be increased due to having to report separately the sale in Missouri. The Prairie Farms exception also notes that the State of Missouri assesses a fee on milk sold on routes in the state. However, we see no reason why this information should have any bearing on the issue under discussion here.

The SVF distribution volume in these five counties is small. However, the decision to include these counties in the marketing area is based on the percentage of sales in each county that was distributed by plants regulated under the Iowa order. This is the same basis for including in the Iowa marketing area other territories in other states as well.

On the matter of additional reporting burden, there is no indication in the record that the type of accounting changes required by including the five Missouri counties will result in the burden of regulation being increased by any significant amount for plants that already are fully regulated under a federal milk order. In fact, we note that Anderson-Erickson Dairy Co., which operates a pool plant in Des Moines, Iowa, and which distributes milk on routes in the five Missouri counties, filed comments supporting the Recommended Decision with regard to expansion of the marketing area. Accordingly, we reaffirm that the Iowa marketing area should be expanded to include the five Missouri counties. Therefore, the exceptions on this issue are denied.

With regard to Deters Dairy, it is not possible to state exactly what portion of its Class I distribution will be partially regulated under the expanded Iowa order. However, in the nine counties in Illinois, Iowa, and Missouri, Deter's witness indicated only very small, or perhaps no sales at all. Therefore, it is expected that any impact upon Deters due to this action would be minimal, in that the plant would be only partially regulated.

As the operator of a partially regulated distributing plant, Deters would be required to pay an administrative assessment on the total hundredweights of route dispositions in the marketing area, less any receipts of milk priced as Class I milk under a Federal order. The maximum assessment rate for this purpose is four cents per hundredweight.

Additionally, Deters would have the option to have any further obligation computed under one of the following:

1. Compute the handler's total value of milk at the order's class prices just as if the plant were a fully regulated pool plant. Subtract payments made for milk that would have been producer milk if the plant had been fully regulated. Any positive difference would be paid to the producer-settlement fund.

2. An amount computed by multiplying the total hundredweights of route dispositions in the marketing area, less any receipts at the plant of milk priced as Class I milk under a Federal order, by the difference between the applicable Class I and uniform prices would be paid to the producer-settlement fund. If the plant received milk priced as Class I milk under a Federal order in an amount at least equal to the in-area route dispositions, there would be no obligation.

In order to determine the payment obligations referred to above, Deters would be subject to certain reporting requirements of the order.

Deters undoubtedly operates a small business. Although the options just described are available to any handler that operates a partially regulated distributing plant, they do provide a small business with choices that can help minimize the impact of even partial regulation.

(d) *Wisconsin territory:* The marketing area of the Iowa order should be expanded to include Crawford and Grant Counties in Wisconsin. Both of these counties are currently included in the marketing area for the Chicago Regional order.

The data submitted by SVF in its sales survey included estimates for these two counties. These estimates show that Chicago order handlers account for an estimated 8 percent of the route

dispositions in Crawford County, and 16 percent in Grant County. The actual sales by SVF in these counties represent 54 and 70 percent of estimated consumption in Crawford and Grant Counties, respectively. The remainder was estimated to be distributed by a handler regulated under the Upper Midwest milk order.

At the hearing, a representative for Dean Foods indicated through cross-examination that his firm's route disposition amounted to some 13.6 percent of the total in Crawford County, rather than 8 percent as shown on the SVF exhibit. It must be noted that the exhibit does not list Dean Foods as a distributor in Crawford County, but does show Dean Foods as distributing 8 percent of the total estimated routes sales of fluid milk products in Grant County. This raises a question as to whether the SVF survey erred in not picking up Dean as a distributor in Crawford County, or whether the Dean representative misspoke in his question to a AMPI witness. It makes little difference because the sales figures quoted for SVF are based on actual sales figures, whereas the percentages indicated for other distributors are estimates. Thus, if the estimated total consumption figures are about right, an error in estimates for other distributors would not change the conclusion that an Iowa handler, SVF, is the largest distributor with more than half of the Class I milk in both counties. This being the case, both counties should be identified as part of the Iowa order marketing area, rather than the Chicago Regional order marketing area, based on current marketing conditions as revealed in the record of this proceeding. In defining an order marketing area, the major consideration is which competing handlers are the principal distributors of milk within the territory under consideration.

It is noted that there were no distributing plants under either order in either county in May 1988. However, there were four reserve supply plants under the Chicago order that were located in these counties, and two supply plants pooled under the Iowa order located therein.

Crawford and Grant Counties clearly are areas where there is overlapping of supplies for both the Chicago and Iowa orders. The evidence in the record indicates also that there is keen competition for those supplies. In December 1987 the producers located in the two counties were about evenly divided between the two orders, with a few more producers and a little bit more milk that participated in the Iowa market than in the Chicago market.

The facts just noted do not weigh heavily in favor of inclusion of two counties in either marketing area based on sources of milk supply. Therefore, the question of which order's handlers distribute more milk in the two counties takes on added importance as a determining factor concerning which marketing area should include the two counties. In this regard, this record clearly supports a conclusion that Crawford and Grant Counties in Wisconsin have a stronger association with the Iowa market than with any other market for which data were provided at the hearing.

The Wisconsin Cheese Makers Association (WCMA) also filed an exception in opposition to adding Crawford and Grant counties to the Iowa marketing area. WCMA claims that the expansion would have a substantial impact on small business and would be disruptive to normal marketing of milk. According to the exception, handlers under the Iowa order will further extend milk procurement in the Chicago marketing area. Also Iowa handlers will increase their Class I sales, which translates into a loss of Class I sales by Chicago order handlers. This in turn will reduce the Chicago order blend prices and further increase the blend price disparity between the two orders.

The comments by WCMA are speculative. First, changing the two counties from the Chicago order area to the Iowa order area will not change the regulatory status of any plants. Thus, there will be no switching of producers from one order to another. Second, the change has no effect upon the ability of Iowa handlers to entice milk supplies away from Order 30 handlers. There simply is no connection between which marketing area includes the two counties and the ability of Iowa order handlers to solicit milk supplies therein. Finally, it is unknown whether Iowa handlers will expand their sales into the Chicago marketing area. However, if SVF further expands its sales, it still could become subject to Chicago order regulation.

The Notice of Hearing invited specific comments on the probable regulatory and informational impact of the hearing proposals on small businesses. Only one handler testified directly in this regard and we have responded in that case elsewhere in this decision. Otherwise, the Department believes that any negative impact of the changes adopted in this decision will not be substantial enough to cause concern. Moreover, when various witnesses were questioned on this subject, the majority of them were either noncommittal or stated that there would be a negative impact without specifying the exact nature or scope of the impact and without offering any evidence in support of their statements. In other cases, opposing views were expressed. For example, one witness indicated that if the proposals were adopted, some supply plants regulated under the Chicago order could have difficulty finding bottling plants to accept shipments of milk that the supply plants are required to make. However, another witness expressed no concern in this regard, because, in his view, Chicago handlers always need milk.

Exceptions also were filed on behalf of the Trade Association of Proprietary Plants. However, while enumerating several points of disagreement with the recommended decision, the exceptions contained arguments that already have been considered. The exceptions, therefore, are denied.

At the hearing, and in certain briefs filed, the validity of the sales survey conducted by or for SVF was questioned. Briefly stated, the estimates were made as follows:

(1) SVF estimated consumption of fluid milk products for each county in the following manner:

—Used a national average annual per capita consumption figure (source—Milk Industry Foundation, Washington, DC) divided by 365 to get a per capita consumption figure of .622 pounds per day.

—Use population data based on the 1980 U.S. Census, adjusted to 1985 (source—Rand McNally Atlas).

—Multiplied the population for a given county by the daily per capita consumption figure, and multiplied the result by 30 to get an estimate of total monthly fluid milk products consumption.

(2) The sales figures for SVF are annual sales divided by 12 to produce a monthly figure.

(3) The estimated percentages of total sales in each county by handlers other than SVF were arrived at through discussions with customers and by on-site observations in "Practically every store of any consequence."

There is no doubt that the methodology employed by SVF did not produce perfectly accurate results. The testimony by Prairie Farms' witness indicating actual sales figures different from those estimated by SVF clearly shows this. Nevertheless, such differences did not change the critical

question of whether Iowa handlers were the dominant distributors in a given county in most cases. Where such differences appeared to raise a serious question in that regard, the county was not included in the marketing area expansion. It also must be noted that except for Prairie Farms, no one else produced specific sales data. By and large, SVF's estimates remained unchallenged and uncontradicted. Accordingly, they must be regarded in this record as reasonable estimates, except as otherwise noted in the discussions of the individual counties.

The current issue of whether Crawford and Grant Counties in Wisconsin should be in the Iowa marketing area is quite similar to an earlier question involving eight counties in northwestern Indiana. The eight counties, formerly known as the Northwestern Indiana marketing area were included in the Chicago Regional marketing area when that order was promulgated on July 1, 1968. However, only a few months later it was found that the inclusion of those counties in the Chicago Regional marketing area had caused major competitive problems for 12 small local handlers because they were not regulated in a way that insured a milk cost comparable with their main competition. This occurred because the blend price under the Chicago order would be lower than the uniform prices as computed under the former Northwestern Indiana order. For example, the decision notes that under the Chicago order the blend price at Northwestern Indiana plants "* * * is expected to average more than 30 cents below the prices received by Indiana producers shipping to Fort Wayne or Indianapolis." Accordingly, the eight counties were removed from the Chicago order and were included in the new Indiana marketing area.[1]

The record in this proceeding clearly demonstrates that SVF's Dubuque plant would be competitively disadvantaged in competing with other plants regulated by the Iowa order for local supplies of milk if it became regulated under the Chicago order. Thus, this decision parallels in many ways the 1968 decision to remove the eight northwestern Indiana counties from the Chicago Regional marketing area.

Including Crawford and Grant Counties in the Iowa marketing area, based on the fact that Iowa regulated handlers have the majority of Class I dispositions in those counties, will lessen the likelihood that the Dubuque plant will switch to regulation under the Chicago order. However, if SVF continues to expand its sales in the remainder of the Chicago marketing area, such action nevertheless could bring about such a shift.

The principal opposition to expanding the marketing area came from cooperatives and handlers subject to the Chicago Regional order. In their view, if SVF had greater route dispositions in the Chicago marketing area than in the Iowa area, then the Dubuque plant should be regulated under the Chicago order. Otherwise, SVF should reduce distribution in the Chicago marketing area. The Chicago interested parties also held that SVF has an advantage over Chicago cooperatives and handlers in competing for producer milk supplies in Wisconsin so long as SVF is regulated under the Iowa order, which has a higher uniform price than the Chicago order. They also urged that other avenues should be pursued, such as revising the location adjustment provisions of the Chicago order, merging orders, and expanding the Chicago marketing area to include the territory previously regulated by the Quad Cities-Dubuque milk order, which is part of the marketing area of the current Iowa order.

Accordingly, Counsel for CMPC moved that this proceeding should be terminated without issuing a recommended or final decision. The basis for the motion was that SVF failed to provide the data necessary to permit the Secretary to reach a decision on the merits of the proposals considered at the hearing. Alternatively, he urged that the record be kept open so that other proposals not heard could be considered at a continuation of the hearing.

The issuance of this document constitutes a denial of the motion to terminate the proceeding or to keep the record open. As noted earlier, the limited lock-in provision that is adopted cannot be made effective with respect to the Chicago order for the reason stated. Also, the proposal raised at the hearing for a permanent lock-in is denied for the reasons stated. The remaining issue, marketing area expansion, can be, and has been, appropriately decided based on the information obtained at the hearing. Therefore, it is concluded that it would serve no useful purpose to reopen the hearing to consider additional proposals at this time. Such action would only serve to delay the timely issuance of appropriate action based on the hearing record.

It must be recognized that the limited marketing area expansion adopted herein may not provide a permanent solution to the issues raised at this proceeding. Rather, it may serve as a stop-gap approach to SVF's problem of regulatory status while the dairy industry in the areas involved searches for a broader based longer-term solution. Some of the information introduced in this proceeding suggests that the industry needs to study the question of order mergers or other possible actions. However, there is no indication at this point that such studies are under way or that any consensus exists about what type of action to pursue in the future. Therefore, this proceeding should be completed in a timely fashion. If and when the industry is ready to pursue some other action, a new proceeding can be requested.

The Chicago interested parties also objected vigorously to the fact that the Chicago order was not open for amendment in the proceeding, especially with regard to the two Wisconsin counties considered for addition to the Iowa marketing area. In the Chicago parties' views, the Secretary could not delete those counties from the definition of the Chicago order marketing area without a proceeding to amend the Chicago order.

In response we note that all cooperatives and handlers that supply milk to or are fully regulated under the Chicago order were sent a copy of the Hearing Notice. That notice advised such parties of the nature of the proposal and invited any interested parties to participate in the hearing and to address specifically the question of whether the counties should be part of the Iowa marketing area. Even though the provisions of the Chicago order were not open for amendment, those who may be directly affected by this proceeding were so notified and provided an opportunity to testify or otherwise submit evidence regarding the proposals submitted by SVF. No one was denied an opportunity to be heard on this issue.

At issue is the question of which mechanism to employ to implement findings based on a public hearing. This decision finds that Crawford and Grant Counties in Wisconsin should be included in the Iowa marketing area rather than in the Chicago marketing area. In order to implement these findings, two steps are necessary. One is to add the territory to the Iowa marketing area by amendment of the Iowa order. The other step involves removing the territory from the provision defining the Chicago order marketing area. This may be done either

[1] Official Notice is taken of the Assistant Secretary's decision, issued December 5, 1968, published on December 10, 1968 [33 FR 18282] on Milk in Indianapolis, Ind. (Renamed "Indiana"), Fort Wayne, Ind., and Chicago Regional Marketing Areas.

of two ways. One way is to amend the Chicago order. That cannot be done in this instance because the Chicago order was not open in this proceding. However, the Secretary is required by § 608c(16)(A)(i) of the Agricultural Marketing Agreement Act of 1937 (the Act) to terminate or suspend operation of any order or provision of an order that he finds obstructs or does not tend to effectuate the declared policy of the Act. Because it has been determined, on the basis of a properly noticed public hearing, that the two Wisconsin counties should be included in the marketing area defined by the Iowa order, it would be only logical to conclude that the two counties should not remain under the Chicago order. This finding would be implemented by terminating that part of the Chicago order which provides that the two counties in question are included under the order. Such method has an advantage in terms of timeliness and of economy in implementing a decision.

CMPC's exceptions reiterated opposition to including Crawford and Grant Counties in the Iowa marketing area. The exception contends that the termination of the two counties from the Chicago marketing area violates the notice and hearing requirements of the Act. The exception cites *Carnation Company* v. *Butz*, 372 F. Supp. 883 (D.D.C. 1974), which held unlawful the use of the suspension authority of the Act to change the pricing provisions of an order. Moreover the exception claims that there is no basis in the record to conclude that inclusion of these two counties in the Chicago Regional marketing area " * * * obstructs or does not tend to effectuate the declared policy * * * " of the Act.

In response, we disagree that the present issue is governed by *Carnation* v. *Butz*. That case specifically involved minimum prices to be paid by milk handlers to milk producers. The court rendered its decision based on its reading of section 8c(18) of the Act, which requires notice and opportunity for a hearing when adjusting prices. In the present document we are not involved in a pricing issue. In the Carnation opinion, the Court also held that the standard of review in determining whether removal of order provisions through suspension without notice and hearing is proper is " * * * whether that removal has the effect of producing a new order materially different from the old." The termination of the two counties from the Chicago marketing area does not alter the Chicago order in a material way. In response to CMPC's second point, we would reiterate that the finding that the two Wisconsin counties should be part of the Iowa marketing area is based on record evidence obtained at a public hearing. Having made this finding, it would be inconsistent to find at the same time that the two counties should remain part of the Chicago marketing area. Therefore, this exception also is denied.

3. *Location adjustment revision.* The order should amend to specify that the territory in Whiteside County, Illinois, which is being added to the marketing area, should be included in Zone 2 for location adjustment pricing purposes. The other Illinois counties in the marketing area are in Zone 2 now.

Aside from proponent's brief statement, no one else addressed this proposal. Currently there are no Iowa order pool plants in the 13 townships of Whiteside County. Thus, addition of these townships to Zone 2 (minus 7 cents) will not change the Class I or uniform price of any handlers fully regulated under the Iowa order.

This change is necessary to assure proper price alignment should there ever be a pool plant, or a nonpool plant that handles surplus milk pooled under the Iowa order, located in the portion of Whiteside County that will be in the marketing area. The townships are adjacent to other territory in Illinois and Iowa that are in Zone 2. For these reasons, the proposal should be adopted.

4. *Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exception with respect to issue number 1.* The notice of hearing stated that evidence will be taken to determine whether emergency marketing conditions exist that would warrant the omission of a recommended decision under the rules of practice and procedure with respect to Proposal No. 2 (plant lock-in). Although this decision provides for the two month lock-in as modified, the provision would have no application until such time as the Chicago order may be amended to provide for an accommodating lock-out provision. Several parties objected to the request by SVF for the omission of a recommended decision. We conclude that omitting a recommended decision would serve no useful purpose. There can be no justification for adopting and implementing on an emergency basis a provision that cannot be utilized in the foreseeable future. Accordingly, a recommended decision has been issued.

Swiss Valley Farms took exception to the conclusion that omitting a Recommended Decision would serve no useful purpose. The exception indicated that omission of a Recommended Decision would have expedited the change in marketing area. The Hearing Notice clearly stated that that omission of a Recommended Decision would be considered with respect to proposal No. 2, which was the lock-in proposal. Emergency action to change the marketing area was not contemplated. Accordingly, this exception must be denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Iowa order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except when they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Iowa marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

April 1989 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Iowa marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on November 20, 1989.

John E. Frydenlund,

Deputy Assistant Secretary Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Iowa Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Iowa marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Iowa marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, on April 12, 1989 and published in the **Federal Register** on April 18, 1989 (54 FR 15417), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1079—[AMENDED]

1. The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § (1079.2) by revising paragraphs (a) and (b), and adding paragraphs (c) and (d) to read as follows:

§ 1079.2 Iowa marketing area.

* * * * *

(a) The Iowa counties of: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Muscatine, Pocahontas, Polk, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Wright, and the city of Osage in Mitchell County.

(b) The Illinois counties of: Henderson, Henry, Mercer, Rock Island, and the city of East Dubuque in Jo Daviess County, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

(c) The Missouri counties of: Grundy, Harrison, Mercer, Putnam, Schuyler.

(d) The Wisconsin counties of: Crawford and Grant.

3. In § 1079.7, revise paragraph (d) to read as follows:

§ 1079.7 Pool plant.

* * * * *

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to paragraph (a) in this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products,

except filled milk, was disposed of as route disposition, in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of from such plant in the Iowa marketing area as route disposition, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(4) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area, and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

4. In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

§ 1079.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(ii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

* * * * * *

Marketing Agreement Regulating the Handling of Milk in the Iowa Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1079.1 to 1079.86, all inclusive, of the order regulating the handling of milk in the Iowa marketing area (7 CFR part 1079) which is annexed hereto; and

II. The following provisions.

§ 1079.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1989, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1079.88 Effective date

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(SEAL)

_____

(Signature)

By _____

(Name) (Title)

_____

(Address)

Attest _____

Date _____

[FR Doc. 89-27767 Filed 11-27-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-11]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 29, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Petition Docket No. 25784, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of section § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 22, 1989.

Pamela Trebbe,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 25784.

Petitioner: Steven J. Wolff, *et al.*

Sections of the FAR Affected: 14 CFR 13.15 and 13.19.

Description of Petition: To consolidate FAR §§ 13.15 and 13.19 into a single rule, which will delineate when, under the provisions of the Federal Aviation Act of 1958, a violator of the Federal Aviation Regulations (FAR) will be subject to civil penalty, and when a violator of the FAR will be subject to suspension or revocation of his or her airman certificate(s). The proposal would also require the FAA to state the policy considerations it weighs before a decision is made as to whether to initiate civil penalty or certificate action, and to describe an airman's appeal rights if he or she avails himself or herself of the opportunity to contest such action. The proposal would further require the FAA to state under what circumstances it intends to invoke its emergency powers under the Federal Aviation Act.

[FR Doc. 89-27864 Filed 11-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-224-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which would require repetitive visual inspections of the right hand main landing gear (MLG) frame and attachment bolts to detect heat damage, and repair, if necessary; and would require eventual modification, which, when installed, would terminate the need for the repetitive inspections. This proposal is prompted by reports of heat damage to the right MLG frame bolts due to electrical arcing across air gaps between the bolts and frame. This condition, if not corrected, could result in degradation of the structural integrity of the right hand MLG frame and attachment bolts and possible malfunction of the MLG.

DATES: Comments must be received no later than January 16, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 89-NM-224-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-224-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all de Havilland Model DHC-7 series airplanes. There has been a report of heat damage to the right main landing gear (MLG) frame bolts due to electrical arcing, caused by external power receptacles being grounded to the MLG frame, which generated small electrical acrs across air gaps between the bolts and frame. This condition, if not corrected, could result in degradation of the structural integrity of the right hand MLG frame and attachment bolts, and possible malfunction of the MLG.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989, which describes procedures for repetitive inspections for heat damage to the right MLG frame and attachment bolts, and repair, if necessary. This service bulletin also describes procedures for relocating the external power ground studs to the nacelle longeron; once this modification is accomplished, the repetitive inspections may be discontinued. Transport Canada has classified this service bulletin as mandatory, and has issued Airworthiness Directive No. CF-89-04 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections for heat damage to the MLG frame bolts, and repair, if necessary; and modification (in accordance with the service bulletin previously described), which would constitute terminating action for the repetitive visual inspections.

It is estimated that 43 airplanes of U.S., registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required initial inspection and 4 manhours per airplane to accomplish the required initial inspection and 4 manhours to accomplish the modification, and that the average labor cost would be $40 per manhour. The modification kit will be supplied at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. Authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to all de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated unless previously accomplished.

To prevent possible malfunction of the right main landing gear (MLG), accomplish the following:

A. Within 100 landings after the effective date of this AD, and thereafter at intervals not to exceed 500 landings, conduct a visual inspection of the right MLG frame and attachment bolts, in accordance with paragraph A. of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989.

1. If no damage is found, reassemble parts and return the airplane to service.

2. If damage is found, replace with serviceable parts prior to further flight, in accordance with the service bulletin.

B. Within 180 days after the effective date of this AD, relocate the external power grounding studs by incorporating Modification No. 7/2577, in accordance with paragraph B. of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on November 15, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-27831 Filed 11-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 78N-052G]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Reopening of Record for Receipt of Comments Regarding the Marketing Status of Combination Drug Products Containing Promethazine Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to accept additional comments and data concerning combination drug products containing promethazine hydrochloride.

DATES: Comments and data by January 29, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 12, 1988 (53 FR 30522), FDA published a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which OTC cough-cold combination drugs are generally recognized as safe and effective and not misbranded. In that document, FDA proposed OTC marketing of cough-cold combination drug products containing promethazine hydrochloride. Before the proposal, such drug products had been marketed as prescription drugs only.

At the time FDA proposed OTC marketing of promethazine hydrochloride-containing cough-cold combination drug products, the agency believed that these products could be generally recognized as safe and effective for short-term (7-day) use for treating the symptoms of the common cold. In accordance with the enforcement policy set out in 21 CFR 330.13, the agency stated that it would allow the OTC marketing of promethazine-containing combination cough-cold drug products to begin.

On December 15, 1988, the agency received a citizen petition (Ref. 1) from the Public Citizen Health Research Group (HRG) and the University of Maryland SIDS Institute objecting to OTC status for promethazine-containing cough-cold drug products. The agency also received letters from a number of physicians (Refs. 2 through 8) voicing the same objection. The major concern that the petition and the letters raised was that the possibility that the use of drug products containing promethazine hydrochloride in children under 2 years of age may be associated with the occurrence of sudden infant death syndrome (SIDS), and that OTC availability of these drug products could "dramatically increase overuse" of these drug products in children this age. The petition also raised concerns about possible adverse neurological reactions to drug products containing promethazine hydrochloride, and about the use on a prescription basis of promethazine-containing drug products in children under age 2, in pregnant or nursing women, and in the elderly.

In response to these concerns, FDA held a meeting of its Pulmonary-Allergy Drugs Advisory Committee on July 31, 1989, to discuss OTC marketing of promethazine hydrochloride combination drug products. Presentations were made by FDA staff, by representatives of HRG, and by representatives of the major manufacturer of promethazine-containing drug products. The presentations addressed adverse neurological reactions associated with the use of promethazine and other phenothiazine drugs, and the possible relationship between promethazine use in children under 2 years of age and the occurrence of SIDS. By a vote of seven to one, the advisory committee recommended to FDA that these drug products not be marketed OTC at this time. In the **Federal Register** of September 5, 1989 (54 FR 36782), the agency announced that promethazine-containing combination drug products for use in treating the symptoms of the common cold may not be marketed OTC at this time.

The administrative record for the proposed rule on OTC cough-cold combination drug products had several closing dates: December 12, 1988, for the submission of comments, August 14, 1989, for the submission of new data, and October 12, 1989, for the submission of comments on the new data submitted. As provided in § 330.10(a)(10)(iii) of the procedural regulations for OTC drugs (21 CFR 330.10(a)(10)(iii)), new data and comments received after August 14, 1989, and October 12, 1989, respectively, can not be included in the administrative record unless the agency reopens the record. Because the Pulmonary-Allergy Drugs Advisory Committee's recommendations of July 31, 1989, were part of the basis for the agency's decision to rescind the OTC marketing status of promethazine hydrochloride at this time, FDA is reopening the administrative record to provide an opportunity for further public comment on the advisory committee's recommendations concerning promethazine hydrochloride combination drug products. The agency has placed the transcripts of the advisory committee's July 31, 1989, meeting in the docket for this rulemaking (Ref. 9). The minutes of this meeting will be placed in the docket for this rulemaking as soon as they are completed. The agency is also reopening the administrative record for OTC cough-cold combination drug products to accept any additional available data relating to the issue of OTC marketing of combination cough-cold drug products containing promethazine hydrochloride. Accordingly, the record is reopened for the receipt of comments and data on this subject only until January 29, 1990.

This notice also serves to inform interested persons of the existence of comments, data, and information on promethazine-containing drug products; their availability for review at the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday, and to provide for the filing of written comments and data by January 29, 1990, on the OTC marketing of promethzine-containing cough-cold combination drug products. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

References

(1) Comment No. CP, Docket No. 76N-052G, Dockets Management Branch.

(2) Comment No. C00205, Docket No. 76N-052G, Dockets Management Branch.

(3) Comment No. C00206, Docket No. 76N-052G, Dockets Management Branch.

(4) Comment No. C00207, Docket No. 76N-052G, Dockets Management Branch.

(5) Comment No. C00208, Docket No. 76N-052G, Dockets Management Branch.

(6) Comment No. C00209, Docket No. 76N-052G, Dockets Management Branch.

(7) Comment No. C00212, Docket No. 76N-052G, Dockets Management Branch.

(8) Comment No. C00214, Docket No. 76N-052G, Dockets Management Branch.

(9) Transcripts of the July 31, 1989 Meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, Docket No. 76N-052G, Dockets Management Branch.

Dated: November 20, 1989.

Ronald S. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27808 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 444

[Docket No. 89N-0448]

Certain Neomycin Sulfate-Polymyxin B Sulfate Containing Ophthalmic Dosage Forms; Revision of Upper Potency Specification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug regulations by revising the upper potency specification for certain neomycin sulfate-polymyxin B sulfate ophthalmic dosage forms. This action is being taken at the request of a manufacturer and to make the upper potency specification for these products consistent with other neomycin sulfate ophthalmic dosage forms.

DATES: Written comments by January 29, 1990; requests for an informal conference by December 28, 1989.

ADDRESSES: Written comments and requests for an informal conference to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: At the request of a manufacturer, FDA is proposing to amend the antibiotic drug regulations by revising the upper potency specification for certain neomycin sulfate-polymyxin B sulfate ophthalmic dosage forms.

The individual monographs (regulations) for these products currently specify an upper potency limit for neomycin sulfate and polymyxin B sulfate of 125 percent of label claim. To bring its products in line with the upper potency specifications of other neomycin sulfate ophthalmic products, the manufacturer requests that the upper potency limit for neomycin sulfate and polymyxin B sulfate be increased to 130 percent of label claim.

FDA has reviewed the manufacturer's request and has tentatively concluded that the requested change is acceptable. Therefore, FDA is proposing that the subject monographs for neomycin sulfate-polymyxin B sulfate ophthalmic dosage forms be amended to revise the upper potency specification for neomycin sulfate and polymyxin B sulfate from 125 percent to 130 percent of label claim. The agency proposes to revise 21 CFR 444.342h(a)(1), 444.342i(a)(1)(ii), 444.342j(a)(1), and 444.342k(a)(1).

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would impose an insubetantial amendment to an existing technical requirement without imposing a more stringent requirement. Accordingly, the agency certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Submitting Comments or Requests for Conference

Interested persons may on or before January 29, 1990, submit to the Dockets

Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before December 28, 1989, submit to the Dockets Management Branch a request for an informal conference. The participants in an informal conference, if one is held, will have until January 29, 1990, or 30 days after the day of the conference, whichever is later, to submit their comments.

List of Subjects in 21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 444 be amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 444.342h is amended in paragraph (a)(1) by revising the second and third sentences to read as follows:

§ 444.342(h) Neomycin sulfate-polymyxin B sulfate ophthalmic ointment.

(a) * * *

(1) * * * Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of polymyxin B that it is represented to contain. * * *

* * * * *

3. Section 444.342i is amended in paragraph (a)(1)(ii) by revising the third and fourth sentences to read as follows:

§ 444.342i Neomycin sulfate-polymyxin B sulfate ophthalmic solution.

(a) * * *

(1) * * *

(ii) * * *Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of polymyxin B that it is represented to contain. * * *

* * * * *

4. Section 444.342j is amended in paragraph (a)(1) by revising the third and fourth sentences to read as follows:

§ 444.342j Neomycin sulfate-polymyxin B sulfate-dexamethasone ophthalmic suspension.

(a) * * *

(1) * * * Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of polymyxin B that it is represented to contain. * * *

* * * * *

5. Section 444.342k is amended in paragraph (a)(1) by revising the second and third sentences to read as follows:

§ 444.342k Neomycin sulfate-polymyxin B sulfate-dexamethasone ophthalmic ointment.

(a) * * *

(1) * * * Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of polymyxin B that it is represented to contain. * * *

* * * * *

Dated: November 15, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 89-27764 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 92; FRL-3691-6]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone and Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing that it is proposing to approve a request by New York to revise its State Implementation Plan (SIP) for attainment of the ozone and carbon monoxide standards in the New York City Metropolitan area. The revision proposes modifications to certain enforcement procedures in the operation of New York's motor vehicle emission inspection program for a two-year trial period. These modifications are not expected to have any adverse impact on air quality.

DATES: Comments must be received by December 28, 1989.

ADDRESSES: All comments should be addressed to: Mr. William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1005, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1979, as part of its State Implementation Plan (SIP) for Ozone and Carbon Monoxide, the State of New York submitted to the Environmental Protection Agency (EPA) information which specified the design and operational procedures for the State's motor vehicle emission inspection and maintenance (I/M) program in the New York City metropolitan area (NYCMA). Included among these were monitoring and enforcement procedures such as periodic (approximately once every two months) unannounced inspection visits by New York State Department of Motor Vehicle (NYSDMV) personnel and unannounced, concealed identity, inspections designed to ensure that private inspection stations properly performed their emissions inspections, adequately maintained the exhaust analyzers and kept satisfactory records.

On January 1, 1981, the I/M program began with mandatory inspections and voluntary repair. On January 1, 1982, mandatory inspection and repair became effective.

On February 15, 1984, EPA received a SIP revision request from New York State which proposed modifications to the I/M monitoring and enforcement procedures used by the NYSDMV. Specifically, the revisions reduced the periodic monitoring visits at stations from once every two months to once every four months, increased the concealed identity monitoring visits to ensure that at least 25 percent of all inspection stations received an undercover investigation every year, increased the oversight of stations with less than satisfactory performance and expanded the public's awareness of the consumer complaint services offered by the NYSDMV. Other aspects of the monitoring and enforcement procedures remained unchanged. EPA approved the request on June 1, 1984 (49 FR 22812).

The State Submittal

On September 19, 1988 the Director of the Division of Air Resources of the New York State Department of Environmental Conservation (NYSDEC) submitted a SIP revision request proposing to alter the nature and frequency of I/M inspection station audits for a two year trial period. This revision would require NYSDMV personnel to perform two unannounced, expanded, audits of each inspection station per year, and to conduct 1,800 concealed identity inspections annually, with at least 25 percent of these concealed identity inspections performed with a vehicle that has been set to fail the emissions test.

It should be noted that while the frequency of inspection station audits decreases under this proposal, the State is proposing to perform more intensive audits that would focus on accounting for inspection records and stickers in far more detail than could normally be undertaken during a routine audit. In order to implement the proposed expanded audit program, NYSDMV has committed to increase staffing by about 40 percent over present levels. As a result, the State expects audit related enforcement actions to increase by about 81 percent over present levels.

The NYSDEC stated that a shift to concealed identity inspections would ensure the most effective use of field staff for improving the I/M program. The State believes that concealed identity inspections tend to identify serious violations, especially with respect to improper inspections, while program audits rarely identify improper inspections but, rather, identify record keeping problems. By increasing concealed identify inspections from 1100 to 1800 annually, the State expects concealed identity related enforcement actions to increase by about 64 percent over present levels.

The State expects that the combination of expanded audits and increased concealed identity inspections will increase overall enforcement actions by 73 percent. However, the State has found that it cannot quantify the effect of these modifications on air quality. Nonetheless, the State believes that the increased effectiveness of enforcement associated with the modifications will reduce the number of incomplete and improperly performed inspections and, therefore will lead to some improvements in air quality.

Finding

EPA has reviewed the State's submittal and finds that the revised enforcement and monitoring procedures should improve the overall quality of the I/M program and, thus, provide air quality benefits equivalent to those committed to in New York's SIP. This action does not preclude comprehensive program restructuring that might be necessary as the State prepares for the submittal of its September 1991 SIP revision. Consequently, this SIP revision is being proposed for approval only with the understanding that the program is being executed on a two-year trial basis. At the end of this two-year period, EPA will evaluate the results of the trial and decide whether the modifications should be a permanent component of the State's enforcement procedures. Any future actions taken in this respect will be announced in the Federal Register.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

Conclusion

EPA is today proposing to find that New York's revised I/M enforcement and monitoring procedures adequately fulfill the SIP commitment made by the State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Dated: January 13, 1989.

Editorial note: This document was received by the Office of the Federal Register on November 27, 1989.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 89-27852 Filed 11-27-89; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-230-09-4311-02]

RIN 1004-AB43

43 CFR Parts 5400, 5420, 5450, 5460, and 9230

Sales of Forest Products, General; Preparation for Sale, Award of Contract, Sales Administration and Trespass

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR part 5400—Sales of Forest Products; General, part 5420—Preparation for Sale, part 5450—Award of Contract, part 5460—Sales Administration, and 9230—Trespass. It is necessary to amend the existing regulations for more effective control of the trespass of timber or other vegetative resources. The proposed rulemaking would provide minimum standards for management and protection of timber and other vegetative resources, and provide for penalties, which may be supplemented by State law, for trespass.

DATE: Comments should be submitted by January 29, 1990. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864, for technical or policy information, or Ted Hudson, (202) 343–8735, for procedural information.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on the trespass of forest products on the public lands are inadequate. Under existing regulations, only the trespass of timber suitable for sawlog and lumber manufacture, violation of free use permits, and trespass activity in the State of Alaska are addressed in sufficient detail. Existing regulations defer to State law action on the trespass of sawlogs except in those situations where State law does not exist. In many situations State law does not provide a sufficient deterrent. Trespass associated with the issuance of standard Bureau of Land Management contracts or permits for the harvest of timber or other vegetative resources for such other purposes as fuelwood and/or Christmas trees is not addressed.

The proposed rulemaking would provide guidance concerning the sale of other vegetative resources and timber products whether sold by contract or under a permit. Recognizing that all permits are contracts but that contracts are not necessarily permits, further explanation of permit contents, requiements, and stipulations, and violation penalties would be addressed. In addition, definitions are provided to clarify several terms used in the proposed rulemaking.

The principal author of this proposed rulemaking is Gary Ryan of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR

Part 5400

Administrative practice and procedure, Forests and forest products, Public lands, Reporting and recordkeeping requirements.

Part 5420

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5450

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 9230

Penalties, Public lands.

Under the authorities cited below, parts 5400, 5420, 5450, and 5460 of Group 5000, subchapter E, and part 9230 of Group 9200, subchapter I, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 1181a, 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

2. Section 5400.0–3 is amended by adding paragraph (e) to read as follows:

§ 5400.0–3 [Amended]

* * * * *

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.).

3. Section 5400.0–5 is amended by removing the lettered paragraph designations while retaining the numbered subparagraph designations, reordering the paragraphs in alphabetical order of the terms defined, italicizing the defined terms at the beginning of each definition paragraph, by revising the definitions of "public lands" and "other vegetative resources," and by adding the following paragraphs in alphabetical order, to read as follows:

§ 5400.0–5 Definitions.

Affiliate means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

* * * * *

Commercial use means use intended for resale, barter, or trade, or for profit.

* * * * *

Incidental use means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

* * * * *

Nonwillful means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal, or reflective of an honest mistake.

* * * * *

Other vegetative resources means all vegetative material that is not normally measured in board feet, but can be sold or removed from public lands by means of the issuance of a contract or permit.

Permit means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the purchaser and the United States.

Personal use means use other than for sale, barter, trade, or obtaining a profit.

Product value means the stumpage value of timber or the fair market value of other vegetative resources.

Public lands means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management and lands from which timber or other vegetative resources may be sold in accordance with the provisions of § 5400.0–3.

Purchaser means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber.

* * * * *

Trespass means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal Government. In addition, trespass can result from failure to comply with contract or permit requirements, causing direct injury or damage to timber or other vegetative resources, or causing undue environmental degradation.

Trespasser means any person, partnership, association, or corporation responsible for committing a trespass.

Willful means an action that is done knowingly and constitutes the voluntary or conscious performance of a prohibited act, including indifference to or the reckless disregard for the law.

§ 5401.0–6 [Amended]

4. Section 5401.0–6 is amended by inserting the phrase "or other vegetative resources" after the word "timber" in the fourth (last) sentence of paragraph (a).

5. Section 5402.0–6 is amended by revising paragraph (c)(2) to read as follows:

§ 5402.0–6 Policy.

* * * * *

(c) * * *

(2) The contract is for the disposal of timber or other vegetative resources, for which it is impracticable to obtain competition.

PART 5420—[AMENDED]

6. The authority citation for part 5420 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

§ 5424.0–5 [Removed]

7. Section 5424.0–5 is removed.

8. Section 5424.0–6 is revised to read as follows:

§ 5424.0–6 Policy.

(a) All timber sales shall be made on contract or permit forms approved by the Director, Bureau of Land Management.

(b) Other than for incidental use, the severance and/or removal of any vegetative resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. All contracts or permits shall contain the following:

(1) The name of the purchaser of his/her authorized representative with complete mailing address.

(2) The specific vegetative resources authorized for removal and their respective quantities and values.

(3) The specific location from which the vegetative resources are to be removed.

(4) The term for which the contract or permit is valid.

(5) Contract or permit conditions and stipulations.

(6) Signature of purchaser or authorized representative.

(c) The authorized officer may include additional provisions in the contract or permit to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution or other environmental degradation.

(d) The contract or permit form and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated all additional provisions shall be made part of the contract or permit.

(e) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions that prohibit:

(1) The export of any unprocessed timber harvested from the area under contract;

(2) The use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands which is exported or sold for export by the purchaser, an affiliate of the purchaser, or any other parties.

PART 5450—[AMENDED]

9. The authority citation is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

10. Section 5450.1 is amended by adding paragraph (c) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(c) Award of contracts or permits on negotiated sales occurs upon the execution of the contract or permit. Terms and conditions shall reflect the contractor's ability to perform, and shall require prevention or mitigation of environmental degradation associated with the removal of the timber or other vegetative resource.

PART 5460—[AMENDED]

11. The authority citation for part 5460 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

12. Part 5460 is amended by adding new subpart 5462 to read as follows:

PART 5462—CONTRACT AND PERMIT REQUIREMENTS

§ 5462.1 Contract and permit compliance.

(a) The following minimum requirements shall be met in order to assure contract or permit compliance;

(1) Contracts or permits shall be executed by authorized purchasers or their formally designated representatives.

(2) For other than lump sum sales, only the specific timber or other vegetative resource designated for removal, in their respective quantities, shall be removed.

(3) Timber or other vegetative resources shall be removed only from designated locations or areas.

(4) Transportation of timber or other vegetative resources shall be in accordance with contract or permit requirements and shall include appropriate load or product tagging if required.

(5) Contract or permit stipulations and specifications shall be adhered to.

(6) Payments shall be made in accordance with Subpart 5461 of this title.

(b) All contract and permit provisions and special provisions shall be adhered to unless the contract is modified in accordance with Part 5470 of this title.

PART 9230—[AMENDED]

13. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701 et seq.; 18 U.S.C. 1851–1858.

Subpart 9239—[Amended]

§ 9239.0–7 [Amended]

14. Section 9239.0–7 is amended by inserting after the word "timber" in the first sentence the phrase "or other vegetative resources."

§ 9239.0–8 [Amended]

15. Section 9239.0–8 is amended by inserting in the first sentence between the word "timber" and the comma immediately following it the phrase "or other vegetative resources."

§ 9239.1 [Amended]

16. Section 9239.1 is amended by revising the heading to read: "Timber and other vegetative resources."

17. Section 9239.1–1 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (d) (1), (2), and (3), respectively, by revising the section heading, and by adding new paragraphs (a) through (c) and an introductory clause for paragraph (d) to read as follows:

§ 9239.1–1 Unauthorized cutting and/or removal.

(a) All of the definitions in § 5400.0–5 of this title apply to this section.

(b) Authorization by contract or permit for other than incidental use shall be obtained prior to the cutting and/or removal of any vegetative resources. Severance or removal of timber or other vegetative resources without a contract or permit, or the use of an invalid contract or permit, constitutes a trespass and is a violation of regulation subject to criminal penalties.

(c) Failure to comply with any of the requirements and/or stipulations of a contract or permit may, if determined to be detrimental to the public interest by the authorized officer, result in the cancellation of the contract or permit. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance. Cancellation shall be mandatory in cases of:

(1) Intentional falsification of information;

(2) Unauthorized activity; or

(3) Activity by unauthorized person or entity.

(d) Permittees under Part 5510 are subject to the following prohibitions:

* * * * *

18. Section 9239.1–2 is amended by redesignating the existing text as paragraph (b), by revising the heading, and adding new paragraph (a) to read as follows:

§ 9239.1–2 Penalty for unauthorized cutting and/or removal.

(a) In accordance with §§ 9239.0–7, and 9239.0–8, and 9239.1–1 of this title, violators of the terms and conditions of a contract or permit, or persons who cut or remove timber or other vegetative resources without a contract or permit, are in trespass and may be prosecuted under Title 18 of the United States Code or under State criminal law.

* * * * *

19. Section 9239.1–3 is revised to read as follows:

§ 9239.1–3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trepass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

Dated: June 16, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–27830 Filed 11–27–89; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register

Vol. 54, No. 227

Tuesday, November 28, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–190]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Kauai, Hawaii, of cotton plants genetically engineered to be tolerant to the herbicide glyphosate or to resist select lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89–150–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to tolerate the herbicide glyphosate or to resist select lepidopteran insects. The field trial will take place in Kauai, Hawaii.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which shows reduced sensitivity to the herbicide glyphosate or a gene encoding delta-endotoxin has been inserted into the cotton chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene nor the delta-endotoxin gene themselves, nor their gene products, confer on cotton any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene and the micro-organism from which the delta-endotoxin gene was isolated are not plant pests.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on cotton any plant pest characteristics.

5. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase nor the delta-endotoxin gene provides the transformed cotton plants with any measurable selective advantage over nontransformed cotton in the ability to be disseminated or to become established in the environment.

6. The vector used to transfer the genes to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

7. The vector agent, the bacterim that was used to deliver the vector DNA and the genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed cotton plants.

8. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. Glyphosate is one of the herbicides that is rapidly degraded in the environment. It has shown to be less toxic to animals than many herbicides commonly used.

10. Delta-endotoxin is a polypeptide which upon ingestion kills only select lepidopteran insects. Delta-endotoxin is not toxic to other insects, wild or domestic birds, fish or mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

11. The field test site is small (about 3 acres) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC this 21st day of November 1989.

William F. Helms,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–27768 Filed 11–27–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held December 12, 1989, 9:30 a.m., Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

AGENDA

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of papers or Comments by the Public.
4. Discussion of the Chairmen's Meeting.
5. Review of IL 1460 Revision Relating to Aircraft, Helicopters, and Aero-Engines.
6. Discussion of the Quarterly List Review.
7. Discussion of the 1990 Annual Plan.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: November 21, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89–27766 Filed 11–27–89; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 19–89]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone by E.J. Brach & Sons, Inc., Confectionary Manufacturing Plant, Chicago, IL

The comment period for the above case, involving a proposed special-purpose subzone for the confectionary manufacturing plant of E.J. Brach & Sons, Inc. (54 FR 42317, 10/16/89), is extended to December 29, 1989, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 20, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–27814 Filed 11–27–89; 9:35 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–583–605]

Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The review covers one manufacturer of this merchandise and the period December 1, 1987 through November 30, 1988. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminary determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 51724) an antidumping duty order on cellular mobile telephones and subassemblies from Japan. One respondent, TDK Corporation ("TDK"), requested in accordance with § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 31, 1989 (54 FR 4871). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS") as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by this review are cellular mobile telephones ("CMTs"), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, *i.e.*, a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, *i.e.*, a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, *i.e.*, a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this antidumping duty order.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cutoff point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than five dollars, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this order: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

During the review period, cellular mobile telephones and subassemblies were classified under Tariff Schedules of the United States item numbers 685.28 and 685.33. This merchandise is currently classified under HTS item numbers 8525.20.60, 8525.10.80, 8527.90.80, 8529.10.60, 8529.90.50, 8542.20.00, and 8542.80.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer of Japanese CMTs and subassemblies, TDK, and the period December 1, 1987 through November 30, 1988.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act.

The Department determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price in this case based on the following elements:

1. The merchandise, which was made to order for each U.S. customer, was purchased or agreed to be purchased from TDK, Japan, prior to the date of U.S. importation.

2. The selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. For all but one of TDK's U.S. customers, the merchandise was shipped directly from the manufacturer to the unrelated U.S. buyer. Direct shipment to its customers was, therefore, the customary commercial channel of trade. For the remaining U.S. customer, the merchandise was not sold through inventory. Rather, the custom-ordered merchandise was warehoused only to accommodate specific delivery needs stipulated by this customer.

Purchase price was based on the packed f.o.b. (foreign port), f.o.b. (post-clearing at U.S. port), or ex-warehouse price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign "inland freight, Japanese brokerage fees, ocean freight, marine insurance, and customs duties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based on the packed delivered (customer's warehouse) price to unrelated and related purchasers, with adjustments, where applicable, for inland freight and insurance, differences in merchandise, warranty expenses, warehousing expenses, and differences in the cost of

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packing and credit. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of .95 percent exists for TDK Corporation during the period December 1, 1987 through November 30, 1988.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 353.38(e) of the Commerce regulations (54 FR 12785; March 28, 1989) (to be codified at 19 CFR 353.38(e)). The Department will publish the final results of the administrative review including the results of its analysis of any such written comments or oral argument.

Representatives of interested parties may request disclosure of proprietary information under administrative protective order within 10 days of the date that the interested party becomes a party to the proceeding but in no event later than the date the case briefs are due.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for TDK. For shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to each of those firms. For any future entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1988 and who is unrelated to any reviewed firm, a cash deposit of .95 percent shall be required. These deposit requirements are effective for all shipments of Japanese cellular mobile telephones and subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce regulations.

Dated: November 20, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-27815 Filed 11-27-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a public Fishermen's Forum on December 6, 1989, at 1:30 p.m., at the Ilikai Hotel, Hilo Suite, 1777 Ala Moana Boulevard, Honolulu, HI.

The Forum will provide an opportunity for fishermen to directly discuss with Council members issues of mutual interest including: (1) Ultra-sonic tracking of large pelagic fish; (2) a National Seafood Inspection program for vessels; (3) the U.S. Customs interpretative rule on transshipment and transportation of tuna caught outside the U.S. Exclusive Economic Zone; (4) intreractions between local longliners and small boat fishermen; (5) problems in data reporting; and (6) other items of mutual interest.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: November 20, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-27756 Filed 11-27-89; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold its 46th Scientific and Statistical Committee (SSC) public meeting on December 4-5, 1989, at 9 a.m., at the Ilikai Hotel, Hilo and Kona Suites, 1777 Ala Moana Boulevard, Honolulu, HI.

The SSC will review the status of programmatic projects in support of fishery management plans (FMPs) for bottomfish, crustaceans, precious corals, and pelagic species. The Committee also will review reports of the Plan Monitoring Team for each FMP and formulate recommendations for the Council. In particular, the SSC will: (1) Review results of the Council FMP Monitoring and Assessment Workshop; (2) review the Planning Team reports on overfishing and thresholds for all FMPs; (3) review the Limited Entry Program for the Northwestern Hawaiian Islands; (4) discuss amendments and the inclusion of tuna management in the Magnuson Fishery Conservation and Management Act; (5) discuss the current status of drift gillnet fishing; and (6) any other SSC business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: November 20, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-27757 Filed 11-27-89; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: The Western Pacific Fishery Management Council and its Standing Committees will hold public meetings on December 5-8, 1989, at the Ilikai Hotel, Hilo Suite, 1777 Ala Moana Boulevard, Honolulu, HI. The Council will begin meeting on December 7 and December 8 at 9 a.m. The Council's Standing Committees will meet on December 5 at 1 p.m., and on December 6 at 8:30 a.m.

At its 67th meeting, the Council will hear routine fisheries reports from state, territorial, and federal governments' representatives on the Council, as well as from private sector Council members from Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). The status of fishery management plans (FMPs) covering crustaceans, bottomfish and seamount groundfish, pelagics, and precious corals also will be discussed.

The Council will review and approve (as necessary) the: (1) Planning Team reports on overfishing and thresholds for all FMPs; (2) Northwestern Hawaiian Islands Limited Entry Program; (3) long-range planning; (4) FMP Monitoring and Assessment Workshop; (5) fishing rights of indigenous peoples/limited entry projects for American Samoa, Guam, and the CNMI; (6) enforcement resources and projects; (7) status of drift gillnet fishing and Magnuson Fishery Conservation and Management Act amendments; (8) general administrative matters including the Council's Statement of Organization, Practices, and Procedures (SOPP), election of officers, Standing Committee assignments; and (9) any other Council business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: November 20, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-27758 Filed 11-27-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Polish People's Republic

November 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 433 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49584, published on December 8, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 1989.

Commissioner of Customs, *Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on November 21, 1989, the directive of December 2, 1988 is amended further to increase to 8,600 dozen [1] the current limit for wool textile products in Category 433, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the Polish People's Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-27829 Filed 11-27-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 90-1-88JD]

1988 Jukebox Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of no controversy; notice of full distribution.

SUMMARY: The Copyright Royalty Tribunal announces that no controversies exist concerning the distribution of the 1988 jukebox copyright royalties and orders a full distribution of the 1988 jukebox copyright royalty fund.

DATE: Distribution of the 1988 jukebox copyright royalty fund shall take place on November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robrt Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION: 17 U.S.C. 116(c)(3) authorizes the Copyright Royalty Tribunal (Tribunal) to distribute annually royalty fees paid by jukebox operators to certain copyright owners and performing rights societies.

In this proceeding, the Tribunal takes up the distribution of royalty fees deposited by jukebox operators for the calendar year 1988. During the month of January, 1989, five parties filed timely claims: Asociacion de Compositores y Editores de Musica Latinoamericana (ACEMLA), the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Italian Book Corporation (IBC) and SESAC, Inc. (SESAC).

On April 24, 1989, ACEMLA informed the Tribunal that it had reached a settlement with ASCAP and BMI concerning, among other things, its claim to the 1988 jukebox copyright royalty fund, and it was therefore withdrawing its claim.

On October 2, 1989, in accordance with 17 U.S.C. 116(c)(3), the Tribunal published in the **Federal Register** a notice requesting all claimants to comment by November 1, 1989 whether any controversies existed concerning the distribution of the 1988 jukebox fund. 54 FR 40473. The comment period was extended at the request of the claimants to November 22, 1989. Order, dated November 1, 1989.

On November 6, 1989, IBC informed the Tribunal that it had reached a settlement with ASCAP, BMI and SESAC concerning its claim to the 1988 jukebox copyright royalty fund, and it was therefore withdrawing its claim.

On Nomvember 20, 1989, ASCAP, BMI and SESAC filed a joint comment with the Tribunal, informing the Tribunal that they had reached a voluntary agreement and there existed no more controversies concerning the distribution of the 1988 jukebox fund. In the same filing, the three performing rights societies made a motion for an immediate and complete distribution of the royalties in the 1988 jukebox fund.

On the basis of the filed comments of the claimants, the Tribunal concludes

that there exists no controversy concerning the distribution of the 1988 jukebox copyright royalty fund, and orders that a full distribution of the fund shall take place on November 30, 1989.

Dated: November 21, 1989.

Mario F. Aguero,

Acting Chairman.

[FR Doc. 89-27754 Filed 11-27-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 247, Transportation; DFSC Form 1890; and OMB Control Number 0704-0245.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: .94038 hours.

Frequency of Response: On occasion.

Number of Respondents: 33,250.

Annual Burden Hours: 65,074.

Annual Responses: 69,200.

Needs and Uses: This request concerns information collection requirements needed to support contracting for transportation and related services in the DoD FAR Supplement and the Service Supplements attached hereto.

Affected Public: Businesses of other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Dest Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: November 21, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27842 Filed 11-17-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Recalculated Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of recalculated mental health per diem rates.

SUMMARY: This notice provides for the recalculation and updating of hospital specific per diem rates for high volume providers and regional per diem rates for low volume providers; the revised cap per diem for high volume providers; and the beneficiary per diem cost-share amount for low volume providers to be used for FY 1990 under the CHAMPUS Mental Health Per Diem Payment System.

EFFECTIVE DATE: The rates contained in this notice are effective for services occurring on or after October 1, 1989.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this final rule, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Program Development, OCHAMPUS, telephone (303) 361-3572

To obtain copies of this document, see the "ADDRESS" section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on pages 34285 through 34294 on September 6, 1988, set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. Included in this final rule were provisions for updating reimbursement rates for each fiscal year. As stated in the final rule, hospital-specific per diems and the regional per diems calculated for the base period (FY 88) shall be in effect for federal fiscal year 1989 with no additional update for fiscal year 1989. For subsequent federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. Since January 1, 1989, the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) has determined that more complete and accurate data is available for establishing per diem rates under this system than was originally used. The data base that was originally used was the same data base which was used to establish CHAMPUS DRGs for the payment of inpatient services of acute medical hospitals. The data was found to be acceptable for establishing DRGs. However, the data used to calculate the mental health per diem rates was found to contain errors which were specifically caused by improper accumulation of days and failure to include all allowed charges. Based on this determination and the fact that several psychiatric hospitals have inquired as to the validity of the originally established per diem rates, OCHAMPUS has decided to recalculate all per diem rates under this system. This means recalculating both hospital-specific per diem rates for high volume hospitals and units and regional per diem rates for low volume hospitals and units. It also means recalculating the cap per diem amount for high volume hospitals and units and the beneficiary cost-share per diem amount for low volume hospitals and units. The recalculated rates have been recalculated using the original base period of July 1, 1987, through May 31, 1988. These rates have also been updated using the Medicare market basket update factor of 5.5 percent for FY 90. The recalculated and updated rates are effective for dates of service beginning on or after October 1, 1989. OCHAMPUS will notify hospitals and units with hospital-specific rates of their recalculated and updated rates by overnight mail. Recalculated and updated regional rates are contained in this notice.

Hospitals will have 60 days from the date of this notice to request an administrative review of their recalculated per diem rates. Up to an additional 60 days will be allowed to provide sufficient opportunity for a hospital to provide evidence in support of their position. As was stated in the original rule, any hospital or unit which believes the OCHAMPUS calculated per diem rate differs by more than five dollars from that calculated by the hospital or unit may apply to the Director of OCHAMPUS or designee for a recalculation. Such requests can be submitted directly to the address provided above. The burden of proof shall be on the hospital. The payment rate determined by an administrative review will be retroactive to October 1, 1989.

Any required reduction resulting from the recalculation of the per diem rates will not be retroactive. In addition, all administrative reviews of individual hospital rates completed prior to October 1, 1989, will be honored. This means, for these hospitals, recalculated rates established during the previous administrative review will be retained and updated for FY 90 using the Medicare update factor mentioned above.

Based on the recalculations, the cap limit for high volume hospitals and units has been lowered to $614 per day. This cap has been established with the 5.5 percent increase referenced above. A few hospitals were underpaid based on the difference between the originally calculated per diems and the recalculated per diems. For these providers, CHAMPUS will retroactively make payment adjustments back to January 1, 1989. No separate action on the part of these providers is required.

For hospitals wanting more detailed information on the methodology used to recalculate the per diem rates, the Office of Civilian Health and Medical Program of the Uniformed Services will provide the information upon written request.

Dated: November 22, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

[Less than 25 CHAMPUS discharges in a year]

United States Census Region	Rate [1]
Northeast:	
New England	$416
Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut	
Mid-Atlantic	$388
New York, New Jersey, Pennsylvania	
Midwest:	
East North Central	$345
Ohio, Indiana, Illinois, Michigan, Wisconsin	
West North Central	$326
Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas	
South:	
South Atlantic	$411
Delaware, Maryland, D.C., Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida	
East South Central	$446
Kentucky, Tennessee, Alabama, Mississippi	
West South Central	$374
Arkansas, Louisiana, Texas, Oklahoma	
West:	
Mountain	$373
Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada	
Pacific	$441
Washington, Oregon, California, Alaska, Hawaii	

[1] The wage portion of the rate, subject to the area wage adjustment, is 73.84%.

Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $109 per day or 25% of the hospital billed charges effective for services rendered on or after October 1, 1989.

[FR Doc. 89-27816 Filed 11-27-89; 8:45 am]

BILLING CODE 3810-01-M

Meetings; Defense Advisory Committee on Women in the Services

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the resolutions made by the committee at the 1989 Fall Conference; review the Subcommittee Issue Agenda, discuss issues relevant to women in the Services, and complete any unfinished business for 1989. All meeting sessions will be open to the public.

DATE: December 11, 1989, 9:30 a.m.-4 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washinngton, DC 20301-4000; telephone (202) 697-2122.

Dated: November 20, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27843 Filed 11-27-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

U.S. Navy Catchment Area Management Demonstration

SUMMARY: The Assistant Secretary of Defense (Health Affairs) has delegated the authority to the Department of the Navy to conduct a Catchment Area Management demonstration project at Naval Hospital, Charleston, South Carolina, beginning 1 January, 1990. Under the provisions of chapter 55, title 10, section 1092, the demonstration project will test the feasibility of giving the commanding officer both the authority and responsibility for all health care delivery within the catchment area. By influencing the distribution of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and direct care costs within the Operations and Maintenance, Navy (O&M,N) funds budgeted for the catchment area, it is anticipated that the commanding officer can enhance both the quality and quantity of healthcare delivery within the catchment area, while containing costs. The project will demonstrate that the patterns of beneficiary healthcare use within a Navy MTF catchment area can be modified to reduce the total cost of healthcare below levels that would have otherwise resulted. This will be accomplished by giving the MTF commander authority to provide for alternate means of healthcare delivery, using portions of the catchment area's budgeted CHAMPUS, as well as direct care funds. An independent evaluation of this project will be conducted by the Rand Corporation, who will determine the degree to which healthcare services at the demonstration site are being provided in a manner which meets the stated objectives of the project. The objectives of the demonstration are to (1) contain the rate of growth of government health care expenditures, (2) improve accessibility to cost-effective healthcare services, (3) improve beneficiary and provider satisfaction with availability and accessibility of health care services, (4) maintain the quality of care provided to the CHAMPUS beneficiary population, and (5) ensure meaningful caseload and enhance the practice environment of active duty providers.

EFFECTIVE DATE: Implementation date of the demonstration project is 1 January 1990.

FOR FURTHER INFORMATION CONTACT: CAPT Taylor I. Cook, Project Officer, CAMS Project Office, NAVHOSP Charleston, SC 29408–6900, telephone (803) 743–1754.

SUPPLEMENTARY INFORMATION:

I. Background

Until recently, there was no mechanism to convert innovations in CHAMPUS healthcare delivery into increased resources in the MTF. In FY 88, CHAMPUS funding was allocated to the individual Services. Each Service is now responsible for the total CHAMPUS bill for care provided for all Services' beneficiaries within specific catchment areas, as well as to its own beneficiaries outside catchment areas. In an attempt to evaluate the concept that the services can effectively manage these funds and provide necessary medical care within the projected CHAMPUS and direct care budgets, Congress directed in the FY 88 Defense Authorization Act that each Service conduct a demonstration of catchment area management in at least one area. During the demonstration all normal CHAMPUS requirements apply except those that are specifically identified herein as subject to deviation.

II. What the Demonstration Project Is Designed To Test

Catchment Area Management is based on the premise that the local MTF commander is responsible for all medical care provided to the eligible DoD beneficiary population within a radius of approximately 40 miles to the MTF. To fulfill that responsibility, the commander will control the funds customarily allocated to operate the MTF, plus have discretion in use of the funds projected to be spent for civilian care under CHAMPUS. At the same time, he will be allowed increased flexibility in dealing with regulatory restrictions to enhance his ability to select the most cost effective options in delivering care to the beneficiary population. The demonstration will test whether, by increasing local participation in the control and distribution of the CHAMPUS and direct care dollars, the MTF commander can enhance the level of services and maintain quality, while not exceeding the total projected healthcare costs for the catchment area in the absence of this demonstration.

III. Key Features

The Navy CAM Demonstration Project within the catchment area of the Naval Hospital, Charleston, South Carolina will be structured on increased utilization of the clinical care capacity of the Naval Hospital and the Charleston Air Force Base Clinic, in combination with a military managed preferred provider network. This combination is designed to provide a managed healthcare system for all beneficiaries within the demonstration project site who voluntarily enroll or participate. Enhanced MTF care capability will be accomplished through personnel acquisitions using Civil Service, VA–DoD resource sharing, service contracting, and CHAMPUS partnership agreements. The mix of services provided will be determined through cost benefit analysis and consideration of graduate medical education and contingency requirements. The mix and size of the preferred provider network will be based on residual care requirements after increased utilization of the MTF has been factored into the total catchment area demand.

The project will be expected to reduce total O&M,N expenditures in the Charleston Catchment Area through several processes. Cost benefit analyses have shown that, in most cases, the increased variable and semivariable costs incurred by the MTF in partnership agreements still allow for significant savings over the cost of similar services provided under the existing CHAMPUS system. In those cases where care requirements exceed the capacity of the MTF, the preferred provider network will lower overall costs of care received outside the MTF relative to existing CHAMPUS. This will occur through the process of discounts on per unit cost, utilization management using pre-authorization for high volume, high cost procedures, and case management and discharge planning. Since beneficiary enrollment and participation is voluntary, the magnitude of cost containment of this system is a function of the percent of the beneficiary population that enrolls and uses the system as an alternative to existing CHAMPUS. The system will market two care options (CAMCHAS and CHAMCHAS PRIME) which offer different incentives and vary in the degree of freedom of the consumer to use the existing CHAMPUS system. The central management element for both will be the healthcare finder system. This will be a centralized appointment system based on the Composite Healthcare System Patient Appointment and Scheduling Module. It will provide appointments first to the MTFs and then to the network providers, if appointments are not available in a prescribed period of time at the MTF. The "CAMCHAS" option will appeal to those consumers who may desire to use existing CHAMPUS but will be attracted because they can use the healthcare finder and participating physicians whose charges are below CHAMPUS prevailing rates. The "CAMCHAS PRIME" option will be a voluntary enrollment plan. As participants in a program designed to monitor utilization and provide cost-effective care, the enrollees will be required to use the healthcare finder system and participating physicians. Without the ability currently to mandate enrollment, the "CAMCHAS PRIME" program will offer incentives to voluntary enrollment—the individual and family deductible will be reduced by 50 percent and non-professional outpatient fees and all professional fee copayments will be reduced from 20 percent to 15 percent for active duty beneficiaries and 25 percent to 20 percent for retirees and their beneficiaries. Enrollee copayments for inpatient hospitalization will remain unchanged. Enrollees must go through healthcare finders who will ascertain the availability of MTF care prior to authorizing care with network providers. Requirements for non-availability statements will remain unchanged. Enrollees who do not use healthcare finders to obtain outpatient healthcare locally will pay the usual CHAMPUS rate, plus a penalty of an additional 5 percent in CHAMPUS copayments for outpatient services. For example, copayments for dependents of active duty enrollees would be increased from 20 percent to 25 percent of CHAMPUS allowable and the government share would decrease from 80 percent to 75 percent for outpatient care not obtained through healthcare finders.

The healthcare finder system will initiate utilization management by establishing the initial primary care assessments by internists, family practitioners, pediatricians, or obstetricians/gynecologists. It will allow for generic pre-authorization of follow up appointments. All subsequent extension of visit requirements, specialty consultations, or hospital admissions will be required to come through the healthcare finder system for appointment and review. Hospitalization and specialty review will be performed primarily by department heads at the naval hospital. This will be done on the basis of availability of care and facilitated by the use of availability templates in the computer system.

Enrollment into the managed care system will be coordinated with provider participation to assure acceptable access to care. Because enrollment is voluntary, total enrollment levels will be subject to the overall effectiveness of the managed care marketing effort. Disenrollment will be allowed without cause after a year's participation or during the first year through a formal grievance process. Disenrollment will also occur when families move out of the catchment area or members lose eligibility. For care provided to beneficiaries outside of the project catchment area, standard CHAMPUS reimbursement and out of pocket charges will apply. Separate fiscal intermediary procedures will identify enrollee claims. Claims processing will be performed by the current CHAMPUS fiscal intermediary.

The demonstration project alters the normally applicable cost-sharing requirements in the CHAMPUS regulation, DoD 6010.8–R, Chapter 4, Section F. In addition to reduced cost share requirements, additional discounts available from the preferred providers will further reduce the actual beneficiary cost. All network providers will accept the discounted CHAMPUS determined allowable charge as payment in full, so that the beneficiary's financial responsibility will be limited to copayment.

The Navy reserves the right during the course of this demonstration project to implement additional changes which will improve our ability to meet overall project objectives. Where necessary, these changes will be published in the **Federal Register**.

The Department of the Navy anticipates that the Catchment Area Management Demonstration will provide enhanced levels of service at discounted rates. This will result in more appropriate care being delivered with no increases in the overall direct care and CHAMPUS budgets. Overall savings depend upon the total number of beneficiaries who enroll in the plan and the number of participating preferred providers.

V. Duration

The legislative authority for the CAM demonstration became effective 1 October 1987. Actual implementation will begin on 1 January 1990, and will continue for at least two years from that date.

Dated: November 21, 1989.

Sandra M. Kay,

Department of the Navy, Alternative Federal Register Liaison Officer.

[FR Doc. 89–27805 Filed 11–27–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet on December 11–12, 1989 at 4401 Ford Avenue, Alexandria, Virginia. This meeting has been rescheduled for December 18, 1989 because of operational necessity. In accordance with 5 U.S.C. section 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: November 21, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–27804 Filed 11–27–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 28, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, pubishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: November 21, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Application for Basic Grant under Library Services for Indian Tribes Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 200.
Burden Hours: 400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form is needed to enable Indian Tribes and Hawaiian Natives to apply for Basis Project Grants as amended. The Department uses the information to determine compliance with the Act and to make grant awards.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Field Test of the The Schools and Staffing Survey.
Frequency: Non-recurring.
Affected Public: Individuals or households; State or local governments; Businesses or other for profit; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 2763.
Burden Hours: 4405.
Recordkeeping Burden:

Recordkeepers: 0.
Burden Hours: 0.
Abstract: A field test will be conducted to determine teacher demands and shortage, school conditions, and staffing. The Department will make decisions impacting the final data collection methodology and survey instruments based on the result of this field test.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Performance Report for Direct Grants.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 200.
Burden Hours: 1600.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This report is used by grantees that have participated in direct grant programs administered by the Office of Vocational and Adult Education. The Department uses the information collected to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Application for State Educational Agency Grants Under the Desegregation of Public Education Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 53.
Burden Hours: 1113.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This application will be used by State educational agencies to apply for grants under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

[FR Doc. 89-27771 Filed 11-27-89; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: Department of Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES: December 8–9, 1989.

TIME: December 8: 8 a.m.–12 p.m., open; 12 p.m.–2 p.m., closed; 2–Adjournment, open. December 9: 8:30 a.m.–3:30 p.m., open.

ADDRESS: Four Seasons Hotel, 98 San Jacinto, Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washington, DC, 20005–4013, Telephone: (202) 357–0738.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will meet in Austin, Texas on December 8, and 9, 1989. On December 8, the Board will meet from 8 a.m. until completion of business and from 8:30 a.m. to 3:30 p.m. on December 9, 1989.

The proposed agenda of the open portion of the meeting on December 8, 1989 includes meetings of the subcommittees on reading, writing, analysis and dissemination, the Nominations Committee and the Executive Committee. There will also be discussion on alternatives to multiple-choice testing practices, a progress report on goal setting, and review of a "White Paper" on the future of NAEP. On December 9, 1989 the open portion of the meeting will be reports from the subcommittee meetings.

On December 8, 1989 from 12 p.m. until 2 p.m., this portion of the meeting will be closed to the public. The closed portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C. 552b (c). During the closed portion of the meeting, there will be review of a grantee's draft trend report prior to its formal release by the Department. The draft report is still undergoing technical review and analysis and there is a significant possibility that the data may be incorrect or incomplete. The premature disclosure of this information would be likely to significantly frustrate implementation of proposed agency action. Such matters are protected by 5 U.S.C. 552b(c)(9)(B).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting. Records are kept of all Board proceedings, and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washington, DC, 20005–4013 from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-27879 Filed 11-27-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Regional Hearings To Solicit Views From Public Officials and Individuals With Expertise and Interest in Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meeting to provide comments on the development of a National Energy Strategy.

SUMMARY: These hearings will be the seventh through eleventh hearings in a series being conducted through the country by the Department of Energy to solicit comments from interested parties on a range of energy topics. Oral testimony at these hearings will be presented by invitation only. Written testimony can be submitted by any interested party at either the hearing site or directly to the Deparment of Energy, Office of Policy, Planning and Analysis, c/o Mr. Scott Neitzel, 1000 Independence Avenue, SW., Room 7B–143, Washington, DC 20585. Please reference specific hearing(s) and topic(s).

These hearings are designed to solicit information, data, and analysis related to the development of national energy policy and objectives, strategies for achieving them, and the role that the Federal Government should play in meeting national energy, economic, and environmental objectives.

The Department is interested in obtaining specific suggestions as to options and obstacles to efficient production and use of energy. Written comments may address general policies, regulations, economic incentives or disincentives, research and development needs, energy science, technology transfer, education, technical assistance, role of State and Local Government, the role of industry in energy policy development and implementation, or any other issues that would enhance the national dialogue on national energy strategy.

Dates, Locations, and Topics of the Hearings are as Follows: Decemer 4, 1989—Houston, TX; "Our Domestic Energy Resources Base" (fossil fuel and renewable energy supplies; technological and regulatory factors affecting supply). The hearing will be held between 9 a.m. and 3 p.m. at the University of Houston, Conrad N. Hilton College of Hotel and Restaurant Management, Hilton College Complex—South Wing, South Ballroom, Second Floor, Houston, Texas.

December 8, 1989—Omaha, NE; "Agriculture as Consumer and Producer of Energy (use of energy in crop production and processing; energy crops). The hearing will be held between 9 a.m. and 3 p.m. at The Omaha/Douglas Civic Center, Legislative Chamber, Floor LC, Room 4, 1819 Farnam Street, Omaha, Nebraska.

December 11, 1989—Detroit, MI; "Transportation and Energy" (fuel efficiency, advanced technology, and potential for systems changes). The hearing will be held between 9 a.m. and 3 p.m. at the Cobo Conference and Exhibition Center, Room W1–55, Street Level, 1 Washington Boulevard, Detroit, Michigan.

December 13, 1989—Washington, DC; "Energy, Defense, and National Security Interests" (role of stockpiles; role of foreign suppliers, globally and in the Western Hemisphere; international relations; energy interdependence). The specific location and time for this hearing will be announced in the near future.

December 14, 1989—Atlanta, GA; "Energy and the Environment" (global climate change, reconciling energy and environmental objectives). The specific location and time for this hearing will be announced in the near future.

All testimony submitted in conjunction with these hearings will be entered into the National Energy Strategy development record and made available to the public.

FOR FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, U.S. Department of Energy, 1000 Independence Avenue, SW., PE–01, Washington, DC 20585, (202) 586–4767.

Linda G. Stuntz,
Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 89-27901 Filed 11-24-89; 8:45 am]
BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, December 5, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 2 p.m. The agenda for the meeting is as follows:

1. Opening remarks
2. Approval of Record Note of the IAB meeting of February 1989
3. Interval between Emergency Tests
4. Training program for Industry Supply Advisory Group Personnel
5. Other Training Operations
6. IAB Working Groups
7. Future Work Program
8. Date of Next IAB Meeting

II. A meeting of the IAB will be held Wednesday, December 6, 1989, at the offices of the IEA, at the aforesaid address beginning at 9:00 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Summary Record of the 62nd Meeting
3. 1990 Program of Work
4. IEA Emergency Response Systems
   —Emergency Management Manual and Emergency Sharing System Operations Manual, Proposal to Establish Working Group
   —Design of Coordinated Emergency Response Measures Test 2, Proposal to Establish Working Group
   —Training Program for ISAG Personnel
   —Other Training Operations
   —Membership of National Emergency Sharing Organizations (NESO) and ISAG
5. Emergency Response Programs of IEA Member Countries
   —Test of IEA Emergency Allocation Procedures by Canadian NESO
   —Review of Member Countries' Emergency Response Programs
   —Review of the United States
   —Review of Denmark
   —Calendar for Reviews
   —Oil Spills and Related Issues in Emergency Response Reviews
   —Summary of Energy Emergency Legislation of IEA Member Countries
   —Member Countries' Legislation, Administrative Procedures and Policy Attitudes Concerning the Use of Stocks in Supply Disruptions
6. Workshop on the Practical Aspects of Stockholding and Stockdraw
7. Emergency Reserve Situation of IEA Countries
   —IEA Country Emergency Reserves—Calculation Method Chosen, Emergency Reserve and Net Import Situations of IEA Member Countries
8. Emergency Data Systems
   —Proposal for Simplification of Questionnaire C (QC) and Improvement of Procedures to Provide Basic QuC Data
   —Revision of Questionnaires A and B Reporting Instructions, Proposal to Establish Working Group
   —Base Period Final Consumption 3Q88–2Q89
   —Monthly Oil Statistics (MOS) to September 1989; MOS to October 1989; QuC Data to November 1989
   —Availability of Oil Trade Statistics for Individual EEC Countries Post-1992
9. Quarterly Oil Forecast 4Q89/3Q90
10. Normal Domestic Production
11. IAB Issues
12. Any Other Business
   —End-November Monthly Oil Report

13. Date of Next Meeting

III. A meeting of the IAB will be held on Thursday, December 7, 1989, at 9:00 a.m., at the aforesaid address. This meeting is being held to allow members of the IAB to participate in an IAB working group meeting on the IEA's Questionnaire A/Questionnaire B (QA/QB) reporting instructions to be held at that time. The agenda for the meeting is as follows:

1. Opening Remarks
2. Reporting Forward Month Trade
3. No Present Destination Oil
4. Other Changes in Company Operating and Trading Practices
5. Other Issues Relating to QA/QB
6. Next Meeting

IV. A meeting of the IAB will be held on Thursday, December 7, 1989, at 2:00 p.m., at the aforesaid address. The purpose of the meeting is to allow members of the IAB to participate in an IAB working group meeting on the Emergency Operations Manual to be held at that time. The agenda for the meeting is as follows:

1. Opening Remarks
2. Emergency Sharing System Operations Manual
3. Next Meeting

As provided in section 252(c)(2)(A)(ii) of the Energy Policy and Conservation Act, the meetings are open only to representatives of members of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, November 22, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89-27860 Filed 11-27-89; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/GP(CA)-1, for the transfer from Canada to Egypt of 60 kilograms of uranium, enriched to 1.38 percent in the isotope uranium-235, for fabrication of CANDU fuel for subsequent irradiation testing in Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 21, 1989.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-27858 Filed 11-27-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9423-001]

Summit Energy Storage, Inc.; Notice of Intent To Prepare an Environmental Impact Statement, and Notice of Public Scoping Meetings

November 20, 1989.

The staff of the Federal Energy Regulatory Commission (Commission) has determined that issuance of a license for the construction and operation of the proposed Summit Pumped Storage Hydroelectric Project, FERC Project No. 9423-001, in the city of Norton, Upper Tuscarawas subbasin, Summit County, Ohio, would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed hydroelectric project in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative impacts of the proposed project, reasonable alternatives, and will also include an econmic, and financial and engineering analysis.

A draft EIS will be issued in May 1990, and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in the final EIS. The staff's conclusions and recommendations will then be presented to the Commissioner's for their consideration in reaching a final decision on whether to issue a license for the project.

Scoping Meetings

On Wednesday, December 20, 1989, the staff will conduct a scoping session oriented toward natural resource agencies and other interested parties in Norton, Ohio, from 9:00 a.m. to 12:00 noon, and a public scoping session from 7 p.m. to 10 p.m. The morning scoping session will be held at the Administration and Police Station Building, 4060 Columbia Woods Drive, Norton, Ohio, and the evening scoping session at the Norton High School, 4128 Cleveland/Massillon Road, Norton, Ohio.

All interested individuals, organizations, and agencies are invited to attend and to assist the staff in identifying the scope of environmental issues that should be analyzed in the upcoming EIS.

Objectives

At the scoping meetings the staff will: (1) summarize the environmental issues tentatively identified for analysis in the planned EIS, (2) encourage statements from the public and experts on the issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views; and (3) solicit from the meeting participants all available information, especially quantified data, on the resources at issue.

Procedures

The meetings will be recorded by a stenographer and thereby become a part of the formal record of the Commission proceeding on the Summit Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Organizations, agencies, and individuals with environmental expertise and concerns are encouraged to attend the morning session to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until January 22, 1990. All correspondence should clearly show the following caption on the first page: Summit Project, Ohio, Project No. P-9423-001.

A preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties.

For further information please contact Lee Emery at (202) 357-0779.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27745 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-20-001 TQ90-2-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff and Request for Amendment

November 20, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 9, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective December 1, 1989

Alternate Thirty-seventh Revised Sheet No. 201
Alternate Thirty-eighth Revised Sheet No. 203
Alternate Thirty-fourth Revised Sheet No. 204
Alternate Thirty-first Revised Sheet No. 205

Algonquin states that it is filing the above listed tariff sheets in conformance with its PGA, section 17 of the General Terms and Conditions as found in Algonquin's compliance filing of October 27, 1989 in Docket No. RP88-41-000, pursuant to the Commission's Order Approving Contested Offer Of Settlement Subject To Conditions issued April 14, 1989 as modified and clarified by the Commission's Order Granting In Part And Denying In Part Rehearing, issued October 6, 1989. The instant filing reflects the roll in of costs associated with Algonquin's purchases to supply its sales services under Rate Schedules F-1, WS-1, I-1, E-1, F-2, F-3 and F-4. Algonquin's calculations include Texas Eastern's Standby Charges under Texas Eastern's Rate Schedules CD-1 and CD-2. The inclusion of Texas Eastern's Standby charges is predicated upon the Commission granting Algonquin's request for a waiver of the Commission's regulations as necessary to permit such inclusion. Algonquin states that it made such a request on June 26, 1989 in Docket No. RP89-199-000 and on Ocotber 17, 1989 in Docket No. RP90-13-000.

Algonquin further states that on October 31, 1989 it made a Quarterly PGA filing in Docket No. TQ90-1-20-000 ("October 31 filing") in which Algonquin requested a waiver of the Commission's regulations in order to permit the October 31 filing to become effective on November 1, 1989. In the instant filing, Algonquin is requesting that the October 31 filing be treated as an out-of-cycle PGA and that the instant filing be accepted as its Quarterly PGA to become effective December 1, 1989.

Algonquin states that the revised rates for Rate Schedules F-1, WS-1, I-1, E-1, F-2, F-3 and F-4 reflect Algonquin's estimate of sales for the three (3) month period beginning December 1, 1989 and those changes in rates in the services underlying such schedules.

Algonquin States that the effect of the changes in the underlying rates is to decrease the Demand-1 and Demand-2 charges by 0.70¢ and 0.12¢ per MMBtu, respectively while the commodity charge increases by 2.46¢ per MMBtu from the rates contained in Algonquin's October 31 filing.

Algonquin notes that copies of the filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 89-27735 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-241-001]

Algonquin Gas Transmission Co.; Compliance Filing

November 20, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 15, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in Substitute Original Sheet No. 220 proposed to be effective November 1, 1989.

Algonquin states that on September 25, 1989 Algonquin filed tariff sheets ("September 25 filing") to set forth the terms and conditions of its proposed new Rate Schedule ATAP. Under Rate Schedule ATAP, Algonquin proposed to assign to third parties, on both a firm and interruptible basis, its firm transportation rights through Texas Eastern's Transportation Assignment Program ("TAP") under Rate Schedule FT-1 as approved by the Commission on August 22, 1989 and further clarified on September 28, 1989.

Algonquin further states that its September 25 filing was accepted by Commission Order Accepting Tariff Sheets Subject To Conditions issued October 31, 1989. Such Commission order accepted Algonquin's September 25 filing to be effective on November 1, 1989 (Ordering Paragraph A) subject to Algonquin filing revised tariff sheets reflecting the elimination of the flow-through of Texas Eastern's Standby charges (Ordering Paragraph B).

Algonquin maintains that in compliance with the Commission's October 31 Order (Ordering Paragraph B), it is submitting within fifteen days of the Commission's Order a revised tariff sheet, Substitute Original Sheet No. 220, reflecting the elimination of the flow-through of Texas Eastern's Standby charges. Substitute Original Sheet No. 220 is proposed to be effective on November 1, 1989.

Furthermore, Algonquin states that it is serving notice that it is accepting valid request for assignment of its FT-1 Service Rights (under Texas Eastern's TAP Program) subject to the terms and conditions of Rate Schedule ATAP. All valid requests received by Algonquin during the five (5) business day window period following this announcement shall have the same first-come, first-served priority. Such window period shall extend from November 16, 1989 through November 22, 1989. Requests for assignments under Rate Schedule ATAP related to Rate Schedule F-1 and F-4 sales conversion requests shall have priority over all other requests for assignments under Rate Schedule ATAP outside of the "first-come, first-served" queue.

Algonquin notes that copies of the filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to

protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27736 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-32-000]

Colorado Interstate Gas Co.; Filing

November 20, 1989.

Take note that on November 15, 1989, Colorado Interstate Gas Company ("CIG") submitted for filing tariff sheets reflecting a new Gas Research Institute ("GRI") charge of 1.3¢/Mcf effective January 1, 1990, pursuant to Commission Opinion No. 334 issued on October 10, 1989 in Docket No. RP89-187-000, and Sections 24 and 15, respectively, of CIG's FERC Original Volume No. 1 and Second Revised Volume No. 1-A.

CIG notes that on November 14, 1989, it filed to implement "interim settlement" rates in Docket No. RP87-30, effective for the limited period October 1, 1989 through December 31, 1989. CIG's acceptance of the settlement and continuation of the settlement rates, however, is contingent upon satisfactory clarification of the Commission's November 8, 1989 order approving the settlement, and upon that order, as clarified, becoming final. Otherwise, CIG's rates revert to the pre-settlement level January 1, 1990. Because CIG is uncertain when and whether the Docket No. RP87-30 settlement will be finally approved, it states that this GRI filing reflects rates without the Docket No. RP87-30 settlement implemented. Should the Commission grant the requested clarification of its November 8, 1989 order in Docket No. RP87-30 and the order becomes final, then CIG states that it will, at that time, file to conform the tariff sheets herein to be consistent with such Commission action.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27737 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS87-47-001 et al.]

Geodyne Production Co., et al. (Geodyne Production Co.), et al.; Applications for Small Producer Certificates [1]

November 20, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS87-47-001	Oct. 23, 1989 [1]	Geodyne Production Company, et al. (Geodyne Production Company), 320 South Boston Avenue, The Mezzanine, Tulsa, OK 74103.
CS84-109-002	Nov. 7, 1989 [2]	Plains Resources Inc., PRI Producing Inc., Hiawatha Oil Company, Inc., PRI Property Management, Inc., PRI Royalty Holdings Inc., J.P. Collins and Janewill Petroleum Inc. (Plains Resources Inc. PRI Producing Inc., Hiawatha Oil Company, Inc., PRI Property Management, Inc., and PRI Royalty Holdings Inc.), Cullen Center, 1600 Smith Street, Houston, TX 77002.
CS90-3-000	Oct. 19, 1989	Axem Energy Co., as record title holder for Blackbird Co., 7800 East Union Avenue, Suite 1100, Denver, CO 80237.
CS90-4-000	Oct. 23, 1989	Union Ridge Oil & Gas Corporation, P.O. Box 7056, Ann Arbor, MI 48107.
CS90-5-000	Nov. 9, 1989	Hall-Houston Oil Company, 700 Louisiana, Suite 2610, Houston, TX 77002.

[1] By letter dated October 6, 1989, Applicant advised that the small producer certificate in Docket No. CS87-47-000 was intended to cover PaineWebber/Geodyne Energy Income Production Partnerships I-A, I-B, I-C, I-D, I-E and I-F as co-holders of the small producer certificate. Applicant requests that PW/Geodyne Production Partnerships II-A, II-B, II-C, II-D, II-E, II-F, II-G and II-H also be covered as coholders of the small producer certificate.

[2] By letter dated November 2, 1989, Applicant requests that the small producer certificate in Docket No. CS84-109-001 be amended to include J.P. Collins and Janewill Petroleum Inc.

[Docket No. CP89-2198-000]

Great Lakes Gas Transmission Co.; Technical Conference

November 20, 1989.

On September 29, 1989, Great Lakes Gas Transmission Company (Great Lakes) filed an application in the above-captioned docket, pursuant to section 7(c) of the Natural Gas Act, for a blanket certificate of public convenience and necessity authorizing open access, self-implementing transportation of natural gas and pre-granted authorization to abandon such self-implementing transportation service, in accordance with the provisions of § 284.221(d) of the Commission's regulations, 18 CFR 284.221(d).

Notice of Great Lakes' application was published in the **Federal Register** on October 13, 1989, 54 FR 42010. Fifty motions to intervene and/or protests have been filed. A number of the interventions and/or protests raise issues concerning the tariff provisions for open access transportation filed by Great Lakes and propose changes to such tariff provisions. Certain of the parties have requested that a technical conference be held. On November 16, 1989, Great Lakes filed a motion recommending such a conference.

TAKE NOTICE that an informal technical conference will be held at the offices of the Commission, commencing at 11:00 a.m. on Tuesday, December 19, 1989, for the purpose of discussing possible resolution of the issues which have been raised by the parties concerning the tariff provisions filed by Great Lakes in this proceeding. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27744 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-27-001]

North Penn Gas Co.; Tariff Filing

November 20, 1989.

Take notice that on November 8, 1989, North Penn Gas Company (North Penn) filed revised Ninety-Sixth Revised Sheet No. PGA-1 to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the tariff sheet supersedes Ninety-Fifth Revised Sheet No. PGA-1 instead of Substitute Ninety-Fifth Revised Sheet No. PGA-1 which was incorrect in North Penn's quarterly PGA filing that was made October 31, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27746 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-38-002]

Ringwood Gathering Co.; Tariff Filing

November 20, 1989.

Take notice that on November 13, 1989, Ringwood Gathering Company (Ringwood) filed Substitute Fifty-First Revised Sheet Annual PGA-1 to FERC Gas Tariff, Original Volume No. 1.

Ringwood also states that it has removed the carrying charges on the costs of gas in excess of the 103 percent level.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that already are parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27738 Filed 11-27-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and section 101-6.1015 of the Final Rule on Advisory Committee Management, (41 CFR 101-6.1015) and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Health and Environmental Research Advisory Committee has been renewed for a two-year period ending November 22, 1991. The Committee will provide advice to the Director, Office of Energy Research, on the Health and Environmental Research (HER) program.

The Committee presently has 19 members. The membership is balanced to include representatives of the national laboratories, the universities and the business sector. Important disciplines such as experimental biological research, ecological research, and medicine are well represented; and experience, point of view and geography are taken into account in the selection of the committee members.

The renewal of the Health and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463), the Department of Energy Organization Act (Pub. L. No. 95-91), and regulations and directives implementing those statutes.

Further information regarding this advisory committee can be obtained from Elinor C. Donnelly (202-586-3448).

Issued in Washington, DC, on November 22, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 89-27857 Filed 11-27-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-48-NG]

Kamine/Besicorp Carthage L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 21, 1989, of an application filed by Kamine/Besicorp Carthage L.P. (Applicant), for authorization to import up to 14,200 Mcf of natural gas per day, and a total of 104 Bcf of natural gas from Canada over a 20-year term. The gas would be used to fuel the Applicant's new 49.9 MW cogeneration plant to be constructed and operated in Carthage, New York. Applicant requests that the authorization commence upon the commercial operation of the facility or May 1, 1991, whichever is earlier. The gas would be transported within the U.S. through existing and proposed pipeline facilities.

The application is filed under Section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127.

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 28, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–1657;

Diane Stubbs, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–1667.

SUPPLEMENTARY INFORMATION:

Applicant is a Delaware limited partnership whose general partners are Kamine Carthage Cogen Co., Inc. (Kamine), and Beta Carthage Inc. (Beta). Kamine is an affiliate of Kamine Engineering and Mechanical Contracting Co., Inc. (KEMCO), a New Jersey corporation with its principal place of business in East Union, New Jersey. Beta is a wholly owned subsidiary of Besicorp Group, Inc. (Besicorp), a New York corporation with its principal place of business in Kingston, New York. KEMCO and Besicorp, individually and jointly, are energy project developers and have been owners and operators of natural gas cogeneration facilities since 1985. KEMCO and/or Besicorp (as affiliates) currently operate four cogeneration facilities in New York and New Jersey and have several other cogeneration facilities in various stages of planning or construction.

According to Applicant, the new cogeneration facility is expected to be completed and in commercial operation by May 1, 1991. If the facility is not operational until after May 1, 1991, the gas subject to the Agreement will be sold in Canadian markets until facility operations begin. Applicant states the gas will be used to fuel a new combined-cycle cogeneration facility to be owned by Applicant and constructed on premises leased from James River II, Inc. (JRII), an affiliate of James River Corporation of Virginia, at the JRII paper mill near Carthage, Saratoga County, New York. The plant has been certified as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). The steam will be sold to the JRII paper mill and the electricity will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk).

Applicant will purchase the gas from Renaissance Energy Ltd., (Renaissance), pursuant to a natural gas purchase agreement executed May 9, 1989, and enclosed as an exhibit with the application. The agreement states that the Applicant will pay Renaissance for gas a minimum base price of $1.45 per MMBtu U.S. This base price is adjusted each quarter to reflect the percentage change in value of an index comprised of: (1) a 50% weighting reflecting the 100% load factor rate published by Consolidated Natural Gas (CNG), (2) a 25% weighting reflecting the price of No. 2 fuel, and (3) a 25% weighting reflecting the average price of spot gas delivered to five major pipelines) compared to the value of the Index on December 1, 1988. The adjusted base price includes commodity costs, royalties, transportation charges, and costs of permits. This base price will be adjusted annually to reflect the percentage increase in the average electric unit price paid by Niagara Mohawk for electricity generated by the cogeneration facility, subject to a maximum of $2.40 per MMBtu in the first contract year. The base price and the composition of the index will be renegotiated in the month preceding the date of first delivery and prior to the expiration of the fifth and tenth contract years. If Applicant and Renaissance cannot agree on such renegotiated base price or composition of the index, either party may terminate this agreement upon proper notice.

Applicant supplemented its application with a November 6, 1989, filing that details the transportation arrangements made for the proposed import using existing facilities, lists the approximate costs of the transportation components, and includes copies of the TransCanada PipeLines (TCPL) transportation agreement and tariffs. Applicant indicates that Renaissance will deliver the natural gas through the pipeline facilities of the NOVA Corporation. The Applicant will take title to the gas in Canada and transport the gas through the facilities of TCPL to an existing interconnection with Great Lakes Gas Transmission (Great Lakes). Great Lakes will transport the Gas to ANR Pipeline Company (ANR). ANR will transport the gas to the existing interconnect with Texas Gas Pipeline Co. (Texas Gas) which will transport it to CNG. CNG will transport the gas to the Niagara Mohawk distribution system which will transport the gas to the cogeneration facility. The approximate costs of the transportation totals $1.60 per Mcf. According to Applicant, transportation is on an interruptible basis through the systems of Great Lakes, ANR, Texas Gas, and CNG.

Applicant states that all the natural gas imported under its requested authorization will be used to fuel the new cogeneration facility. Under anticipated normal operating conditions, the cogenerating facility will produce an average of about 14,200 Mcf per day. Applicant asserts that its request for authority to import up to 104 Bcf per year is necessary to meet the facility's fuel needs, allow for transportation shrinkage, and provide a reasonable margin for any unforeseen exigency.

In support of its application, Applicant states that the imported gas will provide a reliable, long-term, secure supply of competitively priced gas to the new cogeneration facility. According to the Applicant, the agreement's price provisions provide for market-responsive pricing subject to quarterly adjustments. Moreover, the Applicant states, it is not subject to a take-or-pay obligation; instead, the agreement provides for mutual quantity reduction options in the event of specified degrees of reduced performance by either party. At the same time, Applicant avers, its electric purchase contracts require Niagara Mohawk to purchase all generated electric power, with no curtailment or interruption provisions except for specific operational reasons. Similarly, the Applicant states, JRII has contracted to purchase all of its net steam requirement from the new cogeneration facility. With regard to security of supply, the agreement provides for the dedication of specific reserves from a portion of Renaissance's reserve base of 20 gas fields. For these reasons, the Applicant maintains that the proposed import is consistent with the public interest.

Applicant filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA)(10 USC 3801 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Applicant's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

Under section D of the DOE guidelines for compliance with the National Environmental Policy act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environmental assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove this application is unnecessary, and compliance with NEPA for the proposed action can be achieved by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the FUA, and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on this import application that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Applicant's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 21, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–27861 Filed 11–27–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89-47-NG]

Kamine/Besicorp South Glens Falls L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 21, 1989, of an application filed by Kamine/Besicorp South Glens Falls L.P. (Applicant), for authorization to import up to 14,200 Mcf of natural gas per day, and a total of 104 Bcf of natural gas from Canada over a 20-year term. The gas would be used to fuel the Applicant's new 49.9 MW cogeneration plant to be constructed and operated in South Falls, New York. Applicant requests that the authorization commence upon the commercial operation of the facility or May 1, 1991, whichever is earlier. The gas would be transported within the U.S. through existing pipeline facilities.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 28, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1657;

Diane Stubbs, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Applicant is a Delaware limited partnership whose general partners are Kamine South Glens Falls Cogen Co., Inc. (Kamine), and Beta South Glens Falls Inc. (Beta). Kamine is an affiliate of Kamine Engineering and Mechanical Contracting Co., Inc. (KEMCO), a New Jersey corporation with its principal place of business in East Union, New Jersey. Beta is a wholly owned subsidiary of Besicorp Group, Inc. (Besicorp), a New York corporation with its principal place of business in Kingston, New York. KEMCO and Besicorp, individually and jointly, are energy project developers and have been owners and operators of natural gas cogeneration facilities since 1985. KEMCO and/or Besicorp (as affiliates) currently operate four cogeneration facilities in New York and New Jersey and have several other cogeneration facilities in various stages of planning or construction.

According to Applicant, the new cogeneration facility is expected to be completed and in commercial operation by May 1, 1991. If the facility is not operational until after May 1, 1991, the gas subject to the Agreement will be sold in Canadian markets until facility operations begin. Applicant states the gas will be used to fuel a new combined-cycle cogeneration facility to be owned by Applicant and constructed on premises leased from James River II Corporation (James River), an affiliate of James River Corporation of Virginia, at the James River paper mill near South Glens Falls, Jefferson County, New York. The plant has been certified as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). The steam will be sold to the James River paper mill and the electricity will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk).

Applicant will purchase the gas from Renaissance Energy Ltd. (Renaissance), pursuant to a natural gas purchase agreement executed May 9, 1989, and enclosed as an exhibit with the application. The agreement states that the Applicant will pay Renaissance for gas a minimum Base Price of $1.45 per MMBtu U.S. This base price is adjusted each quarter to reflect the percentage change in value of an index comprised of: (1) A 50% weighting reflecting the 100% load factor rate published by Consolidated Natural Gas (CNG), (2) a 25% weighting reflecting the price of No. 2 fuel, and (3) a 25% weighting reflecting the average price of spot gas delivered to five major pipelines compared to the value of the index on December 1, 1988. The adjusted base price includes commodity costs, royalties, fuel, shrinkage, transportation charges, and costs of permits. This base price will be adjusted annually to reflect the percentage increase in the average electric unit price paid by Niagara Mohawk for electricity generated by the cogeneration facility, subject to a maximum of $2.40 per MMBtu in the first contract year. The base price and the composition of the index will be renegotiated in the month preceding the date of first delivery and prior to the expiration of the fifth and tenth contract years. If Applicant and Renaissance cannot agree on such renegotiated base price or composition of the index, either party may terminate this agreement upon proper notice.

Applicant supplemented its application with a November 6, 1989, filing that details the transportation arrangements made for the proposed import using existing facilities, lists the approximate costs of the transportation components, and includes copies of the TransCanada PipeLines (TCPL) transportation agreement and tariffs. Applicant indicates that Renaissance will deliver the natural gas through the pipeline facilities of the NOVA Corporation. The Applicant will take title to the gas in Canada and transport the gas through the facilities of TCPL to an existing interconnection with Great Lakes Gas Transmission (Great Lakes). Great Lakes will transport the gas to ANR Pipeline Company (ANR). ANR will transport the gas to the Niagara Mohawk distribution system which will transport the gas to the existing interconnect with Texas Gas Pipeline Co. (Texas Gas) which will transport it to CNG. CNG will transport the gas to the cogeneration facility. The approximate costs of the U.S. transportation components total $1.60 per Mcf. According to Applicant, transportation is on an interruptible basis through the systems of Great Lakes, ANR, Texas Gas, and CNG.

Applicant states that all the natural gas imported under its requested authorization will be used to fuel the new cogeneration facility. Under anticipated normal operating conditions, the cogenerating facility will produce an average of about 14,200 Mcf per day. Applicant asserts that its request for authority to import up to 104 Bcf per year is necessary to meet the facility's fuel needs, allow for transportation shrinkage, and provide a reasonable margin for any unforeseen exigency.

In support of its application, Applicant states that the imported gas will provide a reliable, long-term, secure supply of competitively priced gas to the new cogeneration facility. According to the Applicant, the agreement's price provisions provide for market-responsive pricing subject to quarterly adjustments. Moreover, the Applicant states, it is not subject to a take-or-pay obligation; instead, the agreement provides for mutual quantity reduction options in the even of specified degrees of reduced performance by either party.

At the same time, Applicant avers, its electric purchase contracts require Niagara Mohawk to purchase all generated electric power, with no curtailment or interruption provisions except for specific operational reasons. Similarly, the Applicant states, James River has contracted to purchase all of its net steam requirement from the new cogeneration facility. With regard to security of supply, the agreement provides for the dedication of specific reserves from a portion of Renaissance's reserve base of 20 gas fields. For these reasons, the Applicant maintains that the proposed import is consistent with the public interest.

Applicant filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (10 U.S.C. 3801 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Applicant's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

Under section D of the DOE guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environment assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove this application is unnecessary, and compliance with NEPA for the proposed action can be achieved by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the FUA, and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on this import application that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Section 590.316.

A copy of Applicant's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-6478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 21, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-27859 Filed 11-27-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-847-DR]

Major Disaster and Related Determinations; Virginia

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA-847-DR), dated November 8, 1989, and related determinations.

DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated November 8, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms, flooding, and mudslides on October 16-17, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288, as amended by PL 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Buchanan County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-27844 Filed 11-27-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Gulfway

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011141-010.

Title: Gulfway.

Parties:

Lykes Bros. Steamship Co., Inc.
Hapag Lloyd AG
Sea-Land Services, Inc.
P&O Containers (TFL) Ltd.
Deppe Linie GMBH & Co.
Gulf Container Line (GCL), BV
Nedlloyd Lijnen, BV
South Atlantic Cargo Shipping, N.V.
Euro-Gulf International, Inc.
Transportation Maritima Mexicana, S.A. de C.V. (TMM)

Synopsis: The proposed amendment would remove exclusions of certain minibridge routings from the scope of the Agreement. It would provide that all parties shall be advised of any accord reached under the Agreement and would make certain other procedural and administrative changes to the Agreement.

By Order of the Federal Maritime Commission.

Dated: November 21, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27749 Filed 11-27-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dahlonega Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 12, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Dahlonega Bancorp, Inc.*, Dahlonega, Georgia; to acquire an additional 2.1 percent of the voting shares of Mountain Bank of Georgia, Hiawassee, Georgia, for a total of 7 percent.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Woodburn State Bank, Woodburn, Oregon.

2. *Seafirst Corporation*, Seattle, Washington; to merge with Woodburn Bancorp, Woodburn, Oregon, and thereby indirectly acquire Woodburn State Bank, Woodburn, Oregon.

Board of Governors of the Federal Reserve System, November 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27786 Filed 11-27-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Jordan E. Ginsburg*, Boca Raton, Florida; to acquire 8.58 percent of the voting shares of First Commercial Bancorporation, Boca Raton, Florida, for a total of 24.90 percent and thereby indirectly acquire First Commercial Bank of Florida, formerly First Commercial Bank of Palm Beach County, Boca Raton, Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *S.N. and Mrs. Magaret A. Moffit*, Larned, Kansas; to acquire an additional 5.1 percent of the voting shares of Pawnee Bancshares, Inc., Larned, Kansas, for a total of 26.2 percent, and thereby indirectly acquire First National Bank & Trust, Larned, Kansas.

Board of Governors of the Federal Reserve System, November 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27787 Filed 11-27-89; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp., New York, NY; Proposal to Conduct Private Placements as Agent of All Types of Securities and Buy and Sell All Types of Securities on the Order of Investors as Riskless Principal

Manufacturers Hanover Corporation, New York, New York ("Manufacturers"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, Manufacturers Hanover Securities Corporation, New York, New York ("Company"), in the placement, as agent for issuers, of all types of securities (including securities that are registered under the Securities Act of 1933), and buying and selling all types of securities on the order of investors as riskless principal. Manufacturers is proposing that Company will engage in these activities on a nationwide basis.

Manufacturers is currently authorized to engage indirectly in providing securities brokerage and related services generally, and investment advisory and securities brokerage services on a combined basis to institutional customers, as well as underwrite and deal in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C 24 and 335. Manufacturers is also authorized to engage through Company in underwriting and dealing to a limited extent in municipal revenue bonds, 1-4 family mortage-backed securities, consumer-receivable related securities, and commercial paper. Additionally, Company is authorized to act as a placement agent with respect to commercial paper.

Manufacturers has applied to engage, through Company, in the placement, as agent for issuers, of all types of securities within the following limitations: (1) Company will privately place securities exclusively with "accredited investors", as defined in Rule 501(a) issued by the SEC under the 1933 Act, will make no general solicitation or general advertising for such securities, and such securities will not be purchased by the general public; (2) Company will not purchase or repurchase for its own account (other than as riskless principal) the securities being privately placed and will not inventory unsold portions of such securities; (3) except as otherwise permitted in prior Board orders, Company will execute securities transactions as principal only as a "riskless principal", *i.e.* only where there are firm offsetting orders to buy and sell, and will not act as riskless principal in any transaction where a foreign affiliate is a counterparty; (4) Manufacturers will adopt appropriate procedures, including maintenance of necessary documentary records, to ensure that any extensions of credit by it or any of its subsidiaries to issuers of securities privately placed by Company (including securities privately placed by Company in a riskless principal transaction) or to purchasers of such securities are on an arm's-length basis; (5) no bank affiliate of Company will express an opinion with respect to the advisability of the purchase of securities privately placed by Company (including securities privately placed by Company in a riskless principal transaction) unless the bank notifies the customer that Company is privately placing the security; (6) neither Manufacturers nor any of its other subsidiaries will purchase, as principal, securities that are privately placed by Company (including securities privately placed by Company in a riskless principal transaction) during the period of the placement; (7) neither Manufacturers nor any of its bank subsidiaries will purchase, as a trustee or in any other fiduciary capacity, for accounts over which they have investment discretion, securities privately placed by Company (including securities privately placed by Company in a riskless principal transaction) during the period of the placement, unless such purchase is authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

The Board has not previously determined that the proposed combination of activities is permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." Manufacturers maintains that the proposed placement and riskless principal activities are closely related to banking because banks generally provide private placement services.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater

convenience, increased competition, or gain in efficiency, that outweigh possible adverse effects, such as undue concentration or resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Manufacturers contends that permitting Company to engage in the proposed activities would enhance competition and help make Company a stronger participant in the private placement market. Manufacturers maintains that approval of its proposal would result in increased efficiencies for Manufacturers as well as increased convenience for customers, including reduced issuer costs and enhanced liquidity in the secondary market for privately placed securities.

Furthermore, states Manufacturers, any potential adverse effects or conflicts of interest that might be said to arise from the proposed activities are adequately addressed by the structural operational insulation between Company and its bank affiliates, as well as the limits on affiliate transactions imposed by sections 23A and 23B of the Federal Reserve Act, and the antitying provisions of the Bank Holding Company Act. Manufacturers argues that the risks associated with the proposed activities are no greater than the risks incurred by banks in engaging in private placement and riskless principal activities.

Manufacturers further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e).

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 18, 1989.

Board of Governors of the Federal Reserve System, November 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27785 Filed 11-27-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's current open season commenced on November 15, 1989, and will end on January 31, 1990. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1 to January 31, 1990.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 523-8367.

Dated: November 21, 1989.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 89-27753 Filed 11-27-89; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Determination of Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Serivce, HHS.

ACTION: Revision of fees for sanitation inspections of cruise ships; continued use of Lloyd's Registry of Shipping in the determination of fees; and the establishment of an additional category for extra small vessels.

SUMMARY: Notice of revised fees for vessel sanitation inspections effective January 1, 1990. Discussion of public comment on the use of gross tonnage as established by Lloyd's Registry of Shipping in the determination of fees collected for sanitation inspections and the establishment of an additional category for Extra Small vessels is also presented.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236-4111, Commercial: (404) 488-4111.

SUPPLEMENTARY INFORMATION:

Purpose and Background

Collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC began on March 1, 1988; the fee schedule was first published in the **Federal Register** November 24, 1987, (52 FR 45019). The fee schedule for calendar year 1989 was published in the **Federal Register** November 3, 1988, (53 FR 44528). The cost per inspection was determined by dividing the full cost of the Vessel Sanitation Program by the estimated number of inspections and multiplying by a size/cost factor based on the size of the vessel and the number of vessels in each size category.

A request for public comment on the use of Gross Registered Tonnage (GRT) [1] as reported by Lloyd's Registry of Shipping in the determination of fees collected for sanitation inspections of passenger cruise ships and the fees to be set for small passenger cruise ships was published in the **Federal Register** on Thursday, October 5, 1989 (54 FR 41164).

Discussion of Comments

The public notice provided a 30 day comment period. During the comment period, comments were received from 6 sources, one of which was the International Committee of Passenger Lines (ICPL) representing 19 separate cruise lines and their subsidiaries. Discussion of the comments and CDC's responses follows:

Comment: One commentor stated the GRT can vary with different kinds of ships because it is based on a measurement which does not necessarily relate to the number of people on board. In the commentor's opinion, the vessel sanitation inspection is directly related to the number of people on board the vessel. The total number of people certified to sail on a vessel should be the basis for determining fees to be collected for sanitation inspections.

Response: The number of passengers on board does not always correlate with the number and complexity of food service and water systems on board a passenger vessel. For example, there are a number of vessels with a lower passenger count in the same size category but whose food service areas are more numerous and complex than a vessel with a similar number of passengers. A vessel's GRT correlates more closely with the length of time required to conduct a sanitation inspection than the number of passengers a vessel is certified to carry. After considering the commentor's alternative proposal, CDC sees no advantage to using the number of passengers on board rather than the GRT in determining fees.

Comment: One commentor stated that harbor fees, pilot fees, wharfage, etc. are calculated in most ports of the world by multiplication of net or gross tonnage by a certain denominator. The commentor suggested that a denominator be established and vessels charged according to their reported GRT as established by Lloyd's Registry of Shipping. Another commentor suggested a per ton rate so that the charge will vary continuously according to the dimension of the ship and not by the categories.

Response: Establishing a denominator is the method used in determining the fees to be assessed. The cost per inspection is determined by dividing the full cost of the Vessel Sanitation Program by a weighted average of the number of inspections projected for the year. The weighted average accounts for the length of time required to complete a sanitation inspection due to the number and complexity of food service areas and water systems on board passenger vessels. The size/cost factor is based on CDC's estimate that the complexity and the time required to conduct a sanitation inspection depends upon a vessel's size category rather than individual tonnage. The size categories of vessels were established based on CDC's estimate of the time required to conduct a sanitation inspection for that category.

Comment: Two commentors agreed with the use of the GRT as reported by Lloyd's Registry of Shipping but suggested the classification of a large vessel should be changed from the present range of 30,001 to 65,000 GRT to a range of 30,001 to 60,000 and the classification of an Extra Large vessel changed from the present range of greater than 65,000 GRT to greater than 60,000 GRT. Neither commentor addressed the issue of a new classification for an Extra Small vessel.

Response: CDC reviewed the 89/90 edition of Lloyd's Registry of Shipping for the GRT of all passenger vessels coming to a port under the control of the U.S. There was only one vessel listed with a GRT of between 60,000 and 65,000; the complexity and the time required to conduct a sanitation inspection of that vessel is closer to the time rquired for vessels in the Extra Large category. The vessel with the next lowest GRT is 47,262; the complexity and the time required to conduct a sanitation inspection of that vessel is more closely related to the vessels in the Large category. Therefore, CDC agreeeas with these commentors' suggestion regarding the size classification for an Extra Large vessel. The size category for an Extra Large vessel will be grater than 60,000 GRT.

While the ICPL has no comment on the proposals regarding the size classifications, the ICPL suggested again, as it had in November, 1987, that "the vessel inspection program and the related inspection fees should continue to reflect the voluntary cooperative nature of the program and that the reference to authority for vessel sanitation inspection and collection of fees should be deleted." CDC has not changed its earlier conclusion that the collection of fees for sanitation inspections of passenger cruise ships is covered by existing authorizations. The **Federal Register** of July 17, 1987 (52 FR 27060) cited the appropriate authority for the vessel sanitation inspections (Public Health Service Act sections 361-369, 42 U.S.C. 264-272, and 42 CFR part 71) and the authority to collect fees for the full costs of services (Pub. L. 99-591, Sec. 101(i)).

There were no comments received which disagreed with the use of Lloyd's Registry of Shipping to establish GRTs for use in the determination of fees collected for sanitation inspections of passenger cruise ships.

There were no comments disagreeing with the addition of an Extra Small vessel category and the change in the category of small vessels. The category of Extra Small vessel is established and fees determined based upon the time and complexity of the inspection. Therefore, the categories of vessels by GRT and the fees to be charged for calendar year 1990 beginning January 1, 1990 are as follows:

Tonnage	Classification	Fee
>3,001 GRT	Extra Small Ship	$624
3,001-15,000 GRT.	Small Ship	$1,249
15,001-30,000 GRT.	Medium Ship	$2,496
30,001-60,000 GRT.	Large Ship	$3,747
<60,000	Extra Large Ship	$4,995

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: November 20, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-27792 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-18-M

[1] GRT-Gross tonnage in cubic feet, as shown in Lloyd's Registry of Shipping.

Food and Drug Administration

[Docket No. 89N-0433]

Biological Products; In Vitro Tests To Detect Antibodies to the Human Immunodeficiency Virus, Type 1; Points to Consider; Request for Comments, Data, and Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Points to Consider in the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Antibodies to the Human Immunodeficiency Virus; Type 1 (1989)."

FDA is also requesting comments, data, and recommendations from the public on this document. The agency eventually may develop this document into a guideline or regulations to help ensure the safety, purity, potency, and effectiveness of biological products, new drugs, or other products regulated under the Federal Food, Drug, and Cosmetic Act or under the Public Health Service Act.

DATE: Comments by January 29, 1990.

ADDRESSES: Submit written requests for single copies of the draft document to the Congressional and Public Affairs Staff (HFB-140), Food and Drug Administration, Park Bldg., room 158, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments on the draft document to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Copies of the draft document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldenthal, Center for Biologics Evaluation and Research (HFB-230), Food and Drug

BEST COPY AVAILABLE

Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–443–4864.

SUPPLEMENTARY INFORMATION: As a result of the recognition of acquired immunodeficiency syndrome (AIDS) and the identification of the etiologic agent, human immunodeficiency virus type 1, (HTV–1), there has been extensive interest in the development of in vitro diagnostic tests for detecting evidence of infection with the virus. FDA's Center for Biologics Evaluation and Research has developed a draft document concerning these products, entitled "Points to Consider in the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type 1 (1989)." FDA is issuing this document to provide useful guidance to manufacturers engaged in the production and clinical evaluation of such in vitro test kits. FDA is announcing availability of the draft document and is inviting public comment.

FDA may develop this document into a guideline under 21 CFR 10.90(b)(1) or into regulations as needed to help ensure the safety, purity, potency, and effectiveness of biological products, new drugs, or other products regulated under the Federal Food, Drug, and Cosmetic Act or under the Public Health Service Act. Because these new technologies are changing and improving constantly, FDA may revise the draft document several times and place the revisions on display at the Dockets Management Branch (address above).

Dated: November 20, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–27807 Filed 11–27–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0472]

Allergan Optical, Inc.; Premarket Approval of Hydron® (ocufilcon D) H55 Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Optical, Inc., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Hydron® (ocufilcon D) H55 Hydrophilic Contact Lenses for extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 19, 1989, of the approval of the application.

DATES: Petitions for administrative review by December 28, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On April 3, 1989, Allergan Optical, Inc., Woodbury, NY 11797, submitted to CDRH an application for premarket approval of the Hydron® (ocufilcon D) H55 Hydrophilic Contact Lenses. The spherical lenses are indicated for extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye-care practitioner. The lenses are indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic. The lenses may be worn by persons who exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The spherical lenses range in powers from plano to −10.00 D and are to be disinfected using a chemical lens care system.

On June 23, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 19, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above. The labeling of the Hydron® (ocufilcon D) H55 Hydrophilic Contact Lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33 (b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 28, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 20, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–27762 Filed 11–27–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0475]

Allergan Medical Optics; Premarket Approval of Phaco-Flex™ Models SI–18B and SI–18NB Silicone Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Medical Optics, Irvine, CA, for premarket approval under the Medical Device Amendments of 1976 (the amendments), of the Phaco-Flex™ Models SI–18B and SI–18NB Silicone Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notifed the applicant, by letter of October 31, 1989, of the approval of the application.

DATES: Petitions for administrative review by December 28, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1212.

SUPPLEMENTARY INFORMATION: On November 7, 1988, Allergan Medical Optics, Irvine, CA 92799–5155, submitted to CDRH an application for premarket approval of the Phaco-Flex™ Models SI–18B and SI–18NB Silicone Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. The devices are indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by extracapsular cataract extraction. These devices are intended to be placed in the ciliary sulcus or capsular bag. The devices are available in a range of powers from 10 diopters (D) through 27 D in 0.5–D increments.

On April 13, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 31, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 28, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 20, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–27761 Filed 11–27–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0463]

Sola/Barnes-Hind; Premarket Approval of Signature™ (Netrafilcon A) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sola/Barnes-Hind, Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976 of the spherical SIGNATURE™ (netrafilcon A) Contact Lens for daily and extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notifed the applicant, by letter of September 15, 1989, of the approval of the application.

DATE: Petitions for administrative review by December 28, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On March 3, 1989, Sola/Barnes-Hind, Sunnyvale, CA 94086–5200, submitted to CDRH an application for premarket approval of the SIGNATURE™ (netrafilcon A) Contact Lens. The spherical lens is indicated for daily wear and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye-care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −20.00 D to +12.00 D and is to be disinfected using

either a chemical, heat, or hydrogen peroxide lens care system.

On June 23, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 15, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the spherical SIGNATURE™ (netrafilcon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 28, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 20, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-27765 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATE: Tuesday, December 19, 1989, 1 p.m.

ADDRESS: Park Avenue Senior Center, 1505 Park Ave., Minneapolis, MN 55404.

FOR FURTHER INFORMATION CONTACT: Donald Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 20, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-27810 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Grants for Graduate Training in Family Medicine (Second Cycle)

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Graduate Training in Family Medicine are being accepted for a second grant cycle under the authority of section 786(a), title VII, of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988, Public Law 100-607, title VI.

Public Law 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the Public Health Service Act authorizes the Secretary to award grants to public or nonprofit private hospitals, schools of medicine or to make grants to accredited schools of medicine or osteopathic, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine. To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;
2. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
3. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Funding Priorities for Fiscal Year 1990

The following funding priorities were established in FY 1989 and the Administration is extending these priorities in Fiscal Year 1990.

In determining the order of funding of approved applications a funding priority will be given to:

(1) Projects which satisfactorily demonstrate an enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over the average of the past three years in postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in prevention, recognition and treatment of those with HIV infection-related diseases.

(4) Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, telephone: (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-04, Rockville, Maryland 20857, telephone: (301) 443-5820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The deadline date for receipt of applications is December 22, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 31, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-27808 Filed 11-27-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX—Social Services Block Grant Act; Promulgation for Fiscal Year 1991

AGENCY: Office of Human Development Services, HHS.

ACTION: Notification of allocation of title XX—social services block grant allotment for fiscal year 1991.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1991, pursuant to Title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.7 billion for Fiscal Year 1991 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.7 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent available at the time such allotment is determined.

(3) The remainder of the $2.7 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1991, the allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P-26, No. 88-A issued August 1989) and "Estimates of the Population of Puerto Rico and the Outlying Areas: 1980 to 1988" (Series P-25, No. 1049 issued October 1989), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1990.

Fiscal Year 1991 Federal Allotments to States for Social Services—Title XX Block Grants

Total	$2,700,000,000
Alabama	44,815,730
Alaska	5,723,481
American Samoa	173,471
Arizona	35,087,358
Arkansas	26,159,603
California	309,284,584
Colorado	30,005,748
Connecticut	25,313,004
Delaware	7,208,066
Dist. of Col.	6,730,280
Florida	134,731,180
Georgia	68,271,598
Guam	465,517
Hawaii	11,093,096
Idaho	10,058,442
Illinois	120,966,054
Indiana	53,666,375
Iowa	30,954,857
Kansas	27,282,993
Kentucky	40,697,802
Louisiana	48,147,145
Maine	13,172,744
Maryland	50,484,508
Massachusetts	84,334,545
Michigan	100,925,505
Minnesota	47,043,955
Mississippi	28,617,406
Missouri	56,153,455
Montana	8,782,752
Nebraska	17,498,123
Nevada	11,512,498
New Hampshire	11,851,101
New Jersey	84,333,358
New Mexico	15,400,409
New York	195,614,102
North Carolina	70,858,894
North Dakota	7,505,423
No. Mariana Islands	83,109
Ohio	116,505,852
Oklahoma	33,411,500
Oregon	30,223,056
Pennsylvania	131,093,825
Puerto Rico	13,985,517
Rhode Island	10,846,215
South Carolina	27,880,755
South Dakota	7,787,000
Tennessee	53,499,488
Texas	163,905,068
Utah	18,450,318
Vermont	5,093,829
Virgin Islands	465,517
Virginia	65,899,862
Washington	50,766,567
West Virginia	20,501,858
Wisconsin	59,029,561
Wyoming	5,251,901

Dated: November 21, 1989.

Linda G. Eischeid,

Director, Office of Policy, Planning, and Legislation.

Approved: November 21, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89-27826 Filed 11-27-89; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-00-4212-24]

Emergency Closure of Public Lands; Churchill County, NV

AGENCY: Bureau of Land Management, Nevada.

ACTION: Notice is hereby given that selected public lands adjacent to Bravo-16 and Bravo-19 bombing ranges are closed to the public until further notice. The closure is necessary to ensure public safety and allow the U.S. Navy to perform operations required to clean-up and dispose of live and inert ordnance on public lands adjacent to Bravo-16 and Bravo-19.

DATE: This closure goes into effect on November 17, 1989, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 882-1631.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with this closure order is subject to arrest and fine of up to $1,000.00 and/or imprisonment not to exceed 12 months. This closure applies to all the public except authorized military and BLM personnel. The public lands affected by this closure are described as follows:

Bravo-16

Mt. Diablo Meridian, Nevada

T. 16 N., R. 27 E.,
sections 1 and 2, all;
section 3, E½.
T. 17 N., R. 27 E.,
section 34, E½.
T. 16 N., R. 28 E.,
sections 5 and 6, all.
T. 17 N., R. 28 E.,
section 21, all:

Aggregating approximately 3,840 acres.

Bravo-19

Mt. Diablo Meridian, Nevada

T. 16 N., R. 29 E.,
sections 33-36, all.
T. 15 N., R. 30 E.,
sections 2, 11, 14, 23 and 24, all.
T. 16 N., R. 30 E.,
section 27, S½;
section 28, S½;
section 29, S½;
section 30, SE¼;
sections 31-34, all.

Aggregating approximately 9,440 acres.

Dated this 17th day of November, 1989.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 89-27769 Filed 11-27-89; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places—Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 18, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 13, 1989.

Carol D. Shull,

Chief of registration, National Register.

CALIFORNIA

Contra Costa County

Contra Costa County Courthouse Block, 625 Court St., Martinez, 89002113

Los Angeles County

Heaver, Henry, House, 142 Adelaide Dr., Santa Monica, 89002114

Santa Clara County

Steinbeck, John, House, 16250 Greenwood La., Monte Sereno, 89002117

FLORIDA

Seminole County

Sanford Residential Historic District, Roughly, bounded by Sanford Ave., 14th St., Elm Ave., and 3rd St., Sanford, 89002119

IDAHO

Shoshone County

US Post Office—Kellogg Main (US Post Offices in Idaho, 1900—1941 MPS), 302 S. Division, Kellogg, 89002118

Washington County

Cambridge News Office, 155 N. Superior St., Cambridge, 89002128

IOWA

Jackson County

Cundill Block (Maquoketa MPS), 202 S. Main, Maquoketa, 89002112
First National Bank Building (Maquoketa MPS), 120 S. Main, Maquoketa, 89002108
Hotel Hurst (Maquoketa MPS), 277 S. Main, Maquoketa, 89002105
Hotel Hurst Garage (Maquoketa MPS), 219 S. Main, Maquoketa, 89002109
IOOF Building (Maquoketa MPS), 103 N. Main, Maquoketa, 89002110

Lyon Block (Maquoketa MPS), 112—116 M. Main, Maquoketa, 89002104
Maquoketa Free Public Libery (Maquoketa MPS), Second and Pleasant, Maquoketa, 89002102
Merrero Building (Maquoketa MPS), 111—115 S. Main, Maquoketa, 89002107
Mitchell—Maskrey Mill (Maquoketa MPS), Maquoketa, 89002111
New Era Building (Maquoketa MPS), 115—117 E. Platt, Maquoketa, 89002103
Sanborn, C.M., Building (Maquoketa MPS), 203 S. Main, Maquoketa, 89002106

KENTUCKY

Bourbon County

Downtown Paris Historic District, Roughly bounded by 2nd St., Pleasant St., Main St., High St., and 12th St., Paris, 89002123

Menifee County

Gladie Cabin, KY 715 at Confluence of Red River and Gladie Creek, Slade victinity, 89002120

MASSACHUSETTS

Suffolk County

Roxbury Presbyterian Church, 328 Warren St., Boston, 89002125

MINNESOTA

St. Louis County

Hartley Building, 40 E. Superior St., Duluth, 89002127

MISSOURI

Barry County

Tom Town Historic District, Off Co. Rd. VV, S of Pleasant Ridge, Pleasant Ridge vicinity, 89002126

Dent County

Nichols Farm District, W of Co. Rd. V, N of Current River, Cedar Grove vicinity, 89002125

NEW JERSEY

Morris County

Madison Civic Commercial District, Roughly Main St., Waverly Pl., Lincoln Pl., Prospect St., Kings Rd., Green Ave., Wilmer St., and Green Village Rd., Madison, 89002115

OREGON

Multnomah County

Honeyman Hardware Company Building, 832 NW. Hoyt, Portland, 89002124

WISCONSIN

Milwaukee County

Washington Highlands Historic District, Bounded by N. 86th St., W. Lloyd St., N. 60th St., and Milwaukee Ave., Wauwatosa, 89002121

Walworth County

Main Street Historic District, Roughly W. Main St./US 12 from Prairie St. to Fremont St. and Church St. from Forest Ave. to W. Main St., Whitewater, 89002116

[FR Doc. 89-27747 Filed 11-27-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 32]

Columbia River Tariff Bureau; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: The Commission has reviewed the pending application filed by Columbia River Tariff Bureau (CRTB) for continued approval of its collective ratemaking agreement in light of changes: (1) In the standards applicable to motor and rail rate bureaus; and (2) in the water carrier industry, including recent tariff filings by CRTB, since the last pleadings were filed in this proceeding in response to Ex Parte No. 297 (Sub-No. 4), Reopening of Section 5a Application Proceedings to Take Additional Evidence (not printed), served January 6, 1978. This preliminary examination has raised questions as to whether continued antitrust immunity for CRTB is necessary or appropriate. Therefore, the Commission is asking CRTB to describe any current or contemplated collective ratemaking activities within the Commission's jurisdiction for which antittrust immunity is required. If CRTB demonstrates that it has a need for and a continuing interest in immunity that the Commission properly may grant, the Commission proposes to review the agreement under the three-part test set forth in the Ex Parte No. 297 (Sub-No. 4), and to interpret that test in light of the standards the Commission has applied in evaluating motor and rail rate bureaus under 1980 statutory amendments.

DATES: CRTB's comments are due December 28, 1989. Comments from other parties are due January 29, 1990. Rebuttal is due February 20, 1990.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 32 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy should be sent to: C. Kent Roberts, Executive Secretary, Columbia River Tariff Bureau, Suite 1800, Pacwest Center, 1211 SW. Fifth Avenue, Portland, OR 97204-3795.

FOR FURTHER INFORMATION CONTACT: A. Kloze, (202) 275-7933, or Richard B. Felder, (202) 275-7691 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Columbia River Tariff Bureau (CRTB) supplemented its then pending application for approval of a revised collective ratemaking agreement in response to Ex Parte No. 297 (Sub-No. 4), *Reopening of Section 5a Application Proceedings to Take Additional Evidence* (not printed), served January 6, 1978. In that decision, the Commission reopened all previously approved non-rail collective ratemaking agreements to take additional evidence to determine whether those agreements still qualified for Commission approval. The decision required each bureau to submit evidence to establish: (1) That its agreement enhanced one or more National Transportation Policy (NTP) goals; (2) that the agreement did not have anticompetitive effects; and (3) that if anticompetitive effects were found, the benefits the agreement conferred on the public outweighed the harm.

Subsequently, following passage of the Motor Carrier Act of 1980 (MCA), which established new standards for review and approval of motor carrier rate bureau agreements the Commission in a decision served August 21, 1980, terminated the Ex Parte No. 297 (Sub-No. 4) proceeding to the extent it involved review of motor carrier agreements. The proceeding continued for freight forwarders and water carrier rate bureaus and CRTB's agreement requires our approval under 49 U.S.C. 10706(c).

A preliminary examination of CRTB's current activities and those of the water carrier industry generally has raised questions as to whether continued antitrust immunity for the Bureau is necessary or appropriate. In the circumstances, the Commission is asking CRTB to describe any current or contemplated collective ratemaking activities within the Commission's jurisdiction for which antitrust immunity is required. If CRTB does not show that it conducts or needs in the future to conduct such collective ratemaking, the Commission will consider: (a) Dismissing the application for approval of its amended collective ratemaking agreement; (b) revoking antitrust immunity for future collective actions by CRTB and its signatory members; and (c) requiring CRTB to cancel its tariffs.

If CRTB demonstrates that it has a need for and a continuing interest in immunity that the Commission may properly grant, it proposes to review the agreement under the three-part test in Ex Parte No. 297 (Sub-No. 4) in light of the standards now applicable to motor and rail carriers. Because water carrier activities are similar to those of railroads, the Commission proposes to consider especially those guidelines

now applicable to rail rate bureaus under 49 U.S.C. 10706(a)(3)(A) (i) and (ii). Standards developed for motor carrier rate bureaus may also be applied, as relevant and necessary to prevent anticompetitive behavior.

The Commission requests interested parties to comment on its preliminary findings and proposed actions. Such parties must serve a copy of their comments filed with the Commission on CRTB. CRTB will have the opportunity to reply and the Commission will consider all the pleadings in determining what further findings and actions are required.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 11701, 10706, and 10321.

Decided: November 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andrè, Lamboley, and Phillips. Commissioner Andrè dissented.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27827 Filed 11–27–89; 8:45 am]

BILLING CODE 7035–01–M

[Section 5a Application No. 106] [1]

Household Goods Forwarders Tariff Bureau

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: The Commission has reviewed the pending application filed by Household Goods Forwarders Tariff Bureau for continued approval of its collective ratemaking agreement in light of changes: (1) In the standards applicable to motor and rail rate bureaus; and (2) in the household goods forwarder industry, including recent tariff filings by the Bureau, since the last pleadings were filed in this proceeding in response to the Commission's decision in Ex Parte No. 297 (Sub-No. 4), *Reopening of Section 5a Application Proceedings to Take Additional Evidence* (not printed), served January 6, 1978. This preliminary examination has raised questions as to whether continued antitrust immunity for the Bureau is necessary or appropriate. Therefore, the Commission is asking the Bureau to describe any current or contemplated collective ratemaking activities within the Commission's jurisdiction for which antitrust immunity is required. If the Bureau demonstrates that it has a need for and a continuing interest in immunity that the Commission properly may grant, the Commission proposes to review the agreement under the three-part test set forth in Ex Parte No. 297 (Sub-No. 4), *supra*, and to interpret that test in light of the standards the Commission has applied in evaluating motor carrier rate bureau agreements under the Motor Carrier Act of 1980.

DATES: The Bureau's response to the decision is due December 28, 1989. Comments from interested parties are due January 29, 1990. The Bureau's reply is due February 20, 1990.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 106 should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy should be sent to:

Alan F. Wohlstetter, General Counsel and Executive Secretary, Household Goods Forwarders Tariff Bureau, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Ken Schwartz, (202) 275–7956

or

Richard Felder, (202) 275–7691

[TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION:

The Bureau filed its application in response to the Commission's decision in Ex Parte No. 297 (Sub-No. 4), *Reopening of Section 5a Application Proceedings to Take Additional Evidence* (not printed), served January 6, 1978. In that decision, the Commission reopened all previously approved non-rail collective ratemaking agreements to take additional evidence to determine whether those agreements still qualified for Commission approval. The decision required each bureau to submit evidence to establish: (1) That its agreement enhanced one or more National Transportation Policy goals; (2) that the agreement did not have anticompetitive effects; and (3) that, if anticompetitive effects were found, the benefits the agreement conferred on the public interest outweighed the harm.

Subsequently, following passage of the Motor Carrier Act of 1980 (MCA), which established new standards for review and approval of *motor carrier* rate bureau agreements, the Commission terminated the Ex Parte No. 297 (Sub-No. 4) proceeding to the extent it involved review of motor carrier agreements. The proceeding continued for freight forwarder and water carrier rate bureaus. Then, pursuant to the Surface Freight Forwarder Deregulation Act of 1986, *non-household goods* freight forwarders were substantially deregulated, and the Commission's jurisdiction to grant antitrust immunity for their collective ratemaking was revoked. However, jurisdiction over *household goods* freight forwarders continues, and HGFTB's agreement requires the Commission's approval under 49 U.S.C. 10706(c).

A preliminary examination of the Bureau's activities has raised questions as to whether continued antitrust immunity for the Bureau is necessary or appropriate. In the circumstances, the Commission is asking the Bureau to describe any current or contemplated collective ratemaking activities within the Commission's jurisdiction for which antitrust immunity is required. If the Bureau does not show that it conducts or needs in the future to conduct such collective ratemaking, the Commission will consider: (a) Dismissing the application; (b) revoking antitrust immunity for future collective actions by the Bureau and its signatory members; and (c) requiring the Bureau to cancel its tariffs.

If the Bureau demonstrates that it has a need for and a continuing interest in immunity that the Commission properly may grant, the Commission proposes to review the agreement under the three-part test set forth in Ex Parte No. 297 (Sub-No. 4), *supra*, and to interpret that test in light of the standards the Commission has applied in evaluating motor carrier rate bureau agreements under the MCA.

The Commission requests interested parties to comment on its preliminary findings and proposed actions. Such parties must serve on the Bureau a copy of any comments they file with the Commission. The Bureau will have the opportunity to reply to the comments, and the Commission will consider all the pleadings in determining what further findings and actions are required.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 11701, 10706, and 10321.

Decided: November 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre dissented.

Noreta R. McGee,

Secretary.

[FR Doc. 89–27828 Filed 11–27–89; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 5 was recodified as section 10706.

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conduct and Disability Act

AGENCY: Judicial Conference of the United States.

Subagency: Committee to Review Circuit Council Conduct and Disability Orders.

ACTION: Proposed rules and opportunity for comment.

SUMMARY: The Judicial Conference is authorized by section 372(c)(11) of title 28, United States Code, to prescribe such rules for the conduct of proceedings under section 372(c), including the processing of petitions for review, as it considers to be appropriate. It is further provided by 28 U.S.C. 372(c)(11) that any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.

Section 372(c), as enacted by the Judicial Conduct and Disability Act of 1980, Public Law No. 96–458, section 3(a), 94 Stat. 2036, establishes procedures for the consideration of complaints alleging conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging mental or physical disability, on the part of a United States circuit, district or bankruptcy judge or a United States magistrate. Such complaints are presented to and considered by the judicial councils of the circuits or, in the case of a judge of the United States Court of Appeals for the Federal Circuit, the United States Court of International Trade, and the United States Claims Court, by the respective courts.

28 U.S.C. 372(c)(10) provides that a complainant, judge, or magistrate aggrieved by an action of a judicial council (or court) taken under section 372(c)(6) upon a complaint may petition the Judicial Conference for review thereof. By authority of 28 U.S.C. 331 and 372(c)(10), the Conference has established the Committee to Review Circuit Council Conduct and Disability Orders as a standing committee to consider such petitions for review. This Committee has submitted to the Conference the following proposed rules for the processing of petitions for review. The Judicial Conference at its meeting of September 20, 1989, approved these rules for issuance to the public by way of notice with the opportunity for comment.

DATE: By action of the Judicial Conference these rules shall become final following their publication and the consideration of any comments. Comments will be accepted until December 29, 1989.

ADDRESS: Send the original and five copies of any comments to the attention of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, Office of the General Counsel, Administrative Office of the United States Courts, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: William R. Burchill, Jr., General Counsel, Administrative Office of the United States Courts, Washington, DC 20544. Telephone: (202) 633–6127.

Dated: November 15, 1989.

James E. Macklin, Jr.,

Deputy Director, Administrative Office of the United States Courts.

Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act

The Judicial Conference of the United States prescribes these rules under the authority of section 372(c)(11) of title 28, United States Code, with respect to the processing of petitions for review submitted to the Conference under 28 U.S.C. 372(c)(10), seeking review of circuit council actions taken under 28 U.S.C. 372(c)(6) upon complaints of judicial conduct or disability:

1. Petition for review may be made by the filing of a written submission to the Judicial Conference addressed as follows: L. Ralph Mecham, Secretary, Judicial Conference of the United States, Administrative Office of the United States Courts, Washington, DC 20544. Attention: Office of the General Counsel.

2. No form is prescribed for the filing of a petition for review.

3. Such petition shall consist of a written submission in typewriting on plain paper of 8½ by 11 inch dimensions.

4. No formal limitation is imposed upon the length of the petition, but it is suggested that such petition should not normally exceed 20 pages in addition to the attachments required by Rule 8.

5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. No absolute time limitation exists upon the filing of a petition for review. Nevertheless the petition should be submitted seasonably following final action by the circuit judicial council and issuance of its implementing order under 28 U.S.C. 372(c)(15).

7. Five copies of the petition for review shall be submitted, at least one of which shall bear the original ink signature of the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office shall then accept the original petition alone and shall undertake necessary reproduction of copies at its expense.

8. The petition for review shall have attached thereto a copy of each of the following documents:

- The order of the circuit judicial council issued under 28 U.S.C. 372(c)(15), of which review is sought;
- The original complaint of judicial misconduct or disability that commenced the proceeding;
- Any other documents or correspondence arising in the course of the proceeding before the judicial council or its special committee which the petitioner deems essential or useful to the prompt disposition of the review petition.

9. Upon receipt of a petition for review that appears on its face to be coherent, in compliance with these rules, and appropriate for present disposition, the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. § 331.

10. Unless otherwise directed by the Executive Committee of the Judicial Conference, the Committee to Review Circuit Council Conduct and Disability

Orders shall assume the consideration and disposition of all petitions for review, in conformity with the Judicial Conference statement of the Committee's jurisdiction.

11. The Administrative Office shall then distribute the petition and its attachment to the members of the Committee to Review Circuit Conduct and Disability Orders for their deliberation. The petition shall receive an eight-digit identifying number of which the initial two digits shall refer to the year of filing, the next three digits shall be "372," and the final three shall identify each individual petition. Unless otherwise directed by the chairman, the Administrative Office shall contact the circuit executive or clerk of the U.S. court of appeals for the appropriate circuit to obtain the record of circuit council consideration of the complaint for distribution to the Committee.

12. In recognition of the review nature of petition proceedings under 28 U.S.C. 372(c)(10), no additional investigation shall ordinarily be undertaken by the Judicial Conference or the Committee. If such investigation is deemed necessary, the Conference or Committee may remand the matter to the circuit judicial council that considered the complaint, or may undertake any investigation found to be required. If such investigation is undertaken by the Conference or Committee, (a) adequate prior notice shall be given in writing to the judge or magistrate whose conduct is the subject of the complaint, (b) such judge or magistrate shall be afforded an opportunity to appear at any investigative proceedings which might be conducted and to present argument orally or in writing, and (c) the complaint shall be afforded an opportunity to appear at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.

13. Except where additional investigation is undertaken as provided in Rule 12, there shall be no oral arguments or personal appearances before the Committee. Unless the petition for review is amenable to disposition on the face thereof, the Committee may determine to review written argument from the petitioner and from the other party to the complaint proceeding (the complainant or judge/magistrate complained against).

14. The decision on the petition shall be made by written order as provided by 28 U.S.C. 372(c)(15). Such order shall be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman. In accordance with section 372(c)(15), orders of the Committee shall be maintained as public documents by the Administrative Office and by the clerk of the United States court of appeals for the circuit in which the complaint arose.

15. In conformity with 28 U.S.C. 372(c)(10), all orders and determinations of the Judicial Conference or of the Committee on its behalf, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

[FR Doc. 89-27782 Filed 11-27-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Drug enforcement Administration

[Docket No. 89-33]

Bob's Pharmacy and Robert T. Covington, Inc., National City, CA; Hearing

Notice is hereby given that on April 19, 1989, the Drug Enforcement Administration, Department of Justice, issued to Bob's Pharmacy and Robert T. Covington, Inc., an Order to Show Cause as to shy the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BB0529810, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 28, 1989, commencing at 9:30 a.m., in Suite 401, 950 Sixth Avenue, San Diego, California.

Dated: November 17, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-27833 Filed 11-27-89; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

[Docket No. 89-41]

William F. Harrison, M.D. Wichita, KS; Hearing

Notice is hereby given that on May 23, 1989, the Drug Enforcement Administration, Department of Justice, issued to William F. Harrison, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, December 13, 1989, commencing at 10 a.m., at the National Labor Relations Board, 5799 Broadmoor, Courtroom B, Fifth Floor, Mission, Kansas.

Dated: November 17, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-27834 Filed 11-27-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-47]

Edwin A. Schuller, Jr., D.O., Springfield, PA; Hearing

Notice is hereby given that on June 16, 1989, the Drug Enforcement Administration, Department of Justice, issued to Edwin A. Schuller, Jr., D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS1385055, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, December 6, 1989, commencing at 10 a.m., in the Hearing Room, DEA Headquarters, Lincoln Place, East Building, 600 Army Navy Drive, Arlington, Virginia.

Dated: November 17, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-27835 Filed 11-27-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-50]

Sheo Sinha, M.D., Brooklyn, NY; Hearing

Notice is hereby given that on June 21, 1989, the Drug Enforcement Administration, Department of Justice, issued to Sheo Sinha, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS6523167, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, December 20, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW., Washington, DC.

Dated: November 17, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-27836 Filed 11-27-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of individuals to serve as members of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following executives are hereby appointed or reappointed respectively, to three-year terms, effective November 11, 1989: Lawrence W. Rogers, David O. Williams.

The following executive is hereby reappointed to a three-year term effective November 18, 1989: Monica Gallagher.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210, telephone: (202) 523-6551.

Signed at Washington, DC, this 20th day of November, 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-27872 Filed 11-27-89; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,384; Eyelet Embroideries, Inc., Edgewater, NJ

TA-W-23,334; Alco Controls, Wytheville, VA

TA-W-23,365; The Pullman Group of Companies, San Antonio, TX

TA-W-23,357; Core Fashions Sportswear, Inc., East Newark, NJ

TA-W-23,364; Model Garment Co., Inc., Frackville, PA

TA-W-23,269; P.S. & L Corp., Orange, NJ

TA-W-23,391; Maine Electronics, Lisbon, ME

TA-W-23,362; Metrocolor Laboratory, Culver City, CA

TA-W-23,401; Struthers Thermo Flood, Winfield, KS

TA-W-23,389; Hale Manufacturing Co., Putnam, CT

TA-W-23,399; Slawson Exploration Co., Inc., Oklahoma City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,404 and TA-W-23,405; W.A. Kruger Co., Scottsdale, AZ and Brookfield, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,356; Brooks Brothers, Inc., Paterson, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,382; Deutz of America Corp., Richmond, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,372; BP Exploration, Inc., (Lower 48 States), S.W. Freeway Offices, Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,373; BP Exploration, Inc., San Felipe Office, Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,388; Harrison Well Service, Inc., Mt. Carmel, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,428; Specialty Services, Farmington, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,355; Bridge Oil (U.S.A.), Inc., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,368; Arco Oil and Gas Onshore Production, Beeville, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,403 and TA-W-23,403A; Swaco Geolograph Co., Houston, TX and Swaco Geolograph Co., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,3771 Buffalo Refrigeration Co., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,434; Valdez Creek Mining Co., Inc., Cantwell, AK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,395; National Standard Co., Niles, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,367; Ace Schiffli Embroidery Co., Inc., Fairview, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,369; All American Emblem Corp., Fairview, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,371; BC Five Corp., North Bergen, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,374; Barbara Embroidery Corp., Fairview, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,361; Mercury Marine, St. Cloud, FL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,397; Pyote Well Service, Inc., Wickett, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,376; Brooks Foundry Co., Inc., Albion, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,436; AT & T Microelectronics, Union, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,375; Bipolar Integrated Technology, Inc., Beaverton, OR

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,412; The Bovaird Supply Co., Tulsa, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,433; Taurus Petroleum, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,448; Mari Leather Works, Inc., Hialeah, FL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,390; J & K Fashions, Orange, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,402; Suburban Sportswear, Orange, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,407; Bogert Oil Co., Drilling Div., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,418; Jonesboro Wood Products, Jonesboro, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,340; Cecil's Custom Shop, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,366; Schindler Elevator Corp., Toledo, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,396; Pennzoil Product Co., Exploration & Production Div., Bradford, PA Div., Chipmonk Valley Lease, Chipmonk, NY

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-23,341; Chapman Exploration, Inc., Tulsa, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-23,413; Briscoe Drilling Co., Kingfisher, OK

A certification was issued covering all workers separated on or after August 31, 1988.

TA-W-23,387; General Motors Corp., BOC Chicago Plant, Willow Springs, IL

A certification was issued covering all workers separated on or after December 2, 1989.

TA-W-23,411; Baxter Healthcare Corp., Pharmasel Div., Eaton, OH

A certification was issued covering all workers separated on or after September 10, 1988.

TA-W-23,406; The William Powell Co., Cincinnati, OH

A certification was issued covering all workers separated on or after September 7, 1988.

TA-W-23,398; Revelations Shoe Corp., Exeter, PA

A certification was issued covering all workers separated on or after September 7, 1988.

TA-W-23,383; Evart Products Co., Evart, MI

A certification was issued covering all workers separated on or after June 1, 1989.

TA-W-23,381; Decalta International Corp., Denver, CO

A certification was issued covering all workers separated on or after September 5, 1988.

TA-W-23,381A; Decalta International Corp., Operating at Various Locations in The State of CA

A certification was issued covering all workers separated on or after September 5, 1988.

TA-W-23,381B; Decalta International Corp., Operating at Various Locations in The State of CO

A certification was issued covering all workers separated on or after September 5, 1988.

TA-W-23,429; Kent Sportswear, Inc., Kent I, Curwensville, PA

A certification was issued covering all workers separated on or after September 8, 1988.

TA-W-23,430; Kent Sportswear, Inc., Kent II, Curwensville, PA

A certification was issued covering all workers separated on or after September 8, 1988.

TA-W-23,431; Kent Sportswear, Inc., Hyde, Hyde, PA

A certification was issued covering all workers separated on or after September 8, 1988.

TA-W-23,432; Kent Sportswear, Inc., Clearfield, PA

A certification was issued covering all workers separated on or after September 8, 1988.

TA-W-23,345; Interlake Companies, Inc. Material Handling Div., Mendota, IL

A certification was issued covering all workers separated on or after August 23, 1988.

TA-W-21,293; Mustang Drilling, Inc., Great Bend, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1988.

TA-W-21,162; G & A Contract Services, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,166; Griffin-Alexander Drilling Co. Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,414; Emerald Corp., Inc., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-21,313; Stephens & Sons, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before November 1, 1988.

TA-W-21,332; Circle M Construction Co., Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 31, 1986.

TA-W-21,157; Al's Oilfield Service, Willston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,423; Four Square Excavating Co., Carmi, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before June 1, 1987.

TA-W-21,262; Donham Oil Tools Co., Inc., Lake Charles, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1987.

TA-W-21,312; Spartan Drilling & Workover Services, Rocky Mountain District, Sidney, MT & Operating at Various Locations in The Following States:

TA-W-21,312A MT
TA-W-21,312B ND
TA-W-21,312C SD

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,350; Grace Drilling Co., Odessa, TX & Operating at Various Locations in The Following States:

TA-W-21,350A Shreveport, LA
TA-W-21,350B Lafayette, LA
TA-W-21,350C Ft. Smith, AR
TA-W-21,350D Houston, TX
TA-W-21,350E Oklahoma City, OK
TA-W-21,350F Golden, CO

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,399; Grace Drilling Co., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987

TA-W-21,827 and TA-W-21,828; Dyna Jet, Inc., Gillette, WY and Grand Junction, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,712; Digicon Geophysical Corp., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,511; Classic Exploration, Inc., Witchita, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,512; Classic Exploration, Inc., Great Bend, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,063; Renn Drilling, Inc., McLeansboro, IL

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,648; Mud-Co., Inc., Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,649; Mud-Co., Inc., Hays, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before August 21, 1986.

TA-W-21,421; Fluor Drilling Services, Inc., New Orleans, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before December 5, 1986.

TA-W-21,611; Dakota Drilling Co., Bottineau, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,770; Teleco Oilfield Services, Inc., Broussard, LA & Operating at Various Locations in The Following States:

TA-W-21,770A Anchorage, AK
TA-W-21,770B Ventura, CA
TA-W-21,770C Meriden, CT
TA-W-21,770D Lafayette, LA
TA-W-21,770E Houston, TX .
TA-W-21,770F Evanston, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,456; Mid America Petroleum, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,326; Buford Drilling Co., Clodine, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,495; Viking Drilling Fluids, Littleton, CO

A certification was issued covering all workers separated on or after January 1, 1986 and before January 31, 1988.

TA-W-21,443; Knox Corder Drilling Co., Devine, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before March 21, 1987.

TA-W-21,440; Jeansville Corp, Orangeburg, SC

A certification was issued covering all workers separated on or after October 7, 1987 and before November 30, 1988.

TA-W-21,557; Chapman Services, Inc., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,401; Burgener Services, Inc., Olney, IL

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,551; BTA Oil Producers, Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,396; Amazon Technologies, Inc., Longmount, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,464; Parker Drilling Co., Gulf Coast Div., Lafayette, LA

A certification was issued covering all workers separated on or after January 1, 1986.

TA-W-21,505; AT&T Technologies General Markets Groups, Shreveport, LA

A certification was issued covering all workers separated on or after October 17, 1987.

TA-W-21,347; General Motors Corp., Pontiac Motor Div., Pontiac, MI & Operating at Various Plant Locations:

TA-W-21,347A Plant #15
TA-W-21,347B Plant #52
TA-W-21,347C Plant #56

A certification was issued covering all workers separated on or after October 4, 1987.

TA-W-21,819; Crown Exploration Co., Abilene, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-21,862; Hatch Wireline Service, Ed Dorado, AR

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1988.

I hereby certify that the aforementioned determinations were issued during the month of November 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 21, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-27871 Filed 11-27-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs' Advisory Committee; Appointment of Members

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of appointment of members.

SUMMARY: Notice is hereby given that appointments have been made to fill eighteen (18) vacancies on the Job Training Partnership Act Native American Programs' Advisory Committee.

The membership of the Committee and categories represented are as follows:

JTPA Section 401 Grantees

Mr. Thomas W. Dowd, Executive Director, Native Americans for Community Action, Inc., Flagstaff, Arizona
Ms. Evelyn F. Stephens, Executive Director, The Oklahoma Tribal Assistant Program, Inc., Tulsa, Oklahoma
Mr. Fred H. Muscavitch, Executive Director, Milwaukee Area American Indian Manpower Council, Inc., Milwaukee, Wisconsin
Mr. Frank LaMere, Executive Director, Nebraska Indian Inter-Tribal Development Corporation, Winnebago, Nebraska
Mr. John R. Hassan, JTPA Director, Council of Three Rivers, American Indian Center, Inc., Pittsburgh, Pennsylvania
Mr. Anthony Vaska, JTPA Director, Association of Village Council Presidents, Bethel, Alaska
Ms. Winona Whitman, Employment and Training Program Administrator, Alu Like, Inc., Honolulu, Hawaii
Ms. Joy J. Hanley, Executive Director, Affiliation of Arizona Indian Centers, Inc., Phoenix, Arizona
Mr. Doyle Tubby, Director, Department of Employment and Training, Mississippi Band of Choctaw Indians, Philadelphia, Mississippi
Mr. Gary L. Johnson, Executive Director, Western Washington Indian Employment & Training Program, Tacoma, Washington
Mr. Eddie L. Tullis, Chairman, Poarch Band of Creek Indians, Atmore, Alabama

National Organizations

Mr. Norman C. DeWeaver, Washington, D.C. Representative, Indian and Native American Employment and Training Coalition, Washington, D.C.
Mr. Syd Beane, President, National American Indian Council, Washington, D.C.

Representatives From Other Disciplines

Ms. Ada E. Deer, Senior Lecturer, American Indian Studies Program, University of Wisconsin, Madison, Wisconsin
Dr. John W. Tippeconnic III, Associate Professor of Education, Center for Indian Education, Arizona State University, Tempe, Arizona
Mr. Dale Wing, Assistant Project Director, American Association of Retired People, Washington, D.C.
Dr. Rose-Alma McDonald-Jacobs, Native American Consultant, Hogansburg, New York
Mr. A. David Lester, Executive Director, Council of Energy Resource Tribes, Denver, Colorado

Each of these members has been appointed for a term which will end on October 20, 1990.

The JTPA Native American Programs' Advisory Committee was established under section 401(h)(1) of title IV of JTPA to advise the Assistant Secretary for Employment and Training on rules, regulations and performance standards specifically and solely for Native American programs authorized under that section.

DATES: These appointments were made and were effective on November 9, 1989. The appointments expire on October 20, 1990.

FOR ADDITIONAL INFORMATION CONTACT: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, Room N-4644, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 535-0500.

Signed at Washington, DC, this 22nd day of November 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 89-27870 Filed 11-27-89; 8:45 am]

BILLING CODE 4510-30-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Whistleblower Appeals"

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's publication, "Questions & Answers About Whistleblower Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Whistleblower Appeals," will be available on riders to the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 0-00109.

DATE: Agency requisitions must be received by the Government Printing Office on or before [insert date 30 days from date of publication].

ADDRESS: Interested departments and agencies should send requisitions from their Washington, DC, headquarters office authorized to procure printing to the Government Printing Office, Requisition Section, Room C-836, Washington, DC 20401. The estimated cost is approximately 20 cents per copy.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This is a new publication containing general information on the rights of Federal employees to appeal certain personnel actions allegedly based on their whistleblowing activities to the Board and on the provisions of the Whistleblower Protection Act of 1989 (Pub. L. No. 101-12) and the Board's regulations applying to such appeals.

In making this publication available, the Board intends to provide general information about whistleblower appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

This publication is based on the Board's interim regulations, part 1201 and part 1209, as published in the Federal Register of July 6, 1989. When final regulations are published, any changes that affect the information in this publication will be reflected in a revised edition.

Dated: November 22, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-27855 Filed 11-27-89; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL COMMISSION ON CHILDREN

Meeting

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the second town meeting of the National Commission on Children to be held in Kansas City, Missouri.

Time: 7:00 p.m.-9:30 p.m., Monday, December 11, 1989.

Place: Pierson Hall, University of Missouri—Kansas City, Kansas City, Missouri.

Status: 7:00 p.m.-9:30 p.m., open to the public.

Agenda: America's Children and the Drug Crisis.

Contact: Jeannine Atalay, (202) 254-3800.

Dated: November 22, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89-27854 Filed 11-27-89; 8:45 am]

BILLING CODE 6820-37-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445/446]

Availability of Supplement to the Final Environmental Statement for Comanche Peak Steam Electric Station, Units 1 and 2

Notice is hereby given that a supplement to NUREG-0775, "Final Environmental Statement related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2," has been prepared by the Nuclear Regulatory Commission. The supplement provides the NRC staff's evaluation of the alternative of facility operation with the installation of further mitigation design features. The Comanche Peak Steam Electric Station, Units 1 and 2, is located on Squaw Creek Reservoir in Somervell County, Texas about 7 miles north-northeast of Glen Rose, Texas, and about 40 miles southwest of Fort Worth in north central Texas.

Copies of the supplement are available for inspection by the public at: (1) The NRC's Public Document Room at 2120 L Street, NW., Washington, DC 20555; (2) the Local Public Document Room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043; and (3) the mini Local Public Document Room at the University of Texas at Arlington Library, 701 South Cooper, P.O. Box 19447, Arlington, Texas 76019.

The document is also being made available at the state and metropolitan clearing houses.

Copies of the supplement may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

Dated at Rockville, Maryland, this 21st day of November 1989.

For the Nuclear Regulatory Commission.

James E. Lyons,

Acting Director, Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-27802 Filed 11-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on December 6, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 6, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss: (1) Proposed changes to 10 CFR 55, Operator Licenses, (2) NRC staff response to INPO comments on performance indicators, (3) Stater letter on operator training, and (4) Access Authorization rule (tentative).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days

before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 20, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-27793 Filed 11-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 7, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

A portion of the meeting will be closed to discuss information deemed proprietary by the Westinghouse Electric Company.

The agenda for the subject meeting shall be as follows:

Thursday, December 7, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss: (1) The proposed NRR and RES programs for resolution of the interfacing systems LOCA Issue; (2) the status of the NRC/RES's Technical Program Group's efforts to apply the Code Scaling, Applicability and Uncertainty (CSAU) methodology to calculation of a small break LOCA; and (3) the status of development of the Westinghouse best estimate ECCS/LOCA model.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the Westinghouse Electric Company, its consultants, and other interested persons regarding these topics.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 20, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-27794 Filed 11-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-139]

University of Washington; Consideration of Issuance of Amendment to Facility License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to License No. R-13, issued to the University of Washington (the licensee), for the 100KW (thermal) Argonaut reactor facility located on the campus of the University of Washington, in Seattle, Washington. The amendment would involve approval of the licensee's Decommissioning Plan and the renewal of License No. R-13 as a possession-only license with associated Technical Specifications (TS).

The licensee submitted a request to change its license from an operating to a possession-only license on August 3 and 23, 1989 and a Decommissioning Plan on August 31, 1989, which also made a timely request that the license be extended until October 13, 2009. The Decommissioning Plan consists of two phases. The first phase is a partial decommissioning wherein the fuel and parts of the Argonaut reactor will be removed from the facility. After this phase is completed and surveys prove the facility to be acceptable, the licensee plans to install a subcritical assembly and a robotics laboratory in the facility. An application for a special nuclear material license under Part 70 is expected to be submitted, as a separate action, for installation of the subcritical assembly. The second phase of the Decommissioning Plan addresses the complete decontamination of the facility so that it can be released for unrestricted use.

The amendment would accomplish the following: (1) Approval of the licensee's Decommission Plan, which involves on-site storage of residual radioactivity until the year 2009, followed by facility dismantling. The Decommissioning Plan decribes the structures, systems and components to be removed during the first and second phase and the monitoring maintenance of the remainder of the facility; (2) revise the Technical Specification (TS) to delete certain license conditions including the exemption of the physical security and emergency plan that were applicable for reactor operations but not for permanent shutdown possession-only conditions, and to retain the TS suitable for possession-only status such as requirements for radiation protection, monitoring and facility maintenance; and (3) renewal of License No. R-13 from its October 13, 1989 expiration date to October 13, 2009 to be consistent with the licensee's Decommissioning Plan and Possession-Only license amendment request.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, an amended (the Act) the the Commission's regulations.

By December 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Lloyd W. Peterson, Senior Assistant Attorney General, University of Washington, 112 Administration, MS AF-50, Seattle, Washington 98195, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 3, 1989 as revised August 23, 1989 and August 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-27801 Filed 11-27-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that meetings of the Nuclear Waste Technical Review Board and three of its Panels will be held on Monday, December 11, 1989, through Friday, December 15, 1989, at the Hyatt Regency Denver Hotel, Anaconda Tower, 2nd floor, 1750 Welton Street, Denver, Colorado 80202. The agenda will be as follows:

Monday, December 11, 1989

8:30 a.m. to 5:00 p.m., Anaconda Tower, Room 210A-B, Hydrogeology and Geochemistry Panel Meeting (open to public). Topics to be covered: characterization of infiltration, conceptual model of infiltration, current understanding, future plans; importance of fracture vs. matrix flow, results of experimental studies and field observations, conceptual models for fracture-matrix flow, implications of experimental studies and field observations; measurement of unsaturated zone hydrologic properties, overview of unsaturated zone hydrologic properties program, air permeability testing—role of fractures; in-situ monitoring—measuring fluid-flow potential field; radionuclide gas releases, review gaseous isotopes—H-3, C-14, Kr-85, I-129, C-14 migration, chemistry modeling, gas-flow modeling; overview of validation strategy; record of model development: conceptual, mathematical, numerical; lab/field investigations; sensitivity and uncertainty analyses; formal technical reviews; examples of validation.

Tuesday, December 12, 1989

8:30 a.m. to 12:00 noon. Anaconda Tower, Room 210A-B, Hydrogeology and Geochemistry Panel Meeting (open to public). Topics to be covered: applicability of lab experiments; factors controlling sorptive behavior; experimental K_d determination; laboratory and field evidence: thermohydrological, mechanical and geothermal effects of repository development: near and far field;

radionuclide behavior at elevated temperatures, colloidal behavior.

1:00 p.m. to 3:30 p.m., full Board meeting (open to public). Briefings by the Edison Electric Institute/Utility Nuclear Waste and Transportation Program and the Electric Power Research Institute on issues of concern to the industry.

Wednesday, December 13, 1989

8:30 a.m. to 10:30 a.m., Anaconda Tower, Room 210A–B, Structural Geology and Geoengineering Panel technical exchange on use of mechanical methods of tunnel and shaft excavation versus conventional drill-and-blast, and the access each provides to gather geologic data for site characterization (open to public). Participants: NWTRB, DOE, USGS, U.S. Bureau of Reclamation.

10:45 a.m. to 5:00 p.m., full Board will meet (closed to public) to discuss matters solely related to the internal personnel rules and practices of the Board, and to discuss information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Thursday, December 14, 1989

8:00 a.m. to 5:00 p.m., and

Friday, December 15, 1989

8:00 a.m. to 12:00 noon: Anaconda Tower, Room 214, Containers and Transportation Panel technical exchange on RADTRAN 4.0 and TRANSNET (open to public; limited seating).

The public is invited to attend the open meetings as indicated above only as observers. Open meetings on December 11 and 12 will be recorded and transcribed, and procedures to obtain transcripts will be provided at the meeting. Technical exchanges will not be recorded. To ensure that adequate facilities are provided for public attendance, persons planning to attend the meetings should contact Helen Einersen on (202) 254–4792 by December 5, 1989, 4:30 p.m. (EST).

Further information on these meetings can be obtained from William W. Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street, NW., Suite 801, Washington, DC 20036, (202) 254–4792.

Dated: November 21, 1989.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 89–27752 Filed 11–27–89; 8:45 am]

BILLING CODE 6820–AM–M

Office of Science and Technology Policy

Biotechnology Science Coordinating Committee; Meeting

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Open meeting.

Name: Federal Coordinating Council for Science, Engineering, and Technology, Biotechnology Science Coordinating Committee (BSCC).

Date and Time: Wednesday, December 13, 1989; 3:30–5:30 p.m.

Place: National Science Foundation, Room 540, 1800 G Street, Northwest, Washington, DC 20050.

Contact: Dr. John H. Moore, Chairman, BSCC, National Science Foundation, 1800 G Street, Northwest, Washington, DC 20050.

Purpose of the Committee: The BSCC serves as an interagency coordinating committee for addressing scientific biotechnology issues.

Tentative Agenda: The BSCC is interested in hearing comments from all sectors of the public on the effectiveness of the BSCC in handling scientific issues related to biotechnology. In addition, comments are sought on the Coordinated Framework for Regulation of Biotechnology (51 FR 23302, June 26, 1986) that address its utility and effectiveness. Other points of concern to the BSCC and for which public comment is invited include biotechnology safety issues, research and development funding, and the present state and future of academic research in biotechnology-related fields.

Public Participation: The meeting is open to the public. Members of the public who wish to make oral presentations should send a summary of their topic to Dr. Moore at the address listed above. Requests to make statements at the meeting must be received in writing 5 days in advance; reasonable provisions will be made to include requested presentations on the agenda. All presentations from the public will be limited to 5 minutes. Copy for the public record must be submitted at the time of the presentation. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Dated: November 21, 1989.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 89–27812 Filed 11–22–89; 11:44 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

November 21, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for AT&T Shares
Scores, No Par Value (File No. 7–5529)
Americus Trust for Chevron Shares
Scores, No Par Value (File No. 7–5530)
Americus Trust for Dow Chemical Shares
Scores, No Par Value (File No. 7–5531)
Americus Trust for DuPont Shares
Scores, No Par Value (File No. 7–5532)
Americus Trust for Ford Motor Shares
Scores, No Par Value (File No. 7–5533)
Americus Trust for General Motors Shares
Scores, No Par Value (File No. 7–5534)
Americus Trust for General Electric Shares
Scores, No Par Value (File No. 7–5535)
Americus Trust for American Home Products Shares
Scores, No Par Value (File No. 7–5536)
Americus Trust for Johnson & Johnson Shares
Scores, No Par Value (File No. 7–5537)
Americus Trust for Mobil Oil Shares
Scores, No Par Value (File No. 7–5538)
Americus Trust for Arco Shares
Scores, No Par Value (File No. 7–5539)
Americus Trust for Sears Shares
Scores, No Par Value (File No. 7–5540)
Americus Trust for Exxon Shares
Scores, No Par Value (File No. 7–5541)
American Capital Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–5542)
Allstate Municipal Income Trust II
Shares of Beneficial Interest, No Par Value (File No. 7–5543)
Allstate Municipal Income Opportunity Trust II
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–5544)
Apex Municipal Fund
Common Stock, $.10 Par Value (File No. 7–5545)
Dreyfus Municipal Income Fund, Inc.
Common Stock, No Par Value (File No. 7–5546)
MFS Charter Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7–5547)
Munienhanced Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–5548)
Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5549)
Prospect Street High Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–5550)
Putnam High Yield Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7–5551)
High Income Advantage Trust II
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–5552)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27777 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 21, 1989.

The Midwest Stock Exchange, Inc. ("MSE") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 thereunder for unlisted trading privileges ("UTP") in the 3 securities listed below solely for the purpose of trading these securities as part of a portfolio transaction traded through the MSE's Portfolio Trading System during its Secondary Trading Session. The 3 securities listed below are all over-the-counter securities that are quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[1] Last sale information for these securities are reported through NASDAQ facilities.

American Greetings
Class A Common Stock, $1.00 Par Value (File No. 7–5553)
Intergraph Corp.
Common Stock, $.10 Par Value (File No. 7–5554)
Ryan's Family Steak House
Common Stock, $1.00 Par Value (File No. 7–5555)

Interested persons are invited to submit on or before December 8, 1989 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with Section 12(f) of the Act. Under this section the Commission can only approve the UTP application if it finds, after this notice and opportunity for hearing, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

Further, in considering the MSE's application for extension of UTP in the 16 NASDAQ stocks, section 12(f)(2) of the Act requires the Commission to consider, among other matters, the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(1)(C) of the Act would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

[1] None of the securities on which UTP has been requested are registered on another national securities exchange under section 12(b) of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27778 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 21, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Portugal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–5517)
Potash Corporation of Saskatchewan, Inc.
Common Stock, No Par Value (File No. 7–5519)
Capstead Mortgage Corporation
$1.60 Cumulative Convertible Preferred Stock Series A (File No. 7–5518)
First Philippine Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5520)
Rhone-Poulenc, S.A.
American Depositary Shares, No Par Value (File No. 7–5521)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27779 Filed 11-27-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 21, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

United Industrial Corp.
Common Stock, $1 Par Value (File No. 7-5522)
El Paso Refinery, L.P.
Cum. Participating Conv. Pfd. Units (File No. 7-5523)
The Portugal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5524)
Potash Corporation of Saskatchewan, Inc.
Common Stock, No Par Value (File No. 7-5525)
Enron Oil & Gas Company
Common Stock, No Par Value (File No. 7-5526)
The First Philippine Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5527)
Van Kampen Merritt Municipal Income Trust
Common Stock, $0.01 Par Value (File No. 7-5528)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27780 Filed 11-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27454; SR-NSCC-89-12]

Self-Regulatory Organizations; National Securities Clearing Corp. ("NSCC"); Order Approving Modification to NSCC's Automated Customer Account Transfer Service Rules

November 20, 1989.

On August 14, 1989 the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-89-12) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would provide for the automated transfer of mutual fund assets in the form of eligible book shares that are transferred through NSCC's Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"). Notice of the proposed rule change appeared in the **Federal Register** of August 30, 1989.[2] No comments were received. As discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

NSCC's proposal would amend Rules 50 and 52 in order to provide a uniform procedure for member transfers of customer positions in mutual funds associated with NSCC's Fund/SERV [3] through the Automated Customer Account Transfer Service ("ACAT Service" or "ACATS").[4] Under NSCC's proposal, if an eligible fund asset [5] is held in book share form and all asset details are submitted in automated format, the transfer will be processed automatically through NSCC's Fund/SERV.[6] In order to transfer Fund/SERV eligible assets in a client's account, through the ACAT Service, from one brokerage firm to another, the firm to whom a customer's securities account is to be transferred ("receiving member") will submit to NSCC, in physical or automated format, a Transfer Initiation Form ("TIF") for a particular customer account, indicating whether the account includes mutual fund assets. NSCC will then perform a preliminary edit of the data.[7] If any data is missing, NSCC will reject the TIF and return it to the receiving member for correction.

NSCC will forward a copy of the TIF to the member carrying the customer account ("delivering member"). The delivering member must either accept or reject the transfer request. A delivering member may reject a transfer request if it does not know the account, if the TIF has errors, or if additional documentation is required.[8] NSCC will then issue a Control Report for receiving and delivering members that will be available to the participating members by 8:00 a.m.[9] of the day after the TIF has been submitted.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Securities Exchange Act Release No. 27172 (August 23, 1989), 54 FR 35,986 (August 30, 1989).

[3] On November 20, 1987, the Commission approved NSCC's proposal to amend its rules and procedures in order to offer Fund/SERV as a centralized, automated processing system for the purchase and redemption of mutual funds. *See* NSCC Rules, R. 51 & 52, Securities Exchange Act Release No. 25146 (November 20, 1987) 52 FR 45,416 (November 27, 1987).

[4] On September 30, 1985, the Commission approved NSCC's Rule 50 establishing the ACAT Service, which allows participants to transfer customer accounts in an automated fashion. Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41,274 (October 9, 1985).

[5] A Fund/SERV eligible asset consists of mutual fund shares in book-entry format that are associated with mutual funds which have been admitted to NSCC for the purpose of receiving purchase and redemption orders. NSCC Rules, R. 3, § 7.

NSCC's Fund/SERV allows participants to transmit information pertaining to purchase and redemption orders as of a specific date, including trades not submitted on trade date or trades previously rejected from the system. These orders are denominated "as-of" orders and a participant may submit these orders at any time within six months after trade date. NSCC's proposed enhancement to the ACAT Service does not envision the transfer of "as-of" orders, because these positions do not represent current positions within the transferred account.

[6] Presently, the ACAT Service can be used to facilitate the transfer of accounts that have mutual fund assets. The broker-dealer to whom an account is being transferred, however, must initiate separate re-registration proceedings for the mutual fund assets and delivery and payment, if any, occurs outside ACATS. *See* Letter from Allison N. Hoffman, Associate Counsel NSCC, to Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission (October 5, 1989).

[7] A TIF must contain the following information: (a) Receiving member's clearing number; (b) delivering member's clearing number; (c) customer's account number at the delivering member; (d) customer's account title. *See* NSCC, ACATS PROCEDURES MANUAL, at A-1 (January 1988).

[8] *Id.* at C-1.

[9] All times in this Order are referenced in terms of eastern time.

The Control Report will reflect the status of the account relative to the data submitted by the participating members. The account being transferred will appear in the Transfer Initiation section of the Control Report with the status of "New." The system will also provide a transfer initiation reject capability for the delivering member. If the deliverer rejects the transfer request the rejected account will appear in the Control Report with the status "Reject" plus the Reject Code.[10]

A delivering member accepting a transfer request must submit, in an automated fashion, data regarding the customer account's assets within five business days of the receipt of the TIF.[11] NSCC will attempt to provide any missing information (*e.g.*, a missing CUSIP number) or correct any format errors in order to validate the data submitted by the delivering member.[12] If the data submitted by the delivering member fails to have the necessary information or contains one or more format errors, NSCC will notify the receiving member that it has received the customer account data but that it contains errors.

By 8 a.m. of the day after the delivering member submits data regarding the customer account's assets, NSCC will make available to both the receiving and the delivering members an Asset Detail Report setting forth the mutual fund assets, along with the other account assets (*e.g.*, corporate common stock or corporate bonds). Eligible mutual fund shares which are held in book share form, will be set forth in a separate category on the Asset Detail Report. If mutual fund shares are held in physical form or if the shares are not Fund/SERV eligible shares, the receiving and delivering members must arrange transfers outside the ACAT Service between themselves.

Within two business days of receipt of the Asset Detail Report, a receiving member must accept or reject the account, or request the delivering member to make adjustments.[13] Within the same time frame, a receiving member accepting an account will be required to submit transfer instructions for those mutual fund shares to be processed through Fund/SERV.[14] If a delivering member makes an adjustment to the account, NSCC will generate a new Asset Detail Report and the receiving member will be allowed two business days to submit the transfer information.[15]

On a daily basis, NSCC will produce a Registration Detail Report advising members of the transfer instructions received and, in the event no instructions were received, the standing (*i.e.*, pre-established) instructions for re-registration in the member's nominee name (*i.e.*, a pre-established street name).[16] The receiving member will have two business days to submit corrections to the instructions contained in the report.[17] NSCC, however, will provide its own standing transfer instructions to the Fund member,[18] if the receiving member submits incorrect transfer instructions or fails to submit them before 12 noon of the second business day after the issuance of the Asset Detail Report.[19]

Each day, at 8 p.m., through Fund/SERV, NSCC will transmit transfer instructions and details for eligible mutual fund shares to the corresponding Fund members.[20] NSCC expects to receive confirmations or rejections for the transfer instructions by 11 a.m. of the following day.[21] By 12 noon of that day, NSCC will notify the receiving and delivering members, through the Mutual Fund Registration Status Report, of those instructions that have been confirmed, rejected or still pending.[22] As part of the ACAT Service, NSCC will then issue a Settlement Summary Report reflecting entries for fund confirmed transactions that are to be delivered the following day ("settlement date").[23]

On settlement date, NSCC will collect the value of the mutual fund assets from the deliverer by debiting its settlement account.[24] NSCC will then credit this amount to the receiver's settlement account.[25] If NSCC has received confirmation from the Fund member indicating that it has accepted the transfer instructions, NSCC will offset the previous settlement account entries by crediting the delivering member and debiting the receiving member for the value of the assets.[26] This activity will be reflected in the participants' Money Settlement Statements.

In the event transfer instructions remain pending (*i.e.*, neither confirmed nor rejected by the Fund member), NSCC will also collect from the deliverer the value of the pending mutual fund assets.[27] The members' Money Settlement Statements will therefore reflect a debit to the delivering member's settlement account and a credit to the settlement account of the receiving member. NSCC will offset the members' settlement account entries on the day after NSCC receives confirmation from the Fund member that it has received the transfer instructions.[28]

[10] NSCC will issue Control Reports on a daily basis, accounting for all transfers performed through the ACAT Service. NSCC will notify a receiving member of transfer requests that have been rejected by the delivering member and will delete such transfer requests from the ACAT Service. A receiving member resubmitting a rejected transfer request must reinstate the request as if one had never been previously submitted.

[11] NSCC, *supra* note 7, at D-1. NSCC's proposed Rule 50, § 6 requires delivering members to submit asset details in an automated format. A delivering member will input this data through the Customer Account Asset Input/Adjustment Form. The specific instructions for the automated input of this data will be similar to the automated interface procedures currently in use for the ACAT Service. Under NSCC's proposed ACAT-Fund/SERV Service, however, the Customer Account Asset Input/Adjustment Form will contain additional "fields" for the submission of the following asset information regarding the account being transferred: (a) Customer's account number at the mutual fund and whether the number was assigned by the delivering member or the mutual fund, (b) networking control indicator (if the account is a Networking Account), (c) whether the account is held in customer or street name, (d) whether the transferred funds are Fund/SERV eligible, and (e) the registered representative's identity, if any.

[12] NSCC Rules, Proposed R. 50, section 8. A format error consists of a failure to supply information as required by NSCC's instructions for automated input.

[13] NSCC Rules, R. 50, section 9. A receiving member accepting an account is not required to take any specific action. *Id.* In order to change or delete assets listed in the Asset Detail Report, a delivering member must submit an Asset Input/Adjustment Form.

[14] NSCC Rules, Proposed R. 50, section 9, ¶ 2.

[15] *Id.*

[16] *Id.* NSCC's derived standing instructions will also consist of instructions to re-invest distributions. A participant will be able to submit standing instructions containing specific information about the type of account and the identity of the client for whom it will hold the account. *See* NSCC, IMPORTANT NOTICE # A 3228, at 4 (September 15, 1989).

[17] NSCC Rules, Proposed R. 50, section 9, ¶ 2.

[18] Pursuant to NSCC's Rules, Fund members are NSCC members who can only process and settle, on an automated basis, mutual fund purchase and redemption orders and transmit registration instructions. NSCC Rules, R. 51 & 52.

[19] If the delivering member makes an adjustment to the Asset Detail Report, however, the receiving member will be allowed two additional business days to submit the transfer information. NSCC Rules, Proposed R. 50, section 9, ¶ 2.

[20] NSCC, FUND/SERV SYSTEM CAPABILITIES AND SPECIFICATIONS 7 (October 1988).

[21] *Id.*

[22] NSCC, IMPORTANT NOTICE # A 3228, at 5 (September 15, 1989). Fund members will be reminded, on a daily basis, of the items which have not been confirmed or rejected. These pending items will be continually carried forward in the system.

[23] The corresponding debiting and crediting entries for Fund/Serv eligible assets will be separately set forth in the member's ACATS Settlement Report, which is intended to assist the participant's internal preparation for the receipt and delivery of customer account securities.

[24] NSCC Rules, Proposed R. 50, section 11(c).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

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If the Fund member rejects a Fund/SERV eligible book share mutual fund asset,[29] NSCC, as part of the ACAT Service, will issue receive and deliver orders, respectively.[30] On settlement date NSCC will collect the value of the rejected mutual fund assets from the delivering member and credit the receiving member's money settlement account.[31] The deliverer's payment obligation will be netted with the rest of its NSCC payment obligations. The actual transfer of the rejected items, however, must be accomplished between the parties, outside the ACAT and Fund/SERV Services and delivering members will remain responsible for the actual delivery of assets.[32]

NSCC's proposed enhancement to the ACAT Service will occur in two phases. Under Phase I, access to this service will be voluntary. To be eligible to participate, delivering members must be able to transmit data to NSCC in an automated format. In Phase II, all NSCC members will become eligible participants, but to be eligible delivering members, must continue to have automated input capabilities.[33]

During Phase I of the proposed enhancement, standing instructions for the transfer of assets will be derived by NSCC. During Phase II, the receiving member will be able to establish its own standing transfer instructions. In the event the receiving member chooses not to provide standing instructions, the NSCC derived standing instructions will be used.[34]

II. NSCC's Rationale

NSCC believes the proposal is consistent with section 17A of the Act [35] because it promotes the prompt settlement of mutual fund transactions by providing for the automated transfer of Fund/SERV eligible book shares as part of a transfer of a customer account from one brokerage firm to another.

III. Discussion

As discussed below the Commission believes that NSCC's proposed enhancement of the ACAT Service is consistent with the Act. Currently, NSCC compares customers' mutual fund transfer data submitted by broker-dealers, through the ACAT Service. The actual re-registration, delivery and money payment, if any, however, occurs outside the ACAT Service and remains the responsibility of the participating members. NSCC's proposal to allow ACATS participants the use of Fund/SERV in order to facilitate the transfer of eligible mutual fund assets will inject specific duties and performance time frames into the transfer procedure. This, in turn, will prevent unnecessary delays in the processing of these transfers and, as required by the Act, will promote the prompt and accurate clearance and settlement of customer account transfers involving eligible mutual fund assets.[36]

NSCC's proposal combines the advantages of the Fund/SERV and ACAT Services, thus allowing for a greater participant control over the transfer of Fund/SERV eligible assets. As the Commission has stated before, Fund/SERV achieves significant efficiencies for broker-dealers and mutual funds by offering a centralized automated facility with standard formats for processing mutual fund information.[37] The Commission also believes that the ACAT Service promotes the prompt and accurate clearance and settlement of securities by "foster[ing] disciplined broker-to-broker communication related to cumbersome account transfers." [38]

NSCC's proposal will allow for an efficient information sharing process regarding the transfer of eligible mutual fund shares through the ACATS system. At each stage of the transfer, the system will provide participants with information concerning the status of the transferred assets in relation not only to their counterpart, but also to the participating Fund members. NSCC will achieve this constant flow of information by issuing multiple reports that will enable participants to compare information regarding the value of transferred assets and check the accuracy of re-registration instructions within specific time frames. In addition, the ACATS communication system will also serve to remind participants, including Fund members, of those transfers over which no action has been taken. For this reason, the Commission believes that the effective communication system associated with ACATS will improve the information sharing process among participants and therefore expedite the transfer of eligible mutual fund shares.

Participating members' ability to transmit data through Fund/SERV's automated environment will centralize the processing of re-registration information for eligible mutual fund shares. NSCC will transmit transfer instructions derived by either NSCC or the receiving member. In either case, however, the information must be established in a standardized format before the initiation of a transfer. This procedure will minimize delays associated with participant's failure to submit complete information on time.

At the same time, the processing of transfers involving mutual fund assets through Fund/SERV's automated system also will foster cooperation and coordination with "persons engaged in the clearance and settlement of securities transactions," eliminating multiple communications and settlement arrangements between broker-dealers and Fund members.[39] This simplification will reduce the risks of failed deliveries, inadequate transaction records, operational errors and, ultimately, financial insolvency.[40]

NSCC's proposal allowing participants to use Fund/SERV as part of the ACAT Service will encourage the use of new data processing and communications techniques to promote more efficient, effective and safe procedures for the transfer of mutual fund assets. This fostering of efficient means of communication should provide for a faster transfer of mutual fund assets which will, in turn, give investors more timely control over their transferred assets. For these reasons the Commission believes that NSCC's proposal promotes the prompt and accurate clearance and settlement of transfers involving eligible mutual fund assets and is consistent with the safety goals embodied in section 17A of the Act.[41]

[29] A Fund member may reject eligible book shares if it fails to recognize such assets as forming part of the mutual fund.

[30] Receive and Deliver instructions are intended to notify participants of their delivery obligation outside of the NSCC's continuous net settlement system. *See* NSCC's Rules, R. 50, section 10. Settlement of receive and deliver orders is, instead, subject to the rules of the respective members' designated examining authorities ("DEA"), rather than NSCC's rules. NSCC Rules, Proposed R. 50, section 11(b).

[31] NSCC Rules, Proposed R. 50, section 11(c), *see also* NSCC, *supra* note 7, at G–1.

[32] NSCC Rules, Proposed R. 50, section 11(b). Pursuant to NSCC's proposal a member's failure to deliver will be subject to the rules of the member's DEA, rather than NSCC's rules.

[33] NSCC expects to implement Phase II sixty days after the implementation of Phase I.

[34] See *supra* note 16 for a discussion of standing transfer instructions.

[35] 15 U.S.C. 78q–1 (1982).

[36] *See* 15 U.S.C. 78q–1(a)(3)(F) (1982).

[37] *See* Securities Exchange Act Release No. 24068 (February 10, 1987) 52 FR 5,228 (February 19, 1987); *See also* Securities Exchange Act Release No. 26506 (January 31, 1989) 54 FR 6,051, 6,052 (February 7, 1989).

[38] Securities Exchange Act Release No. 22461, *supra* note 4, at 41,275.

[39] *See* 15 U.S.C. 78q–1(b)(3)(F) (1982).

[40] *See* Securities Exchange Act Release No. 24068, *supra* note 37, at 5,230.

[41] *See* 15 U.S.C. 78q–1(a)(1)(C) (1982) where, with regards to the clearance and settlement of securities, the 94th Congress found that "[n]ew data processing and communications techniques create

Continued

The Commission believes that the proposed rule change, as required by the Act, gives NSCC an increased capacity to safeguard funds in its custody or control, or for which it is responsible.[42] While NSCC will not guarantee the delivery of Fund/SERV eligible assets, it will collect from the deliverer the value of the Fund/SERV eligible assets being transferred and credit the receiver's settlement account. This procedure will encourage participants to expedite the transfer of customer's mutual fund assets. In the event of a pending or rejected transfer, moreover, this procedure will provide receiving members with the value of the transferred assets until the delivering member can obtain re-registration of the assets and make subsequent delivery.

NSCC's proposal to collect the value of the transferred assets from delivering members, offers protection to customers by ensuring constant control over the value of the assets being transferred. At the same time, however, the proposal also protects the delivering member's interests because it retains the safeguards in place for the protection of Fund/SERV participants. As such, NSCC can require the return of any monies credited to a receiving member's account through the ACAT-Fund/SERV Services.[43]

Finally, the Commission believes that NSCC's proposed rule change furthers the development of a National Clearance and Settlement System ("National System").[44] The proposal encourages settlement of transfers among broker-dealers in a clearing agency environment, thus contributing to reduce physical movements of certificates in connection with transfer settlements among broker-dealers.[45]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule filing (SR–NSCC–89–12) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–(12) (1988).

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27819 Filed 11–27–89; 8:45 am]

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the opportunity for more efficient, effective, and *safe* procedures for clearance and settlement" (emphasis added).

[42] *See* 15 U.S.C. 78q–1(a)(3)(A) (1982).

[43] NSCC Rules, Addendum D, at 2, *see also* Securities Exchange Act Release No. 24227 (March 17, 1987), 52 FR 9,603, 9,604 (March 25, 1987).

[44] Section 17A(a)(2), 15 U.S.C. 78q–1(a)(2), directs the Commission to use its authority to facilitate the establishment of a National System in order to not only "bolster sagging investor confidence but also to assure that the country maintains a strong, effective and efficient capital raising and capital allocating system in the years ahead." SEN. REP. NO. 75, 94th Cong., 1st Sess. 3 (1975).

[45] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41,920, 41,923 (June 23, 1980) (Release setting forth the standards to be followed by the Division of Market Regulation when recommending specific action to the Commission regarding the registration of clearing agencies).

[Rel. No. IC–17227; 812–7152]

Allied Capital Corporation, et al.; Notice of Application

November 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Allied Capital Corporation ("Allied Capital"), Allied Advisory Inc. ("Allied Advisory"), Allied Management Partners ("Management Partners"), Allied Venture Partnership ("Venture Fund") and Allied Technology Partnership ("Technology Fund").

Relevant 1940 Act Section: Order requested under sections 17(b) and 17(d) of the Act and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an order permitting certain joint transactions and arrangements relating to a proposed externalization of the presently internalized management functions of Allied Capital.

Filing Dates: The application was filed on October 19, 1988, with amendments thereto on April 18, 1989, October 25, 1989, and November 15, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 18, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., Suite 901, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Stuart Norwich (202) 272–3035, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee either by going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representation

1. Allied Capital is a closed-end, non-diversified investment company registered under the Act. It is a holding company engaged in providing venture capital financing to small businesses through four wholly-owned subsidiaries also registered as closed-end investment companies. Allied Capital is therefore basically a shell, virtually all of its public venture capital operations are transacted through its investment company subsidiaries. Allied Capital did not elect business development company ("BDC") status upon the adoption of the 1970 amendments to the Act concerning BDCs, because it preferred not to lose the pass-through tax treatment accorded by virtue of the Internal Revenue Code. Nevertheless, Allied Capital is still considering whether it would be advantageous to elect BDC status and it may, at some future time, do so.

2. Allied Advisory, a registered investment adviser and a wholly-owned subsidiary of Allied Capital, is registered as an investment adviser under the Investment Advisers Act of 1940. Allied Advisory has a 50 percent interest in, and is the general partner of, Management Partners, which is the general partner of Venture Fund and Technology Fund (the "Venture Partnerships"). The Venture Partnerships were formed to manage the assets of institutional investors. Management Partners contributed 1% of the capital of each Venture Partnership, one half of which was furnished by Allied Advisory.

3. Pursuant to advisory agreements with the Venture Partnerships, Allied Advisory provides investment advice and administrative services to them. Allied Advisory also provides investment advisory and administrative services to Allied Capital and its investment company subsidiaries. Neither Allied Capital nor any of its investment company subsidiaries have any direct employees. All operating assets are owned by Allied Advisory.

including desks, chairs, and computers; leases are also in the name of Allied Advisory. Each quarter Allied Advisory bills Allied Capital and its investment company subsidiaries for their directly attributable expenses and for their proportional share of the general expenses of Allied Advisory incurred during the quarter.

4. Applicants propose, subject to the approval of Allied Capital's shareholders, to externalize the management of Allied Capital by "spinning off" Allied Advisory. Under the plan, shares of Allied Advisory will be distributed to shareholders of Allied Capital; they would receive shares of Allied Advisory equal to the number of shares of Allied Capital owned. Upon effectuation of the spin-off, Allied Advisory is expected to have approximately 3,000 shareholders, all of whom will also be shareholders of Allied Capital. Immediately after the spin-off, the shares of Allied Advisory will be tradeable in the over-the-counter market. Once Allied Advisory shares begin trading, that identity of ownership may change.

5. Pursuant to shareholder approval, Allied Capital would then retain Allied Advisory to provide, pursuant to contract, the services previously provided by it as a subsidiary of Allied Capital. The only change in Allied Advisory's relationship with Allied Capital will be that the services previously rendered to Allied Capital in an internalized structure will be provided under the terms of an investment advisory and administrative services agreement. That agreement will contain a provision to the effect that the manager will not undertake any conflicting duties of loyalty which would affect its prior fiduciary duty to Allied Capital. Allied Advisory will also manage the business affairs of Allied Capital. As compensation, Allied Capital will pay an amount to cover its specifically attributable expenses plus an amount equal to 2.5% (on an annual basis) of Allied Capital's consolidated assets.

6. Allied Advisory will render the same "significant managerial assistance" to portfolio companies that it currently provides as a wholly-owned subsidiary of Allied Capital. Allied Advisory, in addition to managing Allied Capital and the two Venture Partnerships, will endeavor to expand its advisory business to include other registered investment companies and other funds. It is anticipated that this expansion of Allied Advisory's business will result in greater profitability of Allied Advisory that will benefit the shareholders of Allied Capital who will become the original shareholders of Allied Advisory, while also providing financial incentives to attract and retain qualified personnel.

7. The board of directors of Allied Capital is comprised of 14 persons, 10 of whom are not interested persons of Allied Capital. The board received no reports from financial consultants and outside counsel; however, numerous discussions regarding the details of the externalization proposal occurred. These included discussions with venture capital advisory and consulting firms regarding the reasonableness of a 2.5% advisory fee; discussions with a mutual fund consulting firm regarding the value of Allied Advisory; and discussions with law firms and an accounting firm regarding the tax, securities, and accounting issues involved with the spin-off proposal. The board also considered the fact that the indirect interest in the profits of the Venture Partnerships would not be available to future shareholders of Allied Capital after the spin-off, although the future shareholders of Allied Capital will purchase shares based on the then-existing structure of the company. The board approved the externalization proposal because it should result in advantages to shareholders from: (a) Direct ownership of Allied Advisory, which would mean shareholders could immediately receive any profits resulting from Allied Advisory by trading their shares in the over-the-counter market; (b) lower advisory costs to Allied Capital, based on figures, summarized in the application, showing a reduction in advisory costs were the spin-off to occur; (c) increased assets under management (by acquiring additional advisory clients) without concomitant increases in administrative costs; (d) personnel incentives; and (e) a simpler corporate structure.

8. On October 24, 1983, Allied Capital obtained a Commission order to permit the establishment of an executive compensation plan providing for the issuance of stock options to certain officers and permitting loans to such officers to facilitate their exercise of the options. See Investment Company Release No. 13595 (Oct. 23, 1983). The shareholders of Allied Capital authorized its stock option plan on December 20, 1983, which provides for the granting of options for up to 468,750 shares of stock. Under the terms of the externalization proposal, the stock option plan would remain intact.

9. On September 17, 1985, Allied Capital obtained a Commission order to permit the establishment of Venture Fund and on June 30, 1987, it obtained a Commission order to permit the establishment of Technology Fund ("Partnership Orders"). See Investment Company Release Nos. 14725 (Sept. 17, 1985) and 15833 (June 30, 1987). The Partnership Orders permitted various affiliated transactions associated with the activities of the Venture Partnerships, including their co-investing with Allied Capital in portfolio companies. Under the terms of these orders, co-participation in investments may occur under specific conditions meant to ensure fairness to Allied Capital, and allocation decisions were required to be approved by a majority of Allied Capital's directors who had no personal interest in the Venture Partnerships. After the spin-off of Allied Advisory, the relationship between Allied Capital and the Venture Partnerships will continue as before, including the co-investing.

Applicants' Legal Analysis

1. Applicants believe that the distribution of shares of Allied Advisory to shareholders of Allied Capital, including the distribution of shares to affiliates of Allied Capital, falls within the purview of Rule 17a–5 under the Act. However, the Division has taken the position that Rule 17a–5 only applies to pro rata distributions of an investment company's portfolio securities. See Chicago Milwaukee Corporation (pub. avail. Dec. 16, 1988) ("Chicago Letter"). Allied Advisory, as a wholly-owned subsidiary of Allied Capital, probably would not be deemed a "portfolio security" of Allied Capital. Based on the Chicago Letter, Applicants believe a question exists as to whether the distribution of shares of Allied Advisory to the shareholders of Allied Capital is covered by Rule 17a–5. Applicants, therefore, request an exemption pursuant to section 17(b) of the Act. Applicants contend this exemptive relief under section 17(b) is warranted because the transfer of assets represented by the distribution of shares of Allied Advisory, for purposes of analysis under the Act, is merely technical. The shareholders of Allied Capital are not having anything transferred away from them; whereas before the spinoff they owned Allied Advisory indirectly, after the spin-off, they will own Allied Advisory directly.

2. Allied Advisory owns all of the furniture, furnishings and equipment used by Allied Capital; it also owns a general partner interest in Management Partners. Nothing in the proposed transactions will alter those ownership interests and obligations. Applicants believe that any transfer of ownership of these interests based on the proposed transactions is subsumed into the distribution of shares of Allied Advisory. Therefore, Applicants are not requesting specific exemptive relief under section 17(b) permitting the transfer of such other property.

3. Allied Capital, Allied Advisory, Management Partners, Venture Fund, and Technology Fund are affiliates of each other because of their control relationships with each other. The participation of the entities in the proposed transaction and the entry into new contractual arrangements may, therefore, constitute a "joint enterprise or other joint arrangement" within the meaning of section 17(d) of the Act and Rule 17d–1 thereunder. Applicants seek an order pursuant to Rule 17d–1 permitting the proposed transactions. Applicants assert that the terms of the transactions are not less advantageous to Allied Capital or its controlled companies than to other participants. Applicants state the Allied Capital's board carefully considered the effect of the proposed externalization and determined that the shareholders would derive greater benefits from the direct ownership of Allied Advisory than the indirect benefit derived from Allied Advisory's general partner interest in Management Partners. Applicants also assert that the proposal should result in reduced advisory costs and greater assets under management, which should result in greater profits for Allied Advisory inuring to the benefit of its shareholders.

4. Applicants submit that their externalization proposal is so free from potential manipulation, that compared to the prior applications granted by the Commission, the conditions established in those applications are inappropriate here. Applicants' proposal does not involve a transfer of economic benefit away from public investment company shareholders to private entities controlled by affiliates. The shareholders of Allied Capital will be the owners of the entity that will provide the advisory and management services.

Applicants' Conditions

Applicants agree that any exemptive relief be subject to the following conditions:

1. Allied Advisory will not increase the fee charged Allied Capital for two years.

2. An independent valuation report of Allied Advisory will be completed prior to the spin-off.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27823 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17231; (812–7236)]

Barclays Bank PLC; Notice of Application

November 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act")

Applicant: Barclays Bank PLC ("Barclays").

Relevant 1940 Act Section: Exemption requested under section 6(c) from the provisions of Section 17(f).

Summary of Application: Barclays requests an order to permit a foreign subsidiary and a foreign securities depository to maintain securities and other assets of United States investment companies. If granted, the order would amend a prior order (Investment Company Act Release No. 16536, August 24, 1988) which permitted Barclays and any registered investment company or a custodian for such investment company to maintain securities in the custody of certain of Barclays' foreign subsidiaries.

Filing Dates: The Application was filed on February 7, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Barclays Bank PLC, 54 Lombard Street, London EC3P 3AH, England, or Paul B. Ford, Jr., Esq., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–3026, or Max Berueffy, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Barclays is a company organized and existing under the laws of the United Kingdom. Barclays, one of the ten clearing banks in the United Kingdom, is authorized and regulated by the Bank of England. It is regulated in the United States as a bank holding company and is subject to the United States International Banking Act of 1978. Barclays' New York branch is licensed by the Superintendent of Banks of the State of New York and is qualified to do business in accordance with the provisions of Article V of the Banking Law of the State of New York.

2. Barclays Bank Australia Limited ("Barclays Australia"), an Australian merchant bank, is a wholly-owned, direct subsidiary of Barclays. It provides custodial services through its subsidiary, Barclays Australian Custodian Services Limited. Barclays states that Barclays Australia is experienced, capable, and well qualified to provide custodial services to registered investment companies, and, under the foreign custody arrangements proposed, the protection of investors would not be diminished.

3. Frankfurter Kassenverein A.G. ("Frankfurter Kassenverein") is one of seven depository and clearing agencies in West Germany, each of which services a particular stock exchange. Barclays states that Frankfurter Kassenverein is experienced, capable and well qualified to provide custodial services to registered investment companies, and under the foreign custody arrangements proposed, the protection of investors would not be diminished.

Applicant's Legal Conclusions

1. Barclays meets the requirements in Rule 17f–5 under the 1940 Act of an "eligible foreign custodian" because Barclays is a regulated bank under the laws of England and has shareholders' equity in excess of the pound sterling equivalent of the rule's $200 million requirement. Barclays, however, requests this order because the proposed foreign custodians are not

"eligible foreign custodians" under the rule.

2. Barclays Australia is not an "eligible foreign custodian" because it does not satisfy the rule's $200 million shareholders' equity requirement. Although Barclays Australia has assets in excess of $1.5 billion, it only has shareholders' equity of approximately $122 million. However, Barclays believes that the terms of the proposed foreign custodial arrangements will adequately protect United States registered investment companies and their shareholders against loss. Barclays will remain liable for the performance of the duties and obligations delegated to Barclays Australia as well as the losses relating to the bankruptcy or insolvency of Barclays Australia. The risks associated with foreign investment, however, will remain with the investment companies (which will presumably disclose any such material risks to investors). The relief requested is similar to that previously granted with regard to Barclays' other subsidiaries. See Barclays Bank PLC, Investment Company Act Release No. 16536 (Aug. 24, 1988).

3. Frankfurter Kassenverein is not an "eligible foreign custodian" because it is not the central or transnational system for the handling of securities in West Germany, as required by the rule. Frankfurter Kassenverein services the Frankfurt Stock Exchange, the largest and most active of the German stock exchanges. Virtually all domestic and foreign banks engaged in the securities business in Frankfurt are members of Frankfurter Kassenverein. The Commission has issued three previous orders permitting United States investment companies to maintain securities and other assets with Frankfurter Kassenverein. See Morgan Guaranty Trust Company of New York, Investment Company Act Release No. 16080 (Oct. 27, 1987); Citibank, N.A., Investment Company Act Release No. 15617 (Mar. 11, 1987); and State Street Bank and Trust Company, Investment Company Act Release No. 14698 (Aug. 28, 1985).

4. Barclays submits that the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Barclays agrees to the following conditions:

1. Barclays Australia will satisfy the requirements of Rule 17f–5 in all respects other than with regard to shareholders' equity.

2. Frankfurter Kassenverein will satisfy the requirements of Rule 17f–5 in all respects other than the requirement that securities depositories must be the central system or transnational system for the handling of securities or equivalent book-entries in the relevant country.

3. Securities of United States investment companies will be maintained with Barclays Australia only in accordance with a three-party contractual agreement, required to remain in effect at all times during which Barclays Australia fails to satisfy all of the requirements of Rule 17f–5, between Barclays, Barclays Australia, and the United States investment company or the custodian for a United States investment company. Pursuant to the terms of this agreement, Barclays would provide specified custodial or sub-custodial services for the United States investment company or custodian and would delegate to Barclays Australia such of Barclays' duties and obligations as would be necessary to permit Barclays Australia to hold in custody in the country in which it operates, the securities of the United States investment company or custodian. The agreement would further provide that Barclays' delegation of duties to Barclays Australia would not relieve Barclays of any responsibility to the United States investment company or custodian for any loss due to such delegation except such loss as may result from political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risks of loss (excluding bankruptcy or insolvency of Barclays Australia) for which neither Barclays nor Barclays Australia would be liable under Rule 17f–5 (e.g., despite the exercise of reasonable care, loss due to acts of God, nuclear incident, and the like).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27820 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17229; 811–4147]

Integrated Corporate Investors Fund, Inc.; Application for Deregistration

November 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Integrated Corporate Investors Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on January 23, 1989, and an amendment was filed on November 6, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 10 Union Square East, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Stephanie Monaco, Branch Chief (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company which registered as an investment company under the 1940 Act and filed a registration statement under the Securities Act of 1933 on November 2, 1984. Applicant's registration statement became effective in February 1985, at which time Applicant commenced offering its shares.

2. Due to unstable and volatile conditions in the preferred equity markets, Applicant's assets were reduced to cash instruments.

3. Prior to September 16, 1988, all public securityholders voluntarily

redeemed or exchanged shares at the then current net asset value in accordance with Applicant's registration statement. Applicant discontinued sale of shares on September 15, 1988. On September 30, 1988, Applicant had outstanding 5,382.592 shares with a net asset value per share of $20.09.

4. On October 27, 1988, Applicant's Board of Directors adopted a plan of liquidation. At a Special Meeting held on October 31, 1988, the remaining shareholder, Integrated Resources, Inc., approved, by proxy, the liquidation of Applicant, and on November 15, 1988, it redeemed its shares.

5. Applicant filed a Certificate of Dissolution with the State of Maryland on October 31, 1988.

6. Applicant is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27822 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17230; File No. 811–4301]

The Insurers Series Fund, Inc.

November 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under section 8(f) of the Investment Company Act of 1940 ("the 1940 Act").

Applicant: The Insurers Series Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 10, 1989 and amended on November 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 14, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, the Insurers Fund, Inc., c/o Joseph H. Haggerty, Esq., I.C.H. Financial Services, Inc., 4211 Norbourne Blvd., Louisville, KY 40207.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2028 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. The Applicant is registered under the 1940 Act as an open-end, diversified management investment company. The Applicant's registration statement on Form N–1A, filed on May 14, 1985, became effective on February 7, 1986. The initial public offering commenced on February 21, 1986.

2. The Applicant served as an underlying investment medium for certain variable universal life insurance policies issued by LifeFund Account ("LifeFund"). LifeFund is a separate account of Southwestern Life Insurance Company ("Southwestern") and is registered as a unit investment trust under the 1940 Act.

3. On April 10, 1989, pursuant to an order of the Commission under section 26(b) of the 1940 Act, shares of Advisors Management Trust ("AMT"), a Massachusetts business trust registered as an open-end, diversified management investment company, were substituted for those shares of the Applicant held by LifeFund. The transaction was effected by LifeFund redeeming its shares of the Applicant and using the proceeds to purchase shares of AMT at net asset value. The Applicant represents that no assets attributable to policyholder accounts have been retained.

4. The Applicant has no debts or outstanding liabilities, is not a party to any litigation or administrative proceedings, and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27821 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17225; File No. 811–5363]

Variable Account A of Skandia Life America Corp.

November 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Variable Account A of Skandia Life America Corporation.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 17, 1989 and amended on September 22, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 12, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Tower One Corporate Drive, Shelton, Connecticut 06484.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272–3017 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be

contacted at (800) 231–3282 (Maryland (303) 253–4300).

Applicant's Representations

1. On October 16, 1987, Applicant filed Form N–8A to register under the 1940 Act as a unit investment trust. Applicant also filed a registration statement under the Securities Act of 1933 on October 16, 1987. Applicant had planned to issue variable life insurance contracts, but its registration statement did not become effective and Applicant never made a public offering of the contracts.

2. Skandia Life America Corporation authorized the formation and registration of Applicant on May 25, 1987, and duly authorized the deregistration of Applicant on May 31, 1988.

3. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

4. Applicant has not been dissolved, liquidated or merged, and there have been no distributions to securityholders of Applicant made in connection with the winding up of its affairs.

5. As of the date of filing this application, applicant has not conducted any business, has no assets, debt or other liabilities, has no shareholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant does not propose to engage in any business activities, other than those necessary for the winding up of its affairs.

7. Applicant was created in connection with Skandia Life America Corporation's intention to offer and sell variable life insurance contracts. No such contracts or any other securities were offered or sold by Applicant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–27824 Filed 11–27–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0248]

Mariner Venture Capital Corp.; Issuance of a Small Business Investment Company License

On September 2, 1988, a notice was published in the **Federal Register** (52 FR 49633) stating that an application has been filed by Mariner Venture Capital Corp., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license to operate as a small business investment company.

Interested parties were given until close of business Monday, October 2, 1988 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0248 on October 2, 1989, to Mariner Venture Capital Corp.; to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–27759 Filed 11–27–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–5530]

Application for License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by SYL Capital Corp. (the Applicant), 605 King Georges Post Road, Fords, New Jersey 08863, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percentage of shares owned
Su-Yi Lin, 6 Lori Lane, Holmdel, NJ 07733	President/Manager/Director	50
Pi-Luan Lin, 6 Lori Lane, Holmdel, NJ 07733	Secretary/Treasurer/Director	50
Edward J. Chrvala, 1709 Riviera Court, Point Pleasant, NJ 08742	Assistant to President	0
Jen-Yang Lin, 215 Dock Street, Union Beach, NJ 07735	Director	1
Husi-Ju Lin Chu, 1231 Inwood Terrace, Fort Lee, NJ 07024	Chairman/Director	20
Husi Chien Lin, RR1, Box 2162, Hampton, MA 04444	Director	1

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of New Jersey. As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness is accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general

circulation in the Fords, New Jersey area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–27760 Filed 11–27–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Yute Air Alaska, Inc., Under Subpart Q to Resume Air Service Under Its Section 401 Certificate

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 89–11–48), Docket 46163.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Yute Air Alaska, Inc., continues to be fit to operate pursuant to its section 401 certificate authorizing it to engage in interstate and overseas air transportation of persons, property and mail for a period of one year.

DATE: Persons wishing to file objections should do so no later than December 6, 1989.

ADDRESS: Objections and answers to objections should be filed in Docket 46163 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: November 21, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–27773 Filed 11–27–89; 8:45 am]

BILLING CODE 4910–62–M

President's Commission on Aviation, Security and Terrorism; Public Hearing

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public hearing of the President's Commission on Aviation Security and Terrorism.

SUMMARY: The President's Commission on Aviation Security and Terrorism will be holding its second public hearing, in which it will take testimony from Federal agencies involved in aviation security, counterterrorism, and foreign intelligence. Interested members of the public are invited to attend. Persons wishing to submit written statements to the Commission are welcome to do so at any time by contacting the person listed below. Persons wishing to address the Commission at the hearing should contact the person listed below not later than seven days before the hearing.

DATE: Monday, December 18, 1989, 10 a.m. et.

ADDRESS: Reserve Officers Association, Fifth Floor, One Constitution Avenue, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Harry R. Van Cleve, Commission on Aviation Security and Terrorism, 1825 K Street, NW., Suite 519, Washington, DC 20036, (202) 254–3166.

SUPPLEMENTARY INFORMATION: By Executive Order 12686, August 4, 1989, the President established the Commission on Aviation Security and Terrorism to examine policy regarding the threat of terrorism to civil aviation, specifically options for preventing aviation terrorism and handling terrorist threats, including prior notification to the public, and policies, practices, and laws regarding treatment of families of the victims of terrorism. In these areas, the Commission is specifically to focus on the destruction of the Pan American flight 103 over Lockerbie, Scotland, on December 21, 1988.

The Commission held its first hearing on Friday, November 17, 1989, at which it took tesimony from families of victims of the PanAm 103 explosion and of the UTA flight to Paris that exploded over Niger in September 1989, as well as representatives of numerous elements of the aviation industry. The principal issue addressed at that hearing was how the Commission should approach its mandate from the President. Persons interested in obtaining copies of formal statements made at that hearing should contact the person listed above.

Issued in Washington, DC on November 21, 1989.

Harry R. Van Cleve,

Commission General Counsel.

[FR Doc. 89–27772 Filed 11–27–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 1–89–139]

New York Harbor Traffic Management Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of cancellation of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of the cancellation of a previously scheduled meeting of the New York Harbor Traffic Management Advisory Committee that was to be held on December 13, 1989, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, NY, beginning at 10:00 A.M.

FOR FURTHER INFORMATION CONTACT: Lt. Comdr. L. Brooks, Executive Secretary, New York Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668–7834.

Dated: November 21, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–27755 Filed 11–27–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–89–45]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 18, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 22, 1989.

Pamela Trebbe,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 20049.
Petitioner: T.B.M. Inc.
Sections of the FAR Affected: 14 CFR 91.211(a)(1).
Description of Relief Sought: To extend Exemption No. 2956, as amended, that allows petitioner to operate its Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under Part 137 of the FAR. Exemption No. 2956, as amended, will expire on April 30, 1990.

Docket No.: 25030.
Petitioner: Pan Am Express, Inc.
Regulations Affected: 14 CFR 93.123 and 93.129.
Description of Relief Sought: Authorization to conduct one additional operation in the 1800 hour time period and one additional operation in the 1900 hour time period at John F. Kennedy International Airport.

Docket No.: 25988.
Petitioner: Soloy Dual Pac, Inc.
Sections of the FAR Affected: 14 CFR 21.19.
Description of Relief Sought: To allow petitioner to obtain a supplemental type certificate for Cessna Caravan aircraft in which the existing engines have been replaced with single propeller, dual engine Soloy Dual Pacs.

Docket No.: 25918.
Petitioner: AFM Corporation.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b).
Description of Relief Sought: To allow petitioner to operate specific aircraft in extended overwater flight with single long-range navigation systems and single high-frequency communications systems in the Western Atlantic Ocean, the Caribbean Sea, and the Gulf of Mexico. GRANT, November 9, 1989, Exemption No. 5112.

[FR Doc. 89-27840 Filed 11-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reductin Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0028.
Form Number: POD 134.
Type of Review: Extension.
Title: Release Form.
Description: This form is used by 'Eligible Recipients of a Postal Savings' account of a deceased depositor to transfer their rightful share to another person.
Respondents: Individuals or households.
Estimated Number of Respondents: 20
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10 hours.

OMB Numer: 1510-0030.
Form Number: POD 1690.
Type of Review: Extension.
Title: Certification of Bill from Undertaker.
Description: This form is used when application is made by the funeral home for the funeral expenses of a deceased postal depositor. This form is completed by a relative of the deceased depositor certifying that the bill submitted by the funeral home is correct. Entitlement to the funds are based on this data to insure proper payment.
Respondents: Individuals or households.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3 hours.

OMB Number: 1510-0034.
Form Number: POD 315.
Type of Review: Extension.
Title: Depositor's Application to Withdraw Postal Savings.
Description: This form is used as an application for payment by depositor or other "Legal Representatives." This form serves to identify the depositor and insures payment is made to the proper person.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,075.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Other (as needed).
Estimated Total Reporting Burden: 538 hours.

Clearance Officer: Mary MacLeod, (301) 436-5300 Financial Management Service, Room 500-A, 3700 East West Highway Hayattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395-6880 Officer of Management and Budget, Room 3208, New Executive Office Building Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-27775 Filed 11-27-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0092.
Form Number: ATF F 5100.31 (1648/1649/1650).
Type of Review: Extension.
Title: Application for Certification/Exemption of Label/Bottle Approval under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 6,060.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 27,300 hours.

OMB Number: 1512-0204.
Form Number: ATF F 5110.38.
Type of Review: Extension.
Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act (Supplemental).
Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Small businesses or organizations.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-27776 Filed 11-27-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Meeting—Electronic Filing Systems

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of electronic filing systems meeting.

SUMMARY: The Electronic Filing Systems Office has scheduled a meeting to be held from 9:00 a.m. to 4:00 p.m., on Wednesday, January 3, 1990, in the IRS Auditorium, 7th Floor, 1111 Constitution Ave., NW., Washington, DC.

Items on the Agenda: Relationship between the banking industry and Electronic Filing of Individual Returns; Automated Deposit of Electronic Payments for Taxes (ADEPT); Refund Anticipation Loans (RAL); Filing of Forms 1041 on magnetic media.

Members of the banking industry are invited to participate to discuss issues relevant to the Electronic Filing System.

DATE: Wednesday, January 3, 1990—9:00 a.m.–4:00 p.m.

ADDRESS: IRS Auditorium, 7th Floor, 1111 Constitution Ave., NW., Washington, DC.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to explore the relationship between the banking industry and electronic filing. Members of IRS and Financial Management Service (FMS) will conduct a briefing on the agenda items and members of the banking industry will have the opportunity to submit questions and comments.

Individuals wishing to attend must make reservations no later than December 22, 1989. To make reservations or obtain additional information, call Karyn Wallace at (202) 343-0012.

Leonard Holt,

Chief, Operations and Marketing Branch.

[FR Doc. 89-27742 Filed 11-27-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 227
Tuesday, November 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

DATE AND TIME: November 29, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 906th Meeting—November 29, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 4660-017, Independence County, Arkansas
CAP-2.
Project No. 2833-021, Public Utility District No. 1, Lewis County, Washington
CAP-3.
Project No. 8133-008, B.S. Inc.
CAP-4.
Project No. 8936-007, BES Hydro Company
CAP-5.
Project No. 8863-003, Northeast Hydrodevelopment Corporation
CAP-6.
Project No. 9840-001, Appomattox River Water Authority
CAP-7.
Omitted
CAP-8.
Project Nos. 4632-004 and 008, Clifton Power Corporation
CAP-9.
Project No. 5376-010, Horseshoe Bend Hydroelectric Company
CAP-10.
Docket No. ER89-678-000, System Energy Resources, Inc.
CAP-11.
Docket No. ER89-636-000, Potomac Electric Power Company
CAP-12.
Docket No. ER89-355-001, CP National Corporation
CAP-13.
Docket No. ER88-316-002, Commonwealth Edison Company
CAP-14.
Docket No. EL86-26-005, San Diego Gas and Electric Company v. Alamito Company
Docket No. ER87-47-003, Alamito Company
CAP-15.
Docket No. ER89-529-000, Kanawha Valley Power Company
CAP-16.
Docket No. EL88-39-001, Northern States Power Company (Wisconsin)
Docket No. EL89-9-001, Northern States Power Company (Minnesota)
CAP-17.
Omitted
CAP-18.
Docket No. EL89-24-000, Louisiana Power & Light Company
CAP-19.
Docket No. EL89-23-000, The Villages of Edgerton and Montpelier, Ohio v. Ohio Power Company
CAP-20.
Docket Nos. ER86-107-005, ER87-327-002 and ER88-397-001, Pacific Gas and Electric Company
Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas and Electric Company
CAP-21.
Omitted
CAP-22.
Docket No. EL89-17-000, San Diego Gas & Electric Company v. Alamito Company
Docket No. EL89-18-000, Arizona Corporation Commission v. Alamito Company
CAP-23.
Docket No. EL89-53-000, Blue Ridge Power Agency, Central Virginia Electric Cooperative Inc., and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company
CAP-24.
Omitted.
CAP-25.
Project No. 3021-018, Allegheny Hydro No. 8, L. P. and Allegheny No. 9, L. P.

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM89-16-000, Final Regulations Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAM-2.
Docket No. GP88-22-000, Woods Petroleum Corporation
CAM-3.
Docket No. GP89-30-000, Realitos Energy Corporation
CAM-4.
Docket No. GP89-35-001, Jennings Exploration Company
CAM-5.
Docket No. GP89-38-000, Corinne B. Grace, Complainant v. El Paso Natural Gas Company, Respondent
CAM-6.
Docket Nos. RP83-42-006 and GP84-56-007, Midwest Gas Users Association v. Northwest Central Pipeline Corporation

Consent Gas Agenda

CAG-1.
Docket Nos. RP90-24-000 and TM90-2-28-000, Natural Gas Pipeline Company of America
CAG-2.
Docket Nos. RP90-25-000, 001 and TM90-2-24-000, Transwestern Pipeline Company
CAG-3.
Docket Nos. RP90-28-000 and TM90-2-21-000, Columbia Gas Transmission Corporation
CAG-4.
Docket No. RP90-30-000, Texas Eastern Transmission Corporation
CAG-5.
Docket No. RP90-29-000, The Inland Gas Company, Inc.
CAG-6
Docket Nos. RP89-119-000 and RP89-208-000, Texas Gas Transmission Corporation
CAG-7.
Docket No. TM90-4-30-000, Trunkline Gas Company
CAG-8.
Docket Nos. TA90-1-53-000 and 001, K N Energy, Inc.
CAG-9.
Docket No. TQ90-3-4-000, Granite State Gas Transmission, Inc.
CAG-10.
Docket No. TQ90-2-63-000, Carnegie Natural Gas Company
CAG-11.
Docket Nos. TQ90-1-20-000 and 001, Algonquin Gas Transmission Company
CAG-12.
Docket Nos. TM90-7-28-000 and TM90-8-28-000, Panhandle Eastern Pipe Line Company
CAG-13.
Docket Nos. RP90-17-000 and CP89-1121-002, Mississippi River Transmission Corporation
CAG-14.
Docket No. RP90-22-000, Algonquin Gas Transmission Company
CAG-15.
Docket No. RP90-20-000, Great Lakes Gas Transmission Company
CAG-16.
Docket Nos. RP90-23-000 and RP89-237-000, North Penn Gas Company
CAG-17.
Docket Nos. RP90-21-000 and 001, CNG Transmission Corporation
CAG-18.
Docket No. RP90-28-000, United Gas Pipe Line Company
CAG-19.
Docket No. RP90-27-000, CNG Transmission Corporation
CAG-20.
Docket No. RP89-7-000, Columbia Gas Transmission Corporation
CAG-21.
Docket No. TA90-1-32-001, Colorado Interstate Gas Company
CAG-22.
Docket Nos. RP86-169-012, RP86-105-014 and RP87-25-002, ANR Pipeline Corporation
CAG-23.
Docket Nos. RP89-138-004, RP88-27-017, 013, RP88-264-011, 014 and CP87-524-008, United Gas Pipe Line Company
CAG-24.
Docket Nos. TQ90-1-9-001 and TM90-1-9-001, Tennessee Gas Pipeline Company
CAG-25.
Docket No. RP89-234-001, Moraine Pipeline Company
CAG-26.
Docket Nos. RP89-230-003 and TM90-1-33-002, El Paso Natural Gas Company
CAG-27.
Docket No. RP89-233-001, Williams Natural Gas Company
CAG-28.
Docket No. CP82-487-022, Williston Basin Interstate Pipeline Company
CAG-29.
Docket Nos. RP89-219-002 and TM90-1-37-002, Northwest Pipeline Corporation
CAG-30.
Docket Nos. RP89-132-005, RP88-184-010 and TA88-1-33-003, El Paso Natural Gas Company
CAG-31.
Docket No. RP82-80-029, ANR Pipeline Company
CAG-32.
Docket Nos. RP89-229-001 and TM89-7-21-001, Columbia Gas Transmission Corporation
CAG-33.
Docket No. TQ89-4-63-001, Carnegie Natural Gas Company
CAG-34.
Docket Nos. CP89-470-002 and CP88-522-007, Tennessee Gas Pipeline Company
CAG-35.
Docket Nos. RP90-67-059, Tennessee Gas Pipeline Company
CAG-36.
Docket Nos. RP89-73-005 and 003, Pelican Interstate Gas System
CAG-37.
Omitted
CAG-38.
Docket Nos. RP82-55-039, 040, RP87-7-045 and 046, Transcontinental Gas Pipe Line Corporation
CAG-39.
Docket Nos. TQ90-1-16-002 and TM90-1-16-002, National Fuel Gas Supply Corporation
CAG-40.
Docket Nos. RP88-240-000, RP89-10-000 and RP89-125-000, Panhandle Eastern Pipe Line Company
CAG-41.
Docket Nos. RP89-50-000, CP88-179-013, CP89-555-000 and CP89-556-000, Florida Gas Transmission Company
CAG-42.
Docket Nos. ST85-956-003, ST85-1572-001, ST86-8-001, ST86-1010-000, ST86-1064-000, ST86-1647-000, ST86-1792-000, ST86-2087-000, ST86-2505-000, ST86-430-000, ST87-588-000, ST87-589-000, ST87-1126-000, ST87-1525-000, ST87-1526-000, ST87-1527-000, ST87-1974-000, ST87-2399-000, ST87-3708-000, ST87-3709-000, ST87-3710-000, ST87-3711-000, ST87-3874-000, ST87-4257-000, ST88-585-000, ST88-1440-000, and ST87-1441-000, Acadian Gas Pipeline System
Docket Nos. ST88-5599-001, ST88-5761-001, ST88-5762-001, ST88-5763-001, ST88-5764-001, ST88-5765-001, ST88-5766-001, ST88-5767-001, ST88-5768-001, ST88-5769-001 and ST88-5770-001, Gulf South Pipeline Company
CAG-43.
Docket No. ST88-5804-001, Acacia Natural Gas Corporation
CAG-44.
Docket Nos. ST89-3298-000, ST89-3375-000, ST89-3765-000 and ST89-3949-000, Enogex, Inc.
CAG-45.
Docket No. CI89-465-000, Union Pacific Fuels, Inc.
CAG-46.
Docket No. CP88-570-003, Mobile Bay Pipeline Projects
CAG-47.
Docket No. CP88-311-001, Williston Basin Interstate Pipeline Company
CAG-48.
Docket No. CP89-539-001, Transwestern Pipeline Company
CAG-49.
Docket No. CP87-408-001, Owens-Corning Fiberglas Corporation v. Transcontinental Gas Pipe Line Corporation
CAG-50.
Omitted
CAG-51.
Docket No. CP87-451-021, Northeast U.S. Pipeline Projects
Docket Nos. CP86-329-001 and CP86-330-001, Erie Pipeline System
Docket Nos. CP86-523-000, 001, 002, 003, CP86-524-000 and CP88-198-000, Iroquis Gas Transmission System
Docket Nos. CP88-168-000 and CP88-169-000, Champlain Pipeline Company
Docket Nos. CP88-173-000, CP88-174-000 and CP88-176-000, Tennessee Gas Pipeline Company
Docket No. CP88-175-000, Northeastern Gas Transmission Company
Docket Nos. CP88-182-000 and -001, PennEast Gas Service Company, CNG Transmission Corporation and Eastern Transmission Corporation
Docket Nos. CP88-189-000, CP88-192-000 and -001, Algonquin Gas Transmission Company
Docket Nos. CP88-190-000 and CP88-191-000, Greater Northeast Pipeline Corporation
Docket No. CP88-193-000, Eastern American States Transmission Company
CAG-52.
Docket Nos. CP88-6-005 and RP88-8-010, United Gas Pipe Line Company
CAG-53.
Docket Nos. CP89-1991-000 and CP89-2001-000, Mississippi River Transmission Corporation
CAG-54.
Docket No. CP89-2034-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-55.
Docket No. CP89-982-000, Natural Gas Pipeline Company of America
CAG-56.
Docket No. CP89-1325-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-57.
Docket No. CP88-555-000, Gas Utility District No. 1 of Tangipahoa Parish, Louisiana, Applicant, Southern Natural Gas Company, Respondent
CAG-58.
Docket No. CP88-267-000, Atlantic Richfield Company and Intalco Aluminum Corporation
CAG-59.
Docket No. CP88-332-004, El Paso Natural Gas Company
CAG-60.
Docket No. RP82-55-046, Transcontinental Gas Pipe Line Corporation
CAG-61.
Docket No. RP89-119-001, Texas Gas Transmission Corporation
CAG-62.
Docket Nos. RP88-10-006 and RP88-211-006, CNG Transmission Corporation
CAG-63.
Docket Nos. RP87-62-000 and RP88-148-000, Pacific Gas Transmission Company
CAG-64.
Docket No. RP88-131-003, Carnegie Natural Gas Company
CAG-65.
Docket No. RP88-69-000, Stingray Pipeline Company
CAG-66.
Docket Nos. CP83-254-332 and CP83-335-252, Williston Basin Interstate Pipeline Company
CAG-67.
Docket No. CP81-296-018, Tennessee Gas Pipeline Company

I. Licensed Project Matters

P-1:
Project Nos. 8142-005, 006, 007 and 014, Henwood Associates, Inc. Order on rehearing of May 2, 1989, order.
P-2.
Project No. 7267-006, Joseph Martin Keating. Order regarding water quality certification

II. Electric Rate Matters

ER-1.
Docket Nos. ER84-604-000 and ER85-156-001, Southwestern Public Service Company. Opinion and order on initial decision establishing just and reasonable rates.
ER-2.
Docket Nos. ER85-461-001, ER85-521-001, ER86-258-001, ER86-478-001, ER86-567-001, ER87-404-001 and ER88-120-000, Kansas Gas and Electric Company. Opinion and order on initial decision concerning prudence of Wolf Creek.

Miscellaneous Agenda

M-1.

Docket No. RM87-33-001, Hydroelectric Relicensing Regulations Under the Federal Power Act. Order on rehearing.

M-2.
Reserved

M-3.
Docket No. RM87-34-000, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. Final Rule.

I. Pipeline Rate Matters

RP-1.
Docket Nos. CP88-434-001 and RP88-185-001, El Paso Natural Gas Company. Concerning gas inventory charge application.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP89-2114-000, United Gas Pipe Line Company. Order regarding United's restructuring proposals.

Lois D. Cashell,
Secretary.
[FR Doc. 89-27958 Filed 11-24-89; 3:23 pm]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 47860, November 17, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., Wednesday, November 22, 1989, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 30, 1989.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 22, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-27907 Filed 11-24-89; 10:08 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:30 a.m., Monday, December 4, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED.

1. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 24, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-27857 Filed 11-24-89; 3:13 pm]
BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 27, December 4, 11, and 18, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 27

Thursday, November 30

2:00 p.m.
Briefing on DOE Views on Advanced Light Water Reactor Design and Certification (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Rulemaking on Sequestration of Witnesses Interviewed Under Subpoena/Exclusion of Attorneys
b. Request for Hearing on St. Lucie Exemptions

Week of December 4—Tentative

Tuesday, December 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 11—Tentative

Thursday, December 14

10:00 a.m.
Briefing on Status of Implementation of the Severe Accident Master Integration Plan and Status of Licensee Progress on IPE (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Risk Communication (Public Meeting)

Wednesday, December 20

2:00 p.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 21

2:00 p.m.
Briefing on NRC Actions for Cleanup of Contaminated Sites Under NRC Jurisdiction (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, December 22

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Dated: November 22, 1989.

William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 89-27917 Filed 11-24-89; 11:07 am]
BILLING CODE 7590-01-M

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federal register

Tuesday
November 28, 1989

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 4, 5, et al.
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 8, 9, 10, 14, 15, 25, 28, 32, 36, 42, 45, 47, 48, 49, 52, and 53

[Federal Acquisition Circular 84–53]

RIN 9000–AC35, 9000–AC32, 9000–AC00, 9000–AC53, 9000–AC68, 9000–AD57, 9000–AC83, 9000–AC86, 9000–AC87, 9000–AD45, 9000–AD38, 9000–AD15, 9000–AC41, 9000–AC47, 9000–AD48, 9000–AB84, 9000–AD44

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84–53 amends the Federal Acquisition Regulation (FAR) with respect to the following: Late Bids and Proposals; Contractor Records Retention; Contract Simplification Program; Approval of Requirements for the Acquisition of Printing; Individual Sureties; Threshold, Part 10; Buy American Act List of Exempt Items; Yarn, 50 Denier Rayon; Rabbit Fur Felt; Accounting Deficiencies, Suspension of Progress Payments; Architect-Engineer Short Selection Threshold; Hazardous Materials; Report of Shipment; Special Tooling; Small Purchase References in Part 47; Guaranteed Maximum Shipping Weights and Dimensions; Incorporating Provisions and Clauses; Examination of Records; and Editorial Changes.

DATES: *Effective Dates:* December 28, 1989, except for Parts 9, 28, 49, and related sections in Parts 52 and 53 (Item V-Individual Sureties) February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAC 84–53.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 84–53, Item III. This final rule provides simplified contract formats for use in acquisitions of supplies or services proposed to be acquired under firm-fixed-price or fixed-price with economic adjustment contracts. In conjunction with the simplified contract format, a new contract form, Standard Form 1447, Solicitation/Contract, is being issued.

The rule also provides for the use of annual representations and certifications.

FAC 84–53, Item V. This final rule is issued to make revisions to the FAR procedures governing the use of individual sureties in support of a bonding requirement. Among other things, the revisions would:

1. Require individual sureties to pledge specific assets to support a bond.
2. Identify and limit the types of assets which are acceptable for pledge based upon a standard of identifiable value and ready marketability.
3. Require objective evidence of asset ownership and unencumbered value.
4. Require a Government security interest in the pledged assets by means of a lien or real property or the establishment of an escrow account for acceptable personal property.
5. Provide for the Governmentwide suspension or debarment of sureties who commit serious improprieties.

FAC 84–53, Item X. The clarification has been made to eliminate the appearance that suspension of all progress payments is required even if only a portion of an accounting system is deficient. The revision to FAR 32.503–6(b) states explicitly that the suspension of progress payments for accounting deficiencies should be applied only to the portion of payments associated with the deficiency.

FAC 84–53, Item XI. FAR 36.602–3(c) required that discussions be held with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services, when the prospective architect-engineer fees shall not be considered in these discussions. This statement is not consistent with Pub. L. 92–582, and therefore the FAR is revised to clarify this inconsistency.

Federal agencies have expressed a need for increasing the short selection process dollar threshold from the present $10,000 to $25,000. When the present threshold of $10,000 was established, the small purchase threshold was also $10,000. An increase in the short selection process dollar threshold to $25,000 would facilitate an early award of A–E contracts that are within the small purchase limitation.

FAR 52.236–20, Special Requirements, has been required for all cost-reimbursement construction contracts. The provisions of the clause were either unnecessary, or were duplicative of the provisions of the clause at 52.236–7, Permits and Responsibilities, and the clause at 52.236–5, Material and Workmanship. Therefore, 52.236–20 is removed, and the applications of 52.236–7 and 52.236–5 are expanded to permit their use for cost-reimbursement contracts.

FAR 36.201(a) is revised to eliminate unnecessary requirements to evaluate contractor performance and to prepare performance reports using the Standard Form 1420, Performance Evaluation (Construction Contracts).

FAC 84–53, Item XVI. On June 5, 1985, the Defense Acquisition Regulatory Council granted the Department of the Army authority to deviate from the provisions of FAR 47.305–16(b) and the clause at 52.247–60 to the extent necessary to request additional information regarding shipping characteristics from offerors and to provide that offers submitted without shipping characteristics would be evaluated on the basis of the shipping characteristics submitted with any offer that produces the highest transportation costs. The Army deviation has ensured that the contract administration office receives the information in the contract necessary to establish the liability of the successful offeror for any increased transportation costs incurred by the Government as a result of misinformation furnished by the offeror. This final rule extends the advantages of the Army deviation to all Government agencies and departments, and revises existing coverage to reflect the Government's intent that contract price reduction be on the basis of actual costs incurred, not costs computed when the offer was evaluated.

FAC 84–53, Item XVII. This case was established as a result of difficulties experienced by DoD field activities which have automated systems that intermingle the full text clauses and provisions with those incorporated by reference when generating solicitations and contracts. The FAR, as revised in FAC 84–37, currently provides for the grouping of clauses and provisions incorporated by reference.

B. Regulatory Flexibility Act

FAC 84–53, Items I, IV, VI, VII, VIII, IX, X, XI, XII, XV, XVI, and XVII. The Regulatory Flexibility Act (Pub. L. 96–354) does not apply to these final rules because each revision is not a significant revision as defined in FAR 1.501–1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

FAC 84–53, Items II, XIII, and XVIII. DoD, GSA, and NASA certify that these final rules in FAC 84–53 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because—

Item II. The extension of time for retention of records only applies to a limited number of contractors, of which an even smaller number are small entities, which fail to meet the 90-day requirement for indirect cost rate submissions. The retention requirement being imposed for computer data only affects those contractors who already maintain this type of data in their normal course of business. The burden of storing this additional data along with records already required to be obtained is minimal.

Item XIII. This final rule does not affect the competitive posture of, or preference for small businesses, solicitation or small purchase procedures, impose nonreimbursed administrative costs, or required professional skill requirements or business systems beyond those normally available in-house to small businesses.

Item XVIII. The revisions merely illustrate the nature of records Government personnel have access to and do not change existing requirements.

Therefore, the Regulatory Flexibility Act does not apply.

FAC 84–53, Items III, V, and XIV. A Final Regulatory Flexibility Analysis pertaining to the following items has been prepared for each item in accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and each is on file in the FAR Secretariat and will be submitted to the Chief Counsel for Advocacy, Small Business Administration—

Item III—Contract Simplification Program
Item V—Individual Sureties
Item XIV—Special Tooling

C. Paperwork Reduction Act

FAC 84–53, Items I, III, IV, VI, VII, VIII, IX, X, XI, XII, XIII, XV, XVI, and XVII. The Paperwork Reduction Act (Pub. L. 96–511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84–53, Item II. This final rule will not impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require approval of OMB under 44 U.S.C. 3501, et seq. The coverage has been revised to clarify that (1) computer data need not be retained in its original form, provided the integrity of source data is maintained and an audit trail is established by the contractor; and (ii) only computer data that meets the definition of records as defined under paragraph (a) of section 4.703(b)(3) and (d) need to be retained. OMB Control Number 9000–0034 has been approved under 44 U.S.C. 3501, et seq.

FAC 84–53, Item V. Public comments concerning the information collection requirements under OMB Control Numbers 9000–0001 and 9000–0045 and pertaining to the proposed rule were previously invited in the Federal Register on November 29, 1988 (53 FR 48035). The Paperwork Reduction Act (Public Law 96–511) applies because the final rule contains an information collection requirement. Accordingly, the information collection requirements are being submitted to OMB under 44 U.S.C. 3501, et seq. for an expedited review by OMB within 20 days of receipt. Public comments concerning the revised information collection requirements should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FAC 84–53, Item XIV. Public comments concerning the information collection requirements under OMB Control Number 9000–0075 and pertaining to the proposed rule were invited in the Federal Register on September 27, 1988 (53 FR 37629) and the information collection requirements were approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. However, those estimates underestimated the usage requirement of DoD concerning special tooling. In addition, this final rule consolidates the initial and updated listing requirements. Therefore, a revised Paperwork Reduction Act Analysis depicting a more realistic estimate of burden impact has been submitted to OMB for review. This identification and use information is used by the contractor in performing its contract and then it is used by the Government buying offices and logistics offices to determine whether any of the special tooling can be used by the Government or contractors subsequent to its use during production by the acquiring contractor. In addition, the information enables the Government to direct retention or disposition of the special tooling following its use in major systems, components, and parts. The *annual reporting burden* for OMB Control Number 9000–0075 is estimated as follows: Number of respondents, 10,000; responses per respondent, 2; annual responses, 20,000; preparation hours per response, 1; annual response burden hours, 20,000. The *annual recordkeeping burden* is estimated as follows: Recordkeepers, 10,000; annual hours per recordkeeper, 40; and total recordkeeping burden hours, 400,000. Public comments concerning this request should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503 by December 28, 1989.

FAC 84–53, Item XVIII. This final rule does not change any recordkeeping or information collection requirements on offerors, contractors, or members of the public which require approval of OMB under 44 U.S.C. 3501, et seq.

D. Public Comments

FAC 84–53, Items I, II, III, IV, VII, XII, XIII, XIV, XVI, and XVIII. The comments that were received were considered by the Councils in the development of the following final rules:

Item I. On March 23, 1985, and on August 15, 1988, proposed rules were published in the Federal Register (50 FR 11522) and (53 FR 30818).

Item II. On June 17, 1988, a proposed rule was published in the Federal Register (53 FR 23105).

Item III. On October 27, 1987, a proposed rule was published in the Federal Register (52 FR 41390).

Item IV. On August 29, 1988, a proposed rule was published in the Federal Register (53 FR 33017).

Item VII. On February 8, 1989, a proposed rule was published in the Federal Register (54 FR 6251).

Item XII. On February 28, 1989, a proposed rule was published in the Federal Register (54 FR 8492).

Item XIII. On July 1, 1988, a proposed rule was published in the Federal Register (53 FR 25102).

Item XIV. On August 29, 1988, a proposed rule was published in the Federal Register (53 FR 33020).

Item XVI. On August 21, 1987, a proposed rule was published in the Federal Register (52 FR 31722).

Item XVIII. On August 17, 1988, a proposed rule was published in the Federal Register (53 FR 31280).

FAC 84–53, Item V. On November 3, 1988, a proposed rule was published in the Federal Register (53 FR 44564), and an extension of the comment period was published on December 30, 1988 (53 FR 53361), to revise the individual surety procedures in the FAR.

Comments received, 426. Of those, 209 comments were favorable or recommended further tightening of the procedures governing the use of individual sureties. Comments opposed to the rule or recommended measures to reduce the impact of the rule, 195. Other

respondents indicating no comment, 12. The comments of all respondents and the views of Congress were considered in developing this final rule. As a result, the final rule makes the following changes from the coverage proposed:

1. The requirement in the proposed rule with respect to Miller Act bonds that 100 percent of the individual surety's assets will be maintained for the duration of the expected obligation of the surety has been modified to permit the contracting officer to release a portion of the individual surety's assets based upon substantial performance of the obligations under the contract.

2. The prohibition on the use of letters of credit as an acceptable asset has been modified to permit the use of irrevocable letters of credit issued by a Federally insured financial institution.

3. Coverage in 49.402–3 has been added requiring the Government to notify the surety when contract default appears imminent and if the contract is subsequently terminated for default.

4. The proposed Optional Form, Satisfaction of Pledge, has been converted to Optional Form 90, Release of Lien on Real Property, and Optional Form 91, Release of Personal Property from Escrow.

5. Other miscellaneous changes have been made.

List of Subjects in 48 CFR Parts 2, 4, 5, 8, 9, 10, 14, 15, 25, 28, 32, 36, 42, 45, 47, 48, 49, 52, and 53.

Government procurement.

Dated: November 20, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84–53]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–53 is effective December 28, 1989, except for Parts 9, 28, 49, and related sections in Parts 52 and 53 (Item V—Individual Sureties) February 26, 1990.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, Department of Defense.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, General Services Administration.

L. E. Hopkins,

Deputy Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Federal Acquisition Circular (FAC) 84–53 amends the Federal Acquisition Regulation as specified below:

Item I—Late Bids and Proposals

FAR 2.101, 14.201–6(c)(3), 14.201–6(r), 14.301 (a), (c), and (d), 14.303(a), 14.304–1 (a)(1), (a)(2), (b), and (e), 15.407 (c)(6) and (c)(8), 15.412(e), 52.214–3, 52.214–5, 52.214–7, and 52.214–23, and 52.215–9 and 52.215–10 are revised. FAR 14.201–6(c) (4), (v), and (w), 14.202–7, 14.304–1(a) (3) and (d), 14.304–2, 15.402 (i) and (j), 15.407 (c)(9) and (j), 52.214–31, 52.214–32, 52.214–33, 52.215–18, and 52.215–36 are added. The changes pertaining to sealed bidding (1) correct language in the current 5-day late bid rule concerning acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by registered or certified mail; (2) provide a 2-day late bid rule for bids mailed by U.S. Postal Service Express Mail Next Day Service; (3) provide separate late bid rules for bids outside the U.S. and Canada; and (4) allow contracting officers the option of permitting the use of facsimile equipment for the submission of bids, acknowledgments of amendments to solicitations, and modifications or withdrawals of bids. Corresponding changes are made with respect to contracting by negotiation.

Item II—Contractor Records Retention

FAR 4.703 (b)(3) and (d) are revised to extend the record retention period for contractors who submit late annual indirect cost rate proposals and clarify the meaning of "record" to include computer input data.

Item III—Contract Simplification Program

FAR 5.503(c)(1)(i), 14.201–1 (a)(5) and (c), 14.201–2 (a)(1), (a)(2), and (b), 14.201–6 (i) and (u), 14.407–1(d), 15.406–1(b), 15.406–2 (a)(1) and (a)(3), 15.407(f), 15.414, 52.214–15, 53.205–1, 53.106(b), and 53.215–1(d) are revised, and FAR 14.201–9, 14.213, 15.406–1(a)(8), 15.407 (c)(9), (i), and (j), 52.102–2(c), 52.214–36, 52.215–35, 53.214(d), 53.215–1(g), and 53.301–1447 (Standard Form (SF) 1447) are added to provide (1) a new SF 1447, (2) simplified contract format for acquisition of noncomplex supplies and services proposed to be acquired under firm-fixed-price or fixed-price with economic price adjustment contracts; and (3) for offeror submission of annual representations and certifications.

Item IV—Approval of Requirements for the Acquisition of Printing

FAR 8.802 (a) and (c) are revised to clarify the legal status of the requirement to obtain the approval of the Congressional Joint Committee on Printing. The previous coverage caused confusion as to the contracting officer's responsibilities in procuring local printing services.

Item V—Individual Sureties

FAR 9.405, 28.101–4, 28.106–1, 28.202, 28.203, 28.204, and 49.402–3(e)(2) are revised, the clause at 52.228–11 is added, and 53.228 is revised to prescribe revised Standard Forms (SF's) 24, 25, 25–A, 28, 34, 35, and 1416 and new Optional Forms (OF's) 90 and 91. The revisions modify existing coverage regarding the use of individual sureties in support of a Government bonding requirement. Implementation of the rule has been delayed to allow time to obtain OMB approval under the Paperwork Reduction Act and to facilitate the printing and stocking of the SF's 24, 25, 25–A, and 28.

SF's 34, 35, and 1416 have been submitted to OMB for approval. When approved, they will be authorized for local reproduction.

OF's 90 and 91 also will be authorized for local reproduction.

Draft copies of the standard and optional forms prescribed by the rule are displayed in this Federal Acquisition Circular 84–53 for information only. After OMB approval, all the forms prescribed by this rule will be displayed in a subsequent FAC. Those forms authorized for local reproduction will be provided in the looseleaf edition of a subsequent FAC for the user to reproduce as required.

Item VI—Threshold, Part 10

FAR 10.006(a)(1)(ii) is revised to clarify that the exception applies to both purchases and contracts that do not exceed the small purchase threshold.

Item VII—Buy American Act List of Exempt Items

FAR 25.102, 25.108, 25.202, and the clause at 52.225–1 are revised to clarify that the Buy American List of Exempt Items at 25.108 is provided for information only, and that each agency is responsible for making a determination that an item is exempt from provisions of the Buy American Act. The rule is needed to ensure that the FAR is consistent with the provisions of the Buy American Act.

Item VIII—Yarn, 50 Denier Rayon

FAR 25.108(d)(1) is revised to add the item, Yarn, 50 denier rayon, to the Buy American List of Exempt Items.

Item IX—Rabbit Fur Felt

FAR 25.108(d)(1) is revised to add the item, rabbit fur felt, to the Buy American List of Exempt Items.

Item X—Accounting Deficiencies, Suspension of Progress Payment

FAR 32.503–6(b) is revised to clarify that the suspension of progress payments for accounting deficiencies should be applied only to the portion of the progress payments associated with a deficiency.

Item XI—Architect-Engineer Short Selection Threshold

FAR 36.201(a)(1), 36.505, 36.507, 36.602–3(c), 36.602–5, and the clauses at 52.236–5 and 52.236–7 are revised, 36.520 is removed, and 36.521 is redesignated as 36.520 to clarify when discussions will be held with architect-engineer (A–E) firms, and to permit the short selection process to be used to select A–E firms for contracts not to exceed the small purchase threshold. The clause at 52.236–20 is removed and the submission of performance reports using the Standard Form (SF) 1420, Performance Evaluation (Construction Contracts), is simplified.

Item XII—Hazardous Materials

FAR 42.302(a)(39) and the clause at 52.223–3(d) are revised to remove the implication that contract administration services are responsible for administering statutory and regulatory requirements for hazardous materials.

Item XIII—Report of Shipment

FAR 42.1406–1 and 42.1406–2 and the clause at 52.242–12 are revised to require contractors to provide advance notice of shipment for categories of material requiring preparation by the consignee for safety and security considerations.

Item XIV—Special Tooling

FAR 45.306–2, 45.306–3, 45.307–1(b), and 45.308 are revised, 45.305 and 45.306–4 are removed, and the clauses at 52.245–2 and 52.245–17 are revised to improve the management of special tooling, the retention and disposal decisions made by the Government, and the opportunities for using the special tooling to increase competition when contracting for postproduction requirements. Corresponding changes are made at FAR clauses 52.245–18 and 52.245–19.

FAR 45.306, and the clause at 52.245–17, Special Tooling, clarify that the clause is used in fixed-price contracts when the Government will furnish special tooling to the contractor, or the Government intends to maintain rights to the special tooling until such time that the Government decides it wants full title to the special tooling or has no further interest in the special tooling.

Under the revised Special Tooling clause, the types of information which contractors must maintain in their property control systems is delineated. The periodic reporting of this information to the Government is also defined.

Other changes are made to 45.305, 45.307, and 45.308 to locate the prescriptions for the Special Test Equipment clause and the Government Property Furnished "As Is" clause in the FAR sections which address the policy on the use of these clauses. These changes are intended to clarify when the clauses are to be used.

Item XV—Small Purchase References in Part 47

FAR 47.104–4(b) and 52.247–1(b) are revised to provide editorial changes to reference the small purchase limitation in section 13.000 and to provide consistency with the FAR's standard "small purchase limitation" terminology.

Item XVI—Guaranteed Maximum Shipping Weights and Dimensions

FAR 47.305–16(b) and 52.247–60 are revised to more specifically describe the information required from the offeror concerning shipping characteristics, to provide that offers submitted without the requested information will be evaluated on the basis of the shipping characteristics submitted with any offer that produces the highest transportation costs, and to provide that the contract price of the successful offer will be reduced by an amount equal to the difference between the transportation costs actually incurred and the costs which would have been accurate.

Item XVII—Incorporating Provisions and Clauses

FAR 52.102–1(d) is removed and FAR 52.107(a) and (b), 52.252–1, and 52.252–2 are revised to eliminate Alternate I, which required contracting officers to identify provisions and clauses incorporated by reference and to group them separately from the provisions and clauses incorporated in full text. This change is made to accommodate buying activities that use automated programs to generate solicitations and contracts. The automated programs generally intermingle provisions and clauses incorporated by reference with those incorporated by full text and do not separately list provisions and clauses incorporated by reference. A notice to the offeror and contractor that some provisions and clauses are incorporated by reference replaces the deleted requirements.

Item XVIII—Examination of Records

FAR 52.215–2 is revised to illustrate the type and form of contractor cost and financial information which is to be made available to Government personnel for conducting reviews of contract costs. This change should help to eliminate time-consuming and inefficient access to records arguments that have occurred between Government personnel and contractors.

Item XIX—Editorial Changes

FAR 10.002(a) is revised to correct a reference to read "41 U.S.C. 253a(a)".

FAR 14.203–2(a) is revised to read "display of invitations for bids".

FAR 28.204–1 is revised to correct a citation to read "31 U.S.C. 9309" and to revise the date of Treasury Department Circular No. 154.

FAR 52.204–1 is revised to correct bracketed instruction in the clause.

FAR 52.212–4(a) and (b) are revised to correct the title of the referenced clause (see 52.249–8).

FAR 52.243–1, Alternate V, paragraph (b) introductory text is corrected to read "or time required for" vice "or item required for". Error was made from the Phase II to Executive Review preparation of the FAR.

FAR 52.244–3(b) is revised to correct reference to read "15.903(d)".

FAR 52.246–19(a)(5)(i) is revised to remove the incorrect reference.

FAR 53.222(e) is revised to display the latest edition of SF 1413. Under the Paperwork Reduction Act, there is a requirement to update the OMB Control Number, and to include a burden statement and the expiration date of the paperwork clearance.

FAR 53.301–1413 illustrates the revised SF 1413.

Therefore, 48 CFR parts 2, 4, 5, 8, 9, 10, 14, 15, 25, 28, 32, 36, 42, 45, 47, 48, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 8, 9, 10, 14, 15, 25, 28, 32, 36, 42, 45, 47, 48, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by alphabetically adding a definition "Facsimile" to read as follows:

2.101 Definitions.

* * * * *

Facsimile means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a

document, e.g., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.703 is amended by adding paragraph (b)(3) and by revising paragraph (d) to read as follows:

4.703 Policy.

* * * * *

(b) * * *

(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216–7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216–13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.

* * * * *

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.503 [Amended]

4. Section 5.503 is amended in paragraph (c)(1)(i) by adding the phrase "or Standard Form 1447, Solicitation/Contract," following the words "Award/Contract,".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

5. Section 8.802 is amended by removing the existing paragraphs (a) and (c); by redesignating the existing paragraphs (b), (d), and (e) as (a), (b) and (c); by removing in the first sentence of paragraph (c) the words "in the District of Columbia" and inserting in their place "within the District of Columbia"; and by revising in new paragraph (b) the first sentence to read as follows:

8.802 Policy

* * * * *

(b) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the Congressional Joint Committee on Printing (JCP) and the Public Printer on matters related to printing.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

6. Section 9.405 is amended by adding paragraph (c) to read as follows:

9.405 Effect of listing.

* * * * *

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

10.002 [Amended]

7. Section 10.002 is amended by removing in the introductory text of paragraph (a) the reference "41 U.S.C. 253A(a)" and inserting in its place "41 U.S.C. 253a(a)".

8. Section 10.006 is amended by revising paragraph (a)(1)(ii) to read as follows:

10.006 Using specifications and standards.

(a) * * *

(1) * * *

(ii) Under the small purchase limitation in 13.000;

* * * * *

PART 14—SEALED BIDDING

9. Section 14.201–1 is amended by adding paragraph (a)(5) and by revising in paragraph (c) the fourth sentence to read as follows:

14.201–1 Uniform contract format.

(a) * * *

(5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format (see 14.201–9).

* * * * *

(c) * * * Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation Offer and Award (SF 33), Standard Form 26, Award/Contract (SF 26), or Standard Form 1447, Solicitation/Contract (SF 1447), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

* * * * *

10. Section 14.201–2 is amended by revising paragraphs (a)(1), (a)(2), and the second sentence in paragraph (b) to read as follows:

14.201–2 Part I—The Schedule.

* * * * *

(a) * * * (1) Prepare the invitation for bids on SF 33, or the SF 1447, unless otherwise permitted by this regulation. The SF 33 is the first page of the solicitation and includes Section A of the uniform contract format. When the SF 1447 is used as the solicitation document, the information in subdivisions (a)(2)(i) and (a)(2)(iv) of this subsection shall be inserted in block 9 of the SF 1447.

(2) When the SF 33 or SF 1447 is not used, include the following on the first page of the invitation for bids:

* * * * *

(b) * * * The SF 33 and SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302–336).

11. Section 14.201–6 is amended by revising paragraphs (c)(3) and (r); by adding in the introductory text of paragraph (i), following "SF 33" the words "or SF 1447"; and by adding paragraphs (c)(4), (u), (v), and (w) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(c) * * *

(3) 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids, for solicitations issued in the United States and Canada for submission of bids to a contracting office in the United States or Canada.

(4) 52.214–32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), for solicitations under which bids are to be submitted to a contracting office outside the United States or Canada.

* * * * *

(r) The contracting officer shall insert the provision at 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding issued in the United States and Canada for submission of technical proposals to a contracting office in the United States or Canada.

* * * * *

(u) The contracting officer shall insert the provision at 52.214–30, Annual Representations and Certifications-Sealed Bidding, in invitations for bids if annual representations and certifications are used (see 14.213).

(v) The contracting officer shall insert the provision at 52.214–33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas), in solicitations for technical proposals in step one of two-step sealed bidding under which technical proposals are to be submitted to a contracting office outside the United States or Canada.

(w) The contracting officer shall insert the provision at 52.214–31, Facsimile Bids, in solicitations if facsimile bids are authorized (see 14.202–7).

12. Section 14.201–9 is added to read as follows:

14.201–9 Simplified contract format.

Policy. For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see 14.201–1). The contracting officer has flexibility in preparation and organization of the simplified contract format. However, the following format should be used to the maximum practical extent:

(a) *Solicitation/contract form.* Standard Form (SF) 1447, Solicitation/Contract, shall be used as the first page of the solicitation.

(b) *Contract schedule.* Include the following for each contract line item:

(1) Contract line item number.

(2) Description of supplies or services, or data sufficient to identify the requirement.

(3) Quantity and unit of issue.

(4) Unit price and amount.

(5) Packaging and marking requirements.

(6) Inspection and acceptance, quality assurance, and reliability requirements.

(7) Place of delivery, performance and delivery dates, period of performance, and F.o.b. point.

(8) Other item-peculiar information as necessary (e.g., individual fund citations).

(c) *Clauses.* Include the clauses required by this regulation. Additional clauses shall be incorporated only when considered absolutely necessary to the particular acquisition.

(d) *List of documents and attachments.* Include if necessary.

(e) *Representations and instructions—*

(1) *Representations and certifications.* Insert those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) *Instructions, conditions, and notices.* Include the solicitation provisions required by 14.201–6. Include any other information/instructions necessary to guide offerors.

(3) *Evaluation factors for award.* Insert all necessary evaluation factors for award.

(4) Upon award, the contracting officer need not physically include the provisions in subparagraphs (e)(1), (2), and (3) of this subsection in the resulting contract, but shall retain them in the contract file. Award by acceptance of a bid on the award portion of SF 1447 incorporates the representations, certifications, and other statements of bidders in the resultant contract even though not physically attached.

13. Section 14.202–7 is added to read as follows:

14.202–7 Facsimile bids.

(a) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile bids (see 14.201–6(w)). In determining whether or not to authorize facsimile bids, the contracting officer shall consider factors such as—

(1) Anticipated bid size and volume;

(2) Urgency of the requirement;

(3) Frequency of price changes;

(4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and

(5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile bids, and ensuring their timely delivery to the bids opening location.

(b) If facsimile bids are authorized, contracting officers may, after the date set for bid opening, request the apparently successful offeror to provide the complete original signed bid.

14.203–2 [Amended]

14. Section 14.203–2 is amended in paragraph (a) by adding the words "invitations for" between the words "display of" and "bids".

15. Section 14.213 is added to read as follows:

14.213 Annual submission of representations and certifications.

(a) Submission of offeror representations and certifications on an annual basis, as an alternative to submission in each solicitation, may be authorized by agencies subject to the requirements of this section. The decision to use annual representations and certifications shall be made in accordance with agency procedures.

(b) In accordance with agency procedures, each contracting office utilizing annual representations and certifications shall establish procedures and assign responsibilities for centrally requesting, receiving, storing, verifying and updating offeror's annual submissions. Generally, the representations and certifications shall be effective for a period of 1 year from date of signature.

(c) The contracting officer shall not include in individual solicitations the full text of provisions that are contained in the annual representations and certifications.

(d) Offerors shall make changes that affect only one solicitation by completing the appropriate section of the provision at 52.214–30, Annual Representations and Certifications—Sealed Bidding.

16. Section 14.301 is amended by revising paragraph (a); by redesignating existing paragraph (c) as (d); and by adding new paragraph (c) to read as follows:

14.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

* * * * *

(c) Facsimile bids shall not be considered unless permitted by the solicitation (see 14.202–7).

* * * * *

17. Section 14.303 is amended by revising paragraph (a) to read as follows:

14.303 Modifications or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message shall be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision prescribed in 14.201–6(w). Modifications received by telephone (including a record of those telephoned by the telegraph company) or facsimile shall be sealed in an

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envelope by a proper official. The official shall write on the envelope (1) the date and time of receipt and by whom, and (2) the number of the invitation for bids, and shall sign the envelope. No information contained in the envelope shall be disclosed before the time set for bid opening.

* * * * *

18. Section 14.304–1 is amended by revising paragraphs (a)(1), (a)(2), and (b); by redesignating existing paragraph (d) as (e); and by adding new paragraphs (a)(3) and (d) to read as follows:

14.304–1 General.

* * * * *

(a) * * *

(1) It was sent to a contracting office in the United States or Canada by registered or certified mail not later than 5 calendar days before the bid receipt date specified;

(2) It was sent by mail (or, if authorized by the solicitation, was sent by telegram or via facsimile) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It was sent to a contracting office in the United States or Canada by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee not later than 5:00 PM at the place of mailing 2 working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and Federal holidays.

(b) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent to a contracting office in the United States or Canada either by registered or certified mail is a U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date, or the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.)

* * * * *

(d) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (b) of this subsection, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerks to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

* * * * *

19. Section 14.30–2 is revised to read as follows:

14.304–2 Notification to late bidders.

When a bid, modification of bid, or withdrawal of bid is received late and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder accordingly. However, when a late bid, modification of bid, or withdrawal of bid is transmitted to a contracting office in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the bidder shall be promptly notified substantially as follows: Your bid in response to Invitation for Bids Number _____ dated _____ for _____ [*insert subject matter or short title*] was received after the time for opening specified in the Invitation. Accordingly, your bid will not be opened or considered for award unless there is received from you by _____ [*insert date*] the original post office receipt for [*insert one of the following, as appropriate*]:

(a) Registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(b) U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee showing a date of mailing not later than 5:00 PM two Federal working days prior to the date specified for opening.

20. Section 14.407–1 is amended by revising paragraph (d) to read as follows:

14.407–1 General.

* * * * *

(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer on an SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams, as notices of awards.

PART 15—CONTRACTING BY NEGOTIATION

21. Section 15.402 is amended by adding paragraphs (i) and (j) to read as follows:

15.402 General.

* * * * *

(i) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile proposals (see 15.407(i)). In determining whether or not to authorize facsimile proposals, the contracting officer shall consider such factors as—

(1) Anticipated proposal size and volume;

(2) Urgency of the requirement;

(3) Frequency of price changes;

(4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and

(5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the proposal opening location.

(j) If facsimile proposals are authorized, contracting officers may, after the date set for receipt of proposal, request offeror(s) to provide the complete original signed proposal.

22. Section 15.406–1 is amended by adding paragraph (a)(8); and in the third sentence of paragraph (b) by removing the words "SF 33 or SF 26" and inserting in their place "SF 33, SF 26, or SF 1447" to read as follows:

15.406–1 Uniform contract format.

* * * * *

(a) * * *

(8) Contracts utilizing the simplified contract format (see 15.416).

* * * * *

23. Section 15.406–2 is amended by revising paragraphs (a)(1), the introductory text of paragraph (a)(3), and paragraph (a)(3)(vii) by inserting a period following the words "Zip Code"; and removing the remainder of the sentence to read as follows:

15.406–2 Part I—The Schedule.

(a) * * *

(1) Prepare RFP's on Standard Form 33, Solicitation, Offer and Award (53.301–33) or Standard Form 1447, Solicitation/Contract (53.301–1447), unless otherwise permitted by this regulation. The first page of the SF 33 or SF 1447 is the first page of the solicitation. The first page of the SF 33 includes section A of the uniform contract format. When the SF 1447 is used as the solicitation document, ensure the information in subdivisions (a)(3)(i) and (a)(3)(iv) of this subsection are inserted in block 9 of the SF 1447.

* * * * *

(3) When other than SF 33, SF 18, or SF 1447 is used, include the following on the first page of the solicitation:

* * * * *

24. Section 15.407 is amended by revising paragraphs (c)(6) and (c)(8); by adding in paragraph (f) the words "or SF 1447" following the words "SF 33"; and by adding paragraphs (c)(9), (i), and (j) to read as follows:

15.407 Solicitation provisions.

* * * * *

(c) * * *

(6) 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, for solicitations issued in the United States and Canada for submission of offers to a contracting office in the United States or Canada;

* * * * *

(8) 52.215–12, Restriction on Disclosure and Use of Data; and

(9) 52.215–36, Late Submissions, Modifications, and Withdrawals of Proposals (Overseas), for solicitations under which offers are to be submitted to a contracting office outside the United States or Canada.

* * * * *

(i) The contracting officer shall insert the provision at 52.215–35, Annual Representations and Certifications—Negotiation, in requests for proposals if annual representations and certifications are utilized (see 14.213).

(j) The contracting officer shall insert the provision at 52.215–18, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.402(i)).

25. Section 15.412 is amended by revising paragraph (e) to read as follows:

15.412 Late proposals and modifications.

* * * * *

(e) When a late proposal or modification is transmitted to a contracting officer in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304–2, appropriately modified to relate to proposals.

* * * * *

26. Section 15.414 is revised to read as follows:

15.414 Forms.

(a) Standard Form 33 (SF 33), Solicitation, Offer and Award (see 53.301–33), shall be used in connection with the solicitation and award of negotiated contracts. Award may be made using the Award portion of SF 33, except as provided in paragraph (b) of this section.

(b) Standard Form 26 (SF 26), Award/Contract (see 53.301–26), shall be used when entering into negotiated contracts when the prospective contractor has amended its offer, unless—

(1) The contract is for the construction, alteration, or repair of buildings, bridges, roads, or other real property;

(2) The acquisition is one for which the FAR prescribes special contract forms; or

(3) Use of a purchase order is appropriate.

(c) Standard Form 1447 (SF 1447), Solicitation/Contract (see 53.301–1447), shall be used in connection with negotiated acquisitions that use the simplified contract format and may be used in lieu of the SF 26 or SF 33 for other acquisitions. Award is generally made using the award portion of the SF 1447 (see 53.215–1).

27. Section 15.416 is added to read as follows:

15.416 Simplified contract format.

For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see 14.201–1).

PART 25—FOREIGN ACQUISITION

25.102 [Amended]

28. Section 25.102 is amended in paragraph (a)(4) by removing the words "one or more agencies have determined."

29. Section 25.108 is amended by revising paragraphs (a) and (b); and by alphabetically adding in paragraph (d)(1) the items "Rabbit fur felt", and "Yarn, 50 Denier rayon" to read as follows:

25.108 Excepted articles, materials, and supplies.

(a) One or more agencies have determined that the articles, materials, and supplies listed in paragraph (d) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The list in paragraph (d) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the agency concerned has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Agencies making determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, or supplies shall submit a copy of these determinations to the appropriate FAR Council for possible addition of items to the list.

* * * * *

25.202 [Amended]

30. Section 25.202 is amended in paragraph (a)(3) by removing the words "One or more agencies have determined that the" and inserting in their place the word "The".

PART 28—BONDS AND INSURANCE

31. Section 28.101–4 is revised to read as follows:

28.101–4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in paragraph (c) of this subsection when the noncompliance shall be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussion, except in the situations described in paragraph (c) of this subsection when noncompliance shall be waived. (See 15.610(a) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range shall be addressed during discussions and the offeror shall be given an opportunity to correct the deficiency.

(c) Noncompliance with a solicitation requirement for a bid guarantee shall be waived in the following circumstances unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest when—

(1) Only one offer is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award;

(2) The amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the offer price and the next higher acceptable offer;

(3) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award. Any award to the offeror shall not exceed the quantity covered by the bid guarantee;

(4) The bid guarantee is received late, and late receipt is waived under 14.304;

(5) A bid guarantee becomes inadequate as a result of the correction of a mistake under 14.406 (but only if the bidder will increase the bid guarantee to the level required for the corrected bid);

(6) A telegraphic offer modification is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous offer and the offeror corrects any deficiency in bid guarantee;

(7) An otherwise acceptable bid bond was submitted with a signed offer, but the bid bond was not signed by the offeror;

(8) An otherwise acceptable bid bond is erroneously dated or bears no date at all; or

(9) A bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

32. Section 28.106–1 is amended by revising the first sentence of the introductory text and paragraphs (e), (h), (i), and (j); and by adding paragraphs (n) and (o) to read as follows:

28.105–1 Bonds and bond-related forms.

The following Standard Forms (SF's) and Optional Forms (OF's) shown in 53.301 and 53.302 shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. * * *

* * * * *

(e) SF 28, Affidavit of Individual Surety (see 28.203).

* * * * *

(h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202(a)(4)).

(i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).

* * * * *

(n) OF 90, Release of Lien on Real Property (see 28.203–5).

(o) OF 91, Release of Personal Property from Escrow (see 28.203–5).

28.202 [Removed]

33. Section 28.202 is removed.

28.202–1 [Redesignated as 28.202]

34. Section 28.202–1 is redesignated as new section 28.202, and the section title and paragraph (d) are revised to read as follows:

28.202 Acceptability of corporate sureties.

* * * * *

(d) The Department of the Treasury Circular 570 may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 401 14th St., SW, 2nd Floor—West Wing, Washington, DC 20227.

28.202–2 [Removed]

35. Section 28.202–2 is removed.

28.203–1 [Redesignated as 28.204–1]

36. Section 28.203–1 is redesignated as 28.204–1.

28.203–2 [Redesignated as 28.204–2]

37. Section 28.203–2 is redesignated as 28.204–2.

28.203 [Redesignated as 28.204]

38. Section 28.203 is redesignated as 28.204, and new section 28.203 is added to read as follows:

28.203 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties, and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation. (See 28.203–7 for information on excluded individual sureties.)

(b) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute the Standard Form 28 and provide a security interest in accordance with 28.203–1. One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety must accept both joint and several liability to the extent of the penal amount of the bond.

(c) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, the offeror utilizing the individual surety shall be rejected as nonresponsible, except as provided in 28.101–4. A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a competency review. (See 19.602–1(a)(2)(i) and 61 Comp. Gen. 456 (1982).)

(d) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted a reasonable time, as determined by the contracting officer, to substitute an acceptable surety for a surety previously determined to be unacceptable.

(e) When evaluating individual sureties, contracting officers may obtain assistance from the office identified in 28.202(d).

(f) Contracting officers shall obtain the opinion of legal counsel as to the adequacy of the documents pledging the assets prior to accepting the bid guarantee and payment and performance bonds.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

39. Section 28.203–1 is added to read as follows:

28.203–1 Security interests by an individual surety.

(a) An individual surety may be accepted only if a security interest in assets acceptable under 28.203–2 is provided to the Government by the individual surety. The security interest shall be furnished with the bond.

(b) The value at which the contracting officer accepts the assets pledged must be equal to or greater than the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

(1) An escrow account with a federally insured financial institution in the name of the contracting agency. (See 28.203–2(b)(2) with respect to Government securities in book entry form.) Acceptable securities for deposit in escrow are discussed in 28.203–2. While the offeror is responsible for establishing the escrow account, the terms and conditions must be acceptable to the contracting officer. At a minimum, the escrow account shall provide for the following:

(i) The account must provide the contracting officer the sole and unrestricted right to draw upon all or any part of the funds deposited in the account. A written demand for withdrawal shall be sent to the financial institution by the contracting officer, after obtaining the concurrence of legal counsel, with a copy to the offeror/contractor and to the surety. Within the time period specified in the demand, the financial institution would pay the Government the amount demanded up to the amount on deposit. If any dispute should arise between the Government and the offeror/contractor, the surety, or the subcontractors or suppliers with respect to the offer or contract, the financial institution would be required, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government as directed by the contracting officer.

(ii) The financial institution would be authorized to release to the individual surety all or part of the balance of the escrow account, including any accrued interest, upon receipt of written authorization from the contracting officer.

(iii) The Government would not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the account.

(iv) The financial institution would not be liable or responsible for the interpretation of any provisions or terms and conditions of the solicitation or contract.

(v) The financial institution would provide periodic account statements to the contracting officer.

(vi) The terms of the escrow account could not be amended without the consent of the contracting officer.

(2) A lien on real property, subject to the restrictions in 28.203–2 and 28.203–3.

40. Section 28.203–2 is redesignated as 28.204–2 and new section 28.203–2 is added to read as follows:

28.203–2 Acceptability of assets.

(a) The Government will accept only cash, readily marketable assets, or irrevocable letters of credit from a federally insured financial institution from individual sureties to satisfy the underlying bond obligations.

(b) Acceptable assets include—

(1) Cash, or certificates of deposit, or other cash equivalents with a federally insured financial institution;

(2) United States Government securities at market value. (An escrow account is not required if an individual surety offers Government securities held in book entry form at a depository institution. In lieu thereof, the individual shall provide evidence that the depository institution has (i) placed a notation against the individual's book entry account indicating that the security has been pledged in favor of the respective agency; (ii) agreed to notify the agency prior to maturity of the security; and (iii) agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the security interest is formally released by the agency);

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are—(i) the New York Stock Exchange; (ii) the American Stock Exchange; (iii) the Boston Stock Exchange; (iv) the Cincinnati Stock Exchange; (v) the Midwest Stock Exchange; (vi) the Philadelphia Stock Exchange; (vii) the Pacific Stock Exchange; and (viii) the Spokane Stock Exchange. These assets will be accepted at 90 percent of their 52-week low, as reflected at the time of submission of the bond. Stock options and stocks on the over-the-counter (OTC) market or NASDQ Exchanges will not be accepted. Assistance in evaluating the acceptability of securities may be obtained from the Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street NW., Washington, DC 20549.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in subdivision (c)(3)(iii) of this subsection, and located within the 50 United States, its territories, or possessions. These assets will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties' unencumbered market value provided a current appraisal is furnished (see 28.203–3).

(5) Irrevocable letters of credit (ILC) issued by a federally insured financial institution in the name of the contracting agency and which identify the agency and solicitation or contract number for which the ILC is provided.

(c) Unacceptable assets include but are not limited to—

(1) Notes or accounts receivable;

(2) Foreign securities;

(3) Real property as follows:

(i) Real property located outside the United States, its territories, or possessions.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques);

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor;

(6) Corporate assets (e.g., plant and equipment);

(7) Speculative assets (e.g., mineral rights);

(8) Letters of credit, except as provided in 28.203–2(b)(5).

41. Sections 28.203–3 through 28.203–7 are added to read as follows:

28.203–3 Acceptance of real property.

(a) Whenever a bond with a security interest in real property is submitted, the individual surety shall provide—

(1) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This list entitled *List of Approved Attorneys, Abstracters, and Title Companies* is available from the Title Unit, Land Acquisition Section, Land and Natural Resource Division, Department of Justice, Washington, DC 20530. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government under paragraph (*d*) of this subsection;

(2) Evidence of the amount due under any encumbrance shown in the evidence of title;

(3) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of

Professional Appraisal Practice as promulgated by the Appraisal Foundation, 1029 Vermont Avenue NW, Washington, DC 20005.

(b) Failure to provide evidence that the lien has been properly recorded will render the offeror nonresponsible.

(c) The individual surety is liable for the payment of all administrative costs of the Government, including legal fees, associated with the liquidation of pledged real estate.

(d) The following format, or any document substantially the same, shall be used by the surety and recorded in the local recorder's office when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

Lien on Real Estate

I/we agree that this instrument constitutes a lien in the amount of $_____ on the property described in this lien. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property, including the right to satisfy its reasonable administrative costs, including legal fees associated with any sale of subject property, in the event of contractor default if I/we otherwise fail to satisfy the underlying ( ) bid guarantee, ( ) performance bond, ( ) or payment bond obligations as an individual surety on solicitation/contract number _____. The lien is upon the real estate now owned by me/us described as follows: (legal description, street address and other identifying description)

IN WITNESS HEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this _____ DAY OF _____ 19____.

_____

WITNESS:

_____

(SEAL)

I, _____, a Notary Public in and for the (CITY) _____, (STATE) _____, do hereby certify that _____, a party or parties to a certain Agreement bearing the date _____ day of _____ 19 ____, and hereunto annexed, personally appeared before me, the said _____ being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her/their act and deed. GIVEN under my hand and seal this _____ day of _____ 19____.

_____

NOTARY PUBLIC, STATE
My Commission expires:

28.203-4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The contracting officer may agree to the substitution of assets upon determining, after consultation with legal counsel, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in Subpart 28.2

28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a) (1) and (2) of this subsection. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Miller Act.* The security interest shall be maintained for the later of (i) 1 year following final payment, (ii) until completion of any warranty period (applicable only to performance bonds), or (iii) pending resolution of all claims filed against the payment bond during the 1-year period following final payment.

(2) *Contracts not subject to the Miller Act.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the subparagraphs (a) (1) and (2) of this subsection. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the lien is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203-6 Contract clause.

Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this subsection shall be included on the list entitled Parties Excluded from Procurement Programs. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear on the list entitled Parties Excluded from Procurement Programs (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this subsection will also preclude such party from acting as a contractor in accordance with Subpart 9.4.

28.204-1 [Amended]

42. Section 28.204-1, as redesignated from 28.203-1, is amended by removing in the first sentence the citation "6 U.S.C. 15" and inserting in its place "31 U.S.C. 9303"; and by removing the date "February 6, 1935" and inserting in its place "July 1, 1978".

43. Section 28.204-2, as redesignated from 28.203-2, is amended by revising the section heading to read as follows:

28.204-2 Certified or cashiers checks, bank drafts, money orders, or currency.

* * * * *

PART 32—CONTRACT FINANCING

44. Section 32.503-6 is amended by revising in paragraph (b)(1) the third sentence to read as follows:

32.503-6 Suspension or reduction of payments.

* * * * *

(b) * * * If the system or controls are deemed inadequate, progress payments shall be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system shall be suspended) until the necessary changes have been made.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

45. Section 36.201 is amended by revising paragraph (a)(1) to read as follows:

36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction Contracts), for each construction contract of—

(i) $500,000 or more; or

(ii) More than $10,000, if the contract was terminated for default.

* * * * *

46. Section 36.505 is revised to read as follows:

36.505 Material and workmanship.

The contracting officer shall insert the clause at 52.236-5, Material and Workmanship, in solicitations and contracts for construction contracts.

47. Section 36.507 is revised to read as follows:

36.507 Permits and responsibilities.

The contracting officer shall insert the clause at 52.236-7, Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

36.520 [Removed]

48. Section 36.520 is removed.

36.521 [Redesignated as 36.520]

49. Section 36.521 is redesignated as 36.520.

36.602-3 [Amended]

50. Section 36.602-3 is amended in the first sentence of paragraph (c) by inserting a period following the word "services" and removing the phrase ", when the prospective architect-engineer contract is estimated to exceed $10,000."

36.602-5 [Amended]

51. Section 36.502-5 is amended in the section title and in the first sentence of the introductory text by removing in each place the figure "$10,000" and inserting in each place the words "the small purchase limitation".

PART 42—CONTRACT ADMINISTRATION

52. Section 42.302 is amended by revising paragraph (a)(39) to read as follows:

42.302 Contract administration functions.

(a) * * *

(39) Ensure contractor compliance with contractual safety requirements.

* * * * *

53. Section 42.1406-1 is amended by revising the second sentence to read as follows:

42.1406-1 Advance notice.

* * * Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. * * *

54. Section 42.1406-2 is revised to read as follows:

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

PART 45—GOVERNMENT PROPERTY

45.305 [Removed and Reserved]

55. Section 45.305 is removed and reserved.

56. Section 45.306-2 is amended by revising the section and the title to read as follows:

45.306-2 Special tooling under cost-reimbursement contracts.

Title to special tooling under cost-reimbursement contracts is acquired by the Government in all cases. The clause used for this purpose is 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

57. Section 45.306-3 is amended by revising the section and the title to read as follows:

45.306-3 Special tooling under fixed-price contracts.

(a) *Criteria for acquisition.* In deciding whether or not to acquire title to special tooling, or rights to title, under fixed-price contracts, the contracting officer shall consider the following factors:

(1) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(2) The estimated residual value of the items.

(3) The administrative burden and other expenses incident to reporting, recordkeeping, preparation, handling transportation, and storage.

(4) The feasibility and probable cost of making the items available to other offerors in the event of future acquisitions.

(5) The amount offered by the contractor for the right to retain the items.

(6) The affect on future competition and contract pricing.

(b) *Decision not to acquire special tooling.* In contracts in which the Government will not acquire title to special tooling, or rights to title, special requirements may be included in the Schedule of the contract (e.g., requirement governing the contractor's capitalization of special tooling costs).

45.306-4 [Removed and Reserved]

58. Section 45.306-4 is removed and reserved.

59. Section 45.306-5 is added to read as follows:

45.306-5 Contract clause.

The contracting officer shall insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when a fixed-price contract is contemplated, and either the contract will include special tooling provided by the Government or the Government will acquire title or right to title in special tooling to be

acquired or fabricated by the contractor for the Government, other than special tooling to be delivered as an end item under the contract. The Special Tooling clause shall apply to all special tooling accountable to the contract.

45.307-1 [Amended]

60. Section 45.307-1 is amended by removing in paragraph (b) the reference "45.306-2(c)" and inserting in its place the reference "45.306-3(a)".

61. Section 45.307-3 is added to read as follows:

45.307-3 Contract clause.

The contracting officer shall insert the clause at 52.245-18, Special Test Equipment, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipent for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

45.308 [Amended]

62. Section 45.308 is amended by removing paragraphs (a) and (b). The section heading remains.

63. Section 45.308-1 is added to read as follows:

45.308-1 General.

(a) The contracting officer may provide Government production and research property on an "as is" basis for performing fixed-price, time-and-material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract shall state that the contractor will not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

(b) When the property is provided under other than a facilities contract, the solicitation shall state that—

(1) Offerors may inspect the property before submitting offers and the conditions under which it may be inspected;

(2) The property is offered in its current condition, f.o.b. present location (provide specific locations);

(3) Offerors must satisfy themselves that the property is suitable for their use;

(4) The successful offeror shall bear the cost of transporting, installing, modifying, repairing, or otherwise making the property suitable for use; and

(5) Evaluations will be made in accordance with Subpart 45.2 to eliminate any competitive advantage resulting from using the property.

64. Section 45.308-2 is added to read as follows:

45.308-2 Contract clause.

The contracting officer shall insert the clause at 52.245-19, Government Property Furnished "As Is," in solicitations and contracts when a contract other than a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished "as is" (see 45.106 for additional clauses that may be required).

PART 47—TRANSPORTATION

65. Section 47.104-4 is amended by revising paragraph (b) to read as follows:

47.104-4 Contract clause.

* * * * *

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts awarded within the small purchase limitation at 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.

66. Section 47.305-16 is amended by revising the section title and by revising paragraph (b) to read as follows:

47.305-16 Shipping characteristics.

* * * * *

(b) *Guaranteed shipping characteristics.* (1) The contracting officer shall insert in soliciations and contracts, excluding those awarded under the small purchase procedures of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the shipping characteristics listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.

(2) The award document shall show the shipping characteristics used in the evaluation.

* * * * *

PART 49—TERMINATION OF CONTRACTS

67. Section 49.402-3 is amended by revising paragraph (e)(2) to read as follows:

49.402-3 Procedure for default.

* * * * *

(e) * * *

(2) When a termination for default appears imminent, the contracting officer shall provide a written notification to the surety. If the contractor is subsequently terminated for default, a copy of the notice of default shall be sent to the surety.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.102-1 [Amended]

68. Section 52.102-1 is amended by removing paragraph (d).

69. Section 52.102-2 is amended by adding paragraph (c) to read as follows:

52.102-2 Incorporation in full text.

* * * * *

(c) Provisions completed as annual representations and certifications are not required to be incorporated in solicitations in full text.

70. Section 52.107 is amended by revising paragraphs (a) and (b) to read as follows:

52.107 Provisions and clauses prescribed in Subpart 52.1.

(a) The contracting officer shall insert the provision at 52.252-1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference.

(b) The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference.

* * * * *

52.204-1 [Amended]

71. Section 52.204-1 is amended by removing in the title of the clause the date "(MAR 1989)" and inserting in its place "(DEC 1989)"; and by removing within the brackets in the clause the words "[fill in name of agency official]" and insert in their place "[identify title of designated agency official here]".

52.212-4 [Amended]

72. Section 52.212-4 is amended in paragraphs (b) and (c) by removing the words "Termination for Default-Supplies and Services" and by inserting in their place "Default-Fixed-Price Supply and Service".

73. Section 52.214-3 is amended by removing in the title of the provision the date "(NOV 1988)" and inserting in its place "(DEC 1989)"; and by revising paragraph (b) to read as follows:

52.214-3 Amendments to Invitations for Bids.

* * * * *

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

* * * * *

74. Section 52.214-5 is revised to read as follows:

52.214-5 Submission of Bids.

As prescribed in 14.201-6(c)(1), insert the following provision:

Submission of Bids (DEC 1989)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation number, and name and address of the bidder, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(c) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(End of provision)

75. Section 52.214-7 is revised to read as follows:

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

As prescribed in 14.201-6(c)(3), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Bids (December 1989)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

52.214-15 [Amended]

76. Section 52.214-15 is amended in the introductory text by inserting a colon following the word "provision" and removing the remainder of the sentence.

77. Section 52.214-23 is revised to read as follows:

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.

As prescribed in 14.201-6(r), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (December 1989)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of technical proposals (e.g., technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 P.M. at the place of mailing 2 working days prior to the date specified for receipt of technical proposals. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of a technical proposal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a

legible date, or the technical proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(End of provision)

78. Section 52.214–30 is added to read as follows:

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

Annual Representations and Certifications—Sealed Bidding (December 1989)

The bidder certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____ *(insert date of signature of submission)*, which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if "none," so state):

☐ (b) Are enclosed.

(End of provision)

79. Sections 52.214–31, 52.214–32, and 52.214–33 are added to read as follows:

52.214–31 Facsimile Bids.

As prescribed in 14.201–6(w), insert the following provision:

Facsimile Bids (December 1989)

(a) Definition. "Facsimile bid," as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

_____

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

_____

_____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

52.214–32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

As prescribed in 14.201–6(c)(4), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (December 1989)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(e) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)

52.214–33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

As prescribed in 14.201–6(v), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas) (December 1989)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent (i) by mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(End of provision)

80. Section 52.215–2 is amended by removing in the title of the clause the date "(APR 1988)" and inserting in its place the date "(DEC 1989)"; by revising paragraphs (a), (b), and (e) of the clause; and by adding paragraph (f) to read as follows:

52.215–2 Audit-Negotiation.

* * * * *

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost or pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all of the Contractor's books records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations an projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

* * * * *

(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

81. Section 52.215–6 is amended by removing in the title of the provision the date "November 1988)" and inserting in its place "(December 1989)"; and by revising paragraph (b) to read as follows:

52.215–6 Amendments to Solicitations.

* * * * *

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by (1) signing and returning the amendment, (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer, (3) letter or telegram, or (4) facsimile, if facsimile offers are authorized in the solicitation. The Government must receive the acknowledgment by the time specified for receipt of offers.

* * * * *

82. Section 52.215–9 is revised to read as follows:

52.215–9 Submission of Offers.

As prescribed in 15.407(c)(5), insert the following provision:

Submission of Offers (December 1989)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

(d) Item samples, if required, must be submitted within the time specified for reciept of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government, and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

(End of provision)

83. Section 52.215–10 is revised to read as follows:

52.215–10 Late Submissions, Modifications, and Withdrawals of Proposals.

As prescribed in 15.407(c)(6), insert the following provision in requests for proposals:

Late Submissions, Modifications, and Withdrawals of Proposals (December 1989)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., and offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal

wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

84. Section 52.215–18 is added to read as follows:

§ 52.215–18 Facsimile Proposals.

As prescribed in 15.407(i), insert the following provision:

Facsimile Proposals (December 1989)

(a) Definition. "Facsimile proposal," as used in this solicitation, means a proposal, modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile proposals as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile proposals that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile proposals must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

_____

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

_____

(g) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(End of provision)

85. Section 52.215–35 is added to read as follows:

52.215–35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

Annual Representations and Certifications—Negotiation (December 1989)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____ (insert date of signature on submission) which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if "none," so state):

☐ (b) Are enclosed.

(End of provision)

86. Section 52.215–36 is added to read as follows:

52.215–36 Late Submissions, Modifications and Withdrawals of Proposals (Overseas).

As prescribed in 15.407(c)(9), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (December 1989)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

87. Section 52.223–3 is amended by removing in the title of the clause the date "(AUG 1987)" and inserting in its place the date "(DEC 1989)" and by revising paragraph (d) of the clause to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

* * * * *

(d) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

* * * * *

52.225–1 [Amended]

88. Section 52.225–1 is amended by inserting a colon in the introductory text following the word "provision" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(DEC 1989)"; by removing in the last paragraph of the provision the parenthetical phrase "(listed at 25.108 of the Federal Acquisition Regulation)"; and by removing the derivation lines following "(End of provision)".

89. Section 52.228–11 is added to read as follows:

52.228–11 Pledges of Assets.

As prescribed in 28.203–6, insert the following clause:

Pledges of Assets (February 1990)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203–2 (except see 28.203–2(b)(2) with respect to Government sureties held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owner; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203–3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.236–5 [Amended]

90. Section 52.236–5 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence.

52.236–7 [Amended]

91. Section 52.236–7 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence.

52.236–20 [Removed and Reserved]

92. Section 52.236–20 is removed and reserved.

93. Section 52.242–12 is amended in the introductory text by inserting a colon following the word "clause" and removing the reminder of the sentence; by removing in the title of the clause the date "[APR 1984]" and inserting in its place "[DEC 1989]"; by removing the derivation line following "[End of clause]"; and by revising the first sentence of the clause to read as follows:

52.242–12 Report of Shipment (REPSHIP).

As prescribed in 42.1406–2, insert the following clause:

* * * * *

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii respectively) destination (other than a port for export). * * *

* * * * *

52.243–1 [Amended]

94. Section 52.243–1 is amended in the introductory text of Alternate V, paragraph (b), by removing the words "item required" and inserting in their place "time required".

52.244–3 [Amended]

95. Section 52. 244–3 is amended in paragraph (b) by removing the reference "16.301–4" and inserting in its place "15.903(d)".

96. Section 52.245–2 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1989)"; by adding in paragraph (c)(2) a second sentence; by removing the six derivation lines following "(End of clause)"; and by revising paragraph (c)(3) to read as follows:

52.245–2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause:

* * * * * *

(c) * * *

(2) * * * However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. * * *

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

* * * * *

97. Section 52.245–17 is revised to read as follows:

52.245–17 Special Tooling.

As prescribed in 45.306–5, insert the following clause:

Special Tooling (December 1989)

(a) *Definition.* "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling for the purpose of this clause, includes all special tooling acquired or fabricated by the Contractor for the Government (other than special tooling to be delivered as a line item) or furnished by the Government for use in connection with and under the terms of the contract.

(b) *Title.* The Government retains title to Government-owned special tooling and option to take title to all special tooling subject to this clause until such time as title or option to take title is relinquished by the Contracting Officer as provided for in subparagraphs (j)(2) and (j)(3) of this clause.

(c) *Risk of loss.* Except to the extent that the Government shall have otherwise assumed the risk of loss to special tooling applicable to this clause, in the event of the loss, theft or destruction of or damage to any such property, the repair or replacement shall be accomplished by the Contractor at its own expense.

(d) *Special tooling furnished by the Government.* (1) Except as otherwise provided in this contract, all Government-furnished special tooling is provided "as is." The Government makes no warranty whatsoever with respect to special tooling furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when last available for inspection by the Contractor under the solicitation.

(2) The Contractor may repair any special tooling made available on an "as is" basis. Such repair will be at the Contractor's expense, except as otherwise provided in this clause. Such property may be modified as necessary for use under this contract at the Contractor's expense, except as otherwise directed by the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(3) If there is any change in the condition of special tooling furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the

solicitation or the Government directs a change in the quantity of special tooling furnished or to be furnished, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts, and, as directed by the Contracting Officer, either (i) return such items at the Government's expense or otherwise dispose of the property or (ii) effect repair to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of special tooling in a condition or in quantities other than that when originally offered.

(e) *Use of special tooling.* The Contractor may use special tooling subject to this clause on other Government effort when specifically approved in writing by the Contracting Officer for this contract and the Contracting Officer for the contract under which the special tooling will be used. Any other use of the special tooling shall be subject to advance written approval of the Contracting Officer. In the event the Government elects to remove any speical tooling that is required for continued contract performance, the contract shall be equitably adjusted in accordance with paragraph (m) of this clause.

(f) *Property control.*—(1) *Records.* The Contractor's special tooling records shall provide the following minimum information regarding each item of special tooling subject to this clause and shall be made available for Government inspection at all reasonable times:

(i) Number or code of the contract to which the tooling is accountable and the number or code of the contract for which the tooling was originally acquired or fabricated.

(ii) Retention codes as defined below:

(A) *Primary Code.* Assign one of the following to each item of special tooling:

Code A. Spares Tooling. Required to produce a provisioned spare part or assembly.

Code B. Judgment (Insurance) Tooling. Fabrication tools for parts that are not provisioned spares but which in the judgment of the Contractor will be required at some time for logistic support of the end item.

Code C. Rate Tooling. Necessary to economically produce at increased rates (e.g., for mobilization or surge) but not essential for parts fabrication at low production rates.

Code D. Assembly Tooling. Required for manufacture of the end product but not required for production of spare parts. Those items having no postproduction need except for potential modification or resumed production programs.

(B) *Secondary Code.* Assign one or more of the following codes, as applicable, to each item of special tooling:

Code 1. Repair Tooling. Items which are capable of being used for repair of provisioned parts or assemblies.

Code 2. Replaceable Tooling. Spares or judgment tooling (primary retention codes A or B) which, in the opinion of the Contractor, can be effectively and economically replaced by "soft" tooling on an "as required" basis in lieu of retention of the "hard" production tooling for supporting postproduction requirements.

Code 3. Maintenance Tooling. Items which are capable of being used for depot level maintenance of the applicable end item or components thereof.

Code 4. Crash Damage Tooling. Items which apply to provisioned or nonprovisioned parts or assemblies which are designated as or have the potential of being required for crash damage repairs.

(iii) Nomenclature, function, or comparable code.

(iv) Tool part number or code.

(v) Tool identification number, or quantity of each tool part number or code, if tool identification number is not assigned.

(vi) Part number(s) of item(s) on which used (complete hierarchy of part numbers).

(vii) Unit price. (Estimates are acceptable.)

(viii) Storage method code. Assign one of the following:

Code J. Inside storage.

Code K. Outside storage.

Code L. Other.

(ix) Estimated weight of tool, if over 25 pounds.

(x) Estimated volume of tool, if over 3 cubic feet.

(xi) Location of Contractor, subcontractor, vendor for each item. Use Federal Supply Code for Manufacturers (FSCM), or name and address if code is not available.

(xii) All operation sheets or other data as are necessary to show the manufacturing operation or processes for which such items were used, designed, or modified.

(2) *Identification or tagging.* To the extent practicable, the Contractor shall identify all special tooling subject to this clause in accordance with the Contractor's identification procedures.

(g) *Maintenance.* The Contractor shall maintain special tooling in accordance with sound industrial practice. These requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (j), Disposition instructions, of this clause.

(h) *Identification of excess special tooling.* The Contractor shall promptly identify and report all special tooling in excess of the amounts needed to complete full performance under this contract (see subdivision (i)(2)(i) of this clause).

(i) *Lists of special tooling.* The Contractor shall periodically prepare and distribute lists of special tooling as described below:

(1) *Special tooling list.* The list shall be furnished within 60 days after delivery of the first production end item under this contract or completion of the initial provisioning process, whichever is later, and shall include all special tooling subject to this clause as of the reporting date. However, if this contract represents the final production contract, the Contractor shall provide this list of all tools not later than 180 days prior to scheduled delivery of the last production end item. If this is a contract for storage of special tooling, the list shall be provided within 60 days of contract implementation.

(2) *Excess special tooling list.*—(i) *Excess special tooling.* Except for items subject to subdivision (i)(2)(ii) of this clause, lists of special tooling excess to this contract shall be furnished within 60 days of the date that the item is determined to be excess. The Contractor shall include in this list the information prescribed in Format of lists, subparagraph (i)(3) of this clause, as well as the applicable excess code as follows:

Code V. Excess to contract requirements with no follow-on requirements.

Code W. Excess to contract requirements but can be used to support actual or anticipated follow-on requirements.

Code X. Excess due to changes in design or specification of the end items.

Code Y. Excess due to nonserviceable or nonrepairable condition.

Code Z. Other.

(ii) *Termination inventory.* These items shall be submitted on SF 1432 or by computer list attached to an SF 1432 in accordance with FAR 45.606. Format and content of this submission will be as prescribed by Format of lists, subparagraph (i)(3) of this clause, but will contain information as prescribed by FAR subpart 45.6, in effect on the date of award of this contract.

(3) *Format of lists.* Lists furnished by the Contractor shall state the type of list and shall include all information from subparagraph (f)(1), Records, of this clause, items (i) through (xi). All lists will be grouped by primary retention code as prescribed in subdivision (f)(1)(ii)(A) of this clause and further listed in tool part number sequence.

(4) *Distribution of lists.* The Contractor shall submit two copies of lists to each of the following recipients unless otherwise directed:

(i) The Contracting Officer.

(ii) The Administrative Contracting Officer.

(iii) The inventory control point designated by the contracting office.

(j) *Disposition instructions.* The Contracting Officer shall provide the Contractor with written disposition instructions within 180 days of receipt of the list as prescribed by subparagraph (i)(1) of this clause and within 90 days of the receipt of excess special tooling lists reported in accordance with subparagraph (i)(2) of this clause. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (j)(1) through (j)(3) of this clause, or a combination of such methods. The Contractor shall comply with such disposition instructions.

(1) The Contracting Officer may identify specific items of special tooling to be retained or give the Contractor a list specifying the products, parts, or services including follow-on requirements for which the Government may require special tooling and request the Contractor to identify all usable items of special tooling on hand that were designed for or used in the production or performance of such products, parts, or services. Once items of usable special tooling required by the Government are identified, the Contracting Officer may—

(i) Direct the Contractor to transfer specified items of special tooling to follow-on contracts requiring their use. Those items shall be furnished for use on the contract(s) as specified by the Contracting Officer and shall be subject to the provisions of the gaining contracts(s); or

(ii) Request the Contractor to enter into an appropriate storage contract for special tooling specified to be retained by the Contractor for the Government. Tooling to be stored shall be stored pursuant to a storage contract between the Government and the Contractor; or

(iii) Direct the Contractor to transfer title to the Government (to the extent not previously transferred) and deliver to the Government those items of special tooling which are specified for removal from the Contractor's plant.

(2) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling not specified by the Government pursuant to subparagraph (j)(1) of this clause. To the extent that the Contractor incurs any costs occasioned by compliance with such direction, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract. The net proceeds of all sales shall either be credited to the cost of contract performance or shall be otherwise paid to the Government as directed by the Contracting Officer. Sale of special tooling to the prime Contractor or any of its subcontractors is subject to the prior written approval of the Contracting Officer.

(3) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or right in specified special tooling.

(4) Restoration of Contractor's premises. Unless otherwise provided in this contract, the Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if special tooling is withdrawn or if other special tooling is substituted, then the equitable adjustment under paragraph (m) of this clause may properly include restoration or rehabilitation costs.

(k) *Access to special tooling.* The Contractor shall provide access to special tooling subject to this clause at all reasonable times to all individuals designated by the Contracting Officer.

(l) *Storage or shipment.* The Contractor shall promptly arrange for either the shipment or the storage of special tooling specified in accordance with the final disposition instructions in subdivisions (j)(1)(ii) or (j)(1)(iii) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. All operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed shall accompany special tooling to be shipped or stored or shall otherwise be provided to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs costs for storage, shipment, packing, crating, or handling under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished special tooling;

(2) Delivery of Government-furnished special tooling in a condition not suitable for its intended use;

(3) A decrease in or substitution of special tooling; or

(4) Failure to repair or replace Government-furnished special tooling for which the Government is responsible.

(n) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

52.245–18 [Amended]

98. Section 52.245–18 is amended by removing in the introductory text the reference "45.305(b)" and inserting in its place the reference "45.307–3".

99. Section 52.245–19 is amended by revising the introductory text to read as follows:

52.245–19 Government Property Furnished "As Is."

As prescribed in 45.308–2, insert the following clause:

* * * * *

52.246–19 [Amended]

100. Section 52.246–19 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1989)"; by removing in paragraph (c)(5)(i) the words "as required in paragraph (c)(1)(ii) below"; and by removing the derivation line following "(End of clause)".

101. Section 52.247–1 is amended by revising paragraph (b) of the introductory text to read as follows:

52.247–1 Commercial Bill of Lading Notations.

* * * * *

(b) As prescribed in 47.104–4(b), the contracting officer may insert the following clause:

* * * * *

102. Section 52.247–60 is revised to read as follows:

52.247–60 Guaranteed Shipping Characteristics.

As prescribed in 47.305–16(b)(1), insert the following clause:

Guaranteed Shipping Characteristics (December 1989)

(a) The offeror is requested to complete subparagraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in subparagraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in subparagraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:

(i) Type of container: Wood Box ____, Fiber Box ____, Barrel ____, Reel ____, Drum ____, Other (Specify) ____;

(ii) Shipping configuration: Knocked-down____, Set-up ____, Nested ____, Other (specify) ____;

(iii) Size of container ____" (Length), x ____" (Width), x ____" (Height) = ____ Cubic FT;

(iv) Number of items per container ____ Each;

(v) Gross weight of container and contents____ LBS

(vi) Palletized/skidded ____ Yes ____ No;

(vii) Number of containers per pallet/skid____;

(viii) Weight of empty pallet bottom/skid and sides____ LBS;
(ix) Size of pallet/skid and contents ____ LBS Cube ____;
(x) Number of containers or pallets/skid per railcar ____*—
Size of railcar ____
Type of railcar ____
(xi) Number of containers or pallets/skids per trailer ____*—
Size of trailer ____ FT
Type of trailer ____
(2) To be completed by the Government after evaluation but before contract award:
(i) Rate used in evaluation ____;
(ii) Tender/Tariff ____;
(iii) Item ____;
(b) The guaranteed shipping characteristics requested in subparagraph (a)(1) of this clause do not establish actual transportation requirements, which are specified elsewhere in this solicitation. The guaranteed shipping characteristics will be used only for the purpose of evaluating offers and establishing any liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.
(End of clause)

52.252-1 [Amended]

103. Section 52.252-1 is amended by removing Alternate I of the clause.

52.252-2 [Amended]

104. Section 52.252-2 is amended by removing Alternate I of the clause.

PART 53—FORMS

53.106 [Amended]

105. Section 53.106 is amended in paragraph (b) by adding the Standard Form number ", 1447" following "33".

106. Section 53.205-1 and the title are revised to read as follows:

53.205-1 Paid advertisements.

SF 26, Award/Contract, SF 1447, Solicitation/Contract, or OF 347, Order for Supplies. SF 26, prescribed in 53.214(a), SF 1447, prescribed in 53.215-1(g), and OF 347 (or an approved agency form), prescribed in 53.213(e), shall be used to place orders for paid advertisements within the dollar limitations and as otherwise specified in 5.503(c).

107. Section 53.214 is amended by revising the title and by adding paragraph (d) to read as follows:

53.214 Sealed bidding.

* * * * *

(d) *SF 1447 (5/88), Solicitation/Contract.* SF 1447, prescribed in 53.215-1(g), shall be used in soliciting bids for supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201-9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

* * * * *

108. Section 53.215-1 is amended by revising the title and paragraph (d); and by adding paragraph (g) to read as follows:

53.215-1 Solicitation and receipt of proposals and quotations.

* * * * *

(d) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.

* * * * *

(g) *SF 1447, Solicitation/Contract.* SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.

53.222 [Amended]

109. Section 53.222 is amended in the introductory text of paragraph (e) by removing the words "SF 1413 (10/83)" and inserting in their place "SF 1413 (REV. 6/89)".

110. Section 53.228 is amended by revising the title and paragraphs (a), (b), (c), (e), (f), (g), and (m), and by adding paragraphs (n) and (o) to read as follows:

53.228 Bonds and insurance (SF's 24, 25, 25-A, 25-B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, OF's 90 and 91).

* * * * *

(a) *SF 24 (REV. X/XX), Bid Bond.* (See 28.106-1.)
(b) *SF 25 (REV. X/XX), Performance Bond.* (See 28.106-1(b).)
(c) *SF 25-A (REV. X/XX), Payment Bond.* (See 28.106-3(c).)

* * * * *

(e) *SF 28 (REV. X/XX), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).)
(f) *SF 34 (REV. X/XX), Annual Bid Bond.* (See 28.106-1(f).)
(g) *SF 35 (REV. X/XX), Annual Performance Bond.* (See 28.106-1.)

* * * * *

(m) *SF 1416 (REV. X/XX), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).)
(n) *OF 90 (REV. X/XX), Release of Lien on Real Property.* (See 28.106-1(n) and 28.203-5(a).)
(o) *OF 91 (REV. X/XX), Release of Personal Property from Escrow.* (See 28.106-1(o) and 28.203-5(a).)

111. Section 53.301-1413 is revised to read as follows:

53.301-1413 Standard Form 1413, Statement and Acknowledgment.

BILLING CODE 6820-JC-M

*Number of complete units (contract line item) to be shipped in carrier's equipment.

STATEMENT AND ACKNOWLEDGMENT

FORM APPROVED OMB NO. 9000-0014

Public reporting burden for this collection of information is estimated to average .15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, D.C. 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER
4. PRIME CONTRACTOR (Name, address and ZIP code)		5. SUBCONTRACTOR (Name, address and ZIP code)

6. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on date shown in Item 2 by (Name of Awarding Firm) _____

to the subcontractor identified in Item 5, for the following work:

7. PROJECT	8. LOCATION	
9. NAME AND TITLE OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

Contract Work Hours and Safety Standards Act - Overtime Compensation - Construction	Davis-Bacon Act
Payrolls and Basic Records	Apprentices and Trainees
Withholding of Funds	Compliance with Copeland Regulations
Disputes Concerning Labor Standards	Subcontracts
	Contract Termination-Debarment
	Certification of Eligibility

13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

14. NAME AND TITLE OF PERSON SIGNING	15. BY (Signature)	16. DATE SIGNED

NSN 7540-01-151-4297 Previous edition is usable — EXPIRATION DATE: 3-31-92 — 1413-102 — STANDARD FORM 1413 (REV. 6-89) Prescribed by GSA - FAR (48 CFR) 53.228(e)

BILLING CODE 6820-JC-C

112. Section 53.301–1447 is revised to read as follows:

53.301–1447 Standard Form 1447, Solicitation/Contract.

BILLING CODE 6820-JC-M

SOLICITATION/CONTRACT

BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27

1 THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) | RATING | PAGE 1 OF

2. CONTRACT NO | 3. AWARD/EFFECTIVE DATE | 4. SOLICITATION NUMBER | 5. SOLICITATION TYPE ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP) | 6. SOLICITATION ISSUE DATE

7. ISSUED BY | CODE | NO COLLECT CALLS

8. THIS ACQUISITION IS
☐ UNRESTRICTED
☐ SET ASIDE % FOR
☐ SMALL BUSINESS
SIC
☐ LABOR SURPLUS AREA CONCERNS
☐ OTHER

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)
☐ SUPPLIES ☐ SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.

12. ADMINISTERED BY | CODE

13. CONTRACTOR OFFEROR CODE | FACILITY CODE

14. PAYMENT WILL BE MADE BY | CODE

☐ CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER
TELEPHONE NO. | DUNS NO

SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK

15. PROMPT PAY DISCOUNT

16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION
☐ 10 U.S.C. 2304 (C) ( )
☐ 41 U.S.C. 253 (C) ( )

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. TOTAL AWARD AMOUNT (FOR GOVT USE ONLY)

26. ☐ CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

25. ☐ AWARD OF CONTRACT. YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS .

27. SIGNATURE OF OFFEROR/CONTRACTOR

28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

NAME AND TITLE OF SIGNER (TYPE OR PRINT) | DATE SIGNED | NAME OF CONTRACTING OFFICER | DATE SIGNED

NSN 7540–01–216–4386 | 1447-101 | STANDARD FORM 1447 (5-85) Prescribed by GSA FAR (48 CFR 53.215-1(c))

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
	OTHER (Specify)		
	WE DO		WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED
NAME AND ADDRESS OF FIRM (Include Zip Code)		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	

FROM:

AFFIX STAMP HERE

TO:

SOLICITATION NO. _____

DATE AND LOCAL TIME _____

GPO: 1988 200-498 (PO107)(m) SF 1447 (5-89) BACK

BILLING CODE [illegible]

113. Section 53.301–24 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–24 Standard Form 24, Bid Bond.

BILLING CODE [illegible]

BEST COPY AVAILABLE

BID BOND
(See instructions on reverse)

DATE BOND EXECUTED (Must not be later than bid opening date)

FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Name and business address)

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENT(S)	FOR (Construction, Supplies or Services)	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal – (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL			
SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

NSN 7540-01-152-8059
Previous edition not usable.

EXPIRATION DATE

24-106

STANDARD FORM 24 (REV.
Prescribed by GSA - FAR (48 CFR) 53.228(a)

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

BILLING CODE [illegible]

STANDARD FORM 24 (REV. BACK

114. Section 53.301–25 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–25 Standard Form 25, Performance Bond.

BILLING CODE 6820-JC-M

PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) T ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) / THOUSAND(S) / HUNDRED(S) / CENTS
	CONTRACT DATE F / CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above. A

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a–270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date. R

PRINCIPAL			
SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	
INDIVIDUAL SURETY(IES)			
SIGNATURE(S) D	1. (Seal)	2. (Seal)	
NAME(S) (Typed)	1.	2.	
CORPORATE SURETY(IES)			
SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.
	NAME(S) & TITLE(S) (Typed)	1.	2.

Corporate Seal

NSN 7540-01-152-8060 EXPIRATION DATE 25-101 STANDARD FORM 25 (REV. Prescribed by GSA - FAR (48 CFR) 53.228(b)
Previous edition not usable.

CORPORATE SURETY(IES) (Continued)

SURETY E	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY C	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY D	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY E	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY F	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.		
SURETY G	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	

BOND PREMIUM	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

BILLING CODE 6820-JC-C

STANDARD FORM 25-A, BACK

115. Section 53.301–25–A is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–25A Standard Form 25–A, Payment Bond.

BILLING CODE 6820–JC–M

PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)	
T	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION	
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS	
	CONTRACT DATE: F | CONTRACT NO.	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

A

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

R

PRINCIPAL			
SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S) D	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

NSN 7540-01-152-8081 EXPIRATION DATE 5-90
Previous edition not usable.

STANDARD FORM 25-A (REV. Prescribed by GSA - FAR (48 CFR) 53.228(c)

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2. T	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2. F	
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2. A	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

R

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

D

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

BILLING CODE 6820-JC-C

STANDARD FORM 25-A (REV. BACK

116. Section 53.301–28 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–28 Standard Form 28, Affidavit of Individual Surety.

BILLING CODE 6820–JC–M

AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse)

FORM APPROVED OMB NO. 9000–0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0001), Washington, D.C. 20503.

STATE OF

COUNTY OF SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)	2. HOME ADDRESS (Number, Street, City, State, ZIP Code)
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)	6. TELEPHONE NUMBER HOME – BUSINESS –

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment on the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED (MONTH / DAY / YEAR)	b. CITY AND STATE (Or other jurisdiction)		Official Seal
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)	d. SIGNATURE	e. MY COMMISSION EXPIRES	

NSN 7540–01–152–8063 EXPIRATION DATE 3–31–92 STANDARD FORM 28 (REV.)
Previous edition is not usable Prescribed by GSA – FAR (48 CFR) 53.228(a)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety shall have the completed form notarized.

2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.

3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations – any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.

4. All signatures on the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

BILLING CODE 6820-JC-C

STANDARD FORM 28 REV. , BACK

117. Section 53.301–34 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–34 Standard Form 34, Annual Bid Bond.

BILLING CODE 6820-JC-M

ANNUAL BID BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name, business address, and State of incorporation)	
AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING September 30, 19____

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE:

The above obligation is void and of no effect if the Principal – (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable — EXPIRATION DATE — 54-106 — STANDARD FORM 34 (REV. Prescribed By GSA - FAR (48 CFR) 53.228(a))

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

BILLING CODE 6820-JC-C

STANDARD FORM 34 (REV. BACK

118. Section 53.301–35 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301–35 Standard Form 35, Annual Performance Bond.

BILLING CODE 6820-JC-M

ANNUAL PERFORMANCE BOND
(See instructions on reverse)

DATE BOND EXECUTED

FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)
T
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION
STATE OF INCORPORATION

SURETY(IES) (Name, business address, and State of incorporation)

PENAL SUM OF BOND

MILLIONS	THOUSANDS	HUNDREDS	CENTS

F
FISCAL YEAR ENDING
September 30, 19____

AGENCY REPRESENTING THE GOVERNMENT

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

A
CONDITIONS:

The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Government department or agency shown above, for furnishing supplies or services to the government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.

THEREFORE:

The above obligation is void if the Principal – (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made. Notice of those modifications to the surety(ies) is waived.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

R

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

D

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

EXPIRATION DATE

STANDARD FORM 35 (REV.)
Prescribed by GSA – FAR (48 CFR) 53.228(g)

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

BILLING CODE 6820-JC-C

STANDARD FORM 35 (REV.) BACK

119. Section 53.301-1416 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.301-1416 Standard Form 1416, Payment Bond for Other than Construction Contracts.

BILLING CODE 6820-JC-M

PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address) (Include ZIP Code)	TYPE OF ORGANIZATION (Check one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es)) (Include ZIP Code)	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the Principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action –

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration of one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District Court for the district in which the coniract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)		Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.		
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) & TITLE(S) (Typed)	1.	2.		
CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY B — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SURETY B — SIGNATURE(S)	1.	2.		
SURETY B — NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

DUE TO PATTERNS COVERING PRINT, MANY PAGES DID NOT REPRODUCE WELL. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.

BEST COPY AVAILABLE

120. Section 53.302-90 is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.302-90 Optional Form 90, Release of Lien on Real Property.

BILLING CODE 6820-JC-M

RELEASE OF LIEN ON REAL PROPERTY

Whereas _____ (Name), of _____ (Place of Residence), by a bond for the performance of U.S. Government Contract Number _____, became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on _____ (Name of Land Records) in the _____ (Locality) of _____ (State), and

Whereas, I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom, and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Data]

[Signature]

Seal

OPTIONAL FORM 90 (REV.
Prescribed by GSA
FAR (48 CFR) 53.228(d)

AUTHORIZED FOR LOCAL REPRODUCTION

BILLING CODE 6820-JC-C

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121. Section 53.302–91, is illustrated for information as follows and will not appear in the Code of Federal Regulations.

53.302–91 Optional Form 91, Release of Personal Property from Escrow.

BILLING CODE 6820–JC–M

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas _____ (Name), of _____ (Place of Residence), by a bond for the performance of U.S. Government Contract Number _____, became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

in Account Number _____ on deposit

at _____ (Name of Financial Institution)

located at _____ (Address of Financial Institution), and

Whereas I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to _____ (Name of Financial Institution).

[Date]

[Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 91
Prescribed by GSA
FAR (48 CFR) 53.228(a)

[FR Doc. 89–27616 Filed 11–27–89; 8:45 am]
BILLING CODE 6820–JC–C

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federal register

Tuesday
November 28, 1989

Part III

Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Fair Housing Initiatives Program; Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-2063; FR-2709-N-1]

Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability.

SUMMARY: This notice solicits applications, from eligible State and local fair housing agencies and from public or private organizations formulating or carrying out programs to prevent or eliminate discriminatory housing practices, for funding under the Education and Outreach Initiative of the Fair Housing Initiatives Program (FHIP). Applicants must meet specific eligibility criteria set forth in this notice and in 24 CFR part 125 to qualify for consideration under this program. This notice pertains to competitive funding applications under the Education and Outreach Initiative which are national, State, local or regional in scope.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone: (202) 755-0455. (V and TDD) (This is not a toll-free number.) Application kits are available upon written or telephone request from the above. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATES: An application for funding under this notice must be submitted between November 28, 1989 and December 28, 1989 unless it qualifies for a late application exception as specified in the application kit and is received before funds are awarded.

SUPPLEMENTARY INFORMATION: The legislation creating the Fair Housing Initiatives Program (FHIP), approved by the President on February 5, 1988, authorizes the Secretary to provide funding to State and local governments or their agencies, public or private non-profit organizations, or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. These funds will enable the recipients to carry out activities designed to obtain enforcement of the rights granted by the Fair Housing Act or by substantially equivalent State or local fair housing laws, and education and outreach activities designed to inform the public concerning rights and obligations under such Federal, State or local laws prohibiting discrimination.

The FHIP has three funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the private Enforcement Initiative. This notice announces the availability of funding under the Education and Outreach Initiative for applications which are national, state, local or regional in scope.

Funds under the Education and Outreach Initiative which are national, state, local or regional in scope are available to State and local fair housing agencies, Community Housing Resource Boards, traditional civil rights organizations and other governmental, public and private agencies and organizations. Funding will be based upon the submission of applications for projects designed to inform and educate the general public and housing groups about fair housing rights and responsibilities under Federal, State and local fair housing laws.

Organizations funded by the FHAP or the CHRB Program to carry out education and outreach activities in Fiscal Year 1989 will not be funded under this NOFA. In addition, all future education and outreach activities to further Fair Housing, funded by HUD, will be coordinated between the FHAP and FHIP programs.

Background

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and to render technical assistance to public or private entities carrying out programs to prevent or eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) established the Fair Housing Initiatives Program to strengthen the Department's effort to enforce the Fair Housing Act and to further fair housing. This program is intended to assist projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws.

On April 25, 1989, HUD published a Notice of Funding Availability (NOFA) for $300,000, inviting applications for ten awards of approximately $30,000 per award. The response to that Notice was the receipt of over 180 applications. Therefore, HUD decided to issue this NOFA for an additional $1.7 million.

The basic activities to be assisted by approximately $1 million of such funding are the same as those announced in the April 25, 1989 notice. Individual awards for State, local or regional campaigns may be up to $75,000. HUD invites those applicants who previously applied to resubmit their applications if they so desire.

This NOFA also provides for awards totaling up to $700,000 for national education and outreach campaigns for applications which were not requested in the previous NOFA. HUD expects to fund the most effective product(s) or source material for use by States, local governments and private entities. The replicability of the potential source material solicited in this NOFA is therefore important. Applications for national education and outreach campaigns will be scored and ranked separately from State, local or regional applications.

Other Matters

The program components of the Fair Housing Initiatives Program are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; and 14.410, Private Enforcement Initiative.

Application requirements associated with this program have been approved by OMB and assigned approval number 2529-0033.

I. General Provisions Governing Applications for Assistance

Each application for funding under the Fair Housing Initiatives Program must contain the information set forth below. Each application will be assessed against the general selection criteria set forth in this Notice of Funding Availability. Recipients will be expected to comply with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in Federally assisted programs.

A. A description of the practice or practices at the community, regional or national level which have adversely affected the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of such practices on persons seeking dwellings or services related to the sale, rental and financing of dwellings, in the general location where the applicant proposes to undertake activities;

B. A description of the specific activities to be conducted with FHIP funds, including the final products and any reports to be produced, the cost of each activity proposed and a schedule for completion of the funded activities;

C. A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

D. A statement indicating the need for Federal funding in support of the proposed project; and an estimate of such other public or private resources as may be available to assist the proposed activities;

E. A description of the procedures to be used by the applicant for monitoring the conduct and for assessing the results of the proposed activities;

F. A description of the benefits which successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured; and

G. A description of the expected long term viability of project results.

II. General Selection Criteria for Ranking Applications for Assistance

All projects proposed in applications will be ranked on the basis of the following criteria for selection:

A. The anticipated impact of the project proposed on the concerns identified in the application (25 points);

B. The extent to which the applicant's professional and organizational experience will further the achievement of project goals (25 points);

C. The extent to which the project will provide benefits in support of fair housing after funded activities have been completed (20 points);

D. The extent to which the project utilizes other public or private resources that may be available (20 points); and

E. The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner (10 points).

F. Further Clarification of Factors for Award

1. In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues. Clarity and thoroughness of project description will be considered in this determination.

2. In determining the extent to which the applicant's professional and organizational experience will further the achievement of project goals, HUD will consider the experience and qualifications of existing personnel identified for key project positions, or a description of the process and qualifications to be used for selection of key personnel, including subcontractors/consultants, as well as the organization's past and current experience. Such experience should include both fair housing experience and experience in implementing education, outreach, or public information programs.

3. In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner, HUD will consider reasonableness of the proposed timetable for implementation and completion of the project, as well as the adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring timely completion. HUD will also consider information provided regarding how the project is cost effective.

4. In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project is of continuing value in dealing with housing discrimination.

G. Cost Factors—Cost will be the deciding factor when complete and eligible applications are evaluated against the factors for award and considered to be technically equivalent. Furthermore, an application may not be funded when costs are determined to be unrealistically low or unreasonably high.

H. Program Policy Factor—After eligible applications are evaluated against the factors for award, the Assistant Secretary will review the geographical distribution of potential recipients. In making awards, the Assistant Secretary may exercise discretion to make awards out of rank order for the purpose of ensuring equitable geographic distribution.

III. The Education and Outreach Initiative

A. Eligibility

The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

1. State or local governments;

2. Public or private non-profit organizations or institutions and other public or private entities (including Community Housing Resource Boards) that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

B. Scope

Applications are solicited for specialized project proposals as described in 24 CFR 125.303 and in this Section III.B.

This notice announces funding under the Education and Outreach Initiative for the development of a national, state, regional or local education or outreach campaigns or other special efforts, including education of the general public and housing industry groups about fair housing rights and obligations and media campaigns concerning availability of housing opportunities.

All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

Educational projects that may be funded under the Education and Outreach Initiative may include (but are not limited to) the following:

1. Developing informative material on fair housing rights and responsibilities;

2. Developing fair housing and affirmative marketing instructional material for education programs for National, State, regional and local housing industry groups;

3. Providing educational seminars and working sessions for civic associations, community-based organizations and other groups; and

4. Developing educational material targeted at persons in need of specific or additional information on their fair housing rights.

Outreach projects that may be funded under the Education and Outreach Initiative may include (but are not limited to) the following:

1. Developing national, State, regional or local media campaigns regarding fair housing;

2. Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

3. Designing specialized outreach projects to inform persons of the availability of housing opportunities;

4. Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices; and

5. Developing mechanisms for the identification of and quick response to housing discrimination cases involving the threat of physical harm.

C. Applications for Funding

In addition to meeting the application requirements contained in Section I. above, all applications for Education and Outreach Initiative funding must describe how the activities or the final products of the project can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

D. Coordination of Activities

Each non-governmental applicant for funding which is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law which has been recognized by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, evidence that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of the other.

E. Program Totals and Funding Estimates

Approximately $1.7 million is available in total under this Notice for Education and Outreach funding. HUD estimates that it could fund up to $700,000 for national education and outreach campaigns. HUD will use the remaining funds for State, local or regional campaigns. No single award for a State, local or regional campaign will be greater than $75,000.

F. Applications

An applicant may submit only one application, but may propose more than one type of activity under this Initiative. Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the criteria set forth at sections I., II and III.C, above.

Applicants must provide information to establish that they meet the eligibility criteria in III.A. above. Projects should be no longer than 12 months in duration.

Projects shall not be proposed that are planned for implementation with applicant funds and would simply substitute FHIP funds for applicant funds. Data gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

G. Award Procedures

Applications for funding under this Initiative will be evaluated competitively and awarded points based on the Factors for Award identified in section II, above. Applications will be reviewed by a HUD Technical Evaluation Panel. The final decision on awarding of funds rests with the Assistant Secretary or the Assistant Secretary's designee.

IV. Applicant Notification and Award Procedures

The following procedures are applicable to all funding under this NOFA:

A. Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible. Awards are expected to be announced by HUD within three months of the closing date for applications.

B. Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are above the funding threshold (but before the actual award), HUD may require that applicants in this group participate in negotiations and submit application revisions resulting from those negotiations. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. Successful negotiations include resolution of all administrative matters such as the adequacy of the applicants accounting system for tracking costs under cost reimbursement awards. Negotiations will not be used to raise the rankings of applications that would otherwise fall below the funding threshold.

If an award is not made to an applicant whose application is above the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen below the initial threshold, HUD will establish a new funding threshold and proceed as described in the preceding paragraph.

C. Funding Instrument

HUD expects to award a cost reimbursement cooperative agreement or grant to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

Authority: Sec. 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601-19); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 6, 1989.

Leonora L. Guarraia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 89-27750 Filed 11-27-89; 8:45 am]

BILLING CODE 4210-28-M

federal register

Tuesday,
November 28, 1989

Part IV

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Research and Demonstration (R&D) Field-Initiated Proposal Competition for Program Year 1989 and Thereafter; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Research and Demonstration (R&D) Field-Initiated Proposal Competition for Program Year 1989 and Thereafter

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) announces the establishment of a competitive process for awarding field-initiated research and demonstration grants. Field-initiated projects are those that are generated by interested individuals and organizations in the public and private sectors, and are not in response to DOL generated Solicitations for Grant Applications (SGAs) or Requests for Proposals (RFPs). The process will begin with publication of this notice and continue in future Program Years (PY), which begin July 1, and end on June 30 of each calendar year.

This notice explains the process which will be followed and specifies the topic areas for PY 1989. The notice solicits grant applications, and announces ETA's intention to direct priority funding support toward field-initiated projects that are more in line with agency goals and objectives.

DATES: Proposals will be accepted from November 28, 1989 through the close of business on March 31, 1990.

ADDRESS: Proposals shall be submitted in writing (original plus three (3) copies) to: James C. DeLuca, Grant Officer, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4306, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) announces a process for reviewing and selecting field-initiated research and demonstration proposals. This notice officially begins the process for Program Year (PY) 1989 which began on July 1, and invites applications for topic areas outlined under part II. Applications for PY 1989 will be accepted through March 31, 1990.

Approved topic areas of interest to ETA for PY 1989 are summarized, and examples of proposals unlikely to be funded are included. Interested parties are advised that field-initiated research and demonstration proposals will be funded primarily through this competitive process. Any funding of proposals submitted outside of the process announced in this notice will be on a limited basis.

This solicitation for Grant Applications (SGA) is unrestricted. Proposals may be submitted by individuals and organizations from the public and private sectors. Grant awards resulting from this solicitation will not be fee-bearing.

Part I—Background

Section 452 of title IV, part D, of the Job Training Partnership Act (JTPA) provides for the establishment of research and demonstration (R&D) programs to overcome employment and training problems and improve employment opportunities of low-skilled and disadvantaged workers. Section 453 provides for financial assistance to pilot projects assisting persons who face particular disadvantages in gaining employment, and to such projects addressing skills shortages critical to national objectives. Other sections of Part D provide for multistate, evaluation and training and technical assistance programs which may not always be relevant to this solicitation.

Historically, ETA has managed its responsibilities for the provision of Research, Demonstration and Evaluation (RD&E) programs through three basic approaches: (1) Annual competitions for grants and contracts; (2) annual funding for grantees with established, long-term relationships with ETA; and (3) proposals submitted from interested individuals and organizations. In the past several years, ETA has increased the proportion of its RD&E competitive awards, resulting in a decrease in the number of field-initiated proposals funded. However, significant numbers of field-initiated proposals have continued to be submitted during the last two program years.

Part II—The New Competitive Process for Field-Initiated R&D Proposals

To improve the review and selection of field-initiated proposals, ETA is instituting a process of competing virtually all proposals throughout the course of the PY. This procedure will not only increase the competitive base of the R,D&E program, but will also add to the consistency, and therefore fairness, of the review process itself. Notification of the competition will be made each PY in the Federal Register.

ETA will describe its major topics of interest and will clearly indicate what will not be acceptable. Other submissions will be accepted and reviewed but will be awarded on a limited basis. All offerors may enter this competition at any time during the PY. Panels will be established quarterly, to the extent possible, to review all proposals received during that three-month period. All offerors will be notified of the disposition of their proposals, and winners will be announced in the Federal Register.

This procedure is designed to supplement not supplant the competitive process for individual grants and contracts announced in the Federal Register and the *Commerce Business Daily*. Proposals will be accepted in the areas noted below unless they appear to be circumventing an announced SGA or Request for Proposals (RFP) competition. The areas of interest are sufficiently broad to permit consideration of unique, innovative aspects of research and demonstration beyond the scope of announced competitions.

A. Program Year 1989 Agenda

On September 6, 1989, ETA announced in the Federal Register (54 FR 37033) the PY 1989 Research, Evaluation, Pilot and Demonstration (R,E,P&D) agenda describing the topic areas of major interest to the Administration which included the following:

—Workplace 2000
—Youth Opportunities
—Workplace Literacy
—Workplace Adjustment Assistance and Adult Programs.

Applications submitted through this SGA should address these priority topics. Focused projects within some of these areas are also planned to be awarded through major procurement competitions.

1. Workplace 2000

The U.S. economy is expected to continue to grow at least at its current rate through the year 2000. Nonetheless, the efficiency of our labor markets will be severely tested. More sophisticated jobs will demand greater skills. Fewer young people will be entering the labor market, and a growing fraction will be minorities, who as a group, are educationally disadvantaged. Greater flexibility will be demanded of all workers, but particularly the middle-aged worker. In the anticipated tight labor market of the year 2000, employers will be forced to either seek out and invest in workers heretofore underutilized, or to bid up wages or export jobs overseas.

Employer-based training is one such method of investing in workers. Recent study findings indicate that it is a primary source of productivity improvement. However, there are gaps in the research needed to fully understand learning in the workplace. More information is needed on how to make learning on the job more effective and efficient for both workers and employers.

Workplace 2000 proposals should focus on the preparation of workers and changes and trends in employment as we approach the turn of the century. Recent studies have predicted the need to increase the following: workers' skill levels for the jobs of the near future, worker flexibility to new working conditions, the involvement of population groups not now fully utilized, employer involvement in worker training, and options for fringe benefits. Briefly, more time, attention and funds must be directed to improving human capital if we are to be a productive and competitive force in world economies.

2. Youth Opportunities

Improving the educational preparedness of workers is a challenge we must meet to be competitive into the 21st century. This is most important for our young people. Today's youth at risk of dropping out of school are our entry level workers of the next two decades. They face jobs demanding higher skills in math, reading and communications. Yet recent studies have shown that many of these youth are reading, writing, and computing at levels below present day expectations. Further, many of these youth are disillusioned with schools, and fail to see education's connection with good paying jobs. In some inner cities, as many as 50 percent of youth drop out of school. Further efforts must also be focused on young people who complete high school but do not go to college. Businesses report that their levels of job preparedness are frequently inadequate.

Proposals are invited that offer new concepts to motivate and train youth for tomorrow's workforce, to increase the basic skills and employability of at-risk youth, including innovative and replicable programs/options for returning dropouts to school, and unique, workable concepts for remedial and job training programs. Innovative research studies on selected youth employability issues are also invited.

3. Workplace Literacy

As the remainder of this century unfolds, it is expected that jobs requiring higher levels of literacy and analytic skills will increase, and those requiring only strength and manual ability will shrink. Further, the population groups presently in jobs with lesser skill requirements can expect a more difficult time in the job markets ahead unless their literacy skills are increased. In addition to increased skills, increased flexibility will be required to enable workers to adapt to new working conditions, new technology and new environments. In the rapidly growing service sector, the demand for workers will shift frequently in response to customer demand. Worker mobility will be necessary to fill these jobs. Effective mobility will require a universal method of certifying skill levels in order to facilitate the movement of workers from one employer to another.

In the past several years, ETA has undertaken a wide variety of programs to explore, test and demonstrate new learning techniques and programs for groups in particular need of enhancing their workplace literacy skills, and efforts to assess literacy skill levels.

Improving the workplace literacy levels of Americans of all ages continues to be a major priority. As technology changes, workers are required to keep up with it to retain or grow in their jobs. Workplace literacy includes math and analytical thinking skills along with the ability to read, comprehend and communicate. Studies have shown that learning these skills "in context,"—i.e., relating them to the workplace—is an effective approach for many learners.

Applications are invited for research or demonstrations in the broad arena of increasing the workplace literacy of youth and adults. Offerors should direct their efforts to unique methods, tools or technologies for training more efficiently and effectively, and should focus their studies or demonstration on learning on the job or in a workplace context.

4. Work Adjustment Assistance and Adult Programs

Workers needing adjustment assistance are many and varied. Changes in the economy and technologies have displaced many workers. Many of these workers, displaced from manufacturing sectors, are ill prepared for evolving jobs, primarily in the service sectors. Trade Adjustment Assistance (TAA) (Chapter 2 of Title II of the Trade Act of 1974) and Economic Dislocation and Worker Adjustment Assistance (EDWAA) (Title III of JTPA) programs are available to assist dislocated workers to train for and find new employment. Major new legislation was enacted last year substantially revising and expanding these important programs.

Other workers face conflicts between their jobs and family responsibilities, including the care of children and elders. Women, work and family issues are also included under this topic. Since the mid-1940's the labor force participation rate for women has grown dramatically from about 33 percent to more than 70 percent. In 1987, 66.7 percent of women with children participated in the labor force. The rate for mothers with young toddlers was 55.2 percent, more than double the rate of only 20 years ago. Contrary to popular belief, most working women (78 percent) work full time, and only 17 percent work part time voluntarily. Estimates for the remainder of the century indicate that women will increase their labor force participation, but at a slower rate. By the year 2000, the labor force participation rate for women is expected to reach 81 percent, while that of men will be nearly 93 percent.

Applications are invited that seek to improve the employability of these workers and potential workers. Proposals might include concepts and projects to assist dislocated workers and disadvantaged men and women (including single mothers on welfare) to receive job training and employment, or new ways to provide training or job adjustments that also allow for appropriate care for children and/or elderly family members. Additional innovative projects are invited which assist JPA-eligible disadvantaged, handicapped, limited English speaking, and other targeted groups in need of special assistance to prepare for and gain employment at a living wage, and projects geared to improving the delivery of JTPA programs at all levels.

B. Application Procedures

Proposals are expected to be complete and readily understandable. No contracts will be made to elicit further information from the offeror or to clarify meaning. At a minimum, proposals should include the following:

Technical Proposal—Part A

1. Statement of the problem and brief summary of the proposed solution/project.

2. As appropriate, a brief history of research or projects leading to the proposed project.

3. An outline of the proposed research methodology or operational design envisioned, including a summary of personnel and/or equipment required.

4. As applicable, information on the number and location of sites to be involved, the target group(s) to be

served, the projected number of people to be served, the contemplated duration of the project (and its phases, if appropriate) and the expected measures of success, and goals to be reached. (Typically funding is for 12 months, and seldom exceeds 18 months.)

5. A description of program linkages or shared/leveraged research efforts, as appropriate. (Indicate dollars leveraged or matched in Part B only.)

6. A description of key staff and the name and telephone number of the person to be contacted for further information.

Cost Proposal—Part B

1. A budget which includes a breakdown of personnel costs, fringe benefits, other direct costs, overhead requirements and equipment.

2. A description and the amount of matching or leveraging resources.

All information needed for submittal of proposals is included in this notice. An original and three (3) copies of the proposal shall be submitted. The proposal package shall consist of two separate and distinct parts. Part A shall contain a detailed technical proposal and Part B shall contain a detailed budget. Part A shall not include or make reference to costs. Proposals shall be submitted to: James C. DeLuca, Grant Officer, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4305, Washington, DC 20210.

C. Criteria for Evaluation

The proposals will be reviewed and paneled quarterly. To the extend possible, proposals will be reviewed in the quarter they are received. The panel's evaluation is advisory to the ETA Grant Officer. The final decision to award a grant will be made by the Grant Officer, after considering the panel's review. The Grant Officer's decision will be based on what he determines is most advantageous to the Government in terms of technical quality and other factors. The evaluation criteria are as follows:

- The *quality and soundness* of the project design, methodology and approach. (35 points)
- *Qualifications* and capability of *personnel and the organization.* (20 points)
- The *innovativeness or uniqueness* of the concept, methodology or approach. (20 points)
- The *relevance* to government training and employment policy and the potential for *broad application* of project results. (15 points)
- *Matching or contributed resources* in support of the project and, for demonstrations, the *ability to continue* the project without these R, D&E funds beyond the grant period. (10 points)

Cost will be reviewed in terms of its reasonableness and what is most advantageous to the government. (Projects in excess of $300,000 are seldom funded due to budget constraints and the desire to fund a variety of research and demonstrations.)

D. Proposals Outside Agency Priorities

The JTPA program is not authorized to fund certain projects, and due to the need to conserve limited resources, will restrict its funding to projects that are in line with agency goals and objectives. The following list is not all-inclusive, but does indicate proposals that are frequently submitted but not funded; such proposals will not be considered for funding:

—Proposals that include costs associated with purchasing buildings, capital equipment, or extensive computer equipment. This does not preclude submissions that include reasonable computer costs associated with word or data processing to manage the research, pilot or demonstration effort.

—Proposals for the establishment of small businesses, even if the direct outcome of that business is the employment and training of disadvantaged individuals.

—Proposals for loans or grants for personal financial assistance.

—Proposals for projects/operations providing on-going training and employment assistance using established service delivery methods. Such successful program operators should contact the State or local JTPA Administrator if they seek to become service providers.

—Proposals for local one-time labor market studies.

—Proposals for projects or functions that are, have been, or are planned to be publicly completed.

—Proposals that fail to provide sufficient information for an adequate assessment of their merits.

The Proposal Review Process

All proposals will be acknowledged when they are received; offerors will be notified of the approximate time of the next panel. Two to three times a year, all proposals received will be reviewed by a panel composed of representatives from the major offices within ETA and others as appropriate.

Each proposal will be reviewed by all panel members who will rate them on their individual merits using the criteria established in this SGA. The panel will make recommendations for funding to the ETA Grant Officer.

All offerors will be informed of the disposition of their proposals.

Signed at Washington, DC, this 16th Day of November, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 89–27704 Filed 11–27–89; 8:45 am]

BILLING CODE 4510-30-M

federal register

Tuesday
November 28, 1989

Part V

Oversight Board Resolution Trust Corporation

12 CFR Parts 1506 and 1606

Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors; Joint Notice of Proposed Rulemaking

OVERSIGHT BOARD

12 CFR Part 1506

RESOLUTION TRUST CORPORATION

12 CFR Part 1606

RIN 3205-AA01

Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors

AGENCY: Oversight Board and Resolution Trust Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: This proposed rule establishes the minimum qualifications, ethical standards of conduct, and the restrictions on the use of confidential information relating to independent contractors who seek or contract to provide services to the Resolution Trust Corporation ("RTC") in connection with its management and resolution of failing and failed thrift institutions. The Oversight Board and the RTC are required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") to promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code within 180 days from enactment of the Act. FIRREA further requires the Oversight Board to prescribe by regulations, procedures for ensuring that any individual who performs any function or service on behalf of the RTC meets minimum standards of competence, experience, integrity, and fitness, and to review all rules, regulations, principles, procedures, and guidelines that may be adopted or announced by the RTC.

Consistent with these requirements, the rule proposed jointly by the Oversight Board and the RTC is intended to assure fair competition in the award of contracts by precluding improper use of personal relationships or influence, and to prevent personal gain from the improper use of confidential information obtained through performance of a contract. The proposed rule, in a separate section, also contains the proposed procedures prescribed by the Oversight Board to ensure that those who perform services for or on behalf of the RTC meet minimum standards of competence, fitness, integrity, and experience and adhere to the highest standards of ethical conduct in performing services for the RTC. The proposed rule is also consistent with the relevant goals and objectives contained in the strategic plan published in the **Federal Register** on November 3, 1989, 54 FR 46574.

As noted in the proposed strategic plan, FIRREA requires the RTC to utilize the private sector in carrying out its duties, including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services, to the extent that such services are available and their utilization by the RTC is practicable and efficient. The Board and the RTC are determined to utilize the private sector's extensive experience and expertise in the program. Such services will, however, have to be rendered to the RTC consistent with the high ethical standards mandated by the FIRREA. To assure that both Congressional objectives are fully met, the Board and the RTC are determined that the rule as finally promulgated preserves the integrity of the system, while, at the same time, assures the private sector's participation in the program to the maximum extent feasible. The Oversight Board and the RTC are seeking comment on whether the proposed rule would accomplish these objectives. The private sector is urged to participate in the rulemaking process. In the formulation of the final rule, the Oversight Board and the RTC will give due consideration to all comments and recommendations received.

DATES: Comments must be submitted on or before January 12, 1990.

ADDRESSES: Comments may be mailed to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room 6097 on business days between 8:30 a.m. and 5:00 p.m. All comments will be considered by both the Oversight Board and the RTC.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, (202) 898-7272, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429 or Kevin Morse, Executive Secretary, (202) 387-7667, Oversight Board, 1825 Connecticut Avenue NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and to the Assistant Executive Secretary (Administration), Room 6090, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

The collections of information proposed by these regulations are contained in §§ 1506.4, 1606.6, 1606.7, and 1606.10. As a group, the collections are entitled "Fitness and Integrity Certifications for Independent Contractors with RTC." This information will be used by the RTC to (1) determine if a competing contractor is barred by statute from doing business with the RTC and (2) evaluate competing contractors' fitness and integrity.

The estimated annual burden for the collections of information imposed by these regulations is summarized as follows: number of respondents 12,000; total annual responses 12,000; hours per response 6; and total annual burden hours 72,000.

It has been determined that these proposed regulations do not constitute a major rule for purposes of E.O. 12291.

Background: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, enacted on August 9, 1989, amended the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, by adding section 21A, which establishes the Oversight Board and the Resolution Trust Corporation ("RTC"). Section 21A(b) provides that, in carrying out the duties of the RTC, the services of private persons (including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services) shall be utilized if deemed practicable and efficient by the RTC.

In authorizing the RTC to perform its functions through the use of independent contractors, Congress made it clear that regulations implementing section 21A(p) must ensure that the independent contractors act for the public good. To this end, Congress required the Oversight Board to prescribe regulations to ensure that the independent contractors the RTC employs meet minimum standards of competence, integrity, fitness, and experience. Congress barred certain classes of persons from contracting with the RTC. Persons who are subject to those statutory bars are those who have:

(i) Been convicted of a felony;

(ii) Been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant

to any final enforcement action by any federal banking agency;

(iii) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) Caused a substantial loss to the federal deposit insurance funds.

The Oversight Board and the RTC share Congress' concern that persons whose activities contributed to the decline of the thrift industry play no role in contracting with the RTC. Accordingly, the proposed rules interpret these statutory bars strictly, without unfairly penalizing persons who were unwittingly caught by changes in the economic climate of a region. Consequently, to have demonstrated a pattern or practice of defalcation within the meaning of these regulations, a person must be subject to continuing legal claims arising from two or more uncured defaults that are alleged to have resulted in losses aggregating in excess of $50,000 to one or more financial institutions. For a person to be subject to this restriction, both elements—uncured defaults and losses to one or more institutions—must have occurred. If defaults have been cured, for example, by a nonrecourse borrower tendering deeds in lieu of foreclosures, one of the necessary elements for defalcation is missing.

In considering the appropriate lines to draw with regard to causing a substantial loss to the federal deposit insurance funds, the Oversight Board and the RTC believes that the Congress, by using the word "substantial," clearly intended that not every action that resulted in a loss to the insurance funds should bar an individual from contracting with the RTC. Therefore, a "substantial loss" is deemed to be $50,000 or more that is caused in one of three ways. Such a loss to the funds can occur whenever (i) there is an outstanding final judgment obtained by the Federal Deposit Insurance Corporation ("FDIC"), the Federal Savings and Loan Insurance Corporation ("FSLIC") and its successors, or the RTC arising from a note or other obligation or from legal action on any theory including fraud, negligence, or breach of fiduciary duty; (ii) there is an outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC or its successor, or the RTC; or (iii) the insurer, having a continuing legal claim, suffers a substantial loss as a result of the disposition of an asset. Thus, for the purposes of FIRREA conflict provisions, not all losses sustained by the insurance funds are deemed to have been "caused" by a borrower. A nonrecourse borrower on a loan involving a loss to a federal deposit insurance fund, for example, would not *per se* be regarded as causing a substantial loss to such fund. On the other hand, a participant in an unsafe and unsound banking practice that resulted in such substantial loss would not meet minimum standards.

The Oversight Board and the RTC have also determined that, in addition to the classes of persons Congress deemed ineligible to contract with the RTC, persons who are currently in default on an obligation to the FDIC, the RTC, or an insured depository institution under the jurisdiction of the RTC, will also be ineligible to contract with the RTC.

Contractor Fitness and Integrity: The proposed regulations contain procedures for determining contractor fitness and integrity and avoiding conflicts of interest, as well as prohibitions designed to protect nonpublic information and the integrity of the contracting process. Because of the large numbers of contractors who wish to contract with the RTC, and the urgent need to resolve cases involving failing and failed thrifts, the regulations require contractors (including offerors) to provide certifications that will assist the RTC in evaluating contractor fitness and integrity. Each contractor will be required to retain for two years after the termination date of the contract information upon which the contractor based any certification. Moreover, contractor certifications will be subject to independent monitoring and review by the RTC. The rule further provides that knowingly or intentionally providing false information to the RTC can result in the rescission of a contract, a permanent bar against contracting with the RTC, and can subject a contractor to criminal penalties pursuant to 18 U.S.C. 1001.

Contractors will be required to demonstrate that they meet minimum standards of competence and experience by providing information about relevant business experience, financial stability, and licenses necessary to perform the contract work. To establish fitness and integrity, contractors will have to provide certifications concerning relationships with insured depository institutions, actions or investigations by governmental authorities, present or potential liabilities to federal banking authorities, and liabilities to clients for fraudulent activities and will have to disclose whether they are within one of the classes of persons ineligible to contract with the RTC.

The certifications required by these regulations will apply to practitioners in several professions and a number of industries, including, but not limited to, law firms, accounting firms, investment banking firms, real estate brokers, appraisers, property managers, and auction marketing experts. Thus, the certifications detailed in the regulations primarily reflect the core information which will be required of everyone. It is likely that these core certifications will be augmented by additional requirements depending upon the nature of the contract.

Since many contractors will be corporate entities, the integrity of the contractor cannot be ascertained unless information is supplied about the activities of persons or entities controlling the company and directing the contractor's performance on the contract. Therefore, contractors will be required to provide certifications not only regarding their own activities but also concerning those of their related entities. The term "related entities" has been defined as (i) the contractor's management officials who have decisionmaking or policymaking responsibilities with regard to the contract; (ii) persons or entities controlled by or which control the contractor; (iii) organizations related to the contractor that will perform contract work; and (iv) successors and assigns of the contractor. Contractors will also be required to certify that they will not employ (i) any person to participate personally and substantially in performing work on the contract whether through decision, approval, disapproval, recommendation, or the rendering of advice, or (ii) any subcontractor to perform contract work, who is a member of one of the classes deemed ineligible to perform contract work. The definitions of persons, management officials, and related entities, limit the scope of the application of the statute to those persons having significant decisionmaking or discretionary authority to perform work on the contract.

From the information provided, the RTC will determine whether each contractor meets minimum standards of fitness and integrity. In some situations, even though the contractor is not barred by the statutory provisions from performing contract work, the RTC may determine that the contractor does not meet minimum standards of fitness and integrity. In such case, the contractor will be notified within 30 days of such determination.

The Oversight Board and the RTC are aware that the process of determining contractor fitness and integrity and the

procedures for avoiding conflicts of interest are likely to require consideration of specific circumstances in individual cases. Therefore, the RTC is designating a Contractors' Conflicts Committee comprised of officials of the RTC and the FDIC to resolve questions which arise under these regulations and relate to independent contractors, other than law firms. Similar questions which relate to law firms will be resolved by the Outside Counsel Conflicts Committee of the FDIC.

The Contractors' Conflicts Committee will delegate certain responsibilities to regional and consolidated offices and may, at its discretion, refer particular matters to the Board of Directors of the RTC for consideration. The committee will be required to refer to the Board of Directors of the RTC for determination those matters in which it believes that a contractor has a significant conflict of interest but nevertheless should be hired because the contractor has a special expertise not otherwise available or because engagement of the contractor is otherwise in the best interest of the Government. Decisions issued by the Contractors' Conflicts Committee and the Board of Directors of the RTC shall be in writing and made available to the public upon request.

Conflicts of Interest: Contractors will be required to provide information and certifications with regard to two types of conflicts of interest: (i) Organizational conflicts arising from the structure and relationships of the contractor and its related entities, and (ii) personal conflicts of interest of those performing work on the contract. Organizational conflicts are present if (i) performance of the contract may provide a contractor with an unintended advantage that can be used for the benefit of the contractor or any related entity or affiliate, or (ii) a private interest or relationship exists within the contractor's organization that could impair the contractor's or a related entity's ability to objectively perform the contract work.

To determine whether organizational conflicts exist, each contractor will be required to provide information about its relationships as controlling shareholder, officer, or director of any insured depository institution, and descriptions of businesses organizationally related to the contractor. The contractor will also be required to obtain similar information from its related entities and to certify that its related entities have no organizational conflicts of interest.

In addition, each contractor will be responsible for ensuring that its management officials and other employees who participate personally and substantially on the contract work have no personal, business, or financial interests that conflict with the contractor's responsibilities to the RTC. Accordingly, contractors will be required to obtain certain information from these individuals prior to allowing them to perform contract work. That information will primarily concern the relationships of these officials and employees, and those of their spouses and minor children, with the depository institution whose assets are the subject of the contract and relationships with persons having an interest in the assets that are the subject of the particular contract. Contractors will also be required to establish procedures to ensure that they are advised of subsequent conflicts of interest that may arise.

Contractors and their related entities also will be required to adhere to certain general requirements during the term of a contract. Generally, the contractor and its related entities are prohibited from (i) continuing to perform work for the RTC if a conflict of interest is discovered that has not been previously disclosed, (ii) soliciting or accepting gifts from persons with interests in the contract or the contractor's performance, (iii) improperly using property controlled by reason of the contract for the personal benefit of the contractor or any other person or entity, and (iv) making unauthorized promises or commitments on behalf of the RTC.

Fairness and Integrity in the Contracting Process: The Oversight Board and the RTC intend the RTC's contracting process to be fair to all competing contractors. The proposed regulations describe three situations in which contractors may have an undue advantage over competitors because of previous or current work done for the RTC. In those circumstances, restrictions (subject to waiver by the Contractors' Conflicts Committee) are imposed on the contractors and their related entities to avoid their benefiting from such undue advantage.

Specifically, the regulations provide that a contractor who is engaged by the RTC to develop a plan of action for a specific insured institution cannot, without a waiver, enter into subsequent contracts with the RTC to implement its recommendations or assist others in a contract that would implement its recommendations. Similarly, when a contractor is engaged to manage, lease, value, or establish a sales price for an asset or group of assets, the contractor cannot enter into a subsequent contract with the RTC to purchase such asset or assets or assist someone else in purchasing such asset or assets from the RTC. Finally, a contractor is prohibited from acting for the RTC in the same particular matter in which is has a business or financial interest. The contractor is similarly prohibited if a related entity has a business or financial interest unless the entity is screened in a manner satisfactory to the RTC.

The integrity of the RTC's procurement activities is further protected by certain restrictions on communications by competing contractors with RTC employees. These provisions are modeled on the procurement integrity provisions in title 41, United States Code. They prohibit a contractor, during the course of any procurement, from offering any business opportunity or future employment to any RTC employee who has personal or direct responsibility for that procurement. Contractors are also prohibited from giving or offering anything of value to RTC employees, and from soliciting from RTC employees any proprietary or source selection information concerning the procurement. Prior to the award of a contract, each contractor will be required to provide a certification that its employees who prepared the bid, offer, or proposal were aware of the foregoing restrictions and the contractor knows of no violations or possible violations of the provisions.

Confidentiality of Information: The RTC shall identify for each contractor information it deems to be confidential with regard to a particular contract. The contractor and its related entities are prohibited from disclosing such information, except as necessary to perform contract work, and from using or allowing the use of such confidential information to further a private interest or other than as contemplated by the contract. The contractor is responsible for taking appropriate measures to ensure that the confidentiality of such information is maintained and that it is not inappropriately used. The regulations describe minimum measures that contractors must take to ensure the confidentiality of information.

Use of Consultants: The Oversight Board and the RTC intend to avoid improper influences on the contracting process. While contractors may wish to obtain the services of consultants or advisors to assist them in obtaining contracts, the Oversight Board and the RTC believe that reasonable limitations should apply to the use of consultants. Therefore, these regulations prohibit contractors from engaging consultants on a contingent fee basis. And, consistent with requirements recently enacted by Congress, contractors shall be required to include with any bid, offer, or proposal made to the RTC information concerning consulting contracts and payments made to consultants to obtain contracts with the RTC.

Rescission of Contracts: The proposed regulations provide that the RTC may rescind a contract if (i) the contractor fails to disclose a material fact to the RTC; (ii) there are any material changes in the representations or certifications made by the contractor; (iii) a personal or organizational conflict arises which is not waived; (iv) the contractor is subsequently determined to be ineligible to contract with the RTC; (v) the contractor has been subject to a final enforcement action by any bank regulatory agency; or (vi) the contractor violates any provisions of these regulations.

If the RTC deems it appropriate to rescind a contract, the contractor will be ineligible to enter into further contracts with the RTC. Disqualification under these circumstances shall also apply to related entities of the contractor, unless determined otherwise by the Contractors' Conflicts Committee. The RTC may seek damages from any contractor or subcontractor whose actions caused the rescission, as well as pursue any additional rights and remedies provided by law.

Regulatory Flexibility Analysis: The Oversight Board and the RTC hereby certify that the proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small business entities within the meaning of the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations establish rules to be used by the RTC to (1) determine if a competing contractor is barred by statute from doing business with the RTC and (2) evaluate competing contractor's fitness and integrity.

Regulations Promulgation: The Oversight Board and the RTC are proposing to promulgate identical regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code and are proposing to codify these regulations in their respective parts of title 12 of the Code of Federal Regulations. Since the regulations are identical, the text of the regulations is set out only once at the end of the common preamble. The part heading, table of contents, and authority citation for the regulations as they will appear in each CFR title follow the text of the proposed common rule.

Text of Proposed Rule

The text of the proposed common rule, as adopted by the agencies in this document, appears below:

PART ——— QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS OF THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

———.1 Authority, purpose, and scope.
———.2 Definitions.
———.3 Contractors' Conflicts Committee and Outside Counsel Conflicts Committee.
———.4 [Reserved]
———.5 Organizational conflicts of interest.
———.7 Personal conflicts of interest.
———.8 General standards for independent contractor activities.
———.9 Limitations on concurrent and subsequent activities.
———.10 Communications with RTC employees.
———.11 Confidentiality of information.
———.12 Source selection information.
———.13 Use of consultants.
———.14 Rescission of contracts.

§———.1 Authority, purpose, and scope.

(a) *Authority.* This part implements section 21A(p) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as amended by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Pursuant to that section, the Oversight Board and the Resolution Trust Corporation ("the RTC") are required to promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of title 18 and 41 or the United States Code.

(b) *Purpose.* These regulations seek to ensure that contractors meet minimum standards of competence, integrity, fitness, and experience and are held to the highest standards of ethical conduct in performing services for the RTC. They are intended to prevent:

(1) The direct or indirect use of information gained through performance of a contract with the RTC for personal gain not contemplated by the contract; and

(2) The use of personal relationships or improper influence to gain unfair competitive advantage in obtaining contracts with the RTC.

(c) *Scope.* These regulations apply to all contracts entered into after the effective date of these regulations with law firms, accounting firms, investment banking firms, real estate brokers, appraisers, property managers, and others performing similar services on behalf of the RTC.

§———.2 Definitions.

As used in this part:

(a) *Competing property* means real property which has the same general character as an asset which is the subject of a contract between the contractor and the RTC and concerning which the contractor has an ownership interest.

(b) *Contractor* means the person or entity submitting an offer to perform services for the RTC or having a contractual arrangement with the RTC to perform services.

(c) *Defalcation* means any transaction in which an insured depository institution failed to receive the principal and/or interest payments to which it is entitled, and there is a loss to the institution, and with respect to which the insured depository institution has a continuing legal claim.

(d) *FDIC* means the Federal Deposit Insurance Corporation, which serves as exclusive manager for the RTC.

(e) *FSLIC* means the former Federal Savings and Loan Insurance Corporation.

(f) *Organizational conflict of interest* means a situation in which:

(1) Performance of the contract may provide the contractor with an advantage unintended by the contract which can be used for the benefit of the contractor or any related entity or affiliate; or

(2) A private interest or relationship exists within the organization which could impair the contractor's or a related entity's ability to objectively perform the contract work.

(g) *Pattern or practice of defalcation* means there are two or more instances of uncured defaults as to which there are continuing legal claims, resulting in losses to one or more insured depository institutions, which, in the aggregate, exceed $50,000.

(h) *Person* means an individual who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the performance of the contract.

(i) "Related entity" means:

(1) The contractor's management officials and other individuals having decision-making or policy-making functions with respect to formulation or negotiation of, performance under, and/or monitoring for compliance with the contract;

(2) Any person or entity that directly or indirectly controls or is controlled by the contractor;[1]

(3) Any other organization related to the contractor that will perform work pursuant to the contract; and

(4) Any successor or assignee of the contractor.

(j) *RTC employee* means a director, officer, or employee of the RTC, including a special government employee, or an employee of any other government agency who is properly acting on behalf of the RTC.

(k) *Source selection information* means information related to a particular procurement, including any procurement using procedures other than competitive procedures, which, if not available from the government at that stage of the procurement, and, if obtained by a bidder, would give the bidder an advantage in the procurement process.

(l) *Special government employee* means any employee serving the RTC with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(m) *Subcontractor* means any individual or organization who is required by contract with a contractor (as defined) to perform services related to contracts with the RTC, excluding contracts necessary for the day-to-day operations of the RTC and contracts for routine maintenance and supplies necessary to maintain an asset.

(n) *Substantial loss to the federal deposit insurance funds* means a loss of more than $50,000 to the funds for the protection of depositors maintained and administered by the FDIC or the former FSLIC which was occasioned by or is represented by:

(1) A loss to the insurer as a result of the disposition of, or the failure to satisfy, an obligation at its full value;

(2) An outstanding final judgment obtained by the FDIC, the FSLIC, or the RTC against the maker, endorser, or guarantor of a note or other obligation or arising from a legal action on any theory including fraud, negligence, or breach of fiduciary duty; or

(3) An outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC, or the RTC as a successor.

[1] For purposes of this part, a person or entity shall be deemed to have control of a company or organization if the person or entity directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns or controls 25 percent or more of the equity, or otherwise controls the management or policies, of the contractor.

§ ———.3 Contractors' Conflicts Committee and Outside Counsel Conflicts Committee.

(a) *Designation.* The Board of Directors of the RTC will designate officials of the FDIC or RTC as members of a Contractors' Conflicts Committee, which will consider issues of conflicts of interest affecting independent contractors, other than law firms, which arise under these regulations. The Outside Counsel Conflicts Committee appointed by the General Counsel of the FDIC will consider conflict of interest issues relating to law firms.[2]

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsel Conflicts Committee shall resolve or, as appropriate, delegate responsibility to regional and consolidated offices to resolve conflict of interest issues which arise under these regulations.

(c) *Referrals to the Board of the RTC.* The Contractors' Conflicts Committee shall make referrals of and recommendations to the Board of Directors of the RTC with respect to situations in which the Committee determines that a significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee or the Board of Directors of the RTC shall be final. They shall be in writing and shall include statements of the bases for the decisions. Decisions shall be filed with the Executive Secretary of the RTC and shall be made available to the public upon request, with such redactions as may be required by law to protect the privacy interests of identifiable individuals or confidential business information.

§§ ———.4 and ———.5 [Reserved]

§ ———.6 Organizational conflicts of interest.

(a) *Information required about the contractor.* To permit the RTC to make a determination with regard to the existence of organizational conflicts of interest, any bid, proposal, or offer made to the RTC in regard to the rendering of services to the RTC shall include the following information about the business and financial interests of the contractor.

(1) Relationships as controlling shareholder of any federally insured depository institution;

(2) The names of related entities and a description of each related entity's business(es);

(3) The names of any management officials who have been or are directors or officers of an insured depository institution or depository institution holding company;

(4) A list of all competing property of the contractor, if the contract relates to the valuation, disposition, or management of real estate; and

(5) Any other business or financial interest of the contractor which may be requested by the RTC or information concerning any other business or financial interest of the contractor which, in the opinion of the contractor, might conflict with the contractor's obligations to the RTC in the performance of the contract.

(b) *Information to be obtained by the contractor.* Prior to submitting any bid, offer, or proposal to the RTC for a specific contract, the contractor shall obtain the information detailed in paragraph (a) of this section from each of its related entities.

(c) *Certification required.* At the time the contractor submits its bid, offer, or proposal and provides the information required by paragraph (a) of this section concerning its own interests, the contractor shall also provide a certification:

(1) Attesting to the fact that no related entity of the contractor has an interest which, to the best of its knowledge, presents an organizational conflict of interest or, if such interest exists:

(i) Detailing any interest which might conflict with obligations to the RTC;

(ii) Requesting a waiver from the Contractors' Conflicts Committee or its designee; and

(iii) Including with the request any information it deems appropriate to support the issuance of a waiver; and

(2) Agreeing that the contractor will not acquire any business or financial interest during the term of the contract which would result in an organizational conflict of interest without the prior approval of the Contractors' Conflicts Committee or its designee and that, if any of its related entities does so, the contractor will promptly notify the Contractors' Conflicts Committee or its designee.

(d) *Determination required.* Prior to entering into any contract, the RTC must conclude, in writing, that neither the contractor nor any of its related entities has an organizational conflict of interest with regard to that contract or that, if such conflict exists, engagement of the contractor is, nevertheless, acceptable under the circumstances. Accordingly, if either the contractor or a related entity has an organizational conflict of interest, the matter shall be decided by the Contractors' Conflicts Committee or its designee.

(e) *Retention of information.* Information obtained pursuant to paragraph (b) of this section shall be retained during the term of the contract and for a period of two years following termination or expiration of the contract and shall be made available for review by the RTC upon request.

[2] Whenever the Contractors' Conflicts Committee is referred to in these regulations, it should be understood that if the conflict question relates to outside legal counsel, it will be addressed by the Outside Counsel Conflicts Committee rather than the Contractors' Conflicts Committee.

§ ———.7 Personal conflicts of interest.

(a) *Contractor's responsibility.* A contractor shall ensure that management officials and other persons who exercise discretion with regard to work performed pursuant to the contract have no personal, business, or financial interest which conflicts with responsibilities to the RTC.

(b) *Information required.* At a minimum, a contractor shall obtain from its management officials and other persons the following information about the personal, business, and financial relationships of themselves, their spouses, and minor children:

(1) Loans from, employment by, or an ownership interest in the depository institution whose assets are the subject of the contract;

(2) Current or prior relationships with any other insured depository institution as officer, director, controlling shareholder, or employee;

(3) Financial, business, or personal relationships with any person or entity who has an interest in the assets which are the subject of the contract, including information about negotiations or arrangements for future employemnt with such person or entity;

(4) A list and description of any instance during the preceding five years in which there was a default on any material obligation to an insured depository institution which, in the aggregate, exceeded $50,000; and

(5) Any other information deemed necessary by the RTC because of the nature of the contract.

(c) *Certification.* Based on the information obtained pursuant to paragraph (b) of this section, the contractor shall determine whether any management official or other person has an interest which conflicts with responsibilities to the RTC. The contractor shall disqualify persons with personal conflicts of interest from performing work pursuant to the contract. If appropriate, the contractor may seek a waiver from the Contractor's Conflicts Committee or its designee to allow employment of an individual with a personal conflict of interest on the contract work. In addition, the contractor shall certify to the RTC that all management officials for whom no waiver is sought have no business, personal, or financial interest which conflicts with responsibilities to the RTC and, furthermore, shall establish a procedure to monitor for interests which conflict with the performance of contract responsibilities. At a minimum, the contractor shall require management officials and other persons to provide the required information prior to employment on the contract work and to update information within 10 days of any change.

(d) *Subsequent notification.* Within 10 days after learning of a management official's conflict of interest, the contractor shall notify the RTC of the conflict and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or its designee.

(e) *Retention of information.* Information obtained by a contractor from its management officials pursuant to paragraph (b) of this section shall be retained during the term of the contract and for a period of two years following termination or expiration of the contract and shall be made available for review by the RTC upon request.

§ ———.8 General standards for independent contractor activities.

(a) In connection with the performance of any contract and during the term of such contract, a contractor and its related entities shall adhere to the following standards:

(1) No contractor or related entity shall act for the RTC in any matter in which either the contractor or a related entity has a conflict of interest unless the Contractors' Conflicts Committee or its designee has determined that the participation of the contractor or related entity is appropriate;

(2) No contractor or related entity shall accept or solicit for itself or other favors, gifts, or other items of monetary value from any person or entity whom the contractor knows is seeking official action from the RTC in connection with the contract or has interests which may be substantially affected by the performance or nonperformance of the contractor's duties to the RTC;

(3) No contractor or related entity shall improperly use or allow the improper use of RTC property, or property over which the contractor or related entity has supervision or control by reason of the contract, for the personal benefit of the contractor, a related entity, or any other person or entity; and

(4) No contractor shall make any unauthorized promise or commitment on behalf of the RTC.

(b) Any individual who acts for or on behalf of the RTC pursuant to a contract or any other agreement shall be deemed a public official for purposes of 18 U.S.C. 201. That statute generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) In their dealings with the RTC, contractors are subject to 18 U.S.C. 1001.[3] Upon receipt of information indicating that any person or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, the RTC shall transmit such information to the Department of Justice.

§ ———.9 Limitations on concurrent and subsequent activities.

(a) *Avoiding undue advantage.* The RTC has determined that contractors performing services for the RTC may have an undue advantage over competitors if they seek additional contracts with the RTC or with third parties which relate to work being performed or already performed for the RTC. To prevent such advantage, restrictions, dependent on the scope of contractual responsibilities, must be imposed on the concurrent and subsequent activities of contractors. Accordingly, the following restrictions shall apply unless waived by the Contractors' Conflicts Committee or its designee: [4]

(1) A contractor engaged by the RTC to develop a plan of action concerning a specific insured institution cannot enter into any subsequent contract with the RTC to implement its recommendations or assist others in regard to such contract;

(2) A contractor engaged by the RTC to manage, lease, value, or establish a sales price for an asset or group of assets cannot enter into any subsequent contract with the RTC to purchase that asset or assets or assist someone other than the RTC seeking to purchase that asset or those assets from the RTC; and

[3] Section 1001 of title 18 generally prohibits the making of any false or fraudulent statement to a federal officer.

[4] An open and competitive bidding procedure or evidence that sufficient screening mechanisms are in place may be sufficient to permit the granting of a waiver of the restrictions on concurrent and subsequent activities of a contractor.

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(3) A contractor cannot act for the RTC in the same particular matter in which it or a related entity has a business or financial interest unless the entities are screened from one another in a manner satisfactory to the RTC.

(b) *Applicability to related entities.* The restrictions in paragraph (a) of this section shall apply to related entities of the contractor unless determined otherwise by the Contractors' Conflicts Committee or its designee.

§ ———.10 Communications with RTC employees.

(a) *Prohibitions.* During the course of any procurement by the RTC (including any procurement using procedures other than competitive procedures),[5] a competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the procurement in which the contractor will be or is competing; [6]

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the RTC; [7] or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such procurement.

(b) *Competing contractor.* For purposes of this section, "competing contractor" with respect to any procurement (including a procurement using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract for the procurement of services to any competing contractor or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee of the competing contractor responsible for the bid, offer, or proposal for any contract or modification of such contract any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

§ ———.11 Confidentiality of information.

(a) *Nonpublic information defined.* Any information identified by the RTC as confidential shall be deemed to be nonpublic until the RTC determines otherwise, in writing, or the information becomes part of the body of public information from a source other than the contractor.

(a) *Prohibitions.* The contractor and its related entities are prohibited from:

(1) Disclosing nonpublic information to anyone except as required to perform the contractor's obligations pursuant to the contract; and

(2) Using or allowing the use of any nonpublic information to further a private interest or in a manner other than as contemplated by the contract.

(c) *Contractor's responsibility.* The contractor is required to take appropriate measures to ensure the confidentiality or nonpublic information and to prevent its inappropriate use. At a minimum, such measure shall include:

(1) Notifying all employees, related entities, subcontractors, and other persons to whom the contractor may need to disclose nonpublic information to perform its responsibilities under the contract of the requirement of confidentiality and limitations as to the use of nonpublic information; and

(2) Requiring each person to whom nonpublic information is provided to execute a certification that such person understands the limitations on disclosure and use and will maintain the confidentiality of the information and not use it other than as contemplated by the contract.

§ ———.12 Source selection information.

(a) *Prohibition.* During the conduct of any procurement by the RTC, no person who is given authorized or obtains unauthorized access to source selection information regarding the procurement shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized to receive such information by the Executive Director of the RTC, his or her designee, or the RTC's contracting officer.

(b) *Permitted disclosures.* The Executive Director of the RTC, his or her designee, or the RTC's contracting officer, in accordance with internal procedures developed by the RTC, may authorize persons or classes of persons to obtain access to proprietary or source selection information when access is essential to the conduct of the procurement.

§ ———.13 Use of consultants.

(a) *Contingent fees.* Contractors are prohibited from obtaining the services of a consultant or advisor to assist in obtaining a contract with the RTC pursuant to an agreement in which payment of the consultant or advisor would be contingent on the contractor obtaining the contract.

(b) *Disclosure.* When submitting any bid, offer, or proposal to the RTC, a contractor shall include information about payments, agreements to pay or arrangements for obtaining the services (other than engineering, technical, legal, and accounting services) of consultants or advisors to assist in obtaining the contract that were made by the contractor or a related entity.

[5] The "course of a procurement" is defined as the period beginning with the development, preparation, and issuance of a procurement solicitation and concluding with the qualification, award, modification, or extension of a contract.

[6] Employees who have no personal or direct responsibility for the procurement may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. *See* 18 U.S.C. 208(a) and 12 CFR 336.15(b).

[7] Employees of the FDIC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. *See* 12 CFR 336.8. Regulations applicable to RTC employees shall be no less stringent. *See* section 21A(p)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as amended by section 501 of FIRREA.

§ ———.14 Rescission of contracts.

(1) *Circumstances permitting rescission.* The RTC may rescind any contract if:

(1) There is a failure to disclose a material fact to the RTC;

(2) The contractor would be prohibited from contracting with the RTC by § 1506.5(a);

(3) Any person or related entity has been subject to a final enforcement action by any federal banking agency;

(4) There is any material change in the representations or certifications provided to the RTC under § 1506.4;

(5) There arises a personal or organizational conflict of interest not waived by the Contractors' Conflicts Committees or its designee; or

(6) There is violation of any provision of these regulations.

(b) *Contractor liability.* In those situations in which the RTC determines that rescission of a contract pursuant to paragraph (a) of this section is appropriate, the RTC may seek damages from the contractor or subcontractor whose actions caused the rescission as well as pursue any additional rights and remedies provided by law.

(c) *Permanent bar.* Contractors whose contracts with the RTC have been rescinded pursuant to paragraph (a) of this section shall be deemed ineligible to enter into further contracts with the RTC. This ineligibility shall apply to related entities of the contractor, unless determined otherwise by the Contractors' Conflicts Committee.

Proposed Adoption of the Common Rule

The agency specific proposed adoption of the proposed common rule, which appears at the end of the common preamble, appears below:

OVERSIGHT BOARD

12 CFR Part 1506

List of Subjects in 12 CFR Part 1506

Conflict of interests, Government contracts.

Chapter XV of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

Daniel P. Kearney,

President and Chief Executive Officer, Oversight Board.

1. Subchapter A is added to chapter XV. The subchapter heading reads as follows:

SUBCHAPTER A—GENERAL PROVISIONS

2. Part 1506 is added to read as set forth at the end of the common preamble.

PART 1506—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

1506.1 Authority, purpose, and scope.
1506.2 Definitions.
1506.3 Contractors' Conflicts Committee and Outside Counsel Conflicts Committee.
1506.4–1506.5 [Reserved]
1506.6 Organizational conflicts of interest.
1506.7 Personal conflicts of interest.
1506.8 General standards for independent contractor activities.
1506.9 Limitations on concurrent and subsequent activities.
1506.10 Communications with RTC employees.
1506.11 Confidentiality of information.
1506.12 Source selection information.
1506.13 Use of consultants.
1506.14 Rescission of contracts.

Authority: 12 U.S.C. 1441a(a)(13) and (p)(1)(B), (3), (6), and (7).

3. Part 1506 is further amended by adding § 1506.4 and § 1506.5 to read as follows:

§ 1506.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence, on a form or forms to be furnished by the RTC for that purpose, of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default on any material obligation to an insured depository institution which, in the aggregate, exceeded $50,000, and shall be required to certify to the following items:

(1) That the contractor and each of its related entities has all necessary licenses, permits, and approvals to permit it to carry out its obligations under the contract;

(2) That neither the contractor nor any of its related entities has been convicted of a felony;

(3) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(4) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions;

(5) That neither the contractor nor any of its related entities has caused a substantial loss to the federal deposit insurance funds;

(6) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract, or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(7) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty where the damages awarded exceeded the lesser of 50 percent of the net worth of the contractor or its related entities or 10 percent of the annual gross revenues of the contractor or its related entities;

(8) That neither the contractor nor any of its related entities is currently excluded from federal procurement or nonprocurement programs;

(9) That neither the contractor nor any of its related entities is subject to an unsatisfied final judgment in favor of the FDIC, the FSLIC, an insured depository institution under RTC's jurisdiction, or the RTC;

(10) That neither the contractor nor any of its related entities is a party to a lawsuit in which the FDIC, the FSLIC, an insured depository institution under RTC's jurisdiction, or the RTC is seeking recovery of money or property from them in excess of $50,000; and

(11) That the contractor will not employ any person or subcontractor to perform work on the contract who:

(i) Has been convicted of any felony;

(ii) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(iii) Has demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions;

(iv) Has caused a substantial loss to the federal deposit insurance funds; or

(v) Is currently in default on an obligation to the FDIC, the FSLIC, an insured depository institution under the RTC's jurisdiction, or the RTC.

Depending upon the nature of the contract, a contractor may be required

to submit such additional certifications or information with respect to its activities and those of its related entities as the RTC deems appropriate.

(b) *Procedures.* (1) A contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section shall provide information on the form or forms submitted which fully explains the circumstances giving rise to its inability to furnish the certification(s). The Contractors' Conflicts Committee, or its designee, will determine whether a contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section is deemed to meet minimum standards of fitness and integrity.

(2) A contractor may consolidate the responses of its related entities in furnishing the certifications required by paragraphs (a)(1) through (a)(11) of this section or in providing the information required by paragraph (b)(1) of this section. If a consolidated response is submitted, the contractor shall retain the information obtained from its related entities upon which it relied in preparing the certifications during the term of the contract and for a period of two years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request.

(3) Before permitting any person or subcontractor to perform work pursuant to the contract, the contractor shall obtain such information from such person or subcontractor as will permit it to furnish the certification required by paragraph (a)(11) of this section. The contractor shall retain the information upon which it relied in preparing the certification during the term of the contract and for a period of two years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request. Whenever a contractor receives information indicating that the certification or any information upon which it relied in preparing the certification is incorrect in any material respect, the contractor shall promptly notify the RTC and shall not permit the person or subcontractor to whom the information relates to perform work pursuant to the contract.

§ 1606.5 Disqualification of contractors.

(a) *Mandatory ineligibility.* A contractor shall be deemed not to meet minimum standards of fitness and integrity, and therefore ineligible to contract with the RTC, if the contractor or a related entity has:

(1) Been convicted of a felony;

(2) Been removed from, or prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions;

(4) Caused a substantial loss to the federal deposit insurance funds; or

(5) Is currently in default on an obligation to the FDIC, the FSLIC, an insured depository institution under the RTC's jurisdiction, or the RCT.

(b) *Notification of mandatory ineligibility.* A contractor deemed ineligible to contract with the RTC pursuant to paragraph (a) of this section will be advised of its ineligibility and of the basis for such determination not later than 30 days after its ineligibility is determined.

(c) *Discretionary disqualification.* The RTC may determine that a contractor, not subject to mandatory ineligibility pursuant to paragraph (a) of this section, nevertheless does not meet minimum standards of fitness and integrity to perform work for the RTC because the past activities of the contractor or a related entity warrant such determination. A decision to disqualify a contractor shall be within the sole discretion of the RTC with no right of review.

(d) *Notification of discretionary disqualification.* After determining that a contractor should be disqualified pursuant to paragraph (c) of this section, the RTC shall notify the contractor in writing of its determination and of the reason for such determination not later than 30 days after the determination is made.

RESOLUTION TRUST CORPORATION

12 CFR Part 1606

List of Subjects in 12 CFR Part 1606

Conflict of interests, Government contracts.

Title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

1. Chapter XVI is established. The chapter heading reads as follows:

CHAPTER XVI—RESOLUTION TRUST CORPORATION

2. Part 1606 is added to read as set forth at the end of the common preamble.

PART 1606—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

1606.1 Authority, purpose, and scope.
1606.2 Definitions.
1606.3 Contractors' Conflicts Committee and Outside Counsel Conflicts Committee.
1606.4–1606.5 [Reserved]
1606.6 Organizational conflicts of interest.
1606.7 Personal conflicts of interest.
1606.8 General standards for independent contractor activities.
1606.9 Limitations on concurrent and subsequent activities.
1606.10 Communications with RTC employees.
1606.11 Confidentiality of information.
1606.12 Source selection information.
1606.13 Use of consultants.
1606.14 Rescission of contracts.

Authority: 12 U.S.C. 1441a(b)(12) and (p)(1)(B), (3), and (7).

[FR Doc. 89–27865 Filed 11–27–89; 8:45 am]

BILLING CODE 2222–01–M

federal register

Tuesday
November 28, 1989

Part VI

Department of Justice

Federal Prison Industries, Inc. and Bureau of Prisons

28 CFR Part 301

Inmate Accident Compensation; Proposed Rule

28 CFR Parts 540, 549, and 571

Control, Custody, Care, Treatment and Instruction of Inmates; and Proposed Rules and Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 301

Inmate Accident Compensation

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise its regulations on Inmate Accident Compensation. The regulations are rewritten and reorganized. Major changes include setting the standard rate of payment of lost-time wages at 75%; adding the ability to terminate lost-time wages if the recipient is placed into Disciplinary Segregation; modifying time parameters for filing a claim; adding review provisions similar to those found in other compensation programs; and providing for suspension of benefits upon subsequent incarceration. These changes are designed to improve the efficient operation of the Inmate Accident Compensation program.

DATES: Comments by January 12, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing amendments to its final rule on Inmate Accident Compensation. A final rule on this subject was published in the Federal Register June 12, 1981 (46 FR 31206 et seq.), and was amended October 22, 1982 (47 FR 47172 et seq.). The current proposed amendment restructures the part into three separate subparts to improve clarity and organization. In subpart A (General), a section on definitions is added. In subpart B (Lost-Time Wages), the standard rate of payment of lost-time wages is set at 75%. This eliminates the need for staff to make a determination of dependent support. The subpart also adds the ability to terminate lost-time wages if the recipient is placed into Disciplinary Segregation. Subpart C (Compensation for Work-Related Physical Impairment or Death) modifies the time parameters for filing a claim. A claim could be filed no more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to the release date. This modification provides a 15 day period prior to release in which the claimant may be examined by Bureau medical staff. A section on review of entitlement is added. This section provides that each monthly compensation recipient shall be required to submit to periodic medical examinations to determine the current status of their physical impairment. It also provides for a reduction in compensation benefits where excessive income is received by the claimant. The subpart also provides for suspension of benefits where a monthly compensation recipient is subsequently incarcerated. Finally, the subpart incorporates a title change from "Associate Commissioner" to "Chief Operating Officer."

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 301

Prisoners.

J. Michael Quinlan,

Director, Bureau of Prisons.

In consideration of the foregoing, it is proposed to amend 28 CFR chapter III by revising part 301 as follows:

PART 301—INMATE ACCIDENT COMPENSATION

Subpart A—General

Sec.

301.101 Purpose and scope.
301.102 Definitions.
301.103 Inmate work assignments.
301.104 Medical attention.
301.105 Investigation and report of injury.
301.106 Repetitious accidents.

Subpart B—Lost-Time Wages

301.201 Determination of work-relatedness.
301.202 Payment of lost-time wages.
301.203 Continuation of lost-time wages.
301.204 Appeal of determination.

Subpart C—Compensation for Work-Related Physical Impairment or Death

301.301 Compensable and noncompensable injuries.
301.302 Work-related death.
301.303 Time parameters for filing a claim.
301.304 Representation of claimant.
301.305 Initial determination.
301.306 Appeal of determination.
301.307 Notice, time and place of committee action.
301.308 Committee reconsideration.
301.309 In-person hearing before the committee.
301.310 Witnesses.
301.311 Expenses associated with appearance at committee hearing.
301.312 Notice of committee determination.
301.313 Chief Operating Officer review.
301.314 Establishing the amount of award.
301.315 Review of entitlement.
301.316 Subsequent incarceration of compensation recipient.
301.317 Medical treatment following release.
301.318 Civilian compensation laws distinguished.
301.319 Exclusiveness of remedy.

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

Subpart A—General

§ 301.101 Purpose and scope.

Pursuant to the authority granted at 18 U.S.C. 4126, the procedures set forth in this part govern the payment of accident compensation, necessitated as the result of work-related injuries, to federal prison inmates or their dependents. Compensation may be awarded via two separate and distinct programs:

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., or in institutional work assignments involving the operation or maintenance of a federal correctional facility; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., or to paid institutional work assignments involving the operation or maintenance of a federal correctional facility for work-related injuries resulting in time lost from the work assignment.

§ 301.102 Definitions.

(a) For purposes of this part, the term "work-related injury" shall be defined to include any injury, including occupational disease or illness, proximately caused by the actual performance of the inmate's work assignment.

(b) For purposes of this part, the term "release" is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(c) For purposes of this part, the term "dependent" is defined as the legally recognized spouse or child of an inmate for whose support the inmate is legally responsible in whole or part.

§ 301.103 Inmate work assignments.

The unit team of each inmate, which ordinarily designates work assignments, or whoever makes institutional work assignments, shall review appropriate medical records, presentence reports, admission summaries, and all other available information prior to the designation of an inmate to a work assignment in an effort to preclude the assignment of an inmate to a work assignment not compatible with the inmate's physical ability or condition.

§ 301.104 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff. Refusal by an inmate worker to accept such medical, surgical, hospital or first aid treatment recommended by medical staff may result in denial of any claim for compensation for any impairment resulting from the injury.

§ 301.105 Investigation and report of injury.

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP–140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all staff or inmate witnesses shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the institutional safety manager for review.

(b) The institution safety manager shall ensure that a medical description of the injury is included on the BP–140 whenever the injury is such as to require medical attention. The institution safety manager shall also ensure that the appropriate sections of BP–140, Page 2, Injury—Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

§ 301.106 Repetitious accidents.

If an inmate worker is involved in successive accidents on a particular work site in a comparatively short period of time, regardless of whether injury occurs, and the circumstances of the accidents indicate an awkwardness or ineptitude that, in the opinion of the inmate's work supervisor, implies a danger of further accidents in the task assigned, the inmate shall be assigned to another task more suitable to the inmate's ability.

Subpart B—Lost-Time Wages

§ 301.201 Determination of work-relatedness.

(a) When the institution safety manager receives notice, or has reason to believe, a work-related injury may result in time lost from the work assignment, he or she shall present BP–140, Pages 1 and 2 (with the appropriate sections completed) to the Institution Safety Committee at the Committee's next regularly scheduled meeting. The Safety Committee shall make a determination of the injury's work-relatedness based on the available evidence and testimony. The determination shall be recorded on BP–140, Page 2, a copy of which shall be provided to the inmate.

(b) A determination of work-relatedness for purposes of awarding lost-time wages is not confirmation on the validity of any subsequent claim to receive compensation for work-related physical impairment or death.

§ 301.202 Payment of lost-time wages.

(a) An inmate worker may receive lost-time wages for the number of regular work hours absent from work due to injury sustained in the performance of the assigned work.

(b) Lost-time wages are paid for time lost in excess of three consecutively scheduled workdays. The day of injury is considered to be the first workday regardless of the time of injury.

(c) An inmate may receive lost-time wages at the rate of 75% of the standard hourly rate of the inmate's regular work assignment at the time of the injury.

§ 301.203 Continuation of lost-time wages.

(a) Once approved, the inmate shall receive lost-time wages until the inmate:

(1) Is released;

(2) Is transferred to another institution for reasons unrelated to the work injury;

(3) Returns to the pre-injury work assignment;

(4) Is reassigned to another work area or program for reasons unrelated to the sustained work injury, or is placed into Disciplinary Segregation; or,

(5) Refuses to return to a regular work assignment or to a lighter duty work assignment after medical certification of fitness for such duty.

(b) An inmate medically certified as fit for return to work shall sustain no monetary loss due to a required change in work assignment. Where there is no light duty or regular work assignment available at the same rate of pay as the inmate's pre-injury work assignment, the difference shall be paid in lost-time wages. Lost-time wages are paid until a light duty or regular work assignment at the same pay rate as the inmate's pre-injury work assignment is available.

§ 301.204 Appeal of determination.

An inmate who disagrees with the decision regarding payment of lost-time wages may appeal that decision exclusively through the Administrative Remedy Procedure. (See 28 CFR part 542.)

Subpart C—Compensation for Work-Related Physical Impairment of Death

§ 301.301 Compensable and noncompensable injuries.

(a) No compensation for work-related injuries resulting in physical impairment shall be paid prior to an inmate's release.

(b) Compensation may only be paid for work-related injuries of claims alleging imporper medical treatment of a work-related injury. This ordinarily includes only those injuries suffered during the performance of an inmate's regular work assignment. However, injuries suffered during the performance of voluntary work in the operation or maintenance of the institution, when such work has been approved by staff, may also be compensable.

(c) Compensation is not paid for injuries sustained during participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Furthermore, compensation shall not be paid for injuries suffered away from the work

location (e.g., while the claimant is going to or leaving work, or going to or coming from lunch outside of the work station or area).

(d) Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not related to the actual performance of the work assignment are not compensable, and no claim for compensation for such injuries will be approved. Willful violation of rules and regulations may result in denial of compensation for any resulting injury.

§ 301.302 Work-related death.

A claim for compensation as the result of work-related death may be filed by a dependent of the deceased inmate up to one year after the inmate's work-related death. The claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

§ 301.303 Time parameters for filing a claim.

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial or institution work-related injury shall submit a FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. Assistance will be given the inmate to properly prepare the claim, if the inmate wishes to file. In each case a definite statement shall be made by the claimant as to the impairment caused by the alleged injury. The completed claim form shall be submitted to the Institution Safety Manager for processing.

(b) Each claimant shall submit to a medical examination to determine the degree of physical impairment. Refusal, or failure, to submit to such a medical examination shall result in the forfeiture of all rights to compensation. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI Form 43.

(c) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager for final processing. It shall then be forwarded promptly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(d) It is the responsibility of each claimant to advise the Claims Examiner of his or her current address, in writing, at all times during the pendency of a claim for Inmate Accident Compensation.

(e) When circumstances preclude submission in accordance with the provisions of paragraph (a) of this section, a claim may be accepted up to 60 days following release. Additionally, a claim for impairment may be accepted up to one year after release, for good cause shown. In such cases the claim shall be submitted directly to the Claims Examiner, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

§ 301.304 Representation of claimant.

(a) Any person may represent the claimant's interest in any proceeding for determination of a claim under this part, so long as that person is not confined in any federal, state or local correctional facility. Written appointment of a representative, signed by the claimant, must be submitted before the representative's authority to act on behalf of the claimant may be acknowledged.

(b) It is not necessary that a claimant employ an attorney or other person to assert a claim or effect collection of an award. Under no circumstances will the assignment of any award be recognized, nor will attorney fees be paid by Federal Prison Industries, Inc.

§ 301.305 Initial determination.

A claim for inmate accident compensation shall be determined by a Claims Examiner under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the determination, including the reasons therefore, together with notification of the right to appeal the determination, shall be mailed to the claimant at the claimant's last known address, or to the claimant's duly appointed representative.

§ 301.306 Appeal of determination.

(a) An Inmate Accident Compensation Committee (hereafter referred to as the "Committee") shall be appointed by the Chief Operating Officer, Federal Prison Industries, Inc., under authority delegated by the Board of Directors of Federal Prison Industries, Inc., pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternate members, with any three thereof required to form a quorum for decision-making purposes.

(b) Any claimant not satisfied with any decision of the Claims Examiner concerning the amount or right to compensation shall, upon written request made within 30 days after the date of issuance of such determination, or up to 30 days thereafter upon a showing of reasonable cause, be afforded an opportunity for either an in-person hearing before the Committee, or Committee reconsideration of the decision. A claimant may request an in-person hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

(c) Upon receipt of claimant's request, a determination will be made regarding the timeliness of the filing. If the request is timely filed, or if reasonable cause exists to accept the request filed in an untimely manner, the request shall be accepted. Once accepted, copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at the claimant's last know address, or to claimant's duly appointed representative, provided the release of such information is not determined to pose a threat to the safety of the claimant, any other inmate, or staff.

§ 301.307 Notice, time and place of committee action.

(a) Committee action shall ordinarily occur within 60 days of the receipt of claimant's request, except as provided in this section. Notice of the date set for Committee action shall be mailed to the claimant at the claimant's last known address, or to claimant's duly appointed representative. All Committee action shall be conducted at the Central Office of the Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of the claimant. A claimant may change the request from either hearing to reconsideration or reconsideration to hearing, provided notice of such change is received at least 10 days prior to the previously scheduled action.

§ 301.308 Committee reconsideration.

If the claimant elects to have the Committee reconsider any decision of the Claims Examiner, the claimant may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee must receive evidence no less than 10 days prior the date of reconsideration, and may request additional documentary evidence from the claimant or any other source.

§ 301.309 In-person hearing before the Committee.

(a) The appeal shall be considered to have been abandoned if the claimant fails to appear at the time and place set for the hearing and does not, within 10 days after the time set for that hearing, show good cause for failure to appear.

(b) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the rights and obligations of the claimant and the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in support of the claim under review.

(c) The Committee shall consider all evidence presented by the claimant, and shall, in addition, consider any other evidence as the Committee may determine to be useful in evaluating the claim. Evidence may be presented orally and/or in the form of written statements and exhibits.

(d) A representative appointed in accordance with the provisions of this section may make or give, on behalf of the claimant, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to fact and law in any proceeding affecting the claimant and to request information with respect to the claim. Likewise, any request for additional information, or notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and shall have the same force and effect as if it had been sent to the claimant.

(e) In order to fully evaluate the claim, the Committee may question the claimant and any witness(es) appearing before the Committee on behalf of the claimant or government.

(f) Claimant, or claimant's representative, may question the Committee or any witness(es) appearing before the Committee on behalf of the government, but only on matters determined by the Committee to be relevant to its evaluation of the claim.

(g) The hearing shall be recorded, and a copy of the recording or, at the discretion of the Committee, a transcript thereof shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

§ 301.310 Witnesses.

(a) If a claimant wishes to present witnesses at the hearing, the claimant must provide the Committee, no less than 10 days before the scheduled hearing date, the name and address of each proposed witness, along with an outline of each witness' testimony. The Committee may limit the number of witnesses who may appear at a hearing, however, the Committee has no authority to compel the attendance of any witness.

(b) Any person confined in a Federal, State, or local penal or correctional institution at the time of the hearing may not appear as a witness, but that person's testimony may be submitted in the form of a written statement.

§ 301.311 Expenses associated with appearances at committee hearing.

Federal Prison Industries, Inc., may not assume responsibility for any expenses incurred by the claimant, claimant's representative, or any witness appearing on behalf of the claimant in connection with attendance at the hearing, as well as any other costs relating to any representative, witnesses, or evidence associated with a hearing before the Committee.

§ 301.312 Notice of committee determination.

The Committee shall mail written notice of its decision to affirm, reverse, or amend the Claims Examiner's initial determination, with the reasons for its decision, to the claimant at the claimant's last known address, or to claimant's duly appointed representative, no later than 30 days after the date of the hearing unless the Committee needs to make a further investigation as a result of information received at the hearing. If the Committee conducts a further investigation subsequent to the hearing, the decision notice shall be mailed no later than 30 days after the conclusion of the Committee's investigation.

§ 301.313 Chief Operating Officer review.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Chief Operating Officer, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534. A written request for such an appeal must be received no later than 90 days after the date of notice of the Committee's decision. The Chief Operating Officer shall review the record and affirm, reverse or amend the Committee's decision no later than 90 days after receipt of claimant's notice of appeal. Written notice of the Chief Operating Officer's decision shall be mailed to the claimant's last known address, or to the claimant's representative.

§ 301.314 Establishing the amount of award.

(a) If a claim for Inmate Accident Compensation is approved, the amount of compensation shall be based upon the degree of physical impairment existent at the time of the claimant's release regardless of when during the claimant's period of confinement the injury was sustained. No claim for compensation will be approved if full recovery occurs while the inmate is in custody and no impairment remains at the time of release.

(b) In determining the amount of accident compensation to be paid, the permanency and severity of the injury in terms of functional impairment shall be considered. The provisions of the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, et seq.) shall be followed when practicable. The FECA establishes a set number of weeks of compensation applicable for injuries to specific body members or organs (Section 8107).

(c) All awards of Inmate Accident Compensation shall be based upon the minimum wage (as prescribed by the Fair Labor Standards Act).

(1) For body members or organs covered under Section 8107, the minimum wage applicable at the time of the award shall be used as the basis for determining the amount of compensation. Awards regarding injury to body members or organs covered under Section 8107 shall be paid in a lump sum. Acceptance of such an award shall constitute full and final settlement of the claim for compensation.

(2) For body members or organs not covered under Section 8107, awards will be paid on a monthly basis because such awards are subject to periodic review of entitlement. The minimum wage applicable at the time of each monthly payment shall be used in determining the amount of each monthly payment. Monthly payments are ordinarily mailed the first day of the month following the month in which the award is effective.

§ 301.315 Review of entitlement

(a) Each monthly compensation recipient shall be required, upon request of the Claims Examiner, to submit to a medical examination, by a physician specified or approved by the Claims Examiner, to determine the current status of his physical impairment. Any reduction in the degree of physical impairment revealed by this examination shall result in a commensurate reduction in the amount of monthly compensation provided. Failure to submit to this physical examination shall be deemed refusal, and shall ordinarily result in denial of future compensation. The cost associated with this examination shall

be borne by Federal Prison Industries, Inc.

(b) Inasmuch as compensation awards are based upon the minimum wage, any income received by a compensation recipient which exceeds the annual income available at the minimum wage (based upon a 40 hour work week), including Social Security or veterans benefits received as the result of the work-related injury for which Inmate Accident Compensation has been awarded, shall be deemed excessive. The amount of compensation payable to a claimant with an income deemed excessive shall be reduced at the rate of one dollar for each two dollars of earned and benefit income which exceeds the annual income available at minimum wage. Each monthly compensation recipient shall be required to provide a statement of earnings on an annual basis, or as otherwise requested. Failure to provide this statement shall result in the suspension or denial of all Inmate Accident Compensation benefits until such time as satisfactory evidence of continued eligibility is provided.

§ 301.316 Subsequent incarceration of compensation recipient.

If, subsequent to an award of compensation on a monthly basis, a claimant becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claimant is released from the correctional facility.

§ 301.317 Medical treatment following release.

Federal Prison Industries, Inc., may not pay the cost of medical, hospital treatment, or any other related expense incurred after release from confinement unless such cost is authorized by the Claims Examiner in advance, or the Claims Examiner determines that circumstances warrant the waiver of this requirement. Generally, the payment of such costs is limited to impairment evaluations, or treatments intended to reduce the degree of physical impairment, conducted at the direction of the Claim Examiner.

§ 301.318 Civilian compensation laws distinguished.

The Inmate Accident Compensation system is not obligated to comply with the provisions of any other system of worker's compensation except where specifically stated in this part. Awards made under the provisions of the Inmate Accident Compensation procedure differ from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a three-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that the claimed impairment is causally related to the claimant's work assignment.

§ 301.319 Exclusiveness of remedy.

Inmates who are subject to the provisions of these Inmate Accident Compensation regulations are barred from recovery under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). Recovery under the Inmate Accident Compensation procedure was declared by the U.S. Supreme Court to be the exclusive remedy in the case of work-related injury. *U.S.* v. *Demko*, 385 U.S. 149 (1966).

[FR Doc. 89-27869 Filed 11-27-89; 8:45 am]
BILLING CODE 4410-35-M

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment and Instruction of Inmates Contact With the Media

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons, in response to increased interest in its operations, is proposing to amend its regulations on Contact With the Media. Major changes involve the frequency of interviews, procedures covering access to inmates, and clarification of the prohibition on inmates conducting a business. The proposed regulations are intended to ensure a better informed pulbic, and to offer inmates an opportunity to exercise their First Amendment rights in ways that do not conflict with the security and orderly operation of the institutions where they are confined.

DATES: Comments due by January 12, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Contact With the Media. A final rule on this subject was published in the **Federal Register** on June 29, 1979 (44 FR 38247).

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street, NW., Washington, DC 20534. Comments received furing the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 540

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), it is proposed to amend part 540 in subchapter C of 28 CFR, chapter V as set forth below.

Dated: November 22, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 3621, 3622, 3624, 4001, 4041, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, unless otherwise noted.

2. In § 540.2, paragraph (c) and the undesignated paragraph which follows it are designated as new paragraph (i), paragraph (b) is redesignated and revised as paragraph (d), and new paragraphs (b), (c), and (e) through (h) are added to read as follows:

§ 540.2 Definitions.

* * * * *

(b) The term "media" means agencies or organizations whose principal purpose is to gather and disseminate factual information to the public through various mechanisms including, but not limited to print, electronic, and other means of mass communication.

(c) The term "news media" means any segment of the media as defined in paragraph (b) of this section whose principal purpose is the gathering and at least weekly dissemination of current happenings, occurrences, or anything of interest to the general public, including, but not limited to:

(1) A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the public and if it publishes news of public interest. A key test to decide whether a newspaper qualifies as a "general circulation" newspaper is to determine whether the paper qualifies for the purpose of publishing legal notices in the community in which it is located or in the area to which it distributes. It is generally held that for a newspaper to be considered, by law, a newspaper of general circulation, and so be qualified to publish legal notices, it must contain items of general interest to the public, such as news of political, religious, commercial, or social affairs;

(2) A news magazine of national circulation that is sold by newsstands and mail subscription to the general public;

(3) A national or international news service; or

(4) A radio or television news program of a station (or other non-print media) outlet holding a Federal Communications Commission license.

(d) "Reporter," or "representative of the media," or "representative of the news media," or "media representative" means a person whose employment is to gather or report news for news-gathering organizations. The following elements can be used to evaluate the status of such a person. The person:

(1) Works for a media organization as defined in this section as a primary occupation;

(2) Works for a media organization as defined in this section for a salary, hourly wage, or any other schedule of compensation, regular or otherwise;

(3) Works as a party to formal or informal arrangements with a news-gathering organization to submit material for publication through any channel, when acting in a capacity other than a member of the general public, such as in a letter to the editor; and

(4) Can present proof of previous professional publication for such a news-gathering organization. Because of the institutional resources needed to screen and process prospective interviews, ordinarily, only a member of the news media, as defined herein, may conduct a face-to-face interview with a specified inmate.

(e) A "business" or "profession" is any activity conducted by an inmate that entails a contractual arrangement or generates income through a non-Bureau of Prisons-approved program or activity, as contrasted with a work assignment or an approved program or activity otherwise regulated by Bureau of Prisons policy. This income could derive from civilian sources directed by the inmate, or be created by the inmate through activities in the institution that are not approved for the generation of income. For this purpose of this policy, any writing or other creative product generated by an inmate in non-BOP approved activity, which generates more than $500 in gross income in any one calendar year, is considered to be business activity, and is prohibited. Approved hobbycraft sales are permitted in accord with the policy regulating those activities, and inmates may receive cash awards or prizes for participation in approved creative programs, up to the $500 limit. The amount of the ceiling on hobbycraft profits shall be raised (in multiples of $50.00) wherever the Commissary purchase authority for inmates is raised, and to a comparable percentage increase.

(f) For the purpose of Bureau of Prisons procedures, a "manuscript" is any pre-publication product of creative writing, including fiction, non-fiction, music, poetry, or cartoons, which contains text, music, lyrics, or other creative writings, other than personal correspondence with the media. Manuscripts are generally submitted for the purpose of publication as a stand-alone literary or musical product, e.g., a book, pamphlet, script, song or other document. Manuscripts are typically prepared over a period of time, and are submitted to publishers or other non-media outlets; because of the time involved in preparation and ultimate publication, manuscripts ordinarily do not relate to current events.

(g) For the purpose of Bureau of Prisons procedures, a "by-lined article" is a written or other communication product published in the media (other than a letter to the editor) that is accompanied by the name of the author; is created and submitted to any media outlet (print or otherwise) for further distribution through a periodical such as a newspaper, magazine, or other mechanism; is ordinarily intended to be published as part of a larger work product; and may deal with contemporary issues.

(h) "Creative writing" includes all forms of writing other than legal documents and social or special mail correspondence. Creative writing activity is intended to encourage creativity and constructive structuring of leisure time, and is not for the purpose of fund-raising; an inmate may not be paid for creative writing activity.

* * * * *

3. Subpart E, consisting of §§ 540.60 through 540.65, is revised to read as follows:

Subpart E—Contact With the Media

Sec.

540.60 Purpose and scope.
540.61 Authorization.
540.62 General institutional visits.
540.63 Personal interviews and other media contacts.
540.64 Media pools.
540.65 Release of information.

Subpart E—Contact With the Media

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 3621, 3622, 3624, 4001, 4041, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 540.60 Purpose and scope.

(a) The Bureau of Prisons recognizes that it is in the public interest to supply information about its operations, and that the media can play a vital role in that information function. To that end, representatives of the media may visit institutions for the purpose of preparing reports about the institution, its programs, and its activities, and to interview inmates. It is not the intent of this rule to provide publicity for an inmate, or special privileges for the media by providing access to inmates in a manner not otherwise available to the general public. These regulations are intended to insure a better informed public, and to offer inmates an opportunity to exercise their First Amendment rights in ways that do not conflict with the security and orderly operation of the institutions where they are confined. An inmate's First Amendment rights to freedom of expression, and access to the institution by media representatives, may be restricted when and if such expression or access would result in potential disruption to the discipline and security of the institution, or material interference with the accomplishment of

its mission. The Bureau of Prisons has a responsibility to protect the privacy and other rights of inmates and members of the staff. Therefore, any media tours or interviews in an institution must be regulated to safeguard those rights, and face-to-face interviews with inmates must be regulated to ensure the safe, orderly operation of the institution.

(b) In general, media contacts fall into two broad categories. The first are contacts of a general nature directed toward institutional programs and activities that have a public education purpose, and do not focus on any individual inmate or discrete group of identifiable inmates. The second type of media contact focuses on an individual inmate, identifiable group of inmates, or some investigative subject. These contacts are not considered to have a general public education purpose, but are rather intended to have a specific expository outcome with regard to the inmates or programs involved. Different types of access and processing are involved for these two very different types of media activity.

(c) These rules apply to inmates in Federal institutions and on authorized furlough from Federal institutions. When a Federal prisoner is confined as a contract boarder in any non-Federal facility or community corrections-type facility, the local or State facility rules and regulations will govern.

§ 540.61 Authorization.

(a) A media representative who desires to make either a public education-type visit or a news media representative who wishes to conduct an inmate interview at an institution must make application in writing to the Warden on the letterhead of the news organization for which the tour or interview is to be conducted. Except as otherwise noted herein, the term "Warden" refers to the Warden or the Warden's designee. The request ordinarily must be received at the institution not less than two working days in advance of the requested visit or interview. It must indicate the scope of the intended interview, and affirm that the media representative is familiar with the rules and regulations of the institution and agrees to comply with them.

(b) Representatives of the media have a professional responsibility to make a reasonable attempt to verify any allegations regarding an inmate, staff member, or institution. To ensure an opportunity to gather complete information regarding both sides of any issue in the institution, a representative of the news media, as a condition of any face-to-face interview granted by the Bureau, shall provide authorized staff of the Bureau of Prisons an opportunity to respond to any allegation that might be published or broadcast.

(c) A representative of the media should collect information only from the primary source, and may not obtain and use personal information from one inmate about another inmate who refuses to be interviewed, an act which would constitute a violation of that inmate's privacy.

(d) A representative of the media who is on an inmate's authorized visiting list will not be granted any form of media access to a Bureau institution. A media representative may not be added to an inmate's visiting list unless that inmate is an immediate family member, in which case, all media privileges will be suspended for that individual within the Bureau of Prisons.

(e) Failure by the media representative to adhere to the provisions set forth by this rule constitutes grounds for denying that media representative, or the organization that he or she represents, permission to conduct future interviews or tours in a BOP facility for up to one year.

(f) Any limitation or denial of media access will be reported to the Regional Public Information Officer. Denial of access beyond a single visit will only be upon written notice to the party involved, after consultation with the Regional and Central Office public information officers, and review of the proposed letter of limitation or denial by the Regional Director.

(g) A representative of the media may appeal any local decision to deny, or otherwise restrict access to the institution, to the Regional Director, and may further appeal any determination made at that level to the Director of the Bureau of Prisons.

(h) After the access limitation period has expired, the individual or organization may reapply for admission, in writing, to the Office of Public Affairs, Central Office, Washington, DC.

(i) The Warden may suspend all categories of media visits during an institutional emergency and for a reasonable time after the emergency. During such a suspension, the local institution may establish a local media center, offer regular informational briefings by the institution Public Information Officer, establish a media pool, and make available such facilities and services as are required, in the Warden's view, to ensure a smooth flow of public information about the emergency.

§ 540.62 General institutional visits.

(a) General institutional visits are contacts of a general nature directed toward institutional programs and activities, which have a public education purpose, and do not focus on any individual inmate or discrete group of identifiable inmates. A media representative shall make advance appointments for this category of visit, which ordinarily should be held during regular business hours for that institution. Institution staff will process all such requests expeditiously, and within two working days of receipt.

(b) The institutional Public Information Officer is responsible for verifying the identity and credentials of all media personnel applying for admission to the institution. All personnel making a request to take part in a media tour or interview should be named in the request for the interview, and each will supply their date of birth and social security number, in order that institutional staff may complete necessary identification procedures prior to approval. Individuals not so identified at the time of the request may not be admitted.

(c) When media representatives visit the institution, photographs of programs and activities may be taken. However, an inmate has the right not to be identifiably photographed or have his or her voice identifiably recorded by the media. Accordingly, a visiting representative of the media is required to obtain written permission from an inmate before identifiably photographing or recording the voice of that inmate, or before distributing it.

(d) Because of the large number of individuals who may potentially seek to obtain access to Bureau institutions under the auspices of other kinds of media activity, tours for representatives of non-news media organizations, and others, such as movie producers, researchers and free-lance writers, are ordinarily not approved. They may be permitted only by special arrangement, with approval of the Warden, and after conferring with the Regional Public Information Officer.

§ 540.63 Personal interviews and other media contacts.

(a) This type of media contact involves an individual inmate, identifiable group of inmates, or some investigative subject. These contacts are not considered to have a general public education purpose, but are rather intended to have specific expository outcome with regard to the inmates or programs involved; they are ordinarily

granted only to news media representatives.

(b) Except as otherwise provided in Bureau policy, an inmate in a Federal institution may not conduct a business, be employed in an employee/employer relationship, execute a contract or legally binding agreement, act as a reporter, publish under a by-line, or execute a power of attorney or other instrument or mechanism that has the effect of circumventing these restrictions or any other provision of this program statement.

(c) Inasmuch as alternate access to the media is an important communication option, an inmate may correspond personally with representatives of the media through established institutional correspondence procedures.

(d) The use of the telephone is a legitimate avenue for inmates to use to contact the media. However, an inmate may not grant an interview that is broadcast live, inasmuch as that process prevents the institution from accomplishing the review and response provisions of this policy. Inmates may not place third-party phone calls to media representatives.

(e) In the interest of institutional security and order, an inmate currently confined in an institution may not be employed or act as a reporter, publish under a byline, or cause to be disseminated for compensation above the amount allowed by § 540.2(e) of this part any manuscript with which his name is associated.

(f) Except as otherwise provided in Bureau policy, an inmate may not receive compensation or any consideration, directly or indirectly, for any creative work or time expended in any creative activity (this includes submission of articles or other published works or any broadcast participation,) or for interviews with the media, whether the nature of the media contact is face-to-face, by phone, or through correspondence. Creative products that draw upon an inmate's criminal activities may be subject to referral to the U.S. Attorney for consideration of forfeiture under Federal statute.

(g) An inmate or a representative of the news media may initiate a request for a face-to-face interview.

(1) Visits by the news media to conduct face-to-face inmate interviews are subject to the same conditions stated in § 540.62. A news media representative shall make a request for a personal interview, ordinarily allowing two working days prior to the requested interview date.

(2) Staff shall notify an inmate of each face-to-face interview request, and shall, as a prerequisite, obtain the inmate's written consent for any interview, photo, or voice recording for the interview prior to the interview taking place.

(h) As a condition of granting the interview, an inmate must authorize institutional staff to respond to comments made in the interview and to release information to the media relative to the interview.

(i) The Warden shall ordinarily approve or disapprove an interview request within two working days of receipt by institution staff of the request.

(j) The Warden shall document any disapproval. A request for interview or visit may be denied for any of the following reasons:

(1) The news media representative, or the organization which he or she represents, does not agree to the conditions established by this rule or has, in the past, failed to abide by the required conditions.

(2) The inmate is physically or mentally unable to participate. This must be supported by a medical officer's statement (a psychologist may be used to verify mental incapacity) to be placed in the inmate's record, substantiating the reason for disapproval by the Warden.

(3) The inmate is a juvenile (under age 18) and written consent has not been obtained from the inmate's parent or guardian. If the juvenile inmate's parents or guardians are not known or their addresses are not known, the Warden of the institution shall notify the news media representative of the inmate's status as a juvenile, and shall then consider the request. The inmate's written consent, as specified in paragraph (g) of this section, is still required.

(4) The interview, in the opinion of the Warden, would endanger the health or safety of the interviewer, or would probably cause serious unrest or disturb the good order of the institution.

(5) The inmate is involved in a pending court action and the court having jurisdiction has issued an order forbidding such interviews.

(6) In the case of unconvicted persons (including competency commitments under 18 USC 4241–43 and 4245–56) held in Federal institutions, interviews are not authorized until there is documented clearance with the court having jurisdiction, which ordinarily will be obtained through the U.S. Attorney's Office.

(7) The Bureau has received objections from other Government agencies which have expressed an interest. Interviews requested with U.S. Immigration and Naturalization (INS) detention cases will be cleared by the local INS office. Interview requests for inmates in whom other Government agencies have expressed an interest will be cause for institution staff to notify that agency of the proposed interview. Interviews for offenders held for other jurisdictions will be approved only with the concurrence of the court or agency having final jurisdiction of the inmate.

(8) The inmate is a "protection" case and disclosure of his or her whereabouts would endanger the inmate's safety.

(k) The Warden will establish the place and time of all media interviews, subject to the following conditions:

(1) Ordinarily, inmate interviews will be scheduled during regular business hours for that institution.

(2) Face-to-face media interviews will ordinarily not be subject to auditory supervision, but at the discretion of the Warden, they may be subject to supervision in the same manner as other visits by the public. The presence of an institutional Public Information Officer or other staff member will not be construed as an opportunity for debate or other exchange of views between the reporter, inmate, and staff member; the employee is present for supervision purposes, not to participate in the interview.

(3) Ordinarily, not more than one face-to-face interview per day will be held in any institution, using an equitable method of apportioning access when requests exceed one per day.

(4) Ordinarily, an inmate will be limited to not more than one face-to-face interview per calendar month; in instances of multiple requests, the inmate will be responsible for choosing which interview will be granted.

(5) The Warden may establish additional limits on the length and number of face-to-face interviews per month an inmate may have if confined in special housing status; e.g., segregation, restricted, holdover, control unit, or hospital status, or if otherwise required by special security, custodial, supervisory, or operational needs.

(6) The Warden may limit the amount of audio, video, and film equipment entering the institution, and limit to five the total number of media personnel and technicians entering the institution; live television or radio broadcasts are not permitted. In the case of a pre-trial inmate, the attorney of record and a representative of the U.S. Attorney's Office may also be present.

(7) In the case of interviews that must be conducted in visiting rooms that are frequently crowded, or in visiting rooms of maximum security institutions, the Warden may limit the equipment to hand-held cameras or recorders, and may impose additional restrictions on

the number of news media representatives or technicians permitted.

(8) News media representatives are encouraged to tour Bureau institutions in conjunction with a personal interview.

§ 540.64 Media pools.

(a) The Warden may establish a media pool whenever he or she determines that the frequency of requests for visits reaches a volume that warrants limitations in order to ensure the efficiency of the tour process or conserve staff resources.

(b) Whenever the Warden establishes a media pool under these circumstances, the Warden shall notify all media representatives who have requested interviews or visits that have not been conducted that a pool will be authorized, and to what areas of the institution the pool will have access. The selected representatives will be admitted to the institution to conduct the interviews under specific guidelines established by the Warden.

(c) The members of the media pool are selected by their peers by a process determined by those media representatives present and wishing to participate; institutional staff will not participate in the selection process. A media pool shall consist of not more than one representative from each of the following groups:

(1) The national and international news services;

(2) The television and radio networks and outlets;

(3) Magazines and newspapers; and

(4) All media in the local community where the institution is located.

If no interest has been expressed by one or more of these groups, no representative from such group need be selected.

(d) All news material generated by such a media pool is made available to all media without right of first publication or broadcast.

(e) In order to preserve the principle that inmates will not use media access for personal notoriety or advancement of any kind, inmates may not convene or conduct a media conference, or be interviewed by the media in a pool situation. However, when in the judgement of the Warden, such a high level of media interest exists regarding one inmate that normal institutional resources cannot meet a legitimate public information need, then pool selection procedures may be modified. In this situation, the Warden may allow a separate interview (not to exceed a total of four) by a single representative of each of the four categories of news media enumerated above, chosen by procedures agreed upon by the members of the media themselves. In this circumstance the successive, individual pool interviews will together count as that inmate's interview for that month.

§ 540.65 Release of information.

(a) The Warden will ordinarily make announcements to the media of facts surrounding unusual or newsworthy incidents. Examples are deaths, escapes, and institution emergencies.

(b) The Warden shall provide information about an inmate that is a matter of public record to the representatives of the media upon request. The information is limited to the inmates:

(1) Name;

(2) Register number;

(3) Place of incarceration;

(4) Age;

(5) Race;

(6) Conviction and sentencing data: this includes the offense(s) for which convicted, the court where convicted, the date of sentencing, the length of sentence(s), the amount of good time earned or available, the parole eligibility date and parole release (presumptive or effective) date, and the date of expiration of sentence, and includes previous Federal, State, and local convictions;

(7) Past movement via transfers or writs;

(8) General institutional assignments; and

(9) Release destination.

(c) The Warden of each institution, or his/her designated representative, is solely responsible for contact with the media.

(d) Information in paragraphs (b)(1) through (9) of this section may not be released if confidential for protection cases, or otherwise in conflict with any provisions of the Privacy Act.

(e) A request for additional information concerning an inmate by a representative of the media shall be referred to the Regional Public Information Officer, or the Office of Public Affairs, Central Office, Washington, DC.

(f) The Public Information Officer, Office of Public Affairs, Central Office, Washington, DC shall release all announcements related to changes in:

(1) Bureau of Prisons policy;

(2) Institutional mission;

(3) Type of inmate population; or

(4) Executive personnel.

[FR Doc. 89-27868 Filed 11-27-89; 8:45 am]
BILLING CODE 4410-05-M

28 CFR Part 549

Control, Custody, Care, Treatment and Instruction of Inmates; HIV Education, Counseling, Testing, Reporting, Treatment and Monitoring

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing new regulations concerning Human Immunodeficiency Virus (HIV). These proposed regulations codify Bureau policy on HIV Education, Counseling, Testing, Reporting, Treatment and Monitoring. The intended effect is both to help restrict the spread of HIV and to improve the quality of life for those who are HIV-positive.

DATES: Comments due by January 12, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing new regulations on HIV Education, Counseling, Testing, Reporting, Treatment and Monitoring. These regulations codify Bureau policy in these areas.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street, NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 549

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), it is proposed to amend part 549 in subchapter C of 28 CFR, chapter V as set forth below.

Dated: November 22, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4005, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In part 549, subpart A, consisting of §§ 549.10 through 549.18, is added to read as follows:

Subpart A—HIV Education, Counseling, Testing, Reporting, Treatment and Monitoring

Sec.

549.10 Purpose and scope.
549.11 Intake screening.
549.12 Housing.
549.13 Communal implements.
549.14 Work assignments.
549.15 Education.
549.16 Testing and reporting.
549.17 Counseling.
549.18 Treatment/monitoring.

Subpart A—HIV Education, Counseling, Testing, Reporting, Treatment and Monitoring

§ 549.10 Purpose and scope.

In conjunction with current medical procedures and treatments, the Bureau of Prisons provides programs of education, counseling, testing and reporting for inmates to help restrict the spread of the Human Immunodeficiency Virus (HIV) and to improve the quality of life for those who are HIV-positive.

§ 549.11 Intake screening.

During routine intake screening, all new commitments shall be interviewed to identify those who may be HIV infected. The questions should address specific symptoms such as thrush, fevers, night sweats, cough, unexplained weight loss, lymphadenopathy, and diarrhea. Inmates identified in this manner shall be tested as clinically indicated.

§ 549.12 Housing.

With the exception of the Bureau of Prisons rule set forth in subpart E of 28 CFR 541, there shall be no special housing or quarantining established for HIV positive inmates.

§ 549.13 Communal implements.

Toothbrushes, razors or other personal implements that could become contaminated with blood may not be used by more than one inmate. Multiple use items such as bandage scissors, barber equipment, etc., shall be washed in warm soap water, agitated in disinfectant for not less than 15 seconds, then dried with a clean cloth following each use.

§ 549.14 Work assignments.

HIV antibody screening ordinarily will not be performed as a criterion for work detail assignments. Known HIV positive inmates, however, are not ordinarily assigned to Food Service or to the Hospital.

§ 549.15 Education.

Bureau of Prisons staff shall ensure that HIV education is provided to all inmates during admission and orientation, periodically, and prior to an inmate's release on furlough, parole or Community Corrections Center placement.

§ 549.16 Testing and reporting.

The Bureau's HIV program consists of much more than administering tests. HIV testing is administered only in conjunction with a well developed education and counseling program. Appropriate emphasis must be placed on education, counseling, testing, and treatment.

(a) *New commitments:* All inmates committed to the Bureau of Prisons will be tested on a random basis. All inmates who test negative shall be retested at six months. The new commitment testing program as well as the follow-up testing program is mandatory. Failure to comply shall result in an incident report, and possible disciplinary action.

(b) *Voluntary:* After consultation with a Bureau of Prisons physician or physician assistant, an inmate may request an HIV antibody test, ordinarily not to occur more frequently than once every twelve months.

(c) *Clinically indicated:* Consistent with sound clinical judgment, physicians may order an HIV antibody test if an inmate presents chronic illnesses or symptoms suggestive of an HIV infection. Inmates who are pregnant, inmates receiving live vaccines or, if required, inmates admitted to community hospitals shall be tested in this category. Also, inmates demonstrating promiscuous, assaultive or predatory sexual behavior shall be tested within this category.

(d) *Pre-release/community activities:*

(1) Inmates being considered for parole, furlough, or placement in a Community Corrections Center (CCC) will be tested for the HIV antibody as a condition for participation in the community activity. An inmate who has been tested within one year of this consideration ordinarily will not be required to submit to a repeat test prior to the lapse of the one-year period. Inmates electing not to be tested may not be considered for furlough, or CCC referral. If an inmate is being considered for parole and elects not to be tested, the United States Parole Commission shall be notified. Inmates participating in unescorted community activities shall be tested for the HIV antibody. Refusing to be tested shall be grounds for denying participation in the community activity.

(2) Prior to release on parole, to a CCC or participation in an unescorted community activity, the inmate will be given a reasonable period, ordinarily 5–10 days, in which to notify his/her spouse (legal or common-law) or any identified significant others with whom it could be assumed the inmate might have contact resulting in possible transmission of the virus. Refusal to make such notification may result in denial of CCC placement or participation in unescorted community activities. Institution staff shall personally confirm that these individuals have been notified of the inmate's condition. If an inmate is being considered for parole and refuses to make such contacts, the United States Parole Commission shall be notified.

(3) Inmates being released due to full expiration of sentence or mandatory release shall submit to an antibody test within one year prior to release. Failure to comply shall result in an incident report. Those inmates testing positive shall be encouraged to notify their spouse or significant other of seropositivity.

§ 549.17 Counseling.

Inmates receiving the HIV antibody test shall receive pre and post test counseling, regardless of the test result.

§ 549.18 Treatment/monitoring.

(a) Clinical evaluation and review for HIV positive inmates shall occur at least once a month.

(b) Pharmaceuticals approved by FDA for use in the treatment of AIDS and HIV infected inmates will be offered at the parent institution when indicated.

[FR Doc. 89-27868 Filed 11-27-89; 8:45 am]
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Part VII

Federal Trade Commission

Mail Order Merchandise Trade Regulation Rule; Notice of Proposed Rulemaking

FEDERAL TRADE COMMISSION

16 CFR Part 435

RIN 3084-AA19

Mail Order Merchandise Trade Regulation Rule; Notice of Proposed Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission is commencing a rulemaking to amend the trade regulation rule "Mail Order Merchandise," 16 CFR part 435 ("the Rule"), to include merchandise ordered by telephone, and to amend the definition of "properly completed order" for credit sales. The Commission is commencing this rulemaking because of the public comments filed in response to its Advance Notice of Proposed Rulemaking, and other information discussed in this notice. The rulemaking proceeding will be limited to consideration of amending the Rule in these respects.[1]

The Commission invites public comment on the proposed amendments to the Rule.

DATES: Written comments must be submitted on or before January 29, 1990. Notification of interest in questioning witnesses must be submitted on or before January 12, 1990. Prepared statements of witnesses and exhibits, if any, must be submitted on or before February 26, 1990. Public hearings commence at 9:30 a.m. on March 28, 1990.

ADDRESSES: Five copies of written comments, notifications of interest, prepared statements of witnesses and exhibits should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202-326-3642. The public hearings will be held in Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All submissions should be captioned: "Notice of Proposed Rulemaking—Amendment of the Mail Order Merchandise Rule.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection (601 Pennsylvania Ave., Rm. 4632), Federal Trade Commission, Washington, DC 20580, 202-326-2967.

SUPPLEMENTARY INFORMATION: [2] This notice sets out the rulemaking procedures to be followed, the text of the Rule provisions to be considered during the rulemaking proceeding, reference to the legal authority for the Rule and the rulemaking proceeding, a statement of the Commission's reasons for commencing the proceeding to amend the Rule, a list of general questions and issues upon which the Commission desires written and oral comment, an invitation for written and oral comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in this proceeding.

Background

[1] On October 22, 1975, the Federal Trade Commission published, at 40 FR 49492, the Trade Regulation Rule relating to Mail Order Merchandise, 16 CFR part 435. A Statement of Basis and Purpose for the Rule was published on November 5, 1975, at 40 FR 51582. The Rule became effective on February 2, 1976, and has remained in full force and effect since then. Statutory authority for the Rule and for this rulemaking proceeding to amend the Rule is provided by Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, as amended.

[2] Under the Rule, a mail order seller who is unable to ship merchandise within the time stated in the solicitation of the order, or within thirty days of receipt of a properly completed order if no time is stated, must provide the buyer with a notice of delay. If the delay is thirty days or less, the notice must give the buyer the option to cancel the order. If the delay is more than thirty days or is indefinite, the seller must notify the buyer that, unless the buyer expressly consents to such a delay, the order will be automatically cancelled. If the buyer agrees to the delay date given in the first notice but the seller cannot meet the new shipping date, the seller must send out a second notice of delay. The order will then be cancelled automatically unless the buyer expressly consents to a further delay.

[3] The Rule also requires the seller to have a reasonable basis for any claims made about shipping time. Where no claim is made, it is implicitly claimed that merchandise will be shipped within thirty days. Where the seller fails to ship in the time expressly or implicitly claimed, the Rule requires the seller to refund the buyer's money whenever the seller (1) fails to provide any notice of delay and option to cancel required by the Rule; or, (2) provides a first notice of delay and option to cancel and the buyer exercises the option to cancel prior to shipment; or, (3) provides a first notice that shipment will be delayed more than thirty days or for an indefinite time and, within thirty days after the original shipment time, fails to ship and the buyer fails expressly to consent to the delay; or (4) provides a second notice of delay whereby the buyer must expressly consent to any further delay and the buyer does not consent; or, (5) provides the buyer notice of his inability to ship and his decision not to ship. When a refund is required by the Rule, a seller is allowed one billing cycle to take specified action where there is a credit sale, and seven working days to mail a refund where the buyer has made a cash, check or money order payment.

[4] On October 27, 1988, the Commission published its Advance Notice of Proposed Rulemaking (the "ANPR"), which requested comments on whether the Commission should amend the Rule to include shipment of merchandise ordered by telephone or any other means, and to change the definition of a "properly completed order" for credit sales to mean the time the seller receives sufficient information to charge the buyer's account.[3] The Commission received 34 written comments in response to the ANPR.

Extending the Rule's Coverage to Telephone-order Merchandise

[5] Twenty-four of the comments addressed the question of extending the Rule to telephone-order merchandise.

[1] The Commission is also seeking comment on a note explaining the coverage of the proposed amendment which, if the amendment is adopted and incorporated into the existing Rule, would be designated "Note 8." The proposed note explains that the term "telephone" refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language of the sale is that of, human beings, machines or both.

Additionally, the Commission is soliciting comment on whether sections 435.1(b)(3) (i) and (ii) of the Rule should be amended to include means for providing option notices to consumers other than by first class mail. Since any such amendment would give other evidence of compliance with the Rule the same weight that the Rule now gives to option notices provided by first class mail, the Commission views it as not a substantive amendment to or repeal of any portion of the Rule, and so not governed by the provisions of section 18(d)(2)(B) of the FTC Act, 15 U.S.C. section 57(d)(2)(b). The Commission accordingly is not proposing at this time any specific language relating to these provisions, but may at some future time, based on the information elicited in this rulemaking, or otherwise, change these provisions.

[2] To facilitate reference, we have numbered consecutively the paragraphs in each *major* section of this Notice of Proposed Rulemaking. These numbers are bracketed.

[3] Mail Order Merchandise Rule: Advance Notice of Proposed Rulemaking, 53 FR 43448 (Oct. 27, 1988).

The comments largely supported extending the Rule.[4]

[6] The Direct Marketing Association ("DMA"), a trade association of 3500 direct marketers, said that it regarded the Rule's non-coverage of telemarketers as an exception to the Rule for which it saw no justification. DMA nevertheless urged the Commission to develop the evidentiary basis for extending the Rule to telemarketers (ANPR Comment 1).

[7] The comments from consumers provided some anecdotal evidence of a need to extend the Rule.[5] Three other comments provided information based on more widespread experience. Modern stated that it had adopted the policy of rejecting advertising by telephone-order merchants who failed to ship or provide refunds within the times prescribed by the Rule. It rejected over a dozen advertisers over the four years the policy has been in effect. Modern relates that one of the most frequent reasons for rejecting advertising has been the failure to timely ship (ANPR Comment 7, p. 3).

[8] PaBCP noted that since 1985 Pennsylvania has experienced a 39% increase per year in telemarketing complaints it has handled, and that it is presently averaging 100 such complaints a week. The consumer protection agency also notes that, although the actual number of telemarketing complaints is fewer than the number of similar mail order complaints, proportionally the volume of mail order complaints has remained static over the last several years while the volume of telemarketing complaints has increased. Moreover, the dollar value of telephone orders is significantly greater than the dollar value of mail orders (ANPR Comment 8, p. 2).[6]

[9] Another state consumer protection agency, NWMaDA, also noted a "dramatic increase in the number of [consumer] complaints * * * concerning purchases or leases negotiated by telephone" (ANPR Comment 32, p. 1).

[10] CaDCA's comment traced the history of the amendment in 1986 of the California mail order rule (Bus. & Prof. Code § 17538) to include telephone-order merchandise and services. It said the legislation was preceded by a case brought by the state against a computer software merchant who failed to timely ship telephone-order merchandise to both consumers and businesses. The consumer protection agency stated that the amendment "attracted only minor opposition from the mail order industry" and that it is "not aware of any change in the cost or price of goods or services used by consumers or businesses as a result of the amendments" (ANPR Comment 10, p. 2).

[11] The one comment that flatly opposed extending the Rule to telephone merchandise did so on the basis that the commenter had no evidence that any change in the Rule is needed.[7]

[12] In addition to receiving these comments, Commission staff has prepared a report of a nationally projectable survey of consumer experiences over a six month period with telephone order and mail order merchandise. The field work for this survey was conducted from November 1987 to February 1988 by Opinion Research Corporation ("ORC"), a consumer research organization that specializes in nationally projectable sampling. The results of this survey indicate that consumer expectations with respect to shipment time are about the same for mail order and telephone order merchandise. Similarly, the ORC survey indicates that consumers experience shipment and refund failures, and inadequate notices of delay, at nearly the same rate regardless of the means of ordering.

[13] Staff also has obtained reports of two other surveys. One survey, a mail panel survey, was conducted in 1984 for the Commission by Market Facts. The other is a 1987 Response Analysis survey of behavior and attitudes of telephone shoppers and non-shoppers that was commissioned by AT&T Communications. The reports of these surveys provide validating information in support of the ORC survey, and other helpful information. The staff report of the ORC survey and the underlying data, and the reports of the Market Facts and Response Analysis surveys, are being made available to the public upon publication of this notice.

[14] In addition to the above-referenced surveys, the Commission is placing on this rulemaking record the report of the results of a 1983 telephone survey of small (at that time, annual receipts of less than $7.5 million) and larger mail order firms by Damans and Associates ("Damans"). The Damans survey was commissioned by the FTC to evaluate the impact of the existing Rule under the Regulatory Flexibility Act of 1980. The survey concluded that (1) "[T]otal costs incurred by most small mail order firms for complying [with the Rule] were not viewed as being high, with 75% having total costs under $500;" (2) [T]otal compliance costs for large mail order businesses are higher than they are for small businesses, however, sales are also higher;" (3) "Most mail order business[es,] small and large, are not opposed to the Mail Order Rule;" and (4) "Most mail order firms, large and

[4] Supporting the extension of the Rule to telephone marketing were CVN Companies, Inc. ("CVN"), a telephone solicitation and order processing agent for direct marketers (ANPR Comment 4); Leo Burnett Co., Inc. ("Burnett"), an advertising agency that handles advertising accounts for direct marketers (ANPR Comment 6); Modern Photography ("Modern"), an advertising medium for direct marketers (ANPR Comment 7); the Pennsylvania Bureau of Consumer Protection ("PaBCP"), a state consumer protection agency (ANPR Comment 8); the California Department of Consumer Affairs ("CaDCA"), a state consumer protection agency (ANPR Comment 9); Anthony Salamone, a columnist for the Easton (Pa) Express (ANPR Comment 14); Jeffrey L. Cashatt, a consumer (ANPR Comment 16); Betty D. Griffin, a consumer (ANPR Comment 18); Alan Flacks, a consumer (ANPR Comment 19); N. M. Loscalzo, a consumer (ANPR Comment 20); Andrew Levitt, a consumer (ANPR Comment 21); John M. Chaplick, a consumer (ANPR Comment 22); Leilani Ponzi, a consumer (ANPR Comment 23); the National Consumers League ("NCL"), a consumer association (ANPR Comment 24); the American Retail Federation ("ARF"), an association of state and national retail associations (ANPR Comment 25); the National Retail Merchants Association ("NRMA"), an association of department, chain, specialty and independent retail stores (ANPR Comment 26); Vrymeer Commodities, Inc., a direct marketer (ANPR Comment 27); the Iowa Consumer Protection Division ("IaCPD"), a state consumer protection agency (ANPR Comment 28); the Wisconsin Attorney General ("WiAG") (ANPR Comment 29); the Maine Attorney General ("MeAG") (ANPR Comment 30); the Department of Justice of North Carolina ("NCDOJ") (ANPR Comment 31); the Consumer Protection Division for the District Attorney for the Northwestern District of Massachusetts ("NWMaDA"), a state consumer protection agency (ANPR Comment 32); and Bernhardt Sandler, a consumer (ANPR Comment 34).

Four consumers commented about marketing practices that are unrelated to shipment delays by direct marketers. These comments accordingly are not included in our analysis of comments *passim*. The comments that are excluded from the analysis include those of Mr. Robert Aichroth (ANPR Comment 12), who objected to what he viewed as paying excessive postage and handling costs; George J. Van Cura (ANPR Comment 15), who objected to the failure of direct marketers to prominently advertise postage and handling costs in the solicitation of orders; Geraldine Huempfner-Gatz (ANPR Comment 17), who objected to outbound (originating with merchant) telephone solicitation as disruptive; and William F. Pryor (ANPR Comment 33), who complained that he received telephone-order merchandise on time, but that it was defective.

[5] *See*, e.g., comments of Leilani Ponzi (ANPR Comment 23) and Bernhardt Sandler (ANPR Comment 34).

[6] PaBCP may have included within the categories "mail order complaints" and "telemarketing complaints" consumer contacts that are not specifically related to the Rule or the proposed amendment to extend it to telephone-order merchandise. However, because these categories probably included some complaints about the timeliness of fulfillments or refunds, they are pertinent and of interest to us. We accordingly invite state or other consumer protection or mediation agencies to provide detailed evidence of such consumer complaints.

[7] Barry J. Cutler, Esq. ("Cutler"), representing unnamed direct marketers (ANPR Comment 3).

small, feel the basis of the Mail Order Rule is sound business practice that enhances the growth and development of mail order business. . . ." [9]

[15] Staff also has collected published information concerning the direct marketing industry and its size to provide background data. This information is being placed in the rulemaking record. Based upon this information and the results of the ORC survey, staff estimates that nearly a third of direct marketing consumer sales of merchandise are now placed by telephone and paid for by credit card. Staff believes that telephone order sales of merchandise to consumers in 1987 totalled between $11 billion and $12.3 billion, while mail order sales totalled between $21 billion and $23.5 billion. Based on this information, staff also believes that these figures can be multiplied by a factor of as much as five to obtain estimates of business-to-business sales of telephone order merchandise.[9]

[16] Upon consideration of the comments and other information obtained by the staff for placement in the rulemaking record, the Commission has determined to issue a Notice of Proposed Rulemaking ("NPR") to commence a proceeding to expand the Rule to cover telephone order merchandise.

Extending the Rule to Other Ordering Means

[17] Twelve of the comments addressed the question of extending the Rule to merchandise ordered by telephone or any other means. Of these comments, seven favored extending the Rule to other means of ordering on the grounds that the Rule governs unfair and deceptive acts with respect to the timely shipment or refund of prepaid merchandise, and the means by which the merchandise is ordered is immaterial to the deceptive acts or practices addressed by the Rule.[10]

[18] Five comments opposed extending the Rule to other ordering technologies on the grounds that the Commission has no basis for assessing either the need for expanding the Rule to include undeveloped marketing technologies, or for assessing the impact of such an expanded Rule.[11]

[19] DMA, while opposing the extension of the Rule to forms of ordering other than the telephone, points out that the extension of the Rule to telephone-order merchandise will necessarily comprise a number of new technologies as they develop. DMA argues that merchandise ordered by any new technology that directly or indirectly involves the use of the telephone by definition will be telephone-order merchandise covered by the extended rule (ANPR Comment 1, p. 2). For example, computer shopping may involve the telephone because the consumer's in-home personal computer may be linked to the merchant's computer by modem and telephone. Arguably the extension of the Rule to telephone-order merchandise would by definition extend it to such computer-ordered merchandise because it was ordered by means that employed the telephone.

[20] Although the Commission agrees that the means by which merchandise is ordered is immaterial to the harm the Rule is meant to remedy, we are unable at this time to assess whether, in the absence of any shipment representation by the merchant, consumer perceptions of shipment time will vary depending on the means used to order merchandise. Accordingly, the Commission has not included the proposal to expand the Rule to cover merchandise in addition to telephone-order merchandise in the NPR. However, the Commission believes that consumer perceptions of shipment time will not vary materially where the telephone is used for ordering, regardless of whether the telephone is activated by, or the language of the sale is that of, human beings, machines, or both. We therefore invite comment on a proposed note to this effect. If the proposed amendment is adopted, this note would be appended to the Rule as "Note 8," and provide that the term "telephone" refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language of the sale is that of, human beings, machines, or both.

Revising the Definition of "Properly Completed Order"

[21] Nine comments addressed the ANPR's proposal that the Commission amend the definition of "properly completed order" in the credit sale context. Such an amendment would treat a credit order as "properly completed" from the time the merchant receives sufficient information to charge the buyer's account, instead of from the time the seller charges the buyer's account, as stated by the existing rule. Although there was some division among these comments, there was no disagreement with the assertion of NCL that the use of credit cards and telemarketing "go hand in hand" (ANPR Comment 24). This comment is supported by the ORC and AT&T surveys, which appear to agree that the preponderant method of payment for telephone order merchandise is by credit card. The importance of credit cards in telephone ordering has led the Commission, in proposing to extend the Rule to telephone-order merchandise, to explore anew the Rule's different treatment of credit and other sales governed by the Rule.

[22] When it adopted the Rule the Commission made it clear that it believed that it would be appropriate to impose the same requirements on credit and other sales. The Commission reasoned that, although consumers who pay in advance are more oppressed with delayed delivery than consumers whose accounts are not charged immediately, all consumers are injured when a seller lacks a reasonable basis for his shipment representations. However, in framing the remedies to correct the unfair or deceptive acts or practices of making unsubstantiated shipment representations and failing to obtain consumer consents to delay, it decided to accept the industry suggestion that credit transactions be treated differently because it felt that it had not provided affected industry sufficient notice of this possible regulatory position.[12]

[23] Six comments opposed the proposed change in the definition, albeit three (Cutler, ARF and NRMA) argued simply that the definition should permit a longer shipment time whenever the consumer's order is part of an application to the merchant for credit. In fact, Cutler implies that there would be no difficulty in changing the definition as proposed in the ANPR were it limited to third-party or bank card credit transactions (ANPR Comment 2, p. 2). Similarly, part (c) of section 17538 of the California Business and Professions Code, which covers mail and telephone-order goods and services, makes this distinction. The statute permits an additional 20 days for shipment in credit transactions involving situations in

[9] Regulatory Flexibility Act Review of the Mail Order Rule, 51 FR 1516, 1517 (Jan. 14, 1986).

[9] The Rule reaches merchandise purchased by mail by businesses. *See*, Statement of Basis and Purpose accompanying the Rule (hereinafter referred to as the "SBP"). 40 FR 51582, 51594 (Nov. 5, 1975).

[10] Comments of Burnett (ANPR Comment 6); Modern (ANPR Comment 7); PaBCP (ANPR Comment 8); Christopher Lee, a consumer (ANPR Comment 11); Andrew Levitt (ANPR Comment 21); NCL (ANPR Comment 24; and MeAG (ANPR Comment 32).

[11] Comments of DMA (ANPR Comment 1); Cutler (ANPR Comment 2); Ellett Brothers ("Ellett"), a gun and ammunition wholesaler (ANPR Comment 5); ARF (ANPR Comment 25); and NRMA (ANPR Comment 26).

[12] *See, SBP*, 40 FR 51582, 51594 (Nov. 5, 1975).

which a credit application accompanies the order (ANPR Comment 9, pp. 1, 5–6).

[24] On the other hand, DMA and Direct Marketing Enterprises ("DME"), a direct marketer (ANPR Comment 3), argued that any credit transaction is potentially more time consuming than other methods of payment. In this regard, DME suggested that a credit order not be treated as "properly completed" until two weeks following its receipt by the merchant (ANPR Comment 3, p. 3). Similarly, DMA argued for a "reasonable" definite additional time. Although it is conceivable that merchants who solicit credit orders need more time to process them than merchants who do not, the suggestion seems counter-intuitive. For example, it appears that the bulk of the sales made by telephone-order merchants are credit sales while the bulk of mail order sales are paid by cash, check or money order. Nevertheless, of those merchants who make express shipment representations when they solicit orders of merchandise, telephone-order merchants generally promise faster shipment than mail order merchants. We believe that, for the most part, they would not make such representations if they lacked a reasonable basis for them. The Commission accordingly welcomes the development of the rulemaking record with respect to the time needed to process credit orders, a matter that is now far from clear.

[25] CVN pointed to additional problems arising from the possible lack of coordination between direct marketers and their marketing agents whereby, under the proposed amendment, the agent might well provide a notification of delay and option to cancel the order after the merchant had already shipped it (ANPR Comment 4, p. 2). Since such problem may exist in non-credit transactions, the implications of the CVN comment are not entirely clear. In any event, the Commission welcomes the development of the rulemaking record in this respect.

[26] Three comments by state consumer protection agencies favor amending the definition of properly completed order, as suggested in the ANPR.[13]

[27] The Commission notes that the results of the ORC survey indicate that consumer perceptions do not appear to vary greatly depending on the method of payment. But consumers who pay by credit card tend to expect faster shipment than consumers who pay by check or money order. While acknowledging that consumers may expect speedier shipment of credit purchases, DMA argues that such an expectation does not justify a requirement that shipment be made within the same time regardless of the method of payment.

[28] Nevertheless, if consumers widely and reasonably perceive that shipment will occur within the same time regardless of how they pay, it would be unfair and deceptive for the merchant to fail to specify a longer shipment time for credit sales if that is the case. However, even if such consumer expectations are widely held and reasonable, they may be incorrect.

[29] In considering these issues and possible remedies, the Commission will consider a definition of "properly completed order" in the credit context that permits the merchant greater flexibility for various credit transactions. For example, as was previously noted, California permits an additional 20 days when the order is accompanied by a credit application to the merchant (ANPR Comment 9, pp. 1, 5–6).

[30] At this time the Commission is not having any conclusions on these issues. The Commission invites factual information on the usual or customary practices and time required for processing credit sales, whether credit is extended by the merchant or a third party. It also invites the development of the record with respect to the capabilities and practices of direct marketers and their agents to coordinate their fulfillment efforts when payment is by credit.

Option Notices: Narrowing the Rebuttable Presumptions

[31] Comments by Cutler (ANPR Comment 2, p. 6), ARF (ANPR Comment 25), and NRMA (ANPR Comment 26, p. 2) suggested that option notices be permitted by telephone. At the time of the adoption of the existing Rule, the Commission stated that it did not wish to "absolutely bar sellers from making use of other means of communication which are consistent with the requirements of the Rule and which can be demonstrated to be of equal or superior efficacy" to providing any notice or means of exercising an option to cancel and obtain a prompt refund by first class mail.[14] Accordingly, sellers may presently use such means. However, §§ 435.1(b)(3) (i) and (ii) create rebuttable presumptions of non-compliance where first class mail is not used. The comments accordingly indirectly relate to whether these rebuttable presumptions should be changed. The Commission welcomes development of the record with respect to whether mechanisms other than those described in §§ 435.1(b)(3) (i) and (ii) for contracting buyers and providing them the means for response can be demonstrated to insure that "buyers are provided with intelligible information and are given a meaningful opportunity to exercise their option to cancel their order or consent to delayed shipment."[15]

Other Issues

[32] Several comments received in response to the ANPR raised issues that extend beyond the amendments to the Rule proposed by the Commission. The Commission notes these comments below and describes why further discussion of them during the rulemaking proceeding is unnecessary.

[33] A comment from the California Council of the Blind argued that the Rule or any amendment to the Rule should explicitly exempt charitable organizations (ANPR Comment 10). Section 4 of the FTC Act limits its operation to any person, partnership or corporation "organized to carry on business for its own profit or that of its members." Organizations excluded from the coverage of the Act are thus "legitimate bona fide eleemosynary institutions . . .." Ohio Christian College et al., 80 F.T.C. 815, 849 (1972). *See also, Community Blook Bank of the Kansas City Area* v. *FTC*, 405 F. 2d 1011 (8th Cir. 1969); National Commission on Egg Nutrition, 88 F.T.C. 89, 175 (1976). Any trade regulation rule authorized by the FTC Act is derivative: it can reach no further than the FTC Act itself.

[34] A comment from Ellett, a wholesale supplier of guns and ammunition, argued that the amendment should reach only consumer transactions (ANPR Comment 5). Upon analysis of the comment, it appears that Ellett may not appreciate that the existing Rule reaches mail order merchandise purchased by businesses. At the time it adopted the Rule the Commission made it clear that * * * businessmen have encountered the same problems as the general public when dealing with distant mail order sellers * * * [T]here is no compelling reason to treat them differently from other members of the consuming public.[16]

[13] PaBCP (ANPR Comment 8, p. 3), MeAG (ANPR Comment 30, p. 1), and NWMaDA (ANPR Comment 32, p. 2).

[14] *SBP*, 40 FR 51582, 51591 (Nov. 5, 1975).

[15] *Id.*

[16] *SBP*, 40 FR 51582, 51594 (Nov. 5, 1975). Staff has consistently publicized the fact that the Rule covers

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Businesses too can be targets of unscrupulous telemarketers.[17] In the absence of any evidence that businesses are not affected, the Commission declines to limit the coverage of the proposed amendment in a way the existing Rule fails to do.

[35] Finally, comments by PaBCP (ANPR Comment 8, p. 1), NCAG (ANPR Comment 31, pp. 1–2), WiAG (ANPR Comment 29, p. 2), and NWMaDA (ANPR Comment 32, p. 1) suggested that the Commission initiate rulemaking to deal with telemarketing fraud generally or support legislative proposals in Congress that would empower state consumer protection agencies to deal with telemarketing fraud by pursuing perpetrators in federal district court actions. They point to the difficulties states encounter in dealing with fraudulent telemarketers that operate only in interstate, not intrastate commerce, or in dealing with telemarketing operations that are quickly relocated to escape state enforcement efforts. As NCAG points out (ANPR Comment 31, p. 1), generally speaking the telemarketing fraud referred to here does not involve shipment failure, but price or quality misrepresentations. Although it is certainly possible, as NCL argues, that some telemarketing fraud may be spotted earlier if shipment dates are not being met (ANPR Comment 24, p. 2), our experience is that such forms of deception or unfairness are difficult to reach by rulemaking.

Section A. Notice of Proposed Rulemaking; The Current Rule; The Proposed Trade Regulation Rule Relating to Mail and Telephone Order Merchandise and Receipt of a Properly Completed Credit Order

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, the provisions of part I, subpart B of the Commission's procedures and rules of practice, 16 CFR 1.7, *et seq.*, and section 553 of subchapter II, chapter 5, title 5 of the U.S. Code (Administrative Procedure), 5 U.S.C. 553, hereby initiates a proceeding to consider whether its Trade Regulation Rule Concerning Mail Order Merchandise (hereinafter cited as "the Rule"), 16 CFR part 435, should be amended to cover merchandise ordered by telephone, and whether the definition of "properly completed order" in the context of credit sales should be amended to refer to the time the merchant receives sufficient information to charge the buyer's account. In the proceeding, the Commission will limit its consideration to these concerns. During the proceeding, all requirements of the Rule which became effective on February 2, 1976, will remain in effect.

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking and neither the Commission nor the Presiding Officer will designate disputed issues.

There are no current requirements in the Rule relating to merchandise ordered by telephone as such. Moreover, the Rule currently defines the term "properly completed order" in the credit context to refer to the time the consumer's account is charged. The proposal would require the addition of references to telephone order merchandise to the current provisions relating to mail order merchandise, and change the definition of "properly completed order" in the credit context, as follows:

1. The proposed amendment would change the title of the Rule to "Mail and Telephone Order Merchandise."

2. In § 435.1 of the Rule, the proposed amendment would refer to mail or telephone order sales in commerce and to merchandise ordered through the mails or by telephone.

3. In § 435.2(b)(1) of the Rule, the proposed amendment would change the definition for receipt of a properly completed order to refer to the time at which the seller receives all the information necessary to charge the buyer's account.

4. Because of the proposed changes, the other sections of the Rule would automatically apply to any merchandise ordered by telephone.

Section B. Section-By-Section Description of Proposed Amendments

[1] As amended, § 435.1 of the Rule would provide that, in connection with either mail or telephone order sales in commerce, it is an unfair method of competition and an unfair or deceptive act or practice for a seller to engage in any of the acts or omissions described in the Rule. Thus both mail order sellers and telephone order sellers would be required to comply with the provisions of the Rule with respect to substantiating any representation with respect to shipment time; providing adequate notification of delay with an option, exercisable at the seller's expense, to cancel the order and obtain a prompt refund, and containing such other information as is required by the Rule; or deeming an order cancelled and providing a prompt refund when appropriate.

[2] As used in the amended Rule, any inbound or outbound use of the telephone to order merchandise would be covered. In interpreting the existing Rule, Commission staff has said that any use of the mails directly or indirectly to complete an order makes it a mail order sale. Similarly, it is the Commission's purpose that any direct or indirect use of the telephone to order merchandise, however the telephone is activated, and whether or not the language of the transaction is that of humans, machines, or both would make an order a telephone order sale.

[3] As with the existing Rule, the proposed Rule would not cover services, only merchandise. The same exemptions applicable to the existing Rule would continue under the proposed Rule. This includes exemptions for certain installments of subscriptions ordered for serial delivery, seeds and growing plants, C.O.D. sales, and transactions governed by the FTC Rule "Use of Negative Option Plans by Sellers in Commerce," 16 CFR part 425. *See*, 16 CFR 435, notes 1–4.

[4] Section 435.1(a)(1) of the proposed Rule would make the solicitation of a mail or telephone order sale without substantiation for any shipment representation, or substantiation for an implicit 30-day shipment representation where no explicit shipment representation is made, an unfair method of competition and an unfair or deceptive act and practice. As with the existing Rule,[18] the Commission is not proposing to make any bright-line determination of how much of what information would constitute substantiation of shipping representations generally. Nor is the Commission proposing to determine the extent and nature of records and other documentary proof that would be adequate to establish the merchant's use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time, and that would rebut the presumption of a lack of a reasonable basis for any shipping representation under § 435.1(a)(4) of the Rule. A legal standard based on the acts of a "reasonable and prudent businessman, acting in good faith," *Pfizer, Inc.*, 81 F.T.C. 23, 64 (1972), is necessarily flexible: the appropriate level of substantiation for any shipping representation will vary depending on the circumstances.

[5] Section 435.2(b)(1) of the proposed Rule would define "receipt of a properly completed order" in the credit sale situation as the time at which the seller receives all information necessary to charge the buyer's account. Thus, the relevant time period would begin to run when sufficient information was received by the seller to charge the buyer's account, whether the seller charges the account or not. As with the existing Rule, in situations in which it develops that the buyer does not qualify for a credit sale, the order would not be deemed "properly completed" until the seller "receives notice that the buyer qualifies for a credit sale." [19]

Section C. Statement of the Commission's Reasons

1. Bases for the Rule and the Amended Rule

[1] A complete discussion of the reasons that led to the existing Rule and the specific rationale for its various remedial provisions is contained in the Statement of Basis and Purpose for the Rule.[20] However, in summary, the Commission promulgated the Rule to address the failure of mail order merchants to have substantiation for (a) the express or implied shipment representations made in their solicitation of mail order sales or in the notices of delay provided to consumers; (b) the failure to explain indefinite shipment delays; (c) the failure to provide an option to cancel and obtain a prompt refund in situations in which the delayed shipment materially changed (without the customer's consent) the terms of the sales contract; and (d) the failure to cancel automatically in multiple delay situations when the consumer did not expressly consent to further delays.

Telephone-order Merchandise

[2] However, as is pointed out by NRMA, at the time the rulemaking record was developed, "the telephone ordering portion of the market was so small as not to warrant its inclusion." ANPR Comment 26, p. 1. Since then the volume of direct marketing conducted by telephone has grown considerably. According to Burnett, the term "mail order" is becoming a misnomer. "Our advertisers quote that well over 70% of their orders are received by phone," it says (ANPR Comment 6, p. 1).

[3] The proposal to amend the Rule to include telephone-order merchandise is based on the supportive comments filed in response to the ANPR [21] and the results of a nationally projectable survey of consumer expectations of and experiences with mail-order and telephone-order merchandise ordered over a six month period. The field work was done from November, 1987 to February, 1988 by ORC, which specializes in samples of this nature. The data was analyzed by Commission staff, and will be placed in the rulemaking record upon publication of this NPR.

[4] The ORC survey asks consumers about their shipment expectations. According to staff, the results support the conclusion that, in the absence of an express shipping representation, consumer perceptions of the speed with which telephone-order merchandise is shipped are not materially different from consumer perceptions of the speed with which mail-order merchandise is shipped. If anything, consumers expect faster shipment of telephone-order merchandise than mail-order merchandise. When consumers reported that shipment representations were made, it appears that telephone-order merchants generally promised faster shipment than mail-order merchants.

[5] According to staff's analysis of the ORC survey, consumer experiences with shipment delays and notices of delay for telephone-order merchandise were similar to consumer experiences with mail-order merchandise. Telephone-order consumers reported non-receipt or delay of merchandise at nearly the same rate as did mail-order consumers. Staff believes that these instances of non-receipt or delay are, when projected to the national population, widespread. The value of the average delayed telephone order considerably exceeded the value of the average delayed mail order.

[6] Staff reports that, in the ORC survey, in situations in which consumers should have been asked to consent to delayed shipments, both mail order and telephone order merchants failed at nearly the same rate to provide adequate notification and cancellation options.

[7] As in the original rulemaking, the Commission infers from consumer reports of delay that in a significant number of transactions merchants lacked a reasonable basis for their express or implied shipment representations. To similar extents, both mail-order merchants and telephone-order merchants appear to fail to have a reasonable basis for their shipment representations. Thus, the bases underlying such a rule would be identical to those underlying the existing Rule.

Properly Completed Order

[8] When the Commission adopted the existing Rule it considered and rejected the Direct Mail/Marketing Association proposal that credit transactions be exempted. The *SBP* stated:

> While the consumer who paid in advance may feel more oppressed when faced with non-delivery or late delivery of merchandise, all consumers who order mail order merchandise are the victims of unfair or deceptive practices when the seller who solicited their orders lacked a reasonable basis for expecting to be able to ship within 30 days of receipt of the orders or within the time stated in the solicitations. * * * Thus the Commission finds that the exclusion of credit transactions would run contrary to the evidence in the record and in addition would seriously dilute and undermine the effectiveness of the Rule.[22]

Because the Commission felt that insufficient advance notice had been given to the public and that the record had not been as fully developed as it might on this point, it chose "to retain the scope of the published revised proposed Rule." [23] The possibility that the Rule may be extended to telephone-order merchandise, which is usually paid for by credit card, has led the Commission to reexamine this determination and to propose the subject change.

[9] The definition of "properly completed order" identifies a rational point in the sales transaction from which to measure the promptness of shipment and compliance with other provisions of the Rule. If the evidence establishes that consumers who pay by credit card expect shipment at least as promptly as consumers who pay by check, the rational point from which to measure the promptness of shipment in credit sales is the time the merchant receives all information necessary to process the order, the same moment chosen by the existing Rule for mail orders paid by check.

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business-to-business mail order sales. *See, e.g.*, A Business Guide to the Federal Trade Commission's Mail Order Rule, GPO: 185–846 (1987), p. 18.

[17] *See*, Comments of CaDCA (ANPR Comment 9, p. 1) and Betty D. Griffin (ANPR Comment 18, p. 1).

[18] *See, SBP*, 40 FR 51562, 51568 (Nov. 5, 1975).

[19] 16 CFR § 435.2(b)(2)(iii).

[20] 40 FR 51582 et seq. (Nov. 5, 1975).

[21] *See*, discussion in the section of this notice titled "Supplementary Information," paragraphs 5–10, *supra*.

[22] *SBP*, 40 FR 51582, 51594 (Nov. 5, 1975). *See also*, *id.*, n. 69 and accompanying text.

[23] *Id.*, n. 148.

[10] According to staff's analysis of the ORC survey, consumer perceptions of shipment time do not vary greatly depending on the method of payment. If consumers widely perceive that shipment will occur within the same time regardless of how they pay, it may be unfair and deceptive for the merchant to fail to specify a longer shipment time for credit sales if that is the case.

[11] If credit-sale consumers reasonably expect at least the same treatment as check-sale consumers, then as a matter of remedial discretion it is entirely appropriate to choose the same moment for measuring compliance in both cases. The Commission accordingly does not agree with the position of DMA that, in order to support this change, the Commission must find a widespread and abusive practice of holding charge orders, i.e., avoiding the shipment and notification requirements of the Rule by not processing charges (ANPR Comment 1, p. 4).

[12] As the *SBP* made clear, although the injury may not be as easily measured in situations in which consumer accounts are not charged as in situations in which they are, credit card buyers are injured when there are unauthorized delays in shipping time. Consumers might lose planned use opportunities or forego other purchase options if they are induced to deal with a merchant who has no reasonable basis for shipping within the time promised. Further, consumers might incur costs associated with learning the status of their orders.[24]

[13] Nevertheless, the comments make clear that it may be difficult for merchants to process large volumes of credit orders as quickly as they process other kinds of orders. For this reason, it may be necessary to provide greater flexibility in credit transactions than the proposed amendment would allow. The Commission accordingly encourages the submission of information and views (particularly factual information relating to the usual or expected time for processing numbers of credit orders) that will assist it to determine whether and how to revise the definition in a manner consistent with consumer expectations but which nevertheless permits the merchant reasonable time to process and ship the order.

2. Alternatives to be Considered in This Proceeding

[1] The Commission invites submission of evidence and the views of interested parties concerning whether or not the Commission should amend the Rule to include telephone-order merchandise. No alternatives are suggested with respect to this proposed amendment.

[2] The Commission also invites the submission of evidence and the views of interested parties concerning whether or not the definition of the term "properly completed order" in the credit context should be changed in the existing Rule. The proposed amendment defines receipt of a properly completed order as the time at which the seller receives all the information necessary to charge the buyer's account. Alternative amendments include: (a) Amend the definition as proposed but only with respect to third party credit transactions, thereby retaining the existing definition for the rest; (b) amend the definition as proposed but add 20 days for orders accompanied by credit applications to the merchant; and (c) amend the definition as proposed but allow the merchant an additional two weeks or some other specific reasonable time to ship.

[3] After considering these and all other alternatives proposed during the rulemaking proceeding, the Commission will determine on the basis of the record developed whether or not it would be appropriate to amend the Rule.

Section D. Regulatory Analysis and Regulatory Flexibilty Act Requirements

[1] Under section 22 of the FTC Act,[25] the Commission must issue a preliminary regulatory analysis when it publishes the NPR for a trade regulation rule. The Commission does not have to issue a preliminary regulatory analysis in an amendment proceeding unless the Commission: [26]

1. Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more;

2. Estimates that the amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

3. otherwise determines that such amendment will have a significant impact upon persons subject to regulation under the amendment and upon consumers.

[2] Under the Regulatory Flexibility Act,[27] at the time the Commission issues the NPR, the Commission must prepare and make available for public comment an initial regulatory flexibility analysis, describing the impact of the proposed rule on small entities;[28] or the Chairman must certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[29] The Commission has considered all the comments in response to the ANPR, and survey and other information mentioned elsewhere in this notice, and particularly the following information, in determining that an initial regulatory flexibility analysis is unnecessary:

[3] According to staff the results of the ORC survey indicate that, in general, telephone order merchants tend to promise faster shipment than mail order merchants. It seems appropriate to the Commission to assume that telephone-order merchants have the capacity to fulfill orders faster than mail order merchants if that is what they generally represent to consumers when they solicit orders. However, we are encouraging the development of the rulemaking record in this regard.

[4] CVN Companies, Inc., a company that provides sales solicitation services for the telemarketing industry, stated that many telemarketers use the same fulfillment and backorder procedures whether an order is received by mail or telephone (ANPR Comment 4, p. 1). Additionally, CVN points out that most companies have procedures in place to keep customers informed on the status of their orders as a matter of customer service and satisfaction, not because of government regulation (*Id.*, p. 2).

[5] CaDCA commented that when the state of California amended its mail order statute in 1986 to include merchandise and services ordered by telephone, there was no apparent "change in the cost or price of goods or services used by consumers or businesses as a result of the amendments" (ANPR Comment 9, p. 2).

[6] The Damans 1983 survey of small and larger mail order firms concluded as follows:

(1) "[T]otal costs incurred by most small mail order firms for complying [with the Rule] were not viewed as being high, with 75% having total costs under $500;"

(2) [T]otal compliance costs for large mail order businesses are higher than they are for small businesses, however, sales are also higher;" (3) "Most mail order business[es,] small and large, are not opposed to the Mail Order Rule;" and, (4) "Most mail order firms, large and small, feel the basis of the Mail Order Rule is sound business practice that enhances the growth and development of mail order business . . ." [30]

[7] Several industry comments suggested that any amendment to the definition of a "properly completed order" for credit sales should permit more fulfillment time for some or all credit sales than for other prepaid sales. However, none of the comments presented evidence of the need for more time or the costs to industry if such time is not provided. Elsewhere in this NPR we have invited the development of the rulemaking record on this point.

[8] Based on the available information, it appears that neither the expansion of the Rule's coverage to telephone-order merchandise nor the amendment of the definition of "properly completed order" in credit sales should materially affect the direct marketing industry. For these reasons, the Commission does not believe that the proposed amendments will have an annual effect on the national economy of $100,000,000 or more. Similarly, the Commission does not believe that the proposed extension of the Rule to telephone-order merchandise will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments. Finally, the Commission believes that the proposed amendments will not have a significant negative impact upon persons subject to regulation under the amendment, or upon consumers.

[9] Similarly, for the same reasons, the Commission believes that the proposed amendments should not, if promulgated, have a significant economic impact on a substantial number of small entities.

[10] Consequently, the Commission has decided that it does not have to issue a preliminary regulatory analysis or initial regulatory flexibility analysis in connection with the publication of the NPR in this amendment proceeding. The Chairman's Certificate of No Effect under the Regulatory Flexibility Act follows this notice. The public is invited to comment on this determination.

[24] Under the existing Rule, the seller bears the costs of informing buyers of the status of their orders.

[25] 15 U.S.C. 57b–3.

[26] 15 U.S.C. 57b–3(a)(1).

[27] 5 U.S.C. § 601, *et seq.*

[28] 5 U.S.C. § 603. "Small entity" is defined under the Small Business Size Standards, 13 CFR part 121, promulgated by the Small Business Administration. Under the current version of this regulation, mail order houses with annual receipts less than $12.5 million are small entities.

[29] 5 U.S.C. 605.

[30] *Regulatory Flexibility Act Review of the Mail Order Rule*, 51 FR 1516, 1517 (Jan. 14, 1986).

Section E. Invitation To Comment

All interested persons are hereby notified that they may submit data, views, or arguments on any issue of fact, law or policy bearing upon the proposed extension of the Rule to telephone-order merchandise and the amendment of the definition of a "properly completed order" in credit sales. Such comments may be presented either in writing or orally. Written comments will be accepted until January 29, 1990 and should be addressed to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202–326–3642. To assure prompt consideration, comments should be identified as "Notice of Proposed Rulemaking—Amendment of the Mail Order Merchandise Rule: Comment." Please furnish five copies of all comments when feasible and not burdensome. (Instructions for persons wishing to present their views orally are found in sections G and H of this notice.)

While the Commission welcomes comments on any issues bearing upon the proposed Rule's telephone-order merchandise requirements and the definition of "properly completed order" in credit sales, questions on which the Commission particularly desires comment are listed in section F, below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the Rule being discussed. Comments should include reasons and data for the position. Comments opposing either the extension of the Rule to telephone order merchandise or the proposed definition of "properly completed order" for credit sales should, if possible, suggest any specific alternatives. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed Rule's requirements. Comments should include a full discussion of all the relevant facts and be based directly on first-hand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rule.

Section F. General Questions and Issues

Set forth below is a list of specific questions and issues upon which the Commission invites comment and testimony. The list of questions is not intended to be exclusive, nor is it meant as a list of "disputed issues of material fact that are necessary to resolve." Any right to cross-examine or submit rebuttal evidence will be determined with reference to the criteria set forth in the Commission's Rules of Practice. Based upon the rulemaking record, the Commission retains its authority to promulgate a final rule containing requirements which differ from those proposed in ways suggested by these questions.

1. In what ways and to what extent are consumer experiences with untimely shipment, notice of delay and refund alike or different for mail order and telephone order merchandise?

2. In the absence of express shipment representations, in what ways and to what extent are consumer expectations with respect to shipment time alike or different for mail order and telephone order merchandise? Is there any difference in such perceptions depending on whether the merchandise is paid on credit or by credit card instead of cash, check or money order? Is there any difference in perceptions depending on whether the order is accompanied by an initial application for credit?

3. What are the usual or customary practices and times required for processing credit sales by the merchant? Does the time required vary depending on the source of credit and whether the order is accompanied by an application for credit? What other variables may affect the time necessary for processing credit sales?

4. Aside from the means referenced by § 435.1(b)(3) (i) and (ii) of the present Rule, what mechanisms for contacting consumers and providing them the means for response can be demonstrated to insure that they are provided with intelligible information and are given meaningful opportunities to exercise their options to cancel or consent to delayed shipment?

5. What would the costs, benefits, or other effects be of: (a) Amending the Rule to include telephone order merchandise; (b) redefining the term "properly completed order" in the context of a credit sale as proposed; and (c) adopting any of the alternative amendments to the definition of "properly completed order" discussed in this NPR?

6. What would the costs be for small entities [31] of: (a) amending the Rule to include telephone order merchandise; (b) redefining the term "properly completed order" in the context of a credit sale as proposed; and (c) any of the alternative amendments to the definition of "properly completed order" discussed in this NPR?

[31] I.e., mail order houses with annual receipts less than $12.5 million are small entities. *See supra*, n. [28].

7. What would the effects be on industry competition of any of the proposed amendments to the Rule discussed in this NPR?

Section G. Public Hearings

Public hearings will commence on March 28, 1990 at 9:30 a.m. in Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Persons desiring to present their views orally at the hearings are encouraged to advise the Presiding Officer, as soon as possible, and in any event no later than the time for filing the advance notice of oral testimony, as provided in section H, 1., below. The Presiding Officer appointed for this proceeding shall have all powers prescribed in 16 CFR 1.13(c), subject to any limitations described in this notice.

Section H. Instructions to Witnesses

1. Advance Notice

If you wish to testify at the hearings, you must notify the Presiding Officer of your desire to appear and file with him your complete, word-for-word statement no later than February 26, 1990. This advance notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare. Any cross-examination that is permitted may cover any of your written testimony, which will be entered into the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement or you may deliver a short summary of the most important aspects of the statement within time limits to be set by the Presiding Officer. As a general rule, your oral summary should not exceed ten minutes.

Prospective witnesses are advised that they may be subject to questioning by designated group representatives of interested parties and by members of the Commission's staff. Such questioning will be conducted subject to the discretion and control of the Presiding Officer and within such time limitations as he may impose. In the alternative, the Presiding Officer may conduct such examination or may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised and the testimony delivered by each witness.

2. Use of Exhibits

Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period for submission of written comments so they can be studied by other interested persons. If those documents are unavailable to you during this period, you must file them as soon as possible thereafter and not later than the deadline for filing your advance notice. Mark each of the documents with your name, and number then in sequence (*e.g.*, Jones Exhibit 1). The Presiding Officer has the power to refuse to accept for the public record any hearing exhibits that you have not furnished by the deadline.

3. Expert Witnesses

If you are going to testify as an expert witness, you must attach to your statement a current *curriculum vitae*, biographical sketch, or resume or summary of your professional background; a complete bibliography of your publications; and a summary statement of the area(s) in which you consider yourself expert. You should include in footnotes or appendices documentation for the opinions and conclusions you express. If your testimony is based upon or chiefly concerned with one or more major research studies, a copy of the report of each should be appended as an exhibit to your statement. Apart from such major research studies, you may cite generally publicly available published works in footnotes. Unpublished works or works published in publications that are not widely available should be attached to your statement as exhibits. You should also attach, as an exhibit to your statement, a complete translation of any foreign language work relied upon in your statement.

4. Results of Surveys and Other Research Studies

If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits the following:

(a) A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

(b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all versions of the questionnaire, protocol, form for interview report, or any other data collection instrument used in conducting the survey or study.

(d) A description of the methodology used in conducting the survey or other research study including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the completed protocols, questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with computer tapes that were used to conduct analyses, should be made available (with appropriate explanatory data) upon request by the Presiding Officer. The Presiding Officer will then be in a position to permit their use by the interested persons or their counsel.

5. Identification, Number of Copies, and Inspection

To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1–4 above should be identified as "Notice of Proposed Rulemaking—Amendment of the Mail Order Merchandise Trade Regulation Rule: Prepared Statement" ("and Exhibits," if appropriate), and submitted in five copies when feasible and not burdensome.

6. Reasons for Requirement

The foregoing requirements are necessary to permit the orderly scheduling of your appearance(s) and that of other witnesses. As well, other interested parties must have your expected testimony and supporting documents for study before the hearing so they can decide whether to question you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer has the power to refuse to let you testify.

7. General Procedures

These hearings will be informal and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You also are not required to respond to any questions outside the area of your written statement. However, if such questions are permitted, you may respond if you believe you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of the interested groups for full and true disclosure, and the number and nature of the factual issues discussed. The Presiding Officer further has the right to limit the number of witnesses to be heard if the orderly conduct of the hearing so requires.

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship can be demonstrated

Section I. Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses, you must notify the Presiding Officer by January 12, 1990, of your position with respect to the proposed rulemaking proceeding. Your notification must be in sufficient detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the general questions and issues provided in Section F of this notice. The Presiding Officer may require the submission of additional information if your notification is inadequate. If you fail to file an adequate notification in sufficient detail, you may be denied the opportunity to cross-examine witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If they are unable to agree, the Presiding Officer may select a representative for each group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time. Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated.

Section J. Post-Hearing Procedures

You will be afforded 45 days after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comments rather than rebuttal. The 45-day rebuttal period is intended to include the time consumed in securing a complete transcript.

Not later than 120 days after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's recommended decision based upon his findings and conclusions as to all relevant and material evidence shall be released not later than 60 days after publication of the staff recommendations. Post-record comments, as described in § 1.13(b) of the Rules of Practice, shall be submitted not later than 60 days after the submission of the Presiding Officer's recommended decision.

Section K. Rulemaking Record

The Commission urges all interested persons to consider the relevance of any material before submitting it for the rulemaking record. While the Commission encourages comments on the proposed amendments to the Rule, the submission of material that is not generally probative of the issues posed by the rulemaking proceeding merely overburdens the rulemaking record and decreases its usefulness, both to those reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instruction. The rulemaking record, as defined in 16 CFR 1.18(a), will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC.

List of Subjects in 16 CFR Part 435

Mail order merchandise, Telephone order merchandise, Trade practices.

In consideration of the foregoing, the Commission proposes to amend title 16, chapter I, subchapter D of the Code of Federal Regulations, as follows:

PART 435—MAIL ORDER MERCHANDISE

1. The authority for part 435 continues to read as follows:

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41, *et seq.*

2. The title of the Rule is revised to read as follows:

PART 435—MAIL AND TELEPHONE ORDER MERCHANDISE

3. Section 435.1 introductory text and paragraph (a)(1) is revised to read as follows:

§ 435.1 The rule.

In connection with mail or telephone order sales in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act and practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that he will be able to ship any ordered merchandise to the buyer:

(i) Within that time clearly and conspicuously stated in any such solicitation, or

(ii) If no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer.

* * * * *

4. Section 435.2(b)(1) is revised to read as follows:

§ 435.2 Definitions.

* * * * *

(b) "Receipt of a properly completed order" shall mean:

(1) Where there is a credit sale and the buyer has not previously tendered partial payment, the time at which the seller receives all the information necessary to charge the buyer's account;

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–27904 Filed 11–24–89; 9:35 am]

BILLING CODE 6750–01–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

Control, Custody, Care, Treatment and Instruction of Inmates; Release of Inmates Prior to a Weekend or Legal Holiday

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on release of inmates prior to a weekend or legal holiday. The final amendment places into rule language the authority for releasing an inmate on the last preceding weekday before a Saturday, Sunday, or legal holiday for inmates committed under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. This amendment is necessitated by a change in the applicable law.

EFFECTIVE DATE: November 28, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on release of inmates prior to a weekend or legal holiday. A final rule on this subject was published in the **Federal Register** June 29, 1979 (at 44 FR 38254 et seq.). The present amendment places into rule language the release authority for inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. Since the present amendment is necessitated by a change in the applicable law, the Bureau finds good cause under 5 U.S.C. 553(d) to make this amendment effective immediately, without notice of proposed rulemaking, opportunity for public comment, or delay in the effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

The title of 28 CFR 571, Subpart D is changed to "Release of Inmates Prior to a Weekend or Legal Holiday." The title of § 571.30 is changed to "Purpose and scope." Former paragraph (a) of § 571.30 becomes introductory text to the section, and the reference in former paragraph (a) to 18 U.S.C. 4163 is deleted because this reference is now located in new paragraph (a). Former paragraph (b) is also incorporated into new paragraph (a). New paragraph (b) discusses the release authority for inmates convicted of offenses occurring on or after November 1, 1987, and who were sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984.

List of Subjects in 28 CFR Part 571

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 571 in subchapter D of 28 CFR chapter V is amended as set forth below.

Dated: November 17, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. In 28 CFR part 571, subpart D, consisting of § 571.30, is revised to read as follows:

Subpart D—Release of Inmates Prior to a Weekend or Legal Holiday

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 and 4201–4218 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 571.30 Purpose and scope.

The Bureau of Prisons may release an inmate whose release date falls on a Saturday, Sunday, or legal holiday, on the last preceding weekday unless it is necessary to detain the inmate for another jurisdiction seeking custody under a detainer, or for any other reason which might indicate that the inmate should not be released until the inmate's scheduled release date.

(a) The release authority for inmates convicted of offenses occurring prior to November 1, 1987 is pursuant to 18 U.S.C. 4163. The number of days used under 18 U.S.C. 4163 may not be added to the number of days remaining to be served to release an inmate "as if * * * on parole" (18 U.S.C. 4164) who would otherwise have been released by expiration of sentence.

(b) The release authority for inmates sentenced under the provisions of the Sentencing Reform Act of the Comprehensive Crime Control Act of 1984 for offenses committed on/or after November 1, 1987 is pursuant to 18 U.S.C. 3624(a).

[FR Doc. 89–27867 Filed 11–27–89; 8:45 am]

BILLING CODE 4410–05–M

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federal register

Wednesday
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federal register

Wednesday
November 29, 1989

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Presidential Documents

Title 3—

The President

Proclamation 6078 of November 27, 1989

National Alzheimer's Disease Month, 1989 and 1990

By the President of the United States of America

A Proclamation

At medical facilities and research institutions across the country, dedicated scientists are piecing together the puzzle of Alzheimer's disease. Alzheimer's disease is a living nightmare for the millions of older Americans who suffer from it. The disease robs its victims of their memory and judgment, their health, their independence, and, eventually, their lives.

Research has taught us many things about Alzheimer's disease that we did not know just one decade ago. More physicians now recognize the illness, and they know how to treat some of the problems it causes. Unfortunately, however, physicians and scientists do not yet know how to cure the disease or stop it from progressing. We do know that continued research is vital.

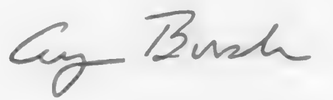
At the forefront of scientific research on Alzheimer's disease is the Federal Government's National Institute on Aging. The National Institute on Aging, along with other government agencies and private voluntary organizations such as the Alzheimer's Disease and Related Disorders Association, is working to advance our knowledge about this tragic disease.

Scientific research has yielded a number of promising leads, and it holds the ultimate hope for the victims of Alzheimer's disease and their families. Nevertheless, until a cure is found, there is much that can be done to improve care and alleviate the emotional stress this disease imposes on families. The knowledge that has been acquired about effective treatment programs and care strategies needs to be shared with both professional and family caregivers. Continued efforts must be made to coordinate the many local, State, and Federal programs involving Alzheimer's disease and to get needed information into the hands of health and social service professionals who serve Alzheimer patients and their families. Only through a concerted effort can we ensure that the victims of this disease receive the highest quality care.

To enhance public awareness of Alzheimer's disease, the Congress, by Senate Joint Resolution 16, has designated the months of November 1989 and 1990 as "National Alzheimer's Disease Month" and has authorized and requested the President to issue a proclamation in observance of these months.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the months of November 1989 and 1990 as National Alzheimer's Disease Month and call upon the people of the United States to observe these months with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-28108
Filed 11-27-89; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6079 of November 27, 1989

National Home Care Week, 1989 and 1990

By the President of the United States of America

A Proclamation

Throughout the United States, dedicated professionals and volunteers working in more than 12,000 home health care agencies are bringing needed medical services to millions of ill and disabled Americans. This week, as we recognize these hardworking men and women for their efforts, we also acknowledge the important role that home care plays in our Nation's health care system.

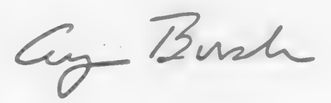
When appropriate, home care is more than an effective and economical alternative to institutionalization. For the patient, it can bring the added comfort and reassurance of a warm, familiar environment. Home care not only emphasizes the dignity and independence of the patient, but also alleviates the suffering caused by separation from loved ones. In the home, a patient is able to obtain treatment while enjoying the love and support of his or her family.

Working in concert with government agencies and concerned organizations, home health care providers give millions of ill and disabled Americans a welcome alternative to hospitalization and other institutionalized forms of care. During National Home Care Week, we recognize the benefits of this important partnership.

To increase public awareness and support for our Nation's home health care service providers, the Congress, by Senate Joint Resolution 184, has designated the weeks beginning November 26, 1989, and November 25, 1990, as "National Home Care Week" and has requested the President to issue a proclamation calling for appropriate observances of these weeks.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 26 through December 2, 1989, and November 25 through December 1, 1990, as National Home Care Week. I urge all concerned government officials, health care and social service providers, private voluntary organizations, insurance companies, and the American public to observe these weeks with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord, nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-28109
Filed 11-27-89; 2:33 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432 and 540

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments invited.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to implement the Performance Management and Recognition System Reauthorization Act of 1989. This Act extends the Performance Management and Recognition System (PMRS) from October 1, 1989, to March 31, 1991. These regulations modify the formula used to determine merit increases and establish new procedures for dealing with employees who are performing below the fully successful level, as authorized by the Act.

DATES: *Effective Date:* October 1, 1989.

Comment date: To be considered, comments must be received by January 29, 1990.

ADDRESSES: Send or deliver written comments to: Barbara L. Fiss, Assistant Director for Pay and Performance; Personnel Systems and Oversight Group; room 7H30; Office of Personnel Management; 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Janice B. Smith (202) 632–0720, concerning questions about the changes in parts 430 and 540; Sharon C. Snellings, (202) 653–6551, concerning changes in part 432.

SUPPLEMENTARY INFORMATION: In addition to extending the PMRS to March 31, 1991, the Act modifies the formula used to determine merit increases and establishes new procedures for dealing with employees who are performing below the fully successful level.

The change in the merit increase determination procedures addresses the procedural problem that caused a lack of parity between PMRS merit increases and General Schedule within-grade increases for employees rated fully successful in the middle third of the pay range. The new formula divides the PMRS pay range into three parts. Merit increases will be determined based on the employee's performance rating and his/her basic pay compared to specific reference rates in the pay range (i.e., position in the range). The first and second reference rates in the new formula equal the dollar amounts of the fourth and seventh steps of a General Schedule grade or special rate range. All agencies must use the new formula in making their merit increase determinations for Fiscal Years 1990 and 1991, effective as of the beginning of the first applicable pay period commencing on or after October 1, 1989.

The Act also requires agencies to provide a performance improvement plan (PIP) to each employee whose performance is determined to be below fully successful. This requirement will take effect on October 1, 1989, and applies to any performance determination (under 4302a(b)(4) of title 5, U.S.C.) given on or after that date. Further, the Act provides that employees covered by the Performance Management and Recognition System may be reassigned, reduced in grade or removed if they fail to attain at least fully successful performance once they have been afforded a performance improvement plan. Accordingly, part 432 regulations are being revised to incorporate these changes concerning employees covered by the PMRS.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because Congress has provided that Public Law 101–103 is effective October 1, 1989, and accordingly, these regulations must go into effect on that date.

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. These regulations are being made effective immediately because agencies must have rules in effect to implement the Performance Management and Recognition System, under which certain actions are required to be taken on the first day of the first pay period in October 1989.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects

5 CFR Parts 430 and 432

Administrative practice and procedure; Government employees.

5 CFR Part 540

Government employees; Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the Office of Personnel Management proposes to amend title 5, chapter I, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation in part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53 and 54.

2. In § 430.405, paragraphs (i) and (j) are revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(i) Each appraisal system shall provide for a performance improvement plan (PIP) for each employee whose performance has been rated below fully successful on one or more critical elements. The PIP must:

(1) Notify the employee of the critical element(s) in which he/she is performing below the fully successful level;

(2) Describe the types of improvements that the employee must

demonstrate to attain the fully successful level of performance;

(3) Offer assistance to the employee in improving to the fully successful level; and

(4) Provide the employee a reasonable period of time to attain that level.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter,

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee who fails to attain at least the fully successful level but only after affording the employee a reasonable period to improve performance to the fully successful level or higher on the critical element(s) rated below fully successful, as required in 5 U.S.C. 4302a(b)(6).

(2) Once the employee has been afforded the reasonable period referred to in paragraph (j)(1) of this section, the agency may reassign, reduce in grade or remove the employee as provided by 5 U.S.C. 4302a(b) if the employee fails to attain fully successful performance.

* * * * *

4. The title of part 432 is revised to read as follows:

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

4a. The authority citation in part 432 is revised to read as follows:

Authority: 5 U.S.C. 4302a, 4303, and 4305.

5. Section 432.101 is revised to read as follows:

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the Performance Management and Recognition System (PMRS) based solely on performance below the fully successful level and the reduction in grade and removal of other employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance and 5 U.S.C. 4302a(b) which covers actions to reduce in grade or remove employees covered by the Performance Management and Recognition System for performance below the fully successful level. (The provisions of 5 U.S.C. 7501 *et. seq.*, may also be used to reduce in grade or remove employees. See part 752 of this chapter.)

6. In § 432.102, paragraph (a) is revised to read as follows:

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of:

(1) Employees, covered by the PMRS, based on performance below the fully successful level; and

(2) Employees, not covered by the PMRS, based on unacceptable performance.

* * * * *

7. Section 432.103 is amended by revising paragraph (a), removing paragraph (i), redesignating paragraphs (e) through (h) as (f) through (i), and adding new paragraph (e) to read as follows:

§ 432.103 Definitions.

For purposes of this part—

(a) "Acceptable performance" means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue where the employee is not covered by the Performance Management and Recognition System (PMRS). For those employees covered by the PMRS, acceptable performance is performance determined to be at the fully successful level or above in the critical element(s) at issue.

* * * * *

(e) "Performance improvement plan" means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance in his or her position; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

* * * * *

8. Section 432.104 is revised to read as follows:

§ 432.104 Addressing unacceptable performance by non-PMRS employees.

At any time during the performance appraisal cycle that a non-PMRS employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency may also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving acceptable performance.

§§ 432.108–432.109 [Redesignated from §§ 432.106–432.107]

§ 432.106 [Redesignated from § 432.105 and Amended]

9. Sections 432.106 and 432.107 are redesignated as § 432.108 and § 432.109; § 432.105 is redesignated as § 432.106, the section heading is revised and paragraph (b) is amended by revising the words "appeal and grievance" in the last sentence to read "appeal and/or grievance"; and new §§ 432.105 and 432.107 are added to read as follows:

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance in his or her position; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency may also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

§ 432.106 Proposing and taking action based on unacceptable performance for non-PMRS employees.

* * * * *

§ 431.107 Proposing and taking action based on performance below the fully successful level for PMRS employees.

(a) *Proposing action based on performance below the fully successful level.* (1) Once an employee has been afforded an opportunity to improve performance to the fully successful level through a performance improvement plan pursuant to § 432.105, an agency may propose a reduction in grade or removal action if the employee's performance during or following the performance improvement plan is below fully successful in one or more of the critical elements for which the employee was afforded an opportunity to improve through a performance improvement plan.

(2) If an employee has performed at the fully successful level for one year from the beginning of a performance improvement plan (in the critical element(s) for which the employee was afforded a performance improvement plan) and the employee's performance again is determined to be below fully successful, the agency shall afford the employee an additional performance improvement plan before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of below fully successful performance which occur within a one-year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30-day advance notice of the proposed action that identifies both the specific instances of below fully successful performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of below fully successful performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her deficient performance to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification that the employee's performance is below fully successful and the establishment of the performance improvement plan under § 432.105. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.107(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for performance below the fully successful level may be based only on those instances of performance that occurred during the one year period on the date of issuance of the advance notice of proposed action under § 432.107(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of below fully successful performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

10. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. chapters 43 and 54.

§ 540.102 [Amended]

11. In the definition of "Reference amount" in § 540.102 the term

"Reference amount" in the first sentence is revised to read "First reference rate", and the term "reference amount" in the second sentence is revised to read "first reference rate" and place the new term in alphabetical order.

12. In § 540.102 the definition of "Second reference rate" is added to read as follows:

§ 540.102 Definitions.

* * * * *

Second reference rate means the sum of the minimum rate of the grade and two-thirds of the difference between the maximum and the minimum rate for that grade. In the General Schedule, the second reference rate equals the doliar amount of the seventh step of a General schedule grade, or in the case of a special rate range established under 5 U.S.C. 5303 and part 530 of this chapter, the seventh step of such special rate range.

* * * * *

13. In § 540.107, the table in paragraph (b) is revised to read as follows:

§ 540.107 Merit increases.

* * * * *

(b) * * *

MERIT INCREASES FOR EACH PERFORMANCE RATING LEVEL

Performance rating	Amount received if rate of basic pay does not equal or exceed the first reference rate	Amount received if rate of basic pay equals or exceeds the first reference rate but does not equal or exceed the second reference rate	Amount received if rate of basic pay equals or exceeds the second reference rate
Level 5	1 merit increase	1 merit increase	1 merit increase.
Level 4	1 merit increase	⅔ merit increase	⅔ merit increase.
Level 3 (fully successful)	1 merit increase	⅓ merit increase	⅓ merit increase.

* * * * *

[FR Doc. 89-27878 Filed 11-28-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-102]

19 CFR Part 101

Customs Regulations Amendment Relating to the Designation of Tucson, AZ, as Port of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing the Customs field organization by changing the designation of Tucson, Arizona, from a Customs station to a port of entry. Adoption of this proposal alters the relationship of the Customs operations at Tucson from that of a station under the supervision of a port to that of a port in the Nogales District. This redesignation is part of the efforts of Customs to improve the efficiency of its field operations.

EFFECTIVE DATE: November 29, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of its ongoing effort to improve efficiency and service to the public, the Customs Service continually reviews its field service organization to assure that it best utilizes its resources. This review has identified the current relationship of the port of entry of Nogales and the Customs station of Tucson as one which is in need of modification.

While the status of Tucson as a Customs station was appropriate at the time it was established in 1963 (T.D. 55986), Tucson currently meets or exceeds the minimum criteria for the level of activity necessary for eligibility as a port of entry as identified in T.D. 82-371, amended by T.D. 86-14 and T.D. 87-65.

Comments

Notice of the proposed amendment was published in the **Federal Register** on May 8, 1989 (54 FR 19577). The three comments received favored Tucson, Arizona, becoming a port of entry.

Port Limits

The limits of the port of entry of Tucson, Arizona are: The city of Tucson, Arizona, including the Tucson International Airport.

Executive Order 12291 and Regulatory Flexibility Act

Because this document is related to agency management and organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by the E.O. are not required. Although Customs solicited public comments, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553(a)(2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

Delayed Effective Date

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), a substantive rule is to be published not less than 30 days prior to its effective date. The statute provides, however, that this requirement may be waived where the agency finds good cause and publishes such finding with the rule. 5 U.S.C. 553(d)(3). Good cause exists for not delaying the effective date inasmuch as the establishment of a port in place of a station confers an economic benefit to the public.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 6, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. In § 101.3(b), in the Southwest Region, opposite "Nogales" under the heading "Name and Headquarters", insert "Tucson, including the territory described in T.D 89-102", in alphabetical order, under the column headed "Ports of Entry".

§ 101.4 [Amended]

3. In § 101.4(c), remove "Nogales, Ariz." under the listing of districts, "Tucson," in the column listing Customs stations, and "Nogales" under ports having supervision.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: November 21, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-27876 Filed 11-28-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 88F-0175]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food. This action is in response to a petition filed by Mitsui Petrochemical Industries, Ltd.

DATES: Effective November 29, 1989; written objections and requests for a hearing by December 29, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 9, 1988 (53 FR 21728), FDA announced that a food additive petition (FAP 8B4081) has been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2-5, Kasumigaseki 3-Chome, Chiyoda-KU, Tokyo 100, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that § 177.1520 should be amended to provide for an increase in the weight-percent of butene-1 in propylene/butene-1 copolymers for use in contact with food as set forth below.

FDA has also made editorial changes appropriate to the changes made in this section. In § 177.1520(c), item 3.2 has been redesignated as item 3.2a and revised, and a new item 3.2b has been added to set forth the specifications for the new propylene/butene-1 copolymer. The text of paragraph (d)(7) has also been revised to facilitate future amendments of § 177.1520 that include melt flow index specifications.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection . Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1520 is amended by redesignating paragraph (a)(3)(i)(*c*) as paragraph (a)(3)(i)(*c*)(*1*) and by adding new paragraph (a)(3)(i)(*c*)(*2*); in the table in paragraph (c) by redesignating item 3.2 as item 3.2a and revising it, by adding new item 3.2b; and by revising paragraph (d)(7) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*c*) * * *

(*2*) Olefin basic copolymers manufactured by the catalytic copolymerization of propylene and butene-1 shall contain greater than 15 but not greater than 35 weight percent of polymer units derived from butene-1 with the remainder being propylene.

* * * * *

(c) *Specifications:*

Olefin polymers	Density	Melting point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of polymer) in N-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
• • • • •	•	•	•	•
3.2a Olefin copolymers described in paragraph (a)(3)(i) of this section; except olefin copolymers described in paragraph (a)(3)(i)(c)(2) of this section and listed in item 3.2b of this table for use in articles used for packing or holding food during cooking; except that olefin copolymers containing 89 to 95 percent ethylene with the remainder being 4-methyl-pentene-1 contacting food Types III, IVA, V, VIIA, and IX identified in § 176.170(c) of this chapter, Table 1, shall exceed 0.051 millimeter (mm) (0.002 inch (in)) in thickness when used under conditions of use A and shall not exceed 0.102 mm (0.004 in) in thickness when used under conditions of use B, C, D, E, and H described in § 176.170(c) of this chaper, Table 2.	0.85–1.00		2.6 percent at 50 °C.	Do.
3.2b Olefin copolymers described in paragraph (a)(3)(i)(c)(2) of this section have a melt flow index no greater than 10 grams per 10 minutes as determined by the method described in paragraph (d)(7) of this section, and the thickness of the finished polymer contacting food shall not exceed 0.025 mm (0.001 in). Additionally, optional adjuvants permitted for use in olefin copolymers complying with item 3.2a of this table may be used in the production of this copolymer.				Do.
• • • • •	•	•	•	•

(d) * * *

(7) *Melt flow index.* The melt flow index of olefin polymers described below shall be determined by ASTM method D–1238–82, "Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference in accordance with 5 U.S.C. 552(a). The availability of this incorporation by reference is given in paragraph (d)(1) of this section. The olefin polymers and test conditions and procedures are as follows:

List of polymers	Conditions/ procedures
Olefin copolymers described in paragraph (a)(3)(i)(c)(2) of this section.	Condition L, procedure A.
Olefin copolymers described in paragraph (a)(3)(v) of this section.	Condition E, procedure A.

* * * * *

Dated: November 16, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–27874 Filed 11–28–89; 8:45 am]

BILLING CODE 4160–01–M

MARITIME ADMINISTRATION

46 CFR Part 382

[Docket No. R–107]

RIN 2133–AA43

Bulk and Packaged Preference Cargoes

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule establishes new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry and liquid bulk and packaged preference cargoes on United States commercial cargo vessels. This regulation requires operators to submit data on the operating and capital costs of their vessels. Based on this data, the Maritime Administration (MARAD) will calculate fair and reasonable guideline rates according to the method explained in the **SUPPLEMENTARY INFORMATION** Section of this notice.

DATE: This rule is effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Tel (202) 366–2323.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 U.S.C. 1241(b)), requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, shall be transported on privately owned U.S.-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share to 75 percent on certain others, phased in over three years. Upon request, MARAD provides fair and reasonable guideline rates to shipper agencies. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1).

Until recently, MARAD has used two separate methods for determining guideline rates for bulk cargoes carried by U.S.-flag bulk cargo vessels. For vessels built before 1955, guideline rates were calculated for vessel categories arranged by deadweight tonnage. Since there are only a few such vessels remaining in service, MARAD no longer calculates category rates. MARAD now calculates rates separately for all vessels.

There are no current procedures, except for parcel lots on liner vessels, for calculating guideline rates that are formalized in MARAD regulations, and there is no existing MARAD regulatory requirement that operators participating in the bulk cargo preference trades submit cost data to MARAD on an annual basis. Since accurate and verifiable cost data for all participating vessels are not available, MARAD has been unable to verify some cost data used in calculating guideline rates. For these reasons as well as those stated later in this discussion, MARAD believes there is a need to develop and formalize the guideline rate procedures and to require periodic submission of cost data.

In developing these procedures MARAD was guided by: (1) An opinion

of the Comptroller General (Opinion B–95832, Feb. 17, 1955), issued shortly after enactment of section 901(b), that the term "fair and reasonable rate" did not necessarily mean the going market rate, but "* * * would appear to call for reasonable compensation to the operator, including a fair profit;" and, especially, (2) court decisions which, while upholding MARAD's rate setting authority for preference cargoes, clearly require that MARAD select rates which will allow an operator to earn a reasonable profit or, if not, explain why the language and legislative history of the Act justify the rate methodology chosen (*See e.g., American Maritime Association* v. *United States*, 766 F.2d 545, 559 (D.C. Cir., 1985)). As is more fully explained below, MARAD believes the procedures selected comply with this guidance.

Prior Rulemaking Actions

MARAD published an initial NPRM on August 6, 1985 (50 FR 31735) that contained data submission requirements and a methodology for determining fair and reasonable guideline rates for full shiploads of dry and liquid bulk preference cargoes. That methodology was an averaging technique based on a "least squares regression analysis." MARAD received nine comments and concluded that the use of the "least squares regression analysis" methodology was generally unsatisfactory. Accordingly, MARAD issued a SNPRM on December 17, 1986 (51 FR 45136), that proposed and requested public comment on a cost-based methodology for calculating fair and reasonable guideline rates that would be based on each vessel's actual or constructed costs.

Following the comment period on the SNPRM, MARAD published a second SNPRM for comment on June 28, 1988 (53 FR 24324). This SNPRM was incorrectly designated as RIN number 2133–AA51. It should have been designated as RIN number 2133–AA43. The methodology in the second SNPRM utilized averaged operating costs (except fuel) for competing vessels, by vessel size categories, and constructed capital items based on actual capitalized costs.

Data Submission Requirements

The information that MARAD would have required from the operators for each vessel under the second SNPRM included statistical information on the vessel (e.g., normal operating speed, deadweight tonnage); operating expenses (e.g., wage costs of officers and crews, insurance costs); capital costs (e.g., capitalized costs, interest rates); and port and cargo handling costs (e.g., stevedore costs, canal fees). Such data was to be for the year preceding the current year and was to be submitted no later then April 30 of the current year. This final rule contains essentially the same data submission requirements as in the second SNPRM.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552(b)(4), the requested data submissions have to be considered confidential commercial or financial information not to be disclosed to the public provided certain prerequisites are satisfied. As discussed later, a provision is included in this regulation under which data would be presumed confidential.

Comments

Responses were received from nine commenters with regard to the SNPRM of June 28, 1988. The respondents were American Gulf Shipping (AGS); Coastal Carriers Corp. (CCC); Diversified Marine International (DMI); Falcon Shipping Group (Falcon); Gulf Coast Transit Company (GTC); O'Conner & Hannan, on behalf of the Government of Israel Supply Mission (Israel); Dyer, Ellis, Joseph & Mills, on behalf of Liberty Marine Corporation (Liberty); and Preston, Thorgrimson, Ellis & Holman, on behalf of OMI Corp. (OMI).

As a result of the substantial interest evidenced by the replies to the second SNPRM, MARAD determined that a public hearing was necessary to afford the public the opportunity to clarify various positions regarding controversial sections of the proposed rule. A Notice of Public Hearing was published in the **Federal Register** on August 22, 1988 (53 FR 31870), setting the date of the hearing for September 8, 1988. The meeting was attended by representatives from 13 companies operating self-contained vessels or tug/barge units in the bulk preference trades. Also attending were representatives of four private organizations either representing vessel operators or having an interest in bulk shipping; three liner operators who engage in the bulk preference trades from time-to-time; and the United States Agency for International Development (AID) and the Department of Agriculture (USDA).

American Trading Transportation Company (ATT), Dixie Carriers (Dixie), OSG Bulk Ships, Inc. (OSG), Keystone Shipping (Keystone), and OMI provided written comments in advance of the hearing. AGS, CCC, Coastal Barge Corporation (CBC), DMI, Falcon, GTC, Liberty, OMI, Ocean Transport Company (OTC), and the Transportation Institute (TI) provided written comments after the hearing.

Many of the comments received were similar in nature. Therefore, to facilitate discussion of the comments, they will be discussed by subject matter.

No Requirement for Regulation

Comments in this category basically fall into two groups: (1) Those operators who believed that the current system of rate determination is more accurate and works best; and (2) those who believed that competition in the market is the better regulator and that guideline rates are unnecessary where such competition exists. Some commenters expressed both views. One commenter asserted that, since no one has complained about the present system, the only entity that can be interested in implementing the proposed system of regulations is the Government.

The genesis of the fair and reasonable guideline rate regulation lies in the concerns over rates and costs brought forth during the amendment of the Act in 1970. MARAD began preliminary work on this regulation in the late 1970's. Ultimately, a draft regulation was prepared, and internal review of the regulation within the Department of Transportation began in May of 1983. On June 18, 1985, two years later, the GAO issued a report recommending codification of fair and reasonable rate procedures for liner vessels and verification of cost data collected in general. The GAO report merely added impetus to MARAD's effort to codify guideline rate procedures for bulk cargo vessels and led to a reexamination of the data reporting requirements contained in the bulk regulations under preparation. As noted previously, the regulation was first issued in proposed form on August 6, 1985.

In reviewing the comments presented on this issue, MARAD can find no compelling reason to redirect this regulatory effort from its current course. The need for clear definition of the procedures for calculating guideline rates still exists. As a related matter, MARAD concludes that while there is some rationale to the arguments presented by several commenters that guideline rates are not required when there is substantial competition for cargo, we do not believe that section 901(b), of the Act allows such latitude. The legislative history of section 901(b), as noted in the Comptroller General's

opinion, clearly indicates the rejection of the argument that a rate dictated by market conditions would always be fair and reasonable. The Comptroller General cites the specific removal of the term "market" rate and its replacement with the "fair and reasonable" rate in the construction of the legislation for stating that "fair and reasonable" rates "should not be construed to mean the going market rates as such for the United States-flag commercial vessels."

Rate of Return

Most commenters expressed the general opinion that the rate of return set forth in the proposed regulation is inadequate. All commenters on this subject stated that a rate of return based on a transportation industry index is not sufficient to provide a fair return for bulk shipping ventures. All expressed the view that shipping is a high risk venture and that a correspondingly high rate of return is required in order for an operator to attract sufficient venture capital to meet its needs and remain in business. One tug/barge operator added that because most tug/barge operators are small and financing is difficult to obtain, an adequate return is especially critical to this segment of the industry. Four commenters stated that a rate of return geared to the industry's risk level would be more acceptable than a general average rate based on non-maritime industries. One commenter noted that an average rate of return may or may not be adequate to provide a shipping operator with a fair return in any given year. A number of commenters made specific suggestions as to an adequate rate of return and one indicated that the yield on junk bonds would be appropriate. The specific rates of return suggested ranged from 16.5 percent after taxes to 27 percent.

At the public hearing, an adjustable rate of return was suggested, based on a company's overall performance over a year. This concept was supported by a number of other commenters at the hearing. One commenter visualized the concept as an average target rate of return that would permit swings above and below the overall guideline rate, provided that the company's performance for the year averaged out to the target rate of return. In a similar vein, it has previously been suggested by at least one commenter that prior losses be factored into subsequent guideline calculations. Some comment has also been made that the guideline rate should include both a floor and ceiling rate. Another commenter stated that the rate should be calculated on an annualized basis.

With respect to the general concept of a guideline rate which varies as a result of prior company operations, there is considerable evidence that Congress intended that the guideline be an individual fixture rate which acts as a ceiling and that the Government should take advantage of cyclical swings of below ceiling rates. In oversight hearings on the Cargo Preference Act of 1954 by the House Committee on Merchant Marine and Fisheries (*Administration of Cargo Preference Act*, H.R. Rep. No. 80, 84th Cong. 1st Sess. 18 (1955)), the committee reported that "The Government must be in a position to take advantage of the pendulum of supply and demand when it swings in its direction." In view of this guidance, a ceiling rate would be appropriate, but not a floor or variable rate. The ceiling rate would properly protect the Government from paying excessive freight rates. On the other hand, establishment of either a floor or variable rate would place the Government in a position that would be clearly contrary to Congressional intent.

However, we note that a number of contingency factors have been included in this rule to address the problem of cyclical vessel utilization, both on a seasonal and long-term basis. These include the 300 day operating period for capital cost, the 5 and 10 percent delay factors (as appropriate), the 20 year depreciation period, and the 100 percent working capital allowance. The intent of all these devices is not to guarantee a profit for any operator, but is to give the operators the opportunity to earn a profit on the basis of the efficiency of their individual operations.

Because of considerable interest shown by the comments on what constitutes an adequate rate of return or profit, MARAD reviewed alternative methods of calculating a return on the shipowner's investment. The staff surveyed returns over several years on sales, assets, equity and speculative grade bonds. In this regard, MARAD believes that return based on the owner's investment in its assets is the most appropriate tool to base a rate of return. Since returns based on sales and bond yields do not reflect the acquisition of operating assets, they are not useful. A return on assets also presents certain problems as available indices are based on total assets, not fixed assets, and are thus unusable. A return on the operator's equity remains feasible and reflective of a company's actual investment in its vessels. Accordingly, MARAD will continue to use return on equity as a basis for its return on shipowner's investment.

It is noted that the second SNPRM proposed a rate of return based on a cross section of the rates of return experienced in transportation industries, including maritime shipping. MARAD's analysis of various rates of return in transportation fields indicates that a return based on such a cross section generally reflects the risks inherent in the maritime transportation industry. For this reason, MARAD sees no reason to change its views on the rate of return. However, MARAD concedes that market conditions in any given year could cause upward or downward distortions. To correct this, MARAD will use a five year moving average to assure that the return reflects the rate of return or profit a participant in the transportation industry would expect to attain. During its analysis, MARAD also noted the lack of reliable pretax rate of return indices. Accordingly, the rate of return will be based on an after tax rate.

Operating Period

Another major area of contention is the 335-day operating period proposed by MARAD in determining daily capital costs. Six commenters responded to this issue. Citing numerous examples of situations wherein a vessel would not be profitably employed, each commenter claimed that actual operating experience showed that 335 days is not a realistic operating period. Of the operators quantifying their experience, actual operating days ranged from 270 days to 326.

The range of operating experience cited above was also discussed in the public hearing. It was agreed that any operator able to attain the high end of the range would have to have access to either in-house or dedicated cargoes. The general consensus was that 270 days is closer to true industry experience, especially for tug/barge operators. Most of the commenters indicated that an average of 300 days would be acceptable.

MARAD believes that the use of an operator's actual experience has some merit. However, MARAD is also mindful that the number of operating days cannot be set at a level so low as to permit the recapture of inordinate amounts of capital costs through the fair and reasonable rate system. In addition, this would also tend to skew the rate of return index and result in higher rates than necessary under the proposed system. In this regard, MARAD notes that the lower 270-day proposal reflects certain market conditions in the domestic tug/barge trades which MARAD believes to be transient and not reflective of the longer term market.

Accordingly, MARAD is willing to accept the 300-day operating period suggested by the commenters as the standard for an efficient operator in determining the capital component.

Depreciation

The determination of a depreciation allowance is another issue that generated a number of comments. Generally, the commenters believed that 25-year, straight-line depreciation is not reflective of current industry practice. Two of the commenters also pointed out that in tug/barge operations, a vessel may have a useful life in excess of 25 years. Further, several commenters insisted that they provide a higher level of maintenance than others, which helps to extend their equipment's useful life. Some commenters also believed that an allowance should be made for operators of older equipment to receive a return on their investment in that equipment when the age of the equipment exceeds 25 years. As a related matter, it was suggested that MARAD make a determination of market value for such vessels and use it in the capital calculation. Another commenter believed that because of wear and tear on the equipment, 25 years is too long and that a 15-year period should be used.

Yet another commenter objected to the provision which allows a new capitalized cost for acquired vessels. This commenter stated that depreciation should be based on the vessel's original value less depreciation determined pursuant to an accelerated depreciation method and that changes in ownership should not alter the previously established depreciation value. Still another commenter believed that a 20-year period would be more in keeping with industry practice.

It is recognized that there are many methods of depreciating an asset, but the choice of that method is an individual management decision based on a number of factors. A regulation that is generally applicable to the entire bulk cargo industry cannot and, indeed, should not accommodate all depreciation scenarios. To do so would introduce a number of inequities in the guideline rate calculation that could present problems for the shipper agencies in selecting vessels for the carriage of preference cargoes. The use of a standard depreciation period places operators on an equal footing in bidding for preference cargoes. However, after review of this issue, MARAD believes that a 20-year depreciation period is now the norm for the bulk industry. Accordingly, straight line depreciation based on a 20-year economic life will be incorporated in the regulation.

With respect to the additional overhaul and major maintenance costs cited by certain tug/barge operators, it should be noted that, in most cases, these items are capitalizable and depreciable over the remaining life of an asset. The rule as proposed would recognize such expenses. For vessels over 10 years old, including otherwise fully depreciated vessels, capitalized expenses would be recognized over a minimum 10-year period. With regard to the establishment of a market value for fully depreciated equipment, MARAD can find no merit in the concept. Aside from the fact that market values tend to be subjective and fluctuate, MARAD can find no basis to allow a cost where none exists. Further, if MARAD were to establish market values on vessels, the actual market value of the vessels could be influenced arbitrarily by MARAD's actions.

Similarly, MARAD cannot find merit in the suggestion that the originally established depreciable value follow the ownership of a vessel. When a new owner makes an investment in an existing vessel, MARAD has no alternative but to recognize the acquisition cost as the vessel's new capital cost, provided acquisition of the vessel is an arm's length transaction.

Overhead and Administrative Costs

Five commenters stated that the four percent allowance for brokerage and overhead is inadequate. All pointed out that while the 2.5 percent allowance for brokerage is adequate, the remaining 1.5 percent allowed for overhead is significantly understated. Three of the commenters quantified their opinions, advising that an appropriate allowance for overhead would be 12.5 percent, six percent, and six percent, respectively. Participants attending the public hearing as well as follow-up written comments strongly echoed these views. In addition, one operator stated that the calculation of brokerage and overhead should be separated.

MARAD has conducted a review of in-house data available as well as data provided as a result of the public hearing and finds that there is merit in the operators' claims. The findings show a wide range of overhead expenditures with an overhead figure of six percent generally supportable for overhead and administrative expenses alone. Therefore, the final regulations allows a total of 8.5 percent for brokerage and overhead.

Cost Averaging

Generally, the commenters believed that cost averaging will discriminate against some operators. Two commenters noted the inconsistency of averaging all operating costs, except fuel. One commenter stated that: (1) Cost averaging will competitively eliminate approximately one-half of the U.S.-flag operators and reduce the availability of U.S.-flag vessels for the cargo preference trades and that (2) averaging will discriminate against operators of more expensive vessels. This commenter believed that while the Government may save money on the carriage of preference cargoes, it will also reduce utilization of U.S.-flag vessels in the long run.

Another commenter pointed out that cost averaging may make sense for single unit vessels, but not for tug/barge combinations. The commenter claimed that older, single unit U.S.-flag vessels tend to be less efficient and more heavily manned than more modern vessels, partly because of the shift from steam to diesel operation and the greater use of shipboard automation in newer vessels. It is pointed out, however, that technology and manning on tug/barges has not changed significantly in several decades, so that many older tug/barges are as efficient as newer units. This commenter claimed that some older tug/barge units may be more cost efficient than newer units because of lower capital costs. The commenter also believed that averaging penalizes operators who spend more than minimum amounts on maintenance and upkeep and that averages for tug/barges will be skewed because of small category sizes.

Two commenters, on the other hand, laud the use of averaging in the promotion of operator efficiency. However, others pointed out that excluding fuel in the averages for operating costs is inconsistent and promotes inefficiency by restoring a major cost item to operators of vessels with less efficient power plants. Another supported averaging costs to promote efficiency and points out that the use of averaging is also consistent with the intent of the 1954 Cargo Preference statute and maximizes the efficiency of MARAD's data collection procedures. The latter commenter also believed the use of actual fuel costs is inconsistent with the statute and inefficient.

Impetus for the use of averaged operating costs was rooted in the Comptroller Generals' Opinion (B–95832 of February 17, 1955) and in MARAD's desire to keep an element of competition

in the bidding process for bulk preference cargoes. The Comptroller General wrote that "the statute contemplates average fair and reasonable rates; which may or may not be profitable, or even compensatory, to a high-cost operator." MARAD originally embraced the use of averaging as a method of encouraging efficient vessel operations. However, based on the various comments, and a thorough review of the issue, MARAD now believes that the use of actual costs in the fair and reasonable rate calculation is appropriate.

The staff believes that the Comptroller General's opinion was prepared at a time when little diversity existed in oceangoing vessels and seagoing tug/barge combinations were virtually an unknown entity. Operating costs for the vessels and their operating characteristics were virtually the same. The only major variable in company costs came purely from management decisions. Accordingly, inefficient management was the primary cause of high cost operations. In today's environment, where a wide array of different vessel types compete for cargoes, the basis for the Comptroller General's opinion is no longer completely valid. A high cost vessel or type may be very efficiently operated relative to its characteristics, but may not be viewed as such relative to other vessel types. Accordingly, the guideline rate system should not penalize vessels for their inherent vessel characteristics. Unfortunately, MARAD is unable to determine whether any given vessel is operated efficiently without extensive reporting and review requirements, which are not feasible or appropriate.

Since neither the MARAD staff nor any of the concerned commenters were able to develop a viable alternative which incorporates efficiency incentives, comports with the Comptroller General's opinion and subsequent court decisions, and is fair to all concerned, the staff is persuaded that a system based on actual operating costs for each individual vessel is appropriate. Given modern computer technology, such a system is achievable and maintainable if the data provided by each operator is up to date and correct. Accordingly, MARAD is modifying the proposal to establish a guideline rate system and will use actual operating costs to establish a guideline rate system for each vessel.

Fleet Categories

Categorization of vessels generated responses from seven operators. Basically, all the commenters believed that there are too many variables to make categorization of the fleet feasible. One believed that the size of any particular class or category will distort the data averages. Four others believed that the fleet is too diverse to be categorized fairly. One commenter stated that a category should be based on the operator's ability to carry the cargo and not vessel size.

One commenter raised the point that because of variations in vessel age, capital costs and operating costs vary widely among vessels of any given size. Another commenter stated that no explanation is given as to how categories are developed and, further, that if categories are used they should be based on the cargoes tendered, not vessel size. This commenter also asserted that each category should be large enough to be statistically significant.

With regard to tug/barge operations, one commenter pointed out that diversity of the fleet is more pronounced in the tug/barge segment because of wide variations in barge equipment and tug size.

Another recommended categorization of tug/barges in increments of 5,000 DWT. Yet another commenter suggested increments of 6,000 DWT, if categorization is deemed necessary.

The diversity of the comments received on this subject reflects, among other things, the difficulty in establishing vessel categories. The category concept was based upon MARAD's original intention to average non-fuel operating costs for all operators. It was developed in an effort to avoid comparing bids from vessels of widely varying size against each other. Changes in the method of determining operating costs, previously discussed, now obviate the use of fleet categories and the need for a definition of ITB's as well. Accordingly, vessel categories will be eliminated in the revised guideline regulations.

Recovery of Costs

Comments regarding the recovery of certain costs not included in the operating cost calculation were received from five interested parties. Each of the commenters cited particular operating costs which are not covered in the operating costs computation, and expressed the opinion that these costs should be recoverable as legitimate items of expense.

The majority of the comments in this area were received from tug/barge operators. Generally, all of the commenters stated there are certain costs associated with the operation of tug/barge units that are peculiar to the operation of that type of vessel that are not addressed in the proposed methodology. These costs include extra shoreside cleanup and barge preparation costs, independent survey costs, positioning costs, taping of hatches, and extra supervisory costs.

Two single unit vessel operators also supplied comments on cost recoveries. One simply believed that an operator should be able to recover all costs associated with the operation of a vessel. The other specifically mentioned recovery of positioning costs as a noncovered cost item.

After reviewing the comments received in response to the second SNPRM, and those submitted as a result of the public hearing, MARAD concedes that tug/barge operators have legitimate port and cargo handling costs that are unique to their operations.

However, the second SNPRM allowed for the inclusion of all appropriate port and cargo handling expenses and need not be changed. Operators should take care in reporting the required port and cargo handling information to MARAD so that all appropriate expenses are included. If MARAD determines that such costs are allowable, they will be included.

This would apply to any costs incurred for operations by single unit vessels. However, with respect to positioning time, break-out and layup costs, MARAD has consistently maintained that the deviation to engage in a preference voyage is a management decision, and costs for such decisions are for the account of the company, not the Government. As to oil-to-grain cleaning costs, the preference cargo programs are intended to be support programs for vessels of the appropriate type. Accordingly, MARAD will not allow costs such as oil-to-grain cleaning, positioning voyages, positioning time, or break-out, or layup costs.

Return on Working Capital

In their initial comments, two commenters stated that the return on working capital should be 100 percent, based upon the ongoing difficulties that the operators have in recovering payment of freight from third world nations. Recovery is generally slow, and an operator may well be into or have completed other voyages before full payment for a prior voyage is received. The theme of slow payment was reiterated by many of the public hearing attendees. The attendees also pointed out that the final 10 percent of freight due them is often outstanding for long periods of time and seldom is paid in full. MARAD believes there is a demonstrable delay involved in the present collection process. Since the operators are not receiving their freight payment until near the end of the voyage or afterward, utilization of a 100 percent working capital factor is appropriate. As such, MARAD has modified the proposal to include a return that recognizes 100 percent of working capital expended.

Delay Factor

Two commenters expressed opinions that the delay factor built into the operating cost category is not sufficient to cover actual delays. Both cited unusual weather delays, port congestion, and weather among other causes of delay. In addition, they pointed out that certain charter terms almost always have a greater delay factor associated with them. (One operator believed that, at a minimum, 35 percent is appropriate, while another asserted that a 50 percent factor would be most appropriate.) One commenter also pointed out that because of their lashing system, tug/barge units must slow substantially and go into towing modes at very low speeds while at sea in heavy weather.

MARAD has been using certain port delay factors that have proven satisfactory over a long period of time. It will continue to look at types of cargo carried and charter terms for guidance in determining a factor for delays. In this regard, this rule requires the submission of data on preference cargoes carried. If the voyage data indicates greater delays over time, the delay factors will be modified appropriately.

MARAD concedes that in heavy weather tug/barge units which are not fully integrated must slow considerably in a towing mode and that an additional delay factor is warranted. Procedures will be modified to utilize a 10 percent weather delay factor for these units.

Confidentiality

Two commenters believed that the confidentiality of data submissions cannot be effectively maintained. Additionally, one of the commenters believed that MARAD does not need the requested data and that is an imposition on the operators to be required to provide the data. The first commenter stated that the risk of disclosure, either accidentally or through the Freedom of Information Act (FOIA), is too great and that there exists a substantial risk of competitive harm through the release of what it believes to be highly sensitive and confidential information.

The second, however, stated that the confidentiality problem might be addressed through embodiment of confidentiality provisions in the regulation. In the SNPRM, the issue of confidentiality was discussed in the preamble of the regulation but was not incorporated in the regulation. Several operators raised this issue at the public hearing. Most did not question the necessity, but nearly all were concerned of public exposure of the data.

Considering the position taken by the GAO in its report of June 18, 1985, the requirement for data submission in this regulation is justified. However, there are other considerations. Contrary to the belief of the first commenter MARAD does not now have readily available the comprehensive body of data needed to calculate guideline rates except as voluntarily submitted by vessel operators. This is due, in part, to the participation in these programs of operators who have no other reporting requirements to MARAD.

MARAD concedes that the possibility of a leak is always present and currently exists in any program which requires the submission of confidential data. However, the incidence of intentional and accidental leaks of proprietary information is extremely low. Defense of confidential material from discovery under the FOIA is also generally quite successful, except in extreme instances where limited discovery has been ordered by the courts.

MARAD acknowledges that there is merit in the suggestion that confidentiality provisions should be embodied in the regulation. MARAD believes that for these procedures to be effective, MARAD is essential, that operators submit to it proprietary, privileged, commercial and financial information that operators would not otherwise disclose in the ordinary course of business.

Accordingly, the data submission requirements have been amended to incorporate confidentiality provisions similar to those contained in the regulations at 46 CFR part 232, Uniform Financial Reporting Requirements. In this regard, MARAD will make an initial, rebuttable, presumption that all financial and operating data submitted is confidential within the meaning of 5 U.S.C. 552(b)(4). MARAD will contact the operators as required for confirmation of data confidentiality in the event of a request under FOIA for release of any data submissions. MARAD emphasizes that submitters can also help protect data from inadvertent disclosure by clearly marking the data submitted as confidential.

Procedures and Definitions

Two commenters stated that parts of the proposed rule are not clear. One wanted the procedures for escalating cost data and determining variable interest rates more clearly defined, and the process for implementation of the rule clearly set forth. In addition, several tug/barge operators suggested that a definition of a fully integrated tug/barge unit (ITB) be included in the regulation.

Further, one commenter believed that the entire process for determining the guideline rates is based on unsupported assumptions and does not meet the judicial requirements established in *Aeron Marine Co.* v. *U.S.* 695 F.2d. 567 (D.C. Cir. 1982).

Under the regulations, escalation of cost data will be done yearly for wage and non-wage items of expense. Wage items will be escalated on July 1 of each year by the wage index used by MARAD to escalate subsidizable wage costs for ODS purposes. Non-wage items will be escalated on January 1 on a similar basis. With regard to variable interest rates, MARAD will use the rate in effect at the time of the rate calculation. Both of these requirements are incorporated in the regulation.

With respect to the definition of an integrated tug/barge unit, MARAD agrees that a definition that will identify ITB's is required for the proper application of delay factors. Pushing mode ITB's have operational characteristics and seakeeping capabilities similar to single unit vessels of similar size, and most are comparable in size to moderately sized single unit vessels. In this regard, the Coast Guard also views pushing mode ITB's as similar to single unit vessels of the same size. Accordingly, for the purpose of the regulations, MARAD is adopting the definition of Pushing Mode ITB's contained in enclosure (1) to the U.S. Coast Guard's Navigation and Vessel Inspection Circular 2–81, change 1 (NVC 2–81 change 1).

With regard to the requirements of *Aeron* v. *U.S.*, it appears that the commenter's claim was that various components of the rate determination are based on unsupported assumptions. The commenter asserted that the number of operating days in a year, the working capital requirements, overhead, and loading and discharge factors are unsupported assumptions. MARAD feels this criticism is unfounded. All of the items referred to above are discussed in detail elsewhere in this rule.

Participation

Some commenters believed that the regulations will discourage participation of U.S.-flag operators in the preference trades. One states that the uncertainty generated by the rule will discourage new investment in and modernization of

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the U.S. merchant marine. Another stated that the rule would discourage participation of American-flag operators in preference trades, reduce the availability of U.S.-flag vessels, and defeat the intent of Congress in establishing the requirement that 75 percent of certain preference cargoes be carried in U.S.-flag ships. MARAD believes that the foregoing comments represent unsubstantiated speculation. The purpose of the various requests for comments and the public hearing was to achieve a rulemaking that is workable and fair to the operators, the Government, and the shipper agencies. MARAD believes that as a result of the rulemaking process, this purpose has been achieved, and that the worst case scenarios envisioned by the commenters will not materialize.

Miscellaneous Comments

A number of comments were expressed by a single operator only. These comments are discussed below by operator.

American Trading Transportation Company

ATT has expressed two general comments on the proposed regulations. First, ATT believes that MARAD should not calculate a precise rate and that absolute accuracy is not required by statute or Congressional intent. Second, ATT stated that MARAD should calculate guideline rates on the basis of industry survey data already available to it and require data submissions and calculate a specific rate only when the agency believes that an operator has submitted a rate that is outrageously unfair and unreasonable.

Contrary to ATT's comment on precise rates, MARAD believes that it was indeed Congress' intent to have clearly defined procedures for calculating guideline rates, based on the best cost information obtainable. Lacking this, MARAD and the shipper agencies could not comply with the statute in evaluating bids as fair and unreasonable. To this end, a precise rate is most certainly required. Further, as pointed out earlier, MARAD's lack of precise and verifiable data has been criticized by the GAO, and MARAD intends to correct this shortcoming.

Liberty Maritime Corp.

First, Liberty believed that the 70 percent floor limitation on the vessel capacity used to calculate the per ton guideline rate is anticompetitive and will discourage the carriage of smaller lots of cargo in larger vessels. Second, Liberty stated that there should be a trial period during which both MARAD and the individual operators should share in the process of calculating guideline rate, with MARAD disclosing to each operator how its individual rate was determined. The trial period would be used to fine tune the rate calculation process.

MARAD notes this regulation does not prohibit an operator with a large capacity vessel from bidding on smaller preference cargo lots. However, this regulation does emphasize the uneconomical aspect of such arrangements. It is MARAD's position that the Government should not pay what amounts to an excess premium rate when vessels carry substantially less than their cargo capacity. Accordingly, the 70 percent limitation is fair for rate calculation purposes and will be retained.

As to a trial period, MARAD believes that the procedures contained in this regulation are clear and, further, that they have already been subjected to an extended period of comment and review. A trial period is not deemed necessary.

American Gulf Shipping, Inc.

AGS commented that the entire regulation should be withdrawn at this time for further study.

As noted above, this regulation has already been subjected to extensive study and review. Through the regulatory process, MARAD believes that a sound methodology has been achieved.

Falcon Shipping Group

Falcon commented that if the proposed regulations result in a decrease in participation in the preference trades by U.S.-flag operators, a greater number of defaults may occur on vessels that have obtained financing guarantees under title XI of the Act. As previously discussed, MARAD believes that these concerns are purely speculative. MARAD does not concur that such results are inevitable or even likely.

Gulfcoast Transit Company

GTC believed that the title XI rate of interest should not be used in calculating the interest cost segment in the capital portion of the guideline rate. GTC stated that this rate is not available to many operators using non-title XI financing and is lower than the rates those operators can obtain. As a result, interest costs may be understated.

The regulation calls for the use of the operators' actual interest rate in calculating interest costs in the capital component of the rate. The title XI rate is only to be utilized in cases where the actual interest rate is not available.

OMI Corp.

OMI has suggested that depreciation alone is not sufficient to encourage investment in replacement vessels and has suggested that an additional bonus be included in the guideline rate for replacement vessels. MARAD does not concur. MARAD believes that the depreciation allowance is normally set aside for replacement of assets and is adequate for this purpose. An additional allowance is considered unnecessary. In addition, any new replacement vessel entering service would receive its own depreciation allowance. Accordingly, no additional allowance will be included for replacement of vessels.

Keystone Shipping

During the course of the hearing, Keystone stated that there should be special provisions in the capital portion of the rate for capitalized leases. Similar comments were made on behalf of the Berger Group with reference to previous comments submitted on an earlier NPRM. MARAD considers capital leases to be an alternative form of financing. As a rule, the cost of such leases should be adequately reflected in the existing capital calculation in the rate structure. It is, therefore, necessary for any operator utilizing a capitalized lease to report the capitalized cost of that lease and the imputed interest rate. Accordingly, MARAD does not believe any alteration is necessary to the guideline rate structure, although reporting requirements will be modified to specify that, where appropriate, the required lease information be provided.

Non-MARAD Issues

During the course of the public hearing, and in several of the supplemental comments provided after the hearing, several issues were raised that are beyond the scope of MARAD's authority. These issues primarily involved inequitable terms in charter parties and abuses by various parties to the charters. One of these subjects was the inadequacy or unfair demurrage and dispatch provisions in the charter parties. Another involved the timing or seasonality of shipments, i.e., heavy vessel utilization at certain times of the year with widespread slack time during other periods. While MARAD can sympathize with the operators in regard to these matters, they are beyond the scope of this regulation. However, the salient comments on these matters have been referred to the appropriate shipper agencies for review and action, and

MARAD has instigated a dialogue on these issues which is currently ongoing.

Revised Rate Methodology

The guideline or fair and reasonable rates to be established by MARAD will apply only to the waterborne portion of cargo transportation and will consist of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the fair and reasonable rate for each participating bulk vessel will reflect actual vessel operating costs based on the historical data submitted in accordance with this rule. MARAD will escalate the operating costs yearly to the current period utilizing escalation factors for wage and non-wage costs. To the extent vessels are time chartered or leased, operators shall submit both operating and capital costs, including capitalized cost and imputed interest rate for vessels subject to capital leases. If these items are unavailable, MARAD will construct appropriate cost factors.

All eligible annual operating costs will be added together for each vessel and divided by the total number of operating days for that vessel to yield a daily operating cost. The cost will be escalated to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage.

Fuel will be figured on the basis of actual reported fuel consumption at sea and in port. The actual fuel consumptions of each vessel will be multiplied by the corresponding projected number of voyage days at sea and in port to yield total fuel consumed. Current fuel prices will be applied to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments will be added together to yield the operating cost component for the voyage.

The capital cost component will be calculated individually for each participating bulk vessel, and will consist of an allowance for depreciation and interest, and a reasonable return on investment. Depreciation will be straight-line based on a 20-year economic life utilizing a residual value of 2.5 percent. However, if the owner acquired an existing vessel, the vessel will be depreciated on a straight-line basis over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements will be depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years, commencing with the capitalization date for those improvements.

For the purpose of calculating interest expense, it is assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over a 20-year period. To compute the interest cost, the owner's actual interest rate will be applied to the constructed outstanding debt on the vessel. Where the owner has a variable interest rate, the owner's rate prevailing at the time of calculation will be used. In cases where there is no interest rate available, MARAD will select an appropriate interest rate. A current long-term interest rate (the Title XI rate if available) will be used for operators without vessel debt.

Return on investment will have two components, return on equity and return on working capital. The rate of return will be based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity is assumed to be the vessel's constructed net book value less constructed principal. Working capital is the dollar amount necessary to cover operating and voyage expenses.

The annual depreciation, interest, and return on equity will be divided by 300 operating days to determine a daily amount. The total of these elements will be multiplied by estimated voyage days and added to the return on working capital to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component will be determined for each voyage on the basis of the actual cargo tender terms for the commodity, load and discharge ports, and lot size. The costs will include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo, except bagging and stacking of cargo at discharge. Costs used to determine the port and cargo cost component shall be based on the most current data from all available sources and verified from data received on completed cargo preference voyages.

To determine the brokerage and overhead component of the fair and reasonable rate, the components for operating, capital, and port and cargo handling will be totaled and multiplied by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components is divided by cargo tons (but not less than 70 percent of the vessel's deadweight) to determine the fair and reasonable rate.

When an operator, whose vessel is to carry or has carried preference cargo, subsequently arranges to transport an additional (backhaul) cargo for the next leg of the vessel's roundtrip itinerary, MARAD will reexamine the guideline rate that was calculated for the preference voyage. This reexamination may result in the originally calculated guideline rat.. being recalculated, incorporating the additional voyage itinerary, costs and revenues which occurred as a result of the carriage of the additional (backhaul) cargo. This, in turn, can possibly result in the vessel operator being liable for repayment of some portion of the revenue it derived from the preference cargo, if MARAD's recalculated guideline rate is less than the rate per ton received by the operator from the preference cargo. MARAD will so notify the sponsoring shipper agencies in all such cases for appropriate action in this regard.

If a vessel is scrapped or sold after discharging a preference cargo, the guideline rate will be adjusted to reflect the termination of the voyage after discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one way voyage, the operator is required to repay the difference in ocean freight to the shipper agency.

The civilian Federal agencies chartering full vessel quantities of cargo subject to the preference laws secure guidance from MARAD as to fair and reasonableness of U.S.-flag rates and as to the eligibility of U.S.-flag vessels for these cargoes. In this context, MARAD's approval of a vessel's eligibility is directly contingent upon compliance by the vessel's operator with the required submission of the cost data specified in the proposed rulemaking.

In special circumstances, such as a rapid change in vessel technology accelerating the end of numerous vessels' economic lives, certain procedures prescribed in this rule may be waived, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Analysis of Regulatory Impact

This regulation has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because it addresses a matter of considerable importance to the maritime industry and may be expected to generate significant public interest. MARAD has estimated the potential economic impact of this rulemaking based on a sample of actual fixtures. If in instances where the actual fixture exceeded the guideline rate calculated using this rulemaking and the actual fixture was reduced to the guideline rate, freight charges paid by the government would have been reduced by 0.75%. In 1988, estimated freight charges paid by government agencies covered by this rule was about $300 million. Under conditions characterizing the study period, total savings are estimated to be $2.25 million annually. The additional administrative costs to the government and the cost of additional data requirements on operators is estimated to be $4,347 annually. This cost is less than the annual $2.25 million savings and therefore the proposed change is justifiable on a cost basis. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environment Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

This regulation does contain a requirement for the collection of information that has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has been approved (OMB approval No. 2133–0514).

List of Subjects in 46 CFR Part 382

Agricultural commodities, Cargo preference, Cargo vessels, Government procurement, Grant programs—foreign relations, Loan programs—foreign relations, water transportation.

Accordingly, 46 CFR chapter II is hereby amended by adding a new part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

Sec.

382.1 Scope.
382.2 Data Submission.
382.3 Determination of fair and reasonable rates.
382.4 Waiver.

Authority: Secs. 204 and 901 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1241); 49 CFR 1.66.

§ 382.1 Scope.

These regulations prescribe the type of information that must be submitted by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except less than full cargoes on liner vessels, pursuant to section 901 of the Merchant Marine Act, 1936, as amended.

§ 382.2 Data Submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators and are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator as specified herein. Failure of a vessel operator to submit the required cost data will result in MARAD being unable to construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required information for each vessel.* The following information shall be submitted not later than 120 days following the effective date of this part for the previous calendar year and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name.

(2) Vessel DWT and net registered tonnage for the Suez and Panama Canals.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel, per day.

(6) Fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs), by type of fuel, per day.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, such information to be submitted, by vessel, in the format stipulated by 46 CFR 232.1, Form MA–172 Schedule 301. Tug/barge operators shall submit such information separately for each tug and barge employed in the preference trade. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this regulation an operating day is defined as any day on which a vessel or barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin operations.

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage within 60 days of the termination of the voyage, identifying the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use 46 CFR part 232, Uniform Financial Reporting Requirements, and 46 CFR part 272, Maintenance and Repair Reporting Instructions, for guidance in submitting cost data. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of these regulations is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under 5 U.S.C. 552, MARAD will inform the submitter of such request and allow the opportunity to comment. The submitter shall claim confidentiality at that time by memorandum or letter, stating the basis, in detail, for such assertion of exemption to disclosure, including, but not limited to, statutory and decisional authorities. Those parts not so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control No. 2133–0514)

§ 382.3 Determination of fair and reasonable rates.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component.* An operating cost component, based on actual operating costs of each participating vessel, shall be determined on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as defined by 46 CFR 232.5, Form MA–172 Schedule 301, Operating Expenses. (For purposes of this rule, charter hire expenses are not considered operating costs.) Such data shall be escalated by MARAD yearly to the current period utilizing escalation factors for wage and nonwage costs applied to those cost categories in escalating operating subsidy costs for the same period. Fuel costs shall be determined individually based on the actual fuel consumptions, at sea and in port, for each vessel and current fuel prices in effect at the time of the preference cargo voyage(s).

(b) *Capital component*— (1) *General.* A capital cost component shall be constructed for each eligible vessel consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 10 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate (in the event these items are not furnished they shall be constructed by MARAD). When vessels more than 10 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old will be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 20-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be the same rate as described in paragraph (b)(2)(iii) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(3) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast, unless the vessel is scrapped or sold immediately after discharge of the preference cargo. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included. In the event a backhaul cargo is obtained, an adjustment to allowable voyage days shall be made.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "international rules for the interpretation of trade terms" (INCOTERMS).

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the vessel's normal operating speed, and shall include for single unit vessels and fully integrated tug/barge units (ITB's), as defined by the definition of Pushing

Mode ITB contained in U.S. Coast Guard Navigation and Vessel Inspection Circular 2–18, change 1, enclosure (1), an additional five percent to account for weather conditions. An allowance of ten percent shall be added for all other tug/barge units.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less than 70 percent of deadweight be used for rate calculation purposes. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate for each parcel shall be provided based on the combined voyage.

(g) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component divided by the amount of cargo to be carried as determined by paragraph (f) of this section, expressed as cost per ton.

§ 382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

By order of the Maritime Administrator.

Dated: November 22, 1989.

James E. Saari,

Secretary.

[FR Doc. 89–27846 Filed 11–28–89; 8:45 am]

BILLING CODE 4910–81–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 570

[Acquisition Circular AC–89–4]

General Services Administration Acquisition Regulation; Revision of Appraisal Requirements Related to Acquisition of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is temporarily amended to revise sections 570.208–3 and 570.501 to implement, in part, recommendations of a Public Buildings Service Task Force which recently reviewed the requirements for obtaining appraisals of the fair rental value for acquisitions of leasehold interests in real property.

EFFECTIVE DATE: December 1, 1989.

Expiration Date: November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

The rule was not published in the **Federal Register** for public comment because it relates to internal operating procedures of the agency and has no impact on lessors.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule amends the GSAR to provide internal operating procedures. The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register.** The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 570

Government procurement.

1. The authority citation for 48 CFR part 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR part 570 is amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC–89–4)

To: All GSA contracting activities.

Subject: Revision of appraisal requirements related to acquisitions of leasehold interests in real property.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12A) to revise the appraisal requirements related to acquisitions of leasehold interests in real property.

2. *Background.* The regulation is being revised to implement, in part, recommendations of a Public Buildings Service Task Force which recently reviewed the requirements for obtaining appraisals of the fair rental value for acquisitions of leasehold interests in real property.

3. *Effective date.* December 1, 1989.

4. *Expiration date.* This Acquisition Circular expires November 30, 1990, unless canceled earlier.

5. *Reference to regulation.* Sections 570.208–3 and 570.501 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

a. Section 570.208–3 is revised to read as follows:

570.208–3 Appraisal.

(a) Except as provided in paragraphs (b) and (c) below, the contracting officer shall obtain an appraisal of the fair rental value for acquisitions of leasehold interests in real property.

(b) An appraisal of the fair rental value is not required for:

(1) A lease of 2,000 or less net usable square feet if the gross annual rent does not exceed $50,000 and the aggregate rent during the term, including options, does not exceed $1 million; or

(2) A lease of 2,001 to 10,000 net usable square feet if the gross annual rent does not exceed $50,000 and the aggregate rent during the term, including options, does not exceed $2 million; or

(3) A lease of 2,001 to 10,000 net usable square feet if (i) the gross annual rent exceeds $50,000; (ii) the aggregate rent during the term, including options, does not exceed $2 million; and (iii) three or more offers are received that are responsive to the Government's requirements as outlined in the solicitation.

(4) A lease entered into pursuant to FAR 6.302–2 under situations of unusual and compelling urgency.

(c) Notwithstanding the exceptions in paragraph (b) above, the contracting officer shall obtain an appraisal when:

(1) The Government's requirement for space generates or requires new construction or an addition to an existing building;

(2) The space to be leased is for a special purpose facility (e.g., border stations, laboratories, motor pools, etc.);

(3) A sole source leasing action (including extensions or expansions) that will exceed $100,000 in aggregate rent is involved; or

(4) Market information is not adequate to make a determination that the proposed rental rate is fair and reasonable.

b. Section 570.501 is amended to revise paragraph (d) to read as follows:

570.501 Renewal options.

* * * * *

(d) *Reappraisal.* The original appraisal must be updated by memorandum or a new appraisal performed unless one of the exceptions to the appraisal requirement outlined at 570.208–3 applies.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–27919 Filed 11–28–89; 8:45 am]

BILLING CODE 4820–61–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

RIN 2125–AC46

Minimum Levels of Financial Responsibility for Motor Carriers; Coverage Requirements for Certain Foreign Carriers; Mexico

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to allow Mexican motor carriers to satisfy the coverage requirements only during periods these motor carriers are actually operating their commercial motor vehicles in the United States. This action will complement the legislative requirement that all Mexican motor carriers obtain a Certificate of Registration (CR) from the Interstate Commerce Commission (ICC) before entering the United States and the ICC rule implementing the legislation and will facilitate the flow of trade and traffic between the two countries.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, HCS–10, (202) 366–2983; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Act of 1984, Public Law 98–554, title II, 98 Stat. 2832 (1984 Act), required Mexican motor carriers performing operations that had been exempt from regulation by the Interstate Commerce Commission (ICC) to obtain a special certificate of registration (CR) annually in order to continue those operations. To obtain the new CR, affected motor carriers were required, among other things, to demonstrate that they maintained specified levels of insurance coverage. The ICC implemented the law by adopting regulations at 49 CFR part 1171, and a new OP–2 application form. See Certificates of Registration for Certain Foreign Carriers, 133 M.C.C. 511 (1985) (Certificates of Registration). Since the financial responsibility requirements of both the FHWA and the ICC required continuous coverage, no change in the FHWA's rules were necessary at that time.

Congress enacted changes to these requirements in section 9111 of the Truck and Bus Safety and Regulatory Reform Act of 1988, Public Law 100–690, 102 Stat. 4527, at 4531, (1988 Act). The 1988 Act changed the scope and duration of certificates of registration and authorized changes in insurance requirements.

1988 Act

The 1988 Act generally requires all Mexican motor carriers who wish operating commercial motor vehicles in the United States commercial zones (see 49 U.S.C. 10922(1)(2)(B)) to obtain a CR prior to such operation. Further, those motor carriers must demonstrate that they maintain specified levels of insurance coverage.

Section 9112 of the 1988 Act amended section 30 of the Motor Carrier Act of 1980 by redesignating subsection (g) as subsection (h) and inserting a new subsection (g) which reads as follows:

(g) *Insurance for Foreign Motor Carriers.*—The Secretary of Transportation may issue regulations which permit foreign motor carriers and foreign motor private carriers (as such terms are defined under section 10530 of title 49, United States Code) providing transportation of property under a certificate of registration issued under such section to meet the minimum levels of financial responsibility established by or under this section only during periods in which such carriers are providing transportation of property in the United States.

ICC Action

In the matter of "Applications For Certificates of Registration For Certain Foreign Carriers" (Ex Parte No. 55 (Sub-No. 74A)), the ICC issued a decision and a companion Notice of Proposed Rule Making (NPRM) on June 9, 1989. The NPRM was subsequently published in the **Federal Register** on June 12, 1989 at 54 FR 24919. The ICC proposed modifications to its regulations and CR application procedure to conform to the new statutory requirements.

In its decision, the ICC stated:

Insurance. The insurance requirement for CRs has changed in two respects. The first change pertains to the insurance coverage that must be held by foreign motor *private* carriers of non-hazardous commodities. The 1984 Act required these carriers to maintain insurance only at the level prescribed by the States in which they would operate. In some cases, most notably Texas, that amount was considerably lower than the amount required of interstate carriers generally. Under the 1988 Act, all carriers needing a CR to operate into the United States must demonstrate, as proof of minimum financial responsibility, that they maintain insurance coverage at least at the levels prescribed under section 30 of the Motor Carrier Act of 1980 (MCA), and under the laws of the States in which the carrier is operating, to the extent applicable. Thus, motor foreign private carriers of non-hazardous commodities will have to maintain the same amount of insurance as the for-hire foreign motor carriers (the same amount required of all U.S. interstate carriers).

The second area of change affects the period of time insurance coverage must be in effect. Section 9112 of the 1988 Act permits DOT to amend its regulations to allow a carrier subject to the CR requirement to meet the minimum financial responsibility requirements *only* during periods these carriers are actually operating in the United States. In other words, DOT may adopt regulations providing for "trip" insurance, rather than the continuous 365-days-a-year coverage now required that has been a problem for many Mexican carriers.

Section 9111(h) amends 49 U.S.C. 10927(a) to require *all* applicants for a CR to file with the Commission evidence approved by the Commission that they meet minimum levels of responsibility not less than those prescribed by DOT under section 30 of the MCA, and the laws of the States in which they operate. The Commission now requires this coverage to be continuous (and at the same level as the DOT level), with the result that, when a carrier's insurance coverage lapses, the carrier's authority is revoked. Unless DOT adopts regulations providing for trip insurance, our continuous coverage requirement will remain in effect. Should DOT adopt the trip insurance alternative, we will amend our rules accordingly.

Discussion

The 1988 Act still requires a foreign motor carrier to demonstrate that it is fit, willing, and able to provide the transportation to be authorized by the CR and to comply with the statute and the regulations of the ICC and the DOT. The phrase "fit, willing, and able" is defined as safety fitness and proof of minimum financial responsibility (insurance). It is clear that Congress wanted all Mexican motor carriers to have a CR before operating a commercial motor vehicle into this country. To facilitate the flow of trade and traffic between the two countries, the FHWA believes it is necessary to provide a means by which the Mexican

motor carriers may obtain the required minimum financial responsibility coverage more easily and without compromising safety in any way. The FHWA will, therefore, allow Mexican motor carriers to obtain insurance coverage, in the required amount, for periods of 24 hours or longer, from insurers that meet the requirements of 49 CFR 387.11 or 387.35.

The ICC in its decision in Ex Parte No. 55 (Sub-No. 74A), Application for Certificates of Registration for Certain Foreign Carriers, served October 18, 1989, commented on its willingness to amend its rules requiring continuous insurance coverage and to adopt the DOT's rules covering trip insurance. Since the DOT will now recognize trip insurance, we would expect that once the ICC adopts our regulations, applicants will not be required to include proof of insurance as a condition to the issuance of a Certificate of Registration by the Commission.

A Mexican motor carrier issued a Certificate of Registration (CR) must show proof of insurance upon entering the United States by having available for inspection, in each of its vehicles, a copy of the CR attached to the required insurance endorsement (either Form MCS–90 or MCS–90B). In addition the carrier must present an insurance identification card, binder or similar document that specifies both the effective date and the expiration date of the trip insurance authorized by this rulemaking.

Regulatory Impact

The ICC is in the process of amending its regulations to implement the statutory requirements of the 1988 Act. It is anticipated that the new CR regulations will be effective January 1, 1990. If the orderly flow of traffic and goods between the United States and Mexico is to continue, this amendment to Part 387 must be in place by that date. The amendment imposes no additional burden on industry or the general public; it simply codifies a limited exception to the Federal Motor Carrier Safety Regulations which has already been authorized by Congress. The FHWA therefore finds good cause to promulgate the amendment as a final rule without prior notice. Notice and opportunity to comment are not required under the regulatory policies and procedures of the DOT because it is not anticipated that such action could result in the receipt of useful information in view of the ministerial nature of this rulemaking action which is expressly authorized by section 9112 of the 1988 Act.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking, although expressly authorized by a statutory provision, will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, of FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 387

Highways and roads, Financial responsibility, Insurance, Motor carriers.

Issued on: November 21, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 387 as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. The authority citation for 49 CFR part 387 continues to read as follows:

Authority: 49 U.S.C. 10927 note; and 49 CFR 1.48.

2. Section 387.7(b) is amended by adding a new paragraph (b)(3) to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(b) * * *

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The Certificate of Registration;

(ii) The required insurance endorsement (Form MCS–90); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS–90.

* * * * *

3. Section 387.15 is amended by revising the introductory text preceding Illustration I to read as follows:

§ 387.15 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

* * * * *

4. Section 387.31(b) is amended by adding a new paragraph (b)(3) to read as follows:

§ 387.31 Financial responsibility required.

* * * * *

(b) * * *

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.35 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The Certificate of Registration;

(ii) The required insurance endorsement (Form MCS–90B); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS–90B.

* * * * *

3. Section 387.39 is amended by revising the introductory text preceding the endorsement to read as follows:

§ 387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.31(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

* * * * *

[FR Doc. 89–27884 Filed 11–28–89; 8:45 am]

BILLING CODE [illegible]

Proposed Rules

Federal Register
Vol. 54, No. 228
Wednesday, November 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 200 and 203

[Docket No. R-89-1411; FR-2433-P-1]

Authorize Additional Types of Mortgages and Loans for Direct Endorsement Processing

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule

SUMMARY: Under current regulations mortgages insured under sections 203(k) (Rehabilitation Mortgage Insurance); 222 (Mortgage Insurance for Servicepersons); and 240 (Purchase of Fee Simple Title from Lessors) of the National Housing Act may not be processed under the Direct Endorsement Program. Also, mortgages currently eligible for direct endorsement processing may not be insured pursuant to section 238(c) (Mortgage Insurance in Federally Impacted Areas) or section 223 (Miscellaneous Housing Insurance) of the National Housing Act. This rule proposes to make two programs under section 223 and all of the other types of mortgages cited above eligible for processing through the Direct Endorsement Program. The proposal is based on the Department's belief that the availability of direct endorsement processing for these loans would not present any unusual or unacceptable insurance risk.

The rule also proposes to make a number of technical or "housekeeping" amendments relating to the Direct Endorsement Program.

DATE: Comment due date: December 29, 1989.

ADDRESS: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084.)

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

On March 22, 1983 HUD published a final rule delegating to eligible mortgagees the authority to underwrite and close certain types of single family mortgages for submission to HUD/FHA for mortgage insurance endorsement (48 FR 11937). Under this new "direct endorsement" program, single family mortgage insurance loans, as defined under sections 203(b), 203(i), 221(d)(2), 234(c) and 245(a) of the National Housing Act, are eligible for direct endorsement processing (see 24 CFR 200.163(a)(1)). This rule proposes to add to this list of eligible loans those defined under sections 203(k), 222 and 240 of the National Housing Act.

Section 203(k) provides mortgage insurance to facilitate the rehabilitation of one- to four-family properties. Under the 203(k) program, HUD insures rehabilitation loans to (1) finance rehabilitation of an existing property; (2) finance rehabilitation and refinancing of the outstanding indebtedness of a property; and (3) finance purchase and rehabilitation of a property. An eligible rehabilitation loan must involve a principal obligation not exceeding the amount allowed under the section 203(b) basic home mortgage insurance program. Legislation establishing this program was enacted in 1961. As of November 1987, 4,496 loans have been insured under this program with a value of $95,409,413. Experience under the program has demonstrated that it presents no unusual risks and that loans under it could be processed through the direct endorsement program.

Section 222 was enacted in 1954. Under it, the Department of Defense, Transportation (Coast Guard) or Commerce (National Oceanic and Atmospheric Administration) may pay the HUD/FHA mortgage insurance premium on behalf of service members on active duty under their jurisdiction. In general, the mortgages may finance single family dwellings or condominiums insurable under standard HUD home mortgage insurance programs. As of November 1987, 274,869 housing units have been insured under this program with a value of $4,525,190,502. Experience under this program has demonstrated that it presents no unusual risks and that loans under it could be processed through the direct endorsement program.

Section 240—Purchase of Fee Simple Title from Lessors—Provides for insurance of mortgage loans to finance the purchase of fee simple title from lessors. The mortgagor must be a homeowner under a long-term lease on a property on which there is a residential structure of no more than four family units. As of November 1987, 359 mortgages have been insured under the program with a value of $8,868,950. (The program is limited since ground leases are not common in all areas of the country.)

Below are statistics for Fiscal Years 1983 through 1987 showing the number of cases insured, claims paid and the claims rate for the 203(k), 222 and 240 programs. Also shown are early default and claim reports showing the default/claim rates on all Direct Endorsement and HUD processed cases insured during Fiscal Years 1986 and 1987. While the report on the sections proposed to be added in this rule is not strictly comparable with the early default and claim reports, it is evident that the claim rates for the programs

proposed to be added are not inordinately high compared to the FY 1986 rate for HUD-processed claims. (Cases endorsed in FY 1987 have not had time to establish a valid default/claim rate.)

The default/claims rate report for 1986, however, does indicate a lower percentage for Direct Endorsement processed cases (2.11) as compared to regular processed cases (4.02). This same trend is continuing with the FY-1987 figures (Direct Endorsement—0.96; Regular—1.61). With the Direct Endorsement default/claims rates being less than that for HUD processing, the Department feels justified in believing that Direct Endorsement lenders are acting responsibly.

Since the volume of mortgages insured under the programs this rule would include is so low (about 400 per year combined), we are convinced that any increased risk to the Department by including these programs would have minimal impact on the insurance funds.

Number of Loans Endorsed 1985–1987

Number of Claims Through 03/08/88 by Section

Section	Number Insured	Number of Claims	Claims Rate
203(k)	1,448	46	3.18
223	348	6	2.44
240	54	0	.00

Default—Claims Rate for FY 1986–1987 Endorsements

	HUD-Processed Endorsements	HUD-Processed defaults	HUD-Processed Claims	HUD-Percent
1986 Total	220,031	6,152	2,898	4.02
1987 Total	164,777	216	2,756	1.61

	Direct Endorsements	D.E. Defaults	D.E. Claims	D.E. Percent
1986 Total	558,937	8,335	3,421	2.11
1987 Total	1,149,792	749	10,258	.96

1986 Total Endorsed, 786,968
1987 Total Endorsed, 1,334,569
1986 Total Claims & Defaults, 20,806
1987 Total Claims & Defaults, 13,982

Under the direct endorsement program, certain categories of single family mortgages are specifically listed as ineligible for processing (see 24 CFR 200.163(a)(2)). Among those listed are mortgages insured pursuant to section 238(c) of the National Housing Act. This rule proposes to remove from the current list of ineligible mortgages those insured pursuant to section 238(c) and 223(a)(7).

Section 238(c) makes available Federal mortgage insurance for housing in areas affected by military installations. Mortgage insurance can be provided under various insurance sections of Title II of the National Housing Act. With respect to this rule and the direct endorsement program however, only one- to four-family mortgages are relevant. Properties are eligible, provided certain certifications are received from the Secretary of Defense and certain findings are made by the Secretary of HUD, where there is a military impact upon a local economy to the extent that a mortgage would not normally be insured. Such mortgages are an obligation of the Special Risk Insurance Fund. Legislation establishing this program was enacted in 1974. As of November 1987, 498 units have been insured under this authority, with a value of $21,186,963. While experience under this program has not been extensive, it has been adequate to demonstrate that it presents no risks incommensurate with those HUD is authorized to incur in connection with obligations of the Special Risk Insurance Fund, and that the loans could be processed through the direct endorsement program.

Section 223(a)(7) makes available Federal mortgage insurance for the refinancing of an existing mortgage, insured under a section of the National Housing Act, where the refinancing mortgage does not meet all eligibility requirements of that section, provided the following conditions are met (1) the new mortgage must be in an amount which does not exceed the lesser of (a) the original principal amount of the existing mortgage, or (b) the sum of the unpaid principal balance of the existing mortgage plus loan closing charges; (2) the term does not exceed the unexpired term of the existing mortgage, or an extended term acceptable to the Commissioner; (3) the new mortgage will result in a reduction in regular monthly mortgage payments, and (4) the mortgagors record of payment on the existing mortgage meets standards established by the Commissioner. Regulatory provisions implementing section 223(a)(7) are contained in 24 CFR 203.43(c) and 234.52.

Mortgages insured pursuant to section 223(a)(7) are insured under the regular National Housing Act sections such as 203(b) or 234 and are not separated out by virtue of their having been processed pursuant to 223(a)(7). Any default or claims information would be reflected in that section under which the new mortgage was insured. No separate default or claim data is kept under the category 223(a)(7).

Under the heading of technical or housekeeping amendments the rule proposes to revise § 200.164(c)(2). That paragraph currently requires a direct endorsement mortgagee (other than a supervised mortgage or governmental institution) to be approved as a Federal National Mortgage Association (FNMA) seller, an issuer of Government National Mortgage Association (GNMA) mortgage-backed securities, or to have a net worth, in assets acceptable to the Secretary, of not less than $250,000. The rule proposes to stike the references to FNMA and GNMA approval. Thus, all affected mortgagees would have to meet the $250,000 net worth requirement. The Department has found the FNMA and GNMA alternatives for meeting HUD's financial responsibility requirement redundant and, at times, not entirely reliable.

The rule also proposes to revise § 203.258. That section currently authorizes a mortgagee to release a mortgagor from personal liability on a mortgage note and still retain the benefits of FHA insurance if it obtains the Secretary's approval of a substitute mortgagor (assumptor), who assumes personal liability and agrees to pay the

mortgage debt. The rule would add a sentence to this section stating: "Direct endorsement mortgagees need not obtain specific secretarial approval but may themselves approve an appropriate substitute mortgagor." Delegating this authority to the direct endorsement mortgagee is fully consistent with other delegations made in the program. Through an oversight this particular delegation was not made at the inception of the program.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of smaller entities. Direct endorsement processing is essentially a procedural device that does not affect the availability of FHA insurance to small mortgagees, but only the means by which their applications for mortgage insurance are processed.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702) as item H-4-88 (Sequence No. 1042) under Office of Housing in compliance with Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

The Secretary has determined that good cause exists for making this rule effective as soon as after publication as possible. Of particular importance is early authorization to use the direct endorsement processing in conjunction with the section 203(k) rehabilitation loan program. Both this Department and program participants agree that the section 203(k) can be a useful tool for the provision of affordable housing. Accordingly, this rule is being promulgated with a 30 (rather than 60) day period for public comment in order to conjoin the benefits of Direct Endorsement with the section 203(k) insuring authority at the earliest feasible date. HUD's original Direct Endorsement Program regulations were adopted after notice and comment rulemaking. (The proposed rule was published at 47 FR 53038, November 24, 1982.) The program has been operational for more than six years. Applying these procedures to the additional insuring authorities set out in this document should present no new issues or concerns. The public comments received will, of course, be taken into account in promulgating the final rule.

The catalog of Federal Domestic Assistance program numbers are 14.108, 14.165 and 14.166.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and Community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

24 CFR Part 203

Home improvement, Loan programs, Housing and community development, Mortgage insurance, Reporting and recordkeeping, Urban renewal.

Accordingly, 24 CFR parts 200 and 203 are proposed to be amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 would be revised to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Paragraphs (a)(1), (2), and (3), paragraphs (b)(2), (5)(xi) (A) through (I), and paragraphs (c) (1) through (5), and (c)(7) of § 200.163 would be revised to read as follows:

§ 200.163 Direct endorsement.

(a) * * *

(1) Single family mortgage insurance loans defined under sections 203(b), 203(i), 203(k), 221(d)(2), 222, 234(c), 240 and 245 of the National Housing Act would be eligible for processing under this section.

(2) Single family mortgages insured under any of the programs listed in paragraph (a)(1) of this section pursuant to sections 223 (except for subsection 223(a)(7)), 225, 244, 247, or 248 of the National Housing Act are not eligible for processing under this section. The provision contained in 24 CFR 221.55 which permits a builder-mortgagor to sell a property to a displaced family on a deferred basis is not available in the Direct Endorsement program.

(3) The Secretary shall publish in the Single Family Direct Endorsement Program handbook a list of the mortgage loans by type which are eligible for Direct Endorsement processing under this section. Such listing shall set forth with particularity the required certifications applicable to each mortgage type.

(b) * * *

(2) *Guidelines for underwriting procedures.* The Secretary shall publish guidelines for underwriting procedures in the Single Family Direct Endorsement Program handbook. Compliance with these guidelines is deemed to be the minimum exercise of due diligence in underwriting mortgage loans.

* * * * * *

(5) * * *

(xi) * * *

(A) That the mortgage satisfies the requirements (as appropriate) of 24 CFR 203.17, or the requirements of § 203.17 as made applicable in § 222.1(a), or the requirements of 24 CFR 203.50(i), 221.5, 221.25, 221.30, 221.32, 221.35, or 221.40, and 221.45, 234.25, or 240.16;

(B) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, 240.15 or 203.37 as made applicable in §§ 221.1(a), 222.1(a) or § 234.65;

(C) That any graduated payment mortgage meets the requirements established under 24 CFR 203.45, 203.45 as made applicable in § 222.1(a) or § 234.75; any growing equity mortgage meets the requirements established under 24 CFR 203.47 or 234.77; and any adjustable rate mortgage meets the requirements established under 24 CFR 203.49 or 234.79;

(D) That the property covered by the mortgagee meets the flood plain requirements set forth in § 203.16a, or § 203.16a as made applicable in §§ 221.1(a), 222.1(a) or § 234.17;

(E) That the stated mortgage amount (*i*) satisfies the requirements of

(*i*) 24 CFR 203.18, 203.18a, 203.18b, 203.29; or

(*ii*) 24 CFR 203.29 as made applicable in §§ 221.1(a), 221.10, 221.11, 221.20, 221.50, 234.27, or § 234.49; or

(*iii*) 24 CFR 203.50(b), 222.3, or 240.5; and

(*2*) For a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (b)(5)(xi)(E)(i) of this section, and any further limitation prescribed by the Secretary.

(F) That the mortgagor has made the minimum investment required by 24 CFR 203.19, 221.50, 222.5, or 234.28, and no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment.

(G) That for a mortgage involving refinancing to be insured under 24 CFR 221.21, the mortgagor, in addition to limitations contained in §§ 221.10, 221.11 and 221.20, does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property.

(H) That for a property located in an outlying area, the mortgage meets the requirements of 24 CFR 203.18(d); and

(I) That a mortgage to be insured under section 234(c) of the National Housing Act meets the requirements of 24 CFR 234.59.

(c) * * *

(1) That the mortgage property is located in a community where the housing standards and location meet the requirements of the Secretary as required by 24 CFR 203.40, 203.43i(a), or by § 203.40 as made applicable in § 222.1(a), or § 240.1(a);

(2) That there is located on the mortgage property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, 222.9, or 240.15, or by 203.38 as made applicable in §221.1(a);

(3) That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21, 221.1(a), 222.1(a), 240.1(a), or as required under § 234.36;

(4) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required under 24 CFR 203.33, 221.2(a), 222.1(a), 234.56, or 240.1(a);

(5) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as made applicable in §§ 221.1(a), 222.1(a), 234.57, or § 240.1(a).

* * * * *

(7) In cases where the mortgaged property is subject to—

(i) A secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State or local government agency or instrumentality or

(ii) A second mortgage held by a mortgagee that is not a Federal, State or local government agency or instrumentality or

(iii) A junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured; that the applicable requirements of 24 CFR 203.32 (b), (c) or (d) as made applicable in § 221.1(a), 222.1(a), or § 234.55 are met;

* * * * *

3. Paragraph (c)(2) of § 200.164 would be revised to read as follows:

§ 200.164 Approval of direct endorsement mortgagees.

* * * * *

(c) * * *

(2) The mortgagee, other than a supervised mortgagee or governmental institution, has a net worth, in assets acceptable to the Secretary, of not less than $250,000.

* * * * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

4. The authority citation for 24 CFR part 203 would continue to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

5. Section 203.258 is revised to read as follows:

§ 203.258 Assumption with or without release of mortgagor.

The mortgagee may effect the release of a mortgagor from personal liability on a mortgage note while retaining the benefits of insurance under this part if it obtains the Secretary's approval of a substitute mortgagor (assumptor) who assumes personal liability and agrees to pay the mortgage debt. Direct endorsement mortgagees need not obtain specific secretarial approval but may themselves approve an appropriate substitute mortgagor.

Dated: November 14, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-27856 Filed 11-28-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 32, 35, and 39

[CGD 88-102]

RIN 2115-AC65

Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 6, 1989, the Coast Guard published a notice of proposed rulemaking (54 FR 41366) proposing to adopt new regulations for the safe design installation, and operation of marine vapor control systems. Because of requests for additional time to comment on the proposed rulemaking, the comment period is being extended for 42 additional days.

DATE: Comments must be received on or before January 2, 1990.

ADDRESSES: Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-102), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1477. Comments may also be delivered to and will be available for inspection and copying at the Marine Safety Council, room 3600, U.S. Coast Guard, 2100 Second Street SW., Washington, DC, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security and Environmental Protection (G-MTH-1), room 1214, (202) 267-1217, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published on October 6, 1989, invited and encouraged interested persons to participate in this proposed rulemaking by submitting written views, data or arguments by November 20, 1989.

Several persons requested additional time to prepare comments, citing the difficulty in preparing meaningful responses within the original 45 day comment period. Because of these requests, the comment period is extended for 42 additional days until January 2, 1990.

Comments should include the name and address of the person making them, identify this notice (CGD 88-102) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped self-addressed post card or envelope should be enclosed. The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Dated: November 20, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-27591 Filed 11-22-89; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 89-5; Notice 3]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose amendments to the recently adopted regulation of the National Highway Traffic Safety Administration governing importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. The first amendment would add the agency's bumper and theft prevention standards to those Federal standards for which conformity is necessary for permanent importation of a motor vehicle into the United States. Although conformity of imported cars with these standards is required by statute, current importation regulations have never been amended to include them. The second amendment would extend coverage of the bond required by NHTSA for a demonstration of conformity with the safety standards, to vehicles imported between January 31, 1990, and October 31, 1992, by importers who owned the vehicle as of October 31, 1988, and whose assigned place of employment was outside the U.S. at times from that date until the time of importation. This bond would supersede the current equivalent Customs bond. The third amendment would specify the terms and conditions of the two NHTSA bonds. The final amendment proposes procedures for submitting petitions for remission and mitigation of bond forfeiture.

DATES: The comment closing date for the proposal is December 29, 1989. The effective date of the final rule will be January 31, 1990.

ADDRESS: Comments should refer to the docket number and notice number of this notice and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202-366-5263).

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed Public Law 100-562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). A notice of proposed rulemaking to establish part 591 was published on April 25, 1989 (54 FR 17772), and a final rule on September 29, 1989 (54 FR 40069). As the notices stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)). The importation of motor vehicles subject to the Federal motor vehicle bumper standard (15 U.S.C. 1916), and the Federal motor vehicle theft prevention standard (15 U.S.C. 601) was not included in these changes. Importation of passenger motor vehicles subject to the bumper standard is to be governed by joint regulations of both NHTSA and the Secretary of the Treasury (15 U.S.C. 1916(b)(3)), under terms and conditions (including the furnishing of a bond) sufficient to ensure conformance, or exported or abandoned to the United States. Importation of vehicles and equipment subject to the theft prevention standard is flatly prohibited unless vehicles and equipment conform at time of entry. In reviewing agency programs, NHTSA and Customs have agreed that regulatory simplicity requires that all vehicles subject to NHTSA's standards should be imported pursuant to a NHTSA regulation.

The Federal Bumper Standard

Title I of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) was enacted in 1972, and required NHTSA to promulgate bumper standards applicable to all passenger motor vehicles imported into the United States. In implementation of this requirement, NHTSA issued 49 CFR Part 581, *Bumper Standard*, effective September 1, 1978. The importation provisions in the Cost Savings Act for vehicles subject to the bumper standards were substantially similar to those for vehicles subject to the safety standards. No standard was to apply to a vehicle intended solely for export and so labeled or tagged. No person was to import a passenger motor vehicle manufactured on or after the effective date of a bumper standard unless it was in conformity with such a standard. However, it could be admitted under the joint regulations of the Secretaries of Treasury and Transportation under such terms and conditions (including the furnishing of a bond) as appeared appropriate to ensure conformity, or exportation or abandonment to the United States. The joint regulations could also provide for the "importation" (as contrasted with the "temporary importation" allowed by the Vehicle Safety Act) of any passenger motor vehicle after its first purchase for purposes other than resale.

However, the joint regulation that applied to the importation of vehicles subject to the Federal safety standards, 19 CFR 12.80, was never amended to incorporate the bumper standard, although NHTSA enforced it as part of its importation compliance procedures. With the advent of NHTSA's own vehicle importation regulation, 49 CFR part 591, this notice proposes to add bumper standard importation requirements to the declarations required for entry, and to amend the bond provisions to include compliance with the bumper standard. To fulfill the statutory requirement for joint issuance, NHTSA has consulted with the Customs Service on this proposed amendment, and the final rule will be jointly issued under the authority of both regulatory agencies.

The bumper declarations and requirements are virtually identical with those required for the safety standards. There is one exception, however, NHTSA has interpreted the 1988 Act as requiring a showing of total compliance with the safety standards, or exportation or abandonment of the motor vehicle to the United States. NHTSA does not read the Cost Savings Act as imposing the same punishment in the absence of such a showing regarding the bumper standard. Therefore, in the event that a passenger motor vehicle demonstrates compliance with the safety standards, but not the bumper standard, the agency may choose to levy a penalty upon the bond instead of demanding export or abandonment of the vehicle, if the facts appear to justify it.

The Theft Prevention Standard

Title VI of the Cost Savings Act (15 U.S.C. *et seq.*) requires NHTSA to issue a vehicle theft prevention standard that applies to "covered major parts which are installed by manufacturers into passenger motor vehicles in lines designated " * * * as high theft lines", and the major replacement parts for those major parts. In implementation of this requirement, NHTSA issued 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard*, effective April 24, 1986. Conformance with this standard requires the marking of certain original and replacement parts in the manner specified in the standard. Unlike the statutory importation requirements for safety and bumper standards, title VI contains a flat prohibition against the importation of vehicles and parts which are subject to the theft prevention standard, but are not marked in accordance with it. Therefore, vehicles and parts covered by the theft prevention standard must comply before their importation into the United States, whether the marking is affixed by the importer, or original manufacturer. In terms of part 591, this means that an importer must declare that his vehicle meets the theft prevention standard, even if it is accompanied by a declaration of nonconformance with the safety and bumper standards. If, in the first instance, the vehicle does not meet the theft prevention standard, it will not be allowed entry under bond or otherwise for the eventual production of a conformity statement. Admission under a false declaration may constitute a violation of the regulations of the Customs Service, and result in seizure of the vehicle.

This notice proposes appropriate changes in the language of the declarations, and also proposes a new § 591.5(k) that would apply to replacement parts. It would require a declaration of conformity with the theft prevention standard by the importer of any major part covered by the standard.

Bonds for Those Eligible To Import Under Present Regulation

Under certain circumstances, and for a limited time, section 108(g) of the Vehicle Safety Act permits a nonresident (including any member of the Armed Forces) to continue to import a vehicle under the present regulation, that is, the Administrator need not have made a determination that it is capable of conformance, and conformance work need not be performed by a registered importer. This exception applies to a single vehicle imported, for personal use and not for resale, between January 31, 1990, and October 31, 1992, by an individual whose assigned place of employment was outside the United States for the total period between October 31, 1988, and the date of importation, provided that the vehicle was acquired (or was subject to a binding contract to acquire) before October 31, 1988, and that the individual has not previously imported a nonconforming motor vehicle. Importation under this amendment is reflected in § 591.5(g).

NHTSA had initially assumed that importation of vehicles under this category would continue to be covered by the present Customs bond under 19 CFR 12.80, in that the 1988 Act specifically allows importation under the present requirements from January 31, 1990, to October 31, 1992. However, NHTSA and Customs have agreed that as of January 31, 1990, all bonds given for conformance with the safety standards should be those of NHTSA. Therefore, appropriate inclusory language is proposed in this notice.

Conditions of the Conformance Bond

In its response to the proposal of part 591, General Motors commented that part 591 did not state the conditions of the bond. With the determination by Customs and NHTSA that the bond will be that of NHTSA, it is now possible for this agency to propose those conditions. In general, they would include the acts that the statue requires importers or registered importers to perform after entry of a vehicle and before its release. The bond is given to secure compliance with the Federal motor vehicle safety standards, and, if the vehicle has been imported under section 108(c) of the Vehicle Safety Act, no mitigation of the bond is contemplated for vehicles that appear to conform only partially with the safety standards. If full conformance with the safey standards is not achieved, the vehicle must be exported, or abandoned to the United States. If none of these actions occur, the bond is forfeited. If a vehicle has been brought into full conformance with the safety standards, but not the bumper standard, NHTSA may not demand export or abandonment, but only a partial forfeiture of the bond. This differs from the practice under the present bond (in effect until January 31, 1990), which will continue until October 31, 1992, for vehicles imported pursuant to section 108(g). Under this condition, the principal submits a statement identifying the conforming party, and discussing the nature and extent of the work performed in the conformance process, within 120 days after entry (or longer, if the Administrator allows it). It has been the practice of Customs to release vehicles under a partial forfeiture of the bond when complete compliance has not been documented, and the vehicle has not been returned for export. A further condition of the bond for vehicles imported pursuant to section 108(c) is that the principal would make the vehicle available for inspection upon demand by NHTSA, and would not release it from custody before 30 days had passed after its submission of conformance certification to NHTSA. A further condition of the bond for vehicles imported pursuant to section 108(g) is that the principal would not sell the vehicle, or offer it for sale, until a statement had been issued by NHTSA that it was acceptable to do so.

These conditions are now set forth in proposed § 591.8 (f) and (g). The bond that would apply to importers of vehicles pursuant to section 108(c) of the Act is depicted at Appendix A. The bond that would apply to importers of vehicles pursuant to section 108(g) is depicted at Appendix B.

Petitions for Remission or Mitigation

In the event a bond is forfeited, a principal and/or surety may petition the Administrator for remission of the forfeiture. If the Administrator finds that all conditions of the bond have been, in fact, fulfilled, the forfeiture is remitted.

A petition may also be submitted for mitigation of the forfeiture. However, given the intent of the 1988 Act that the Federal motor vehicle safety standards be enforced more strictly than before, the agency has concluded that mitigation of forfeiture is inappropriate if a vehicle has been imported pursuant to new section 108(c) of the Vehicle Safety Act, and is not brought into compliance with all safety standards. Arguably, failure to conform should occur infrequently in the future. This is because a vehicle will not be admitted unless the agency has determined that it is capable of conformance, and the conformance work will be performed by

those who have registered with NHTSA as undertaking to provide certifications that vehicles have been brought into conformity.

This restriction would not apply to importers of vehicles under section section 108(g). Vehicles imported pursuant to this provision are exempt from eligibility determinations and need not be conformed by registered importers. If these vehicles fail to comply fully with the standards, and are not exported or abandoned, the bond would be forfeit, but the Administrator would entertain petitions for mitigation, just as the Customs Service does under the existing regulations.

Nor would the restriction apply to either category of importer if the condition of the bond that is not met relates to compliance with part 581, the Federal bumper standard. The primary purpose of this standard is the preservation of property, rather than the prevention of deaths and injuries. The fact that Congress draws a distinction is found in the permissive authority of the two Secretaries that allows importation of used passenger motor vehicles whether or not they comply with the bumper standard (15 U.S.C. 1916(b)(4)), but forbids the importation of vehicles that do not comply with safety standards unless the vehicles are brought into compliance with them.

These provisions are proposed as § 591.9.

Impacts

NHTSA has considered the impacts of this proposed rule, and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". It is intended to formalize existing statutory obligations of importers of motor vehicles not originally manufactured to comply with the Federal bumper standard, and to ensure that motor vehicles comply with the Federal theft prevention standard before their entry into the United States. It is not significant under Department of Transportation regulatory policies and procedures. Less than 3,000 motor vehicles a year are currently imported, and it is anticipated that this number will not increase. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There is no substantial effect on state and local governments. The impact upon the Federal government is that the bonding obligation of the U.S. Customs Service with respect to motor vehicle compliance with Federal standards is transferred to the Department of Transportation.

The agency has also considered the effects of this proposed rule in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities. Because importers of vehicles that do not conform to the Federal motor vehicle safety standards currently must post conformance bonds of up to 300% of the entered value of the vehicle, the proposal that they pay a bond of only 150% of such value should result in a lesser economic impact upon vehicle importers. Further, small organizations and governmental jurisdictions would not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles.

NHTSA has analyzed this proposal for purposes of the National Environmental Policy Act. The proposal would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported under the rule would not vary significantly from that existing before promulgation of the rule.

The declaration and bond requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Although they are modifications of declarations presently existing in agency form HS–7, the declarations have been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). They will become effective upon approval by OMB.

The agency has analyzed the proposal in accordance with the principles and criteria contained in Executive Order 12612 "Federalism", and has determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 591

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 would be revised as follows:

1. The authority citation would be revised to read:

Authority: Pub. L. 100–562, 15 U.S.C.1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8.

2. The title of part 591 would be revised to read:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

3. In the table of contents, under the section heading "Sec.", new §§ 591.8 and 591.9 would be added to read:

Sec.

591.8 Conformance bond and conditions.
591.9 Petitions for remission or mitigation of forfeiture.

4. Sections 591.1, 591.2, and 591.3 would be revised to read:

§ 591.1 Scope.

This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

§ 591.2 Purpose.

The purpose of this part is to ensure that motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and bumper standards issued under part 581 of this chapter. The purpose of this part is also to ensure that nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

§ 591.3 Applicability.

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States.

5. The introductory text of § 591.4 would be revised to read:

§ 591.4 Definitions.

All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391), and section 2 and section 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021), are used as defined in the Acts, except that the term "model year" is used as defined in part 593 of this chapter.

* * * * *

6. The introductory text of § 591.5 and paragraphs (a), (b), and (c) would be revised to read:

§ 591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

(a)(1) The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal motor vehicle safety, bumper, and theft prevention standards; or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and bumper and theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or to the equipment item or its delivery container, in accordance with, as applicable, parts 541, 555, 567, 568, and 581, or part 571 (for certain equipment items) of this chapter.

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

§ 591.5 [Amended]

7. The introductory text of § 591.5(d) would be revised to read:

* * * * * *

(d) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * * *

§ 591.5 [Amended]

8. Section 591.5(e) would be revised to read:

* * * * * * *

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and any part of such vehicle that is required to be marked by part 541 of this chapter is marked in accordance with that part, and upon completion of such further manufacturing operations such vehicle or equipment item will comply with all applicable Federal motor vehicle safety, bumber, and theft prevention standards.

* * * * * *

§ 591.5 [Amended]

9. In § 591.5, the introductory text of paragraph (f) and paragraph (f)(1) would be revised to read:

* * * * * *

(f) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in § 591.8; and

* * * * * *

§ 591.5 [Amended]

10. The introductory text of § 591.5(g) would be revised to read:

* * * * * *

(g) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but it does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

* * * * * *

§ 591.5 [Amended]

11. In § 591.5(g), new paragraphs (g)(5), (g)(6), and (g)(7) would be added to read:

* * * * * *

(g) * * *

(5) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in § 591.8;

(6) The vehicle was not manufactured in conformity with all applicable safety and bumper standards, but it has been or will be brought into conformity; furthermore, within 120 days after entry or such additional time not to exceed 180 days after entry as the Administrator may allow, the importer will submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity; and

(7) The importer will not sell the vehicle, or offer it for sale, until the Administrator issues a statement that the conditions of the bond required by § 591.6(c) have been satisfied.

§ 591.5 [Amended]

* * * * * *

12. The introductory text of § 591.5(h) would be revised to read:

* * * * * *

(h) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * * *

§ 591.5 [Amended]

13. Section 591.5(i)(2) would be revised to read:

* * * * * *

(i)(2) The equipment item was manufactured on a date when no applicable safety or theft prevention standard was in effect.

§ 591.5 [Amended]

* * * * * *

14. The introductory text of § 591.5(j) would be revised to read:

* * * * * *

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but it being imported solely for the purpose of:

§ 591.5 [Amended]

15. A new § 591.5(k) would be added to read:

* * * * * *

(k) The equipment item is subject to the theft prevention standard, and is marked in accordance with the requirements of part 541 of this chapter.

* * * * * *

§ 591.6 [Amended]

16. Section 591.6(c) would be revised to read:

* * * * * *

(c) A declaration made pursuant to § 591.5(f) of § 591.5(g) shall be accompanied by a bond in the form shown in Appendix A or Appendix B of this part, respectively, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury for the conformance of the vehicle with all applicable Federal

motor vehicle safety and bumper standards, or, if conformance with the safety standards is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

17. New §§ 591.8 and 591.9 would be added to read:

§ 591.8 Conformance bond and conditions.

(a) The bond required under § 591.6(c) for importation of a vehicle not originally manufactured to conform with all applicable standards issued under part 571 and part 581 of this chapter shall cover only one motor vehicle, and shall be in an amount equal to 150% of the entered value of the vehicle, as determined by the U.S. Customs Service.

(b) The principal on the bond shall be the importer of the vehicle.

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989).

(d) In consideration of the release from the custody of the U.S. Customs Service or the withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to all applicable standards issued under part 571 and 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 571 and part 581 of this chapter within 120 days after the date of entry;

(2)

(i) In the case of a vehicle imported pursuant to § 591.5(f), to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety and bumper standard in the year that the vehicle was manufactured and which applies in such year to the vehicle; or

(ii) In the case of a vehicle imported pursuant to § 591.5(g), to submit a true and complete statement to the Administrator, idenifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle has been brought into conformity with each Federal motor vehicle safety and bumper standard in the year that such vehicle was manufactured and which applies in such year to the vehicle.

(3) In the case of a Registered Importer, not to release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted such certification, and that the vehicle and bond may be released, except that the vehicle shall not be released if the principal has received written notice from the Administrator that an inspection of the vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation;

(4) In the case of a Registered Importer, to cause the vehicle to be available for inspection, if the principal has received written notice from the Administrator that an inspection is required.

(5) In the case of a Registered Importer, not to release the vehicle until the Administrator is satisfied with the certification and any modification thereof, if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation.

(6) If the principal has received written notice from the Administrator tha the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, to pay the Administrator the amount of the bond.

(e) If the principal defaults on the obligation of paragraph (d)(6) of this section, to abandon the vehicle to the United States or to redeliver the vehicle to the custody of a District Director of Customs and to execute all documents necessary for its exportation, the obligors shall pay to the Administrator the amount of the bond given under the provisions of this section.

§ 591.9 Petitions for remission or mitigation of forfeiture.

(a) After a bond has been forfeited, a principal and/or a surety may petition for remission of forfeiture. A principal and/or a surety may petition for mitigation of forfeiture only if the motor vehicle has been imported pursuant to § 591.5(g), or, if imported pursuant to § 591.5(f), only if the condition not met relates to the compliance of a passenger motor vehicle with part 581 of this chapter.

(b) A petition for remission or mitigation shall:

(1) Be addressed to the Administrator, identified as either a petition for remission or for mitigation, submitted in triplicate, and signed by the principal and/or the surety.

(2) State the make, model, model year, and VIN of the vehicle involved, and contain the Customs Entry number under which the vehicle entered the United States.

(3) State the facts and circumstances relied on by the petitioner to justify remission or mitigation.

(4) Be filed within 30 days from the date of the mailing of the notice of forfeiture incurred.

(c) A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

(d) If the Administrator finds that all conditions of the bond have, in fact, been fulfilled, the forfeiture is remitted.

(e) A decision to mitigate a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision. If payment of the stated amount is not made, or arrangements made for delayed or installment payment, the full claim of forfeiture shall be deemed applicable. The Administrator shall collect the claim, or, if unable to collect the claim within 120 days, shall refer the matter to the Department of Justice.

18. Appendix A and Appendix B would be added to this part as follows:

Appendix A—Bond for Importations of Motor Vehicles Under § 591.5(f)

Bond to Ensure Conformance With Motor Vehicle Safety and Bumper Standards

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents

That _____

name of principal or surety; if a corporation, the State of incorporation of _____,

as principal, street address or post office box number; city; state; ZIP code and _____

of _____,

name; State of incorporation, if any address

and _____

of _____,

name; State of incorporation, if any address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ _____ dollars ($_____), which represents 150% of the entered value of the following described motor vehcile as determined by the U.S. Customs Service:

_____

model year, make, series, engine and chassis numbers

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

Witness our hands and seals this _____ day of _____, 199_.

Whereas, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

DOT Form XXXX

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the motor vehicle described above); and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Administrator of the National Highway Traffic Safety Administration has determined tha the motor vehicle described above is eligible for importation into the United States; and

Whereas, the motor vehicle described above has been imported at the port of _____ and entered at said port for consumption on entry No. _____ dated _____, 199_.

Now, Therefore, The Condition of This Obligation is Such that—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) The principal shall then file, or if not a Registered Importer, shall then cause the Registered Importer of the vehicle to file, with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with the Federal bumper standard (if applicable);

(3) The principal, if a Registered Importer, shall not release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator notifies the principal before 30 calendar days that (s)he has accepted such certification and the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation;

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation:

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____

Name Address

_____

Name Address

_____(SEAL)

(Principal)

_____

Name Address

_____

Name Address

_____(SEAL)

(Surety)

Certificate As To Corporate Principal

I, _____

certify that I am the _____ of the corporation named as principal in the within bond;

that _____,

who signed the bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ {Corporate Seal}

To be used when a power of attorney has been filed with NHTSA May be executed by secretary, assistant secretary, or other officer

Appendix B—Bond for Importation of Motor Vehicles Under § 591.5(g)

Bond to Ensure Conformance with Motor Vehicle Safety and Bumper Standards

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents

That _____

name of principal or surety; if a corporation, the State of incorporation of _____,

as principal, street address or post office box number; city; state; ZIP code and _____

name; State of incorporation, if any of _____,

address

and _____

name; State of incorporation, if any of _____,

address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

_____

model year, make, series, engine and chassis numbers

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

Witness our hands and seals this _____ day of _____, 199__

Whereas, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

---

DOT Form XXXX

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

Whereas, pursuant to paragraph 591.5(g) of 49 CFR part 591, a regulation promulgated under the provisions of section 108, the above-bounden principal is eligible to import a motor vehicle under the provisions thereof: to wit, the above bounden principal's assigned place of employment was outside the United States as of October 31, 1988 and (s)he has not had an assigned place of employment in the United States between that date and the date of entry of the motor vehicle described above, and (s)he has not previously imported a motor vehicle into the United States manufactured on or after January 1, 1968, and (s)he had acquired (or had entered into a binding contract to acquire) the motor vehicle described above not later than October 31, 1988, and (s)he will enter the motor vehicle described above not later than October 31, 1992; and

Whereas, the motor vehicle described above has been imported at the port of _____,
and entered at said port for consumption on entry
No. _____, dated _____, 199__,

Now, Therefore, the Condition of This Obligation is Such That—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days after such importation, or such longer time not to exceed 180 days after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) When the vehicle has been brought into conformity, the principal shall then file with the Administrator, a true and complete statement that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle also complies with the Federal bumper standard;

(3) The principal shall not offer the vehicle for sale, or sell the vehicle, until the principal has received written notice from the Administrator that the principal has fulfilled all the conditions of the bond.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist!

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the statement is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the statement and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demands that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____
Name Address

_____
Name Address
_____(SEAL)
(Principal)

_____
Name Address

_____
Name Address
_____(SEAL)
(Surety)

Certificate as to Corporate Principal

I, _____
certify that I am the _____
of the corporation named as principal in the within bond;
that _____,
who signed the bond on behalf of the principal, was then _____
of said coporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ [Corporate Seal]

To be used when a power of attorney has been filed with NHTSA May be executed by secretary, assistant secretary, or other officer.

Issued on: November 22, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-27902 Filed 11-24-89; 11:18 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1057 and 1058

[Ex Parte No. MC-41 (Sub-No. 1)]

RIN 3120-AB 59

Identification of Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to eliminate its vehicle identification regulations at 49 CFR part 1058. Vehicle identifications of varying types are currently used by carriers, other regulatory agencies, and shippers. The existence and use of reasonable alternative manifestations of identity displayed on or carried in the vehicle appear to make the regulations at 49 CFR part 1058 duplicative, unnecessary and costly.

DATES: Comments are due on December 29, 1989.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC-41 (Sub-No. 1) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
John W. Fristoe (202) 275-7844
or
Roy M. Wilkins (202) 275-7452
(TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the decision, write to, call, or pickup in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Energy and Environmental Considerations

We preliminarily conclude that the proposed rule revision will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We preliminarily conclude that this action will not have a significant impact on a substantial number of small entities. Indeed, the proposed changes are likely to have a positive impact on the many small motor carriers for whom the current requirements impose expenses that may be unnecessary. The proposed rule revisions will not require the filing of reports or record keeping by small entities. The proposal will not duplicate, overlap, or conflict with any existing Federal rules. Comments are invited on these points.

List of Subjects

40 CFR 1057

Motor carriers, Reporting and record keeping requirements.

49 CFR Part 1058

Motor carriers.

Decided: November 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1057 and 1058 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

1. The authority citations for part 1057 would continue to read as follows:

Authority: 49 U.S.C. 11107 and 10321; and 5 U.S.C. 553.

2. Section 1057.11(c) is proposed to be revised to read as follows:

§ 1057.11 General leasing requirements.

* * * * *

(c) *Authority to operate vehicle.* Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative

* * * * *

3. Section 1057.21, introductory paragraph, is proposed to be revised to read as follows:

§ 1057.21 General exemptions.

The regulations in this part shall not apply to:

* * * * *

§ 1057.22 [Amended]

4. Section 1057.22 is proposed to be amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively.

5. Section 1057.31(d) is proposed to be revised to read as follows:

§ 1057.31 Interchange of equipment.

* * * * *

(d) *Authority to operate vehicle.* Unless a copy of the interchange agreement is carrier on the quipment, the authorized common carrier shall carry a statement with each vehicle during interchange service certifying that it is operating the equipment. The statement shall also identify the equipment by company or State registration number and shall show the specific point of interchange, the date and time it assumes responsibility for the equipment, and the use to be made of the equipment. This statement shall be signed by the parties to the interchange agreement or their authorized representatives. The requirements of this paragraph shall not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers.

* * * * *

PART 1058—IDENTIFICATION OF VEHICLES

6. Part 1058 is proposed to be removed.

[FR Doc. 89-27944 Filed 11-28-89; 8:45 am]

BILLING CODE 7035-01-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 54, No. 228
Wednesday, November 29, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 24, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Office of Transportation
- International Carriage of Perishable Foodstuffs
- None
- Recordkeeping; On occasion
- Businesses or other for-profit; Small businesses or organizations; 8 responses; 476 hours; not applicable under 3504(h)
- Dieter Fischer (202) 653–6246

Reinstatement

- Soil Conservation Service
- Application for Payment
- SCS–FNM–141
- On occasion
- Individuals or households; Farms; 18,600 responses; 4,650 hours; not applicable under 3504(h)
- Roy R. Twidt (202) 447–4251

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 89–27945 Filed 11–28–89; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), Advisory Panel (AP), and other Council advisory groups will meet on December 5–8, 1989, as the Sheraton Hotel in Anchorage, AK. Except as noted below, the meetings are open to the public.

The Council will begin meeting on December 5 at 9 a.m. It will consider final approval of a measure to extend the International Pacific Halibut Commission Area 4C 10,000 pound trip limit to the area's entire halibut quota.

The Council will review public comments on the draft inshore/offshore problem statement and proposed alternatives. If also will receive recommendations from its Fishers Management Committee on further action. The Council will review a revised Environmental Assessment/Regulatory Impact Review document analyzing options to prohibit or to curtail roe-stripping of pollock in the Gulf of Alaska and Bering Sea/Aleutian Islands (GOA and BSA), and consider emergency action for the 1990 winer fishery.

The Council will receive updated reports on the status of groundfish stocks in the GOA and BSA, and determine the acceptable biological catches for 1990 for each of the groundfish species groups in those areas.

It will also set total allowable catches based on biological and socioeconomic considerations. The Council will hear public testimony on domestic processors' and joint venture needs for 1990 and set initial apportionments to start the new fishing year. The Council also will review bycatch management in the GOA an BSA. The Council may discuss the current analysis for sablefish management in the GOA and BSA, and give additional guidance to staff regarding technical analysis. It may also discuss scheduling for further analysis of limited access measures for the halibut fishery.

The Council will receive status reports on the development of a domestic observer program, on current domestic fisheries activities from the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game, on high-seas fisheries negotiations, as well as on NOAA and U.S. Coast Guard enforcement activities.

The Council also will announce 1990 appointments to its SSC and AP, and appoint members to its Pacific Northwest Crab Industry Advisory Committee.

The Council's SSC and AP will begin meeting on Sunday, December 3 at the Sheraton Hotel to review the above-mentioned agenda items, and to prepare recommendations for the Council. Other meetings to also be held during the week include a NOAA/NMFS presentation of the 1990 logbook, observer, and reporting requirements, as well as meetings of the Council's Permit Review, AP Nominating, and Finance Committees.

Other workgroup and committee meetings may also be held on short notice throughout the week. The Council will meet in executive session (not open to the public) at least once during the week to consider employment matters and to receive briefings on international affairs and ongoing litigation.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Alan D. Parsons,
Chief, Recreational and Interjurisdictional Division, Office of Fisheries Conservation and Management.
[FR Doc. 89–27940 Filed 11–28–89; 8:45 am]
BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposed New Rules 577 and 578—Globex Limitation of Liability

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rules and request for comment.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted to the Commodity Futures Trading Commission ("Commission") proposed new Rules 577 and 578. The proposed rules generally pertain to limitations of liability for the CME, its clearing members, the P-M-T Limited Partnership ("PMT"), the Globex Corporation, Reuters, and their respective directors, officers and employees for any loss, damage, cost or expense incurred by a customer as a result of the customer's use of the CME's automated trading system, Globex, or use of Exchange services or facilities in connection with Globex. The Commission has determined that publication is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATES: Comments must be submitted by December 29, 1989.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8314.

FOR FURTHER INFORMATION CONTACT: Lystra G. Blake, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: By letter dated September 12, 1989, the CME submitted proposed Rules 577 and 578 pursuant to section 5a(12) of the Act and Commission Regulation 1.41(c). The proposed rules generally pertain to limitations of liability for the CME, its clearing members, PMT, the Globex Corporation, Reuters, and their respective directors, officers and employees for any loss, damage, cost or expense incurred by a customer as a result of the customer's use of the CME's automated trading system, Globex, or use of Exchange services or facilities in connection with Globex.[1] On October 10, 1989, the Commission determined to review the rules for approval pursuant to Section 5a(12). On October 13, 1989, the CME submitted an amended version of Rule 578.

Proposed Rule 577 prohibits members, clearing members and Rule 106.I. member firms from accepting an order from, or on behalf of, a customer for entry into Globex, the CME's automated trading system, unless the customer is first provided with a Globex Customer Information Statement ("Statement") in a form approved by the Exchange. The Statement briefly explains how Globex works and identifies certain features of Globex which differ from pit trading. The Statement also informs customers that neither the Exchange, its clearing members, other futures commission merchants, PMT,[2] the Globex Corporation,[3] Reuters (with respect to Globex), nor any of their respective directors, officers or employees would be liable for any loss, damage, cost or expense suffered by a customer as a result of the customer's use of Globex.

Proposed Rule 578 provides that neither the Exchange, PMT, the Globex Corporation, Reuters (with respect to Globex), nor any of their respective directors, officers or employees shall be liable to any Exchange member, clearing member or customer for any loss, damage, cost or expense (including, but not limited to loss of profits and loss of use) incurred by members or customers arising from: (i) Any faults in the delivery or operation of Globex, or Exchange services or facilities in connection with Globex, regardless of the cause of such faults; (ii) the suspension, termination, or inability to use all or part of Globex or Exchange services or facilities in connection with Globex, or any inaccuracies or omissions in any information provided; (iii) any failure or delay suffered or allegedly suffered by members or customers in concluding trades in Exchange contracts through Globex, however caused; or (iv) any other cause in connection with the furnishing, performance, maintenance or use of or inability to use all or any part of Globex, or Exchange services or facilities in connection with Globex.[4]

The rule also provides that neither the CME's clearing members, their officers, directors or employees would be liable to any customer for any loss, damage, cost or expense incurred by such customer from any failure of Globex, or from the failure of Exchange services or facilities in connection with Globex. In addition, under this rule neither the Exchange, its clearing members, PMT, the Globex Corporation, nor Reuters (with respect to Globex) would be liable to members or customers for any direct, indirect, incidental or consequential damages, including lost profits, resulting from the use of Globex, or the use of Exchange services or facilities in connection with Globex, even if the Exchange, its clearing members, PMT, the Globex Corporation, and Reuters had been advised of the possibility of such damage and even if the damage was due to the error, omission or negligence of these entities.

The proposed rule further provides that neither the Exchange, PMT, the Globex Corporation or Reuters makes any express or implied warranties or representations relating to Globex, or Exchange services or facilities in connection with Globex including, but not limited to, warranties of merchantability and fitness for a particular purpose or use, except those expressly set forth within this rule.

Proposed Rule 578 further provides that Illinois law would apply to all claims arising out of the use of Globex, or exchange services or facilities in connection with Globex, in which PMT, the CME or the Globex Corporation is a party. The rule also specifies the time within which claims must be brought and the court which would have jurisdiction to hear such claims.

The Commission requests comments on any aspect of the proposal that members of the public believe may raise issues under the Act or the

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[1] Other futures exchanges currently have limitation of liability rules. See, *e.g.*, Rule 313(b) of the Coffee, Sugar and Cocoa Exchange, Inc. and Rule 103(a) of the New York Futures Exchange.

[2] PMT is a limited partnership organized under the laws of the state of Illinois with a wholly-owned subsidiary of the CME as its general partner and certain members and clearing members of the Exchange as limited partners. Each of the CME's members and clearing members was invited, but was under no obligation, to join PMT as a limited partner. Under the PMT partnership agreement, the CME would retain any partnership interest which an Exchange member or clearing member declined to purchase and would offer to sell it to any subsequent purchaser of that Exchange seat.

[3] The Globex Corporation is an Illinois corporation that will be the administrative arm for the Globex system. The directors for the Globex Corporation will be comprised of individual representatives from participating exchanges and the futures commission merchant community.

[4] The proposed rules are similar to the limitation of liability provisions in the CME-Reuters Agreement.

Commission's regulations. The Commission requests comment generally on whether a limitation of liability rule is necessary or proper. In particular, the Commission requests comment on whether the scope of the limitations of liability would preclude Globex customers from asserting any rights, or receiving any protections, provided for under the Commodity Exchange Act, as amended, and Commission regulations, and whether the breadth of the limitations of liability contravenes specific provisions of the Act, Commission regulations, or public policy. While the Commission understands the rationale behind the proposed *force majeure* provisions, the Commission has reservations with respect to the scope of those provisions.

Copies of the proposed rules will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on the proposed rules, or with respect to other materials submitted by the CME in support of its submission, should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 22, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–27877 Filed 11–28–89; 8:45 am]

BILLING CODE 6351–01–M

New York Mercantile Exchange: Proposed Amendments Relating to Quality Specifications for the Crude Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The New York Mercantile Exchange ("NYMEX") has submitted proposed amendments to its crude oil futures contract. The amendments would change the types of foreign crude oil deliverable on the contract, eliminate the futures price adjustments for sulfur and gravity, and modify the matching procedures for foreign crude oil deliveries. The amendments would apply to newly listed contract months and to existing contracts effective with deliveries two months after the spot month being traded when the Exchange receives notification of Commission approval. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation § 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on the proposal.

DATE: Comments must be received on or before December 29, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed changes to the NYMEX crude oil futures contract.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The NYMEX crude oil futures contract currently provides for delivery of seven enumerated domestic crude oil streams and six enumerated foreign crude oils. The rules specify the par crude as West Texas Intermediate (WTI) with a 40° gravity (API) and 0.4 percent sulfur. There is a 2-cent per barrel discount for each full degree of gravity (API) below 40° and a 5-cent per barrel premium (discount) for each full 0.1 percent sulfur content less (more) than 0.4 percent. To be eligible for delivery, crude oil must have a gravity of 34° to 45° (A.P.I.) and a sulphur content that does not exceed 0.5 percent by weight.

Delivery on the crude oil futures contract takes place "no earlier than the first calendar day of the delivery month and no later than the last calendar day of the delivery month," based on pipeline scheduling. Longs accepting delivery fill out a "Notice of Intention to Accept Delivery" specifying their intentions and requests.

The proposed amendments would eliminate four currently deliverable foreign crudes (Nigerian Brass Blend, Norwegian Ekofisk, Tunisian Zarzaitine/El Borma and Algerian Saharan Blend) and add one new foreign crude (Norwegian Oseberg Blend). With these amendments, only three foreign crudes would be deliverable—U.K. Brent Blend, Nigerian Bonny Light and Norwegian Oseberg Blend.

The proposed amendments also would eliminate the existing price adjustments for sulfur and gravity noted above, so that all eligible domestic and foreign crudes meeting the NYMEX's gravity and sulfur standards would be deliverable at par. In addition, the proposal would make explicit the seller's obligation to ensure that crude oil is available to begin flowing in Cushing, Oklahoma (the delivery point) by the first day of the delivery month.

The Exchange also has proposed a resolution on matching whereby the Exchange will provide long participants with the option of requesting delivery of foreign crude oil, which will be allocated to such longs if it is delivered against crude oil futures by short participants. The resolution also specifies procedures for distributing any foreign crude oil to long participants if the total requests for foreign crudes do not equal the amount to be delivered by the shorts.

In support of the proposed changes regarding the deliverable foreign crudes, the NYMEX stated that "the key issue is one of product fungibility." The Exchange noted that, in the 1980's:

> . . . Saharan Blend and Brass River foreign crudes have tended to trade at a discount to WTI. They have tended to trade at a discount, not only because they are not more available, but also because they produce significantly less gasoline that that of WTI (and the demand for gasoline has risen). Moreover, even though Zarzaitine is technically not an OPEC crude oil . . . the same problem of increased supply and lower yield patterns affect its pricing relative to WTI.
>
> . . . The second factor altering product fungibility concerns changes for gasoline's Reid Vapor Pressure (RVP). RVP is a measure of gasoline's volatility.
>
> In early 1989 both the federal and a number of state governments began mandating lower gasoline volatility during summer months as a way of reducing air pollution. When the governments mandated lower RVP standards, it changed relative crude oils values because crude oils have different proportions of "light ends".
>
> Those crude oils with larger amounts of condensate or butane, for example, will yield less environmentally acceptable gasoline than crude oils with less light ends. . . . Ekofisk, Saharan Blend, and Zarzaitine have significantly higher light end components than WTI. As a result, these crude oils have become much less valuable relative to WTI.

After considering both the trading relationship of the above crude oils (i.e., the supply and demand for these crude oils relative to WTI), and the effect of the RVP changes, the Exchange's Crude Oil Advisory Committee voted to remove Saharan Blend, Zarzaitine, Brass River, and Ekofisk crude oils from the list of deliverable crude oils. None of these crude oils were considered close enough to WTI to allow them to be delivered as a substitute. Brent Blend and Bonny Light were, however, considered close enough to remain deliverable.

Regarding the addition of Oseberg Blend, the Exchange stated that "this decision represents a compromise between the various market participants. It also represents a decision accepted by the majority or refiners in Oklahoma and Kansas." The Exchange further noted that an additional reason for adding Oseberg Blend was that its production is expected to increase to 340,000 barrels per day (bd) by 1992. NYMEX stated that "total production should increase to approximately 600,000 bd by the mid 1990s."

With respect to the proposed elimination of the gravity and sulfur adjustment, the NYMEX justified this proposal in two ways, as noted below.

First, the industry has gradually phased out gravity and sulfur banks. Most all crude oil pipeline common streams are now operated without such adjustments. The best example of this probably is the Capline. * * * Second, the Cushing market, and the market the New York Mercantile Exchange has come to serve and reflect, is primarily a spot market. And the cash WTI market trades "flat and gravity." All purchases and sales are assumed to be at par and there are no gravity or sulfur adjustments. While the lease, or posted market, still uses such adjustments, they are definitely not part of the spot market.

As a consequence of these changes in the cash market, the provisions for sulfur and gravity adjustment in the crude oil contract are no longer relevant.

The Exchange indicated that the intent of the proposed rule change regarding the seller's obligation to ensure that crude oil is available by the first of the delivery month is "to provide the delivery recipient with the same ability to schedule the receipt of foreign barrels as is now available when scheduling [shipment of] domestic barrels." The Exchange stated that the language of this rule currently focuses on the timing of receipt of oil into Cushing rather than delivery out. Thus, the Exchange states that the revised language meets the needs of longs, while at the same time ensuring that shorts delivery foreign crude oil in a equivalent manner to that now occurring in the domestic cash market.

Regarding the proposed revised matching procedures, the NYMEX noted that the modification would provide buyers with the option of requesting foreign crude oil. The NYMEX noted that:

> A box for indicating this preference will be placed on the "Intention to Accept Delivery" form. (Clearing procedures for such a request will be handled in a similar manner to that occurring in the New York Harbor gasoline or heating oil contracts when a party requests truck delivery. Truck delivery requests are removed from the computer run before they are matched by size, and they are assigned appropriate partners based on their mutual desire to make or take such a delivery.) There is no guarantee that such requests can or will be fulfilled.
>
> It should be noted that the Exchange has been told by a number of traditional longs that they would avail themselves of this foreign crude oil request option. Consequently, such a procedure would greatly aid in the adjustment of the contract to the evolving cash market practices.

The Commission is requesting comment on the merits of NYMEX's proposed changes to its crude oil futures contract. Also, the Commission is requesting comment on the proposal to apply the changes to certain existing contracts as explained above.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the NYMEX in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on November 24, 1989.

Steven Manaster,

Director.

[FR Doc. 89–27954 Filed 11–28–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Application Filed With Commission

November 22, 1989.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of filing:* Amendment of License—New Capacity.

b. *Project No.:* 8436–050.

c. *Date filed:* September 6, 1989.

d. *Applicant:* Smith Falls Hydropower.

e. *Name of project:* Smith Creek.

f. *Location:* On Smith Creek in Boundary County, Idaho near the town of Porthill occupying lands of the United States within the Panhandle National Forest.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. David B. Van Otten, President, American Pacific Power Corp., 699 E. South Temple, Salt Lake City, Utah 84102, (801) 363–6111.

i. *Commission contact:* Deborah Frazier-Stutely, (202) 357–0842.

j. *Commment date:* December 22, 1989.

k. *Description of the proposed action:* The license for this project was issued on April 10, 1987. The licensee proposes to make the following changes to his licensed project: (1) Install two generating units with an installed capacity of 1,8000 kW instead of two 1,5000 kW generating units as authorized in the original license. (2) Install a third unit with an installed capacity of 2,150 kW at the minimum flow release outlet of the dam. The total installed capacity of the project will increase from 30,000 kW to 38,150 kW, increasing the estimated average annual energy generation from 81.8 million kWh to 85.5 million kWh.

1. *This notice also consists of the following standard paragraph:* B

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27887 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-42-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 21 1989.

Take notice that on November 16, 1989, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, tendered for filing in Docket No. RP90-42-000 Twenty-Fifth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2 (Primary Case).

Northwest Alaskan states that Twenty-Fifth Revised Sheet No. 5 is proposed to be effective January 1, 1990 and is based on the assumption that Natgas U.S. Inc. ("Natgas") will have replaced United Gas Pipe Line Company ("United") as a customer of Northwest Alaskan under Rate Schedule X-3 effective January 1, 1990, pursuant to Northwest Alaskan's certificate filing in Docket No. CP78-123-028 and tariff filing in Docket No. RP90-16-000, which are currently pending before the Commission. The replacement of United by Natgas is subject to the closing of an overall transaction among a number of parties as well as obtaining governmental approvals of all aspects of the transaction. Natgas will not be subject to paying a demand charge adjustment during the period January-June 1990 since Natgas was not a customer of Northwest Alaskan during the period March-August 1989. Hence, Natgas will pay only its share of the estimated demand charges. United's Demand Charge Adjustment will be billed to United as set forth in RP90-16-000.

Northwest Alaskan that Twenty-Fifth Revised Sheet No. 5 reflects a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to three of Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle") and Natgas under Rate Schedules X-1, X-2 and X-3, respectively. Demand charges to Northwest Alaskan's fourth customer, Pacific Interstate Transmission Company ("PIT"), under Rate Schedule X-4, have increased as a result of increased demand charges from Pan-Alberta.

Northwest Alaskan states that Alternate Twenty-Fifth Revised Sheet No. 5 is based on the assumption that United will still be Northwest Alaskan's customer under Rate Schedule X-3 as of January 1, 1990 (Alternate Case). This would occur only if the conditions precedent to the replacement of United by Natgas are not satisfied and the transaction referred to above does not close. In that event, this alternative sheet is proposed to be effective January 1, 1990. At such time as Natgas replaces United, a new demand charge filing will be made.

Northwest Alaskan requests that Twenty-Fifth Revised Sheet No. 5 become effective January 1, 1990.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27888 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-37-011; RP89-1-014]

Northwest Pipeline Corp.; Notice of Filing

November 21, 1989.

Take notice that on November 15, 1989, Northwest Pipeline Corporation (Northwest) filed second Substitute Third Amended Thirty-Ninth Revised Sheet No. 10 and Second Amended Forty-First Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1 to supplement its filing of July 26, 1989, in Docket Nos. TA-88-4-37-009 and RP89-1-012.

Northwest states that Second Substitute Third Amended Thirty-Ninth Revised Sheet No. 10 reflects the inclusion of the revised PGA surcharge (9.59 cents per MMBtu) in its Base Tariff Restatement rates. Northwest states that Second Amended Forty-First Revised Sheet No. 10 implements that revised PGA surcharge effective July 3, 1988 and reflects the non-gas cost component of its gas sales rates that were set forth in its June 6, 1988 filing.

Northwest states that copies of this filing is being served on all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211(1989)). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27889 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-7-28-001]

Panhandle Eastern Pipe Line Co.; Notice of Filing

November 21, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle) filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989.

Panhandle requests that the Commission substitute these tariff sheets, which reflect the correct interest rate for the fourth quarter of 1989, in lieu of the three tariff sheets filed on October 31, 1989.

Panhandle states that copies of this filing have been mailed to its jurisdictional customers, interested state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27890 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-8-28-001]

Panhandle Eastern Pipe Line Co.; Notice of Filing

November 21, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle) filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989.

Panhandle requests that the Commission substitute these tariff sheets, which reflect the correct interest rate for the fourth quarter of 1989, in lieu of the three tariff sheets filed on October 31, 1989.

Panhandle states that copies of this filing have been mailed to its jurisdictional customers, interested state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27891 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-28-001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 22, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on November 20, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Seventy-Fifth Revised Sheet No. 3-A
First Substitute Fifty-Second Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is December 1, 1989.

Panhandle states that these revised tariff sheets filed herewith reflect the following adjustments respecting Panhandle's D1 and D2 demand rates: (1) an increase of $1.30 for D1 and (2) an increase of 0.05¢ for D2 pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets, as revised, are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to §§ 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective December 1, 1989.

Panhandle states that this revised quarterly PGA filing is to conform to Trunkline Gas Company's (Trunkline) revised demand rate adjustments filed on November 13, 1989 in compliance with the Commission's Orders dated May 31, 1989 and October 31, 1989 in Trunkline's Docket No. RP89-160-000 to be effective November 1, 1989.

Panhandle states that it should be noted that by order dated June 30, 1989, issued in Docket No. RP89-185-000, the Commission accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Pursuant to § 25.31 thereof, §§ 18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 are suspended until reestablished in accordance with § 25.32. Accordingly, Panhandle is reflecting as a current adjustment only the changes in its D1 and D2 demand rates mentioned above.

Panhandle has requested any necessary waivers of the Commission's Regulations and the General Terms and Conditions of its PGA provisions in order to permit the revised tariff sheets to become effective as proposed.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27892 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-41-000]

Southern Natural Gas Co.; Petition for Limited Waiver

November 21, 1989.

Take notice that on November 8, 1989, Southern Natural Gas Company (Southern) filed a petition for limited waiver of certain provisions of its FERC Gas Tariff, Sixth Revised Volume No. 1, in compliance with § 161.3(b) of the Commission's Regulations. Southern requests a limited waiver of sections 5(d) and 5(e) of Rate Schedules FT and IT of its FERC Gas Tariff to the extent necessary to allow Southern, for the cumulative imbalance period ending March 31, 1989, (1) to offset the volumes on which Southern is owed an imbalance penalty by a shipper under section 5(d) by any volumes which Southern is allowed to retain from the same shipper under section 5(e), and (2) to charge all shippers who owe deficiency penalties to Southern under sections 5(d) the rate in effect on March 31, 1989, under Southern's AO Rate Schedule for the zone in which the deliveries were made.

Southern requests the Commission to allow Southern to lessen, in a limited

manner, the severity of first-time imbalance penalties to be levied against shippers who failed to make up deficient transportation imbalances which remained above the specified tolerance level. Southern also requests that the Commission allow it to net those overdeliveries by a shipper which Southern is authorized to retain under one or more service agreements against those deficiencies owed by the same shipper to Southern under one or more different service agreements.

Southern states that a copy of this filing is being served on all of its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27893 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-30-001]

Trunkline Gas Co.; Notice of Filing

November 21, 1989.

Take notice that on November 15, 1989, Trunkline Gas Company (Trunkline) filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989.

Trunkline requests that the Commission substitute these tariff sheets, which reflect the correct interest rate for the fourth quarter of 1989, in lieu of the three tariff sheets filed on October 31, 1989.

Trunkline states that copies of this filing have been mailed to its jurisdictional customers, interested state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27894 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-252-001]

Washington Natural Gas Co.; Project Operator; Filing of Revised Tariff Sheet

November 22, 1989.

Take notice that on November 15, 1989, Washington Natural Gas Company (Washington Natural) 815 Mercer Street, Seattle, Washington, in its capacity as Project Operator of the Jackson Prairie Storage Project (Storage Project), located in Chehalis, Lewis County, Washington, tendered for filing with the Commission First Revised Sheet No. 13 in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on November 1, 1989.

According to Washington Natural, it filed its FERC Gas Tariff, First Revised Volume No. 1, on September 29, 1989, containing a revised Gas Storage Project Agreement (Project Agreement) pursuant to which Washington Natural, as Project Operator of the Storage Project, will operate the Storage Project and that the revised Project Agreement supersedes the original Project Agreement contained in Washington Natural's FERC Gas Tariff, Original Volume No. 1. It is further stated that the Storage Project provides the natural gas storage capacity and capability to enable Northwest Pipeline Corporation (Northwest) to render its Rate Schedule SGS-1 storage service.

Washington Natural further states that, in an order issued October 31, 1989, the Commission accepted Washington Natural's First Revised Volume No. 1 for effectiveness November 1, 1989 but rejected one provision—section 6.6 of Article VI of the revised Project Agreement—without prejudice to its being refiled with a supporting explanation for its purpose and need.

According to Washington Natural, section 6.6 of the Project Agreement applies in force majeure circumstances on Northwest's system and allows Northwest to withdraw Working Gas during emergency situations to restore and maintain minimum pressure and service on its pipeline system and to replace the Working Gas, following the end of the emergency.

Washington Natural further states that section 6.6 of the revised Project Agreement exempted Working Gas deliveries to Washington Natural and The Washington Water Power Company from curtailment during emergency situations on Northwest's system, unless these parties gave their specific approval. According to Washington Natural this is the particular part of section 6.6 in the revised Project Agreement to which the Commission objected and which the Commission rejected.

Washington Natural states that section 6.6 of the revised Project Agreement as refiled on First Revised Sheet No. 13 restates section 6.6 as it appeared in the original Project Agreement and permits the curtailment of deliveries of Working Gas to Washington Natural and The Washington Water Power Company to the extent necessary during emergencies on the Northwest system.

Washington Natural states that copies of its filing were served upon the intervenors in this proceeding and upon those customers of Northwest who subscribe to its Rate Schedule SGS-1 service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27895 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-52-001]

Western Gas Interstate Co.; Tariff Filing

November 22, 1989.

Take Notice that on November 16, 1989, Western Gas Interstate Company ("Western") filed certain tariff sheets to its FERC Gas Tariff.

Western states that the tariff sheets are filed in compliance with the October 17, 1989 Letter Order of the Director, OPPR, requiring Western to file a tariff sheet reflecting the annual change to its Annual Charge Adjustment, effective October 1, 1989, rather than November 1, 1989 as proposed in Western's September 29, 1989 PGA filing in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27896 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-251-001]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 22, 1989.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on November 15, 1989, tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1 in compliance with the Commission's "Order Accepting and Rejecting Tariff Sheets Subject to Refund and Conditions and Establishing a Hearing" issued October 31, 1989.

Copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27949 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-253-002]

Carnegie Natural Gas Co.; Compliance Filing

November 22, 1989.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on November 15, 1989, tendered for filing proposed revisions to its Second Revised Volume No. 1, FERC Gas Tariff, and supporting explanatory language, as required by the Commission's October 31, 1989 order issued in this proceeding.

Carnegie states that its proposed revised language applies to section 5.1(a) of its FTS and ITS Rate Schedules (Transportation Imbalances) and to Section 15.2 of the General Terms and Conditions of its FERC Gas Tariff (Nominations for Deliveries). The proposed imbalance tariff revisions pertain to specific penalties and charges Carnegie proposes to bill to transporters in addition to imbalance charges; the proposed nominations tariff language lists the information Carnegie will require from customers seeking deliveries of firm sales gas.

In addition, Carnegie provides a written narrative in its transmittal letter explaining its 'first-through-the-meter" provision at section 15.2 of the General Terms and Conditions of its FERC Gas Tariff.

Carnegie also states that it has not filed tariff sheets removing its proposed Gas Inventory Charge flowthrough mechanism because, on November 6, 1989, Carnegie filed a request for reconsideration and request for stay of that aspect of the Commission's order, and the Commission has not yet acted on the matter.

Carnegie states that it has served the filing upon the company's jurisdictional customers, applicable state commissions, and other parties that have intervened in these dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27950 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-217-014]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 22, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on November 15, 1989, pursuant to Section 4 of the Natural Gas Act, the Commission's August 3, 1989 order in Docket No. RP88-190-002, *et al.* and Section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff:

Second Substitute Original Sheet No. 160I

The proposed effective date of this sheet is June 1, 1989. CNG states that the purpose of this filing is to correct a wording error inadvertently included on this tariff sheet. In addition, CNG requested that the proposed effective date for Substitute Third Revised Sheet No. 45 be June 1, 1989, rather than May 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before 11-30-89. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27951 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-37-006, RP89-32-006]

High Island Offshore System; Compliance Filing

November 22, 1989.

Take notice that on November 16, 1989, High Island Offshore System (HIOS) filed certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 16, 1989.

HIOS states that this filing is in compliance with the Commission's order of October 17, 1989.

HIOS states that copies of this filing are being mailed to all parties to these consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27952 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-025]

Northwest Pipeline Corp.; Compliance Filing

November 22, 1989.

Take notice that on November 17, 1989, Northwest Pipeline Corporation (Northwest) filed certain tariff sheets to its FERC Gas Tariff to comply with the Commission's order of October 17, 1989 and to implement settlement rates as approved.

Northwest states that a copy of this filing is being served on all parties of record and on all jurisdictional customers and affected state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before November 30, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27953 Filed 11-28-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3691-3]

Drinking Water; Announcement of Public Meeting to Discuss the Preliminary Concept Paper for the Disinfectants and Disinfection By-Products Rule

AGENCY: Environmental Protection Agency (EPA).

The EPA Office of Drinking Water is conducting a public meeting on December 4, 1989 form 9:00 a.m. to 4:00 p.m. at the EPA Headquarters Education Center Auditorium located at 401 M Street SW., Washington, DC 20460. This meeting concerns development of Primary Drinking Water Regulations for disinfectants and their by-products. Specifically, EPA would like to discuss in a public forum our preliminary approach to selection of contaminants, monitoring, determination of best available technologies, and specification of maximum contaminant levels and treatment technologies for the Disinfectants and Disinfection By-Products Rule.

The meeting will begin with a summary of the approach EPA is currently considering. Members of the public will be given an opportunity to make brief statements on issues relevant to the EPA approach. Most of the program will allow informal discussion of the issues. Copies of a preliminary concept paper outlining EPA's approach will be available at the meeting. A copy of the paper can also be obtained by writing to: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550D), 401 M Street SW., Washington, DC 20460.

EPA will be accepting written comments on the paper at the above address until January 15, 1990.

Dated: November 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 89-27875 Filed 11-28-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Inter-American Freight Conference, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009648A-048.

Title: Inter-American Freight Conferenoe Agreement.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I. e I.
American Transport Lines, Inc.
A/S Ivarans Rederi
Companhia Maritima Nacional
Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritima Netumar
Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Frota Amazonica S.A.
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Van Nievelt Goudriaan & Co. B.V.
Reefer Express Lines PTY. Ltd.
Transportacion Maritima Mexicana S.A.

Synopsis: The proposed modification would transfer provisions relating to

loyalty contracts from Article 14 to Article 13.03 (b).

Agreement No.: 217-010051-016.

Title: Mediterranean Space Charter Agreement.

Parties:

Compania Trasatlantica Espanola Costa Container Line
Farrell Lines, Inc.
"Italia" di Navigazione, S.P.A. Jugolinija
Lykes Bros. Steamship Co., Inc.
A.P. Møller-Maersk Line
Nedlloyd Lijnen B.V.
Sea-Land Service Inc.
P&O Containers (TFL) Ltd.
Zim Israel Navigation Co., Inc.

Synopsis: The modification proposes to add Compagnie Generale Maritime as a party to the Agreement and to reflect the name changes of three other parties.

Agreement No.: 203-011117-005.

Title: North America/Australasia Interconference and Carrier Discussion Agreement.

Parties:

Pacific Coast/Australia-New Zealand Tariff Bureau
U.S. Atlantic & Gulf/Australia-New Zealand Conference
Blue Star Line, Ltd.
Hyundai Australia Direct Line
Columbus Line
Scancarriers
Hong Kong Islands Line America S.A. ("HKI")
Associated Container Transportation (Australia) Ltd.
Ocean Star Container Line A.G.
Australia-New Zealand Direct Line
Lief Hoegh & Co., S.A. ("Lief Hoegh")
Nedlloyd Lines.

Synopsis: The proposed amendment would delete HKI and Lief Hoegh as parties to the agreement. It would delete Canada and Mexico from the scope of the Agreement in conformity with the Commission's decision in Docket 87-24 and would change the name of the Agreement to "United States/Australasia Interconference and Carrier Discussion Agreement." It would also make a number of other administrative changes to the Agreement.

Agreement No.: 202-011259.

Title: United States/Southern Africa Conference Agreement.

Parties:

Empresa De Navegacao Internacional (Navinter)
Lykes Bros. Steamship Co., Inc.
Safbank Line, Ltd. (Safbank)

Synopsis: Agreement No. 202-011259 proposes to create a Conference in the trade between the U.S. and South Africa. It authorizes the parties to perform the normal operational activities of a conference in addition to allowing the parties to charter vessel capacity (space or slots). It is anticipated that the United States/South and East Africa Conference and the South and East Africa/U.S.A. Conference will be dissolved on or about 30 days after the effectiveness of Agreement No. 202-011259, United States/Southern Africa Conference.

Agreement No.: 202-011260.

Title: United States/East Africa Conference Agreement.

Parties:

Bank Line East Africa Limited
Lykes Bros. Steamship Co., Inc.
P.O. Containers (TFL), Ltd.

Synopsis: Agreement No. 202-011260 proposes to create a Conference in the trade between the U.S. and East Africa. The parties are authorized to perform the normal operational activities of a conference, and also to charter vessel capacity (space or slots). It is anticipated that the United States/South and East Africa Conference as well as the South and East Africa/U.S.A. Conference will be dissolved on or about 30 days after the effectiveness of Agreement No. 202-011260, United States/East Africa Conference.

Agreement No.: 203-011261.

Title: ACL/Wallenius Space Charter and Cooperative Working Agreement.

Parties:

Atlantic Container Line ("ACL")
Wallenius rederierna AB ("Wallenius")
Rederiaktiebolaget Transatlantic
Incotrans BV

Synopsis: The proposed agreement would permit Wallenius to charter space from ACL aboard ACL's roll-on roll-off vessels in the trade from U.S. Atlantic, Gulf, Great Lakes and St. Lawrence River ports and inland points via such ports to ports and points in Europe. It would also permit the parties to agree on the scheduling of vessels aboard which Wallenius charters space.

Agreement No.: 203-011262.

Title: ACL/Cunard General Agency Agreement.

Parties:

Atlantic Container Line
The Cunard Steam-Ship Company, plc

Synopsis: The Agreement provides authority for the Cunard Steam-Ship Company, plc (Cunard) to serve as general agent for Atlantic Container Line in the United Kingdom and Eire through December 31, 1991, and commits Cunard not to engage in common carrier activities within the geographic scope of the Agreement during the stated period.

Agreement No.: 203-011263.

Title: ACL/CGM General Agency Agreement.

Parties:

Atlantic Container Line
Compagnie Generale Maritime

Synopsis: The Agreement provides authority for Compagnie Generale Maritime (CGM) to serve as general agent for Atlantic Container Line in France, Switzerland, Spain and Portugal through March 31, 1991, and commits CGM not to engage in common carrier activities within the geographic scope of the Agreement during the stated period.

By Order of the Federal Maritime Commission.

Dated: November 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27880 Filed 11-28-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200307.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Port), James River II, Inc., dba Western Transportation (WT).

Filing Parties: Ms. Elaine Lycan, Price Estimating & Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, OR 97208

Synopsis: The Agreement provides WT with the lease of terminal facilities located at Terminal 1, Portland, Oregon to be operated as a public cargo and passenger handling facility. WT is to assess dockage and wharfage charges based upon rates in the Port's tariff and is entitled to share certain dockage, wharfage and passenger fees. The Agreement's term expires June 30, 1991.

By Order of the Federal Maritime Commission.

Dated: November 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27905 Filed 11-28-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200147-002.

Title: Jacksonville Port Authority Terminal Agreement.

Parties: Jacksonville Port Authority, Sea-Land Service, Inc.

Synopsis: The Agreement amends the basic agreement. It modifies provisions pertaining to the commencement of throughput charges. It also re-defines the beneficial occupancy clause and eliminates the CFS warehouse requirement of the agreement.

Agreement No.: 224-010747-002.

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach (City), Boliden Sulex, Inc.

Synopsis: The Agreement modifies Agreement No. 224-010747 for the lease of property at the City's Pier G to (1) reflect a corporate name change from Sulexport Corporation to Boliden Sulex, Inc. and (2) to provide for an adjustment of rent, as well as, the reservation of a vehicular easement on the leased premises and related matters.

By Order of the Federal Maritime Commission.

Dated: November 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27906 Filed 11-28-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Advisory Committee on the National Institutes of Health; Establishment

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) announces the establishment by the Secretary of the Advisory Committee On the National Institutes of Health.

The Committee shall advise and make recommendations to the Secretary and the Assistant Secretary for Health on strengthening the position of Director, NIH, in order to prepare the NIH for the challenges of the 1990's and beyond.

The Committee shall terminate on November 30, 1990, unless the Secretary, DHHS, formally determines that continuance is in the public interest.

Dated: November 21, 1989.

James O. Mason,

Assistant Secretary for Health and Acting Surgeon General.

[FR Doc. 89-27885 Filed 11-28-89; 8:45 am]

BILLING CODE 4160-17-M

Advisory Committee on the National Institutes of Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the meeting of the Advisory Committee on the National Institutes of Health (NIH).

Date and Time: December 4, 1989, at 4 p.m.

Place: Humphrey Building, Secretary's Conference Room, 6th Floor, 200 Independence Avenue SW., Washington, DC 20201.

Open 4 p.m. to approximately 4:20 p.m.

Closed for remainder of meeting.

Agenda: The open session of the meeting from 4 p.m. to approximately 4:20 p.m. will be devoted to introductions, swearing-in of Committee members, and welcoming remarks of the Chair. The remainder of the meeting will be closed to the public under 5 U.S.C. 552b(9)(B) because the premature disclosure of the proceedings would be likely to frustrate evaluation and implementation of the Committee recommendations by the Department of Health and Human Services and the Public Health Service. During the closed portion of the meeting, the Committee will be discussing the kinds of changes that might be needed to strengthen the position of Director, NIH, in order to prepare the NIH for the challenges of the 1990's and beyond.

Because of the necessity to commence the activities of the Committee as soon as possible, the usual requirement for advance notice of the Committee's meeting has been waived.

Anyone wishing to obtain a Roster of Members or other relevant information should contact Dr. Patricia J. Hoben, Office of the Assistant Secretary for Health, room 740 G Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245-6135.

Dated: November 21, 1989.

James O. Mason,

Assistant Secretary for Health and Acting Surgeon General.

[FR Doc. 89-27886 Filed 11-28-89; 8:45 am]

BILLING CODE 4160-17-M

National Institutes of Health

National Cancer Institute: Notice of Availability of 3ZD Mouse Hybridoma Cell Line

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given of the availability of the 3ZD mouse hybridoma cell line from the Biological Response Modifiers Program of the National Cancer Institute. This cell line produces the IgG1 monoclonal antibody against human IL-1β with no cross-reactivity with human IL-1α.

ADDRESS: Individuals interested in obtaining this cell line or desiring further information should contact Joost Oppenheim, M.D., Head, Laboratory of Molecular Immunology, Biological Response Modifiers Program, NCI-FCRF, Frederick, Maryland 21701, (301) 698-1551.

Dated: November 22, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89-27946 Filed 11-28-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the meeting notice for the meeting of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS which was published in the **Federal Register** (52 FR 11447) on March 20, 1989.

The meeting of December 7 originally scheduled in Conference Room 10, Building 31C, National Institutes of Health, Bethesda, MD, will now be held at the Hart Senate Office Building, Room 216, 200 Block of 2nd Avenue NE., Washington, DC 20510 from 9 a.m. to 4 p.m.

Dr. Elliott H. Stonehill, Assistant Director, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide agenda details, transcripts or summaries of the meetings and rosters of the Committee members upon request.

Dated: November 24, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-27947 Filed 11-28-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a grant program.

SUMMARY: The Bureau of Indian Affairs intends to make funds available to Federally Recognized Indian Tribes on an annual basis for the purpose of financing highway traffic safety projects which are designed to reduce the high number of traffic accidents and their resulting fatalities, injuries, and property damage within Indian reservations. Due to the limited funding available for this program, all projects will be reviewed and selected on a competitive basis. This notice is intended to inform Indian tribes on the availability of the grant monies and the process in which the projects are selected.

DATES: Applications must be received by July 1 of each program year.

ADDRESSES: Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be addressed to the attention of: "Indian Highway Safety Program Coordinator". Application packets will be distributed on May 1 of each program year. Application packets will be sent to the tribal address as shown on the latest Tribal Leaders List which is compiled by the Bureau of Indian Affair's Tribal Government Services, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tribes should direct all questions concerning the grant program and applications to the Area Indian Highway Safety Program Coordinator having responsibilities for the applicant tribe. More general inquiries on the National Indian Highway Safety Program may be directed to Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, P.O. Box 2006, Albuquerque, New Mexico 87124. Telephone: (505) 766-2181.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93-87) provides for U.S. Department of Transportation funding to assist Indian tribes in financing highway safety projects. These projects are designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All Federally recognized Indian tribes on Indian Reservations are eligible to receive this assistance, and at such time as highway safety projects are approved, the tribal governing bodies carry out and administer the programs. All tribes and reservations which avail themselves of this assistance are reimbursed for costs incurred under the terms of a Federal/Reservation agreement. The Department of Transportation pays from 75% to 100% of all costs of highway safety projects approved for funding under provisions of the Highway Safety act.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a "State" and the Secretary, U.S. Department of the Interior (DOI) is considered the "Governor of a State". The Secretary, DOI, delegated the authority to administer the programs throughout all the Indian reservations in the United States to the Commissioner, Bureau of Indian Affairs (BIA).

The Commissioner of BIA further delegated the responsibility for primary administration of the Indian Highway Safety Program to the Central Office Division of Safety Management (DSM), located in Albuquerque, New Mexico.

The chief, DSM, as program administrator of the Indian Highway Safety Program, has one full-time staff member to assist in program matters and provide technical assistance to the Indian tribes. It is at this level that contacts with the U.S. Department of Transportation are made with respect to program approval, funding of projects and technical assistance.

The U.S. Department of Transportation, through the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA), is responsible for assuring that the Indian Highway Safety Program is carried out in accordance with 23 U.S.C. 402 and other applicable Federal regulations.

The National Highway Traffic Safety Administration is responsible for the apportionment of funds to the Secretary of the Interior, review and approval of highway safety projects involving NHTSA highway safety areas of responsibilities, and technical guidance and assistance to BIA field offices and tribal coordinators by NHTSA regional offices in the general administration of the program.

The Federal Highway Administration is responsible for review and approval of highway safety projects involving FHWA highway safety areas of responsibilities and technical guidance and assistance to BIA field offices and tribal coordinators by FHWA division offices.

Program Areas

The Department of Transportation, at the direction of Congress, in the Omnibus Budget Reconciliation Act of 1981, conducted a major review to determine which State and local highway safety programs have been most effective in reducing traffic crashes, injuries and fatalities. The six most effective NHTSA and FHWA highway safety programs are: (1) Alcohol Countermeasures; (2) Police Traffic Services; (3) Occupant Protection; (4) Traffic Records; (5) Emergency Medical Services; and (6) Safety Construction and Operational Improvements.

Funding Criteria

The Department of Transportation will reimburse for costs associated with the following:

(1) Alcohol Countermeasures—Salary (DWI enforcement/education/rehabilitation); DWI training; breath-testing equipment; community/school alcohol traffic safety education; DWI offender education/rehabilitation; and vehicle expenses.

(2) Police Traffic Services—Salary (traffic enforcement/education); traffic enforcement training; speed enforcement equipment; community/school education; and vehicle expenses.

(3) Occupant Protection—(A) Child Car Seat Program—child car seats; car seat transportation/storage; educational materials; and office expenses. (B) Community Seat Belt Program—Salary; educational/promotional materials; office expenses; and training.

(4) Traffic Records—salary; computerized equipment.

(5) Emergency Medical Services—Training is the only allowable cost for funding.

(6) Safety Construction and Operation Improvements—Traffic signs (warning, regulatory, work zone); hardware; and sign posts.

Project Applications

Application packets will be forwarded to the tribes on May 1 of each program year. Upon receipt of the application packet, each tribe should prepare a proposed project application based upon the following guidelines:

A. *Program Planning.* Program planning shall be based upon the highway safety problems identified and countermeasures selected by the tribe for the purpose of reducing traffic crash factors.

B. *Problem Identification.* Highway traffic safety problems shall be identified from the best data available. This data may be found in tribal enforcement records on traffic crashes. Other sources of data include ambulance records, court and police arrest records. The problem identification process may be aided by using professional opinions of personnel in law enforcement, Indian Health Service, driver education, road engineers, etc.

Impact problems will be identified during the identification process. An impact problem is a highway safety problem that contributes to car crashes, fatalities and/or injuries, and one which may be corrected by the application of countermeasures. Impact problems can be identified from analysis of statewide and/or tribal traffic records. The analyses should consider, as a minimum: pedestrian, motorcycle, pedalcycle, passenger car, school bus, and truck accidents; records on problem drivers, roadside and roadway hazards, alcohol involvement, youth involvement, defective vehicle involvement, suspended or revoked driver involvement, speed involvement and safety belt usage.

C. *Countermeasure Selection.* When tribal highway traffic safety problems are identified, appropriate countermeasures shall be developed by the tribe to solve or reduce the problems. The development of these countermeasures should take into account the overall cost of the countermeasure versus its possible effects on the problem.

D. *Objectives/Performance Indicators.* After countermeasure selection, the objective(s) of the project must be expressed in clearly defined, time-framed and measurable terms.

E. *Budget Format.* The activities to be funded shall be outlined according to BIA object groups, i.e., personal services, travel, supplies and materials, equipment, contracts, training, etc. Each object group shall be quantified, i.e., personal activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object-group shall have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made and the total cost, including and tribal contribution to the project.

F. *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted and if it has accomplished its objective. A plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance shall be included in the grant application.

G. *Technical Assistance.* Department of Transportation, State, and Bureau personnel will be available to tribes for technical assistance in the preparation of tribal project applications.

H. *Section 402 Project Length.* Section 402 funds shall not be used to fund the same project at one location or jurisdiction for more than three years.

Submission Deadline

Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be sent to the attention of: Indian Highway Safety Program Coordinator. The application must be received by July 1 of each program year. Requests for extension to this deadline will not be granted.

Selection Criteria

Project application will be reviewed and evaluated by the Indian Highway Safety Program Office and applications will be ranked by assigning points to four areas of consideration. Those areas of consideration and their respective point values are listed below:

Magnitude of Problems—50 Points

1. Does a highway safety problem exist?
2. Is the problem significant?
3. Does the project contribute to the solution of the problem identified?
4. Number of traffic crashes last three years? Alcohol related?
5. Number of reported fatalities last three years? Alcohol related?

Countermeasure Selection—40 Points

1. Are the countermeastres selected the most effective?
2. Are they cost effective?
3. Have objectives been stated in realistic performance terms and are they attainable?
4. Are the objectives time-framed and are the time-frames realisitc and attainable?

Tribal Leadership and Community Support—10 points

1. Are tribal resources used in this project? Tribal Resolution?
2. Does the project have community support? Support Letters?

Past Performance + or — 10 Points

1. Reporting (Financial & Programmatic).
2. Accomplishments.

Notification of Selection

The tribes selected to particpate will be notified by letter. Each tribe will be requested to submit a *Certification Regarding Drug-Free Workplace Requirements.* Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. The certification must be signed by an individual authorized to sign for the tribe or reservation. The certification must be received by the U.S. Department of Transportation prior to the release of grant funds for that tribe or reservation.

Notification of Non-Selection

The Program Administrator will notify each tribe not selected. The tribe will be advised of the reason for non-selection.

Uniform Administrative Requirements for Grants-in-Aid

Uniform grant administration practices have been established on a national basis for all grant-in-aid programs by OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments".

Cost principals applicable to grants and contracts with State and local Governments have been established by OMB Circular A-87 and NHTSA Order 462-13A. It is the responsibility of the Program Administrator, Area Coordinators, and Contracting/Grants Officers to establish operating procedures consistent with the applicable provisions of those circulars.

Standards for Financial Management System

Tribal financial management systems must provide for:

1. Accurate, current, and complete disclosure of financial results of the highway safety project.
2. Adequate record keeping.
3. Control over and accountability for all funds and assets.
4. Comparison of actual with budgeted amounts.
5. Documentation of accounting records.
6. Appropriate auditing. Highway safety projects will be included in the tribal A-128 Single Audit.

Tribal programs will provide a monthly financial status report to the Department of Transportation. This report of expenditures will be submitted to the Program Administrator no later than fifteen days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA to maintain a degree of project oversight, provide technical assistance as needed to assist the project in fulfilling its objectives, and assure that grant provisions are complied with.

Project Evaluation

A performance evaluation will be conductd for each highway safety project by the Bureau of Indian Affairs. The evaluation will measure the actual accomplishments to the planned activity.

Walter R. Mills,

Depty to the Assistant Secretary-Indian Affairs (Operations).

[FR Doc. 89-27920 Filed 11-28-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-00-4111-15; WYW63045]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulations 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW63045 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW63045 effective May 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 89-27921 Filed 11-28-89; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Commission Determination not to Review Initial Determination Granting Motion for Summary Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) granting the joint motion of respondents for summary determination terminating the investigation with respect to U.S. Letters Patent Des. 269,873 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

On October 5, 1989, respondents Nokia Corporation; Nokia-Mobira Oy; Nokia, Inc; Nokia-Mobira, Inc; A & A International and Tandy Corporation, all of the respondents in the above-captioned investigation, jointly filed a motion requesting summary determination terminating the investigation with respect to U.S. Letters Patent Des. 269,873. The Commission investigative attorney (IA) supported the motion, and complainant Motorola opposed the motion.

On October 24, 1989, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 28) granting the joint motion to terminate the investigation with respect to U.S. Letters Des. 269,873.

No petitions for review or government agency comments were filed.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By Order of the Commission.
Filed: November 21, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-27909 Filed 11-28-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-308]

Certain Key Blanks for Keys of High Security Cylinder Locks; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 26, 1989, under section 337 of the Tariff Act of 1930, as amended, 19

U.S.C. 1337, on behalf of Medeco Security Locks, Inc., P.O. Box 3075, U.S. 11, West Allegheny Drive, Salem, Virginia 24153. The complaint alleges violations of:

Subsection (a)(1)(B)(i) of section 337 in the importation into the United States or the sale within the United States after importation of certain key blanks for the keys of high security cylinder locks by reason of induced and contributory infringement of claims 4, 5, 17, 18 and 19 of U.S. Letters Patent 4,835,455 and claims 1, 2 and 3 of U.S. Letters Patent 4,732,022 and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (August 29, 2969).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 20, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States or the sale within the United States after importation of certain key blanks for the keys of high security cylinder locks by reason of induced or contributory infringement of (1) claims 4, 5, 17, 18 or 19 of U.S. Letters Patent 4,635,455 or (2) claims 1, 2 or 3 of U.S. Letters Patent 4,732,022, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Medeco Security Locks, Inc., P.O. Box 3075, U.S. 11, West Allegheny Drive, Salem, Virginia 24153.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Action Security Products, Inc., 2113–D Palma Drive, Ventura, California 93003.

(c) David A. Guth Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059 (August 29, 1988). Pursuant to § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (August 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 20, 1989.

[FR Doc. 89–27910 Filed 11–28–89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-303]

Certain Polymer Geogrid Products and Processes; Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 4) issued by the presiding administrative law judge (ALJ) granting complainant Tensar Corporation's motion to amend the complaint in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1089.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 3, 1989, complainant Tensar Corporation filed a motion to amend the complaint and notice of investigation in the investigation so as to correct and supplement the list of foreign patent applications coresponding to the patents in issue in the investigation, U.S. Letters Patent 4,756,946 and U.S. Letters Patent 4,474,798. On October 26, 1989, pursuant to interim Commission rule 210.22 (53 FR 33059 (Aug. 29, 1989)), the ALJ issued an ID granting Tensar's motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure ((53 FR 33070) (Aug. 29, 1988)).

By order of the Commission.

Kenneth R. Mason

Secretary.

Issued: November 21, 1989.

[FR Doc. 89–27911 Filed 11–28–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-148/169]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Order Modifying Administrative Law Judge's Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has modified an order issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The Commission has deleted a paragraph of the ALJ's order that provided that confidential treatment for certain information would continue for a period of 5 years following the termination of the investigation. The Commission has replaced that paragraph with a paragraph that does not contain a time limit.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 252–1116. Copies of the Commission's order and the nonconfidential documents filed in connection with this action are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 252–1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 252–1810.

SUPPLEMENTARY INFORMATION: On July 31, 1984, the presiding ALJ issued his final ID order in this investigation. Among other things, the order provided that *in camera* treatment for certain information would continue for a period of 5 years from the termination of the investigation. Because of the exclusion order in the investigation was issued by the Commission on November 26, 1984, *in camera* treatment would have expired on November 26, 1989.

On September 11, 1989, Viskase Corporation, successor to a co-complainant in this investigation, filed a petition for modification (under Commission interim rule 211.57) of the order of the presiding ALJ. Viskase requested that the Commission strike the portion of the order that provided that *in camera* treatment would expire after 5 years, in order that *in camera* treatment for the information continue indefinitely. Teepak, also a co-complainant in the original investigation, filed a response supporting Viskase's position. Respondent Viscofan S.A. filed an opposition to the petition. No other comments were received.

The authority for this action is conferred by section 337(n) of the Tariff Act of 1930 (19 U.S.C. 1337(n)), added by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, August 23, 1988), and by Commission interim rule 210.6 (53 FR 33056–57, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 22, 1989.

[FR Doc. 89–27912 Filed 11–28–89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Amoco Chemical Co., et al.; Extension of Public Comment Period on Proposed Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice was published in the **Federal Register** on August 31, 1989, that a complaint was filed on August 15, 1989, in *United States* v. *Amoco Chemical Company, et al,* Civil Action No. H–89–2734, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, a consent decree between the United States, Amoco Chemical Company and twenty other defendants was lodged with the Court. The prior notice stated that public comments on the proposed consent decree would be received for a period of thirty (30) days from the date of publication of the notice. In response to a request submitted by a member of the public, the public comment period on the proposed consent decree was extended until October 30, 1989. In response to concerns now expressed by residents near the site known as the "Brio Refinery Site", the period during which comments will be received from the public is reopened from October 30, 1989 until thirty (30) days from publication of this notice.

Accordingly, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Amoco Chemical Company,* et al., D.J. Ref. 90–11–3–325.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

United States Attorney's Office

Chief, Civil Division, U.S. Courthouse & Federal Building, 515 Rusk, 3rd Floor, Houston, Texas 77002, (713) 229–2800.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $19.90 payable to Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27922 Filed 11–28–89; 8:45 am]

BILLING CODE 4410-01-M

Standard Machine & Equipment Co., Inc.; Lodging of Consent Decree

In accordance with Departmental policy, notice is hereby given that on November 16, 1989, a proposed Consent Decree in *United States* v. *Standard Machine & Equipment Co., Inc.,* Civil Action No. 88–2450, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree resolves an action alleging violations of the Clean Air Act and the asbestos NESHAP work practice standards contained at 40 CFR 61.141 *et seq.* by requiring Standard Machine & Equipment Co., Inc. to comply with the Act and the asbestos NESHAP and to pay to the United States a civil penalty in the amount of $17,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the

Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Standard Machine & Equipment Co., Inc.*, D.J. reference # 90–5–2–1–1250.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114, the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (15 pages at 10 cents per page) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–27923 Filed 11–28–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Notifications; Automotive Emissions Cooperative Research Program

Notice is hereby given that, on October 18, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Automotive Emissions Cooperative Research Program ("the Program"), a joint research venture, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Program and (2) the nature and objective of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the Program and the nature and objective of the Program are given below.

The Program is composed of the following fourteen oil companies and three automobile manufacturers:

	Principal place of business	State of incorporation
Amoco Oil Co., 200 East Randolph Drive, Chicago, IL 60601.	Chicago, IL.	MD.
Atlantic Richfield Co., 515 South Flower Street, Los Angeles, CA 90071.	Los Angeles, CA.	DE.
Ashland Oil, Inc., P.O. Box 391, [or], 1000 Ashland Drive, Ashland, KY 41114.	Ashland, KY.	KY.
BP Oil Co., 200 Public Square 33–3507–K, Cleveland, OH 44114–2375.	Cleveland, OH.	OH.
Chevron Corp., 225 Bush Street, San Francisco, CA 94104.	San Francisco, CA.	DE.
Chrysler Motors Corp., 12000 Chrysler Drive, Highland Park, MI 48288.	Detroit, MI ...	DE.
Conoco Inc., 600 North Dairy Ashford, Harris County, Houston, TX 77079.	Houston, TX.	DE.
Exxon Research and Engineering Co., 180 Park Avenue, P.O. Box 101, Florham Park, NJ 07932.	Florham Park, NJ.	DE.
Ford Motor Co., The American Road, Dearborn, MI 48121.	Dearborn, MI.	DE.
General Motors Corp., 3044 West Grand Boulevard, Detroit, MI 48232.	Detroit, MI ...	DE.
Marathon Oil Co., 539 South Main St., Findlay, OH 45840.	Findlay, OH.	OH.
Mobil Oil Corp., 150 East 42nd Street, New York, NY 10017.	New York, NY.	NY.
Phillips Petroleum Co., 4th and Keeler Streets, Bartlesville, OK.	Bartlesville, OK.	DE.
Shell Oil Co., One Shell Plaza, Houston, TX 77001.	Houston, TX.	DE.
Sun Refining and Marketing Co., Ten Penn Center, 1801 Market Street, Philadelphia, PA 19103.	Philadelphia, PA.	PA.
Texaco Inc., 2000 Westchester Avenue, White Plains, NY 10650.	White Plains, NY.	DE.
Union Oil Company of California, 1201 West 5th Street, Los Angeles, CA 90017.	Los Angeles, CA.	CA.

The Program may contract with third parties, such as the Coordinating Research Council, Inc., incorporated in Georgia, with its principal place of business in Atlanta, Georgia, to perform certain functions.

The Program was agreed to as of October 16, 1989. The Program will have as its objective the development and carrying out of research and tests designed to evaluate the potential improvements in air quality achievable through the use of reformulated gasolines (including reformulated gasoline using ethers and ethanol as oxygenates), of methanol and other alternative fuels, and of developments in advanced automotive technology including emission control systems. The Program will also evaluate the relative cost-effectiveness of these various alternatives. The members of the Program expect the research and testing to provide sound and reliable data with which the Federal Government as well as various state governments can fairly and accurately compare the costs and benefits of the various alternatives to reducing emissions and ozone forming potential from motor vehicles in order to improve air quality. The members anticipate that the data from the testing will be made available to Congress, the Environmental Protection Agency, various state regulators, and the public.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–27924 Filed 11–28–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed an additional written notification with the Attorney General and the Federal Trade Commission on November 3, 1989, concerning the identities of additional members of NCMS and certain state-of-the-art investigations it has undertaken. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have become members of the NCMS since August 9, 1989:

Apeiron, Inc.
D. Appleton Company
Flow Research, Inc.
Giddings & Lewis, Inc.
Sensor Adaptive Machines, Inc.
Setco Industries, Inc.
Thomas Group, Inc.

The NCMS has awarded a number of state-of-the-art investigation contracts in various manufacturing fields and is currently negotiating with several prospective contractors for research projects directed toward NCMS's objectives.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which was published by the Department of Justice ("the Department") pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications, identifying its initial membership, on April 15, 1988 and May 5, 1988, notices of which were published by the Department on June 2, 1988 (53 FR 20194). On July 11, 1988, NCMS filed a notification change in membership, notice of which was published by the Department on August 19, 1988 (53 FR 31771). On September 13, 1988, NCMS filed an additional notification of change in membership and change of state of incorporation, notice of which was published by the Department on November 4, 1988 (53 FR 44680). NCMS filed additional notifications of membership changes on December 8, 1988, March 9, 1989 and August 10, 1989, notices of which were published on January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), and September 18, 1989 (54 FR 38461).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–27925 Filed 11–28–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notifications; Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on October 26, 1989, disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specified circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594. On November 4, 1988, February 2, 1989, and July 28, 1989, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), and August 25, 1989 (164 FR 35408), respectively.

The identities of the new, non-voting members of OSF as of October 17, 1989 are as follows:

Member	Date
Schlumberger	7/28/89.
Institute of Systems Science	7/31/89.
Shell Development Company	8/08/89.
Chung-Ang University	8/29/89.
Institut fur Wirtschaftsinformatik	8/29/89.
Naval Underwater Systems Center	9/06/89.
National Computer Board	9/11/89.
Computer Institute of Japan, Ltd.	9/13/89.
Columbia University	9/14/89.
Objectivity, Inc.	9/15/89.
Andersen Consulting	9/21/89.
Matsushita Electric Industrial Co., Ltd.	9/23/89.
Microelectronics Computer Tech Corp.	9/25/89.
Transarc Corporation	10/06/89.
University of Bremen	10/06/89.
New Jersey Institute of Technology	10/10/89.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–27926 Filed 11–28–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notifications; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et. seq.* ("the Act"), Semiconductor Research Corporation ("SRC") on October 25, 1989, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of Epic Design Technology, Etech Development Corporation, Peak Systems, Inc., Rapro Technology, Inc. and Technology Modeling Associates, Inc. and the deletion of Applied Materials, Inc.

The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 69(b) of the Act, the SRC's general area of planned activity is given below.

The SRC is a joint venture which, with the addition and deletion of the previously identified companies to the SRC, comprises the following members:

Advanced Micro Devices, Incorporated
AT&T Technology, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
Epic Design Technology
E-Systems, Incorporated
Etech Development Corporation
General Electric Company/RCA
General Motors Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Microelectronics and Computer Technology Corporation
Micron Technology, Inc.
Motorola, Incorporated
National Semiconductor Corporation
NCR Corporation
Peak Systems, Inc.
Perkin-Elmer Corporation
Rapro Technology, Inc.
Rockwell International Corporation
SEMATECH, Inc.
Silvaco Data Systems
Solid State Equipment Corporation
Technology Modeling Associates, Inc.
Texas Instruments Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

The SRC's purpose is to plan, promoted, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members; and

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

On January 8, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SRC also filed additional notifications on December 19, 1986 and January 30, 1987; the Department published notice of both on February 13, 1987 (52 FR 4671). SRC also filed an additional notification on December 13, 1988, notice of which the Department published on January 13, 1989, (FR 1454). SRC also filed additional notifications on January 31, 1989 and February 10, 1989; the Department published notice of both on March 13, 1989 (54 FR 10456). SRC also filed an additional notification on March 29, 1989, notice of which the Department published on May 4, 1989 (54 FR 19256). SRC also filed an additional notification on July 13, 1989, notice of which the Department published on August 10, 1989 (54 FR 32855).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-27927 Filed 11-28-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notifications; UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. on October 31, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of UNIX International, Inc. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989, 54 FR 8608. On May 4, 1989, and August 1, 1989 UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26266), and August 17, 1989 (54 FR 33985), respectively.

As of October 27, 1989, the following have become members of UNIX International, Inc.:

Altos Computer Systems
Aoyama Gakuin University
Cambridge Tech
Chorus Systems
Convex Computer
CSK
Diab Data AB
Edinburgh Port
ETRI
Far East Computers
Fiat Auto
Fourth Wave
Imperial Software
Keio University
Kmart
Labtam Limited
Mannesmann
Matsushita Electric Industrial Co., Ltd.
MITAC International
NTT Data Comm.
Samsung Electronic
Santa Cruz Oper.
SMT-GOUPIL
Softway Pty. Ltd.
Sumitomo Electric
Sumitomo Metal
Swedish Defense
Tatung Co.
Teradata Corp.
TI
University of Tokyo
WYSE Technology
Yokogawa Electric.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-27928 Filed 11-28-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application by Abbott Laboratories

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations, (CFR), this is notice that on June 2, 1989, Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064-4000, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Fentanyl (9801)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Hydromorphone (9150)	II
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative CCR, and must be filed no later than December 29, 1989.

Dated: November 14, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27943 Filed 11-28-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacture of Controlled Substances; Registration of Knoll Pharmaceuticals

By Notice dated January 9, 1989, and published in the **Federal Register** on January 12, 1989, (54 FR 1257), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, NJ 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydrocodone, a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 20, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27941 Filed 11-28-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration of Mallinckrodt Specialty Chemicals Co.

By Notice dated March 16, 1989, and published in the **Federal Register** on March 22, 1989, (54 FR 11823), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Street, St. Louis, MO 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objectives have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 20, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-27942 Filed 11-28-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on December 13 and 14, 1989 in Room S-4215 A and B of the Frances Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will begin at 9:00 am.

The agenda for this meeting includes reports on: The extension of the Permissible Exposure Limits Rule for Construction, OSHA's response to Committee comments on the excavation standard, the status on subpart R proposed rule, the status of the final rule in lockout-tagout, the compliance directive for the excavation standard, the OSHA response to the Committee's legislative proposals, the compliance directive for inspections of employers with significant histories of workplace fatalities and the proposed rule on permit required for confined space. Reports will also be received from the Committee's work groups on cadmium, vehicle safety, recordkeeping, hazard communication and compliance officer training. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Dvision of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202-523-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 27th day of November 1989.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 89-28043 Filed 11-27-89; 4:34 pm]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Information Notices and Bulletins

This notice is to announce that information notices and bulletins issued by the U.S. Nuclear Regulatory Commission (NRC) can now be purchased through a subscription service form the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9323. The Government Printing Office telephone number is (202) 275-2060. If any additional information or clarification is needed, contact Don Kirkpatrick, NRC on (301) 492-1152.

Dated at Rockville, Maryland this 21st day of November, 1989.

For The Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation.

[FR Doc. 89-27913 Filed 11-28-89; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all

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notices of amendments issued, or proposed to be issued from November 6, 1989 through November 16, 1989. The last biweekly notice was published on November 15, 1989 (54 FR 47598).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 29, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: October 30, 1989

Description of amendments request: Currently, the Dresden Nuclear Power Station (DNPS), Units 2 and 3, Technical Specifications (TS) do include cycle-specific and fuel bundle type specific power distribution operating limits. Typically, in the past, changes to these limits would be submitted for NRC approval prior to each refueling outage to reflect upcoming cycle-specific characteristics. Since these limits were determined using a methodology previously approved by the NRC, license amendments were an unnecessary burden on the utility and NRC resources. In order to facilitate the elimination of these unnecessary amendments, the NRC issued Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications." This Generic Letter provides guidance in removing the cycle-specific and fuel bundle-specific operating limits from the TS and recording them in a Core Operating Limits Report (COLR). Commonwealth Edison Company (CECo) proposed a TS amendment for DNPS in accordance with Generic Letter 88-16 and the previously approved lead Boiling Water Reactor (BWR) Plant (Brunswick).

CECo's proposed TS amendment removes the following cycle-specific and fuel bundle type specific operating limits: Average Planar Linear Heat Generation Rate, Minimum Critical Power Ratio, Linear Heat Generation Rate, and Rod Block Monitor Upscale Setpoints. In place of these limits, the applicable TS sections will reference the COLR. The COLR is an unit specific document containing the power distribution operating limits that apply for a specific cycle.

COLRs for future operating cycles will be submitted to the NRC for information prior to startup following each refueling outage as required by Generic Letter 88-16. The implementation and revision of the COLRs will be controlled by DNPS Administrative Procedures. It should be noted that COLR revisions will receive the same level of detailed review and required approvals by the CECo Nuclear Fuel Services (NFS) Department, and On-Site and Off-Site Review Committees as Technical Specification changes do. In addition, the Definitions Section of the Technical Specifications shall have an entry entitled, "Core Operating Limits Report," and there will be a new administrative reporting requirement added to the existing reporting requirements in Section 6.6.A of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(C). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

CECo reviewed the proposed changes to the TS and determined that the requested amendment does not involve a significant hazards consideration. More specifically, operation of DNPS in accordance with the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of any accident previously evaluated because plant protective functions and modes of operation are not altered. This amendment removes cycle-specific and fuel bundle type specific power distribution limits from the Technical Specifications and places them in a separate, controlled document (i.e., COLR). These changes are essentially administrative in nature, as the parameters in the COLR are the same as those currently specified in the Technical Specifications. NRC approved methods will still be used to analyze reloads of NRC approved fuel types for determining the results reported in the COLR. The surveillance requirements for these operating limits remain unchanged. Furthermore, functional requirements of safety-related equipment remain uneffected.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because as stated above no safety-related equipment, safety function, plant protective feature, or mode of operation will be altered as a result of this amendment. The proposed changes do not create any new type of accident. The proposed amendment is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameters from the TS. These operating limits will be developed in accordance with NRC-approved methodology, and the incorporation of these limits to the COLR ensure they will be properly controlled. Furthermore, the TS requirement for submitting the COLR to the Commission will allow the staff to continue to trend the value of these limits without the need for prior staff approval and without introduction of an unreviewed safety question. The current spectrum of analyzed reactor transients and accidents remains unchanged.

(3) Does not involve a significant reduction in the margin of safety. No plant functions are changed by this amendment. The change only removes cycle-specific and fuel bundle type specific power distribution limits from the Technical Specifications and incorporates these limits in the COLR. The plant will still continue to be operated within the boundaries established by these same power distribution limits as calculated using NRC approved methods.

The Commission conducted a preliminary review of CECo's proposed amendment and analysis of no significant hazards. Currently, the Commission concurs with CECo's determination, and proposes that the aforementioned amendment does not constitute a significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael L. Miller, Esquire; Sidley and Austin, One

First National Plaza, Chicago, Illinois 60603.

NRC Project Director: John W. Craig

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would revise the provisions in the Technical Specifications to incorporate operability and surveillance requirements for core exit thermocouples (CET). A new specification and several applicable footnotes would be added to Table 3.17.4 establishing minimum CET operability requirements, permissible bypass conditions, and compensatory actions to be taken in the event of CET inoperability. A new item would also be added to Table 4.1.3 specifying periodic surveillance requirements for the CET. In addition, the licensee proposes to revise Basis paragraph 3.17 to reflect the above described changes.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely add operability and surveillance requirements for the upgraded core exit thermocouples (CETs) where none had existed previously. The upgraded CETs are environmentally qualified thermocouples with increased indicating range and improve the operators' ability to monitor core temperatures following an accident.

The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely add operability and surveillance requirements for the upgraded core exit thermocouples (CETs) where none had existed previously.

The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 16, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications to conform with the Westinghouse Standard Technical Specifications (WSTS) as is expressed in the McGuire Technical Specifications. The amendment would specify the time limits during which the diesel generator fuel oil can be allowed out of specifications (3.8.1.1.a, b and d). New requirements would be imposed requiring periodic removal of water from the diesel fuel tank, sampling of new fuel oil in accordance with industry test standard documents, and periodic testing of stored fuel oil.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The new diesel oil specifications comply with current guidance documents and do not reduce the level of diesel generator operability. The new requirements cannot function as initiating events of any previously analyzed accidents. Furthermore, we determined that despite the proposed changes to the Technical Specifications, the original design requirement of the system will continue to be met, and safety-related systems which require power supply from the diesel generators will be capable of performing their original design functions. Hence the probability and consequences of previously analyzed accidents will not be increased. There is no hardware, software or operational procedure changes as a result of the proposed amendment, and hence no new failure modes are introduced. Finally, there is no change in any analytical assumption or acceptance criteria.

We therefore propose to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 16, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications to clarify the reactor coolant system (RCS) boron dilution requirements. These changes have been incorporated in the D.C. Cook and Millstone 3 Technical Specifications. Specifically, (1) A footnote would be added to Section 3.1.1.3 to clearly define boron reduction (dilution), (2) An existing footnote to Section 3.4.1.3 would be expanded to clearly define boron dilution, (3) Section 3.4.1.4 would be totally rewritten to impose requirements on RCS isolated loops, (4) Section 3.4.1.5 would be rewritten to address requirement to restart isolated RCS loops, (5) A footnote would be added, similar to item (1) above, to Section 3.9.8.1 to clearly define boron dilution (reduction), and (6) Basis Section 3/4.4.1 would be revised to reflect changes included in items (3) and (4).

The purpose of the above specifications would be to preclude reactivity transients when isolated RCS loops are to be restarted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The above changes affect requirements that are not initiators of previously analyzed accidents, and not contributors to consequences of previously analyzed accidents; the answer to the first criterion is thus negative. The above requirements all seek to assure, through administrative controls, that minimum shutdown margins are available to prevent accidents from occurring; all accidents attributed to loss of shutdown margin have been previously analyzed and the new requirements cannot result in new accidents. Hence the answer to criterion (2) is also negative. Finally, there will be no changes to safety analysis assumptions and acceptance criteria, and hence the answer to the third criterion is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2 Shippingport, Pennsylvania

Date of amendment request: October 16, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications of both units in a number of ways:

(1) Specification 4.7.13.1.a, regarding testing frequency of the Auxiliary River Water System (Unit 1), and the Standby Service Water System (Unit 2), would be revised from monthly to quarterly. The pumps in these systems are not safety-graded, and thus have no need to follow the monthly Class 1, 2 and 3 test schedule.

(2) Specification 4.7.8.1.b, regarding testing frequency of the Supplemental Leak Collection and Release System (SLCRS) would be clarified by replacing "and" with "or" so that the conditions that would require testing can be more easily met. The current test frequency is non-conservative compared to the proposed frequency.

(3) Specifications 3.7.9.1 and 4.7.9.1.1 on sealed sources would be revised to comply with the requirements of the Standard Technical Specifications.

(4) Basis section 3/4.9.1 and 3/4.9.13 regarding the Unit 1 fuel building ventilation system would be revised to correct an error.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Change (1) affects the test frequency of a non-safety system which has no part in any accident scenarios. Change (2) would increase the test frequency of the SLCRS, a safety system, and hence improves its assurance of operability. The SLCRS mitigates consequences of accidents; the increased test frequency in no way decreases this function. Change (3) is not associated with any previously analyzed accidents, and change (4) is not part of the Technical Specifications. Hence all four changes would not involve any increase in consequences or probability of previously analyzed accidents.

No hardware or operational changes are involved. Hence the changes cannot create the possibility of a new or different kind of accident from any previously evaluated. Finally, there is no proposed change in analytical assumptions or acceptance criteria. Hence there is no reduction of any safety margin.

The staff therefore proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 22, 1989

Description of amendment request: At the start of each fuel cycle, the values of certain parameters associated with the design of the particular core must be established. Thus, when a new core is installed, the values of these parameters must be changed. Such parameters are referred to as "cycle-dependent." Generic Letter 88-16 provided guidance on relocating such parameters. This amendment would remove "cycle-dependent" limits from the Technical Specifications (TS) and relocate them to a Core Operating Limits Report. This report would document the specific values of parameters resulting from the licensee's calculations, including any mid-cycle revisions to such parameters. The TS would also be revised to define and require such a report. This amendment request is consistent with the guidance provided by Generic Letter 88-16.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee analyzed the amendment request in light of the above three criteria. In regard to the first criterion, the licensee determined that the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because the requirements to operate the Crystal River Unit 3 (CR-3) plant within the cycle-specific core operating limits would remain in the TS. The amendment would merely relocate the cycle-specific limits from the TS to a Core Operating Limits Report.

Regarding the second criterion, the licensee determined that the proposed

amendment would not create the possibility of a new or different kind of accident from any accident previously analyzed. The cycle-specific variables and limits would continue to be calculated using approved methodologies, and the requirements to operate within these approved limits would remain in the TS. Thus, no new limit or mode of plant operation has been introduced.

In regard to the third criterion, the licensee determined that the proposed amendment would not involve a significant reduction in a margin of safety. As stated before, both the requirement to calculate cycle-specific variables using approved methodologies and the requirement to have a TS ensuring that the approved limits are followed would remain. Furthermore, the appropriate corrective actions to be taken, should approved operating limits be violated, remain unchanged.

In addition, an application for a similar amendment to the TS of Duke Power Company's Oconee Nuclear Station Units 1, 2, and 3 was previously approved by the staff on January 26, 1989.

The staff has conducted a preliminary evaluation of the licensee's proposed amendment and agrees that it meets the above three criteria. Furthermore, the staff believes that the proposed amendment is consistent with the guidance provided by Generic Letter 88-16 and with policies already established by the Commission. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: December 27, 1988

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying the Appendix A Technical Specifications Section 6-3, "Unit Staff Qualifications". The proposed change would resolve a potential disparity between qualifications of unit staff personnel, required by the Appendix A Technical Specifications and the plant conditions after defueling.

Section 6.3, Unit Staff Qualifications, states that Unit Staff personnel must comply with ANSI-N18.1 1971. ANSI-N18.1 1971 states that certain positions of the plant staff either hold or be capable of acquiring an operator's license. Additionally, the ANSI standard requires that the Plant Manager position requires either an individual or designated alternate have a Senior Reactor Operating (SRO) license or have the background required to sit for the examination.

Once defueling of TMI-2 is completed and the licensee has demonstrated that the possibility of an inadequate criticality is precluded then the licensee can, as allowed by the current Technical Specifications, transition to Mode 2. In Mode 2 there will no longer be a requirement to have licensed operators at TMI-2.

The licensee has proposed adding to Section 6.3.1 the statement that during Modes 2 and 3, the requirements of ANSI-N18.1 of 1971 pertaining to unit staff operator license qualifications not apply. The licensee asserts that since there will no longer be a requirement for senior reactor operators after they enter Mode 2, unit staff personnel or an alternate should not be required to have an SRO license, or be required to have the background to sit for the examination.

The licensee has stated that during Modes 2 and 3, GPU Nuclear will continue to apply the educational and experience requirements of ANSI-N18.1 of 1971 to the TMI-2 staff with the exception of unit staff licensed operator requirements unless specifically exempted in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is currently in a post-accident, cold shutdown, long-term cleanup mode. The licensee is presently engaged in the final stages of defueling the damaged reactor, decontaminating the facility and readying the plant for long-term storage. As of the end of September 1989, approximately 94 percent of the fuel contained in the reactor vessel has been removed. Defueling the facility has progressed to the regions below the location of the original core volume. The licensee plans to remove greater than 99% of the fuel from the facility. Once the licensee can demonstrate that defueling is completed and there is no possibility of a recriticality then the licensee can, under provisions of Amendment 30, enter Mode 2. One of the provisions of Mode 2 allows the licensee to no longer man the control room with licensed operators. The staff has determined in previous license amendments, that the potential accidents analyzed for TMI-2 in the current cleanup-mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR. The change proposed by the licensee is a change to the Appendix A Technical Specifications. The change proposed by the licensee would resolve a potential disparity between required qualifications of unit staff personnel required by the Appendix A Technical Specifications and the plant conditions after entering Mode 2.

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated because no changes are proposed to current safety systems or setpoints. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. The proposed change removes the requirement to comply with ANSI-N18.1 1971, after the plant enters Mode 2, and as such does not affect the potential or severity of an accident at TMI-2. The proposed change does not involve a significant reduction in a margin of safety, because the facility would be defueled and the possibility of a criticality would be precluded.

Based on the above considerations, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company, Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 30, 1989

Description of amendment request: This proposed amendment would revise Technical Specification Sections 1.8, the definition of Core Alteration, and 3.9.5, which deals with communications during core alterations. The proposed change would revise the definition of Core Alteration to exclude the normal movement of LPRMs or the undervessel replacement of SRMs, IRMs, LPRMs, TIPs, or special moveable detectors from being considered a core alteration. The proposed change to Section 3.9.5 is only to remain consistent with the proposed revised definition.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the Clinton Power Station reactor (BWR/6) design is such that the movement of incore instrumentation, including withdrawal or insertion for the purpose of replacement, does not constitute an operation that significantly affects core reactivity. In addition, such movement does not physically change the core configuration, or potentially degrade the condition of the reactor vessel with respect to its capability for containing reactor coolant.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since the addition of LPRM movement or the removal of the moveable incore instruments is not significantly different than the movement of incore instruments that is currently allowed by the Technical Specifications.

The proposed changes do not involve a significant reduction in a margin of safety as the change involves no alteration to plant design and affects no setpoints or margins assumed in any accident analysis.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John W. Craig

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: January 12, 1989

Description of amendments request: Technical Specification Table 3.3-3 (Engineering Safety Features Actuation System Instrumentation) would be modified so that it more accurately reflects the actuation signals for the auxiliary feedwater system on a loss of 4kv bus voltage.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(iii) Involve a significant reduction in a margin of safety.

The license has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are intended to clarify and correct the existing T/S so that it more accurately reflects the actuation signal for motor driven auxiliary feedwater flow in the event of a loss of voltage on the safety busses. No operability or surveillance requirements have been reduced. Therefore, we believe the changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not involve physical modifications to the plant or changes in plant operation. Therefore, the changes should not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. As stated in response to criterion 1, no operability or surveillance requirements are reduced by the proposed changes. Therefore, the changes do not represent a significant reduction in a margin of safety.

In the March 6, 1986 Federal Register (51 FR 7751), the NRC published a list of examples of license amendments that are not likely to involve a significant hazards consideration. One of the examples is: A purely administrative change to technical specifications, e.g., a change to achieve a consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change is similar to this example inasmuch as the proposed changes would clarify and correct errors in the existing technical specifications.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John G. Thoma, Acting.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: February 6, 1989 and supplemented on November 10, 1989

Description of amendments request: The licensee proposes to modify fire protection technical specifications (TS) for Unit 1 and Unit 2 as summarized herein.

The first change (change category (A)) would delete the requirement to make a special report to the NRC if the required fire detection systems, fire suppression systems, or fire rated assemblies are not restored to operable status within the specified time. In addition, a statement is added to the Bases which states that compensatory actions should not be relied on for an extended period of time and that action to restore the required fire protection equipment to operable status will be taken within a reasonable amount of time.

Change Category B involves modifying the action statement associated with (1) fire detection

instrumentation, (2) spray and/or sprinkler systems, (3) low pressure CO_2 systems, (4) holon systems, (5) fire hose stations and (6) fire rated assemblies, to provide alternatives for complying with the action statement other than establishing a fire watch (e.g., reliance on sprinkler systems when detection instrumentation is inoperable and vice versa).

Editorial changes (referred to collectively as change C) are proposed to clarify the TS requirements and improve their wording.

Change D incorporates requirements currently not included in the TS or makes existing requirements more restrictive.

Change E allows 50% of the detectors on a single circuit to be inoperable before declaring the detection circuit inoperable rather than the 25% allowed by current TS. The 50% value is consistent with standard TS.

Change Category F deletes the detection systems associated with the charcoal filter units 1-HV-CFT 1 and 2. These detection systems are not taken credit for in any Appendix R boundary evaluations or exemption requests. The filter units are not included elsewhere on the TS.

Change Category G modifies surveillance requirement 4.7.9.2.b.2 by deleting the inspection of piping supervised by air.

Change Category H revises Table 3.7-6 to convert several low pressure carbon dioxide systems from automatic to manual operation.

Change Category I allows the use of a liquid level meter to confirm the full capacity of the halon storage tank.

Change Category J modifies an existing surveillance requirement for fire suppression system flow testing. Instead of referencing the NFPA Fire Protection Handbook, which verifies the flow rate through the system but does not require confirmation of flow through all segments of the system; the surveillance requirement would require the verification of flow in individual segments.

Change Category K would allow the fire pump diesel engine inspection to be performed during plant operation. Only one of the four fire pumps (shared between the two units) would be rendered inoperable during the inspection period.

Change Category L modifies the surveillance requirement to require inspection of an additional 10% of each type of seal when changes on appearance or abnormal degradation are found in the initial sample only if there is an indication of a plant-wide trend.

Change Category M proposes to allow an air flow test as an alternative to the CO_2 puff test.

Change Category N adds a footnote to Table 3.7-6 stating that the control room cable vault CO_2 system is only required to be operable when the control room cable vault halon system is inoperable.

Change Category O deletes the requirement that the fire pump diesel test be performed on recirculation flow.

Basis for proposed no significant hazards consideration determination: In their submittal the licensee addressed why the amendment would involve no significant hazards consideration. Per 10 CFR 50.92, a proposed amendment will involve no significant hazards consideration if the amendment does not:

(1) involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) create the possibility of a new or different kind of accident from an accident previously analyzed or evaluated, or

(3) involve a significant reduction in a margin of safety.

The licensee's basis and the staff's conclusions regarding the no significant hazards consideration determination for each of the proposed changes are paraphrased and summarized below.

Change A

Deletion of the special reporting requirements (Change Category A) will not affect the actions taken or the time required to restore the inoperable equipment to operable status. In addition, the proposed change will not result in a change in plant configuration or operation and will not place the plant in an unanalyzed condition. Thus, the staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change B

The alternatives provided in the modified action statements proposed in Change Category B will provide adequate fire protection and assurance that a condition will not be created which will prevent safe shutdown during a fire scenario. In addition, the proposed changes will not result in a change in plant configuration and will maintain adequate fire protection for the affected areas. Thus, the staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change C

Change C is purely editorial in nature and will not reduce the requirements or commitments contained in the existing TS. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change D

Change D makes the TS more restrictive. The licensee has determined that the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident, or significantly reduce a margin of safety. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change E

Change E does not significantly increase the probability of an accident previously analyzed and is consistent with standard TS. In addition, the proposed changes will not result in a change in plant configuration and will maintain adequate fire protection for the affected areas. Thus, the staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change F

The detection systems being deleted in Change F are not taken credit for in the Appendix R boundary evaluations or exemption requests and there are no TS requiring operability of the filter units protected by these systems. In addition, the proposed changes will not result in a change in plant configuration and will maintain adequate fire protection for the plant. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change G

The licensee states that inspection of piping supervised by air is unnecessary and provides no benefit; therefore, Change G, which would eliminate this inspection requirement, does not result in an increase in the probability or consequences of an accident previously analyzed. In addition, the proposed change will not result in a change in plant configuration or operation and will not place the plant in an unanalyzed condition. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change H

The subject systems described in Change H are not required by Appendix R to be automatic and their conversion to manual will have no impact on the original analyses. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change I

The method of measuring the fill capacity of the halon storage tank, proposed in change I, has been found acceptable by the National Fire Protection Association and is essentially equivalent to measuring the full charge rate. The proposed change will not result in a change in plant configuration or operation and will not place the plant in an unanalyzed condition. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change J

Change J will enhance the ability to meet the intent of the existing TS requirements. The proposed change will not result in a change in plant configuration or operation. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change K

Change K is deemed acceptable by the licensee on the basis that adequate fire protection can be maintained by the remaining operable fire pumps while one of the diesel driven pumps is inoperable for testing. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change L

The licensee's basis for Change L acceptability is that testing additional seals when the discovered degradation has apparently been caused by circumstances restricted to one particular seal provides no apparent benefit. The licensee plans to continue testing additional seals when the degradation appears to have been caused by circumstances which would produce similar problems in other seals. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change M

According to the licensee, the airflow test proposed by Change M is a safer method of testing the carbon dioxide nozzles and is equivalent to the existing TS test from the standpoint of meeting the intent of the TS requirement. Furthermore, the proposed change will not result in a change in plant configuration or operation and will not place the plant in an unanalyzed condition. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change N

The licensee supports that the primary suppression system (halon system) and the detection system provide adequate fire protection for the control room vault area. The carbon dioxide system is intended as a backup to the halon system and need only be required operable when the halon system is inoperable. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Change O

The licensee states that the proposed change eliminates an unnecessary restriction. The flow path used in conducting the subject test has no impact on the test results and the intent of the surveillance test can, therefore, be met without requiring that a particular flow path be used. The staff concurs with the licensee's determination that the criteria of 10 CFR 50.92 is satisfied.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: July 13, 1989

Description of amendment request: To delete the phrase "... and shall be approved by the Plant Manager..." in Technical Specification 6.8.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the staff agrees that the proposed change does not involve a significant hazards consideration because operation of Shoreham Nuclear Power Station - Unit 1, in accordance with this change, would not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated. The change is not related to any accident analysis and does not affect the function or operation of any plant system or equipment.

(2) Create the possibility of an accident that is different than any already evaluated in the USAR. No physical alteration of plant configuration or changes to setpoints or operating parameters are proposed. The changes does not affect the function or operation of any plant system or equipment.

(3) Involve a significant reduction in the margin of safety. The reassignment of responsibilities for procedure approvals is administrative in nature and is unrelated to any margin of safety as defined in the bases for any technical specification.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9897

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P. O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 16, 1989

Description of amendment request: The proposed amendment would correct typographical mistakes and inadvertent errors in the Technical Specifications including the administrative section. Except for the correction of mistakes and errors, the proposed amendment would make no other changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposed amendment would make three changes. The reactor vessel surveillance capsule names in Table 4.4-5 would be changed to agree with the source document from the vendor. A reference to a fire brigade remains in a note to 6.2.2 even though the fire brigade and related Technical Specification were removed to the Final Updated Safety Analysis Report. A reference in Section 6.8.1.h should correctly point to the corresponding paragraph labeled "e" under 6.2.2. The licensee has made the following findings.

The proposed changes correct typographical and administrative errors. None of the changes affect any plant hardware, plant design, safety limit settings, or plant system operation; and therefore, they do not modify or add any initiating parameters that significantly increase the probability or consequences of any previously analysed accident. The proposal does not affect any equipment, nor does it involve any potential initiating events that could create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses remain valid. Therefore, the

proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The plant safety margins come from limiting conditions for operation, limiting safety system setting, and safety limits presently given in the technical specifications. The proposal only involves changing overtime and fire brigade cross-references along with a nomenclature change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensees findings and agree. Therefore, based on the above, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 31, 1989

Description of amendment request: The proposed change would revise the Cooper Nuclear Station (CNS) Technical Specifications Section 6, "Administrative Controls." In particular, this proposed change involves the Station Operations Review Committee (SORC), changes to various job position titles throughout Section 6, and adding a requirement to have a Shift Technical Advisor (STA) available to the operating crew shift during certain periods of plant operation.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Evaluation:

1. The proposed change involves revising the format of the membership for the on-site review committee as described in the Administrative Controls Section of the plant's Technical Specifications. The proposed change will provide sufficient requirements on Committee membership to ensure its continuing effectiveness in performing review and audits of station operations.

The proposed change does not involve any material or procedural change to the plant and does not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed change involves incorporating requirements for the availability and qualifications of the Shift Technical Advisor (STA) into the Station Technical Specifications and does not involve any material or procedural change to the plant that would affect the probability of any previously evaluated accident. The STA is to provide engineering expertise and advice to the operating crew regarding plant response to accidents and transients and, thus, provide assistance in mitigating the consequences of any accident previously evaluated.

3. The proposed change revises several job position titles and adds the designation of two senior manager level positions as the primary alternates for the Division Manager of Nuclear operations. The changes are administrative in nature, will not decrease the organizational effectiveness, and do not affect plant operation or structures. The proposed change does not affect plant operation or structures and do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation:

1. The proposed change involves revising the format of the membership for the on-site review committee as described in the Administrative Controls Section of the plant's Technical Specifications. It does not introduce any new equipment or mode of plant operation that could create the possibility of a new or different kind of accident from any accident previously evaluated.

2. The proposed change involves incorporating requirements for the availability and qualifications of the Shift Technical Advisor into the Station Technical Specifications. It does not involve any material or operational procedural change and does not create any new mode of plant operation. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change revises several job position titles and adds the designation of two senior manager level positions as the primary alternates for the Division Manager of Nuclear Operations. These changes are administrative in nature, will not decrease the organizational effectiveness, and do not affect plant operation or structures. The proposed change does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation:

1. The proposed change involves revising the format of the membership for the on-site review committee as described in the Administrative Controls Section of the plant's Technical Specifications. It does not involve a change in any system operating or protective setpoint nor does it change the intended function of any system or component. The proposed change does not involve a significant reduction in the margin of safety.

2. The proposed change involves incorporating requirements for the availability and qualifications of the Shift Technical Advisor into the Station Technical Specifications. It does not change the intended function of any system or component and does not involve a change in any system operating or protective setpoint. The change involves incorporating additional requirements into the Technical Specifications and does not involve a significant increase in the margin of safety.

3. The proposed change revises several job position titles and adds the designation of two senior manager level positions as the primary alternates for the Division Manager of Nuclear Operations. The changes are administrative in nature and do not involve any change in system function and operating or protective setpoints. The change does not involve a significant reduction in the margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Frederick J. Hebdon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1989

Description of amendment request: The proposed change to the Technical Specifications would revise the setpoint tolerance on the Low-Low Set Safety/Relief Valve pressure switches, revise the format and location of the Low-Low Set specifications to be equivalent to the Standard Technical Specifications, and correct typographical errors in instrument I.D. numbers.

There are three specific changes proposed as follows:

(a) TS 3.7.A.6 add Low-Low Set (LLS) Technical Specifications (TS) equivalent to the Standard Technical Specifications and delete LLS TS on Table 3.2.B (page 7).

(b) Revise the setpoint tolerance on the Low-Low Set Safety/Relief (S/RV) Valve pressure switches from 2710 psig to 2720 psig.

(c) Table 3.2.B (pages 1 and 2), revise typographical errors in instrument I.D. numbers.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

1. Does the proposed License Amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

a. The first proposed change would delete the LLS setpoints on Table 3.2.b (page 7) and add LLS Technical Specifications equivalent to the Standard Technical Specifications in Sections 3.7.A.6 and 4.7.A.6. The current LLS Technical Specifications contain the correct setpoints, but there are no action statements which are directly applicable to the Low-Low Set function of the S/RVs. The setpoints will remain the same and the setpoint tolerance will change as proposed in Change b. below. Also, Action Statements equivalent to the Standard Technical Specifications will be added. The surveillances are currently conducted, and the testing requirements will remain, in Specification 4.2.B and Table 4.2.B. However, the title of Table 4.2.B will be corrected to reflect both ADS and LLS testing requirements.

This change has no effect on the probability or consequences of any accident, since the change is primarily editorial in that it relocates the LLS specifications from Section 3.2 to Section 3.7.A.6 and 4.7.A.6. In addition, this change adds specific LLS Action Statements, equivalent to those approved by the NRC in the Standard Technical Specifications, where previously no specific requirements existed.

b. The second proposed change is to revise the setpoint tolerance on the pressure switches (NBI-PS-51A-D) controlling the Low-Low Set (LLS) relief function of the safety/relief valves in the Cooper Nuclear Station Technical Specifications. The current setpoint tolerance on NBI-PS-51 A, B, C and D is 2710 psig. The District proposes to change this tolerance to 2720 psig.

The safety function of the Low-Low Set (LLS) Relief Logic is to reduce the number of (and increase the time between) subsequent safety/relief valve (S/RV) actuations, following the initial pressure peak during an operational transient or accident, to reduce the thrust loads on the torus and S/RV discharge piping. The LLS modification was necessary to restore the safety margin for the structural integrity of the torus and S/RV discharge piping. By reducing the number of subsequent S/RV actuations, and increasing the minimum time between actuations, the loads are reduced to within the design margin. The LLS relief function of the S/RVs accomplishes its safety function by lowering the opening and closing setpoints of the two non-ADS S/RVs with the lowest setpoints and increasing the range between the opening and closing setpoints of the two valves. This function is armed once any S/RV opens and the high reactor pressure scram setpoint (1045 psig) is exceeded. The increased blowdown range allows the release of more energy from the vessel per each blowdown and allows time for the water leg in the S/RV discharge piping to clear. This increases the time for reactor pressure to increase back to the LLS setpoint, reducing, or in some cases eliminating subsequent actuations.

The analytical limits on the setpoints for the Cooper Nuclear Station Low-Low Set S/RV function were established in NEDE-22197 (Reference 1). The opening setpoint is required to be less than or equal to 1050 psig, the closing setpoint is required to be greater than or equal to 825 psig and the blowdown range is required to be greater than or equal to 90 psig (modified from 100 psig stated in NEDE-22197 by a letter from General Electric dated April 20, 1983, Reference 2). The 1050 psig upper limit is set to ensure that the LLS S/RVs do control subsequent blowdowns. This means that the opening setpoint must be below the lowest normal S/RV setpoints (1080 27 11 psig) by enough margin that the LSS valves will be the ones that open on subsequent actuations, even accounting for maximum drift of the setpoint instruments on both valves. The closing setpoint limit is greater than or equal to 825 psig, to ensure that the LLS S/RVs close before the Main Steam Isolation Valve (MSIV) trip occurs on low pressure (reference CNS Technical Specification 2.1.A.6). The purpose of the lower limit is to ensure that LLS does not inadvertently cause an MSIV isolation. The analytical limit on the blowdown range must be set such that there will be at least 5 seconds between subsequent S/RV actuations, to allow the water leg in the S/RV discharge piping to clear. In NEDE-22197 (Reference 1), the calculated time between subsequent S/RV actuations for Cooper Nuclear Station, assuming a 100 psig blowdown range, was approximately 34 seconds, assuming failure of the LLS S/RV with the lowest opening setpoint (worst single failure). General Electric also concluded that the actual blowdown range at CNS of 90 psig would result in approximately 30 seconds minimum time between S/RV actuations (reference GE letters dated April 20, 1983, and April 4, 1989, References 2 and 3). Thus, the 90 psig blowdown installed at CNS provides significant margin over the minimum of a 5 second water leg clearing time.

The actual opening setpoints for the CNS LLS S/RVs are 1025 psig and 1015 psig. It can be seen that, if the highest set LLS valve drifts +20 psig (1025 + 20 = 1045 psig) and the lowest set normal S/RV drifts down by the Technical Specification allowed tolerance of -11 psig (1080 - 11 = 1169 psig), the LLS valve will control subsequent S/RV actuations, with significant margin, and the LLS S/RV will perform its intended safety function. Also, the actual closing setpoint for both LLS valves is 875 psig. If either valve were to drift -20 (875 - 20 = 855 psig), the main steamline isolation valve low pressure trip instrument could drift up by +20 psig (825 + 20 = 845 psig) and the LLS valve closure would still occur before MSIV isolation on low pressure. The opening and closing setpoints 1025 psig and 875 psig and 1015 psig 875 psig are also set such that a minimum of 90 psig blowdown is assured assuming a 20 psig drift of both instruments in the worst case directions (1025 - 20 = 1005 psig; 1015 - 20 = 995 psig, and 875 + 20 = 895 psig). Thus, provided neither valve exceeds the maximum opening setpoint, or drifts below the minimum closing setpoint, and provided the opening and closing setpoints are at least 90 psig apart, LLS will fulfill its safety function. As has been shown, the setpoints for the CNS LLS S/RVs were established to accommodate a setpoint tolerance of 2720 psig.

This change is also consistent with the Standard Technical Specifications. Therefore, with the limits specified in this proposed change, the LLS function of the S/RVs will perform its safety function and will not increase the probability or consequences of any accident.

c. The third proposed change revises typographical errors in Technical Specification Table 3.2.B (pages 1 and 2). During the 1988 refueling outage, the two dual element pressure switches, NBI-PS-52A and C were replaced with four single element switches, NBI-PS-52 A1, A2, C1 and C2. The A1 and C1 contacts provide a closing signal to the Reactor Recirculation discharge valves between 185 and 235 psig and the A2 and C2 contacts provide a pressure permissive to the Core Spray and Low Pressure Coolant Injection (LPCI) injection valves at less than or equal to 450 psig.

Technical Specification Change No. 50 was submitted to the NRC to reflect the change in Instrument I.D. numbers on Table 3.2.B and was approved as License Amendment No. 121. However, typographical errors were introduced into Table 3.2.B in Change No. 50 that are being corrected in this proposed Change. In particular, NBI-PS-52 A1, A2, C1 and C2 will be changed to NBI-PS-52 A2 and C2 on page 53 and 54 of the CNS Technical Specifications and NBI-PS-52 A and C on page 54 is changed to NBI-PS-52 A1 and C1.

Since this proposed change only corrects typographical errors in Instrument I.D. Numbers, it does not increase the probability or consequences of any accident previously evaluated.

2. Does the proposed License Amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

a. The first proposed change deletes the LLS setpoints in Table 3.2.B and adds LLS specifications, equivalent to the Standard Technical Specifications (STS), in Sections 3.7.A.6 and 4.7.A.6. This change provides

action statements which identify specific actions to be taken upon loss of one or both LLS S/RV valves. The current CNS Technical Specifications do not contain any specific action statements directly applicable to the LLS S/RV logic.

There are no changes to the LLS S/RV setpoints or the hardware associated with the LLS logic. This change does incorporate the change in setpoint tolerance which is described, evaluated and justified in b. below.

Since this change moves the LLS Technical Specification from TS 3.2.B to 3.7.A.6/4.7.A.6, adds STS Action Statements and incorporates the changes in setpoint tolerance justified in b. below, this change cannot create any new or different kind of accident.

b. The second proposed change, from a 2710 psig tolerance to 2720 psig tolerance on the LLS S/RV opening and closing setpoints, cannot create any new or different kind of accident. The Low-Low Set Relief Function of the S/RVs is designed to mitigate thrust loads on the torus and S/RV discharge piping due to subsequent S/RV actuations. The thrust loads occur when there is not enough time between the subsequent S/RV actuations to allow the water leg to clear. The water leg is caused by water being drawn up into the S/RV discharge piping and condensation of steam remaining in the discharge piping following a blowdown. The design requirement for the LLS function of the S/RVs at Cooper Nuclear Station is that there must be at least 5 seconds between subsequent S/RV actuations.

The LLS S/RV setpoints were established to accommodate a tolerance of at least 2720 psig. It has been shown by analysis (Reference 1, 2 and 3) that the LLS S/RVs will perform their safety function with the setpoints drifted to the maximum analytical limits in any of the three possible instrument drift scenarios. The three scenarios being the opening setpoint drifts high, the closing setpoint drifts low or the opening and closing setpoint on one valve drift too close together. The maximum analytical opening setpoint is 1050 psig, the minimum analytical closing setpoints is 825 psig and the minimum analytical blowdown range is 90 psig. With a 20 psig drift of each opening and closing setpoint in the most disadvantageous directions, the analytical limits are not exceeded. Therefore, revising the setpoint tolerance from 2710 psig to 2720 psig will not exceed the allowed analytical limits for the system, and therefore, ensures the safety function of LLS.

The LLS S/RV function has been analyzed on both a generic and a CNS plant specific basis (NEDE-22223 and NEDE-22197, respectively). Also, the NRC has accepted the LLS design both generically and for CNS (April 26, 1983, Letter D. B. Vassallo to H. C. Pfefferlen and License Amendment No. 83 with LLS Safety Evaluation Report, respectively). It has, therefore, been previously shown that the LLS S/RV function will mitigate thrust loads on the torus and S/RV discharge piping, without creating any new kind of accident.

Therefore, the only function of the LLS logic is to mitigate the consequences of previously analyzed accidents and transients. The CNS LLS design has been previously accepted to fulfill the required mitigation function. It has been shown that, with the S/RV setpoints drifted by 2720 psig, the analytical limits are not exceeded and the LLS logic provides the intended safety function. Therefore, this change cannot create any new or different kind of accident.

c. Change number three is a purely editorial change which corrects typographical errors in the Instrument I.D. numbers of the reactor low pressure switches in Table 3.2.B. The plant configuration is as described in License Amendment No. 121; this change only corrects typographical errors in the Technical Specification table. Since this change does not involve any hardware changes, no new or different kind of accident can be created.

3. Does the proposed License Amendment involve a significant reduction in a margin of safety?

Evaluation

a. The first proposed change adds LLS specific specifications to the CNS Technical Specifications. This change includes adding specific Action Statements and maintaining the current opening and closing setpoints. The proposed revision to the setpoint tolerance described in b. below is also incorporated.

This proposed change adds specifications which are equivalent to the Standard Technical Specifications. This change has no effect on the margin of safety, since it does not affect the setpoints of the LLS S/RVs, the blowdown range or the surveillance testing performed. The only changes are the format and location within the CNS Technical Specifications (TS) and adding specific Action Statements, which clarify the CNS TS.

This change, therefore, does not reduce the margin of safety.

b. The change from a 2710 psig tolerance on each setpoint to 2720 psig tolerance does propose to relax a requirement which could affect the ability of the LLS logic to perform its safety function. However, the current 2710 psig tolerance is very conservative. The setpoints were established to accommodate at least a 2720 psig tolerance. With the opening and closing setpoints drifted to the analytical limits (which exceed a 20 psig drifts), the calculated time between subsequent S/RV actuations (assuming the worst case single failure of one of the two LLS S/RVs) is approximately 30 seconds. The calculated time required for the water leg to clear is 5 seconds. Thus, with a 2720 psig tolerance, the margin provided for the LLS logic to perform its safety function is clearly adequate and is conservative. Note that the opening setpoints of 1025 and 1015 psig on the high and low valve, respectively, provide a minimum tolerance of 25 psig on the high valve to the analytical maximum opening setpoints of 1050 psig. Also, the closing setpoint of 875 psig provides a 50 psig tolerance to the analytical lower limit of 825 psig. Also, the opening and closing setpoints are set far enough apart such that both setpoints can drift together by 25 psig each and the required 90 psig blowdown range is maintained.

The relaxation of the tolerance on the setpoints, therefore, does not actually affect the margin of safety of the LLS logic, unless the tolerance is increased beyond the analytical limits. Therefore, the increase in the tolerance to 2720 psig does not reduce the margin of safety.

The Standard Technical Specifications provide an opening setpoint with a 20 psig allowable tolerance for both LLS S/RVs. The proposed 2720 psig tolerance at CNS meets this same requirement. In addition to the fact that this proposed change has no impact on safety margin, it meets the practical consideration of setting a reasonable and achievable setpoint tolerance. The pressure switches that control the LLS S/RVs must be effective over the entire design pressure range of the reactor coolant pressure boundary (0 - 1528 psig). Since a good pressure switch would be expected to have an accuracy of 2?1% of the upper range limit, it is clear that a tolerance of 2710 psig is not practically achievable.

Based on the above, the relaxation of the setpoint tolerance for the LLS S/RV setpoints is not considered to reduce the margin of safety.

c. The proposed change to correct typographical errors in Table 3.2.B clearly does not reduce any margin of safety. This change only corrects the Instrument I.D. numbers and does not affect any hardware, operation or testing of any plant equipment.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Frederick J. Hebdon

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Dates of amendment requests: October 17 and October 19, 1989

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) as follows: (1) TS 4.3.1.2, "Reactor Trip System Instrumentation" and TS 4.3.2.2, "Engineered Safety Features Actuation System Instrumentation" would be changed to require testing of input relays as part of the response time testing program, and (2) TS Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements" would be changed to clarify Loss-of-Offsite Power (LOOP) Test requirements.

Basis for proposed no significant hazards consideration determination: The purpose of response time testing is to assure that equipment which is credited in the safety analyses for preventing, or ameliorating, the consequences of accidents will respond within the time frame assumed in the safety analyses. At the present time, the instrumentation associated with the Reactor Trip System (RTS) and the Engineered Safety Features Actuation System (ESFAS) is response time tested under TS 4.3.1.2 and 4.3.2.2, respectively. One design feature that is common to the RTS and the ESFAS is the two trains of input relays which are actuated by sensors inside containment and subsequently actuate the RTS and ESFAS. The licensee has proposed a change to TS 4.3.1.2 and 4.3.2.2 to explicitly include testing of the input relays as part of the RTS and ESFAS response time testing programs.

The licensee has reviewed the proposed changes in accordance with the standards for "significant hazards considerations" in 10 CFR 50.92 with regard to their October 17, 1989 application. The licensee concluded, and the staff agrees, that the changes do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The changes provide assurance that the RTS and ESFAS will operate as assumed in the design basis analysis. Incorporation of both input breaker trains to channel response time testing requirements is consistent with current plant practices. For these reasons the change does not increase the probability or consequences of any event.

2. Create the possibility of a new or different kind of accident from that previously analyzed. The proposed changes do not have the potential to initiate any event nor are any plant operations altered by the proposed changes. No new failures modes are introduced. Thus, the changes do not have the potential to create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety. The changes do not impact any of the protective boundaries, nor are the consequences of any event increased. There is no negative impact on any of the safety systems. Therefore, there is no reduction in the margin of safety.

Test intervals for the ESFAS are specified in TS Table 4.3-2. At the present time, LOOP testing associated with ESFAS instrumentation is addressed twice in TS Table 4.3-2 and is, in fact, the same requirement. Item 6.e is the LOOP actuation surveillance for the Auxiliary Feedwater (AFW) System while Item 8 is the LOOP actuation surveillance for all ESFAS instrumentation devices (including AFW). The licensee has proposed that Item 6.e of TS Table 4.3-2 be eliminated by referring to Item 8. In addition, the licensee has proposed the following clarifying note for the monthly LOOP test required by Item 8 of TS Table 4.3-2:

On a monthly basis an undervoltage condition will be initiated at the sensing device to verify the operability of the trip actuating device and verify that the associated logic and alarm relays operate.

The licensee has also reviewed the standards for "significant hazards considerations" contained in 10 CFR 50.92 with regard to their October 19, 1989 application. The licensee concluded, and the staff agrees, that the proposed changes do not involve significant hazards considerations in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The change clarifies the test interval for the instrument channel and relay portion of the LOOP logic scheme and does not affect the present method of LOOP testing. Previously analyzed accidents are not affected. Without the proposed change, it is possible that some alternative interpretation of the test could have resulted in a temporary loss of undervoltage protection for the emergency bus. The proposed change eliminates the possibility of such an occurrence due to surveillance testing of the LOOP logic.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. The proposed change has no effect on plant operation.

3. Involve a significant reduction in a margin of safety. Since the proposed change does not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

Based upon the above, the NRC staff proposes to determine that the proposed changes to the TS, identified in the licensee's October 17 and October 19, 1989 applications, involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 27, 1989

Description of amendment request: The proposed amendment to the Technical Specifications (TSs) is to provide the operability requirements, surveillance requirements, and the basis for the alternate and auxiliary alternate shutdown panels. These panels were provided outside of the control room for use in the event of an accident situation, like a fire, which renders the control room uninhabitable. These panels contain the necessary control equipment and instrumentation to allow the operators to safely bring the plant to hot shutdown condition and maintain that status until sufficient corrective measures can be taken to allow and maintain a cold shutdown. This Facility License Change (FLC) is being incorporated into the TSs as requested by the staff in a letter dated January 30, 1990.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

This proposed change does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. This change decreases the consequences and probability of accident/event escalation during the forced evacuation of the Control Room. Since the alternate and auxiliary alternate shutdown panels assumes a major protective function for plant control during the loss of the Control Room in a fire, this FLC is required to ensure continued operability of alternate and auxiliary alternate shutdown panels.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not

created because no new or different modes of operation are proposed for the plant. Additional surveillances provide a higher level of assurance that alternate and auxiliary alternate shutdown panels will function if required to do so.

3. Involve a significant reduction in the margin of safety. This change results in an increase in the margin of safety associated with alternate and auxiliary alternate shutdown panels and the Alternate Shutdown capability by assuring that the system will operate properly through surveillance tests, and applying Limiting Conditions for Operation to this system.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: September 14, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to remove fire protection requirements. This proposal would delete LCO 4.10 and SR 5.10. In addition, certain requirements would be deleted from AC7.1.1 and added to AC7.1.2 and AC7.4. Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, from the NRC provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety. The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 86-10 for licensees requesting removal of fire protection Technical Specifications. The incorporation of the NRC-approved Fire Protection Program, and the former TS requirements by reference to the procedures implementing these requirements, into the Final Safety Analysis Report (FSAR) and the use of the standard License Condition, on fire protection, will ensure that the Fire Protection Program, including the systems, the administrative and technical controls, the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the FSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desires to make in the Fire Protection Program. In this context, the determination of the involvement of an unreviewed safety question defined in 50.59(a)(2) would be made based on the "accident...previously evaluated" being the postulated fire in the fire hazards analysis for the fire area affected by the change. Hence, the proposed License Condition establishes an adequate basis for defining the scope of changes to the Fire Protection Program which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised License Condition or the removal of the existing TS requirements on fire protection does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the License Condition does not alter the requirement that an evaluation be performed for the identification of an unreviewed safety question for each proposed change to the Fire Protection Program. Consequently, the proposed License Condition or the removal of the fire protection requirements do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification of the Administrative Control Section 7 of the Technical Specifications includes the addition of Fire Protection Program implementation to the requirements for procedures and programs, that requires written procedures be established, implemented, and maintained covering this program. This section of the Technical Specifications is also modified to include the review of the Fire Protection Program and implementing procedures and the submittal of recommended changes to the Plant Operations Review Committee (PORC). In this manner, the Fire Protection Program will be addressed by administrative control requirements that are consistent with other programs addressed by License Conditions. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment includes the removal of fire protection Technical Specifications in four areas: (1) fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing requirements. While it is recognized that a comprehensive Fire Protection Program is essential to plant safety, many details of this program that are currently addressed in Technical Specifications can be modified without affecting nuclear safety. With the removal of these requirements from the Technical Specifications, they have been incorporated into the Fire Protection Program implementing procedures. Hence, with the additions to the existing administrative control requirements that are applicable to the Fire Protection Program and the revised License Condition, there are suitable administrative controls to ensure that licensee initiated changes to these requirements, that have been removed from the Technical Specifications, will receive careful review by competent individuals. Again, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 11, 1989

Description of amendment request: The amendment would change three

monitors to reflect planned organization changes: (1) The duties of the Chemistry/Radiation Control Superintendent would be divided between two new positions: Superintendent, Plant Chemistry and Superintendent, Radiation Control; (2) the position of Training Supintendent would be changed to a position of greater organizational authority and status, and (3) the position of Site Director, GGNS would be eliminated.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The replacement of the current position titles with new titles is administrative. The proposed change does not affect assumptions contained in plant safety analyses, the physical design or operation of the plant, nor are the TS that preserve safety analysis assumptions affected.

b. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. The proposed change is administrative. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The level of position qualifications are not reduced in TS.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. The change being proposed is administrative and does not relate to or modify the safety margins defined in and maintained by the TS. The change does not alter SERI's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant. No position qualifications are being reduced in the TS.

b. Therefore, this proposed change will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 10, 1987

Description of amendment request: The proposed amendment would revise the Davis-Besse Nuclear Power Station, Unit No. 1, Operating License, Appendix A Technical Specifications (TS). The proposed changes involve revising TS 4.0.3 and Bases Section 4.0.3 in accordance with NRC Generic Letter 87-09 to include a specific, acceptable time limit of 24 hours to complete an inadvertently missed surveillance before the provisions of the Action Requirements apply. The proposed amendment would also provide clarification of when a missed surveillance constitutes a violation of the operability requirement of a Limiting Condition for Operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification changes. It is overly conservative to assume that systems/components are inoperable when the vast majority of surveillances demonstrate operability. By allowing up to 24 hours to perform a missed surveillance, unnecessary plant transients (required by Action Requirements), and consequently potential plant upsets that would lead to a demand for the system/component being tested, would be reduced. Thus, the probability of an accident previously evaluated in the USAR is actually expected to decrease. The proposed changes are also consistent with the guidance provided in Generic Letter 87-09.

2. Create the possibility of a new or different kind of accident from any previously evaluated because the Surveillance Requirements will still be performed at their desired frequencies. By allowing up to 24 hours to perform a missed surveillance, unnecessary plant transients (required by Action Requirements), and consequently potential plant upsets that would lead to a demand for the system/component being tested, would be reduced. Thus, the probability of an accident previously evaluated in the USAR is actually expected to decrease. The proposed changes are also consistent with the guidance provided in Generic Letter 87-09.

3. Involve a significant reduction in a margin of safety because the Surveillance Requirements will still be performed at their desired frequencies. By allowing up to 24 hours to perform a missed surveillance, unnecessary plant transients (required by Action Requirements), and consequently potential plant upsets that would lead to a demand for the system/component being tested, would be reduced. Thus, the probability of an accident previously evaluated in the USAR is actually expected to decrease. The proposed changes are also consistent with the guidance provided in Generic Letter 87-09.

The NRC staff has reviewed the licensee's determination related to no significant hazards consideration and concurs with its findings.

On this basis, the NRC Staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: September 7, 1989

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) to allow reduction of the frequency of turbine valve testing. An evaluation performed by Westinghouse Electric Corporation for the Westinghouse Owners Group Turbine Valve Test Frequency (TVTF) evaluation subgroup (WCAP-11525) provides justification for the proposed change. The second proposed revision will update the meteorological data requirements by removing the requirement of recording joint frequency distributions, specifying recording methods, and making some minor administrative changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that the proposed changes involve no significant hazards consideration. The Commission has reviewed the licensee's evaluation and agrees with it for the following reasons:

(1) The Commission has established acceptance criteria for the probability of turbine missile ejection event. The evaluation in WCAP-11525 for the Point Beach Nuclear Power Plants shows that the probability of a missile ejection event for turbine valve test intervals of up to one year is significantly less than the established acceptance criteria. The small change in the probability of generating a turbine missile as a result of longer turbine valve testing intervals does not represent a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendments do not change the configuration or type of equipment associated with overspeed protection for the turbine. Decreasing the frequency of turbine valve testing does not result in a significant change in failure rate or change failure modes for the turbine valves. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As noted in (1) above, this change to the Point Beach TSs will not result in a significant reduction in the margin of safety for turbine missile ejection. The probability of turbine missile ejection remains within the established acceptance criteria.

(4) Regarding the proposed changes to the Point Beach TSs concerning meteorological data recordkeeping requirements, these changes are administrative in nature and do not involve or impact any accidents or safety margins.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazard exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve a significant hazards consideration. The proposed administrative changes (Item 4) in these amendments are similar to the example of a purely administrative change to the TSs. On this basis, the Commission proposes to determine that the proposed changes to the TSs do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 5, 1989

Brief description of amendment request: The amendment would revise the Technical Specification (TS) on boron dilution and charging pumps - operating to permit changing plant operation from Mode 3 to Mode 2 by deborating the reactor coolant system.

Date of publication of individual notice in **Federal Register:** October 23, 1989 (54 FR 43219)

Expiration date of individual notice: Comment period expired November 7, 1989; Notice period expires November 22, 1989.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 16, 1989

Description of amendment request: The proposed amendment would change the Technical Specifications to reduce the frequency of fire watches, when required, from continuous to not less than once per hour in the cable vault or switchgear room.

Date of publication of individual notice in **Federal Register:** November 7, 1989 (54 FR 46785)

Expiration date of individual notice: December 7, 1989

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: June 9, 1989

Brief description of amendment: The amendment will change the minimum critical power ratio safety limit from 1.04 to 1.06. The change is necessary because a new fuel type (GE8x8NB) is being added to the core. The amendment will also specify the fuel types located in the core for the upcoming cycle. Fuel type GE8x8NB will be added and fuel types 8x8R and P8x8R will be deleted. Fuel type GE8 will be renamed as fuel type GE8x8EB.

Date of issuance: November 8, 1989

Effective date: November 8, 1989

Amendment No.: 168

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29401). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket No. 50-254 & 50-265, Quad Cities Nuclear Power Station Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: August 3, 1989

Brief description of amendment: Reduce the number and decrease the setpoint of temperature switches which initiate system isolation for the High Pressure Coolant (HPCI) and Reactor Core Cooling (RCIC) systems.

Date of issuance: November 15, 1989

Effective date: November 15, 1989 for Unit 1 and April 15, 1990 for Unit 2

Amendment No.: 121 and 117

Facility Operating License No. DPR-29 and DPR-30: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37043). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 14, 1988

Brief description of amendment: This amendment revises the Technical Specifications by deleting the mass flow rate valves associated with the Steam Line Flow - High trip function for the Reactor Core Isolation Cooling (RCIC) system isolations and High Pressure Coolant Injection (HPCI) system isolation as listed in Table 3.3.2-2, Items 3.a.1 and 4.a.1.

Date of Issuance: November 14, 1989

Effective date: November 14, 1989

Amendment No.: 43

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15827). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 5, 1989 as supplemented by letters dated October 23 and November 1, 1989.

Brief description of amendment: The amendment revised the Technical Specifications on boron dilution and charging pumps - operating to permit changing plant operation from Mode 3 to Mode 2 by deborating the reactor coolant system.

Date of issuance: November 14, 1989

Effective date: November 14, 1989

Amendment No.: 59

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 43219 dated October 23, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by *November 22, 1989,* but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The October 23 and November 1, 1989 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation, the exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated November 14, 1989.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: July 31, 1989

Brief description of amendment: This change to the Technical Specifications adds four valves to the table of primary containment isolation valves to enable the use of a drywell pumpback system to maintain the required differential pressure between the drywell and the torus.

Date of issuance: November 7, 1989

Effective date: November 7, 1989

Amendment No.: 37

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37048). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 8, 1989

Brief description of amendment: The change to the Technical Specifications would add a new requirement to maintain an average water temperature of less than or equal to 75° F at the intake structure except when the reactor is in the cold shutdown or refueling condition.

Date of issuance: November 7, 1989

Effective date: November 7, 1989

Amendment No.: 38

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37049). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: July 25, 1989

Brief description of amendment: The change to the Technical Specifications would add the term "Source Check" to the surveillance requirement to correct discrepancies between TS Sections 4.8.A.1, 4.8.B.1 and their referenced tables, Tables 4.8-1 and 4.8-2.

Date of issuance: November 8, 1989

Effective date: Novmeber 8, 1989

Amendment No.: 39

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37048). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 96385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 1989

Brief description of amendment: This amendment modified Table 3-3 in the Fort Calhoun Technical Specifications to correct an administrative error that was made when Amendment No. 32 was issued.

Date of issuance: November 6, 1989

Effective date: November 6, 1989

Amendment No.: 123

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40931). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: June 16, 1988, as clarified by letter dated October 6, 1989

Brief description of amendment: Changed the Susquehanna Steam Electric Station, Unit 2 Technical Specifications in support of the fuel reload for Cycle 4 operation.

Date of issuance: November 3, 1989

Effective date: November 3, 1989

Amendment No.: 58

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31110). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: June 16, 1989

Brief description of amendment: Technical Specification changes cancelling changes previously approved in Amendment No. 49.

Date of issuance: November 3, 1989

Effective date: November 3, 1989

Amendment No.: 59

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31112). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 30, 1989

Brief description of amendment: The amendment revises Section 6.0 of the Technical Specifications to reflect a reorganization in the licensee's Nuclear Division.

Date of issuance: November 6, 1989

Effective date: November 6, 1989

Amendment No.: 155

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40933). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1989.

No significant hazards consideration comments recieved: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 31, 1989

Brief description of amendment: The amendment updates Table 4.7-2, "Exceptions to Type C Tests," to accurately reflect the as-built configuration of the plant, to correct several editorial errors, and improve the format of the table.

Date of issuance: November 14, 1989

Effective date: November 14, 1989

Amendment No.: 143

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27236). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: July 14, 1989

Brief description of amendment: Revises and upgrades the Technical Specifications for Surveillance of Station Batteries.

Date of issuance: November 15, 1989

Effective date: November 15, 1989

Amendment No.: 73

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38766). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: October 11, 1988, December 19, 1988 and December 28, 1988.

Brief description of amendments: The amendment revised Technical Specifications (TS) 3/4.3.4, "Turbine Overspeed Protection," TS 3/4.4.5.1, "Reactor Coolant System Leakage," and TS 3/4.4.5.2, "Operational Leakage." Specifically in each case, the associated surveillance interval has been changed from 18 months to each refueling interval, which is defined as every 24 months.

Date of issuance: November 9, 1989

Effective date: November 9, 1989

Amendment Nos.: 79 and 67

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9931, 54 FR 9934 and 54 FR 9935). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 20, 1989 (TS 271)

Brief description of amendments: The amendments modify the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specifications. The changes add restrictions to core addition activities by requiring continuous core monitoring during refueling.

Date of issuance: November 3, 1989

Effective date: November 3, 1989

Amendments Nos.: 172, 175, 143

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35111). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 22nd day of November, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-27803 Filed 11-28-89; 8:45 am]

BILLING CODE 7590-01-D

Staff Assessment of Proposed Amended Agreement Between the Nuclear Regulatory Commission

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Utah.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amended agreement received from the Governor of the State of Utah for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed amended program ofr control over sources of radiation is set foreth below as supplementary information to this notice. A copy of the proposed amended agreement, program narrative, including the referenced appendices, applicable State legislation and Utah regulations, is available for public inspection in the Commission's public document room at 2120 L Street, NW, Washington, DC. Exemptions from the Commission's regulatory authority, which would implement this proposed amended agreement, have been published in the Federal Register and codified as part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before December 15, 1989.

ADDRESSES: Submit comments to: the Secretary of the Commission, U.S. Nuclear Regualtory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be

examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Vandy L. Miller, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301–492–0326.

SUPPLEMENTARY INFORMATION:
Assessment of proposed amended Utah Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Utah for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for land disposal of source, byproduct and special nuclear material received from other persons pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. On March 29, 1984, the Governor of Utah signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. In a letter dated July 17, 1989, Governor Norman H. Bangerter of the State of Utah requested that the Commission enter into an amended agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, under which the State would also assume responsibility for regulating the land disposal of these materials received from other persons. The Governor certified that the State of Utah has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Utah desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for permanent disposal of low-level waste containing the material for which Utah has assumed regulatory authority under the 1984 agreement but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act). The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The proposed amendment to the agreement covers the following areas:

1. Amending Article I of the Agreement of March 29, 1984 to add land disposal of source, byproduct and special nuclear material received from other persons to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of March 29, 1984 to delete land disposal of source, by product and special nuclear material received from other persons from the list of materials and activities over which the Commission continues to retain regulatory authority and responsibility.

3. Specifies the effective date of the amended agreement.

C. Utah Code Annotated (UCA) 26–1–27 through 26–1–29 authorizes the State Department of Health to issue licenses to, and perform inspections of (see, also, UCA 26–23–8), users of radioactive materials under the 1984 agreement and otherwise carry out a total radiation control program. Utah Radiation Control Rules UCA–10 through UCA–80 adopted November 8, 1982 under authority of 26–1–27 through 26–1–29 Utah Code Annotated 1953, as amended, provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These regulations have been determined to be compatible with the Commission's regulations. Utah Radiation Control Rules R447–10 through R447–70 were amended and recodified in July 1989. Regulations R447–25 were adopted in July 1988 for licensing requirements for land disposal of radioactive waste.

D. On March 29, 1984, under enabling legislation in UCA 26–1–29, Utah assumed regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. The program audits conducted since that time have resulted in an NRC finding that the Utah radiation control program is compatible with that of the NRC and is adequate to protect public health and safety. In addition to Utah's agreement program, Utah is involved in several environmental radiation issues including monitoring indoor radon, monitoring uranium mill tailings, particularly at the Vitro uranium mill, and monitoring and assessment of the State environmental program. In addition, the Department issued to Envirocare of Utah, Inc., a license to receive, store, and dispose, by shallow land burial, naturally occurring radioactive material (NORM) wast with a radium–226 concentration not to exceed 2,000 picocuries per gram. NORM material is not regulated by the Nuclear Regulatory Commission.

E. The State's proposed programs for low-level radioactive waste disposal are assessed under Criteria numbers 9, "Radioactive Waste Disposal" and 20 "Qualification of Regulatory and Inspection Personnel." Additional criteria relating to prior evaluation of uses of radioactive materials, inspection and administration,[2] are addressed as appropriate to supplement information found in the staff assessment of the original Utah proposed agreement published in the Federal Register on December 30, 1983 (48 FR 57674–57684).

II. NRC Staff Assessment of the Proposed Amendment to Utah Program for Control of Agreement Materials

Reference: Criteria for Guidance of states and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[3]

[1] A. Byproduct materials as defined in 11e.(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

[2] Criteria 13, "Prior Evaluation of Hazards and Uses Exceptions," 14, "Evaluation Criteria," 16, "Inspection, Purpose, Frequency," and 27, "Coverage, Amendments reciprocity."

[3] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546).

Objectives

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requiremetns and applicable supporting sections set forth in 10 CFR part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97–425).

The Utah regulations contain provisions relating to the disposal of radioactive materials into the air, water ans sewer and burial in soil which are essentially uniform with those of 10 CFR part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Utah regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR part 61.

The Utah regulations provide for land disposal of low-level radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and supporting sections set out in 10 CFR part 61. The Utah regulations include provisions for financial arrangements for decontamination, closure and stabilization. Under the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425), the financial arrangements for long term monitoring and maintenance at specific sites in Utah will be subject to Commission review and approval prior to Utah relieving the site operator of licensed responsibility.

References: URC–R447–15–310, URC–R447–15–302, URC–R447–15–303, URC–R447–304, URC–R447–15–304, URC–R447–15–306, URC–R447–15–307, URC–R447–15–308, URC–R447–15–309, URC–R447–15–311, URC–R447–25; Section 151(a)(2), Pub. L. 97–425.

Prior Evaluation of Uses of Radioactive Materials

13. Prior Evaluation of Hazards and Uses, Exceptions

In the present state of knowledge, it it necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the disposal of radioactive materials, the Utah Bureau of Radiation Control will required the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: URC–447–25, Utah Program Statement, section III.D "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

14. Evaluation Criteria

In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal for disposal of radioactive material, the Utah Bureau of Radiation Control will make the findings required by URC–R447–25–11, including, among other, findings that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public and that the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life or property.

Other special requirements for the issiance of specific licenses are contained in the regulations.

References: URC–R447–25, *see*, especially, R447–25–11, Utah Program Statement, Section III.D. "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

Inspection

16. Purpose, Frequency

The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Utah low-level waste disposal icensees will be subject to inspection by the Bureau of Radiation Control. Upon instruction from the Bureau, licensees shall perform or permit the Bureau to perform such reasonable tests and surveys as the Bureau deems

A correction was published July 16, 1981 (46 FR 36999) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

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appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: Utah Program Statement, section III.E "Compliance Program for a Low-Level Radioactive Waste Disposal Facility."

Personnel

20. Qualifications of Regulatory and Inspection Personnel

The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use, and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology, and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear materials which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons performing a more limited function in evaluation and inspection. These pesons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the ratiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or as its command, not only for routine functions, but also for emergency cases.

Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste—(a) Number of Personnel— (a) *Number of Personnel.* There are approximately 230 specific licenses in the State of Utah. The Bureau of Radiation Control has responsibility for the low-level waste (LLW) management regulatory program as a joint function of Radioactive Materials and Machine Licensing Section and Environmental Monitoring and Mill Tailings Management Section. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The Bureau of Radiation Control has identified seven staff members who will provide supervision, technical support and administrative assistance during the various phases of regulating a licensed low-level waste disposal facility. These personnel and summaries of their duties are:

Larry F. Anderson: Director, Bureau of Radiation Control. Responsible for administration of Bureau programs.

Mark S. Day: Environmental Health Engineer. Responsible for the Utah's inactive uranium mill tailings remedial action project.

Dane L. Finerfrock: Environmental Health Manager, Environmental Monitoring and Mill Tailings Management Section. Responsible for radon-in-residences monitoring, statewide environmental radiation monitoring, licensing and inspection of low-level radioactive waste disposal facilities, and inactive uranium mill tailings remedial action programs.

Blaine N. Howard: Health Physicist. Responsible for licensing and inspection in materials program.

John D. Hultquist: Environmental Health Scientist. Responsible for inspection of low:level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Craig W. Jones: Environmental Health Manager, Radioactive Materials and Machine Licensing Section. Responsible for the Agreement State program including licensing and inspection of low-level disposal facilities.

Raymond G. Nelson: Environmental Health Scientist. Responsible for regulation of low-level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Cindy Wignall: Environmental Health Technician. Responsible for supporting both sections as a technical assistant in meeting the Bureau's goals.

In addition, Utah has identified staff with expertise in various disciplines within the Department and other State agencies for support during the pre-operational and licensing stage. Expertise in disciplines not provided by Utah personnel either on staff or covered by agreements with other State agencies will be provided by contracts with the State.

(b) *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of low-level radioactive waste disposal facilities is shown below.

Larry F. Anderson—B.S. Chemistry, MPA (Health), Brigham Young University.
NIOSH Course 549, *Recognition, Evaluation, and Control of Occupational Hazards.* October 1972.
NIOSH Course 582, *Sampling and Evaluating Airbourne Asbestos Dust.* April 10–12, 1973.
Utah State Division of Health, *Visible Emission Evaluation Course.* June 19, 1973.
American Industrial Hygiene Association, *Industrial Toxicology Seminar.* A 24-hour course ending April 30, 1975.
OSHA, *Fundamentals of Occupational Injury Investigation.* Short course ending April 1, 1977.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending January 27, 1978.
U.S. Environmental Protection Agency, *Grants Administration Seminar.* A 16-hour course ending May 16, 1989.
Safety International Training Center, *Hydrogen Sulfide and EQuipment for Instructors.* A 12-hour course ending June 19, 1979.
Rocky Mountain Center for Occupational and Environmental Health, University of Utah, *Health and Exposures in the Smelter Environment.* A 20-hour course ending March 29, 1980.
U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course held in January 1984.
U.S. Nuclear Regulatory Commission, *Industrial Radiography.* A 40-hour course held May 1985.
Harvard School of Public Health, *Biological Effects of Ionizing Radiation.* A 40-hour course held in March 1988.

Mark S. Day—B.S. Civil and Environmental Engineering, Utah State University.
Center for Professional Advancement, *Hydraulic Conveying.* A 1-week course in 1974.
University of California, *Resolution of Construction Claims.* A 1-week course in 1983.
Management Consultants Incorporated, *Federal Procurement of Construction Projects.* A 1-week course in 1985.
Air Force Institute of Technology, *Contingency Engineering.* A 2-week course in 1986.
Air Force Institute of Technology, *Hazardous Waste Management.* A 2-week course in 1986.

Dane L. Finerfrock—*B.S. Meteorology, B.S. Biology, University of Utah.*
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 10-week course ending April 1981.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.
U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course held in August 17, 1980.
Western Interstate Energy Board, *Workshop on Low-Level Radioactive Waste.* A 16-hour course ending July 16, 1980.
U.S. Department of Health, Education and Welfare, *Basic Course for Investigators: Diagnostic X-Ray Surveillance.* A 80-hour course ending March 14, 1980.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September, 1979.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in November 16, 1984.
U.S. Nuclear Regulatory Commission, *License Inspection Procedures.* A 40-hour course ending in June 18, 1985.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.

Blaine N. Howard—B.S. Math and Physics, Ricks College. M.S. Radiological Health, New York University. M.S. Physics and Math, Brigham Young University.
Bureau of Radiological Health, *Medical X-Ray Protection.* Held October 30-November 10, 1972.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course held in 1978.
National Legislative Conference, *States Role in Radioactive Material Management.* Held December 9–11, 1974.
U.S. Environmental Protection Agency, *Drinking Water Regulations and Radioanalytical Workshop.* Held January 10–12, 1978.
X-Ray Workshop, Richfield, Utah. March 14–15, 1979
Actinides in Man and Animals Workshop, Snowbird, Utah. October 15–17, 1979.
U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending September 12, 1980.
NWTS Annual Information Meeting, Columbus, Ohio. December 8–10, 1980.
Waste Management 1981—American Nuclear Society, Tucson, Arizona. February 23–27, 1981.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September 1982.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in July 30, 1982.
U.S. Nuclear Regulatory Commission, *Radon Monitoring.* A 40-hour course ending in November 1982.
Conference of Radiation control Program Directors, *Radiation Instruments.* A 24-hour course ending September 1983.
U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1988.
U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course ending September 1989.

John D. Hultquist—B.S. Environmental Science/Biology, University of Tennessee.
U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in March 1988.
Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.
U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1989.
U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending August 1989.
U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.

Craig W. Jones—B.S. Biology, M.S.P.H. (Industrial Hygiene), University of Utah.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.
Department of Health and Human Services, *Radiopharmaceutical Quality Assurance.* A 16-hour course ending November 1984.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in February 1985.
U.S. Environmental Protection Agency, *Air Surveillance for Hazardous Materials.* A 40-hour course ending in April 1985.
U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending June 1985.
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1985.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 40-hour course ending in September 1985.
U.S. Nuclear Regulatory Commission, *Radiation Protection Engineering.* A 40-hour course ending in November 1986.
U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1987.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in August 1988.
Raymond G. Nelson—Completed 2 years towards B.S. in Geophysics, University of Utah.
U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in September 1988.
Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.
U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in June 1989.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials. A 40-hour course ending in August 1989.*
U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending in August 1989.
U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.

Reference: Utah Program Statement, section II.D "Low-Level Radioactive Waste Management," section IV "Staffing, Supervision, and Equipment for a Low-Level Waste Program," and Appendix E.

Administration

27. Coverage, Amendments, Reciprocity

The proposed amendment to the Utah agreement provides for the assumption of regulatory authority over land disposal of source, byproduct and special nuclear material received from other persons.

Reference: Proposed Amendment to Agreement, section I.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this sectioon with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commisson finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with rspect tot he materials covered by the proposed agreement.

The staff has concluded that the State of Utah meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covereds by the proposed amendment to the Utah agreement. Since the State is not seeking authority over uranium milling activities, subsection O. is not applicable to the proposed amendment to the Utah amended agreement.

Dated at Rockville, Maryland, this 7th day of November 1989.

For the U.S. Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs.

Appendix A

Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on April 1, 1984, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantitites not sufficient to form a critical mass; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 26–1–29 to enter into this amendment to the Agreement of March 29, 1984, between the Commission and the State of Utah; and

Whereas, The Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on *(date to be inserted)* that the State of Utah has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the land disposal within the State of source, byproduct and special nuclear material received from other persons and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on *(date to be inserted),* that the program for regulation of materials covered by the amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1989, is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended.

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, is amended by deleting "and" at the end of paragraph B., by adding ";and," after the words "critical mass" in paragraph C., and by inserting the following new paragraph immediately after paragraph C.:

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Section 2. Article II of the Agreement of March 29, 1984, is amended by deleting paragraph E. and by redesignating paragraph F. as paragraph E.

This amendment shall become effective on *(date to be inserted),* and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984.

Done at Salt Lake City, Utah, in triplicate, this ——— day of ———, 1989.

For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

Chairman

For the State of Utah.

Norman H. Bangerter,

Governor

[FR Doc. 89–2695 Filed 11–14–89; 8:45 am]

BILLING CODE 7590–01–M

Commonwealth Edison. Co.; Issuance of Amendment To Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 108 to Provisional Operating License No. DPR–19 and Amendment No. 103 Operating License No. DPR–25 issued to the Commonwealth Edison Company, (the licensee), for operation of the Dresden Nuclear Power Station, Units 2 and 3 located in Grundy County, Illinois.

These amendments correct the discrepancy between the Technical Specification Table 3.2.2 value for the 4KV emergency bus undervoltage trip (3092V) and the current trip value (2930V), and includes administrative changes which add clarity and conciseness to the Technical Specifications.

The parts of application for the amendment approved by the Commission complies with the standards and requirements of the Atomic Energy Act to 1954, as amended (the Act), and the Commission's rules and regulations. A Notice of Denial has been issued for those parts of the application denied. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the licensee's amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15755). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared and Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an Environmental Impact Statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 28, 1988, (2) Amendment No. 108 to License No. DPR–19, and (3) Amendment No. 103 to DPR–25, and (4) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC; and at Morris Public Library, 604 Liberty Street, Morris, Illinois 60450. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 2055, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager Project Directorate III–2 Division of Reactor Projects—III. IV, V, and Special Projects.

[FR Doc. 89–27914 Filed 11–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–237, 50–249]

Commonwealth Edison Co. Dresden Nuclear Power Station, Unit Nos. 2 and 3, Denial of Amendment To Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by Commonwealth Edison Company, an amendment to Provisional Operating License No. DPR–19, and Facility Operating License No. DPR–25 issued to the licensee for operation of the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located in Grundy County, Illinois. Notice of consideration of issuance of this amendment was published in the **Federal Register** on May 3, 1988 (53 FR 15755).

The purpose of the licensee's amendment request was to correct the discrepancy between the Technical Specification Table 3.2.2 value for 4KV emergency bus undervoltage trip (3092V) and the current trip valve (2930V) and include administrative changes which add clarity and conciseness to the Technical Specifications (TS).

The staff has denied the proposal to delete "Permissive for Starting ECCS umps" under the Remark Column of Table 3.2.2 for the 4KV loss of voltage relays because these relays do provide a permissive function which should be encompassed by the TS. The staff has also denied the proposal to add a new note 6 to Table 3.2.2 to encompass new limiting conditions for operation (LCO) for the 4KV loss of voltage and degraded voltages instrumentation channels (relays). Our concern was that if either of the two relays in the 2-out-of-2 loss of voltage and 2-out-of-2 degraded voltages trip logic is found inoperable, the new LCO would allow plant operation to continue for 7 days with no clear indication as to the status (tripped/non-tripped) into which the logic or relays would be placed. The other provisions of the amendment pertaining to section 3/4.2 have been approved by Amendment Nos. 108 and 103 dated November 21, 1989.

Notice of Issuance of that amendment will be published in the Commission's biweekly **Federal Register** notice.

The licensee was notified of the Commission's denial of the proposed TS change by the letter transmitting Amendment Nos. 108 and 103.

By December 29, 1989, the licensee may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L. Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 28, 1988 (2) the Commission's letter to the licensee

dated November 21, 1989, and (3) the Commission's Safety Evaluation dated November 21, 1989, issued with Amendment Nos. 108 and 103 to DPR–19 and DPR–25 respectively.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, Washington, DC 20555 and at Morris Public Library, 604 Liberty Street, Morris, Illinois 60450. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Document Control Desk.

Dated at Rockville, Maryland this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Byron Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27915 Filed 11–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al; Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 80 to Facility Operating License No. NPF–10 and Amendment No. 68 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revise the following items in the Technical Specifications.

3/4.3.1 "Reactor Protective Instrumentation"
3/4.3.2 "Engineered Safety Feature Actuation System Instrumentation"
3/4.1.3.3 "Position Indicator Channel—Shutdown"

Specifically in each case, the associated surveillance interval has been changed from 18 months to each refueling interval, which is defined as every 24 months. The initial Federal Register notices did not specifically define the refueling interval; however, the 24-month period is the generally accepted fuel cycle and does not affect the initial notices.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the Federal Register on February 24, 1989 (54 FR 8032, 8036 and 8037). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments dated April 28, 1988 (PCN–248), April 28, 1988 (PCN–251) and December 19, 1988 (PCN–282), (2) Amendment No. 80 to License No. NPF–10 and Amendment No. 68 to License No. NPF–15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 21st day of November, 1989.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–27916 Filed 11–28–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–69]

Determinations Under section 304 of the Trade Act of 1974, as amended, Regarding Japanese Government Procurement Policies Affecting Architectural, Engineering and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

SUMMARY: On November 21, 1989, the USTR determined, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce. The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act is appropriate at this time in light of certain commitments made by the Government of Japan. The USTR will monitor Japan's implementation of these commitments pursuant to section 306 of the Trade Act, and will seek a satisfactory resolution of all remaining concerns in ongoing bilateral negotiations, beginning January 19, 1990, and including a full review in May 1990 of the "Major Projects Arrangements" concluded by the United States and Japan in 1988. If Japan's implementation of its undertakings or progress in ongoing negotiations is unsatisfactory, the USTR shall consider at that time what further action may be appropriate under section 301 of the Trade Act.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395–7271, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On November 21, 1988, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1182), the United States Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended,

regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of architectural, engineering, and construction services, and related consulting services.

By Federal Register notice dated November 28, 1988 (53 FR 47897), USTR invited written public comment on these barriers. In addition, on March 13, 1989, USTR held a public hearing on the Japanese government practices at issue (54 FR 6349), and heard testimony on practices which interested persons considered are unreasonable and a burden or restriction on U.S. commerce. Following the hearing, the United States held consultations with the Government of Japan on this matter.

Section 304 of the Trade Act required the USTR in this case to determine by November 21, 1989, whether the Japanese practices are unreasonable and burden or restrict U.S. commerce, and if so, what action, if any, to take under section 301 in response. On November 1, 1989 (54 FR 46181), USTR requested further comment, particularly with respect to the determinations required under section 304.

Determinations

On November 21, 1989, the United States Trade Representative (USTR) determined pursuant to section 304(a)(1)(A) of the Trade Act of 1974, as amended ("the Trade Act"), that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce.

The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act is appropriate at this time in light of (a) written commitments made by the Government of Japan regarding actions the Government of Japan intends to take to improve access for U.S. firms to its market, and (b) written commitments made by the Government of Japan to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including consultations scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

Reasons for Determinations

The USTR gave the following reasons for her determinations under section 304 of the Trade Act:

(1) Japanese Acts, Policies and Practices

On the basis of an investigation pursuant to section 302 of the Trade Act of 1974, as amended, and on consultations with the Government of Japan and the affected U.S. industry, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan implements procurement policies in the construction sector in a way that limits competition and facilitates collusive bidding practices ("dango"), including inadequate use of administrative measures restricting collusive bidding activities, and operation of the designated bidder system. More specifically:

- Japan's administrative measures restricting collusive bidding ("dango") are ineffective to deter collusive activities. Ministries have consistently imposed the minimum penalties prescribed by their regulations to suspend from bidding firms found to have engaged in collusive activities. In two recent cases, the funding ministries suspended the guilty firms from bidding from only one month and only in the region where the collusion occurred.
- The Government of Japan also implements the designated bidder system in a way which limits competition. This system operates to limit the number of firms that can bid, thereby further limiting the opportunities for U.S. firms. The decision to designate bidders also depends on vague and subjective criteria.

In addition, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan uses open bidding procedures only in the 14 construction projects covered by the Major Projects Arrangements concluded by the United States and Japan in May 1988. More specifically:

- Foreign firms are excluded from bidding on public projects outside the Major Projects Arrangements, unless they have had prior experience on other Japanese construction projects. Such experience currently can be gained only from projects subject to the Major Projects Arrangements—or from private sector projects, in which foreign firms have had limited success.
- The Government of Japan discriminates against non-Japanese firms by providing information to them less promptly and fully than it does to Japanese firms on projects not covered by the Major Projects Arrangements.

(2) U.S. Action

The USTR's determination that no responsive action under section 301 of the Trade Act is appropriate at this time takes into account several commitments made by the Government of Japan. In consultations with the Government of Japan on November 8–9, 1989, Japanese Government officials gave the United States written commitments, amplified by the USTR's subsequent discussions with Japanese Government officials in Tokyo and by a letter dated November 17, 1989, from the Minister of Construction, regarding actions the Government of Japan intends to take immediately to improve access for U.S. firms to its market. The Government of Japan also committed in the November 17 letter, and again subsequent thereto, to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including those scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

More specifically:

- With regard to deterrence of collusive activities, the Government of Japan stated its intention to undertake two new administrative measures to deter collusive activities. It plans to provide at two stages in the bidding process a statement of the legal prohibitions against collusive activities. Commissioning entities will require each bidder to submit, at the time that he submits a bid, a signed and sealed document that states compliance with the bidding instructions.
- With regard to the designated bidder system, the Government of Japan agreed to provide greater detail about the nature of the specific projects being tendered, which should enable potential bidders to assess more accurately whether there is a reasonable likelihood that the company has the technical capabilities required for designation.
- With regard to requirements to form consortia or joint ventures in order to bid, the Government of Japan agreed that commissioning entities will refrain from determining the share of any company in a joint venture or the segment of the project that a company will undertake.
- With regard to architectural design, the Government of Japan stated that the design of the two additional elements of the Kansai International Airport will be open to non-discriminatory competition: the airline terminal annex, and the cargo terminal building. After the procuring agencies for the Haneda Airport Terminal Construction (Phase III), the Hiroshima Airport Terminal Construction, and the New Kitakyushu Airport Terminal Construction are

determined, the Government of Japan will encourage those procuring agencies to follow non-discriminatory competitive procedures. For all other projects under the Major Projects Arrangements, the decision to contract for the design will be announced in the annual plans of the commissioning authority.

• With regard to sub-contracting of goods and services, the procuring entities will publish a notice of the intention to procure all major goods and services (whether procured directly or indirectly) at the same time they announce the major project and will provide additional information on those goods and services during the explanation meeting. The Government of Japan also stated that commissioning entities will encourage contractors to provide explanations to a potential supplier who requests an explanation. Furthermore, the Government of Japan will allow the potential suppliers recourse to the complaints mechanism under the Major Projects Arrangements, if the supplier fails to win the contract or subcontract and does not obtain a satisfactory explanation from the general contractor or subcontractor.

The United States will monitor Japan's implementation of these market-opening actions pursuant to section 306 of the Trade Act, and will seek a satisfactory resolution of all remaining concerns in ongoing bilateral negotiations, beginning January 19, 1990 and including a full review of the Major Projects Arrangements in May 1990. If Japan's implementation of its undertakings or our progress in ongoing negotiations is unsatisfactory, the USTR shall consider at that time what further action may be appropriate under section 301 of the Trade Act.

The USTR's determination also takes into account the fact that the value of U.S. architectural, engineering and construction contracts in the Japanese market has reached about $65 million and has been growing. The USTR will continue to monitor this progress and expects U.S. firms to be more successful as Japan implements its assurances to continue its market-opening efforts.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–27918 Filed 11–28–89; 8:45 am]

BILLING CODE 3190-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 12 and 13, 1989 at the Madison Hotel, 15th & M Streets NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Drawing Rooms I and II, second floor at 9 o'clock, December 12, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9 o'clock, December 12, 1989 in Executive Chambers 1, 2 and 3.

The Full Commission will convene at 1:30 o'clock p.m. on December 12, 1989, in Executive Chambers 1, 2 and 3, on the second floor. The Full Commission will meet again on Wednesday, December 13, 1989, at 9:00 a.m. in the same room.

All meetings are open to the Public.

Donald A Youny,

Executive Director.

[FR Doc. 89–27569 Filed 11–28–89; 8:45 am]

BILLING CODE 8820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27455; File No. SR–AMEX–89–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Equity Specialist Performance, Allocation and Reallocation Procedures

I. Introduction

On October 23, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] copies of a proposed rule change to adopt the Exchange's equities specialist performance, allocation and reallocation procedures, including revisions to its specialist unit evaluation questionnaire.[3] No comments were received in connection with the proposal.

Under Amex Rule 170, if the Exchange determines that a specialist substantially or continuously fails to engage in a course of dealing calculated to assist in the maintenance of fair and orderly markets or fails to meet other performance standards, it may suspend or revoke the specialist's registration in one or more assigned securities. Pursuant to the rule, Amex has proposed procedures for the evaluation of specialist performance and for the allocation and reallocation of securities. The procedures are designed to measure, among other things, the quality of specialist performance utilizing certain performance-based criteria and to provide an incentive for quality performance both through the Exchange's allocation process and through the imposition of non-disciplinary sanctions, including the reallocation of stocks for continued unsatisfactory specialist performance.

II. Description of the Proposal

A. Performance Measurement Criteria

Amex's Committee on Specialist and Registered Trader Performance ("Performance Committee") [4] has been delegated authority to review and evaluate specialist performance. The Performance Committee assesses specialist performance utilizing two evaluation tools: (1) A quarterly specialist unit evaluation questionnaire ("questionnaire"), which elicits the opinions of floor brokers regarding the overall performance of a specialist, and (2) Performance Committee ratings, which are based upon a review of trading data and evaluation of market making performance on questionable trades identified by Amex staff over the course of an evaluation period. In addition, the procedures contain minimum standards of acceptable specialist performance. Any specialist whose market making performance falls below the designated threshold levels will be subject to a variety of remedial measures, including possible reallocation of their specialty stock(s).

1. The Specialist Unit Evaluation Questionnaire

Under its specialist evaluation procedures, Amex distributes the questionnaire on a quarterly basis to floor brokers and registered traders who are requested to evaluate a specialist's performance based upon their floor contact with the unit. Amendment No. 4 to SR–Amex–83–27 substantially revises the questionnaire.[5] Among other things, the revisions expand from 4 to 26 the number of questions contained on the questionnaire. In addition, the Exchange proposes to replace the existing numerical grading scale with a new alphabetical rating scale. Respondents will grade a specialist unit's performance for each question utilizing A, F, S, O, and N, where A=Always, F=Frequently, S=Satisfactory, O=Occasionally, N=Never. The alphabetical rating is translated into a numerical rating by correlating A to 1, F to 2, S to 3, O to 4, and N to 5. The rating is then compared to the average of all units and, depending on the deviation from the average, the unit is assigned a numerical rating between 1 and 5 which is provided to the Allocations Committee.[6] Any specialist that receives a 4 or 5 rating on the questionnaire in any quarter is automatically precluded from applying for new allocations until its questionnaire rating improves. In addition, the Performance Committee will consider recommending the reallocation of a unit's specialty stock where the unit receives a 4 or 5 overall questionnaire rating, coupled with a similar Performance Committee rating, over two consecutive quarters and where lesser remedial efforts designed to improve the unit's performance have failed.[7]

2. Performance Committee Ratings

As provided by the procedures, the Performance Committee, or a subcommittee thereof, meets regularly with the staff of Trading Analysis to review specific instances of poor performance by a specialist which have been uncovered by an analysis of certain trading data, including daily transaction journals, information from automated exception reports, specialist principal trading activity reports, and customer complaints. The Performance Committee reviews the questionable trades for market continuity, depth, stabilization, and quotation spread. In addition, the Performance Committee may meet with members of the particular unit under review, at which time the unit is provided an opportunity to defend its performance.[8]

The Performance Committee rates the specialist's performance on a scale of 1 (least severe) to 6 (most severe) based upon its determination of the severity of a particular instance of poor performance. In those instances in which a unit is assigned a rating of 3, the Performance Committee will consider the imposition of remedial action; however, such action is within the discretion of the Performance Committee. A rating of 4, 5, or 6 automatically triggers the imposition of one or more remedial measures, including an admonitory letter, preclusion from future allocations, suspension of a specialist's registration, or a recommendation of reallocation of one or more of the specialist's registered securities to the Allocations Committee. [9]

Performance Committee ratings are divided into two categories: interim Performance Committee ratings and quarterly Performance Committee ratings. Under the first category of ratings, Performance Committee reviews only are triggered by individual instances of performance weakness by a specialist. The Performance Committee assigns the specialist a rating which may or may not trigger remedial action, depending upon the severity of the particular trade(s) under review. The Performance Committee's quarterly ratings are based upon any interim ratings conferred throughout the quarterly evaluation period. The interim Performance Committee ratings are noted in the specialist unit's permanent performance file maintained by Trading Analysis, which is made available to the Allocations Committee. [10] Each interim performance rating serves to lessen a unit's overall quarterly rating.

The Performance Committee also reviews the permanent performance files of all specialists on a quarterly basis. Each unit is given a composite rating based on the number and severity of individual ratings in the unit's permanent file in relation to the number of its assigned stocks. [11] The Performance Committee then produces a final rating on a 1 (highest) to 5 (lowest) scale determined by the deviation from the average. A specialist unit receiving a score of 4 or 5 is ineligible for new allocations until its ratings improve in the next or a subsequent quarter.

B. Allocation and Reallocation Procedures

1. Allocation Procedures

When the Exchange has approved an issue for listing, a new Allocations Committee is convened. [12] In allocating the new listing, the Allocations Committee considers a variety of factors; however, the most significant factors considered by the Allocations Committee are Performance Committee ratings, questionnaire ratings and statistical data concerning the particular issue to be allocated and each applicant unit. This data is provided to each Allocations Committee on the Summary Statistics for Allocations Committee Sheet ("Statistic Sheet"). [13] All

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1989)

[3] The proposal was noticed in Securities Exchange Act Release No. 26353, November 4, 1988, 48 FR 51992. The Amex submitted Amendment No. 1 to the proposal on April 23, 1984; however, due to a number of concerns raised by the amendment, the Commission determined not to publish the amendment for notice and comment, but rather requested the Amex to provide additional amendments to the filing that would address the Commission's concerns. In response, Amex submitted Amendment No. 2 to the filing on February 7, 1985. Amendment No. 3 to the filing was submitted on May 30, 1985 restating Amex's "issuer's choice" program that permits issuers to determine which Amex specialist will be allocated its stock under certain circumstances. See Securities Exchange Act Release No. 22312, August 12, 1985, 50 FR 33139 and note 15 *infra* discussing Amex's issuer choice program. Amendment No. 4 to the filing revises the Exchange's Specialist Unit Evaluation Questionnaire and was submitted on March 17, 1988. See Securities Exchange Act Release No. 25542, March 31, 1988, 53 FR 11387. Amendment No. 5, submitted on April 14, 1989, makes some clarifying amendments and codifies Amex's existing policy on the inability of a specialist and its firm to compete for new allocations when the specialist is a member of the Allocations Committee.

[4] The Performance Committee is appointed by Amex's Board of Governors ("Board") and is charged with evaluating specialist performance as well as taking appropriate corrective action to improve the quality of Amex markets.

[5] *See* Securities Exchange Act Release No. 25542, March 31, 1988, 53 FR 11387.

[6] The Exchange also proposes to redesignate the four major areas of performance evaluated on the questionnaire to include principal obligations, agency/fiduciary obligations, communication function, and auction market maintenance.

[7] *See* Securities Exchange Act Release No. 22312, August 12, 1985, 50 FR 33139 ("August 12, 1985 Release").

[8] See SR–Amex–83–27, Amendment No. 2 ("Amendment No. 2"), pg. 5.

[9] See Amendment No. 2, pg. 6.

[10] We note, however, that under the procedures, an interim Performance Committee review may not necessarily result in the imposition of remedial action, if, for example, the specialist under review receives a 1 or 2 interim Performance Committee rating. Such a rating would indicate that while the specific trades raised sufficient concerns to merit an interim review, they were not serious enough to warrant Performance Committee action.

[11] According to the Amex, specialist units whose performance does not trigger a review under the interim procedures will generally receive an excellent quarterly performance rating.

[12] The Allocations Committee has been delegated authority by Amex's Board to allocate and reallocate equity securities to specialist units. It is composed of eight members, including a Committee chairman, who is generally a floor governor and only votes to break a tie. The seven voting members consist of six floor brokers (chosen from a roster of approximately 25 brokers) and one specialist (chosen from a roster of approximately 15 specialists). Four floor brokers and the specialist are selected on a rotating basis from their respective rosters. In order to preserve continuity from one Committee to another the remaining two floor brokers on the Committee are selected from a sub-group of the floor broker roster and serve five consecutive Committees. Allocations Committee action is triggered by the vote of two-thirds of the voting members. *See* Amendment No. 2, pg. 12.

[13] The statistics sheet contains aggregate statistical information about all specialist units regarding the number of issues per unit per specialist, average daily equity and option volume per specialist for the most recent 12 and 3 month periods, manpower, average principal participation for each unit for the most recent six months, and the number of issues allocated in the last 12 months. In addition to this data, Trading Analysis also apprises the Allocations Committee of any pending changes in the composition of a unit and any relevant findings by Amex's Examination Division as to a unit's financial status.

specialist units are deemed to have applied for each stock allocation, except (1) the specialist firm whose member is scheduled to serve on the Allocations Committee for the particular allocation meeting; [14] (2) those units that are subject to an allocation freeze due to poor performance ratings; or (3) those units that have withdrawn from consideration for a particular allocation by letter because of a conflict of interest or the incompatibility of the issue to be allocated with the unit's current portfolio of stocks. In addition, the Allocations Committee is provided with any letters from specialist unit applicants written in support of their applications. Under Amex's issuer's choice program, a new Amex issuer is permitted to select its specialist unit from a list of seven specialists selected by the Allocations Committee based on performance related criteria. Another option allows newly-listed companies to eliminate up to three specialists from a list of ten specialists, compiled by the Allocations Committee, considered eligible for the company's listing. The Allocations Committee makes a final selection from the units remaining on the list. [15]

2. Reallocation Procedures

Under Amex reallocation procedures, an Allocations Committee is convened to reallocate securities in the following circumstances. First, reallocation proceedings are commenced when the Performance Committee recommends the reallocation of a unit's specialty stock due to (1) the failure of the unit to maintain satisfactory performance in a particular instance, (2) consistently poor performance ratings,[16] or (3) a significant change within a unit, such as a merger or dissolution. Second, a stock will be reallocated if a specialist requests withdrawal of its registration in a particular security. Third, a specialist's registration in a specialty stock can be cancelled by the Allocations Committee as a result of disciplinary action. Finally, the Exchange may reallocate one or more of a specialist unit's securities on an emergency basis, if it determines that the unit is in such financial or operating condition so as to jeopardize the safety of investors, its creditors or other Exchange members.[17]

D. Procedural Safeguards

Under the procedures, all specialists are appraised of their performance ratings throughout the evalaution process and are offered an opportunity to meet with the Performance Committee or one of its subcommittees. In addition, a specialist subject to a performance review or that is required to appear before the Performance Committee may be represented by legal or other counsel, if it so desires.[18]

1. Individual Performance Ratings

Each time a specialist's performance is reviewed by a subcommittee or the full Performance Committee, the specialist unit is notified of the review and given access to all materials to be reviewed. Specialist unit members are provided an opportunity to meet with the Performance Committee to defend their performance or to revise mitigating factors; in some instances more than one meeting may be necessary, particularly in those cases in which the questionable performance is complex or potentially serious. Following the Performance Committee's ratings, a member of the Performance Committee meets with members of the specialist unit to discuss the Performance Committee's rationale for its rating.[19]

2. Quarterly Performance Ratings

Meetings between the Performance Committee, or a subcommittee thereof, and a specialist unit to discuss the specialist's final quarterly performance rating may be at the specialist's or the Performance Committee's request, depending upon the final quarterly performance rating conferred. Meetings between a specialist receiving a rating of 1 to 3 and the Performance Committee are generally convened at the specialist's request. In the case of a 4 or 5 rating, the unit is requested to meet with the subcommittee of the Performance Committee and Trading Analysis to discuss the Performance Committee's rating and measure for improvement. In addition, in those instances in which a a specialist unit that receives a 4 or 5 rating has received substandard ratings in previous quarters, follow-up meetings are held as needed during the subsequent quarter to closely monitor the remedial measures being taken by the unit.

3. Performance Reallocations

In any case in which the Performance Committee determines that it will consider recommending the reallocation of a security or securities as a result of poor performance, it first provides written notice and an opportunity to be heard to the particular specialist. The written notice contains the specific grounds to be considered as the basis for the reallocation. If a specialist unit does not wish to be present at a hearing, it is required to sign a waiver of the right to a hearing.

The members of the specialist unit have an opportunity to be heard on the specific grounds to be considered by the Performance Committee and a written record of any such hearing is maintained. Following the reallocation hearing, the Performance Committee informs the members of the unit in writing of its determination and its basis therefor. The decision of a majority of the members of the Performance Committee is final, subject to the unit's right to appeal the decision to Amex's Board.[20]

[14] Under the policy, both the specialist Allocations Committee member and his firm are ineligible to apply for any stock to be allocated by the Allocations Committee in its regularly scheduled meeting. The ban on the firm's participation in the allocation process is only triggered when one of its specialists sits on the Allocations Committee; however, because a new Allocations Committee consisting of new members is convened for each allocation, the specialist Allocations Committee member's firm is only affected by the ban for that particular meeting or until another specialist is selected to serve on the Allocations Committee. *See* Amendment No. 5, dated April 14, 1988.

[15] See generally, Securities Exchange Act Release No. 23593, September 5, 1986, 51 FR 32985. We note that in implementing the optional allocation programs, Amex adopted guidelines designed to ensure that pre-allocation contacts between issuers and Amex specialists are appropriate. Under the guidelines, specialists are required to notify Amex's Marketing Department of any contact they wish to initiate with unlisted companies. Amex could, in these instances, request the units to avoid making such contacts if it believes such activities could hinder its marketing efforts or otherwise be inappropriate. In addition, specialists are required to report all unplanned contacts with prospective companies. Once an issuer determines to list on Amex, specialists are barred from making contact with the company. Moreover, if a newly-listed issuer wishes to interview one or more of Amex's final list of seven specialists under its issuer's choice program, Amex offers to arrange telephone interviews or in person interviews on its premises. Failure by a specialist to comply with the guidelines could result in disciplinary action. *Id.*

[16] For example, the Performance Committee will consider recommending a reallocation of a unit's stock if the unit's performance remians unsatisfactory despite remedial efforts for two consecutive quarters, as demonstrated by a 4 or 5 questionnaire or Performance Committee rating. See Amendment No. 2, pg. 16.

[17] Under these procedures, Amex's Chairman of the Board or President, in consultation with all Floor Governors available, has the power to recommend an Emergency Reallocation for the reasons noted above. See August 12, 1985 Release and Amendment No. 2, pgs. 16 and 21.

[18] See Article V, section 1(a) of Amex's Constitution.

[19] See August 12, 1985 Release.

[20] In this regard, we note that all specialist units are entitled to appeal Performance or Allocations Committee decisions to Amex's Board. The appeals are heard *de novo* and are adjudicated by the Board's Executive Committee. All Executive Committee decisions are final. See Article II, Section 2 of Amex's Constitution.

III. Discussion

The Commission strongly supports efforts by the Amex and other exchanges to encourage quality specialist performance through its specialist performance evaluation process. We note that in designing its program, Amex reviews both broker evaluations and trading data, evaluating market making performance on questionable trades, to monitor and identify those specialist units whose performance, either on an individual or continuous basis, falls below minimum acceptable standards contained in the procedures. The Commission believes that the performance evaluation measures adequately should address performance weakness by specialist units and should be useful to motivate specialists to improve their performance. Accordingly, after reviewing Amex's proposal, we believe that it is consistent with the requirements of the Act, particularly Section 6, and will strengthen the Exchange's specialist system as well as further investor protection and the public interest.

With regard to Amex's questionnaire, the Commission believes that the expansion of the number of survey questions from 4 to 26 is a significant improvement and should enhance this portion of the procedures for several reasons. The additional questions should enable Amex to elicit broker opinions on specialist performance in a broader range of performance areas. In this regard, we note that although specialist performance will continue to be analyzed in four major categories, each category will now contain more questions intended to address the different aspects of the particular performance category. As a result, the expanded questionnaire should provide Amex with more information to consider when assessing specialist performance, thereby ensuring that final questionnaire ratings will be more balanced and comprehensive.

In addition to the questionnaire, the Commission believes that Performance Committee ratings should facilitate the identification of poorly performing specialists on a continuous basis. In this connection, although overall performance evaluations are conducted quarterly, Amex constantly will monitor specialist trading activity to detect questionable trades; once Amex identifies trading irregularities it will be able to evaluate the specialist's performance and impose any specific remedial measures where appropriate. Further, the Commission believes that the factors employed in reviewing trading activity analyzing continuity, depth, stabilization, and quotation spreads should provide Amex with an accurate and reliable measure of the quality of specialist performance. Accordingly, the Commission believes that the combination of a questionnaire and review of trading data for each unit should provide Amex with a balanced, comprehensive assessment of specialist performance, and, as noted above, simplify the task of identifying and correcting performance weakness among specialists.

While the Commission generally believes that Amex's procedures are adequate, the absence of relative performance standards in Amex's procedures raises concern. The Commission has long favored the incorporation of relative performance standards into the specialist evaluation process so that specialists who were regularly among the lowest ranked specialist units would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance.[21] The need for Amex to adopt such relative performance standards has been highlighted by specialist performance on the Amex during the October market break. In the Division of Market Regulation's ("Division") report on the October 1987 market break, the Division examined specialist performance on the Amex on October 19 and 20, 1987.[22] Although some Amex specialists appeared to perform well under the adverse conditions, the Division found a general decline in overall specialist performance on October 19 and 20 and found several instances of questionable individual specialist performance. In addition, the Division noted its concern about the number of stocks that never opened due to order imbalances and the large number of trading halts and delayed openings in Amex stocks. The Division concluded that the wide disparity in specialist performance underscored the need for the Amex to develop relative, objective standards of performance for evaluating specialists.[23] The Commission continues to believe that the adoption of relative performance measures would substantially strengthen Amex's evaluation procedures, and again, strongly urges the Amex to develop such procedures in the near future.[24]

The Commission also believes that the powers available to Amex to address poor performance, in addition to the actual exercise of these powers, is extremely important. In particular, we believe that the remedial measures available to Amex, such a preclusion from future allocations or the reallocation of stocks, should provide a strong incentive for units to improve or maintain quality performance. Moreover, the Commission believes that Amex's procedures contain sufficient procedural safeguards to ensure that specialists whose performance triggers some form of review will receive the appropriate notice and opportunity to be heard. Under the procedures, specialists are guaranteed the opportunity to be heard before the Performance Committee or one of its subcommittees throughout the evaluation, allocation, and reallocation process. In addition, as mentioned earlier, when required to appear before the Performance Committee for a hearing, the specialist unit may be represented by legal or other counsel. Written notice is provided to specialists required to appear before the Performance Committee, a written record is maintained of the hearing, and the specialist unit is provided with a written decision containing the Committee's rationale for its determination. Specialists may also appeal a Performance Committee decision through Amex's appeallate process. The Commission believes that these procedures should adequately safeguard the rights of specialists subject to remedial action.

Finally, the Commission believes that the allocation guidelines adopted by Amex are appropriate. In particular, the Commission believes that Allocations Committee consideration of both the

[21] See e.g., letters from Douglas Scarff, Director, Division of Market Regulation, to John J. Phelan, Jr., President, New York Stock Exchange ("NYSE"), dated November 10, 1981 and August 18, 1982; letter from Richard G. Ketchum, Director, Division of Market Regulation to John J. Phelan, Jr. dated July 30, 1986 and Securities Exchange Act Release No. 34-25682, May 9, 1988, 53 FR 17287 approving the NYSE's specialist performance evaluation and improvement program on a two year pilot basis.

[22] See Division of Market Regulation, *The October 1987 Market Break*, February 1988 at 4-29.

[23] *Id.* at xvii.

[24] We also believe Amex's procedures could be improved by the development of threshold levels of acceptable performance in a variety of areas capable of objective evaluation such as timeliness of openings. In addition although the Performance Committee analyzes depth, continuity, stabilization and quotation spreads on particular trades that raise concerns, minimum standards should be developed for evaluating overall market making performance among all specialists. Despite these recommendations and the absence of relative performance standards, as discussed further in this Section, Amex's proposed policy meets the requirements of the Act and is an important step to encourage improved specialist performance.

Performance Committee and broker evaluation ratings, in addition to other supplemental data such as a unit's dealer participation rates, staffing and current number of Amex stocks, should ensure that the Committee reviews a broad range of factors in its allocation awards.[25] Accordingly, because allocation awards will be largely based upon a unit's on-floor performance, the Commission believes that the allocation process should provide a significant incentive for specialists to strive for optimal performance in order to compete successfully for additional listings.[26] Such superior performance should, in the Commission's view, enhance market quality as well as facilitate the execution of public orders, which ultimately benefits the Exchange, its specialist community and the investing public.

IV. Conclusion

In assessing Amex's proposal, a primary Commission concern has been that the evaluation procedures serve as a meaningful incentive for quality specialist performance. The Commission believes that Amex's evaluation program addresses this concern as well as additional concerns regarding such issues as due process protection and proper evaluation procedures. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[25] We note, that the Allocations Committee's consideration of statistical data also includes a review of the number of new allocations a unit received over the preceding year. While the Commission believes that this information can be marginally useful for deciding close contests for a new allocation, the Commission nonetheless believes that recent allocations should not be used to preclude a more clearly qualified specialist unit from receiving a new listing. Accordingly, Amex has stated that this criterion only will be used when reviewing the applications of specialist units that are equally qualified to receive an allocation as determined by the measures noted above. *See* Letter from Jules L. Winters, Senior Vice President, Trading Analysis and Market Operations, Amex, to Sharon Lawson, Special Counsel, Division of Market Regulation, Securities and Exchange Commission.

[26] In this regard, the Commission believes that the key criteria for allocating stocks to specialist units should be specialist performance as evidenced by the result of Amex's evaluation process.

Dated: November 22, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27934 Filed 11-28-89; 8:45 am]

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[Rel. No. 34-27460; File No. SR-MSRB-89-8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Calculation of Price and Yield on Continously Callable Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rules G–12 and G–15 (hereafter referred to as the "proposed rule change") concerning calculation of price and yield on continuously callable securities. The proposed rule change applies the Board's previous interpretations in this area to the securities in question.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The Board received an inquiry asking for guidance on the proper method of computing price from yield in transactions involving municipal securities that are "continuously callable" after the first optional call date. The procedure for calculating price to call for these issues is the same as for other securities with declining premium calls. Dealers must take the lowest price possible from the operation of an "in-whole" call feature, compare it to the price calculated to maturity and use the lower of the two figures on the confirmation. For settlement dates prior to the first "in-whole" call, it generally should be sufficient to check the first and intermediate call dates (including the par call), determine which produces the lowest price, and compare that price to the price calculated to maturity. For settlement dates occurring after the first "in-whole" call date, it must be assumed that a notice of call could be published on the day after trade date, which would reult in the redemption of the issue 31 days after trade date. The price calculated to this possible redemption date should be compared to prices calculated to subsequent intermediate call dates and the lowest of these prices used as the price to call. The price computed to call then can be compared to the price computed to maturity and the lower of the two included on the confirmation. If a price to call is used, the date and redemption price of the call must be stated. Identical procedures are used for computing yield from price for display on customer confirmations under rule G–15(a).

The Board's response applies the Board's previous interpretations in this area to the securities in question; however, the question is novel and may involve a number of different issues of municipal securities.

(2) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rule which are:

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 20, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27935 Filed 11-28-89; 8:45 am]

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[Release No. 34-27450; File No. SR-MSRB-89-7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Confirmation Requirements for Partially Refunded Securities.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rules G–12 and G–15 (hereafter referred to as the "proposed rule change") concerning confirmation requirements for partially refunded securities. The proposed rule change restates the Board's previous interpretation on computing price from yield in these transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board received an inquiry asking for guidance on the proper method of computing price from yield and the proper securities description for securities that are "partially prerefunded." The Board's response restates the Board's previous interpretation on computing price from yield in these transactions.

Rules G–12(c) and G–15(a) govern inter-dealer and customer confirmations, respectively. Rules G–12(c)(v)(I) and G–15(a)(i)(I) require the dollar price computed from yield and shown on the confirmation to be computed to the lower of call date or maturity. For purposes of computing price to call, only "in-whole" calls, of the type which may be exercised in the event of a refunding, are used. Accordingly, the Board previously has concluded that the sinking fund redemption in the type of issue described should be ignored and the dollar price should be calculated to the lowest of the "in-whole" call date for the issue (*i.e.*, the redemption date of the prerefunding) or maturity. In addition, the stated maturity date must be used for the calculation of price to maturity rather than any "effective" maturity which results from the operation of the sinking fund redemption. Identical rules apply when calculating yield from dollar price. The parties to a transaction may agree to calculate price or yield to a specific date, *e.g.*, a date which takes into account a sinking fund redemption. If this is done, it should be noted on the confirmation.

The Board's response also provides guidance on the securities description required for the securities under rules G–12 and G–15. Rules G–12(c)(v)(E) and G–15(a)(i)(E) require that confirmations of securities that are "prerefunded" include a notation of this fact along with the date of "maturity" that has been fixed by the advance refunding and the redemption price. The rules also state that securities that are redeemable prior to maturity must be described as "callable." In addition, rules G–12(c)(vi)(I) and G–15(a)(iii)(J) state that confirmations must include information not specifically required by the rules if the information is necessary to ensure that the parties agree to the details of the transaction. Since, in this case, only a portion of the issue will be chosen by lot and redeemed at a premium price under the prerefunding, this fact must be noted on the confirmation. As an example, the issue could be described as "partially prerefunded to [redemption date] at [premium price] to be chosen by lot—callable." The notation of this fact must be included within the securities description shown on the front of the confirmation.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

* * * designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's

consideration of the proposed rule change was prompted by an interpretative inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 20, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27936 Filed 11-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17233; 812-7306]

The Glenmede Fund, Inc.; Application

November 21, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Glenmede Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6 (c) from the provisions of section 12 (d)(3) of the 1940 Act.

Summary of Application: Applicant seeks a conditional order permitting it, on behalf of its International Portfolio and any other present or future investment portfolio of the Applicant that will invest in the securities of foreign issuers, to acquire equity securities issued by foreign issuers who derived more than 15% of their gross revenue from activities as a broker, dealer, underwriter, or investment adviser in their most recent fiscal year ("foreign securities companies").

Filing Date: The application was filed on April 24, 1989, and an amendment to the application was filed on October 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 1989, and should be accompanied by proof of service on applicant, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Vanguard Financial Center, P.O. Box 1102, Valley Forge, PA 19482–1102.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is registered under the 1940 Act as an open-end management investment company. It currently is comprised of four investment portfolios.

2. The investment objective of the Applicant's International Portfolio is to provide maximum long-term total return for shareholders, consistent with reasonable risk to principal. The International Portfolio seeks to achieve its objective by investing primarily in common stocks and other equity securities of companies located outside the United States. The investment adviser of the International Portfolio is The Glenmede Trust Company.

3. Applicant wishes to make portfolio investment in equity securities of foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of the Commission's proposed amendments to Rule 12d3–1 under the 1940 Act (Investment Company Act Release No. 17098 (Aug. 3, 1989)) (the "Proposed Amended Rule 12d3–1"), including those requirements for foreign securities set forth in Proposed Amended Rule 12d3–1 (b) (5). Applicant will comply with the provisions of Proposed Amended Rule 12d3–1 as it may be reproposed, adopted or amended.

4. In particular (but without modifying in any respect the exact conditions set forth in Proposed Amended Rule 12d3–1 (b)(5)), Applicant will limit its investments in equity securities of foreign securities companies to those that (a) have been listed on a qualified foreign exchange (as defined in Proposed Amended Rule 12d3–1) for at least six months prior to the acquisition, (b) have had an average daily trading volume for the past six months of at least 500 shares which is equal in value to at least $25,000, (c) are part of a class of equity securities with at least 400,000 shares outstanding, excluding shares held by officers, directors and 10% owners, (d) are securities of issuers with at least $4 million in capital, surplus, and undivided profits as defined under generally accepted accounting principles or the substantial equivalent of such items, (e) are securities of an issuer which has been in existence at least three years, (f) are securities of an issuer which is current since the beginning of its last fiscal year on all filings and reports required by the laws of its home country and the rules of the stock exchange on which it is listed, and (g) are quoted daily as to both bid and asked prices and such prices are continuously available to the public.

Applicant's Conclusions of Law

1. In its current form, Rule 12d3–1 under the 1940 Act in effect limits an investment company's ability to invest in securities of foreign securities related businesses. This limitation results from the requirement in Rule 12d3–1 that an eligible security of a securities-related business be a "margin security."

2. The primary concerns addressed by section 12(d)(3)—entrepreneurial risk of investing in securities-related businesses structured as partnerships and potential conflicts of interests between an investment company's shareholders and its investment adviser, underwriters or other brokers—are not relevant in Applicant's context. Applicant does not intend to purchase any general partnership interest in securities-related businesses. Since Applicant's own shares are sold by the Applicant, the concern that Applicant might purchase shares in a broker-dealer for selling its shares is not relevant.

Applicant's Condition

The Applicant agrees that the following condition may be imposed in any order of the Commission granting the requested relief: Applicant will comply with the provisions of Rule 12d3–1 (Investment Company Act Release No. 17098 (Aug. 3, 1989), 54 FR 33027 (Aug 11, 1989)) as such Rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27937 Filed 11-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17232; (812-7424]

Public Facility Loan Trust; Application

November 20, 1989.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Shawmut Bank, N.A., not in its individual capacity, but solely as trustee ("Applicant" or "Owner Trustee"), on behalf of the Public Facility Loan Trust ("Trust").

Relevant 1940 Act Section: Order requested under section 6(c) from the provisions of Rule 8b-16 under section 8(b) of the 1940 Act.

Summary of Application: The Applicant, serving as Owner Trustee on behalf of the Trust, seeks an order amending the order issued in connection with the issuance of bonds and two classes of certificates of beneficial interest in the Trust collateralized by certain loans originated by the United States Department of Housing and Urban Development in Investment Company Act Release No. 16502 (July 28, 1988) as part of the United States Government Loan Assets Sales Program. The amended order would include an additional exemption from the requirement that the Trust file an annual amendment to its Registration Statement on Form N–2.

Filing Date: The application was filed on November 3, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on December 18, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549; Applicant, One Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272–2856 or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representation

1. The Trust, a Massachusetts business trust, is registered as a closed-end management investment company under the 1940 Act. By order dated July 28, 1988, (Investment Company Act Release No. 16502) ("Prior Order"), the Trust was exempted pursuant to section 6(c) from the provisions of sections 10(h), 14(a), 16(a), 17(a) and (d), 18(a), (c), and (i), and 32(a) of the 1940 Act in connection with the issuance of bonds and two classes of certificates of beneficial interest in the Trust collateralized by certain loans originated by the United States Department of Housing and Urban Development.

2. The Trust is a passive entity similar to a unit investment trust. The activities of the Owner Trustee are limited to receiving payments from the bond trustee while the bonds are outstanding and payments on the loans thereafter, and to making current distributions to certificateholders of the amounts received. Under the Prior Order, the Owner Trustee complies with Section 26 of the 1940 Act (with certain exceptions) as if the Trust were a unit investment trust. The Trust is not issuing, nor is it permitted to issue, additional securities in any public offering.

3. The Applicant seeks to amend the Prior Order to obtain an additional exemption from Rule 8b-16 under section 8(b) of the 1940 Act. Rule 8b-16 provides in relevant part that a registered management company which is required to file a semi-annual report on Form N–SAR, as prescribed by Rule 30b1–3, must amend the registration statement required under section 8(b) by filling the appropriate form prescribed for such amendments not more than 120 days after the close of each fiscal year ending on or after the date upon which the registration statement was filed.

Applicant's Legal Conclusion

4. The Applicant states that the concerns of Rule 8b-16 are fully satisfied as a result of other filings and reports required to be made by the Trust. Financial statements of the Trust are currently sent to the Commission and to the certificateholders of the Trust pursuant to the rules and regulations promulgated under section 30 of the 1940 Act. In addition, holders of the bonds issued by the Trust receive financial reports from the bond trustee. Thus, the requested exemption is consistent with the protection of investors because it would not result in withholding any information from investors that they do not already receive on a routine basis. Further, the preparation of annual amendments to the Registration Statement of the Trust on Form N–2 would impose an unnecessary burden of additional administrative and legal expenses which would be borne by the certificateholders with no countervailing benefits. Lastly, unit investment trusts are not subject to the requirement of Rule 8b-16 that annual amendments be filed to registration statements. For these reasons, the Applicant states that the requested exemption is necessary and appropriate in the public interest and is consistent with purposes fairly

intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27838 Filed 11-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17236; File No. 812-7310]

Western Life Insurance Co. et al; Application

Date: November 21, 1989.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Western Life Insurance ("Western Life"), Variable Account C of Western Life Insurance Company ("Account C"), and AMEV Investors, Inc. ("Investors").

Relevant 1940 Act Sections and Rules: Exemptions requested under section 6(c) from the provisions of sections 2(a)(32), 22(c), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rules 22c-1 and 6e-3(T)(b)(12), (b)(13) and (d)(1)(ii) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies that enable Western Life to (1) credit the policyholder's account with a "policy value advance" and later recover the policy value advance from the assets of Account C through a $4.00 monthly deduction and a daily deduction at an annual rate of .27% of the value of the policy's net assets; (2) deduct any premium tax charge not previously deducted as part of a contingent deferred charge; and (3) deduct sales charges, in part, by means of a constant $4.00 monthly charge, and by means of charges that may cease and resume under certain circumstances. These sales charges may be deemed to be higher in one period than in a prior period due to the operation of the policy value advance feature of the policies.

FILING DATE: The application was filed on May 5, 1989 and amended on July 31, 1989 and October 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on December 18, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of that date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Western Life, Account C and Investors, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017, or Clifford E. Kirsch, Acting Assistant Director, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Western Life, a Minnesota corporation, established Account C pursuant to the insurance laws of Minnesota as a segregated investment account for the purpose of funding variable life insurance policies. Account C is registered with the Commission as a unit investment trust under the 1940 Act. Investors, an affiliated company of Western Life, is the principal underwriter for the policies and is registered as a broker-dealer under the Securities Exchange Act of 1934. Account C currently consists of five subaccounts, each of which invests exclusively in shares of a corresponding portfolio of AMEV Series Funds, Inc., a registered management investment company.

2. The policy permits the policy owner to select (and change from time to time) between two death benefit options. Under one of these options the "policy value" is added to the policy's "face amount" of insurance coverage for purposes of computing the death benefit. The policy owner also may change the face amount from time to time, subject to certain restrictions.

3. The policy may be fully surrendered at any time for its "surrender value," and, generally after the first policy year, the policy owner may make a partial withdrawal of surrender value once a year. The policy owner also may take out policy loans and has considerable flexibility to vary the frequency and amount of premium payments.

4. The policy will not lapse for a specified number of years if certain minimum premium payments are made. For purposes of this guaranteed death benefit the premium payment requirement is based on monthly "minimum premiums." Mostly minimum premiums are also used, among other things, to make certain sales charge and "policy value advance" computations under a policy. Under various circumstances, different monthly minimum premiums may be used for different purposes, but in no case will the sum of twelve monthly minimum premiums with respect to a policy (or benefit change) exceed the "guideline annual premium" with respect to such policy (or change, respectively) as defined in Rule 6e-3(T)(c)(8).

5. The "policy value" is the amount available to earn a return for the policy owner pursuant to the policy. Unless prohibited in any state by applicable insurance law, a policy may be eligible for a credit in the form of a policy value advance on the last day of each of the 9th through 19th policy years. Eligible policies may receive a policy value advance only if, as of the date of the credit, (1) the cumulative amount of premiums paid over the life of the policy, less any outstanding policy loans, and less the cumulative amount of partial withdrawals taken by the policy owner, at least equals (2) the cumulative monthly minimum premiums to date. If the premium requirement is not met for any credit, no further policy value advances will be paid. Western Life currently intends that, for eligible policies, the policy value advance paid at the end of the 9th policy year will equal 10% of the average of the total monthly minimum premiums for each year to date. At the end of each of the 10th through 19th policy years, Western Life intends to make similar policy value advances to policies that continue to be eligible, in the amount of 10% of the average minimum premiums for each year to date. Any policy value advance will be allocated among the investment alternatives then in use under the policy on a "pro rata basis." Following such allocation, these amounts will be credited with investment performance and otherwise be treated the same as any other amounts of policy value.

6. Policy value advances at the foregoing rate is not guaranteed, and Western Life reserves the right in its sole discretion to reduce it, subject to guaranteed minimum rates. The guaranteed rates are based on the insured's age at policy issue, as follows: ages 0-40, 10%; ages 41-43, 9%; ages 44-46, 8.25%; ages 47-50, 7.5%; ages 51-55, 6%; ages 56-60, 5.5%; and 61-70, 5%.

7. Western Life will give policy owners notice that they may be forfeiting policy value advances by failing to make sufficient premium payments. Each year, a statement sent to the policy owner will tell the policyowenr the dollar amount that he or she must pay for the year (plus any unpaid amounts from prior years) to be eligible for policy value advances. If no such premiums must be paid, this will be set forth on the statement.

8. Currently, a premium tax charge of 2.3% of all premium payments is assessed through monthly and daily deductions from policy value. Any portion of such monthly and daily deductions that is not recovered by Western Life pursuant to the monthly and daily deductions may be deducted as part of the surrender charge.

9. A sales charge in the amount of 7½% of all premium payments is also assessed through the monthly and daily deductions from policy value. Any amount of this sales charge that is not recovered by Western Life through these monthly and daily deductions may be deducted as part of the surrender charge.

10. The monthly deduction for premium tax and sales totals $4.00 per month and the daily deduction for these purposes is at an aggregate annual rate of .27% of the value of the policy's net assets in Account C. These monthly and daily deductions, however, will be waived to the extent that the cumulative amount of all such deductions would exceed 9.8% of all premium payments made to date. Nor will these premium tax and sales charge deductions be made at any time when the similar deductions for a policy value advance are being made.

11. As part of the surrender charge, Western Life imposes an additional contingent deferred sales charge in the amount of 12% of premiums paid in the first two policy years that are not in excess of the sum of twelve monthly minimum premiums.

12. An additional amount of contingent deferred sales charge will be payable on certain total surrenders or policy lapses following an increase in face amount requested by the policy owner. The maximum additional contingent deferred sales charge will be 12% of the lesser of (1) the sum of twelve monthly minimum premiums for the face amount increase or (2) the amount of actual premium payments deemed attributable to the increase which are made not later than two years after the date of the increase. Any such additional contingent deferred sales charge arising from a face amount increase is payable only as part of the surrender charge.

13. A charge for other policy issuance expenses is also imposed under a policy. This charge is $5.00 per thousand dollars of a policy's initial face amount and also will be imposed following any increase in face amount. This charge is deducted only as part of the surrender charge. This charge will not exceed the amount permitted by Rule 6e-(T)(b)(13)(iii)(A).

14. The maximum surrender charge is the sum of the following components: (1) Any portion of the current 2.3% premium tax charge and the 7½% sales charge referred to above that has not yet been collected through the monthly and daily deductions; (2) the additional contingent deferred sales charge; and (3) the charge for other policy (or increase) issuance expenses. The entire surrender charge for the initial face amount and each face amount increase is subject to an overall upper limit or "cap," based on the insured's age and the face amount (or face amount increase). This cap decreases on the fifth and each subsequent policy anniversary (or face amount increase anniversary, as the case may be) until it reaches zero on the eleventh policy anniversary (or increase anniversary).

15. The amount of any policy value advance paid by Western Life is subject to recovery through the following deductions made after the payment of the advance: $4.00 per month (as part of the monthly deduction) plus a daily deduction at an annual rate of .27% of the value of the policy's net assets in Account C. These deductions continue until their cumulative amount equals the cumulative amount of policy value actually credited to the policy. These deductions will not be made under any policy that has not received a policy value advance.

16. The monthly deduction from policy value includes (1) premium tax and sales charges of recovery of policy value advances, (2) the cost of insurance charge, (3) a monthly charge for the guaranteed death benefit (in the amount of $.01 per thousand dollars of face amount under the policy of any optional riders), (4) the charge for optional insurance benefits added by rider, and (5) the monthly administrative expense charge of $4.50 per policy. This charge will not exceed the amount permitted by Rule 6e-(T)(b)(13)(iii)(A).

17. A daily charge is made for mortality and expenses risks assumed by Western Life. The charge is at an annual rate of .90% of the average daily value of the net assets in Account C that are attributable to the policies.

18. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(1) to the extent necessary to permit the deduction of monthly and daily charges to recover value advances. Applicants submit that because the recovery of all or part of a policy value advance merely returns to Western Life its own assets, such recovery is not a payment of the sort addressed by section 26(a)(2)(C). In this respect, deductions to recover policy value advances are similar to the removal from separate account assets amounts necessary to secure policy loans, or to secure additional policy loans that are made automatically in order to "capitalize" loan interest that the policy owner has not otherwise paid. Similarly, deductions by Western Life to recover policy value advances may reasonably be viewed as capital adjustments rather than a charge or expense of the type addressed by section 26(a)(2)(C).

19. Section 27(c)(2) requires only that the "proceeds" of "payments" (*i.e.*, amounts paid by the investor) be deposited with a trustee and held subject to the requirements of Section 26. The statutory language itself thus lends support to the conclusion that recovery by Western Life of policy value advances is outside the ambit of those provisions, insofar as the policy value advance does not constitute "proceeds" of "payments" made by an investor, but is rather an advance made by Western Life from its own funds.

20. Policy value advances will provide a significant potential benefit to policy owners that are eligible for them. They increase the amount available to earn a return for the policy owner. In many cases, moreover, the amount of a policy value advance will never be recovered, or will be only partially recovered, by Western Life. This is because no contingent deferred charge for unrecovered policy value advances is imposed upon death of the insured, surrender, withdrawal or lapse. The total amount deducted to recover policy value advances under any policy will never exceed the amount of policy value advances actually paid to that policy.

21. The policy owner receives the further benefit that, during the time when deductions for policy value advances are being made, the similar monthly and daily deductions for premium taxes and sales charges are suspended. The amounts of premimum tax and sales charges that are thus deferred are equal to the amounts of the monthly and daily deductions for policy value advances, assuming the 9.8% maximum on the monthly and daily premium tax and sales charge

deductions would not have otherwise been reached.

Once the amount of any policy value advances has been fully recovered through the deductions therefor, the monthly and daily deductions for premium taxes and sales charges resume, unless the total monthly and daily deductions actually made to date for premium taxes and sales charges already has reached 9.8% of all premiums paid to date. The policy owner is not deemed to have "paid" any periodic premium tax and sales charges that otherwise would have been deducted during the period when deductions to recover policy value advances were being made. Nevertheless, the deferral of these charges is a significant benefit that enhances the value to policy owners of the policy value advance feature. The deferral of these charges tends to offset the deductions made to recover policy value advances and therefore has a positive effect on policy value. This benefit is illustrated by the illustrations filed as an appendix to the application.

22. A policy value advance will increase the policy value and, accordingly, may increase the amount of certain charges that are deducted by Western Life on the basis of a percentage of Account C or AMEV Series assets: *i.e.*, the mortality and expense risk charge and the AMEV Series investment advisory fee. The increased asset-based charges in each case are simply the price the policy owner pays for the opportunity of having amounts attributable to the transaction participate in the investment performance of Account C. The policy owner can avoid the increased asset-based charges in each case by allocating the policy value to the general account, rather than to Account C.

23. There is no assurance that separate account investment performance earned on policy value advances will be sufficient to offset the additional asset-based charges resulting from the policy value advances. This would depend to some extent on the timing of the policy value advances and of the deductions to recover them, because these factors indirectly determine the amount of return that would be credited. A policy owner who wants to be assured of earning a rate of return greater than the rate of asset-based charges can allocate amounts attributable to policy value advances to Western Life's general account.

24. The policy value advances involve various costs to Western Life, including the cost of the amounts advanced and the costs of developing and administering the policy value advance feature. Even if the development and administration costs are disregarded, there is no reasonable set of assumptions under which (1) the value to Western Life of (a) the revenues from the deductions for policy value advances plus (b) any increased mortality and expense risk charge and advisory fee revenues resulting from policy value advances would exceed (2) Western Life's additional costs associated with policy value advances. Therefore, the policy value advances and related charges could not be said to involve any "back door" attempt to impose additional charge on policy owners.

25. The deductions for policy value advances do not contain hidden charges because the deductions to recover policy value advances, as well as the possibility of increased asset-based charges, will be fully disclosed in the prospectus for the policies. Nor do these deductions result in profits to Western Life, since they merely defray the cost of credits previously paid to policies by Western Life out of its own funds. The deductions to recover policy value advances are not intended to finance sales expenses. Their sole purpose and effect is to reimburse Western Life for amounts that Western Life will have advanced to the policy owner.

26. Policy value advances are intended as benefits that will make policies more attractive to prospective purchasers and will encourage policy owners to retain and make regular premium payments under their policies. Life insurance policies are typically quite unprofitable to an insurance company in the policies' early years because each policy typically has high initial insurance costs (such as sales expenses and underwriting costs) and asset-based revenues are likely to be relatively small. To the extent that the objectives of the policy value advance are achieved, it will be less likely that Western Life at some point would need to raise its charges for cost of insurance, administrative expenses or certain policy features to achieve their objectives, and the possibility will be increased that Western Life may be able to offer additional investment options or reduce charges under policies in the future. Policy owners may also benefit from lower expense ratios of the management investment company funding the policies, as a result of increased assets attributable to policies. Insufficient sales or poor persistency also can produce a small and non-diverse pool of mortality risks represented by the policies. This would expose Western Life to the possibility of erratic mortality experience. This problem is exacerbated by the fact that policies tend not to be surrendered when the insured is in poor health. A high rate of surrenders, therefore, would tend to decrease the overall quality of the mortality pool represented by the policies. Thus, if the policy value advances achieve their objectives, Western Life's financial strength and stability will be enhanced, as will as the security of the policy owner's investment in and coverage under the policies.

27. Policy value advances also will promote fairness between persisting and surrendering policy owners. Because persisting policy owners make substantial premium payments, they are expected to generate more profits for Western Life. It is therefore equitable for persisting policy owners to receive additional benefits in the form of policy value advances.

28. Western Life has designed the policy value advances and its method of operation so as to address any state regulatory concerns. Western Life has specifically designed the policy value advances to avoid any substantial discontinuities in projected values. All sales illustrations used by Western Life will specifically disclose the amount of any policy value advances that are assumed by the illustration. The policy value advances are not contingent on Western Life's actually earning profits and Western Life will establish current reserves for planned policy value advances.

29. The Commission has in the past acquiesced in or approved of an insurance company making deductions to recover or defray the cost of providing benefits to investors similar to those afforded by policy value advances. For example, deductions to recover policy value advances are similar to the removal from separate account assets of amounts necessary to secure policy loans, or to secure additional policy loans that are made automatically in order to "capitalize" loan interest that the policy owner has not otherwise paid. Also, the Commission has granted exemptive relief from sections 27(c)(2) and 26(a)(2)(C) with respect to contingent deferred charges to recover "bonuses" credited by an insurance company under certain variable annuity contracts.[1] There would appear no reason for reaching a different result in this case.

30. Applicants request exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) and Rules 6e–3(T)(b)(12), and 6e–3(T)(b)(13) and 22c–1, to the extent necessary to permit the amount of any premium tax charges that have not been previously collected by means of a deduction from policy value to be included in the surrender charge.

31. Western Life's method of deducting all or part of the charges for premium taxes on a basis other than from premiums is more favorable to investors than deducting the entire amount of such charges from premium payments, to the extent that more policy value is available to earn a return for the investor. Applicants represent that (1) no premium tax charge will be designed to yield a profit, (2) the total amount charged to any policy owner for permium taxes (including any amounts that Western Life may subsequently determine to deduct from premium payments) will be no greater than if all such charges were taken from premiums when paid, and (3) the premium tax charges will not take into account the "time value" of money (which would increase the charge to factor in the investment cost to Western Life of deferring collection of the charge).

32. Applicants request an exemption from the "stair step" requirements of section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and (d)(1)(ii) to the extent necessary because of three aspects of the policies discussed below.

33. First, part of the $4.00 monthly charge deducted pursuant to each policy is a sales charge. Because this sales charge is a constant dollar amount each month, it will vary from month to month as a percentage of premiums paid and as a percentage of the policy onwer's policy value. Assessing part of the sales charge as a flat monthly deduction is beneficial to policy owners, as compared to deducting it from premium payments. A greater amount is thus available to earn an investment return for the policy owner. Also, the dollar amount of the sales charge deductions will be more predictable than if the sales charge were deducted through a daily percentage charge. This has potential advantages for both the policy owner and for Western Life, insofar as their ability to make plans based on expected amounts of sales charge deductions is thereby enhanced. The flat dollar amount deducted monthly for sales charges under a policy will not change from month to month, except in the case of a reduction as a result of transfer from another plan of insurance. At least one other registrant appears to offer several variable life insurance policies that deduct constant amounts of sales charges from a policy's account value in reliance on Rule 6e–3(T), without, to Applicant's knowledge, obtaining exemptive relief from the stair step provisions. Although it may therefore be regarded as unnecessary, Applicants are requesting such relief to eliminate any uncertainty in this regard.

34. Second, the monthly and daily sales charge deductions may cease for certain periods of time and subsequently resume. These charges are suspended when deductions to recover policy value advances are being made and when the maximum amount of such charges, as a percentage of premium payments, has been reached. This creates a question regarding compliance with the requirements in Rule 6e–3(T)(d)(1)(ii)(A) and (B), respectively, that the proportionate or percentage amount of sales charges deducted not exceed the proportionate or percentage amount previously deducted pursuant to the same method.

35. Applicants assert that, if section 27(a)(3) and the related provisions of Rule 6e–3(T) were interpreted to prevent the resumption of sales charge deductions from contract assets once the deduction of such charges had ceased for any reason, the utility of policy designs providing for sales charge deductions from policy assets would be greatly reduced. Deducting part of the sales charges from policy value, rather than from premium payments, is advantageous to policy owners because more assets are put to work as policy value with the potential of earning a return for the policy owner's benefit.

36. Certain other variable life insurance issuers impose asset-based sales charges that may cease upon certain limits being reached and subsequently recommence when additional premiums are paid. The same is true with respect to several variable life insurance policies that deduct the sales load attributable to a premium payment from the policy's account value in periodic installments of a fixed amount. To Applicant's knowledge, in none of these cases have stair step exemptions been granted to permit sales charge deductions to be resumed upon payment of additional premiums subsequent to the time such deductions reached the maximum permitted percentage of premiums previously paid. Applicants submit, therefore, that such relief has been regarded as unnecessary. Nevertheless, Applicants are requesting such relief here in order to eliminate any uncertainty in this regard.

37. Third, Rule 6e–3(T)(c)(4) defines "sales load" for any contract period as the excess of premium payments over changes in "cash value" (other than from investment performance) and certain enumerated charges. An increase or decrease in a policy's cash value resulting from the payment of or subsequent deductions to recover a policy value advance could be deemed to result in an increase or decrease in the otherwise applicable sales load for the contract period in which the transaction occurs. The stair step provisions could apply because the operation of the policy value advance could cause such sales load to be at a higher rate than in a preceding period or at a lower rate than in a subsequent period. Applicants submit that their program with respect to policy value advances provides a significant potential benefit to policy owners and the policies' charge structure complies with the spirit and purpose of Rules 6e–3(T)(b)(13)(ii) and (d)(1)(ii).

38. The potential stair step issues under the policies do not result from early deduction of front-end charges. No sales charges will be deducted from premiums. Although sales charges will be deducted through several different types of deductions, the rates of these charges will never increase.

39. The stair step issues under the policies result from the deferral by Western Life of sales charges in the form of monthly and daily deductions and, in the case of policies that are surrendered or lapse before a certain time, the surrender charge. In two recent no-action letters, the Commission staff examined in detail the policies and purposes underlying section 27(a)(3).[2] The staff concluded, based on extenstive citation of authority, that the provision was designed to address the perceived abuse of periodic payment plan certificates that deducted large amounts of front-end sales charges so early in the life of the plan that an investor redeeming in the early periods would recoup little or none of his or her investment. Western Life's policies present an entirely different case. The potential stair step issues under the policies do not result from early deduction of front-end charges. No sales charges will be deducted from premiums. The stair step uncertainties under the policies in fact result from the imposition of deferred sales charges in the form of monthly and daily deductions and, in the case of policies that are surrendered or lapse before a certain time, the surrender charge. By

[1] *In the Matter of the Prudential Ins. Co. of America, et al.*, Rel. No. IC–16789 (Jan. 25, 1989) (Notice); Rel. No. IC–16824 (Feb. 21, 1989) (Order); *In the Matter of the Prudential Ins. Co. of America, et al.*, Rel. No. IC–15240 (Aug. 8, 1986) (Notice); Rel. No. IC–15299 (Sept. 5, 1986) (Order).

[2] United Investors Life Ins. Co. (avail. July 9, 1987); Western Reserve Life Ins. Co. (avail. Aug. 28, 1987).

thus spreading sales charges more evenly and fairly over the life of a policy, the policies' sales charge structure clearly furthers the purposes of section 27(a)(3), as articulated by the Commission's staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 89-27939 Filed 11-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Corporate Reorganization Release No. 386, Release No. 34-27456; File No. 4-351]

Request for Public Comments on the Role of the Securities and Exchange Commission in Reorganization Cases Under Chapter 11 of the Bankruptcy Code

AGENCY: Security and Exchange Commission.

ACTION: Extention of comment period.

SUMMARY: The Securities and Exchange Commission today announced that it has extended the deadline for comments concerning the scope of the Commission's participation in Federal court reorganizations of publically-held companies under the Bankruptcy Code. Corporate Reorganization Release No. 384, Release No. 34-27300 (September 27, 1989) [54 FR 40760, October 3, 1989] requested public comments by November 15, 1989; the new deadline is January 2, 1990. The public hearing concerning the Commission's role in Chapter 11 cases, tentatively scheduled for December 11, 1989, has also been postponed; a separate announcement will be forthcoming regarding a new date for that hearing.

DATES: Comments must be received on or before January 2, 1990.

ADDRESSES: Persons wishing to express their views should submit comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. 4-351. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Berman (202) 272-2493, Office of the General Counsel, Securities and Exchange Commission, 450 5th Street NW, Mail Stop 6-6, Washington, DC 20549.

By the Commission.

Dated: November 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-27897 Filed 11-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27470; File No. SR-NASD-89-23]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Operation of the PORTAL Market

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to adopt new Schedule I to the NASD By-Laws ("PORTAL Rules"). The proposed new schedule will establish a new marketplace for primary distributions and secondary trading that would meet the requirements of proposed Rule 144A under the Securities Act of 1933 ("Rule 144A") for an exemption from the registration and prospectus delivery requirements of the Securities Act of 1933 ("Securities Act"). The market will be based on fully automated facilities supporting private offerings, resale trading, clearing and settlement of domestic and foreign debt and equity securities that are immobilized within a dedicated custodial network, providing appropriate record-keeping and controls to provide for multi-currency settlements, and control of the exit of the unregistered securities into the domestic United States retail market.

As part of the proposal the NASD requests that the Commission grant exemptions from Rules 15c2-11 and 12g3-2. The NASD requests, pursuant to Rule 15c2-11(h), that the Commission grant an exemption from Rule 15c2-11 with respect to publication or display of quotations in eligible securities through the proposed PORTAL Market. The NASD also requests that the Commission grant an exemption from Rule 12(g) so that PORTAL qualified investors in PORTAL equity securities, domestic and foreign, will not be counted toward the shareholder thresholds of Section 12(g). In addition, the NASD requests that the Commission grant an exemption from subsection (d)(3) of Rule 12g3-2 which, unless granted, would appear to subject foreign issuers of PORTAL securities to Exchange Act reporting requirements.

The proposed new marketplace is called the PORTAL[1] Market. Following is a summary description of the PORTAL Rules. Interested persons may obtain a copy of the complete rule filing and/or the PORTAL Rules by request to the Office of General Counsel of the NASD, 1735 K Street NW., Washington, DC 20006.

Summary

The proposed PORTAL Rules are comprised of eight parts. Part I provides definitions of terms used in the Rules. Part II sets forth the requirements applicable to securities in the PORTAL Market. Park III delineates the requirements applicable to NASD members that wish to act as dealers or brokers in the PORTAL Market. Part IV provides the requirements applicable to investors that wish to participate in the PORTAL Market. Part V indicates the procedures for handling grievances concerning the designation of a security in the PORTAL Market or the registration of a dealer, broker or investor in the PORTAL Market. Part VI sets forth requirements applicable to the operation of and transactions in the PORTAL Market. Part VII delineates the applicability of the NASD Rules of Fair Practice to transactions in the PORTAL Market. Part VIII indicates the availability or arbitration to settle disputes arising from PORTAL transactions.

Securities that have been approved pursuant to the requirements of Part II of the proposed PORTAL Rules are considered designated as "PORTAL securities." The basic requirement for PORTAL securities is that the security be eligible to be sold pursuant to Rule 144A. NASD members must meet the requirements of Part III of the proposed PORTAL Rules applicable to "PORTAL dealers" and "PORTAL brokers" to participate in the PORTAL market on a principal or agency basis. The distinction between the two categories is that PORTAL dealers must be eligible to purchase securities under Rule 144A. Investors must be designated as

[1] PORTAL is a service mark of NASD Market Services, Inc.

"PORTAL qualified investors" pursuant to Part IV in order to purchase and sell PORTAL securities in the PORTAL Market. The major requirement applicable to PORTAL qualified investors is that the investor be eligible to purchase securities pursuant to Rule 144A. PORTAL qualified investors may only execute purchase or sale "transactions" in PORTAL securities through a PORTAL dealer or a PORTAL broker, and such transactions may only be through the PORTAL Market with a PORTAL dealer or another PORTAL qualified investor or be in a "qualified exit transaction" to an account outside the PORTAL Market. A "qualified exit transaction" is one meeting the requirements of Section 15 to Part I of the proposed PORTAL Rules, which restricts transactions in PORTAL securities to an account outside of the PORTAL market to transactions: (1) Registered under the Securities Act, (2) exempt from the registration requirements of the Securities Act pursuant to proposed SEC Regulation S,[2] SEC Rules 144 and 145,[3] or because of repurchase by the issuer, or (3) that are exempt from registration and result in the purchaser holding freely-tradeable securities. Further, PORTAL participants are prohibited from effecting transfers out of the PORTAL Market other than purchases and sales except in a "qualified exit transfer", which restricts transfers existing the PORTAL Market to the return of borrowed securities.

PORTAL dealers, PORTAL brokers and PORTAL qualified investors (together, defined as "PORTAL participants") are required to be a member of, or have a relationship providing it access to, a "PORTAL depository system," which is composed of one or more organizations designated by the Association to perform the functions of a securities depository with respect to PORTAL securities. Currently, the sole designated PORTAL depository organization is Centrale de Livraison de Valeurs Mobilieres S.A. Luxembourg ("CEDEL"), supported by its individual global network of foreign depository banks. PORTAL dealers and PORTAL brokers are required to be a member of a "PORTAL clearing system," which is composed of one or more organizations designated by the Association to perform the clearance and settlement functions with respect to PORTAL securities. The sole PORTAL clearing organization designated by the NASD is the International Securities Clearing Corporation ("ISCC"), which is registered under Section 17A of the Exchange Act. PORTAL participants are also required to be a participant in a "PORTAL account instruction system," which is composed of one or more communications systems designated by the Association to transfer information concerning PORTAL account activities between a PORTAL qualified investor, its agent providing it access to the PORTAL depository system, PORTAL dealers and PORTAL brokers. The sole PORTAL account instruction system currently designated by the NASD is the International Institutional Delivery System ("IID"), owned and operated by the Depository Trust Company which is registered with the SEC pursuant to Section 17A of the Exchange Act.

The normal PORTAL Market hours of operation are to be between 9:30 a.m. and 4:00 p.m. Eastern Time. However, Section 1 to Part VI of the PORTAL Rules permits the NASD to establish different hours. The PORTAL market will accept prices and quotations that are one- or two-sided, firm or indicative. Transactions in the PORTAL Market will settle five business days after the date of the transaction, except as otherwise agreed between the parties to the transactions. Further, the transaction can settle in any currency accepted by the PORTAL clearing organization. Each PORTAL dealer and PORTAL broker that executes a transaction or effects a qualified exit transfer is required to enter a PORTAL transaction report in the PORTAL Market that includes necessary information regarding the transaction or transfer. Any modification, correction or cancellation of the PORTAL transaction report is also required to be entered into the PORTAL Market. PORTAL participants are required to either affirm or reject a PORTAL transaction report in the PORTAL Market in order to obtain a compared PORTAL transaction report.

"When, as and if" trading of a new issue of securities is permitted in the PORTAL Market subsequent to effectiveness of the designation of the securities as PORTAL securities so long as the managing underwriter establishes a settlement date for the securities based on their anticipated availability and enters a corrected PORTAL transaction report designating a substitute settlement date if settlement is delayed.

"Short" sale transactions are permitted in the PORTAL Market and securities may be borrowed from another PORTAL Market account or from outside the PORTAL Market. The requirements applicable to "short" sales are based on those in the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities, Article III, Section 1 of the NASD's Rules of Fair Practice. A provision is included providing the NASD authority to adopt additional restrictions with respect to "short" sales and the borrowing and return of securities as the NASD deems necessary to prevent violation of the registration requirements of the Securities Act.

The PORTAL Rules specify that stabilizing bids are permitted in the PORTAL Market. Sections 15, 59 and 60 of the NASD's Uniform Practice Code are incorporated into the PORTAL Rules, with modifications to reflect the context of transactions in the PORTAL Market. The close-out procedures from Sections 59 and 60 of the Uniform Practice Code are not mandatory. The PORTAL Rules also include provisions that set forth the applicability of the NASD's Rules of Fair Practice to transactions and business activities relating to the PORTAL Market, distinguishing between provisions that are applicable; provisions that are applicable with exceptions; provisions that are applicable to members regardless of their participation in the PORTAL Market; and provisions that are not applicable.

The PORTAL Rules also provide that any determination by the NASD to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL, participant may be reviewed upon application by the aggrieved person pursuant to the provisions of Article IX of the Code of Procedure. Moreover, the facilities of the NASD's Arbitration Department, and the procedures of the Code of Arbitration Procedure are available to PORTAL participants to resolve disputes arising from PORTAL transactions or activities related thereto.

The PORTAL Rules provide authority for the NASD to impose a fee on PORTAL dealers, PORTAL brokers or PORTAL qualified investors for PORTAL transactions or such other fees that the NASD shall determine. It is not the NASD's intention at this time to impose a fee with respect to transactions in the PORTAL Market for the first six months of the Market's operation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

[2] Securities Act Release No. 6779 (June 10, 1988); Securities Act Release No. 6838 (July 11, 1989).

[3] 17 CFR 240.144; 17 CFR 240.145.

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comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of, the Purpose of and Statutory Basis for, the Proposed Rule Change

Section 5 of the Securities Act requires that all transactions in securities be registered with the Commission. The SEC has proposed and reproposed for comment new Rule 144A that would provide a safe harbor from Section 5 for securities transactions in compliance with that Rule.[4] The NASD is proposing to adopt the PORTAL Rules to establish a new marketplace for Rule 144A-qualified transactions in securities. The proposed new PORTAL Market will be fully automated and is designed to support the trading, clearance and settlement of domestic and foreign debt and equity securities in both primary market placements and secondary market activity. The new PORTAL Market is also intented to provide a mechanism for Rule 144A compliance by Rule 144A-qualified investors trading in Rule 144A-qualified securities.

While the NASD Board of Governors has requested that the SEC include in Rule 144A an additional safe harbor from the registration requirements of the Securities Act for transactions in compliance with the rules of a private placement trading system approved by the SEC pursuant to the requirements of the Exchange Act,[5] the NASD believes, even without such a provision, transactions in compliance with the PORTAL rules will meet the requirements of the Rule 144A safe harbor.

Following is an analysis of how the PORTAL Market is proposed to act as a mechanism for participating broker/dealers and institutional investors to effect sales of securities in compliance with Rule 144A.

Qualified Institutional Buyer Requirement—Rule 144A(d)(1)

Rule 144A(d)(1) provides that the safe harbor of Rule 144A is only available to institutional investors meeting the definition of a "qualified institutional buyer" under Rule 144A(d)(1). The PORTAL Market proposes to limit trading in the PORTAL Market to institutions meeting the "qualified institutional buyer" test of Rule 144A(d)(1) as set forth in the following discussion.

The PORTAL Rules require that a PORTAL dealer and a PORTAL qualified investor be eligible to purchase securities under Rule 144A, which currently proposes that an investor have assets invested in securities that were purchased for at least $100 million at the conclusion of its most recent fiscal year. The PORTAL Rules also require that eligibility pursuant to Rule 144A(d)(1) be demonstrated annually or more frequently if required by Rule 144A. PORTAL dealers and PORTAL brokers must agree to only purchase PORTAL securities for their own account (if a PORTAL dealer) or for a PORTAL qualified investor. A PORTAL qualified investor is also required to agree to only purchase PORTAL securities for its own account or for an account the investor is eligible to make purchases for under Rule 144A. Moreover, a PORTAL qualified investor may not transfer beneficial ownership of a PORTAL security in a sale transaction or a transfer except if the sale or transfer is: (1) Through the PORTAL Market, (2) in a qualified exit transaction or qualified exit transfer, or (3) to a managed account or an investment company the PORTAL qualified investor is eligible to make purchases for under Rule 144A. A PORTAL qualified investor may only execute transactions in a PORTAL security, including a transactions that is to a non-PORTAL account (i.e., an exit transaction), through a PORTAL dealer or PORTAL broker and through the PORTAL Market or in a qualified exit transaction. PORTAL dealers and PORTAL brokers are prohibited from executing a transaction or effecting a transfer in a PORTAL security through the PORTAL Market with any party other than a PORTAL participant, unless in a qualified exit transaction or qualified exit transfer.

Notwithstanding the suspension or termination of the registration of a PORTAL dealer or PORTAL qualified investor, the dealer and investor are required to remain suject to the PORTAL Rules with respect to the disposition of any PORTAL securities in its accounts and is required to only engage in transactions in those securities in accordance with the NASD's terms of notice of the suspension or termination. Through the registration process for PORTAL dealers and PORTAL qualified investors, the NASD will be able to make a determination as to whether it has formed a reasonable belief that the applicant meets the requirements of Rule 144A(d)(1). Further, the PORTAL Rules prohibit registered PORTAL dealers, PORTAL brokers and PORTAL qualified investors from purchasing on behalf of a non-PORTAL participant or selling to a non-PORTAL participant except in a qualified exit transaction or qualified exit transfer. The requirement that PORTAL transactions be effected through a PORTAL dealer or PORTAL broker is intended to ensure that an audit trail is provided of every transaction. PORTAL dealers and PORTAL brokers are required to enter a PORTAL transaction report with respect to each transaction in the PORTAL Market. Transactions in the PORTAL Market will be surveilled to determine whether: (1) any PORTAL broker has executed a transaction on a principal basis, thus requiring registration as a PORTAL dealer and (2) any transaction has occurred without the entry of a PORTAL transaction report.[6]

Based on the requirements of the PORTAL Rules, the NASD's procedures for reviewing the eligibility of applicants and surveillance of the PORTAL Market, the NASD believes that PORTAL securities will only be offered or sold in the PORTAL Market to PORTAL dealers and PORTAL qualified investors that are qualified institutional buyers in compliance with the condition in Rule 144A(d)(1).

Reliance on Rule 144A Requirement—Rule 144A(d)(2)

Rule 144A requires, as a condition to the availability of the Rule 144A safe harbor, that the seller must take reasonable steps to ensure that the purchaser is aware that the seller may rely on Rule 144A. The PORTAL Rules provide that an applicant to be a PORTAL qualified investor must agree that it understands that it may purchase a PORTAL security from a PORTAL qualified investor who may rely on Rule 144A. The NASD believes that based on this requirement, PORTAL dealers and PORTAL qualified investors acting as sellers in the PORTAL Market will be able to sell PORTAL securities in compliance with the condition in Rule 144A(d)(2).

[4] Securities Act Release No. 6808 (October 25, 1988); Securities Act Release No. 6839 (July 11, 1989).

[5] If the Commission approves Rule 144A as proposed, PORTAL participants would have to comply with the information provision requirements of Rule 144A(d)(4) on their own, without reliance on the rules or procedures of PORTAL. See *infra*.

[6] See discussion below of restrictions on exit transactions and exit transfers to non-PORTAL participants.

Eligibility of Securities Requirement—Rule 144A(d)(3)

Rule 144A(d)(3) requires, as a condition to the availability of the Rule 144A safe harbor, that the securities, when issued, were not fungible with securities listed on a national securities exchange or quoted in the NASDAQ system and were not securities of an open-end investment company, unit investment trust or face-amount certificate company. The PORTAL Market limits trading by PORTAL participants to securities meeting the requirements of Rule 144A(d)(3).

The PORTAL Rules require that PORTAL securities be eligible to be sold pursuant to Rule 144A. Only PORTAL dealers and PORTAL qualified investors may submit an application for designation of a security in the PORTAL Market. The application must include sufficient information for the NASD to determine that the security is eligible to be sold pursuant to Rule 144A(d)(3), which may include a statement of counsel, a statement of a certified public accountant, or a certification by the issuer's chief executive officer that the security meets the requirements of Rule 144A(d)(3). The NASD may suspend or terminate designation of a PORTAL security if the security is not in compliance with PORTAL rules, any application or document related thereto contained an untrue statement or omitted a material statement, or failure to withdraw designation of the securities would be detrimental to the interests and welfare of PORTAL participants and the NASD. A suspended or terminated PORTAL security remains subject to the PORTAL rules until the inventory of PORTAL participants in the security is sold in a qualified exit transaction or in accordance with the terms of notice by the NASD of the suspension or termination. PORTAL participants are prohibited from trading a suspended or terminated PORTAL security, except in accordance with the terms of notice by the NASD of the suspension or termination.

PORTAL qualified investors are required to deposit and maintain all PORTAL securities in their segregated PORTAL accounts at the PORTAL depository organization until the securities are sold or transferred to another PORTAL account or are sold or transferred to a non-PORTAL account in compliance with the restrictions on exit transactions and exit transfers. PORTAL qualified investors may only purchase PORTAL securities for their own account and may only transfer beneficial ownership of a PORTAL security in a sale or transfer through the PORTAL Market, except for qualified exit transactions, qualified exit transfers and transfers between managed accounts and investment companies that are the same family of investment companies.

Transactions in the PORTAL Market will be validated to ensure that the transaction is in a PORTAL security (i.e., a security designated a PORTAL security and not subject to suspension of termination). Based on NASD's review procedures in connection with designation of a PORTAL security and the PORTAL Market validation that PORTAL transactions are only in PORTAL securities, the NASD believes that transactions by PORTAL participants in the PORTAL Market will be limited to securities that meet the requirements of Rule 144A(d)(3).

Information Delivery Requirement—Rule 144A(d)(4)

Rule 144A(d)(4) requires, as a condition to the availability of the Rule 144A safe harbor, that the seller or its agent must provide certain information to the purchaser upon request with respect to securities of non-reporting issuers. In its comment letter to the SEC with respect to the reproposal of Rule 144A, the NASD advised the SEC that it had considered but had determined it to be infeasible at this time for the NASD to act as a depository for information required to be delivered pursuant to proposed Rule 144A(d)(4) in connection with the PORTAL Market. The NASD stated:

> While information regarding the issuer could possibly be obtained at the time securities are considered for inclusion in the system, it would be virtually impossible to ensure compliance with a continuing update requirement if one were imposed. Rule 144A is unclear as to how often the information must be updated. There is also the practical problem of identifying the party that should be subjected to the open-ended requirement that the information be updated.[7]

It is further the NASD's understanding that any other procedure short of acting as a depository for information required to be delivered pursuant to Rule 144A(d)(4) would not be considered to provide a mechanism for ensuring compliance with that provision. Therefore, the PORTAL Rules do not impose a specific requirement on PORTAL participants to comply with Rule 144A(d)(4), and PORTAL participants would have to comply with this requirement, if adopted, on their own.

Restrictions on Resale Requirement Rule 144A(d)(5) Agreement in Writing—Rule 144A(d)(5)(A)

The restrictions on resale requirements of Rule 144A(d)(5) provide in subprovision (A) thereof that reasonable steps to prevent a sale in violation of Rule 144A will be conclusively established where the purchaser agrees in writing not to resell the securities in the United States unless they are registered under the Securities Act or an exemption from registration is available. The PORTAL Rules require that applicants to be a PORTAL qualified investor agree not to sell or transfer PORTAL securities to an account outside the PORTAL Market unless the securities are sold or transferred in compliance with the restrictions on qualified exit transactions and restrictions on qualified exit transfers in Part I, Sections 15 and 16 of the PORTAL Rules.

The NASD believes that the foregoing agreement included in the PORTAL Rules and in the application submitted to the Association pursuant to Subsection 1(b) to Part IV by applicants to be a PORTAL qualified investor satisfies the requirement of Rule 144A(d)(5)(A) that the referenced agreement be "in writing."

Reasonably Designed Procedure—Rule 144A(d)(5)(B)

The resale restrictions of subprovision (B) of Rule 144A(d)(5) applies to sales of PORTAL securities to an account in the PORTAL Market and sales of PORTAL securities to an account outside of the PORTAL Market, i.e., and "exit transaction." The provisions of Rule 144A(d)(5)(B) provides that a procedure reasonably designed to prevent the transfer of securities to other than qualified investors, unless registered under the Securities Act or an exemption from registration is available, may be administered by "the issuer of the securities or a third party."

Procedure by the Issuer. With respect to the first alternative of permitting a procedure administered by the issuer, the application for designation of securities will request information to determine whether, in the case of a security subject to Rule 144A(d)(5)(B), the issuer has established a procedure reasonably designed to prevent the transfer of the securities to other than qualified institutional buyers unless the securities are registered under the Securities Act or an exemption from

[7] Letter to Jonathan G. Katz, Secretary, SEC, dated September 12, 1989 from Frank J. Wilson, Executive Vice President and General Counsel, NASD, at p. 11.

registration is available. The NASD will request a description of the procedure to determine whether it meets the "reasonably designed" requirement of subprovision (B).

Procedure by a Third Party. In discussing the establishment of a procedure by "a third party" under Rule 144A(d)(5)(B), the reproposing release on Rule 144A clarifies that "* * * sellers could rely on a closed trading system that limited trading to qualifying institutions and established depository and clearance systems such that trades could only be made to such institutions or outside the United States." [8]

With respect to the requirement that securities be Rule 144A eligible and only traded by qualifying institutions, the discussion above with respect to the conditions of Rules 144A(d)(1) and 144A(d)(3) demonstrates that the PORTAL Market limits trading to securities meeting the criteria in Rule 144A(d)(3) by institutions meeting the "qualified institutional buyer" test of Rule 144A(d)(1). The NASD also submits that the PORTAL Market has depository and clearance systems to ensure that trades in Rule 144A securities can only be made between such qualifying institutions unless the securities are sold in an exit transaction either registered under the Securities Act or exempt from registration under the Securities Act.

The NASD has designated CEDEL as a PORTAL depository organization and ISCC as a PORTAL clearing organization. PORTAL Rules require that PORTAL securities be eligible for deposit and have been or will be deposited into the PORTAL depository system by the issuer or a PORTAL participant. The NASD will determine whether a security complies with this requirement by requesting the CEDEL identification number for the security for which application is being made on the application form submitted pursuant to Subsection 1(a) to Part I. Subsections 1(b) (4) and (6) to Part III of the PORTAL Rules require that PORTAL dealers and PORTAL brokers be a member of CEDEL and ISCC, direct that their accounts for PORTAL securities at CEDEL be segregated from all other accounts the firm may have at CEDEL, authorize and direct both CEDEL and ISCC to transmit all reports in respect of the PORTAL account activity to the NASD, and authorize and direct ISOC to accept data from IID. Subsection 1(b)(5) to Part III of the PORTAL Rules requires that PORTAL dealers and PORTAL brokers agree to deposit and maintain all PORTAL securities in its segregated PORTAL account at CEDEL until: (1) The securities are sold or transferred to a PORTAL account in the PORTAL Market or (2) the securities are sold or transferred to a non-PORTAL account in compliance with Sections 15 and 16 to Part I of the PORTAL Rules.

Subsection 1(b)(3) to Part IV of the PORTAL Rules requires that the PORTAL qualified investor be a member or have a relationship providing it access to the services of CEDEL which will maintain PORTAL securities in an account segregated from all other accounts the investor may have at CEDEL. Subsection 1(b)(4) to Part IV requires the PORTAL qualified investor to maintain an account with its agent providing it access to the services of a PORTAL depository organization that is segregated from all other accounts it may have at the agent, if the investor uses an agent. Subsection 1(b)(5) to Part IV of the PORTAL Rules requires that PORTAL qualified investors authorize and direct the agent that provides them access to CEDEL to authorize and direct CEDEL to transmit all reports in respect of its PORTAL account activities to the NASD or ISCC. Subsection 1(b)(6) to Part IV of the PORTAL Rules requires that PORTAL qualified investors be a member of IID.

Transaction reports will be input into the PORTAL Market pursuant to Section 5 to Part VI of the PORTAL Rules and compared pursuant to Section 8 thereof. Transactions will be locked in through IID, with confirmations to both sides of the transactions and the locked-in trade details input to ISCC and CEDEL for settlement processing by electronic book entry.

With respect to transactions that occur in the PORTAL Market and are between PORTAL qualified investors, the NASD submits that the foregoing review of the PORTAL Rules demonstrates that the PORTAL Market meets the requirement of subprovision (B) to Rule 144A(d)(5) for a reasonably designed procedure "* * *" to prevent the transfer of Rule 144A securities to other than qualified investors "* * *" on the basis that the PORTAL Market is a closed trading system that has designated depository and clearing systems that ensure that trades in Rule 144A securities will only occur between Rule 144A-qualified investors.

With respect to transactions from the PORTAL Market to an account outside the PORTAL Market, the NASD provides the following in support of its position that the PORTAL Market provides a mechanism for compliance with Rule 144A(d)(5)(B). Section 15 to Part I of the PORTAL rules defines a qualified exit transaction. All exit transactions from the PORTAL Market are required to be made in compliance with the definition. In addition, in order to ensure that a transfer of PORTAL securities to an account outside the PORTAL Market is not, in fact, a sale transaction, the PORTAL Rules include restrictions on the exit transfer of securities that is included in the definition of qualified exit transactions in Part I, Section 16 to the PORTAL rules.

Registered Exit Transactions. Rule 144A(d)(5) permits Rule 144A securities subject to that provision to be sold to qualified investors under Rule 144A, in a transaction registered under Section 5 of the Securities Act, or in a transaction for which an exemption from registration is available. The definition of "qualified exit transaction" in Section 15 to Part I of the PORTAL Rules permits the sale of PORTAL securities out of the PORTAL Market in a transaction registered with the SEC under Section 5 of the Securities Act. The exit of securities from the PORTAL Market in a transaction registered under the Securities Act would be in compliance with Rule 144A(d)(5) which permits resales of securities registered under the Securities Act.

Exempt Exit Transactions/Exit Transfers—Restricted Securities

Exit transactions in PORTAL securities that are restricted and are not being sold pursuant to registration under the Securities Act can only be sold in an exit transaction for which an applicable exemption is available from the Securities Act. Section 15 to Part I of the PORTAL Rules permits the sale of PORTAL securities to an account outside the PORTAL Market in a transaction not subject to registration under the Securities Act by reason of compliance with proposed SEC Regulation S or by reason of compliance with Rules 144 or 145. In addition, exit transactions are permitted where the issuer is repurchasing its securities. Finally, exit transactions are permitted where the seller has demonstrated to the NASD on a pre-exit basis that the transaction is exempt from SEC registration and the purchaser will acquire securities that can be freely resold without registration under the Securities Act or that the transaction is exempt from SEC registration under Rule 144A based on an opinion of counsel.

[8] Securities Act Release No. 6839 (July 11, 1989), at p. 36. *See*, Amendment No. 1 to SR NASD–89–23, pp. 34 and 35 for a complete discussion with respect to the excerpt from the SEC's reproposing release on Rule 144A.

A surveillance program has been created that provides significant controls over resales of Rule 144A securities in comparison to resales conducted to Rule 144A securities that are not included in the PORTAL Market. The surveillance program is comprised of pre-transaction procedures and controls, transactional restrictions and post-transaction monitoring.

Pre-Transaction Procedures

Procedure by the Issuer. As indicated previously, the application for designation of a PORTAL security will identify whether the issuer has established a procedure reasonably designed to prevent the transfer of the securities pursuant to Rule 144A(d)(5). A list of those securities for which the issuer has established procedures meeting the requirements of Rule 144A(d)(5) will be maintained and will be used to assist surveillance staff in focusing their efforts on exit transactions of those PORTAL securities for which the issuer has not established a compliance procedure.

Pre-Transaction/Transfer Approval. Section 15 to Part I of the proposed PORTAL Rules permits exit transactions with pre-transaction approval where the NASD determines, based upon the submission of such information as may be required by the Association, the transaction is exempt from Section 5 of the Securities Act and the purchaser acquires securities that can be freely resold without registration.

With respect to the remaining permissible exit transactions, the NASD does not believe that pre-transaction review of exit transactions made in compliance with Rule 144, 145 or Regulation S is necessary or appropriate. Such pre-transaction review would significantly impede the ability of PORTAL dealers and PORTAL brokers to conduct transactions through the PORTAL Market.

PORTAL Dealers and PORTAL Brokers. Rule 144A requires that "a procedure exists * * * that is reasonably designed to prevent the transfer of the securities to other than qualified institutional buyers unless the securities are registered under the Act or an exemption from registration is available." The NASD has determined to impose the requirement of compliance with Section 15 to Part I of the PORTAL Rules on NASD members participating in the PORTAL Market as a PORTAL dealer or PORTAL broker.

With respect to exit transactions, a PORTAL qualified investor is prohibited from selling PORTAL securities to an account outside of the PORTAL Market unless the sale is done through a PORTAL dealer or PORTAL broker. This requirement is intended to ensure that the NASD retains control over the transaction through its members and enforces upon its membership compliance with the resale restrictions in Rule 144A(d)(5), Sections 15 and 16 to Part I and Section 3(b)(5) to Part III of the PORTAL Rules.

PORTAL dealers and PORTAL brokers are required to establish supervisory procedures reasonably designed to achieve compliance with the PORTAL Rules restrictions on qualified exit transactions and qualified exit transfers in Part I, Sections 15 and 16, including preserving information demonstrating compliance with respect to each transaction and transfer pursuant to Rule 17a–4(a) under the Exchange Act and filing a PORTAL Exit Report with NASD Market Surveillance within one business day of the execution of the sale or transfer. Based on this provision, the NASD requires pre-registration approval of each PORTAL dealer's and broker's compliance procedures with respect to exit transactions and transfers. The requirement to preserve information demonstrating compliance with the resale restrictions is intended to ensure that the member make a record and preserve that record demonstrating compliance with Sections 15 and 16 to Part I of the PORTAL Rules in order to provide NASD examiner staff with a basis for a determination as to whether the exit transaction or transfer has conducted in compliance with Sections 15 or 16.

A PORTAL dealer and a PORTAL broker is also required to: (1) Establish a segregated PORTAL account at the designated PORTAL depository organization and have an account at the designated PORTAL clearing organization; (2) deposit and maintain all PORTAL securities in the segregated PORTAL account at CEDEL until sold in a transaction in PORTAL or to a non-PORTAL account in compliance with Sections 15 and 16 to Part I of the PORTAL Rules; (3) authorize and direct CEDEL and ISCC to provide reports of its PORTAL account activities to the NASD; and (4) advise the NASD of any change in its depository, clearing or account instruction systems.

PORTAL Qualified Investor. Part IV of the PORTAL Rules requires that PORTAL qualified investors agree not to sell PORTAL securities to a non-PORTAL account outside the PORTAL Market except in compliance with Section 15 to Part I of the PORTAL Rules, to not transfer securities to a non-PORTAL account outside the PORTAL Market except in compliance with Section 16 to Part I of the PORTAL Rules, and requires that the investor agree to file a PORTAL Exit Report with NASD Market Surveillance within one business day of the execution of a transfer not executed through a PORTAL dealer or PORTAL broker. These requirements are intended to ensure that the investor is aware of its obligations to comply with the restrictions on resale and on transfers out of the PORTAL Market and that an Exit Report is required to be made on every exit transfer not done through a PORTAL dealer or PORTAL broker.

PORTAL qualified investors must also agree to provide the NASD with any document or information necessary to verify compliance with Sections 15 and 16 to Part I of the PORTAL Rules. The NASD's ability to obtain appropriate information is enhanced by the requirements that the investor have a segregated PORTAL account at its agent bank, that its agent bank maintain a segregated PORTAL account at CEDEL for the investor's PORTAL transactions at CEDEL, and that CEDEL, be directed and authorized to release information to the NASD regarding the investor's CEDEL account activities.

Transactional Restrictions

The PORTAL Rules impose clear obligations on PORTAL participants to comply with Sections 15 and 16 to Part I of the PORTAL Rules. All qualified exit transactions are required to be done through a PORTAL dealer or PORTAL broker. A PORTAL dealer or PORTAL broker is prohibited from executing a sale or effecting a transfer of a PORTAL security to an account outside the PORTAL Market unless: (1) The transaction is in compliance with Sections 15 and 16 of the PORTAL Rules, (2) information demonstrating such compliance is preserved pursuant to Rule 17a–4(a) under the Exchange Act, and (3) a PORTAL Exit Report is filed with NASD Market Surveillance within one business day of the execution of the sale or transfer. PORTAL qualified investors are required to execute all PORTAL Market transactions through a PORTAL dealer or PORTAL broker and either through the PORTAL Market or in a qualified exit transaction as defined in Part I, Section 15 of the PORTAL Rules. PORTAL qualified investors are also prohibited from transferring beneficial ownership of a PORTAL security in a sale or transfer unless the sale or transfer is: (1) Through the PORTAL Market, (2) a transfer between accounts managed by the investor, (3) a transfer between investment companies part of a

family of investment companies the investor can make purchases for, and (4) in compliance with Sections 15 and 16 Part I of the PORTAL Rules. PORTAL qualified investors must file a PORTAL Exit Report with NASD Market Surveillance within one business day of an exit transfer not executed through a PORTAL dealer or PORTAL broker. The NASD is provided with authority to adopt restrictions on "short" sales and on the borrowing and return of securities that the NASD determines are necessary to prevent violation of the registration provisions of the Securities Act.

Further support for the NASD's, effort to impose on its members compliance with the referenced resale restrictions is found in Section 5 to Part VI of the PORTAL Rules, which requires PORTAL dealers and PORTAL brokers to enter a transaction report with respect to each transaction in the PORTAL Market, including exit transactions, and with respect to exit transfers.

Post-Transaction Surveillance

The PORTAL Rules provide the NASD with authority to suspend or terminate the registration of a PORTAL dealer or PORTAL broker, and to take such other disciplinary action as it determines, for failure to comply with the restrictions on qualified exit transactions and qualified exit transfers in Sections 15 and 16 to Part I of the PORTAL Rules. Further, a PORTAL dealer or PORTAL broker may be suspended or terminated for failure to preserve information demonstrating compliance with Sections 15 and 16 with respect to each transaction pursuant to Rule 17a–4(a) under the Exchange Act and for failure to file an Exit Report with respect to all exit transactions and exit transfers. The NASD may suspend or terminate the registration of a PORTAL qualified investor if the investor sells or transfers a PORTAL security to an account outside the PORTAL Market in a manner not in compliance with the restrictions on qualified exit transactions or qualified exit transfers in Sections 15 and 16 to Part I of the PORTAL Rules and will refer information regarding the violation to the Commission where it is determined that securities were sold in an unregistered transaction without an available exemption under Section 5 of the Securities Act.

As previously referenced, an Exit Report is required of PORTAL dealers and PORTAL brokers with respect to all transactions and exit transfers and is required of PORTAL qualified investors with respect to exit transfers (not effected through a PORTAL dealer or PORTAL broker). The Exit Report will either be a paper filing, generally faxed to the NASD, or the information in the report will be included in the PORTAL transaction report required to be entered in the PORTAL Market pursuant to Section 5 to Part VI of the PORTAL Rules. The Exit Report will request whether the exit was effected in compliance with SEC Rule 144, SEC Rule 145, SEC Rule 901, or SEC Rule 903, or was a registered transaction, or a purchase by the issuer of the security, or an NASD approved exit transaction, or was a return of borrowed securities.

Daily reports from CEDEL will identify PORTAL dealers and PORTAL brokers that effect an exit transaction in PORTAL securities without the entry of a transaction report, as each PORTAL dealer and PORTAL broker has their own account at CEDEL. If a PORTAL qualified investor has its own account at CEDEL, the NASD will also be able to identify whether the investor has effected an exit transaction that was not entered in the PORTAL Market through a PORTAL dealer or PORTAL broker (thus, violating PORTAL Rules). However, if a PORTAL qualified investor's agent has an account at CEDEL, and the investor is one of many participating in the agent's CEDEL PORTAL account, the NASD will have more difficulty identifying the particular PORTAL qualified investor that has instructed its agent to direct CEDEL to move securities out of the PORTAL account. In this case, the NASD may be required to query all PORTAL qualified investors participating in the particular CEDEL account.

Since a PORTAL transaction report is required by PORTAL dealers and PORTAL brokers with respect to transfers out of the PORTAL Market (but not within the PORTAL Market), the NASD will have a PORTAL Market generated record of the exit of borrowed securities, with an Exit Report designating the exit transfer as the return of borrowed securities. In the event that a PORTAL qualified investor effects an exit transfer, the PORTAL qualified investor is also required to file an Exit Report with the NASD. In this case, the Exit Report would be a paper report, as PORTAL qualified investors are not permitted to enter transaction reports.

The NASD can verify whether the exit transfer matches an entry transfer based on CEDEL reports, if the PORTAL qualified investor maintains their own account at CEDEL, by comparing the Exit Reports of PORTAL qualified investors with transfers of securities from the investor's CEDEL account. If the PORTAL qualified investor participates in its agent's CEDEL account, the NASD may have some difficulty quickly verifying that the exit transaction is a return of borrowed securities. However, Subsection 1(b)(12) to the PORTAL Rules provides the NASD authority to request and obtain from PORTAL qualified investors any information or document necessary to verify compliance with the restrictions on qualified exit transactions and qualified exit transfers pursuant to Sections 15 and 16 to Part I of the PORTAL Rules. With this authority, the NASD believes that it will be able to obtain information from qualified investors with respect to questionable exit transfers and exit transactions.

Moreover, the NASD will conduct an examination of each PORTAL dealer and PORTAL broker every six months to, *inter alia*, review the member's compliance with the qualified exit transaction and qualified exit transfer restrictions of Sections 15 and 16 to Part I of the PORTAL Rules. The frequency of this examination will be reviewed to determine if a more frequent review is necessary or whether a less frequent review is sufficient. This examination will focus on a review of exit transactions in restricted securities conducted pursuant to Regulation S and Rules 144 and 145. The NASD will be able to identify such transactions by means of the Exit Reports required to be filed with the NASD.

The NASD believes that this frequent post-transaction review of exit transactions by PORTAL dealers and PORTAL brokers provides significant and sufficient controls to determine whether a broker/dealer acting on behalf of a seller of Rule 144A securities has complied with the restrictions on resale of Sections 15 and 16 to Part I of the PORTAL Rules. The PORTAL Rules provide the NASD authority to discipline its members and to suspend or terminate the registration of PORTAL participants who engage in violative transactions.

Conclusion

Based upon the foregoing analysis, the NASD submits that the PORTAL Market provides a procedure reasonably designed to prevent the transfer of securities to other than qualified investors, unless the securities are registered under the Securities Act or an exemption from registration is available, as required pursuant to Rule 144A(d)(5). Further, it is submitted that the PORTAL Market meets the SEC's concept of a closed trading system that limits trading to qualifying institutions unless the securities are registered under the Securities Act or sold in a transaction exempt from registration under the Securities Act.

Rule 144A Safe Harbor

Based on the foregoing review of the proposed PORTAL Rules, the NASD submits that securities transactions made in compliance with the rules of the PORTAL Market would be made in compliance with Rule 144A and that participants would be able to rely on the Rule 144A safe harbor to the extent that information is provided to a purchaser as required by Rule 144A(d)(4).

Statutory Basis

The proposed rule change is consistent with the provisions of Section 11A(a)(2) of the Exchange Act of 1934, as the proposed PORTAL Rules will establish a new trading system "for particular types of securities with unique trading characteristics." By establishing the proposed PORTAL Market, the proposed rule change will permit the trading of unregistered securities by qualified investors in compliance with Rule 144A and in a manner designed to prevent the trading of unregistered securities in the United States by persons not meeting the requirements of Rule 144A. The proposed rule change is also consistent with the provisions of Section 15A(b)(6) of the Exchange Act in that the PORTAL Rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change establishes criteria for securities and participants in a new trading market for unregistered securities that are based on those in proposed SEC Rule 144A and are intended to enforce the requirements of Rule 144A. Therefore, the proposed rule change does distinguish between securities, investors and dealers in the securities in the proposed new trading market and will result in certain investors, dealers and securities not being permitted access to the trading market. The NASD believes, however, that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 20, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28091 Filed 11–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/1328]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 1:30 p.m., December 7, 1989 in Room 1105 of the Department of State, 2201 C Street NW., Washington, DC. It is essential that all participants indicate their desire to attend in advance of the meetings. An escort will be at the main entrance to the building (22nd and C Streets) during the period 1:15–1:35 p.m. to assist attendees.

The purpose of the United States Organization is to assist and advise the Department on matters concerning participation in the international CCIR activities. It is charged with promoting the best interests of the United States, providing advice on matters of policy and positions in preparation for Study Group meetings, and recommending the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration. The National Committee constitutes a steering body, and as such has purview of the work of the national study groups and other activities.

The main purposes of the meeting will be to consider:

1. Results of the CCIR Final Study Group Meetings held recently in Geneva;

2. Preparations for the upcoming CCIR Plenary Assembly scheduled for May 21–June 1, 1990, in Dusseldorf;

3. Establishment of the High-Level Committee to carry out the Review of ITU Structure and Functioning;

4. Other business (next meeting will be January 10, 1990).

Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman. Admittance of public members is limited to available seating. All persons wishing to attend the meeting must contact the office of Richard Shrum, Department of State, Washington, DC; phone (202) 647–2592, telefax (202) 647–5957, in order to pre-register and arrange for entry into the State Department. Entrance to the building is controlled and attendees must use the C Street entrance.

Dated: November 21, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89–27881 Filed 11–28–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1329]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S.

Organization for the International Radio Consultative Committee (CCIR) will meet on December 18, 1989, at NASA Headquarters, 600 Independence Avenue, Washington, DC in Room 521J at 10:00 a.m.

Study Group 2 deals with matters relating to the space research services among other things. The purpose of the meeting is to preparations for participation in newly formed international working parties and particularly for the 1992 World Administrative Radio Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834–5607.

Dated: November 21, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR. Doc. 89–27882 Filed 11–28–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Contra Costa County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Contra Costa County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans, will prepare a Tier 1, Environmental Impact Statement (EIS) on a proposal to protect the right-of-way in the Route 680/Route 4 interchange area. This action is necessary in order to provide Maximum flexibility for future modifications to this interchange when traffic demand approaches the capacity of the existing cloverleaf.

It is requested that agencies which may have knowledge about historic resources protentially affected by the proposal, or who are interested in the effects of the project on historic properties, present their views at this time.

The EIS will discuss the no action or "do nothing" alternative and a protection and/or acquisition alternative based on a west-shift realignment of Route 680.

The proposed scoping process includes the distribution of a Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of this Notice of Intent in the Federal Register and a scoping meeting to be held early next year. The time and location of this meeting will be advertised in advance in local newspapers.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 20, 1989.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89–27929 Filed 11–28–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Ellis County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Ellis County, Texas.

FOR FURTHER INFORMATION CONTACT: W.I. Hall, Jr., P.E., District Engineer, Federal Highway Administration, 826 Federal Building, Austin, Texas 78701, (512) 482–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), does not intend to prepare an Environmental Impact Statement (EIS) on a proposal to upgrade a portion of U.S. 287 in Ellis County, Texas, to a four-lane divided, non-controlled access facility. A Notice of Intent to prepare an Environmental Impact Statement for the proposed action was published in the Federal Register on December 30, 1988. Since that time, it has become apparent that sufficient impacts to warrant an EIS will not occur as a result of this action. A new Environmental Assessment has been prepared, and a Finding of No Significant Impact (FONSI) will be sought for the proposed project. Because of difficulty in predicting availability of funds, the DHT has not yet decided whether to use State or Federal funds to finance construction of this project.

The highway section under study passes through the City of Midlothian (1982 Pop. 9,447). The corridor study begins at the proposed S.H. 360–U.S. 287 interchange which is approximately 5.0 miles west of Midlothian and ends at a point near the town of Sardis, approximately 6.1 miles east of Midlothian. The existing facility is, for the most part, a two-lane roadway with a four-lane roadway existing through the central business district of Midlothian. U.S. 287 has become a major link for truck traffic from the Dallas/Fort Worth area to the Houston/Galveston area.

Truck traffic averages approximately 26 to 28 percent of the average daily traffic on the facility. The existing facility through the central business district of Midlothian is unable to handle the present traffic. Highway volumes of traffic are expected in the future with the present growth expected to continue. Truck traffic is expected to increase along with the continued rate of increase in traffic. Truck traffic creates a problem in the central business district with its narrow streets and minimum building setbacks.

This proposed project in conjunction with the construction around Ennis and Waxahachie will provide fast, direct, safe and efficient transportation service from the Dallas/Fort Worth metropolitan area to a direct connection with I.H. 45 to the Houston/Galveston area. Separation of the intra-city traffic from through traffic will reduce congestion in the city and better serve local traffic. By separation of short local trips from through trips, access to local housing, businesses, schools and churches will be improved. The proposed improvement will benefit through traffic by eliminating the usual delays and interruptions associated with city travel. Several alternatives will be considered for the proposed action, including the consideration of possible bypass routes. One alternative will be along the existing facility with signalization improvements and other traffic flow improvements in the central business district considered. The "no-build" alternative will also be considered.

There are currently no plans to hold formal scoping meetings for this proposal. A public meeting was held on June 6, 1985 for the proposed action. An opportunity to request a public hearing will be afforded at a later date. Adequate notice will be given through the news media concerning the public hearing opportunity and any ensuing hearings. To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental assessment should be directed to the FHWA at the address provided above.

Anthony J. Fusco,

Assistant Division Administrator, Austin, Texas.

[FR Doc. 89–27930 Filed 11–28–89; 8:45 am]

BILLING CODE 4910–22–M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., December 19, 1989, at the Cororation's Administration Headquarters, Room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than December 12, 1989, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 21, 1989.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 89–27831 Filed 11–28–89; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0095.
Form Number: None.
Type of Review: Extension.
Title: Soviet Gold Coin Regulations.
Description: Submission will provide the U.S. Government with information to be used in administering and enforcing prohibitions against importing Soviet gold coins.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 3.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3 hours.
Clearance Officer: Dale A. Morgan (202) 566–2883, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–27898 Filed 11–28–89; 8:45 am]

BILLING CODE 4810–25–M

Rechartering of the Advisory Group to the Commissioner of Internal Revenue

Pursuant to the Federal Advisory Committee Act of October 6, Public Law 92–463, as amended, and with the approval of the Secretary of the Treasury, announces the rechartering of the following advisory committee. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Title: The Advisory Group to the Commissioner of Internal Revenue.

The primary purpose of the Advisory Group is to provide an organized public forum for discussions of relevant tax administration issues between officials of IRS and representatives of the public. The Advisory Group also offers constructive observations about IRS' current or proposed policies, programs, and procedures and, where necessary, suggests ways to improve IRS' operations.

The Commissioner and other senior officials receive from the Advisory Group a significant amount of information about the problems taxpayers encounter not only in dealing with IRS but also in meeting obligations imposed on them statutorily. The Service uses the advice of the Advisory Group to develop a tax administration system which reflects, the simplest, most equitable approach to administering the tax system that it is within our power to pursue. Accordingly, the Advisory Group conveys to the Service the public's perceptions of IRS activities.

The services of the Advisory Group are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date this Charter has been filed.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended) the Department of the Treasury has rechartered the Advisory Group to the Commissioner of Internal Revenue for a two year period beginning November 21, 1989.

Dated: November 21, 1989.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 89–27899 Filed 11–28–89; 8:45 am]

BILLING CODE 4810–25–M

Rechartering of the Advisory Committee to the National Center for State and Local Law Enforcement Training

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Public Law 92–463, as amended), and with the approval of the Secretary of the Treasury and the concurrence of General Services Administration, announces the renewal of the following advisory committee:

Title: Advisory Committee to the National Center for State and Local Law Enforcement Training.

Purpose: The primary purpose of the Advisory Committee is to provide a

forum for discussion and interchange between a broad cross-section of representatives for the law enforcement community and related training institutions on training issues and needs. Considering that there are over 40,000 individual policy departments throughout the country, the advice emanating from this exchange is very important to the Director of the Federal Law Enforcement Training Center and the Director of the National Center for State and Local Law Enforcement Training (National Center). The committee's advice is critical to ensuring that programs developed and offered by the National Center are meeting the unique and specialized needs of the State and local law enforcement community and enhancing the networking between Federal, State and local agencies. This networking is essential to an efficient and effective overall system.

Although FLETC representatives participate in the training committee activities of the major policy membership associations, no forum exists which provides the broad representation required to meet the needs of the National Center. The uniqueness of the program requires an appropriately selected and specifically dedicated group.

The committee advises the Director of FLETC and the Director of the National Center for State and Local Law Enforcement Training on policy formulation, training needs, curriculum and course content, student admission and evaluation. There is no question that the committee's input has been very instrumental in the successes enjoyed to this point. Resources have been committed only to those progams which meet unique needs of the State and local law enforcement community. All are quite positive. In addition, State and local agencies have actively participated in the development and delivery of the programs by providing personnel as subject matter experts, course developers and instructors. The programs offered have been developed only after a thorough screening process to ensure that the limited resources available are being committed most productively.

The committee does not duplicate functions being performed with Treasury or elsewhere in the Federal Government.

Termination Date: The services of the committee are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date the charter is filed.

Accordingly, I hereby determine, pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended, that continuation of the Advisory Committee to the National Center for State and Local Law Enforcement Training for a two year period, is in the public interest.

Dated: November 6, 1989.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 89-27900 Filed 11-8-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 33-89]

Treasury Notes of November 30, 1991, Series AG-1991

Washington, November 24, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of November 30, 1991, Series AG-1991 (CUSIP No. 912827 YF 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 30, 1989, and will accrue interest from that date, payable on a semiannual basis on May 31, 1990, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 28, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 27, 1989, and received no later than Thursday, November 30, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, November 30, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-27985 Filed 11-24-89; 4:33 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 34-89]

Treasury Notes of February 15, 1995, Series J-1995

Washington, November 24, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,000,000,000 of United States securities, designated Treasury Notes of February 15, 1995, Series J-1995 (CUSIP No. 912827 YG 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes

may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 1, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1990, and each subsequent 6 months on February 15 and August 15 through the date that the principle becomes payable. They will mature February 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000 $100,000, and $1,000,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC. 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 29, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 28, 1989, and received no later than Friday, December 1, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of the specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all the Notes. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, December 1, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general

regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 29, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over pay, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–27986 Filed 11–24–89; 4:33 pm]

BILLING CODE [illegible]

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 5, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-28078 Filed 11-27-89; 1:31 pm]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 1, 1989, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Consent Calendar:
   —Charter Cancellation, Shelbyville FLBA, Fourth District
2. Rules and Regulations:
   —Proposed Regulations on Service of Process, 12 CFR part 600 subpart B
   —Proposed Regulations Relating to the Availability of the Farm Credit Administration, Pursuant to the Freedom of Information Reform Act of 1986, 12 CFR part 602
   —Final Rule Eliminating Certain Prior Approvals, 12 CFR parts 612, 614, 615 and 616
3. Proposed Investment by the FCB of Wichita in the Conservation Reserve Program;
4. Proposed Appraisal Policy and Fee Appraisal Service Program of the Western Farm Credit Bank;

***Closed Session**

5. Examination and Enforcement Matters;
6. Jackson FLB/FLBA, in Receivership.

Dated: November 27, 1989.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

David A. Hill

Secretary, Farm Credit Administration Board.

[FR Doc. 89-28079 Filed 11-27-89; 1:32 pm]

BILLING CODE 6705-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, December 5, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Collision and Derailment of Freight Train and Release of Hazardous Materials, Helena, Montana, February 2, 1989.
2. Petition for Reconsideration: Highway Accident Report—Pickup Truck/Church Bus Collision and Fire, Carrollton, Kentucky, May 14, 1988.
3. Public Hearing: Recommendation for No Hearing re School Bus truck/Collision, Alton, Texas; September 21, 1989. (Calendared by Member Burnett.)

News Media Please Contact Betty Scott (202) 382-6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: November 24, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-28065 Filed 11-27-89; 1:30 pm]

BILLING CODE 7533-01-M

federal register

Wednesday
November 29, 1989

Part II

Environmental Protection Agency

40 CFR Parts 230 and 233

Treatment of Indian Tribes as States for Purposes of Section 404 of the Clean Water Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 230 and 233

[FRL-3565-6]

RIN 2040-AB69

Treatment of Indian Tribes as States for Purposes of Section 404 of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Water Quality Act of 1987 (Pub. L. 100–4) amends the Clean Water Act (CWA) by adding section 518 which requires EPA to promulgate regulations, specifying how Tribes will be treated as States for the following provisions of the CWA: Title II (construction grants), section 104 (research, investigation, and training), section 106 (grants for pollution control), section 303 (water quality standards), section 305 (water quality inventories), section 308 (inspections, monitoring, and entry), section 309 (Federal enforcement), section 314 (Clean Lakes), section 319 (non-point source program), section 401 (certification), section 402 (National Pollutant Discharge Elimination System), and section 404 (dredge and fill permits).

This proposed rule would (a) establish requirements for determining eligibility of Indian Tribes to be treated as States for purposes of section 404 of the CWA and, if found eligible, (b) allow for assumption of the dredge and fill permit program. This regulation would satisfy the statutory provisions in section 518 as provided under section 404 (g)–(l) of the Clean Water Act with respect to the 404 program.

DATES: Written comments on this proposed rule will be accepted until January 29, 1990.

ADDRESS: Send comments to Office of Wetlands Protection (A–104F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lori Williams, 202–382–5043.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The over-all objective of the Clean Water Act (CWA) as amended is to restore and maintain the chemical, physical and biological integrity of the Nation's water. The two national goals the Act established in 1972 include: (1) Eliminating the discharge of pollutants into navigable waters; and (2) achieving and interim water quality level that would protect fish, shellfish, and wildlife while providing for recreation in and on the water wherever attainable.

Since 1972, section 101(b) of the CWA makes it national policy to recognize and preserve the States' primary responsibility to meet these goals. Over the past 17 years, the Agency has focused on developing standard operating relationships with the States and localities.

Congress, through amendments to both CWA in 1987 and the Safe Drinking Water Act (SDWA) in 1986, has authorized EPA to treat Indian Tribes as States under various provisions of these Acts. Amendments to both statutes required the Agency to promulgate regulations that would establish exactly how Tribes would be treated as States.

The February 4, 1987 amendments to the CWA added a new section 518 entitled "Indian Tribes." These Amendments authorize EPA to treat Indian Tribes as States for the purposes of certain provisions of the Act, and provide grant and contract assistance (for certain of these programs) to Indian Tribes where appropriate. The Amendments require EPA to promulgate regulations specifying how the Agency will treat an Indian Tribe as a State under the following provisions: Title II (Construction Grants), section 104 (Research, Investigation and Training), section 106 (Grants for Pollution Control), section 303 (Water Quality Standards and Implementation Plans), section 305 (Water Quality Inventory), section 308 (Inspections, Monitoring, and Entry), section 309 (Federal Enforcement), section 314 (Clean Lakes), section 319 (Nonpoint Source), section 401 (Certification, section 402 (National Pollutant Discharge Elimination System), and section 404 (Dredge and Fill Permit Program.)

Section 518(e) of the Clean Water Act establishes certain criteria an Indian Tribe must meet before treatment as a State is authorized: (1) "The Indian Tribe has a governing body carrying out substantial governmental duties and powers;" (2) "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by member of an Indian Tribe if such property interest is subject to a trust restriction on alienation or otherwise within the boundaries of a reservation"; and (3) "the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and of all applicable regulations."

In addition to the eligibility requirements specified in section 518(e), section 518(h)(2) defines Indian Tribes as follows: "Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of Interior and exercising governmental authority over a Federal Indian reservation." Consequently, Federal recognition and governmental authority over reservation lands are necessary criteria by definition.

B. Development of This Rule

Based on the statutory amendments to the CWA, there are currently regulations related to five separate CWA programs at different stages of development in the Agency: (1) Construction Grants program, (2) Water Quality Standards program (including the required conflict resolution mechanism), (3) Dredge and Fill Permit program on Indian lands, (4) National Pollution Discharge Elimination System permit program on Indian lands, and (5) CWA grants programs for Indian lands. To promote consistency among the various regulations being developed, an intra-Agency oversight committee was established. Efforts are being made by this committee to develop parallel requirements where appropriate in order to reduce the burden on Tribes that choose to apply for any of these programs.

EPA has already issued regulations: (1) Specifying how Indian Tribes will be treated as States for purposes of the Public Water System and Underground Injection Control (UIC) programs under the SDWA (53 FR 37396) (referred to below as the "SDWA Indian Primacy Rule"), and (2) promulgating Federal UIC programs on all Indian lands where an applicable program had not been in place (53 FR 43084). The SDWA Indian Primacy Rule is being used as a model for developing parallel regulatory approaches in the forthcoming CWA Indian regulations. The CWA Indian grant regulations were also recently promulgated in interim final form (54 FR 14354).

Section 518(e) of the CWA requires consultation with Indian Tribes during regulations development. The CWA also requires the Administrator to consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Tribes located on common bodies of water.

In keeping with this requirement, the Agency decided a multifaceted consultation approach would be most appropriate. Tribal and State representatives were appointed to serve on various CWA Indian workgroups. For the most part, workgroup meetings have been noticed in the Federal Register inviting the public to observe and offer comment. Other efforts to consult with Tribes and States have included national meetings across the country to discuss the regulatory approaches proposed in the various CWA regulations, EPA officials attendance at both Tribal and interested State meetings to present regulatory approaches being considered, and distribution of the draft proposed language for broad review at an early stage of the regulation development.

C. EPA Indian Policy

This rule is consistent with Federal Policy statements regarding Indian Tribes. On January 24, 1983, the Federal government established an Indian Policy Statement providing for treatment of Tribal governments on a government-to-government basis and supporting the principle of self-determination and local decision-making by Indian Tribes.

The EPA's policy is "to give special consideration to Tribal interests in making Agency policy and to ensure the close involvement of Tribal governments in making decisions and managing the environmental programs affecting reservation lands." In practice, EPA's policy is to work directly with Tribal governments as independent authorities for reservation affairs, recognizing that they are not political subdivisions of States.

D. Supplemental Statutory Background

In 1972, Congress established the 404 permit program to regulate discharges of dredged or fill material into waters of the United States. Congress in the 1977 Amendments to the Federal Water Pollution Control act (the Clean Water Act), gave States the option of assuming the 404 permit program in certain waters of the State, subject to EPA approval (section 404 (g)–(1)). If a State assumes this responsibility, its jurisdiction includes all waters within its border except (1) those which are subject to the ebb and flow of the tide plus adjacent wetlands and (2) waters which are presently used or may be susceptible to use (through reasonable improvement) to transport interstate or foreign commerce plus adjacent wetlands. The Corps retains jurisdiction over all waters which States cannot assume.

The Act prescribes minimum requirements which States must meet before exercising their option to assume the program and assigned program approval and oversight responsibility to EPA. On May 19, 1980, EPA promulgated regulations to establish procedures and criteria for approval/disapproval of 404 State programs and for monitoring a State program after program approval. In response to State concerns about rigid mandatory requirements, excessive paperwork burdens, intrusive Federal oversight, and general lack of flexibility, EPA promulgated revised regulations on June 6, 1988. These revisions provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Act. Once a Tribe is determined to be a State, the Tribe must meet the requirements for an approval program specified in 40 CFR part 233.

II. Summary and Explanation of Today's Action

Today's proposed rule would implement section 518 of the CWA which authorizes EPA to treat an Indian Tribe as a State for assumption of the dredge and fill permit program if the Indian Tribe meets the eligibility criteria.

The criteria for treating Indian tribes as States under the CWA and the SDWA are very similar. The Agency intends to establish the least burdensome process possible for Tribes to demonstrate State eligibility. When most or all regulations under the SDWA and CWA stipulating how Tribes shall be treated as States are final, the Agency will develop procedures to implement a single application procedure for the SDWA and CWA programs for those aspects that are similar under both statutes.

Most qualification criteria are of a general nature and need only be provided when a Tribe first applies for "treatment as a State" under the SDWA or CWA. For example, the "Federal recognition" and "governmental duties and powers" criteria will usually require the same showing for a Tribe and would ordinarily need to be demonstrated only during the first application a Tribe submitted under either of the Acts.

However, the Agency believes that even with a streamlined application procedure, some qualifications will still need to be demonstrated separately for each program, particularly regarding capability. For example, a Tribe may possess the requisite capability to establish water quality standards but not to assume the Dredge and Fill Permit Program. Yet the Agency does not wish to put Tribes through the burden of filing complete applications for treatment as a State for each separate program. Consequently, the Agency will allow Indian Tribes which have previously been designated as a State under either SDWA or CWA to provide only that information which is unique to the specific additional program(s) (which may include demonstrating adequate regulatory authority to administer the specific program) the Tribe is applying for. Requirements which may be unique for the dredge and fill program are § 233.61(d) (4) and (5).

As is the case for States, an Indian Tribe must have its own legal authorities to administer a program under the CWA: EPA cannot delegate its own authority. However, the Agency considered whether the lack of comprehensive criminal enforcement authority would preclude Tribes from applying for the National Pollution Discharge Elimination System (section 402) and the Dredge and Fill Permit programs (section 404) that currently require such authority for an approvable State program.

Section 1451 of SDWA specifically states that Indian Tribes are not required to exercise criminal enforcement jurisdiction for primary enforcement responsibility. The CWA amendments, however, do not include similar language indicating whether it would be appropriate to treat a Tribe not having criminal enforcement authority over all individuals on the reservation as a State where such authority is currently required for State program assumption.

The Agency realizes that a comprehensive criminal enforcement requirement could raise substantial impediments to Tribal assumption of those CWA programs that require such authorities of States. Federal law bars Indian Tribes from criminally trying or punishing non-Indians in the absence of a treaty or other agreement to the contrary. *Oliphant* v. *Suquamish Indian Tribe* 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian court or tribunal from imposing any criminal fine greater than $5,000 (25 U.S.C. 1302(7)).

The Agency believes that even though Congress did not explicitly waive the requirement under CWA, as under SDWA, that Congress nonetheless intended Tribes to be able to obtain primacy without demonstrating comprehensive criminal enforcement authority. If EPA were to infer that Congress, by failing to insert language similar to that contained in section 1451 of SDWA, intended not to waive the criminal enforcement requirement, EPA's reading would make part of section 518 of CWA a nullity, since

absent further legislative action, no Tribe would be able to assume a program under 402 or 404 of CWA. This reading would contradict the apparent intent of section 518 to allow Tribes to assume all specified CWA programs where they meet the section 518(e) criteria and further would violate two traditional rules of statutory construction: (1) Legislation should not be interpreted as being meaningless, if at all possible; and (2) ambiguous statutes should be interpreted to the benefit of the Tribes.

Section 233.41 of the 404 State Program Regulations (SPR) requires that a State have criminal enforcement authority to have an approvable 404 State program. This notice proposes to amend the existing regulations so that Tribes will not be required to exercise comprehensive criminal enforcement jurisdiction as a condition to assuming the 404 program. Tribes would, instead, be required to provide for the referral of criminal enforcement matters when Tribal enforcement authority does not exist (e.g., non-Indians or fines over $5,000) to EPA and/or the Corps, as the parties agree in an appropriate and timely manner. Such procedures must be established in a formal Memorandum of Agreement (MOA) with the Regional Administrator and/or the appropriate District Engineer(s) of the Corps. There may be a single MOA among the tribe, EPA and the Corps; separate MOA's between the Tribe and EPA and the Tribe and the Corps; or only one MOA, between the Tribe and EPA or the Corps, if the parties so agree. The MOA(s) used to satisfy this agreement may, but do not have to be, the same as those required in 40 CFR 233.13 and 233.14.

Thus, the lack of comprehensive Tribal criminal enforcement authority should not prevent a Tribe from having an approvable 404 State program.

We are particularly interested in receiving comments and/or suggestions from the Tribes on establishing procedures to effectively and efficiently handle the referral of the criminal enforcement cases over which the Tribes do not have enforcement authority.

Because CWA program funds are limited, many Indian Tribes may decide it is not cost-effective or otherwise beneficial to apply for various CWA program authorities. The Agency encourages Tribes to carefully consider which of the available programs would be beneficial to assume and to target the Tribal efforts and resources towards those specific programs. The Agency notes that Tribal assumption of the CWA program discussed in today's rule is voluntary on the part of the Tribes.

In order to facilitate consistent implementation of the requirements of CWA, an Indian Tribe and the State or States adjacent to the lands of such Tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act (see section 518(d) of the CWA.)

The Agency highly encourages such cooperative agreements, because of the relative benefits such as information and resource sharing. The Agency does not have any specific criteria that a cooperative agreement must meet, so long as all parties involved approve it and it complies with the intent and administrative requirements of CWA. In situations where EPA is a signatory to a cooperative agreement, all Federal requirements that govern such agreements must also be met.

Draft cooperative agreements should be submitted to the Regional Administrator for review and approval. If necessary, the Agency will develop guidance to assist the Tribes and states in developing cooperative agreements.

A. Treatment of Indian Tribes as States

This rule would create procedures for Indian Tribes to apply to EPA for treatment as a State in order to be eligible to subsequently apply for assumption of the dredge and fill permit program as provided under section 404(g)–(1). This rule revises 40 CFR part 230 and creates a new subpart G of part 233. A new subpart G of 40 CFR part 233 establishes criteria Indian Tribes must meet for treatment as a State, lists the information the Tribe must provide in its application to EPA, and provides a procedure for formal EPA review of applications for "treatment as a State." The requirements a Tribe must meet under all the CWA Indian regulations are as similar as possible leaving room for program specific requirements which are explained further in the capability requirements section of this notice.

As mentioned previously, Section 518 of the CWA stipulates that a Tribe is eligible for treatment as a State if it meets the following criteria:

(1) Is Federally recognized;
(2) It carries out substantial governmental duties and powers over a Federal Indian reservation;
(3) Has appropriate regulatory authority over surface waters of the reservation; and
(4) Is reasonably expected to be capable of administering the relevant CWA program;

The Agency believes the language in Section 518 requires that each of these elibility criteria be satisfied through a separate demonstration by a Tribe following the procedures these regulations will set forth. These procedures are intended to ensure Tribes who are treated as States meet the requirements in the CWA not to act as a barrier to program assumption. The Agency hopes that as many Tribes as possible will assume responsibility for the CWA programs where the Tribe and the Agency deem it appropriate.

1. Federal Recognition

With respect to Federal recognition as an Indian Tribe, the Secretary of the Interior periodically publishes a list of Federally recognized Tribes. If the applicant appears on this list it need only state that this is so. If the Tribal name does not appear on this list because the list has not been updated, the Tribe can still provide appropriate documentation to EPA verifying that it is Federally recognized by the Secretary of Interior.

2. "Substantial Governmental Duties and Powers"

In addition, a Tribe must satisfy the second criteria that the Tribe is "carrying out substantial governmental duties and powers." The Agency defines "substantial governmental duties and powers" to mean that the Tribe is currently performing governmental functions to promote the public health, safety, and welfare [of the affected population] within a defined geographical area.

Many Indian Tribal governments perform functions traditionally performed by sovereign governments. Examples of such functions include, but are not limited to, levying tax, acquiring land by exercising the power of eminent domain, and police power (i.e., providing for the public health, safety, and general welfare of the affected population). Based on comments on the SDWA Indian Primary rule, the Agency believes that most Tribes will be able to meet these criteria without much difficulty. (See 53 FR 37399).

The Agency intends to minimize the burdens to a Tribe to demonstrate that it carries out substantial governmental duties and powers. The Agency proposes to require a narrative statement: (1) Describing the form of Tribal government; (2) describing the types of essential governmental functions currently performed such as those listed above; and (3) identifying the legal authorities for performing these functions (e.g., Tribal constitutions, codes, etc.).

The Agency merely intends the functions listed above (e.g., police powers affecting the health, safety and welfare, taxation, and power of eminent domain) as examples. It is not necessary that an applicant be currently performing each such function to qualify for treatment as State. The Agency intends only to require sufficient documentation to determine whether a Tribe satisfies the statutory requirement of "carrying out substantial governmental duties and powers."

3. Jurisdiction

The third requirement a Tribe must meet for treatment as a State is that "the functions to be exercised by the Tribe must pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the boundaries of a reservation."

This provision contains different language than that of section 1451(a)(2) SDWA which states: "The functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction." Whereas CWA section 518 language suggests that Tribes may only regulate those water resources which are within the exterior boundaries of a Federal Indian reservation, the parallel SDWA provision makes no such explicit limitation. As a result of this different statutory definition under SDWA, Tribes are not precluded from applying for treatment as a State for any lands over which the Tribe believes it has regulatory authority. (See 53 FR 37400.)

The CWA establishes a somewhat narrower part of Indian country for which EPA will recognize Tribal authority by restricting Tribal eligibility for treatment as a State to lands "otherwise within reservation boundaries." The Agency anticipates that this language may reduce the potential for disputes since authority to regulate within boundaries is more readily determined.

Comments received on the SDWA primacy regulations suggest that Tribes should not face the burden of proving their jurisdiction, i.e., that they should receive the same general recognition of sovereign authority that EPA accords States. The Agency recognizes that there is substantial support for the general proposition that a Tribal government has authority to administer CWA programs within the exterior boundaries of the Tribe's reservation. The Agency does not believe, however, that it is appropriate to establish a rebuttable presumption concerning Tribal governmental authority. Just as when EPA considers a State application, EPA must not delegate program responsibility to a Tribe unless the Tribe can adequately show it possesses the requisite authority.

The Agency recognizes that there may be some disputes regarding the extent of Tribal authority to administer CWA programs and therefore believes it necessary to require documentation to demonstrate adequate authority by Tribes applying for CWA programs. The request that a given Tribe establish its authority to administer CWA programs is not meant to be a barrier or a deterrent to that Tribe's attainment of these programs. Rather the intent of these requirements is to raise at an early date the presence or absence of a key element to effective administration of CWA programs.

The process the Agency proposes to establish for Tribes to demonstrate their authority includes the submission of a statement signed by the Tribal Attorney General or an equivalent official explaining the legal basis for the Tribe's regulatory authority to administer the desired program(s). The statement is similar to the statement currently required of States applying for 404 program assumption (40 CFR 233.12). The Attorney General's statement will supplement the other documentation mentioned in § 233.61 of this proposed rule (e.g., a map, copies of tribal codes and ordinances, etc.). The Attorney General's statement with the supporting documentation will assist EPA in verifying that the Tribe has the necessary authority to administer the appropriate CWA program.

4. Tribal Capability

The fourth criterion that a Tribe must meet is that, in the Administrator's judgment, the Tribe must be "reasonably expected to be capable" of administering an effective program. In evaluating a Tribe's demonstration that it is "reasonably expected to be capable" of administering an effective dredge and fill permit program, the Administrator will consider from among the following five factors those which are appropriate for the dredge and fill permit program:

(1) The Tribe's previous management experience;
(2) Existing environmental or public health programs administered by the Tribe;
(3) The mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government;
(4) The relationship between regulated entities and the administrative agency of the Tribal government which is, or will be, designated as the primacy agent; and
(5) The technical and administrative capabilities of the staff to administer and manage the program.

The Agency recognizes that certain Tribes may not have substantial experience in administering environmental programs. Although lack of this experience will not preclude a Tribe from demonstrating the required capability, the presence of such experience will be of significant importance to the Agency.

The EPA proposes to request information on the Tribe's executive, legislative, and judicial functions to assure that the Tribe has the capability to administer a program approved under the Clean Water Act.

The EPA's evaluation of the Tribe's capability will also consider the relationship between the existing or proposed Tribal agency which will assume the dredge and fill permit program and any potential regulated Tribal entities.

A common situation among Indian Tribes is that the Tribe is both the regulator and regulatee. Such a situation could result in a conflict of interest if EPA delegated the program to the Tribe, since the Tribe would be regulating itself. The Agency believes that independence of the regulator and regulatee is necessary to assure effective and fair administration of these programs.

This approach is not meant to require the Tribes to divest themselves of ownership of any regulated entities it owns or operates. One possible solution to the problem could be the creation of an independent organization to regulate Tribal entities subject to CWA regulatory requirements. Similar arrangements could be established utilizing existing Tribal organizations.

Failure to resolve the regulator/regulatee conflict will not preclude a Tribe from being eligible for treatment as a State but is intended to alert Tribes at an early date about a potential bar to regulatory program assumption that must be resolved. Resolution of the regulator/regulatee issue relative to the CWA programs will be evaluated on a case-by-case basis. EPA does not intend to limit Tribal flexibility in creating structures which will ensure adequate separation of the regulator and the regulated entity.

The Agency is aware that, in limited cases, States also are in a similar situation of being both regulator and regulatee. However, State infrastructures are typically such that the State agency operating the regulated entity is not the same State agency that has primary enforcement authority. This

is in contrast to the typical situation exhibited by Indian Tribes which may own and operate most or all regulated entities.

The Agency encourages smaller Tribes to consider consortiums or intertribal agencies as ways to obtain the necessary expertise to administer these programs and to make the attainment of primacy cost-effective and beneficial to the Tribe. The Agency will consider and evaluate all applications it receives, regardless of the applicant's size, on a case-by-case basis.

Although EPA will consider applications by a group or consortium of Tribes within the same geographical area, each applicant must still meet all eligibility requirements to be treated as a State, particularly the jurisdictional requirement.

B. Process for Evaluating Applications

Within thirty days after receipt of a Tribe's complete application for treatment as a State (which has all the information required in § 233.60), EPA will notify appropriate governmental entities (e.g., neighboring Tribal and State governments) of the receipt of the application and the substance of and basis for the Tribe's assertion of authority over reservation waters.

Each of the governmental entities will have thirty days after receipt of the notice to submit comments to EPA. Comments will be limited solely to the issue of the Tribe's showing under Section 518(e)(2). EPA will not consider comments directed to whether the Tribe meets EPA's other requirements for treatment as a State.

If an Indian Tribe's assertion under 518(e)(2) is subjected to a competing claim, the Administrator will consult with the Tribe, the governmental entity submitting comments, and the Secretary of the Department of the Interior, or his designee. After consultation, and in consideration of comments received, the Administrator will determine whether the Tribe has adequately demonstrated that it meets the requirements of section 518(e)(2). If the Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to certain reservation waters, then Tribal assumption of the dredge and fill permit program will be restricted accordingly. Any such determination by the Administrator is not a determination of the Tribe's general regulatory authority but only with respect to administration of the 404 program. A dispute over a certain area over which a Tribe is asserting authority will not necessarily delay the Agency's decision to treat a Tribe as a State for the non-disputed areas.

This procedure does not imply that States or Federal agencies have veto power over Tribal applications for treatment as a State. Rather, the procedure is simply intended to ensure that the Tribe has the necessary authority to administer the dredge and fill permit program. The Agency will not rely solely on the assertions of a competing regulatory authority; it will make an independent evaluation of the Tribal showing.

The Agency does not believe it will be possible to approve or disapprove all applications for "treatment as a State" within a designated time frame. The Agency fully anticipates that there will be instances where the determinations under section 518 (e)(2) and (e)(3) will require the Agency to go back to a Tribe for clarification or additional information. Likewise, the Agency's experience with States applying for various EPA programs indicates that at times meetings and discussions between EPA and the State are necessary before all requirements are met. The Agency believes that the same process of communication with Tribes will be beneficial in ensuring that Tribes meet the "treatment as a State" criteria in an expeditious manner.

A determination by the Administrator that a Tribe does not meet the requirements for treatment as a State does not preclude the Tribe from resubmitting the application at a future date. If the Administrator determines that a Tribal application is deficient or incomplete, the Tribe should consult with EPA on what changes are necessary.

III. Other Issues—Alaska Native Villages and Oklahoma Tribes

Under section 518 of the CWA, the Agency concludes that Alaska Native Villages (except for the Annette Island Reserve of the Metlakatla Indian Community) are not eligible to apply for treatment as a State based on the definition of Indian Tribes. The Act uses the following definition in section 518(h): (1) "Federal Indian reservation" means all lands within the limits of any reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and (2) "Indian Tribe" means any Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a *Federal Indian reservation.*" [emphasis added] Since Alaska Native Villages do not exercise authority over reservations, under the terms of the CWA they are not "Tribes" for purposes of section 518(e).

The Agency's conclusion is based on the fact that since passage of the Alaska Native Claims Settlement Act (25 U.S.C. 1618) in 1971, Alaska Native Villages, with one limited exception, do not exercise governmental authority over a Federal Indian reservation. This lack of authority prevents Alaska Native Villages from being eligible to receive grants or assume programs under section 518 of the Act.

Section 518(g) of the CWA does not affect EPA's analysis of the status of Alaska Native Villages. Section 518(g) states that * * * no provisions of this Act shall be construed to—

(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally recognized tribe, traditional Alaska Native council, or Native Council organized pursuant to the Act of June 1, 1934 (48 Stat. 987), over lands or persons in Alaska;

(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

(3) in any way affect any assertion that Indian country as defined in Section 1151 or title 18, United States Code, exists or does not exist in Alaska.

Section 518(g) merely clarifies that providing for Tribal participation under the CWA, in and of itself, did not change the regulatory status of the Alaska Native Villages.

The Agency also concludes that Tribes on former reservations in Oklahoma and elsewhere likewise are not eligible to apply for the CWA programs addressed in this notice because they also do not meet the definition of Tribes under section 518(h)(1).

IV. Request for Public Comment

EPA requests public comment and information on all aspects of this proposal. As indicated earlier in the preamble, we are particularly interested in receiving comments on setting up the procedures for handling those criminal enforcement cases over which the Tribes do not have enforcement authority. EPA notes that very similar regulations were recently proposed for the CWA grants program. Commentors need not resubmit comments generic to all CWA Indian program regulations.

V. Other Regulatory Requirements

A. Compliance With Executive Order 12291

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the proposed rule does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis. The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any response to these comments will be available for public inspection from the person listed at the beginning of this notice.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1542) and a copy may be obtained from Harold Woodley, Information Policy Branch; EPA; 401 M St., SW (PM–223); Washington, DC 20460 or by calling 202–382–2738.

Public reporting burden for this collection of information is estimated to average 100 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq., EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

—Small governmental jurisdictions—any government of a district with a population of less than 50,000.

—Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

—Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions.)

Using the above definition of small entity, EPA has concluded that the proposed regulation, if promulgated, will not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is unnecessary. EPA has reached this conclusion based on the following considerations.

The proposed regulation will not have a significant impact on a substantial number of small governmental organizations. Approximately 275 Indian Tribes are potentially eligible for treatment as a State under the wetlands program. While most Indian Tribes meet the definition of small governmental organization provided above, EPA believes the number of tribes subject to significant impacts as a result of this proposed regulation will be a very small fraction of the total that apply. EPA considers the information required by this rule to be the minimum necessary to effectively treat Indian tribes as States for the purpose of the 404 permit program.

The proposed regulation will not have a significant impact on a substantial number of small businesses. Although it is conceivable that an Indian tribe could impose additional requirements upon a permit applicant than the Corps, EPA believes that these situations will be rare. Any additional economic impact on the public resulting from implementation of this proposed regulation is expected to be negligible, since tribal regulation of these activities is limited to areas within tribal jurisdiction.

The proposed regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the proposed regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this proposed regulation, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 230 and 231

Indian lands, Intergovernmental relations, Navigation, Penalties, Water pollution control, Water supply, Waterways, Wetlands.

Dated: November 15, 1989.

F. Henry Habicht,

Acting Administrator, Environmental Protection Agency.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 is revised to read as follows:

Authority: Secs. 404(b) and 501(a) of the Clean Water Act, (33 U.S.C. 1344(b) and 1361(a)).

2. Section 230.3 is amended by removing the paragraph designations and the phrase "The term" and alphabetizing the definitions and by adding, in alphabetical order, new definitions for "Federal Indian reservation," "Indian Tribe," and "State" to read as follows:

§ 230.3 Definitions.

* * * * *

"Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

"Indian Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in

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these regulations, which meet the requirements of § 233.60.

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

2. Section 233.1 is amended by revising paragraph (b) to read as follows:

§ 233.1 Purpose and scope.

* * * * *

(b) Except as provided in § 232.3, a State program must regulate all discharges of dredged or fill material into waters regulated by the State under section 404(g)–(1). Partial State programs are not approvable under section 404. A State's decision not to assume existing Corps' general permits does not constitute a partial program. The discharges previously authorized by general permit will be regulated by State individual permits. However, in many cases, States other than Indian Tribes will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State which is not an Indian Tribe to regulate activities on Indian lands does not constitute a partial program. The Secretary of the Army acting through the Corps of Engineers will continue to administer the program on Indian lands if a State which is not an Indian Tribe does not seek and have authority to regulate activities on Indian lands.

* * * * *

2. Section 233.2 is amended by removing the paragraph designations and alphabetizing the definitions, by adding, in alphabetical order, new definitions for "Federal Indian reservation" and "Indian Tribe" and by revising the definition of "State" to read as follows:

§ 233.2 Definitions.

* * * * *

"Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

"Indian Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe, as defined in these regulations, which meet the requirements of § 233.60. For purposes of this regulation, the word State also includes an interstate agency requesting program approval or administering an approved program.

* * * * *

3. Part 233 is amended by redesignating subpart G as subpart H and § 233.60 as § 233.70, and by adding a new subpart G to read as follows:

Subpart G—Treatment of Indian Tribes as States

Sec.

233.60 Requirements for treatment as a State.
233.61 Request by an Indian Tribe for a determination of treatment as a State.
233.62 Procedure for processing an Indian Tribe's application for treatment as a State.
233.63 Provisions for Tribal criminal enforcement authority.

Subpart G—Treatment of Indian Tribes as States

§ 233.60 Requirements for treatment as a State.

Section 518(e) of the CWA, 33 U.S.C. 1378(e), authorizes the Administrator to treat an Indian Tribe as a State for purposes of making the tribe eligible to apply for assumption of the 404 permit program under section 404(g)–(1) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(c) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction an alienation, or otherwise within the borders when Indian reservation.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective Section 404 dredge and fill permit program.

§ 233.61 Request by an Indian Tribe for a determination of treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act, for purposes of the section 404 program. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 233.60. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement shall:

(1) Describe the form of the Tribal government.

(2) Describe the types of government functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c)(1) A map or legal description of the area over which the Indian Tribe asserts regulatory authority pursuant to section 518(e)(2) of the CWA and § 233.60(c);

(2) A statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's assertion under section 518(e)(2) (including the nature or subject matter of the asserted regulatory authority); and

(3) A copy of all documents such as Tribal constitutions by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of regulatory authority;

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective 404 permit program. The statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized by the Indian Self Determination & Education Act (25 U.S.C. 450 et seq.), the Indian Mineral Development Act (25 U.S.C. 2101 et seq.), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a section 404 dredge and fill permit program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative & technical expertise.

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective 404 dredge and fill permit program.

(e) The Administrator may, at his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator has previously determined that a Tribe has met the requirements for "treatment as a State" for programs authorized under the Safe Drinking Water Act or the Clean Water Act, then that Tribe need only provide that additional information unique to the particular statute or program for which the Tribe is seeking additional authorization.

§ 233.62 Procedure for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 233.61 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance of and bases for the Tribe's assertions that it meets the requirements of § 233.60(c).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion of under § 233.60(c). Comments by governmental entities shall be limited to the Tribe's assertion under § 233.60(c).

(d) If a Tribe's assertion under § 233.60(c) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 233.60(c) for the dredge and fill permit program.

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 233.61, the Indian Tribe is then eligible to be treated as a State for purposes of 404 program assumption.

(f) The Regional Administrator shall follow the procedures described in § 233.15 in processing a Tribe's request to assume the 404 dredge and fill permit program.

§ 233.63 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe does not assert or is precluded from asserting criminal enforcement authority (§ 233.41 (a)(3)(ii) through (a)(3)(iii)), the Federal government will assume primary criminal enforcement responsibility. The Tribe, with the EPA Region and Corps District(s) with jurisdiction, shall develop a system where the Tribal agency will refer such a violation to the Regional Administrator or the District Engineer(s), as agreed to by the parties, in an appropriate and timely manner. This agreement shall be incorporated into joint or separate Memorandum of Agreement with the EPA Region and the Corps District(s), as appropriate.

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November 29, 1989

Part III

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA-Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA); Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62083; FRL-3668-5]

Asbestos-Containing Materials in Schools; EPA-Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 206(c)(3) of the Toxic Substances Control Act (TSCA) directs the EPA Administrator to publish (and revise as necessary) a list of EPA-approved asbestos courses and tests which are consistent with the Agency's Model Accreditation Plan required under section 206(b) of TSCA and a list of courses and tests which qualify or had qualified for equivalency treatment for interim accreditation during the time period established by Congress in AHERA. Since the August 1989 Federal Register, that time period for States to develop programs has now ended in all States. The grace period for persons with interim accreditation expired in July 1989, in all except seven States. All courses approved for interim accreditation are included in the list for information purposes only.

Section 206(f) of TSCA Title II requires the Administrator to publish quarterly in the Federal Register, beginning August 31, 1988, a list of EPA-approved asbestos training courses. This Federal Register notice includes the cumulative ninth list of course approvals and a list that includes State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. Additionally, this notice includes the most current list as of (October 31, 1989) of laboratories accredited under section 206(d) of TSCA to conduct bulk analysis of asbestos-containing materials. Those laboratories which had previously received interim accreditation from EPA are no longer listed in this Federal Register because EPA interim approval for laboratories ended October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3790, TDD: (204) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Accreditation Plan by April 20, 1987. The Plan was issued on April 20, 1987, and was published in the Federal Register of April 30, 1987 (52 FR 15875), as appendix C to subpart E, 40 CFR part 763. To conduct asbestos-related work in schools, persons must receive accreditation in order to inspect school buildings for asbestos, develop management plans, and design or conduct response actions. Such persons can be accredited by States, which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the Federal Register of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR part 763, Subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACMs) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The new rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A through E.

In Section 206(c)(3) of Title II, and as amended by Section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of EPA-approved asbestos courses and tests which the Administrator has determined are consistent with the Model Plan and which qualify a contractor for accreditation. In addition, the Agency has included in this notice the most current list of laboratories which have received only full accreditation from the National Institute of Standards and Technology (NIST), (formerly the National Bureau of Standards (NBS)), for the analysis of bulk materials for asbestos by polarized light microscopy (PLM). Those laboratories which had previously received interim accreditation from EPA are no longer listed in this Federal Register because EPA interim approval for laboratories ended October 30, 1989.

The Federal Register notice of October 30, 1987, included the initial list of course approvals. In addition, the list included State accreditation programs that EPA has approved as meeting the requirements of the Model Plan. The second Federal Register notice of February 10, 1988 (53 FR 3982), the third Federal Register notice of June 1, 1988 (53 FR 20066), the fourth Federal Register notice of August 31, 1988 (53 FR 33574), the fifth Federal Register notice of November 30, 1988 (53 FR 48424), the sixth Federal Register notice of February 28, 1989 (54 FR 8438), the seventh Federal Register notice of May 31, 1989 (54 FR 23392), and the eighth Federal Register notice of August 31, 1989 (54 FR 36166), were cumulative listings of EPA course approvals and EPA- approved State accreditation programs.

This Federal Register notice is divided into five units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses the AHERA-imposed deadline for persons with interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of October 31, 1989. Subsequent Federal Register notices will add other State programs as they are approved. Training courses received by EPA prior to October 15, 1989, and subsequently approved will also be listed. Unit V contains a listing of all laboratories under the NIST accreditation program for laboratories that are conducting analyses of bulk samples of ACM. The February 1990 Federal Register notice will include new laboratory listings.

As published in the Federal Register of September 20, 1989, EPA is no longer accepting for review and contingent approval training courses for AHERA accreditation after October 15, 1989. However, a course's status may change after October 15. For example, a contingently approved course may become fully approved and a course with full approval may become disapproved. As mentioned in the September 1989 Federal Register notice, EPA has said it would continue to conduct full approval audits of courses that already have received contingent approval and review for contingent approval and subsequent full approval, courses received by EPA which had been postmarked on or before October 15, 1989. In the future, EPA may reach agreements with States that do not currently have an accreditation program, to turn over responsibility for auditing courses with contingent and full approval as these States develop accreditation programs.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA may approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately, rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, Arkansas, Colorado, Delaware, Indiana, Iowa, Kansas, Massachusetts, Michigan, Mimesota, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Colorado, Indiana, Iowa, Massachusetts, Michigan, North Dakota, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA- approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for the discipline. Current lists of training courses approved by Arkansas, Delaware, Massachusetts, Michigan, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, Utah, and Virginia are listed under Unit IV. Colorado, Indiana, Iowa, Kansas, Minnesota, Washington and Wisconsin do not have separate provider listings since the States have not independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of its courses to take the State exam. Therefore, those New Jersey-approved course sponsors who are contemplating presenting the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination as required by the Model Plan to the Regional Asbestos Coordinator in their region for EPA approval.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is included under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. As is noted in Unit III, interim accreditation is no longer in effect in all except seven States. Each course that had been approved for interim accreditation will show inclusive dates of this approval. EPA's deadline for interim accreditation will be discussed in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

Thus far, EPA has taken formal action to revoke or suspend course approvals in two instances. EPA revoked approval from Living Word College's inspector and management planner training courses offered after May 6, 1988. Living Word College is located in EPA Region VII. In addition, EPA has suspended approval from the Safety Management Institute's training courses and refresher courses for workers, inspectors/management planners, and contractors/supervisors. The effective date for the course suspensions is the first week of October 1989. Safety Management Institute is located in EPA Region III.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

State accreditation programs have the authority to have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being approved. It should be noted that the persons who have successfully completed these are fully accredited; they are not limited only to being accredited on an interim basis.

III. Phase out of Interim Accreditation

TSCA Title II enabled EPA to accredit persons on an interim basis if they attended previous EPA-approved asbestos training and passed a course examination. As a result, the Agency approved certain training courses offered previously for purposes of

accrediting persons on an interim basis. Only those persons who had taken training courses equivalent to the Model Plan's requirements between January 1, 1985 and December 14, 1987, were considered for interim-accreditaton under these provisions. An equivalent course means one that was essentially similar in length and content to the curriculum found in the Model Plan. In addition, the examination given for the course had to essentially meet the examination requirements found in the Model Plan. If no examination was offered at the time, course providers seeking interim approval needed to provide an examination.

Persons who took one of the EPA-approved courses for interim accreditation, and could produce evidence that they had successfully completed the course by passing an examination, were accredited on an interim basis. This accreditation was interim since the person was considered accredited for only one year after the date on which the State where the person was employed was required to have established an accreditation program at least as stringent as the EPA Model Plan. TSCA Title II requires States to adopt a contractor accreditation program at least as stringent as the Model Plan within 180 days after the first regular session of the State's legislature convened following the date EPA issued the Model Plan.

The deadline for all States to establish a complete accreditation program was July 1989. In fact, most States were required to have developed a program by July 1988. As a result, after July 1989, the period of interim accreditation expired for persons in all States but Arkansas, Montana, Nevada, North Carolina, Oregon, Pennsylvania, and Texas. In these seven States, the legislatures meet on a bi-annual basis and last met in January 1989; therefore, persons in those States with interim accreditation will not lose their interim status until July 1990. Of course some of the States have already developed EPA-approved State accreditation programs in some disciplines. In any other State that has not developed accreditation programs at least as stringent as the Model Plan, persons accredited on an interim basis are no longer eligible to conduct AHERA work. Such persons were required to complete an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan to receive full accreditation. For example, a person with interim accreditation as a supervisor would have to take a 4-day supervisor's course approved by EPA or an EPA-approved State program to become fully accredited.

In past **Federal Register** notices, EPA had also approved the Alaska and Washington State programs for purposes of providing interim accreditation to contractors, supervisors and workers. The State of Illinois had approval for interim accreditation purposes for abatement workers only. By now, these States should have already implemented full accreditation programs. As a result, AHERA interim accreditation, based on courses approved by these States under their programs which were less stringent than the Model Plan, is no longer valid.

Prior to July 1989, The New York City Department of Environmental Protection, Bureau of Air Resources had a training program for asbestos workers and contractors/supervisors that met the requirements for EPA approval of training courses for interim accreditation. As a result, persons who met the training requirements of the New York City Abatement Worker (i.e., "handler") or Contractor/Supervisor program between April 1, 1987, and December 14, 1987, were accredited as listed under Unit IV on an interim basis. However, after July 1989, asbestos abatement workers and contractors/supervisors who received interim accreditation under the New York City Department of Environmental Protection, Bureau of Air Resources training program were no longer eligible to do school asbestos work unless they had taken an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The ninth cumulative listing of EPA-approved State accreditation programs and training courses is listed in this Unit. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this ninth notice was October 31, 1989. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes).

As of October 31, 1989, a total of 532 training providers are offering 977 EPA-approved training courses for accreditation under TSCA Title II. There are 429 asbestos abatement worker courses, 330 contractor/supervisor courses, 176 inspector/management planner courses, 15 inspector only courses, and 27 project designer courses. In addition, EPA has approved 551 refresher courses. Eighteen States have EPA-approved State accreditation programs in one or more discipline.

The EPA-funded model course for inspectors and management planners is available. In addition, a previous EPA-developed course for asbestos abatement contractors and supervisors has been revised and is available in final form for interested parties who plan to offer training courses. EPA anticipates that its model worker course will be available in Spring 1990. A fee for each course will be charged to cover the reproduction and shipping costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468-1916.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

(1)(a) *State:* Arkansas.

State Agency: Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

Arkansas Department of Pollution Control and Ecology, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Arkansas Laborers Training Fund.

Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(ii)(a) *Training Provider:* Asbestos Training & Employment, Inc.

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iii)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88).
Contractor/Supervisor (Certified 9/12/88).

(iv)(a) *Training Provider:* Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(v)(a) *Training Provider:* Environmental Technologies.

Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569-3518.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Contractor/Supervisor (Certified 3/16/88).

(vi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2381.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).

(vii)(a) *Training Provider:* Professional Asbestos Training Service.

Address: P.O. Box 45233, Little Rock, AR 72214, Contact: Harold Lewis, Phone: (501) 562-1519.

(b) *Approved Courses:*

Abatement Worker (Certified 4/18/88).
Contractor/Supervisor (Certified 4/18/88).

(viii)(a) *Training Provider:* University of Arkansas.

Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.

(b) *Approved Course:*

Abatement Worker (Certified 10/7/88).

(2)(a) *State:* Colorado.

State Agency: Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 320-8333.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

(3)(a) *State:* Delaware.

State Agency: Delaware Dept. of Administrative Services, Address: O'Neill Building, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 736-5644.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).

Delaware Department of Administrative Services, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Delaware Technical & Community College Terry Campus.

Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/88).
Contractor/Supervisor (Certified 4/1/88).

(4)(a) *State:* Indiana.

State Agency: Indiana Department of Management, Address: 105 South Meridian St., P.O. Box 6015, Indianapolis, IN 46206-6015, Contact: Kathy Prosser, Phone: (317) 232-8162.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(5)(a) *State:* Iowa.

State Agency: Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

Iowa Department of Education Administrative Finance School Plant Facilities, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Iowa Environmental Services, Inc.

Address: 820 First St., Suite 200, West Des Moines, IA 50265, Contact: Glenn Sawyer, Phone: (515) 279-9042.

(b) *Approved Course:*

Abatement Worker (Certified 3/27/89).

(6)(a) *State:* Kansas.

State Agency: Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Howard F. Saiger, Phone: (913) 296-1544.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/8/86).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

(7)(a) *State:* Massachusetts.

State Agency: Massachusetts Dept. of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

Massachusetts Department of Health, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1256.

(b) *Approved Courses:*

* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).

(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.

Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mohen, Phone: (609) 692-0883.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Contractor/Supervisor (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(iii)(a) *Training Provider:* Asbestos Workers Union Local No. 6.

Address: 1725 Revere Beach Pkwy., Everett, MA 02149, Contact: James P. McCourt, Phone: (617) 387-2679.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).

(iv)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.

(b) *Approved Course:*

Abatement Worker (Certified 4/8/88).

(v)(a) *Training Provider:* Astral Environmental Assoc.

Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.

(b) *Approved Course:*

Abatement Worker (Certified 6/5/89).

(vi)(a) *Training Provider:* BCM Engineering.

Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(vii)(a) *Training Provider:* Briggs Associates, Inc.

Address: 400 Hingham St., P.O. Box 369, Rockland, MA 02370, Contact: Paul Skorohod, Phone: (617) 871-6040.

(b) *Approved Course:*

Project Designer (Certified 11/10/88).

(viii)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/88).
Abatement Worker Annual Review (Certified 9/26/88).
Contractor/Supervisor (Certified 9/26/88).
Contractor/Supervisor Annual Review (Certified 9/26/88).
Inspector/Management Planner (Certified 9/26/88).
Inspector/Management Annual Review (Certified 9/26/88).
Project Designer (Certified 9/26/88).

(ix)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(x)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).

(xi)(a) *Training Provider:* Environmental Training Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.

(b) *Approved Courses:*

Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).
Project Designer (Certified 8/5/88).

(xii)(a) *Training Provider:* Environmental Training Services.

Address: 115 New Boston St., Woburn, MA 01801, Contact: Kenneth P. Martin, Jr., Phone: (617) 938-6062.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).
Project Designer Annual Review (Certified 4/8/89).

(xiii)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).
Project Designer (Certified 9/6/88).

(xiv)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/88).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/88).
Inspector/Management Planner (Certified 4/25/88).
Inspector/Management Annual Review (Certified 4/25/88).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/88).

(xv)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgass, Phone: (617) 732-1171.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xvi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Courses:*

Abatement Worker (Certified 6/5/88).
Contractor/Supervisor (Certified 8/5/88).
Project Designer (Certified 8/5/88).

(xvii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Inspector/Management Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/89).

(xviii)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-0664.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/26/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/26/89).
Inspector/Management Planner (Certified 4/28/88).
Inspector/Management Annual Review (Certified 5/26/89).
Project Designer (Certified 4/28/88).

(xix)(a) *Training Provider:* JF Walton & Co.

Address: 201 Marginal St., P.O. Box 6120, Chelsea, MA 02150, Contact: Richard King, Phone: (617) 884-0350.

(b) *Approved Courses:*

Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xx)(a) *Training Provider:* Kaselaan & D'Angelo Associates.

Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: David Kaplan, Phone: (617) 472-1330.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(xxi)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/89).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Project Designer (Certified 1/11/89).

(xxii)(a) *Training Provider:* National Asbestos Training Center of Kansas.

Address: 6600 College Blvd., Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0161.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxiii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/88).

(xxiv)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2899, Contact: James Merloni, Jr., Phone: (617) 435-6318.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).

(xxv)(a) *Training Provider:* Northern Asbestos Abatement Co.

Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/89).
Contractor/Supervisor Annual Review (Certified 3/16/89).
Project Designer (Certified 3/16/89).
Project Designer Annual Review (Certified 3/16/89).

(xxvi)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 11/7/88).
Project Designer (Certified 11/7/88).

(xxvii)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/6/88).
Abatement Worker Annual Review (Certified 5/16/89).
Contractor/Supervisor (Certified 5/6/88).
Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxviii)(a) *Training Provider:* Safety Council of Western Massachusetts.

Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7908.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/88).
Abatement Worker Annual Review (Certified 6/21/89).
Project Designer (Certified 6/21/88).
Project Designer Annual Review (Certified 6/21/89).

(xxix)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2900.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/28/88).
Contractor/Supervisor Annual Review (Certified 10/28/88).
Inspector/Management Planner (Certified 10/28/88).
Project Designer (Certified 10/28/88).

(xxx)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3551.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/88).

Contractor/Supervisor Annual Review (Certified 3/16/89).
Inspector/Management Planner (Certified 3/16/88).
Inspector/Management Annual Review (Certified 3/16/89).
Project Designer (Certified 3/16/88).
Project Designer Annual Review (Certified 3/16/89).

(xxxi)(a) *Training Provider:* Universal Engineering Corp.

Address: 100 Boylston St., Boston, MA 02116, Contact: Janet Hester, Phone: (617) 542-8216.

(b) *Approved Courses:*

Project Designer (Certified 8/5/88).
Project Designer Annual Review (Certified 8/5/89).

(xxxii)(a) *Training Provider:* University of Massachusetts, Division of Environmental Health & Safety.

Address: N414 Morrill Science Center, Amherst, MA 01003, Contact: Donald Robinson, Phone: (413) 545-2682.

(b) *Approved Courses:*

Project Designer (Certified 10/3/88).
Project Designer Annual Review (Certified 10/3/88).

(xxxiii)(a) *Training Provider:* Weston-Atc, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/25/89).
Contractor/Supervisor Annual Review (Certified 5/25/89).
Inspector/Management Planner (Certified 5/25/89).
Inspector/Management Annual Review (Certified 5/25/89).
Project Designer (Certified 5/25/89).
Project Designer Annual Review (Certified 5/25/89).

(8)(a) *State:* Michigan.

State Agency: State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335-8186.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/13/89).
Contractor/Supervisor (full from 4/13/89).
Inspector (full from 4/13/89).
Inspector/Management Planner (full from 4/13/89).
Project Designer (full from 4/13/89).

Michigan Department of Public Health, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* BDN INDUSTRIAL Hygiene Consult.

Address: 8105 Valleywood Ln., Portage, MI 49002, Contact: Brent Bassett, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (Certified 11/9/89).
Abatement Worker Annual Review (Certified 11/9/89).
Contractor/Supervisor (Certified 11/9/89).
Contractor/Supervisor Annual Review (Certified 11/9/89).

(ii)(a) *Training Provider:* Barton Associates.

Address: 1265 Westport Rd., Ann Arbor, MI 48103, Contact: Sara Bassett, Phone: (313) 665-3681.

(b) *Approved Course:*

Contractor/Supervisor (Certified 9/15/89).

(iii)(a) *Training Provider:* EMU Corporate Services.

Address: 3075 Washtenaw Ave., Ypsilanti, MI 48197, Contact: Bertrand Ramsay, Phone: (313) 487-2259.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 11/1/89).

(iv)(a) *Training Provider:* ENTELA Engineering Service.

Address: 4020 W. River Dr., Comstock Park, MI 49321, Contact: Bruce H. Cornell, Phone: (616) 784-7774.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/89).
Contractor/Supervisor (Certified 9/26/89).

(v)(a) *Training Provider:* Fibertec Inc.

Address: 700 Abbott Rd., East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/4/89).

(vi)(a) *Training Provider:* Jensen Environmental & Training.

Address: 651 Fisher Rd., Grosse Pointe, MI 48230, Contact: Leonard L. Jensen, Phone: (313) 882-2021.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 8/10/89).
Contractor/Supervisor Annual Review (Certified 8/10/89).

(vii)(a) *Training Provider:* Michigan Laborers' Training.

Address: 11155 S. Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/89).
Abatement Worker Annual Review (Certified 9/12/89).
Contractor/Supervisor (Certified 9/12/89).
Contractor/Supervisor Annual Review (Certified 9/12/89).

(viii)(a) *Training Provider:* Testing Engineers & Consultant.

Address: 1333 Rochester Rd., Troy, MI 48099, Contact: Karen Brunch, Phone: (313) 588-6200.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 11/13/89).
Inspector/Management Annual Review (Certified 11/13/89).

(9)(a) *State:* Minnesota.

State Agency: Minnesota Dept. of Health Section of Occupational Health, Address: 717 Southeast Delaware St., Minneapolis, MN 55440-9441, Contact: William A. Fetzner, Phone: (612) 623-5380.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/3/88).
Contractor/Supervisor (full from 10/3/88).

(10)(a) *State:* New Jersey.

State Agency: State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).

New Jersey Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

*NOTE.--New Jersey approved course providers who present the training in another State must develop their own examination. They must also submit a detailed statement about the development of the course examination, as required by the Model Plan, to the Regional Asbestos Coordinator in their Region for EPA approval.

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Williams Roberts, Phone: (800) 526-0500.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Contractor/Supervisor (Certified 5/20/85).

(ii)(a) *Training Provider:* Alternative Ways.

Address: Barclay Pavilion, Suite 222 E, Rte. 70 E, Cherry Hill, NJ 08034, Contact: James Mitchell, Phone: (609) 795-1991.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/85).
Contractor/Supervisor (Certified 4/25/85).

(iii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Carol Pacquin, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (Certified 6/17/87 to 9/28/89 only).
Contractor/Supervisor (Certified 6/17/87 to 9/28/89 only).

(iv)(a) *Training Provider:* Asbestos Training Academy - NJ.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Jean Bodman or Ron Rominski, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/85).
Contractor/Supervisor (Certified 5/1/85).

(v)(a) *Training Provider:* Asbestos Training Academy - NY.

Address: 315 West 36th St., 9th Fl., New York, NY 10018, Contact: R. Green or C. Hicks, Phone: (212) 971-0370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/20/88).
Contractor/Supervisor (Certified 9/20/88).

(vi)(a) *Training Provider:* Asbestos Training Institute- LVI, Inc.

Address: 64 South State St., South Hackensack, NJ 07606, Contact: Roger Bason, Phone: (201) 343-5133.

(b) *Approved Courses:*

Abatement Worker (Certified 3/4/87).
Contractor/Supervisor (Certified 3/4/87).

(vii)(a) *Training Provider:* BCM Eastern, Inc.

Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: R. Ferguson or C. Sterchak, Phone: (215) 825-3800.

(b) *Approved Courses:*

Abatement Worker (Certified 6/7/87).
Contractor/Supervisor (Certified 6/7/87).

(viii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.

Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi, Phone: (201) 521-0200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/19/85).
Contractor/Supervisor (Certified 7/19/85).

(ix)(a) *Training Provider:* Certified Abatement Technologies, Inc.

Address: 47 Midland Ave., Elmwood Park, NJ 07407, Contact: Daniel Curtin, Phone: (201) 796-9589.

(b) *Approved Courses:*

Abatement Worker (Certified 6/3/87).
Contractor/Supervisor (Certified 6/3/87).

(x)(a) *Training Provider:* Drexel University.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2154.

(b) *Approved Courses:*

Abatement Worker (Certified 4/13/88).
Contractor/Supervisor (Certified 4/13/88).

(xi)(a) *Training Provider:* E.I. DuPont DeNemours & Co.

Address: Chamber Works, Deepwater, NJ 08023, Contact: Charles Battle or Helen Giova, Phone: (609) 540-2434.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/86).
Abatement Worker Annual Review (Certified 6/12/89).
Contractor/Supervisor (Certified 5/1/86).
Contractor/Supervisor Annual Review (Certified 6/12/89).

(xii)(a) *Training Provider:* IT Corporation.

Address: 17461 Derian Ave., Suite 190, Irvine, CA 92714, Contact: Keith Soesbe, Phone: (714) 261-6441.

(b) *Approved Courses:*

Abatement Worker (Certified 8/29/85).
Contractor/Supervisor (Certified 8/29/85).

(xiii)(a) *Training Provider:* Kaselaan & D' Angelo Associates - NY.

Address: 220 5th Ave; 17th Floor, New York, NY 10001, Contact: L. Fredericks/M. Cox-Abdalla, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (Certified 8/28/89).
Contractor/Supervisor (Certified 8/28/89).

(xiv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.

Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Steven L'Erario, Phone: (609) 547-6500.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Contractor/Supervisor (Certified 5/8/85).

(xv)(a) *Training Provider:* Local Union No. 14.

Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens/Lewis Fitzgerald, Phone: (215) 533-0395.

(b) *Approved Courses:*

Abatement Worker (Certified 8/9/85).
Contractor/Supervisor (Certified 8/9/85).

(xvi)(a) *Training Provider:* Local Union No. 32.

Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini/John Dwyer, Phone: (201) 485-3626.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/87).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/8/87).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xvii)(a) *Training Provider:* Local Union No. 42.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Joseph Noble, Phone: (302) 328-4203.

(b) *Approved Courses:*

Abatement Worker (Certified 10/30/85).
Contractor/Supervisor (Certified 10/30/85).

(xviii)(a) *Training Provider:* Local Union No. 89.

Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo/John DaBronzo, Phone: (609) 587-0092.

(b) *Approved Courses:*

Abatement Worker (Certified 5/13/86).
Contractor/Supervisor (Certified 5/13/86).

(xix)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.

Address: 675 Hoes Ln., Piscataway, NJ 08854, Contact: Lee Laustsen/Doris Daneluk, Phone: (201) 463-4500.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Contractor/Supervisor (Certified 7/1/86).

(xx)(a) *Training Provider:* NDI Training Institute.

Address: 7112 Airport Highway, Pennsauken, NJ 08109, Contact: J. Rodney Walton/John O'Brien, Phone: (609) 663-5042.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/86).
Contractor/Supervisor (Certified 9/13/86).

(xxi)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact:

T. Laubenthal or V. Cornwell, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/13/87).
Contractor/Supervisor (Certified 1/13/87).

(xxii)(a) *Training Provider:* National Asbestos Training Institute.

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler or Lisa Criscuolo, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (Certified 5/3/85).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/3/85).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xxiii)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/88 to 6/22/89 only).
Contractor/Supervisor (Certified 1/16/88 to 6/22/89 only).

(xxiv)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).

(xxv)(a) *Training Provider:* Northeastern Analytical.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: R. Holwitt/M. Dutkiewicz, Phone: (609) 985-8000.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Abatement Worker Annual Review (Certified 6/30/89).
Contractor/Supervisor (Certified 5/20/85).
Contractor/Supervisor Annual Review (Certified 6/30/89).

(xxvi)(a) *Training Provider:* Princeton Testing Laboratory.

Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3108, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 6/14/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 6/14/89).

(xxvii)(a) *Training Provider:* Temple University.

Address: 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Benarde/Lester Levin, Phone: (215) 787-6394.

(b) *Approved Courses:*

Abatement Worker (Certified 11/24/87).
Contractor/Supervisor (Certified 11/24/87).

(xxviii)(a) *Training Provider:* White Lung Association - NJ.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: A. Legoretta/C. Anderson, Phone: (201) 624-2623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/21/85).
Contractor/Supervisor (Certified 5/21/85).

(xxix)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Nelson Helu/Barbara Zeluck, Phone: (212) 619-2270.

(b) *Approved Courses:*

Abatement Worker (Certified 9/21/88).
Contractor/Supervisor (Certified 9/28/88).

(11)(a) *State:* North Dakota.

State Agency: State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 224-2348.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/21/89).
Contractor/Supervisor (full from 4/21/89).
Inspector (full from 4/21/89).
Inspector/Management Planner (full from 4/21/89).
Project Designer (full from 4/21/89).

North Dakota State Department of Health and Consolidated Laboratories, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.

Address: Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2200.

(b) *Approved Course:*

Abatement Worker (Certified 6/30/89).

(ii)(a) *Training Provider:* Survey Management and Design.

Address: R.R. 2 Box 85-B, Fargo, ND 58102, Contact: Dave Sohm, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 8/10/89).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 8/10/89).
Inspector/Management Planner (Certified 9/14/89).

(iii)(a) *Training Provider:* University of North Dakota.

Address: University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Contractor/Supervisor (Certified 6/13/89).

(12)(a) *State:* Oregon.

State Agency: State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204, Contact: Bruce E. Arnold, Phone: (503) 229-5506.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/23/88).
Contractor/Supervisor (full from 9/23/88).

Oregon Department of Environmental Quality, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* Asbestos Training Project Workplace Resources.

Address: P.O. Box 11053, Eugene, OR 97440, Contact: Wendy Wiles, Phone: (503) 345-7393.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/89).

(ii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 5319 Southwest Westgate, Suite 239, Portland, OR 97221, Contact: Kelly Champion, Phone: (503) 292-9406.

(b) *Approved Courses:*

Abatement Worker (Certified 12/28/88).
Contractor/Supervisor (Certified 9/7/89).

(iii)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 Southwest Barbur, Portland, OR 97219, Contact: Tom Natsch, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.

Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 288-2950.

(b) *Approved Course:*

Abatement Worker (Certified 12/3/88 to 9/18/89 only).

(vi)(a) *Training Provider:* NAC Corporation.

Address: 1005 NW Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Course:*

Abatement Worker (Certified 3/23/89).

(vii)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: P.O. Box 169, Washougal, WA 98671, Contact: Cindi Rice, Phone: (206) 835-8576.

(b) *Approved Courses:*

Abatement Worker (Certified 12/14/88).
Contractor/Supervisor (Certified 12/14/88).

(13)(a) *State:* Rhode Island.

State Agency: State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., Three Capitol Hill, Providence, RI 02908, Contact: William Dundulis, Jr., Phone: (401) 277-3601.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).

Rhode Island Department of Health, EPA-Approved Courses for Abatement Workers and Contractors/Supervisors

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.

(b) *Approved Course:*

Contractor/Supervisor (Certified 3/31/89).

(ii)(a) *Training Provider:* Analytical Testing Services, Inc.

Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/10/88).
Contractor/Supervisor Annual Review (Certified 12/10/88).
Initial Supervisor 6 Hour Supplement (Certified 1/24/89).

(iii)(a) *Training Provider:* Center for Environmental Management-Tufts University.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/88).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/88).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(iv)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 8/22/89).
Abatement Worker Annual Review (Certified 8/22/89).
Contractor/Supervisor (Certified 8/22/89).
Contractor/Supervisor Annual Review (Certified 8/22/89).

(v)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessler, Phone: (401) 333-7166.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(vi)(a) *Training Provider:* Con-Test Educational Center.

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1196.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/88).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(vii)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Lion, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(viii)(a) *Training Provider:* Environmental Training Services.

Address: 115 New Boston St., Woburn, MA 01801, Contact: Kenneth P. Martin, Jr., Phone: (617) 938-6062.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
Initial Supervisor 6 Hour Supplement (Certification Pending).

(ix)(a) *Training Provider:* Georgia Institute of Technology/GTRI.

Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.

(b) *Approved Courses:*

Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(x)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(xi)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.

Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6666.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xii)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Course:*

Abatement Worker (Certified 1/31/89).

(xiii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xiv)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xv)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8803.

(b) *Approved Course:*

Contractor/Supervisor (Certified 1/31/89).

(xvi)(a) *Training Provider:* NAACO.

Address: 790 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor Annual Review (Certified 4/3/89).
Initial Supervisor 6 Hour Supplement (Certified 4/3/89).

(xvii)(a) *Training Provider:* National Asbestos Council, (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.

(b) *Approved Course:*

Abatement Worker (Certified 9/5/86).

(xviii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW, Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xix)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor Annual Review (Certified 2/15/89).
Initial Supervisor 6 Hour Supplement (Certified 2/15/89).

(xx)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

(xxi)(a) *Training Provider:* Safe Environment Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

(14)(a) *State:* South Dakota.

State Agency: Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Tammy LeBeau, Phone: (605) 773-3153.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

South Dakota Department of Water and Natural Resources, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Black Hills Special Services Cooperative.

Address: Box 218, Sturgis, SD 57784, Contact: Jim Doolittle, Phone: (605) 347-4467.

(b) *Approved Courses:*

Abatement Worker (Certified 3/22/89).
Contractor/Supervisor (Certified 3/22/89).
Inspector/Management Planner (Certified 3/22/89).

(ii)(a) *Training Provider:* Enviro-safe Inc.

Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.

(b) *Approved Courses:*

Abatement Worker (Certified 2/28/89).
Contractor/Supervisor (Certified 2/28/89).
Inspector/Management Planner (Certified 2/28/89).

(iii)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.

Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4961.

(b) *Approved Courses:*

Abatement Worker (Certified 4/20/89).
Contractor/Supervisor (Certified 4/20/89).

(iv)(a) *Training Provider:* Iowa Laborers Training Fund.

Address: 5806 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-0965.

(b) *Approved Course:*

Abatement Worker (Certified 3/22/88).

(v)(a) *Training Provider:* South Dakota State University College of Engineering.

Address: P.O. Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4107.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).
Inspector/Management Planner (Certified 5/18/88).

(15)(a) *State:* Utah.

State Agency: Utah Dept. of Health Bureau of Air Quality, Address: 288 North 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 538-6105.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).

Project Designer (full from 7/8/88).

Utah Bureau of Air Quality, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* R.S. Christiansen Asbestos Consultants, Inc.

Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 7/28/89).

(16)(a) *State:* Virginia.

State Agency: Commonwealth of Virginia Dept. of Commerce, Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Peggy J. Wood, Phone: (804) 367-8595.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).

Virginia Department of Commerce, EPA-Approved Courses for Abatement Workers, Contractors/Supervisors, Inspectors/Management Planners, and Project Designers

(i)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 7th St., SE, 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/88).
Contractor/Supervisor (Certified 3/2/88).
Inspector/Management Planner (Certified 3/2/88).

(ii)(a) *Training Provider:* Asbestos Analytical Association.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 397-8939.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/88).
Contractor/Supervisor (Certified 7/27/88).
Inspector/Management Planner (Certified 7/27/88).

(iii)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 309-3900.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/88).
Contractor/Supervisor (Certified 9/13/88).
Inspector/Management Planner (Certified 9/13/88).

(iv)(a) *Training Provider:* Briggs Assoc. Inc.

Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(b) *Approved Course:*

Abatement Worker (Certification Pending).

(v)(a) *Training Provider:* Critical Environmental.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Dr. Ronald F. Dodson, Phone: (713) 921-8021.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).

(vi)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.

Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.

(b) *Approved Courses:*

Abatement Worker (Certified 5/11/88).
Contractor/Supervisor (Certified 5/11/88).

(vii)(a) *Training Provider:* Environmental Specialties, Inc.

Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-1541.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(viii)(a) *Training Provider:* Fluor Daniel.

Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2166.

(b) *Approved Courses:*

Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).

(ix)(a) *Training Provider:* GST Company.

Address: 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(x)(a) *Training Provider:* Georgia Tech Research Group.

Address: Georgia Tech Institute of Technology, Atlanta, GA 30332.

Contact: Vicki H. Ainslie, Phone: (404) 853-3906.

(b) *Approved Course:*

Contractor/Supervisor (Certified 5/1/89).

(xi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4940 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/88).
Contractor/Supervisor (Certified 5/23/88).
Inspector (Certified 5/23/88).

(xii)(a) *Training Provider:* Hazard Abatement Consultants.

Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/89).

(xiii)(a) *Training Provider:* Ind-Tra-Co., Ltd.

Address: 18 South 22nd St., Richmond, VA 23223, Contact: Fred Breive, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (Certified 3/7/88).
Contractor/Supervisor (Certified 3/7/88).
Inspector/Management Planner (Certified 3/7/88).

(xiv)(a) *Training Provider:* Industrial Training & Support Services.

Address: P.O. Box 496, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.

(b) *Approved Course:*

Abatement Worker (Certified 10/22/88).

(xv)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-0664.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector (Certification Pending).

(xvi)(a) *Training Provider:* Jenkins Professionals Inc.

Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Course:*

Contractor/Supervisor (Certification Pending).

(xvii)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund.

Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-8148.

(b) *Approved Course:*

Abatement Worker (Certified 8/8/88).

(xviii)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1055.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).

(xix)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.

Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (Certified 5/19/89).
Contractor/Supervisor (Certified 5/19/89).

(xx)(a) *Training Provider:* Medical College of Virginia Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Abatement Worker (Certified 12/8/87).
Contractor/Supervisor (Certified 12/8/87).
Inspector/Management Planner (Certified 12/8/87).

(xxi)(a) *Training Provider:* Metropolitan Laboratories.

Address: P.O. Box 8921, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.

(b) *Approved Courses:*

Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).

(xxii)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.

Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2940.

(b) *Approved Course:*

Abatement Worker (Certified 6/15/88).

(xxiii)(a) *Training Provider:* Old Dominion University.

Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 440-4256.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).
Inspector/Management Planner (Certified 6/8/88).

(xxiv)(a) *Training Provider:* Quality Specialties, Inc.

Address: 109 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 748-9606.

(b) *Approved Course:*

Abatement Worker (Certified 5/3/88).

(xxv)(a) *Training Provider:* Roy F. Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Whittington, Phone: (205) 826-6100.

(b) *Approved Course:*

Inspector/Management Planner (Certified 6/1/89).

(xxvi)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.

(b) *Approved Course:*

Abatement Worker (Certified 6/10/88).

(xxvii)(a) *Training Provider:* The Francis L. Greenfield Institute.

Address: Route 6344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.

(b) *Approved Course:*

Abatement Worker (Certified 10/10/88).

(xxviii)(a) *Training Provider:* Tidewater Community College.

Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7198.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/89).

(xxix)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.

Address: 106 Midmont Lake, Charlottesville, VA 22903, Contact: Gregory Pels, Phone: (804) 924-7114.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/88).

(xxx)(a) *Training Provider:* Waco, Inc.

Address: Highway 925, N, Waldorf, MD 20601, Contact: Wayne Cooper, Phone: (301) 843-2488.

(b) *Approved Courses:*

Abatement Worker (Certified 10/31/88).
Contractor/Supervisor (Certified 10/31/88).

(xxxi)(a) *Training Provider:* White Lung Association.

Address: 1114 Cathedral St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 289-3529.

(b) *Approved Course:*

Inspector/Management Planner (Certified 7/11/88).

(17)(a) *State:* Washington.

State Agency: Washington Department of Labor and Industries, Division of Industrial Safety and Health, Address: 805 Oplum St., SE, Olympia, WA 98504, Contact: Steve Cant, Phone: (206) 753-6497.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).

(18)(a) *State:* Wisconsin.

State Agency: Department of Health & Social Services, Division of Health, Address: 1 West Wilson St., P.O. Box 309, Madison, WI 53701-0309, Contact: Patricia A. Goodrich, Phone: (608) 266-3581.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

EPA-Approved Training Courses

REGION I -- Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Brooks Safe & Sound, Inc.

Address: 44 Codfish Ln., Weston, CT 06883, Contact: Allan Griffin, Phone: (203) 226-6970.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 11/1/89).

(2)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/86).

Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).

(3)(a) *Training Provider:* Ecosystems, Inc.

Address: 266 Mian St., Suite 19, Medfield, MA 02052, Contact: Richard Doyle, Phone: (617) 239-8181.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 10/5/87).

(4)(a) *Training Provider:* Enviromed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 1/30/89).

(5)(a) *Training Provider:* Environmental Training Services.

Address: 12 Walnut Hill Park, P.O. Box 808, Woburn, MA 01801, Contact: Kenneth P. Martin, Phone: (617) 396-0348.

(b) *Approved Course:*

Abatement Worker (contingent from 4/22/88).

(6)(a) *Training Provider:* Hygientics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: John W. Cowdery, Phone: (617) 723-4664.

(b) *Approved Course:*

Inspector (contingent from 10/2/87).

(7)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.

Address: 915 Bridgeport Ave., Shelton, CT 06484, Contact: Angela D. Rath, Phone: (203) 929-1131.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 11/1/89).

(8)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Park, Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 8/12/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/28/89).
Project Designer Refresher Course (contingent from 8/8/89).

(9)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.

Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 235-3547.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 7/27/88).

(10)(a) *Training Provider:* Maine Labor Group on Health, Inc.

Address: P.O. Box V, Augusta, ME 04330, Contact: Diane White, Phone: (207) 622-7823.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/87).
Abatement Worker Refresher Course (contingent from 10/17/88).
Contractor/Supervisor (contingent from 5/12/87).
Contractor/Supervisor Refresher Course (full from 3/28/89).

(11)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: Route 97 & Murdock Rd., P.O. Box 77, Pomfret Center, CT 06259, Contact: Gennaro L. pore, Phone: (203) 974-1455.

(b) *Approved Course:*

Abatement Worker (contingent from 5/25/89).

(12)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748, Contact: Jim Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).

(13)(a) *Training Provider:* Radiation Safety Associates, Inc.

Address: P.O. Box 107, 16 Pendleton Dr., Hebron, CT 06248, Contact: Joseph T. Althouse, Phone: (203) 228-0487.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).

(14)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

EPA-Approved Training Courses

REGION II -- Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAC Contracting, Inc.

Address: 243 Paul Rd., Rochester, NY 14624, Contact: Kevin T. Cannan, Phone: (716) 328-7010.

(b) *Approved Course:*

Abatement Worker (contingent from 5/8/89).

(2)(a) *Training Provider:* ATC Environmental, Inc.

Address: 104 East 25th St., New York, NY 10010, Contact: David V. Chambers, Phone: (212) 353-8280.

(b) *Approved Courses:*

Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).

Inspector/Management Planner (full from 3/6/89).

(3)(a) *Training Provider:* Abatement Safety Training Institute.

Address: 323 West 39th St., New York, NY 10018, Contact: Jay Sall, Phone: (212) 629-8400.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/25/88).

Contractor/Supervisor (contingent from 10/25/88).

Inspector/Management Planner (contingent from 3/9/88).

Inspector/Management Planner (full from 3/21/88).

Inspector/Management Planner Refresher Course (contingent from 1/11/89).

Inspector/Management Planner Refresher Course (full from 1/30/89).

(4)(a) *Training Provider:* Adelaide Environmental Health Associates.

Address: 61 Front St., Binghamton, NY 13905-4705, Contact: William S. Carter, Phone: (607) 722-6839.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(5)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).

Address: P.O. Box 1346, Schenectady, NY 12301, Contact: Kevin Pilgrim, Phone: (518) 374-4801.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/8/89).

Contractor/Supervisor (contingent from 6/8/89).

(6)(a) *Training Provider:* Albany-Schaharie-Schenectady BOCES.

Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/20/89).

Contractor/Supervisor (contingent from 7/20/89).

Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(7)(a) *Training Provider:* Allegheny Council on Occupational Health.

Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.

(b) *Approved Course:*

Abatement Worker (contingent from 7/26/89).

(8)(a) *Training Provider:* Allwash of Syracuse, Inc.

Address: P.O. Box 605, Syracuse, NY 13201, Contact: Ronald D. Roy, Phone: (315) 454-4476.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/16/87).

Abatement Worker (full from 12/7/88).

Abatement Worker Refresher Course (contingent from 12/15/88).

Contractor/Supervisor (contingent from 1/30/89).

Contractor/Supervisor Refresher Course (contingent from 10/17/89).

(9)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.

Address: Barclay Pavilion E, Suite 222, Route 70, Cherry Hill, NJ 08034, Contact: Linda A. Pardi, Phone: (609) 795-1991.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/88).

Contractor/Supervisor (contingent from 4/11/88).

Inspector/Management Planner (contingent from 4/22/88).

Inspector/Management Planner (full from 5/26/88).

Inspector/Management Planner Refresher Course (contingent from 1/18/89).

(10)(a) *Training Provider:* Anderson International.

Address: RD 2, North Main Street Extension, Jamestown, NY 14701, Contact: Sally L. Gould, Phone: (716) 004-4026.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).

Contractor/Supervisor (contingent from 12/29/88).

(11)(a) *Training Provider:* Applied Respiratory Technology.

Address: P.O. Box 1132, Peekskill, NY 10566, Contact: Paul M. Madigan, Phone: (914) 431-6421.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).

Abatement Worker (full from 11/28/88).

Abatement Worker Refresher Course (contingent from 10/19/88).

Contractor/Supervisor (contingent from 8/11/88).

Contractor/Supervisor (full from 11/28/88).

Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(12)(a) *Training Provider:* Asbestos Control Management, Inc.

Address: 126 South Third St., Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.

(b) *Approved Course:*

Abatement Worker (contingent from 5/5/89).

(13)(a) *Training Provider:* Asbestos Training Academy, Inc.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Maryann Brady, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).

Abatement Worker (full from 11/7/88).

Contractor/Supervisor (contingent from 9/15/88).

Contractor/Supervisor (full from 11/7/88).

Inspector (contingent from 4/27/89).

(14)(a) *Training Provider:* Asteco, Inc.

Address: P.O. Box 2204, Niagara University, Niagara, NY 14109, Contact: John Larson, Phone: (716) 297-5992.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).

Abatement Worker (full from 4/13/88).

Abatement Worker Refresher Course (contingent from 12/20/88).

(15)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary DiPalo, Jr., Phone: (718) 387-0011.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).

Abatement Worker (full from 4/18/88).

Contractor/Supervisor (contingent from 9/20/89).

Inspector (contingent from 1/18/89).

(16)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.

Address: 431 Philo Road, Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/89).

Abatement Worker Refresher Course (contingent from 6/1/89).

Contractor/Supervisor (contingent from 6/1/89).

Contractor/Supervisor Refresher Course (contingent from 6/1/89).

Inspector/Management Planner Refresher Course (contingent from 6/1/89).

(17)(a) *Training Provider:* Board of Cooperative Education Services of Rensselaer & Green Counties New York.

Address: 1550 Schuurman Road, Castleton, NY 12033, Contact: Paul Bowler, Phone: (518) 732-7266.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/10/89).

(18)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.

Address: 507 Deer Park Rd., Dix Hills, NY 11746, Contact: Ciro Aiello, Phone: (516) 667-6000 X 300.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/6/89).

Contractor/Supervisor (contingent from 2/6/89).

(19)(a) *Training Provider:* Board of Cooperative Educational Services of Rensselear, (Columbia) & Green Counties of New York.

Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Paul D. Bowler, Phone: (518) 732-7266.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/10/89).

Inspector/Management Planner (contingent from 4/10/89).

(20)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing ED.

Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Edward J. Milliken, Phone: (516) 563-2954.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).

Abatement Worker Refresher Course (contingent from 6/16/89).

Contractor/Supervisor (contingent from 3/27/89).

Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(21)(a) *Training Provider:* Branch Services, Inc.

Address: 1255 Lakeland Ave., Bohemia, NY 11716, Contact: Luis Sanders, Phone: (516) 563-7300.

(b) *Approved Course:*

Abatement Worker (contingent from 6/1/89).

(22)(a) *Training Provider:* Buffalo Laborers Training Fund.

Address: 481 Franklin St., Buffalo, NY 14202, Contact: Victor J. Sansanese, Phone: (716) 884-7157.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).

Abatement Worker Refresher Course (contingent from 8/8/89).

(23)(a) *Training Provider:* Building Laborers Local Union No. 17.

Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562-1121.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(24)(a) *Training Provider:* Calibrations, Inc.

Address: 802 Watervliet - Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 318-1893.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).

Abatement Worker (full from 12/5/88).

Abatement Worker Refresher Course (contingent from 3/6/89).

Contractor/Supervisor (contingent from 9/28/88).

Contractor/Supervisor (full from 12/5/88).

Contractor/Supervisor Refresher Course (contingent from 3/6/89).

Inspector/Management Planner (contingent from 9/28/88).

Inspector/Management Planner Refresher Course (contingent from 3/6/89).

Project Designer (full from 5/23/88).

Project Designer Refresher Course (contingent from 3/6/89).

(25)(a) *Training Provider:* Cayuga-Onondaga BOCES.

Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*

Abatement Worker (contingent from 6/17/88).

(26)(a) *Training Provider:* Comprehensive Analytical Group.

Address: , NY 13206, Contact: , Phone: (315) 432-0855.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).

Abatement Worker Refresher Course (contingent from 4/25/89).

Contractor/Supervisor (contingent from 3/29/89).

Contractor/Supervisor Refresher Course (contingent from 5/18/89).

Inspector (contingent from 10/27/89).

(27)(a) *Training Provider:* Ecology & Environment, Inc.

Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/7/89).

(28)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.

Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-6001.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).

Abatement Worker Refresher Course (contingent from 10/20/88).

Abatement Worker Refresher Course (full from 10/22/88).

(29)(a) *Training Provider:* Edward O. Watts & Associates.

Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4827.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).

Abatement Worker Refresher Course (contingent from 3/3/89).

Contractor/Supervisor (contingent from 7/12/89).

Contractor/Supervisor Refresher Course (contingent from 3/3/89).

(30)(a) *Training Provider:* Environmental Training, Inc.

Address: 661 Fulton St., Brooklyn, NY 11217, Contact: Nelson Helu, Phone: (718) 625-4300.

(b) *Approved Course:*

Abatement Worker (contingent from 4/25/88).

(31)(a) *Training Provider:* General Bldg. Laborer's Local Union No. 66.

Address: 288 Middle Island Rd., Medford, NY 11763, Contact: Michael Barbara, Phone: (516) 249-1110.

(b) *Approved Course:*

Abatement Worker (full from 8/10/89).

(32)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.

Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).

Contractor/Supervisor (contingent from 10/31/88).

(33)(a) *Training Provider:* Hudson Asbestos Training Institute.

Address: 609 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2656.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).

Abatement Worker (full from 3/13/89).

Contractor/Supervisor (contingent from 1/30/89).

(34)(a) *Training Provider:* Hunter College Asbestos Training Center/ United Brotherhood of Carpenters & Joiners of America.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.

(b) *Approved Courses:*

Abatement Worker (full from 7/1/88).

Abatement Worker Refresher Course (contingent from 6/20/89).

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Contractor/Supervisor (full from 7/1/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/89).
(35)(a) *Training Provider:* Hygeia Research & Training.
Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/88).
Abatement Worker (full from 5/6/88).
Abatement Worker Refresher Course (contingent from 12/12/88).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/88).
(36)(a) *Training Provider:* Institute of Asbestos Awareness.
Address: 2 Heitz Pl., Suite 1000, Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.
(b) *Approved Courses:*
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 3/8/89).
Contractor/Supervisor (full from 10/24/88).
Contractor/Supervisor Refresher Course (contingent from 3/8/89).
Inspector/Management Planner (contingent from 9/28/88).
Inspector/Management Planner (full from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 3/8/89).
Project Designer (contingent from 9/26/89).
(37)(a) *Training Provider:* Institute of Asbestos Technology Corp.
Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Doreen E. Bianchi, Phone: (315) 437-1307.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 12/20/88).
Contractor/Supervisor (contingent from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner Refresher Course (contingent from 10/27/89).
(38)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.
Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/15/89).
Contractor/Supervisor (contingent from 3/27/89).
Inspector/Management Planner (contingent from 2/12/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (full from 4/27/89).
(39)(a) *Training Provider:* Korean Asbestos Training Center.
Address: 46-12 Queens Blvd, Long Island City, NY 11104, Contact: Tchang S. Bahrk, Phone: (718) 361-6464.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/11/89).
Abatement Worker Refresher Course (contingent from 5/22/89).
Contractor/Supervisor (contingent from 5/11/89).
Contractor/Supervisor Refresher Course (contingent from 5/22/89).
(40)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.
Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 2/15/89).
Contractor/Supervisor (contingent from 8/22/89).
(41)(a) *Training Provider:* Lozier Architects/Engineers.
Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Coyne, Phone: (716) 223-7610.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/12/89).
Abatement Worker Refresher Course (contingent from 7/12/89).
(42)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.
Address: 444 Park Ave. S, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/15/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 8/25/89).
Contractor/Supervisor (contingent from 10/18/88).
Contractor/Supervisor (full from 12/5/88).
(43)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDMJ Robert Wood Johnson Medical School.
Address: 675 Hoes Ln., Piscataway, NJ 08854-5635, Contact: Lee Laustsen, Phone: (201) 463-4500.
(b) *Approved Courses:*
Abatement Worker (full from 7/28/86).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (full from 7/28/86).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (full from 11/18/88).
Project Designer Refresher Course (contingent from 10/17/89).
(44)(a) *Training Provider:* Monroe Community College of Rochester, New York.
Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 272-9839.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 4/26/89).
(45)(a) *Training Provider:* National Asbestos Training Institute (NATI).
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 10/20/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 6/13/88).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 5/25/89).
Project Designer (contingent from 11/3/89).
Project Designer Refresher Course (contingent from 10/20/89).
(46)(a) *Training Provider:* National Institute on Abatement Science & Technology (NIAST).
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2536.
(b) *Approved Courses:*
Inspector (contingent from 3/8/88).
Inspector (full from 4/11/88).
(47)(a) *Training Provider:* New York University School of Continuing Education Real Estate Institute, The Midtown Center.

Address: 11 West 42nd St., New York, NY 10036, Contact: Charles Schwartz, Phone: (212) 790-1344.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 5/18/89).
Inspector/Management Planner Refresher Course (contingent from 6/8/89).
Project Designer (contingent from 5/18/89).
Project Designer Refresher Course (contingent from 6/8/89).
(48)(a) *Training Provider:* Niagara County Community College.
Address: 160 Washburn St., Lockport, NY 14094, Contact: Eugene Zinni, Phone: (716) 731-3271.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (contingent from 1/23/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor (full from 2/19/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 5/18/88).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
(49)(a) *Training Provider:* Northeastern Analytical Corporation.
Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Robert Howlitt, Phone: (609) 985-8000.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/17/89).
(50)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin C. Tifft, Jr., Phone: (315) 451-4700.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/19/89).
Abatement Worker (full from 4/10/89).
Contractor/Supervisor (contingent from 1/19/89).
Contractor/Supervisor (full from 4/10/89).
Inspector/Management Planner (full from 10/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
(51)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.
Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
(52)(a) *Training Provider:* P.A. Environmental Corp.
Address: 4240-24F Hutchinson River Pkwy. E, Bronx, NY 10475, Contact: Pichai Arjarasupun, Phone: (212) 379-6716.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/31/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
(53)(a) *Training Provider:* Paradigm Environmental Services, Inc.
Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Marcia R. Cummings, Phone: (716) 647-2530.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/89).
Abatement Worker Refresher Course (contingent from 10/3/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).
(54)(a) *Training Provider:* Peurto Rico Environmental Consultants and Training Center, Inc.
Address: Cond. Banco Cooperative Plaza Office, 302-B, Hato Rey, PR 00917, Contact: Roberto Berber, Phone: (809) 250-6052.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Inspector/Management Planner (contingent from 11/1/89).
(55)(a) *Training Provider:* Princeton Testing Laboratory, Inc.
Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Anne Coogan, Phone: (609) 452-9050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/21/88).
(56)(a) *Training Provider:* R. J. Fletcher, Inc.
Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-0141.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
(57)(a) *Training Provider:* SUNY College of Technology at Farmingdale.
Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: Charles Erlanger, Phone: (516) 420-2000.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).
(58)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 457, Depew, NY 14043, Contact: Reza Farrokh, Phone: (800) 634-7234.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/4/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/8/88).
Contractor/Supervisor (full from 4/4/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
(59)(a) *Training Provider:* Schuyler-Chemung-Tioga Board of Cooperative Educational Services.
Address: 431 Philo Rd., Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
(60)(a) *Training Provider:* State University of New York at Buffalo.
Address: 127 Farber Hall, University of New York, Buffalo, NY 14214, Contact: Paul J. Kostyniak, Phone: (716) 831-2125.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 2/2/89).

Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(61)(a) *Training Provider:* State of New Jersey Dept. of Health.
Address: CN 360, Trenton, NJ 08625, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(62)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.
Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436-4114.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/21/88).
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 6/20/89).

(63)(a) *Training Provider:* Tri-Cities Laborers Training Program.
Address: 5 Lombard St., Schenectady, NY 12304, Contact: Joseph A. Zappone, Phone: (518) 370-3463.
(b) *Approved Courses:*
Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/26/88).
Abatement Worker Refresher Course (full from 2/2/89).

(64)(a) *Training Provider:* Union Occupational Health Center.
Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/10/89).

(65)(a) *Training Provider:* Utilicom Corp.
Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Dennis J. Money, Phone: (716) 381-8710.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 4/21/89).

(66)(a) *Training Provider:* Warren Mae Associates.
Address: RD 3, Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-8386.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).

(67)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker (full from 1/24/88).

(68)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manasia, Phone: (212) 619-2270.
(b) *Approved Course:*
Inspector (contingent from 2/23/89).

(69)(a) *Training Provider:* White Lung Association of New Jersey.
Address: 901 Broad St., Newark, NJ 07102, Contact: Mylers O'Malley, Phone: (201) 824-2623.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).
Inspector/Management Planner (contingent from 9/19/89).

(70)(a) *Training Provider:* Zola Sookias Associates Environmental Consultants.
Address: 545 Eighth Ave., Suite 401, New York, NY 10018, Contact: Zola Sookias, Phone: (212) 330-0914.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/6/89).
Contractor/Supervisor (contingent from 10/6/89).

EPA-Approved Training Courses

REGION III -- Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anna Marie Sossong, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: D.R. Twilley, Phone: (301) 684-3327.
(b) *Approved Courses:*
Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 9/1/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 9/1/89).
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 3/31/88).

(3)(a) *Training Provider:* Alcam, Inc.
Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2791.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(4)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.
Address: 410 7th St., SE, 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/16/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(5)(a) *Training Provider:* American Asbestos Training Institute, Inc.
Address: 2133 Arch St., Philadelphia, PA 19103, Contact: Linda McNeil, Phone: (215) 988-9710.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(6)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.
Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 7/21/89).

(7)(a) *Training Provider:* Apex Environmental, Inc.
Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(8)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2924.
(b) *Approved Courses:*
Abatement Worker (full from 6/17/87).
Contractor/Supervisor (full from 6/17/87).

(9)(a) *Training Provider:* Asbestos Analytical Association, Inc.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0695.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(10)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.
Address: P.O. Box 28, Timonium, MD 21093, Contact: David George, Phone: (301) 584-1490.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(11)(a) *Training Provider:* Asbestos Workers Local Union No. 24.
Address: 6713 Ammendale Rd., Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937-7636.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(12)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.
(b) *Approved Courses:*
Abatement Worker (full from 10/1/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Abatement Worker Refresher Course (full from 10/31/88).
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (full from 10/31/88).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner (full from 8/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(13)(a) *Training Provider:* Brigge Associates, Inc. Maryland.
Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.
(b) *Approved Course:*
Abatement Worker (contingent from 1/30/89).

(14)(a) *Training Provider:* Brujos Scientific, Inc.
Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.
(b) *Approved Courses:*
Abatement Worker (full from 11/21/88).
Contractor/Supervisor (contingent from 9/29/88).

(15)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 10/13/89).

(16)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.
Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 10/8/89).

(17)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.
Address: 814 East Pittsburgh Plaza, Pittsburgh, PA 15112, Contact: David Ginsburg, Phone: (412) 823-1002.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 12/8/88).
Abatement Worker Refresher Course (full from 1/19/89).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 12/8/88).
Contractor/Supervisor Refresher Course (full from 1/19/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/1/89).
Project Designer (contingent from 6/29/89).

(18)(a) *Training Provider:* Center for Hazardous Materials Research.
Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/28/88).
Contractor/Supervisor (contingent from 11/28/88).

(19)(a) *Training Provider:* Charles County Community College.
Address: Mitchell Rd., Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(20)(a) *Training Provider:* Commonwealth of Pennsylvania Dept. of Public Welfare.
Address: P.O. Box 2675, Harrisburg, PA 17120-0012, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).

Abatement Worker (full from 11/15/88).
(21)(a) *Training Provider:* Delaware Technical & Community College Terry Campus.
Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 736-5428.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/88).
Abatement Worker Refresher Course (contingent from 3/1/88).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 3/1/88).
(22)(a) *Training Provider:* Dept. of the Environment, State of Maryland.
Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 4/14/89).
(23)(a) *Training Provider:* District Council of Eastern Pennsylvania.
Address: 2163 Berry Hill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 8/17/89).
(24)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2156.
(b) *Approved Courses:*
Abatement Worker (interim from 9/1/86 to 11/11/87).
Abatement Worker (full from 11/12/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 9/1/86 to 11/11/87).
Contractor/Supervisor (full from 11/12/87).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/8/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
(25)(a) *Training Provider:* Dynamac Corp.
Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 9/1/88).
Inspector/Management Planner Refresher Course (contingent from 6/26/89).
(26)(a) *Training Provider:* E.I. Dupont De Nemours & Co. Spruance Plant.
Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).
(27)(a) *Training Provider:* Eagle Industrial Hygiene Association, Inc.
Address: 405 Masons Mill Rd., Huntingdon Valley, PA 19006, Contact: Stephen R. Bell, Phone: (215) 657-2261.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Abatement Worker (full from 7/14/89).
Abatement Worker Refresher Course (contingent from 10/30/89).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor (full from 7/14/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner Refresher Course (contingent from 7/20/89).
(28)(a) *Training Provider:* Eastern Environmental Services of the Northeast, Inc.
Address: RD 1, Route 309 North, P.O. Box B, Drums, PA 18222, Contact: Kenneth Skuba, Phone: (717) 788-4155.
(b) *Approved Courses:*
Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
(29)(a) *Training Provider:* Environmental Education Associates.
Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).
(30)(a) *Training Provider:* Environmental Training & Consultants, Inc.
Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).
Inspector/Management Planner (contingent from 4/6/89).
(31)(a) *Training Provider:* Environmental Training, Inc.
Address: 10 Industrial Hwy., Building N, Tinicum Industrial Park, Philadelphia, PA 19113, Contact: Gary D. Hyrne, Phone: (215) 521-5469.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).
(32)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 7/21/89).
Contractor/Supervisor (full from 10/18/88).
Contractor/Supervisor Refresher Course (contingent from 7/21/89).
(33)(a) *Training Provider:* GA Environmental Services, Inc.
Address: Pier 5 Penn's Landing, Philadelphia, PA 19106, Contact: Frank E. Cona, Phone: (215) 351-4045.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/17/89).
Inspector/Management Planner (contingent from 11/7/89).
Project Designer (contingent from 8/17/89).
(34)(a) *Training Provider:* GST Co.
Address: Freedom Professional Bldg., 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).

Abatement Worker Refresher Course (contingent from 1/30/89).
Contractor/Supervisor (contingent from 11/14/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).
(35)(a) *Training Provider:* Galson Technical Services, Inc.
Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/17/88).
(36)(a) *Training Provider:* General Physics Corp.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).
(37)(a) *Training Provider:* Genty Associates.
Address: 6060 Woodland Ave., Philadelphia, PA 19143, Contact: Frank Genty, Phone: (215) 727-4420.
(b) *Approved Course:*
Abatement Worker (contingent from 9/14/89).
(38)(a) *Training Provider:* Gerald T. Fenton, Inc.
Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).
(39)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0830.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 4/12/88).
(40)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.
Address: 148 East Mall Plaza, Carnegie, PA 15106, Contact: Terry Larkin, Phone: (412) 276-3711.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 10/25/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).
(41)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.
Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Jos Klocek, Phone: (717) 564-7563.
(b) *Approved Course:*
Abatement Worker (contingent from 10/20/88).
(42)(a) Training Provider: Ind. Tra. Co. Ltd. Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836. (b) Approved Courses: Abatement Worker (full from 9/15/87). Abatement Worker Refresher Course (contingent from 8/12/88). Contractor/Supervisor (full from 9/15/87). Inspector/Management Planner (full from 9/16/88). Inspector/Management Planner Refresher Course (full from 3/1/89).
(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.
Address: 315 - 317 North Washigton St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.
(b) *Approved Course:*
Abatement Worker (contingent from 3/2/89).
(44)(a) *Training Provider:* JMR Associates.
Address: P.O. Box 9895, Philadelphia, PA 19140, Contact: Joseph Faulk III, Phone: (215) 227-3035.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/24/89).
Contractor/Supervisor (contingent from 8/24/89).
(45)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 11/1/89).
(46)(a) *Training Provider:* Laborer's District Council of Eastern Pennsylvania.
Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 1/30/89).
Abatement Worker Refresher Course (contingent from 5/17/89).
(47)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.
Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1800.
(b) *Approved Course:*
Abatement Worker (contingent from 4/10/89).
(48)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.
Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-8533.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).
(49)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836-1175.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
(50)(a) *Training Provider:* Marcus Environmental.
Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1995.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(51)(a) *Training Provider:* Medical College of Virginia Virginia Commonwealth University Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(52)(a) *Training Provider:* National Association of Minority Contractors.
Address: 806 15th St., NW, Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).

(53)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1126 16th St., NW, Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/26/88).

(54)(a) *Training Provider:* Occupational Medical Center.
Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Contractor/Supervisor (contingent from 9/25/89).

(55)(a) *Training Provider:* Old Dominion University Office of Continuing Education College of Health Services.
Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 7/27/88).

(56)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/89).
Abatement Worker Refresher Course (contingent from 10/12/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor Refresher Course (contingent from 10/12/89).
Inspector (contingent from 3/14/88).

(57)(a) *Training Provider:* Paskal Environmental Services.
Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/88).

(58)(a) *Training Provider:* Pennsylvania Dept. of Welfare.
Address: Room 103 Capitol Associates Bldg., P.O. Box 2675, Harrisburg, PA 17105, Contact: Gerald A. Dovatucci, Phone: (717) 783-9543.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 8/17/89).

(59)(a) *Training Provider:* Philadelphia Electric Co.
Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewiez, Phone: (215) 270-8600.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/19/88).
Abatement Worker Refresher Course (contingent from 2/24/89).

(60)(a) *Training Provider:* Phoenix Safety Associates, Ltd.
Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).

(61)(a) *Training Provider:* Quality Specialities, Inc.
Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5855.
(b) *Approved Course:*
Abatement Worker (contingent from 8/8/88).

(62)(a) *Training Provider:* RCW Environmental Consulting & Training.
Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/89).
Contractor/Supervisor (contingent from 8/1/89).
Inspector/Management Planner (contingent from 11/1/89).

(63)(a) *Training Provide* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.
Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).

(64)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.
(b) *Approved Course:*
Abatement Worker (contingent from 7/12/88).

(65)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/30/89).

(66)(a) *Training Provider:* STIC Corporation.
Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 4/7/89).

(67)(a) *Training Provider:* Safety Management Institute.

Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/6/88).
Abatement Worker (full from 8/8/88).
Abatement Worker (Approval Suspended 10/2/89).
Abatment Worker Refresher Course (contingent from 2/8/89).
Abatement Worker Refresher Course (Approval Suspended 10/2/89).
Contractor/Supervisor (contingent from 1/8/88).
Contractor/Supervisor (full from 8/8/88).
Contractor/Supervisor (Approval Suspended 10/2/89).
Contactor/Supervisor Refresher Course (contingent from 2/8/89).
Contractor/Supervisor Refresher Course (Approval Suspended 10/2/89).
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management (Approval Suspended 10/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/8/89).
Inspector/Management Refresher Course (Approval Suspended 10/2/89).

(68)(a) *Training Provider:* Schneider Engineers.
Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(69)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.
Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.
(b) *Approved Courses:*
Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).

(70)(a) *Training Provider:* Tetra Services, Inc.
Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/89).

(71)(a) *Training Provider:* The Glaser Co.
Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(72)(a) *Training Provider:* The J.O.B.S. Company.
Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0048.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/28/89).
Contractor/Supervisor (contingent from 5/25/89).

(73)(a) *Training Provider:* Tracor Jitco, Inc.
Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).

(74)(a) *Training Provider:* United Environmental Systems, Inc.
Address: 104-108 Arch St., Philadelphia, PA 19106, Contact: Michael Yaron, Phone: (215) 829-9454.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).

(75)(a) *Training Provider:* University of Pittsburgh Graduate School of Public Health.
Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(76)(a) *Training Provider:* University of Scranton Technology Center.
Address: Scranton, PA 18510-2192, Contact: Jerome P. De Santo, Phone: (717) 961-4050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/26/89).

(77)(a) *Training Provider:* Volz Environmental Services, Inc.
Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Project Designer (contingent from 9/1/89).

(78)(a) *Training Provider:* Waco, Inc.
Address: Highway 925, N, P.O. Box 759, Waldorf, MD 20601, Contact: Wayne Cooper, Phone: (301) 843-2488.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).

(79)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.
Address: One Monogalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346-0581.
(b) *Approved Course:*

Abatement Worker (contingent from 8/29/88).

(80)(a) *Training Provider:* West Virginia University Extension Service.

Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4013.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).

Abatement Worker Refresher Course (contingent from 11/2/89).

Contractor/Supervisor (contingent from 10/20/88).

Contractor/Supervisor Refresher Course (contingent from 11/2/89).

Inspector/Management Planner (contingent from 5/9/88).

Inspector/Management Planner Refresher Course (contingent from 4/20/89).

Inspector/Management Planner Refresher Course (full from 4/26/89).

(81)(a) *Training Provider:* White Lung Association.

Address: 1114 Cathedral St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).

Abatement Worker (full from 6/6/88).

Abatement Worker Refresher Course (contingent from 2/23/89).

Contractor/Supervisor (contingent from 2/18/88).

Contractor/Supervisor (full from 6/6/88).

Contractor/Supervisor Refresher Course (contingent from 2/23/89).

Inspector/Management Planner (contingent from 1/4/88).

Inspector/Management Planner (full from 2/15/88).

Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(82)(a) *Training Provider:* William L. James Enterprises, Inc.

Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5830.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).

Contractor/Supervisor (contingent from 4/20/88).

EPA-Approved Training Courses

REGION IV -- Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certificatin indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A.S.C. Consultants, Inc.

Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.

(b) *Approved Course:*

Abatement Worker (contingent from 6/22/89).

(2)(a) *Training Provider:* AHP Research, Inc.

Address: 1502 Johnsons Ferry Rd., Atlanta, GA 30362, Contact: Dwight Brown, Phone: (404) 565-0061.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 1/6/89).

Inspector/Management Planner (interim from 5/28/86 to 12/13/87).

Inspector/Management Planner (full from 12/14/87).

(3)(a) *Training Provider:* ATEC Associates, Inc.

Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).

Contractor/Supervisor (contingent from 4/14/89).

Inspector/Management Planner (contingent from 4/14/89).

(4)(a) *Training Provider:* ATI Environmental Services.

Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5306.

(b) *Approved Courses:*

Abatement Worker (full from 1/12/88).

Abatement Worker Refresher Course (contingent from 2/21/89).

Contractor/Supervisor (full from 1/12/88).

Contractor/Supervisor Refresher Course (contingent from 2/21/89).

(5)(a) *Training Provider:* All Gulf Contractors, Inc.

Address: 3654 Halls Mill Rd., Mobile, AL 36693, Contact: Robert Pettie, Phone: (205) 665-5199.

(b) *Approved Course:*

Abatement Worker (contingent from 2/22/89).

(6)(a) *Training Provider:* American Environmental Safety Institute.

Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 731-2986.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/89).

Abatement Worker Refresher Course (contingent from 12/16/88).

Contractor/Supervisor (full from 10/17/88).

Contractor/Supervisor Refresher Course (contingent from 12/16/88).

Inspector/Management Planner (full from 2/8/89).

(7)(a) *Training Provider:* Arch Training Services, Inc.

Address: Hotel Royal Plaza, P.O. Box 22203, Lake Buena Vista, FL 32830-2203, Contact: Arleen Folkes Goldberg, Phone: (407) 827-3985.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 3/2/89).

Inspector/Management Planner (contingent from 3/2/89).

(8)(a) *Training Provider:* Asbestos Abatement Associates, Inc.

Address: P.O. Box 8178, Spartanburg, SC 29303, Contact: Otey Reynolds, Phone: (803) 582-1222.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).

Abatement Worker (full from 6/26/89).

Contractor/Supervisor (contingent from 3/7/89).

Contractor/Supervisor (full from 9/15/89).

(9)(a) *Training Provider:* Asbestos Consultants, Inc.

Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/9/88).

(10)(a) *Training Provider:* Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Courses:*

Abatement Worker (full from 5/8/88).

Contractor/Supervisor (contingent from 2/22/89).

(11)(a) *Training Provider:* Asbestos Techincal Resource Center, Inc.

Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/2/89).

Abatement Worker Refresher Course (full from 6/7/89).

Contractor/Supervisor (contingent from 6/2/89).

Contractor/Supervisor (full from 8/10/89).

Contractor/Supervisor Refresher Course (full from 6/7/89).

(12)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.

Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.

(b) *Approved Course:*

Abatement Worker (contingent from 8/11/88).

(13)(a) *Training Provider:* BCM Engineers, Inc.

Address: 108 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: H. Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*

Inspector/Management Planner (full from 11/11/87).

Inspector/Management Planner Refresher Course (contingent from 11/10/88).

Project Designer (full from 12/8/87).

Project Designer Refresher Course (contingent from 5/4/89).

(14)(a) *Training Provider:* Betchel Construction, Inc.

Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slover, Phone: (305) 246-6565.

(b) *Approved Course:*

Abatement Worker (contingent from 3/13/89).

(15)(a) *Training Provider:* Big Bend Abatement, Inc.

Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-0130.

(b) *Approved Course:*

Abatement Worker (contingent from 4/28/89).

(16)(a) *Training Provider:* Briggs Associates Int'l. Inc.

Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.

(b) *Approved Course:*

Abatement Worker (contingent from 5/4/89).

(17)(a) *Training Provider:* CRU Incorporated.

Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-8844.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).

Contractor/Supervisor (contingent from 5/1/89).

Inspector/Management Planner (contingent from 5/26/89).

(18)(a) *Training Provider:* DPC General Contractors, Inc.

Address: 250 Arizona Ave., NE, Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/88).

Abatement Worker (full from 5/9/88).

(19)(a) *Training Provider:* EEC, Inc.

Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimanker, Phone: (919) 782-8910.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/7/89).

Abatement Worker Refresher Course (contingent from 5/3/89).

(20)(a) *Training Provider:* ELB & Associates, Inc.

Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.

(b) *Approved Course:*

Abatement Worker (contingent from 6/30/88).

(21)(a) *Training Provider:* Energy Support Services, Inc.

Address: P.O. Box 6098, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8888.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/5/89).

(22)(a) *Training Provider:* Enpuricon Asbestos Management.

Address: 6308 - D Angus Dr., Raleigh, NC 27613, Contact: Terry E. Slate, Phone: (919) 781-0886.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/11/89).

Contractor/Supervisor (contingent from 2/6/89).

(23)(a) *Training Provider:* Enviro Science, Inc.

Address: 3509 Hayworth Dr., Raleigh, NC 26709, Contact: Reginald C. Jordan, Phone: (919) 782-6527.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/15/88).

(24)(a) *Training Provider:* Enviro-Tech.

Address: 550 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89).

Contractor/Supervisor (contingent from 7/11/89).

(25)(a) *Training Provider:* Environmental Aspecs, Inc.

Address: 1527 North Dale Mabry Hwy., Suite 105, Lutz, FL 33549-3010, Contact: Dennis L. Mast, Phone: (813) 948-1887.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).

Abatement Worker (full from 7/7/89).

Abatement Worker Refresher Course (contingent from 7/18/89).

Contractor/Supervisor (contingent from 4/14/89).

Inspector/Management Planner (contingent from 6/30/89).

(26)(a) *Training Provider:* Environmental Control Systems.

Address: 2720 Frankfort Ave., Louisville, KY 40206, Contact: William A. Sadler, Phone: (502) 896-1245.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 8/10/89).

(27)(a) *Training Provider:* Environmental Engineering Co., Inc.

Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7846.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).

Abatement Worker (full from 9/22/89).

Abatement Worker Refresher Course (contingent from 9/28/89).

Contractor/Supervisor (contingent from 2/17/89).

Contractor/Supervisor Refresher Course (contingent from 9/28/89).

(28)(a) *Training Provider:* Environmental Resources Group.

Address: 3845 Viscount, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(29)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.

Address: 2631 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 856-7458.

(b) *Approved Course:*

Abatement Worker (contingent from 1/31/89).

(30)(a) *Training Provider:* Fayetteville Technical Community College.

Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).

Contractor/Supervisor (contingent from 5/1/89).

(31)(a) *Training Provider:* Georgia Tech. Institute.

Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3808.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 6/1/85 to 5/10/87).

Contractor/Supervisor (full from 5/11/87).

Contractor/Supervisor Refresher Course (contingent from 9/23/87).

Contractor/Supervisor Refresher Course (full from 7/7/88).

Inspector/Management Planner (full from 10/19/87).

Inspector/Management Planner Refresher Course (contingent from 10/24/88).

Inspector/Management Planner Refresher Course (full from 11/29/88).

Project Designer (contingent from 6/1/88).

Project Designer (full from 6/7/88).

Project Designer Refresher Course (contingent from 1/31/89).

Project Designer Refresher Course (full from 3/22/89).

(32)(a) *Training Provider:* Great Barrier Insulation Co.

Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).

Abatement Worker (full from 4/4/89).

Abatement Worker Refresher Course (contingent from 3/30/89).

(33)(a) *Training Provider:* Harmon Engineering Associates.

Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Roger W. Thompson, Phone: (205) 821-9250.

(b) *Approved Course:*

Abatement Worker (contingent from 1/4/89).

(34)(a) *Training Provider:* Harrison Contracting, Inc.

Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).

Abatement Worker (full from 10/12/88).

(35)(a) *Training Provider:* Howard I. Henson Training Institute.

Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.

(b) *Approved Course:*

Abatement Worker (full from 2/16/88).

(36)(a) *Training Provider:* International Association Heat & Frost Insulators & Asbestos Worker Local Union No. 13.

Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 355-4881.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).

Abatement Worker Refresher Course (contingent from 1/23/89).

Contractor/Supervisor (contingent from 1/23/89).

Contractor/Supervisor (full from 4/24/89).

Contractor/Supervisor Refresher Course (contingent from 1/23/89).

(37)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.

Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.

(b) *Approved Courses:*

Abatement Worker (full from 10/11/88).

Abatement Worker Refresher Course (contingent from 8/16/89).

Contractor/Supervisor (full from 1/9/89).

Contractor/Supervisor Refresher Course (contingent from 10/11/88).

Contractor/Supervisor Refresher Course (full from 1/9/89).

(38)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.

Address: 374 Maynard Terrace, SE, Suite 232, Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 373-9866.

(b) *Approved Courses:*

Abatement Worker (full from 5/4/88).

Contractor/Supervisor (full from 6/27/88).

Contractor/Supervisor Refresher Course (full from 11/2/88).

Inspector (contingent from 9/26/88).

Inspector (full from 9/28/88).

(39)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.

Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-0679.

(b) *Approved Courses:*

Abatement Worker (full from 11/15/88).

Contractor/Supervisor (full from 12/12/88).

(40)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.

Address: 7930 U.S. Hwy. 301 N, Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985-3067.

(b) *Approved Courses:*

Abatement Worker (full from 8/23/89).

Contractor/Supervisor (full from 11/29/88).

(41)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.

Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.

(b) *Approved Course:*

Abatement Worker (full from 8/10/88).

(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.

Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-4840.

(b) *Approved Courses:*

Abatement Worker (full from 10/25/88).

Contractor/Supervisor Refresher Course (full from 5/17/89).

(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.

Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.

(b) *Approved Courses:*

Abatement Worker (full from 7/10/89).

Contractor/Supervisor (full from 7/10/89).

(44)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.

Address: P.O. Box 508, Pooler, GA 31322, Contact: Mr. Hutcherson, Phone: (912) 748-5252.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).

Abatement Worker Refresher Course (full from 8/17/89).

Contractor/Supervisor (full from 9/13/88).

(45)(a) *Training Provider:* Kentucky Laborers Training Trust Fund.

Address: US 127 Bypass South, P.O. Box 208, Lawrenceburg, KY 40342, Contact: David Vinson, Phone: (502) 839-3155.

(b) *Approved Course:*

Abatement Worker (contingent from 1/10/89).

(46)(a) *Training Provider:* LCI Training Institute.

Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8661.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/88).

Contractor/Supervisor (contingent from 6/9/88).

(47)(a) *Training Provider:* Laborers District Council of Southeast Florida.

Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2659.

(b) *Approved Course:*

Abatement Worker (full from 3/15/88).

(48)(a) *Training Provider:* Lang Engineering of Florida, Inc.

Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-8311.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).

Abatement Worker Refresher Course (contingent from 8/9/89).

(49)(a) *Training Provider:* Law Engineering, Inc.

Address: 7616 Southland Blvd., Suite 110, Orlando, FL 32809, Contact: Diana Rigdon, Phone: (407) 855-8740.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/89).

Contractor/Supervisor (contingent from 9/1/89).

(50)(a) *Training Provider:* Mississippi State University Dept. of Continuing Education.

Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Margaret V. Naugle, Phone: (601) 325-2677.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).

Contractor/Supervisor (contingent from 7/19/88).

Contractor/Supervisor (full from 6/29/89).

Contractor/Supervisor Refresher Course (contingent from 5/26/89).

Inspector/Management Planner (full from 6/20/88).

Inspector/Management Planner Refresher Course (contingent from 5/26/89).

Project Designer (contingent from 12/15/88).

Project Designer Refresher Course (contingent from 5/26/89).

(51)(a) *Training Provider:* Mur-Shel, Inc. Asbestos Abatement.

Address: 1038 Grace Ave., Panama City, FL 32401, Contact: Lois Shelton, Phone: (904) 763-2010.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 9/1/89).

(52)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (interim from 7/1/88 to 6/1/87).

Abatement Worker (full from 7/1/87).

Abatement Worker Refresher Course (contingent from 2/8/89).

(53)(a) *Training Provider:* National Monitoring Labs, Inc.

Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Rakshi, Phone: (800) 347-3414.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 4/14/89).

Contractor/Supervisor Refresher Course (contingent from 5/23/89).

Inspector/Management Planner (contingent from 4/14/89).

Inspector/Management Planner Refresher Course (contingent from 5/23/89).

(54)(a) *Training Provider:* PDR Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298-2065.

(b) *Approved Course:*

Inspector (contingent from 9/15/88).

(55)(a) *Training Provider:* Practical Environmental Training Institute.

Address: P.O. Box 26308, Charlotte, NC 28221-6308, Contact: Dianne Christenbery, Phone: (704) 598-9588.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).

Abatement Worker (full from 10/24/88).

Contractor/Supervisor (contingent from 1/17/89).

Contractor/Supervisor (full from 3/20/89).

(56)(a) *Training Provider:* Republic Industries, Inc.

Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2864.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).

Contractor/Supervisor (contingent from 9/22/89).

Contractor/Supervisor Refresher Course (contingent from 6/5/89).

(57)(a) *Training Provider:* Retra Services, Inc.

Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Paroff, Phone: (800) 548-5848.

(b) *Approved Courses:*

Abatement Worker (full from 1/24/89).

Abatement Worker Refresher Course (contingent from 12/29/88).

Abatement Worker Refresher Course (full from 1/24/89).

(58)(a) *Training Provider:* South Carolina Research & Training Center.

Address: 300 Gervais St., Annex III, Columbia, SC 29201, Contact: Jan Temple, Phone: (803) 737-2080.

(b) *Approved Courses:*

Contractor/Supervisor (full from 3/8/88).

Inspector/Management Planner (full from 3/1/88).

(59)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.

Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 725-3565.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).

Contractor/Supervisor (contingent from 1/18/89).

(60)(a) *Training Provider:* Technical Abatement Service, Inc.

Address: 897 East Lemon St., Bartow, FL 33830, Contact: John W. Pery, Phone: (813) 533-0885.

(b) *Approved Course:*

Abatement Worker (contingent from 6/21/89).

(61)(a) *Training Provider:* Tennessee Environmental Services.

Address: 1804 Williamson Ct., Brentwood, TN 37027, Contact: Claire Badan, Phone: (615) 373-8792.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/26/89).

Contractor/Supervisor (contingent from 5/26/89).

(62)(a) *Training Provider:* The Environmental Institute.

Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/10/87).

Abatement Worker (full from 5/2/88).

Contractor/Supervisor (contingent from 12/10/87).

Contractor/Supervisor (full from 2/1/88).

Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (full from 11/8/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
Project Designer Refresher Course (contingent from 4/17/89).

(63)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies, Division of Envir. & Industrial Prog.

Address: P.O. Box 2967, Tuscaloosa, AL 35486-2967, Contact: William Weems, Phone: (205) 348-3033.

(b) *Approved Courses:*

Abatement Worker (full from 4/5/88).
Contractor/Supervisor (full from 12/14/87).
Inspector/Management Planner (full from 5/16/88).

(64)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.

Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).

(65)(a) *Training Provider:* University of Florida TREEO Center.

Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Peggy Cook-Holland, Phone: (904) 392-9470.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).

(66)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.

Address: 305 Slone Bldg., Lexington, KY 40506-0053, Contact: A.B. Broderson, Phone: (606) 257-4300.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Inspector Refresher Course (contingent from 3/3/89).
Inspector/Management Planner (full from 2/15/88).

(67)(a) *Training Provider:* University of North Carolina Occupational Safety & Health Educational Resource Center.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Ted Williams, Phone: (919) 962-2101.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 6/7/89).
Inspector/Management Planner (contingent from 11/9/87).
Inspector/Management Planner (full from 11/9/87).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 5/2/89).
Project Designer Refresher Course (contingent from 6/22/89).

(68)(a) *Training Provider:* University of North Florida Division of Continuing Education & Extension Environmental Ed. & Safety Institute.

Address: 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216, Contact: Herbert E. Carter, Phone: (904) 646-2502.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/89).
Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(69)(a) *Training Provider:* University of South Carolina School of Public Health c/o Azimuth Inc.

Address: 9229 University Blvd., Charleston, SC 29418, Contact: Betty Schnee, Phone: (803) 553-9456.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/89).
Contractor/Supervisor (contingent from 5/5/89).
Contractor/Supervisor (full from 8/21/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).

(70)(a) *Training Provider:* University of South Carolina Medical MUSC) Dept. of Environmental Health.

Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.

(b) *Approved Courses:*

Abatement Worker (full from 12/19/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).
Inspector/Management Planner Refresher Course (full from 5/2/89).

(71)(a) *Training Provider:* WESTON, INC.

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: Ronald Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Contractor/Supervisor (contingent from 10/13/88).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 1/31/89).
Contractor/Supervisor Refresher Course (full from 9/25/89).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner (full from 9/27/89).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 8/23/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 9/26/89).

(72)(a) *Training Provider:* Westinghouse Environmental Geotechnical Services, Inc.

Address: 3100 Spring Forest Rd., Suite 118, P.O. Box 58069, Raleigh, NC 27658-8069, Contact: James R. Penland, Phone: (919) 872-2660.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/89).
Contractor/Supervisor (contingent from 7/18/89).

(73)(a) *Training Provider:* Williams & Associates, Inc. Environmental Training Center.

Address: 460 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-9030.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Abatement Worker Refresher Course (contingent from 5/1/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 4/18/88).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).

EPA-Approved Training Courses

REGION V -- Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.

Address: P.O. Box 28835, Columbus, OH 43226-0835, Contact: Steven Ritchie, Phone: (614) 267-0906.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.

Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.

Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/14/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 12/29/89).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 5/30/89).

(4)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 Three Mile Rd., NW, Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).
Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbetos Council).

Address: Box 7418, Springfield, IL 62791, Contact: Douglas L Gamble, Phone: (217) 523-5588.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 6/14/89).
Abatement Worker Refresher Course (contingent from 6/31/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (contingent from 9/11/89).
Inspector/Management Planner (contingent from 3/29/89).
Inspector/Management Planner Refresher Course (contingent from 9/11/89).
Project Designer Refresher Course (contingent from 9/19/89).

(6)(a) *Training Provider:* American Environmental Institute.

Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 11/14/88).

(7)(a) *Training Provider:* American Industrial Hygiene Association.

Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1087, Contact: Mary Christ, Phone: (216) 762-7294.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 2/23/89).

(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology, Center, 511 11th Ave. S, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 10/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).

(9)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 1/18/89).

(10)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.

(b) *Approved Course:*

Abatement Worker (contingent from 7/6/88).

(11)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1670.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/12/88).
Inspector/Management Planner (contingent from 10/14/88).

(12)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 8/18/87).

Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/1/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(13)(a) *Training Provider:* Asbestos Professional Services, Inc.
Address: 501 North Second St., Breese, IL 62230, Contact: Donald T. Anderson, Phone: (618) 526-2742.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/9/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/9/89).

(14)(a) *Training Provider:* Asbestos Roofing Technology, Inc.
Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refieuna, Phone: (312) 352-0400.

(b) *Approved Course:*
Abatement Worker (contingent from 4/13/89).

(15)(a) *Training Provider:* Asbestos Services, Inc.
Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 3/17/89).

(16)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 1186 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(17)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/15/88).
Abatement Worker (full from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 6/20/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(18)(a) *Training Provider:* Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5969.

(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(19)(a) *Training Provider:* Astesco Laboratory, Inc.
Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.

(b) *Approved Courses:*
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(20)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 1/15/88).
Inspector/Management Planner (full from 2/15/88).

(21)(a) *Training Provider:* Baker Midwest, Maple Grove, Minnesota.
Address: 10650 State Highway 152, Suite 112, Maple Grove, MN 55369, Contact: Joseph Reeves, Phone: (612) 493-2595.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/15/89).
Contractor/Supervisor (contingent from 6/15/89).

(22)(a) *Training Provider:* Ball State University.
Address: College of Sciences & Humanities-, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5780.

(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/30/89).

(23)(a) *Training Provider:* Bems Engineering, Inc.
Address: 18600 Northville Rd., Suite 200, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).
Project Designer (contingent from 3/2/89).

(24)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.
Address: 2903 South Graham Rd., Saginaw, MI 48608-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/7/89).

(25)(a) *Training Provider:* Boelter Associates, Inc.
Address: 8700 W Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.

(b) *Approved Course:*
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(26)(a) *Training Provider:* Bonne Terre Training Services.
Address: P.O. Box 673, Tiffin, OH 44883, Contact: Timothy E. Blott, Phone: (419) 447-5091.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(27)(a) *Training Provider:* Bowling Green State University Environmental Health Program.
Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.

(b) *Approved Course:*
Abatement Worker (contingent from 4/21/89).

(28)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.
Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4400.

(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(29)(a) *Training Provider:* Centin Corp.
Address: 6801 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.

(b) *Approved Course:*
Abatement Worker (contingent from 3/30/89).

(30)(a) *Training Provider:* Charles J. Ogg and Associates.
Address: P.O. Box 815, Newburgh, IN 47629-0815, Contact: Charles J. Ogg, Phone: (812) 853-7607.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Contractor/Supervisor (contingent from 5/1/89).

(31)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/16/88).

(32)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/21/89).

(33)(a) *Training Provider:* Cleveland Wrecking Co.
Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/89).
Abatement Worker Refresher Course (contingent from 8/3/89).
Contractor/Supervisor (contingent from 8/3/89).
Contractor/Supervisor Refresher Course (contingent from 8/3/89).

(34)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/4/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(35)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.
Address: 400 East Ogden Ave., Westmont, IL 60559, Contact: Anthony Solano, Phone: (312) 323-8999.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 9/22/89).

(36)(a) *Training Provider:* Construction Laborer Local Union No. 405.
Address: 5945 North Ridge Rd., P.O. Box 190, Madison, OH 44057, Contact: Floyd Conrad, Phone: (216) 428-7177.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/25/89).

(37)(a) *Training Provider:* D/E 3.
Address: 7471-H Tyler Blvd., Mentor, OH 44060, Contact: Harold N. Danto, Phone: (216) 942-4800.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker Refresher Course (contingent from 1/4/89).

(38)(a) *Training Provider:* D/E 3.
Address: 19701 South Miles Pkwy., N-12, Warrensville, OH 44128, Contact: Harold Dante, Phone: (216) 663-1500.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/10/89).

(39)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.

(b) *Approved Courses:*
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/25/89).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(40)(a) *Training Provider:* Darla Environmental, Inc.
Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(41)(a) *Training Provider:* DeLisle Associates, Ltd.
Address: 6948 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(42)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., P.O. Box 148, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(43)(a) *Training Provider:* Ecological Services, Inc.
Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 3/7/89).

(44)(a) *Training Provider:* Emscoe-Emergency Medical Service Consultants of America.
Address: 12125 South 90th Ave., Palos Park, IL 60464, Contact: Fred Debow, Phone: (708) 448-7500.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/3/89).
(45)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.
Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
(46)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.
Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 3/7/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 3/7/89).
(47)(a) *Training Provider:* Environmental Abatement Systems, Inc.
Address: 6416 Ellsworth, Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
(48)(a) *Training Provider:* Environmental Diversified Services, Inc.
Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/14/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).
(49)(a) *Training Provider:* Environmental Mangement Consultants, Inc.
Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/9/89).
(50)(a) *Training Provider:* Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).
(51)(a) *Training Provider:* Environmental Rehab, Inc.
Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 3/29/89).
Abatement Worker Refresher Course (contingent from 10/13/89).
(52)(a) *Training Provider:* Environmental Response Systems, Inc.
Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 12/29/88).
(53)(a) *Training Provider:* Environmental Safety Training Services, Inc.
Address: 11802 HANSON RD., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (217) 525-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 1/17/89).
(54)(a) *Training Provider:* Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).
Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.
(b) *Approved Course:*
Abatement Worker (contingent from 3/17/89).
(55)(a) *Training Provider:* Environmental Training Institute.
Address: 4708 Angold Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/10/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
(56)(a) *Training Provider:* Envirplus, Inc.
Address: 600 Hartrey Ave., Suite 203 A, Evanston, IL 60202, Contact: Salvador Garcia, Phone: (312) 475-0022.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/31/89).
(57)(a) *Training Provider:* Escor, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).
(58)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 2400 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7191.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/4/88).
Contractor/Supervisor Refresher Course (contingent from 1/4/89).
(59)(a) *Training Provider:* G & H Contracting Associates, Ltd.
Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 4/21/89).
(60)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.
(b) *Approved Courses:*
Abatement Worker (full from 1/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/1/88).
Contractor/Supervisor (full from 8/29/88).

Contractor/Supervisor Refresher Course (contingent from 7/26/89).
Inspector/Management Planner (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (contingent from 8/2/89).
(61)(a) *Training Provider:* Hazard Management Group, Inc.
Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
(62)(a) *Training Provider:* Hazardous Materials Institute, Inc.
Address: 1550 OLD Henderson Rd., Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).
(63)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
(64)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/8/88).
(65)(a) *Training Provider:* Helix Environmental, Inc.
Address: 416 Triangle, Dayton, OH 45419, Contact: Ralph Froehlich, Phone: (513) 298-2990.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).
(66)(a) *Training Provider:* I.P.C. of Chicago.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).
(67)(a) *Training Provider:* Illinois Environmental Institute.
Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.
(b) *Approved Course:*
Abatement Worker (contingent from 3/3/89).
(68)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.
Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.
(b) *Approved Courses:*
Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).
(69)(a) *Training Provider:* Ilse Engineering, Inc.
Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-8858.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).
(70)(a) *Training Provider:* Indiana Laborers Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).
(71)(a) *Training Provider:* Indianapolis Center for Advanced Research, Inc.
Address: 611 North Capitol Ave., Indianapolis, IN 46204, Contact: William Beranek, Jr., Phone: (317) 262-5027.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/13/88).
Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).
(72)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).
(73)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Contractor/Supervisor (contingent from 8/12/88).

Inspector Refresher Course (contingent from 2/23/89).

(74)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.

Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).

Abatement Worker (full from 5/15/89).

Abatement Worker Refresher Course (contingent from 1/26/89).

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(75)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/8/88).

Contractor/Supervisor (contingent from 9/1/88).

(76)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.

Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5873.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Abatement Worker Refresher Course (contingent from 1/18/89).

Contractor/Supervisor (contingent from 1/18/89).

(77)(a) *Training Provider:* JWP Enterprises, Ltd.

Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/6/89).

Abatement Worker Refresher Course (contingent from 6/8/89).

Contractor/Supervisor (contingent from 6/6/89).

Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(78)(a) *Training Provider:* Keeter Environmental, LTD.

Address: 699 Edgewood Ave., Elmhurst, IL 60126, Contact: Philip Pekron, Phone: (312) 941-0201.

(b) *Approved Course:*

Abatement Worker (contingent from 10/27/89).

(79)(a) *Training Provider:* Kemron Environmental Services, Inc.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 5/13/88).

Contractor/Supervisor (full from 2/27/89).

Contractor/Supervisor Refresher Course (contingent from 2/7/89).

Inspector/Management Planner (contingent from 3/25/88).

Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(80)(a) *Training Provider:* Lakeland Contractors, Inc.

Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/4/89).

Abatement Worker Refresher Course (contingent from 4/11/89).

(81)(a) *Training Provider:* Lepi Enterprises, Inc.

Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1162.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).

Abatement Worker Refresher Course (contingent from 4/25/89).

(82)(a) *Training Provider:* Lyle Training Institute.

Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8822.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/21/88).

Contractor/Supervisor (contingent from 3/7/89).

Inspector/Management Planner (contingent from 6/30/88).

Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(83)(a) *Training Provider:* M.K. Moore & Sons, inc.

Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/31/89).

Abatement Worker Refresher Course (contingent from 4/7/89).

Contractor/Supervisor (contingent from 3/31/89).

Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(84)(a) *Training Provider:* MacNeil Environmental, Inc.

Address: 799 Roosevelt Rd., Building 6, Glen Ellyn, IL 60137, Contact: James E. Viskocil, Phone: (312) 858-2092.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 7/6/89).

Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(85)(a) *Training Provider:* Manage Right Asbestos Consultants.

Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-1290.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/24/89).

Abatement Worker Refresher Course (contingent from 4/27/89).

Contractor/Supervisor (contingent from 4/7/89).

(86)(a) *Training Provider:* Mark A. Kriesemint, Ltd.

Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(87)(a) *Training Provider:* McDowell Business Training Center.

Address: 1328 S. Michigan Ave., Suite 103, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2500.

(b) *Approved Course:*

Abatement Worker (contingent from 10/6/89).

(88)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.

Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Contractor/Supervisor (contingent from 8/12/88).

(89)(a) *Training Provider:* Michigan Laborers Training Institute.

Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/9/88).

Abatement Worker (full from 5/2/88).

Abatement Worker Refresher Course (contingent from 11/14/88).

Contractor/Supervisor (contingent from 4/6/88).

Contractor/Supervisor (full from 5/8/88).

Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(90)(a) *Training Provider:* Mid-Central Illinois District Council of Carpenters.

Address: 910 Brenkman Dr., Pekin, IL 61554, Contact: Mr. Burnett, Phone: (309) 353-4232.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 9/1/89).

Contractor/Supervisor Refresher Course (contingent from 9/1/89).

(91)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).

Contractor/Supervisor (full from 11/28/88).

Contractor/Supervisor Refresher Course (contingent from 12/1/88).

Inspector/Management Planner (contingent from 5/9/88).

Inspector/Management Planner (full from 5/23/89).

Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(92)(a) *Training Provider:* Midwest Health Training.

Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/25/88).

Abatement Worker (full from 4/25/88).

Abatement Worker Refresher Course (contingent from 9/15/88).

Contractor/Supervisor (contingent from 2/23/89).

(93)(a) *Training Provider:* Milwaukee Asbestos Information Center.

Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-8100.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).

Abatement Worker Refresher Course (contingent from 2/23/89).

Contractor/Supervisor (contingent from 12/1/88).

Contractor/Supervisor Refresher Course (contingent from 2/23/89).

Inspector/Management Planner (contingent from 3/2/89).

Inspector/Management Planner Refresher Course (contingent from 2/23/89).

Project Designer (contingent from 9/22/89).

Project Designer Refresher Course (contingent from 10/16/89).

(94)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Richard Kukac, Phone: (312) 974-5733.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

Abatement Worker Refresher Course (contingent from 3/16/89).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 12/6/88).

Inspector/Management Planner (full from 2/9/88).

Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(95)(a) *Training Provider:* National Asbestos Abatement Corp.

Address: 1198 Robert T. Longway Blvd., Flint, MI 48503, Contact: James S. Sheaffer, Phone: (313) 232-7100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

Abatement Worker (full from 4/18/89).

(96)(a) *Training Provider:* National Institute for Abatement Education.

Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271-7281.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).

Contractor/Supervisor (contingent from 7/15/88).

(97)(a) *Training Provider:* Northern Safety Consultants, Inc.

Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.

(b) *Approved Courses:*

Abatement Worker (full from 5/31/88).

Contractor/Supervisor (full from 5/31/88).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(98)(a) *Training Provider:* Northland Environmental Services, Inc.

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9999.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Abatement Worker Refresher Course (contingent from 1/18/89).

Contractor/Supervisor (contingent from 1/18/89).

Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(99)(a) *Training Provider:* Nova Environmental Services.

Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-8383.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).

Abatement Worker Refresher Course (contingent from 4/13/89).

Contractor/Supervisor (contingent from 9/1/88).

Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(100)(a) *Training Provider:* Nova Environmental, Inc.

Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).

Abatement Worker (full from 3/27/89).

Contractor/Supervisor (contingent from 10/7/88).

Contractor/Supervisor (full from 3/27/89).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

Inspector/Management Planner (contingent from 10/7/88).

Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(101)(a) *Training Provider:* Ohio Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5969.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/17/88).

Contractor/Supervisor (full from 5/12/88).

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(102)(a) *Training Provider:* Ohio Laborers Training & Upgrading Trust Fund.
Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.
(b) *Approved Courses:*
Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).

(103)(a) *Training Provider:* Olive - Harvey College Skill Center.
Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.
(b) *Approved Course:*
Abatement Worker (contingent from 3/6/89).

(104)(a) *Training Provider:* Peoria Public Schools.
Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 11/14/88).

(105)(a) *Training Provider:* Professional Asbestos Control Company Inc.
Address: 5739 West Howard St., Niles, IL 60648, Contact: William Foss, Phone: (312) 647-0077.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/2/89).
Contractor/Supervisor (contingent from 11/2/89).

(106)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.
Address: 1501 Martin Luther King Dr., Gary, IN 46407, Contact: George Bradley, Phone: (219) 883-8541.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/5/88).

(107)(a) *Training Provider:* Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148, Contact: W.K. Swartzendruber, Phone: (312) 691-1490.
(b) *Approved Courses:*
Contractor/Supervisor Refresher Course (contingent from 10/11/89).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner (full from 4/27/89).
Inspector/Management Planner Refresher Course (contingent from 10/11/89).

(108)(a) *Training Provider:* Randolph & Associates, Inc.
Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Kirk E. Sweetland, Phone: (309) 692-4422.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/30/89).
Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(109)(a) *Training Provider:* Rend Lake College.
Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 10/10/89).

(110)(a) *Training Provider:* Risk Services, Inc.
Address: 26384 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker Refresher Course (contingent from 4/11/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(111)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S.Z. Mansdorf, Phone: (216) 928-5434.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 2/12/88).
Contractor/Supervisor Refresher Course (contingent from 1/19/89).
Inspector/Management Planner (contingent from 6/24/88).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(112)(a) *Training Provider:* Safer Foundation.
Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 11/3/89).

(113)(a) *Training Provider:* Safety Dynamics.
Address: 124 Massachussetts Ave., Poland, OH 44514, Contact: Ronald G. Zikmund, Phone: (216) 757-3899.
(b) *Approved Course:*
Abatement Worker (contingent from 8/18/89).

(114)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.
(b) *Approved Courses:*
Abatement Worker (full from 12/18/87).
Abatement Worker Refresher Course (contingent from 11/14/88).

(115)(a) *Training Provider:* Sear Corp.
Address: 8802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 7/7/89).

(116)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.
Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.
(b) *Approved Course:*
Abatement Worker (contingent from 4/21/89).

(117)(a) *Training Provider:* Sierra Analytical & Consulting Services, Inc.
Address: 307 North First St., Ann Arbor, MI 48103, Contact: David Nelson, Phone: (313) 662-1155.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/17/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/13/89).

(118)(a) *Training Provider:* South East Michigan Committee on Occupational Safety and Health (SEMCOSH).
Address: 1550 Howard St., Detroit, MI 48216, Contact: Barbara Boylan, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(119)(a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.
(b) *Approved Courses:*

Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 8/22/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).

(120)(a) *Training Provider:* The American Center for Educational Development, Inc.
Address: 401 S. Michigan Ave., Chicago, IL 60605, Contact: Ron Broon, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/3/89).

(121)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 5/1/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 7/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(122)(a) *Training Provider:* The Clear Consortium.
Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.
(b) *Approved Course:*
Abatement Worker (contingent from 7/18/89).

(123)(a) *Training Provider:* The Environmental Institute.
Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 12/22/88).

(124)(a) *Training Provider:* Thermico, Inc.
Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Course:*
Abatement Worker (contingent from 4/7/89).

(125)(a) *Training Provider:* Tillotson Consulting & Training, Inc.
Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(126)(a) *Training Provider:* Trust Thermal Systems.
Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(127)(a) *Training Provider:* University of Cincinnati Medical Center Institute of Environmental Health Kettering Laboratory.
Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1732.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 7/11/89).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).
Project Designer (contingent from 10/26/89).

(128)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C.
Address: 1440 West Washington, Chicago, IL 60612, Contact: Tony Billotti, Phone: (312) 996-5762.
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (full from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).
Inspector/Management Planner Refresher Course (full from 2/17/89).
Project Designer (contingent from 7/7/89).

(129)(a) *Training Provider:* University of Wisconsin.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).

(130)(a) *Training Provider:* William E. Fink & Associates.
Address: 25 South State St., Girard, OH 44420, Contact: William Fink, Phone: (216) 545-1222.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/18/89).

(131)(a) *Training Provider:* William E. Fink & Associates, Inc.
Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6299.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/88).
Contractor/Supervisor (contingent from 8/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/13/89).

(132)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/87).

Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).

(133)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

EPA-Approved Training Courses

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAR, Inc.
Address: P.O. Box 742648, Houston, TX 77274-2648, Contact: David S. Barnett, Phone: (713) 777-9205.

(b) *Approved Course:*
Abatement Worker (contingent from 1/26/89).

(2)(a) *Training Provider:* AC & C Systems Corp.
Address: 5909 Northwest Expressway, Suite 310, Oklahoma City, OK 73132, Contact: Turner Stallings, Phone: (405) 728-0444.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/26/88).

(3)(a) *Training Provider:* AEGIS Associates, Inc.
Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-8320.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/25/89).
Inspector Refresher Course (contingent from 4/4/89).

(4)(a) *Training Provider:* Abateco, Inc.
Address: 10000 Old Katy Rd., Suite 200, Houston, TX 77055, Contact: W.D. Heimbrook, Phone: (713) 461-0692.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 8/14/89).

(5)(a) *Training Provider:* American Specialty Contractors, Inc.
Address: 8181 West Darryl Pkwy, Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 926-9624.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).

(6)(a) *Training Provider:* Analytical Labs Training Center.
Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1264.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Contractor/Supervisor (contingent from 4/21/89).

(7)(a) *Training Provider:* Asbestos Surveys & Training, Inc.
Address: 5959 Centralcrest, Houston, TX 77092, Contact: J.T. Stoneburger, Phone: (713) 681-2639.

(b) *Approved Course:*
Abatement Worker (full from 10/22/87).

(8)(a) *Training Provider:* Ashley Environmental Services.
Address: 5959 Central Crest, Houston, TX 77092, Contact: Jesse Ashley, Phone: (713) 683-6311.

(b) *Approved Course:*
Abatement Worker (contingent from 9/27/89).

(9)(a) *Training Provider:* CCA Environmental Inc.
Address: 8499 Greenville, Suite 105, Dallas, TX 75231, Contact: Alcee Chriss, Phone: (214) 348-1954.

(b) *Approved Course:*
Abatement Worker (contingent from 10/18/89).

(10)(a) *Training Provider:* Carpenters Apprenticeship Training School.
Address: 8505 Glen Vista, Houston, TX 77061, Contact: S.C. Strunk, Jr., Phone: (713) 641-1011.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(11)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.

(b) *Approved Course:*
Abatement Worker (contingent from 4/20/88).

(12)(a) *Training Provider:* Enviro-Con Services, Inc.
Address: 10014 Sussex Drive, Houston, TX 77041, Contact: Johnny Bacot, Phone: (713) 524-4121.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/89).
Abatement Worker Refresher Course (contingent from 10/2/89).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor Refresher Course (contingent from 10/2/89).

(13)(a) *Training Provider:* Environmental Consultant Service.
Address: P.O. Box 586422, Dallas, TX 75258, Contact: Thomas Armstrong, Phone: (214) 638-3589.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 4/20/89).

(14)(a) *Training Provider:* Environmental Institute.
Address: 5918 W. Courtyard Dr., Suite 410, Austin, TX 78730, Contact: E. H. Hurst, Phone: (512) 338-4332.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 1/11/88).
Contractor/Supervisor (full from 3/1/88).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (contingent from 10/2/89).

(15)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS).
Address: 13008 Amarillo Ave., Austin, TX 78729, Contact: Rick Pruett, Phone: (512) 335-9116.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 3/1/88).
Inspector/Management Planner (contingent from 4/19/89).

(16)(a) *Training Provider:* Field Sciences Institute.
Address: 2309 Renard Pl. SE, Suite 104, Albuquerque, NM 87106, Contact: Robert L. Edgar, Phone: (505) 764-9251.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (full from 8/1/89).
Inspector Refresher Course (full from 8/1/89).
Inspector/Management Planner (contingent from 4/22/88).

(17)(a) *Training Provider:* Fort Worth Independent School District.
Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H.D. Duncan, Phone: (817) 336-8311.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

(18)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 1501 Norwood, Suite 142, Hurst, TX 76054-3638, Contact: Ed Kirch, Phone: (817) 268-4006.

(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).

(19)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.
Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/14/88).
Abatement Worker (full from 4/12/89).

(20)(a) *Training Provider:* IMPACT INC.
Address: 5330 Griggs Rd., Houston, TX 77021, Contact: Edgar Harvey, Phone: (713) 845-2416.

(b) *Approved Course:*
Abatement Worker (contingent from 8/17/89).

(21)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.
Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.

(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 10/4/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (full from 6/27/88).

(22)(a) *Training Provider:* K & T Safety Service, Inc.
Address: 9888 Bissonnett, Houston, TX 77036, Contact: Kevin Clothier, Phone: (713) 988-9021.

(b) *Approved Course:*
Abatement Worker (contingent from 3/28/89).

(23)(a) *Training Provider:* Keers Environmental, Inc.
Address: P.O. Box 6848, Albuquerque, NM 89197, Contact: Robert W. Keers, Phone: (505) 888-9525.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 3/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(24)(a) *Training Provider:* Kiser Engineering, Inc.
Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 8/24/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (contingent from 8/24/89).

(25)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.
Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 887-3740.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/88).
Contractor/Supervisor (contingent from 7/21/88).

(26)(a) *Training Provider:* Lamar University, Hazardous Materials Program.
Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2369.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker (full from 4/26/89).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).

(27)(a) *Training Provider:* Law Engineering.
Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.

(b) *Approved Course:*
Abatement Worker (contingent from 3/14/89).

(28)(a) *Training Provider:* Little-Tex Insulation Co., Inc.
Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8094.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).

(29)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.
Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker Refresher Course (contingent from 4/4/89).

(30)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.
Address: 361 Pleasant Hall, Baton Rouge, LA 70803-1520, Contact: Marcia L. Gilman, Phone: (504) 388-6591.

(b) *Approved Courses:*
Abatement Worker (full from 1/1/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Abatement Worker Refresher Course (full from 3/8/89).

Contractor/Supervisor (contingent from 10/6/87).
Contractor/Supervisor (full from 4/7/88).
Contractor/Supervisor Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (full from 3/6/89).
Inspector/Management Planner (full from 1/18/88).
Inspector/Management Planner Refresher Course (full from 3/7/89).

(31)(a) *Training Provider:* MARTECH International, Inc.

Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3880.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).
Contractor/Supervisor (contingent from 1/17/89).

(32)(a) *Training Provider:* Maxim Engineers, Inc.

Address: 2342 Fabens, Dallas, TX 75229, Contact: Kyle B. Dotson, Phone: (214) 247-7575.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/6/89).
Abatement Worker (full from 6/9/89).

(33)(a) *Training Provider:* Meador-Wright & Associates, Inc.

Address: 6211 W. Northwest Hwy., Suite C260, Dallas, TX 75225, Contact: Carl Teel, Phone: (214) 691-3485.

(b) *Approved Course:*

Inspector/Management Planner (full from 10/12/89).

(34)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701-12th Ave., NW, Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364-5763.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).
Abatement Worker Refresher Course (contingent from 5/19/89).
Contractor/Supervisor (full from 3/3/86).
Contractor/Supervisor Refresher Course (contingent from 5/19/89).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 5/19/89).

(35)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3278.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(36)(a) *Training Provider:* O'Connor McMahon, Inc.

Address: 1505 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: James M. Walley, Phone: (214) 245-3300.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(37)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 9/15/88).

(38)(a) *Training Provider:* PAN AM World Services Inc.

Address: P. O. Box 58938, Houston, TX 77258, Contact: Audrey Hall, Phone: (713) 483-7951.

(b) *Approved Course:*

Abatement Worker (contingent from 8/23/89).

(39)(a) *Training Provider:* Protechnics Environmental Services.

Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Hugh Songster, Phone: (713) 496-9674.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/89).
Abatement Worker (full from 6/30/89).
Contractor/Supervisor (contingent from 6/22/89).

(40)(a) *Training Provider:* R & H Associates, Inc.

Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 1/12/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(41)(a) *Training Provider:* RABA-KISTNER Training Institute.

Address: 12821 West Golden Ln., San Antonio, TX 78249, Contact: Don Kirchoff, Phone: (512) 699-9090.

(b) *Approved Course:*

Abatement Worker (contingent from 10/23/89).

(42)(a) *Training Provider:* Region 6 Environmental Training.

Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Charlotte Ramzel, Phone: (512) 837-9298.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(43)(a) *Training Provider:* Regional Environmental Training Center.

Address: 9024 Garland Rd., Dallas, TX 75218, Contact: Lisa Adams, Phone: (214) 328-2928.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(44)(a) *Training Provider:* Safety & Health Research Institute.

Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/12/88).
Contractor/Supervisor (contingent from 9/12/88).
Inspector/Management Planner (contingent from 9/12/88).

(45)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.

Address: U.A.M. - Willard Hall, P.O. Box 3507, Monticello, AR 71655, Contact: Lloyd Crossley, Phone: (501) 367-6648.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(46)(a) *Training Provider:* Southwest Environmental Institute.

Address: P.O. Box 295, Abilene, TX 79605, Contact: Tom Dye, Phone: (915) 691-0189.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).
Inspector/Management Planner (contingent from 8/24/89).

(47)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.

Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Tom Garner, Phone: (409) 845-6682.

(b) *Approved Courses:*

Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(48)(a) *Training Provider:* Texas Tech University.

Address: P.O. Box 4369, Lubbock, TX 79409, Contact: Renee Witherspoon, Phone: (806) 742-3876.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 10/31/89).

(49)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (contingent from 5/20/88).

(50)(a) *Training Provider:* U.S. Analytical, Inc.

Address: P.O. Box 801, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3293.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/13/89).
Contractor/Supervisor (contingent from 2/13/89).

(51)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.

Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 8/18/89).

(52)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.

Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-8483.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(53)(a) *Training Provider:* University of Houston/McClelland Management Services, Inc.

Address: Houston, TX 77204-3901, Contact: Patricia Robinson, Phone: (713) 749-7358.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 5/5/89).

(54)(a) *Training Provider:* University of New Mexico The Environmental Training Center Division of Continuing Education.

Address: 1634 University Blvd. NE, Albuquerque, NM 87131, Contact: Ed Rodriguez, Phone: (505) 277-9060.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/4/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
Contractor/Supervisor (contingent from 6/16/85).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(55)(a) *Training Provider:* University of Texas Health Center at TYLER/Critical Environmental Training, Inc.

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-2310.

(b) *Approved Courses:*

Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(56)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.

Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.

(b) *Approved Courses:*

Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(57)(a) *Training Provider:* Veltmann Engineering.

Address: Midland Air Park, P.O. Box 50741, Midland, TX 79710, Contact: Clyde Veltmann, Phone: (915) 683-1874.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).

(58)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.

Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372-4329.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

EPA-Approved Training Courses

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AEROSTAT Environmental Engineering Corporation.

Address: 2817 Atchinson Ave., Box 3096, Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 3/3/89).
Abatement Worker Refresher Course (full from 3/16/89).
Contractor/Supervisor (full from 5/9/88).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).
Contractor/Supervisor Refresher Course (full from 3/17/89).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(2)(a) *Training Provider:* Abatement Project Training.
Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 788-3440.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor (full from 4/28/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).
Contractor/Supervisor Refresher Course (full from 6/21/89).

(3)(a) *Training Provider:* American Asbestos Training Center, Ltd.
Address: 529 West First, Monticello, IA 52310, Contact: Steve Intlekofer, Phone: (319) 465-5555.
(b) *Approved Courses:*
Abatement Worker (full from 6/27/89).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 6/26/89).
Contractor/Supervisor (full from 6/27/89).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/26/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).

(4)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.
(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(5)(a) *Training Provider:* Baird Scientific, Inc.
Address: 221 West Fourth St., P.O. Box 842, Carthage, MO 64836, Contact: Mackie Redd, Phone: (417) 358-5567.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/26/89).
Contractor/Supervisor (contingent from 9/26/89).

(6)(a) *Training Provider:* CHART Services, Ltd.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.
(b) *Approved Courses:*
Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (full from 11/28/88).

(7)(a) *Training Provider:* Construction Industry Laborers' Training Institute for Eastern Missouri.
Address: Route 1, Box 79 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2391.
(b) *Approved Courses:*
Abatement Worker (full from 1/19/88).
Abatement Worker Refresher Course (contingent from 5/18/89).
Abatement Worker Refresher Course (full from 5/31/89).

(8)(a) *Training Provider:* Construction Laborers Building Corp.
Address: Box 34549, Omaha, NE 68134, Contact: Jack Budd, Phone: (402) 572-0570.
(b) *Approved Course:*
Abatement Worker (full from 11/2/87).

(9)(a) *Training Provider:* Educational Innovations.
Address: 23 West 3rd St., Lee's Summit, MO 64063, Contact: JoAnn Onwiler, Phone: (816) 525-6911.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker (full from 5/2/89).
Abatement Worker Refresher Course (contingent from 3/29/89).
Abatement Worker Refresher Course (full from 8/2/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor (full from 5/2/89).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (full from 8/2/89).
Project Designer Refresher Course (contingent from 6/21/89).
Project Designer Refresher Course (full from 7/31/89).

(10)(a) *Training Provider:* Enviro-Impact Inspections, Inc.
Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: (314) 426-0087.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Contractor/Supervisor (contingent from 3/8/88).

(11)(a) *Training Provider:* Environmental Salvage, Ltd.
Address: 25 South 15th St., Suite 6A, Council Bluffs, IA 51501, Contact: Tracey Coats, Phone: (712) 323-1836.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/89).
Abatement Worker (full from 2/16/89).
Abatement Worker Refresher Course (contingent from 6/22/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor (full from 2/16/89).
Contractor/Supervisor Refresher Course (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (full from 8/1/89).

(12)(a) *Training Provider:* Environmental Technology, Inc.
Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Bouska, Phone: (913) 236-5040.
(b) *Approved Courses:*
Abatement Worker (full from 2/29/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 7/18/89).

(13)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.
Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.
(b) *Approved Course:*
Abatement Worker (full from 3/7/88).

(14)(a) *Training Provider:* General Services Administration (GSA)- Region 6 Safety & Environmental Management Div.
Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.
(b) *Approved Courses:*
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 7/18/89).
Inspector/Management Planner Refresher Course (full from 8/29/89).

(15)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.
Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(16)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 637-0129.
(b) *Approved Courses:*
Abatement Worker (full from 8/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/19/88).
Contractor/Supervisor (full from 8/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 8/17/87).
Inspector/Management Planner Refresher Course (full from 9/19/88).
Project Designer (full from 8/17/87).
Project Designer Refresher Course (contingent from 9/19/88).
Project Designer Refresher Course (full from 12/20/88).

(17)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.
Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: (316) 778-1153.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/88 to 12/7/88 only).
Contractor/Supervisor (contingent from 10/19/88 to 12/7/88 only).

(18)(a) *Training Provider:* Hazardous Materials Training & Research Institute.
Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Barkdoll, Phone: (319) 322-5015.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 4/13/89).
Contractor/Supervisor (contingent from 6/8/89).
Contractor/Supervisor (full from 7/21/89).

(19)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.
Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.
(b) *Approved Courses:*
Abatement Worker (full from 6/28/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
Abatement Worker Refresher Course (full from 4/24/89).
Contractor/Supervisor (full from 6/28/88).
Contractor/Supervisor Refresher Course (contingent from 4/4/89).
Contractor/Supervisor Refresher Course (full from 4/24/89).

(20)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No.1.
Address: 3325 Hallenberg Dr., St. Louis, MO 63044, Contact: James M. Hagen, Phone: (314) 291-7399.
(b) *Approved Courses:*
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 6/28/89).
Abatement Worker Refresher Course (full from 6/30/89).
Contractor/Supervisor (full from 9/16/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).

(21)(a) *Training Provider:* Iowa Dept. of Education.
Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/4/88).

(22)(a) *Training Provider:* Iowa Laborers District Council Training Fund.
Address: 5806 Meredith Dr., Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-6965.
(b) *Approved Courses:*
Abatement Worker (full from 2/22/88).
Contractor/Supervisor (contingent from 10/14/88).

(23)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.
Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 267-0140.
(b) *Approved Courses:*
Abatement Worker (full from 1/5/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(24)(a) *Training Provider:* Living Word College.
Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88 to 5/6/88).
Inspector/Management (Approval Revoked 5/7/88).

(25)(a) *Training Provider:* MITON, Inc.
Address: P.O. Box 1582, Branson, MO 65616, Contact: Tony Williams, Phone: (417) 335-6743.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/14/89).
Abatement Worker (full from 5/15/89).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 5/15/89).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Inspector/Management Planner Refresher Course (full from 4/3/89).

(26)(a) *Training Provider:* Maple Woods Community College.
Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-6500.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (full from 1/13/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (full from 1/13/89).
Inspector/Management Planner (contingent from 4/20/88).

Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/89).
Inspector/Management Planner Refresher Course (full from 7/28/89).
(27)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew/Betty Fenstemaker, Phone: (800) 444-6382.
(b) *Approved Courses:*
Abatement Worker (full from 10/20/87).
Abatement Worker Refresher Course (full from 11/14/88).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (full from 11/14/88).
Inspector/Management Planner (full from 8/8/88).
Inspector/Management Planner Refresher Course (full from 1/30/89).
(28)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.
Address: 635 Southwest 2nd St., Box 1029, Lee's Summit, MO 64063, Contact: Steve Minshall, Phone: (816) 525-6681.
(b) *Approved Courses:*
Abatement Worker (full from 5/9/88 to 6/5/89 only).
Abatement Worker Refresher Course (contingent from 4/28/89 to 6/5/89 only).
Contractor/Supervisor (full from 5/9/88 to 6/5/89 only).
Contractor/Supervisor Refresher Course (contingent from 4/28/89 to 6/5/89 only).
(29)(a) *Training Provider:* National Asbestos Training Center University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0161.
(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/5/88).
Abatement Worker Refresher Course (full from 9/26/89).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/87).
Contractor/Supervisor Refresher Course (contingent from 10/5/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (full from 10/26/87).
Inspector/Management Planner Refresher Course (contingent from 10/5/88).
Inspector/Management Planner Refresher Course (full from 1/25/89).
(30)(a) *Training Provider:* PSH, Inc.
Address: 1810 Craig Rd., Suite 114, St. Louis, MO 63146, Contact: Carol E. Hoag, Phone: (314) 275-7733.
(b) *Approved Courses:*
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 9/14/89).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/14/89).
Inspector/Management Planner (full from 6/23/88).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 3/2/89).
(31)(a) *Training Provider:* Performance Abatement Services, Inc.
Address: 14801 West 99th St., P.O. Box 19328, Lenexa, KS 66215, Contact: Robert Bornkessel, Phone: (913) 888-[illegible].
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 7/6/89).
Contractor/Supervisor (full from 7/27/89).
(32)(a) *Training Provider:* Roth Asbestos Consultants, Inc.
Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 3/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 7/20/89).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 1/23/89).
(33)(a) *Training Provider:* Ryckman's Emergency Action & Consulting Team (REACT).
Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: Nicolaus P. Neuman, Phone: (314) 569-0991.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 8/3/89).
Contractor/Supervisor (full from 7/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/26/89).
Contractor/Supervisor Refresher Course (full from 8/4/89).

EPA-Approved Training Courses

REGION VIII -- Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.
Address: 9101 Pearl St., Thornton, CO 80229, Contact: Eugene Aragan, Phone: (303) 450-5028.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/28/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 7/26/89).
(2)(a) *Training Provider:* Asbestos Training & Supply.
Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.
(b) *Approved Course:*
Abatement Worker (contingent from 5/2/89).
(3)(a) *Training Provider:* Chen-Northern, Inc.
Address: 600 South 25th St., Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-9161.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 12/8/87).
Abatement Worker Refresher Course (contingent from 2/16/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.
Address: 4290 Holly St., Denver, CO 80216, Contact: Stephen L. Sanford, Phone: (303) 393-6060.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).
(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.
Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/89).
Abatement Worker (full from 2/16/89).
(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences.
Address: Fort Collins, CO 80523, Contact: Birgit Wolff, PHD, Phone: (303) 491-1551.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/23/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
(7)(a) *Training Provider:* Colorado Training Institute.
Address: 1210 East Colfax, Suite 306, Denver, CO 80218, Contact: Mike Schluterbusch, Phone: (303) 860-0574.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).
Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/22/88).
(9)(a) *Training Provider:* Envir-o-tech.
Address: 300 Moore Ln., Billings, MT 59102, Contact: Dr. Gwen Burton, Phone: (406) 252-7538.
(b) *Approved Course:*
Abatement Worker (full from 7/6/88).
(10)(a) *Training Provider:* Front Range Community College.
Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
(11)(a) *Training Provider:* HWS Technologies, Inc.
Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-6868.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Abatement Worker Refresher Course (full from 6/29/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 6/29/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (full from 6/29/89).
(12)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 11234 East Caley Ave., Englewood, CO 80111, Contact: Charles Metzger & D. Robinson, Phone: (303) 790-2727.
(b) *Approved Courses:*
Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 4/28/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (full from 4/28/89).
(13)(a) *Training Provider:* Industrial Health, Inc. (IHI).
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (contingent from 4/24/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/6/89).
Project Designer Refresher Course (contingent from 4/24/89).
(14)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.
Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham & Pat Pfeifer, Phone: (303) 778-8602.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/28/89).
(15)(a) *Training Provider:* Major Safety, Inc.
Address: 1510 Ayr St., Suite 200, Lakewood, CO 80215, Contact: Tom Major Sr., Phone: (303) 424-7874.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/28/88).
Abatement Worker (full from 9/15/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/20/89).

Contractor/Supervisor (full from 9/12/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 1/2/88).
Inspector/Management Planner (full from 3/27/89).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Project Designer (contingent from 1/28/88).
Project Designer Refresher Course (contingent from 1/18/89).

(16)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).
Address: 219 23rd St. North, Box 170, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 5/23/89).
Abatement Worker Refresher Course (contingent from 7/31/89).

(17)(a) *Training Provider:* Misers Inspection & Training, Inc.
Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-0367.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Abatement Worker Refresher Course (full from 1/27/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).
Contractor/Supervisor Refresher Course (full from 1/27/89).

(18)(a) *Training Provider:* NATEC International, Inc.
Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Lester Ablin, Phone: (303) 761-0422.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/15/88).
Inspector/Management Planner (contingent from 6/2/89).

(19)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 S, West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).
Contractor/Supervisor (contingent from 3/6/89).

(20)(a) *Training Provider:* Power Masters, Inc.
Address: 13205 South State St., Draper, UT 84020, Contact: Brain Welty, Phone: (801) 571-9321.

(b) *Approved Course:*
Abatement Worker (contingent from 6/13/88).

(21)(a) *Training Provider:* Precision Safety & Services, Inc.
Address: 1245 Windemaker Ln., Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8590.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/2/88).

(22)(a) *Training Provider:* R.S. Christiansen Asbestos Consultant.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R.S. Christiansen, Phone: (801) 572-2910.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/29/88).
Abatement Worker (full from 12/7/88).

(23)(a) *Training Provider:* South Dakota State University College of Engineering.
Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/18/88).

(24)(a) *Training Provider:* Survey Management & Design (SMD).
Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: David A. Sohm, Phone: (701) 234-9556.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/2/89).
Inspector/Management Planner (contingent from 9/14/89).

(25)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.
Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee & D. Bastian, Phone: (801) 581-5710.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/88).
Contractor/Supervisor (contingent from 6/1/87).
Contractor/Supervisor (full from 6/1/87).
Contractor/Supervisor Refresher Course (contingent from 6/7/88).
Contractor/Supervisor Refresher Course (full from 11/13/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

EPA-Approved Training Courses

REGION IX -- San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

List of Asbestos Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Asbestos C.T.I.
Address: P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Lee Hess, Phone: (209) 286-1249.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/31/88).
Inspector (contingent from 3/21/89).

(2)(a) *Training Provider:* Asbestos Workers Abatement Training Program of Southern California.
Address: 1669 East Lincoln Ave., Orange, CA 92655-1929, Contact: James Riley, Phone: (714) 921-8110.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/27/88).
Contractor/Supervisor (contingent from 1/26/89).

(3)(a) *Training Provider:* Carpenters No. 46 Northern California Counties J.A.T.C. & T.B.
Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 12/1/88).

(4)(a) *Training Provider:* Center for Accelerated Learning.

Address: 400 Buck Ave., Suite G, Vacaville, CA 95688, Contact: David Esparza, Phone: (707) 446-7996.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).

(5)(a) *Training Provider:* DWC Consulting Co., Inc.
Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/3/89).
Contractor/Supervisor (contingent from 4/3/89).
Inspector/Management Planner (contingent from 4/3/89).

(6)(a) *Training Provider:* Dan Napier & Associates.
Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Project Designer (contingent from 3/30/89).

(7)(a) *Training Provider:* Diagnostic Engineering, Inc.
Address: 50 East Foothill Blvd., Arcadia, CA 91006, Contact: Alan M. Lamson, Phone: (818) 447-5216.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).

(8)(a) *Training Provider:* EnviroMD, Inc.
Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Rose Rubio, Phone: (602) 881-1000.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/17/89).
Inspector/Management Planner (contingent from 11/14/88).

(9)(a) *Training Provider:* Environmental Control Industries.
Address: 5720 Shattuck Ave., Oakland, CA 94609, Contact: Richard McGlothlin, Phone: (415) 655-5855.

(b) *Approved Course:*
Abatement Worker (contingent from 12/1/88).

(10)(a) *Training Provider:* Environmental Sciences, Inc.
Address: 105 E. Speedway, Tucson, AZ 85705, Contact: Dale Keyes, Phone: (602) 792-0097.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/2. /87).
Inspector/Management Planner (full from 10/5/87).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(11)(a) *Training Provider:* Excel Environmental, Inc.
Address: 739 Allston Way, Berkeley, CA 94710, Contact: Otis Wong, Phone: (415) 548-4300.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 6/3/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(12)(a) *Training Provider:* Hawaii Laborers Training School.
Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 488-8161.

(b) *Approved Course:*
Abatement Worker (contingent from 5/27/88).

(13)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Asbestos Training Fund.
Address: 2033 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2292.

(b) *Approved Course:*
Abatement Worker (contingent from 5/27/88).

(14)(a) *Training Provider:* International Technology Corp.
Address: 336 West Anaheim St., Wilmington, CA 90748, Contact: Keith Soebe, Phone: (213) 830-1781.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 3/29/89).
Contractor/Supervisor (contingent from 4/15/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(15)(a) *Training Provider:* KELLCO Training Institute.
Address: 44814 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 659-8751.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
Inspector/Management Planner (contingent from 3/21/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(16)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(17)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306, Contact: Mary Lacy, Phone: (714) 763-4341.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(18)(a) *Training Provider:* Lehr Training Institute.
Address: 1431 Warner Ave., Tustin, CA 92680, Contact: Susan Patnode, Phone: (714) 259-1575.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/16/88).

Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(19)(a) *Training Provider:* National Abatement Technology Employment Center (NATEC).
Address: 11552 Knott St., Suite 8, Garden Grove, CA 92643, Contact: Ronald Sandlin, Phone: (714) 894-7577.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/30/87).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 12/30/87).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(20)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.

(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/7/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(21)(a) *Training Provider:* Naval Civil Engineering Laboratory.
Address: Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-3409.

(b) *Approved Course:*
Inspector (contingent from 4/6/89).

(22)(a) *Training Provider:* Occupational Training Institute, Inc.
Address: 5 Civic Center, Suite 225, Newport Beach, CA 92660, Contact: David K. Hardman, Phone: (714) 721-9570.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/21/89).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/21/89).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 2/21/89).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(23)(a) *Training Provider:* Pacific Asbestos Information Center U.C. Extension.
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Debra Dobbin, Phone: (415) 643-7143.

(b) *Approved Courses:*
Contractor/Supervisor (full from 2/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).

(24)(a) *Training Provider:* Salem Kroeger, Inc.
Address: 106 Church St., Roseville, CA 95678, Contact: Owen C. Tilley, Phone: (916) 784-7222.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/3/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(25)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.
Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 263-6941.

(b) *Approved Course:*
Abatement Worker (contingent from 3/21/89).

(26)(a) *Training Provider:* San Diego County District Council of Carpenters.
Address: 4665 Mercury St., San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 571-8977.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Contractor/Supervisor (contingent from 10/31/88).

(27)(a) *Training Provider:* The Asbestos Institute.
Address: 2701 East Camelback, Suite 381, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 381-0090.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(28)(a) *Training Provider:* University Associates, Ltd.
Address: 2425-A North Huachuca Dr., Tucson, AZ 85745, Contact: Carolyn Coker, Phone: (602) 624-9366.

(b) *Approved Course:*
Inspector/Management Planner (contingent from 12/1/88).

(29)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.
Address: University Gardens, 3500 South Figueroa St., Suite 202, Los Angeles, CA 90007, Contact: James O. Pierce, Phone: (213) 743-6523.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/15/88).
Inspector/Management Planner (full from 8/2/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

EPA-Approved Training Courses

REGION X – Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (6T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Asbestos Services International.
Address: 12360 Southwest Butner Rd., Portland, OR 97225-5815, Contact: Robert E. Hastings, Phone: (503) 644-0246.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).

Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(2)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.

(b) *Approved Course:*
Inspector (contingent from 3/25/88).

(3)(a) *Training Provider:* Engineering Continuing Education University of Washington.
Address: CG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/8/88).

(4)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE, Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.

(b) *Approved Courses:*
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).

(5)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8056.

(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(6)(a) *Training Provider:* Hazcon, Inc.
Address: 5950 6th Ave., S, Suite 216, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(7)(a) *Training Provider:* Heavey Engineers, Inc.
Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648-0832, Contact: Daniel Evans, Phone: (509) 427-8936.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 3/10/89).

(8)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.
Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

(9)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: 4020 Southeast International Way, Suite C-106, Milwaukie, OR 97222, Contact: Shiela Wanta, Phone: (503) 659-8899.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(10)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.
Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Stephen Smiley, Phone: (503) 248-1939.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/14/89).
Inspector/Management Planner Refresher Course (full from 6/30/89).
Project Designer (contingent from 6/9/89).
Project Designer (full from 6/19/89).

(11)(a) *Training Provider:* South East Regional Resource Center, Inc.
Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 4/18/89).

(12)(a) *Training Provider:* Specialized Environmental Consulting, Inc.
Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 3/7/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(13)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).

(14)(a) *Training Provider:* Valley Research Corporation.
Address: 1299 E. 2400 St., Hagerman, ID 83332, Contact: Leon Urie, Phone: (208) 837-6437.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 11/2/88).

(15)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.
Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Colin MacRae, Phone: (206) 455-8054.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

V. List of EPA - Accredited Polarized Light Microscopy (PLM) Laboratories

A. Background

Section 206(d) of Title II requires EPA to provide for the development of an accreditation program through the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), for laboratories conducting analyses of bulk samples of asbestos-containing materials. NIST began initial evaluations of enrolled laboratories in October 1988 and has accredited approximately 550 PLM laboratories to date. NIST will continue to accredit laboratories on a regular basis.

EPA, to initially provide LEAs with a source of accredited laboratories until NIST completed its laboratory evaluations, established the "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." EPA announced the program in the Federal Register of September 30, 1987 (52 FR 33470). In the

program, laboratories successfully meeting EPA requirements were provided EPA Interim Accreditation. However, as of October 30, 1989, all EPA Interim Accreditations were removed. EPA published a notice in the **Federal Register** on September 18, 1989 (54 FR 38436), describing the removal process. Specifically, the notice stated all EPA accredited laboratories must receive NIST accreditation by October 30, 1989.

The following listing includes *commercial* and *noncommercial* laboratories currently accredited in the NIST National Voluntary Laboratory Accreditation Program (NVLAP). NIST continues to evaluate the accredited laboratories with ongoing proficiency testing rounds. It is possible some accredited laboratories could lose their accredited status based on their performance in NIST proficiency testing rounds. If this happens, NIST will assign the term "suspended" to the accreditation status of the laboratory. EPA does not consider a suspended accreditation to meet the regulatory requirements for the utilization of an accredited laboratory. Hence, LEAs must not use suspended laboratories. Prior to selecting a laboratory, LEAs should contact NIST at (301) 975-4016 to verify the accredited status of the laboratory. Additional copies of this listing may be obtained by calling (202) 554-1404.

EPA Accredited Commercial PLM Laboratories

REGION I – Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

(1) *Laboratory:* Aetna Life & Casualty (NIST), Engineering Department W101.

Address: 575 Pigeon Hill Rd., Windsor, CT 06095, Contact: Ethel Patricio, Phone: (203) 683-3647.

(2) *Laboratory:* Air Quality Consultants (NIST).

Address: 406 Libbey Pkwy., Weymouth, MA 02189, Contact: John E. O'Malley, Phone: (617) 337-7320.

(3) *Laboratory:* Allied Engineering, Inc. (NIST).

Address: 11 Columbia St., Augusta, ME 04330, Contact: Gary Bates, Phone: (207) 623-9299.

(4) *Laboratory:* Analytical Testing Services (NIST).

Address: 180 Weeden St., Pawtucket, RI 02860-1804, Contact: Robert F. Weisberg, Phone: (401) 723-7978.

(5) *Laboratory:* Applied Occupational Health Systems, (NIST).

Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: Richard R. Kretovich, Phone: (603) 228-3610.

(6) *Laboratory:* Balsam Environmental Consultants, Inc. (NIST).

Address: 225 Western Ave., Augusta, ME 04330, Contact: Frank Hill, Phone: (603) 893-0616.

(7) *Laboratory:* Balsam Environmental Consultants, Inc., (NIST).

Address: 59 Stiles Rd., Salem, NH 03079, Contact: Linda Goodreau, Phone: (603) 893-0616.

(8) *Laboratory:* Barnes and Jarnis, Inc.

Address: 216 Tremont St., Boston, MA 02116, Contact: Albert Szezur, Phone: (617) 542-6521.

(9) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 400 Hingham St., Rockland, MA 02370, Contact: James Litrides, Phone: (617) 871-6040.

(10) *Laboratory:* Brooks Laboratories, Inc. (NIST).

Address: 44 Codfish Ln., Weston, CT 06883, Contact: Margaret Y. Brooks, Phone: (203) 226-8970.

(11) *Laboratory:* CON-TEST, Inc. (NIST).

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Thomas E. Veratti, Phone: (413) 525-1198.

(12) *Laboratory:* CT State Dept. of Health Lab (NIST).

Address: 10 Clinton St., P.O. Box 1689, Hartford, CT 06106, Contact: Janet B. Kapish, Phone: (203) 566-5626.

(13) *Laboratory:* Certified Engineering & Testing Co., Inc. (NIST).

Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Kevin Kelley, Phone: (617) 337-7887.

(14) *Laboratory:* Certified Engineering & Testing Co., Inc. of Rhode Island (NIST).

Address: 400 Smith St., Providence, RI 02908, Contact: Maria Stoeckel, Phone: (401) 831-9090.

(15) *Laboratory:* Chem Scope, Inc. (NIST).

Address: P.O. Box 389, Fair Haven Station, New Haven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 468-0055.

(16) *Laboratory:* Covino Environmental Consultants, Inc., (NIST).

Address: 12 Walnut Hill Pk., Woburn, MA 01801, Contact: Samuel J. Covino, Jr., Phone: (617) 933-2555.

(17) *Laboratory:* Dennison Environmental, Inc. (NIST).

Address: 35 Industrial Pkwy., Woburn, MA 01801, Contact: James E. Dennison, Phone: (617) 932-9400.

(18) *Laboratory:* EHL (NIST), Division of Cigna Corp.

Address: 94 Murphy Rd., Hartford, CT 06114, Contact: Jim Kenny, Phone: (203) 522-3814.

(19) *Laboratory:* ESA Laboratories (NIST).

Address: 43 Wiggins Ave., Bedford, MA 01730, Contact: Reg Griffin, Phone: (617) 275-0100.

(20) *Laboratory:* Eastern Analytical Laboratories, Inc., (NIST).

Address: 149 Rangeway Rd., North Billerica, MA 01862, Contact: Robert MacDonald, Phone: (617) 272-5212.

(21) *Laboratory:* Enviro Research (NIST).

Address: 141 Prestige Park Rd., East Hartford, CT 06108, Contact: Arthur C. Cosmas, Phone: (203) 289-6493.

(22) *Laboratory:* Enviro-Lab, Inc. (NIST).

Address: 154 Grove St., Chicopee, MA 01020, Contact: Peter R. Tuttle, Phone: (413) 592-0030.

(23) *Laboratory:* Enviromed Services, Inc. (NIST).

Address: 25 Science Pk., New Haven, CT 06511, Contact: Joseph Pasquariello, Phone: (203) 786-5580.

(24) *Laboratory:* Hunter Environmental Sciences, Inc., (NIST).

Address: 10 Lewis St., P.O. Box 289, Lincoln, MA 01773, Contact: W. Bruce Hunter, Phone: (617) 259-0800.

(25) *Laboratory:* Hygeia, Inc. (NIST).

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: John R. Pilling, Phone: (617) 890-4999.

(26) *Laboratory:* Hygienetics Analytical Services, Inc., (NIST).

Address: 150 Causeway St., Boston, MA 02114, Contact: Jack Yee, Sr., Phone: (617) 723-4664.

(27) *Laboratory:* Industrial Hygiene/New England (NIST).

Address: P.O. Box 1158, Kennebunk, ME 04043, Contact: Lori Burns, Phone: (207) 985-6110.

(28) *Laboratory:* Industrial Hygiene/New England, Inc., (NIST).

Address: 157 Park St., Bangor, ME 04401, Contact: Peter Noddin, Phone: (207) 947-6645.

(29) *Laboratory:* Kaselaan & D'Angelo Associates, Inc., (NIST).

Address: 500 Victory Rd. Suite 270, Marina Bay, MA 02171, Contact: Marianne Rogers, Phone: (617) 472-1100.

(30) *Laboratory:* MMR, Inc. (NIST).

Address: P.O. Box 810, 241 West Boylston St., West Boylston, MA 01583, Contact: David Krashes, Phone: (617) 835-6262.

(31) *Laboratory:* Massachusetts Commonwealth (NIST), Div. of Occupational Hygiene.

Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 528-0635.

(32) *Laboratory:* Mystic Air Quality Consultants (NIST).

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(33) *Laboratory:* New Hampshire Div. of Public, Health (NIST), Public Health Laboratory.

Address: 6 Hazen Dr., Concord, NH 03301, Contact: Veronica Malmberg, Phone: (603) 271-4657.

(34) *Laboratory:* Northeast Test Consultants (NIST).

Address: 587 Spring St., Westbrook, ME 04092, Contact: Stephen Broadhead, Phone: (207) 854-3939.

(35) *Laboratory:* Norwich Laboratories, Inc. (NIST).

Address: 750 North Pleasant St., Amherst, MA 01002, Contact: Nina Inchardi, Phone: (413) 549-6884.

(36) *Laboratory:* R.I. Analytical Laboratories Inc., (NIST).

Address: 1040 Mineral Spring Ave., North Providence, RI 02904, Contact: Scott Patefield, Phone: (401) 725-4190.

(37) *Laboratory:* Shelburne Laboratories, Inc. (NIST).

Address: 74 Ethan Allen Dr., P.O. Box 9479, South Burlington, VT 05403, Contact: Robert J. Emerson, Phone: (802) 658-5798.

(38) *Laboratory:* TRC Environmental Consultants, Inc., (NIST).

Address: 800 Connecticut Blvd., East Hartford, CT 06108, Contact: Paul Hunt, Phone: (203) 289-8631.

(39) *Laboratory:* Testwell Craig Labs of Connecticut, Inc. (NIST).

Address: 25 Henry St., Bethel, CT 06801, Contact: Richard Speciale, Phone: (203) 743-7281.

(40) *Laboratory:* The Hartford Steam Boiler I & I Co., (NIST), Environmental Services Laboratory.

Address: One State St., Hartford, CT 06102, Contact: Joanne Kuvalanka, Phone: (203) 722-5476.

EPA Accredited Commercial PLM Laboratories

REGION II – Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.

(1) *Laboratory:* ASBESCO, Inc. (NIST).

Address: 961 Lydell Ave., Bldg. 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberov, Phone: (716) 647-2530.

(2) *Laboratory:* ASTECO, Inc. (NIST).

Address: 4287 Witmer Rd., P.O. Box 2204, Niagara Falls, NY 14305, Contact: Fred Smith, Phone: (716) 297-5992.

(3) *Laboratory:* ATC Environmental, Inc. (NIST).

Address: 104 East 25th St., New York, NY 10010, Contact: Edwin Levin, Phone: (212) 353-8280.

(4) *Laboratory:* Adirondack Environmental Services, (NIST).

Address: 298 Riverside Ave., P.O. Box 265, Rensselaer, NY 12144, Contact: Thomas Hare, Phone: (518) 785-0128.

(5) *Laboratory:* Alternative Ways, Inc./AEM, Inc., (NIST).

Address: P.O. Box 1147, 100 Essex Rd., Bellmawr, NJ 08031, Contact: John Luxford, Phone: (609) 933-1663.

(6) *Laboratory:* Ambient Labs, Inc. (NIST).

Address: 119 West 23rd St., New York, NY 10011, Contact: William A. Esposito, Phone: (212) 962-4242.

(7) *Laboratory:* American Testing Labs, Inc. (NIST).

Address: P.O. Box 102, Bronx, NY 10471, Contact: George Kan, Phone: (212) 796-4761.

(8) *Laboratory:* Applied Environmental Technology, Inc., (NIST).

Address: 316 Cooper Center, Pennsauken, NJ 08109, Contact: Willard Kingsley, Phone: (609) 488-0900.

(9) *Laboratory:* Applied Geo Services, Inc. (NIST).

Address: 41 Union Square W, Suite 1125, New York, NY 10003, Contact: Jeffrey A. Forgang, Phone: (212) 633-1113.

(10) *Laboratory:* Atlantic Environmental, Inc. (NIST).

Address: 2 East Blackwell St., Suite 24, Dover, NJ 07801, Contact: David Pearson, Phone: (201) 366-4660.

(11) *Laboratory:* Barnes & Jarnis, Inc. (NIST).

Address: 373 Park Ave. S, 11th Fl., New York, NY 10016-8865, Contact: Jay Holmes, Phone: (212) 532-6433.

(12) *Laboratory:* Brad Associates (NIST).

Address: 1 Rosanne Ct., Lake Ronkonkoma, NY 11779, Contact: Benito P. San Pedro, Phone: (516) 467-4539.

(13) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 361 Hanover St., Portsmouth, NJ 03801, Contact: Janice Smith, Phone: (603) 431-2870.

(14) *Laboratory:* Buck Engineering & Environmental, Laboratory (NIST).

Address: 100 Tompkins St., Courtland, NY 13045, Contact: John H. Buck, Phone: (607) 753-3403.

(15) *Laboratory:* Buffalo Testing Labs., Inc. (NIST).

Address: 902 Kenmore Ave., Buffalo, NY 14216, Contact: Edward J. Kris, Phone: (716) 873-2302.

(16) *Laboratory:* Bulava Environmental, Inc. (NIST).

Address: 13 Hunt Club Rd., Belle Mead, NJ 08502, Contact: Edward J. Bulava, Phone: (201) 874-6207.

(17) *Laboratory:* Calibrations (NIST).

Address: 802 Watervliet Shaker Rd., Latham, NY 12210, Contact: Sascha Percent, Phone: (518) 786-1865.

(18) *Laboratory:* Certified Engineering & Testing Co. of, Upstate New York, Inc. (NIST).

Address: 288 Genesee St., Utica, NY 13502, Contact: Mark S. Evans, Phone: (315) 732-3826.

(19) *Laboratory:* Chenango Environmental Laboratory, Inc. (NIST).

Address: 350 State St., Binghamton, NY 13901, Contact: Tim Sayers, Phone: (607) 723-8175.

(20) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 160 Fieldcrest Ave., Raritan Center, Edison, NJ 08837, Contact: Lee Schumann, Phone: (201) 225-6040.

(21) *Laboratory:* Comprehensive Analytical Group (NIST).

Address: 147 Midler Park Dr., P.O. Box 254, Syracuse, NY 13206, Contact: Jeffrey Berry, Phone: (315) 432-0855.

(22) *Laboratory:* Dames & Moore (NIST).

Address: 12 Commerce Dr., Cranford, NJ 07016-1101, Contact: Margaret Lynch, Phone: (201) 272-8300.

(23) *Laboratory:* Detail Associates, Inc. (NIST).

Address: 310 Grand St., Engelwood, NJ 07631, Contact: Stephen A. Jaraczewski, Phone: (201) 569-6706.

(24) *Laboratory:* Eastern Analytical Services, Inc., (NIST).

Address: 4 Westchester Plaza, Elmsford, NY 10523-1601, Contact: Paul Stascavage, Phone: (914) 592-8380.

(25) *Laboratory:* Ecology & Environment, Inc. (NIST).

Address: 4285 Genesee St., Buffalo, NY 14225, Contact: Andrew Clifton, Phone: (716) 631-0360.

(26) *Laboratory:* Electron-Microscopy Service, Laboratories, Inc. (NIST).

Address: 108 Haddon Ave., Westmont, NJ 08108, Contact: Peter Frasca, Phone: (609) 858-4800.

(27) *Laboratory:* Environmental Management Systems, Inc., (NIST).

Address: 14 Sarafian Rd., New Paltz, NY 12561, Contact: Martin S. Rutstein, Phone: (914) 255-1034.

(28) *Laboratory:* Exxon Biomedical Sciences, Inc. (NIST), IH Analytical Laboratory.

Address: Mettlers Rd.: CN2350, East Millstone, NJ 08875-2350, Contact: John E. Stillman, Phone: (201) 873-0033.

(29) *Laboratory:* Friends Laboratory, Inc. (NIST).

Address: 446 Broad St., Waverly, NY 14892-1445, Contact: Douglas Friend, Phone: (607) 565-2893.

(30) *Laboratory:* Galson Technical Services (NIST).

Address: 6601 Kirkville Rd., East Syracuse, NY 13057, Contact: Joseph Unangst, Phone: (315) 432-0506.

(31) *Laboratory:* Hall-Kimbrell Environmental Services, (NIST).

Address: 129-09 26th Ave., Flushing, NY 11354-1166, Contact: Robert Farley, Phone: (718) 445-9090.

(32) *Laboratory:* Hazardous Waste Engineering, Consultants, Inc. (NIST).

Address: 47 Hudson St., Ossining, NY 10562, Contact: Marco Pedone, Phone: (914) 762-9000.

(33) *Laboratory:* Hillman Environmental Co. (NIST).

Address: 1089 Cedar Ave., Union, NJ 07083, Contact: Joseph P. Hillman, Phone: (201) 686-3335.

(34) *Laboratory:* Hygeia, Inc. (NIST).

Address: 276 Fifth Ave., Suite 503, New York, NY 10001, Contact: Marianne Thorpe, Phone: (212) 545-7822.

(35) *Laboratory:* Independent Asbestos Labs, Inc. (NIST).

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Fred Terracina, Phone: (315) 437-1122.

(36) *Laboratory:* Independent Testing & Consultation, Inc. (NIST).

Address: 386 Line Rd., P.O. Box 539, Holmdel, NJ 07733, Contact: Anthony Matthews, Phone: (201) 583-2538.

(37) *Laboratory:* Industrial Testing Laboratories (NIST).

Address: 50 Madison Ave., New York, NY 10010, Contact: Kenneth J. Kohlhof, Phone: (212) 685-8788.

(38) *Laboratory:* International Asbestos Testing, Laboratories (IATL) (NIST).

Address: 36 North Pine Ave., Maple Shade, NJ 08052, Contact: Emil M. Ondra, Phone: (609) 779-7792.

(39) *Laboratory:* Kaselaan & D'Angelo Associates, Inc., (NIST).

Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Marianne Rogers, Phone: (609) 547-6500.

(40) *Laboratory:* Kemron Environmental Services (NIST).

Address: 755 New York Ave., Huntington, NY 11743, Contact: Patricia Kirkland, Phone: (516) 427-0050.

(41) *Laboratory:* Laboratory Testing Services, Inc., (NIST).

Address: 75 Urban Ave., Westbury, NY 11590, Contact: Brian Heneveld, Phone: (516) 334-7770.

(42) *Laboratory:* Lozier Laboratories (NIST).

Address: 23 North Main St., Fairport, NY 14450, Contact: Alan J. Laffin, Phone: (716) 223-0050.

(43) *Laboratory:* Moby II (NIST).

Address: 1615 9th Ave., Bohemia, NY 11716, Contact: Andrew Hiscock, Phone: (516) 467-8477.

(44) *Laboratory:* Monroe Monitoring & Analysis (NIST).

Address: 1425 Mt. Read Blvd., Rochester, NY 14606, Contact: Herbert Dohr, Phone: (716) 546-8580.

(45) *Laboratory:* National Testing Laboratories, Inc., (NIST).

Address: 27-14 39th Ave., Long Island City, NY 11101, Contact: Allen Ross, Phone: (718) 784-2828.

(46) *Laboratory:* New York City, Dept. of Sanitation, (NIST) Environmental Police Laboratory.

Address: 2253 Broadway, Suite 800, New York, NY 10007, Contact: Daniel Millstone, Phone: (212) 240-4800.

(47) *Laboratory:* Northeastern Analytical Corp. (NIST).

Address: Evesham Corporation Center, 4 East Stow Rd., Unit 10, Marlton, NJ 08053, Contact: William Dolan, Phone: (609) 651-1441.

(48) *Laboratory:* OBG Laboratories, Inc. (NIST).

Address: Box 4873, 1304 Buckley Rd., Syracuse, NY 13221, Contact: Michael Gerber, Phone: (315) 457-1494.

(49) *Laboratory:* Omega Laboratories, Inc. (NIST).

Address: 127 Main St., Hackensack, NJ 07601, Contact: John C. Walton, Phone: (201) 393-5647.

(50) *Laboratory:* PMK, Ferris, & Perricone, Inc. (NIST).

Address: 516 Bloy St., Hillside, NJ 07205, Contact: James Ferris, Phone: (201) 885-0044.

(51) *Laboratory:* Pedneault Associates, Inc. (NIST).

Address: 1615 9th Ave., Bohemia, NY 11716, Contact: John Pedneault, Phone: (516) 467-8477.

(52) *Laboratory:* Powell Environmental Services, Inc., (NIST).

Address: Suite 9A, Camp Meeting Grounds, Delanco, NJ 08075, Contact: Michael D. Moschella, Phone: (609) 764-8888.

(53) *Laboratory:* Professional Service Ind., Inc. (NIST).

Address: 423A New Karner Rd., Albany, NY 12205, Contact: Samuel Battaglia, Phone: (518) 452-0777.

(54) *Laboratory:* Public Service Testing Laboratories, Inc. (NIST).

Address: 37-31 57th St., Woodside, NY 11377, Contact: Stephen DiMartino, Phone: (718) 476-9202.

(55) *Laboratory:* R-C-G BOCES Risk Management Services, Lab (NIST).

Address: Brookview Rd., P.O. Box 28, Brookview, NY 12026, Contact: Rajender Abraham, Phone: (518) 732-7266.

(56) *Laboratory:* R.J. Lee Group, Inc. (NIST).

Address: 1741 Baseline Rd., Grand Island, NY 14072, Contact: Kuldrip Chopra, Phone: (716) 773-7625.

(57) *Laboratory:* Suffolk County Public & Env. Health, Lab. (NIST).

Address: Veterans Memorial Hwy., Building 77, Hauppauge, NY 11788, Contact: Ronald Huttie, Phone: (516) 360-5528.

(58) *Laboratory:* TAKA Asbestos Analytical Services, Inc. (NIST), Environmental Testing.

Address: 8 Pine Hill Court, Northport, NY 11768, Contact: Thomas Kubic, Phone: (516) 261-2117.

(59) *Laboratory:* Testwell Craig Lab, Inc. (NIST).

Address: 47 Hudson St., Ossining, NY 10562, Contact: Marco J. Pedone, Phone: (914) 736-1776.

(60) *Laboratory:* Testwell Craig Laboratories of Albany, Inc. (NIST).

Address: 518 Clinton Ave., Albany, NY 12206, Contact: Stanley P. Purzycki, Phone: (518) 436-4114.

(61) *Laboratory:* Testwell Craig Laboratories, Inc., (NIST).

Address: 50 Passaic Ave., Fairfield, NJ 07006, Contact: Tony Poraello, Phone: (201) 882-8377.

(62) *Laboratory:* Testwell Craig Peters, Inc. (NIST).

Address: 127 Seeley Rd., Syracuse, NY 13224, Contact: Walter Peters, Phone: (315) 446-0005.

(63) *Laboratory:* Testwell Craig Testing Laboratories, (NIST).

Address: 505 East Jarding Hwy., P.O. Box 477, Mays Landing, NJ 08330, Contact: James Kelly, Phone: (609) 625-1700.

(64) *Laboratory:* The Analytical Lab (NIST), Safety and Brookhaven National Lab.

Address: Bldg. 535A, Upton, NY 11973, Contact: Jana Kiram Naidu, Phone: (516) 282-4263.

(65) *Laboratory:* U.S. Testing Company, Inc., Environmental Sciences Division (NIST).

Address: 1415 Park Ave., Hoboken, NJ 07030, Contact: Ellen McCabe Noyes, Phone: (201) 792-2400.

EPA Accredited Commercial PLM Laboratories

REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

(1) *Laboratory:* AGX, Inc. (NIST).

Address: Freedom Professional Bldg., 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Kimberly Allison, Phone: (412) 776-1905.

(2) *Laboratory:* AMA Analytical Services (NIST).

Address: 4475 Forbes Blvd., Lanham, MD 20706, Contact: Len Burrelli, Phone: (800) 459-2640.

(3) *Laboratory:* ASBESTECH Division of AH and M, Carolina, Inc. (NIST).

Address: P.O. Box 98, Dunbar, WV 25064, Contact: Orvie Nicholson, Phone: (304) 766-6224.

(4) *Laboratory:* ATEC Associates of Virginia, Inc., (NIST).

Address: 2551 Eltham Ave., Suite Z, Norfolk, VA 23513, Contact: Richard A. Vogel, Jr., Phone: (804) 857-6765.

(5) *Laboratory:* ATEC Associates, Inc. (NIST), Industrial Hygiene Division.

Address: 8989 Herrmann Dr., Columbia, MD 21045-8780, Contact: Paul A. Esposito, Phone: (301) 381-0232.

(6) *Laboratory:* Accredited Environmental Technologies, Inc. (NIST).

Address: 28 North Pennell Rd., Lima, PA 19037, Contact: Jack Carney, Phone: (215) 891-0114.

(7) *Laboratory:* Advanced Analytical Laboratories, Inc., (NIST).

Address: 30th & North Church St., Hazelton, PA 18201, Contact: Thomas Martinelli, Phone: (717) 455-5115.

(8) *Laboratory:* Air Quality Analysis Associates (NIST).

Address: 1337 Perry Ave., Morgantown, WV 26505, Contact: John T. Jankovic, Phone: (304) 599-0023.

(9) *Laboratory:* Allegheny Asbestos Analysis, Inc., (NIST).

Address: 300 Mt. Lebanon Blvd., Suite 2217, Pittsburgh, PA 15234, Contact: Tammy Nagel, Phone: (412) 563-3744.

(10) *Laboratory:* Allegheny Mountain Research (NIST), Occupational Health Division.

Address: RD 1, Box 243A, Berlin, PA 15530-9546, Contact: Victor Kawchak, Phone: (814) 267-4404.

(11) *Laboratory:* Altest Environmental Labs (NIST).

Address: 28 West Main St., Plymouth, PA 18651, Contact: Frank Egenski, Phone: (717) 779-5377.

(12) *Laboratory:* American Medical Laboratories, Inc., (NIST).

Address: 11091 Main St., Fairfax, VA 22030, Contact: Elsie Sharon, Phone: (703) 691-9100.

(13) *Laboratory:* American Medical Laboratories, Inc., (NIST).

Address: 2000 Bremo Rd., Suite 204, Richmond Medical Park, Richmond, VA 23226, Contact: Alton Bartlett, Phone: (703) 691-9100.

(14) *Laboratory:* Analytics (NIST).

Address: P.O. Box 25249, Richmond, VA 23260, Contact: James Calpin, Phone: (804) 353-8973.

(15) *Laboratory:* Analytics Laboratory, Inc. (NIST), Subs. of Roche Biomedical, Laboratories Inc.

Address: 205 South Whiting St., Suite 405, Alexandria, VA 22304, Contact: Eugene Buie, Phone: (703) 751-3803.

(16) *Laboratory:* Analytics Laboratory, Inc. (NIST), Subs. of Roche Biomedical, Laboratories, Inc.

Address: 4625 Pembroke Lake Cir., Virginia Beach, VA 23455, Contact: Christie Buie, Phone: (804) 857-0675.

(17) *Laboratory:* Apex Environmental, Inc. (NIST).

Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Frank G. Fitzpatrick, Phone: (301) 217-9200.

(18) *Laboratory:* Applied Environmental Health & Safety, Inc. (NIST).

Address: Reston International Center, 11800 Sunrise Valley Dr., Suite 1230, Reston, VA 22091, Contact: Jana Ambrose, Phone: (703) 648-0822.

(19) *Laboratory:* BCM Engineers, Inc. (NIST).

Address: 1850 Gravers Rd., Norristown, PA 19401, Contact: Linda Cox, Phone: (215) 275-0281.

(20) *Laboratory:* BCM Engineers, Inc. (NIST).

Address: 5777 Baum Blvd., Pittsburg, PA 15206, Contact: Paul Jadlowiec, Phone: (412) 361-6000.

(21) *Laboratory:* BCM Engineers, Inc. - Potomac (NIST).

Address: 600 W. Service Road, Suite 320, Washington, DC 20041, Contact: Nathan Williamson, Phone: (703) 260-0002.

(22) *Laboratory:* Batta Environmental Associates (NIST).

Address: Delaware Industrial Park, 6 Garfield, Way, Newark, DE 19713-3540, Contact: Steve Cahill, Phone: (302) 737-3376.

(23) *Laboratory:* Biospherics, Inc. (NIST).

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Lori Sletten, Phone: (301) 369-3900.

(24) *Laboratory:* Blue Ridge Analytical (NIST).

Address: 202 Bishop Rd., Blacksburg, VA 24060, Contact: David Violette, Phone: (703) 951-9283.

(25) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(26) *Laboratory:* Brojos Scientific, Inc. (NIST).

Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0858.

(27) *Laboratory:* Cumberland Analytical Labs., Inc., (NIST).

Address: 56 North Second St., Chambersburg, PA 17201, Contact: D. R. Richner, Jr., Phone: (717) 263-5943.

(28) *Laboratory:* Eagle Industrial Hygiene Association, Incorporated (NIST).

Address: 405 Masons Mill Rd., Huntingdon, PA 19006, Contact: Keith Crawford, Phone: (215) 657-2261.

(29) *Laboratory:* Enviromental Testing, Inc. (NIST).

Address: 100 S. Cass Street, Middletown, DE 19709, Contact: Gary Hayes, Phone: (302) 378-9881.

(30) *Laboratory:* FREE-COL Laboratories (NIST).

Address: Cotton Rd., P.O. Box 557, Meadville, PA 16335-0557, Contact: J. Richard Wohler, Phone: (814) 724-6242.

(31) *Laboratory:* Galson Technical Services, Inc. (NIST).

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Pamela Weaver, Phone: (215) 834-7288.

(32) *Laboratory:* Gannett Fleming, Environmental Laboratory (NIST).

Address: 209 Senate Ave., Camp Hill, PA 17011, Contact: David W. Lane, Phone: (717) 763-7211.

(33) *Laboratory:* Geo-Environmental Services, Inc., (NIST).

Address: 18928 Germantown Rd., Germantown, MD 20874, Contact: John T. Razzolini, Phone: (301) 353-0338.

(34) *Laboratory:* HBI-USA (NIST).

Address: 10378 Democracy Lane, Fairfax, VA 22030, Contact: Peter Binnie, Phone: (703) 352-0102.

(35) *Laboratory:* Havens Laboratories, Inc. (NIST).

Address: 1130 East Market Street, Charlottesville, VA 22901, Contact: Stanley Havens, Phone: (804) 293-6000.

(36) *Laboratory:* I-TEM, Ltd. (NIST).

Address: North Lake Commerce Center, 12850 Middlebrook Rd., P.O. Box 1060, Germantown, MD 20874, Contact: Jorge Rangel, Phone: (301) 353-0585.

(37) *Laboratory:* Lancaster Laboratories, Inc. (NIST).

Address: 2425 New Holland Ave., Lancaster, PA 17601, Contact: Barbara J. Weaver, Phone: (717) 656-2301.

(38) *Laboratory:* Lehigh Valley Analytics, Inc. (NIST).

Address: 60 West Broad St., Bethlehem, PA 18018, Contact: Barbara J. Davies, Phone: (215) 866-4434.

(39) *Laboratory:* MDS Laboratories (NIST).

Address: 4418 Pottsville Pike, Reading, PA 19605, Contact: Fred Usbeck, Phone: (215) 921-9191.

(40) *Laboratory:* Marine Chemist Service, Inc. (NIST).

Address: 11850 Tug Boat Ln., Newport News, VA 23606, Contact: Colleen Becker, Phone: (804) 873-0933.

(41) *Laboratory:* Medlab, Inc. (NIST).

Address: P.O. Box 2045, Wilmington, DE 19899, Contact: Sevag Sinanian, Phone: (302) 994-5764.

(42) *Laboratory:* Microbac Laboratories (NIST), Erie Testing Laboratory Division.

Address: 2411 West 26th Street, Erie, PA 16506, Contact: Michael McElhinny, Phone: (814) 833-4790.

(43) *Laboratory:* Microbac Mid-Atlantic (NIST).

Address: 5808 Jefferson Avenue, Newport News, VA 23605, Contact: Anthony Creech, Phone: (804) 874-4930.

(44) *Laboratory:* Occupational Medical Center Lab (NIST),

Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Christopher Beza, Phone: (301) 306-0632.

(45) *Laboratory:* Oneil M. Banks, Inc. (NIST).

Address: 336 South Main St., Bel Air, MD 21014, Contact: Michelle L. Evans, Phone: (301) 879-4676.

(46) *Laboratory:* Pacific Environmental Services, Inc., (NIST).

Address: 11440 Isaac Newton Sq., Suite 205, Reston, VA 22090, Contact: John Mazur, Phone: (703) 471-8383.

(47) *Laboratory:* Paleozoic Hydrocarbon Industries, Asbestos Lab Division of PHI (NIST).

Address: 132 Oakwood Rd., Charleston, WV 25314, Contact: S. M. Spencer, Jr., Phone: (304) 342-6424.

(48) *Laboratory:* Pennrun Corporation (NIST).

Address: 150 William Pitt Way, Pittsburgh, PA 15238, Contact: Valerie McDonald, Phone: (412) 826-5304.

(49) *Laboratory:* Professional Service Ind., Inc. (NIST), Pittsburgh Testing Lab Division.

Address: 850 Poplar St., Pittsburgh, PA 15220, Contact: Bruce Erdner, Phone: (412) 922-4000.

(50) *Laboratory:* R.J. Lee Group (NIST).

Address: 350 Hochberg Rd., P.O. Box 278, Monroeville, PA 15146, Contact: Ian Stewart, Phone: (412) 325-1776.

(51) *Laboratory:* R.J. Lee Group (NIST).

Address: 10366 Battleview Pkwy., Manassas, VA 22110, Contact: Tom Dagenhart, Phone: (703) 368-7880.

(52) *Laboratory:* SSI Environmental Consultants (NIST).

Address: Expressway Pk., Gulf Lab Rd. - Harmarville, Pittsburgh, PA 15238, Contact: George M. Beck, Phone: (412) 828-9210.

(53) *Laboratory:* Schneider Laboratories, Inc. (NIST).

Address: 1427 West Main St., Richmond, VA 23220-4629, Contact: Richard F. Schneider, Phone: (804) 353-6778.

(54) *Laboratory:* Scientific & Environmental Analytical, Svcs, Inc. (SEAS) (NIST).

Address: 202 Bishop Rd., Blacksburg, VA 23220, Contact: David Violette, Phone: (703) 951-9283.

(55) *Laboratory:* Spotts, Stevens, & McCoy (NIST).

Address: 345 North Wyomissing Blvd., Wyomissing, PA 19610, Contact: Steven Delp, Phone: (215) 376-6581.

(56) *Laboratory:* Structure Probe, Inc. (NIST).

Address: 535 East Gay St., P.O. Box 656, West Chester, PA 19381-0656, Contact: Kim Royer, Phone: (215) 436-5400.

(57) *Laboratory:* Tracor Technology Resources, Inc., (NIST).

Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Stephen Olin, Phone: (301) 984-2751.

(58) *Laboratory:* Versar, Inc. (NIST).

Address: 6850 Versar Center, Springfield, VA 22151, Contact: Marcie Wilson, Phone: (703) 750-3000.

(59) *Laboratory:* Volz Environmental Services (NIST).

Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: George J. Skarupa, Phone: (412) 826-3150.

(60) *Laboratory:* Washington Analytical Lab of VA, Inc., (Mobile Unit) (NIST).

Address: 14214 Coda Place, Chantilly, VA 22021, Contact: Hugh Granger, Phone: (703) 631-6870.

(61) *Laboratory:* Washington Analytical Laboratory, Inc., (NIST).

Address: 14214 Coda Place, Chantilly, VA 22021, Contact: R. Hugh Granger, Phone: (703) 631-6868.

(62) *Laboratory:* Wright Lab Services, Inc. (NIST).

Address: 34 Dogwood Ln., Middletown, PA 17057, Contact: Francine Walker, Phone: (717) 944-5541.

EPA Accredited Commercial PLM Laboratories

REGION IV – Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

(1) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 129 West Valley Ave., Birmingham, AL 38209, Contact: David Yates, Phone: (205) 945-9224.

(2) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 4845 Rosselle St., Jacksonville, FL 32205, Contact: Doug Carvel, Phone: (904) 387-6404.

(3) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 2980 Northwest 40 St., Miami, FL 33142, Contact: Michael H. Straube, Phone: (305) 633-2700.

(4) *Laboratory:* ATEC Associates, Inc. (NIST), Environmental Services Division.

Address: 1300 Williams Dr., Marietta, GA 30066-6299, Contact: Dwayne Cheatom, Phone: (404) 427-9456.

(5) *Laboratory:* ATEC Environmental Consultants (NIST).

Address: 1535 North Cogswell St., Suite A-5, Rockledge, FL 32955, Contact: Harry L. Capadano, Jr., Phone: (407) 631-6561.

(6) *Laboratory:* Advanced Industrial Hygiene Services, Inc. (NIST).

Address: 2131 Southwest 2nd Ave., Miami, FL 33129, Contact: Bruce Marchette, Phone: (305) 854-7554.

(7) *Laboratory:* American Microscopy Laboratory (NIST).

Address: 29 Heritage Hills, Tuscaloosa, AL 35406, Contact: M. A. Beg, Phone: (205) 345-2555.

(8) *Laboratory:* Analytical & Forensic Associates, (NIST).

Address: 1913 Capri Dr., Huntsville, AL 35811, Contact: John Kilbourne, Phone: (205) 533-3188.

(9) *Laboratory:* Analytical Management, Inc. (NIST).

Address: P.O. Box 11279, Lexington, KY 40574, Contact: David H. McRae, Phone: (606) 231-6511.

(10) *Laboratory:* Apollo Environmental, Inc. (NIST).

Address: 11553 U.S. Highway 41 South, Gibsonton, FL 33534-9720, Contact: Patricia Craig, Phone: (813) 671-3999.

(11) *Laboratory:* Applied Environmental Testing Lab, Inc. (NIST).

Address: 680 Thornton Way, Suite 202, Lithia Springs, GA 30057, Contact: Ali A. Hassani Pak, Phone: (404) 948-4919.

(12) *Laboratory:* Applied Technical Services (NIST).

Address: 1190 Atlanta Industrial Dr., Marietta, GA 30066, Contact: Laurel V. Waters, Phone: (404) 423-1400.

(13) *Laboratory:* Asbestos Analysis and Information, Service (NIST).

Address: P.O. Box 837, Fair Oaks, NC 27524, Contact: Kathy Westbrook, Phone: (919) 894-2804.

(14) *Laboratory:* Azimuth, Inc. (NIST).

Address: P.O. Box 71904, Charleston, SC 29415-1904, Contact: Charles B. Stoyle, Phone: (803) 553-9456.

(15) *Laboratory:* BCM Engineers, Inc. (NIST).

Address: 104 St. Francis St., Suite 400, Mobile, AL 36633, Contact: Sheri Sims, Phone: (205) 433-0517.

(16) *Laboratory:* Bonner Analytical Testing Co. (NIST).

Address: Rt. 14, Box 509, Hattiesburg, MS 39402, Contact: Michael Bonner, Phone: (601) 264-2854.

(17) *Laboratory:* Briggs Associates, Inc. (NIST).

Address: 4401 Vineland Rd., Suite A9, Orlando, FL 32811, Contact: William Newman, Phone: (407) 422-3522.

(18) *Laboratory:* Broward County Environmental Quality, Control Board (NIST).

Address: 500 S.W. 14th Court, Ft. Lauderdale, FL 33315, Contact: Kenneth Larson, Phone: (305) 765-5881.

(19) *Laboratory:* CRU, Inc. (NIST).

Address: P.O. Box 24487, Louisville, KY 40224, Contact: Donna M. Ringo, Phone: (502) 426-8860.

(20) *Laboratory:* Carolina Environmental (NIST).

Address: 5104 Suite 201-C Western Blvd., Raleigh, NC 27606, Contact: Dale King, Phone: (919) 859-0477.

(21) *Laboratory:* Cavin Analytical Consultants (NIST).

Address: 2165-k West Park Ct., Stone Mountain, GA 30087-3547, Contact: Joy Cavin, Phone: (404) 498-8295.

(22) *Laboratory:* Certified Engineering and Testing, Co., Inc. (NIST).

Address: 5175 Elmore Rd. Suite 1, Memphis, TN 38134, Contact: Sharon Frase, Phone: (901) 382-6282.

(23) *Laboratory:* Chem-Ray (NIST).

Address: P.O. Box 821, Florence, AL 35631, Contact: James D. Ray, Phone: (205) 776-4345.

(24) *Laboratory:* Chemalytics (NIST).

Address: 300 Doctors Bldg., 33 East Seventh St., Covington, KY 41011, Contact: Kenneth P. Reed, Phone: (606) 431-6224.

(25) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 400 Chastain Center Blvd., NW, Suite 490, Kennesaw, GA 30144, Contact: Owen Crankshaw, Phone: (404) 499-7500.

(26) *Laboratory:* Davis & Floyd, Inc. (NIST).

Address: P.O. Drawer 428, Greenwood, SC 29648, Contact: William J. Day, Phone: (803) 229-5211.

(27) *Laboratory:* EEC, Inc. (NIST).

Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Scrimanker, Phone: (919) 782-8910.

(28) *Laboratory:* EEC, Inc. (NIST).

Address: 500 Rivermont Rd., P.O. Box 11847, Columbia, SC 29210, Contact: Kevin Ulmer, Phone: (803) 256-7846.

(29) *Laboratory:* EMSL, Inc. (NIST).

Address: 1800 Peachtree St., NW, Suite 305, Atlanta, GA 30309, Contact: John Scarano, Phone: (404) 858-4800.

(30) *Laboratory:* Ecosafe, Inc. (NIST).

Address: 1713 Chapel Hill Rd., Durham, NC 27707, Contact: Steven L. Goode, Phone: (919) 493-2612.

(31) *Laboratory:* Enviro-Chem, Inc. (NIST).

Address: 762 Downtowner Loop W., Mobile, AL 36609, Contact: Charles Smilie, Phone: (205) 344-7711.

(32) *Laboratory:* EnviroSciences, Inc. (NIST).

Address: Montgomery Bldg., Suite 705, P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew G. Schauder, Phone: (803) 585-4900.

(33) *Laboratory:* Environmental Analytical Labs (NIST).

Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Jeremy A. Armstrong, Phone: (404) 425-9901.

(34) *Laboratory:* Environmental Health Laboratory (EHL), (NIST), Cigna Loss Control Services.

Address: 3920 Arkwright Rd., Macon, GA 31213, Contact: Jeanne Gibbs, Phone: (912) 471-4544.

(35) *Laboratory:* Environmental Laboratories, Inc., (NIST).

Address: 2498-C Tuckerstone Pkwy., Tucker, GA 30084, Contact: Charles Zollner, Phone: (404) 938-6819.

(36) *Laboratory:* Environmental Materials Consultants, (NIST).

Address: P.O. Box 100161, 2217 10th Ct. S., Suite 200, Birmingham, AL 35210, Contact: Denny Stapp, Phone: (205) 933-0400.

(37) *Laboratory:* Environmental Protection Systems, Inc., (NIST).

Address: 7215 Pine Forest Rd., Pensacola, FL 32506, Contact: Don Gay, Phone: (904) 944-0301.

(38) *Laboratory:* Environmental Protection Systems, Inc., (NIST).

Address: 5360 I-55 North, P.O. Box 20382, Jackson, MS 39209, Contact: Herbert Johnston, Phone: (601) 956-1400.

(39) *Laboratory:* Environsciences, Inc. (NIST).

Address: 3810-F Merton Dr., Raleigh, NC 27609, Contact: E. R. Childress, Phone: (919) 782-1487.

(40) *Laboratory:* Fiber Lab, Inc. (NIST).

Address: P.O. Box 36726, Birmingham, AL 35236, Contact: David Hayes, Phone: (205) 822-8544.

(41) *Laboratory:* GSC Environmental Laboratories, Inc., (NIST).

Address: 1824 Bi Wylds Rd., Augusta, GA 30909, Contact: Dan Troutman, Phone: (404) 737-0185.

(42) *Laboratory:* Geo-Environmental Services, Inc., (NIST).

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Address: 141 West Wieuca Rd., Suite 200A, Atlanta, GA 30342, Contact: Susan Harper, Phone: (404) 257-8303.

(43) *Laboratory:* Harmon Engineering Associates, Inc., (NIST).

Address: 1550 Pumphrey Ave., Auburn, AL 36830-4399, Contact: Roger Thompson, Phone: (205) 821-9250.

(44) *Laboratory:* Health & Hygiene, Inc. (NIST).

Address: 4605-E Dundas Dr., Greensboro, NC 27407, Contact: Sharon P. Lonon, Phone: (919) 854-2303.

(45) *Laboratory:* Hillmann Environmental Co., of Florida (NIST).

Address: 12108 N. 56th St., Tampa, FL 33617, Contact: Mary Hillmann, Phone: (813) 988-1652.

(46) *Laboratory:* Hunter Services, Inc. (NIST).

Address: 14220 W. Newberry Rd. P.O. Box ESE, Gainesville, FL 32607 1703, Contact: Barbara Ross, Phone: (904) 332-3318.

(47) *Laboratory:* International Abatement Management, Inc. (NIST).

Address: 550 North Reo St., Suite 300, Tampa, FL 33609, Contact: Robert B. Greene, Phone: (813) 287-5100.

(48) *Laboratory:* KNL Laboratory Services (NIST).

Address: P.O. Box 1833, Tampa, FL 33601, Contact: Garrett J. McGibbon, Phone: (813) 229-2879.

(49) *Laboratory:* Law Associates, Inc. (NIST).

Address: 114 Town Park Dr., Kennesaw, GA 30144, Contact: Greg Lewars, Phone: (404) 499-6600.

(50) *Laboratory:* Law Engineering (NIST).

Address: 4919 West Laurel St., P.O. Box 24183, Tampa, FL 33623, Contact: Monte Hall, Phone: (813) 879-0750.

(51) *Laboratory:* Law Engineering Testing Co. (NIST).

Address: 501 Minuet Ln., P.O. Box 11297, Charlotte, NC 28220, Contact: R. Glenn Craig, Phone: (704) 523-2022.

(52) *Laboratory:* Law Engineering, Inc. (NIST).

Address: 3608 7th Ct., S, P.O. Box 10244, Birmingham, AL 35202, Contact: R. Michael Hamilton, Phone: (205) 252-9901.

(53) *Laboratory:* Materials Analytical Services, Inc., (NIST).

Address: 3597 Parkway Ln., Suite 250, Norcross, GA 30092, Contact: William Longo, Phone: (404) 448-9030.

(54) *Laboratory:* McCrone Environmental Services, Inc., (NIST).

Address: 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Contact: Harriotte A. Hurley, Phone: (404) 368-9600.

(55) *Laboratory:* Metro Services Laboratory (NIST), Asbestos Control Division.

Address: 6309 Fern Valley Pass, Louisville, KY 40228, Contact: Zonetta English, Phone: (502) 964-0865.

(56) *Laboratory:* Micro Analytical Laboratories, Inc., (NIST).

Address: 3618 Northwest 97th Blvd., Gainesville, FL 32606, Contact: Nancy Dehgan, Phone: (904) 332-1701.

(57) *Laboratory:* Micro-methods, Inc. (NIST).

Address: 6500 Sunplex, Ocean Springs, MS 39564, Contact: Thomas J. Wilson, Phone: (601) 875-6420.

(58) *Laboratory:* NSI - ES Analytical Svcs. Lab (NIST).

Address: 2 Triangle Dr., P.O. Box 12313, RTP, NC 27709-2313, Contact: James A. Jahnke, Phone: (919) 549-0611.

(59) *Laboratory:* PSC Environmental, Inc. (NIST).

Address: 1105 Fitzpatrick Ave., P.O. Box 2605, Opelika, AL 36803-2605, Contact: Fred Moore, Phone: (205) 749-2636.

(60) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 5460 Beaumont Center Blvd., Tampa, FL 33634, Contact: Timothy M. Odell, Phone: (813) 884-8268.

(61) *Laboratory:* Pensacola P.O.C., Inc. (NIST).

Address: 109 South 2nd St., Pensacola, FL 32507, Contact: Barbara Sviglin, Phone: (904) 456-4406.

(62) *Laboratory:* Phoenix Environmental Labs (NIST), Division of P.D.R. Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Teresa Tichenor, Phone: (615) 298-2065.

(63) *Laboratory:* Pioneer Laboratory, Inc. (NIST).

Address: 11 East Olive Rd., Pensacola, FL 32514, Contact: Paul Canevaro, Phone: (904) 474-1001.

(64) *Laboratory:* Professional Service Ind., Inc. (NIST), PTL/Arribas Division.

Address: 3901 Northwest 29th Ave., Miami, FL 33142, Contact: Mary E. Hamel, Phone: (305) 633-7555.

(65) *Laboratory:* Quality Analytical Services, Inc., (NIST).

Address: 709 West Johnson St., Raleigh, NC 27603, Contact: Eloise Sheats, Phone: (919) 839-0757.

(66) *Laboratory:* Roberts Environmental Services (NIST), MAKO Office Complex.

Address: Highway 24 E., Swansboro, NC 28584, Contact: H. Dan Roberts, Phone: (919) 393-8585.

(67) *Laboratory:* Safety Underwriters Laboratory (NIST).

Address: P.O. Box 20094, Birmingham, AL 35216, Contact: Rebecca Hicks, Phone: (205) 822-3727.

(68) *Laboratory:* Schneider Services International, Inc., (NIST).

Address: Chem Lab MS-340, Arnold AFB, TN 37389, Contact: Jim Thomas, Phone: (615) 454-6573.

(69) *Laboratory:* Schweiger and Associates (NIST).

Address: 2022 Powers Ferry Rd., Suite 180, 4M, Marietta, GA 30339, Contact: Patrick J. Schweiger, Phone: (404) 988-9250.

(70) *Laboratory:* South Carolina Dept. of Health &, Environmental Control (NIST), Bureau of Labs.

Address: 8231 Parklane Rd., P.O. Box 2202, Columbia, SC 29202, Contact: Edward Williams, Phone: (803) 737-7003.

(71) *Laboratory:* Southeastern Marine Chemists, Inc., (NIST), Southeastern Chemists' Laboratories.

Address: P.O. Box 8917, Jacksonville, FL 32211, Contact: Joseph W. Newton, Phone: (904) 725-2040.

(72) *Laboratory:* Specialized Assays (NIST).

Address: 210 12th Ave., S., P.O. Box 25110, Nashville, TN 37202, Contact: Kay Williams-Smith, Phone: (615) 255-5786.

(73) *Laboratory:* TEI Environmental, Inc. (NIST).

Address: 308A Pomona Dr., Greensboro, NC 27407, Contact: James Buchanan, Phone: (919) 852-0318.

(74) *Laboratory:* TTL, Inc. (NIST).

Address: 3516 Greensboro Ave., P.O. Box 1128, Tuscaloosa, AL 35403, Contact: Jack E. Davis, Phone: (205) 345-0816.

(75) *Laboratory:* Testwell Craig Laboratories of, Florida, Inc. (NIST).

Address: 7104 Northwest 51st St., Miami, FL 33166, Contact: Robert Schuler, Phone: (305) 593-0561.

(76) *Laboratory:* Thornton Laboratories, Inc. (NIST).

Address: 1145 East Cass St., Tampa, FL 33602, Contact: Steve Fickett, Phone: (813) 223-9702.

(77) *Laboratory:* Westinghouse Environmental &, Geotechnical Svcs. Inc. (NIST).

Address: 3980 Dekalb Technology Pkwy., Suite 700, Atlanta, GA 30340, Contact: Clint Gilbert, Phone: (404) 452-1911.

(78) *Laboratory:* Westinghouse Environmental &, Geotechnical Svcs., Inc. (NIST).

Address: 5909 Breckenridge Pkwy., Suite B, Tampa, FL 33610, Contact: John J. Henderson, Phone: (813) 623-2438.

(79) *Laboratory:* Westinghouse Environmental &, Geotechnical Svcs., Inc. (NIST).

Address: 9600-D Southern Pines Blvd., P.O. Box 7668, Charlotte, NC 28217, Contact: Terry Liles, Phone: (704) 523-1910.

(80) *Laboratory:* Westinghouse Environmental &, Geotechnical Svcs., Inc. (NIST).

Address: 840 Low Country Blvd., Mt. Pleasant, SC 29464, Contact: Nina G. Marshtein, Phone: (803) 884-0005.

(81) *Laboratory:* Weston-ATC Mobile Facility (NIST).

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Keith Pass, Phone: (205) 826-6100.

(82) *Laboratory:* Weston-ATC, Inc. (NIST).

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: William Barker, Phone: (205) 826-6100.

EPA Accredited Commercial PLM Laboratories

REGION V -- Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

(1) *Laboratory:* ABS Environmental Labs, Inc. (NIST).

Address: 605 Brookside, Frankfurt, IL 60423, Contact: Arlene B. Smith, Phone: (815) 469-4464.

(2) *Laboratory:* AIResearch (NIST).

Address: 2969 N. 114th St., Wauwatosa, WI 53222, Contact: James Walsh, Phone: (414) 476-1030.

(3) *Laboratory:* ALEX (NIST).

Address: 485 Frontage Rd., Burr Ridge, IL 60521, Contact: Linda Orr, Phone: (312) 789-6080.

(4) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 1501 East Main St., Griffith, IN 46319, Contact: Roger S. Berkowitz, Phone: (219) 924-6690.

(5) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 5150 East 65th St, Indianapolis, IN 46220-4871, Contact: Richard A. Gehlbach, Phone: (317) 849-4990.

(6) *Laboratory:* Affiliated Environmental Services, Inc, (NIST).

Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Don Dauch, Phone: (419) 627-1974.

(7) *Laboratory:* Air Quality Testing (NIST).

Address: 236 South Washington St., Naperville, IL 60540, Contact: J.D. Stubblefield, Phone: (312) 983-4010.

(8) *Laboratory:* Air Quality Testing, Inc. (NIST).

Address: 1630 Fifth Ave., Suite 541, Moline, IL 61265, Contact: Gerald Hofferth, Phone: (309) 762-1998.

(9) *Laboratory:* AirTech Associates, Inc. (NIST).

Address: 4100 Madison, Lower Level, Suite 4, Hillside, IL 60162, Contact: Mark Watka or Anne Czechorski, Phone: (312) 547-8117.

(10) *Laboratory:* Aires Environmental Services (NIST).

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Cynthia Darling, Phone: (312) 879-3006.

(11) *Laboratory:* Alderink & Associates, Inc. (NIST).

Address: 3221 3 Mile Rd., Grand Rapids, MI 49504, Contact: Carol J. Paxhia, Phone: (616) 791-0730.

(12) *Laboratory:* Alloway Testing (NIST).

Address: 1325 North Cole St., Lima, OH 45801-3415, Contact: John R. Hoffman, Phone: (419) 223-1362.

(13) *Laboratory:* American Analytical Laboratories, (NIST).

Address: 100 Lincoln St., Akron, OH 44308, Contact: Richard E. Moore, Phone: (216) 535-1300.

(14) *Laboratory:* Amoco Oil Co.-Whiting Refinery (NIST), Lab. Services Division.

Address: 2831 Indianapolis Blvd., Whiting, IN 46394, Contact: James Miller, Phone: (219) 473-3075.

(15) *Laboratory:* Anasbestics Co. (NIST).

Address: 7206 West 90th Pl., Bridgeview, IL 60455, Contact: Gary Kentgen, Phone: (312) 598-2921.

(16) *Laboratory:* Applied Environmental Sciences, Inc., (NIST).

Address: 511 11th Ave. S, Box 220, Minneapolis, MN 55415, Contact: Patrick DiBartolomeo, Phone: (612) 339-5559.

(17) *Laboratory:* Asbestos Compliance Technology, Inc., (NIST).

Address: 4015 Cherry St., Cincinnati, OH 45223, Contact: Tina Schmalz, Phone: (513) 741-1331.

(18) *Laboratory:* Asbestos Control Methods, Inc. (NIST).

Address: 2010 South Carboy Rd., Mount Prospect, IL 60056, Contact: Jeffrey Camplin, Phone: (312) 437-7999.

(19) *Laberatory:* Asbestos Management, Inc. (NIST).

Address: 36700 South Huron St., Suite 104, New Boston, MI 48164, Contact: D. Rex Bleeker, Phone: (313) 961-6135.

(20) *Laboratory:* Asbestos Technology, Inc. (NIST).

Address: 5353 Tacoma Ave., Indianapolis, IN 46220, Contact: Dawn Trigg, Phone: (317) 257-5096.

(21) *Laboratory:* BCA Laboratory (NIST).

Address: 1102 South Main, Bloomington, IL 61701, Contact: Kurt Benckendorf, Phone: (309) 828-7772.

(22) *Laboratory:* Beling Consultants, Inc. (NIST).

Address: 1001-16th St., Moline, IL 61265, Contact: Jeffrey A. Wasson, Phone: (309) 757-9800.

(23) *Laboratory:* Braun Environmental Laboratories, (NIST).

Address: 6800 South Country Rd. 18, P.O. Box 35108, Minneapolis, MN 55435-0108, Contact: Lisa A. Fournelle-Smestad, Phone: (612) 941-5600.

(24) *Laboratory:* Bruce Menkel & Associates, Inc. (NIST).

Address: 235 Industrial Dr., P.O. Box 159, Franklin, OH 45005, Contact: Bruce Menkel, Phone: (513) 746-9300.

(25) *Laboratory:* C.G. Technologies, Inc. (NIST).

Address: 535 Science Dr., Suite B, Madison, WI 53711, Contact: Carol Gannon, Phone: (608) 238-7811.

(26) *Laboratory:* CAE Asbestos (NIST).

Address: 207 North Woodwork Ln., Palatine, IL 60067, Contact: Charles Keenan, Phone: (312) 991-3300.

(27) *Laboratory:* CENCON (CNA Insurance) (NIST).

Address: 333 South Wabash - 3W, Chicago, IL 60604, Contact: Ellen Janka, Phone: (312) 822-6093.

(28) *Laboratory:* Carnow, Conibear and Associates, Ltd., (NIST).

Address: 333 West Wacker Dr., 14th Fl., Chicago, IL 60606, Contact: Steve Wolf, Phone: (312) 782-4486.

(29) *Laboratory:* Chem-Bio Corporation (NIST).

Address: 140 East Ryan Rd., Oak Creek, WI 53154, Contact: Kaye Donlevy, Phone: (414) 764-7005.

(30) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Bob Lieckfield, Phone: (313) 344-1770.

(31) *Laboratory:* Cole Associates, Inc. (NIST).

Address: 2211 East Jefferson Blvd., South Bend, IN 46615, Contact:

Lawrence W. Grauvogel, Phone: (219) 236-4400.

(32) *Laboratory:* Daily Analytical Laboratories (NIST).

Address: 1621 West Candletree Dr., Peoria, IL 61614, Contact: Susan J. Naschert, Phone: (309) 692-5252.

(33) *Laboratory:* DataChem, Inc. (NIST).

Address: 4388 Glendale-Milford Rd., Cincinnati, OH 45242, Contact: Lance Eggenberger, Phone: (513) 733-5336.

(34) *Laboratory:* DeLisle Consulting & Laboratories, Inc. (NIST).

Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Brad Shook, Phone: (616) 343-9698.

(35) *Laboratory:* DeYor Laboratories, Inc. (NIST).

Address: P.O. Box 3949, 7655 Market St., Suite 2500, Youngstown, OH 44512, Contact: Joseph K. Samuels, Phone: (216) 758-5788.

(36) *Laboratory:* EIS Environmental Engineers, Inc., (NIST).

Address: 1701 North Ironwood Dr., South Bend, IN 46635, Contact: H. Stephen Nye, Phone: (219) 277-5715.

(37) *Laboratory:* ENTELA Engineering Services, Inc., (NIST).

Address: 4020 West River Dr., Comstock Park, MI 49321, Contact: Cal Van Ooyen, Phone: (616) 784-7774.

(38) *Laboratory:* ERT Testing Services, Inc. (NIST).

Address: D.O.H. Professional Bldg., 211 Glendale, Suite 425, Highland Park, MI 48203, Contact: Rose M. Grier, Phone: (313) 865-0600.

(39) *Laboratory:* Electro Analytical, Inc. (NIST).

Address: 7118 Industrial Park Blvd., Mentor, OH 44060-5377, Contact: Mitchell E. Fadem, Phone: (216) 951-3514.

(40) *Laboratory:* Environmental Analytical Labs (NIST).

Address: 314 South State Ave., Indianapolis, IN 46201, Contact: David W. Hogue, Phone: (317) 269-3618.

(41) *Laboratory:* Environmental Consultants, Inc. (NIST).

Address: 1916 North 12th St., P.O. Box 2104, Toledo, OH 43603, Contact: Donald Dick, Phone: (419) 241-7127.

(42) *Laboratory:* Environmental Enterprises, Inc., (NIST).

Address: 10147 Springfield Pike, Cincinnati, OH 45215, Contact: Wayne L. Collier, Phone: (513) 772-2818.

(43) *Laboratory:* Environmental Evaluation & Laboratory, Services, Inc. (NIST).

Address: 225 Parsons St., P.O. Box 1665, Kalamazoo, MI 49005, Contact: A. Clark Kahn, III, Phone: (616) 388-8099.

(44) *Laboratory:* Environmental Services, Inc. (NIST).

Address: 1403 Sunset Ter., P.O. Box 385, Western Springs, IL 60558, Contact: Hugh Flack, Phone: (312) 246-2040.

(45) *Laboratory:* Esstek, Inc. (NIST).

Address: 17960 Englewood Dr., Middleburg Heights, OH 44130, Contact: Scott F. Linville, Phone: (216) 826-4220.

(46) *Laboratory:* Fay Goldblatt Laboratories, Inc., (NIST).

Address: 5225 Old Orchard Rd., Suite 2, Skokie, IL 60077, Contact: Fay Goldblatt, Phone: (708) 965-6333.

(47) *Laboratory:* Gabriel Laboratories, Inc. (NIST).

Address: 1421 North Elston Ave., Chicago, IL 60622, Contact: Chris Rollins, Phone: (312) 486-2123.

(48) *Laboratory:* Gelles Laboratories (NIST).

Address: 2836 Fisher Rd., Columbus, OH 43204, Contact: S.H. Gelles, Phone: (614) 276-2957.

(49) *Laboratory:* Hayden Environmental Group, Inc., (NIST).

Address: 6015 Manning Rd., Miamisburg, OH 45342, Contact: David Robinson, Phone: (513) 866-5908.

(50) *Laboratory:* IHI Kemron Environmental Services, (NIST).

Address: 32740 North Western Hwy., Farmington Hills, MI 48018, Contact: Charles O'Bryan, Phone: (313) 626-2426.

(51) *Laboratory:* ITL/Bascor (NIST).

Address: 5960 North Milwaukee Ave., Chicago, IL 60646, Contact: Joby H. Burman, Phone: (312) 792-2454.

(52) *Laboratory:* Industrial Environmental Consultants, (NIST).

Address: 1760 East Grand River, East Lansing, MI 48823, Contact: Teresa Kenyon, Phone: (517) 351-4002.

(53) *Laboratory:* Institute for Environmental Assessment, (NIST).

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Richard T. Cox, Phone: (612) 427-5310.

(54) *Laboratory:* John Mathes & Assoc., Inc. (NIST).

Address: 210 West Sand Bank Rd., P.O. Box 330, Columbia, IL 62236-0330, Contact: David H. Ward, Phone: (618) 281-7173.

(55) *Laboratory:* Lyle Laboratories (NIST).

Address: 41 South Grant Ave., Columbus, OH 43215, Contact: Tom Eggers, Phone: (614) 224-8822.

(56) *Laboratory:* Martin Marietta Energy Systems, Inc., (NIST).

Address: Portsmouth Gaseous Diffusion Plant, P.O. Box 628, Piketon, OH 45661, Contact: David Boyd, Phone: (614) 289-2331.

(57) *Laboratory:* Micro Air, Inc. (NIST).

Address: 7132 Lakeview Pkwy. West Dr., Indianapolis, IN 46268, Contact: Harold Eitzen, Phone: (317) 293-1533.

(58) *Laboratory:* Micro Air, Inc. (NIST) (Mobile).

Address: 7132 Lakeview Pkwy. West Dr., Indianapolis, IN 46268, Contact: Harold Eitzen, Phone: (317) 293-1533.

(59) *Laboratory:* Micro-Fiber Laboratories, Inc. (NIST).

Address: 605 Landwehr Rd., Northbrook, IL 60062, Contact: Phillip G. Pekron, Phone: (312) 498-4127.

(60) *Laboratory:* MicroView Consulting (NIST).

Address: 416 East Catawba Ave., Akron, OH 44301, Contact: Frank S. Karl, Phone: (216) 773-8330.

(61) *Laboratory:* Microbac Laboratories, Inc. (NIST), Seaway Industrial Laboratory, Subsidiary.

Address: 542-544 Conkey St., Hammond, IN 46324, Contact: Karen A. Erny, Phone: (219) 932-1770.

(62) *Laboratory:* Monarch Analytical Laboratories, Inc., (NIST).

Address: P.O. Box 2990, Toledo, OH 43606, Contact: Ronald J. Plenzler, Phone: (419) 535-1780.

(63) *Laboratory:* NATLSCO (NIST).

Address: Rte. 22 & Kemper Dr., K-2, Long Grove, IL 60049, Contact: Joan Wronski, Phone: (312) 540-2488.

(64) *Laboratory:* National Petrographic Services, (NIST).

Address: 4484 Willowbrook Rd., Columbus, OH 43220, Contact: Bonnie Awan, Phone: (614) 459-7360.

(65) *Laboratory:* Northland Environmental Services, Inc., (NIST).

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Robert C. Voborsky, Phone: (715) 341-9699.

(66) *Laboratory:* Nova Environmental Services, Inc., (NIST).

Address: 1107 Hazeltine Blvd., Suite 420, Hazeltine Gates, Chaska, MN 55318, Contact: Elizabeth Gardner, Phone: (612) 448-8888.

(67) *Laboratory:* P.A.T. Services (NIST).

Address: 133 Hollywood, Peoria, IL 61603, Contact: Cheryl McGuinnis, Phone: (309) 673-5919.

(68) *Laboratory:* PEI Associates, Inc. (NIST).

Address: 11499 Chester Rd., Cincinnati, OH 45246, Contact: Craig Caldwell, Phone: (513) 782-4700.

(69) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 1710 Douglas Dr., N., Minneapolis, MN 55422, Contact: Roger Splinter, Phone: (612) 544-5543.

(70) *Laboratory:* Parkland Labs (NIST).

Address: 2935 ClearLake Ave., Springfield, IL 62702, Contact: Harry Stowers, Phone: (217) 525-2935.

(71) *Laboratory:* Particle Data Laboratories, Ltd., (NIST).

Address: 115 Hahn St., Elmhurst, IL 60126, Contact: Ron Sturm, Phone: (312) 832-5658.

(72) *Laboratory:* Pro-Ac Asbestos Services (NIST).

Address: 8711 Reading Rd., Cincinnati, OH 45215, Contact: Fred Schmalz, Phone: (513) 821-0505.

(73) *Laboratory:* RCM Laboratories (NIST).

Address: 4137 Blanchan, Brookfield, IL 60513, Contact: Collen Rifke, Phone: (312) 485-8600.

(74) *Laboratory:* Randolph & Associates, Inc. (NIST).

Address: 5440 North Cumberland Ave., Suite 111, Chicago, IL 60656, Contact: Bruce Stockmeier, Phone: (312) 693-0330.

(75) *Laboratory:* Randolph & Associates, Inc. (NIST).

Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Ellen Zuck, Phone: (309) 692-4160.

(76) *Laboratory:* Reed City Hopsital (NIST).

Address: 7665 Patterson Rd., P.O. Box 75, Reed City, MI 49677, Contact: James T. Reardon, Phone: (616) 832-3271.

(77) *Laboratory:* Ricerca, Inc. (NIST).

Address: 7528 Auburn Rd, P.O. Box 1000, Painesville, OH 44077-1000, Contact: William O. Butler, Phone: (216) 357-3300.

(78) *Laboratory:* S.E.A., Inc. (NIST).

Address: 7349 Worthington-Galena Rd., Columbus, OH 43085, Contact: Jami J. St. Clair, Phone: (614) 888-4160.

(79) *Laboratory:* Sea Earth & Air Environmental, Consultants, Inc. (NIST).

Address: 5787 North Lincoln Ave., Chicago, IL 60659, Contact: Barbera Carr, Phone: (312) 878-8337.

(80) *Laboratory:* Seaway Environmental Labs (NIST).

Address: 542 Conkey St., Hammond, IN 46532, Contact: Karen Erny, Phone: (219) 932-1770.

(81) *Laboratory:* Sierra Analytical & Consulting, Services, Inc. (NIST).

Address: 307 N. 1st St., Ann Arbor, MI 48103, Contact: Dave Nelson, Phone: (313) 662-1155.

(82) *Laboratory:* Stat Analysis Corporation (NIST).

Address: 2201 West Campbell Park Dr., Chicago, IL 60612-3501, Contact: David E. Schwartz, Phone: (312) 733-0551.

(83) *Laboratory:* Stilson Laboratories, Inc. (NIST).

Address: 170 North High St., Columbus, OH 43215, Contact: W. Martin Bell, Phone: (614) 228-4385.

(84) *Laboratory:* Suburban Environmental Consultants, Ltd. (NIST).

Address: 18031 Dixie Hwy., Homewood, IL 60430, Contact: Henry G. Gooday, Jr., Phone: (312) 335-1808.

(85) *Laboratory:* TEM, Inc. (NIST).

Address: 443 Duane St., Glen Ellyn, IL 60137, Contact: James Tuinenga, Phone: (312) 790-0880.

(86) *Laboratory:* Testing Engineers & Consultants, Inc., (NIST).

Address: 933 West Jolly Rd., Lansing, MI 48909, Contact: James Hollenbeck, Phone: (517) 887-0628.

(87) *Laboratory:* Testing Engineers & Consultants, Inc., (NIST).

Address: 3816 Carpenter Rd., Pittsfield Township, MI 48197, Contact: Dawn Brennan, Phone: (313) 971-0030.

(88) *Laboratory:* Testing Engineers and Consultants, Inc. (NIST).

Address: P.O. Box 249, 1333 Rochester Rd., Troy, MI 48099, Contact: Matthew Skeels, Phone: (313) 588-6200.

(89) *Laboratory:* Thermo Analytical, Inc. (NIST).

Address: 7314 West 90th St., Bridgeview, IL 60455, Contact: Frank P. DeFranza, Phone: (312) 430-1112.

(90) *Laboratory:* Thermo Analytical, Inc./ERG (NIST).

Address: 525 Avis Dr., Suite 7, Ann Arbor, MI 48108, Contact: Fred Fenner, Phone: (313) 662-3104.

(91) *Laboratory:* Tremco (NIST).

Address: 10701 Shaker Blvd., Cleveland, OH 44104, Contact: Charles J. Kaloczi, Phone: (216) 292-5000.

(92) *Laboratory:* Tri-State Laboratories, Dept. of Environmental Services, (NIST).

Address: 19 East Front St., Youngstown, OH 44503, Contact: Bari Lateef, Phone: (216) 746-8800.

(93) *Laboratory:* Twin City Testing Corporation (NIST).

Address: 662 Cromwell Ave., St. Paul, MN 55114, Contact: Rennie Smith, Phone: (612) 649-5000.

(94) *Laboratory:* United Analytical Services, Inc., (NIST).

Address: 4410 West Roosevelt Rd., Suite 101, Hillside, IL 60162, Contact: Patrick Fosnacht, Phone: (312) 449-0070.

(95) *Laboratory:* Wadsworth/Alert Laboratories (NIST).

Address: P.O. Box 31454, Cleveland, OH 44131, Contact: Dale Mori, Phone: (216) 642-0151.

(96) *Laboratory:* Walker & Ward (NIST).

Address: 2803 B N. St. Joseph Ave., Evansville, IN 47712, Contact: Roger Ward, Phone: (812) 421-1900.

(97) *Laboratory:* Wausau Insurance Companies, Environmental Health Laboratory, (NIST).

Address: 2000 Westwood Dr., Wausau, WI 54401, Contact: Thomas Stavros, Phone: (715) 842-6810.

(98) *Laboratory:* Wisconsin Occupational Health Labs. (NIST).

Address: 979 Jonathon Dr., Madison, WI 53713, Contact: Richard Zimmerman, Phone: (608) 263-8807.

(99) *Laboratory:* Zimmerlin Consulting Group (NIST).

Address: 3420 East 96th St., Suite A, Indianapolis, IN 46240, Contact: Daniel J. Smith, Phone: (317) 574-0848.

(100) *Laboratory:* Zimmerlin Consulting Group (NIST).

Address: 3082 Brown Park Dr., Suite D, P.O. Box 357, Hilliard, OH 43026-0357, Contact: William Zimmerlin, Phone: (614) 876-1153.

EPA Accredited Commercial PLM Laboratories

REGION VI – Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* ACI & Associates (NIST).

Address: 2100 Road to Six Flags E., Arlington, TX 76011, Contact: Dan Weeks, Phone: (817) 282-9929.

(2) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 11356 Mathis Ave., Dallas, TX 75299-3157, Contact: Jim Hutchins, Phone: (214) 243-8931.

(3) *Laboratory:* Accumin Analysis, Inc. (NIST).

Address: 323 Hollyvale Dr., Houston, TX 77060, Contact: William McHale, Phone: (713) 931-1131.

(4) *Laboratory:* Aegis Associates - El Paso (NIST).

Address: 1280 Hawkins, Suite 120, El Paso, TX 79925, Contact: Michael Fernandez, Phone: (915) 592-6556.

(5) *Laboratory:* Aegis Associates, Inc. (NIST).

Address: 12015 Park 35 Circle, Suite 125, Austin, TX 78753-1807, Contact: Jimmie Bolton, Phone: (512) 835-8052.

(6) *Laboratory:* Aer-Aqua Lab, Inc./ Accredited, Industrial Hygienists, Inc. (NIST).

Address: 211 E. Shaw, Pasadena, TX 77506, Contact: Mary Heusel, Phone: (713) 477-8101.

(7) *Laboratory:* Allied Enviro Engineering Inc. (NIST).

Address: 1450 Empire Central, Suite 116, Dallas, TX 75247, Contact: Thomas Palet, Phone: (214) 631-0862.

(8) *Laboratory:* Allied Enviro Engineering, Inc. (NIST).

Address: 1450 Empire Central, Suite 116, Dallas, TX 75247, Contact: Thomas J. Palet, Phone: (214) 631-0862.

(9) *Laboratory:* Arkansas Department of Health (NIST).

Address: 4815 West Markham St., Little Rock, AR 72205, Contact: Stan Faulk, Phone: (501) 661-2389.

(10) *Laboratory:* Assaigai Analytical Laboratories, (NIST).

Address: 7300 Jefferson, NE, Albuquerque, NM 87109, Contact: Dean Dupree, Phone: (505) 345-8964.

(11) *Laboratory:* Building Environmental Systems, Inc., (NIST).

Address: 3501 North MacArthur, Suite 400B, Irving, TX 75062, Contact: Amy L. Smith, Phone: (214) 257-0787.

(12) *Laboratory:* Central Analytical Laboratories, Inc., (NIST).

Address: 2600 Marietta Ave., Kenner, LA 70062, Contact: David R. Lasater, Phone: (504) 469-3511.

(13) *Laboratory:* Chemtex Environmental Laboratory, (NIST).

Address: 3082 25th Street, Port Arthur, TX 77642, Contact: C.N. Reddy, Phone: (409) 983-4575.

(14) *Laboratory:* Conoco Analytical Labs (NIST).

Address: 1000 South Pine, Ponco City, OK 74603, Contact: Gary Keen, Phone: (405) 767-2468.

(15) *Laboratory:* Core Labs (NIST).

Address: 2417 West Pinhook Rd., Lafayette, LA 70508-3344, Contact: Richard Tietz, Phone: (318) 232-8042.

(16) *Laboratory:* Diversified Environmental, Technologies, Inc. (NIST).

Address: 132 West Main, Norman, OK 73069, Contact: Dan Tutt, Phone: (405) 360-7929.

(17) *Laboratory:* EEG, Inc. (NIST).

Address: 1305 E. Main, Russellville, AR 72801, Contact: Anne Woker, Phone: (501) 968-6767.

(18) *Laboratory:* ENSR Consulting & Engineering (NIST).

Address: 2925 Richmond Ave., Houston, TX 77098, Contact: Sandy Bialas, Phone: (713) 520-1495.

(19) *Laboratory:* East Texas Testing Laboratory, Inc., (NIST).

Address: 1717 East Erwin, Tyler, TX 75702, Contact: Gary G. LaFrance, Phone: (214) 595-4421.

(20) *Laboratory:* Environmental Analysis, Inc. (NIST).

Address: 914 Barber Street, Little Rock, AR 72202, Contact: Phillip Young, Phone: (501) 374-7837.

(21) *Laboratory:* Environmental Monitoring Service, Inc., (NIST).

Address: 12731 Research B.vd., Bldg. A, Austin, TX 78759, Contact: Rick Pruet, Phone: (512) 335-9116.

(22) *Laboratory:* Environmental Monitoring Service, Inc., (NIST).

Address: 342 Twin City Hgwy., Port Niches, TX 77651, Contact: Don Duplechian, Phone: (409) 727-7778.

(23) *Laboratory:* Environmental Research Institute, Inc., (NIST).

Address: P.O. Box 2024, Tyler, TX 75710, Contact: Thomas R. McKee, Phone: (214) 877-9314.

(24) *Laboratory:* Environmental Services Co., Inc., (NIST).

Address: 13715 West Markham, Little Rock, AR 72211, Contact: James Brown, Phone: (501) 221-2565.

(25) *Laboratory:* Envirotest, Inc. (NIST).

Address: P.O. Box 42812-414, Houston, TX 77042, Contact: Daniel J. Gerhardt, Phone: (713) 782-4101.

(26) *Laboratory:* Geo-Environmental Services, Inc., (NIST), Austin Office.

Address: 7801 North Lamar, Suite 185E, Austin, TX 78752, Contact: John Johnson, Phone: (512) 454-5222.

(27) *Laboratory:* Hanby Analytical Laboratories, Inc., (NIST).

Address: 4400 South Wayside 107, Houston, TX 77087, Contact: Duane Salinas, Phone: (713) 649-4500.

(28) *Laboratory:* Hanby Analytical Laboratories, Inc./, Mobile Unit (NIST).

Address: 4400 South Wayside St., Suite 107, Houston, TX 77087, Contact: John D. Hanby, Phone: (713) 649-4500.

(29) *Laboratory:* Huey, Martin, & Associates (NIST).

Address: 5613 Bruyninckx Rd., Alexandria, LA 71303, Contact: Ben F. Martin, Phone: (318) 473-6446.

(30) *Laboratory:* IHST (NIST).

Address: 17480 Dallas Pkwy., Suite 111, Dallas, TX 75287, Contact: Tracy Bramlett, Phone: (214) 248-9110.

(31) *Laboratory:* Kemron Environmental Services (NIST).

Address: 16550 Highland Rd., Baton Rouge, LA 70810, Contact: Thomas Bauckham, Phone: (504) 293-8650.

(32) *Laboratory:* Kiser Engineering, Inc. (NIST).

Address: 211 North River St., Sequin, TX 78155, Contact: Rick Kirkpatrick, Phone: (800) 426-2102.

(33) *Laboratory:* Law Engineering Testing Co. (NIST).

Address: 5500 Guhn Rd., Houston, TX 77040, Contact: C. H. Byrd, Phone: (713) 939-7161.

(34) *Laboratory:* Marshall Environmental Management, (NIST).

Address: 3801 Northwest 63rd St., Suite 162, Oklahoma City, OK 73116, Contact: Charles L. Marshall, Phone: (405) 842-3415.

(35) *Laboratory:* Maxim Engineers, Inc. (NIST).

Address: 11601 North Lamar, Austin, TX 78753, Contact: Fernando Yepez, Phone: (512) 837-8851.

(36) *Laboratory:* Maxim Engineers, Inc. (NIST).

Address: 2342 Fabens, P.O. Box 59902, Dallas, TX 75229, Contact: Steve Moody, Phone: (214) 247-7575.

(37) *Laboratory:* McClelland Management Services (NIST).

Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: Jaye R. Stanley, Phone: (713) 995-9000.

(38) *Laboratory:* Microanalysis Laboratory, Inc. (NIST).

Address: 8499 Greenville Ave., Suite 201, Dallas, TX 75231, Contact: Carolyn Jones, Phone: (214) 340-0890.

(39) *Laboratory:* NUS Corporation (NIST).

Address: 900 Gemini, Houston, TX 77058, Contact: John W. McCormick, Phone: (713) 488-1810.

(40) *Laboratory:* National Asbestos Consultants Inc., (NIST).

Address: 4619 North Santa Fe, Oklahoma City, OK 73118, Contact: Jerry Bowerman, Phone: (405) 528-6134.

(41) *Laboratory:* New Mexico State University (NIST), Electron Microscope Laboratory.

Address: Box 3EML, Las Cruces, NM 88003, Contact: Joseph LaPointe, Phone: (505) 646-3734.

(42) *Laboratory:* North American Analytical Labs (NIST).

Address: 4405 Crawford St., P.O. Box 6865, Abilene, TX 79605, Contact: Gene Walker, Phone: (915) 691-0172.

(43) *Laboratory:* Occupational Hygiene, (NIST).

Address: P.O. Box 161709, Dallas, TX 75216, Contact: Virginia Wheeler, Phone: (214) 324-3813.

(44) *Laboratory:* Occupational Safety & Health, Consultants, Inc. (NIST).

Address: 208 North Armstrong, Bixby, OK 74008, Contact: Jeffrey Jenkins, Phone: (918) 366-4834.

(45) *Laboratory:* Oklahoma State Department of Health, Special Hazard Division (NIST).

Address: P.O. Box 53551, Oklahoma City, OK 73152, Contact: John M. Feero, Phone: (405) 271-5221.

(46) *Laboratory:* P.E.I. Microanalysis Laboratory D/FW, (NIST).

Address: P.O. Box 612383 (Trailer No. 12), D/FW Airport, TX 75261, Contact: Neal Sizemore, Phone: (214) 574-1700.

(47) *Laboratory:* Phillips 66 Company (NIST), Borger Refinery & NGL Process Center, Lab.

Address: Box 271, Borger, TX 79008, Contact: D. Taylor, Phone: (806) 273-2831.

(48) *Laboratory:* Precision Testing Labs, Inc. (NIST).

Address: 624 Northwest 5th St., Suite 2, Moore, OK 73160, Contact: Jerry Doyle, Phone: (405) 793-1468.

(49) *Laboratory:* ProTechnics Environmental Services, Inc. (NIST).

Address: 14760 Memorial Dr., 105, Houston, TX 77079, Contact: Steve Barham, Phone: (713) 496-9914.

(50) *Laboratory:* Raba-Kistner Consultants, Inc. (NIST).

Address: P.O. Box 690287, San Antonio, TX 78269-0287, Contact: Frank B. Schweitzer, Phone: (512) 699-9090.

(51) *Laboratory:* Regional Testing Lab, Inc. (NIST).

Address: 318 West Chestnut, Suite 204, Denison, TX 75020, Contact: Cliff Wood, Phone: (214) 463-6666.

(52) *Laboratory:* Southwest Environmental Management, (NIST).

Address: Oklahoma Division, 3035 NW 63rd St., Suite 150, Oklahoma City, OK 73116, Contact: Teresa Burrows, Phone: (602) 443-0070.

(53) *Laboratory:* Southwestern Laboratories, Inc. (NIST).

Address: 2575 Lone Star Dr., Dallas, TX 75212, Contact: Lawrence M. Thompson, Phone: (214) 631-2700.

(54) *Laboratory:* Southwestern Laboratories, Inc. (NIST).

Address: 222 Cavalcade, Houston, TX 77009, Contact: Russell DiRaino, Phone: (713) 692-9151.

(55) *Laboratory:* Southwestern Public Service Co. (NIST), Systems Laboratory.

Address: P.O. Box 1261, Amarillo, TX 79170, Contact: Dean Metcalf, Phone: (806) 381-6360.

(56) *Laboratory:* Standard Testing & Eng. Co. (NIST).

Address: 660 Distributors Row, Harahan, LA 70123, Contact: Robert E. Jones, Phone: (504) 734-8378.

(57) *Laboratory:* Standard Testing and Engineering Co., (NIST).

Address: 3400 North Lincoln Blvd., Oklahoma City, OK 73105, Contact: Cheri Marcham, Phone: (405) 528-0541.

(58) *Laboratory:* Stanley Engineering Inc. & Alpha, Analytical Labs, Inc. (NIST).

Address: 2700 Northwest 39th St., Oklahoma City, OK 73112, Contact: Keith L. Stanley, Phone: (405) 948-6505.

(59) *Laboratory:* Stanley Engineering, Inc. (NIST).

Address: 4137 South Harvard, Suite E, Tulsa, OK 74135, Contact: Allison Myers, Phone: (918) 747-2929.

(60) *Laboratory:* Sun City Analytical (NIST).

Address: 6028 Surety Dr., Suite 204A, El Paso, TX 79905, Contact: David Felix, Phone: (915) 772-7850.

(61) *Laboratory:* Sunbelt Associates, Inc. (NIST).

Address: 6961 Mayo Rd., New Orleans, LA 70126, Contact: Gary C. Allen, Phone: (504) 286-6796.

(62) *Laboratory:* Technology Serving People, Inc. (NIST).

Address: 5373 West Alabama, Suite 450, Houston, TX 77056, Contact: Bill Hurt, Phone: (713) 621-9067.

(63) *Laboratory:* Terra Environmental Controls, Inc., (NIST).

Address: 2909 Division St., Suite C, Metairie, LA 70002, Contact: Jason Bourgeois, Phone: (504) 885-5711.

(64) *Laboratory:* Texas Department of Health (NIST), Asbestos Abatement Branch.

Address: 1100 West 49th St., Austin, TX 78756-3199, Contact: Don Brown, Phone: (512) 458-7318.

(65) *Laboratory:* Texas Research Institute (NIST), Environmental Division.

Address: 9063 Bee Cave Rd., Austin, TX 78733, Contact: Gary Rolls, Phone: (512) 263-2101.

(66) *Laboratory:* The Hartford Steam Boiler Laboratory, (NIST), Inspection & Insurance Co.

Address: 1100 North Post Oak No. 30, Suite 300, Houston, TX 77055, Contact: Diana Spence, Phone: (713) 578-7300.

(67) *Laboratory:* University of Texas, Health Center, (NIST) Dept. of Cell Biology &, Environmental Sciences.

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald Dodson, Phone: (214) 877-7554.

(68) *Laboratory:* Waldemar S. Nelson & Co., Inc. (NIST).

Address: 1200 St. Charles Ave., New Orleans, LA 70130, Contact: Laura E. Yager, Phone: (504) 523-5281.

(69) *Laboratory:* West-Paine Laboratories, Inc. (NIST).

Address: 7979 G.S.R.I. Ave., Baton Rouge, LA 70820, Contact: Jonny H. Vickers, Phone: (504) 769-4900.

EPA Accredited Commercial PLM Laboratories

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835. (FTS) 757-2835.

(1) *Laboratory:* ACM Labs, Inc. (NIST).

Address: 304 North Main, P.O. Box 2073, Fairfield, IA 52556, Contact: David Fleshman, Phone: (515) 472-7402.

(2) *Laboratory:* ALERT Analytical Laboratories (NIST).

Address: 1900 West 47th Pl., No. 101, Westwood, KS 66205, Contact: William Garies, Phone: (913) 831-4516.

(3) *Laboratory:* Ames Environmental (NIST).

Address: 3910 Lincoln Way, Ames, IA 50010, Contact: David Fairchild, Phone: (515) 292-3400.

(4) *Laboratory:* Asbestos Consulting & Testing (NIST).

Address: 14953 West 101st. Ter., Lenexa, KS 66215, Contact: Jim A. Pickel, Phone: (913) 492-1337.

(5) *Laboratory:* Baird Scientific (NIST).

Address: P.O. Box 842, Carthage, MO 64836, Contact: Gary Baird, Phone: (417) 358-5567.

(6) *Laboratory:* CHART Services, Ltd. (NIST).

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 278-3642.

(7) *Laboratory:* CHART Services, Ltd. (NIST).

Address: 12616 West 62nd Ter., Suite 118, P.O. Box 18, Shawnee, KS 66216, Contact: Bernie Hemlick, Phone: (913) 268-0715.

(8) *Laboratory:* CHART Services, Ltd. (NIST).

Address: 7912 Davenport St., Omaha, NE 68114, Contact: Carmen Riegel, Phone: (402) 393-0155.

(9) *Laboratory:* Certified Environmental Management, Inc. (NIST).

Address: P.O. Box 504, Salina, KS 67402-0504, Contact: Brenda A. Tolson, Phone: (913) 536-4226.

(10) *Laboratory:* Hall-Kimbrell Environmental Services, Inc. (NIST).

Address: 4840 West 15th St., Lawrence, KS 66046, Contact: Robert Kleopfer, Phone: (913) 865-9304.

(11) *Laboratory:* Industrial Testing Laboratories, Inc., (NIST).

Address: 2350 7th Blvd., St. Louis, MO 63104, Contact: William J. Lowry, Phone: (314) 771-7111.

(12) *Laboratory:* Kansas Dept. of Health & Environment, (NIST) Toxicology Section, Div. of, Labs and Res.

Address: Bldg. 740, Forbes Field, Topeka, KS 66620, Contact: Roger Carlson, Phone: (913) 296-1620.

(13) *Laboratory:* Microscopic Analysis, Inc. (NIST).

Address: 989 Gardenview Office Pkwy., St. Louis, MO 63141, Contact: Douglas N. Nimmo, Phone: (314) 993-2212.

(14) *Laboratory:* Midwestern Testing Labs, Inc. (NIST).

Address: P.O. Box 1657, Fairfield, IA 52556, Contact: Dennis Greenley, Phone: (515) 472-1881.

(15) *Laboratory:* Net Midwest Inc., Cedar Falls Division, (NIST).

Address: 704 Enterprise Dr., Cedar Falls, IA 50613, Contact: Michael McGee, Phone: (319) 277-2401.

(16) *Laboratory:* Pace Laboratories, Inc. (NIST).

Address: 2005 West 103rd Ter. (B), Leawood, KS 66206, Contact: Don Wright, Phone: (913) 341-7800.

(17) *Laboratory:* Ramsey-Schilling Consulting Group, Inc. (NIST).

Address: 503 Main St., Belton, MO 64012, Contact: George S. McDowell, Phone: (816) 331-0002.

(18) *Laboratory:* The University of Iowa (NIST), University Hygienic Laboratory.

Address: Iowa City, IA 52242, Contact: I. A. Schwabbauer, Phone: (319) 335-4500.

(19) *Laboratory:* University of Missouri - Kansas City, (NIST).

Address: Chemistry Dept., Kansas City, MO 64110, Contact: Dr. Peter F. Lott, Phone: (816) 276-2289.

EPA Accredited Commercial PLM Laboratories

REGION VIII -- Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

(1) *Laboratory:* ARC Labs (NIST).

Address: 216 Denver Ave., Suite G&I, Grand Forks, ND 58220, Contact: Joe Worman, Phone: (701) 772-6496.

(2) *Laboratory:* ATC Environmental, Inc. (NIST).

Address: 2600 W. 29th Ave., Denver, CO 80211, Contact: Dan Benecke, Phone: (303) 480-0209.

(3) *Laboratory:* ATC Environmental, Inc. (NIST).

Address: 1515 East Tenth St., Sioux Falls, SD 57103, Contact: Donald Beck, Phone: (605) 338-0555.

(4) *Laboratory:* ATEC Associates, Inc. (NIST).

Address: 4860 Ironton, Inc. (NIST), Denver, CO 80239, Contact: Mark Komori, Phone: (303) 371-2640.

(5) *Laboratory:* Amoco Oil Company Mandan Refinery, (NIST).

Address: Mandan Avenue & Old Red Trail, Mandan, ND 58554, Contact: Jerifer Romsaas, Phone: (701) 667-2463.

(6) *Laboratory:* Analytica, Inc. (NIST).

Address: 5930 McIntyre St., Golden, CO 80403, Contact: Steve Hyatt, Phone: (303) 279-2583.

(7) *Laboratory:* Bison Engineering/ Research (NIST).

Address: P.O. Box 1703, Helena, MT 59624, Contact: Patricia E. Groll, Phone: (406) 442-5768.

(8) *Laboratory:* Colorado State University Department, of Environmental Health (NIST).

Address: B120 Microbiology Bldg., Fort Collins, CO 80523, Contact: Roy C. Warbington, Phone: (303) 491-6729.

(9) *Laboratory:* DCM Science Laboratory (NIST).

Address: 12975 West 24th Pl., Golden, CO 80401, Contact: Donna C. Mefford, Phone: (303) 237-0110.

(10) *Laboratory:* Datachem, Inc. (NIST).

Address: 960 West LeVoy Dr., Salt Lake City, UT 84123, Contact: Lance Eggenberger, Phone: (801) 266-7700.

(11) *Laboratory:* Dixon Information, Inc. (NIST).

Address: 78 West 2400 S., Salt Lake City, UT 84115, Contact: Willard C. Dixon, Phone: (801) 486-0800.

(12) *Laboratory:* Esstek, Inc. (NIST).

Address: 11435 West 48th Ave., Wheat Ridge, CO 80033-2101, Contact: Robert Cordova, Phone: (303) 425-7038.

(13) *Laboratory:* HTI Laboratories & Industrial, Consultants (NIST).

Address: 1806 Main Ave., Fargo, ND 58103, Contact: Constance S. Hodny, Phone: (701) 232-1399.

(14) *Laboratory:* HTI Laboratories & Industrial, Consultants, Inc. (NIST).

Address: 6436 South Racine Cir., Engelwood, CO 80111, Contact: Constance S. Hodny, Phone: (303) 792-2125.

(15) *Laboratory:* Hager Laboratories, Inc. (NIST).

Address: 11234 East Caley Ave., Englewood, CO 80111, Contact: John Molina, Phone: (303) 790-2727.

(16) *Laboratory:* Northern Engineering & Testing, Inc., (NIST).

Address: 600 South 25th St., Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9161.

(17) *Laboratory:* Occupational Health Technologies, Inc., (NIST).

Address: 171 University Cir., Pueblo, CO 81005, Contact: Thomas F. Antonson, Phone: (719) 566-0422.

(18) *Laboratory:* Professional Service Ind., Inc. (NIST), Pittsburgh Testing Lab. Div.

Address: 2955 Southwest Temple St., Salt Lake City, UT 84115, Contact: Herb Ritzman, Phone: (801) 484-8827.

EPA Accredited Commercial PLM Laboratories

REGION IX -- San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* ACCULAB Environmental Services (NIST).

Address: 3700 Lakeville Hwy., Petaluma, CA 94952, Contact: Olivia Alejandro, Phone: (707) 778-4160.

(2) *Laboratory:* ASBESTECH (NIST).

Address: 6801 Fair Oaks Blvd., Suite H, Carmichael, CA 95608, Contact: Tommy G. Conlon, Phone: (916) 481-8902.

(3) *Laboratory:* Analytical Research Laboratories, Inc., (NIST).

Address: 160 Taylor St., P.O. Box 2360, Monrovia, CA 91016, Contact: Michelle Miller, Phone: (818) 357-3247.

(4) *Laboratory:* Applied Petrography, Inc. (NIST).

Address: 8520 Sorenson Ave., Suite E, Santa Fe Springs, CA 90670, Contact: Joanna Deane, Phone: (213) 945-3468.

(5) *Laboratory:* Asbestos Detection Co., Inc. (NIST).

Address: 12755 Brookhurst St., Suite 206, Garden Grove, CA 92640, Contact: Richard L. Frauenberger, Phone: (714) 530-1922.

(6) *Laboratory:* Associated Safety Consultants (NIST).

Address: 13363 Saticoy St., No. 204, North Hollywood, CA 91605, Contact: Dan Flaherty, Phone: (818) 503-0471.

(7) *Laboratory:* BSE Labs, Inc. (NIST).

Address: 50 East Foothill Blvd., Arcadia, CA 91006, Contact: Gustavo Delgado, Phone: (818) 355-8911.

(8) *Laboratory:* California Water Labs (NIST).

Address: 1430 Carpenter Ln., Modesto, CA 95352, Contact: Gloria Poling, Phone: (209) 527-4050.

(9) *Laboratory:* Cam Lab (NIST).

Address: 9525 Slauson Ave., Pico Rivera, CA 90660, Contact: Michael R. Tiffany, Phone: (213) 942-8668.

(10) *Laboratory:* Certified Engineering & Testing Co., Inc. (NIST).

Address: 725 Greenwich St., No. 204, San Francisco, CA 94133, Contact: Cabe Silverhame, Phone: (415) 986-6872.

(11) *Laboratory:* Clark Geological Services (NIST).

Address: 3479 Edison Way, Fremont, CA 94538, Contact: Joyce Lucas-Clark, Phone: (415) 659-1784.

(12) *Laboratory:* Clayton Environmental Consultants, Inc. (NIST).

Address: 1252 Quarry Ln., Pleasanton, CA 94566, Contact: Ron Peters, Phone: (415) 426-2600.

(13) *Laboratory:* Control Labs, Inc./ Toxscan, Inc., (NIST).

Address: 42 Hangar Way, Watsonville, CA 95076, Contact: Philip Carpenter, Phone: (408) 724-4522.

(14) *Laboratory:* Dan Napier & Associates (NIST).

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(15) *Laboratory:* Dyer Laboratories, Inc. (NIST).

Address: 2531 West 237th St., No. 121, Torrance, CA 90505, Contact: D.L. Dyer, Phone: (213) 530-3322.

(16) *Laboratory:* E & A Env'l Service, Inc. (NIST).

Address: 15943 Clark Ave., Bellflower, CA 90706, Contact: Ebbiteanga Abili, Phone: (213) 925-5080.

(17) *Laboratory:* EMS Laboratories (NIST).

Address: 507 Mission St., South Pasadena, CA 91030, Contact: Bernadine M. Kolk, Phone: (818) 441-2393.

(18) *Laboratory:* EnvironMETeo Services, Inc. (EMET), (NIST).

Address: 94-463 Ukee St., Suite A, Waipahu, HI 96797, Contact: Clifford How, Phone: (808) 671-8383.

(19) *Laboratory:* Environmental Innovations Corp. (NIST).

Address: 675 Hegenberger Rd., Suite 110, Oakland, CA 94621, Contact: Kip Fout, Phone: (415) 632-0104.

(20) *Laboratory:* Esstek (NIST).

Address: 3045 Teagarden St., San Leandro, CA 94577, Contact: Bob Cordova, Phone: (303) 425-0013.

(21) *Laboratory:* Esstek, Inc. (NIST).

Address: 9041-17 Dice Rd., Santa Fe Springs, CA 90670, Contact: Robert Cordova, Phone: (303) 425-0013.

(22) *Laboratory:* Eureka Laboratories, Inc. (NIST).

Address: 3401 La Grande Blvd., Sacramento, CA 95823, Contact: Steven K. Leung, Phone: (916) 381-7953.

(23) *Laboratory:* Fiberquant, Inc. (NIST).

Address: 4824-B South 35th St., Phoenix, AZ 85040, Contact: Larry Pierce, Phone: (602) 276-6138.

(24) *Laboratory:* Forensic Analytical Specialities, Inc., (NIST).

Address: 3777 Depot Rd., Suite 406, Hayward, CA 94545, Contact: Stephen A. Shaffer, Phone: (415) 887-8828.

(25) *Laboratory:* Gemeni Petrographic Investigations, (NIST).

Address: P.O. Box 2127, Novato, CA 94948, Contact: Peter A. Almendinger, Phone: (415) 892-9016.

(26) *Laboratory:* HECO Safety Division (NIST), Industrial Hygiene Section.

Address: 820 Ward Ave., Honolulu, HI 96813, Contact: Joana Teba, Phone: (808) 548-7386.

(27) *Laboratory:* Hall-Kimbrell Environmental Services, (NIST).

Address: 646 South Brea Canyon Rd., Walnut, CA 91789, Contact: David Reusswig, Phone: (714) 594-3232.

(28) *Laboratory:* Hall-Kimbrell Environmental Services, (NIST).

Address: 2615 South King St., Suite 2A, Honolulu, HI 96826, Contact: S. Gil Cobb, Phone: (808) 943-0254.

(29) *Laboratory:* Hanlon Laboratories (NIST).

Address: 8801 Folsom Blvd., Suite 145, Sacramento, CA 95826, Contact: Victoria Nabavi, Phone: (916) 386-2153.

(30) *Laboratory:* Health Sciences Associates (NIST).

Address: 10771 Noel St., Los Alamitos, CA 90720, Contact: Kathy S. Jones, Phone: (714) 220-3922.

(31) *Laboratory:* IT Corporation-Cerritos (NIST).

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Mary Hammons, Phone: (213) 921-9831.

(32) *Laboratory:* J.M. Cohen, Inc. (NIST).

Address: 155 Bovet Rd., Suite 300, San Mateo, CA 94402, Contact: Joel Cohen, Phone: (415) 349-9737.

(33) *Laboratory:* Kellco Asbestos Analytical Services, (NIST).

Address: 44814 Osgood Rd., Fremont, CA 94539, Contact: Patricia Brown, Phone: (415) 659-9751.

(34) *Laboratory:* Kellco Services, Inc. (NIST).

Address: 8421 Auburn Ave., Citrus Heights, CA 95610, Contact: Duane Graves, Phone: (916) 722-7997.

(35) *Laboratory:* Kemron Environmental Services (NIST).

Address: 14340 Bolsa Chica, Suite C, Westminster, CA 92683, Contact: Humphrey Laurent, Phone: (714) 373-1194.

(36) *Laboratory:* Law Engineering, Inc. (NIST).

Address: 5025 S. 36th St., Phoenix, AZ 85040, Contact: Peter Flening, Phone: (602) 437-0250.

(37) *Laboratory:* McClara Laboratory (NIST).

Address: 3560 Business Dr., Sacremento, CA 95820, Contact: Michael McClara, Phone: (916) 451-7244.

(38) *Laboratory:* McCrone Environmental Services, Inc., (NIST).

Address: 120 Newport Center Dr., Suite 240, Newport Beach, CA 92660, Contact: William Millar, Phone: (714) 759-6619.

(39) *Laboratory:* Micro Analytical Laboratories, Inc., (NIST).

Address: 5900 Hollis St., Suite M, Emeryville, CA 94608, Contact: Bradley Erskine, Phone: (415) 653-0624.

(40) *Laboratory:* Microanalytical Services, Inc. (NIST).

Address: 201 South Lake Ave., Suite 402, Pasadena, CA 91101, Contact: Lily Prigge, Phone: (818) 356-7400.

(41) *Laboratory:* Microprobe (NIST).
Address: 5104 East Burns, Tucson, AZ 85711, Contact: James R. Kessler, Phone: (602) 745-1169.
(42) *Laboratory:* National Asbestos Labs, Inc. (NIST).
Address: 2235 Polvorosa Ave., Suite 220, San Leandro, CA 94577, Contact: Kevin Smith, Phone: (415) 357-9555.
(43) *Laboratory:* National Environmental Services, Inc., (NIST).
Address: 5055 East Broadway, Suite D-208, Tucson, AZ 85711, Contact: Donna Katz, Phone: (602) 790-4491.
(44) *Laboratory:* PACE Laboratories (NIST).
Address: 11 Digital Dr., Novato, CA 94949, Contact: Keith Hunter, Phone: (415) 883-6100.
(45) *Laboratory:* Particle Diagnostics, Inc. (NIST).
Address: 1274 Morena Blvd., San Diego, CA 92109, Contact: Dan Baxter, Phone: (619) 276-2200.
(46) *Laboratory:* Precision Micro-Analysis (NIST).
Address: 5685-A Power Inn Rd., Suite 102, Sacramento, CA 95824, Contact: J. Benjamin Smith, Phone: (916) 381-0694.
(47) *Laboratory:* R.J. Lee Group, Inc. (NIST).
Address: 2424 6th St., Berkeley, CA 94710, Contact: Jesse E. Fisher, Phone: (415) 486-8319.
(48) *Laboratory:* Radiation Detection Co. (NIST).
Address: 162 Wolfe Rd., P.O. Box 1414, Sunnyvale, CA 94088, Contact: Donald Shepley, Phone: (408) 735-8700.
(49) *Laboratory:* Reynolds Electrical & Engineering Co., (NIST).
Address: P.O. Box 98521, M/S 706, Las Vegas, NV 89193, Contact: Glen Clark, Phone: (702) 295-6379.
(50) *Laboratory:* Salt River Project (NIST).
Address: 600 East Curry Rd., Tempe, AZ 85281, Contact: William Powell, Phone: (602) 236-8024.
(51) *Laboratory:* Schwein/Christensen Eng., Ltd. (NIST).
Address: 3397 Mt. Diablo Blvd., Suite E, Lafayette, CA 94549, Contact: Conrad Christensen, Phone: (415) 284-3311.
(52) *Laboratory:* Sonoran Desert Labs, Inc. (NIST).
Address: 2425-A North Huachuaca Dr., Tucson, AZ 85745, Contact: Frank Mendoza, Phone: (602) 624-9366.
(53) *Laboratory:* Sonoran Desert Labs, Inc. (NIST).
Address: 2725 Congress St., Suite 2A, San Diego, CA 92110, Contact: Greg Behnfeldt, Phone: (619) 294-7200.
(54) *Laboratory:* Southwest Environmental Management, Inc. (NIST).
Address: 14255 N. 79th, Suite 10, Scottsdale, AZ 85260, Contact: Teresa Burrows, Phone: (602) 443-0070.
(55) *Laboratory:* Southwest Hazard Control, Inc. (NIST).
Address: 5400 West Massingale Rd., Tucson, AZ 85743, Contact: Gerald J. Karches, Phone: (602) 744-1060.
(56) *Laboratory:* Stan Tech (NIST).
Address: 4040 E. McDowell, Suite 412, Phoenix, AZ 85008, Contact: Tjuana White, Phone: (602) 273-6934.
(57) *Laboratory:* TEM Analytics, Inc. (NIST).
Address: 3443 East Fort Lowell, Suite 105, Tucson, AZ 85716, Contact: Sandra Bejarauno, Phone: (602) 795-7000.
(58) *Laboratory:* TMA/NORCAL Corporation (NIST).
Address: 2030 Wright Ave., Richmond, CA 94804, Contact: Rosemary Sliney, Phone: (415) 235-2833.
(59) *Laboratory:* Unitek Environmental Consultants, Inc., (NIST).
Address: 2889 Mokumoa St., Honolulu, HI 96819, Contact: Irene Enoki, Phone: (808) 834-1444.
(60) *Laboratory:* Van Houten Consultants, Inc. (NIST).
Address: 422 Petaluma Blvd. North Suite B, Petaluma, CA 94952, Contact: Gregory P. Arnold, Phone: (707) 762-1132.
(61) *Laboratory:* Western Technologies, Inc. (NIST), Chemistry Lab.
Address: 3737 East Broadway Rd., Phoenix, AZ 85040, Contact: Steve Barnes, Phone: (602) 437-3737.

EPA Accredited Commercial PLM Laboratories

REGION X -- Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.
(1) *Laboratory:* AM TEST, Inc. (NIST).
Address: 14603 Northeast 87th St., Redmond, WA 98052, Contact: John T. Dailey, Phone: (206) 885-1664.
(2) *Laboratory:* Cascade Analytical Service (NIST).
Address: 3640 South Cedar St., Suite O, Tacoma, WA 98409, Contact: Juin B. J. TeVrucht, Phone: (206) 472-6909.
(3) *Laboratory:* Coffey Laboratories, Inc. (NIST).
Address: 4914 Northeast 122nd Ave., Portland, OR 97230, Contact: Fredrick C. Colley, Phone: (563) 254-1794.
(4) *Laboratory:* Environmental Consulting Services, Inc. (NIST).
Address: 1259 Willamette St., Eugene, OR 97401, Contact: Richard W. Carlin, Phone: (503) 345-6790.
(5) *Laboratory:* Environmental Consulting Services, Inc. (NIST).
Address: 3601 Northwest Yeon, Suite 134, Portland, OR 97210, Contact: Sheila Monroe, Phone: (503) 227-7210.
(6) *Laboratory:* Esstek, Inc. (NIST).
Address: 12822 Gateway Dr., Seattle, WA 98168, Contact: Richard C. Thompson, Phone: (303) 790-0529.
(7) *Laboratory:* HAZCON, Inc. (NIST).
Address: 9500 Southwest Barbur Rd., Suite 100, Portland, OR 97219, Contact: Gerald Liddell, Phone: (503) 244-6045.
(8) *Laboratory:* HAZCON, Inc. (NIST).
Address: 5950 6th Ave. S, Suite 216, Seattle, WA 98108, Contact: Masood Hashmi, Phone: (206) 763-7364.
(9) *Laboratory:* HAZTOX, Inc. (NIST).
Address: 820 North Linder Rd., Meridian, ID 83642, Contact: Robert Woellner, Phone: (800) 548-8220.
(10) *Laboratory:* Hanford Environmental Health, Foundation NHS, Inc. (NIST).
Address: 2950 C George Washington Way, Richland, WA 99352, Contact: Maureen Hamilton, Phone: (509) 376-6060.
(11) *Laboratory:* Hanford Environmental Health, Foundation NHS, Inc. (NIST).
Address: 805 Goethals Dr., Richland, WA 99352, Contact: Maureen Hamilton, Phone: (509) 376-6980.
(12) *Laboratory:* Hunter Services, Inc. (NIST).
Address: 1205 East Int'l. Airport Rd., Suite 100, Anchorage, AK 99519, Contact: Doug Jones, Phone: (907) 561-3055.
(13) *Laboratory:* M & M Environmental, Inc. (NIST).
Address: 3902 North 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 572-2772.
(14) *Laboratory:* Marine & Environmental Testing, Inc., (NIST).
Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin H. Finkel, Phone: (503) 286-2950.
(15) *Laboratory:* Microlab Northwest (NIST).
Address: 7609 140th Pl., NE, Redmond, WA 98052, Contact: Russel Crutcher, Phone: (206) 885-9419.
(16) *Laboratory:* Northwest Asbestos Consultants (NIST).

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale A. Schmidt, Phone: (503) 389-9727.
(17) *Laboratory:* Oregon Analytical Laboratory (NIST).
Address: 14855 Southwest Old Schools Ferry Rd., Beaverton, OR 97007, Contact: Howard Boorse, Phone: (503) 644-5300.
(18) *Laboratory:* Professional Service Ind., Inc. (NIST).
Address: 700 West 58th St., Units A & B, Anchorage, AK 99518-1632, Contact: John Buzdor, Phone: (907) 561-2400.
(19) *Laboratory:* Professional Service Ind., Inc. (NIST).
Address: 611 Southeast Harrison St., Portland, OR 97214, Contact: Judy Grant, Phone: (503) 232-2183.
(20) *Laboratory:* Westinghouse Northwest Environmental, Center (NIST).
Address: Kenai Peninsula Borough Maintenance, 47140 Poppy Ln., Soldotna, AK 99669, Contact: Larry Lockard, Phone: (907) 262-4011.
(21) *Laboratory:* Westinghouse Northwest Environmental, Center (NIST).
Address: 1234 Columbia Dr., SE, Richland, WA 99352, Contact: Carlton Allen, Phone: (509) 735-3211.

EPA Accredited Commercial PLM Laboratories

Non-Domestic PLM Laboratories

(1) *Laboratory:* Pinchin & Associates, Ltd. (NIST).
Address: Two Robert Speck Pkwy., Suite 290, Mississauga, Ontario, Contact: Suzanne Ruginis, Phone: (416) 279-1629.
(2) *Laboratory:* Pinchin Harris Holland Associates, Ltd. (NIST).
Address: No. 200-1285 West Pender St., Vancouver, BC, V6E 4B1, Canada, Contact: Geoffrey A. Clark, Phone: (604) 669-5979.
(3) *Laboratory:* Chatfield Technical Consulting, Ltd., (NIST).
Address: 2071 Dickson Rd., Mississauga, Ontario, Canada L5B 1YB, Contact: Eric Chatfield, Phone: (416) 896-7611.
(4) *Laboratory:* McMaster Laboratory (NIST), Occupational Health Laboratory.
Address: 1200 Main St., W., Hamilton, Ontario, Canada L8N 3Z5, Contact: Dave K. Verma, Phone: (416) 525-9140.

EPA Accredited Non-Commercial PLM Laboratories

REGION I -- Boston, MA

Regional Asbestos Coordinator: Joe DeCola, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.
(1) *Laboratory:* Olin Corp. (NIST), Environmental Hygiene Laboratory.
Address: 91 Shelton Ave., P.O. Box 30-9643, New Haven, CT 06511, Contact: James P. Dawson, Phone: (203) 781-5613.
(2) *Laboratory:* State of Maine, Department of Human, Services (NIST), Public Health Laboratory.
Address: 221 State St., Augusta, ME 04333, Contact: John Krueger, Phone: (207) 289-2727.

EPA Accredited Non-Commercial PLM Laboratories

REGION II -- Edison, NJ

Regional Asbestos Coordinator: Arnold Freiberger, EPA, Region II, Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6671, (FTS) 340-6671.
(1) *Laboratory:* City of New York, Dept. of Gen. Svc., Lab Division of Muncipal Supplies, (NIST).
Address: 480 Canal St., New York, NY 10013, Contact: A.D. Pacifico, Phone: (212) 925-5326.
(2) *Laboratory:* Hess Oil Virgin Islands Corp. (NIST).
Address: P.O. Box 127, Kingshill, St. Croix, VI 00850, Contact: John L. Edgley, Phone: (809) 778-4314.
(3) *Laboratory:* Nassau County Dept. of Health (NIST), Division of Laboratories & Research.
Address: 209 Main St., Hempstead, NY 11550, Contact: Robert Porter, Phone: (516) 483-9158.

EPA Accredited Non-Commercial PLM Laboratories

REGION III -- Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3HW-42), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.
(1) *Laboratory:* Aluminum Company of America, Environmental Health Laboratory (NIST).
Address: ALCOA Technical Center, ALCOA Center, PA 15069, Contact: R. Danchik, Phone: (412) 337-2154.
(2) *Laboratory:* Maryland Dept. of Health, Laboratories Adm. - AQL (NIST).
Address: 201 West Preston St., Room 6D1, Baltimore, MD 21203, Contact: Delores E. Willis, Phone: (301) 225-6212.
(3) *Laboratory:* National Institute of Health (NIST), Safety Support Section.
Address: Building 13, Room 3K04, Bethesda, MD 20892, Contact: Randolph K. Larsen, Phone: (301) 496-3457.
(4) *Laboratory:* Pennsylvania Department of, Environmental Resources (NIST).
Address: Bureau of Laboratories, P.O. Box 1467, 3rd & Reily St., Harrisburg, PA 17120, Contact: Vincent White, Phone: (717) 787-4669.

EPA Accredited Non-Commercial PLM Laboratories

REGION IV -- Atlanta, GA

Regional Asbestos Coordinator: Liz Wilde, EPA, Region IV, 345 Courtland St., NE, (4APT-PT), Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.
(1) *Laboratory:* E.I. Dupont DeNemours & Co., Cape Fear Plant (NIST).
Address: P.O. Box 2042, Wilmington, NC 28402, Contact: W.M. Tedder, Phone: (919) 371-4257.
(2) *Laboratory:* EG&G Florida (NIST), Occupational Medicine & Environmental, Health Services.
Address: P.O. Box 21296, BOC-022, Kennedy Space Center, FL 32815, Contact: Patricia L. Colomore, Phone: (407) 867-3829.
(3) *Laboratory:* GTRI Microscopy Research Lab (NIST).
Address: 151 Sixth St., O'Keefe Bldg., Atlanta, GA 30057, Contact: James Smith, Phone: (404) 894-3806.
(4) *Laboratory:* Schneider Services International, (NIST).
Address: MS-340, Arnold AFB, TN 37389, Contact: Doug Hite, Phone: (615) 454-3000.
(5) *Laboratory:* TN Dept. of Health & Environment, (NIST).
Address: 1522 Cherokee Trail, P.O. Box 59019, Knoxville, TN 37950, Contact: Edward McCrary, Phone: (615) 546-9221.
(6) *Laboratory:* TN Dept. of Public Health (NIST), Jackson Branch Lab.
Address: 295 Summar Dr., Jackson, TN 38302-0849, Contact: John Hitz, Phone: (901) 424-9200.

EPA Accredited Non-Commercial PLM Laboratories

REGION V -- Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7); Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.
(1) *Laboratory:* Commonwealth Edison/SMAD (NIST).

Address: 1319 South First Ave., Maywood, IL 60153, Contact: Bernard Piechalak, Phone: (312) 450-5435.

(2) *Laboratory:* Indiana State Board of Health (NIST), Industrial Hygiene Laboratory.

Address: 1330 West Michigan St., Indianapolis, IN 46206, Contact: John Ruyack, Phone: (317) 633-0692.

(3) *Laboratory:* Martin Marietta Energy Systems, Inc., (NIST).

Address: P.O. Box 628, Piketon, OH 45661, Contact: David Boyd, Phone: (614) 289-2831.

(4) *Laboratory:* NIOSH (NIST).

Address: 4676 Columbia Pkwy., MS R-2, Cincinnati, OH 45226, Contact: Phil Bierkaum, Phone: (513) 841-4321.

(5) *Laboratory:* State of Illinois Department of Public, Health (NIST), Toxicology Laboratory.

Address: 2121 West Taylor St., Chicago, IL 60612-4285, Contact: Dietmar Grohlich, Phone: (312) 693-4766.

(6) *Laboratory:* West Allis Memorial Hospital (NIST), Industrial Toxicology Laboratory.

Address: 8901 West Lincoln Ave., West Allis, WI 53227, Contact: Leon A. Saryan, Phone: (414) 546-6313.

EPA Accredited Non-Commercial PLM Laboratories

REGION VI -- Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

(1) *Laboratory:* Duncan Public Schools (NIST).

Address: 1706 Spruce, P.O. Box 1548, Duncan, OK 73533, Contact: Ron Murray, Phone: (405) 255-4725.

(2) *Laboratory:* Jimmie Ann Bolton (NIST).

Address: P.O. Box 49079, Austin, TX 78765, Contact: Jimmie Ann Bolton, Phone: (512) 471-3511.

(3) *Laboratory:* Phillips Petroleum IH Lab (NIST).

Address: 267 Petroleum Lab, Bartlesville, OK 74004, Contact: Wanda Waugh, Phone: (918) 661-3648.

(4) *Laboratory:* Texaco Chemical Co. (NIST), Neches Plant.

Address: P.O. Box 847, Port Neches, TX 77651, Contact: Janet E. Wiiki, Phone: (409) 722-8381.

(5) *Laboratory:* U.S. Air Force (NIST).

Address: OEHL/SA, Brooks AFB, TX 78235, Contact: Edward Brown, Phone: (512) 536-3626.

(6) *Laboratory:* Univ. of Texas Health Center at Tyler, Dept. of Cell Biology &, Environmental Science (NIST).

Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-3541.

EPA Accredited Non-Commercial PLM Laboratories

REGION VII -- Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, 726 Minnesota Ave., Kansas City, KS 66101. (913) 236-2835, (FTS) 757-2835.

(1) *Laboratory:* KDHE - Laboratory Services (NIST).

Address: Building 740 Forbes Field, Topeka, KS 66620, Contact: Roger Carlson, Phone: (913) 296-1620.

EPA Accredited Non-Commercial PLM Laboratories

REGION VIII -- Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1744, (FTS) 564-1744.

(1) *Laboratory:* Natl. Enforcement Investigation (NIST).

Address: Box 22527, Denver Federal Center, Denver, CO 80225, Contact: Douglas Kendall, Phone: (303) 236-1066.

(2) *Laboratory:* Public Service Co. of Colorado (NIST).

Address: Hampden Park West, Bldg. 5H, 1500 West Hampden, Englewood, CO 80110, Contact: Richard K. Price, Phone: (303) 797-4226.

EPA Accredited Non-Commercial PLM Laboratories

REGION IX -- San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-2), EPA, Region IX, 215 Fremont St., San Francisco, CA 94105. (415) 974-7290, (FTS) 454-7290.

(1) *Laboratory:* Aerojet Solid Propulsion Co., Water Quality Control Lab. (NIST).

Address: P.O. Box 15699C, Sacramento, CA 95813, Contact: Jimmy Suarr, Phone: (916) 355-4051.

(2) *Laboratory:* Aerojet Tech Systems Company (NIST), Non-Metallics Testing Laboratory.

Address: P.O. Box 13222, Dept. 9410, Bldg. 200, Sacramento, CA 95813, Contact: Jeanne Fischer, Phone: (916) 355-3496.

(3) *Laboratory:* LA Unified School District (NIST), Employee Safety Section.

Address: 1425 South San Pedro St., Room 215, Los Angeles, CA 90015, Contact: Jeffrey Franklin, Phone: (213) 742-7371.

(4) *Laboratory:* Riverside County Health Department, Laboratory (NIST).

Address: 5888 Mission Blvd., Rubidoux, CA 92509, Contact: William Redden, Phone: (714) 784-1860.

(5) *Laboratory:* SCAQMD Laboratory (NIST).

Address: 9150 Flair Dr., El Monte, CA 91731, Contact: Joan Niertit, Phone: (818) 572-6200.

(6) *Laboratory:* Timothy B. Hemming, City of LA, Dept. of Water & Power, (NIST).

Address: 1630 North Main St., Bldg. 7, Box 111, Los Angeles, CA 90051-0100, Contact: Timothy B. Hemming, Phone: (213) 481-6691.

EPA Accredited Non-Commercial PLM Laboratories

REGION X -- Seattle, WA

Regional Asbestos Coordinator: Walter Jasper, EPA, Region X, 1200 Sixth Ave. (6T-083), Seattle, WA 98101. (206) 442-4762, (FTS) 399-2870.

(1) *Laboratory:* Puget Sound Naval Shipyard (NIST).

Address: Code 1343, Bremerton, WA 98314, Contact: C. Laubach, Supervisor, Phone: (206) 476-8900.

Dated: November 22, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89-27873 Filed 11-28-89; 8:45 am]

BILLING CODE 6560-50-D

federal register

Wednesday
November 29, 1989

Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba); Additions to List

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of Additions to the List of Specially Designated Nationals of Cuba.

SUMMARY: This notice provides the names of individuals and entities that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR part 515).

EFFECTIVE DATE: November 29, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400. Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Room 300, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by law, or by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national.

Section 515.201 prohibits any transaction, except as provided in Section 515.206 or as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national.

The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), April 10, 1989 (54 FR 14215), August 4, 1989 (54 FR 32064) and September 20, 1989 (54 FR 38811).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both; and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3571 and 3581.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3571 and 3581.

Specially Designated Nationals of Cuba (New Additions at This Publication)

Cariberia, S.A.
  Spain
Caribsugar International Traders, S.A.
  125–133 Camden High Street
  London, NW1 7JR, England
Casa de Cuba
  Mexico
Casa de Cuba
  Spain
CIDECO (a.k.a. Corporacion Iberoamericana de Comercio)
  Spain
CIMEX
  Emerson No. 148 Piso 7
  11570 Mexico, D.F.
CIMEX (a.k.a. Compania de Importacion y Exportacion Iberia)
  Spain
CITA
  Canary Islands
COIBA (a.k.a. Commercial Iberoamericana, S.A.)
  Spain
Commercial Iberoamericana, S.A. (a.k.a. COIBA)
  Spain
Compania de Importacion y Exportacion Iberia (a.k.a. CIMEX)
  Spain
COPIA S.A. (a.k.a. Corporacion Argentina de Ingenieria y Arquitectura S.A.)
  Argentina
Corporacion Argentina de Ingenieria y Arquitectura S.A. (a.k.a. COPIA)
  San Martin 323, 4th Floor
  Buenos Aires, Argentina
Corporacion Iberoamericana del Comercio (a.k.a. CIDECO)
  Spain
Corporacion Mexicana de Asesoria
  Reforma No. 116–805
  Col. Juarez, Mexico, D.F.
Cubacancun Cigars and Gift Shops
  Cancun, Mexico
Cubaexport
  Spain
Cubafrutas
  Spain
Cuban Cigars Trade
  Italy
Cubana Airlines (a.k.a. Cubana de Aviacion)
  Spain
Cubana de Aviacion (a.k.a. Cubana Airlines)
  Spain
Cubanatur
  Baja California 255
  Edificio B., Oficina 103
  Condesa 06500, Mexico, D.F.
Cubatabaco
  Spain
Cubatur (a.k.a. Empresa de Turismo Nacional y Internacional)
  Buenos Aires, Argentina
CUFLET
  Mexico
CUREF Metal Processing BV
  Boezembolcht 23
  Rotterdam, Netherlands
de France, Naomi A.
  Cubanatur
  Baja California 255
  Edificio B., Oficina 103
  Condesa 06500, Mexico, D.F.
Dominguez, Carlos
  Vinales Tours
  Oaxaca 80
  Roma, Mexico, D.F.
Durgaco
  London, England
Ediciones Cubanas
  Spain
Eggleton, Wilfred
  Director General
  Cubanatur
  Baja California 255
  Edificio B., Oficina 103
  Condesa 06500, Mexico, D.F.
Empresa de Turismo Nacional y Internacional (a.k.a. Cubatur)
  Buenos Aires, Argentina
Garcia, Daniel
  Manager
  Promociones Artisticas (PROARTE)
  Ave. Insurgentes sur No. 421
  Bloque B Despacho 404
  C. P. 06100, Mexico, D.F.
Garcia Palacios, Sergio
  Manager
  Corporacion Mexicana de Asesoria
  Reforma No. 116–805
  Col. Juarez, Mexico, D.F.
Guamatur
  Buenos Aires, Argentina
Gutierrez Reyes, Jose
  Vinales Tours
  Oaxaca 80
  Roma, Mexico, D.F.
Habanos Trading
  Geneva
Imprisa
  Spain
Instalaciones Industriales Peninsulares
  Calle 35 No. 498–A
  ZP 97 Merida, Mexico
Instituto Nacional de Turismo de Cuba
  Spain
Leverye S.A.
  Corrientes 1386, 5th Floor
  Buenos Aires, Argentina
Licorexport S.A.
  Quito, Ecuador
NIREF
  Boezembolcht 23
  Rotterdam, Netherlands
Ortiz, Guadalupe
  Cubanatur
  Baja California 255
  Edificio B., Oficina 103
  Condesa 06500, Mexico, D.F.
Pescabrava, S.A.
  France
Pescabrava, S.A.
  Italy
Pescabrava, S.A.
  Spain
Prelasa
  Mexico
Prensa Latina
  Spain
PROARTE (a.k.a. Promociones Artisticas)
  Mexico
Promociones Artisticas (a.k.a. PROARTE)
  Ave. Insurgentes sur No. 421
  Bloque B Despacho 404
  C. P. 06100, Mexico, D.F.
Reclama
  Federal Republic of Germany
Santo, Anabel
  Promociones Artisticas (PROARTE)
  Ave. Insurgentes sur No. 421
  Bloque B Despacho 404
  C. P. 06100, Mexico, D.F.
Tabacalera Espana
  Spain
Viajes Guama, S.A.
  Spain
Vinales Tours
  Oaxaca 80
  Roma, Mexico, D.F.

Dated: October 10, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 17, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 28128 Filed 11–28–89; 8:45 am]

BILLING CODE 4810–25–M

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federal register

Thursday
November 30, 1969

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federal register

Thursday
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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WASHINGTON, DC

WHEN: December 7, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-88-115 IFR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revised Nomination Procedures for the Navel and Valencia Orange Administrative Committee Memberships

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim Final Rule Revising an Interim Final Rule with Request for Comments.

SUMMARY: This interim final rule will revise an interim final rule published in the September 2, 1988, issue of the **Federal Register** (53 FR 34022) and invites comments on the establishment of revised nomination procedures for membership on the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of their respective orders. The September 2, 1988, interim final rule allowed the U.S. Department of Agriculture (Department) to conduct nominations of both committees using the interim nomination procedures described in that rule. This interim final rule will revise those procedures to clarify and improve this operation.

DATES: Interim final rule effective on November 30, 1989. Comments must be received by January 2, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action is essentially small entities acting on their own behalf. Both the Act and the RFA have small entity orientation and compatibility.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders were amended, effective September 2, 1988, (53 FR 34026), to change committee structure and the basis for industry representation on the committees. The amendments are intended to provide a more flexible framework for apportioning committee membership among segments of the industries.

A September 2, 1988, interim final rule (53 FR 34022) provided interim nomination procedures for membership on the committees and allowed the Department to conduct initial nominations for both committees. In addition, comments were invited from interested persons until November 1, 1988. One comment was received from Mr. James A. Moody, counsel for Sequoia Orange Co., Inc.

The interim nomination procedures established in the September 2, 1988, interim final rule were used to select a new Navel Orange Administrative Committee on November 8, 1988, and a new Valencia Orange Administrative Committee on March 7, 1989. This interim final rule will revise the interim procedures.

The amended orders and this interim final rule provide for nomination procedures involving three nominating entities. Nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year in which nominations are made. Nominating entity 2 groups are composed of individual handlers or groups of handlers not affiliated with nominating entity 1 who declare themselves to be nominating entities. These groups or coalitions may be made up solely of cooperative handlers, a combination of cooperative and independent handlers, or solely independent handlers. Nominating entity 3 is comprised of growers not affiliated with handlers in nominating entities 1 or 2.

Sections 907.102(a)(1) and 908.102(a)(1) of the interim final rule state that the Secretary will notify all handlers of their percentage of the total

volume of navel or Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made.

This interim final rule will clarify the previous interim rule so that only individual handlers not affiliated with nominating entity 1 will be notified of their percentages of total orange dispositions. Handlers affiliated with nominating entity 1 do not need to know their individual percentage of dispositions since they are already committed to nominations through the cooperative marketing organization. The cooperative marketing organization which qualifies as nominating entity 1 will be notified of the total percentage of dispositions of all of its handlers at the same time that nominating entities 2 and 3 are notified of dispositions.

In addition, §§ 907.102(a)(1) and 908.102(a)(1) will be further modified to provide that designated employees of the committees will inform all handlers not affiliated with nominating entity 1 of their percentage of total orange dispositions in the current fiscal (navel oranges) or marketing (Valencia oranges) year and the minimum percentages required to be allocated grower and/or handler members on the committees. The September 2, 1988, interim final rule provided that the Secretary will inform all handlers of the percentage of total dispositions. However, this method has proved inefficient and time consuming. Designated employees of the committees have this information readily available. Therefore, the interim final rule is further revised to provide that designated employees of the committees, rather than the Secretary, shall inform handlers not affiliated with nominating entity 1 of their percentages of total dispositions.

This interim final rule will further revise §§ 907.102(a)(1) and 908.102(a)(1) to require designated employees of each handler or individual designated by the handler as its representative in nominating entity 2 to submit a signed statement indicating the handler's willingness to participate in the nominating entity for the purpose of nominating members to the committees. This information is necessary to insure that the handler in fact belongs to that nominating entity 2 group.

This interim final rule will revise §§ 907.102(a)(1) and 908.102(a)(1) to require designated employees of the committees to submit grower lists for all nominating entities to the Department, upon request, even if the entity nominates its slate of candidates through action of its board of directors. This is necessary to insure that no grower votes more than once in the nomination process.

The September 2, 1988, interim final rule requires nominating entity 2 handlers to submit grower lists to the Department. During the nominations, however, the Department encountered difficulty in receiving timely responses from nominating entity 2 handlers. Therefore, this interim final rule provides that, in the future, the Department will obtain grower lists for nominating entity 2 handlers from designated employees of the committees. This will help expedite the nomination process. In the event that the committees' employees are not able to provide grower lists in a timely manner, individual handlers will then be required to submit their grower lists to the Department.

The September 2, 1988, interim final rule requires the Department to hold candidate selection meetings for nominating entity 3 growers in all districts of the production area. A slate of grower candidates would be developed at such meetings. Provision was also made for growers to propose candidates for nomination without attending the candidate selection meetings by submitting candidates names on an approved form. In practice, the Department found that few growers attended the recent navel and Valencia orange nomination meetings. Instead, growers, for the most part, chose to propose candidates for nomination by submitting nominations on the approved forms without attending the candidate selection meetings. Therefore, under this interim final rule, candidate selection meetings will no longer be required for nominating entity 3 growers. Growers will propose candidates by submitting the names on an approved form to AMS's California marketing field office. These forms will be signed by at least 10 eligible growers. This interim final rule will revise paragraphs (3) of §§ 907.102(a) and 908.102(a) accordingly.

This interim final rule will further revise §§ 907.102(a) and 908.102(a). The September 2, 1988, interim final rule requires growers of nominating entity 3 to submit the names of proposed candidates on a form approved by the Secretary to the AMS California marketing field office. Such submission, if mailed, must be postmarked at least 10 days prior to a date established by the Secretary and, if hand delivered, must be received at least five days prior to such date. In practice in the nomination process, the Department has found such time frames to be too restrictive and lacking in flexibility. Therefore, under this interim final rule, the forms, whether posted or hand delivered, must be received prior to or on a date established by the Secretary.

The interim final rule published in the September 2, 1988, issue of the **Federal Register** (53 FR 34022) requested comments from interested persons until November 1, 1988. One comment was received from Mr. James A. Moody and is discussed herein.

Mr. Moody, in his comment on the September 2, 1988, interim final rule, raised several issues opposing the interim nomination procedures.

In his first issue, Mr. Moody stated that small growers and handlers suffer severe disadvantage under the interim procedures because they are not notified of the market share of Sunkist Growers, Inc. (Sunkist), the market share for each handler, and the names and addresses of handlers and growers eligible to nominate and vote. He further alleges that Sunkist knows its own and other handlers' percentage of total disposition (market share) as do members of the committees.

Sections 907.73(d) and 908.73(d) of the navel and Valencia orange marketing orders, respectively, prohibit the release of confidential or financial information submitted by a handler which include individual navel or Valencia orange handler's total dispositions. These sections state that all reports and information submitted by handlers shall be received by and at all times be in the custody of one or more designated employees of the committees. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received. Therefore, the market share or percentage of total dispositions of an individual handler may not be released to other handlers.

It is true that Sunkist should know the market share of each handler affiliated with Sunkist, as it is to be expected that a cooperative marketing organization would know the market share of those handlers whom it represents. Sunkist would not know the market share of handlers not affiliated with the organization. The nominating procedures provide that all nominating entities are notified of their percentage of total dispositions of navel or Valencia oranges at the same time.

Mr. Moody's comment states that members of the committees have been provided with individual navel or Valencia orange handlers' market share. However, current procedures provide, in accordance with §§ 907.73(d) and 908.73(d), that committee members no longer receive this information in their capacity as committee members. In the course of the nominating procedures, navel and Valencia orange handlers are advised only of their own percentages of total navel or Valencia orange dispositions, and nominating entity 1 (which was Sunkist during both of the most recent committee nominations), was advised of its aggregate market share, and not the individual market share of its affiliated handlers. The market share, or percentages of total navel or Valencia orange dispositions, for any handler have not been disclosed to any other individual handler or to Sunkist.

Mr. Moody also states that small growers and handlers suffer a severe disadvantage because they are not notified of names and addresses of growers and handlers eligible to nominate and vote. There is no demonstrated need for growers and handlers to be notified of the names and addresses of growers. Growers do not form coalitions under the nomination procedures, handlers do. In addition, within a voting coalition, handlers are aware of the names and addresses of the growers who deliver fruit to them. However, there is sufficient reason for handlers to receive the names and addresses of other handlers. This information will aid handlers in contacting each other and forming coalitions. Once in contact with other handlers, individual handlers could then inform others of their percentage of total dispositions. For these reasons, this interim final rule will further revise the September 2, 1988, interim final rule to require the committees to provide handlers with a list of the names and addresses of all handlers at the same time handlers are notified of their respective percentages of total dispositions or market share.

In his second issue, Mr. Moody states that AMS's consideration of the economic impact of the September 2, 1988, interim final rule was deficient as the Administrator of the AMS did not "certify" that the interim final rule would not have a substantial economic impact on small entities. The entities regulated pursuant to the marketing orders are handlers of oranges. The majority of the 123 handlers of navel oranges and 115 handlers of Valencia oranges are small entities as that term is defined by the Small Business Administration. The Department and the AMS have adhered to the requirements of the navel and Valencia orange marketing orders, the Act, the RFA, the Paperwork Reduction Act, the Administrative Procedure Act, and the Department's "Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders" in this rulemaking proceeding. In the September 2, 1988, interim final rule, the Administrator of the AMS determined that issuance of the interim final rule will not have a significant economic impact on a substantial number of small entities.

In his third issue, Mr. Moody stated that Sunkist enjoyed simplified nominating procedures. The recent amendment of the navel and Valencia orange marketing orders changed the provisions of the marketing orders concerning the structure of the committees. These amendments were approved by navel and Valencia orange producers in a referendum and the Final Order Amending the Orders was published in the September 2, 1988, issue of the **Federal Register**. The amendments provided for three nominating entities of which nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year. Sunkist was the cooperative marketing organization which disposed of the largest percentage of the total volume of navel and Valencia oranges and qualified as nominating entity 1 for nomination purposes for both committees. As a cooperative marketing organization, Sunkist may decide to nominate members through its Board of Directors, an option open to any cooperative marketing organization in nominating entity 1 and 2. Therefore, the simplification of nominating procedures rises from the organization and nature of the cooperative marketing organization, and not from the identity of that organization.

For the reasons stated above, Mr. Moody's exception, asking that the names and addresses of handlers be made available to each handler in the nomination process has merit and is approved. All other exceptions to the interim final rule are denied.

After consideration of all available information, including the recently concluded amendatory proceedings relative to these orders, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on available information, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the additional information collection provisions that are required by this interim final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0116 (navel oranges) and 0581–0121 (Valencia oranges). It is estimated that these changes will require 0.083 of an hour response time per handler every two years.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the term of office for members of the Valencia Orange Administrative Committee begins February 1, 1990. Accordingly, nomination procedures should be in place as soon as possible in order for selection of a new committee.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, and Valencias.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

Note: These sections will appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Sections. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Paragraph (a) of § 907.102 is amended by republishing the introductory text of paragraph (a), and by revising paragraphs (a) (1) and (3) to read as follows:

Subpart—Rules and Regulations

§ 907.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate

members of the committee shall be as follows:

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of navel oranges disposed by all handlers in all outlets during the fiscal year in which nominations are made: *Provided,* That concurrent with such notification, such employees shall provide each handler of record with a list of the names and addresses of all navel orange handlers. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: *Provided further,* That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

* * * * *

(3) Growers, pursuant to § 907.22(a)(3), and, if applicable, growers pursuant to § 907.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current fiscal year is not affiliated with nominating entities 1 or 2 and delivered navel oranges to handlers shall be eligible to vote for nominees pursuant to § 907.22(g).

(ii) Growers shall propose candidates by submitting the names on a form approved by the Secretary to the Agricultural Marketing Service's California marketing field office and signed by at least 10 eligible growers. Such submission must be received on or before a date established by the Secretary.

(iii) Persons submitting names for candidcacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

* * * * *

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Paragraph (a) of § 908.102 is amended by republishing the introductory text of paragraph (a), and by revising paragraphs (a) (1) and (3) to read as follows:

§ 908.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made: *Provided,* That concurrent with such notification, such employees shall provide each handler of record with a list of the names and addresses of all Valencia orange handlers. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: *Provided further,* That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

* * * * *

(3) Growers, pursuant to § 908.22(a)(3), and, if applicable, growers pursuant to § 908.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current marketing year is not affiliated with nominating entities 1 or 2 and delivered Valencia oranges to handlers shall be eligible to vote for nominees pursuant to § 908.22(g).

(ii) Growers shall propose candidates by submitting the names on a form approved by the Secretary to the Agricultural Marketing Service's California marketing field office and signed by at least 10 eligible growers. Such submission must be received on or before a date established by the Secretary.

(iii) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

* * * * *

Dated: November 24, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-27982 Filed 11-29-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 985

[FV-89-001 FR]

Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1989-90 marketing year which began June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base and 136 producers hold "Class 3" (Native) oil allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), during a June 28, 1989, teleconference meeting, unanimously recommended that the salable quantities and allotment percentages for both Scotch and Native spearmint oils for the 1989-90 marketing year be increased. Section 985.51(b) of the marketing order authorizes the Committee to recommend such an increase and to submit its recommendation, and the reasons for it, to the Secretary of Agriculture for approval. The salable quantities and allotment percentages for those classes of oil were published in the March 8, 1989, issue of the Federal Register (54 FR 9766). This revision would have increased the salable quantity for Scotch oil from 706,742 to 840,099 pounds and increased the allotment percentage from 42 to 50 percent. However, the Committee, during an August 18, 1989, teleconference meeting, unanimously recommended that the salable quantity and allotment percentage for Scotch spearmint oil for the 1989-90 marketing year be further increased to 70 percent and 1,193,828 pounds, respectively. Thus, an interim final rule was published in the September 14, 1989, issue of the Federal Register (54 FR 37932). This interim final rule increased the allotment percentage for Scotch oil from 42 to 70 percent and the salable quantity from 706,742 to 1,193,828 pounds. In addition, the allotment percentage for Native oil was increased from 42 to 48 percent and the salable quantity was increased from 781,092 to 891,363 pounds. These revisions were issued pursuant to § 985.52 of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

Scotch Spearmint Oil

At its September 21, 1988, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1989-90 marketing year to be 718,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 718,000 pounds. The Committee estimated that 16,892 pounds would be carried in on June 1, 1989. This amount was deducted from the total supply needed leaving 701,108 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,682,719 pounds, resulted in 41.6 percent, which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989-90 Scotch allotment percentage which resulted in a 1989-90 salable quantity of 706,742 pounds.

At the time of the June 28, 1989, Committee meeting, the 1989-90 salable percentage of 42 percent for Scotch oil, when applied to the then current total allotment base of 1,680,198 pounds, gave a 1989-90 salable quantity of 705,683 pounds. Since all growers were expected to either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1989, was 723,372 pounds, and this was the total supply available for the 1989-90 marketing year. Carry-in on June 1, 1989, was 17,689 pounds of Scotch oil, a little higher than the Committee had estimated.

The Committee, at its June 28, 1989, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 8 percent, from 42 to 50 percent, which would have made an additional 134,416 pounds available to the market. If these additional pounds were added to the total supply available of 723,372 pounds, the Committee felt at that time that the resulting 857,788 pounds would have met immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1989-90 Scotch salable percentage be increased from 42 to 50 percent, which would have resulted in an increase in the salable quantity from 706,742 to 840,099 pounds. This figure, when added to the June 1, 1989, carry-in of 17,689 pounds, would have resulted in a total available supply of 857,788 pounds.

The demand for Far West Scotch oil continued to increase due to a shortage of Midwest Scotch oil caused by the drought in the summer of 1988. During the 1988 fall planting season, when growers in the Far West began to realize that their Scotch oil reserves would be used to fill the unexpected demand, plans were made to increase the acreage of Far West Scotch oil. However, an extremely wet fall prevented any significant planting. In addition, the spring of 1989 was also very wet, and growers were forced to wait until very late in the spring to plant. Therefore, because of the wet conditions and delayed planting, the 1989 crop of Far West Scotch oil is expected to have a below average yield.

Uncertainties about the 1989-90 supply of Scotch oil caused concern among buyers and users of Scotch oil and resulted in the high demand and market activity that is presently occurring. In order to meet the increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were therefore required.

The June 28 recommendation would not have made the reserve Scotch oil available. This is because growers had reserve pool oil in excess of the amount needed to fill their annual allotment. Due to the continuning strong demand for Scotch spearmint oil, the Committee recognized that it was necessary to allow all the reserve pool oil to be made available for sale. Thus, the Committee, in an August 18, 1989, teleconference meeting, unanimously voted to revise its June 28, 1989, recommendation by increasing the salable percentage of Scotch spearmint oil from the recommended 50 to 70 percent. Accordingly, all growers now have adequate annual allotment to market all the Scotch oil from current production and from the reserve pool.

When the 70 percent salable percentage is applied to the total Scotch oil allotment base of 1,680,198 pounds, it results in a salable quantity of 1,193,828 pounds. However, the actual amount of oil made available is the total estimated supply of 872,685 pounds. This is because very few growers have individual supplies of oil equal to 70 percent of their base. However, since all of the estimated supply will likely be needed this year and it is desirable that all growers be able to market this oil, the Committee recommended that the 1989–90 Scotch oil salable percentage be further increased from its original June 28, 1989, recommendation of 42 percent to 70 percent. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Recommendation Sept. 21, 1988 (pounds)	Recommendation June 28, 1989 (pounds)	Revised recommendation Aug. 18, 1989 (pounds)
(1) Carry-in	16,892	17,689	17,689
(2) Total supply available	723,634	857,788	872,685
(3) Desirable carryout	0	0	0
(4) Total allotment base for Scotch oil	1,682,719	1,680,198	1,680,198
(5) Allotment percentage	42	50	70
(6) Salable quantity	706,742	840,099	[1] 854,996

[1] Although 70 percent of the total 1989–90 allotment base figure of 1,680,198 pounds results in a salable quantity of 1,193,828 pounds, the actual amount of Scotch oil made available by this action is 872,685 pounds. This is because some growers do not have reserve pool oil and will not be able to fill the deficiency created by this increase.

Thus, the Department determined that an allotment percentage of 70 percent should be established for Scotch spearmint oil for the 1989–90 marketing year and issued the interim final rule. This percentage made available 872,685 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

Native Spearmint Oil

At its September 21, 1988, meeting, the Committee estimated trade demand for Native spearmint oil for the 1989–90 marketing year to be 818,266 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 818,266 pounds. The Committee estimated that 40,000 pounds would be carried-in on June 1, 1989. This amount was deducted from the total supply needed, leaving 778,266 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,859,743 pounds, resulted in 41.8 percent which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989–90 Native allotment percentage which resulted in a 1989–90 salable quantity of 781,092 pounds based on the estimated total base of 1,859,743 pounds.

The 1989–90 salable percentage of 42 percent for Native oil, when applied to the revised total allotment base of 1,857,007 pounds, gave a 1989–90 salable quantity of 779,943 pounds. Since all growers were expected to either produce their individual salable quantity or fill deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1989, was 789,139 pounds. This was the total supply available for the 1989–90 marketing year. Carry-in on June 1, 1989, was 9,196 pounds of Native oil, which was lower than the Committee had estimated.

The potential shortage of Scotch oil put an extra demand on the supply of Native oil. In addition, recent events in China gave rise to concern about the supply of Chinese spearmint oil among buyers and users. Last year, the crop of Chinese oil was poor, and only 20,000 pounds were imported into the United States. In past years, as much as 170,000 pounds have been imported. Uncertainty about the Midwest production and the supply of oil from China contributed to a heightened demand and an increase in grower prices for Native oil from $10.50 to $11.00 per pound. A higher salable quantity and allotment percentage for Native oil was required in order to meet the increase in trade demand. The Committee therefore recommended increasing the salable percentage by 6 percent, from 42 to 48 percent, thus making an additional 11,420 pounds available to the market which increased the salable quantity from 781,092 to 891,363 pounds. The Committee decided that this figure met immediate needs while assuring growers that a burdensome supply would not be put on the market. This figure added to the June 1, 1989, carry-in of 9,196 pounds resulted in a total available supply of 900,559 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Original recommendation Sept. 21, 1988 (pounds)	Revised recommendation June 28, 1989 (pounds)
(1) Carry-in	40,000	9,196
(2) Total supply available	821,092	900,559
(3) Desirable carryout	0	0
(4) Total Allotment base for Native oil	1,859,743	1,857,007
(5) Allotment percentage	42	48
(6) Salable quantity	781,092	891,363

Thus, the Department determined that an allotment percentage of 48 percent should be established for Native spearmint oil for the 1989–90 marketing year. This percentage made available 900,559 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

An interim final rule establishing those allotment percentages and salable quantities for Scotch and Native spearmint oils was issued on September 11, 1989, and published in the **Federal Register** on September 14, 1989 (54 FR 37932). Comments were solicited from interested persons through October 16, 1989. No comments were received. Thus, the allotment percentages and salable quantities as established by that interim final rule are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 8, 1989, issue of the **Federal Register** (54 FR 9766), in connection with the initial establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils, the Committee's recommendations and other available information, it is found that to revise § 985.209 [54 FR 9766] so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This action adopts as a final rule, without change, the provisions of the interim final rule. No comments were received concerning the interim final rule and no practical purpose would be served by postponing the effective date of this action.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

Note.—This section will not appear in the Code of Federal Regulations.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 985.209, which was published at 54 FR 37935 on September 14, 1989, is adopted as a final rule without change.

Dated: November 24, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–27983 Filed 11–29–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–121–AD; Amdt. 39–5404]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for cracks of an emergency exit torsion box beam, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in certain areas of the torsion box beam. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Airbus Industie Model A300 series airplanes, which requires repetitive inspections for cracks of an emergency exit torsion box beam, and repair, if necessary, was published in the **Federal Register** on July 26, 1989 (54 FR 31045).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter suggested that there was insufficient cause to proceed with the adoption of the rule since the unsafe condition identified in the preamble to the Notice, "potential decompression of the fuselage," was not mentioned in the applicable service bulletin. Further, this commenter suggested that the intent of the procedures outlined in the service bulletin is merely to "avoid potentially extensive repairs in the future," and that adoption of an AD based on such "economic reasons" is not justified. The FAA does not concur with the commenter's suggestion that the proposed rule is not justified. Fatigue testing has revealed potential development of fatigue cracking in the emergency exit torsion box beam; such cracking presents an unsafe condition in the aircraft since it could eventually lead to reduced structural capability of the airplane fuselage. The FAA has determined that this unsafe condition could exist or eventually develop on Model A300 series airplanes, and that repetitive inspections of the affected area (and necessary repair of cracking) must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such actions to correct an unsafe condition is the airworthiness directive.

The FAA has reconsidered its description of the unsafe condition, and has determined that it is appropriate to delete the reference to "* * * subsequent decompression of the airplane" from that description in this final rule. This change, however, does not affect the intent of this rule since the unsafe condition of "reduced structural capability of the fuselage" was also identified in the Notice and is addressed by this action.

One commenter questioned the need for the rule since the referenced service bulletin will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletin may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles at which the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

Paragraph C. of the final rule has been revised to reflect that the Standardization Branch is the appropriate FAA office responsible for approval of required repairs of cracks exceeding 15 mm.

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule, with the changes noted above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform an eddy current inspection of the emergency exit torsion box between Frame 57A and Frame 58, and between the left-hand and right-hand Stringers 14 and 15, in accordance with Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,900 landings, and repeated thereafter at intervals not to exceed 26,300 landings.

2. For airplanes identified as Configuration 2 in the service bulletin, the initial inspection must be performed prior to the accumulation of 26,200 landings, and repeated thereafter at intervals not to exceed 21,500 landings.

3. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,300 landings, and repeated thereafter at intervals not to exceed 23,100 landings.

4. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,700 landings, and repeated thereafter at intervals not to exceed 18,800 landings.

5. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 34,500 landings, and repeated thereafter at intervals not to exceed 18,100 landings.

6. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,100 landings, and repeated thereafter at intervals not to exceed 14,700 landings.

B. If cracks found are less than or equal to 15.0 mm (0.59 inch), repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989. After repair, the inspections described in paragraph A., above, are no longer required.

C. If cracks found are greater than 15.0 mm (0.59 inch), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. After repair, the inspections described in paragraph A., above, are no longer required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Divison, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, ANM-113, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28005 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-39; Amdt. 39-6380]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222 and 222B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the modification of the tail rotor boost cylinder support bracket on the Bell Helicopter Textron, Inc. (BHTI) Model 222 and 222B helicopters. The AD is prompted by a report of a fatigue failure of the support bracket bulkhead. Failure of the tail rotor boost cylinder support bracket bulkhead in flight could result in loss of flight control and possible loss of the helicopter.

DATES: *Effective Date:* December 20, 1989.

Compliance: Required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Roach, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5179.

SUPPLEMENTARY INFORMATION: There has been a report of a fatigue failure of the tail rotor boost cylinder support bracket bulkhead. The failure occurred while the helicopter was on the ground with engines operating. The failure caused the tail rotor blades to go to an uncommanded full pitch position. After the failure there was no control of the tail rotor blade pitch through the antitorque pedals. Failure of the tail rotor boost cylinder support bracket bulkhead in flight could result in loss of flight control and possible loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspection and modification of the tail rotor boost cylinder support bracket and support bulkhead on BHTI Model 222 and 222B helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to Model 222 helicopters, serial numbers (S/N) 47006 through 47079 and 47081 through 47084, and Model 222B helicopter, S/N 47132. This AD applies to these helicopters, certificated in any category, with tail rotor boost cylinder support bracket, part number (P/N) 222-031-471-001, installed. (Docket No. 89-ASW-39)

Compliance is required within 50 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent failure of the tail rotor boost cylinder support bracket bulkhead, which could result in loss of the helicopter, accomplish the following:

(a) Modify the Station 340 bulkhead in accordance with appendix I of this AD.

(b) Compliance with BHTI Technical Bulletin No. 222-83-55, dated April 25, 1983, or Part II of Alert Service Bulletin No. 222-89-55, dated August 24, 1989, constitutes compliance with this AD.

(c) An alternative method of compliance which provides an equivalent level of safety, may be approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment becomes effective December 20, 1989.

Issued in Fort Worth, Texas, on November 22, 1989.

John F. Williams,

Acting Manager, Rotorcraft Directorate, Aircraft Certfication Service.

APPENDIX I

(Bell Helicopter Textron Alert Service Bulletin No. 222-89-55, dated 8-24-89, contains the same technical requirements as this appendix)

Accomplishment Instructions

Modification

1. Gain access to area by removing panel, P/N 222-031-464-133. Retain attaching hardware. Cracks found in the 222-031-416 bulkhead during inspection, up to 3.00 inches long and at least 2.0 inches from edge of material, may be repaired by stop drilling with No. 40 drill and deburring at both ends.

2. Disconnect actuator, P/N 22-382-002-003, remove support, P/N 222-001-730-005, and tube assembly, P/N 222-001-016-101, in accordance with Model 222 Maintenance Manual, Chapter 27-00-00, Section 27-30-00. Retain attaching hardware.

3. Refer to Figures 1 and 5. Remove support, P/N 222-031-471-29 and all attaching parts as a unit. Remove five (5) nutplates from the lower flange of the bulkhead.

4. Refer to Figure 2. Temporarily locate and attach brace, P/N 222-031-471-115, to the forward face of the bulkhead.

5. Refer to Figures 3 and 4. Assembly together support, P/N 222-031-471-, two (2) radius blocks, P/N 20-042-8-20, and support, P/N 222-031-471-113. Clean the faying surfaces of radius blocks, and supports with MEK. Bond supports and radius blocks with Adhesive, P/N 299-947-100-TY2CL2. Rivet supports, P/N 222-031-471-111 and -113 together using sixteen (16) rivets, P/N MS20470AD4-6 while adhesive is wet. Allow adhesive to cure at 180 degrees for four (4) hours.

6. Refer to Figures 3 and 4. Temporarily attach the assembly (from Step 5) on brace, P/N 222-031-471-115 (See Step 4). Pick up all rivet holes in the bulkhead and add all holes in the bulkhead from the brace and assembly. Pick up the four (4) 0.263/0.256 inch diameter holes from the bulkhead into the brace and assembly. Remove parts and deburr all holes. Clean faying surfaces of filler, P/N 222-031-471-119 and -121, brace and bulkhead flange with MEK.

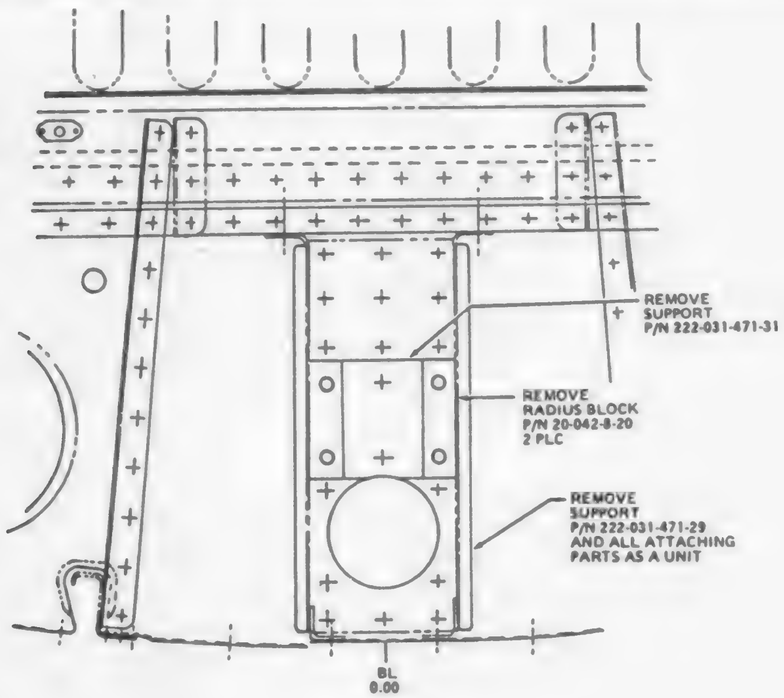
7. Refer to Figures 3, 4 and 5. Locate and bond fillers, P/N 222-031-471-119 and -121 with Adhesive, P/N 299-947-100-CL2TY2. Install brace, and assembled parts with rivets, as shown. Install five (5) nutplates, P/N MS21059L3, with rivets, P/N MS20426AD3-6. Install clips, P/N 222-031-471-117 and -118. Pick up existing holes in bulkhead flange. Pick up holes in support from clips. Remove clips and deburr holes. Install clips with rivets as shown.

8. Clean work area of all debris. Reinstall support, P/N 222-001-730-005, with retained hardware, reconnect actuator, P/N 222-382-002-003 and tube assembly, P/N 222-001-016-101, in accordance with instructions in 222 Maintenance Manual, Chapter 27-30-00.

9. Check rigging of directional control system in accordance with instructions in Model 222 Maintenance Manual, Chapter 27-30-00.

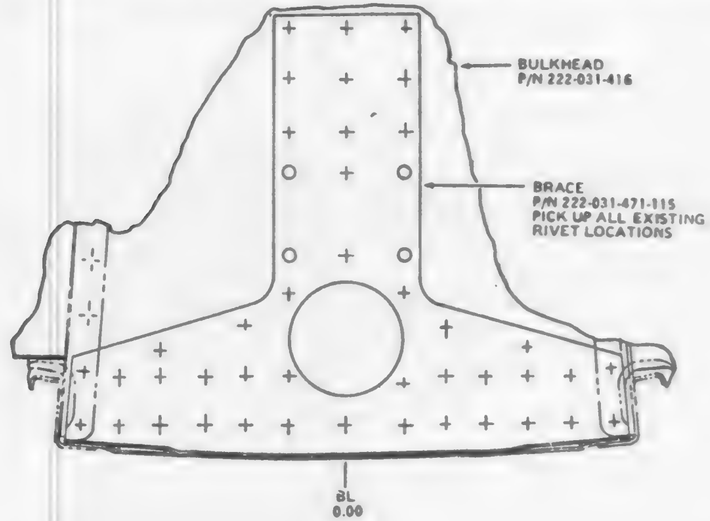
10. Reinstall panel, P/N 222-031-464-133, with retained hardware.

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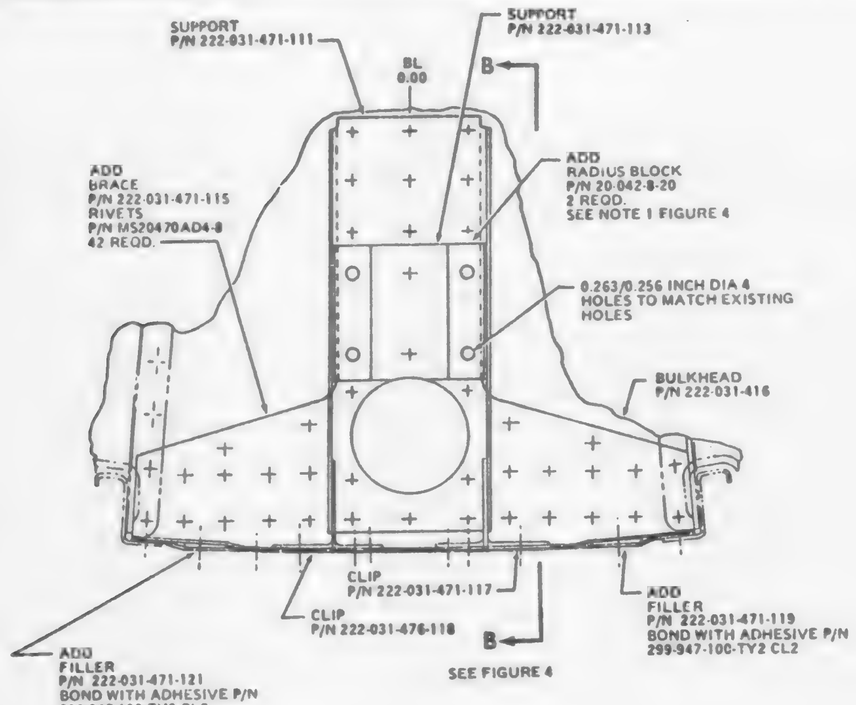
VIEW LOOK AFT AT
BULKHEAD P/N 222-031-416
STA' 340.0

SUPPORT P/N 222-031-471-29 REMOVAL.
FIGURE 1



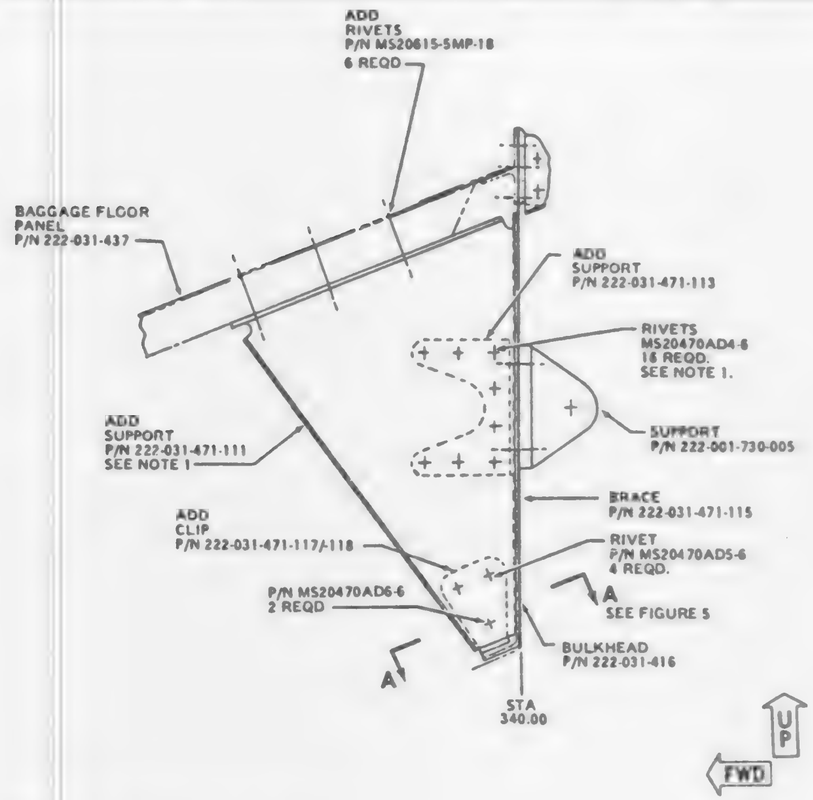
VIEW LOOKING AFT

INSTALLATION OF BRACE P/N 222-031-471-115.
FIGURE 2



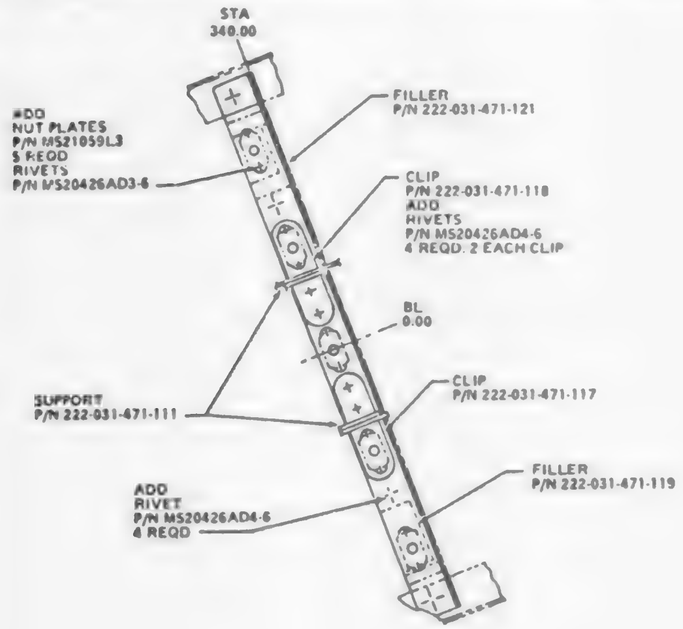
VIEW LOOKING AFT AT STA 340.0 BULKHEAD.

SUPPORT ASSEMBLY INSTALLATION
FIGURE 3



Note:
1. Bond using adhesive P/N 299-947-100TY2 CL2. Support -111, Support--113 and two (2) radius block P/N 20-042-8-20.

VIEW LOOKING INBOARD LEFT SIDE
B-B
SUPPORT ASSEMBLY INSTALLATION.
FIGURE 4



VIEW A-A

VIEW LOOKING DOWN ON BULKHEAD FLANGE.

NUTPLATE INSTALLATION ON LOWER FLANGE OF BULKHEAD.
FIGURE 5

[FR Doc. 89-28004 Filed 11-29-89; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 89-NM-154-AD; Amdt. 39-5405]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes, which requires a one-time inspection of both the right and left upper nacelle brace struts, and replacement of struts if the struts are found with self-tapping screws. This amendment expands the applicability of the existing AD to include additional affected airplanes. This amendment is prompted by discovery of brace struts with self-tapping screws on an airplane which was not included in the existing AD. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 23314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-04-06, Amendment 39-6143 (54 FR 6642; February 14, 1989), applicable to Fokker Model F-27 series airplanes, to expand the applicability of the existing AD to include additional affected airplanes, was published in the **Federal Register** on September 1, 1989 (54 FR 36322).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6143 (54 FR 6642; dated February 14, 1989), AD 89-04-06 as follows:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10102 through 10307, 10308 through 10340, and 10342 through 10360, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent engine separation and subsequent structural damage to the airplane aft of the engine, accomplish the following:

A. For airplanes listed in Fokker Service Bulletin F27/54-44, dated July 7, 1988: Within 60 days after March 28, 1989 (the effective date of AD 89-04-06, Amendment 39-6143), inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings from May 27, 1989, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

B. For airplanes Serial Numbers 10308 through 10340 and 10342 through 10360: Within 60 days after the effective date of this amendment, inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, Revision 1, dated May 19, 1989. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the effective date of this amendment, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

The amendment amends Amendment 39-6143, AD 89-04-06.

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28007 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

14 CFR Part 39

[Docket No. 89-NM-140-AD; Amdt. 39-6406]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which requires a one-time inspection to detect cracks in the wing rear spar web plates, between Wing Stations 4790 and 5280, and repair, if necessary. This amendment is prompted by results of manufacturer's fatigue testing, which revealed cracks developing in the rear spar web plate inboard of Wing Station 5280. Undetected fatigue cracks could lead to reduced structural capability of the wing.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1976. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires a one-time inspection for cracks of the wing rear spar web plates, between Wing Stations 4790 and 5280, and repair, if necessary, was published in the **Federal Register** on August 22, 1989 (54 FR 34783).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the FAA delay issuing the rule until the applicable Fokker service bulletin is revised to provide repair instructions. The FAA acknowledges that the commenter is correct in that the service bulletin does not provide sufficient instructions as to a method of repair of cracks. Part 2 of the service bulletin instructs operators to contact the manufacturer for repair guidance. Currently, there is no data from the manufacturer to include regarding the repair, since the repair depends upon the nature of the cracking found. While an operator might normally contact the manufacturer for repair information, the FAA realizes that such information may not be the only means of repair. Therefore, the final rule has been revised to require cracks to be repaired prior to further flight "in accordance with a method approved by the [FAA]." Under this provision, the FAA will review repair data submitted by any party and, if found to be acceptable, will approve it.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change discussed above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,680.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11241, and 11991 and 11992, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to fatigue cracks, accomplish the following:

A. Perform external high-frequency eddy current inspection of the rear spar web plate between Wing Stations 4790 and 5280, in accordance with Part 1 of Fokker Service Bulletin F28/57-84, dated April 7, 1988, and the following schedule:

1. For airplanes that have accumulated fewer than 45,000 landings, inspect within the next 2,000 landings after the effective date of this AD or prior to the accumulation of 35,000 landings, whichever occurs later.

2. For airplanes that have accumulated 45,000 landings or more but less than 55,000 landings, inspect within the next 1,000 landings after the effective date of this AD.

3. For airplanes that have accumulated 55,000 landings or more, inspect within 500 landings after the effective date of this AD.

B. If cracks are found, repair prior to further flight, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Suite 500, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28006 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-31-AD; Amdt. 39-6397]

Airworthiness Directives; Piper Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, which requires repetitive inspections of the exhaust tailpipe assembly and the installation of a Piper Engine Fire Detection Kit. This interim action is prompted by continued reports of failed exhaust system components and at least two in-flight fires. The actions specified in this AD will help ensure the continued integrity of the exhaust tailpipe assembly and provide the pilot with an early warning system should a malfunction occur.

DATES: *Effective Date:* December 29, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Service Bulletin No. 920, dated August 7, 1989, applicable to this AD, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4366. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Systems Branch, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: As a result of at least six reported occurrences of cracked, failed or leaking exhaust system components on the Piper PA-60 series airplanes, which have caused substantial damage and at least one accident, Piper issued Mandatory Service Bulletin (SB) No. 818, entitled "Engine Exhaust System Inspection," dated February 25, 1986. This bulletin required a one-time removal and inspection of the complete exhaust system for each engine, and the replacement of failed parts. Reinstallation of the exhaust system required special attention to the alignment, installation sequences and use of a high temperature lubricant.

The FAA issued a Notice of Proposed Rule Making (NPRM), published in the **Federal Register** on December 31, 1986 (51 FR 47251), which resulted in the issuance of AD 87-07-09, with an effective date of May 15, 1987, mandating the one-time inspection specified in SB No. 818.

At the FAA's request, Piper Aircraft Corporation reviewed the design of the PA-60 series exhaust systems in 1985. It concluded that a design change was unnecessary if the exhaust system was properly inspected and maintained in accordance with Piper's maintenance manual and applicable service publications.

However, reports continue to surface of broken V-clamps, clamp bolts, and cracked or damaged exhaust tailpipes and hardware. A Model PA-60-601P airplane crashed west of Atlanta, Georgia on June 21, 1989, resulting in three fatalities. A review of the air traffic control tower tapes revealed that the pilot reported smoke and then loss of power in the right engine shortly after takeoff. The pilot attempted to land at the nearest airport but the right wing and engine separated from the fuselage and the airplane crashed approximately five miles west of the airport. A review of the wreckage revealed over-heated wing structure near the right engine. One of the exhaust system tailpipes from the right engine was missing from the engine but was discovered in a cracked condition along the final flight path of the airplane. An in-flight fire occurred June 23, 1989, on a Model PA-60-700P airplane in Indiana. The airplane was able to land but sustained extensive heat damage to the left wing structure. Investigation revealed that the V-band clamp, which attaches the tailpipe to the turbocharger, was missing.

In light of the two recent incidents mentioned above, Piper Aircraft Corporation has agreed to initiate another design review of the PA-60 series exhaust system in an attempt to resolve the problem of damaged wing structure resulting from exhaust system failures. Recent testing conducted at Piper using a heat source which simulated the exhaust system, showed that although the firewall is not perforated, the heat radiated through the firewall is intense enough to cause the fluid carrying lines behind the firewall to rapidly deteriorate and leak. This deterioration results in the release of flammable fluids which ignite within minutes of exposure. It is this combustion that is attributed to cause the damage to the wing structure and to the engine and propeller control rods. Additional tests are being conducted to develop a final solution for this problem.

As an interim action, the manufacturer has recommended an increase in frequency of exhaust tailpipe inspections until a Piper designed fire detection system is installed on the firewall of each airplane engine. This detection system provides a rapid aural and visual warning to the pilot of an exhaust system malfunction so that the engine can be shut down before the heat radiated through the firewall can become a problem. This action is set forth in Piper SB No. 920, dated August 7, 1989, entitled "Engine Tailpipe Inspection and Addition of Fire Detection System." The FAA concurs with this interim action until the design review is completed, at which time additional corrective action may be required. The FAA has also determined that the repetitive inspections and installation of the Fire Detection System should be mandated by AD action, since undetected failure to the exhaust tailpipe could delay the pilot's corrective action resulting in additional in-flight fires and/or catastrophic loss of wing structure.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to Piper (Aerostar) Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, which requires initial and repetitive inspections of the engine tailpipe assembly. Upon the installation of an Engine Fire Detection Kit, the AD will authorize longer inspection intervals. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good

cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper (Aerostar): Applies to Model PA-60-600 (S/N 60-0001-003 through 60-0933-8161282), PA-60-601 (S/N 61-0001-004 through 61-0880-8162157 and 62-0001-013), PA-60-601P (S/N 61P-0157-001 through 61P-0860-8163455), PA-60-602P (S/N 62P-0750-8165001 through 62P-0932-8165055, and 60-8265001 through 60-8365021), and PA-60-700P (S/N 60-8423001 through 60-8423025) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To help prevent possible in-flight engine nacelle fire and the resultant damage to the wing structure, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD and at each 25 hour TIS interval thereafter, accomplish the dismantling inspections and reinstallation of the exhaust tailpipe assembly as specified in Part I of Piper Service Bulletin (SB) No. 920, dated August 7, 1989. If any discrepancies are found, prior to further flight repair the discrepancies in accordance with the above SB or appropriate Piper Maintenance Manual.

(b) Within the next 100 hours TIS after the effective date of this AD, modify the airplane by installing a Piper Engine Fire Detection System Kit, Piper Part Number 764-158 (Opt 67), in accordance with the instructions in Part II of Piper SB No. 920, dated August 7, 1989, and modify the Airplane Flight Manual/Pilot's Operating Handbook by inserting the appropriate supplements provided with the above Kit.

(c) the repetitive inspection intervals specified in Paragraph (a) of this AD may be extended to 50 hours TIS when the modification specified in paragraph (b) of this AD has been accomplished.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 29, 1989.

Issued in Kansas City, Missouri, on November 7, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28008 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Rules of Practice

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: This document amends § 3.45 of the Commission's Rules of Practice by permitting, in unusual circumstances, the issuance of *in camera* orders without expiration dates. The amendment is necessary because the current rule has been construed to be inconsistent with the granting of indefinite *in camera* treatment. The amended rule should alleviate certain administrative burdens on respondents and agency staff as to *in camera* materials whose confidentiality is unlikely to decrease over time.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326-2447; Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 3.45 of the FTC's Rules of Practice provides that every *in camera* order issued thereunder shall specify the date on which that order shall expire. *See* FTC Rule of Practice 3.45(b), 16 CFR 3.45(b). The Commission has construed this provision as inconsistent with the issuance of a permanent *in camera* order. Volkswagen of America, Inc, 103 F.T.C. 536, 539 (1984); *see also* E.I. Dupont de Nemours & Co., 103 F.T.C. 533, 534 (1984) (denial of request for indefinite *in camera* treatment, noting that, "[a]t some point in the future, [the information at issue] may well lose its competitive sensitivity * * *").

In some cases, however, the competitive sensitivity or the proprietary value of information for which *in camera* treatment is requested will not necessarily diminish, and may actually increase, with the passage of time, *e.g.*, highly secret product formulas and trade secrets concerning unpatented technology. In these instances, the Commission perceives little benefit to be gained by burdening the agency and its staff with periodically reviewing confidentiality claims or requiring respondents to file petitions respecting material that in all likelihood remains highly sensitive.

Accordingly, the Commission has determined to amend § 3.45(b) of its Rules of Practice by providing that, in unusual circumstances, an *in camera* order need not specify an expiration date, but requiring that the order in such cases must include a specific explanation as to why the protected information is likely to remain sensitive for an indeterminate period of time. The Commission intends that this discretion shall be exercised only where the party requesting *in camera* treatment for an indefinite period can show at the outset that the need for confidentiality of the material is not likely to decrease over time. Except as described above, this amendment does not change the general requirement that all *in camera* orders contain expiration dates, nor does it in any way alter the established procedures or grounds for seeking and obtaining *in camera* treatment.

This amendment relates solely to rules of agency practice and is therefore not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). The requirements of the Regulatory Flexibility Act do not apply for the same reason. 5 U.S.C. 601(2).

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 3—[AMENDED]

1. The authority for part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.45 is amended by revising paragraph (b)(3) to read as follows:

§ 3.45 In camera orders.

* * * * *

(b) * * *

(3) A statement of the reasons for the date on which *in camera* treatment will expire. Such expiration date may not be omitted except in unusual circumstances, in which event the order must state with specificity the reasons why the need for confidentiality of the document, testimony, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to *in camera* treatment for an indeterminate period. Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the Administrative Law Judge setting forth the justification therefor. The Administrative Law Judge, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title, the docket number of the proceeding, the notation "*In Camera* Record under § 3.45," and the date, if any, on which *in camera* treatment expires.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-28045 Filed 11-29-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 219

[Docket No. R-89-1437; FR-2541-0-3]

Flexible Subsidy Program—Capital Improvement Loans; Announcement of Office of Management and Budget Approval Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Technical amendment.

SUMMARY: In response to amendments made to section 201 of the Housing and Community Development Amendments of 1978, 24 CFR part 219 was reorganized into three subparts to cover the current program of Flexible Subsidy operating assistance, the new program of capital improvement loans, and general provisions applicable to both types of assistance. Certain sections of these regulations contained information collection requirements and were submitted for approval to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). This document amends 24 CFR part 219 of HUD regulations to include OMB control numbers at the place where current information collection requirements are described.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, (202) 426-3944. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number listed.

List of Subjects in 24 CFR Part 219

Reporting and recordkeeping requirements.

Text of the Amendment:

Accordingly, part 219 of title 24 of the Code of Federal Regulations is amended as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1a; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 219.210, 219.220, and 219.310 [Amended]

2. Sections 219.210, 219.220, and 219.310 are amended by adding at the end of each section the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2502-0395).

Dated: November 24, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-27998 Filed 11-29-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Hazard Communication

CFR Correction

In title 29 of the Code of Federal Regulations Part 1926, revised as of July

1, 1989 on page 102, § 1926.59 was incorrectly followed by an effective date note and that note is removed.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Amendment to the Kansas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, which was submitted to OSM on June 29, 1989, and July 26, 1989, pertains to eligible lands and waters, project evaluation, rights of entry, liens, appraisals of private lands, project ranking and selection, organizational structure, and public participation.

EFFECTIVE DATE: November 30, 1989.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374–6405;

Kansas Department of Health and Environment, Mining Section, Bureau of Environmental Quality, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. All conditions were removed and the Secretary's approval of the revised Kansas AMLR plan was announced in the June 3, 1983, **Federal Register** (48 FR 24876). An amendment to the Kansas Plan, granting the State authority over emergency projects, was approved on January 10, 1989.

II. Proposed Amendment

On June 29, 1989, Kansas submitted to OSM part of a proposed regulatory revision that would amend its AMLR plan (Administrative Record No. AML–KS–129). The proposed revisions would amend the Kansas Administrative Regulations (K.A.R.) at K.A.R. Chapter 47, Article 16. Specifically, Kansas proposes to amend: K.A.R. 47–16–1, Eligible Lands and Waters; K.A.R. 47–16–2, Reclamation Project Evaluation; K.A.R. 47–16–4, Entry for Studies or Exploration; K.A.R. 47–16–5, Entry and Consent to Reclaim; K.A.R. 47–16–6, Liens; K.A.R. 47–16–7, Appraisals; and K.A.R. 47–16–8, Satisfaction of Liens.

On July 26, 1989, Kansas submitted to OSM additional proposed revisions to amend its plan (Administrative Record No. AML–KS–135). The proposed revisions would amend State policies and procedures regarding project ranking and selection, organization structure, and public participation in the AMLR program.

Under the revision, Kansas would use a phased process to select reclamation sites. This process provides for an orderly evaluation of each problem site in the State. Final selection of projects for funding would be based on a numerical score derived from a matrix analysis. The State also will request public comment on all projects proposed for funding, as well as any future amendments to the Kansas Plan.

Kansas submitted the proposed amendment on its own initiative.

OSM announced receipt of the proposed amendment in the August 30, 1989, **Federal Register** (54 FR 35894) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the amendment's substantive adequacy. No public comments were received by September 29, 1989, the close of the comment period. A public hearing was not held because no one requested an opportunity to testify.

On September 5, 1989, following a thorough review of the proposed amendment, OSM notified Kansas of the need for several nonsubstantive editorial changes and clarifications. On September 11, 1989, Kansas submitted the necessary clarifications and editorial corrections. The Director has determined that these corrections are insignificant in nature and, accordingly, require no further public comment.

III. Director's Findings

The Director finds, in accordance with section 405 of SMCRA, that the amendment submitted by Kansas meets the requirements of SMCRA and 30 CFR 884.15 in that:

1. The State has the legal authority, policies, and administrative structure necessary to implement the amendment.

2. The plan amendment meets all requirements of OSM's AMLR program provisions.

3. The State has an approved Surface Mining Regulatory Program.

4. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Public and Agency Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. No comments were received, and since no one requested an opportunity to testify, no public hearing was held.

Pursuant to 30 CFR 884.14(a)(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas plan. None of the agencies notified submitted any comments regarding the amendment.

V. Director's Decision

Based on the findings detailed above, the Director approves Kansas's June 29, 1989, and July 26, 1989, proposed amendment. The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas AMLR plan, are amended to implement this decision.

VI. Procedural Matters

1. National Environmental Policy Act

The Secretary has determined that pursuant to the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30), no environmental impact statement need be prepared for this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or disapproval of State/Tribe AMLR plans and amendments. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

3. Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507 *et seq.*

Effective Date

This final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because:

(1) Kansas Department of Health and Environment, Mining Section is fully staffed and currently administering the Abandoned Mine Land Reclamation Program; and

(2) OSM wishes to expedite the implementation of the revised AMLR plan amendment.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Abandoned Mine Land Reclamation.

Dated: November 3, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

30 CFR Part 916 is amended as follows:

PART 916—KANSAS

1. The authority citation of Part 916 is revised to read:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.25 is revised to read as follows:

§ 916.25 Approval of abandoned mine land reclamation plan amendments.

(a) The Kansas AMLR plan amendment allowing the State to assume responsiblity for administering an emergency reclamation program was approved effective January 10, 1989.

(b) The Kansas AMLR Plan amendment submitted on June 29, 1989, and July 26, 1989, and modified on September 11, 1989, is approved effective November 30, 1989.

[FR Doc. 89–28059 Filed 11–29–89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 89–47]

Special Local Regulations; City of Miami

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Miami, Greater Miami Boat Parade. The event will be held on December 2, 1989 from 6:00 p.m. to 10:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 2, 1989 at 5:00 p.m. e.s.t. and terminate on December 2, 1989 at 11:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: LTJG R. Malcolm Jr., (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT Alfred G. Santos, project attorney, Seventh Coast Guard District Office and LTJG Ralph Malcom Jr., project officer, USCG Group Miami.

Discussion of Regulations

The Greater Miami Boat Parade, also called "Winter Reflections on the Bay", is a nighttime parade of vessels ranging in length from 25–150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area southeast of Dodge Island in Fisherman's Channel then proceed east towards Government Cut and then west through Government Cut to the Intracoastal Waterway (ICW). It will then proceed north up the ICW to Sunny Isle Causeway where it will disband. 75 vessels are expected to participate in the parade with over 1000 spectator vessels.

A Special Local Regulation is needed to prevent interruption of the parade due to unusually high vessel traffic and to prevent damage to vessels or injury to personnel from the planned operation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0747 is added as follows:

§ 100.35–0747 Greater Miami Boat Parade.

(a) *Regulated Area.* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade. The regulated area will also include that area of the north and south boundary as it moves north from the east side of the Intracoastal Waterway (ICW) to the center of the channel. The parade route is located in the Intracoastal Waterway (ICW), Miami, Florida starting in Government Cut, proceeding north in the ICW through the Venetian Causeway Bridge, and up the west channel of the Intracoastal Waterway (ICW). Vessels will proceed northward through the Julia Tuttle Causeway Bridge and the 79th Street Causeway Bridge, to a reviewing stand at Haulover Park Marina. Once past the reviewing stand, the participants will proceed to the Sunny Isle Causeway Bridge where they will disband.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants through the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on December 2, 1989 from 5:00 p.m. e.s.t. and terminate on December 2, 1989 at 11:00 p.m. e.s.t.

Dated: November 13, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89–27883 Filed 11–29–89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 89–50]

Special Local Regulations; City of Fort Lauderdale, Winterfest Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Fort Lauderdale Winterfest Boat Parade. The event will be held on December 9, 1989, from 6:30 p.m. to 9:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 9, 1989, at 5:00 p.m. e.s.t. and will terminate on December 9, 1989, at approximately 11:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm Jr. (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group Miami Beach, Florida.

Discussion of Regulations

The Fort Lauderdale Winterfest Boat Parade is a nighttime parade of vessels ranging in length from 25 feet to 150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at the Port Everglades Turning Basin. It will then proceed north up the Intracoastal Waterway (ICW) to Lake Santa Barbara, where it will disband. 110 vessels are expected to participate in the parade and over 1000 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the ICW.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0750 is added as follows:

§ 100.35–0750 Fort Lauderdale Boat Parade, FL.

(a) *Regulated Area.* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) in the vicinity of Fort Lauderdale, Florida. The parade starts in Port Everglades, proceeds north in the ICW through the 17th Street Bridge and the Las Olas Bridge, and continues up the ICW into Lake Santa Barbara, where the parade will disband.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on December 9, 1989, at 5:00 p.m. e.s.t. and terminate on December 9, 1989, at approximately 11:00 p.m. e.s.t.

Dated: November 21, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89–27971 Filed 11–29–89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 89–51]

Special Local Regulations; Kiwanis Club of Delray Beach Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Kiwanis Club of Delray Beach, Florida, Christmas Boat Parade. The event will be held on December 15, 1989, from 6:30 p.m. to 9:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 15, 1989, at 5:00 p.m. e.s.t. and will terminate on December 15, 1989, at approximately 11:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm Jr., (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group Miami Beach, Florida.

Discussion of Regulations

The Kiwanis Club of Delray Beach Christmas Boat Parade is a nighttime parade of vessels ranging in length from 16 feet to 65 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at Intracoastal Waterway Marker 46. It will then proceed south down the Intracoastal Waterway (ICW) to the C–15 Canal, where it will disband. Forty-five vessels are expected to participate in the parade and over 50 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate south in the ICW.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

§ 100.35–0751 Kiwanis Club of Delray Beach Boat Parade, FL.

(a) *Regulated Area.* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits south in the Intracoastal Waterway (ICW) in the vicinity of Delray Beach, Florida. The parade starts at ICW Marker 46, then proceeds south in the ICW to the C–15 Canal, where the parade will disband.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on December 15, 1989, at 5:00 p.m. e.s.t. and terminate on December 15, 1989, at approximately 11:00 p.m. e.s.t.

Dated: November 21, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 89–27973 Filed 11–29–89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 89–54]

Special Local Regulations; Greater Boca Raton Chamber of Commerce Winter Fantasy Waterway Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Greater Boca Raton Chamber of Commerce Winter Fantasy on the Waterway Boat Parade. The event will be held on December 16, 1989, from 6:00 p.m. to 8:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 16, 1989, at 6:00 p.m. e.s.t. and will terminate on December 16, 1989, at approximately 10:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: LTJG R. Malcolm Jr., (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group, Miami Beach, Florida.

Discussion of Regulations

The Greater Boca Raton Chamber of Commerce Winter Fantasy on the Waterway Boat Parade is a nighttime parade of vessels ranging in length from 25 feet to 150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at the Intracoastal Waterway Canal C–15. It will then proceed south down the Intracoastal Waterway (ICW) to the Hillsboro Canal, where it will disband. Sixty to 80 vessels are expected to participate in the parade and over 100 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate south in the ICW.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0754 is added as follows:

§ 100.35–0754 Boca Raton Boat Parade, FL.

(a) *Regulated Area.* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits south in the Intracoastal Waterway (ICW) in the vicinity of Boca Raton, Florida. The parade will form in the staging area at the Intracoastal Waterway Canal C–15. It will then proceed south down the Intracoastal Waterway (ICW) to the Hillsboro Canal, where the parade will disband.

(b) *Special Local Regulations.*(1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on December 16, 1989, at 5:00 p.m. e.s.t. and terminate on December 16, 1989, at approximately 10:00 p.m. e.s.t.

Dated: November 21, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-27972 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-36925]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Pfizer, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Pfizer, Incorporated in Groton, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was originally approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective January 29, 1990 unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On February 7 and August 30, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8021 which the State of Connecticut issued to Pfizer, Incorporated in Groton, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on certain processes at Pfizer as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8021 and has determined that the level of control required by this Order represents RACT for the operations at Pfizer covered by the State Order. Pfizer is a chemical manufacturer engaged in the manufacturing of synthesized pharmaceutical products and other types of chemicals at its Groton plant. The operations at Pfizer that produce pharmaceutical products and intermediates by chemical synthesis are subject to subsection 22a-174-20(t) of Connecticut's regulations entitled "Manufacture of synthesized pharmaceutical products." This regulation was adopted by Connecticut pursuant to guidance provided by EPA in the CTG document entitled "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products" (EPA-450/2-78-029). All operations, however, do not engage in production covered by this regulation. These operations are exempt from the control requirements contained in subsection 22a-174-20(t). Because the potential VOC emissions from these exempt operations exceed 100 tons per year, they are subject to subsection 22a-174-20(ee) of Connecticut's regulations.

As RACT for the processes subject to subsection 22a-174-20(ee), the State Order requires Pfizer to install air pollution control equipment on any VOC emission source at its Groton facility with maximum potential VOC emissions in excess of forty pounds per day. Each new piece of air pollution control equipment, except surface condensers and surface condenser/secondary control equipment combinations on any process vent, is required to demonstrate a minimum overall VOC reduction of eighty-five percent. Control equipment currently in operation must also meet a minimum overall VOC reduction of eighty-five percent. Surface condensers and surface condenser/secondary control equipment combinations on any process vent are required to demonstrate a minimum overall VOC reduction of ninety-five percent.

All pollution abatement equipment is also subject to an operation and maintenance program that is part of the State Order. This program requires Pfizer operate and monitor its control equipment in a prescribed manner. It also requires Pfizer to perform certain preventive maintenance at prescribed intervals depending on the type of pollution control equipment.

The State Order exempts any source at Pfizer's facility which emits less than forty pounds of VOC per day from any RACT requirements. This exemption is consistent with the provisions of subsection 22a-174-20(aa) of Connecticut's regulations which was approved by EPA on October 1, 1984 (49 FR 41026). For purposes of determining which of the facility's sources are exempt from meeting RACT, Pfizer must aggregate similar or identical VOC emission points. For each source that is exempt from meeting RACT, the DEP has imposed an enforceable daily cap of forty pounds VOC per day. Furthermore, the DEP has imposed daily and annual emission caps on each process equipment group that is used in manufacturing.

Part VIII(A)(4) of the Compliance Timetable incorporated into the Order provides that any new, less restrictive emission limit on an existing process resulting from a process change, or any new emission limit on any new process will be incorporated into Appendix B of the Order. For the new, less restrictive emission limits on existing processes, EPA will have to approve these into the SIP before Pfizer may use them to comply with Federal law. These new limits will be minor adjustments affecting a few processes among Pfizer's hundreds of emission points.

State Order No. 8021 also requires Pfizer to implement a fugitive leak detection program. This program will reduce VOC leaks from process valves, pumps, safety relief devices, agitators, piping connections, sampling connections, and vessels at Pfizer.

The State Order also imposes a minimum ninety percent destruction requirement on any boiler used to destroy waste VOC.

Pfizer is required to comply with subsection 22a-174-20(ee) of Connecticut's regulations by December 31, 1987, which is the final compliance date of the regulation.

EPA has reviewed State Order No. 8021 and has determined that the level of control required by this Order represents RACT for Pfizer.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on (60 days from today).

Final Action

EPA is approving Connecticut State Order No. 8021 as a revision to the Connecticut SIP. The provisions of State Order No. 8021 define and impose RACT on Pfizer to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

October 4, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

Subpart H, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 40—[AMENDED]

Subpart H—Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(52) to read as follows:

§ 52.370 Identification of plan.

* * * * * * *

(c) * * *

(52) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7 and August 30, 1989.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1989 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8021 and attached Compliance Timetable, and Appendix A (allowable limits on small, uncontrolled vents and allowable outlet gas temperatures for surface condensers) for Pfizer, Incorporated in Groton, Connecticut. State Order No. 8021, Compliance Timetable and Appendix A were effective on December 2, 1988.

(C) Letter from the Connecticut Department of Environmental Protection dated August 30, 1989 and reorganized Appendix C (fugitive leak detection program) and Appendix D (operation and maintenance program for pollution abatement equipment) to State Order No. 8021. Appendices C and D were effective on December 2, 1988.

(ii) Additional materials

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89-28034 Filed 11-29-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42008F; FRL 3668-2]

RIN 2070-AB94

Unsubstituted Phenylenediamines; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of *ortho*-phenylenediamine (*o*-pda; CAS No. 95-54-5), *meta*-phenylenediamine (*m*-pda; CAS No. 108-45-2), *para*-phenylenediamine (*p*-pda; CAS No. 106-50-3) and the sulfate salts of *m*-pda (*m*-pda.H_2 SO_4; CAS No. 54-17-06) and *p*-pda (*p*-pda.H_2 SO_4; CAS No. 1624-57-75) to perform testing for neurotoxic effects, chemical fate, and aquatic toxicity. Manufacturers and processors of *m*-pda and the sulfate salt of *m*-pda are also required to perform testing for mutagenic effects in the sex-linked recessive lethal and bone marrow cytogenetics assays. The results of human health, chemical fate, and aquatic toxicity testing will determine additional testing for these effects.

DATES: This rule shall become effective on January 16, 1990. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 544-0551.

SUPPLEMENTARY INFORMATION: This action is in response to the Interagency Testing Committee's (ITC) designation of the phenylenediamine (PDA) chemical category for health and

environmental effects testing (45 FR 35897, May 28, 1980).

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require the development of data relevant to assessing the risk to human health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The ITC designated the PDA category, consisting of 50 chemicals, for consideration for testing for health and environmental effects in its Sixth Report, published in the **Federal Register** of May 28, 1980 (45 FR 35897).

EPA issued an Advance Notice of Proposed Rulemaking (ANPR) for 13 of the high production PDA's, published in the **Federal Register** of January 8, 1982 (47 FR 973). Subsequently EPA issued a TSCA section 8(a) manufacturers' reporting rule on June 22, 1982 (47 FR 26992), and a section 8(d) health and safety data reporting rule published in the **Federal Register** of Sept. 2, 1982 (47 FR 38780), which included all of the PDA's recommended by the ITC.

After reviewing comments submitted in response to the ITC's recommendation, the ANPR, the section 8(a) and 8(d) rules, and data from the public record, EPA issued a notice, published in the **Federal Register** of January 30, 1985 (50 FR 472), stating that the PDA category had been subdivided into three subcategories: (1) Five unsubstituted PDA's (hereafter "pda's") (2) eight toluenediamines, and (3) 34 PDA's not subject to testing. EPA then issued a proposed test rule (NPRM) for the unsubstituted pda's under section 4(a) of TSCA published in the **Federal Register** of January 6, 1986 (51 FR 472). The NPRM proposed testing of *o*-, *m*-, and *p*-pda for aquatic oxidation rate and toxicity to aquatic organisms and testing of *m*-pda for mutagenicity in the *Drosophila* sex-linked recessive lethal (SLRL) test. EPA subsequently extended the comment period an additional 30 days (51 FR 7593, March 5, 1986). No new data have been received for the 34 subcategory 3 chemicals which would change EPA's decision not to require testing of these chemicals at this time. The toluenediamines are being considered for separate rulemaking. EPA concluded from its analysis of public comments that the NPRM should be modified, and therefore issued its proposed modifications for public comment published in the **Federal Register** of January 14, 1988 (53 FR 913). The modified NPRM proposed that acute neurotoxicity testing, namely the functional observation battery and the motor activity tests, be added for all three isomers. Positive results lasting more than 24 hours would trigger subchronic neurotoxicity testing and neuropathological examination. EPA also proposed that mutagenicity testing of *m*-pda be expanded to include, in addition to the previously proposed *Drosophila* sex-linked recessive lethal (SLRL) assay, the *in vivo* mammalian bone marrow cytogenetics test—chromosomal analysis (MBMC) in the mouse. Positive results from the SLRL could trigger the mouse specific locus test. A positive MBMC would trigger a dominant lethal test in the mouse, which if positive, would trigger a heritable translocation test in the same species. EPA further noted that positive Chinese hamster ovary test (CHO) data identified as a result of the public comments was sufficient to trigger an oncogenicity bioassay. The modified NPRM also retained the original proposal that chemical fate testing be conducted for all three isomers. It proposed that the acute aquatic toxicity testing of *o*- and *p*-pda with rainbow trout, *Daphnia* and *Gammarus* be condensed into one tier and that the number of acute-test species be reduced. The results of these acute aquatic tests would be used to determine whether chronic toxicity testing would be triggered and to identify the most sensitive vertebrate and/or invertebrate in which to conduct the chronic testing. The proposed chronic testing included the fish partial life-cycle flow-through test and the invertebrate life-cycle flow-through test in *Daphnia magna*. *m*-Pda would be retested with the aphnia life-cycle test.

As stated in the proposed rule, EPA expects the sulfate salts of *p*-pda and *m*-pda to produce substantially the same toxicological effects as their respective free bases. The salts that are known to have been produced and that were cited by the ITC include *p*-pda.H_2SO_4 (CAS No. 1624-57-75) and *m*-pda.H_2SO_4 (CAS No. 54-17-06). Accordingly, EPA is making the findings for the sulfate salts, as well as their respective free bases. Thus, the final rule requires manufacturers and processors of *m*-pda and the sulfate salt of *m*-pda to conduct all of the testing of *m*-pda or its salt as required by this rule, and manufacturers and processors of *p*-pda and the sulfate salt of *p*-pda to conduct all the testing of *p*-pda or its salt required by this rule. Hereafter, when this preamble refers to *m*-pda or *p*-pda, the salts of *m*-pda and *p*-pda are also meant to be included, except in Unit III.C when actual test substances are specified.

II. Public Comment

Comments in response to the modified NPRM for pda's were received from E. I. DuPont de Nemours, Inc. (DuPont) (Ref. 9) and the Neurobehavioral Toxicity Test Standard Committee (NTTSC), Psychopharmacology Division of the American Psychological Association (Ref. 19). These comments and EPA's responses to these comments are summarized below.

A. Exposure Potential Under TSCA Section 4(a)(1)(A)

Dupont argued that industry has supplied enough information to show that workplace exposure to the pda's is in the range of 0.01 to 0.03 mg/m³, and that protective clothing and face masks are worn by people handling any of the isomers (Ref. 9). This level is below the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) of 0.1 mg/m³ for *p*-pda. Consequently, there is no evidence of exposure under TSCA section 4.

EPA acknowledges that workplace levels of pda's may vary from 0.01 to 0.03 mg/m³, and that workers involved with the manufacture of the pda's may wear or may not wear the protective clothing described by DuPont (Ref. 20). However, EPA notes that users of *m*- and *p*-pda reported exposure levels from "nil" to 1.5 mg/m³ and that one user of *m*-pda provided an unsubstantiated estimate for shipping-handling exposure of 50 mg/m³ (Ref. 20). The ACGIH TLV of 0.1 mg/m³ to skin is "sufficiently low to minimize the number of persons who become sensitized (to *p*-pda) but it is recognized that the limit is not low enough to prevent exacerbation of asthma in those already sensitized to *p*-pda" (Ref. 21). The TLV does not address exposure to either *o*- or *m*-pda nor does a TLV based on sensitization data address EPA's concern for potential oncogenic effects from exposure to *m*-pda or potential neurotoxic effects from exposure to *p*-, *o*-, or *m*-pda. Consequently, there is no way to ascertain the actual risk of exposure at these levels until testing is conducted.

In addition to the 617 people reported by DuPont to be potentially exposed to one or more of the three isomers during their uses (Ref. 20), the National Occupational Exposure Survey (Ref. 1) reports that as many as 59,483 workers in 6,187 plants may be exposed to at least one of the pda's. Hence, EPA believes that exposure to pda's may occur during processing and use, as well as at least occasionally during manufacture, and that this potential exposure is sufficient to support EPA's section 4 findings. Because EPA is concerned about oncogenic and neurotoxic effects, there is an adequate basis for the finding that manufacturing, processing and use of pda's may present an unreasonable risk of injury to human health.

B. Health Effects Hazards Potential

1. *Neurotoxicity.* The neurotoxicity testing proposal in the modified NPRM generated opposing responses from NTTSC and DuPont. NTTSC agreed with EPA's proposal for neurotoxicity testing, and recommended that motor activity data be collected as part of the functional observation battery (Ref. 19). NTTSC also suggested that an evaluation of schedule-controlled operantbehavior, visual impairment, and kindling behavior (electrochemical measurement of seizure potential) would provide better baseline neurotoxicity data for the pda's. NTTSC volunteered to help EPA develop experimental procedures to measure these effects.

EPA agrees with NTTSC that both motor activity and functional observation battery should be included in the neurotoxicity testing program. EPA agrees that the testing program does not include measures of "higher cognitive functioning (e.g., schedule-controlled operant behaviors)." The effect of pda's on "cognitive functioning" has not been adequately characterized, yet concern for this effect still exists. Schedule-controlled operant behavior (SCOB) testing is not being required at this time. However, because of the concerns raised in the public comments, data received from the required testing will be reviewed for evidence of potential effects on cognitive functioning. A public program review will be initiated to determine whether to require SCOB testing according to the test standard in 40 CFR 798.6500.

The pda data provide some evidence that exposure to pda's may produce visual disturbances. It is not clear that these effects represent a direct effect on the eye. Von Oettingen (Ref. 2) concluded that edema around the head was more likely due to vascular changes than to a direct effect upon the nerve. Consequently, EPA does not believe sufficient justification exists to require visual impairment testing.

EPA agrees with NTTSC that the proposed testing does not adequately examine the potential alterations in seizure susceptibility nor does it assess the effects of pda's on kindling behavior. EPA also agrees that exposure to pda's may increase seizure potential. However, EPA is not requiring that these tests be conducted initially.

DuPont criticized the neurotoxic effects testing proposed in the modified NPRM as inappropriate, asserting that adequate, modern testing data do not support the central nervous system (CNS) effects observed in the turn-of-the-century, anecdotal reports cited in the modified NPRM, and that adequate consumer/worker controls are already in place (Ref. 9).

EPA agrees with DuPont that the evidence presented by NTTSC in its response to the NPRM (51 FR 472), and discussed in the modified NPRM (53 FR 913), did not definitely prove neurotoxic effects, nor did it demonstrate a lack of neurotoxic effects from exposure to pda's. Available literature shows a consistent pattern of neurobehavioral effects. While the nervous system cannot be determined with certainty to be the primary target for these effects, this possibility cannot be excluded. Convulsions after treatment with pda's have consistently been reported since the turn of the century in many animal species, and these data imply a direct neurological effect. Although convulsions were reported at lethal concentrations, there is concern that subconvulsive concentrations may pose a health risk. The repeated administration of convulsive agents at subconvulsive dose levels can result in the development of a permanent state of seizure susceptibility (Ref. 3). Further concern is indicated by studies which demonstrate that a single super-convulsant exposure in the developing organism can increase seizure susceptibility later in the adult (Ref. 4); the immature brain may be more vulnerable to seizures than the adult brain. Many neurobehavioral effects for such convulsants as picrotoxin, bicuculline, and carbolines have been reported at subconvulsant concentrations (Ref. 5). These data suggest that dermal exposure to pda's may cause seizures and neurological damage. EPA believes that the data leave sufficient uncertainty as to neurotoxic effects to justify neurotoxic effects testing for all three isomers.

When all of the required neurotoxicity testing data have been received by EPA, the data will be reviewed and a public program review will be initiated. If EPA determines, from its review of the data developed by this rule, that additional testing is warranted, EPA will issue a subsequent notice proposing testing for seizure potential or other effects.

2. *Mutagenicity.* DuPont argued that mutagenic effects of pda's are adequately characterized. Comments submitted in rulemakings for other section 4 chemicals state that EPA's proposed mouse specific locus testing and the heritable translocation testing cannot be done. DuPont pointed out that the notice failed to identify whether a visible or biochemical specific locus test would be used, that the micronucleus test is more economical than the bone marrow testing, and that the heritable translocation test and bone marrow testing could effectively be done in the same animals, if EPA continues to require these tests. DuPont questioned the applicability of the sex-linked recessive lethal test (SLRL) for predicting genetic effects in mammals.

EPA has proposed separately to amend the requirement for the mouse visible specific locus test (MVSL; 53 FR 51847, December 23, 1988), for proposed and final test rules promulgated under section 4(a) of TSCA. EPA is proposing to allow test sponsors for this test rule to choose either the MVSL or the mouse biochemical specific locus test (MBSL), proposed under 40 CFR 798.5195, to test for heritable mutations in mammals. EPA believes that the MBSL and MVSL are comparable tests and are acceptable for detecting this endpoint in mammals. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL once triggered. If the MVSL proposal becomes final, it will apply to all existing and prospective section 4 test rules, including this rule for pda's.

If the specific locus test is triggered, selection of route of exposure will be decided as part of the program review of the required mutagenicity testing.

EPA agrees with DuPont that the mouse micronucleus assay would provide useful information on the mutagenic potential of *m*-pda, and is therefore allowing this requested change. EPA is also requiring that *m*-pda be tested in the *in vivo* mammalian bone marrow cytogenetics test: Micronucleus assay (40 CFR 798.5395), rather than the

MBMC chromosomal analysis test in the modified pda's proposal.

The available data on mutagenic potential of the pda's indicate that these chemicals have potential effects on the gonadal tissue in mammals (Refs. 6 and 7). The SLRL assay cannot be extrapolated to man and the data from this assay are not intended to be used in this way. SLRL results will be taken as an indication of the ability of *m*-pda to interact with gonadal DNA to induce heritable mutations in non-mammalian species. These results will be incorporated into the body of mutagenicity data examined at the program review stage of testing, as described in the modified NPRM.

3. *Oncogenicity.* DuPont argued that sufficient information already exists to determine the potential cancer risk from exposure to *m*-pda and that further testing is unnecessary. DuPont also reported that correspondence with Dr. M. Matsuyama, director of the Japanese bioassay on *m*-pda, has revealed negative test results. Dr. Matsuyama has forwarded a copy of the published bioassay results to EPA (Ref. 8). EPA is reviewing the data included in the Japanese study and this information will be included in the total body of information reviewed by EPA when EPA decides whether oncogenicity testing is to be initiated.

In the proposed rule, EPA proposed that oncogenicity testing would be triggered from positive SLRL results (51 FR 472, 476 & 493). In the reopening of comments, EPA noted that oncogenicity testing has already been triggered from a positive CHO assay (53 FR 913, 914). Other language in the document suggested that other positive mutagenicity tests would trigger oncogenicity testing (53 FR 913, 921). EPA also noted that, although oncogenicity testing had been triggered and that oncogenic potential for *m*-pda was inadequately characterized, a review of all scientific evidence would be completed before oncogenicity testing would be initiated (53 FR 913, 914). DuPont questioned the applicability of the SLRL for predicting oncogenicity. EPA reiterates that the oncogenicity test has been triggered by existing mutagenicity data; therefore SLRL data are not needed for purposes of an oncogenicity trigger. However, all mutagenicity data will be part of the scientific evidence reviewed by EPA to determine whether oncogenicity testing shall be initiated.

Regrettably a typographical error was perpetuated in both the proposed rule and the reopening of comments. EPA intended to propose oncogenicity testing (40 CFR 798.3300) rather than combined chronic toxicity/oncogenicity testing (40 CFR 798.3320). However, in both documents, required oncogenicity testing is described as being conducted in accordance with 40 CFR 798.3320 (51 FR 472, 476; 53 FR 913, 921). These tests differ in numbers of required test species, duration of testing, and measured endpoints and 40 CFR 798.3320 does not adequately address the oncogenic potential of *m*-pda at this time. Therefore, although EPA did make the finding that oncogenicity testing is necessary (if indicated by the weight of evidence review after completion of the SLRL), EPA is not specifying the test standard in this rule. If oncogenicity testing is indicated, EPA will publish a Federal Register notice of the proposed oncogenicity test standard for comment.

C. Chemical Fate and Aquatic Toxicity

1. *Indirect photolysis.* DuPont argued that the chemical fate data collected were state-of-the-art, and any additional analytical exercise requiring identification of break-down products would be very costly exploratory research and consequently inappropriate for section 4 rulemaking. DuPont argued that EPA presented inadequate arguments for use of humic acids in the testing and that EPA's explanation for rejecting the Delaware River data was unsatisfactory.

EPA agrees with DuPont that the analysis of break-down products would be very costly; therefore, EPA is not requiring chemical analysis beyond that needed to document the concentrations of the pda's in the test solutions as required in the test guidelines.

EPA maintains that indirect photolysis testing is necessary and that including humic acids in the test system is necessary to adequately complete this testing. DuPont states that "DuPont, with EPA's approval and participation, designed studies in 1984 and 1985 to determine the oxidative half-lives of the pda's. These studies sought information both about environmental disappearance of pda's and the mechanisms of pda toxicity. DuPont completed these studies and performed additional work to provide the EPA with more information than it had originally requested..." (Ref. 9).

EPA notes that discussions with DuPont on the oxidation rate studies occurred in 1984, prior to the onset of the studies referenced by DuPont in their comments. Repeated efforts were made by EPA to include DuPont in the development of the Indirect Photolysis Guidelines, so that DuPont's planned studies would follow EPA's protocol for the pda's (Refs. 10 and 11). DuPont contacted the individuals involved in developing the guidelines (Ref. 12), but since the development of the indirect photolysis guidelines did not correspond with DuPont's testing schedule, the oxidation rate study was completed in accordance with DuPont's protocol (Ref. 12 and 13). Throughout these discussions, EPA reminded DuPont that the oxidation rate study must be environmentally relevant (Ref.10), and that EPA reserved the right to review both the protocol and the data generated for their relevance to EPA's needs (Refs. 10, 11, and 15). If the data met these needs, EPA could reconsider its proposed testing; if the data did not, EPA would proceed with the indirect photolysis requirement, including addition of humic acid to the testing solutions (Ref. 16). The modified NPRM presents EPA's rationale for requiring the indirect photolysis study and the reasons why the oxidation rate studies submitted by DuPont do not meet EPA's needs (53 FR 913, 916–917).

The additional work submitted by DuPont in response to the ANPR included a study measuring the disappearance rate of *p*-pda in Delaware River water. In addition to the concerns listed in the modified NPRM, the following conditions have been identified as unacceptable: (1) Although DuPont's report implied that molecular oxygen is intimately involved in the oxidation of *p*-pda, documentation of molecular oxygen depletion was not included in DuPont's report; (2) the study report did not document quality control; and (3) the composition of the test water was unknown. Because of these deficiencies, EPA has not modified its decision to require the indirect photolysis testing.

2. *Aquatic toxicity.* DuPont argued that the aquatic toxicity tests submitted to EPA were reliable because the data were collected according to EPA-approved protocols, that chemical detection levels were state-of-the-science, that flow-through testing would not improve data reliability, that EPA did not provide adequate arguments for the inadequacy of the chronic *Daphnia* test for *m*-pda, and that *Gammarus* is not a good test organism (Ref. 9).

EPA approved DuPont's protocols prior to the onset of the 1985 studies in *Daphnia*, fathead minnows, and algae with acceptance of study results being contingent upon EPA's review (Ref. 18). In the modified NPRM, EPA reported that these studies were flawed. EPA test guidelines require flow-through testing for chemicals that may hydrolyze, oxidize, volatilize, or biodegrade to maintain constant chemical concentrations throughout the duration of the experiment. Pda's are expected to oxidize. EPA acknowledges that DuPont used state-of-the-science analytical techniques to determine pda concentrations in the test solutions; however, constant chemical concentrations were not maintained in the tests submitted by DuPont. EPA has chosen not to require the fathead minnow and daphnid acute toxicity tests to be repeated; these data will be used in combination with the acute flow-through rainbow trout and *Gammarus* studies to determine the most sensitive species for testing in the fish partial life-cycle test and to assess the acute hazard of pda's to aquatic organisms.

The chronic *Daphnia* test lacks adequate documentation for chemical concentration measurements. EPA acknowledges that DuPont used state-of-the-science analytical techniques to determine *m*-pda concentrations in the test solutions. However, this test is a static-renewal test. EPA guidelinesrecommend that test concentrations should be measured, at a minimum, in each chamber before the test and in each chamber on 7, 14, and 21 days of the test to determine actual chemical concentrations being tested. DuPont's study does not identify whether test chamber concentrations were measured before or after the daphnids were exposed to the chemical solution. The test concentrations also varied from 22.5 to 86.7 percent of the nominal concentrations, a variation EPA believes could have been reduced by conducting a flow-through assay. However, EPA has chosen not to require repetition of this study. The data will be combined with the fathead minnow and rainbow trout partial life-cycle test results to assess the long-term hazard of *m*-pda to aquatic organisms.

EPA disagrees with DuPont that *Gammarus* testing is not well documented. *Gammarus* is a good test organism because it provides data for response of amphipods to chemical toxins, has shown comparability with daphnids in response to toxic stresses, and sometimes is a more sensitive species than *Daphnia*.

EPA is, therefore, requiring aquatic toxicity testing according to the testing scheme presented in the modified NPRM. All three isomers shall be tested in the rainbow trout and *Gammarus* acute tests. Since the daphnid and fathead minnow LC_{50}s for *p*-pda are less than 1 mg/L and for *o*-pda the daphnid LC_{50} is less than 1 mg/L, testing for *p*- and *o*-pda will proceed to the daphnid life-cycle and the fish partial life-cycle test in the more sensitive species of rainbow trout or fathead minnow. For *m*-pda, a fish partial life-cycle test shall be conducted because of 1985 data showing the maximum acceptable toxicant concentration (MATC) to be less than 0.1 mg/L. The results of the rainbow trout acute testing will be compared to the fathead minnow acute toxicity data to determine the more sensitive species for testing *m*-pda. Chemical-specific sensitivity of fish to the pda isomers may provide results requiring testing of the three isomers in different fish species. Although the aquatic invertebrate acute testing will provide needed data measuring species sensitivity to pda's, EPA chronic invertebrate test guidelines are available only for daphnids. Consequently, all chronic aquatic invertebrate testing is being required in *Daphnia magna*.

3. *Reporting deadlines.* DuPont found the reporting deadlines unrealistic, stating they fail to allow adequate time for critical administrative paths involved in the proposed tiered testing. However, insufficient evidence was presented to show that pda's present unique qualities should cause EPA to alter the reporting requirements proposed in the NPRM and modified NPRM. Therefore, the required reporting deadlines will remain the same as required for other section 4 final rules.

4. *Cost of testing.* DuPont disagreed with EPA's estimated testing cost. DuPont argued that actual testing costs would total approximately $1 million more than EPA's estimate. EPA has evaluated DuPont's submission and finds it difficult to determine the differences in the costs since DuPont did not provide the rationale for its estimate. For all three isomers, DuPont estimated the partial life-cycle test in rainbow trout to be $30,000 and $120,000, oxidative half life and oxidative by-product assays $100,000 and $200,000, and chronic neurotoxicity test $540,000. EPA's estimated price range for the required rainbow trout partial life-cycle assays for all three isomers is $54,000 to 120,000 and for the subchronic neurotoxicity testing $285,000. EPA is not requiring chronic neurotoxicity testing at this time. The required indirect photolysis testing for all isomers is estimated to be $15,000 to $18,000. However, since publication of the modified NPRM, the estimated cost of the mouse biochemical specific locus test has been updated to between $350,000 and $600,000. EPA's total estimated cost for testing would therefore increase to $1.8 to $2.8 million, approaching DuPont's cost estimation. EPA believes that this cost does not impose an excessive economic burden upon the pda industry (see Unit IV of this preamble).

III. Final Health and Environmental Effects Test Rule for Unsubstituted Phenylenediamines

A. Findings

EPA is basing the final health and environmental effects testing requirements on the authority of section 4(a)(1)(A) of TSCA.

1. *Health effects testing.* EPA finds that the manufacture, processing, and use of *m*-pda and *m*-pda.H_2SO_4 may present an unreasonable risk of mutagenic and oncogenic effects, and that manufacture, processing, and use of *m*-, *o*-, *p*-pda, *m*-pda.H_2SO_4, and *p*-pda.H_2SO_4 may present an unreasonable risk of neurotoxic effects in humans because (1) as many as 59,483 workers in 6,187 plants may be exposed during manufacture, processing and use to at least one of the three isomers (Ref. 1); and (2) for *m*-pda, a potential genotoxic, oncogenic and neurotoxic hazard exists, and for *o*-pda and *p*-pda a potential neurotoxic hazard exists from this exposure. Under section 4(a)(1)(A)(ii), EPA also finds that there are insufficient data to reasonably predict such effects on human health from the manufacturing, processing, and use of these pda's. Under section 4(a)(1)(A)(iii), EPA finds that testing of these pda's is necessary to develop data for potential genotoxic, neurotoxic, and oncogenic hazards to determine whether manufacture, processing, or use of pda's does or does not present an unreasonable risk of injury to human health.

In this rule EPA finds that testing is necessary to determine the potential oncogenic hazard from exposure to *m*-pda. A determination of whether oncogenicity testing will be initiated and the required test standard for testing for oncogenic effects will be included in the weight-of-evidence review. If such testing is indicated, EPA will publish this determination and propose a test standard for comment in a separate Federal Register notice.

a. *Mutagenicity.* The finding that *m*-pda "may present an unreasonable risk" of mutagenic toxicity is based on its positive Ames assays and a comparative study which showed *m*-pda to be the most potent mutagen of 11 aromatic amines tested (51 FR 472, 474), positive results in the *in vivo* Chinese hamster ovary chromosomal aberration test, and inhibition by *m*-pda of mouse testicular cell DNA synthesis *in vitro* (53 FR 913, 914).

b. *Neurotoxicity.* The finding that these pda isomers "may present an unreasonable risk" of neurotoxicity is based on available literature reports of a consistent pattern of neurobehavioral effects resulting from exposure to pda's. These reports suggest that dermal exposure to pda's may cause seizures at very low levels, cause adverse physical and neurological effects and visual disturbances, and that subcutaneous injections cause clonic and tonic spasms indicating interference with brain metabolism. These data leave sufficient uncertainty and data gaps to justify neurotoxic effects testing for all three isomers (53 FR 913, 916).

c. *Oncogenicity.* The finding that *m*-pda may present an unreasonable risk of oncogenicity is based on a positive Chinese hamster ovary assay (53 FR 913, 914).

2. *Chemical fate and environmental effects testing.* EPA finds that pda's may present an unreasonable risk to the environment and that data are insufficient to determine aquatic toxicity of pda's. EPA finds that: (1) Concentrations of these pda's in the environment could reach levels which may be harmful to aquatic organisms and they may persist long enough that exposure to them may present an unreasonable risk of acute or chronic injury to aquatic organisms. In addition, the finding that these pda's "may present an unreasonable risk" to aquatic organisms is based upon the literature values for acute toxicity of these pda's to aquatic organisms, structure-activity relationships with toluenediamines (51 FR 472, 475), and aquatic toxicity data submitted by DuPont (53 FR 913, 916–918; Unit II.C of this preamble). (2) There are insufficient data to characterize potential environmental persistence and toxicity of these pda's. (3) Testing is necessary to characterize the environmental persistence and aquatic toxicity of *m*-, *o*-, and *p*-pda to help determine whether manufacturing, processing, or use of these pda's does or does not present an unreasonable risk of injury to the environment.

The reason chemical fate testing is being required is based upon the chemical properties of these pda's, biodegradation efficiency in activated sludge, structure-activity relationships with toluenediamines (51 FR 472, 475), and the uncertain environmental relevance of existing chemical fate data (53 FR 913, 916-917; Unit II.C).

B. Test Standards

1. *Health effects.* On the basis of the findings given above for health effects testing, EPA is requiring that *m*-pda be tested for mutagenic and oncogenic effects, and that *m*-, *o*-, and *p*-pda be tested for neurotoxic effects, chemical fate, and aquatic toxicity. These tests shall be conducted in accordance with specific test guidelines set forth in 40 CFR parts 795, 796, 797, and 798. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792. On the basis of the findings presented in Unit III.A.1 of this preamble for human health effects, EPA is requiring that *m*-pda be tested for mutagenicity, using *Drosophila* sex-linked recessive lethal and mouse bone marrow micronucleus assays, as stipulated in 40 CFR 798.5275 and 798.5395, respectively. A positive bone marrow assay would trigger a dominant lethal assay in mice using the procedure in 40 CFR 798.5450. A positive result in the dominant lethal assay may, after a public program review, trigger the heritable translocation assay using the procedure in 40 CFR 798.5460. If the dominant lethal assay is negative, no further chromosomal aberration testing will be required for *m*-pda.

If the sex-linked recessive lethal assay is positive, after a public program review, the MVSL (40 CFR 798.5200) will be triggered. If the proposed amendment for the requirement of the MVSL is promulgated prior to the onset of the MVSL testing, the test sponsor may choose to conduct either the MVSL or the MBSL and shall notify EPA in writing of its choice in its first interim report. If the sex-linked recessive lethal assay is negative, no further gene-mutation testing will be required.

A determination of whether oncogenicity testing shall be initiated will be made at the completion of the mutagenicity testing program, at which time EPA will make a weight-of-evidence determination and conduct a public program review as referenced in Unit II.B.3 of this preamble. If the test must be initiated, EPA will propose the oncogenicity test standard for comment.

On the basis of the findings presented in Unit III.A.1 of this preamble for human health effects, EPA is requiring that *m*-pda, *o*-pda, and *p*-pda be tested for neurotoxic effects (acute functional observational battery and motor activity test) using the test guidelines in 40 CFR 798.6050 and 798.6200. Results of the acute testing may trigger subchronic neurotoxicity testing and neuropathological examination, as specified in 40 CFR 798.6050, 798.6200, and 798.6400.

EPA will hold a public program review prior to requiring the initiation of the mouse specific locus assay, the heritable translocation assay, the chronic oncogenicity assay, or additional neurotoxicity testing. Public participation in this program review will be in the form of written comments or a public meeting. A request for public comments or notification of a public meeting will be published in the **Federal Register**. Should EPA determine, from the available weight of evidence, that proceeding to the mouse specific locus test, heritable translocation test, oncogenicity test, or neurotoxicity testing is no longer warranted, EPA would propose to repeal that test requirement(s) and, after public comment, issue a final amendment to rescind the requirement(s). If oncogenicity testing must be initiated, EPA will propose the standard for conducting such testing in a separate **Federal Register** notice.

2. *Chemical fate.* On the basis of the reasons presented in Unit III.A.2 for chemical fate testing, EPA is requiring that *m*-,*o*-, and *p*-pda be tested in the indirect photolysis screening test as specified in 40 CFR 795.70.

3. *Environmental effects.* On the basis of the justifications presented in Unit III.A.2 for environmental effects testing, EPA is requiring that acute toxicity testing of *m*-, *o*-, and *p*-pda be conducted on (1) rainbow trout (*Salmo gairdneri*) using the test guideline in 40 CFR 797.1400; and (2) in *Gammarus* sp. using the test guideline specified in 40 CFR 795.120. Since existing fathead minnow or daphnid acute toxicity test data or algal bioassay test data satisfy at least one of the decision criteria for each chemical, as defined in the NPRM and modified NPRM, fish partial life-cycle testing shall be conducted for *o*-, *p*-, and *m*-pda's as specified in 40 CFR 797.1600 in the more sensitive species of either rainbow trout (Salmo gairdneri) or fathead minnow (*Pimephales promelas*). The acute fish toxicity testing may provide data requiring the different isomers to be tested in different fish species in the fish partial life-cycle test. *Daphnia magna* life-cycle testing shall be conducted for *o*-and *p*-pda's as specified in 40 CFR 797.1330.

EPA is requiring that the TSCA health effects, chemical fate, and environmental effects test guidelines referenced in Unit III.B of this preamble, and subsequent revisions, shall be the test standards for the purposes of the required tests for pda's. The TSCA test standards for health effects, chemical fate, and aquatic toxicity specify generally accepted minimum conditions for determining health effects, chemical fate, and aquatic organism toxicities for substances such as pda's to which humans and the environment are expected to be exposed. EPA believes

that these test methods reflect the current state of the science for testing chemicals such as pda's for the specified endpoints.

C. Test Substance

EPA is requiring that *m*-, *o*-, and *p*-pda, each of at least 98 percent purity, shall be used as the test substances. EPA expects that the free bases may not be sufficiently stable to be used as test substances for repeated dose health effects testing. Thus, as stated in the proposed rule (51 FR 472, 478) either the hydrochloride or sulfate salt of *m*-pda is an acceptable test substitute for the oncogenicity test because it should be more stable. In addition for this final rule, either the hydrochloride or sulfate salt of *m*-pda, *p*-pda, or *o*-pda is an acceptable substitute for the subchronic neurotoxicity testing if any of the free bases prove to be unstable under the conditions of the study. Such salts must be of at least 98 percent purity.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the EPA makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility of testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(b) of TSCA to include "import"). Processors are required to test if the findings are based upon processing. Both manufacturers and processors are required to test if the exposure giving rise to the potential risk occurs during use, distribution, or disposal.

Because EPA has found that manufacturing, processing, and using *p*-pda, *o*-pda, *m*-pda, and the sulfate salts of *p*-pda and *m*-pda may result in an unreasonable risk to human health or the environment, EPA is requiring that persons who manufacture or process, or intend to manufacture or process, *p*-, *o*-, *m*-pda and the sulfate salts of *p*-pda and *m*-pda at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements for the particular substance as required by this rule. The end of the reimbursement period will be 5 years after the last final report is submitted, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR part 790.

Processors subject to this rule, unless they are also manufacturers, are not required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to the processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for unsubstituted pda's. As noted in Unit III. C, EPA is interested in evaluating the effects attributable to unsubstituted pda's and has specified relatively pure substances for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its TSCA GLP Standards which appear in 40 CFR part 792.

In accordance with 40 CFR part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 45 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA's reporting requirements for each of the test standards are specified in Tables 1 and 2. Except as noted, progress reports for all tests are required at 6-month intervals starting 6 months from the effective date of the final test rule.

EPA is requiring that manufacturers of *m*-pda and its sulfate salt shall report the study results and submit interim reports according to the schedule on the following Table 1.

Table 1—Required Testing, Test Standards, And Reporting Requirements For *meta*-Phenylenediamine

Test	Test standard (40 CFR section)	Reporting deadlines for final reports (months)[1]	Interim reports required
Health Effects Testing:			
1. *Drosophila* sex-linked recessive lethal (injection)	§ 798.5275	12	1
2. Mouse visible specific locus test (gavage)[2]	§ 798.5200	51	8
3. Mouse bone marrow micronucleus assay (oral)	§ 798.5395	12	1
4. Dominant lethal assay	§ 798.5450	[illegible]	1
5. Heritable translocation [2]	§ 798.5460	[illegible]	3
6. Oncogenicity [3]	[Reserved]	[illegible]	6
7. Acute functional observational battery (oral)	§ 798.6050	[illegible]	-
8. Acute motor activity test (oral)	§ 798.6200	[illegible]	-
9. Subchronic functional observational battery (oral)	§ 798.6050	[illegible]	2
10. Subchronic motor activity test (oral)	§ 798.6200	18	2

Table 1—Required Testing, Test Standards, And Reporting Requirements For *meta*-Phenylenediamine—Continued

Test	Test standard (40 CFR section)	Reporting deadlines for final reports (months)[1]	Interim 6 month reports required
11. Neuropathology	§ 798.6400	18	2
Chemical Fate Testing:			
12. Indirect photolysis	§ 795.70	8	-
Aquatic Toxicity Testing:			
13. Acute rainbow trout (flow-through)	§ 797.1400	9	-
14. Acute *Gammarus* test (flow-through)	§ 795.120	9	-
15. Fish partial life-cycle test [4] (flow-through)	§ 797.1600	18	2

[1] Calculated from the effective date of final rule, except as noted.
[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor(s) by certified letter or FEDERAL REGISTER notice that, following public program review of all the then existing data for *m*-pda, EPA has determined that the testing must be performed.
[3] Testing standard will be proposed in a separate FEDERAL REGISTER notice if oncogenicity testing is to be initiated. Reporting deadline will be calculated from the date of promulgation of test standard
[4] Test species to be determined from results from acute toxicity testing with rainbow trout and fathead minnow.

EPA is requiring that manufacturers and processors responsible for the testing of *p*- and *o*-pda shall report the study results and submit interim reports according to the schedules in the following Table 2.

Table 2—Required Testing, Test Standards, And Reporting Requirements For *ortho*- And *para*-Phenylenediamine

Test	Test Standard (40 CFR)	Reporting Deadlines for final reports (months)[1]	Interim 6 month reports required
Health Effects Testing:			
1. Acute functional observational battery (oral)	§ 798.6050	9	-
2. Acute motor activity test (oral)	§ 798.6200	9	-
3. Subchronic functional observational battery (oral)	§ 798.6050	18	2
4. Subchronic motor activity test (oral)	§ 798.6200	18	2
5. Neuropathology	§ 798.6400	18	2
Chemical Fate Testing:			
6. Indirect photolysis	§ 795.70	8	-
Aquatic Toxicity Testing:			
7. Acute rainbow trout (flow-through)	§ 797.1400	9	-
8. Acute *Gammarus* test (flow-through)	§ 795.120	9	-
9. Fish partial life-cycle test (flow-through) [2]	§ 797.1600	18	2
10. Daphnid life-cycle	§ 797.1330	12	1

[1] Number of months after effective date of the test rule.
[2] Test species to be determined from results from acute toxicity testing with rainbow trout and fathead minnow.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of *m*-pda, *o*-pda, *p*-pda, or the sulfate salts of *m*-pda and *p*-pda must report the first annual export or intended export of the unsubstituted pda to any one country. EPA will notify the foreign country of the test rule for the chemical.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce ***". EPA considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for unsubstituted pda's. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data, interpretations and evaluations, and to determine compliance with TSCA GLP Standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (see supporting documentation (2)(a) in Unit VI.A of this preamble) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of pda's: (1) Price sensitivity of demand, (2) market expectations, (3) industry cost characteristics, and (4) industry structure.

Total testing costs for the required testing for pda's are estimated to range from $1.8 to $2.6 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a 7 percent cost of capital over a period of 15 years) range from $197,000 to $280,000. Based on 1984 production of 60 million pounds, the total unit test costs range from $0.0033 to $0.0047 per pound. These costs are equivalent to (percent of current price, current price in dollars per pound): *p*-pda: 0.08–0.12, $4.00;*m*-pda: 0.16–0.23, $2.07; *o*-pda: 0.1–0.14, $3.25.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.12–0.23 percent of product price in the upper-bound case,

2. Demand for pda's does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (see supporting documentation (2)(a) in Unit VI.A of this preamble).

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82–140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 17) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C9 aromatic hydrocarbon fraction test rule at 40 CFR 799.2175. Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding [docket number OPTS-42006F]. This record includes:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on unsubstituted phenylenediamines (51 FR 472; January 6, 1986).

(b) Notice of reopening comment period for unsubstituted phenylenediamines (52 FR 913; January 14, 1988).

(c) Notice containing the ITC designation of the phenylenediamines category to the Priority List (45 FR 35897; May 28,1980).

(d) Notices relating to EPA's health effects test guidelines and TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(e) Notice of final rule on test rule development and exemption policy and procedures (49 FR 30772; October 10, 1984).

(f) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(g) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(h) Advance Notice of Proposed Rulemaking for the phenylenediamines (47 FR 973; January 8, 1982).

(i) Notice of Agency decision not to require testing of certain phenylenediamines (50 FR 4287; January 30, 1985).

(j) TSCA test guidelines final rule (40 CFR parts 796, 797, and 798: September 27, 1985)

and modifications (52 FR 19056; May 20, 1987).
(k) Notice of extended comment period for ANPR (51 FR 7593; March 5, 1986).
(l) Notice of final rule on 2-mercaptobenzothiazole (53 FR 34154; September 7,1988).
(m) Notice of final rule on C9 aromatic hydrocarbon fraction (40 CFR 799.2175).
(2) Support Documents: consisting of:
(a) Economic analysis document.
(b) Ethyltoluene and Trimethylbenzene technical support document.
(c) Cresols support document.
(3) Communications before proposal consisting of:
(a) Written public and intra-agency or interagency memoranda and comments.
(b) Records of telephone conversations.
(c) Records or minutes of informal meetings.
(d) Reports—published and unpublished factual materials.

B. References

(1) National Occupational Exposure Survey. Computer Print-out. U. S. Environmental Protection Agency, Washington, D. C. (October 3, 1988).
(2) Von Oettingen. US Public Health Service Bulletin ı271 (1941).
(3) Cain, D.P. "Transfer of pentylenetetrazol sensitization to amygdaloid kindling." *Pharmacology, Biochemistry and Behavior*. 15:533-536 (1981).
(4) Gilbert, M.E. and D.P.Cain, "A single neonatal pentylenetetrazol or hyperthermia convulsion increases kindling susceptibility in the adult rat." *Developmental Brain Research*. 22:169–180 (1985).
(5) Sanger, D.J. "GABA and the behavioral effects of anxiolytic drugs." *Life Science*. 63:1503-1513 (1985).
(6) EPA. "Notice of proposed rule on unsubstituted Phenylenediamines." (51 FR 472; January 6, 1986).
(7) EPA. "Notice of reopening comment period for unsubstituted Phenylenediamines." (53 FR 913; January 14, 1988).
(8) Amo, H., M. Matsuyama, H. Amano, et al. "Carcinogenicity and toxicity study of *m*-phenylenediamine administered in the drinking-water to (C57BL/6 x C3H/He)F1 mice." *Federation of Chemical Toxicology*. 26(11/12): 893–897 (1988).
(9) DuPont. "DuPont comments: Unsubstituted Phenylenediamines: Proposed Rule (OPTS 42008D)." Washington, D.C.: Office of Toxic Substances, U.S. Environmental Protection Agency (February 26, 1988).
(10) DuPont. Phone Contact: T. Lewis to J. Helm (September 5, 1984).
(11) EPA. Phone contact: J. Helm to N. Krivanek (October 4, 1984).
(12) DuPont. Phone Contact: N. Krivanek to P. Kennedy (September 12, 1984).
(13) EPA. Phone Contact: J. Helm to K.D. Dastur (September 26, 1985).
(14) DuPont. Letter: K.D. Dastur to R. Northrop. "Phenylenediamines"(August 5,1985).
(15) EPA. Phone Contact: J. Helm to T. Lewis (November 14, 1984).
(16) EPA. Phone Contact: J. Helm to K.D. Dastur (August 28, 1985).
(17) EPA. Evaluation of TSCA test guidelines for neurotoxicity testing. Mathtech, Inc. Contract numbers 68–02–4235. Regulatory Impact Branch, Office of Toxic Substances, Washington, DC (April 4, 1987).
(18) EPA. Letter: EPA response to ecotoxicity protocols submitted by DuPont. From: Ralph Northrop, U. S. Environmental Protection Agency, to: K.D. Dastur, E.I. DuPont De Nemours & Company (November 14, 1984).
(19) NTTSC. "Comments on the proposed test rule for unsubstituted Phenylenediamines (FR 53: 913–922)." American Psychological Association, Psychopharmacology Division. Washington, DC, Office of Toxic Substances, US Environmental Protection Agency (February 25, 1988).
(20) E.I. DuPont de Nemours & Co., Inc. "Phenylenediamines: Response to Interagency Testing Committee (OPTS-42008)." Washington, DC, Office of Toxic Substances, U.S. Environmental Protection Agency (April 6, 1982).
(21) American Conference of Governmental Industrial Hygienists, Inc. "Documentation of the Threshold Limit Values Fourth Edition 1980: Supplemental Documentation 1982." page, 330 (1982).

Confidential Business Information (CBI), while part of the record, is not available for public view. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U. S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq. Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have significant impact on a substantial number of small businesses because: (1) they are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 4,841 hours for *m*-pda, 3,227 hours for *p*-pda, and 6,454 hours for *o*-pda. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List Of Subjects In 40 CFR part 799

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: November 2, 1989.

Linda F. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 15 U. S. C. 2603, 2611, 2625.

b. Section 799.3300 is added to read as follows:

§ 799.3300 Unsubstituted phenylenediamines.

(a) *Identification of test substance.* (1) The unsubstituted phenylenediamines (pda's), *para*-phenylenediamine (*p*-pda, CAS No. 106–50–3), or its sulfate salt (*p*-pda.H_2SO_4, CAS No. 1624–57–75), *meta*-phenylenediamine (*m*-pda, CAS No. 108–45–2), or its sulfate salt (*m*-pda.H_2SO_4, CAS No. 54–17–08), and *ortho*-phenylenediamine (*o*-pda, CAS No. 95–54–5) shall be tested in accordance with this section.

(2) *p*-Pda, *m*-pda, and *o*-pda of at least 98 percent purity shall be used as the test substances. Either the hydrochloride or sulfate salt of *m*-pda shall be used as the test substances. Either the hydrochloride or sulfate salt of *m*-pda shall be used as a test substance in the oncogenicity test in paragraph (c)(2) of this section if the free base proves to be unstable under the conditions of this study. Either the hydrochloride or sulfate salt of *o*-pda, *p*-pda, or *m*-pda shall be used as a test substance in the 90-day subchronic neurotoxicity studies in paragraph (c)(3)(B) of this section if the free base proves to be unstable under the conditions of these studies. The salt(s) shall be of at least 98 percent purity.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture (including import or by-product manufacture) or process *m*-pda or *m*-pda.H_2SO_4, or intend to manufacture or process *m*-pda or *m*-pda.H_2SO_4, after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c), (d), and (e) of this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking.

(2) All persons who manufacture (including import or by-product manufacture) or process *p*-pda, or *p*-pda.H_2SO_4, or intend to manufacture or process *p*-pda, or *p*-pda H_2SO_4, after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c)(3), (d), and (e) of this section, subpart A of this part and parts 790 and 792 of this chapter for single-phase rulemaking.

(3) All persons who manufacture (including import or by-product manufacture) or process *o*-pda, or intend to manufacture or process *o*-pda after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c)(3), (d), and (e) of this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Mutagenicity testing*— (i) *Required testing.* (A) The sex-linked recessive lethal (SLRL) assay shall be conducted, by injection, in *Drosophila melanogaster* with *m*-pda in accordance with § 798.5275 of this chapter.

(B) If the SLRL assay conducted pursuant to paragraph (c)(1)(i)(A) of this section is positive, the mouse visible specific locus test (MVSL) shall be conducted for *m*-pda by gavage in accordance with § 798.5200 of this chapter, if after public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor(s) specifying that testing shall be initiated.

(C) The mouse bone marrow cytogenetics: micronucleus (MBMC) assay shall be conducted on *m*-pda in accordance with § 798.5395 of this chapter.

(D) If the MBMC assay conducted pursuant to paragraph (c)(1)(i)(C) of this section is positive, the dominant lethal assay (DL) in mice shall be conducted on *m*-pda pursuant to § 798.5450 of this chapter.

(E) If the DL conducted pursuant to paragraph (c)(1)(i)(D) of this section is positive, heritable translocation (HT) testing in the mouse on *m*-pda shall be conducted pursuant to § 798.5460 of this chapter, if after a public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor(s) specifying that testing shall be initiated.

(ii) *Reporting requirements.* (A) The tests shall be completed and final reports for the SLRL assay and the MBMC assay shall be submitted to the EPA no later than 12 months after the effective date of this final rule.

(B) If required, the DL test shall be completed and the final report shall be received by EPA no later than 24 months after the effective date of this final rule.

(C) If required, the MVSL shall be completed and the final report shall be received by EPA no later than 51 months after EPA issues a Federal Register Notice or sends a certified letter to the test sponsor(s) identified under paragraph (c)(1)(i)(B) of this section specifying that testing shall be initiated.

(D) If required, the HT test shall be completed and the final report shall be submitted to EPA not later than 36 months after the date on which EPA notifies the test sponsor under paragraph (c)(1)(i)(E) of this section to begin testing.

(E) Interim reports for the SLRL assay and MBMC are required at 6-month intervals beginning 6 months after the effective date of this section. If the DL is triggered, interim reports are required at 6 month intervals beginning with the date of initiation of the study.

(F) Interim reports for HT, and mouse specific locus studies are required at 6-month intervals beginning with the date of notification by EPA that testing shall be initiated, and ending when the final report is submitted.

(2) *Oncogenicity*—(i) *Required testing.* A 2-year dermal oncogenicity bioassay shall be conducted with *m*-pda if, after public program review, EPA issues a Federal Register notice specifying that the testing shall be initiated.

(ii) [Reserved]

(iii) *Reporting requirements.* (A) The final results and final report for the oncogenicity bioassay shall be submitted to EPA no later than 53 months after EPA issues a Federal Register notice or sends a certified letter to the test sponsor under paragraph (c)(2)(i) of this section specifying that the testing shall be initiated.

(B) Interim reports for the oncogenicity study are required at 6-month intervals beginning 6 months after the date of notification by EPA that testing shall be initiated and ending when the final report is submitted.

(3) *Neurotoxicity*—(i) *Required testing.* (A) Acute neurotoxicity testing in the neurotoxicity functional observational battery (FOB) in accordance with § 798.6050 of this chapter, and the motor activity test (MAT) in accordance with § 798.6200 of this chapter, shall be conducted for *o*-, *m*-, and *p*-pda. The test chemicals shall be administered in a single oral dose. Clinical observations shall be made at a minimum of 1, 4, 24, and 48 hours and at 7 days after dosing.

(B) If neurotoxic effects are observed at 24 hours, or longer, during the testing conducted pursuant to paragraph (c)(3)(i)(A) of this section, then 90-day subchronic neurotoxic FOB and MAT tests shall be conducted in accordance with §§ 798.6050 and 798.6200 of this chapter, respectively, for each isomer showing such effects. At the end of these tests, the animals shall be sacrificed and the nervous tissue preserved and examined as described in the neuropathology test standard, § 798.6400 of this chapter.

(ii) *Reporting requirements.* (A) The acute neurotoxicity tests shall be completed and the final report submitted to EPA no later than 6 months after the effective date of this final rule. If triggered, the final report for the subchronic neurotoxicity testing and the neuropathological examination shall be submitted to EPA no later than 15 months after the effective date of this final rule.

(B) [Reserved]

(d) *Chemical fate testing*—(1) *Indirect photolysis testing*—(i) *Required testing.* Indirect photolysis studies shall be

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conducted with *p*-, *m*-, and *o*-pda to determine the half-life in water of each of the three unsubstituted pda's in accordance with § 795.70 of this chapter.

(ii) *Reporting requirements.* (A) The final report shall be submitted to EPA no later than 8 months after the effective date of the final rule.

(B) The final report shall include a calculation of the predicted environmental concentration (PEC), 100 x PEC, and 1,000 x PEC for each isomer. PEC shall be calculated by using results from the indirect photolysis studies and solving the following equations for the appropriate isomer: *o*-pda: PECo = 0.3629 + 1.0468 log t 1/2; *m*-pda: PECm = 0.6830 + 1.9702 log t 1/2; *p*-pda: PECp = 0.0085 + 0.0024 log t 1/2, where PEC is the predicted concentration in ppb and t 1/2 is the half-life for oxidation (i.e., indirect photolysis) expressed in minutes. PEC, 100 x PEC, and 1,000 x PEC shall be used in the decision logic described in paragraph (e) of this section.

(2) [Reserved]

(e) *Environmental effects testing*—(1) *Acute toxicity* testing—(i) *Required testing.* (A) Flow-through fish acute toxicity tests in the rainbow trout (*Salmo gairdneri*) shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 797.1400 of this chapter.

(B) Acute flow-through studies on the freshwater invertebrate *Gammarus* shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 795.120 of this chapter.

(C) If the concentration affecting 50 percent of the population (LC_{50} or EC_{50}) for any study conducted pursuant to paragraphs (e)(1)(i)(A) and (B) of this section is less than or equal to 100 X PEC, less than or equal to 1 milligram/liter (mg/L), or less than or equal to 100 mg/L and shows indications of chronicity, chronic toxicity testing shall be conducted pursuant to paragraph (e)(2) of this section. Indications of chronicity shall be the following: for fish or aquatic invertebrates, the ratio of 24 hour/96 hour LC_{50} is greater than or equal to 2; for gammarids, the ratio of 24 hour/48 hour EC_{50} is greater than or equal to 2.

(ii) *Reporting requirements.* (A) The final report for acute toxicity testing shall be submitted to EPA no later than 9 months after the effective date of the final rule.

(B) [Reserved]

(2) *Chronic toxicity testing*—(i) *Required testing.* (A) A fish partial life-cycle flow-through test shall be conducted in the more sensitive fish species, either *Pimephales promelas* or *Salmo gairdneri*, with each isomer, *o*-, *m*-, and *p*-pda, demonstrating an LC_{50}, determined by testing of fish pursuant to paragraph (e)(1)(i)(A) of this section, equal to or less than 100 X PEC; or less than 1 mg/L; or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(C) of this section. Testing shall be conducted in accordance with § 797.1600 of this chapter.

(B) An invertebrate life-cycle flow-through toxicity test shall be conducted in *Daphnia magna* for *o*- and *p*-pda in accordance with § 797.1330 of this chapter.

(ii) *Reporting requirements.* (A) The tests shall be completed and the final results shall be submitted to the EPA no later than 24 months after the effective date of the final rule.

(B) Progress reports shall be submitted at 6 month intervals after the effective date of the final rule.

(f) *Effective date.* (1) This rule is effective on January 16, 1990.

(2) The guidelines and test methods cited in this section are referenced as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033)

[FR Doc. 89–27932 Filed 11–29–89; 8:45 am]

BILLING CODE 6560–50–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[Federal Acquisition Circulars 84–48 and 84–49]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: For the purpose of annually revising 48 CFR Ch. 1 (Federal Acquisition Regulation), this document corrects two Federal Acquisition Circulars (FAC's) published in the Federal Register on Monday, June 12, 1989 (54 FR 25060) FAC 84–48 and on Tuesday, July 11, 1989 (54 FR 29278) FAC 84–49.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAC's 84–48 and 84–49 corrections.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–13944 (FAC 84–48) beginning on page 25060, in the first column of page 25072, in amendatory instruction 29. the words "and by alphabetically adding the definition 'nonprofit organization' are corrected to read: "and by alphabetically inserting and revising the definition 'Nonprofit organization' ".

In FR Doc. 89–16077 (FAC 84–49), beginning on page 29278, in the second column of page 29283, in amendatory instruction Number 41, the words "and by revising the first sentence in paragraph (c) of the clause, and the first sentence in paragraph (c) of the Alternate I" are corrected to read: "and by revising paragraph (c) of the clause and removing the first sentence of paragraph (c) of the Alternate I and adding two new sentences".

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: November 22, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 89–27841 Filed 11–29–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 11]

RIN 2127–AC53

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice further delays the effectiveness of the downward torque deflection requirements for external mechanical aiming of replaceable bulb headlamps (paragraph S7.5.5.1(a)), from December 1, 1989, to September 1, 1990. It is occasioned by comments in response to a request published on August 1, 1989 (54 FR 31687).

EFFECTIVE DATE: The rule establishing a new effective date of September 1, 1990, is effective November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202–366–5280).

SUPPLEMENTARY INFORMATION: NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, on May 9, 1989 (54 FR 20066). With the exception of two requirements for equipment marking, the amendments became effective 30 days after their publication in the Federal Register.

With respect to the May 1989 amendments, the Managing Director of NHTSA announced that "Because of the need to relieve design restrictions and encourage innovation", good cause had been shown for an effective date earlier than 180 days after issuance of the rule, and that the effective date would be 30 days after publication. General Motors (GM) submitted a petition for reconsideration noting that paragraph S7.7.5.1(a) did not relieve design restrictions or encourage innovation for replaceable bulb headlamps. Instead, its downward torque deflection test imposed a new requirement for systems of replaceable bulb headlamps (though such a test has been applicable for some time to sealed beam headlamps). GM further argued that imposition of the requirement without sufficient lead time for manufacturers to design, validate, and adopt product changes is not in the public interest. It asked that an effective date of December 1, 1989, be established for the downward torque deflection requirements of paragraph S7.7.5.1(a) applicable to replaceable bulb headlamps. NHTSA granted its petition, and published an interim final rule amending paragraph S7.7.5.1(a) to specify an effective date of December 1, 1989 with respect to headlighting systems designed to conform to paragraph S7.5 (replaceable bulb headlamps) (54 FR 31687).

The notice of the interim final rule also asked for comments on whether the duration of the suspension of the effectiveness should be longer or shorter than December 1, 1989. Six comments were received in response to this request, from General Motors Corporation (GM), Volkswagen of America (VW), Chrysler Motors, Robert Bosch, GMBH, Koito Manufacturing Co., Ltd., and Motor Vehicle Manufacturers Association (MVMA).

These comments addressed not only the effective date but also the requirement itself. Chrysler believes that the requirement is premature until an appropriate test procedure has been developed, and incorporated into the standard. Koito requested that test procedures, especially regarding deflectometers, should be clarified to ensure repeatability of test results between differing laboratories. MVMA submitted a similar comment. The agency concurs in these comments. This issue will be addressed in detail in a forthcoming notice responding to petitions for reconsideration of the May 1989 amendments. However, the agency does not concur with comments that the effective date should be suspended until the procedures have been implemented. Instead, it has decided to further postpone the effective date until a time subsequent to the amendments that will be made in response to the petitions for reconsideration, and in accordance with the comments received in response to the interim final rule.

The effective date of December 1, 1989, was supported by GM, who had requested it, and MVMA. As noted above, Chrysler viewed any effective date as premature until acceptable test procedures are established. Bosch opposed it on the ground that not all its headlighting systems complied with the requirement, and insufficient time remained to achieve compliance. It suggested making the requirement applicable "only to new designs which come into series production after December 1, 1989." VW asked that the effectiveness be deffered until September 1, 1990, to allow engineering changes necessary to conformance of certain Audi models that do not comply with S7.7.5.1(a), and could not comply by December 1, 1989. It supports the September date as consistent with model year timing considerations. Koito recommended that the requirement apply only to "new vehicle models and that those should be limited for new vehicle models to be introduced on or after 1991." In response to these comments, the agency is further deferring the effective date of the requirement to September 1, 1990.

The publication of this rule affects none of the impacts of the final rule as discussed in the May 9, 1989 notice adopting amendments to Standard No. 108, or the Federalism assessment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. In the last sentence of section S7.7.5.1(a), the date "December 1, 1989" is revised to read "September 1, 1990".

Issued on November 27, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–28000 Filed 11–27–89; 11:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 665

[Docket No. 89–B]

RIN 2132–AA36

Bus Testing Program; Reopening of Comment Period

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: On August 23, 1989, the Urban Mass Transportation Administration published interim procedures for its bus testing facility program. On behalf of the industry, the American Public Transit Association (APTA) has requested an extension of the comment period. UMTA agrees that additional time for comments would be helpful. Since the comment period ended on November 21, 1989, this document reopens the comment period for 90 days.

DATES: Comments must be submitted by February 28, 1990.

ADDRESSES: Comments should be addressed to: Urban Mass Transportation Administration, Department of Transportation, Office of Chief Counsel, Docket 89–B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366–0090; for legal issues, Daniel Duff or Susan Schruth, Office of Chief Counsel (202) 366–4011.

SUPPLEMENTARY INFORMATION: On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no

funds appropriated or made available under the Urban Mass Transportation Act, as amended, after September 30, 1989, may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

At the time of the proposal, the agency indicated that it would issue interim procedures for the bus testing facility program in advance of final program regulations. On August 23, 1989, the agency issued these interim procedures to ensure timely implementation of STURAA's bus testing requirements.

Comments on the interim procedures were due on November 21, 1989. However, the American Public Transit Association had requested that UMTA extended this comment period for 90 days.

This bus testing program raises many complex issues. As we noted in the interim final rule, UMTA will consider all issues anew in the development of the final rule. Because this program is new in both type and scope for UMTA grantees, the agency believes it should give commenters maximum opportunity to comment.

Accordingly, in response to APTA's request and in view of the complex nature of this program, the agency has found reasonable cause for reopening the comment period of UMTA Docket 89–B until February 28, 1990.

Issued: November 24, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89–28062 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 81133–9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery closure.

SUMMARY: NOAA issues this notice to close the Nantucket Shoals Area surf clam fishery for the remainder of the 1989 fishing year. This action is required to prevent significant overharvest of the annual surf clam quota for that fishery. The intended effect is to provide brief advance notice of closure and then prohibit further harvest of the resource.

EFFECTIVE DATE: 0001 hours, December 1, 1989.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, telephone 508–281–9252.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(d) a provision requiring the Secretary of Commerce to close any of the regulated fisheries if the Regional Director upon review of available information, including current and expected levels of fishing effort, determines that the fishery quota will be exceeded.

Landings for 1989 consistently have exceeded quarterly quotas established for the area. The expectation that harvest rates would decrease during the last quarter, as was experienced in the 1988 fishery, did not occur. The increased catch rates were further compounded by the closure (54 FR 33700, August 16, 1989 and 54 FR 47364, November 14, 1989) of the Georges Bank Area to the harvest of surf clams after paralytic shellfish poisoning was discovered to be present in surf clams. The closure increased effort in the Nantucket Shoals Area when vessels that normally would have worked the Georges Bank Area chose to work the Nantucket Shoals Area. Landings exceeded 50 percent of the fourth quarter quota on October 20, 1989, and it was necessary to impose trip landing limits in the Nantucket Shoals Area fishery (54 FR 47682, November 16, 1989) to slow the rate of harvest to match the remaining quota available.

Landings through November 17, 1989, totalled 203,000 bushels out of a total annual quota of 200,000 bushels mandating the Secretary to take action to close the area. A reporting lag also has been experienced for this fishery and the amount of overharvest may be significant. Any amount of quota overharvested during the 1989 fishery will be used to adjust the 1990 Nantucket Shoals Area quota by subtracting that amount from the annual quota and proportionately from the quarterly quotas as specified in § 652.21(b)(3).

The fishery will reopen on December 31, 1989, with the beginning of the new fishing year.

Other Matters

This action is taken under the authority of 50 CFR part 652 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 1989.

Alan Dean Parsons,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–28033 Filed 11–29–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 90407–9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective at 1:01 p.m., Alaska Standard Time on November 27, 1989. Comments will be accepted through December 12, 1989.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be deliverd to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Initial specification for DAH, DAP (domestic annual processing), and JVP for 1989 were published at 54 FR 3608. The same notice established a 15 percent non-specific reserve and then apportioned amounts from that reserve to JVP in order to provide bycatch amounts for JVP fisheries.

JVP amounts of Bering Sea subarea pollock, yellowfin sole, other flounders, Pacific cod, and rock sole were increased on September 3, 1989 (54 FR 37112, September 7, 1989) based on new information about DAP potential. On September 16 (54 FR 38686, September 20, 1989) the DAP for Atka mackerel was supplemented by 3,043 mt of the non-specific reserve. On October 6 the DAP for Greenland turbot was supplemented by 1,200 mt and the JVP for arrowtooth flounder was supplemented by 2,000 mt from the non-specific reserve (54 FR 41977, October 13, 1989). On October 31, the DAPs for sablefish in the Bering Sea subarea and the Aleutian Island area subarea were supplemented by 420 mt and 510 mt, respectively, from the non-specific reserve (54 FR 46619, November 6, 1989).

On October 13, the Region completed a reanalysis of DAP pollock needs for 1989. The Region concluded that DAP Bering Sea subarea pollock would require supplementation by 21,000 mt before the end of the year, leaving only 6,000 mt in the non-specific reserve for possible transfer to JVP; and that 9,000 mt of DAP Aleutian subarea pollock, as well as 2,018 mt in the non-specific reserve, was excess to DAP needs. On November 9 (54 FR 47684, November 16, 1989), 4,500 mt of Aleutian Island subarea pollock DAP was reapportioned to JVP, and 2,500 of the non-specific reserve was transferred to the JVP for Bering Sea subarea pollock.

On November 9 (54 FR 47684), receipt by foreign vessels of pollock taken in directed fisheries in the Bering Sea subarea was prohibited. Later, joint venture representatives were advised by letter that the amount of pollock available for JVP in the Aleutian Islands subarea would be taken on November 19, and foreign vessels could no longer receive pollock after that date. This reapportionment of pollock to JVP rescinds those notices.

Reapportionment

The following actions listed in Table 1 are taken by this notice to apportion groundfish from the non-specific reserve to the BSA JVP: An amount identified as excess to DAP needs for Bering Sea subarea pollock, 3,500 mt, is apportioned to JVP for Bering Sea subarea for pollock, an amount identified as excess to DAP needs for Aleutian Islands subarea pollock, 2,518 mt, is apportioned to JVP for Aleutian Islands subarea for pollock. Also, 4,000 mt identified as excess to DAP needs for Aleutian Islands subarea pollock is transferred to the JVP for Aleutian Islands subarea for pollock. Therefore, pollock in the JVP fishery of the Aleutian Islands subarea is increased by a total of 6,518 mt.

In addition, JVP fisheries have experienced higher than anticipated catches of squid and "other species." Rather than require these categories to be discarded, as would occur if their JVP quotas were reached, the JVP for squid is increased by 100 mt and that of "other species" by 500 mt, both by transferring said amounts from DAP. In both cases these amounts are excess to DAP needs in 1989.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would be required to terminate a fishery earlier than necessary. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea)	DAP	1,045,585		1,045,585
TAC=ABC=1,340,000	JVP	269,915	+3,500	273,415
Pollock (Aleutian Is)	DAP	6,932	−4,000	2,932
TAC=13,450 ABC=117,900	JVP	4,500	+6,518	11,018
Squid	DAP	850	−100	750
TAC=1,000 ABC=10,000	JVP	75	+100	175
Other species	DAP	11,274	−500	10,774
TAC=13,264 ABC=59,000	JVP	4,500	+500	5,000
Total (TAC=2,000,000)	DAP	1,345,986	−4,600	1,341,386
	JVP	611,639	+10,618	622,257
	RESERVES	42,374	−6,018	36,356

[FR Doc. 89–28142 Filed 11–27–89; 5:11 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 229
Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-210-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires operational testing of fuel boost pump bypass valves, and provides an optional terminating modification. This action would require a one-time inspection of the bypass valves on airplanes that have been modified, and further modification, if necessary; and modification of those airplanes that have not been modified. This proposal is prompted by reports of unacceptable preloading in the fuel scavenge system components on airplanes on which the optional modification was accomplished. This condition, if not corrected, could lead to fuel line stress fractures causing fuel leakage within the main wing tanks, which could result in engine(s) power loss due to fuel starvation.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-1969.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-210-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 21, 1988, the FAA issued AD 88-01-06-R1, Amendment 39-5990 (53 FR 28859; August 1, 1988), to require operational testing of the fuel boost pump bypass values to remove accumulated water which could freeze and render the bypass value inoperative. That amendment allows optional termination of the required operational testing if certain fuel system modifications, described in Boeing Alert Service Bulletin 737-28A1072, Revisions 2 or 3, are incorporated.

Since issuance of that AD, certain operators have reported that after incorporation of the terminating modification (detailed in the above Boeing Service Bulletin revisions), incidents of unacceptable preloading in the fuel scavenge system components have occurred on certain airplanes identified in the previously mentioned alert service bulletin as Group 1. This preloading condition, if not corrected, could lead to fuel line stress fractures causing fuel leakage withn the main wing tanks, which could result in engine(s) power loss due to fuel starvation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1072, Revision 4, dated August 7, 1989, which describes a modification to the fuel scavenge system components which prevents the accumulation of water and eliminates the potential for fuel tube preloading.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-01-06-R1 with a new airworthiness directive that would require a one-time inspection of the bypass valves on airplanes that have been modified in accordance with paragraph B. of AD 88-01-06-R1, to determine if preloading of the fuel scavenge system exists, and modification, if necessary. This proposal would also require all unmodified airplanes currently subject to the repetitive operational tests required by paragraph A. of AD 88-01-06-R1, to install the modification described in Revision 4 of the alert service bulletin; this modificatin would constitute terminating action for the repetitive operational tests.

There are approximately 500 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no cost for modification parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $152,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is detemined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 39-88-01-06-R1, Amendment 39-5990 (53 FR 28859; August 1, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-28A1072, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine fuel starvation resulting from main wing tank fuel scavenge system stress fractures or fuel boost pump bypass valves freezing, accomplish the following:

A. Prior to the accumulation of 150 flight hours after January 27, 1988 (the effective date of Amendment 39-5823, AD 88-01-06), and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737-28A1072, dated August 17, 1987.

B. The operational tests required by paragraph A., above, may be terminated when the fuel system modifications, detailed in Boeing Service Bulletin 737-28A1072, Revision 2, dated February 16, 1988, or Revision 3, dated October 6, 1988, are installed.

C. For airplanes modified in accordance with paragraph B., above: Within one year after the effective date of this amendment, conduct an inspection of the fuel scavenge system for preloading, in accordance with Boeing Alert Service Bulletin 737-28A1072, Revision 4, dated August 7, 1989. If preloading is discovered in the fuel scavenge system, prior to further flight, modify in accordance with that service bulletin.

D. For all other airplanes: Within one year after the effective date of this amendment, modify the fuel boost pump bypass valves system in accordance with Boeing Alert Service Bulletin 737-28A1072, Revision 4, dated August 7, 1989. This modification constitutes terminating action for the repetitive operational tests required by paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28009 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-227-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8 series airplanes, which would require modification of the emergency lighting system. This proposal is prompted by reports that certain elements of the emergency lighting system fail to illuminate automatically when normal (i.e., the engine-driven generators) electric power is lost. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-227-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cuneo, Systems and Equipment Branch, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–227–AD. The post card will be date/time stamped and returned to the commenter.

Discussion

There have been reports that the emergency lighting system on the de Havilland Model DHC–8 series airplanes will not come on automatically if generator electric power (defined as "normal" electric power) is lost, as long as the right battery provides power to the right essential bus. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8–33–17, dated August 25, 1989, which describes procedures for relocating the emergency lights circuit breaker from the right essential bus to the right secondary bus.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the emergency lighting system in accordance with the service bulletin previously described.

It is estimated that 64 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Boeing of Canada, LTD., De Havilland Division Applies to de Havilland Model DHC–8 series airplanes, Serial Numbers 1 through 179, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To ensure the proper operation of the emergency lighting system when required, accomplish the following:

A. Relocate the emergency lights circuit breaker on the circuit breaker panel from the right essential bus to the right secondary bus and terminate a wire, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin No. 8–33–17, dated August 25, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on November 17, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28011 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–132–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 Series Airplanes, Serial Numbers 3 Through 119, Inclusive, With Modification No. 8/0467 Incorporated, and Equipped With Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8–410–3, 8–410–04, or 8–410–05

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM), reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 series airplanes, that would have required a modification of the landing gear control system which would terminate the need for certain pre-flight procedures required by an existing AD. This amended proposal would add Model DHC–8–103 series airplanes and a Proximity Switch Electronic Control Unit (PSEU) part number to the applicability statement, and would cite the latest revision to the service bulletin as the appropriate service information.

DATES: Comments must be received no later than January 9, 1990.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–132–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE–173, FAA New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposal rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt for their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–132–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations, which would have revised AD 88–03–51, Amendment 39–5868 (53 FR 7348; March 8, 1988) to require modification of the landing gear control system on de Havilland Model DHC–8–100 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 17, 1989 (54 FR 33934). That NPRM was prompted by the development of a modification which includes certain wiring changes to make the operation of the landing gear selector value and the opening of the landing gear doors independent of the Promimity Switch Electronic Unit (PSEU). This modification, if accomplished, terminates the need for a pre-flight check procedure of the nose gear cockpit indication system, required by AD 88–03–51.

A commenter suggested that the applicability of the rule include Model DHC–8–103 series airplanes, and airplanes equipped with Eldec PSEU Part Number 8–410–05. The FAA concurs that the addition of those airplanes is appropriate since those airplanes are subject to the same unsafe condition addressed in the Notice. The proposed applicability statement has been revised accordingly.

Further, since issuance of the Notice, de Havilland has released Service Bulletin 8–32–70, Revision B, dated December 2, 1988, which revises the effectivity to include Model DHC–8–103 series airplanes. Accordingly, the FAA amended the proposed rule to cite the latest revision to the service bulletin as the appropriate service information source.

Since the changes described above would expand the scope of the proposed rule, the FAA has determined that it is necessary to revise the Notice accordingly and provide additional time for public comment.

Currently, no additional airplanes of U.S. registry would be affected by this AD, besides the original 42 specified in the Notice. However, should a de Havilland Model DHC–8–103 series airplane be imported and placed on the U.S. register, it would take approximately 40 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. The modification kits will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on any affected U.S. operator is estimated to be $1,600 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained and the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket No. 89–NM–132–AD, FR Doc. 89–19281, published in the **Federal Register** on August 17, 1989 (54 FR 33934), as follows:

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC–8–100 series airplanes, Serial Numbers 3 through 119, inclusive, with Modification No. 8/0467 incorporated, and equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8–410–03, 8–410–04, or 8–410–05, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the following:

A. Within 24 hours after March 25, 1988 (the effective date of AD 88–03–51) add the following to the Limitations Section of the Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM:

"1. Perform the following check prior to each flight. This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch—"OFF"

b. Anti-skid switch—"ON"

c. Check that inboard and outboard anti-skid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears the fault."

"2. While performing the 'After Take Off' and 'Approach' procedures:

a. Monitor the landing gear indication system during landing gear retraction and extension.

b. If there is any irregularity in gear indication or operation at any time throughout the flight, the gear must be confirmed DOWN AND LOCKED using the alternate down-lock verification system, irrespective of gear DOWN AND LOCKED (green) indication on the normal landing gear indicating system."

B. Any in-flight landing gear irregularity must be corrected prior to further flight.

C. Within 60 days after the effective date of this amendment, modify the landing gear control system, in accordance with de Havilland Service Bulletin 8–32–70, Revision B, dated December 2, 1988. This modification constitutes terminating action for the requirements of paragraphs A. and B. of this AD, and the revised operating procedures may be moved from the AFM.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada Ltd, de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28012 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–13

14 CFR Part 39

[Docket No. 89–NM–216–AD]

Airworthiness Directives, British Aerospace Model BAe 146–200A and 300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–200A and –300A series airplanes, which would require modification of the fuselage rear section. This proposal is prompted by reports of a riveting deficiency during modification of Stringer 21P in the area where it is attached to the lower left-hand skin panel. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–216–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–216–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 146–200A and –300A series airplanes. British Aerospace (BAe) Modification HCM00737A was installed on certain BAe 146–200A and –300A series airplanes during production. BAe has now determined that rivets needed to attach the aft end of Stringer 21P to the fuselage skin were omitted from the modification. Accordingly, Stringer 21P has not been adequately riveted at its aft end termination area which is in the vicinity of fuselage frame 39X.

British Aerospace has issued Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989, which describes procedures for modification of the fuselage rear section. This modification adds eight rivet positions to the stringer end termination area which completes stringer-to-skin panel riveting. The United Kingdom CAA has classified this service bulletin as mandatory, and has issued Airworthiness Directive 005–07–89 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design and registered in the United States, an AD is proposed which would require modification of the fuselage rear section in accordance with the service bulletin previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of the government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146–200A and –300A series airplanes, as listed in British Aerospace Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989, certificated in any category. Compliance is required prior to the accumulation of 3,000 landings since new, or within 30 days after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Modify the fuselage rear section by adding eight rivets to the Stringer 21P end termination area, in accordance with British Aerospace Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28010 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ACE–34]

Proposed Alteration of Transition Area—Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Aurora, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure at the Aurora, Nebraska, Municipal Airport utilizing the Aurora nondirectional radio beacon (NDB) as a navigational aid.

DATES: Comments must be received on or before December 29, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All

communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communciations must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.161 of the Federal Aviation Regulations (14 CFR part 71) to alter the 700-foot transition area at Aurora, Nebraska. The NDB at Aurora, Nebraska, has been relocated due to a runaway extension. Accordingly, the FAA is developing a new instrument approach procedure utilizing the Aurora NDB as a navigational aid. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Aurora, Nebraska, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft, using the approach procedure under Instrument Flight Rules (IFR) from other aircraft operating under Visual Flight Rules (VFR). Section 71.161 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation— (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the crtieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Aurora, Nebraska [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of Aurora Municipal Airport (lat. 40°53'39"N., long. 97°59'39"W.) and within 2 miles each side of the 110° radial of the Grand Island VOR, extending from the 5-mile radius to 7 miles west of the airport, excluding that portion which overlies the Grand Island, NE, transition area and within 3 miles each side of the 360° bearing from the Aurora, NE, NDB (lat. 40°53'33"N., long. 97°59'49"W.) extending from the 5-mile radius to 8.5 miles north of the airport.

Issued in Kansas City, Missouri, on November 14, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 89–28014 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–48]

Proposed Revision of Transition Area; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Ada, OK. The development of a new VOR/DME RWY 17 standard instrument approach procedure (SIAP), utilizing the Ada Very High Frequency Omnidirectional Radio Range (VOR), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP to the Ada Municipal Airport.

DATE: Comments must be received on or before January 24, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.161 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Ada, OK. The development of a new VOR/DME RWY 17 SIAP to the Ada Municipal Airport, utilizing the Ada VOR, has necessitated the proposal. This proposal would reduce the radius of the existing transition area from 9 miles to 6.5 miles and would create an arrival extension to the north. The current transition area is too large for the type of aircraft which use the Ada Municipal Airport. The intended effect of this proposal is to release to the public that controlled airspace which is no longer required, but will provide adequate controlled airspace for aircraft executing all the SIAP's which serve the Ada Municipal Airport. Section 71.161 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ada, OK [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ada Municipal Airport (latitude 34°48'20"N., longitude 96°40'14"W.), and within 3.5 miles each side of the 355° radial of the Ada VOR (latitude 34°48'09"N., longitude 96°40'12"W.) north of the Ada Municipal Airport.

Issued in Fort Worth, TX on November 16, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–28013 Filed 11–29–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Request for public comment.

SUMMARY: Having satisfied the requirements of the Act in regard to abandoned coal mine reclamation, the State of Louisiana requests certification to proceed with noncoal reclamation projects as provided for under section 409 of title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1202 *et. seq.*).

This notice sets forth the times and locations for the public to submit written comments or to meet and discuss the request with Office of Surface Mining Reclamation and Enforcement (OSM) representatives or request public meetings.

DATES: OSM will accept written comments on the proposed rule until 4:30 p.m. c.s.t. on January 2, 1990.

Upon request, OSM will hold a public hearing on the proposed rule on December 20, 1989, beginning at 9 a.m. c.s.t. The public hearing will be held at the location shown under **"ADDRESSES"** below.

OSM will accept requests for a public hearing until 4:30 p.m. c.s.t. on December 15, 1989. If no person has contacted OSM by that date to express an interest in testifying at the hearing, it will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, or hand-delivered to the same address.

If requested, a public hearing will be held at the Tulsa Field Office of the Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550.

Requests for a public hearing should be made by contacting the individual listed under **"FOR FURTHER INFORMATION CONTACT."**

Copies of the Louisiana AMLR program and the request for certification are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

Louisiana Department of Natural Resources, Office of Conservation, 625 North 4th Street, Baton Rouge, Louisiana 70804; Telephone (504) 342–5558.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 L Street NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581–6430.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95–87, 30 U.S.C. 1201 *et seq.*,

establishes an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

Each State having within its border coal-mined lands eligible for reclamation under title IV of SMCRA, may submit to the Secretary of the Interior a State Reclamation Plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM on an annual basis an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved State reclamation plan. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR part 886. AMLR funds are to be utilized to address the problems caused by past mining in the following order: First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining. Certain noncoal-mining-related problems may also be addressed at the same time if they involve direct threats to the public health and safety. Second, following the completion of all coal-related impacts, a State program may then direct its efforts to alleviating the problems caused by all other types of mining. Finally, when all coal- and noncoal-related impacts have been addressed, and if certain other conditions set forth in section 402(g)(2) of SMCRA are satisfied, AMLR funds may be used for construction of specific public facilities in communities impacted by coal mining development.

The Louisiana Reclamation Plan, as submitted on February 3, 1986, was approved effective December 10, 1986 (51 FR 40795). Since this approval, the State has inspected all known or suspected coal-related sites in a 24-parish area of north Louisiana. No coal-related problem sites were identified that would qualify as eligible for funding under the AMLR program. The State has developed an inventory of all noncoal-related problem areas in the 24 parishes having known coal reserves under cooperative agreements with OSM.

II. Discussion of Proposed Action

The Commissioner of the Louisiana Office of Conservation notified OSM by letter on June 12, 1989, (Administrative Record No. LAML-22) that the State has no known coal-related problems eligible for funding under Section 404 of SMCRA and stated that any unforeseen coal problems that might arise will be addressed as funds are available.

Once a State has reclaimed all lands adversely impacted by past coal mining, SMCRA provides that a State may utilize its AMLR funds to address problems caused by noncoal mining. To confirm the State's assertion that there are no existing coal-related problems to be addressed by the State and, thereby, allow unrestricted use of AMLR funds for noncoal purposes, OSM is seeking public comments and information concerning any known or suspected unreclaimed lands and water resources in the State that may have been adversely affected by coal-mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

If no past coal-mining problems eligible for funding under Section 404 of SMCRA are identified through this process, the Secretary is authorized to allow the State to address noncoal problems as set forth in 30 CFR part 875. Such noncoal reclamation activities, however, may occur with one condition; that is, if a coal problem occurs or is identified some time in the future, the State must seek immediate funding for reclaiming that problem. In the event of certification by the Secretary, the State has agreed to this condition.

To assist in its analysis of Louisiana's grant application and the proposed plan for funding future coal-related problems, OSM solicits comments on all relevant economic, environmental, and legal issues involving the reclamation of lands adversely affected by past coal mining practices and the State's request to fund noncoal projects.

Lists of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 17, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-28080 Filed 11-29-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8-85-21]

Anchorage Grounds; Galveston Harbor, Bolivar Roads Channel, TX

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is amending the anchorage regulations for Galveston Harbor by creating an anchorage for temporary use by shallow draft vessels and designating the present anchorage for deep draft vessel use only.

DATE: Comments must be received on or before January 16, 1990.

ADDRESS: Comments should be mailed to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1209 at the above address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: LTJG J.D. Irino, Project Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, Tel. (504) 589-6234.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD8-85-21, the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG J.D. Irino, Project Officer, c/o Commander, Eighth Coast Guard District Aids to Navigation Branch and CDR J.A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Coast Guard received a recommendation from the Houston/Galveston Navigation Safety Advisory Committee to enlarge and change anchorage regulations for the Bolivar Roads Anchorage. This committee represents a broad spectrum of waterway users in the area. A notice of proposed rulemaking was published on January 9, 1988 (51 FR 991). However, no final regulatory action was taken. The Coast Guard is now reconsidering the proposal. The proposed regulations are necessary to provide a safe haven for shallow draft vessels and to ensure sufficient anchorage space is available for deep draft vessels. The impact of the regulation is expected to be minimal.

Economic Assessment and Certification

The changes to the regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that further evaluation is unnecessary. The added length is not expected to have any significant effect on navigation and therefore it is determined that the impact will be minimal.

Since the impact of this change is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 110.197 is revised to read as follows:

§ 110.197 Galveston Harbor, Bolivar Roads Channel, Texas.

(a) The Anchorage area. The area in Bolivar Roads bounded to the south by the north channel edge extending west from latitude 29°20'48" N., longitude 94°42'54" W., approximate position of Buoy "10"; thence to latitude 29°20'43" N., longitude 94°44'46.5" W., approximate position of Buoy "12"; thence to latitude 29°20'37" N., longitude 94°46'08" W., approximate position of Buoy "16"; thence 023 °T to a point, latitude 29°21'14" N., longitude 94°45'50" W.; thence 089 °T to latitude 29°21'15" N., longitude 94°44'27" W., approximate position of Buoy "B"; thence 97 °T latitude 29°21'05" N., longitude 94°42'52" W. approximate position of Buoy "A"; thence 187.5 °T to the point of beginning.

(b) The regulations. (1) The anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and other conditions favorable to the resumption of their voyages.

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in the anchorage eastward of a line between Buoy "B" and Buoy "12" for periods exceeding 48 hours unless expressly authorized by the Captain of the Port to anchor for such longer periods.

(3) No vessel with a draft of less than 22 feet may occupy the anchorage eastward of a line between Buoy "B" and Buoy "12" without prior approval of the Captain of the Port.

(4) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from available anchorage spaces.

(5) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(6) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(3) of this section.

(7) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(8) Whenever the maritime or commercial interests of the United States so require, the Captian of the Port, or his authorized representative, is hereby empowered to shift the position of any vessel anchored or moored within the anchorage area.

Dated: November 17, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-27974 Filed 11-29-89; 8:45 am]

BILLING CODE [illegible]

33 CFR Part 117

[CGD1 89-132]

Drawbridge Operation Regulations; Eel Pond Channel, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Town of Falmouth Department of Public Works, the Coast Guard is considering a change to the regulations governing the Eel Pond (Water Street) drawbridge across the Eel Pond Channel, at mile 0.0, at Falmouth, Massachusetts by permitting the number of openings to be limited to the hour and half hour during daylight hours from 15 May through 14 October and by requiring advance notice, all the time on, Christmas, New Years, Easter, all Sundays in January and February and year-round during evening hours. This proposal is being made in an effort to reduce traffic during the summer months and to incorporate operating procedures that have been unofficially being implemented by the Town of Falmouth. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073.

The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting

comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and LT. John B. Gately, project attorney.

Discussion of Proposed Regulation

This drawbridge provides a vertical clearance of 8 feet at mean high water and 10 feet at mean low water. The bridge presently opens on signal during daylight as follows: (1) October 15 to May 14 from 8 a.m. to 5 p.m.; (2) May 15 to June 14 and September 16 to October 14 from 7 a.m. to 7 p.m.; and (3) June 15 to September 15 from 6 a.m. to 9 p.m. At all other times the bridge is not manned and only opens on advance notice. However, title 33 Code of the Federal Regulation part 117 and Coast Guard records do not reflect that any special regulations were ever officially issued. Therefore, the present regulations are that, at all times, the draw shall open on signal.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the fact that the Town Engineer had contacted the marina's and facilities upstream of the bridge and all indicated no objection. Additionally, marine traffic will still be able to transit the waterway, however, they will have to plan their movements to conform to the opening schedule. Since several companies and facilities have offices on either side of the river, it will facilitate their predestrian traffic getting between offices. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.698 is added to read as follows:

§ 117.698 Eel Pond Channel.

The following requirement apply to the draw of Eel Pond (Water Street) drawbridge at mile 0.0 at Falmouth, Massachusetts.

(a) The draw shall open at all times as soon as possible for a public vessel of the United States, State or Local vessels used for public safety, and vessels in distress. The opening signal for these vessels shall be four or more short blast of a whistle, horn, or radio request.

(b) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(c) The draw shall operate as follows:

(1) On signal from October 15 through May 14, from 8 a.m. to 5 p.m. except as provided in paragraph (c)(3) and (i) of this section.

(2) Need open on signal only on the hour and half hour as follows:

(i) From May 15 through June 14 and from September 16 through October 14, from 7 a.m. to 7 p.m.

(ii) From June 15 through September 15, from 6 a.m. to 9 p.m.

(3) The draw shall open on signal if at least 8 hours advance notice is given:

(i) At all times on Christmas, New Years, Easter and all Sundays in January and February.

(ii) At all other times not stipulated in paragraph (c)(1) and (c)(2) of this section.

Dated: November 20, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard; Commander, First Coast Guard District.

[FR Doc. 89-27975 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

36 CFR Ch. VII

National Film Preservation Board; Proposed Guidelines for the Labeling and Use of the Seal for Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice of proposed guidelines is issued to inform the public that the Librarian of Congress pursuant to section 3 of Public Law 100-446, The National Film Preservation Act of 1988, 2 USC 178, and pursuant to the rule-making procedures provided in subchapter II of chapter 5 of title 5, United States Code, known as the Administrative Procedures Act, publishes the following proposals for public comment:

(1) The first twenty-five films selected for inclusion in the National Film Registry; and

(2) The following general guidelines issued for the benefit of film owners and distributors in order to determine whether a version of a film registered on the National Film Registry which is in their possession has been materially altered. Films which are materially altered require a label to that effect, and films not materially altered may carry a specially designed seal of the National Film Registry.

DATES: Comments should be received on or before January 16, 1990.

ADDRESSES: Copies of written comments on these proposed guidelines should be addressed to: Dr. James H. Billington, Librarian of Congress, The National Film Registry, The Library of Congress, Washington, D.C. 20540, Attention: Eric Schwartz, Counsel. Telephone inquiries: (202) 707-8350.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

SUPPLEMENTARY INFORMATION:

Previous Action

Under section 3(a)(1) of the National Film Preservation Act of 1988 (hereafter, "the act"), the Librarian is required to (A) establish criteria for guidelines pursuant to which such films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first theatrical release; and (B) establish a procedure whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry. In the Federal Register of February 13, 1989, the Librarian issued *"Proposed Guidelines for the Selection of Films and Proposed Procedures for the Public Participation in the Selection of Films."*

Those guidelines were printed in the Federal Register subject to 30 days of public comment. One public comment was received during that period. Those guidelines will be issued in final form at a later date and at the same time that today's labeling guidelines and the list of the first twenty-five films are printed in the Federal Register in final form. Only then will the labeling guidelines and the use of the seal of the National Film Registry attach to the films listed below.

Proposed Films Selected and Proposed Guidelines

Proposed Films Selected for Inclusion in the National Film Registry

Under section 3(a)(2)(A) of the Act, the Librarian after consultation with the Board shall determine "which films satisfy the criteria developed pursuant to paragraph 3(a)(1)(A) and qualify to be included in the National Film Registry" and shall select no more than twenty-five films per year for inclusion in such Registry.

The National Film Preservation Board received 962 film titles for nomination from the general public and reduced the list to twenty-five titles for consideration by the Librarian of Congress after meeting on July 19, 1989 in Los Angeles, in an open session and in an executive session.

The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board announces the following are his nominations for the twenty-five selected for incusion in the National Film Registry for 1989 subject to public comment for a period to end on January 16, 1990:

(1) The Best Years Of Our Lives (1946)
(2) Casablanca (1942)
(3) Citizen Kane (1941)
(4) The Crowd (1928)
(5) Dr. Strangelove (or, How I Learned To Stop Worrying And Love the Bomb) (1964)
(6) The General (1927)
(7) Gone With the Wind (1939)
(8) The Grapes of Wrath (1940)
(9) High Noon (1952)
(10) Intolerance (1916)
(11) The Learning Tree (1969)
(12) The Maltese Falcon (1941)
(13) Mr. Smith Goes to Washington (1939)
(14) Modern Times (1936)
(15) Nanook Of The North (1922)
(16) On The Waterfront (1954)
(17) The Searchers (1956)
(18) Singin' In The Rain (1952)
(19) Snow White And The Seven Dwarfs (1937)
(20) Some Like It Hot (1959)
(21) Star Wars (1977)
(22) Sunrise (1927)
(23) Sunset Boulevard (1950)
(24) Vertigo (1958)
(25) The Wizard Of Oz (1939)

Proposed Labeling Guidelines

In accordance with section 3(a)(1)(C) of the Act, the Librarian shall "establish general guidelines so that film owners and distributors are able to determine whether a version of a film registered on the National Film Registry which is in their possession has been materially altered." These guidelines are only to apply to the twenty-five films selected for inclusion in the National Registry, listed above. The labeling requirements under the law are not effective until 45 days after publication of the twenty-five films and the labeling in final form in the Federal Register. A date certain will be specified when the guidelines are issued in final form.

In addition, in accordance with section 3(a)(2)(C), the Librarian shall "provide a seal to indicate that the film has been included in the National Film Registry as an enduring part of our national cultural heritage and such seal may then be used in the promotion of any version of such film that has not been materially altered." A seal has been designed for these purposes and will be made availble to copyright owners, exhibitors and distributors, when the labeling guidelines are made final. Under the law, any of the twenty-five films selected for the National Film Registry can carry either the seal or the labeling requirement but not both, depending on whether or not a particular vesion of any of the twenty-five films has been "materially altered" within the definition provided in section 11. Materially altered films *must* carry the label, and films not materially altered may carry the seal.

The approach of Congress under the Act was to leave unaffected the law governing the actual practices of colorizing or otherwise changing motion pictures from their original theatrical release to other formats for television, cable, videocassette or any other type of broadcast or distribution. The Act neither prevents nor inhibits any practices with regard to altering motion pictures. It requires only a public disclosure of such practices being applied to copies of films selected for inclusion in the National Film Registry, through a labeling requirement. Copies of films not "materially altered" can carry the seal of the National Film Registry.

After the twenty-five films are selected, labels must be attached to all copies of these twenty-five films which are either (1) colorized or (2) materially altered. Anyone who "knowingly distributes or exhibits to the public" a materially altered (including colorized) copy of the film without the required label, or with the seal of the National Film Registry, is subject to the civil and criminal penalties under the law.

The label that is attached to colorized or materially altered copies of the film is specified in the law. Neither the Librarian nor the Board can change the label that must be attached to these films. Only Congress can change the label by amending the law.

The Act, at section 4(d), sets out two labels (one for colorized films, the other for materially altered versions other than colorized ones) and specifies their placement and size. The labels are to read:

For colorized films—"This is a colorized version of a film originally marketed and distributed to the public in black and white. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film."

For materially altered films—"This is a materially altered version of the film originally marketed and distributed to the public. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film."

For copies of films that have been both, colorized and otherwise materially altered, the law requires that both labels appear. Also, in cases where the film has been materially altered or colorized with the participation of the principal director, screenwriter or other creators of the original film, the law does not allow flexibility and the relevant label above, must be affixed to the film.

The Act imposes the duty of affixing the appropriate label to copies of the

film upon the copyright owners, distributors, exhibitors and/or broadcasters, and gives the same entities the option of applying the seal of the National Film Registry, where appropriate. Many industries which distribute and exhibit films are affected by the labeling requirements and the use of the seal. They include, but are not limited to: Broadcast and cable television (and other transmissions, such as satellite, pay per view etc.), the rental and sale videocassette markets (including other formats like laser disks etc.) theatrical exhibitors and the airlines.

When the final guidelines are issued for the labeling requirements and the use of the seal, they are to apply retroactively to all copies of the twenty-five selected films whenever they are distributed or exhibited. However, there are provisions in the law (at sections 4 and 13) for all copies of films intended for home use, through either retail sale or rental, to exclude them from the labeling and seal requirements if they have already been packaged for distribution or in the case of videocassettes only, if they are in the inventory of a manufacturer or packager, or have already been distributed to retail or wholesale distributors before the effective date of the labeling guidelines.

The Act specifically directs the Librarian, after consultation with the Board, to issue "labeling guidelines." The authority of the Librarian is obviously constrained by the provisions of the National Film Preservation Act as a whole. The guidelines issued by the Librarian cannot exceed the plain language of the Act nor the underlying intent of Congress.

The law is only concerned with fundamental post-production alternations to films for marketing purposes. The "base line" copy of a particular film that all other copies are measured against is the first theatrically released version. The duties imposed by the Act apply only to versions embodying fundamental changes made subsequent to the first theatrical release.

The staff of the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress will answer inquires based on their research, as to what the "original" (first theatrically released) version is for each of the twenty-five films. In this regard, the Library will solicit the assistance of the copyright owners to provide research materials indicating the running time and contents of the first theatrical release for each of the twenty-five selected films.

This descriptive information concerning the first theatrical release version will be made available to copyright owners, exhibitors and distributors. Copyright owners, exhibitors and distributors will be able to call the Library at (202) 707–5840 for this information. The Librarian welcomes comments on the most effective way to provide this information, and the form it should take, for the benefit of copyright owners, exhibitors and distributors. Ultimately it is the responsibility of the copyright owners, exhibitors and distributors to decide whether or not a copy of film within their possession must carry the label or can carry the seal of the National Film Registry.

The seal of the National Film Registry, designed by the Librarian of Congress will be made available to film owners, exhibitors and distributors for placement on their copies of the twenty-five films. Copies of the seal will be made available from the National Film Registry at the Library of Congress in Washington, DC when the final labeling guidelines are issued. The Librarian of Congress welcomes comments on the most efficient way to make this historic seal available.

Section 11 of the law defines "material alteration" to mean "to colorize or to make other fundamental post-production changes in a version of a film for marketing purposes but does not include changes made in accordance with customary practices and standards and reasonable requirements of preparing a work for distribution or broadcast."

Section 11 goes on to add two additional definitions for further clarification. To colorize means "to add color, by whatever means, to versions of motion pictures originally produced, marketed, or distributed in black and white." And finally, under section 11(b), "excluded from the definition of 'material alteration' are practices such as the insertion of commercials and public service announcements for television broadcast."

Since many of the practices are unfamiliar to the general public, the following definitions are provided for purposes of illustration:

(a) Colorization (also known as computer color encoding): This is a process by which black and white film prints are transferred to videotape and electronically encoded with color. The film print itself cannot be colored by existing computer technologies, only by chemical processes such as tinting (the addition of a single color for effect).

(b) Panning and scanning: This is a process by which motion pictures, composed for viewing on theatre screens, are adapted for viewing on television screens (including videocassetts). This process involves reconciling the larger theatrical "aspect ratio" (ratio of width to height) to the smaller space available on a television screen.

(c) Letterboxing: This technique is an alternative to panning and scanning and permits the original composition of a theatrical motion picture to be retained on television (including videocassettes) by reducing the size of the image. Because the entire televison screen is not used, letterboxing requires dark bands at the top and bottom of the screen.

(d) Lexiconning (also known as time compression/time expansion): This technology involves the electronic time compression or expansion of a motion picture in order to fit the picture into broadcast time slots (or to reduce the running time on videocassettes).

(e) Computer generation of images: This new technology allows for computer created life-like representations of people (or anything else) to be substituted or added onto videotapes of preexisting motion pictures.

Meeting of the National Film Preservation Board

On September 26, 1989 the National Film Preservation Board met for the third and final time this fiscal year at the Library of Congress, to discuss the labeling guidelines, found in section 3 of the Act.

The Board discussed specific practices used in the post-production and dissemination of motion pictures. The Board agreed by a 9-3 vote (with one member absent from the vote) on a motion recommending that the Librarian's labeling guidelines require labeling of films in all cases except where a film is edited for "standards and practices" (nudity, language or violence) or for the insertion of commercials or public service announcements. The Board also discussed the preferred use of the seal only in those limited cases where there was no labeling requirement. There were diferences of opinion among the Board members about the application of the "material alteration" definition in section 11 and the practices Congress intended to include and exclude from the labeling requirements and the use of the seal.

Proposed Procedures for the Labeling of the Twenty-Five Films Selected for Inclusion in the National Film Registry and the Placement of the Seal of the National Film Registry on These Films

The interpretation of congressional intent with regard to the definition of "material alteration" at section 11 is important for two reasons—the ability to place the seal of the National Film Registry on one of the twenty-five films and the labeling requirements. The Librarian issues the following information in two forms:

(1) The Librarian's encouraged usage of the label and the seal; and

(2) The proposed guidelines which encompass what is required by the law for the labeling and use of the seal, under the Librarian's interpretation of the law.

Only the proposed guidelines will invoke the civil and criminal penalties at sections 5 and 6. Both the encouraged uses, and the required uses, only apply to "material alteration" as defined in the National Film Preservation Act and therefore only to the twenty-five films a year included in the National Film Registry. The Librarian has no jurisdiction over any films other than the twenty-five and the Librarian does not feel it is appropriate to discuss labeling films in any other context, except as required by the National Film Preservation Act.

The Librarian Encourages the Following Usages of the Seal and "Material Alteration" Labels

The Librarian encourages a more limited usage of the seal, and broader usage of a label which informs the public that the version of the film they are viewing is different, in some way, from the original theatrical release. This encouraged use of a label and the seal meets the Congress' finding that the films selected for inclusion in the National Film Registry are works of American art, deserving of protection in their "original" form. It is important for the viewer to be made aware that versions of motion pictures after the first theatrical release are often changed in one way or another—especially in light of the special status reserved for the films selected for the National Film Registry. This is the Librarian's encouraged use of the seal and a label for the public's benefit, but it is not what is required by Congress under the Act.

The Librarian's encouraged usage of the seal and the labeling guidelines are consistent with the recommendations of the National Film Preservation Board. They are not inconsistent with the requirements of the law because they are simply recommendations, not requirements for film owners, distributors and exhibitors.

It is the Librarian's hope that only the original theatrical release or a version with the minimal amount of changes would carry the seal of the National Film Registry because this would inform the viewing public that they are seeing the "original." Changes that are made in the motion pictures and broadcast industries are necessary for the dissemination of works to the widest possible audience. In some cases, these changes are done without the consent of the creative artists who created them and the public should, where possible, be made aware of this. The Librarian is aware of the need to make some changes for the so-called "after markets" for films in order to provide the widest possible dissemination of the film to the viewing public.

Although copyright owners and distributors are entitled by law to use the seal of the National Film Registry without complying with the Librarian's encouraged uses, that is, where changes have been made to films, the Librarian believes it is in the spirit of the law that those using the seal under these conditions must inform their viewers that changes have been made. In fact, it would be contrary to the spirit of the law to use the seal of the National Film Registry and not clearly indicate to the viewing public that changes have been made in the copy of the film they are watching.

The Librarian Therefore Encourages the Use of the Seal of the National Film Registry for Each of the Twenty-Five Selected Films

(1) For copies of films as exhibited in their original theatrical release;

(2) For copies of films that are *not* changed by the following technical processes:

(i) Colorization;

(ii) Panning and scanning;

(iii) Time compression or time expansion;

(iv) Removal of materials by editing out scenes;

(v) Substitution of materials, including new soundtracks;

(vi) Any mutilation, physical defacement or destruction of a copy of a film;

(vii) Any fundamental changes in theme, plot and character including the technological substitution of characters' bodies and faces, or new images etched directly on previouly released films.

(3) The Librarian's encouraged use of the seal would not apply to:

(i) Copies of films in which production materials including soundtracks, have been enhanced during good faith restoration activities in order to repair damages or deterioration;

(ii) Where commercials or public service announcements have been inserted for broadcast television, or where materials have been removed for "community standards" regarding nudity, langauge or violence for broadcast television or airline use;

(4) Letterboxed versions of films for television or videotape would be encouraged, where possible, as an alternative to panning and scanning;

(5) In all cases, where the Librarian cannot encourage the placement of the seal for the above reasons, the Librarian would encourage the insertion of a label which informs the public that changes have been made from the original theatrical release.

Proposed Guidelines

The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, which met in an open session, on July 19, 1989 in Los Angeles, and on September 26, 1989 in Washington, DC, announces the following are subject to public comment for a period to end on January 16, 1990:

Proposed Guidelines for the Seal and the Labeling Requirements

(1) The following practices are examples of fundamental post-production changes deemed "material alterations" under section 11 of Public Law 100–446. Copies of films in the National Film Registry which use these practices would be subject to the labeling requirements set forth in section 4 of the Act, and are prevented from using the seal of the National Film Registry:

(a) Colorization, including any black and white film or portions thereof, to which color is added by whatever means;

(b) Fundamental changes in theme, plot and character, including:

(i) Technological substitution of characters' bodies and faces or life-like characters who ae modeled after known personalities;

(ii) The addition of any other new materials, by digital or other technological means, into preexisting films including the substitution of a new soundtrack (but not the remixing or remastering of a preexisting soundtrack);

(c) Removal of materials (editing out) for all purposes including broadcast time slots or for other marketing or aesthetic purposes. However, there are two exceptions to this rule, which are not "material alterations:"

(i) The removal of materials for community standards and practices, including nudity, profane language or explicit violence for broadcast television and airline use;

(ii) The inadvertent or unavoidable loss of de minimis amounts of material due to repeated uses of a particular copy, for example, by splicing and breakage;

(d) Time compression and time expansion (lexiconning) of over x%* of the total running time of the film, or where it is clearly perceptible to the average viewer that the action has been altered;

*[For this particular technology, the Librarian asks for comments from the industry on the percentage of the overall running time of a film which would be considered a reasonable requirement of preparing a work for distribution or broadcast within the meaning of the Act at section 11. In particular, information would be helpful regarding the common practices and average uses of this particular technology in the exhibition and distribution of works.]

(e) Any intentional mutilations or defacements of the actual film, such as the defacing of a negative by purposefully scratching a new image over an old image;

(2) The following practices are examples of fundamental post-production changes that are not "material alterations" under section 11 of Public Law 100-446. Copies of films in the National Film Registry which use these practices would not be subject to the labeling requirements set forth in section 4 of the Act, and would be allowed to use the seal of the National Film Registry. However, these practices must be carried out in a manner which is reasonable and customary in the motion picture or broadcast industry measured at the time the particular work is distributed, exhibited or broadcast:

(a) The insertion of commercials and public service announcements for broadcast television purposes only, including station promotion material and similar materials;

(b) The physical transference of film onto videotape, including panning and scanning for all films orginally prepared in aspect ratios of 1.85:1 or less. For films originally prepared in aspect ratios over 1.85:1, any panning and scanning that makes changes clearly perceptible to the average viewer that the action has been altered, would be a "material alteration" subject to the labeling requirements and prevented from use of the seal of the National Film Registry;

(c) The removal or insertion of materials necessary in the preparation of films for foreign markets by dubbing, subtitling or editing for foreign censors or for foreign marketing purposes;

(d) The use of any practice, including those listed above in paragraphs (1) (a) through (e), carried out as part of any good faith restoration in order to repair damages or deterioration to the film or soundtrack;

Dated: November 21, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-27784 Filed 11-29-89; 8:45 am]

BILLING CODE 1410-07-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF HEALTH AND HUMAN SERVICES

38 CFR Part 17

RIN 2900-AC31

Contract Medical Care; Non-Federal Hospital Payment/Reimbursement Rates

AGENCIES: Department of Veterans Affairs and Department of Health and Human Services.

ACTION: Proposed regulations; reopen comment period.

SUMMARY: The Department of Veterans Affairs (VA) is reopening the comment period on its Contract Medical Care proposed rule in response to comments received from the Maryland Hospital Association and members of the Maryland Congressional Delegation. The effect of this reopening is to allow further comment on the issue raised by the association and Congressional delegation.

DATES: Written comments must be received on or before January 2, 1990. Comments will be available for public inspection until January 9, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections, to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief Policies and Procedures Division, Medical Administration Service, Veterans Health Services and Research Administration, (202) 233-2504.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 25, 1988 (53 FR 47726), the Department of Veterans Affairs (VA) and the Department of Health and Human Services (HHS) proposed to amend VA's medical series of regulations to carry out provisions of Public Law 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. This authority requires VA to publish regulations in conjunction with HHS describing the payment methodology and amounts for non-Federal public and private hospital care provided at VA expense. Payment methodology and amounts are to be based generally on rates allowed by Medicare under the Prospective Payment System (PPS) for similar services to Medicare beneficiaries. The comment period for the proposed regulations ended January 4, 1989. After the close of the comment period, the Maryland Hospital Association and members of the Maryland Congressional Delegation submitted comments requesting that any State payment system granted a Federal waiver for the purposes of Medicare reimbursement automatically be exempted from the proposed VA system.

Currently, there are two alternative systems recognized by the Medicare program under the provisions of 42 U.S.C. 1395f(b)(3) and 42 U.S.C. 1395ww(c). Under the Maryland system, each payor pays hospitals on the basis of charges approved by the Maryland Health Services Cost Review Commission. The charges are established at levels designed to meet individual hospital's revenue needs. Under the Finger Lakes System, each payor's rate is determined by assigning to each payor a share of each hospital's predetermined revenue cap. This cap is, in turn, based on prior year cost data trended forward to the current year. We wish to consider this issue. Therefore, we are including the comments of the Maryland Hospital Association and the Maryland Congressional Delegation in the rulemaking record and are reopening the comment period for 30 days solely for the purpose of receiving comments concerning this issue. Comments concerning any other issue will not be considered.

Approved: October 3, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Dated: November 13, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 89-28068 Filed 11-29-89; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 54, No. 229
Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of Sugar Import Quota Amount

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice increases the quota for imports of sugars, syrups, and molasses described in Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), during the quota period January 1, 1989 through September 30, 1990, from 1,955,932 metric tons, raw value, to 2,229,612 metric tons, raw value. This increase of the sugar import quota is appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, issued May 5, 1982, amended Headnote 3 of subpart A, part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) in part to authorize the Secetary of Agriculture to establish the total amount of sugar that may be imported during any quota period and to amend the quota period for sugar imported into the United States. Effective January 1, 1989, Headnote 3 was repealed, and Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the Untied States (HTS) was enacted in its place. Paragraph (d) of Additional U.S. Note 3 authorizes the Secretary of Agricutlure to "amend quantitative limitations (including the time period for which such limitations are applicable) which have previously been established." On September 12, 1989, the Secretary of Agriculture established the current quota period of January 1, 1989 through September 30, 1990 and a quota level of 1,955,932 metric tons, raw value. (54 FR 38258)

On June 22, 1989, the GATT Council adopted the report of the panel which examined U.S. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to Chapter 17 are inconsistent with the General Agreement. The Council requested the United States to either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture established a Taskforce to develop options for implementing U.S. law with respect to imports of sugar in a manner consistent with our GATT obligations. The Taskforce and other appropriate Government agencies are now formulating and evaluating these options.

In the interim and since no clear alternative has yet been decided upon, modification of the quota amount gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Notice

Notice is hereby given that I have determined, in accordance with Additional U.S. Note 3 to Chapter 17 of the (HTS) (Note 3), that the total amount of sugars, syrups, and molasses described in subhearings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40, and 2106.90.10 of the HTS which may be entered or withdrawn from warehouse for consumption during the current sugar import quota period January 1, 1989 through September 30, 1990 is increased to 2,229,612 metric tons, raw value. Of the 2,229,612 metric tons, raw value, 1,815 metric tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Note 3; 2,115,000 metric tons, raw value are reserved as the total base quota amount of purposes of paragraph (c)(i) of Note 3; and 112,797 metric tons, raw value are reserved as a quota adjustment amount to be allocated by the United States Trade Representative.

I have also determined that this modification of the quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC on November 24, 1989.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 89-27956 Filed 11-24-89; 3:05 pm]
BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

[Docket No. 89-153]

Availability of Model State Program for Poultry Disease Prevention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a Model State Program for Poultry Disease Prevention is available to be used as a guide by States in developing uniform poultry disease prevention measures. This voluntary program provides a uniform system for preventing poultry disease outbreaks and for preventing the spread of these diseases should they occur.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, Swine, Poultry, and Miscellaneous Diseases Staff; VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7768.

SUPPLEMENTARY INFORMATION: During the 1970's and 1980's, exotic Newcastle disease and avian influenza (H5N2) struck the poultry industry in the United States, resulting in the loss of approximately 30 million birds and millions of dollars in losses for the poultry industry. Additional millions were spent by State governments and the poultry industry to eradicate these two diseases.

Following these losses, a cooperative effort was launched by industry, the research community, and State and Federal governments to develop a system that could be used by industry and States to help prevent a recurrence of these and other poultry diseases, and to prevent the spread of poultry diseases should they occur. The system they developed is called the Model State Program for Poultry Disease Prevention.

The Model State Program for Poultry Disease Prevention is designed to promote uniform standards for poultry disease prevention and control in participating States. Uniform standards ensure that participating States will make certain minimal poultry disease prevention, detection, and control efforts. This system will provide States with a mechanism for moving unprocessed poultry products with minimal restrictions.

The Model State Program for Poultry Disease Prevention does not emphasize vaccination and medication as primary strategies for preventing and controlling poultry disease. Instead, it emphasizes sanitation, isolation of flocks during rearing, adequate surveillance, early detection of disease, and prevention of disease spread.

By participating in the Model State Program for Poultry Disease Prevention, a State will enhance the marketability of unprocessed poultry products produced in that State, particularly during those periods when poultry disease outbreaks are occurring in that State or surrounding States.

These unprocessed poultry products will have enhanced marketability because buyers of those products will know that the products were produced in a State that has a system for controlling poultry disease.

Authority: 7 U.S.C. 429.

Done in Washington, DC, this 27th day of November 1989.

William F. Helms,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-28064 Filed 11-29-89; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Mount Shasta Ski Area; Intent To Prepare a Supplement to an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Supplement to the Environmental Impact Statement for the Mount Shasta Ski Area, Siskiyou County, California, filed September 1988. The Supplement will consider reasonable alternatives to the proposed development at the Mt. Shasta Ski Area site, including the possibility of development to the extent of the proposed site's ski area capacity. The Supplement will also consider the impacts of reasonably foreseeable development of nearby private land, including possible development of a Lemuria Village, even though the timing, nature and extent of any development is uncertain.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Supplement to Duane Lyon, MSSA Team Leader, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001. Telephone (916) 246-5499.

Responsible Official: Robert R. Tyrrel, Forest Supervisor, Shasta-Trinty National Forests, 2400 Washington Avenue, Redding, California is the responsible official.

SUPPLEMENTARY INFORMATION:

The Forest Service prepared an Environmental Assessment (EA) on Mount Shasta Ski Area development in 1984 in response to public interest for downhill skiing on the mountain. The EA examined some locations which had been identified in previous studies. Based on the EA, a decision was made to allocate a total of 1,885 acres on the south slope of Mount Shasta to skiing. In October 1984, a prospectus was issued for a downhill ski development on Mount Shasta. Under terms of use offered through the prospectus, Phase I of the facility would serve a minimum of 1,200 skiers at one time. Ultimately, the facilities could be expanded to serve about 5,000 skiers at one time at the end of Phase III.

A proposal submitted by Mount Shasta Ski Area, Inc. was seleced. The site-specific Environmental Assessment addressing Phase I of the development plan was completed in March 1986 and a decision was made by the Forest Supervisor to implement the proposed action. That decision was appealed to the Regional Forester and subsequently remanded to the Forest Supervisor with direction to prepare an Environmental Impact Statement (EIS) covering all phases of the project. The EIS was completed in 1988 and a decision was made to select an alternative that would result in a medium size ski area of 4,800 skiers at-one-time at build-out. A Special Use Permit was issued to Mt. Shasta Ski Area, Inc. for a development to be constructed in three phases. The decision, based on the EIS, was appealed to the Regional Forester who subsequently affirmed the Forest Supervisor's decision. Appeals of that decision were filed with the Chief of the Forest Service.

In October 1989, the Chief reversed and remanded the Forest Supervisor's decision on two of the 12 issues raised by the appellants. The Chief did not rule on the merits of the proposal. The Chief directed that a supplement to the EIS be prepared that considers reasonable alternative sites to the proposed action and considers impacts from reasonably foreseeable development on nearby private land. These issues will be the focus of this Supplement.

The draft SEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the winter of 1989-90. At that time EPA will publish a notice of availability of the draft SEIS in the **Federal Register.**

Public participation will be especially important during the comment period on the draft SEIS. The comment period on the draft SEIS will be 45 days from the date of the notice of availability appears in the **Federal Register.** To be most helpful, comments should be as specific as possible. In addition, federal court decisions have established that those who wish to participate in the process must do so in a meaningful way that alerts the agency to their position. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft Supplement stage may be waived if not raised until after the final Supplement. *City of Angoon* v. *Hodel* 803 F.2d 1016 (9th Cir., 1986), and *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them.

After the comment period ends on the draft SEIS, the comments will be analyzed and considered by the Forest Service in preparing the final SEIS. The Final SEIS is scheduled to be completed by May 1990. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: November 21, 1989.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 89-27977 Filed 11-29-89; 8:45 am]

BILLING CODE 3410-11-M

Mt. Ashland Ski Development Plan; Intention To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District, Rogue River National Forest, Jackson County, Oregon. Notice of intent to prepare an EIS was published in the Federal Register February 28, 1987 (52 FR 5793). The draft EIS was released for public comment in May 1987. The public comment period was extended and ended on July 6, 1987. The original notice of intent was revised January 4, 1989 (54 FR 184). Public comments on the draft EIS showed a need for additional site specific information and analysis. The public comments also indicated a need for further review of the proposal for cross-country skiing. The final EIS was not ready for release within the time specified in the January 4, 1989, revised notice. The final EIS is now scheduled to be completed in the spring, of 1990.

FOR FURTHER INFORMATION CONTACT: Mary Smelcer, District Ranger, Ashland Ranger District, Ashland, Oregon 97520; phone (503) 482-3333.

Dated: November 15, 1989.

Ron Ketchum,

Deputy Forest Supervisor.

[FR Doc. 89-28025 Filed 11-29-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 9132-01-et al.]

Export; Louis Tin-Yee Luk, et al.

Order

Having reviewed the record and based on the facts addressed in this case, I affirm the following Decision and Order of the Administrative Law Judge (ALJ).

I, however, do not agree with the reasoning furnished by the ALJ in denying the Agency Counsel's request for the imposition of a civil penalty with respect to respondents Wan and Ng. The ALJ found that there is a lack of jurisdiction to impose or collect a civil penalty against these two respondents. The record indicates that both respondents were served in accordance with the Export Administration Regulations.

The Export Administration Act, and the regulations to implement the Act, clearly provide the authority to impose civil penalties for violations of the United States export laws. *See* 50 U.S.C. App. 2410(c). As this Office has stated in other Orders on this matter, the authority to impose a civil penalty is vested irrespective of the nationality of the respondent or the feasibility of enforcing such a penalty. See In the Matter of Hendrick G. Wasmoeth, Docket No. 6674-01, March 19, 1987; In the Matter of Especialidades Industries Latino-Americanas, S.A., Docket No. 6683-01, June 26, 1987. Therefore, a civil penalty could be imposed against the Respondents, if the circumstances warranted such a sanction.

In light of the facts in this case, as well as the impending denial of export privileges against the Respondents, I agree with the penalty as imposed by the ALJ.

This Order constitutes final agency action in this matter.

Dated: November 22, 1989.

Joan M. McEntee,

Acting Under Secretary.

In the Matter of: Louis Tin-Yee Luk, Lily Monica Wan, individually and doing business as Generex Ltd., James Ng, individually and doing business as Generex Ltd. and Jonas Suet-Fai Leung, Respondents.

[Docket No. 9132-01, 9133-01, 9133-02, 9134-01, 9134-02, 9135-01]

Appearance for Respondents:
Louis Tin-Yee Luk, 125 Greenfield, Irvine, California 92715
Lily Monica Wan, 26 La Salle Road, Kowloon, Hong Kong.
James Ng, 1/E, 8th Floor, City Garden, 233 Electric Road, North Point, Hong Kong.
Generex Ltd., Room 703A, Federal Building, 369 Lockhart Road, Wan Chai, Hong Kong.
and
Jonas Suet-Fai Leung, 1511 Clark Street, Burbank, California 91505.

Appearance for Agency:
Thomas C. Barbour, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

In separate charging letters dated June 30, 1989, the Office of Export Enforcement alleged that the respondents, Louis Tin-Yee Luk (Luk), Lily Monica Wan (Wan), individually and doing business as Generex Ltd., James Ng (Ng), individually and doing business as Generex Ltd., and Jonas Suet-Fai Leung (Leung) conspired amongst themselves, and with Wai Man Chung [1] and others to violate the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the Act), [2] and the Regulations. It is alleged that the purpose of the conspiracy was to export U.S.-origin computer equipment from the United States to Hong Kong without first obtaining the validated export license required by § 772.1 of the Regulations. By participating in this conspiracy, it is alleged that each of the respondents committed one violation of § 787.3(b) of the Regulations.

The charging letter against Luk also alleged that, on four separate occasions, December 10, 1983, May 5, 1984, June 6, 1984 [3] and June 15, 1984, he exported or caused to be exported from the United States to Hong Kong, Aydin computer circuit boards without first obtaining the validated export licenses required by § 772.1 of the Regulations, thereby committing four separate violations of § 787.6 of the Regulations. It is further alleged that on or about October 23, 1984, Luk attempted to export, from the United States to Hong Kong, seven Aydin computer circuit boards without first obtaining the validated export license required by § 772.1 of the Regulations, thereby committing one violation of § 787.3(a) of the Regulations.

The charging letters against Wan, Ng and Leung alleged, in addition to the conspiracy set forth above, that the exports made by Luk were made in furtherance of the conspiracy. Therefore, it is alleged that each of the participants in the conspiracy (Wan, Ng, and Leung) also violated § 787.6 of the Regulations. The allegation is made that Wan and Ng

[1] On March 15, 1989, pursuant to a Consent Agreement the Acting Assistant Secretary for Export Enforcement entered an Order denying Chung all export privileges for five years, the last three years of which will be suspended 54 FR 12466 (March 27, 1989).

[2] The alleged violations occurred between July 14, 1983 and October 23, 1984. There were periods during that time when the Regulations were continued in effect by Executive Orders issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)). Between October 15, 1983 and December 4, 1983, and between March 31, 1984 and October 23, 1984, the Regulations were continued in effect by Executive Orders 12444 (50 FR 48215, October 18, 1984) and 12470 (49 FR 13099, April 3, 1984), respectively.

[3] Although the charging letter states that the export was made on June 6, 1984, the actual date of export was June 5, 1984.

each committed four separate violations of § 787.6 of the Regulations in connection with the exports which Luk made on December 10, 1983, May 5, 1984, June 6, 1984, and June 15, 1984. However, since it is acknowledged that, in March 1984, Leung withdrew from the conspiracy, he was charged with only one violation of § 787.6 of the Regulations, in connection with the export Luk made on December 10, 1983. The Respondents have failed to answer.

Because of the failure to answer, this office issued an Order, dated August 18, 1989, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by September 18, 1989, pursuant to § 788.8 of the Regulations, which provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency counsel filed the Motion for Default Order on September 15, 1989. The Agency also submitted documentary evidence to support allegations made in the charging letters. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on September 15, 1989, to which there has been no response. An order to show cause why a default adjudication should not issue was transmitted on September 18, 1989. The time to respond expired on October 18, 1989 without any such filing.

Facts

On July 14, 1983, respondents Luk and Leung, together with two other individuals, Wai Man Chung and Aaron Mak, established a company they called Mcall Resources. On July 15, 1983, James Ng, on behalf of Generex, Limited, Hong Kong, wrote Mcall to ask if Mcall would be its agent in the United States. On July 27, 1983, Luk, on behalf of Mcall, agreed to become Generex's purchasing agent in the United States.

On September 3, 1983, Ng asked Mcall for a price quotation for Aydin Controls computer circuit boards and accessories. On September 6, 1983, Mcall telexed a price quote for the requested equipment to Ng. On September 21, 1983, Wan placed a purchase order for the circuit boards with Mcall. A revised purchase order was submitted to Mcall on September 21, 1983. On September 24, 1983, Wan telexed Luk that she did not have the model number or series number for the Aydin computers for which she was ordering circuit boards but knew the computers had been purchased at the end of 1982.

On October 28, 1983, Mcall ordered from Aydin a complete Aydin 15/Series System. Mcall purchased the entire system because it was less expensive to take the circuit boards out of a complete system than to order each circuit board individually. Shortly thereafter, Luk advised Leung and Chung that he would hand-carry nine circuit boards to Hong Kong during a visit he had planned for December 1983. Wan telexed Luk on November 8, 1983, reminding him to "bring the [circuit boards] when you come in Dec." Further, on December 9, 1983, "Lily" requested confirmation from Luk "that you are hand carrying the [circuit boards]." There was some concern expressed by Leung and Chung that Luk would get caught if he hand-carried the circuit boards to Hong Kong.

As Luk admitted during the related criminal proceeding, on December 10, 1983,[4] he hand-carried the nine Aydin circuit boards from the United States to Hong Kong without obtaining the validated export license he knew was required for that export. Gov. Ex. 5 at p. 20. By invoice dated December 14, 1983, Mcall billed for the circuit boards, noting that payment of all but the delivery charges had been made on November 22, 1983. Gov. Ex. 21.

On February 16, 1984, Wan, on behalf of Generex, requested a price quotation from Luk for a variety of equipment, including fifteen Aydin Aycon 16/Series circuit boards and accessories. On February 22, 1984, Luk drafted a telex to Wan providing price quotations for the Aydin circuit boards.

On April 15, 1984, Luk telexed Generex to advise that Chung would be traveling to Hong Kong and could hand carry some Aydin circuit boards with him if an order were received before April 23, 1984. However, prior to his departure from the United States, Chung decided that he would not hand carry the Aydin circuit boards with him to Hong Kong. On May 7, 1984, Ng telexed Luk asking why Luk's partner, Chung, had not yet contacted him. On the same date, Luk cabled Ng and advised him that he, Luk, would send the Aydin parts to his father in Hong Kong "without export lic." Payment for this order was to be made to Luk's personal account.

On May 22, 1984, Luk telexed Wan and advised her that he had made a shipment to his father. In the criminal proceeding, Luk admitted that on May 22, 1984 he shipped "by U.S. Post Office" three Aydin boards to Hong Kong without obtaining the validated export license he knew was required for that export.

On June 4, 1984, Luk telexed Wan to advise her that she "should already receive 1st & 2nd shipment fr. my father." The total value for those two shipments was stated as being $11,245. On June 4, 1984, Luk prepared Mcall Invoice No. 001005 billing Nobletune[5] $11,245 for the shipment of various Aydin circuit boards. On June 15, 1984, Luk prepared Mcall invoice 001006 billing Generex for three Aydin parts, identified on the invoice as the third and fourth shipments, which were shipped "via UPS" to Nobletune. As noted above, in the criminal proceeding, Luk admitted that on June 5, 1984, he knowingly exported Aydin computer circuit boards to Hong Kong without the validated export licenses he knew were required for those exports.

Conclusion

The above facts demonstrate the involvement of these four respondents in the ordering, purchasing and exporting, from the United States to Hong Kong, of the Aydin circuit boards on which the allegations of the charging letters are based. These facts, coupled with Lux's admissions in the related criminal proceeding, also support a finding that these respondents conspired to violate the Act and the Regulations by exporting U.S.-origin equipment from the United States to Hong Kong without the validated export license required by § 722.1 of the Regulations. Further, the evidence supports a finding that the four illegal exports, which Luk admits that he made, were done in furtherance of the conspiracy.

The commodities illegally exported by respondents are controlled for reasons

[4] The facts alleged in the charging letter were admitted by Luk in a related criminal proceeding. On May 7, 1986, he was fined $50,000 and placed on probation for five years for these violations. Luk had entered a plea of guilty to counts one, seven, twelve, thirteen, fourteen and sixteen of the indictment returned against him.

The criminal proceeding including the guilty pleas provide a basis for finding that the facts as stated in the charging letter issued against Luk are true and that those facts support a finding that Luk committed the violations alleged. While Luk's criminal conviction does not collaterally estop the other respondents from disputing the facts to which Luk pled guilty, his factual statements in the criminal proceeding, coupled with the evidence received support my finding that the facts set forth in the charging letter issued against Wan, Ng and Leung are also true.

There is no explanation for the more than 3 year delay from the criminal conviction, nor for the more than 5 year delay from the occurrence of the acts involved.

[5] This company was not charged. Apparently, because it had ceased operations in 1984.

of national security. It has been stated that "this equipment had definite military application and little or no commercial use." From the evidence presented it is clear that respondents also had apparently anticipated that their business arrangement would result in significant amounts of U.S.-origin goods being exported from the United States to Hong Kong.

I find that an order denying export privilege for 10 years from the date of the final order should be entered with respect to respondents Luk, Wan, and Generex and for 5 years, the last 3 years of which are suspended, for Leung.[6]

The further reexport of these restricted pieces of equipment is a factor in aggravation further indicating a deliberate illegal scheme. I find that, as requested, an Order denying export privileges for the above stated periods from the date that a final order should be entered in this proceeding. Such action is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

Order

I. For the period indicated with respect to each Respondent, from the date of the final Agency action, Respondents

Louis Tin-Yee Luk (for 10 years)
125 Greenfield
Irvine, California 92715

Lily Monica Wan (for 10 years)
26 La Salle Road
Kowloon, Hong Kong

James Ng (for 10 years)
1/E, 8th Floor, City Garden
233 Electric Road
North Point, Hong Kong

Generex Ltd., (for 10 years)
Room 703A, Federal Building
369 Lockhart Road
Wan Chai, Hong Kong

and

Jonas Suet-Fai Leung (for 5 years, 3 years suspended)
1511 Clark Street
Burbank, California 91505

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing two years from the date of the final Agency action, the denial of export privileges relating to Jonas Suet-Fai Leung as set forth in Paragraph I above shall be suspended, in accordance with § 788.16 of the Regulations, for the remainder of the five year period set forth in paragraph I, and shall be terminated at the end of such period, provided that Respondent has committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the three year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United State or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended with respect to Respondent Suet-Fai Leung during such five-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 25, 1989.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-28071 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DT-M

[6] I decline to follow the recommendation of Agency Counsel to the extent that he urges that a civil penalty of $50,000 be imposed against Respondents Wan and Ng. This appears to be based on an attempt to obtain some equivalency of sanctions with the criminal fine imposed upon Respondent Luk. As I have previously observed, there is a lack of jurisdiction to impose or collect civil penalties upon persons not served or otherwise personally served within the United States. More significantly as pointed out in *Spawr*, Docket #1613 (August 29, 1989) the purpose of these administrative proceedings is not to punish but is rather aimed at obtaining compliance. Denial of export privileges accomplishes that purpose. The substantial penalty is not, in these circumstances a remedial approach or aimed at compliance but is a mimic of the criminal sanction imposed against Respondent Luk without a pretense of providing the constitutional protections afforded in the judicial criminal process.

Foreign-Trade Zones Board

[Order No. 450]

Resolution and Order Approving the Application of the Muskogee, City-County Port Authority for a Foreign-Trade Zone in Muskogee, OK

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Muskogee City-County Port Authority, filed with the Foreign-Trade Zones Board (the Board) on June 28, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Muskogee, Oklahoma, adjacent to the Tulsa Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrence of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Muskogee, Oklahoma Adjacent to the Tulsa Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the Unitd States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Muskogee City-County Port Authority (the Grantee) has made application (filed June 28, 1988, FTZ Docket 25–88, 53 FR 27069) in due and proper form to the Board, requesing the establishment, operation, and maintenance of a foreign-trade zone in Muskogee, Oklahoma, adjacent to the Tulsaa Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 164, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operations of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 17th day of November, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-28072 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 30-89]

Foreign-Trade Zone 84—Harris County, TX; Application for Subzone Zeon Synthetic Rubber Plant, Harris County

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, rquesting special-purpose subzone status for a new synthetic rubber manufacturing plant under construction by Zeon Chemical, Inc. (subsidiary of Nippon Zeon Co. Ltd., Japan), in Harris County, Texas, adjacent to the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 1989.

The new plant is being constructed on a 34-acre parcel located on Choate Road at State Route 146, within the Bayport

Industrial Development in Harris County. The facility will be used to process imported nitrile butadiene rubber (NBR), by hydrogenation to produce a patented form of hydrogenated NBR (Zetpol), which would be sold to producers of such products as automobile hoses, belts, and seals. Zeon will purchase the NBR from Japan. Zeon plans to export about half of the Zetpol made at the new Texas plant.

NBR from Japan is presently subject to an antidumping (AD) order (53 FR 22553, 6/16/88), but is otherwise duty-free. Zone procedures would exempt Zeon from the AD duties on NBR used in Zetpol that is exported. The company is not seeking exemption from AD duties on products shipped into the U.S. market. The application indicates zone savings will encourage the company to shift production to the United States from Japan.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057; and, Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77553.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 19, 1990.

A copy of the application is available for public inspection at each of following locations:

U.S. Department of Commerce, District Office, 2625 Federal Courthouse Building, 515 Rusk Street, Houston, Texas 77002;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: November 20, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-28073 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-357-007]

Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On July 3, 1989, the Department of Commerce published the preliminary results of its administrative review and tentative determination not to revoke in part the antidumping duty order on carbon steel wire rod from Argentina. The review covers one manufacturer/exporter of Argentine carbon steel wire rod to the United States, Acindar Industria Argentina de Aceros S.A., and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on our preliminary results of review and tentative determination not to revoke. We received no comments, and our final results are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Alfredo R. Montemayor or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 27921) the preliminary results of its administrative review and tentative determination not to revoke in part the antidumping duty order on carbon steel wire rod from Argentina. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod. During the review period, such merchandise was classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item numbers 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30 or 7213.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Acindar Industria Argentina de Aceros S.A. ("Acindar"), and the period November 1, 1987 through October 31, 1988. There were no known shipments by Acindar of this merchandise to the United States during the period and there are no known unliquidated entries.

Final Results of Review and Determination Not To Revoke in Part

We invited interested parties to comment on the preliminary results of review and tentative determination not to revoke in part. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review, and we determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Acindar	11/01/87-10/31/88	[1] 119.11

[1] No shipments during the period; margin from the antidumping duty order.

Further, we determine not to revoke in part the antidumping duty order.

As provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the above margin. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipment occurred after October 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 119.11 percent shall be required. These deposit requirements are effective for all shipments of Argentine carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and §§ 353.22 and 353.25 of the Commerce Regulations (54 FR 12778; March 28, 1989) (to be codified at 19 CFR 353.22 and 353.25).

Dated: November 16, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28074 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The review covers two manufacturers of this merchandise and the period December 1, 1986 through November 30, 1987. We preliminarily determine the dumping margins to range from zero to 2.77 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 51724) an antidumping duty order on cellular mobile telephones and subassemblies from Japan. Two respondents, Mitsubishi Electric Corporation ("MELCO") and Nihon Dengyo, requested in accordance with § 353.53a(a) of the Commerce regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 27, 1988 (53 FR 2262). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system to customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS") as provided for in section 1201 *et seq* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by this review are cellular mobile telephones ("CMTs"), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, *i.e.*, a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, *i.e.*, a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, *i.e.*, a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this antidumping duty order.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cutoff point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesize, duplexer, power supply, power amplification, transmitter and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than five dollars, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this order: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

During the review period, cellular mobile telephones and subassemblies were classified under items 685.28 and 685.33 of the Tariff Schedules of the United States. This merchandise is currently classified under HTS item numbers 8525.20.60, 8525.10.80, 8527.90.80, 8529.10.60, 8529.90.50, 8542.20.00, and 8542.80.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers of Japanese CMTs and subassemblies and the period December 1, 1986 through November 30, 1987.

United States Price

In calculating United States price and Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate.

Purchase price was based on the packed f.o.b. price to an unrelated purchaser in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight and insurance as well as Japanese brokerage fees. For ESP, we made further adjustments for ocean freight, marine insurance, U.S. brokerage/handling fees, U.S. inland freight, U.S. duties, discounts, rebates, commissions to unrelated parties, warranties, credit, selling expenses incurred in Japan and in the United States, internal taxes, and any increased value resulting from further processing in the United States.

Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price or constructed value, as defined in section 773 of the Tariff Act. Home market price was used when sufficient quantities of such or similar

merchandise were sold in the home market to provide a basis for comparison. Third country price was used when insufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When insufficient quantities of such or similar merchandise were sold in either the home market or third-countries, we used constructed value.

Home market and third-country prices were based on the packed delivered or ex-warehouse price to unrelated purchasers, with adjustments, where applicable, for inland freight and insurance, warranties and technical services, ocean freight and insurance, customs duty and brokerage, indirect selling expenses up to the amount of indirect selling expenses and commissions in the United States, third-country freight, internal third country taxes, credit, and differences in the cost of packing. No other adjustments were claimed or allowed.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included cost of materials, labor, and factory overhead in our calculations. Because MELCO's selling, general, and administrative ("SG&A") expenses were greater than the statutory minimum of ten percent of the cost of manufacture, we used MELCO's actual SG&A. For Nihon Dengyo, the statutory minimum of ten percent was used for SG&A. For both Nihon Dengyo and MELCO, we used the statutory minimum of eight percent for profit. To constructed value we added U.S. packaging and made further adjustments, where applicable, for indirect selling expenses and credit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period December 1, 1986 through November 30, 1987:

Manufacturer	Margin (percent)
MELCO	2.77
Nihon Dengyo	[redacted]

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 353.38(e) of the Commerce regulations (54 FR 12785; March 28, 1989) (to be codified at 19 CFR 353.38(e)). The Department will publish the final results of the administrative review including the results of its analysis of any such written comments or oral argument.

Representatives of interested parties may request disclosure of proprietary information under administrative protective order within 10 days of the date that the interested party becomes a party to the proceeding but in no event later than the date the case briefs are due.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for MELCO. Because there was no margin for Nihon Dengyo, no cash deposit will be required for this manufacturer.

For shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to each of those firms. For any further entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1987 and who is unrelated to any reviewed firm, a cash deposit of 2.77 percent shall be required. These deposit requirements are effective for all shipments of Japanese cellular mobile telephones and subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations).

Dated: November 20, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28075 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-402]

Lime From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On August 14, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on lime from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Holly Kuga, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 33264) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on lime from Mexico (49 FR 35672; September 11, 1984). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments from Mexico of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide [$Ca(OH)_2$], commonly called hydrated lime or hydrate. Through 1988, such merchandise was classifiable under item numbers 512.1100 and 512.1400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item numbers 2520.20.00, 2522.10.00 and 2522.30.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. On October 2, 1989, we received comments from petitioners, Chemical Lime—Southwest, Inc. and CHEMSTAR, Inc., and a respondent, Refractarios Basicos, S.A. ("REBASA"). On October 10, 1989, we received rebuttal comments from REBASA and Sonocal S.A., another respondent.

Comment 1: Petitioners claim that U.S. law does not require an injury determination in the circumstances of this case. At the time the investigation was conducted, the United States had no "international obligations" under section 303(a)(2) of the Tariff Act to provide an injury determination on duty-free lime from Mexico because Mexico was not a contracting party to the General Agreement on Tariffs and Trade ("GATT"). Article VI of the GATT contains no language requiring that subsequent injury reviews be conducted with respect to countervailing duty orders validly issued before a country accedes to the GATT, nor does any document associated with Mexico's GATT accession indicate that Mexico had the right to injury reviews of outstanding countervailing duty orders. A basic principle of statutory construction and of the interpretation of treaties requires that obligations be interpreted as having prospective effect, unless their terms clearly indicate that they are to apply retroactively.

Respondents reply that section 303(a)(2) directly parallels the operative language in Article VI by prohibiting the imposition of countervailing duties on duty-free merchandise, absent an affirmative injury determination by the International Trade Commission ("ITC") when the international obligations of the United States require such a determination on that merchandise. Lime from Mexico is duty free; Mexico became a contracting party to the GATT on August 24, 1986; and, the GATT is considered an international obligation within the meaning of section 303(a)(2). Therefore, effective August 24, 1988, lime from Mexico is entitled to an injury determination under U.S. law prior to the assessment of countervailing duties.

Sonocal also counters the assertion that the obligation for providing an injury determination is only prospective by arguing that the obligation embodied in section 303(a)(2) to make an injury determination is unconditionally established by reference to the imposition of duties. Neither the prior existence of an order nor the absence of a provision authorizing an injury investigation after the order has been issued affects the obligation under section 303(a)(2) not to levy countervailing duties in this case without an affirmative injury determination. By characterizing the obligation for an injury determination in this case as retroactive application of the statute and a violation of the principle of prospectivity, petitioners misstate the fundamental issue.

Department's Position: Section 303(a)(2), which extended section 303 to duty-free merchandise and provided for an injury determination to meet U.S. obligations under Article VI, proscribes the "imposition" of countervailing duties on duty-free merchandise in the absence of an injury determination only if such a determination is required by the "international obligations" of the United States. The issue of the United States' international obligations in this case, as a result of Mexico's accession to the GATT, turns on whether the requirement in Article VI for an injury determination prior to levying countervailing duties is a continuing obligation or a one-time provision that terminates with the issuance of a countervailing duty order. If the injury requirement in Article VI applies throughout the life of an order, the United States is under an international obligation to conduct an injury investigation in this case. If, on the other hand, the only test of the legitimacy of an order is whether it was in accordance with the international obligations of the United States at the time it was issued, then no subsequent obligation exists.

Mexico's rights under section 303(a)(2) rest exclusively on the proper interpretation of the term "imposed" and the nature of the United States' international obligations. Section 303(a)(2) uses "imposed" in the same fashion as Article VI uses the term "levy." By using the word "levy," the drafters of the GATT tied Article VI obligations to the act of collecting a countervailing duty.

Moreover, the legislative history of the Trade Agreements Act of 1979 speaks further to the general proposition that the United States is obligated to uphold the principles of the GATT in its domestic law. Given the general framework of Congressional acknowledgement of the GATT as an international agreement that must be adhered to in domestic law, the Department believes that providing for an injury determination in this case fulfills Congressional intent under the countervailing duty law.

Comment 3: Petitioners claim that the Department has deduced the requirement for an injury determination with respect to the outstanding order on lime from Mexico based on a single word, "levy," in Article VI. The Department's conclusion that "levy" means "assess" duties, thus creating an obligation to conduct an injury investigation on an order that was issued before any right to the injury test existed and in which no injury review is authorized by law, is a misreading of that provision. As used in Article VI, "levy" is merely a general reference to the overall process of imposing countervailing duties and not a specific step in that process, the actual assessment of duties. The definition of "levy" appears in a footnote to Article 4:2 of the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade" ("the Subsidies Code") and has meaning only as used in that context, to distinguish between provisional measures and the final assessment of countervailing duties. The definition does not govern, or have any special relevance to, interpreting the term in the context of Article VI. Thus, it does not have the far-reaching significance attributed to it by the Department.

Sonocal responds that the definition of "levy" cannot be restricted solely to the context of the Subsidies Code. The meaning of "levy" in Article VI is logically and properly found in the Subsidies Code, an international agreement concluded with the specific purpose of prescribing the interpretation and application of Article VI. Article VI states that no contracting party shall levy any countervailing duty on the products of another contracting party without a determination of injury and defines the right to an injury determination in absolute terms. The legislative history is also clear that Congress intended section 303(a)(2) to conform the countervailing duty law to Article VI. Consequently, there is no basis for inferring that the term "imposed" in section 303(a)(2) has any legal meaning independent of the term "levy" in Article VI or that a contracting party foregoes its right to an injury determination under Article VI because it became entitled to assert that right only after a countervailing duty order was issued. In fixing the point at which the right to an injury determination must

be accorded, Article VI refers only to the "levy" of duties.

Respondents assert that the term "levy" refers specifically to the final act of assessing countervailing duties. Thus, prior to Mexico's accession to the GATT, the Department was correct in assessing countervailing duties without an injury determination pursuant to section 303(a)(1). However, once Mexico became a contracting party to the GATT, Article VI became effective between the United States and Mexico, and section 303(a)(2) became the controlling statute. Thus, an affirmative injury determination by the ITC is a mandatory prerequisite to any assessment of countervailing duties on lime from Mexico subsequent to August 24, 1986. The exception for outstanding orders asserted by petitioners has no basis in Article VI or the countervailing duty law.

Department's Position: Although it is true that Article VI does not expressly define "levy," the word was used as it was commonly understood at the time, *i.e.*, "imposing and collection of a tax or other payment." Because Mexico's entitlement to an injury determination prescribed by Article VI arose when it became a contracting party to the GATT, the United States cannot collect countervailing duties absent an affirmative injury determination.

Comment 4: Petitioners argue that the precedents for revoking this order cited by the Department, "Indian Fasteners" and "Carbon Steel Wire Rod from Trinidad & Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19562; May 9, 1985) ("T & T Wire Rod") are inapplicable. These cases were wrongly decided because the United States' obligation under the GATT for providing an injury determination is prospective only and is required only with respect to investigations initiated after the change in status of the goods or the country involved. These cases also are distinguishable from this case because India and Trinidad & Tobago were contracting parties to the GATT when the countervailing duty investigations were conducted, whereas Mexico acceded to the GATT only after the order on lime was issued.

Respondents concur with the Department's reliance upon the "Indian Fasteners" and "T & T Wire Rod" precedents in making its determination to revoke this order and assert that petitioners have cited no legal precedent to contradict the Department's determinations in those cases. Even though the factual context in this case may be slightly different from the precedents cited, the legal ramifications are exactly the same; section 303(a)(2) applies to merchandise whenever both factual prerequisites (duty-free status and international obligations) exist and the order in which these prerequisites were met is a distinction without a difference.

Department's Position: We addressed the issue of prospective application of U.S. obligations under Article VI in our response to Comment 1 and stand by our reliance on the "Indian Fasteners" and "T & T Wire Rod" precedents.

In "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order" (47 FR 44129; October 6, 1982) ("Indian Fasteners"), the Department determined that "Congress intended 'impose' to mean 'levy,'" at the time section 303(a)(2) was enacted and that "the jury requirement extends beyond the issuance of the countervailing duty order throughout the life of an order whenever duties are assessed or collected." Accordingly, Article VI prohibits the United States from "imposing," or assessing, countervailing duties on lime from Mexcio unless there has been a determination that the imported goods are causing, or threatening to cause, material injury to a U.S. industry.

To argue, as petitioners have, that any obligations with respect to an injury determination terminates with issuance of an order, and that application of the injury requirements of Article VI to this case is a retroactive application of treaty obligations, overstates the significance of an order and misinterprets the nature of such obligations. Although the determinations regarding subsidies and injury (where the latter is required) are normally made prior to the issuance of a countervailing duty order, the one-time issuance of an order does not vitiate the continuing nature of the Article VI obligation. The GATT has always recognized that a contracting party has a continuing obligation to review and update the original determinations that resulted in the countervailing duty order; the issuance of an order does not establish a basis for collecting duties indefinitely. Under the U.S. countervailing duty law, administrative reviews are conducted periodically and countervailing duties assessed in accordance with U.S. obligations in effect at the time the subject merchandise entered into the United States. Thus, the United States is fully within its rights to collect countervailing duties on entries of lime from Mexico made on or before August 23, 1986. Only subsequent to Mexico's accession to the GATT, on August 24, 1986, did the legal prerequisites for an order issued on duty-free merchandise under section 303(a)(1) cease to exist in the absence of an injury determination, and the obligation for an injury determination arise.

Comment 2: Petitioners argue that GATT cannot provide an independent source of authority for an injury investigation in this case because, having never been ratified by Congress, the GATT has the status of an executive agreement that is inferior to subsequently enacted legislation. Since Article VI took effect with respect to the United States, Congress has enacted legislation providing for injury investigations and reviews in a wide variety of situations but has declined to authorize injury determinations in the circumstances of this case.

Sonocal replies that, in the case of the GATT, the President was authorized by Congress to enter into an international agreement, and the fact that Congress has not subsequently ratified the agreement does not in itself vitiate the agreement or preclude its enforcement in domestic law; executive agreements, like formal treaties, can be enforced as the supreme law of the land. Sonocal also points out that petitioners have acknowledged that section 303(a)(2) was enacted to satisfy U.S. obligations under Article VI. Finally, Sonocal asserts that where the specific purpose of a statute, as clearly established by its legislative history, is to give effect to an obligation contained in an international agreement to which the United States has acceded, one cannot conclude without any basis in the language of the statute that, in the process of implementing a GATT provision, Congress restricted the scope of U.S. obligations under that provision.

Department's Position: Since signing the GATT in 1948, the United States has consistently taken the position that it was required under international law to fulfill the obligations of that agreement. The United States has agreed to the Protocol Application and has undertaken numerous GATT obligations thereunder. The fact that Congress has authorized the President to enter into several rounds of trade negotiations under the auspices of the GATT also supports the view that the GATT was to be enforced as domestic law. The legislative history of section 303(a)(2) clearly indicates that the section was enacted to fulfill U.S. obligations under Article VI to provide for an injury determination on duty-free merchandise.

Comment 5: Petitioners argue, and respondents agree, that section 303(a)(2) of the Tariff Act specifies that any injury determination in this case must be conducted by the ITC pursuant to Title VII of the Tariff Act. The only provision of law that currently authorizes a post-order injury investigation, and thus the only potentially relevant provision of Title VII to this case, is a changed circumstances review under section 751(b) of the Tariff Act; this section authorizes such reviews by the ITC only in cases where the ITC has previously made an injury determination. However, the ITC has consistently held, and informed the Department in this case, that it lacks the statutory authority under section 751(b) or within the framework of the countervailing duty law to conduct a post-order injury investigation of an outstanding countervailing duty order issued without an ITC injury determination pursuant to section 303(a)(1).

Department's Position: We believe that in the circumstances of this case, it would be inappropriate for the Department to maintain the order or, as respondents would have it, revoke the order for want of a determination of the likely effects on a United States industry of revocation of the order. Although the language of section 303(a)(2) requires an injury investigation when our international obligations require it as a condition for collecting countervailing duties, the language referring to Title VII was added to the countervailing duty law in 1979, along with Title VII itself. Prior to 1979, section 303(b)(A), which has since been repealed, required the ITC to conduct "such investigation as it deemed necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States" in order to fulfill U.S. international obligations for an injury determination. The reference to Title VII in section 303(a)(2) reflects Congress' intention to conform section 303(a)(2) to the addition of Title VII, and the legislative history behind section 303(a)(2) indicates that Congress merely intended to accomplish a largely ministerial function in conforming the two portions of the new legislation. Accordingly, section 303(a)(2) does not contemplate conducting an injury investigation pursuant to a specific provision of the statute.

Congress has not specifically addressed the anomalous situation faced in this case. However, Congress made clear its intent to provide an injury determination for merchandise entered duty-free from a contracting party to the GATT in the legislative history of the Trade Act of 1974. *See*, S. Rep. No. 1298, 93d Cong., 2d Sess. 185. Given that we are faced with a circumstance that can best be described as a "gap" in the law, we are persuaded that the current procedure is appropriate in light of the settled principle of administrative law that where the intent and object of a statute are manifest, agency action consistent with the intent is a proper exercise of an agency's authority.

Comment 6: Petitioners assert that the ITC's section 332(g) investigation in this case was conducted under Title III of the Tariff Act, not Title VII, and that section 332(g) does not establish procedures or standards for injury investigations or authorize the ITC to make an injury determination of any kind.

Respondents agree with petitioners that the section 332(g) investigation conducted by the ITC in this case is not the legal equivalent to an injury investigation required as the result of section 303(a)(2). REBASA further argues that no provision of the countervailing duty law permits the Department to substitute a section 332(g) investigation conducted by the ITC as a proxy for the required material injury determination.

Department's Position: Under section 332(g), the President of the United States, through the United States Trade Representative ("USTR"), requested that the ITC "conduct an investigation into and report to the President on whether the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico . . . would be such that (1) an industry would be materially injured, or would be threatened with material injury or (2) the establishment of an industry in the United States would be materially retarded." *See, "Conditions of Competition Between U.S. and Mexican Lime in the United States Market"* (USITC Publication 2210 at page 1; August 1989) ("ITC report"). While section 332(g) does not establish procedures or standards for an injury determination, it is clear from USTR's request that the ITC was to conduct an investigation employing the same terms as a Title VII injury determination. The ITC's report serves as the factual basis for our determination in this case. With respect to the claim that no provision authorizes the Department to rely on the ITC report as a basis for determining injury, we have addressed this in our response to comment 5.

Comment 7: Petitioners argue that no part of section 751 (b) or (c), or any other provision of law, authorizes the Department to conduct an injury investigation or to make an injury determination. Further, any injury determination by the Department under section 751 would not satisfy the requirements of section 303(a)(2) because it would not be an injury determination within the meaning of section 303(a)(2) nor would it be a determination by the ITC. Thus, the purported preliminary injury determination by the Department is unauthorized and *ultra vires*.

REBASA agrees with petitioners that the Department does not have the authority to make the injury determination required by the statute in this case. The statutory authority to determine material injury is given exclusively to the ITC. The Court of Appeals for the Federal Circuit has recently noted, "[i]n the intricate administrative machinery Congress has erected over the years for dumping and countervailing duty cases, one unique feature is the allocation of responsibility to two agencies otherwise independent of one another, the Commerce Department and the ITC, the requisite injury determination for the latter, and everything else for the former." *Algoma Steel Corp., Ltd. v. United States* 865 f.2d 240, 241 (Fed. Cir. 1989) ("Algoma"). Because the Department has no statutory authority whatsoever to make an injury determination in this or any other case, it cannot substitute its own determination, even if based in part on an ITC decision, for that of the ITC material injury determination required as a result of section 303(a)(2).

Department's Position: We do not consider this determination to be *ultra vires* for the reasons stated in our response to Comment 5. We emphasize that the Department has an obligation to effectuate the purpose of the laws that we administer. REBASA's reference to "Algoma" is not on point. The dictum referred to addresses the circumstances of that case, and of the vast majority of antidumping and countervailing duty determinations made under the Tariff Act. However, as we have stated, the current situation is anomalous and is not specifically addressed in the law. The courts have held that the Department has the authority to implement the intent of legislation designed to fulfill the international obligations of the United States, even where the legislation itself contains a gap with regard to meeting those obligations and the general intent of Congress. *See, Matsushita Electric*

Industrial Co. Ltd. v. *United States*, 529 F. Supp. 670 (Ct Int'l Trade 1981), and *United States Steel* v. *United States*, 618 F. Supp. 496 (Ct. Int'l Trade 1985), appeal dismissed as moot, 792 F. 2d 1101.

Comment 8: Petitioners claim that Congress' failure to enact a provision in the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") allowing for an injury test for outstanding countervailing duty orders on duty-free merchandise, where U.S. international obligations require an injury determination, is a clear indication that Congress did not want the ITC to conduct injury reviews of countervailing duty orders in cases where the exporting country did not accede to the GATT until after issuance of the order. Furthermore, petitioners point out that with section 104 of the Trade Agreements Act of 1979, Congress provided for injury reviews for outstanding section 303 orders, and an incentive for prompt accession to the Subsidies Code, by allowing injury reviews for orders in effect on January 1, 1980 for "countries under the Agreement" if requests for such reviews were received prior to January 1, 1983; no right to an injury test was provided for section 303 orders issued after January 1, 1980. Since the order on lime from Mexico was issued under section 303 after January 1, 1980, providing an injury determination in this case would be contrary to the terms of section 104 and the intent of Congress in enacting that section.

Sonocal counters by arguing that the legislative history of the 1988 Act serves only to undercut petitioners' assertion that no injury test is required in the circumstances of this case. During consideration of the 1988 Act, Congress had the opportunity to grant express authority to conduct an injury investigation where the requirement for an injury determination arises after a countervailing duty order has been issued. Congress specifically declined to alter existing law to provide such authority even though consideration of the proposed measure proceeded on the assumption that there was such an obligation and that, in the absence of express authority to conduct an injury investigation on an existing order, the only remaining option available under the law was to proceed with revocation. Sonocal further argues that the controlling statute, section 303(a)(2), has not been amended to restrict the scope of U.S. injury test obligations to other GATT contracting parties under Article VI and that subsequent legislation establishing procedures for injury tests (*e.g.*, section 104), which makes no specific provision for an injury test in the circumstances of this case, do not constitute later federal legislation overriding any contrary GATT obligation.

Department's Position: There is no basis for petitioners' conclusions, particularly in light of the fact that Congress was made aware that the orders would have to be revoked absent an injury determination. We do not believe that, without providing for an injury determination, revoking the order would have been consistent with Congressional intent to collect countervailing duties on merchandise that we have determined has benefited from subsidies. Thus, the conclusion that Congress would have acquiesced to revocation without provision of an injury determination would be inconsistent with previously expressed intent and is without merit.

Petitioners further confuse the concept of "country under the Agreement," which refers to signatories of the Subsidies Code, and the provision in section 303(a)(2), which refers to our obligations under Article VI to provide an injury determination on duty-free merchandise from contracting parties to the GATT. Whatever conditions were placed on the provision of an injury determination on merchandise from countries that signed the Subsidies Code do not apply, either explicitly or implicitly, to merchandise subject to section 303(a)(2), which is based upon our Article VI obligation and is distinct from the Subsidies Code.

Comment 9: Petitioners claim that there has been no showing of "changed circumstances sufficient to warrant review" in this case. Mexico's accession to the GATT did not create any obligation on the part of the United States for an injury determination; no valid injury determination constituting a sufficient change in circumstances has been made; and, because U.S. law does not authorize an injury determination in this case, a purported injury determination by the ITC or the Department cannot provide the basis for revocation of the countervailing duty order.

Sonocal rebuts petitioners' assertions by arguing that the Department's determination that it lacks authority under section 303(a)(2) to assess countervailing duties on lime from Mexico in the absence of an injury determination provides changed circumstances sufficient to warrant a review. The absence of a valid injury determination and a claim that a purported injury determination by the ITC or the Department cannot provide the basis for revocation of the countervailing duty order, because U.S. law does not authorize an injury determination in this case, does not affect the essential requirement for an injury determination.

Department's Position: We discussed the basis for our obligation to conduct an injury investigation, and the Department's authority for making an injury determination, in our responses to Comments 1 and 7, respectively. We believe that the lack of authority to assess countervailing duties without an injury determination and the absence of an affirmative determination of injury are changed circumstances sufficient to warrant review. We also disagree with petitioners claim that, because an injury determination in this case is not authorized under U.S. law, the Department does not have the authority to revoke this order. As we have stated, we believe the Department has the authority to make an injury determination and, consequently, to revoke the order on the basis of its determination that a U.S. industry will not be materially injured, or threatened with material injury, if the countervailing duty order is revoked.

However, if there were no legal basis for providing an injury determination in this case, the Department would be compelled to revoke the countervailing duty order.

Comment 10: Respondents argue that, because there is no provision in the countervailing duty law authorizing the Title VII injury investigation required by U.S. law and the international obligations of the United States in this case, the only means under the law for satisfying the requirement in section 303(a)(2) that countervailing duties not be imposed on lime from Mexico without an affirmative injury determination is to revoke the order.

Department's Position: We disagree. As discussed in our response to Comment 5, we believe the Department has the authority for meeting the obligation to make an injury determination in this case. The Department's determination to revoke the order on lime from Mexico is based not on the ITC's lack of authority to conduct such a review under Title VII but on our determination that a U.S. industry will not be materially injured, or threatened with material injury, if the countervailing duty order is revoked.

Comment 11: Petitioners claim that, because injury determinations must be made under Title VII, injury investigations must be conducted in accordance with the standards and procedures for Title VII investigations prescribed by statute and ITC rules. In this case, petitioners' counsel were denied access to the business confidential information under administrative protective order (APO) to which representatives of interested parties are entitled in Title VII injury investigations and which is essential to participate effectively in such proceedings. This denial crippled the ability of petitioners' counsel to participate effectively in the ITC's investigation, because counsel had no opportunity to correct or rebut erroneous findings and assumptions. To permit revocation on the basis of the ITC's investigation would run afoul of the Administrative Procedure Act (APA), which requires that federal agencies provide an adequate opportunity for parties to an investigation to be heard. Petitioners further claim that because of delays by the Department in releasing business proprietary information under APO, particularly the confidential ITC report, access to proprietary information by petitioners' counsel during the Department's administrative review was inadequate, and such minimal access constitutes a violation of petitioners' procedural rights and due process.

Department's Position: We disagree. The ITC's investigation was conducted under section 332(g), and petitioners' opportunity to participate and comment were fully consistent with the procedures established for such investigations. The Department, not the ITC, is the decision maker in the injury investigation in this case, and petitioners had complete access under APO to the record established in the ITC's investigation during the Department's administrative review. Furthermore, we do not believe that the administrative delay in declassifying and releasing the confidential ITC report had any effect on petitioners ability to participate in the administrative review. As a practical matter, information available under APO did not contradict and could not alter the conclusions to be drawn from the information presented in the public version of the ITC's report, and this report was available to petitioners two months before comments on the preliminary results in this review were due. Even so, as a result of the delay in releasing the confidential ITC report, we offered petitioners the opportunity to amplify their comments on the ITC's investigation in their rebuttal comments. Petitioners chose not to submit any rebuttal comments.

Comment 12: Petitioners claim that the determinations by the ITC and the Department, that a regional lime industry in the southwestern United States would not be materially injured or threatened with material injury if the countervailing duty order on lime from Mexico were revoked, are erroneous and not supported by substantial evidence. A review of the record in the ITC's investigation reveals ample support for a finding that revocation of the countervailing duty order would cause material injury, or threaten material injury, to a properly defined regional lime industry. In rejecting petitioners' proposed definition of the regional industry, comprised of CHEMSTAR's plant in Douglas, Arizona and the area within a 200-mile radius of the plant, petitioners argue that the ITC applied an improper legal standard by defining a much larger southwestern region in which imports are currently concentrated, instead of the region in which imports would be concentrated if the order were revoked.

Department's Position: We disagree. In attempting to define the appropriate regional industry that might be affected by the revocation of the countervailing duty order, petitioners have focussed on the potential impact on one plant in southern Arizona and the effect on that plant of imports from one Mexican plant that is directly across the border from it. Petitioners ignore the fact that the countervailing duty order at issue concerns lime from Mexico, not lime from Sonocal, and that injury must be examined in terms of a distinct regional industry, not one plant among many in that region. We note further that the countervailing duty order covers both quicklime and hydrated lime and that CHEMSTAR's Douglas plant produces only quicklime.

The regional industry is properly defined in this case by the commercial realities associated with the transportation costs of lime, which set the practical limits of the market for imports from Mexico to within a few hundred miles of the U.S. border. As stated in the ITC's report, the southwestern United States "constitutes an isolated and insular market" where all of the imports from Mexico are sold, where nearly all production of U.S. producers in that region is consumed and where little of the lime consumed in the region is produced by U.S. producers located outside the region. Other than projecting a substantial increase in imports from Sonocal, petitioners provide no evidence that the actual parameters of the southwestern region will change.

While it is apparent that, as the producer geographically closest to Sonocal, CHEMSTAR's Douglas plant would be most affected by any increase in Sonocal's exports of quicklime, it does not follow that imports from Sonocal compete only with the Douglas plant. The impact of imports from Sonocal on other producers in the region, particularly those of hydrated lime, as well as the imports into this region from other Mexican exporters that do not compete with the Douglas plant must also be taken into account in any injury determination; all imports of Mexican lime would continue to be subject to countervailing duties if there were an affirmative determination of injury.

Comment 13: Petitioners argue that, based on ample evidence in the record, the ITC concluded that revocation would likely result in significant underselling by Mexican lime imports, that the volume effect of revocation would be substantial, and that even the current low levels of Mexican imports had already had a noticeable effect on the southwestern regional industry. In addition, petitioners argue that the ITC underestimated Sonocal's ability to export, made assumptions that grossly understated the imports that would occur during the first year after revocation, and apparently was unaware of information indicating that a substantial portion of Sonocal's production capacity, formerly committed to a domestic purchaser, may now be freed up and available for export to the United States. Finally, petitioners claim that, in examining the condition of the southwestern regional industry in 1987, the ITC apparently concluded that there was no correlation between the performance of the industry and imports whereas the record clearly shows such a correlation despite the low level of consumption that imports accounted for in 1987.

REBASA asserts that petitioners misinterpret the substantial evidence standard when alleging that the ITC's determination is not based on substantial evidence on the record. ITC determinations must be based on substantial evidence in the record as a whole, rather than segregated parts of the record. Although isolated fragments of the administrative record may contain indications of potentially injurious effect, petitioners' allegations ignore the fact that the ITC record, as a whole, indicates that there would be no material injury, or threat of material injury, to the southwestern United States lime industry if the countervailing duty order were revoked.

Department's Position: We disagree with REBASA's characterization of the ITC's role in this injury determination.

The ITC issued a report, not a legally enforceable determination. The Department is making the enforceable determination that must meet the substantial evidence standard and which is subject to judicial review.

The ITC's report demonstrated that, during the 1986–88 period, the lime industry in the southwestern region of the United States experienced increases in the following areas: Capacity utilization, consumption, domestic shipments, employment, inventories, production and productivity. In addition, the average unit value declined one percent, unit labor costs decreased seven percent, and the financial performance of the industry improved. Import penetration from Mexico never exceeded three percent, despite a substantial increase in exports of quicklime in 1987 at prices that were generally below average U.S. prices.

Within this regional industry, there were substantial differences between the performance of quicklime and hydrated lime. For quicklime, apparent consumption increased 29 percent, capacity utilization increased from 58 to 72 percent, domestic shipments increased 29 percent, and the average unit value increased six percent. For hydrated lime, apparent consumption decreased 24 percent, capacity utilization decreased from 78 to 53 percent, domestic shipments decreased 26 percent, and the average unit value decreased nine percent. Even in 1987, when imports from Sonocal increased significantly, almost all of the economic indicators relating to U.S. quicklime producers showed increases, whereas almost all the economic indicators relating to hydrated lime showed decreases. Consumption of quicklime was up 10 percent from 1986 to 1987 while consumption of hydraded lime dropped 20 percent.

The experience with Sonocal's exports in 1987, when a low rate of estimated countervailing duties was collected as a result of confusion over the appropriate rate, leads to the conclusion that shipments from Sonocal could increase significantly above 1987 levels if the countervailing duty order is revoked. (Petitioners' most adverse assumptions about Sonocal's ability to export indicate that the market penetration of Mexican lime into the southwestern region could perhaps double from its high point in 1987 to six percent.) The 1987 experience also suggests that revocation will probably result in significant underselling with respect to imports of quicklime from Mexico, which accounts for the vast majority of Mexicar lime imports. However, there was an absence of significant price suppression in 1987 as imports increased.

Although there would be some impact on the regional industry as a result of increased imports from Mexico and there may be some instances of adverse price impact associated with this increase, particularly on some individual producers, the Department determines that such increases would not be felt to the extent of material injury and the maximum potential effects of revocation will be quite small.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on lime from Mexico. The effective date of the revocation is August 24, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duty made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Further, as a consequence of this revocation, the changed circumstances administrative review initiated on August 2, 1988 (53 FR 29076) concerning the sale of Sonocal to Bomintzha S.C.L. (preliminary results of review published January 17, 1989 (54 FR 1753)) and the administrative review of calendar year 1987 initiated on December 5, 1988 (53 FR 48951) are terminated. Entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative review initiated on October 20, 1987 (52 FR 38952) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and sections 355.22(h)(1) and 355.25(d)(1) and (d)(3) of the Commerce Regulations in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: November 22, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–28076 Filed 11–29–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on toy balloons (including punchballs) and playballs from Mexico. Because the U.S. industry is not interested in having the United States Trade Representative refer this case to the International Trade Commission to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order, we intend to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On December 27, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 57532) a notice of final affirmative countervailing duty determination and countervailing duty order on toy balloons (including punchballs) and playballs ("toy balloons") from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order" (47 FR 44129; October 6, 1982) and "Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our domestic obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of the industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on toy balloons from Mexico.

On September 20, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on duty-free imports of toy balloons from Mexico, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order on toy balloons from Mexico. We received no response.

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is not classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Mexican toy balloons (including punchballs) and playballs. Balloons and punchballs are inflatable, thin-walled articles made by dipping non-porous forms (called "mandrels") in natural latex. Punchballs have slightly thicker walls than balloons and are sold packaged with bands. A playball is a hollow sphere produced from polyvinyl chloride (a thermoplastic resin) and other thermoplastics that will bounce when inflated with air and which yields diameters from 4 to 20 inches. Playballs are not nylon wound or made of rubber, and are not to be confused with sportballs (used in athletic activities). Playballs are not an athletic product because they are lighter in weight and smaller in size; however, styles of the vinyl playballs include models resembling footballs, basketballs and other sports-oriented items.

Through 1988, such merchandise was classifiable under item numbers 735.0970, 735.0995, 737.9536 and 737.9836 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 9503.90.50. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent To Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on toy balloons from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intent to revoke the countervailing duty order on toy balloons from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2), and (d)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: November 22, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

FR Doc. 89–28077 Filed 11–25–89; 8:45 am]

BILLING CODE 3510-DS-M

U.S. and Foreign Commercial Service Advisory Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The U.S. and Foreign Commercial Service Advisory Council was established on February 17, 1988, to advise the Secretary on matters pertinent to operations, programs and services of the U.S. and Foreign Commercial Service (US&FCS) and its related worldwide export promotion programs.

Time and Place: December 12, 1989, from 9 a.m. to 12 noon. The meeting will take place at the Main Commerce Building, Room 5851, 14th Street and Constitution Avenue, NW., Washington, DC 20230

Agenda

1. Briefings on the current state of US&FCS operations by principal officials of the agency.
2. Discussion of strategic review of US&FCS programs.
3. Other matters as appropriate.

Public Participation: The meeting will be open to public participation; the last five minutes will be set aside for comments and questions. Approximately 4 seats will be available on a first-come, first-served basis. Please notify Mr. Kevin Mulvey of your intent to attend.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin C.W. Mulvey, Executive Secretary, U.S. and Foreign Commercial Service Advisory Council, Room 3804, International Trade Administration, Department of Commerce, Washington, DC 20230.

Dated: November 22, 1989.

Susan C. Schwab,

Director General.

[FR Doc. 89-28024 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-FP-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton Textile Products Produced or Manufactured in Guatemala

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a restraint period and limit.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Guatemala agreed to establish a bilateral agreement, effected by a Memorandum of Understanding dated November 9, 1989, for cotton textile products in Categories 347/348 for four consecutive periods—July 1, 1989 through February 28, 1990, March 1, 1990 through December 31, 1990, January 1, 1991 through December 31, January 1, 1992 through December 31, 1992. The United States Government will control imports in Categories 347/348 for the first period of the agreement.

Also, the agreement establishes Guaranteed Access Levels for Categories 347/348 for three one-year periods beginning March 1, 1990 and extending through December 31, 1992.

Beginning on January 1, 1990, for goods to be re-exported from Guatemala to the United States during the period March 1, 1990 through December 31, 1990, U.S. Customs will start signing the first section of form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 that are destined for Guatemala and subject to the Guaranteed Access level established for Categories 347/348. These products, which are assembled in Guatemala from parts cut in the United States from fabric formed in the United States, are governed by HTS number 9802.00.8010 or by Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 347/348 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Guatemala in order to qualify for entry under the Guaranteed Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 29086, published on July 11, 1989.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 1208, published on June 11, 1986; and 52 FR 26057, published on July 10, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of Commerce,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 5, 1989 from the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the period April 26, 1989 through April 25, 1990.

Effective on November 22, 1989, you are directed to amend the current restraint period for Categories 347/348 to begin on July 1, 1989 and extend through February 28, 1990 at an increased level of 1,000,000 dozen.[1]

Textile products in Categories 347/348 which have been exported to the United States prior to July 1, 1989 shall not be subject to this directive.

Charges already made to the limit for Categories 347/348 for the period July 1-12, 1989 shall be retained. You are directed to deduct the following charges made to the limit for goods imported during the period April 26, 1989 through June 30, 1989:

Category	Amount to be Deducted
347	107,481 dozen.
348	78,874 dozen.

Beginning on January 1, 1990, U.S. Customs is directed to start signing the first section of form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 that are destined for Guatemala and re-exported to the United States during the period March 1, 1990 through December 31, 1990.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28069 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Macau

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs increasing and re-opening a limit.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

[1] The limit has not been adjusted to account for any imports exported after June 30, 1989.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 445/446 is being increased for swing and carryforward. As a result, the limit, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced, or manufactured in Macau and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 1, 1989, the directive of December 16, 1988 is amended further to increase to 80,259 dozen [1] the limit for Categories 445/446, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Macau.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the Foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 89-27959 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

Announcing the Implementation of Import Restraint Limits Based on Date of Entry for Certain Textiles and Textile Products Produced or Manufactured in Thailand

November 24, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 6, 1989, a notice was published in the **Federal Register** (54 FR 46643) announcing that, effective January 1, 1990, CITA reserves the right to implement certain import restraint limits based on date of entry rather than date of export for countries with agreements that have expired or will expire after November 6, 1988.

The purpose of this notice is to advise the public that all new import restraint limits resulting from Article 3 and section 204 calls on Thailand on and after January 1, 1990 shall be implemented by CITA based on date of entry, regardless of the date of export.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-27960 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The Impact of Aids on the U.S. Army: Interviews with Seropositive Applicants for Military Service; No Form; and OMB Control Number 0704-0282.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: .75 hours.

Frequency of Response: One response per respondent.

Number of Respondents: 1,200.

Annual Burden Hours: 1,900.

Annual Responses: 1,200.

Needs and Uses: Interview survey is to be used by contractor trained personnel to interview military recruit applicants who have been identified as positive for HIV to determine risk factors for the disease. The interview will be conducted in a single session by contractor trained interviewers who will not know the antibody status of the subject. The survey instrument and analysis and summary files will not contain personal identifier information and linking of individuals to their specific responses will not be possible. Information gained will be of unique importance for designing intervention programs, for targeting high risk groups for screening and health education and for assessing the efficacy of prevention efforts. Data currently available may not reflect the current state of the epidemic. This research effort will provide a broad-based, national surveillance system for determining the geographic spread of the epidemic and the risk factors most associated with its spread.

Affected Public: Individuals or households.

Frequency: One per respondent.

Respondent's Obligation: This is a voluntary survey.

OMB Desk Officer: Dr. J. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: November 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27988 Filed 11-29-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 2, 1990; Tuesday, January 9, 1990; Tuesday, January 16, 1990; Tuesday, January 23, 1990; and Tuesday, January 30, 1990 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c) (2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c) (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: November 24, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27988 Filed 11-28-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Advisory Group for the Air Force Communications Command (AFCC) Standard Systems Center will meet on 8 January 1990, from 8:00 a.m. to 5:00 p.m. at the Standard Systems Center Headquarters, Building 888, Gunter AFB, Alabama.

The purpose of this meeting is to review the activities of the Software Center of Excellence that AFCC has established at the Standard Systems Center.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (3) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-27976 Filed 11-29-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18-19 December 1989.

Time of Meeting: 0830-1700, 18 December 1989; 0830-1500, 19 December 1989.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Software in the Army will meet for discussions focused on major problem areas. Additional discussions will center around the input from the Signal Center on the subject of career fields and their retention. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-28089 Filed 11-29-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a rquest to review and approve within 20 days of receipt an expedited review of an information collection requirement concerning Bid, Performance, and Payment Bonds.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* "Bond" means a written instrument executed by the contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

The Miller Act (40 U.S.C. 270a-270e) requires performance and payment bonds for any construction contract exceeding $25,000; unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate.

The bond(s) are retained by the obligee (the Government) until the principal's (the contractor's) obligation is fulfilled.

This submission requests a revision of OMB approval of an information collection requirement in the Federal Acquisition Regulation (FAR). The information collection requirement in the FAR remains unchanged. However, the burden estimated has been decreased because of the revisions of estimates of usage governmentwide based upon decreased use by individual sureties since only one individual surety need comply in lieu of the current requirement for two (applies to SF's 24, 25, 25-A, 34, 35, and 1416).

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 19,075; responses per respondent, 4.87; total annual responses, 92,895; preparation hours per response, .42; and total response burden hours, 39,016.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0045, Bid, Performance, and Payment Bonds.

Dated: November 22, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28026 Filed 11-29-89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve within 20 days an expedited review of an information collection requirement concerning Affidavit of Individual Sureties

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other format exists for the collection of this information.

The information of SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 1.43; total annual responses, 715; preparation hours per response, 3; and total response burden hours, 2,145.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0001, Affidavit of Individual Surety (SF 28).

Dated: November 22, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28027 Filed 11-29-89; 8:45 am]

BILLING CODE 6820-JC-M

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 6, 1989 beginning at 1 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11 a.m. at the same location and will include status reports on the Upper Delaware ice jam project and amendment of Compact section 15.1(b) to fund the Francis E. Walter Reservoir project.

The subjects of the hearing will be as follows:

A Proposed Amendment to the Comprehensive Plan to Delete the Hackettstown, Trexler, Aquashicola and Maiden Creek Reservoirs. Since the 1962 incorporation of these reservior projects into the Commission's Comprehensive Plan, various studies and events have determined that their construction is no longer recommended. As continuation of these projects in the Comprehensive Plan could, under Commission regulations, subject other proposed projects to unnecessary review by the Commission, these reservoir projects are now proposed for deletion from the comprehensive Plan.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article II and/or Section 3.8 of the Compact:

1. Borough of Brooklawn, Water Department D-85-18 CP RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 15.0 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 3 and 4. Commission approval on May 29, 1985 was limited to three years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in Brooklawn Borough, Camden County, New Jersey.

2. E. I. duPont deNemours & Company, Inc. D-85-32 RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 57.3 mg/30 days of water to the applicant's industrial facility from Well Nos. 3, 5, 6, and decontamination Well No. 46. Commission approval on August 28, 1985 was limited to four years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remains limited to 57.3 mg/30 days. The project is located in Greenwich Township, Gloucester County, New Jersey.

3. Panther Creek Energy, Inc. D-87-66 (Revised). An application for revision of a previously approved withdrawal project for a proposed 80 megawatt electric generation plant. The revision includes a relocation of the point of withdrawal and a reduction in the quantity of withdrawal. Up to 67.0 mg/30 days (previously 103.2 mg/30 days) of ground water will be withdrawn from the inundated mine cavities known as the Lansford Mine Pool for use as cooling and process water in the generation facilities. Low grade anthracite coal breaker refuse, supplied from culm banks on approximately 300 acres near the plant site, will serve as the principal fuel for the proposed facility. The withdrawal taking point is located in the Borough of Summit Hill, and the proposed generation plant will be located in the adjacent Nesquehoning Borough, both municipities of Carbon County, Pennsylvania.

4. Borough of Palmyra D-88-29 CP. An application to upgrade and expand a sewage treatment plant to process

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wastewater flow from primarily residential sources within Palmyra Borough, Burlington County, New Jersey. The existing plant is designed to treat 0.53 million gallons per day (mgd) and the proposed plant is designed to provide high quality secondary treatment of 1.05 mgd for the design year 2009. Treated effluent will continue to discharge through the existing outfall to the Delaware River in Water Quality Zone 3.

5. Georgia Pacific Corporation D–89–56. An application to upgrade an existing 0.44 mgd capacity industrial wastewater treatment plant that serves the applicant's gypsum linerboard paper mill located on Derousse Avenue in Pennsauken Township, Camden County, New Jersey. The applicant proposes to construct an aerated stabilization tank and related treatment facilities to reduce BOD and provide a buffer for flow fluctuation. The treated effluent will continue to discharge to the Delaware River.

6. Draper-King Cole, Inc. D–89–66. An application to replace the withdrawal of water from Well No. 14 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 14A be limited to 43.2 mg/30 days, and that the total withdrawal from all wells remain limited to 75.0 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

7. Town of Frederica D–89–73 CP. An applicant for approval of a ground water withdrawal project to supply up to 3.9 mg/30 days of water to the applicant's distribution system from existing Well Nos. 1, 2, 3, and 4 (Well Nos. 1 and 2 are for fire/emergency use only), and to limit the withdrawal from all wells to 3.9 mg/30 days. The project is located in the Town of Frederica, Kent County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: November 21, 1989.

Susan M. Weisman,

Secretary.

[FR Doc. 89–28015 Filed 11–29–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Request for Data and Information Under the Bilingual Education: State Educational Agency Program for Fiscal Year 1988

Programmatic Information

This program provides financial assistance to State educational agencies (SEAs) to collect and report data and information on limited English proficient (LEP) persons under section 7032 of the Bilingual Education Act (20 U.S.C. 3302), and 34 CFR Part 548. SEAs are required to report data and information to the Secretary in accordance with section 7032(b) of the Act and 34 CFR 548.10.

Date for Submitting Data and Information

Fiscal year 1988 SEA grantees are required to submit this report containing data and information on LEP persons to the U.S. Department of Education by December 22, 1989.

Addresses

Information should be sent to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW. (Room 5086, Switzer Building), Washington, DC 20202–6641.

Further Information

For further information contact Luis A. Catarineau. Telephone: (202) 732–5707.

Authority: 20 U.S.C. 3302(b).

Dated: November 24, 1989.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89–27987 Filed 11–29–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intention To Award a Grant to the Stanford University Petroleum Research Institute

AGENCY: Bartlesville Project Office, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Stanford University Petroleum Research Institute (SUPRI).

SUMMARY: The Department of Energy (DOE), Barlesville Project Office, announces that pursuant to 10 CFR 600.7 (b)(2)(i) criteria (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to Stanford University Petroleum Research Institute (SUPRI) for the continuation of their effort entitled "Research on Oil Recovery Mechanisms in Heavy Oil Reservoirs."

Scope: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (A) and (D), the objective of this Grant is for Stanford University Petroleum Research Institute to continue conducting basic research on heavy oil recovery by various EOR methods. The studies concern technology useful to all enhanced oil recovery techniques. These include methods of reservoir definition such as pressure transient testing, analysis of well logs and tracer data, and experimental data on properties of reservoir fluids and rocks. In addition, a test of a SUPRI developed process to improve steam injection by using foam additives will be conducted. The intended research will (1) establish flow properties studies in order to assess the effect of reservoir parameters on permeability and capillary pressure, (2) study mechanisms governing the combustion process in order to optimize in-situ combustion design for reservoirs, (3) identify the additives that improve mobility control and study the mechanisms of foam flow in porous media by experiments and numerical modeling, (4) develop improving existing reservoir evaluation techniques, (5) provide technical and field support services in design and monitoring field projects, and (6) transfer the learned technologies to industry, other research groups and oil operators through publications and workshops. The Stanford University Petroleum Research Institute will make available the facilities and technical expertise required for this project.

The term of the grant is for a three-year period at an estimated value of $2,250,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Norey B. Laug; Telephone: AC (412) 892–4827.

Dated: November 15, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89–28087 Filed 11–29–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

National Coal Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with section 101–6.1015 title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council (NCC) has been renewed for a two-year period ending December 31, 1991. The NCC will continue to provide advice, information, and recommendations to the Secretary of Energy, on a continuing basis, regarding general policy matters relating to coal issues.

Council members are chosen to assure a well balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The NCC also has members who represent interests outside the coal industry, including environmental interests, labor, research, universities, and tribal government. Membership and representation of all interests will continue to be determined in accordance with the requirements of FACA, section 624(b) of the DOE Organization Act (Pub. L. 95–91), and implementing regulations.

The renewal of the National Coal Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. No. 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Elinor C. Donnelly (202) 586–3448.

Issued at Washington, DC on November 27, 1989.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 89–28085 Filed 11–29–89; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with section 101–6.1015 title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council (NPC) has been renewed for a two-year period ending December 31, 1991. The NPC will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The NPC also has members who represent interests outside the petroleum industry, including representatives from environmental, labor, research, universities, tribal government, and state utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of FACA, and section 624(b) of the DOE Organization Act (Pub. L. 95–91), and implementing regulations. The renewal of the National Petroleum Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Elinor C. Donnelly (202) 586–3448.

Issued at Washington, DC on: November 27, 1989.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 89–28086 Filed 11–29–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–68–LNG]

Yukon Pacific Corp.; Order Granting Authorization to Export Liquefied Natural Gas and Record of Decision in Compliance with the National Environmental Policy Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to export natural gas from Alaska and record of decision.

SUMMARY: The office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order on November 16, 1989, granting Yukon Pacific Corporation authorization to export liquefied natural gas (LNG) from Alaska to Pacific Rim nations. Yukon Pacific plans to build the Trans-Alaska Gas System (TAGS) to transport gas from the North Slope of Alaska south to Valdez, where it would be converted to LNG and exported to East Asia by tanker.

In conjunction with that order, FE is hereby issuing a Record of Decision pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA).

A copy of Order 350, issued in ERA Docket No. 87–68–LNG, is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819;

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, Forrestal Building, Room 3E–080, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Council on Environmental Quality Regulations implementing the procedural provisions of NEPA [1] and the DOE's guidelines [2] for compliance with NEPA, FE is issuing this Record of Decision on the application filed by Yukon Pacific on December 3, 1987, for authority to export liquefied Alaskan North Slope natural gas to the Pacific Rim countries of Japan, South Korea, and Taiwan.[3]

II. Decision

On November 16, 1989, FE issued Order 350, under section 3 of the NGA,[4] granting Yukon Pacific authority to export up to 14 million metric tons of LNG per year over a term of 25 years commencing on the date of the first

[1] 42 U.S.C. 4321, *et seq.*

[2] 52 FR 47662, December 15, 1987.

[3] On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204–127 specifies the transferred functions (54 FR 11436, March 20, 1989).

[4] 15 U.S.C. Sec. 717b.

delivery, which is estimated to be in the mid-1990's. The export would involve construction of the TAGS facilities.

The DOE participated as a cooperating agency during the preparation of and has adopted the Trans-Alaska Gas System Final Environmental Impact Statement (FEIS), issued jointly by the Bureau of Land Management (BLM) of the U.S. Department of the Interior and the U.S. Army Corps of Engineers (USACE) in June 1988.[5] FE used that FEIS as well as an independent review in assessing the environmental effects of granting the export.

III. Project Description

Yukon Pacific proposes to build and operate TAGS to transport gas from the North Slope of Alaska at Prudhoe Bay to Port Valdez on Alaska's southern coast where it would be liquefied and transported by ship to the three Pacific Rim countries. The primary components of the proposed TAGS project would be 796.5 miles of buried, chilled, 36-inch outer diameter natural gas pipeline, with 10 compressor stations along the route. The pipeline would terminate at a proposed liquefaction plant and marine terminal located at Anderson Bay in Port Valdez. The liquefaction plant would include four LNG processor units (to remove impurities from incoming gas, and to reduce the temperature of the gas to −259 degrees Fahrenheit, condensing it to the liquid state for storage and shipping) and four LNG storage tanks. The marine terminal would include two LNG tanker berths and dock facilities for support vessels adjacent to the liquefaction plant.

Natural gas would be provided to the TAGS pipeline at Prudhoe Bay by means of an existing or newly authorized gas conditioning facility.

IV. Governmental Responsibilities

For Yukon Pacific's proposed project, the issuance of several major permits and authorizations is required before the project can proceed. The lands that would be directly affected by the construction and operation of the project are primarily under the control of the Federal and state governments. A Federal right-of-way grant from the BLM to cross Federal lands and a state right-of-way lease by the Alaska Department of Natural Resources must be approved. A permit is required from the USACE for the placement of fill material and for work in all wetlands along the proposed pipeline alignment and navigable waters. An authorization also is required from FE to export natural gas and from the Federal Energy Regulatory Commission (FERC) for a place of export.

Yukon Pacific applied for a grant of right-of-way from BLM and the State of Alaska and applied to the USACE under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899 for the required permits. On December 3, 1987, Yukon Pacific filed an application with the DOE for export authorization under section 3 of the NGA. Concurrently, Yukon Pacific sumitted an application to the FERC, under section 3 of the NGA, for authorization to use Anderson Bay as the LNG export site.[6]

V. Description of Alternatives

FE had two alternative courses of action in processing Yukon Pacific's application to export natural gas. It could grant the application (with or without conditions) or deny the application (no-action). If FE denied the application the TAGS project would not be coentructed, no North Slope gas would be converted to LNG and available to overseas markets, and there would be no impacts to the existing environment. If FE granted the application, Yukon Pacific could proceed, subject to obtaining other necessary approvals, with construction of facilities to transport natural gas to tidewater for conversion into LNG for export.

VI. Basis for Decision

The principal criterion in choosing whether to approve or disapprove a gas export project is the requirement under section 3 of the NGA that an application to export gas must be approved unless, after opportunity for hearing, it is determined that the export is not consistent with the public interest. In reviewing natural gas export applications, the domestic need for the gas is considered, and any other issues determined to be appropriate in a particular case. Additionally, the environmental implications of granting or denying the export application must be evaluated pursuant to NEPA.

In connection with Yukon Pacific's export proposal, the DOE determined that it was both necessary and appropriate to consider international gas trade policy, the implications of the Alaska Natural Gas Transportation Act of 1976 (ANGTA),[7] and the Presidential finding on January 2, 1988, under section 12 of ANGTA, concerning Alaska natural gas exports.[8]

A. General Conclusions

FE found that the proposed export would not be inconsistent with the public interest requirements of section 3 of the NGA. In particular, it was determined that this gas supply is not needed to ensure American consumers adequate supplies at reasonable prices. In addition, the TAGS export project is expected to provide important benefits in the areas of energy security, energy production, international relations, and the Alaskan economy. Furthermore, FE concluded that the proposed exports would not be inconsistent with the framework of ANGTA.

B. Environmental Determination

The BLM and USACE were the lead Federal agencies in conducting an examination of the environmental effects of constructing the TAGS pipeline, LNG facility, marine terminal, and related project components and preparing the FEIS for the TAGS project. Alternatives to the proposed project that were considered in the FEIS included various alternative modes for transporting the North Slope gas, alternative pipeline routes and sites for the LNG plant and marine terminal, and a no-project alternative. Three major alternatives were considered in detail in the FEIS, the proposed project, the Cook Inlet-Boulder Point route and the no-action alternative. The DOE participated as a cooperating agency during the preparation of the FEIS, and the DOE utilized the FEIS (which was adopted as a DOE FEIS) [9] as well as an independent analysis to assess the environmental effects of granting or denying the export authorization.

1. Conceptual Gas Conditioning Facility

The FEIS did not consider gas conditioning facilities (GCF) in the Prudhoe Bay area as part of the TAGS project. Rather, such facilities were viewed as a connected action to be evaluated with regard to environmental effects when the plant configuration and technology are more certain. However, the FEIS conceptually described the GCF that would be needed to produce pipeline quality natural gas for TAGS and analyzed and discussed the potential environmental consequences as they presently exist for the construction and operation of the conceptual GCF if it was located at Prudhoe Bay adjacent to Atlantic Richfield Company's existing Central Gas Conditioning Facility. The ownership of the conceptual GCF would be determined by the North Slope gas producers, Yukon Pacific, and the State of Alaska.

The unconstructed Alaska Natural Gas Transportation System (ANGTS) holds a conditional certificate from the FERC to build and operate a gas conditioning plant, designated the Alaska Gas Conditioning Facility (AGCF), at Prudhoe Bay to support the proposed ANGTS project.[10] The TAGS FEIS is based on the assumption that the ANGTS facilities to deliver North Slope gas by means of a pipeline across Alaska and Canada to markets in the lower 48 states will be built. The timing for construction and operation of the ANGTS project would be when the market conditions make it a viable project.

The FEIS indicated that no significant cumulative effects are expected from the construction and operation of the AGCF and a stand-alone GCF for TAGS located several miles south of the area identified for the AGCF.

2. Alternative Transportation Modes and Systems Considered

Alternative modes considered for transporting North Slope gas were land routes, including transportation by dense-phase and methanol pipelines, railway, and monorail; marine routes, including ice-breaking tankers and submarines; air routes, including airplanes, helifloats, and dirigibles; and possible combinations of various modes. None of these alternative modes of transportation were considered feasible to design or operate, and were eliminated from further consideration.

The injection of natural gas into crude oil carried by the existing Trans-Alaska Pipeline System (TAPS) hot oil pipeline from Prudhoe Bay to Port Valdez was not considered a viable option to TAGS because the natural gas, as a liquid, would not be compatible with the TAPS design or operating requirements.

3. Statewide Alternative Pipeline Routes and Coastal LNG Terminal Sites

Alternative pipeline routes and LNG plant sites were considered in various regions of Alaska. The analysis concluded that only the southcentral Cook Inlet and Prince William Sound-Valdez area provided feasible alternatives for the pipeline, liquefaction plant, and marine terminal. In western Alaska limited tanker access related to sea ice as well as other factors eliminated the region from further consideration. Pipeline distance to southeast ports and the extensive mountainous terrain that would have to be crossed would be insurmountable obstacles to the TAGS project and eliminated the southeast region from further consideration.

4. Regional Alternative Pipeline Routes and Sites for LNG Facilities/Terminals

Along with Yukon Pacific's proposed pipeline route to Anderson Bay, one major route alternative and six alternative LNG plant and marine terminal locations were evaluated within the Cook Inlet and Prince William Sound regions for project feasibility. The Cook Inlet alternative pipeline alignment would deviate from Yukon Pacific's proposed route near Livengood (milepost 395 of proposed TAGS) and proceed south to the Cook Inlet area where three alternative liquefaction plant and marine terminal locations at Harriet Point, Boulder Point, and Cape Starichkof were considered. In the Prince William Sound-Anderson Bay area, three other alternative liquefaction plant and marine terminal locations at Gravina, Gold Creek, and Robe Lake were considered.

After examining the alternative tidewater sites, the FEIS identified the TAGS project's Anderson Bay site as the preferred location in Prince William Sound, and Boulder Point was determined to be the best Cook Inlet alternative. Neither of the Cook Inlet alternatives to Cape Starichkof nor Harriet Point offered engineering, environmental, cost, or safety advantages over location of a facility at Boulder Point. The cost, time, and additional impacted area associated with the Cape Starichkof and Harriet Point sites make them inferior options. None of the three alternatives considered for the Prince William Sound region was ranked superior to Yukon Pacific's Anderson Bay site.

5. Comparison of Proposed Anderson Bay Route with the Cook Inlet-Boulder Point Alternative

The basic project components for the Cook Inlet-Boulder Point alternative would be similar to the proposed TAGS project. The pipeline route from Prudhoe Bay to Livengood for the proposed TAGS project and the Cook Inlet alternative would be the same. Likewise, both projects' approach to basic construction techniques would be the same for the remainder of the route. However, at Livengood, the Cook Inlet alternative would diverge from the proposed TAGS Anderson Bay alignment, to an LNG plant and marine terminal at Boulder Point on the Kenai Peninsula. The Cook Inlet alternative would require a 15-mile subsea crossing of Cook Inlet to reach Boulder Point. The major difference in construction techniques would be for those conditions specific to the Cook Inlet alternative route, such as the subsea pipeline under Cook Inlet, the approach to the pinch point near Denali National Park and Preserve where construction is limited, and the major access roads required for access to the compressors located in Minto and Susitna flats.

The FEIS analyzed and compared the potential environmental consequences of constructing and operating a pipeline using the Cook Inlet alternative route from Livengood with the environmental consequences anticipated for the proposed TAGS project. It was determined that, on balance, the overall impacts to the environment anticipated from either the proposed route to Anderson Bay or from the Cook Inlet alternative would be similar in scope and range with regard to air quality, geology, noise, socioeconomics, surface and ground watet marine environments, fish, and subsistence. The Anderson Bay route would be expected to have greater potential to affect threatened or endangered species, whereas the Cook Inlet alternative to Boulder Point would have greater potential impacts in several areas, notably land use, transportation, recreation, aesthetics, and cultural resources.

As summarized in the FEIS, the socioeconomic impacts from the proposed TAGS project and the Cook Inlet alternative routing would be major. The impacts to air quality, vegetation, wetlands, recreation, aesthetics, land use, and wilderness would be moderate. Minor impacts would occur related to noise, geology, surface, water and ground water, marine environments, fish, and wildlife. Transportation, subsistence, and cultural resources are

[5] FEIS BLM–AK–PT–88–003–1792–910.

[6] FERC Docket No. CP88–105–000.

[7] 15 U.S.C. 719 *et seq.*

[8] 53 FR 999 (January 15, 1988).

[9] DOE/EIS–0139.

[10] ANGTS is a privately sponsored project which received Presidential and Congressional approval pursuant to the provisions of ANGTA. The northern portion of the proposed TAGS pipeline would parallel the proposed route of ANGTS. Although substantial engineering design has been completed for ANGTS, work has been suspended until natural gas markets stabilize and financing prospects improve for the participants in the project's construction. At this time, there is no firm schedule for remobilization. As yet, no North Slope gas has reached the lower-48 states. Although some federal permits have been issued to ANGTS, the permitting requirements for use of state ownership lands in Alaska have not been completed, and no state authorizations have been issued. Work on state permits is also suspended.

subject to minor impacts. Impacts to threatened or endangered species would be negligible.

The site specific impacts to the natural environment are of about the same nature and degree for both alternatives because they would use the same technology in similar environments, the Cook Inlet subsea crossing excepted. The primary difference between these alternatives is where the impacts occur. The Cook Inlet alternative route would require transit through a number of state and federal parks, important subsistence and recreation areas, and wildlife areas, including proposed Minto Flats State Game Refuge, Denali National Park and Refuge, the Kenai National Wildlife, Refuge, Nancy Lake State Recreational Area, and Captain Cook State Park. The proposed Anderson Bay route follows an existing transportation and utility corridor which includes the constructed TAPS pipeline, a segment of the approved but unconstructed ANGTS pipeline, and various state highway rights-of-way.

Finally, an Act of Congress would be required for the Cook Inlet, alternative to cross the Denali National Park and Preserve under title XI of the Alaska National Interest Lands and Conservation Act (ANILCA). This action requires a finding by the National Park Service, the President, and Congress that there is no environmentally acceptable alternative.

6. Liquefaction Plant and Marine Terminal

The environmental impacts associated with construction and operation of a liquefaction plant and marine terminal at Port Valdez range from minor to moderate. A safety zone around the facilities would limit access to part of Chugach National Forest lands and certain areas of Anderson Bay presently used for commercial and sport fishing. A major concern affecting the public safety would be the risk of a catastrophic leak or spill of LNG. The city of Valdez is located more than 5 miles from the site on the opposite shore of Port Valdez.

Based upon an LNG safety analysis conducted for the proposed facilities, the site location would provide for safe operations to the public. The results of Yukon Pacific's analysis of the thermal radiation and flammable vapor gas dispersion for an LNG spill indicate that all public and private land-use areas near the proposed liquefaction plant and marine terminal would be located outside the hazard zones.

LNG tankers traversing Prince William Sound to and from the proposed Anderson Bay marine terminal would be subject to the U.S. Coast Guard's (USCG) monitoring system which is designed to protect the navigable waters of the area from environmental harm resulting from collisions or groundings. The cumulative increases in tanker traffic through Port Valdez and Valdez Arm would increase the potential for accidents, including oil spills. The USCG indicated that it would be capable of handling the additional tanker traffic which would result from the proposed TAGS project since existing vessel traffic is low.

The cumulative impact of LNG tanker traffic on the high seas between Prince William Sound and destination ports in the Pacific Rim nations is considered negligible.

7. No-Action Alternative

The no-action alternative would consist of the denial of any of the rights-of-way or permits required for construction and operation of the TAGS project or denial of the DOE export authorization or FERC disapproval of the place of export. Under this alternative, no construction would take place, North Slope gas would not be exported, and the impacts to the national environment associated with the project would not occur. The no-action alternative also would avoid the negative and positive impacts to the socioeconomic environment.

The FEIS classified the socieconomic impacts from this alternative as significant. The positive socioeconomic effects of the proposed TAGS project on Alaska include creating and stimulating employment in Alaska, increasing local and state government revenues, and helping to offset trade inbalances with Taiwan, Korea, and Japan. Inside Alaska, construction will create a significant number of jobs, up to 7,200 during the peak year. Operations will employ about 550 people directly, and support 1,000 more jobs indirectly. Royalty payments, state taxes and property taxes will produce about $377 million in state government annual revenues. Conversely, the influx of construction workers for TAGS would cause short-term negative impacts to water supply and waste, crime, and a strain on the supply of goods and services in local population centers near the pipeline alignment.

VII. Considerations in Implementing the Decision

The DOE has determined that the no-action alternative is the environmentally preferred alternative, because none of the physical impacts to the natural environment predicted in the FEIS would occur. However, the DOE has concluded that these impacts are relatively minor and area acceptable when compared to the substantial economic benefits to be derived from the project.

BLM issued a right-of-way to Yukon Pacific for the TAGS pipeline on October 17, 1988. The grant was contingent upon issuance of an LNG authorization by the DOE. BLM determined that of the two construction alternatives analyzed in detail in the FEIS, the proposed TAGS project is the environmentally preferred alternative and the impacts are comparable with those of the TAPS facilities, a project that was approved by both Federal and state governments and has been in operation for more than 10 years.

In its decision to issue the right-of-way, BLM identified three factors discussed in the FEIS which indicated that the proposed TAGS project is environmentally preferable to the Cook Inlet alternative. First, the Cook Inlet alternative creates new disturbance in Minto Flats, an important subsistence use area. By contrast, the impacts of the proposed project are in an existing transportation and utility corridor. Second, the Cook Inlet alternative crosses Denali National Park and Preserve, and would impact visitors traveling to and from the park. While the proposed project would impact visitors and travelers elsewhere, Denali has the greater concentration. Finally, the Cook Inlet alternative includes a 15-mile subsea crossing, an impact to an ecosystem that does not occur under the proposed project.

DOE notes that BLM, USACE, FERC, and the State of Alaska have principal authority and direct responsibility to impose and monitor mitigation measures and conditions relative to the construction and operation of the proposed TAGS facilities through their various authorizations and permits. Yukon Pacific, BLM, and USACE are using a tiered approval system for the design and construction of the TAGS project. The fundamental approach used in the tiered mitigation process is: the development and approval of design criteria, final design, and the issuance of a "Notice to Proceed." Therefore, the discussion of mitigation measures in the FEIS tend to be generic and refer to site specific designs not yet done. Consistent with that tiered concept, BLM attached stipulations to its grant of a right-of-way for TAGS which specify that Yukon Pacific will submit for government approval certain plans and site specific designs before proceeding with field activities. These stipulations and subsequent plans will set forth the standards of performance for construction and operation of the pipeline, and termination of the right-of-way grant. The stipulations cover (1) protection of the environment; (2) integrity of the pipeline system; (3) integrity and protection of adjacent or intersecting facilities, in particular, the TAPS and ANGTS pipelines; (4) public health and safety; and (5) effects on socioeconomic, subsistence, and cultural resources. Mitigation of environmental impacts and monitoring of the project by BLM will be primarily through monitoring, enforcement, and action under these stipulations. According to BLM, these stipulations adopt all practicable means to avoid or minimize the short- and long-term environmental harm, as well as irreversible and irretrievable commitments of resources.

ANGTA established the Office of Federal Inspector (OFI) to coordinate and monitor Federal activity concerning ANGST. Reorganization Plan No. 1 of 1979 transferred to OFI exclusive responsibility for enforcing all Federal statutes relevant in any manner to the preconstruction, construction, and initial operation of ANGTS. OFI coordinates its activities with those of other Federal agencies. In areas where TAGS and ANGTS would interact, OFI would have responsibility to determine compatability, to review and approve designs, plans, and schedules, and to enforce the provisions and requirements of the TAGS right-of-way when it is on or adjacent to the ANGTS right-of-way.

With respect to Yukon Pacific's LNG export site, the FERC is responsible for considering the environmental and safety ramifications of its approval, under section 3 of the NGA, of the place at which the natural gas would be exported. The FERC was a cooperating agency in the preparation of the FEIS. However, a decision on Yukon Pacific's application for an export site has not yet been issued by the FERC. While it is uncertain which, if any, mitigation measures the FERC would impose for the placement, construction, and operation of the liquefaction plant and marine terminal through its authorization, the liquefaction plant must nevertheless comply with the Pipeline Safety Regulations of the U.S. Department of Transportation (DOT),[11] and meet the requirements of the National Fire Association 59A LNG standards.

[11] 49 CFR part 193, subchapter D, prescribes Federal Pipeline Safety Standards for liquefied natural gas facilities.

The regulatory responsibility for the safety of the liquefaction plant falls under the jurisdiction of the U.S. Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the DOE. The USCG is responsible for the siting, design, construction, maintenance, and operation of the marine cargo transfer system and associated facilities (except the site for the associated facilities) between the vessel and last valve located immediately before the storage tanks. The RSPA is responsible for the rest of the plant.[12] The Anderson Bay site would have to be developed to meet USCG and RSPA regulations. Accordingly, the Federal safety standards and regulations of the USCG and RSPA would be the primary standards for the siting, design, construction, maintenance, and operation of the TAGS liquefaction plant and marine terminal facilities, in addition to any potential mitigation measures that may be implemented or imposed as conditions to any authorization by the FERC.

VIII. Conclusion

The decision whether to authorize this export of LNG has been evaluated against the potential environmental impacts. Implementing the specific mitigation measures identified in the FEIS, together with the stipulations required by BLM, would minimize the negative social, economic, and environmental effects and promote the positive effects of the proposed TAGS project. Accordingly, DOE has decided to grant Yukon Pacific authority to export Alaskan natural gas and determined that this decision is not inconsistent with the public interest under section 3 of the NGA.

Issued in Washington, DC, on November 18, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89-28088 Filed 11-29-89; 8:45 am]

BILLING CODE 6450-01-M

[12] The USCG derives its authority over waterfront facilities adjoining the navigable waters of the U.S. from the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) and Executive Order 0173, as amended (3 CFR 1949-1953 comp., p. 356). The regulatory authority of the RSPA is derived from the natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*).

Federal Energy Regulatory Commission

[Project Nos. 2683 and 588]

James River II, WA; Public Scoping Meetings

November 22, 1989.

The Federal Energy Regulatory Commission (FERC) has received an application for an original license for the operation of the Elwha Project, FERC No. 2683 and an application for a new license for the operation of the Glines Canyon Project, FERC No. 588. The two hydropower projects are located on the Elwha River in Clallam County, Washington. The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. The FERC, on August 17, 1988, noticed an intent to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act.

Scoping Meetings

On Wednesday December 20, 1989, the staff will conduct a public scoping meeting in Port Angeles, Washington, from 7:30 p.m. to 10:30 p.m., at the Port Angeles High School Auditorium, 304 East Park Avenue. The next day, Thursday, December 21, 1989, in Seattle, Washington, the staff will conduct two scoping meetings the first oriented toward agencies from 1:00 p.m. to 4:30 p.m. and the second oriented toward public interests from 7:30 p.m. to 10:00 p.m. The scoping meetings in Seattle will be held at the Federal Building, South Auditorium, 4th Floor, 915 Second Avenue.

All interested individuals, organizations, tribes, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS, (2) encourage statements from the public and experts on the issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views; and (3) solicit from

the meeting participants all available information, especially quantified data, on the resources at issue.

Procedures

The meetings will be recorded by a stenographer and thereby become a part of the formal record of the Commission proceeding on the proposed Elwah/Glines Canyon Projects. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, tribes, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until January 22, 1990. All correspondence should clearly show the following caption on the first page: Elwha/Glines Canyon Projects, Washington, Project Nos. P–2683 and 588.

A preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties.

All those that are formally recognized by the Commission as intervenors in the Elwha/Glines Canyon Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

For further information please contact S. Ronald McKitrick at (202) 357–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 89–27961 Filed 11–29–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–73–000, et al.]

Pan American Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Pan American Gas Company

[Docket No. CP90–73–000]

November 20, 1989.

Take notice that on October 18, 1989, Pan American Gas Company (Pan Am), 200 East Randolph Drive, Chicago, Illinois 60601, filed in Docket No. CP90–73–000, as supplemented on November 15, 1989, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition of facilities in Oklahoma and Texas to be used to transport gas in interstate commerce, to operate the system as a transporter of natural gas in and between Oklahoma and Texas and to construct and operate a metering and regulating station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pan Am states that it proposes to acquire the "Oklahoma-Texas Line" from United Gas Pipeline Company (United). It is stated that the facilities included in the acquisition would include 8.07 miles of 20-inch pipeline, one 12-inch and 16-inch orifice meter tube, a regulating station and appurtenances commencing in Beckham County, Oklahoma and terminating in Wheeler County, Texas. It is stated that United constructed the Oklahoma-Texas Line in 1982 to comply with a gas purchase contract and transportation agreement pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA), to connect Oklahoma Natural Gas Company to facilities owned by Red River Pipeline Company (Red River). It is stated that both contracts terminated in 1986. It is stated that subsequent thereto, United has utilized the line solely for interruptible Section 311 shipments.

Pan Am states that it is acquiring the Oklahoma-Texas Line from United and that Pan Am's ownership of the line is contingent upon the issuance of an order approving an application for abandonment filed by United in Docket No. CP89–1547–000. Pan Am further states that at that time a Special Warranty Deed and Bill of sale will be prepared. Pan Am states that it will acquire the Oklahoma-Texas Line at a cost of $3,000,000.

It is stated that Pan Am proposes to operate as a transporter of natural gas in Oklahoma and Texas. It is also stated that Pan Am proposes tariffs for firm and interruptible transportation on the Oklahoma-Texas Line and initial maximum and minimum firm and interruptible rates for such transportation.

Pan Am states that since it is acquiring the Oklahoma-Texas Line from United, it proposes to utilize United's existing gas plant in service for this line. However, it is stated that because Pan Am is acquiring the line for purposes of operating the facilities as a stand alone, point-to-point transmission, it will be necessary to construct a metering station at the point at which its line interconnects with the facilities of Red River in Texas. Pan Am estimates the cost of installing the measuring and regulating station to be $450,000, which will be capable of handling maximum daily gas flows of 150,000 Mcf. Pan Am states that the meter station will be financed by internally generated funds.

Comment date: December 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP90–186–000]

November 20, 1989

Take notice that on October 31, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP90–186–000 and application pursuant to section 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the implementation of a replacement storage service under a new Rate Schedule SS–1 and a sales service under a new Rate Schedule SCQ, and for an order permitting and approving the abandonment of service under Rate Schedule WS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that by Commission order issued September 1, 1960 in Docket Nos. G–18968 and G–18969 (24 FPC 364), as subsequently amended by Commission orders, Texas Eastern is currently authorized to provide a storage service under its Rate Schedule WS (Winter Service) to 25 customers for up to a total Maximum Daily Quantity (MDQ) aggregating 597,358 Dekatherms (Dt) based upon dedicated storage capacity in the Accident, Leidy, and Oakford Storage Fields. Texas Eastern also states that the primary terms of 21 of the WS service agreements have expired and the remainder will expire shortly.

Texas Eastern further states that due to changes in the regulatory and business climate under which Texas Eastern must operate, that changes in the nature of the WS service are necessary. To this end on November 15, 1988, Texas Eastern sent letters of termination to all its WS customers, and indicated to the WS customers a desire to negotiate new service contracts to replace the terminated WS contracts.

Texas Eastern states further that by the Stipulation and Agreement filed May 31, 1989 in Docket No. RP88–67, *et al.*, the issues of (i) whether the current cost allocation and rate design of Texas Eastern's service under Rate Schedule WS is unjust, unreasonable, unduly preferential and, if so, whether and in what manner the cost allocation and rate design of the WS service and Texas Eastern's other services should be modified, and (ii) the effect of any changes in rates for WS service upon the rates charged pursuant to Texas Eastern's other sales and transportation rate schedules, will be treated as a contingent reserved issue in order to allow the WS customers and Texas Eastern to negotiate new service agreements to replace the WS service; that the Stipulation and Agreement also provided that the litigation of the appropriateness of the rates for the existing WS service will be held in abeyance until November 1, 1989, in order to permit Texas Eastern and its customers to submit a restructuring plan for the WS service, otherwise, the issues would be set for hearing; that it was against this backdrop that Texas Eastern proposed and negotiated with its customers on the terms and conditions of new services to replace Rate Scheduled WS; and that accordingly, Texas Eastern is submitting the instant application for the restructured service.

Texas Eastern requests a certificate of public convenience and necessity authorizing the implementation of storage service under a new Rate Schedule SS–1 and sales service under a new Rate Schedule SCQ, up to the following quantities (Dt):

Customer		SS–1		
	Maximum daily withdrawal quantity (1)	Maximum storage quantity (2)	Non-SCQ storage quantity [1] (3)	Non-SCQ daily injection quantity [2] (4)	SCQ—Summer contract quantity [3] (5)
Zone B: Quantities to be Nominated by Buyer					
Arkansas/Louisiana Gas	[illegible]	37,350			
Associated Natural Gas	16,665	[illegible] 300			
City of Cairo, IL	312	18,720			
Central Illinois Public Service Co	5,709	342,540			
Consumers Gas Co	125	7,470			
City of Kennett, MO	2,021	121,230			
City of Lawrenceburg, TN	415	24,930			
City of Lebanon, TN	415	24,930			
Mississippi Valley Gas Co	7,711	462,690			
Union Electric Co	1,557	93,420			
United Cities Gas Co	[illegible]	23,130			
Zone C:					
Indiana Gas Co	[illegible]	213,750			
City of Somerset, KY	207	12,420			
Zone D:					
Algonquin Gas	185,586	11,135,160			
Brooklyn Union Gas Co	[illegible]	3,737,160			
Chambersburg, PA	2,700	162,000			
Columbia Gas Trans	11,713	702,720			
Consolidated Edison Co. of NY	[illegible]	3,861,720			
Elizabethtown Gas Co	[illegible]	[illegible]			
Long Island Lighting	15,572	[illegible]			
New Jersey Natural Gas	59,171	3,550,230			
Penn Fuel Gas	[illegible]	322,920			
Philadelphia Electric	43,601	2,616,030			
Philadelphia Gas Works	44,118	2,647,080			
Public Service Electric & Gas Co	[illegible]	3,737, 160			
Total	597,358	35,841,240			

[1] This nomination must equal difference between maximum storage quantity (Col. 2) and summer contract quantity (Col. 5).
[2] This nomination may not exceed 110% of 1/214th of non-SCQ storage quantity (Col. 3).
[3] Buyer may nominate up to the maximum storage quantity (Col. 2).

Texas Eastern states that the above customers have been tendered precedent agreements by Texas Eastern to purchase the SS–1 storage service and, if desired by the customers, the SCQ sales service. Texas Eastern further states that it will supplement this application when the precedent agreements are executed:

Texas Eastern states that for service rendered by Texas Eastern to each Buyer pursuant to Rate Schedule SS–1, Buyer shall pay each month the sum of the following charges:

A. MDWQ Charge: The Demand Charge rate multiplied by the Maximum Daily Withdrawal Quantity (MDWQ).

B. Space Charge: The Space Charge rate multiplied by one-twelfth (1/12) of the Maximum Storage Quantity (MSQ).

C. Injection Charge: The Injection Charge rate multiplied by the quantity of gas injected pursuant to Rate Schedule SS–1 for the month.

D. Withdrawal Charge: The applicable Withdrawal Charge rate multiplied by the quantity of gas withdrawn from storage, other than Authorized Overrun Quantities, pursuant to Rate Schedule SS–1 for the month.

E. AOQ Charge: The applicable authorized overrun charge rate multiplied by the quantity of Authorized Overrun Quantity delivered to Buyer for the month.

F. Commodity Sales Charge: The applicable commodity charge rate multiplied by the quantity of gas purchased by Buyer from Texas Eastern and delivered to Texas Eastern for the month.

Texas Eastern states that for all service provided to Buyer during the Summer Season under Rate Schedule SCQ, Buyer shall pay Texas Eastern each month during the year the sum of the Demand Charges and Commodity Charges as follows:

Capacity Reservation Charge: The Capacity Reservation rate multiplied by one-twelfth (1/12) of Summer Contract Quantity.

Commodity Charge: The applicable Commodity Charge rate multiplied by the quantity of gas purchased during the month by Buyer for subsequent injection into storage under Rate Schedule SS–1.

Texas Eastern states that no new facilities will be required inasmuch as Texas Eastern will utilize the facilities it has been utilizing to render the service under Rate Schedule WS that it proposes to abandon herein.

Texas Eastern requests permission and approval to abandon service under its Rate Schedule WS as follows:

Customer	WS service abandoned (MDQ/DT)
Zone B:	
Arkansas/Louisiana Gas	623
Associated Natural Gas Co	16,665
City of Cairo, IL	312
Central Illinois Public Service Co	5,709
Consumers Gas Co	125
City of Kennett, MO	2,021
City of Lawrenceburg, TN	415
City of Lebanon, TN	415
Mississippi Valley Gas Co	7,711
Union Electric Co	1,557
United Cities Gas Co	[illegible]
Zone C:	
Indiana Gas Co	3,563
City of Somerset, KY	207
Zone D:	
Algonquin Gas Trans	185,586
Brooklyn Union Gas Co	62,286
Chambersburg, PA	2,700
Columbia Gas Trans	11,713
Consolidated Edison Co. of NY	84,362
Elizabethtown Gas Co	872
Long Island Lighting Co	15,572
New Jersey Natural Gas	59,171
Penn Fuel Gas	5,382
Philadelphia Electric	43,601
Philadelphia Gas Works	44,118
Public Service Electric & Gas	62,286
Total	597,358

Texas Eastern alleges that authorization of Texas Eastern's proposal herein will enable Texas Eastern to restructure the WS service to meet the changes that are taking place in the marketplace and the regulatory climate under which Texas Eastern must operate, that customers should be able to purchase gas at off-peak prices and store such gas for delivery during the peak winter period, thereby reducing costs to the consumers, and that in addition, the customers' ability under Rate Schedule SS-1 to tender "third party" gas supplies will enhance the customers' ability to diversify its supply sources for storage injection.

Comment date: December 11, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Williams Natural Gas Company

[Docket No. CP90-236-000]

November 20, 1989.

Take notice that on November 13, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-236-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Midstates Pipeline Company (Midstates), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 5,400 dt equivalent of natural gas on a peak day, 5,000 dt equivalent on an average day and 600,000 dt equivalent on an annual basis for Midstates. It is stated that WNG would receive the gas for Midstate's account at various receipt points on WNG's system in Oklahoma, and would deliver equivalent volumes at various points on WNG's system in Kansas. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced October 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-341.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP90-238-000]

November 20, 1989.

Take notice that on November 13, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP90-238-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to partially abandon a firm transportation service performed by Tennessee, *inter alia,* for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is open to public inspection.

Tennessee states that the Commission order on remand amending prior order issued September 25, 1987, in Docket No. CP84-132-005 *et al.* (41 FERC ¶61,307) authorized Tennessee, *inter alia,* to provide a firm transportation service of up to 32,500 Mcf of natural gas per day through the Project South Pass Block 77 facilities, offshore Louisiana, to Plaquemines Parish, Louisiana, for Natural. Tennessee, with Natural's consent, now proposes to reduce its firm transportation service volumes to 21,000 Mcf per day, because Natural needs less gas. Tennessee transports this gas for Natural under its FERC Rate Schedule T-175.

Comment date: December 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP90-240-000]

November 20, 1989.

Take notice that on November 14, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-240-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Phillips 66 Natural Gas Company (Phillips), a producer, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 200 dt of natural gas equivalent per day for Phillips pursuant to a transportation agreement dated October 4, 1989, between WNG and Phillips. WNG would receive the gas at various existing receipt points on its system in Oklahoma and deliver equivalent volumes, less fuel used and lost and unaccounted for quantities, to various existing delivery points on its system in Kansas and Missouri.

WNG states that the estimated daily and annual quantities would be 200 dt and 73,000 dt, respectively. Service under § 284.223(a) commenced on October 4, 1989, as reported in Docket No. ST90-340-000, it is stated.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

El Paso Natural Gas Company

[Docket No. CP90-241-000]

November 20, 1989

Take notice that on November 15, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-241-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport natural gas on an interruptible basis for Devon Energy Corporation (Devon). El Paso explains that the service commenced September 23, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-294-000. El Paso proposes to transport on a peak day up to 870 MMBtu; on an average day up to 870 MMBtu; and on an annual basis up to 317,550 MMBtu. El Paso proposes to receive the subject gas at a point of receipt on its system in Beaver County, Oklahoma, and redeliver the gas at a delivery point also in Beaver County, Oklahoma.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

Texas Gas Transmission Corporation

[Docket No. CP90-245-000]

November 20, 1989.

Take notice that on November 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-245-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Columbia Gas Development Corporation (Columbia Development) under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated April 11, 1989, it proposes to receive up to 75 billion Btu of natural gas per day at specified points located offshore and onshore Texas and Louisiana and in Indiana, Ohio, Kentucky, Illinois, and Arkansas and redeliver the gas at specified points located in Warren County, Ohio. Texas Gas estimates that the peak day, average day and annual volumes would be 75,000 million Btu, 1,000 million Btu, and 365,000 million Btu, respectively. It is indicated that on September 27, 1989, Texas Gas initiated a 120-day transportation service for Columbia Development under § 284.223(a), as reported in Docket No. ST90-97-000.

Texas Gas further states that no facilities need be constructed to implement the service. Texas Gas states that the service would continue on a month-to-month basis unless terminated upon thirty days written notice by either party. Texas Gas proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP90-246-000]

November 20, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-246-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Tarpon Gas Marketing Ltd. (Tarpon), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on a interruptible basis, up to a maximum of 100,000 dt equivalent of natural gas per day for Tarpon pursuant to a transportation agreement dated March 23, 1989. Panhandle states that it would receive the gas from various existing points of receipt in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming and redeliver the gas, less fuel and unaccounted for line loss, to Union Gas Limited in Wayne County, Michigan. Panhandle indicates that the total volume of gas to be transported for Tarpon on a peak day would be 100,000 dt; on an average day would be 75,000 dt; and on an annual basis would be 27,375,000 dt.

Panhandle states that it commenced the transportation of natural gas for Tarpon on October 1, 1989, at Docket No. ST90-252-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP90-250-000]

November 20, 1989

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-250-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI, Inc. (PSI), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 10,000 dekatherms of natural gas per day for PSI from receipt points located in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas to a delivery point located in Cass County, Missouri. Panhandle anticipates transporting an annual volume of 3,650,000 dekatherms.

Panhandle states that the transportation of natural gas for PSI commenced October 1, 1989, as reported in Docket No. ST90-186-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86-585-000.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP90-251-000]

November 20, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-251-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Anadarko Trading Company (Anadarko), a marketer of natrual gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 80,000 dt equivalent of natural gas on a peak day, 80,000 dt equivalent on an average day and 29,200,000 dt equivalent on an annual basis for Anadarko. Panhandle states that it would perform the transportation service for Anadarko under Panhandle's Rate Schedule PT. Panhandle indicates that it would receive the gas at designated points on

its system in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas and would deliver equivalent volumes of gas, less fuel used and unaccounted for line loss, to Anadarko at an interconnection between Panhandle's facilities and those of Mich-Con Detroit, located in Wayne County, Michigan.

It is explained that the service commenced October 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–189. Panhandle indictes that no new facilities would be necessary to provide the subject service.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Northwest Pipeline Corporation

[Docket No. CP90–252–000]

November 20, 1989.

Take notice that on November 15, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–252–000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a firm transportation service for Kern River Gas Supply Corporation (KRGS), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it proposes to transport up to 190,000 MMBtu per day of natual gas for KRGS pursuant to a Transportation Agreement dated October 1, 1989, under Rate Schedule TF–1, for an initial term effective from October 1, 1989, to December 31, 1992, and continuing from year to year hereafter, subject to termination upon 12 months written notice by either party.

Northwest proposes to transport the subject gas through its system from Sumas, Washington to a primary delivery point to be located at an interconnection near Muddy Creek, Wyoming with a pipeline proposed to be constructed by Kern River Gas Transmission Company. Pending completion of facilities to allow deliveries at the primary delivery point, Northwest will make deliveries to existing alternate delivery points located between Sumas and Muddy Creek to the extent that capacity is available at such alternate points which is not committed to other firm services.

Northwest further states that the maximum daily transportation volumes would be no more than 190,000 MMBtu, while it initially estimates that average day and annual transportation volumes initially will be approximately 50,000 MMBtu and 18,250,000 MMBtu, respectively.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. ANR Pipeline Company

[Docket No. CP90–254–000]

November 20, 1989.

Take notice that on November 16, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–254–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Wintershall Energy/BASF Corporation (Wintershall), a shipper, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 20,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Wintershall. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the offshore Louisiana gathering area and would redeliver the natural gas for the account of Wintershall at existing interconnections located in the state of Louisiana. ANR indicates that the average day and annual volumes of natural gas to be transported would be 20,000 dt and 7,300,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on September 12, 1989, as reported in Docket No. ST90–128–000.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Transcontinental Gas Pipe Line

[Docket No. COP90–132–000]

November 21, 1989.

Take notice that on October 25, 1989, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application, as supplemented on October 30, 1989, pursuant to section 7(b) and (c) of the Natural Gas Act and the Rules and Regulations of the Commission, for an order permitting and approving the abandonment of natural gas service provided by Applicant under Rate Schedule CD, GSS, WSS, FT and IFS to Commonwealth Gas Pipeline Corporation (commonwealth) which has assigned such service rights to the City of Richmond (Richmond), Columbia Gas Transmission Corporation (Columbia), Commonwealth Gas Services, Inc. (CGS) and Virginia Natural Gas, Inc. (VNG) (referred to collectively as Assignees) and to provide sales, transportation and storage services to Assignees, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently provides service to Commonwealth pursuant to existing and expired service agreements under the following rate schedules at the indicated levels of service:

Rate schedule	Quantity
CD	64,500 Mcf per day.
WSS	700,000 Dt equivalent storage capacity.
GSS	100,000 Mcf storage capacity, 2,000 Mcf day demand.

It is indicated that moreover, as a result of the stipulation and agreement which was filed by Applicant on August 27, 1989, in *Transcontinental Gas Pipe Line Corporation*, Docket No. RP88–68000, *et al.* and approved by the Commission on September 29, 1989, Applicant also provides service to commonwealth under the following Rate Schedules:

Rate Schedule	Quantity
FT	64,500 Mcf per day
IFS	64,500 Mcf per day

Applicant states that in connection with the restructuring of the Commonwealth system, Assignees have negotiated arrangements with Commonwealth and Applicant which provide for their assumption of the rights and obligations of Commonwealth with respect to service from Applicant. It is stated that in this connection, by assignment dated October 19, 1989, Commonwealth has assigned all of its rights and obligations under its existing agreements with Applicant to Richmond, Columbia, CGS and VNG. Applicant also states that in addition, pursuant to the assignment, Applicant has agreed and consented tgo the transfer by Commonwealth of its rights and obligations to the Assignees. In order to effectuate the assignment, Applicant requests authorization to abandon natural gas services provided to Commonwealth under Rate Schedules CD, GSS, WSS, FT and IFS and in lieu thereof, to provide such service to the assignees.

Transco also indicates that in lieu of the service provided to Commonwealth and subject to the terms and conditions of the Assignment and the service agreements between Applicant and Commonwealth, Applicant proposes to provide sales, storage and transportation services to Assignees under the following Rate Schedules at the idnicated service levels:

Assignee	Quantity (Mcf/d)
Rate Schedules CD, FT and IFS	
Richmond	9,693.
CGS	6,377.
Columbia	13,715.
VNG	34,715.
Rate Schedules GSS	
VNG	100,000 Mcf storage capacity. 2,000 Mcf daily demand.
Rate Schedules WSS	
VNG	700,000 Dt equivalent of storage capacity.

Applicant indicates that under the terms of the proposed agreement, the Assignees will assume all of Commonwealth's rights and obligations under the service agreements with Applicant, as modified by the settlement approved by the Commission in Docket No. RP88–68, *et al.* In addjtion, pursuant to the assignment, Applicant states that the parties have acknowledged and agreed that the assignment will confer upon assignees no greater right or interest in service than what Commonwealth is presently entitled.

Applicant indicated that assignees would be considered "settling customers" and are entitled to the interim merchant service elected by Commonwealth effective November 1, 1989. It is also indicated that in addition, under Article II the Assignees, as settling customers are entitled to certain long term and limited term conversion rights under the settlement and that those rights would accure to Assignees on a proportionate basis relative to their respective contract demand (CD) entitlements under the terms of the assignments.

Transco also states that as part of the settlement, settling customers also have agreed to a minimum or gurararteed annual PSP Commodity Surcharge computed in one of two ways, at the election of the settling customers, and that Commonwealth has elected Option I for the applicable PSP Commodity Charge methodology. Accordingly, it is indicated that Commonweatlh's Option I election and Commonweath's fixed monthly PSP charge would be binding on Assignees on a proprtionate basis relative to their respective CD entitlements.

Comment date: December 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP90–228–000]

November 21, 1989.

Take notice that on November 9, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–228–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for permission and approval to abandon direct sales service and the metering facilities used for the sale of natural gas to two industrial customers in East Baton Rouge Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to abandon the sales to the two customers, Kleinpeter Farms Dairy, Inc. and Kleinpeter Farms Dehydration Company, in response to notification by both customers that they wish to terminate their sales contracts. It is stated that the abandonment of the facilities would be accomplished without detriment or disadvantage to United's other existing customers. It is asserted that the original cost of the facilities, $21,287, would be credited against Account 101, Gas Plant in Service.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Endevco Industrial Gas Sales Company

[Docket No. CP90–237–000]

November 21, 1989.

Take notice that on November 13, 1989, Endevco Industrial Gas Sales Company (Endevco), 8080 North Central Expressway, 12th Floor, Dallas, Texas 75206, filed an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR § 284.244) requesting blanket certificate authorization to engage in the sale, transportation (including storage) and assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Endevco states that it is a public utility in the State of Mississippi providing natural gas services subject to the regulation of the Mississippi Public Service Commission (Mississippi PSC). Endevoc further states that it is a "Hinshaw Pipeline" and is exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act. During the twelve-month period beginning on November 1, 1988, and ending October 31, 1989, Endevco asserts that it received 84, 472 MMBtu's of gas into its system and that all such volumes were from interstate sources and exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act.

Endevco advises that it has received authority from the Mississippi PSC to acquire an existing natural gas liquid storage facility located in Mississippi, which is presently subject to Mississippi regulation, and to convert such a facility into, and operate such facility as a natural gas storage facility. The instant authorization is being sought primarily because Endevco desires to utilize the facility to provide storage service for companies located outside of Mississippi. Endevco states that the services performed under the requested blanket authority would be subject to the same rates, terms and conditions approved by the Mississippi PSC for like services provided to LDC's, end-users and public utilities located within Mississippi.

Comment date: December 12, 1989 in accordance with Standard Paragraph F at the end of the notice.

16. Texas Gas Transmission Corporation

[Docket No. CP90–243–000]

November 21, 1989.

Take notice that on November 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–243–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Santa Fe Minerals, Inc. (Santa Fe), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated August 21, 1989, Texas Gas requests authorization to transport

up to 75,000 MMBtu of natural gas per day for Santa Fe under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to various existing points of delivery located in Louisiana. Santa Fe estimates that the average day and annual transportation quantities would be 50,000 MMBtu and 27,000,000 MMBtu, respectively. Texas Gas advises that the service commenced October 14, 1989, as reported in Docket No. ST90–169–000, under § 284.223(a) of the Commission's Regulations.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. K N Energy, Inc.

[Docket No. CP90–253–000]

November 21, 1989.

Take notice that on November 15, 1989, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90–253–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate sales taps for the delivery of natural gas to end users under KN's blanket certificate issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

KN proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines. KN states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on KN's peak day and annual deliveries.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Tennessee Gas Pipeline Company

[Docket No. CP90–258–000]

November 21, 1989.

Take notice that on November 17, 1989, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–258–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Pruet Production Company (Pruet), under its blanket authorization issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Pruet, a producer of natural gas, pursuant to a gas transportation agreement dated October 20, 1989 (contract no. I–3887). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of one year and month to month thereafter, subject to termination upon 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 74,180 dekatherm; on an average day up to 74,180 dekatherm; and on an annual basis 27,075,700 dekatherm for Pruet. Tennessee proposes to transport the subject gas from receipt points located in Mississippi and Alabama, for redelivery to various delivery points located in Alabama. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on November 4, 1989, as reported in Docket No. ST90–471–000.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Trunkline Gas Company

[Docket No. CP90–261–000]

November 21, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–261–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for NGC Transportation, Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for NGC. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Texas Eastern in Williamson County, Illinois.

Trunkline advises that service under § 284.223(a) commenced September 28, 1989, as reported in Docket No. ST90–190. Trunkline further advises that it would transport 2,000 dt on an average day and 730,000 dt annually.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Colorado Interstate Gas Company

[Docket No. CP90–267–000]

November 21, 1989.

Take notice that on November 17, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP90–267–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Questar Energy Company (Questar), a natural gas marketer, under its blanket authorization issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed interruptible transportation service for Questar, pursuant to a interruptible transportation service agreement dated July 15, 1989. The transportation agreement dated July 15, 1989. The transportation agreement is effective until August 1, 1990, and month to month thereafter provided that after July 31, 1990, either party may terminate the agreement upon 30 days' prior written notice. CIG proposes to transport up to 25,000 Mcf of natural gas on a peak and day; 10,000 Mcf on an average day; and on an annual basis 3,650,000 Mcf of natural gas for Questar. CIG proposes to receive the subject gas at an existing point of receipt located in Section 24–T18N–R106W, Sweetwater County, Wyoming and redeliver the gas, less fuel gas and lost and unaccounted-for gas, and redeliver the gas, for the account of Questar in Section 23–T12N–R60W, Weld County, Colorado. CIG avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120–day self implementing provision § 284.223(a)(1) of the Commission's Regulations. CIG commenced such self-implementing service on October 18, 1989, as reported in Docket No. ST90–365–000.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Trunkline Gas Company

[Docket No. CP90–258–000]

November 21, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–258–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Panhandle Trading Company (PTC), a marketer, under the blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated December 22, 1988, under its Rate Schedule PT, it proposes to transport up to 65,000 dekatherms (dt) per day equivalent of natural gas for NGC. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Texas Eastern in Williamson County, Illinois.

Trunkline advises that service under § 284.223(a) commenced October 3, 1989, as reported in Docket No. ST90–324. Trunkline further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Trunkline Gas Company

[Docket No. CP90–257–000]

November 22, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–258–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mountain Iron & Supply Company (Mountain Iron), a marketer, under the blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated September 15, 1989, under its Rate Schedule PT, it proposes to transport up to 1,000 dekatherms (dt) per day equivalent of natural gas for Mountain Iron. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to CIPSO—Effingham in Effingham County Illinois.

Trunkline advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–323. Trunkline further advises that it would transport 1,000 dt on an average day and 365,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Trunkline Gas Company

[Docket No. CP0–260–000]

November 22, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–260–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull Marketing), a marketer, under the blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated April 27, 1989, under its Rate Schedule PT, it proposes to transport up to 40,000 dekatherms (dt) per day equivalent of natural gas for Seagull Marketing. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Consumers Power in Elkhart County, Indiana.

Trunkline advises that service under § 284.223(a) commenced October 13, 1989, as reported in Docket No. ST90–402. Trunkline further advises that it would transport 40,000 dt on an average day and 10,000,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

24. Gulf States Transmission Corporation

[Docket No. CP90–239–000]

November 22, 1989.

Take notice that on November 13, 1989, Gulf States Transmission Corporation (GSTC) 1324 North Hearne, Suite 300, Shreveport, Louisiana, 71107, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, Part 157, Subpart E of the Commission's Regulations (18 CFR Part 157, Subpart E), and Part 284 of the Regulations (18 CFR Part 284). GSTC requests an abbreviated application for: (1) An optional expedited certificate (OEC) of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and approving initial rates to be charged for transportation service through such facilities; and (2) issuance of a blanket certificate of public convenience and necessity to perform self-implementing, open-access transportation service by means by such facilities, and to perform "routine activities," all as more fully set forth in the request which is on file with the Commission and open to public inspection.

GSTC proposes to construct a natural gas transmission system extending from a point in Harrison County, Texas, to a point in Caddo Parish, Louisiana. Specifically, GSTC requests that the Commission grant it an optional expedited certificate authorizing it to construct an operate the proposed facilities which will enable and existing gas reserves located primarily in east Texas to be transported to intrastate facilities located in northwest Louisiana, for delivery to local markets, as well as to downstream interstate pipelines. GSTC proposes to construct and operate the following interstate facilities:

—Approximately 5.6 miles of 20 inch O.D. pipeline, primarily .312" wall thickness, from Section 20 T–18–N, R–16–W, Caddo Parish, Louisiana, to N. Jones Survey, A-371, Harrison County, Texas; and

—Meter stations and receipt and delivery points at each terminus of the aforementioned pipeline.

GSTC states that the maximum throughput of the proposed facilities will be 150,000 Mcf per day at the design inlet operating pressure of 912 psig. This pressure is necessary for GSTC to deliver gas at its terminus in Caddo Parish, Louisiana at the 900 psig operating pressure of Gulf States Pipeline Corporation. GSTC states that no compression will be installed. GSTC estimates that the capital cost of the proposed facilities will be $2,455,000. GSTC proposes to finance the project through short-term loans and corporate funds on hand, and permanently as part of its over-all long-term financing program.

GSTC submits that the initial rates proposed to be charged for the transportation service have been derived using components that comply with the Commission's standards for assumption of economic risk by OEC applicants. Therefore, GSTC states that it will be assuming the economic risk of the project.

Finally, GSTC requests that the Commission issued a blanket certificate of public convenience and necessity authorizing it to transport natural gas for others pursuant to § 7 of the NGA and § 284.221 of the Commission's Regulations. In support of this request, GSTC appended to its application pro forma tariff sheets, general terms and conditions, and service agreements to implement such open access, non-discriminatory transportation to be performed on a self-implementing basis under the blanket certificate. GSTC also requests that the blanket certificate authorize it to undertake the "routine activities" under subpart F of Part 157 of the Commission's Regulations.

Comment date: December 13, 1989 in accordance with Standard Paragraph F at the end of the notice.

25. United Gas Pipe Line Company

[Docket No. CP90–265–000]

November 22, 1989.

Take notice that on November 17, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–265–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Gulf South Pipeline Company (Gulf South) under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, as more fully set forth in the request which is on file with the Commission and open to the public inspection.

United States that pursuant to a transportation service agreement dated May 12, 1989, as amended on September 14, 1989, it proposes to receive up to 300,000 Mcf per day at specified points located onshore and offshore Louisiana, Texas, and Mississippi and redeliver the gas at specified points located in the states of Louisiana, Alabama, and Mississisippi. United estimates that the peak day, average day and annual volumes would be 309,000 million Btu, 309,000 million Btu, and 112,785,000 million Btu, respectively. It is indicated that on September 15, 1989, United initiated a 120-day transportation service for Gulf South under § 284.223(a), as reported in Docket No. ST90–339–000.

United further states that no facilities need by construcuted to implement the service. United states that the agreement would continue on a month-to-month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. Panhandle Eastern Pipe Line Company

[Docket No. CP90–248–000]

November 22, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–248–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Home Petroleum Corporation (HPC), a shipper and producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 2,000 dt per day on an interruptible basis, pursuant to a transportation agreement dated September 14, 1989, between Panhandle and HPC. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt located in the State of Wyoming. Panhandle states that it would then redeliver subject gas, less fuel used and unaccounted for line loss, to Mountain Fuel in Sweetwater County, Wyoming. Panhandle indicates that the total volume of gas to be transported for HPC on a peak day would be 2,000 dt; on an average day would be 1,500 dt; and on an annual basis would be 730,000 dt.

Panhandle states that it commenced the transportation of natural gas for HPC on October 1, 1989, at Docket No. ST90–317–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

27. El Paso Natural Gas Company

[Docket No. CP90–255–000]

November 22, 1989.

Take notice that on November 17, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP90–255–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas for Phillips Gas Marketing Co. (Phillips), a natural gas shipper, under its blanket certificate issued in Docket No. CP88–433–000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes an interruptible transportation service for Phillips of 51,500 MMBtu equivalent of natural gas on peak and average days, and 18,797,500 MMBtu equivalent per year. El Paso would transport gas for Phillips from any receipt point on its system to various existing Texas delivery points and existing delivery points near Topock, Arizona, and Blythe, California, also on El Paso's system. El Paso commenced its transportation service for Phillips on September 26, 1989, under the 120-day automatic authorization provisions of § 284.233(a) of the Regulations, as reported in Docket No. ST90–356.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

28. Colorado Interstate Gas Company

[Docket No. CP90–242–000]

November 22, 1989.

Take notice that on November 15, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–242–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–589, *et al.* pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it would receive natural gas for Amoco from various existing points of receipt on CIG's system in Kansas, Wyoming, Oklahoma and Colorado, and would redeliver the gas for the account of Amoco in Sweetwater County, Wyoming.

CIG states that the maximum daily, average daily and annual quantities that it would transport for Amoco would be 50,000 Mcf of natural gas, 20,000 Mcf of natural gas and 7,300,000 Mcf of natural gas, respectively.

CIG indicates that in Docket No. ST90–333, filed with the Commission, it reported that transportation service for Amoco had begun on October 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

29. Southern Natural Gas Company

[Docket No. CP90–266–000]

November 22, 1989.

Take notice that on November 17, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–266–000 a request for authorization pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to abandon certain regulating and measurement facilities and to change the operation of an existing delivery point by shifting contract demand from one point to another and by altering the contract delivery pressure at one point pursuant to Southern's blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to Alabama Gas Corporation (Alagasco) at the Green-Hale Delivery Point (Greene-Hale) and the Tuscaloosa No. 2 Point of Delivery (Tuscaloosa No. 2) under a Service Agreement between Southern and Alagasco.

Southern explains that the Greene-Hale and Tuscaloosa No. 2 meter stations lie adjacent to each other on Southern's pipeline system. Southern and Alagasco have agreed that Southern may consolidate deliveries to Alagasco at Tuscaloosa No. 2, which would be more efficient for both parties, it is explained. Therefore, Southern requests authorization to abandon the Greene-Hale meter station and transfer the contract demand assigned to Greene-Hale to the Tuscaloosa Area Delivery Point.

Southern states that it currently delivers gas supplies to Alagasco at Tuscaloosa No. 2 at a contract delivery pressure of 300 psig. Southern explains that Alagasco has requested, and Southern has agreed to deliver mainline pressure at Tuscaloosa No. 2. As a result of the increased delivery pressure, Southern further proposes to abandon two 3-inch regulators and appurtenant facilities at Tuscaloosa No. 2, which will no longer be necessary upon delivery of main line pressure.

Southern states that the abandonment of facilities, shift in contract demand, and increase in delivery pressure proposed in this application would not result in any termination of service, and that the changes would not result in a change to the total contract demand delivered to Alagasco. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries at Tuscaloosa No. 2 at the revised delivery pressure and change in contract demand without detriment or disadvantage to its other customers; (2) deliveries at the increased delivery pressure would have no impact on Southern's peak day and annual deliveries; and (3) the abandonment and change are not prohibited by any existing tariff of Southern.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

30. Southern Natural Gas Company

[Docket No. CP90–269–000]

November 24, 1989.

Take notice that on November 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–269–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states authorization to transport, on an interruptible basis, up to a maximum of 10,000 MMBtu of natural gas per day for Texican from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Mississippi and Alabama to a delivery point located in Aiken County, South Carolina. Southern anticipates transporting 3,479 MMBtu of natural gas on an average day and an annual volume of 2,000,000 MMBtu.

Southern states that the transportation of natural gas for Texican commenced September 22, 1989, as reported in Docket No. ST90–123–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88–116–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

31. Trunkline Gas Company

[Docket No. CP90–259–000]

November 24, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP90–259–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportion service on behalf of Amgas, Inc. (Amgas), under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt of natural gas per day for Amgas from receipt points located in Illinois, Louisiana, offshore Louisiana, Tennessee, offshore Texas and Texas to a delivery point located in Douglas County, Illinois. Trunkline anticipates transporting, on an average day 25,000 dt and an annual volume of 18,250,000 dt.

Trunkline states that the transportation of natural gas for Amgas commenced October 13, 1989, as reported in Docket No. ST90–403–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

32. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP90-263-000]

November 24, 1989.

Take notice that on November 17, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-263-000, an application pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Enron Oil and Gas Company (Enron), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated October 16, 1989, Northern requests authority to transport up to 150,000 MMBtu per day of natural gas, on a firm basis, for Enron. Northern states that the agreement provides for it to receive the gas from an existing point of receipt located at Matagorda Island, Block 638, offshore Texas and to redeliver the gas to an existing point of delivery located at Matagorda Island, Block 624, offshore Texas. Enron has informed Northern that it expects to have only 112,500 MMBtu transported on an average day and estimates that 54,750,000 MMBtu would be transported annually. Northern advises that the transportation service commenced on October 26, 1989, as reported in Docket No. ST90-242-000, pursuant to § 284.223 of the Commission's Regulations.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27962 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10248-001 Arkansas]

F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy Corporation, permittee for the Toad Suck Ferry L+D No. 8 Project located on the Arkansas River in Perry County, Arkansas has requested that its preliminary permit be terminated. The preliminary permit was issued on May 1, 1987, and would have expired on April 30, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10248 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27963 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10249-001 Texas]

F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F&T Energy Corporation, permittee for the Lake O' The Pines Project located on the Cypress Creek in Marion County, Texas has requested that its preliminary permit be terminated. The preliminary permit was issued on April 30, 1987, and would have expired on March 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10249 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27964 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10250-001 Arkansas]

F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F&T Energy Corporation, permittee for the DeQueen Lake Dam Project located on the Rolling Fork River in Sevier County, Arkansas has requested that its preliminary permit be terminated. The preliminary permit was issued on April 21, 1990, and would have expired on March 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10250 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27965 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10247-001 Texas]

F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy Corporation, permittee for the Wright Patman Dam Project located on the Sulphur River in Bowie County, Texas has requested that its preliminary permit was issued on May 11, 1987, and would have expired on April 30, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10247 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27966 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10251-001 Arkansas]

F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy Corporation, permittee for the Dierks Lake Dam Project located on the Saline River in Sevier County, Arkansas has requested that its preliminary permit be terminated. The preliminary permit was issued on April 21, 1987, and would have expired on March 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10251 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27967 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-245-001]

Paiute Pipeline Co.; Compliance Filing

November 24, 1989.

Take notice that on November 20, 1989, Paiute Pipeline Company (Paiute) tendered for filing Substitute Original Sheet No. 11.

Paiute states that the purpose of this filing is to comply with Ordering Paragraph (1) of the October 27, 1989 order issued by the Commission in the above-referenced docket. In its order, the Commission directed Paiute to revise its original filing to reflect the allocation of take-or-pay costs direct billed by Northwest Pipeline Corporation only to Paiute's firm sales customers. Paiute has requested waiver of the Commission's regulations to permit an effective date of October 1, 1989 for Substitute Original Sheet No. 11.

Paiute states that copies of this filing have been mailed to all parties of record and interested State commissions in the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before December 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27968 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-759-001]

Transcontinental Gas Pipe Line Corp.; Sale of Natural Gas

November 21, 1989.

Take notice that on October 31, 1989, as supplemented on November 16, 1989, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Boulevard, Houston, Texas 77251, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transco's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP89-759-000 issued March 4, 1989 (48 FERC ¶ 61,303).

(1) Name of Buyer: TXG Gas Marketing Company (TXG)

(2) Location of Buyer: Owensboro, Kentucky

(3) Affiliation between Transco and Buyer: TXG and Transco are both subsidiaries of Transco Energy Company.

(4) Nature of the involvement of the affiliate: purchase for resale

(5) Term of Sale: one (1) year commencing December 1, 1989

(6) Estimated Total and Maximum Daily Quantities:

Daily Quantity—100,000 MMBtu

Estimated Total—36.5 Bcf

(7) Rates: Maximum—100 percent load factor rate, as adjusted, currently on file: $2.04

Minimum—Transco's Unit Price for gas: $1.72 plus variable costs

To be charged during billing period: minimum rate.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 24, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transco may sell gas for 120 days from the date of commencement of service or

until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27969 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-43-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 24, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on November 17, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective December 17, 1989:

1st Revised Sheet No. 86A
Original Sheet No. 86B

Transwestern states that by orders issued May 11, 1988 and July 29, 1988, in Docket No. CP88-99-000 *et al.*, the Commission authorized Transwestern to establish a Gas Inventory Charge ("GIC") subject to certain conditions. Among the conditions imposed was the requirement that Transwestern terminate its PGA clause and close out its Account No. 191 upon implementation of a GIC. Section 24.10 of the General Terms and Conditions of Transwestern's FERC Gas Tariff provides that on or before March 1, 1990, Transwestern shall bill or refund, as appropriate, all Account No. 191 costs actually paid or incurred before December 31, 1989.

Transwestern proposes a revision to Substitute Original Sheet No. 86A to provide a "litigation exception" to the requirement that all amounts to be direct billed be paid on or before December 31, 1989. Specifically, the "litigation exception" proposed herein provides that Transwestern will be permitted to direct bill producer billing dispute amounts ultimately determined, either through settlement or resolution of court litigation or arbitration proceedings, for which such litigation or arbitration proceedings were pending on December 31, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27970 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO-RTP-0327; FRL 3692-4]

Alternative Fuels Research Strategy; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces an expert, peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of a draft document titled "Alternative Fuels Research Strategy." The workshop site is the Washington Duke Inn, 3001 Cameron Blvd., Durham, North Carolina 27706, (919) 490-0999.

DATES: The workshop will be held December 6-8, 1989, from approximately 9:00 a.m. to 5:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: J. Michael Davis, Ph.D., U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4162 or (FTS) 629-4162.

SUPPLEMENTARY INFORMATION: The Office of Research and Development of the U.S. Environmental Protection Agency (EPA) is preparing an "Alternative Fuels Research Strategy." The purpose of this Research Strategy is to summarize scientific issues and identify research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health and environmental benefits and risks attendant to the introduction and use of alternative fuels in comparision to those associated with the use of conventional petroleum fuels. The ultimate goal of this Research Strategy is to lay the foundation for obtaining information useful in quantitative, comparative risk assessments for human health, ecosystem, and global warming effects.

One major impetus for this effort lies in the Alternative Motor Fuels Act of 1988 (Public Law 100-494). This legislation requires the Administrator of EPA to prepare a Report to Congress every two years, starting in December 1990, on the positive and negative environmental impacts associated with alternative fuels as compared to gasoline and diesel fuels. The Act identifies methanol, ethanol, and compressed natural gas as alternatives to conventional petroleum-distillate fuels. In addition to these possible replacements for conventional fuels, the Research Strategy considers reformulated gasoline blends. For each of these fuels, the Research Strategy examines issues and research needs related to: stationary and mobile source emissions associated with fuel production, distribution, and utilization; emissions transport, transformation, and fate in air, soil, and water; human and ecosystem exposure; health effects, including pharmacokinetics, animal inhalation toxicology, human clinical studies, epidemiology, and cancer and non-cancer health effects; aquatic and terrestrial ecosystem effects; and risk reduction/control technologies. Implications for global warming are also noted where emissions of radiatively importance trace gases are involved.

It is expected that the worshop will be conducted by dividing into three subgroups: (1) Emissions, atmospheric processes, exposure, and risk reduction/control technology; (2) human health effects; and (3) ecosystem fate, exposure, and effects. Plenary sessions will be held at the beginning and conclusion of the meeting. Only limited time will be available for observers to comment. Because one purpose of this Research Strategy is to provide guidance for non-EPA as well as EPA research in the area of alternative fuels, Organizations with research interests related to conventional and alternative fuels are encouraged to communicate their interests to EPA. Members of the public wishing to attend the meeting should contact Dr. J. Michael Davis in advance at the address noted above and, also, identify whether they wish to make a statement at the workshop. Following this workshop, the Research Strategy will be revised and an external review draft released for further public comment and EPA Science Advisory Board (SAB) review.

Dated: November 24, 1989.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-28036 Filed 11-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3692-3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; Spectra-Chem, Inc. and William Flynn

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). This proposed settlement is intended to resolve the liability under CERCLA of Spectra-Chem, Inc. and William Flynn for response costs incurred at the Spectra-Chem facility in Oregon, Wisconsin.

DATE: Comments must be provided on or before January 2, 1990.

ADDRESS: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and should refer to: In Re Spectra-Chem site in Oregon, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-0562.

Notice of Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Spectra-Chem hazardous waste site at 295 Market Street in Oregon, Wisconsin. The agreement was approved, subject to review by the public pursuant to this Notice, by EPA Region V on April 19, 1989. Spectra-Chem, Incorporated and William Flynn have executed binding certification of their consent to participate in the settlement.

Under this proposed settlement, parties have agreed that U.S. EPA will receive the proceeds of the sale of the Spectra-Chem property, which was the subject of removal activities by EPA from December 20, 1985 through January 8, 1986. Spectra-Chem, Inc. and William Flynn will make their best efforts to obtain the highest possible price for the property. Prior written approval from EPA will be required for sale of the property at less than the appraised value.

EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes EPA to settle a claim under Section 107 for response costs incurred if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement proposes to settle with Spectra-Chem, Inc. and William Flynn.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this Notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-28035 Filed 11-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Long Beach Terminal

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003800-004

Title: City of Long Beach Terminal Agreement.

Parties:
City of Long Beach
California United Terminals

Synopsis: The Agreement amends the basic agreement. It revises the description of the assigned premises, adjusts the compensation provisions, and eliminates certain obsolete provisions. The entire basic agreement has beens restated.

By Order of the Federal Maritime Commission.

Dated: November 24, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27984 Filed 11-29-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 22, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 10, 1989.

ADDRESS: Comments, which should refer to OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary,

BEST COPY AVAILABLE

Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a)

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Report

1. *Report title:* Report on Terms of Credit Card Plans.
Agency form number: FR 2572.
OMB Docket number: 7100–0239.
Frequency: Semiannual.
Reporters: Financial institutions.
Estimated number of reporters: 175.
Average number of hours per response: 1.
Annual reporting hours: 350.

Small businesses are not affected.

General Description of Report

The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (Pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act (15 U.S.C. § 1646(a)).

This semiannual report will collect credit card price and availability information from a sample of financial institutions. The sample of financial institutions will be comprised of credit card plan information from the largest 175 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan associations and savings banks). In addition, the report will include any financial institution that notifies the Federal Reserve Banks that they would like to participate. Financial institutions wishing to file the initial January 31, 1990 report, should contact the Federal Reserve Bank located in their district prior to January 1, 1990. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

Board of Governors of the Federal Reserve System, November 22, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–27991 Filed 11–29–89; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review

November 24, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve Sysem (Board) its approval authority under the Paperwork Reduction Act of 1980, as 5 CFR 1320.9, "to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 21, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files upon approval may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Report

1. *Report title:* Application for Employment with the Board of Governors of the Federal Reserve System.
Agency form numbers: N.A.
OMB Docket number: 7100–0181.
Frequency: On occasion.
Reporters: Individuals.
Annual reporting hours: 3,500.
Estimated average hours per response: 0.5.
Number of respondents: 7,000.

Small businesses are not affected.

General Description of Report

This information collection is required to obtain a benefit [12 U.S.C. 244 and 248(1)] and is given confidential treatment [5 U.S.C. 552(a) and 552(b) (2) and (6)].

The Application for Employment with the Board of Governors of the Federal Reserve System collects information needed to determine the qualifications, suitability, and availability of applications for employment with the Board and of current Board employees for reassignment, reinstatement, transfer, or promotion. The completed form may also be used to examine, rate, or assess the applicant's qualifications and to determine if the applicant is entitled to rights or benefits under certain laws and regulations.

Board of Governors of the Federal Reserve System, November 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–27992 Filed 11–29–89; 8:45 am]

BILLING CODE 6210–01–M

Dunlap Iowa Holding Co., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Dunlap Iowa Holding Co., Dunlap, Iowa; to increase its lending authority from $150,000 to $500,000. Applicant currently makes and services loans subject to the commitment that the dollar volume extended or purchased does not exceed $150,000.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-South Bancorp, Inc., Franklin, Kentucky; to acquire General Trust Company, Nashville, Tennessee, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27993 Filed 11–29–89; 8:45 am]

BILLING CODE 6210–01–M

High Point Bank Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 20, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. High Point Bank Corporation, High Point, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of High Point Bank and Trust Company, High Point, North Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. International Trade Bankcorp, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of International Trade Bank of Atlanta, Atlanta, Georgia, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Royal Bancshares, Inc., Elroy, Wisconsin; to become a bank holding company by acquiring 97.63 percent of the voting shares of Bank of Elroy, Elroy, Wisconsin.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Kirbyville Bancshares, Inc., Beaumont, Texas; to acquire 100 percent of the voting shares of First National Bank of Woodville, Woodville, Texas.

2. Kirbyville Bancshares, Inc., Beaumont, Texas; merge with Vidor Bancshares, Inc., Vidor, Texas, and thereby indirectly acquire Plaza National Bank, Beaumont, Texas, and Vidor State Bank, Vidor, Texas.

3. Thompson Financial, Ltd., Fort Worth, Texas; acquire 3.80 percent of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas, and North Fort Worth Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, November 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–27994 Filed 11–29–89; 8:45 am]

BILLING CODE 6210–01–M

The Mitsui Bank, Limited, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. The Mitsui Bank, Limited, Tokyo, Japan; to merge with Taiyo Kobe Bank & Trust Company, New York, New York.

In connection with this application, Applicant also proposes to operate Bank as a limited purpose trust company, subsequent to its conversion from a bank to a nonbank, for the period between the time of the merger and January 1, 1991 and to engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-27995 Filed 11-29-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1990 Through September 30, 1991

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1991 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1990 through September 30, 1991. This notice announces the calculated "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; title IV–A programs in all jurisdictions except American Samoa and the Northern Mariana Islands; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Pub. L. 99-272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1990 and ending September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Family Support Administration, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252-5041.

(Catalog of Federal Domestic Assistance Program Nos. 13.808–Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: November 28, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

BILLING CODE 4150-04-M

Federal percentages and Federal medical assistance percentages, effective October 1, 1990-September 30, 1991 (Fiscal year 1991)

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	72.73
Alaska	50.00	50.00
American Samoa	50.00	50.00*
Arizona	57.46	61.72
Arkansas	65.00	75.12
California	50.00	50.00
Colorado	50.00	53.59
Connecticut	50.00	50.00
Delaware	50.00	50.00
District of Columbia	50.00	50.00
Florida	50.00	54.46
Georgia	57.04	61.34
Guam	50.00	50.00*
Hawaii	50.00	54.14
Idaho	65.00	73.65
Illinois	50.00	50.00
Indiana	59.16	63.24
Iowa	59.35	63.41
Kansas	52.61	57.35
Kentucky	65.00	72.96
Louisiana	65.00	74.48
Maine	59.43	63.49
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	50.00	54.17
Minnesota	50.00	53.43
Mississippi	65.00	79.93
Missouri	55.35	59.82
Montana	65.00	71.73
Nebraska	58.56	62.71
Nevada	50.00	50.00
New Hampshire	50.00	50.00
New Jersey	50.00	50.00
New Mexico	65.00	73.38
New York	50.00	50.00
North Carolina	62.89	66.60
North Dakota	65.00	70.00
Northern Mariana Islands	50.00	50.00
Ohio	55.48	59.93
Oklahoma	65.00	69.65
Oregon	59.65	63.50
Pennsylvania	51.82	56.64
Puerto Rico	50.00	50.00*
Rhode Island	50.00	53.74
South Carolina	65.00	72.58
South Dakota	65.00	71.69
Tennessee	65.00	68.57
Texas	59.48	63.53
Utah	65.00	74.89
Vermont	57.74	61.97
Virgin Islands	50.00	50.00*
Virginia	50.00	50.00
Washington	50.00	54.21
West Virginia	65.00	77.00
Wisconsin	55.14	59.62
Wyoming	64.60	68.14

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 89-28188 Filed 11-29-89; 8:45 am]

BILLING CODE 4150-04-C

Privacy Act of 1974; Deletion of Notice of System of Records

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of the Assistant Secretary for Planning and Evaluation is deleting one Privacy Act System of Records previously published in the **Federal Register**.

EFFECTIVE DATE: November 30, 1989.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information regarding this action, contact Joan Turek-Brezina, Privacy Act Officer (telephone: 202–245–6141).

Notice is hereby given that the Department of Health and Human Services is deleting the following notice which describes a system of records maintained by the Office of the Assistant Secretary for Planning and Evaluation:

System No.	System name	Date published in the FEDERAL REGISTER
09–90–0065	Medicare Mental Health Demonstration Evaluation.	10/13/82 (47 FR 45550).

The records formerly covered by the system notice for the Medicare Mental Health Demonstration Evaluation have been certified as being properly destroyed or erased by the contractor, Macro Systems, Inc.

Dated: November 17, 1989.

Ann Segal,

Executive Assistant to the Assistant Secretary for Planning and Evaluation.

[FR Doc. 89–27990 Filed 11–29–89; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Announcement of Proposed Categories of Facilities Determined To Have a Critical Shortage of Nurses for Service Obligations Under the Program of Scholarships for the Undergraduate Education of Professional Nurses

The Health Resources and Services Administration announces the categories of health facilities which the Secretary (HRSA) is proposing to determine to have a critical shortage of nurses for purposes of the fulfillment of service obligations by individuals who first receive a scholarship under the Scholarships for the Undergraduate Education of Professional Nurses Grant Program for academic years 1989–90 and 1990–91. This program is authorized under section 843 of the Public Health Service Act (the Act), as added by Public Law 100–607. Comments are invited on the categories being proposed.

Purpose

The Scholarships for the Undergraduate Education of Professional Nurses Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending their schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than 2 years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a certified nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

Definitions of Facilities

The following definitions, arranged alphabetically, apply to those facilities specified in section 843 of the Act and have been included in application materials mailed to schools.

"Community Health Center" means an entity (as defined under section 330(a) of the Act and in regulations at 42 CFR 51c.102(c) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:

(1) Primary health services;

(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health care services;

(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;

(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health;

(5) Information on the availability and proper use of health services, for all residents of the area it serves; and

(6) Patient case management services (including outreach, counseling, referral, and follow-up services), for all residents of the area it serves (referred to in this section as a "catchment area").

"Indian Health Service Center" means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act, as described in 42 CFR part 36, subparts H and I), which is physically separated from a hospital, and which provides one or more clinical treatment services, such as physician, dentist or nursing services (as described in 42 CFR 36.11), available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent as described in 42 CFR 36.12.

"Migrant Health Center" means an entity (as defined under section 329(a) of the Act and in regulations at 42 CFR 56.102(g)) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:

(1) Primary health services;

(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health care services;

(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;

(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health;

(5) As may be appropriate for particular centers (as determined by the centers), infections and parasitic disease screening and control;

(6) As may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure; and

(7) Information on the availability and proper use of health services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals, for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves and individuals who have previously been migratory agricultural workers but can no longer meet the definition of migratory agricultural workers because of age or disability, and members of their families within the area it serves.

(a) "Migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes for the purpose of such employment a temporary abode.

(b) "Seasonal agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

"Native Hawaiian Health Center" means an entity (as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579 [S. 136])—(A) which is organized under the laws of the State of Hawaii, (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable, (C) which is a public or nonprofit private entity, and (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

"Nursing Facility" means a facility as defined under section 1919(a) of the Social Security Act (as such section is in effect during Fiscal Year 1991 and subsequent Fiscal Years), except that for Fiscal Year 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"Public Hospital" means a facility (as defined in regulations at 42 CFR 242.1) owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof, and (A) which provides community services for inpatient medical care of the sick or injured (including obstetrical care); (B) where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; (C) which is a facility licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

"Rural Health Clinic" means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2) which:

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as such services and supplies covered under Sections 1861(s)(2)(A) and 1861(s)(10) of the Social Security Act;

(2) In the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the revisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Act, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, which are developed with the advice of (and with provisions for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (5) and relating to the provision of the clinic's service;

(7) Directly provides routine diagnostic service, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(1) Meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Proposed Facilities Having a Critical Shortage of Nurses

In addition to the types of facilities specified above, the following categories of facilities are proposed as meeting the criterion of a "health facility having a critical shortage of nurses" for purposes of fulfillment of service obligations by nurses who first received scholarships under the Scholarships for the Undergraduate Education of Professional Nurses program for academic years 1989–90 and 1990–91.

(1) All rural hospitals, as classified by the Medicare and Medicaid programs.

(2) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a disproportionately larger share of low-income patients than other hospitals, as determined by the Medicare and Medicaid Programs.

(3) Home health agencies approved for Medicare and Medicaid reimbursement.

(4) State and local health departments.

HRSA is proposing a broad definition of the term "health facility having a critical shortage of nurses" for individuals who first received scholarships during the initial 2 years of implementation of the Scholarships for the Undergraduate Education of Professional Nurses Program. This broad interpretation is based on HRSA's view that this program was established primarily to increase access to the nursing profession for financially needy individuals, particularly those from

disadvantaged backgrounds, and secondly, to meet selected priority needs for nursing services.

The proposed approach for determining where critical shortages of nurses exist is consistent with the finding of former Secretary Bowen's Commission on Nursing that the current shortage of nurses cuts across all health care delivery settings. HRSA plans to review the proposed definition on a periodic basis to determine whether modifications for purposes of new scholarship recipients should be made to meet changing critical needs for nursing services.

Interested persons are invited to comment on the proposed categories. Normally, the comment period is 60 days. However, the comment period has been reduced to 30 days due to the need to inform nursing students of eligible facilities as soon as possible.

Written comments should be addressed to Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Division of Student Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

This program is listed at 13.182 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

Dated: November 24, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–28030 Filed 11–29–89; 8:45 am]

BILLING CODE 4165-15-M

Advisory Council on Nurses Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1990:

Name: Advisory Council on Nurses Education.

Date and Time: January 24–25, 1990, 9 a.m.

Place: The Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on August 16, 9:00 a.m.–12:30 p.m. Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendment of 1985 (Pub. L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will include announcements; consideration of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The meeting will be closed to the public on August 16, 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, Special Project Grants applications and Nursing Opportunities for Individuals from Advantaged Backgrounds applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Date: November 24, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–28029 Filed 11–29–89; 8:45 am]

BILLING CODE 4016-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–940–00–4121–14; (UTU–64263)]

Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Carbon and Emery Counties, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer.

DATE: The lease sale will be held at 1:00 p.m., Thursday, January 11, 1990. Sealed bids must be submitted on or before 10:00 a.m., Thursday, January 11, 1990.

ADDRESS: The lease sale will be held in Salon I, Main Floor of the Red Lion Inn, 255 West Temple, Salt Lake City, Utah. Sealed bids must be submitted to the Cashier, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon and Emery Counties, Utah, approximately sixteen miles southwest of Price, Utah:

T. 14 S., R. 7 E., SLM, Utah
Sec. 34, lots 3, 4, N½SE¼.
T. 15 S., R. 7 E., SLM, Utah
Sec. 2, lots 2–7, 10–12, SW¼, W½SE¼;
Sec. 3, lots 1, 2, 7–10, E½SE¼,E½W½SE¼;
Sec. 10, E½E½, E½NW¼NE¼;
Sec. 11, W½, W½E½;
Sec. 14, NW¼, NW¼NE¼;
Sec. 15, E½E½NE¼.
Containing 1,987.46 Acres

One economically recoverable coal bed, the Wattis Seam, is found in this tract. The seam averages 7.86 feet in thickness. This tract contains an estimated 7,632,000 tons of recoverable high volatile B bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

12,622 BTU/lb;
6.27 Percent moisture;
.52 Percent sulphur;
6.36 Percent ash;
45.90 Percent fixed carbon;
42.49 Percent volatile matter.

(Totals do not equal 100% due to rounding)

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rate of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with 30 CFR 203.200.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303 or in the Public Room (Room 400). All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those

portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

James M. Parker,

State Director.

[FR Doc. 89–27978 Filed 11–29–89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY–040–09–4111–08]

Environmental Impact Statement; Bridger-Teton National Forest Plan, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of Final Environmental Impact Statement for Bridger-Teton National Forest Plan, Wyoming.

SUMMARY: Pursuant to 40 CFR 1506.3 and Department of Interior Manual 516DM, notice is hereby given that the Bureau of Land Management intends to adopt the Draft and Final Environmental Impact Statements (DEIS/FEIS) on the Land and Resources Management Plan (LRMP) for the Bridger-Teton National Forest for the purpose of leasing minerals.

DATE: Adoption of the FEIS for the Bridger-Teton Forest Plan will be considered official January 2, 1990. A Record of Decision (ROD) covering BLM actions related to mineral leasing will be signed after the conclusion of the public comment period designated by the Forest Service, which expires December 31, 1989.

ADDRESS: Any comments, questions, or exceptions which could affect the adoption should be forwarded to Alan Stein, Chief of Planning and Environmental Assistance, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, phone: 307–382–5350.

FOR FURTHER INFORMATION CONTACT: Alan Stein, Chief of Planning and Environmental Assistance, Rock Springs District, Bureau of Land Management, phone: 307–382–5350.

SUPPLEMENTARY INFORMATION: The FEIS for the Bridger-Teton National Forest inadvertently omitted identifying BLM as a cooperating agency in the preparation of the Final EIS. BLM has cooperated in the preparation of those portions of the FEIS related to BLM's mineral leasing authority.

The FEIS meets BLM Supplemental Program Guidance (SPG) requirements for leasable minerals including the development of Reasonable Foreseeable Development Scenarios for affected Management Area (MAs), identification of mineral potential for oil and gas resources within the National Forest, and identification of stipulations which the BLM will utilize in leasing minerals on the Bridger-Teton National Forest. The EIS contains all the necessary information and analysis to allow BLM to make decisions concerning leasable minerals in compliance with the National Environmental Policy Act.

BLM's preferred alternative for the Bridger-Teton LRMP is to offer lands fo release, in accordance with Alternative F, which is the Forest Service Preferred Alternative. Prior to offering lands for lease, the Forest Service will be given an opportunity to review lease parcels for plan conformance and application of appropriate lease stipulations. No lease parcels will be offered over the objections of the Forest Service.

Dated: November 24, 1989.

James K. Murkin,

Acting State Director.

[FR Doc. 89–28080 Filed 11–29–89; 8:45 am]

BILLING CODE 4310-22-M

[OR931–00–6321–02: GPO–067]

Availability of the Draft Record of Decision for Managing Competing Vegetation on Forest Lands in Western Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft "Record of Decision" emanating from the Final Environmental Impact Statement, Western Oregon Program, Management of Competing Vegetation, February 1989.

SUMMARY: A draft record of decision for managing competing vegetation on forest lands in western Oregon is now available for public review. An integrated pest management program is adopted. The proposed decision prioritizes treatments as follows, (1) Use of effective techniques to prevent development of vegetation management problems, (2) use of effective alternatives to herbicides, and (3) use of effective herbicides. Prescribed burning practices will be modified to reduce emissions hazardous to human health.

DATES: Written comments on the proposed record of decision will be accepted through January 6, 1990.

FOR FURTHER INFORMATION CONTACT: Requests for copies as well as written comments should be addressed to: Tom Aufenthie, Project Lead, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 21, 1989.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 89–28020 Filed 11–29–89; 8:45 am]

BILLING CODE 4310-33-M

[ID–020–09–4322–12]

Burley District; Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and Agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on January 9, 1990.

The meeting will convene at 9:30 a.m. on January 9, 1990 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Prioritized Pleasantview allotment project maintenance schedule; (2) Contributions for support of range improvement (8100) projects; (3) Secretary/Treasurer's report; (4) Scheduling of contributed money (7121) projects; (5) Curlew Grazing Association season of use; (6) Range improvement maintenance policy; (7) Information items—(a) Land Pool Exchange Concept; (b) Grazing Advisory Board election.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by January 8, 1990 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: January 9, 1990.

ADDRESS: Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678–5514.

Dated: November 21, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89–28018 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–GG–M

[ID–040–4312–04]

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Tuesday, January 9, 1990 at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon River Electric Cooperative, Inc., Conference Room, Challis, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Laws 92–463 and 94–579. The purpose for the meeting is to discuss a proposed non-shooting area designation in the Cyprus Mine area, an exclusive right-of-way request for the Cyprus Mine, the BLM budgeting process, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:00 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by January 5, 1990.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Bx 430, Salmon, Idaho 83467.

Dated: November 21, 1989.

Roy S. Jackson,

District Manager.

[FR Doc. 89–28019 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–GG–M

[AZ 020–41–5410–10; AZA–24090]

Mineral Interest Application; Arizona

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application AZA–24090.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Michael Kettenbach has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 14 E.,
sec. 21, A11
sec. 22, W½NE¼4, SE¼NE¼, W½, N½SE¼, SW¼SE¼.
Containing 1,200 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, October 19, 1989, whichever occurs first.

Dated November 20, 1989.

William T. Childress,

Acting District Manager.

[FR Doc. 89–28022 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–41–5410–10–ZACD; A 21817, A 21818, A 28120, A 21821, A 21822]

Receipt of Conveyance of Mineral Interest Applications in Cochise County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Applications A 21817, A 21818, A 28120, A 21821, A 21822 in Cochise County Arizona.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Messrs. John D. Klump, John L. Klump, Karry K. Klump, Luther W. Klump and Wayne D. Klump have applied to purchase the mineral estate described as follows:

John D. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 26 E.,
sec. 20, S½N½, N½S½;
sec. 22, SW¼SW¼.
T. 13 S., R. 27 E.,
sec. 29, SW¼, SW¼SE¼;
sec. 30, NW¼NE¼, NE¼NW¼, SE¼SW¼, S½SE¼.
T. 14 S., R. 28 E.,
sec. 29, N½NE¼, NE¼NW¼, SW¼;
sec. 30, SW¼NW¼, S½.
T. 15 S., R. 27 E.,
sec. 1, SE¼NE¼.
Containing 1,440.00 acres, more or less.

John L. Klump:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 32 E.,
sec. 26, lots 2, 3, 4, NW¼SW¼;
sec. 27, NE¼SW¼, N½SE¼;
sec. 35, lots 1–4 incl., W½W½.
T. 13 S., R. 28 E.,
sec. 35, W½E½, SW¼.
Containing 942.87 acres, more or less.

Karry K. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 25 E.,
sec. 14, lots 5–8 incl., SW¼SE¼;
sec. 24, lots 4–7 incl. 9, 10, 11, 14, 15, 16, SW¼;
sec. 26, NW¼;
sec. 27, lots 1–4 incl.;
sec. 33, S½;
sec. 34, SW¼;
sec. 35, W½NE¼, SE¼NE¼.
T. 13 S., R. 27 E.,
sec. 27, SW¼NW¼, NW¼SW¼, S½S½;
sec. 28, SE¼NE¼, E½SE¼;
sec. 33, N½;
sec. 34, N½N½, SE¼NE¼, SW¼NW¼, N½SE¼;
sec. 35, W½NE¼, NW¼, NW¼SW¼.
T. 13 S., R. 31 E.,
sec. 27, NW¼;
sec. 34, W½NE¼.
T. 13 S., R. 32 E.,
sec. 9, NE¼NE¼;
sec. 27, NE¼SE¼NW¼, N½SE¼ SE¼NW¼;
sec. 28, W½NE¼, E½NW¼;
sec. 33, NE¼NW¼.
T. 14 S., R. 25 E.,
sec. 4, lots 3 and 4, N½NW¼.
T. 14 S., R. 26 E.,
sec. 28, S½.
Containing 4,226.96 acres, more or less.

Luther W. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 27 E.,
sec. 21, SE¼SE¼;
sec. 22, S½SW¼, SW¼SE¼;
sec. 27, NW¼NE¼, N½NW¼;
sec. 28, N½NE¼.
Containing 360.00 acres, more or less.

Wayne W. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 26 E.,

sec. 14, N½;
sec. 15, NE¼;
sec. 22, N½, NE¼SW¼, SE¼;
sec. 23, all;
sec. 24, E½NE¼, W½W½;
sec. 25, NW¼;
sec. 26, NE¼.
T. 13 S., R. 27 E.,
sec. 13, S½SE¼NW¼, E½NE¼SW¼;
sec. 16, NW¼NW¼, S½N½, S½;
sec. 18, S½SE¼;
sec. 19, N½NE¼, SE¼NE¼, NW¼, S½;
sec. 20, all;
sec. 21, N½, SW¼, N½SE¼, SW¼SE¼;
sec. 31, E½E½, W½NE¼, NE¼NW¼.
T. 14 S., R. 26 E.,
sec. 11, S½;
sec. 13, NW¼;
sec. 14, N½.
Containing 5,760.00 acres, more or less.

Total acres involved is 12,729.83, more or less.

Upon publication of this Notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date the courts remanded the applications back to the District Office, September 6, 1988, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Dated November 21, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89–28016 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–32–M

[CO–920–90–4111–15; COC36500]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC36500 for lands in Garfield and Mesa Counties, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from August 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 89–28023 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–JB–M

[CA–010–00–4212–13, CA 25913]

Exchange of Public and Private Lands in California

REALTY ACTION: Exchange of Public and Private Lands in Amador, Calaveras, El Dorado, Mariposa, Nevada, Tuolumne, and Yuba Counties, CA.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

(Note: It is possible not all of the land identified below will be exchanged. Some parcels may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.)

Selected Public Land

Amador County, California

T. 7N., R. 10E., M.D.M.
Sec. 14, lots 1, 3, 4, 13, 15,16.
T. 7N., R. 11E., M.D.M.
Sec. 15, SE¼SE¼;
Sec. 22, NE¼SE¼.
T. 7N., R. 12E., M.D.M.
Sec. 4, lots 10, 11;
Sec. 19, NW¼SW¼;
Sec. 22, all public lands within section.

Calaveras County, California

T. 4N., R. 10E., M.D.M.
Sec. 15, lots 3, 4, 5.
T. 4N., R. 13E., M.D.M.
Sec. 3, lot 5;
Sec. 23, lots 1, 2;
Sec. 28, lots 3, 4.
T. 5N., R. 11E., M.D.M.
Sec. 22, lots 16, 18, 19, 20, MS 4046B, E½NE¼;
Sec. 24, lots 11, 12, N½NW¼NW¼, N½NW¼SW¼;
Sec. 25, lots 5, 8.
T. 5N., R. 12E., M.D.M.
Sec. 19, E½NE¼, SE¼NW¼NE¼.
T. 6N., R. 14E., M.D.M.
Sec. 7, SW¼SE¼.

El Dorado County, California

T. 9N., R. 10E., M.D.M.
Sec. 29, lot 7;
Sec. 32, lot 3.
T. 9N., R. 11E., M.D.M.
Sec. 12, W½NW¼, N½SW¼.
T. 12N., R. 10E., M.D.M.
Sec. 2, SE¼NW¼SW¼NW¼, SW¼NE¼SW¼NW¼, E½SW¼SW¼NW¼, W½SE¼SW¼NW¼.

Mariposa County, California

T. 3S., R. 15E., M.D.M.
Sec. 3, lot 3, SW¼NW¼;
Sec. 35, SW¼SE¼.
T. 4S., R. 16E., M.D.M.
Sec. 5, lot 4;
Sec. 9, lot 1;
Sec. 10, lot 2, SE¼SE¼.
T. 4S., R. 18E., M.D.M.
Sec. 31, lot 4;
Sec. 33, lot 7.

Nevada County, California

T. 16N., R. 7E., M.D.M.
Sec. 24, SW¼NW¼.
T. 17N., R. 8E., M.D.M.
Sec. 20, S½SE¼NE¼, N½NW¼SE¼.

Tuolumne County, California

T. 1S., R. 13E., M.D.M.
Sec. 1, SW¼SW¼;
Sec. 11, NW¼NE¼.
T. 1N., R. 15E., M.D.M.
Sec. 25, E½NE¼.

Yuba County, California

T.18N., R.8E., M.D.M.
Sec. 26, NW¼SW¼.

The lands identified above are in addition to property previously published in the **Federal Register** under the same serial number, CA 25913. Disposal of Federal lands is in conformance with land use planning; these lands are generally isolated parcels which are inaccessible for public use.

In exchange for Federal land listed above, the United States proposes to acquire wetlands and waterfowl habitat in the Central Valley of California through such conservation groups as the Nature Conservancy, Ducks Unlimited, and Trust for Public Lands.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire unprotected wetlands or agricultural lands suitable for conversion to wetlands in the Central Valley. The Central Valley was identified in 1986 in the international North American Waterfowl Management Plan as an area critically in need of wetlands protection. Approximately 60 percent of waterfowl populations in the Pacific Flyway winter in the Central Valley of California where 93 percent of the wetlands have been destroyed during the past century.

The public interest will be well served by completing this land tenure adjustment through exchange, in association with the North American Waterfowl Management Plan.

The Federal lands would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances, including archaeology and rare plants and animals, shall be granted prior to conveyance of title by the U.S.

Grazing operators who will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

Publication of this notice in the **Federal Register** segregates the public land described herein from all forms of appropriation under the public land laws, including the mining laws, for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Kay Miller, (916) 985–4474, or at the address lsited below.

ADDRESS: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA. 95630

Dated: November 22, 1989.

D.K. Swickard,

Area Manager.

[FR Doc. 89–28017 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–90–4730–12]

Colorado; Filing of Plats of Survey

November 20, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 20, 1989.

The supplemental plat creating new lot 6, in section 2, T. 1 S., R. 97 W., Sixth Principal Meridian, Colorado, was accepted September 28, 1989.

The plat representing the dependent resurvey of portions of the Eleventh Standard Parallel North (south boundary, T. 45 N., R. 7 E.), east boundary, and subdivisional lines and the subdivision of certain sections, T. 44 N., R. 7 E., New Mexico Principal Meridian, Colorado, Group No. 854, was accepted September 11, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing trhe dependent resurvey of a portion of the Mesa Verde National Park boundary, T. 36 N., R. 14 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

The plat representing the dependent resurvey of a portion of the west boundary and the Mesa Verde National Park boundary, T. 35 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

The plat representing the dependent resurvey of a portion of the Mesa Verde National Park boundary, T. 35 N., R. 14 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

These surveys were executed to meet certain administrative needs of the National Park Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89–28021 Filed 11–29–89; 8:45 am]

BILLING CODE 4310–JB–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 330X)]

CSX Transportation, Inc.; Abandonment Exemption; In Hopkins and Muhlenberg Counties, KY

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—"Exempt Abandonments" to abandon 5.52 miles of railroad line in Kentucky: (1) Between milepost LHM–131.6, near Newcoal, and milepost LHM–134.03, near Fies, in Hopkins County; and (2) between milepost LHF–126.99, near Millport, and milepost LHF–130.08, near Brier Creek, in Muhlenberg County.

Applicant has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) any overhead traffic on the lines can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the lines (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under "Oregon Short Line R. Co.—Abandonment—Goshen," 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 28, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 8, 1989.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by December 18, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 1, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See "Exemption of Out-of-Service Rail Lines," 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See "Exempt. of Rail Abandonment—Offers of Finan. Assist.," 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28057 Filed 11–29–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31532]

Indiana Hi-Rail Corp.; Lease and Operation Exemption; Norfolk and Western Railway Co. Line Between Douglas, OH and Van Buren, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Indiana Hi-Rail Corporation (IHR) from Norfolk and Western Railway Company of 77.9 miles of railroad between milepost TS 65.5 in Douglas, OH, and milepost TS 144.2 in Van Buren, IN, subject to standard labor protective conditions.

DATES: This exemption will be effective on December 7, 1989. Petitions for reconsideration must be filed by December 20, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31532 to:

(1) Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31532, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

John D. Heffer, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

Robert J. Cooney, Senior General Attorney, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: November 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Chairman Gradison and Commissioner Andre dissented in part with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28058 Filed 11–29–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Master Metals Inc.

In accordance with Departmental policy, notice is hereby given that on November 14, 1989, a proposed Consent Decree in *United States* v. *Master Metals Inc.*, Civil Action No. C87–1471, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires defendant to close the waste piles and certain other areas at its facility in Cleveland, Ohio, in compliance with an approved closure plan, to comply with interim status regulations under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and to pay a civil penalty of $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Master Metals Inc.*, D.J. reference 90–7–1–390.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114–1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00, for reproduction costs, payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28061 Filed 11–29–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; Catalytic Converter Development Project for Control of Heavy-Duty Diesel Particulate Emissions

Notice is hereby given that, on November 3, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Engine Manufacturers Association ("EMA") and the Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Catalytic Converter Development Project for Control of Heavy-Duty Diesel Particulate Emissions." The notification discloses (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are EMA, on behalf of itself and its members, and SwRI. EMA is an Illinois not-for-profit corporation with its principal place of business at One Illinois Center, 111 East Wacker Drive, Chicago, Illinois 60601. SwRI is a Texas nonprofit corporation with its principal place of business at 6220 Culebra Road, San Antonio, Texas 78284.

EMA's current members are:

Briggs & Stratton Corporation
Catepillar Inc.
Cummins Engine Company
Deere & Company
Detroit Diesel Corporation
Deutz Corporation
Ford New Holland, Inc.
Hercules Engines, Inc.
Isuzu Motors Corporation
Iveco Trucks of North America
Kohler Company

Lister-Petter, Inc.
Mack Trucks, Inc.
Mercedes-Benz Truck Company
Mitsubishi Motors America, Inc.
Navistar International Transportation Corporation
Onan Corporation
Saab-Scania AB
Teledyne Total Power
Volvo GM Heavy Truck Corporation
Waukesha Engine Division

With the exception of Briggs & Stratton Corporation, Deere & Company, Deutz Corporation, Kohler Company, Lister-Petter, Inc., Onan Corporation, Teledyne Total Power and Waukesha Engine Division, all current EMA members are participants in the project.

The purpose of the project is to conduct research, inquiries, investigations and studies relating to the development and evaluation of a prototype flow-through catalytic converter system suitable for use on heavy-duty diesel engines for the control of particulate emissions. The primary objective of the project is to provide evidence that such a system is capable of attaining the 1994 model year design targets for complying with the 0.10 g/bhp-hr particulate standard mandated by the U.S. Enviornmental Protection Agency as well as the emission standards mandated for HC, Co and NOx. The system also must be viable for high-volume production and demonstrate adequate in-use durability for at least 150,000 miles with minimal maintenance requirements.

SwRI is responsible for the solicitation and selection of product suppliers to provide hardware necessary for its research and development efforts. The intellectual property rights arising from the technology developed by SwRI during the course of the project will be perfected by EMA on behalf of EMA, its participating members and its designees. EMA further anticipates disclosure of any technology developed during the course of the project to non-EMA members in exchange for a reasonable fee.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 89-28082 Filed 11-29-89; 8:45 am]
BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Development of a Computer-Aided Armor Design/Analysis System Southwest Research Institute

Notice is hereby given that, on November 1, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "The Development of a Computer-Aided Armor Design/Analysis System." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK TNO (Netherlands Organization for Applied Scientific Research) (effective September 11, 1989) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On June 26, 1989, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 20, 1989, 54 FR 30461. On August 7, 1989, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on August 31, 1989, 54 FR 36066.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 89-28083 Filed 11-29-89; 8:45 am]
BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Arkansas Power & Light Co.,

Arkansas Nuclear One, Unit Nos. 1 and 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-51 and NPF-6 issued to Arkansas Power and Light Company (AP&L, the licensee) for operation of the Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2) located in Pope County, Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change license conditions to allow the operation and maintenance of ANO-1&2 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989.

The Need for the Proposed Action

The licensee, AP&L, proposes to transfer the operation and maintenance of ANO-1&2 to Entergy Operations, Inc. The proposed license conditions will assure that AP&L will continue in its present capacity as owner of ANO-1&2. The transfer to Entergy Operations, Inc. entails the transfer of ANO-1&2 operating and support staff from Arkansas Power and Light Company to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the licensing conditions. The proposed changes would allow AP&L to transfer the operations and maintenance of ANO-1&2 to Entergy Operations, Inc. The operation and maintenance staff of AP&L associated with ANO-1&2 will transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the license amendment. The licensee (AP&L) will continue as owner of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 6, 1989 (54 FR 37041). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

The action does not involve the use of resources beyond the scope of resources used during normal operation discussed in the Final Environmental Statement (FES) related to the operation of Arkansas Nuclear One, Unit 1 issued in February 1983 and in the FES related to the operation of Arkansas Nuclear One, Unit 2 issued in June 1977.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 27th day of November 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebden,
Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89-28038 Filed 11-29-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-58 and DPR-74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Units Nos. 1 and 2 located in Berrien County, Michigan.

The amendment would revise the Technical Specifications by adding requirements on the fire-unaffected Unit to support the alternate safe shutdown or emergency remote shutdown of the opposite fire-affected Unit. The changes are necessary to meet the requirements of 10 CFR part 50, appendix R. In addition, a change is proposed to the Bases which clarifies that fire watches would not be implemented in areas protected by carbon dioxide fire suppression systems during testing of the systems which may result in carbon dioxide discharge, or after the discharge of a system, when carbon dioxide levels may represent a personnel hazard.

Finally, the licensee proposed a change that involves removing the wide range hot-leg and cold-leg temperature indications of RCS loops 1 and 3 from the local shutdown indication (LSI) panels. The wide range hot-leg and cold-leg temperature indications of reactor coolant system loops 2 and 4 would still be supplied to the LSI panels. This change is necessary in order to meet the Category 1 redundancy criteria of Regulatory Guide 1.97, Revision 3 for the reactor vessel level indication system (RVLIS).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In their submittal, the licensee provided the following statements with regard to the criteria of 10 CFR 50.92:

Criterion 1

The proposed TS changes require that some plant systems be available to support shutdown of the opposite unit in accordance with Appendix R. In addition, we have added requirements for various Appendix R remote shutdown monitoring instrumentation. Since these TS place additional requirements on various plant equipment to ensure an alternative method of shutting down during a fire scenario, we believe this change will not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

The proposed TS changes assure that safe shutdown systems are available without placing the plant in a configuration inconsistent with the design basis. In addition, the proposed changes add requirements that certain safety systems be available that are not currently required. For this reason, we believe that the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed TS changes introduce new CVCS cross-tie valves into the plant, and thus introduce additional risk of error or failure. However, the operation and surveillance procedures associated with these valves are similar to those for other safety-related systems. As noted in Criterion 1, these changes impose additional requirements on various plant equipment to ensure an alternate method of shutting down during a fire scenario. For this reason, we believe the proposed changes do not constitute a significant reduction in the margin of safety.

Lastly, we note that the Commission has provided guidance concerning the determination of significant hazards by providing certain examples (51 FR 7751) of amendments considered not likely to involve significant hazards considerations. The second of these examples refers to changes that impose additional limitations, restrictions, or controls not presently included in the TS. The changes proposed in this letter are for the type cited in this example. Therefore, we believe these changes do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The staff has reviewed the licensee's submittals and agrees with the licensee's no significant hazards determination.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 2, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local Public Document Room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interests in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John O. Thoma: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 16, 1988 and Revised January 23, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–28039 Filed 11–29–89; 8:45 am]

BILLING CODE 7590–01–M

Louisiana Power & Light Co., Waterford Steam Electric Station Unit No. 3; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Louisiana Power and Light Company (LP&L, the licensee) for operation of the Waterford Steam Electric Station, Unit No. 3 located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change license conditions to allow the operation and maintenance of Waterford 3 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989.

The Need for the Proposed Action

The licensee, LP&L, proposes to transfer the operation and maintenance of Waterford 3 to Entergy Operations, Inc. The proposed license conditions will assure that LP&L will continue in its present capacity as owner of Waterford 3. The transfer to Entergy Operations, Inc. entails the transfer of Waterford 3 operating and support staff from Louisiana Power and Light Company to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the licensing conditions. The proposed changes would allow LP&L to transfer the operations and maintenance of Waterford 3 to Entergy Operations, Inc. The operation and maintenance staff of LP&L associated with Waterford 3 will transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the license amendment. The licensee (LP&L) will continue as owner of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 6, 1989 (54 FR 37047). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal operation discussed in the Final Environmental Statement related to the operation of Waterford Steam Electric Station, Unit No. 3 issued in September 1981.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland this 27th day of November 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–28040 Filed 11–29–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al; Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to System Energy Resources, Inc., (SERI or the licensee) acting for itself and as agent for South Mississippi Electric Power Association (SMEPA), and Mississippi Power and Light Company, for operation of the Grand Gulf Nuclear Station, Unit 1, (Grand Gulf 1) located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change license conditions and Technical Specifications (TS) to allow the operation and management of Grand Gulf 1 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989, as revised August 22, 1989.

The Need for the Proposed Action

The licensee proposes to transfer the operation and management responsibility of Grand Gulf 1 to Entergy Operations, Inc. The proposed license conditions and TS will assure that SERI and SMEPA will continue in their present capacity as owners of Grand Gulf 1. The transfer to Entergy Operations, Inc. entails the transfer of Grand Gulf 1 operating and support staff from SERI to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license conditions and TS. The proposed changes would allow SERI to transfer the operation and management responsibilities of Grand Gulf 1 to Entergy Operations, Inc. The operation and management staff of SERI associated with Grand Gulf 1 will

transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the license amendment. SERI and SMEPA will continue as owners of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on September 6, 1989 (54 FR 37047). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2," dated September 1981.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 27th day of November 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II/I, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28041 Filed 11-29-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittees and meetings of the ACRS full Committee, and of the Advisory Committee on Nuclear Waste (ACNW), the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 18, 1989 (54 FR 42873). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1989 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Human Factors, December 6, 1989 (tentative), Bethesda, MD. The Subcommittee will discuss: (1) Proposed changes to 10 CFR part 55, Operator Licenses, (2) NRC staff response to INPO comments on performance indicators, (3) a letter from R. Stater (public) to R. Fraley, ACRS concerning operator training deficiencies, and (4) Access Authorization rule (tentative).

Thermal Hydraulic Phenomena, December 7, 1989, Bethesda, MD. The Subcommittee will discuss: (1) The proposed NRR and RES programs for resolution of the interfacing systems LOCA issue; (2) the status of the NRC/RES Technical Program Group's efforts to apply the Code Scaling, Applicability, and Uncertainty (CSAU) methodology to calculation of the effects of a small-break LOCA; and (3) the status of development of the Westinghouse best-estimate ECCS/LOCA model.

Containment Systems, December 12, 1989, Bethesda, MD. The Subcommittee will discuss the NRC staff's document on the Containment Performance Improvements (CPI) Program (all containment types other than the BWR Mark I).

Joint Containment Systems and Structural Engineering, December 13, 1989, Bethesda, MD. The Subcommittees will continue to discuss containment design criteria for future plants with invited speakers from industry and national laboratories.

Regulatory Policies and Practices, January 10, 1990, Bethesda, MD. The Subcommittee will review the approach suggested by the NRC staff for license renewal along with the staff's proposed resolution of industry's comments on the suggested approach obtained at the November Workshop.

Joint Severe Accidents and Probabilistic Risk Assessment, January 23-24, 1990, Albuquerque, NM. The Subcommittees will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Structural Engineering, January 24-25, 1990, Albuquerque, NM. The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Safety Research Program, February 7, 1990, Bethesda, MD. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1991 and other related matters.

Occupational and Environmental Protection Systems, Date to be determined (December/January), Bethesda, MD. The Subcommittee will continue its review of Interim Standard for hot particles.

Systematic Assessment of Experience, Date to be determined (December/January), Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Advanced Pressurized Water Reactors, Date to be determined (January), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (January/February), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Materials and Metallurgy, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Decay Heat Removal Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Regulatory Policies and Practices, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed staff program for the renewal of power plant licenses.

ACRS Full Committee Meetings

356th ACRS Meeting, December 14-16, 1989, Bethesda, MD—Items are tentatively scheduled.

*A. *Nuclear Power Plant Access Authorization (Open/Closed)*—Review and report on proposed final rule on Personnel Access Authorization Requirements for Nuclear Power Plants (10 CFR 73.56).

*B. *Containment Performance Improvement Program (Open)*—Review and report on proposed NRC program to improve containment performance during severe accident conditions for all containment types except Mark I containment.

*C. *Technical Training and Qualification Program for NRC Employees (Open)* Briefing by NRC staff representatives regarding training courses at the NRC Technical Training Center at Chattanooga, TN.

*D. *Fitness for Duty (Open)*—Review and report on proposed revision of 10 CFR part 55 to require operator compliance with NRC fitness-for-duty programs and conforming modification to the Commission's enforcement policy.

*E. *Meeting with NRC Commissioners (Open)*—Meeting with NRC Commissioners to discuss items of mutual interest.

*F. *Meeting with Acting EDO (Open)*—Discussion regarding lack of coherence in the NRC regulatory process.

*G. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS Subcommittee activities, topics proposed for consideration by the ACRS, proposed changes in ACRS Bylaws, and the ACRS/NRC staff Memorandum of Understanding.

*H. *Appointment of New Members (Open/Closed)*—Discuss the status of appointment of candidates proposed for appointment to the Committee.

*I. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of ACRS subcommittees regarding the status of assigned activities regarding safety-related matters, including the activities related to thermal hydraulic phenomena, etc.

*J. *Evaluation of Operational Data (Open)*—Briefing and discussion regarding use of SALP ratings in the regulatory process and elsewhere.

357th ACRS Meeting January 11-13, 1990—Agenda to be announced.

358th ACRS Meeting, February 8-10, 1990—Agenda to be announced.

ACNW Full Committee Meetings

ACNW Working Group Meeting, November 30, 1989, San Antonio, TX. The purpose of the meeting will be to review and discuss the projects currently under way at the Center for Nuclear Waste Regulatory Analyses and those planned in the future.

15th ACNW Meeting, December 20, 1989, Bethesda, MD. The purpose of the meeting will be to review and discuss the NRC staff's reevaluation of the U.S. Environmental Protection Agency's high-level waste disposal standards development, prepare a report to the Nuclear Regulatory Commission on ACNW Activities for the upcoming four months, and the Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

16th ACNW Meeting, January 24-26, 1990—Agenda to be announced.

17th ACNW Meeting, February 21-23, 1990—Agenda to be announced.

Dated: November 24, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-28037 Filed 11-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 129 to Operating License No. DPR-58 and Amendment No. 114 to Operating License DPR-74 issued to Indiana Michigan Power Company, which revised the Technical Specifications for operations of the Donald C. Cook Nuclear Plant located in Berrien County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification Sections to allow a portion of the Waste Gas System Explosive Monitoring System to be inoperable for up to 160 days to allow for its replacement.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set for in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for

Hearing in connection with this action was published in the Federal Register on August 18, 1989 (54 FR 34267). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement (54 FR 47742) dated November 16, 1989. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 21, 1989, (2) Amendment Nos. 129 and 114 License Nos. DPR-58 and DPR-74 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Maude Preston Polenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Joseph G. Gütter,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28042 Filed 11-29-89; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Final Wildlife Amendments; Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final wildlife amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On July 13, 1989 the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to amend the program's wildlife measures. Appropriate notices of the proposed amendments were published in the Federal Register and distributed through the Council's mailing lists and newsletters. In September, public hearings were held in: Coeur d'Alene, Twin Falls, and Boise, Idaho; Kalispell, Montana; Portland, Oregon; and Seattle, Washington. Consultations were held with interested parties, and written comments were received through September 30, 1989.

At its October, 1989 Council meeting, the Council adopted certain amendments to the program. On November 9, 1989, the Council adopted final amendments, action plan amendments, and a response to comments. These amendments.

- Authorize the use of loss estimates as evidence of wildlife losses for an interim, 10-year mitigation program.
- Call for a review of the loss estimates by an independent party.
- Establish an interim goal of addressing 35% of total wildlife losses due to the federal hydropower dams over the next 10 years.
- Call for mitigation plans and proposals to be evaluated against certain standards.
- Set procedures for developing future mitigation plans with public involvement.
- Call for an advistory committee to recommend mitigation priorities to the Council.
- Call for the Bonneville Power Administration to fund implementation of wildlife mitigation plans.
- Establish guidelines for wildlife mitigation at nonfederal hydropower projects.

For copies of the final amendments, the response to comments, or for further information: Contact the Council's Public Involvement Division at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-28044 Filed 11-29-89; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27459; File No. SR-Amex-89-25]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Article VIII, Section 2 (b) and (c) of the Exchange Constitution Regarding the Availability of Arbitration Before the American Arbitration Association

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Article VIII, section 2 (b) and (c) of the Exchange Constitution regarding the forums before which arbitration involving Exchange members may be conducted.

The text of the proposed rule change is as follows:

[Additions italicized; deletions bracketed]

Arbitration Forum

Section 2. Arbitration shall be conducted under the arbitration procedures of this Exchange, except as follows:

(a) No change.

(b) [If all parties to the controversy are members, allied members, member firms or member corporations of the New York Stock Exchange,] any party *to the controversy* may elect to arbitrate under the arbitration procedures [of that Exchange] *of any self-regulatory organization of which all parties to the controversy are members.*

(c) If any of the parties to a controversy is a customer, the customer may elect to arbitrate before the American Arbitration Association [in the city of New York], unless the customer has expressly agreed, in writing, to submit only to the arbitration procedures of [the Exchange.] *securities industry self-regulatory organizations.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to clarify Article VIII, sections 2 (b) and (c) of the Exchange Constitution regarding the forums before which arbitration involving Exchange members may be conducted. Article VIII, section 2(c) deals with the ability of customers to elect arbitration before the American Arbitration Association ("AAA") as an alternative to Exchange arbitration. Specifically, the Amex provision reads as follows:

> [If] any of the parties to a controversy is a customer, the customer may elect to arbitrate before the American Arbitration Association in the City of New York, unless the customer has expressly agreed, in writing, to submit only to the arbitration procedure of the Exchange.

The interpretive questions surrounding this provision have focused on two aspects of the wording: (1) Whether a customer electing to arbitrate before AAA is limited to bringing such proceedings only "in the City of New York," and (2) whether the customer can be deemed to have waived his or her right to arbitrate before AAA only in the event of an agreement to arbitrate exclusively pursuant to Amex procedures as opposed to an agreement to arbitrate in accordance with the procedures of any self-regulatory organization ("SRO"). Due to the confusion that has developed concerning the interpretation of these phrases, the Exchange is proposing to clarify the language of Article VIII, section 29c).[1]

The Exchange has interpreted the words "in the City of New York" as referring merely to the fact that the AAA is headquartered in New York City. This reference is not viewed by the Exchange as a venue-setting provision, nor as a limitation on the right to have an arbitration submitted to the AAA conducted in any of the various locations outside New York City where the AAA has regional offices or otherwise may choose to allow an arbitration to proceed. Once a matter is before the AAA, any questions regarding the administration of the proceeding, including the location of the hearing, should be resolved pursuant to the AAA's own rules and procedures. Any other interpretation would be inconsistent with the current practice of the Exchange and other SROs, which, depending on the circumstances of the particular case, is to permit arbitration proceedings commenced by customers to be conducted outside the city in which the SRO is located. Nevertheless, to clarify this aspect of section 2(c), it is proposed that the reference to the City of New York be deleted.

With respect to the provision that a customer may elect to arbitrate before the AAA unless the customer has agreed, in writing, to submit "only to the arbitation procedure of the Exchange," the Amex interprets this provision as referring to the arbitration procedures of any SRO having comparable requirements to those of the Exchange. Inasmuch as all SROs maintaining arbitration forums have now adopted the Uniform Code of Arbitration, there is no justification for distinguishing one SRO arbitration facility from another. To interpret this language as applying only to the Amex (*i.e.*, to give credence only to rules in place at the Amex and not to essentially identical rules in place at other SROs) would be not only illogical, but contrary to the long-established goal of the Securities Industry Conference on Arbitration ("SICA"), as well as of the Commission: to develop and support uniformity among securities industry arbitration forums. Thus, to clarify this aspect of section 29(c), it is being proposed that the phrase in question be amended to refer specifically to all SROs.

Article VIII, section 2(b) of the Constitution, which applies to member versus member disputes, provides that if all parties to a controversy are members of the New York Stock Exchange ("NYSE"), any party may choose to arbitrate under the NYSE's arbitration procedures. This language has been interpreted to include any SRO having comparable rules; thus, for instance, if all parties are members of the National Association of Securities Dealers ("NASD"), the arbitration may be conducted pursuant to the NASD's arbitration procedures. To make this clear, it is being proposed that the provision be amended to provide that any party to a controversy may elect to arbitrate under the arbitration procedures of any SRO of which all parties to the controversy are members.

(2) Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act which is designed to protect investors and the public interest by clarifying the meaning of Exchange Constitutional provisions and to facilitate the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

[1] *See PaineWebber Inc.* v. *Pitchford*, 1989 Fed. Sec. L. Rep. (CCH) ¶ (SD N.Y. Sept. 14, 1989).

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the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-89-25 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1989.

Shirley B. Hollis,

Assistant Secretary.

[FR Doc. 89-28092 Filed 11-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27458; File No. SR-CSE-89-5]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Designated Dealer Net Capital

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE has submitted a rule filing proposing to amend Rule 11.9 of chapter XI of the Exchange's Rules of the Board of Trustees to increase the net capital requirement of Designated Dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 11.9 currently requires a Designated Dealer [1] to maintain a minimum net capital [2] of $50,000 or the amount required under Rule 15c3-1 of the Act. The proposed amendment would increase this minimum net capital requirement for Designated Dealers to $100,000.

The primary purpose of the net capital rule is to protect customers and creditors of registered broker-dealers from monetary losses and delays that can occur when a registered broker-dealer fails.[3] To this end, the increase is intended to satisfy concerns that broker-dealers have adequate capital and resources to enable Designated Dealers to meet their affirmative obligations during volatile markets and assure that the securities markets function smoothly and efficiently.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to protect investors and the public interest and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commissioin may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-89-5 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1989

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28093 Filed 11-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27459; File No. SR-MSRB-89-10]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Executive and Administrative Staff of the Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] A Designated Dealer is a Proprietary Member of the Exchange who has been approved to perform market functions by entering bids and offers for Designated Issues into the National Securities Trading System. Exchange Rule 11.9.

[2] *See* Securities Exchange Act Rule 15c3-1(c)(2); 17 CFR 240.15c3-1(c)(2) (1989).

[3] 17 CFR 240.15c3-1 (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing an amendment to Board rule A-5 on the executive and administrative staff of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) At a recent meeting of the Board, the Board restated the duties and responsibilities of the Executive Director. The proposed rule change reflects the Board's view regarding the organization of the executive and administrative staff by stating that the Board determines the duties and responsibilities of the Executive Director and the Executive Director determines the duties and responsibilities of all other staff members.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is concerned solely with the operation of the Board and does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 21, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley R. Hollis,

Assistant Secretary.

[FR Doc. 89-28094 Filed 11-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27453; File No. MSRB-89-06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board, Inc., Relating to Professional Qualifications

On August 28, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), a proposed rule change amending the Board's rule on professional qualifications by eliminating the Board's Financial and Operations Principal ("FINOP") Examination and, instead, requiring FINOP candidates to qualify through the National Association of Securities Dealers' ("NASD") FINOP Examination. The Board requested that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, to allow FINOP candidates to have sufficient time to prepare for the NASD's FINOP examination. The Commission published notice of the proposed rule change on October 10, 1989 in Securities Exchange Act Release No. 27349, 54 FR 42874. No comments were received on the proposal.

Rule G-3 on professional qualifications requires securities firms that engage in municipal securities transactions to have at least one associated person qualified as a FINOP. A FINOP supervises the financial reporting and net capital compliance required by SEC rules and the processing, clearance and safekeeping of municipal securities by the securities firm.

Under current Board Rule G-3(d), an individual may qualify as a FINOP by passing either the Board's Financial and Operations Principal Qualification Examination (Test Series 54) or by being qualified as a FINOP by the NASD. The NASD qualifies FINOPs through its FINOP Examination (Test Series 27). The Board stated that its FINOP examination has been a three-hour "paper and pencil" examination with 66 multiple choice questions and additional arithmetical problems which test the candidate's ability to perform net capital and reserve formula computations on municipal securities. Developed by the Board in 1978 and administered by the NASD, the Board's FINOP examination is designed to test a candidate's knowledge of applicable Board and SEC rules and statutory provisions pertaining to financial responsibility and recordkeeping as well as the protections afforded investors under the Securities Investor Protection Act of 1970. The FINOP examination used by the NASD qualifies candidates to supervise the financial and operations activities of firms handling municipal and corporate securities and includes questions on financial responsibility rules, SEC recordkeeping rules and NASD uniform practice rules. In addition, this examination tests a candidate's knowledge of the Board's recordkeeping and uniform practice requirements.

When the Board's FINOP examination was developed in 1978, FINOPs from all

previously unregistered municipal dealers were required to take either the Board's or the NASD's FINOP examination. The Board stated that most candidates took the Board's FINOP examination because, at the time, there were significant differences in the net capital treatment of municipal securities under SEC rules. Since then, however, fewer and fewer candidates satisfy their examination requirement by taking the Board's FINOP examination. The Board believes that this may be because there are fewer muncipal securities-only firms qualifying FINOPs, there are fewer differences in the treatment of municipal securities and other securities in the SEC's net capital rule, or because municipal securities-only firms, like most general securities firms, prefer that their FINOP candidates qualify under the NASD's more comprehensive examination. Because so few Board FINOP examination are given, the Board has determined to eliminate it.

The NASD is currently revising the test specifications of its FINOP examination. These revised specifications will include, among other things, a section devoted exclusively to questions on Board rules, including Rules G–8 and G–9 on recordkeeping, Rules G–12 and G–15 on uniform practice, deliveries to customers and automated clearance and settlement, and Rule G–27 on supervision. Also, the Board and the NASD are in the process of reaching an agreement that the questions contained in the NASD's FINOP examination regarding Board rules will be provided or reviewed by the Board.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, Section 15B(b)(2)(A) of the Act in that it protects investors and the public interest by maintaining standards of training, experience and competence for municipal securities dealers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 17, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28095 Filed 11–29–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27184; File No. SR–NYSE–89–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Minimum Halt Period for Equipment Changeover Trading Halts

On June 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to Securities and Exchange Commission (Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Exchange's policy on the minimum time period for a trading halt involving an "equipment changeover" condition.

The proposed rule change was noticed in Securities Exchange Act Release No. 26965 (June 23, 1989), 54 FR 28138 (July 5, 1989). No comments were received on the proposed rule change.

In its filing, the Exchange proposes to reduce the minimum period for the duration of a trading halt involving an equipment changeover condition from fifteen to five minutes. The proposed rule change also provides that if, during an Equipment Changeover trading halt in the stock, a significant order imbalance develops or a regulatory condition occurs (i.e., news pending or news dissemination), then the nature of the halt condition would be changed accordingly and notice of such change would be disseminated. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated.

Present Exchange policy does not take into consideration the difference in rationale between an Equipment Changeover and other halt conditions in that regardless of the nature of the halt condition, a price indication must be disseminated before trading can be resumed, and trading may not be resumed for at least fifteen minutes from the time on the first indication. In many cases, a systems, equipment or other technical problem may be corrected in a much shorter period of time, and it may be possible to resume trading at a price which is a reasonable variation from the last sale in the stock prior to the halt. Therefore, the Exchange proposes to reduce the minimum halt period from fifteen to five minutes for an Equipment Changeover condition. Of course, if the systems, equipment or technical problem took longer to resolve, then the halt would continue until corrective action is completed.[3]

The proposed rule change recognizes the possibility that during an Equipment Changeover halt, a significant order imbalance may develop or a "news pending" or "news dissemination" regulatory condition may occur. In such a case, the proposed rule change would require the nature of the halt condition to be changed accordingly, and that notice of such change be disseminated. Thereafter, the standard policies relating to order imbalance or regulatory halts would apply. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated. This would provide market participants the normal time period to evaluate and react to news of a corporate event or a significant order imbalance.

Finally, the proposed rule change defines a "significant order imbalance" as one which would result in a price change of the lesser of 10% or three points (five points if the last sale was $100 or more) unless the price change is less than one point. This is the same standard that applies to mandatory indications on openings, under existing Exchange policies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6(b)(5) of the Act.[4] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of a national securities exchange be designed to "remove impediments to and perfect the mechanism of a free and open market * * * and to protect investors and the public interest * * *" The proposal will shorten the time period for an equipment changeover trading halt, thereby reopening a security for trading in a more expeditious fashion. The Commission agrees that an equipment changeover trading halt need not be as long as a regulatory trading halt due to the technical, non-market aspect of the equipment changeover halt. Thus, the NYSE proposal will permit a stock in these conditions to reopen sooner for public trading. At the same time, the NYSE's proposal recognizes that an equipment changeover halt may develop into a regulatory halt due to a "news pending" or buy or sell imbalance in the stock, and ensures that in these conditions such a halt would be treated accordingly. Finally, the other rules proposed by the NYSE regarding the Equipment Changeover halt are reasonably designed to ensure fair and orderly markets upon resumption of trading after the halt.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28096 Filed 11–29–89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b–4 (1988).

[3] In all other respects, existing policies relating to non-regulatory halts would apply to an Equipment Changeover halt.

[4] 15 U.S.C. 87f (1982).

[Release No. 34–27467; File No. SR–NYSE–89–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Changes in the Electronic Access Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a new Electronic Access Membership fee in order to reduce the cost of an Electronic Access Membership. The proposed new fee for 1990 will be $83,642 instead of the current amount of $77,000.[1]

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(2) (1988).

[1] The reduced Electronic Access Membership fee of $83,642 is the result of a NYSE proposed change which implements a new calculation method, conducted quarterly, which is based on 70% of the 6-month average (April-September 1989, excluding initiation fees and dues) of the Physical Access Membership fee. Previously, the calculation method was based on 70% of the prior 12 month average (December-November, including initiation fees and dues) of the Physical Access Membership fee. Therefore, under the previous method, the 1990 Electronic Access Membership fee would equal $70,736. (*See* File No. SR–NYSE–89–37, submitted to the Commission on November 13, 1989.)

[2] Article X, section 1(c) of the Exchange Constitution provides that "[t]he membership fee payable by an electronic access member, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution, shall be fixed by the Board from time to time, and shall be not less than $13,500 annually."

[3] The costs for alternative forms of access, such as the purchase of equity seats, or the fixing of lease rentals, are determined by market conditions in negotiations between the purchaser and seller or lessor and lessee. The dues charges by the Exchange to physical access members are measured largely by the average of the annual rentals payable under *bona fide* leases, and are thus also affected by market conditions. Therefore, the proposed change to reduce the Electronic Access Membership fee is intended to result in a closer correlation of Electronic Access Membership prices with current market conditions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to adjust the Electronic Access Membership fee [2] in order to accurately reflect the current market conditions, thereby creating a more equitable cost level for an Electronic Access Membership.[3]

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–36 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28097 Filed 11–29–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27466; File No. SR-NYSE-89-37]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Changes in the Method of Calculating Electronic Access Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a new method for calculating Electronic Access Membership fees.[1] The resulting proposed new rate for 1990, which will be adjusted quarterly, is a function of the Physical Access Membership fees.[2] Each new quarterly rate will be an annual charge to any new or renewing Electronic Access Member approved during that quarter.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to adjust the Electronic Access Membership cost of more accurately reflect current market conditions, thereby creating a more equitable cost level.

Costs for alternative forms of access, such as the purchase of equity seats, or the fixing of lease rentals, are determined by market conditions in negotiations between purchaser and seller of lessor and lessee. The dues charged by the Exchange to Physical Access Members are measured largely by the average of the annual rentals payable under *bona fide* leases, and are thus also affected by market conditions.

Consequently, it is necessary that Electronic Access Memberships be more realistically priced to reflect the market conditions as evidenced by the changes in seat prices and annual lease rentals.

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-37 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28098 Filed 11-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No 34-27466; File No SR-PSE-89-23]

Self-Regulatory Organization; Pacific Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to Board of Governor Liability

On September 18, 1989, the Pacific Stock Exchange ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Ninth Article of the Certificate of Incorporation to allow for an exemption from monetary damages for breach of fiduciary duty by a Governor to the Exchange. Additionally, the proposed rule change would amend Rule XXIII of the Rules of the Board of Governors in order to limit the exemption from monetary damages to those situations not involving a violation of federal securities laws.

The proposed rule change was noticed in Securities Exchange Act Release No. 27339 (October 4, 1989), 54 FR 42128 (October 13, 1989). No comments were received on the proposal.

The proposed rule change was noticed in Securities Exchange Act Release No. 27339 (October 4, 1989), 54 FR 42128 (October 13, 1989). No comments were received on the proposal.

The proposed rule change would amend the Ninth Article of the Exchange's Certificate of Incorporation, which applies to indemnification from liability for members of the Exchange's Board of Governors and members of committees of the Exchange, as well as for officers, agents, and employees of the PSE, and would add new Rule XXIII to the Rules of the Board of Governors. The proposed amendment to the Certificate of Incorporation would exempt the members of the Board of Governors, to the fullest extent permitted by Delaware law, from liability from monetary damages for breach of fiduciary duty.

Additionally, the proposed change to the Rules of the Board of Governors would limit the applicability of the proposed rule change to the Certificate of Incorporation by excluding from the proposed liability exemption those cases where the liability arose, directly or indirectly, as a result of a violation of federal securities laws.

Because the PSE is incorporated in the state of Delaware, the Exchange based the proposed amendment to the Certificate of Incorporation on a 1986 amendment to section 102(b)(7) of the Delaware Corporations Code.[3] Under that provision, as amended, corporations incorporated under the laws of Delaware are permitted to include in their certificate of incorporation a provision limiting or eliminating the personal liability of a director to the corporation or its shareholders for monetary damages for breach of his or her fiduciary duty as a director. The Delaware statute does not permit the limitation or elimination of a director's liability under the following circumstances: a breach of the director's duty of loyalty to the corporation or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; or any transaction from which the director derived an improper personal benefit. Moreover, the Delaware statute does not permit the adoption of any provision that would eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

The Delaware statute does not eliminate a director's fiduciary duty but rather prevents the imposition of monetary damages in the event of a breach of that duty. Other legal remedies for breach of fiduciary duty, such as recision and injunction, remain available under the Delaware provision. In addition, in response to a request from the Commission, the PSE has proposed new Rule XXIII, which would exclude violations of the federal securities laws from the liability limitation.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and, accordingly, has determined that it should be approved. In reaching this determination, the Commission has considered the potential impact that the proposed rule change, if approved, would have on the special role and responsibilities of the Board of Governors of a registered national securities exchange under the Act. The Board of Governors of a national securities exchange has a crucial role in insuring that the exchange meets its responsibilities as a self-regulatory organization under the Act.[4] In view of this, the PSE's proposal was limited so that the exemption from monetary damages would not be available where liability was based, directly or indirectly, on a violation of the Federal securities laws.

At the same time, the Commission recognizes that national securities exchanges, such as the PSE, are incorporated under State law and, as such, are generally entitled to take advantage of provisions under State corporation codes to the extent they are consistent with the Federal securities laws. The proposed rule change adequately balances the need to retain the special responsibilities of directors of national securities exchanges with the desire of the Exchange to adopt State law provisions pertaining to its corporate structure. The rule change allows the Exchange to take advantage of section 102(b)(7) of the Delaware Corporations Code as would any other organization incorporated in Delaware, except where the imposition of monetary actions involves a violation of the Federal securities laws. Accordingly, Governors of the PSE would still be subject to the full panoply of damages in actions involving violations of the Federal securities laws.[5]

For the reasons discussed in detail above, the Commission believes the proposed amendment to the PSE's Certificate of Incorporation and proposed new Rule XXIII are consistent with the requirements of the Act, and, in particular, with the requirements of section 6 and section 19(g) of the Act.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: November 22, 1989.

Shirley B. Hollis,

Assistant Secretary.

[FR Doc. 89-28099 Filed 11-29-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6749; Amdt. 1]

Alaska, Declaration of Disaster Loan Area

The City and Borough of Juneau and the Unincorporated Borough and the contiguous Boroughs of Haines, Ketchikan Gateway, and the City and Borough of Sitka the State of Alaska, constitute an Economic Injury Disaster

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[1] *See* Article X, Section 1(c) of the Exchange Constitution.

[2] The current method of calculation, done annually, bases the Electronic Access Membership fee on 70% of the prior 12 month average (*e.g.* December–November), including initiation fees and dues, of the Physical Access Membership Fees. Therefore, using the current method, the 1990 fee would equal $70,736. The proposed fee calculation is done quarterly and is based on 70% of the 6 month average (*e.g.* April–September) excluding initiation fees and dues, of Physical Access Membership. Therefore, utilizing the proposed calculation method, the 1990 fee would equal $83,642 for January–March of 1990.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19 b-4 (1989).

[3] Del. Code Ann., Tit. 8, section 102(b)(7) (1988).

[4] The powers and responsibilities of the PSE's Board of Governors are set out in the Exchange's Constitution. Under Section 1(a), the government of the Exchange is vested in the Board of Governors. Section 1(d) provides that the Board is vested with and may exercise all powers of the Exchange and may perform all lawful acts which are not required to be performed by the members. This includes the regulation of business conduct of members of the Exchange. The PSE's Board of Governors is authorized under Section 1(f) to prescribe penalties for violation of Exchange rules and for neglect or refusal to comply with orders, directions, or decisions of the Board or of any standing committee, and for other offenses where penalties are not specifically provided by the Constitution. Under Section 2, the Chairman of the Board of Governors is the Chief Executive Officer of the Exchange responsible to the Board for the management of the PSE's business affairs. Additionally, Sections 4 and 5 of the Constitution provide that the Board of Governors appoints the President of the Exchange, its Chief Operating Officer, and the other officers of the Exchange.

[5] To the extent there is any remaining concern that the imposition of monetary damages against Board members for violations of Federal securities laws would deter persons from acting on PSE's Board of Governors, the Commission notes that Article 9 of the PSE's Certificate of Incorporation allows the Exchange to provide indemnification to members of its Board of Governors, within the limits permitted by Delaware law, to safeguard them from expense and liability for actions that they take in such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the PSE and its members. *See also* PSE Constitution, Article XVI, Section 1.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

Loan Area as a result of damage from the oil spill in the Prince William Sound area, which occurred on March 24, 1989. All other information remains the same; i.e., the termination date for filing applications for eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere is the close of business on January 10, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations.

SBA must have evidence that the needed financial assistance is not available from Exxon or its agents before a small business may be considered for economic injury assistance.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: November 16, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–28046 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2384; Amdt. 3]

South Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 16, 1989, to extend the termination date for filing applications for physical damage until December 20, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 22, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 17, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–28048 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2382, Amdt. 1]

Virgin Islands; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 16, 1989, to extend the termination date for filing applications for physical damage until December 4, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 17, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–28047 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2390]

Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 8, 1989, I find that the Buchanan County in the State of Virginia, constitutes a disaster area as a result of damages caused by severe storms, flooding, and mudslides on October 16–18, 1989. Applications for loans for physical damage may be filed until the close of business on January 10, 1990, and for economic injury until the close of business on August 8, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308,

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Russell and Tazewell in the State of Virginia and McDowell County in the State of West Virginia may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For Economic Injury:	
Businesses and small agricultural cooperative without credit available elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Virginia is 239008, and for economic injury the number is 687000. In Kentucky the economic injury number is 686900 and in West Virginia the economic injury number is 687100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 17, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–28049 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Public Meeting in San Francisco, CA

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Wednesday, December 6, 1989, at 211 Main Street, 5th floor, Conference Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Office of District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street–4th Floor, San Francisco, California 94105, phone (415) 744–6801.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–28050 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

Regional V Advisory Council Public Meeting in Chicago, IL

The U.S. Small Business Administration, Executive Committee of Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 9:30 a.m. on Friday, December 15, 1989, at the O'Hare Hilton Hotel, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator, U.S. Small Business Administration, 230 South Dearborn Street, room 510, Chicago, Illinois 60604–1593, telephone number: 312/353–0359.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–28050 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Public Meeting in Cleveland, OH

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m. on Tuesday, December 12, 1989, at the Administration Building, Cuyahoga Community College, 2900 Community College Avenue, room 210, 2nd Floor, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S Small Business Administration, or others present.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199–2095, phone (216) 522–4180.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–28052 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Public Meeting; Cancellation of Meeting in Dallas, TX

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, public meeting scheduled for 9:00 a.m., on Friday, December 8, 1989, at the Business Resource Center, 4601, North 19th Street, Waco, Texas, has been canceled.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas 75242, phone (214) 767–0605.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–28054 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Public Meeting in Concord, NH

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Tuesday, December 5, 1989, in the James Cleveland Federal Building, Room B–16, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S Small Business Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302–1257, phone (603) 225–1400.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–28053 Filed 11–29–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0353]

Fairway Capital Corp.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Fairway Capital Corporation, 285 Governor Street, Providence, Rhode Island 02906, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Direct ownership (percent)
Paul V. Anjoorian, 285 Governor Street, Providence, Rhode Island 02906	President/Treas./Director	*
Gary D. Kilberg, 285 Governor Street, Providence, Rhode Island 02906	Secretary/Director	*
Cheryl L. Kilberg, 285 Governor Street, Providence, Rhode Island 02906	Director	*
Fairway Associates, 5070 North Ocean Drive, Singer Island, Florida 33404	Sole Shareholder	100

Fairway Associates is a Florida partnership which is owned by:

Paul A. Anjoorian, 285 Governor Street, Providence, Rhode Island 02906 (percent)	50
The Hamlet Limited Partnership, 285 Governor Street, Providence, Rhode Island 02906 (percent)	50

The Hamlet Limited Partnership is owned by:

Gary D. Kilberg, 285 Governor Street, Providence, Rhode Island 02906 (percent)	34
Cheryl L. Kilberg, 285 Governor Street, Providence, Rhode Island 02906 (percent)	33
Jennifer L. Kilberg, 285 Governor Street, Providence, Rhode Island 02906 (percent)	33

The applicant will begin operations with a capitalization of $2,500,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Providence, Rhode Island.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: November 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-28055 Filed 11-29-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0539]

IBJS Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. et seq.) has been filed by IBJS Capital Corporation, One State Street, New York, New York 10004 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and sole shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of Ownership
Peter D. Matthy, 58 Tanglewylde Avenue, Bronxville, NY 10708	Chairman of the Board, Director	
Corbin R. Miller, 1165 Fifth Avenue, New York, New York 10029	President, Director	
Ronald M. Winters, 1015 Washington Street, Hoboken, NJ 07030	Vice President	
Sherry L. Mautone, 301 East 75th Street, New York, New York 10021	Vice President	
Stephen E. Davis, 130 Ridgewood Avenue, Glen Ridge, NJ 07028	Secretary, Director	
Edward G. Hamway, Jr., 36 Waldron Avenue, Summit, NJ 07901	Director	
Takeo Kani, 641 Fifth Avenue, New York, New York 10022	Director	
Peter Rona, 114 East 36th Street, New York, New York 10036	Director	
Alastar Merrick, 440 East 79th Street, New York, New York 10021	Controller	
John Newman, 14 Arthur Place, Middletown, NJ 07748	Auditor	
Jean Zimmerman, 1155 Park Avenue, New York, New York 10128	Assistant Secretary	
IBJ Schroder Bank & Trust Company, One State Street, New York, New York 10004	Sole Shareholder	100

Note: IBJ Schroder Bank & Trust Company conducts a general banking and trust business. The Industrial Bank of Japan, Ltd., Tokyo, Japan owns 95.1 percent of IBJ Schroder Bank & Trust Company. No one person owns 10 percent or more of The Industrial Bank of Japan, Ltd.

The Applicant, a Delaware Corporation, will begin operations with $5,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of New York, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-28056 Filed 11-29-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Blue Grass Airport, Lexington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lexington-Fayette Urban County Airport Board for Blue Grass Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Blue Grass Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 12, 1990.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 13, 1989. The public comment period ends January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Airports District Office, 3973 Knight Road, Suite #105, Memphis, Tennessee 38118-3004, (901) 521-3495. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Blue Grass Airport are in compliance with applicable requirements of part 150, effective November 13, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 12, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Lexington-Fayette Urban County Airport Board submitted to the FAA on June 6, 1989 noise exposure maps, descriptions and other documentation which were produced during Blue Grass Airport Noise Compatibility Study, December 1986-September 1988. These maps were first submitted for review September 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Lexington-Fayette Urban County Airport Board. The specific maps under consideration are Current Year Noise Contours and Year 1993 Noise Contours with New Fleet Mix in the submission. The FAA has determined that these maps for Blue Grass Airport are in compliance with applicable requirements. This determination is effective on November 13, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Blue Grass Airport, also effective on November 13, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 12, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Road, Suite #105, Memphis, TN 38118-3004.

Mr. Mike Flack, Executive Director, Lexington-Fayette Urban County Airport Board, Blue Grass Airport, 4000 Versailles Road, Lexington, KY 40511.

Questions may be directed to the individual named under the heading, "FOR FURTHER INFORMATION CONTACT."

Issued in Memphis Airports District Office, November 13, 1989.

Wayne R. Miles,

Acting Manager.

[FR Doc. 89-28002 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Hartford-Brainard Airport, Hartford, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by the State of Connecticut for Hartford-Brainard Airport, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Hartford-Brainard Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 14, 1990.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is November 15, 1989. The public comment period ends on January 14, 1990.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Hartford-Brainard Airport is in compliance with applicable requirements of part 150, effective November 15, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 14, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in

consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Connecticut submitted to the FAA on June 16, 1989, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) Study at Hartford-Brainard Airport from January 1988 to October 1989. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the State of Connecticut. The specific map under consideration is Figure 1.1, along with the supporting documentation in Volume I: Noise Exposure Map of the part 150 Study. The FAA has determined that the map for Hartford-Brainard Airport is in compliance with applicable requirements. This determination is effective on November 15, 1989. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example; which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 or FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Hartford-Brainard Airport, also effective on November 15, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 14, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the production of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, MA 01803.

Connecticut Department of Transportation, Bureau of Planning, 24 Wolcott Hill Road, Drawer A, Wethersfield, CT 06109-0801.

Questions may be directed to the individual named above under the heading: **"FOR FURTHER INFORMATION CONTACT."**

Issued in Burlington, Massachusetts on November 15, 1989.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 89-28003 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a change in the date of the second meeting of the Aviation Security Advisory Committee.

DATE: The meeting has been changed from December 13 to December 15, 1989, from 9 a.m. to 1 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 15, 1989, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A review of the first committee meeting held October 20, 1989. A discussion of previously discussed and newly submitted items as they relate to designation of subcommittees by topical areas. A decision concerning subcommittee topics and membership.

Attendance at the December 15 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on November 24, 1989.

Raymond A. Salazar,

Director of Civil Aviation Security.

[FR Doc. 89-28001 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 89-18]

RIN 2125-AC39

Handicapped Parking Regulatory Negotiation Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces the time and place of the next meetings of the Handicapped Parking Regulatory Negotiation Advisory Committee. These meetings are open to the public.

DATES: The meetings of the Handicapped Parking Regulatory Negotiation Advisory Committee will be held as follows:

To consider a draft report and recommended NPRM:
Wednesday, November 29, 1:00 p.m., to 5:30 p.m.,
Thursday, November 30, and Friday, December 1, 1989 9 a.m. to 5:30 p.m.

To finalize the report and recommended NPRM, after members have the opportunity to discuss the report and recommended NPRM with persons they represent:
Monday, January 10, 1990, 1:00 p.m. to 5:00 p.m.,
Tuesday, January 11, and Wednesday, January 12, 1990 9:00 a.m. to 5 p.m.

ADDRESS: The meetings of the advisory committee will be held at the Department of Transportation, Room 4200, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *Agency contact* Mr. Vincent Nowakowski, FHWA, Office of Traffic Operations (202) 366-2214, Ms Judith S. Kaleta, FHWA, Office of the Chief Counsel (202) 366-0764, or Mr. E. William Fox, NHTSA, Office of the Chief Counsel (202) 366-1834 400 Seventh Street, SW., Washington, DC 20590. *Mediator:* Robert Robertory, Deputy Chief Administrative Judge, Board of Contract Appeals, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4305.

SUPPLEMENTARY INFORMATION: Pub. L. 100-641 directs the Secretary of Transportation to establish a uniform system for handicapped parking. This authority has been delegated to the FHWA and the NHTSA. To implement this law, the FHWA and the NHTSA have established an advisory committee for regulatory negotiation. 54 FR 24908 and 40770 (1989). The committee will develop a report concerning the establishment of a uniform system for handicapped parking to enhance the safety for handicapped parking to enhance the safety of persons with disabilities. This report will include a recommended rulemaking proposal and will be submitted to the Administrators of the FHWA and the NHTSA. After the agencies issue a notice of proposed rulemaking (NPRM), the committee will review any comments submitted to the rulemaking docket, and write a second report which will include a recommended final rule.

This advisory committee will consider the following issues:

1. The adoption of the International Symbol of Access (ISA) as the only recognized symbol for the identificaton of vehicles used for transporting individuals with handicaps that limit or impair the ability to walk.

2. The issuance of license plates displaying the ISA for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk.

3. The issuance of removable windshield placards (displaying the ISA) to individuals with handicaps which limit or impair the ability to walk.

4. The fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps.

5. The recognition of licenses and placards, which display the ISA and are issued by other States and countries.

We anticipate that this advisory committee will discuss matters that are ancillary to the issues set forth above.

In the notice of establishment of the advisory committee, which was published on October 3, 1989, 54 FR 40770, we noted that notices of the meetings will be published in the **Federal Register** if time permits. We noted that publication may not be possible in cases when the committee decides to meet for a few days, break for a few days, and then resume negotiations. However, through this notice, we are attempting to advise all interested parties of the committee meetings.

Issued on: November 22, 1989.

E. Dean Carlson,

Acting Executive Director Federal Highway Administration.

[FR Doc. 89-28090 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-855]

Lykes Bros. Steamship Co., Inc.; Application for Authorization To Permit Participation in a Reciprocal Space Charter and Coordinated Sailing Agreement—FMC Number 232-011254

By application of November 7, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) with respect to Operating-Differential Subsidy Agreement, Contract MA/MSB-451, requests authority required by the Maritime Administration to effect a Reciprocal Space Charter and Coordinated Sailing Agreement, so as to permit Lykes participation in Agreement 232-011254 (Agreement).

The Agreement was recently concluded between Lykes and Pharos Lines, A.A., doing business as Constellation Line (Constellation). The Agreement was filed with the Federal Maritime Commission on October 24, 1989, and has been assigned FMC Number 232-011254.

Under the Agreement Lykes and Constellation, a Greek operator of foreign flag vessels, may agree on sailing schedules, service frequency, ports to be served and port rotation with respect to the trade between the United States Atlantic and Gulf and the Mediterranean including, among other areas, the Black Sea and North Africa, but excluding Italy, Spain, France and Portugal (Trade), as more specifically described in Article 4 of the Agreement. Further, the parties may charter space to and from each other, and in connection with such space charter, may provide equipment and jointly contract or coordinate in contracting with stevedores, terminals, ports and suppliers of equipment, land and services. The Agreement also permits the parties to advertise sailings, and, within specified limits, agree on the number, size and type of vessels operated by each in the Trade.

The Agreement does not create a joint service, permit pooling nor permit the parties to agree on rates or terms applicable to the shipping public other than as permitted by other agreements filed with the FMC. In addition, each party is required to utilize and maintain its own marketing and sales organizations and manage its own

vessels. The term of the Agreement is for at least one year, continuing thereafter unless either party desires to terminate its participation.

Currently, Lykes serves Trade Route (TR) 13 (U.S. South Atlantic and Gulf/Mediterranean and Black Sea) with a mixture of full containerships, combination vessels, and breakbulk vessels. Three full containerships are dedicated to the service while the other vessels are deployed on TR 13 depending upon their availability as well as the particular needs of the trade at that time. Constellation operates three combination vessels in the Trade, two with container and breakbulk capacity and one with RO/RO and container capacity. Lykes advises that the Agreement with Constellation will allow it to better utilize its vessels and better control scheduling.

Lykes states that it has entered into this Agreement in order to meet these circumstances and with the intention of receiving reciprocal business from Constellation and to (1) meet the needs of cargo interests as those needs change; (2) expand its container service to areas in the trade that are not presently being served, with a resultant increase in Lykes' market share; and (3) help establish Lykes' presence in new areas.

Finally, Lykes asserts that it can foresee no adverse impact from this Agreement. The Agreement will, in Lykes opinion, be beneficial because it will assist in increasing the U.S. flag share of the Trade, increase the scope of the U.S. service, provide added stability to the Trade and, as to Lykes, enable the realization of efficiencies from rationalization of sailings.

Section 804(a) of the Act provides that "it shall be unlawful for any contractor receiving operating-differential subsidy under title VI to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act." Section 804(b) states that this provision may be waived by the Secretary under special circumstances and for good cause shown.

Other U.S.-flag competitors advertise service in the range covered by the Agreement. For this reason, the Maritime Administration is publishing this **Federal Register** notice as a matter of discretion.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on Dec. 13, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 [Operating-Differential Subsidies]).

By Order of the Maritime Administrator

Dated: November 24, 1989.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 89-27955 Filed 11-29-89; 8:45 am]

BILLING CODE [illegible]

National Highway Traffic Safety Administration

[Docket No. 89-21; Notice 1]

RIN 2127-AC20

Evaluation Report on Door Locks and Roof Crush Resistance of Passenger Cars; Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components; Roof Crush Resistance; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 206, "Door Locks and Door Retention Components" and No. 216, Roof Crush Resistance." This staff report evaluates safety effectiveness and benefits of improvements to door locks and roof structures in passenger cars. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than: March 30, 1990.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-4949). [Docket hours, 9:30 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Taffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Standard No. 206 (49 CFR 571.206) regulates the door locks and door retention components of cars, light trucks, vans and multipurpose passenger vehicles. The standard took effect for cars on January 1, 1968 and is aimed at minimizing the likelihood of occupants being thrown from the vehicle as a result of impact. The auto industry steadily improved door lock design in the years leading up to 1968. Standard No. 216 (49 CFR 571.216) has applied to passenger cars since September 1, 1973 and its purpose is to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover accidents. During the Standard 216 rulemaking process, the auto industry changed roof design from hardtops to pillared cars with stronger roof support.

Pursuant to Executive Order 12291, NHTSA is conducting an evalantion of door locks and roof crush resistance of passenger cars to determine the effectiveness of technology selected by automobile manufacturers in preventing fatalities and to determine the benefits of the technology to consumers. Under the executive order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation is an analysis of the effectiveness and benefits of stronger door locks and roof structures in rollover crashes of passenger cars.

The evaluation is based on statistical analyses of accident data from Texas, the Fatal Accident Reporting System, the National Crash Severity Study, the National Accident Sampling System and Multidisciplinary Accident Investigation and roof crush data from laboratory tests of pre- and post-Standard 216 cars.

The principal findings and conclusions of this study are the following:

- Door latch improvements implemented during 1963-68 save an estimated 400 lives per year, reducing the risk of ejection in rollover crashes by 15 percent.
- The shift from hardtops to pillared cars, in response to Standard 216, saves an estimated 110 lives per year.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: November 27, 1989.

Adele Derby,

Associate Administrator for Plans and Policy.

[FR Doc. 89-27996 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0078.
Form Number: ATF F 1533 (500.18).
Type of Review: Extension.
Title: Consent of Surety.
Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512-0177.
Form Number: ATF F 5100.29.
Type of Review: Extension.
Title: Catering Locations.
Description: ATF F 5100.29 is used by caterers to register all changes of locations within a previous 30-day period. This is to identify where liquor was sold at locations other than what was listed on the special tax stamp issued to the caterer. The form is filed in duplicate by the caterer. The form is filed in duplicate by the caterer, along with an amended ATF F 5630.5.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.

OMB Number: 1512-0192.
Form Number: ATF REC 5110/02-ATF 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Warehousing Records and Reports.
Description: The information collected is used to account for the proprietor's tax liability adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 212.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,088 hours.

OMB Number: 1512-0198.
Form Number: ATF REC 5110/03-ATF F 5110.28.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Processing Records and Report.
Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 141.
Estimated Burden Hours Per Response: 2 hours.
Recordkeeping: 5 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 4,089 hours.

OMB Number: 1512-0207.
Form Number: ATF REC 5110/04-ATF F 5110.43.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 93.
Estimated Burden Hours Per Response: 1 Hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,116 hours.

OMB Number: 1512-0392.
Form Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.
Description: These records (bills of sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 12,665.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–28031 Filed 11–29–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0874.

Form Number: 8328.

Type of Review: Extension.

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

Description: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Respondents: State or local governments, Businesses or other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	5 hours, 44 minutes.
Learning about the law or the form.	1 hour, 53 minutes.
Preparing and sending the form to IRS.	2 hours, 4 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 96,000 hours.

OMB Number: 1545–1016.

Form Number: 8613.

Type of Review: Extension.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	6 hours, 13 minutes.
Learning about the law or the form.	1 hour, 59 minutes.
Preparing and sending the form to IRS.	2 hours, 10 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 15,570 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Office.

[FR Doc. 89–28032 Filed 11–29–89; 8:45 am]

BILLING CODE 4810-25-M

Office of Foreign Assets Control

Cuban Assets Control; Fitness and Qualification of License Applicants

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. It also informs the public of the identity of additional travel service providers and family remittance forwarders authorized to engage in these services.

DATE: Comments must be submitted on or before January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376–0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

On April 21, 1989 and on June 6, 1989, the Office of Foreign Assets Control published a list of license applicants, who had been granted provisional authority to provide services pending review of their completed license applications (54 FR 16188 and 54 FR 24262). Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publications of the earlier notices, 13 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging

different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely family remittances to close relatives in amounts not to exceed $500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed $500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel, Carrier, and Family Remittance Forwarding Services:

Name of Applicant (Company Name of Individual); Principal Officer (If Applicant is Incorporated); Address (As Supplied by Applicant)	Branch Office(s) Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Estrellita Travel, Estrella M. Ponce, 414, 65th St., West New York, NJ 07093.	TSP, FRF.
Happy World Travel Agency, Inc., Louise E Sanchez, 1300 S. Semoran Blvd., Orlando, FL 32807.	TSP, FRF.
La Ilsa Envios, Lydia E Suarez, 6451 E. Clara St., Bell Gardens, CA 90201.	TSP, FRF.
International Fast Service, Inc., Oscar F. Perez, 1183 W. 37th St., Hialeah, FL 33012.	TSP, FRF.
Jetlite, Inc., George R. Armagost, 1500 N.W. 62nd St., #414, Ft Lauderdale, FL 33309.	CSP.
La Perla De Las Antillas, Edwin G. Morales, 8852 W. Flagler St., Miami, FL 33144.	TSP, FRF.
Medi-Cuba Express Service Co., Inc., Ceferino Perez-Carril, 588 W. 207th St., New York, NY 10034.	FRF.
Nile Tours and Multiple Services, Inc., Gladys B. Bulnes, 1889 W. Flagler St., Miami, FL 33135.	TSP, FRF.
Ricardo Pascual & Asociados, Ricardo J.M. Pascual, 124 Condado Ave., #502, Santurce, Puerto Rico 00907.	TSP.
Sabal Palm Airways, Inc., Gilbert Chacon, 1575 W. Commercial Blvd., Hanger #38, Ft. Lauderdale, FL 33309.	CSP.
Solymar Corp., Adis Ramos, 585 E. 49th St., #18–17, Hialeah, FL 33013.	TSP, FRF.

The following companies listed solely for family remittance forwarding in a previous notice have also received authorization as travel service providers:

Almacen El Espanol, Augusto P. Rodriguez, 1359 S.W. 1st St., Miami, FL 33135.	TSP, FRF.
Cuba Envios, Inc., Carmen Ordenes, 4700 NW., 7th St., #8, Miami, FL 33126.	TSP, FRF.
El Espanol Corporation, Augusto C. Rodriquez, 8938 SW. 40th St., Miami, FL 33155.	TSP, FR.
Exportaciones Cubanacan, Inc., Jose Mesa, 2319 NW. 7th St., Miami, FL 33125.	TSP, FRF.

Dated: November 6, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 15, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

FR Doc. 89–28129 Filed 11–29–89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Conversion of Select Federal Supply Schedule Items From a Multiple Award Schedule to a Single Award Schedule

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is proposing to convert select items currently under Federal Supply Schedule Group 65, part II, from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS).

DATES: Written comments must be received on or before January 2, 1990, and should include consideration of potential impact on small business concerns. Comments will be available for public inspection until January 11, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, (except holidays), until January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne H. Taylor, Federal Supply Schedule Division (904C), Department of Veterans Affairs Marketing Center (312) 216–2495.

SUPPLEMENTARY INFORMATION: The items proposed for conversion from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS) are: (1) Antimicrobial Soap; (2) Stretcher, Hospital (adjustable back rest) and (3) Sphygmomanometers, Mercury and Aneroid. This proposed action is published in accordance with General Services Administration Handbook, Supply Operations, Chapter 38 (FSS P2901.2A), and Federal Acquisition Regulation (FAR) 38.2.

Dated: November 21, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89–27980 Filed 11–29–89; 8:45 am]

BILLING CODE 8320-01-M

Regional Office Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and

Hearing Rules, that on December 22, 1989, at 1:00 p.m, the U.S. Department of Veterans Affairs Regional Office Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A–220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether VA benefits to all eligible persons enrolled in Stage One—The Hair School, 33 North Cleveland, Memphis, Tennessee 38104, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: November 22, 1989.

R.S. Bielak,

Director, VA Regional Office.

[FR Doc. 89–27979 Filed 11–29–89; 8:45 am]

BILLING CODE 8320–01–M

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA's) Performance Review Boards which was published in the **Federal Register** (53 FR 46742, dated November 18, 1989).

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3423.

VA Performance Review Board (PRB)

Anthony J. Principi, Deputy Secretary of Veterans Affairs (Chairperson)
Ronald E. Cowles, Deputy Assistant Secretary for Personnel and Labor Relations
Arthur J. Lewis, M.D., Deputy Chief Medical Director
H. Robert Saldivar, Deputy Assistant Secretary for Acquisition and Materiel Management
Robert W. Schultz, Deputy Assistant Secretary for Administration

Veterans Benefits Administration PRB

Harold F. Gracey, Executive Assistant to the Chief Benefits Director (Chairperson)
Raymond H. Avent, Deputy Chief Benefits Director for Field Operations
Grady W. Horton, Deputy Chief Benefits Director for Program Management
Richard Pell, Jr., Director, Operations and Policy Staff
Rhoda R. Mancher, Deputy Chief Benefits Director for ADP Systems Management

Veterans Health Services and Research Administration PRB

Arthur J. Lewis, M.D., Deputy Chief Medical Director (Chairperson)
Sidney M. Ford, Regional Director, Midwestern Region
George H. Gray, Acting Regional Director, Northeastern Region
Robert E. Lindsey, Jr., Regional Director, Western Region
Richard P. Miller, Regional Director, Southwestern Region
Richard Pell, Jr., Director, Operations and Policy Staff
Robert A. Perreault, Executive Assistant to the Chief Medical Director
Peter F. Regan, M.D., Assistant Chief Medical Director for Academic Affairs
Carl L. Stephensen, Acting Regional Director, Mid-Atlantic Region
Donald B. Thompson, Regional Director, Southeastern Region
Daniel H. Winship, M.D., Associate Deputy Chief Medical Director
Charles V. Yarbrough, Director, Management Support Office
Albert Zamberlan, Regional Director, Great Lakes Region

Office of Inspector General PRB

Milton McDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
Miriam F. Browning, Deputy Assistant Inspector General for Administration and Information Management, Department of Defense
H. Rae Scott, Assistant Inspector General for Investigations, Department of Transportation

Dated: November 21, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89–27981 Filed 11–29–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 229
Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 1, 1989.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–28161 Filed 11–28–89; 2:20 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 8, 1989.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–28162 Filed 11–28–89; 2:20 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 15, 1989.
PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–28163 Filed 11–28–89; 2:20 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 22, 1989.
PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–28164 Filed 11–28–89; 2:20 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 29, 1989.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–28165 Filed 11–28–89; 2:20 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, December 5, 1989, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Tuesday, December 7, 1989, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC. (ninth floor).
STATUS: This meeting will be closed to the public.
MEMBERS TO BE CONSIDERED:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989–27: Mr. Jon L. Bryan
Drug Free Workplace Revised Instruction
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89–28222 Filed 11–28–89; 3:20 am]
BILLING CODE 6715–01–M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

DATE AND TIME: December 10 and 11, 1989.
PLACE: Embassy Suites, Hotel, Delegate Room, 1250 22nd Street, NW., Washington, DC 20037, (202) 857–3388.
STATUS:
December 10, 1989, 1:15 p.m.–2:00 p.m., Closed, Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, part 1703;
December 10, 1989, 2:00 p.m.–5:45 p.m., Open;
December 11, 1989, 9:00 a.m.–2:30 p.m., Open.
MATTERS TO BE DISCUSSED:
Chairman's Report
Executive Director's Report
NCLIS Committee Reports:
—Budget and Finance
—Governance
—Indian Library Services
—Information Policies
—International
—Legislative
—Personnel
—Program Review
—Public Affairs
—Recognition Awards
—School Media
—White House Conference II
Election of NCLIS Vice Chairman
Library of Congress Status Report, Winston Tabb, Acting Deputy Librarian of Congress
NCLIS Statistics Program Report
White House Conference on Library and Information Services Advisory Committee Report, Daniel Carter, Chairman
Discussion on Republication of:
National Information Policy Report
Public/Private Sector Report

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW., Suite

310, Washington, DC 20036, (202) 254–3100.

Dated: November 28, 1989.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 89–28160 Filed 11–28–89; 2:19 pm]

BILLING CODE 7537–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 4, 1989, and at 8:30 a.m. on Tuesday, December 5, 1989, in Phoenix, Arizona. The December 4 meeting, at which the Board will discuss preparations for the rate case filing, is closed to the public. (See 54 FR 47449, November 14, 1989). The December 5 meeting is open to the public and will be held in Conference Room 113–A at the Phoenix Main Post Office, 4949 East Van Buren Street. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

December 4—1:00 p.m. (Closed)

1. Preparation for Rate Case Filing. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group; and Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)

Tuesday Session—Phoenix Main Post Office

December 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 6–7, 1989.
2. Remarks of the Postmaster General.
3. FY 1989 Financial Statements. (Mr. Coppie)
4. Annual Comprehensive Statement to Congress. (Louis A. Cox, General Counsel)
5. Overview of Automation Program to Date. (Allen R. Kane, Assistant Postmaster General, Delivery, Distribution, and Transportation Department; and Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Support Department)
6. Chief Inspector's Report on Consumer Protection. (Charles R. Clauson, Chief Postal Inspector)
7. Report on EEO/Affirmative Action Programs in the Phoenix Division. (David C. Bakke, Phoenix Field Division General Manager/Postmaster)
8. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Fort Myers, Florida, General Mail Facility.
   b. San Francisco, California, Polk Gulch Station.
9. Tentative Agenda for January 8–9, 1990, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89–28146 Filed 11–28–89; 9:12 am]

BILLING CODE 7710–12–M

federal register

Thursday
November 30, 1989

Part II

Department of the Treasury

Office of Thrift Supervision

12 CFR Ch. V

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989; Final Rule

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Ch. V

[No. 89-244]

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989

Date: October 10, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

DATE: October 10, 1989.

SUMMARY: The Office of Thrift Supervision ("OTS" or "Office") has recently published a notice in the **Federal Register** notifying the public that, pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, the authority to regulate thrift institutions has been transferred from the Federal Home Loan Bank Board ("Bank Board" or "Board") to the Office. 54 FR 34637 (August 21, 1989). This final rule supplements that Notice by republishing 12 CFR chapter V, as revised pursuant to that legislation, to reflect this shift in authority.

EFFECTIVE DATE: November 30, 1989. Except §§ 567.1, 567.2, 567.5, 567.6, and 567.8 through 567.11 are effective December 7, 1989, § 571.19 is effective January 1, 1990, and §§ 545.131, 545.132, and 545.141(d) are effective December 15, 1989.

FOR FURTHER INFORMATION CONTACT: The following contact persons will direct callers to the appropriate legal or policy personnel who will be able to provide additional information about a specific regulation.

General investment authority of Federal savings associations, liquidity, capital, accounting, loans to one borrower, appraisals, classification of assets, safety and soundness regulations: Mary J. Hoyle, (202) 906-7135, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Incorporation, organization, and corporate structure of Federal savings associations, conversions, securities, accounting, transactions with affiliates, management interlocks, community reinvestment, acquisition of control, savings and loan holding company regulations: Linda Beamer, (202) 906-6536, Corporate and Securities Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Rules of practice and procedure, adjudication of enforcement actions, and conduct of investigations and formal examinations: Gary Gegenheimer, (202) 906-7170, Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

All other areas not specifically listed above: Mary J. Hoyle, (202) 906-7135, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, has transferred the authority to regulate savings associations from the Bank Board in its own right and as operating head of the Federal Home Loan Bank System ("Bank System") and the Federal Savings and Loan Insurance Corporation ("FSLIC") to the Office.

This document is the second of a series of documents that the Office anticipates adopting and publishing over the next several months. It follows the "Statement of Organization, Functions, and Delegations of Authority," 54 FR 34637 (Aug. 21, 1989), which provided, *inter alia*, that all former Bank Board and FSLIC regulations in areas placed within the Office's authority by FIRREA "remain in effect and enforceable by the Office, until such time as modified, canceled, or repealed by the Office." Today's final rule reflects all of the changes made to the Board's regulations as in effect on the day prior to enactment of the FIRREA necessary in order to continue and transfer such regulations to the Office as the appropriate thrift regulatory authority as designated in FIRREA.[1]

Chapter V, as modified, sets forth the new regulatory structure for the thrift industry. Modifications are being made to the transferred regulations in order to effect the amendment, transfer, or repeal of sections of the governing statutes and corresponding changes in responsibilities. Cross-references to Title IV of the National Housing Act ("NHA") and the Federal Home Loan Bank Act ("FHLBA") are being changed to refer to sections of the Home Owners' Loan Act of 1933 ("HOLA") or Federal Deposit Insurance Act ("FDIA") where appropriate. Transferred regulations are also being revised to reflect substantive statutory changes in authority. The body of regulations as a whole is being reorganized in some areas, particularly in those regulations formerly located in Subchapters A and B and Parts 547, 555, 563, and 570. Any cross-references affected are modified to reflect these changes. A conversion table is incorporated for ease of reference. Technical changes are also being made where appropriate to renumber paragraphs within sections.

This package also contains two sets of regulations adopted by the Office and published in the **Federal Register** prior to today's republication. These regulations, which appear in Parts 502 and 567, are included in today's document in full text for ease of reference.

New regulations mandated by the statute that are not required to be implemented immediately will be adopted over the upcoming months, as dictated by the timetables in the FIRREA. This will include revisions, for example, to the Office's appraisal and qualified thrift lender regulations. This process will also include a review of the transferred regulations to determine which should be modified in conformance with the statutory dictate that the Office's rules, regulations, and policies governing the safe and sound operation of savings associations be no less stringent than those of the Office of the Comptroller of the Currency ("OCC"). The Office also anticipates making further revisions to a number of existing regulations and adopting new regulations over the next few months in order to further the Office's mandate to promote the safe and sound operation of the thrift industry. The Office will attempt to publish, where possible, related proposals and related final regulations together in the **Federal Register** for ease of reference.

The following are brief descriptions of the general changes made throughout the regulations pursuant to FIRREA, and brief descriptions of the changes made to particular parts.

General

References to the Bank Board are generally being changed to references to the Office of Thrift Supervision, or, where appropriate, to the Director of the Office. References to the Office of Regulatory Activities or its predecessor offices now refer to the Senior Deputy Director for Supervision (Operations) or

[1] The Office is aware of the existence of some confusion due to the recent promulgation by the Federal Housing Finance Board ("FHFB") of certain regulations that duplicate regulations remaining within the Office's authority. *See* 54 FR 36757 (September 5, 1989). The promulgation of such regulations by the FHFB does not in any way affect or diminish the Office's authority regarding the duplicated regulations.

Senior Deputy Director for Supervision (Policy) as appropriate. References to the former Office of District Banks now refer to the Senior Deputy Director for Supervision (Operations), where those functions are now located. References to the former Office of General Counsel now refer to the Chief Counsel's office, where those functions are now located. Before the FIRREA, a number of the Bank Board's supervisory functions were located in the Federal Home Loan Banks and performed by the Board's Principal Supervisory Agents and Supervisory Agents. The regulations now refer instead to the District Directors in the Office's District Offices, who will perform those functions.

References to accounts insured by the FSLIC or deposits insured by the Federal Deposit Insurance Corporation ("FDIC") are being amended to reflect the new insurance structure whereby savings associations are members of the Savings Association Insurance Fund, while commercial banks and certain savings banks are members of the Bank Insurance Fund. Both funds are administered by the FDIC. Regulations that previously referred to the FSLIC are being amended to refer to either the Office, the FDIC, or the Resolution Trust Corporation ("RTC"), as appropriate.

Under the former statutory and regulatory structure, a number of safety and soundness regulations promulgated pursuant to the NHA referred to "insured institutions" and tied certain requirements to applications for insurance of accounts. Similarly, other regulations, notably those governing liquidity, had been promulgated pursuant to the Bank Board's then-existing authority under the FHLBA and referred to "member institutions". These references are being modified to refer to "savings associations" and tied to the new statutory and regulatory structure of the Office.

Certain parts and sections within the chapter that formerly governed those functions of the Bank Board or the FSLIC that have been transferred to other agencies have, therefore, not been readopted by the Office today. These parts and sections include those dealing with the credit function performed by the Federal Home Loan Banks (now under the jurisdiction of the FHFB) and to the insurance fund and receivership functions formerly performed by the FSLIC and now under the FDIC or RTC. *See* 54 FR 36757 (September 5, 1989) (FHFB); 54 FR 41359 (October 6, 1989), 54 FR 42789 (October 18, 1989) (FDIC).

Part 500

The organizational regulations of the Office are now set forth in part 500. They are being revised to indicate the new structure of the Office.

Part 502

The assessments regulation codified in part 502 and previously published by the Office in the **Federal Register** of September 29, 1989 (54 FR 39983) is incorporated herein in full text for ease of reference.

Part 505

The Office, as a component part of the Department of the Treasury, is covered by its FOIA regulations at 31 CFR part 1, subpart A. Those regulations permit bureaus and offices of the Treasury Department to supplement those Department-wide regulations. While the Office anticipates revising its FOIA regulations in the near future, today's revisions are limited to incorporating references to Treasury regulations at 31 CFR part 1, subpart A and items required by these regulations.

Part 505a

The Privacy Act regulations formerly appearing at part 505a have been substantially superseded because the Office, as a component part of the Treasury Department, is covered by the regulations appearing at 31 CFR part 1, subpart C. Part 503 contains the Office's specific regulations in this area.

Part 505b

Former part 505b, which governed public information regarding meetings of the Bank Board under the Government in the Sunshine Act is being repealed, as the Office is not a deliberative body subject to that Act.

Part 505c

Former part 505c is being redesignated as part 504.

Part 505d

Former part 505d is being removed as the list of OMB control numbers contained therein no longer accurately reflects the current regulations and assigned control numbers.

Part 508

Former part 508 is being removed. Former §§ 508.10, 508.10–1, and part of 508.13 are being incorporated into new § 510.2. Former § 508.16 is being redesignated as 510.3. The remaining sections have been removed as unnecessary because they are duplicative of the Administrative Procedure Act.

Parts 509, 509a, 512, and 513

These parts have been modified to reflect the Office's new statutory enforcement authorities. In particular, the list of civil money penalty provisions giving rise to an administrative hearing has been expanded to include the new powers of the Office granted by FIRREA. Former part 509a is being redesignated as part 508.

Part 510

Part 510 is being expanded to incorporate provisions formerly located in parts 508 and 551.

Part 511

Part 511 has been removed as the Treasury's ethics regulations (31 FR part 0) apply to the Office and its employees. The Office will, from time to time, supplement those regulations by issuing policies or guidance that will apply to all Office employees.

Part 514

Part 514, which contained regulations governing the Federal Savings and Loan Insurance Advisory Committee, has been removed, as section 713 of the FIRREA has removed the statutory provisions creating this body.

Part 516

Part 516 previously contained regulations which implemented the Drug-Free Workplace Act of 1988 as well as regulations governing Governmentwide nonprocurement debarment and suspension. The Department of the Treasury has adopted these as Departmentwide regulations and codified them at 31 CFR part 19. Because the Office is a component of the Department of the Treasury, and therefore covered by its Departmentwide regulations, the regulations contained in part 516 would be duplicative and are removed.

Sections 523.10, 523.11, 523.12, 523.13, 523.14, 523.29, 526.1, 526.2, 531.8 and 531.10, Parts 533 and 535

These sections under the former regulatory structure applied to members of the Federal Home Loan Bank System. The FIRREA has transferred regulatory responsibilities in the areas covered by these parts to the Office, as thrift regulator or has otherwise provided the Office with authority to address these issues. The regulations will now apply to all savings associations, regardless of their membership in a Federal Home Loan Bank, and accordingly are being incorporated in the regulations governing the operations of savings associations. Former §§ 523.10 through 523.14, governing liquidity, are being placed into a new part 566. Former § 523.29, governing flood insurance, is being added as new § 563.48. Section 526.1 is being incorporated into the definitions in part 561. Section 526.2 is being incorporated into the advertising regulation § 563.27. Sections 531.8 and 531.10, statements of policy, are now §§ 571.24 and 571.25.

Parts 523 and 529

The Office is adopting, with only nomenclature changes, the former Bank Board nondiscrimination regulations.

Part 532

Former § 532.1 has been transferred to part 571 and redesignated as § 571.17 in the interests of consolidating the Office's codified Statements of Policy that apply to all savings associations. It is being further modified as set forth in the discussion under that part.

Part 541

Some definitions in this part are being modified to reflect nomenclature changes. A cross-reference to the definitions located in part 561 has been added. The new statutory term "Federal savings association" replaces the term "Federal association". The term "Principal supervisory agent" has been deleted and is being replaced with "District Director" to conform with the new regulatory structure. The terms "insured institution" and "Supervisory Agent" have been removed.

Part 543

1. Section 543.2(g) is being modified to incorporate the charter approval standards set forth at 12 U.S.C. 1464(e) and to provide that charter approvals will be conditioned upon receipt of written confirmation of FDIC insurance of accounts. A conforming change is being made to § 543.2(b) to eliminate the unnecessary recitation of the charter approval standards. The terminology of § 543.2(g)(3)(iii) is being revised to enhance its clarity and to eliminate inconsistency with § 543.5 regarding the timing of the issuance of charters. A new paragraph (g)(3)(iii)(f) is being added to confirm that Federal savings associations may not commence accepting deposits until their organization is completed. The approval procedures for interim Federal savings associations, § 543.2(h)(2), are also being revised to incorporate the charter approval standards set forth at 12 U.S.C. 1464(e), to the extent relevant.

2. New language is being added to § 543.6(d) to confirm that the organization of a Federal savings association is not deemed complete until the association has obtained Federal Home Loan Bank membership, insurance of accounts has been confirmed (in the case of Federal savings associations not already insured by the FDIC), and all conditions imposed in connection with approval of the organization application have been met. *Cf.* § 552.2–1(h)(6).

3. Section 543.7–1, which provides for the issuance of charters in supervisory cases, is being revised to reflect the fact that such associations will now be proposed by the FDIC, the RTC and the Office, instead of the FSLIC.

4. Section 543.9(c) is being amended to provide that approvals of charter conversions by the District Director will be conditioned upon receipt of written confirmation of FDIC insurance of accounts (in the case of associations not already insured by the FDIC) and Federal Home Loan Bank membership.

5. Section 543.11–1(a) is being amended to reflect changes to the "grandfathered" authority of certain Federal savings banks pursuant to amended section 5(i)(4)(ii) of the HOLA, 12 U.S.C. 1464(i)(4)(ii).

Part 544

1. In section 8 of the model charter for federal mutual associations as set forth in § 544.1, the language regarding "general reserves" has been eliminated as obsolete.

2. References to Charters B, K, L, and N in § 544.8 have been removed because they no longer serve any useful purpose. *See* § 544.8(a) (1988).

Part 545

1. A new § 545.10 is being added by the transfer of former § 563.7–1 to this part. That section formerly dealt with the approval by the FSLIC of the form of accounts issued by Federal savings associations, pursuant to the authority formerly vested in the FSLIC by the NHA. With the dissolution of the FSLIC, this responsibility now rests with the Office. For ease of reference this section now appears with the other regulations relating to accounts offered by Federal savings associations.

2. Section 545.11 is being amended by adding a new paragraph (a) requiring all Federal savings associations to obtain FDIC insurance for their accounts or deposits before doing business or issuing accounts. This conforms to the new statutory structure for deposit insurance and the changes made to the charter approval standards discussed under part 543 above.

3. Section 545.12 is being amended by deleting former paragraphs (a) and (b) in conformance with the statutory modification of section 5(b)(1) of the HOLA, which no longer limits the persons from whom a Federal savings association may accept demand deposits.

4. The requirement that Federal savings associations reserve the right to require a notice of withdrawal is being modified by revising paragraphs (a) and (b) of § 545.15 to replace a fourteen-day notice of withdrawal requirement with a seven-day notice of withdrawal requirement. This modification removes an ambiguity resulting from an inconsistency between this section and § 561.28 (formerly § 561.11f), § 561.29 (formerly § 561.11g), and § 563.7 (formerly § 563.3–1). *See also* § 563.8.

5. Section 545.19 (net worth certificates) is being modified to conform to 12 U.S.C. 1823(i), which FIRREA amended to require FDIC approval for the issuance of net worth certificates by depository institutions including Federal savings associations. Under the FDIA, such certificates may still count as capital of such Federal savings associations.

6. An obsolete cross-reference to disclosure requirements for home loans formerly located at § 545.33(f), which had been removed as of October 1, 1988, is being replaced in §§ 545.34 and 545.45 with a cross-reference to new § 563.99 (formerly § 563.9–9) where the currently applicable disclosure requirements appear.

7. Section 545.35(d), setting forth the percentage of assets limitations on loans secured by nonresidential real estate, is being amended to conform to section 5(c)(2)(b) of the HOLA, as amended.

8. Section 545.74 is being amended by adding a new paragraph (b)(7) to comply with 12 U.S.C. 1828(m), which requires 30 days notice to both the Office and the FDIC prior to the establishment or acquisition of any service corporation and 30 days notice to both the Office and the FDIC prior to the commencement of any new activity by a service corporation.

9. The statutory reference in § 545.75(a) is being modified to conform with new section 5(c)(2)(d) of the HOLA and a specific reference to the statutory limit on such investments has been added. Section 545.75(d) formerly set forth a one percent of assets limitation on a Federal savings association's investment in commercial paper and corporate debt not rated highly enough to warrant greater investment permissibility. *See* §§ 545.75(b)(1) and (2). This one percent of assets limitation is being amended to recognize the limitation/prohibition on new investments in these assets now contained in new section 28(d) of the Federal Deposit Insurance Act. The Office anticipates revisiting this

regulation for more substantive revisions in light of this statutory change.

10. Section 545.76(b) is being revised to include a specific reference to the statutory authority permitting Federal savings associations to invest in commercial paper and corporate debt securities which forms the basis for investment in open-end management investment companies that hold portfolios consisting of such assets.

11. Similarly to the service corporation regulation at § 545.74, the finance subsidiary regulation at § 545.82 is amended to conform to 12 U.S.C. 1828(m), which requires a savings association to notify both the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any subsidiary company.

12. Section 545.79 previously stated that Federal savings associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury only pursuant to Pub. L. No. 99–185. This section is amended to conform to a February 6, 1989 opinion by the Office of General Counsel of the Federal Home Loan Bank Board to the Chief Counsel of the United States Mint, Department of the Treasury, that under the regulation such associations may purchase, sell, and pay interest or dividends in *any* gold coin minted by the United States Treasury pursuant to Congressional directive. This amendment is intended to reflect the actual policy in effect on the date the FIRREA was enacted and thus to minimize the potential for confusion. Similar amendments are being made to §§ 563.27, 571.10 and new § 571.20 (formerly § 532.1).

13. Section 545.92(h)(1) is being modified to confirm that an existing association that converts to a Federal savings association may maintain its existing offices and a Federal savings association that acquires offices through merger or purchase of bulk assets may maintain those acquired offices unless the Office specifies otherwise in connection with its approval of the conversion, merger, or purchase of bulk assets.

14. A new paragraph (g) is being added to § 545.121 providing that the indemnification requirements are subject to and qualified by 12 U.S.C. 1821(n). A conforming change is made to paragraph (b).

Part 546

A variety of changes are being made to the regulations governing mergers and transfers involving savings associations (part 546 and §§ 552.13, 563.22, and 571.5) to incorporate the provisions of the Bank Merger Act, 12 U.S.C. 1828(c), and to eliminate redundancy within the merger regulations. Consistent with the foregoing, part 546 is being amended to eliminate procedural provisions that are duplicative of provisions that appear in § 563.22 and to ensure that the effective date of mergers of mutual associations is consistent with the timing specified in the Bank Merger Act. *See* § 546.2(g) and 12 U.S.C. 1828(c)(6).

The definition of the term "association" is also being replaced with a definition of the term "savings association" that conforms to section 2(4) of the HOLA. *See* § 546.1(a). Finally, the provision in § 546.2(d)(2) regarding approval of new offices acquired through merger is being removed since this matter is addressed by § 545.92(h). See discussion of part 545 above.

Part 551

This part has been removed and its provisions consolidated into new § 510.4.

Part 552

1. Section 552.2–1(b) is being modified to incorporate the charter approval standards set forth at section 5(e) of the HOLA and to provide that charter approvals shall be conditioned upon receipt of written confirmation of FDIC insurance of accounts.

2. Section 552.2–2(b), which sets forth the approval procedures for interim Federal stock associations, is also being revised to incorporate the charter approval standards set forth at section 5(e) of the HOLA, to the extent relevant.

3. Section 552.2–3, which provides for the issuance of charters in supervisory cases, is being revised to reflect the fact that such associations will now be proposed by the Office, the RTC, and the FDIC, instead of the FSLIC.

4. To enhance clarity, references to Charters "S" and "T" are being replaced with references to "charters consistent with section 552" or "the charter of a Federal stock association." *See, e.g.*, §§ 552.2–5, 552.2–6, and 552.8.

5. The provision in § 552.3, charters for Federal stock associations, authorizing Federal savings banks to "make any investment and engage in any activity as may be specifically authorized by action of the [Bank] Board" is being eliminated as obsolete. The Office does not have statutory authority to grant expanded powers to Federal savings banks.

6. Former § 552.9 has been removed since it was based upon obsolete distinctions between Federal stock associations in general and Charter N and Charter T associations.

7. Section 552.13 is being amended to eliminate procedural provisions duplicative of provisions that appear in § 563.22 and to ensure that the effective date of mergers and combinations of stock associations is consistent with the timing specified in the Bank Merger Act. *See* § 552.13(k) and discussion of part 546. In addition, the definition of the term "association" that appears in § 552.13(b)(1) is being revised to conform to the definition of "savings association" in section 2(4) of the HOLA.

Parts 555 and 556

1. Former part 555, "Board Rulings" has been consolidated into part 556, "Statements of Policy—Federal Savings Associations".

2. Section 556.5, the policy statement on branching, is being amended in several respects. First, paragraph (a)(3)(i)(A)*(3)* is being modified to clarify that the ability of a Federal savings association to become a savings and loan holding company of a savings association located in another state is subject to section 10 of the HOLA (formerly Section 408 of the NHA) and the branching laws of the respective states, and not merely the branching policy statement. Second, paragraph (a)(3)(i)(E)*(2)* regarding the branching rights of Federal savings association subsidiaries of certain multi-state multiple savings and loan holding companies (*i.e.*, holding companies with more than one savings association subsidiary located in different states) is being eliminated as obsolete. Third, paragraph (a)(3)(ii) is being modified to update the procedures and standards under which the Office may permit the establishment of a branch office by a Federal savings association in a state other than the state in which its home office is located in connection with a supervisory action initiated to facilitate the acquisition of a savings association that is in default or in danger of default. Fourth, the term "default" is being substituted for the term "failure" in paragraph (a)(3)(iv) to be consistent with the terminology of the FIRREA. Fifth, a new paragraph (a)(4) is being added to conform to the standards for branching by thrift subsidiaries of banks and bank holding companies established by section 13(k) of the FDIA or Section 408(m) of the NHA as in effect immediately prior to the enactment of the FIRREA. Finally, § 556.5(i), drive in and pedestrian offices, is being eliminated as duplicative of § 556.15.

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Parts 558 and 559

The Office's regulations governing the appointment of conservators and receivers and the conduct of conservatorship and receivership for Federal savings associations, are being significantly modified and reduced from the former Bank Board regulations in these areas. The HOLA and FDIA as amended cover in detail matters formerly covered by parts 547, 548 and 549 of the Bank Board's regulations. The RTC and the FDIC will now be performing a number of the functions formerly performed by the FSLIC in these areas.

The contents of these former parts that remain within the Office's authority are either covered by new section 5(d)(2) of the HOLA or are being incorporated into parts 558 and 559. *See* new §§ 558.1, 558.6, 559.1, 559.2. Part 558 now covers procedures for conservatorships for Federal savings associations; part 559 now covers receivership procedures for Federal savings associations. Comparable regulations for state-chartered savings associations appear at parts 579 and 580.

Conservators and receivers for Federal savings associations continue to have all powers granted to them by statute or otherwise. The Office may publish new regulations, consistent with new section 5(d)(3) of the HOLA, in the area of conservatorships and receiverships for public notice and comment.

Part 561

1. A cross-reference to the definitions in part 541 is being added. The definitions of "insured institution," "insured member," "insured account," "trust estate," "independent activity," "all insured accounts," "premium," "primary reserve," and "secondary reserve" have been removed from part 561. These terms are no longer necessary due to the repeal of the statutory sections pertaining to insurance matters, which are now under the jurisdiction of the FDIC.

2. The statutory term "savings association" replaces the obsolete term "insured institution" in part 561 and its definition conforms to the statutory definition set forth at section 2(4) of the Act.

3. The definition of "financial institution" has been modified to track the definition of "depository institution" in section 3(c)(1) of the FDIA.

4. The definition of the term "deposit broker" now refers to the definition of that term in new section 29 of the FDIA.

5. The terms "accountholder", "BIF", "account," "Corporation", "Office", and "SAIF" are being added.

6. The definition of "checking account" that formerly appeared at § 561.11a is being modified to refer to "demand deposit accounts" and amended in accordance with the revision of section 5(b)(1) of the HOLA.

7. Obsolete cross-references in part 561 to definitions formerly appearing in part 526 for the terms "note account", "tax and loan account," and "United States Treasury General Account", "United States Treasury Time Deposit-Open Account" are being replaced with the definitions that formerly appeared in part 526.

8. The definitions of the terms "bank" and "bank holding company" that appear in the definitional paragraph for "holding company affiliate" are being cross-referenced to the definitions of those terms in §§ 583.3 and 583.4, which in turn track the definitions of those terms in the Bank Holding Company Act of 1956.

Part 563

1. A number of sections in this part are being renumbered as set forth in the conversion table. This is being done in the interest of removing a large number of hyphenated section numbers that have resulted in some confusion. Regulations governing the operation of savings associations in this part now are grouped more closely by subject matter.

2. New language referring to the limitations on dividends imposed by 12 U.S.C. 1828(b) is being added to new § 563.74(i)(2)(iv) (formerly § 563.7–4(i)(2)(iv)).

3. In new § 563.75 (formerly § 563.7–6), a new paragraph (d)(1)(iii) is being added requiring that the form of stock certificate state or refer to a document stating the limitations on dividends imposed by 12 U.S.C. 1828(b), and the language of paragraph (d)(1)(iv) regarding payments on mandatorily redeemable preferred stock when an association is not meeting its regulatory capital requirements is being clarified.

4. New § 563.80(c) (former § 563.8(c)) is being amended to reflect the transfer to the FDIC of the insurance function for savings associations.

5. New § 563.81(d)(1)(i) (former § 563.8–1(d)(1)(i)) is being amended to insert a reference to the Office's ability to approve otherwise prohibited purchases of subordinated debt by savings associations and certain of their affiliates, thereby making this clause consistent with paragraph (d)(3). A new paragraph (d)(1)(v) is being added to require subordinated debt certificates to state the limitations on interest imposed by 12 U.S.C. 1828(b). Paragraph (d)(1)(vi) prescribing the rights of holders of subordinated debt in the event of receivership is being revised to reflect the transfer of certain receivership authorities from the FSLIC to the FDIC and the RTC. (In addition, in paragraphs (vi)(A) and (B) the term "insured institution" is being replaced with "financial institution," consistent with the special definition of "insured institution" that formerly appeared in paragraph (vi)(*d*). Because of this change, paragraph (vi)(*d*) is no longer needed and has been removed.)

6. Former § 563.9(a) has been removed since FIRREA does not carry forward the geographic lending restrictions that were contained in section 403(b) of the NHA. The title of the regulation (now § 563.90) is being changed to reflect its remaining provisions on appraisals on out-of-area loans.

7. New § 563.93 (former § 563.9–3) is being amended to include a specific cross-reference to the new statutory loans-to-one borrower provisions located in section 5(u) of the HOLA. That self-executing section sets forth several limits, to include a new general limitation and a special limitation for certain real estate loans. It also permits the Office to impose more stringent restrictions. The Office anticipates revisiting this section in the near future to determine the substantive revisions necessary in light of this statutory change. Pending issuance of those revisions, a Thrift Bulletin will be issued by the Office to define a "safe harbor" for loans that comply with both the current OCC regulations on loans to one borrower and the limitations under § 563.93, to the extent the latter impose a more stringent standard.

8. New § 563.98(f)(4) (formerly § 563.9–8(f)(4)) is being modified by adding language clarifying the treatment of debt securities issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under this regulation, which covers equity-risk investments. This change was discussed in the preamble to the Bank Board's recent amendment to this regulation, but was inadvertently omitted from the regulatory language.

9. The classification of assets regulations formerly located at 12 CFR 561.18c are being moved from that definitional part and renumbered as § 563.160 for convenient reference to the related regulations appearing at new §§ 563.161 through 563.172.

10. Section 563.171(c)(iv) (formerly § 563.17–1(c)(iv)) is being modified to include a cross-reference to the requirements of new § 563.172 (formerly

§ 563.17–1a) in the appraisal requirements for records with respect to loans secured by real estate. This technical conforming change replaces an incomplete and potentially misleading statement of the appraisal requirements of § 563.172.

11. Paragraph (e) of former § 563.18–3, penalties for violations, is being eliminated. That section is being renumbered as § 563.183. Violations of new §§ 563.181 (formerly § 563.18–1) and 563.183 will be subject to the penalties provided in the Home Owners' Loan Act, as amended, and in the Federal Deposit Insurance Act, as amended.

12. As noted above in the discussion of part 546, a number of changes are being made to the regulations governing mergers and transfers involving savings associations to incorporate the provisions of the Bank Merger Act, 12 U.S.C. 1828(c), and to eliminate redundancy within the merger regulations. Consistent with the foregoing, § 563.22 is being amended by adding to paragraph (d) a provision for public notice, notice to the Attorney General, the OCC, the Board of Governors of the Federal Reserve System, and the FDIC, and a 30-day waiting period to consummate any merger transaction after receipt of the approval of such transaction by the Office. Former paragraphs (e) and (f) are being reorganized and then combined into one new paragraph (e). Former paragraph (h) is being redesignated accordingly. New paragraph (g) combines the definitions that formerly appeared in § 563.22(e)(2) and (g). Some of the filing procedures formerly contained in § 552.13 are also being consolidated into § 563.22.

13. The first two sentences of § 563.24 are being revised to reflect the transfer of the insurance function to the FDIC. The obligation to provide information to the Office about sales plans and giveaways will now be triggered either by the filing of a charter application with the Office (in the case of an organizing Federal savings association) or the filing of an insurance application with the FDIC (in the case of a state savings association seeking Federal insurance of its accounts).

14. Section 563.27 now contains both the advertising provisions previously located in this section (new § 563.27(c)) and those formerly appearing at part 526 (new § 563.27(a), (b)). The former definitional section of former part 526 is being incorporated into part 561.

15. Paragraph (b) of § 563.33 is being removed as obsolete. Former paragraph (c) is being redesignated as paragraph (b).

16. Section 563.37 has been modified by adding a new paragraph (c) requiring that all savings associations must notify the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any service corporation and not less than 30 days before commencing any new activity through a service corporation. This requirement was added by the FIRREA addition to the FDIA of section 28(m), 12 U.S.C. 1828(m).

17. Sections 563.41(a) and 563.43(a) are being modified to clarify that transactions subject to those sections are also subject to new Section 11 of the Home Owners' Loan Act. Section 563.43 is also being modified to reflect that, notwithstanding the prohibitions on the purchase of third-party loans from affiliated persons contained therein, purchases of third-party mortgage loans from an affiliate that are permissible under 12 CFR 250.250 will not be prohibited.

18. Section 563.44 is being amended to reflect that the terms "consolidated net worth" and "consolidated net earnings" are no longer defined in the Office's regulations. Instead, reference is made to the meaning of those terms under generally accepted accounting principles.

19. The flood insurance provisions formerly located at § 523.29 have been moved to § 563.48. They have been further modified to reflect a previous statutory change in authority under this act from the Department of Housing and Urban Development to the Federal Emergency Management Administration.

20. Section 563.182(c) (formerly § 563.13–2(c)) is being revised by adding the requirement that the FDIC, as well as the District Director, be notified when a savings association establishes, transfers additional assets to, or issues securities through a finance subsidiary, in conformance with 12 U.S.C. 1828(m).

Part 563a

Former part 563a is being redesignated as part 568.

Part 563b

1. Definitions of "BIF," "SAIF," "FDIC," "District Director," "savings association," and "Office" are being added to § 563b.2. The definitions of "insured institution" and "Corporation" are being removed. Statutory citations are being revised as appropriate to reflect changes made by FIRREA. The titles of the officials to whom authority is delegated for purposes of part 563b are being updated. *See* §§ 563b.8(w), 563b.28(c), 563b.40(b), and 563b.41(c).

2. Paragraph (d)(14), "Summary Proxy Statement," of § 563b.3 is being eliminated as duplicative of § 563.6(c)(2), "Summary Proxy Statement." The exception from paragraphs (i)(1)–(3) of § 563b.3 set forth in paragraph (i)(5)(v) of § 563b.3 is being amended to clarify that the exception applies to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company. In addition, paragraph (i)(5) of § 563b.3 is being renumbered as paragraph (i)(4) because of the elimination of current paragraph (i)(4) of § 563b.3 as obsolete. The penalty provision for willful violations of § 563b.3(i), which appears in § 563b.3(i)(9), is being eliminated as obsolete; violations of § 563b.3(i) will be subject to the penalties provided in the FDIA and the HOLA.

3. Procedural requirements concerning the surrender to the FSLIC for amendment or cancellation of the certificate of insurance of a converting insured institution and the issuance of a new or amended certificate of insurance by the FSLIC to the converted institution are being eliminated as obsolete. *See* §§ 563b.8(d)(1), 563b.28(d)(1), and 563b.41(d)(1).

4. References to "Charter S" and "Charter T" are being eliminated as obsolete; replacement language refers to a form of charter and bylaws "consistent with the provisions of part 552." *See, e.g.*, §§ 563b.8(d)(2), 563b.28(d)(2), 563b.41(d)(2), Item 9 of Form AC of § 563b.100, and exhibit 3(d) of Form AC of § 563b.100.

5. The reference in § 563b.8(r) to filings with the "Office of the Secretary of the Board" is being eliminated and replaced by a reference to filings "received by the Office in the manner prescribed in part 563b."

6. The provisions concerning the contents of applications for voluntary supervisory stock conversion and modified conversion are being amended to require submission of a copy of any application for insurance of accounts submitted to the FDIC. *See* §§ 563b.27(k) and 563b.39(k).

7. References to the Financial Accounting Standards Board's Statement of Financial Accounting Standards "No. 33" are being updated to refer to Statement of Financial Accounting Standards "No. 89." *See* Instruction 3 to Item 7(b) of Form PS of § 563b.101 and Instructions 7 and 8 to Item 7(c)(1) of Form PS of § 563b.101.

8. Item 14, "Financial Statements," of Form PS of § 563b.101 is being updated to refer to a "Statement of Cash Flows" instead of a "Statement of Changes in Financial Position."

9. The reference to "§ 523.10" (liquidity regulations) in instruction 5 to Item 7(c)(1) of Form PS of § 563b.101 is being deleted and replaced by a reference to "the liquidity regulations of the Office."

10. Item 7(f), "Business of applicant—Federal regulation," of Form PS of § 563b.101 is being updated to require descriptions of (1) the general regulatory authority of the FDIC; (2) the assessment authority and requirements of the FDIC, the RTC, the Financing Corporation, and the Office; and (3) applicable Federal and State liquidity requirements.

11. The following obsolete provisions are being eliminated: §§ 563b.3(b)(2); 563b.3(d)(2); 563b.3(i)(4); 563b.3(j); 563b.7(f)(3); 563b.8(w)(1); and the last sentence of § 563b.8(w)(2).

Part 563c

1. References to "scheduled items" are being replaced by references to "classified assets" where appropriate. *See, e.g.*, Item i.8.(j)(ii) in § 563c.101. Citations to the regulations of the Securities and Exchange Commission are being updated. *See, e.g.*, Item i.8.(j)(iii) of § 563c.101.

2. The obsolete reference to prepayments into the secondary reserve in Item I.12. of Section 563c.101 is being removed. Item III. of Section 563c.101 is being updated to refer to a "statement of cash flow" instead of a "Statement of Changes in Financial Position."

Part 563d

Section 563d.1 is being amended to reflect the transfer of securities jurisdiction over savings associations from the Board to the Office, to preserve the right of the Office to impose filing fees at some future date, and to clarify and simplify the use of certain terms.

Part 563f

1. Section 563f.2(f)(1) is being conformed to 12 U.S.C. 3201(4) by adding language exempting advisory and honorary directors of institutions with less than $100 million in assets from the definition of "management official." Paragraph (k) adds the definition of "savings association", as set forth in section 2(4) of the HOLA and 3(b)(1) of the FDIA, to this part.

2. Section 563f.4(a) is being conformed to 12 U.S.C. 32040 (7), (8), and (9) by adding the exemptinns provided there for interlocks involving (i) diversified savings and loan holding companies, (ii) depository organizations in danger of closing, and (iii) savings associations or savings and loan holding companies that have issued stock in connection with a qualified stock issuance. *See* § 563f.4(a)(7), (8), and (9). A new paragraph (c) is added to conform to 12 U.S.C. 1823(k)(1)(a)(v), as added by FIRREA, which provides a ten-year exemption for interlocks approved by the FDIC in connection with supervisory transactions conducted pursuant to 12 U.S.C. 1823(k). Paragraph (d) is being conformed to 12 U.S.C. 3205(b) by extending the time period of the exemption provided therein to 1993.

3. Section 563f.5 is being conformed to 12 U.S.C. 3205(a) by extending the time period of the exemption provided therein to 1993.

4. The delegations of § 563f.7 are being expanded to encompass the new exemptions provided for in § 563f.4(a)(7), (8), and (9). *See* Item 1(b) above. Filing instructions for notices filed pursuant to those exemptions are also being added to § 563f.7.

5. Statutory and regulatory citations are being modified as necessary to reflect the changes required by FIRREA. *See, e.g.*, § 563f.2(k) and 563f.4(d).

Part 563g

1. A definition of "savings association" that conforms to Section 2(4) of the HOLA is being added to § 563g.1. The definition of "insured institution" is being removed.

2. Obsolete exceptions from the offering circular requirements are being deleted as no longer necessary. *See* § 563g.3.

3. Statutory citations are being revised as appropriate to reflect changes made by FIRREA. Language is also being added to Section 563g.10 to clarify that the prohibited practices listed in that section will constitute a violation of that section, as well as constituting an unsafe and unsound practice.

4. The titles of the officials to whom authority is delegated for purposes of Part 563g are being updated. *See* § 563g.22.

Part 566

1. The liquidity regulations, including definitions, requirements, and provisions for deficiencies and penalties, formerly located at §§ 523.10 through 523.14 are being moved into this new Part to reflect the transfer of the statutory basis for these regulations from the Federal Home Loan Bank Act to the HOLA.

2. New § 566.1(g)(3) (iv) and (v) are being revised to reflect the new structure of the Farm Credit System.

3. New §§ 566.3 and 566.5 are being further revised to indicate that reports on penalties under this Part are now to be filed with, and the penalties paid to, the Office, rather than to a Federal Home Loan Bank.

Part 567

1. New part 567 contains the Office's capital regulations. This Part includes both former Board regulations previously located at §§ 563.14, 563.14–1 and 563.47, and the recent capital rule published by the Office in the **Federal Register** on November 8, 1989 (54 FR 46845) pursuant to the requirement of section 5(t) of HOLA. Both are incorporated here in full text for ease of reference.

2. The capital forbearance provisions formerly set forth in § 563.47 (new § 567.20) are being amended to reflect FIRREA's repeal of the capital forbearance provisions formerly found in section 10 of the HOLA (12 U.S.C. 1467a) and section 416 of the NHA (12 U.S.C. 1730i). The FIRREA grandfathers forbearances that had already been granted pursuant to these specific statutory provisions prior to FIRREA's enactment, subject to the savings association's continued reporting to the OTS and adherence to the capital plan adopted under those provisions. Hence, the new regulation deletes the old regulation's provisions relating to applications for, and approval of requests for capital forbearances. The revised section retains, with appropriate modifications, only those provisions in the old rule that relate to capital plan reporting and administration, as well as the provisions relating to the potential termination of existing capital forbearances.

Part 569

1. Section 569.2 is being amended to eliminate the obsolete date that appears in the first sentence.

2. Paragraphs (b) and (c) of § 569.3 regarding prohibitions against corporations and partnerships holding proxies in Federal savings associations, are also being removed as obsolete.

Parts 570 and 571

1. Former part 570, "Board Rulings" has been consolidated into part 571, "Statements of Policy," and the sections of that part carried forward by the Office now appear in part 571 as new §§ 571.20, 571.21, 571.22, and 571.23. Former § 570.3 has been removed as obsolete as it dealt with a regulation, § 563.11, that was removed several years ago.

2. Section 571.1 (appraisals of real estate securing assets of savings associations) is being modified by removing the word "professional" and referring simply to "appraisers" in order

to remove the inadvertent ambiguity arising from inconsistent terms.

3. Section 571.5(b)(3), which deals with the antitrust considerations in connection with mergers and transfers of assets and liabilities, is being amended to conform to the specific language of section 18(c)(5) of the FDIA. Similarly, paragraph (c) is being amended to track the "future prospects" language of section 18(c)(5) of the FDIA. Former paragraph (f) has been deleted from the section and paragraphs (g) through (k) redesignated accordingly.

4. Section 571.6 is being revised to apply only to applications for *de novo* Federal charters and no longer to apply to applications for FSLIC insurance of accounts for *de novo* state-chartered institutions. Paragraph (a)(2) of the section is being deleted as obsolete. Paragraphs (b)(1) and (2) of § 571.6 are being modified to delete references to the approval standards of the NHA and to incorporate the approval factors of section 5(a)(2) of the FDIA.

5. Section 571.10 previously stated that state-chartered savings associations may purchase, sell, and pay interest or dividends in gold coins pursuant to those charters, but that such activities would be closely monitored by supervisory personnel. The policy statement granted specific approval, however, to transactions involving gold coins minted and issued by the United States Treasury pursuant to Pub. L. No. 99–185 only. This section is amended for the same reasons set forth in the discussion of § 545.79. The section is also amended by changing the reference to Title IV of the NHA to Section 4 of the HOLA.

6. The reference to "applications for approval of holding company indebtedness" in § 571.12(a) is being eliminated as no longer needed due to the repeal of the referenced statutory provision. *See* the discussion of holding company indebtedness in part 584. The references in § 571.12(a) to requests for FSLIC assistance or assistance payments in connection with an application for merger, acquisition, or restructuring of an insured institution and to requests "in connection with [FSLIC] authorizations of emergency thrift acquisitions" are being replaced by a reference to applications or requests related to transactions pursuant to sections 13(c) or (k) of the Federal Deposit Insurance Act. The references in § 571.12(f) to the Executive Director and the Executive Director for Policy are being eliminated as no longer necessary.

7. Former § 532.1 (payment in gold or its equivalent) is being redesignated as § 571.17. References to "members" (of the Federal Home Loan Banks) are being changed to refer to "savings associations". This section is also being amended in the same manner as § 545.79, discussed under part 545, above.

8. Former § 570.7 (payment for appraisals) now appears as new § 571.20. The reference to the NHA is being modified to refer to section 5(d) of the HOLA and Section 8 of the FDIA. The former reference to "Chief Examiner" now refers to the District Director.

9. Former § 570.11 (most favored lender status) now appears as new § 571.22. Statutory references in that section are being modified to refer to new section 4(g) of the HOLA, which covers this area.

Part 574

1. Citations are being modified as necessary to reflect the transfer of provisions from the NHA to the HOLA or FDIA. Thus, for example, citations to 12 U.S.C. 1730a are being changed to section 10 of the HOLA and citations to 12 U.S.C. 1730q are being changed to 12 U.S.C. 1817(j). *See, e.g.*, § 574.1.

2. Definitions of "savings association," "uninsured institution," "Office" (*i.e.*, the Office of Thrift Supervision), "Director" (*i.e.*, the Director of the Office of Thrift Supervision), "District Director", "BIF" (*i.e.*, the Bank Insurance Fund), "SAIF" (*i.e.*, the Savings Association Insurance Fund), and the "Repealed Control Act" (*i.e.*, 12 U.S.C. 1730(q)) are being added to § 574.2; the definition of "insured institution" is being removed; and technical modifications are being made to the definitions of "company" and "stock."

3. Section 574.3(a) and (b) are being revised (i) to reflect the new statutory provisions allowing officers, directors, and control persons of savings and loan holding companies to acquire control of any savings association not a subsidiary of such savings and loan holding company upon written approval by the Office of an application, and (ii) to reflect the new acquisitions which are allowed for savings and loan holding companies of qualified stock issuances by undercapitalized savings associations or holding companies. A new exemption is also being added at § 574.3(c)(2)(v) for acquisitions of stock of a *de novo* Federal savings association in connection with the organization of that Federal savings association, and § 574.3(e) (prohibited acquisitions) is being updated to conform to HOLA section 10(e)(3).

4. References to the Federal Home Loan Banks are being replaced with references to the District Directors. *E.g.*, § 574.6(b)(1)(ii) and (d)(2).

5. Language is being added to §§ 574.6 and 574.7 to clarify that acquisitions by companies involving mergers, including mergers with interim associations must comply with the requirements of both part 574 and the merger regulations of the Office, since the merger regulations are now based upon the Bank Merger Act. *See* §§ 574.6(i) and 574.7(b). Language is also being added to § 574.3(b) to clarify that acquisitions of savings associations *by persons* by means of mergers with interim associations will be subject to the merger regulations, but *not* part 574. *See* 12 U.S.C. 1817(j)(17).

6. Provisions are being added to § 574.6(b)(1)(iv), (v), and (vi) to require submission of additional copies of certain applications and notices to the Office for distribution by the Office to the other Federal banking agencies and the Attorney General in accordance with 12 U.S.C. 1467a(e)(2), 1817(j)(11), and 1828(c)(4). In addition, § 574.6(c)(3)(ii) is being amended to set forth each of the statutory bases for 45-day extensions of the time period during which notices of change of control may be disapproved. *See* 12 U.S.C. 1817(j)(1).

7. Section 574.7(d) is being expanded to include the new sixth criterion for disapproving notices of change of control, *i.e.*, adverse impact on the BIF or SAIF. *See* 12 U.S.C. 1817(j)(7). Parenthetical language is being added to § 574.7(g)(1)(iii) to clarify that service at the request of the Office (or any other Federal banking agency) as a management official or director for a savings association that goes into receivership or conservatorship is not intended to constitute a presumptive disqualifier.

8. A new § 574.8 provides definitions and procedures for qualified stock issuances by undercapitalized savings associations and holding companies.

9. Former § 574.8 is being renumbered as § 574.9 and revised to clarify and expand the scope of the delegated authority of the District Directors (in place of the Principal Supervisory Agents) and of the Office's Washington staff.

Parts 579 and 580

These parts deal with conservatorship procedures and receivership procedures, respectively, for state-chartered savings associations where the Director has appointed a conservator or receiver. Comparable regulations for Federal savings associations are located in parts 558 and 559.

Conservators and receivers for state-chartered savings associations continue to have all the powers granted to them by statute or otherwise. The Office contemplates revisiting this area in a future rulemaking, after reviewing the new statutory provisions added by the FIRREA.

Part 583

1. The Qualified Thrift Lender ("QTL") provisions previously set forth in § 583.27 are being moved to new § 584.6. *See* § 584.6(a) and (e)(4). A brief definition of the term "Qualified Thrift Lender," which merely cross references new § 584.6, is being retained in part 583 at § 583.17.

2. The definitions of "consolidated debt service," "consolidated net earnings," "consolidated net income available for interest," "consolidated net worth," "debt security," and "outstanding debt" are being removed from part 583. These are terms that were used in old §§ 584.5, 584.6, and 584.8, which are being repealed today to conform to the repeal of the statutory sections to which they relate. *See* below. Other obsolete terms being removed from Part 583 include "Board," "Supervisory Agent," and "insured institution."

3. New definitions of the following terms are being added to part 583: "bank holding company," "BIF," "District Director," "Office," "SAIF," and "savings association." In addition, technical modifications are being made to the definitions of "company," "diversified savings and loan holding company," "subsidiary", and "uninsured institution."

4. The definition of "bank" is being amended so as to refer to commercial banks, rather than the Federal Home Loan Banks; and the definition of "Corporation" is being amended so as to refer to the FDIC, rather than the FSLIC.

5. All definitions in part 583 are being alphabetized.

Part 584

1. References to the Federal Home Loan Banks are being replaced with references to the District Directors. *E.g.*, § 584.1(e).

2. Section 584.2(b) (activities restrictions) is being amended to conform to section 10(c) of the HOLA. In addition, former paragraph (c) of § 584.2 (regarding activities of service corporations of savings association subsidiaries of savings and loan holding companies) is being moved to § 584.2a(d), and a new paragraph (c) is being added to § 584.2 that incorporates the provisions of section 10(e)(4)(B) of the HOLA, which subjects savings and loan holding companies controlled by certain individuals who control more than one savings association to the activities restrictions of section 10(c) of the HOLA.

3. Paragraphs (a) and (b) of § 584.2a, which carves out certain exceptions to the activities restrictions of § 584.2(b), is being amended to make reference to acquisitions of savings associations made pursuant to amended section 13(c) of the FDIA and new section 13(k) of the FDIA, consistent with section 10(c) of the HOLA. Reference to acquisitions made under former section 408(m) of the National Housing Act is also retained, consistent with section 10(c) of the HOLA. (Although section 10(c) of the HOLA fails to mention former section 406(f), such reference apparently was viewed as unnecessary due to the reference to section 13(c) in section 10(c).) A new paragraph (e) is also being added to § 584.2a to provide an exemption for bank holding companies that are also savings and loan holding companies. *See* section 10(c)(8) of the HOLA.

4. The transactions-with-affiliates provisions of Section 584.3 are being replaced with a cross-reference to new HOLA Section 11.

5. Section 584.4 (prohibited acquisitions) is being amended to conform to section 10(e)(1)(A)(iii) of the HOLA.

6. Section 584.5–1 (relief from restrictions on payment of dividends) is being removed since it is obsolete.

7. Section 584.6 (holding company indebtedness) and § 584.7 (payment of dividends to diversified savings and loan holding companies) are being repealed since the statutory authority for these provisions, 12 U.S.C. 1730a(g), was repealed by FIRREA. Former paragraph (e) of section 584.1 (designation of principal state by multiple holding companies) is also being repealed since the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100–86, 101 Stat. 552, eliminated the statutory basis for this provision.

8. The qualified thrift lender ("QTL") test previously set forth in § 583.27 is being moved to new § 584.6 and a brief definitional cross-reference retained in § 583.17. The existing regulation is retained in its entirety except for two provisions. Old subsection (e)(4) regarding the 5-year disqualification period is being deleted because it has been rendered obsolete by the FIRREA. The special phase-in for certain savings banks in § 584.6(a)(7) is being revised to reflect changes instituted by FIRREA that are effective immediately. *See* FIRREA section 302; Section 10(m)(6). The new statutory consequences of failure to maintain QTL status, 12 U.S.C. 1467a(m)(3), effective one year after the date of FIRREA's enactment, are being included in § 584.6(c). Paragraph (b) is being added to reference other statutory provisions.

9. Section 584.8 (computation of diversified savings and loan holding company status) is being repealed as unnecessary. The definition of "diversified savings and loan holding company," set forth in new § 583.11, merely specifies that an association's diversified status is to be computed in accordance with generally accepted accounting principles.

10. Section 584.9 (management interlocks) is being amended to conform to section 10(h)(2) of the HOLA.

11. Section 584.10(c) and (d) (application forms for transactions with affiliates and holding company debt) are being repealed as obsolete. *See* discussion above of §§ 584.3 and 584.6.

12. Former § 585.2, hearings, is being redesignated as new § 584.11.

Part 585

Section 585.1 (authority to amend parts 583 through 588) is being repealed as superfluous.

Part 588

Section 588.1 (gold related activities by multiple holding companies) is being repealed because it was rendered obsolete by CEBA.

Administrative Procedure Act

No new substantive regulations are being adopted that are not made necessary by changes in the statutory authority pursuant to which the Office will operate. The Office finds that in the interest of the continuity of regulatory authority in these areas and the absence of any additional burden on the public by the readoption of such regulations there is good cause for waiving the notice and comment and delay of effective date provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, for these regulations. Because this recodification contains no substantive changes the Office promulgates this final rule as a matter of agency organization and management and therefore for good cause shown under 5 U.S.C. 553(a)(2) and (b)(B) is exempt from the notice and comment requirements of the APA and the 30-day delay of the effective date pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12291

This revision of 12 CFR Chapter V does not fall within the scope of Executive Order 12291 as it is being

done as a matter of agency organization and management by the Office. As set forth above, the revisions made to the former Bank Board regulations are limited to (1) nomenclature and organizational changes and (2) revisions mandated by changes in statutory authority. No agency discretion has been exercised.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rulemaking the Regulatory Flexibility Act does not apply.

The following distribution table is provided for reader reference and shows the relationship of former section numbers within chapter V to the new section numbers.

Previous section	Previous title	New section	New title
PART 500			
500.1	General statement and statutory authority	500.1	General statement and statutory authority.
500.2	The Federal Home Loan Bank system	Removed	
500.3	The Federal savings and loan system	500.3	The Federal savings association system.
500.4	The Federal Savings and Loan Insurance Corporation	Removed	
		500.4	Supervision and regulation of savings associations.
500.5	District of Columbia savings and loan associations	500.5	District of Columbia savings associations.
500.6	General statement concerning gender-related terminology	500.6	General statement concerning gender-related terminology.
500.10	The Board	Removed	
		500.10	The Office.
500.11	Secretary to the Board	500.11	Secretary to the Office.
500.12	Congressional Liaison Officer	500.12	Senior Deputy Director for Congressional Relations and Communications.
500.13	Director of the Office of Management Systems and Administration	500.13	Senior Deputy Director for Management.
500.14	Director of the Office of Economic Research	500.14	Chief Economist.
500.15	Director of the Office of Enforcement	Removed	
500.16	Director of the Office of Communications	Removed	
500.17	The General Counsel	500.17	The Chief Counsel.
500.19	Director of the Office of District Banks	Removed	
		500.19	Senior Deputy Director for Supervision (Operations).
500.20	Director of the Office of the Federal Savings and Loan Insurance Corporation	Removed	
		500.20	Senior Deputy Director for Supervision (Policy).
500.22	Director of the Office of Housing and Urban Affairs	Removed	
500.30	General statement concerning procedures and forms	500.30	General statement concerning procedures and forms.
500.31	Forms	Removed	
500.32	Offices of the Board; information and submittals	500.32	Offices of the Office of Thrift Supervision; information and submittals.
500.40	Director of the Office of the Federal Savings and Loan Insurance Corporation	Removed	
PART 501			
501.1	Claims of the Board and the Federal Savings and Loan Insurance Corporation	Removed	
501.2	Assessments	Removed	
501.10	Officers as agents	Removed	
501.11	Designation of principal supervisory agent and supervisory agents	Removed	
PART 502			
		502.1	Interim assessments and fees.
PART 505			
505.1	Basis and scope	505.1	Basis and scope.
505.2	Definitions	Removed	
		505.2	Public reading room.
505.3	Published information	Removed	
		505.3	Requests for records.
505.4	Access to records	Removed	
		505.4	Administrative appeal of initial determination to deny records.
505.5	Information not disclosed	Removed	
		505.5	Delivery of process.
505.6	Subpoenas	Removed	
PART 505a		**PART 503**	
505a.1	Purpose and scope	503.1	Scope and procedures.
505a.2	Definitions as used in this part 505a	Removed	
505a.3	Procedures or requests pertaining to individual records in a record system	Removed	
505a.4	Times, places, and requirements for identification of individuals making requests	Removed	
505a.5	Disclosure of requested information to individuals	Removed	
505a.6	Special procedures for medical records	Removed	
505a.7	Request for amendment of record	Removed	
505a.8	Agency review of request for amendment of record	Removed	
505a.9	Appeals	Removed	
505a.10	Fees for providing copies of records	Removed	
505a.11	Criminal penalties	Removed	
505a.12	Exemptions	Removed	

Previous section	Previous title	New section	New title
505a.13	Exemptions of records containing investigatory material compiled for law enforcement purposes.	Removed	
PART 505b			
505b.1	Purpose and scope	Removed	
505b.2	Definitions	Removed	
505b.3	Open meetings	Removed	
505b.4	Exemptions	Removed	
505b.5	Closed meetings	Removed	
505b.6	Public announcements of meetings	Removed	
505b.7	Accommodation for public attendance at open meetings	Removed	
PART 505c		**PART 504**	
505c.1	Purpose and scope	504.1	Purpose and scope.
505c.2	Policy	504.2	Policy.
505c.3	Administration of program	504.3	Administration of program.
505c.4	Mandatory review procedure	504.4	Mandatory review procedure.
PART 505d			
505d.1	OMB control numbers assigned pursuant to the Paperwork Reduction Act	Removed	
PART 506		**PART 910**	
506.1	Issuance of consolidated bonds	Removed	(FHFB–910.1).
506.2	Form of consolidated bonds	Removed	(FHFB–910.2).
506.3	Transactions in consolidated bonds	Removed	(FHFB–910.3).
506.4	Lost, stolen, destroyed, mutilated, or defaced bonds	Removed	(FHFB–910.4).
506.5	Administrative provision	Removed	(FHFB–910.5).
506.6	Reservation of right to revoke or amend; limitation thereon	Removed	(FHFB–910.6).
PART 506a		**PART 912**	
506a.1	Definition of terms	Removed	(FHFB–912.1).
506a.2	Authority of Reserve Banks	Removed	(FHFB–912.2).
506a.3	Scope and effect of book-entry procedure	Removed	(FHFB–912.3).
506a.4	Transfer or pledge	Removed	(FHFB–912.4).
506a.5	Withdrawal of Federal Home Loan Bank Securities	Removed	(FHFB–912.5).
506a.6	Delivery of Federal Home Loan Bank Securities	Removed	(FHFB–912.6).
506a.7	Registered bonds and notes	Removed	(FHFB–912.7).
506a.8	Servicing book-entry Federal Home Loan Bank securities; payment of interest; payment at maturity or on call.	Removed	(FHFB–912.8).
506a.9	Obligation of United States with respect to Federal Home Loan Bank securities	Removed	(FHFB–912.9).
PART 507			
507.10	Hearings on regulations for Federal Home Loan Banks	Removed	
507.11	Recommendations and representations at hearings by	Removed	
PART 508			
508.10	Reservation of right to amend	510.2(a)	Amendments.
508.10–1	Waiver or relaxation of regulatory provisions with respect to disaster or emergency areas.	510.2(b)	Waiver or relaxation of regulatory provisions with respect to disaster or emergency areas.
508.11	Amendments of regulations without notice	Removed	
508.12	Notice of proposed amendments or regulations not within § 508.11	Removed	
508.13	Participation of interested persons in a proposed amendment or rule	510.2(c)	Bar on participation in notice and comment rulemaking by suspended or disbarred persons.
508.14	Effective dates of amendments and rules	Removed	
508.15	Repeal of rules and regulations	Removed	
508.16	Coordination of subchapters	510.3	Coordination of subchapters.
PART 509			
509.1	Scope of regulations	509.1	Scope of regulations.
509.2	Definitions	509.2	Definitions.
509.3	Appointment of Administrative Law Judge	509.3	Appointment of Administrative Law Judge.
509.4	Authority of the Administrative Law Judge	509.4	Authority of the Administrative Law Judge.
509.5	Appearance and practice in adjudicatory proceedings	509.5	Appearance and practice in adjudicatory proceedings.
509.6	Good faith certification	509.6	Good faith certification.
509.7	Ex parte communications	509.7	Ex parte communications.
509.8	Maintenance of the record	509.8	Maintenance of the record.
509.9	Service	509.9	Service.
509.10	Filing of papers	509.10	Filing of papers.
509.11	Formal requirements as to papers filed	509.11	Formal requirements as to papers filed.
509.12	Computing time	509.12	Computing time.
509.13	Notice	509.13	Notice.
509.14	Answer	509.14	Answer.
509.15	Amending pleadings	509.15	Amending pleadings.
509.16	Consolidation and severance of proceedings	509.16	Consolidation and severance of proceedings.
509.17	Motions	509.17	Motions.
509.18	Interlocutory review	509.18	Interlocutory review.
509.19	Prehearing conference and exchange of information	509.19	Prehearing conference and exchange of information.

Previous section	Previous title	New section	New title
509.20	Opportunity for informal settlement	509.20	Opportunity for informal settlement.
509.21	Discovery	509.21	Discovery.
509.22	Subpoenas for documentary or physical evidence or for witness attendance	509.22	Subpoenas for documentary or physical evidence or for witness attendance.
509.23	Depositions	509.23	Depositions.
509.24	Conduct of hearings	509.24	Conduct of hearings.
509.25	Private and public hearings	509.25	Private and public hearings.
509.26	Summary disposition	509.26	Summary disposition.
509.27	Proposed findings of fact and conclusions of law	509.27	Proposed findings of fact and conclusions of law.
509.28	Briefs	509.28	Briefs.
509.29	Exceptions	509.29	Exceptions.
509.30	Oral argument before the Board	509.30	Oral argument before the Office.
509.31	Notice of submission to the Board	509.31	Notice of submission to the Office.
509.32	Decision of the Board	509.32	Decision of the Office.
509.33	Scope	509.33	Scope.
509.34	Notice of assessment; request for hearing; answer	509.34	Notice of assessment; request for hearing; answer.
509.35	Notice of hearing	509.35	Notice of hearing.
509.36	Assessment orders	509.36	Assessment orders.
509.37	Payment of civil penalty	509.37	Payment of civil penalty.
509.38	Relevant considerations	509.38	Relevant considerations.
PART 509a		**PART 508**	
509a.1	Scope	508.1	Scope.
509a.2	Definitions	508.2	Definitions.
509a.3	Issuance of Notice or Order	508.3	Issuance of Notice or Order.
509a.4	Contents and service of the Notice or Order	508.4	Contents and service of the Notice or Order.
509a.5	Petition for hearing	508.5	Petition for hearing.
509a.6	Initiation of hearing	508.6	Initiation of hearing.
509a.7	Conduct of hearings	508.7	Conduct of hearings.
509a.8	Default	508.8	Default.
509a.9	Rules of evidence	508.9	Rules of evidence.
509a.10	Burden of persuasion	508.10	Burden of persuasion.
509a.11	Relevant considerations	508.11	Relevant considerations.
509a.12	Proposed findings and conclusions and recommended decision	508.12	Proposed findings and conclusions and recommended decision.
509a.13	Decision of the Board	508.13	Decision of the Office.
509a.14	Miscellaneous	508.14	Miscellaneous.
PART 509b	[Previously Removed]		
PART 510			
510.1	Provisions relating to ex parte communications	510.1	Provisions relating to ex parte communications.
PART 510a		**PART 515**	
510a.1	Purpose and scope	515.1	Purpose and scope.
510a.2	Contact person for missing children photographs on penalty mail	515.2	Contact person for missing children photographs on penalty mail.
510a.3	Policy and implementation	515.3	Policy and implementation.
510a.4	Responsibility of Board administrative unit for implementation and procedure governing use of penalty mail in location of missing children.	515.4	Responsibility of Board administrative unit for implementation and procedure governing use of penalty mail in location of missing children.
510a.5	Exceptions to use of missing children photographs and biographical data on penalty mail.	515.5	Exceptions to use of missing children photographs and biographical data on penalty mail.
510a.6	Expiration date	515.6	Expiration date.
PART 511			
511.735–1	Purpose	Removed	
511.735–2	Definition	Removed	
511.735–3	Effective date and distribution	Removed	
511.735–4	Counseling	Removed	
511.735–10	General prohibitions	Removed	
511.735–11	Gifts, entertainment, favors and loans	Removed	
511.735–12	Soliciting contributions; accepting and giving gifts	Removed	
511.735–13	Accepting gifts from foreign governments	Removed	
511.735–14	Outside employment and other activities	Removed	
511.735–15	Receipt of salary or compensation for service to Agency	Removed	
511.735–16	Payments to Board Members	Removed	
511.735–17	Financial interest	Removed	
511.735–18	Use of Agency property	Removed	
511.735–19	Misuse of information	Removed	
511.735–20	Indebtedness	Removed	
511.735–21	Gambling, betting and lotteries	Removed	
511.735–22	General conduct prejudicial to the Government	Removed	
511.735–25	Use of Agency employment	Removed	
511.735–26	Use of inside information	Removed	
511.735–27	Coercion	Removed	
511.735–28	Gifts, entertainment and favors	Removed	
511.735–29	Other provisions applicable to special Government employees	Removed	

Previous section	Previous title	New section	New title
511.735–35	Filing and review of statements of employment and financial interests	Removed	
511.735–36	Employees required to submit statements	Removed	
511.735–36a	Employees complaint on filing requirement	Removed	
511.735–37	Board Members not required to submit statements	Removed	
511.735–38	Time and place for submission of employees' statements	Removed	
511.735–39	Supplementary statements	Removed	
511.735–40	Interests of employees' relatives	Removed	
511.735–41	Information not known by employees	Removed	
511.735–42	Information not required	Removed	
511.735–43	Effect of employees' statements on other requirements	Removed	
511.735–44	Specific provisions of Agency regulations for special	Removed	
511.735–50	Reporting unresolved conflicts of interest	Removed	
511.735–51	Opportunity to be heard	Removed	
511.735–52	Action by the Chairman	Removed	
511.735–53	Violations of this part cause for disciplinary action	Removed	
511.735–54	Remedial action to be effected in accordance with law and regulation	Removed	
511.735–55	Miscellaneous statutory provisions	Removed	
511.737–1	Applicable provisions of law	Removed	
511.737–2	Enforcement proceedings	Removed	
512.1	Scope of part	512.1	Scope of part.
512.2	Definitions	512.2	Definitions.
512.3	Confidentiality of proceedings	512.3	Confidentiality of proceedings.
512.4	Transcripts	512.4	Transcripts.
512.5	Rights of witnesses	512.5	Rights of witnesses.
512.6	Obstruction of the proceedings	512.6	Obstruction of the proceedings.
512.7	Subpoenas	512.7	Subpoenas.
PART 513			
513.1	Scope of part	513.1	Scope of part.
513.2	Definitions	513.2	Definitions.
513.3	Who may practice	513.3	Who may practice.
513.4	Suspension and debarment	513.4	Suspension and debarment.
513.5	Reinstatement	513.5	Reinstatement.
513.6	Duty to file information concerning adverse judicial or administrative action	513.6	Duty to file information concerning adverse judicial or administrative action.
513.7	Proceeding under this part	513.7	Proceeding under this part.
PART 514			
514.1	Scope	Removed	
514.2	Definitions	Removed	
514.3	Duties and responsibilities of the Advisory Committee	Removed	
514.4	Membership	Removed	
514.5	Vacancies	Removed	
514.6	Chairperson responsibilities and duties	Removed	
514.7	Meeting procedures	Removed	
514.8	Travel expense reimbursement	Removed	
514.9	Conflict of interest and disclosure of sensitive information	Removed	
514.10	Advisory Committee responsibility for safe-guarding sensitive information	Removed	
514.11	Execution of agreement with Corporation	Removed	
PART 516			
516.100	Purpose	Removed	
516.105	Definitions	Removed	
516.110	Coverage	Removed	
516.115	Policy	Removed	
516.200	Debarment or suspension	Removed	
516.205	Ineligible persons	Removed	
516.210	Voluntary exclusion	Removed	
516.215	Exception provision	Removed	
516.220	Continuation of covered transactions	Removed	
516.225	Failure to adhere to restrictions	Removed	
516.300	General	Removed	
516.305	Causes for debarment	Removed	
516.310	Procedures	Removed	
516.311	Investigation and referral	Removed	
516.312	Notice of proposed debarment	Removed	
516.313	Opportunity to contest proposed debarment	Removed	
516.314	Debarring official's decision	Removed	
516.315	Settlement of voluntary exclusion	Removed	
516.320	Period of debarment	Removed	
516.325	Scope of debarment	Removed	
516.400	General	Removed	
516.405	Causes for suspension	Removed	
516.410	Procedures	Removed	
516.411	Notice of suspension	Removed	
516.412	Opportunity to contest suspension	Removed	
516.413	Suspending official's decision	Removed	
516.415	Period of suspension	Removed	
516.420	Scope of suspension	Removed	
516.500	GSA responsibilities	Removed	
516.505	Board responsibilities	Removed	
516.510	Participants' responsibilities	Removed	

Previous section	Previous title	New section	New title
516.600	Purpose	Removed	
516.605	Definitions	Removed	
516.610	Coverage	Removed	
516.615	Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.	Removed	
516.620	Effect of violation	Removed	
516.625	Exception provision	Removed	
516.630	Grantees' responsibilities	Removed	
Appendix A	Certification regarding debarment, suspension, and other responsibility matters—Primary covered transaction.	Removed	
Appendix B	Certification regarding debarment, suspension, ineligibility and voluntary exclusion—Lower tier covered transactions.	Removed	
Appendix C	Certification regarding drug-free workplace requirements	Removed	
PART 521		**PART 931**	
521.1	Act	Removed	(FHFB–931.1).
521.2	Bank	Removed	(FHFB–931.2).
521.3	Board	Removed	(FHFB–931.3).
521.4	Creditor liabilities	Removed	(FHFB–931.4).
521.5	Deposits in banks or trust companies	Removed	(FHFB–931.5).
521.6	Home mortgage	561.23	Home mortgage.
521.6–1	Home	Removed	(FHFB–931.7).
521.6–2	Other dwelling unit	Removed	(FHFB–931.8).
521.7	Member	Removed	(FHFB–931.9).
521.8	[Previously Removed]		
521.9	Obligations of the United States	Removed	(FHFB–931.11).
521.10	Paid-in value of stock in a Bank	Removed	(FHFB–931.12).
521.11	State	Removed	(FHFB–931.13).
PART 522		**PART 932**	
522.1	Charter	Removed	(FHFB–932.1).
522.5	Par value and price of stock	Removed	(FHFB–932.2).
522.6	Dividends	Removed	(FHFB–932.3).
522.10	Issuance and form of stock	Removed	(FHFB–932.4).
522.11	Stock in consolidations	Removed	(FHFB–932.5).
522.12	Stock in reorganizations	Removed	(FHFB–932.6).
522.13	Loss or destroyed certificates	Removed	(FHFB–932.7).
522.20	General	Removed	(FHFB–932.8).
522.21	Director representing Puerto Rico	Removed	(FHFB–932.9).
522.22	Definition of member	Removed	(FHFB–932.10).
522.23	Location of member	Removed	(FHFB–932.11).
522.24	Report of stock investment	Removed	(FHFB–932.12).
522.25	Designation and nomination of elective directorship	Removed	(FHFB–932.13).
522.26	Election of directors	Removed	(FHFB–932.14).
522.26a	Special provisions for election of directors during calendar year 1988	Removed	
522.27	Prohibition of actions influencing votes	Removed	(FHFB–932.15).
522.28	Definition of "State"	Removed	(FHFB–932.16).
522.30	Special scheduling provisions for election of directors during calendar year 1989	Removed	
522.60	Compensation	Removed	(FHFB–932.27).
522.61	Duties	Removed	(FHFB–932.28).
522.62	Responsibility of bank directors	Removed	(FHFB–932.29).
522.70	Selection	Removed	(FHFB–932.40).
522.71	Compensation	Removed	(FHFB–932.41).
522.72	Indemnification	Removed	(FHFB–932.42).
522.73	Restrictions as to former employees	Removed	(FHFB–932.43).
522.75	General	Removed	(FHFB–932.50).
522.76	President	Removed	(FHFB–932.51).
522.80	General	Removed	(FHFB–932.55).
522.81	Functions of Office of Finance	Removed	(FHFB–932.56).
522.82	Budget and expenses	Removed	(FHFB–932.57).
522.83	[Previously Revoked]		
522.85	General	Removed	(FHFB–932.60).
522.86	Functions and duties of Office of Neighborhood Reinvestment	Removed	(FHFB–932.61).
522.87	Budget and expenses	Removed	(FHFB–932.62).
522.90	Office of Regulatory Policy, Oversight, and Supervision	Removed	(FHFB–932.65).
PART 523		**PART 933**	
523.1	Application form	Removed	(FHFB–933.1).
523.2	[Previously Removed]		
523.3	Board action on applications	Removed	(FHFB–933.3).
523.3–1	Automatic board approval in certain cases	Removed	(FHFB–933.4).
523.3–2	Membership at principal place of business designation, transfer of membership	Removed	(FHFB–933.5).
523.3–3	Delegations	Removed	(FHFB–933.6).
523.4	Subscription	Removed	(FHFB–933.7).
523.5	Additional subscription	Removed	(FHFB–933.8).
523.6	Adjustments in holdings	Removed	(FHFB–933.9).
523.7	Excess subscription	Removed	(FHFB–933.10).
523.8	Payment on subscription	Removed	(FHFB–933.11).
523.9	[Previously Deleted]		
523.10	Definitions for purposes of this Section, § 523.11 and § 523.12	566.1	Definitions.
523.11	Liquidity requirements	566.2	Requirements.
523.12	Deficiencies and penalties	566.3	Deficiencies and penalties.
523.13	Reports; records	566.4	Reports; records.

Previous section	Previous title	New section	New title
523.14	Payment of penalty	566.5	Payment of penalty.
523.15	Reports	Removed	(FHFB–933.16).
523.20	Examinations of members	Removed	(FHFB–933.22).
523.25	Official membership insignia	Removed	(FHFB–933.27).
523.29	Flood disaster protection	563.48	Flood disaster protection.
523.30	Procedure for withdrawal	Removed	(FHFB–933.32).
523.31	Procedure for removal	Removed	(FHFB–933.33).
523.32	[Previously Deleted]		
PART 524	**PART 934**		
524.1	Investments	Removed	(FHFB–934.1).
524.2	Loans guaranteed under the Foreign Assistance Act of 1961	Removed	(FHFB–934.2).
524.3	Transfer of funds between banks	Removed	(FHFB–934.3).
524.4	Deposits from members	Removed	(FHFB–934.4).
524.5	Trustee powers	Removed	(FHFB–934.5)
524.6	Budgets	Removed	(FHFB–934.6).
524.7	Surety bonds	Removed	(FHFB–934.7).
524.8	Insurance	Removed	(FHFB–934.8).
524.9	Safe-keeping accounts	Removed	(FHFB–934.9).
524.10	Securities held in trust or as collateral	Removed	(FHFB–934.10).
524.11	Donations	Removed	(FHFB–934.11).
524.12	Accounting	Removed	(FHFB–934.12).
524.13	Gold and gold-related transactions	Removed	(FHFB–934.13).
PART 525—ADVANCES		**PART 935**	
525.1	Limitations on advances	Removed	(FHFB–935.1).
525.2	Extension of credit	Removed	(FHFB–935.2).
525.3	Interest rates	Removed	(FHFB–935.3).
525.4	Bank stock collateral	Removed	(FHFB–935.4).
525.5	Gold and gold-related securities ineligible as collateral	Removed	(FHFB–935.5).
525.6	Terms of advances	Removed	(FHFB–935.6)
525.7	Collateral securing advances	Removed	(FHFB–935.7).
525.8	Determination of value of collateral	Removed	(FHFB–935.8).
525.9	Additional collateral	Removed	(FHFB–935.9).
525.10	Short term advances	Removed	(FHFB–935.10).
525.33	Lines of credit	Removed	(FHFB–935.30).
525.34	Eligible institutions	Removed	(FHFB–935.31).
525.35	Rates of interest	Removed	(FHFB–935.32).
525.36	Application for advances	Removed	(FHFB–935.33).
PART 526			
526.1	Definitions	See below	
526.1(a)	Member	Removed	
526.1(b)	Certificate account	561.9	Certificate account.
526.1(c)	Savings account	561.42	Savings account.
526.1(d)	Tax and loan account	561.52	Tax and loan account.
526.1(e)	Note account	561.33	Note account.
526.1(f)	United States Treasury general account	561.53	United States Treasury General Account.
526.1(g)	United States Treasury time deposit open account	561.54	United States Treasury Time Deposit Open Account.
526.2	Advertising interest or dividends on savings accounts	563.27	Advertising.
PART 527		**PART 937**	
527.1	General	Removed	(FHFB–937.1).
527.2	Definitions	Removed	(FHFB–937.2).
527.3	Middle-income families	Removed	(FHFB–937.3).
527.4	Low-income families	Removed	(FHFB–937.4).
527.5	Credits to member institutions	Removed	(FHFB–937.5).
527.6	Disbursement of funds to Banks	Removed	(FHFB–937.6).
527.7	Retention of documents	Removed	(FHFB–937.7)
527.8	Recertification of income	Removed	(FHFB–937.8)
PART 528			
528.1	Definitions	528.1	Definitions.
528.1a	Supplementary guidelines	528.1a	Supplementary guidelines.
528.2	Nondiscrimination in lending and other services	528.2	Nondiscrimination in lending and other services.
528.2a	Nondiscriminatory appraisal and underwriting	528.2a	Nondiscriminatory appraisal and underwriting.
528.3	Nondiscrimination in applications	528.3	Nondiscrimination in applications.
528.4	Nondiscriminatory advertising	528.4	Nondiscriminatory advertising.
528.5	Equal Housing Lender poster	528.5	Equal Housing Lender poster.
528.6	Monitoring information	528.6	Monitoring information.
Appendix A to § 528.6	Association instructions for preparation of loan application registers	Appendix A to § 528.6	
Appendix B to § 528.6	Association instructions for preparation of data submission report	Appendix B to § 528.6	
528.7	Nondiscrimination in employment	528.7	Nondiscrimination in employment.
528.8	Complaints	528.8	Complaints.
PART 529			

Previous section	Previous title	New section	New title
529.1	Purpose	529.1	Purpose.
529.2	Definitions	529.2	Definitions.
529.3	Application of this part	529.3	Application of this part.
529.4	Discrimination prohibited	529.4	Discrimination prohibited.
529.5	Assurances required	529.5	Assurances required.
529.6	Compliance information	529.6	Compliance information.
529.7	Conduct of investigations	529.7	Conduct of investigations.
529.8	Procedure for effecting compliance	529.8	Procedure for effecting compliance.
529.9	Hearings	529.9	Hearings.
529.10	Decisions and notices	529.10	Decisions and notices.
529.11	Judicial review	529.11	Judicial review.
529.12	Effect on other regulations	529.12	Effect on other regulations.
Appendix A	Activities to which this part applies	Appendix	
PART 531		**PART 540**	
531.1	Policy on advance to members	Removed	(FHFB–940.1).
531.2	Policy on Federal Savings and Loan Insurance Corporation—guaranteed advances and loans to the Federal Savings and Loan Insurance Corporation.	Removed	(FHFB–940.2).
531.3	[Previously Deleted]		
531.4	Assigned collateral; verification	Removed	(FHFB–940.3).
531.5	[Previously Deleted]		
531.6	[Previously Deleted]		
531.7	[Previously Reserved]		
531.8	Guidelines relating to nondiscrimination in lending	571.24	Guidelines relating to nondiscrimination in lending.
531.9	Interest rates on advances	Removed	(FHFB–940.5).
531.10	Accepting pooled accounts	571.25	Accepting pooled accounts.
531.12	Transfer and repurchase of government securities [Redesignated as FSLIC-Insured Institution regulation, 12 CFR 563.8–4, ¶ 4668, effective May 27, 1982].	Removed	
PART 532			
532.1	Payment in gold or its equivalent	571.17	Payment in gold or its equivalent.
PART 533			
533.1	Electronic fund transfers subject to Regulation E	533.1	Electronic fund transfers subject to Regulation E.
PART 534		**PART 543**	
534.1	Authority and scope	Removed	(FHFB–943.1).
534.2	Definitions	Removed	(FHFB–943.2).
534.3	General provisions	Removed	(FHFB–943.3).
534.4	Incidental powers	Removed	(FHFB–943.4).
534.5	Operations	Removed	(FHFB–943.5).
534.6	Pricing of services	Removed	(FHFB–943.6).
534.7	Rights, powers, responsibilities, duties and liabilities	Removed	(FHFB–943.7).
PART 535			
535.1	Definitions	535.1	Definitions.
535.2	Unfair credit contract provisions	535.2	Unfair credit practices.
535.3	Unfair or deceptive cosigner practices	535.3	Unfair or deceptive cosigner practices.
535.4	Late charges	535.4	Late charges.
535.5	State exemptions	535.5	State exemptions.
PART 541			
541.1	General	541.1	General.
541.2	Act	541.2	Act.
541.3	Combination of residential real estate and business property involving only minor or incidental business use.	541.4	Combination of residential real estate and business property involving only minor or incidental business use.
541.4	Combination of home and business property	541.3	Combination of home and business property.
541.5	Cooperative housing development	541.6	Cooperative housing development.
541.6	Director	Removed	
541.7	Dwelling unit	541.10	Dwelling unit.
541.8	Federal association	541.11	Federal savings association.
541.9	Interim Federal association	541.18	Interim Federal savings association.
		541.9	District Director.
541.10	Interim state institution	541.19	Interim state savings association.
541.11	Insured institution	Removed	
541.12	General reserves	541.12	General reserves.
541.13	Guaranteed loan	541.13	Guaranteed loan.
541.14	Home	541.14	Home.
541.15	Improved residential real estate	541.16	Improved residential real estate.
541.16	Insured loan	541.17	Insured loan.
541.17	Regulatory capital	Removed	
541.18	Principal Supervisory Agent	Removed	
541.19	Short-term savings account	541.24	Short-term savings account.
541.20	Single-family dwelling	541.25	Single-family dwelling.
541.21	Supervisory Agent	Removed	
541.22	Surplus	541.26	Surplus.
		541.22	[Reserved]
541.23	Withdrawal value of a savings account	541.28	Withdrawal value of a savings account.

Previous section	Previous title	New section	New title
541.24	Loans	541.20	Loans.
541.25	Commercial paper	541.5	Commercial paper.
541.26	Corporate debt security	541.7	Corporate debt security.
541.27	Unimproved real estate	541.27	Unimproved real estate.
541.28	Debit card	541.8	Debit card.
541.29	Residential real estate	541.23	Residential real estate.
541.30	Nonresidential real estate	541.21	Nonresidential real estate.
541.31	Improved nonresidential real estate	541.15	Improved nonresidential real estate.
PART 542—[Removed]			
PART 543			
543.1	Corporate title	543.1	Corporate title.
543.2	Application for permission to organize	543.2	Application for permission to organize.
543.3	[Removed December 15, 1982]		
543.4	[Removed December 15, 1982]		
543.5	Issuance of Charter	543.5	Issuance of charter.
543.6	Completion of organization	543.6	Completion of organization.
543.7	Limitations on transaction of business	543.7	Limitations on transaction of business.
543.7–1	Federal association proposed by Federal Savings and Loan Insurance Corporation.	543.7–1	Federal savings association created in connection with an association in default or in danger of default.
543.8	General	543.8	Conversion from State mutual charter to Federal charter.
543.9	Application	543.9	Application for Conversion to Federal mutual charter.
543.10	Organization after conversion	543.10	Organization after conversion.
543.11	Organization plan for governance during first years after issuance of Federal mutual savings bank charter.	543.11	Organization plan for governance during first years after issuance of Federal mutual savings bank charter.
543.11–1	Grandfathered authority	543.11–1	Grandfathered authority.
543.12	FDIC-insured federal savings banks	543.12	BIF-insured Federal savings banks.
543.13	Notice to FDIC	543.13	Notice to FDIC.
543.14	Continuity of existence	543.14	Continuity of existence.
PART 544			
544.1	Federal mutual charter	544.1	Federal mutual charter.
544.2	Charter amendments	544.2	Charter amendments.
544.2–1	[Previously Removed]		
544.2–2	[Previously Removed]		
544.3	Adoption of new federal charter by a federal association	544.3	Adoption of new federal charter by a federal savings association.
544.4	Issuance of charter	544.4	Issuance of charter.
544.5	Federal mutual association bylaws	544.5	Federal mutual savings association by laws.
544.5–1	[Previously Removed]		
544.6	Effect of subsequent charter or bylaw change	544.6	Effect of subsequent charter or bylaw change.
544.6–1	[Previously Removed]		
544.7	In association offices	544.7	In association offices.
544.8	References to old and new charters; rules applicable to trustees of federal mutual savings banks.	544.8	References to old and new charters; rules applicable to trustees of Federal mutual savings banks.
544.9	Obsolete charter provision for Charter B associations	544.9	Obsolete charter provision for Charter B associations.
Appendix	Model bylaws for mutual institutions	Appendix	Model bylaws for mutual savings associations.
PART 545			
545.1	General authority	545.1	General authority.
545.2	Federal preemption	545.2	Federal preemption.
545.3–545.9	[Reserved]	545.3.–545.9	[Reserved].
		545.10	Savings deposits or shares.
545.11	Insured accounts	545.11	Issuance of accounts.
545.12	Demand deposit accounts	545.12	Demand deposit accounts.
545.13	Account records	545.13	Account records.
545.14	Determination and distribution of earnings	545.14	Determination and distribution of earnings.
545.15	Withdrawals	545.15	Withdrawal requests.
545.16	Public deposits, depositaries, and fiscal agents	545.16	Public deposits, depositaries, and fiscal agents.
545.17	Funds transfer services	545.17	Funds transfer services.
545.18	Issuance of mutual capital certificates	545.18	Issuance of mutual capital certificates.
545.19	Issuance of net worth certificates	545.19	Issuance of net worth certificates.
545.20	Borrowing, issuing obligations and securities, and giving security	545.20	Borrowing, issuing obligations and securities, and giving security.
545.21	Give-aways	545.21	Give-aways.
545.22–545.30	[Reserved]	545.22–545.30	[Reserved].
545.31	Election regarding classification of loans or investments	545.31	Election regarding classification of loans or investments.
545.32	Real estate loans	545.32	Real estate loans.
545.33	Home loans	545.33	Home loans.

Previous section	Previous title	New section	New title
545.34	Limitations for home loans secured by borrower-occupied property	545.34	Limitations for home loans secured by borrower-occupied property.
545.35	Other real estate loans	545.35	Other real estate loans.
545.36	Loans to acquire or to improve real estate	545.36	Loans to acquire or to improve real estate.
545.37	Combination loans	545.37	Combination loans.
545.38	Insured and guaranteed loans	545.38	Insured and guaranteed loans.
545.39	Loans guaranteed under the Foreign Assistance Act of 1961	545.39	Loans guaranteed under the Foreign Assistance Act of 1961.
545.40	Loans on low-rent housing	545.40	Loans on low-rent housing.
545.41	Community development loans and investments	545.41	Community development loans and investments.
545.42	Home improvement loans	545.42	Home improvement loans.
545.43	State housing corporation investment-insured	545.43	State housing corporation investment-insured.
545.44	Mortgage transactions with the Federal Home Loan Mortgage Corporation	545.44	Mortgage transactions with the Federal Home Loan Mortgage Corporation.
545.45	Manufactured home financing	545.45	Manufactured home financing.
545.46	Commercial loans	545.46	Commercial loans.
545.47	Overdraft loans	545.47	Overdraft loans.
545.48	Letters of credit	545.48	Letters of credit.
545.49	Loans on securities	545.49	Loans on securities.
545.50	Consumer loans	545.50	Consumer loans.
545.51	Credit cards	545.51	Credit cards.
545.52	Loans on savings accounts	545.52	Loans on savings accounts.
545.53	Finance leasing	545.53	Finance leasing.
545.54–545.70	[Reserved]	545.54–545.70	[Reserved].
545.71	Liquid assets	545.71	Liquid assets.
545.72	Government obligations	545.72	Government obligations.
545.73	Inter-American Savings and Loan Bank	545.73	Inter-American Savings and Loan Bank.
545.74	Service corporations	545.74	Service corporations.
545.75	Commercial paper and corporate debt securities	545.75	Commercial paper and corporate debt securities.
545.76	Investment in open-end management investment companies	545.76	Investment in open-end management investment companies.
545.77	Real estate for office and related facilities	545.77	Real estate for office and related facilities.
545.78	Leasing	545.78	Leasing.
545.79	Gold transactions	545.79	Gold transactions.
545.80	Small business investment corporations	545.80	Small Business Investment Corporations.
545.81	[Reserved]	545.81	[Reserved].
545.82	Finance subsidiaries	545.82	Finance subsidiaries.
545.83–545.90	[Reserved]	545.83–545.90	[Reserved].
545.91	Home office	545.91	Home office.
545.92	Branch offices	545.92	Branch offices.
545.93	Upgrading of approved branch office	545.93	Upgrading of approved branch office.
545.94	Closing a branch office	545.94	Closing a branch office.
545.95	Change of office location and redesignation of offices	545.95	Change of office location and redesignation of offices.
545.96	Agency	545.96	Agency.
545.97–545.100	[Reserved]	545.97–545.100	[Reserved].
545.101	Fiscal agency	545.101	Fiscal agency.
545.102	Trustee	545.102	Trustee.
545.103	Suretyship	545.103	Suretyship.
545.104–545.110	[Reserved]	545.104–545.110	[Reserved].
545.111	Adjustments to book value of assets	545.111	Adjustments to book value of assets.
545.112	[Removed and Reserved]	545.112	[Reserved].
545.113	Accounting records	545.113	Accounting records.
545.114	Monthly reports	545.114	Monthly reports.
545.115	Statement of condition	545.115	Statement of condition.
545.116–545.120	[Reserved]	545.116–545.120	[Reserved].
545.121	Indemnification of directors, officers, and employees	545.121	Indemnification of directors, officers, and employees.
545.122	Employment contracts	545.122	Employment contracts.
545.123	Advisory boards and committees	545.123	Advisory boards and committees.
545.124–545.125	[Reserved]	545.124–545.125	[Reserved].
545.126	Referral of insurance business	545.126	Referral of insurance business.
545.127–545.130	[Reserved]	545.127–545.130	[Reserved].
545.131	Communication between members of a federal mutual association	545.131	Communication between members of a federal mutual savings association.
545.132	Disclosure of customer records	545.132	Disclosure of customer records.
545.133–545.135	[Reserved]	545.133–545.135	[Reserved].
545.136	Financial future transactions	545.136	Financial future transactions.
545.137	Financial options transactions	545.137	Financial options transactions.
545.138	Data-processing services	545.138	Data-processing services.
545.139–545.140	[Reserved]	545.139–545.140	[Reserved].
545.141	Remote service units (RSUs)	545.141	Remote service units (RSUs).
545.142	Home banking services	545.142	Home banking services.
Appendix	Notice to housing creditors regarding alternative mortgage transactions	Removed	
PART 546			
546.1	Definitions	546.1	Definitions.

Previous section	Previous title	New section	New title
546.2	Procedure; effective date	546.2	Procedure; effective date.
546.3	Transfer of assets upon merger	546.3	Transfer of assets upon merger.
546.4	Voluntary dissolution	546.4	Voluntary dissolution.
546.5	[Removed effective December 15, 1982]		
PART 547			
547.1	Grounds for appointment of conservator or receiver	Removed	
547.2	Appointment of conservator or receiver	Removed	
547.3	Appointments on other grounds	Removed	
547.4	Notice of appointment	558.2	Notice of appointment.
		559.2	Notice of appointment.
547.5	Removal of conservator or receiver	Removed	
547.6	Federal Savings and Loan Insurance Corporation as receiver	Removed	
547.7	Possession by conservator or receiver	Removed	
547.8	Surrender of possession by conservator or receiver	558.6	Surrender of a possession by a conservator.
PART 548		**PART 558**	
548.1	Procedure upon taking possession	558.1	Procedure upon taking possession.
548.2	Powers and duties of conservator	Removed	(FDIC–382.2).
548.3	Creditors	Removed	(FDIC–382.3).
548.4	Share interests	Removed	(FDIC–382.4).
548.5	Inventory; examinations and audits, and costs thereof; accounting practices	558.3	Inventory.
548.6	Final discharge and release of conservator	558.7	Final discharge and release of conservator.
548.7	Inspection of reports	558.4	Inspection of reports.
548.8	Delegation by conservator	558.5	Delegation by conservator.
PART 549		**PART 559**	
549.1	Definitions	Removed	(FDIC–383.1).
549.2	Procedure upon taking possession	559.1	Procedure upon taking possession.
549.3	Powers and duties of receiver	Removed	(FDIC–383.3).
549.4	Creditor claims	Removed	(FDIC–383.4).
549.5	Share interest claims	Removed	(FDIC–383.5).
		559.5	Delegation by receiver.
549.5–1	Deposit associations	Removed	(FDIC–383.6).
549.6	Inventory; examinations and audits, and costs thereof; accounting practices	559.3	Inventory.
549.7	Final discharge and release of receiver	559.6	Final discharge and release of receiver.
549.8	Inspection of reports	559.4	Inspection of reports.
PART 550			
550.1	Definitions	550.1	Definitions.
550.2	Applications	550.2	Applications.
550.3	Consolidation or merger of two or more Federal associations	550.3	Consolidation or merger of two or more Federal savings associations.
550.4	Deposit of securities with state authorities	550.4	Deposit of securities with state authorities.
550.5	Administration of trust powers	550.5	Administration of trust powers.
550.6	Books and accounts	550.6	Books and accounts.
550.7	Audit of trust department	550.7	Audit of trust department.
550.8	Funds awaiting investment or distribution	550.8	Funds awaiting investment or distribution.
550.9	Investment of funds held as fiduciary	550.9	Investment of funds held as fiduciary.
550.10	Self-dealing	550.10	Self-dealing.
550.11	Custody of investments	550.11	Custody of investments.
550.12	Compensation of association	550.12	Compensation of Federal savings association.
550.13	Collective investment	550.13	Collective investment.
550.14	Surrender of trust powers	550.14	Surrender of trust powers.
550.15	Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.	550.15	Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.
550.16	Revocation of trust powers	550.16	Revocation of trust powers.
PART 551			
551.1	Service of process	510.4	Service of process.
PART 552			
552.1	Definitions	552.1	Definitions.
552.2	Corporate title	552.2	Corporate title.
552.2–1	Procedure for organization of Federal stock association	552.2–1	Procedure for organization of Federal stock association.
552.2–2	Procedures for organization of interim Federal stock association	552.2–2	Procedures for organization of interim Federal stock association.
552.2–3	Federal stock association proposed by Federal Savings and Loan Insurance Corporation.	552.2–3	Federal stock association created in connection with an association in default or in danger of default.
552.2–4	Limitations on transaction of business	552.2–4	Limitations on transaction of business.
552.2–5	Conversion from Federal mutual to Federal stock charter	552.2–5	Conversation from Federal mutual to Federal stock charter.
552.2–6	Conversion from state stock to Federal stock charter	552.2–6	Conversion from state stock to Federal stock charter.
552.3	Charters for Federal stock associations	552.3	Charters for Federal stock associations.
552.4	Charter amendments	552.4	Charter amendments.

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Previous section	Previous title	New section	New title
552.5	Bylaws	552.5	Bylaws.
552.6	Shareholders	552.6	Shareholders.
552.6–1	Board of directors	552.6–1	Board of directors.
552.6–2	Officers	552.6–2	Officers.
552.6–3	Certificates for shares and their transfer	552.6–3	Certificates for shares and their transfer.
552.6–4	Fiscal year; annual audit	552.6–4	Fiscal year; annual audit.
552.7	Description of federal stock associations	552.7	Description of Federal stock associations.
552.8	Savings deposits	552.8	Savings deposits.
552.9	Investments, services and borrowings	Removed	
552.10	Annual reports to stockholders	552.10	Annual reports to stockholders.
552.11	Books and records	552.11	Books and records.
552.13	Combinations involving federal stock associations	552.13	Combinations involving Federal stock associations.
552.14	Dissenter and appraisal rights	552.14	Dissenter and appraisal rights.
552.15	Supervisory combinations	552.15	Supervisory combinations.
552.16	Effect of subsequent charter of bylaw change	552.16	Effect of subsequent charter of bylaw change.
Appendix	Model bylaws for stock associations	Appendix	Model bylaws for stock associations.
PART 556		**PART 556**	
555.1	Directors	556.1	Directors.
555.2	Power to engage in escrow business	556.2	Power to engage in escrow business.
555.3	Real estate	556.3	Real estate.
555.5	Insurance	556.4	Insurance.
555.8	Savings accounts	556.6	Savings accounts.
555.9	Effect of loan participation on status of borrowing members	556.17	Effect of loan participation on status of borrowing members.
555.10	Service corporation secured debt limitation	556.7	Service corporation secured debt limitation.
555.12	Drive-in and pedestrian facilities	556.15	Drive-in and pedestrian facilities.
555.13	First liens on properties sold by the Secretary of HUD	556.10	First liens on properties sold by the Secretary of HUD.
555.14	Chief executive officer of a branch office	556.14	Chief executive officer of a branch office.
555.15	Prepayment penalty on mortgage loans	556.11	Prepayment penalty on mortgage loans.
555.17	Insurance agencies—usurpation of corporate opportunity	556.16	Insurance agencies—usurpation of corporate opportunity.
555.18	Deposit assurance of direct deposit of social security payments	556.12	Deposit assurance of direct deposit of social security payments.
555.19	Receipt of interest expressed as a percentage of other income	556.13	Receipt of interest expressed as a percentage of other income.
PART 556			
556.1	[Previously Deleted]		
556.2	[Previously Rescinded]		
556.3	[Previously Rescinded]		
556.4	[Previously Rescinded]		
556.5	Establishment of branch offices	556.5	Establishment of branch offices.
556.7	Service corporation involvement with gold or gold related transactions	Removed	
556.8	Suretyship	556.8	Suretyship.
556.9	Imposition of late charges and due-on-sale clauses	556.9	Imposition of late charges and due-on-sale clauses.
556.10	[Removed effective February 13, 1981]		
PART 561			
561.1	Insured institution	561.43	Savings association.
		561.1	General.
561.2	Insured member	561.3	Accountholder.
561.2a	Deposit broker	561.17	Deposit broker.
561.3	Insured account	561.2	Account.
561.4	Trust estate	Removed	
561.5	Public Unit	561.40	Public unit.
561.5a	Political subdivision	561.38	Political subdivision.
561.5b	Independent activity	Removed	
561.6	All insured accounts	Removed	
561.7	Principal office	561.39	Principal office.
		561.7	BIF.
561.8	With recourse	561.55	With recourse.
561.9	Premium	Removed	
561.10	Primary reserve; secondary reserve	Removed	
561.11	Savings accounts	Removed	
561.11a	Checking accounts	561.16	Demand accounts.
561.11b	Tax and loan accounts	Removed	
561.11c	Note account	Removed	
561.11d	United States Treasury General Account	Removed	
561.11e	United States Treasury Time Deposit-Open Account	Removed	
561.11f	Money Market Deposit Accounts	561.28	Money Market Deposit Accounts.
561.11g	Negotiable order of withdrawal accounts	561.29	Negotiable Order of Withdrawal Accounts.
561.12	Closing date	561.11	Closing date.
561.13	Regulatory capital	Removed	(OTS–54 FR 48845).
561.14	[Removed effective Aug. 16, 1982]		

Previous section	Previous title	New section	New title
561.15	Scheduled items [Reserved]	Removed	
		561.15	Corporation.
561.16	Slow loans	561.46	Slow loans.
561.16a	Slow consumer credit	561.47	Slow consumer credit.
561.16b	Consumer credit classified as a loss	561.13	Consumer credit classified as a loss.
561.16c	Classification of certain assets	563.160	Classification of certain assets.
561.17	[Previously Removed and Reserved]		
561.18	Land loan	561.26	Land loan.
561.19	Nonresidential construction loan	561.30	Nonresidential construction loan.
561.20	Insured loan	561.25	Insured loan.
561.21	Guaranteed loan	561.20	Guaranteed loan.
561.21a	Guaranteed obligation	561.21	Guaranteed obligation.
561.22	Normal lending territory	561.32	Normal lending territory.
561.23	Low-rent housing	561.27	Low-rent housing.
561.24	Subordinated debt security	561.51	Subordinated debt security.
561.24a	[Deleted effective May 30, 1980]		
561.25	Affiliate	561.4	Affiliate.
561.26	Service corporation	561.45	Service corporation.
561.27	Service corporation affiliate	561.46	Service corporation affiliate.
561.28	Controlling person	561.14	Controlling person.
561.29	Affiliated person	561.5	Affiliated person.
561.30	Immediate family	561.24	Immediate family.
561.31	Director	561.18	Director.
561.32	Officer	561.35	Officer.
561.33	Financial institution	561.19	Financial institution.
561.34	Holding company affiliate	561.22	Holding company affiliate.
		561.34	Office.
561.35	Principal supervisory agent	Removed	
561.36	Parent company; subsidiary	561.37	Parent company; subsidiary.
561.37	Audit period	561.6	Audit period.
561.38	Consumer credit	561.12	Consumer credit.
561.39	Open-end consumer credit	561.36	Open-end consumer credit.
561.40	Closed-end credit	561.10	Closed-end consumer credit.
561.41	Security	561.44	Security.
		561.41	SAIF.
561.42	Nonwithdrawable account	561.31	Nonwithdrawable account.
		561.49	[Reserved].
		561.50	State.
PART 562		**PART 384**	
562.1	General provisions	Removed	(FDIC–384.1).
562.2	Application form	Removed	(FDIC–384.2).
562.3	Filing and amendment of application	Removed	(FDIC–384.3).
562.4	Processing of application	Removed	(FDIC–384.4).
562.5	[Previously Deleted]		
562.6	Exceptions to foregoing procedure	Removed	(FDIC–384.5).
562.7	Action by Corporation	Removed	(FDIC–384.6).
562.8	Costs of examination, audit, and appraisal	Removed	(FDIC–384.7).
562.9	Effective date of insurance; initial premium payment, issuance of certificate of insurance.	Removed	(FDIC–384.8).
562.10	Prohibition against advertising prospective insurance	Removed	(FDIC–384.9)
PART 563			
563.1	Form of account	563.1	Form of account.
563.2	Simple form of certificate; passbooks	563.2	Simple form of certificate; passbooks.
563.3	Long form of membership certificate	563.3	Long form of membership certificate.
563.3–1	Fixed-term accounts (certificate accounts)	563.7	Fixed-term accounts (certificate accounts).
563.3–2	Negotiable order of withdrawal accounts authorized	563.8	Negotiable order of withdrawal accounts authorized.
563.3–3	Eurodollar deposits	563.9	Eurodollar deposits.
563.3–10	Earnings-based accounts	563.10	Earnings-based accounts.
563.4	Brokered deposits	563.4	Brokered deposits.
563.5	Securities: statement of non-insurance	563.5	Securities: statement of non-insurance.
563.6	Payment of insured accounts on demand	563.6	Payment of insured accounts on demand.
563.7	[Removed effective April 25, 1982]		
563.7–1	Savings deposits or shares of Federal savings and loan associations	545.10	Savings deposits or shares.
563.7–2	Form, return and maturity of securities	563.72	Form, return and maturity of securities.
563.7–3	[Previously Rescinded]		
563.7–4	Mutual capital certificates	563.74	Mutual capital certificates.
563.7–5	Mandatorily redeemable preferred stock	563.75	Mandatorily redeemable preferred stock.
563.8	Borrowing limitations	563.80	Borrowing limitations.
563.8–1	Issuance of subordinated debt securities	563.81	Issuance of subordinated debt securities.
563.8–2	Corporation's right of purchase	Removed	(FDIC–385.5).
563.8–3	[Removed effective February 14, 1982]		
563.8–4	Transfer and repurchase of government securities	563.84	Transfer and repurchase of government securities.
563.9	Geographic lending restrictions	563.90	Appraisals on loans outside lending area.
563.9–1–563.9–2	[Previously Rescinded]		
563.9–3	Loans to one borrower	563.93	Loans to one borrower.

Previous section	Previous title	New section	New title
563.9–4	Mortgage transactions with the Federal Home Loan Mortgage Corporation	563.94	Mortgage transactions with the Federal Home Loan Mortgage Corporation.
563.9–5	Investment in state housing corporations	563.95	Investment in state housing corporations.
563.9–6	Limitation on investment in accounts of commercial banks and thrift institutions and in debt securities hedged with forward commitments.	563.96	Limitation on investment in accounts of commercial banks and thrift institutions and in debt securities hedged with forward commitments.
563.9–7	Loans in excess of 90 percent of value	563.97	Loans in excess of 90 percent of value.
563.9–8	Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.	563.98	Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.
563.9–9	Adjustable-rate mortgage loan disclosures	563.99	Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.
Appendix	Adjustable-rate mortgage disclosure sample	Appendix to 563.99.	
563.10—563.11	[Previously Rescinded]		
563.12	[Previously Deleted]		
563.13	Regulatory capital requirement		Removed (OTS–54 FR 46845).
563.13–1	Liability growth	563.131	Liability growth.
563.13–2	Securities issued through subsidiaries	563.132	Securities issued through subsidiaries.
563.13–3	Sale of Federal Home Loan Mortgage Corporation preferred stock	563.133	Sale of Federal Home Loan Mortgage Corporation preferred stock.
563.14	Individual minimum caprtal requirements	567.3	Individual minimum capital requirements.
563.14–1	Capital directives	567.4	Capital directives.
563.15	Premiums	Removed	(FDIC–385.6).
563.16	Premiums in mergers, consolidations, or purchases of bulk assets	Removed	(FDIC–385.7).
563.16–1	[Previously Revoked]		
563.16–2	Secondary reserve	Removed	(FDIC–385.8).
563.17	Management and financial policies	563.161	Management and financial policies.
563.17–1	Examinations and audits; appraisals; establishment and maintenance of records	563.170	Examinations and audits; appraisals; establishment and maintenance of records.
563.17–1a	Appraisal policies and practice of insured institutions and service corporations	563.171	Appraisal policies and practice of savings associations and service corporations.
563.17–2	Re-evaluation of assets; adjustment of book value; adjustment charges	563.172	Re-evaluation of assets; adjustment of book value; adjustment charges.
563.17–3	Forward commitments	563.173	Forward commitments.
563.17–4	Futures transactions	563.174	Futures transactions.
563.17–5	Financial options transactions	563.175	Financial options transactions.
563.17–6	Interest-rate-risk-management procedures	563.176	Interest-rate-risk-management procedures.
563.17–7	Procedures for monitoring Bank Secrecy Act compliance	563.177	Procedures for monitoring Bank Secrecy Act compliance.
563.18	Reports to the Corporation	563.180	Criminal referrals and other reports or statements.
563.18–1	Reports of change in control of mutual institutions	563.181	Reports of change in control of mutual savings associations.
563.18–2	[Previously Removed]		
563.18–3	Reports of change in chief executive officer or director; other reports; form and filing of such reports.	563.183	Reports of change in chief executive officer or director; other reports; from and filing of such reports.
563.19	Bonds for directors, officers, employees, and agents; form of and amount of bonds.	563.190	Bonds for directors, officers, employees, and agents; form and amount of bonds.
563.20	Bonds for agents	563.191	Bonds for agents.
563.21	Safe deposit business	563.192	Safe deposit business.
563.22	Merger, consolidation, purchase or sale of assets, or assumption of liabilities	563.22	Merger, consolidation, purchase or sale of assets, or assumption of liabilities.
562.22–1	[Previously Revoked]		
563.23	[Previously Removed]		
563.23–1	Premium, discounts, charges, and credits with respect to loans; sale of real estate; and related items.	563.231	Premiums and discounts with respect to loans.
563.23–2	Accounting for gains and losses with respect to transactions in securities	Removed	
563.23–3	Accounting principles and procedures	563.233	Accounting principles and procedures.
563.23–4	Accounting for troubled debt restructuring	563.234	Accounting for troubled debt restructuring.
563.24	Sales plans; give-aways	563.24	Sales plans; give-aways.
563.25–563.26	[Previously Removed]		
563.27	Advertising must be accurate	563.27	Advertising.
563.28	Advertising of insurance of accounts	Removed	(FDIC–385.9).
563.29	Name of association	563.29	Name of association.
563.29–1	Continuation of insurance	Removed	(FDIC–385.1).
563.30	Reservation of right concerning advertising	Removed	(FDIC–385.2).
563.31	Other insurance or guaranty	Removed	(FDIC–385.3).
563.32	Payment of trustee fees on pension trust accounts	563.32	Payment of trustee fees on pension trust accounts.
563.33	Directors, officers, and employees	563.33	Directors, officers, and employees.

Previous section	Previous title	New section	New title
563.34	Deposit relationships involving affiliated persons	563.34	Deposit relationships involving affiliated persons.
563.35	Restrictions involving loan services	563.35	Restrictions involving loan services.
563.36	Equal Opportunity in Employment	Removed	(FDIC–385.4).
563.37	Operation of service corporations; limited liability of insured institution for debt of service corporation.	563.37	Operation of service corporations, limited liability of savings association, for debt of service corporation.
563.38	Salvage power of insured institution to assist service corporation	563.38	Salvage power of savings association to assist service corporation.
563.39	Employment contracts	563.39	Employment contracts.
563.39–1	Pension plans	563.47	Pension plans.
563.40	Restrictions on loan procurement fees, kickbacks and unearned fees	563.40	Restrictions on loan procurement fees, kickbacks and unearned fees.
563.41	Restrictions on real and personal property transactions with affiliated persons	563.41	Restrictions on real and personal property transactions with affiliated persons.
563.42	[Reserved]	563.42	[Reserved]
563.43	Restrictions on loans and other investments involving affiliated persons	563.43	Restrictions on loans and other investments involving affiliates and affiliated persons.
563.44	Loans involving mortgage insurance	563.44	Loans involving mortgage insurance.
563.45	Disclosure	563.45	Disclosure.
563.46	Charge-off of consumer credit classified as a loss	563.46	Charge-off of consumer credit classified as a loss.
563.47	Capital forbearance	567.20	Grandfathered capital forbearances.
PART 563a		**PART 568**	
563a.1	Scope of part and definitions	568.1	Scope of part and definitions.
563a.2	Designation of security officer	568.2	Designation of security officer.
563a.3	Security devices	568.3	Security devices.
563a.4	Security procedures	568.4	Security procedures.
563a.5	Reports and records	568.5	Reports and records.
563a.6	Corrective action	568.6	Corrective action.
563a.7	Penalty provision	568.7	Penalty provision.
Appendix A	Minimum standards for security devices	Appendix A	Minimum standards for security devices.
Appendix B	Proper employee conduct during and after a robbery	Appendix B	Proper employee conduct during and after a robbery.
PART 563b			
563b.1	Scope of part	563b.1	Scope of part.
563b.2	Definitions	563b.2	Definitions.
563b.3	General principles for conversions	563b.3	General principles for conversions.
563b.4	Notice of filing; public statements; confidentiality	563b.4	Notice of filing; public statements; confidentiality.
563b.5	Solicitation of proxies; proxy statement	563b.5	Solicitation of proxies; proxy statement.
563b.6	Vote by members	563b.6	Vote by members.
563b.7	Pricing and sale of security	563b.7	Pricing and sale of securities.
563b.8	Procedural requirements	563b.8	Procedural requirements.
563b.9	Conversion of an insured institution in connection with the formation of a holding company.	563b.9	Conversion of a savings association in connection with the formation of a holding company.
563b.10	Conversion of an insured institution in connection with an acquisition by an existing holding company; conversion of an insured institution through merger with an insured stock institution.	563b.10	Conversion of a savings association in connection with an acquisition by an existing holding company; conversion of a savings association through merger with an existing stock savings association.
Subpart B	[Removed effective January 4, 1984]		
563b.20	Scope of subpart	563b.20	Scope of subpart.
563b.21	Voluntary supervisory conversions	563b.21	Voluntary supervisory conversions.
563b.22	Purpose of subpart	563b.22	Purpose of subpart.
563b.23	Authority of supervisory conversions	563b.23	Authorization of supervisory conversions.
563b.24	Qualification for supervisory conversion of FSLIC-insured institutions	563b.24	Qualification for supervisory conversion of SAIF-insured savings associations.
563b.25	Qualifications for supervisory conversion of FDIC-insured institutions	563b.25	Qualifications for supervisory conversion of BIF-insured savings associations.
563b.26	Viability of converted insured institution	563b.26	Viability of converted savings association.
563b.27	Application for voluntary supervisory stock conversion	563b.27	Application for voluntary supervisory stock conversion.
563b.28	Procedural requirements	563b.28	Procedural requirements.
563b.29	Conditions of approval	563b.29	Conditions of approval.
563b.30	Sale of conversion stock	563b.30	Sale of conversion stock.
563b.31	Expenses	563b.31	Expenses.
563b.32	Employment contracts	563b.32	Employment contracts.
563b.33	[Previously Removed]		
563b.34	Scope of subpart	563b.34	Scope of subpart.
563b.35	Modified stock conversion	563b.35	Modified stock conversion.
563b.36	Purpose of subpart	563b.36	Purpose of subpart.
563b.37	Qualification for modified conversion	563b.37	Qualification for modified conversion.
563b.38	Authorization of modified conversion	563b.38	Authorization of modified conversion.
563b.39	Application for modified conversion	563b.39	Application for modified conversion.
563b.40	Sale of stock	563b.40	Sale of stock.

Previous section	Previous title	New section	New title
563b.41	Procedural requirements	563b.41	Procedural requirements.
563b.100	Form AC—Application for Conversion	563b.100	Form AC—Application for Conversion.
563b.101	Form PS—Proxy Statements	563b.101	Form PS—Proxy Statements.
563b.102	Form OC—Offering Circulars	563b.102	Form OC—Offering Circulars.
PART 563c			
563c.1	Form and content of financial statements	563c.1	Form and content of financial statements.
563c.2	Definitions	563c.2	Definitions.
563c.3	Qualification of public accountant	563c.3	Qualification of Public Accountant.
563c.4	Condensed financial information [Parent only]	563c.4	Condensed financial information [Parent only].
563c.10	Use of accrual basis of accounting	563c.10	Use of accrual basis of accounting.
563c.11	Accounting for uncollectible income	Removed	
563c.12	Accounting for net income	563c.12	Accounting for net income.
563c.13	Accounting for investment in service corporation	563c.13	Accounting for investment in service corporation.
563c.14	Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.	563c.14	Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.
563c.101	Application of this subpart	563c.101	Application of this subpart.
563c.102	Financial statement presentation	563c.102	Financial statement presentation.
PART 563d			
563d.1	Requirements under certain sections of the Securities Exchange Act of 1934	563d.1	Requirements under certain sections of the Securities Exchange Act of 1934.
563d.2	Mailing requirements for securities filings	563d.2	Mailing requirements for securities filings.
563d.3b–6	Liability for certain statements by registrants	563d.3d–6	Liability for certain statements by savings associations.
563d.200.30	Delegation of authority to General Counsel	563d.200–30	Delegation of authority to Chief Counsel.
563d.210	Form and content of financial statements	563d.210	Form and content of financial statements.
563d.801	Application of this Subpart	563d.801	Application of this subpart.
563d.802	Description of business	563d.802	Description of business.
PART 563e			
563e.1	Authority	563e.1	Authority.
563e.2	Purposes	563e.2	Purposes.
563e.3	Delineation of community	563e.3	Delineation of community.
563e.4	Community Reinvestment Act statement	563e.4	Community Reinvestment Act statement.
563e.5	Files of public comments and recent CRA statements	563e.5	Files of public comments and recent CRA statements.
563e.6	Public notice	563e.6	Public notice.
563e.7	Assessing the record of performance	563e.7	Assessing the record of performance.
563e.8	Effect on applications	563e.8	Effect on applications.
PART 563f			
563f.1	Authority, purpose, and scope	563f.1	Authority, purpose, and scope.
563f.2	Definitions	563f.2	Definitions.
563f.3	General prohibitions	563f.3	General prohibitions.
563f.4	Permitted interlocking relationships	563f.4	Permitted interlocking relationships.
563f.5	Grandfathered interlocking relationships	563f.5	Grandfathered interlocking relationships.
563f.6	Changes in circumstances	563f.6	Changes in circumstances.
563f.7	Delegation of authority to grant exemptions and extensions of time	563f.7	Delegation of authority to grant exemptions and extensions of time.
563f.8	Enforcement	563f.8	Enforcement.
PART 563g			
563g.1	Definitions	563g.1	Definitions.
563g.2	Offering circular requirements	563g.2	Offering circular requirement.
563g.3	Exemptions	563g.3	Exemptions.
563g.4	Non-public offerings	563g.4	Non-public offering.
563g.5	Filing and signature requirements	563g.5	Filing and signature requirements.
563g.6	Effective date	563g.6	Effective date.
563g.7	Form, content, and accounting	563g.7	Form, content, and accounting.
563g.8	Use of the offering circular	563g.8	Use of the offering circular.
563g.9	Escrow requirement	563g.9	Escrow requirement.
563g.10	Unsafe or unsound practices	563g.10	Unsafe or unsound practices.
563g.11	Withdrawal or abandonment	563g.11	Withdrawal or abandonment.
563g.12	Securities sale report	563g.12	Securities sale report.
563g.13	Public disclosure and confidential treatment	563g.13	Public disclosure and confidential treatment.
563g.14	Waiver	563g.14	Waiver.
563g.15	Requests for interpretive advice or waiver	563g.15	Requests for interpretive advice or waiver.
563g.16	Delayed or continuous offering and sale of securities	563g.16	Delayed or continuous offering and sale of securities.
563g.17	Direct sales of securities at an office	563g.17	Direct sales of securities at an office.
563g.18	Current and periodic reports	563g.18	Current and periodic reports.
563g.19	Approval of the security	563g.19	Approval of the security

Previous section	Previous title	New section	New title
563g.20	Form for securities sale report	563g.20	Form for securities sale report.
563g.21	Filing of copies of offering circulars in certain exempt offerings	563g.21	Filing of copies of offering circulars in certain exempt offerings.
563g.22	Delegation of authority	563g.22	Delegation of authority.
PART 564		**PART 386**	
564.1	Settlement of insurance upon default	Removed	(FDIC–386.1).
564.2	General principles applicable in determining insurance of accounts	Removed	(FDIC–386.2).
564.3	Single ownership accounts	Removed	(FDIC–386.3).
564.4	Testamentary accounts	Removed	(FDIC–386.4).
564.5	Accounts held by executors or administrators	Removed	(FDIC–386.5).
564.6	Accounts held by a corporation or partnership	Removed	(FDIC–386.6).
564.7	Accounts held by an unincorporated association	Removed	(FDIC–386.7).
564.8	Public unit accounts	Removed	(FDIC–386.8).
564.9	Joint account	Removed	(FDIC–386.9).
564.10	Trust accounts and IRA and Keogh accounts	Removed	(FDIC–386.10).
564.11	FDIC-insured federal associations	Removed	(FDIC–386.11).
564.12	[Invalidated by court order, June 20, 1984 (49 FR 27294)]		
Appendix	Examples of insurance coverage afforded accounts in institutions insured by the Federal Savings and Loan Insurance Corporation.	Removed	(FDIC-Appendix to Part 386).
PART 565		**PART 387**	
565.1	Voluntary termination of insurance	Removed	(FDIC–387.1).
565.2	Termination by the Corporation	Removed	(FDIC–387.2).
565.3	Termination of insurance resulting from removal from Federal Home Loan Bank membership.	Removed	(FDIC–387.3).
565.4	Date of termination of insured status	Removed	(FDIC–387.4).
565.5	Notice to insured members	Removed	(FDIC–387.5).
565.6	Cessation of existence; mergers and consolidations	Removed	(FDIC–387.6).
565.7	Cessation of existence; other cases	Removed	(FDIC–387.7).
565.8	Surrender of insurance certificate	Removed	(FDIC–387.8).
565.9	FDIC-insured federal associations	Removed	(FDIC–387.9).
565.10	Liquidation account	Removed	(FDIC–387.10).
PART 566—[Rescinded]			
PART 567			
567.1	Amendment of rules and regulations	Removed	(OTS–54 FR 46845).
		567.1	Definitions.
567.2	[Previously Revoked]	Removed	
		567.2	Minimum regulatory capital requirement.
		567.5	Components of capital.
		567.6	Risk-based capital credit risk weight categories.
		567.8	Leverage ratio.
		567.9	Tangible capital requirement.
		567.10	Consequences of failure to meet capital requirements.
		567.11	Reservation of authority.
PART 568			
568.1	Agents for service of process	Removed	
PART 569			
569.1	Definitions	569.1	Definitions.
569.2	Form of proxies	569.2	Form of proxies.
569.3	Holders or proxies	569.3	Holders of proxies.
569.4	Proxy soliciting material	569.4	Proxy soliciting material.
PART 569a		**PART 579**	
569a.1	Grounds for appointment of receiver	Removed	
		579.1	Scope.
569a.2	Appointment of Receiver	Removed	
569a.3	Notice of appointment	579.3	Notice.
569a.4	Possession by Receiver	Removed	(FDIC–388.1).
		579.4	Inventory.
569a.5	Procedure on taking possession	579.2	Procedure on taking possession.
		579.5	Inspection of report.
569a.6	Powers and duties as Receiver	Removed	(FDIC–388.3).
		579.6	Delegation by conservator.
569a.7	Priority of claims	Removed	(FDIC–388.4).
		579.7	Surrender of possession by a conservator.
569a.8	Creditor claims	Removed	(FDIC–388.5).
569a.9	Claims of accountholders	Removed	(FDIC–388.6).
569a.10	Audits	Removed	(FDIC–388.7).
569.11	Accounting practices; reports	Removed	(FDIC–388.8).
569.12	Final discharge and release of Receiver	579.8	Final discharge and release of conservator.
569a.13	Purchase and assumption transactions	Removed	(FDIC–388.10).

Previous section	Previous title	New section	New title
PART 569c		**PART 349**	
569c.1	Definitions	Removed	(FDIC–389.1).
569c.2	Scope	Removed	(FDIC–389.2)
569c.3–569c.6	[Previously Reserved]	Removed	(FDIC–389.3)
569c.7–1	Subrogation of the Corporation and Assignment of Claim	Removed	(FDIC–389.4)
569c.8–1	Federal Home Loan Banks as Secured Creditors	Removed	(FDIC–389.5)
569c.9–569c.10	[Previously Reserved]	Removed	(FDIC–389.6)
569c.11	Priorities	Removed	(FDIC–389.7)
PART 570			
570.1	[Previously Rescinded]		
570.2	[Previously Revoked]		
570.3	Reserves; Federal insurance reserve; transfers from; undivided profits	Removed	
570.4	Regulatory capital	571.23	Regulatory capital.
570.5	[Removed effective March 21, 1985]		
570.6	[Previously Revoked]		
570.7	Appraisals; payment for	571.20	Payment for appraisals.
570.8	Computation of scheduled items, assets and specified assets	Removed	
570.9	[Removed effective August 16, 1982]		
570.10	Separate corporate existence of a service corporation	571.21	Separate corporate existence of a service corporation.
570.11	Most favored lender status	571.22	Most favored lender status.
570.12	Insurance of accounts evidenced by negotiable instruments	Removed	(FDIC–386.12).
570.13	Insurance of annuity accounts	Removed	(FDIC–386.13).
PART 571			
571.1	Appraisal of real estate securing asset of insured institutions	571.1	Appraisal of real estate securing asset of savings associations.
571.1a	Classification of certain assets	571.26	Classification of certain assets.
571.1b	Appraisal policies and practices of insured institutions	571.27	Appraisal policies and practices of savings associations.
571.2	Audits of insured institutions	571.2	Audits of savings associations.
571.3	Interest-rate-risk management	571.3	Interest-rate-risk management.
571.4	Hazard insurance	571.4	Hazard insurance.
571.5	Mergers and transfers of assets and liabilities	571.5	Mergers and transfers of assets and liabilities.
571.6	Policy considerations regarding 'de novo' applications for insurance of accounts	571.6	Policy considerations regarding 'de novo' applications.
571.7	Conflicts of interest	571.7	Conflicts of interest.
571.8	Investment in state housing corporation	571.8	Investment in state housing corporations.
571.9	Corporate opportunity in insured institutions	571.9	Corporate opportunity in savings associations.
571.10	Gold and gold-related transactions	571.10	Gold and gold-related transactions.
571.11	Exclusive leases and similar agreements	571.11	Exclusive leases and similar agreements.
571.12	Applications processing guidelines	571.12	Applications processing guidelines.
571.13	Participation interests in pools of loans	571.13	Participation interests in pools of loans.
571.14	Fidelity bonds; acceptable surety companies	571.14	Fidelity bonds; acceptable surety companies.
571.15	Fiduciary activities of state-chartered insured institutions and service corporations.	571.15	Fiduciary activities of state-chartered savings associations and service corporations.
571.16	Mortgage-backed-securities transaction	571.6	Mortgage-backed-securities transaction.
571.17	[Previously Removed]		
571.18	Accounting for troubled debt restructuring	571.18	Accounting for troubled debt restructuring.
571.19	Investment Portfolio Policy and accounting guidelines	571.19	Investment portfolio policy and accounting guidelines.
PART 572		**PART 390**	
572.1	Purchase of net worth certificates	Removed	(FDIC–390.1).
572.2	Definitions	Removed	(FDIC–390.2).
572.3	Application for Corporation purchases of net worth certificates	Removed	(FDIC–390.3).
572.4	Delegations	Removed	(FDIC–390.4).
572.5	Right of appeal	Removed	(FDIC–390.5).
572.6	Effect of Corporation purchase of net worth certificates	Removed	(FDIC–390.6).
572.7	Dividends	Removed	(FDIC–390.7).
572.8	Branching	Removed	(FDIC–390.8).
572.9	Transactions with holding company	Removed	(FDIC–390.9).
572.10	Board statutory authority	Removed	(FDIC–390.10).
PART 572a		**Part 391**	
572a.1	Statement of policy	Removed	(FDIC–391.1).
572a.2	Definitions	Removed	(FDIC–391.2).
572a.3	Standards of eligibility	Removed	(FDIC–391.3).
572a.4	Procedure for recommendation and designation	Removed	(FDIC–391.4).
572a.5	Actions by Principal Supervisory Agent	Removed	(FDIC–391.5).
572a.6	Sunset	Removed	(FDIC–391.6).
PART 574			
574.1	Scope of part	574.1	Scope of part.
574.2	Definitions	574.2	Definitions.
574.3	Acquisition of control of insured institutions	574.3	Acquisition of control of savings associations.

Previous section	Previous title	New section	New title
574.4	Control	574.4	Control.
574.5	Certifications of ownership and other reports	574.5	Certifications of ownership and other reports.
574.6	Procedural requirements	574.6	Procedural requirements.
574.7	Determination by the Corporation	574.7	Determination by the Office.
		574.8	Qualified stock issuances by under-capitalized savings associations or holding companies.
574.8	Delegations of authority	574.9	Delegations of authority.
574.100	Rebuttal of control agreement	574.100	Rebuttal of control agreement.
PART 575		**PART 392**	
575.1	Purpose	Removed	(FDIC–392.1).
575.2	Definitions	Removed	(FDIC–392.2).
575.3	Publication of notice	Removed	(FDIC–392.3).
575.4	Proof of claim	Removed	(FDIC–392.4).
575.5	Insured deposits	Removed	(FDIC–392.5).
575.6	Uninsured deposits	Removed	(FDIC–392.6).
575.7	Agents of the special representative	Removed	(FDIC–392.7).
575.8	Control log for proofs of claims	Removed	(FDIC–392.8).
575.9	Review of proof of claims	Removed	(FDIC–392.9).
575.10	Review on the merits of a claim	Removed	(FDIC–392.10).
575.11	Allowance, disallowance, or retention for further review of claim	Removed	(FDIC–392.11).
575.12	Special representative and claims counsel	Removed	(FDIC–392.12).
575.13	Elements of review	Removed	(FDIC–392.13).
575.14	Request for immediate determination	Removed	(FDIC–392.14).
575.15	Burden of proof	Removed	(FDIC–392.15).
575.16	Exclusion from claims procedure	Removed	(FDIC–392.16).
575.17	Application of claims procedure	Removed	(FDIC–392.17).
575.18	Criteria for the determination of claims for provision of services, supplies, and material	Removed	(FDIC–392.18).
575.19	Claims to security, priority, or preference	Removed	(FDIC–392.19).
PART 575a		**PART 393**	
575a.1	Presentment of claims to receivers required as prerequisite to commencing litigation.	Removed	(FDIC–393.1).
575a.2	Inclusion of presentment requirement in notices to potential creditors	Removed	(FDIC–393.2).
PART 576		**PART 394**	
576.1	Purpose	Removed	(FDIC–394.1).
576.2	Notice of right to file a request for review	Removed	(FDIC–394.2).
576.3	Filing a request for review	Removed	(FDIC–394.3).
576.4	Control of request for review	Removed	(FDIC–394.4).
576.5	Basis for board decision	Removed	(FDIC–394.5).
576.6	Burden of proof	Removed	(FDIC–394.5).
576.7	Issuance of decision	Removed	(FDIC–394.7).
576.8	Decision in writing	Removed	(FDIC–394.8).
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12 CFR Part 529

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12 CFR Part 543

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Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563f

Antitrust, Holding companies, Savings associations.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 566

Liquidity, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 567

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12 CFR Part 574

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12 CFR Part 584

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12 CFR Part 590

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12 CFR Part 591

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Accordingly, the Office of Thrift Supervision hereby revises chapter V, title 12, Code of Federal Regulations to read as follows:

CHAPTER V—OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

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504 National security information.
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500.14 Chief Economist.
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500.19 Senior Deputy Director for Supervision (Operations).
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500.30 General statement concerning procedures and forms.
500.32 Offices of the Office of Thrift Supervision; information and submittals.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

Subpart A—Functions and Responsibilities of the Director of the Office of Thrift Supervision

§ 500.1 General statement and statutory authority.

The Director of the Office of Thrift Supervision (referred to in this chapter as "Director" or "Office") is responsible for the administration and enforcement of the Home Owners' Loan Act of 1933, ("HOLA"), and applicable portions of the Federal Deposit Insurance Act and with respect to savings associations subject to provisions of the foregoing acts and title, the Bank Protection Act of 1968, the Truth in Lending Act, and the Fair Credit Reporting Act.

§ 500.3 The Federal savings association system.

The Office is authorized under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of Federal savings associations. Under this authority, the Office's functions include, but are not limited to, regulation of the corporate structure of such associations, regulation of the distribution of their earnings, regulation of their lending and other investment powers, acting upon their applications for facility offices (including branch offices, limited facilities, mobile facilities and satellite offices), the regulation of mergers, conversions, and dissolutions involving such associations, the appointment of conservators and receivers for such associations, and the enforcement of laws, regulations, or conditions against such associations or the officers or directors thereof by proceedings under section 5 of the Home Owners' Loan Act of 1933, as amended.

§ 500.4 Supervision and regulation of savings associations.

The Office regulates and examines savings associations within the authority conferred by the HOLA and the FDIA and is authorized to enforce applicable laws, regulations, or conditions against savings associations or the officers or directors thereof by proceedings under section 5 of the HOLA and section 8 of the FDIA as amended. The Office also regulates and supervises savings and loan holding companies pursuant to the provisions of section 10 of the HOLA, as amended, and section 8 of the FDIA.

§ 500.5 District of Columbia savings associations.

The Office exercises supervisory and regulatory authority over all building and loan or savings and loan associations and similar institutions of or doing business in or maintaining offices in the District of Columbia.

§ 500.6 General statement concerning gender-related terminology.

The statutes administered by the Office and the rules, regulations, policies, practices, publications, directives, and guidelines promulgated pursuant to such statutes that prescribe the course and methods to be followed by the Office that inadvertently use or contain gender-related terminology are to be interpreted as equally applicable to either sex.

Subpart B—General Organization

§ 500.10 The Office.

The Office of Thrift Supervision is an Office of the Department of the Treasury. Its functions are to charter, supervise, regulate and examine Federal savings associations and to supervise, regulate, and examine all savings associations. It is directed by a Director, who is appointed by the President and confirmed by the Senate to a five year term.

§ 500.11 Secretary to the Office.

The Secretary to the Office is responsible for the secretarial functions of the Office and has custody of the records of the Office. The Secretary to the Office is responsible for the preparation and maintenance of the Record of all official actions of the Office, for the authentication of documents and for certifications. The Office of the Secretary provides general record services for the Office through the Files and Docket Section, which is under the direction and supervision of the Secretary to the Office.

§ 500.12 Senior Deputy Director for Congressional Relations and Communications.

The Senior Deputy Director for Congressional Relations and Communications is responsible to the Director for ensuring appropriate coordination and communication with Congress and the public and the news media.

§ 500.13 Senior Deputy Director for Management.

The Senior Deputy Director for Management is responsible for the administration and management of the internal financial operations of the Office, including budgeting, accounting, receipt, and disbursement of funds; control, processing, and payment of expenses; and maintenance of pay and leave records. The responsibility includes the supervision and administration of the office.

§ 500.14 Chief Economist.

The Chief Economist, as principal economic adviser to the Office, is responsible for the design and supervision of economic analysis in the areas of general economic developments, capital and mortgage markets, housing, and the savings and loan industry and competing financial intermediaries, as well as matters relating to legislation, regulation, and policies of the Office. The Chief Economist's responsibilities also include: Developing and maintaining various research, statistical, and econometric programs to gather and keep current information relating to the savings and loan industry; providing research support and advice to the Office and acting as official economic spokesman for the Office.

§ 500.17 The Chief Counsel.

The Chief Counsel is the chief legal officer of the Office and has, among other functions, those set forth below. The Chief Counsel is responsible for the representation of the Office in judicial proceedings in which the Office is involved as a party or as amicus curiae, except for those enforcement actions in which the Office is represented by the Office of Enforcement. He also is responsible for defending all appeals of final Office orders in the federal Courts of Appeal. The Chief Counsel is responsible for advising the Office with respect to interpretations involving questions of law, for the preparation of legislation submitted by the Office to Congress, for the preparation of Office comments to Congress upon pending legislation, and for the preparation and interpretation of regulations. In addition, the Chief Counsel also is responsible for dealing with general problems arising under the Administrative Procedure Act and for dealing with legal problems arising under applications to the Office.

§ 500.19 Senior Deputy Director for Supervision (Operations).

The Senior Deputy Director for Supervision (Operations) serves as chief liaison between the 12 District Offices and the Office and oversees the operations and financial programs of each District Office. The Senior Deputy Director for Supervision (Operations) is responsible for ensuring that the District Offices conform with applicable laws as well as Office regulations and policies and for arranging annual audits of each of the District Offices. The Senior Deputy Director for Supervision (Operations) is responsible for processing, reviewing, and evaluating certain applications to the Office, except for applications which are approved by other agents or offices of the Office pursuant to delegated authority.

§ 500.20 Senior Deputy Director for Supervision (Policy).

The Senior Deputy Director for Supervision (Policy) is responsible for developing, as directed by the Director, policy guidelines for the Office in the areas within the Office's authority.

Subpart C—Procedures

§ 500.30 General statement concerning procedures and forms.

(a) Rules and procedures of the Office are published in chapter V of title 12 of the Code of Federal Regulations and in supplementary material published in the **Federal Register**. The statutes administered by the Office and the rules and regulations promulgated pursuant to such statutes prescribe the course and method of the formal procedures to be followed in proceedings of the Office. These are supplemented where practicable by informal procedures designed to aid the public and facilitate the execution of the Office's functions. The informal procedures of the Office consist principally in the rendering of advice and assistance to members of the public dealing with the Office. Opinions expressed by members of the staff do not constitute an official expression of the views of the Office, but do represent views of persons working with the provisions of the statute or regulation involved.

(b) Information with respect to procedures, forms, and instructions of the Office is available to the public at the headquarters of the Office. Forms of concern to the public consist principally

of periodic financial reports and of applications to the Office. The Office may from time to time require the completion by individuals or savings associations of miscellaneous forms, questionnaires, reports, or other papers. In each instance, the individual or savings association is given actual and timely notice of the scope and contents of the papers in question.

§ 500.32 Offices of the Office of Thrift Supervision; information and submittals.

(a) The headquarters of the Office is located at 1700 G Street, NW., Washington, DC 20552. General information concerning the Office and District Offices of the Office may be obtained in person at that location or by written request addressed to the Secretary to the Office, 1700 G Street, NW., Washington, DC 20552.

(b) The District Offices of the Office and their districts are as follows:

(1) Boston District Office, One Financial Center, 20th Floor, Boston, Massachusetts 02111. (District: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

(2) New York District Office, 1 World Trade Center, Floor 103, New York, New York 10048. (District: New Jersey, New York, Puerto Rico, Virgin Islands).

(3) Pittsburgh District Office, 20 Stanwix Street, One Riverfront Center, Pittsburgh, Pennsylvania 15222. (District: Delaware, Pennsylvania, West Virginia).

(4) Atlanta District Office, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309. (District: Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia).

(5) Cincinnati District Office, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202. (District: Kentucky, Ohio, Tennessee).

(6) Indianapolis District Office, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204. (District: Indiana, Michigan).

(7) Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601. (District: Illinois, Wisconsin).

(8) Des Moines District Office, 907 Walnut Street, Des Moines, Iowa 50309. (District: Iowa, Minnesota, Missouri, North Dakota, South Dakota).

(9) Dallas District Office, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261. (District: Arkansas, Louisiana, Mississippi, New Mexico, Texas).

(10) Topeka District Office, 3 Townsite Plaza, 200 East 6th Street, Topeka, Kansas 66603. (District: Colorado, Kansas, Nebraska, Oklahoma).

(11) San Francisco District Office, 580 California Street, 10th Floor, San Francisco, California 94104. (District: Arizona, California, Nevada).

(12) Seattle District Office, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101. (District: Alaska, Hawaii, Guam, Idaho, Montana, Oregon, Utah, Washington, Wyoming).

PART 502—ASSESSMENTS

Authority: Sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467).

§ 502.1 Interim assessments and fees.

(a) *Interim assessments and fees.* To fund the Office's operations until a permanent assessment mechanism is in place, the Director shall issue an initial assessment or assessments upon savings associations, calculated on the basis established in paragraphs (b) and (c) of this section and payable by the means prescribed in paragraph (h) of this section, except that the Director may in special cases direct that payment be made by the means prescribed in paragraph (i) of this section. The Director may also issue initial assessments under paragraphs (d) through (g) of this section.

(b) *Interim examination fees for savings associations.* Each savings association shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed savings association's assets as shown on its Thrift Financial Report for the most recent month. The percentage of assets shall be the same for each savings association. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(c) *Working-capital fund.* The Director may establish a working-capital fund pursuant to section 9(7) of the Home Owners' Loan Act of 1933, as amended. The working-capital fund shall be funded by collections by the Director of fees under paragraph (b) of this section at a level in excess of expenses actually incurred by the Office during the interim period. If the Director collects an interim assessment or assessments under paragraphs (d) and (e) of this section, he may likewise set those assessments at a level to contribute to the working-capital fund authorized by this paragraph (c). The Director shall refund to the payors funds collected in excess of those that he deems necessary to maintain the working-capital fund and to pay the Office's expenses.

(d) *Examination fees for affiliates.* Each affiliate of a savings association, in the discretion of the Director, shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed affiliate's assets as shown in the most recent statement on file with the Office or, if there is no such statement, the results of the most recent examination. The percentage of assets shall be the same for each assessed affiliate except as the Director may otherwise direct. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(e) *Further fees for examinations and supervisory activities.* The Director may assess upon institutions for which the Director is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, additional interim fees that may be necessary to fund the direct and indirect expenses of the Office. Such fees shall be imposed in proportion of the assets or resources of the institutions.

(f) *Fees for fiduciary examinations.* The Director may assess interim fees adequate to cover the cost of examinations of fiduciary activities of savings associations that exercise fiduciary powers. The fees shall be assessed upon the institution examined, and may include office analysis, overhead, per diem, travel expense, and other costs, direct or indirect, attributable to the examination.

(g) *Processing fees.* The Director may establish an interim schedule of fees for processing applications, filings, notices, requests for approval, and other such submissions. Such fees shall be set at an amount necessary to cover the Office's projected costs of processing such submissions. Submissions for which a processing fee is required shall not be processed if the fee is not tendered with the submission, except in the discretion of the Director or his designees.

(h) *Collection of fees and assessments by debit of accounts at Federal Home Loan Banks.* Each association that is:

(1) Subject to fees and assessments under paragraphs (a) through (f) of this section, and

(2) A member of a Federal Home Loan Bank, shall establish at its Federal Home Loan Bank a demand deposit account for the purpose of paying such fees and assessments.

Each such member association, using a form approved by the Director, shall authorize its Federal Home Loan Bank to debit such account directly to effectuate payment of assessments and fees to the Office, and shall maintain funds in such account in sufficient amount to pay its obligations to the Office. The Director shall mail a payment notice to each such association at least five days prior to the date that any such account is to be debited to pay the member association's obligations to the Office, which notice shall specify the date on which the debit is to occur.

(i) *Direct billing of associations.* As an alternative to the payment mechanism described in paragraph (h) of this section, the Director may collect assessments by sending notice and demand for direct payment thereof to an assessed association. In such case, the association shall pay the fee or assessment identified in such notice not later than the date specified in such notice. This payment procedure shall be used to collect fees and assessments from assessed institutions that are not members of a Federal Home Loan Bank.

(j) *Interest.* For all associations, overdue fees and assessments shall bear interest. Such interest shall be calculated at a rate (to be redetermined quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

PART 503—PRIVACY ACT

Authority: Sec. 552a, 80 Stat. 383, as amended (5 U.S.C. 552a); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

Cross Reference: See 31 CFR part 1, subpart C.

§ 503.1 Scope and procedures.

(a) *In general.* The Privacy Act regulations of the Department of the Treasury, 31 CFR part 1, subpart C, apply to the Office as a component part of the Department of the Treasury. This part 503 sets forth, for the Office, specific notification and access procedures with respect to particular systems of records, and identifies the officials designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This part 503 also sets forth the specific procedures for requesting amendment of records and identifies the officials designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officials designated to grant extensions of time on appeal, the officials with whom "Statements of Disagreement" may be filed, the official designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances."

(b) *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(c) *Requests for amendment of records.* Initial determinations under 31 CFR 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed to: Privacy Act Amendment Request, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(d) *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office will be made by the Director of the Office of Thrift Supervision ("Director") or Chief Counsel or the delegate of the Director or Chief Counsel. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(e) *Statements of disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the Senior Deputy Director for Congressional Relations and Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

(f) *Service of process.* Service of process will be received by the Chief Counsel's Office or the delegate of such official and shall be delivered to the following location: Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(g) *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuance." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

PART 504—NATIONAL SECURITY INFORMATION

Sec.

504.1 Purpose and scope.
504.2 Policy.
504.3 Administration of program.
504.4 Mandatory review procedure.

Authority: E.O. 12356, 47 FR 27836 (1982).

§ 504.1 Purpose and scope.

(a) This part is issued by the Office pursuant to the requirement of Subpart E of Executive Order 12356, 47 FR 27839 (1982) ("the Order"), that unclassified regulations that establish information security policy and unclassified guidelines for systematic declassification review, which affect the public, be published in the Federal Register.

(b) This part covers all information and material handled by the Office that is owned by, produced for or by, or under the control of, the United States Government, has been determined pursuant to the Order or prior orders to require protection against unauthorized disclosure, and is so designated. Such material is referred to in this part as classified information.

§ 504.2 Policy.

It is the Office's policy to act in accordance with the Order with respect to all classified information.

§ 504.3 Administration of program.

The Senior Deputy Director for Management ("Senior Deputy Director"), shall:

(a) Implement and oversee the Office's information security program;

(b) Receive questions, suggestions, and complaints regarding it;

(c) Make changes to it as he deems advisable;

(d) Ensure that it is at all times consistent with the Order;

(e) Receive requests for declassification regardless of the origin of any such request, ensuring that requests are acted upon promptly and a final determination as to declassification is made within one year from the date or receipt except in unusual circumstances; and

(f) Ensure that requests submitted under the Freedom of Information Act are handled in accordance with that Act.

§ 504.4 Mandatory review procedure.

The Senior Deputy Director shall process requests for mandatory review for declassification. He shall not refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the Mandatory Review Provision of the Order, unless the fact of its existence or non-existence would itself be classified under the Order.

PART 505—FREEDOM OF INFORMATION ACT

Sec.
505.1 Basis and scope.
505.2 Public reading room.
505.3 Requests for records.
505.4 Administrative appeal of initial determination to deny records.
505.5 Delivery of process.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

Cross Reference: See 31 CFR part 1, subpart A.

§ 505.1 Basis and scope.

(a) This part is issued by the Office of Thrift Supervision ("Office") as a supplement to the Freedom of Information Act regulations of the Department of the Treasury, 31 CFR part 1, subpart A, which apply to the Office as a component part of the Department of the Treasury.

(b) This part is issued by the Office pursuant to the requirement of section 552 of title 5 of the United States Code, which requires every federal agency to publish in the **Federal Register** the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals on requests, or obtain decisions, and the forms available or the places at which forms and instructions as to the scope and contents of all papers, reports, or examinations may be found. Information about the Public Reading Room is set forth in § 505.2 of this part. Procedures for requests for information are set forth in § 505.3 of this part. Information about administrative appeals is set forth in section 505.4 of this part. Provisions relating to delivery of process upon the Office are set forth in § 505.5 of this part.

§ 505.2 Public reading room.

The Office will make materials available for review on an ad hoc basis when necessary. Contact the FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

§ 505.3 Requests for records.

Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office will be made by the Freedom of Information Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

§ 505.4 Administrative appeal of initial determination to deny records.

Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office will be made by the Chief Counsel or his or her designee. Appeals made by mail should be addressed to: FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006. Appeals may be delivered personally to the FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

§ 505.5 Delivery of process.

Service of process will be received as set forth in section 510.4 of this subchapter.

PART 508—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

Sec.
508.1 Scope.
508.2 Definitions.
508.3 Issuance of Notice or Order.
508.4 Contents and service of the Notice or Order.
508.5 Petition for hearing.
508.6 Initiation of hearing.
508.7 Conduct of hearings.
508.8 Default.
508.9 Rules of evidence.
508.10 Burden of persuasion.
508.11 Relevant considerations.
508.12 Proposed findings and conclusions and recommended decision.
508.13 Decision of the Office.
508.14 Miscellaneous.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 64 Stat. 879, as amended (12 U.S.C. 1818).

§ 508.1 Scope.

The rules in this part apply to hearings, which are exempt from the adjudicative provisions of the Administrative Procedure Act, afforded to any officer, director, or other person participating in the conduct of the affairs of a savings association, affiliate service corporation, savings and loan holding company, or subsidiary of such a holding company, where such person has been suspended or removed from office or prohibited from further participation in the conduct of the affairs of one of the aforementioned entities by a Notice or Order served by the Office upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act, (12 U.S.C. 1818(g)).

§ 508.2 Definitions.

As used in this part—

(a) The term *Office* means the Office of Thrift Supervision.

(b) The term *Secretary* means the Secretary to the Office and any Assistant or Acting Secretary to the Office.

(c) The term *Notice* means a Notice of Suspension or Notice of Prohibition issued by the Office pursuant to section 8(g) of the Federal Deposit Insurance Act.

(d) The term *Order* means an Order of Removal or Order of Prohibition issued by the Office pursuant to section 8(g) of the Federal Deposit Insurance Act.

(e) The term *association* means a savings association within the meaning of section 2(4) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1462(4) ("HOLA"), an affiliate service corporation within the meaning of section 8(b)(8) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818(b)(8) ("FDIA"), a savings and loan holding company within the meaning of section 10(a)(1)(D) of the HOLA, 12 U.S.C. 1467a(a)(1)(D) and a subsidiary of a savings and loan holding company (other than a savings association) within the meaning of section 10(a)(1)(G) of the Home Owners' Loan Act of 1933.

(f) The term *subject individual* means a person served with a Notice or Order.

(g) The term *petitioner* means a subject individual who has filed a petition for informal hearing under this Part.

§ 508.3 Issuance of Notice or Order.

(a) The Office may issue and serve a Notice upon an officer, director, or other person participating in the conduct of the affairs of an association, where the individual is charged in any information, indictment, or complaint with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, if the Office, upon due deliberation, determines that continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association. The Notice shall remain in effect until the information, indictment, or complaint is finally disposed of or until terminated by the Office.

(b) The Office may issue and serve an Order upon a subject individual against whom a judgment of conviction, or an agreement to enter a pretrial diversion or other similar program has been rendered, where such judgment is not subject to further appellate review, and the Office, upon the deliberation, has determined that continued service or participation by the subject individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association.

§ 508.4 Contents and service of the Notice or Order.

(a) The Notice or Order shall set forth the basis and facts in support of the Office's issuance of such Notice or Order, and shall inform the subject individual of his right to a hearing, in accordance with this part, for the purpose of determining whether the Notice or Order should be continued, terminated, or otherwise modified.

(b) The Secretary shall serve a copy of the Notice or Order upon the subject individual and the related association in the manner set forth in § 509.9 of this subchapter.

(c) Upon receipt of the Notice or Order, the subject individual shall immediately comply with the requirements thereof.

§ 508.5 Petition for hearing.

(a) To obtain a hearing, the subject individual must file two copies of a petition with the Secretary within 30 days of being served with the Notice or Order.

(b) The petition filed under this section shall admit or deny specifically each allegation in the Notice or Order, unless the petitioner is without knowledge or information, in which case the petition shall so state and the statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a petitioner intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) The petition shall state whether the petitioner is requesting termination or modification of the Notice or Order, and shall state with particularity how the petitioner intends to show that his continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or to impair public confidence in the association.

§ 508.6 Initiation of hearing.

(a) Within 10 days of the filing of a petition for hearing, the Office shall notify the petitioner of the time and place fixed for hearing, and it shall designate one or more Office employees to serve as presiding officer.

(b) The hearing shall be scheduled to be held no later than 30 days from the date the petition was filed, unless the time is extended at the request of the petitioner.

(c) A petitioner may appear personally or through counsel, but if represented by counsel, said counsel is required to comply with § 509.5 of this subchapter.

(d) A representative(s) of the Office's Office of Enforcement also may attend the hearing and participate therein as a party.

§ 508.7 Conduct of hearings.

(a) Hearings provided by this section are not subject to the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557). The presiding officer is, however, authorized to exercise all of the powers enumerated in § 509.4 of this subchapter.

(b) Witnesses may be presented, within time limits specified by the presiding officer, provided that at least 10 days prior to the hearing date, the party presenting the witnesses furnishes the presiding officer and the opposing party with a list of such witnesses and a summary of the proposed testimony. However, the requirement for furnishing such a witness list and summary of testimony shall not apply to the presentation of rebuttal witnesses. The presiding officer may ask questions of any witness, and each party shall have an opportunity to cross-examine any witness presented by an opposing party.

(c) Upon the request of either the petitioner or a representative of the Office of Enforcement, the record shall remain open for a period of 5 business days following the hearing, during which time the parties may make any additional submissions for the record. Thereafter, the record shall be closed.

(d) Following the introduction of all evidence, the petitioner and the representative of the Office of Enforcement shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

(e) All oral testimony and oral argument shall be recorded, and transcripts made available to the petitioner upon payment of the cost thereof. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record sua sponte or upon the motion of any party.

(f) The parties may, in writing, jointly waive an oral hearing and instead elect a hearing upon a written record in which all evidence and argument would be submitted to the presiding officer in documentary form and statements of individuals would be made by affidavit.

§ 508.8 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 508.7(d) or (f) of this part, the Notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the Order shall remain in effect until terminated by the Office.

§ 508.9 Rules of evidence.

(a) Formal rules of evidence shall not apply to a hearing, but the presiding officer may limit the introduction of irrelevant, immaterial, or unduly repetitious evidence.

(b) All matters officially noticed by the presiding officer shall appear on the record.

§ 508.10 Burden of persuasion.

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the association does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association.

§ 508.11 Relevant considerations.

(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association, in order to decide whether the Notice or Order should be continued, terminated, or otherwise modified, the Office will consider:

(1) The nature and extent of the petitioner's participation in the affairs of the association;

(2) The nature of the offense with which the petitioner has been charged;

(3) The extent of the publicity accorded the indictment and trial; and

(4) Such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the Office will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the Office will not collaterally review such final judgment of conviction.

§ 508.12 Proposed findings and conclusions and recommended decision.

(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer shall file with the Secretary and certify to the Office for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

(b) The recommended decision shall contain:

(1) A statement of the issue(s) presented,

(2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and

(3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

§ 508.13 Decision of the Office.

(a) Within 30 days after the recommended decision has been certified to the Office, the Office shall issue a final decision.

(b) The Office's final decision shall contain a statement of the basis therefor. The Office may satisfy this requirement where it adopts the recommended decision of the presiding officer upon finding that the recommended decision satisfies the requirements of § 509.27(b) of this subchapter.

(c) The Secretary shall serve upon the petitioner and the representative of the Office of Enforcement a copy of the Office's final decision and the related recommended decision.

§ 508.14 Miscellaneous.

The provisions of §§ 509.9, 509.10, 509.11, 509.12, and of this subchapter shall apply to proceedings under this part.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—General

Sec.

509.1 Scope of regulations.
509.2 Definitions.
509.3 Appointment of Administrative Law Judge.
509.4 Authority of the Administrative Law Judge.
509.5 Appearance and practice in an adjudicatory proceeding.
509.6 Good faith certification.
509.7 Ex parte communications.
509.8 Maintenance of the record.
509.9 Service.
509.10 Filing of papers.
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509.12 Computing time.
509.13 Notice.
509.14 Answer.
509.15 Amending pleadings.
509.16 Consolidation and severance of proceedings.
509.17 Motions.
509.18 Interlocutory review.
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509.20 Opportunity for informal settlement.
509.21 Discovery.
509.22 Subpoenas for documentary or physical evidence or for witness attendance.
509.23 Depositions.
509.24 Conduct of hearings.
509.25 Private and public hearings.
509.26 Summary disposition.
509.27 Proposed findings of fact and conclusions of law and recommended decision.
509.28 Briefs.
509.29 Exceptions.
509.30 Oral argument before the Office.
509.31 Notice of submission to the Office.
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Subpart B—Assessment of Civil Money Penalties

509.33 Scope.
509.34 Notice of assessment; request for hearing; answer.
509.35 Notice of hearing.
509.36 Assessment orders.
509.37 Payment of civil penalty.
509.38 Relevant considerations.

Authority: Sec. 556, 80 Stat. 386, as amended (5 U.S.C.556); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78*l*).

Subpart A—General

§ 509.1 Scope of regulations.

This part prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings are provided by the following statutory provisions:

(a) Hearings in cease and desist proceedings under section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818(b) ("FDIA");

(b) Hearings under section 8(e) of the FDIA, 12 U.S.C. 1818(e), to determine whether a director, officer, or other person should be removed from office and/or prohibited from further participation in the conduct of the affairs of a savings association;

(c) Hearings under section 10(a)(2)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1467a(a)(2)(D), to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(d) Hearings under section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), section 18(j)(4) of the FDIA, 12 U.S.C. 1828(j)(4), section 10(i)(3) of the HOLA, 12 U.S.C. 1467a(i)(3) and section 7(j)(16) of the FDIA, 12 U.S.C. 1817(j)(16), to determine whether and/or to what extent civil penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials or institution-affiliated parties for violation of any regulation, law, order, written agreement, condition imposed in writing by the Office in connection with the grant of any application, or in the conduct of any unsafe or unsound practice in conducting the affairs of the association or breach of any fiduciary duty that is a part of a pattern of misconduct that causes or is likely to cause more than a minimal loss to the savings association or results in pecuniary gain or other benefit to such party;

(e) Hearings under section 9(d) of the HOLA, 12 U.S.C. 1467(d), to determine whether and/or to what extent civil penalties should be assessed against any savings association for failure of the association's affiliate to permit any examiner appointed by the Director to make an examination or failure to provide any information required to be disclosed in the examination;

(f) Hearings under section 10(g)(5)(A) of the HOLA, 12 U.S.C. 1467a(g)(5)(A), to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary;

(g) Hearings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), to determine whether the Office should issue an order to approve or disapprove a person's proposed acquisition of a savings association and/or savings and loan holding company;

(h) Hearings under section 5(v) of the HOLA, 12 U.S.C. 1464(v) and section 10(r)(5) of the HOLA, 12 U.S.C. 1467a(r)(5) to determine whether penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials for submission of false or inaccurate information to the Office; and

(i) Hearings under section 15(c)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(4) (the "Exchange Act"), to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act, 15 U.S.C. 78*l*(i), has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act.

§ 509.2 Definitions.

As used in this part:

(a) The term *adjudicatory proceeding* means a proceeding conducted pursuant to this part and leading to the formulation of a final order other than a regulation.

(b) The term *association* means a savings association within the meaning of section 2(4) of the HOLA, 12 U.S.C. 1462(4), a subsidiary of a savings association, a savings and loan holding company within the meaning of section 10(a)(1)(D) of the HOLA, 12 U.S.C. 1467a(a)(1)(D) and a subsidiary of a savings and loan holding company within the meaning of section 10(a)(1)(G) of the HOLA, 12 U.S.C. 1467a(1)(G).

(c) The term *Office* means the Office of Thrift Supervision, the Director of the Office of Thrift Supervision or his designee.

(d) The term *Director of Enforcement* means the chief enforcement officer for the Office, any designee, representative, counsel, or any person subject to the direction of the Director of Enforcement.

(e) The term *Secretariat* means the Secretary to the Office of Thrift Supervision, including any Acting or Assistant Secretary to the Office.

(f) The term *Administrative Law Judge* means an Administrative Law Judge appointed pursuant to section 3105 or detailed to the Office pursuant to section 3344 of Title 5 of the United States Code to preside at a hearing conducted in accordance with this part. As used in this part, the term also shall refer to the Office or any person to whom the Office has delegated authority to act when an Administrative Law Judge has not been appointed or is unavailable.

(g) The term *party* means an association or person named as a respondent in any adjudicatory proceeding. The Office's Director of Enforcement and/or any of the attorneys subject to the direction of the Director of Enforcement is deemed to be a party to all proceedings under this part.

(h) The term *Respondent* means any association or person against whom the Office seeks relief in the notice commencing the adjudicatory proceeding.

(i) The term *notice* means the notice that commences the adjudicatory proceeding, is served upon the Respondent by the Office, and designates a date, time, and place for the hearing to be conducted in connection with the allegations in the notice.

(j) Any use of a masculine, feminine, or neuter gender shall be deemed to encompass whichever usage would be appropriate under the circumstances, in accordance with § 500.6 of this subchapter.

§ 509.3 Appointment of Administrative Law Judge.

(a) *Appointment.* Unless otherwise directed by the Office, all hearings under this part shall be conducted by an Administrative Law Judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) Following the issuance and service of a notice, the Office or any person designated by the Office shall promptly request the appointment of an Administrative Law Judge to conduct the proceeding.

(2) Upon notification that a Administrative Law Judge has been appointed, the Office or any person designated by the Office shall advise the parties in writing of such appointment.

(3) If for any reason the designated Administrative Law Judge is unable to conduct or complete the proceeding for which he was appointed, a successor Administrative Law Judge shall be requested and appointed.

§ 509.4 Authority of the Administrative Law Judge.

All hearings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The Administrative Law Judge designated pursuant to this part to preside at any such hearing shall be in charge of the hearing and shall have the duty to conduct it in a fair and impartial manner and to take all action to avoid unnecessary delay in the disposition of the proceeding. Such Administrative Law Judge shall have all powers necessary to that end, including the following powers:

(a) To administer oaths and affirmations;

(b) To issue subpoenas and subpoenas duces tecum, as authorized by this part, and to revoke, quash, or modify any such subpoenas;

(c) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(d) To take or cause depositions to be taken as authorized by this part;

(e) To regulate the course of the hearing and the conduct of the parties and their counsel;

(f) To hold conferences for the settlement or simplification of issues or for any other proper purpose;

(g) As justice may require, to consider and rule upon all procedural and other motions appropriate in an adversarial proceeding, except that only the Office shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in final determination of the merits of the proceeding; and

(h) To prepare and present to the Office a recommended decision as provided herein.

Without limitation as to paragraphs (a) through (h) of this section, the Administrative Law Judge shall, subject to the provisions of this part, have all the authority of section 556(c) of Title 5 of the United States Code.

§ 509.5 Appearance and practice in an adjudicatory proceeding.

(a) *Appearance before the Office*—(1) *By non-attorneys.* An individual may appear on his own behalf; an authorized member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an

official or employee of any governmental unit, agency, or authority may represent that unit, agency, or authority before the Office (including representation before the Administrative Law Judge appointed to conduct the proceeding), unless such individual, partner, officer, or employee has been suspended or debarred from practice in accordance with the provisions of part 513 of this subchapter or excluded or suspended from the proceeding pursuant to paragraph (c) of this section.

(2) *By attorneys.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice before the Office in accordance with the provisions of part 513 of this subchapter or excluded or suspended from a particular proceeding in accordance with paragraph (c) of this section may represent parties or other persons in such adjudicatory proceeding. An attorney representing a party in an adjudicatory proceeding shall file a notice of appearance with the Secretariat, containing a written declaration that he is currently qualified to practice before the Office as provided by this paragraph (a)(2) and is authorized to represent the particular party on whose behalf he acts. Included in the notice of appearance shall be a written disclosure as to whether the attorney has ever been suspended or debarred from practice by the bar of any State, territory, Commonwealth, or the District of Columbia and, if so, the date(s) of any such suspension or debarrment and a description of the facts and circumstances surrounding the same.

(b) *Conflict of interest in representation.* An individual shall not represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be affected by that individual's responsibilities to a third person or by the individual's own interests. The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(c) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous, or contumacious conduct at any phase of any adjudicatory proceeding under this part, as determined in the sole discretion of the Administrative Law Judge, may be grounds for exclusion therefrom and suspension for the duration of the proceeding and may be grounds for suspension or debarment pursuant to part 513 of this subchapter.

(d) *Representatives of nonparties.* A nonparty who is required or requested to testify at a prehearing deposition pursuant to § 509.23 may be represented by any person qualified to represent a party before the Office. Anyone representing a nonparty in such a situation need not file a notice of appearance unless expressly ordered to do so by the Administrative Law Judge, but may be required by the Administrative Law Judge or any party to state on the record or in writing the information required in a notice of appearance. No attorney or other representative who refuses to provide such information shall be permitted to represent any person in the proceeding.

§ 509.6 Good faith certification.

(a) *General requirement.* After the issuance of the notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name and shall state the attorney's business address and telephone number. A party who is not represented by an attorney shall sign his presentations and shall include his address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification by the signer that the attorney or party has read the presentation; that, to the best of his knowledge, information, and belief formed after reasonable inquiry, the presentation is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a presentation is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by the attorney or party that, to the best of his knowledge, information, and belief formed after reasonable inquiry, his statements are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violation.* If a presentation is made in violation of this section, the Administrative Law Judge may, on motion of any party or on his own motion, impose upon the attorney, represented party, or both any appropriate sanction authorized by this part.

§ 509.7 Ex parte communications.

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning the merits of an adjudicatory proceeding that takes place between a party, his counsel, or another person interested in the proceeding and the Administrative Law Judge handling that proceeding, the Office or any person who may reasonably be expected to be involved in assisting or advising the Office with respect to the preparation of a decision with respect to that proceeding and that was neither on the record nor on reasonable prior notice to all parties.

(b) *Prohibition of ex parte communications.* From the time the notice is served, or from the date that a party learns that a notice has been approved by the Office, whichever is applicable, until the date that the Office serves its final decision pursuant to § 509.32, no person, including any person involved in the decisional process concerning the proceeding, shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding.

(c) *Communications involving the Administrative Law Judge.* (1) The Administrative Law Judge shall not consult anyone within the Office on the merits of an adjudicatory proceeding, except upon notice and opportunity for all parties to participate in such consultation. This section shall not be construed as prohibiting the Administrative Law Judge from consulting with employees or agents of the Office on procedural matters.

(2) The Administrative Law Judge shall not be responsible to, nor subject to the supervision or direction of, any officer, employee, or agent of the Office engaged in the performance of investigatory or adjudicatory functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Office or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The Administrative Law Judge shall then determine whether any action should be taken concerning the ex parte communication and, if so, what that action should be.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the HOLA and/or the FDIA, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or debarment of any person engaging in such conduct under the procedures set forth in § 509.5(c) herein or in part 513 of this subchapter.

§ 509.8 Maintenance of the record.

The transcript of testimony and exhibits, together with all papers and requests (including motions, stipulations, exceptions, rulings, pleadings, briefs, and other materials filed in connection with the proceeding) shall constitute the exclusive record for decision in accordance with this part. The Secretariat shall maintain the official record of all papers filed in each proceeding under this part. Upon appointment of the Administrative Law Judge, the Secretariat shall forward to the Administrative Law Judge a copy of the existing record of the proceeding.

§ 509.9 Service.

(a) *By the Office.* All documents or papers required to be served by the Office upon any party afforded a hearing shall be served by the Secretariat unless some other person shall be designated for such purpose by the Office. Such service, except for service on counsel for the Director of Enforcement, shall be made by personal service or by registered or certified mail, addressed to the last known address of such party, or on the attorney or representative of record so such party, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address of such party. Such service may also be made in such other manner reasonably calculated to give actual notice as the Office may by regulation or otherwise provide.

(b) *By the parties.* Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this Part 509 shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding or, if any party is not so represented, then upon such party. Such service may be made by personal service, by registered, certified, or regular first-class mail, or by an express delivery service addressed to the last known address of such parties or to their attorneys or representatives of record. Service shall be deemed to have been made at the time of personal service, upon deposit in the United States mails of a properly addressed and postage-paid document, or upon delivery of such document to an express delivery service. All such documents or papers shall include a certificate, signed by the person making service and stating that such service on other parties has been made and indicating the date and method of such service.

(c) *By the Administrative Law Judge.* Copies of all orders and rulings on motions by the Administrative Law Judge shall be served on all parties to the proceeding in the same manner as described in paragraph (b) of this section. The Administrative Law Judge shall file the original of all rulings and orders by him with the Secretariat.

§ 509.10 Filing of papers.

(a) Unless otherwise specifically provided in the notice or by the Administrative Law Judge, an original and one copy of all documents and papers required to be served under this part shall be filed with the Secretariat, with a copy to the Administrative Law Judge after he is designated. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the Administrative Law Judge pursuant to § 509.19.

(b) All material required to be filed with the Office or the Secretariat shall be filed with the Secretariat, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC, 20552. Any such filing with the Secretariat shall be made at the time of service or within a reasonable time thereafter, but must be received by the Secretariat in Washington, DC within three business days of service on the other parties.

§ 509.11 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this part shall be double spaced and printed or typewritten on 8½ by 11 inch paper. All copies shall be clear and legible.

(b) *Signature.* The original of all papers filed by a party shall be signed by such party or by the duly authorized agent or attorney of such party and must show the address of the signer. Counsel for the Director of Enforcement shall sign the original of all papers filed by that Office.

(c) *Caption.* All papers filed must include at the head thereof, or on the title page, the name of the Office, the name of the party afforded the hearing, the number of the resolution giving notice of the hearing, and the subject matter of the particular paper.

§ 509.12 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act, event, or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor such federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and such federal holidays shall be excluded in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within a period of time prescribed in this part after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period; *provided, however,* that if an overnight mail service is used, only one day shall be added to the prescribed period.

(c) *Change of time limits.* Except as otherwise provided by law, the Administrative Law Judge may, at the request of the parties or sua sponte, extend the time limits prescribed by these rules or by any notice or order issued in the proceedings for good cause shown. Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27(b), the Office or any person designated by the Office may grant such extensions for good cause shown.

§ 509.13 Notice.

Whenever a hearing is ordered by the Office in any proceeding provided for in this part, a notice shall be served by the Secretariat, or other person designated for such purpose by the Office, upon the party or parties afforded the hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and, if an

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Administrative Law Judge has been designated to preside at the hearing, the name and address of such Administrative Law Judge. Such notice shall also contain a statement of the matters of fact and law constituting the grounds for the hearing.

§ 509.14 Answer.

(a) *When required.* In any notice commencing an adjudicatory proceeding, the Office shall direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice. Except where a different period of not less than 10 days after service of a notice is specified by the Office, a party shall file an answer with the Secretariat within 20 days after service upon him of the notice.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice, unless the party is without knowledge or information, in which case his answer shall so state and such statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party contends in good faith that part of an allegation is false, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, his answer shall consist of a statement that he admits all of the allegations to be true. Such answer shall constitute a waiver of hearing as to the facts alleged in the notice. All parties will then have an opportunity to serve proposed findings of fact, conclusions of law, and a discussion of the appropriate remedy under the circumstances, together with supporting briefs, with copies to the Administrative Law Judge. These filings, together with the notice, will provide a record basis on which the Administrative Law Judge shall file with the Secretariat his recommended decision in accordance with § 557 of Title 5 of the United States Code.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations in the notice. If no answer is filed, the Administrative Law Judge, without further notice to the party, may receive proposed findings of fact, conclusions of law, and a recommended order from the Director of Enforcement and, based thereon, may find the facts to be as alleged in the notice and file with the Secretariat a recommended decision containing such findings and appropriate conclusions. The Administrative Law Judge may, for good cause shown, permit the filing of a delayed answer after the time for filing the answer has expired, provided that a request to file such a delayed answer is made to the Administrative Law Judge within the time prescribed for the filing of the answer. No request to file a delayed answer will be considered after the time for filing the answer has expired.

§ 509.15 Amending pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the Administrative Law Judge. Such leave shall be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Administrative Law Judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the notice or answer and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the Administrative Law Judge may allow the notice or answer to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Administrative Law Judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.16 Consolidation and severance of proceedings.

(a) *Consolidation.* On motion of any party, or upon the initiative of the Administrative Law Judge, or by resolution of the Office:

(1) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction or occurrence, or series of transactions or occurrences, and material common questions of law or fact will arise in each of the proceedings, unless such consolidation would cause unreasonable delay or injustice.

(2) Any two or more proceedings against the same or at least one common respondent that involve or arise out of the same transaction or occurrence, or series of transactions or occurrences, and involve common questions of law or fact may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or manifest injustice.

(b) *Severance.* On the motion of any party or upon the initiative of the Administrative Law Judge, or by resolution of the Office, a proceeding involving two or more respondents may be severed for some or all purposes if:

(1) Severance is appropriate because the proceeding against one or more respondents is settled, stayed, or cannot proceed; or

(2) Severance will promote prompt resolution of the proceeding as to one respondent, or as to some or all respondents; or

(3) Severance is otherwise required to prevent manifest injustice.

§ 509.17 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After an Administrative Law Judge has been designated to preside at a hearing and before the filing with the Secretariat of his recommended decision, all such motions shall be filed with the Secretariat, with a copy to the Administrative Law Judge, as provided in § 509.10 of this part. At all other times motions shall be addressed to the Office and filed with the Secretariat. In either case, a copy shall also be served on every other party to the proceeding. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally on the record unless the Administrative Law Judge directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Responses.* Within 15 days after service of any written motion, or within such other period of time as may be fixed by this part or by order of the Administrative Law Judge, any party may file a written response to such motion. The moving party shall have no right to reply to such response except as expressly permitted by this part or by order of the Administrative Law Judge. The Administrative Law Judge may waive the requirements of this section as to motions for brief extensions of time and may rule upon such motions after receiving an oral response from the opposing party.

(c) *Dilatory motions not permitted.* Repetitive or numerous motions that raise the same issues or arguments or deal with the same subject matter as previously-decided motions shall not be permitted. Such dilatory motions may form the basis for sanctions under § 509.5(c) of this part or part 513 of this subchapter. The Administrative Law Judge may assess costs attendant to responding to or ruling on such motions against parties who file such dilatory motions.

(d) *Supporting papers.* Written memoranda or briefs may be filed with motions or responses thereto, stating the points and authorities relied upon in support of the position taken.

(e) *Oral argument.* No oral argument will be heard on motions except as directed by the Administrative Law Judge.

(f) *Rulings on motions.* Except as otherwise provided in this part, the Administrative Law Judge shall rule promptly upon all motions properly served upon him and upon such other motions as the Office may direct, except that if the Administrative Law Judge finds that a prompt decision by the Office on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Office for decision. The original of all rulings and orders on motions by the Administrative Law Judge shall be filed by him with the Secretariat, and copies served by the Administrative Law Judge on all parties to the proceeding.

(g) *Continuation of proceeding.* Unless otherwise ordered by the Administrative Law Judge or the Office, the proceeding, including the hearing, shall continue pending the determination of any motion that must be decided by the Office.

§ 509.18 Interlocutory review.

(a) *General rule.* The Office will review a ruling of the Administrative Law Judge prior to the submission of the Administrative Law Judge's recommended decision only in extraordinary circumstances that warrant the Office's prompt review and in accordance with the procedures set forth in this section.

(b) *Scope of review.* An interlocutory appeal may be permitted, in the discretion of the Office, under the following circumstances:

(1) Appeal from a ruling pursuant to § 509.5 suspending an attorney or other representative from participation in a particular proceeding;

(2) Appeal from an order denying a motion for summary disposition;

(3) On certification by the Administrative Law Judge in accordance with paragraph (c) of this section;

(4) Upon any other interlocutory ruling where certification has been denied by the Administrative Law Judge. Interlocutory review shall not be granted under this paragraph (b)(4) unless the Office determines that the Administrative Law Judge's failure to certify the matter was clearly erroneous.

(c) *Certification by Administrative Law Judge.* (1) Any party may move that the Administrative Law Judge certify and permit an appeal of a contested ruling to the Office. Such a motion shall be served within 10 days of the Administrative Law Judge's notification to the parties of the contested ruling; provided, however, that if such a motion is made during the hearing, the Administrative Law Judge may permit the motion and responses thereto to be made orally. The motion for certification must state the grounds relied upon, including the reasons for permitting the interlocutory review, in accordance with the criteria set forth in paragraph (c)(2) of this section. Any party may serve a response to a motion for certification within 10 days after service of the motion.

(2) The Administrative Law Judge shall certify a ruling for interlocutory review to the Office only upon a motion by a party and a determination by the Administrative Law Judge that (i) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion; and (ii) an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. Any certification to the Office shall be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for the granting of the moving party's request for review by the Office.

(d) *Procedure.* Where certification is not required under paragraph (b) of this section or where the Administrative Law Judge certifies a ruling for interlocutory review by the Office, or where a party believes that a denial of certification by the Administrative Law Judge was clearly erroneous, a petition for interlocutory review may be filed within 10 days after notice of the Administrative Law Judge's ruling or certification. The petition shall include or have attached thereto a copy of the ruling or portion thereof from which appeal is being sought and present the points of fact and law relied upon in support of the position taken. Any party may serve a response to a petition for interlocutory review within 10 days of service of the petition. The Office shall determine whether to grant interlocutory review based upon the petition for review and any responses thereto without oral argument or further written submissions unless the Office shall otherwise direct.

(e) *Dismissal of interlocutory appeal by the Office.* The Office may dismiss an interlocutory appeal if it finds that the Administrative Law Judge's certification was erroneously granted or if it finds that prompt consideration of the appeal is not warranted under the standards set forth in paragraph (c)(2) of this section.

(f) *Notification by the Secretariat.* Neither a motion to the Administrative Law Judge for interlocutory review, nor a petition to the Office for interlocutory review, nor the granting of such a motion or petition under this section shall suspend or stay the proceeding unless otherwise ordered by the Administrative Law Judge or the Office. Any stay of longer than 30 days must be specifically approved by the Office.

§ 509.19 Prehearing conference and exchange of information.

(a) *Prehearing conference.* The Administrative Law Judge may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing (in person or by telephone) and/or submit prehearing memoranda to him in writing, to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice will be taken;

(4) Limiting the number of witnesses; and

(5) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Witnesses.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, each party shall serve a written list of witnesses to be called to testify at the hearing. The list shall contain the name and address of each witness and a brief summary of the testimony expected of each witness. The Administrative Law Judge shall not allow any witness to testify at the hearing who is not included on any party's witness list except for good cause shown.

(c) *Exhibits.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for hearing, each party shall serve a written list of exhibits to be offered into evidence at hearing together with a copy

of each proposed exhibit. The Administrative Law Judge shall not allow any exhibit to be accepted into evidence at the hearing that is not listed and copied in accordance with the provisions of this paragraph (c) except for good cause shown.

(d) *Stipulations.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, the parties shall by written stipulation agree upon as many pertinent facts as practicable. The parties may also stipulate to any other pertinent facts orally at the hearing. When stipulations are accepted by the Administrative Law Judge, they shall be binding on the parties.

(e) *Prehearing brief.* Any party may serve, and the Administrative Law Judge may require all parties to serve, a prehearing brief or legal memorandum in advance of the hearing date.

(f) *Prehearing order.* At or within a reasonable time following the conclusion of a prehearing conference, the Administrative Law Judge shall file with the Secretariat and serve upon each party a prehearing order setting forth agreements reached and any procedural determinations made. Any agreements reached among the parties at the prehearing conference or otherwise shall become part of the record and shall be binding on the parties unless the Administrative Law Judge permits otherwise for good cause shown.

§ 509.20 Opportunity for informal settlement.

(a) Any respondent may at any time unilaterally submit to the Secretariat, for consideration by the Office or its designee, with copies to all other parties, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. Other parties to the proceeding may respond to the settlement offer within 20 days of service of such settlement offer. Unless the Director of Enforcement recommends to the Office or its designee that it accept the submitted settlement offer, submission of a settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart. No such settlement offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding.

(b) Upon receipt of a settlement offer, the Office, its designee, or any person selected by the Office or its designee may consult with the parties about the settlement offer by convening a settlement conference with the parties or by requiring the submission of such additional information as the Office or such other person may deem appropriate for consideration of the settlement offer.

(c) The Office shall notify the parties of its decision whether to accept the settlement offer within 60 days of its receipt of such settlement offer, unless extended in writing for good cause.

§ 509.21 Discovery.

(a) *General rule.* Parties to proceedings under this part may obtain discovery only through the production of documents and only by order of the Administrative Law Judge in accordance with the procedures set forth in this paragraph (a). Except as otherwise expressly authorized by this part, no other form of discovery shall be allowed.

(b) *Criteria.* Discovery shall be permitted only upon a clear showing that:

(1) The documents being sought are relevant and material to the requesting party's case or defense;

(2) The party seeking discovery has substantial need for the materials for the preparation of its case or defense; and

(3) The location and production of the documents will not result in any undue burden to any other party or in any undue delay in the proceeding.

(c) *Procedure.* Any party seeking to obtain discovery shall serve a motion for discovery containing facts and arguments sufficient to demonstrate that the criteria set forth in paragraphs (b)(1), (b)(2), and (b)(3) of this section have been satisfied. The motion shall identify with reasonable particularity the documents requested, either by individual item or by category. Any party may serve a response to the motion within 10 days of service thereof. Upon a clear showing that the criteria set forth in paragraphs (b)(1), (b)(2), and (b)(3) of this section have been satisfied, the Administrative Law Judge may grant all or such part of such discovery request as he may deem appropriate under the circumstances.

(d) *Response.* In the event that the Administrative Law Judge grants all or part of a discovery request, the party from whom the documents were requested shall furnish the documents within 20 days of service of the decision of the Administrative Law Judge, unless the parties agree on a different time or the Administrative Law Judge orders a different time for good cause shown. If any documents are withheld on the basis of privilege of any kind as provided by paragraph (e) of this section, the responding party shall provide a written list of the documents withheld, the privilege claimed with respect to each document, and the basis for the claim of privilege.

(e) *Privileged documents.* Privileged documents are not discoverable. Applicable privileges include the attorney-client privilege, the attorney work product privilege, the governmental deliberative process privilege, and other such privileges as the Unites States Constitution, applicable acts of Congress, or principles of the common law may provide.

(f) *Motions to compel production.* If any party fails to comply with an order of the Administrative Law Judge granting a discovery request within the prescribed time for response, or withholds documents without a valid privilege claim, the requesting party may move for an order of the Administrative Law Judge compelling production of the documents. The Adminstrative Law Judge may impose sanctions under § 509.5(c) of this part for failure to comply with a discovery order.

(g) *Protective orders.* Upon a showing that discovery is being conducted in bad faith or in such a manner as unreasonably to annoy, oppress, or embarrass any party, the Administrative Law Judge may order discovery terminated or may limit the scope or manner of discovery. Grounds for terminating or limiting discovery include persistent requests for privileged documents, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, and unwarranted attempts to pry into a party's preparation for trial.

(h) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 30 days prior to the date scheduled for the commencement of the hearing. No exceptions to this rule shall be permitted unless the Administrative Law Judge finds on the record that good cause clearly exists for waiving the requirements of this section.

§ 509.22 Subpoenas for documentary or physical evidence or for witness attendance.

(a) *Issuance.* The Administrative Law Judge shall issue subpoenas, as authorized by law, at the request of any party, requiring the attendance of witnesses at the hearing to be held in connection with an adjudicatory proceeding and/or the production of documentary or physical evidence at such hearing. Where it appears to the Administrative Law Judge that the subpoena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking

the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the Administrative Law Judge, after consideration of all the circumstances, determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it in modified form upon such conditions as justice requires.

(b) *Motion to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date of service of such subpoena, serve a motion, in accordance with the provisions of § 509.17 of this part, to revoke, quash, or modify such subpoena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpoena.* The party seeking the subpoena is responsible for effecting service thereof. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena by personal service, certified or registered mail, or an express delivery service to such person and by tendering the fees for one day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpoena is issued at the insistence of counsel for the Director of Enforcement, fees and mileage need not be tendered at the time of service of the subpoena. If service is made by a United States Marshal, his deputy, or an employee of the Office, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpoena issued in connection with a hearing provided for in this part may be required from any place in any State, Commonwealth, possession, territory, or the District of Columbia at any designated place where the hearing is being conducted. Witnesses subpoenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

§ 509.23 Depositions.

(a) *Prerequisites.* Oral depositions shall be permitted in adjudicatory proceedings under this part only upon a showing that:

(1) The proposed deponent is or is likely to be unavailable to attend the hearing because of age, illness, infirmity or other cause beyond the control of the deponent;

(2) The testimony of the proposed deponent will be relevant and material to the proceeding; and

(3) The taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

(b) *Procedure.* Any party desiring to take the oral deposition of a witness shall serve a written motion setting forth facts sufficient to demonstrate that the prerequisites set forth in paragraph (a) of this section have been satisfied. The motion shall include the name and address of the proposed deponent and a statement setting forth the matters upon which the proposed deponent will be questioned, the materiality and relevance of the deponent's testimony, the need for the deposition, and the proposed time and place for the deposition. Any party may serve a response to the motion within 10 days after service thereof. Failure of a party to respond to such a motion within 10 days will be deemed to constitute a waiver of objection to the deposition.

(c) *Decision.* Upon a showing that the prerequisites set forth in paragraph (a) of this section have been satisfied, the Administrative Law Judge may, by subpoena or subpoena duces tecum, order that such oral deposition be taken. If, after consideration of all circumstances, the Administrative Law Judge determines that the deposition or its location, in whole or in part, is unnecessary, unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to grant the motion or may grant it only upon such conditions as justice requires. The Administrative Law Judge shall serve a notice of the action taken on the motion upon each of the parties. Service shall be accomplished under the procedures of § 509.9 of this part. Service shall be completed at least 10 days in advance of the date and time fixed for the taking of the deposition.

(d) *Motion to quash.* A person named in a subpoena or subpoena duces tecum to take evidence by oral deposition who is not a party to the proceeding may move to revoke, quash, or modify the subpoena. Such motion shall be accompanied by a statement of the reasons therefor and a copy of the motion shall be served upon the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date of service of the subpoena, except for good cause shown.

(e) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and all other parties shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds of objection, unless a valid privilege is asserted. If the deponent refuses to answer a question posed at a deposition, the deposition may be adjourned or completed at the option of the party who requested the deposition, except as to the unanswered question, and an oral or written request may be made to the Administrative Law Judge to compel an answer.

(f) *Protective orders.* At any time during the taking of a deposition, on motion of the deponent or of any party, and upon a showing that the deposition is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Administrative Law Judge may order the termination of the deposition or may limit the scope and manner of the taking of the deposition. Grounds for terminating or limiting a deposition include persistent questioning on privileged matters, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, or unwarranted attempts to pry into a party's preparation for trial. The physical condition of the witness and the adequacy of the examination that has already taken place also may be considered.

(g) *Introduction as evidence.* If the deposition or any portion of the deposition is offered at the hearing, the Administrative Law Judge shall then consider any objections raised, provided that those objections were made during the deposition and, at that time, may refuse to allow reading of the answer to any question found to be objectionable. Subject to appropriate rulings on such objections to questions or evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be submitted into evidence by any party to the proceeding. Only that part of a deposition that is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(h) *Payment of fees.* The fees of the witness and of the reporter shall be paid by the person upon whose application the deposition was taken.

§ 509.24 Conduct of hearings.

(a) *Hearing rules.* Every party shall have the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination as may be required for full disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, become part of the record. Argument on objections may, at the discretion of the Administrative Law Judge, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling shall constitute a waiver of the objection. The privileges of witnesses or parties shall be governed by the principles of the common law as such principles may be interpreted by the courts of the United States in light of reason and experience.

(b) *Official notice.* Official notice may be taken of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Office. All matters officially noticed by the Administrative Law Judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof. A copy of the transcript of the testimony taken at the hearing, duly certified by the reporter, together with all exhibits, shall be filed with the Administrative Law Judge, who shall file such materials with the Secretariat at the time he submits his recommended decision. The Administrative Law Judge shall have the authority to rule upon motions to correct the record.

(d) *Continuances and changes or extensions of time and changes of place of hearing.* Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27 of this part, except as otherwise expressly provided by law, the Office may in the notice or any subsequent order provide time limits different from those specified in this part and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice, or change the time and place for any hearing hereunder. The Administrative Law Judge may, as permitted by law, change the time for beginning any hearing, continue or adjourn a hearing from time to time, and change the location of the hearing.

(e) *Call for further evidence, oral arguments, briefs, or reopening of hearing.* The Administrative Law Judge may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at or following the hearing, and, upon appropriate notice, may reopen the hearing at any time prior to the filing of his recommended decision with the Secretariat.

§ 509.25 Private and public hearings.

(a) All hearings shall be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceeding unless the Office determines that a public hearing should be held pursuant to this section. Unless an exception is granted by the Administrative Law Judge in response to a motion by a party, all witnesses shall be sequestered.

(b) Unless otherwise ordered by the Office as provided in paragraph (c) of this section or required by law, the entire record in any proceeding under this part, including, but not limited to, the notice, answer, the transcript, exhibits, proposed findings of fact and conclusions of law, briefs, recommended decision of the Administrative Law Judge, exceptions thereto, the decision of the Office [except for the actual final order of the Office], and any other papers and documents that are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the Office and its staff, the Administrative Law Judge, the parties, and appropriate supervisory authorities.

(c) Where the Office, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Office may order that the hearing be public. In any public hearing, the Administrative Law Judge shall have the authority to take all appropriate steps, including closing portions of the hearing to the public and admitting materials into the record under seal, to protect the reputation and integrity of any nonparties to the proceeding.

§ 509.26 Summary disposition.

(a) *Filing of motions and responses.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law may move for summary disposition in his favor of all or any part of the proceeding. Such motion may be filed at any time. Any party, within 20 days after service of such a motion, or within such further time period as the Administrative Law Judge may allow, may serve an opposition to such motion and/or may countermove for summary disposition. Following receipt of a motion for summary disposition and all responses thereto and any further written submission and/or oral argument he deems appropriate, the Administrative Law Judge shall submit a recommended decision to the Office in accordance with the provisions of § 509.27(b) of this part and of paragraph (d) of this section if he finds that summary disposition is warranted. No such recommended decision need be filed with the Office if the Administrative Law Judge finds that no party is entitled to summary disposition. If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, he may defer submitting a recommended decision as to those claims until he files his recommended decision at the conclusion of the hearing. If the Administrative Law Judge determines that a party is entitled to an order based on the presence in one or more transaction(s) or occurrence(s) of all statutory elements necessary to support such an order, he may recommend that the Office issue such an order based on such transaction or occurrence even though he may make no such finding with respect to other transactions or occurrences contained in the notice.

(b) *Supporting papers.* A motion for summary disposition shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue, supported by documentary evidence, admissions in pleadings, stipulations, depositions, and any other evidentiary materials that the moving party contends support his position. The motion shall also be accompanied by a brief containing the points and authorities in support of the contention of the party making the motion. Any party opposing a motion for summary disposition shall file a statement setting forth those material facts as to which he contends a genuine dispute exists, supported by evidence of the same type required to be submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate. A party opposing a motion for summary disposition may argue that, although there is no dispute as to the material facts, the law is unclear or contrary to the position urged by the moving party or that the circumstances are such that a different remedy or result is appropriate. In this event, the party's submission shall clearly set forth such legal differences or circumstances and a discussion of the appropriate result or remedy.

(c) *Hearing on motion.* At the request of any party or sua sponte, the Administrative Law Judge may convene a hearing on any motion for summary disposition for the purpose of receiving oral argument on the motion.

(d) *Recommended decision on motion.* The Administrative Law Judge shall recommend that the Office issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, stipulations, documentary evidence, deposition transcripts, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with the motion show that:

(1) There is no genuine issue as to any material fact;

(2) There is no necessity that further facts be developed on the record; and

(3) The moving party is entitled to a decision in his favor as a matter of law.

§ 509.27 Proposed findings of fact and conclusions of law and recommended decision.

(a) *Proposed findings of fact and conclusions of law.* Each party shall have a period of 30 days after the submission of the hearing transcript to the Administrative Law Judge following the close of the hearing, or such further time as the Administrative Law Judge for good cause may allow, to serve proposed findings of fact and conclusions of law, which may be accompanied by a brief in support thereof. Such proposals shall be supported by citation of such statutes, decisions and other authorities, and page references to such portions of the record as may be relevant. Each party may serve a reply brief within 20 days of service of the other parties' proposed findings of fact and conclusions of law and accompanying briefs. All such proposals and briefs shall become a part of the record.

(b) *Recommended decision and filing of record.* The Administrative Law Judge shall, within 30 days after the expiration of the time allowed under paragraph (a) of this section, or within such further time as the Office for good cause may allow, file with the Secretariat and certify to the Office for decision the entire record of the hearing, which shall include his recommended decision in accordance with section 557 of Title 5 of the United States Code, the transcript, and the exhibits (including, on request of any of the parties, any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all pleadings, briefs, and other materials filed in connection with the hearing. Promptly upon such filing, the Secretariat shall serve upon each party to the proceeding a copy of the recommended decision. The provisions of this paragraph (b) shall not apply in any case where the hearing was held before the Office.

§ 509.28 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each proposed finding of fact, conclusion of law, or exception that is briefed shall be supported by a concise argument and by citation of such statutes, decisions, and other authorities and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs.* Reply briefs may be served within 20 days after service of original briefs of opposing parties, or such further time as the Administrative Law Judge may permit, and shall be confined to matters in opening briefs. Further briefs may be filed only with the express permission of the Administrative Law Judge.

(c) *Delayed filing.* Briefs not served on or before the time fixed in this part will be received only upon special permission of the Administrative Law Judge.

§ 509.29 Exceptions.

(a) *Filing.* Within 30 days after service of the recommended decision of the Administrative Law Judge or such further time as the Office for good cause shall allow, any party (other than a party who has not filed an answer in accordance with § 509.14(a) of this part), may serve and file with the Secretariat exceptions thereto or to any portion thereof, or the failure of the Administrative Law Judge to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge supported by such brief as may appear advisable.

(b) *Waiver.* Failure of a party to serve and file exceptions to the recommended decision of the Administrative Law Judge or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge within the time allowed under paragraph (a) of this section, shall be deemed to be a waiver of objection thereto.

(c) *Review by the Office on its own initiative.* The Office may, on its own initiative, undertake review of a recommended decision of an Administrative Law Judge within 30 days after the recommended decision has been served on all parties. Notice of any order of the Office directing review on its own initiative shall be served on all parties by the Secretariat.

§ 509.30 Oral argument before the Office.

Upon the Office's own initiative or upon the written request of any party made within the time for filing exceptions to the recommended decision (or any part thereof) of the Administrative Law Judge, the Office or its designee(s) may order and hear oral argument on all or any part of the recommended decision and the findings and conclusions on which the recommended decision or such part thereof is based. Such written request must show good cause for oral argument, including reasons why arguments have not been, or cannot be, presented adequately in writing. Oral argument before the Office shall be recorded by the Secretariat.

§ 509.31 Notice of submission to the Office.

Upon the filing of the record with the Secretariat, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Office, and upon the hearing of any oral argument ordered by the Office, the Secretariat shall notify the parties in writing that the case has been submitted to the Office for final decision.

§ 509.32 Decision of the Office.

(a) Employees of the Office who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may advise and assist the Office in the consideration of the proceeding. The Office shall consider the recommended decision and the whole record on review and shall base its determination thereon.

(b) The Office shall render its final decision within 90 days after the Secretariat has notified the parties, pursuant to § 509.31 of this part, that the case has been submitted to the Office for final decision, unless within such 90-day period the Office shall order that such notice be set aside and the case

reopened for further proceedings. Copies of the decision and order of the Office shall be served by the Secretariat upon each party to the proceeding and, if directed by the Office or required by statute, upon any appropriate State supervisory authority.

Subpart B—Assessment of Civil Money Penalties

§ 509.33 Scope.

The rules and procedures in this subpart B and in subpart A shall apply to:

(a) Proceedings under section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), section 18(j)(4) of the FDIA, 12 U.S.C. 1828(j)(4), section 10(i)(3) of the HOLA, 12 U.S.C. 1467a(i)(3) and section 7(j)(16) of the FDIA, 12 U.S.C. 1817(j)(16), to determine whether and/or to what extent civil penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials or institution-affiliated parties for violation of any regulation, law, order, written agreement, condition imposed in writing by the Office in connection with the grant of any application, or in the conduct of any unsafe or unsound practice in conducting the affairs of the association or breach of any fiduciary duty that is a part of a pattern of misconduct that causes or is likely to cause more than a minimal loss to the savings association or results in pecuniary gain or other benefit to such party;

(b) Proceedings under section 9(d) of the HOLA, 12 U.S.C. 1467(d), to determine whether and/or to what extent civil penalties should be assessed against any savings association for failure of the association's affiliate to permit any examiner appointed by the Director to make an examination or failure to provide any information required to be disclosed in the examination; and

(c) Proceedings under section 5(v) of the HOLA, 12 U.S.C. 1464(v) and section 10(r)(5) of the HOLA, 12 U.S.C. 1467a(r)(5) to determine whether penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials for submission of false or inaccurate information to the Office.

§ 509.34 Notice of assessment; request for hearing; answer.

Proceedings to assess civil money penalties shall be commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the grounds for the assessment of the penalty, the amount of the civil money penalty being assessed, and the date by which the penalty must be paid and shall inform the party being assessed of its right to request a hearing to challenge the assessment of the penalty within 10 days of service of the notice. If a hearing is not requested within the prescribed 10 day period, the assessment shall constitute a final and unappealable order of the Office. A party requesting a hearing shall file an answer as prescribed in § 509.14 of this part.

§ 509.35 Notice of hearing.

A party requesting a hearing shall be informed by notice of the time and place set for the hearing. The notice of hearing shall be served at least 30 days in advance of the date set for the hearing and shall order the hearing to commence within 60 days after receipt of the request for a hearing. Any party afforded a hearing who does not appear at the hearing personally or through a duly authorized representative shall be deemed to have consented to the issuance of an assessment order.

§ 509.36 Assessment orders.

In the event of consent, or if upon the record developed at the hearing, the Office finds that any of the grounds specified in the notice of assessment have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. An assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing court.

§ 509.37 Payment of civil penalty.

(a) Civil penalties assessed pursuant to this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the penalty would be better served thereby; provided, however, that if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party shall not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such cases, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment.

(b) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United States.

§ 509.38 Relevant considerations.

In determining the amount of the penalty to be assessed in any proceeding under this part, the Office shall consider the financial strength and good faith of the party against whom the penalty is to be assessed, the gravity of the violation, any previous violations, and such other matter as justice may require.

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

Sec.

510.1 Provisions relating to ex parte communications.
510.2 Provisions related to regulations of the Office.
510.3 Coordination of subchapters.
510.4 Service of process.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 510.1 Provisions relating to ex parte communications.

(a) *Scope of section.* This section shall apply to ex parte communications with respect to applications made to the Office for permission to organize Federal savings associations and for branch office and mobile facilities of such associations under Subchapter C of this chapter, applications to convert under Subchapter D of this chapter, and to ex parte communications with respect to any matter which is the subject of a hearing conducted by or on behalf of the Office. However, this section shall not apply to ex parte communications with respect to those applications as to which public notice is not required; and this section shall not apply to ex parte communications with respect to any hearing which is subject to the provisions of Part 509 of this subchapter, which communications shall be handled in accordance with applicable law.

(b) *Prohibited communications.* Except as provided in paragraph (c) of this section, any ex parte communication, either written or oral, relating to any matter within the scope of this section, by any person, other than an officer, agent, or employee of the Office, a hearing officer, or any other employee or agent of the Office participating in the decisional process, is prohibited prior to final decision on such matter.

(c) *Exceptions.* The provisions of this section shall not apply to communications on the subject matter of any hearing on the proposed adoption or repeal of, or amendment to, rules or regulations, to inquiries limited exclusively to the status of a pending matter or directed only to procedural questions, to reports or investigations made at the Office's request by or at the request of an officer, agent, or employee of the Office, communications and other material filed pursuant to the regulations in this chapter governing the applications and requests referred to in paragraph (a) of this section, or communications from authorities having governmental examining or supervisory functions relating to savings associations, building and loan, and homestead associations or cooperative banks.

(d) *Action to be taken.* (1) The recipient of any written communication made in contravention of the provisions of this section shall promptly transmit such communication to the Secretary to the Office. The recipient of any oral communication made in contravention of the provisions of this section shall immediately prepare a written statement of the substance of the communication and promptly transmit such statement to such Secretary. Such transmittal shall be accompanied by a written statement of the circumstances under which the communication was made, if such circumstances are not otherwise apparent.

(2) The Secretary to the Office shall place all material so transmitted to him in the public record, and shall transmit copies of all such material to all interested parties for comment or rebuttal. Any such comment or rebuttal by any person shall be delivered to the Office of the Secretary to the Office within 10 days after such transmittal to such person, unless the Office shall otherwise provide, and shall be placed by such Secretary in the public record. The Office may provide for such other or further action with respect to any such communication as it may deem advisable.

(3) The references in paragraphs (d)(1) and (d)(2) of this section to "Secretary to the Office" and "Office of the Secretary to the Office" shall be deemed to be references to "District Director" in the case of a communication made with respect to an application or request within the scope of this section at a time when such application or request is in the Office of a District Director. As used in this paragraph (d)(3), the term "District Director" shall mean the agent of the Office who is processing such an application or request.

(e) *Sanctions.* A violation of any of the provisions of this section shall be good cause for imposition of such sanctions as the Office may deem just and proper.

§ 510.2 Provisions related to regulations of the Office.

(a) *Amendments.* The Office expressly reserves the right to amend (including the right to alter or repeal) the regulations set forth in Subchapters A, B, C, D, E, F, and G of this chapter.

(b) *Waiver or relaxation of regulatory provisions with respect to disaster or emergency areas.* Whenever the President of the United States determines that a major disaster or emergency exists, or declares an area a major disaster or emergency area, the Office may, to the extent not inconsistent with law, by resolution waive or relax any limitations pertaining to the operations of Federal savings associations and savings associations in any area or areas affected by such disaster or emergency so declared.

(c) *Bar on participation in notice and comment rulemaking by suspended or disbarred persons.* No person who has been suspended or debarred from practice before the Office in accordance with the provisions of Part 513 of this subchapter may submit to the Office, either directly or on behalf of an interested party, any written documents or petitions otherwise permitted by the Administrative Procedures Act.

§ 510.3 Coordination of subchapters.

This subchapter shall be applied in conjunction with any related provisions of Subchapters B, C, D, E, F, and G of this chapter together with such other material not inconsistent therewith as may be filed now or hereafter by the Office pursuant to section 5, 49 Stat. 501, 44 U.S.C. 305, and sections 3 and 4, 60 Stat. 238, 5 U.S.C. 1002, 1003.

§ 510.4 Service of process.

(a) *Service of Process.* Service of process may be made upon the Office by delivering a copy of the summons and complaint to the U.S. Attorney for the district in which the action is brought or to an assistant U.S. Attorney or clerical employee designated by the U.S. Attorney in a writing filed with the clerk of the court, and by sending copies of the summons and of the complaint by registered or certified mail to the Attorney General of the United States, Washington, DC., and to the Secretary of the Office.

(b) *Subpoenas.* Any subpoena to obtain information maintained by Office shall be duly issued and served upon the Secretary of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC., 20552.

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

Sec.

512.1 Scope of part.
512.2 Definitions.
512.3 Confidentiality of proceedings.
512.4 Transcripts.
512.5 Rights of witnesses.
512.6 Obstruction of the proceedings.
512.7 Subpoenas.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78 *l*).

§ 512.1 Scope of part.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 10(g)(2) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1467a(g)(2) ("HOLA") and to the conduct of formal examination proceedings with respect to savings associations and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) ("FDIA"), section 8(n) of the FDIA, 12 U.S.C. 1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in Part 509 of this subchapter.

§ 512.2 Definitions.

As used in this part:

(a) *Office* means the Office of Thrift Supervision;

(b) *Investigative proceeding* means an investigation conducted under section 10(g)(2) of the HOLA;

(c) *Formal examination proceeding* means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings associations and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and

(d) *Designated representative* means the person or persons empowered by the Office to conduct an investigative

proceeding or a formal examination proceeding.

§ 512.3 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Office, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Office, or required by law, and except as provided in §§ 512.4 and 512.5, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the Office or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated representative(s) during the course of said proceedings shall be confidential.

§ 512.4 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *provided,* that a person seeking a transcript of his own testimony must file a written request with the Director or any Deputy Director of Enforcement stating the reason he desires to procure such transcript, and said persons may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

§ 512.5 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the Office resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Director or any Deputy Director of Enforcement.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Office in accordance with the provisions of Part 513 of this subchapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Office, for good cause, may exclude a particular attorney from further participation in any investigation in which the Office has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Office instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Office may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Office may permit or direct.

§ 512.6 Obstruction of the proceedings.

The designated representative shall report to the Office any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the Office may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

§ 512.7 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Director or any Deputy Director of Enforcement to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Director or the Deputy Director, as appropriate, may:

(1) Deny the application;

(2) Quash or revoke the subpoena;

(3) Modify the subpoena; or

(4) Condition the granting of the application on such terms as the Director or Deputy Director determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Office by any of its designated representatives.

PART 513—PRACTICE BEFORE THE OFFICE

Sec.

513.1 Scope of part.
513.2 Definitions.
513.3 Who may practice.
513.4 Suspension and debarment.
513.5 Reinstatement.
513.6 Duty of file information concerning adverse judicial or administrative action.
513.7 Proceeding under this part.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 78 *l*).

§ 513.1 Scope of part.

This part prescribes rules with regard to general practice before the Office on one's own behalf or in a representative capacity and prescribes rules describing the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Office. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Office thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation under this subchapter from a rulemaking hearing in accordance with § 510.2, from an adjudicatory proceeding in accordance with § 509.5(a)(2), from a removal hearing in accordance with § 508.3, or from an investigatory proceeding in accordance with § 512.5(b)(2) of this subchapter.

§ 513.2 Definitions.

As used in this part:

(a) *Office* means the Office;

(b) The term *Secretary* means the Secretary and any Assistant or Acting Secretary to the Office;

(c) The term *presiding officer* includes the Office, his delegatee or an administrative law judge appointed under section 3105 or detailed pursuant to section 3344 of title 5 of the U.S. Code and, as used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text;

(d) The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia; and

(e) The term *practice* means transacting any business with the Office, including:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the Office, a presiding officer or the Office's staff, including those proceedings covered in Parts 508, 509, 510, and 512 of this subchapter;

(2) The preparation of any statement, opinion, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other licensed expert which is filed with or submitted to the Office, with such expert's consent or knowledge in connection with any application or other filing with the Office;

(3) A presentation to the Office, a presiding officer or the Office's staff at a conference or meeting relating to an association's or other person's rights, privileges or liabilities under the laws administered by the Office and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the Office, a presiding officer or the Office's staff; and

(5) The transaction of any other formal business with the Office on behalf of another, in the capacity of an attorney, accountant, appraiser or other licensed expert.

§ 513.3 Who may practice.

(a) *By non-attorneys*—(1) An individual may appear on his own behalf (pro se); a member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a commission, department or political subdivision may represent that commission, department or political subdivision before the Office.

(2) Any accountant, appraiser or other licensed expert may practice before the Office in a professional capacity.

(b) *By attorneys.* Any association or other person may be represented in any proceeding or other matter before the Office by an attorney.

(c) Any licensed expert or professional transacting business with the Office in a representative capacity may be required to show his authority to act in such capacity.

§ 513.4 Suspension and debarment.

(a) The Office may censure any person practicing before it or may deny, temporarily or permanently, the privilege of any person to practice before it if such person is found by the Office, after notice of and opportunity for hearing in the matter,

(1) Not to possess the requisite qualifications to represent others,

(2) To be lacking in character or professional integrity,

(3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the Office, or

(4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the Office or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.* (1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended forthwith from practicing before the Office.

(2) Any accountant, appraiser or other licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practice before the Office.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practicing before the Office.

(4) A conviction (including a judgment or order on a plea of nolo contendere), revocation, suspension or disbarment under paragraphs (b)(1), (b)(2) and (b)(3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or other licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court or in a jurisdiction continues in professional good standing before other courts or in other jurisdictions.

(c) *Temporary suspension.* (1) The Office, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who, on or after June 20, 1984, by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the Office itself in a final administrative order, by reason of his misconduct in any action brought by the Office based upon violations of, or aiding and abetting the violation of, the Home Owners, Loan Act of 1933, as amended, 12 U.S.C. 1461 *et seq.*, the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.* or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, *et seq.*, which is administered by the Office, or of any rule or regulation promulgated thereunder; or

(ii) Found by any court of competent jurisdiction (whether by consent, default, or summary judgment, or after trial) in any action brought by the Office to which he is a party or found by the Office (whether by consent, default, upon summary judgment or after hearing) in any administrative proceeding in which the Office is a complainant and he is a party, to have willfully committed, caused or aided or abetted a violation of any provision of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 *et seq.*, the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.* or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, *et seq.*, which is administered by the Office, or of any rule or regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified or registered mail directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Office pursuant to paragraph (c)(1) of this section more than three months after the final judgment or order entered in a judicial or administrative proceeding described in paragraphs (c)(1)(i) or (c)(1)(ii) of this section has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the Office in accordance with paragraph (c)(1) of this section may, within 30 days after service upon him of the order of temporary suspension, petition the Office to lift such suspension. If no petition is received by the Office within those 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Office shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Office, or both. After opportunity for hearing, the Office may censure the petitioner or may suspend the petitioner from appearing or practicing before the Office temporarily or permanently. In every case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph (c)(4) shall be expedited by the Office in order to ensure the petitioner's right to address the allegations against him.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused or aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why he should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against him or any admissions made by him in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or ordered by reason of the misconduct alleged in the complaint.

§ 513.5 Reinstatement.

(a) Any person who is suspended from practicing before the Office under paragraphs (a) or (c) of § 513.4 of this part may file an application for reinstatement at any time. Denial of the privilege of practicing before the Office shall continue unless and until the applicant has been reinstated by order of the Office for good cause shown.

(b) Any person suspended under paragraph (b) of § 513.4 shall be reinstated by the Office, upon appropriate application, if all of the grounds for application of the provisions of paragraph (b) of § 513.4 subsequently are removed by a reversal of the conviction or termination of the suspension, disbarment or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (b) of § 513.4 may be filed at any time. Such application shall state with particularity the relief desired and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in § 509a.3 and paragraph (a) of § 509a.7 of this subchapter. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Office for good cause shown.

§ 513.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the Office who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 513.4 (b) or (c) of this part in an action not instituted by the Office shall promptly file a copy of the relevant order, judgment or decree with the Secretary to the Office together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment or decree within 30 days after the later of June 15, 1984, the entry of the order, judgment or decree, or the date such person initiates practice before the Office, for that reason alone may be disqualified from practicing before the Office until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this part.

§ 513.7 Proceeding under this part.

(a) All hearings required or permitted to be held under paragraphs (a) and (c) of § 513.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure in adjudicatory proceedings under Part 509 of this subchapter.

(b) All hearings held under this part shall be closed to the public unless the Office on its own motion or upon the request of a party otherwise directs.

(c) Any proceeding brought under any section of this Part 513 shall not preclude a proceeding under any other section of this part or any other part of the Office's regulations.

PART 515—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

Sec.

515.1 Purpose and scope.
515.2 Contact person for missing children photographs on penalty mail.
515.3 Policy and implementation.
515.4 Responsibility of Office administrative unit for implementation and procedure governing use of penalty mail in location of missing children.
515.5 Exceptions to use of missing children photographs and biographical data on penalty mail.
515.6 Expiration date.

Authority: Sec. 1, 99 Stat. 290 (39 U.S.C. 3220).

§ 515.1 Purpose and scope.

The purpose of this part is to assist in the location and recovery of missing children through the use of Office penalty mail. This part is issued by the Office pursuant to the requirements of section 1(a) of Pub. L. 99–87, 99 Stat. 290 (1985), which adds a new section 3220 to Title 39, United States Code. This part likewise complies with the Department of Justice, Office of Juvenile Justice and Delinquency Prevention ("OJJDP") guidelines, 50 FR 46622 (1985), promulgated under the authority of section 3220(a)(1) of Title 39, United States Code.

§ 515.2 Contact person for missing children photographs on penalty mail.

The Office contact person for missing children photographs on penalty mail is:

Director, Financial and Administrative Systems, Management Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Telephone No. (202) 906–6222.

§ 515.3 Policy and implementation.

(a) The Office will support the national effort to assist in the location and recovery of missing children by utilizing photographs and biographical data of missing children in penalty mail sent out by the Office.

(b) The Office will implement the use of missing children photographs and biographical data in penalty mail by the most efficient and cost effective method. This method may include:

(1) The printing of missing children photographs and biographical data on penalty mail envelopes at the time they are initially printed on behalf of the Office;

(2) Overprinting of such photographs and data on existing Office franked penalty mail envelopes;

(3) Manual or automated insertion of such photographs and data into Office franked penalty mail envelopes prior to mailing; or

(4) Affixing of stickers containing such photographs and data onto Office franked penalty mail prior to mailing.

(c) The use of missing children photographs and biographical data in accordance with § 515.3(a) shall be restricted to the following types of envelopes when franked for Office use as penalty mail:

(1) Standard letter-size envelopes (4⅛"×9½").

(2) Document-size envelopes (9½"× 12, 9½"×12½", 10"×13").

(3) Other sizes of envelopes if franked for Office use and normally used as penalty mail.

(d)(1) Missing children photographs and biographical data affixed by whatever method described herein on standard letter-size envelopes as referred to in § 515.3(c)(1) shall be positioned in accordance with the illustration in Appendix A of the OJJDP guidelines published on November 8, 1985, in the Federal Register (50 FR 46622, 46625).

(2) Missing children photographs and biographical data affixed by whatever method described herein on document-size or other sizes of envelopes referred to in § 515.3(c)(2) and (c)(3) shall be positioned in such a manner as to comport with the illustration in Appendix A of the OJJDP guidelines to the extent possible.

(e) The Office will obtain missing children photographs and biographical data exclusively from the National Center for Missing and Exploited Children ("National Center") and will utilize such photographs and data in accordance with the Federal Schedule for Photographs promulgated by the National Center.

(f) The Office will discontinue the use of any particular child's photograph or biographical data within three months after receiving written notification from the National Center that the photograph and biographical data should be withdrawn from penalty mail dissemination.

§ 515.4 Responsibility of Office administrative unit for implementation and procedure governing use of penalty mail in location of missing children.

(a) The Financial and Administrative Systems Division ("FAS") of the Management Office will be the Office's administrative unit responsible for the implementation of this part and will act as the liaison between the Office and the National Center regarding the use of missing children photographs and biographical data. FAS shall:

(1) Develop any necessary plans or guidelines, and implement and monitor the use of missing children photographs and biographical data on penalty mail. Said plans or guidelines shall comply with OJJDP guidelines (50 FR at 46624), and seek to maximize the opportunities for the use of penalty mail to aid in the recovery of missing children.

(2) Procure all appropriate photographs and data from the National Center in accordance with said Center's protocol for the printing, overprinting on, insertion into, or affixing to penalty mail pursuant to this part.

(3) Remove any photograph or data from circulation through Office penalty mail whenever notified by the National Center.

(4) Collect, consolidate, and analyze cost, mail volume, and other data related to implementation of this part and submit a report on behalf of the Office to OJJDP by June 30, 1987, concerning the Office's experience in implementation, estimated total cost of implementation, and recommendations.

(5) Provide guidance, assistance, and any logistical support to any Office administrative unit in order to successfully implement the Office's use of missing children photographs and biographical data on penalty mail.

(b) Office administrative unit managers, particularly Senior Deputy Directors and Division Directors, shall be responsible for ensuring maximum appropriate use, by their administrative units, of penalty mail containing missing children photographs and biographical data.

§ 515.5 Exceptions to use of missing children photographs and biographical data on penalty mail.

The Director of the Office's Management Office is empowered to make a determination, consistent with the policy underlying section 320(a)(2), Title 39, United States Code, and OJJDP guidelines, that any particular Office envelope or publication sent by penalty mail is inappropriate for association with missing children photographs and biographical data, based on the contents or context of said envelope or publication.

§ 515.6 Expiration date.

This part is effective May 8, 1987, and shall cease to be effective upon the close of the Office's business on December 31, 1992.

SUBCHAPTER B—CONSUMER-RELATED REGULATIONS

PART 528—NONDISCRIMINATION REQUIREMENTS

Sec.

528.1 Definitions.
528.1a Supplementary guidelines.

Sec.
528.2 Nondiscrimination in lending and other services.
528.2a Nondiscriminatory appraisal and underwriting.
528.3 Nondiscrimination in applications.
528.4 Nondiscriminatory advertising.
528.5 Equal Housing Lender Poster.
528.6 Monitoring information.
528.7 Nondiscrimination in employment.
528.8 Complaints.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 302, 89 Stat. 1125, as amended (12 U.S.C. 2801 *et seq.*); secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 *et seq.*); sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); sec. 1, 14 Stat. 27, as amended (42 U.S.C. 1982); secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

§ 528.1 Definitions.

As used in this Part 528—

(a) *Application.* For purposes of this part and § 571.24, an application for a loan or other service is as defined in Regulation B, 12 CFR 202.2(f).

(b) *Savings association.* The term "savings association" means any savings association as defined in § 561.43 of this chapter other than a State-chartered savings bank whose deposits are insured by the Bank Insurance Fund.

(c) *Dwelling.* The term "dwelling" means any building, structure, or portion thereof, including a mobile home, which is occupied, or designed or intended for occupancy, as a residence by one or more individuals, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. "Dwelling-related" means secured by a dwelling, regardless of the purpose of the loan or transaction, or intended for purposes related to a dwelling.

(d) *Decision center.* The term "decision center" means a savings association's office where decisions are made to approve (on terms requested or as changed), or take any adverse action on applications for dwelling-related loans.

§ 528.1a Supplementary guidelines.

The Office's § 571.24 policy statement supplements should be read together with part 528. Refer also to the HUD Fair Housing regulations at 24 CFR parts 100 *et seq.* and Federal Reserve Regulation B at 12 CFR part 202.

§ 528.2 Nondiscrimination in lending and other services. (See also, § 571.24 (b) and (c).)

(a) No savings association may deny a loan or other service, or discriminate in the purchase of loans or securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract) or national origin of:

(1) An applicant or joint applicant;

(2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;

(3) The present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;

(4) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.

(b) A savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.

(c) No savings association may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z) and 24 CFR part 100).

§ 528.2a Nondiscriminatory appraisal and underwriting. (See also, § 571.24 (b), (c)(6), and (c)(7).)

(a) *Appraisal.* No savings association may use or rely upon an appraisal of a dwelling which the savings association knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) *Underwriting.* Each savings association shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each association shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

§ 528.3 Nondiscrimination in applications. (See also, § 571.24 (a) through (d).)

(a) No savings association may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), national origin, or other characteristics prohibited from consideration in § 528.2(c) of this part, of the prospective borrower or other person, who:

(1) Makes application for any such loan or other service;

(2) Requests forms or papers to be used to make application for any such loan or other service; or

(3) Inquiries about the availability of such loan or other service.

(b) A savings association shall inform each inquirer of his or her right to file a written loan application, and to receive a copy of the association's underwriting standards.

§ 528.4 Nondiscriminatory advertising.

No savings association may directly or indirectly engage in any form of advertising which implies or suggests a policy of discrimination or exclusion in violation of title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, or this part 528. Advertisements, other than for savings, shall include a facsimile of the following logotype and legend:



§ 528.5 Equal Housing Lender Poster.

(a) Each savings association shall post and maintain one or more Equal Housing Lender Posters, the text of which is prescribed in paragraph (b) of this section, in the lobby of each of its offices in a prominent place or places readily apparent to all persons seeking loans. The poster shall be at least 11 by 14 inches in size, and the text shall be easily legible. It is recommended that savings associations post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.

(b) The text of the Equal Housing Lender Poster shall be as follows:



We Do Business In Accordance With Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

[ ] Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or

[ ] Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD: SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act AND TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

For processing under Office of Thrift Supervision Regulations

* * * * *

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

[ ] On the basis of race, color, national origin, religion, sex, martial status, or age;

[ ] Because income is from public assistance; or

[ ] Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

§ 528.6 Monitoring information.

(a) *Information to be requested.* (1) Each savings association which receives an in-person or written application from a natural person for a loan related to a dwelling shall request, but not require, either on the application form or a form referring to the application, the following information regarding the applicant and joint applicant (if any):

(i) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(b) If the applicant(s) choose not to provide the information or any part of it, that fact shall be noted on the monitoring form, and the savings association shall, to the extent possible, on the basis of sight and/or surname, designate race and sex of each loan applicant and joint applicant.

(c) *Disclosure notice.* Any form used to collect monitoring information required by paragraph (a) of this section shall contain a written notice that such information is requested by the Federal government to monitor compliance with Federal statutes which prohibit savings association from discriminating on those bases against applicants for a loan or other service, and that the savings association is required to note race and sex, on the basis of sight and/or surname, if the applicant(s) choose not to do so.

(d) *Loan application registers.*—(1) *General.* For examination purposes, each savings association shall maintain, at each of its decision centers (defined in § 528.1 of this part), separate, current, readily accessible loan application registers for each of the following loan types made: one-to-four-family dwelling loans, mobile home loans, and home improvement and/or equipping loans.

(2) *Data required on all registers.* Information recorded on applicable registers shall be entered in accordance with instructions issued by the Office, and at a minimum include, for all registers, the following data:

(i) *Loan Identification.* Loan Purpose, Application Number, Date of Application (Month, Day, and Year), and Loan Number;

(ii) *Loan Disposition.* Disposition and Disposition Date (Month, Day, and Year);

(iii) *Property Location.* Standard Metropolitan Statistical Area, Census Tract, and Zip Code;

(iv) *Area data.* Community Reinvestment Act Delineated Community, Low Income Census Tract, Moderate Income Census Tract, and Substantially Minority Census Tract;

(v) *Applicant(s) Data.* Race, Sex, Marital Status and Age;

(vi) *Property data.* Property Type, and Year Built;

(vii) *Loan terms.* Loan Amount, Maturity Term (Months), and Type of Financing.

(3) *Additional data for separate registers.* In addition to data required by paragraph (b) of this section, the register for each type of loan shall contain the following data:

(i) 1–4 Family Loans:

(A) *Property Data.* Purchase Price, and Appraised Value;

(B) *Loan Terms.* Loan to Value Ratio.

(ii) Mobile home loans.

(A) *Property Data.* Buyer's Total Costs, and Valuation;

(B) *Loan Terms.* Calculation Method.

(iii) Home improvement and equipping loans.

(A) *Loan Terms.* Calculation Method.

(e) *Reporting.* Each savings association shall periodically submit aggregate data from loan application registers on forms provided by the Office, and other monitoring data in such manner as the Office may prescribe.

BILLING CODE 6720-01-M

ADDRESS OF DECISION CENTER

FEDERAL HOME LOAN BANK BOARD
LOAN APPLICATION REGISTER
HOME IMPROVEMENT AND/OR EQUIPPING LOANS

(See Reverse of this Form for Codes (*) and Footnotes)

PAGE

LOAN IDENTIFICATION				LOAN DISPOSITION		PROPERTY LOCATION			AREA DATA *				APPLICANT(S) INFORMATION (A=Applicant CA=Co-Applicant)													
LOAN PURPOSE *	APPLICATION NUMBER	DATE OF APPLICATION MONTH	DAY	YEAR	DISPOSITION *	DATE 1/ MONTH	DAY	YEAR	SMSA	CENSUS TRACT	ZIP CODE	CRA DELINEATED COMMUNITY	PROPERTY LOCATED IN CENSUS TRACT LOW INC.	MOD INC.	SUBSTANTIALLY MINORITY	RACE * A	CA	SEX * A	CA	MARITAL STATUS * A	CA	AGE A	CA	PROPERTY TYPE *	YEAR BUILT 2/	LOAN AMOUNT	RATE	CALCULATION METHOD *	MATURITY TERM (Months)	TYPE OF FINANCING *

ADDRESS OF DECISION CENTER

FEDERAL HOME LOAN BANK BOARD
LOAN APPLICATION REGISTER
MOBILE HOME LOANS

See Reverse of this Form for Codes and Footnotes

PAGE

LOAN IDENTIFICATION				LOAN DISPOSITION		PROPERTY LOCATION[2]			AREA DATA *		APPLICANT(S) INFORMATION				MOBILE HOME DATA			LOAN TERMS					
ACTION TAKEN	APPLICATION NUMBER	DATE OF APPLICATION MONTH	DAY	YEAR	LOAN NUMBER	ACTION TAKEN	DATE[1] MONTH	DAY	YEAR	SMSA	CENSUS TRACT	ZIP CODE	PROPERTY LOCATED IN REHAB AREA	RACE	SEX	MARITAL STATUS *	AGE	BUYER'S TOTAL COST (BTC)	VALUATION	YEAR BUILT[3]	LOAN AMOUNT	LOAN TO BTC RATIO OR LOAN TO VALUE RATIO	INTEREST RATE	BUY DOWN	MATURITY TERM (Months)	CALCULATION METHOD *

ADDRESS OF DECISION CENTER

FEDERAL HOME LOAN BANK BOARD
LOAN APPLICATION REGISTER
MORTGAGE LOANS

See Reverse of this Form for Codes (*) and Footnotes.

PAGE

LOAN IDENTIFICATION				LOAN DISPOSITION		PROPERTY LOCATION			AREA DATA *	APPLICANT(S) INFORMATION A-Applicant CA-Co-Applicant								PROPERTY DATA			LOAN TERMS				
LOAN PURPOSE *	APPLICATION NUMBER	DATE OF APPLICATION MONTH	DAY	LOAN NUMBER	DISPOSITION	DATE 1/ MONTH	DAY	YEAR		CENSUS TRACT	ZIP CODE	AREA DATA *	PROPERTY LOCATED IN METROPOLITAN STATISTICAL AREA (MSA)	RACE		SEX		MARITAL STATUS *		PROPERTY TYPE *	PURCHASE PRICE	APPRAISED VALUE	YEAR BUILT 2/	LOAN AMOUNT	LOAN TO VALUE RATIO	CONTRACT INTEREST RATE	TERM Months	TYPE OF FINANCING *

Appendix A to § 528.6—Instructions—Association Instructions For Preparation of Loan Application Registers

Separate Loan Application Registers will be maintained for mortgage loans, home improvement and equipping loans, and mobile home loans. Only applications related to one- to four-family dwellings should be entered.

All home equity loans, secured by one- to four-family dwellings, should be entered on a Loan Application Register. If the primary loan purpose is stated as home improvement, the loan should be entered on the home improvement and equipping loan register. All other home equity loans should be entered on the register for mortgage loans.

Please note that these application registers are for loans originated by the savings association or its decision centers, which may include branches, mortgage companies and service corporations. See Appendix B for instructions on completing Section R, Decision Centers. Loans or participations purchased from unaffiliated entities are never included in the registers.

I. Mortgage Loan Application Register

A. Loan Identification

1. *Loan Purpose.* Indicate the purpose of the loan, if known, by use of the numeric codes provided. If the purpose is not known, use Code 9, "Other."

2. *Application Number.* Indicate the application number in this column. Each application must be assigned a number at the time of receipt. The number should identify the application and facilitate locating it if the requested loan is not made.

3. *Date of Application.* Indicate the date that the application is received or taken by the association. These dates must appear on the application register in chronological order.

4. *Loan Number.* If a loan is made as a result of the application, show the loan's identifying number.

B. Loan Disposition

Disposition. Indicate the final disposition of the application using the numeric codes provided.

1. *Approved as Requested.* Loan application is approved and settled with terms as originally requested.

2. and 3. If the application is approved, but with any of the originally requested terms changed, the indication will be: a "2," if the terms are accepted by the applicant; or "3," if refused by the applicant. Any applications with changed terms must appear as either a "2" or "3."

4. Denied—Decision based on Applicant's Creditworthiness.

5. Denied—Decision based on Collateral.

6. Denied—Decision based on considerations other than those shown in 4 and 5 above.

7. *Withdrawn by Applicant.* Use this indication only if application is withdrawn before an approval/denial decision is made; or if application is approved with the same terms as requested and is withdrawn by applicant.

Date. For applications with a disposition code of "1" or "2," indicate the date the loan is settled (Not the date of approval.) For all other disposition codes, indicate the date of denial, refusal by applicant, or withdrawal by applicant.

C. Property Location

1. *SMSA.* Indicate, by name, the SMSA in which the property is located. If the property is not in an SMSA, leave blank.

2. *Census Tract.* Indicate the census tract in which the property is located. If the property is not within a census tract, leave blank.

3. *Zip Code.* Indicate the zip code in which the property is located.

Note: All of the above locators which are obtainable must be shown.

D. Area Data

1. *CRA Delineated Community (as defined at 12 CFR 563e.3).* Show Y-yes if the property is located within the area established as the delineated community(ies) in the association's CRA Statement(s). If the property is not within a delineated community, show N-no.

2. *Low Income Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a Low income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this column blank.

3. *Moderate Income Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a moderate income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this column blank.

4. *Substantially Minority Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a census tract which is substantially minority in composition. If the property is within a census tract, this column must be completed. If the property is not located in a census tract, leave this column blank. ("Substantially minority" is defined as those census tracts in which the minority resident constitute 25 percent or more of the total population in the census tract.)

The source data needed to enable an association to supply the information required in items 2, 3, and 4 above, will be furnished by the Office. Each association will be furnished a complete list of census tracts by SMSA. This listing will be coded to show each census tract that is: (a) low income, (b) moderate income, or (c) substantially minority.

The savings association may also use data that it has available relative to the demographics required in 2, 3, and 4 above provided the data used conforms with the definitions for "Substantially Minority," "Low Income," and "Moderate Income" as used in the Office's data—i.e., "Substantially Minority" means 25 percent or more of the area's population consists of minority residents; "Low Income" means those census tracts in which the median family income is 80 percent or less of the median family income for the entire SMSA; and "Moderate Income" means those census tracts in which the median family income ranges from 81 percent through 95 percent of the median family income for the entire SMSA. If the association uses its own data it must make the data sources available for examiner inspection.

E. Applicant(s) Information

1. *Race.* Indicate the race of both the applicant and coapplicant using the numeric codes provided.

2. *Sex.* Indicate "M" for male or "F" for female for both the applicant and coapplicant.

3. *Marital Status.* Indicate the marital status of both the applicant and coapplicant using the codes provided.

4. *Age.* Indicate the age of the applicant and coapplicant.

F. Property Data

1. *Property Type.* Indicate the property type using the numeric codes provided.

2. *Purchase Price.* Indicate the purchase price of the security property if the Loan Purpose code is either "1" or "2." Leave blank for all other loan purpose codes.

3. *Appraised Value.* Indicate the appraised value of the security property, if an appraisal was made.

4. *Year Built.* Indicate the year built, or the approximate year built for the security property.

G. Loan Terms

For each heading under this section, if the loan was granted (disposition codes 1 or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. *Loan Amount.* Indicate the dollar amount of the loan.

2. *Loan to Value Ratio.* Indicate the ratio of loan amount to appraised value. If an appraisal was not made, show ratio of loan amount to purchase price, if applicable.

3. *Interest Rate.* Indicate the contract interest rate.

4. *Maturity.* Indicate the term of the loan in number of months.

5. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

II. Mobile Home Loan Application Register

Note: The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. Loan Identification
B. Loan Disposition
C. Property Location
D. Area Data
E. Applicant(s) Information

Instruction for Mobile Home Loan Application Register only:

F. Property Data

1. *Buyer's Total Cost.* Show an amount in this column when the amount loaned was based on the borrower's total cost.

2. *Valuation.* Show an amount in this column when the amount loaned was based on an appraisal, or other accepted system of valuation of a new or used mobile home.

3. *Year Built.* Show year in which mobile home unit was manufactured.

G. Loan Terms

Note: For each heading under this section, if the loan was granted (disposition codes 1 or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. *Loan Amount.* Show the dollar amount of the loan, but exclude interest, however computed.

2. *Loan to BTC Ratio or Loan to Value Ratio.* A ratio should be shown in this column only when applicable. If the loan was based on the buyer's total cost or on a valuation, then a ratio should be shown. Leave this column blank for loans that are based on prescribed amounts, such as FHA and VA loans for the purchase of new homes.

3. *Interest.*

a. *Rate.* Show contract rate of interest (not APR).

b. *Calculation Method.* Indicate the method of calculating interest by use of the alphabetic codes provided.

4. *Maturity Term.* Indicate the term of the loan in months.

5. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

III. Home Improvement and/or Equipping Loan Application Register

Notes: All loan applications that identify home improvement as their primary purpose should be entered on this register.

The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. Loan Identification
B. Loan Disposition (Including, when appropriate, item No. 5—denial based on collateral).
C. Property Location
D. Area Data
E. Applicant(s) Information
F. Property Data (Item No. 2—Purchase Price, and Item No. 3—Appraised Value, may be omitted if they are not contained in the application file.)

Instructions for Home Improvement and/or Equipping Loan Application Register only:

G. Loan Terms

1. *Loan Amount.* Show the total dollar amount of the loan, but exclude interest, however computed.

2. *Interest.*

a. *Rate.* Show contract rate of interest (Not APR)

b. *Calculation Method.* Indicate the method of calculating interest by use of the alphabetic codes provided. If necessary, use an additional code, "O—Other".

3. *Maturity Term.* Indicate the term of the loan in months.

4. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

Appendix B to § 528.6—Instructions—Association Instructions for Preparation of Data Submission Report

Sections O, P, and Q

BILLING CODE 6726-01-M

FEDERAL HOME LOAN BANK BOARD
DATA SUBMISSION REPORT
SECTION O
MORTGAGE LOANS

NAME OF ASSOCIATION AND ADDRESS OF DECISION CENTER
(Please use preprinted label)

DISTRICT	DOCKET	DECISION CENTER	SECTION
01 02	03 06	07 09	10 **O**

PREPARED BY:

PHONE NO. (Include Area Code)

CATEGORY	MORTGAGE LOANS — DISPOSITION THIS PERIOD: TOTAL NUMBER	TOTAL AMOUNT (000's Omitted)	GRANTED NUMBER	GRANTED AMOUNT (000's Omitted)	REJECTED/DENIED NUMBER	REJECTED/DENIED AMOUNT (000's Omitted)	WITHDRAWN NUMBER	WITHDRAWN AMOUNT (000's Omitted)	PENDING NUMBER
A. CENSUS TRACTS									
Both Low and Substantially Minority	101	102	103	104	105	106	107	108	109
Both Moderate and Substantially Minority	111	112	113	114	115	116	117	118	119
Low but Not Substantially Minority	121	122	123	124	125	126	127	128	129
Moderate but Not Substantially Minority	131	132	133	134	135	136	137	138	139
Not Low or Moderate but Substantially Minority	141	142	143	144	145	146	147	148	149
All Other Tracts	151	152	153	154	155	156	157	158	159
Non-tracted Areas	161	162	163	164	165	166	167	168	169
TOTAL	191	192	193	194	195	196	197	198	199
B. RACE									
Asian/Pacific Islander	201	202	203	204	205	206	207	208	209
Black	211	212	213	214	215	216	217	218	219
American Indian/Alaskan Native	221	222	223	224	225	226	227	228	229
Hispanic	231	232	233	234	235	236	237	238	239
White	241	242	243	244	245	246	247	248	249
TOTAL	291	292	293	294	295	296	297	298	299
C. SEX									
Male (either or both)	301	302	303	304	305	306	307	308	309
Female (alone or both)	311	312	313	314	315	316	317	318	319
TOTAL	391	392	393	394	395	396	397	398	399
D. MARITAL STATUS									
Married	401	402	403	404	405	406	407	408	409
Unmarried	411	412	413	414	415	416	417	418	419
Separated	421	422	423	424	425	426	427	428	429
TOTAL	491	492	493	494	495	496	497	498	499

PERIOD COVERED BY THIS REPORT:

		MONTH	DAY	YEAR
START DATE	901			
END DATE	902			

MEMO ITEMS

NUMBER OF HOME IMPROVEMENT AND/OR EQUIPPING APPLICATIONS THIS PERIOD (If the number is greater than 50, submit Section P)	903	
NUMBER OF MOBILE HOME LOAN APPLICATIONS THIS PERIOD (If the number is greater than 50, submit Section Q)	904	

FHLBB Form 1192-O
MARCH 1988

BEST COPY AVAILABLE

FEDERAL HOME LOAN BANK BOARD
DATA SUBMISSION REPORT
SECTION P
HOME IMPROVEMENT AND/OR EQUIPPING LOANS

NAME OF ASSOCIATION AND ADDRESS OF DECISION CENTER
(Please use preprinted label)

DISTRICT	DOCKET NUMBER	DECISION CENTER	SECTION
01 02	03 06	07 09	P

PREPARED BY:

PHONE NO. (Include Area Code)

CATEGORY	HOME IMPROVEMENT AND/OR EQUIPPING LOANS — DISPOSITION THIS PERIOD: TOTAL NUMBER	TOTAL AMOUNT (000's Omitted)	GRANTED NUMBER	GRANTED AMOUNT (000's Omitted)	REJECTED/DENIED NUMBER	REJECTED/DENIED AMOUNT (000's Omitted)	WITHDRAWN NUMBER	WITHDRAWN AMOUNT (000's Omitted)	PENDING NUMBER
A. CENSUS TRACTS									
Both Low and Substantially Minority	101	102	103	104	105	106	107	108	109
Both Moderate and Substantially Minority	111	112	113	114	115	116	117	118	119
Low but Not Substantially Minority	121	122	123	124	125	126	127	128	129
Moderate but Not Substantially Minority	131	132	133	134	135	136	137	138	139
Not Low or Moderate but Substantially Minority	141	142	143	144	145	146	147	148	149
All Other Tracts	151	152	153	154	155	156	157	158	159
Non-tracted Areas	161	162	163	164	165	166	167	168	169
TOTAL	191	192	193	194	195	196	197	198	199
B. RACE									
Asian/Pacific Islander	201	202	203	204	205	206	207	208	209
Black	211	212	213	214	215	216	217	218	219
American Indian/Alaskan Native	221	222	223	224	225	226	227	228	229
Hispanic	231	232	233	234	235	236	237	238	239
White	241	242	243	244	245	246	247	248	249
TOTAL	291	292	293	294	295	296	297	298	299
C. SEX									
Male (either or both)	301	302	303	304	305	306	307	308	309
Female (alone or both)	311	312	313	314	315	316	317	318	319
TOTAL	391	392	393	394	395	396	397	398	399
D. MARITAL STATUS									
Married	401	402	403	404	405	406	407	408	409
Unmarried	411	412	413	414	415	416	417	418	419
Separated	421	422	423	424	425	426	427	428	429
TOTAL	491	492	493	494	495	496	497	498	499

PERIOD COVERED BY THIS REPORT:

		MONTH	DAY	YEAR
START DATE	901			
END DATE	902			

FHLBB Form 1192-P
MARCH 1989

FEDERAL HOME LOAN BANK BOARD
DATA SUBMISSION REPORT
SECTION Q
MOBILE HOME LOANS

NAME OF ASSOCIATION AND ADDRESS OF DECISION CENTER
(Please use preprinted label)

DISTRICT NUMBER	DOCKET NUMBER	DECISION CENTER	SECTION
01 02	03 06	07 09	Q

PREPARED BY:

PHONE NO. (Include Area Code)

CATEGORY	MOBILE HOME LOANS — DISPOSITION THIS PERIOD: TOTAL NUMBER	TOTAL AMOUNT (000's Omitted)	GRANTED NUMBER	GRANTED AMOUNT (000's Omitted)	REJECTED/DENIED NUMBER	REJECTED/DENIED AMOUNT (000's Omitted)	WITHDRAWN NUMBER	WITHDRAWN AMOUNT (000's Omitted)	PENDING
A. CENSUS TRACTS									
Both Low and Substantially Minority	101	102	103	104	105	106	107	108	109
Both Moderate and Substantially Minority	111	112	113	114	115	116	117	118	119
Low but Not Substantially Minority	121	122	123	124	125	126	127	128	129
Moderate but Not Substantially Minority	131	132	133	134	135	136	137	138	139
Not Low or Moderate but Substantially Minority	141	142	143	144	145	146	147	148	149
All Other Tracts	151	152	153	154	155	156	157	158	159
Non-tracted Areas	161	162	163	164	165	166	167	168	169
TOTAL	191	192	193	194	195	196	197	198	199
B. RACE									
Asian/Pacific Islander	201	202	203	204	205	206	207	208	209
Black	211	212	213	214	215	216	217	218	219
American Indian/Alaskan Native	221	222	223	224	225	226	227	228	229
Hispanic	231	232	233	234	235	236	237	238	239
White	241	242	243	244	245	246	247	248	249
TOTAL	291	292	293	294	295	296	297	298	299
C. SEX									
Male (either or both)	301	302	303	304	305	306	307	308	309
Female (alone or both)	311	312	313	314	315	316	317	318	319
TOTAL	391	392	393	394	395	396	397	398	399
D. MARITAL STATUS									
Married	401	402	403	404	405	406	407	408	409
Unmarried	411	412	413	414	415	416	417	418	419
Separated	421	422	423	424	425	426	427	428	429
TOTAL	491	492	493	494	495	496	497	498	499

PERIOD COVERED BY THIS REPORT:

		MONTH	DAY	YEAR
START DATE	901			
END DATE	902			

FHLBB Form 1192-Q
MARCH 1988

BILLING CODE 6720-01-C

Introduction

The Data Submission Report (DSR) calls for tabulated summary information on applications that have had a disposition during the reporting cycle. Information on pending (i.e. no disposition) applications is collected and reported as a memo item. Information is requested on a semiannual basis for the periods ending in June and December.

All information for this report is obtained from the Loan Application Register. Information on the DSR is broken down by the total number and dollar amount of applications received and acted on, the number and dollar amount of these applications that have been granted, the number and dollar amount denied, and the number and dollar amount withdrawn. ALL DOLLAR AMOUNTS ARE REPORTED IN THOUSANDS (E.G. $10,100 IS REPORTED AS 10, NOT 10.1).

Under each of these divisions, the applications are further broken down by census tract groupings, race, sex, and marital status. An additional memo reflects the number of those applications still pending. The number of pending applications is NOT included in the total columns.

In technical amendments conforming to the Fair Housing Amendments Act of 1988, Section 528.1(c) has been revised to make it clear that "dwelling-related" includes all loans secured by a one to four family dwelling, regardless of purpose or classification. This is also reflected in Appendix A.

Section 528.1(d) defines a "Decision Center" to mean a savings association's office where decisions are made to approve (on the terms requested, or as changed and accepted) or take any adverse action on applications for dwelling-related loans. Each Decision Center will be responsible for maintaining its own Loan Application Registers and preparation of its own semiannual DSR. All Decision Centers should submit their Data Submission Reports to the savings association's main office. The main office is responsible for submission of all DSRs for all its Decision Centers to the appropriate District Director.

DECISION CENTERS ARE DISCUSSED ON PAGE OPQ–8 OF THESE INSTRUCTIONS.

COMPLETION OF FORM. A separate DSR will be prepared for:

OTS FORM

Mortgage loans: 1192–0
Home improvement and/or Equipping loans: 1192–P
Mobile Home Loans: 1192–Q

Home equity loans will be reported as mortgage loans on 1192–0, unless the stated purpose is home improvement and/or equipping, in which case they will be reported on 1192–P.

However, no DSR will be required for mobile home loan applications or home improvement and/or equipping loan applications if the decision center has not received more than 50 of these types of applications during the six (6) month reporting cycle.

The tabulation procedures described below will be used for all three types of Data Submission Reports.

I. Applications With A Disposition

Under this section, tabulate only those applications which have an indicator in the "Disposition" column of the application register.

Those with no disposition at the time this report is prepared will be separately tabulated and reported under the Pending column. Please refer to Part II (Applications Without a Disposition) of these instructions.

A. Category A—Census T

1. *Both Low Income and Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column.

Of the above tabulated applications, total all which have a Loan Disposition code of "1" or "2" and place under the "Granted" columns.

Total those above applications with a Loan Disposition code of 3, 4, 5, or 6 and place under the "Rejected/Denied" columns.

Total the above applications with a Loan Disposition code of "7" and place under the "Withdrawn" columns.

The number and dollar amounts under "Granted," "Rejected/Denied," and "Withdrawn" on this line, when added together must total the amounts under the "Total" column.

Example

Nos. 103 + 105 + 107 = 101
Nos. 104 + 106 + 108 = 102

The following relationship of equality must be maintained on each line throughout this report:

Granted + Rejected/Denied + Withdrawn = Total

The number of pending applications should NOT be included in the total.

2. *Both Moderate Income and Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Moderate Income census tract column and Substantially Minority, by the same procedures described previously.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn," by the same procedures described previously.

3. *Low Income but not Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator of "Y" (yes) under the Low Income census tract column, and an indicator of "N" (no) under the Substantially Minority census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

4. *Moderate Income but not Substantially Minority.* From the application register, total by number and dollar amounts all applications with a disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column, and an indicator of "N" (no) under the Substantially Minority census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

5. *Not Low or Moderate Income but Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator of "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low Income census tract column and Moderate Income census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

6. *All Other Tracts.* From the application register, total by number and dollar amount the applications which have a disposition, and for which a census tract is shown, but which do not have an indicator of "Y" (yes) in either the Low Income census tract column, the Moderate Income census tract column, or the Substantially Minority census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

7. *Non-tracted Areas.* From the application register, total by number and dollar amount all applications which have a disposition, and are located in a non-tracted area.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

Total all columns under "CATEGORY A—CENSUS TRACTS." As with each individual line above, the totals under "Granted," "Rejected/Denied," and "Withdrawn" for this whole section will equal the accumulated "Total" column.

B. Category B—Race

Tabulate all applications with a disposition, on the basis of race, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those used for Census Tracts. An additional instruction relative to race breakdowns is necessary, however.

The loan application register requests information relative to both the applicant and coapplicant. For the Data Submission Report, however, only one indicator per application is allowed in order to maintain comparable totals. Therefore:

If both the applicants are white, include the application under the totals for "White."

If one of the applicants is white and the other is one of the minority designations, tabulate the application under that minority designation.

If both applicants are the same minority, tabulate the application under that minority designation.

If both applicants are minorities, but different minorities, tabulate the application under either minority designation but not both.

As with the Census Tract category, all figures will total horizontally. In addition, the totals of each column under race will equal the totals of each column under Census Tracts, as well as all other categories.

Example

No. 191 = No. 291
No. 192 = No. 292
No. 193 = No. 293 etc.

C. Category C—Sex

Tabulate all applications with a disposition, on the basis of sex, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to sex designation is necessary, however.

As with the race breakdowns, only one indicator per application is allowed. Therefore:

If either of the applicants or both applicants are male, tabulate the application under the "Male" designation. (This will include coapplicants who are husband and wife.)

If there is only one applicant and that person is a female or if both applicants are females, tabulate the application under the "Female" designation.

(Anytime a male is involved as an applicant, tabulate under "Male." Tabulate under "Female" when all applicants are female.)

As with the other categories, all figures will total horizontally. In addition, all totals under Sex category will equal all totals under the other categories.

D. Category D—Marital Status

Tabulate all applications with a disposition, on the basis of marital status, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to Marital Status is necessary, however.

As with the previous breakdowns, only one indicator per application is allowed. Therefore:

If both applicants are married, not necessarily to each other, tabulate the application under the "Married" designation.

If one applicant is married and the other is either unmarried or separated, tabulate the loan under that appropriate non-married designation.

If both applicants are in different non-married statuses, (i.e., one unmarried and one separated), tabulate the application under either designation but not both designations.

As with the other categories, all figures will total horizontally. In addition, all totals under the Marital Status category will equal all totals under the other categories.

II. Applications Without a Disposition (Pending)

Under this section, tabulate only those applications which were received during the six (6) month reporting cycle, and for which there has been no disposition as of the last day of the reporting cycle. DO NOT include pending applications from any previous reporting cycle.

Remember that Pending applications are not included in tabulating the total columns.

A. Category A—Census Tracts

1. *Both Low Income and Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

2. *Both Moderate Income and Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Moderate Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

3. *Low Income but not Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Low Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract column.

4. *Moderate Income but not Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract column.

5. *Substantially Minority, but not Low or Moderate Income.* Total, by number only, all applications with no disposition which have a "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low Income and Moderate Income census tract columns.

6. *All Other Tracts.* Total, by number only, all applications with no disposition which show a census tract but which do not have an indicator of "Y" (yes) in either Low or Moderate census tract column or the Substantially Minority census tract column.

7. *Non-tracted Areas.* Total, by number only, all applications with no disposition for which a census tract is not shown.

TOTAL ALL FIGURES OBTAINED IN THE ABOVE BREAKDOWN.

B. Category B—Race

Total, by number only, all applications with no disposition, by various race categories, using the same criteria previously supplied. The total for all applications without a disposition broken down by race will equal the total for all such applications under "Category A—Census Tracts," as well as all the other categories.

C. Category C—Sex

Total, by number only, all applications with no disposition, by sex, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under the other categories.

D. Category D—Marital Status

Total, by number only, all applications with no disposition, by marital status, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under all other categories.

THE TOTALS IN EACH CATEGORY WILL BE EQUAL.

Example

No. 199 = No. 299 = No. 399 = No. 499

Decision Centers

Section 528.6(d) requires that:

. . . each member institution shall maintain, at each of its decision centers (defined in Section 528.1 of this Part), separate, current, readily accessible loan application registers for each of the following loan types made: one- to four-family dwelling loans, mobile home loans, and home improvement and/or equipping loans.

The decision center concept and the semiannual reporting requirement entail certain responsibilities for each decision center and for the main office of the association. These are as follows:

1. Individual Decision Center

A. Maintains its own loan application registers.

B. Prepares its own Data Submission Reports.

C. Assures that each Data Submission Report's line items and totals conform with the arithmetic equalities required.

Example

Nos. 103+105+107=101
Nos. 104+106+108=102
Nos. 191=291=391=491
Nos. 192=292=392=492

D. A unique and permanent identifying number must be reported to the District Director for each decision center (see the instructions on Section R). Decision centers must show this number on all Data Submission Reports. This number cannot be changed and cannot be re-assigned if the decision center is deleted.

E. Data Submission Reports (and required copies) will be submitted only to the main office of the savings association by each decision center (the main office will submit all DSR's). One copy should be retained at the decision center.

2. Main Office

A. Assures that each Data Submission Report received from a decision center shows the proper decision center number, as recorded by the Office.

B. Assures that Data Submission Reports balance as required. (See 1.c. above.)

C. Makes sure that each decision center has submitted all required semiannual Data Submission Reports.

D. Data Submission Reports should be submitted by the main office as follows:

(1) The original of each report and one copy are to be filed with the District Director.

(2) One additional copy of each report is to be mailed to: Information Resource Management, Office of Thrift Supervision, 1700 G Street, NW., Mail Stop 3–6, Washington, DC 20552.

The copy of the report mailed to Washington, DC is used to enter data into the computerized system. Accordingly, such data entry copy must be completely legible. Where carbon copies of reports are prepared, it is suggested that the first copy of the report be mailed to Washington for data entry.

§ 528.7 Nondiscrimination in employment.

(a) No savings association shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No savings association shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national origin.

(c) No savings association shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, State, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No savings association shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such savings association indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000e–1 or sections 2000e–2 (e) through (j) of Title 42, United States Code.

(f) Any violation of the following laws or regulations by a savings association shall be deemed to be a violation of this part 528:

(1) The Equal Employment Opportunity Act, as amended, 42 U.S.C. 2000e–2000h–2, and Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR part 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621–633, and EEOC and Department of Labor regulations;

(3) Department of the Treasury regulations at 31 CFR part 12 and Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60;

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011–2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021–2026;

(5) The Rehabilitation Act of 1973, 29 U.S.C. 701 *et al.*; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR part 274a.

§ 528.8 Complaints.

Complaints regarding discrimination in lending by a savings association shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552 for processing under Office regulations. Complaints regarding discrimination in employment by a savings association should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

PART 529—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec.

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Appendix A to Part 529—Activities to Which This Part Applies

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1).

§ 529.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office.

§ 529.2 Definitions.

Unless the context requires otherwise, as used in this part—

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by the Office, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) *Office* means the Office of Thrift Supervision or, except in § 529.10 (e) of this part, any person to whom it has delegated its authority in the matter concerned.

(c) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation remodeling, alteration or acquisition of facilities.

(d) *Federal financial assistance* includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) *Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(f) *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) *Recipient* may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

§ 529.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Office, including the Federally assisted programs and activities listed in Appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date, and to any such assistance extended under the Housing Opportunity Allowance Program, pursuant to Part 529 of this subchapter, since the inception of such program. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts;

(b) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part;

(c) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 529.4(c) of this part.

The fact that a program or activity is not listed in Appendix A to this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to Appendix A to this part.

§ 529.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin—

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such, program, or the class of persons to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited descrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient

shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Location of facilities.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

§ 529.5 Assurances required.

(a) *General.* Every application for Federal financial assistance to carry out a program to which this part applies and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Office shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Real property.* In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Office to revert title to the property in the event of a breach of the covenant where, in the discretion of the Office, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property purposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Office may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

§ 529.6 Compliance information.

(a) *Cooperation and assistance.* The Office shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Office timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Office may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Office during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Office finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 529.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The Office shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Office a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Office.

(c) *Investigations.* The Office will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Office will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 529.8 of this part.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the Office will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 529.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking,

(2) A proceeding brought under the Office's cease-and-desist authority pursuant to Part 550 of this chapter, and

(3) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 529.5.* If an applicant fails or refuses to furnish an assurance required under § 529.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Office shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, the Office shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until—

(1) The Office has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Office pursuant to § 529.10(e); and

(4) The expiration of 30 days after the Office has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by this Office until—

(1) The Office has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 529.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 529.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Office that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing.

An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 529.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Office in Washington, DC, at a time fixed by the Office unless it determines that the convenience of the applicant or recipient or of the Office requires that

another place be selected. Hearings shall be held before the Office, or at its discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5, United States Code, or detailed under section 3344 of Title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Office shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with part 509 of the General Regulations of the Office (12 CFR part 509), to the extent said part 509 is consistent with this part 529, and with such other regulations that may be necessary or appropriate for the conduct of hearings pursuant to this part 529.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Office may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 529.10.

§ 529.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Office for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Office his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Office may, on its own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that it will review the decision. Upon the filing of such exceptions or of notice of review, the Office shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Office.

(b) *Decisions on record or review by the Office.* Whenever a record is certified to the Office for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Office conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with its briefs or other written statements of its contentions and a written copy of the final decision of the Board shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 529.9, a decision shall be made by the Board on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Office shall set forth his or its ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Office.* Any final decision by an official of the Office, other than the Office itself, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Office itself, which may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Office that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Office to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Office determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If the Office denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Office to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Office. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g)(3) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 529.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 529.12 Effect on other regulations.

(a) Nothing in this part supersedes any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or

(2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Office shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which it is responsible.

(c) *Supervision and coordination.* The Office may from time to time assign to officials of the Office or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 529.10), including the achievement of effective coordination and maximum uniformity within the Office and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph (c) shall have the same effect as though such action had been taken by this Office.

Appendix A to Part 529—Activities to Which This Part Applies

1. Use by a savings association of funds the interest charges on which have been adjusted pursuant to the Housing Opportunity Allowance Program (Pub. L. 91–351, July 24, 1970, 101).

PART 533—ELECTRONIC FUND TRANSFERS

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 902–920, as added by sec. 2001, 92 Stat. 3728–3741, as amended (15 U.S.C. 1693–1693r).

§ 533.1 Electronic fund transfers subject to Regulation E.

Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and § 205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), provided by any savings association is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

PART 535—PROHIBITED CONSUMER CREDIT PRACTICES

Sec.
535.1 Definitions.
535.2 Unfair credit practices.
535.3 Unfair or deceptive cosigner practices.
535.4 Late charges.
535.5 State exemptions.

Authority: Sec. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

§ 535.1 Definitions.

(a) *Act.* For the purposes of this part, "Act" means the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

(b) *Consumer.* The term "consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended "consumer credit" as defined in § 561.12 of this chapter.

(c) *Cosigner.* The term "cosigner" means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term shall include any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term shall not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

(d) *Creditor.* The term "creditor" means a savings association.

(e) *Debt.* The term "debt" means money that is due or alleged to be due from one to another.

(f) *Earnings.* The term "earnings" means compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(g) *Household goods.* The term "household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and

(4) Jewelry (other than wedding rings).

(h) *Savings association.* For purposes of this part, the term "savings association" includes any savings association, and any service corporation that is wholly owned by one or more savings association, that engages in the business of providing credit to consumers.

(i) *Obligation.* The term "obligation" means an agreement between a consumer and a creditor.

(j) *Person.* The term "person" means an individual, corporation, or other business organization.

§ 535.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a savings association directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a savings association, any of the following provisions:

(1) A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon;

(2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;

(3) An assignment of wages or other earnings, unless:

(i) The assignment by its terms is revocable at the will of the debtor,

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

§ 535.3 Unfair or deceptive cosigner practices.

(a) *General.* In connection with the extension of credit to consumers after January 1, 1986, it is:

(1) A deceptive act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to obligate a cosigner unless the cosigner is informed, prior to becoming obligated, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) A clear and conspicuous document that shall contain the following statement or one which is substantially equivalent, shall be given to the consigner prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the cosigner becomes obligated for any fees or transaction on the account):

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) Compliance with the disclosure requirement under paragraph (b)(1) of this section shall constitute compliance with the consumer information requirement of paragraph (a)(2) of this section.

(3) If the notice is a separate document, nothing other than the following times may appear with the notice:

(i) The name and address of the savings association;

(ii) An identification of the debt to be cosigned (e.g., a loan identification number);

(iii) The date; and

(iv) The statement, "This notice is not the contract that makes you liable for the debt."

§ 535.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For the purposes of this part, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 535.5 State exemptions.

(a) Upon application to the Office by an appropriate state agency, the Office shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Office makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Office in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Office.

(c) The Director of Consumer Affairs in consultation with the Chief Counsel shall have delegated authority to make such determinations as are required under this part 535.

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 541—DEFINITIONS

Sec.

541.1 General.
541.2 Act.
541.3 Combination of home and business property.
541.4 Combination of residential real estate and business property involving only minor or incidental business use.
541.5 Commercial paper.
541.6 Cooperative housing development.
541.7 Corporate debt security.
541.8 Debit card.
541.9 District Director.
541.10 Dwelling unit.
541.11 Federal savings associations.
541.12 General reserves.
541.13 Guaranteed loan.
541.14 Home.
541.15 Improved nonresidential real estate.
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541.17 Insured loan.
541.18 Interim Federal savings association.
541.19 Interim state savings association.
541.20 Loans.
541.21 Nonresidential real estate.
541.22 [Reserved].
541.23 Residential real estate.
541.24 Short-term savings account.
541.25 Single-family dwelling.
541.26 Surplus.
541.27 Unimproved real estate.
541.28 Withdrawal value of a savings account.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 541.1 General.

Unless another definition is provided in this subchapter, definitions in Part 561 of this chapter apply.

§ 541.2 Act.

The term "Act" means the Home Owners' Loan Act of 1933, as amended.

§ 541.3 Combination of home and business property.

The term "combination of home and business property" means a home used in part for business.

§ 541.4 Combination of residential real estate and business property involving only minor or incidental business use.

The term "combination of residential real estate and business property involving only minor or incidental business use" means residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use.

§ 541.5 Commercial paper.

The term "commercial paper" means any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

§ 541.6 Cooperative housing development.

The term "cooperative housing development" means real estate primarily comprising a group of single-family dwellings owned by a non-profit cooperative housing organization.

§ 541.7 Corporate debt security.

The term "corporate debt security" means a marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note and/or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

§ 541.8 Debit card.

The term "debit card" means a card that enables an accountholder to obtain access to a savings account for the purpose of making withdrawals or of transferring funds to a third party by non-transferable order or authorization.

§ 541.9 District Director.

The term "District Director" means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with the examination and supervision of a savings association in the region where the savings association is located.

§ 541.10 Dwelling unit.

The term "dwelling unit" means the unified combination of rooms designed for residential use by one family, other than a single-family dwelling.

§ 541.11 Federal savings association.

The term "Federal savings association" means a Federal savings association or Federal savings bank chartered under section 5(o) of the Act.

§ 541.12 General reserves.

The term "general reserves" means aggregate reserves established solely to meet losses.

§ 541.13 Guaranteed loan.

The term "guaranteed loan" means a loan guaranteed or as to which a commitment to guarantee has been made under the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

§ 541.14 Home.

The term "home" means real estate comprising a single-family dwelling(s) or a dwelling unit(s) for four or fewer families in the aggregate.

§ 541.15 Improved nonresidential real estate.

The term "improved nonresidential real estate" means nonresidential real estate:

(a) Containing a permanent structure(s) constituting at least 25 percent of its value; or

(b) Containing improvements which make it usable by a business or industrial enterprise; or

(c) Used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

§ 541.16 Improved residential real estate.

The term "improved residential real estate" means residential real estate containing offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

§ 541.17 Insured loan.

The term "insured loan" means a loan as to which the mortgagee is insured, or as to which a commitment for such insurance has been made under the National Housing Act or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

§ 541.18 Interim Federal savings association.

The term "interim Federal savings association" means a Federal savings association chartered by the Office under section 5 of the Act to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock savings association or other insured stock savings association by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Office may approve.

§ 541.19 Interim state savings association.

The term "interim state savings association" means a savings association, other than a Federal savings association, the accounts of which are insured by the FDIC to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock savings association or other insured stock savings association by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Office may approve.

§ 541.20 Loans.

The term "loans" means obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

§ 541.21 Nonresidential real estate.

The terms "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate," as that term is defined in § 541.23 of this part.

§ 541.22 [Reserved]

§ 541.23 Residential real estate.

The terms "residential real estate" or "residential real property" mean homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

§ 541.24 Short-term savings account.

The term "short-term savings account" means a savings account which will be withdrawn in less than twenty-four months or was established to accumulate funds to pay taxes or insurance premiums on real estate securing a loan.

§ 541.25 Single-family dwelling.

A structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underling real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

§ 541.26 Surplus.

The term "surplus" means undistributed earnings held as unallocated reserves for general corporate use.

§ 541.27 Unimproved real estate.

The term "unimproved real estate" means real estate that will be improved, as defined in §§ 541.15 or 541.16 of this part.

§ 541.28 Withdrawal value of a savings account.

The term "withdrawal value of a savings account" means the amount

invested in a savings account plus earnings credited thereto, less lawful deductions therefrom.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

Sec.

543.1 Corporate title.

Organization

543.2 Application for permission to organize.
543.5 Issuance of charter.
543.6 Completion of organization.
543.7 Limitations on transaction of business.
543.7–1 Federal savings association created in connection with an association in default or in danger of default.

Conversion

543.8 Conversion from State mutual charter to Federal charter.
543.9 Application for conversion to Federal mutual charter.
543.10 Organization after conversion.
543.11 Organization plan for governance during first years after issuance of Federal mutual savings bank charter.
543.11–1 Grandfathered authority.
543.12 Bank Insurance Fund insured Federal savings banks.
543.13 Notice to FDIC.
543.14 Continuity of existence.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

§ 543.1 Corporate title.

(a) *General.* Except for corporate titles in existence or applied for as of May 4, 1984, a Federal savings association's title shall include the word "Savings" and in some manner indicate that it is a Federal association. A Federal savings association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

(b) *Title change.* Prior to changing its corporate title, an association must file with the District Director a written notice indicating the intended change. The District Director, or his or her designee, shall provide to the association a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the District Director, or his or her designee does not notify the association of his or her objection on the grounds set forth in paragraph (a) of this section, the association may change its title by amending its charter in accordance with § 544.2(b) or § 552.4 and the amendment provisions of its charter, except that an association chartered as a Federal Savings and Loan Association may change its title to indicate that it is a Federal Savings Bank, and an association chartered as a Federal Savings Bank may change its title to indicate that it is a Federal Savings and Loan Association, only pursuant to a charter change under § 544.3 or § 552.4 of this chapter.

Organization

§ 543.2 Application for permission to organize.

(a) *General.* Questions regarding this section shall be directed to the District Director or his or her designee. Recommendations by District Directors or their designees and officers and employees of the Office regarding applications for permission to organize a Federal savings association are privileged, confidential, and subject to § 505.4 of this chapter.

(b) *Form; supporting information.* Persons applying for permission to organize a Federal savings association shall obtain application and notice forms and related instructions from the District Director, or his or her designee. An application and all required supporting information shall be executed by at least seven persons (the "applicants") and submitted to the District Director, or his or her designee. The applicants shall request a corporate title to be approved by the Office and to be included as Section One of the association's charter. The applicants shall provide a copy of the proposed charter and bylaws including any preapproved charter provisions specifically requested. An application shall be deemed filed when three copies are delivered to the District Director, or his or her designee; the District Director, or his or her designee, shall notify the applicant in writing that the application is complete and direct the applicant to publish notice pursuant to paragraph (d) of this section when the District Director, or his or her designee, determines that all required information has been submitted.

(c) *Amendment of application; additional information.* An applicant may amend an application or file additional supporting information only until publication of notice under paragraph (d) of this section, unless otherwise requested to do so by the Office.

(d) *Public notice and inspection.* (1) The applicant shall publish notice within 10 days after being notified by the District Director, or his or her designee, that the application is complete. Notice shall be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new association is to be located. If the District Director, or his or her designee, determines that the primary language of a significant number of adult residents of the community is a language other than English, the District Director, or his or her designee, may require that notice also be given simultaneously in the appropriate language(s).

(2) Promptly after publication, the applicant(s) shall transmit to the District Director, or his or her designee, two copies of each notice and publisher's affidavit of publication.

(3) The District Director, or his or her designee, shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located, and to persons whose requests for announcements under § 563e.6 of this chapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d) of this section. The District Director, or his or her designee, may also give notice to any other persons she/he believes might have an interest in the application.

(4) The application and its filing shall be confidential until publication of notice. Thereafter, the application and all related communications may be inspected by any person at the District Director's office during regular working hours, unless application information is exempted from public disclosure under § 505.4 of this chapter.

(e) *Protest.* Communications and answers to protests shall be submitted only as provided in this paragraph (e) or as requested by the Office.

(1) Within 10 days of the date of publication of notice of application (or 17 days after such date if an extension is requested in writing within the 10-day period), anyone may file a communication in favor or protest of the application by furnishing four copies to the District Director, or his or her designee. If the applicant or any person who has filed a substantial protest pursuant to this paragraph (e) wishes to have oral argument heard on the merits of an application, a request for oral argument must be made within this period.

(2) Within 10 days after the filing of a protest, the District Director shall advise the protestant and the applicant, in writing, whether the protest is considered "substantial." A protest will be considered substantial only in those instances where the reason for the protest is consistent with one of the regulatory bases set forth in the regulations for denying the application (excluding supervisory considerations).

(3) The applicant may file an answer to any protest until 10 days after the last date for filing of communications by furnishing four copies to the District Director or his or her designee.

(4) A protest shall be considered "substantial" only if it is written, seasonably filed, and contains at least the following:

(i) A summary of the reasons for the protest;

(ii) The specific matters in the application to which the protestant objects, and the reasons for each objection;

(iii) Facts supporting the protest, including relevant economic or financial data; and

(iv) Any adverse effects on the protestant which may result from approval of the application.

(5) The District Director's determination whether a protest is "substantial" is final. A protest filed by an individual or community group pertaining to an applicant's performance under Part 563e of this chapter (the Community Reinvestment Act regulations) shall not be considered insubstantial merely because of the form in which it is submitted.

(f) *Oral argument*—(1) *General.* Oral argument on the merits of an application shall be heard if

(i) The applicant or anyone who has filed a substantial protest has seasonably requested it pursuant to paragraph (e) of this section; or

(ii) The District Director, or his or her designee, after reviewing the application and other pertinent information, considers oral argument desirable. The District Director, or his or her designee, shall mail notice of the time (which shall be not less than 10 days after such mailing) and place of oral argument to the applicant and to all persons who filed communications. In the case of protests pertaining to Part 563e of this chapter, the District Director, or his or her designee, shall ensure that the time and place of any oral argument is reasonably convenient to the protestants.

(2) *Procedure.* The District Director, his or her designee, or any other person designated by the Director, may hear and determine all matters relating to the conduct of oral argument. Arguments may be made in person or by authorized representatives and unless otherwise permitted by the District Director, or his or her designee, shall be based only on written information previously filed regarding the application. A reasonable time of at least one hour shall be allowed to each side for oral argument. A transcript of the oral argument shall be made and included in the application file.

(g) *Approval.* Decisions on all applications for permission to organize a Federal association will be made by the Director, or his or her designee.

(1) Factors that will be considered are:

(i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions; and

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound operation of a federal savings association.

(2) Once an application has been approved, the Office shall promptly send a copy of that application, together with the certificate of approval specified at Section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), to the Federal Deposit Insurance Corporation.

(3) Approvals of applications will be conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the Federal savings association will be insured by the Federal Deposit Insurance Corporation;

(ii) A minimum amount of capital to be paid into the association's accounts prior to commencing business;

(iii) The submission of a statement that

(A) the applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal savings association;

(B) the applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred;

(C) no funds have been collected on account of the association before the Office's approval;

(D) an organization committee has been created (naming the committee and its officers);

(E) the committee will organize the association and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6 of this part; and

(F) no funds will be accepted for deposit by the association until organization has been completed; and

(iv) The satisfaction of any other requirement the Director, or his or her designee, may impose.

(h) *Alternative procedures for interim Federal savings associations.*

(1) The procedures prescribed by paragraphs (d) through (g) of this section shall not be required with respect to applications for permission to organize an interim Federal savings association that will not open for business except as may be required by Parts 546, 563, or 574 of this chapter.

(2) Approval of an application for permission to organize an interim Federal savings association shall be conditioned on approval by the Office of an application to merge the interim Federal savings association and an existing insured stock association or on approval by the Office of such other transaction which the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in section 543.2(g)(1) to the extent relevant.

(3) *Delegations of authority.* (i) The Director delegates the authority to approve applications for permission to organize an interim Federal savings association under paragraph (h) of this section to the District Director, provided that the District Director otherwise is authorized to approve the transaction for which the interim Federal savings association has been chartered to facilitate.

(ii) The Director delegates the authority to approve applications for permission to organize an interim Federal savings association under paragraph (g) of this section to the Senior Deputy Director for Supervision (Operations) or his or her designee with the concurrence of the Chief Counsel or his or her designee, *Provided,* That the Senior Deputy Director for Supervision (Operations), or the Chief Counsel, jointly or individually, otherwise are authorized to approve the transaction that the interim Federal savings association has been chartered to facilitate.

§ 543.5 Issuance of charter.

Approval by the Office of the organization of a Federal savings association or the conversion of an insured association to Federal savings association form shall constitute issuance of a charter and shall be final, provided that the association complies

with the procedures set out at § 544.2(a) of this subchapter. The charter shall conform with the requirements of § 544.1 of this subchapter, the permissible provisions of § 544.2, or other provisions specifically approved by the Office.

§ 543.6 Completion of organization.

(a)(1) *Temporary officers.* When the Office approves an application for permission to organize a Federal savings association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Office.

(2) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in Parts 544 and 552 of this subchapter.

(b) *First meeting of directors.* Upon election, the association's board of directors shall hold a meeting to elect officers of the association as provided by its charter and bylaws and to take any other action necessary to permit operation of the association in accordance with law, the association's charter and bylaws, and these rules and regulations. When such officers have been bonded under § 563.190 of this chapter, they shall immediately collect the sums due on subscriptions to the association's capital.

(c) *Membership in Federal Home Loan Bank and insurance of accounts.* When a Federal savings association's charter is issued it must promptly qualify as a member of a Federal Home Loan Bank and meet all requirements necessary to obtain insurance of its accounts by the Federal Deposit Insurance Corporation.

(d) *Failure to complete.* Organization of a Federal savings association is completed when the organization meeting and the first meeting of its directors have been held, permanent officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, if required, Federal Home Loan Bank membership has been obtained and Federal Deposit Insurance Corporation insurance of accounts has been confirmed and any conditions imposed by the Office in connection with approval of the application have been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Director or his or her designee may for good cause grant, and in the case of an interim Federal savings association, if a merger, or other transaction facilitated by the existence of an interim association, has not been approved, the charter shall become void and all cash collected on subscriptions shall thereupon be returned.

§ 543.7 Limitations on transaction of business.

No person may organize a Federal savings association, collect money from others for such purpose, or represent himself or herself as authorized to do so, and no Federal savings association shall transact any business prior to completion of its organization, except as provided in this part.

§ 543.7-1 Federal savings association created in connection with an association in default or in danger of default.

The preceding sections of this part do not apply to a Federal savings association which is proposed by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation under section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) or section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441A), or is otherwise chartered by the Office in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when the Director or his or her designee so determines.

Conversion

§ 543.8 Conversion of State mutual charter to Federal charter.

(a) With the approval of the District Director or his or her designee, any state savings and loan type or state savings bank type institution may, on such conditions as the Office may prescribe, convert itself into a Federal savings association, if it complies with all laws of its jurisdiction expressly providing for such conversions and with these rules and regulations.

(b) Questions regarding conversions shall be directed to the District Director. Recommendations by District Directors and officers and employees of the Office regarding applications for issuance of Federal charters are privileged, confidential and subject to § 505.4 of this chapter.

§ 543.9 Application for conversion to Federal mutual charter.

(a) *Filing.* Any state savings and loan association type or state savings bank type institution desiring to convert itself into a Federal savings association shall, after approval by its board of directors, file an application in duplicate with the District Director on forms obtained from the District Director. The applicant shall submit any financial statements or other information the Office may require, and pay all costs, as determined by the Office, of consideration of the application.

(b) *Plan of conversion.* The applicant shall submit with its application a plan of conversion specifying the location of the home office and any branch offices to be maintained by the Federal savings association, and providing for:

(1) Appropriate reserves and surplus for the Federal savings association;

(2) Satisfaction in full or assumption by the Federal savings association of all creditor obligations of the applicant;

(3) Issuance by the Federal savings association of savings accounts to current holders of withdrawable accounts in an amount equalling the value of such accounts; and

(4) If applicable, issuance of additional savings accounts to current holders of nonwithdrawable capital stock of the applicant in an amount equalling the value of their nonwithdrawable capital stock, including the present value of any preference to which such holders are entitled.

(c) *Action on application.* The District Director will consider such application and any information submitted therewith, and may approve the application in accordance with § 543.2(g)(1). The District Director will not consider the application of a converting institution not insured by the Federal Deposit Insurance Corporation, until an eligibility examination has been completed by the Federal Deposit Insurance Corporation. Approval of an application and issuance by the Office of a charter will be subject to:

(1) Compliance by the applicant with all conditions prescribed in the approval;

(2) Receipt by the applicant of approval of the plan of conversion by such vote as may be required by the laws of the applicant's jurisdiction to consider such action;

(3) In the case of a converting association the accounts of which are not insured by the Federal Deposit Insurance Corporation, receipt by the District Director of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the converting association will be insured by the Federal Deposit Insurance Corporation; and

(4) Receipt by the District Director of written confirmation from the appropriate Federal Home Loan Bank of approval of the converting institution's application for Federal Home Loan Bank membership, if the institution is not a member.

§ 543.10 Organization after conversion.

Except as provided in § 543.11, after a Federal charter is issued under § 543.9 the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter the board of directors shall meet, elect officers, and transact any other appropriate business.

§ 543.11 Organization plan for governance during first years after issuance of Federal mutual savings bank charter.

(a) *Organizational meeting.* Except as provided in paragraph (c)(1) of this section, promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state chartered mutual savings bank, shall call a meeting of the members. Notice for, and conduct of, such meeting shall be in accordance with the bank's Federal charter and bylaws. Business to be conducted at the organizational meeting shall include the election of trustees (who may also be known as a board of directors) and any other matters permitted by the charter and bylaws. Any action taken at such meeting shall be deemed an acceptance of the charter and bylaws approved by the Office pursuant to § 544.1 of this subchapter.

(b) *First meeting of trustees.* Upon election or appointment, the board of trustees shall hold a meeting to elect the officers of the bank in accordance with its Federal charter and bylaws, and to take other action necessary to permit the operation of the bank in accordance with the Home Owners' Loan Act of 1933, as amended, the bank's charter and bylaws, these rules and regulations, and orders of the Office.

(c) *Plan for governance of association during first six years after issuance of Federal charter.* (1)(i) An applicant for a Federal mutual savings bank charter may submit a plan which provides that each member of its governing board, *i.e.*, board of trustees, managers, or directors, may continue to serve, provided that within two years of the issuance of a Federal charter at least one-fifth of the members of such board shall have been elected by vote, either in person or by proxy, of the bank's membership as provided in its Federal charter, that within three years of the issuance of its Federal charter at least two-fifths of the members of such board shall have been elected by such a membership vote, that within four years of the issuance of its Federal charter at least three-fifths of the members of such board shall have been elected by such a membership vote, that within five years of the issuance of its Federal charter at least four-fifths of the members of such board shall have been elected by such a membership vote, and that within six years of the issuance of its Federal charter all of the members of such board shall have been elected by such a membership vote.

(ii) The plan:

(A) Shall set forth the names of those persons who are being proposed for service on the applicant's governing board after conversion to a Federal charter,

(B) Shall show how trustees not elected by the converted bank's membership will be appointed or otherwise selected, and

(C) Shall provide that no trustees may be appointed or elected to terms of more than three years.

(iii) The plan may provide that

(A) after receipt of its Federal charter the bank will be organized by its existing governing board,

(B) within the first two years following receipt of its Federal charter, the bank's charter may be amended without a membership vote, provided any such amendment is first approved by a two-thirds vote of its board of trustees and is thereafter approved by the Office, and

(C) the bank's first annual membership meeting need not take place until two years after receipt of its Federal charter. Also, during the first two years of any such plan, the Office will not require the bank to comply with the disclosure requirements of § 563.45 of this Chapter if such disclosure requirements would be otherwise applicable.

(2) Except to the extent that the Office approves a plan under this paragraph (c) which is inconsistent with other provisions of this section, a Federal mutual savings bank shall in all respects comply with those other provisions.

§ 543.11-1 Grandfathered authority.

(a) A Federal savings bank formerly chartered or designated as a mutual savings bank under state law may exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion from a state mutual savings bank to a Federal or other state charter. Except to the extent such authority may be exercised by Federal savings associations not enjoying grandfathered rights hereunder, such authority may be exercised only to the degree authorized under state law at the time of such conversion. Unless otherwise determined by the Director, an association, in the exercise of grandfathered authority, may continue to follow applicable state laws and regulations in effect at the time of such conversion.

(b) A Federal savings association that acquires, or has acquired, a Federal savings bank by merger or consolidation may itself exercise any grandfathered rights enjoyed by the disappearing institution, whether such rights were obtained directly through conversion or through merger or consolidation. The extent of the grandfathered rights of a Federal savings association that disappeared prior to the effective date of this section shall be determined exclusively pursuant to this section.

(c) This section shall not be construed to prevent the exercise by a Federal savings association enjoying grandfathered rights hereunder of authority that is available under the applicable state law only upon the occurrence of specific preconditions, such as the attainment of a particular future date or specified level of regulatory capital, which have not occurred at the time of conversion from a state mutual savings bank, provided they occur thereafter.

(d) This section shall not be construed to permit the exercise of any particular authority on a more liberal basis than is allowable under the most liberal construction of either state or Federal law or regulation.

§ 543.12 Bank Insurance Fund-insured Federal savings banks.

The Office may issue a Federal charter to a state-chartered savings bank which is, and continues to be, insured by the Bank Insurance Fund.

§ 543.13 Notice to FDIC.

Upon receiving an application for a Federal charter by an association insured by the Bank Insurance Fund, the Office shall notify the Federal Deposit Insurance Corporation, and shall notify it of the Office's determination with respect to such application.

§ 543.14 Continuity of existence.

The corporate existence of an association converting under this part or under § 544.3 of this subchapter shall continue in its successor. Each savings or demand accountholder shall receive a savings account or accounts in the converted association equal in amount to the value of accounts held in the former association.

PART 544—CHARTER AND BYLAWS

Charter

Sec.
544.1 Federal mutual charter.
544.2 Charter amendments.
544.3 Adoption of new Federal charter by a Federal savings association.
544.4 Issuance of charter.

Bylaws

544.5 Federal mutual savings association bylaws.
544.6 Effect of subsequent charter or bylaw change.

Availability

544.7 In association offices.
544.8 References to old and new charters; rules applicable to trustees of Federal mutual savings banks.
544.9 Obsolete charter provision for Charter B associations.

Appendix to Part 544—Model Bylaws for Mutual Savings Associations

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

Charter

§ 544.1 Federal mutual charter.

When the Office approves an Application for Permission to Organize for a Federal mutual savings association that is a Federal savings and loan association or savings bank, or approves an Application for Conversion to a Federal savings and loan association or savings bank pursuant to §§ 543.8 and 543.9 of this subchapter or § 544.3 of this part, the association shall have a charter in the following form, or a form which includes any of the additional provisions set forth in § 544.2 of this part, if such provisions are specifically requested. A charter for a Federal mutual savings bank shall substitute the term "savings bank" for "association."

Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal savings association hereby chartered is _____.

Section 2. Office. The home office shall be located at _____.

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("Office").

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Office.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. [Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the Office. Borrowers as of the date of this charter shall continue to have one vote for the period of time such borrowings are in existence.] No member, however, shall cast more than 1000 votes. Voting may be by proxy, which is subject to the rules and regulations of the Office. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. All accounts shall be nonassessable.

Section 7. Directors [Trustees]. The association shall be under the direction of a board of directors [trustees]. The authorized number of directors [trustees] shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors [trustees] may be increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate. Each director [trustee] of the association shall be a member of the association. Members of the association shall elect directors [trustees] by ballot: *Provided,* that in the event of a vacancy on the board, the board of directors [trustees] may fill such vacancy, if the members of the association fail to do so, by electing a director [trustee] to serve until the next annual meeting of the members. Directors [trustees] shall be elected for periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year.

[State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of trustees [directors] so long as such provisions (i) are authorized by the Office, and (ii) provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal savings association.]

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the Office. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the Office: *Provided,* That the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the association shall be entitled to equal distribution of assets, *pro rata* to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment pursuant to §§ 544.2 or 544.3 of the Office's regulations shall be effective upon filing the amendment with the Office in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be submitted to and preliminarily approved by the Office prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____
Secretary of the Association
By: _____
President or Chief Executive Officer of the Association
Attest: _____
Secretary of the Office of Thrift Supervision
Director of the Office of Thrift Supervision
By: _____

§ 544.2 Charter amendments.

(a) Whenever a Federal mutual savings association, whose charter specifies that amendments shall be effective upon filing, completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and three conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the District Director, or his or her designee, who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. An association whose charter requires final approval by the Office of all charter amendments shall be deemed to have obtained such final approval by filing a copy of the properly adopted amendment with the District Director, or his or her designee, in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Office of any of the following amendments to the charter of a Federal mutual savings association, including the adoption of the Federal mutual charter as set forth in § 544.1 of this part: *Provided,* That the association follows the requirements of its charter in adopting the amendments.

(1) *Purpose and powers.* Add a second paragraph to Section 4, as follows:

Section 4. Purpose and powers. * * * The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by rules and regulations made by the Office, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such rules and regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the Office; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) *Title change.* A Federal mutual savings association that has complied with § 543.1(b) of this subchapter may amend its charter by substituting a new corporate title in Section 1.

(3) *Home office.* A Federal mutual savings association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in Section 2.

(4) *Mutual capital certificates.* Renumber existing Section 9 as Section 10, add new Section 9 to read as set forth below, and add an additional provision to renumbered Section 10 as provided below:

Section 9. Mutual capital certificates. The association may issue mutual capital certificates pursuant to the rules and regulations of the Office. Subject to such rules and regulations and without the prior approval of the members, the board of directors [trustees] of the association is authorized, by resolution(s) from time to time adopted by it, to provide in supplementary sections hereto for the issuance of mutual capital certificates and to fix and state the voting powers, designations, preferences, and the relative participating, optional, or other special rights of the certificates and the qualifications, limitations, and restrictions thereon.

Members of the association shall not be entitled to preemptive rights with respect to the issuance of mutual capital certificates nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issues of mutual capital certificates.

Section 10. Amendment of charter. * * * Additional provisions may be added to the section to grant holders of mutual capital certificates the right to vote on amendments, additions, alterations, changes, or repeal of this charter in any of the instances set forth in § 563.74 of the Office's regulations.

(c) *Reissuance of charter.* A federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office by filing one executed, and three conformed copies, with the signatures required under § 544.1 of this part, with the Secretariat of the Office, and such supporting documents as may be needed to demonstrate that the amendments were properly adopted. The Director delegates to the Counsel authority to sign on his or her behalf charters submitted for reissuance pursuant to this paragraph (c).

(d) *Delegations of authority—(1) Actions by the District Director.* The District Director is authorized to grant or deny preliminary approval, in whole or in part, of any application for a charter amendment filed under this section: *Provided,* that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (d)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for charter amendment as originally filed with the District Director or his or her designee, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the Chief Counsel.* The Chief Counsel, or his or her designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

(e) *Filing requirements.* Application for preliminary approval of any amendment to the charter of a federal mutual savings association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director, or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the District Director.

§ 544.3 Adoption of new Federal charter by a Federal savings association.

If the board of directors of a Federal mutual savings association proposes to amend its charter to read in the form of any other Federal mutual savings association charter, the amendment may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association, the board of directors of which proposes to amend its charter to read in the form of any other Federal stock association charter, the amendment may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit the following petition to the District Director, together with any requested change in the association's title or location of home office, and the Office thereafter will issue a charter in the form sought, upon approval by the District Director or the Director of a change in such name or location:

District Director

The undersigned, under § 544.3 of the Rules and Regulations Applicable to Federal Savings Associations, petitions the Director of the Office of Thrift Supervision to issue to it a charter in the form of the charter of a _____ [specify type of institution], fixing the name of the undersigned as _____, and its home office at _____. The present charter fixes the name of the association as _____ and its home office location as _____.

The undersigned, by its secretary, hereby certifies that the members or stockholders, at a meeting duly called and held, adopted the following resolution:

Be it resolved, That the present charter of this association be amended to read in the form of the charter of a _____ [specify type of institution] as prescribed in the Rules and Regulations applicable to Federal savings associations, prescribing the name of the association as _____ and fixing its home office location as _____.

In witness whereof, the Secretary of the undersigned has hereunto affixed his or her hand and the seal of the undersigned this ____ day of _____, 19____.

[Name of Federal savings association]

By: _____

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§ 544.4 Issuance of charter.

Issuance by the Office of a charter to a Federal mutual savings association within the meaning of § 543.5 of this subchapter constitutes the incorporation of that association by the Office.

Bylaws

§ 544.5 Federal mutual savings association bylaws.

(a) A Federal mutual savings association shall operate under bylaws that contain provisions which comply with all requirements specified by the Office in this section and which are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations. Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this part shall be deemed to comply with the requirements of this section. A copy of all bylaws and amendments thereto shall be filed with the District Director, or his or her designee, in accordance with the procedure for filing amendments to charters set out at § 544.2 of this part and shall include an opinion by the association's counsel that said bylaws or amendments thereto comply with all applicable laws, rules, and regulations.

(b) The following requirements are applicable to Federal mutual savings associations:

(1) *Annual meetings of members.* An association shall provide for and conduct an annual meeting of its members for the election of directors [trustees] and at which any other business of the association may be conducted. Such meeting shall be held, as designated by its board of directors [trustees], at a location within the state that constitutes the principal place of business of the association and at a date and time within 120 days after the end of the association's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(2) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors [trustees] of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting.

(3) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the association. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice.

(4) *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken.

(5) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and

regulations of the Office, including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

(6) *Communications between members.* Provisions relating to communications between members shall be consistent with § 545.131 of the Office's regulations.

(7) *Number of directors [trustees].* The number of directors [trustees] shall not be fewer than five nor more than fifteen, except where authorized by the Director of the Office or his or her designee.

(8) *Meetings of the board.* The board of directors [trustees] shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors [trustees], and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board.

(9) *Officers, employees, and agents.* (i) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected annually by the board of directors [trustees]. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors [trustees] or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(ii) All officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors [trustees] not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices.

(iii) Any indemnification provision must provide that any indemnification is subject to applicable Federal law, rules, and regulations.

(10) *Resignation or removal of directors [trustees].* The bylaws shall set out the procedure for the resignation of a director [trustee], which shall be by written notice or by any other procedure established in the bylaws. Directors [trustees] may only be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

(11) *Powers of the board.* The board of directors [trustees] shall have the power:

(i) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(ii) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without cause;

(iii) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(12) *Execution of instruments, generally.* The board shall establish procedures for the execution, verification, acknowledgment, and delivery of instruments or writings of any nature.

(13) *Nominations for directors [trustees].* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(14) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

(15) *Seal.* The association may have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(16) *Amendment.* Bylaws may include any provision for their amendment pursuant to § 544.5 of the Office's regulations, as long as any such amendment would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose. Amendments shall be effective upon filing with the Office in accordance with regulatory procedures after approval by a two-thirds affirmative vote of the authorized board, or by a vote of the members of the association.

(17) *Miscellaneous.* The bylaws may also address the subjects of age limitations for directors or officers as long as consistent with applicable federal law, rules, or regulations, emergency preparedness, and any other subjects necessary or appropriate for effective operation of the association.

(c) *Delegations of authority*— (1) *Actions by the District Director.* The District Director is authorized to grant or deny preliminary approval, in whole or in part, of any application for a bylaw amendment filed under this section: *Provided,* that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (c)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the

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District Director. The appeal request should include the application for bylaw amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 day calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the Chief Counsel.* The Chief Counsel, or his or her designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a bylaw amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (c)(2) of this section.

(d) *Filing requirements.* Application for preliminary approval of any amendment to the bylaws of a federal mutual savings association that is eligible to be processed under delegated authority pursuant to paragraph (c) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (c) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director.

§ 544.6 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

Availability

§ 544.7 In association offices.

A Federal mutual savings association shall make available to its members at all times in its offices a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member on request.

§ 544.8 References to old and new charters; rules applicable to trustees of Federal mutual savings banks.

The trustees of each Federal mutual savings bank shall be subject to the Rules and Regulations Applicable to Federal Savings Associations (Part 541 *et seq.* of this subchapter), and the Rules and Regulations Applicable to All Savings Associations (Part 561 *et seq.* of this chapter), insofar as they pertain to directors of Federal savings associations, just as if they were directors.

§ 544.9 Obsolete charter provision for Charter B associations.

The standard provision in section 10 of Charter B relating to limiting equity, corporate bond and consumer loan investments to a particular percentage of assets is of no force and effect.

Appendix to Part 544—Model Bylaws for Mutual Savings Associations

1. *Annual meeting of members.* The annual meeting of the members of the association for the election of directors [trustees] and for the transaction of any other business of the association shall be held, as designated by the board of directors [trustees], at a location within the state that constitutes the principal place of business of the association at (insert date and time within 120 days after the end of the association's fiscal year), if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other times on such day or at such other place in the same state as the board of directors [trustees] may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

2. *Special meetings of members.* Special meetings of the members of the association may be called at any time by the president or the board of directors [trustees] and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the capital of the association. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the association addressed to the president. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

3. *Notice of meeting of members.* (a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such annual meeting shall convene, to each of its members of record at the last address appearing on the books of the association. Such notice shall state the name of the association, the place of the annual meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number not less than 15) days and not more than (insert number not more than 45) days prior to the date on which such special meeting shall convene to each of its members of record at the member's last address appearing on the books of the association. Such notice shall state the name of the association, the purpose(s) for which the meeting is called, the place of the special meeting and the date and time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any special meeting of members, notice thereof need not be given to such member.

4. *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors [trustees] shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer

that 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the association on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting.

5. *Voting by proxy.* Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Office, provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, prior to the convening of such meeting. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

6. *Communication between members.* Communication between members shall be subject to any applicable rules or regulations of the Office.

7. *Number of directors [trustees].* The number of directors [trustees] of the association shall be _____.

8. *Meetings of the board.* The board of directors [trustees] shall meet regularly without notice at the principal place of business of the association at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors [trustees]. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors [trustees]. All special meetings shall be held upon at least three days' written notice to each director [trustee] unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

9. *Officers, employees, and agents.* Annually at the meeting of the board of directors [trustees] of the association next following the annual meeting of the members of the association, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer: *Provided*, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board.In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices.

Any indemnification by the association of the association's personnel is subject to any applicable rules or regulations of the Office.

10. *Resignation or removal of directors [trustees].* Any director [trustee] may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board.

At a meeting of members called expressly for that purpose, directors [trustees] or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

11. *Powers of the board.* The board of directors [trustees] shall have the power:

(a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof;

(c) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for an account or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

12. *Execution of instruments, generally.* All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositaries shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by, or standing in the name of, the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other persons so authorized by the board.

13. *Nominating committee.* The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors [trustees] in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting. Provided such committee is appointed and makes such nominations, no nominations for directors [trustees] except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors [trustees] may be made at the annual meeting by any member and shall be voted upon.

14. *New business.* Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors [trustees] of the association, shall be stated in writing and filed with the secretary of the association at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in

connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

15. *Seal.* The seal shall be two concentric circles between which shall be the name of the association. The year of incorporation, the word "Incorporated," or an emblem may appear in the center.

16. *Amendment.* Adoption of any bylaw amendment pursuant to § 544.3 of the Office's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated bylaw section, shall be effective upon filing with the Office in accordance with the regulatory procedures after such amendment has been approved by a two-thirds affirmative vote of the authorized board, or by a vote of the members of the association.

17. *Age limitations.*—(a) *Directors [trustees].* No person (fill in any age, 70 or above) years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the association. No director [trustee] shall serve as such beyond the annual meeting of the association immediately following the director [trustee] becoming (fill in age used above), except that a director [trustee] serving on (fill in bylaw adoption date) may complete the term as director [trustee]. This age limitation does not apply to an advisory director [trustee].

(b) *Officers.* No person (fill in any age, 70 or above) years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming (fill in age used above), except that an officer serving on (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age ____ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ____(must be in accordance with ERISA).

18. *Preparedness emergency bylaws.*—(a) *Emergency operations by surviving staff.* In the event of an emergency declared by the President of the United States or the person performing his or her functions, the officers and employees of this association will continue to conduct the affairs of the association under such guidance from the directors as may be available except as to matters which by statute require specific approval of the board of directors and subject to conformance with any governmental directives during the emergency.

(b) *Emergency operations by directors or members of executive committee.* The board of directors shall have the power, in the absence or disability of any officer, or upon the refusal of any officer to act, to delegate and prescribe such officer's powers and duties to any other officer, or to any director, for the time being. In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of this association by its directors and officers as contemplated by these bylaws, any two or more available members of the then incumbent executive committee shall constitute a quorum of that committee for the full conduct and management of the affairs and business of the association in accordance with the provisions of Article ____ of these bylaws. In the event of the unavailability, at such time, of a minimum of two members of the then incumbent executive committee, any three available directors shall constitute the executive committee for the full conduct and management of the affairs and business of the association in accordance with the foregoing provisions of this section. This bylaw shall be subject to implementation by resolutions of the board of directors passed from time to time for that purpose, and any provisions of these bylaws (other than this section) and any resolutions which are contrary to the provisions of this section or to the provisions of any such implementary resolutions shall be suspended until it shall be determined by any interim executive committee acting under this section that it shall be to the advantage of this association to resume the conduct and management of its affairs and business under all of the other provisions of these bylaws.

(c) *Officer succession.* If consequent upon war or warlike damage or disaster, the president of this association cannot be located by the then acting home office or is unable to assume or to continue normal executive duties, then the authority and duties of the president shall, without further action of the board of directors, be automatically assumed by one of the following persons in the order designated: (List of names in order of succession is shown in the official minutes of the association and in the certified copies which are under seal in various depositories.)

Any one of the above persons who in accordance with this resolution assumes the authority and duties of the president shall continue to serve until he or she resigns or until five-sixths of the other officers who are attached to the then acting home office decide in writing he or she is unable to perform said duties or until the elected president of this association, or a person higher on the above list, shall become available to perform the duties of president of the association. If consequent upon war or warlike damage or disaster, the treasurer of this association cannot be located by the then acting home office or is unable to assume or to continue normal executive duties, then the authority and duties of the treasurer shall, without further action by the board of directors, be automatically assumed by one of the following persons in the order designated: (List of names in order of succession is shown in the official minutes of the association and in the certified copies which are under seal in various depositories.)

The person assuming the authority and duties of treasurer in accordance with this section shall serve until: (1) The elected treasurer or person whose name is higher on the above list shall be able to function as treasurer, or (2) until he or she resigns or is unable as determined by the acting president to perform the duties of his or her office. In the case of paragraph (c)(2) of this section, the next eligible and available person on the above list shall assume the authority and duties of the treasurer. Anyone dealing with this association may accept a certification by any three officers that a specified individual is acting as president or that a specified individual is acting as treasurer in accordance with this section; and that anyone accepting such certification may continue to consider it in force until notified in writing of a change, said notice of change to carry the signatures of three officers of the association.

(d) *Providing for alternate locations.* The offices of the association at which its business shall be conducted shall be the home office thereof located at _____ Street, _____, _____ (and branches, if any), and any other legally authorized location which may be leased or acquired by this association to carry on its business. During an emergency resulting in any authorized place of business of this association being unable to function, the business ordinarily conducted at such location shall be relocated elsewhere in suitable quarters, in addition to or in lieu of the locations heretofore mentioned, as may be designated by the board of directors or by the executive committee or by such persons as are then, in accordance with resolutions adopted from time to time by the board of directors dealing with the exercise of authority in the time of such emergency, conducting the affairs of this association. Any temporarily relocated place of business of this association shall be returned to its legally authorized locations as soon as practicable and such temporary place of business shall then be discontinued.

(e) *Providing for acting home offices.* In case of, and provided that, because of war or warlike damage or disaster, the Home Office of this association is unable temporarily to continue its functions, _____ Branch, located in _____, shall automatically and without further action of this board of directors, become the "Acting Home Office of this Association"; that if by reason of said war or warlike damage or disaster, both the Home Office of this association and the said _____ Branch of this association are unable to carry on their functions, then and in such case, the _____ Branch of this association, located in _____, shall, without further action of this board of directors, become the "Acting Home Office of this Association"; and if neither _____ Branch nor _____ Branch can carry on their functions, then the Branch of this association, located in _____, shall, without further action of this board of directors, become the "Acting Home Office of this Association." The Home Office shall resume its functions at its legally authorized location as soon as practicable.

PART 545—OPERATIONS

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Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464) sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

§ 545.1 General authority.

A Federal savings association may exercise all authority granted it by the Home Owners' Loan Act of 1933 ("Act"), 12 U.S.C. 1464, as amended, and its charter and bylaws, whether or not implemented specifically by Office regulations, subject to the limitations and interpretations contained in this part.

§ 545.2 Federal preemption.

The regulations in this Part 545 are promulgated pursuant to the plenary and exclusive authority of the Office to regulate all aspects of the operations of Federal savings associations, as set forth in section 5(a) of the Act. This exercise of the Office's authority is preemptive of any state law purporting to address the subject of the operations of a Federal savings association.

§§ 545.3–545.9 [Reserved]

§ 545.10 Savings deposits or shares.

Savings deposits or shares of any Federal savings association which are in compliance with the provisions of subsection (b) of section 5 of Title III of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 which amended the Home Owners' Loan Act of 1933, the Federal savings association's charter, and the rules and regulations for the Office, all as now or hereafter in effect, relating to the type, form, return, and maturity thereof are, as to type and form, return, and maturity hereby approved by the Office.

§ 545.11 Issuance of accounts.

(a) Prior to doing business and issuing accounts as defined in § 561.2 of this chapter, a Federal savings association shall obtain and maintain insurance of all its accounts by the Federal Deposit Insurance Corporation.

(b) *General.* Pursuant to section 5(b)(1) of the Act, a Federal savings association may issue accounts as defined in § 561.2 of this chapter. A Federal savings association may establish classes of accounts and specify terms and conditions for such classes of accounts. Amounts deposited in accounts may be in cash or property in which the association is authorized to invest. The authority of a Federal savings association to issue accounts pursuant to this part is subject to any applicable provision of Part 563 of this chapter.

(c) *Status and priority of savings deposits and accounts.* In the event of voluntary or involuntary liquidation, dissolution, or winding up of the association, or in the event of any other situation in which the priority of savings deposits and accounts is in controversy, such savings deposits and accounts shall, to the extent of their withdrawable value, be debts of the Federal savings association having the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general creditors. Savings deposits of Federal mutual savings associations shall have the same right to share in the remaining assets of the Federal savings association that savings share accounts would have.

§ 545.12 Demand deposit accounts.

(a) Pursuant to 12 U.S.C. 1464(b)(1)(A), (B), a Federal savings association may accept demand deposit accounts from any person.

(b) A Federal savings association shall not pay interest on a demand deposit; however, premiums and finders' fees offered in accordance with § 561.47 (b) through (f) of this chapter are not payments of interest, and the absorption of expenses or forbearance from charging a fee as set forth in paragraph (g) of § 561.47 is not a payment of interest.

(c) For purposes of this section, demand deposits include only those accounts which are payable on demand within the meaning of § 563.6 of this chapter.

§ 545.13 Account records.

(a) *Evidence of ownership and account.* A Federal savings association shall comply with the requirements found at §§ 563.1 and 563.170(c)(8) of the chapter. Accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt or advice.

(b) *Ownership of record*—(1) *General rule.* A Federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the Federal savings association's books. Accounts shall be transferable only on the association's books on proper application by the transferee and acceptance of the transferee as accountholder on terms approved by the board of directors.

(2) *Exception.* Paragraph (b)(1) of this section notwithstanding, a Federal savings association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the Federal savings association: *Provided,* That any provisions of the Federal savings association's charter regarding membership and voting shall not apply to such certificates.

(c) *Use of collecting and paying agent.* A Federal savings association may authorize any bank that is a member of the Federal Deposit Insurance Corporation to prepare, sign and deliver evidence of accounts, to collect and transmit funds obtained from those accounts, and to maintain records with respect to such accounts. The Federal savings association may provide for issuance of duplicate certificates, bond, security and other protection in connection with such activities. A Federal savings association may also authorize any such institution to pay an account according to its terms.

§ 545.14 Determination and distribution of earnings.

(a) *Rates of return.* A Federal savings association may issue savings accounts earning interest at different rates of return, which may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted, subject to § 563.10 of this chapter.

(b) *Time of distribution.* A Federal savings association may distribute earnings on savings accounts, or designated classes thereof, as provided in its charter and bylaws and the terms of the account.

(c) *Distribution on share accounts.* No distribution of earnings on share accounts may be made under this section until provision has been made for payment of expenses and for the pro rata portion of credits to reserves required by the Federal savings association's charter and by part 563 of this chapter.

§ 545.15 Withdrawal requests.

(a) *Right to require notice for withdrawal from savings account.* A Federal savings association shall reserve the right to require at least seven days advance notice of intention to withdraw from savings accounts not having a fixed or minimum term of at least seven days or a prior notice-of-withdrawal requirement of at least seven days.

(b) *Payment of withdrawal requests.* Unless otherwise specified in its charter, when a Federal savings association cannot pay withdrawal requests within seven days of the date of receipt of written request therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than seven days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of $1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the Federal savings association shall so notify the accountholder by registered mail to his last address as recorded on the Federal savings association's books and, unless the accountholder, within fourteen days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding $200 to any accountholder in any calendar month; and

(2) The Federal savings association shall allot to the payment of withdrawal requests the remainder of the Federal savings association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than twenty percent of the Federal savings association's receipts from its accountholders and its borrowers.

(c) *Grace period with respect to withdrawals.* A Federal savings association may compute earnings on amounts withdrawn from its accounts having an indefinite term during the last three business days of any period for which earnings are distributable as if the withdrawal had been made immediately after the close of that period.

§ 545.16 Public deposits, depositaries, and fiscal agents.

(a) *Definitions.* As used in this section—

(1) *Moneys* includes *monies* and has the meaning it has in applicable state law;

(2) *State law* includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) *Surety* means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety for public deposits.* (1) A Federal savings association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the Federal savings association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the Federal savings association or in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Deposit Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(c) *Depositaries and fiscal agents.* Subject to regulation of the United States Treasury Department, a Federal savings association may serve as a depositary for Federal taxes, as a Treasury tax and loan depositary, or as a depositary of public money and fiscal agent of the Government or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Office, and may satisfy any requirement in connection therewith, including maintaining accounts described in §§ 561.33, 561.52, 561.53, and 561.54 of this chapter; pledging collateral; and performing the

services outlined in 31 CFR 202.3(b) or any section that supersedes or amends § 202.3(b).

§ 545.17 Funds transfer services.

A Federal savings association is authorized to transfer, with or without fee, its customers' funds from any account (including a line of credit) of the customer at the Federal savings association or at another financial intermediary to third parties or other accounts of the customer on the customer's order or authorization by any mechanism or device, including cashier's checks, conforming with applicable laws and established commercial practices.

§ 545.18 Issuance of mutual capital certificates.

A Federal mutual savings association may issue mutual capital certificates as its charter permits, subject to the requirements of § 563.74 of this chapter or as the Office may otherwise authorize in writing.

§ 545.19 Issuance of net worth certificates.

A Federal savings association may issue net worth certificates if authorized by the FDIC in accordance with 12 U.S.C. 1823(i).

§ 545.20 Borrowing, issuing obligations and securities, and giving security.

Pursuant to sections 5(b)(2) and (b)(3) of the Act, a Federal savings association may borrow, give security, and issue notes, bonds, debentures, or other obligations, or other securities, including capital stock, subject to the provisions of Parts 561–571 of this chapter.

§ 545.21 Give-aways.

(a) *Definitions.* (1) *Give-away* means any thing of value, or service performed in any part outside a Federal savings association's premises, given without adequate payment, but not including:

(i) Providing safety deposit facilities at reduced rental to members of the savings association,

(ii) Repaying to members of any part of amounts paid by them for safety deposit facilities located outside the savings association's facilities, or

(iii) Providing any service or thing of value as payment of interest.

(2) *Doing business* has the meaning it has in the statute described in paragraph (c) of this section, and "domestic savings association" means any savings association, building and loan, homestead association, or cooperative bank which is a domestic savings association under that statutory provision.

(b) *Prohibition.* No Federal savings association doing business in a state which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall:

(1) Condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or maintaining a minimum balance therein;

(2) Except under paragraph (d) of this section, refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding $2.50; or

(3) Enter any agreement with, or accept funds for investment in a savings account from, any person engaging in such activities.

(c) *Reciprocal statutory provision.* The statutory provision referred to in paragraph (b) of this section must authorize a specified state official to impose any regulation restrictions on domestic savings associations of the state equivalent to those imposed on Federal savings associations by paragraphs (b) (1) and (2) of this section if, while the restriction is in force, Federal savings associations doing business in the state are likewise restricted.

(d) *Exception.* Notwithstanding paragraph (b) of this section, a Federal savings association may advertise give-aways during a single period of thirty days ending not more than one year after it opens its first office.

§§ 545.22–545.30 [Reserved]

§ 545.31 Election regarding classification of loans or investments.

(a) If a loan or other investment is authorized under more than one section of the Home Owners' Loan Act of 1933, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. To classify a loan as a real estate loan, a Federal savings association must rely substantially upon the real estate as the primary security for the loan.

(b) For purposes of determining whether aggregate investments under one provision of the Home Owners' Loan Act of 1933, as amended, or this part exceed an applicable percentage-of-assets limitation, a loan commitment shall be counted as an investment and shall be included in total assets of a Federal savings association only to the extent that funds have been advanced (and not repaid) pursuant to the commitment. The term "loan commitment" used in the preceding sentence includes a loan in process, a letter of credit, or any other commitment to extend credit.

(c) Loans sold to a third party shall be included in calculation of a percentage-of-assets investment limitation only to the extent they are sold with recourse.

(d) A Federal savings association may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

§ 545.32 Real estate loans.

(a) *Authorization.* Pursuant to sections 5(c)(1)(B) and 5(c)(2)(B), a Federal savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans made on the security of residential or nonresidential real estate, or interests in such loans, subject to the limitations of this part.

(b) *General*—(1) *Appraisals.* A Federal savings association may make a real estate loan only after an appraiser approved by the Federal savings association's management (as that term is defined in § 563.171 of this chapter) has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the Federal savings association by the insuring or guaranteeing agency. The Federal savings association shall pay the cost of any appraisal of the security property obtained by the Federal savings association after loan closing but prior to maturity of a loan, unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan. The appraisals of any real estate required by this part shall be rendered in accordance with the general appraisal guidelines set forth in §§ 563.171 and 571.27 of this chapter.

(2) *Initial repayments on real estate loans.* Except as expressly authorized by this part, repayments on real estate loans shall begin not later than 60 days after the loan is disbursed: *Provided,* That if such loans are for construction, substantial alteration, repair, or improvement, repayments may begin not later than 36 months (24 months for loans secured by real estate consisting solely of a home or combination of home and business property) after the date of the first disbursement, and interest shall

be payable at least semi-annually until regular periodic payments begin.

(3) *Adjustments.* Subject to the limitations of § 545.33(e), a Federal savings association may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value, or as provided in § 556.13 of this subchapter.

(4) *Amortization.* Subject to the limitations in §§ 545.33 and 545.35 of this part, a real estate loan may be fully amortized, partially amortized, non-amortized, or a line-of-credit loan, and the loan contract may provide for the deferral and capitalization of a portion of the interest.

(5) *Initial loan charges.* Except as provided in § 563.35(d) of this chapter, a Federal savings association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs, in such reasonable amounts as the board of directors may fix. The Federal savings association may collect the charges from the borrower and pay the persons rendering services.

(6) *Escrow accounts.* A Federal savings association may require that all or any part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the Federal savings association, in addition to interest and principal payments on the loan, to enable the Federal savings association to pay such charges as they become due, consistent with the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617) ("RESPA").

(c) *Security property.* A loan is made on the security of real estate if:

(1) The security property is real estate pursuant to the law of the state in which the property is located;

(2) The security interest of the Federal savings association may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state in which the property is located;

(3) The security property is capable of separate appraisal; and

(4) With regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends, or is subject to extension or renewal at the option of the Federal savings association, for a term of at least five years following the maturity of the loan.

(d) *Loan-to-value ratios.* (1) At the time of origination, a real estate loan may not exceed 100 percent of the market value of the security property. A Federal savings association shall, by a vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this paragraph (d) with such excess secured by the savings account: *Provided,* That for loans originated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer, and the loans shall not exceed the appraised value of the real estate.

(2) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(3) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, a Federal savings association's board of directors shall approve each such loan prior to its origination and such approval shall be recorded in the minutes of its meeting.

(4) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan a Federal savings association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the Federal savings association's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value-ratio limitations prescribed in this paragraph (d). In valuing the real estate security, a Federal savings association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means the market value of the real estate.

§ 545.33 Home loans.

Any loan made on the security of homes (including a unit of a condominium or cooperative), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate (home loans) shall be subject to the limitations of this section.

(a) *Term; interest.* The loan term shall not exceed 40 years, with interest payable at least semi-annually, except as expressly authorized by this section or by § 545.32(b)(4) of this part.

(b) *Repayment of principal.* The loan balance, for other than nonamortized and line-of-credit loans, shall be repayable in at least semi-annual installments: *Provided,* That loans on the security of farm residences and combinations of farm residences and commercial farm real estate may be repayable in annual installments.

(c) *Amortization.* The loan contract may provide for the deferral and capitalization of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

(d) *Loan-to-value ratios.* (1) At origination, the loan balance may not exceed the maximum loan-to-value ratios established pursuant to § 545.32(d) of this part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by paragraph (c) or (e) of this section. The board will assume continued compliance with the loan-to-value-ratio limitations where the original ratio met the requirements of this paragraph (d), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan, unless pursuant to the paragraph (e)(2)(i) of this section or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125 percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to paragraph (b)(3) of § 545.32 or as permitted by § 556.13 of this subchapter.

(2) If, at maturity of a home loan that provides for adjustments pursuant to paragraph (c) or (e) of this section, the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible under § 545.32(d) of this part the association may offer to refinance the loan if:

(i) It complies with § 545.32(d)(2) of this part, and

(ii) The loan contract requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the Federal savings association with each installment payment.

(e) *Adjustments.* For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term to maturity shall comply with the limitations of this paragraph (e). The disclosure and notice requirements of § 563.99 of this chapter shall also be complied with.

(1) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association. A Federal savings association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract. A Federal savings association may decrease the interest rate at any time.

(2) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract or (iii) in the case of an open-end line-of-credit loan, the adjustment reflects an advance taken by the borrower under the line-of-credit and is permitted by the loan contract.

(3) Any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan, if set forth in the loan contract.

(4) Adjustment notices shall be provided in accordance with § 563.99 of this chapter. In the case of an open-end line-of-credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit, and advance notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given. In the case of a non- or partially-amortized loan, (including a loan with a "call" provision), a Federal savings association shall provide the borrower with notice of maturity at least 90 but not more than 120 days prior to the date of expected maturity.

(5) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide a Federal savings association with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan.

(f) *Loans on cooperatives.* A loan made on the security of a cooperative under this section shall comply with the following requirements:

(1) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(2) *Loans on individual cooperative units.* Such loans may be made on the security of:

(i) A security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and

(ii) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(g) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed the loan-to-value ratios adopted by the association and shall be repayable within eighteen months.

(h) *Notice of housing creditors regarding alternative mortgage transactions.* Pursuant to Title VIII, Pub. L. 97–320, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make alternative mortgage transactions (as defined by section 803 of Pub. L. 97–320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with section 807(b) of Pub. L. 97–320, the provisions listed below are identified as appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: Section 545.32(b)(3) and (b)(4), § 545.33(c) and (e), and § 563.99. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever appropriate.

§ 545.34 Limitations for home loans secured by borrower-occupied property.

(a) *Due-on-sale clauses.* Subject to the provisions of 12 U.S.C. 1701j–3 (which preempts state prohibitions of due-on-sale clauses) and part 591 of this chapter, a Federal savings association may include a provision in its loan instrument whereby the Federal savings association may, at its option, declare immediately due and payable sums secured by the Federal savings association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the Federal savings association's prior written consent.

(b) *Late charges.* A Federal savings association may include in the loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless (1) any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed, and (2) the Federal savings association has disclosed the information pertaining to the charge pursuant to § 563.99 of this chapter. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph (b) shall be considered as interest to the

Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

(c) *Loan payments and prepayments.* Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. Subject to the disclosure provisions of § 563.99, a Federal savings association may impose a penalty on prepayment of a loan as provided in the loan contract. Notwithstanding the above, for any home loan secured by borrower-occupied property and on which the yield may be adjusted pursuant to § 545.33(e), a Federal savings association may not impose a penalty on any prepayment made within 90 days following notice of an adjustment.

§ 545.35 Other real estate loans.

A loan made on the security of residential real estate other than a home or on the security of nonresidential real estate shall be subject to the limitations of this section.

(a) The loan term shall not exceed 30 years, except for nonamortized loans, which shall be repayable within five years. Partially amortized loans shall be repayable with principal and interest payments sufficient to meet a 30-year amortization schedule. A partially amortized loan is any loan which is repayable in full in a lump sum at the end of the loan term but which requires partial amortization during the loan term by regular monthly payments which include both principal and interest.

(b) Interest shall be payable at least semi-annually, except to the extent that the loan contract provides for the deferral and capitalization of interest.

(c) At origination, the loan balance may not exceed the maximum loan-to-value ratios specified in 545.32(d) of this part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from the deferral and capitalization of interest, but at no time during the loan term may the ratio of the loan balance to the initial appraised value of the security property exceed 100 percent as a result of the deferral and capitalization of interest.

(d) A Federal savings association's aggregate investment in nonresidential real estate loans under this section shall not exceed 400 percent of the Federal savings association's capital (as determined under section 5(t) of the Act), unless the Office finds that such additional amount will not present a significant risk to the safe and sound operation of the Federal savings association and is consistent with prudent operating practices. If the Office authorizes any Federal savings association to exceed the 400 percent of capital limitation, the Office shall closely monitor the condition and lending activities of such Federal savings association to ensure that the Federal savings association carries out all authority under section 5(c) of the Act in a safe and sound manner and complies with this paragraph (d) and all other applicable laws and regulations.

§ 545.36 Loans to acquire or to improve real estate.

In addition to any other limitations in this part pertaining to real estate loans, loans for the purpose of acquiring unimproved real estate (or loans on the security of unimproved real estate already owned by the borrower), for financing the development of real estate, on the security of building lots and sites (including a lot on which a manufactured home will be located), for construction of structures on real estate, or for the rehabilitation of real estate shall be subject to the provisions of this section.

(a) Such loans shall not exceed the loan-to-value ratios adopted under § 545.32(d) of this part.

(b) Such loans shall be repayable within the following terms:

(1) Two years: loans for the construction or rehabilitation of an individual single-family dwelling;

(2) Three years: loans for the acquisition of land;

(3) Six years: loans for the construction or rehabilitation of multi-family dwellings, of nonresidential real estate, or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(4) Eight years: loans to finance the development of real estate;

(5) Fifteen years: loans on the security of building lots and sites for single-family dwellings to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used).

(c) For loans made to finance the development of real estate, loans on the security of building lots and sites, and construction loans, upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the appraised value fixed at the time the loan was made.

(d) Loan documentation for development loans shall contain a preliminary development plan that is satisfactory to the Federal savings association. In addition, loans to one borrower (as defined in § 563.93 of this chapter) made under this section for any one development project shall not exceed two percent of an association's assets. A development project includes all facilities that compose an integrated development plan. With respect to construction loans, Federal savings associations shall reserve the right to impose limits on the number of structures under construction at a given time.

§ 545.37 Combination loans.

(a) Any loans authorized by this part may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable sections of this part.

(b) With respect to a combination of loans to finance development of real estate and loans on building lots and sites and/or construction loans, whether or not development has been completed:

(1) Beginning not more than three years after the initial disbursement of loan proceeds for construction purposes, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the principal loan balance applicable to any improvement, including the building site, over the remaining term of the loan, and

(2) Beginning not more than four years after such disbursement, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the loan balance not applicable to the construction of any improvement and its building site, over the remaining term of the loan.

(c) For a combination loan that includes the acquisition of land, the loan contract shall provide that if the development or construction to be financed with the loan has not commenced by the end of the third year from the initial disbursement of the loan proceeds, the loan balance outstanding shall be due and payable.

(d) Notwithstanding any other provisions of this section, a combination loan for construction inclusive of acquisition and/or development, other than loans for single-family dwellings to be used as the principal place of residence of the borrower (which may be repayable within the period allowed by this section plus 40 years), shall be repayable within eleven years.

§ 545.38 Insured and guaranteed loans.

Without regard to any other limitations of this part, a Federal savings association may make or invest in any of the following:

(a) Loans on the security of residential real estate that constitute guaranteed or insured loans as defined in § 541.13 or § 541.17 of this chapter, or that are insured or guaranteed by an agency or instrumentality of a state

(1) whose full faith and credit is pledged to support the insurance or guarantee, or

(2) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) Loans on the security of residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program: *Provided,* That

(1) FmHA guarantees at least eighty percent of the principal amount and accrued interest of each loan made under the program;

(2) The loan terms must be acceptable to FmHA; and

(3) The Federal savings association invests not more than the greater of 2.5 percent of its assets or one-half of its regulatory capital in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the Federal savings association.

(c) Loans on the security of non-residential real estate that are guaranteed by one of the following agencies:

(1) Economic Development Administration (under the Public Works and Economic Development Act of 1965, as amended, or the successor to that Act; or the Trade Act of 1974, as amended);

(2) Farmers Home Administration (under the Consolidated Farm and Rural Development Act of 1974, as amended);

(3) Small Business Administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

§ 545.39 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) Pursuant to section 5(c)(4)(C) of the Act, a Federal savings association may invest in any housing project loan guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969; any loans guaranteed under section 224 of that Act, as in effect before December 30, 1969; or any loan guaranteed under sections 221 or 222 of that Act, as in effect after December 29, 1969, subject to paragraph (b) of this section.

(b) *Requirements.* For any investment made pursuant to this section:

(1) The loan agreement shall specify what constitutes an event of default, and provide that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and

(2) The contract of guaranty shall cover 100 percent of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

§ 545.40 Loans on low-rent housing.

Limitations in this part relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of:

(a) An annual contributions contract for low-rent housing under former sections 23 or 5 of the United States Housing Act of 1937, as amended, or

(b) A Housing Assistance Payment (HAP) contract for low-income housing under section 8 of the United States Housing Act of 1937, as amended, which the borrower has agreed in writing to enter into for the maximum term available for the particular project type and financing;

Provided, That no loan by a Federal savings association pursuant to the authority of this section shall exceed the applicable loan-to-value ratio specified in § 545.32(d) or, the purchase price if the security property is to be purchased by a local public housing authority, and in no event, shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.38 of this chapter.

§ 545.41 Community development loans and investments.

(a) *General.* A Federal savings association may make investments pursuant to section 5(c)(3)(B) of the Act that are located within any of the following areas:

(1) Any neighborhood strategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974, as amended;

(2) Any general location (as specified in 24 CFR 570.306(b)(3)(ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance;

(3) Any urban renewal area (as defined in section 110(a) of the Housing Act of 1949, as amended) receiving such concentrated assistance in order to finish incomplete urban renewal projects; and

(4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) *Investment in loans and other obligations secured by liens on real estate.* Such investments shall conform to all limitations in this part 545 applicable to the type of real estate securing the investments.

(c) *Investments in real estate.* Investments in real estate may not exceed the appraised value of the property plus usual settlement costs. In determining the two-percent statutory investment limit, the following rules shall apply:

(1) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the Federal savings association;

(2) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be a market rate as of the date of the lease; and

(3) The investment in improvements to land in which the Federal savings association has a leasehold interest shall be the cost to the Federal savings association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

§ 545.42 Home improvement loans.

For any home improvement loan, with or without security, made pursuant to section 5(c)(1)(J) of the Act, installments shall be payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized by §§ 545.32(b)(4) and 545.33 (e) and (f) of this part. No loan contract may provide for the deferral and capitalization of interest on a loan made under this section.

§ 545.43 State housing corporation investment-insured.

A Federal savings association may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8 of this chapter), pursuant to section 5(c)(1)(P) of the Act, provided that the aggregate outstanding direct investment and investment in loans and loan commitments under this section shall not exceed 30 percent of the Federal savings association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the Federal savings association's home state.

§ 545.44 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this part, a Federal savings association may enter into and perform any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

§ 545.45 Manufactured home financing.

(a) *Definitions.* (1) The term *Manufactured home* shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(2) *Manufactured home chattel paper.* The term "manufactured home chattel paper" means a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(3) *Manufacturer's invoice price.* The term "manufacturer's invoice price" means a manufacturer's itemized charges, shown on its invoice, for a specifically identified manufactured home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

(b) *General investment authority.* Pursuant to section 5(c)(1)(J) of the Home Owner's Loan Act, a Federal savings association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

(c) *Inventory financing.* A Federal savings association may invest in manufactured home chattel paper which finances a manufactured home dealer's acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of business;

(2) The loan evidenced by the chattel paper is the dealer's obligation; and

(3) The loan amount does not exceed the following:

(i) For new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(ii) For used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including installed equipment.

(d) *Retail financing*—(1) *Insured and guaranteed loans.* A Federal savings association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in § 541.13 or § 541.17 of this subchapter, or that has a commitment for such insurance or guarantee.

(2) *Conventional loans.* A Federal savings association may invest in conventional retail manufactured home chattel paper if:

(i) The manufactured home is located at a manufactured home park or other permanent or semi-permanent site;

(ii) The manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.33 (c) and (e) of this part; and

(iii) The financed amount (excluding time-price differential or interest, however computed) does not exceed (A) in the case of a new manufactured home, 90 percent of the buyer's total costs, including freight, itemized setup charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or (B) in the case of a used manufactured home, 90 percent of the appraised market value or other generally accepted valuation of the manufactured home plus sales and other taxes, filing and recording fees imposed by law, premiums for related insurance, and freight and itemized set-up changes, if any.

(3) *Combination loans.* A Federal savings association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(i) *Affixed manufactured homes.* If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a home loan under § 545.33.

(ii) *Unaffixed manufactured homes.* If the manufactured home is not affixed in the manner described in paragraph (d)(3)(i) of this section, a Federal savings association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this section and the loan-to-value ratio does not exceed 75 percent of the appraised value of the lot and lot improvements and 90 percent of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in paragraph (d)(2)(iii) of this section.

(iii) *Insured and guaranteed loans.* Notwithstanding the other provisions of paragraph (d)(3) of this section, a Federal savings association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in § 541.13 or § 541.17 of this subchapter, or that has a commitment for such insurance or guarantee.

(e) *Sale of paper.* All manufactured home chattel paper sold by a Federal savings association shall be sold without recourse, as defined in § 561.55 of this chapter.

§ 545.46 Commercial loans.

(a) *Investment authority.* Pursuant to section 5(c)(2)(A) of the Act, a Federal savings association may invest in, sell, purchase, participate in, or otherwise deal in loans for commercial, corporate, business, or agricultural purposes: *Provided*, That at any one time the total investment made under this section shall not exceed five percent of the Federal savings association's assets (or 7.5 percent in the case of a savings bank) prior to January 1, 1984, and ten percent thereafter.

(b) *Loans covered.* Notwithstanding the provisions of § 545.31 of this chapter, the percentage-of-assets limitations in paragraph (a) of this section shall apply to:

(1) Overdraft loans on demand accounts; and

(2) Commercial loans not secured by real estate that are made by a service corporation of the Federal savings association:

Provided, That, in the case of a service corporation with multiple stockholders, the amount of such loans attributed to one stockholder Federal savings association will be calculated pro rata on the basis of the percentage of the service corporation's stock owned by the Federal savings association.

§ 545.47 Overdraft loans.

(a) *Authorization.* Pursuant to section 5(c)(1)(A) of the Act, a Federal savings association may extend secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn, subject to the limitations of this section.

(b) *Loans not subject to this section.* Extensions of credit through the use of drafts or other funds transfer orders for purposes other than the payment of bona fide overdrafts or which result in a debit balance existing for more than 30 days after notice shall not be considered to be made pursuant to this section.

(c) *Demand accounts.* Overdraft credit relating to demand accounts is subject to specific limitations set forth in § 545.46 of this chapter.

§ 545.48 Letters of credit.

(a) A Federal savings association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

(1) Each letter of credit must conspicuously state that it is a letter of credit;

(2) The issue's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(3) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

(4) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

(b) To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage-of-assets limits and other requirements under an applicable provision of this part 545.

§ 545.49 Loans on securities.

A Federal savings association may invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in § 566.1(g)(3) of this chapter, if:

(a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission; and

(b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

§ 545.50 Consumer loans.

(a) *Authorization.* Pursuant to section 5(c)(2)(D) of the Act, a Federal savings association may make consumer loans, subject to the limitations of this section.

(b) *Definition.* Consumer loans include loans for personal, family or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit, but does not include credit extended in connection with credit cards nor bona fide overdraft loans.

(c) *Loans to dealers in consumer goods.* A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section. For purposes of the limitations on loans to one borrower, loans to dealers in consumer goods to finance inventory and floor planning shall be treated as commercial loans.

§ 545.51 Credit cards.

(a) *Authorization.* Pursuant to section 5(b)(4) of the Act, a Federal savings association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, subject to the limitations of this section.

(b) Credit card operations may be subject to § 545.141 of this part. If a personal security identifier, as defined in § 545.141(a)(2), is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

§ 545.52 Loans on savings accounts.

(a) *Authorization.* Pursuant to section 5(c)(1)(A) of the Act, a Federal savings association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, subject to the limitations of this section.

(b) Loans may be made pursuant to this section if the Federal savings association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the Federal savings association has any unpaid application for withdrawal on file more than 14 days.

§ 545.53 Finance leasing.

(a) *Authorization.* Pursuant to sections 5(c)(1)(B), (c)(2)(A), and (c)(2)(D) of the Act, a Federal savings association may engage in leasing activities that are the functional equivalent of lending, subject to the limitations of this section.

(b) *General.* (1) A Federal savings association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if:

(i) The lease is a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease and

(ii) At the expiration of the lease, the Federal savings association s interest in the property shall be liquidated or released on a net basis as soon as practicable.

(2) A lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in real estate loans.

(c) *Definitions.* For the purposes of this section:

(1) The term "net lease" means a lease under which the Federal savings association will not, directly or

indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property: *Provided,* That improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration of filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or financier of the property.

(2) The term "full-payout" lease means one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, ectimated tax benefits, guarantees and other sources, and the estimated residual value of the property at the expiration of the initial term of the lease:

Provided, That no more than 20 percent of the return may be realized from the residual value of the property at the expiration of the initial term of the lease. Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(d) *Salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of paragraphs (b) and (c) of this section shall not prevent the Federal savings association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (d)(1) and (d)(2) of this section.

§§ 545.54–545.70 [Reserved]

§ 545.71 Liquid assets.

A Federal savings association may invest in assets that are described in § 566.1(g) of this chapter. For purposes of this section, the maturity limitations (except those for banker's acceptances) of § 566.1(g) shall not apply.

§ 545.72 Government obligations.

Pursuant to section 5(c)(1)(H) of the Act, a Federal savings association may invest in obligations of or issued by any state, territory or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality), subject to the following conditions:

(a) Government obligations must continue to hold one of the four highest national investment grade ratings, or must be issued by a public housing agency and backed by the full faith and credit of the United States.

(b) Notwithstanding the limitations contained in paragraph (a) of this section, a Federal savings association may invest up to one percent of its assets in the obligations of a state, territory, possession or political subdivision in which the association's home office or a branch office is located.

(c) Investment in gold-related obligations is prohibited.

§ 545.73 Inter-American Savings and Loan Bank.

Pursuant to section 5(c)(4)(C) of the Act, a Federal savings association may invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to the following conditions:

(a) The Federal savings association's regulatory capital meets the requirements of § 567.2 of this chapter, including any individual minimum capital requirement established under § 567.3 of this chapter or by a capital directive issued pursuant to § 567.4 of this chapter, and all losses have been offset by specific loss allowances to the extent required by § 563.172 of this chapter;

(b) The Federal savings association's aggregate investment pursuant to this paragraph (b), including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), will not, as a result of such investment, exceed one-quarter of one percent of its assets or $100,000, whichever is less; and

(c) The Federal savings association's aggregate investment under this paragraph (c) and its aggregate outstanding principal amount of investment under section 5(c)(4)(C) of the Act, will not, as a result of such investment, exceed one percent of its assets.

§ 545.74 Service corporations.

(a) *Definitions.* As used in this section—

(1) *Aggregate outstanding investment* means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations. It also includes all nonconforming loans and conforming loans to the extent that they exceed the amounts specified in paragraph (d)(2) of this section.

(2) *Conforming loan* means a loan or portion thereof which a Federal savings association may make under any provision of this part other than this section, except a loan made under 12 U.S.C. 1464(c)(3)(C)–(D). A guarantee or take-out commitment with respect to a loan which could have been made by a Federal savings association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal savings association complies with all requirements of this chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.

(3) *Joint venture* means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

(4) *Subsidiary* includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof:

(i) Owns, controls, or holds with power to vote more than 25 percent of the capital stock,

(ii) Is a general partner, or

(iii) Is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

(b) *General.* Pursuant to 12 U.S.C. 1464(c)(4)(B), a Federal savings association may invest in service corporations organized under the laws of the state (including the District, commonwealth, territory or possession) in which the association's home office is located, provided that:

(1) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section, or are otherwise specifically approved by the Office subsequent to the Office's review of an application;

(2) Approval of the Office is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint venture;

(3) If all of the capital stock is held by fewer than five savings associations, or more than 40 percent of such stock is held by one savings association, with a home office in such state, then the consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and its subsidiaries may not exceed:

(i) Ten times the total of the service corporation's consolidated regulatory capital and its unsecured debt (excluding accounts payable incurred in the ordinary course of business and paid within 60 days) to holders of at least 25 percent of its capital stock; or

(ii) Twenty times such total if the service corporation is engaged solely in the activities set forth in paragraph (c)(1)(i) of this section. The consolidated debt of the service corporation and its subsidiaries shall include the entire amount of any obligation of the service corporation or subsidiary resulting from the sale of loans with recourse;

(4) The service corporation must agree in writing to permit and to pay the cost of such examination as the Office deems necessary;

(5) The Office may limit service corporation activities, or refuse to permit activities, for supervisory reasons.

(6) Prior approval of the Office must be obtained for investment in a service corporation or for investment by a service corporation in a joint venture or subsidiary if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of an association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee.

(7) The association shall notify the FDIC and the Office not less than 30 days prior to the establishment, or acquisition of any service corporation, and not less than 30 days prior to the commencement of any new activity through a service corporation. This notice requirement is in addition to any application that may be required under paragraph (c) of this section. Notice required under this paragraph (b)(7) shall be made to the Office as follows: one copy of such notice shall be submitted to the Senior Deputy Director for Supervision (Operations) and one copy of such notice shall be submitted to the District Director.

(c) *Permitted activities.* A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activities of Federal savings associations as the Office may approve. Applications for approval to engage in such activities shall be made to the District Director. In addition, a service corporation may engage in the following activities without prior Office approval provided the notice required by paragraph (b)(7) of this section has been given:

(1) *Loans.* Originating, investing in, selling, purchasing (including purchasing participations in) servicing, or otherwise dealing in (including brokerage or warehousing), any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on manufactured homes;

(ii) Loans, and participations in loans with or without security, for altering, repairing, improving, equipping, or furnishing real estate;

(iii) Loans and participations in loans for business purposes secured in part by real estate and insured or guaranteed by an agency of the United States;

(iv) Educational loans and participations therein;

(v) Consumer loans, including inventory and floor planning loans, and participations therein;

(vi) Commercial loans and participations therein: *Provided,* That: such loans together with commercial loans made by the parent association pursuant to § 545.46 of this part do not exceed ten percent of the assets of the parent. Where a service corporation is owned by more than one association, each parent for purposes of this calculation shall include a portion of the subsidiary's commercial loans in the proportion of that parent's investment in the service corporation.

(2) *Services primarily for financial institutions.* Performing any of the following services, primarily for financial institutions:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Developing and operating storage facilities for microfilm or other duplicate records;

(v) Advertising, brokerage and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts;

(vi) Serving as escrow agent or as trustee under deeds of trust, including executing and delivering conveyances, reconveyances, and transfers of title;

(vii) Providing liquidity management, investment, advisory and consulting services;

(viii) Providing clerical, accounting, and internal auditing services;

(ix) Establishing, owning, leasing, operating or maintaining remote service units;

(x) Purchase of office supplies, furniture, and equipment.

(3) *Real estate services.* (i) Maintaining and managing real estate, including real estate used for agricultural purposes;

(ii) Managing owners' associations for condominium, cooperative, Planned Unit Development or other rental real estate projects;

(iii) Providing home ownership and financial counseling;

(iv) Providing relocation services;

(v) Providing real estate brokerage services for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not for property owned by third parties;

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided,* That any development, subdivision, and construction of improvements is to be

completed within eleven years after acquisition of the real estate, unless such period is extended by the District Director upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction: and *Provided further,* That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this paragraph (c)(3)(vi);

(vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(viii) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities: *Provided,* That without prior approval of the Office, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated regulatory capital.

(4) *Securities brokerage services.* (i) Execution of securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and the provision of standardized and individualized investment advice to individuals or entities, provided that the service corporation:

(A) Conducts securities brokerage and investment advisory activities in an area that is clearly identified and distinguished from the areas where the association's depository functions are performed;

(B) Distinguishes advertising by the service corporation from that of the association, such that advertising does not confuse securities transactions executed, securities purchased, or investment advice provided by the service corporation with federally-insured deposits; that the advertising indicates that the service corporation and broker-dealer, and not the association, is providing the securities brokerage or investment advisory services, identifies the broker-dealer in advertising, and does not use the logo of the parent association in the text of any advertisement prepared or distributed by the service corporation or the broker-dealer or in the text of any advertisement for specific securities products;

(C) Where the service corporation contracts with a third-party broker-dealer, has a written contract with the broker-dealer that provides that the broker-dealer agrees to indemnify fully the service corporation and the association for any liability arising from the negligence, recklessness, or intentional conduct of the broker-dealer or its employees, and that sets forth operating, marketing, compensation, and other relevant terms;

(D) Provides to the District Director or his or her designee an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program that the program has been established pursuant to operational procedures that are intended to ensure that the program is conducted in conformity with applicable securities laws and regulations and that such procedures include internal controls and supervisory systems that have been established and are to be applied to detect and prevent violations of federal securities statutes, the rules adopted thereunder, and the rules of self-regulatory organizations applicable to broker-dealers, including but not limited to those provisions designed to prevent churning, unsuitable recommendations, charging excessive prices, and the making of fraudulent representations in connection with the offer, sale, or purchase of securities ("the regulations"); and on an annual basis thereunder provides a certification by the senior securities principal responsible for supervising and overseeing the subject brokerage program that he or she has discharged the obligations incumbent upon him or her by reason of such procedures and systems previously described and has no reasonable belief or cause to believe that such procedures and systems have not been and are not being complied with or that a violation of the regulations has occurred;

(E) Does not condition the provision of securities services to a customer on the customer's utilizing services of any affiliate of the association, the service corporation, or a broker-dealer.

(ii) Service corporation activities authorized under this paragraph (c)(4)(ii) may not include the following activities:

(A) Execution of securities transactions on a principal basis, including market-making and underwriting, except on a riskless principal basis, and except as permitted under paragraph (c)(3) of this section;

(B) Payment to any employee of the association of a referral fee, bonus, or any incentive compensation, in cash or in kind, for referring any customer to the service corporation except as may be consistent with a "no-action" letter received by the association from the U.S. Securities and Exchange Commission ("SEC"), stating that the SEC will not recommend enforcement section if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;

(C) Solicitation of a person to execute a transaction in a specific security by any registered representative;

(D) Indemnification by the service corporation to a degree greater than the indemnification provided to it by the third-party broker-dealer; and the association is prohibited from indemnifying a third party broker-dealer;

(E) Extension of margin credit by the association to customers of the service corporation or broker-dealer;

(F) Entry into any third-party contract with a broker-dealer, directly by the association; and

(G) Non-registered representatives who are dual or sole employees of the association performing tasks other than clerical for ministerial tasks; prohibited activities include accepting or delivering money or securities and taking orders to execute securities transactions.

(iii) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the District Director or his or her designee, no earlier than 180 days and no later than 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided, together with copies of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent savings association, and their affiliates, *pro formo* income statements for a three year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage service qualify as preapproved under this paragraph (c)(4)(iii).

(iv) The District Director or his or her designee may request additional information at any time regarding the operations of the service corporation if he or she has supervisory concerns about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

(5) *Other investments.* (i) Making investments in securities and in corporations or partnerships authorized by title IX of the Housing and Urban Development Act of 1968;

(ii) Investing in savings accounts in a savings association that is a stockholder of the service corporation: *Provided,* That the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Investing in the capital stock or in the accounts of an interim Federal savings association or an interim state savings association that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company;

(iv) Investing in tax-exempt bonds of state governments or political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies and issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended; and

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 302(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraph (c)(1) through (c)(6) of this section;

(vi) Engaging in interest rate futures transactions subject to the provisions of § 563.174 of this chapter, but not subject to any notification requirements thereof;

(vii) Engaging in financial options trading subject to the provisions of § 563.175 of this chapter;

(viii) Making investments specified in §§ 545.71–73 and 545.76 and in 12 U.S.C. 1464(c)(1) (C) through (F), (M) and (N).

(6) *Other services.* (i) Preparing state and Federal tax returns for individuals or organizations that are not corporations operated for profit;

(ii) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance, but not private mortgage insurance;

(iii) Providing fiduciary services upon application to the Office pursuant to § 550.2, and subject to the conditions provided in §§ 550.1 through 550.16 of this subchapter;

(iv) Issuing notes, bonds, debentures, or other obligations or securities;

(v) Issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(vi) Acquiring personal property, including office equipment, for the purpose of leasing such property or obtaining an assignment of a lessor's interest in a lease of such property;

(vii) Providing data processing services to the extent permitted to the parent association pursuant to § 545.138 of this part;

(viii) Issuing letters of credit;

(ix) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

(7) Activities reasonably incident to those listed in paragraphs (c)(1) through (c)(6) of this section.

(d) *Amount of investment.* (1) An association may invest under this section in the capital stock, obligations, or other securities of service corporations: *Provided,* That its aggregate outstanding investment does not exceed three percent of assets, and any investment in excess of two percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this paragraph (d)(1) shall include all loans (but not including accounts payable incurred in the ordinary course of business and paid within 60 days) secured and unsecured, and all guarantees or take-out commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of two percent of assets shall designate investments that serve primarily community, inner-city or community development purposes which shall include the following:

(i) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(ii) Investments for the preservation or revitalization of either urban or rural communities;

(iii) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(iv) Other community, inner-city or community development-related investments approved by the District Director.

(2) In addition to amounts which it may invest under paragraph (d)(1) of this section, an association that meets its applicable minimum regulatory capital requirement may lend additional amounts as follows:

(i) An amount not to exceed regulatory capital may be invested in conforming loans and functionally equivalent leases made to each service corporation of which the association owns or holds with power to vote not more than ten percent of the capital stock and to each joint venture, in which a service corporation in which the association is a stockholder, including subsidiaries of such service corporation:

(A) Owns or holds with power to vote not more than a total of ten percent of the capital stock, or

(B) Is a limited partner and has contributed not more than ten percent of such joint venture's capital.

(ii) An aggregate outstanding amount not to exceed fifty percent of regulatory capital may be invested in conforming loans and functionally equivalent leases to all service corporations in which the association owns more than ten percent of the capital stock, and to all joint ventures in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

(A) Own or hold with power to vote more than a total of ten percent of the capital stock, or

(B) Are partners.

(3) The limitation in paragraph (d)(1) of this section does not apply to conforming loans to any service corporation in which the lending association does not have any investment made under authority of this section, or to conforming loans to a statewide service corporation in which:

(i) All of the capital stock is available for purchase by, and only by, any and all savings associations with a home office in such state;

(ii) No savings association owns, or may own, more than ten percent of the service corporation's outstanding capital stock, except that in any state in which the home offices of fewer than fifteen savings associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or

savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement.

(e) *Disposal of investment.* Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal savings association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal savings association having an interest in the service corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Director mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

(f) *Delegation of authority.* Unless an application of a Federal savings association filed pursuant to this section involves a significant issue of law or policy or would establish a precedent of national significance, the Senior Deputy Director for Supervision (Operations), with the concurrence of the Chief Counsel, or their respective designees, is authorized:

(1) To approve the application, if it is complete and in compliance with regulatory requirements; and

(2) To deny the application if it does not satisfy the approval criteria.

If the Senior Deputy Director for Supervision (Operations) or the Chief Counsel, or their respective designees, is of the opinion that the application involves considerations of law or policy that warrant resolution by the Director of the Office, the Senior Deputy Director for Supervision (Operations) shall submit the application to the Director for his or her determination and notify the applicant. If the Senior Deputy Director for Supervision (Operations) fails to obtain the concurrence of the Chief Counsel, or their designees, the Senior Deputy Director for Supervision (Operations) shall present the application to the Director for his or her determination and notify the applicant.

(g) *Appeals.* Denial of an application by the Senior Deputy Director for Supervision (Operations) pursuant to paragraph (f) of this section may be appealed to the Director of the Office under the following procedure. Within 30 days after notification of the decision of the Senior Deputy Director for Supervision (Operations) as provided in this section, the applicant must file a written request for review with the Director stating the applicant's desire to appeal the decision of the Senior Deputy Director for Supervision (Operations). The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial of the Senior Deputy Director for Supervision (Operations) is contended to be erroneous. Three copies of such request for review shall be submitted to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, Washington, D.C. 20552. One copy of such request should be addressed to the attention of the Senior Deputy Director for Supervision (Operations), and one copy to the attention of "the Chief Counsel, Corporate and Securities Division"; also, one copy shall be sent to the District Director. The Senior Deputy Director for Supervision (Operations) shall forward to the Director the record, or a copy thereof, used as a basis for the determination together with any other information believed by the Senior Deputy Director for Supervision (Operations) to be useful in reviewing the determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Senior Deputy Director for Supervision (Operations) is waived. A timely filing of a request for review in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

§ 545.75 Commercial paper and corporate debt securities.

(a) *General.* Pursuant to section 5(c)(2)(D) of the Act, a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b) of this section.

(b) *Limitations.* (1) Commercial paper must be:

(i) Denominated in dollars, and

(ii) As of the date of purchase, as shown by the most recently published rating made of such investments by at least two nationally recognized investment rating services, rated in either one of the two highest categories; or

(iii) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (b)(1)(ii) of this section.

(2) Corporate debt securities must be:

(i) Denominated in dollars,

(ii) Securities that may be sold with reasonable promptness at a price which corresponds reasonably to their fair value, and

(iii) Rated in one of the four highest categories by a nationally recognized investment rating service at its most recent published rating before the date of purchase of the security.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with other commercial loans, shall not exceed the limitations contained in § 563.93(b)(2).

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) The purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) At the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature;

(iii) Federal savings associations are prohibited from exercising the conversion feature.

(5) At any one time, the average maturity of a Federal savings association's portfolio of corporate debt securities may not exceed six years.

(6) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(c) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

(d) Notwithstanding any rating and marketability limitations contained in paragraphs (b) (1) and (2) of this section, a Federal savings association may invest up to one percent of its assets in commercial paper and corporate debt securities not otherwise prohibited by section 28(d) of the Federal Deposit Insurance Act, as added by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, if in the exercise of its prudent business judgment it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with such securities, including all debt service requirements.

§ 545.76 Investment in open-end management investment companies.

(a) *Authorization.* Pursuant to section 5(c)(1)(Q) of the Act, a Federal savings association may invest in, redeem, or hold shares or certificates in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to any such investments as an association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold or otherwise deal with.

(b) *Limitations.* Where the investments of the open-end management investment company consist of commercial paper and corporate debt securities, such investments must come within the limitations of § 545.75(b) (1) and (2) of this part. Five percent of assets shall be the maximum that may be invested in the shares of any one such company.

§ 545.77 Real estate for office and related facilities.

(a) *General.* A Federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the Federal savings association's present needs or its reasonable future needs for office and related facilities. The Federal savings association shall obtain Office approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.74(c)(3)(viii) of this part) to exceed its regulatory capital. The Federal savings association shall also obtain Office approval before investing in real estate which the Office has not approved for the establishment or maintenance of an office facility, if the investment, together with the Federal savings association's other investments in real estate lacking such approval, would exceed 25 percent of its regulatory capital.

(b) *Requests for Office approval of exceptions.* A Federal savings association shall send requests for Office approval of exceptions to limitations in this section to the District Director, with a copy to the Senior Deputy Director for Supervision (Operations).

§ 545.78 Leasing.

(a) *Authorization.* Pursuant to section 5(c)(2)(C) of the Act, a Federal savings association may invest in tangible personal property for the purpose of leasing that property, subject to the limitations of this section.

(b) *Residual value.* The estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor.

§ 545.79 Gold transactions.

No Federal savings association shall engage in any transaction or activity, including the payment of interest or dividends, involving gold (including gold coin) or gold related instruments or securities or pay interest or dividends in an amount of money determined in any manner related to gold: *Provided,* That Federal savings associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury.

§ 545.80 Small Business Investment Corporations.

Pursuant to section 5(c)(4)(D) of the Act, a Federal savings association may invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Company Act of 1958.

§§ 545.81 [Reserved]

§ 545.82 Finance subsidiaries.

(a) *Definitions.* As used in this section:

(1) *Assets collateralizing* means any assets of a finance subsidiary securing, pledged to, or committed to a securities issuance by a finance subsidiary.

(2)(i) *Assets transferred* or "transferring assets" means assets of or liabilities issued by a parent Federal savings association that are transferred or made available by such Federal savings association to a finance subsidiary. Assets transferred include guarantees of a finance subsidiary's securities issuances by its parent Federal savings association.

(ii) For the purpose of calculating the 30 percent aggregate and 250 percent per-issuance transfer limitations set forth in paragraphs (c)(1)(i) and (c)(1)(ii), respectively, of this section, assets transferred by a Federal savings association to a finance subsidiary include—

(A) Assets or liabilities used to capitalize a finance subsidiary, to collateralize an issuance of securities by an established finance subsidiary, or to maintain collateral levels for any security issued by a finance subsidiary;

(B) Any guarantee issued by a parent Federal savings association with respect to the securities issued by a finance subsidiary or any collateral for such guarantee as provided in paragraph (c)(4) of this section;

(C) Any portion of the proceeds of a securities issuance by a finance subsidiary held by a finance subsidiary for collateral maintenance, fee payment, or other necessary expenses related to the securities issuance or collateralizing assets; and

(D) Any assets or liabilities received by a finance subsidiary from its parent Federal savings association by or after remitting to the parent Federal savings association the proceeds of a securities issuance by such finance subsidiary.

The remittance of proceeds of a securities issuance to a parent Federal savings association by any method, including those set out in paragraph (e) of this section, shall not decrease the amount of assets transferred for the purposes of paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(3) "Finance subsidiary" means a Federal savings association's subsidiary subject to the provisions of this section whose sole purpose is to issue securities (as defined in § 561.44 of this chapter) that the Federal savings association is authorized to issue directly (or, if the parent Federal savings association is a mutual savings association, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such securities issuances to its parent Federal savings association.

(b) *Establishment of finance subsidiaries.* A Federal savings association may establish one or more finance subsidiaries as defined in paragraph (a)(3) of this section. Prior to the establishment of any finance subsidiary, the board of directors of a Federal savings association shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Office. The Federal savings association shall notify the Office and the Federal Deposit Insurance Corporation not less than 30 days before the commencement of the activities of the finance subsidiary. The board of directors of a Federal savings association shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

(c) *Transactions between a parent Federal savings association and its finance subsidiaries.* (1) A Federal savings association may provide the capital to establish one or more finance subsidiaries by transferring assets to such a finance subsidiary: *Provided,* That:

(i) The aggregate current book value of all assets transferred by a Federal savings association to a finance subsidiary shall not, without the prior written approval of the District Director of the parent Federal savings association exceed 30 percent of the current book value of the Federal savings association's total assets determined as of the date of any transfer of assets; and

(ii) The aggregate current market value of all assets transferred shall not, without the prior written approval of the Federal savings association's District Director exceed the amount necessary and customary for the issuance of the type of securities to be issued by a finance subsidiary (which may be the amount required by the rating criteria of a nationally recognized investment rating service) or 250 percent of the gross proceeds of a finance subsidiary's securities issuance, whichever is less.

(2) A finance subsidiary shall not be consolidated with its parent Federal savings association for purposes of calculating the regulatory capital requirement of the parent Federal savings association pursuant to § 567.2 of this chapter, but the parent Federal savings association shall be subject to the requirements of § 563.132 of this chapter.

(3) A Federal savings association may guarantee any securities issued by its finance subsidiary: *Provided,* That the guarantee shall not exceed the sum of the unpaid principal balance, any accrued but unpaid interest, any redemption premium, and any post-default interest on such securities, and *Provided* further, That the guarantee shall provide that the assets collateralizing the payment of such securities of the finance subsidiary shall be exhausted before recourse may be had to the guarantee.

(4) If a guarantee of a finance subsidiary's securities by its parent Federal savings association is collateralized or if a liability issued by a parent Federal savings association to its finance subsidiary is collateralized, then the greater of the face amount of such guarantee or liability or the current book value of the collateral shall be included in the total amount of assets transferred by a parent Federal savings association under the limitation of paragraph (c)(1)(i) of this section. The greater of the face amount of such guarantee or liability or the market value of the collateral shall be included in the total amount that may be transferred by a parent Federal savings association under the limitation of paragraph (c)(1)(ii) of this section.

(5) The amount of assets transferred (as defined in paragraph (a)(2) of this section) by a Federal savings association to a finance subsidiary shall not be subject to the loans-to-one-borrower limitations imposed by § 563.93 of this chapter.

(d) *Issuance of securities by finance subsidiaries.* (1) A finance subsidiary of a Federal savings association may issue, either directly or through a third-party intermediary, any security that its parent Federal savings association is authorized to issue (or, if the parent Federal savings association is a mutual savings association, would be authorized to issue if it converted to the stock form), subject to the provisions of this section.

(2) A finance subsidiary shall not issue or deal in the deposits or savings accounts of its parent Federal savings association, or state or imply that securities issued by it are insured by the Federal Deposit Insurance Corporation.

(3) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent Federal savings association is insolvent or has been placed into receivership.

(4)(i) A Federal savings association providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock. A Federal savings association shall not transfer or otherwise assign any interest in its finance subsidiary's common stock to any other person or entity without the prior written approval of the Office.

(ii) A finance subsidiary may provide for voting rights for holders of preferred stock in the manner, for the time period, and to the extent customary to protect the rights of such preferred stockholders: *Provided,* That upon the expiration of any event giving rise to the exercise of such voting rights, such rights shall be vested exclusively as provided in paragraph (d)(4)(i) of this section. Such events include, without limitation, the following:

(A) The finance subsidiary fails to pay dividends for at least one dividend period;

(B) Authorization is sought for any merger, consolidation, or reorganization of the finance subsidiary or its parent Federal savings association (except in a supervisory case) in which the issuing finance subsidiary or its parent Federal savings association is not the survivor and the regulatory capital of the resulting finance subsidiary or parent Federal savings association available for payment of any class of preferred stock is less than the regulatory capital available for such class prior to the merger, consolidation, or reorganization;

(C) Authorization is sought to create a class of preferred stock having a preference or priority over an outstanding class or classes of preferred stock;

(D) Authorization is sought for any action that would adversely change the specific terms of a class of preferred stock;

(E) Authorization is sought to increase the number of shares of a class of preferred stock; and

(F) Authorization is sought for the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specified financial standards.

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal savings association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent Federal savings association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent Federal savings association (subject to the limitations of paragraph (c)(1) of this section on the aggregate and per-issuance transfers by a parent Federal savings association to a finance subsidiary): *Provided,* That any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be regulatory capital as defined in § 567.1 of this chapter shall not, if issued by the parent Federal savings association to its finance subsidiary, be included in the parent Federal savings association's regulatory capital unless:

(1) No assets of the parent Federal savings association have been transferred to the finance subsidiary,

(2) The transaction transfers the risk of equity ownership to parties other than that finance subsidiary or any savings association, and

(3) The Office approves the transaction.

The remittance of proceeds to a parent savings association by any method shall not reduce the amount of assets transferred to a finance subsidiary for purposes of the transfer limitations of paragraph (c)(1) of this section. If a Federal savings association on December 31, 1985, has exceeded the transfer limitations of paragraph (c)(1)(i) or (c)(1)(ii) of this section due to deducting from the amount of the Federal savings association's assets transferred any amount of remitted proceeds from a finance subsidiary's securities issuances, the Federal savings association shall not make additional transfers (unless necessary for collateral maintenance) until the Federal savings association is in compliance with such transfer limitations.

(f) *Notification to the District Director.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of any additional securities by an existing finance subsidiary, the board of directors of the parent Federal savings association, or a duly authorized executive committee thereof, shall submit written notification to the Federal savings association's District Director specifying:

(i) The name of the finance subsidiary;

(ii) The jurisdiction of incorporation of the finance subsidiary;

(iii) The amount of assets of the parent Federal savings association to be transferred (including the terms of any guarantee to be issued by the Federal savings association or any affiliate of the Federal savings association); the current book value of all such assets previously transferred to the finance subsidiary; and the amount representing 30 percent of the current book value of the parent Federal savings association's total assets; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the finance subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the finance subsidiary's securities;

(D) The minimum denomination of the finance subsidiary's securities; and

(E) Where the finance subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a finance subsidiary, its parent Federal savings association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance of securities to its District Director.

(3)(i) Any Federal savings association that fails to meet its regulatory capital requirement, as provided in § 567.2 of this chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the Federal savings association's District Director. To obtain the written approval of the District Director, the board of directors of the Federal savings association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the District Director.

(ii) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (f)(3)(i) of this section or any additional information by a Federal savings association subject to paragraph (f)(3)(i) of this section, the District Director shall notify the applicant in writing either that all information required has been filed or that additional specified information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(iii) The District Director shall approve the application of a Federal savings association, subject to the requirements of paragraph (f)(3)(i) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of additional securities by an existing finance subsidiary is likely to affect adversely the financial condition or the safe and sound operation of the parent Federal savings association. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The Federal savings association shall file its petition with the Secretary to the Office and shall send a copy to the District Director. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (f)(3)(iii) of this section in writing within 30 days of receipt. If the Office does not deny such a petition for reconsideration within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.

(g) *Examination of finance subsidiaries.* A finance subsidiary shall agree in writing to permit and to facilitate examinations and to pay any Federal savings association costs of such examinations as the Office may deem necessary or appropriate.

§§ 545.83–545.90 [Reserved]

§ 545.91 Home office.

All operations of a Federal savings association shall be subject to direction from the home office.

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, data processing or administrative office, or a remote service unit. Except as limited by this section, any business of a Federal savings association may be transacted at a branch office. A Federal savings association shall not establish a branch office without prior written approval of the Office.

(b) *Eligibility.* A Federal savings association may apply for a branch regardless of the number of branch applications it has pending before the Office, unless otherwise currently restricted under an agreement between the Office and a state agency that regulates state-chartered savings associations.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain Office approved application and notice forms and related instructions from the District Director or his or her designee. An application is filed when four copies are delivered to the District Director or his or her designee; the application is complete when the District Director or his or her designee determines that all required information has been submitted. The Office shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The District Director or his or her designee shall determine that the application is complete, the applicant is

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eligible, and that as a preliminary matter there is no basis for supervisory objection to the application, before giving direction for publication of notice.

(d) *Processing of application.* Processing of an application under this part shall follow the procedures set forth in § 543.2 (c), (d), (e), and (f) of this subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed branch office.

(e) *Approval by the Director or the District Director.* (1) The Director shall approve an application only if, in his or her opinion, the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within twelve months of approval unless otherwise allowed by the Director or the District Director. In considering whether to approve an application, the Director will assess and take into account an association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this chapter; assessment of an association's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed pursuant to an existing agreement between the Office and a state agency that regulates state-chartered savings associations.

(2) The District Director may approve, on behalf of the Director, an application for permission to establish a branch office if no substantial protest based on Part 563e of this chapter has been filed. Such application shall be deemed to be approved 30 days after notification that the application is complete, unless the applicant is notified by the District Director that objection has been taken on grounds set forth in paragraph (e)(1) of this section.

(f) *Approval of temporary or permanent location.* The District Director or his or her designee may approve a temporary and/or permanent location of an approved branch office if the new location is in the immediate vicinity of the approved location.

(g) *Offices not requiring prior written approval.* A Federal savings association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other SAIF-insured association, and the functions of which are limited to the ordinary functions performed at a teller-window.

(h) *Maintenance of branch office after conversion, consolidation, purchase of bulk assets, merger or purchase from receiver.* (1) An existing association which converts to a Federal savings association may maintain an existing office, and a Federal savings association which acquires offices through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association may maintain any acquired office, except to the extent the written approval of the Office of the conversion, consolidation, merger, or purchase specifies otherwise.

(2) A Federal savings association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least six months.

(3) The Director may deny a branch application if he or she determines that the applicant will not in fact operate such branch as an office of a Federal savings association.

(i) *Exclusive agreements prohibited.* A Federal savings association may not enter into any kind of agreement(s) that would result in the exclusive right to operate a branch office in a regional shopping center, as defined in § 571.11(b) of this chapter, or in a majority of all locations of a chain store, or enter into an agreement under which other financial institutions would be excluded from operating offices in a regional shopping center or any location of a chain store where the Federal savings association does not have an office.

§ 545.93 Upgrading of approved branch office.

(a) *General.* A branch office is upgraded if the association is relieved of any of the restrictions imposed on operation of the office when it opened.

(b) *Notice.* A Federal savings association operating a limited, mobile, or satellite facility approved before January 1, 1981, or a branch office with conditions imposed on its operation shall notify the District Director or his or her designee at least 30 days before upgrading the facility.

(c) *Approval.* If, within 30 days of receipt of the notice, the District Director or his or her designee does not notify the association of supervisory objection which would require the association to submit an application or additional information before upgrading, the association may upgrade the facility.

(d) *Upgrading with change of location.* Any upgrading which involves a permanent change of location must be approved under § 545.95 of this part.

§ 545.94 Closing a branch office.

A Federal savings association shall notify the District Director or his or her designee not less than 60 days or, in the case of an emergency, as early as circumstances permit, before closing a branch office.

§ 545.95 Change of office location and redesignation of offices.

(a) *General.* A Federal savings association shall not change the permanent location of its home office or any approved branch office, or redesignate a home or branch office, without prior approval of the Director or the District Director or his or her designee.

(b) *Processing of application.* (1) Processing of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 545.92 (c), (d), (e), (f), (g), (h), and (i) of this part, except that:

(i) The applicant shall publish the required newspaper notice of application in the applicant's home office community, the community to be served by the new office, and the community where the office is to be closed or the home office is to be redesignated as a branch; and

(ii) The applicant shall post notice of the application for seventeen days from the date of first publication in a prominent location in the office to be closed or redesignated.

(2) The District Director may approve, on behalf of the Director, an amendment to an association's charter in connection with approval of a home office relocation or redesignation under this section.

(c) *Short-distance relocations.* (1) Notwithstanding paragraph (a) of this section, an association may change the permanent location of a home or branch office, without applying for approval by the Office, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.92 of this part or paragraph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Standard Metropolitan Statistical Area ("SMSA") designated by the U.S. Department of Commerce;

(ii) The area within a one-mile radius of the site if it is located within an SMSA designated by the U.S. Department of Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within an SMSA.

(2) An association shall notify the District Director or his or her designee in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the District Director or his or her designee notifies the association that the relocation does not satisfy the criteria in the first sentence of this paragraph (c), in which case the association must file an application and obtain approval by the Office in accordance with paragraph (b) of this section.

§ 545.96 Agency.

(a) *General.* A Federal savings association may, without approval of the Office, to the extent authorized by its board of directors, establish or maintain, within the same state as the home office of the Federal savings association or the same state as any branch office approved by the Office, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the Federal savings association.

(b) *Additional services.* Except for payment on savings accounts and loan approval services, offering of any services not listed in paragraph (a) of this section may be approved by the District Director.

(c) *Records.* An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the Federal savings association.

(d) *Notice.* A Federal savings association shall notify the District Director when it opens or closes an agency.

§§ 545.97–545.100 [Reserved]

§ 545.101 Fiscal agency.

A Federal savings association designated fiscal agent by the Secretary of the Treasury or with Office approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

§ 545.102 Trustee.

(a) A Federal savings association may act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954; as trustee or custodian of an Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code; or as trustee with no active fiduciary duties if state law authorizes a savings association to act in such capacity: *Provided,* that the Federal savings association shall invest the funds of the trust or account only in the Federal savings association's own accounts, deposits, obligations, or securities or, upon the condition that the Federal savings association does not exercise any investment discretion or directly, or indirectly provide any investment advice with respect to the trust or account assets, in such other assets as the customer may direct. The Federal savings association shall observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and may receive reasonable compensation for acting in any trust capacity authorized by this section.

(b) Unless trust investments are limited to accounts or deposits insured by the Federal Deposit Insurance Corporation, a Federal savings association acting as trustee or custodian pursuant to paragraph (a) of this section shall include in bold type on the first page of any contract documents the following language:

> Funds invested pursuant to this agreement are not insured by the Federal Deposit Insurance Corporation ("FDIC") merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of such a Federal savings association are insured by the FDIC, subject to its rules and regulations.

§ 545.103 Suretyship.

Pursuant to the authority given to the Office under section 5(b)(2) of the Act, a Federal savings association is authorized to enter into an agreement to act as surety subject to the following provisions:

(a) A savings association may enter into a suretyship agreement only if performance under the agreement would create an obligation authorized for investment by a savings association. A savings association's obligation under the suretyship agreement will be treated as a loan to its principal for purposes of the requirements of §§ 563.93 and 563.43 of this chapter.

(b) A savings association must take and maintain a security interest in real estate or marketable securities of its principal having a market value of at least 110 percent of the savings association's suretyship obligation. If real estate, the value must be established by a signed appraisal by an appraiser approved by the savings association's management (as that term is defined in § 563.171 of this chapter). In determining compliance with the 110 percent requirement, the savings association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the party for whose protection the suretyship agreement is made. If marketable securities, such securities must be of a type in which the savings association is authorized to invest, and the savings association must provide for maintenance of the security at the required level during the term of the suretyship agreement.

(c) To the extent a savings association is required to meet its obligation under a suretyship agreement, the amount expended shall be treated as an extension of credit subject to percentage-of-assets limits in accordance with the obligation thereby created to the savings association.

§§ 545.104–545.110 [Reserved]

§ 545.111 Adjustments to book value of assets.

If the District Director determines that an asset's stated book value exceeds its value or that documentation in the Federal savings association's loan file is inadequate to demonstrate that an investment made under 12 U.S.C. 1464(c)(3)(C)–(D) is sound, it may require the Federal savings association to charge off the asset immediately or establish and maintain a special reserve(s) equaling the overvaluation.

§ 545.112 [Reserved]

§ 545.113 Accounting records.

(a) *Accounting practices.* Each Federal savings association shall use such forms and follow such accounting practices as the Office may require, and shall close its books at least annually as of the end of such month(s) as the Federal savings association's board of directors may designate. The date of the Federal savings association's annual closing shall be not less than fifteen days or more than three months and fifteen days before its annual meeting.

(b) *Maintenance of records.* A Federal savings association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records, including control records, of its business transactions. The Federal savings association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has:

(1) By resolution authorized the transfer or maintenance and

(2) Sent a certified copy of the resolution to the District Director of its district.

A Federal savings association that determines to maintain any of its records by means of data processing services shall so notify the District Director, in writing, at least 90 days before such maintenance will begin. Notification shall include identification of the records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

§ 545.114 Monthly reports.

A Federal savings association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Office and available from any District Director. The association shall send two copies of the report to the Office.

§ 545.115 Statement of condition.

(a) *General.* Each Federal savings association, within thirty days after the end of its fiscal year, shall:

(1) Publish a statement of condition in any English language newspaper of general circulation in the county in which the association's home office is located, and

(2) Make available for public inspection at its home office and each branch office a copy of such statement of condition.

A statement of condition is a formal statement of a Federal savings association's assets, liabilities, and regulatory capital as of the end of its most recent fiscal year.

(b) *Format.* The information set forth in a Statement of Condition shall be presented in accordance with generally accepted accounting principles and shall include a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, with regulatory capital, as defined in § 567.1 of this chapter. Each statement of condition shall include in bold type in the body of the statement the following language: "The SAIF, an agency of the United States Government, insures all depositors up to $100,000 in accordance with the rules and regulations of the FDIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language: "Regulatory capital is the basis by which the Office of Thrift Supervision determines whether a savings association is insolvent and whether a savings association is meeting its regulatory capital requirement."

(c) *Exemptions.* The requirements of this section shall not apply to a Federal savings association:

(1) If, with respect to the same fiscal year that would be the subject of the statement of condition, the Federal savings association transmits an annual report to each of its voting members (or shareholders) pursuant to § 563.45 of this chapter; or

(2) In the case of a stock-chartered Federal savings association, if the equity securities of the Federal savings association are registered under section 12 of the Securities Exchange Act of 1934.

§§ 545.116–545.120 [Reserved]

§ 545.121 Indemnification of directors, officers and employees.

A Federal savings association shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action.* The term "action" means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* The term "court" includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment.* The term "final judgment" means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement.* The term "settlement" includes entry of a judgment by consent or confession or a plea of guilty or *nolo contendere.*

(2) References in this section to any individual or other person, including any association, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraphs (c) and (g) of this section, a savings association shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such period under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his or her favor; or

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

(iii) Final judgment in his or her favor, other than on the merits, if a majority of the disinterested directors of the savings association determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the savings association or its members.

However, no indemnification shall be made unless the association gives the Office at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the District Director, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Director of the Office advises the association in writing, within such notice period, of his or her objection thereto.

(d) *Insurance.* A savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no savings association may obtain insurance which provides for payment of losses of any person incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a savings association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (e) shall prevent the directors of a savings association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the savings association. Before making advance payment of expenses under this paragraph (e), the savings association shall obtain an agreement that the savings association will be repaid it the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No savings association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(n).

§ 545.122 Employment contracts.

A Federal savings association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this chapter.

§ 545.123 Advisory boards and committees.

A Federal savings association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

§§ 545.124–545.125 [Reserved]

§ 545.126 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in § 556.16(a) (1) and (3) of this Subchapter.

(b) No Federal savings association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless:

(1) A specific state statute or regulation precludes Federal savings associations' service corporations (or wholly owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a *bona fide* attempt to obtain any necessary approval (with or without instituting legal proceedings against state officials to compel approval) has been denied permission by the appropriate state licensing or regulatory authorities for its service corporation, or a wholly owned subsidiary thereof, to engage in the insurance business;

(3) Such state authorities follow an established and well-known policy of refusing to accept or approve such applications. (The association need not demonstrate existence of such a policy by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such state law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate state agencies and/or the Office.

§§ 545.127–545.130 [Reserved]

§ 545.131 Communication between members of a Federal mutual savings association.

(a) *Right of communication with other members.* A member of a Federal mutual savings association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the Federal savings association regarding any matter related to the Federal savings association's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the Federal mutual savings association.

(b) *Member communication procedures.* If a member of a Federal mutual savings association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the Federal mutual savings association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the Federal savings association' s members, the request shall be given at least thirty days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the Federal savings association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The Federal savings association shall reply to the request within either—

(i) Fourteen days;

(ii) Ten days, if the communication is in connection with the annual meeting; or

(iii) Three days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the Federal savings association's members and the estimated reasonable cost to the Federal savings association of mailing to them the proposed communication; or

(ii) Notification that the Federal savings association has determined not to mail the communication because it is "improper", as defined in paragraph (c) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the Federal savings association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within fourteen days;

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the Federal savings association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the District Director two copies each of the requesting member's materials, the Federal savings association's written statement, and any other relevant material. The materials shall be sent within:

(i) Fourteen days,

(ii) Ten days if the communication is in connection with the annual meeting, or

(iii) Three days, if the communication is in connection with a special meeting,

after the Federal savings association receives the request for communication.

(c) *Improper communication.* A communication is an "improper communication" if it contains material which:

(1) At the time and in the light of the circumstances under which it is made:

(i) Is false or misleading with respect to any material fact or

(ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;

(2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party;

(3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the Federal savings association or is not within the control of the Federal savings association; or

(4) Directly or indirectly and without expressed factual foundation:

(i) Impugns character, integrity, or personal reputation,

(ii) Makes charges concerning improper, illegal, or immoral conduct, or

(iii) Makes statements impugning the stability and soundness of the Federal savings association.

§ 545.132 Disclosure of customer records.

(a) *Definitions.* For purpose of this section:

(1) The term "Agent" means any person authorized to transact business for a principal, as defined by the laws of the appropriate jurisdiction.

(2) The term "Customer" means a depositor in, borrower from, and any other person patronizing a Federal savings association and utilizing its services.

(3) The term "Customer identification" means the original or any copy or summary of any document, including any evidence of a transaction conducted by electronic termina1, that contains the name and/or address of any customer of a Federal savings association, or any data from which such information could be constructed.

(4) The term "Customer information" means the original or any copy or summary of any document, including any evidence of a transaction conducted by means of an electronic terminal, that contains a customer's customer identification and any information concerning a customer's individual savings or loan accounts or the details of other types of transactions between the customer and the association, or any data from which such information could be constructed.

(5) The term "Financial institution" means any office of a bank, savings bank, savings association, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(6) The term "Person" includes an individual, partnership, corporation, association, trust, or any other legal entity organized under the laws of any state or of the United States, or of any foreign state.

(7) The term "Public record" means a written document that is filed and recorded in the official public records of a governmental unit and which is available for public inspection.

(8) The term "Service corporation" has the meaning provided in § 545.74 of this Part and includes its wholly-owned subsidiaries.

(9) The term "Third person" means a person other than the customer, the Federal savings association, or its wholly-owned service corporation, to whom disclosure is restricted by this regulation.

(b) *Right to obtain and inspect customer's own customer information.* A customer of a Federal savings association or his duly authorized agent has the right to obtain and inspect customer information pertaining solely to the customer's own savings account(s) or loan account(s) records, or information pertaining to other financial transactions with the association. A customer does not have the right under this section to obtain internal business papers, memoranda, or other confidential correspondence or communications between the association and others including its attorneys, accountants, and board of directors that may relate to the customer.

(c) *Disclosure of customer identification and customer information.* (1) A Federal savings association may disclose a customer's customer information to:

(i) A wholly-owned service corporation of the Federal savings association, or

(ii) To third persons if the customer information intended to be released is limited to information recorded in the public records and/or a customer's customer identification, *provided that* in either case the Federal savings association has given written notice to the customer of the intent of the Federal savings association to release such information, and that the customer has the right to prohibit the release of this information by notifying the association in writing of his or her objection, or

(iii) To third persons if the customer information to be disclosed is customer information not contained in a public record *provided that* the Federal savings association has complied with paragraph (f) of this section.

(2) Any disclosure pursuant to paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be made no sooner than fifteen (15) days after the customer received the notice, if the notice was given in person, or fifteen days after the notice was mailed to the customer, and shall be limited to those customers of the Federal savings association who have not objected to the release of his or her customer information pursuant to those provisions.

(3) At least once every two years after a Federal savings association releases a customer's customer information pursuant to paragraph (c)(1) of this section, a Federal savings association that desires to continue to release customer information shall provide written notice to such customers reminding them that the association may release such customer information and of the customer's continuing right to withdraw such authorization at any time.

(d) *Exceptions.* Notwithstanding paragraph (c) of this section, a Federal savings association may disclose its customer information to the following:

(1) Any person to whom the customer has affirmatively authorized such disclosure in writing;

(2) Any director, officer, or employee of a Federal savings association having the duty to prepare, examine, handle, maintain, or process customer information in the ordinary course of conducting the association's business;

(3) Any agent of the Federal savings association, any independent contractor providing a service to the association in the ordinary course of the association's business, or any person providing professional services to the association, including, but not limited to, an accountant engaged by the association to prepare an independent audit or an attorney performing a service on behalf of the association;

(4) Any officer, employee, or agent of the Office of Thrift Supervision, a Federal Home Loan Bank, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation for use solely in the exercise of his or her duties;

(5) A financial institution, commercial enterprise, or credit reporting agency, when such disclosure is part of an exchange in the regular course of business of information pertaining to the credit-worthiness of the customer between a Federal savings association and another financial institution or commercial enterprise, directly or through a credit reporting agency;

(6) Persons to whom reports or returns must be made or information disclosed pursuant to Federal law or regulations including, but not limited to, the Internal Revenue Service, or any government authority acting pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, or the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*

(7) Persons to whom information is permitted to be disclosed under state law concerning the dishonor of a negotiable instrument;

(8) An appropriate law enforcement authority when the Federal savings association reasonably believes, pursuant to § 563.180(d) of this part, that it has been the victim of a crime or has a known factual basis for a belief that a crime has been committed;

(9) Persons making demand pursuant to a lawful subpoena, summons, warrant, or court order or in response to a subpoena from a federal or state grand jury served upon the Federal savings association;

(10) The savings association's bond or insurance companies when the savings association has information relative to a claim pursuant to its bond or director's and officer's liability insurance policy or other insurance coverage;

(11) Any person for the purpose of engaging in a secondary market transaction;

(12) Representatives of the United States Department of Justice conducting civil investigations, pursuing civil actions for the purpose of assessing civil money penalties, or pursuing forfeitures for violations of financial institution criminal statutes.

(13) Any person not expressly permitted by this section if the savings association receives the prior written approval of the Office, which may establish the terms and conditions governing such release.

(e) *Confidentiality agreement.* Prior to the release by a Federal savings association of its customer information authorized by paragraphs (c)(1) or by exceptions (d)(1), (d)(3), (d)(5), (d)(10) and (d)(11) of this section, the association shall require intended recipients of customer information to execute an agreement stating at a minimum the specific use to be made of the customer information and prohibiting subsequent disclosure of the customer information to a third party, except if such disclosure is required by law or pursuant to the circumstances set forth in paragraphs (d)(4), (d)(6), (d)(8), (d)(9), and (d)(11) of this section, and, if the recipient of the customer information is a credit reporting agency, subsequent disclosures may be made in the regular course of the credit reporting agency's business.

(f) *Informed consent form and procedure.* (1) Before releasing any customer information pursuant to paragraph (c)(1)(iii) of this section, a Federal savings association shall:

(i) Provide a copy of an "Informed Consent Form" to all new and existing customers of the association whose customer information is not contained in the public records intended to be disclosed to third persons. The consent form shall contain:

(A) A definition of customer information not contained in a public record ("non-public customer information");

(B) A statement that the customer has the right to withhold consent to the release of his or her non-public customer information by the Federal savings association;

(C) A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

(D) A statement that the Federal savings association may seek to release non-public customer information for a longer period than two years, and if an extension is sought, the association shall provide a notice explicitly reminding the customer of the customer's prior authorization and the customer's continuing right to withdraw that authorization.

(E) A statement that if release is contemplated to types of recipients other than those for which authorization is sought the association must obtain new authorization for the release;

(F) A statement that the customer may at any time provide the Federal savings association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

(G) A statement that non-public customer information may be released pursuant to statute or regulation even when not authorized by the customer;

(H) A statement authorizing the release of non-public customer information; and

(I) A space for the customer's signature and for the date the document was executed.

(ii) Receive a signed and dated consent form from the customer; and

(iii) Retain a copy of each consent form in an appropriate file maintained for the customer providing the authorization.

(2) A Federal savings association shall fulfill the requirement that it obtain consent from its customers before disclosing customer information not contained in a public record under paragraph (c)(1)(iii) of this section by providing a clear and conspicuous document containing the information set forth in paragraph (f)(1) of this section. The following complies with this requirement, but associations are permitted to develop their own forms containing the required information:

Authorization to Disclose Customer Information

[Customer Name]
[Account/Loan Number(s)]

Under applicable Federal law and regulations [name of association] must obtain your consent to disclose non-public information concerning your account balances, loans, or other financial activities to various entities. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] desires to disclose such information during the next [period of time not to exceed two years] to [insert types of persons or entities to which the customer records are intended to be disclosed]. These persons or entities may contact you to offer you a product or service. These persons or entities have agreed, or will be required to agree, not to disclose this information to any other person or business, except as permitted by law and regulation, and have agreed that non-public customer information shall remain confidential. [Name of association] may receive a fee for the release of customer records. In the event that the association wishes to disclose such information to persons or entities not described above, the association will seek reauthorization. In the event the association wishes to disclose this information beyond two years, it will provide you with notice.

Without your consent, [Name of association] cannot disclose your non-public customer information except as provided for by law and regulation.

If you provide your consent to disclose this information now or in the future, you may withdraw your consent at any time. You may withdraw your consent by writing [name of association] at the following address:

[Name of association]
[Address of association]
[Attn:]

If, after reading the following statement, you consent to the release of non-public customer information, sign your name on the

space provided and return this form to [name of association].

Authorization

I HEREBY PROVIDE MY CONSENT TO [name of association] TO RELEASE MY NON-PUBLIC CUSTOMER INFORMATION TO THIRD PERSONS, AND UNDERSTAND THAT I MAY WITHDRAW SUCH CONSENT AT ANY TIME. I HAVE BEEN INFORMED OF MY RIGHT TO WITHHOLD MY CONSENT FOR [name of association] TO RELEASE MY NON-PUBLIC CUSTOMER INFORMATION AND I HAVE READ THE INFORMATION PRINTED ABOVE.

Name of customer

Date

(3) Federal savings associations shall not release any person's non-public customer information and shall take such affirmative steps as may be necessary to insure that such customer information is not released:

(i) If the customer has not authorized the disclosure of such information;

(ii) If at any time, the Federal association receives written notification of a customer's withdrawal of consent to release customer information pursuant this section.

(4) A customer may, at any time, withdraw the consent by writing to the Federal savings association and informing it of the withdrawal of consent.

(5) For the purpose of compliance with the renewal notice requirement of paragraph (c)(3) of this section for release of non-public customer information to third persons, the following notice will be considered to be in compliance with that section, but Federal savings associations may develop their own notices provided that the equivalent information is contained therein:

Renewal Notice for Release of Non-Public Information

[Name of customer]
[Account/Loan number(s)]

You previously gave [name of association] your consent to disclose non-public information concerning your account balances, loans, or other financial activities to [types of persons or entities to which the customer information has been disclosed]. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] is required by law or regulation to inform you at least every two years of your right to withdraw your consent at any time. If you decide to withdraw your consent, your non-public customer information will no longer be disclosed once we receive a written notice withdrawing your consent. You may withdraw your consent by writing to the following address:

[Name of association]
[Address of association]
Attn: [appropriate employee of association]

§ 545.133–545.135 [Reserved]

§ 545.136 Financial futures transactions.

A Federal savings association may engage in financial futures transactions in compliance with § 563.174 of this chapter.

§ 545.137 Financial options transactions.

A Federal savings association may engage in financial options transactions in compliance with § 563.175 of this chapter.

§ 545.138 Data-processing services.

(a) *Authorization.* A Federal savings association may engage in any permissible activity or service by using data processing equipment or technology, and may provide data processing and data transmission services to others on a for-profit basis as permitted by this section. An association may establish and maintain an office to provide such services to others without observing the application and approval procedures for branch offices set forth in this part.

(b)(1) *Permissible data.* The data to be processed or transmitted by a Federal savings association pursuant to paragraph (a) of this section must be financial, economic, or related to thrift, home financing, or the activities of depository institutions.

(2) *Customer restrictions.* A Federal savings association must provide data processing and transmission services primarily for itself, other depository institutions (including the parent or a subsidiary of either), and persons with whom the Federal savings association has established a loan or deposit relationship. A Federal savings association may also provide such services to other persons if the services constitute less than one half of the data processing services provided under paragraphs (a) and (b) of this section.

(3) *Facilities.* In conjunction with providing services pursuant to paragraphs (a) and (b) of this section, a Federal savings association may supply data processing software, documentation, and operating personnel. Any such facilities, as well as those used by the Federal savings association, must be designed and operated for the processing or transmission of permissible data.

(c) *By-products and excess capacity.* As an incident to providing data processing and data transmission services pursuant to paragraph (b) of this section, a Federal savings association may:

(1) Market by-products of such services (including software and compilations of data) to any person, only if the by-products are not designed, created, or substantially enhanced primarily for the purpose of such marketability, and

(2) Market excess capacity of its data processing facilities, provided that the involvement of the Federal savings association is limited to furnishing access to its facilities and providing the necessary operating personnel, and that the Federal savings association has not artificially created excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate its present or expected future needs for providing permissible data processing services.

(d) *Controls.* A Federal savings association providing data processing services or marketing excess capacity to any person under this section shall establish internal and system controls for both hardware and software such that the integrity of its records and those of its depositors and customers are adequately protected. At a minimum, the controls shall be consistent with Generally Accepted Auditing Standards. Any agreement pursuant to which the Federal savings association provides data processing services shall contain a provision that generally describes the security measures so taken.

(e) *Contract and tying restrictions.* Any contract for data processing services authorized by this section shall incorporate the relevant limitations specified herein and state that the Federal savings association's facilities are to be used only for the processing and transmission of permissible data. A Federal savings association providing such services under this section shall comply with the anti-tying provisions of section 5(q) of the Act.

(f) *Participation.* A Federal savings association may participate with others in establishing or maintaining a data processing office: *Provided,* That the Federal savings association may participate in establishing or maintaining a data processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Office that it will permit and pay for such examination of the office as the Office deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the Office.

§ 545.139–545.140 [Reserved]

§ 545.141 Remote Service Units (RSUs).

(a) *Definitions.* As used in this section—

(1) *Generic data* means statistical information which does not identify any individual accountholder.

(2) *Personal security identifier* (PSI) means any word, number, or other security identifier essential for an accountholder to gain access to an account.

(3) *Remote service unit* (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal savings association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal savings association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal savings association under § 545.92 *et seq.* of this part.

(4) *RSU account* means a savings or loan account or demand account that may be accessed through use of an RSU.

(b) *General.* Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal savings association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account, a demand account or establish a loan account.

(c) *RSU access techniques.* A Federal savings association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The savings association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activitate an RSU shall bear the words "Not transferable" or their equivalent. A passbook may not be such a device.

(d) *Privacy of account data.* A Federal savings association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal savings association may disclose account data to third parties, other than the Office or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information disclosed to the Office will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal savings association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal savings association.

(e) *Security.* A Federal savings association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 568 of this chapter as though such units were offices, as defined in § 568.1 of said part, except to the extent that a savings association satisfies the Office's District Director that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Office's District Director must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(f) *Office supervision.* A Federal savings association may share an RSU controlled by a financial institution or another party not subject to examination by a Federal regulatory agency only if such financial institution or other party has agreed in writing that the RSU is subject to such examination by the Office as it deems necessary.

§ 545.142 Home banking services.

A Federal savings association may utilize any electronic technology to provide its customers with home banking services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2) (as construed by Supplement II—Official Staff Interpretation, 2–23). "Home banking services" means the transfer of funds or financial information, or the performance of other transactions initiated by a customer by means of an electronic home terminal, such as a telephone, a home computer terminal, or a television set that is linked to a Federal savings association's computer by telephone or cable television lines. A Federal savings association providing services authorized by this section shall adopt security measures adequate to prevent unauthorized access to its records or those of its customers or the use of a home terminal to defraud the Federal savings association or any of its customers.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Sec.
546.1 Definitions.
546.2 Procedure; effective date.
546.3 Transfer of assets upon merger.
546.4 Voluntary dissolution.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

§ 546.1 Definitions.

As used in §§ 546.2 and 546.3:

(a) The term "Savings Association" means a Federal savings association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan, or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association.

(b) The term "Merging association" means a savings association absorbed by merger; and

(c) The term "Resulting association" means the savings association whose corporate existence continues after absorbing a merging association.

§ 546.2 Procedure; effective date.

(a) A Federal mutual savings association and any other Federal savings association and/or one or more other savings associations may merge only as prescribed in this part and subject to the requirements of § 563.22 of this chapter, if, as to any such association which is not a Federal savings association, the merger is also in accordance with the laws of the

jurisdiction in which the association was organized.

(b) Each association, by a two-thirds vote of its board of directors, shall approve a plan of merger evidenced by a merger agreement. The agreement shall state that it is effective only when approved by the Office and shall specify:

(1) Which association will be the resulting association;

(2) The name it will use;

(3) The location of its home office and branch offices;

(4) The bases on which its savings accounts will be issued; and

(5) The number of its directors and their names, addresses, and the length of their terms.

(c) Prior written approval of the Office is required for every merger. In determining whether to confer such approval, the Office shall apply the criteria set out in § 571.5 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(d)(1) Processing of an application under this section shall follow the procedures set forth in § 563.22 of this chapter except that applicants may also mail such notice to the voting members of each savings association within the time specified in § 543.2(d).

(2) In approving a merger under this section, the Director, or any person(s) who have delegated authority to approve the merger on behalf of the Director, may also approve a temporary increase in the number of directors of the resulting association provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 544.1 or § 552.3 of this subchapter within a reasonable period of time.

(e) Notwithstanding any other provision of this part, the Director, or any person(s) who have delegated authority to approve or deny a merger on behalf of the Director, may require that a plan of merger be submitted to the voting members of any of the mutual associations at a duly called meeting(s) and that the plan, to be effective, be approved by them.

(f) A conservator or receiver for an association may merge the association with another under §§ 546.2 and 546.3 without submitting the plan to the association's board of directors or members for their approval.

(g) If a plan of merger provides for the resulting association's name or location to be changed, and it is a Federal savings association, its charter shall be amended accordingly. If the resulting association is a Federal savings association, the effective date of merger shall be the date specified in the approval; if the resulting association is not a Federal savings association, the effective date shall be that prescribed by the State law under which the resulting association was created, if applicable, or any other applicable law. Approval of a merger automatically cancels the Federal charter of each of the merging Federal savings associations as of the effective date of merger and those associations shall, on that date, surrender their charters to the Office.

§ 546.3 Transfer of assets upon merger.

On the effective date of a merger in which the resulting association is a Federal association, all assets and property of the merging associations shall immediately, without any further act, become the property of the resulting association to the same extent as they were the property of the merging associations, and the resulting association shall be a continuation of the entity which absorbed the merging associations. All rights and obligations of the merging association shall remain unimpaired, and the resulting association shall, on the effective date of merger, succeed to all those rights and obligations.

§ 546.4 Voluntary dissolution.

A Federal savings association's board of directors may propose a plan for dissolution of the association. The plan may provide for either:

(a) Appointment of the Federal Deposit Insurance Corporation or the Resolution Trust Corporation (under section 5 of the Act and section 11 of the Federal Deposit Insurance Act, as amended or section 21A of the Federal Home Loan Bank Act, as amended) as receiver for the purpose of liquidation;

(b) Transfer of all the association's assets to another association and home-financing institution under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that association's payment of all the association's outstanding obligations and issuance of share accounts or other evidence of interest to the association's members on a *pro rata* basis; or

(c) Dissolution in a manner proposed by the directors which they consider best for all concerned.

The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Director for approval. The Director will approve the plan if he or she believes dissolution is advisable and the plan best for all concerned, but if he or she considers the plan inadvisable, he or she may either make recommendations to the association concerning the plan or disapprove it. When the plan is approved by the association's board of directors and by the Director, it shall be submitted to the association's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Director may require, shall immediately be filed with the Director. When the Director receives such evidence satisfactory to him or her, he or she will terminate the corporate existence of the dissolved association and the association's charter shall thereby be cancelled.

PART 550—TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

Sec.

550.1 Definitions.
550.2 Applications.
550.3 Consolidation or merger of two or more Federal savings associations.
550.4 Deposit of securities with State authorities.
550.5 Administration of trust powers.
550.6 Books and accounts.
550.7 Audit of trust department.
550.8 Funds awaiting investment or distribution.
550.9 Investment of funds held as fiduciary.
550.10 Self-dealing.
550.11 Custody of investments.
550.12 Compensation of Federal savings association.
550.13 Collective investment.
550.14 Surrender of trust powers.
550.15 Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.
550.16 Revocation of trust powers.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464), sec. 501, 94 Stat. 161, as amended (12 U.S.C. 1735f–7).

§ 550.1 Definitions.

(a) *Account* means the trust, estate or other fiduciary relationship which has been established with a Federal savings association;

(b) *Custodian under a uniform gifts to minors act* means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute and with respect to which the Federal savings association operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

(c) *Fiduciary* means a Federal savings association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare and profit sharing trusts, and any other similar capacity;

(d) *Fiduciary records* means all matters which are written, transcribed, recorded, received or otherwise come into the possession of a Federal savings association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of a Federal savings association;

(e) *Guardian* means the guardian, conservator, or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws;

(f) *Investment authority* means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others;

(g) *Local law* means the law of the state or other jurisdiction governing the fiduciary relationship;

(h) *Managing agent* means the fiduciary relationship assumed by a Federal savings association upon the creation of an account which names the Federal savings association as agent and confers investment discretion upon the Federal savings association;

(i) *State-chartered corporate fiduciary* means any state bank, trust company, or other corporation which comes into competition with Federal savings associations and is permitted to act in a fiduciary capacity under the laws of the state in which the Federal savings association is located;

(j) *Trust department* means that group or groups of officers and employees of a Federal savings association or of an affiliate of a Federal savings association to whom are assigned the performance of fiduciary services by the Federal savings association;

(k) *Trust powers* means the power to act in any fiduciary capacity authorized by section 408 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96–221, 94 Stat. 132, 12 U.S.C. 1464(n). Under the Act, a Federal savings association may be authorized to act, when not in contravention of local law, as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, and paying agent, trustee of employee pension, welfare, and profit-sharing trusts, or in any other fiduciary capacity which state-chartered corporate fiduciaries exercise under local law: *Provided, That* the granting to, and exercise of, such powers shall not be deemed to be in contravention of state or local law whenever the laws of such state authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies, or other corporations which compete with Federal savings associations.

§ 550.2 Applications.

(a) A Federal savings association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the District Director an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under paragraph (b) of this section.

(b) In addition to any other facts or circumstances deemed proper, the Office, in passing upon an application to exercise trust powers, will give consideration to the following:

(1) The financial condition of the Federal savings association, provided that in no event shall trust powers be granted to a Federal savings association if its financial condition is such that the Federal savings association does not meet the financial standards required by state laws of State-chartered corporate fiduciaries;

(2) The needs of the community for fiduciary services and the probable volume of such fiduciary business available to the Federal savings association;

(3) The general character and ability of the management of the Federal savings association;

(4) The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and

(5) Whether the Federal savings association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

(c) The District Director, or his designee, is authorized to approve or disapprove any application filed under this section, that does not raise any significant issues of law or policy on which the Office has not taken a formal position. If each of the following conditions are not met, the District Director's (or his designee's) approval of such application must be made conditional upon each being met:

(1) The financial condition of the Federal savings association meets the financial standards prescribed for State-chartered corporate fiduciaries by the laws of each state in which the Federal savings association has offices from which it will offer the fiduciary services (the District Director may consider the regulatory capital of a Federal mutual savings association as equivalent to capital stock and surplus when state law prescribes minimum capital stock and surplus requirements) and the District Director has determined that the financial condition of the Federal savings association is sufficient to support the proposed trust operations;

(2) The Federal savings association has submitted a legal opinion from independent counsel certifying that the proposed trust powers are authorized for State-chartered corporate fiduciaries by the laws of each State in which the Federal savings association has offices from which it will offer fiduciary services;

(3) The Federal savings association's regulatory capital meets the Office's minimum requirements for that association under §§ 567.2 or 567.3 of this chapter;

(4) Based on the most recent examination of the Federal savings association and any other available information, the District Director determines that any deficiencies with respect to the Federal savings association's management are minor;

(5) Based on the most recent examination of the Federal savings association and any other available information, the District Director determines that the overall performance of the Federal savings association is satisfactory;

(6) The proposed trust officer(s) who would be in charge of the trust operations must:

(i) Have been responsible for trust operations or fiduciary matters comparable to those proposed, for a period of at least two years during the previous five years; or

(ii) Have had two years of such experience prior to the last five years and successfully completed, during the previous year, an intensive course on trust operations comparable to those proposed;

(7) The District Director determines, based on the information available, that the proposed trust officer(s) is trustworthy and competent (the person's

experience, education and other relevant factors may be considered) to be in charge of the proposed trust operations;

(8) The proposed trust department or service corporation has legal counsel available to provide advice with respect to fiduciary matters;

(9) The District Director has determined that there is sufficient need for the proposed trust activities in the communities to be served; and

(10) The approval of the appropriate Federal or State authorities has been obtained if the proposed fiduciary services are to be exercised through a state or Federally chartered service corporation.

(d) Approval by the Office or the District Director of an application under this section authorizes the applicant to exercise only those trust powers specified in the approval. Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.

§ 550.3 Consolidation or merger of two or more Federal savings associations.

Where two or more Federal savings associations consolidate or merge, and any one of such Federal savings associations has, prior to such consolidation or merger, received a permit from the Office to exercise trust powers which permit is in force at the time of the consolidation or merger, the rights existing under such permit pass to the resulting Federal savings association, and the resulting Federal savings association may exercise such trust powers in the same manner and to the same extent as the Federal savings association to which such permit was originally issued; and no new application to continue to exercise such powers is necessary. However, when the name or charter number of the resulting Federal savings association differs from that of the Federal savings association to which the right to exercise trust powers was originally granted, the Office or the District Director will issue a certificate to that Federal savings association showing its right to exercise the trust powers theretofore granted to any of the Federal savings associations participating in the consolidation or merger.

§ 550.4 Deposit of securities with State authorities.

Whenever local law requires a corporation acting as a fiduciary to deposit securities with State authorities for the protection of private or court trusts, Federal savings associations in that state authorized to exercise trust powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state authorities. If the state authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Home Loan Bank of which the Federal savings association is a member, and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the State authorities.

§ 550.5 Administration of trust powers.

(a)(1) *Responsibility of the board of directors.* The board of directors is responsible for the proper exercise of fiduciary powers by the Federal savings association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the Federal savings association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Federal savings association's trust powers as it may consider proper to assign to such director(s), officer(s), employee(s), or committee(s) as it may designate.

(2) *Administration of accounts.* No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the Federal savings association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the Federal savings association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(b) *Use of other Federal savings association personnel.* The trust department may utilize personnel and facilities of other departments of the Federal savings association, and other departments of the Federal savings association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(c) *Compliance with Federal securities laws.* Every Federal savings association exercising trust powers shall adopt written policies and procedures to ensure that the Federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the Federal savings association's trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(d) *Legal counsel.* Every Federal savings association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the Federal savings association and its trust department.

(e) *Bonding.* In addition to the minimum bond coverage required by § 563.190 of this chapter, directors, officers, and employees of a Federal savings association engaged in the operation of a trust department shall acquire such additional bond coverage as the office may require.

§ 550.6 Books and accounts.

(a) *General.* Every Federal savings association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the Federal savings association. All fiduciary records shall be so kept and retained for such time as to enable the Federal savings association to furnish such information or reports with respect thereto as may be required by the office. The fiduciary records shall contain full information relative to each account.

(b) *Record of pending litigation.* Every Federal savings association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

§ 550.7 Audit of trust department.

At least once during each calendar year, the Federal savings association's trust department shall be audited by auditors in a manner consistent with § 563.170 of this chapter. A copy of the report of the audit shall be promptly filed with the District Director of the District in which the principal office of the Federal savings association is located. Trust department audits may be made as part of the annual audits required by § 563.170.

§ 550.8 Funds awaiting investment or distribution.

(a) *General.* Funds held in a fiduciary capacity by a Federal savings association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(b) *Use by Federal savings association in regular business.* (1) Funds held in trust by a Federal savings association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the Federal savings association, provided that the Federal savings association shall first set aside under control of the trust department as collateral security:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of the state in which such Federal savings association is located; or

(iii) Other readily marketable securities as the Office may determine.

(2) Collateral securities or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this paragraph (b)(2) are met when qualifying assets of the Federal savings association are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

(3) Any funds held by a Federal savings association as fiduciary awaiting investment or distribution and deposited in other departments of the Federal savings association shall be made productive.

§ 550.9 Investment of funds held as fiduciary.

(a) *Private trusts.* Funds held by a Federal savings association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the Federal savings association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which state-chartered corporate fiduciaries may invest under local law.

(b) *Court trusts.* If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if a Federal savings association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of such court, funds of such accounts may be invested in any investments which are permitted by local law. Otherwise, a Federal savings association acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the Federal savings association.

(c) *Collective investment of trust funds.* The collective investment of funds received or held by a Federal savings association as fiduciary is governed by § 550.13 of this Part.

§ 550.10 Self-dealing.

(a) *Purchase of obligations, etc., from Federal savings association.* Unless lawfully authorized by the instrument creating the relationship, or by court order or local law, funds held by a Federal savings association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the Federal savings association or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the Federal savings association in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the Federal savings association or their directors, officers or employees.

(b) *Sale or transfer of trust assets to Federal savings association.* Property held by a Federal savings association as fiduciary shall not be sold or transferred, by loan or otherwise, to the Federal savings association or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the Federal savings association in selling or transferring such property, or to affiliates of the Federal savings association or their directors, officers or employees, except:

(1) When lawfully authorized by the instrument creating the relationship or by court order or by local law;

(2) In cases in which the Federal savings association has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors and the District Director, *provided, That* in all such cases the Federal savings association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

(3) As provided in the laws and regulations governing collective investments; and

(4) When required by the Office.

(c) *Investment in stock of Federal savings association.* Except as provided in § 550.8(b) of this part, funds held by a Federal savings association as fiduciary shall not be invested by the purchase of stock or obligations of the Federal savings association or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law: *Provided, that* if the retention of stock or obligations of the Federal savings association or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, a Federal savings association's share held by the Federal savings association as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

(d) *Transactions between accounts.* (1) A Federal savings association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

(2) A Federal savings association may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not

prohibited by local law, and the terms of the transaction are fair to all accounts.

(3) A Federal savings association may make a loan to an account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not prohibited by local law.

§ 550.11 Custody of investments.

(a) *Segregation of trust assets and joint custody.* The investments of each account shall be kept separate from the assets of the Federal savings association, and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the Federal savings association designated for that purpose either by the board of directors of the Federal savings association or by one or more officers designated by the board of directors of the Federal savings association, and all such officers and employees shall be adequately bonded. To the extent permitted by law, a Federal savings association may permit the investments of a fiduciary account to be deposited elsewhere.

(b) *Segregation of accounts.* The investments of each account shall be either:

(1) Kept separate from those of all other accounts, except as provided in § 550.13 of this part; or

(2) Adequately identified as the property of the relevant account.

§ 550.12 Compensation of Federal savings association.

(a) *General.* If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, a Federal savings association acting in such capacity may charge or deduct a reasonable compensation for its services. When the Federal savings association is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by local law.

(b) *Officer or employee of Federal savings association as co-fiduciary.* No Federal savings association shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the Federal savings association in the administration of any account undertaken by it.

(c) *Bequests or gifts to trust officers and employees.* No Federal savings association shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the Federal savings association.

§ 550.13 Collective investment.

(a) When not in contravention of local law, funds held by a Federal savings association as fiduciary may be held in:

(1) A common trust fund maintained by the Federal savings association exclusively for the collective investment and reinvestment of moneys contributed thereto by the Federal savings association in its capacity as trustee, executor, administrator, guardian, or custodian under a Uniform Gifts to Minors Act; or

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code.

(b) Collective investments of funds or other property by a Federal savings association under paragraph (a) of this section shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 CFR 9.18: *provided, That* any documents required to be filed with the Comptroller of the Currency under that regulation shall also be filed with the District Director and that the Office may review such documents for compliance with these and other laws and regulations.

(c) As used in this section, the term Federal savings association shall include two or more Federal savings associations which are members of the same affiliated group with respect to any fund established pursuant to § 550.13 of this part of which any of such affiliated Federal savings associations is trustee, or of which two or more of such affiliated Federal savings associations are co-trustees.

§ 550.14 Surrender of trust powers.

(a) Any Federal savings association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the District Director a certified copy of the resolution of its board of directors signifying such desire. In addition, the Federal savings association must submit to the District Director an opinion from its legal counsel stating that the Federal savings association has been discharged from all fiduciary duties which it has undertaken, with respect to the trust services it has provided.

(b) Upon receipt of such resolution, the District Director shall make an investigation and if it is satisfied that the Federal savings association has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to such Federal savings association certifying that it is no longer authorized to exercise fiduciary powers.

(c) Upon issuance of such a certificate by the District Director, a Federal savings association:

(1) Shall no longer be subject to the provisions of these regulations,

(2) Shall be entitled to have returned to it any securities which it may have deposited with state authorities or a Federal Home Loan Bank under § 550.4 of this part, and

(3) Shall not exercise thereafter any of the powers granted by this part 550 without first applying for and obtaining new authorization to exercise such powers.

§ 550.15 Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.

(a) *Appointment of conservator or receiver.* Whenever a conservator or receiver is appointed for a Federal savings association under parts 558 and 559 of this title, such receiver or conservator shall, pursuant to the instructions of the Office and the orders of the court having jurisdiction, proceed to close such of the Federal savings association's trust accounts as can be closed promptly and transfer all other such accounts to substitute fiduciaries.

(b) *Voluntary dissolution.* Whenever a Federal savings association exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with local law, proceed at once to liquidate the affairs of the trust department as follows:

(1) All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order or instructions of such court; and

(2) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

§ 550.16 Revocation of trust powers.

(a) In addition to the other sanctions available, if, in the opinion of the Office, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this part 550 or otherwise fails or has failed to comply with the requirements of this part 550, the Office may issue and serve upon the Federal savings association a notice of intent to revoke the authority of the Federal savings association to exercise the powers granted by this part 550. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should be issued against the Federal savings association.

(b) Such hearing shall be conducted in accordance with the provisions of part 509 of this chapter, and shall be fixed for a date not earlier than thirty days and not later than sixty days after service of such notice unless an earlier or later date is set by the Office at the request of the Federal savings association so served.

(c) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any such hearing, the Office shall find that any allegation specified in the notice of charges has been established, the Office may issue and serve upon the Federal savings association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this Part 550 except that such order shall permit the Federal savings association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(d) A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the Federal savings association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Office or a reviewing court.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

Sec.

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552.3 Charters for Federal stock associations.
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Appendix to Part 552—Model Bylaws for Stock Associations

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 552.1 Definitions.

As used in this part, the following terms shall have the indicated meanings.

(a) *Federal stock association.* The term "Federal stock association" means a Federal savings and loan association or Federal savings bank which has been issued a charter in the form prescribed in § 552.3 of this part, or such other form as authorized by the Office.

(b) *Federal stock charter.* A charter of a Federal stock association in the form specified in § 552.3 or its predecessors, or permitted by § 552.4 of this part, or other action of the Office.

(c) *Capital.* The term "capital" means the aggregate of the consideration received upon the issuance of capital stock.

§ 552.2 Corporate title.

The provisions of § 543.1 of this subchapter shall be applicable to Federal stock associations.

§ 552.2–1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize.* Applications for permission to organize a Federal stock association shall be subject to the provisions of paragraphs (a) through (f) of § 543.2 of this subchapter.

(b) *Conditions of approval.* Decisions on all applications for permission to organize a Federal stock association will be made by the Director or his or her designee.

(1) Factors that will be considered are:

(i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions; and

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound operation of a Federal savings association.

(2) Once an application has been approved, the Office shall promptly send a copy of that application, together with the certificate of approval specified at section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), to the Federal Deposit Insurance Corporation.

(3) Approvals of applications will be conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the association will be insured by the Federal Deposit Insurance Corporation;

(ii) The sale of a minimum amount of fully-paid capital stock of the association prior to commencing business;

(iii) The submission of a statement that:

(A) The applicants have incurred no expense in organization which is chargeable to the association, and that no such expense will be incurred, and

(B) No funds will be accepted for deposit by the association until organization has been completed;

(iv) Compliance with all applicable laws, rules, and regulations; and

(v) The satisfaction of any other requirement or condition the Director or his or her designee may impose.

(c) *Issuance of charter.* Upon approval of an application, the Office shall issue to the association a charter for a Federal stock savings association or for a Federal stock savings bank, as requested by the applicants, which shall be in the form provided in this part. Issuance of the charter shall be subject to the condition subsequent that the

organization of the association is completed pursuant to this section.

(d) *Interim board of directors and officers.* Upon approval of the application and the issuance of the charter, the applicants shall constitute the interim board of directors of the association until the board of directors of the association are elected by its stockholders at the organizational meeting required by paragraph (g) of this section, and the interim officers of the association shall be those persons set forth in the application for permission to organize.

(e) *Sale of capital stock.* Upon the issuance of the charter, the association shall proceed to offer and sell its capital stock pursuant to the requirements of part 563g of this chapter.

(f) *Bank membership and insurance of accounts.* Promptly upon the issuance of the charter, a Federal stock association must qualify as a member of the appropriate Federal Home Loan Bank and meet all requirements necessary to obtain insurance of accounts by the Federal Deposit Insurance Corporation.

(g) *Organizational meeting.* Promptly upon the completion of the sale of its capital stock, the association shall provide notice, pursuant to § 552.6(b), of a meeting of its stockholders to elect a board of directors. Immediately following such election, the directors shall meet to elect the officers of the association and to undertake any other action necessary under the charter or bylaws to complete corporate organization.

(h) *Completion of organization.* Organization of a Federal stock association shall be deemed complete for the purposes of this part when:

(1) The association has obtained Federal Home Loan Bank membership and insurance of its accounts from the Federal Deposit Insurance Corporation;

(2) It has completed the sale of and received full payment for its capital stock;

(3) It has complied with all requirements of Part 563g of this chapter;

(4) It has held its organizational meeting for the election of directors and all directors have been elected;

(5) Its officers have been elected and bonded; and

(6) It has met the requirements and conditions imposed by the Office in connection with approval of the application.

(i) *Failure of completion.* If organization of a Federal stock association is not completed within six months after the Office approves the application, or within such additional period as the Director or his or her designee may, in his or her discretion, for good cause grant, the charter shall become void and all subscriptions to capital stock shall be returned.

§ 552.2–2 Procedures for organization of interim Federal stock association.

(a) The procedures prescribed in paragraphs (d) through (f) of § 543.2 of this subchapter and § 552.2–1(b) of this part shall not be required with respect to applications for permission to organize an interim Federal stock association except as may be required by parts 546, 563, or 574 of this chapter.

(b) Approval of an application for permission to organize an interim Federal stock association shall be conditioned upon approval by the Office of an application to merge the interim Federal stock institution, or upon approval by the Office of such other transaction that the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing institutions involved in the transactions, and the factors specified in § 552.2–1(b)(1) to the extent relevant.

(c) If a merger or other transaction facilitated by the existence of the interim Federal stock association has not been approved within six months of the approval of the application for permission to organize, unless extended by the Director or his or her designee in his or her discretion for good cause shown, the charter shall be void and all subscriptions for capital stock shall be returned.

(d) The authority of the Director to approve applications for permission to organize an interim Federal savings association may be exercised as provided in § 543.2 (h)(3)(i) and (h)(3)(ii) of this chapter.

§ 552.2–3 Federal stock association created in connection with an association in default or in danger of default.

Sections 552.2–1 and 552.2–2 of this part do not apply to a Federal stock association which is proposed by the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation under section 5(p) of the Home Owner's Loan Act of 1933, section 11(c) of the Federal Deposit Insurance Act, or section 21A of the Federal Home Loan Bank Act, or is otherwise chartered by the Office in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when and under such conditions as the Director or his or her designee so determines.

§ 552.2–4 Limitations on transaction of business.

No person may organize a Federal stock association, collect money from others for such purpose, or represent himself or herself as authorized to do so, and no Federal stock association shall transact any business prior to completion of its organization, except as provided in this part.

§ 552.2–5 Conversion from Federal mutual to Federal stock charter.

A Federal mutual association may amend its charter in its entirety to read in a form consistent with this part 552 by a vote of a majority of the total votes of the association members eligible to be cast at any legal meeting. Upon receipt of the following certification, the Office will issue a charter consistent with this part 552 to such Federal savings association on the condition subsequent that all stock proposed to be issued in its application filed pursuant to part 563b of this chapter is sold:

The undersigned, by its secretary, hereby certifies that the members at a meeting duly called and held adopted the following resolution:

Be it resolved, that the present charter of this association be amended to read in the form of a Federal stock association as attached hereto.

In witness whereof, the secretary of the undersigned has hereunto affixed his or her hand and the seal of the undersigned this _____ day of _____, 19____.

§ 552.2–6 Conversion from State stock to Federal stock association.

With the approval of the District Director or his or her designee, or, in connection with a supervisory transaction, with the approval of the Chief Counsel or his or her designee, any state stock savings and loan association type or state stock savings bank type institution may convert to a Federal stock savings and loan association or a Federal stock savings bank, subject to its compliance with the requirements set forth in §§ 543.3 through 543.10 of this subchapter governing conversion to a Federal mutual association and its submission of an opinion by independent counsel within six months from the date of the approval that the conversion is in conformance with applicable state law. In lieu of compliance with the requirement of § 543.9(b)(1), an applicant shall provide that the holders of nonwithdrawable capital stock of the applicant shall exchange, on a one-for-one basis, each share of such stock for a share of nonwithdrawable capital stock in the Federal stock association. The new types and classes of stock shall be the same as the former types and classes; however, types and classes of stock that contain provisions inconsistent with the provisions and standards that must be set forth in a charter consistent with part 552 shall be amended to conform therewith.

§ 552.3 Charters for Federal stock associations.

(a) The charter of a Federal stock association shall be in the following form, except that an association that has converted from the mutual form pursuant to part 563b of this chapter shall include in its charter a section establishing a liquidation account as required by § 563b.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term "savings bank" for "association." Charters may also include any preapproved optional provision contained in § 552.4 of this part.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is _____.

Section 2. Office. The home office shall be located in _____.

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("Office").

Section 5. Capital stock. The total number of shares of all classes of the capital stock which the association has the authority to issue is _____, all of which shall be common stock of par [or stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of common stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than seven nor more than fifteen except when a greater number is approved by the Director of the Office.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is first proposed by the board of directors of the association, then preliminarily approved by the Office, which preliminary approval may be granted by the Office pursuant to regulations specifying preapproved charter amendments, and thereafter approved by the shareholders by a majority of the total votes eligible to be cast at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon shall be effective upon filing with the Office in accordance with regulatory procedures or on such other date as the Office may specify in its preliminary approval.

Attest: _____
Secretary of the Association

By: _____
President or Chief Executive Officer of the Association

Attest: _____
Secretary of the Office of Thrift Supervision

Director of the Office of Thrift Supervision
By: _____

§ 552.4 Charter amendments.

(a) Whenever a Federal stock association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and two conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the District Director, or his or her designee, who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. A Federal stock association whose charter provides that any amendment shall be effective on the date it receives final approval of the Office shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment with the District Director, or his or her designee, in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Office of the proposal to shareholders by the board of directors of any Federal stock association of the following amendments to such association's charter, including the adoption of the Federal stock charter as set forth in § 552.3 of this part: *Provided,* That the association follows the requirements of its charter in adopting the amendments.

(1) A Federal stock association that has complied with § 543.1(b) of this subchapter may amend its charter by substituting a new corporate title in section 1.

(2) A Federal stock association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in section 2.

(3) A Federal stock savings and loan association may amend its charter to read in the form of a Federal stock savings bank charter or a Federal stock savings bank may amend its charter to read in the form of a Federal stock savings and loan association charter: *Provided,* That such association complies with the requirements of § 544.3 of this subchapter.

(4) Amend section 5 of the charter of a Federal stock association to change the number of authorized shares and its number of shares within each class of shares and the par or stated value of such shares.

(5) Amend the charter of a Federal stock association by revising section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of the capital stock which the association has the authority to issue is _____, of which _____ shall be common stock of par [or stated] value of _____ per share and of which [list the number of each class of preferred and the par or stated value per share of each such class.] The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors: *Provided,* That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision which would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Office, the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the Secretary to the Office a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(6) Amend the charter of a Federal stock association to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchanges.

(7) [Reserved]

(8) Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vi) of the Office's regulations.

In the event shares are acquired in violation of this Section 8, all shares beneficially owned by any person in excess of 10% shall be considered "excess shares" and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(1) The term "person" includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

(2) The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term "acting in concert" means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The Office may grant preliminary approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for preliminary approval an opinion, acceptable to the Office, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located.

(d) *Reissuance of charter.* A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office by filing one executed and three conformed copies with the signatures required under § 552.3 of this part with the Office's Senior Deputy Director for Supervision (Operations), and such supporting documents as needed to demonstrate that the amendments were properly adopted. The Director delegates to the Chief Counsel or his or her designee authority to execute on his or her behalf charters submitted for reissuance pursuant to this paragraph (d).

(e) *Delegations of authority*—(1) *Actions by the District Director or his or her designee.* The District Director or his or her designee is authorized to grant or deny preliminary approval, in whole or in part, of any application for a charter amendment filed under this section: *Provided,* that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (e)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for charter amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the Chief Counsel.* The Chief Counsel, or his or her designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (e)(2) of this section.

(f) *Filing Requirements.* Application for preliminary approval of any amendment to the charter of a federal stock association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (e) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under

delegated authority, with the District Director or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (e) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director or his or her designee.

§ 552.5 Bylaws.

(a) At its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 552.6 through 552.6–4 of this part and shall not contain any provision which is inconsistent with those sections or with applicable laws, rules, regulations, or the charter, except that a bylaw inconsistent with §§ 552.6 through 552.6–4 may be adopted with approval of the Office.

(b) Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this part shall be deemed to comply with the requirements of this section.

(c) A copy of all bylaws and amendments thereto shall be filed with the District Director or his or her designee.

(d) *Delegations of authority*—(1) *Actions by the District Director.* The District Director or his or her designee is authorized to grant or deny preliminary approval, in whole or in part, of any application for a bylaw amendment filed under this section: *Provided,* that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a District Director pursuant to paragraph (d)(l) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for bylaw amendment as originally filed with the District Director or his or her designee, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 day calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the Chief Counsel.* The Chief Counsel, or his or her designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a bylaw amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

(e) *Filing Requirements.* Application for preliminary approval of any amendment to the bylaws of a federal stock association that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Officeof Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director or his or her designee.

§ 552.6 Shareholders.

(a) *Shareholder meetings.* An annual meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the association has its principal place of business.

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(c) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.* (1) At least 10 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours, for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(e) *Shareholder quorum.* A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(f) *Shareholder voting*—(1) *Proxies.* Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) *Shares controlled by association.* Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(3) *Cumulative voting.* Unless otherwise provided in the association's charter, every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

(g) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

§ 552.6–1 Board of directors.

(a) *General powers and duties.* The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting.

(b) *Number and term.* The board of directors shall consist of not fewer than seven nor more than fifteen as prescribed in the bylaws. The directors shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

(c) *Regular meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders.

(d) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office.

(e) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(f) *Removal of directors.* (1) At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

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(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a meeting.

(i) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(k) *Age limitation on directors.* A federal stock association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. The bylaws may also provide that no director shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 552.6–2 Officers.

(a) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the offficers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall comfort with § 545.122 of this subchapter.

(c) *Age limitation on officers.* A federal stock association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment or reappointment as an officer of the association. The bylaws may also provide that no officer shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 552.6–3 Certificates for shares and their transfer.

(a) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(b) *Transfer of shares.* Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

§ 552.6–4 Fiscal year; annual audit.

The bylaws of a Federal stock association shall specify the fiscal year for the association. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

§ 552.7 Description of Federal stock associations.

In the case of a Federal stock association, the words "a capital stock association" or a similar description shall appear conspicuously on any evidence of a savings deposit issued by such association after it amends its charter.

§ 552.8 Savings deposits.

(a) *General.* A Federal stock association may accept such savings deposits only as are authorized by this section in the form of cash, or of property in which such association is authorized to invest, and, in the absence of actual fraud in the transaction, the value of such property, as determined by the board of directors of such association shall be conclusive. Savings accounts or deposits existing in such association at the time when it amends its charter to read in the form of the charter of a Federal stock association shall be deemed to be such savings deposits subject to the terms and conditions of this section. Any right outstanding at the time of such amendment to receive from the association a savings account or deposit shall thereafter be a right to receive a corresponding savings deposit authorized by this section.

(b) *Terms of savings deposits; membership and voting rights.* To the extent not inconsistent with this section, savings deposits authorized by this section shall be on the same bases, terms, and conditions and have the same characteristics as if they were authorized by and subject to §§ 545.11 and 545.14. Holders of such savings deposits shall not be members of the association or have voting rights.

(c) *Existing bonus rights.* To the extent not inconsistent with this section, a Federal stock association which has outstanding bonus agreements shall continue to respect the provisions thereof and distribute bonus payments thereunder.

(d) *Status and priority.* In the event of voluntary or involuntary liquidation, dissolution, or winding up of the association or in the event of any other situation in which the priority of such savings deposits is in controversy, all such savings deposits shall be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association. Such savings deposits shall have no additional right to share in the remaining assets of the association.

(e) *Prohibition on the acceptance of share accounts.* A Federal stock association shall not accept savings accounts representing share interests in the association.

(f) *Ancillary provisions—(1) References in regulations.* To the extent not inconsistent with the provisions of this section all references in this subchapter to savings accounts (except this section) and to owners, holders, or holders of record of savings accounts shall with respect to savings deposits authorized by this section be applicable in the same manner and to the same extent that they would be applicable if the savings deposits were savings deposits authorized by §§ 545.11 and 545.14.

(2) *Forms of certificate.* Except as the Director may otherwise provide, a Federal stock association shall use for savings deposits authorized by this section a form of certificate which may be used for a corresponding savings deposit authorized under §§ 545.11 and 545.14. However, the form shall be modified to eliminate any language referring to:

(i) Dividends,

(ii) Membership or voting rights, and

(iii) Any right to share upon liquidation in assets of the association, other than in the capacity of a general creditor.

(3) *Applicability of certain matters to savings deposits.* If there is outstanding at the time an association becomes a Federal stock association a determination, notice, or other action by the association or its board of directors which would be effective as to savings accounts or deposits thereafter opened if such association were not a Federal stock association, such determination, notice, or other action shall be deemed to be applicable to savings deposits of such association in the same manner and to the same extent as if such savings deposits were savings accounts or deposits issued under its prior charter.

(4) *Reporting requirements.* In any report required by this subchapter or by any other requirement imposed by the Office, a savings deposit authorized by this section in a Federal stock association may be included in any category in which it could properly be included if it were a corresponding savings account or deposit issued under the prior charter of such association.

§ 552.9 [Reserved]

§ 552.10 Annual reports to stockholders.

A Federal stock association not wholly owned by a holding company shall, within ninety days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements which satisfy the requirements of Rule 14a–3 (17 CFR 240.14a–3) under the Securities Exchange Act of 1934. Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the association, together with five copies of the report, shall be transmitted by the association to the District Director or his or her designee.

§ 552.11 Books and records.

(a) Each Federal stock association shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(b) Any stockholder or group of stockholders of a Federal stock association, holding of record the number of voting shares of such association specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(1) Voting shares having a cost of not less than $100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(2) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a Federal stock association shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(c) The right to examination authorized by paragraph (b) of this section and the right to inspect the list of stockholders provided by a Federal stock association's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such association, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the association, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the association or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(d) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a Federal stock association containing:

(1) A list of depositors in or borrowers from such association;

(2) Their addresses;

(3) Individual deposit or loan balances or records; or

(4) Any data from which such information could be reasonably constructed.

§ 552.12 [Reserved]

§ 552.13 Combinations involving Federal stock associations.

(a) *Scope and authority.* Federal stock associations may enter into combinations only in accordance with the provisions of this section, section 18(c) of the Federal Deposit Insurance Act, section 5(d)(3)(A) of the Home Owners' Loan Act, and § 563.22 of this chapter.

(b) *Definitions.* The following definitions apply to §§ 552.13 and 552.14 of this part:

(1) *Association.* "Association" means a Federal savings association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan, or homestead association or a cooperative bank (other than a cooperative bank that falls within 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association.

(2) *Bulk purchase of assets.* A transfer of all or substantially all the assets and may include the assumption of all or substantially all the liabilities of an association or a depository institution to or from a Federal stock association.

(3) *Consolidation.* Fusion of two or more associations into a newly-created association having the combined powers and rights of all its constituents.

(4) *Constituent association.* Resulting or disappearing association.

(5) *Depository institution.* Any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(6) *Disappearing association.* An association whose corporate existence does not continue after a merger or consolidation effected under this section.

(7) *Merger.* Uniting two or more associations by the transfer of all property rights and franchises to the resulting association, which retains its corporate identity.

(8) *Mutual association.* Any association organized in a form not requiring nonwithdrawable stock under Federal or State law.

(9) *Resulting association.* An association whose corporate existence continues after a merger, or the association resulting from a consolidation of two or more associations.

(10) *State.* Includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(11) *Stock association.* Any association organized in a form requiring nonwithdrawable stock.

(c) *Forms of combination.* Federal stock associations may combine in the following ways:

(1) *Mergers: Provided,* That:

(i) All constituent associations Federal savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation are savings associations whose accounts are insured by the Federal Deposit Insurance Corporation, and

(ii) If any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory mergers, mergers approved under part 563b of subchapter D or mergers in which one of the constituents is an interim Federal savings association or an interim state association.

(2) Consolidations among Federal savings associations resulting in Federal mutual associations.

(3) Bulk purchases of assets and/or assumptions of deposit liabilities: *Provided,* That:

(i) The resulting Federal savings association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;

(ii) The resulting Federal savings association conforms, within the time prescribed by the Director, or any person(s) who have delegated authority to approve the purchase on behalf of the Director, to the requirements of section 5(c) of the Home Owners' Loan Act; and

(iii) The transferor is not a mutual savings association.

(d) *Office approval.* Prior written approval of the Office is required for every combination. In determining whether to confer such approval, the Office shall apply the criteria set out in § 571.5 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(e) *Approval of board of directors.* Before filing for Office approval, the combination shall be approved by each constituent association's board of directors:

(1) By a two-thirds vote of the entire board of each Federal savings association, and

(2) As required by state law, for other constituents.

(f) *Combination agreement.* (1) All terms, conditions, agreements or understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall state:

(i) That the combination shall not be effective unless and until approved by the Office;

(ii) Which constituent association is to be the resulting association;

(iii) The name of the resulting association;

(iv) The location of the home office and any other offices of the resulting association;

(v) The terms and conditions of the combination and method of effectuation;

(vi) Any charter amendments, or the new charter in the consolidation;

(vii) The manner of converting or exchanging the stock of each constituent association into stock, savings accounts, or other securities of the resulting association or cash, property, rights, or securities of any other entity in connection with the combination;

(viii) The basis upon which the savings accounts of the resulting association shall be issued;

(ix) The number, names and residence addresses, and terms of directors;

(x) The effect upon and assumption of any liquidation account of a disappearing association by the resulting association; and

(xi) Such other provisions, agreements, or understandings as relate to the combination.

(g) Processing of an application under this section shall follow the procedures set forth in § 563.22(c) through (h) of this chapter.

(h) *Approval by stockholders*—(1) *General rule.* Except as otherwise provided in this section, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required votes shall be taken at a meeting of the association.

(2) *General exception.* Stockholders of the resulting association need not authorize a combination agreement if:

(i) It does not involve an interim Federal savings association or an interim state savings association;

(ii) The association's charter is not changed;

(iii) Each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting association after such effective date; and

(iv) Either:

(A) No shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of combination or

(B) The authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(3) *Exceptions for certain combinations involving an interim association.* Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal savings association or interim state savings association when the resulting Federal stock association is acquired pursuant to § 574.7(a)(2) of this chapter. In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(i) *Disclosure.* The Director, or any person(s) who have delegated authority to approve a combination on behalf of the Director, may require, in connection with a combination under this section, such disclosure of information as he or she deems necessary or desirable for the protection of investors in any of the constituent associations.

(j) *Articles of combination.* (1) Following stockholder approval, articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall set forth:

(i) The plan of combination;

(ii) The number of shares outstanding in each association; and

(iii) The number of shares in each association voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the Secretary of the Office which shall, if it finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting association.

(k) *Effective date.* No combination under this section shall be effective until approved by the Office. The effective date of a combination in which the resulting association is a Federal stock association shall be the date of consummation of the transaction or such other later date specified on the endorsement of the articles of combination by the Secretary of the Office. The effective date of a combination in which the resulting association is not a Federal savings association shall be a date subsequent to Office approval prescribed by the law of the state under which the resulting association is chartered. If a disappearing association combining under this section is a Federal stock association, its charter shall be deemed to be cancelled as of the effective date of the combination; such charter shall be surrendered to the Office at the time of filing of the articles of combination.

(l) *Mergers and consolidations: transfer of assets and liabilities to resulting association.* Upon the effective date of merger or consolidation under this section, if the resulting association is a Federal savings association, all assets and property (real, personal, and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each constituent association or which would inure to any of them, shall immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting association. The resulting association shall be deemed to be a continuation of the entity of each constituent association, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith.

(m) All references to the Office in this section shall be read to include its delegates under § 563.22(f) of this chapter, the District Directors and the Senior deputy Director of the Supervision (Operations) and the Chief Counsel, and their respective designees.

§ 552.14 Dissenter and appraisal rights.

(a) *Right to demand payment of fair or appraised value.* Except as provided in paragraph (b) of this section, any stockholder of a Federal stock association combining in accordance with § 552.13 of this part shall have the right to demand payment of the fair or appraised value of his stock: *Provided,* That such stockholder has not voted in favor of the combination and complies with the provisions of paragraph (c) of this section.

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his or her stock shall have the right under this section to demand payment of the stock's fair or appraised value, if such stock was listed on a national securities exchange or quoted on the National Association of Securities Dealers' Automated Quotation System ("NASDAQ") on the date of the meeting at which the combination was acted upon or stockholder action is not required for a combination made pursuant to § 552.13(h)(2) of this part. "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national

securities exchange or quoted on NASDAQ, or any combination of such shares of stock and cash.

(c) *Procedure*—(1) *Notice.* Each constituent Federal stock association shall notify all stockholders entitled to rights under this section, not less than twenty days prior to the meeting at which the combination agreement is to be submitted for stockholder approval, of the right to demand payment of appraised value of shares, and shall include in such notice a copy of this section. Such written notice shall be mailed to stockholders of record and may be part of management's proxy solicitation for such meeting.

(2) *Demand for appraisal and payment.* Each stockholder electing to make a demand under this section shall deliver to the Federal stock association, before voting on the combination, a writing identifying himself or herself and stating his or her intention thereby to demand appraisal of and payment for his or her shares. Such demand must be in addition to and separate from any proxy or vote against the combination by the stockholder.

(3) *Notification of effective date and written offer.* Within ten days after the effective date of the combination, the resulting association shall:

(i) Give written notice by mail to stockholders of constituent Federal stock associations who have complied with the provisions of paragraph (c)(2) of this section and have not voted in favor of the combination, of the effective date of the combination;

(ii) Make a written offer to each stockholder to pay for dissenting shares at a specified price deemed by the resulting association to be the fair value thereof; and

(iii) Inform them that, within sixty days of such date, the respective requirements of paragraphs (c)(5) and (c)(6) of this section (set out in the notice) must be satisfied.

The notice and offer shall be accompanied by a balance sheet and statement of income of the association the shares of which the dissenting stockholder holds, for a fiscal year ending not more than sixteen months before the date of notice and offer, together with the latest available interim financial statements.

(4) *Acceptance of offer.* If within sixty days of the effective date of the combination the fair value is agreed upon between the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section, payment therefor shall be made within ninety days of the effective date of the combination.

(5) *Petition to be filed if offer not accepted.* If within sixty days of the effective date of the combination the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section do not agree as to the fair value, then any such stockholder may file a petition with the Office, with a copy by registered or certified mail to the resulting association, demanding a determination of the fair market value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition within sixty days of the effective date of the combination shall be deemed to have accepted the terms offered under the combination.

(6) *Stock certificates to be noted.* Within sixty days of the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his or her stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(7) *Withdrawal of demand.* Notwithstanding the foregoing, at any time within sixty days after the effective date of the combination, any stockholder shall have the right to withdraw his or her demand for appraisal and to accept the terms offered upon the combination.

(8) *Valuation and payment.* The Director shall, as he or she may elect, either appoint one or more independent persons or direct appropriate staff of the Office to appraise the shares to determine their fair market value, as of the effective date of the combination, exclusive of any element of value arising from the accomplishment or expectation of the combination. Appropriate staff of the Office shall review and provide an opinion on appraisals prepared by independent persons as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Director after consideration of the appraisal report and the advice of the appropriate staff shall, if he or she concurs in the valuation of the shares, direct payment by the resulting association of the appraised fair market value of the shares, upon surrender of the certificates representing such stock. Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Director.

(9) *Costs and expenses.* The costs and expenses of any proceeding under this section may be apportioned and assessed by the Director as he or she may deem equitable against all or some of the parties. In making this determination the Director shall consider whether any party has acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(10) *Voting and distribution.* Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) of this section shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of the combination): *Provided,* That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(11) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 552.15 Supervisory combinations.

Notwithstanding the foregoing provisions of this part, the Director of the Office may waive or deem inapplicable any provision of § 552.13 or § 552.14 of this part if he or she determines that grounds exist, or may imminently exist, for appointment of a conservator or receiver for an association under subsection 5(d) of the Home Owners' Loan Act.

§ 552.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

Appendix to Part 552—Model Bylaws for Stock Associations

Article I—Home Office

The home office of the association shall be at _____ in the County of_____, in the State of _____.

Article II—Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the association or at such other place in the State in which the principal place of business of the association is located as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year on the _____ of _____ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at _____, or at such other date and time within such 120-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Office of Thrift Supervision ("Office"), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the association entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Office or these bylaws. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in Section 6 of this Article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournment, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 552.6(d) of the Office's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the shareholders of the association any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected

multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any person other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president.

Unless otherwise prescribed by regulations of the Office, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. General Powers. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of _____ members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, within the association's normal lending territory, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors, may fix any place, within the association's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons.

Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person but shall not constitute attendance for the purpose of compensation pursuant to Section 12 of this Article.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least two days prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed or when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by Section 5 of this Article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for actual attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for actual attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this selection shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV—Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association, or recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of Section 8 of this Article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the association and may prescribe the duties, constitution, and procedures thereof.

Article V—Officers

Section 1. Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Office; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with Section 3 of this Article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI—Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Office, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in any duly authorized depositories as the board of directors may select.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and cancelled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

Article VIII—Fiscal Year; Annual Audit

The fiscal year of the association shall end on the _____ of _____ of each year. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

Article IX—Dividends

Subject to the terms of the association's charter and the regulations and orders of the Office, the board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

Article X—Corporate Seal

The board of directors shall provide an association seal which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article XI—Amendments

These bylaws may be amended in a manner consistent with regulations of the Office at any time by a majority vote of the full board of directors or by a majority vote of the votes cast by the stockholders of the association at any legal meeting.

PART 556—STATEMENTS OF POLICY

Sec.

556.1 Directors.
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556.17 Effect of loan participation on status of borrowing members.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended, (12 U.S.C. 1701j–3); secs. 902–920, as added by sec. 2001, 92 Stat. 3728–3741, as amended (15 U.S.C. 1693–1693r).

§ 556.1 Directors.

(a) *Number necessary for quorum.* If the number of directors provided for in the bylaws or fixed by resolution of the members has been elected, a majority of that number constitutes a quorum, regardless of any subsequent reduction in the number of directors actually serving. An increase in the authorized number of directors does not affect the number required for a quorum until the newly created directorships are filled.

(b) *Directors' powers to fill vacancies.* The board of directors of a Federal mutual savings association which has the prescribed bylaws may, without calling a special meeting of the members, elect directors to fill vacancies, including vacancies caused by resignation or by increase in the number of directors, unless the number was increased by a vote of the members and they elected directors to fill the new positions. Each director so elected by the board of directors shall serve until the next annual meeting of members.

§ 556.2 Power to engage in escrow business.

A Federal savings association may not act generally as an agent for the public in handling escrows. It may, however, handle escrows relating to real estate loans it makes and, to the extent reasonably incidental to accomplishing its express purposes, may handle escrows for others involving the type of real estate transactions common to the savings association business. In handling any escrow, it may not assume duties or responsibilities or perform acts beyond its power under the Act, these regulations, or its charter.

§ 556.3 Real estate.

(a) For lending purposes, a motel is generally considered "improved nonresidential real estate." However, if the business use (tourist units) is merely incidental to its use as the borrower's residence, it qualifies as combination home and business property.

(b) *Purchase of paving certificates.* A Federal savings association may purchase a paving certificate which constitutes a lien on property securing an association loan, if necessary to protect its interest in the property. However, it may not acquire such a certificate as an investment or as to property on which it does not have a mortgage.

§ 556.4 Insurance.

A Federal savings association's board of directors has the duty to establish and maintain such requirements over hazard insurance as it considers necessary to protect the Federal savings association's interest in real estate security for its loans. The requirements may include establishment of fair standards based on such factors as recognized financial ratings of insurers and coverage forms, but such standards may not be based on the insurer's corporate structure. Subject to this limitation, the borrower should have reasonable freedom of choice in placing hazard insurance on the real estate security.

§ 556.5 Establishment of branch offices.

(a) *General.* (1) The Office encourages a competitive savings association system that provides choices of facilities for improved financial services to the public. The Office believes that branching is a primary means to increase competition and serve the public. The Office recognizes that establishment of a full service branch is only one means for improving service and competition in an area and, therefore, encourages innovative ideas for branches designed to suit the needs of a particular community.

(2) As a general policy, the Office permits a Federal savings association to branch within the state in which its home office is located, except as provided in paragraph (a)(4) of this section.

(3)(i)(A)(*1*) Additionally, the Office will permit a Federal savings association to establish or operate a branch office in a state other than the state in which its home office is located if the law of the state in which a Federal savings association's home office is located and the law of the state in which the branch is to be located would permit the establishment of such branch if the Federal savings association were a savings association chartered by the state in which the Federal savings association's home office is located, except as provided in paragraph (a)(4) of this section.

(*2*) For the purposes of paragraph (a)(3)(i)(A) of this section, state law is employed to determine basic authority to branch, or to acquire branch offices by merger or acquisition of assets or liabilities, but authorization by a state official is not required, and other state law limitations or requirements, such as those concerning investment standards, do not apply.

(*3*) Paragraph (a)(3)(i)(A) of this section does not authorize a Federal savings association to become a savings and loan holding company controlling a savings association located in a state other than the state in which the Federal savings association's home office is located, if such an acquisition would not be permitted for state-chartered savings associations located in the respective states.

(B) For the purposes of paragraph (a)(3) of this section, the home office of a Federal savings association shall be deemed to be its home office as of the later of the date of its chartering or December 20, 1985, unless a savings association clearly demonstrates to the satisfaction of the Office that relocation to another state was not effected primarily to obtain branching advantages under this § 556.5(a).

(C) If a Federal savings association is a holding company or a subsidiary of a savings association that is a holding company, it shall have a home office for the purposes of paragraph (a)(3)(i) of this section only if no other savings association in its holding company structure exercises or has exercised branching rights described in paragraph (a)(3)(i)(A) of this section.

(D) If a Federal savings association is an ultimate parent holding company, and no state chartered savings association in the holding company structure exercises or has exercised branching rights described in paragraph (a)(3)(i)(A) of this section, such ultimate parent holding company shall be the sole association in the holding company structure that may acquire such branching rights under paragraph (a)(3)(i)(A) of this section. For the purposes of paragraph (a)(3)(i) of this section, "ultimate parent holding company" means a savings and loan holding company not controlled by another company.

(E) *Multiple holding companies.* A Federal savings association that is a subsidiary of a multiple savings and loan holding company that controls savings associations located in more than one state shall have a home office for the purposes of paragraph (a)(3)(i) of this section only if no other subsidiary savings association of its holding company exercises or has exercised branching rights described in paragraph (a)(3)(i)(A) of this section.

(F) A Federal savings association that acquires and exercises branching rights pursuant to any of paragraphs (a)(3)(i)(A) through (a)(3)(i)(E) of this section may not operate or retain branches established pursuant to such exercise if another savings association in its holding company structure exercises branching rights described in paragraph (a)(3)(i)(A) of this section.

(ii)(A) Notwithstanding the limitations of paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Office may approve the establishment or operation of a branch office by a Federal savings association in a state other than the state in which its home office is located; *provided* That:

(*1*) The establishment of the branch office will be achieved as part of or as a result of a transaction in which assets or liabilities of a savings association in default or in danger of default ("target association") are acquired by another association, by merger or otherwise, as part of a transaction in which the insured accounts of a target association are assumed by and transferred to a savings association as a means of payment of insurance by the Federal Deposit Insurance Corporation ("FDIC") or the Resolution Trust Corporation ("RTC"), or pursuant to an action by the Office, the FDIC or the RTC to prevent the default of a target association;

(*2*) The Office determines (for this purpose, the Office may accept a certification from the FDIC or the RTC) that the potential cost to the FDIC or the RTC will be reduced as a result of the transaction involving a target association; and

(*3*) If any alternative has been submitted that is not objectionable on supervisory grounds and could be approved in accordance with paragraph (a)(2), (a)(3)(i), or (a)(3)(iii) of this section or that would involve an acquisition by, or transfer of accounts to, a state chartered association and would be in accordance with the laws governing the chartering and operation of all parties to the transaction, the Office determines (for this purpose, the Office may accept a certification from the FDIC or RTC) that the potential cost to the FDIC or the RTC resulting from the proposed interstate acquisition by, or transfer of accounts to, a Federal savings association under paragraph (a)(3)(ii) of this section will be substantially less than the liability that would result from such other alternative.

(B) Branching approved or permitted pursuant to paragraph (a)(3)(ii) of this section may be:

(*1*) Operation of a former office or offices of a target association; and

(*2*) Permission to establish branch offices in a state or states other than the state or states in which a target association operates: *Provided* That branching rights permitted pursuant to this paragraph (a)(3)(ii)(B)(*2*) shall not in any event include any state in addition to the greater of (*i*) three states in addition to the state or states in which the target association operates, or (*ii*) if the home office of the target association is located in a state that, as of the date of acquisition of the target association,

is included in a regional compact of states specifically authorizing branching or acquisition across state lines by associations of the savings and loan or savings bank type by statute laws of such states, by language to that effect and not merely by implication, the states included within such a regional compact: *Provided further,* That the Office shall give preference to an application seeking limited branching authority over an application seeking wider branching capacity under paragraphs (a)(3)(ii)(B)(*1*) and (a)(3)(ii)(B)(*2*) of this section; *Provided further,* That in considering applications to approve transactions involving the exercise of authority under this paragraph (a)(3)(ii)(B)(*2*), the Office shall prefer an application involving branching in states within a regional compact for associations of the savings and loan or savings bank type or in a state having boundary lines contiguous with boundary lines of the state in which the target association's home office is located; and *Provided further,* That no application for branching capacity under this paragraph (a)(3)(ii)(B)(*2*) shall be approved unless the Office finds that such branching capacity is reasonably related to the office structure of the applicant, before or after acquisition of the target association or its assets or liabilities, and the Office determines (for this purpose, the Office may accept a certification from the FDIC or RTC) that an acquisition effected pursuant to such application is of very substantial benefit to the FDIC or the RTC in a measure sufficient to constitute a compelling factor in determining to make an award to the applicant.

(C) The principles of paragraph (a)(3)(ii) of this section shall also apply in reverse mergers in which the target association is the surviving entity and in the acquisition of control of subsidiary savings associations in a state or states in which a Federal savings association is not authorized to branch pursuant to paragraph (a)(3)(i) of this section.

(iii) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners Loan Act of 1933, as amended, the Office may approve the establishment of a branch office in a state or states other than the state in which the home office is located, provided that the establishment of the branch office will be achieved by the consolidation of some or all of the savings association subsidiaries, or of some or all of the offices of the savings association subsidiaries, of a multiple savings and loan holding company. The Office may approve the establishment of a branch office by a resulting association in any state or states in which it maintains branch offices as a result of the consolidation.

(iv) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, in a transaction not involving an action by the FDIC or the RTC for transfer of accounts or to prevent the default of a savings association, the Office may approve the establishment of a branch office in any state in which the applicant has established or has been permitted to operate a branch office pursuant to the conditions set forth in paragraph (a)(3)(ii) of this section.

(v) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Office may approve the establishment of branches in either Maryland or Virginia, but not both, by an association whose home office is located in the District of Columbia; *Provided,* That the association may establish branches on a nonsupervisory basis in Maryland or Virginia [excluding any grandfathered branches) under any other paragraph of this section other than (a)(3)(ii), unless those branching rights were acquired under paragraph (a)(3)(iv) of this section as a result of a supervisory transaction approved in 1985, such association may not branch into the other state solely pursuant to this paragraph (a)(3)(v); and *Provided, further,* That the association has informed the District Director or his or her designee in writing of its chosen state for future branching within 180 days after June 2, 1986 or at the time of obtaining its Federal charter, which choice may not be changed by the association after it has made its election to branch in that state; and *Provided further,* That the Office generally will not approve a branch under this paragraph (a)(3)(v) if the association's eligibility for approval of the branch under this paragraph (a)(3)(v) would result from a change in the location of the association's home office.

(vi) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Office may approve the establishment of branches in the District of Columbia by an association whose home office is located in Maryland or Virginia: *Provided,* That the Office generally will not approve a branch under this paragraph (a)(3)(vi) if the branch's eligibility for approval under this paragraph (a)(3)(vi) would result from a change in the location of the association's home office.

(4)(i) A savings association eligible for assistance under section 13(c) of the Federal Deposit Insurance Act that is acquired by a bank holding company or a bank pursuant to section 13(k) of the Federal Deposit Insurance Act (or a savings association acquired by a bank holding company or bank pursuant to section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) may retain and continue to operate any branch or related facilities in operation prior to acquisition by such bank holding company. If such savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association not affiliated with a bank holding company located in the same state.

(ii) Notwithstanding the foregoing, if such savings association does not have its home office located in the same state as the home office(s) of the bank subsidiary(ies) of the holding company, and if the association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, as amended, or does not meet the asset composition test of subparagraph (C) thereof, then such savings association shall be subject to the conditions upon which a bank in the state where the association's home office is located may retain, operate and establish branches.

(b) *Supervisory clearance.*—(1) *General.* The branching regulations recognize that the decision to branch is a management prerogative. However, in granting supervisory clearance to an applicant, the Office will consider whether the overall policies, condition, and operation of the applicant are satisfactory and, as a whole, afford no bases for supervisory objection. Where the overall condition of the applicant is satisfactory, the Office in its discretion may waive any specific supervisory objection and approve the branch application.

(2) *Regulatory capital.* (i) For purposes of supervisory clearance, an association's regulatory capital should equal the minimum requirements established by law and applicable regulations of the Office.

(ii) *Exception.* If an applicant fails to meet any of the regulatory capital criteria, the District Director or his or her designee will not grant supervisory clearance unless he or she finds that:

(A) The existing level of regulatory capital and recent operating results are adequate to support the proposed branch expansion; and

(B) The association's management is capable of operating the association in a safe and sound manner, free of significant supervisory concern.

(3) *Supervisory objection.* Supervisory objection may be interposed at any point during the processing of the application.

(c) *Community reinvestment.* The Office, pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901) ("CRA"), encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all members of the communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. In this regard, the Office will review and evaluate an applicant's record under Part 563e of this chapter, may deny an application based on the assessment of an association's CRA record, and may approve a branch application on the condition that the association improve specific aspects of its community investment-related practices and performance.

(d) *Protest and oral argument*— (1) *Protest.* Protests to applications for branches will have to be persuasive and factually documented to influence the Office's decisions on branch applications.

(2) *Oral argument.* In any case in which oral argument is scheduled, the District Director or his or her designee may provide for consolidation of the oral argument on applications for permission to organize Federal savings associations or to establish branch offices. In hearing oral argument, the person presiding may determine the order of presentation by various persons and whether to permit rebuttal or he or she may permit the parties to agree on a division of time. In consolidated arguments, he or she may allow each applicant the full time which would be allowed if there were no consolidated argument. Ordinarily, the arguments should be based only on the facts and information already on file. Occasionally, a party may seek to introduce new matter. If it appears to the person presiding that there is in fact substantive new matter, he or she should permit the parties to argue on the basis of such new matter, and require the party introducing it to submit a memorandum of such new matter at the time of oral argument. If opposing parties wish to file a rebuttal, the person presiding may allow a reasonable time—10 days should suffice in most cases—for the submission of a rebuttal. The District Director or his or her designee should include 3 copies of the transcript in the file which is transmitted to the Director.

(e) *Basis for approval.* The Office may approve or deny an application based on any information available to it, not limited only to the information presented by either applicant or protestant(s).

(f) *Branch openings.* The Office does not intend to allow associations to accumulate approved branch sites, holding them for eventual opening, and extensions will be granted only on an exceptional basis. If an association does not open a branch within the time specified in the approval, and the Director or his or her designee find that the association is not making a good faith effort to open the branch promptly, then the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(g) *Branch closings.* Pursuant to § 545.94 of this subchapter, the Office requires an association to notify the Office when it plans to close a branch. The Office does not intend to question an association's sound business decision to close a branch; it merely wants an opportunity to maintain competitive levels of service in all areas of a community, if possible.

(h) *Name of branch office.* If an association applies to establish a branch within the market area of another savings association having a similar name, the Office may, to minimize public confusion and prevent unfair competition, condition branch approval by prescribing the name of the branch and the type of advertising that may be used in connection with such branch. In a merger or acquisition, the Office will generally allow a branch of the merged or acquired association to preserve its identity with its own name (without the word "association") followed by the words "a Division of [the name of the resulting association]."

§ 556.6 Savings accounts.

(a) *Date payments considered received.* If a Federal savings association has fixed a determination date as provided in its charter, it usually must actually receive payments on its savings accounts by that date to consider them received on the first of the month. However, in a month when the determination date falls on a nonbusiness day for the Federal savings association, it may consider payments received on the next business day after the determination date as received on the first of the month. The Federal savings association may not, however, represent generally that payments received on a date later than the determination date receive earnings from the first, without stating the month in which that will occur.

(b) *Redemption of savings accounts must not be discriminatory.* Section 7 of a Federal mutual savings association's charter does not empower the Federal mutual savings association to redeem a shareholder's account discriminatorily. Authority to redeem savings accounts "by lot or otherwise" permits redemption only by methods similar to determination by lot, i.e., that are non-discriminatory.

(c) *Sale of merchandise in connection with soliciting savings accounts.* A Federal savings association may not, as an incident to powers prescribed in its charter, sell, except in connection with a promotional campaign, merchandise other than coin banks and similar coin-savings devices.

§ 556.7 Service corporation secured debt limitation.

The unpaid balance of a note executed by a service corporation and secured by a mortgage or similar obligation is debt under § 545.74(c)(3). even if the holder of the note, in the event of default, may proceed only against the security property and has no legal basis for recovery of any deficiency from the service corporation.

§ 556.8 Suretyship.

The Office will authorize a Federal savings association to be surety under §§ 545.16 and 545.103 of this subchapter only if such activity would be properly incident to its other authorized activities.

§ 556.9 Imposition of late charges and due-on-sale clauses.

(a) The Office expects Federal savings associations to adopt procedures sufficient to ensure that, by the time of loan closing, the rights and obligations of the contracting parties regarding imposition of late charges and prepayment charges and exercise of acceleration clauses (including due-on-sale clauses) are fully and specifically disclosed to the borrower.

(b) Although there is no maximum limitation on the amount of late charges a Federal savings association may assess or collect, under contract, on loans made before August 1, 1976, secured by borrower occupied homes, the Office expects Federal savings associations to be reasonable and fair in assessing and collecting late charges against delinquent borrowers as to such loans, taking into consideration the reason for delinquency, the length of

delinquency, and the borrower's past practice respecting delinquencies.

§ 556.10 First liens on properties sold by the Secretary of HUD.

Under section 5(c) of the Act, a Federal savings association may make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate. The Secretary of HUD, when disposing of properties acquired by lien under default provisions of an earlier insured loan may sell the properties to individuals and insure new loans to finance those purchases. Under the procedure prescribed in 24 CFR 203.390 and 203.402, such mortgages may be insured without documentary evidence establishing the quality and validity of the mortgagee's lien. Because that procedure offers protection to Federal savings associations equivalent to that of a first lien, such loans shall be considered secured by a first lien even though new title evidence has not been obtained.

§ 556.11 Prepayment penalty on mortgage loans.

Section 545.34(c) of this subchapter makes clear that, with the exception of certain instances enumerated therein, the charging of a prepayment penalty is a matter of contract between a Federal savings association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. Thus, in view of the controlling Federal regulation, a Federal savings association may include a prepayment provision in the loan contract up to the maximum limitation of § 545.34(c) of this subchapter regardless of conflicting State law which sets a lower limit or imposes a different type of prepayment penalty, but it may not charge a prepayment penalty exceeding the limit in § 545.34(c) of this subchapter even if State law allows a higher charge.

§ 556.12 Deposit assurance of direct deposit of social security payments.

(a) Under the Social Security Administration's "direct deposit program", a social security beneficiary may designate a financial institution, including a Federal savings association, to receive the beneficiary's benefit payments. Thereafter, benefit payments are made directly to the financial institution in the form of checks or magnetic tape notices.

(b) The Office has concluded that giving "deposit assurance" in connection with the program is within a Federal savings association's implied powers under section 5 of the Home Owners' Loan Act. Deposit assurance consists of the Federal savings association's undertaking to credit the beneficiary's account with a "deposit" in the amount of the benefit payment on the date it is due to be received, whether or not the Federal savings association actually receives the check or magnetic tape notice from the Treasury by that date. The Office has concluded, based on the unique nature of the social security direct-deposit program and the improbability of failure to receive payments on time, that the Federal savings association "constructively" receives payment on that date.

(c) The Office believes, however, that such deposit assurance may involve some risk for Federal savings associations participating in the program and that they must therefore institute adequate safeguards and controls in conjunction therewith.

(d) *Electronic fund transfers.* Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and § 205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), made under this section, is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

§ 556.13 Receipt of interest expressed as a percentage of other income.

(a) With limited exceptions, Federal savings associations lack the statutory authority to acquire an equity interest either in real estate or in a corporation. Accordingly, Federal savings associations cannot, as part of a loan transaction, acquire an ownership interest in the security property or in a corporate borrower. The issue has arisen as to whether the receipt of a share of the income generated by the security property or of a corporate borrower, or any similar participation with the borrower in the loan project, necessarily constitutes an unauthorized acquisition of an equity interest.

(b) The Office has determined that the receipt of such income or the right to receive income should not be considered an equity interest if it in substance constitutes no more than a part of the compensation received for the use of the Federal savings association's funds. Accordingly, if the borrower has an unconditional obligation to repay the loan principal, and if a Federal savings association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest calculated on the basis of the income from or the appreciation of the security property, the income of a corporate borrower, or some other measure of a venture's success. The means by which a Federal savings association calculates its share of the income is not a material consideration in determining whether the share constitutes an equity interest in the property.

§ 556.14 Chief executive officer of a branch office.

Section 5 of a Federal mutual savings association's bylaws provide, in part, that the association's board of directors may appoint such officers as they may determine from time to time. They may also designate appropriate titles for officers so appointed whose titles are not specified in the bylaws. The chief executive officers of a branch office may be titled division president, branch manager, or any other appropriate title which does not suggest that the branch office is an autonomous association.

§ 556.15 Drive-in and pedestrian facilities.

Section 545.92 of this chapter under certain conditions permits a Federal savings association, without prior approval of the Office, to establish a single drive-in or pedestrian facility in conjunction with its home office and each branch office. A "pedestrian" facility is a facility at which the person doing business with the Federal savings association does not enter an office or structure of any kind but remains outside the structure and is serviced by a teller inside a building or structure. Similarly, a person doing business with the Federal savings association, in the case of a drive-in facility, will remain outside the drive-in facility and may transact business from a vehicle. The building or structure in which a teller is located for such a facility may be the Federal savings association's home or branch office or a separate structure, but it may not be placed in a store or location of some other business so as to constitute joint occupancy of quarters. There is no objection to a pedestrian facility which faces on an enclosed mall and serves pedestrians who remain in the mall while transacting business with the Federal savings association. The "ordinary" functions which may be performed at a drive-in or pedestrian facility are limited primarily to acceptance of payments on savings accounts, payment of withdrawals from accounts, acceptance of payments on mortgages or other loans, and opening of savings accounts. Although in the case of a particular Federal savings association the tellers at its regular offices may give out and receive mortgage loan applications, such function is not an "ordinary" function performed at a teller window but is an extraordinary function, and therefore may not be performed at a drive-in or pedestrian facility.

§ 556.16 Insurance agencies—usurpation of corporate opportunities.

(a) *Definitions.* As used in this section: (1) *Owned* and "ownership", in connection with an insurance agency, include, in addition to ownership by a person:

(i) Ownership by the person's spouse, minor child, or other relative by blood or marriage having the same home as the person;

(ii) Ownership through a broker or other nominee or agent; or

(iii) Ownership by a company controlled by the person.

However, the terms do not include ownership by one such person of less than 10 percent of the insurance agency, or ownership by more than one such person or less than 25 percent of the agency;

(2) *Profits* means any form of remuneration received, or to be received, by officers, directors, or controlling persons of the association other than salaries, fees, or commissions based upon, and reasonably related to, services actually performed respecting an insurance agency;

(3) *Referral* means directing the business of association members to an affiliated insurance agency, but does not include offering association members, without specific recommendation, a list of approved insurance agencies, including the affiliated agency, unless the list is designed or given in a manner calculated to cause members to select the affiliated agency over the other listed agencies;

(b) *General.* Subject to exceptions in paragraph (c) of this section, as limited by paragraph (d) of this section, referral of insurance business of an association's members to an insurance agency owned by one or more officers or directors of the association, or by one or more persons having the power to direct its management, constitutes upsurpation of the association's corporate opportunity to engage in the insurance business.

(c) *Exceptions.* No corporate opportunity for a Federal savings association to enter the insurance business is deemed to have existed:

(1) If the referral described in paragraph (b) of this section took place:

(i) While application for permission to engage in the insurance business was on file with the appropriate State agency and/or the Office;

(ii) Before May 20, 1971;

(iii) While a specific State statute or regulation precluded Federal savings association service corporations (or their wholly-owned subsidiaries) from engaging in the insurance business;

(iv) While State licensing or regulatory authorities whose prior approval is required to engage in the insurance business followed an established and well-known policy of refusing to accept or process applications from Federal savings association service corporations (or their wholly-owned subsidiaries) for permission to engage in the insurance business (an association need not demonstrate existence of such a policy by instituting legal proceedings to compel approval);

(v) During a reasonable period (not over 18 months) following (A) May 20, 1971, or (B) a change in the State statute or regulation described in paragraph (c)(1)(iii) of this section or policy described in paragraph (c)(1)(iv) of this section for the association to have investigated the feasibility and desirability of acquiring or establishing its own service corporation insurance business and to have prepared and filed applications with respect thereto;

(2) If the association, after filing any necessary application and making a *bona fide* attempt to obtain any necessary approvals (such attempt need not involve instituting legal proceedings to compel such approvals), was denied permission by the appropriate State licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the insurance business;

(3) If a disinterested and independent majority of the Federal savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity to engage in the insurance business through acquisition or *de novo*, as a matter of sound business judgment, taking into consideration such factors as the financial resources of the association to establish or acquire an insurance agency, the risks involved in entering the insurance business, and the projected profitability of the agency; or if involvement in the existing affiliated insurance agency by members of the association's board of directors prevented a decision by a majority of the disinterested and independent directors, the matter was submitted to the vote of the association's members or stockholders at a special annual meeting (no existing proxies may be used at such meetings and proxy solicitations must be accompanied by material which makes full, fair, and accurate disclosure of all relevant material and information respecting the corporate opportunity to enter the insurance business);

(4) If lack of economic justification for the association to engage in the insurance business by either acquiring an existing affiliated insurance agency, or establishing or purchasing another insurance agency, was duly established.

(d) *Limitation to certain exceptions.* (1) Notwithstanding the provisions of paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), and paragraph (c)(3) of this section, the exceptions provided thereunder do not apply to any period of time over 18 months after May 20, 1971, during which the conditions or actions described did not exist or were not instituted.

(2) It is no defense to the charge of upsurpation of corporate opportunity that the existing affiliated insurance agency which the association could have acquired engages in business in which a service corporation may not engage under § 545.74 of this chapter, unless it was determined whether:

(i) The portion of the business of the existing affiliated insurance agency related to referrals from members of the association could have been acquired by the association, or

(ii) It was feasible and desirable for the association, by means of a service corporation, or its wholly-owned subsidiary, to establish or acquire its own insurance agency.

(e) *Relief required.* (1) Usurpation of corporate opportunity under paragraph (b) of this section entitles the association to the resulting profits of the affiliated insurance agency during the period of usurpation, if such profits are attributable to:

(i) Referrals by the association of the association borrowers to the agency during that period, and

(ii) Renewals of such referrals made during such period, unless it can be shown that such renewals were made for a reason other than maintaining the original placement.

The association is not entitled to profits for referrals (or renewals thereof) made before the period of usurpation or for referrals (or renewals thereof) made after the corporate opportunity ceased to exist.

(2) Notwithstanding paragraph (e)(1) of this section, an association whose corporate opportunity was usurped under this section is not entitled to recover insurance agency profits:

(i) Which exceed profits actually accruing to the association's officers, directors, or controlling persons (*e.g.*, their *pro rata* share of the profits based on their partial ownership of the insurance agency) during the period of usurpation; or

(ii) From a person who was an officer of the association during the period of usurpation, if it is clearly shown that the person's receipt of such profits was in lieu of a portion of what otherwise would have been officer's compensation. (Profits that exceed an amount which could reasonably be regarded to have been in lieu of compensation, based on compensation of persons in comparable positions, are recoverable.)

§ 556.17 Effect of loan participation on status of borrowing members.

Solely for the purpose of determining borrower membership in a Federal mutual savings association under parts 544 and 563b of this chapter, a person is a borrowing member of the association under its charter only if the association has singly or jointly originated a loan to the person, the loan has not been fully repaid, and the association has not sold its entire ownership interest in the loan to a third party or parties. If the loan is assumed in full, the person assuming the loan becomes a borrowing member of the association in lieu of the original borrower, regardless of whether the original borrower remains obligated on the loan.

PART 558—POSSESSION BY CONSERVATORS FOR FEDERAL SAVINGS ASSOCIATIONS

Sec.

558.1 Procedure upon taking possession.
558.2 Notice of appointment.
558.3 Inventory.
558.4 Inspection of reports.
558.5 Delegation by conservator.
558.6 Surrender of possession by a conservator.
558.7 Final discharge and release of conservator.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 558.1 Procedure upon taking possession.

(a) The conservator for a Federal savings association shall take possession of the Federal savings association by taking possession of the principal office of the Federal savings association and in accordance with the terms of the Director's appointment.

(b) Upon taking possession, the conservator shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the Federal savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator knows to be holding or in possession of assets of the Federal savings association, that the conservator has succeeded to all rights, titles, powers and privileges of the Federal savings association.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the Federal savings association in substantially the following form:

The (name of Federal savings association) is in the hands of (name) as Conservator under appointment by the Director of the Office of Thrift Supervision.
Conservator _____
Date _____

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the Federal savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the Federal savings association's assets or property.

§ 558.2 Notice of appointment.

If the Director of the Office appoints a conservator under this part, the Secretary to the Office shall mail a certified copy of the Office's appointment to the Federal savings association's address as it appears in the Office's records, and notice of the appointment shall be filed immediately for publication in the **Federal Register**.

§ 558.3 Inventory.

(a) As soon as practicable after taking possession, the conservator shall inventory the Federal savings association's assets as of the date possession was taken. The inventory shall include the value on the Federal savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the Federal savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the conservatorship in the Federal savings association's principal office.

§ 558.4 Inspection of reports.

Unless the Director of the Office or Senior Deputy Director for Supervision (Operations) otherwise directs, the conservator's inventories, statements, and reports shall be in at least two copies. One copy shall be filed with the Office, and one copy shall be filed with the Senior Deputy Director for Supervision (Operations). The copies shall constitute permanent records of the conservatorship open for inspection whenever the Office of the Secretary to the Office is open for business or at such times and on such conditions as the Director of the Office may direct.

§ 558.5 Delegation by conservator.

The conservator may delegate any powers and authorities vested in him or her.

§ 558.6 Surrender of possession by a conservator.

(a) When the Director of the Office restores a Federal savings association in the hands of a conservator to its previous management, that action, except as the Director of the Office otherwise provides, shall restore the rights, titles, powers and privileges of its members, stockholders, officers and directors.

(b) When a receiver is appointed for a Federal savings association in the hands of a conservator, the conservator shall, as the Director of the Office may require, surrender possession of the association to the receiver.

§ 558.7 Final discharge and release of conservator.

When relieved of all duties, the conservator shall file with the Office a report which the Office finds satisfactory. The Office may direct an audit in connection with the report and shall approve or disapprove the accounts of the conservator. If the accounts are approved, the conservator shall thereupon be completely and finally released.

PART 559—POSSESSION BY RECEIVERS FOR FEDERAL SAVINGS ASSOCIATIONS

Sec.

559.1 Procedure upon taking possession.
559.2 Notice of appointment.
559.3 Inventory.
559.4 Inspection of reports.
559.5 Delegation by receiver.
559.6 Final discharge and release of receiver.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 559.1 Procedure upon taking possession.

(a) The receiver for a Federal savings association shall take possession of the Federal savings association by taking possession of the principal office of the Federal savings association and in accordance with the terms of the Director of the Office's appointment.

(b) Upon taking possession, the receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Take possession of the Federal savings association's books, records and assets.

(3) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the receiver knows to be holding or in possession of assets of the Federal savings association, that the receiver has succeeded to all rights, titles, powers and privileges of the Federal savings association, and to the titles of any conservator, receiver, or other legal custodian of the Federal savings association previously appointed.

(4) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(5) Post a notice on the door of the principal and other offices of the Federal savings association.

(i) If the appointment occurs during the three-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
Receiver _____
Date _____

(ii) If the appointment occurs after the end of such period, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
Receiver _____
Date _____

(6) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the Federal savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the Federal savings association's assets or property.

§ 559.2 Notice of appointment.

If the Director of the Office appoints a receiver under this Part, the Secretary to the Office shall mail a certified copy of the appointment to the Federal savings association's address as it appears in the Office's records, and notice of the appointment shall be filed immediately for publication in the **Federal Register**.

§ 559.3 Inventory.

(a) As soon as practicable after taking possession, the receiver shall inventory the Federal savings association's assets as of the date possession was taken. The inventory shall include the value on the Federal savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the Federal savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the receivership in the Federal savings association's principal office.

§ 559.4 Inspection of reports.

The receiver's inventories, statements and reports shall be in at least as many copies as these regulations require or as the Director of the Office otherwise directs. One copy shall be filed with the Office and shall constitute permanent records of the liquidation open for inspection at such time and on such conditions as the Director of the Office may direct, or in the absence of such direction, whenever the office of the Office is open for business.

§ 559.5 Delegation by receiver.

The receiver may delegate any powers and authorities vested in him or her.

§ 559.6 Final discharge and release of receiver.

When the receiver recommends final distribution of assets or is otherwise relieved of its duties, it shall file with the Office a detailed report in form satisfactory to the Office. Unless the Director of the Office otherwise directs, upon final liquidation of the receivership or when the receiver completes, or is otherwise relieved of, its duties, the receivership shall be examined and audited. The receiver's accounts shall be approved or disapproved, and if approved, the receiver shall be completely and finally released.

SUBCHAPTER D—REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

PART 561—DEFINITIONS

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Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 561.1 General.

Unless another definition is provided in this subchapter, definitions in Part 541 of this chapter apply.

§ 561.2 Account.

The term "account" means any savings account, demand account, certificate account, tax and loan account, note account, United States Treasury general account or United States Treasury time deposit-open account, whether in the form of a deposit or a share, held by an accountholder in a savings association.

§ 561.3 Accountholder.

The term "accountholder" means the holder of an account or accounts in a savings association insured by the SAIF. The term does not include the holder of any subordinated debt security or any mortgage-backed bond issued by the savings association.

§ 561.4 Affiliate.

The term "affiliate" of a savings association, unless otherwise defined, means any corporation, business trust, association, or other similar organization:

(a) Of which a savings association, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percentum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) Of which control is held, directly or indirectly through stock ownership or in any other manner, by the shareholders of a savings association who own or control either a majority of the shares of such savings association or more than 50 per centum of the number of shares voted for the election of directors of such savings association at the preceding election, or by trustees for the benefit of the shareholders of any such savings association; or

(c) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one savings association.

§ 561.5 Affiliated person.

The term "affiliated person" of a savings association means the following:

(a) A director, officer, or controlling person of such association;

(b) A spouse of a director, officer, or controlling person of such association;

(c) A member of the immediate family of a director, officer, or controlling person of such association, who has the same home as such person or who is a director or officer of any subsidiary of such association or of any holding company affiliate of such association;

(d) Any corporation or organization (other than the savings association or a corporation or organization through which the savings association operates) of which a director, officer or the controlling person of such association:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions;

(2) Is a general partner;

(3) Is a limited partner who, directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns an interest of 10 percent or more in the partnership (based on the value of his or her contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25 percent or more in the partnership; or

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25 percent or more of any class of equity securities; and

(5) Any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

§ 561.6 Audit period.

The "audit period" of a savings association means the twelve month period (or other period in the case of a change in audit period) covered by the annual audit conducted to satisfy § 563.170.

§ 561.7 BIF.

The term "BIF" means the Bank Insurance Fund established by the Federal Deposit Insurance Act. (12 U.S.C. 1821 *et seq.)*

§ 561.8 [Reserved]

§ 561.9 Certificate account.

The term "certificate account" means a savings account evidenced by a certificate that must be held for a fixed or minimum term.

§ 561.10 Closed-end consumer credit.

The term "closed-end consumer credit" means consumer credit other than open-end consumer credit.

§ 561.11 Closing date.

The term "closing date" means any annual or semiannual closing date.

§ 561.12 Consumer credit.

The term "consumer credit" means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: *Provided,* the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of

real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

§ 561.13 Consumer credit classified as a loss.

The term "consumer credit classified as a loss" means closed-end consumer credit delinquent 120 days or more (5 monthly payments or more) and open-end consumer credit delinquent 180 days or more (7 zero billing cycles or more). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If a savings association can clearly demonstrate that repayment would occur regardless of delinquency status—for example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where claims have been filed against a solvent estate—then such loan need not be classified as a loss. The following table illustrates the delinquency computation:

CLOSED-END CONSUMER CREDIT

Due date	Period	Delinquency status	Classification
3/10	3/10–4/09	Not delinquent	
6/10	6/10–7/09	90 days or 4 payments	Slow.
7/10	7/10–8/09	120 days or 5 payments	Loss. [1]
8/10	8/10–9/09	150 days or 6 payments	Loss. [1]

OPEN-END CONSUMER CREDIT

Statement	Zero billing		Days		Class
	Day	Cycle	Payment record	Delinquent	
1	1			0	
7	150	6	No payment	150	Slow.
8	210	7	No payment	180	Loss. [1]
9	240	8	No payment	210	Loss. [1]

[1] Charge-off as required by § 563.46 occurs.

§ 561.14 Controlling person.

The term "controlling person" of a savings association means any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, ten percent or more of the voting shares or rights of such savings association; or controls in any manner the election or appointment of a majority of the directors of such savings association. However, a director of a savings association will not be deemed to be a controlling person of such savings association based upon his or her voting, or acting in concert with other directors in voting, proxies:

(a) Obtained in connection with an annual solicitation of proxies, or

(b) Obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors of such association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

§ 561.15 Corporation.

The terms "Corporation" and "FDIC" mean the Federal Deposit Insurance Corporation.

§ 561.16 Demand accounts.

(a) The term "demand accounts" means non-interest-bearing demand deposits which are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation, or otherwise and are payable on demand, as provided in § 563.8(b) of this chapter.

(b) Premiums, whether in the form of merchandise, credit, or cash, given by a savings association to the holder of a demand deposit shall not be deemed the payment of interest on a demand deposit if:

(1) The premium is given to the holder of a demand deposit only upon the opening of a new account or the addition to, or renewal of, an existing demand account;

(2) No more than two premiums per account are given within a twelve-month period; and

(3) The value of the premium, or in the case of articles of merchandise, the total cost (including shipping, warehousing, packaging, and handling costs) does not exceed $10 for deposits of less than $5000 or $20 for deposits of $5000 or more.

(c) The values or costs of the premiums may not be averaged.

(d) A savings association may not solicit funds for deposit on the basis that the savings association divide the funds into several accounts for the purpose of enabling the savings association to pay the depositor more than two premiums within a twelve-month period on the solicited funds.

(e) The savings association shall retain in its files information necessary for an examiner to determine compliance with paragraph (b) of this section, and shall make such information available to the examiner upon request.

(f) A fee paid by a savings association to a person who introduces a depositor to the savings association shall not be deemed a payment of interest to the depositor if the fee:

(1) Consists of bonuses in cash or merchandise to the savings association's employees for participation in an account drive, contest or other incentive plan: *Provided, That* such bonuses are tied to the total amount of deposits solicited; or

(2) Is paid to a bona fide broker if:

(i) The broker is principally engaged in the business of acting as a broker or dealer in regard to deposits, securities, or money market instruments;

(ii) The relationship between the broker and savings association is memorialized in a written agreement, a copy of which is retained by the savings association and made available to examiners; and

(iii) An officer of the broker certifies that no portion of the fee paid to the broker is directly or indirectly passed on to the depositor, and a copy of the certification is given to the savings association to be retained on file with the agreement.

(g) A savings association's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a paying of interest.

§ 561.17 Deposit broker.

The term "deposit broker" means "deposit broker" as defined in section 29(f)(1) of the Federal Deposit Insurance Act.

§ 561.18 Director.

(a) The term "director" means any director, trustee, or other person performing similar functions with respect to any organization whether incorporated or unincorporated. Such term does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

(b) The term "Director" means the Director of the Office of Thrift Supervision as established in section 3 of the Act.

§ 561.19 Financial institution.

The term "financial institution" has the same meaning as the term "depository institution" set forth in 12 U.S.C. 1813(c)(1).

§ 561.20 Guaranteed loan.

The term "guaranteed loan" means a loan that is guaranteed, including a guarantee to repurchase, in whole or in part, or as to which a commitment to guarantee has been made, under the provisions of any of the following:

(a) The Servicemen's Readjustment Act of 1944 or Chapter 37 of Title 38, United States Code;

(b) The New Communities Act of 1968;

(c) Section 221 or section 224 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969; or

(d) Section 221 or section 222 of the Foreign Assistance Act of 1961, as in effect on December 30, 1969, and thereafter.

§ 561.21 Guaranteed obligation.

The term "guaranteed obligation" means an obligation that is guaranteed, in whole or in part, or as to which a commitment to guarantee has been made under the provisions of the New Communities Act of 1968.

§ 561.22 Holding company affiliate.

The term "holding company affiliate" of a savings association means a savings and loan holding company of which such savings association is a subsidiary and any other subsidiary of such holding company other than a subsidiary of such savings association. The term "holding company affiliate" applies to an uninsured institution as if such institution were a savings association. For purposes of this definition of "holding company affiliate", see § 583.24 "Uninsured institution", § 583.20 "Savings and loan holding company", § 583.23 "Subsidiary", § 583.2 "Affiliate", and related definitions in part 583 of this chapter. The term "holding company affiliate" of a bank means a bank holding company of which the bank is a subsidiary and any other subsidiary of such holding company. For purposes of this definition, see § 583.4 "Bank holding company", and § 583.3 "Bank".

§ 561.23 Home mortgage.

The term "home mortgage" means a mortgage on real estate in fee simple, or on a leasehold of:

(a) Not less than 99 years which is renewable or

(b) Not less than 50 years from the date the mortgage was executed, which comprises one or more homes or other dwelling units, including first mortgages, real estate sales contracts, and other classes of first liens commonly given to secure advances on real estate by financial institutions in the State where the real estate is located which are authorized under the Federal Home Loan Bank Act to become members of a Federal Home Loan Bank, together with any credit instrument secured thereby.

§ 561.24 Immediate family.

The term "immediate family" of any natural person means the following (whether by the full or half blood or by adoption):

(a) Such person's spouse, father, mother, children, brothers, sisters, and grandchildren;

(b) The father, mother, brothers, and sisters of such person's spouse; and

(c) The spouse of a child, brother, or sister of such person.

§ 561.25 Insured loan.

The term "insured loan" means a loan which is insured in whole or in part, or as to which the mortgagee is insured, in whole or in part, or as to which a commitment for any such insurance has been made under the provisions of the National Housing Act, or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as now or hereafter amended. Such term also means an education loan which is insured by the U.S. Commissioner of Education under Part B of Title IV of the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965, as now or hereafter amended, or which is insured by a State which has pledged its full faith and credit to such insurance, or which is insured by a State or nonprofit private institution or organization with which the U.S. Commissioner of Education has a guaranty agreement under subsection (c) of section 428 of the Higher Education Act of 1965.

§ 561.26 Land loan.

The term "land loan" means a loan:

(a) Secured by real estate upon which all facilities and improvements have been completely installed, as required by local regulations and practices, so that it is entirely prepared for the erection of structures;

(b) To finance the purchase of land and the accomplishment of all improvements required to convert it to developed building lots; or

(c) Secured by land upon which there is no structure.

§ 561.27 Low-rent housing.

The term "low-rent housing" means real estate which is, or which is being constructed, remodeled, rehabilitated, modernized, or renovated to be, the subject of an annual contributions contract for low-rent housing under the provisions of the United States Housing Act of 1937, as amended.

§ 561.28 Money Market Deposit Accounts.

(a) Money Market Deposit Accounts ("MMDAs") offered by Federal savings associations in accordance with 12 U.S.C. 1464(b)(1) and by state-chartered savings associations in accordance with applicable state law are savings accounts on which interest may be paid if issued subject to the following limitations:

(1) The savings association shall reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account; and

(2)(i) The depositor is authorized by the savings association to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same savings association to the savings association itself, or to a third party: *Provided, That* no more than three of the six transfers provided for in this paragraph (a)(2)(i) may be by check, draft, debit card, or similar order made by the depositor and payable to third parties.

(ii) Savings associations may permit holders of MMDAs to make unlimited transfers for the purpose of repaying loans (except overdraft loans on the depositor's demand account) and associated expenses at the same savings association (as originator or servicer), to make unlimited transfers of funds from this account to another account of the same depositor at the same savings association or to make unlimited payments directly to the depositor from the account when such transfers or payments are made by mail, messenger, automated teller machine, or in person, or when such payments are made by telephone (via check mailed to the depositor).

(3) In order to ensure that no more than the number of transfers specified in paragraph (a)(2)(i) of this section are made, a savings association must either:

(i) Prevent transfers of funds in excess of the limitations; or

(ii) Adopt procedures to monitor those transfers on an after-the-fact basis and contact customers who exceed the limits on more than an occasional basis. For customers who continue to violate those limits after being contacted by the depository savings association the depository savings association must either place funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

(iii) Insured savings association at their option, may use on a consistent basis either the date on a check or the date it is paid in determining whether the transfer limitations within the specified interval are exceeded.

(b) Federal savings associations may offer MMDAs to any depositor, and state-chartered savings associations may offer MMDAs to any depositor not inconsistent with applicable state law.

§ 561.29 Negotiable Order of Withdrawal Accounts.

(a) Negotiable Order of Withdrawal ("NOW") accounts are savings accounts authorized by 12 U.S.C. 1832 on which the savings association reserves the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account.

(b) For purposes of 12 U.S.C. 1832:

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and * * * not * * * for profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code; and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

§ 561.30 Nonresidential construction loan.

The term "nonresidential construction loan" means a loan for construction of other than one or more dwelling units.

§ 561.31 Nonwithdrawable account.

The term "nonwithdrawable account" means an account which by the terms of the contract of the accountholder with the savings association or by provisions of state law cannot be paid to the accountholder until all liabilities, including other classes of share liability of the savings association have been fully liquidated and paid upon the winding up of the savings association is referred to as a "nonwithdrawable account."

§ 561.32 Normal lending territory.

(a) Normal lending territory is the area (1) within the State in which such savings association's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such State; and (3) other territory in which the savings association was operating on June 27, 1934.

(b) *Definitions.* For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish, or similar political subdivision of a State is the unit of "territory" in which the savings association was operating on June 27, 1934.

§ 561.33 Note account.

The term "note account" means a note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable United States Treasury Department regulations. Note accounts are not savings accounts or savings deposits.

§ 561.34 Office.

The term "Office" means the Office as established in Section 3 of the Act or any official duly authorized to act on its behalf. Where appropriate in context, it also refers to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation as predecessor agencies to the Office.

§ 561.35 Officer.

The term "Officer" means the president, any vice-president (but not an assistant vice-president, second vice-president, or other vice president having authority similar to an assistant or second vice-president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated. The term "officer" also includes the chairman of the board of directors if the chairman is authorized by the charter or by-laws of the organization to participate in its operating management or if the chairman in fact participates in such management.

§ 561.36 Open-end consumer credit.

The term "open-end credit" means credit as defined in Regulation Z (12 CFR 226.2(a)(20)).

§ 561.37 Parent company; subsidiary.

The terms "parent company" and "subsidiary" have the meanings given to them by §§ 583.15 and 583.23 of this chapter, respectively.

§ 561.38 Political subdivision.

The term "political subdivision" includes any subdivision of a public unit, any principal department of such public unit:

(a) The creation of which subdivision or department has been expressly authorized by state statute,

(b) To which some functions of government have been delegated by state statute, and

(c) To which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies or boards within principal departments.

§ 561.39 Principal office.

The term "principal office" means the home office of a savings association established as such in conformity with the laws under which the savings association is organized.

§ 561.40 Public unit.

The term "public unit" means the United States, any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, the Virgin Islands, any county, any

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municipality or any political subdivision thereof.

§ 561.41 SAIF.

The term "SAIF" means the Savings Association Insurance Fund, established by the Federal Deposit Insurance Act. (12 U.S.C. 1811 *et seq.*).

§ 561.42 Savings account.

The term "savings account" means any withdrawable account, except a demand account as defined in §§ 563.6 and 561.16 of this Chapter, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

§ 561.43 Savings association.

The term "savings association" means a savings association as defined in section 3 of the Federal Deposit Insurance Act, the deposits of which are insured by the Corporation. It includes a Federal savings association or Federal savings bank, chartered under section 5 of the Act, or a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a State bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating substantially in the same manner as a savings association.

§ 561.44 Security.

The term "security" means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing, except that a "security" shall not include an account or deposit insured by the Federal Deposit Insurance Corporation.

§ 561.45 Service corporation.

The term "service corporation" means any corporation, the majority of the capital stock of which is owned by one or more savings associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which a Federal savings association may invest under § 545.74 of this chapter.

§ 561.46 Service corporation affiliate.

The term "service corporation affiliate" of a savings association means any service corporation which is an affiliate of a savings association.

§ 561.47 Slow consumer credit.

The term "slow consumer credit" means closed-end consumer credit delinquent 90 to 119 days (4 monthly payments) and open-end consumer credit delinquent 90 to 179 days (4-to-6 zero billing cycles). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If an association can clearly demonstrate that repayment would occur regardless of delinquency status—for example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where the claims have been filed against a solvent estate—then such loan need not be classified as "slow consumer credit." The following table illustrates the delinquency computation:

CLOSED-END CONSUMER CREDIT

Due date	Period	Delinquency status	Classification
3/10	3/10–4/09	Not delinquent	
4/10	4/10–5/09	30 days or 2 payments	
5/10	4/10–6/09	60 days or 3 payments	
6/10	6/10–7/09	90 days or 4 payments	Slow

OPEN-END CONSUMER CREDIT

Statement	Zero billing		Days		Class
	Day	Cycle	Payment record	Delinquent	
1	1			0	
2	30	1	No payment	30	
3	60	2	No payment	60	
4	90	3	No payment	90	
5	120	4	No payment	90	Slow.
6	150	5	No payment	120	Slow.
7	180	6	No payment	150	Slow.

§ 561.48 Slow loans.

With respect to loans on the security of a "home," as defined in § 541.14 of this chapter, which is owner-occupied, the term "slow loans" means:

(a) Any loan or land contract less than 1 year old which is the equivalent of 60 days (2 months) or more contractually delinquent; or

(b) Any loan or land contract that is from 1 year to 7 years old which is the equivalent of 90 days (3 months) or more contractually delinquent; or

(c) Any loan or land contract more than 7 years old which is the equivalent of 90 days (3 months) or more contractually delinquent unless 10 out of the last 12 contractually required payments have been made; or

(d) Any mortgage loan, deed or trust, or land contract on which taxes on the security are due and unpaid for the equivalent of two or more years; or

(e) Any loan or land contract that has been modified or refinanced within the preceding 12 months, while

contractually delinquent, except a mortgage loan or land contract:

(1) More than 2 years old and less than 30 days (1 month) contractually delinquent at the time of the modification or refinancing and not previously modified or refinanced during the past 60 months or the life of the loan, whichever period is shorter, or

(2) Modified or refinanced to provide for payment of real estate taxes, other governmental assessments, hazard insurance premiums, mortgage life insurance or disability insurance premiums where the savings association is the assignee or beneficiary of the insurance, or water or sewer rent or charges, if provision is made for payment of the funds so advanced within the succeeding 12 months.

(f) In computing delinquencies for purposes of this section, any loan as to which the savings association has the benefit of any guaranty by the FDIC as successor to the Federal Savings and Loan Insurance Corporation shall be considered to be current as of the date such guaranty becomes effective with respect to that particular loan and only subsequent delinquencies shall be counted in determining whether the loan is slow.

(g) Any loan or land contract that has been made, extended, or continued beyond the term permitted by applicable lending limitations.

Provided, That any mortgage loan, deed of trust, or land contract on which the total indebtedness is less than 60 percent of the original amount, any loan on which all contractually required payments have been made during the preceding 12 months and any loan on which payments are being deferred pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall not be considered to be a slow loan under this section.

§ 561.49 [Reserved]

§ 561.50 State.

The term "State" means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

§ 561.51 Subordinated debt security.

The term "subordinated debt security" means any unsecured note, debenture, or other debt security issued by a savings association and subordinated on liquidation to all claims having the same priority as account holders or any higher priority.

§ 561.52 Tax and loan account.

The term "tax and loan account" means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

§ 561.53 United States Treasury General Account.

The term "United States Treasury General Account" means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

§ 561.54 United States Treasury Time Deposit Open Account.

The term "United States Treasury Time Deposit Open Account" means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

§ 561.55 With recourse.

(a) The term "with recourse" means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to receive from the seller a sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the savings association.

(b) The term "with recourse" does not include loans or interests therein where the agreement of sale provides for the savings association directly or indirectly

(1) To hold or retain a subordinate interest in a specified percentage of the loans or interests; or

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided, That* the savings association designates reserves as provided in § 567.2(b)(4)(ii)(A) of this subchapter for the subordinate interest or guarantee.

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Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

Subpart A—Accounts

§ 563.1 Form of account.

(a) *Submission for approval.* All savings associations prior to commencing operations shall have filed with the Office for approval forms of all accounts and securities proposed to be issued by the applicant as a savings association. An applicant also shall submit for approval its charter, constitution, and bylaws, and all amendments thereto, affecting its accounts or securities. No savings association shall issue:

(1) Any form of account (except NOW accounts as defined in § 541.9 of this chapter) without complying with the requirements of paragraph (b) of this section; or

(2) Any security that has not been approved in writing by the Office.

Notwithstanding any other delegation of the authority granted under this paragraph (a), the Chief Counsel or his or her designee, are delegated exclusive authority to exercise the Office's approval authority under this paragraph (a) with respect to preferred stock security forms and amendments thereto for mandatorily redeemable preferred stock and preferred stock redeemable at the option of the issuer. Any savings association which amends its charter, constitution, or bylaws affecting its accounts or securities promptly shall transmit such amendments to the Office for approval. Except with the written approval of the Office, no savings association may issue or have outstanding any class of account having preference, whether as to time or amount in the event of liquidation, over any other class of account: *Provided,* That where there may be a change from one type of account to another, a reasonable time, to be determined by the Office may be allowed to effect such change. Each savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association and shall upon request deliver to any accountholders a copy of such charter, constitution, bylaws, and amendments.

(b) *Filing.* Prior to issuing any form of account, a savings association shall file with the Office:

(1) The form of account and

(2) An opinion of its legal counsel that the form complies with the requirements of applicable law and regulations and the association's charter and bylaws.

If the account is issued in negotiable instrument form, the opinion must state expressly that the form so qualifies under applicable law. Filing shall be made by delivering a copy of the form and legal opinion to the savings association's District Director (as defined in § 541.9 of this chapter). The savings association shall retain a copy of the opinion for as long as accounts in that form are outstanding. The requirements of this paragraph (b) shall not apply if a savings association issues a form of account that has been approved by the Office for use by saving associations.

§ 563.2 Simple form of certificate; passbooks.

A mutual savings association which, in accordance with State law, includes in its charter, constitution, or bylaws a clear provision that all shareholders are members and shall share equally in earnings and in assets (except for bonus payments under a bonus plan) pro rata to paid-in value, plus credited dividends, and that the savings association shall not directly or indirectly charge any membership, admission, repurchase, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the savings association, may issue a simple form of savings or investment certificate or a passbook, which need not contain any membership certificate or any statement of the dividend, withdrawal, or other rights of members.

§ 563.3 Long form of membership certificate.

Every share, membership, or deposit certificate, passbook or other instrument evidencing a withdrawable investment hereafter issued by a savings association, which pays or proposes to pay a different rate of dividends or interest upon different classes of shares or securities, which prefers, or proposes to prefer, either as to time or amount of participation in earnings or assets (except by way of a bonus plan), any one or more classes of shares or securities, or which charges directly or indirectly any membership, admission, repurchase, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings association must, unless the Office specifically permits omission of one or more of such recitals, include in its provisions, and display in easily read type, a full and understandable statement of the method of maturing such contracts, the rate of interest paid, or the dividend provisions, or both, under which the savings association operates, and the charge or charges, if any, for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings association.

§ 563.4 Brokered deposits.

(a) For purposes of this section, the term "brokered deposits" means any account obtained or placed by or through a deposit broker, as defined in § 561.17 of this subchapter.

(b) For purposes of this section, the term "regulatory capital requirement" means the greater of:

(1) An amount equal to at least three percent of all liabilities (i.e. total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus regulatory capital as defined by § 567.1 of this subchapter);

(2) The minimum regulatory capital required by § 567.2 of this subchapter; or

(3) Any regulatory capital requirement imposed upon the savings association by a supervisory agreement or imposed as a condition to any consent or approval granted by the Office with respect to the savings association.

(c) Except as provided in paragraph (d) of this section, no savings association which does not meet or exceed the regulatory capital requirement set forth in paragraph (b) of this section may commit to accept brokered deposits if the amount of such deposits, together with the total amount of all other brokered deposits then outstanding, would exceed five percent of its total deposits.

(d) A savings association that does not meet the regulatory capital requirement set forth in paragraph (b) of this section may apply to its District Director for a waiver of the provisions of paragraph (c) of this section. The District Director may grant such a waiver in writing for a period not to exceed one year, upon finding that:

(1) The savings association would suffer or is likely to suffer from either a shortage of liquidity or a substantial dissipation of assets if it were not able to accept additional brokered deposits;

(2) Other methods of raising additional funds would pose a greater risk of adverse effects on the financial state of the savings association or would increase costs to the Corporation; and

(3) The savings association's board of directors has adopted a plan of action which is, in the opinion of the District Director, reasonably designed to reduce the savings association's outstanding brokered deposits to comply with paragraph (c) of this section within two years of the date that such waiver is granted.

Material deviations from such a plan, in the absence or approval in writing of such deviation by the District Director, shall constitute a violation of this section.

§ 563.5 Securities: Statement of non-insurance.

Every security issued by a savings association must include in its provisions a clear statement that the security is not insured by the Federal Deposit Insurance Corporation.

§ 563.6 Payment of accounts on demand.

(a) Except for demand accounts, tax and loan accounts, note accounts, and United States Treasury general accounts, as defined in Part 561 of this chapter, no savings association shall issue any account, or advertise or represent that it will pay holders of its accounts, on demand.

(b) As used in paragraph (a) of this section, accounts payable on demand [illegible]:

(1) Accounts with an original maturity or required notice period of less than seven days;

(2) Accounts for which the savings association does not reserve the right to require at least seven days' written notice prior to withdrawal or transfer of funds in the account; or

(3) Savings accounts held by depositors ineligible to hold negotiable order of withdrawal accounts under 12 U.S.C. 1832, the savings association authorizes the depositor to exceed the transaction limitations set forth in § 561.28(a)(2) of this subchapter despite any maturity requirements or notice of withdrawal requirements which may be imposed or reserved.

(c) A savings association may provide in any time deposit contract that if the deposit or any portion thereof is withdrawn not more than ten days after a maturity date, interest will continue to be paid for such period. The payment of such interest is not payment of interest on a demand deposit.

(d) A savings association may continue to pay interest for a period between a maturity date and the date of renewal of the deposit: *Provided,* That such certificate is renewed not more than ten days after maturity. The payment of such interest is not payment of interest on a demand deposit.

§ 563.7 Fixed-term accounts (certificate accounts).

(a) *General.* Subject to the requirements of this section, a savings association may offer certificate accounts, as defined in § 561.9 of this part, in such form as the board of directors of the savings association may authorize by resolution. With respect to any time deposit, a savings association may impose a penalty for early withdrawal, subject to the limitations in paragraph (e) of this section.[1]

(b) *Payment of interest or other earnings.* A savings association may pay earnings on a certificate account at a rate or anticipated rate of return determined at the time that the account is accepted. The rate or anticipated rate on a certificate account either may be fixed or may vary according to a schedule, index, or formula specified at the time that the account is accepted.

(c) *Limitations.* In issuing certificate accounts, no savings association shall:

(1) Accept any fixed-term account for a term of less than seven days; or

(2) Issue any form of certificate account, unless the association has complied with the requirements of § 563.1 of this part.

(d) *Disclosure.* Each certificate account shall include in its provisions and display in easily read type:

(1) The rate or anticipated rate of earnings to be paid; the basis, frequency, extent, and limits of any variation in the rate over the term of the account; and the dates or frequency at which earnings are distributable;

(2) The amount of the account and the date of its issuance;

(3) The minimum term (or for a savings deposit, the term) and minimum-balance requirement;

(4) Any provisions limiting the right of the accountholder to make additions to the account or to withdraw all or any portion of the account prior to its maturity;

(5) Any penalty or penalties for withdrawal prior to expiration of the term;

(6) Any provisions relating to redemption, call, or repurchase;

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[1] Savings associations are advised that for purposes of Regulation D reserve requirements imposed by the Federal Reserve Board, early withdrawal penalties may be required to distinguish time deposits from demand deposits. The penalty, seven days' interest, applies only to withdrawals within the first six days after a time deposit is opened. See FRB Docket No. R-0565 (March 17, 1988). Early withdrawal penalties also may be required under Regulation D to distinguish nonpersonal time deposits with maturities of less than eighteen months for nonpersonal time deposits with maturities of eighteen months or more. The required penalty is one months' interest. *Id.*

(7) Any provisions relating to a renewal when the term expires;

(8) Any provisions relating to earnings after expiration of the term or any renewal period; and

(9) Any provision converting the rate of return on the certificate account to another rate of return, whenever any minimum balance requirement established by the savings association may cease to be met.

(e)(1) A certificate account may prohibit withdrawal of any portion of such account prior to maturity, except under such circumstances as may be set forth therein: *Provided,* That under the following circumstances no certificate may prohibit withdrawal and no early withdrawal penalty may be imposed:

(i) After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or

(ii) After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

(2) For purposes of paragraph (e)(1) of this section, an "owner" is an individual who has full legal and beneficial title to all or part of the account or beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets.

§ 563.8 Negotiable order of withdrawal accounts authorized.

Savings associations may offer negotiable order of withdrawal accounts as are authorized by 12 U.S.C. 1832 and section 561.29 of this subchapter.

§ 563.9 Eurodollar deposits.

(a) *Definitions.* As used in this section:

(1) *Eurodollar certificate* means a certificate account, denominated in United States dollars, evidencing a Eurodollar deposit;

(2) *Eurodollar deposit* means a deposit by a person who is not a United States person;

(3) *United States person* means any national or resident of the United States of America, its territories and possessions, including any corporation, trust, estate, or other entity organized under the laws thereof or of any political subdivision thereof; and

(4) *Participation* means an interest or participation in a Eurodollar certificate.

(b) *General.* To the extent that it has legal authority to do so, a savings association may issue Eurodollar certificates in conformity with this section and § 563.7 of this part.

(c) *Collateralization of certificates.* A savings association may give security for Eurodollar deposits subject to any notification or right of repurchase requirements that may be imposed by the FDIC.

(d) *Requirements as to distribution.* (1) In exercising authority under this section, a savings association shall require an undertaking in writing from each purchaser of a Eurodollar certificate or participation therein to the effect that:

(i) If the purchaser is not a dealer, he will not offer, sell or deliver such Eurodollar certificate(s) or participations therein directly or indirectly in the United States of America or its territories or possessions or to nationals or residents thereof, including any corporation, trust, estate or other entity organized under the laws thereof or of any political subdivision thereof; or

(ii) If the purchaser is a dealer, he has not offered, sold or delivered, and agrees that he will not offer, sell or deliver, any such Eurodollar certificate(s) or participations therein directly or indirectly in the United States of America or its territories or possessions or to nationals or residents thereof and he is not purchasing any such Eurodollar certificate(s) or participations therein for the account of any such nationals or residents. Further, if the purchaser is a dealer, he shall agree that he will require the undertaking required by paragraph (d)(1)(i) of this section on any sales of the Eurodollar certificate(s) or participations therein and that he will inform the issuing savings association promptly if any beneficial ownership by a United States person comes to his attention.

(2) Upon completion of the distribution of any Eurodollar certificates or participations therein, the lead or managing underwriter shall deliver to the issuing savings associations a certification as to the sale stating that to the knowledge of the underwriter no beneficial owner or owners of the Eurodollar certificate(s) or participants therein is a United States person; and, further, that the underwriter has not knowingly sold or offered for sale and will not sell or offer for sale, the Eurodollar certificate(s) or participations therein to any United States person.

(3) Upon issuance of any certificate under this section, the issuing savings association shall provide to the Office such information as the Office deems necessary to monitor effectively the use of the authority provided by this section.

(e) *Requirements as to certificates.* Each Eurodollar certificate and participation, including a temporary Eurodollar certificate or participation, shall bear on its face, in boldface type, a legend substantially in the following form:

> This Eurodollar certificate has been issued pursuant to a regulation of the Office of Thrift Supervision, an agency of the United States government, which requires that the Eurodollar certificate be sold, and interest at the amount stated hereon paid, only to purchasers who are not United States nationals or residents, and may not be offered directly or indirectly or sold in the United States of America, its territories or possessions, or to persons who are nationals or residents thereof.

(f) *Pooling of certificates.* Notwithstanding the provisions of § 571.25 of this chapter, a savings association may engage in pooling or participate in pooling funds, or soliciting or promoting pooled accounts, in connection with the issuance of a Eurodollar certificate in conformity with this section.

§ 563.10 Earnings-based accounts.

(a) *Definition.* An earnings-based account is any account that provides for the payment of interest which is determined, to any extent, directly or indirectly, with reference to an index based upon the profitability, earnings, cash-flow, appreciation, or other form of return on assets which are, directly or indirectly, owned by or under or within the control of the savings association ("contingent interest"): *Provided,* That earnings-based instruments are not issued accounts (as provided in section 545.11 of this chapter) if:

(1) The fixed or guaranteed portion of the interest or return on such instruments is less than 66.667 percent of the average yield for AAA-rated corporate bonds ("Moody's seasoned") published in the issue of the Federal Reserve Board publication H15 (519) "Selected Interest Rates" most recently preceding the date of issuance of such instruments;

(2) The instruments grant the investor an ownership interest of any kind, other than a security interest arising from operation of law, in such assets; or

(3) The instruments put the investor's funds at risk by providing for negative interest or by limiting the obligation to repay principal on the basis of asset performance.

(b) *Limitations.* If authorized by applicable state law, a savings association may issue earnings-based accounts only in accordance with the following conditions:

(1) The total outstanding amount of all such accounts issued by the savings association may not, as of the date of the issuance of any earnings-based account, exceed an amount equal to five percent of the savings association's assets, except that such amount may be increased to 20 percent of the savings association's assets with prior permission of the District Director pursuant to paragraph (c) of this section;

(2) The savings association is in compliance with its regulatory capital requirements under § 567.2(b) of this subchapter;

(3) Assets the income or return on which is the basis for the index used in the accounts may only be loans secured by real property;

(4) Only the savings association, and no other person, may exercise control over the selection or disposition of assets upon which the index is based or assets otherwise acquired in connection with the issuance of such accounts;

(5) No savings association or its agents shall, directly or indirectly:

(i) Employ any device, scheme, or artifice to defraud,

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading, or

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the sale or issuance of any earnings-based account;

(iv) *Provided,* That the defenses available to an action under section 10b of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) shall be available to any person subject to an action under this paragraph (b)(5);

(6) A savings association may not pay or commit to pay contingent interest in an amount greater than the amount of gross receipts, other than amounts attributable to repayment of principal, derived from the assets the return on which the interest index is based;

(7) The maturity, acceleration of maturity, mandatory redemption, or similar right or option with respect to an earnings-based account may not be conditioned upon the financial condition of the savings association or upon any supervisory or other regulatory action, including, but not limited to, the appointment of a conservator or receiver, with respect to such savings association;

(8) No savings association shall issue, sell, or otherwise participate in the distribution of any earnings-based account the sale of which is accompanied by a security or right to purchase a security; and

(9) The issuing savings association shall use all reasonable means to ensure that persons who hold or have a beneficial interest in such accounts do not have an interest of any kind in the assets used to calculate the contingent interest. Such means include, but are not limited to, the inclusion of an appropriate legend on the face of the account certificates.

(c) *District Director permission for increased issuance.* (1) The District Director may grant permission to a savings association to issue earnings-based accounts in an amount of up to 20 percent of the savings association's assets, upon consideration by the District Director of the following factors:

(i) Whether the savings association meets or exceeds the regulatory capital requirement specified in paragraph (d) of this section or any amount of regulatory capital required to be maintained in an applicable supervisory directive or operating agreement;

(ii) Whether the savings association has increased its total liabilities at an annual rate of greater than 25 percent during any three-month period in the 12 months preceding the date of application;

(iii) Whether the savings association's underwriting experience indicates an ability to adequately underwrite the loans anticipated to be used in calculating the index under the program;

(iv) Whether the savings association meets the asset-composition test imposed on a savings association seeking to qualify as a "domestic building and loan association" pursuant to section 7701(a)(19) of the Internal Revenue Code of 1954 (as amended);

(v) Whether there are no other bases for supervisory concern with respect to such savings association; and

(vi) Whether, under the terms of the issuance in question, and in fact, the savings association would retain a substantial economic interest in the indexed assets in proportion to the risks attending such issuance.

(2) Permission shall be deemed granted by the District Director 30 days after notification to the applicant that such application is complete, unless the applicant receives written notice from the District Director within such period that objection has been taken.

(3) An application shall be deemed to be complete for purposes of this section when the District Director has received the following items:

(i) A description of the anticipated and the maximum amounts of earnings-based accounts to be offered by the applicant;

(ii) Information describing in detail the loans to be used in calculating the contingent interest on the certificates;

(iii) A description and analysis of the savings association's underwriting and credit experience in the making of such loans;

(iv) The exact method of calculating contingent interest on the certificates;

(v) Information showing the financial condition of the applicant including, but not limited to, the applicant's regulatory capital (under § 567.2(b) and paragraph (c)(1)(i) of this section;

(vi) A detailed analysis showing the extent to which the proposed offering would affect the applicant's exposure to interest-rate and credit risk;

(vii) Information describing the applicant's deposit growth over the preceding three calendar years; and

(viii) A copy of a resolution adopted by the applicant's board of directors establishing a plan of operations designed, in conjunction with the offering, to reduce interest-rate and credit risk to the savings association.

(d) For purposes of paragraph (c)(1)(i) of this section, the term "regulatory capital requirement" means:

(1) An amount at least equal to three percent of all liabilities (i.e., total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus regulatory capital as defined by § 567.1 of this subchapter); or

(2) For savings associations subject to the requirements of § 567.2(b)(2) of this subchapter, the applicable percentage of such liabilities required by § 567.2(b)(2) of this subchapter.

(e) *Effective date.* This section shall be effective with respect to any instruments issued or sold on or after October 17, 1984, except that it shall not apply to accounts issued after such date under an earnings-based-accounts program for which a savings association had, prior to such date, received written notice of intent not to object to such issuance from the District Director.

Subpart B—Operation and Structure

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No savings association may:

(1) Merge or consolidate with any insured depository institution, or

(2) Directly or indirectly acquire the assets of, or assume liability to pay any deposits made in, any insured depository institution, without application to and approval by the Office.

(b) No savings association may at any time make any other transfer, as defined in § 571.5(a) of this subchapter, of assets or savings account liabilities without application to and approval by the Office.

(c)(1) In determining whether to confer approval for a transaction under paragraph (a) or (b) of this section, the Office shall apply the criteria set out in § 571.5 of this subchapter and may impose any conditions it deems necessary or appropriate to insure conformity with those criteria and the requirements of this section.

(2) Application for approval under this section shall be upon forms prescribed by the Office and shall contain such information as the Office may require, including appropriate information regarding fairness and legal, economic, managerial, financial, disclosure, accounting and tax aspects of the transaction. Where the filing party believes its application is eligible to be processed under paragraph (e) (1) or (2) of this section, the filing party shall also submit a brief summary of the proposed transaction and an affirmative statement that none of the factors specified in paragraph (e) of this section which would preclude automatic approval or action under delegated authority are present.

(d) Applications filed pursuant to paragraph (a) of this section shall follow the procedures set forth in § 543.2 of this chapter, except that:

(1) Constituent associations in a transaction subject to paragraph (a) of this section shall file jointly and concurrently six copies of the application prepared pursuant to this section with the appropriate District Director(s), four of which should be labelled, respectively, "Department of Justice Copy," "Office of the Comptroller of the Currency Copy," "Federal Reserve Board Copy," and "Federal Deposit Insurance Corporation Copy," and two copies with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(2) Notice of any proposed transaction for which approval is required under paragraph (a) of this section shall, unless the Office finds that it must act immediately in order to prevent the probable default of one of the savings associations involved, be published—

(i) No earlier than three calendar days before and no later than three calendar days after filing an application under paragraph (a) of this section, and thereafter on a weekly basis during the period allowed for furnishing reports under paragraph (d)(3) of this section;

(ii) Publication shall be made in the business section of a newspaper printed in the English language in the community in which the home offices of the disappearing and resulting savings associations are located; and if applicable, the community in which the home offices of the largest subsidiary savings association of the disappearing and resulting associations are located. If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the applicant may be required to publish the notification simultaneously in the appropriate language(s).

(3) Unless the Office determines that action must be taken immediately in order to prevent the probable default of one of the savings associations involved, the Office shall request reports from the Attorney General, and the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, on the competitive factors involved in the merger. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the Office advised the Attorney General and the other three banking agencies that an emergency exists requiring expeditious action. The Office shall immediately notify the Attorney General of any approval of a merger pursuant to this section.

(4) If the Office has found that it must act immediately to prevent the probable default of one of the savings associations involved and the reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the Office and any applicable state regulatory authorities. If the Office has advised the Attorney General and the other three banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Office. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Office.

(e) *Automatic approvals by District Director.* (1) Applications filed pursuant to paragraphs (a) and (b) of this section, shall be deemed to be approved automatically by the Office 30 calendar days after the District Director sends written notice to the applicant that the application is complete, unless:

(i) The resulting savings association requests the granting of supervisory forbearances;

(ii) The District Director recommends the imposition of non-standard conditions prior to approving the application;

(iii) The application has been substantially protested;

(iv) The District Director raises objections to the transaction;

(v) The resulting savings association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the transaction there were 5 or fewer depository institutions, the resulting savings association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(vi) The resulting savings association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the transaction there were 6 to 11 depository institutions the resulting savings association would have 30 percent or more of the total deposits held by depositing institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(vii) The resulting savings association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the transaction there were 12 or more depository institutions, the resulting savings association would have 35 percent or more of the total deposits held by the depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(viii) The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the transaction, and the increase in the HHI used by the transaction would be 50 or more;

(ix) In a transaction involving potential competition, the District Director determines that the acquiring savings association is one of 3 or fewer potential entrants into the relevant geographic area;

(x) Both the acquiring and an acquired savings association have assets of $1 billion or more;

(xi) The savings association that will be the resulting savings association in the transaction has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Office's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the District Director;

(xii) The resulting savings association's regulatory capital would not at least equal the amount required under the office's regulatory capital requirements;

(xiii) Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a Certified Public Accountant, satisfactory to the District Director, that its use and value are appropriate under, and accounted for by, generally accepted accounting principles;

(xiv) The transaction involves any supervisory or assistance agreement with the Office, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation;

(xv) The transaction is part of a conversion under part 563b of this Chapter;

(xvi) The District Director determines that the financial condition of the resulting savings association would not satisfy minimum financial standards as determined from time to time by the Senior Deputy Director for Supervision (Operations);

(xvii) The transaction raises a significant issue of law or policy; or

(xviii) The transaction is opposed by either constituent association or contested by a competing acquirer.

(2) *Other actions by the District Director.* The authority of the Office to approve, deny, or otherwise act on applications under paragraphs (a) or (b) of this section may be exercised by the District Director, or his or her designee, unless:

(i) The transaction is opposed by either constituent association or contested by a competing acquirer;

(ii) The transaction is part of a conversion under part 563b of this Chapter;

(iii) The transaction involves any supervisory or assistance agreement with the Office, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation; or

(iv) The transaction raises a significant issue of law or policy.

(3) *Joint actions by the Senior Deputy Director for Supervision (Operations) and the Chief Counsel.* The authority of the Office to approve, deny or otherwise act upon applications under paragraphs (a) or (b) of this section may be exercised by the Senior Deputy Director for Supervision (Operations) with the concurrence of the Chief Counsel, or their respective designees, unless the transaction raises a significant issue of law or policy.

(f) *Appeals.* Denial of an application pursuant to delegated authority under this section may be appealed to the Director under the following procedures:

(1) Within 20 days after notification of the decision by the District Director or the Senior Deputy Director for Supervision (Operations), as the case may be, the applicant may notify the Office's Secretariat of the applicant's desire to appeal the decision. Three copies of such request for review must be submitted to the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with two of such copies addressed, respectively, to the attention of the Deputy Director for Supervision (Operations), and the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial is contended to be erroneous.

(2) If an applicant does not file an appeal within the time permitted under this section, any objection to the initial determination by the applicant is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(g) *Definitions.* (1) With regard to paragraphs (e)(1) (v) through (x) of this section, the following provisions apply.

(i) *Depository institution* includes savings associations, building and loan associations, homestead associations, cooperative banks, savings banks, commercial banks, and credit unions. The "largest depository institutions" are those whose percentage of total deposits in the relevant geographic area ranks one, two, or three. "Total deposits" includes all demand, savings, and time deposit accounts. An "insured depository institution" is a depository institution the accounts of which are insured by either the Savings Association Insurance Fund or the Bank Insurance Fund.

(ii) A "relevant geographic area" is used as a proxy for the "relevant geographic market," which means the area within which the competitive effects of a merger may be evaluated. The relevant geographic area shall be delineated as follows:

(A) A county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging savings associations compete (the "home county");

(B) *The commuting test.* If, when using the area delineated in paragraph (g)(1)(ii) of this section, the merger does not meet the market share and concentration criteria set forth in paragraphs (e)(1) (v) through (x) of this section, the relevant geographic area shall be expanded to include an analysis of surrounding areas where the work force comes in and goes out of the home county on a regular basis.

(*1*) In a Standard Metropolitan Statistical Area ("SMSA"), the relevant geographic area will include any county to which 20 percent of the home county's work force commutes and any county from which 20 percent of the work force commutes to the home county. (These calculations may be obtained from the Census, Table P–2, Social Characteristics of the Population.)

(*2*) In a non-SMSA, the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any other county in which depositors have access to depository institutions that are located approximately the same distance from their homes as are the depository institutions in the home county. (Data on households are available from the Census.)

(C) *The advertising test.* If, when using the area delineated in paragraph (g)(1)(ii) of this section, the merger does not meet the market share and concentration criteria set forth in paragraph (e)(1)(v) through (x) of this section, the relevant geographic area shall be further expanded to include counties where competition between savings associations is demonstrated by newspaper advertising. Where the volume of sales of a newspaper originating in a county other than the county of the savings association to be acquired equals 50 percent of the households of the county of the savings association to be acquired, the county from which the newspaper originates will be included in the analysis if the savings association to be acquired advertises regularly in that newspaper. (Data on households are available from the Census; data on sales are available from newspaper circulation offices.)

(2) Unless the context otherwise requires, for purposes of this section:

(i) The word "merger" shall also mean "purchase of assets" and "assumption of savings account liabilities;"

(ii) The term "resulting savings association" shall also mean "acquiring savings association;"

(iii) The terms "merging savings association" and "acquired savings association" shall also mean "selling savings association;" and

(iv) The term "transferring savings association" shall mean an association making a transfer, as defined in § 571.5(a) of this subchapter, of assets and or deposit liabilities in accordance with paragraph (b) of this section.

§ 563.24 Sales plans; giveaways.

Every applicant for the charter of a Federal savings association that uses salespersons, sales agencies, surplus certificates, or other sales plans shall submit, with its application, full details thereof. Any state chartered association that applies for insurance of accounts by the Federal Deposit Insurance Corporation and that uses salespersons, sales agencies, surplus certificates, or other sales plans shall, prior to the effective date of such insurance, submit full details thereof to the appropriate District Director or his or her designee. No savings association shall, directly or indirectly enter into, extend, or renew any contract, agreement, understanding, or arrangement that authorizes or permits any person other than such association itself to promise, offer, or give a give-away, or to pay or absorb any of the cost of a give-away promised, offered, or given for or in connection with the solicitation, the opening, or any increase of any account in such association, or which authorizes or permits any person other than such association itself to pay or to absorb any of the cost of any give-away advertising for or in connection with any such solicitation, opening, or increase; and no such association shall accept the opening or any increase of any account for or in connection with which any person other than such association gives a give-away or pays or absorbs any of the cost of any give-away advertising, or of any give-away given, for or in connection with any such solicitation, opening, or increase. As used in this section: the term "give" means to give, to sell or dispose of for less than full monetary value or with any agreement or undertaking, contingent or otherwise, for repurchase or redemption, whether total or partial, or to offer, promise, or agree to do any of the foregoing; the term "give-away" means any money, property, service, or other thing of value, whether tangible or intangible; and the term "account" means an account of a type insurable by the Federal Deposit Insurance Corporation.

§ 563.27 Advertising.

(a) *Advertising interest and dividends on savings accounts.* The following rules apply to advertisements, announcements, or solicitations made by a savings association, or any person or organization soliciting savings accounts on a savings association's behalf, relating to interest or dividends paid on a savings association's accounts:

(1) *Annual rate of simple interest.* Interest or dividend rates shall be stated in terms of annual rates of simple interest or dividends.

(2) *Percentage yield based on 1 year.* If a percentage yield achieved by compounding interest or dividends during one year is stated, the annual rate of simple interest shall be stated with equal prominence, with reference to the basis of compounding. A percentage yield based on the effect of grace periods shall not be stated.

(3) *Percentage yield based on more than 1 year.* A total percentage yield, compounded or simple, based on more than 1 year, or an average annual percentage yield achieved by compounding during more than 1 year, shall not be indicated.

(4) *Time or amount requirements.* If a stated rate is payable only on savings accounts that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. If the time requirement for a stated rate exceeds 1 year, the required number of years shall be stated with equal prominence, with an indication of any lower rate(s) applicable if the savings account is withdrawn earlier.

(5) *Penalty for early withdrawals.* A savings association shall include a clear and conspicuous notice stating whether the association will or may impose a penalty for withdrawal from an account before maturity. Such notice may state, "A substantial penalty will (or may) be imposed for early withdrawal."

(6) *Profit.* Interest or dividends paid on a savings account shall not be called "profit."

(7) *Accuracy of advertising.* No representation concerning interest or dividends on savings accounts shall be inaccurate or misleading.

(8) *Gold.* Any statement that any portion of interest or dividends is payable in gold (including gold coin), gold related instruments or securities, or an amount of money determined in any manner related to gold is prohibited: *Provided,* That such statement is permitted with respect to the payment of interest or dividends in gold coins minted and issued by the United States Treasury.

(b) *Advertising of services, contracts, investments or financial condition must be accurate.* (1) No savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

(2) Any advertising shall specifically indicate that a savings association is in fact a savings association; except that if the word "bank" is not used in the advertising of the association's name, the word "savings" need not be used in such advertising. No savings association shall advertise or hold itself out to the public as a commercial bank. Signs existing or ordered on May 4, 1984, depicting the name of the savings association may be used for as long as the savings association chooses to continue to use the corporate title in existence on that date, and may also be used on offices established or acquired after that date for the same period. Stationery and other promotional materials on hand as of that date are exempt until such time as the savings association needs to reorder such materials in the ordinary course of business.

§ 563.29 Name of association.

No savings association shall advertise under a name which includes the word "insured" in the name.

§ 563.32 Payment of trustee fees on pension trust accounts.

Notwithstanding any other provision of this subchapter, annual payment by a savings association of a nominal fee, even if computed with reference to the number of persons having interests in the trust, may be made to the trustee of a trust qualified under the Self-Employed Individuals Tax Retirement Act of 1962, as amended, during the period that the account for such trust is maintained in such savings association.

§ 563.33 Directors, officers, and employees.

(a) *Directors.*—(1) *Requirements.* The composition of the board of directors of a savings association must be in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary or (except in the case of a savings association having 80% or more of any class of voting shares owned by a holding company) any holding company affiliate thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application.* In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) *Other employment.* No savings association or subsidiary thereof shall permit any salaried officer or employee to work during the hours of his or her employment by such association or subsidiary for any affiliated person of such association unless such affiliated person compensates such association or subsidiary for the time during which such officer or employee is engaged in such work.

§ 563.34 Deposit relationships involving affiliated persons.

No savings association or subsidiary thereof shall maintain a deposit relationship with any affiliated person of such association or with any financial institution or holding company affiliate thereof of which an affiliated person of such savings association is a director, if the maintenance of such deposit relationship has been specifically disapproved by the District Director. No such deposit relationship shall be established (including a new interlock involving an existing deposit relationship) without the prior written approval of the District Director. In taking action with respect to the maintenance or establishment of such deposit relationships, factors to be considered by the District Director will include:

(a) The size of the depository relative to the deposits maintained or to be maintained by such savings association or subsidiary;

(b) The amount of the deposits relative to the size of such savings association or subsidiary;

(c) The need for the deposit relationship by such savings association or subsidiary and available alternative deposit relationships not involving affiliated persons;

(d) The extent to which affiliated persons have an interest in the depository;

(e) Whether the deposit relationship has been approved by a disinterested majority of the entire board of directors of such savings association or subsidiary;

(f) Any current supervisory problems involving such savings association or subsidiary and the affiliated persons having an interest in the depository;

(g) Whether the deposit relationship involves an active demand account;

(h) Whether the deposit relationship was established prior to July 1, 1972; and

(i) Any other factors which may have a detrimental effect on such savings association or subsidiary.

§ 563.35 Restrictions involving loan services.

(a) *Tie-in prohibitions.* No savings association or service corporation affiliate thereof may grant any loan on the prior condition, agreement, or understanding that the borrower contract with any specific person or organization for the following:

(1) Insurance services (as an agent, broker, or underwriter), except insurance or a guarantee provided by a government agency or private mortgage insurance;

(2) Building materials or construction services;

(3) Legal services rendered to the borrower;

(4) Services of a real estate agent or broker; or

(5) Real estate or property management services.

(b) *Notice with respect to insurance on home loans.* A savings association or subsidiary thereof shall notify the borrower in writing of his or her right to freely select the person or organization rendering the insurance services referred to in paragraph (a)(1) of this section in connection with a loan on a home (as defined in § 541.14 of this chapter) occupied or to be occupied by the borrower at or prior to the time of the written commitment to make such loan.

(c) *Limitation on paragraphs (a) and (b) of this section.* Notwithstanding paragraphs (a) and (b) of this section, a savings association or subsidiary thereof may refuse to make any loan if it believes on reasonable grounds that the insurance services provided by the person or organization selected by the borrower will afford insufficient protection to such association or subsidiary.

(d) *Payment of attorney's fee by home borrowers.* In connection with a loan on a home (as defined in § 541.14 of this chapter) occupied or to be occupied by the borrower, a savings association or subsidiary thereof may require such borrower to reimburse it for legal services rendered by its attorney, or to directly pay such attorney for such services, only if:

(1) Such attorney's fee is limited to legal services attributable to processing and closing such loan (and not unrelated services performed for the savings association or subsidiary by the attorney);

(2) Such attorney's fee, if in excess of $100, is supported by a statement provided to the borrower at or prior to settlement which:

(i) describes the legal services being performed,

(ii) sets forth the time being spent by such attorney and the hourly rate or other basis for determining such fee,

(iii) states that the legal services are being performed on behalf of the savings association or subsidiary and not on behalf of the borrower, and

(iv) states that such services are being paid for by the borrower;

(3) Such attorney's fee does not exceed that which is reasonable and commensurate with the legal services being performed; and

(4) Such attorney's fee is separately itemized on the loan settlement sheet and identified as a fee to the lender's attorney.

§ 563.36 [Reserved]

§ 563.37 Operation of service corporation, liability of savings association for debt of service corporation.

(a) *General.* Each savings association and service corporation thereof shall be operated in a manner which demonstrates to the public the separate corporate existence of the service corporation and the savings association. Regulations of the Office which apply both to savings associations and service corporations shall not be construed as requiring operation of a savings association and its service corporations as a single entity.

(b) *Service corporation debt.* Every instrument evidencing borrowing by a service corporation shall indicate that its parent savings association is not liable, or in the case of a service corporation owned by more than one savings association, that none of its parent savings associations is liable, except that no such statement is required if the loan is guaranteed by a parent savings association and the total amount of such guaranteed loan, together with all other guaranteed loans, direct loans, and equity risk investment by the savings association in its service corporations, does not exceed the maximum investment permitted by law or regulation.

(c) *Notice of new activity or acquisition or establishment of a service*

corporation. Every savings association shall notify the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any service corporation and not less than 30 days prior to the commencement of any new activity through a service corporation. Notice required under this paragraph (c) shall be made to the Office as follows: one copy of such notice shall be submitted to the Senior Deputy Director for Supervision (Operations) and one copy of such notice shall be submitted to the District Director. The notice requirement of this paragraph (c) is in addition to any application that may be required under § 545.74 of this chapter.

§ 563.38 Salvage power of savings association to assist service corporation.

(a) *Salvage power and investment authority.* No savings association, in the exercise of its salvage power, shall, without the prior approval of the Office, make any contribution, loan, or guarantee of a loan made by any other person to its service corporation, or invest in its service corporation or assume any of its liabilities, if such contribution, loan, investment, guarantee, or assumption of liability, together with such guaranteed loans, direct loans, contributions and equity risk investments by the savings association in its service corporations, would exceed the maximum investment otherwise permitted by law or regulation.

(b) *Applications for approval.* Each application by a savings association to the Office for its approval to make any such contribution, loan, investment, guarantee, or assumption of liability shall establish, to the satisfaction of the Office, in a written statement, that the action it proposes is for the protection of the savings association's investment and is consistent with safe, sound, and economical home financing. The application shall describe and discuss alternative solutions to the service corporation's financial problem including solutions which do not involve increased investment by the savings association, and contain such other information as the Office may require. In the case of a State-chartered savings association, such application shall be accompanied by an opinion of counsel that the proposed action is within the authority of the savings association. Every contribution, loan, investment, guarantee, or assumption of liability made pursuant to approval by the Office under this section shall comply with the terms and conditions of such approval.

§ 563.39 Employment contracts.

(a) *General.* A savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided,* that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Director or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary of the continued operation of the association

(i) by the Director or his or her designee, at the time the Federal Deposit Insurance Corporation or Resolution Trust Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) by the Director or his or her designee, at the time the Director or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Director to be in an unsafe or unsound condition.

Any rights of the parties that have already vested, however, shall not be affected by such action.

§ 563.40 Restrictions on loan procurement fees, kickbacks and unearned fees.

(a) *Loan procurement fees.* No affiliated person of a savings association may receive, either directly or indirectly, from such association, any subsidiary thereof, or any other source any fee or other compensation of any kind in connection with the procurement of any loan from such association or subsidiary thereof.

(b) *Kickbacks and unearned fees.* The prohibitions contained in sections 8(a) and 8(b) of the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93–533) shall apply to any fee, kickback, thing of value, and any portion, split or percentage of any charge, either directly or indirectly, given to or accepted by a savings association or subsidiary or affiliated person thereof, in connection with any loan on real property made by a savings association or subsidiary thereof, without regard to whether the loan is within the term "federally related mortgage loan", as defined in section 3(1) of the Act.

§ 563.41 Restrictions on real property transactions with affiliates and affiliated persons.

(a) *Scope of section.* Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468) and the Office's regulations thereunder, shall exclusively govern transactions between a savings association subsidiary of a savings and loan holding company and such savings association's affiliates, as defined in section 11 of the HOLA (other than officers, directors, and natural persons that are controlling persons). All other transactions between a savings association and its affiliates, executive officers, directors, controlling persons, and their related interests, shall be subject both to the provisions of this section and to section 11 of the HOLA, to the extent applicable.

(b) *Restrictions.* No savings association or subsidiary thereof may, directly or indirectly, purchase or lease from, jointly own with, sell or lease to, an affiliated person of the association any interest in real or personal property unless the transaction is determined by the District Director to be fair to, and in the best interests of, the savings association or subsidiary.

(c) *Conditions.* Transactions permitted under paragraph (b) of this section shall—

(1) Receive prior written approval of the District Director indicating that the terms of such transactions are fair to, and in the best interests of, the savings association or subsidiary;

(2) Be supported by an independent appraisal not prepared by an affiliated person or employee of the savings association or subsidiary; and

(3) Be approved in advance by a resolution duly adopted with full disclosure by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of the association or subsidiary (or alternatively by a majority of the total votes eligible to be cast by the voting members of the savings association at a meeting called for such purpose, with no votes cast by proxies not solicited for such purpose). Full disclosure must include the affiliated person's source of financing for the real property involved in the transaction, including whether the savings association or any subsidiary thereof has a deposit relationship with any financial institution or holding company affiliate thereof providing the financing.

§ 563.43 Restrictions on loans and other investments involving affiliates and affiliated persons.

(a) *Scope of section.* Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468), and the Office's regulations thereunder, shall exclusively govern transactions between a savings association subsidiary of a savings and loan holding company and such savings association's affiliates, as defined in section 11 of the HOLA (other than officers, directors, and natural persons that are controlling persons). All other transactions between a savings association and its affiliates, executive officers, directors, controlling persons, and their related interests, shall be subject both to the provisions of this section and to section 11 of the HOLA, to the extent applicable.

(b) *Restrictions concerning loans and other transactions with affiliated persons.* (1) No savings association or subsidiary thereof may, either directly or indirectly, make a loan to any affiliated person of such savings association or purchase such a loan, except for loans in the ordinary course of business of such an association or subsidiary which do not involve more than the normal risk of collectibility or present other unfavorable features, and which do not exceed the loan amount which would be available to members of the general public of similar credit status applying for loans, of the following types:

(i) Loans secured by the principal residence of an affiliated person;

(ii) Loans secured by savings accounts maintained by the affiliated person at the association; and

(iii) Loans for constructing, adding to, improving, altering, repairing, equipping, or furnishing the principal residence of the affiliated person, loans in the form of overdraft protection for NOW accounts, loans for payment of educational expenses, consumer loans, and extensions of customer credit connection with credit cards.

(2) A loan described in paragraphs (b)(1)(i) and (b)(1)(iii) of this section must be approved in advance by a resolution duly adopted after full disclosure by a least a majority (with no director having an interest in the transaction voting) of the entire board of directors of such savings association. Full disclosure must include whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to members of the general public.

(3) An association may make loans described in paragraph (b)(1) of this section at an interest rate not below its current cost of funds, including all savings accounts and borrowings (except that in the case of a loan secured by a savings account, the interest rate shall be at least one percent above the rate of return on the savings account): *Provided,* that the resolution required by paragraph (b)(2) of this section must set forth:

(i) The savings association's current cost of funds, including the elements of its computation; and

(ii) A justification of the more favorable rate, if the loan is to an affiliated person other than a salaried officer or employee of the savings association or its subsidiary.

(4) With respect to a loan described by paragraph (b)(1) of this section made to a salaried officer or employee of the association or its subsidiary, the approval requirement of paragraph (b)(3) of this section will be satisfied if the loan conforms with a blanket-preapproval resolution of the board specifying the terms on which loans may be made to all officers or employees, or a class of such officers or employees, and the loan documents set forth the association's current cost of funds, including the elements of its computation. A savings association may not use a blanket-preapproval resolution to make loans described by paragraph (b)(1)(iii) of this section to a single affiliated person in excess of $100,000 in the aggregate.

(5) A savings association may extend credit for commercial purposes to an affiliated person which may in no event exceed an aggregate of $100,000. Any such extension of credit shall not involve more than the normal risk of collectibility or present other unfavorable features, and must be at terms, amount, and interest rate substantially the same as those prevailing at the same time for comparable loans made to members of the general public of similar credit status. A savings association must comply with the requirements of paragraph (b)(2) of this section with respect to any extensions of commercial credit exceeding an aggregate amount of $10,000. A savings association shall at

the time of approval by the board of directors of such a transaction notify its District Director and his or her designee of the transaction and all other outstanding extensions of commercial credit to the affiliated person.

(6) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stock, bonds, notes, or other securities of any affiliated person of such association.

(7) No savings association or subsidiary thereof may, directly or indirectly, purchase securities under a repurchase agreement from any affiliated person of such association.

(c) *Prohibitions concerning loan transactions with third persons.* No savings association or subsidiary thereof may, either directly or indirectly:

(1) Make any loan to, or purchase (other than through a secondary market such as the Federal Home Loan Mortgage Corporation) any loan made to, any third party on the security of real property purchased from any affiliated person of such association, unless the property was a single-family dwelling owned and occupied by the affiliated person as his or her principal residence;

(2) Make a loan to, or purchase a loan made to, any third party secured by real property with respect to which any affiliated person of such association holds a security interest;

(3) Accept the stock, bonds, notes, or other securities of any affiliated person of such association as security for a loan to any third party made or purchased by such association or subsidiary thereof;

(4) Maintain a compensating balance with respect to a loan made by any third party to any affiliated person of such association; or

(5) Enter into any guarantee arrangement or make any take-out commitment with respect to a loan made by any third party to any affiliated person of such savings association.

(6) Notwithstanding paragraphs (b) and (c)(1) through (c)(5) of this section, transactions of the type that would be permissible under the standards described in 12 CFR 250.250 shall not be prohibited.

(d) *Waiver.* The restrictions in paragraph (b) and (c) of this section may be waived by the Director or his or her designee in supervisory cases if he or she determines that the terms of the transaction in question are fair to, and in the best interests of, the savings association or subsidiary. A supervisory case includes a merger instituted for supervisory reasons, and action taken pursuant to, or in order to obviate the necessity of, proceedings by the Office or the Corporation pursuant to section 13 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823).

§ 563.44 Loans involving mortgage insurance.

(a) *Definitions.* For purposes of this section:

(1) The terms "affiliate", "company", "control", "director" and "officer" have the same meanings given to them by §§ 583.2, 583.6, 583.7, 583.9, 583.14 of this chapter, respectively.

(2) The term "ownership of an equity security by a director, officer, or controlling person" shall include beneficial ownership through:

(i) A spouse, child, or spouse of a child of such director, officer, or controlling person;

(ii) A broker or other nominee or agent; and

(iii) A company controlled by such director, officer or controlling person.

(3) The term "company" means a parent company of a mortgage insurance company if such mortgage insurance company represents more than 15 percent of such company's consolidated net worth at the close of its preceding fiscal year or of its consolidated net earnings for such fiscal year. For purposes of the foregoing, "consolidated net worth" and "consolidated net earnings" shall be determined in accordance with generally accepted accounting principles.

(b) *Prohibitions*—(1) *Commissions, fees and other compensation.* No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if, either directly or indirectly, any commission, fee or other compensation is to be paid to or received by such association, any such affiliate thereof, or any director, officer, or employee of such association or affiliate in connection with the issuance or renewal of mortgage insurance by such company.

(2) *Deposit accounts.* No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if such company maintains any type of deposit account at such association.

(3) *Officers of mortgage insurance companies.* No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if any officer or employee of such company, or any parent company thereof, is a director, officer or controlling person of such association or any service corporation affiliate thereof.

(4) *Investment in mortgage insurance companies.* Except as provided in paragraph (c) of this section, no savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if the amount of investment in such mortgage insurance company, or any parent company thereof, by such association, its service corporation affiliates and the directors, officers, and controlling persons of such association or such affiliates is sufficient to give rise to a conflict in interest in the placement or renewal of mortgage insurance. Absent a compelling justification to the contrary, the Office will presume a conflict of interest situation to exist:

(i) If such association, any service corporation affiliate thereof, or any director, officer, or controlling person of such association or affiliate holds, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of $50,000, or representing more than one percent of any class of equity securities of such company if its asset are less than $50 million, or representing more than one-half percent of any class of equity securities of such company if its assets equal or exceed $50 million; or

(ii) If such association, all service corporation affiliates thereof and all the directors, officers, and controlling persons of such association and all such affiliates hold in the aggregate, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of $100,000, or representing more than two percent of any class of equity securities of such company whose assets are less than $50 million, or representing more than one percent of any class of equity securities of such company if its assets equal or exceed $50 million.

(c) *Exception.* Paragraph (b)(4) of this section does not apply to investment in any mortgage insurance company in existence on March 11, 1976, which is entirely owned directly or indirectly by savings associations if such investment made or increased after December 21, 1978, does not exceed two percent of such company's outstanding equity securities.

§ 563.45 Disclosure.

(a) *Annual disclosure requirements.* Except as provided in this paragraph (a) and paragraph (b) of this section, a savings association shall transmit to its voting members at least 20 calendar days prior to its 1978 annual meeting, and every annual meeting thereafter, an annual report meeting the requirements of Form AR. In lieu of transmitting such annual report, a savings association may, not less than 30 calendar days prior to its annual meeting, transmit a notice of meeting to its voting members clearly stating that such annual report will be promptly furnished to such person upon request, and provide a postage prepaid card for making such request. For purposes of complying with this paragraph (a), a savings association may, if necessary, determine its voting members as of a date prior to the actual record date for voting at its annual meeting. A savings association is not required by this paragraph (a) to transmit such annual report or notice of meeting to any voting member with less than two votes, unless requested by such member.

(b) *Exemptions from paragraph (a).* Paragraph (a) of this section shall not apply to a savings association:

(1) If such association has total assets of less than $15,000,000 as of the end of its audit period immediately preceding the annual meeting, except as provided in paragraph (d) of this section; or

(2) In the case of a stock-chartered savings association, if such savings association is subject to the proxy solicitation requirements of § 563d.1 of this chapter; or

(3) If the affiliated persons of such association have not engaged in any transactions since the beginning of such immediately preceding audit period which must be disclosed under Item 6(e) of Form AR.

(c) *Filing requirements.* Six copies of each annual report, prepared pursuant to paragraph (a) of this section, and any notice of meeting transmitted to voting members pursuant thereto, shall be publicly filed with the Office concurrently with or prior to transmission of such report or notice pursuant to paragraph (a) of this section. Three of such copies shall be mailed or delivered to the District Director. If the District Director determines that the material so filed fails to comply in any material respect with the requirements of Form AR, the District Director may require such material for three years thereafter to be filed with the District Director and authorized for use prior to being transmitted to voting members.

(d) *Annual disclosure requirements for associations under $15 million in assets.* A savings association which is not exempted from paragraph (a) by paragraph (b)(2) of this section, and which has less than $15,000,000 in assets as of the end of any audit period (beginning with the audit period immediately preceding its 1978 annual meeting), shall prepare an annual report meeting the requirements of Form AR with respect to each such audit period as to which such association does not conform with paragraph (b)(3) of this section. Three copies of each annual report required by the preceding sentence shall be publicly filed with the Office at least 20 days prior to the annual meeting following the audit period as to which such report was prepared. Such copies shall be mailed or delivered to the District Director. If the District Director determines that an annual report prepared by a savings association pursuant to this paragraph (d) reveals practices or events during the audit period covered by such report which, if continued, the District Director believes should be disclosed to persons having voting rights in such association, the District Director may require such association to comply with the requirements of paragraph (a) of this section in connection with the annual report for its next audit period if such a report is required by this paragraph (d). If an annual report prepared pursuant to this paragraph (d) reveals information of the type described in the immediately preceding sentence, the District Director will notify the association in writing within 60 days of the filing of such report with the District Director that such association must submit its annual report (if any) for its next audit period to the District Director for a determination as to whether such association must comply with the requirements of paragraph (a) of this section in connection with such report.

(e) *Disclosure not a restriction on Office's general authority.* Disclosure under this section does not restrict the Office's authority to take appropriate action as to unsafe or unsound practices, or violations of law or regulation, respecting the matters disclosed.

(f) *Additional scope of "affiliated person".* As used in this section and in Form AR, the term "affiliated person" includes any person who has been nominated to be a director of the savings association as if such person had been a director since the beginning of the association's last audit period.

Form AR (Annual Report Form)—General Instructions

Each annual report required under § 563.45 shall, to the extent applicable, include the information called for under each of the items below. In preparation of the annual report, particular attention should be given to the definitions in Part 561 of this chapter.

This form is not to be used as a blank form to be filled in, nor is it intended to prescribe a form for presentation of material in the statement. Its purpose is solely to prescribe the information required to be set forth in the statement; any additional information that the savings association deems appropriate may be included.

Information Required In Statement

Item 1—Nominees and Directors. (a) Furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting:

(1) State the name and age of each such person, the nature of any immediate family relationship between him or her and other directors, nominees and officers, when his or her term of office or the term of office for which he or she is a nominee will expire, and all other positions and offices with the savings association presently held by him or her, and indicate which persons are nominees for election as directors at the meeting.

(2) State his or her present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. Furnish similar information as to all of his or her principal occupations or employments during the last five years, unless he or she is now a director and was elected to his or her present term of office at an annual meeting with respect to which an annual report meeting the requirements of Form AR was furnished.

(3) If he or she is or has previously been a director of the association, state the period or periods during which he or she has served as such.

(4) In the case of a stock association, state, as of the most recent practicable date, the approximate amount of each class of equity securities (other than directors' qualifying shares) of the association, or any parent company or subsidiary thereof, beneficially owned by him or her, either directly or indirectly. If he or she disclaims beneficial ownership of any such securities, make a statement to that effect.

(b) If any nominee for election as a director is proposed to be elected pursuant to any arrangement or understanding between the nominee and any other person or persons except the directors and officers of the savings association acting solely in those capacities, name such other person or persons and describe briefly such arrangement or understanding.

(c) State whether the composition of the association's board of directors will be in compliance with the guidelines set forth in § 563.33(a), and if not, the extent to which the composition of such board will not comply with such guidelines.

Item 2—Officers. List the names and ages of all officers of such association and all persons chosen to become officers; state the nature of any immediate family relationship between them; indicate all positions and offices with the association held by each such person; if such person has served as an officer of the association for less than five years, state the period during which he or she has served as an officer; and if such person is employed pursuant to an employment contract, state the period of such contract and whether it may be terminated for cause by the association.

Item 3—Voting rights. Describe the voting rights of each class of persons having voting

rights (*e.g.*, accountholders, borrowers and/or stockholders) and the approximate number of votes to which each such class of persons is entitled; state the date as of which the record of voting members entitled to vote at the meeting will be determined; and in the case of a stock association, describe any cumulative voting rights.

Item 4—Proxies and revocability thereof. State the method by which proxies are solicited by management for the election of directors (*e.g.*, by annual solicitation or by having savings accountholders sign a proxy of indefinite duration in conjunction with opening their accounts). Also, state the names of the persons, and their positions and offices with the association, holding these proxies, and whether the persons giving these proxies have the power to revoke them. If the right of revocation before these proxies are exercised is limited or is subject to compliance with any formal procedures, briefly describe such limitation or procedures.

Item 5—Change in control. (a) Name each controlling person of the association and include the number of proxies held by such person and, in the case of a stock association, the number of voting shares of stock or other voting securities owned, controlled, or held with power to vote by such person.

(b) Describe any change in controlling persons of the association which has occurred since the beginning of its last audit period.

(c) Describe any contractual arrangement, known to the association, including any pledge of voting securities of the association or any parent company thereof, the operation of the terms of which may at a subsequent date result in a change of control of the association.

Item 6—Remuneration and other transactions with management and others—(a) Direct remuneration. Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the association and its subsidiaries during the association's latest audit period to the following persons for services in all capacities:

(1) Each director of the association whose aggregate direct remuneration exceeded $40,000, and each of the three highest paid officers of the association whose aggregate direct remuneration exceeded that amount, naming each director and officer.

(2) All directors and officers of the association as a group without naming them, but stating the number of persons included.

Name of individual or number of persons in group—(A)
Capacities in which remuneration was received—(B)
Aggregate direct remuneration—(C)

Instructions. 1. This item applies to any person who was a director or officer of the association at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer.

2. The information is to be given on an accrual basis, if practicable. The tables required by this paragraph and paragraph (b) may be combined if the association so desires.

3. Do not include remuneration paid to a partnership in which any director or officer was a partner. But see paragraph (e) below.

(b) *Annuities, pensions, and retirement benefits.* Furnish the following information, in substantially the tabular form indicated, as to all annuity, pension, or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the association or any subsidiary thereof to each director or officer named in answer to paragraph (a)(1) and to all directors and officers of the association who are eligible for such benefits, as a group, stating the number of persons in the group without naming them:

Name of individual or number of persons in group—(A)
Amount set aside or accrued during association's last audit period—(B)
Estimated annual benefits upon retirement—(C)

Instructions. 1. The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

2. Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specific age or after a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors and officers as a group.

3. The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in Instruction 2) where the amount set aside each year depends upon the amount of earnings or profits of the association or its subsidiaries for such period or a prior period (or where otherwise impracticable to state the estimated annual benefits upon retirement) there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless impracticable to do so, in which case the method of computing such benefits shall be stated. In addition, furnish a brief description of the material terms of the plan, including the method used in computing the savings association's contribution, and the amount set aside or accrued during the savings association's last audit period for all officers and directors as a group, indicating the number of persons in such group without naming them.

(c) *Other remuneration.* Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b)) proposed to be made in the future, directly or indirectly, by the association or any subsidiary thereof pursuant to any existing plan or arrangement to (1) each director or officer named in answer to paragraph (a)(1), naming each such person, and (2) all directors and officers of the association as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) *Loans.* State as to each affiliated person of the savings association who was indebted to the association or any subsidiary thereof at any time since the beginning of the last audit period of the association (1) the largest aggregate amount of indebtedness outstanding at any time during such period, (2) the nature of the indebtedness and of the transaction in which it was incurred, (3) the amount thereof outstanding as of the latest practicable date, and (4) the rate of interest paid or charged thereon.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Disclosure under this Item 6(d) shall not be required where the transaction consists of a loan by the association or subsidiary that (i) is of the type covered by an exception in § 563.43(b), and (ii) is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable transactions with other than affiliated persons. In the case of a loan made to an officer who is not a director or controlling person of the association, disclosure of the loan transaction need not be made under this Item 6(d) if (i) disclosure would not have been required under the preceding sentence except that the interest rate being paid is less than the rate for comparable loans to other than affiliated persons at the time the loan was made, and (ii) the aggregate principal balance of all loans at less than such comparable interest rates to such officers as a group outstanding at the end of the last audit period of the association is stated, together with a brief description of the policy of the association or subsidiary in making such loans.

(e) *Transactions where certain persons have a material interest.* Describe briefly any transactions since the beginning of the last audit period, and any presently proposed transactions, to which the association or any of its subsidiaries was or is to be a party, in which any affiliated person of the association had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to the association, the nature of his or her interest in the transaction and, where practicable, the amount of such interest.

Instructions. 1. This item applies to any person who was an affiliated person of the association at any time during the period specified. However, information need not be given for any portion of the period during which such person was not an affiliated person.

2. In connection with a loan transaction to which the association or a subsidiary thereof is a party, an affiliated person of the association acting as attorney or appraiser for the association or subsidiary, or as escrow agent, builder or real estate agent/broker, will be deemed to have a direct or indirect interest in such loan transaction, unless such person acts in such capacity or capacities as a full time salaried officer or employee of the association or subsidiary without additional or separate compensation for individual loan transactions. An affiliated person acting as an insurance agent/broker or underwriter, supplier of title examination or abstract services, or building materials supplier will be deemed to have a direct or indirect interest in such loan transaction if the association or subsidiary had knowledge that such person would act in such capacity at the time the loan commitment was made. In determining whether the interest of the affiliated person in such a loan transaction is material, all payments made during an audit period of the association to the affiliated person for acting in one or more of the foregoing capacities shall be aggregated for purposes of the trigger amount under Instruction 4(c).

3. A person will be deemed to have a direct or indirect material interest in a loan transaction to which the association or a subsidiary thereof was or is to be a party if the loan is to finance the purchase of real property from such person.

4. No information need be given in answer to this item as to any transaction where—

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services at rates or charges fixed in conformity with law or governmental authority; but information shall be given notwithstanding approval of the transaction by the Office or other governmental authority;

(b) The transaction involves services as a transfer agent, registrar, trustee under a corporate trust indenture, or similar services; but information shall be given as to transactions involving services as a bank depository if the amount of the deposits of the association and its subsidiaries averaged on a monthly basis an amount of excess of the trigger figure under Instruction 4(c) during the last audit period of the association.

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed .02% of the association's assets, provided that such amount shall not be less than $100,000 nor exceed $500,000.

(d) The interest of the affiliated person arises solely from ownership of securities of the savings association and the affiliated person receives an extra or special benefit not shared on a *pro rata* basis by all holders of securities of the class; or

(e) The transaction consists of indebtedness to the association or subsidiary disclosed under Item 6(d) or exempt from disclosure under Instruction 2 to Item 6(d).

(f) The transaction is in compliance with § 563.41 of this part.

5. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the association or a subsidiary thereof may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where—

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from direct or indirect ownership by such person and all other persons specified in subparagraphs (1) and (2) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he or she and all other persons specified in subparagraphs (1) and (2) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the association or any subsidiary thereof and the transaction is not material to such other person.

6. The amount of the interest of any specified person shall be computed without regard to the amount of profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

7. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this Item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of an affiliated person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this Item.

8. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the association where any of the affiliated persons were or are to be a principal underwriter or is a controlling person or a member of a firm that was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the association or any subsidiary thereof.

9. A savings association that has engaged in a transaction that must be disclosed pursuant to Item 6(e) of Form AR may be granted a waiver by the District Director, upon an affirmative showing that the association—

1. Entered into the transaction believing in good faith that the transaction would not trigger disclosure;

2. Upon learning that the transaction would trigger disclosure initiated appropriate action to reverse the transaction or to eliminate those aspects of the transaction that necessitate disclosure;

3. Has compiled, prior to the subject transaction, a record of satisfactory compliance with applicable law, including rules, regulations, and supervisory directives of the Office; and

4. Has not, by involvement in the subject transaction, engaged in a transaction contrary to the best interests of the association or its members.

Waiver of the Form AR disclosure requirements under this paragraph does not constitute approval of the transaction nor does it limit the Officer's enforcement authority to suspend, remove, prohibit, or bring cease-and-desist proceedings against any person who has committed a breach of fiduciary duty to a savings association or its members.

(f) *Options to purchase securities.* In the case of stock associations, furnish the following information as to all options to purchase securities, from the association or any parent company or subsidiary thereof, which were granted to or exercised by the following persons since the beginning of the association's last audit period and as to all options held by such persons as of the latest practicable date: (i) each director or officer named in answer to paragraph (a)(1) of this Item, naming each such person; and (ii) all directors and officers of the association as a group, without naming them:

(1) As to options granted, state (i) the title and amount of securities called for; (ii) the prices, expiration dates, and material provision; and (iii) the market value of the securities called for on the granting date.

(2) As to options exercised, state (i) the title and amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date, regardless of when such options where granted, state (i) the title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) the per share market price of the securities subject to the option, as of the latest practicable date.

Instructions. 1. The term "options" as used in this paragraph (f) includes all options, warrants, or rights, other than those issued to security holders as such on a *pro rata* basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting, or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. This item need not be answered with respect to options granted, exercised, or outstanding, as may be specified therein, where the total market value (i) on the granting date of the securities called for by all options granted during the period specified; (ii) on the dates of purchase of all securities purchased through the exercise of options during the period specified; or (iii) as of the latest practicable date of the securities called for by all options held at such time, does not exceed $10,000 for any officer or

director named in answer to paragraph (a)(1) of this Item, or $40,000 for all officers and directors as a group.

(g) *Transactions involving certain pension, retirement, savings and other similar plans.* Describe briefly any transactions since the beginning of the association's last audit period or any presently proposed transaction, to which any pension, retirement, savings, or similar plan provided by the association or any parent company or subsidiary thereof, was or is to be a party, in which any affiliated person of the association had or is to have a direct or indirect material interest, naming such person and stating his or her relation to the association, the nature of his or her interest in the transaction, and, where practicable, the amount of such interest.

Instructions. 1. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item any remuneration received or any loans received or outstanding during the period, or proposed to be received.

2. No information need be given in answer to paragraph (g) with respect to—

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payments of remuneration for services not in excess of five percent of the aggregate remuneration received by the affiliated person during the association's last audit period from the association and its subsidiaries.

Item 7—Brief description of business. Furnish a brief description of the business done by the association and its subsidiaries during the association's most recent audit period, including information concerning any material developments during such period.

Item 8—Financial statements. Furnish a statement of financial condition of the association as of the end of its last two audit periods and related statements of income, retained earnings and changes in financial position for such periods. Such financial statements shall be certified by independent public accountants (except as otherwise provided in § 563.170), and accompanied by the accountants' report. Such financial statement may be presented on a consolidated basis with subsidiaries of the savings association. If the savings association's audit period ends more than 120 days before its annual meeting, financial statements of the type described above shall also be furnished on an unaudited basis as of a date and for the related period ending within 120 days of its annual meeting.

§ 563.46 Charge-off of consumer credit classified as a loss.

When consumer credit is classified as a loss, as defined in § 561.13 of this subchapter, it shall be charged against the savings association's current earnings.

§ 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided,* That (1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and (2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the association's regulatory capital below its regulatory capital requirement.

(d) *Termination.* The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the District Director at least 60 days prior to the proposed termination date.

(e) *Records.* Each savings association or service corporation maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

(1) Plan description;

(2) Schedule of participants and beneficiaries;

(3) Schedule of participants and beneficiaries' rights and obligations;

(4) Plan's financial statements; and

(5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience and expectations, and represent the actuary's best estimate of the plan's projected experiences.

§ 563.48 Flood disaster protection.

(a) *General.* This section implements, in part, sections 4012a (b) and (c), 4104a, and 4106(b) of Title 42 of the United States Code. This section does not apply to a service corporation or a holding company parent of a savings association. As used in this section, the term "loan" includes an installment sale contract.

(b) *Flood insurance*—(1) *Requirement.* A savings association shall not make (including purchase, except as provided in paragraph (d) of this section), increase, extend, or renew any loan (other than a loan closed after March 1, 1974, as to which there was outstanding at the close of March 1, 1974, a commitment to make such loan) secured by improved real estate or a mobile home located or to be located in an area identified by the Director of the Federal Emergency Management Agency ("Director") as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended ("Act"), unless the property securing such loan is covered for the term of the loan by flood insurance at least equal to the outstanding principal balance of the loan or the maximum coverage available with respect to the particular type of property under the Act, whichever is less.

(2) *Exception.* However, flood insurance is not required on any State-owned property covered under an adequate State policy of self-insurance satisfactory to the Director. The Director is required by statute to publish and periodically revise a list of States which have such adequate self-insurance.

(c) *Records of compliance.* Each savings association shall maintain in connection with all loans secured by improved real estate or a mobile home sufficient records to indicate the method used by it to determine whether such loans require flood insurance under this section.

(d) *Purchase of loans.* This section does not prohibit purchase after March 1, 1974, of a loan if:

(1) As to a loan closed before that date, the loan has not thereafter been increased, extended, or renewed; or

(2) As to a loan closed on or after that date, the loan was closed under a loan commitment outstanding on that date and the loan has not thereafter been increased, extended or renewed.

(e) *Notice of special flood hazard area and availability of Federal disaster relief assistance.* A savings association shall, as a condition of making (including purchasing), increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area identified by the Secretary as having special flood hazards, mail or deliver as soon as feasible, but not less than 10 days before closing of the transaction (or not later than the savings association's commitment, if any, if the commitment and closing are less than 10 days apart) a written notice to the borrower stating that the property securing the loan is or will be located in an area so identified; or in lieu of such notification, a savings association may obtain satisfactory written assurances that a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in an area so identified. A savings association shall similarly notify the borrower whether, in the event of damage to the property caused by flooding in a Federally declared disaster, Federal disaster relief assistance will be available for the property. A savings association shall require the borrower, prior to closing, to provide the savings association with a written acknowledgment that the property securing the loan is or will be located in an area so identified and the borrower has received the above-required notice regarding Federal disaster relief assistance.

Subpart C—Securities and Borrowings

§ 563.72 Form, return, and maturity of securities.

Securities of any savings association which are issued in connection with any borrowing which is in conformity with § 563.80 or issued with specific prior approval of the Office are, as to form, return, and maturity hereby approved by the Office.

§ 563.74 Mutual capital certificates.

(a) *General.* No savings association that is in the mutual form shall issue mutual capital certificates pursuant to this section or amend the terms of such certificates unless it has obtained written approval of the Office. No approval shall be granted unless the proposed issuance of the mutual capital certificates and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility Requirements.* The Office will consider and process an application for approval of the issuance of mutual capital certificates pursuant to this section only if the issuance is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution or bylaws.

(c) *Application form; supporting information.* An application for approval of the issuance of mutual capital certificates pursuant to this section shall be in the form prescribed by the Office. Such application and instructions may be obtained from the District Director or his or her designee. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Charter amendment.* No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the amendment to the mutual association's charter, constitution or bylaws or other actions conferring such authority shall have been approved pursuant to the procedures and requirements set forth in the mutual association's charter, constitution or bylaws, or as may otherwise be required by applicable law.

(e) *Filing requirements.* The application for issuance of mutual capital certificates shall be publicly filed with the Office by transmitting concurrently three copies to the District Director and the original and three copies to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(f) *Supervisory objection.* No application or approval of the issuance of mutual capital certificates pursuant to this section shall be approved if, in the opinion of the Office, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.

(g) *Limitation on offering period.* Following the date of the approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the mutual capital certificates issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any extension thereof.

(h) *Reports.* Within 30 days after completion of the sale of mutual capital certificates issued pursuant to this section, the association shall transmit concurrently to the District Director and to the Corporate and Securities Division a written report stating the total dollar amount of securities sold, and the amount of net proceeds received by the association, and within 90 days it shall transmit a written report stating the number of purchasers.

(i) *Requirements as to mutual capital certificates*—(1) *Form of certificate.* Each mutual capital certificate and any governing agreement evidencing a mutual capital certificate issued by an association pursuant to this section:

(i) Shall bear on its face, in bold-face type, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States"; and

(ii) shall clearly state that the certificate is subject to the requirements of § 563.74(i)(2).

(2) *Legal requirements.* Mutual capital certificates issued pursuant to this section shall:

(i) Be subordinate to all claims against the association having the same priority as savings accounts, savings certificates, debt obligations or any higher priority;

(ii) Not be eligible for use as collateral for any loan made by the issuing association;

(iii) Constitute a claim in liquidation not exceeding the face value plus accrued dividends of the certificates, on the general reserves, surplus and undivided profits of the association remaining after the payment in full of all savings accounts, savings certificates and debt obligations;

(iv) Be entitled to the payment of dividends, which may be fixed, variable, participating, or cumulative, or any combination thereof, only if, when and as declared by the association's board of directors out of funds legally available for that purpose, provided that no dividend may be declared or paid without the approval of the Office if such payment would cause the association to fail to meet its regulatory capital requirement under § 567.2 of this subchapter, and provided further that no dividend may be paid if such payment would constitute a violation of 12 U.S.C. 1828(b);

(v) Not be redeemable, except: (A) Where the dollar weighted average term of each issue of mutual capital certificates to be redeemed is seven years or more and redemption is to be made pursuant to a redemption schedule; (B) in the event of a merger, consolidation or reorganization approved by the Office; or (C) where the funds for redemption are raised by the issuance of mutual capital certificates approved pursuant to this section, or in conjunction with the issuance of capital stock pursuant to Part 563b of this

subchapter: *Provided,* that mandatory redemption shall not be required; that mutual capital certificates shall not be redeemable on the demand or at the option of the holder; and that mutual capital certificates shall not receive, benefit from, be credited with or otherwise be entitled to or due payments in or for redemption if such payments would cause the association to fail to meet its regulatory capital requirement under § 567.2 of this subchapter; *And Provided further,* for the purposes of this paragraph (i)(2)(v), the "dollar weighted average term" of an issue of mutual capital certificates shall be the sum of the products calculated for each year that the mutual capital certificates in the issue have been redeemed or are scheduled to be redeemed. Each product shall be calculated by multiplying the number of years of each mutual capital certificate of a given term by a fraction, the numerator of which shall be the total dollar amount of each mutual capital certificate in the issue with the same term and the denominator of which shall be the total dollar amount of mutual capital certificates in the entire issue;

(vi) Not have preemptive rights;

(vii) Not have voting rights, except that an association may provide for voting rights if:

(A) The savings association fails to pay dividends for a minimum of three consecutive dividend periods, and then the holders of the class or classes of mutual capital certificates granted such voting rights, and voting as a single class, with one vote for each outstanding certificate, may elect by a majority vote a maximum of one-third of the association's board of directors, the directors so elected to serve until the next annual meeting of the association succeeding the payment of all current and past dividends;

(B) Any merger, consolidation, or reorganization (except in a supervisory case) is sought to be authorized, where the issuing association is not the survivor, provided that the regulatory capital of the resulting association available for payment of any class of mutual capital certificate on liquidation is less than the regulatory capital available for such class prior to the merger, consolidation, or reorganization;

(C) Action is sought to be authorized which would create any class of mutual capital certificates having a preference or priority over an outstanding class or classes of mutual capital certificates;

(D) Any action is sought to be authorized which would adversely change the specific terms of any class of mutual capital certificates;

(E) Action is sought to be authorized which would increase the number of a class of mutual capital certificates, or the number of a class of mutual capital certificates ranking prior to or on parity with another class of mutual capital certificates; or

(F) Action is sought which would authorize the issuance of an additional class or classes of mutual capital certificates without the association having met specific financial standards;

(viii) Not constitute an obligation of the association and shall confer no rights which would give rise to any claim of or action for default;

(ix) Not be convertible into any account, security, or interest, except that mutual capital certificates may be surrendered in exchange for preferred stock issued in connection with the conversion of the issuing savings association to the stock form pursuant to Part 563b of this subchapter, provided that the preferred stock shall have substantially the same voting rights, designations, preferences and relative, participating optional, or other special rights, and qualifications, limitations, and restrictions, as the mutual capital certificates exchanged for the preferred stock.

(x) Provide for charging of losses after the exhaustion of all other items in the regulatory capital account.

§ 563.75 Mandatorily redeemable preferred stock.

(a) *General.* No savings association shall issue mandatorily redeemable preferred stock includable in regulatory capital pursuant to this section or amend the terms of such preferred stock unless it has obtained the written approval of the Office. Approval of the issuance under this section, in order to qualify as regulatory capital under § 567.1 of this subchapter, may be obtained either before or after the preferred stock is issued, but no approval shall be granted unless the issuance of the preferred stock and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility requirements.* In determining whether the Office will process an application by a savings association for approval of the issuance of mandatorily redeemable preferred stock includable in regulatory capital pursuant to this section, the Office will consider the following factors:

(1) Whether the issuance of such preferred stock by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Whether, in the opinion of the Office, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. Bases for supervisory objection may include the following:

(i) Regulatory capital, without regard to the amount of any mandatorily redeemable preferred stock to be included in regulatory capital, does not meet the requirements of § 567.2;

(ii) Losses have not been offset by specific reserves to the extent required pursuant to § 563.172 of this part;

(iii) Actual and anticipated income from operations, after distribution of earnings to the holders of saving accounts, payment of dividends on outstanding equity securities and payment of interest on borrowings but before income taxes, is not demonstrably sufficient for payment of dividends and redemption price, discount, and related expenses of the proposed issue; and

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be, to parties other than savings associations.

(c) *Application form; supporting information.* An application for approval of the issuance of mandatorily redeemed preferred stock by a savings association pursuant to this section shall be in the form prescribed by the Office or, if no such form has been promulgated, may be in the form prescribed by the Office for the issuance of subordinated debentures, in which case all references therein to "subordinated debt," "debt service" or "debt discount" shall be changed to, respectively, "mandatorily redeemable preferred stock," "debt or redemption service," and "redemption discount" and all citation therein to § 563.81 changed to corresponding provisions, if any, of § 563.75. Such application and instructions may be obtained from the District Director. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.* Mandatorily redeemable preferred stock issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraph (d)(1)(i) of this section which is not eligible for waiver, are waived by the Office.

(1) *Form of certificate.* Each certificate evidencing mandatorily redeemable preferred stock issued by a savings association pursuant to this section shall:

(i) Bear on its face, in bold-face type, the following legend: "This security is not a savings account or deposit and it is not insured by the United States or any agency or fund of the United States";

(ii) Clearly state that the security is unsecured and is not eligible as collateral for any loan by the issuing association;

(iii) State or refer to a document stating the limitations upon payment of dividends imposed by 12 U.S.C. 1828(b); and

(iv) State or refer to a document stating that no voluntary redemption, other than scheduled redemptions, may be made by the association without the approval of the Office if the association is not in compliance with the regulatory capital requirements of § 567.2 or if after giving effect to such redemption the association would fail to meet such regulatory capital requirements.

(2) *Limitation as to term.* No mandatorily redeemable preferred stock issued by a savings association pursuant to this section shall have an original period to required redemption of less than seven years. During the first six years that such a security is outstanding, the total of all required purchase-fund payments, required reserve allocations and required redemptions with respect to the portion of such six years that have elapsed shall at no time exceed the original redemption price thereof multiplied by a fraction the numerator of which is the number of years that have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to required redemption.

(e) *Filing of application.* The application for approval of the issuance of mandatorily redeemable preferred stock under this section shall be filed with the Office by transmitting the original and two copies of the application and all supporting documents to the District Director.

(f) *Additional requirements.* The Office may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, the Office, or the Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate.

(g) *Limitation on offering period.* Following the date of approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the mandatorily redeemable preferred stock issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) *Reports.* Within 30 days after completion of the sale of the mandatorily redeemable preferred stock issued pursuant to prior approval under this section, the association shall transmit a written report to the District Director stating the number of purchasers, the total dollar amount of securities sold, and the amount of new proceeds received by the association.

(i) *Delegations.* The Senior Deputy Director for Supervision (Operations) or his or her designee, with the concurrence of the Chief Counsel, or his or her designee, are authorized to:

(1) Approve any mandatorily redeemable preferred stock applications filed pursuant to this section if they are in compliance with regulatory requirements or waivers thereof, and

(2) Except for denial of the application, otherwise act on the Director's behalf under any provision of this section, unless they are of the opinion that the application involves policy considerations which warrant formal consideration by the Director.

§ 563.80 Borrowing limitations.

(a) *General.* Except as the Office otherwise may permit by advice in writing, a savings association may borrow only in accordance with the provisions of this section.

(b) *Amount of borrowing.* A savings association may borrow up to the amount authorized by the laws under which the savings association operates.

(c) *Security.* An association may give security for borrowings subject to any requirements imposed by the Office or the FDIC regarding notice of default on borrowings and any FDIC right of first refusal to purchase collateral.

(d) *Required statement for all securities evidencing outside borrowings.* Each security shall bear on its face, in a prominent place, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States."

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the savings association meets its regulatory capital requirement, it shall, at least ten business days prior to issuance, file with the District Director or his or her designee a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the items of the security, including:

(i) Principal amount of the securities;

(ii) Anticipated interest rate range and price range at which the securities are to be sold;

(iii) Minimum denomination;

(iv) Stated and average effective maturity;

(v) Mandatory and optional prepayment provisions;

(vi) Description, amount, and maintenance of collateral if any;

(vii) Trustee provisions if any;

(viii) Events of default and remedies of default;

(ix) Any provisions which restrict, conditionally or otherwise, the operations of the association.

(2) The District Director or his or her designee shall have ten (10) business days after receipt of such filing to object to the issuance of such securities. The District Director or his or her designee shall object if in his or her judgment the terms or covenants of the proposed issue place unreasonable burdens on, or convey to the security holders undue control over, the operations of the association. If no objection is taken, the savings association shall have one hundred twenty (120) calendar days within which to issue such securities. If objection is taken, the District Director or his or her designee shall promptly cause the question of such issuance to be submitted to the Director or his or her designee for decision.

(f) *Note accounts.* For purposes of this section, note accounts are not borrowings.

§ 563.81 Issuance of subordinated debt securities.

(a) *General.* No savings association shall issue subordinated debt securities pursuant to this section or amend the terms of such securities unless it has obtained written approval of the Office. Approval of the issue under this section, in order to meet the requirements of § 567.1, may be obtained either before or after the securities are issued, but no approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility requirements.* In determining whether the Office will process an application by a savings association for approval of the issuance

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of subordinated debt securities pursuant to this section, the Office will consider the following factors:

(1) Whether the issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws; and

(2) Whether in the opinion of the Office, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. Under the Director,s oversight, the Senior Deputy Director for Supervision (Policy) of the Office shall establish Guidelines for the District Directors to apply in exercising authority delegated to them in considering applications under this section. These Guidelines shall identify supervisory bases that District Directors may use to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Senior Deputy Director for Supervision (Policy) may modify such Guidelines from time to time as appropriate. Any such changes to the Guidelines shall be effective for those applications filed after the date of the changes to the Guidelines and for those applications submitted for approval but not yet deemed "complete."

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be, to parties other than savings associations. In this connection, the issuance of subordinated debt securities shall not be deemed to result in a sufficient transfer of risk if such securities or any indenture or related agreement pursuant to which they are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of the obligor's failure to make timely payment of interest and principal, its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and events of default relating to certain events of bankruptcy or insolvency, receivership and similar events.

(c) *Application form; supporting information.* An application for approval of the issuance of subordinated debt securities by a savings association pursuant to this section shall be in the form prescribed by the Office. Such application and instructions may be obtained from the District Director. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (d)(1)(i)(A) and (d)(1)(ii) of this section which are not eligible for waiver, are waived by the Office.

(1) *Form of certificate.* Each certificate evidencing subordinated debt issued by a savings association pursuant to this section shall:

(i) Bear on its face, in bold-face type, the following legends:

(A) "This security is not a savings account or deposit and it is not insured by the United States or any agency or fund of the United States"; and

(B) "Absent prior written approval by the Office, this security is not eligible for purchase by any savings association or a corporate affiliate thereof, except that this security may be purchased by a corporate affiliate of the issuer or by any diversified savings and loan holding company and any non-savings association subsidiary thereof."

(ii) Clearly state that the security

(A) is subordinated on liquidation, as to principal, interest, and premium, if any, to all claims (including post-default interest) against the savings association having the same priority as savings account holders or any higher priority;

(B) is unsecured by the assets of the issuing association, or any of its affiliates; and

(C) is not eligible as collateral for any loan by the issuing association.

(iii) State or refer to a document stating the terms under which the issuing savings association may prepay the obligation, which shall include at least the right to prepay without premium or other penalty during the fifteen months immediately prior to the maturity date;

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the office, if the association is failing meet its regulatory capital requirement or if after giving effect to such payment the association would fail to meet its regulatory capital requirement;

(v) State the limitations upon payment of interest imposed by 12 U.S.C. 1828(b); and

(vi) Set forth, in the certificate and the purchase agreement or indenture, precisely the following statement:

Notwithstanding anything to the contrary in this certificate (or in any related document): (A) If the FDIC or Resolution Trust Corporation ("RTC") shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another financial institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another financial institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other financial institutions, neither the FDIC nor the RTC shall have any obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any financial institution or institutions which results from any such merger or which has purchased or otherwise acquired from the FDIC or RTC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the FDIC or RTC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a financial institution with or into which the issuer may have been merged, as described in this subparagraph (A), and/or by one or more financial institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the FDIC or RTC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in any applicable receivership regulations or in orders of the FDIC or RTC relating to such receivership. (B) In the event that the obligation represented by this certificate is assumed in full by another financial institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the FDIC or RTC assume all or a portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (C) This security is not eligible to be purchased or held by any savings association or corporate affiliate thereof except that this security may be purchased or held by a corporate affiliate of the issuer or by a diversified savings and loan holding company and its non-savings association subsidiaries. The issuer of this security may not recognize on its transfer books any transfer made to a savings association or any corporate affiliate thereof (except as provided in the preceding sentence) and will not be obligated to make any payments of principal or interest on this security if the owner of this security is a savings association or any corporate affiliate thereof (except as provided in the preceding sentence).

(2) *Limitation as to term.* No subordinated debt security issued by a savings association pursuant to this section shall have an original period to maturity of less than 7 years. During the first six years that such a security is outstanding, the total of all required sinking fund payments, other required prepayments and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount thereof multiplied by a fraction the numerator of which is the number of years which have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to maturity.

(3) *Limitations on sale to certain associations.* (i) No savings association may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Office in a supervisory case, to the FDIC or RTC; and

(ii) Without the prior written approval of the Office, no savings association may sell, either directly or indirectly through an underwriter or otherwise, any subordinated debt securities issued pursuant to this section to a savings association or any corporate affiliate thereof, except that a savings association may sell such securities to its corporate affiliates or to a diversified savings and loan holding company and its non-savings association subsidiaries.

(4) *Indenture.* An issuer must use an indenture, as described herein, for subordinated debt securities offered pursuant to this section. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor (as defined in 12 CFR 583.2) and provide for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a private non-public offering as defined in 12 CFR 583g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or $5,000,000 in any consecutive thirty-six month period.

(e) *Filing of application.* The application for approval of the issuance of subordinated debt securities under this section is filed with the Office by transmitting the original and three copies of the application and all supporting documents to the association's District Director.

(f) *Additional requirements.* The Office may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, the Office, or the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be.

(g) *Limitation on offering period.* Following the date of the approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the subordinated debt securities issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the savings association shall transmit a written report to the District Director stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the savings association. The association's report shall clearly state the amount of subordinated debt, net of all expenses, that the association intends to be counted as regulatory capital.

(i) *Delegation of authority.* Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the District Director is authorized:

(1) To approve an application filed pursuant to this section, if the application is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) *Appeals.* Denial of an application by a District Director pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed under the following procedures: within 30 days after notification of the District Director's decision as provided for in this section, the applicant must file a written request for review with the Senior Deputy Director for Supervision (Operations) stating the applicant's desire to appeal the District Director's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the District Director's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. One copy of such request should be addressed to the attention of the "Senior Deputy Director for Supervision (Operations)"; and one copy to the attention of "Chief Counsel, Corporate and Securities Division". Also, one copy shall be sent to the District Director. The District Director shall thereupon forward to the Senior Deputy Director for Supervision (Operations) his or her record or a copy thereof used as a basis for his or her determination together with any other information believed by the District Director to be helpful in reviewing his or her determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the District Director is waived. A timely filing of a request for review with the Senior Deputy Director for Supervision (Operations) in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall decide each appeal from a denial of an application under 12 CFR 563.81 by a District Director or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section. With the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Office. If the

Senior Deputy Director for Supervision (Operations) in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Director, the Senior Deputy Director for Supervision (Operations) shall submit the application to the Director for his or her determination. In the event that the Senior Deputy Director for Supervision (Operations) fails to obtain the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall present the matter to the Director for his or her determination.

(k) *Conditions of approval.* Approvals of subordinated debt applications shall be subject to the following conditions:

(1) Where securities are to be sold pursuant to an offering circular required to be filed with the Office pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

(2) The applicant shall submit to the District Director, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt securities;

(3) The applicant shall submit to the District Director no later than 30 days from the completion of the sale of the securities, the report(s) required by 12 CFR 563.81(b) and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement or indenture governing the issuance of the securities; and

(ii) A certificate from the principal executive officer of the applicant which states that to the best of his or her knowledge none of the securities issued pursuant to the subject application were sold to any association whose accounts are insured by the Savings Association Insurance Fund, or a corporate affiliate thereof, except as permitted by 12 CFR 563.81;

(4) That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Office;

(5) The applicant shall submit an application and receive prior written approval of the District Director for any post-approval amendment to the subordinated debt securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the Office's regulations as may then be in effect or would result in a transfer of risk to the applicant or the Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment;

(6) The applicant shall submit to the District Director promptly after execution, one copy of each post-approval amendment to the securities or the related indenture, and if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required; and

(7) Before any offers or sales of the subordinated debt are made on the premises of the association or its affiliates, the applicant shall submit to the District Director a set of policies and procedures for such sale of the subordinated debt satisfactory to the District Director.

§ 563.84 Transfer and repurchase of government securities.

(a) A savings association shall not issue repurchase agreement obligations in denominations under $100,000 with a maturity of 90 days or more evidencing an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the savings association is obligated to repurchase, unless such obligations are issued to financial institutions the accounts or deposits of which are insured by the Federal Deposit Insurance Corporation or to a broker or dealer registered with the Securities and Exchange Commission.

(b) Any repurchase agreement obligation under $100,000 with a maturity of less than 90 days shall meet the following requirements.

(1) *Legend.* Each repurchase agreement and all advertisements and offering documents relating to repurchase agreements shall state, on their face, in plainly legible form, the following legend: "This obligation is not a savings account or a deposit and is not insured by the Federal Deposit Insurance Corporation."

(2) *Prohibited representations.* A savings association issuing repurchase agreements shall not use in its agreements, advertisements, or offering documents the terms "guaranteed," "no risk," "account," "deposit," "withdraw" or other terms which imply that the repurchase agreement is insured or guaranteed by the United States government, an agency of the United States government, or any third party; or the term "fund" or other terms which imply that the repurchase agreement is an interest in an investment company.

(3) *Security interest.* The interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement shall constitute a perfected security interest under applicable state law.

(4) *Value of collateral.* The market value of the security or securities underlying a repurchase agreement shall be at least equal to the principal amount of the issuing savings association's repurchase agreement obligation as of a date certain in each succeeding month of the original or renewed term of the repurchase agreement.

(5) *Disclosure.* A savings association issuing repurchase agreements to the public shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing savings association. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. A savings association that has a regulatory capital deficiency under paragraph (b)(7) of this section shall be subject to the requirements of part 563g of this subchapter, except that the following financial statements may be substituted for those required to be included in an offering circular required under part 563g of this subchapter:

(i) The savings association's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of § 563c.1 of this subchapter;

(ii) On a comparative basis, the savings association's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period

then ended, prepared in accordance with the requirements of § 563c.1 of this subchapter; and

(iii) The savings association's latest monthly financial report filed with the Office.

(6) *Renewal; notice of applicable interest rates.* The maximum term of a repurchase agreement shall be 89 days. Unless otherwise provided for by the terms of a repurchase agreement, automatic renewals effected within an 89-day period from the date of execution, renewal, or automatic renewal of a repurchase agreement shall not be deemed to constitute renewals or automatic renewals under paragraph (b) of this section. Repurchase agreements may be automatically renewed for any period not exceeding 89 days for each automatic renewal pursuant only to the written agreement between the purchaser and the issuing savings association that the repurchase agreement may be automatically renewed at the option of the issuing savings association in the absence of the oral or written instruction of the purchaser that the repurchase agreement shall not be renewed. Savings associations which provide for the automatic renewal of repurchase agreements shall provide and notify each retail repurchase agreement purchaser of a means to determine the current rates of interest. Repurchase agreements may not be automatically renewed by a savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section.

(7) *Eligibility requirements.* A savings association which issues or has outstanding repurchase agreements issued under paragraph (b) of this section shall calculate its regulatory capital on a monthly basis in accordance with § 567.2(b) of this subchapter. A savings association that does not have regulatory capital equal to the sum of one percent of all liabilities (i.e., total assets minus regulatory capital) of the savings association, plus an amount equal to 20 percent of the savings association's assets classified under § 563.160 of this part, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements.

(i) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, the savings association shall file with the District Director and the Corporate and Securities Division of the Chief Counsel's Office and shall continue to file thereafter on a current basis for as long as the regulatory capital deficiency shall exist, the following:

(A) Three copies of an opinion of independent legal counsel that the interest of repurchase agreement purchasers in the security or securities underlying the repurchase agreements constitutes a perfected security interest under applicable state law; and

(B) The offering document required under paragraph (b)(5) of this section.

(ii) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, and thereafter on a date certain in each succeeding week of the original or renewed term of the repurchase agreement for as long as the regulatory capital deficiency shall exist, the market value of the savings association's security or securities underlying a repurchase agreement shall be at least equal to 105 percent of the principal amount of the issuing savings association's repurchase agreement obligation, plus accrued interest.

(iii) A savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section shall not renew an outstanding repurchase agreement unless it provides the purchaser with the disclosure document required under paragraph (b)(5) of this section and the purchaser thereafter affirmatively elects to renew the repurchase agreement.

Subpart D—Investment Limitations

§ 563.90 Appraisals on loans outside lending area.

A savings association investing in a loan outside its normal lending territory, as defined in section 561.32 of this subchapter, shall obtain a signed report of appraisal of any real estate that is relied upon as the primary security for the loan. The report shall be prepared by an appraiser having no interest, direct or indirect, in that security or in any loan on that security and whose compensation is not affected by the approval or disapproval of the loan.

§ 563.93 Loans to one borrower.

Any loans made by a savings association to one borrower shall be in compliance with both the requirements of section 5(u) of the Act and any more stringent requirements under this section.

(a) *Definitions used in this section—*(1) *One borrower.* (i) The term "one borrower" means:

(A) Any person or entity that is, or upon the making of a loan will become, obligor on a loan. *Provided,* that a guarantor shall not be included within the meaning of "obligor" if, in connection with a loan or other extension of credit, the savings association has determined, in good faith, that the primary obligor has qualified for the loan or extension of credit irrespective of the existence of the guarantor;

(B) Nominees of such obligor;

(C) All persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of ten percent or more (based on the value of his contribution), or a record or beneficial stockholder owning ten percent or more of the capital stock;

(D) If such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock of such obligor;

(E) Any person that, directly or indirectly, owns or controls, or is owned or controlled by, any person that is: An obligor on a loan; a nominee of such an obligor; a general partner or limited partner owning an interest of ten percent or more in a partnership that is an obligor; the beneficiary of a trust that is an obligor; or a member of a syndicate that is an obligor. For purposes of this paragraph (a)(1)(i)(E), the term "control" means the power, directly or indirectly, to direct the management or policies of a person or to vote 10 percent or more of any class of voting securities of a person; and

(F) Two or more persons acquiring a business enterprise of which those persons will in the aggregate own 50 percent or more of the capital stock, or two or more persons obtaining loans for a related purpose where the expected source of repayment for the loans or extensions of credit is the same for each person.

(ii) In the case of a loan that has been assumed by a third party with the consent of the lending savings association, the former debtor and any guarantor shall not be deemed an "obligor."

(2) *Outstanding loans.* The term "outstanding loans" means:

(i) Any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a

person on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person, plus interest due and unpaid, less repayments;

(ii) funds a savings association has an obligation to advance under an executed promissory note, unless the loan is subject to a legally binding overline purchase commitment of another person;

(iii) credit extended in the form of finance leases satisfying the criteria set forth in §§ 545.53 and 545.78 of this chapter;

(iv) potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent that the savings association has recourse to cash or a segregated deposit account of its customer to indemnify it against such liabilities; and

(v) investments in commercial paper and corporate debt obligations.

The term does not include a loan or participation interest sold without recourse, a loan secured by a first lien or real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended, a loan on the security of a savings association's deposit accounts, or a deposit or a loan of unsecured day(s) funds described in § 563.96 of this part. The amount of an outstanding "wraparound" loan is determined by the amount of funds advanced by the savings association, except to the extent that the institution has become liable to pay an obligation secured by a lien on the security property prior to its own.

(3) *Outstanding commercial loans.* The term "outstanding commercial loans" means:

(i) Outstanding loans for commercial, corporate, business, or agricultural purposes, except to the extent secured by real property; and

(ii) Loans described in paragraph (a)(3)(i) of this section made by a savings association's subsidiary, attributed pro rata on the basis of the percentage of the subsidiary's stock owned by the savings association.

(4) *Unimpaired capital and unimpaired surplus.* The term "unimpaired capital and unimpaired surplus" means regulatory capital plus specific reserves for loan losses, less appraised equity capital.

(5) *Person.* The term "person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, non-profit corporation, financial institution, sovereign government or any agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(b) Limitations—*(1) Aggregate loans.* No savings association shall make any loan to one borrower if the sum of (i) the amount of such loan and (ii) the total balances of all outstanding loans owed to such savings association and its service corporation affiliates by such borrower exceeds an amount equal to ten percent of such savings association's withdrawable accounts or an amount equal to such savings association's regulatory capital, whichever amount is less: *Provided,* That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of items (b)(1)(i) and (b)(1)(ii) of this section does not exceed $500,000 and, beginning on January 1, 1984, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous twelve months as shown in the November-to-November index.

(2) *Commercial loans.* (i) No savings association may make any commercial loan to one borrower if the sum of such loan and the total balances of outstanding commercial loans to such borrower exceeds the amount a national bank having an identical unimpaired capital and unimpaired surplus could lend such borrower. The general rule stated in section 5200 of the Revised Statutes (12 U.S.C. 84) is that total loans and extensions of credit by a national bank to one borrower are limited to fifteen percent of the bank's unimpaired capital and unimpaired surplus, plus an additional ten percent for loans fully secured by readily marketable collateral. Several exceptions to these limits are set forth in section 5200; and additional limitations on loans to one borrower are found in sections 11(m) and 13 of the Federal Reserve Act (12 U.S.C. 248(m), 372).

(ii) Notwithstanding the limitations imposed by paragraphs (b)(1) and (b)(2) of this section, a savings association may make loans to a service corporation subsidiary in any amount, subject to any limitations on the total amount of investment in service corporations that applies to such savings association.

(iii) The amount of assets transferred (as defined in § 563.132(a)(3) of this part) by a savings association to a finance subsidiary (as defined in § 563.132(a)(4) of this part), subject to the provisions of § 545.82 of this chapter, shall not be subject to the limitations imposed by paragraphs (b)(1) and (b)(2) of this section.

(3) *Rated obligations.* Notwithstanding the limitations set forth in paragraphs (b)(1) and (b)(2) of this section, a savings association may invest:

(i) Up to one percent of assets or one million dollars, whichever is more, in obligations of one issuer evidenced by:

(A) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services in the highest category, or

(B) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; and

(ii) Up to one half of one percent of assets, or $500,000, whichever is more, in obligations of one issuer evidenced by:

(A) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services, in one of the two highest categories, or

(B) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in the first, second, or third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security: *Provided, however,* That the total amount invested by a savings association in obligations of one issuer pursuant to this paragraph (b)(3) shall not exceed an amount equal to one percent of assets or one million dollars, whichever is more.

(4) *Waiver.* In accordance with guidelines approved by the Office, the Office of the District Director or the designee of either may waive the application of the limitations in this paragraph (b) to any loan in connection with the resolution or management of a savings association that is of supervisory concern and has deficit or deteriorating regulatory capital.

(5) A savings association's compliance with the limitations set forth in paragraphs (b)(1) and (b)(2) of this section shall be determined as of the date of execution of the promissory note(s) evidencing an obligation, execution of documents evidencing the purchase of loan(s), or such other act as creates a binding obligation by the obligor(s) to repay funds to the lending savings association. The amount of a savings association's "withdrawable accounts" or "regulatory capital" pursuant to paragraph (b)(1) of this section, or its "unimpaired capital and unimpaired surplus" pursuant to paragraph (b)(2) of this section, shall be calculated as of the savings association's most recent periodic report (monthly or quarterly) required to be filed with the Office prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the savings association knows, or has reason to know, based on transactions or events actually completed, that such level has changed, upward or downward, subsequent to the filing of such report.

(c) *Determination by savings association; maintenance of records.* If a savings association or service corporation affiliate thereof makes a loan to any one borrower, as defined in paragraph (a) of this section, in an amount which, when added to the total balances of all outstanding loans owed to such savings association and its service corporation affiliates by such borrower, exceeds $250,000 or 2 percent of the regulatory capital of such savings association, whichever is greater, but in all cases where such outstanding loans exceed $1,000,000, the records of such savings association or its service corporation affiliate with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraph (b) of this section; for the purpose of such documentation such savings association or service corporation affiliate may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (a) of this section.

§ 563.94 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

To the extent that it has legal power to do so, a savings association may enter into, perform and carry out any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305 of the Federal Home Loan Mortgage Corporation Act, notwithstanding any provision of this part except the regulatory capital requirements of § 567.2 for recourse liabilities.

§ 563.95 Investment in state housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8); *Provided,* That such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds. The aggregate outstanding direct investment and investment in loans and loan commitments under this paragraph (a) shall not exceed 30 percent of the savings association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the association's home State.

(b) Any savings association whose general reserves surplus and undivided profits aggregate more than 5 percent of its withdrawable accounts may, to the extent it has legal authority to do so, invest in obligations (including loans) of or issued by any state housing corporation incorporated in the State in which such savings association has its principal office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) the obligations, if not rated, are approved by the Office.

The aggregate outstanding direct investment in obligations under this paragraph (b) shall not exceed the amount of the savings association's general reserves, surplus and undivided profits, and no more than 25 percent of the aggregate outstanding investment may be invested in obligations issued by any one state housing corporation.

(c) Any savings association whose general reserves, surplus and undivided profits aggregate more than 5 percent of its withdrawable accounts, to the extent it has legal authority to do so, may make direct equity investments in equity securities of any state housing corporation incorporated in the State in which the saving association's principal office is located.

(d) Each state housing corporation in which a savings association invests under the authority of paragraphs (b) and (c) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 563.96 Limitation on investment in accounts of commercial banks and thrift institutions and in debt securities hedged with forward commitments.

A savings association's investments in savings accounts of a commercial bank or savings association (including loans of unsecured day(s) funds, i.e., Federal funds or similar unsecured loans), and debt securities hedged with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the debt securities issued by any single individual, partnership, or corporate or mutual entity of any sort, shall not exceed, with respect to any single individual, partnership, or corporate or mutual entity, the greater of one hundred thousand dollars, or the lesser of if applicable, one-half of one percent of the deposits of the financial institution from which the investment is obtained, or the greater of the investing savings association's regulatory capital or one percent of the investing savings association's assets.

§ 563.97 Loans in excess of 90 percent of value.

(a) A savings association authorized to make loans in excess of 90 percent of value on the security of real estate comprising single-family dwellings or dwelling units for four or fewer families may do so only if such loans comply with § 545.38(a) or § 545.32(d)(2) of this chapter.

(b) This section does not apply to loans to facilitate the sale of real estate owned as a result of foreclosure, or acquired by deed in lieu of foreclosure, or where a contract purchaser has defaulted and the contract canceled, nor to investments in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.38 of this chapter.

§ 563.98 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

(a) *Scope.* A savings association, to the extent it has independent legal authority to do so, may make investments in equity securities, real estate, service corporations, operating subsidiaries, and certain land loans and nonresidential construction loans (collectively, "equity risk investments") only in compliance with the provisions of this section.

(b) *Definitions.* When used in this section:

(1) *Aggregate equity risk investment* means the sum of investments in equity securities, real estate, service

corporations, and operating subsidiaries: *Provided,* That: Upon the sale, liquidation, retirement, or other disposition of any such investment:

(i) The amount of aggregate equity risk investment shall be reduced to the extent that the original investment is recovered;

(ii) Any gain recovered shall not reduce aggregate equity risk investment; and

(iii) Any loss realized shall be deemed to be an outstanding equity risk investment except to the extent that it can be netted against realized gains on other equity risk investments.

(2) *Equity security* means any stock, certificate of interest of participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; or, in general, any interest or instrument commonly known as an equity security; or loans having profit-sharing features which would be reclassified as equity investments under generally accepted accounting principles (or the Office's accounting regulations if applicable); or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or any security carrying any warrant or right to subscribe to or purchase such a security; or any warrant or right to subscribe to or purchase such a security; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing; but does not mean

(i) Stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968;

(ii) Securities issued by any open-end management investment company that is registered under the Investment Company Act of 1940 the portfolio of which is subject to the restrictions set forth at section 5(c)(1)(Q) of the Home Owners' Loan Act;

(iii) Securities issued by a service-corporation, an operating subsidiary, or a finance subsidiary;

(iv) Securities acquired through foreclosure proceedings or through settlement in lieu of foreclosure; and

(v) Securities, or loans subject to reclassification under generally accepted accounting principles (or the Office's accounting regulations if applicable), which represent an "investment in real estate" as defined in paragraph (b) of this section.

(3) *Finance subsidiary* means a corporation as defined in § 563.132(a)(4) of this part.

(4) *Savings association* means a savings association as defined in § 561.43 of this subchapter, including institutions subject to § 543.11–1 of this chapter, but excluding BIF-insured Federal savings associations.

(5) *Investment in equity securities* means an amount equal to the historical book value of equity securities held as of December 10, 1984, or an amount equal to the purchase price of equity securities acquired after such date.

(6) *Investment in real estate* means an amount equal to:

(i) The purchase price of all equity interests in real property, as determined in accordance with generally accepted accounting principles (or the Office's accounting regulations if applicable), exclusive of equity interests in (A) real property to be used primarily by the savings association for offices or other related facilities and (B) real property acquired in foreclosure, by deed in lieu of foreclosure, or on which a contract purchaser has defaulted and the contract has been cancelled;

(ii) Loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which a savings association holds an interest which would be classified as an equity interest in real property under generally accepted accounting principles (or the Office,s accounting regulations if applicable);

(iii) Land loans (as that term is defined in § 561.26 of this subchapter) and nonresidential construction loans (as that term is defined in § 561.30 of this subchapter) with loan-to-value ratios (as defined in paragraph (b)(9) of this section) greater than 80 percent, exclusive of loans for real property to be used primarily by the savings association for offices or other related facilities; and

(iv) Interest capitalized in accordance with generally accepted accounting principles.

(7) *Investment in service corporation* and "investment in operating subsidiary" mean the amount of all equity and debt investments made by a savings association in such corporations (exclusive of any earnings or losses recorded using the equity method of accounting), including, but not limited to, investments in securities issued by such corporations, and the underwriting of extensions of credit to, or the guaranteeing of the debt of, such corporations: *Provided,* That such investment shall be reduced by the repayment of any advance or loan, the expiration or cancellation of any guarantee of indebtedness, or the redemption or sale of any security of such corporations held by a savings association.

(8) *Issuer* means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the terms "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) *Loan-to-value ratio* means the ratio of the loan to the "market value" of the collateral; for purposes of this section, market value means the most probable price in terms of money that a property would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus or special or creative financing or sales concessions granted by anyone associated with the sale, as set forth in an appraisal issued in conformance with the requirements of §§ 563.170 and 563.172 of this part.

(10) *Operating subsidiary* means a corporation, the majority of the capital stock of which is owned by a savings association, which engages exclusively in activities which are part of or incidental to the business of the savings association, as authorized by applicable law.

(11) *Service corporation* means a corporation as defined in § 561.45 of this subchapter or as authorized by state law: *Provided,* That the entire capital stock of such corporation is available for purchase only by savings associations, as defined in § 561.43 of this subchapter.

(12) *Tangible capital* means the amount of equity capital as determined in accordance with generally accepted accounting principles minus goodwill and other intangible assets plus qualifying subordinated debt as defined in § 567.1(c) of this subchapter and qualifying nonpermanent preferred stock as defined in § 567.1(d) of this subchapter.

(c) *Thresholds for aggregate equity risk investment*—(1) *Consolidation of equity risk investments.* For purposes of determining compliance with the requirements of this section, a savings association may consolidate the equity risk investments of any or all of its service corporations and operating subsidiaries with its own equity risk investments and may exclude its investments in such consolidated corporations from the calculation of its aggregate equity risk investment: *Provided,* That all such consolidated equity risk investments shall be deemed to be those of the savings association for purposes of the diversification requirement of paragraph (e) of this section.

(2) *Thresholds.* Except as provided in paragraphs (f) and (g) of this section, no savings association shall make an equity risk investment if immediately thereafter its aggregate equity risk investments would exceed the applicable threshold:

(i) With respect to a savings association that is not subject to the limitations of paragraph (c)(2)(ii) or (c)(2)(iii) of this section and has tangible capital equal to or greater than 6 percent of "total liabilities" (as defined in § 567.2(b)(1)(i) of this subchapter), the applicable threshold is three times tangible capital, calculated as of the end of the immediate preceding calendar month.

(ii) With respect to a savings association that meets its minimum capital requirements set forth in § 567.2 of this subchapter and has tangible capital less than 6 percent of "total liabilities" (as defined in § 567.2(b)(1)(i) of this subchapter), the applicable threshold is the greater of (A) 3 percent of the savings association's assets or (B) two and one-half times the association's tangible capital calculated as of the end of the immediately preceding calendar month.

(iii) A savings association that fails to satisfy its regulatory capital requirement shall not make equity risk investments except as approved by the District Director.

(3) *Notification.* A savings association that undertakes aggregate equity risk investments, pursuant to the threshold authorization set out at paragraph (c)(2)(i) of this section, that would exceed 20 percent of assets shall notify its District Director of such investment. Such notification shall be given to the District Director concurrent with making the such equity risk investment and shall include the amount(s) of the equity risk investment and a brief description of the type(s) of equity risk investment.

(d) *Equity-security investments*—(1) *Permissible investments.* The equity securities in which a savings association may invest shall be limited to:

(i) Common or preferred stock listed on the New York Stock Exchange or American Stock Exchange or quoted on the National Association of Securities Dealers Automated Quotation System, or such other national securities exchange or quotation service as the Corporation may determine; or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such stock, or any security carrying any warrant or right to subscribe to or purchase such stock, or any warrant or right to subscribe to or purchase such stock, provided that any such security, warrant, or right is also listed or quoted on such exchange or quotation service; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for such security;

(ii) Securities issued by any diversified open-end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940;

(iii) Stock of any small business investment company ("SBIC") formed pursuant to section 301(d) of the Small Business Investment Act, provided that the savings association's outstanding aggregate investment in such SBICs does not exceed 1 percent of the savings association's assets;

(iv) Equity securities issued by any United States government-sponsored corporation, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation; and

(v) Equity securities issued by a partnership or joint venture engaged exclusively in activities which are part of or are incidental to the business of the savings association.

(2) *Other investments.* The Senior Deputy Director for Supervision (Operations) is authorized to determine whether insured savings associations may be permitted to invest in stocks listed on exchanges or quoted on national quotation services other than those set forth in paragraph (d)(1)(i) of this section.

(3) *Savings association stock.* No savings association shall at any time, directly or indirectly, or through or in concert with one or more other persons, or through one or more subsidiaries, own, control, or hold with power to vote capital stock issued by

(i) Another savings association or

(ii) Any non-diversified savings and loan holding company, unless the amount of such stock so owned, controlled, or held by the investing association is such that the investing association is deemed to be a savings and loan holding company within the meaning of section 10 of the HOLA.

The term "nondiversified savings and loan holding company" means a "savings and loan holding company" within the meaning of section 10 of the HOLA that is not a "diversified savings and loan holding company" within the meaning of that section.

(e) *Diversification*—(1) *Equity securities.* Except as provided in paragraphs (f) and (g) of this section, no savings association shall at any time own, control, or hold with power to vote for its own account more than 25 percent of any one class of the outstanding equity securities of any one issuer nor an amount of all classes of the outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the association's "regulatory capital" (as defined in § 567.1 of this subchapter): *Provided,* That the limitations of this paragraph (e)(1) shall not apply if the issuer is a partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the savings association.

(2) *Real estate.* Except as provided in paragraphs (f) and (g) of this section, no savings association shall at any time invest in any one real-estate project (including, but not limited to, acquisition, development, and carrying costs and assumption of any debt or liability in connection with such project) an aggregate amount greater in value than the amount permitted under the aggregate loans-to-one borrower limitation, as set forth in § 563.93(b)(1) of this part.

(f) *Saving clause.* (1) A savings association whose aggregate or specific types of actual or prospective equity risk investments on December 10, 1984, would not conform to the requirements of this section shall not be prohibited solely for that reason from maintaining such investments, making investments to which it was legally committed on that date, or completing projects pursuant to definitive plans in existence on that date; nor shall a savings association be required to divest any investment solely because of a subsequent change in its assets or its regulatory capital: *Provided,* That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk

investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(2) A savings association whose aggregate actual or prospective equity risk investments on February 27, 1987 were in compliance with its applicable threshold on that date, including compliance as a result of applying the savings clause of paragraph (f)(1) of this section or of securing District Director approval of otherwise nonconforming levels of investment, but would not conform to the requirements of paragraph (c)(2) of this section (and are not "grandfathered" under paragraph (f)(1) of this section shall not be prohibited solely for that reason from maintaining such investments, or making investments to which it was legally committed on that date; nor shall a savings association be required to divest any investment solely because of a subsequent change in its assets or its regulatory capital: *Provided,* That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(3) A savings association whose aggregate actual or prospective equity risk investments on February 27, 1987 would not conform to the requirements of paragraph (e)(2) of this section (and are not "grandfathered" under paragraph (f) (1) or (2) of this section) shall not be prohibited solely for that reason from maintaining such investments or making investments to which it was legally committed on that date; nor shall an association be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital: *Provided,* That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(4) A savings association whose aggregate actual or prospective equity-risk investments on December 14, 1988 were in compliance with its applicable thresholds on that date, including compliance as a result of applying the savings clauses of paragraphs (f)(1) through (3) of this section or of securing District Director approval of otherwise nonconforming levels of investment, but would exceed those thresholds because of the inclusion of investments in stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, shall not be prohibited solely for that reason from maintaining its full investment in such stock made as of December 14, 1988; nor shall a savings association be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital; nor shall a savings association be in violation of paragraph (e)(1) of this section solely by maintaining its full investment in such stock made as of December 14, 1988, considering that for the purposes of making that calculation with respect to the foregoing issuers only, debt obligations shall not be considered: *Provided,* That additional equity-risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity-risk investments or to require the reduction of aggregate equity-risk investment or the divestiture of specific equity-risk investments.

(g) *Exceptions.* (1) Except as provided in paragraph (g)(6) of this section, a savings association seeking to make equity risk investments in an amount, at a threshold level, or of a type other than as generally permitted by this section shall file an application with its District Director and, if it is state-chartered, shall send a copy of the application to its state supervisor. Within 10 days of the filing of such an application or any additional information, the District Director shall notify the applicant in writing either that all information required under paragraph (g)(2) of this section has been filed or that additional specified information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(2) The application shall set forth the following:

(i) The total amount, in dollars and as a percentage of assets and regulatory capital, of equity risk investments that the applicant seeks to make;

(ii) An identification of the applicant's investment threshold as determined in accordance with paragraph (c) of this section, including, as of the end of the preceding calendar quarter, the applicant's

(A) total assets;

(B) regulatory net worth;

(C) minimum regulatory capital requirement under § 567.2(b) of this subchapter; and

(D) special-purpose regulatory capital requirement set forth in paragraph (c)(2)(ii) of this section;

(iii) A description and quantification, as a dollar amount and as a percentage of assets and regulatory capital, of the applicant's outstanding equity risk investments;

(iv) A business plan which includes a proposal for appropriate diversification of the equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, and which describes the proposed specific investment or general plan for investment pursuant to an augmented threshold level and its anticipated financial impact on the applicant; and

(v) Such other information as may be requested in writing by the District Director, *Provided, however,* That the District Director may make only one such request for additional information for each application submitted.

(3)(i) The District Director shall approve or disapprove an application in writing, giving due consideration to any written views and recommendations submitted by the appropriate state supervisor. If the views of the District Director and the state supervisor differ after consultation, the District Director shall refer the application to the Office for decision.

(ii) The District Director shall approve an application unless he or she makes any of the following findings:

(A) The overall policies, condition, and operation of the applicant afford a basis for supervisory objection; the District Director will specifically but not exclusively review:

(*1*) The trends in performance including:

(*i*) Tangible capital;

(*ii*) Earnings;

(*iii*) The level of assets classified under § 563.160 of this part;

(*iv*) The level of capital relative to a savings association's fully phased-in requirement; and

(*v*) The savings association's market value;

(*2*) Controls, including:

(*i*) The specific goals and objectives of the savings association relating to equity risk investments;

(*ii*) Whether the savings association's plans are consistent with management's expertise;

(*iii*) Whether the savings association has identified and evaluated the risks involved in the activity;

(*iv*) Whether the savings association has an ability to identify and resolve on a timely basis problems which might occur;

(*v*) Whether adequate records are being maintained; and

(*vi*) Whether procedures are in place to monitor the performance of the activities.

(B) The proposed investment or level of investment is likely to increase either the applicant's risk of default or the financial exposure of the SAIF; specifically that:

(*1*) The goals and objectives of the savings association expose it to a high probability of loss; or

(*2*) The risks are improperly reflected in the savings association's business plan, cash flow analysis, and projected profit and loss statement.

(C) The equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate are not appropriately diversified. Equity risk investments shall be deemed to be "appropriately diversified" if the consolidated equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, when deemed to be those of the applicant, meet the requirements of paragraph (e) of this section; and if

(*1*) The activities are geographically diversified in a manner consistent with the overall business plan of the savings association;

(*2*) The types of projects are diversified; and

(*3*) The savings association is engaging in activities with a wide range of other parties.

(D) The applicant's policies are inconsistent with economical home financing, as evidenced by its failure to comply with the definition of a "qualified savings association" as set forth in § 584.2–2(b) of this chapter.

(iii) In the event that the District Director makes any of the findings in paragraph (g)(3)(ii) of this section, he or she may nevertheless approve the application subject to written conditions.

(iv) The Senior Deputy Director for Supervision (Policy) shall prepare, and disseminate to the District Directors, standards for the District Directors' use in determining whether to approve applications for equity risk investments that are one-to-four family housing projects and government-insured multi-family housing projects. The Senior Deputy Director for Supervision (Policy) may revise these standards from time to time.

(4) An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The savings association shall file its petition with the Secretary to the Office, and shall send a copy to the District Director and, if the association is state-chartered, to the state supervisor.

(5) The Office shall approve or disapprove an application referred by a District Director pursuant to paragraph (g)(3)(i) of this section and grant or deny a petition for reconsideration filed pursuant to paragraph (g)(4) of this section in writing within 30 days of receipt of such application or petition. If the Office does not disapprove or deny such application or petition within such time, such application shall be deemed to be approved or such petition granted.

(6) A savings association seeking to make equity risk investments otherwise requiring prior review and approval by its District Director or the Office under § 546.2, § 552.13 or § 563.22 or Part 574 of this chapter shall not be required to file an application under this paragraph (g).

(h) *Expiration date.* This section shall expire on July 13, 1990.

§ 563.99 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.

(a) *Definitions.* For purposes of this section:

(1) *Adjustable-rate mortgage loan* means a mortgage loan, secured by property occupied or to be occupied by the borrower, providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.

(2) *Fixed-rate mortgage loan* means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, the term, and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

(3) *Applicant* means a natural person (or persons) making a loan application.

(4) *Home* means real estate as defined by § 541.14 of this chapter, manufactured housing, combinations of homes and business property, and farm residences or combinations of farm residences and commercial farm real estate.

(b) *Initial disclosures for adjustable-rate mortgage loans.* Savings associations offering adjustable-rate home loans, except open-end loans, with a term of more than one (1) year and secured by property occupied or to be occupied by the borrower, shall provide two types of written disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(1) The booklet titled Consumer Handbook on Adjustable Rate Mortgages published by the Office and the Federal Reserve Board, or a suitable substitute.

(2) A loan program disclosure for each adjustable-rate home loan program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided: [3]

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the use of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate

[3] A sample disclosure form may be found in the Federal Register issue of May 23, 1988 (53 FR 18262) or may be obtained from the Office.

carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(x) The maximum interest rate and payment for a $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan.

(xi) The fact that the loan program contains a demand feature.

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) *Adjustment notices.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate transaction subject to this section is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following written disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to amortize fully the loan at the new interest rate over the remainder of the loan term.

(d) *Fixed-rate and adjustable-rate mortgage loan disclosures.* Not later than three business days following receipt of a written application for a fixed-rate or adjustable-rate mortgage loan, savings associations shall disclose in writing to the applicant the information specified in this paragraph (d). Disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as defined in § 583.2 of this chapter) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures shall be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the savings association, may be purchased notwithstanding these disclosures requirements, provided that such loans comply with the disclosure requirements of other federal laws and regulations to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. If savings associations elect to disclose the information in paragraphs (d)(1) through (d)(4) of this section as part of their advance disclosures under paragraph (c) of this section, disclosed information need not be repeated. Disclosures do not constitute a commitment on the part of a savings association to make a loan to the applicant. At a minimum, the following shall be disclosed:

(1) If the loan contract contains a due-on-sale clause, what rights the lender has under the clause.

(2) If the loan contract authorizes the imposition of a late charge or a prepayment penalty the amount of the charge or penalty or the manner in which it is to be determined. If the method of calculating the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(3) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, how any surplus will be returned to the borrower, and the rights of the lender if the borrower fails to make the escrow payments.

(4) In the case of non- or partially-amortized loans (including a loan giving the lender the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the savings association has unconditionally obligated itself to refinance the loan, and whether there will be a large payment due at maturity or upon call of the loan.

(e) *Maximum interest rate caps.* All savings associations making adjustable-rate loans, originated on or after December 8, 1987, whether open-end or closed-end, shall comply with Regulation Z (12 CFR 226.30) by specifying in their credit contracts the maximum interest rate that may be imposed during the term of the obligation.

(f) *Exception.* The disclosures in paragraph (b) of this section are not required in connection with the extension of consumer credit as defined in § 561.12 of this subchapter even if it is secured by a borrower-occupied home as long as the home is not the primary security for the loan.

Subpart E—Limits Tied to Capital Levels

§ 563.131 Liability growth.

(a)(1) No savings association, unless exempted by paragraph (b) of this section, shall increase its total liabilities within any 2-quarter period at a rate greater than 12.50 percent without prior approval of the savings association's District Director.

(2)(i) The rate of increase in liability growth under paragraph (a)(1) of this section shall be computed by subtracting a savings association's total liabilities as of the beginning of a 2-consecutive-quarter period from its total liabilities as of the end of the 2-consecutive-quarter period and by dividing this amount by the savings association's total liabilities as of the beginning of the 2-consecutive-quarter period.

(ii) The method of computation set forth in paragraph (a)(2)(i) of this section shall be used by a savings association commencing operations as a savings association or initially becoming subject to this regulation, although such a savings association's first computation under this section shall be made at the end of the second quarter during which the savings association operates or is subject to this regulation for all or a portion of the quarter. If a savings association commences operation or initially becomes subject to this regulation within a quarter, the savings association shall be permitted to grow up to 6.25 percent during that quarter.

(iii) For purposes of computing a savings association's growth pursuant to paragraphs (a)(1) and (a)(2) of this section, a savings association's total liabilities as of the beginning of a 2-consecutive-quarter period.

(A) Shall include any increases in liabilities during the 2-quarter period resulting from the acquisition of substantially less than all of the liabilities of a savings association after which the selling savings association continues in operation as a separate entity (including, but not limited to, branch acquisitions), and

(B) Shall be equal to the total liabilities of merged or continuing savings associations as of the beginning of the 2-quarter period in the case of a merger, consolidation, or purchase of assets and assumption of liabilities that occurs during the 2-consecutive-quarter period.

(3) Notwithstanding the provisions of paragraph (a) (1) or (2) of this section, a savings association that increases its liabilities through merger, consolidation, or purchase of assets and assumption of liabilities, for which prior review and approval under § 563.22 of this part is required, shall not be required to file an application under paragraph (c) of this section unless such savings association otherwise increases its liabilities by an amount in excess of 12.50 percent within any 2-consecutive quarter period.

(b) Any savings association is exempted from the preapproval requirement of paragraphs (a) and (c) of this section if it has regulatory capital equal to the higher of its fully phased-in capital requirement (6 percent of total liabilities plus contingency component minus maturity matching credit) or 6 percent of total liabilities. Such a savings association must provide notice to its District Director of its intention to grow in excess of the standard set by paragraph (a) of this section.

(c) To obtain prior written approval from its District Director a savings association shall submit a written growth plan. A growth plan shall cover a period of time not to exceed 1 year and shall include the following information:

(1) The savings association's regulatory capital as of the end of the preceding calendar quarter and its estimated regulatory capital as of the end of the period covered by the growth plan;

(2) The amount of liabilities the savings association expects to obtain;

(3) A listing of the proposed sources of and the methods by which the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities to be obtained; and

(5) The planned uses of any liabilities obtained.

(d) No savings association shall alter an approved written growth plan or materially diverge from such a plan without the prior written approval of its District Director.

(e) Within 10 days after the filing of a growth plan or any additional information, the District Director shall notify the applicant in writing either that all information required under paragraph (c) of this section has been filed or that additional specified information must be filed. Unless the District Director takes objection to or conditionally approves the plan within 30 days of the date of written notice that all required information has been filed, the plan shall be deemed to be approved. Based on a savings association's growth plan, the District Director may require the savings association to maintain not more than 4 percent additional regulatory capital over that required by § 567.2(b)(1) of this subchapter on all or a portion of the savings association's growth over the 12.50 percent rate computed in accordance with paragraph (a) of this section. In determining whether to take objection to a growth plan, to approve a growth plan conditionally, or to require additional regulatory capital, the District Director shall consider the following factors:

(1) The effect of the plan upon the savings association's regulatory capital;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, the level of diversification, and the ability of the savings association to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single source;

(5) The extent to which the interest to be paid on the liabilities conforms with generally prevailing rates for similar liabilities;

(6) The financial strength of the savings association, including the level of its regulatory capital, which shall not be less than that required by § 567.2 of this subchapter;

(7) The stability of the savings association's earnings over the 6 preceding calendar quarters;

(8) The extent to which the savings association's overall policies are consistent with economical home financing, as evidenced by whether the savings association would comply with the definition of "qualified savings association" set forth in § 584.2–2(b) of this chapter; and

(9) Whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory objection.

(f) Total liabilities for purposes of this section shall not include an amount of securities issued through subsidiaries (as defined by § 563.132(a)(1) of this part) that does not cause the subsidiary's level of outstanding securities to exceed its level of securities grandfathered pursuant to § 563.132(b) of this part. Such securities shall be included in total liabilities as defined in § 567.2(b)(1)(i) of this subchapter for all other purposes.

§ 563.132 Securities issued through subsidiaries.

(a) *Definitions.* As used in this section:

(1) *Amount of securities issued through a subsidiary* means the net proceeds from the issuance of securities (or the pro-rata portion of the net proceeds from securities issued through a jointly owned subsidiary), other than capital stock issued by a subsidiary to its parent savings association, after December 31, 1985, by:

(i) A finance subsidiary as defined in paragraph (a)(4) of this section; or

(ii) An operating subsidiary (as defined in § 563.98(b)(9) of this part), a service corporation (as defined in § 561.45 of this subchapter), or any other subsidiary of a state-chartered savings association not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent savings association (unless such a subsidiary demonstrates to its parent savings association's District Director that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

(2) *Assets collateralizing* or *collateralizing assets* means any assets of a subsidiary (including guarantees of its securities issuance by its parent savings association) securing, pledged to, or committed to an amount of securities issued through a subsidiary.

(3) *Assets transferred* means assets of or liabilities issued by a savings

association (including guarantees by a savings association of its subsidiary's securities issuances) that are transferred or made available by a savings association (i) to a finance subsidiary as defined in paragraph (a)(4) of this section or (ii) to collateralize an amount of securities issued through a subsidiary as defined in paragraph (a)(1) of this section.

(4) *Finance subsidiary* means (i) a Federal savings association's subsidiary as defined in § 545.82(a)(3) of this chapter, or (ii) a state-chartered savings association's subsidiary in compliance with the provisions of § 545.82 of this chapter. Investment by a savings association in a finance subsidiary as defined in this paragraph (a)(4) is not subject to the provisions of the equity risk investment regulation set forth in § 563.98 of this part.

(5) *Savings association* means a savings association as defined in § 561.43 of this subchapter, including savings associations subject to § 543.11–1 of this chapter, but excluding BIF-insured Federal savings associations.

(6) *Securities* means any securities as defined in § 561.44 of this subchapter.

(b) *Issuances affected.* (1) The amount of securities issued through a subsidiary does not include proceeds from securities:

(i) Offered or sold by a subsidiary, either directly or through a third party intermediary, if such offer or sale terminated no later than March 3, 1986, and if the offer or sale was preceded by (A) a registration statement filed with the Securities and Exchange Commission on or before December 31, 1985, or (B) for securities exempt from such registration requirements, an offering document relating to the securities offered filed with an appropriate regulatory agency or lawfully provided to prospective purchasers on or before December 31, 1985.

(ii) Issued in connection with a borrowing, when a note evidencing such borrowing was executed on or before December 31, 1985.

(2) The amount of securities issued through a subsidiary includes the renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction was undertaken pursuant to a binding written contract with a term of one year or less which was executed and became effective on or before December 31, 1985.

(c) *Inclusion of securities issuances through a subsidiary in computation of a savings association's regulatory capital requirement.* In calculating total liabilities under § 567.2(g)(1) of this subchapter, the amount of securities issued through a subsidiary shall be included in the total liabilities (as defined in § 567.2(g)(1) of this subchapter of a parent savings association for purposes of computing such savings association's regulatory capital requirement and its compliance with § 563.131 of this part: *Provided,* that such amount shall not include an amount equal to the net proceeds from the issuance of securities:

(1) Collateralized by assets that have substantially the same duration as the securities issued and have a relationship to the issued securities such that the duration match will be maintained within the Office's prescribed parameters throughout the life of the securities without active management and, if issued after August 15, 1986, collateralized by assets the market value of which is less than 110 percent of the gross proceeds of the securities issuance; or

(2) Remitted in exchange for a liability issued by a parent savings association which is otherwise included in the parent savings association's total liabilities pursuant to § 567.2(g)(1) of this subchapter.

(d) *Certification of duration analysis.* Within 10 days after an amount of securities is issued through a subsidiary, such subsidiary shall furnish its parent savings association's District Director with a written certification of the accuracy and validity of the duration measurement required by paragraph (c)(1) of this section. The subsidiary shall also send a copy of the certification to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Such certification shall specify:

(1) The duration calculation (in complete or summarized form);

(2) The underlying financial assumptions, including those related to interest rates, maturity, and prepayment;

(3) Any different calculations or assumptions being relied upon for purposes of the rating of the securities by a national rating agency; and

(4) The certification of accuracy and validity by the subsidiary and by any organization performing the duration analysis on behalf of the subsidiary.

(e) *Notification to the District Director.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of securities through a subsidiary as described in paragraph (a)(1)(ii) of this section, the board of directors of the parent savings association, or a duly authorized executive committee thereof, shall submit written notification to the savings association's District Director specifying:

(i) The name of the subsidiary conducting the issuance and the nature of the subsidiary (e.g., service corporation organized pursuant to state law primarily for equity risk investment);

(ii) The jurisdiction of incorporation of the subsidiary;

(iii) The amount of assets of the parent savings association to be transferred (including the terms of any guarantee to be issued by the savings association or any affiliate of the savings association); the current book value of all such assets of the subsidiary; and the percentage that the amount of assets to be transferred represents of the current book value of parent savings association's total assets on an unconsolidated basis; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(D) The minimum denomination of the subsidiary's securities; and

(E) Where the subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a subsidiary, its parent savings association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance to its District Director.

(3) Any savings association that fails to meet its regulatory capital requirement as provided in § 567.2 of this subchapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the savings association's District Director. To obtain the written approval of the District Director, the board of directors of the savings association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (e)(1) of this section, as well as any additional information required by the District Director.

(4) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (e)(3) of this section or any additional information by a savings association subject to paragraph (e)(3) of this section, the District Director shall notify the applicant in writing either that all information required has been filed or that additional specific information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(5) The District Director shall approve the application of a savings association subject to the requirements of paragraph (e)(3) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of an additional amount of securities issued through a subsidiary described in paragraph (a)(1)(ii) of this section is likely to affect adversely the financial condition or the safe and sound operation of the parent savings association. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The savings association shall file its petition with the Office of the Secretary to the Office and shall send a copy to the District Director. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (e)(3) of this section in writing within 30 days of receipt. If the Office does not deny such a petition within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.

§ 563.133 Sale of Federal Home Loan Mortgage Corporation preferred stock.

(a) A savings association that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter, notwithstanding any previously granted capital forbearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the District Director or his or her designee, subject to the concurrence of the Senior Deputy Director for Supervision (Operations). The District Director or his or her designee, may impose any conditions he or she deems appropriate in granting such approval, subject to the concurrence of the Senior Deputy Director for Supervision (Operations).

(b) A savings association that fails to satisfy the regulatory capital requirement set forth in §§ 567.2 and 567.3 of this subchapter shall make written application to the District Director for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the District Director or his or her designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the association's portfolio, as well as any additional information which the association may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the association's portfolio, the District Director or his or her designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the association's asset portfolio, the association's growth plans, the likely effect on the association's liquidity, as well as any additional relevant information the District Director or his or her designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its District Director or his or her designee, subject to the concurrence of the Senior Deputy Director for Supervision (Operations), a savings association that fails to satisfy its fully phased-in regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

Subpart F—Financial Management Policies

§ 563.160 Classification of certain assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by a savings association.

(b) *Classifications*—(1) *Substandard.* Assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses. They are characterized by the distinct possibility that the savings association will sustain some loss if the deficiencies are not corrected.

(2) *Doubtful.* Assets classified Doubtful have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

(3) *Loss.* Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific reserve is not warranted. This classification does not mean that an asset has absolutely no recovery or salvage value, but, rather, that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may be effected in the future.

(c) *Implementation of classification system.* (1) In connection with examinations of a savings association or its affiliates, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each savings association shall classify its own assets on a regular basis. In addition to any other remedies available to the Office under applicable statutes and regulations, a savings association's failure to set aside prudent valuation allowances, or to monitor portfolio risk with an effective self-classification procedure, will be considered by the examiner or the District Director in determining the amount of valuation allowances to be established by such savings association.

(3) In its quarterly reports to the Office, each savings association shall include aggregate totals of assets that the savings association has classified in each of the three asset classification categories, and the aggregate general and specific valuation allowances established. To the extent a savings association's specific valuation allowances have decreased from the previous reporting period, such savings association shall identify the amount of the decrease attributable to a savings association's between-examination upgrading of classifications.

(d) *Effect of classification.* (1) When, pursuant to this section, a savings association has classified one or more assets, or portions thereof, Substandard or Doubtful, the savings association shall establish prudent general allowances for loan losses. When, pursuant to this section, an examiner has classified one or more assets or portions thereof Substandard or Doubtful and has determined that the

existing valuation allowances are inadequate, the savings association shall establish general allowances for loan losses in an appropriate amount as determined by the examiner, subject to approval of the District Director.

(2) When, pursuant to this section, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall either establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Adequate valuation allowances consistent with generally accepted accounting principles shall be established for classified assets. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

(e) *Assets deserving "Special Mention".* Assets that do not currently expose a savings association to a sufficient degree of risk to warrant classification under paragraph (b) of this section but do possess credit deficiencies or potential weaknesses deserving management's close attention shall be designated "Special Mention" by either the savings association or the examiner. Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

(f) *Delegations and interpretations.* (1) The District Director may approve, disapprove, or modify any classifications of assets made pursuant to this section and any amounts of allowances for loan losses established by savings associations or required by examiners pursuant to this section.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the District Director may approve or reject the appraisal and any valuation related to it.

(3) The Senior Deputy Director for Supervision (Policy) shall, from time to time, issue supervisory interpretations and other informational material regarding classification of assets. See § 571.26 of this subchapter containing the Office's statement of policy on the classification of assets.

(4) The District Director may delegate functions assigned under this section within its office.

§ 563.161 Management and financial policies.

(a) For the protection of its account holders and other savings associations each savings association and service corporation thereof shall maintain safe and sound management and shall pursue financial policies that are safe and consistent with economical home financing and the purposes of federal savings associations and are appropriate to their respective types of operations; in implementing this regulation the Office will take into consideration that service corporations may be authorized to engage in activities which involve a higher degree of risk than do activities permitted to savings associations.

(b) Compensation to officers, directors, and employees of each savings association and its service corporations shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities. Former officers, directors, and employees of savings association or its service corporation who regularly perform services therefor under consulting contracts are employees thereof for purposes of this paragraph (b).

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

(a) *Examinations and audits.* (1) Each savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the Office, with appraisals when deemed advisable, in accordance with general policies from time to time established by the Office. The costs, as computed by the Office, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the Office, and other indirect costs, shall be paid by the savings associations examined, except that in the case of service corporations of Federal savings associations the cost of examinations, as determined by the Office, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each savings association's total assets and of rates for examiner time in amounts determined by the Office.

(2) Each savings association and service corporation thereof shall be audited at least once in each calendar year by auditors and in a manner satisfactory to the Office in accordance with general policies from time to time established by the Office. The Office may at any time make, or cause to be made, an audit of a savings association or service corporation thereof, with appraisals when deemed advisable. A savings association and each of its service corporations shall promptly file with the Office, through the Office's District Director of the District where the principal office of the association is located, a copy of the consolidated or separate report of each audit, other than audits made by the Office, made pursuant to this paragraph (a)(2). If a consolidated report is filed, such report shall include, either by footnote or in a schedule or schedules, the balance sheet and statement of income for the savings association and each of its service corporations included in said consolidated report. If separate reports of audits are issued, a copy of each such report shall be filed as provided herein. The cost of any audit made pursuant to this paragraph (a)(2) shall be paid by the savings association or service corporation audited.

(b) *Appraisals.* (1) Unless otherwise ordered by the Office, appraisal of real estate by the Office in connection with any examination or audit of a savings association, affiliate, or service corporation shall be made by an appraiser, or by appraisers, selected by the Office's District Director of the District in which such savings association is located. The cost of such appraisal shall promptly be paid by such savings association, affiliate, or service corporation direct to such appraiser or appraisers upon receipt by the savings association, affiliate, or service corporation of a statement of such cost as approved by such District Director. A copy of the report of each appraisal made by the Office pursuant to any of the foregoing provisions of this section shall be furnished to the savings association, affiliate, or service corporation, as appropriate within a reasonable time, not to exceed 90 days, following the completion of such appraisals and the filing of a report thereof by the appraiser, or appraisers, with such District Director.

(2) The Office may obtain at any time, at its expense, such appraisals of any of the assets, including the security therefor, of a savings association, affiliate, or service corporation as the Office deems appropriate.

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, or service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts, and the documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be. Without any limitation on the generality of the foregoing sentence, at a minimum savings associations and service corporations ("lenders") shall establish and maintain the following records:

(1) *Records with respect to loans secured by real estate.* The records of a lender with respect to each loan that such lender makes on the security of real estate shall include:

(i) An application for the loan, signed by the borrower or its agent, in such form and containing such information as will disclose the purpose for which the loan is sought (for example, construction, purchase, refinancing) and the identity of any security property;

(ii) A note evidencing the borrower's obligation to repay the amount of the loan, executed by the borrower or its agent;

(iii) A copy of the deed of trust or mortgage instrument on said real estate or other document customarily used in the jurisdiction in which such real estate security is located evidencing the creation of a security interest in the real estate for the benefit of the lender, which deed of trust, mortgage instrument, or other document has been signed by the borrower or the borrower's agent; and if the loan is made for the purpose of financing the purchase of the real estate security for the loan, a signed statement by the borrower or its agent, as a part of or as an attachment to the application for the loan, disclosing the purchase price of such real estate security;

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of § 563.171 of this part, or, if such loan is an insured loan or a guaranteed loan, a certification of the valuation assigned to real estate security by the appraiser accepted by the insuring or guaranteeing agency and furnished to the lender by such agency: *Provided, however,* That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation;

(v) A financial statement, which is current at the time that the loan application is made, signed by the borrower disclosing its financial ability to repay the loan, or a written credit report prepared by the lender or by others at the special instance and request of such lender;

(vi) Documentation showing when and by whom such loan was approved and any terms and conditions of such approval;

(vii) Documentation showing the date, amount, purpose, the recipient of every disbursement of the proceeds of such loan, and to the best of the lender's knowledge, any actual recipient of any proceeds when the stated recipient is acting as an agent or intermediary for another;

(viii) For each loan made for the purpose of developing or constructing improvements on real estate, inspection reports prepared by or for the lender or vouchers signed by the borrower or its agent demonstrating that the work for which each disbursement is sought has been completed;

(ix) An opinion signed by the lender's attorney, a title insurance policy, or other documentary evidence customarily used in the jurisdiction in which the real estate security is located, affirming the quality and validity of the lender's lien on the real estate security for the loan: *Provided, however,* That such documentary evidence shall not be required with respect to any loan having Federal Housing Administration mortgage insurance as to which 24 CFR 203.390 and 203.402 are applicable, and any such loan may be considered to be secured by a first lien without new title evidence;

(x) Documentation showing that the lender, upon the closing of the loan, furnished to the borrower a loan settlement statement setting forth in detail the charges or fees such borrower has paid or is obligated to pay to such lender or to any other concern or person in connection with such loan, which documentation shall include a copy of such loan settlement statement;

(xi) A record showing the status and current payment of taxes, assessments, insurance premiums, other charges on the security for the loan, and documenting any loss incurred on the loan security, as well as any amounts recovered pursuant to an insurance settlement of such loss;

(xii) Documentation evidencing any modifications of the original documents by which a security interest for the benefit of the lender was created, showing appropriate approval of each party to such modification; and

(xiii) Documentation evidencing any release of any portion of the collateral pledged to secure the loan, showing the portion of the collateral released, the consideration, if any, paid to effect such release, and a record of the appropriate approval of each such release.

(2) *Records with respect to loans not secured by real estate.* The records of a lender with respect to each unsecured loan or loan not secured by real estate that such lender makes shall include the documents referred to in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(v), (c)(1)(vi), and (c)(1)(vii) of this section. If the loan is secured by collateral other than real estate, the lender's records also shall include documents evidencing the creation and perfection of a security interest in the collateral, including any financing statement, as well as the documents referred to in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section. In addition, if the loan is made to a business entity, the lender's records shall include documentation showing whether the obligor on the loan is able to generate sufficient cash flow to meet scheduled interest and debt reduction payments and, if not sufficient, the lender's records shall include documentation demonstrating the anticipated source of the borrower's payments.

(3) *Records with respect to loan purchases or participations.* (i) The records of a lender with respect to each loan that it purchases, in whole or in part, that is secured by real estate shall include copies of the documents referred to in paragraphs (c)(1)(i) through (c)(1)(v), (c)(1)(ix), and (c)(1)(xiii) of this section. A single lender purchasing a whole loan secured by real estate must retain documents evidencing the assignment to it of the mortgage or deed of trust.

(ii) The records of the lender with respect to loans it has purchased, in whole or in part, that are unsecured or secured by collateral other than real estate shall include copies of the documents referred to in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(v) of this section. If the loan is made to a business entity and is unsecured or secured by collateral other than real estate, copies of documentation of the obligor's cash flow or other anticipated source of the borrower's payments, as described in paragraph (c)(2) of this section, must be included. If the loan is secured by collateral other than real estate, the purchasing lender must retain copies of documents required by paragraph (c)(1)(xiii) of this section and those evidencing creation and perfection of a security interest for its benefit in the collateral, including any financing statement, signed by the borrower or its agent.

(iii) In addition to the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this

section a lender purchasing all or any part of any loan must retain the originator's or the selling lender's statement concerning whether, on the date the loan is purchased, the payments are current and, if not current, the period for which the loan is delinquent; any agreement concerning participation in or servicing of the loan; and a copy of the underwriting standards of the originator. In addition, a purchaser must retain the written agreement of the seller of the loan to provide access, upon request, to all loan documentation in its possession or control to the purchasing lender, the Office, its District Director, or the examinations and supervision staff, as well as the seller's written certification that copies of any documents concerning the loan provided to the loan purchaser are accurate and complete to the best of the seller's knowledge.

(4) *Records with respect to loans secured by timeshare accounts receivable.* In addition to the records required by the applicable provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, the records of a lender concerning loan purchases, participations, or originations of loans secured by timeshare accounts receivable, including fee, right-to-use, or membership interests, shall include any additional documents necessary to make those records accurate and complete, as this requirement is interpreted by the the Senior Deputy Director for Supervision (Operations).

(5) *Records with respect to property purchased subject to a lender's lien or a secured loan assumed by a third party.* When a property on which the lender has a lien securing an unpaid loan is sold to a third party and the lender releases the original borrower from such indebtedness, the records of the lender shall contain such documentation and records with respect to such third party and such transaction as are required by paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(1)(xii), and (c)(1)(xiii) of this section.

(6) *Records with respect to loans sold.* The records of a lender with respect to each loan it sells, whether in whole or in part, shall include a signed opinion by such lender's attorney stating whether the terms of the sales agreement governing such sale provide for a sale without recourse.

(7) *Records with respect to the acquisition of mortgaged security.* A lender shall maintain a record which discloses every instance that it commences action to acquire the real estate security for a loan, by foreclosure or otherwise, and the ultimate disposition of such action. Such record shall include identification of the real estate security and loan, shall itemize all fees and charges incurred in such action, shall name the recipient or recipients to whom any such fees and charges were paid, and shall identify the holder of title to such real estate as a result of such action.

(8) *Records with respect to accounts.* The records of a savings association with respect to each withdrawable or repurchasable share, investment certificate, deposit, or savings account it issues shall include the signature of the owner of such account or the duly authorized representative of such owner, together with a record reflecting the balance in such account. Notwithstanding the preceding requirement, no account signature card for a trust executed by its trustee(s) of information disclosing the names of the settlor or trustee(s) of the trust need be maintained in the records of a savings association.

(9) *Other records.* A lender shall establish and maintain such other records as are required by statute or by any other regulation to which the lender is subject.

(d) *Change in location of records.* A savings association shall not transfer the location of any of its general accounting or control records from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless the savings association has sent prior written notice of such transfer to the District Director of the District in which the principal office of the savings association is located.

(e) *Use of data processing services for maintenance of records.* A savings association which determines to maintain any of its records by means of data processing services shall so notify the District Director of the District in which the principal office of such savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such records will be maintained. Any contract, agreement, or arrangement made by a savings association pursuant to which data processing services are to be performed for such savings association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit.

§ 563.171 Appraisal policies and practices of savings associations and service corporations.

(a) *Introduction.* The soundness of a savings association's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§ 563.170 and 563.172 of this part.

(b) *Definitions.* For purposes of this section:

(1) *Management* means: The directors and officers of a savings association, or service corporation of such savings association, as those terms are defined in §§ 561.18 and 561.35 of this subchapter, respectively;

(2) *Market value* means: (i) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and each acting in what he considers his own best interest;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(ii) Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institution lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

(3) *Proposed tract development* means a project of five units or more that is planned and constructed as a single development.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which savings associations may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall include, but are not limited to, all of the following requirements.

(i) Appraisals shall be based upon the definition of market value as set forth in paragraph (b)(2) of this section.

(ii) Appraisals shall be presented in a narrative format. An appraisal shall be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate. The analysis of the market value estimate reported shall be commensurate in its detail and complexity with the complexity of the real estate appraised.

(iii) Appraisals shall disclose, analyze, and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(A) For one-to-four family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property, three years preceding the date when the appraisal was prepared.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the savings association. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in determining whether to employ an appraiser.

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the savings association's appraisal policies and procedures; and (ii) the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of paragraph (c)(1) of this section shall not apply with respect to:

(1) Appraisals on existing or proposed one-to-four family and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in compliance with the appraisal standards approved by those agencies. This exemption does not apply to proposed tract developments; or

(2) Appraisals on nonresidential properties prepared on form reports approved by the Office and completed in accordance with the applicable instructional booklet.

§ 563.172 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* A savings association shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The District Director or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph (a). A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph (a) shall be retained in the savings association's records.

(b) *Re-evaluation of loans and other assets.* In connection with each examination of a savings association or service corporation, the Office's examiner shall make such re-evaluation of such savings association's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate or real estate collateral shall be based on net realizable value and should take into consideration the availability of compensation by private mortgage insurance to the extent of its probability of payment.

(c) *Adjustment of book value.* If the re-evaluation of assets by a savings association or otherwise, as ordered by the Office, disclose that any asset of a savings association or service corporation is overvalued on its books (exclusive of overvaluation due to fluctuations in value which are caused by changes solely in market interest rates), such savings associations or service corporation shall, at the direction of the District Director, make an adjustment of the book value of such asset, and, unless otherwise directed by the District Director, such adjustment shall be made by establishing and maintaining a specific reserve in an amount equal to the overvaluation. When an appraisal is required and made in connection with any re-evaluation of assets, the District Director shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

(d) *Adjustment charges.* Adjustment of the book value of an asset by a savings association or service corporation pursuant to any provision of this section may be made by charge against such savings association's or service corporation's previously established allowances, if any, and then against earnings for the period in which such charge is made. Any recovery of any portion of any amount previously charged against allowances established for the sole purpose of absorbing losses shall be credited to such allowances; such credit shall be in addition to all other required credits to such allowances. Any recovery of any portion of any amount previously charged against earnings shall be credited to earnings for the period in which such recovery is effected. For the purposes of this paragraph (d), any charge against a specific allowance established pursuant to any provision of this section shall be deemed to be a recovery on an asset, the book value of which was previously adjusted unless such charge is made for the purpose of concurrently writing down the book value of such asset.

§ 563.173 Forward commitments.

(a) *Definitions*—(1) *Forward commitment.* The term "forward commitment" means an oral or written contract to buy securities 30 or more days after the contract date; such a commitment is a standby commitment if delivery is optional with the seller and a firm commitment if both buyer and seller are obligated to perform on the agreed date.

(2) *Securities.* The term "securities" means assets in which the savings association is authorized to invest (except financial futures or financial options contracts entered into pursuant to § 563.174 or § 563.175 of this part).

(3) *Commitment fee.* The term "commitment fee" means any consideration received directly or indirectly by a savings association for a forward commitment.

(b) *Authorized personnel.* The minutes of the board of directors of the savings association shall set out the names, duties, responsibilities, and current limits of authority of the savings association's personnel authorized to engage in forward commitment transactions for the savings association; the brokerage firms through which authorized personnel may conduct forwards activity; and the dollar limit on transactions with each such firm.

(c) *Limitations*—(1) *General.* A savings association may make forward commitments to purchase securities, subject to the limits in paragraph (c)(2) of this section, if that activity is conducted in a safe and sound manner. An example of an unsafe and unsound practice which may preclude further investment under this section is an inability to fund commitments when due. No savings association may sell a forward commitment or security under agreement to purchase another forward commitment or security at a price other than actual market value.

(2) *Percent of assets.* A savings association's outstanding forward commitments to purchase securities plus short put options entered into pursuant to § 563.175 of this part may not exceed an amount equal to 5 percent of its assets if regulatory capital is 3 percent or less of assets, 10 percent of its assets if regulatory capital is over 3 percent but less than 5 percent of assets, or 15 percent of its assets if regulatory capital is 5 percent or more of assets.

(d) *Disposal before settlement.* All profit or loss related to disposal or modification of a forward commitment before settlement shall be recognized on the savings association's books at the time of disposal or modification.

(e) *Recordkeeping requirements.* A savings association engaging in forward commitments shall establish and maintain the following:

(1) A current register of all outstanding forward commitments, including the type (firm or standby), commitment date, amount, rate, price to be paid at settlement, market price at date of commitment, settlement date, commitment fees received, date and manner of disposal, sales price and market value at disposal if disposition is made on or prior to settlement date other than through funding, and seller's identity and confirmation; and

(2) Documentation of the savings association's ability to fund all outstanding forward commitments when due.

(f) *Commitment fees received.* A fee received for a forward commitment shall be recorded according to generally accepted accounting principles for loan commitment fees. If the commitment period is 30 days or less, a fee shall be deferred over at least ten years.

§ 563.174 Futures transactions.

(a) *Definitions.* As used in this section, the following definitions apply unless the context otherwise requires:

(1) *Forward commitment.* The term "forward commitment" means a written commitment to make, purchase or issue mortgage loans or mortgage-related securities at a price and on or before a date specified in the commitment.

(2) *Financial futures transaction.* The term "financial futures transaction" means the purchase or sale of a financial futures contract.

(3) *Long position.* The term "long position" means the purchase of a financial futures contract to take delivery of a financial instrument.

(4) *Mortgage-related securities.* The term "mortgage-related securities" means securities based on and backed by mortgages, including mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMAs"), Mortgage Participation Certificates of the Federal Home Loan Mortgage Corporation, and similar obligations issued by the savings association or in which the savings association is authorized to invest.

(5) *Offset.* The term "offset" means to cancel an obligation to make or take delivery of securities under a financial instrument under a financial futures contract. A futures contract to purchase a financial instrument is offset by a futures contract to sell a financial instrument of the same type for the same delivery month. A futures contract to sell a financial instrument is offset by a futures contract to purchase a financial instrument of the same type for the same delivery month.

(6) *Short position.* The term "short position" means the holding of a financial futures contract to make delivery of a financial instrument.

(b) *Permitted transactions.* To the extent that it has legal power to do so, a savings association may engage in interest-rate futures transactions to reduce its net interest-rate risk exposure as provided in this paragraph (b). For purposes of this section, net interest-rate risk exposure is the volatility in a savings association's earnings that can arise from the mismatching of the effective maturities of assets and liabilities. A savings association may enter into short positions that are appropriate for reducing its net interest-rate risk exposure. A savings association may enter into long positions, other than those that offset short positions, only under the following conditions:

(1) The futures position must be matched against a firm forward commitment to sell mortgages not yet originated or to issue mortgage-related securities to be based on mortgages not yet originated. For purposes of this paragraph (b), a firm forward commitment is a written commitment obligating the seller to make delivery, and the buyer to take delivery, of mortgage loans not yet originated or mortgage-related securities to be based on mortgages not yet originated, at a price and on or before a date specified in the commitment; and

(2) The futures position may be entered into and maintained only to the extent that the savings association's firm forward commitments exceed 10 percent of long-term assets with fixed interest rates. For purposes of this section, long-term assets are those having remaining terms to maturity in excess of five years.

Until August 3, 1981, savings associations may continue to engage in interest-rate futures transactions as authorized immediately prior to July 10, 1981. Savings associations with interest-rate futures positions entered into before August 3, 1981, that are not permitted under this paragraph (b), will be permitted to continue to hold those futures contracts: *Provided,* That the interest-rate futures transactions were authorized when entered into and the contracts are not renewed.

(c) *Authorized contracts.* A savings association may engage in interest-rate futures transactions using any interest-rate futures contracts designated by the Commodity Futures Trading Commission and based upon a financial instrument in which the savings association has authority to invest in or to issue.

(d) *Board of directors' authorization.* Prior to engaging in interest-rate futures transactions, a savings association's board of directors must authorize such activity. In authorizing futures trading, the board of directors shall consider any plan to engage in financial futures transactions, shall endorse specific written policies, and shall require the establishment of internal control procedures. Policy objectives must be specific enough to outline permissible contract strategies, taking into account price and yield correlations between assets or liabilities and the financial futures contracts with which they are matched; the relationship of the strategies to the savings association's operations; and how such strategies reduce the savings association's net interest-rate risk exposure. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to futures transactions, identify personnel authorized to engage in futures transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding contract positions, and the unrealized gains or losses on those positions at each regular meeting of the board.

(e) *Notification.* A savings association engaging in financial futures transactions shall notify its District Director that it is engaging in such transactions. The savings association shall report its gross outstanding long and short financial futures positions on the Office Monthly Report.

(f) *Recordkeeping requirements.* A savings association engaging in financial futures transactions shall maintain records of such transactions sufficient to document how the transactions reduce the net interest-rate risk exposure of the savings association in accordance with the following requirements:

(1) *Contract register.* The savings association shall maintain a contract register adequate to identify and control all financial futures contracts and including, at a minimum, the type and amount of each contract, the maturity date of each contract, the cost of each contract, the dollar amount and description of the asset or liability with which the futures contract is matched, and the date and manner in which a contract is closed out. Such register shall be prepared in a manner sufficient to indicate at any time the savings association's total outstanding long and short financial futures positions.

(2) *Other documentation.* The savings association shall maintain, as part of the documentation of its financial futures strategy, a schedule of the assets and the liabilities for which net interest-rate risk exposure is being reduced and the purpose of each contract entered into.

(3) *Maintenance of records.* The records designated in this paragraph (f) shall be maintained for all futures transactions closed-out during the preceding two years.

§ 563.175 Financial options transactions.

(a) *Definitions.* As used in this section, the following definitions apply unless the context otherwise requires:

(1) *Call.* The term "call" means an option which gives the holder the right to purchase a financial instrument at a price and on or before the expiration date specified in the option contract.

(2) *Deliverable instrument.* The term "deliverable instrument" means a financial instrument whose terms satisfy the requirements for fulfilling delivery obligations of an option.

(3) *Effective exercise price.* The term "effective exercise price" means the yield equivalent price of an instrument whose coupon rate differs from the standard instrument specified in the option.

(4) *Financial options contract.* The term "financial options contract" means an agreement (other than an optional delivery forward commitment contract to purchase and sell mortgages or mortgage-backed securities when used as part of the mortgage loan origination process) to make or take delivery of a financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by—

(i) A board of trade designated as a contract market for the trading of option contracts by the Commodity Futures Trading Commission ("CFTC") or a national securities exchange registered with the Securities Exchange Commission (SEC); or

(ii) The savings association and a "permissible counterparty," as defined in paragraph (a)(13) of this section, that are counterparties in an over-the-counter option transaction (other than an over-the-counter commodity option transaction subject to the jurisdiction of the CFTC that is not otherwise authorized under the Commodity Exchange Act and the regulations thereunder).

(5) *Financial options transaction.* The term "financial options transaction" means the purchase or sale of a financial options contract.

(6) *Immediate exercise value.* The term "immediate exercise value" means the market value gained by exercising an option with the lowest cost deliverable instrument at its effective exercise price compared to purchasing (or selling) an identical instrument with the same coupon rate in the cash market.

(7) *Long position.* The term "long position" means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(8) *Option commitment fee.* The term "option commitment fee" means the option premium minus the immediate exercise value of the option.

(9) *Option premium.* The term "option premium" means the price paid or received for establishing an option position.

(10) *Put.* The term "put" means an option which gives the holder the right to sell a financial instrument at a price and on or before the expiration date specified in the financial options contract.

(11) *Short position.* The term "short position" means a commitment through a financial options contract to stand ready during the term of the contract to make or take delivery of a financial instrument.

(12) *Primary dealer in government securities.* The term "primary dealer in government securities" means any member of the Association of Primary Dealers in United States Government Securities and any parent, subsidiary, or affiliated entity of such primary dealer: *Provided,* that the member guarantees (to the satisfaction of the Office) the over-the-counter financial options transactions between its parent, subsidiary, or affiliated entity with a savings association, and *Provided further,* that the parent, subsidiary, or affiliated entity is substantially engaged in similar activities.

(13) *Permissible counterparty.* The term "permissible counterparty" means any entity that is:

(i) A primary dealer as defined in paragraph (a)(12) of this section;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and that is in compliance with applicable regulatory capital requirements;

(iii) A savings association that is subject to the regulation and supervision of the Office and is in compliance with applicable regulatory capital requirements;

(iv) A broker or dealer registered with the Securities and Exchange Commission ("SEC") and subject to regulation and supervision by a Registered Securities Association (registered pursuant to section 15A of the Securities and Exchange Act of 1934 ("Exchange Act")) or a National Securities Exchange (registered pursuant

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to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(v) A government securities broker or dealer registered with the SEC that is subject to examination and supervision by a Registered Securities Association (registered pursuant to section 15A of the Exchange Act) or National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(vi) A futures commission merchant registered with the CFTC and that is in compliance with applicable capital requirements;

(vii) The Federal Home Loan Banks;

(viii) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(ix) Any other entity that the Office, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with a savings association would not entail substantial credit risks for the association. The Office delegates the authority to consider and approve such applications to the Senior Deputy Director for Supervision (Operations), with the concurrence of the Chief Counsel, or their respective designees.

(b) *Permitted transactions.* To the extent that it has legal power to do so, a savings association may engage in financial options transactions as provided in this paragraph (b).

(1) *Long positions.* A savings association may enter into long positions without numerical limit.

(2) *Short positions.* A savings association may enter into short call positions without numerical limit. A savings association may enter into short put options to the extent that the aggregate amount of its short put options and forward commitments to purchase securities does not exceed the limitations set forth in § 563.173(c)(2) of this part.

(c) *Authorized contracts.* A savings association may engage in financial options transactions using any financial options contracts either—

(1) Designated by the CFTC or approved by the SEC; or

(2) Entered into with a "permissible counterparty" (as defined in paragraph (a)(13) of this section) and based upon a financial instrument that the savings association has authority to invest in or to issue.

(d) *Board of directors' authorization.* Prior to engaging in financial options transactions, a savings association's board of directors must authorize such activity. In authorizing options, the board of directors shall consider any plan to engage in writing or purchasing financial options contracts, shall endorse specific written policies, and shall require the establishment of internal control procedures. For options positions that will be matched with cash or forward market positions, policy objectives must be specific enough to outline permissible options contract strategies, taking into account price and yield correlations between assets or liabilities and the financial options contracts; the relationship of the strategies to the savings association's operations; the rationale for the ratio of the value of options positions to the value of the matched cash market positions; and how the options strategy reduces the savings association's interest-rate risk exposure. For unmatched option positions, policy objectives must specify the relationship of the strategy to the savings association's operations. Prudent business judgment shall be exercised by participating savings associations engaging in financial options transactions in order to maintain a safe and sound financial position. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to financial options transactions, identify personnel authorized to engage in financial options transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding options contract positions, and the unrealized gains or losses on those positions at each regular meeting of the board.

(e) *Notification, reporting, and approval.* (1) A savings association shall notify the District Director of the District in which its principal office is located immediately following authorization of its board of directors to engage in financial options transactions. The savings association shall report its outstanding positions together with the total unrealized gain or loss from such positions to the Office.

(2) A savings association shall not engage in over-the-counter financial option transactions with any permissible counterparty unless such counterparty agrees to notify the District Director of the District in which the principal office of the savings association is located immediately following the entering into such transaction. A savings association shall not continue to engage in over-the-counter financial option transactions with any permissible counterparty that has failed to so notify the appropriate District Director with respect to previous over-the-counter financial option transactions with that savings association. Notwithstanding the foregoing, no savings association shall engage in a long over-the-counter financial option transaction with a specific permissible counterparty, without obtaining the prior approval of its District Director, whenever the aggregate exercise value of all long over-the-counter financial option positions with the counterparty exceeds the limitations contained in § 563.93(b)(1) of this part. A District Director may approve any financial option transaction whenever it determines that such transaction does not subject the SAIF to undue risk. In making such determinations, the District Director shall consider:

(i) The creditworthiness of the specific counterparty,

(ii) The savings association's experience with such counterparty and with transacting in financial option and futures contracts generally,

(iii) The nature of the subject contracts (e.g., matched or unmatched), and

(iv) Any other circumstances deemed relevant by the District Director. An application to enter into a financial option transaction under this paragraph (e)(2) shall be deemed approved if the District Director does not deny such application within 10 calendar days from the date the application was filed.

(f) *Recordkeeping requirements.* A savings association engaging in financial options transactions shall maintain records of such transactions in accordance with the following requirements:

(1) *Contract register.* The savings association shall maintain a contract register adequate to identify and control all financial options contracts and sufficient to indicate at any time the amounts of financial options contracts required to be reported on its monthly report. At a minimum, the register shall list the type, amount, expiration date and the cost of or income from each contract.

(2) *Other documentation.* The savings association shall maintain as part of the documentation of its financial options strategy a schedule of any cash market or forward commitment position with which the option is matched and the purpose of each contract.

(3) *Maintenance of records.* The records designated in this paragraph (f) shall be maintained for all financial options closed out during the preceding two years.

(g) *Accounting*—

(1) *Purchase or sale.* Upon initial purchase or sale of a financial options contract, a memorandum entry of the information specified in paragraph (f)(1) of this section shall be made and appropriate margin accounts shall be established.

(2) *Option commitment fee.* (i) The option commitment fee paid for a long position or received from the sale of a short put option shall be amortized to income or expense over the term of the option, except as provided in paragraph (g)(3)(ii) of this section.

(ii) The option commitment fee received from the sale of a matched short call option shall be deferred until the option position is terminated. The option commitment fee received from the sale of an unmatched short call option shall be amortized to income over the term of the option.

(3) *Options contracts.* (i) Gains or losses on options contracts that are matched with assets or liabilities carried at the lower of cost or market value or carried at market value shall be considered in determining the market value of the asset or liability.

(ii) Options positions that are matched with assets or liabilities carried at cost or to be carried at cost shall be accounted for as follows:

(A) If a commitment fee will be or has been received with respect to the matched asset, the option commitment fee shall be treated as an adjustment of such fee. The adjusted commitment fee shall then be treated as a fee paid or received in connection with the matched asset;

(B) If a commitment fee has not been received with respect to a matched asset, the option commitment fee (except if received for the sale of a short call option) shall be amortized to income or expense over the commitment period by the straight-line method;

(C) Any resulting gain or loss from an option position (except from a short call option) shall be treated as a discount or premium on the matched asset or liability;

(D) Any resulting gain or loss from a short call option position shall be recognized as income or expense upon termination of the option position;

(E) In the event that an option position is not matched with a cash-market or forward-commitment position or if the cash-market or forward-commitment position with which an option is matched is sold or will not occur, the option shall be marked to market.

(iii) The immediate exercise value of short puts and other unmatched option positions shall be carried at their current market value.

§ 563.176 Interest-rate-risk-management procedures.

Savings associations shall take the following actions:

(a) The board of directors or a committee thereof shall review the savings association's interest-rate-risk exposure and devise a policy for the savings association's management of that risk.

(b) To assist in this review and formulation of policy, by October 31, 1984, the board of directors shall obtain an initial report from the management of the savings association containing at least the following information:

(1) Analyses of the difference between the dollar value of assets and liabilities with the same remaining term to repricing, or "gap" analyses, together with assumptions used to adjust contractual maturities to anticipated maturities; and

(2) Analyses of the impact of differing market-interest-rate scenarios on earnings, net asset values, and regulatory capital.

(c) The board of directors shall formerly adopt a policy for the management of interest-rate risk. The management of the savings association shall establish guidelines and procedures to ensure that the board's policy is successfully implemented.

(d) The management of the savings association shall periodically report to the board of directors regarding implementation of the savings association's policy for interest-rate-risk management and shall make that information available upon request to the Office.

(e) The savings association's board of directors shall review the results of operations at least quarterly and shall make such adjustments as it considers necessary and appropriate to the policy for interest-rate-risk management, including adjustments to the authorized acceptable level of interest-rate risk.

(f) See also § 571.3 of this subchapter, containing the Office's statement of policy on interest-rate-risk management.

§ 563.177 Procedures for monitoring Bank Secrecy Act compliance.

(a) *Purpose.* The purpose of this regulation is to require savings associations (as defined by § 561.43 of this subchapter) to establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of Subchapter II of Chapter 53 of Title 31, United States Code, and the implementing regulations promulgated thereunder by the U.S. Department of Treasury, 31 CFR Part 103.

(b) *Compliance procedure.* On or before April 27, 1987, each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in Subchapter II of Chapter 53 of Title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury, 31 CFR Part 103. The compliance program shall be reduced to writing, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by a savings association's in-house personnel or by an outside party;

(3) Designate individual(s) responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 3068–0530)

Subpart G—Reporting and Bonding

§ 563.180 Criminal referrals and other reports or statements.

(a) *Periodic reports.* Each savings association and service corporation thereof shall make such periodic or other reports of its affairs in such manner and on such forms as the Office may prescribe. The Office may provide that reports filed by savings associations or service corporations to meet the requirements of other regulations also satisfy requirements imposed under this section.

(b) *False or misleading statements or omissions.* No savings association or director, officer, agent, employee, affiliated person, or other person participating in the conduct of the affairs of such association nor any person filing or seeking approval of any application shall knowingly:

(1) Make any written or oral statement to the Office or to an agent, representative or employee of the Office that is false or misleading with respect to any material fact or omits to state a

material fact concerning any matter within the jurisdiction of the Office; or

(2) Make any such statement or omission to a person or organization auditing a savings association or otherwise preparing or reviewing its financial statements concerning the accounts, assets, management condition, ownership, safety, or soundness, or other affairs of the association.

(c) *Notifications of loss and reports of increase in deductible amount of bond.* A savings association maintaining bond coverage as required by § 563.190 of this part shall promptly notify its bond company and file a proof of loss under the procedures provided by its bond, concerning any covered losses greater than twice the deductible amount. Whenever a deductible amount specified in a bond is increased above the permissible deductible amount specified in the table in § 563.190(b) of this part, the affected savings association or service corporation shall report promptly the facts concerning such increase in writing to the District Director for the District where the association's principal office is located.

(d) *Reports of crimes, suspected crimes, and unexplained losses*—(1) *Purpose and scope.* Savings associations and service corporations are required to promptly notify the appropriate law enforcement authorities and the Office after discovery of known or suspected criminal acts:

(i) If those acts involve affiliated persons (as defined in § 561.5 of this subchapter);

(ii) If those acts involve actual or anticipated losses of more than $1,000 and the association has a known factual basis for identifying a suspect or group of suspects;

(iii) If those acts result in a loss of $5,000 or more, regardless of whether a suspect is identified; or

(iv) If money laundering, engaging in monetary transactions known to have been derived from unlawful activities, or structuring a transaction to evade the reporting requirements of the Bank Secrecy Act (also known as the Currency and Foreign Transactions Act) is known or suspected.

This paragraph (d)(1) applies to known or suspected crimes involving savings association and service corporations committed either by their employees or others and to crimes or suspected crimes against another financial institution believed to be committed by a person associated with the reporting savings association or service corporation. As used in this paragraph (d)(1) the phrase "suspected crimes" refers to all matters, including unexplained losses, for which there is a known factual basis for a belief that a crime has been or may have been committed. In the case of a crime or suspected crime against a service corporation that is either wholly or partly owned by a savings association, either the service corporation or the savings association may make the report.

(2) *Filing of reports.* Except as permitted under paragraph (d)(3) of this section and other than robberies, burglaries and non-employee larcenies for which a record must be kept under § 568.5 of this subchapter, a savings association or a service corporation shall notify the appropriate law enforcement authorities and the Office by filing OTS Form 366 within 14 business days after discovery of any crime, suspected crime, or unexplained loss suffered by the savings association or service corporation, including:

(i) Embezzlement, non-employee larceny, check-kiting operation, fraud or attempted fraud, unexplained loss, or other known or suspected misapplication of funds or other things of value belonging to a savings association or entrusted to its care;

(ii) Bank bribery, the corrupt offering, solicitation, or acceptance of things of value in connection with any transaction or business of a financial institution;

(iii) False statements or reports or overvaluation of land, property or security, or omission to state or attempt to conceal information for the purpose of influencing the actions of a savings association or the Office; or

(iv) Other violations of statutes, as described in instructions to OTS Form 366.

(3) *Oral reports.* Required reports may be made orally in emergency cases, such as when it is likely that evidence or witnesses will become unavailable before a written report can be made; or where other circumstances dictate an immediate referral. In such cases, the report shall be documented by later completion and filing of the prescribed form(s), if required under paragraph (d)(2) of this section.

(4) *Notification of the Board of Directors.* The chief executive officer of the savings association or his designee shall notify the board of directors concerning any report filed pursuant to this paragraph (d)(4) by the association or a service corporation in which it has an ownership interest not later than its next regularly scheduled meeting following the filing of the report. If the chief executive officer is suspected of being involved in the violation, the next ranking officer shall notify the association's board.

(5) *Maintenance of records.* Reports made under this section and related records of all crimes or suspected crimes shall be maintained at the savings association's home office for ten years.

§ 563.181 Reports of change in control of mutual savings associations.

(a) *Reports of change in control*—(1) *When reports are required.* Reports are required under this paragraph (a) whenever any change occurs in the control of savings association and no report is required under any other paragraph of this section. As used in this section, the term "control" means power, directly or indirectly, to direct or cause the direction of the management or policies of the savings association, and the term "savings association" means a mutual savings association. Reports shall be made to the Office by the president or other chief executive officer of the savings association involved within 15 days after he or she obtains knowledge of such change. If there is any doubt as to whether a change in control has occurred, such doubt shall be resolved in favor of reporting to the Office.

(2) *Contents of reports.* Reports of change in the control of a savings association, as required under this paragraph (a), shall contain the following information to the extent that such information is known by the person making the report:

(i) The name or names of the person or persons who acquired such control;

(ii) The basis of such control; and

(iii) The date and a description of the transaction or transactions by which such control was acquired.

(b) *Reports of changes in voting stock or voting rights*—(1) *When reports are required.* (i) Reports are required under this paragraph (b) whenever a change occurs in the outstanding voting stock or voting rights of a savings association resulting in control or a change in the control of such savings association. Reports shall be made to the Office by the president or other chief executive officer of the savings association involved within 15 days after he or she obtains knowledge of such change. If there is any doubt as to whether such a change has resulted in control or a change in control, such doubt shall be resolved in favor of reporting to the Office.

(ii) Without any limitation on the foregoing, a report is required under this paragraph (b) whenever any person, partnership, corporation, trust or group of associated persons acquires, receives, or becomes the holder of:

(A) Ten percent or more of the outstanding shares of any class of the voting stock of the savings association or of the voting rights thereto;

(B) Ten percent or more of the outstanding voting rights of the savings association; or

(C) Any appointment, designation or right of substitution with respect to 10 percent or more of the outstanding voting rights of the savings association.

(2) *Contents of reports*—(i) *General.* The reports required under this paragraph (b) shall contain the items of information set forth below to the extent that such information is known by the person making the report. In addition, such reports shall contain such other information as may be available to inform the Office of the effect of the transaction upon control of the savings association.

(ii) *Reports of changes in voting stock or voting rights with respect to such stock.* Reports of changes in ownership of voting stock or holdings of voting rights with respect to such stock, resulting in control or a change in the control of a savings association, shall contain the following information:

(A) The number of shares of each class of voting stock and the number of voting rights with respect thereto involved in the transaction;

(B) The names of the purchasers (or transferees) of such stock or such voting rights;

(C) The names of the sellers (or transferors) of such stock or voting rights;

(D) The amount of consideration received by the sellers (or transferors) in connection with the transaction;

(E) The names of the beneficial owners if the shares or voting rights are of record in another name or other names;

(F) The total number of shares of each class of voting stock owned by the sellers (or transferors), the purchasers (or transferees), and the beneficial owners both immediately before and after the transaction;

(G) The total number of shares of each class of voting stock outstanding both immediately before and after the transaction;

(H) The total number of voting rights (with respect to voting stock) held by the sellers (or transferors), the purchasers (or transferees), and the beneficial owners both immediately before and after the transaction;

(I) The total number of such voting rights outstanding both immediately before and after the transaction; and

(J) In the case of any appointment, designation, or substitution of a holder or holders of such voting rights, the name or names of the holder or holders both immediately before and after the transaction.

(iii) *Reports of changes in voting rights with respect to withdrawable accounts.* Reports of changes in holding of voting rights with respect to withdrawable accounts, resulting in control or a change in the control of a savings association, shall contain the following information:

(A) In the case of a transfer or transfers of such voting rights from one holder or group of holders to another holder or group of holders;

(*1*) The date of each such transfer; and

(*2*) The name or names of the acquiring holder or holders and of the transferor or transferors (unless such transferors are the original owners of the accounts to which such voting rights attach);

(B) In the case of any appointment, designation, or substitution of a holder or holders of voting rights, with respect to a holder or group of holders already having control:

(*1*) The date of such appointment, designation or substitution; and

(*2*) The names of each of the holders both immediately before and after such change; and

(C) In the case of any other acquisition of or change in control (without regard to the number of voting rights involved):

(*1*) The name or names of the person or persons acquiring such control;

(*2*) The basis of such control; and

(*3*) The date and a description of such acquisition or change.

(c) *Reports of solicitation of voting rights*—(1) *When reports are required.* Reports are required under this paragraph (c) whenever any person, partnership, corporation, trust, or group of associated persons:

(i) Solicits voting rights with respect to 10 percent or more of the outstanding shares of any class of voting stock of a savings association.

(ii) Solicits 10 percent or more of the outstanding voting rights in a savings association; or

(iii) Solicits any voting rights in a savings association when such solicitor already holds either:

(A) Voting rights with respect to 10 percent or more of the outstanding shares of any class of the voting stock of such savings association; or

(B) Ten percent or more of the outstanding voting rights in such savings association.

(2) *Content of reports*—(i) *General.* The reports required under this paragraph (c) shall contain the items of information set forth below to the extent that such information is known by the person making the report. In addition, such reports shall contain such other information as may be available to inform the Office of the possible impact of the solicitation upon control of the savings association.

(ii) *Voting rights with respect to stock.* Reports of solicitation of voting rights with respect to any class of voting stock of a savings association shall contain the following information:

(A) The name or names of the person or persons making the solicitation;

(B) The extent of such solicitation (including relevant dates) and the class or classes of such voting stock with respect to which the solicitation of voting rights is made;

(C) The number of shares of such class or classes of voting stock which the solicitor already owns and the total number of voting rights with respect thereto which he or she holds at the time of such solicitation; and

(D) The total number of shares of such class or classes of voting stock outstanding at the time of such solicitation.

(iii) *Voting rights with respect to withdrawable accounts.* Reports of solicitation of voting rights with respect to withdrawable accounts of a savings association shall contain the following information:

(A) The name or names of the person or persons making the solicitation;

(B) The extent of such solicitation (including relevant dates); and

(C) The approximate percentage of the outstanding voting rights which the solicitor already holds at the time of such solicitation.

(d) *Definitions.* As used in this section—

(1) The term *stock* means rights, interest, or powers with respect to a mutual savings association.

(2) The term *voting rights* means stock which carries voting rights.

(3) The term *voting rights* means proxies, consents, or authorizations which give the holder or holders the right to vote with respect to shares of voting stock, or with respect to withdrawable accounts, in a savings association.

§ 563.183 Reports of change in chief executive officer or director; other reports; form and filing of such reports.

(a) *Definitions used in this section*—(1) *Control.* The term "control" means power, directly or indirectly, to direct the management or policies of a savings association or to vote 25 percent or more of any class of the voting stock or voting rights in a savings association.

(2) *Savings association.* The term "savings association" means a savings association, whether in mutual or stock form, and any savings and loan holding company as defined in section 10 of the Home Owners' Loan Act.

(3) *Stock.* The term "stock" means any permanent or guaranty stock or other nonwithdrawable account, share, or equity security in a savings association.

(4) *Voting stock.* The term "voting stock" means any stock which carries voting rights.

(5) *Voting rights.* The term "voting rights" means any proxies, consents, or authorizations which give the holder(s) the right to vote with respect to shares of voting stock or withdrawable accounts in a savings association.

(b) *Reports of change in chief executive officer or director.* Whenever a change resulting in control or a change in control of a savings association has occurred concurrently with or within 60 days after or 12 months before a change or replacement of the chief executive officer or any director of the savings association, a report shall be filed containing the following:

(1) The name of the new chief executive officer or director;

(2) The effective date of the person's appointment or election; and

(3) A statement of the person's past and current business and professional affiliations.

(c) *Form and filing of reports.* (1) Unless otherwise specified by the Office, a report required by § 563.181 of this part or this section § 563.183 shall be by letter signed by the officer making the report with the original and two copies to the District Director or his or her designee.

(2) Such a report shall be made by the president or other chief executive officer of the savings association.

(3) Such a report shall be filed within 15 days after the person making it learns of the change in control or the activity which necessitates filing the report, except that a report required under paragraph (b) of this section shall be filed within 15 days after the effective date of the change or replacement of the chief executive officer or director, or within 15 days after the officer making the report obtains knowledge of the change or replacement, whichever occurs later.

(d) *Other reports.* The Office may also require savings associations and individuals or other persons who have or have had any connection with the management of any savings association, including any present or former director, officer, controlling person, or agent of a savings association, to provide such periodic or other reports as it may determine to be necessary or appropriate for protection of investors or the Office.

§ 563.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain bond coverage with a bonding company acceptable to the Office, using the standards set out in § 571.14 of this subchapter, in the form known as Standard Form No. 22 or its equivalent. The bond shall cover each director, officer, employee and agent who has control over or access to cash or securities of such savings association. Such coverage shall be maintained in the minimum amount set forth below, computed on a base consisting of the total assets of the savings association plus the unpaid balance of loans which it has contracted to service for others. The savings association's board of directors must specifically approve any riders to Standard Form 22 and the approval of any rider must be set forth in the minutes of the meeting at which the board of directors approves that rider.

Base	Minimum bond
Not over $300,000	$15,000 plus $7,500 for each $100,000 or fraction thereof over $100,000.
$300,001 to $1,000,000	$45,000 plus $15,000 for each $100,000 or fraction thereof over $400,000.
$1,000,001 to $10,000,000.	$150,000 plus $30,000 for each $1,000,000 or fraction thereof over $2,000,000.
$10,000,001 to $230,000,000.	$450,000 plus $60,000 for each $5,000,000 or fraction thereof over $15,000,000.
$30,000,001 to $60,000,000.	$705,000 plus $75,000 for each $10,000,000 or fraction thereof over $40,000,000.
$60,000,001 to $100,000,000.	$945,000 plus $90,000 for each $15,000,000 or fraction thereof over $70,000,000.
$100,000,001 and over	$1,230,000 plus $105,000 for each $25,000,000 or fraction thereof over $125,000,000.

(b) No savings association shall be required to maintain such bond coverage in an amount greater than $3,000,000. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the bonding company. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond). A deductible shall not exceed an amount determined according to the following schedule:

Base	Permissible deductible
$75,000,000 and under	$50,000.
$75,000,001 to $250,000,000.	$25,000 plus .0005 of base over $25 million.
Over $250,000,000	$137,500 plus .0001 of base over $250 million.

(c) If the accounting records of a savings association are maintained and serviced by a data processing organization, that organization, while performing such data processing services, must be covered as an employee under the savings association's bond.

(d) A service corporation of a savings association shall maintain such bond coverages as may be appropriate considering the nature of its activities and the practice of other corporations engaged in similar activities.

§ 563.191 Bonds for agents.

In lieu of the bond provided in § 563.190 of this part in the case of agents appointed by a savings association, a fidelity bond may be provided in an amount at least twice the average monthly collections of such agents, provided such agents shall be required to make settlement with the savings association at least monthly, and provided such bond is approved by the board of directors of the savings association. No bond need be obtained for any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.

§ 563.192 Safe deposit business.

The bond or bonds required by this section shall protect the savings association with respect to the operation of any safe deposit business transacted by such savings association. Each such savings association shall either:

(a) Validly limit the replacement or loss value of the contents of each box to an amount not more than $1,000 or

(b) Carry additional insurance of a type protecting the savings association against any and all legal liabilities arising out of the rental of safe deposit boxes in minimum amounts as follows: $25,000 for any number of boxes up to 100, plus $1,000 for each additional 20 boxes, or fraction thereof, available for rent, up to a maximum coverage of $100,000; and shall not contractually

incur liabilities beyond the general liabilities incident to the conduct of such business.

Subpart H—Accounting

§ 563.231 Premiums and discounts with respect to loans.

(a) *Purchase at a premium.* A premium paid by a savings association in connection with the acquisition of a loan shall be accounted for in accordance with generally accepted accounting principles.

(b) *Purchase at a discount.* If a savings association purchases a loan at discount, the discount shall be differed by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles.

§ 563.232 [Reserved]

§ 563.233 Accounting principles and procedures.

For purposes of examination by and reports to the Office and of compliance with this subchapter, each savings association and service corporation shall:

(a) Employ such specific principles or procedures on particular accounting or reporting matters as the Office may require by regulation or otherwise; and

(b) Prepare and maintain such books and records as will support its financial statements and reports to the Office and readily permit reconciliation of such statements and reports with its books and records; and

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the Office shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such financial statements and reports, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, may be carried at historical cost in such statements and reports. All such financial statements and reports shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 567.1(a) of this subchapter, to regulatory capital, as defined in § 567.1 of this subchapter. Loan losses and gains deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management investment companies, as defined in § 566.1(g)(8) of this subchapter, accounted for at historical cost, may be reported on such financial statements and reports only for and until the last reporting period of 1993.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such Statements of Condition, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, may be carried at historical cost on such Statements of Condition. All such Statements of Condition shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 567.1(a) of this subchapter with regulatory capital, as defined in § 567.1 of this subchapter. Loan gains and losses deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, accounted for at historical cost, may be reported only for and until the last period of 1993. Each statement of condition shall include in bold type in the body of the statement the following language: "Federal Deposit Insurance Corporation" ("FDIC"), an agency of the U.S. government, insures all depositors up to $100,000 in accordance with the rules and the regulations of the FDIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language: "Regulatory capital is the basis by which the Office determines whether a savings association is insolvent and whether a savings association is meeting its regulatory capital requirement."

(e)(1) A savings association seeking to delay its compliance with the uniform accounting standards set forth in this § 563.233 or § 567.1 of this subchapter shall file a plan with its District Director.

(2) The plan shall set forth the following:

(i) The specific components of the uniform accounting standards with which the savings association is unable to comply ("excepted components");

(ii) A timetable setting forth the date, in no event later than December 31, 1993, by which the savings association proposes to comply with each excepted component; and

(iii) Any other information that the savings association believes is relevant to its determination that it is not feasible for the savings association to comply with each excepted component.

(3)(i) The District Director shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.

(ii) In reviewing a plan, the District Director shall consider all relevant information, including, but not limited to,

(A) The savings association's plan submitted pursuant to this section;

(B) Other information available to the District Director regarding the savings association;

(C) The ability of other savings associations in the region to comply with the uniform accounting standards; and

(D) The extent to which any relevant grandfathering or phase-in of the uniform accounting standards affects any excepted component in the savings association's plan.

(4) In the event that the District Director disapproves a plan for delayed compliance in whole or in part, the savings association may appeal the disapproval to the Office within thirty days of the disapproval. The Office shall act on such appeal in accordance with the guidelines set forth at § 571.12 of this subchapter. The Office, in reviewing the disapproval, shall take into consideration all relevant factors, including those listed in paragraph (e) of this section.

§ 563.234 Accounting for troubled debt restructuring.

(a) If a savings association engages in troubled debt restructuring with respect to any loan by the savings association and the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), the savings association shall account for the effects of the troubled debt restructuring and its investment in the original debt instrument (or other agreement that is subject to such restructuring) in the manner provided in those statements and in a manner consistent with the AICPA Industry Guide for Savings and Loan Associations. Guidelines for use by savings associations in accounting for troubled debt restructurings are set forth in § 571.18 of this subchapter.

(b) Savings associations shall report restructured loans in all monthly and quarterly reports to the Office.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

563b.1 Scope of part.
563b.2 Definitions.

Subpart A—Standard Conversions

563b.3 General principles for conversions.
563b.4 Notice of filing; public statements; confidentiality.
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563b.20 Scope of subpart.
563b.21 Voluntary supervisory conversions.
563b.22 Purpose of subpart.
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Subpart D—Guidelines for Modified Conversions

563b.34 Scope of subpart.
563b.35 Modified stock conversion.
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Subpart E—Forms

563b.100 Form AC—Application for Conversion.
563b.101 Form PS—Proxy Statements.
563b.102 Form OC—Offering Circulars.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3, 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w).

§ 563b.1 Scope of part.

(a) *General.* Except as the Office may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual savings associations to capital stock associations, and no mutual savings association shall convert to the capital stock form without the prior written consent of the Office. The Office may grant a waiver in writing from any requirement of this part for good cause shown.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part except as it relates to information not deemed material.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a written request for waiver of compliance with such provision by the Office. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders or other savings associations or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Acting in concert.* The term "acting in concert" shall be defined as provided in § 574.2(c).

(2) *Affiliate.* An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) *Amount.* The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(4) *Applicant.* An "applicant" is a savings association which has applied to convert pursuant to this part.

(5) *Associate.* The term "associate", when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that, for the purposes of § 563b.3 (c)(6), (c)(7), (c)(9), and (d)(4), it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8), it does not include any tax-qualified employee stock benefit plan, and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(6) *Association members.* The term "association members" refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant's meeting at which conversion will be voted upon.

(7) *BIF.* The term "BIF" means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(8) *Broker.* The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(9) *Capital stock.* The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(10) *Charter.* The term "charter" includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(11) *Control.* The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(12) *Dealer.* The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) *Director.* The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(14) *District Director.* The term "District Director" means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the district in which the converting savings association has its principal office.

(15) *Eligibility record date.* The term "eligibility record date" means the record date for determining eligible account holders of a converting association.

(16) *Eligible account holder.* The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with § 563b.3(e).

(17) *Employee.* The term "employee" does not include a director or officer.

(18) *Equity security.* The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(19) *FDIC.* The term "FDIC" means the Federal Deposit Insurance Corporation, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(20) *Market Maker.* The term "market maker" means a dealer who, with respect to a particular security:

(i) Regularly publishes *bona fide*, competitive bid and offer quotations in a recognized inter-dealer quotation system; or

(ii) Furnishes *bona fide* competitive bid and offer quotations on request; and

(iii) Is ready, willing and able to effect transactions in reasonable quantities at his or her quoted prices with other brokers or dealers.

(21) *Material.* The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(22) *Member.* The term "member" means any person qualifying as a member of a savings association pursuant to its charter or bylaws.

(23) *Offer.* The term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(24) *Office.* The term "Office" means the Office of Thrift Supervision.

(25) *Officer.* The term "officer" means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(26) *Person.* The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(27) *Proxy.* The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(28) *Purchase.* The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(29) *SAIF.* The term "SAIF" means the Savings Association Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(30) *Sale.* The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but such terms do not include an exchange of securities in connection with a merger or acquisition approved by the Office.

(31) *Savings account.* The term "savings account" has the same meaning as in part 561 of this subchapter and includes certificates of deposit.

(32) *Savings association.* The term "savings association" has the same meaning as in part 561 of this subchapter.

(33) *Security.* The term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(34) *Solicitation; solicit.* The terms "solicitation" and "solicit" refer to:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute, not execute, or revoke a proxy; or

(iii) The furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5(f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(35) *Subscription offering.* The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

(i) Eligible account holders as required by § 563b.3(c)(2);

(ii) Supplemental eligible account holders as required by § 563b.3(c)(4);

(iii) Members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5);

(iv) Directors, officers and employees, as permitted by § 563b.3(d)(2); and

(v) Eligible account holders, supplemental eligible account holders, and voting members as permitted by § 563b.3(d)(3).

(36) *Subsidiary.* A "subsidiary" of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(37) *Supplemental eligibility record date.* The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting association required by § 563b.3(c)(4). The date shall be the last day of the calendar quarter preceding the Office's approval of the application for conversion.

(38) *Supplemental eligible account holder.* The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record date.

(39) *Tax-qualified employee stock benefit plan.* A "tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust, meets the requirements to be "qualified" under section 401 of the Internal Revenue Code. A "non-tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan which is not so qualified.

(40) *Underwriter.* The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

(b) Terms defined in other parts of this subchapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

Subpart A—Standard Conversions

§ 563b.3 General principles for conversions.

(a) *Applicability of subpart.* The provisions of this subpart shall govern conversions undertaken pursuant to any other subpart of this part unless clearly inapplicable.

(b) *General requirements.* No application for conversion shall be approved by the Office if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with the provisions of this part;

(2) The conversion would cause the applicant to fail to meet any regulatory capital requirement of § 567.2 of this subchapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended; or

(4) The converted association would not have its accounts insured by the FDIC.

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting savings association shall issue and sell its capital stock at a total price equal to the estimated *pro forma* market value of such stock in the converted savings association, based on an independent valuation, as provided in § 563b.7.

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings association.

(i) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(2), shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation equal to 100 shares.

(ii) Any shares not allocated in accordance with paragraph (c)(2)(i) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(3) Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings association based on their increased deposits in the converting association in the one year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to paragraph (c)(2) of this section.

(4) Provide that, in plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the Office's approval, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of the converting association shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings association on the supplemental eligibility record date.

(i) Subscription rights received pursuant to this paragraph (c)(4) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to paragraphs (c)(2) and (c)(3) of this section.

(ii) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with paragraph (c)(2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c)(4) of this section.

(iii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(4), shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation (including the number of shares, if any, allocated in accordance with paragraph (c)(2) of this section) equal to 100 shares.

(iv) Any shares not allocated in accordance with paragraph (c)(4)(iii) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(5) Provide that association voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, or one-tenth of one percent of the total offering of shares.

(i) Subscription rights received pursuant to this paragraph (c)(5) shall be subordinated to all rights received by eligible account holders and supplemental account holders to purchase shares pursuant to paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(ii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(5), shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of conversion.

(6) Provide that any shares of the converting savings association not sold to persons with subscription rights shall be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering, subject to the applicant demonstrating to the Office the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

(ii) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares per order basis until all orders have been filled.

(iii) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will achieve the widest distribution of the stock.

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the counties in which the association has an office.

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total of shares which any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares, and shall be entitled to purchase this quantity regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

(8) Provide that the officers and directors of the converting association and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting association provided that the converting association has less than $50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if the converting association has more than $500 million in total assets. If the converting association has between $50 million and $500 million, in total assets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less $50 million divided by $45 million. For example, for a converting association with $275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of $275 million less $50 million, or $225 million, divided by $45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10(c), any shares owned prior to the merger conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director, or his or her associates, shall not purchase, without the prior written approval of the Office, the capital stock of the converted savings association except from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to:

(i) Negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted savings association; or

(ii) Purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

(10) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7 of this part; and specify the underwriting and/or other marketing arrangements to be made to ensure the sale of all shares not sold to persons with subscription rights.

(11) Establish a time period within which the conversion must be completed prior to termination. The time period shall be not more than 24 months from the date the association members approve the plan of conversion and shall not be extended by the converting savings association or the Office.

(12) Provide that each savings account holder of the converting savings association shall receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting savings association.

(13) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings association, in accordance with the provisions of paragraph (f) of this section. An association converting to a federally chartered stock savings and loan association or savings bank shall include in its charter the following section:

Liquidation account. Pursuant to the requirements of the Office's regulations (12 CFR Subchapter D) the association shall establish and maintain a liquidation account

for the benefit of its savings account holders as of _____ ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the association's eligible savers' inchoate interest in the liquidation account, to the extent it is still in existence: *Provided,* That an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

(14) Provide for an eligibility record date, which shall be not less than 90 days prior to the date of adoption of the plan by the converting savings association's board of directors.

(15) Provide that the holders of the capital stock of the converted savings association shall have exclusive voting rights, unless in the case of a State-chartered converted savings association State law requires savings account holders and/or borrowers of the converted savings association to have voting rights, in which case the charter of the converted savings association shall:

(i) Limit such voting rights to the minimum required by State law, and

(ii) Provide for the management of the converted savings association to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(16) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Office; and that the conversion may be terminated by such board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Office.

(17) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings association (by subscription or otherwise) or from an underwriter shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or officer.

(18) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted savings association's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to such restricted stock.

(19) Provide that the converting savings association shall:

(i) Promptly following the conversion register the securities issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such securities for a period of three years thereafter;

(ii) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(iii) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(20) Provide that the expenses incurred in the conversion shall be reasonable.

(21) Contain no provision which the Office shall determine to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.

(22) Provide that the converting savings association shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the association.

(23) Provide that a tax-qualified employee stock benefit plan has a priority to purchase conversion stock prior to eligible and supplemental accountholders and voting members who have subscription rights.

(24) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That the converting savings association may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to association members pursuant to § 563b.6(c) of this part of the proxy statement authorized for use by the Office. The subscription offering may be closed before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(2) That directors, officers and employees of the converting savings association shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and tax-qualified employee stock benefit plans provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to the following conditions:

(i) The total number of shares which may be purchased under this paragraph (d)(2) shall not exceed 25 percent of the total number of shares to be issued in the case of a converting savings association with total assets of less than $50 million or 15 percent in the case of a converting savings association with total assets of $500 million or more; in the case of a converting savings association with total assets of $50 million or more but less than $500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 20 percent in the case of a converting savings association with total assets of approximately $275 million); and

(ii) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

(3) That any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares, provided that orders for conversion stock exceeding five percent (5%) of the total offering of shares shall not exceed in the aggregate ten percent (10%) of the total offering of shares, except that tax-qualified employee stock benefit plans may purchase in the aggregate up to ten percent (10%) of the total offering and not be included in the order limit.

(5) That the converting savings association may require association members to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: *Provided,* That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to association members of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each association member who had been furnished with proxy soliciting materials, written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to an association member unless the association member returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(6) That the converting savings association may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) of this part to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting the receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: *Provided,* That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to the non-voting eligible account holders and supplemental eligible account holders of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each eligible account holder and supplemental account holder who had been furnished with a notice pursuant to paragraph (d)(11) of this section written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to a non-voting eligible account holder or supplemental eligible account holder unless the eligible account holder or supplemental eligible account holder returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(7) That any insignificant residue of shares of the converting savings association not sold in the subscription offering or in a public offering referred to in paragraph (c)(6) of this section may be sold in such other manner as provided in the plan with the Office's approval.

(8) That the number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares.

(9) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of up to 25 shares to the extent such shares are available (but the aggregate price for any minimum share purchase shall not exceed $500).

(10) That the converted savings association shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(11) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Office the feasibility of the method of exercising such rights and to such conditions as shall be provided in the plan of conversion. Such conditions shall include, but not be limited to, a condition requiring that orders for stock in the public offering or direct community offering shall first be filled, in the order of priority set forth in this section, by orders of persons exercising subscription rights.

(12) That the Office may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings association.

(e) *Determination of amount of qualifying deposit; predecessor and successor accounts.* (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings association as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings accounts with total deposit balances of less than $50 (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a

predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) *Liquidation account.* (1) Each converted savings association shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of regulatory capital of the converting savings association as of the latest practicable date prior to conversion. For the purposes of this paragraph, the savings association shall use the regulatory capital figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in paragraph (g)(2) of this section, the existence of the liquidation account shall not operate to restrict the use or application of any of the regulatory capital accounts of the converted savings association.

(2) The liquidation account shall be maintained by the converted savings association for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in such association. Each such eligible account holder and supplemental eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance ("subaccount").

(3) In the event of a complete liquidation of the converted savings association (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the association prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another SAIF-insured savings association is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving association. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the association not been converted as of the date of liquidation.

(4) The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates. Such initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of:

(i) The deposit balance in such savings account at the close of business on any other annual closing date subsequent to the eligibility record date or supplemental eligibility record date; or

(ii) The amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for such savings account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit balance.

In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. The converted association shall not be required to recompute the liquidation account and subaccount balances provided the converted association maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

(g) *Restrictions on repurchase of stock and payment of dividends.* Each savings association that converts pursuant to this part shall be subject to the following conditions:

(1) No converted savings association shall for a period of three years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either:

(i) A repurchase, on a *pro rata* basis pursuant to an offer approved by the Office and made to all shareholders of such association;

(ii) The repurchase of qualifying shares of a director; or

(iii) A purchase in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

(2) No converted savings association shall declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted savings association to be reduced below: (i) The amount required for the liquidation account; or (ii) The regulatory capital requirements contained in § 567.2 of this subchapter.

(3) Without the prior approval of the Office, no converted savings association shall, for a period of three years after the date of its conversion, declare or pay a cash dividend on, or repurchase any of, its capital stock in an amount in excess of one half of the greater of:

(i) The association's net income (as defined in § 563c.12 of this subchapter) for the current fiscal year; or

(ii) The average of the association's net income (as so defined) for the current fiscal year and not more than two of the immediately preceding fiscal years.

(4) *Preapproval of Certain Repurchases of Stock.* A converted savings association subject to paragraph (g)(1) of this section may repurchase its captial stock provided:

(i) The repurchases are part of an open-market stock repurchase program that does not involve greater than 5% of the association's outstanding capital stock during a six-month period;

(ii) The repurchases do not reduce the association's ratio of regulatory capital (as defined in 12 CFR 567.1) to total liabilities below 6%; and

(iii) The association provides to the District Director and to the Chief Counsel's Office, Corporate and Securities Division, no later than 10 days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken and the effect of such repurchases on its regulatory capital position, and the District Director does not disapprove the repurchase program based upon a determination that:

(A) The repurchase program would adversely affect the financial condition of the savings association; or

(B) The information submitted by the savings association is insufficient upon which to base a conclusion as to whether the association's financial condition would be adversely affected.

(h) *Manipulative and deceptive devices.* In the offer, sale or purchase of securities issued incident to its conversion, no savings association, or any director, officer, attorney agent or employee thereof, shall:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(i) *Acquisition of the securities of converting and converted savings associations*—(1) *Prohibited transfers.* Prior to the completion of a conversion, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.

(2) *Prohibition of offers and certain acquisitions.* Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting savings association issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings association issued in connection with the conversion in excess of the maximum purchase limitations established in the association's approved plan of conversion pursuant to paragraph (c)(7) or (d)(4) of this section.

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* (i) For a period of three years following the date of the completion of the conversion, no person shall directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of a savings association converted in accordance with the provisions of this Part 563b, without the prior written approval of the Office. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of a savings association converted in accordance with part 563b, without the prior written approval of the Office as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of a savings association where the person holds any combination of stock or revocable or irrevocable proxies of the association under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 574.4 (a) and (b) of this chapter. The original and one copy of all applications for approval of the Office under this paragraph should be filed with the Chief Counsel's Office, Corporate and Securities Division, and one copy of all such applications should be filed with the District Director.

(ii) A conversion shall be deemed completed on the date all of the converting association's conversion stock was sold.

(iii) An acquisition of shares shall be presumed to have been made if the acquiror entered into a binding written agreement for the transfer of shares. An offer shall be deemed made when communicated.

(4) *Exceptions.* (i) Paragraphs (i)(1) and (i)(2) of this section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

(A) Pertains only to securities to be purchased pursuant to paragraph (c)(6), (d)(7), or (d)(12); and

(B) Has the prior written approval of the Office.

(ii) Paragraphs (i)(2) and (i)(3) of this section shall not apply to any offer with a view toward public resale made exclusively to the association or to the underwriters or a selling group acting on its behalf.

(iii) Unless made applicable by the Office by prior advice in writing, the restriction contained in paragraph (i)(3) of this section shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the class of securities.

(iv) The restriction contained in paragraph (i)(3) of this section shall not apply to any offer to acquire or acquisition of beneficial ownership of more than ten percent of the common stock of a savings association by a corporation whose ownership is or will be substantially the same as the ownership of the savings association, provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this section shall not apply to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted association or holding company.

(5) *Criteria for approval.* The Office may deny an application involving an offer or acquisition of any security or proxies to vote securities of a converted association submitted under paragraph (i)(3) of this section if it finds that the proposed acquisition:

(i) Would frustrate the purposes of the provisions of this Part 563b;

(ii) Would be manipulative or deceptive;

(iii) Would subvert the fairness of the conversion;

(iv) Would be likely to result in injury to the association;

(v) Would not be consistent with economical home financing;

(vi) Would otherwise be violative of law or regulation; or

(vii) Would not contribute to the prudent deployment of the association's conversion proceeds.

(6) *Optional charter provisions.* The plan of conversion may provide for the charter of the converted savings association to include, for a specified period of not more than five years following the date of the completion of the conversion, any or all of the provisions of § 552.4(b)(8) of this chapter: *Provided,* that if the savings association is converting to a state-chartered stock association, it shall include in its application an opinion of counsel independent of the association that such charter provisions are

permissible under the law of the applicable state. At any annual or special meeting of its shareholders, a converted state-chartered savings association may adopt any charter provision regarding the acquisition by any person or persons of its equity securities that would be permitted to be adopted by a savings association chartered by the state in which the converted savings association is chartered, and a converted federally-chartered savings association may adopt any such charter provision permitted under § 552.4 of this chapter.

(7) *Definitions.* (i) The term *person* includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of securities of a savings association.

(ii) The term *offer* includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security, for value: *Provided,* That for the purpose of this § 563b.3(i), the term "offer" shall not include:

(A) Inquiries directed solely to the management of a savings association and not intended to be communicated to stockholders, designed to elicit an indication of management's receptivity to the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition and formula for determining price, or

(B) Nonbinding expressions of understanding or letters of intent with the management of a savings association regarding the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition, and formula for determining price.

(iii) The term *acquire* includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(iv) The term *security* includes non-transferable subscription rights issued pursuant to a plan of conversion as well as a *security* as defined in 15 U.S.C. 78c(2)(10).

(j) *Priority of regulations.* The provisions of this part shall supersede all inconsistent charter and bylaw provisions of federally-chartered savings associations converting to the stock form.

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) Information prior to approval of plan of conversion. (1) A savings association which is considering converting pursuant to this part and its directors, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the Office may require remedial measures including:

(i) A public statement by the association that its board of directors is currently considering converting pursuant to this part;

(ii) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings association's board of directors as to assure the equitability of the conversion;

(iii) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the Office; and

(iv) Any other actions the Office may deem appropriate and necessary to assure the fairness and equitability of the conversion.

(2) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(3) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings association shall:

(i) Notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings association is located and/or by mailing a letter to each of its members; and

(ii) Have copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. The savings association may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Office, but may be submitted for comment to the Chief Counsel's Office, Corporate and Securities Division. Copies of the definitive statement, letter and press release shall be filed with the Office as part of the application for conversion.

(4) The statement, letter and press release, unless otherwise authorized by the Office shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the savings association from a Federal (or State, as the case may be) mutual association to a Federal (or State, as the case may be) capital stock savings association;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the savings association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Office and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective and that members of the applicant will have an opportunity to file written comments including objections and materials supporting such objections to the Office;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Office or the approval of any appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(x) A brief statement as to the extent to which voting members will participate in the conversion;

(xi) A brief description of the proposed plan of conversion;

(xii) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xiii) A brief statement as to the extent to which directors, officers and employees will participate in the conversion;

(xiv) A statement that savings account holders will continue to hold accounts in the converted savings association identical as to dollar amount, rate of return and general terms, and that their accounts will continue to be insured by the FDIC;

(xv) A statement that the savings association will continue to be a member of the Federal Home Loan Bank System;

(xvi) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion;

(xvii) A statement that the normal business of the savings association in accepting savings and making loans will continue without interruption; that the converted savings association will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(xviii) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xix) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the savings association.

(5) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements or describe the benefits of conversion or the value of the capital stock of the savings association upon conversion. In replying to inquiries, the savings association should limit its answers to the matters listed in paragraph (a)(3) of this section.

(b) *Notice of filing.* (1) Upon determination that an application for conversion is properly executed and is not materially incomplete, the Office will advise the applicant, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the applicant shall prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

Notice of Filing of an Application for Conversion To Convert to a Stock Savings and Loan Association or a Stock Savings Bank

Notice is hereby given that, pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations, _____ (fill in name of applicant) has filed an application with the Office of Thrift Supervision ("Office") for approval to convert to the _____ [State-chartered or Federally-chartered) stock form of organization. Copies of the application have been delivered to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and to the District Director at _____ (Address, including zip code, of District Director).

Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within 10 business days after the date of this notice. Failure to make the written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the Chief Counsel, Corporate and Securities Division, and one copy should be sent to the District Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the District Director's office. A copy of the plan of conversion may also be inspected at each office of the applicant.

(2) If a significant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.

(3) Promptly after publication of the notice or notices prescribed in paragraphs (b)(1) and (b)(2), the applicant shall file four copies of each notice with the Office accompanied by an affidavit of publication from each publisher.

(c) *Confidential information.* Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. The Office will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". The applicant will be advised of any decision by the Office to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent it deems necessary the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of a savings association for the meeting at which a conversion plan will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the savings association where the total number of persons solicited is not more than 50;

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than:

(i) Name the savings association;

(ii) State the reason for the advertisement;

(iii) Identify the proposal or proposals to be acted upon by association members; and

(iv) Urge the member to vote at the meeting.

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Office prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Office. Proxy material authorized for use by the Office shall be

mailed to the association members within ten days of such authorization unless extended by the Office in writing.

(c) *Information to be furnished association members.* No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Office.

(d) *Requirements as to proxy.* (1) The form of proxy:

(i) Shall indicate in bold face type whether the proxy is solicited on behalf of the management;

(ii) Shall provide specifically designated blank spaces for dating and signing the proxy;

(iii) Shall identify clearly and impartially each matter or group of related matters intended to be acted upon;

(iv) Shall be clearly labeled "Revocable Proxy" in bold face type (at least as large as 18 point);

(v) Shall describe any charter or State law requirement restricting or conditioning voting by proxy;

(vi) Shall contain an acknowledgement by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy;

(vii) Shall contain the date, time and place of meeting, if practicable;

(viii) Shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon; and

(ix) Shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(1)(viii) of this section a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so specified, the votes will be cast as indicated in bold face type on the form of proxy.

(4) Notwithstanding any other provisions of paragraph (d) of this section, the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting, *Provided:* That such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

(e) *Material required to be filed.* (1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material. Speeches may, but need not be, filed with the Office prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Office not later than the date such material is first sent or given to association members. All materials filed pursuant to this paragraph (e)(3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary Copy". Such preliminary copies shall be for the information of the Office only and shall not be deemed available for public inspection except that such material may be disclosed to any department or agency of the United States Government or appropriate State Government and the Office may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Office.

(6) Unless requested by the Office, copies of replies to inquiries from members of the savings association and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to paragraph (e) of this section.

(7) Where any proxy statement, form of proxy or other material filed pursuant to paragraph (e) of this section is amended or revised, four of the required copies of such amended or revised material filed with the Office shall be marked to indicate clearly and precisely the changes effected therein subsequent to the last prior filing.

(f) *Mailing communications for associations members.* If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate; and

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such association member.

(2) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Office shall be mailed by the applicant to such of the association members specified in paragraph (f)(1)(i) of this section as the association member shall designate.

(3) Any such material which is furnished by the association member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other containers therefor and postage or payment for postage.

(4) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

(g) *False or misleading statements.* (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Office and authorized for use shall not be deemed a finding by the Office that such material is accurate or complete or not false or misleading, or that the Office has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(3) If a solicitation by management violates any provision of this section, the Office may require remedial measures including:

(i) Correction of any such violation by means of a retraction and new solicitation;

(ii) Rescheduling of the meeting for a vote on the conversion; and

(iii) Any other actions the Office may deem appropriate in the circumstances in order to ensure a fair vote.

(h) *Prohibition of certain solicitations.* No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:

(1) Any undated or post-dated proxy;

(2) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members;

(3) Any proxy which is not revocable at will by the association member giving it; or

(4) Any proxy which is part of any other document or instrument (such as an account card).

§ 563b.6 Vote by members.

(a) *Vote at special meeting.* Following approval by the Office of an application for conversion, the plan of conversion shall be submitted to a special meeting of members, unless in the case of a State-chartered converting savings association State law requires that the plan be considered at an annual meeting of members.

(b) *Determining members eligible to vote.* The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall not be more than 60 nor less than 10 days prior to the date of such meeting, without prior approval of the Office, unless State law requires a different voting record date.

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Office. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless State law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity:

(i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the association's records; and

(ii) In the case of a State-chartered association, where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1) of this section. Without prior approval by the Office, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this subpart A; and

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following:

(*1*) Item 6. Management Remuneration.

(*2*) Item 7. Business of the Applicant. Paragraphs (c) through (m), and (o).

(*3*) Item 14. Financial Statements.

(*4*) Item 15. Consents of Experts and Reports, Paragraph (b).

(B) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under Item 16.

(E) The statement contained in § 563b.8(u) of this part shall be included.

(d) *Notice to eligible account holders and supplemental account holders who are not voting members.* The converting savings association may give notice of the proposed conversion and the meeting of the association members by letter or other written communication authorized for use by the Office to eligible account holders and supplemental account holders who are not voting members. The contents of the notice shall be subject to §§ 563b.4(a)(4) and (a)(5), and 563b.5(g) of this part; the use of the notice shall be subject to § 563b.5(b) of this part; and filing of the notice with the Office shall be subject to § 563b.5(e)(1), (e)(3), (e)(5), and (e)(7) of this part.

(e) *Required vote.* The plan shall be approved by a vote of at least a majority of the total outstanding votes of the association members, unless State law requires a higher percentage for a State-chartered converting savings association, in which case the higher percentage shall be used. Voting may be in person or by proxy.

§ 563b.7 Pricing and sale of securities.

(a) *General.* (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Office of the application for conversion and until the proxy statement has been authorized for use by the Office.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Office unless the offering circular meets the requirements of this part or Part 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared effective by the Office.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with the applicant.

(b) *Distribution of offering materials.* Any preliminary offering circular which has been filed with the Office may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this part. No final offering circular shall be distributed until it has been declared effective by the Office. The declaration of effectiveness of the final offering circular by the Office shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (i) of this section, or beyond such period of time as the Office shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under paragraph (k) of this section.

(c) *Estimated price information.* If the offering is to commence prior to the meeting of the association members held to vote on the plan of conversion, the proxy statement authorized for use by the Office shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than $50 per share and the minimum no less than $5 per share.

(d) *Prohibited representations.* The Office will review the price information required under this section in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of association members, and will review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that such price information has been approved by the Office or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Office or that the Office has passed upon the accuracy or adequacy of any offering circular covering such shares.

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Office or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11) of this part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Office shall accept. The term "underwriting commissions" includes underwriting discounts.

(f) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) of this section, the Office will apply the following guidelines:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Office;

(ii) The materials shall contain a brief summary of data that is sufficient to support the conclusions reached therein; and

(iii) To the extent that the appraisal is based on a capitalization of the *pro forma* income of the converted savings association, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, such existing stock associations must be reasonably comparable to the converting savings association in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(2) In addition to the information required in paragraph (f)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Office the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request, including, without limitation, a full appraisal.

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Office has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting savings association shall have adopted in its plan of conversion the optional provisions set forth in § 563b.3 (d)(5), (d)(6), or (d)(11) of this part, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the Office's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain an amendment to the Office's approval. If appropriate, the Office will condition its approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(4) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

(iii) State the maximum subscription price per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(vi) Indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by withdrawal from a savings account or certificate of deposit, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the order form;

(viii) Contain an acknowledgment by the account holder or other person signing the order form that he or she has received a final offering circular prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

(5) The order form may provide that it may not be modified without the applicant's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from a savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(h) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

(i) *Period for completion of sale.* The sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the Office.

(j) *Interest on subscriptions and direct community offering purchase orders.* The converting savings association shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the association until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.* (1) The Office may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i) of this section, provided that no single extension of time shall exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting savings association shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Office pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription: (i) At any time prior to 20 days before the end of the extension period; or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: *Provided,* That if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings association.

(3) For the purpose of paragraph (k) of this section, the public offering shall be deemed to commence upon the filing with the Office of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Office of the final offering circular.

(4) After the expiration of subscription rights, the converting savings association shall file with and have declared effective by the Office a post-effective amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings association immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting savings association shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his or her subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Office pursuant and subject to the provisions of paragraph (k)(2) of this section.

§ 563b.8 Procedural requirements.

(a) Filing an application for conversion. An applicant that desires to

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convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the Office.

(b) *Return of improperly executed or materially incomplete filings.* (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3) of this section, any application for approval that does not contain copies of:

(i) A plan of conversion;

(ii) A preliminary proxy statement with signed financial statements; and

(iii) A preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant.

Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned by the Office to the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Office until the applicant requests and the Office consents to the filing of the additional materials set forth in paragraph (b)(2) of this section.

(c) *Additional filing requirements.* An applicant whose plan of conversion has been approved by the Office shall fulfill the following requirements.

(1) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

(i) The total number of votes eligible to be cast;

(ii) The total number of votes represented in person or by proxy at the meeting;

(iii) The total number of votes cast in favor of and against each such matter; and

(iv) The percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared for the savings association by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion an opinion of counsel to the effect that:

(i) The meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation;

(ii) All requirements of State law applicable to the conversion have been complied with; and

(iii) If the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Office ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

(d) *Termination or amendment of charter.* (1) Upon approval of a plan of conversion by the members of a State-chartered savings association or a Federal savings association which is converting to a State-chartered stock savings association, the charter of such savings association shall terminate effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. If such converting savings association is a Federal savings association, its Federal charter shall promptly be surrendered to the Office for cancellation. A savings association converting to a State-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in a form consistent with part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual association converting to a federally-chartered stock association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a Federal or a State-chartered mutual savings association converting to a State-chartered stock savings association, unless State law otherwise prescribes, the corporate existence of the converting savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

(e) *Number of copies; place of filing; binding; signatures.* (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Office, one copy shall be filed with the District Director or his or her designee and the remaining copies with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. Whenever a requirement is made under this part for the filing of ten or more copies of any document with the Office, three copies shall be filed with the District Director or his or her designee and the remaining copies with the Chief Counsel, Corporate and Securities Division. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the District Director or his or her designee and another with the Chief Counsel, Corporate and Securities Division. Other copies shall be conformed. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed by:

(i) A duly authorized representative of the applicant on its behalf;

(ii) Its principal executive officer;

(iii) Its principal financial officer;

(iv) Its principal accounting officer; and

(v) At least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4)(i) Except as provided in paragraph (e)(4)(ii) of this section, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that:

(A) He or she has read such application or amendment;

(B) In the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that such application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this part and forms prescribed hereunder; and

(C) Each such person holds such informed opinion.

(ii) The representations specified in paragraph (e)(4)(i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Office within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he or she does not so represent.

(f) *Requirements as to paper and printing.* (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, applications for any portion thereof may be prepared by any similar process which, in the opinion of the Office, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(g) *Method of preparation.* Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (n) of this section in response to the items of the appropriate form in lieu of furnishing the information in item-and-answer form, and shall omit the captions and text of all items and instruction. Every application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(h) *Interpretation of requirements.* (1) Unless the context indicates otherwise, the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(i) *Additional information.* In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they made, not misleading.

(j) *Information unknown or not reasonably available.* Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(k) *Incorporation of certain information by reference.* (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (l) of this section. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(l) *Summaries or outlines of documents.* Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(m) *Legibility of materials.* The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein, shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(n) *Presentation of information.* (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins.

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 of this subchapter governs the certification, form and content of such financial statements, including the basis of consolidation.

(o) *Application of amendments to regulations and forms.* (1) The form and contents of any filing made under the provisions of this part need conform only to the applicable regulations and forms then in effect, and contain the information, including financial statements specified therein, required at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (o)(2) of this section.

(2) Whenever the Office prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition ceases to be effective.

(p) *Consents of experts.* (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part are named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to paragraph (p) of this section shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his or her report, a reference shall be made in the list to the report containing such consent.

(q) *Consents of persons about to become directors.* If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

(r) *Date of filing.* The date on which any documents are actually received by the Office in the manner prescribed in this part shall be the date of filing thereof.

(s) *Amendments.* All amendments to any application under this part shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(t) *Pre-filing conferences with applicants.* (1) The staff of the Office, including the District Director or his or her designee, will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Office if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under paragraph (t) of this section, the staff of the Office will not undertake to prepare material for filing but will limit themselves to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

(u) *Review of the Office's action.* Any person aggrieved by a final action of the Office which approves, with or without conditions, or disapproves a plan of conversion pursuant to this part may obtain review of such action by filing in the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or in the U.S. Court of Appeals for the District of Columbia Circuit, a written petition praying that the final action of the Office be modified, terminated or set aside. Such petition must be filed within 30 days after publication of notice of such final action in the **Federal Register**, or 30 days after the mailing by the applicant of the notice to members as provided for in § 563b.6(c) of this part, whichever is later. The further procedure for review is as follows: A copy of the petition is forthwith transmitted to the Office by the clerk of the court and thereupon the Office files in the court the record in the proceeding, as provided in section 2112 of title 28 of the U.S. Code. Upon the filing of the petition, the court has jurisdiction, which upon the filing of the record is exclusive, to affirm, modify, terminate, or set aside in whole or in part, the final action of the Office. Review of such proceedings is had as provided in Chapter 7 of Title 5 of the U.S. Code. The judgment and decree of the court is final, except that they are subject to review by the Supreme Court upon *certiorari* as provided in section 1254 of title 28 of the U.S. Code.

(v) *Post-conversion reports.* The applicant shall file such post-conversion reports concerning its conversion as the Office may require.

(w) *Delegation of authority.* The Director of the Office delegates to the Chief Counsel or his or her designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this subpart A, and to exercise any other authority of the Office under this subpart A, except:

(i) The authority to waive any material provision of this subpart A pursuant to § 563b.1(a) of this part;

(ii) The authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(12) of this part;

(iii) The authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1) of this part; and

(iv) The authority to approve an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted savings association under § 563b.3(i)(3) of this part that raises a significant issue of law or policy or to deny an application submitted under that paragraph.

The Director of the Office also delegates to the Chief Counsel or his or her designee, in connection with the approval of an application for conversion under this subpart A, the authority to approve but not to deny applications for approval of security forms, charter amendments, and bylaw amendments under § 563.1 of this subchapter and parts 544 and 552 of this chapter.

§ 563b.9 Conversion of a savings association in connection with the formation of a holding company.

A savings association may convert to the stock form pursuant to this subpart A as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted savings association. In such a transaction eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part to purchase capital stock of the newly-formed holding company in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this subpart A shall apply to a conversion under this section.

§ 563b.10 Conversion of a savings association in connection with an acquisition by an existing holding company; conversion of a savings association through merger with an existing stock savings association.

(a) *Conversion involving an existing holding company.* A savings association may convert to the stock form pursuant to this Part 563b as part of a transaction in which an existing holding company acquires upon issuance all the capital stock of the converted savings association. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the holding company to purchase its capital stock in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under this paragraph (a).

(b) *Merger involving the issuance of holding company capital stock.* A savings association may convert to the stock form pursuant to this Part 563b by merging into an existing stock savings association which is a wholly-owned subsidiary of a holding company. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the holding company to purchase its capital stock in lieu of capital stock of the converting savings association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under this paragraph (b).

(c) *Merger with an existing stock savings association.* (1) A savings association may convert to the stock form by merging with an existing stock savings association as part of a transaction in which the equity securities of the existing stock savings association or the converting savings association are issued. In such a transaction in which the existing stock savings association is the surviving association, the eligible account holders, supplemental eligible account holders, and voting members of the converting association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the existing stock savings association to purchase its capital stock in lieu of capital stock of the converting savings association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under paragraph (c) of this section.

(2) A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part, or a modified conversion under Subpart D of this part, also may convert to stock form by merging with an interim Federal or state chartered stock association in a transaction in which stock of the resulting association is issued.

(i) Following the date of the completion of a merger conversion of an association that qualifies for a voluntary supervisory conversion in accordance with subpart C of this part, § 563b.3(i)(3) of this part shall be applicable with respect to the equity securities of the resulting association for the period specified in paragraph (c)(2)(ii) of this section.

(ii) The period specified shall be six months if the converting insolvent association has between $100 million and $250 million in total assets; twelve months if the converting insolvent association has between $250 million and $500 million in total assets; eighteen months if the converting insolvent association has between $500 and $750 million in total assets; twenty-four months, if the converting insolvent association has between $750 million and $1 billion in total assets; thirty months if the converting insolvent association has between $1 and $2 billion in total assets; and thirty-six months if the converting insolvent association has more than $2 billion in total assets. In all of the foregoing cases, total assets shall be calculated at the end of the fiscal quarter of the converting association concluded immediately prior to the filing of the voluntary supervisory merger conversion application.

Subpart B—[Reserved]

Subpart C—Voluntary Supervisory Stock Conversions

§ 563b.20 Scope of subpart.

(a) Except as the Office may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of savings associations as authorized, ordered or concurred in by the Office or the FDIC pursuant to sections 5(i) (1) and (2), 5(o)(2)(C), and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (o)(2)(C), and (p).

(b) All of the provisions of Subpart A of this part shall apply to a supervisory conversion undertaken pursuant to this subpart unless clearly inapplicable.

§ 563b.21 Voluntary supervisory conversions.

A voluntary supervisory conversion of a savings association pursuant to this subpart may be accomplished through the sale of the association's securities issued in the conversion directly to a person or persons. Such a conversion may also occur through the merger of the association into a stock association newly-chartered for the purpose of facilitating the conversion. At least a majority of the board of directors of the converting association shall adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this subpart. The members of the association shall have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interest in the converted association.

§ 563b.22 Purpose of subpart.

The purpose of this subpart is to give guidance to savings associations and potential acquirors of the stock of converting savings associations regarding the qualification of savings associations for a supervisory conversion under this subpart, and guidance as to the extent to which the Office will permit, by means of a supervisory conversion, deviations from the substantive and procedural requirements adopted by the Office for standard conversions under Subpart A of this part.

§ 563b.23 Authorization of supervisory conversions.

The Office will consider authorizing or ordering a supervisory stock conversion if the savings association files an application containing the information and documents specified in § 563b.27 of this subpart, in accordance with the procedures specified in

§ 563b.28 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Office authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.29 of this subpart must be fulfilled and the converted savings association and the purchaser or purchasers of its conversion stock must comply with the requirements of § 563b.30 of this subpart.

§ 563b.24 Qualification for supervisory conversion of SAIF-insured savings associations.

The Office in its discretion may authorize the supervisory conversion of a SAIF-insured savings association when:

(a) The association's liabilities exceed its assets, as calculated under generally accepted accounting principles on a going concern basis; and

(b) The association would be a viable entity as determined under § 563b.26 of this part following the conversion.

§ 563b.25 Qualification for supervisory conversion of BIF-insured savings associations.

(a) The Office may, in its discretion, concur with the determination of the FDIC that a BIF-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Office in accordance with section 5(o)(2)(C) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(C), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank;

(b) The Office may, in its discretion, authorize a BIF-insured savings association to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met:

(1) The association's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the association is a going concern; and

(2)(i) A sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the association to meet its capital requirement as established by the FDIC immediately upon completion of the conversion; or

(ii) The FDIC has indicated that, based upon the association's proposed post-conversion operating plan, the association would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.26 Viability of converted savings association.

(a) An application of a SAIF-insured savings association to convert pursuant to this subpart may be approved by the Office in its discretion if it finds that the SAIF-insured savings association will be a "viable entity" following the conversion.

(b) A converting SAIF-insured savings association is a "viable entity" if either paragraph (b)(1) or (b)(2) of this section, and paragraph (b)(3) of this section are met.

(1) As part of the plan of conversion, the prospective acquirer shall infuse sufficient capital at the conversion to enable the association to achieve a ratio of net worth to total liabilities, equal to the greater of:

(i) Three percent (3%) of liabilities, computed on the basis of generally accepted accounting principles; or

(ii) The association's regulatory capital requirement established under applicable law and regulations of the Office thereunder.

(2) As part of the plan of conversion, the prospective acquirer shall:

(i) Infuse sufficient capital at the conversion to enable the association to achieve a ratio of net worth to total liabilities, computed on the basis of generally accepted accounting principles, of at least one percent (1%) of total liabilities; and

(ii) Agree in writing with the Office that the acquirer will infuse additional capital as necessary to enable the association to increase its regulatory capital on a scheduled basis in order to comply with applicable regulatory capital requirements in effect from time to time within five years of the date of conversion, and agree that upon failure to achieve scheduled regulatory capital levels on or before the due date or to adhere in all material aspects to the business plan submitted as part of the supervisory conversion application, the acquirer shall be subject to such sanctions as the Office, in connection with its approval of the supervisory conversion application, directs to be included in the written agreement, or which are otherwise authorized by law.

(3) The transaction taken as a whole is in the best interests of, and does not present the potential for injury to, the converting association, its depositors and the SAIF or BIF, as the case may be.

§ 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for the Office's approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.28 of this subpart:

(a) A plan of conversion adopted by the board of directors of the association, which shall contain at a minimum, the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) The business plan which shall contain a description of the proposed operating policies of the savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application or a Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, whichever is applicable, and the prior-conduct certification required by Memorandum SP–51 issued by the Senior Deputy Director for Supervision (Operations).

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of the Senior Deputy Director for Supervision (Operations).

(m) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Office and, in the case of real estate assets, meet the standards of Memorandum No. R–41c of the Senior Deputy Director for Supervision (Operations).

(n) A description of the estimated expenses of the voluntary supervisory conversion to the savings association.

(o) An audited balance sheet:

(1) Prepared in accordance with generally accepted accounting principles of a date within 90 days of the date of submission of the conversion application;

(2) Prepared by an auditor, and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2; and

(3) Which reflects a debit balance in retained earnings.

(p) *Pro forma* financial statements that apply "push down" accounting to the financial statements described in paragraph (o) of this section, if such accounting treatment is appropriate under generally accepted accounting principles, and that reflect stockholders' equity equal to at least:

(1) The greater of (i) 3 percent of the association's total liabilities or (ii) the association's regulatory capital requirement under applicable law and regulations of the Office thereunder; or

(2) One percent of the association's total liabilities.

(q) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered savings association to state stock form is authorized under applicable state law, if applicable.

(r) A specific description of any of the features of the savings association's application that do not conform to the requirements of this subpart.

(s) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

§ 563b.28 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* A savings association seeking to convert pursuant to this subpart shall file an original and one copy of its supervisory conversion application containing the information and documents specified in § 563b.27 of this subpart with the Chief Counsel's Office, Corporate and Securities Division, with one copy each to the Senior Deputy Director for Supervision (Operations) and to the District Director. The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 of this part shall constitute an incomplete application, and the District Director shall continue to seek other appropriate supervisory resolutions of the association's financial condition pending the filing of a complete application.

(c) The Director of the Office delegates to the Chief Counsel or his or her designee, the authority to approve applications for voluntary supervisory conversions, and to exercise the authority of the Office pursuant to this subpart, provided that:

(1) The application does not present a significant issue of law or policy; and

(2) The Senior Deputy Director for Supervision (Operations) does not raise supervisory objection to the application based upon significant unresolved supervisory issues with respect to the financial or managerial resources of the converting association, the items specified in §§ 563b.24, 563b.25, and 563b.26 of this part, or the items required to be submitted pursuant to paragraphs (b), (d), (h), (j), (1), (m), (n), (o), (p), (r) and (s) of § 563b.27 of this part.

(d) *Termination or amendment of charter.* (1) Upon approval by the Office of a plan of supervisory stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-chartered savings association, its federal charter shall be surrendered promptly to the Office for cancellation. A savings association converting to a state-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual savings association converting to a federally-chartered stock savings association shall apply to amend its charter and bylaws to read in a form consistent with Part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual savings association converting to a federally-chartered stock savings association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a federal or state-chartered mutual savings association converting to a state-chartered stock savings association, unless state law otherwise prescribes, the corporate existence of the converting mutual savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

§ 563b.29 Conditions of approval.

The Office's approval of a supervisory conversion application will be conditioned upon the following:

(a) Completion of the sale of conversion stock within a maximum of three months after the Office approves the application, or within such additional period as the General Counsel or his or her designee may for good cause grant;

(b) Compliance with all filing requirements of 12 CFR parts 563b and 563g;

(c) Submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the association's conversion stock;

(d) Compliance with all applicable laws, rules, and regulations; and

(e) Satisfaction of any other requirement or conditions the Office may impose.

§ 563b.30 Sale of conversion stock.

Each savings association that converts pursuant to this subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR part 563g.

§ 563b.31 Expenses.

Expenses incurred by a savings association in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a SAIF-insured savings association, shall not be in an amount such that the payment of such expenses would render the proceeds to the association from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

§ 563b.32 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by a savings association would not be an unsafe or unsound practice or represent a sale of control. The Office shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his or her affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of a savings association generally will be disfavored.

Subpart D—Guidelines for Modified Conversions

§ 563b.34 Scope of subpart.

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of savings association as authorized, ordered or concurred in by the Office or the FDIC pursuant to sections 5(i) (1) and (2), 5(o), and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1) and (2), (o), and (p).

(b) The provisions of this subpart are not exclusive and may be waived by the Office.

§ 563b.35 Modified stock conversion.

A modified conversion generally is available to an association that fails to meet its regulatory capital requirement. In a modified conversion, the substantive and procedural rights granted to members in mutual savings associations converting under Subpart A may be restricted in order to meet the needs of a savings association whose financial condition has deteriorated such that a standard conversion which would raise sufficient capital to enable the association to achieve a satisfactory capital level is not feasible. Modified conversions may be effected without the approval of members, must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the association as determined by an independent appraiser, and involve the limitation of members' preemptive rights.

§ 563b.36 Purpose of subpart.

The purpose of this subpart is to give guidance to savings associations and potential acquirors of the stock of savings associations regarding the qualification of savings associations for a modified conversion under this subpart, and guidance as to the extent to which the Office will permit, by means of a modified conversion, deviance from the substantive and procedural requirements adopted by the Office for standard conversions under subpart A of this part.

§ 563b.37 Qualification for modified conversion.

(a) The Office may, in its discretion, approve or order a modified conversion if it finds that:

(1) The savings association does not meet its regulatory capital requirement calculated according to generally accepted accounting principles; and

(2) The projected net proceeds of the sale of conversion stock by the savings association in a standard conversion under Subpart A, as demonstrated by an appraisal determined to be acceptable to the Office, would not be sufficient to enable the association to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles.

(b) The Office may, in its discretion, concur that a BIF-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the FDIC certifies to the Office in accordance with section 5(o)(2)(C)–(E) of the Home Owners' Loan Act that severe financial conditions exist that threaten the stability of the savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

§ 563b.38 Authorization of modified conversion.

(a) All of the provisions of Subpart A of this part shall apply to a conversion undertaken pursuant to this subpart unless clearly inapplicable.

(b) The Office may authorize the conversion to the stock form of a savings association under this subpart upon the filing of an application approved by resolution of the majority of the board of directors of the association, but neither the Office nor the association is required to secure the prior approval of the association's members of the conversion.

(c) A savings association that has converted to the stock form pursuant to this subpart is required to establish a liquidation account on behalf of the association's members as required under § 563b.3(f) of this part.

(d) A savings association converting under this Subpart D shall sell its stock at an aggregate price exceeding the estimated *pro forma* market value of the association, including an appropriate control premium, based on an independent valuation determined to be acceptable by the Office, as provided in § 563b.7 of this part.

(e) The Office may, in its discretion, approve an application for conversion pursuant to this subpart if it is demonstrated to the Office's satisfaction, through a submission prepared by an independent appraiser, investment banking firm or other qualified person, that:

(1) The net capital to be received from the sale by the converting savings association of its capital stock pursuant to this subpart, would cause the savings association to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles; and

(2) The transaction would benefit the association, its depositors, and the SAIF or BIF, as the case may be.

(f) The eligible accountholders, the supplemental eligible accountholders, and the voting members, if any, of the savings association converting pursuant to this subpart shall be granted subscription rights to purchase the stock proposed to be issued by the savings association, in accordance with the rules and regulations of Subpart A of this part, except that such subscription rights may be reduced as follows:

(1) If the regulatory capital of the association is between 0 percent of an association's liabilities and one-third of its regulatory capital requirement under applicable law and regulations of the Office thereunder, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory capital;

(2) If the regulatory capital of the association is more than one-third but not in excess of two-thirds of its regulatory capital requirement under applicable law and regulations of the Office thereunder, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory capital; and

(3) If the regulatory capital of the association is more than two-thirds of its regulatory capital requirement but not in excess of the association's regulatory capital requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory capital. Regulatory capital for purposes of this paragraph shall be computed in accordance with generally accepted accounting principles.

(g) An acquiror of a controlling interest in an association undertaking a modified conversion shall pay a control premium in such an amount and in such form determined to be acceptable by the Office.

(h) For three years following the date of completion of a modified conversion, any controlling shareholder or the converted association may not acquire shares from minority shareholders without first obtaining prior approval by the Office of such purchases and offering fair value, as determined through an independent appraisal which takes into consideration the value of the association on a "going concern" basis including, but not limited to, an evaluation of historical earnings, future prospects for earnings, financial conditions, any arms' length trades in the stock, net asset value, dividends record, investment value, and book value.

§ 563b.39 Application for modified conversion.

A savings association may apply for the Office's approval of a modified conversion pursuant to this subpart by filing in accordance with the procedures specified in § 563b.8 of this part an application which includes the following information and documents:

(a) A plan of conversion adopted by the board of directors of the association, which shall contain, at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the known proposed purchasers of conversion stock and their relationship to the savings association; the method of stock sale; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) A business plan acceptable to the District Director and the Senior Deputy Director for Supervision (Operations), which shall contain a description of the proposed operating policies of the savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application or a Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, where applicable, and the prior conduct certification required by Memorandum SP–51 issued by the Senior Deputy Director for Supervision (Operations).

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership and FDIC insurance of accounts, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of the Senior Deputy Director for Supervision (Operations).

(m) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the modified conversion. Appraisals must be acceptable to the Office and, in the case of real estate assets, must meet the standards of Memorandum No. R–41c of the Senior Deputy Director for Supervision (Operations).

(n) A description of the estimated expenses of the modified conversion to the savings association.

(o) An audited balance sheet:

(i) Prepared in accordance with generally accepted accounting principles as of a date within 90 days of the date of submission of the conversion application;

(ii) Prepared by an auditor and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2; and

(iii) Which reflects a balance in retained earnings in an amount less than the association's regulatory capital requirement calculated under applicable law and regulations of the Office thereunder.

(p) An independent appraisal meeting the requirements of § 563b.7 of this part which:

(1) Describes the amount of capital that the association could be expected to raise in standard conversion stock offering; and

(2) Supports the control premium proposed to be paid in the modified conversion.

(q) *Pro forma* financial statements which demonstrate that:

(1) As a result of an infusion of the amount of capital that could be expected to be raised in a standard conversion, the association would not have an amount of stockholders' equity at least equal to the association's required level of regulatory capital under applicable law and regulations of the Office thereunder; and

(2) As a result of the capital infusion proposed in the modified conversion, the amount of stockholders' equity would at least equal the level of the association's required regulatory capital under applicable law and regulations of the Office thereunder.

(r) An opinion of independent counsel that the modified conversion of a state-chartered savings association to state stock form is authorized under applicable state law, if applicable.

(s) A specific description of any of the features of the savings association's

application that do not conform to the requirements of this subpart.

(t) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the modified conversion.

§ 563b.40 Sale of stock.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Office of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Office.

(b) *Delegation.* The Director of the Office delegates to the Chief Counsel or his or her designee the authority to declare a final offering circular effective.

§ 563b.41 Procedural requirements.

(a) *Filing of modified conversion application.* A savings association seeking to convert pursuant to this subpart shall file an original and one copy of its modified conversion application containing the information and documents specified in § 563b.39 of this subpart with the Chief Counsel's Office, Corporate and Securities Division, with one copy each to the Senior Deputy Director for Supervision (Operations) and to the District Director. The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for modified stock conversion that does not contain all of the applicable information and documents specified in § 563b.39 of this part shall constitute an incomplete application, and shall not be approved pending the filing of a complete application.

(c) The Director of the Office delegates to the Chief Counsel or his or her designee the authority to approve applications for modified conversions except in those applications presenting a significant issue of law or policy, and to exercise the authority of the Office pursuant to this subpart.

(d) *Termination or amendment of charter.* (1) Upon the Office's approval of a plan of modified stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-chartered savings association, its federal charter shall be surrendered promptly to the Office for cancellation. A savings association converting to a state-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual savings association converting to a federally-chartered stock savings association shall apply to amend its charter and bylaws to read in a form consistent with Part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual savings association converting to a federally-chartered stock savings association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a federal or state-chartered mutual savings association converting to a state-chartered stock savings association, unless state law otherwise prescribes, the corporate existence of the converting mutual savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

Subpart E—Forms

§ 563b.100 Form AC—Application for Conversion.

Form AC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, N.W., Washington, D.C. 20552

Application for Conversion

_____

(Exact name of Applicant as specified in charter)

_____

(Street address of applicant)

_____

(City, State and Zip Code)

Date of Application _____

_____

General Instructions

A. Rules as to Use of Form AC

Form AC shall be used by any savings association seeking approval by the Office of conversion from the mutual to the stock form of organization pursuant to Part 563b of the Rules and Regulations Applicable to All Savings Associations.

B. Application of Rules and Regulations

Attention is directed to § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in § 563b.2 also should be noted.

Item 1. Form of Application

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 563b of the Rules and Regulations Applicable to All Savings Associations.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Office, they will be conducted by, or as approved by, the Office at the expense of the applicant; and applicant will pay the costs thereof as computed by the Office.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(e)(4) of the Rules and Regulations Applicable to All Savings Associations, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section: (1) That each such person has read this application; (2) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations Applicable to All Savings Associations and forms thereunder; and (3) that each such person holds such informed opinion.

Attest:

Applicant _____

By _____

(Duly Authorized Representative)

_____

(Principal Executive Officer)

_____

(Principal Financial Officer)

_____

(Principal Accounting Officer)

_____

(Director)

_____

(Director)

_____

(Director)

_____

(Director)

_____

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Office's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. Sequence and Timing of the Plan

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State or other regulatory authorities (other than the Office). Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or direct community marketing of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates

If the applicant's plan of conversion contains an eligibility record date substantially earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date.

Indicate the circumstances that will require the use of a supplemental eligibility record date.

Item 7. Expenses Incident to the Conversion

Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal	
Postage and Mailing	
Printing	
Escrow or Agent Fees	
Underwriting Fees	
Appraisal Fees	
Transfer Agent Fees	
Auditing and Accounting	
Proxy Solicitation Fees	
Advertising	
Other Expenses	
Total	

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers; if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the applicant has any category of expense exceeding $10,000 which is not specified in this Item, such expense shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification

State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director or officer of the applicant will be insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such.

Item 9. Federally Chartered Stock Savings Associations

State whether the converting savings association is applying to amend its charter and bylaws to read in a form consistent with Part 552 of the Rules and Regulations Applicable to Federal Savings Associations.

Exhibits

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors

Set forth a certified copy or copies of a resolution or resolutions of the board of directors: (1) Adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Deposit Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. Copies of Documents, Contracts and Agreements

Furnish the following documents, contracts and agreements:

(a) Proposed certificates for capital stock and any other securities to be issued;

(b) Proposed order forms with respect to the subscription rights;

(c) Proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(i)(7);

(d) Any proposed stock option plan and form of stock option agreement;

(e) Any proposed management employment contracts;

(f) Any contract described in response to Item 6 of Form PS;

(g) Contracts or agreements with paid solicitors described in response to Item 3(b) of Form PS;

(h) Any material loan agreements relating to borrowing by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Office;

(i) Any appraisal agreement or proposed agreement, underwriting contracts or agreements among underwriters;

(j) Any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association;

(k) Any proposed contracts or agreements among members of a group regarding the purchase of unsubscribed shares pursuant to § 563b.3(d)(2);

(l) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion that they are acting independently;

(m) Any documents referred to in the answer to Item 8 of Form AC;

(n) Any trustee agreements or indentures;

(o) Any agreements for the making of markets or the listing on exchanges of the stock of the converted savings association.

Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for documents which by their nature cannot be practically expected until a later time required by subdivisions (i) and (k) in which case they shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel

Furnish an opinion of counsel for the applicant regarding each of the following matters:

(a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities;

(b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan;

(c) The legal sufficiency of the applicant's bylaws;

(d) The continuation of insurance of the applicant's accounts by the Federal Deposit Insurance Corporation after conversion;

(e) The type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted savings association;

(f) A certification that the proposed charter and bylaws conform to Part 552 of this subchapter or if not a statement to that effect.

Matters listed in subdivisions (b), (c) and (e) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to the various account holders who receive nontransferable subscription rights to purchase capital stock.

Instruction. The Office recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Office may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Office may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as

to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or, if applicable, a ruling from the appropriate state taxing authority to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be located upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. Valuation Materials

Furnish any materials required to be filed by § 563b.7 regarding the valuation to the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

Exhibit 6. Notice to Members

Furnish the notices to the applicant's members required by § 563b.4(a) and (b).

Exhibit 7. Other Materials

(a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j)(2).

(b) Furnish all consents required to be filed by § 563b.8(p) and (q).

(c) If applicable, furnish the statement required by Item 5 of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) Furnish any powers of attorney employed pursuant to § 563b.8(e)(3).

(e) Furnish the cross reference sheet referred to in § 563b.8(g).

(f) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c)(2).

§ 563b.101 Form PS—Proxy Statements.

Form PS

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

Proxy Statement

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Proxy Statement Form

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Information Required in Conversion Proxy Statement

Notes

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the Chief Counsel or the Deputy Chief Counsel for Securities and Corporate Structure by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement, and the full address, ZIP code and telephone number of the applicant.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following boldface legend:

THE ASSOCIATION MAY USE YOUR PREVIOUSLY EXECUTED PROXIES TO VOTE FOR THE PLAN OF CONVERSION IN THE EVENT YOU DO NOT EXECUTE ANOTHER PROXY FOR THIS MEETING, ATTEND AND VOTE IN PERSON, OR OTHERWISE REVOKE YOUR PREVIOUSLY-EXECUTED PROXIES.

Item 2. Revocability of Proxy

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation

(a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he or she intends to oppose any action intended to be taken by the management and indicate the action which he or she intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to Items 5 through 16, but must include such information as to make such solicitations comply with § 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval

(a) Describe briefly the voting rights of each class of association members, state the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled. Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

(d) If the applicant intends to use previously executed proxies to vote on the plan of conversion in accordance with § 563b.5(d)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

Item 5. Directors and Executive Officers

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 404, and Item 6 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the applicant and the word "Commission" shall refer to the Office.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Management remuneration

Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 402 of Regulation S–K, 17 CFR 229.402, and Item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "Commission" in those regulations shall refer to the applicant and to the Office, respectively.

Item 7. Business of the applicant

(a) *Narrative description of business.* (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the association as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the applicant in the summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (i), (ii), and (iii) of this paragraph with respect to liquidity, capital resources, and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(i) *Liquidity.* Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) *Committed resources.* (A) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(B) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(B) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(C) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(E) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, Section III C).

Instructions. 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 7(c) need only include that which is available to the applicant without undue effort or expense and which

does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(i) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined in the liquidity regulations of the Office.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-harbor rule for projections, § 563d.3b–6, under the circumstances specified in that rule.

7. Applicants which elect to provide narrative explanations of supplementary information disclosed in accordance with SFAS 89 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the information is combined, it shall be located in reasonable proximity to the discussion and analysis. If the information is not combined, the discussion of the impact of inflation otherwise required by this Item may be omitted if there is an appropriate cross reference to the explanations provided pursuant to SFAS 89.

8. Applicants which elect not to provide explanations of supplementary information disclosed in accordance with SFAS 89 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 89 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (i) and (ii) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the applicant.

(ii) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor rule for projections, § 563d.3b–6, under the circumstances specified in that rule.

(d) *Lending activities.* (1) Briefly describe the applicable Federal and State restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the applicant, describe briefly (i) the lending area restrictions, if any, applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(i) Average yield during the period on: (A) Loan portfolio, (B) investment portfolio, (C) other interest-earning assets, and (D) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average rate paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, (D) all interest-bearing liabilities ((A), (B), and (C)). Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period, for the items in (i) and (ii) above.

(iv) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more frequent than monthly.

(v) For each of the periods required by Item 14(b), set forth in tabular form: (A) The dollar amount of change in interest income and (B) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (i) and (ii) above) into amounts attributable to (*1*) changes in volume (change in volume multiplied by old rate), (*2*) changes in rates (change in rate multiplied by old volume), and (*3*) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by Item 14(b), present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instructions. Applicants should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the latest fiscal year reported on, present seperately the amounts of loans in each category required by balance sheet Item 7(b), § 563c.102, which are due: (i) In each of the three years following the balance sheet, (ii) after three through five years, (iii) after five through ten years, (iv) after ten through fifteen years, and (v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

Instructions. 1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

(e) *Savings activities.* (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, § 563c.102, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders equity at the end of the period.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, the general regulatory authority of the Office, and Federal regulatory capital requirements, the results of failure to meet those requirements, and the applicant's regulatory capital position in relation to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation, the Office, the Financing Corporation, and the Resolution Funding Corporation. In addition, describe briefly applicable liquidity requirements under section 4A of the Home Owners' Loan Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(g) *Federal Home Loan Bank System.* Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include

(1) Limitations on borrowings,

(2) Recent loan policies of the applicant's Federal Home Loan Bank and current interest rates, and

(3) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(h) *State savings association law.* If the applicant is converting to a State-chartered stock association, describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and State taxation.* Describe briefly the Federal income tax laws applicable to the applicant including:

(1) Permissible bad debt reserves;

(2) The applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 14(a);

(3) Future increases in the effective income tax rate;

(4) The date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service; and

(5) The tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion.

Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

Instruction. In answering Item 7(j) give to the extent known the association's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(k) *Office and other material properties.* (1) Furnish the location of the applicant's home office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed full time by the applicant including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(m) *Service corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Legal proceedings.* Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the applicant.

(o) *Additional information.* The Office may upon the request of applicant, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Office may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. Description of the Plan of Conversion

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Office of Thrift Supervision has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such approval by the Office does not constitute a recommendation or endorsement of the plan by the Office.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual association to a stock association including the following information:

(1) State that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(2) State whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have;

(3) State the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders and supplemental eligible account holders in such account and the formula by which such account will be adjusted;

(4) State that the rights and obligations of borrowers from the applicant will not be changed in any manner;

(5) State that capital stock to be sold by the applicant will not be insured by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(6) State than none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and

(7) State briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the subscription rights of members, furnish the following information:

(1) The formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2), (4), and (5);

(2) Any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) The allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) The use and time of the order forms with respect to the exercise of subscription rights.

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion;

(2) State that the offering price will be the *pro forma* market value of such shares as determined by the association's management and the underwriter, as the case may be; and

(3) State that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss: (1) The earnings per share of the capital stock to be sold on a *pro forma* basis as of the most recent year-end and interim period required by Item 14(b); and (2) the book value per share on a *pro forma* basis as of the most recent year-end and interim period required by Item 14(a).

Instructions: 1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions used clearly stated.

2. In computing *pro forma* earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (Item 7(d)(4)(i)(D)) and (ii) average rate paid on deposits (Item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Office will consider permitting alternative computations proposed by an applicant that are properly supported.

4. An appropriate statement should be included which explains that the *pro forma* data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its conversion.

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state:

(1) That a maximum subscription price will be set forth in the offering circular used for offering of subscription rights;

(2) That the actual subscription price will be the public offering price;

(3) That the actual subscription price will not exceed the maximum subscription price shown on the order form; and

(4) That any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(h) Furnish the following information:

(1) Describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future;

(2) Describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders receiving nontransferable subscription rights to purchase capital stock in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.8(c)(2) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or

directly by the converting association. If such is the case, provide the information to the extent known required by Item 6 of Form OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all officers, directors and their associates as a group without naming them.

(2) As to each officer and director named in Item 5(a), name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(3) As to any officer, director or associate thereof who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(4) With respect to the information required by (1), (2) and (3) above, indicate separately the number of shares proposed to be purchased in each offering category.

Instructions. With respect to the information requested as to associates of officers and directors, such information is required only to the extent known. In a case where such confirmation is not obtainable, only the number of shares which the associate is given subscription rights to purchase need be disclosed.

Item 9. Description of capital stock

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

(b) An undertaking should be included in the proxy statement that the applicant where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the applicant.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market makers and stockholders, and the anticipated success of the applicant in listing the stock.

Instructions. Any discussion of the listing of the applicant's stock should include the basic requirements that must be met for such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant. Captions below may be modified as appropriate.

	(A) Capitalization as of most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits			
FHL bank advances			
Other Borrowings			
Capital stock			
Preferred stock			
Paid-in capital			
Retained earnings: Restricted			
Unrestricted			
Total			

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

3. With respect to Column A, the applicant should use the most recent balance sheet date required by Item 14.

Item 11. Use of New Capital

State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New charter, bylaws, or other documents

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

Instruction. This Item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

Item 13. Other Matters

State that the applicant will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. It should be noted that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 14. Financial Statements

Notes: 1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement. Subpart A of part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently.

(a) *Consolidated balance sheets.* (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Office's approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) *Consolidated statements of income and cash flows.* (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished, except that for periods prior to July 15, 1988, statements of changes in financial position may be provided in lieu of statements of cash flows.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) *Financial statements of business acquired or to be acquired.* There shall be furnished the information required by 17 CFR 210.3–05 and 210.11–01 to –03 regarding business acquired or to be acquired.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.* There shall be furnished the information required by 17 CFR 210.3–09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

(f) *Filing of other statements in certain cases.* The Office may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Office may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Item 15. Consents of Experts and Reports

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to § 563b.8(p).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction on Item 12 shall apply to paragraph (a) of this Item.

Item 16. Attachments

There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as approved by the Office unless the following procedure is observed. The association may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests within a specified period by means of a postage-paid postcard or other written communication.

§ 563b.102 Form OC—Offering Circulars.

Form OC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, D.C. 20552

Offering Circular

_____

(Exact name of applicant as specified in charter)

_____

(Street address of applicant)

_____

(City, State and Zip Code)

Offering Circular Form

Item 1. Information Required by and Use of Form OC

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public offering through an underwriter or the direct community marketing by the converting savings association of the unsubscribed shares, unless otherwise indicated.

2. The offering circular shall include such information which the Chief Counsel or Deputy Chief Counsel for Securities and Corporate Structure, by interpretive release or otherwise, has deemed necessary to comply with this Form OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. Additional Current Information Required

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders, voting members and others, the price at which the shares were sold, and the number of unsubscribed shares.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the direct community offering or public offering pursuant to this paragraph (f).

Item 3. Statement Required in Offering Circulars

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE OFFICE OF THRIFT SUPERVISION NOR HAS SUCH OFFICE PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

"This offering circular has been filed with the Office of Thrift Supervision, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is declared effective by the Office of Thrift Supervision. The offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

Item 5. Information with Respect to Exercise of Subscription Rights

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Information with Respect to Public Offering or Direct Community Offering

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for any public offering, such information shall be given in substantially the tabular form set forth below. In any other case, the information may be given in narrative form. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share	$	$	$
Total	$	$	$

(b) An offering circular for a public offering or direct community marketing, where the plan of conversion does not contain the optional provision permitted by § 563b.3(d)(11), may omit the description relating to the exercise of subscription rights required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11). Each offering circular shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11).

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.

(f) If any shares are to be sold by the converting savings association through a direct community marketing, indicate the timing of the offering, the geographical area where the offering will be made, the method to be employed to market the shares, including the frequency and nature of communications or contracts with potential purchasers, any preferences that will be given any such geographical area or class of potential purchasers, and the limitations on purchases by potential purchasers.

PART 563c—ACCOUNTING REQUIREMENTS

Subpart A—Form and Content of Financial Statements

Sec.

563c.1 Form and content of financial statements.
563c.2 Definitions.
563c.3 Qualification of public accountant.
563c.4 Condensed financial information [Parent only].

Subpart B—Other Accounting Requirements

563c.10 Use of accrual basis of accounting.
563c.11 [Reserved]
563c.12 Accounting for net income.
563c.13 Accounting for investment in service corporation.
563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

Subpart C—Financial Statement Presentation

563c.101 Application of this subpart.
563c.102 Financial statement presentation.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w).

Subpart A—Form and Content of Financial Statements

§ 563c.1 Form and content of financial statements.

(a) This subpart A states the requirements as to form and content of financial statements included by a savings association in the following documents. However, the Office's regulations governing the applicable documents specify the actual financial statements that are to be included in that document.

(1) Any proxy statement or offering circular required to be used in connection with a conversion under part 563b of this subchapter.

(2) Any offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under Part 563g of this subchapter.

(3) Any filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, made pursuant to the requirements of Part 563d of this subchapter.

(b) Except as otherwise provided by the Office by rule, regulation, or order made specifically applicable to financial statements governed by this section, financial statements shall:

(1) Be prepared and presented in accordance with generally accepted accounting principles;

(2) Comply with subpart C of this part;

(3) Consistent with the provisions of this subpart, comply with Articles 1, 2, 3, 4, 10, and 11 of Regulation S–X adopted by the Securities and Exchange Commission (17 CFR 210.1–210.4, 210.10, and 210.11).

(4) Be audited, when required, by an independent auditor in accordance with the standards imposed by the American Institute of Certified Public Accountants.

(c) The term "financial statements" includes all notes to the statements and related schedules.

§ 563c.2 Definitions.

(See also 17 CFR 210.1–02.)

(a) *Registrant.* The term "registrant" means an applicant, a savings association, or any other person required to prepare financial statements in accordance with this subpart.

(b) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The association's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the association and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether financial statements of a business acquired or to be acquired in a business combination accounted for as a pooling of interests are required pursuant to 17 CFR 210.3–05, this condition is also met when the number of common shares

exchanged by the association exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The association's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the association and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The association's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the association and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent or its consolidated subsidiaries or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the association and its subsidiaries consolidated for purposes of the computation.

2. If income of the association and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

§ 563c.3 Qualification of public accountant.

(See also 17 CFR 210.2–01.)

(a) The term "qualified public accountant" means a certified public accountant or licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States who is in good standing as such under the laws of the jurisdiction where the home office of the registrant to be audited is located. Any person or firm who is suspended from practice before the Securities and Exchange Commission or other governmental agency is not a "qualified public accountant" for purposes of this section.

(b) Independence of public accountant. (See § 571.2(c)(3) of this subchapter.)

§ 563c.4 Condensed financial information (Parent only).

(a) The information prescribed by Schedule III required by section IV of § 563c.102 of this part shall be presented in a note to the financial statements when the restricted net assets (17 CFR 210.4–08(e)(3)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. The investment in and indebtedness of and to association subsidiaries shall be stated separately in the condensed balance sheet from amounts for other subsidiaries; and the amount of cash dividends paid to the parent association for each of the last three years by association subsidiaries shall be stated separately in the condensed income statement from amounts for other subsidiaries.

(b) For purposes of the above test, restricted net assets of consolidated subsidiaries shall mean that amount of the association's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent year may not be transferred to the parent company by subsidiaries in the form of loans, advances, or cash dividends without the consent of a third party (*i.e.*, lender, regulatory agency, foreign government, etc.).

(c) Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (See Item I (22) in § 563c.102) and minority interest (See Item I (21) in § 563c.102) shall be deducted in computing net assets for purposes of this test.

Subpart B—Other Accounting Requirements

§ 563c.10 Use of accrual basis of accounting.

(a) *Definition.* As used herein, the term "accrual basis of accounting" refers to that accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether or not received.

(b) *General rule.* Savings associations shall use the accrual basis of accounting to prepare and maintain their accounting records and/or to prepare their financial statements and reports to the Office, except that this requirement shall not apply to savings associations whose total assets do not exceed $10,000,000.

(c) *Preparation and maintenance of books and records.* For the purpose of examinations by the Office, savings associations which elect or are required to use the accrual basis of accounting for the preparation of financial statements and reports to the Office and which prepare and maintain books and records on a basis other than the accrual basis of accounting shall also prepare and maintain such records and reconciliations as will properly support such statements and reports.

(d) *Initial accrual basis adjustments.* (1) A savings association which elects or is required to use the accrual basis of accounting shall make initial adjustment to convert to such basis of accounting as of the beginning of the annual accounting period to which such election or requirement is applicable, and such initial adjustments shall be recorded no later than the close of business of the sixth month of such annual accounting period.

(2) The net amount of the initial adjustments may be recorded as a nonoperating income or expense item, as the case may be, or may be recorded as a direct charge or credit to appropriate regulatory capital accounts.

§ 563c.11 [Reserved]

§ 563c.12 Accounting for net income.

(a) *Definition of net income.* The term "net income" means gross income of all kinds from all sources less all expenses, including interest on Federal Home Loan Bank advances and borrowed money, interest or dividends on withdrawable or nonwithdrawable accounts (except capital stock), Federal, state or local income taxes, if any, and losses of every kind and nature.

(b) *Reporting of net income.* All reports submitted to the Office by or for a savings association (including reports of audit) which include therein data relating to net income for any quarterly period ending on or after October 31, 1971, shall report net income in accordance with the definition contained in paragraph (a) of this section.

§ 563c.13 Accounting for investment in service corporation.

(a) For purposes of examination by and reports to the Office and of compliance with this subchapter, each service corporation shall be prepared to show its earnings under the provisions of §§ 563.231 and 563.173 of this chapter, and each savings association shall calculate and report the outstanding book value of its investment in any service corporation as though such service corporation applied the provisions of §§ 563.231 and 563.173 of this chapter to the calculation of its earnings.

(b) For purposes of this section, when applying the provisions of § 563.231 of this chapter, any loans made or committed to be made to the purchaser of the real estate, or any such loan acquired or committed to be acquired by the savings association or any affiliate, as defined in § 561.4, shall be considered as if they were made directly by the service corporation: *Provided,* That this paragraph (b) shall not apply if not more than ten percent of the stock of the service corporation is owned by the savings association that is providing the financing or that has subsequently acquired the mortgage or security property.

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* A savings association, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles, on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.174(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 566.1(g) (except those qualifying under § 566.1(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an association may revoke any prior election(s) to amortize gains and losses on the disposition of such assets. The election to defer gains and losses is restricted to the disposition of assets acquired, purchased, originated or committed to be acquired, purchased or originated prior to October 28, 1984. Participation certificates and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under this section.

(b) *Amortization.* An association making this election shall:

(1) Demonstrate an intent to use the sale proceeds so as to improve the association's future profitability and/or reduce interest-rate risk;

(2) If it is a state-chartered association, exercise this election only if its state supervisory authority has provided the Office with either specific or blanket concurrence for state law purposes in the use of this accounting treatment by sending the concurrence to the Office's District Director.

(3) Account for such gains and losses as follows:

(i) Such gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) shall be carried in a separate account and shall be readily identifiable in the association's statement of condition;

(ii) Such gains or losses shall be amortized by the straight-line or level-yield methods over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.

(c) *Matching the amortization of discounts and losses.*

(1) For purposes of paragraph (c) of this section only:

(i) The term "long-term, deep-discount security" means any loan, lease or security identified in paragraph (a) of this section that has a remaining term to maturity, at the time of purchase, of ten years or more, and is purchased at a price of less than 90% of its stated (par) value or principal balance.

(2) When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to paragraph (a) of this section, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss: *Provided,* That: (i) The method used for the loss is also an appropriate method by which to amortize a discount, and (ii) if the average of the remaining terms to maturity of the securities purchased is shorter than the period used to amortize the matching loss, then the average of the remaining terms to maturity of the securities purchased may be used as the amortization period for the discount.

(3) If necessary to meet the requirements of paragraph (c)(2) of this section, an association may change the method and period by which the matching loss is being amortized. When making such a change, the amount of the matching loss shall be that portion of the loss that remains to be amortized as of the date of the change.

(d) For purposes of this section, "disposition" includes, but is not limited to:

(1) Prepayment at a discount of an association's mortgage loans by existing borrowers,

(2) Sales of loans (including participation interests therein), leases and securities identified in paragraph (a) of this section, and

(3) Exchanges of assets eligible for disposition under this section.

(e) The accounting treatment authorized by this section may be used only for mortgages and qualifying securities sold or otherwise disposed of during fiscal years ending on or after September 30, 1981. The board of directors of any association that has a fiscal year ending prior to December 31, 1982, must make the election authorized by paragraph (a) of this section prior to January 1, 1982.

(f) *"Sunset" and "Grandfather" Provisions.* Authority to exclude the unamortized amount of gain deferrals and to include the unamortized amount of loss deferrals in computing an association's regulatory capital will cease as of January 1, 1988. Any savings association that has excluded gain deferrals and included loss deferrals in computing its regulatory capital as of January 1, 1988, may continue to exclude the unamortized amount of such gain deferrals and include the unamortized amount of such loss deferrals in computing its regulatory capital after January 1, 1988.

Subpart C—Financial Statement Presentation

§ 563c.101 Application of this subpart.

This subpart contains rules pertaining to the form and content of financial statements included as part of:

(a) A conversion application under part 563b, including financial statements in proxy statements and offering circulars,

(b) A filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and

(c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74, debt securities under § 563.80 and § 563.81, and retail repurchase agreements under § 563.84 of this subchapter.

§ 563c.102 Financial statement presentation.

This section specifies the various line items which should appear on the face

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of the financial statements governed by this Subpart C and additional disclosures which should be included with the financial statements in related notes.

I. Balance Sheet

Balance sheets shall comply with the following provisions:

Assets

1. *Cash and amounts due from depository institutions.* (a) The amounts in this caption should include noninterest-bearing deposits with depository institutions.

(b) State in a note the amount and terms of any deposits in depository institutions held as compensating balances against long- or short-term borrowing arrangements. This disclosure should include the provisions of any restrictions as to withdrawal or usage. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposits are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required. Compensating balances that are maintained under an agreement to ensure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of the agreement.

(c) Checks outstanding in excess of an applicant's book balance in a demand deposit account shall be shown as a liability.

2. *Interest-bearing deposits in other banks.*

3. *Federal funds sold and securities purchased under resale agreements or similar arrangements.* These amounts should be presented, *i.e.*, gross and not netted against Federal funds purchased and securities sold under agreement to repurchase, as reported in Caption 15.

4. *Trading-account assets.* Include securities considered to be held for trading purposes in accordance with the Statement of Policy at § 571.19.

5. *Other short-term investments.*

6. *Investment securities.* (a) Include securities considered to be held for investment purposes in accordance with the Statement of Policy at § 571.19. Disclose the aggregate book value of investment securities as the line item on the balance sheet; and also show on the face of the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned, or sold under repurchase agreements and similar arrangements. Borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (i) the U.S. Treasury and other U.S. Government agencies and corporations; (ii) states of the U.S. and political subdivisions thereof; and (iii) other securities.

7. *Assets held for sale.* Investments in assets considered to be held for sale in accordance with the Statement of Policy at § 571.19 should be reported separately in the statement of financial condition.

8. *Loans.* (a) Disclose separately: (i) Total loans (including financing type leases), (ii) allowance for loan losses, (iii) unearned income on installment loans, (iv) discount on loans purchased, and (v) loans in process.

(b) State on the balance sheet or in a note the amount of loans in each of the following categories: (i) Real estate mortgage; (ii) real estate construction; (iii) installment; and (iv) commercial, financial, and agricultural.

(c)(i) Include under the real estate mortgage category loans payable in monthly, quarterly, or other periodic installments and secured by developed income property and/or personal residences.

(ii) Include under the real estate construction category loans secured by real estate which are made for the purpose of financing construction of real estate and land development projects.

(iii) Include under the installment category loans to individuals generally repayable in monthly installments. This category shall include, but not be limited to, credit card and related activities, individual automobile loans, other installment loans, mobile home loans, and residential repair and modernization loans.

(iv) Include under the commercial, financial, and agricultural category all loans not included in another category. This category shall include, but not be limited to, loans to real estate investment trusts, mortgage companies, banks, and other financial institutions; loans for carrying securities; and loans for agricultural purposes. Do not include loans secured primarily by developed real estate.

(d) State separately any other loan category regardless of relative size if necessary to reflect any unusual risk concentration.

(e) Unearned income on installment loans shall be shown and deducted separately from total loans.

(f) Unamortized discounts on purchased loans shall be deducted separately from total loans.

(g) Loans in process shall be deducted separately from total loans.

(h) A series of categories other than those specified in (b) above may be used to present details of loans if considered a more appropriate presentation. The categories specified in (b) above should be considered the minimum categories that may be presented.

(i) For each period for which an income statement is presented, disclose in a note the total dollar amount of loans being serviced by the association for the benefit of others.

(j)(i)(A) As of each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the last year) made by the association or any of its subsidiaries to directors, executive officers, or principal holders of equity securities (17 CFR 210.1–02) of the association or any of its significant subsidiaries (17 CFR 210.1–02) or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include at the beginning of the period new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(B) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of stockholders' equity at the balance sheet date.

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, Section III.C.), so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(iii) Notwithstanding the aggregate disclosure called for by paragraph (j)(i) of this balance sheet caption 8, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan (see 17 CFR 210.9–03.7(e)(3)).

(iv) For purposes only of Balance Sheet Item 8(j), the following definitions shall apply:

(A) "Associate" used to indicate a relationship with any person means (1) any corporation, venture, or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (2) any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity; and (3) any member of the immediate family of any of the foregoing persons.

(B) "Executive officer" means the president, any vice president in charge of a principal business unit, division, or function (such as loans, investments, operations, administration, or finance), and any other officer or person who performs similar policy-making functions.

(C) "Immediate family" with regard to a person means such person's spouse, parents, children, siblings, mother- and father-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law.

(D) "Ordinary course of business" with regard to loans means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features.

(k) For each period for which an income statement is presented, furnish in a note a statement of changes in the allowance for loan losses, showing balances at beginning and end of the period, provision charged to income, recoveries of amounts previously charged off, and losses charged to the allowance.

9. *Premises and equipment.*

10. *Real estate owned.* State, parenthetically or otherwise:

(a) The amount of real estate owned by class as described in paragraph (b) below and the basis for determining that amount; and

(b) A description of each class of real estate owned (i) acquired by foreclosure or by deed in lieu of foreclosure, (ii) in judgment and subject to redemption, or (iii) acquired for development or resale. Show separately any accumulated depreciation or valuation allowances. Disclose the policies regarding, and amounts of, capitalized costs, including interest.

11. *Investment in joint ventures.* In a note, present summarized aggregate financial statements for investments in real estate or other joint ventures which individually (a) are 20 percent or more owned by the association or any of its subsidiaries, or (b) have liabilities (including contingent liabilities) to the parent exceeding 10 percent of the parent's regulatory capital. If an allowance for real estate losses subsequent to acquisition is maintained, the amount shall be disclosed, deducted from the other real estate owned, and a statement of changes in the allowance showing balances at beginning and end of period should be included. Provision charged to income and losses charged to the allowance account shall be furnished for each period for which an income statement is filed.

12. *Other assets.* (a) Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of stockholders' equity. The remaining assets may be shown as one amount.

(i) *Accrued interest receivable.* State separately those amounts relating to loans and those amounts relating to investments.

(ii) Excess of cost over assets acquired (net of amortization).

(b) State in a note (i) amounts representing investments in affiliates and investments in other persons which are accounted for by the equity method, and (ii) indebtedness of affiliates and other persons, the investments in which are accounted for by the equity method. State the basis of determining the amounts reported under paragraph (b)(i).

13. *Total assets.*

Liabilities, and Stockholders' Equity

14. *Deposits.* (a) Disclose separately on the balance sheet or in a note the amounts in the following categories of interest-bearing and noninterest-bearing deposits: (i) NOW account and MMDA deposits, (ii) savings deposits, and (iii) time deposits.

(b) Include under the savings-deposits category interest-bearing deposits without specified maturity or contractual provisions requiring advance notice of intention to withdraw funds. Include deposits for which an association may require at its option written notice of intended withdrawal not less than 14 days in advance.

(c) Include under the time-deposits category deposits subject to provisions specifying maturity or other withdrawal conditions such as time certificates of deposits, open account time deposits, and deposits accumulated for the payment of personal loans.

(d) Include accrued interest or dividends, if appropriate.

15. *Short-term borrowings.* (a) State separately, here or in a note, the amounts payable for (i) Federal funds purchased and securities sold under agreements to repurchase, (ii) commercial paper, and (iii) other short-term borrowings.

(b) Federal funds purchased and sales of securities under repurchase agreements shall be reported gross and not netted against sales of Federal funds and purchase of securities under resale agreements.

(c) Include as securities sold under agreements to repurchase all transactions of this type regardless of (i) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, or other terms signifying the same substantive transaction, and (ii) whether the transactions are with the same or different institutions, if the purpose of the transactions is to repurchase identical or similar securities.

(d) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

16. *Advance payments by borrowers for taxes and insurance.*

17. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 30 percent of stockholders' equity (except that amounts in excess of 5 percent of stockholders' equity should be disclosed with respect to Item (d)). The remaining items may be shown as one amount.

(a) Income taxes payable.

(b) Deferred income taxes.

(c) Indebtedness to affiliate and other persons the investment in which is accounted for by the equity method.

(d) Indebtedness to directors, executive officers, and principal holders of equity securities of the registrant or any of its significant subsidiaries. (The guidance in balance sheet caption "8(j)" shall be used to identify related parties for purposes of this disclosure.)

18. *Bonds, mortgages, and similar debt.* (a) Include bonds, Federal Home Loan Bank advances, capital notes, debentures, mortgages, and similar debt.

(b) For each issue or type of obligation state in a note:

(i) The general character of each type of debt, including: (A) The rate of interest, (B) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1990 to 1999," (C) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (D) a brief indication of priority, and (E) if convertible, the basis. For amounts owed to related parties see 17 CFR 210.4–08(k).

(ii) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that, if used, would be disclosed under this caption shall be disclosed in the notes to the financial statements, if significant.

(c) State in the notes with appropriate explanations (i) the title and amount of each issue of debt of a subsidiary included in (a) above which has not been assumed or guaranteed by the association, and (ii) any liens on premises of a subsidiary or its consolidated subsidiaries which have not been assumed by the subsidiary or its consolidated subsidiaries.

19. *Deferred credits.* State separately those items which exceed 30 percent of stockholders' equity.

20. *Commitments and contingent liabilities.* Total commitments to fund loans should be disclosed. The dollar amounts and terms of other than floating market-rate commitments should also be disclosed.

21. *Minority interest in consolidated subsidiaries.*

22. *Preferred stock subject to mandatory redemption requirements or the redemption of which is outside the control of the issuer.* (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (i) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (ii) it is redeemable at the option of the holder; or (iii) it has conditions for redemption which are not solely within the control of the issuer, such as stock which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under caption 23 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title, carrying amount, and redemption amount of each issue. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07.)

(c) State in a separate note captioned "Redeemable Preferred Stock" (i) a general description of each issue, including its

redemption features (*e.g.*, sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made, (ii) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet, and (iii) the changes in each issue for each period for which an income statement is required to be presented. (See also 17 CFR 210.4–08(d).)

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 23, 24 or 25, which follow.

23. *Preferred stock which is not redeemable or is redeemed solely at the option of the issuer.* State on the face of the balance sheet, or, if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07.) Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be presented. (See also 17 CFR 210.4–08(d).)

24. *Common stock.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see 17 CFR 210.4–07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common stock state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis for conversion (see also 17 CFR 210.4–08(d).) Show also the dollar amount of any common stock subscribed for but unissued, and show the deduction of subscriptions receivable. Show in a note or statement the changes in each class of common stock for each period for which an income statement is required to be presented.

25. *Other stockholders' equity.* (a) Separate captions shall be shown on the face of the balance sheet for (i) additional paid-in capital, (ii) other additional capital, and (iii) retained earnings, both (A) restricted and (B) unrestricted. (See 17 CFR 210.4–08(e).) Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate. State whether or not the association is in compliance with the Federal regulatory capital requirements (and state requirements where applicable). Also include the dollar amount of those regulatory capital requirements and the amount by which the association exceeds or fails to meet those requirements.

(b) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates, and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) Changes in stockholders' equity shall be disclosed in accordance with the requirements of 17 CFR 210.3–04.

26. *Total liabilities and stockholders' equity.*

II. Income Statement

Income statements shall comply with the following provisions:

1. *Interest and fees on loans.* (a) Include interest, service charges, and fees which are related to or are an adjustment of the loan interest yield.

(b) Current amortization of premiums on mortgages or other loans shall be deducted from interest on loans, and current accretion of discount on such items shall be added to interest on loans.

(c) Discounts and other deferred amounts which are related to or are an adjustment of the loan interest yield shall be amortized into income using the interest (level yield) method.

2. *Interest and dividends on investment securities.* Include accretion of discount on securities and deduct amortization of premiums on securities.

3. *Trading account interest.* Include interest from securities carried in a dealer trading account or accounts that are held principally for resale to customers.

4. *Other interest income.* Include interest on short-term investments (Federal funds sold and securities purchased under agreements to resell) and interest on bank deposits.

5. *Total interest income.*

6. *Interest on deposits.* Include interest on all deposits. On the income statement or in a note, state separately, in the same categories as those specified for deposits at balance sheet caption 14(a), the interest on those deposits. Early withdrawal penalties should be netted against interest on deposits and, if material, disclosed on the income statement.

7. *Interest on short-term borrowings.* Include interest on borrowed funds, including Federal funds purchased, securities sold under agreements to repurchase, commercial paper, and other short-term borrowings.

8. *Interest on long-term borrowings.* Include interest on bonds, capital notes, debentures, mortgages on association premises, capitalized leases, and similar debt.

9. *Total interest expense.*

10. *Net interest income.*

11. *Provision for loan losses.*

12. *Net interest income after provision for loan losses.*

13. *Other income.* Disclose separately any of the following amounts, or any other item of other income, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amount may be shown as one amount, except for investment securities gains or losses which shall be shown separately regardless of size.

(a) Commissions and fees from fiduciary activities.

(b) Fees for other services to customers.

(c) Commissions, fees, and markups on securities underwriting and other securities activities.

(d) Profit or loss on transactions in investment securities.

(e) Equity in earnings of unconsolidated subsidiaries and 50-percent- or less-owned persons.

(f) Gains or losses on disposition of investments in securities of subsidiaries and 50-percent- or less-owned persons.

(g) Profit or loss from real estate operations.

(h) Other fees related to loan originations or commitments not included in income statement caption 1.

The remaining other income may be shown in one amount.

(i) Investment securities gains or losses. The method followed in determining the cost of investments sold (*e.g.*, "average cost," "first-in, first-out," or "identified certificate") and related income taxes shall be disclosed.

14. *Other expenses.* Disclose separately any of the following amounts, or any other item of other expense, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amounts may be shown as one amount.

(a) Salaries and employee benefits.

(b) Net occupancy expense of premises.

(c) Net cost of operations of other real estate (including provisions for real estate losses, rental income, and gains and losses on sales of real estate).

(d) Minority interest in income of consolidated subsidiaries.

(e) Goodwill amortization.

15. *Other income and expenses.* State separately material events or transactions that are unusual in nature or occur infrequently, but not both, and therefore do not meet both criteria for classification as an extraordinary item. Examples of items which would be reported separately are gain or loss from the sale of premises and equipment, provision for loss on real estate owned, or provision for gain or loss on the sale of loans.

16. *Income or losses before income tax expense.*

17. *Income tax expense.* The information required by 17 CFR 210.4–08(h) should be disclosed.

18. *Income or loss before extraordinary items effects of changes in accounting principles.*

19. *Extraordinary items, less applicable tax.*

20. *Cumulative effects of changes in accounting principles.*

21. *Net income or loss.*

22. *Earnings-per-share data.*

23. *Conversion footnote.* If the association is an applicant for conversion from a mutual to a stock association or has converted within the last three years, describe in a note the general terms of the conversion and restrictions on the operations of the association imposed by the conversion. Also, state the amount of net proceeds received from the conversion and costs associated with the conversion.

24. *Mergers and acquisitions.* For the period in which a business combination occurs and is accounted for by the purchase method of accounting, in addition to those disclosures required by Accounting Principles Board Opinion No. 16, the association shall make those disclosures as noted below for all combinations involving significant acquisitions. (A significant acquisition is defined for this purpose to be one in which the assets of the acquired association, or group of associations, exceed 10 percent of the assets of the consolidated association at the end of the most recent period being reported upon.)

(a) Amounts and descriptions of discounts and premiums related to recording the aggregate interest-bearing assets and liabilities at their fair market value. The disclosure should also include the methods of amortization or accretion and the estimated remaining lives.

(b) The net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to the purchase accounting transaction(s). For subsequent periods, the association shall disclose the remaining total unamortized or unaccreted amounts of discounts, premiums, and intangible assets as of the date of the most recent balance sheet presented. In addition, the association shall disclose the net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to prior business combinations accounted for by the purchase method of accounting. Such disclosures need not be made if the total amounts of discounts, premiums, or intangible assets do not exceed 30 percent of stockholders' equity as of the date of the most recent balance sheet presented.

III. Statement of Cash Flows

The amounts shown in this statement should be those items which materially enhance the reader's understanding of the association's business. For example, gains from sales of loans should be segregated from sales of mortgage-backed securities and other securities, if material, proceeds from principal repayments and maturities from loans and mortgage-backed securities should be segregated from proceeds from sales of loans and mortgage-backed securities, purchases of loans, mortgage-backed securities and other securities should be segregated, if material. Additional guidance may be found in the FASB's Statement of Financial Accounting Standards No. 95 Statement of Cash Flows.

IV. Schedules Required to be Filed

The following schedules, which should be examined by an independent accountant, shall be filed unless the required information is not applicable or is presented in the related financial statements:

(1) *Schedule I—Indebtedness of and to related parties—Not Current.* For each period for which an income statement is required, the following schedule should be filed in support of the amounts required to be reported by balance sheet Items 8(j) and 17(c) unless such aggregate amount does not exceed 5 percent of stockholders' equity at either the beginning or the end of the period:

INDEBTEDNESS OF AND TO RELATED PARTIES—NOT CURRENT

	Indebtedness of—			
Name of person [1]	Balance at beginning	Additions [2]	Deductions [3]	Balance at end
A	B	C	D	E

INDEBTEDNESS OF AND TO RELATED PARTIES—NOT CURRENT

	Indebtedness to—			
Name of person [1]	Balance at beginning	Additions [2]	Deductions [3]	Balance at end
A	F	G	H	I

[1] The persons named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

[2] For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

[3] If deduction was other than a receipt or disbursement of cash, explain.

(2) *Schedule II—Guarantees of securities of other issuers.* The following schedule should be filed as of the date of the most recently audited balance sheet with respect to any guarantees of securities of other issuers by the person for which the statements are being filed:

GUARANTEES OF SECURITIES OF OTHER ISSUERS [1]

Col. A. Name of issuer of securities guaranteed by person for which statement is filed	Col. B. Title of issue of each class of securities guaranteed	Col. C. Total amount guaranteed and outstanding [2]	Col. D. Amount owned by person or persons for which statement is filed

GUARANTEES OF SECURITIES OF OTHER ISSUERS [1]

Col. A. Name of issuer of securities guaranteed by person for which statement is filed	Col. E. Amount in treasury of issuer of securities guaranteed	Col. F. Nature of guarantee [3]	Col. G. Nature of any default by issue of securities guaranteed in principal, interest, sinking fund or redemption provisions, or payment of dividends [4]

[1] Indicate in a note to the most recent schedule being filed for a particular person or group any significant changes since the date of the related balance sheet. If the schedule is filed in support of consolidated or combined statements, there shall be set forth guarantees by any person included in the consolidation or combination, except that such guarantees of securities which are included in the consolidated or combined balance sheet need not be set forth.

[2] Indicate any amounts included in column C which are included also in column D or E.

[3] There need be made only a brief statement of the nature of the guarantee, such as "Guarantee of principal and interest," or "Guarantee of dividends." If the guarantee is of interest or dividends, state the annual aggregate amount of interest or dividends so guaranteed.

[4] Only a brief statement as to any such defaults need be made.

(3) *Schedule III—Condensed financial information.* The following schedule shall be filed as of the dates and for the periods specified in the schedule.

Condensed Financial Information
[Parent only]
[Association may determine disclosure based on information provided in footnotes below]

(a) Provide condensed financial information as to financial position, changes in financial position, and results of operations of the association as of the same dates and for the same periods for which audited consolidated financial statements are required. The financial information required need not be presented in greater detail than is required for condensed statement by 17

CFR 210.10-01(a) (2), (3), (4). Detailed footnote disclosure which would normally be included with complete financial statements may be omitted with the exception of disclosure regarding material contingencies, long-term obligations, and guarantees. Description of significant provisions of the association's long-term obligations, mandatory dividend, or redemption requirements of redeemable stocks, and guarantees of the association shall be provided along with a 5-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the association have been separately disclosed in the consolidated statements, they need not be repeated in this schedule.

(b) Disclose separately the amount of cash dividends paid to the association for each of the last three fiscal years by consolidated subsidiaries, unconsolidated subsidiaries, and 50-percent- or less-owned persons accounted for by the equity method, respectively.

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

Subpart A—Regulations

Sec.

563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.
563d.2 Mailing requirements for securities filings.
563d.3b–6 Liability for certain statements by savings associations.
563d.200–30 Delegation of authority to Chief Counsel.
563d.210 Form and content of financial statements.

Subpart B—Interpretations

563d.801 Application of this subpart.
563d.802 Description of business.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), 78 *l*, m, n, w, 78d–1).

Subpart A—Regulations

§ 563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.

In respect to any securities issued by savings associations, the powers, functions, and duties vested in the Securities and Exchange Commission (the "Commission") to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934 (the "Act") are vested in the Office. The rules, regulations and forms prescribed by the Commission pursuant to those sections or applicable in connection with obligations imposed by those sections, shall apply to securities issued by savings associations, except as otherwise provided in this part. The term "Commission" as used in those rules and regulations shall with respect to securities issued by savings associations be deemed to refer to the Office unless the context otherwise requires. All filings with respect to securities issued by savings associations required by those rules and regulations to be made with the Commission shall be made with the Office by submitting such filings to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, except as noted in § 563d.2 of this part. Except to the extent specifically provided, no filing fees specified by the Commission's rules shall be paid to the Office.

§ 563d.2 Mailing requirements for securities filings.

Those savings associations required to file reports with the Corporate and Securities Division, as set forth in § 563d.1 of this part, shall file one of the required number of copies with the District Director or his or her designee. In the case of preliminary versions of any filing, and in the case of Forms 3 and 4, however, all copies shall be sent to the Corporate and Securities Division, as set forth in § 563d.1 of this part. The originally-signed copy and all remaining copies of each filing shall be sent to the Corporate and Securities Division, at the address noted in § 563d.1 of this part. Additionally, copies to the District Director shall be mailed on the same day as the original and remaining copies are forwarded to the Corporate and Securities Division.

§ 563d.3b–6 Liability for certain statements by savings associations.

This section replaces adherence to 17 CFR 240.3b–6 and applies as follows:

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a proxy statement or offering circular filed with the Office under part 563b of this subchapter; in a registration statement filed with the Office under the Act on Form 10 (17 CFR 249.210); in part I of a quarterly report filed with the Office on Form 10–Q (17 CFR 241.308a); in an annual report to shareholders meeting the requirements of § 563d.1 of this part, particularly 17 CFR 240.14a–3 (b) and (c) or 17 CFR 240.14c–3 (a) and (b) under the Act; in a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available; or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided*, That

(i) At the time such statements are made or reaffirmed, either:

(A) The issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Act and has complied with the requirements of 17 CFR 240.13a–1 or 240.15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K; or

(B) If the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Act, the statements are made either in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Act, or in a proxy statement or offering circular filed with the Office under part 563b of this subchapter if such statements are reaffirmed in a registration statement under the Act on Form 10, filed with the Office within 180 days of the savings association's conversion, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940;

(2) Information (i) relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.303), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.302), supplementary financial information, and (ii) disclosed in a document filed with the Office or in an annual report to shareholders meeting the requirements of 17 CFR 240.14a–3 (b) and (c) or 17 CFR 240.14c–3 (a) and (b) under the Act: *Provided*, That such information included in a proxy statement or offering circular filed pursuant to part 563b of this subchapter shall be reaffirmed in a registration statement under the Act on Form 10 filed with the Office within 180 days of the association's conversion.

(c) For purposes of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S–K; or

(4) A statement of the assumptions underlying or relating to any of the statements described in paragraph (c)(1), (c)(2), or (c)(3) of this section.

(d) For purposes of this section, the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

§ 563d.200–30 Delegation of authority to Chief Counsel.

The Chief Counsel and such person or persons as he or she may designate from time to time shall have delegated authority under the Act to perform the following actions:

(a) To determine to be effective applications for registration of securities on a national securities exchange prior to 30 days after receipt of a certification pursuant to section 12(d) of the Act, 15 U.S.C. 78*l*(d);

(b) To accelerate, at the request of the issuer, the effective date of registration statements filed pursuant to section 12(g) of the Act, 15 U.S.C. 78*l*(g);

(c) To accelerate, at the request of the issuer, the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act, 15 U.S.C. 78*l*(g)(4), or as provided in 17 CFR 240.12g–4;

(d) To approve the withdrawal or striking from listing and registration of securities registered on any national securities exchange pursuant to section 12(d) of the Act, 15 U.S.C. 78*l*(d), and 17 CFR 240.12d2–1 and 240.12d2–2;

(e) To grant for a period not to exceed 60 da[illegible] or deny applications filed pursuant to section 12(g)(1) of the Act, 15 U.S.C. 78*l*(g)(1), for extensions of time within which to file registration statements;

(f) To authorize the use of forms of proxies, proxy statements, or other soliciting material within periods of time less than that prescribed in 17 CFR 240.14a–6, 17 CFR 240.14a–8(d) and 17 CFR 240.14a–11; to authorize the filing of information statements within periods of time less than that prescribed in 17 CFR 240.14c–5(a); and to authorize the filing of information pursuant to 17 CFR 240.14f–1, within periods of time less than prescribed in those sections;

(g) To grant or deny applications for confidential treatment filed pursuant to section 24(b) of the Act, 15 U.S.C. 78x(b) and 17 CFR 240.24b–2, and to revoke a grant of any such application for confidential treatment;

(h) Pursuant to instructions regarding financial statement requirements applicable to forms adopted under the Act:

(1) To extend the time for filing or to permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character; and

(2) To require the filing of other financial statements in addition to, or in substitution for, the statements therein required; and

(i) To approve or disapprove applications regarding unlisted trading privileges under section 12(*f*) of the Act.

The provisions of 17 CFR 201.26 shall be applicable with regard to the delegations specified in this section.

§ 563d.210 Form and content of financial statements.

The financial statements required to be contained in filings with the Office under the Act are as set out in the applicable form and Regulation S–X, 17 CFR Part 210. Those financial statements, however, shall conform as to form and content to the requirements of § 563c.1 of this subchapter.

Subpart B—Interpretations

§ 563d.801 Application of this subpart.

This subpart contains interpretations pertaining to the requirements of the Act and the rules and regulations thereunder as applied to savings associations by the Office.

§ 563d.802 Description of business.

(a) This section applies to the description-of-business portion of:

(1) Registration statements filed on Form 10 (Item 1) (17 CFR 249.210),

(2) Proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14C) (17 CFR 240.14a–101 and 240.14c–101), and

(3) Annual reports filed on Form 10–K (Item 7) (17 CFR 249.310).

(b) The description of business should conform to the description of business required by Item 7 of Form PS under Part 563b of this subchapter.

(c) No repetitive disclosure is required by virtue of similar requirements in Item 7 of Form PS and Items 301 and 303 of Regulation S–K (17 CFR 229.301, 303). However, there should be included appropriate disclosure which arises by virtue of the registrant being a stock savings association. For example, the table regarding return on equity and assets, Item 7(d)(5), should include a line item for "dividend payout ratio (dividends declared per share divided by net income per share)."

PART 563e—COMMUNITY REINVESTMENT

Sec.

563e.1 Authority.
563e.2 Purposes.
563e.3 Delineation of community.
563e.4 Community Reinvestment Act statement.
563e.5 Files of public comments and recent CRA statements.
563e.6 Public notice.
563e.7 Assessing the record of performance.
563e.8 Effect on applications.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

§ 563e.1 Authority.

The provisions of this Part 563e are issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); and section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a).

§ 563e.2 Purposes.

The purposes of this regulation are to encourage savings associations to help meet the credit needs of their local community or communities; to provide guidance to associations as to how the Office will assess the records of associations in satisfying their continuing and affirmative obligations to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods,

consistent with the safe and sound operation of those associations; and to provide for taking into account those records in connection with certain applications.

§ 563e.3 Delineation of community.

(a) Each savings association shall prepare, and at least annually review, a delineation of the local community or communities that comprise its entire community, without excluding low- and moderate-income neighborhoods. Maps shall be used to portray community delineations. The reasonableness of the delineations will be reviewed by the Office's examiners.

(b) Except as provided in paragraph (c) of this section, a local community consists of the contiguous areas surrounding each office or group of offices, including any low- and moderate-income neighborhoods in those areas. More than one office of an association may be included in the same local community. Unless the Office determines otherwise, a community delineation need not take account of an off-premises electronic facility that receives deposits for more than one depository institution. In preparing its delineation, an association may use any one of the three bases set forth below.

(1) Existing boundaries such as those of standard metropolitan statistical areas (SMSA's) or counties in which the association's office or offices are located may be used to delineate a local community. Where appropriate, portions of adjacent areas should be includ d. The association may make adjustments in the case of areas divided by State borders or significant geographic barriers, or areas that are extremely large or of unusual configuration. In addition, a small association may delineate those portions of SMSA's or counties it reasonably may be expected to serve.

(2) An association may use its effective lending territory, which is defined as that local area or areas around each office or group of offices where it makes a substantial portion of its loans and all other areas equidistant from its offices as those areas. Adjustments such as those indicated in paragraph (b)(1) of this section may be made.

(3) An association may use any other reasonably delineated local area that meets the purposes of the CRA and does not exclude low- and moderate-income neighborhoods.

(c) An association whose business predominantly consists of serving persons who are on active duty or retired military personnel or their dependents and who are located outside of its local community or communities may delineate a "military community" for those customers, in addition to its local community or communities. Provisions of this part concerning local communities shall also apply to military communities, except that military communities shall be delineated by a written description rather than a map.

§ 563e.4 Community Reinvestment Act statement.

(a) Within 90 days after the effective date of this part, the board of directors of each association shall adopt a CRA statement for each delineated local community.

(b) Each CRA statement shall include at least the following:

(1) The delineation of the local community;

(2) A list of specific types of credit within certain categories, such as residential loans for 1- to 4-family dwelling units, residential loans for 5 dwelling units and over, housing rehabilitation loans, home improvement loans, small business loans, farm loans, community development loans, commercial loans, and consumer loans, that the association is prepared to extend within the local community; and

(3) A copy of the Community Reinvestment Act notice provided for in § 563e.6 of this part.

(c) Each association is encouraged to include the following in each CRA statement:

(1) A description of how its current efforts, including special credit-related programs, help to meet community credit needs;

(2) A periodic report regarding its record of helping to meet community credit needs; and

(3) A description of its efforts to ascertain the credit needs of its community, including efforts to communicate with members of its community regarding credit services.

(d) Each association's board of directors shall review each CRA statement at least annually and shall act upon any material change made in the interim at its first regular meeting after the change. Such actions shall be noted in its minutes.

(e) Each current CRA statement shall be readily available for public inspection:

(1) At the home office of the association; and

(2) At each office of the association in the local community delineated in the statement, except off-premises electronic deposit facilities.

(f) Copies of each current CRA statement shall be provided to the public upon request. An association may charge a fee not to exceed the cost of reproduction.

§ 563e.5 Files of public comments and recent CRA statements.

(a) Each association shall maintain files that are readily available for public inspection consisting of:

(1) Any signed, written comments received from the public within the past 2 years that specifically relate to any CRA statement or to the association's performance in helping to meet the credit needs of its community or communities;

(2) Any response to the comments that the association wishes to make; and

(3) Any CRA statements in effect during the past 2 years.

(b) These files shall not contain any comments or responses that reflect adversely upon the good name or reputation of any persons other than the association, or publication of which would violate specific provisions of law.

(c) These files shall be maintained by each association as follows:

(1) All materials at the home office; and

(2) Those materials relating to each local community at a designated office in that community.

§ 563e.6 Public notice.

Within 90 days after the effective date of this part, each association shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by associations having more than one local community.

Community Reinvestment Act Notice

The Federal Community Reinvestment Act (CRA) requires the Office of Thrift Supervision to evaluate our performance in helping to meet the credit needs of this community, and to take this evaluation into account when deciding on certain applications submitted by us. Your involvement is encouraged.

You may obtain our current CRA statement for this community in this office. [Current CRA statements for other communities served by us are available at our home office, located at _____.]

You may send signed, written comments about our CRA statement[s] or our performance in helping to meet community credit needs to (title and address of association official) and to the District Director located at (address). Your letter, together with any response by us, may be made public.

You may look at a file of all signed, written comments received by us within the past 2 years, any responses we have made to the comments, and all CRA statements in effect during the past 2 years at our office located at (address). [You also may look at the file about this community at (name and address of designated office).]

You may ask to look at any comments received by the District Director.

You also may request from the District Director an announcement of applications covered by the CRA filed with the Office of Thrift Supervision.

§ 563e.7 Assessing the record of performance.

In connection with its examination of an association, the Office shall assess the record of performance of the association in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the association. The Office will review the association's CRA statement(s) and any signed, written comments retained by the association or the Office. In addition, the Office will consider the following factors in assessing an association's record of performance:

(a) Activities conducted by the association to ascertain the credit needs of its community, including the extent of the association's efforts to communicate with members of its community regarding the credit services being provided by the association;

(b) The extent of the association's marketing and special credit-related programs to make members of the community aware of the credit services offered by the association;

(c) The extent of participation by the association's board of directors in formulating the association's policies and reviewing its performance with respect to the purposes of the CRA;

(d) Any practices intended to discourage applications for types of credit set forth in the association's CRA statement(s);

(e) The geographic distribution of the association's credit extensions, credit applications and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The association's record of opening and closing offices and providing services at offices;

(h) The association's participation, including investments, in local community development and redevelopment projects or programs;

(i) The association's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The association's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses or small farms;

(k) The association's ability to meet various community credit needs based on its financial condition and size, and legal impediments, local economic conditions and other factors; and

(l) Other factors that, in the Office's judgment, reasonably bear upon the extent to which an association is helping to meet the credit needs of its entire community.

§ 563e.8 Effect on applications.

(a) Assessments under this part shall be taken into account in determining whether to grant charters, branches and other deposit facilities, relocations, mergers, consolidations, acquisitions of assets or assumptions of liabilities, and savings and loan holding company acquisitions. Assessment of an applicant's record of performance may be the basis for denying an application.

(b) The Office will take into account any views expressed by State supervisory authorities with regard to whether State-chartered applicants are helping to meet the credit needs of their communities.

(c) The Office may consider the credit-granting record of any financial institution subsidiaries of savings and loan holding companies when such holding companies submit to the Office applications listed under paragraph (a) of this section.

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
563f.1 Authority, purpose, and scope.
563f.2 Definitions.
563f.3 General prohibitions.
563f.4 Permitted interlocking relationships.
563f.5 Grandfathered interlocking relationships.
563f.6 Changes in circumstances.
563f.7 Delegation of authority to grant exemptions and extensions of time.
563f.8 Enforcement.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 201, 92 Stat. 3672, as amended (12 U.S.C. 3201 *et seq.*).

§ 563f.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act, as amended ("Interlocks Act") (12 U.S.C. 3201 *et seq.*).

(b) *Purpose and scope.* The general purpose of the Interlocks Act and this Part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This part applies to management officials of savings associations, savings and loan holding companies, and their affiliates.

§ 563f.2 Definitions.

For the purpose of this part, the following definitions apply:

(a) The term "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family" includes spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(b) The term "Community" means city, town, or village, or contiguous or adjacent cities, towns, or villages. "Contiguous or adjacent cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other or are within ten road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(c) The term "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(d) The term "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust

company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered in the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(e) The term "Depository organization" means a depository institution or a depository holding company.

(f)(1) The term "Management official" means:

(i) An employee or officer with management functions (including a branch manager);

(ii) A director (including an advisory director or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

(iii) A trustee of a business organization under the control of trustees (*e.g.*, a mutual savings bank); or

(iv) Any person who has a representative or nominee serving in any such capacity.

(2) The term "Management official" does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) Persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

(g) The term "Office" means a principal or branch office of a depository institution located in the United States. "Office" does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office, or any office of a depository holding company.

(h) The term "Person" means a natural person, corporation, or other business.

(i) The term "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Areas as defined by the Office of Management and Budget.

(j) The term "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, or agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation by the management official to another person. For the purposes of this definition, "person" shall include only natural persons.

(k) The term "Savings association" means:

(1) Any Federal savings association (as defined in § 1813(b)(2) of the Federal Deposit Insurance Act);

(2) Any State savings association (as defined in § 1813(b)(3) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) Any corporation (other than a bank as defined in § 1813(a)(1) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(l) The term "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The total assets of a depository holding company include the total assets of all its subsidiary affiliates, except that "total assets" of a diversified savings and loan holding company as defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F)) and 12 CFR 583.11, or of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)), means only the total assets of its depository institution affiliate. "Total assets" of a United States branch or agency of a foreign commercial bank means total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(m) The term "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

§ 563f.3 General prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions and each has an office in the same community;

(2) Offices of depository institution affiliates of both are located in the same community; or

(3) One is a depository institution that has an office in the same community as a depository institution affiliate of the other.

(b) *Relevant Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

(c) *Major assets.* Without regard to location, a management official of a depository organization with total assets exceeding $1 billion or a management official of any affiliate of the greater than $1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding $500 million or a management official of any affiliate of the greater than $500 million depository organization.

§ 563f.4 Permitted interlocking relationships.

(a) *Interlocking relationships permitted by statute.* The prohibitions of § 563f.3 of this part do not apply in the case of any one or more of the following organizations or their subsidiaries:

(1) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) A depository organization that has been placed formally in liquidation, or that is in the hands of a receiver, conservator, or other official exercising a similar function;

(4) A credit union being served by a management official of another credit union;

(5) A State-chartered savings and loan guaranty corporation; or

(6) A Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, or both.

(7) A depository organization which—

(i) is determined by the Office of Thrift Supervision to be closed or in danger of closing; and

(ii) is acquired by another depository organization, during the 5-year period beginning on the date of the acquisition of the depository organization described in paragraph (a)(7)(i) of this section.

(8)(i) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F) and 12 CFR 583.11)) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

(A) notice of the proposed dual service is given by such diversified savings and loan holding company to—

(*1*) the appropriate Federal supervisory agency for such company; and

(*2*) the appropriate Federal supervisory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director, not less than 60 days before such dual service is proposed to begin; and

(B) the proposed dual service is not disapproved by any such appropriate Federal supervisory agency before the end of such 60-day period.

(ii) Any appropriate Federal supervisory agency may disapprove, under paragraph (a)(8)(i)(B) of this section, a notice of proposed dual service by any individual if such agency finds that—

(A) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

(B) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(C) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

(iii) Any appropriate Federal supervisory agency may, at any time after the end of the 60-day period referred to in paragraph (a)(8)(i) of this section, require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstance occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

(9) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (a)(9) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Office of Thrift Supervision has determined that such service is consistent with the purposes of this Act and the Home Owners' Loan Act.

(b) *Interlocking relationships permitted by agency order.* A management official or a prospective management official of a savings association, a savings and loan holding company, or an affiliate of either may enter into an otherwise prohibited interlocking relationship with a depository organization that falls within one of the classifications enumerated in this paragraph (b) if the Federal supervisory agency (as specified in section 207 of the Interlocks Act) of the organization that falls within one of the classifications determines that the relationship meets the requirements set forth in this paragraph (b). If the depository organization that falls within one of the classifications is not subject to the interlocks regulations of any of the Federal supervisory agencies, then the Office of Thrift Supervision shall determine whether the relationship meets the requirements of this paragraph.

(1) *Organization in low-income area; minority or women's organization.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is:

(i) Located, or to be located, in a low-income or other economically depressed area, or

(ii) Controlled or managed by persons who are members of minority groups or by women, subject to the following conditions:

(A) The relationship is necessary to provide management or operating expertise to the organization specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section;

(B) no interlocking relationship permitted by this paragraph shall continue for more than five years; and

(C) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(2) *Newly chartered organization.* A person may serve at the same time as a management official of two or more depository organizations if one of the depository organizations (or an affiliate thereof) is a newly chartered organization, subject to the following conditions:

(i) The relationship is necessary to provide management or operating expertise to the newly created organization;

(ii) No interlocking relationship permitted by this subparagraph shall continue for more than two years after the newly chartered organization commences business; and

(iii) Other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(3) *Conditions endangering safety or soundness.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations faces conditions endangering the organization's safety or soundness. *Provided:*

(i) The relationship is necessary to provide management or operating expertise to the organization facing conditions endangering safety or soundness; and

(ii) Other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(4) *Organization sponsoring credit union.* A management official of a depository organization or its affiliate may serve at the same time as a management official of a federally-insured credit union that is sponsored by the depository organization or its affiliate primarily to serve employees of the depository organization.

(5) *Loss of management officials due to changes in circumstances.* If a depository organization is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in § 563f.6 of this part, the affected management officials may continue to serve in excess of the time periods specified in such section, *provided* that:

(i) The depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository organization;

(ii) The depository organization demonstrates that, absent a grant of relief in accordance with paragraph (b)(5)(i) of this section, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization;

(iii) If the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a 15-month period; and

(iv) The depository organization develops a plan for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances).

Other conditions in addition to or in lieu of the foregoing may be imposed by the Federal supervisory agency. In evaluating requests made pursuant to paragraph (b)(5) of this section, the Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) *Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.* A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to ten years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

(d) *Diversified savings and loan holding company.* Notwithstanding § 563f.3 of this part, a person who serves as a management official of a depository organization and of a nondepository organization (or any subsidiary thereof) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F)) and 12 CFR 583.11 and may continue to serve until November 10, 1993, despite the occurrence of any changes in circumstances, whether or not those changes in circumstances occurred prior to November 30, 1983.

§ 563f.5 Grandfathered interlocking relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of section 8 of the Clayton Act (15 U.S.C. 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1993. Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a merger, acquisition, consolidation or establishment of offices that was formerly defined as a change in circumstances in 12 CFR 563f.6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1993.

§ 563f.6 Changes in circumstances.

(a) *Nongrandfathered interlocks.* If a person's service as a management official is not grandfathered under § 563f.5 of this part, that person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth; a change in relevant metropolitan statistical area or community boundaries, or the designation of a new relevant metropolitan statistical area; an acquisition, merger, or consolidation by the depository organization; the establishment of an office; or a disaffiliation.

(b) *Grace period.* If a person's nongrandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

§ 563f.7 Delegation of authority to grant exemptions and extensions of time.

The District Director may grant or withhold exemptions under § 563f.4 of this part, with the exceptions of §§ 563f.4(a)(7), (a)(8) and (a)(9), and extensions of time under § 563f.6 of this part, provided the exemption or extension request does not present a significant issue of law or policy and would not establish a precedent of national significance. Exemptions under §§ 563f.4(a)(7), (a)(8) and (a)(9) of this part may be granted, withheld, or terminated by the Senior Deputy Director for Supervision (Operations), with the concurrence of the Chief Counsel, or their respective designees, provided the exemption request or termination does not present a significant issue of law or policy and would not establish a precedent of national significance. Exemptions under any paragraph of § 563f.4 of this part shall be granted under this delegated authority if all relevant conditions specified in that paragraph, if any, are met. Extensions under § 563f.6 of this part shall be granted unless the District Director determines that the extension would be so contrary to the best interests of the depository institutions as to outweigh the disruption caused by the earlier departure of management officials in interlocking relationships. For applications not approved, the District Director, or the Senior Deputy Director for Supervision (Operations), as the case may be, shall give the applicant prompt notice, in writing, citing the specific basis for disapproval. Except as noted below, applications made pursuant to this section should be submitted to the District Director for the District that has supervisory responsibility over the depository institution or depository holding company wherein the management official is, or would be, in a prohibited management interlock position. Applications made pursuant to §§ 563f.4(a)(7), (a)(8) and (a)(9) of this part shall be filed concurrently as follows: one copy with the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, labeled "Dockets Copy;" one (manually executed) copy with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; one copy with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and one copy with the District Director for the district that has supervisory responsibility over the savings and loan holding company wherein the management official is, or would be, in a prohibited management interlock position.

§ 563f.8 Enforcement.

The Office of Thrift Supervision administers and enforces the Interlocks Act with respect to savings associations, savings and loan holding companies, and their affiliates, and in addition to the other remedies and sanctions available under applicable law, may refer the case of a prohibited interlocking relationship involving any such organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association or a savings and loan holding company is primarily subject to the regulation of another Federal supervisory agency, then the Office of Thrift Supervision does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 563g—SECURITIES OFFERINGS

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563g.21 Filing of copies of offering circulars in certain exempt offerings.
563g.22 Delegation of authority.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12–14, 16, 23, 48 Stat. 882, 892, 894–896, 901, as amended (15 U.S.C. 78c(b), 78*l*, m, n, p, w).

§ 563g.1 Definitions.

(a) For purposes of this part, the following definitions apply:

(1) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any savings association.

(2) *Commission* means the Securities and Exchange Commission.

(3) *Dividend or interest reinvestment plan* means a plan which is offered solely to existing security holders of the savings association which allows such persons to reinvest dividends or interest paid to them on securities issued by the savings association, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) *Employee benefit plan* means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for officers, directors or employees.

(5) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) *Filing date* means the date on which a document is actually received during business hours, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, by the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such document may be filed on the next business day.

(7) *Issuer* means a savings association which issues or proposes to issue any security.

(8) *Offer*; "Sale" or "sell." For purposes of this part, the term "offer," "offer to sell," or "offer for sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(9) *Person* means the same as in § 563b.2(a)(27) of this subchapter, and includes a savings association.

(10) *Purchase* and *buy* mean the same as in § 563b.2(a)(29) of this subchapter.

(11) *Savings association* has the same meaning as in part 561 of this subchapter, and includes a federally-chartered savings association in organization under this chapter, and a state-chartered savings association in organization which is granted conditional approval of insurance of accounts by the Federal Deposit Insurance Corporation. In addition, for purposes of § 563g.2 of this part, "savings association" includes any underwriter participating in the distribution of securities of a savings association.

(12) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(13) *Security* means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral–trust certificate, preorganization or subscription, transferable share, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing, except

that a "security" shall not include an account insured, in whole or in part, by the Federal Deposit Insurance Corporation. Nothing in this part shall affect the applicability of § 563.10 of this subchapter.

(14) *Underwriter* means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission and such term shall also not include any person who has continually held the securities being transferred for a period of two (2) consecutive years provided that the securities sold in any one (1) transaction shall be less than ten percent (10%) of the issued and outstanding securities of the same class. The following shall apply for the purpose of determining the period securities have been held:

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions.* If the securities sold were acquired from the issuer for consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for conversion.

(iii) *Contingent issuance of securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged securities.* Securities which are *bona fide* pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of securities.* Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Securities acquired from the settler of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the settler.

(vii) *Estates.* Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

(viii) *Exchange transactions.* A person receiving securities in a transaction involving an exchange of the securities of one issuer for securities of another issuer shall be deemed to have acquired the securities received when such person acquired the securities exchanged.

(b) A term not defined in this part but defined in another part of this subchapter, when used in this part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in the rules, regulations, or forms of the Commission referred to in this part, the term "Commission" shall be deemed to refer to the Office, the term "registrant" shall be deemed to refer to an issuer defined in this part, and the term "registration statement" or "prospectus" shall be deemed to refer to an offering circular filed under this part, unless the context otherwise requires.

§ 563g.2 Offering circular requirement.

(a) *General.* No savings association shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this part and which has been filed and declared effective pursuant to this part; or

(2) An exemption is available under this part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this section:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act;

(2) Subsequent to filing an offering circular, any notice circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act; and

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the Office.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this part;

(2) The preliminary offering circular includes the information required by this part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Office is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

§ 563g.3 Exemptions.

The offering circular requirement of § 563g.2 of this part shall not apply to an issuer's offer or sale of securities:

(a) Complying with the requirements for retail repurchase agreements of § 563.84 of this subchapter, except where the issuer has a regulatory capital deficiency under that section.

(b) Exempt from registration under either section 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings associations), and section 3(a)(11) (for intrastate offerings) of the Securities Act;

(c) In a conversion from the mutual to the stock form of organization pursuant to part 563b of this subchapter, except for a supervisory conversion undertaken pursuant to subpart C of part 563b of this subchapter;

(d) In a non-public offering which satisfies the requirements of § 563g.4 of this part;

(e) That are debt securities issued in denominations of $100,000 or more, which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;

(f) Distributed exclusively abroad to foreign nationals: *Provided,* That (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(g) To its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of the savings association.

§ 563g.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) of this section and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 563g.3(b) and 563g.3(d) of this part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of paragraph (b) of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a preexisting personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer, shall file with the Office a report describing the results of the sale of securities as required by § 563g.12(b) of this part.

(d) *Limitation on resale.* The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of § 563g.1(a)(14) of this part, which reasonable care shall include, but not be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the Office pursuant to § 563g.2 of this part, but instead are being sold in reliance upon the exemption from the offering circular requirement provided for by this section; and

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the Office and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of § 563g.1(a)(14) of this part.

§ 563g.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this part shall, unless otherwise indicated, be filed in accordance with the requirements of § 563b.8(e)(1), (e)(3) and (e)(4), (f) through (q), and (s), of this subchapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall include 10 copies of the document to be filed with the Office, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Chief Counsel, Corporate and Securities Division; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the District Director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Office, as follows: 22 copies to the Chief Counsel, Corporate and Securities Division, and three copies to the District Director.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Office in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the Office pursuant to this part shall include an attached manually signed signature page which authorizes the filing and has been signed by:

(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this part shall be signed by a person authorized to do so.

(3) At least *one copy* of every document filed pursuant to this part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

§ 563g.6 Effective date.

(a) Except as provided for in paragraph (d) of this section, an offering circular filed by a savings association shall be deemed to be automatically declared effective by the Office on the twentieth day after filing or on such earlier date as the Office may determine for good cause shown.

(b) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed.

(c) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment.

(d) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section.

(e) An amendment filed after the effective date of the offering circular shall become effective on such date as the Office may determine.

(f) If it appears to the Office at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the Office may pursue any remedy it is authorized to pursue under section 5(d) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)) or section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818), including, but not limited to, institution of cease-and-desist proceedings.

§ 563g.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this part shall:

(1) Be filed under cover of Form OC, which is under part 563b of this subchapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S–1 (17 CFR part 239) for registration under the Securities Act, if the association issuing the securities is not in compliance with the Office's regulatory capital requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S–K (17 CFR part 229) should be furnished, include such information and all of the information required by Item 7 of Form PS, which is under part 563b of this subchapter;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 563g.18 of this part, include in part II of Form OC the following undertaking: "The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed;"

(8) In offerings involving the issuance of options, warrants, subscription rights or conversion rights within the meaning of § 563g.1(a)(8) of this part, include in part II of Form OC an undertaking to provide a copy of the issuer's most recent audited financial statements to persons exercising such options, warrants or rights promptly upon receiving written notification of the exercise thereof;

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for permission to organize as submitted to the Office for federally-chartered associations, or a copy of the application for insurance of accounts as submitted to the Federal Deposit Insurance Corporation for state-chartered associations; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective an offering circular or amendment shall satisfy the accounting requirements in subpart A of part 563c of this subchapter.

§ 563g.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the Office shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this part shall not extend the period for which an effective offering circular or amendment may be used under paragraph (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the Office.

§ 563g.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum–maximum amount to be sold shall be held in an escrow or similar separate account until such time as all of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all

funds in the escrow account shall be promptly refunded unless the Office otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

§ 563g.10 Unsafe or unsound practices.

(a) No person shall directly or indirectly,

(1) Employ any device, scheme or artifice to defraud,

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a savings association.

(b) Violations of this section shall constitute an unsafe or unsound practice within the meaning of section (3)(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1462a(a), and section 8 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818.

(c) Nothing in this section shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

§ 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any document withdrawn will not be removed from the files of the Office, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the Office for a period of nine months and has not become effective, the Office may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of such notice. When a filing is abandoned, the filing will not be removed from the files of the Office, but will be marked "Declared abandoned by the Office on (date)."

§ 563g.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after such 30 day period and not later than 30 days after the later of the last sale of securities in an offering pursuant to § 563g.2 of this part or the application of the proceeds therefrom, the issuer shall file with the Office a report describing the results of the sale of the securities and the application of the proceeds, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this part and shall also include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to § 563g.4 of this part, the issuer shall file with the Office a report describing the results of the sale of securities, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this part, and shall also include the following:

(1) All of the information required by paragraph (a) of this section; and

(2) A detailed statement of the factual and legal grounds for the exemption claimed.

§ 563g.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and parts 503 and 505 of this chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this part shall be made as required under Commission Rule 24b–2 (17 CFR 240.24b–2) under the Exchange Act.

§ 563g.14 Waiver.

(a) The Office may waive any requirement of this part, or any required information:

(1) Determined to be unnecessary by the Office;

(2) In connection with a transaction approved by the Office for supervisory reasons, or

(3) Where a provision of this part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by a savings association which seeks to waive compliance with any provision of this part shall be void, unless approved by the Office.

§ 563g.15 Requests for interpretive advice or waiver.

Any requests to the Office for interpretive advice or a waiver with respect to any provision of this part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the Chief Counsel, Corporate and Securities Division;

(b) The provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The association issuing the securities is in compliance with the Office's regulatory capital requirements during the time the offering is made.

§ 563g.17 Direct sales of securities at an office.

Securities of a savings association or an affiliate may only be offered or sold at an office of a savings association or an affiliate, if:

(a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(c) Offers and sales are made only by regular, full-time employees; and

(d) The association issuing the securities is in compliance with the Office's regulatory capital requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.84 of this subchapter.

§ 563g.18 Current and periodic reports.

(a) Each savings association which files an offering circular which becomes effective pursuant to this part, after such effective date, shall file with the Office periodic and current reports on Forms 8–K, 10–Q and 10–K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the savings association is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons.

(b) For purposes of registering securities under section 12(b) or 12(g) of the Exchange Act, an issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Form 8–A or 8–B as applicable.

§ 563g.19 Approval of the security.

Any securities of a savings association which are not exempt under this part and are offered or sold pursuant to an offering circular which becomes effective under this part, are deemed to be approved as to form and terms for purposes of § 563.1 of this subchapter.

§ 563g.20 Form for securities sale report.

Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552

[Form G–12]

Securities Sale Report Pursuant to Section 563g.12

OTS No.———————
Issuer's Name: ———————
Address: ———————

If in organization, state the date of FDIC certification of insurance of accounts: ———

State the title, number, aggregate and per-unit offering price of the securities sold: ———

State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees: ———

State the aggregate and per-unit dollar amounts of the net proceeds raised: ———

Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used: ———

State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering: ———

For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary): ———

For a non-public offering, all offering materials used should be listed: ———
Person to Contact: ———
Telephone No.: ———

This issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.
Date of securities sale report ———
Issuer: ———
Signature: ———
Name: ———
Title: ———

Instruction: Print the name and title of the signing representative under his or her signature. Ten copies of the securities sale report should be filed, including one copy manually signed, as required under 12 CFR 563g.5.

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.180(b)).

§ 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of § 563g.2 by reason of § § 563g.3(e) or 563g.4 of this part shall be mailed to the Office within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Office and shall not be deemed to be "filed" with the Office pursuant to § 563g.2 of this part. The mailing to the Office of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 563g.2 of this part.

§ 563g.22 Delegation of authority.

The Chief Counsel, the Deputy Chief Counsel for Securities and Corporate Structure, and the Director of the Corporate and Securities Division, or their designee, is authorized to act on, or exercise the Office's authority pursuant to, this part.

PART 566—LIQUIDITY

Sec.
566.1 Definitions.
566.2 Requirements.
566.3 Deficiencies and penalties.
566.4 Reports; records.
566.5 Payment of penalty.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 6, 48 Stat. 134, as amended (12 U.S.C. 1465); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 701, as added by sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691); sec. 702, as added by sec. 503, 88 Stat. 1522 (15 U.S.C. 1691a).

§ 566.1 Definitions.

(a) *Cash.* The term "cash" means cash on hand and unpledged demand accounts in a Federal Home Loan Bank, an insured bank, a savings association, the Bank for Savings and Loan Associations (Chicago, Illinois), or the Savings Banks Trust Company (New York, New York), but not gold in any form.

(b) *Insured financial institution.* The term "insured financial institution" means a commercial or savings bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation and which is not under the control of any supervisory authority.

(c) *Liquidity base.* The term "liquidity base" means savings association's net withdrawable accounts plus the savings association's short-term borrowings.

(d) *Net withdrawable accounts.* The term "net withdrawable accounts" means all withdrawable accounts less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, or U.S. Treasury Time Deposit Open Accounts.

(e) *Short-term borrowings.* The term "short-term borrowings" means any portion of the principal amount thereof, payable on demand or in one year or less, but not including tax and loan accounts, note accounts, U.S. Treasury General Accounts, or U.S. Treasury Time Deposit Open Accounts.

(f) *Obligations of the United States.* The term "obligations of the United States" means evidences of indebtedness issued by the United States, or issued by an agency or instrumentality thereof and fully guaranteed as to principal and interest by the United States.

(g) *Liquid assets.* The term "liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under this section or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as principal and interest on such assets are not in default and a savings association's investments in such assets do not exceed any applicable limitations on such investments by the savings association:

(1) Time deposits in a Federal Home Loan Bank, the Bank for Savings and Loan Associations, Chicago, Illinois, or the Savings Banks Trust Company, New York, New York;

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States maturing in 5 years or less;

(3) Obligations with 5 years or less remaining until maturity, issued, or fully guaranteed as to principal and interest, by:

(i) A Federal Home Loan Bank(s);

(ii) The Federal National Mortgage Association;

(iii) The Government National Mortgage Association;

(iv) A Bank(s) for Cooperatives, including the National Bank for Cooperatives or the United Bank for Cooperatives;

(v) A Farm Credit Bank(s);

(vi) The Tennessee Valley Authority;

(vii) The Export-Import Bank of the United States;

(viii) The Commodity Credit Corporation;

(ix) The Federal Financing Bank;

(x) The Student Loan Marketing Association;

(xi) The Federal Home Loan Mortgage Corporation; or

(xii) The National Credit Union Administration;

(4) Savings accounts of an insured financial institution, including loans of unsecured day(s) funds to an insured financial institution (i.e., Federal funds or similar unsecured loans), if:

(i) Except for loans of unsecured day(s) funds, such accounts are:

(A) Negotiable and will mature in one year or less,

(B) Not negotiable and will mature 90 days or less, or

(C) Not withdrawable without notice and the notice periods do not exceed 90 days;

(ii) Loans of unsecured day(s) funds will mature in 6 months or less; and

(iii) The priority of claims of a lender of unsecured day(s) funds is not subordinate to claims of depositors in the borrower thereof;

(5) Bankers' acceptances of an insured financial institution if:

(i) The total of all such acceptances of the same financial institution held by the same savings association does not exceed one-fourth of 1 percent of total deposits of such financial institution (as shown by its last published statement of condition preceding the date of acceptance);

(ii) Such acceptances will mature in 9 months or less;

(6) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof, including any agency, corporation or instrumentality of a state, territory, possession or political subdivision: *Provided,* That:

(i) Such obligations continue to meet the requirements of § 545.72(a) of this chapter; and

(ii) Such obligations will mature in 2 years or less;

(7) Promissory notes issued to and made to the order of an insured financial institution by the Savings Association Insurance Fund or the Bank Insurance Fund;

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), and (g)(9) of this section.

(9) Corporate debt obligations and commercial paper denominated in dollars,

Provided, That:

(i) Such corporate debt obligations

(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized investment rating service,

(B) Are marketable as defined by § 541.7 of this part,

(C) Will mature in three years or less, and

(D) Are not convertible to common stock;

(ii) Such commercial paper

(A) Continues to be rated in one of the two highest categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated,

(B) Will mature in 270 days or less; and

Provided, That an amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset; and

(10) Reserves required to be maintained pursuant to Title I of the Depository Institutions Deregulation and Monetary Control Act of 1980 and established pursuant to 12 CFR part 204, whether in the form of (i) vault cash, (ii) balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located, or (iii) a pass through account: *Provided,* That vault cash shall be included only once in calculating the aggregate amount of liquid assets. As used herein, the terms "vault cash" and "pass through account" are as defined in 12 CFR 204(2).

(11) Any obligation that would qualify as a liquid asset under paragraph (g)(2), (g)(3), (g)(6) or (g)(9) of this section but for its maturity: *Provided,* That the obligation:

(i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured financial institution, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g) of this section;

(ii) Is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a liquid asset under paragraph (g) of this section;

(iii) Is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g)(11)(iii); or

(iv) Provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or

par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph (g)(11)(iv):

Provided further, That the amount of any obligation qualifying under paragraphs (g)(11)(i), (g)(11)(ii) or (g)(11)(iii) of this section that may be counted in satisfaction of the requirements imposed by § 566.2 of this part shall be the obligation's book value at the time of hedging; and *Provided finally,* That the board of directors of a savings association shall review on at least an annual basis the financial condition of each insured financial institution, and Association members from which it regularly obtains forward commitments.

(h) *Short-term liquid assets.* The term "short-term liquid assets" means the total of cash other than vault cash used to satisfy the reserve requirements of 12 CFR part 204, accrued interest on unpledged assets which qualify as liquid assets under paragraph (g) of this section, or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as a savings association's investments in such assets do not exceed any applicable limitations on such investments by the savings association:

(1) Time deposits specified in paragraph (g)(1) of this section;

(2) Obligations specified in paragraphs (g) (2) and (3) of this section, which will mature in 12 months or less;

(3) Savings accounts, including loans of unsecured day(s) funds, that qualify as liquid assets under paragraph (g)(4) of this section, and, in the case of negotiable savings accounts, will mature in six months or less;

(4) Bankers' acceptances specified in paragraph (g)(5) of this section which will mature in 6 months or less;

(5) Obligations of or obligations (other than gold-related obligations) issued by a public housing agency which have the full faith and credit of the United States pledged under section 1421a(c) or section 1437i(a) of Title 42 of the U.S. Code, as amended, and which will mature in 6 months or less;

(6) Shares or certificates of any investment company qualifying under paragraph (g)(8) of this section, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in paragraphs (h)(1) through (h)(5), and(h)(7) of this section; and

(7) Corporate debt obligations and commercial paper specified in paragraph (g)(9) of this section which will mature in six months or less.

(8) Any obligation that would qualify as a short-term liquid asset under paragraphs (h)(2), (h)(5) or (h)(7) of this paragraph (h)(8) but for its maturity: *Provided,* That the obligation:

(i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured financial institution, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section;

(ii) Is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a short-term liquid asset under paragraph (h) of this section;

(iii) Is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section; or

(iv) Provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section;

Provided further, That the amount of any obligation qualifying under paragraphs (h)(8)(i), (h)(8)(ii) or (h)(8)(iii) of this section that may be counted in satisfaction of the requirements imposed by § 566.2 of this part shall be the obligation's book value at the time of hedging; and *Provided finally,* That the board of directors of a savings association shall review on at least an annual basis the financial condition of each insured financial institution and Association member from which it regularly obtains forward commitments.

§ 566.2 Requirements.

(a) *General.* Except as otherwise provided in paragraphs (b) and (d) of this section, for each calendar month, each savings association, other than a mutual savings bank with an election under paragraph (e) of this section in effect, shall maintain an average daily balance of liquid assets not less than 5 percent of the average daily balance of its liquidity base during the preceding calendar month, and each savings association, other than a mutual savings bank, shall maintain an average daily balance of short-term liquid assets not less than 1 percent of the average daily balance of its liquidity base during the preceding calendar month.

(b) *Exception.* Instead of computing its liquidity requirement under paragraph (a) of this section, a savings association with less than $25,000,000 in total assets at the beginning of its current fiscal year may, by resolution of its board of directors, compute such requirement as a percentage of its liquidity base as of the end of the preceding calendar month. Such election shall remain in effect so long as the savings association continues to meet the asset requirement, unless sooner revoked by resolution of its board of directors.

(c) *Calculation of average daily balance.* For purposes of this section, § 566.1, and § 566.3, the "average daily balance of liquid assets," "average daily balance of the savings association's liquidity base" shall be calculated by adding, respectively, the savings association's liquid assets, short-term liquid assets, or liquidity base, as of the close of each business day in a calendar month, and for any non-business day, as of the close of the nearest preceding business day, and dividing the respective total by the number of days in such month.

(d) *Reduction and suspension of liquidity requirements.* The Office may, to the extent and under conditions it may prescribe, permit a savings association to reduce its liquid assets below the minimum amount required by paragraph (a) of this section to meet withdrawals or pay obligations. The Office may suspend part or all of the liquidity requirements of paragraph (a) of this section whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Office, shall terminate after 90 days, but the Office may again suspend part or all of such requirement at any time.

(e) *Election for mutual savings banks.* Any mutual savings bank may maintain liquid assets in accordance with this paragraph (e) instead of the first sentence of paragraph (a) of this section. Any such mutual savings bank so electing shall maintain, for each calendar month, an average daily balance of liquid assets not less than 5 percent of its average daily liquidity base balance during the preceding calendar month, except as otherwise provided in paragraphs (b) and (d) of this section, and such savings association shall maintain commercial paper aggregating not less than the difference between:

(1) The amount of liquid assets which, but for such election, would have been required under the first sentence of paragraph (a) of this section and

(2) The actual amount of its liquid assets.

§ 566.3 Deficiencies and penalties.

(a) *Calculation of deficiency.* (1) Except as provided in paragraph (a)(2) of this section, a savings association's liquid assets or short-term liquid assets for any calendar month are deficient in the amount that the average daily balance of such assets for such calendar month is less than the respective minimum amount required under § 566.2.

(2) A savings association may reduce any deficiency under paragraph (a)(1) of this section as follows, *Provided,* That no such reduction may reduce a savings association's liquidity requirements below 4 percent of its liquidity base at the end of the immediately preceding month:

(i) *Old rule.* For the first month of a current distribution period, by the amount of its aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the last 3 business days of the immediately preceding month and the first 10 calendar days of the current month, and for the second month of the same distribution period, by one-half of such amount of aggregate net withdrawals.

(ii) *New rule.* For each month, by the amount of aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the month, and by one-half of the amount of the preceding month's aggregate net withdrawals not recovered.

(iii) *Effective dates.* Reduction of any deficiency must be calculated under paragraph (a)(2)(i) of this section for all months through November 1979. For all months beginning with December 1979 through and including March 1980, reduction may be calculated under either paragraphs (a)(2)(i) or (a)(2)(ii) of this section. For all months beginning April 1980, reduction shall be calculated under paragraph (a)(2)(ii) of this section.

(b) *Calculation of penalty.* A savings association shall calculate the penalty for any deficiency under paragraph (a) of this section by multiplying the amount of deficiency by 1/12 the sum of 2 percent and the annual interest rate for advances of 1 year or less charged by the Federal Home Loan Bank for the Federal Home Loan Bank district in which the principal office of the savings association is located on the last day of the month in which the deficiency occurred. The penalty for deficiencies in 1 month in both liquid assets and short-term liquid assets shall be calculated only on the larger deficiency. No penalty shall be calculated on any deficiency of $5,000 or less unless the Office so directs in a specific case.

(c) *Assessment of penalty; compromise, remission, or reduction.* Except as otherwise provided in this paragraph (c), penalties are hereby assessed when deficiencies arise. Upon application and subject to such conditions as may be imposed, the District Director or his/her designee may, before collection of a penalty, compromise, remit, or reduce it for good cause shown; e.g., that the penalty would cause a serious adverse effect on the savings association, or the deficiency resulted from:

(1) Unexpectedly heavy withdrawals or other situations beyond the control of an association's management, or

(2) Temporary disruption of normal operations because of a merger or similar transaction.

Applications which the District Director believes require Office consideration shall be forwarded to the Office for decision. Applications not approved by the District Director may be appealed by the applicant to the Office for final decision. No relief will be granted if the savings association has failed to observe any condition imposed in connection with prior relief from a liquidity deficiency penalty.

§ 566.4 Reports; records.

(a) *Reports.* By the 10th day of the month following assessment of a penalty under § 566.3(c) of this part, a savings association shall submit to the District Director a report regarding such penalty on forms obtained from the Office or the District Director.

(b) *Records.* Each savings association shall maintain records verifying its compliance with liquidity requirements prescribed by the Office, and make them available to the Office, or its representative, during supervisory examinations and at other times the Office may direct.

§ 566.5 Payment of penalty.

When a savings association submits a report required by § 566.4(a) of this part it shall enclose a check, payable to the Office, in the amount of the penalty for the month covered by the report, unless the savings association makes application under § 566.3(c) of this part.

PART 567—CAPITAL

Sec.

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Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 567.1 Definitions.

For purposes of this part:

(a) *Adjusted total assets.* The term "adjusted total assets" means:

(1) A savings association's total assets as defined in § 567.1(ff);

(2) Plus

(i) For the risk-based capital standard, general valuation loan and lease loss allowances up to 1.5% of risk-weighted assets until December 30, 1992, and up to 1.25% of risk-weighted assets on or after December 31, 1992;

(ii) The prorated assets of any includable subsidiary in which the savings association has a minority ownership interest that is not consolidated under generally accepted accounting principles;

(iii) The prorated assets of any subsidiary acquired prior to April 12, 1989 that is not an includable subsidiary to the extent set forth in § 567.5(a)(2)(v)(C) or § 567.9(c)(3)(iii) respectively; and

(iv) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (w)(1) of this section;

(3) Minus

(i) Assets not included in the applicable capital standard except for

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those subject to paragraphs (a)(3)(ii) and (a)(3)(iii) of this section;

(ii) Investments in any includable subsidiary in which a savings association has a minority interest;

(iii) Investments in any subsidiary subject to consolidation under paragraph (a)(2)(iii) of this section; and

(iv) For purposes of determining core capital, qualifying supervisory goodwill.

(b) *Cash items in the process of collection.* The term "cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation; and unposted debits.

(c) *Commitment.* The term "commitment" means any arrangement that obligates a savings association to:

(1) Purchase loans or securities; or

(2) Extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(d) *Common stockholders' equity.* The term "common stockholders' equity" means common stock, common stock surplus, retained earnings, adjustments for the cumulative effect of foreign currency translation and net unrealized losses on non-current marketable equity securities.

(e) *Conditional guarantee.* The term "conditional guarantee" means a contingent obligation of the United States Government or its agencies, the validity of which to the beneficiary is dependent upon some affirmative action—*e.g.*, servicing requirements—on the part of the beneficiary of the guarantee or a third party.

(f) *Direct credit substitutes.* The term "direct credit substitutes" means any irrevocable obligation or portion thereof in which a savings association has essentially the same credit risk as if it had made a direct loan to the obligor or account party. It includes, but is not limited to, guarantees or guarantee type instruments backing financial claims such as outstanding securities, loans, and other financial obligations, and financial guarantee-type standby letters of credit.

(g) *Depository institution.* The term "domestic depository institution" means a financial institution that engages in the business of banking; that is recognized as a bank by the bank supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. In the United States, this definition encompasses all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institutions. Bank holding companies and savings and loan holding companies are excluded from this definition. For the purposes of assigning risk weights, the differentiation between OECD depository institutions and non-OECD depository institutions is based on the country of incorporation. Claims on branches and agencies of foreign banks located in the United States are to be categorized on the basis of the parent bank's country of incorporation.

(h) *Eligible savings association.* (1) The term "eligible savings association" means a savings association with respect to which the Director of the Office of Thrift Supervision has determined, on the basis of information available at the time, that:

(i) The savings association's management appears to be competent;

(ii) The savings association, as certified by its Board of Directors, is in substantial compliance with all applicable statutes, regulations, orders and written agreements and directives; and

(iii) The savings association's management, as certified by its Board of Directors, has not engaged in insider dealing, speculative practices, or any other activities that have or may jeopardize the association's safety and soundness or contributed to impairing the association's capital.

(2) Savings associations, for purposes of this paragraph, will be deemed to be eligible unless the Director makes a determination otherwise or notifies the savings association of its intent to conduct either an informal or formal examination to determine eligibility and provides written notification thereof to the savings association.

(i) *Equity investments.* (1) The term "equity investments" includes investments in equity securities and real property that would be considered an equity investment under generally accepted accounting principles.

(2) The term "equity securities" means any

(i) Stock, certificate of interest of participation in any profit-sharing agreement, collateral trust certificate or subscription, preorganization certificate or subscription, transferable share, investment contract, or voting trust certificate; or

(ii) In general, any interest or instrument commonly known as an equity security; or

(iii) Loans having profit sharing features which generally accepted accounting principles would reclassify as equity securities; or

(iv) Any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or

(v) Any security carrying any warrant or right to subscribe to or purchase such a security; or

(vi) Any certificate of interest or participation in, temporary or Interim certificate for, or receipt for any of the foregoing or any partnership interest; or

(vii) Investments in equity securities and loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which a savings association holds an interest in real property under generally accepted accounting principles.

It does not include investments in subsidiaries as defined in paragraph (dd) of this section or service corporations or stock of Federal Home Loan Banks or Federal Reserve Banks.

(3) For purposes of this part, the term "equity investments in real property" does not include interests in real property that are primarily used or intended to be used by the savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business.

(4) In addition, for purposes of this Part, the term "equity investments in real property" does not include interests in real property that are acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by the savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of within five years or a longer period approved by the Office.

(j) *Exchange rate contracts.* The term "exchange rate contracts" includes cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar instrument that, in the opinion of the Office, may give rise to similar risks.

(k) *High quality mortgage-related securities.* The term "high quality mortgage-related securities" means any mortgage-related security as defined in section 3(c)(41) of the Securities

Exchange Act of 1934, 15 U.S.C. 78(c)(41), and any mortgage-backed securities issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It includes mortgage-backed bonds meeting equivalent rating requirements.

(l) *Includable subsidiary.* The term "includable subsidiary" means a subsidiary of a savings association that is:

(1) Engaged solely (either directly or through ownership of a subsidiary) in activities not impermissible for a national bank;

(2) Engaged in activities not permissible for a national bank, but only if acting solely as agent for its customers and such agency position is clearly documented in the savings association's files;

(3) Engaged solely in mortgage-banking activities;

(4)(i) Itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(ii) Was acquired by the parent savings association prior to May 1, 1989; or

(5) A subsidiary of any Federal savings association existing as a Federal savings association on August 9, 1989 that

(i) Was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law, or

(ii) Acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(m) *Intangible assets.* The term "intangible assets" includes, but is not limited to, credit card servicing rights, goodwill, favorable leaseholds, core deposit value, and purchased mortgage servicing rights.

(n) *Interest-rate contracts.* The term "interest-rate contracts" includes single currency interest-rate swaps; basis swaps; forward rate agreements; interest-rate options purchased; forward forward deposits accepted; and any other instrument that, in the opinion of the Office, may give rise to similar risks, including when-issued securities.

(o) *Mortgage-related securities.* The term "mortgage-related securities" means any mortgage-related qualifying security under section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), *provided that,* the rating requirements of that section shall not be considered for purposes of this definition.

(p) *OECD-based country.* The term "OECD-based country" means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund ("IMF") associated with the IMF's capital General Arrangements to Borrow. These countries are hereinafter referred to as "OECD countries". "Public-sector entities" include states, local authorities, and governmental subdivisions below the central government level in any OECD-country. "Central government" means the national governing authority of a country; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

(q) *Original maturity.* The term "original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it expires or is unconditionally cancelable at the option of the issuing savings association.

(r) *Perpetual preferred stock.* The term "perpetual preferred stock" means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed. Cumulative perpetual preferred stock is preferred stock where the dividends accumulate from one period to the next. Noncumulative perpetual preferred stock is preferred stock where the unpaid dividends are not carried over to subsequent dividend periods.

(s) *Problem institution.* The term "problem institution" means a savings association that, at the time of its acquisition, merger, purchase of assets or other business combination with or by another savings association:

(1) Was subject to special regulatory controls by its primary Federal or state regulatory authority;

(2) Posed particular supervisory concerns to its primary Federal or state regulatory authority; or

(3) Failed to meet its regulatory capital requirement immediately before the transaction.

(t) *Prorated assets.* The term "prorated assets" means the total assets (as determined in the most recently available GAAP report but in no event more than one year old) of a subsidiary (including those subsidiaries where the savings association has a minority interest) multiplied by the savings association's percentage of ownership of that subsidiary.

(u) *Qualifying mortgage loan.* The term "qualifying mortgage loan" means a permanent 1–4 family residential first mortgage loan that is prudently underwritten and is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(v) *Qualifying multifamily mortgage loan.* The term "qualifying multifamily mortgage loan" means a loan on an existing property consisting of 5–36 dwelling units with an initial loan-to-value ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units has existed for at least one year.

(w) *Qualifying supervisory goodwill.* The term "qualifying supervisory goodwill" means, for eligible savings associations:

(1) Any unamortized goodwill (FSLIC Capital Contributions, as reported in the September 30, 1989 Thrift Financial Report) that existed on April 12, 1989 resulting from prior regulatory accounting practices less any amortization that would have occurred subsequent to April 12, 1989 through the current reporting period where the amortization is calculated on a straight line basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for regulatory accounting practices; plus

(2) The lesser of:

(i) Supervisory goodwill as defined in 567.1(ee) that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or

(ii)(A) Supervisory goodwill as defined in 567.1(ee) that is included in goodwill that is reflected in the current reporting period under GAAP;

(B) Plus any amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section that occurred subsequent to

April 12, 1989 for GAAP reporting purposes.

(C) Minus the amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for GAAP reporting purposes.

(x) *Reciprocal holdings of depository institution instruments.* The term "reciprocal holdings of depository institution instruments" means cross-holdings or other formal or informal arrangements in which two or more depository institutions swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other depository institutions that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held such instruments for more than five years or a longer period approved by the Office.

(y) *Replacement cost.* The term "replacement cost" means, with respect to interest rate and exchange-rate contracts, the loss that would be incurred in the event of a counterparty default, as measured by the net cost of replacing the contract at the current market value. If default would result in a theoretical profit, the replacement value is considered to be zero. This mark-to-market process must incorporate changes in both interest rates and counterparty credit quality.

(z) *Residential properties.* The term "residential properties" means houses, condominiums, cooperative units, and manufactured homes. This definition does not include boats or motor homes, even if used as a primary residence, or timeshare properties.

(aa) *Residual characteristics.* The term "residual characteristics" means interests similar to a multi-class pay-through obligation representing the excess cash flow generated from mortgage collateral over the amount required for the issue's debt service and ongoing administrative expenses or interests presenting similar degrees of interest-rate/prepayment risk and principal loss risks.

(bb) *Risk-weighted assets.* The term "risk-weighted assets" means the sum total of risk-weighted on-balance sheet assets and the total of risk-weighted off-balance sheet credit equivalent amounts. These assets are calculated in accordance with section 567.6 of this part.

(cc) *State.* The term "State" means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(dd) *Subsidiary.* The term "subsidiary" means any corporation, partnership, business trust, joint venture, association, pool, syndicate or other similar organization, in which a savings association has a 5% or greater ownership interest,[1] regardless of whether the savings association exercises, directly or indirectly, control as determined under generally accepted accounting principles. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held the interest for more than five years or a longer period approved by the Office.

(ee) *Supervisory goodwill.* The term "supervisory goodwill" means goodwill resulting from the acquisition, merger, consolidation, purchase of assets, or other business combination (if such transaction occurred on or before April 12, 1989) of

(1) A savings association where the fair market value of assets was less than the fair market value of liabilities at the acquisition date; or

(2) A problem institution.

(ff) *Total assets.* The term "total assets" means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office in accordance with generally accepted accounting principles.

(gg) *Unconditionally cancelable.* The term "unconditionally cancelable" means, with respect to a commitment-type lending arrangement, including retail credit card lines, that a savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(hh) *United States Government or its agencies.* The term "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(ii) *United States Government-sponsored agency or corporation.* The term "United States Government-sponsored agency or corporation" means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

[1] The Office reserves the right to review a savings association's investment in a subsidiary on a case-by-case basis. If the Office determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary it will make such determination regardless of the percentage of ownership held by the savings association.

§ 567.2 Minimum regulatory capital requirement.

(a) To meet its regulatory capital requirement a savings association must satisfy each of the following capital standards:

(1) *Risk-based capital requirement.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 6% of its risk-weighted assets as measured pursuant to § 567.6 of this part plus 2% of its risk-weighted assets as measured pursuant to that section.

(ii) A savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 567.5 of this part.

(2) *Leverage ratio requirement.* (i) A savings association's minimum leverage ratio requirement shall be the amount set forth in § 567.8 of this part.

(ii) A savings association must satisfy this requirement with core capital as defined in § 567.5 of this part in an amount not less than 3% of its adjusted total assets.

(3) *Tangible capital requirement.* (i) A savings association's minimum tangible capital requirement shall be the amount set forth in § 567.9 of this part.

(ii) A savings association must satisfy this requirement with tangible capital as defined in § 567.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) *Transition period for risk-based capital requirement.* (1) From December 7, 1989 to December 30, 1990, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 80% of the amount required under paragraph (a)(1) of this section; and

(2) From December 31, 1990 until December 31, 1992, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 90% of the amount required under paragraph (a)(1) of this section.

(c) Savings associations are expected to maintain compliance with all of these standards at all times.

§ 567.3 Individual minimum capital requirements.

(a) *Purpose and scope.* (1) The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a savings association that varies from the requirement that would otherwise apply to the savings association under § 567.2. Pursuant to 12 U.S.C. 1464(s), the Office delegates authority to the District Directors to establish, with the prior written concurrence of the Senior Deputy Director for Supervision (Operations) such individual minimum capital requirements for savings associations as are necessary or appropriate on a case-by-case basis in light of the particular circumstances of each savings association. Under the Office's oversight, the Senior Deputy Director for Supervision (Policy) shall establish guidelines for the exercise by the District Directors of the authority granted by this section to set individual minimum capital requirements in a fair, uniform manner consistent with the Office's national policies.

(2) Upon adoption and satisfactory implementation of such guidelines under the oversight of the Office, the Office may delegate, in all or in part, exclusively to the District Directors the authority to set individual minimum capital requirements in conformance with the guidelines without the requirement for case-by-case concurrence by the Senior Deputy Director for Supervision (Operations) and the Office subsequently may terminate such delegation. Under such delegation, a District Director's decision would constitute final agency action. After such delegation, the Senior Deputy Director for Supervision (Policy) under the Office's oversight would retain control over the guidelines for District Director action and would oversee implementation of and compliance with the guidelines. The Senior Deputy Director for Supervision (Operations) would continue to be notified of individual minimum capital requirements set by the District Directors.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than those required under § 567.2 may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) A savings association receiving special supervisory attention;

(2) A savings association that has or is expected to have losses resulting in capital inadequacy;

(3) A savings association that has a high degree of exposure to interest-rate risk, prepayment risk, credit risk, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

(4) A savings association that has poor liquidity or cash flow;

(5) A savings association growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by § 563.131 of this subchapter or other Office regulations;

(6) A savings association that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or savings associations with which it has significant business relationships, including concentrations of credit;

(7) A savings association with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) A savings association that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated, savings associations; has management deficiencies; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the savings association;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the savings association and, if applicable, its holding company, subsidiaries, and affiliates;

(4) The savings association's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated savings associations; and

(5) The policies and practices of the savings association's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) *Procedures*—(1) *Notification.* When a District Director determines that a minimum capital requirement different from that set forth in § 567.2 is necessary or appropriate for a particular savings association and is in accordance with any guidelines, the District Director shall notify the savings association in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the savings association. At the same time, the District Director shall forward to the Senior Deputy Director for Supervision (Operations) a copy of the notifying letter, along with the documentation supporting the need for such a higher capital requirement. The District Director shall also forward the notifying letter to the appropriate state supervisor if a state-chartered savings association would be subject to an individual minimum capital requirement.

(2) *Response.* (i) The response shall include any information that the savings association wants the District Director to consider in deciding whether to establish or to amend an individual minimum capital requirement for the savings association, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The responses of the savings association and appropriate state supervisor must be in writing and must be delivered to the District Director within 30 days after the date on which the notification was received. The District Director shall then forward a copy of these responses to the Senior Deputy Director for Supervision (Operations). The District Director may extend the time period for good cause. The time period for response by the savings association may be shortened for good cause:

(A) When, in the opinion of the District Director, the condition of the savings association so requires, and the District Director informs the savings association of the shortened response period in the notice;

(B) With the consent of the savings association; or

(C) When the savings association already has advised the District Director that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the District Director, may constitute a waiver of any objections to the proposed individual minimum capital requirement or to the schedule for complying with it, unless the District Director has provided an extension of the response period for good cause.

(3) *Decision.* After expiration of the response period, the District Director shall decide whether or not he believes the proposed individual minimum capital requirement should be established for the savings association, or whether that proposed requirement should be adopted in modified form, based on a review of the savings association's response and other relevant information. The District Director's decision shall address comments received within the response period from the savings association and the appropriate state supervisor (if a state-chartered savings association is involved) and shall state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the savings association could take to eliminate the need for continued applicability of the individual minimum capital requirement. The District Director shall send a copy of the recommended final determination to the Senior Deputy Director for Supervision (Operations) which must concur before the decision becomes effective and is communicated to the savings association and to the appropriate state supervisor (if a state-chartered savings association is involved). The District Director shall provide the savings association with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the savings association and setting forth the decision and the basis for that decision. Upon receipt of this decision, the individual minimum capital requirement becomes effective and binding upon the savings association. This decision represents final agency action.

(4) *Failure to comply.* Failure to satisfy an individual minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individual minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 567.4 of this part.

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the savings association's capital adequacy or its ability to reach its required minimum capital level by the specified date, the District Director may, with the concurrence of the Senior Deputy Director for Supervision (Operations), amend the individual minimum capital requirement or the savings association's schedule for such compliance. As set forth in paragraph (a)(1) of this section with regard to the initial setting of an individual capital requirement, this authority may also be delegated exclusively to the District Directors without the need for the concurrence of the Senior Deputy Director for Supervision (Operations) in individual determinations. The District Director may decline to consider a savings association's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. The District Director shall notify the Senior Deputy Director for Supervision (Operations) of the request and his decision. Pending the District Director's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

§ 567.4 Capital directives.

(a) *Issuance of a Capital Directive—*(1) *Purpose.* In addition to any other action authorized by law, the Office, after referral of an appropriate case by a District Director and based on a recommendation of the Office's Office of Enforcement developed in coordination with the Senior Deputy Director for Supervision (Operations) may issue a capital directive to a savings association that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on a savings association's noncompliance with a capital requirement established under § 567.2, § 567.3, by a written agreement under 12 U.S.C. 1464(d)(2), or as a condition for approval of an application. A capital directive may order a savings association to:

(i) Achieve its minimum capital requirement by a specified date;

(ii) Adhere to the compliance schedule for achieving its individual minimum capital requirement;

(iii) Submit and adhere to a capital plan acceptable to the Office describing the means and a time schedule by which the savings association shall reach its required capital level;

(iv) Take other action, including but not limited to, reducing the savings association's assets or its rate of liability growth, or imposing restrictions on the savings association's payment of dividends, in order to cause the savings association to reach its required capital level;

(v) Take any action authorized under § 567.10(e); or

(vi) Take a combination of any of these actions.

A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1464(d)(8) in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final under 12 U.S.C. 1464(d)(2).

(2) *Notice of intent to issue capital directive.* Upon referral of a case by a District Director, the Office of Enforcement, in coordination with the Senior Deputy Director for Supervision (Operations), will determine whether to initiate the process of issuing a capital directive. The Office of Enforcement will notify a savings association in writing by registered mail of its intention to issue a capital directive. If a state-chartered savings association is involved, the Office of Enforcement will also notify and solicit comment from the appropriate state supervisor. The notice will state:

(i) The reasons for issuance of the capital directive and

(ii) The proposed contents of the capital directive.

(3) *Response to notice of intent.* (i) A savings association may respond to the notice of intent by submitting its own compliance plan, or may propose an alternative plan. The response should also include any information that the savings association wishes the Office of Enforcement to consider and the Senior Deputy Director for Supervision (Operations) to review in deciding whether to recommend that the Office issue a capital directive. The appropriate state supervisor may also submit a response to the Office of Enforcement. These responses must be in writing and be delivered to the Office of Enforcement within 30 days after receipt of the notices. In its discretion, the Office of Enforcement may extend the time period for the response for good cause. The Office of Enforcement may, for good cause, shorten the 30-day time period for response by the savings association:

(A) When, in the opinion of the Office of Enforcement, the condition of the savings association so requires, and the Office of Enforcement informs the savings association of the shortened response period in the notice;

(B) With the consent of the savings association; or

(C) When the savings association already has advised the Office of Enforcement that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the Office of Enforcement, may constitute a waiver of any objections to the capital directive unless the Office of Enforcement grants an extension of the time period for good cause.

(4) *Decision.* After the closing date of the savings association's response period, or upon receipt of the savings association's response, if earlier, the Office of Enforcement shall consider the savings association's response and may seek additional information or clarification of the response. Thereafter, the Office, based on a recommendation from the Office of Enforcement developed in coordination with the Senior Deputy Director for Supervision (Operations), will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and effectiveness.* (i) Upon issuance, a capital directive will be served upon the savings association. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the savings association, unless the Office of Enforcement determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the savings association has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Office.

(6) *Change in circumstances.* Upon a change in circumstances, a savings association may submit a request to its District Director to reconsider the terms of the capital directive or consider changes in the savings association's capital plan issued under a directive for the savings association to achieve its minimum capital requirement. If the District Director believes such a change is warranted, the District Director shall forward the request to the Office of Enforcement, which may recommend that the Office modify the savings association's capital requirement or may refuse to recommend such action if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The Office—

(1) May consider a savings association's progress in adhering to any capital plan required under this section whenever such savings association or any affiliate of such savings association (including any company which controls such savings association) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such savings association's progress in meeting its minimum capital requirement (such as an application under § 563.131 of this subchapter, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.98(g) of this subchapter); and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the Office determines that the proposal would adversely affect the ability of the savings association on a current or pro forma basis to satisfy its capital requirement.

§ 567.5 Components of capital.

(a) *Core Capital.*

(1) The following elements, less the amount of any deductions pursuant to paragraph (a)(2) of this section, comprise a savings association' s core capital:

(i) Common stockholders' equity (including retained earnings);

(ii) Noncumulative perpetual preferred stock and related surplus,[2]

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated;

(iv) Nonwithdrawable accounts and pledged deposits of mutual savings associations (excluding any treasury shares held by the savings association) meeting the criteria of regulations and memoranda of the Office to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods.

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in § 567.1(w)(1) of this part.

(2) *Deductions from core capital:*

(i) Intangible assets are deducted from assets for purposes of determining core capital except as provided elsewhere in this paragraph.

(ii) Assets that meet the definition of intangible assets as set forth at § 567.1(m) of this part (excluding purchased mortgage servicing rights), but meet the following three-part test shall not be considered intangible assets for purposes of this section but are limited to 25% of core capital:

(A) The intangible asset must be able to be separated and sold apart from the savings association or from the bulk of the savings association's assets;

(B) The market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the savings association; and

(C) The savings association must demonstrate and document that a market exists which will provide liquidity for the intangible asset.

(iii) Paragraph (a)(2)(i) of this section does not apply to the following intangible assets:

(A) Purchased mortgage servicing rights. These must be valued at the lower of 90% of fair market value to the extent determinable, 90% of original cost or the current amortized book value as determined under generally accepted accounting principles. The amount written off, if any, is deducted from assets and, therefore, core capital.

(B) Qualifying supervisory goodwill held by an eligible savings association (as defined in § 567.1(h) of this part) to the extent permitted by this paragraph. The amount of qualifying supervisory goodwill may not exceed the applicable percentage of adjusted total assets as calculated for the tangible capital requirement set forth in the following table:

	Percent
Prior to January 1, 1992	1.500
January 1, 1992–December 31, 1992	1.000
January 1, 1993–December 31, 1993	0.750

[2] Preferred stock issues where the dividend is reset periodically based upon current market conditions and the savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of its cumulative or noncumulative characteristics. Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report, likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries may not be included in capital.

	Percent
January 1, 1994–December 31, 1994	0.375
Thereafter	0

(iv) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest) are deducted from assets and, thus core capital except as provided in paragraphs (a)(v) and (a)(vi) of this section.

(v)(A) For investments described in paragraph (a)(iv) of this section where the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (a)(2)(v)(B) of this section of the lesser of:

(*1*) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(*2*) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(B) For purposes of paragraph (a)(2)(v)(A) of this section, the applicable percentage is as follows:

For the period:	The applicable percentage is:
Prior to July 1, 1990	[illegible]
July 1, 1990–June 30, 1991	10
July 1, 1991–June 30, 1992	25
July 1, 1992–June 30, 1993	40
July 1, 1993–June 30, 1994	[illegible]
Thereafter	100

(C) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (a)(2)(v)(A) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the core capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount in calculating its adjusted total assets:

For the period:	The applicable percentage is:
Prior to July 1, 1990	100
July 1, 1990–June 30, 1991	[illegible]
July 1, 1991–June 30, 1992	75
July 1, 1992–June 30, 1993	60
July 1, 1993–June 30, 1994	40
Thereafter	0

(vi) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution, the Office may, in its sole discretion upon determining that the amount of core capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (a)(2)(iv) and (a)(2)(v) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(l) of this part.

(b) *Supplementary Capital.* Supplementary capital counts towards a savings association's total capital up to a maximum of 100% of the savings association's core capital. The following elements comprise a savings association's supplementary capital:

(1) *Permanent Capital Instruments.* (i) Cumulative perpetual preferred stock and other perpetual preferred stock [3] issued pursuant to regulations and memoranda of the Office;

(ii) Mutual capital certificates issued pursuant to regulations and memoranda of the Office;

(iii) Nonwithdrawable accounts and pledged deposits (excluding any treasury shares held by the savings association) meeting the criteria of 12 CFR 561.42 to the extent that such instruments are not included in core capital under paragraph (a) of this section;

(iv) Net worth certificates either issued pursuant to regulations and memoranda of the Office, or that the FDIC is committed to purchase;

(v) Income capital certificates;

[3] Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries may not be included in capital.

(vi) Perpetual subordinated debt issued pursuant to regulations and memoranda of the Office; and

(vii) Mandatory convertible subordinated debt (capital notes) issued pursuant to regulations and memoranda of the Office.

(2) *Maturing Capital Instruments.* (i) Subordinated debt issued pursuant to regulations and memoranda of the Office;

(ii) Intermediate-term preferred stock issued pursuant to regulations and memoranda of the Office and any related surplus;

(iii) Mandatory convertible subordinated debt (commitment notes) issued pursuant to regulations and memoranda of the Office; and

(iv) Mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Office and approved in writing by the FSLIC for inclusion as regulatory capital before or after issuance.

(3) *Transition rules for maturing capital instruments.*—(i) *Maturing capital instruments issued on or before November 7, 1989.* For all maturing capital instruments issued on or before November 7, 1989, the following amortization schedule applies:

Years to maturity of outstanding subordinated debt	Percent included in supplementary capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	[illegible]
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	[illegible]

(ii) *Maturing capital instruments issued after November 7, 1989.* A savings association issuing maturing capital instruments after November 7, 1989, may choose, subject to paragraph (b)(3)(ii)(C) of this section, to include such instruments pursuant to either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemptions).[4]

(B) Only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 20% of an institution's capital will qualify as supplementary capital.

(C) Once a savings association selects either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section for the issuance of a maturing capital instrument, it must continue to elect that option for all subsequent issuances of maturing capital instruments for as long as there is a balance outstanding of such post-November 7, 1989 issuances. Only when such issuances have all been repaid and the savings association has no balance of such issuances outstanding may the savings association elect the other option.

(4) *General valuation loan and lease loss allowances.* General valuation loan and lease loss allowances established pursuant to regulations and memoranda of the Office up to a maximum of 1.25 percent of risk-weighted assets.[5] Until December 31, 1992, such allowances may not constitute any more than 1.5% of risk-weighted assets. Thereafter they may not constitute any more than 1.25% of risk-weighted assets.

(c) *Total Capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital, subject to paragraph (c)(3) of this section.

(i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments, except as provided in paragraph (c)(3) of this section; and

(iii) That portion of land loans and nonresidential construction loans in excess of 80 percent loan-to-value ratio.

[4] Capital instruments may be redeemed prior to maturity and without the prior approval of the Office, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the Office must be notified in writing at least 30 days in advance of such redemption.

[5] The amount of the general valuation loan and lease loss allowances that may be included in capital is based on a percentage of risk-weighted assets. A savings association may deduct an allowance for general valuation loan and lease losses in excess of the amount permitted to be included as capital from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital standard.

(3) The following percentages of investments described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section may be included in the calculation of adjusted total assets and, thus, total capital for the periods indicated:

	Percent
Prior to July 1, 1990	100
July 1, 1990–June 30, 1991	[illegible]
July 1, 1991–June 30, 1992	75
July 1, 1992–June 30, 1993	[illegible]
July 1, 1993–June 30, 1994	40
Thereafter	[illegible]

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* Risk-weighted assets equal total assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk weight as set forth in this section. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with this section. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent amount that is included in the calculation of risk-weighted assets for purposes of this rule. Assets not included for purposes of calculating capital pursuant to § 567.5 of this part are not included in calculating risk-weighted assets.

(1) *On-Balance Sheet Assets:* The risk categories/weights for on-balance sheet assets are:

(i) *Zero percent Risk Weight (Category 1).*

(A) Cash, including domestic and foreign currency owned and held in all offices of a savings association or in transit. Any foreign currency held by a savings association must be converted into U.S. dollar equivalents;

(B) Securities issued by and other direct claims on the U.S. Government or its agencies (to the extent such securities or claims are unconditionally backed by the full faith and credit of the United States Government) or the central government of an OECD country;

(C) Notes and obligations issued by either the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and backed by the full faith and credit of the United States Government;

(D) Deposit reserves at, claims on, and balances due from Federal Reserve Banks;

(E) The book value of paid-in Federal Reserve Bank stock;

(F) That portion of assets that is fully covered against capital loss and/or yield maintenance agreements by the Federal Savings and Loan Insurance Corporation or any successor agency.

(G) That portion of assets directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country.

(ii) *20 percent Risk Weight (Category 2).*

(A) Cash items in the process of collection;

(B) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States government or its agencies, or the central government of an OECD country;

(C) That portion of assets conditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(D) Securities (not including equity securities) issued by and other claims on the U.S. Government or its agencies which are not backed by the full faith and credit of the United States Government;

(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-sponsored agencies;

(F) That portion of assets guaranteed by United States Government-sponsored agencies;

(G) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies;

(H) High quality mortgage-related securities, except for those classes with residual characteristics or stripped mortgage-related securities;

(I) Claims representing general obligations of any public-sector entity in an OECD country, and that portion of any claims guaranteed by any such public-sector entity;

(J) Bonds issued by the Financing Corporation or the Resolution Funding Corporation;

(K) Balances due from and all claims on domestic depository institutions. This includes demand deposits and other transaction accounts, savings deposits and time certificates of deposit, federal funds sold, loans to other depository institutions, including overdrafts and term federal funds, holdings of the savings association's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other institutions and securities issued by

depository institutions, except those that qualify as capital;

(L) The book value of paid-in Federal Home Loan Bank stock;

(M) Deposit reserves at, claims on and balances due from the Federal Home Loan Banks;

(N) Assets collateralized by cash held in a segregated deposit account by the reporting savings association.

(O) Claims on, or guaranteed by, official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.[6]

(P) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(Q) All claims on depository institutions incorporated in an OECD country, and all assets backed by the full faith and credit of depository institutions incorporated in an OECD country. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other depository institutions incorporated in an OECD country, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other depository institutions incorporated in an OECD country. However, bank-issued securities that qualify as capital of the issuing bank are not included in this risk category;

(R) Claims on depository institutions incorporated in a non-OECD country, as well as claims on the central bank of a non-OECD country, with a residual maturity of one year or less.

(iii) *50 percent Risk Weight (Category 3).*

(A) Revenue bonds issued by any public-sector entity in an OECD country for which the underlying obligor is a public- sector entity, but which are repayable solely from the revenues generated from the project financed through the issuance of the obligations;

(B) Qualifying mortgage loans and qualifying multifamily mortgage loans;

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans, except for those with residual characteristics or stripped mortgage-related securities.

(iv) *100 percent Risk Weight (Category 4).* All assets not specified above or deducted from calculations of capital pursuant to section 567.5 of this part, including, but not limited to:

(A) Consumer loans;

(B) Commercial loans;

(C) Home equity loans;

(D) Non-qualifying mortgage loans;

(E) Non-qualifying multifamily mortgage loans;

(F) Residential construction loans;

(G) Land loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(H) Nonresidential construction loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(I) Obligations issued by any state or any politica1 subdivision thereof for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, *e.g.*, industrial development bonds;

(J) Private-issue debt securities except for those qualifying under paragraph (a)(1)(ii) of this section;

(K) Investments in fixed assets and premises;

(L) Intangible assets, including any goodwill not deducted from capital;

(M) Purchased and excess mortgage servicing rights;

(N) Any classes of a mortgage-related security with residual characteristics, regardless of the issuer or guarantor;

(O) All stripped mortgage-backed securities, including interest-only portions (IOs), principal-only portions (POs) and other similar instruments, regardless of the issuer or guarantor;

(P) That portion of equity investments not deducted pursuant to section 567.5 of this part;

(Q) The prorated assets of subsidiaries (except for the assets of includable, fully consolidated subsidiaries) to the extent such assets are included in adjusted total assets.

(v) *200 percent risk weight* (Category 5).

(A) All repossessed assets or assets that are more than 90 days past due, *provided that*, 1-4 family residential real estate that is more than 90 days past due is placed in the 100% risk weight category;

(B) Equity investments that the Office determines have the same risk characteristics as real estate owned by the savings association.

(vi) *Ownership interests in investment companies.*

(A) Except as provided in paragraph (a)(1)(vi)(C) of this section, ownership interests in investment companies as defined in the Investment Company Act of 1940 are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the investment company.

(B) Where the portfolio of the investment company consists of assets that would fall into different risk-weight categories, or contains some assets that would be deducted in calculations of total capital, the entire ownership interest of the savings association will be assigned to the category of the asset with the highest risk weight in the portfolio or excluded from assets and thus deducted from calculations of total capital, as appropriate.

(C) On a case-by-case basis, the Office may allow the savings association to assign the portfolio proportionately to the various risk categories based on the proportion in which the risk categories are represented by the composition of assets in the portfolio. Before the Office will consider a request to proportionately risk-weight such a portfolio, the savings association must have and maintain current information for the reporting period that details the composition of the portfolio of assets.

(2) *Off-Balance Sheet Activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk-weight category depending on the obligor (*i.e.*, the 20 percent risk-weight category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party), *provided that*, the maximum risk-weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. Guarantees and other direct credit substitutes by savings associations of the obligations of their service corporations and subsidiaries that qualify as equity investments are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet items to which they apply:

[6] These institutions include, but are not limited to, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investments Bank, the International Monetary Fund and the Bank for International Settlements.

(i) *100 percent credit conversion factor (Group A).*

(A) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute is netted against the amount of any participations sold in that item (except as otherwise provided below). The amount retained by the savings association is converted to an on-balance sheet equivalent and assigned to the proper risk-weight category using the criteria regarding obligors, guarantors and collateral listed herein. Participations are treated as follows:

(*1*) If the originating savings association remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent using a credit conversion factor of 100%, with that amount then being assigned to the risk-weight category appropriate for the purchaser of the participation.

(*2*) If participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating institution, the full amount of the participations sold is excluded from the originating institution's risk-weighted assets;

(B) Risk participations purchased in bankers, acceptances and participations purchased in direct credit substitutes;

(C) Assets sold under an agreement to repurchase and the value of assets sold with recourse, to the extent these assets are not included in the savings association's total assets, except where the amount of recourse liability retained by a savings association is less than the capital requirement for credit-risk exposure, in which case capita1 must be maintained equal to the amount of credit-risk exposure retained. This category includes loan strips sold without direct recourse where the maturity of the participation is shorter than the maturity of the underlying loan and the ownership of the subordinated portion of a loan participation or package of loans. This category includes loans serviced by associations where the association is subject to losses on the loans, commonly referred to as "recourse servicing". (Where associations hold a participation certificate ("PC") in a mortgage loan swap with recourse or a subordinated portion as an on-balance sheet asset, the PC or subordinated portion is *not* to be risk-weighted for purposes of the risk-based capital requirement. Instead, the procedure outlined above is to be followed.);

(D) Forward agreements and other contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets at a specified future date. On the date an institution enters into a forward agreement or similar obligation, it should convert the principal amount of the assets to be purchased at 100 percent as of that date and then assign this amount to the risk-weight category appropriate to the obligor or guarantor of the item, or the nature of the collateral;

(E) Indemnification of customers whose securities the savings association has lent as agent. If the customer is not indemnified against loss by the savings association, the transaction is excluded from the risk-based capital calculation. When a savings association lends its own securities, the transaction is treated as a loan. When a savings association lends its own securities or is acting as agent, agrees to indemnify a customer, the transaction is assigned to the risk weight appropriate to the obligor or collateral that is delivered to the lending or indemnifying institution or to an independent custodian acting on their behalf.

(ii) *50 percent credit conversion factor (Group B).*

(A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction. To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(B) Unused portions of commitments, including home equity lines of credit, with an original maturity exceeding one year except those listed in paragraph (a)(2)(iv) of this section; and

(C) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the savings association's customer can issue short-term debt obligations in its own name, but for which the savings association has a legally binding commitment to either:

(*1*) Purchase the obligations the customer is unable to sell by a stated date; or

(*2*) Advance funds to its customer, if the obligations cannot be sold.

(iii) *20 percent credit conversion factor (Group C).* Trade-related contingencies, *i.e.*, short-term, self-liquidating instruments used to finance the movement of goods and collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(iv) *Zero percent credit conversion factor (Group D):*

(A) Unused commitments with an original maturity of less than one year;

(B) Unused commitments with an original maturity of greater than one year, if:

(*1*) They are unconditionally cancelable by the savings association, and

(*2*) The savings association has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each draw under the lending facility; and

(C) Unused portion of retail credit card lines that are unconditionally cancelable in accordance with applicable law by the savings association and home equity lines of credit that are unconditionally cancelable in accordance with federal law.

(v) *Interest-rate and exchange rate contracts (Group E).*

(A) The credit equivalent amount of interest-rate and exchange rate contracts is the sum of:

(*1*) Current credit exposure, *i.e.*, the replacement cost of the contract, measured in U.S. dollars, regardless of the currency specified in the contract. A savings association may net multiple contracts with a single counterparty only if those contracts are subject to novation. The term "novation" means a bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations; and

(*2*) Potential credit exposure, *i.e.*, an estimate of the potential increase in credit exposure over the remaining life of the contract. The add-on is calculated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate: [7]

(*i*) Interest rate contracts:

(*A*) Zero percent, if the contract has a remaining maturity of one year or less, and

[7] No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the on-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.

(*B*) 0.5%, for contract has a remaining maturity greater than one year;

(*ii*) Exchange rate contracts:

(*A*) 1.0%, if the contract has a remaining maturity of one year or less, and

(*B*) 5.0%, for contracts with a remaining maturity greater than one year.

(B) *Risk weighting.* The credit equivalent amount is then assigned to the proper risk-weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(2) of this section. However, the maximum risk weight assigned to the credit equivalent amount of an interest rate or exchange rate contract is 50%.

(C) *Exceptions.* The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a savings association's risk-based capital ratio:

(*1*) Exchange rate contracts with an original maturity of 14 calendar days or less; and

(*2*) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

(b) [Reserved]

§ 567.8 Leverage ratio.

Savings associations shall have and maintain core capital, as defined at 12 CFR 567.5(a), in an amount equal to at least 3.0% of adjusted total assets.

§ 567.9 Tangible capital requirement.

(a) Savings associations shall have and maintain tangible capital in an amount equal to at least 1.5% of adjusted total assets.

(b) The following elements, less the amount of any deductions pursuant to paragraph (c) of this section, comprise a savings association's tangible capital:

(1) Common stockholders' equity (including retained earnings);

(2) Noncumulative perpetual preferred stock and related earnings;

(3) Nonwithdrawable accounts and pledged deposits that would qualify as core capital under § 567.5 of this part; and

(4) Minority interests in the equity accounts of fully consolidated subsidiaries.

(c) *Deductions from tangible capital.* In calculating tangible capital, a savings association must deduct from assets, and, thus, from capital:

(1) Any intangible assets (except for purchased mortgage servicing rights that are includable in assets and, therefore, not deducted from tangible capital) in the lesser of the amount specified in § 567.5(a)(2)(iii)(A) of this part or any percentage specified by the Federal Deposit Insurance Corporation by regulation pursuant to section 5(t)(4)(C)(ii) of the Act; and

(2) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest), except as provided in paragraphs (c)(3) and (c)(4) of this section.

(3)(i) For investments described in paragraph (c)(2) of this section where the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (c)(3)(ii) of this section of the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(ii) For purposes of paragraph (c)(3)(i) of this section, the applicable percentage is as follows:

For the period:	The applicable percentage is:
Prior to July 1, 1990	0
July 1, 1990–June 30, 1991	10
July 1, 1991–June 30, 1992	25
July 1, 1992–June 30, 1993	40
July 1, 1993–June 30, 1994	50
Thereafter	100

(iii) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (c)(3)(i) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the tangible capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount to its adjusted total assets:

For the period:	The applicable percentage is:
Prior to July 1, 1990	100
July 1, 1990–June 30, 1991	90
July 1, 1991–June 30, 1992	75
July 1, 1992–June 30, 1993	60
July 1, 1993–June 30, 1994	40
Thereafter	0

(4) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution the Office may, in its sole discretion upon determining that the amount of tangible capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (c)(2) and (c)(3) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(1) of this part.

§ 567.10 Consequences of failure to meet capital requirements.

(a) *Prior to January 1, 1991.*

(1) During the period prior to January 1, 1991, the Director may restrict the asset growth of any savings association not in compliance with capital standards; and

(2) During the period prior to January 1, 1991, the Director shall require any savings association not in compliance with capital standards to submit a plan that:

(i) Addresses the savings association's need for increased capital;

(ii) Describes the manner in which the savings association will increase capital so as to achieve compliance with capital standards;

(iii) Specifies types and levels of activities in which the savings association will engage;

(iv) Requires any increase in assets to be accompanied by increase in tangible capital not less in percentage amount than the leverage limit then applicable;

(v) Requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

(vi) Is acceptable to the Director.

(3) To be acceptable to the Director under this section, a plan must, in addition to satisfying all of the requirements set forth in paragraphs (a)(2)(i) through (a)(2)(v) of this section, contain a certification that while the plan is under review by the Office, the savings association will not, without the prior written approval of its District Director:

(i) Grow beyond net interest credited;

(ii) Make any capital distributions; or

(iii) Act inconsistently with any other limitations on activities established by statute, regulation or by the Office in supervisory guidance for savings associations not meeting capital standards.

(4) If the plan submitted to the Director under paragraph (a)(2) of this section is not approved by the Office, the savings association shall immediately and without any further action, be subject to the following restrictions:

(i) It may not increase its assets beyond the amount held on the day it receives written notice of the Director's disapproval of the plan; and

(ii) It must comply with any other restrictions or limitations set forth in the written notice of the Director's disapproval of the plan.

(b) On or after January 1, 1991, the Director shall:

(1) Prohibit any asset growth by any savings association not in compliance with capital standards, *except* as provided in paragraph (d) of this section; and

(2) Require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director which may include the restrictions contained in paragraph (e) of this section and any other restrictions the Director determines appropriate.

(c) A savings association that wishes to obtain an exemption from the sanctions provided in paragraph (b)(2) of this section must file a request for exemption with its District Director. Such request must include a capital plan that satisfies the requirements of paragraph (a)(2) of this section.

(d) The Director may permit any savings association that is subject to paragraph (b) of this section to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities, if:

(1) The savings association obtains the Director's prior approval;

(2) Any increase in assets is accompanied by an increase in tangible capital in an amount not less than 3% of the increase in assets;

(3) Any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standards then applicable;

(4) Any increase in assets is invested in low-risk assets; and

(5) The savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(e) If a savings association fails to meet any of the regulatory capital requirements set forth in § 567.2 of this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

(1) Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Office's supervision staff for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken or order or directive issued to comply with the requirements of this section under this section.

§ 567.11 Reservation of authority.

(a) *Transactions for purposes of evasion.* The Director or the District Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section.

(b) *Average versus period-end figures.* The Office reserves the right to require a savings association to compute its capital ratios on the basis of average, rather than period-end, assets when the Office determines appropriate to carry out the purposes of this part.

(c) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute core or supplementary capital, and the Office may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its contribution to a savings association's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

§ 567.20 Grandfathered capital forbearances.

(a) *Scope.* This section applies to any savings association that had been granted capital forbearance and entered into a capital plan pursuant to Section 10 of the Home Owners' Loan Act of 1933 or Section 416 of the National Housing Act, as these sections were in effect prior to their repeal by the FIRREA ("grandfathered savings associations"). As required under the prior forbearance provisions (see 12 CFR 563.47 (1988)), these capital plans contain a detailed description of the steps a savings association would take to meet its minimum capital requirements; they address the association's operations during the time it has capital forbearance; they include forecasts and pro forma financial statements and they set forth a reasonable time frame (not later than January 1, 1995) for achieving its minimum capital requirement; and they also contain any other restrictions required by the savings association's District Director in approving the plan. Pursuant to the FIRREA, the capital forbearances already granted to these savings associations are grandfathered subject to their continued reporting and adherence to their capital plans.

(b) *Reporting.* Each grandfathered savings association shall submit thorough and complete reports on such savings association's progress in meeting the goals set forth in its capital

plan. Such reports must provide the District Director with a detailed ongoing evaluation of capital recovery progress and explain any deviations from the schedule, methods, operations, or goals set forth in the plan. These reports shall be submitted as frequently as required by the District Director, but not less often than semiannually.

(c) *Termination of capital forbearance status.* (1) The District Director may determine that a savings association does not qualify for capital forbearance or no longer qualifies for capital forbearance status, if:

(i) The savings association fails to comply with its capital plan;

(ii) Forbearance was granted contingent upon the occurrence of events that do not subsequently occur;

(iii) The savings association undergoes a change in control or a material change in management that was not approved by the District Director;

(iv) The savings association engages in practices inconsistent with achieving its minimum capital requirement;

(v) Information is discovered that was not made available to the District Director at the time the savings association qualified for capital forbearance and that indicates that forbearance should not have been granted;

(vi) The savings association's regulatory capital at the time of requesting forbearance was reported to be at least 0.5 percent, but is later found to have been below 0.5 percent;

(vii) The savings association engages in abusive, unsafe or unsound, or other imprudent practices;

(viii) The savings association violates an agreement with, or order issued by the Office; or

(ix) The savings association fails to submit the reports required by paragraph (b) of this section.

(2) The District Director shall terminate a grant of forbearance when a savings association has attained its minimum regulatory capital requirement as calculated in accordance with this Part 567, or other capital level imposed by the Office.

(3) The District Director shall notify a savings association in writing if it no longer qualifies for capital forbearance stating the reasons for the termination. Such termination shall take effect upon receipt of such notification by the savings association.

(4) Except if termination is contemplated for the reason set forth in paragraph (c)(2) of this section, as an alternative to denying or terminating capital forbearance, the District Director may permit the savings association to revise its plan, and if such revision is approved by the District Director, capital forbearance may be granted or continued.

(5) Any action by the District Director to terminate capital forbearance is deemed to be final action of the Office.

(d) *Status of supervisory, enforcement, and other actions during capital forbearance participation.* (1) While a savings association qualifies for capital forbearance, the Office shall not issue a capital directive pursuant to 12 CFR 567.4, institute supervisory or enforcement action to enforce the savings association's capital requirement, or take action to terminate the savings association's insurance, or place the savings association in conservatorship or receivership based on the savings association's inadequate capital.

(2) Notwithstanding paragraph (d)(1) of this section, the Office will not forbear from taking any appropriate action against—

(i) The savings association for matters other than inadequate capital, or

(ii) Any individual or entity other than the savings association for any matter, including inadequate capital.

(3) All existing supervisory or enforcement actions remain in effect unless lawfully modified or terminated.

(4) All regulations that address, relate to, or include a reference to regulatory capital or net worth remain in effect as before forbearance was granted, unless lawfully modified as applied to a particular savings association.

PART 568—MINIMUM SECURITY DEVICES AND PROCEDURES

Sec.

568.1 Scope of part and definitions.
568.2 Designation of security officer.
568.3 Security devices.
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Appendix A to Part 568—Minimum Standards for Security Devices

Appendix B to Part 568—Proper Employee Conduct During and After a Robbery

Authority: Secs. 2–5, 82 Stat. 294–295 (12 U.S.C. 1881–1884).

§ 568.1 Scope of part and definitions.

This part establishes minimum standards with which savings associations shall comply with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts; sets time limits within which savings associations shall comply with the standards; and provides for the submission of reports with respect to compliance. For the purposes of this part:

(a) The term "District Director" means the District Director who is responsible for the conduct of the Office's examinations of savings associations in the District in which a savings association's principal office is located.

(b) The term "business hours" means the time during which an office is open for the normal transaction of business with the public.

(c) The term "office" includes the principal office of a savings association and any branch thereof.

(d) The term "branch" includes any branch business quarters, agency, additional office, mobile facility, or any branch place of business located in any State or territory of the United States or in the District of Columbia at which investments in insured accounts are received or payments on loans are received.

(e) The term "teller's station or window" means a location in an office at which the savings association's customers routinely conduct transactions with the savings association's which involves the exchange of funds, including a walkup or drive-in teller's station or window.

§ 568.2 Designation of security officer.

On or before March 17, 1969 (or within 30 days after the effective date of insurance of accounts, whichever is later), the board of directors of each savings association shall designate an officer or other employee of the savings association who shall be charged, subject to supervision by the savings association's board of directors, with responsibility for the installation, maintenance, and operation of security devices and for the development and administration of a security program which equal or exceed the standards prescribed by this part.

§ 568.3 Security devices.

(a) *Installation, maintenance, and operation of appropriate security devices.* Before January 1, 1970 (or within 30 days after the effective date of insurance of accounts, whichever is later), the security officer of each savings association under such directions as shall be given him by the savings association board of directors, shall survey the need for security devices in each of the association's offices and shall provide for the installation, maintenance, and operation, in each such office, of

(1) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(2) Tamper-resistant locks on exterior doors and exterior windows designed to be opened;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(4) Such other devices as the security officer, after seeking the advice of law enforcement officers, shall determine to be appropriate for discouraging robberies, burglaries, and larcenies and for assisting in the identification and apprehension of persons who commit such acts.

(b) *Considerations relevant to determining appropriateness.* For the purpose of paragraph (a)(4) of this section, considerations relevant to determining appropriateness include, but are not limited to

(1) The incidence of crime against the particular office and/or against financial institutions in the area in which the office is or will be located;

(2 The amount of currency or other valuables exposed to robbery, burglary, or larceny;

(3) The distance of the office from the nearest responsible law enforcement officers and the time required for such law enforcement officers ordinarily to arrive at the office;

(4) The cost of the security devices;

(5) Other security measures in effect at the office; and

(6) The physical characteristics of the office structure and its surroundings.

(c) *Implementation.* It is appropriate for offices of savings association in areas with a high incidence of crime to install many devices which would not be practicable because of costs for small offices in areas substantially free of crimes against financial institutions. Each savings association shall consider the appropriateness of installing, maintaining, and operating security devices which are expected to give a general level of protection at least equivalent to the standards described in Appendix A of this part. In any case in which (on the basis of the factors listed in paragraph (b) of this section or similar ones, the use of other measures, or the decision that technological change allows the use of other measures judged to give equivalent protection) it is decided not to install, maintain, and operate devices at least equivalent to these standards, the institution shall preserve in its records a statement of the reasons for such decision.

§ 568.4 Security procedures.

(a) *Development and administration.* On or before July 15, 1969 (or within 30 days after the effective date of insurance of accounts, whichever is later), each savings association shall develop and provide for the administration of a security program to protect each of its offices from robberies, burglaries, and larcencies and to assist in the identification and apprehension of persons who commit such acts. The security program shall be reduced to writing, approved by the savings association's board of directors, and retained by the savings association in such form as will readily permit determination of its adequacy and effectiveness.

(b) *Contents of security programs.* Such security programs shall:

(1) Provide for establishing a schedule for the inspection, testing, and servicing of all security devices installed in each office; provide for designating the officer or other employee who shall be responsible for seeing that such devices are inspected, tested, serviced, and kept in good working order; and require such officer or other employee to keep a record of such inspections, testings, and servicings;

(2) Require that each office's currency be kept at a reasonable minimum and provide procedures for safely removing excess currency;

(3) Require that the currency at each teller's station or window be kept at a reasonable minimum and provide procedures for safely removing excess currency and negotiable securities to a locked safe, vault, or other protected place;

(4) Require that the currency at each teller's station or window include "bait" money, i.e., used Federal Reserve notes, the denominations, banks of issue, serial numbers, and series years of which are recorded, verified by a second officer or employee, and kept in a safe place;

(5) Require that all currency and negotiable securities be placed in a vault or safe at the earliest time practicable after business hours, that the vault or safe be locked at the earliest time practicable after business hours, and that the vault or safe be opened at the latest time practicable before business hours;

(6) Provide, where practicable, for designation of a person or persons to open each office and require him or them to inspect the premises, to ascertain that no unauthorized persons are present, and to signal other employees that the premises are safe before permitting them to enter;

(7) Provide for designation of a person or persons who will assure that all security devices are turned on and are operating during the periods in which such devices are intended to be used;

(8) Provide, where practicable, for designation of a person or persons to inspect, after the closing hour, all areas of each office where currency and negotiable securities are normally handled or stored in order to assure that such currency and negotiable securities have been put away, that no unauthorized persons are present in such areas, and that the vault or safe and all doors and windows are securely locked; and

(9) Provide for training, and periodic retraining, of employees in their responsibilities under the security program including the proper use of security devices and proper employee conduct during and after a robbery, in accordance with the procedures listed in Appendix B of this part.

§ 568.5 Reports and records.

(a) *Compliance reports.* As of the last business day in June of 1970, and in connection with each periodic supervisory examination thereafter, each savings association shall file with the District Director a statement certifying to its compliance with the requirements of this part. The statement shall be dated and signed by the president or other managing officer of the association and may be in a form substantially as follows:

I hereby certify, to the best of my knowledge and belief, that this association has developed and administers a security program that equals or exceeds the standards prescribed by § 568.4 of the Rules and Regulations for Savings Association; that such security program has been reduced to writing, approved by this association's board of directors, and retained by this association in such form as will readily permit determination of its adequacy and effectiveness; and that this association's security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of appropriate security devices, as prescribed by § 568.3 of the Rules and Regulations for Savings Associations in each of this association's offices.

(b) *Records of external crime.* After a robbery, burglary or nonemployee larceny is committed or attempted at an office operated by a savings association, the savings association shall keep a record of the incident at its main office. The record may be a copy of a police, insurance or similar report of the incident. Alternatively, the savings association may wish to develop its own record indicating the office at which the incident occurred, the type of crime, when the crime occurred and the

amount of any loss; whether operational or mechanical deficiencies might have contributed to the crime; and what has been or will be done to correct the deficiencies.

(c) *Special reports.* Each savings association shall file such other reports as the Office may require.

§ 568.6 Corrective action.

Whenever the Office determines that the security devices or procedures used by a savings association are deficient in meeting the requirements of this part, or that the requirements of this part should be varied in the circumstances of a particular office, it may take or require the savings association to take necessary corrective action. If the Office determines that such corrective action is appropriate or necessary, the association will be so notified and will be furnished a statement of what the association must do to comply with the requirements of this part.

§ 568.7 Penalty provision.

Pursuant to section 5 of the Bank Protection Act of 1968, a savings association that violates any provision of this part shall be subject to a civil penalty not to exceed $100 for each day of the violation.

APPENDIX A TO PART 568—MINIMUM STANDARDS FOR SECURITY DEVICES

In order to assure realization of maximum performance capabilities, all security devices utilized by a savings association should be regularly inspected, tested, and serviced by competent persons. Actuating devices for surveillance systems and robbery alarms should be operable with the least risk of detection by unauthorized persons that can be practicably achieved.

1. *Surveillance systems*—(a) *General.* Surveillance systems should be:

(1) Equipped with one or more photographic, recording, monitoring, or like devices capable of reproducing images of persons in the association's office with sufficient clarity to facilitate (through photographs capable of being enlarged to produce a one-inch vertical head-size of persons whose images have been reproduced) the identification and apprehension of robbers or other suspicious persons;

(2) Reasonably silent in operation; and

(3) So designed and constructed that necessary services, repairs or inspections can readily be made. Any camera used in such a system should be capable of taking at least one picture every 2 seconds and, if it uses film, should contain enough unexposed film at all times to be capable of operating for not less than 3 minutes, and the film should be at least 16mm.

(b) *Installation and operation of surveillance systems providing surveillance of other than walk-up or drive-in teller's stations or windows and fully automated stations.* Surveillance devices for other than walk-up or drive-in teller's stations or windows and fully automated stations should be:

(1) Located so as to reproduce identifiable images of persons either leaving the office or in a position to transact business at each such station or window; and

(2) Capable of actuation by initiating devices located at each teller's station or window.

(c) Installation and operation of surveillance systems providing surveillance of walk-up or drive-in teller's stations or windows. Surveillance devices for walk-up or drive-in teller's stations or windows should be located in such a manner as to reproduce identifiable images of persons in a position to transact business at each such station or window and areas of such station or window that are vulnerable to robbery or larceny. Such devices should be capable of actuation by one or more initiating devices located within or in close proximity to such station or window. Such devices may be omitted in the case of a walk-up or drive-in teller's station or window in which the teller is effectively protected by a bullet-resistant barrier from persons outside the station or window. However, if the teller is vulnerable to larceny or robbery by members of the public who enter the office, the teller should have access to a device to actuate a surveillance system that covers the area of vulnerability or the exits to the office.

2. *Robbery and burglary alarm systems—(a) Robbery alarm systems.* A robbery alarm system should be provided for each office which is vulnerable to robbery and at which the police ordinarily can arrive within 5 minutes after an alarm is actuated; all other such offices should be provided with appropriate devices for promptly notifying the police that a robbery has occurred or is in progress. Robbery alarm systems should be:

(1) Designed to transmit to the police, either directly or through an intermediary, a signal (not detectable by unauthorized persons) indicating that a crime against the office has occurred or is in progress;

(2) Capable of actuation by initiating devices located at each teller's station or window (except walk-up or drive-in teller's stations or windows in which the teller is effectively protected by a bullet-resistant barrier and effectively isolated from persons, other than fellow employees, inside an office of which such station or window may be a part);

(3) Safeguarded against accidental transmission of an alarm;

(4) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(5) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 24 hours in the event of failure of the usual source of power.

(b) *Burglary alarm systems.* A burglary alarm system should be provided for each office. Burglary alarm systems should be:

(1) Capable of detecting promptly an attack on a fully automated station and on the outer door, walls, floor, or ceiling of each vault, and each safe not stored in a vault, in which currency, negotiable securities, or similar valuables are stored when the office is closed, and any attempt to move any such safe;

(2) Designed to transmit to the police, either directly or through an intermediary, a signal indicating that any such attempt is in progress; and for fully automated stations and other offices at which the police ordinarily cannot arrive within 5 minutes after an alarm is actuated, designed to actuate a loud sounding bell or other device that is audible inside the office and for a distance of approximately 500 feet outside the station or office;

(3) Safeguarded against accidental transmission of an alarm;

(4) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(5) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 80 hours in the event of failure of the usual source of power.

3. *Walk-up and drive-in teller's stations or windows.* Walk-up and drive-in teller's stations or windows contracted for after February 15, 1969, should be constructed in such a manner that tellers are effectively protected by bullet-resistant barriers from robbery or larceny by persons outside such stations or windows. Such barriers should be of glass at least 1⅜₁₆ inches in thickness,[1] of material of at least equivalent bullet-resistance. Pass-through devices should be so designed and constructed as not to afford a person outside the station or window a direct line of fire at a person inside the station.

4. *Vaults, safes, safe deposit boxes, night depositories, and automated paying or receiving machines.* Vaults, safes (if not to be stored in a vault), safe deposit boxes, night depositories, and automated paying or receiving machines, in any of which currency, negotiable securities, or similar valuables are to be stored in fully automated stations or when offices are closed, should meet or exceed the standard expressed in this section.

(a) *Vaults.* A vault is defined as a room or compartment that is designed for the storage and safekeeping of valuables and which has a size and shape which permits entrance and movement within by one or more persons. Other asset storage units which do not meet this definition of a vault will be considered as safes. Vaults contracted for after November 1, 1973,[2] should have walls, floor, and ceiling of reinforced concrete at least 12 inches in thickness.[3] The vault door should be made of

[1] It should be emphasized that this thickness is merely bullet-resistant and not bulletproof.

[2] Vaults contracted for previous to this date should be constructed in conformance with all applicable specifications then in effect.

[3] The reinforced concrete should have: two grids of 5 (⅝" diameter) deformed steel bars located in horizontal and vertical rows in each direction to form grids not more than 4 inches on center; or two grids of expanded steel bank vault mesh placed parallel to the face of the walls, weighing at least 6 pounds per square foot to each grid, having a

Continued

steel at least 3½ inches in thickness, or other drill and torch resistant material, and be equipped with a dial combination lock, a time lock, and a substantial lockable day-gate. Electrical conduits into the vault should not exceed 1½ inches in diameter and should be offset within the walls, floor, or ceiling at least once so as not to form a direct path of entry. A vault ventilator, if provided, should be designed with consideration of safety to life without significant reduction of the strength of the vault wall to burglary attack. Alternatively, vaults should be so designed and constructed as to afford at least equivalent burglary resistance.[4]

(b) *Safes.* Safes contracted for after February 15, 1969, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. The body should consist of steel, at least 1 inch in thickness, either cast or fabricated, with an ultimate tensile strength of 50,000 pounds per square inch and be fastened in a manner equal to a continuous ¼ inch penetration weld having an ultimate tensile strength of 50,000 pounds per square inch. The door should be made of steel that is at least 1½ inches in thickness, and at least equivalent in strength to that specified for the body; and the door should be equipped with a combination lock, or time lock, and with a relocking device that will effectively lock the door if the combination lock or time lock is punched. One hole not exceeding ½ inch diameter may be provided in the body to permit insertion of electrical conductors, but should be located so as not to permit a direct view of the door or locking mechanism. Alternatively, safes should be constructed of materials that will afford at least equivalent burglary resistance.

(c) *Safe deposit boxes.* Safe deposit boxes used to safeguard customer valuables should be enclosed in a vault or safe meeting at least the above-specified minimum protection standards.

(d) *Night depositories.* Night depositories (excluding envelope drops not used to receive substantial amounts of currency) contracted for after February 15, 1969, should consist of a receptacle chest having cast or welded steel walls, top, and bottom, at least 1 inch in thickness; a steel door at least 1½ inches in thickness, with a combination lock; and a chute, made of steel that is at least 1 inch in thickness, securely bolted or welded to the receptacle and to a depository entrance of strength similar to the chute. Alternatively, night depositories should be so designed and constructed as to afford at least equivalent burglarly resistance.[5] Each depository entrance (other than an envelope drop slot) should be equipped with a lock. Night depositories should be equipped with a burglar alarm and be designed to protect against the "fishing" of a deposit from the deposit receptacle, and to protect against the "trapping" of a deposit for extraction.

(e) *Automated paying or receiving machines.* Except as hereinafter provided, cash dispensing machines (automated paying machines), including those machines which also accept payments on savings accounts and/or loans (automated receiving machines) contracted for after November 1, 1973, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. Cash dispensing machines should contain, among other features, a storage chest having cast or welded steel walls, top, and bottom, at least one inch in thickness, with a tensile strength of at least 50,000 pounds per square inch. Any doors should be constructed of steel at least equivalent in strength to the storage chest and be equipped with a combination lock and with a relocking device that will effectively lock the door if the combination lock is punched. The housing covering the cash dispensing opening in the storage chest and the housing covering the mechanism for removing the cash from the storage chest, should be so designed as to provide burglary-resistance at least equivalent to the storage chest and should also be designed to protect against the "fishing" of cash from the storage chest. The cash dispensing control and delivering mechanism (and, when applicable, cash-payment-receipt mechanism) should be protected by steel, at least ½ inch in thickness, securely attached to the storage chest. A cash dispensing machine which also receives payments on savings accounts and/or loans should have a receptacle chest having the same burglary-resistant characteristics as that of cash dispensing storage chest and should be designed to protect against the fishing and trapping of payments. Necessary ventilation for the automated machines should be designed so as to avoid significantly reducing the burglary-resistance of the machines. The cash dispensing machine should also be designed so as to be protected against actuation by unauthorized persons, should be protected by a burglar alarm, and should be located in a well lighted area. Alternatively, cash dispensing machines should be so designed and constructed as to afford at least equivalent burglary-resistance.[6] A cash dispensing machine which is used inside an insured institution's premises only during business hours, and which is empty of currency and coin at all other times, should at least provide safeguards against "jimmying", unauthorized opening of the storage chest door, and against actuation by unauthorized persons.

diamond pattern not more than 3" X 6"; or two grids of any other fabricated steel placed parallel to the face of the walls, weighing at least 6 pounds per square foot to each grid and having an open area not exceeding 4 inches on center. Grids are to be located not less than 6 inches apart and staggered in each direction. The concrete should develop an ultimate compression strength of at least 3,000 pounds per square inch.

[4] Equivalent burglary-resistant materials for vaults do not include the use of a steel lining, either inside or outside a vault wall, in lieu of the specified reinforcement and thickness of concrete. Nonetheless, there may be instances, particularly where the construction of a vault of the specified reinforcement and thickness of concrete would require substantial structural modification of an existing building, where compliance with the specified standards would be unreasonable in cost. In those instances, the institution should comply with the procedure set forth in paragraph (c) of § 568.2.

[5] Equivalent burglary-resistant materials for night depositories include the use of one-fourth inch steel plate encased in 6 inches or more of concrete or masonry building wall.

[6] Equivalent burglary-resistant materials for cash dispensing machines include the use of ⅝ inch thick nickel stainless steel meeting American Society of Testing Materials (ASTM) Designation A 167–70, Type 304, in place of 1 inch thick steel, if other criteria are satisfied.

APPENDIX B TO PART 568—PROPER EMPLOYEE CONDUCT DURING AND AFTER A ROBBERY

With respect to proper employee conduct during and after a robbery, employees should be instructed:

1. To avoid actions that might increase danger to themselves or others;

2. To activate the robbery alarm system and the surveillance system during the robbery, if it appears that such activation can be accomplished safely;

3. To observe the robber's physical features, voice, accent, mannerisms, dress, the kind of weapon he has, and any other characteristics that would be useful for identification purposes;

4. That if the robber leaves evidence (such as a note) try to put it aside and out of sight, if it appears that this can be done safely; retain the evidence, do not handle it unnecessarily, and give it to the police when they arrive; and refrain from touching, and assist in preventing others from touching, articles or places the robber may have touched or evidence he may have left, in order that fingerprints of the robber may be obtained;

5. To give the robber no more money than the amount he demands, and include "bait" money in the amount given;

6. That if it can be done safely, observe the direction of the robber's escape and the description and license plate number of the vehicle used, if any;

7. To telephone the local police, if they have not arrived, and the nearest office of the Federal Bureau of Investigation, or inform a designated officer or other employee who has this responsibility, that a robbery has been committed;

8. That if the robber leaves before the police arrive, assure that a designated officer or other employee waits outside the office, if it is safe to do so, to inform the police when they arrive that the robber has left;

9. To attempt to determine the names and addresses of other persons who witnessed the robbery or the escape, and request them to record their observations or to assist a designated officer or other employee in so doing;

10. To refrain from discussing the details of the robbery with others before recording the observations respecting the robber's physical features and other characteristics as hereinabove described and the direction of escape and description of vehicle used, if any.

PART 569—PROXIES

Sec.

569.1 Definitions.

569.2 Form of proxies.

569.3 Holders of proxies.

569.4 Proxy soliciting material.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463).

§ 569.1 Definitions.

As used in this part:

(a) *Security holder.* The term "security holder" means any person having the right to vote in the affairs of a savings association by virtue of:

(1) Ownership of any security of the association or

(2) Any indebtedness to the association.

For purposes of this part, the term "security holder" shall include any account holder having the right to vote in the affairs of a mutual savings association.

(b) *Person.* The term "person" includes, in addition to natural persons, corporations, partnerships, pension funds, profit-sharing funds, trusts, and any other group of associated persons of whatever nature.

(c) *Proxy.* The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for the security holder in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(d) *Solicit; solicitation.* The terms "solicit" and "solicitation" refer to:

(1) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(2) any request to execute, not execute, or revoke a proxy; or

(3) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the request of such security holder or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

§ 569.2 Form of proxies.

Every form of proxy shall conform to the following requirements:

(a) The proxy shall be revocable at will by the person giving it. The power to revoke may not be conditioned on any event or occurrence or be otherwise limited; except that, in the case of a proxy relating to capital stock if such proxy is coupled with an interest, states such fact on its face, and is valid under the laws of the State in which it is to be exercised, such proxy may be made irrevocable to the extent permitted by such State law.

(b) The proxy may not be part of any other document or instrument (such as an account card).

(c) The proxy shall be clearly labeled "Revocable Proxy" in boldface type (at least as large as 18 point).

§ 569.3 Holders of proxies.

No proxy of a mutual savings association with a term greater than eleven months or solicited at the expense of the association may designate as holder anyone other than the board of directors [trustees] as a whole, or a committee appointed by a majority of such board.

§ 569.4 Proxy soliciting material.

No solicitation of a proxy shall be made by means of any statement, form of proxy, notice of meeting, or other communication, written or oral, which:

(a) Solicits any undated or postdated proxy;

(b) Solicits any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder; or

(c)(1) Contains any statement that is false or misleading with respect to any material fact, or

(2) Omits to state any material fact:

(i) Necessary in order to make the statements therein not false or misleading or

(ii) Necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has subsequently become false or misleading.

PART 571—STATEMENTS OF POLICY

Sec.
571.1 Appraisal of real estate securing assets of savings associations.
571.2 Audits of savings associations.
571.3 Interest-rate-risk management.
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571.23 Regulatory capital.
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571.26 Classification of certain assets.
571.27 Appraisal policies and practices of savings associations and service corporations.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.1 Appraisal of real estate securing assets of savings associations.

Section 563.170 provides that the examination of a savings association shall include appraisals when deemed advisable. It has been, and it now is, the policy of the Office to have the real estate securing a savings association's assets appraised when specific facts or information with respect to mortgage loans or lending, or with respect to operations in general give evidence that a savings association's appraisals may be excessive, that lending may be of a marginal nature, that appraisal policies and practices may not conform with generally accepted and established professional standards or that assets secured by real estate are overvalued. This statement of policy sets out the basic guidelines for a determination that appraisals should be obtained and the procedures to be employed in obtaining such appraisals.

(a) *General.* (1) Notwithstanding any provisions hereinafter set out in this statement of policy, appraisals may, and will, be made in any instance where, in the opinion of the Office, such appraisals are necessary to protect the interests of the Office, other savings associations, or the public. Further, the Senior Deputy Director for Supervision (Operations) has been, and continues to be, authorized to direct that an examination, including such appraisals as he deems advisable, be made at any time of any savings association and any statements made herein shall not act to modify or limit such authority.

(2) As used in this statement of policy, the term "appraiser" means an individual whose qualifications are demonstrated by means of education and/or experience appropriate to the complexity of the particular assignment. The fact that an appraiser is employed by a savings association on a fee or salary basis need not, of itself, adversely affect the acceptability of any report of appraisal prepared by or under the direct supervision of such appraiser.

(3) A determination to obtain appraisals must be the product of a careful consideration of current facts and factors and, therefore, such a determination will usually be geared to the orderly processes of examination.

(4) The exercise of judgment in arriving at a decision to obtain appraisals has been, and must continue to be, a matter which requires consultation and close cooperation between all examining and supervisory personnel.

(b) *Authority of District Director to obtain appraisals.* The Office's District Director for the district in which the principal office of a savings association is located is authorized to obtain, in connection with any examination of such savings association, appraisals of real estate securing the savings association's assets when, in the opinion of the District Director, the savings association's policies and practices and operating results and trends are such as to cause concern over the quality of such assets. When the trend of the ratio of assets classified under § 563.160 is such that it raises serious question as to a savings association's financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the District Director, or any designee of the District Director, is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the savings association's loans and contracts.

(c) *Additional authority of District Director or his or her designee to obtain appraisals.* The District Director for the district in which the principal office of a savings association is located or any designee is authorized to obtain, as a part of and in connection with an examination, appraisals of real estate securing such savings association's loans and contracts when an examination discloses the following conditions or such conditions are otherwise known or found to exist:

(1) When the savings association's independent public accountant disclaims an opinion on its financial statements in his report of audit because he is of the opinion that the fair market value of real estate securing assets is materially less than book value of such assets.

(2) When the savings association's independent public accountant expresses an opinion in his report of audit that the financial statements do not fairly present the savings association's financial position or results of operations because of potential losses in the loan portfolio or on the sale of real estate owned.

(3) When a borrower agrees or otherwise obligates himself to pay, or does pay, fees or other consideration to a third party to induce an inflow of funds to savings accounts or checking accounts in the savings association.

(4) When there have been two or more changes in record ownership of the security property in comparatively rapid succession within a short period of time, each such change being accompanied by a material increase in the reported purchase price.

(5) When the beneficial owner of the real estate is not directly obligated to the savings association for the repayment of the debt.

(6) When an appraisal of income-producing real estate or vacant land, excepting such real estate being utilized in farming or similar agricultural pursuits, has not been made by a professional appraiser within a 3-year period preceding the Office's examination.

(7) When loan applications, contracts of sale, or other documents submitted to induce and support the granting of loans to finance the purchase of security properties do not disclose the true purchase prices.

(8) In the case of loans or contracts granted or made to facilitate the sale by the savings association of real estate previously acquired by it as a result of foreclosure or voluntary deed in lieu thereof:

(i) When the appraisal supporting the loan or contract to facilitate exceeds by 10 percent or more the appraised value of the real estate at the time of acquisition by the savings association, unless both appraisals were made by an appraiser or appaisers;

(ii) When the sales price of the real estate sold by the savings association is 10 percent or more above or below the appraised value of such real estate at the time of acquisition by the savings association, unless the appraisal at the time of acquisition was made by an appraiser.

(9) When a loan involves real estate in which an officer, director, employee, or attorney of or for the savings association, or any owner of 10 percent or more of the savings association's permanent, reserve, or guaranty stock, had a direct or indirect interest, financial or otherwise, of 10 percent or more, excepting real estate occupied by such officer, director, employee, attorney, or stockholder on his or her residence.

(10) When the original amount of a loan exceeds the greater of $100,000 or one-fourth of 1 percent of the savings association's assets at the time such loan was granted, except loans secured by single-family dwellings, and the security for which was not appraised by an appraiser.

(11) When real estate acquired since the date of the previous examination by foreclosure or voluntary deed in lieu thereof or in exchange for any scheduled items, which remains as real estate owned on the savings association's books at the time of the examination, was not appraised by an appraiser at the time of acquisition, excepting real estate temporarily held pending transfer to an insuring or guaranteeing agency of the U.S. Government.

(12) When other real estate owned by the savings association for a period of 3 or more years (excepting real estate occupied or to be occupied as a home, branch, or service office of such savings association) has not been appraised by an appraiser within the 3-year period preceding the examination.

(d) [Reserved]

(e) *Other bases for obtaining appraisals.* It is not feasible to identify, or to state categorically or inflexibly, all of the other indications of the need to evaluate appraisal practices and policies. Many factors must be considered separately and in context in the light of the operations of each savings association, and economic conditions as they exist. However, the following broad areas of operation by a savings association will be of paramount supervisory concern and essential facts and information with respect to such matters will in large measure constitute the basis for determining whether or not appraisals should be made.

(1) *Increase in funds for mortgage lending.* The extent to which the savings association's expense ratio and dividend rate necessitate or have produced volume lending or lending at interest rates, or at interest rates plus fees, which materially exceed rates charged by responsible lenders in the area on prime real estate security—in order to provide sufficient revenue to pay expenses and dividends—are

matters of much importance. In evaluating this aspect or area of a savings association's operations consideration will be given not only to the dividend rate and expense ratio as compared to other comparable savings associations in the same business area, but also to such matters as bonus (on top of a competitive dividend rate); inflow of funds to checking accounts and savings accounts from or through brokers; advertising of rate, rate increases, or other terms in a manner or by means which indicate pressure in the solicitation of accounts; extensive rate advertising in media outside the savings association's normal business area; use of give-aways, directly or through brokers, and any solicitation practices generally recognized as being inconsistent with accepted standards in the conduct of responsible savings associations. In order to evaluate the extent of any mortgage lending pressures to which the savings association is subjecting itself, consideration may also need to be given to the use of borrowed money and to sales of loans for relending purposes.

(2) *Increase in mortgage lending.* A material increase in the amount of loans made, as compared to an approximate equal period next preceding that covered by an examination, might be indicative of lending policies and practices which would call for appraisals. A determination to have appraisals made in connection with an examination would be well based if any of the following conditions or practices are found, particularly when such conditions or practices are coupled to the mortgage lending pressures described in paragraph (e) of this section.

(i) A significant amount of loans made at interest and/or fee charges which are higher than charges generally being made by other comparable savings associations in the area.

(ii) Loans made to borrowers with whom the savings association has previously had material difficulty.

(iii) A series of loans or advances within a short period of time, on the same security property, particularly if these transactions are accompanied by increased appraisals without commensurate improvement of or addition to the security.

(iv) Material concentration of loans on real estate in declining areas, or to a few speculative or operative builders.

(v) Appraisal of real estate security at amounts which substantially exceed sales prices, particularly in the case of new construction which is sold on a competitive, free market and not subject to temporary adverse economic conditions in the community or to other considerations which in certain limited circumstances might justify an appraisal in excess of purchase price.

(vi) Disbursement of construction loan proceeds in advance of the progress of construction or of value at the time disbursement is made.

(vii) Inadequate loan applications, credit information, or documentation of the disbursement of proceeds of loans.

(viii) Granting or extension of mortgage credit to speculative builders when the borrower is already indebted to the savings association on loans secured by properties which have remained unsold for a substantial period of time following completion.

(3) *Other considerations.* (i) While the condition and operations of a savings association as measured by the factors enumerated in paragraph (e) of this section would generally be determinative, the identification of those matters is not intended as even a suggestion that consideration should not be given to other matters, separately or in context with one or more of the factors stated.

(ii) Among other considerations to which careful attention should be given in connection with a determination as to whether or not appraisals should be made are:

(A) Failure to follow an aggressive collection policy or to observe recognized standards in determining the ability of borrowers to undertake and to pay their mortgage obligations.

(B) Inventory of completed but unsold houses in the savings association's lending area, particularly where the savings association is continuing to make speculative construction loans or is subject to the investment pressures previously described.

(C) The number and amount of speculative construction loans as to which there is a relatively substantial deficiency in funds available for completion of construction.

(f) *Selection of appraiser.* The Distict Director for the district in which the principal office of a savings association is located will select the appraiser or appraisers to make appraisals under this program. When making the selection, the District Director shall, insofar as is feasible, make such selection from those appraisers who do not regularly make appraisals for competing savings associations in the community.

(g) *Purpose and type of appraisals.* (1) The purpose of obtaining appraisals is to provide information and data essential to the proper discharge of the Office's supervisory responsibilities. The facts of each particular situation will, in large measure, determine the type of appraisal activity. Thus, appraisals may be obtained in order to test overall appraisal policies and practices, to determine the results of the application of specific policies and practices in relation to specific lending areas of property types, to estimate potential losses, etc. The District Director will select such appraisal procedure as will, in his opinion, best disclose the deficiencies and permit such supervisory action as may be appropriate.

(2) The District Director may obtain the services of an appraiser to make actual, physical appraisal of specific properties, to review and evaluate the savings association's appraisal policies and procedures, or to make a preliminary appraisal or survey. The latter procedure is to estimate the highest and best use of the property, to select the approach which, in his opinion, will develop the most rational value indication, to ascertain whether the neighborhood is improving, stabilizing, or declining, to determine the condition of the property, etc. Dependent on the purpose of the appraisal assignment the District Director may select any one or combination of the three procedures.

(3) Regardless of the appraisal procedure utilized, the appraiser will submit a written report of his findings to the District Director. When a preliminary appraisal survey is made, the appraiser's report of findings will specifically include an opinion regarding the sufficiency of data and the reasonableness of estimates of value shown on the savings association's reports of appraisal.

(h) *Selection of properties to be appraised.* An examiner designated by the District Director will select properties to be appraised. Depending on the purpose of the appraisals, selection may encompass a sampling of the security for the newer loans, the security for the entire loan portfolio, the security for substandard loans, the security for certain types of classes of loans, or real estate owned.

(i) *When appraisals need not be obtained.* (1) Appraisals need not be obtained in connection with the examination of any state-chartered savings association the principal office of which is located in a state where the appropriate state supervisory authority has established and maintains an appraisal procedure acceptable to the Office whereby appraisers on the staff of such state authority make appraisals of real estate security in connection with examinations of each such savings association, provided that the results of such appraisals are made known by such state authority, in writing, to the Office's District Director for the district in which such state is located.

(2) Appraisals generally need not be obtained on:

(i) Real estate securing insured or guaranteed loans;

(ii) Real estate securing loans or contracts purchased within the preceding 3-year period from either a predecessor agency of the Office prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, or from the FDIC;

(iii) Real estate securing loans or contracts acquired as a result of a merger or purchase of assets made for supervisory purposes within the preceding 3-year period;

(iv) Real estate acquired as a result of a merger or purchase of assets for supervisory purposes within the preceding 3-year period;

(v) Real estate previously appraised as a part of and in connection with an examination by the Office's examiners, except:

(A) Income-producing real estate or vacant land (exclusive of such real estate utilized in farming or similar agricultural pursuits) not appraised by an appraiser within a 3-year period preceding the examination; and

(B) Real estate (exclusive of that occupied or to be occupied as a home branch or service office of the savings association) owned by the savings association for a period of 3 or more years and which has not been appraised by an appraiser within the 3-year period preceding the examination.

§ 571.2 Audits of savings associations.

(a) *Introduction.* (1) Section 583.170(a)(2) of this subchapter requires each savings association to be audited at least once in each calendar year by auditors and in a manner satisfactory to the Office. This audit requirement subjects the accounting policies, procedures, and records and the internal control of each savings association to periodic, independent, critical review and evaluation, thus enhancing the probability that financial statements and reports to the Office will be proper and that conditions that could affect adversely the savings association, other savings associations, the Office, or the public will be detected. This statement sets forth the policies and criteria for determining that an auditor or an audit is satisfactory to the Office.

(2) The provisions of this statement of policy shall not in any manner modify or limit the Office's authority, as set out in § 563.170(a) of this subchapter, to make, or cause to be made, at any time, an audit of a savings association (including appraisals when deemed advisable) or to assess against such savings association the cost of any audit made pursuant to such authority.

(3) As used in this section, the title "District Director" refers to the Office's District Director for the district in which the principal office of any savings association is located.

(b) *General policy.* Except as provided in paragraph (e) of this section, each savings association must satisfy the audit requirement of § 563.170(a) of this subchapter by means of an audit by a public accountant or internal auditor. To be acceptable to the Office, auditors must be qualified and independent and must follow recognized rules of ethics and conduct; reports of audits must meet the requirements of this section and comply with such additional requirements as may be contained in bulletins issued by the Senior Deputy Director for Supervision (Operations) or instructions issued by a District Director.

(c) *Audits by public accountants or internal auditors*—(1) *Procedure.* (i) When the board of directors of a savings association elects to have an audit performed by a public accountant, an officer of the savings association, within 15 days following such action, shall notify the District Director of such action and of the public accountant engaged to perform such service. The District Director also shall be notified within 15 days following any action terminating the services of a public accountant.

(ii) When the board of directors of a savings association elects to satisfy the regulatory audit requirements by means of an audit by an internal auditor, it shall, by resolution, disclose its intention to establish an internal audit program, outline the objectives and the basic minimum requirements of the program, specify the date when the program will commence and designate a full-time salaried employee or officer of the savings association, who shall report and be accountable directly to the board of directors, to perform the function of internal auditor. A certified copy of such resolution shall be filed with the District Director at least 90 days prior to commencement of such internal audit program. Any changes in the objectives and minimum requirements of the program or in the person responsible for implementation of such program shall be accomplished by appropriate resolution of the board of directors. A certified copy of each such resolution shall be filed with the District Director.

(2) *Qualification of public accountant or internal auditor.* (i) The term "qualified public accountant" refers to a person who is a certified public accountant or licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States and who is in good standing as such under the laws of the State or other political subdivision of the United States in which is located the home office of the savings association that is to be audited. Any other person will not be deemed to be a qualified public accountant unless, as of April 15, 1966, such person had an established client relationship with a savings association and had filed with the District Director a report of audit that was acceptable under then existing requirements.

(ii) The term "qualified internal auditor" refers to a person who has had adequate technical training as an auditor and who has proficiency as an auditor, an understanding of audit objectives, and a working knowledge of savings and loan operations. When a board of directors designates a person as an internal auditor, that person's qualifications shall be submitted to the District Director, who shall make an initial review of and decision as to the acceptability of that person as an internal auditor. Such initial review and acceptance shall not be final; continuing acceptance will depend on the internal auditor's ability to carry out the internal audit program in a manner which meets the requirements of the Office.

(3) *Independence of public accountant or internal auditor.* (i) To be acceptable, an audit must be made by a qualified public accountant or internal auditor who is in fact independent. While it is not feasible to identify or to state categorically or inflexibly all of the criteria for judging the independence of an auditor, the most common conditions that contribute to a lack of independence are set out hereafter.

(ii) A public accountant will not be considered to be independent if he:

(A) Is connected with the savings association or any of its subsidiaries or affiliates as an officer, director, attorney, or employee, or is a member of the immediate family of an officer, director, attorney, or employee of the savings association or any of its subsidiaries or affiliates;

(B) Is the beneficial owner, directly or indirectly, of any shares of permanent, reserve, or guaranty stock of the savings association;

(C) Has any proprietary interest in any partnership, corporation, syndicate, or other business or legal entity which, directly or indirectly, controls the

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savings association or any of its subsidiaries or affiliates;

(D) Is a borrower from the savings association or any of its subsidiaries or affiliates except with respect to:

(*1*) A loan on the security of his residence;

(*2*) A loan to make alterations, repairs, or improvements to his residence;

(*3*) A loan secured solely by his savings credits in the savings association; or

(*4*) A consumer loan either unsecured or secured by goods used or bought primarily for personal, family, or household purposes.

(E) Makes entries or postings on the books of account or performs any other operating functions for the savings association or any of its subsidiaries or affiliates, except such functions for which prior approval was requested and obtained, in writing, from the District Director;

(F) Receives any special consideration in any transaction with the savings association or its subsidiaries or affiliates, or has any interest, direct or indirect, financial or otherwise, in any real property owned by, or securing any loan made by, the savings association or any of its subsidiaries or affiliates, except as provided in paragraph (c)(3)(ii)(D) of this section, or in any other operating activity or function of the savings association or of any of its subsidiaries or affiliates; or

(G) Has any conflict of interest, or the appearance thereof, by reason of business or personal relationships with management or those individuals who, by ownership of stock, control of proxies, or otherwise, are in a position to influence management or its decisions or functions.

(iii) An internal auditor is subject to the same tests of independence as are applicable to a public accountant, except that an internal auditor must be a full-time salaried employee or officer of the savings association. In addition, an internal auditor will be considered to be independent of operating responsibilities and able to function properly as an internal auditor only if he has, and is able to exercise, authority to audit any department of the savings association without notice and has complete and unrestricted access to all records of such savings association.

(iv) The requirements as to independence are applicable to those members and employees of a firm of public accountants who, in any way, are in a position to influence or control the conduct of an audit of a savings association or to influence or control the presentation of facts and other information in the report of such audit.

(v) It is the responsibility of the public accountant or internal auditor to disclose to the District Director any unusual relationships or affiliations he may have with the savings association, any affiliate or subsidiary of the savings association, or any persons closely connected with the savings association, and to have resolved any question as to independence before proceeding with the audit.

(4) *Reports of audit.* Section 563.170(a)(2) of this subchapter requires a savings association to "promptly" file with the Office, through the District Director, a copy of the report of each audit. Pursuant to this requirement, a savings association shall file such copy, or cause it to be filed, with the District Director, no later than 15 days following the receipt thereof. For the purpose of this filing requirement, the term "report of audit" includes, in addition to the audit report itself, any special or supplemental reports, letters or reports to management, or any other documents which are related to the audit or the report thereof. A savings association shall file, or cause to be filed, with the District Director, a copy of any such special or supplemental material no later than 15 days following the receipt thereof.

(d) *Authority of District Director.* (1) The District Director shall determine whether an auditor is satisfactory to the Office, whether an audit was conducted in a manner satisfactory to the Office, and whether a report of audit is to be accepted. If, at any time, it is found that a public accountant or internal auditor has not followed recognized rules of ethics or conduct, was not in fact independent, has knowingly made any material misstatement of fact or circumstance or any material misrepresentation of any kind, or has otherwise failed to meet any of the requirements set out in this statement, in bulletins issued by the Senior Deputy Director for Supervision (Policy), or in instructions issued by the District Director, the District Director may reject the audit and may determine that, for such time period as he may set, reports of audit by the public accountant or internal auditor who made such rejected audit shall not be acceptable to the Office. Upon request by such public accountant or internal auditor, such determination shall be reviewed by the Senior Deputy Director for Supervision (Operations).

(2) In the event of the rejection of an audit or the failure of a savings association to arrange to be audited either by an auditor or in a manner satisfactory to the Office, the District Director is authorized to have an audit made by an auditor in a manner satisfactory to the Office.

(3) Upon proper application made by a savings association in conformity with paragraph (e) of this section, the District Director may waive or modify for 1 fiscal year, and to such extent as he may deem appropriate, the general policy requiring an audit by a public accountant.

(e) *Waiver or modification of general policy requiring audit by public accountant*—(1) *General.* A savings association which is located in an area where audit services by a qualified public accountant are not readily available, or where the costs of such services are beyond the means of the savings association, may make application to the District Director for waiver or modification of the general policy requiring an audit by a public accountant.

(2) *Application form; supporting information.* An application made pursuant to paragraph (e)(1) of this section shall be in the form of a letter addressed to the District Director and signed by the chief executive officer of the savings association upon the express authorization of its board of directors. Such application shall request the waiver or modification of the general policy requiring an audit by a public accountant for the succeeding fiscal year and shall set forth factual data supporting the savings association's representations that it is located in an area where audit services by a qualified public accountant are not readily available or the cost of such services is beyond its means. Such factual data should include, but need not be limited to, the actual or estimated cost (whichever is appropriate) of an acceptable audit of the savings association by an independent public accountant, including per-diem rates, the number of mandays required to make such audit at such rates, and any extra charges made for travel or other out-of-pocket expenses. If the savings association is state-chartered and the State has requirements as to audits by independent public accountants, the application shall be accompanied by a written statement by the State supervisory authority that it is willing to waive or modify its requirements if such application is approved by the District Director.

(3) *Basis for waiver or modification by District Director.* An application submitted pursuant to paragraphs (e)(1) and (e)(2) of this section shall be approved by the District Director unless, in his or her opinion:

(i) The savings association is located in an area where audit services by a qualified public accountant are readily available, or can be obtained, at a cost within its means;

(ii) The report of the most recent supervisory examination or audit discloses inadequate internal controls or accounting records as to which the savings association has not taken satisfactory corrective action;

(iii) The report of the most recent supervisory examination or audit discloses overvalued assets for which the savings association has not provided adequate valuation allowances or discloses any other adverse matter of substance; or

(iv) The savings association has a history of, or a trend toward, marginal operations or has problems requiring other than routine supervisory effort.

(4) *Procedure.* (i) An application for waiver or modification of the general policy requiring an audit by a public accountant shall be filed with the District Director no later than 90 days before the close of the fiscal year preceding that for which such waiver or modification is sought. An application applicable to the calendar year 1970, or to a fiscal year commencing in the 60-day period following the date of publication of this statement, shall be filed with the District Director no later than 45 days following the date of publication of this statement.

(ii) A savings association which has applied for waiver or modification of audit requirements shall be notified, in writing, of the District Director's approval or rejection of such application and, if it is rejected, the reasons therefor. Upon request by the applicant savings association, any such rejection shall be reviewed by the Senior Deputy Director for Supervision (Operations). Approval by the District Director may be conditioned upon the savings association's agreement to specified conditions, such as an agreement to have an independent accountant make a periodic review of internal control or verify certain assets.

(iii) During any fiscal year in which a waiver or modification of audit requirements is effective, the scope of any examination shall be expanded to include such audit procedures as the District Director may deem necessary or appropriate.

(iv) A savings association may apply for waiver or modification of audit requirements for 1 fiscal year only. If a savings association wishes waiver or modification of audit requirements in subsequent years, a separate application for each year must be filed in conformity with this paragraph (e)(4)(iv). Each such application shall be considered on its own merits and without regard to whether previous applications have been approved or denied.

§ 571.3 Interest-rate-risk management.

(a) *General.* A principal component of the income of savings associations is the difference between the yields earned on assets and the rates paid on liabilities. This component of income ("margin" or "spread") varies over time because the average interest rates paid on short-term deposits and other liabilities adjust more quickly to changes in interest rates than the average interest rates earned on long-term mortgage loans. Changes in interest rates also affect net asset values. Increases in interest rates, for example, lower net asset values because long-term interest-bearing assets in savings associations' portfolios decline in value. This sensitivity of income and net asset values to changes in interest rates is commonly referred to as "interest-rate risk." The larger the difference in average maturities between assets and liabilities, the greater the exposure to interest-rate risk. The interest-rate-risk management procedures required by § 563.176 of this Subchapter are intended to ensure that boards of directors and management of savings associations address the management of interest-rate risk.

(b) *Other risk management.* While emphasizing interest-rate risk, this statement of policy is not intended to diminish attention paid to other forms of risk. The Office realizes that the means used to reduce interest-rate risk can increase other forms of risk, particularly the risk of default. In addition, the requisite degree of care and skill must be employed in pricing and structuring new assets, such as adjustable-rate mortgages, to reduce interest-rate risk and to ensure that the desired economic effect is achieved. The Office recognizes that the duties of boards of directors include overseeing the management of the various types of risk which affect their savings associations.

§ 571.4 Hazard insurance.

(a) Each savings association has been required to include in its loan contracts provisions which require the maintenance of such hazard insurance as will protect the savings association from loss in the event of damage to or destruction of the real estate securing the savings association's loans.

(b) It is incumbent upon the savings association to determine that specific provisions of each hazard insurance contract insuring the security property name and protect the savings association as mortgagee in an amount at least equal to its insurable interest in the security and cover such perils as are commonly covered in policies described as "Standard Fire and Extended Coverage" as well as such other perils as to which institutional lenders operating in the same area commonly require hazard insurance.

(c) In conducting examinations of savings associations, examiners for the Office will review each savings association's files for evidence, in the form of individual insurance policies, memoranda of insurance or blanket policies satisfactory to the savings association, to determine that such insurance is in force.

§ 571.5 Mergers and transfers of assets and liabilities.

(a) *General policy.* This is a statement of the general policy of the Office on merger and transfer proposals. It does not ordinarily apply to mergers and transfers instituted for supervisory reasons. The term "merger" includes consolidations as well as statutory mergers, and the term "transfers" means transfers in bulk not made in the ordinary course of business including, but not limited to, transfers of assets and savings account liabilities, purchases of assets, assumptions of savings accounts and other liabilities, and transfers of assets in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations; *Provided,* however, That the term "transfers" shall not include transfers in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, reorganizations, and combinations, where the surviving entity is a savings association. Transactions in accordance with § 545.82 of this chapter between a Federal savings association or a state-chartered savings association and a finance subsidiary as defined in § 563.132(a)(4) of this subchapter are not "transfers" for purposes of this paragraph (a). Potential merger and transfer applicants are encouraged to review proposed transactions with the District Director or his or her designee prior to proceeding with the formal application process.

(b) *Legal considerations*—(1) *General.* Conformity under law and regulation is a precondition to approval by the Office. Applicable laws and regulations include the Federal antitrust laws (the Clayton and Sherman Acts), sections 5(d) and 18(c) of the Federal Deposit Insurance Act, the Community Reinvestment Act of 1977, applicable State law, and the

Office's own regulations. To enable the Office to make a legal evaluation of the possible anticompetitive impact of proposed mergers and transfers, applicants are required to submit certain information on prescribed forms available at each District Office and such other information as may be requested by the District Director or his or her designee. In any case in which the District Director or his or her designee believes it clear that no antitrust or competitive problem exists, a merger or a transfer proposal may be submitted with relevant partial information short of the complete data called for by the schedules.

(2) *Acquisitions of savings associations under section 10 of the Home Owners' Loan Act.* The Office's Acquisition of Control of Savings Associations regulations, 12 CFR Part 574, implement this statutory provision. These regulations require information on competitive factors similar to that indicated in paragraph (b)(1) of this section. The regulations also require information as to additional matters, including details of acquisition, financial and managerial resources, future prospects, and the convenience and needs of the community to be served.

(3) *Antitrust considerations.* (i) The Office will examine the impact of the merger or transfer on competition under the relevant antitrust laws and will not approve.

(A) Any proposed merger or transfer which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) Any other proposed merger or transfer transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

This analysis will be done for each relevant geographic market.

(ii) All firms reasonably competitive with the business of the parties to the subject transaction will be taken into account in determining deposit and loan market statistics and the competitive consequences of the merger or transfer. In determining whether a violation of the antitrust laws is likely, the Office will examine all of the relevant facts, including:

(A) Competition currently existing in the relevant markets as demonstrated by the applicant, or otherwise determined by the staff;

(B) Market shares and the reliability thereof, whether based on deposits, loans or other pertinent criteria;

(C) The ranking of the resulting association and of other competitors in the relevant markets;

(D) The number and size distribution of competitors;

(E) Trends in the market toward concentration or deconcentration; and

(F) The history and pattern of expansion and growth in the market, including the existence of potential entrants and future procompetitive trends.

(4) *Convenience and needs.* The Office will also examine the extent to which the transaction will affect the convenience and needs of the communities to be served and the impact, if any, on operating efficiency of the resulting or purchasing savings association. In this regard, the Office will review the record of the acquiring association under part 563e of this chapter, and may deny an application based on an assessment of such association's Community Reinvestment Act record, and may approve an application on the condition that the association improve specific aspects of its community investment-related practices and performance.

(c) *Managerial and financial aspects and future prospects—(1) Managerial aspects.* The Office's primary requirement is that the resulting or purchasing savings association have the managerial and financial resources and future prospects to operate successfully. The experience and the performance record of the persons to be in control or in key managerial positions will be evaluated as to the probability of sound operation of the resulting or purchasing savings association. If a merger proposal provides for a temporary increase in the board of directors of a surviving Federal savings association to a number in excess of that permitted by the association's charter, the Office will deem such merger proposal provision to be an application for an appropriate charter amendment. The maximum number of directors, however, may not exceed a number equal to the total number of directors on boards of the involved savings associations on the date on which each savings association adopted the plan of merger, and the number of directors must be reduced to not more than 15, in accordance with an acceptable plan for complying with § 544.1 or § 552.3, within three years after its next annual meeting.

(2) *Financial aspects.* The overall operations and financial condition will be reviewed to determine the resulting or purchasing savings association's prospects of generating sufficient income to meet competition, making the required transfers to reserves, and conducting its affairs essentially free of supervisory concern. The adequacy of the regulatory capital of the resulting or purchasing savings association, relative to the risks inherent in its assets, and economic and other factors will be considered. Intangible assets will be closely reviewed.

(d) *Factors relating to fairness and disclosure of the plan.* The Office will review the fairness and disclosure of a merger or transfer proposal on the basis of the following criteria:

(1) *Equitable treatment.* The plan should be equitable to all concerned—savings accountholders, borrowers, creditors, and stockholders (if any) of each savings association—giving proper recognition of and protection to their respective legal rights and interests. The plan will be closely reviewed for fairness where the merger or transfer does not appear to be the result of arm's length bargaining or, in the case of a stock savings association, where controlling stockholders are receiving different consideration from other stockholders.

(2) *Full disclosure.* The application should make full disclosure of all written or oral agreements or understandings by which any person or company will receive, directly or indirectly, any money, property, service, release of pledges made, or other things of value, whether tangible or intangible, in connection with the merger or transfer.

(3) *Compensation to officers.* Compensation, including deferred compensation, to officers, directors and controlling persons of the disappearing savings association by the resulting savings association or a service corporation affiliate thereof should not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The application should fully justify the compensation to be paid to such persons. The plan will be particularly scrutinized where any of such persons is to receive a material increase in compensation above that paid by the disappearing savings association prior to the commencement of merger negotiations. An increase in such compensation in excess of the greater of 15% or $10,000 gives rise to presumptions of unreasonableness and

sale of control. In the case of such an increase, evidence sufficient to rebut such presumptions should be submitted.

(4) *Employment contracts.* Any employment contracts should conform with § 563.39 of this subchapter.

(5) *Advisory boards.* The application should fully justify the need for, and the compensation to be paid to, an advisory board of the resulting savings association consisting of officers, directors or controlling persons of the disappearing savings association. The application should describe the duties and responsibilities of such advisory board. The plan will be particularly scrutinized where proposed advisory board fees exceed by more than 15 percent the director fees paid by the disappearing savings association prior to commencement of merger negotiations. Such an excess in advisory director fees gives rise to presumptions of unreasonableness and sale of control. In the case of such an excess, evidence sufficient to rebut such presumptions should be submitted, unless the advisory board fees do not exceed the fee per monthly meeting attended that the advisory directors of the acquiring savings association receive or $150, whichever is greater. In the case of such an excess, evidence sufficient to rebut such presumptions should be submitted, unless, based on a schedule of 12 meetings per year, the advisory board fees do not exceed $100 per meeting attended in the case of a disappearing savings association with assets of at least $10,000,000 or $50 if the disappearing savings association has assets of less than $10,000,000. No advisory board fees should exceed the director fees paid by the resulting savings association and no advisory board fees should be paid to salaried officers or employees of the resulting savings association. If the disappearing savings association experienced significant supervisory problems prior to the merger, the application should also fully justify any selection as an advisory board member of a person who was a director, officer or controlling person of the disappearing savings association. Advisory board members should be elected annually for a term not exceeding one year.

(6) *Retention of attorneys and other professionals.* Neither the resulting savings association nor any service corporation affiliate thereof should agree, in connection with the merger, to retain any attorney, law firm or other person performing professional services for the disappearing savings association. Any such retention should be by decision of the resulting savings association or affiliate, independent of the merger.

(7) *Tie-in transactions.* Neither the resulting savings association nor any service corporation affiliate thereof should agree, in connection with the merger, to purchase or lease any office building or space therein, or other property or business, from any officer, director or controlling person of the disappearing savings association. Any such purchase or lease should be by decision of the resulting savings association or affiliate, independent of the merger. The limitation on leasing does not apply to an assumption of an existing lease without change in its terms.

(8) *Fees paid in connection with mergers and transfers.* The application should state the name of each person or firm rendering legal or other professional services in connection with merger or transfer. The fee expected to be paid to each such person or firm should be stated, together with a description of the services being performed, the time expected to be spent in performing such services, the hourly rate or other basis used for determining the fee, and any relationship between such person or firm and an institutional party to the transaction. If a finder's or similar fee is to be paid in connection with the merger or transfer, the application should fully justify the payment and amount of the fee and state the name of the person or firm to whom the fee is to be paid. No finder's or similar fee should be paid to any officer, director, or controlling person of a savings association which is a party to the transaction.

(e) *Accounting for goodwill.* The proposed treatment of goodwill in connection with the merger or transfer must be fully described in the application. The computation and amortization of goodwill should be in accordance with accounting policies of the Office in effect at the time the application is filed.

(f) *Noninducement affidavits.* The application should include a noninducement affidavit on a prescribed form signed by each senior officer, director, and controlling person of each savings association which is a party to the transaction and each attorney or law firm regularly serving such savings association.

(g) *Depository relationships.* Neither the resulting savings association nor any service corporation affiliate thereof should, in connection with the merger, agree to continue any depository relationship of the disappearing savings association. Any such continuance should be by decision of the resulting savings association or affiliate, independent of the merger.

(h) *Tax liability.* In a merger, a tax ruling from the Internal Revenue Service or a tax opinion will be required.

(i) *Transfers.* In addition to the other requirements of this section applicable to the parties involved in transfer transactions, the application of a savings association which is a party to a transfer should provide a description of:

(1) The assets and liabilities subject to transfer and their contract rates;

(2) any discount rates used;

(3) the market value of the assets and liabilities subject to transfer; and

(4) the effect of the transfer on the savings association's cost of money and yield on assets.

(j) *Sale of assets or liabilities*—(1) *Accounting and valuation.* The application of a savings association selling assets or account liabilities will be reviewed under valuation and accounting standards established by the Office.

(2) *Notice to accountholders.* Notice of a proposed account transfer and the option of retaining the account in the transferring savings association shall be furnished to an affected accountholder:

(i) by a savings association transferring account liabilities to a savings association or other institution the accounts of which are not insured by Savings Association Insurance Fund, the Bank Insurance Fund, or the National Credit Union Share Insurance Fund; and

(ii) by any mutual savings association transferring account liabilities to a stock savings association. The required notice shall allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring savings association.

(3) *Supervisory concerns.* The Office will closely review a transfer of assets and savings account liabilities entered into by a savings association with regulatory capital, as defined in § 567.1 of this subchapter, calculated prior to the consummation of the transaction and without the benefit of inclusion of any net worth certificates of 0.5% or less of all liabilities. An application by such a savings association should demonstrate that the proposed transaction is beneficial to the short-term and long-term viability of the savings association, that the transfer was negotiated at arm's length and that the transfer is not detrimental to the interests of the Savings Association Insurance Fund or the Bank Insurance Fund.

§ 571.6 Policy considerations regarding "de novo" applications for a Federal savings association charter.

The Office deems it advisable that *de novo* applicants for permission to organize a Federal savings association be informed of certain policies governing application review which the Office will generally apply.

(a) *Minimum initial capitalization.* (1) In order to ensure adequate reserve levels for *de novo* applicants during their initial period of operations, it is the Office's policy that it will not approve any such applicant having less than three million dollars in initial capital stock (stock associations) or initial pledged savings (mutual associations), except as provided in paragraph (a)(2) of this section.

(2) The Office will consider approving a *de novo* applicant having at least two million dollars in initial capital stock (stock institutions) or initial pledged savings (mutual institutions) if the applicant provides in its application and in the business plan described in paragraph (b) of this section, that:

(i) The applicant will be located in, and intends to serve, an area with a population not exceeding 50,000; and

(ii) The applicant will be community-oriented, as demonstrated by:

(A) A substantial number of the organizers residing in the community in which the applicant is to be located;

(B) A plan to focus capital-raising activities on subscribers in the community in which the applicant will be located;

(C) Provision of adequate local public deposit facilities acceptable to the Office, in the community in which the applicant will be located;

(D) A commitment to local home financing and related services; and

(E) Office concentration in the community in which the applicant is located and, if desired, in communities of similar size.

(iii) For purposes of determining appropriate minimum capital, the population of the area will be calculated upon a determination of the delineated market area or the county or Standard Metropolitan Statistical Area (SMSA) in which the association will be located, whichever is greater.

(iv) Any material change from the qualifying criteria set forth in paragraphs (a)(3)(i) and (a)(3)(ii) of this section may be made if the applicant has increased its capital to at least three million dollars and receives the prior approval of the District Director, or his or her designee.

(b) *Business and investment plans of newly-chartered associations.* (1) Pursuant to section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), the Office must consider the following factors enumerated in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) in order for an applicant to obtain insurance of accounts by the Federal Deposit Insurance Corporation:

(i) The financial history and condition of the association;

(ii) The adequacy of its capital structure;

(iii) Its future earnings prospects;

(iv) The general character and fitness of its management;

(v) The risk presented to the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(vi) The convenience and needs of the community to be served; and

(vii) Whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

(2) Pursuant to section 5(e) of the Home Owners' Loan Act, the Office may grant a new Federal savings association charter only:

(i) To persons of good character and responsibility;

(ii) If in the judgment of the Director of the Office a necessity exists for such association in the community to be served;

(iii) If there is a reasonable probability of the association's usefulness and success; and

(iv) If the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(3)(i) In order for the Office to consider the factors enumerated in section 5(a)(2) of the Federal Deposit Insurance Act and to make the determinations required under section 5(e) of the Home Owners Loan Act of 1933, a *de novo* applicant for a federal charter shall submit a business plan describing its management, operations, investments, and financial projections for the first three years of operation. The business plan shall provide for the continuation or succession of competent management subject to the approval of the District Director, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the District Director.

(c) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the association is located. The Office generally will consider a director to be representative of the state if such director resides, works or maintains a place of business in the state in which the association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) which incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company which does not have substantial independent economic substance, the foregoing standards will be applied to the holding company.

(d) *Policies pertaining to management officials.* (1) Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered as management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an association's application for permission to organize and subsequent to issuance of a federal savings association charter to the association by the Office, any individual or group of individuals acting in concert, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this policy, shall submit a Biographical and Financial Report to the District Director.

(2) Each new director of a *de novo* association shall sign an "Oath of Director for Savings Associations". The original of the document, executed, shall be submitted to the District Director.

(3) Any individual who is an (i) existing or proposed director, (ii) existing or proposed officer, or (iii) proposes to own, directly or indirectly, or acting in concert with any other individual, ten percent or more of the *de novo* association's stock, may not pledge more than 50 percent of his or her stock for a period of three years following issuance of the association's federal savings association charter to secure borrowed funds to finance his or her total stock purchase.

(4)(i) All controlling shareholders shall personally agree to maintain the association's regulatory capital at the required regulatory level for a minimum of five years after the granting of a federal charter. In determining whether to approve a proposed stock acquisition, the Office will consider the financial position of any proposed controlling shareholder and his or her ability to fulfill the regulatory capital maintenance agreement. Controlling shareholders shall execute an agreement with the Office that, in the event the association fails to meet its regulatory capital requirement, they will pay to the association an amount calculated as follows:

(A) If the controlling shareholder holds less than 80 percent of the total stock: The required payment will equal the percent of the association's total stock held by the controlling shareholder multiplied by the total regulatory capital deficiency of the association.

(B) If the controlling shareholding holds 80 percent or more of the total stock: The required payment will equal 100 percent of the association's total regulatory capital deficiency.

(ii) At the end of the fifth year after granting a federal charter, a controlling shareholder may apply to the District Director for a release from this obligation. Applicants may be released from the regulatory capital maintenance requirement if the District Director determines that the association is meeting its regulatory capital requirement and that there is no basis for supervisory concern.

(iii) Upon disposition of the stock of an association by a controlling shareholder who has executed a regulatory capital maintenance agreement pursuant to this section such that the shareholder no longer meets the definition of a controlling shareholder, the Director or his or her designee will release the obligation upon a showing that:

(A) The association's regulatory capital meets its required regulatory level, or,

(B) In the case where a person or persons propose to acquire 25 percent or more of the stock, such person or persons have assumed the obligation under the regulatory capital maintenance agreement and have demonstrated the financial capacity to perform such obligation.

(iv)(A) For purposes of this section the term "acting in concert" shall have the meaning set forth at § 574.2(c) of this subchapter: *Provided*, that organizers and members of the board of directors will not be deemed to be acting in concert, solely due to their joint activity in forming and/or managing a *de novo* association; however, other factors, such as agreements between the parties with respect to profits, losses or expenses, or which affect the disposition of their ownership interests, will be deemed to evidence that the parties are acting in concert.

(B) For purposes of this section, the term "controlling shareholder" shall mean any individual who will control, or any group of individuals acting in concert to control, or controlling persons for a company which does not have substantial independent economic substance that will control, directly or indirectly, 25 percent or more of the stock of a *de novo* association.

(e) In connection with an application for a federal charter for a *de novo* association, the applicant shall include a plan for avoidance of conflicts of interest and usurpation of corporate opportunity in the business plan required pursuant to paragraph (b) of this section. The plan shall:

(1) Identify specific areas where conflicts of interest and abuse of corporate opportunity may occur within the framework of the association's current management structure;

(2) Describe specific policies and actions that the association will institute to avoid potential conflicts of interest and corporate-opportunity abuses; and

(3) Establish specific procedures for dealing with directors and management officials who violate the association's policies in these areas.

(f) This policy statement does not apply to any application for a federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes or in connection with applications for federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers or holding company reorganizations.

(g) For purposes of this section, the terms "*de novo* association" and "*de novo* applicant" mean any savings and loan association, building and loan association, homestead association, cooperative bank, or savings bank which has submitted to the District Director an application for permission to organize a Federal savings association, and the business of which has not been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association for a period of three years.

§ 571.7 Conflicts of interest.

(a) The Office has a paramount interest in the prevention and elimination of practices and conditions which adversely affect: The interests of members in savings associations; the soundness of such associations; the provision of economical home financing for the Nation; and the accomplishment of the other purposes of the Home Owners' Loan Act.

(b) Among the practices and conditions which have such adverse effects are conflicts between the accomplishment of the purposes of the Home Owners' Loan Act set forth in paragraph (a) of this section and the personal financial interests of directors, officers, and other affiliated persons of savings associations. Conflicts of this type which have demonstrably resulted in such adverse effects are considered by the Office to be inherently unsafe and unsound practices and conditions. The Office accordingly holds that each director, officer, or other affiliated person of a savings association has a fundamental duty to avoid placing himself or herself in a position which creates, or which leads to or could lead to, a conflict of interest or appearance of a conflict of interest having such adverse effects.

(c) The Office recognizes that it is impossible to define every practice or condition which falls within the broad concept of objectionable conflicts of interest. The Office has nevertheless issued various regulations to limit or prohibit certain conflicts of interest to reflect its conclusion that the conflicts so limited or prohibited are especially inimical to the accomplishment of the purposes of the Home Owners' Loan Act. However, the fact that the Office has not specifically limited or prohibited other conflicts of interest should not be interpreted as tacit approval thereof. The Office will continue to examine those conflict-of-interest situations which are not specifically limited or prohibited under the regulations and will, when circumstances so warrant, take appropriate action to prevent, circumscribe or eliminate such situations.

§ 571.8 Investment in State housing corporations.

Sections 545.43, 545.72 and 563.95 of this chapter authorize investment by Federal savings associations and regulate investment by state-chartered savings associations, in state housing corporations under section 5 of Pub. L.

93–100, and Title XVII of Pub. L. 95–630. A "state housing corporation" is defined by section 5(e)(3) of Pub. L. 93–100 as "a corporation established by a State for the limited purpose of providing housing and incidental services, particularly for families of low and moderate income." The Office believes the investment authority thereby provided is meant to be restricted to investment in:

(a) Public corporations and agencies, and instrumentalities thereof, established for such limited purpose; and

(b) Private corporations and agencies established under a statute which specifically limits them to the same purpose.

§ 571.9 Corporate opportunity in savings associations.

(a) Directors and officers of a savings association, and other persons having the power to direct the management of the association, stand in a fiduciary relationship to the association and its accountholders or shareholders. Out of this relationship arises, among other things, the duty of protecting the interests of the association. It is a breach of this duty for such a person to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the association or a service corporation of the association and when the opportunity is of present or potential practical advantage to the association. If such a person so appropriates such an opportunity, the association or service corporation may claim the benefit of the transaction or business and such person exposes himself or herself to liability in this regard. In determining whether an opportunity is of present or potential practical advantage to an association, the Office will consider, among other things, the financial, managerial, and technical resources of the association and its service corporation, and the reasonable ability of the association directly or through a service corporation to acquire such resources.

(b) The Office believes that usurpation of a savings association's corporate opportunity to engage in the insurance business, to the extent that such an usurpation is found to exist under State law, is violative of §§ 571.7 and 571.9(a) of this subchapter, is inconsistent with sound and economical home financing, and also constitutes an unsafe and unsound practice. In such a case, the Office believes that the savings association is entitled to profits attributable to the usurpation of the corporate opportunity as provided under paragraph (e) of § 556.16 of this chapter.

§ 571.10 Gold and gold-related transactions.

The authority of state-chartered savings associations and their service corporations to engage in transactions and activities involving gold (including gold coin) or gold-related instruments or securities, including buying, holding, selling, or otherwise dealing with gold or gold-related instruments or securities, is primarily a matter of state law. However, the Office's supervisory and examining personnel will carefully scrutinize any such transactions and activities by savings associations or their service corporations. The Office will regulate or prohibit any such transaction or activity if it determines that such transaction or activity constitutes an unsafe or unsound practice or is otherwise inconsistent with the purposes of section 4 of the Home Owner's Loan Act of 1933, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989: *Provided*, That to the extent that they have independent legal authority to do so, savings associations may purchase, sell, and pay interest or dividends in, and their service corporations may purchase and sell, gold coins minted and issued by the United States Treasury, and engage in activities reasonably incident thereto.

§ 571.11 Exclusive leases and similar agreements.

(a) It is the policy of the Office to scrutinize leases, agreements, or understandings with respect to office or operating sites within a regional shopping center under which a savings association obtains the right to prohibit other financial institutions from leasing or otherwise acquiring office or operating space under control of the lessor or other person from whom the office or operating space is acquired. Such arrangements in some instances may violate the antitrust laws. They may involve restraints of trade under section 1 of the Sherman Act, attempts to monopolize under section 2 of that Act, or unfair methods of competition under section 5 of the Federal Trade Commission Act. Such violations could result in treble damage liability to the savings association with attendant risk to the Federal Deposit Insurance Corporation. Depending upon the facts of an individual case, the Office may determine that because of this risk such an arrangement is an unsafe or unsound practice for a savings association. In making this determination, the Office will consider among other facts the market area in question and the size of the association involved.

(b) For purposes of this section, a regional shopping center is a group of commercial establishments planned, developed, owned or managed as a unit with off-street parking provided on the property, having a gross floor area of 400,000 square feet or more, and including as tenants, one or more department stores.

§ 571.12 Applications processing guidelines.

(a) *General.* Section 410 of Title IV of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, § 410, 101 Stat. 552, 620, generally requires that the Office (as successor to the Federal Home Loan Bank Board) "promulgate guidelines which provide that with respect to each type of completed application" filed by any person for approval by the Office, the application "shall be deemed to be approved" as of the end of the period prescribed under such guidelines unless the Office approves or disapproves such application before the end of such period (§ 410(a)). To comply with these requirements and to ensure the timely processing of applications and notices, the Office hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Office subsequent to October 9, 1987. This section does not apply to applications or requests related to transactions pursuant to §§ 13 (c) or (k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), (k); or requests submitted in connection with cease-and-desist orders, temporary cease-and-desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests submitted in connection with cease-and-desist orders, removal/prohibition orders, supervisory agreements, merger agreements, and other documents negotiated in settlement of litigation ("enforcement documents") are not covered by this section. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not mean that this section does not apply to that application. Requests to engage in activities that are restricted by enforcement documents and requests for termination or modification of such documents are not covered by this section. Applications submitted pursuant to a regulatory requirement that the prior approval of the Office be obtained before engaging in a proposed activity, however, are covered, whether or not mentioned in an enforcement document. If the application or request is unique to the enforcement document, then it is not covered by this section. Requests for reconsideration, modification, or appeal of final agency actions of the Office are not covered by this section. In addition, where other regulations of the Office establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this policy statement.

(b) *Applications submitted for review.* An application submitted to the Office for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of such application.

(c) *Accepting applications for processing.* (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Office shall

(i) Request in writing additional information to complete the application,

(ii) Deem the application to be complete, or

(iii) Return the application if it is deemed by the Office to be materially deficient and/or substantially incomplete.

Failure by the Office to act as described in paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application's being deemed complete, thereby commencing the period for review. If an application includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 30 calendar days of receipt of a properly submitted application for processing, the Office requests in writing additional information about the waiver request, or denies the waiver request in writing.

(2) Failure by an applicant to respond fully to a written request by the Office for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice. If an application is deemed withdrawn, the application may be resubmitted for processing, but it will be deemed a new filing under the applicable statute or regulation.

(3) An applicant may request in writing a brief extension of the 30-day period for responding to a request for additional information described in paragraph (c)(2) of this section prior to the expiration of the 30-day time period. The Office, at its option, may grant an applicant a limited extension of time in writing. Failure by an applicant to respond fully to a written request for additional information by the expiration of the extended period permitted by the Office may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

(4) The period for review by the Office of an application will commence on the date that the application is deemed complete. The Office shall notify an applicant in writing as to whether the application is deemed complete within 15 calendar days after the timely filing of any additional information furnished in response to any initial or subsequent request by the Office for additional information. If the Office fails to so notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15-day period. If additional information furnished in response to a written request by the Office for additional information includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 15 calendar days after the timely filing of such additional information the Office (i) requests in writing additional information about the waiver request, or (ii) denies the waiver request in writing.

(5) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Office may request in writing such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished. Upon receipt of such additional information, the Office shall (i) request in writing further additional information to complete the application, (ii) deem the application to be complete and commence a new review period of the completed application, or (iii) deem the application to be materially deficient and/or substantially incomplete and return it to the applicant. In the case of an application that is not eligible for decision under delegated authority by the District Director, actions taken by the District Director or his or her delegate shall not commence any of the periods for review of a completed application described in paragraph (d) of this section.

(6) Where a regulation prescribes a procedure for submission of protests to an application and a protest is filed, the automatic approval timeframes specified herein shall be temporarily suspended until a record sufficient to support a determination on the protest is developed.

(7) The Office, at its option, may deem an application to be materially deficient and/or substantially incomplete in the event that the applicant or an affiliate of the applicant is or becomes subject to an investigation, examination, or administrative proceeding by a federal or state or municipal court, department, agency or commission or other governmental entity, or a self-regulatory trade or professional organization that is pertinent to the standards applicable to the Office's evaluation of the application or relates to a determination the Office is required to make in connection with the application under the applicable statute or regulation.

(d) *Failure by the Office to approve or deny an application or to disapprove a notice.* (1) If, upon expiration of the applicable period for review of any complete application to which this policy statement applies, or any extension of such period, the Office has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application

shall, without further action, be deemed to be approved, or, in the case of a notice, not disapproved by the Office. For purposes of the previous sentence, the applicable period for review shall be (i) 60 calendar days for an application that is eligible for action by a District Director or his or her delegate or for any application or notice submitted pursuant to part 574 of the Office's regulations, or (ii) 90 calendar days for any other application.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

(e) *Extension of time for review.* The applicable period for review of an application deemed to be complete may be extended by the Office for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Office shall notify an applicant at least 20 days prior to the expiration of the applicable period for review of a complete application that such review period is being extended for 30 days and shall state the general reason(s) therefor.

(f) *Extension of time for Office's review of applications raising significant issues of law or policy.* In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by the Director, the Chief Counsel, or the Senior Deputy Director for Supervision (Operations) beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Office acts upon the application. In such cases, written notice shall be provided to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this paragraph (f), which notice shall also state the general reason(s) therefor.

§ 571.13 Participation interests in pools of loans.

(a) When a savings association purchases a participation interest in a pool of loans (in the nature of mortgage-backed securities), compliance with the documentation requirements of §§ 563.90 and 563.170 of this subchapter may be impracticable. Where this is the case, the documentation requirements of those provisions will be deemed satisfied if:

(1) Access to all loan documentation is provided by the originator/servicer upon request and without charge to any trustee of the pool, the Office or its examiners or District Directors, and upon request and subject only to reasonable charges incurred in providing such access to any savings association investing in the pool;

(2) The originator/servicer warrants as to each loan in the pool to or for the benefit of each savings association investing in the pool that as of the date participation interests in the pool were first issued:

(i) No loan was 30 or more days delinquent;

(ii) Each loan met the requirements for investment by the savings association;

(iii) There were no delinquent tax or assessment liens or mechanics' liens on any collateral for the loans and the collateral was free of substantial damage and in good repair;

(iv) Each loan complied with all applicable state and Federal laws; and

(3) The originator/servicer has agreed to provide each savings association investing in the pool a monthly report of loan delinquencies. The report shall separately indicate

(i) The number and aggregate principal amount of loans delinquent one month and two or more months;

(ii) The book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of the originator/servicer's security interest in the collateral; and

(iii) The aggregate dollar amount or loans made by the pool, if any, on the security of the collateral if such loans are as described in paragraph (a)(3)(ii) of this section (other than insured loans, guaranteed loans, or contracts or loans having the benefit of a guarantee by the former Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation) if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years when there is no maximum term limitation, or have unpaid principal balances in excess of maximum regulatory limitations or 90 percent of the security value when there is no maximum regulatory percentage of value limitation.

(b) Although this Statement of Policy is addressed principally to compliance with regulatory requirements for purchase by savings associations of participation interests in pools of loans, it also applies to sales of participation interests in such pools by savings associations having legal authority to sell participation interests in mortgages.

§ 571.14 Fidelity bonds; acceptable surety companies.

Section 563.190 of this subchapter in part requires each savings association to maintain bond coverage with a bonding company acceptable to the Office. Any surety or insurer meeting one or more of the following criteria is acceptable:

(a) Underwriters holding certificates of authority as acceptable sureties on Federal bonds, as listed in the most recent issue of the United States Treasury Department Circular No. 570, to the limits established by such circular;

(b) Underwriters currently licensed to issue surety bonds by the State in which the principal office of the savings association is located, subject to all restrictions and requirements imposed by the licensing State; or

(c) Underwriters approved to do business as surplus lines insurers under the laws of the State in which the home office of the savings association is located, subject to all restrictions and requirements imposed by the surplus lines laws of such State.

§ 571.15 Fiduciary activities of state-chartered savings associations and service corporations.

Although state law would primarily govern the fiduciary activities of state-chartered savings associations and service corporations in which these institutions invest, it must be recognized that these activities may have implications with respect to the Federal interest in the safe and sound operation of savings associations. Accordingly, savings associations are urged to follow the standards for the exercise of trust powers contained in Part 550 of this chapter. Savings associations are particularly urged not to engage in dealings prohibited by § 550.10. In establishing trust departments, savings associations should also observe the procedures and policies required by §§ 550.5, 550.6, 550.7, 550.8, 550.9, 550.11, and 550.13. Savings associations should also take whatever steps are necessary to ensure that their service corporation subsidiaries adhere to these standards. The examinations staff will monitor the fiduciary activities of all savings associations and may take exception to practices which deviate materially from the standards of Part 550, and the Office may regulate or prohibit such fiduciary activities that threaten the safety or soundness of savings associations.

§ 571.16 Mortgage-backed-securities transaction.

(a) *General.* (1) The accounting treatment described in this section for:

(i) Reverse repurchase agreements;

(ii) Dollar reverse repurchase agreements;

(iii) Dollar reverse repurchase agreements—with rollovers or extensions; and

(iv) Rollovers or extensions of forward commitments to purchase mortgage-backed securities ("forward commitment dollar rolls") is to be used by all savings associations when preparing reports or financial statements primarily for filing with the Office.

(2) The accounting treatment for mortgage-backed securities transactions depends on whether the transactions are, in substance, sales and purchases of securities, financing transactions, or the rollover of forward commitments to purchase securities. When the security to be repurchased is not either identical to or substantially the same as the security sold, the transaction is considered to be a sale and purchase and not a financing transaction. This differentiation is critical since a sale and purchase requires recognition of gain or loss upon initiation of the transaction; a financing does not. Gain or loss shall be recognized upon rollover of forward commitments to purchase mortgage-backed securities.

(3) Repurchase agreements to maturity must be accounted for as sales and purchases and are not discussed in this statement of policy.

(4) A savings association engaging in mortgage-backed securities financing arrangements shall have readily available the following information regarding such transactions:

(i) Type of security and the time it has been held in portfolio before being used to enter into the sell/buy;

(ii) Detail of prices, interest costs and cash flows at each rollover;

(iii) Broker or other party to the transaction;

(iv) Expiration date of the contract;

(v) A description of the security reacquired;

(vi) Documentation of the approval of the transactions by the savings association's board of directors.

(b) *Reverse-repurchase agreements and rollovers of these agreements.* (1) A reverse-repurchase agreement is an agreement (contract) to sell and repurchase ("sell/buy") the identical mortgage-backed security within a specified time at a specified price. These transactions are equivalent to borrowing funds in an amount equal to the sales price of the related mortgage-backed security. For example, if a savings association wishes to borrow funds with a mortgage-backed security as collateral, it may, in lieu of direct borrowing, arrange to temporarily sell the security with an agreement to repurchase the identical security on a future date at a specified price. During the term of this agreement, the savings association continues to receive principal and interest payments on the security.

(2) In these transactions, mortgage-backed securities are "owned" and in the savings association's investment portfolio prior to the initial sell/buy. For purposes of this statement of policy, "owned" means mortgage-backed securities which are in portfolio and have been acquired by the savings association for investment purposes. Mortgage-backed securities which have been formed by the pooling of mortgage loans held by the savings association meet these criteria.

(3) Reverse-repurchase agreements involve identical securities, and the substance of the transaction is a borrowing. These agreements shall be accounted for as financing transactions with no current gain or loss recognition at the time of the sell/buy. When funds are borrowed under a reverse-repurchase agreement, a liability shall be established for the amount of the proceeds. The investment mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Interest cost on these agreements shall be reported as an expense and not recorded net of interest income.

(4) Rollovers and extensions of reverse-repurchase agreements shall be accounted for based on the facts and circumstances at the time of the rollover or extension. When the rollover involves the identical security, the transaction shall continue to be accounted for as described in paragraph (b)(1) of this section.

(c) *Dollar reverse-repurchase agreements.* (1) A dollar reverse-repurchase agreement is an agreement (contract) to sell a mortgage-backed security from an investment portfolio and subsequently repurchase a mortgage-backed security, which is of the same issuer but which is not the original mortgage-backed security, within a specified time and at a specified price. Fixed-coupon and yield-maintenance dollar agreements are the most common agreements. In a fixed-coupon agreement, the seller and purchaser agree that delivery will be made with a mortgage-backed security having the same stated coupon interest rate as the security sold. In a yield-maintenance agreement, the parties agree that delivery will be made with a security that will provide the seller a yield that is specified in the agreement. During the term of the contract, the savings association transfers the security to the lender and the security is no longer registered in the savings association's name. The savings association receives no principal and interest payments on the security during the agreement's term. The security to be repurchased is typically on a "to be assigned" basis, meaning the pools of mortgages to secure a reacquired security have been formed but not specifically identified.

(2) For purposes of this statement of policy, under the fixed-coupon dollar reverse-repurchase agreement, the mortgage-backed security to be sold must be initially owned by the savings association and held in its investment portfolio for a minimum of 35 consecutive days prior to the initiation of the sell/buy contract. Securities which have been formed by the pooling of mortgage loans that have been held by the savings association for 35 days meet this 35-day holding-period criterion.

(3) Fixed-coupon dollar reverse-repurchase agreements involving substantially the same mortgage-backed securities should be accounted for as collateralized borrowing arrangements (financings).

(4) Mortgage-backed securities are considered substantially the same only when all of the following criteria are met:

(i) The securities are collateralized by similar mortgages (*e.g.*, single-family residential mortgages for single-family residential mortgages);

(ii) They are of the same type of fixed-coupon instrument (*e.g.*, GNMA for GNMA, FHLMC for FHLMC, FNMA for FNMA);

(iii) The mortgages collateralizing the securities must be similar as to maturities (that is, expected remaining lives) resulting in approximately the same market yield;

(iv) The securities have identical coupon interest rates; and

(v) The aggregate principal amounts of mortgage-backed securities given up and mortgage-backed securities reacquired must be within the accepted "good delivery" standard for the type of mortgage-backed security involved.

(5) The accounting for fixed-coupon dollar reverse-repurchase agreements is the same as the accounting for reverse-repurchase agreements. When funds are borrowed under this type of agreement, a liability shall be recorded for the amount of the proceeds. The investment

mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Amortization of the original premium or accretion of the original discount and interest income of the original security shall continue to be recorded even if there is an exchange of fixed-coupon mortgage-backed securities.

(6) In conformance with paragraph (c)(4)(v) of this section, the aggregate principal amounts of the mortgage-backed securities sold and reacquired must be within the accepted delivery standards for the types of mortgage-backed security involved. If the principal amount of the securities repurchased in a fixed-coupon dollar reverse-repurchase transaction is greater than that of those originally sold, the difference shall be recorded in the investment account as though a separate acquisition of additional securities had occurred. If the principal amount is less, the investment account must be relieved of the proportionate share of mortgage-backed securities that have been sold, and gains or losses adjusted for the *pro rata* share of unamortized premium (or discount).

(7) To qualify as a financing for accounting purposes, the settlement term on the fixed-coupon dollar reverse-repurchase agreement shall not exceed twelve months from the initiation date (original "sell" date).

(8) A fixed-coupon agreement that contains a right-of-substitution clause or that provides an option to the lender to deliver mortgage-backed securities priced to result in a significantly different yield shall be accounted for in the same manner as a yield-maintenance agreement (*i.e.*, current recordation of gains and losses).

(9) If the elements comprising the substantially the same" criterion (set orth in paragraph (c)(4) of this section), he holding-period criterion (set forth in aragraph (c)(2) of this section), or the erm-of-agreement criterion (set forth in aragraph (c)(7) of this section) have not ll been met, transactions shall be ccounted for as a sale and purchase of ortgage-backed securities rather than s a financing. Thereafter, the position hall be marked to market as a peculative transaction in each ccounting period until the securities are eacquired.

(10) The accounting for fixed-coupon ollar reverse-repurchase transactions ntered into prior to December 31, 1984, shall be accounted for as specified in memoranda of the Senior Deputy Director for Supervision (Policy) as furnished from time to time. For example, a transaction entered into on November 30, 1984, with a thirteen-month term would not be subject to the holding-period criterion, the "substantially the same" criteria (except that the securities must have identical coupon rates), or the length-of-time criterion for purposes of qualifying for financing accounting (through December 31, 1985), because the transaction was initiated prior to December 31, 1984. Transactions entered into on or after December 31, 1984, shall be accounted for as provided in this statement of policy.

(11) Yield-maintenance dollar reverse-repurchase agreements do not represent transactions involving substantially identical mortgage-backed securities and, therefore, must be accounted for as sales and purchases, regardless of when initiated.

(d) *Dollar reverse-repurchase agreements with rollovers or extensions.* (1) A rollover or extension of a dollar reverse-repurchase agreement occurs when an association decides not to accept delivery of a fixed-coupon mortgage-backed security at the repurchase date but rather decides to "roll it forward" by means of a sell/buy transaction in which the position is offset and extended for another specified period of time. Typically, to the extent the market value of the fixed-coupon security has increased or decreased in value due to interest-rate fluctuations from the original sale date to the roll date, the association will pay or receive payment for such price fluctuations. The other characteristics of a dollar reverse-repurchase agreement which are present in its initial term (e.g., no receipt of principal and interest payments, securities not registered in the association's name) also are present in the "roll" periods.

(2) Once the roll period commences, the rolled fixed-coupon dollar reverse-repurchase agreement shall continue to be accounted for as a financing, when the following conditions exist:

(i) Within twelve months from the date of the initial sell/buy transaction (as described in paragraph (c)(1) of this section), the savings association shall fund the security (this condition is not satisfied if the security is funded via a reverse-repurchase agreement), accept delivery, close out its position, and place in its investment portfolio the fixed-coupon mortgage-backed security. To qualify as being placed in the savings association's investment portfolio, the security shall be registered in the savings association's name. For future dollar reverse-repurchase transactions using these reacquired securities, in order for these transactions to be accounted for as financings, the security shall remain in the savings association's investment portfolio for at least 35 consecutive days. These conditions are intended to demonstrate the savings association's ability to fund the purchase of the securities and intent to hold the securities for investment purposes.

(ii) At all times during the rollover or extension period(s), the savings association must be able to demonstrate the ability to fund its aggregate outstanding position of reverse-repurchase agreements and dollar reverse-repurchase agreements (i.e., the individual reverse-repurchase agreements and dollar reverse-repurchase agreements must be aggregated to determine if this criterion has been satisfied). The "ability to fund" condition may be met if the savings association has

(A) sufficient liquidity,

(B) sufficient available borrowing capacity or

(C) sufficient open lines of credit to fund all open positions.

(3) If the conditions of paragraphs (d)(2)(i) and (d)(2)(ii) of this section are not met, the transaction must be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing at the beginning of the month the ability to fund has not been demonstrated or at the end of the twelve-month period, whichever comes first. Thereafter, the position must be marked to market in each accounting period until the mortgage-backed securities are reacquired.

(4) The rollover at maturity of a fixed-coupon dollar reverse-repurchase agreement into a yield-maintenance dollar reverse-repurchase agreement results in a new contract. The rollover into the yield-maintenance agreement shall be accounted for as a sale and purchase of securities and the position marked to market in each accounting period thereafter until the mortgage-backed securities are reacquired.

(5) The policy applies as of December 31, 1984, for fixed-coupon dollar reverse-repurchase agreements which have been rolled and for rolls which occur after that date in order for them to be accounted for as in financing. (For example, assume a transaction was initiated on August 1, 1984, and had been rolled forward in 30-day rollover increments to January 1, 1985. The savings association, beginning on December 31, 1984, would have to demonstrate its ability to fund the delivery of the substantially identical securities. Additionally, the savings association would have to take delivery of the securities on or before December 31, 1985.)

(e) Rollover of forward commitment to purchase mortgage-backed securities ("forward-commitment dollar rolls"). (1) A forward-commitment dollar roll is initiated when a savings association enters into a forward commitment to purchase mortgage-backed securities on a "to be announced" basis ("TBA") at a specified price on a specified settlement date. On or before the settlement date, the savings association decides to "roll" its position forward rather than accept delivery of the securities. The rollover is accomplished by the savings association "offsetting" its position and extending the commitment to purchase a TBA at a specified later date.

(2) These transactions are not initiated with mortgage-backed securities held in portfolio but rather with a forward commitment to purchase. No significant cash is exchanged at the initial settlement date. During the roll period, the securities are not registered in the savings association's name and the savings association does not receive principal and interest payments on the securities. In many cases the TBA securities have not been identified because the pools to secure them have not been formed but are to be created in the future. At each rollover date, the savings association pays or receives cash (similar to a margin call) from the broker for the change in market value of its position since the previous rollover settlement date. Interest costs due the broker may be netted against the margin call. This "net margin call" is the amount of cash which is exchanged during the rolling of the forward commitments. When these transactions are rolled, they are considered to be speculative in nature rather than the short-term financing, in addition to other forward commitments, are subject to the limitations specified in § 563.173 of this subchapter.

(3) As of December 31, 1984, open forward-commitment dollar rolls entered into on or before that date may be treated as financings unless modified during the life of the contract, in which case the provisions of § 563.173(d) of this subchapter would apply and profit or loss recognized by the savings association at the time of modification. Any extension of these transactions beyond the earlier of this settlement date or March 31, 1985, any forward-commitment dollar rolls entered into after December 31, 1984, and any open forward-commitment dollar-roll transactions with a settlement date beyond March 31, 1985, shall be marked to market as of the earlier of each roll date or the date of filing reports with the Office after March 31, 1985. Application of mark-to-market accounting to those forward-commitment dollar-roll positions established prior to December 31, 1984, and expiring prior to March 31, 1985, is optional but encouraged.

§ 571.17 Payment in gold or its equivalent.

Section 463(a) of 31 U.S.C. provides, in part, that "[every] provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation [incurred after June 5, 1933]." The Office believes that section remains in effect even though Pub. L. 93-373 invalidated laws prohibiting persons from purchasing, holding, selling, or otherwise dealing with gold, effective December 31, 1974. The Office interprets 31 U.S.C. as prohibiting savings associations from agreeing to pay any part of the principal of, or interest or dividends earned on, their savings accounts in gold (including gold coin), gold-related instruments or securities, or an amount of money determined with reference to gold: *Provided,* That savings associations may pay interest or dividends in gold coins minted and issued by the United States Treasury.

§ 571.18 Accounting for troubled debt restructuring.

(a) The purpose of this section is to offer to the management of savings associations the Office's views on troubled debt restructuring. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law.

(b) All savings associations should use the accounting treatment for troubled debt restructuring ("TDR") described in this section when preparing all financial reports for filing with the Office. All savings associations may use TDR for any loans, in compliance with Statement No. 5 and Statement No. 15 of the Financial Accounting Standards Board ("FASB–5" and "FASB–15"). If an association chooses to use TDR, it should account for the transaction as specified in FASB–5 and FASB–15. Allowances for losses on those loans should be determined as set forth in the AICPA Industry Guide for Savings and Loan Associations. This statement of policy sets forth the policy and general criteria for determining what may be included in TDR, when a savings association must report a TDR, treatment of any transfer of assets as part of a TDR, including treatment of repossessions in substance, and how TDRs should be reported. This statement also sets forth the criteria under FASB–5 for when a loss must be recognized because an asset has been impaired, regardless of TDR, and when loss contingencies must be disclosed.

(c) The accounting standards for TDR are set forth in FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," which is summarized in this paragraph (c) and the rest of this section. Further specific information may be found by referring to FASB–15. A TDR is a restructuring in which a creditor, such as a savings association, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Extending or renewing a loan with no change in principal at a stated interest rate equal to the current interest rate for new loans at a similar level of risk is not considered a restructured loan and should not be reported as such. A restructuring may involve a transfer of assets from the borrower to the thrift in full or partial satisfaction of the loan, a modification of the loan's terms, or both of the above. A restructuring may also involve the substitution or addition of a new debtor for the original borrower.

(d) FASB Statement No. 5, "Accounting for Contingencies," also plays a significant role in the reporting of TDRs. FASB–5 governs when certain losses must be recognized because a loss contingency is both probable and estimable and an asset has therefore been impaired or a liability has been incurred. Further specific information may be found by referring to FASB–5.

(e) TDR may not be used to avoid recognizing losses that FASB–5 requires to be accrued. Estimated losses must be accrued by a charge to income if two conditions are met. First, available information indicates that it is probable that an asset had been impaired or a liability incurred at the date of the financial statements. Second, the amount of the loss must be reasonably estimable. If both of these conditions are met for a loan, the savings association must, both before and after restructuring, establish loss allowances for the difference between the carrying value of the loan and its net realizable value as determined in accordance with the AICPA Industry Guide for Savings and Loan Associations. The FASB–15 criteria are then applied to the net realizable value of the loan.

(f) FASB–5 also requires adequate disclosure of loss contingencies not meeting both of the above criteria under

certain circumstances. Disclosure is required, for example, where there is at least a reasonable possibility that a loss, or an additional loss, may have been incurred or where an asset has probably been impaired but the amount of loss cannot reasonably be estimated. Such disclosure should include a description of the loss or excess or additional loss contingency and either a range of possible loss or a statement that no estimate of the loss can be made.

(g) Under paragraph 6 of FASB–15, the date of consummation of the restructuring is the time of the restructuring. A TDR exists as soon as there is agreement between the savings association and the borrower(s) (either prospective or existing) to consummate the restructuring. Thus, a TDR would clearly exist when a formal letter of intent or mutual agreement is signed. It would also be presumed to exist, however, if the senior management of both the savings association and the borrower reach an oral agreement memorialized in written documentation, such as a memorandum to the files, setting forth the terms of the TDR. Savings associations that report such informal or incomplete restructurings assume the burden of formally completing the transaction, however. Failure to do so may result in reconsideration of any conclusions drawn as a result of the anticipated restructuring and may require refilings of financial statements. Normally a TDR should be finalized within six months from the start of negotiations. The savings association's history in finalizing expected restructurings will be reviewed by the Office's examiners. If a savings association's reported expected restructurings frequently do not result in formal consummation within a reasonable time, the examiner may decide to permit only formally completed TDRs to be reported as such.

(h) A restructuring may involve the transfer of assets from the borrower to the creditor savings association in full or partial satisfaction of the loan. The proper treatment of assets received in partial satisfaction of the loan is set forth in paragraph (j) of this section. Assets transferred may include, but are not limited to, receivables from third parties, real estate, or an equity interest in the borrower. Pursuant to paragraph 28 of FASB–15, such assets must be accounted for at their fair value at the time of the restructuring. Paragraph 13 of FASB–15 defines the "fair value of the assets transferred" as the amount the borrower could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, *i.e.*, other than a forced or liquidation sale. Paragraph 13 provides that market value shall be used if an active market exists. If no market price is available for the asset or similar assets that could be used in estimating fair market value, a forecast of expected cash flows from the asset, discounted at a rate commensurate with any risk involved, may be used to arrive at fair value.

(1) Such fair value accounting is required by FASB–15 when collateral is repossessed by the savings association. This fair value accounting treatment cannot be avoided merely by delaying formal repossession. Under paragraph 34 of FASB–15, a repossession in substance must be accounted for at fair value in accordance with paragraph 28. Paragraph 84 of FASB–15 requires such accounting "if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt." The Office will use the guidelines established by the Securities and Exchange Commission ("SEC") as set forth in its Interpretive Release Number 33–6679 to determine when a repossession in substance has occurred. Under these guidelines, a repossession in substance will be deemed to have occurred when:

(i) The borrower has little or no equity in the collateral, considering the current fair value of the collateral; and

(ii) The creditor can only expect proceeds for the repayment of the loan to come from the operation or sale of the collateral; and

(iii) The borrower has either—

(A) Formally or effectively abandoned control of the collateral to the creditor; or

(B) Retained control of the collateral but, because of its current financial condition or economic prospects, it is unlikely that the borrower will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

These determinations will be made on a case-by-case basis. A number of factors will be considered in determining whether a repossession in substance has occurred because it is unlikely that the borrower can rebuild equity in the "foreseeable future." Among these are the savings association's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout agreement. As the SEC noted in its Interpretive Rule:

> [O]ngoing debtor commitment is a factor in assessing whether collateral has in substance been repossessed * * * [R]epossession accounting may not be necessary when the debtor continues good faith efforts toward successful operation of the collateral and eventual repayment of the loan; provided, however, that the creditor can demonstrate a reasonable basis for concluding that the loan will be ultimately collectible.

(2) Assets received in full satisfaction of a loan must be recorded at their fair value. Any excess of the carrying value of the loan over the fair value of assets received in satisfaction of the loan must be recognized as a loss. The carrying value of the loan is the loan balance, adjusted for any unamortized premium or discount, less any allowance provided or any amount previously charged off, plus recorded accrued interest.

(i) TDR may involve a modification of the terms of the loan. This modification may include, but is not limited to, a reduction in the stated interest rate, an extension of maturity at a favorable interest rate, a reduction in the face amount of the debt (principal), a reduction in accrued interest, or a combination of the above. The proper treatment of a TDR involving a combination of a transfer of assets from the borrower to the savings association in partial satisfaction of the loan and a modification of the terms of the loan is set forth in paragraph (j) of this section. Both before and after a TDR is implemented, an adequate allowance for loss must be provided in accordance with FASB–5. Under GAAP, this allowance must be based on net realizable value to determine the appropriate carrying value of the loan being restructured.

(1) If the total expected future cash receipts (including both principal and interest) reasonably expected to be collected under the modified repayment terms are less than the carrying value of the loan on the savings association's books, after any necessary FASB–5 adjustment, then a loss on restructuring must be recognized to the extent of that deficiency. Under these circumstances, no interest income will be recognized over the life of the restructured loan.

(2) If the total expected future cash receipts are equal to or exceed the carrying value of the loan, after any necessary FASB–5 adjustment, no loss on restructuring need be reported. Interest income will be recognized over the life of the loan to the extent that future receipts exceed the carrying value of the loan. Savings associations should recognize this income using an effective interest rate that will yield a constant rate of interest over the remaining life of the loan.

(3) Some restructurings may involve indeterminate future cash receipts. To the extent that the minimum future cash receipts are less than the carrying value of the loan, the savings association must recognize a loss. This loss must be recognized under paragraph 32 of FASB–15, unless under the modified terms the contingent future cash receipts needed to make the total future cash receipts under the modified terms equal to the carrying value of the loan, after any necessary FASB–5 adjustment, are both probable and are reasonably estimable.

(j) Some TDRs may involve both a transfer of assets from the borrower to the savings association in partial satisfaction of the loan and a modification of the terms of the remaining loan. In these circumstances, the restructuring must be accounted for by a two-stage process under paragraph 33 of FASB–15. First, the carrying value of the loan is reduced by the fair value of the property received, as calculated pursuant to paragraph 13 of FASB–15. Second, the total amount of the expected future cash receipts is compared to the remaining carrying value of the loan. Any loss recognized is limited to the excess of the remaining carrying value of the loan over such total future cash receipts. If the total expected cash receipts exceed the remaining recorded amount of the loan, no loss need be recognized, and any future interest income should be recognized at a constant effective interest rate over the life of the loan.

(k) Some TDRs may involve the substitution or addition of a new debtor for the original borrower. Pursuant to paragraph 42 of FASB–15, such a restructuring should be accounted for according to its substance. If under the restructuring the substitute or additional debtor controls, is controlled by, or is under common control with the original borrower, or performs the custodial function of collecting certain of the original borrower's funds, FASB–15 provides that the restructuring should be accounted for as a modification of terms. If the substitute or additional debtor does not have such a control or custodial relationship with the original borrower, the restructuring should be accounted for as a new loan in full or partial satisfaction of the original borrower's loan. The new loan should be recorded at its fair value.

(l) As provided in § 563.234 of this subchapter, restructured loans are to be reported in all monthly and quarterly reports to the Office. In these reports and annual audited reports filed with the Office, all disclosures and information required by FASB–5 and FASB–15 should be provided. The carrying value of an asset received in full or partial satisfaction of the loan is not reportable as a restructured loan.

(m) Examiners will continue to monitor savings associations' loan portfolios, including restructured loans. Loans will not automatically be classified merely because they have been restructured. Conversely, loans will not be exempt from classification merely because they have been restructured. Where appropriate under the criteria set forth in § 563.160, a restructured loan may be classified.

§ 571.19 Investment portfolio policy and accounting guidelines.

(a) *General.* This Statement of Policy sets forth the Office's position on the need for an association to document prudent investment portfolio policy and strategies. It places with the association's board of directors the responsibility for the establishment of and ongoing monitoring of management's compliance with the association's investment policy and strategies. The Statement of Policy reiterates the requirement that securities[1] be recorded in accordance with generally accepted accounting principles ("GAAP") and requires the management of an association to support via documentation the appropriate classification [2] of and accounting for securities in accordance with generally accepted accounting principles. This documentation is then required to be reviewed by the association's auditors for consistency with promulgated GAAP. From a regulatory standpoint, there is the need for an association to engage in safe and sound investment of its resources.

(b) *Investment policy and strategies*—(1) *Content of policy and strategies.* An association must document its overall investment policy for the association as a whole and must also document its investment strategies for each different type of security portfolio. The investment policy and strategies must distinguish between those securities activities undertaken for investment, for sale, and for trading. Generally, such activities may be differentiated based upon an association's desire to earn an interest yield (held for investment), to realize a holding gain from assets held for indefinite periods of time (held for sale), or to earn a dealer's spread between the bid and asked prices (held for trading).[3] The association's policy should state the overall investment course reflecting, *inter alia*, the association's business plan, capital adequacy, its plans for growth, and the current economic environment, including a range of reasonably foreseeable economic environments.[4] The investment strategies should reflect the more specific plans to carry out the investment policy by addressing the type, nature, dollar amount and anticipated maturity of each type of security that will be used to achieve the strategies. Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit.

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[1] "Securities", as used throughout this Statement of Policy, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

[2] "Classification", as used throughout this Statement of Policy, refers to the balance sheet classification of securities and does not refer to the classification of assets for purposes of loss allowance analysis under 12 CFR 563.160, "Classification of Certain Assets". Furthermore, "classification" as used throughout this statement of policy, does not refer to a classification of assets that falls within the arbitration process mandated by the Competitive Equality Banking Act of 1987.

[3] These definitions are drawn from a letter, dated December 21, 1988, to the former Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). *See* 54 FR 11736 (March 22, 1989) for the text of the letter.

[4] In assessing the "range of reasonably foreseeable economic environments" an association should consider, *inter alia*, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions on the local, regional, and national level that may affect the decision of the association to engage in securities transactions, and the experience of the management of the association in dealing with significant economic events of the past and the ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the association need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the association would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an association generally should re-evaluate its financial position and evaluate the need to reposition itself (assets and liabilities) for the significant changes encountered.

For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should proscribe sales of investment securities. Accordingly, sales of investment securities within the range should be extremely rare [8] and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting. Furthermore, changes in policy and strategies for the association as a whole or for a particular group of assets, *e.g.*, from loans held for sale to loans held for investment or *vice versa*, shall be documented and based upon sound rationale. The investment policy and strategies must, at a minimum, address the following:

(i) The investment policy and strategies in rising and falling interest rate environments within a reasonably foreseeable range of interest rates;

(ii) The association's intent to purchase and originate securities for investment, for sale, or for trading;

(iii) The liquidity considerations of the association;

(iv) The association's desired rate of return on investments;

(v) The association's desired degree of interest rate risk;

(vi) The association's desired asset/liability position;

(vii) The use of hedging techniques, if any;

(viii) The types of products to be originated and/or purchased;

(ix) The intent of the association to build a mortgage-servicing portfolio;

(x) The association's plan for reinvestment of proceeds from sales; and

(ix) The characteristics of the investments originated or purchased.

(2) *Board of directors' review and approval.* The investment policy must be reviewed and approved periodically (but no less than annually) by the association's board of directors. Furthermore, the association's investment strategies and securities activities must be approved no less than quarterly by the association's board of directors or an investment committee thereof to ensure that securities activities are consistent with the investment policy and strategies of the association. Securities activities may be approved based on a summary report of transactions.

(3) *Portfolio Decisions.* An association shall identify and determine whether securities are intended to be held for investment, for sale, or for trading at the time the securities are committed to be purchased or originated. Documentation of decisions may be made by exception when appropriate, *e.g.*, "all adjustable rate mortgages are purchased or originated for the investment portfolio". Any exceptions to a strategy require identification and documentation at the commitment date.

(c) *Safety and soundness.* Securities activities must be conducted in a safe and sound manner and by competent personnel. Investment decisions and securities activities shall be carried out consistent with the investment policy and strategies that appropriately consider adequate liquidity, protection from interest rate risk, desired rate of return, asset/liability position, capital adequacy, and management capabilities of an association. In addition to understanding and approving the association's investment policy and strategies, the association's board of directors or an investment committee of the board of directors (in conjunction with the full board) has the fiduciary duty to oversee the establishment of strong internal controls, ensure that management and their investment consultants, if any, are reputable and capable, and to ensure that securities activities are consistent with the investment policy and strategies of the association's and are classified and accounted for in accordance with GAAP.

(d) *Generally Accepted Accounting Principles.* (1) Accounting guidance for securities including investment securities, high yield corporate debt securities, loans and mortgage-backed securities and their derivatives exists in various degrees of detail in the FASB Statement of Financial Accounting Standards ("SFAS") No. 12, "Accounting for Certain Marketable Securities", SFAS No. 65, "Accounting for Certain Mortgage Banking Activities", SFAS No. 80, "Accounting for Futures Contracts", SFAS No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases", the September 20, 1988, and December 21, 1988, letters from the FASB staff to the former Federal Home Loan Bank Board ("Board"), the American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Savings and Loan Associations, the AICPA's Industry Audit Guide for Audits of Banks, the April 14, 1989, letter from the Chief Accountant of the Securities and Exchange Commission to the Chairman of the Accounting Standards Executive Committee of the AICPA, and various consensuses of the FASB's Emerging Issues Task Force. As stated in the FASB staff's letters to the Board, GAAP's emphasis on the intent to hold *to maturity* as a premise for cost accounting is well founded within existing GAAP literature promulgated by the FASB. Further, GAAP currently requires that investments held for sale are to be recorded at the lower of cost or market and investments held for trading purposes are to be valued at market.

(2) An association's investment activities shall be classified and accounted for in accordance with GAAP. Critical to the proper classification of and accounting for securities as investments is the intent and ability of an association to hold the securities until maturity. A positive intent to hold to maturity, not just a current lack of intent to dispose, is necessary for securities acquired to be considered held for investment purposes. Those associations whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

(3) Management is responsible for analyzing the types, extent and timing of securities activity to ascertain the appropriate classification of and accounting for securities transactions in accordance with current GAAP literature. In supporting management's intent and ability to hold securities until maturity, management must document how its sale, purchase, and origination activities support the association's intent and ability to hold securities until maturity. Independent accountants must obtain and evaluate management's documentation and analyses and document their conclusions regarding management's compliance with GAAP. Additionally, certain transactions carry a presumption of trading; *see* Section I, "Trading in the Investment Portfolio" to the Appendix to the Federal Financial Institutions Examination Council policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" included as an Appendix to this Statement of Policy.

(i) *Intent.* (A) *Sales intent.* The necessity of analyzing sales activity is considered to be minimal since sales activity will be extremely rare for securities held for investment purposes. This does not imply that an association may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the association's intent and/or ability to hold a security until maturity, although such instances should be extremely rare. Where management's strategies proscribe the sales of securities due to changes in external factors that are reasonably foreseeable, a positive intent to hold until maturity will be presumed to exist. Past and subsequent management actions must bear out the presumption. Accordingly, the reasons for sales of securities will need to be determined. Among the factors to be considered in analyzing sales activity include, but are not limited to, analyses of:

(1) Whether the reason for the sale is consistent with the investment strategy;

(2) The number of sales transactions at gains and at losses during the reporting period;

(3) The relative volume of gross gains and gross losses on sale of securities as percentages of net income and equity;

(4) The net gain or loss from sales as a percentage of income and equity;

(5) The dollar amount of securities sold compared with outstanding balances throughout the reporting period;

(6) The rapidity of turnover, including consideration of the average number of days securities are owned prior to sale;

(7) A trend indicating that sales of securities transpire largely when gains are recognized ("gains trading" or "par capping");

(B) *Originations and purchases intent.* The types and extent of originations and purchases shall also be analyzed for intent to hold until maturity. Among the factors to be considered in analyzing origination and purchase activity include, but are not limited to, analyses of:

(1) The nature of securities (type, term, duration, yield, etc.) originated and/or purchases;

(2) The means of financing the acquisition;

(3) Trends indicating that market value is consistently below cost at the time of origination and/or purchase.

(C) *Other intent.* Other securities activities that shall be considered when reviewing an association's intent to hold securities until maturity include, but are not limited to:

(1) The period of time between sales and purchases of securities;

(2) The method by which securities are financed. The consistent funding of securities via very short-term liabilities that have not been extended in duration via interest rate swaps, options, futures, etc., may indicate that the intent to hold the securities is short-term or that the ability to hold is in doubt; and

(3) The reasons for an association's securitization of loans. There are numerous reasons to securitize loans, one being the ability to raise debt at lower cost when collateralized by mortgage-backed securities. Securitization does not automatically portend sale or trade accounting; however, the extent of securitization should be considered in light of an association's investment policy and strategies, activity and liquidity needs.

(ii) *Ability to hold.* In supporting and analyzing an association's ability to hold securities until maturity, documentation shall include, but is not limited to, analyses of the following:

(A) The availability of funding;

(B) The ability to meet margin calls and overcollateralization requirements; and

(C) The ability of the association to fund commitments to purchase or originate securities in light of regulatory limitations (or the non-compliance therewith), *e.g.*, regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. In determining whether an association's pair-off activity is considered to be investment activity (instead of trading activity), regulatory limitations shall be analyzed based upon gross commitments to purchase or originate securities adjusted for anticipated prepayments through the period of delivery.

(e) *Effective date.* The requirements for the establishment and documentation of investment policies and strategies, management and its auditors requirements to support via documentation the proper classification of and accounting for its securities activities in accordance with GAAP and board of directors' reviews are effective January 1, 1990. As authoritative GAAP literature has been in existence, the Office would expect savings associations to properly apply the appropriate accounting principles in financial statements filed with the Office and the Office will continue its practice of challenging the reporting of securities activities not properly accounted for in accordance with GAAP.

[8] Within the range of reasonably foreseeable events, the Office would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

§ 571.20 Payment for appraisals.

(a) *Payment by the savings association.* Paragraph (b) of § 563.170 of this subchapter provides, among other things, that if appraisals of real estate securing a savings association's loans are obtained as part of an examination by the Office, the cost of such appraisals shall promptly be paid by the savings association direct to the appraiser or appraisers. Failure to make payment for appraisals as provided in § 563.170 of this subchapter within 60 days after receipt of a statement of the cost of the appraisals approved by the District Director will be considered a violation of a regulation to which the savings association is subject within the meaning of section 5(d) of the Home Owners' Loan Act of 1933, as amended, and section 8 of the Federal Deposit Insurance Act, as amended.

(b) *Payment by the Office.* In any instance where the cost of appraisals has not been paid as provided in paragraph (a) of this section, the Office will make such payment to the appraiser or appraisers and, in turn, charge such cost to the savings association as part of the cost of examination. Payment by the Office will not constitute correction by the savings association of the violation of the regulation.

§ 571.21 Separate corporate existence of a service corporation.

(a) *General.* If a savings association and its service corporation fail to maintain their separate corporate existence, a court, for equitable reasons in an extreme situation, might hold the savings association liable for the obligations of its service corporation. To insure judicial recognition of the separate corporate existence of service corporations, the savings association and its service corporations should operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled,

(2) Each observes the formalities of their separate corporate procedures,

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character,

(4) Each is held out to the public as a separate enterprise, and

(5) The savings association does not dominate the service corporation to the extent that the latter is treated as a mere department of the former.

In recommending such operating practices, the Office is not suggesting that a failure to follow one or more or all of such practices by a savings association and its service corporation

should cause a court to ignore the separate corporate existence of the service corporation.

(b) *Operation of service corporations.* Section 563.37(a) of this subchapter requires that a savings association and its service corporations be operated in a manner which demonstrates their separate corporate existence. Failure to assure corporate separateness could result in serious risk to the savings association. In monitoring compliance with § 563.37(a) of this subchapter, the Office will look for attributes of corporate separateness such as those contained in paragraph (a) of this section.

§ 571.22 Most Favored Lender status.

(a) Under section 4(g) of the Act savings associations are authorized to charge on any loan an interest rate equal to the greater of one percentage point above the discount rate on ninety day commercial paper in the association's Federal Reserve district or "the rate allowed by the laws of the State * * * where such association is located" whenever either of these rates exceeds the rate the association is currently permitted. The stated purpose of this provision is to provide savings associations with competitive equality with national banks. In view of this Congressional purpose and the judicial construction of the phrase "rate allowed by the laws of the State" in the context of the National Bank Act, it is the opinion of the Office that section 4 allows savings associations to charge interest at a rate not to exceed the greater of either one percent above the Federal Reserve ninety-day discount rate or the rate allowed to the most favored lender on the particular class of loans under State law whenever the greater of either of these rates exceeds the rate the association is permitted to charge by State law.

(b) Savings associations may only charge the preferential rates reserved for most favored lenders when they are making the same type of loans as the most favored lender. Accordingly, savings associations could not charge the maximum loan rates permitted for small loan companies unless that loan met the substantive state law requirements as to loan term amount, use of proceeds, identity of borrower, etc. Consumer protections specifically required in such loans when made by the most favored lender would also be considered substantive and must be included in loans made by savings associations which desire to use most-favored-lender rates.

(c) Federal savings associations would not be required to submit to state most-favored-lender restrictions that are primarily procedural or regulatory in nature. Such restrictions would include licensing, bonding, and reporting to State authorities. The degree to which state-chartered savings associations must comply with such restrictions will be determined by their State supervisors.

§ 571.23 Regulatory capital.

(a) The term "regulatory capital" is defined in § 567.1 of this subchapter to mean the sum of equity capital as determined in accordance with generally accepted accounting principles, definitional capital, certain other components of capital as the Office determines consistent with its risk analysis conventions, and risk analysis reporting forbearances. To the extent regulatory capital includes reserves (except specific or valuation reserves), the rules set forth in paragraphs (b) and (c) of this § 571.23 shall apply.

(b) Specific loss reserves required by the California Savings and Loan Commissioner under section 7255 of the California Savings and Loan Association Law are not specific reserves within the meaning of the foregoing exception clause unless established in respect of loans whose outstanding balance is in excess of the appraised value of the security property as determined by the Commissioner.

(c) Temporary designation of a portion of earned surplus or undivided profits as a specific loss reserve, and subsequent restoration to earned surplus or undivided profits, shall not be deemed to constitute a previous allocation to another regulatory capital account within the meaning of part 567 of this chapter.

§ 571.24 Guidelines relating to nondiscrimination in lending.

(a) *General.* Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the Office, the Office has adopted, in parts 528 and 529 of this Chapter, nondiscrimination regulations that, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. Such discrimination is also prohibited in the purchase of loans and securities. This section provides supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies. Each savings association should reexamine its underwriting standards at least annually in order to ensure equal opportunity.

(b) *Loan underwriting standards.* The basic purpose of the Office's nondiscrimination regulations is to require that every applicant be given an equal opportunity to obtain a loan. Each loan applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has a discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect.

(c) *Discriminatory practices—(1) Discrimination on the basis of sex or marital status.* The Civil Rights Act of 1968 and the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

(2) *Discrimination on the basis of language.* Requiring fluency in the English language as a prerequisite for obtaining a loan may be a discriminatory practice based on national origin.

(3) *Income of husbands and wives.* A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of section 527 of the National Housing Act. As with other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual may not be requested.

(4) *Supplementary income.* Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families. The Office favors loan underwriting which reasonably evaluates the credit worthiness of each applicant based on a realistic appraisal of his or her own past, present, and foreseeable economic circumstances. The determination as to whether primary income or additional income qualifies as effective for credit purposes should depend upon whether such income may reasonably be expected to continue through the early period of the mortgage risk. Automatically discounting other income from bonuses, overtime, or part-time employment, will cause some applicants to be denied financing without a realistic analysis of their credit worthiness. Since statistics show that minority group members and low- and moderate-income families rely more often on such supplemental income, the practice may be racially discriminatory in effect, as well as artificially restrictive of opportunities for home financing.

(5) *Applicant's prior history.* Loan decisions should be based upon a realistic evaluation of all pertinent factors respecting an individual's creditworthiness, without giving undue weight to any one factor. The savings association should, among other things, take into consideration that:

(i) In some instances, past credit difficulties may have resulted from discriminatory practices;

(ii) A policy favoring applicants who previously owned homes may perpetuate prior discrimination;

(iii) A current, stable earnings record may be the most reliable indicator of credit-worthiness, and entitled to more weight than factors such as educational level attained;

(iv) Job or residential changes may indicate upward mobility; and

(v) Preferring applicants who have done business with the lender can perpetuate previous discriminatory policies.

(6) *Income level or racial composition of area.* Refusing to lend or lending on less favorable terms in particular areas because of their racial composition is unlawful. Refusing to lend, or offering less favorable terms (such as interest rate, downpayment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons.

(7) *Age and location factors.* Sections 528.2, 528.2a, and 528.3 of this chapter prohibit loan denials based upon the age or location of a dwelling. These restrictions are intended to prohibit use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Loan decisions should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan. Specific factors which may negatively affect its short-range future value (up to 3–5 years) should be clearly documented. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because of rehabilitation programs or affirmative lending programs, or because the cause of abandonment is unrelated to high risk. Proper underwriting considerations include the condition and utility of the improvements, and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

(8) *Fair Housing Act (Title VIII, Civil Rights Act of 1968, as amended).* Savings associations, must comply with all regulations promulgated by the Department of Housing and Urban Development to implement the Fair Housing Act, found at 24 CFR 100 *et seq.*, except that they shall use the Equal Housing Lender logo and poster prescribed by Office regulations at 12 CFR 528.4 and 528.5 rather than the Equal Housing Opportunity logo and poster required by 24 CFR Parts 109 and 110.

(d) *Marketing practices.* Savings associations should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; a savings association does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community. A review of marketing practices could begin with an examination of an association's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The Office will systematically review marketing practices where evidence of discrimination in lending is discovered.

§ 571.25 Accepting pooled accounts.

A savings association may not pool or participate in pooling funds, or solicit, or promote pooled accounts. However, a savings association is authorized to accept pooled funds from existing or potential accountholders who have pooled their funds in order to meet any prescribed minimum amount under this Part or to aggregate $100,000 or more.

§ 571.26 Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 563.160 of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified. Reserves established by a savings association for such assets must be based on an appraisal made in accordance with Office appraisal standards and should take into consideration the availability of compensation by private mortgage insurance when the probability of full insurance payment is substantial.

(a) *Substandard.* An asset classified Substandard must have a well-defined weakness or weaknesses. A Substandard asset is an asset inadequately protected by the current regulatory capital and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the savings association will sustain some loss if the deficiencies are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be

timely requires a Substandard classification even if there is little likelihood of total loss. If the deficiencies are not corrected, the savings association may sustain some loss. Assets classified Substandard may exhibit one or more of the following characteristics:

(1) Collateral which is not subject to adequate inspection and verification;

(2) The primary source of repayment is gone and the lending savings association is relying upon the secondary source;

(3) A loss does not seem likely, but sufficient problems have arisen to cause the savings association to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;

(4) Obligors are unable to generate enough cash flow for debt reduction;

(5) Deterioration in collateral;

(6) Flaws in documentation, leaving the lending savings association in a subordinated or unsecured position;

(7) With regard to assets secured by real estate, the appraisal does not conform with Office appraisal standards, or the assumptions underlying the appraisal are demonstrably incorrect;

(8) Office examiners may also consider the following in determining whether a Substandard classification is appropriate:

(i) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the savings association;

(ii) Deterioration in the borrower's affairs sufficient to cause the savings association to look to the sale of collateral for repayment;

(iii) Loans to unprofitable or under-capitalized businesses;

(iv) Special problems arising from conditions of a given industry; or

(v) Significant deterioration in market conditions.

It is incumbent upon the examiner to avoid classification of sound assets. The presence of one of these factors does not mandate that the asset be classified Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

(b) *Doubtful.* (1) An asset classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty to permit the asset to remain on the books at its full value. In addition, a Doubtful classification could reflect the fact that the primary source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

(2) The possibility of loss on a Doubtful asset is high, but, because of certain important and reasonably specific pending factors which may work to the strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined.

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors that may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. An entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, if there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the savings association is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off or reserving all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* (1) When, pursuant to § 563.160 of this subchapter, a savings association has classified one or more assets, or portions thereof, Substandard or Doubtful, the savings association shall establish prudent general allowances for loan losses. When, pursuant to § 563.160 of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the savings association shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 563.160 of this subchapter, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Allowances provided on classified assets should be established consistent with Generally Accepted Accounting Principles. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

§ 571.27 Appraisal policies and practices of savings associations and service corporations.

(a) *Purpose.* The purpose of this section is to offer to the management of savings associations and service corporations the Office's views on appraisal policies and practices that comport with principles of safety and soundness. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law. Therefore, savings associations and service corporations may adopt appraisal standards different from those set forth in this section and still be consistent with the principles of safety and soundness required by § 563.170.

(b) *Definitions.* For purposes of this section:

(1) *Management* shall have the meaning given in § 563.171(b)(1) of this subchapter.

(2) *Market value* shall have the meaning given in § 563.171(b)(2) of this subchapter.

(3) *Market value as is on appraisal date* means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date the appraisal is prepared;

(4) *Market value as if complete on appraisal date* means the market value of a property with all proposed construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants;

(5) *Prospective future value upon completion of construction* means the prospective future value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date;

(6) *Prospective future value upon reaching stabilized occupancy* means the prospective future value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

(c) *Appraisal management.* Management is obligated by regulation to take reasonable steps to ensure that all appraisals used to support credit and investment decisions report accurate values upon which to base lending decisions. Acceptable appraisals may include the following features:

(1) Management should provide appraisers with a letter of engagement that contains a legal description of the property, the interest to be appraised, the different value estimates requested, copies of the savings association's written guidelines, and a copy of the Office's rule, if the rules requirements are not specifically included within the savings association's appraisal policies. Management should attach to the letter of engagement information pertinent to the property that is necessary to comply with these requirements to the extent that this information is available. Such information should include, but is not limited to, financing data, leases, purchase agreements, and profit and loss statements of the security property;

(2) Appraisals should be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made;

(3) Appraisals should reflect the market value of the rights in real property offered as security or as part of the transaction. All other values or interests appraised should be clearly labeled and segregated, *e.g.*, value of chattels, value of financing terms, business value, furnishings, fixtures, and equipment value;

(4) Appraisals should report the cost, income, and sales comparison approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more approaches to such value;

(5) Appraisers should analyze and report in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised if such information is available to the appraiser in the normal course of business;

(ii) A history of comparable sales used when the comparable sales properties have been sold several times during a brief period of time or when prices of comparable properties have been increasing or decreasing at a rate that is not typical for the local real estate market. Such sales analysis should cover the time period of the multiple transactions and address artificially altered sales prices;

(6) An appraisal of a proposed project, improvement, or change in use should be based upon the most recent plans and specifications. If material changes in the plans and specifications could significantly reduce the estimated collateral value after a loan or investment decision has been made, management should take steps to ensure that a current estimate of value is established based on the final plans and specifications for the project. This may be satisfied by having the original appraiser recertify his value or by obtaining a new appraisal based on the final plans and specifications;

(7) Appraisal reports should contain a properly supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (b)(2) of this section. Such estimate should be prepared whether or not the proposed use of the property is in fact the highest and best use. This highest and best use estimate should consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal should consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser should specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses should be presented in sufficient detail to support the appraiser's forecast of the probable success of the proposed use and should indicate whether this is in fact the highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone other than the appraiser, the appraiser should set forth the reasoning and rationale for accepting or rejecting that study, or any portion thereof;

(8) Appraisals on all properties should report an estimate of "market value as is on appraisal date" as that term is defined in paragraph (b)(3) of this section.

(9) Appraisals on all properties wherein a portion of the overall real property rights or physical assets would typically be sold to their ultimate users over a future time period should report the following estimates of value:

(i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section;

(ii) "Market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; and

(iii) "Prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section.

Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those that reflect all expenses associated with the disposition of the real property as well as the cost of capital and entrepreneurial profit;

(10) Appraisals on all properties for which anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion should report the following estimates of value:

(i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section;

(ii) "Market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section;

(iii) "Prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section; and

(iv) "Prospective future value upon reaching stabilized occupancy on the date of stabilization" as defined in paragraph (b)(6) of this section.

Such valuations should fully reflect the anticipated pattern of income and pertinent operating expenses during the absorption period as well as the impact upon the value estimates of rental and other concessions;

(11) Appraisals should reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All analyses involving fractional interests in the real estate, where the combined value of all interests on estates is not reported, should establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.

(d) *Appraisal content.* The content of each appraisal accepted by an association should follow generally

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accepted and established appraisal practices. Specifically, each appraisal should:

(1) Contain reasonable supporting documentation, with no pertinent information withheld, and not misleading so that when read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported;

(2) Unequivocally identify, by legal description or otherwise, the real estate being appraised as this information is provided to the appraiser by management (management is obliged to ensure, prior to funding, that the appraised real estate is described in a manner consistent with the description found in the association's evidence of debt or encumbrance);

(3) Identify the property rights being appraised;

(4) Describe all salient features of the property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (b)(2) of this section;

(6) Set forth the effective date(s) of the value conclusion(s) and the date of the report;

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to sales comparable data analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with appropriate market support.

(9) Contain a summary of actual annual operating statements for existing income-producing properties made available to the appraiser by the lender and/or borrower, together with a supported forecast of the most likely future financial performance. If the appraiser is told that actual operating statements are unavailable, the appraiser should so indicate. The appraiser should report current rents and current vacancies;

(10) Set forth all material assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's certification:

(i) A statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved;

(ii) A statement indicating whether or not the appraiser made a personal inspection of the subject property; and

(iii) A statement indicating that to the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the appraisal standards of the savings association.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

Sec.

574.1 Scope of part.
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574.3 Acquisition of control of savings associations.
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574.5 Certifications of ownership and other reports.
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574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.
574.9 Delegations of authority.
574.100 Rebuttal of control agreement.

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a; sec. 2(7), 64 Stat. 878, as amended (12 U.S.C. 1817).

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C. 1817(j) ("Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a ("Holding Company Act"), relating to acquisitions and changes in control of savings associations that are organized in stock form and holding companies thereof.

§ 574.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) "Acquire" when used in connection with the acquisition of stock of a savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group: *Provided*, That an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor:

(i) Votes the stock only upon instruction from the beneficial owner, and

(ii) Does not provide the beneficial owner with advice concerning the voting of such stock.

(b) *Acquiror* means a person or company.

(c) *Acting in concert* means:

(1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(d) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(e) *BIF* means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(f) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (r) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervision, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

(g) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(h) *Director* means the Director of the Office of Thrift Supervision.

(i) *District Director* means the senior representative of the Director for all matters dealing with examination and supervision of savings associations in the District in which the savings association with respect to which an application or other document is being filed pursuant to this part has its home office.

(j) *Immediate family* means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

(k) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(l) *Office* means the Office of Thrift Supervision.

(m) *Person* means an individual or a group of individuals acting in concert who do not constitute a "company" as defined in paragraph (f) of this section.

(n) *Repealed Control Act* means the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q), as in effect immediately prior to its repeal by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(o) *SAIF* means the Savings Association Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811*et seq.*

(p) *Savings Association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1), and any savings and loan holding company as defined in paragraph (q) of this section.

(q) *Savings and loan holding company* means any company that directly or indirectly controls a savings association, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Office) as will permit the sale thereof on a reasonable basis; and

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(i) Was in existence and in control of a savings association on June 26, 1967, or

(ii) Is a testamentary trust.

(r) *Similar organization* for purposes of paragraph (f) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(s) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(t) *Uninsured institution* means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(u)(1) *Voting stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing savings association or company); or

(ii) To vote or to direct the conduct of the operations or other significant policies of the issuer.

(2) Notwithstanding anything in paragraph (u)(1) of this section, preferred stock, limited partnership shares or interests, or similar interests are not "voting stock" if:

(i) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears;

(ii) The stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and

(iii) The stock, shares or interests do not at the time entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer;

(3) Notwithstanding anything in paragraphs (u)(1) and (u)(2) of this section, "voting stock" shall be deemed to include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock

into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (u)(3) shall be included in calculating the amount of voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

§ 574.3 Acquisition of control of savings associations.

(a) *Acquisition by a company or certain persons.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior approval under paragraph (d) of this section, no company or any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company, shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association except upon receipt of the written approval of the Office.

(b) *Acquisition by a person.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior notice under paragraph (d) of this section, no person (other than certain persons affiliated with a savings and loan holding company who are subject to § 574.3(a), above), shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association until written notice has been provided to the Office and (1) the Office indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the Office may specify if the review period has been extended under § 574.6(c)(3) of this part) have passed since receipt of a notice deemed sufficient under § 574.6(c)(2). Notwithstanding the forgoing, acquisitions by persons by means of a merger with an interim association are not subject to this part, but shall be subject to approval under § 563.22, and either § 552.13 or applicable state law.

(c) *Exempt transactions.* (1) The following transactions are exempt from the application requirements of paragraph (a) of this section:

(i) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company under § 574.2(q) of this part;

(ii) Control of a savings association acquired in connection with a reorganization which involves solely the acquisition of control of that association by a newly formed company which is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: *Provided,* That the acquirors have filed an H–(e)4 notification as provided in § 574.6 of this part and the chief Counsel or his or her delegate does not object to the acquisition within 30 days of the filing date;

(iii) Control of a savings association acquired solely as a result of (A) a pledge or hypothecation of stock to secure a loan contracted for in good faith or (B) the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Office within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Office may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Office finds such extension is warranted and would not be detrimental to the public interest;

(iv) Control of a savings association acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(v) Acquisition of additional stock after approval under § 574.7 of this part, or any predecessor provision, has been received: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquiror in its application;

(vi) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39); and

(vii) Acquisitions of up to 15 percent of the voting stock of any savings association by a savings and loan holding company (other than a bank holding company) in connection with a qualified stock issuance if such acquisition is approved by the Office pursuant to § 574.8(a).

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv) and (c)(1)(v) of this section;

(ii) Transactions for which approval is required under paragraph (a) of this section;

(iii) Transactions for which approval is required under Part 546 or § 552.13 and § 563.22 of this chapter;

(iv) Acquisition of additional stock of a savings association by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such association continuously since March 9, 1979; or

(B) Has maintained control of the savings association continuously since acquiring control in compliance with the Control Act (or the Repealed Control Act) and the Office's regulations thereunder then in effect: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice.

(v) Acquisitions of stock of a *de novo* federal savings association in connection with the organization of such association: *Provided,* That the Office has considered the financial and managerial resources of the acquiror in granting the association its federal savings association charter; and additional acquisitions of stock of such association, and *further provided,* that the acquisitions are consistent with any conditions imposed in connection with the approval of the association's charter and with representations made by the acquiror in its application for a federal savings association charter, and that the District Director has no supervisory objection to the acquiror's additional acquisitions.

(3) An acquiror that would be considered to be in control of a savings association pursuant to § 574.4 of this part on December 26, 1985, shall not be subject to this § 574.3 unless the acquiror acquires additional stock of the savings association or obtains a control factor with respect to such association after December 26, 1985: *Provided,* That an acquiror shall not be deemed to have acquired control of a savings association on the basis of actions taken prior to December 26, 1985, or on the basis of actions taken after December 26, 1985, if such actions are pursuant to and consistent with a materially complete application under the Holding Company Act or notice under the Repealed Control Act filed prior to December 26, 1985, if such acquisition is made pursuant to an application approved under the Holding Company Act or a notice under the Repealed Control Act that was not disapproved.

(d) *Transactions exempt from prior approval or notice.*

(1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under § 574.3: *Provided,* That the timing of the transaction was not within the control of the acquiror.

(i) Control of a savings association acquired through *bona fide* gift;

(ii) Control of a savings association acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

(iii) Control of a savings association acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata*;

(iv) Control determined pursuant to § 574.4 (a) or (b) as a result of actions by third parties that are not within the control of the acquiror;

(v) Control of a savings association acquired through testate or intestate succession: *Provided,* That the acquiror transmits written notification of the acquisition to the Office within 60 days of the acquisition and provides such additional information as the Office may specifically request.

(2) The exemptions provided by paragraphs (d)(1)(i) through (d)(1)(iv) of this section are subject to the following conditions:

(i) The acquiror shall file an application, notice or rebuttal, as appropriate, with the Office within 90 days of acquisition of control;

(ii) The acquiror shall not take any action to direct the management or policies of the savings association or which are designed to effect a change in the business plan of the savings association other than voting on matters that may be presented to stockholders by management of the savings association until the Office has acted favorably upon the acquiror's application or notice, and the Office may require that the acquiror take such steps as the Office deems necessary to insure that control is not exercised; and

(iii) If the Office disapproves the acquiror's application or notice, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the savings association under § 574.4 of this part, within one year or such shorter period of time and in the manner that the Office may order.

(e) *Prohibited acquisitions.* No acquisition shall be approved by the Office pursuant to § 574.3(a) which would result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one state where the acquisition causes a savings association to become an affiliate of another savings association with which it was not previously affiliated unless:

(1) Such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional state or states pursuant to section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k) (or section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(2) Such company controls a savings association subsidiary which operated a home or branch office in the additional state or states as of March 5, 1987; or

(3) The statute laws of the state in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such state could be acquired by a savings association chartered by the state where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a state chartered savings association), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

§ 574.4 Control.

(a) *Conclusive control.* (1) An acquiror shall be deemed to have acquired control of a savings association, other than a savings and loan holding company, if the acquiror directly or indirectly, through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the savings association;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the savings association;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association; or

(iv) Controls in any manner the election of a majority of the directors of the savings association.

(2) An acquiror shall be deemed to have acquired control of a company, including a savings and loan holding company, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the company;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the company;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association;

(iv) Controls in any manner the election of a majority of the directors or trustees of a company;

(v) Is a general partner of a company;

(vi) Has contributed more than 25 percent of the capital of the company; or

(vii) Is a trustee of a trust.

(3) A company shall be deemed to control a savings association if the Office finds, after notice and opportunity for hearing, that the company has the power directly or indirectly, to exercise a controlling influence over the management or policies of the savings association.

(4) A person shall be deemed to control a savings association if the Office determines that such person has the power to direct the management or policies of the savings association.

(b) *Rebuttable control determinations.* (1) Except as provided in § 574.8, an acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 10 percent of any class of voting stock of the savings association and is subject to any control factor, as defined in paragraph (c) of this section;

(ii) Acquires more than 25 percent of any class of stock of the savings association and is subject to any control

factor, as defined in paragraph (c) of this section.

(2) An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of a savings association, excluding such proxies held in connection with a solicitation by, or in opposition to, a solicitation on behalf of management of the savings association, but including a solicitation in connection with an election of directors, and such proxies would enable the acquiror to:

(i) Elect one-third or more of the savings association's board of directors, including nominees or representatives of the acquiror currently serving on such board;

(ii) Cause the savings association's stockholders to approve the acquisition or corporate reorganization of the savings association; or

(iii) Exert a continuing influence on a material aspect of the business operations of the savings association.

(c) *Control factors.* For purposes of paragraph (b)(1) of this section, the following constitute control factors. References to the acquiror include actions taken directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(1) The acquiror would be one of the two largest holders of any class of voting stock of the savings association.

(2) The acquiror would hold more than 25 percent of the total stockholders' equity of the savings association.

(3) The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the savings association.

(4) The acquiror is party to any agreement:

(i) Pursuant to which the acquiror possesses a material economic stake in the savings association resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the savings association; or

(ii) that enables the acquiror to influence a material aspect of the management or policies of the savings association, other than agreements to which the savings association is a party where the restrictions are customary under the circumstances and in the case of an acquisition agreement, which apply only during the period when the acquiror is seeking the Office's approval to acquire the savings association, the agreement prohibits transactions between the acquiror and the savings association and their respective affiliates without approval by the District Director or his or her designee during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the savings association in the event the acquisition is not approved or not approved by a specified date.

(5) The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the savings association's voting stock or to vote more than 25 percent of a class of the savings association's voting stock in the future upon the occurrence of a future event.

(6) The acquiror would have the power to direct the disposition of more than 25 percent of a class of the savings association's voting stock in a manner other than a widely dispersed or public offering.

(7) The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the savings association's board of directors.

(8) The acquiror or a nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the savings association.

(d) *Rebuttable presumptions of concerted action.* An acquiror will be presumed to be acting in concert with the following persons and companies:

(1) A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee or management official of such company with respect to the acquisition of stock of a savings association, if

(i) Both the company and the person own stock in the savings association,

(ii) The company provides credit to the person to purchase the savings association's stock, or

(iii) The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings association;

(2) A person will be presumed to be acting in concert with members of the person's immediate family;

(3) Persons will be presumed to be acting in concert with each other where

(i) Both own stock in a savings association and both are also management officials, controlling shareholders, partners, or trustees of another company, or

(ii) One person provides credit to another person or is instrumental in obtaining financing for another person to purchase stock of the savings association;

(4) A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert;

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act of 1934, promulgated by the Securities and Exchange Commission.

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39) shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary.

(7) Persons or companies will be presumed to be acting in concert with each other and with any other person or company with which they also are presumed to act in concert.

(e) *Procedures for rebuttal*—(1) *Rebuttal of control determination.* An acquiror attempting to rebut a determination of control that would arise under paragraph (b) of this section shall file a submission with the Office setting forth the facts and circumstances which support the acquiror's contention that no control relationship would exist if the acquiror acquires stock or obtains a control factor with respect to a savings association. The rebuttal must be filed and accepted in accordance with this section before the acquiror acquires such stock or control factor.

(i) An acquiror seeking to rebut the determination of control arising under paragraph (b)(1) of this section shall submit to the Office an executed agreement materially conforming to the agreement set forth at § 574.100 of this part. Unless agreed to by the Office in writing, no other agreement or filing shall be deemed to rebut the determination of control arising under paragraph (b)(1) of this section. If accepted by the Office, the acquiror shall furnish a copy of the executed agreement to the association to which the rebuttal pertains.

(ii) An acquiror seeking to rebut the determination of control with respect to holding of proxies arising under paragraph (b)(2) of this section shall be subject to the requirements of paragraph (e)(1) of this section, except that in the case of a rebuttal of the presumption of control arising under paragraph (b)(2) of this section, the Office may require the acquiror to furnish information in response to a specific request for information and depending upon the particular facts and circumstances, to provide an executed rebuttal agreement materially conforming to the agreement set forth at § 574.100 of this part, with any modifications deemed necessary by the Office.

(2) *Presumptions of concerted action.* An acquiror attempting to rebut the presumption of concerted action arising under paragraph (d) of this section shall file a submission with the Office setting forth facts and circumstances which clearly and convincingly demonstrate the acquiror's contention that no action in concert exists. Such a statement must be accompanied by an affidavit, in form and content satisfactory to the Office, executed by each person or company presumed to be acting in concert, stating that such person or company does not and shall not, without having made necessary filings and obtained approval or clearance thereof under the Holding Company Act or the Control Act, as applicable, have any agreements or understandings, written or tacit, with respect to the exercise of control, directly or indirectly, over the management or policies of the savings association, including agreements relating to voting, acquisition or disposition of the savings association's stock. The affidavit shall also recite that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of the Office's regulations at 12 CFR 563.180(b), and would be considered a "presumptive disqualifier" under 12 CFR 574.7(g)(1)(v).

(3) *Determination.* A rebuttal filed pursuant to paragraph (e) of this section shall not be deemed sufficient unless it includes all the information, agreements, and affidavits required by the Office and this part, as well as any additional relevant information as the Office may require by written request to the acquiror. Within 20 calendar days after proper filing of a rebuttal submission, the Office will provide written notification of its determination to accept or reject the submission; request additional information in connection with the submission; or return the submission to the acquiror as materially deficient. Within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office, the Office shall notify the acquiror in writing as to whether the rebuttal is thereby deemed to be sufficient. If the Office fails to notify an acquiror within such time, the rebuttal shall be deemed to be accepted. The Office may reject any rebuttal which is inconsistent with facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

(f) *Safe harbor.* Notwithstanding any other provision of this section, where an acquiror has no intention to participate in or to seek to exercise control over a savings association's management or policies, the acquiror may seek to qualify for a safe harbor with respect to its ownership of stock of a savings association.

(1) In order to qualify for the safe harbor, an acquiror must submit a certification, which shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned makes this submission pursuant to § 574.4(f) of the regulations of the Office of Thrift Supervision ("Office") with respect to [name of savings association] and hereby certifies to the Office the following:

The undersigned is not in control of [name of savings association] under § 574.4(a);

The undersigned is not subject to any control factor as enumerated in § 574.4(c) with respect to the [name of savings association];

The undersigned will not solicit proxies relating to the voting stock of [name of savings association];

Before any change in status occurs that would bring the undersigned within the scope of § 574.4 (a) or (b), the undersigned will file and obtain approval of a rebuttal, notice or application, as appropriate.

The undersigned has not acquired stock of [name of savings association] for the purpose or effect of changing or influencing the control of [name of savings association] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph shall be submitted to the Office in accordance with § 574.6(b)(3) of this part.

§ 574.5 Certifications of ownership and other reports.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10 percent of any class of stock of a savings association or additional stock above 10 percent of the stock of a savings association occurring after December 28, 1985, an acquiror shall file in accordance with § 574.6(b)(4) of this part a certification with the Office as described in this section.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of savings association or holding company]. The undersigned is not in control of such association or company, as defined in 12 CFR 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, or notice under the Change in Bank Control Act, 12 U.S.C. 1817(j), or filing and obtaining acceptance by the Office of Thrift Supervision of a rebuttal of the rebuttable determination of control.

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Office has approved the acquisition of the savings association or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this part.

(b) *Reports of loans secured by voting stock.* Whenever a savings association, or a bank which has accounts insured by the Federal Deposit Insurance Corporation, makes a loan, or loans, secured (or to be secured) by 25 percent or more of the outstanding voting stock of a savings association, unless the borrower has been the owner of record of such stock for a period of one year or more or the stock is of a newly organized association prior to its opening, a report shall be filed with the Office by the president or other chief executive officer of the lending institution containing the following information:

(1) The name of the borrower;

(2) The date and amount of the loan;

(3) The name of the savings association which has issued or is to issue the stock securing the loan; and

(4) The number of shares securing the loan.

(c) *Privacy.* All reports and certifications filed under this § 574.5 shall be for the information of the Office in connection with its examination functions and shall be provided confidential treatment by the Office.

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application or notice required by § 574.3 of this part shall be filed in the form prescribed by the Office as provided in this section. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of § 574.6(f) of this part. In the case of an application involving a merger (including a merger with an interim association) the application forms specified below shall be used in lieu of an application that otherwise would be required for such merger under § 546.2, § 552.13, and § 563.22 of this chapter.

(1) *H–(e)1.* This application shall be used for all applications filed under § 574.3(a) by a company, other than a savings and loan holding company, for approval of an acquisition of one savings association.

(2) H–(e)1–S. Notwithstanding the provisions of paragraph (a)(1) of this section, an application filed under § 574.3(a) that satisfies each of the conditions for automatic approval specified in 12 CFR 574.7 (a)(2) and (a)(3), need only include the following information:

(i) A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"). If no such Registration Statement has been or will be filed, a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, should be provided, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act;

(ii) Copies of the savings association's most recent Community Reinvestment Act statement and examination report, and any Community Reinvestment Act comments filed with the savings association within the one year period preceding the filing of the application;

(iii) A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, the Holding Company Act, or the regulations promulgated thereunder, 12 CFR 563f and 584.9;

(iv) A certification that the savings association is eligible to file Application H–(e)1–S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7 (a)(2) and (a)(3);

(v) For any officer or director of the savings association that has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Office's Biographical and Financial Report on Form 1393;

(vi) Copies of any new or amended employment contracts to which the savings association or the proposed holding company is or will be a party that are entered into as a part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction;

(vii) In the event any of the proposed officers, directors or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company or other depository institution, information identifying the institution, the number of shares owned and the percentage of outstanding shares owned. If no proposed officers, directors or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided;

(viii) The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to § 574.6(a)(2)(i); provided however, that to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to § 574.6(a)(2)(i), the applicant shall include a cross-reference sheet specifying the document and page number where such information and documents are located:

(A) the information required by Item 3 of Application H–(e)1 relating to information about controlling persons of the proposed holding company;

(B) the information required by Item 4 of Application H–(e)1 relating to the details of the proposed transaction;

(C) a statement as to the reasons for proposing the reorganization;

(D) the information required by Item 5 of Application H–(e)1 relating to fees, commissions and expenses;

(E) the information required by Item 6 of Application H–(e)1 relating to regulatory approval;

(F) the information required by Item 11 of Application H–(e)1 relating to the board of directors and executive officers of the proposed holding company;

(G) a statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that shows the savings association and the holding company on a historical basis, *pro forma* adjustments, if any, and the holding company on a *pro forma* basis;

(H) a description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the application;

(I) a description of the present dividend policy of the savings association, and a description of the proposed dividend policy of the savings association and the holding company subsequent to the reorganization;

(J) a copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(K) a copy of the charter and bylaws of the holding company; and

(L) a copy of any opinions of counsel or revenue rulings received by the savings association or the holding company in connection with the reorganization.

(ix) A consolidated business plan conforming to requirements set by the District Director.

(3) H–(e)2. This application shall be used for all applications filed under § 574.3(a) for approval of acquisitions of:

(i) One or more savings associations by a savings and loan holding company or

(ii) More than one savings association by any other company.

This application shall also be used for all applications filed under § 574.3(a) to acquire control of a savings association by any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, and for all applications filed under § 574.8 regarding the acquisition by a savings and loan holding company of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8(a): *Provided* That the Office may determine as a general matter or on a case by case basis not to require information required by Form H–(e)2 not relevant to applications by such persons or such savings and loan holding companies.

(4) *H–(e)3.* This application shall be used for all applications filed under § 574.3(a):

(i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of a savings association or uninsured institution or a savings and loan holding company, or

(ii) By any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more savings associations.

(5) *H–(e)4.* This information filing shall be used to claim that a reorganization is exempt from prior written approval of the Office under § 574.3(c)(1)(ii).

(6) *Notice Form 1393, Parts A and B.* This form shall be used for all notices filed under § 574.3(b) regarding the acquisition of control of a savings association by any person or persons not constituting a company except as provided in paragraph (a)(3) of this section.

(b) *Filing requirements.*

(1) *Applications. Notices, and Rebuttals.*

(i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions that are not eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed as follows: one copy with the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, labelled "Dockets Copy"; one (manually executed) copy with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; one copy with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; and one copy with the District Director(s) of the district(s) in which the savings association or associations involved in the transaction have their home office or offices. Unsigned copies shall be conformed.

(ii) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed as follows: two copies each with the District Director(s) for the district(s) in which the savings association or associations involved in the transaction have their home office or offices (including one manually executed copy); and one copy with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Unsigned copies shall be conformed. Each copy shall include a summary of the proposed transaction including an explanation of why the application, notice, or rebuttal submission may be processed under delegated authority, and an affirmative representation that none of the conditions specified in § 574.9(a) that would preclude action under delegated authority are present. Such statement shall be clearly labeled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the person or company making the submission subsequently becomes aware of additional information or changed circumstances that would alter the eligibility of the application, notice, or rebuttal submission for processing under delegated authority, the company or person shall promptly so advise the District Director in writing.

(iii) All companies submitting applications under Section 574.3 of this part shall comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (parts 801, 802, and 803 of title 16 of the Code of Federal Regulations).

(iv) Any acquiror filing a notice pursuant to § 574.3(b) of this part shall file three additional copies of the notice with the District Director, and shall label such copies "FDIC Copy," "Comptroller Copy" and "Federal Reserve Copy," respectively. In addition, any acquiror filing a notice pursuant to § 574.3(b) of this part with respect to acquisition of a state-chartered association shall file an additional copy of the notice with the District Director and label such copy "State Supervisor Copy."

(v) In the case of an application involving a merger (including a merger involving an interim association), the applicant shall file four additional copies of the application with the District Director, and shall label such copies "FDIC Copy," "Comptroller Copy," "Federal Reserve Copy," and "DOJ Copy," respectively.

(vi) In the case of an application filed on Form H–(e)2 (other than an application to which paragraph (b)(1)(v) of this section applies or an application under 574.8), the applicant shall file one additional copy of the application with the District Director and shall label such copy "DOJ copy."

(vii) Any person or company may amend an application, notice, or rebuttal submission, or file additional information with respect thereto, upon request of the Office or, in the case of the party filing an application, notice, or rebuttal, upon such party's own initiative.

(2) *H–(e)4. Information Filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Office under § 574.3(c)(1)(ii) shall be filed as follows: one copy shall be filed with the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, labelled "Dockets Copy;" one copy shall be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552; and a third copy shall be filed with the District Director. Such a filing shall be clearly labeled "H–(e)4 Information Filing."

(3) *Safe-harbor filing.* In order to qualify for the safe harbor under § 574.4(f), a certification must be filed setting forth the information required by § 574.4(f). Three copies shall be submitted: one to the Secretariat, Office of Thrift Supervision, Washington, DC 20552, labelled "Dockets Copy;" one (manually signed) to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; and one to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. A fourth copy shall be transmitted to the District Director.

(4) *Certification.* Certifications required by § 574.5(a) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(5) *Reports of loans.* Reports of loans required by § 574.5(b) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(6) *Reports on pledges, hypothecations and liquidations.* Reports of pledges, hypothecations and liquidation transactions required by § 574.3(c)(1)(iii) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(c) *Sufficiency and waiver.*

(1) Except as provided in § 574.6(c)(5), an application or notice filed pursuant to § 574.3 (a) or (b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Office and this part, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Office may require by written request to the applicant. Unless an application or notice specifically indicates otherwise, the application or notice shall be considered to pertain to acquisition of 100 percent of a savings association's voting stock. Where an application or notice pertains to a lesser amount of stock, the Office may condition its approval or non-disapproval to apply only to such amount, in which case additional acquisitions may be made only by amendment to the acquiror's application or notice and the Office's approval or non-disapproval thereof. Failure by an applicant to respond completely to a written request by the Office for additional information within

30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, notice, or rebuttal filing or may be treated as grounds for denial of an application, issuance of a notice of disapproval of a notice, or rejection of a rebuttal.

(2) The period for the Office's review of any proposed acquisition will commence upon receipt by the Office of a notice or application deemed sufficient under paragraph (c)(1) of this section. The Office shall notify an acquiror in writing within 30 calendar days after proper filing of an application or notice as to whether an application or notice—

(i) Is sufficient;

(ii) Is insufficient, and what additional information is requested in order to render the application or notice sufficient; or

(iii) Is materially deficient and will not be processed: *Provided*, That if the public comment period specified in paragraph (e) of this section is extended, the 30 day period shall be extended for the same number of days the public comment period is extended. The Office also shall notify an acquiror in writing within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office as to whether the application or notice is thereby deemed to be sufficient. If the Office fails to so notify an acquiror within such times, the application or notice shall be deemed to be sufficient as of the expiration of the applicable period.

(3) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the acquiror, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the acquiror or was concealed at the time an application or notice was deemed to be sufficient or which pertains to developments subsequent to the time an application or notice was deemed to be sufficient, the Office, at its option, may request such additional information as it considers necessary, or may deem the application or notice not to be sufficient until such additional information is furnished and cause the review period to commence again in its entirety upon receipt of such additional information.

(i) The 60-day period for the Office's review of an application or notice deemed to be sufficient also may be extended by the Office for up to an additional 30 days.

(ii) The period for the Office's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if—

(A) the Office determines that any acquiring party has not furnished all the information required under this part;

(B) in the Office's judgment, any material information submitted is substantially inaccurate;

(C) the Office has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or

(D) the Office determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(iii) In the case of an application or notice that is not eligible for processing under delegated authority by the District Director pursuant to § 574.9(a), actions by the District Director or his or her designee shall not commence any of the periods described in this paragraph (c) for review.

(4) With respect to an H–(e)4 information filing, the Chief Counsel or his or her designee shall have 30 days after receipt of a filing deemed sufficient to disapprove the assertion that the company qualifies for the exemption provided in § 574.3(c)(1)(ii). After the expiration of such 30-day period without response from the Chief Counsel, the filing shall be deemed to be approved.

(5) The Office may waive any requirements of this paragraph (c)(5) determined to be unnecessary by the Office, upon its own initiative, upon the written request of an acquiring person, or in a supervisory case.

(d) *Publication.* (1) An acquiror shall publish a notification as provided in this section no earlier than three calendar days before and no later than three calendar days after filing an application under § 574.3(a) or 574.8 or notice under § 574.3(b) and shall mail a copy of the notification to the association whose stock is sought to be acquired. Publication shall be made in the business section of a newspaper printed in the English language in:

(i) The community in which the home office of the savings association is located; and

(ii) If applicable, the community in which the home office of the largest subsidiary savings association of the acquiror is located.

If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the acquiror may be required to publish the notification simultaneously in the appropriate language(s).

(2) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

Notice of Filing of Application or Notice for Acquisition of a Savings Association

This is to inform the public that under § 574.3 of the Regulations of the Office of Thrift Supervision ("Office") for Acquisitions of Savings Associations [Acquiror] [has filed/intends to file] an [application/notice] with the Office for permission to [acquire control of/purchase a qualified stock issuance of] [savings association], located in [location], on [date or intended date of filing].

Anyone may write in favor of or protest against the [application/notice] and in so doing may submit such information as he or she deems relevant. Copies of all submissions must be sent to the District Director, [give name and address] [and in the case of applications or notices not delegated to the District Director under § 574.9(a), one copy to each of the following: Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, labeled "Dockets Copy;" Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552] within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause if a written request is received by the District Director within the initial 20-day period.

You may inspect the non-confidential portion of the [application/notice] and non-confidential portions of all comments filed with the District Director [and in the case of applications and notices not delegated to the District Director, by contacting the FOIA Section, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.] If you have any questions concerning these procedures, contact the District Director, at [(__) _____, [and the FOIA Section at (202) 906–_____]

(3) Promptly after publication, the acquiror shall transmit copies of each notice and a publisher's affidavit of publication to the Senior Deputy Director for Supervision (Operations) and to the District Director(s) for the district(s) in which the savings associations involved in the acquisition have their home offices. In addition, where a savings association to be acquired (including a holding company

thereof) has securities registered under the Securities Exchange Act of 1934, one copy of the notice also shall be transmitted to the Chief Counsel, Corporate and Securities Division.

(4) Notice shall be provided to the appropriate state supervisor and to persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d)(1) of this section. Any other persons who might have an interest in the application or notice may also be notified.

(5) Disclosure of any part of an application or notice shall be made only in compliance with paragraph (f) of this section.

(e) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph (e) or as requested by the Office. Within 20 calendar days of the date of filing (or up to 40 calendar days after such date if an extension is requested in writing within the initial 20-day period) anyone may file comments in favor of or in protest of the application or notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, unverified accusations, or materials pertaining to an application, notice, other filing or public comment which the commenter is unwilling to have disclosed to the party making such submission, shall not be part of the record and need not be considered by the Office. Comments shall be filed in the manner and in the locations provided in paragraph (b) of this section for the application or notice to which the comments pertain.

(f) *Disclosure.* (1) Any application, notice, other filings, public comment, or portion thereof, made pursuant to this part for which confidential treatment is not requested in accordance with this paragraph (f), shall be immediately available to the public and not subject to the procedures set forth herein. Public disclosure shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and parts 503 and 505 of this chapter. Applicants and other submitters should provide confidential and non-confidential versions of their filings, as described in § 574.6(f) (2) and (3) in order to facilitate this process.

(2) Any person who submits any information or causes or permits any information to be submitted to the Office pursuant to this part may request that the Office afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, which shall include such information that would be deemed to result in the commencement of a tender offer under § 240.14d–2 of title 17 of the Code of Federal Regulations, or for any other reason permitted by Federal law. Such request for confidentiality must be made and justified in accordance with paragraph (f)(5) of this section at the time of filing, and must, to the extent practicable, identify with specificity the information for which confidential treatment may be available and not merely indicate portions of documents or entire documents in which such information is contained. Failure to specifically identify information for which confidential treatment is requested, failure to specifically justify the bases upon which confidentiality is claimed in accordance with paragraph (f)(5) of this section, or overbroad and indiscriminate claims for confidential treatment, may be bases for denial of the request. In addition, the filing party should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Office (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which identifies with specificity the information as to which confidential treatment is requested. Any such request must be substantiated in accordance with paragraph (f)(5) of this section.

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impracticable under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) A determination as to the validity of any request for confidential treatment may be made when a request for disclosure of the information under the Freedom of Information Act is received, or at any time prior thereto. Five business days notice will be provided to the filing party if the Office receives a request for the information under the Freedom of Information Act and determines to disclose material for which confidential treatment has been requested.

(5) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determination by the Office, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Office;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether commercial or financial information was voluntarily submitted to the Office, and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Office;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential treatment;

(ix) The amount of time after the consummation of the proposed acquisition for which the information should remain confidential and a justification thereof;

(x) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(6) Any person requesting access to an application, notice, other filing, or public comment made pursuant to this part for purposes of commenting on a pending submission may prominently label such request: "Request for Disclosure of Filing(s) Made Under Part 574/Priority Treatment Requested."

(g) *Supervisory cases.* The provisions of paragraphs (d), (e) and (f) of this section may be waived by the Office in connection with a transaction approved by the Office for supervisory reasons.

(h) *Notification of State supervisor.* Upon receiving a notice relating to an acquisition of control of a state-chartered savings association, the Office shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such state agency may be submitted. The Office shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition.

Notwithstanding the provisions of this paragraph (h), if the Office determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the default of the association involved in the proposed acquisition, the Office may dispense with the requirement of this paragraph (h) or, if a copy of the notice is forwarded to the state supervisory agency, the Office may request that the views and recommendations of such state supervisory agency be submitted immediately in any form or by any means acceptable to the Office.

(i) *Additional procedures for acquisitions involving mergers.* Acquisitions of control involving mergers (including mergers with an interim association) shall also be subject to the procedures set forth in § 563.22 of this chapter to the extent applicable, except as provided in paragraph (a) of this Section.

§ 574.7 Determination by the Office.

(a) *Acquisition by a company.* (1) The Office shall approve an application by any company other than a savings and loan holding company to acquire control of one savings association unless it determines that the criteria set forth in paragraph (c) of this section are not met. Acquisitions involving mergers with an interim association shall also be subject to §§ 546.2, 552.13, 563.22 and 571.5.

(2) Subject to compliance with the requirements of §§ 546.2, 552.13 and 563.22, as applicable, an application filed pursuant to § 574.6(a)(2) by a savings association solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such savings association, and related applications for permission to organize an interim federal association, and for merger with such interim association, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date:

(i) The Office has requested additional information of the applicant in writing;

(ii) Notified the applicant that the application is materially deficient and will not be processed; or

(iii) Denied the application prior to that time; provided that to be eligible for approval under this paragraph (a)(2):

(A) The holding company shall not be capitalized initially in an amount exceeding the amount the savings association is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines issued by the Senior Deputy Director for Supervision (Policy);

(B) The creation of the savings and loan holding company by the association is the sole transaction contained in the application, and there are no other transactions requiring Office approval incident to the creation of the holding company (other than the creation of an interim association that will disappear upon consummation of the reorganization and the merger of the savings association with such interim association to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(C) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the association;

(D) The acquisition raises no significant issues of law or policy under then current Office policy;

(E) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or prenuptial agreement required by Office regulations, or in the absence thereof, required pursuant to policy guidelines issued by the Senior Deputy Director for Supervision (Policy);

(F) The holding company shall furnish the following information in accordance with the specified time frames:

(*1*) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the savings association shall certify to the District Director or his or her designee in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the savings association since the date of the financial statements submitted with the application;

(*2*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the savings association acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(*3*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(*4*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee a certification stating that the holding company will not cause the savings association to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the District Director or his or her designee is obtained;

(G) In the event an interim association is utilized to facilitate the reorganization transaction, the resulting association shall, no later than 30 days from the date of consummation of the reorganization transaction, furnish a certification by legal counsel stating:

(*1*) The effective date of the merger involving the interim association and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization or similar document pursuant to which the transaction was accomplished;

(*2*) The interim association has not opened for business;

(*3*) The merger was consummated within 120 calendar days of the date of approval: and

(*4*) After completion of the organization of the interim association, the board of directors of the interim association ratified the Agreement and Plan of Reorganization or similar document; and

(H) The proposed acquisition shall be consummated within 120 days after the application is automatically approved under this § 574.7(a)(2).

(3) To the extent that an association reorganizing into holding company form is subject to provisions relating to its mutual to stock conversion imposed by 12 CFR 563b.3(c)(9), (c)(17), (c)(18), (c)(19), (g)(1) or (i), such provisions shall be applicable to any holding company approved automatically pursuant to paragraph (a)(2) of this section.

(b) *Acquisition by a savings and loan holding company.* The Office shall not approve an acquisition by a savings and loan holding company to acquire control of a savings association, by any other company to acquire control of more than one savings association, by any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance by a savings association pursuant to § 574.8 of this part, except in accordance with paragraph (c) of this section. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Office shall request from the Attorney General and consider any report rendered within 30 days of such request on the competitive factors involved. Acquisitions involving mergers (including mergers with an interim association) shall also be subject to §§ 546.2, 552.13, 563.22, and 571.5.

(c) *Application criteria.* The Office may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8, if the Office finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the SAIF or BIF, or if the acquiror fails or refuses to furnish information requested by the Office. In connection with applications filed pursuant to § 574.6 (a)(2) and (a)(3) and § 574.8 of this part, the Office will also consider the convenience and needs of the community to be served. Moreover, the Office shall not approve any proposed acquisition:

(1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

(2) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Office finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served.

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the Office may disapprove any proposed acquisition, if the Office determines that:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States;

(2) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of the acquiring person is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, the Office, or the public to permit such person to control the association;

(5) The acquiring person fails or refuses to furnish information requested by the Office; or

(6) The Office determines that the proposed acquisition would have an adverse effect on the SAIF or the BIF.

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Office has failed to disapprove such notice, the proposed acquisition may take place: *Provided,* That it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) (1) *Disapproval of a notice.* Within three business days after its decision to disapprove a notice, the Office shall notify the acquiror in writing of the grounds for disapproval. If the disapproval was issued by the District Director or the Senior Deputy Director for Supervision (Operations) pursuant to delegated authority, such notification shall include a statement that the acquiror may request review of the disapproval by the Director within 20 days of the receipt of such notification. If such review is denied by the Director or the disapproval was issued by the Director, the acquiror may request an administrative hearing under paragraph (4) of the Control Act within 10 days of receipt of the notification of disapproval or notification of the Director's decision not to review the denial.

(2) *Appeal.* Denial of an application or notice or rejection of a rebuttal by the District Director pursuant to section 574.9(a) may be appealed to the Office under the following procedures: Within 20 days after notification of the District Director's decision as provided herein, the acquiror must notify the Secretariat in writing of the acquiror's desire to appeal the District Director's decision. Two copies of such request for review must be submitted to the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with one copy indicated "Attention: Senior Deputy Director for Supervision (Operations) and a second copy indicated "Attention: Corporate and Securities Division." A third copy should be sent to the appropriate District Office. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the District Director's denial or notice of disapproval or rejection is contended to be erroneous. If an applicant does not file an appeal within the time permitted under this section, any objection to the District Director's action is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(g) *Presumptive disqualifiers*—(1) *Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (c) of

this section or the integrity test of paragraph (d)(4) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations; or

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding company thereof under the Holding Company Act or the Bank Holding Company Act or otherwise,

(C) A notice relating to a change in control of any of the foregoing under the Control Act or the Repealed Control Act; or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Office, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Office or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of § 574.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section, or the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the Office, create excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

§ 574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Office under this section 574.8, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) an undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) the assets of which exceed the liabilities of such association; and

(B) which does not comply with one or more of the capital standards in effect under section 5(t) of the Home Owners' Loan Act; or

(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Office in accordance with the provisions of section 10(b) of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Office approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(c) *Approval of acquisitions.*

(1) *Criteria.* The Office, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 574.7(c) of this part, including the presumptive disqualifiers set forth in § 574.7(g) of this part.

(2) *Additional capital commitments not required.* The Office shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Office or any other Federal agency having jurisdiction.

(3) *Other conditions.* The Office shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Office determines to be appropriate, including—

(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Office may require; and

(ii) such other conditions as the Office deems necessary or appropriate to prevent evasions of this section, including, but not limited to, requiring a rebuttal of control agreement in a form substantially similar to that appearing at § 574.100.

(4) *Application deemed approved if not disapproved within 90 days.* An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Office if such application has not been disapproved by the Office before the end of the 90-day period beginning on the date such application has been deemed sufficient under this part.

(d) *No limitation on class of stock issued.* The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this § 574.8, shall use Form H-(e)2, as provided in § 574.6(a)(3).

§ 574.9 Delegations of authority.

(a) *Actions by the District Director.* The District Director or his or her designee is authorized to take any action that the Office is authorized to take under this part, except as follows:

(1) The District Director or his or her designee may not take any action with respect to any application filed under § 574.3(a) of this part or notice filed under § 574.3(b) of this part if any of the following conditions are present:

(i) The acquisition is opposed by the savings association to be acquired or is contested by another prospective acquiror;

(ii) The application or notice raises a significant issue of law or policy; or

(iii) The acquisition is a part of a conversion under Part 563b of this chapter.

(2) The District Director or his or her designee may not take any action with respect to any application filed under § 574.8 of this part.

(3) The District Director or his or her designee may grant or deny a request for waiver of certified financial statements for an acquiror's proprietary interests required in connection with a notice filed under § 574.3(b) of this part, provided the acquiror furnishes the following substitute information:

(i) A statement supporting the acquiror's contention that production of such certified financial statements is unduly burdensome;

(ii) Tables setting forth:

(A) The amount of investment in the savings association and the investment as a percentage of the acquiror's net worth; and

(B) The amount of each entry as a percentage of the acquiror's total assets, net worth and gross income; and

(iii) The latest available Federal income tax returns for each entity for the immediately preceding two taxable years.

(4) The District Director or his or her designee may not take any action with respect to any rebuttal filed under § 574.4(e) of this part if any of the following conditions are present:

(i) With a rebuttal of control, the acquiror submits an executed rebuttal agreement that does not conform in all material respects to the agreement set forth in § 574.100;

(ii) With a rebuttal of concerted action, an acquiror submits an executed affidavit that does not conform in all material respects to the requirements of § 574.4(e)(2) of this part;

(iii) The rebuttal raises a significant issue of law or policy;

(iv) The proposed acquisition of securities or other action covered by the rebuttal is opposed by the savings association whose securities are to be acquired or there is a competing acquiror for the savings association's securities; or

(v) The acquisition is part of a conversion under Part 563b of this chapter.

(b) *Joint actions by the Senior Deputy Director for Supervision (Operations) and the Chief Counsel.* The Senior Deputy Director for Supervision (Operations) with the concurrence of the Chief Counsel, or their respective designees, are authorized to take any action that the Office is authorized to take under this part, except approve or disapprove an application filed under § 574.3(a) of this part that raises a significant issue of law or policy, or disapprove or issue notice of intent not to disapprove a notice filed under § 574.3(b) of this part that raises a significant issue of law or policy.

(c) *Actions by the Director.* Any action that the Office is authorized to take under this part may be taken by the Director.

§ 574.100 Rebuttal of control agreement.

Agreement

Rebuttal of Rebuttable Determination Of Control Under Part 574

WHEREAS

A. [ ] is the owner of [ ] shares (the "Shares") of the [ ] stock (the "Stock") of [name and address of association], which Shares represent [ ] percent of a class of "voting stock" of [ ] as defined under the Acquisition of Control Regulations ("Regulations") of the Office of Thrift Supervision ("Office"), 12 CFR part 574 ("Voting Stock");

B. [ ] is a "savings association" within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] ("Additional Shares"), such that [ ]'s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a "control factor" as defined in the Regulations ("Control Factor");

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in

any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application ("Application") under the Savings and Loan Holding Company Act ("Holding Company Act"), 12 U.S.C. 1467a, or file and obtain clearance of a notice ("Notice") under the Change in Control Act ("Control Act"), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the "Rebuttal");

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the Office that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of [insert name of association and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of association and any holding company thereof]'s board of directors or as president or chief executive officer of [insert name of association and any holding company thereof];

3. Engage in any intercompany transaction with [ ] or [ ]'s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of association and any holding company thereof] for the board of directors of [insert name of association and any holding company thereof] other than as permitted in paragraph A-1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];

6. Do any of the following, except as necessary solely in connection with [ ]'s performance of duties as a member of [ ]'s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];

(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or character of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with [ ].

C. [ ] shall not assist, aid or abet any of [ ]'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement.

D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the Office for its determination;

E. Prior to acquisition of any shares of "Voting Stock" of [ ] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [ ] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;

F. At any time during which 10 percent or more of any class of Voting Stock of [ ] is owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ ] files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;

G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;

H. Where any Application or Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, [ ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the Office.

K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.

III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.

IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.

V. This Agreement shall terminate upon (i) the approval by the Office of [ ]'s Application under the Holding Company Act or clearance by the Office of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [ ] of a sufficient number of shares of [ ], or (iii) the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

VI. IN WITNESS THEREOF, the parties thereto have executed this Agreement by their duly authorized officer.

[Acquiror]
Office of Thrift Supervision.
Date: ----------
By: ----------

SUBCHAPTER E—REGULATIONS APPLICABLE TO STATE-CHARTERED SAVINGS ASSOCIATIONS

PART 579—POSSESSION BY CONSERVATORS FOR STATE SAVINGS ASSOCIATIONS

Sec.

579.1 Scope.
579.2 Procedure upon taking possession.
579.3 Notice.
579.4 Inventory.
579.5 Inspection of reports.
579.6 Delegation by conservator.
579.7 Surrender of possession by a conservator.
579.8 Final discharge and release of conservator.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 579.1 Scope.

The regulations of this part shall govern conservators for state savings associations appointed by the Director of the Office.

§ 579.2 Procedure upon taking possession.

(a) The conservator for a state association shall take possession of the association by taking possession of the principal office of the association and in accordance with the terms of the Office's appointment.

(b) Upon taking possession, the conservator shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records, and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator knows to be holding or in possession of assets of the savings association, that the receiver has succeeded to all rights, titles, powers and privileges of the savings association.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings association in substantially the following form:

> The (name of state association) is in the hands of the Conservator under appointment by the Director of the Office of Thrift Supervision.
>
> Conservator
>
> Date

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the savings association's assets or property.

§ 579.3 Notice.

If the Director of the Office appoints a conservator under this Part, the Secretary to the Office shall mail a certified copy of the Office's appointment to the savings association's address as it appears in the Office's records and to the State official having jurisdiction over the savings association. Notice of the appointment shall be filed immediately for publication in the **Federal Register.**

§ 579.4 Inventory.

(a) As soon as practicable after taking possession, the conservator shall inventory the savings association's assets as of the date possession was taken. The inventory shall include the value on the savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the conservatorship in the savings association's principal office.

§ 579.5 Inspection of reports.

Unless the Director of the Office or Senior Deputy Director for Supervision (Operations) otherwise directs, the conservator's inventories, statements, and reports shall be in at least two copies. One copy shall be filed with the Office, and one copy shall be filed with the Senior Deputy Director for Supervision (Operations). The copies shall constitute permanent records of the conservatorship open for inspection whenever the office of the Secretary to the Office is open for business or at such times and on such conditions as the Director of the Office may direct.

§ 579.6 Delegation by conservator.

The conservator may delegate any powers and authorities vested in him or her.

§ 579.7 Surrender of possession by a conservator.

(a) When the Director of the Office restores a state savings association in the hands of a conservator to its previous management, that action, except as the Director of the Office otherwise provides, shall restore the rights, titles, powers and privileges of its stockholders, members, accountholders, depositors, officers, and directors.

(b) When a receiver is appointed for a state savings association in the hands of a conservator, the conservator shall, as the Director of the Office may require, surrender possession of the association to the receiver.

§ 579.8 Final discharge and release of conservator.

When relieved of all duties, the conservator shall file with the Office a report which the Office finds satisfactory. The Office may direct an audit in connection with the report and

shall approve or disapprove the accounts of the conservator. If the accounts are approved, the conservator shall thereupon be completely and finally released.

PART 580—POSSESSION BY RECEIVERS FOR STATE SAVINGS ASSOCIATIONS

Sec.
580.1 Scope.
580.2 Procedure upon taking possession.
580.3 Notice of appointment.
580.4 Inventory.
580.5 Inspection of reports.
580.6 Delegation by receiver.
580.7 Final discharge and release of receiver.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 16, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 580.1 Scope.

The regulations of this part shall govern receivers for state savings associations appointed by the Director of the Office.

§ 580.2 Procedure upon taking possession.

(a) The receiver for a state savings association shall take possession of the savings association by taking possession of the principal office of the savings association and in accordance with the terms of the Director of the Office's appointment.

(b) Upon taking possession, the receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the state savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian who shall be in the principal office of the savings association and appears to be in charge.

(3) Take possession of the savings association's books, records, and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the receiver knows to to be holding or in possession of assets of the savings association, that the receiver has succeeded to all the rights, titles, powers and privileges of the savings association, and to the titles of any previous conservator, receiver or other legal custodian of the savings association appointed under state law.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings association.

(i) If the appointment occurs during the three-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the notice shall be in substantially the following form:

> The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
>
> Receiver
>
> Date

(ii) If the appointment occurs after the end of such period, the notice shall be in substantially the following form:

> The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.
>
> Receiver
>
> Date

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to

(i) All rights, titles, powers and privileges of the savings association, and of any stockholder, member, accountholder depositor, officer or director; and

(ii) Title to the books, records, and assets of every description of any conservator, receiver or other legal custodian of the savings association appointed under state law.

No stockholder, member, accountholder, depositor, officer, or director or any previous conservator, receiver or other legal custodian shall thereafter have or exercise any such right, title, powers or privileges or act in connection with any asset or property of any nature of the savings association.

(c) The receiver shall promptly notify by certified mail the court or other public authority having jurisdiction over such conservator, receiver or other legal custodian and any supervisory or regulatory authority to which the savings association was theretofore subject, of its possession of the savings association.

§ 580.3 Notice of appointment.

If the Director of the Office appoints a receiver under this Part, the Secretary to the Office shall mail a certified copy of the appointment to the savings association's address as it appears in the Office's records and to the State official having jurisdiction over the savings association. Notice of the appointment shall be filed immediately for publication in the Federal Register.

§ 580.4 Inventory.

(a) As soon as practicable after taking possession, the receiver shall inventory the savings association's assets as of the date possession was taken. The inventory shall include the value on the savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the receivership in the savings association's principal office.

§ 580.5 Inspection of reports.

The receiver's inventories, statements, and reports shall be in at least as many copies as these regulations require or as the Director of the Office otherwise directs. One copy shall be filed with the Office and shall constitute the permanent records of the liquidation and shall be open for inspection at such time and on such conditions as the Director of the Office may direct, or in the absence of such direction, whenever the Office is open for business.

§ 580.6 Delegation by receiver.

The receiver may delegate any powers and authorities vested in him or her.

§ 580.7 Final discharge and release of receiver.

When the receiver recommends final distribution of assets or is otherwise relieved of its duties, it shall file with the Director of the Office a detailed report in form satisfactory to the Office. Unless the Director of the Office otherwise directs, upon final liquidation of the receivership or when the receiver completes, or is otherwise relieved of, its duties, the receivership shall be

examined and audited. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

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Authority: Sec. 2, 48 Stat. 128, (as amended 12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 15, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

§ 583.1 Acquire.

The term *acquire* means to acquire, directly or indirectly, ownership or control through an acquisition of shares, an acquisition of assets or assumption of liabilities, a merger or consolidation, or any similar transaction.

§ 583.2 Affiliate.

The term *affiliate* of a specified savings association means any person or company which controls, is controlled by, or is under common control with, such savings association.

§ 583.3 Bank.

The term *bank* means any national bank, state bank, state-chartered savings bank, cooperative bank, or industrial bank, the deposits of which are insured by the Bank Insurance Fund and also includes any institution that converted from a savings association charter to a bank charter and whose deposits are insured by the Savings Association Insurance Fund.

§ 583.4 Bank holding company.

The term *bank holding company* means any company which has control over any bank or over any company that is or becomes a bank holding company.

§ 583.5 BIF.

The term *BIF* means the Bank Insurance Fund, established by the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

§ 583.6 Company.

The term *company* means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include:

(a) The Federal Deposit Insurance Corporation,

(b) The Resolution Trust Corporation,

(c) Any Federal Home Loan Bank,

(d) The Office of Thrift Supervision, or

(e) Any company the majority of the shares of which is owned by

(1) The United States or any State,

(2) An officer of the United States or any State in his or her official capacity, or

(3) An instrumentality of the United States or any State.

§ 583.7 Control.

For purposes of this subchapter, a person shall be deemed to have *control* of:

(a) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(b) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(c) A trust if the person is a trustee thereof; or

(d) A savings association or any other company if the Office determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

§ 583.8 Corporation.

The term *Corporation* means the Federal Deposit Insurance Corporation.

§ 583.9 Director.

The term *director* as used in any document specified in part 584 of this subchapter means any director of a corporation or any individual who performs similar functions in respect of any company, including a trustee under a trust.

§ 583.10 District Director.

The term *District Director* means the senior representative of the Director for all matters dealing with the examination and supervision of savings associations in the District in which the subsidiary savings association of the registrant or applicant has its principal office, or in which the principal savings association business of the registrant or applicant is located.

§ 583.11 Diversified savings and loan holding company.

The term *diversified savings and loan holding company* means any savings and loan holding company whose subsidiary savings association and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or *pro forma* basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

§ 583.12 Multiple savings and loan holding company.

The term *multiple savings and loan holding company* means any savings and loan holding company which directly or indirectly controls two or more savings associations.

§ 583.13 Office.

The term *Office* means the Office of Thrift Supervision.

§ 583.14 Officer.

The term *officer* as used in any document specified in Part 584 of this subchapter means the chairman of the board, president, vice president, treasurer, secretary, or comptroller of any company, or any other person who participates in its major policy decisions.

§ 583.15 Parent company.

The term *parent company* means any company which directly or indirectly

controls any other company or companies.

§ 583.16 Person.

The term *person* means an individual or company.

§ 583.17 Qualified thrift lender.

The term *qualified thrift lender* means a financial institution that meets the appropriate qualified thrift lender test set forth in § 584.6 of this subchapter.

§ 583.18 Registrant.

The term *registrant* means a savings and loan holding company filing a registration statement with the Office pursuant to § 584.1. of this subchapter.

§ 583.19 SAIF.

The term *SAIF* means the Savings Association Insurance Fund, established by the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.).*

§ 583.20 Savings and loan holding company.

The term *savings and loan holding company* means any company that directly or indirectly controls a savings association, but does not include:

(a) Any company by virtue of its ownership or control of voting stock of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Office) as will permit the sale thereof on a reasonable basis; and

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a savings association on June 26, 1967, or

(2) Is a testamentary trust.

§ 583.21 Savings association.

The term *savings association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Corporation, and any corporation (other than a bank) the deposits of which are insured by the Corporation that the Office and the Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1).

§ 583.22 State.

The term *State* includes the District of Columbia and the Commonwealth of Puerto Rico.

§ 583.23 Subsidiary.

The term *subsidiary* means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

§ 583.24 Uninsured institution.

The term *uninsured institution* means any depository institution the deposits of which are not insured by the Corporation.

PART 584—REGULATED ACTIVITIES

Sec.

584.1 Registration, examination and reports.
584.2 Prohibited activities.
584.2a Exempt savings and loan holding companies and grandfathered activities.
584.2–1 Prescribed services and activities of savings and loan holding companies.
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584.3 Transactions with affiliates.
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584.11 Hearings.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec 301, 103 Stat. 342 (12 U.S.C 1468).

§ 584.1 Registration, examination and reports.

(a) *Filing of registration statements and other reports—*

(1) *Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Office by filing the appropriate registration statement specified in paragraph (a) of § 584.10 of this part.

(2) *Filing of annual reports.* Each registered savings and loan holding company, including subsidiary savings and loan holding companies, shall file an annual report H–(b)11, except that such report need not be filed by a savings and loan holding company that has filed a registration statement H–(b)3, H–(b)4, or H–(b)5, or by a savings and loan holding company which is a trust (other than a business trust). Annual reports shall be filed not later than 120 days after the close of the fiscal year.

(3) *Filing of H–(b)12.* Each registered savings and loan holding company which is required to file report H–(b)11 shall file reports of current information on report H–(b)12. The H–(b)12 shall be filed within 15 days of the end of each month during which any of the events specified in the report occurs, unless the required information has been previously reported by the registrant.

(4) *General.* Registration statements, annual reports, and the H–(b)12 are filed with the Office by transmitting the original and requisite number of copies enumerated on the report to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and by submitting the requisite number of copies to the District Director. Copies of forms to be used in submitting registration statements, annual reports, and the H–(b)12 may be obtained from any District Director or his or her designee.

(b) *Date of registration.* The date of registration of a savings and loan holding company shall be the date on which its registration statement is received by the Senior Deputy Director for Supervision (Operations) and the District Director.

(c) *Extension of time for registration.* For timely and good cause shown, the Office may extend the time within which a savings and loan holding company shall register.

(d) *Release from registration.* The Office may at any time, upon its own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Office shall determine that such company no longer has control of any savings association.

(e) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Office and the District Director such reports as may be required by the Office. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Office may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Office may require.

(f) *Books and records.* Each savings and loan holding company shall maintain such books and records as may be prescribed by the Office.

(g) *Examinations.* Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Office may prescribe. The cost of such examinations (other than examinations of savings associations) shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Office to the appropriate State supervisory authority. The Office shall, to the extent deemed feasible, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

(h) *Appointment of agent.* The Office may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§ 584.2 Prohibited activities.

(a) *Evasion of law or regulation.* No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust;

(6) Any other activity:

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to 12 CFR 225.23 or 225.25, unless the Office, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) Is set forth in § 584.2–1 of this part, subject to the limitations therein; or

(7) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Office pursuant to 574.8 of this chapter.

Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Treatment of certain holding companies.* If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings and loan holding companies pursuant to §§ 584.2, 584.2a, 584.2–1 and 584.2–2 of this part.

§ 584.2a Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b) of this part:

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one savings association, if the savings association subsidiary of such company is a qualified thrift lender as defined in § 583.17 of this subchapter.

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all of the savings association subsidiaries of such company are qualified thrift lenders as defined in § 583.17 of this subchapter.

(2) Any savings and loan holding company whose subsidiary savings association(s) fails to qualify as a qualified thrift lender pursuant to § 584.6 of this subchapter may not commence, or continue, any service or activity other than those permitted under § 584.2(b) of this part, except that, the Office may allow, for good cause shown, such company (or subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations set forth in § 584.2(b) of this part: *Provided,* That effective August 9, 1990, any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalifed as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, shall within one year after the date on which the savings association fails to qualify as a qualified thrift lender, register as and be deemed to be a bank holding company, subject to all of the provisions of the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding § 584.2(b) of this part and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 to acquire control of a savings association may engage, directly or indirectly or through any subsidiary (other than a subsidiary savings association of such company) in any activity in which it was lawfully engaged on March 5, 1987, *Provided,* That:

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional savings association, other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 406(f) or 408(m) of the National Housing Act, as in effect immediately prior to the date of

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enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

(2) Any savings association subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those permitted under § 584.2(b) of this part or in which it was engaged on March 5, 1987;

(4) Any savings association subsidiary of the holding company does not increase the number of locations from which such savings association conducts business after March 5, 1987, other than an increase due to a transaction under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or under section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(5) Any savings association subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(c) *Termination by the Office of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Office may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary:

(1) To prevent conflicts of interest;

(2) To prevent unsafe or unsound practices; or

(3) To protect the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof that is not a savings association) that controlled a single savings association on August 10, 1987, shall not be subject to the restrictions set forth in § 584.2(b) of this part with respect to any activities of such holding company that are conducted exclusively in a foreign country.

(e) *Bank holding company.* The provisions of § 584.2(b) shall not apply to any company treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

§ 584.2–1 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 584.2(b)(6)(ii) of this part, the activities set forth in paragraph (b) of this section are, and were as of March 5, 1987, permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary savings associations are prescribed by paragraph (d) of this section. Notwithstanding and without regard to any other provision of this section other than this sentence, a savings and loan holding company and any subsidiary thereof that is not a savings association, other than a service corporation, may invest in the types of securities specified in §§ 545.71 and 566.1 of this chapter without regard to any limitation therein as to amount or maturity.

(b) *Prescribed services and activities.* Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to 584.2(b) of this part, or a subsidiary thereof which is neither a savings association nor a service corporation of a subsidiary savings association, may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so:

(1) Originating, purchasing, selling and servicing any of the following:

(i) Loans, and participation interests in loans, on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans, except that such a company or subsidiary shall not invest in a loan secured by real estate as to which a subsidiary savings association of such company has a security interest;

(ii) Manufactured home chattel paper (written evidence of both a monetary obligation and a security interest of first priority in one or more manufactured homes, and any equipment installed or to be installed therein), including brokerage and warehousing of such chattel paper;

(iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;

(iv) Educational loans; and

(v) Consumer loans, as defined in § 545.50(b) of this chapter, *Provided,* That, no subsidiary savings association of such holding company or service corporation of such savings association shall engage directly or indirectly, in any transaction with any affiliate involving the purchase or sale, in whole or in part, of any consumer loan.

(2) Subject to the provisions of § 584.3 of this part, furnishing or performing clerical accounting and internal audit services primarily for its affiliates;

(3) Subject to the provisions of § 584.3 of this part, furnishing or performing the following services primarily for its affiliates, and for any savings association and service corporation subsidiary thereof, and for other multiple holding companies and affiliates thereof:

(i) Data processing;

(ii) Credit information, appraisals, construction loan inspections, and abstracting;

(iii) Development and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iv) Research, studies, and surveys;

(v) Purchase of office supplies, furniture and equipment;

(vi) Development and operation of storage facilities for microfilm or other duplicate records; and

(vii) Advertising and other services to procure and retain both savings accounts and loans;

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision, for:

(i) Construction of improvements,

(ii) Resale to others for such construction, or

(iii) Use as mobile home sites;

(5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;

(6) Acquisition of improved real estate and mobile homes to be held for rental;

(7) Acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(8) Maintenance and management of improved real estate;

(9) Underwriting or reinsuring contract of credit life or credit health and accident insurance in connection with extensions of credit by the savings and loan holding company or any of its subsidiaries, or extensions of credit by any savings association or service corporation subsidiary thereof, or any other savings and loan holding company or subsidiary thereof;

(10) Preparation of State and Federal tax returns for accountholders of or borrowers from (including immediate family members of such accountholders or borrowers but not including an accountholder or borrower which is a corporation operated for profit) an affiliated savings association;

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto; and

(12) Any services or activities approved by order of the former Federal Savings and Loan Insurance Corporation prior to March 5, 1987, pursuant to its authority under section 408(c)(2)(F) of the National Housing Act, as in effect at the time.

(c) *Procedures for commencing services or activities.* (1) Before a savings and loan holding company subject to restrictions on its activities pursuant to § 584.2(b) of this part or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section, either *de novo* or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the Office. The original and one copy of such notice shall be filed with the District Director. The activity or service may be commenced unless, before the close of the period specified immediately below, the District Director finds that the activity or service proposed would not be, under the circumstances, a proper incident to the operations of savings associations or would be detrimental to the interests of savings accountholders therein, or unless the District Director, upon notice to the applicant, refers the application to the Director of the Office because the proposed activity presents a significant issue of law or policy. The period for District Director review shall be 30 calendar days after the date of receipt of such notice, in the case of a *de novo* entry, or 60 calendar days, in the case of an acquisition of a going concern. If the District Director makes either finding within the applicable calendar-day period, the notice and finding(s) shall be forwarded immediately to the Senior Deputy Director for Supervision (Operations) for his or her review, and the activity or service may be commenced within the period specified immediately below unless the Senior Deputy Director for Supervision (Operations) concurs in the District Director's finding. The period for review by the Senior Deputy Director for Supervision (Operations) shall be 30 calendar days after the date of receipt of the notice and the District Director's finding(s) in the case of a de novo entry, or 60 calendar days in the case of an acquisition of a going concern. The District Director or the Senior Deputy Director for Supervision (Operations) may extend the appropriate calendar-day period for a period not to exceed 15 calendar days. The District Director or the Senior Deputy Director for Supervision (Operations) also may request additional information from such holding company or subsidiary after receipt of notice, but neither the District Director nor the Senior Deputy Director for Supervision (Operations) must consider additional information forthcoming from the holding company or subsidiary as a result of such a request if the information is received less than 10 calendar days before the end of the original or extended calendar-day period. The District Director or the Senior Deputy Director for Supervision (Operations) may permit such holding company or subsidiary to commence the activity at an earlier date. Where the District Director has referred an application to the Director of the Office because the application presents significant issues of law or policy, the Director of the Office will act on the application pursuant to the guidelines set forth at § 571.12 of this chapter.

(2) The Office may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Office finds necessary in order to ensure compliance with the provisions and purposes of this part and of section 10 of the Home Owners' Loan Act, as amended, or to prevent evasions thereof.

(3) Except as may be otherwise provided in a resolution by or on behalf of the Office in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(d) *Service corporation subsidiaries of savings associations.* The Office hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the Office pursuant to 12 CFR 545.74, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association of a savings and loan holding company and if such service corporation has legal power to do so.

§ 584.2–2 Permissible bank holding company activities of savings and loan holding companies.

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to 12 CFR 225.23 or 225.25 are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided,* That no such savings and loan holding company or subsidiary thereof shall commence, either *de novo* or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Office pursuant to paragraph (b) of this section. Where an activity is within the scope of both § 584.2–1 of this part and this section, the procedures of § 584.2–1 of this part shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the District Director with a copy to the Senior Deputy Director for Supervision (Operations). The District Director shall act upon such application pursuant to the guidelines set forth in 571.12 of this chapter unless, the District Director, upon notice to the applicant, refers the application to the Director of the Office because it raises issues of law or policy inappropriate for resolution by the District Director. Where the District Director has referred an application to the Director of the Office, the Director of the Office will act on such application pursuant to the guidelines set forth at § 571.12 of this chapter.

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the District Director or the Director of the Office, as the case may be, shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

§ 584.3 Transactions with affiliates.

Transactions between savings association subsidiaries of savings and loan holding companies and their affiliates shall be governed by section 11 of the Home Owners' Loan Act, as amended, and section 304 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

§ 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall:

(a) Acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, nor, in the case of a multiple savings and loan holding company (other than a multiple savings and loan holding company described in § 584.2a(a)(ii) of this subchapter), acquire or retain more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part: *Provided,* That this paragraph (a) shall not apply to voting shares of a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding 3 years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided,* That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not in the aggregate exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Shares acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to § 574.8 of this chapter; *Provided,* That the aggregate amount of shares held under this paragraph (a), (other than pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(b) Acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

§ 584.5 Advance notice of proposed dividend declarations.

No subsidiary savings association of a savings and loan holding company may declare any dividend on its guaranty, permanent, or other nonwithdrawable stock without first giving to the Office not less than 30 days' advance notice of the proposed declaration by its directors of any such dividend. Such notice shall be in form prescribed by the Office in § 584.10(b) of this part and filed with the Office by transmitting the original and one copy to the District Director and by transmitting one copy to the Senior Deputy for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. The 30-day notice period begins to run from the date of receipt of such notice by the District Director, who will promptly acknowledge such receipt in writing. Any such dividend declared within the 30-day notice period, or declared without first giving the notice required hereunder, is invalid and confers no rights or benefits upon any holder of such stock.

§ 584.6 Qualified thrift lender status.

(a) *General test until June 30, 1991.* (1) Until June 30, 1991, a savings association shall be a qualified thrift lender ("QTL") if the association's actual thrift investment percentage (as defined in paragraph (a)(5)(i) of this section) equals or exceeds 60 percent.

(2) As of January 1, 1988, a savings association shall be deemed to have QTL status and shall maintain its status as a QTL so long as the association's actual thrift investment percentage continues to equal or exceed 60 percent during three out of every four calendar quarters in each of two out of every three calendar years. For purposes of this paragraph (a), calculations of the actual thrift investment percentage shall be made on an average basis by taking the sum of an association's qualified thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the association's total tangible assets at the end of each of these same four months.

(3) An association shall lose its QTL status at the close of the quarter during which the association has failed to maintain its actual thrift investment percentage at or above 60 percent, which failure makes it mathematically impossible for the association to meet the 60 percent actual thrift investment percentage test during three out of every four calendar quarters for each of two out of every three calendar years on a continuous basis.

(4) For purposes of paragraph (a)(1) of this section, a *de novo* association shall begin a QTL measuring cycle (3 out of every 4 calendar quarters in 2 out of every 3 calendar years) at the beginning of the quarter following the date on which its charter was granted.

(5) *Definitions.* For purposes of determining whether a savings association is a qualified thrift lender for purposes of this paragraph (a), the following terms are defined as stated:

(i) *Actual thrift investment percentage* means the percentage determined by dividing the amount of a savings association's qualified thrift investments (as defined in paragraph (a)(5)(iii) of this section) by the total amount of the association's tangible assets (as defined in paragraph (a)(5)(ii) of this section).

(ii) *Total tangible assets* of an association means the total assets of the savings association minus goodwill and any other intangible assets, including, but not limited to, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

(iii) Subject to paragraph (a)(5)(iii)(D) of this section, *qualified thrift investments* means, with respect to any savings association, the sum of:

(A) The aggregate net amount of all investments (including loans, equity positions, or securities) held by such association (or any subsidiary of such association) that are related to domestic residential real estate or manufactured housing as defined in this paragraph (a)(5);

(B) The book value of property used by such association or subsidiary in the conduct of the business of such association or subsidiary; and

(C) An aggregate amount not to exceed 10 percent of such association's tangible assets of:

(1) The liquid assets of the type required to be maintained under section 6 of the Home Owners' Loan Act (12 U.S.C. 1465) and set forth in 12 CFR 566.1 of this chapter, and

(2) 50 percent of the dollar amount of residential mortgage loans originated by the savings association or its subsidiary and sold within 90 days of origination, provided that these mortgage loans were sold during the calendar quarter for which the actual thrift investment percentage is being measured.

(D) In calculating the amount of qualified thrift investments held by an association and its subsidiaries under paragraph (a)(5)(iii) of this section, an association or its subsidiary may not count their investment in subsidiaries as a qualified thrift investment if they are also including their subsidiaries' investments as qualified thrift investments.

(6) *Housing related investments.* For purposes of the definition contained in paragraph (a)(5)(iii)(A) of this section, investments (including such investments held subject to repurchase agreement) that are "related to domestic residential real estate or manufactured housing" include the following:

(i) Any home mortgage, as defined in 12 CFR 561.23, provided that the home or other dwelling unit is located in any State;

(ii) Any loan made on the security of liens upon residential real estate located in any State, or any loan made for the repair, equipping, alteration, or improvement of any residential real property located in any State;

(iii) Any investment in manufactured home chattel paper and interests therein, where the underlying security is either manufactured, sold, or used in any State. "Manufactured home" and "manufactured home chattel paper" shall have the same definitions as contained in §§ 545.45 (a)(1) and 545.45 (a)(2) of this chapter;

(iv) Any investment in any property acquired through the liquidation or in foreclosure of investments described in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) of this section; and any other equity interest investment in residential real estate or residential real property;

(v) Any investment in any state housing corporation as defined in § 571.8 of this chapter; in any obligations of or issued by any State or any political subdivision thereof that is issued for the purpose of providing financing for residential housing or incidental services; and in any community development loans or investments of the type described in § 545.41 of this chapter;

(vi) Investments in the stock of a Federal Home Loan Bank, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or obligations issued by the Corporation, the former Federal Savings and Loan Insurance Corporation, the Financing Corporation, the Resolution Trust Corporation or the Resolution Funding Corporation;

(vii) Investments in Federal Home Loan Bank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the Federal Home Loan Banks;

(viii) Investments in the deposits of a Federal savings association, or in the deposits of a building and loan, savings and loan, or homestead association, or a cooperative bank, the accounts of which are insured by the SAIF;

(ix) Investments in mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454–55);

(x) Investments in obligations, participations, securities, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association;

(xi) Investments in any other mortgage-backed securities, including mortgage pass-through certificates, mortgage-backed bonds, and mortgage pay-through bonds, as well as any derivative mortgage-related security that is created by disaggregating and repackaging the cash flows to be received as payments on mortgages and traditional mortgage-backed securities provided that the underlying assets of such securities or bonds are domestic residential real estate assets;

(xii) Excess servicing rights resulting from the sale of residential mortgage loans as well as investments in the purchased rights to perform the servicing function for a specific group of residential mortgage loans that are owned by others;

(xiii) Any investment in a corporation, partnership, or trust in proportion to the amount of gross revenues derived by such entity from servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other domestic housing related activities such as residential loan origination or selling residential real estate loans.

(xiv) Any investment that the Senior Deputy Director for Supervision (Policy) hereafter identifies as a housing related investment for purposes of this regulation.

For the purposes of this paragraph (a), the terms "residential real estate," and "residential real property" shall have the same definitions that are stated for these terms in section 5(c)(5) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(c)(5). The inclusion of any investment as a "qualified thrift investment" under this regulation is not intended to expand, contract, or otherwise affect the permissibility of investments as determined for any association under other relevant State and Federal statutes or regulations.

(7) *Special phase-in for certain Federal savings associations.* (i) Any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a State savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have the status of a qualified thrift lender through August 9, 1995, *Provided,* That:

(A) The association's actual thrift investment percentage does not after August 9, 1989, decrease below the actual thrift investment percentage calculated for the association on July 15, 1989; and

(B) The amount by which—

(1) The actual thrift investment percentage of such association on the dates indicated in paragraph (a)(7)(ii) of this section exceeds

(2) The actual thrift investment percentage of such association on July 15, 1989, is equal to or greater than the applicable percentage (as indicated in paragraph (a)(7)(ii) of this section) of the amount by which 70 per cent exceeds the actual thrift investment percentage of such association on August 9, 1989.

(ii) The applicable percentages referenced in paragraph (a)(7)(i) of this section are 25 per cent on July 1, 1991; 50 per cent on January 1, 1993; 75 per cent on July 1, 1994; and 100 percent thereafter.

(8) Exceptions. Notwithstanding paragraph (a)(1) of this section, the Director of the Office may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in paragraph (a)(1) of this section as the Director of the Office deems necessary if —

(i) The Director of the Office determines that extraordinary circumstances exist, such as when the

effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(ii) The Director of the Office determines that —

(A) The grant of any such exception will significantly facilitate an acquisition under sections 13(c) or 13(k) of the Federal Deposit Insurance Act, as amended,

(B) The acquired association will comply with the transition requirements of paragraph (a)(7) of this section, as if the date of the exemption were the starting date for the transition period described in such paragraph, and

(C) The exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of the qualified thrift lender test.

(b) *General test effective July 1, 1991.* Effective July 1, 1991, an association's qualified thrift lender status shall be determined in accordance with section 10(m) of the Home Owners' Loan Act, as amended by section 303 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(c) *Restrictions applicable to savings associations that are not qualified thrift lenders.* (1) *Until August 9, 1990,* a savings association that fails to maintain its status as a qualified thrift lender may receive advances from its Federal Home Loan Bank only to the extent permitted by section 10(e) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(e), as amended by section 714 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. A holding company of any savings association that fails to maintain its status as a qualified thrift lender shall be subject to the provisions of § 584.2a(a)(2) of this part.

(2) *Effective August 9, 1990,* on the date a savings association fails to become or remain a qualified thrift lender, the savings association shall either become one or more banks (other than a savings bank), or be subject to the following restrictions:

(i) *Activities.* The savings association shall not make any new investments (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association; *Provided, however,* beginning three years after the date on which the savings association should have become or ceases to be a qualified thrift lender the savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank and is also permissible for the savings association as a savings association;

(ii) *Branching.* The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this paragraph (c)(2)(ii), a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender;

(iii) *Advances.* The savings association shall not be eligible to obtain new advances from any Federal Home Loan Bank; *Provided, however,* beginning three years after the date on which the savings association should have become or ceases to be a qualified thrift lender, the savings association shall repay any outstanding advances from any Federal Home Loan Bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association; and

(iv) *Dividends.* The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

(3) *Requalification.* (i) *Until June 30, 1991,* a savings association that should have become or ceases to be a qualified thrift lender shall not be subject to paragraph (c)(2) of this section if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement on an average basis in 3 out of every 4 quarters and 2 out of every 3 years and thereafter remains a qualified thrift lender.

(ii) *Effective July 1, 1991,* a savings association that should have become or ceases to be a qualified thrift lender shall not be subject to paragraph (c)(2) of this section, if the savings association becomes a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, as amended by section 303 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(iii) If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time after requalification as provided for in paragraph (c)(3)(i) or (c)(3)(ii) of this section ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of paragraph (c)(2) of this section and § 584.2a(a)(2) of this part, as if all the periods described in such provisions had expired.

(4) *Deposit insurance assessments.* Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay the SAIF the assessments on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status as a SAIF-insured association, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such association shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until December 31, 1993, or the association's change of status from a SAIF-insured association to a BIF-insured association, whichever is later.

(5) *Exemptions*—(i) *For specialized savings association serving transient military personnel.* Paragraph (c)(2) of this section shall not apply to a savings association subsidiary of a savings and loan holding company if the savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the savings association before January 1, 1984, and at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.

(ii) *For certain Federal savings associations.* Paragraph (c)(2) of this section shall not apply to any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law or that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

(6) *Special rules for Puerto Rico and Virgin Islands savings associations.* The restrictions of paragraph (c)(2) of this section shall not become effective until July 1, 1991, with respect to any savings association headquartered and operating primarily in Puerto Rico or the Virgin Islands.

§ 584.9 Prohibited acts.

(a) *Control of mutual savings association.* No savings and loan holding company or any subsidiary thereof, or any director, officer, or employee of a savings and loan holding company or subsidiary thereof, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company or subsidiary, may hold, solicit, or exercise any proxies in respect of any voting rights in a mutual savings association.

(b) *Management interlocks.* No director or officer of a savings and loan holding company, or any person owning, controlling, or holding with power to vote, or holding proxies representing more than 25 percent of the voting shares of such holding company may acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Office pursuant to § 574.3(a) of this chapter.

(c) *Convicted persons.* No individual who has been convicted of any criminal offense involving dishonesty or breach of trust may serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company, except with the prior written approval of the Office.

(d) *Applications for approval.* Applications for an approval under pargraph (c) of this section shall contain a full statement of the reasons in support thereof. Such applications shall be filed with the Office by transmitting the original and one copy to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and one copy to the District Director.

§ 584.10 Statements, applications, reports and notices to be filed.

(a) *Registration statements and annual reports for savings and loan holding companies under § 584.1*—(1) *Registration Statements.* (i) *H–(b)10.* This statement shall be used for registration by every savings and loan holding company, including subsidiary savings and loan holding companies, except trusts (other than a business trust) and savings and loan holding companies which file H–(b)3, H–(b)4, or H–(b)5 registration statements.

(ii) *H–(b)3. Corporation as trustee of a trust.* This statement (rather than H–(b)10) shall be used for registration by any company which is a savings and loan holding company by virtue of its control, in a trustee capacity, of a savings association.

(iii) *H–(b)4. Creditor as savings and loan holding company.* This statement (rather than H–(b)10) may be used for registration by any company which is a creditor and is a savings and loan holding company only by virtue of the acquisition of control of a savings association or another savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business.

(iv) *H–(b)5. Voting trust as savings and loan holding company.* This statement (rather than H–(b)10) shall be used for registration by any voting trust which is a savings and loan holding company by virtue of its control of a savings association or another savings and loan holding company.

(2) *Annual Report—H–(b)11.* This report shall be used by every registered savings and loan holding company, including subsidiary savings and loan holding companies, except trusts (other than business trusts) and savings and loan holding companies filing H–(b)3, H–(b)4, and H–(b)5 registration statements.

(3) *H–(b)12.* This report shall be used by every registered savings and loan holding company which is required to file an H–(b)11.

(b) *H–(f).—Notice of proposed dividend declaration under § 584.5.* This notice shall be filed by a subsidiary savings association for the purpose of giving the Office advance notice of the proposed declaration of any dividend on its guaranty, permanent, or other nonwithdrawable stock.

§ 584.11 Hearings.

Any person who has made an application or petition to the Office pursuant to any provision of this subchapter may request a hearing thereon if such application or petition has been denied or disapproved, in whole or part, by the Office. At any time after the filing of any such application or petition and before consideration thereof by the Office, any interested person may request a hearing upon such application or petition. The Office may order a hearing in connection with the consideration of any matter arising under any provision of the regulations in this subchapter whether or not any request therefor has been made by any person. The Director of the Office may deny any request for, or dispense with, any hearing for which this section provides when, in his or her judgment, no need therefor exists.

SUBCHAPTER D—REGULATIONS FOR FEDERALLY-RELATED MORTGAGE LOANS

PART 590—PREEMPTION OF STATE USURY LAWS

Sec.

590.1 Authority, purpose, and scope.
590.2 Definitions.
590.3 Operation.
590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.
590.100 Status of Interpretations issued under Public Law 96–161.
590.101 State criminal usury statutes.

Authority: Sec. 501, 94 Stat. 161, as amended (12 U.S.C. 1735f–7).

§ 590.1 Authority, purpose, and scope.

(a) *Authority.* This part contains regulations issued under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, 94 Stat. 161.

(b) *Purpose and scope.* The purpose of this permanent preemption of state interest-rate ceilings applicable to Federally-related residential mortgage loans is to ensure that the availability of such loans is not impeded in states having restrictive interest limitations. This part applies to loans, mortages, credit sales, and advances, secured by first liens on residential real property, stock in residential cooperative housing corporations, or residential manufactured homes as defined in § 590.2 of this part.

§ 590.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Loans* mean any loans, mortgages, credit sales, or advances.

(b) *Federally-related loans* include any loan:

(1) Made by any lender whose deposits or accounts are insured by any agency of the Federal government;

(2) Made by any lender regulated by any agency of the Federal government;

(3) Made by any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(4) Made in whole or in part by the Secretary of Housing and Urban Development; insured, guaranteed, supplemented, or assisted in any way by the Secretary or any officer or agency of the Federal government, or made under or in connection with a housing or urban development program administered by the Secretary, or a housing or related program administered by any other such officer or agency;

(5) Eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or made by any financial institution from which the loan could be purchased by the Federal Home Loan Mortgage Corporation; or

(6) Made in whole or in part by any entity which:

(i) Regularly extends, or arranges for the extension of, credit payable by agreement in more than four installments or for which the payment of a finance charge is or may be required; and

(ii) Makes or invests in residential real property loans, including loans secured by first liens on residential manufactured homes that aggregate more than $1,000,000 per year; except that the latter requirement shall not apply to such an entity selling residential manufactured homes and providing financing for such sales through loans or credit sales secured by first liens on residential manufactured homes, if the entity has an arrangement to sell such loans or credit sales in whole or in part, or where such loans or credit sales are sold in whole or in part, to a lender or other institution otherwise included in this section.

(c) *Loans which are secured by first liens on real estate* means loans on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real estate (whether in fee, or in a leasehold or subleasehold extending, or renewable, automatically or at the option of the holder or the lender, for a period of at least 5 years beyond the maturity of the loan) specific security for the payment of the obligation secured by the instrument: *Provided,* That the instrument is of such a nature that, in the event of default, the real estate described in the instrument could be subjected to the satisfaction of the obligation with the same priority as a first mortgage of a first deed of trust in the jurisdiction where the real estate is located.

(d) *Loans secured by first liens on stock in a residential cooperative housing corporation* means loans on the security of:

(1) A first security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(e) *Loans secured by first liens on residential manufactured homes* means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home which will have priority over any conflicting security interest.

(f) *Residential real property* means real estate improved or to be improved by a structure or structures designed primarily for dwelling, as opposed to commercial use.

(g) *Residential manufactured home* shall mean a manufactured home as defined in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6), which is or will be used as a residence.

(h) *State* means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, except as provided in section 501(a)(2)(B) of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161.

§ 590.3 Operation.

(a) The provisions of the constitution or law of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any Federally-related loan:

(1) Made after March 31, 1980; and

(2) Secured by a first lien on:

(i) Residential real property;

(ii) Stock in a residential cooperative housing corporation when the loan is used to finance the acquisition of such stock; or

(iii) A residential manufactured home: *Provided,* That the loan so secured contains the consumer safeguards required by § 590.4 of this part;

(b) The provisions of paragraph (a) of this section shall apply to loans made in any state on or before the date (after April 1, 1980 and prior to April 1, 1983) on which the state adopts a law or certifies that the voters of such state have voted in favor of any law, constitutional or otherwise, which states explicitly and by its terms that such state does not want the provisions of paragraph (a) of this section to apply with respect to loans made in such state, except that—

(1) The provisions of paragraph (a) of this section shall apply to any loan which is made after such date pursuant to a commitment therefore which was entered into during the period beginning on April 1, 1980, and ending on the date the state takes such action;

(2) The provisions of paragraph (a) of this section shall apply to any rollover of a loan which loan was made, or committed to be made, during the period beginning on April 1, 1980, and ending on the date the state takes such action, if the mortgage document or loan note provided that the interest rate to the original borrower could be changed through the use of such a rollover; and

(3) At any time after the date of adoption of these regulations, any state may adopt a provision of law placing limitations on discount points or such other charges on any loan described in this part.

(c) Nothing in this section preempts limitation in state laws on prepayment charges, attorneys' fees, late charges or other provisions designed to protect borrowers.

§ 590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

(a) *Definitions.* As used in this section:

(1) *Prepayment.* A "prepayment" occurs upon—

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or

(iii) The entry of a judgment for the indebtedness in favor of the creditor.

(2) *Actuarial method.* The term *actuarial method* means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) *Precomputed Finance Charge.* The term *precomputed finance charge* means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder's fees, or similar charges.

(4) *Creditor.* The term *creditor* means any entity covered by this part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) *General.* (1) The provisions of the constitution or the laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is secured by a first lien on a residential mobile home if a creditor covered by this part complies with the consumer protection regulations of this section.

(2) *Relation to state law.* (i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance with the following:

(A) *State law regulating matters not covered by this section.* When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) *State law regulating matters covered by this section.* Creditors need comply only with the provisions of this section, unless the Office determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the Federal Register and shall operate prospectively.

(ii) Any interested party may petition the Office for a determination that state law requirements are more protective of consumers than the provisions of this section. Petitions shall be sent to: Secretary to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and shall include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provision, indicating how the state law to be considered offers greater protection to consumers than the Office's regulation.

(c) *Refund of precomputed finance charge.* In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which, is less than one dollar. The unearned portion of the precomputed finance charge is, at the option of the creditor, either:

(1) That portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred, as deferred. A payment period shall be deemed unexpired if prepayment is made within 15 days after the payment period's scheduled due date. The unearned precomputed finance charge is the total of that which would have been earned for each such period had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on those charges which are considered precomputed finance charges in this section, assuming that all payments were made as originally scheduled, or as deferred, if deferred. The creditor, at its option, may round this annual percentage rate to the nearest one-quarter of one percent; or

(2) The total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge shall be determined by applying an annual percentage rate based on the total precomputed finance charge (as that term is defined in this section), under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment. If a late charge or deferral fee has been collected, it shall be treated as a payment.

(d) *Prepayment penalties.* A debtor may prepay in full or in part the unpaid balance of the loan at any time without penalty. The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the document.

(e) *Balloon payments*—(1) *Federal savings associations.* Federal savings association creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes, and such loans shall be governed by the provisions of this section and § 545.33(f) of this chapter.

(2) *Other creditors.* All other creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes to the extent authorized by applicable Federal or state law or regulation.

(f) *Late charges.* (1) No late charge may be assessed, imposed, or collected unless provided for by written contract between the creditor and debtor.

(2) To the extent that applicable state law does not provide for a longer period of time, no late charge may be collected on an installment which is paid in full on or before the 15th day after its scheduled or deferred due date even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of assessing late charges, payments received are deemed to be applied first to current installments.

(3) A late charge may be imposed only once on an installment; however, no such charge may be collected for a late installment which has been deferred.

(4) To the extent that applicable state law does not provide for a lower charge or longer grace period, a late charge on any installment not paid in full on or before the 15th day after its scheduled or deferred due date may not exceed the lesser of $5.00 or five percent of the unpaid amount of the installment.

(5) If, at any time after imposition of a late charge, the lender provides the borrower with written notice regarding amounts claimed to be due but unpaid, the notice shall separately state the total of all late charges claimed.

(6) Interest after the final scheduled maturity date may not exceed the maximum rate otherwise allowable under State law for such contracts, and if such interest is charged, no separate late charge may be made on the final scheduled installment.

(g) *Deferral fees.* (1) With respect to mobile home credit transactions containing precomputed finance charges, agreements providing for deferral of all or part of one or more installments shall be in writing, signed by the parties, and

(i) Provide, to the extent that applicable state law does not provide for a lower charge, for a charge not exceeding one percent of each installment or part thereof for each month from the date when such installment was due to the date when it is agreed to become payable and proportionately for a part of each month, counting each day as 1/30th of a month;

(ii) Incorporate by reference the transaction to which the deferral applied;

(iii) Disclose each installment or part thereof in the amount to be deferred, the date or dates originally payable, and the date or dates agreed to become payable; and

(iv) Set forth the fact of the deferral charge, the dollar amount of the charge for each installment to be deferred, and the total dollar amount to be paid by the debtor for the privilege of deferring payment.

(2) No term of a writing executed by the debtor shall constitute authority for a creditor unilaterally to grant a deferral with respect to which a charge is to be imposed or collected.

(3) The deferral period is that period of time in which no payment is required or made by reason of the deferral.

(4) Payments received with respect to deferred installments shall be deemed to be applied first to deferred installments.

(5) A charge may not be collected for the deferral of an installment or any part thereof if, with respect to that installment, a refinancing or consolidation agreement is concluded by the parties, or a late charge has been imposed or collected, unless such late charge is refunded to the borrower or credited to the deferral charge.

(h) *Notice before repossession, foreclosure, or acceleration.* (1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described in this paragraph (h)(1). The debtor is not entitled to notice of default more than twice in any one-year period.

(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor's intended actions upon failure of the debtor to cure the default, and the debtor's right to redeem under state law.

To:
Date: , 19

Notice of Default and Right to Cure Default

Name, address, and telephone number of creditor
Account number, if any
Brief identification of credit transaction
You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.
If you correct the default, you may continue with the contract as though you did not default. Your default consists of:

Describe default alleged

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).
Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends to take).
If you have any questions, write (the creditor) at the above address or call (creditor's designated employee) at (telephone number) between the hours of and on (state days of week).
If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash.

§ 590.100 Status of interpretations issued under Public Law 96–161.

The Office continues to adhere to the views expressed in the formal Interpretations issued under the authority of section 105(c) of Pub. L. 96–161, 93 Stat. 1233 (1979). These interpretations, which relate to the temporary preemption of state interest ceilings contained in Pub. L. 96–161, may be found at 45 FR 2840 (Jan. 15, 1980); 45 FR 6165 (Jan. 25, 1980); 45 FR 8000 (Feb. 6, 1980); 45 FR 15921 (Mar. 12, 1980).

§ 590.101 State criminal usury statutes.

(a) Section 501 provides that "the provisions of the constitution or laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges shall not apply to any" federally-related loan secured by a first lien on residential real property, a residential manufactured home, or all the stock allocated to a dwelling unit in a residential housing cooperative. 12 U.S.C. 1735f–7 note (Supp. IV 1980). The question has arisen as to whether the federal statute preempts a state law which deems it a criminal offense to charge interest at a rate in excess of that specified in the state law.

(b) In the Office's view, section 501 preempts all state laws which expressly limit the rate or amount of interest chargeable on a federally-related residential first mortgage. It does not matter whether the statute in question imposes criminal or civil sanctions; section 501, by its terms, preempts "any" state law which imposes a ceiling on interest rates. The wording of the federal statute clearly expresses an intent to displace all direct state law restraints on interest. Any state law that conflicts with this Congressional purpose must yield.

PART 591—PREEMPTION OF STATE DUE-ON-SALE LAWS

Sec.
591.1 Authority, purpose, and scope.
591.2 Definitions.
591.3 Loans originated by Federal savings associations.
591.4 Loans originated by lenders other than Federal savings associations.
591.5 Limitations on exercise of due-on-sale clauses.
591.6 Interpretations.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j–3).

§ 591.1 Authority, purpose, and scope.

(a) *Authority.* This part contains regulations issued under section 5 of the Home Owners' Loan Act of 1933, as amended, and under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469, 1505–1507.

(b) *Purpose and scope.* The purpose of this permanent preemption of state prohibitions on the exercise of due-on-sale clauses by all lenders, whether federally- or state-chartered, is to reaffirm the authority of Federal savings associations to enforce due-on-sale clauses, and to confer on other lenders generally comparable authority with respect to the exercise of such clauses. This part applies to all real property loans, and all lenders making such loans, as those terms are defined in § 591.2 of this part.

591.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Assumed* includes transfers of real property subject to a real property loan by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers. "Completed credit application" has the same meaning as completed application for credit as provided in § 202.2(f) of this title.

(b) *Due-on-sale clause* means a contract provision which authorizes the lender, at its option, to declare immediately due and payable sums secured by the lender's security instrument upon a sale of transfer of all or any part of the real property securing the loan without the lender's prior written consent. For purposes of this definition, a *sale or transfer* means the conveyance of real property of any right, title or interest therein, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract or any other method of conveyance of real property interests.

(c) *Federal savings association* has the same meaning as provided in § 541.11 of this chapter.

(d) *Federal credit union* means a credit union chartered under the Federal Credit Union Act.

(e) *Home* has the same meaning as provided in § 541.14 of this chapter.

(f) *Savings association* has the same meaning as provided in § 561.43 of this chapter.

(g) *Lender* means a person or government agency making a real property loan, including without limitation, individuals, Federal savings associations, state-chartered savings associations, national banks, state-chartered banks and state-chartered mutual savings banks, Federal credit unions, state-chartered credit unions, mortgage banks, insurance companies and finance companies which make real property loans, manufactured-home retailers who extend credit, agencies of the Federal government, any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, and any assignee or transferee, in whole or part, of any such persons or agencies.

(h) *Loan secured by a lien on real property* means a loan on the security of any instrument (whether a mortgage, deed or trust, or land contract) which makes the interest in real property (whether in fee, or in a leasehold or subleasehold) specific security for the payment of the obligation secured by the instrument.

(i) *Loan secured by a lien on stock in a residential cooperative housing corporation* means a loan on the security of:

(1) A security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(j) *Loan secured by a lien on a residential manufactured home, whether real or personal property,* means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(k) *Loan originated by* a Federal savings association or other lender means any loan for which the lender makes the first advance of credit thereunder, *provided,* That such lender then held a beneficial interest in the loan, whether as to the whole loan or a portion thereof, and whether or not the loan is later held by or transferred to another lender.

(l) *Real property loan* means any loan, mortgage, advance or credit sale secured by a lien on real property, the stock or membership certificate allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property.

(m) *Residential manufactured home* has the same meaning as provided in § 590.2(g) of this subchapter.

(n) *Reverse mortgage* means an instrument providing periodic payments to homeowners based on accumulated equity, whether the payments are made directly by the lender, through purchase of an annuity through an insurance company or in any other manner. The loan may be due either upon a specific date or when a specified event occurs, such as the sale of the property or death of the borrower.

(o) *State* means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(p)(1) A *window-period loan* means a real property loan, not originated by a Federal savings association, which was made or assumed during a window-period created by state law and subject to that law, which loan was recorded, at the time of origination or assumption, before October 15, 1982, or within 60 days thereafter (December 14, 1982).

(2) The window-period begins on:

(i) The date a state adopted a law (by means of a constitutional provision or statute) prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to the state law creating the window-period, or the effective date of a constitutional or statutory provision so adopted, whichever is later; or

(ii) The date on which the highest court of the state rendered a decision prohibiting such unrestricted exercise (or if the highest court has not so decided, the date on which the next highest appellate court rendered a decision resulting in a final judgment which applies statewide), and ends on the earlier of the date such state law prohibition terminated under state law or October 15, 1982.

(3) Categories of state law which create window-periods by prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to such state law restrictions include laws or judicial decisions which permit the lender to exercise its option under a due-on-sale clause only where:

(i) The lender's security interest or the likelihood of repayment is impaired; or

(ii) The lender is required to accept an assumption of the existing loan without an interest-rate change or with an interest-rate change below the market interest rate currently being offered by the lender on similar loans secured by similar property at the time of the transfer.

§ 591.3 Loans originated by Federal savings associations.

(a) With regard to any real property loan originated or to be originated by a Federal savings association, as a matter of contract between it and the borrower, a Federal savings association continues to have the power to include a due-on-sale clause in its loan instrument.

(b) Except as otherwise provided in § 591.5 of this part with respect to any such loan made on the security of a home occupied or to be occupied by the borrower, exercise by any lender of a due-on-sale clause in a loan originated by a Federal savings association shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and borrower shall at all times be fixed and governed by that contract.

§ 591.4 Loans originated by lenders other than Federal savings associations.

(a) With regard to any real property loan originated by a lender other than a Federal savings association, as a matter of contract between it and the borrower, the lender has the power to include a due on sale clause in its loan instrument.

(b) Except as otherwise provided in paragraph (c) of this section and § 591.5 of this part, the exercise of due-on-sale clauses in loans originated by lenders other than Federal savings associations shall be governed exclusively by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by that contract.

(c)(1) In the case of a window-period loan, the provisions of paragraph (b) of this section shall apply only in the case of a sale or transfer of the property subject to the real property loan and only if such sale or transfer occurs on or after October 15, 1985: *Provided,* That:

(i) With respect to real property loans originated in a state by lenders other than national banks, Federal savings associations, and Federal credit unions, a state may otherwise regulate such contracts by state law enacted prior to October 16, 1985, in which case paragraph (b) of this section shall apply only if such state law so provides; and

(ii) With respect to real property loans originated by national banks and Federal credit unions, the Comptroller of the Currency or the National Credit Union Administration Board, respectively, may otherwise regulate such contracts by regulations promulgated prior to October 16, 1985, in which case paragraph (b) of this section

shall apply only if such regulation so provides.

(2) A lender may not exercise its options pursuant to a due-on-sale clause contained in a window-period loan in the case of a sale or transfer of property securing such loan where the sale or transfer occurred prior to October 15, 1982.

(d)(1) Prior to the sale or transfer of property securing a window-period loan subject to the provisions of paragraph (c) of this section.

(i) Any lender in the business of making real property loans may require any successor or transferee of the borrower to supply credit information customarily required by the lender in connection with credit applications, to complete its customary credit application, and to meet customary credit standards applied by such lender, at the date of sale or transfer, to the lender's similar loans secured by similar property.

(ii) Any lender not in the business of making loans may require any successor or transferee of the borrower to meet credit standards customarily applied by other similarly situated lenders or sellers in the geographic market within which the transaction occurs, for similar loans secured by similar property, prior to the lender's consent to the transfer.

(2) The lender may exercise a due-on-sale clause in a window-period loan if:

(i) The successor or transferee of the borrower fails to meet the lender's credit standards as set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or

(ii) Upon transfer of the security property and not later than fifteen days after written request by the lender, the successor or transferee of the borrower fails to provide information requested by the lender pursuant to paragraph (d)(1)(i) or (d)(1)(ii) of this section, to determine whether such successor or transferee of the borrower meets the lender's customary credit standards.

(3) The lender shall, within thirty days of receipt of a completed credit application and any other related information provided by the successor or transferee of the borrower, determine whether such successor or transferee meets the customary credit standards of the lender and provide written notice to the successor or transferee of its decision, and the reasons in the event of a disapproval. Failure of the lender to provide such notice shall preclude the lender from exercise of its due-on-sale clause upon the sale or transfer of the property securing the loan.

(4) The lender's right to exercise a due-on-sale clause pursuant to this paragraph (d)(4) is in addition to any other rights afforded the lender by state law regulating window-period loans with regard to the exercise of due-on-sale clauses and loan assumptions.

§ 591.5 Limitation on exercise of due-on-sale clauses.

(a) *General.* Except as provided in §§ 591.4 (c) and (d)(4) of this part, due-on-sale practices of Federal savings associations and other lenders shall be governed exclusively by the Office's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) *Specific limitations.* With respect to any loan on the security of a home occupied or to be occupied by the borrower,

(1) A lender shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-on-sale clause upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property: *Provided,* That such lien or encumbrance is not created pursuant to a contract for deed;

(ii) The creation of a purchase-money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase will allow the exercise of a due-on-sale clause);

(v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:

(A) A transfer to a relative resulting from the death of the borrower;

(B) A transfer where the spouse or child(ren) becomes an owner of the property; or

(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or

(vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.

(2) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender

(i) Declares by written notice that the loan is due pursuant to a due-on-sale clause or

(ii) Commences a judicial or nonjudicial foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such clause.

(3) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender fails to approve within 30 days the completed credit application of a qualified transferee of the security property to assume the loan in accordance with the terms of the loan, and thereafter the borrower transfers the security property to such transferee and prepays the loan in full within 120 days after receipt by the lender of the completed credit application. For purposes of this paragraph (b)(3), a *qualified transferee* is a person who qualifies for the loan under the lender's applicable underwriting standards and who occupies or will occupy the security property.

(4) A lender waives its option to exercise a due-on-sale clause as to a specific transfer if, before the transfer, the lender and the existing borrower's prospective successor in interest agree in writing that the successor in interest will be obligated under the terms of the loan and that interest on sums secured by the lender's security interest will be payable at a rate the lender shall request. Upon such agreement and resultant waiver, a lender shall release the existing borrower from all obligations under the loan instruments, and the lender is deemed to have made a new loan to the existing borrower's successor in interest. The waiver and release apply to all loans secured by homes occupied by borrowers made by a Federal savings association after July 31, 1976, and to all loans secured by homes occupied by borrowers made by other lenders after the effective date of this regulation.

(5) Nothing in paragraph (b)(1) of this section shall be construed to restrict a lender's right to enforce a due-on-sale clause upon the subsequent occurrence of any event which disqualifies a transfer for a previously-applicable exception under that paragraph (b)(1).

(c) *Policy considerations.* Paragraph (b) of this section does not prohibit a lender from requiring, as a condition to an assumption, continued maintenance of mortgage insurance by the existing borrower's successor in interest, whether by endorsement of the existing policy or by entrance into a new contract of insurance.

§ 591.6 Interpretations.

The Office periodically will publish Interpretations under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1505-1507, in the **Federal Register** in response to written requests sent to the Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,

Director

[FR Doc. 89-28716 Filed 11-29-89; 8:45 am]

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November 30, 1989

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings; Preliminary Statement of Reasons for Adoption of Standby Loss Criteria

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS–RM–79–112–C]

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings

AGENCY: U.S. Department of Energy.

ACTION: Preliminary Statement of Reasons for Adoption of Standby Loss Criteria.

SUMMARY: Pursuant to the October 6, 1989, Memorandum and Order of the United States District Court for the District of Columbia in Civil Action No. 89–1315, *Gas Appliance Manufacturers Association, Inc., et al.*, v. *Secretary of Energy*, the Department of Energy (DOE) hereby complies with the Memorandum and Order by publishing a "Statement of Reasons for Adoption of Standby Loss Criteria." See Interim Rule published at 54 FR 4537, January 30, 1989. The court remanded 10 CFR 435.109, section 9.3.2 (hereafter referred to as section 9.3.2) and portions of Table 9.3–1 within that section dealing with "Minimum Performance (Loss)" for electric, gas and oil storage water heaters pending reconsideration of those provisions on remand in a manner consistent with the court's opinion. In that regard, the court directed as follows: (1) That DOE provide a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups; (2) that DOE place in the public rulemaking record all the materials on which it now relies in determining the storage water heater criteria it adopts on remand; (3) that DOE publish its statement of reasons for adoption of standby loss criteria in the Federal Register by November 30, 1989; (4) that DOE make the materials upon which it relies available by November 30, 1989; (5) that DOE invite all interested participants to comment by January 15, 1990; (6) that plaintiffs file their response or responses with DOE by January 15, 1990; and (7) that DOE publish by February 15, 1990, in the Federal Register a statement responding to plaintiffs' critique and any others, again with reference to the statutory requirements and announcing appropriate standby loss criteria. (See pages 11–12 of Memorandum and Page 1 of Order, dated October 6, 1989.)

Until this process has been completed, DOE is enjoined from taking any public action to enforce the requirements of section 9.3.2 and the relevant portion of Table 9.3–1. The injunction extends only to section 9.3.2 and the portions of Table 9.3–1 dealing with "Minimum Performance (Loss)" for electric, gas and oil storage water heaters, and not to any other provision of the Interim Rule.

DATES: Written comments in response to the "Statement of Reasons for Adoption of Standby Loss Criteria" must be received by DOE by January 15, 1990.

ADDRESSES: All written comments (7 copies) are to be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets, U.S. Department of Energy, Docket Number CAS–RM–79–112–C, 1000 Independence Avenue, SW., Room 6B–025, Washington, DC 20585, (202) 586–9320.

Copies of the written public comments received may be viewed and/or obtained from the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020, 9:00 a.m.–4:00 p.m., Monday-Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Architectural and Engineering Systems, CE–131, U.S. Department of Energy, Room 5E–080, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9444.

Peter A. Greenlee, Esq., Office of General Counsel, GC–12, U.S. Department of Energy, Room 6A–141, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In compliance with the Memorandum and Order of the Court, DOE.

1. Is hereby providing a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups;

2. Is placing in the public rulemaking record all of the materials on which it now relies in determining the storage water heater criteria it adopts on remand;

3. Is inviting all interested participants to comment by January 15, 1990; and

4. Shall publish by February 15, 1990, in the Federal Register a statement responding to plaintiffs' critique and any others, again with reference to the statutory requirements and announcing appropriate standby loss criteria.

I. Historical Background

A. Events Prior to October 6, 1989

The Energy Conservation Standards For New Buildings Act of 1976, as amended (hereafter "the Act"), required the Secretary of Energy to develop and promulgate performance standards to improve the energy efficiency for all new buildings in the United States.

On November 28, 1979, DOE published proposed performance standards in the Federal Register, 44 FR 68120. At the time the proposed Building Energy Performance Standards (BEPS) were published, over forty States had already adopted energy conservation standards, developed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE), as their mandatory energy conservation standard for new building design, and many local governments had incorporated them by reference into their building codes. ASHRAE Standard 90–1975 entitled Energy Conservation in New Building Design and the version revised in 1980 and known as ANSI/ASHRAE/IES Standard 90A–1980 is a component performance standard that identifies minimum performance criteria for the major components of a building, i.e. envelope, heating, ventilation and air conditioning and lighting systems. BEPS represented a radical departure from the standard practice of the building community in that it required a "whole building" approach rather than a building component simulation analysis.

The Federal Register notice generated over 1,800 technical and substantive comments regarding the proposed performance standards. DOE was urged to work more closely with the building industry in the development of standards and to consider using ANSI/ASHRAE/IES Standard 90–1980, a building industry consensus standard.

On October 8, 1980, Congress amended the Act requiring that DOE promulgate interim standards by August 1, 1981. Congress modified the interim standards so that they would only apply to new federal buildings.

On August 13, 1981, Congress again amended the Act in order to create the term "voluntary performance standards", eliminate the possibility of statutory sanctions for noncompliance, and add a provision that, except for federal buildings, voluntary standards would be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings.

The various legislative amendments to the 1976 Act have required DOE to make fundamental changes in the compliance

aspects of the commercial building standards. Specifically, while DOE retained the responsibility to develop performance standards which would achieve the maximum practicable improvements in energy efficiency, these standards would become mandatory design requirements for the federal sector but would serve only as guidelines for the design of non-federal buildings.

In response to numerous comments, alternatives to the whole building performance approach were included in the form of prescriptive and component performance compliance paths. In response to numerous comments, it was decided to seek a broader spectrum of building industry input in the development of the standards.

In 1981–84, DOE developed improved design standards and guidelines utilizing the ANSI/ASHRAE/IES Standard 90A–1980 as the baseline standard. This was done in conjunction with the ASHRAE Special Projects Committee 41 (SP 41) and supported by detailed engineering and economic analysis conducted by research and practicing architects and engineers. A Project Plan for the Development of Recommendations to upgrade ANSI/ASHRAE/IES Standard 90A–1980 including the DOE's draft modification to the

By October 1983, DOE finalized its Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, which consisted of four volumes of forty separate technical documents.

On January 26, 1984, DOE published a Notice of Inquiry to enumerate the goals of the agency and solicit public comment on the aforementioned 1983 Recommendations. 49 FR 3245, 3246 (January 26, 1984).

On April 25, 1984, the Gas Appliance Manufacturers Association, Inc. (GAMA) submitted timely comments on DOE's Notice of Inquiry. DOE and support staff at DOE's Pacific Northwest Laboratory, and ASHRAE SP41, received GAMA's comments noting GAMA's identification of inconsistencies with the ASHRAE 90A–1980 standard.

Subsequent to completion of the research findings, as published in the Federal Register on January 26, 1984, DOE, ASHRAE and the Illuminating Engineering Society of North America (IES) shared expertise and research results in order to continue development of the most effective standards. In particular DOE worked very closely with the then newly formed ASHRAE Standing Standards Project Committee (SSPC 90R), and DOE Personnel and laboratory support staff regularly participated in SSPC 90R meetings since the committee was formed in 1984. GAMA also attended many of those meetings and participated in discussions with committee members regarding the rationale that the committee used in developing its own water heating criteria. The SSPC 90R water heating criteria were eventually incorporated by DOE in the promulgation of its Interim Rule and subsequently became the subject of Civil Action No. 89–1315 discussed above.

Over a three year period, SSPC 90R prepared three drafts of their Standard 90.1P. These drafts, dated 1985, 1986, and 1987 were open to public comment. ASHRAE shared comments on the public review drafts with DOE, as well as its response to such comments.

During this extensive research and development process, SSPC 90R, with DOE encouragement, formed an ad hoc working committee of subcommittee members, equipment trade associations (including GAMA), and manufacturers to obtain information and to better categorize and evaluate equipment criteria proposed by SP 41. Information was sought on proper categorization of products and desired table formats; industry statistics—especially shipment-weighted efficiency and product efficiency availability; recommended levels for minimum efficiency requirements; and recommended approaches and appropriate minimum efficiency levels for part-load. SSPC 90R and DOE relied on information from DOE and other research studies, analyses of progress in residential water heaters, work by state energy commissions, and professional expertise to set criteria for service water heaters. The reference information which was influential in the evolution and development of ASHRAE's and DOE's standards for storage water heater standby loss consisted of the following:

Arthur D. Little Inc. 1982. *Consumer Products Efficiency Standards Engineering Analysis Document.* DOE/CE–0030, prepared for the U.S. Department of Energy, Washington, DC.

USDOE. 1983. *Supplement to: March 1982 Consumer Products Efficiency Standards Engineering Analysis and Economic Analysis Documents.* DOE/CE–0045, U.S. Department of Energy, Washington, DC.

Harris, J.E. 1984. *Test Results and A Recommended Test Procedure for Heat Traps.* NBSIR 84–2851, prepared by the National Bureau of Standards for the U.S. Department of Energy, Washington, DC.

Demetri, E.P., M.P. Sespaniak, and J. Gerstmann. 1984. *High-Efficiency Commercial Water Heater Development.* GRI–84/0188, prepared by Advanced Mechanical Technology, Inc., for the Gas Research Institute, Chicago, IL.

Palla, R.L. 1979. *Evaluation of Energy-Conserving Modifications for Water Heaters.* NBSIR 79–1783, Final Report, National Bureau of Standards, Washington, DC.

Vasilakis, A.D., J.F. Peraron, and J. Gerstmann. 1980. *Research and Development of a High Efficiency Gas-Fired Water Heater.* Volume 1, Final Report Summary, ORNL/Sub-7381/1; and Volume 2, Concept and Market Evaluation, ORNL/Sub-7381/2. Prepared for Oak Ridge National Laboratory. Advanced Mechanical Technology, Inc., Newton, MA.

The resultant criteria were different in form and more stringent than the recommendations in the Notice of Inquiry, to reflect advances in test procedures and water heater appliance standards. More importantly they accomplished the purpose of the Act. DOE reviewed the SSPC 90R modifications, including the criteria for water heaters, and determined to incorporate the changes into its standards for the design of new federal buildings.

On May 6, 1987, DOE published its Notice of Proposed Interim Rule and Public Hearings and Finding of No Significant Impact for Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings.

The research employed to develop the proposed interim standards consisted of five major elements performed sequentially but with considerable overlap. They were: (1) Evaluations of ASHRAE 90A–1980 and the identification of its problem areas; (2) some additional research to develop improvements; (3) testing for energy conservation and economic effectiveness, (4) the formulation of a Draft Standard that would provide the basis for proposed interim standards for federal use concurrent with promoting its voluntary use in the private sector, and (5) extensive analysis of provisions of the draft standard followed by additional research in key areas such as envelopes and lighting. The initial research was performed on a component-by-component basis. Later on in the project, however, all the component results were integrated and evaluated to determine the overall building effects.

In addition to accepting written public comments on the Proposed Interim Role, DOE scheduled three public hearings in New Orleans, San Francisco and Washington in order to provide an additional forum for public comment. On June 11, 1987, at the public hearing held in Washington, DC, a senior official of GAMA addressed this public hearing and reiterated GAMA's concerns, as

previously expressed to ASHRAE, over the proposed water heater standards.

On July 27, 1987, GAMA submitted written comments to DOE's proposed energy conservation standards for new commercial and multi-family high rise residential buildings. GAMA again asserted that the proposed standby loss requirements for commercial water heaters were unreasonable. All public comments, including those by GAMA, were categorized and evaluated by DOE during the period of time between publication of the Proposed Interim Rule and the publication of the Interim Rule.

DOE has looked at the technical feasibility, and economic viability of energy conservation measures. In the case of water heaters these measures meant additional insulation, heat traps in water input and output lines, and improved flue and vent dampers. Each of these has been technically achievable for years. In addition, insulation and heat traps have been shown to be cost effective for residential units and projection of that analysis to commercial units showed them to be cost effective for commercial units as well. Moreover, flue improvements and vent dampers in commercial size units were also shown to be cost effective by the research. Finally, extension of the residential production analysis used for the appliance standards program and the Gas Research Institute research showed there would be a small impact on producers.

On January 30, 1989, DOE published the Interim Rule for Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings. GAMA submitted the only comment on DOE's standby loss criteria. In reference to GAMA's comments, DOE, relying on the current research in this particular area, rejected GAMA's assertion of overly stringent standby loss standards, and thereby, maintained the same standby loss requirement as detailed in the Proposed Interim Rule. In that regard, in addition to the ongoing joint research with ASHRAE and the previously cited analyses, DOE relied upon the following new information in the standby loss area:

Excerpts of advance drafts of Crawley, D.B. and Briggs, R.S., Building Energy requirements database guidebook for office buildings, GRI-89-0029. Chicago, IL., Gas Research Institute.

As required by the Act, upon issuance of the interim standards, DOE commenced a demonstration project to test and evaluate the impact of the standards.

B. Events Subsequent to October 6, 1989

Since October 6, 1989, DOE has performed a complete review of the storage water heater standby loss criteria. For this activity, DOE has decided to supplement its policy of working in conjunction with other consensus standards organizations and, carried out this re-analysis internally with its Pacific Northwest Laboratory support staff. DOE not only reexamined the documents that it relied upon in promulgating the interim standards standby loss criteria, but sought out additional documents that were pertinent to the subject. These additional documents include publications that provide background data for some of the original supporting documents as well as documents published subsequent to DOE's determination of criteria for storage water heater standby loss in the interim rule. These documents are itemized at Section III, DOE Reference Materials.

With this background, DOE now provides a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups.

II. Applicable Statutory and Judicial Criteria

Congress mandated, in section 501(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(b)(1), that the Secretary of Energy, in promulgating energy standards, must include "a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation or order." In addition, section 501(d), 42 U.S.C. 7191 (d) provide that after the notice and comment period, the Secretary may promulgate a rule if the rule is accompanied by "an explanation responding to the major comments, criticisms, and alternatives offered during the comment period." Section 310 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6839, specifically provides that such standards must be "adequately analyzed in terms of energy efficiency, * * * economic cost and benefit, and impact on affected groups." In addition, section 302 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6831(b)(2), requires DOE "to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy." In that regard, the October 6, 1989 Memorandum of the court concludes that the word "practicable" in section 302(b)(2) "reinforces the requirement of section 310 that DOE take into account cost-benefit and constituency concerns and not simply sacrifice all other concerns to any reductions in energy use." Further, standards setting activities "shall be designed to assure that such standards are adequately analyzed in terms of energy efficiency, stimulation of use of nondepletable sources of energy, institutional resources, habitability, economic cost and benefit, and impact upon affected groups."

Finally the court's Memorandum further states that "increased energy efficiency must be weighed against potential increases in overall dollar costs arising from new standards under some articulated formula".

III. Description of Storage Water Heater Standby Loss Criteria In Question

The Storage Water Heater Standby Loss Criteria in question are part of § 435.109 of the interim standards, entitled "Service Water Heating Systems", published at 54 FR 4689. This section identifies the scope, design principles, minimum requirements, and a prescriptive compliance method for service water heating systems and equipment. Minimum requirements have been set for the following:

- Sizing of systems;
- Equipment efficiencies, including standby loss criteria (found in Table 9.3–1);
- Heat traps;
- Piping insulation;
- Equipment temperature controls;
- Swimming pool water heaters;
- Combination service water heating/space heating equipment;
- Additional equipment efficiency measures, including Electric Water Heaters and Gas-Fired Water Heaters; and
- Use of waste heat, solar energy and thermal storage.

All water heaters and hot water storage tanks are addressed in Table 9.3–1. This includes electric, gas, and oil storage water heaters, unfired storage tanks, gas and distillate oil instantaneous water heaters, and swimming pool water heaters. There is one exception to the standby loss criteria; storage water heaters and hot water storage tanks having more than 500 gallons of storage capacity need not meet the standby loss requirements of Table 9.3–1, (1) if the tank surface area is thermally insulated to R–12.5 and (2) if a standing pilot light is not used.

The standby loss criteria for electric, gas, and oil storage water heaters is highlighted in the right hand column of Table 9.3–1. Although the word "standby" could intuitively infer only that period of time when the storage water heater is not used (e.g., overnight), the criteria address the constant loss of heat energy experienced by a storage water heater while holding heated water not immediately being drawn for use in a building. A "storage water heater" is a water heater that has an input rating of <4000 Btu/hr per gallon and a storage capacity of more than 10 gallons.

The covered water heaters include the following: electric storage water heater with a storage capacity of more than 120 gallons or an input rating of more than 12 kW; gas storage water heaters with a capacity of more than 100 gallons or an input rating of more than 75,000 Btu/h; and oil storage water heaters of more than 50 gallons or an input rating of more than 105,000 Btu/h. The covered electric storage water heaters are required to have a standby heat loss of less than 1.9 W/ft². The covered gas and oil storage water heaters are required to have a standby heat loss of less than 1.3 + 38/V percent per hour. Standby loss is based on 80 °F, or the change in water temperature in percent per hour based on a nominal temperature of 90 °F. The pertinent portions of Table 9.3–1 that address standby loss are included in the table in the right-hand column under the heading "loss."

BUILDING CODES [illegible]

Table 9.3-1
Standard Rating Conditions & Minimum Performance of Water Heating Equipment

Type	Fuel	Storage (Gal)	Input	Applicable Test Procedure	Minimum Performance		
					DOE Rating	Eff.	Loss
Storage Water Heaters[2]	Electric	≤120	≤12 kW	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF= ≥0.95-0.00132V		
		>120 (or)	>12kW	ANSI C72.1 - 1972	-	-	SL= <1.9 W/ft^2
	Gas	≤100	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF= ≥0.62-0.0019V	-	-
		>100 (or)	>75,000 Btu/h	ANSI Z21.10.3-1984 Gas Water Heaters w/Addenda Z21.10.3a-1985	-	E_t= 77%	SL= <1.3+ 38/V
	Oil		≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF= ≥0.59-0.0019V	-	-
		≤50	≤105,000 Btu/h		>0.59-0.0019V	-	-
		>50 (or)	>105,000 Btu/h		-	E_c= 83%	SL= <1.3+ 38/V

Table 9.3-1
Standard Rating Conditions & Minimum Performance of Water Heating Equipment (Cont.)

Class	Type	Fuel	Input Capacity	Applicable Test Procedure	Minimum Performance Rating	
Unfired Storage	1	All Volume	All Inputs		-	HL= <6.5 Btu/h·ft^2
Instantaneous[3]	Gas	-	All Inputs	ANSI Z21.10.3-1984	E_t= 80%	-
	Distill Oil	-	All Inputs	ANSI Z21.10.3-1984	E_c= 83%	-
Pool Heaters	Gas/ Oil	-	All Inputs	ANSI Z21.56-1986	E_t= 78%[c]	-

Notes for Table 9.3-1:
Terms Defined:
1. EF = Energy factor, overall heater efficiency by DOE Test Procedure
E_t = Thermal efficiency with 70 °F, ΔT
E_c = Combustion efficiency, 100% - flue loss when smoke = 0 (trace is permitted)
SL = Standby loss in W/ft^2 based on 80 °F, ΔT, or in % per hour based on nominal 90 °F, ΔT
HL = Heat loss of tank surface area
V = Storage volume in gallons

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The basis for comparing the relative energy efficiency levels for storage water heater standby loss criteria is ANSI/ASHRAE/IES Standard 90A–1980. It was chosen because it is the preeminent basis for State and local energy conservation standards and is currently being utilized in the statutorily mandated project required to demonstrate the impact of the interim standards.

The DOE interim standards reference existing test procedures to determine water heater standby loss. These test procedures were developed by the American National Standards Institute (ANSI) and DOE. The ANSI test procedures were developed under industry consensus process procedures and DOE test procedures were developed in response to legislation under DOE regulatory procedures. (Appendix E to subpart B of 10 CFR part 430) They were chosen as the most current and appropriate test procedures for the DOE Interim Standards standby loss criteria.

1. ANSI Standard C72.1–1972 American National Standard for Household Automatic Electric Storage-Type Water Heaters

The test conditions for determining electric storage water heather standby loss in Watts/ft² are described in detail in ANSI Standard C72.1–1972. Test condictions and equations within the ANSI standard which are pertinent to the DOE standby loss criteria include the following:

Test room temperature: 73.4± 3.6 °F (23±2 °c)
Water temperature at tank top: 150±5 °F

Test duration: 48 hours starting after a 24 hour stabilization period

$Sp = W1/A_w$
$W1 = (2.42 \times C_a(T_1 - T_2) + Wh) / N \times 80/(T_T - T_R)$
Where:
Sp = standby performance (Watts/ft²)
W1 = Watts loss for 80 °F rise above room temperature (Watts)
C = actual tank capacity (gallons)
T_1 = average water temperature at start of test (°F)
T_2 = average water temperature at finish of test (°F)
Wh = measured watt-hour consumption
N = number of hours of test
T_R = average measured room temperature (°F)
T_T = average water temperature during test (°F)
A_w = net surfact area of tank outer casing (ft²)

The standby loss equations adjust heat losses occurring during the test to losses for an 80 °F rise in tank water temperature above room temperature.

2. ANSI Standard Z21.10.3–1984 w/addenda Z21.10.3a–1985 American National Standard for Gas Water Heaters, Volume III: Circulating Tank, Instantaneous and Large Automatic Storage Water Heaters

The test conditions for determining gas storage water heater standby losses in percent per hour are described in detail in ANSI Standard Z21.10.3–1985 w/addend Z21.10.3a–1985. In the interim standards, DOE references the 1984 test procedures with the 1984 addenda. The most recent test procedures were issued by ANSI in 1988. However, the portions of the test procedures pertinent to standby loss have not changed since 1979.

Test conditions and equations within the ANSI standard which are pertinent to the DOE standby loss criteria include the following:

Test room temperature: 75±10 °F (24±5.5 °C)
Water temperature at tank top: 160±5 °F (71±3 °C)
Test duration: 48 hours
$S = \{ [CF \times Q_a) (H) + E_t)/((K) (V_a) (T_3) (t)) - (T_4)/((T_3)(t)(E_t)) \} \times 100$
Where:
S = standby loss, percent per hour, expressed as a ratio of the heat loss per hour to the heat content of the stored water above room temperature
CF = correction factor to correct observed gas volume to standard conditions of 30 inches mercury column (101.3 kPa) pressure at 50 °F (15.5 °C)
K = 8.25 Btu per gallon °F (4147.6331]/L °C), the nominal specific heat of water
V_a = tank capacity expressed in gallons (L)
H = higher heating value of gas, Btu per ft³ (MJ/m³)
T_3 = difference between the average value of the mean tank temperature and the average value of the ambient temperature, °F (°C)
T_4 = difference between the final and initial mean tank temperature, °F (°C)
t = duration of test, hrs
E_t = electrical energy consumption expressed in Btu (kJ)
E_t = thermal efficiency as determined by this standard
Q_a = total fuel flow as metered, ft³ (m³)

3. DOE, Title 10 CFR Part 430 Subpart B, Appendix E, 1985 Energy Conservation Program for Consumer Products

The calculation procedure for determining oil storage water heater standby losses as outlined in the DOE test procedure differs from that of ANSI Standard Z21.10.3–1984 w/addenda ANSI Z21.10.3a–1985, in that values of standby loss calculated with the equation(s) found in the DOE test procedure have units of inverse hours while those in the ANSI test procedure for gas storage water heaters have units of percent per hour.

In order to be used for compliance determination, standby losses for both gas and oil-fired storage water heaters must be expressed in percent per hour.

IV. Discussion of Practicability of Standby Loss Criteria

Several of the methods of evaluation required of DOE, when promulgating building standards, can be employed to measure the practicability of water heater standby loss criteria. Applying these methods to water heater criteria, the following questions can be asked. Do the criteria contribute to building energy efficiency? Are the criteria cost-effective when applied to the range of water heaters covered by the criteria? Is it technically possible to construct new water heaters that meet the criteria? Are there water heaters on the market at the present time that meet the criteria? Is there a substantially negative effect on the water heater industry brought on by the application of the criteria? And what effect do the standby loss criteria have on the consumer, in this case the Federal government? A discussion of each of these points follows in Sections A and B.

Practicability can also be measured in terms of the criteria developed and published by other national consensus standards organizations. As stated earlier, ASHRAE has recently adopted similar energy conservation standards for new commercial and multi-family high rise residential buildings. These were developed under ANSI approved procedures. The water heater standby loss criteria in ASHRAE/IES Standard 90.1–1989 (ASHRAE 1989) are exactly the same as the DOE interim standards, however DOE chose to implement the requirements in 1989 while ASHRAE chose 1992. A discussion of this follows in Section B. There are three reasons for this action. First, DOE believes that there will be sufficient water heaters on the market that can meet the criteria at the time buildings designed to the interim standards are built. In practical terms, DOE interim standards will not affect water heater product manufacturers for two to three years. (Further discussion on this point is provided later.) Furthermore, DOE believes that the free play of market forces, absent a unity of purpose or common design to the contrary, will ensure that there are sufficient water heaters on the market that meet the criteria at the time buildings designed to the interim standards are built. Finally, it is in the Federal government's interest to do so in order to reduce operating costs.

A. Energy Efficiency and Cost-Benefit

The primary reason for including standby loss criteria for storage water heaters in DOE interim standards is that storage water heaters have a constant loss of heat. The major loss is the heat flow due to the temperature difference between the hot water and the cooler room air or out the flue for gas and oil-fired storage water heaters. (Hoskins 1977) DOE analysis shows that it is practicable to reduce this waste of energy. While other non-water heater related criteria in the interim standards save more energy, DOE is mandated to achieve the maximum building energy use reduction and is obligated to set practical criteria for reducing this heat loss.

Jacket heat losses constitute the only major heat loss in electric water heaters and can be reduced substantially by increasing the insulation thickness around the water heater jacket (either internal or external to the jacket). Gas and oil water heater standby losses include jacket losses that could be reduced with increased insulation, flue losses that could be decreased with the installation of a flue damper, and pilot light losses that could be eliminated with the installation of intermittent ignition devices. (Blue 1979)

For example, increasing the fiberglass insulation thickness in a 50 gallon electric water heater from 1 to 4 inches has been shown to reduce electric water heater consumption by 7% (6650 kWh/yr to 6200 kWh/yr) at an increased initial cost (retail price) of 11% ($157 to $175 in 1975 dollars). (Hoskins 1977) When comparing the benefits of the additional insulation to added cost in 1988 dollars with 1988 average electricity costs of $21.44/Million Btu ($0.073/kWh) (Ruegg 1988), there would be an annual savings of $32.85. Assuming insulation prices have doubled since 1975 due to inflation, the retail price increase would be $36 in 1988 dollars—a simple payback of just over one year.

Several specific examples are provided below which demonstrate the energy savings that can be derived through the use of added insulation and other energy conservation measures to each type of covered water heater. It should be noted that the standby loss criteria allow for insulation to be placed internal or external to the water heater jacket.

To calculate the benefit of adding insulation and other first cost measures to water heaters, the relative energy savings must be calculated and translated to cost savings using energy costs. The cost of adding additional insulation and other energy conservation measures are calculated. These include labor, retooling costs, and profit. The ratio of increased costs to energy cost savings are then compared and a payback period established. This was done for several sizes of water heaters.

Because of the complication of flue losses, a gas water heater example is used to provide information on the process used to determine the energy efficiency and cost-benefit values. A similar process is described for electric oil water heaters. Tables for each may be found in a technical support document available for review at the DOE Freedom of Information Office.

1. Procedure Used to Analyze Water Heater Standby Loss Criteria

The initial procedure used to analyze storage water heater standby loss criteria was to separate these units into categories bassed on the nature of the loss. Gas and oil-fired units have burners/flames and require flues. Thus standby losses due to the flue must be addressed. Electric units have an immersed heating element and none of the problems associated with combustion. Available test procedures were reviewed and the three included in the interim standards were found to be appropriate.

The standby loss criteria for each storage water heater fuel type category were then separately evaluated, using the appropriate procedure for each. Available data on the number of storage water heater sales of various characteristic types was reviewed and a widely used category was initially selected. The range of categories was also noted. Then the standby loss was calculated for the selected unit both for the ANSI/ASHRAE/IES Standard 90A–1980 base case and for the DOE interim standards. The difference between the base case standby loss and that of the DOE interim standards was then used to calculate the energy savings.

The cost of measures to meet the interim standards was then determined and, using the energy savings above, the payback of the measures calculated. This same procedure was then done for representative units of various sizes above and below the initial unit in order to evaluate the sensitivity of the initial conclusions and to identify trends. Similarly, other assumptions made in the initial calculations were systemically changed to observe trends and their sensitivity to variation.

The following is an example of the procedure used for establishing the water heater standby loss criteria. A typical gas water heater is used as an example.

The Gas Research Institute "High Efficiency Water Heater Development" report indicates that the most prevalent gas-fired water heater input rating is in the range of 100–200 kBtu/hour. (Demetri, et al. 1984) Gas-fired water heaters in this category fall within the size range covered by the standby loss criteria in the interim standards. Accordingly, to demonstrate the effect of the standby loss criteria, the example water heater in Table 1 has: a 100 gallon storage capacity; an input rate of 199,000 Btu/hour; a six inch diameter flue with damper; intermittent ignition device; and insulation on the top and sides. The tank height shown in the table represents the approximate heated surface height of the internal water tank. The height value was obtained from the following equation:

$H = V \times 231 / (\pi \times D^2/4 - \pi \times FD^2/4)$
Where:
H = standby period heated surface height (inches)
D = water tank diameter (inches)
FD = flue diameter (inches)
V = tank volume (gallons)
231 = conversion from gallons to cubic inches

Table 1 presents the standby loss criteria in percent per hour under the column headings of "CR–90A" and "CR–DOE".

Where (for gas water heaters):

"CR–90A" = 2.8 + 67/V
"CR–DOE" = 1.3 + 38/V

The calculated standby loss in percent per hour is presented under column heading "SB" and calculated for various levels of insulation.

Where:

$$SB = \frac{[Q_{tot}/Eff]\ 100}{(V \times 8.25 \times (T_{wtr} - T_{amb}))} = \frac{\text{standby heat loss}}{\text{heat content of stored water}} \times 100$$

Where:

Q_{sat} = total standby loss rate not including heating efficiency (Btu/hr)
Eff = heating efficiency (fraction)
V = tank volume (gallons)
T_{wtr} = tank storage water temperature (°F)
T_{amb} = ambient air temperature (°F)
$Q_{tot} = Q_{jacket} + Q_{oth}$

Where:

Q_{jacket} = heat loss through the jacket not including firing rate losses to replace these losses (Btu/hr)
Q_{oth} = heat loss other than jacket and firing rate losses (Btu/hr)

The "other losses" parameter is an important concept in analyzing gas water heaters in that as the "other losses" become significant (i.e., greater than 40 percent of total losses), the ability of added insulation to meet the required criteria becomes questionable. This concept is further discussed below in Section 3, "Summary of Energy Efficiency and Cost-Benefit for Gas Water Heaters".

2. Application of Procedure to Gas Water Heaters

The equations cited above estimate, for a candidate water heater, the standby loss percent that would be obtained if the appropriate test procedure was conducted on the candidate water heater. Using this procedure, tank standby losses for various insulation thicknesses were calculated by computing the loss rate through the jacket top and sides and then adding in the other losses to arrive at a total loss rate for a given tank and insulation thickness. The calculations assume that energy required to make up standby losses can be supplied at 75 percent thermal efficiency. However, this energy can probably be supplied more efficiently because these thermal efficiencies take into account some standby losses. Thus, the calculated results are conservative.

Table 1 indicates that when flue dampers and intermittent ignition devices are used in a gas water heater, the jacket losses are the major source of energy losses incurred during heater standby operation. If it is assumed that these losses account for 90% of the total losses occurring during standby operation of a water heater in minimal compliance with ANSI/ASHRAE/IES Standard 90A–1980 standby loss requirements, the "other losses" are found to be 193.24 Btu/hr for the 100 gallon, 199,000 Btu/hr water heater. Standby loss calculations for this heater indicate that to comply with ANSI/ASHRAE/IES Standard 90A–1980 (1982 requirements), the water heater requires ½ in. of insulation, and to comply with the DOE interim standards, the water heater requires ¾ in. of insulation.

Even though this example analysis shows that ½ in. of insulation is sufficient to meet ANSI/ASHRAE/IES Standard 90A–1980, DOE was unable to find manufacturers literature that showed less than 1 in. of insulation. As a consequence, the following estimate of consumer savings assumes that water heaters that comply with ANSI/ASHRAE/IES Standard 90A–1980 have a nominal 1 in. of jacket insulation.

Table 1 Standby Losses Calculated Using ANSI Z21.10.3a–1985 Method (Flue Damper & IID)

(Other Losses = 193.24)

Note: The text of Table 1 appears in the Appendix.

To estimate properly the potential consumer savings due to improved standby loss performance, the standby losses had to be calculated for actual operation conditions. The water heater was simulated with the appropriate level of insulation to meet the requirements of ANSI/ASHRAE/IES Standard 90A–1980 and then the DOE interim standards. It was assumed that the water heater tank temperature would be approximately 140 °F. This value was recommended by the "1987 ASHRAE Handbook, HVAC Systems and Applications Volume" (ASHRAE 1985) to minimize the potential of Legionnaires Disease. The commercial service hot water utilization temperature would typically be higher than 140 °F because high volume uses, such as dishwashing and laundry, require temperatures closer to 180 °F. Room ambient temperature for the calculations was set at 72.5 °F; the average prototype building space temperature control setpoints for heating and cooling found in Section 11.5.8.3 of the DOE interim standards. Section 11.0 of the interim standards provides an alternative compliance path that allows greater flexibility in the design of energy efficient buildings using an annual energy cost method. It sets several criteria for modeling prototype buildings.

Improved standby performance savings result from the increased insulation thickness and hence, reduced jacket losses, obtained in meeting the DOE interim standards. Table 2 shows the reduction in jacket losses realized by increasing insulation thickness from ½ in. to ¾ in. for the 90% jacket losses (flue damper and intermittent ignition device (IID) assumed) case.

Table 2—Jacket Loss Rates and Energy Savings Rates Resulting From Increased Insulation Thickness

Note: The text of Table 2 appears in the Appendix.

All jacket loss calculations were made with a FORTRAN program designed to account for surface resistance to heat transfer as well as insulation resistance. The code for the FORTRAN program may be found in the technical support document in the DOE Freedom of Information Office. The program iteratively determines jacket surface temperature in the process of finding surface resistance coefficients. Jacket surface emissivity was assumed to be 0.50; a conservative value for enamel coated steel surfaces. (Chapman 1984) Thermal resistances of water heater tank and jacket cover material were assumed to be negligibly small. Fiberglass insulation conductivity was set to 0.28 Btu-in/h-ft²-°F. This value represents 2 lb/ft³ density fiberglass at an average temperature of 125 °F.

The effects of tank size and percent jacket losses when in compliance with the ANSI/ASHRAE/IES Standard 90A–1980 (1982 requirements) were studied with additional water heater simulations. Tanks with sizes and dimensions representative of water heaters in the A.O. Smith product line guide (A.O. Smith 1988) were simulated in sizes of 100, 129, 221, 411, and 594 gallon sizes. Insulation thicknesses were varied from zero to six inches on the jacket top and sides for these tanks. Jacket loss percentages when in compliance with the ANSI/ASHRAE/IES Standard 90A–1980 requirements were varied from thirty to ninety percent. For assumed jacket losses in the 60 to 90 percent range, it was possible to meet the DOE interim standards requirements with the use of additional insulation. Furthermore, all tank sizes with the 90 percent assumption needed no additional insulation to meet the DOE requirements.

The same procedure was taken for each of the three types of water heaters—gas, electric, and oil. The gas and oil procedures are quite similar as can be found in the two test procedures. The results of the analysis of each may be found in the technical support document that DOE has prepared on this subject. This document is available for review in the DOE Freedom of Information Office.

3. Summary of Energy Efficiency and Cost-Benefit for Gas Water Heaters

The following are summaries of the calculations performed on typical gas water heaters. Table 3 shows that there is a dependence between the base case design assumptions and the ability of such a design to meet the DOE interim standards by jacket loss reduction alone. The parameter that best describes this dependence is the percent of "total standby" loss that occurs through the jacket alone. Increased percentage jacket loss indicates that design features that reduce off-cycle flue or other losses (flue dampers or intermittent ignition devices (IID)) are included in the designs. For example, a water heater with a tight flue damper and intermittent ignition device could be considered above the 80 percent jacket loss category, and a water heater with a less effective flue damper and with a pilot light could be considered in the 70 to 80 percent jacket loss category. Water heaters with an open flue (no damper) and a constantly burning pilot could be in the 60 percent or less jacket loss category. A selective sampling of manufacturers' literature indicates that there are many water heaters that comply with ANSI/ASHRAE/IES Standard 90A–1980 that include flue dampers and/or intermittent ignition devices. (Lochinvar 1989; Mor-Flo/American 1988; Rheem 1988; A.O. Smith 1988; and State 1989) Such units would be in the 70 percent loss or greater categories and as shown, in Tables 4 through 8, cost-effectively meet the DOE interim standards with no more than 2½ in. of added insulation. The manufacturers' literature also shows ANSI/ASHRAE/IES Standard 90A–1980 compliant water heaters without flue dampers or intermittent ignition devices. All these latter designs are relatively low in power, e.g., 75,000 Btu/hr, and as a consequence have single flues of smaller diameters with corresponding smaller off-cycle flue losses. Using a conservative assumption that these units can not meet the DOE interim standards with only added insulation, the analysis presented in this Statement of Reasons includes the addition of a flue damper as one path of compliance for this category of water heaters. (Note: Table 3 shows that water heaters with 50 percent jacket losses that comply with ANSI/ASHRAE/IES Standard 90A–1980 cannot meet the DOE interim standards through added insulation alone.)

Table 3—Ability To Comply with DOE Interim Standards by Reduction of Jacket Losses for a Selection of Commercially Available Heater Sizes based on Stated Loss Assumptions

Note: The text of Table 3 appears in the Appendix.

Using the same example, a 100 gallon gas water heater, the insulation thickness required to comply with ANSI/ASHRAE/IES Standard 90A–1980 would require 1 inch of insulation with a 70% loss through the jacket. Under the DOE interim standards, the 100 gallon water heater would require 3 inches of insulation. As is shown in Table 4, the required insulation levels are reduced as the water heater size increases.

Table 4—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A–1980 and DOE Interim Standards (With 70 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 Compliance Level)

Note: The text of Table 4 appears in the Appendix.

Table 5 indicates the amount of energy savings that are calculated for each of the five examples, plus the cost of insulation and total cost of refitting the water heater. In the 100 gallon example, annual energy savings would be $32.53 using an average gas price in 1988 dollars. This represents a significant annual energy savings of 67.9 therms (10^6 Btu) of gas at an average gas price of $0.479 per therm. The cost of the additional fiberglass needed to bring the water heaters to standard would be $20.48. The total cost, including labor, would be $51.20, or approximately 2.5 times the cost of the fiberglass insulation. The latter is based on a study conducted by Oak Ridge National Laboratory. (Blue 1979, Figure 2.2). The most significant point in Table 5 is that the payback periods for the additional insulation are very low, thus making the addition cost-effective. This would be true even if the selected multiplier for costs were doubled. For the 100 gallon water heater, the payback period is 1.57 years, significantly less than the 3–5 year payback normally considered good for non-Federal sector energy conservation investments, or the 7 to 10 years typically used by Federal agencies.

Table 5—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (With 70 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 Compliance Levels)

Note: The text of Table 5 appears in the Appendix.

Tables 6–8 provide two additional examples—one for water heaters with 80% loss and the other with 90% loss. The key points to observe in these examples are how the needed insulation is reduced for all tank capacities. In the 100 gallon example, at 80% loss, 1½ in. of fiberglass insulation is needed. At 90% loss, only 1 in. is needed—the same as is used to meet ANSI/ASHRAE/IES Standard 90A–1980. In other words, use of other energy conserving features such as intermittent ignition devices, in lieu of pilot lights, and flue dampers is an important option. Both are readily available on the market. Also significant are the payback periods for the investment of added insulation. For the 100 gallon example it ranges from 1.27 to 1.57 years, which is significantly lower than other energy conservation investments routinely incorporated in commercial buildings.

Table 6—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A–1980 and DOE Interim Standards (With 80 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 Compliance Level)

Note: The text of Table 6 appears in the Appendix.

Table 7—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (With 80 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 (Compliance Level)

Note. The text of Table 7 appears in the Appendix.

Table 8—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A–1980 and DOE Interim Standards (With 90 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 Compliance Levels)

Note: The text of Table 8 appears in the Appendix.

4. Summary of Energy Efficiencies and Cost Benefits for Electric Water Heaters

The calculation for the allowable standby losses for electric water heaters is much simpler—involving only the allowable W/ft² (4 W/ft² for ANSI/ASHRAE/IES Standard 90A–1980 and 1.9 W/ft² for the DOE interim standards). Using the calculation methods described in ANSI C72.1–1972, the minimum R-values for insulation are determined and converted into thickness based on the k-value. Different fiberglass insulation densities produce a similar spread of results. It was assumed that energy required to make up standby losses was delivered with 100% efficiency. The calculations considered

jacket losses through top, bottom, and sides.

Standby losses were calculated based on losses incurred while the water heater tank operated at the test conditions prescribed in ANSI Standard C72.1–1972 for DOE interim standards and ANSI/ASHRAE/IES Standard 90A–1980 (150 °F tank temperature, 73.5 °F room temperature). The calculations of energy savings were based on 140 °F tank temperature and 72.5 °F room temperature (similar to those for gas-fired heaters).

Simulations were done with a computer program that iteratively solved tank-surface temperature based on radiative and convective losses (correlations) and the energy balance equation. Note, this is different from the calculations for gas water heater jackets, which were only considered for the tank sides and top—the flame/burner is on the bottom.

The insulation thicknesses needed to bring electric water heaters in compliance with ANSI/ASHRAE/IES Standard 90A–1980 (1982 Requirements) and the DOE interim standards are higher than for gas water heaters. This is due to consideration of combustion and exhaust life safety requirements for gas water heaters. (See Section B, Institutional Resources.) The test case provides these examples of typical electric water heaters–50 gallon, 120 gallon and 170 gallon. All require 1½ in. of insulation to comply with ANSI/ASHRAE/IES Standard 90A–1980 and 3½ in. to comply with the DOE interim standards. (See Table 9.) It should be remembered that flue dampers and intermittent ignition devices are not applicable in electric water heaters.

Table 10 contains the energy savings and added costs for compliance. In all three examples, the annual energy savings are significant—$21.35 for the 50 gallon heater, $38.94 for the 120 gallon heater, and $49.01 for the 170 gallon heater, in 1988 dollars. This is based on calculated electricity savings of 292.46 kWh for the 50 gallon example, 533.42 kWh for the 120 gallon example, and 671.37 kWh for the 170 gallon example.

The added cost for the 120 gallon water heater were calculated to be $39.20 in fiberglass insulation and $97.99 overall, and $50.58 for insulation and $128.45 overall for the 170 gallon example. The total overall costs were also calculated as 2.5 times the cost of the insulation. Payback for both range from 2.52 to 2.58 years, both well within the excellent range for energy conservation investments.

Table 9—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A–1980 and the DOE Interim Standards

Note: The text of Table 9 appears in the Appendix.

Table 10—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Note: The text of table 10 appears in the Appendix.

5. Summary of Energy Efficiency and Cost-Benefit for Water Oil Heaters

The calculations for oil water heaters are very similar to those of gas water heaters; the test procedures are similar and burner configurations are similar. Like gas water heaters, energy savings reductions can result from added insulation, or the addition of flue dampers. The analysis performed was similar to that done for gas-fired heaters, but the efficiencies are combustion efficiencies (100%-stack losses, a measure of actual energy input into water without including standby losses while that energy is being returned). Under these conditions the efficiency requirements are 80% Ec for ANSI/ASHRAE/IES Standard 90A–1980 and 83% Ec for the DOE interim standards. All the other underlying assumptions used in the gas water heater analysis also pertain to oil water heaters.

The oil heater analyzed was similar in geometry to the model used in gas-fired water heater analysis—6 in. flue, 23.75 in. wide tank, 47.9 in. high tank.

In the examples given (Tables 11–13), an 86 gallon oil-fired water heater, the insulation requirements of ANSI/ASHRAE/IES Standard 90A–1980 result in jacket heat loss rates of 930.75 Btu/h. Jacket heat loss is reduced to 417.10 Btu/h using the DOE interim standards criteria, or a difference of 513.65 Btu/h. Insulation levels for Standard 90A–1980 are 1 in. and 2 in. for the DOE interim standards. The added insulation can be placed either internal or external to the water heater jacket. Savings from the addition of 1 inch (2 inches overall) fiberglass insulation would be $21.78, or a total of 4.5 million Btu (at $4.84/million Btu, 1988 average national price). The cost of installing the insulation would be $40.80 ($11.66 for insulation and $29.14 for the other costs). Again the payback period of 1.87 years falls well within the acceptable range for energy conservation investments.

Table 11—Jacket Heat Loss Rates and Energy Savings Rates Resulting From Increased Insulation Thickness

Note: The text of Table II appears in the Appendix.

Table 12—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A–1980 and DOE Interim Standards

Note: The text of Table 12 appears in the Appendix.

Table 13—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Note: The text of Table 13 appears in the Appendix.

B. Institutional Resources and Impact on Affected Groups

DOE is obligated under the DOE Organization Act and section 310 of the Energy Conservation Standards for New Buildings Act to analyze the effect its standards would have on the groups affected by each portion of the standards. For water heaters this would include the product manufacturers, product distributors, building designers (architects and engineers), and building owners. The objective of the building standards has been stated elsewhere in this Statement of Reasons—to promulgate standards that save the maximum practicable amount of energy. The term "practicable" pertains to the affected groups because they must either manufacture, supply, design, or bear the cost of buying the water heaters or water heater components that go into buildings.

In setting the water heater standby loss criteria, DOE considered the following questions:

1. Is It Technically Feasible to Meet the Criteria?

There are several ways to meet the standby loss criteria adopted interim standards. For gas and oil water heaters, more insulation, a flue damper, and/or an intermittent ignition device can be added. For electric water heaters, the addition of insulation is the appropriate response. Flue dampers and intermittent ignition devices are a well-established part of the water heater market and readily available. While their addition adds to the cost of gas and oil water heaters, DOE finds no overriding technical reason they can't be added to the covered water heaters. In many cases, flue dampers and intermittent ignition devices are already being specified in the design of commercial buildings.

DOE has assumed the use of fiberglass insulation instead of foam insulation to provide a conservative estimate of technical feasibility in light of the growing perception of problems using CFC-based foam insulations. Studies indicate that the CFCs discharged from foam insulations and other products can damage the earth's atmosphere. However, DOE is aware that many water heaters produced today are insulated with foam. At least one insulation manufacturer claims to have a foam produced without the use of CFCs and it is reasonable to believe others will follow. Foam insulations occupy less volume than fiberglass insulations with corresponding thermal resistance values. For example, an inch of extruded polystyrene foam would have an R-value of 5. To achieve the same R-value, 4–5 inches of fiberglass insulation might be needed, depending on density. DOE found no reason to believe that those manufacturers using foams will be more or less adversely affected than those using fiberglass.

The addition of insulation does present some challenges to manufacturers. Depending on the volume of existing external water heater jackets, it may not be possible for a manufacturer to place the prescribed amount of insulation between the jacket and the tank. This would necessitate either redesigning the jacket, or more practically for those companies that make many sizes, using the next larger jacket size. Both options are technically feasible and cost-effective. An additional option would be to wrap the water heater with insulation once it is set in place.

There has been some resistance to adding insulation to electric water heaters because of the higher temperatures that the internal wiring would have to endure. DOE recognizes this problem but there are wire products on the market with electric insulation readily capable of withstanding higher temperatures than will be experienced in commercial storage water heaters. Adding insulation to the outside of storage water heaters must be done with care on gas and oil water heaters to avoid causing combustion or exhaust problems. In either case, trained certified installers should be used.

2. What Effect Would the Criteria Have on the Water Heater Market and the Product Distributors?

The DOE interim standards will be voluntary for new non-Federal buildings. The standards will only be mandatory for the design of new Federal buildings (they do not cover buildings constructed with government loans or loan guarantees). Therefore, as new Federal buildings account for only 2–3 percent of those constructed nationally, DOE finds no convincing evidence that there will be a significant effect on the water heater market or product distributors. In addition, because the DOE interim standards are design standards, it must be understood that because of the Federal building process the actual procurement of materials and building components are not likely to be affected for two to three years or more. The Federal building process involves several steps. The first is developing the building program, site selection, and producing the preliminary design. The following fiscal year the appropriation of funds is sought for design, construction documents, and cost estimates. Once this has been completed, construction funds are sought in the following fiscal year, based on the design and cost estimates. Once construction funds are appropriated, bidding, procurement of materials, and construction follow. DOE interim standards for many aspects of the building are applied in the first and second steps of this process. In the case of water heaters, the criteria will primarily be used in the second step for specification and cost estimating. Hence, buildings designed in FY 1990 will start construction in mid FY 1991 at the earliest. Most will be commenced in FY 1992.

ASHRAE has voted to issue ASHRAE/IES Standard 90.1–1989, as previously noted. The water heater standby loss criteria are the same as those in the DOE interim standards and have an effective date of 1992. Hence, in 1992, the criteria will be the same. It is likely that ASHRAE/IES Standard 90.1–1989 will be adopted nationally by most States as were its predecessor versions, Standards 90–75 and 90A–1980. Commencing with their publication and distribution they will represent recommended engineering practice across the country whether they have been incorporated in local or State codes or not. By 1992, product manufacturers will have to comply with the same criteria across the board. The small but guaranteed market for water heaters that new Federal buildings will provide, which because of the previously described Federal building process will commence in late 1991, should assist manufacturers in making the transition to more energy conserving water heater product lines.

3. Will Building Owners Be Adversely Affected Because of the Added Costs?

It is clear from the analysis conducted, and summarized above, that the standby loss criteria can be very beneficial to building owners. With short payback periods, they are able to recoup their initial investment within 1 to 2½ years. Any energy and dollar savings beyond the payback period are profit. It has been contended that maintenance of more heavily insulated water heaters could be more expensive, thus reducing profits. However, DOE finds no evidence which links standby loss criteria with higher maintenance costs.

It has been contended that added insulation will require the design of special access doors to permit the installation of water heaters. In Federal buildings, doors are currently designed to widths adequate to accept better insulated equipment. Unlike homes, egress requirements of commercial buildings, with generally larger heating equipment such as boilers and furnaces and cooling equipment such as chillers, already require adequate openings. The same is true in the private sector, too. Hence, no effect on owners is anticipated.

4. What Effects Will There Be on Building Designers?

DOE has identified none. DOE considered that designers must provide space to accommodate equipment in the building design, size the equipment, design the connection of equipment to the larger water system in the building, and specify the equipment. DOE sees no impact on designers in regard to the above tasks relative to the standby loss criteria.

5. Is Fiberglass the Optimal Insulation To Meet the Standby Loss Criteria?

In most of the examples analyzed it is possible to meet DOE interim standards through simple addition of fiberglass. Foam insulation, however, is an option, often only causing the manufacturer to purchase the foam generating equipment (prices can range $10,000 to $20,000). With the increased insulating value of the foam, no re-tooling of the jacket size is usually required. Most foams today use blowing agents containing chlorofluorocarbons (CFC). It has been determined that CFC emissions can be damaging to the atmosphere. It is conceivable CFC regulations may be enacted limiting the use of some foams until substitute foaming agents can be identified and tested.

Another option to meet the additional insulation requirements is to provide in-situ fiberglass wrap—2 or more inches. For almost all applications in electric water heaters, this will work. There are potential problems associated with

proper installation of the in-situ wrap when used with either gas or oil, or for higher temperature applications. This would require trained installers and/or careful on-site inspection.

According to discussions with several manufactuers, larger water heaters (over 120 gallons) are custom built. (USDOE 1989) Thus, the incremental cost of increasing the jacket insulation thickness is extremely small—as little as $100 per unit (unit prices vary from around $1300–11,600) (Gaston 1984).

V. DOE Reference Materials

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VI. Summary

In the preceding sections of this Statement of Reasons, DOE has endeavored to be responsive to the October 6, 1989 Memorandum and Order of the court in *Gas Appliance Manufacturers Association et al.* v. *Secretary of Energy*. More specificially, DOE has undertaken to provide a detailed and substantiated statement of the reasons for and circumstances surrounding its adoption of the water heater standby loss criteria in question, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis and impact on affected groups. In that regard, DOE has described and referenced the activities and procedures which its personnel utilized and the materials and data upon which they relied in arriving at the decision to adopt the standby loss criteria which are the subject of the above-referenced litigation and this Statement of Reasons.

In conjunction with the publication of this Statement of Reasons, and in further response to the court's Memorandum and Order, DOE is placing in the public rulemaking record all of the technical support documents and referenced materials upon which it is relying to date. These documents and materials may be examined at DOE's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Ave SW., Washington, DC. 20585, (202) 586–6020, between 9:00 a.m.–4:00 p.m., Monday—Friday, except holidays.

In further compliance with the Memorandum and Order, DOE is also providing for its receipt of written comments on this Statement of Reasons from the plaintiffs in the above-referenced litigation and other interested persons. Those comments must be received by DOE by the close of business on January 15, 1990. Section VII below provides additional information on the public comment procedures to be used.

As a final act of compliance with the Memorandum and Order, on February 15, 1990, DOE will publish in the **Federal Register** a statement responding to such critique(s) or comment as may be submitted by plaintiffs in the "GAMA" litigation and other interested persons, therein discussing the same with reference to the applicable statutory criteria and announcing DOE's determination as of that time as to appropriate standby loss criteria.

VII. Public Comment Procedures

A. Participation in Response to Statement of Reasons

DOE encourages and invites the maximum level of public participation in responding to this Statement of Reasons. Individuals, Federal agencies, architects, engineers, utilities, States and local governments, building code organizations, builders, builder associations, manufacturers, manufacturer associations, building owners, building owner associations, consumers and others are urged to submit written comment on the Statement of Reasons.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects discussed in this Statement of Reasons. Instructions for submitting written comments are set forth below. Comments should be labeled both on the envelope and on the documents, "Commercial and Multi-Family High Rise Residential Building Standards (Docket No. CAS–RM–79–112–C)" and must be received by January 15, 1990, in order to be considered. Seven (7) copies are requested to be submitted. All comments received by that date and other relevant information will be considered by DOE before final action is taken. All written comments received on the Statement of Reasons will be available for public inspection at the DOE Freedom of Information Reading Room as previously provided.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and, (7) why disclosure of the information would not be in the public interest.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Water heaters, Insulation, Voluntary performance standards.

In consideration of the foregoing and in compliance with the court's Memorandum and Order, DOE hereby submits the foregoing Statement of Reasons For Adoption of Water Heater Standby Loss Criteria as identified in (Part 435 of Chapter II of Title 10 of the Code of Federal Regulations Subpart A, Table 9.3–1, Standard Rating Conditions and Minimum Performance of Water Heating Equipment.)

Issued in Washington, D.C. on November 27, 1989.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

BILLING CODE 6450-01-M

APPENDIX -- Tables 1--13

Table 1. STANDBY LOSSES CALCULATED USING ANSI Z21.10.3a-1985 METHOD (FLUE DAMPER & IID) (OTHER LOSSES = 193.24)

FUEL	HEIGHT (in.)	DIAMETER (in.)	INPUT (kBtu/h)	VOLUME (gal.)	INSULATION TOP (in.)	INSULATION SIDE (in.)	INSULATION BOTTOM (in.)	SURFACE AREA (FT2)	WATER TEMP (°F)	AIR TEMP (°F)	Q LOSS (Btu/H)	UA (%/H)	EF-90A (%/H)	EF-DOE (%/H)
GAS	55.70	23.75	240.00	100.00	0.00	0.00	0.00	35.01	160.00	70.00	4469.83	8.37	3.47	1.68
GAS	55.70	23.75	240.00	100.00	0.50	0.50	0.00	37.03	160.00	70.00	1150.06	2.41	3.47	1.68
GAS	55.70	23.75	240.00	100.00	1.00	1.00	0.00	39.09	160.00	70.00	708.50	1.62	3.47	1.68
GAS	55.70	23.75	240.00	100.00	1.50	1.50	0.00	41.19	160.00	70.00	528.66	1.30	3.47	1.68
GAS	55.70	23.75	240.00	100.00	2.00	2.00	0.00	43.33	160.00	70.00	430.79	1.12	3.47	1.68
GAS	55.70	23.75	240.00	100.00	2.50	2.50	0.00	45.52	160.00	70.00	369.27	1.01	3.47	1.68
GAS	55.70	23.75	240.00	100.00	3.00	3.00	0.00	47.75	160.00	70.00	327.11	0.93	3.47	1.68
GAS	55.70	23.75	240.00	100.00	3.50	3.50	0.00	50.03	160.00	70.00	296.48	0.88	3.47	1.68
GAS	55.70	23.75	240.00	100.00	4.00	4.00	0.00	52.35	160.00	70.00	273.28	0.84	3.47	1.68
GAS	55.70	23.75	240.00	100.00	4.50	4.50	0.00	54.71	160.00	70.00	255.16	0.81	3.47	1.68
GAS	55.70	23.75	240.00	100.00	5.00	5.00	0.00	57.12	160.00	70.00	240.64	0.78	3.47	1.68
GAS	55.70	23.75	240.00	100.00	5.50	5.50	0.00	59.57	160.00	70.00	228.81	0.76	3.47	1.68
GAS	55.70	23.75	240.00	100.00	6.00	6.00	0.00	62.06	160.00	70.00	217.90	0.74	3.47	1.68

Table 2. Jacket loss rates and energy savings rates resulting from increased insulation thickness.

GAS HEATER TYPE	ANSI/ASHRAE/IES Standard 90A-1980 (Btu/h)	DOE Interim Standards (Btu/h)	SAVINGS (Btu/h)
FLUE DAMPER & IID	1150.60	708.50	442.10

Table 3. Ability to Comply with DOE Interim Standards by Reduction of Jacket Losses for a Selection of Commercially Available Heater Sizes based on Stated Loss Assumptions.

Tank Capacity (gallons)	Percent of Losses through Jacket at Compliance with ANSI/ASHRAE/IES Standard 90A-1980					
	30	40	50	60	70	80
100	NO	NO	NO	NO	YES	YES
129	NO	NO	NO	NO	YES	YES
221	NO	NO	NO	YES	YES	YES
411	NO	NO	NO	YES	YES	YES
594	NO	NO	NO	YES	YES	YES

Table 4. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 70 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
100	1 in.	3 in.
129	1 in.	2-1/2 in.
221	1 in.	2 in.
411	1 in.	1-1/2 in.
594	1 in.	1-1/2 in.

* 2 lb/ft^3 density fiberglass insulation ($k = 0.28$ $Btu \cdot in/h \cdot ft^2 \cdot °F$)

Table 5. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (with 70 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance levels).

Tank Capacity (gallons)	Energy Savings %	Fiberglass %	Total* %	Payback Years
100	32.53	20.48	51.20	1.57
129	31.74	21.06	52.65	1.66
221	38.03	18.36	45.90	1.21
411	56.67	27.14	67.85	1.20
594	77.46	37.04	92.60	1.20

* The total cost is based studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (see Blue 1979)

Table 6. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 80 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
100	1 in.	1-1/2 in.
129	1 in.	1-1/2 in.
221	1 in.	1 in.
411	1 in.	1 in.
594	1 in.	1 in.

* 2 lb/ft^3 density fiberglass insulation ($k = 0.28$ Btu·in/h·ft^{2}·°F)

Table 7. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (with 80 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tank Capacity (gallons)	Energy Savings %	Fiberglass %	Total* %	Payback Years
100	26.08	13.28	33.20	1.27
129	27.72	13.73	34.33	1.24
221	27.99	9.00	22.50	0.80
411	40.93	13.37	33.43	0.82
594	55.90	18.27	45.68	0.82

* The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (see Blue 1979)

Table 8. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 90 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance levels).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
100	1 in.	1 in.
129	1 in.	1 in.
221	1 in.	1 in.
411	1 in.	1 in.
594	1 in.	1 in.

* 2 lb/ft^3 density fiberglass insulation ($k = 0.28$ Btu·in/h·ft^{2}·°F)

Table 9. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and the DOE Interim Standards.

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
50	1-1/2 in.	3-1/2 in.
120	1-1/2 in.	3-1/2 in.
170	1-1/2 in.	3-1/2 in.

* 2 lb/ft^3 density fiberglass insulation ($k = 0.28$ Btu·in/h·ft^2·°F)

Table 10. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards.

Tank Capacity (gallons)	Energy Savings $	Fiberglass $	Total* $	Payback Years
50	21.35	23.67	59.18	2.77
120	38.94	39.20	97.99	2.52
170	49.01	50.58	126.45	2.58

* The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (Blue 1979.)

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Table 11. Jacket heat loss rates and energy savings rates resulting from increased insulation thickness.

OIL HEATER TYPE	ANSI/ASHRAE/IES Standard 90A-1980 (Btu/h) (Ec = 80%)	DOE Interim Standards (Btu/h) (Ec = 83%)	SAVINGS (Btu/h)
JACKET LOSSES = 80% OF TOTAL LOSS	930.75	417.10	

Note: These savings are based on assumption that models currently meeting the ANSI/ASHRAE/IES Standard 90A-1980 criteria have 80% of standby loss through the jacket.

Table 12. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards.

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
55	1 in.	2 in.

* 2 lb/ft^3 density fiberglass insulation ($k = 0.28$ Btu·in/h·ft^2·°F)

Table 13. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Tank Capacity (gallons)	Energy Savings $	Fiberglass $	Total* $	Payback Years
55	21.78	11.66	29.14	1.87

* The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (Blue 1979)

Note: National average energy cost for fuel oil (distillate fuel) is $4.84/million Btu.

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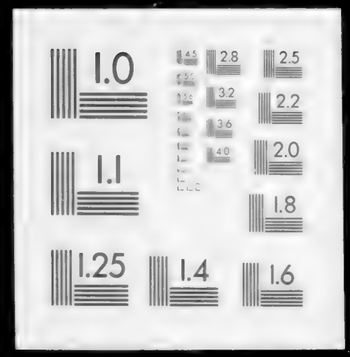
H.R. 215/Pub. L. 101–173
To amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee. (Nov. 27, 1989; 103 Stat. 1292; 1 page) Price: $1.00

H.J. Res. 291/Pub. L. 101–174
Designating November 16, 1989, as "Interstitial Cystitis Awareness Day". (Nov. 27, 1989; 103 Stat. 1293; 1 page) Price: $1.00

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S.J. Res. 184/Pub. L. 101–176
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12-1-89
Vol. 54 No. 230

federal register

Friday
December 1, 1989

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12-1-89
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federal register

Friday
December 1, 1989

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 696]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 1 through December 7, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 696 (7 CFR part 907) is effective for the period from December 1 through December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,085 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 73,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 66 percent of the 1989–90 crop of 73,350 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (10 percent) or processed (22 percent). This compares with the 1988–89 total of 45,561 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to

the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Comments were received from Mr. Carl Pescosolido, Jr., Sequoia Orange Company, Inc., Mr. Richard J. Pescosolido, Foothill Farms, and Mr. James A. Moody, coordinator for Farmers Alliance for Improved Regulation. The Department is currently analyzing the comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on November 28, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of eight to one with one abstention, that 1,550,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989–90 marketing policy. This recommended amount is 450,000 cartons less than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 1,550,000 cartons, 1,488,000 are allotted for District 1, and 62,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 23, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,284,000 cartons compared with 928,000 cartons shipped during the week ending on November 24, 1988. Export shipments totaled 221,000 cartons compared with 132,000 cartons shipped during the week ending on November 24, 1988, and processing and other uses accounted for 315,000 cartons compared with 236,000 cartons shipped during the week ending on November 24, 1988.

Fresh domestic shipments to date this season total 5,145,000 cartons compared with 2,747,000 cartons shipped by this time last season. Export shipments total 783,000 cartons compared with 211,000 cartons shipped by this time last season. Processing and other use shipments total 1,352,000 cartons compared with 796,000 cartons shipped by this time last season.

For the week ending on November 23, 1989, handlers in District 1 had net undershipments of 259,000 cartons and handlers in District 3 had net undershipments of 20,000 cartons. Thus, undershipments of 279,000 cartons will be carried over into the week ending on November 30, 1989. Preliminary adjusted allotment for the week ending on November 30, 1989, is 1,711,000 cartons.

The average f.o.b. shipping point price for the week ending on November 23, 1989, was $7.89 per carton based on a reported sales volume of 826,000 cartons compared with last week's average of $8.60 per carton on a reported sales volume of 1,154,000 cartons. The season average f.o.b. shipping point price to date is $8.88 per carton. The average f.o.b. shipping point price for the week ending on November 24, 1988, was $9.78 per carton; the season average f.o.b. shipping point price at this time last season was $10.42 per carton.

The Committee reports that overall demand for navel oranges has declined. Thus, because of the weak market, the large supply of navel oranges available for shipment, and a large carryover, prorate was set below the shipping schedule.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 1 through December 7, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market. By using provisions contained in the navel orange marketing order, handler shipments could exceed an estimated 2,140,000 cartons during the week.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 28, 1989, and this action needs to be effective for the regulatory week which begins on December 1, 1989.

Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.996 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 907.996 Navel Orange Regulation 696.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 1 through December 7, 1989, is established as follows:

(a) District 1: 1,488,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 62,000 cartons;
(d) District 4: unlimited cartons.

Dated: November 29, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-28293 Filed 11-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 694]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 694 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period from December 3 through December 9, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 694 (7 CFR part 910) is effective for the period from December 3 through December 9, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on November 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.994 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.994 Lemon Regulation 694.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 3, 1989, through December 9, 1989, is established at 350,000 cartons.

Dated: November 29, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-28292 Filed 11-30-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-228-AD; Amendment 39-6408]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, -81, -82, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9 series airplanes, which currently requires inspection of the left- and right-hand window belt panels for cracks, and repair, if necessary. This amendment requires that repetitive eddy current inspections be performed at more frequent intervals for certain airplanes, and extends the repetitive inspection interval for other airplanes. This amendment is prompted by a report of a 17.75-inch crack of a window belt panel discovered during routine maintenance. This condition, if not corrected, could result in rapid cabin depressurization.

EFFECTIVE DATE: December 18, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5322.

SUPPLEMENTARY INFORMATION: On October 12, 1985, the FAA issued AD 85-19-02, Amendment 39-5136 (50 FR 36046; September 5, 1985), to require inspection of the left- and right-hand window belt panels for cracks on certain McDonnell Douglas DC-9-10, -20, -30, -40, -50, -80 series aircraft and C-9 (Military) series airplanes. That action was prompted by reports of cracks in the window belt panel. The cracks were attributed to metal fatigue. This condition, if not corrected, could lead to rapid depressurization and result in severe structural damage to the airplane.

Since issuance of that AD, a 17.75-inch crack of a window belt panel was discovered on a Model DC-9-32 series airplane, fuselage number 469, during routine maintenance activity.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A53-142, Revision 8, dated October 25, 1989, which describes procedures for eddy current inspection and repair, as necessary, of the window belt panels above and below the passenger compartment windows.

This revision of the service bulletin segregates the affected airplanes into two groups: Group I includes airplanes with line numbers 1 through 950; Group II includes airplanes with line numbers 951 through 1157. Each group was manufactured using a different type of aluminum having different fatigue characteristics; the material used in the (earlier-produced) Group I airplanes is less ductile than that used in the (later-produced) Group II airplanes. Therefore, the service bulletin specifies different repetitive inspection intervals for the two groups of airplanes.

The revised service bulletin also describes procedures for a modification, consisting of an exterior window belt doublers installation, which, if installed, would constitute terminating action for the repetitive inspections.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 85-19-02 to require eddy current inspections to detect cracks of the window belt panels at more frequent repetitive intervals for Group I airplanes than previously required by the existing AD; this AD extends the repetitive inspection intervals for Group II airplanes. The inspections and necessary repairs are required to be accomplished in accordance with the revised service bulletin described above.

Additionally, this rule removes all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, since later revisions of the service bulletin may be approved as an alternate means of compliance with this amendment, as provided by paragraph H.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Therefore, the FAA has issued additional rulemaking which proposes to require operators to accomplish the modifications identified in paragraph C. and D. of this AD and, thus, terminate the repetitive inspection requirement. The proposed rule, contained in Docket 89-NM-197-AD (54 FR 39408; September 26, 1989), is a result of the recommendations of the Aging Aircraft Task Force, sponsored by the Air Transport Association (ATA) of America, the Aerospace Industries Association (AIA), and the FAA; it proposes the installation of numerous terminating modifications related to a number of service bulletins applicable to Model DC-9 series airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined tha this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

2. Section 39.13 is amended by superseding Amendment 39-5136 (50 FR 36046; September 5, 1985), AD 85-19-02, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50, -81, -82 and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent crack propagation, which could result in rapid cabin depressurization, accomplish the following:

A. For airplanes fuselage numbers 1 through 950: Prior to the occurrence of the latest of the compliance times set forth below, inspect the left- and right-hand window belt panels and adjacent structure for cracks using eddy current methods, in accordance with McDonnell Douglas Alert Service Bulletin (ASB) A53-142, Revision 8, dated October 25, 1989 (hereinafter referred to as ASB 53-142):

1. Prior to the accumulation of 30,000 or more landings; or

2. Within 2,500 landings since the last inspection in accordance with Amendment 39-5136, AD 85-19-02; or

3. Within 500 landings after the effective date of this AD.

B. For airplanes, fuselage numbers 951 through 1157: Prior to the occurrence of the latest of the compliance times set forth below, inspect the left- and right-hand window belt panels and adjacent structure for cracks using eddy current methods, in accordance with McDonnell Douglas ASB A53-142:

1. Prior to the accumulation of 30,000 or more landings; or

2. Within 10,000 landings since the last inspection in accordance with Amendment 39-5136, AD 85-19-02; or

3. Within 500 landings after the effective date of this AD.

C. Repeat the inspections required by paragraph A. of this AD at intervals not to exceed 800 landings, until such time as the preventive modification is installed in accordance with McDonnell Douglas Service Bulletin 53-142, dated June 30, 1983.

D. Repeat the inspections required by paragraph B. of this AD at intervals not to exceed 20,000 landings, until such time as preventive modification is installed in accordance with McDonnell Douglas Service Bulletin 53-142, dated June 30, 1983.

E. Credit may be given for inspections and repairs already accomplished in accordance with earlier versions of the McDonnell Douglas ASB A53-142.

F. If any fuselage skin cracks are found, accomplish the procedures described in paragraphs F.1., F.2., or F.3., below:

1. Before further flight, repair fuselage skin cracks in accordance with Option 2 described in ASB 53-142; or

2. Before further flight, repair fuselage skin cracks in accordance with McDonnell Douglas DC-9 Drawing J060131. Repairs of fuselage skin cracks accomplished in accordance with Drawing J060131 must be visually inspected at intervals not to exceed 2,000 landings, and must be replaced by repairs accomplished in accordance with McDonnell Douglas Drawing J060109 within 4,000 landings. After accomplishment of repairs in accordance with Drawing J060109, inspect the unrepaired areas of the airplane in accordance with the requirements of paragraphs C., above, for fuselages 1 through 951, or paragraph D., above, for fuselages 952 through 1157 or

3. Before further flight, install a placard in plain view of the pilot reading "Pressurized Flight Prohibited," and accomplish either paragraph F.1. or F.2., above, within 4,000 landings.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base to comply with the requirements of this AD.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-5136, AD 85-19-02.

This amendment becomes effective December 18, 1989.

Issued in Seattle, Washington, on November 21, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28155 Filed 11-30-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

RIN 2700-AA49

Availability of Agency Records to Members of the Public

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This action amends 14 CFR part 1206, "Availability of Agency Records to Members of the Public," by making administrative changes and corrections to reflect the renaming of a NASA field installation, to change the offices responsible for Freedom of Information Act (FOIA) requests, and to reassign responsibilities for FOIA final determinations.

EFFECTIVE DATE: December 1, 1989.

ADDRESS: Freedom of Information Act Officer, Code LN, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Patricia M. Riep, 202/453-2939, or Pamela J. von Soosten, 202/453-2439.

SUPPLEMENTARY INFORMATION: The notice and public comment procedures of 5 U.S.C. 553 were considered to be inapplicable based on the exemption at 5 U.S.C. 553(a)(2), for rulemaking on "a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts."

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities. NASA has also determined that this rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1206

Freedom of Information, Information.

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

For reasons set out in the preamble, 14 CFR part 1206 is amended to read as follows:

1. The authority citation for part 1206 continues to read as follows:

Authority: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93-504, 88 Stat. 1561, Pub. L. 99-507, unless otherwise noted; the Privacy Act of 1974, 5 U.S.C. 552a.

2. Section 1206.401 is amended by revising paragraph (j) to read as follows:

§ 1206.401 Location of NASA information centers.

* * * * *

(j) NASA Information Center, John C. Stennis Space Center, MS 39529.

* * * * *

3. Section 1206.500 is amended by revising the section heading and the introductory text to read as follows:

§ 1206.500 Assistant Deputy Administrator.

Except as otherwise provided in § 1206.504, the Assistant Deputy Administrator or designee is responsible for the following:

* * * * *

4. Section 1206.502 is amended by revising paragraph (a)(3) to read as follows:

§ 1206.502 Field and component installations.

(a) * * *

(3) In coordination with the Assistant Deputy Administrator, ensuring that requests for records under the cognizance of his/her respective installation are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

* * * * *

5. Section 1206.503 is amended by revising paragraph (a)(4) to read as follows:

§ 1206.503 NASA Headquarters.

(a) * * *

(4) In coordination with the Assistant Deputy Administrator, ensuring that requests for agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in subpart 6 of this part.

* * * * *

6. Section 1206.600 is revised to read as follows:

§ 1206.600 Requests for records.

A member of the public may request an agency record by mail or in person from the Freedom of Information Act (FOIA) Office having cognizance over the record requested or from the NASA Headquarters FOIA Office.

7. Section 1206.601 is amended by revising paragraph (a) to read as follows:

§ 1206.601 Mail requests.

* * * * *

(a) The request must be addressed to an appropriate NASA FOIA Office or otherwise be clearly identified on the envelope and in the letter as a request for an agency record under the "Freedom of Information Act."

* * * * *

8. Section 1206.602 is revised to read as follows:

§ 1206.602 Requests in person.

(a) A member of the public may request an agency record in person at a NASA FOIA Office (see § 1206.401) during the duty hours of the installation.

(b) A request at an FOIA Office must identify the record requested or reasonably describe it as provided in § 1206.601(b).

(c) If the record requested is located at the FOIA Office or otherwise readily obtainable, it shall be made available to the requester upon the payment of any fees that are chargeable (see subpart 7 of this part), which fees may be paid in cash or by a check or money order payable to the "National Aeronautics and Space Administration." If the record requested is not located at the FOIA Office or otherwise readily obtainable, the request will be docketed at the FOIA Office and processed in accordance with the procedures in §§ 1206.603 and 1206.604, with any fee chargeable being handled in accordance with § 1206.601(c).

9. Section 1206.603 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1206.602 Procedures and time limits for initial determinations.

(a) Except as provided in § 1206.608, an initial detemination on a request for an agency record, addressed in accordance with § 1206.601(a) or made in person at a NASA FOIA Office, shall be made, and the requester shall be sent notification thereof, within 10 working days after receipt of the request, as required by 5 U.S.C. 552(a)(6).

(b) An initial determination on a request for an agency record by mail not addressed in accordance with § 1206.601(a) shall be made, and the requester shall be sent notification thereof, within 10 working days after the correspondence is recognized as a request for an agency record under the "Freedom of Information Act" and received by the appropriate NASA FOIA Office. With respect to such a request, unless an initial determination can reasonably be made within 10 working days of the original receipt, the request will be promptly acknowledged and the requester notified of the date the request was received at that FOIA Office and that an initial determination on the request will be made within 10 working days of that date.

* * * * *

10. Section 1206.604 is revised to read as follows:

§ 1206.604 Request for records which exist elsewhere.

(a) If a request for an agency record is received by an FOIA Office not having cognizance of the record (for example, where a request is submitted to one NASA installation or Headquarters and the requested record exists only at another NASA installation), the FOIA Office receiving the request shall promptly forward it to the NASA FOIA Office having cognizance of the record requested. That installation shall acknowledge the request and inform the requester that an initial determination on the request will be sent within 10 working days from the date of receipt by such installation.

(b) If a request is received for agency records which exist at two or more installations, the FOIA Office receiving the request shall undertake to comply with the request, if feasible, or to forward the request (or portions thereof) promptly to a more appropriate installation for processing. The requester shall be kept informed of the actions taken to respond to the request.

(c) If a requester is received by a NASA FOIA Office for a record of another agency, the requester shall promptly be informed of that fact, and the request shall be returned to the requester, with advice as to where the request should be directed.

11. Section 1206.610 is amended by correcting the introductory heading to paragraph (b) to read as follows:

§ 1206.610 Notice to submitters of commercial information.

* * * * *

(b) *Notice to submitters.* * * *

* * * * *

Dated: November 24, 1989.

Richard H. Truly,

Administrator.

[FR Doc. 89-28147 Filed 11-30-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

Export of Chemicals From the United States to Panama; Policy Statement

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Policy statement.

SUMMARY: Notice is hereby given that an exporter must notify DEA at least 15 days in advance of the shipment of a chemical listed under the Chemical Diversion and Trafficking Act of 1988 if the shipment is from the United States to Panama. The exception under title 21 CFR 1313.24 allowing exporters to notify DEA on the day of shipment for transactions between a "regulated person" and a "regular customer" does not apply to shipments to Panama until further notice.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Howard A. McClain, Jr., Office of Diversion Control, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION: The following is a statement of policy by the Drug Enforcement Administration (DEA) under the Chemical Diversion and Trafficking Act of 1988 regarding exports of listed chemicals from the United States to Panama.

On August 1, 1989, the DEA published the final rule implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA). The CDTA provides DEA with a potent new tool to use in combatting illicit drug manufacturing, namely the ability to deny traffickers access to the chemicals necessary to produce and process illicit drugs. The CDTA and the implementing regulations establish a system of recordkeeping and reporting requirements that provide DEA with a mechanism to track domestic and international movement of listed chemicals, tableting and encapsulating machines, and equipment. DEA now has the authority to stop a shipment of listed chemicals pursuant to 21 U.S.C. 971 "on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance." Of particular concern in this regard are exports of listed chemicals destined for Central and South America, especially those chemicals which are used as solvents and reagents in the manufacture of cocaine HCL.

Section 1018(a) of the CDTA (21 U.S.C. 971) provides that "each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place." The requirement is modified by § 1313.24 of the CDTA regulations where the transaction is between a "regulated person" and a "regular customer." Exporters are allowed to ship listed chemicals to regular customers with notification on the day of shipment. In either case, DEA has the obligation to investigate the customer in order to determine if the customer is legitimate and that the chemical will not be diverted to the illicit manufacture of drugs.

DEA is currently in the process of investigating those foreign customers submitted by exporters for regular customer status. Several customers located in Panama have been submitted. In addition, it is anticipated that DEA will receive future notifications from U.S. exporters for shipments to Panamanian customers who were not submitted for regular customer status. Under the current circumstances the ability of the U.S. Government to investigate the legitimacy of those Panamanian customers submitted for regular customer status or those submitted later on a shipment-by-shipment basis, does not exist. Also, based upon past experience, the United States is unable to rely upon the representations of current Panamanian officials. Present United States policy prohibits official communications (including law enforcement matters) with the Panamanian Defense Force and other Panamanian officials. In view of the fact that in the past drug traffickers have diverted listed chemical shipments via Panama to illicit cocaine production, it must be concluded that the likelihood of diversion of listed chemical shipments to Panama is high. Therefore, DEA will be guided by the following principles in determining whether a shipment of listed chemicals will be allowed:

A. The U.S. exporter must be able to show conclusively that all of the chemical will be consumed in Panama.

B. If the ultimate customer is not in Panama, that customer must be identified to DEA so that an investigation as to its legitimacy and the possibility of diversion can ensue.

C. The quantity and the intended use of the chemical must be consistent with previously established experience for an established customer. If the U.S. exporter has no previously exported listed chemicals to the customer, the quantity and intended use must be consistent with the nature and the size of the customer's business. This must be determined by an on-site appraisal of the customer's actual need by a representative of the U.S. exporter.

D. Due to the circumstances previously discussed, DEA has no ability to investigate those customers submitted as regular customers nor those who would become regular customers after the initial notification, as specified in 21 CFR 1313.24. Therefore, since there is no way to determine with any reasonable degree of certainty that the chemical shipment will not be diverted, regular customer status will not be accorded to *any* customer located in Panama. An exporter must file a DEA Form 486 at least 15 days in advance of the shipment date in accordance with 21 CFR 1313.21 for every shipment of a threshold quantity of a listed chemical to Panama.

E. Exporters are cautioned to view every order from Panama with extreme vigilance. Firms should recognize that they will be called upon to demonstrate that they have fully satisfied the provisions of 21 CFR 1310.07 and 21 CFR 1313.22 with regard to verification of the identity and authority of the customer. Failure to do so may result in suspension of the shipment.

* * * * *

Dated: November 20, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-28107 Filed 11-30-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program—Revisions, Clarifications, and Corrections

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment modifies 23 Virginia rules in various subject areas for the purpose of clarifying existing rules and maintaining consistency with revised Federal standards.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

II. Submission of Amendment

III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of Amendment

By letter dated June 30, 1989 (Administrative Record No. VA–728), Virginia submitted a proposed amendment (State Program Amendment Tracking No. VA–0001) to modify the following rules of its Surface Coal Mining Reclamation Regulations: Chapter VR 480–03–19.: 780.14, 773.15, 779.19, 783.19, 779.20, 783.20, 780.16, 784.21, 816.97, 817.97, 846, 846.2, 846.12, 846.14, 846.17, 846.18, 784.20, 700.11, 764.15, 840.11, 843.22, 785.14, 801.17.

Most of the proposed changes respond to recently published Federal rule revisions or address State operational concerns. Minor changes affect the mountaintop removal mining rules and bond release notification rules.

OSM announced receipt of the proposed amendment in the August 4, 1989 Federal Register (32098–32099), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

III. Director's Findings

Pursuant to SMCRA and Federal regulations contained at 30 CFR 730.5, 30 CFR 732.15, and 30 CFR 732.17, the Director finds the submitted amendment, with the exception of VR 480–03–19.843.22 upon which Federal action is deferred, to be no less effective than comparable Federal regulations. In support of this finding, the Director specifically finds as follows:

1. VR 480–03–19.780.14 Operation Plan: Maps and Plans

Paragraph (c) would add the requirement that maps, plans and cross sections for each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or certified professional geologist with assistance from experts in related fields such as land surveying and landscape architecture. The Director finds this rule design and certification standards to be substantively equivalent to the corresponding Federal rule at 30 CFR 780.14(c) in referencing paragraph (b)(6) and therefore, no less effective.

2. VR 480–03–19.773.15 Review of Permit Applications

Paragraph (c)(12) would require the Virginia Division of Mined Land Reclamation make a written finding before permit approval for a proposed remining operation. The site of the operation must be a previously mined area as defined in the Virginia regulations. The Director finds the proposal to be substantively equivalent to the Federal rule at 30 CFR 773.15(c)(12) and therefore, no less effective.

3. VR 480–03–19.780.16 and 480–03–19.784.21 Fish and Wildlife Information

These sections apply to permitting of surface and underground mining activities respectively and the language of each section is the same. Certain substantively duplicative text relating to fish and wildlife information has been deleted from VR 480–03–19.770.20 and 480–03–19.783.20. Changes in references in VR 480–03–19.779.19 and 480–03–19.783.19 would properly identify the new proposed sections.

(a) *Resource information.* Paragraph (a) of these proposed rules would require each application to include fish and wildlife resource information for the permit and adjacent area. It would also require the scope and level of detail of such information and site-specific information on endangered or threatened plant or animal species, and animal habitat as necessary or required. The Director finds paragraph (a) of the proposed rules to be the substantive equivalent of the Federal rules at 30 CFR 780.16(a) and 784.21(a) and therefore, no less effective.

(b) *Protection and enhancement plan.* Paragraph (b) of these rules would require a description of protective measures to be used during the active mining phase, and of enhancement measures to be used during the reclamation and postmining phase that apply to the species and habitats identified under proposed paragraph (a) of this section. The Director finds paragraph (b) of these rules to be the substantive equivalent of the Federal rules at 30 CFR 780.16(b) and 784.21(b) and therefore, no less effective.

(c) *Fish and Wildlife Service review.* Paragraph (c) of the rules require the regulatory authority (Division) to provide fish and wildlife resource information to the U.S. Fish and Wildlife Service within ten days of receipt of such a request from the Service. The Director finds paragraph (c) of these sections to be the substantive equivalent of 30 CFR 780.16(c) and 784.21(c) and therefore, no less effective.

4. VR 480–03–19.816.97 and 480–03–19.817.97 Protection of Fish, Wildlife, and Related Environmental Values

These sections apply to the performance standards for surface and underground mining activities respectively, and the language of each section is substantively equal.

(a) *Endangered and threatened species.* Paragraph (b) of both sections would prohibit mining activities which are likely to result in the destruction or adverse modification of designated critical habitats for federally listed endangered or threatened species. It also requires an operator to promptly report to the Division any State or federally listed endangered or threatened species within the permit area of which the operator becomes aware. The Director finds the proposed rules to be the substantive equivalent of the corresponding Federal rules at 30 CFR 816.97(b) and 817.97(b) and therefore, no less effective.

(b) *Exclusion of wildlife from toxic ponds.* Subparagraph (e)(4) of both sections would require operators to fence cover, or use appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials. The Director finds the proposed rules to be the substantive equivalent of the Federal rules at 30 CFR 816.97(e)(4) and 817.97(e)(4) and therefore, no less effective.

5. VR 480–03–19.846 Individual Civil Penalties and 480–03–19.846.2 Definitions

This proposal would add a new part to the Virginia program to be consistent with the Federal program at 30 CFR part 846. The Director finds that the definitions for "knowingly", "violation, failure or refusal", and "willfully" are the substantive equivalent of the Federal definitions at 30 CFR 846.5 and therefore, no less effective.

6. VR 480–03–19.846.12 When an Individual Civil Penalty May Be Assessed

Paragraphs (a) and (b) of this proposed rule would provide the Division with the authority to assess an individual civil penalty in all circumstances where it is permitted. The Director finds the proposal to be the substantive equivalent of the Federal rules at 30 CFR 846.12 and therefore, no less effective.

7. VR 480–03–19.846.14 Amount of the Individual Civil Penalty

Paragraph (a) requires Virginia to consider an individual's history of previous violations, the seriousness of the violation, and demonstrated good faith in attempting to achieve rapid compliance after receiving notice of infraction. Paragraph (b) would allow Virginia to deem each day of continuing violation a separate violation for which an individual civil penalty may be assessed. The Director finds these proposed rules to be the substantive equivalent of the Federal rules at 30 CFR 846.14 and therefore, no less effective.

8. VR 480–03–19.846.17 Assessment of the Individual Civil Penalty

Paragraph (a) of this rule would provide notice to an individual being assessed a penalty to the same extent as the Federal requirements. Paragraph (b) would establish effective dates for assessments and standards for service. The Director finds this rule to be substantively equivalent to the Federal rule at 30 CFR 846.17 and therefore, no less effective.

9. VR 480–03–19.846.18 Penalty Payment

This proposal would establish penalty payment due dates and would provide for withdrawal of the penalty if abatement or compliance is satisfactory. The Director finds the Virginia proposal substantively equivalent to the Federal rule at 30 CFR 846.18 and therefore, no less effective.

10. VR 489–03–19.784.20 Subsidence Control Plan

This proposed rule clarifies where and when a subsidence control plan is required.

(a) *Map of underground workings.* Paragraph (b) of this rule requires a map of areas in which planned subsidence mining methods will be used. It states that corrective measures would be taken only "to the extent required under State law," while the comparable Federal rule at 30 CFR 784.20(b) requires that corrective measures be taken "where appropriate." Under the operative Virginia regulation at VR 480–03–19.817.121(c)(2), the duty to correct "to the extent required by state law" only applies to the correction of damage caused to structures. However, pursuant to VR 480–03–19.817.121(c)(1) which is the substantive equivalent of the Federal regulation at 30 CFR 817.121(c)(1), the operator must correct "any material damage resulting from subsidence caused to surface lands." The proposed language at VR 480–03–19.784.20 does not change these duties imposed upon the operator. Accordingly, the Director finds the proposed amendment to be no less effective than comparable federal regulations.

(b) *Subsidence monitoring.* Paragraph (d) clarifies that the Division has the authority to require monitoring as part of any subsidence control plan, regardless of the type of mining proposed. The Director finds this proposal to be the substantive equivalent of 30 CFR 784.20(d) and therefore, no less effective.

11. VR 480–03–19.700.11(b) Two-Acre Exemption

The Division proposes to delete this rule to reflect the effect of the repeal of the two-acre exemption contained in section 528(2) of SMCRA and of the statutory provisions of Section 45.1–253 of the code of Virginia. The Director finds that the deletion of these provisions would not render the Virginia program to be less stringent than SMCRA and no less effective than the Federal regulations from which rule 30 CFR 700.11(b) was suspended.

12. VR 480–03–19.764.15 Designating Areas Unsuitable for Mining—Initial Processing, Recordkeeping and Notification Requirements

The Division proposes to streamline the reviewing of petitions to have an area designated as unsuitable for coal mining by eliminating the hearing provision on the completeness of petitions under paragraph (b)(2), and by replacing it with a completeness definition under paragraph (a)(1). The Director finds that these revisions would make the Virginia rule substantively equivalent to the Federal rule at 30 CFR 764.15.

13. VR 480–03–19.840.11 Inspection of Abandoned Sites

Paragraph (g) and (h) are being added to the Virginia program to clarify that abandoned mines, where all mining operations have ceased and no one remains at the site to complete the reclamation, need not be inspected as frequently as active mines. The Director finds the proposed rules to be the substantive equivalent of the Federal rules at 30 CFR 840.11 (g) and (h) and therefore, no less effective.

14. VR–480–03–19.843.22 Enforcement Actions at Abandoned Sites

Action upon this portion of the amendment is deferred to give the State an opportunity to correct the regulation citation contained within the proposed regulation.

15. VR 480–03–19.785.14 Mountaintop Removal Mining

The Director finds that proposed word changes and spelling corrections in subparagraphs (c)(1)(iii)(G) and (c)(1)'iv) would make the Virginia rules the substantive equivalent of 30 CFR 785.14(c)(1)(iii) and (c)(1)(iv) and therefore, no less effective.

16. VR 480.03.19.801.17 Bond Release Application

Proposed subparagraph (d)(4)(i) would require local government notification of total or partial bond release of pool bond funds. The Director finds that the proposed language would be the same as required for other forms of bonds in Virginia's program at VR 480–03–19.800.40(e) and the substantive equivalent of the requirements contained in the Federal program at 30 CFR 800.40(e) and therefore, no less effective.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the August 4, 1989 Federal Register ended September 5, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program. The Fish and Wildlife Service (FWS) generally supported the language of the amendment described under finding 3(c). Other comments by FWS applied to matters of coordination between FWS and Virginia regulatory authority. Such other issues are beyond the scope of this State rulemaking proceeding.

Director's Decision

Based on the above findings, the Director is approving the proposed amendment consisting of revisions, clarifications and corrections as submitted on June 30, 1989, with the

exception of VR 480–03–19.843.22 upon which action is deferred. The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(ll)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. As required by 30 CFR 732.17(h)(11)(i), the Director solicited EPA's comments on these changes; however, none were received.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(g) prohibits unilateral changes to an approved State program. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials.

VI. Procedural Determinations

Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 1989.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

For reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulation is amended as set forth below.

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (y) is added to read as follows:

§ 946.15 Approval of regulatory amendments.

* * * * *

(y) The following amendments submitted to OSM on June 30, 1989 are approved effective upon promulgation of the revised rules by the State provided the rules adopted are identical to those submitted to OSM. Revisions to the Virginia coal surface mining regulations in chapter VR 480–03–19.: 700.11, 764.15, 773.15, 779.19, 779.20, 780.14, 780.16, 783.19, 783.20, 784.20, 784.21, 785.14, 801.17, 816.97, 817.97, 840.11, 846, 846.2, 846.12, 846.14, 846.17, 846.18.

[FR Doc. 89–28122 Filed 11–30–89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 198

[DoD Directive 6035.2]

DoD Medical Program Review Committee (MPRC)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR part 198. The overall effectiveness of the Planning Programming and Budgeting System (PPBS) was not enhanced by the requirements of 32 CFR part 198. The part has served the purpose for which it was intended and is no longer required.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Correspondence and Directives Directorate, Washington, DC 20301–1155, telephone 202–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 198

Organization and functions, Health care.

PART 198—DoD MEDICAL PROGRAM REVIEW COMMITTEE (MPRC)—[REMOVED]

Accordingly, title 32, chapter I, is amended by removing part 198.

Dated: November 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 89–28130 Filed 11–30–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities; Diseases of the Peripheral Nerves

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting previously published information concerning the Schedule for Rating Disabilities table for Diseases of the Peripheral Nerves.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In 38 CFR 4.124a, the table of Diseases of the Peripheral Nerves was inadvertently misrepresented and is hereby corrected.

List of Subjects in 38 CFR Part 3

Disability benefits, Pensions, Veterans.

Dated: November 24, 1989.

Charles A. Fountaine, III,

Chief, Directives Management Division.

In 38 CFR part 4, Schedule for Rating Disabilities, the table in § 4.124a titled

Diseases of the Peripheral Nerves is revised to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

* * * * *

Diseases of the Peripheral Nerves

* * * * *

	Rating
Sciatic nerve.	
8520 Paralysis of:	
Complete; the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost	80
Incomplete:	
Severe, with marked muscular atrophy	60
Moderately severe	40
Moderate	20
Mild	10
8620 Neuritis.	
8720 Neuralgia.	
External popliteal nerve (common peroneal).	
8521 Paralysis of:	
Complete; foot drop and slight droop of first phalanges of all toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8621 Neuritis.	
8721 Neuralgia.	
Musculocutaneous nerve (superficial peroneal).	
8522 Paralysis of:	
Complete; eversion of foot weakened	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8622 Neuritis.	
8722 Neuralgia.	
Anterior tibial nerve (deep peroneal)	
8523 Paralysis of:	
Complete; dorsal flexion of foot lost	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8623 Neuritis.	
8723 Neuralgia.	
Internal popliteal nerve (tibial).	
8524 Paralysis of:	
Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa, plantar flexion of foot is lost	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8624 Neuritis.	
8724 Neuralgia.	
Posterior tibial nerve.	
8525 Paralysis of:	
Complete; paralysis of all muscles of sole of foot, frequency with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8625 Neuritis.	
8725 Neuralgia.	
Anterior crural nerve (femoral).	
8526 Paralysis of:	
Complete; paralysis of quadriceps extensor muscles	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8626 Neuritis.	
8726 Neuralgia.	
Internal saphenous nerve.	
8527 Paralysis of:	
Severe to complete	10
Mild to moderate	0
8627 Neuritis.	
8727 Neuralgia.	
Obturator nerve.	
8528 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8628 Neuritis.	
8728 Neuralgia.	
External cutaneous nerve of thigh.	
8529 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8629 Neuritis.	
8729 Neuralgia.	
Ilio-inguinal nerve.	
8530 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8630 Neuritis.	
8730 Neuralgia.	

* * * * *

[FR Doc. 89–28101 Filed 11–30–89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900–AD63

Veterans Education; Veterans' Employment, Training and Counseling Amendments of 1988

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect the Department of Veterans Affairs' (VA's) relationships with the State approving agencies (SAAs), and other provisions which affect the administration of the Veterans' Job Training Act (VJTA). This proposal will better inform the public how VA intends to implement these provisions of law.

EFFECTIVE DATES: The amendments dealing with the duties of the Contracting Officer (§ 21.4154(f)) are effective November 3, 1989. VA is making all the other amendments to §§ 21.4150, 21.4151, 21.4152, 21.4153, 21.4154 and 21.7200, like the provisions of law they implement, retroactively effective on May 20, 1988. VA is making § 21.4155, like the provisions of law it implements, retroactively effective on May 20, 1988. VA is making the amendments to §§ 21.4612, 21.4622, 21.4630 and 21.4632, like the provisions of law they implement, retroactively effective on July 19, 1988. VA is making §§ 21.4623 and 21.4631 like the provisions of law they implement retroactively effective on July 19, 1988.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225C), Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 21230 through 21234 of the Federal Register of May 17, 1989, there was published a notice of intent to amend 38 CFR part 21 in order to implement several provisions of the Veterans' Employment, Training and Counseling Amendments of 1988. Interested people were given 28 days to submit comments, suggestions or objections.

VA received one letter concerning the proposal from an official of a State approving agency. The official commended VA for the way in which the provisions were written.

During an internal review VA noted that previous language which indicated that the Director of a VA field facility could withhold reimbursement from a State approving agency was inadvertently carried forward from the version of 38 CFR 21.4153(f) which has long been in effect. VA has recently decided to delegate this authority to the Contracting Officer rather than to the Director of a VA field facility. The final regulation reflects this. VA is making all the other regulations in the proposal final without change. VA finds that good cause exists for making the amendments to §§ 21.4153 and 21.4154 (other than those dealing with the duties of the Contracting Officer) and all the amendments to §§ 21.4150, 21.4151, 21.4152 and 21.7200 as well as the entire § 21.4155, like the

sections of the law they implement, retroactively effective on May 20, 1988. VA finds that good cause exists for making the amendments to §§ 21.4612, 21.4622, 21.4630 and 21.4632 as well as the entire §§ 21.4623 and 21.4631, like the provisions of law they implement, retroactively effective on July 19, 1988. To achieve the maximum benefit of this legislation for the affected individuals, State approving agencies and employers, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of services to a veteran who is otherwise entitled to them.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because §§ 21.4150, 21.4151, 21.4152, 21.4153, 21.4154 and 21.7200 affect only State approving agencies, and so have no economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

On the other hand, the amendment to § 21.4622(a)(3) requires each employer to certify that the participating veteran will be provided with the full opportunity to participate in a personal interview with his or her case manager during the normal work day. This will have an economic effect on small entities.

If the interview is not made part of the training program, the employer could choose not to pay the trainee during the time he or she is being interviewed. In this situation the economic effect would consist of a possible loss of production while the trainee was being interviewed.

The employer could also choose to pay the trainee during the time he or she is being interviewed. The economic effect in this instance would be somewhat greater since VA would reimburse the employer for only one-half of the veteran's wage.

However, since the average starting wage paid to veterans training under VJTA is less than $10 per hour, and an interview would last, at most a few hours, VA does not believe that the economic impact would be significant. Furthermore, since the amended regulation is based upon the law, any economic impact would be caused by the underlying law.

In addition, some economic impact could potentially result from § 21.4623. That regulation permits VA to disapprove payments on behalf of new participants in a job training program if the percentage of veterans who successfully complete the program is disproportionately low due to deficiencies in the quality of the program. There is no evidence, however, indicating that repeated unsuccessful completion of training programs is a widespread problem. Furthermore, in order to give employers ample opportunity to demonstrate that a training program does not have a disproportionately low completion rate, the proposed regulation would generally allow the employer the opportunity to train at least five veterans in the program before the VA will examine the completion rate. Many programs have not yet had five trainees. Therefore, VA does not think that the regulations will have a significant economic impact upon a substantial number of small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111, 64.117, 64.120, 64.121 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 3, 1989.

Edward J. Derwinski,
Secretary.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.4150, paragraph (c) is revised to read as follows:

§ 21.4150 Designation.

* * * * *

(c) The provisions of 38 U.S.C. chapter 36 and the sections in this part which refer to the State approving agency will, with respect to a State, be deemed to refer to VA when that State:

(1) Does not have and fails or declines to create or designate a State approving agency, or

(2) Fails to enter into an agreement as provided in § 21.4153 of this part.

(Authority: 38 U.S.C. 1771(b)(1))

* * * * *

2. In § 21.4151, paragraph (b) is revised to read as follows:

§ 21.4151 Cooperation.

* * * * *

(b) *State approving agency responsibilities.* State approving agencies are responsible for:

(1) Inspecting and supervising schools within the borders of their respective States;

(2) Determining those courses which may be approved for the enrollment of veterans and eligible persons;

(3) Ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved; and

(4) Under an agreement with VA rendering services and obtaining information necessary for the Secretary's approval or disapproval under chapters 30 through 36, title 38, United States Code and chapters 106 and 107, title 10, United States Code, of courses of education offered by any agency or instrumentality of the Federal Government within the borders of their respective States.

(Authority: 38 U.S.C. 1772, 1773, 1774; Pub. L. 100–323)

3. In § 21.4152, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 21.4152 Control by agencies of the United States.

(a) *Control of educational institutions and State agencies generally prohibited.* Except as provided in § 21.4155 of this part, no department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution.

(Authority: 38 U.S.C. 1782; Pub. L. 100–323)

(b) *Authority retained by VA.* The provisions of paragraph (a) of this section do not restrict authority conferred on VA.

* * * * *

4. In § 21.4153, paragraph (c)(2)(iii) is removed, paragraphs (c)(2)(i) and (c)(2)(ii) are redesignated as paragraphs (c)(2)(ii) and (c)(2)(iii) respectively; paragraphs (a)(1), (c)(4)(ii), and (f) are revised and new paragraph (c)(2)(i) is added, so the revised and added text reads as follows:

§ 21.4153 Reimbursement of expenses.

(a) * * *

(1) *Scope of contracts.* (i) If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, VA will negotiate a contract or agreement with the State or local agency to pay (subject to available funds and acceptable annual evaluations) reasonable and necessary expenses incurred by the State or local agency in—

(A) Determining the qualifications of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,

(B) Supervising educational institutions and training establishments, and

(C) Furnishing any other services VA may request in connection with the law governing VA education benefits.

(ii) VA will take into account the results of annual evaluations carried out under § 21.4155 of this part when negotiating the terms and conditions of the contract or agreement.

(Authority: 38 U.S.C. 1774, 1774(a); Pub. L. 100–323)

* * * * *

(c) * * *

(2) * * *

(i) Reimbursement will be made under the terms of the contract for travel of personnel engaged in activities in connection with the inspection, approval or supervision of educational institutions, including—

(A) Travel of personnel attending training sessions sponsored by VA and the State approving agencies.

(B) Expenses of attending out-of-State meetings and conferences only if the Director, Vocational Rehabilitation and Education Service, authorizes the travel.

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

* * * * *

(4) * * *

(ii) The Contracting Officer has approved the subcontract in advance.

(Authority: 38 U.S.C. 1774; Pub. L. 94–502, Pub. 95–602)

* * * * *

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Contracting Officer determines that the State has failed to comply with the standards or provisions of the law or with terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the State may request the Contracting Officer to reconsider his or her decision or may initiate action under the Disputes clause of the contract. See 48 CFR 801.602.

(Authority: 38 U.S.C. 1774)

* * * * *

5. In § 21.4154, paragraphs (a) and (b)(2) are revised to read as follows:

§ 21.4154 Report of activities.

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 of this part must submit a report of its activities to VA. The report may be submitted monthly or quarterly by the State approving agency as provided in the contract or agreement.

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

(b) * * *

(2) Shall detail the activities of the State approving agencies under the agreement or contract during the preceding month or quarter, as appropriate;

(3) May include, at the option of the State approving agency a cumulative report of its activities from the beginning of the fiscal year to date;

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

* * * * *

6. Section 21.4155 is added to read as follows:

§ 21.4155 Evaluations of State approving agency performance.

(a) *Annual evaluations required.* (1) VA shall conduct in conjunction with State approving agencies an annual evaluation of each State approving agency. The evaluation shall be based on standards developed by VA with State approving agencies. VA shall provide each State approving agency an opportunity to comment upon the evaluation.

(2) VA shall take into account the result of the annual evaluation of a State approving agency when negotiating the terms and conditions of a contract or agreement as provided in § 21.4153(a) of this part.

(Authority: 38 U.S.C. 1774A(a); Pub. L. 100–323)

(b) *Functional supervision of State approving agencies required.* VA shall exercise functional supervison over the provision of course-approval services by State approving agencies under this section.

(1) Functional supervison includes, but is not limited to:

(i) Providing technical assistance to State approving agency personnel with respect to carrying out their course-approval duties;

(ii) Checking for compliance with VA regulations regarding the provision of services under §§ 21.4150 through 21.4154 of this part; and

(iii) Bringing matters which require corrective action to the attention of State approving agency personnel who have authority over policy, procedures, and staff.

(2) Functional supervision does not include:

(i) Hiring, firing, disciplining or issuing directives to an employee of a State approving agency; and

(ii) Making regulations, changing procedure or establishing internal policies for a State approving agency.

(Authority: 38 U.S.C. 1774A; Pub. L. 100–323)

(c) *Development of a training curriculum.* (1) VA shall cooperate with State approving agencies in developing and implementing a uniform national curriculum, to the extent practicable, for—

(i) Training new employees of State approving agencies, and

(ii) Continuing the training of the employees of the State approving agencies.

(2) VA with the State approving agencies shall sponsor the training and continuation of training provided by this paragraph.

(Authority: 38 U.S.C. 1774A; Pub. L. 100–323)

(d) *Development, adoption and application of qualification and performance standards for employees of State approving agencies.* (1) VA shall:

(i) Develop with the State approving agencies prototype qualification and performance standards;

(ii) Prescribe those standards for State approving agency use in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement as provided in § 21.4153(a) of this part; and

(iii) Review the prototype qualification and performance standards with the State approving agencies no less frequently than once every five years.

(2) In developing and applying standards described in paragraph (d)(1) of this section, a State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions.

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However, no State approving agency may develop, adopt or apply qualification or performance standards that do not meet the requirements of paragraph (d)(3) of this section.

(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend or modify its adopted qualification and performance standards annually as circumstances may require.

(4) VA shall provide assistance in developing these standards to a State approving agency that requests it.

(5) After November 19, 1989, each State approving agency carrying out a contract or agreement with VA under § 21.4153(a) shall:

(i) Apply qualification and performance standards based on the standards developed under this paragraph, and

(ii) Make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under § 21.4153(a) of this part.

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that person remains in the position in which the person was employed on that date.

(Authority: 38 U.S.C. 1774 A(b); Pub. L. 100-323)

7. In § 21.4612, paragraph (c)(2) is revised to read as follows:

§ 21.4612 Applications and certifications.

* * * * *

(c) * * *

(2) A certificate expires 90 days from the date on which it is furnished to the veteran.

(i) VA may renew a certificate or grant a further certificate for a veteran who has voluntarily terminated a job training program or who has been involuntarily terminated from a job training program only when:

(A) The provisions of paragraph (b) of this section are met, and

(B) The Department of Labor has assigned a case manager for the veteran.

(ii) VA may renew a certificate or grant a further certificate for any other veteran when the provisions of paragraph (b) of this section are met.

(iii) A renewed certificate or further certificate expires 90 days from the date on which it is furnished to the veteran.

(Authority: Pub. L. 98-77, sec. 5, Pub. L. 98-543, sec. 212, Pub. L. 100-323, sec. 11)

8. In § 21.4622, paragraphs (a)(3) introductory text and (a)(3) (xv) and (xvi) are revised, and paragraphs (a)(3) (xvii) and (xviii) are added, so the revised and added text reads as follows:

§ 21.4622 Employer applications for approval.

(a) * * *

(3) In applying for approval of a job training program in the form prescribed by the Secretary of Veterans Affairs, the employer will certify:

* * * * *

(xv) That the employer, before the veteran's entry into training will:

(A) Furnish the veteran with a copy of the certification described in this paragraph, and

(B) Obtain and retain the veteran's signed acknowledgement of having received the certification;

(xvi) That the employer is in compliance with the following laws and all Federal Regulations adopted pursuant to those laws:

(A) Title VI of the Civil Rights Act of 1964;

(B) Title IX of the Education Amendments of 1972;

(C) Section 504 of the Rehabilitation Act of 1973; and

(D) The Age Discrimination Act of 1975;

(xvii) That the employer will provide each participating veteran for whom a case manager has been assigned by the Department of Labor with the full opportunity to participate in a personal interview with the veteran's case manager during the veteran's normal work day; and

(xviii) The information the employer is required to certify under part 44 of this chapter concerning nonprocurement debarment and suspension.

(Authority: Pub. L. 98-77, secs. 6 and 7, Pub. L. 100-323, sec. 11; 20 U.S.C. 1661; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 42 U.S.C. 6102)

* * * * *

9. Section 21.4623 is added to read as follows:

§ 21.4623 Disapproval of new program entries.

(a) *Payments on behalf of new participants may be disapproved.* The Director of a VA field facility, or the Director, Vocational Rehabilitation and Education Service, as appropriate, may disapprove entry into an employer's job training program under the Veterans' Job Training Act, by veterans who had not begun the job training program on the date of notice to the employer of such disapproval when the Director finds that the rate of veterans' successful completion of the job training program is disproportionately low as a result of deficiencies in the quality of the job training program.

(Authority: Pub. L. 98-77, sec. 11, Pub. L. 100-323, sec. 11(b))

(b) *Deficiencies in the job training program.* (1) In determining whether any completion rate is disproportionately low because of deficiencies in the quality of a job training program VA will take into account appropriate data including—

(i) Quarterly data provided by the Secretary of Labor with respect to:

(A) The number of veterans who:

(1) Receive counseling in connection with training under the Veterans' Job Training Act, and

(2) Participate in job training under the Veterans' Job Training Act,

(B) The reasons for veterans' failure to complete job training under the Veterans' Job Training Act; and

(C) Data compiled through the particular employer's compliance survey.

(Authority: Pub. L. 98-77, sec. 11(b), Pub. L. 100-323, sec. 11)

(c) *Successful completion rate for job training training programs.* VA will determine whether the successful completion rate for a job training program is disproportionately low as follows.

(1) VA will determine the number of veterans who have either completed the job training program or terminated that program either voluntarily or involuntarily. If this number is four or less, VA will consider that the completion rate of the job training program is not disproportionately low unless there is strong evidence to the contrary.

(2) If the number determined in paragraph (c)(1) of this section is five or more or if the number is less than five and there is strong evidence that there are deficiencies in the quality of the program, VA will:

(i) Calculate a percentage by dividing the number of veterans who have completed the job training program by the number of veterans who have either completed that program or terminated that program;

(ii) Calculate a second percentage by dividing the number of veterans who have ever completed any job training program approved for veterans' training under the Veterans' Job Training Act by the number of veterans who have either completed one of these job training programs or terminated one of these job training programs; and

(iii) Compare the two percentages. If the percentage determined in paragraph (c)(2)(i) of this section is less than one-half the percentage determined in paragraph (c)(2)(ii) of this section, the successful completion rate of the job training program is low, and shall be considered with the data described in paragraph (b) of this section in determining whether it is disproportionately low.

(Authority: Pub. L. 98-77, sec. 11(b), Pub. L. 100-323, sec. 11)

(d) *Notification.* If after considering the data described in paragraphs (b) and (c) of this section the Director of the VA field activity, or the Director, Vocational Rehabilitation and Education Service, as appropriate, determines that new entries in a program of job training under the Veterans' Job Training Act should be disapproved, as provided in paragraph (a) of this section, he or she shall notify the employer of the disapproval. The notice shall be by certified or registered letter, return receipt requested, and shall include:

(1) A statement of the reasons for VA's action, and

(2) Notice of the employer's right to appeal to the Board of Veterans' Appeals, and the right to a hearing.

(Authority: Pub. L. 98-77, sec. 11, Pub. L. 100-323, sec. 11(b))

(e) *Period of disapproval.* (1) A disapproval as described in paragraph (a) of this section shall remain in effect until the Director of the VA field facility of jurisdiction or the Director, Vocational Rehabilitation and Education Service, as appropriate, determines that the employer has taken adequate remedial action.

(2) Payments will be made on behalf of new participants only for training which occurs after the date on which the Director determines that remedial action has been taken.

(Authority: Pub. L. 98-77, sec. 11, Pub. L. 100-323, sec. 11)

10. In § 21.4630, paragraph (c) is removed.

11. Section 21.4631 is added to read as follows:

§ 21.4631 Job readiness skills development and counseling.

(a) *Employment counseling services.* At the request of a veteran who is eligible to participate in a job training program, the VA will provide the veteran with employment counseling services to assist him or her in selecting a suitable job training program.

(Authority: Pub. L. 98-77, Pub. L. 100-323, sec. 14(a))

(b) *Job readiness skills development and counseling.*—(1) *Purpose.* The program of job readiness skills development and counseling services is designed to assist veterans in need of such assistance in finding, applying for, and succesfully participating in a suitable job training program under the Veterans' Job Training Act.

(2) *Eligibility.* A veteran with a valid certificate furnished pursuant to § 21.4612(c) of this part may participate in a program of job readiness skills development and counseling services if—

(i) Staff in the Department of Labor or the Department of Veterans Affairs as described in paragraph (b)(7) of this section find that the veteran needs such assistance, and

(ii) Funds are available to provide the veteran with a program of job readiness skills development and counseling services through contracts with appropriate service providers if the services needed cannot be furnished by VA or Department of Labor staff.

(3) *Scope of services.* (i) Job readiness skills development includes finding training and employment opportunities, completing job applications, functioning in an interview and other services and other assistance.

(ii) Counseling services include counseling services to assist in selecting suitable training opportunities and using appropriate methods of seeking, applying for and maintaining employment.

(4) *Providing services.* (i) VA and Department of Labor staff will provide job readiness skills development and counseling services to the veteran if such regular staff services are sufficient for the veteran to participate successfully in a job training program under the Veterans' Job Training Act.

(ii) If VA determines that the regular services of VA and Department of Labor staff are not sufficient for the veteran to participate successfully in a job training program under the Veterans' Job Training Act, the veteran may be placed in a program with service providers under contract to VA. This determination will be based upon a written certification by VA and Department of Labor staff of the need for assistance through a service provider under contract to VA.

(5) *Facilities with which contracts may be negotiated.* VA will enter into contracts only with established agencies, organizations, individuals and programs which have a demonstrated capacity to provide these services;

(6) *Approval of programs.* VA will approve programs of job readiness skills development and counseling in the same manner as under §§ 21.290, 21.292 and 21.294 of this part.

(7) *Staff.* For the purposes of making the determinations required by paragraph (b)(2) of this section; providing job readiness skills development and counseling services and making the written certification of the need for assistance from a service provider required by paragraph (b)(4) of this section; the staff of VA and the Department of Labor is limited to—

(i) Counseling psychologists and vocational rehabilitation specialists in the Vocational Rehabilitation and Counseling Division of VA field facilities, or

(ii) Local Veterans' Employment Representatives and Disabled Veterans' Outreach Program Specialists in the State Employment agencies.

(Authority: Pub. L. 98-77, Pub. L. 100-323, sec. 14)

12. In § 21.4632, the heading, introductory text, and paragraph (e)(2)(i) and (ii) are revised to read as follows:

§ 21.4632 Payment restrictions.

VA shall not make payments to an employer if the job training program has not been approved as required by § 21.4622(b) of this part, or the veteran does not meet the eligibility requirements found in § 21.4610 of this part, or the provisions of § 21.4623 of this part prohibit payments to an employer on behalf of a veteran, or the payment would be for training subsequent to withdrawal of program approval under § 21.4624 of this part, or approval of a veteran's entrance into training must be withheld or denied due to a lack of funds. Payments made to employers on behalf of veterans in training shall be made in accordance with the provisions of this section.

* * * * *

(e) * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after September 30, 1989;

(Authority: Pub. L. 98-543, sec. 212; Pub. L. 99-108; Pub. L. 99-238, sec. 201(e); Pub. L. 100-77, sec. 901(b); Pub. L. 100-227, Sec. 201; Pub. L. 100-323, sec. 17)

(ii) For any job training program which begins after March 31, 1990;

(Authority: Pub. L. 98-543, sec. 212; Pub. L. 99-108; Pub. L. 99-238, sec. 210(e); Pub. L. 100-77, sec. 901(b); Pub. L. 100-323, sec. 17)

13. In § 21.7200, paragraphs (d) and (e) are revised and paragraph (f) is added, so the revised and added text reads as follows:

§ 21.7200 State approving agencies.

* * * * *

(d) Section 21.4153—Reimbursement of expenses;

(e) Section 21.4154—Report of activities; and

(f) Section 21.4155—Evaluation of State approving agency performance.

(Authority: 38 U.S.C. 1434, 1770, 1771, 1772, 1773, 1774, 1774A; Pub. L. 98–525, Pub. L. 100–323)

[FR Doc. 89–28067 Filed 11–30–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42088F; FRL 3661-8]

RIN 2070-AB94

Office of Solid Waste Chemicals Test Rules; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects a test rule under 40 CFR 799.5055 on hazardous waste constituents, published in the Federal Register of June 15, 1988 (53 FR 22300). This action is necessary to correct a Chemical Abstracts Service (CAS) number reference to trichloromethanethiol testing requirements.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is correcting 40 CFR 799.5055 (53 FR 22300) by correcting the hazardous waste constituent trichloromethanethiol CAS designation to 75–70–7 from the incorrectly listed CAS Number 594–42–3.

In accordance with section 4(a) of the Toxic Substances Control Act (TSCA), a rule was promulgated under 40 CFR 799.5055 (53 FR 22300; June 15, 1988) to require health effects and/or chemical fate testing for 24 chemicals that are hazardous waste constituents. One of these chemicals, trichloromethanethiol was designated for hydrolysis testing, soil adsorption testing and subchronic testing.

EPA, in response to an August 1989 telephone inquiry from DuPont, reviewed the CAS Number designation made in the final rule publication in the Federal Register. From this review, EPA determined that the correct CAS Number was 75–70–7. EPA also determined that the transposition of the incorrect CAS Number was apparently made at the time of the preparation of the original candidate testing list from the RCRA Hazardous Wastes List (40 CFR part 261 Appendix VIII.).

Because the error in CAS Number designation was the result of a transcription error by EPA, public comment is not necessary. The chemical name has been correctly identified in the OSW Final Test Rule so that there should have been no confusion as to the identity of the chemical to be tested. EPA finds that making this deletion effective immediately will relieve administrative and testing burdens, and that good cause exists to make the amendment immediately effective.

Accordingly, the table in 40 CFR 799.5055(c) is corrected by deleting the entries for "Trichloromethanethiol, CAS No. 594-42-3"and replacing them with "Trichloromethanethiol, CAS No. 75–70–7".

Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this technical amendment is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601, *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this technical amendment will not have a significant impact on a substantial number of small businesses because the chemical name has been correctly identified in the OSW Final Test Rule so that there should have been no confusion as to the identity of the chemical to be tested.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA has determined that there are not any "collection of information" requirements as result of this amendment to the rule. Therefore, this technical amendment was not submitted to OMB for approval.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical exports, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Testing.

Dated: November 22, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

2. In § 799.5055(c) by revising the entry for "Trichloromethanethiol" to read as follows:

§ 799.5055 Hazardous waste constituents to testing.

* * * * *

(c) * * *

Chemical name	CAS No.	Required testing under paragraphs (d) and (e) of this section
* * * * *		
Trichloromethanethiol	75–70–7.	(d)(1), (2), (e)(1)
* * * * *		

[FR Doc. 89–28172 Filed 11–30–89; 8:45 am]

BILLING CODE 6560–50–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6757

[NM–940–00–4214–10; NM NM 015227]

Partial Revocation of Public Land Order No. 1038; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 24.687 acres of National Forest land withdrawn for use by the U.S. Forest Service in connection with the Southwestern Congregation Churches Organization Camp and Recreation Area in the Gila National Forest. The land is included in a proposed exchange involving the U.S. Forest Service and Camp Thunderbird Association, Inc. This action will open the land to surface entry, mining, and the mineral leasing laws, except for oil and gas leasing. The land has been and will remain open to oil and gas leasing. This order lifts the no surface occupancy for oil and gas leasing.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6071.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1038, which withdrew land for a U.S. Forest Service recreation area, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 15 S., R. 12 W.,
Sec. 36, S½NE¼SW¼NE¼NE¼, S½NW¼NE¼SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, W½SW¼NE¼NE¼, SW¼SW¼NW¼NE¼NE¼, S½NE¼NW¼NE¼, and SE¼NW¼NE¼.

The area described contains 24.687 acres in Grant County.

2. At 9 a.m. on January 2, 1990, the land will be opened to such forms of disposition as may by law be made of National Forest land, including location and entry under the United States mining laws. The no surface occupancy for oil and gas leasing is lifted. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 17, 1989.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89–28127 Filed 11–30–89; 8:45 am]

BILLING CODE 4310–FB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–621; RM–6519]

Radio Broadcasting Services; Beeville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 250C2 for Channel 250A at Beeville, Texas, and modifies the license of Station KYTX(FM) to specify operation on the higher class co-channel, as requested by Hamon Broadcasting, Inc. *See* 54 FR 5983, February 7, 1989. This action provides Beeville and the surrounding area with enhanced FM service. A site restriction of at least 21.7 kilometers (13.5 miles) west of the community is required in order to comply with Section 73.207 of the Commission's Rules. The petitioner's specified site coordinates are 28–24–00 and 98–01–00, which is located 26.5 kilometers (16.4 miles) west of the city. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–621, adopted November 8, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 250A and adding Channel 250C2 at Beeville.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28120 Filed 11–30–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 43 and 64

[CC Docket No. 86–182; FCC 89–296]

Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has denied USTA's Petition for Reconsideration and/or clarification of the filing date for Table I of FCC Form 495A, Forecast of Investment Usage Report (Forecast Report), established in the *ARMIS Order*.[1] However, the Commission agreed that the current rules lack sufficient clarity and it modified §§ 43.21(e) and 64.901(b)(4) to change the identification of the filing date and to define the three-year forecast period covered by the Forecast Report.

EFFECTIVE DATE: January 2, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jan Frenette or Alicia Dunnigan, Accounting and Audits Division, Common Carrier Bureau, at (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Further Reconsideration, CC Docket No. 86–182, adopted October 24, 1989 and released November 21, 1989.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857–3800.

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 5770 (1987) *(ARMIS Order), modified on recon.*, 3 FCC Rcd 6375 (1988) *(ARMIS Reconsideration Order).*

Summary of Order on Further Reconsideration

1. The United States Telephone Association (USTA) filed a petition for clarification and/or further reconsideration of the filing date for Table I of FCC Form 495A, Forecast of Investment Usage Report (Forecast Report). The Forecast Report monitors the Commission's requirement that carriers allocate investment in network plant between regulated and nonregulated activities based on the forecasted relative use of plant over a three-year period. The Forecast Report consists of three tables and is currently required to be filed annually at the same time that the cost support materials required by the Tariff Review Plan (TRP) are filed. The next filing date for the TRP and the Forecast Report is April 1, 1990. USTA requested that Table I of the Forecast Report be filed annually on December 31 rather than on April 1. USTA suggested that an acceptable alternative would be to continue to file all three tables concurrently with the TRP but with the forecast period covering the current calendar year plus the following two years.

2. USTA argued that the current filing date for Table I creates an inconsistency between the Commission requirement that shared investment be forecast over a three-year period and the requirements for access charge filings. USTA based its assertion on the fact that the TRP (and hence the forecast of investment) is to be filed on April 1, and, therefore, the carriers must forecast usage for the "three consecutive years following the effective date of the current annual access charge filing." [2] Because the next access tariff filing will be on April 1, 1990, for the period July 1, 1990, through June 30, 1991, USTA argued that carriers must forecast for four years (through 1993) in order to comply with that Commission requirement.

3. The Commission disagreed that the current filing date for any part of the 495A Forecast Report should be changed. However, the Commission agreed that the current rules do not establish with sufficient clarity the date on which the three-year forecast commences. The Commission amended its rules so that the first year of the forecast period is the calendar year during which the forecast is filed, with the balance of the forecast period being the following two calendar years. The Commission also changed the identification of the filing date from the date upon which the TRP is filed to April 1 of each calendar year.

Paperwork Reduction Act

4. The Change contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

Ordering Clauses

5. Accordingly, it is ordered, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i) and 405, That the United States Telephone Association's petition for Clarification and/or further reconsideration herein is denied, except to the extent set forth above.

6. It is further ordered, pursuant to sections 4(i) and 4(j), 201–205, 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 219 and 220 that Parts 43 and 64 of the Commission's Rules are amended, as set forth below, effective 30 days from publication of the text thereof in the **Federal Register.**

List of Subjects

47 CFR Part 43

Communications, Common Carriers, Reporting Requirements.

47 CFR Part 64

Miscellaneous rules relating to common carriers, allocation of costs.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Parts 43 and 64 of title 47 of the CFR are amended as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.21(e) is revised to read as follows:

§ 43.21 Annual reports of carriers and affiliates.

* * * * *

(e) Each communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations shall file, on or before April 1:

(1) A three-year forecast of regulated and nonregulated use of network plant for the current calendar year and the two calendar years following, and investment pool projections and allocations for the current calendar year; and

(2) A report of the actual use of network plant investment for the prior calendar year.

* * * * *

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1077; 47 U.S.C. 201,218, unless otherwise noted.

2. Section 64.901(b)(4) is revised to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(b) * * *

(4) The allocation of central office equipment and outside plant investment costs between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed.

* * * * *

[FR Doc. 89–28115 Filed 11–30–89; 8:45 am]

BILLING CODE 6712–01–M

[2] *See* 47 CFR 64.901(b)(4).

Proposed Rules

Federal Register
Vol. 54, No. 230
Friday, December 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations governing licensing fees for all topical reports and licensing and inspection fees for radioisotope licenses (small programs covered by parts 30, 40 and 70). The proposed amendments would (1) establish a ceiling of $50,000 for topical report reviews, (2) update the schedule of fees for small radioisotope programs, including the addition of a fee for byproduct material applications for decommissioning, (3) change the cost per professional staff hour for all full-cost fees from $86 to $95 per hour based on the FY 1990 budget, (4) delete certain exemption provisions and clarify others for ease of administration, (5) add a new exemption provision to provide that Indian tribes and Indian organizations will be exempt from payment of fees and (6) request that bills in excess of $5,000 be paid by electronic fund transfer in accordance with U.S. Department of the Treasury cash management initiatives. The proposed action is intended to more completely recover costs incurred by the Commission in providing services to identifiable recipients and to encourage the continued submittal of topical reports.

DATES: The comment period expires January 30, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date

ADDRESSES: Submit written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:45 am and 4:15 pm (Telephone 301–492–1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555, in the lower level of the Gelman Building.

The NRC will hold a public meeting on January 8, 1990 in Region I at 1:00 pm, Sheraton-Radisson Hotel, Erie Room, 1200 First Avenue, King of Prussia, Pennsylvania, and a public meeting on January 11, 1990 in Region III at 1:00 pm, Holiday Inn, 5440 North River Road, Rosemont, Illinois, to discuss the proposed changes and answer any questions.

The agency workpapers which support these proposed changes to 10 CFR 170 are available in the Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7351.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Section-by-Section Analysis
IV. Environmental Impact: Categorical Exclusion
V. Paperwork Reduction Act Statement
VI. Regulatory Analysis
VII. Regulatory Flexibility Certification
VIII. Backfit Analysis
IX. Subject terms

I. Background

On December 29, 1988, the Commission published its final amended regulations which revised the fee schedules contained in 10 CFR parts 170 and 171 (53 FR 52632). In the response to comments received on the published proposed rule, the Commission indicated that a portion of the 10 CFR part 170 fee schedule for certain small materials licenses is outdated and in need of revision (53 FR 52633). The Commission further stated that a rulemaking on this issue would be initiated in 1989.

Part 170 implements title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). The fees assessed under part 170 recover the costs to the NCR of providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fees for radioisotope licenses issued under 10 CFR parts 30, 40 and 70 and for inspections of these licenses were last revised on May 21, 1984 (49 FR 21293). The 1984 revision was based on cost and professional staff hour data for fiscal year (FY) 1981. In the final rule published on December 29, 1988, the previous policy of charging inspection fees based on the routine inspection frequency for small materials programs was changed to provide for the assessment of fees for each inspection under 10 CFR 170.31.

II. Proposed Action

The Commission proposes to amend 10 CFR part 170 to update the licensing fees for materials licenses to more fully recover costs for application reviews and other services based on FY 1987 and FY 1988 licensing data. For inspection fees, the professional staff hours used in the 1984 rule to conduct an inspection have been maintained while the Commission explores ways to unify the fee categories with the Regulatory Information Tracking System (RITS) inspection categories and licensing program codes. Therefore the routine and nonroutine inspection fees have increased due to the change in the hourly rate only. It is proposed that the professional hourly rate of $86 for FY 1989 shown in 10 CFR 170.20 will be revised to $95 per hour based on the FY 1990 budget. (Note that the December 1988 rule revision did not apply the $86 per hour charge to the materials fee schedule, but retained the 1981 rate of $58 per hour.) In addition, it is proposed that a fee ceiling be reestablished for all topical reports.

III. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to title 10, chapter I, part 170, Code of Federal Regulations.

Section 170.3 Definitions

This section is revised to remove the paragraph designations for the definitions, arrange the definitions in

alphabetical order, and add definitions of "Indian organization" and "Indian tribe."

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Section 170.11 Exemptions

Paragraph (a)(3) is being removed in its entirety. Fees for any byproduct, source or special nuclear materials licenses issued under 10 CFR part 30, 40, 70, or 71 that are considered to be incidental to operation of a nuclear reactor will be charged under respective materials fee category rather than under the 10 CFR part 50 reactor fee category as has been past practice. Therefore, for a special nuclear materials license or any other licenses which are required prior to operation of the reactor, e.g., startup sources, reactor fuel, or calibration or monitoring equipment, fees will be assessed under 10 CFR 170.31 rather than § 170.21. If an applicant possesses byproduct, source or special nuclear material for decontamination, inspection, repair, modification or testing of their reactor components, for which a license is required under the Commission's applicable materials regulations, fees will be assessed in accordance with 10 CFR 170.31.

Paragraph (a)(4) is changed to broaden the exemption for non-profit educational institutions to include certain activities (e.g., research) not covered by the current exemption. It would not include power reactor licenses and materials licenses which authorize human use, commercial distribution, or remunerated service to other persons or activities performed under a government contract. If a non-profit educational institutions provides services to other persons without charge, the exemption would apply. The Commission has received several fee exemption requests from colleges and universities for licensed activities not covered by the current exemption. Additionally, this change is in keeping with the concern of Congress regarding the impact of the current schedule on some entities and their limited ability to pass through the costs of these charges to the ultimate consumer. Although the legislative history for annual fees contained in part 171 of this chapter discusses the option of considering modifications to these fee schedules for hospitals, research and medical institutions and uranium producers, the Commission is continuing to limit this particular exemption to non-profit educational institutions.

Paragraph (a)(5) is changed, for clarification, to include certificates of compliance and other approvals.

Paragraph (a)(11) is added to provide that Indian tribes and Indian organizations will be exempt from license fees. Indian tribes are recognized as separate political entities similar to State governments. The Commission intends to exempt Indian tribes and wholly owned tribal commercial organizations conducting licensed activities on tribal lands from license fees in the same manner as it does States and governmental agencies.

Section 170.12 Payment of Fees

Paragraphs (a), (b), (c) and (d) are revised to more clearly distinguish the fee payment requirements for materials licenses and approvals not subject to full cost from the requirements for other licensed activities that are subject to full cost.

Paragraph (h) is being revised to indicate that (1) payments may also be made by electronic fund transfer (EFT) and (2) that were specific instructions regarding payment are provided on the bills, payment should be made accordingly. It is the intent of the Commission to request payment by electronic fund transfer of those bills which are in excess of $5,000. This change is being made to encourage timely receipts and deposits in accordance with U.S. Department of the Treasury regulations relating to cash management initiatives.

Section 170.20 Average Cost Per Professional Staff-Hour

This section is modified to reflect an agency-wide professional staff-hour rate based on FY 1990 costs to the Agency. Accordingly, the proposed professional staff rate for the NRC for FY 1990 for all fee categories that are based on full cost is $95 per hour, or $166.8 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, $196.4 million; (2) Administrative Support, $87.95 million; (3) Travel, $12.31 million, and (4) Program Support, $178.34 million. In FY 1990, 1,618 FTEs are considered to be in direct support of NRC programs applicable to fees (see Table I). Of the total 3,180 FTEs, 1,562 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of these 1,562 FTEs, a total of 286 FTEs and the resulting $26.8 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

TABLE I.—ALLOCATION OF DIRECT FTES BY OFFICE

Office	Number of direct FTEs [1]
NRR/SP	[illegible]
RESEARCH	155.0
NMSS	307.5
AEOD	93.1
ASLAP/ASLBP	22.2
ACRS	25.0
OGC	33.0
Total Direct FTE	1,618.0

[1] Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All direct FTEs are identified by office.

2. NRC plans, budgets, and controls on the following four major categories (see Table II):

(a) Salaries and Benefits.
(b) Administrative Support.
(c) Travel.
(d) Program Support.

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method was described in the December 29, 1988 final rule (53 FR 52639) and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining $269.9 million allocated uniformly to the direct FTEs (1,618) results in a calculation of $166.8 thousand per FTE for FY 1990 (an hourly rate of $95).

TABLE II.—FY 1990 BUDGET BY MAJOR CATEGORY

[$ in Millions]

Salaries and benefits	$196.40
Administrative support	87.95
Travel	12.31
Total nonprogram support obligations	296.66

TABLE II.—FY 1990 BUDGET BY MAJOR CATEGORY—Continued

[$ in Millions]

Program support	178.34
Total budget	475.0

The Direct FTE Productive Hourly Rate ($95/hour rounded to the nearest whole dollar) is calculated by dividing the annual nonprogram support costs ($296.66 million) less the amount applicable to exempted functions ($26.8 million) by the product of the direct FTE (1,618 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

For subsequent fiscal years the professional staff-hour rate will be revised, as needed, using the same methodology to arrive at a new hourly rate as described above. Any changes in the staff-hour rate for future fiscal years will be published in the **Federal Register** prior to the beginning of the fiscal year for which they will become effective.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects and Inspections

Since the Commission decision (53 FR 52633; December 29, 1988) to remove the fee ceiling for topical reports reviews, the number of topical reports submitted for review has significantly decreased. It appears that the principal reason for the reduction in topical reports being submitted is the uncertain and potentially unlimited fee for NRC review of these reports. This is counterproductive to the agency because, in many cases, the regulatory effort gains significant benefit in terms of (1) the resolution of safety significant problems, and (2) the staff time saved by conducting a generic review of a topical item thereby saving extensive plant-by-plant review in the same or similar areas. Examples of beneficial topical initiatives are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more complete technical review than could have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saves NRC costly review time assessing plant-by-plant guidelines. These are just two of many examples where the public interest is served by an industry undertaking to resolve an issue. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource savings to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports.

In conclusion, a balance must be maintained between the need to encourage industry submittal of these reports and the need to assess fees for the costs of reviewing the reports. The current system of charging a fee with no ceiling for NRC review of these reports appears to have had an inhibiting effect on the industry. As a result, the Commission is proposing to amend 10 CFR 170.21, Category J, Special Projects, to provide that the maximum fee for review of a topical report shall not exceed $50,000 and any amendments, revisions, or supplements to topical reports shall not exceed $50,000. This figure represents an adjustment of a previous ceiling of $20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees charged over $20,000 thus far in 1989.

The professional hourly rate assessed for the services provided under the schedule is revised as shown in § 170.20. Footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984 and January 30, 1989 rules, as appropriate. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1990 rates shown in this proposed rule.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services

The licensing and inspection fees in this section are modified to reflect the FY 1990 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. It includes the addition of a category for decommissioning applications for byproduct material. After the effective date of this final rule, the fees shown in this proposed rule will apply to those decommissioning applications that are currently pending NRC review and subsequently filed applications.

Fee Category 3N is revised to include licenses which authorize leak test services, with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. This revision is in response to Health Physics Associates' July 22, 1988 comment on the June 27, 1988 proposed revision to 10 CFR 170, other comments received from applicants and licensees since the inception of the June 1984 revision, and to supporting information provided by the Office of Nuclear Material Safety and Safeguards.

By letter dated July 19, 1988, Lixi, Inc. commented on the June 27, 1988 proposed rule that 10 CFR 170 should be revised to create a new category for diagnostic devices. Lixi believes doctors should be charged the same for medical use of the Lixi Imaging Scope as industrial users. At this time, it is not practical to make a separate category for each manufactured item. The fee Categories in 10 CFR 170.31 are based on the use of the material rather than specific types of products or equipment. In addition, in using the average-cost instead of the full-cost method for materials license fees, variations will exist between licenses grouped within a single category. However, in developing the current fee categories, every effort was made to group licenses in the most logical and equitable manner.

Many licenses which authorize human use of diagnostic devices also authorize other medical uses of byproduct, source, or special nuclear material. These licenses are currently subject to fee Category 7C. If a separate category existed for diagnostic devices only, these licenses could be subject to the fees in the new category in addition to the fees in Category 7C.

For these reasons, applications for human use of the Lixi Imaging Scope and other diagnostic devices will continue to be subject to fee Category 7C and industrial uses of the Lixi Imaging Scope will continue to be subject to fee Category 3P.

Fee Category 10B is changed from full-cost to flat fees. This change is based on an analysis of the actual staff-hours expended for the review and approval of the part 71 quality assurance programs.

Fee Category 12, Special Projects, is revised to provide that the maximum fee for review of a topical report and any amendments, revisions or supplements to topical reports shall not exceed $50,000.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule revision is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this proposed revision.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

VI. Regulatory Analysis

The proposed revision was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (32 U.S.C. 9701) and the Commission's fee guidelines. These guidelines took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 336 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (1976); *National Associations of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F. 2d 1135 (1976) These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, when the U.S. Court of Appeals for the Fifth Circuit held in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (1979), cert. denied 44 U.S. 1102 (1980), that (1) the Nuclear Regulatory Commission had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

This proposed rule revision will not have significant impact on state and local governments and geographical regions; on health, safety, and the environment; or create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980; 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects about 9,000 specific licenses under 10 CFR part 30–35, 40, 50, 60, 61, 70, 71, and 72. Approximately 8,000 of these licensees could be considered small entities, particularly in the area of materials licensing under parts 30–35. There is no annual recordkeeping burden imposed by the proposed rule.

The NRC does not believe that the increase in fees that would result from the adoption of this proposed rule would result in a significant economic impact on most materials licensees. The increase in the annual cost that would be imposed on these licensees would not be significant in terms of their gross annual receipts.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for it because these amendments do not require the modification of or addition to systems, structures, components or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 533, the NRC is proposing to adopt the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.3, remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe" to read as follows:

§ 170.3 Definitions.

* * * * *

"*Indian organization*" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe.

"*Indian tribe*" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Secretary of the Interior because of their status as Indians.

* * * * *

3. In § 170.11, paragraph (a)(3) is removed and reserved; paragraphs (a)(4) and (a)(5) are revised and paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(3) [Reserved]

(4) A construction permit or license applied for by, or issued to, a non-profit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material except for licenses which authorize (i) human use; (ii) remunerated services to other persons; (iii) distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and (iv) activities performed under a Government agency contract.

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104b of the Atomic Energy Act of 1954, as amended.

* * * * *

(11) A license for possession and use of byproduct material, source material, or special nuclear material or other approval applied for by or issued to an Indian tribe or an Indian organization conducting licensed activities on tribal lands.

* * * * *

4. In § 170.12, paragraphs (a), (b), (c), (d) and (h) are revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. Applications for which no remittance is received will not be processed and may be returned to the applicant. All application fees will be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

(b) *License fees.* (1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Except as provided in paragraph (b)(3) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each.

(3) For early site reviews issued under 10 CFR part 52, there is no application fee. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* (1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed, except for amendment and other approvals for early site permits which will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* (1) Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except as noted in paragraphs (d)(3) and (d)(4) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Fees for review of an application for renewal of a standard design certification shall be deferred as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all costs are not recovered, within ten years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the review of the application for renewal, or remainder of those costs, at that time.

(4) Fees for the review of an application for renewal of an early site permit shall be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

* * * * *

(h) *Method of payment.* Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Where specific payment instructions are provided on the bills to applicants or licenses, payment should be made accordingly, e.g., bills of $5,000 or more will normally indicate payment by electronic fund transfer.

* * * * *

5. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required approvals and inspections under §§ 170.21 and 170.31 will be calculated based upon the full costs for the review using a professional staff rate per hour

equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate for the NRC for FY 1990 is $95 per hour. Subsequent changes to this rate will be published in the Federal Register prior to the fiscal year for which a new professional staff-hour rate is effective.

6. In § 170.21, Category J, Special Projects and Footnote 2 to the schedule are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

* * * * *

Category of materials licenses and type of fees [1]	Fee [2]
J. Special projects	
Approvals:	
1. Topical reports	$50,000
2. Amendments, revisions and supplements to topical reports	$50,000
3. All other approvals, special projects and reports except those specified in 1 and 2 above	Full Cost

* * * * *

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rule revisions, as appropriate. For those applications currently on file for which review costs have reached the applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings since January 29, 1989, will be assessed at the applicable rate established by § 170.20. In no event will the total review costs be less than $150.

* * * * *

7. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services including inspections.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety, and safeguards inspections, where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or ore of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Application	$150.
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Application	$150.
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:	
Application—New license	$420.
Renewal	$420.
Amendment	$310.
Inspections:	
Routine	$380.
Nonroutine	$1,100.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:	
Application—New license	$570.
Renewal	$570.
Amendment	$190.
Inspections:	
Routine	$570.
Nonroutine	$670.
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Application	$150.
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8)	
Application—New license	$100.
Renewal	$100.
Amendment	$100.
Inspections:	
Routine	$240.
Nonroutine	$290.
C. All other source material licenses:	
Application—New License	$660.
Renewal	$400.
Amendment	$370.
Inspections:	
Routine	$870.
Nonroutine	$1,200.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,900.
Renewal	$1,100.
Amendment	$190.
Inspections: [5]	
Routine	$1,700.
Nonroutine	$1,800.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,100.
Renewal	$1,900.
Amendment	$480.
Inspections: [5]	
Routine	$440.
Nonroutine	$1,600.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of part 32 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$2,800.
Renewal	$1,200.
Amendment	$380.
Inspections:	
Routine	$1,100.
Nonroutine	$1,500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$830.
Renewal	$410.
Amendment	$260.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$410.
Renewal	$350.
Amendment	$210.
Inspections:	
Routine	$360.
Nonroutine	$570.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$950.
Renewal	$330.
Amendment	$290.
Inspections:	
Routine	$480.
Nonroutine	$1,000.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$3,800.
Renewal	$1,500.
Amendment	$380.
Inspections:	
Routine	$860.
Nonroutine	$1,100.
H. Licenses issued pursuant to subpart A of part 32 of the chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$1,800.
Renewal	$870.
Amendment	$210.
Inspections:	
Routine	$570.
Nonroutine	$570.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of the chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,200.
Renewal	$890.
Amendment	$290.
Inspections:	
Routine	$360.
Nonroutine	$570.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,100.
Renewal	$480.
Amendment	$320.
Inspections:	
Routine	$570.
Nonroutine	$570.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities by byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$770.
Amendment	$240.
Inspections:	
Routine	$570.
Nonroutine	$570.
L. Licenses of broad scope for possession and use by byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,900.
Renewal	$1,600.
Amendment	$420.
Inspections:	
Routine	$750.
Nonroutine	$950.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$930.
Renewal	$830.
Amendment	$520.
Inspections:	
Routine	$670.
Nonroutine	$780.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$1,100.
Renewal	$570.
Amendment	$190.
Inspections:	
Routine	$570.
Nonroutine	$670.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$2,500.
Renewal	$1,500.
Amendment	$400.
Inspections:	
Routine	$950.
Nonroutine	$2,100.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$430.
Renewal	$420.
Amendment	$310.
Inspections:	
Routine	$360.
Nonroutine	$360.
4. Waste disposal:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:	
Application	$150.
License, renewal, amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,300.
Renewal	$1,500.
Amendment	$190.
Inspections:	
Routine	$1,800.
Nonroutine	$1,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$760.
Amendment	$190.
Inspections:	
Routine	$1,300.
Nonroutine	$1,700.

Category of materials licenses and type of fees [1]	Fee [2] [3]
5. Well logging:	
A. Licenses specifically authorizing use of byproduct material, source material, or special material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$2,800.
Renewal	$1,700.
Amendment	$450.
Inspections:	
Routine	$670.
Nonroutine	$670.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Application	$150.
License, renewal, amendment	Full Cost.
Inspections:	
Routine	$570.
Nonroutine	$560.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$1,100.
Renewal	$1,100.
Amendment	$290.
Inspections:	
Routine	$950.
Nonroutine	$1,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700
Renewal	$360
Amendment	$350
Inspections:	
Routine	$950.
Nonroutine	$1,500.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,900.
Renewal	$1,600.
Amendment	$300
Inspections:	
Routine	$1,300.
Nonroutine	$1,400.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$350.
Renewal	$440.
Amendment	$350.
Inspections:	
Routine	$560.
Nonroutine	$1,200.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$480.
Renewal	$330.
Amendment	$350
Inspections:	
Routine	$570.
Nonroutine	$570.
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$2,700.
Amendment—each device	$350.
Inspections	None.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$1,300.
Amendment—each device	$440
Inspections	None.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$570.
Amendment—each source	$190.
Inspections	None.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$390.
Amendment—each source	$100.
Inspections	None.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Application	$150.
Approval, Renewal, Amendment	Full Cost.
Inspections	None.
B. Evaluation of part 71 quality assurance programs:	
Application-Approval	$190.
Renewal	190.
Amendment	190.
Inspections	None.
11. Review of standardized spent fuel facilities:	
Application	$150.
Approval, Renewal, Amendment	Full Cost.
Inspections	None.
12. Special projects:	
Application	$150.
Approval:	
1. Topical reports	$50,000.
2. Amendments, revisions and supplements to topical reports.	$50,000.
3. All other approvals, special reports and reports except those specified in 1 and 2 above.	Full Cost.
Inspections	None.
13.	
A. Spent fuel storage cask Certificate of Compliance:	
Application	$150.
Approvals	Full Cost.
Amendments, revisions and supplements.	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of part 72 of this chapter:	
Routine	Full Cost.
Nonroutine	Full Cost.
14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72:	
Application	$150.
Approval, Renewal, Amendment	Full Cost.
Inspection:	
Routine	Full Cost.
Nonroutine	Full Cost.

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals or those applications filed in support of expired licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval fees*—For new licenses and approvals issued in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14 must be accompanied by an application fee of $150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) *Amendment fees*—Applications for amendments must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses in fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14 must be accompanied by an application fee of $150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

An application to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fee.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 and January 30, 1989 rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached through January 29, 1989 will not be billed to the applicant. Any professional staff-hours expended since January 29, 1989 and/or on or after the effective date of this rule will be assessed at the applicable rate established by § 170.20 of this part. In no event will the total review costs be less than the application fee.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

Dated at Rockville, Maryland, this 27th day of November 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-28157 Filed 11-30-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-32-AD]

Airworthiness Directives; Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Fairchild SA226 and SA227 series airplanes, requiring inspection and rework as necessary of the main landing gear door to nacelle skin to assure proper clearance. The proposed AD is prompted by several wheels-up landings caused by the main landing gear doors jamming against the nacelle which prevents extension of the main landing gear. The proposed actions will correct this unsafe condition.

DATES: Comments must be received on or before January 16, 1990.

ADDRESSES: Fairchild Service Bulletin Nos. SA226-32-055 and SA227-32-027, both dated December 8, 1988, applicable to this AD, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: James R. Bannister, Airplane Certification Office, FAA Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5163.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that a safety of flight condition exists on Fairchild SA226 and SA227 series airplanes. Several accidents have occurred in which the main landing gear would not extend and the airplane was forced to land "wheels up". Five of the accidents were attributed to the landing gear doors becoming jammed against the nacelle skin thus preventing extension of the landing gear.

Since the condition described is likely to exist or develop in other Fairchild SA226 and SA227 series airplanes of the same design, the proposed AD would require visual inspection and adjustment of the landing gear door to nacelle skin gap in accordance with Fairchild Service Bulletins 226-32-055 and 227-32-027, as applicable.

The FAA has determined there are approximately 656 airplanes affected by the proposed AD. The cost of the inspections and adjustments specified in the proposed AD is estimated to be $300 per airplane. The total cost is estimated to be $196,800. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Fairchild (Swearingen): Applies to the following airplanes certificated in any category:

Model	Serial Nos.
SA226-T	T201 through T275 and T277 through T291.
SA226-T(B)	T(B)276, and T(B)292 through T(B)417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.
SA227-TT	TT421 through TT489.
SA227-AT	AT421B, and AT423 through AT631B, and AT695B.
SA227-AC	AC406, AC415, AC416, and AC420 through AC726.

Compliance: Required within the next 250 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the main landing gear doors from jamming against the nacelle skin and preventing the extension of the landing gear, accomplish the following:

(a) Visually inspect the gap between the main landing gear doors and the adjacent nacelle skins to insure a clearance of 0.38±.03 inches in accordance with the instructions specified in Fairchild Service Bulletin (S/B) SA226-32-055 or S/B SA227-32-027, both dated December 8, 1988, as applicable. If rework of the door(s) is required to obtain the specified clearance, prior to further flight accomplish the task in accordance with the instructions in the above applicable S/B.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA Southwest Region, P.O. Box 1689, Forth Worth, Texas 76103-0150.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Airplane Certification Office, FAA Southwest Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 20, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28154 Filed 11-30-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I, Subchapter C

[Docket No. 85N-0043]

Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives; Withdrawal of Notice of Intent

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its notice of intent to propose rules concerning parenteral drug products containing benzyl alcohol or other antimicrobial preservatives. Prompted by reports of benzyl alcohol related toxicity in newborns, FDA had announced its intent to propose a rule that would: (1) Prohibit the use of antimicrobial preservatives in single-dose parenteral drug products for human use; and (2) require the labeling of multiple-dose parenteral drug products that contain any antimicrobial preservatives to bear a caution about use in newborn infants. Since becoming aware of the toxicity problems, FDA and the U.S. Pharmacopeial Convention (U.S.P.C.) have taken a number of steps to increase awareness of the hazards of use of benzyl alcohol containing products in newborns. Moreover, no reports of benzyl alcohol related toxicity have been received by FDA since 1982. Therefore, FDA has decided not to proceed by regulation to prohibit the use of antimicrobial preservatives, including benzyl alcohol, in single-dose containers of parenteral solutions, nor to require in its regulations a cautionary warning against the administration of these products to newborn infants.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of May 15, 1985 (50 FR 20233), FDA published a notice of intent and request for information entitled "Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives." In the notice, the agency announced that it was considering prohibiting the use of all antimicrobial preservatives in single-dose containers of parenteral drug products for human use, and requiring the labeling of multiple-dose containers of parenteral drug products for human use that contain any antimicrobial preservatives to bear a warning that caution should be used in the administration of these drugs to newborn infants. The notice solicited data, information, and comment on the issues raised, specifically asking for recommendations on any further course of action to be taken by the agency.

This notice reflected agency concern about preservatives used in bacteriostatic water for injection and bacteriostatic sodium chloride injection. Specifically, agency action was prompted by two reports suggesting a relationship between the administration of such solutions and a sometimes fatal toxic reaction in low birth weight, premature infants. These reports came from medical centers where neonatal intensive care staffs used these solutions to flush intravascular catheters and to reconstitute drugs for delivery through such catheters. Benzyl alcohol toxicity in newborns (benzyl alcohol syndrome) is characterized by central nervous system depression, metabolic acidosis, gasping respirations, and high levels of benzyl alcohol and its metabolites found in the blood and urine. It is perhaps a result of the inability of the immature liver of the low birth weight, premature infant to metabolize or excrete benzyl alcohol or its metabolites properly.

FDA took action shortly after receiving the first reports of benzyl alcohol syndrome. On May 28, 1982, FDA sent 22,000 letters to hospital pharmacists, along with 19,000 letters to pediatricians and 8,400 letters to hospital administrators notifying them of the problem with benzyl alcohol. Warning notices were prepared for inclusion in bulletins of the American Society of Hospital Pharmacists and the American Nursing Association and other professional associations. In addition, the agency prepared a press release dated June 1, 1982, that urged pediatricians and other personnel in hospitals not to use fluids preserved with benzyl alcohol (or other antimicrobial agents) as intravascular flush solutions for newborn infants and not to use diluents with this preservative to reconstitute or dilute medications for infants.

On June 4, 1982, the agency met with all known manufacturers of bacteriostatic water for injection and bacteriostatic sodium chloride injection, and with staff from the U.S.P.C. At that meeting, manufacturers of these two classes of products voluntarily agreed to place a warning on product labels against their use in newborns. Subsequently, the U.S.P.C. published a revision to the USP monographs (U.S. Pharmacopeia XX/National Formulary XV) that required these two classes of products to bear the warning "NOT FOR USE IN NEWBORNS" (Supplement 4, published January 1, 1983; effective May 1, 1983). The labeling requirement is retained in the U.S. Pharmacopeia XXI/National Formulary XVI and U.S. Pharmacopeia XXII/National Formulary XVII.

FDA received 30 comments in response to the May 1985 **Federal Register** notice. Some comments favored banning benzyl alcohol from single-use containers, especially for those products intended for use in low birth weight neonates. Other comments stated that preservatives are important for sterility assurance, and urged that they not be banned from either single-dose or multiple-dose containers.

FDA has concluded that neither a regulation prohibiting the use of antimicrobial preservatives in single-dose containers of parenteral solutions, nor a regulation requiring labeling of multiple-dose parenteral drug products containing benzyl alcohol or other antimicrobial preservatives are currently necessary.

Of considerable significance, the agency is unaware of any additional reports in the scientific literature of benzyl alcohol syndrome since 1982. The agency believes that the steps taken by FDA, drug manufacturers, and the U.S.P.C. may have helped reduce the use of newborn products containing benzyl alcohol.

While satisfied that the measures taken with respect to bacteriostatic water for injection and bacteriostatic sodium chlorine injections are adequate, FDA remains concerned about the use of benzyl alcohol as a preservative in other products that may be used by neonates. If there are further reports of benzyl alcohol toxicity, or other adverse reactions associated with antimicrobial preservatives, the agency will reconsider the need for agency action.

The agency notes that benzyl alcohol toxicity is associated with impaired renal function in neonates. This association suggests potential toxicity of benzyl alcohol or other antimicrobial preservatives in oncology patients and other patients with renal impairment. FDA is looking for evidence of problems in these additional patient populations and is prepared to take action if reports of problems are received.

Therefore, FDA is withdrawing its notice of intent published in the **Federal Register** of May 15, 1985 (50 FR 20233).

Dated: November 24, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 89-28110 Filed 11-30-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This additional information pertains to definitions, permit applications, civil penalties, permit review, coal exploration, bonding, performance standards, and underground mining. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Kansas program, proposed amendment to that program, and additional information are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m., c.s.t. December 18, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to William J. Kovacic at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405

Kansas Department of Health and Environment, Surface Mining Section, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 29, 1989, (Administrative Record No. KS–436) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed revisions (1) in response to an October 21, 1988, letter that OSM sent in accordance with 30 CFR 732.17(c) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1988, and to satisfy anticipated deficiencies in the State program through July 1, 1989, (2) in response to a May 11, 1989, letter that OSM sent in accordance with 30 CFR 732.17(c) concerning ownership and control, and (3) at the State's own initiative to improve its program.

The regulations that Kansas proposes to amend are Kansas Administrative Regulations (K.A.R.): 47–1–1, Title; 47–1–3, Communication; 47–1–4, Sessions; 47–1–8, Petitions to Initiate Rulemaking; 47–1–9, Notice of Citizen Suits; 47–1–10, General Notice Requirement; 47–1–11, Permittee Preparation and Submission of Reports; 47–2–14, Complete and Accurate Application Defined; 47–2–21, Employee Defined; 47–2–53, Regulatory Authority or State Regulatory Authority Defined; 47–2–67, Surety Bond Defined; 47–2–75, Definitions-Adoption by Reference; 47–3–1, Application for Mining Permit; 47–3–2, Application for Mining Permit-Adoption by Reference; 47–3–3a, Application for Mining Permit-Maps; 47–3–42, Application for Mining Permit-Adoption by Reference; 47–4–14, Public Hearing-Incorporation by Reference of K.S.A. 77–501 *et seq.*; 47–4–15, Administrative Hearings, Discovery, Incorporation by Reference; 47–4–16, Interim Orders for Temporary Relief; 47–4–17, Administrative Hearings, Award of Costs and Expenses; 47–5–5a, Civil Penalties-Adoption by Reference; 47–5–16, Civil Penalties-Final Assessment and Payment; 47–6–1, Permit Review; 47–6–2, Permit Revision; 47–6–3, Permit Renewals-Adoption by Reference; 47–6–4, Permit Transfers, Assignments, and Sales-Adoption by Reference; 47–6–6, Permit Conditions-Adoption by Reference; 47–8–8, Bonding Procedures-Adoption by Reference; 47–8–11, Use of Forfeited Bond Funds; 47–9–1, Performance Standards-Adoption by Reference; 47–9–2, Revegetation; 47–9–4, Interim Program Performance Standards-Adoption by Reference; 47–10–1, Underground Mining-Adoption by Reference; 47–11–8, Small Operator Assistance Program-Adoption by Reference; 47–12–4, Lands Unsuitable for Surface Mining-Adoption by Reference; 47–13–4, Training and Certification of Blasters-Adoption by Reference; 47–13–5, Responsibilities of Operators and Blasters-in-Charge; 47–13–6, Training Program; 47–14–7, Employee Financial Interest-Adoption by Reference; 47–15–1a, Inspection and Enforcement-Adoption by Reference; 47–15–3, Lack of Information and Inability to Comply; 47–15–4, Injunctive Relief; 47–15–7, State Inspections; 47–15–8, Citizen's Request for State Inspections; 47–15–15, Service of Notices of Violation and Cessation Orders; and 47–15–17, Maintenance of Permit Areas.

OSM published a notice in the July 14, 1989, **Federal Register** (54 FR 29742) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS–441). The public comment period ended August 14, 1989.

During its review of the amendment, OSM identified concerns relating to K.A.R.: 47–1–9 (e) and (f), Notice of Citizen Suits; 47–2–21, Employee Defined; 47–2–53, Regulatory Authority or State Regulatory Authority Defined; 47–2–53a, Regulatory Program Defined; 47–2–58, Significant, Imminent Environmental Harm to Land, Air, and Water Resources Defined; 47–2–64, State Act Defined; 47–2–74, Public Road Defined; 47–2–75(a) (6), (7), and (8), Definitions; 47–2–75(b)(6)(B) and (C), Alluvial Valley Floor and Arid Semiarid Area Defined; 47–2–75, Ownership and Control Definitions; 47–3–1, Application for Mining Permit; 47–3–2(c)(3), Application for Mining Permit; 47–3–42, Application for Mining Permit; 47–3–42(b)(15), Special Category Permits; 47–3–42, Application for Mining Permit; 47–4–14, Incorporation by Reference of Kansas Statute Annotated 77–501 *et seq.*; 47–5–5a(a)(10), Individual Civil Penalties; 47–6–2(d), Permit Revision; 47–6–6(b)(4), Permit Review; 47–7, Coal Exploration; 47–8–9(q)(2), Bonding Procedures; 47–9–1(c)(6), Topsoil and Subsoil; 47–9–1(c)(26), Coal Mine Waste: General Requirements; 47–9–1 (c)(42) and (d)(39), Surface and Underground Revegetation: Standards for Success; 47–9–1 (c)(45) and (d)(44), Surface and Underground Postmining Land Use; 47–9–1(d)(2), Underground Mining Performance Standards; 47–10–1(b)(6), Underground Mining Permit Applications; and Rills and Gullies Guidelines. OSM notified Kansas of the concerns by letter dated September 8, 1989 (Administrative Record No. KS–445). Kansas responded in letters dated October 24, October 30, November 9, and November 15, 1989, and an undated letter received November 17, 1989 (Administrative Record No. KS–449), by submitting a revised amendment.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Kansas City Field Office will not be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 916

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 22, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–28123 Filed 11–30–89; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Permanent Regulatory Program; Reopening of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On October 7, 1988, the OSM conditionally approved Kentucky House Bill 869 (53 **Federal Register** 39470). The bill amended the Kentucky Revised Statutes (KRS) at 350.032 to provide that final orders of the Cabinet are appealable to the Circuit Court of the County where the violation occurred rather than to the Circuit Court of Franklin County. The Director's approval was given on a trial basis with final approval dependent on the results of an evaluation report to be completed by Kentucky two months prior to the commencement of the 1990 General Assembly. On October 27, 1989, Kentucky submitted an evaluation report to OSM on House Bill 869 in fulfillment of the Director's requirement

This notice sets forth the times and locations that the Kentucky program and the proposed additional materials are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 2, 1990. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on December 26, 1989. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 18, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionaly approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

On October 7, 1988, OSM conditionally approved Kentucky House Bill 869 (53 FR 39470). The bill amended KRS 350.032 to provide that final orders of the Cabinet are appealable to the Circuit Court of the County where the violation occurred rather than to the Circuit Court of Franklin County. The Director's approval was given on a trial basis with final approval dependent on the results on an evaluation report to be completed and submitted to OSM by Kentucky two months prior to the commencement of the 1990 Kentucky General Assembly.

By a letter dated October 24, 1989, (Administrative Record No. KY–929), Kentucky submitted to OSM the report on House Bill 869. The report details the impact of House Bill 896 on agency resources and the judicial review process. The report contains information on the number of appeals filed in Circuit Courts, their outcome and status, and the funding and staff resources allocated in defending the Cabinet in those actions. The report also includes information on the number of decisions enjoining the Cabinet from enforcing sections of the law, delays encountered in the appeals process, and the number of appeals heard in which the applicant for review failed to exhaust all administrative remedies. Kentucky's report is intended to address the Director's concerns in 53 FR 39470. Therefore, OSM is reopening the public comment period for thirty days to allow public comment on the proposed program amendment as clarified.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, the include explanations in support of the commentor's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on December 18, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30

U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-28121 Filed 11-30-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1-87-068]

Special Anchorage Area; Perth Amboy, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to redesignate Anchorage Ground 45-A as a special anchorage. This anchorage is located in the waters contiguous to the City of Perth Amboy, New Jersey. Raritan Yacht Club has requested the redesignation because the anchorage has historically been utilized solely by small recreational vessels. These vessels are currently required to be lighted at night. This regulation will provide a safe anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. Raritan Bay is currently experiencing a resurgence of recreational boating during the summer months. There are no such anchorages currently available in the immediate area.

DATES: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments should be mailed to Captain of the Port, Bldg. 109, Governors Island, NY 10004, Attention to: Waterways Management Office. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments may also be hand delivered to that address. Persons wishing to visit the Waterways Management Office must make an appointment so that clearance onto Governors Island (a military installation) can be arranged.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C. W. Jennings, Waterways Management Officer, Captain of the Port, New York at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-87-068) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information. The drafters of this notice are ENS M. P. Duesing, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations. Anchorage Ground 45-A is the area proposed for redesignation as a special anchorage. It is located in the waters contiguous to the City of Perth Amboy, New Jersey. Raritan Yacht Club has requested the redesignation because the anchorage has historically been utilized solely by small recreational vessels. They are currently required to remain lighted at night. Redesignating this area would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The area will not affect navigable channels and is located where general navigation will not endanger or be endangered by unlighted vessels. The Raritan Yacht Club has indicated that it is willing to continue to manage the placement of moorings as it has done for many years. The area has been and will continue to be available for use by the general public. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification. These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, thus a full regulatory evaluation is unnecessary. Establishment of these proposed special anchorage areas will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, paragraph (aa) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(aa) South of Perth Amboy, New Jersey. The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°30'19.0"	74°15'46.0"
40°30'17.0"	74°15'38.0"
40°30'02.8"	74°15'45.0"
40°29'36.0"	74°16'08.2"
40°29'30.8"	74°16'22.8"
40°29'47.2"	74°16'52.0"
40°30'02.0"	74°16'43.0"

and thence along the shoreline to the point of beginning.

3. In § 110.155, remove and reserve paragraph (j)(3).

Dated: November 21, 1989.

R.I. Rybicki,

U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 89-28153 Filed 11-30-89; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-5

Centralized Services in Federal Buildings and Complexes; Miscellaneous Changes

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes the methods by which the General Services Administration provides for establishment of centralized services in Federal buildings occupied by a number of executive agencies. The changes contained in this proposal describe GSA's responsibility to provide printing and photocopying services in multi-occupant Federal buildings or complexes.

DATE: Comments are due January 30, 1990.

ADDRESS: Comments should be submitted to the General Services Administration, CAR, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny Young, Reproduction Services Division Director (202-566-1961).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-5

Government property management.

PART 101-5—[AMENDED]

1. The authority citation for part 101-5 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The title of part 101-5 is revised to read as follows:

PART 101-5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES

3. Section 101-5.000 is revised to read as follows:

§ 101-5.000 Scope of part.

This part prescribes the methods by which the General Services Administration provides for establishment of centralized services in Federal buildings or complexes occupied by a number of executive agencies.

Subpart 101-5.1—General

4. Section 101-5.101 is revised to read as follows:

§ 101-5.101 Applicability.

The regulations in this part apply to all executive agencies which occupy space in or are prospective occupants of multi-occupant Federal buildings located in the United States. In appropriate circumstances, the centralized services provided pursuant to this part are extended to agencies occupying other Federal buildings in the same geographical area. For purposes of this part, reference to Federal buildings may be deemed to include, when appropriate, leased buildings or specific leased space in a commercial building under the control of GSA.

5. Section 101-5.102 is revised to read as follows:

§ 101-5.102 Definitions.

(a) *Centralized services* means those central supporting and administrative services and facilities provided to occupying agencies in Federal buildings or nearby locations in lieu of each agency providing the same services or facilities for its own use. This includes those common administrative services provided by a Cooperative Administrative Support Unit (CASU). It does not include such common buildings features as cafeterias, blind stands, loading platforms, auditoriums, incinerators, or similar facilities. Excluded are interagency fleet management centers established pursuant to Public Law 766, 83rd Congress and covered by part 101-38 of this chapter.

(b) *Occupying agency* means any Federal agency assigned space in a building or complex for which GSA has oversight of, or responsibility for the functions of operation and maintenance in addition to space assignment.

(c) *Cooperative Administrative Support Unit (CASU)* means an organized mechanism for providing administrative services for agencies in multi-tenant federally occupied buildings.

6. Section 101-5.104-1 is revised to read as follows:

§ 101-5.104-1 General.

GSA is currently providing various centralized services to Federal agencies in such fields as office and storage space, supplies and materials, communications, records management, transportation services, and printing and reprographics. Other centralized CASU's may be providing supporting services or activities such as health units, use of training devices and facilities, pistol ranges, and central facilities for receipt and dispatch of mail. Consolidation and sharing is frequently feasible with resulting economies in personnel, equipment, and space. Opportunities to effect economies through planned consolidation of such services occur particularly during the design stage of the construction of new Federal buildings, or the renovations to existing buildings. Opportunities may also occur as a result of needs assessments jointly conducted by local agencies.

7. Section 101-5.104-2 is amended to revise paragraph (b) as follows:

§ 101-5.104-2 Basis for determining economic feasibility.

* * * * *

(b) In the absence of standard data on which a determination of economic feasibility can be based, or where such data must be supplemented by additional factual information, a formal feasibility study will be made by GSA or a CASU workgroup prior to a final determination to proceed with the furnishing of a centralized service. Generally, a formal feasibility study will be made only if provision of the proposed centralized service would involve the pooling of staff, equipment, and space which occupying agencies otherwise would be required to use in providing the service for themselves. Examples of centralized services which may require formal studies include

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printing and duplicating plants and similar facilities.

8. Section 101–5.104–3 is amended to revise paragraph (a) as follows:

§ 101–5.104–3 Data requirements for feasibility studies.

(a) The data requirements for feasibility studies may vary from program to program, but shall be standard within any single program. Such data shall disclose the costs resulting from provisions of the service on a centralized basis as compared to the same service provided separately by each occupying agency, including the costs of personnel assigned to provide the service, comparative space needs, equipment use, and any other pertinent factors.

* * * * *

9. Section 101–5.105 is amended by revising paragraph (a) to read as follows:

§ 101–5.105 Operation of the centralized facility.

(a) GSA will continually appraise the operation of centralized facilities to insure their continued justification in terms of economy and efficiency. Centralized services provided pursuant to the regulation may be discontinued or curtailed if no actual savings or operating improvements are realized after a minimum operating period of one year. Occupying agencies will be consulted regarding the timing of curtailment or discontinuance of any centralized services and the heads of such agencies notified at least 120 days in advance of each action.

* * * * *

10. Section 101–5.106 is amended by revising paragraph (a) and paragraph (b) to read as follows:

§ 101–5.106 Agency committees.

(a) *Establishment.* An occupying agency committee will be established by GSA if one does not exist, to assist it, or such other agency as may be responsible, in the cooperative use of the centralized services, as defined in § 101–5.102(a), provided in a Federal building. Generally, such a committee will be established when the problems of administration and coordination necessitate a formal method of consultation and discussion among occupying agencies.

(b) *Membership.* Each occupying agency of a Federal building is entitled to membership on an agency committee. The chairperson of each such committee shall be a GSA employee designated by the appropriate GSA Regional Administrator, except when another agency had been designated to administer the centralized service. In this instance, the chairperson shall be an employee of such other agency as designated by competent authority within that agency.

* * * * *

11. The title of subpart 101–5.2 is revised to read as follows:

Subpart 101–5.2—Centralized Field Reproduction Services

12. The Table of Contents for subpart 101–5.2 is amended by revising three entries to read as follows:

Sec.

* * * * *

101–5.202 Types of centralized field reproduction services.
101–5.203 Economic feasibility of centralized field reproduction services
101–5.205–3 Action prior to operation of facilities

* * * * *

13. Section 101–5.200 is revised to read as follows:

§ 101–5.200 Scope of subpart.

This subpart states general guidelines and procedures for the establishment and operation of centralized field printing, duplicating, and photocopying services on a reimbursable basis. These services may be provided in multioccupant leased and/or government owned buildings.

14. Section 101–5.202 is amended by revising the title and paragraph (a) to read as follows:

§ 101–5.202 Types of centralized field reproduction services.

(a) Services will include offset reproduction, electronic publishing, photocopying, distribution, bindery services, and other closely related services as requested or required.

* * * * *

15. The title of § 101–5.203 is revised to read as follows:

§ 101–5.203 Economic feasibility of centralized field reproduction services.

16. Section 101–5.203–1 is revised to read as follows:

§ 101–5.203–1 Scheduling of feasibility studies.

(a) Based on the available data on the proposed size, location, number of agencies scheduled for occupancy, and other factors pertinent to a proposed new or acquired Federal building, GSA will determine whether to provide for a centralized field reproduction facility in the space directive covering the new building. A feasibility study thereafter will be scheduled and coordinated with the Federal building program of the Public Building Service, GSA, to occur during the period following development of the prospectus and before development of final working drawings for the space directive. The final decision to provide centralized field reproduction services in a new or acquired Federal building will be subject to subsequent determination by the GSA Administrator based upon the formal feasibility study.

(b) Feasibility studies will be initiated by GSA in existing Federal buildings. Such studies will be conducted in accordance with the rules prescribed in § 101–5.203.

17. Section 101–5.203–2 is revised to read as follows:

§ 101–5.203–2 Notification of feasibility studies.

The Administrator, GSA, or his authorized designee, will give at least 30 days notice to the head of each executive agency that would be served by a proposed centralized field reproduction facility in accordance with § 101–5.104–4, and will request the designation of agency representatives, as provided in § 101–5.104–5.

18. Section 101–5.203–5 is revised to read as follows:

§ 101–5.203–5 Uniform space allowances.

The space requirements for printing, duplicating, photocopying, and related equipment under individual agency use as compared with use in a centralized facility will be based upon uniform space allowances applied equally under both conditions.

19. Section 101–5.203–6 is amended by revising paragraph (a), paragraph (c) and paragraph (d) to read as follows:

§ 101–5.203–6 Pooling of equipment and personnel.

(a) In establishing centralized reproduction facilities in Federal buildings or complexes, GSA's regional office will make arrangements with participating agencies for the transfer of duplicating and related equipment for the centralized plant. Equipment for which there is no foreseeable need in the centralized plant will not be transferred to the plant but will be disposed of or transferred by the owning agency out of the centralized plant. Copy processing machines, as provided in paragraph (b) of this section, as well as reproduction, addressing, and automatic-copy processing equipment used in bona fide systems applications may be retained by mutual agreement with using agencies.

* * * * *

(c) Personnel devoting over 50 percent of time to the duplicating activities of the affected agency will be identified for transfer to the operating agency upon establishment of a centralized plant, in accordance with the Office of Personnel Management regulations relating to the transfer of functions. Agencies will transfer personnel ceiling to the operating agency for employees so transferred. In the event of later disestablishment of the centralized facility of substantial reduction in operations thereof, personnel ceiling will be returned to the agencies from which originally received.

(d) GSA will not make available to occupant agencies space for duplicating equipment, or provide other support services for such equipment in Federal buildings where use of such equipment would duplicate the services provided by the centralized plant unless sufficient justification is provided for the approval of the GSA regional printing and distribution activity with a Standard Form 81, Request for Space.

20. Section 101–5.203–7 is revised to read as follows:

§ 101–5.203–7 Determination of feasibility.

The Administrator of General Services will determine the economic feasibility of each proposed centralized field reproduction facility in accordance with § 101–5.104–7. The Director of the Office of Management and Budget and the head of each affected agency will be advised of the Administrator's determination to establish a centralized facility.

21. The title of § 101–5.204 is revised to read as follows:

§ 101–5.204 Operation of centralized field reproduction facilities.

22. Section 101–5.204–1 is revised to read as follows:

§ 101–5.204–1 Continuity of service.

Each new centralized field reproduction facility will be established in sufficient time to assure occupants moving into the building that there will be no interruption of duplicating service in support of their program activities.

23. Section 101–5.204–2 is revised to read as follows:

§ 101–5.204–2 Announcement of centralized services.

The appropriate GSA regional office will announce the availability of a centralized field reproduction facility approximately 90 days in advance of its activation, including:

(a) The date service will be available;

(b) The services which will be furnished, including technical assistance on reproduction problems;

(c) A current price schedule;

(d) Procedures for obtaining service; and

(e) Billing procedures.

24. Section 101–5.204–3 is revised to read as follows:

§ 101–5.204–3 Appraisal of operations.

(a) The appropriate GSA regional office will appraise continually the operation of each centralized field reproduction facility. Proposals to expand, modify, or discontinue a centralized activity shall be made to the Director, Reproduction Services Division, in the Central Office and must be supported by all pertinent information.

(b) The Administrator of General Services will give a minimum of 120 days notice to the heads of agencies concerned before any action to curtail or discontinue centralized services is taken.

25. Section 101–5.205–1 is revised to read as follows:

§ 101–5.205–1 General.

The Administrator of General Services, in accordance with § 101–5.105(b), may designate an agency other than GSA to operate a centralized field reproduction facility. Such designation will be made only by mutual agreement with the agency head concerned.

26. Section 101–5.205–2 is revised to read as follows:

§ 101–5.205–2 Prerequisites to designation of other agencies.

The following conditions are to be met by an agency designated by GSA to operate a centralized field reproduction facility:

(a) Generally, prices charged to Government agencies using the centralized field facility should be no higher than those specified on the currently effective nationwide uniform General Services Administration Reproduction Services Price Schedule. In special circumstances, deviations from the Price Schedule may be developed jointly by GSA and the designated agency.

(b) The designated agency shall accept responsibility for implementing the determination of the Administrator of General Services to establish a centralized reproduction facility, issued in accordance with §§ 101–5.104–7 and 101–5.203–7, including the provisions for transfer of excess equipment and other procedures and conditions specified in that determination. Necessary deviations from the determination may be developed jointly by GSA and the designated agency.

27. Section 101–5.205–3 is amended by revising the title, the introductory paragraph, paragraph (a) and paragraph (c) to read as follows:

§ 101–5.205–3 Actions prior to operation of facilities.

The following actions are to be taken by an agency designated by GSA to operate a centralized field reproduction facility prior to operations of such a facility:

(a) The designated agency shall assist the appropriate GSA regional office in the determination of firm space needs, including any special requirements. Space needs will be furnished by the GSA regional Administrative Services Division, Printing and Distribution Branch, before forwarding it to the Public Buildings Service, GSA, for preparation of final working drawings in the Federal building where the plant is to be located.

* * * * *

(c) After coordination with the designated operating agency to obtain its current price schedule, procedures for obtaining service, and billing procedures, GSA will announce the availability of the centralized field reproduction facility in the manner prescribed in § 101–5.204–2.

28. Section 101–5.204–5 is revised to read as follows:

§ 101–5.205–4 Facility inspections and customer evaluations.

Periodic facility inspections and customer evaluations will be performed jointly by GSA and the designated agency in order to appraise the continuing effectiveness of the centralized facility.

Dated: November 24, 1989.

Carlene Bawden,

Associate Administrator for Administration.

[FR Doc. 89–28194 Filed 11–30–89; 8:45 am]

BILLING CODE 6820–RF–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–526, RM–6974, RM–7014]

Radio Broadcasting Services; Golconda and Murphysboro, IL, and Lutesville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions for rule making. The first petition was filed on behalf of C R

Broadcasting, Inc. ("C R"), licensee of Station WTAO(FM), Murphysboro, Illinois, seeking the substitution of Channel 286B1 for Channel 285A at Murphysboro, and modification of the license for Station WTAO to specify the higher class channel. The proposal to upgrade at Murphysboro will require the substitution of Channel 232A for vacant but applied for Channel 286A at Golconda, and substitution of Channel 281A for vacant and unapplied for Channel 286A at Lutesville, Missouri. The second petition was filed by William L. Moir ("Moir"), seeking the substitution of Channel 232A for Channel 286A at Golconda, Illinois. The coordinates for Channel 286B1 at Murphysboro, Illinois, are North Latitude 37–40–35 and West Longitude 89–16–32. The coordinates for Channel 232A at Golconda, Illinois, are North Latitude 37–23–32 and West Longitude 88–29–21. The coordinates for Channel 281A at Lutesville, Missouri, are North Latitude 37–19–00 and West Longitude 89–57–30.

DATES: Comments must be filed on or before January 16, 1990, and reply comments on or before Janaury 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: William L. Moir, 11920 Gay Glen, St. Louis, MO 63043; Marnie K. Sarver, Reed, Smith, Shaw & McClay, 1200 18th Street NW., Washington, DC 20036 (Counsel for C R Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–526, adopted November 8, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28119 Filed 11–30–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–519, RM–6856]

Radio Broadcasting Services; West Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Brian Dodge, permittee of Station WVNH(FM), Channel 298A, West Rutland, Vermont, proposing the substitution of Channel 298C3 for Channel 298A at West Rutland, and the modification of his station's construction permit accordingly. A site restriction of 14.6 kilometers (9 miles) northeast of the city is required. The coordinates are 43–39–40 and 72–53–25. Concurrence of the Canadian government is also required for the proposal.

DATES: Comments must be filed on or before January 16, 1990, and reply comments on or before January 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Brian Dodge, P.O. Box 105FM, Hinsdale, NH 03451 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–519, adopted October 31, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28117 Filed 11–30–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–518, RM–6954]

Radio Broadcasting Services; Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edward G. and Carol K. Pickett, proposing the substitution of Channel 233C3 for Channel 233A at Rutland, Vermont, and the modification of the license for Station WKLZ (FM) at Rutland to specify operation on the higher powered channel. A site restriction of 19.8 kilometers (12.3 miles) north of the city is required, at coordinates 43–47–09 and 72–59–29. Since the location of the community is within 320 kilometers of the U.S.-Canadian border, the proposal requires concurrence of the Canadian government.

DATES: Comments must be filed on or before January 16, 1990, and reply comments on or before January 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James G. Bethard, P.O. Drawer C, Coushatta, Louisiana 71019 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–518, adopted October 31, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28118 Filed 11–30–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–23, No. 1]

RIN 2127–AC–81

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Some trucks and trailers otherwise covered by the standard are excluded from all or portions of the standard because their attributes, typically those relating to configuration speed or weight, result in restricted highway operation, or sharply increased compliance costs.

In response to a petition from the Truck Trailer Manufacturers Association (TTMA), NHTSA is today proposing to amend Standard 121 to require extendable and drop frame container chassis trailers to comply with all requirements of Standard 121. The existing Standard excludes extendable and drop frame container chassis trailers from certain actuation timing, emergency and parking brake requirements otherwise applicable to trailers. Under the proposal, extendable and drop frame container chassis trailers would no longer be excluded from the requirements of FMVSS No. 121 S5.3, S5.6, and S5.8. This notice invites public comment on the proposed approach.

DATES: Comments must be received on or before January 30, 1990. This proposal would become effective one year after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202) 366–5274.

SUPPLEMENTARY INFORMATION: Standard No. 121, Air Brake Systems, specifies requirements and test procedures for trucks, buses and trailers equipped with air brakes. The requirements for trailers include provisions governing service brake reservoirs (S5.2.1.2), brake actuation time (S5.3.3), brake release time (S5.3.4), parking brake performance (S5.6) and emergency brake performance (S5.8).

Since 1974, an exclusion has been provided from these requirements for a category of trailers known as "heavy hauler trailers." These trailers are defined in S4 as trailers with one or more of the following characteristics: brake lines designed to adapt to separation or extension of the frame, or a body consisting only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground (unloaded), except that it may include sides designed to be easily removable and a permanent front end structure. The intent of this exclusion is to accommodate the specialized use of trailers designed to haul very heavy loads such as heavy industrial equipment, construction equipment, and other items that often require the vehicles to be used off-road at construction sites. This off-road use was a principal reason why the added braking requirements were viewed as impractical for heavy hauler trailers at the time Standard 121 was promulgated. Additionally, heavy hauler trailers are not often driven at high speeds for long periods of time. These types of trailers usually have beds as low to the ground as possible in order to facilitate loading and unloading, as well as to increase stability. They use special axles and suspensions with smaller diameter wheels and tires in order to achieve as low a cargo deck height as possible.

The lack of space for larger dual chamber spring brakes used for parking brakes on other types of trailers, along with the need for quick release valves in remote locations to meet actuation timing requirements, and the complex routing of air lines would have made compliance with Standard 121 extremely difficult for manufacturers of true heavy hauler trailers. It is for these reasons that heavy haulers have been excluded from certain requirements of Standard 121 since 1974. *See* 39 FR 28161 (August 5, 1974).

When the exclusion for heavy trailers was promulgated, there were few trailers with any of the features listed in the definition of heavy hauler trailer which were not, in fact, designed to carry very heavy loads. However, in recent years increasing numbers of container chassis trailers have been built with extendable or separable features, or with drop frame construction, but which share very little in the limiting features of heavy hauler trailers; i.e. severely restricted space around the axles. Furthermore, these trailers are intended to carry lighter loads and to operate in more conventional commercial service at highway speeds. The sales and use of these trailers are increasing dramatically. Petitioner TTMA stated that there were 32,284 of these trailers manufactured in 1988, a 40 percent increase from the 23,000 units manufactured in 1987. Because, technically, they fall under the outmoded definition of heavy hauler trailer, the current language of the Standard can be used to claim an exclusion for these new types of trailers from the requirements of S5.3, S5.6 and

S5.8, even though there does not appear to be a legitimate need to do so.

Today's proposal would revise Standard No. 121 by adding definitions of "container chassis trailer" and "intermodal shipping container," and revising the definition of "heavy hauler trailer" to exclude container chassis trailers. The effect of the proposal would be to require extendable and drop frame container chassis trailers to comply with those requirements of the Standard from which true heavy hauler trailers are exempt, in addition to the requirements already imposed upon all trailers by Standard 121.

Heavy haulers are currently exempted from the service brake reservoir requirements of section S5.2.1.2 because these low-bed trailers typically lack the space for larger air reservoirs due to their low road clearance. In addition, some heavy hauler trailers have many wheels spaced close together, further restricting the space available for reservoirs. Container chassis trailers do not have these features, and would therefore not be exempted from section S5.2.1.2 under the proposal.

Heavy haulers are currently exempted from the actuation and release timing requirements of section S5.3.3 and 3.4 because compliance is very difficult for some extremely long extendable trailers due to their long coiled air lines, and, in certain cases, many axles and wheels requiring extensive brake line plumbing. Container chassis trailers do not have these features, and would not be exempted from these requirements under the proposal.

The proposal would also delete the exemption from dynamometer testing for heavy hauler trailers manufactured before July 1, 1979, contained at S5.4. A vehicle manufactured under the exemption would now be exempt from recall and remedy under the 8 year statute of limitations in section 154(a)(4) of the National Traffic and Motor Vehicle Saftey Act (15 U.S.C. 1414(a)(4)), so that the specific exemption in S5.4 is no longer necessary.

Under the current rule, heavy haulers are provided an alternative to compliance with S5.6 (Parking Brake Systems) and S5.8 (Emergency Braking Capability). At the manufacturer's option, they may comply instead with the Federal Highway Administration's requirements found at 49 CFR § 393.43. This alternative was provided due to space considerations on some low-bed and multi-axle trailers, where there is not enough space to fit spring brakes on the axles. The proposal would revise these provisions to deny this option to manufacturers of container chassis trailers.

According to a recent survey by the petitioner, many (90%) container chassis trailers are being manufactured to meet all the requirements of Standard 121, despite the availability of the exclusion, but some (10%) are not. NHTSA has considered the impact the proposed changes would have on those manufacturers of container chassis that are not now meeting all the requirements of Standard 121. Several changes would be necessary. Manufacturers would have to add a sufficient number of spring brake chambers or other mechanical parking brake devices to meet static retardation force and grade holding requirements. In some cases, manufacturers would have to increase the size of the air tanks, or add an additional tank to meet the brake reservoir requirements. In addition, some changes to brake plumbing and valving could be needed to meet the new requirements.

NHTSA has also examined the cost to manufacturers of complying with the proposed revisions. Spring brakes could be expected to cost $50 additional per axle. NHTSA believes some two axle trailers could meet the parking brake requirements with spring brakes on only one axle. Spring bakes would reduce the likelihood of a rollaway accident if the trailer were parked for an extended period of time.

Larger air reservoirs are estimated to cost approximately $25 additional per vehicle. Their use would decrease the possibility of an accident resulting from insufficient air supply with repeated brake applications. With an additional $50 to cover items such as anti-compounding valves and miscellaneous air hose and plumbing fittings, NHTSA expects that the average cost to a manufacturer who needed to add the maximum amount of equipment to bring a noncomplying trailer into compliance would be about $100. These increased costs are not significant. NHTSA also does not believe the additional weight resulting from compliance with the proposed requirements (approximately 25 pounds) is significant.

The agency believes that it is important to extend the remaining requirements of Standard 121 to containr chassis trailers because of the increasing numbers of these vehicles on public roads, and the differences in construction and use that separate them from the traditional heavy hauler tailer. The Container chassis trailer is likely to become increasingly common in the future as containerized transport becomes more prevalent in the U.S. and throughout the world, and should be subject to the braking requirements applicable to other over-the-road trailers.

NHTS believes that the one year lead time form the date of publication of the final rule should be adequate for manufacturers to achieve compliance with the revised standard.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. This proposal would have little effect on the cost or design of the vehicles to which it might become applicable. Since the effects of the proposal, if adopted as a final rule would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities, and has determined that it would not have a significant impact on a substantial number of them. Most extendable and drop frame container chassis trailers (reportedly about 90 percent) are already being ordered and built without the use of any exemption from the Standard. As mentioned above, the estimated cost of any additional equipment to those now using the exemption would be about $125, which is insignificant when compared to the cost of a complete trailer. Because space for that equipment is already available, installation would not require additional significant engineering and design changes nor expensive modifications of the trailer chassis. Therefore, removing the exemption should not be burdensome on any manufacture, large or small. Since the effects of this proposal are not complex and would be minimal on small entities, a full regulatory flexibility analysis has not been prepared.

This proposal has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompained by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comment, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR 571.121 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S4 of § 571.121 would be amended by adding alphabetically new definitions for "Container chassis trailer" and "Intermodel shipping container" and by revising the definition for" Heavy hauler trailer" to read as follows:

S4 Definitions.

* * * * *

Container chassis trailer means a trailer designed primarily for transporting one or more intermodal shipping containers over the highway.

Heavy hauler trailer means a trailer with one or more of the following characteristics, but which is not a container chassis trailer:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front end structure" as that term is used in § 393.106 of this title.

* * * * *

Intermodal shipping container means a reusable, transportable enclosure that is especially designed to facilitate the efficient and bulk shipping and transfer of goods by, or between various modes of transport, such as highway, rail, sea and air.

* * * * *

3. S5.4 Of § 571.121 would be revised to read as follows:

S5.4 *Service brake system-dynamometer tests.* When tested without prior road testing, under the conditions of S6.2, each brake assembly shall meet the requirements of S5.4.1, S5.4.2, and S5.4.3 when tested in sequence and without adjustments other than those specified in the standard. For purposes of the requirements of S5.4.2 and S5.4.3, an average deceleration rate is the change in velocity divided by the deceleration time measured from the onset of deceleration.

* * * * *

Issued on November 28, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-28159 Filed 11-30-89; 8:45 am]

BILLING CODE [illegible]

Notices

Federal Register
Vol. 54, No. 230
Friday, December 1, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Alva (OK) and Schaal (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Thomas Oller dba Alva Grain Inspection Department (Alva) and Lewis D. Schaal dba D. R. Schaal Agency (Schaal), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: January 1, 1990.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Alva's and Schaal's designations terminate on December 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the July 3, 1989, **Federal Register** (54 FR 27907). Applications were to be postmarked by August 2, 1989. Alva and Schaal were the only applicants for designation in their area and each applied for designation renewal in the entire area currently assigned to that agency. The Service announced the applicant names in the September 1, 1989, **Federal Register** (54 FR 36364) and requested comments on the applicants for designation. Comments were to be postmarked by October 16, 1989. One favorable comment concerning the designation renewal of Alva was received. No comments concerning Schaal were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Alva and Schaal are able to provide official services in the geographic areas for which the Service is renewing their designations. Effective January 1, 1990, and terminating December 31, 1992, Alva and Schaal are designated to provide official inspection services in their specified geographic areas as previously described in the July 3 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Alva at (405) 327–8511 and Schaal at (515) 444–3122.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 28, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–28183 Filed 11–30–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on the Designation Applicants in the Geographic Area Currently Assigned to Alton (IL), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Thomas P. Russell dba Alton Grain Inspection Department (Alton), Robert J. Bohlman dba Grand Forks Grain Inspection Department (Grand Forks), and John R. McCrea dba John R. McCrea Agency (McCrea).

DATE: Comments must be postmarked on or before January 16, 1990.

ADDRESS: Comments must be sumbitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [PMARSDEN/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Paul Marsden

TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Ececutive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic aeas in the October 4, 1989, **Federal Register** (54 FR 40901). Applicants were to be postmarked by November 3, 1989. Alton, Grand Forks, and McCrea were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 28, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–28184 Filed 11–30–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to the Bloomington Grain Inspection Department (IL) and Plainview Grain Inspection and Weighing Service, Inc. (TX) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Gary R. Weirman dba Bloomington Grain Inspection Department (Bloomington) and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATE: Applications must be postmarked on or before January 2, 1990.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Bloomington, located at 115 S. Euclid St., Bloomington, IL 61702–3631, and Plainview, located at 1100 North Broadway Street, Plainview, TX 79072 were designated under the Act on June 1, 1967, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on May 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Bloomington, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by State Route 18 east to U.S.Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line east to the ICG Railroad line;

Bounded on the East along the ICG Railroad line southwest to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line;

Bounded on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to State Route 121; and

Bounded on the West by State Route 121 north to Interstate 74; Interstate 74 northwest to State Route 116; State Route 116 north to State Route 28; State Route 28 north to State Route 18.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Bunge Corporation, Pontiac, Livingston County (located inside Gibson City Grain Inspection Department's area).

Exceptions to Bloomington's assigned geographic area are the following locations inside Bloomington's area which have been and will continue to be served by the following official agencies:

1. Gibson City Grain Inspection Department: Farm Service, Arrowsmith, McLean County; and

2. Springfield Grain Inspection Department: East Lincoln Farmers Grain Co., Lincoln, Logan County.

The geographic area presently assigned to Plainview, in the State of Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is a follows:

Bounded on the North by the northern Deaf Smith County line east to U.S. Route 385; U.S. route 385 south to FM 1062; FM 1062 east to State Route 217; State Route 217 east to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the Briscoe County line; the northern Briscoe County line; the northern Hall County line east to U.S. Route 287;

Bounded on the East by U.S. Route 287 southeast to eastern Hall County line; the eastern and southern Hall County lines; the eastern Motley County line;

Bounded on the South by the southern Motley and Floyd County lines; the western Floyd County line north to FM 37; FM 37 west to FM 400; FM 400 north to FM 1914; FM 1914 west, including Hale Center, to FM 179; FM 179 south to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; and

Bounded on the West by FM 303, not including Sudan, north to U.S. Route 70; U.S. Route 70 west to the Lamb County line; the western and northern Lamb County lines; the western Castro County line; the southern Deaf Smith County line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

Interested parties, including Bloomington and Plainview, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning June 1, 1990, and ending May 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: November 28, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–28185 Filed 11–30–89; 8:45 am]

BILLING CODE 3410-EN-M

Designation of Bloomington Grain Inspection Department, Kankakee Grain Inspection, Inc., and Keokuk Grain Inspection Service, in the Peoria, Illinois, Geographic Area (IL)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation of Gary R. Weirman dba

Bloomington Grain Inspection Department, Kankakee Grain Inspection, Inc., and John H. Oliver, Inc., dba Keokuk Grain Inspection Service, as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Peoria, Illinois, geographic area.

EFFECTIVE DATE: January 1, 1990.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–5454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of the Peoria Grain Inspection Service, Inc. (PGIS), would not be renewed on November 1, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the October 21, 1988, **Federal Register** (53 FR 41392). Applications were to be postmarked by November 21, 1988; a total of 11 applications were received. Each of the 11 applicants applied for the entire geographic area, with several also applying alternatively for subdivisions of the area. All applicants planned to establish at least one specified service point within the available geographic area to provide official service.

The 11 applicants were: 1. Gary R. Weirman, Bloomington, Illinois, dba Bloomington Grain Inspection Department (entire area, or any geographic subdivision of the area) (Bloomington); 2. Donald R. Onken, James H. Onken, and Fred R. Reeves, Mason City, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection, Inc. (Onken/Onken/Reeves); 3. Joseph L. Winkler, Peoria, Illinois, proposing to do business as Central Illinois Grain Inspection Service (Winkler); 4. Bradford M. Fegan and Gary R. Weirman, Bloomington, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc. (entire area, or any geographic subdivision of the area) (Fegan/Weirman); 5. Virgil W. Turner, Jr., Bartonville, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc. (Turner); 6. Mark A. Beaupre, St. Anne, Illinois, proposing to do business as Illinois Valley Inspection (Beaupre); 7. Kankakee Grain Inspection, Inc., Bourbonnais, Illinois (entire area, or Hennepin, Henry, and Lacon, Illinois) (Kankakee); 8. Keokuk Grain Inspection Service, Keokuk, Iowa (Keokuk); 9. Scott D. Deatherage and Larry S. Kitchen, Villa Ridge, Missouri, proposing to do business as Mopart Grain Inspection Service (Deatherage/Kitchen); 10. Anthony L. Marquardt and Nancy L. Marquardt, Quincy, Illinois, dba Quincy Grain Inspection & Weighing Service (entire area, or Havana, Illinois, only) (Quincy); and 11. Southern Illinois Grain Inspection Service, Inc., O'Fallon, Illinois (Southern Illinois).

The Service announced the applicant names in the January 4, 1989, **Federal Register** (54 FR 163) and requested comments on the applicants for designation. Applicant Mark A. Beaupre was subsequently removed from the list of eligible applicants for failure to provide additional information requested on his application. Comments were to be postmarked by February 21, 1989; a total of 70 comments were received, with some commenters commenting on more than one applicant. Two applicants, Beaupre and Quincy, received no comments.

Bloomington received four favorable comments: two comments from grain firms in Bloomington's assigned area regarding good service it had provided; and one comment from a grain firm manager who transferred out of Bloomington's area commending good past service he had received from Bloomington. In addition the owner of the Bloomington agency sent FGIS a copy of a letter he provided to grain firms in the Peoria, Illinois, area discussing his services.

Onken/Onken/Reeves received four comments in their favor, all from grain firms (one comment represented six elevator locations and another represented three elevator locations) who were generally acquainted with the applicants, but did not do business with them. These comments were of a general nature.

Winkler received a total of 26 comments of which 22 were favorable. Of the 22 comments received in Winkler's favor: four comments were from grain firms—two firms commending good past service the applicant had provided (these were from different commenters at the same elevator location) and two firms who were generally acquainted with the applicant; 10 comments were from official agencies—one stating it felt the applicant met the criteria for designation, one who felt someone from PGIS should receive the designation, one who noted the applicant's experience, and seven who were familiar with the applicant through the American Association of Grain Inspection and Weighing Agencies; and eight comments were from private individuals who were generally acquainted with the applicant. Of the four remaining comments received regarding Winkler, three were from former PGIS licensees who had worked for the applicant questioning his knowledge of and performance under the official grain inspection program. And one was from an official agency questioning certain aspects of Winkler's application.

Fegan/Weirman received one favorable comments from a grain firm in the PGIS area who felt they were well qualified.

Turner received seven favorable comments: five comments were from former PGIS licensees who noted the applicant's knowledge and experience while working for PGIS; one was from a grain firm (representing three elevator locations) which was generally acquainted with the applicant; and one was from an official agency which felt someone from PGIS should receive the designation.

Kankakee received 11 favorable comments from grain firms in its assigned area commending good service the firms had received from Kankakee (one comment was from a grain firm in the Peoria, Illinois, geographic area but represented two elevator locations in Kankakee's area).

Keokuk received five favorable comments: four were from grain firms in Keokuk's assigned area commending good service the firms had received from Keokuk; and one was from a grain firm in the Peoria, Illinois, geographic area which felt Keokuk was well qualified.

Deatherage/Kitchen received 14 favorable comments: 12 were from grain firms and one was from a private individual, all of whom were generally acquainted with the applicant; and one from themselves regarding their qualifications for designation.

Southern Illinois received three favorable comments: two were from private individuals and one from a grain trade organization all generally acquainted with the applicant.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Bloomington, Kankakee, and Keokuk are better able than any other applicant to provide official services in the geographic area for which the Service is designating them.

Bloomington, Kankakee, and Keokuk will provide official inspection services in the following specified geographic areas, which together comprise the entire area previously described in the October 21, 1988, **Federal Register**.

Bloomington's designation is hereby amended by adding the following geographic are, in the State of Illinois:

Bounded on the North from the western Peoria County line by Interstate 74 southeast to State Route 121;

Bounded on the East by State Route 121 south to State Route 10;

Bounded on the South by State Route 10 west to Logan County;

Bounded on the West by the western Logan County line; the southern and western Tazewell County lines; and the western Peoria County line north to Interstate 74.

Kankakee's designation is hereby amended by adding the following geographic area, in the State of Illinois:

Bounded on the North by the northern Stark and Marshall County lines; the western Putnam County line north to State Route 29; State Route 29 north to Interstate 180; Interstate 180 east to State Route 26

Bounded on the East by State Route 26 south to State Route 116; State Route 116 south to Interstate 74;

Bounded on the South by Interstate 74 west to the western Peoria County line;

Bounded on the West by the western Peoria and Stark County lines.

Keokuk's designation is hereby amended by adding the following geographic area, in the State of Illinois: Fulton and Mason Counties.

These assignments of geographic area are effective January 1, 1990, and terminate upon the end of Bloomington's (May 31, 1990), Kankakee's (January 31, 1991), and Keokuk's (April 30, 1992) present designations.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Bloomington at (309) 827-7121; Kankakee at (815) 932-2851; and Keokuk at (319) 524-6452.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

W. Kirk Miller,
Administrator.

[FR Doc. 89–28186 Filed 11–30–89; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Environmental Impact Statement for the Proposed Valbois Destination Resort Village, Special Use Permit, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the draft environmental impact statement.

SUMMARY: As a result of public and agency response to the Valbois Draft Environmental Impact Statement, released June 30, 1989, a need for seven areas of supplemental analysis and public review have been identified.

(1) Direct and indirect water and air quality effects, (2) Feasibility of building a wastewater treatment system with a discharge that would have no adverse effect on the water quality of Cascade Reservoir, (3) Transportation; access limitations and solutions, (4) Market research, (5) Comparative economic analysis of the proposed ski facilities, (6) Social factors; population, employment characteristics, and lifestyle effects, (7) Fiscal impacts on Valley County and its residents.

Comments on the Supplement will be combined with comments already received on the DEIS so it will not be necessary to repeat comments submitted during the earlier review. All comments will be used in developing the Final Environmental Impact Statement.

Release of the Supplement to the public is planned for December.

DATE: November 22, 1989.

ADDRESS: 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Greg Spangenberg, 208–384–4104.

Dated: November 22, 1989.

Dave Rittersbacher,
Forest Supervisor.

[FR Doc. 89–28128 Filed 11–30–89; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Assessment and Finding of No Significant Impact on Controlling California Sea Lion Predation on Wild Steelhead in the Lake Washington Ship Canal, Seattle, WA

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of an Environmental Assessment (EA) that was prepared jointly by NMFS and the Washington State Department of Wildlife. The EA explores three alternatives and their environmental consequences for controlling 40 to 60 California sea lions that migrate into Washington each year and prey heavily on a depressed winter-run of wild steelhead in the Lake Washington drainage system in Washington State. The proposed action is a combination of nonlethal measures to remove sea lions with the principal focus on a capture/relocation of sea lions back to southern California from where they originate. Based on the information in the EA, NMFS has made a finding of no significant impact and determined that an environmental impact statement need not be prepared in accordance with the National Environmental Policy Act and implementing regulations.

DATES: Comments on the EA must be submitted by December 15, 1989.

ADDRESSES: Comments should be mailed to either: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115 or Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 8268, Silver Spring, MD 20910. Copies of the EA are available also at these addresses.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206/526–6140, or Ken Hollingshead, 301/427–2289.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS jointly prepared with the Washington State Department of Wildlife (WDW), an EA that explores the environmental consequences of controlling California sea lions (*Zalophus californianus*) to protect a winter-run of wild steelhead (*Oncorhynchus mykiss*). A draft of the EA was distributed to the public by WDW on June 20, 1989 with comments requested by August 15, 1989.

The three alternatives analyzed in the EA for controlling sea lion predation in 1989/90 are no action, non-lethal removal (status quo) and lethal removal. The proposed action is to continue the

status quo, non-lethal removal program utilizing additional measures in an effort to protect the wild run. The no action alternative is no preferred because of the negative impacts it will have on the wild steelhead. The lethal removal alternative is not preferred because it is considered as the last resort if the non-lethal control efforts fail to adequately protect wild steelhead so that spawning escapement goals are achieved. NMFS and WDW have agreed that an environmental impact statement will be prepared if a directed lethal removal program is ever considered further.

NMFS has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and therefore has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in the NOAA Directives Manual; chapter 2, section 10, "Environmental Review Procedures" (49 FR 29644–29657; July 23, 1984). In addition, in accordance with Washington State Environmental Policy Act, the Washington State Department of Wildlife has made a final determination of non-significance pursuant to chapter 232–19 of the Washington Administrative Code.

Further details or a copy of the EA and FONSI may be obtained from the addresses above.

Dated: November 24, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–28100 Filed 11–30–89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold public meetings of the Shark Committee and the Shark Advisory Panel at the Council's headquarters (address below), to review and develop comments concerning the draft Secretarial Shark Fishery Management Plan.

The Shark Advisory Panel will meet on December 18, 1989, from 1 p.m. to 5 p.m. The Shark Committee and the Shark Advisory Panel will meet jointly on December 19 from 8:30 a.m. to noon. The Shark Committee will meet separately on December 19 from 1:30 p.m. until 5 p.m.

A detailed agenda will be available to the public on or about December 8, 1989. For more information contact Carrie R. F. Knight, Public Information Officer (law), South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: November 27, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–28197 Filed 11–30–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Silk Blend Textile Products Produced or Manufactured in the People's Republic of China

November 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For more information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For more information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

November 28, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on November 28, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category levels in group I	Adjusted 12-mo limit [1]
200	565,328 kilograms.
218	10,116,773 square meters.
237	1,198,468 dozen.
300/301	2,344,114 kilograms.
331	4,402,671 dozen pairs.
334	253,935 dozen.
335	350,464 dozen.
336	126,578 dozen.
338/339	2,169,360 dozen of which not more than 1,676,700 dozen shall be in Categories 338–S/339–S.[2]
340	785,930 dozen of which not more than 374,602 dozen shall be in Category 340–Z.[3]
345	117,936 dozen.
351	412,492 dozen.
359–V [4]	660,051 kilograms.
361	3,494,988 numbers.
369–L [5]	2,548,055 kilograms.
442	36,333 dozen.
444	112,977 numbers.
631	973,712 dozen pairs.
634	502,934 dozen.
636	424,216 dozen.
642	285,155 dozen.
645/646	791,854 dozen.
649	567,295 dozen.
659–C [6]	276,246 kilograms.
846	67,721 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338–S/339–S, HTS numbers stat 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 336–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

[3] In Category 340–Z, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] In Category 359–V, only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[5] In Category 369–L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[6] In Category 659–C, only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–28167 Filed 11–30–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: January 3, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Commodities

Strap, Webbing
5340–01–130–8020
Kit Bag, Flyer
8460–00–883–8673

Service

Janitorial/Custodial
Area A (Excluding Buildings 280 and 281) and Area C
Wright-Patterson Air Force Base, Ohio

Deletions

It is proposed to delete the following commodities from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Strap, Shoulder, Quick Release, Right Hand
8465–01–078–8252
Strap, Shoulder, Quick Release, Left Hand
8465–00–269–0482

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–28174 Filed 11–30–89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense Personnel Security Questionnaire, DD Form 398; DoD Request for Personnel Security Investigation, DD 1879; OMB Control Number 0704–0299.

Type of Request: Revision

Average Burden Hours/Minutes Per Response: 1.75 hours.

Frequency of Response: On occasion, one response per respondent.

Number of Respondents: 70,000.

Annual Burden Hours: 122,500.

Annual Responses: 70,000.

Needs and Uses: The Department of Defense Personnel Security Questionnaire, DD Form 398 and DoD Request for Personnel Security Investigation, DD 1879 are used by the Defense Investigative Service to conduct personnel security investigations on individuals requiring access to classified information, sensitive areas or equipment; or to permit assignment to sensitive national security positions.

Affected Public: Individuals or households; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3225, New Executive Office Building, Washington, DC 20503.

DOD Clearance Office: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: November 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28131 Filed 11–30–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Publication of the Record of Decision (ROD) for the Biological Defense Research Program

AGENCY: Department of the Army, DOD.

ACTION: Publication of the Record of Decision for the Biological Defense Research Program.

Record of Decision: Biological Defense Research Program, Department of the Army.

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500), the United States Army announces the decision to continue the Biological Defense Research Program (BDRP). The BDRP is a research, development, test, and evaluation (RDT&E) program conducted by the Department of Defense (DoD), with the Department of the Army (DA) serving as the executive agent. These RDT&E activities are conducted at three Army installations (primary sites) and at approximately 100 other research

institutions (secondary sites). The objectives of the BDRP are to develop measures for the detection, protection, treatment, and decontamination of potential biological warfare threat agents. The BDRP is designed to maintain and promote a strong national defense by developing medical and physical defenses to protect U.S. forces against biological warfare threats. In addition to promoting the national defense, the BDRP benefits the scientific community in general through its research efforts, and benefits the global population in the development of diagnostic methods, vaccines, and drug therapies for the treatment of diseases.

Two alternatives were considered in the Draft and Final Programmatic Environmental Impact Statements (DPEIS/FPEIS) prepared for the BDRP. These were (1) continue the BDRP (the preferred alternative) and (2) terminate the BDRP (the "no action" alternative). To assist in identifying and addressing environmental consequences, an Impact Analysis Matrix (IAM) was developed and included within the DPEIS/FPEIS. Using the IAM, the entire ongoing BDRP was examined on the basis of programmatic risk/issue categories and of representative specific sites. The IAM process revealed no significant adverse environmental impacts.

In addition, a variety of potential accidents and incidents were postulated and analyzed for potential impacts. This examination found that even severe accidents would not create any significant risk or impact upon the quality of the human environment.

Minor unavoidable adverse impacts of the BDRP, such as contributions to normal waste streams and slight health risks to the workforce, are outweighed by the importance of the program to national defense. While the no action alternative to terminate the BDRP would eliminate all environmental impacts and risks associated with the program, this alternative was not selected due to the overriding national importance of the program and the insignificant effect of the existing program on the quality of the human environment.

The standard operational, safety, security and regulatory controls, which are based upon federal, state and local laws and institutional criteria, serve to mitigate any potential adverse impacts resulting from normal activities. Any risks inherent to the BDRP are ameliorated through the implementation of these control measures. Ongoing monitoring and oversight of all phases of the BDRP by trained scientists at each research site and oversight by appropriate federal and state authorities have effectively eliminated significant adverse impacts to the environment and to human health. An inspection program has been implemented to further assure that safety standards are met at institutions performing BDRP research, and DoD now requires that all BDRP activities be conducted in compliance with the Centers for Disease Control-National Institutes of Health guidelines: Biosafety in Microbiological and Biomedical Laboratories. The controls in effect throughout every aspect of the BDRP are adequate, and implementation of more stringent monitoring or development of new criteria are not considered to be necessary. In summary, all practicable means to avoid or minimize environmental harm have been considered and are integral components of the ongoing BDRP.

The programmatic EIS methodology was selected because the BDRP is national in scope and involves many ongoing, interrelated activities. Subsequent NEPA analysis on actions included within the program, such as a site specific coverage, will reference this programmatic EIS as appropriate and concentrate on issues relevant to the action in question.

The BDRP is in full compliance with the Biological Weapons Convention, in which the United States and over 100 other signatory nations have agreed not to develop, produce or stockpile bacteriological (biological) and toxin weapons. The BDRP does not include the development of any weapons, nor does it attempt to develop new pathogenic organisms for any use.

I have reviewed the DPEIS and FPEIS as well as the comments received during the public comment period for each of these documents. While I note questions and differences of opinion regarding the BDRP, as well as special concerns about certain aspects of the program such as aerosol testing, use of stimulants and genetic engineering, I did not find convincing evidence that the program should be substantially altered or terminated. Furthermore, additional administrative measures have been instituted which will add another dimension of safety oversight to a program with an exemplary safety record. Therefore, I conclude that the BDRP should continue.

Dated: November 27, 1989.

John W. Shannon,

Under Secretary of the Army.

[FR Doc. 89-28112 Filed 11-30-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Monday, December 11, 1989, 8:30 a.m. to 6:00 p.m.; Tuesday, December 12, 1989, 8:30 a.m. to 1:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

December 11, 1989

8:30 a.m.: Chairman John F. Ahearne Opens Meeting, Subcommittee Reports, Pantex Tritium Release Report, Selected Technical Issues.

Noon: Lunch, DOE Safety Policy and Organization Issues, Selected Technical Issues, Committee Business.

6 p.m.: Meeting Adjourned.

December 12, 1989

8:30 a.m.: Meeting Reconvened, Selected Technical Issues.

12:30 p.m.: Public Comment Session.

1 p.m.: Meeting Ends.

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 28, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-28198 Filed 11-30-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-70-000, et al.]

Oklahoma Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER90-70-000]

November 21, 1989.

Take notice that on November 16, 1989, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Amended Appendices between OG&E and the Oklahoma Municipal Power Authority (OMPA).

The Amendments modify the Transmission Service Agreement Appendix "A", Appendix "B" and Appendix "D".

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: December 6, 1989, in accordance with standard Paragraph E at the end of this notice.

2. Indianapolis Power & Light Company

[Docket No. ER90-71-000]

November 21, 1989.

Take notice that Indianapolis Power & Light Company (IPL) on November 16, 1989, tendered for filing Modification No. 3 dated as of September 1, 1989 to its Interconnection Agreement with Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) dated as of December 1, 1981, to become effective December 31, 1989.

Modification No. 3 adds Service H (Specific Transmission Service) to the Interconnection Agreement to provide IPL with 50 to 100 megawatts of transmission capacity, thereby enabling it to receive through the year 2010 power and energy purchased from another utility with which it is not physically interconnected. The Modification also makes changes in Service Schedule G (Temporary Transmission Service) to coincide where appropriate with Service Schedule H and extends the transmission service provided by IPL to Hoosier at the Honey Creek Tap Point through the year 2010. In addition, Modification No. 3 adds transfer rates for power purchases from third parties in Service Schedules A (Emergency Service), C (Interchange Power), D (Short Term Power), and E (Limited Term Power Firm) and provides for "up to" demand rates in Service Schedules D and E.

IPL requests waiver of the 60-day notice requirement and represents that copies of the filing were mailed to Hoosier and to the Indiana Utility Regulatory Commission.

Comment date: December 6, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Canal Electric Company

[Docket No. ER90-73-000]

November 24, 1989.

Take notice that on November 20, 1989 Canal Electric Company (Canal) tendered for filing a proposed amendment to Appendix A of its Power Contract, previously filed with the Commission on October 20, 1989 (Docket No. ER90-29-000). Subsequent to the filing of the original Power Contract Canal was requested by Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) to acquire an additional amount of power from Connecticut Light and Power Company (CL&P) for a portion of the time period of the original Power Contract. The terms of the original Power Contract recognize Canal's purchase of demand and energy from CL&P and United Illumination Company for the time period October 1, 1989 to April 30, 1990, and the sale of such power to Cambridge and Commonwealth. The proposed amendment to Appendix A reflects a change in the number of MWs acquired by Canal from CL&P. The proposed revision also causes an increase in the rates collected by Canal pursuant to the Power Contract.

Copies of this filing were served upon the Cambridge Electric Light Company and Commonwealth Electric Company, the utilities jurisdictional customers.

Comment date: December 8, 1989, in accordance with Standard paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER90-77-000]

November 24, 1989.

Take notice that Boston Edison Company of Boston, Massachusetts, (Edison) on November 20, 1989, tendered for filing a specification of the firm transmission service to be taken by New England Power Company (NEP) for NEP's Quincy-Weymouth service area under Edison's firm transmission tariff. Edison states that the filings does not change the terms and conditions of service or affect the rate level charged to NEP.

Copies of the filing have been served upon NEP and the Massachusetts Department of Public Utilities.

Comment date: December 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER90-4-000]

November 24, 1989.

Take notice that on November 20, 1989, on behalf of Florida Power Corporation (Florida Power) and Entergy Services (Entergy), Florida Power tendered for filing a November 15, 1989, Amendment of Contract Four Purchases of Economic Energy Between Florida Power Corporation and Entergy Service, Inc. The original contract was filed in this docket on October 3, 1989.

Secton 6.4 of the contract was amended to accomplish two things. First, Florida Power will not be allowed to price under the incremental cost plus a five mill adder method when Florida Power is purchasing power from a third party for resale to Entergy. Second, incremental transmission losses are allowed only when the parties are utilizing the incremental cost plus a five mill adder method, but not when they are using the share-the-savings method.

According to Florida Power, a copy of this filing has been served on Entergy and the Florida Public Service Commission.

Comment date: December 8, 1989, in accordance with Standard Paragraph E end of this notice.

6. Fitchburg Gas and Electric Light Company

[Docket No. ER90-78-000]

November 24, 1989.

Take notice that on November 16, 1989, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission notices of cancellation of the following rate schedules:

Service Agreement No. 2 to FERC Electric Tariff, Original Volume No. 1.
Service Agreement No. 3 to FERC Electric Tariff, Original Volume No. 1.
Supplement No. 1 to Service Agreement No. 3 to FERC Electric Tariff, Original Volume No. 1.
Supplement No. 2 to Service Agreement No. 3 to FERC Electric Tariff, Original Volume No. 1.
Supplement No. 3 to Service Agreement No. 3 to FERC Electric Tariff, Original Volume No. 1.

Supplement No. 4 to Service Schedule Agreement No. 3 to FERC Electric Tariff, Original Volume No. 1.
Service Agreement No. 4 to FERC Electric Tariff, Original Volume No. 1.

Fitchburg states that service under each rate schedule has been terminated because the service agreement has expired by its terms. A copy of each notice of cancellation has been mailed to each affected purchaser. Fitchburg requests waiver of the Commission's notice requirements to permit each notice of cancellation to become effective on its stated date.

Comment date: December 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ES90-12-000]

November 24, 1989.

Take notice that on November 20, 1989, Central Maine Power Company tendered for filing an Application pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew on or before December 31, 1991, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate face amount not exceeding $140,000,000 at any time.

Comment date: December 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company, Inc.

[Docket No. ES90-11-000]

November 24, 1989.

Take notice that on November 20, 1989, Maine Electric Power Company, Inc. tendered for filing an Application pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew on or before December 31, 1991, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate face amount not exceeding $15,000,000 at any time.

Comment date: December 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Gulf States Utilities Company

[Docket No. ES90-10-000]

November 24, 1989.

Take notice that on November 21, 1989, Gulf States Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to Section 204 of the Federal Power Act, for authority to issue up to $400 million of secured and/or unsecured short-term notes with a final maturity date of no later than December 31, 1992, and to issue up to a like amount of principal of first mortgage bonds and/or subordinated lien bonds in one or more series as security for the Notes and, with respect to issuance of bonds, under § 34.2(b)(2) for exemption from competitive bidding requirements pursuant to § 34.2(a)(1)(iv) and for exemption from the requirements of § 34.2(b)(2)(i)(B).

Comment date: December 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Public Service Company

[Docket No. ES90-5-000]

November 24, 1989.

Take notice that on November 17, 1989, Iowa Public Service Company filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue and sell, in one or more public offerings or private placements, over a two year period, fixed rate debt in aggregate principal amount of not more than $75 million and exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: December 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER90-76-000]

November 24, 1989.

Take notice that Boston Edison Company of Boston, Massachusetts (Edison) on November 20, 1989, tendered for filing a specification of the power to be taken by the Town of Reading ("Reading") under Reading's Contract Demand rate. Edison states that the filing does not change the terms and conditions of service or affect the rate level charged to Reading.

Copies of the filing have been served upon Reading and the Massachusetts Department of Public Utilities.

Comment date: December 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER90-74-000]

November 24, 1989.

Take notice that on November 21, 1989, Carolina Power & Light Company (CP&L) filed revisions to the Amendment to the Interchange Agreement between CP&L and Virginia Electric and Power Company (VaPow) dated August 5, 1988 (CP&L Rate Schedule FPC No. 96 and VaPow Rate Schedule FPC No. 95). These revisions amended § 7.01 of the Interchange Agreement to (1) allow all bills for amounts owned by one party to the other to be paid by the 12th day following receipt of bill; (2) allow all amounts to be paid on the next work day when the due date is on a weekend or holiday; (3) require payment by electronic wire transfer only. It is requested that the required notice period be waived and these changes allowed to go into effect on January 1, 1990.

Copies of this filing have been sent to Virginia Electric Power Company, the North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment date: December 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Power & Light Company

[Docket No. ER90-75-000]

November 24, 1989.

Take notice that on November 20, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amended wholesale power agreement dated October 30, 1989, between the City of Reedsburg and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated July 22, 1986, and designated Rate Schedule No. 139 by the Commission.

The purpose of this revised agreement is to revise the contract term provisions. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Reedsburg and the Wisconsin Public Service Commission.

Comment date: December 8, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28133 Filed 11-30-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-5-20-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

November 27, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 22, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective, October 1, 1989
Third Substitute Thirty-sixth Revised Sheet No. 203
Third Substitute Thirty-second Revised Sheet No. 204

Algonquin states that it is making the instant filing to reflect changes in the cost of gas from its pipeline suppliers, CNG Transmission Corporation ("CNGT") and National Fuel Gas Supply Corporation ("National"). Such changes included the rates in CNGT's Rate Schedule CD and National's Rate Schedule CDS which underlie Algonquin's Rate Schedule F-2 and F-3, respectively. The effect of Algonquin's instant filing under Rate Schedule F-2 is to increase the commodity charge by 8.26¢ per MMBtu over those rates in effect for the month of September, 1989. The effect of National's filing is to decrease the demand rate by 10.00¢ per MMBtu, while increasing the commodity charge by 21.18¢ per MMBtu from the rates in effect for the month of September, 1989.

As required by section 7.3 of Rate Schedule F-2 and F-3, the proposed effective date of Third Substitute Thirty-sixth Revised Sheet No. 203 and Third Substitute Thirty-second Revised Sheet No. 204 is October 1, 1989 to coincide with the effective date of CNGT's and National's filings.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28138 Filed 11-30-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-4-32-000]

Colorado Interstate Gas Co.; Compliance and Tracking Filing

November 27, 1989

Take notice that Colorado Interstate Gas Company ("CIG"), on November 22, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 61G12
Original Sheet No. 61G12-C

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued in Docket No. RP89-178 and that the filing reflects revisions to conform with revisions to the tariff of Northwest Pipeline Corporation ("Northwest") which were approved by the Commission on October 12, 1989, by an order issued in Docket Nos. RP89-219, *et al.*, 49 FERC ¶61,056 (1989). Specifically, CIG's filing reflects an additional principal amount of take-or-pay buyout-buydown costs billed to CIG by Northwest resulting from Northwest's settlement of two producer supplier contracts which were in litigation as of March 31, 1989.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28134 Filed 11-30-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-1-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 20, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to become effective on November 1, 1989:

Substitute One hundred thirty-ninth Revised Sheet No. 16
Substitute Twenty-seventh Revised Sheet No. 16A2
Substitute Forth-first Revised Sheet No. 64A

Columbia states the foregoing tariff sheets are being filed in compliance with the Commission's order issued October 31, 1989 in Docket No. TQ90-1-21-000. Such order directed Columbia to refile its PGA tariff sheets to be effective November 1, 1989 to reflect the elimination of certain storage costs paid by Columbia for storage service rendered by East Ohio Gas Company. Columbia is also reflecting revised reservation charges applicable to Tennessee Gas Pipeline Company to place the rate and determinant levels reflected in its September 29, 1989 PGA filing on an as-billed basis at the time of conversion in accordance with Ordering Paragraph (D) of the October 31, 1989 order. The instant filing corrects an erroneous rate that was used in the computation of Transcontinental Gas Pipe Line Corporation reservation charges in the September 29, 1989 PGA filing.

Columbia also states that the instant filing reflects changes which place its filing in compliance with the Commission's October, 1989 order accepting Columbia's Offer of Settlement in Docket Nos. RP86-168-000, *et al.* (Global Settlement). In this regard, the instant filing reflects the impact of the following changes attributable to the implementation of the Global Settlement on November 1, 1989: (1) The effectuation of a one-part demand rate in accordance with Article I, section E of the Global Settlement: (2) a revised level of Demand billing determinants in accordance with Article IV, Section A of the Global Settlement; (3) the repricing

of recoupable Appalachian take-or-pay gas at the weighted average commodity cost for the most recent twelve-month period in accordance with Article III, Section E of the Global Settlement; and (4) the incurrence of additional purchased gas costs resulting from the addition of Virginia Natural Gas, Inc. (VNG), The City of Richmond (Richmond), and Commonwealth Gas Services, Inc. (Commonwealth Services), as direct wholesale customers and the elimination of Commonwealth Gas Pipeline Corporation (Commonwealth) as a wholesale customer in accordance with Article IV, section 3(c) of the Global Settlement.

Columbia indicates that when compared to the rates contained in Columbia's PGA filing of September 29, 1989, the revised purchased gas component of the sales rates set forth on Substitute One hundred thirty-ninth Revised Sheet No. 16 reflect an overall decrease of .03¢ per Dth in the Commodity sales rate and an overall increase of $.935 per Dth in the Demand rate and elimination of the Demand-2 rate.

The instant filing reflects a revised Demand Unrecovered Purchased Gas Cost Surcharge of minus 57.7¢ per Dth. Due to the implementation of the Global Settlement, Columbia is required to utilize a one-part demand rate, which in turn, necessitates the use of a one-part demand surcharge. Accordingly, the instant filing reflects the elimination of the Unrecovered Purchased Gas Cost Surcharge attributable to Demand-2 and the reclassification of the applicable Unrecovered Purchased Gas Cost to a one-part demand surcharge.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28139 Filed 11-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-45-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

November 27, 1989.

Take notice that on November 20, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective December 1, 1989.

Original Volume No. 1

Thirty-Sixth Revised Sheet No. 4
Third Revised Sheet No. 61-B

Inter-City states that Thirty-Sixth Revised Sheet No. 4 is filed as an out-of-cycle PGA to reflect recent changes to Inter-City's gas costs. Third Revised Sheet No. 61-B reflects a change in Inter-City's PGA tariff language indicating it will round off its calculations to the nearest one-hundreth of one cent.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28135 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-26-000]

Natural Gas Pipeline Co. of America; Change in Rates

November 27, 1989.

Take notice that on November 22, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, to be effective January 1, 1990.

Natural states that the revised tariff sheets reflect the reduced FRI surcharge related to the Gas Research Institute's 1990 Research and Development Program as approved by Commission Opinion No. 334 (Docket No. RP89-187-000) issued October 10, 1989. The reduced rate authorized by the October 10th order is 1.28¢ per Dekatherm.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1990.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28136 Filed 11-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-29-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 27, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on November 22, 1989 tendered for filing to be effective January 1, 1990 certain revised tariff sheets included in Appendix A attached hereto.

Transco states that the purpose of this filing is to reflect a decrease of 0.2¢ per dt in the Gas Research Institute (GRI) Adjustment Charge applicable to sales and transportation deliveries to distributors for resale, to pipelines which are not members of GRI and to ultimate customers.

Transco states that on October 10, 1989 the Commission issued Opinion No. 334 in Docket No. RP89-187-000. The Opinion provides that, as a member of GRI, Transco may file under its Gas Research Institute Charge Adjustment Provision to collect, in advance of payments to GRI, 1.26¢ per dt on sales and transportation deliveries. This charge will replace the currently effective charge of 1.46¢ per dt. All amounts collected under this provision will be remitted to GRI, less any applicable taxes.

Transco further states that copies of the filing have been mailed to each of its customers and State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28137 Filed 11-29-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TQ90-1-30-001 and RP89-160-007]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that Trunkline Gas Company (Trunkline) on November 20, 1989, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Seventy-Third Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is December 1, 1989.

Trunkline states that the above-reference tariff sheet, as revised, is being filed in accordance with Section 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Trunkline's jurisdictional rates effective December 1, 1989.

Trunkline states that it filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 to comply with the Commission's Orders dated May 31, 1989 and October 31, 1989 in Docket No. RP89-160-000 to be effective November 1, 1989. This filing by Trunkline reflects the revised base tariff rates as filed in the above-referenced proceeding on November 13, 1989 adjusted to include the commodity rate decrease of (2.02¢) per Dt filed in Docket No. RP89-160-000 to be effective November 1, 1989 on October 31, 1989 in Trunkline's scheduled quarterly PGA filing Docket No. TQ90-1-30-000.

This filing by Trunkline is without prejudice to Trunkline's rights on rehearing on or in any judicial review proceeding or its position in Docket No. RP89-160-000.

Trunkline has requested any necessary waivers of the Commission's Regulations and the General Terms and Conditions of its PGA provisions in order to permit the revised tariff sheet to become effective as proposed.

Trunkline states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28140 Filed 11-30-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Environmental Restoration and Waste Management

Meeting on Participation in Environmental Restoration and Waste Management (ER&WM) Applied Research, Development, Demonstration, Testing and Evaluation (RDDT&E) Programs

AGENCY: U.S. Department of Energy, Office of Environmental Restoration and Waste Management.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Energy (DOE) is holding a meeting to inform interested parties of the scope and purpose of its recently-published ER&WM Applied RDDT&E Five-Year Plan and to provide a forum for discussion of DOE's intent to conduct collaborative, cooperative, and directly funded RDDT&E with the private sector, universities, and other Government agencies.

Details of the meeting are as follows:

Chairman: Leo P. Duffy.

Topics: DOE plans for ER&WM, DOE plans for RDDT&E, DOE management of RDDT&E, DOE needs in ER&WM, DOE needs in RDDT&E, Industrial integration, Education initiatives, Procurement procedures, Proposal submission, Patent issues, and Liability issues.

Who Should Attend: Representatives of private firms, Government, and educational institutions which have capabilities in and are interested in performing needed ER&WM RDDT&E.

Date(s): 13th and 14th of December, 1989.

Time(s): 8:30 a.m.—5:00 p.m. on December 13, 1989, 8:30 a.m.—3:00 p.m. on December 14, 1989.

Place: San Francisco Marriott, San Francisco, California

Format: One and one-half days of presentations and a one-half day workshop on Five-Year Plan implementation, procurement strategy, and opportunities for cooperative, collaborative, and directly funded RDDT&E.

Registration: A registration fee of $90.00 will be charged, covering costs of the meeting including lunch both days. Limited space is available. Advanced registration is recommended. For

registration information, call Donna McComb at (602) 624–7008.

Paul Grimm,

Acting Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 89–28294 Filed 11–30–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3692–6]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5073.

Availability of Environmental Impact Statements Filed November 20, 1989 Through November 24, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890331, Draft, AFS, CA, Penney Ridge Fire Salvage and Resource Recovery Project, Implementation, Shasta-Trinity National Forest, Trinity County, CA, Due: January 16, 1990, Contact: Kenneth W. Smith (916) 352–4211.

EIS No. 890332, FSuppl, COE, NC, Wilmington Harbor Long-term Plan, Dredging and Disposal of Sediments, Implementation, New Hanover and Brunswick Counties, NC, Due: January 5, 1990, Contact: Frank Yelverton (919) 251–4640.–

EIS No. 890333, Final, BLM, AZ, CA, Yuma District Wilderness Study Areas, Wilderness Designation, Recommendation, Havaru and Yuma Resource Areas, LaPaz, Mohave and Yuma Counties, AZ and Imperial, Riverside, and San Bernardino Counties, CA, Due: January 2, 1990, Contact: Darwin Snell (602) 726–6300.

EIS No. 890334, DSuppl, NOA, Longline and Pot Gear Sablefish Management, Revision to Management Plan, Approval and Implementation, Gulf of Alaska, Bering Sea and Aleutian Islands, AK, Due: January 16, 1990, Contact: Steven Pennoyer (907) 586–7221.

Dated: November 27, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–28200 Filed 11–30–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3692–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 13, 1989 through November 17, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS–COE–L82005–WA Rating LO, Washington Aquatic Plant Management Program Geographic and Treatment Related Program Update Implementation, Lewis and Pend Oreille Counties, WA.

Summary: EPA has reviewed the draft supplement and has no objections to the project as described ERP No. D–FHW–L40171–OR, Rating EC2, I–84 Widening, NE. 181st Avenue to Sandy River, Funding and 404 Permit, Multnomah County, OR.

Summary: EPA major concerns with this project are based on potential impacts to ground-water resources, potential cumulative impacts, and the stated contribution of this project to growth in the project area

Final EISs

ERP No. F–COE–G36030–LA, Aloha-Rigolette Area Agriculture Flood Control Plan, Implementation, Red River Floodplain, Grant and Rapides Parishes, LA.

Summary: EPA finds that the Final EIS and the recommend plan of action, inclusive of the described mitigation plan satisfy our Agency's concerns.

ERP No. FS–COE–H36016–IA, West Des Moines and Des Moines Local Flood Control Protection, Polk County, IA.

Summary: EPA encouraged the City of Des Moines to mitigate for the loss of wetlands due to project construction.

ERP No. F–DOE–J08023–ND, Charlie Creek-Belfield 345 kV Transmission Line Project, Construction, Operation and Maintenance, Implementation, Billings, Stark, McKenzie and Dunn Counties, ND.

Summary: EPA believes the preferred alternative can be constructed and operated with minimal impact to the environment.

Dated: November 28, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–28201 Filed 11–30–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 21, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 771 responses; 386 hours total annual burden; 30 minutes average burden per respondent.

Needs and Uses: This rule requires the permittee of a new broadcast station to notify the Commission of plans to conduct equipment tests for the purpose of making adjustments and measurements. The information is used to ensure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communication Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28113 Filed 11–30–89; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1802]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 24, 1989.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed on or before December 8, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of section 73.202(b) Table of Allotments, FM Broadcast Stations. (Carmel, Carmel Valley, Hollister & Scotts Valley, CA) Petitions filed: 1

Subject: Amendment of section 73.606(b) Table of Allotments TV Broadcast Stations. (Decatur and Plano, Texas) Petitions Filed: 1

Subject: Amendment of section 73.202(b) Table of Allotments FM Broadcast Stations. (Butler, Alabama and Bay Springs, Mississippi) (RM–6707) Petitions Filed: 1

Subject: Amendment of section 73.202(b) Table of Allotments FM Broadcast Stations. (Glasgow, Kentucky) (RM–6750) Petitions Filed: 1

Subject: Amendment of section 73.202(b) Table of Allotments, FM Broadcast Stations. (Muskegon Heights, Michigan) (RM–7138) Petitions Filed: 1

Subject: Provision of Aeronautical Services via the INMARSAT System. (CC Docket No. 87–75) Petitions Filed: 1

Subject: Flexible Allocation of frequencies in the Domestic Public Land Mobile Service for paging and other services. (CC Docket No. 87–120) Petitions Filed: 1

Subject: Amendment of section 73.202(b) Table of Allotments, FM Broadcast Stations. (Provincetown, Dennis, Dennisport, West Yarmouth, and Harwichport, MA) (MM Docket No. 87–484, RM No. 6241) Petitions Filed: 1

Subject: Amendment of section 73.202(b) Table of Allotments, FM Broadcast Stations. (Bartow, Chauncey, Dublin, Eastman, Jeffersonville, Lyons, Soperton and Unadilla, Georgia) (MM Docket No. 88–460, RM Nos. 6263, 6214, 6338, & 6601) Petitions Filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Angola, Berne, Decatur, Lagrange and Roanoke, Indiana; and Brooklyn and Hudson, Michigan) (MM Docket No. 88–284, RM Nos. 6138, 6474 & 6489) Petitions Filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Winnebago, Nebraska) (MM Docket No. 88–502, RM No. 6449) Petitions Filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28114 Filed 11–30–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for two new FM stations:

Applicant	File No.	MM Docket No.
A. Sound of Life, Inc.; Voorheesville, NY.	BPED–871214MC	89–504
B. Family Broadcasting, Inc.; Voorheesville, NY.	BPH–871215MA	
C. George M. Ragsdale, Daniel F. Files, Jr. and Gregory T. Lano d/b/a Mid-Atlantic Broadcasting Company; Voorheesville, NY.	BPH–871215MC	
D. WAMC; Voorheesville, NY.	BPED–871216MA	
E. Francies W. Bell; Voorheesville, NY.	BPH–871216MD	
F. R. Bryan Jackson; Voorheesville, NY.	BPH–871216ME	
G. Tri-Cities FM Limited Partnership; Voorheesville, NY.	BPH–871216MG	

Issue Heading and Applicant(s)

1. (See Appendix), G
2. (See Appendix), G
3. (See Appendix), G
4. (See Appendix), G
5. City Coverage, A,D
6. Environmental, A,B,C,D,F
7. Comparative, A,B,C,D,E,F,G
8. Ultimate, A,B,C,D,E,F,G

II.

Applicant	File No.	MM Docket No.
A. Pruitt and Owen; Corydon, IN.	BPH–880218MQ	87–550

Issue Heading and Applicants

1. Comparative, A
2. Ultimate, A

2. Pursuant to section 309(e) of the Communications Act of 1934 as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO is this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

J. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Voorheesville, NY)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to G's (Tri-Cities) application.

2. To determine whether G's (Tri-Cities) organizational structure is a sham.

3. To determine whether G (Tri-Cities) violated Section 1.65 of the Commission's Rules and/or lacked candor by failing to report: (i) the designation of character issues against other applicants in which one or more of its partners has an ownership interest, (ii) the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending, and (iii) the interest held by one or more of its partners in applications pending and/or dismissed with prejudice by the Commission.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether G (Tri-Cities) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 89–28116 Filed 11–30–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; South Europe/U.S.A. Freight Conference, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of

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the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–040

Title: South Europe/U.S.A. Freight Conference.
Parties:
Achille Lauro
Compagnie Generale Maritime
Compania Transatlantica Espanola S.A.
Costa Container Line, A Division of Contship
Containerlines Limited
d'Amico Societa di Navigazione, S.p.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Bros. Steamship Co., Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
Sea-Land Service, Inc.
P.O. Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.
Synopsis: The modification amends the geographic scope of the Agreement by deleting the transportation of cargo via Yugoslav ports and from points in Yugoslavia via all ports within the scope of the Agreement.

Agreement No.: 212–010745–004

Title: Columbus/Pace/SCNZ/PAD Space Charter and Sailing Agreement.
Parties:
Columbus Line
Pace Line
The Shipping Corporation of New Zealand Limited
Australia New Zealand Direct Line
Pacific Australia Direct Line
Synopsis: The modification proposes to (1) change the name of the Agreement to Columbus/Pace Space Charter and Sailing Agreement; (2) delete Australia-New Zealand Direct Line (ANZDL) as a party to the Agreement; (3) remove the names of The Shipping Corporation of New Zealand Limited (SCNZ) and Pacific Australia Direct Line (PAD) as parties to the Agreement due to the implementation of Agreement No. 207–011144; (4) delete the authority for the parties to pool revenues and (5) change certain Articles of the Agreement to conform with the new Australian Trade Practices (International Liner Cargo Shipping) Amendment Act 1989.

Agreement No.: 203–011264

Title: Yugoslavia/United States Discussion Agreement.
Parties:
Nedlloyd Lines, B.V.
Zim Israel Navigation Company, Ltd.
Synopsis: The Agreement authorizes the parties to discuss and exchange information on rates, charges, service contracts and other matters in the trade from ports in Yugoslavia and points in Yugoslavia via such ports and via Italian ports to ports on the U.S. Atlantic and Gulf coasts and to all U.S. interior and coastal points via such U.S. ports. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached.

By Order of the Federal Maritime Commission.

Dated: November 27, 1989.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 89–28132 Filed 11–30–89; 8:45 am]
BILLING CODE 6730-01-M

Cancellation of Inactive Foreign Tariffs

By notice served September 25, 1989 and published in the Federal Register on September 29, 1989 (53 FR 40190), the Federal Maritime Commission notified 279 carriers of its intent to cancel their individual tariffs, in the absence of showing of good cause why such tariffs should not be cancelled.

The notice was served on 279 carriers by certified mail on September 25, 1989; and 33 carriers replied to the notice requesting that their tariffs remain active. Accordingly, the tariffs of the 33 carriers listed in Attachment A that responded to the notice will be retained in the Commission's active files.

It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 246 carriers listed in Attachment B to this notice that failed to respond to the September 25, 1989 notice will be cancelled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now, therefore, it is ordered, That the tariffs of the 246 carriers listed on Attachment B be cancelled effective October 31, 1989.

It is further ordered, That a copy of this notice be sent by certified mail to the last known address of the carriers listed in the attachments to this notice.

It is further ordered, That this notice be published in the Federal Register.

This notice is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by § 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,
Director, Bureau of Domestic Regulation.

Carriers That Responded to the Notice of Intent To Cancel Inactive Foreign Tariffs

Acronym: Air Sea Transport Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 10 FL., No. 71 Sun Chiang Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007075

Acronym: Asia Shipping Company Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 159 Tonnele Avenue
City: Jersey City
State: NJ 07306
Country: United States of America
License No.:
Name No.: 007832

Acronym: Cargolift (USA) Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8084 Cherry Stone Avenue
City: Panorama City
State: CA 94102
Country: United States of America
License No.:
Name No.: 00849

Acronym: Cheetah Express Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2262–A Landmeier Road
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 007808

Acronym: Chiao Feng Shipping Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Room 1803, The Centre Mark, 287–299 Queen's Road, Central
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 007986

Acronym: CMB Trutainer
DBA Name: NA.

Person type: Non-Vessel-Operating Common Carrier
Street: Meir 1
City: B–2000 Antwerp
State:
Country: Belgium
License No.:
Name No.: 007513

Acronym: Conrado's Cargo
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2449–A E. Plaza Blvd.
City: National City
State: CA 92050
Country: United States of America
License No.:
Name No.: 007148

Acronym: Container Lines Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier, Ocean Common Carrier (Vessel Operating)
Street: 20/21 Princess Street—Hanover Street
City: London WIR8PX
State:
Country: Great Britain
License No.:
Name No.: 000812

Acronym: Continental Seacorp Shipping, Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Butterfield Plaza
City: Providenciales
State:
Country: Turks and Caicos Islands
License No.:
Name No.: 007318

Acronym: Cornell Air Freight Limited
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 155–06 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 001772

Acronym: Dachser Transport of America Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 175–01 Rockaway Boulevard, Suite 301
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000917

Acronym: Dyer International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1782 Clear Lake Drive
City: Milpitas
State: CA 95035
Country:
License No.:
Name No.: 008232

Acronym: Excel International Freight
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 800 E. Wardlow Road
City: Long Beach
State: CA 90807
Country: United States of America
License No.:
Name No.: 001264

Acronym: Gulf Carib Lines Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 1500
City: Tampa
State: FL 33601
Country: United States of America
License No.:
Name No.: 007710

Acronym: Hemisphere Navigation & Trading Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 43 Park Street—2nd Floor
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 007509

Acronym: International Aero-Sea Forwarders Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11222 La Cienega Blvd., #525
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 007778

Acronym: International Exhibits Transport, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 150 Broadway—Suite 1809
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 001360

Acronym: Lloyd International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 28 Lantern Lane
City: Weymouth
State: MA 02188
Country: United States of America
License No.:
Name No.: 005921

Acronym: Maca Maritime Carrier Shipping Gmbh & Company
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Vorsetzen 50
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No.:
Name No.: 001639

Acronym: Marcon Line Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2016 University Drive
City: Compton
State: CA 90220
Country: United States of America
License No.:
Name No.: 001654

Acronym: Mollie Limited
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 488, Marsh Harbour
City: Abaco, Bahamas
State:
Country: Bahama Islands
License No.:
Name No.: 006679

Acronym: Nantai Line Co., Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: IBM Bldg. 3 Fl, No. 2 Tun-Hwa S. Rd.
City: Taipei
State:
Country: Taiwan 10588
License No.:
Name No.: 006143

Acronym: New Port Shipping Lines Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2450 Delta Lane
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 007109

Acronym: Ocean-Air International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11222 La Cienega Blvd., #475
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 001279

Acronym: Overseas Express Line

DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1675 S. Elmhurst Road
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 007635

Acronym: Overseas Super Express, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1207 Mahalo Place
City: Compton
State: CA 90220
Country: United States of America
License No.:
Name No.: 002140

Acronym: Overseas Transportation Consultants, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9096 Railwood
City: Houston
State: TX 77078
Country: United States of America
License No.:
Name No.: 006179

Acronym: South China Consolidation Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11/F., Victoria Heights Bldg. 192–194, Nathan Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007835

Acronym: Strand Freight System, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Bldg. #5, Brooklyn Navy Yard
City: Brooklyn
State: NY 11205
Country: United States of America
License No.:
Name No.: 001193

Acronym: Trans-Union Container Line
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11222 La Cienega Blvd. Suite 540
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 000640

Acronym: W.L. Shipping Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Room 2301, AL–A4 Nan Fung Centre, 264–298 Castle Peak Road
City: Tsuen Wan, N.T.
State:
Country: Hong Kong
License No.:
Name No.: 007833

Acronym: World Express Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 55 American Legion Highway
City: Revere
State: MA 02151
Country: United States of America
License No.:
Name No.: 000745

Acronym: Worldtrend Shipping, Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8/F, Greatmany Commercial Centre, 109–115 Queen's Road, East
City: Wanchai
State:
Country: Hong Kong
License No.:
Name No.: 007308

Carriers That Failed To Respond to the Notice of Intent To Cancel Inactive Foreign Tariffs

Acronym: A. K. Express
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 367 W. Victoria Street
City: Gardena
State: CA 90248
Country: United States of America
License No.: 2858
Name No.: 000152

Acronym: A/S Deep Sea Shipping Ltd.
DBA Name: D.S.S., Inc.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 90 West Street, Suite 1100
City: New York
State: NY 10006
Country: United States of America
License No.:
Name No.: 001794

Acronym: Access Cargo Services Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 787 San Bruno Ave. East
City: San Bruno
State: CA 94066
Country: United States of America
License No.:
Name No.: 007931

Acronym: Aeromar Express
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1505 E. Del Amo Boulevard
City: Carson
State: CA 90745
Country: United States of America
License No.:
Name No.: 007025

Acronym: Aeropac
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2750 N.W. 79th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.:
Name No.: 007066

Acronym: Africa Box Line, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 147–95 Farmers Boulevard
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000173

Acronym: Air Services
DBA Name: Agency International Forwarding, Inc.
Person type: Non-Vessel-Operating Common Carrier
Street: 3979 N.W. 24th Street
City: Miami
State: FL 33124
Country:
License No.:
Name No.: 008169

Acronym: Air Sea Land Cargo
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2829½ Fletcher Drive
City: Los Angeles
State: CA 90039
Country: United States of America
License No.:
Name No.: 007029

Acronym: Airline Airfreight (JFK) Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 182–30 150th Road
City: Jamaica
State: NY 11413
Country: United States of America
License No.:
Name No.: 007831

Acronym: Alaska Outport Transportation Association Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 659 N.E. Northlake Way
City: Seattle
State: WA 98105
Country: United States of America
License No.:
Name No.: 007327

Acronym: Albury's International Shipping, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box N3456
City: Nassau
State:
Country: Bahama Islands
License No.:
Name No.: 000191

Acronym: All Americas Marine Forwarding Co.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 7001 N.W. 25th Street
City: Miami
State: FL 33122
Country:
License No.:
Name No.: 006210

Acronym: All Cargo Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 167–10 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 006678

Acronym: All-Oceans Express Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Suite 2300 No. 3 Embarcadero Center
City: San Francisco
State: CA 94111
Country: United States of America
License No.:
Name No.: 000207

Acronym: Allgreen Worldwide Express
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1875 House Lane
City: Hanover
State: IL 60103
Country: United States of America
License No.:
Name No.: 005836

Acronym: Alto International Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 89–15 127th Street
City: Richmond Hill
State: NY 11418
Country: United States of America
License No.:
Name No.: 007074

Acronym: Always Ocean Transport
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 167–16 146th Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 007089

Acronym: American Caribbean Transport, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3399
City: Humble
State: TX 77347
Country: United States of America
License No.:
Name No.: 006991

Acronym: American Gulf Shipping Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2420 Athania Parkway, Suite 300
City: Metairie
State: LA 70002
Country: United States of America
License No.:
Name No.: 005851

Acronym: American Shipping Lines
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11320 South Post Oak Road, #214
City: Houston
State: TX 77035
Country: United States of America
License No.:
Name No.: 006615

Acronym: Americas Container Line Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 32 South Street
City: Baltimore
State: MD 21202
Country: United States of America
License No.:
Name No.: 006196

Acronym: Anchor Maritime Lines, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8003 NW. 67th Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 000252

Acronym: Andean Line N.V.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: J. Kenndedy Lann 30
City: 9020 Gent
State:
Country: Belgium
License No.:
Name No.: 006312

Acronym: Anderson Shipping Company, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1554
City: Tustin
State: CA 92680
Country: United States of America
License No.:
Name No.: 007443

Acronym: Astro Traders, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1246 Artesia Boulevard
City: Long Beach
State: CA 90815
Country: United States of America
License No.:
Name No.: 006675

Acronym: B.C.R. Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: C/O MTO-Maritime Transport Overseas GMBH, AM Seestern 24
City: D–4000 Dusseldorf 11
State:
Country: German Federal Republic (West)
License No.:
Name No.: 000324

Acronym: Bahama Shipping Lines, Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box N–4645
City: Nassau
State:
Country: Bahama Islands
License No.:
Name No.: 000337

Acronym: Bangkok Shipping
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8232 Coldwater Canyon Avenue
City: North Hollywood
State: CA 91605
Country: United States of America
License No.:
Name No.: 007849

Acronym: Banks Shipping, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1241 Public Ledger Bldg.
City: Philadelphia
State: PA 19106
Country: United States of America
License No.:
Name No.: 000346

Acronym: Barber Transport Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier

Street: 1 Jacobus Avenue, Bldg. 9A
City: S. Kearny
State: NJ 07032
Country: United States of America
License No.:
Name No.: 008145

Acronym: Beaver Marine Lines
DBA Name: NA.
Person type: Ocean Freight Forwarder (Independent), Non-Vessel-Operating Common Carrier
Street: P.O. Box 38489
City: Denver
State: CO 80238
Country: United States of America
License No.: 2531
Name No.: 000357

Acronym: Benship International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 145th Avenue and Hook Creek Road
City: Valley Stream
State: NY 11581
Country: United States of America
License No.:
Name No.: 007773

Acronym: Brasca Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Klipperstraat, 15
City: D 2030 Antwerp
State:
Country: Belgium
License No.:
Name No.: 006083

Acronym: Bywater Shipping, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8320 Benjamin Street
City: Chalmette
State: LA 70043
Country: United States of America
License No.:
Name No.: 006960

Acronym: C.C.C. of Georgia, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 2317
City: Brunswick
State: GA 31521
Country: United States of America
License No.:
Name No.: 007036

Acronym: Cal International Freight Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1543 East Delarno Blvd.
City: Carson
State: CA 90746
Country: United States of America
License No.:
Name No.: 007783

Acronym: Canadian Tropic Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 100 Park Royal, Suite 1102
City: W. Vancouver V7T 1A2
State:
Country: Canada
License No.:
Name No.: 006316

Acronym: Canadian-American Shipping Corp.
DBA Name: Can-Am Line
Person type: Non-Vessel-Operating Common Carrier
Street: 157–21 Rockaway Blvd.
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 006673

Acronym: Cancun Shipping Corp.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 890 South Dixie Highway
City: Coral Gables
State: FL 33146
Country: United States of America
License No.:
Name No.: 007124

Acronym: Capella Marine Service, S.A.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 37–74 Oficinia 105, Via Espana, Edificio Rafael
City: Panama City
State:
Country: Republic of Panama
License No.:
Name No.: 006234

Acronym: Cargo King Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1079 West Side Avenue, P.O. Box 3143
City: Jersey City
State: NJ 07303
Country: United States of America
License No.:
Name No.: 005990

Acronym: Cargo Mania Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5088 NW 74th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 05994

Acronym: Cargo Masters International Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8807 Pioneer Blvd., Unit E
City: Santa Fe Springs
State: CA 90670
Country: United States of America
License No.:
Name No.: 005962

Acronym: Cargo Point International Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 45 John Street, Suite 902
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 005995

Acronym: Cargo, S.P.A.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Via Del Caravaggio, 6
City: 20144 Milano
State:
Country: Italy
License No.:
Name No.: 005997

Acronym: Caribbean Intefica Line
DBA Name: Cari Line
Person type: Ocean Common Carrier (Vessel Operating)
Street: 4210 NW. 2nd Street, Suite 1
City: Miami
State: FL 33126
Country: United States of America
License No.:
Name No.: 007924

Acronym: CCN
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 444 Brickell Avenue, Suite 1015
City: Miami
State: FL 33131
Country: United States of America
License No.:
Name No.: 006071

Acronym: CCS Cargo Services Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 225 Broadway, Suite 304
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 007641

Acronym: Cedar Star Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel-Operating)
Street: Port Str—Bohsali Bldg., P.O. Box 90–1460 (Jdeidet El Metn)
City: Beirut, Lebanon
State:
Country: Lebanon
License No.:
Name No.: 007496

Acronym: CGM/Interline
DBA Name: Interline Connection, Inc.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 350 Calle Comercil
City: San Juan
State: PR 00905
Country: United States of America
License No.:
Name No.: 006964

Acronym: Christensen Canadian African Lines
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Ranvik
City: 3200 Sandefjord
State:
Country: Norway
License No.:
Name No.: 000754

Acronym: Coastal International Cargo and Travel Svc
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9346 Van Nuys Blvd., #2
City: Panorama City
State: CA 91492
Country: United States of America
License No.:
Name No.: 007092

Acronym: Coburn Shipping Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 50–58 Alco Place
City: Baltimore
State: MD 21227
Country: United States of America
License No.:
Name No.: 007602

Acronym: Compagnie Maritime Zairoise
DBA Name: CMZ Connectainer
Person type: Controlled Carrier
Street: B.P. 9496
City: Kinshasa
State:
Country: Zaire
License No.:
Name No.: 000785

Acronym: Compagnie Marocaine De Navigation
DBA Name: Comanav
Person type: Controlled Carrier
Street: 7, Boulevard De La Ressistance
City: Casablanca 05
State:
Country: Morocco
License No.:
Name No.: 005985

Acronym: Consolidated Cargo Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 42 Broadway Suite 1545
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000804

Acronym: Consolidated International Freightways
DBA Name: NA.
Person type: Non-Vessel Operating Common Carrier
Street: 8213 N. Denver Avenue
City: Portland
State: OR 97217
Country: United States of America
License No.:
Name No.: 007979

Acronym: Container Express Lines Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 725 Market Street
City: Wilmington
State: DE 19801
Country: United States of America
License No.:
Name No.: 007139

Acronym: Continental Movers, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1606
City: Christiansted, St. Croix
State: VI 00820
Country: United States of America
License No.:
Name No.: 002699

Acronym: Crossroads Freight Systems, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1801 Hunter St.
City: Los Angeles
State: CA 90021
Country: United States of America
License No.:
Name No.: 000843

Acronym: CTN Consolidators and Distributors, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Elizabeth Seaport, 250 North Avenue East
City: Elizabeth
State: NJ 07020
Country: United States of America
License No.:
Name No.: 006352

Acronym: Dania Lines Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 6448 Ella Lee #2
City: Houston
State: TX 77057
Country: United States of America
License No.:
Name No.: 006077

Acronym: Danielle International
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 147–04 178 Street
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000911

Acronym: Diamond Freight Consolidators, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8432 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 006756

Acronym: Domedar International Corporation
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1111 El Sagundo Blvd
City: El Sagundo
State: CA 90145
Country: United States of America
License No.:
Name No.: 006778

Acronym: Dominican Consolidators
DBA Name: NA.
Person type: Non-Vessel Operating Common Carrier
Street: 168–15 Willowbrook Dr.
City: North Brunswick
State: NJ 08902
Country: United States of America
License No.:
Name No.: 006936

Acronym: Eurasia International Freight, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5th Floor, No. 215, Sec. 3, Nanking E. Rd. T.
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006920

Acronym: Euro Italian Freight Systems S.R.L.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Corso Sempione 60
City: 20154 Milano
State:
Country: Italy
License No.:

Name No.: 006101
Acronym: Export Lines Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 280 Ellsworth Avenue
City: Staten Island
State: NY 10312
Country: United States of America
License No.:
Name No.: 001265
Acronym: Far East Container Services, Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Tsin Sha Tsui—P.O. Box 85724
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 001776
Acronym: Far East Freight, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 79–11 41st Ave
City: Elmhurst
State: NY 11373
Country: United States of America
License No.:
Name No.: 005730
Acronym: Fednav (USA) Inc.
DBA Name: Fednav Lakes Services
Person type: Ocean Common Carrier (Vessel Operating)
Street: 174 S. Clark Street
City: Detroit
State: MI 48209
Country: United States of America
License No.:
Name No.: 006134
Acronym: Finn Container Cargo Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier, Ocean Common Carrier (Vessel Operating)
Street: 1921 Bolsover
City: Houston
State: TX 77005
Country:
License No.:
Name No.: 008400
Acronym: Four Stars Forwarding
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 26046
City: San Diego
State: CA 92126
Country: United States of America
License No.:
Name No.: 007825
Acronym: Freeway Enterprises
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2029 Chateau Avenue
City: Anaheim
State: CA 92804
Country: United States of America
License No.:
Name No.: 006680
Acronym: French Groupage Services
DBA Name: Interline Connection
Person type: Non-Vessel-Operating Common Carrier
Street: 22 Lue Due Beneral De Gaulle
City: St. Martin
State:
Country: French Guiana
License No.:
Name No.: 006940
Acronym: Friendship Lines, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 159 Broad Street
City: Brooklyn
State: NY 11231
Country: United States of America
License No.:
Name No.: 006786
Acronym: Full Speed Maritime Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 709–710 Sincere Building, 173 Des Voeux Road Central
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 006244
Acronym: Gemini Shipping, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 12214 Cardston Court
City: Tomball
State: TX 77375
Country: United States of America
License No.:
Name No.: 007274
Acronym: Genebell International Freight Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 10855 Magnolia Blvd.
City: North Hollywood
State: CA 91601
Country: United States of America
License No.:
Name No.: 006666
Acronym: General American Transport Organization Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 8453
City: Woodlands
State: TX 77387
Country: United States of America
License No.:
Name No.: 006252
Acronym: General Line, Ltd.
DBA Name: General Line
Person type: Ocean Common Carrier (Vessel Operating)
Street: 25 Warehouse Road, P.O. Box 3660 Apapa
City: Lagos
State:
Country: Nigeria
License No.:
Name No.: 007083
Acronym: Global International U.S.A., Inc.
DBA Name: Global International
Person type: Non-Vessel-Operating Common Carrier
Street: 13430 Northwest Freeway, Ninth Floor
City: Houston
State: TX 77040
Country: United States of America
License No.:
Name No.: 004556
Acronym: Global Seacargo Express
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4402 West Jefferson Blvd.
City: Los Angeles
State: CA 90016
Country: United States of America
License No.:
Name No.: 007955
Acronym: Grande Monde Travel and Forwarding Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9658 Garden Grove Blvd., Suite 103
City: Garden Grove
State: CA 92644
Country: United States of America
License No.:
Name No.: 006745
Acronym: Great Western Shipping Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 241 E. Redondo Beach Blvd.
City: Gardena
State: CA 90248
Country: United States of America
License No.:
Name No.: 006833
Acronym: GS Ocean Freight Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 106 Tam Kung Road, G/F.
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007487

Acronym: Guangdong International Shipping Co., Ltd.
DBA Name: NA.
Person type: Controlled Carrier
Street: 25/F., Yardley Commercial Building, 1–3 Connaught Road, West
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 000484
Acronym: Haniel Transport (Taiwan) Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9F1., 111, Nanking East Road, Sec. 2.
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007648
Acronym: Hemisphere Navigation Co. Inc.
DBA Name: Caribbean Project Lines
Person type: Non-Vessel-Operating Common Carrier
Street: 43 Park Place
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 005852
Acronym: Hi Hi Santi Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 136–F South Linden Ave.
City: South San Francisco
State: CA 94080
Country: United States of America
License No.:
Name No.: 007320
Acronym: Home Boys Shipping Company, The
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 422, Marsh Harbour
City: Abaco
State:
Country: Bahama Islands
License No.:
Name No.: 06354
Acronym: Hong Kong Islands Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 249 E. Ocean Blvd., Suite 900
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 001447
Acronym: I.C.E. Express, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1819 Jackson Street, Suite 4
City: San Francisco
State: CA 94109
Country: United States of America
License No.:
Name No.: 007565
Acronym: IFS Lines, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8 Hook Road
City: Bayonne
State: NJ 07002
Country: United States of America
License No.:
Name No.: 006945
Acronym: Imperial Lines Corporation
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 7000 SW. 62 Avenue, Suite 555–A
City: Miami
State: FL 33143
Country: United States of America
License No.:
Name No.: 007649
Acronym: Integrated Carribean Line, S.A.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Napoles 36–501
City: 06600 Mexico, D.F.
State:
Country: Mexico
License No.:
Name No.: 006899
Acronym: Inter Oceanic Freight, S.A.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Ave. Romulo Betancourt #335
City: Santo Domingo
State:
Country: Dominican Republic
License No.:
Name No.: 005944
Acronym: Inter-Mart Consolidators, Co.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8501 Wilshire Blvd., Suite 130
City: Beverly Hills
State: CA 90211
Country: United States of America
License No.:
Name No.: 007113
Acronym: Interasia Lines, Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2–3 3-Chome, Marunochi, Chiyoda-ku
City: Tokyo 100
State:
Country: Japan
License No.:
Name No.: 001335
Acronym: International Cargo Consolidation, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5 FL-A, Li Fung Tower No. 1, Nanking E. Rd., Sec. 4
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007570
Acronym: International Transportation Network, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2340 South El Camino Real, Suite 14
City: San Clemente
State: CA 92672
Country: United States of America
License No.:
Name No.: 006748
Acronym: Intersea Shipping Company, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 287 Syosset-Woodbury Road
City: Woodbury
State: NY 11797
Country: United States of America
License No.:
Name No.: 001376
Acronym: IPI Transport, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 320 Pine Avenue, #400
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 007930
Acronym: Island Shipping Lines, Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 801
City: Red Bank
State: NJ 07701
Country: United States of America
License No.:
Name No.: 006084
Acronym: Jamaica Express Consolidators, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 60 Kellogg Street
City: Jersey City
State: NJ 07035
Country: United States of America

License No.:
Name No.: 007336
Acronym: Japan Multimodal Transport Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: C/O Yamashin Kogyo Co., Ltd., 3–19 Kanda-Nishiki-Cho
City: Chiyoda-ku, Tokyo
State:
Country: Japan
License No.:
Name No.: 005674
Acronym: K/S Nosac A/S
DBA Name: Nosac
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 27, Smetad
City: 0309 Oslo 3
State:
Country: Norway
License No.:
Name No.: 007034
Acronym: Kaitone Shipping Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 249 Des Voeux Road C, Room 1102–2, Tung Ning Bldg.
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 006938
Acronym: Kawaski Kisen Kaisha, Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2P9 Nishi-Shinbashi, 1–Chome, Minato-Ku
City: Tokyo 105
State:
Country:
License No.:
Name No.: 001466
Acronym: Korea Shipping Corp.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 188–3, 1–Ka, Eulji-Ro, Choong-Ku CPO Box 1164
City: Seoul 100
State:
Country: Republic of Korea
License No.:
Name No.: 001456
Acronym: L.K Overseas Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 555 E. Ocean Blvd. #818
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 005911
Acronym: L.K.B.Marine
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 314 Lang Road
City: Burlingame
State: CA 94010
Country: United States of America
License No.:
Name No.: 006947
Acronym: Latinvan, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2100 NW 94 Ave.
City: Miami
State: FL 33172
Country: United States of America
License No.:
Name No.: 001590
Acronym: Leadway Express Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 7F–1, No 73 Fu Hsing N. Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007998
Acronym: Lessco Trading Inc.
DBA Name: Lessco Shipping
Person type: Non-Vessel-Operating Common Carrier
Street: 148 S.W. 8th Street
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 007297
Acronym: Low Country International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 15173
City: Washington
State: DC 20019
Country: United States of America
License No.:
Name No.: 005919
Acronym: M.B.C. Lines
DBA Name: M.B.C. Lines
Person type: Ocean Common Carrier (Vessel Operating)
Street:
City: Panama
State:
Country: Republic of Panama
License No.:
Name No.: 005942
Acronym: Maine Line Transport, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 217 Read Street
City: Portland
State: OR 04101
Country: United States of America
License No.:
Name No.: 006592
Acronym: Majestic Freight System Corporation
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8816 S. Sepulveda Blvd., Suite 102
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007072
Acronym: Majesty International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 10950 S.W. 117th Place
City: Miami
State: FL 33187
Country: United States of America
License No.:
Name No.: 007502
Acronym: Manila Freight Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 213 E. Maude Avenue, Suite 112
City: Sunnyvale
State: CA 94086
Country: United States of America
License No.:
Name No.: 007774
Acronym: Manila International Freight Services
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1543 E. Del Amo Blvd.
City: Carson
State: CA 90746
Country: United States of America
License No.:
Name No.: 007341
Acronym: Marden Freight Systems, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 7489 N.W. 7th Street
City: Miami
State: FL 33126
Country: United States of America
License No.:
Name No.: 006847
Acronym: Marfret
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 13, Quai De La Joliette
City: 13002 Marseille
State:
Country: France
License No.:
Name No.: 007141

Acronym: Marinvest Funds S.A.
DBA Name: Dominican Ferries
Person type: Ocean Common Carrier (Vessel Operating)
Street: Gustavo Mejia Ricart No. 80, Ens Piantina
City: Santo Domingo
State:
Country: Dominican Republic
License No.:
Name No.: 005857
Acronym: Master Freight Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Block "B" 15th Floor, Hong Kui Building, 311 Nathab Road
City: Kowloon
State:
Country: Hong Hong
License No.:
Name No.: 007118
Acronym: Mediterranean Shipping and Transport S.A.R.L.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 175324, Pasteur Street
City: Beirut
State:
Country: Lebanon
License No.:
Name No.: 007935
Acronym: Mer-Line-Shipping Company
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2700 Greens Road, Bldg. K
City: Houston
State: TX 77032
Country: United States of America
License No.:
Name No.: 007886
Acronym: Milwaukee Liner Service, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 500 Nor Harbor Driver
City: Milwaukee
State: WI 53202
Country: United States of America
License No.:
Name No.: 007070
Acronym: Multi-Trade Lines
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 504 156 Park Avenue
City: Rutherford
State: NJ 07070
Country: United States of America
License No.:
Name No.: 006361
Acronym: Mystery Lady Trading Co., LTD.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Grand Turk
City: Turks & Caico Isle
State:
Country: Turks and Caico Islands
License No.:
Name No.: 007905
Acronym: N.T. Cargo Service
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1390 E. Burnett Street, Suite E.
City: Signal Hill
State: CA 90806
Country: United States of America
License No.:
Name No.: 007076
Acronym: Navisan Line
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 3201 N.W. S. River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.:
Name No.: 007897
Acronym: Near East Container Lines
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Via A Vespucci 9/20
City: Naples
State:
Country: Italy
License No.:
Name No.: 006156
Acronym: Neth Box Consolidators B.V.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Seven Dey Street, Suite 711
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 006344
Acronym: Network Container Line, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9721 Kempwood
City: Houston
State: TX 77080
Country: United States of America
License No.:
Name No.: 008028
Acronym: New Tradewinds Int'l, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 90 West Street, Suite 2201
City: New York
State: NY 10006
Country:
License No.:
Name No.: 008118
Acronym: Ocean Express Lines, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 840 Mark Street
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 001282
Acronym: Ocean General Line
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: One Intercontinental Way
City: Peabody
State: WA 01960
Country: United States of America
License No.:
Name No.: 007121
Acronym: Oceanide Express, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 9000 Bellanca Ave., Suite 25 & 26
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007497
Acronym: OCS-CF International
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 300 4th Street
City: San Francisco
State: CA 94107
Country: United States of America
License No.:
Name No.: 006693
Acronym: Orient Consolidation Service (Hong Kong) LTD
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Room 1305-8, 13th Floor, Albion Plaza 2-6 Granville Rd.
City: Tsimshatsui, Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 006988
Acronym: Orient Express
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 3824 S. Santa Fe, Unite No. 1
City: vernon
State: CA 90058
Country: United States of America
License No.:
Name No.: 007123
Acronym: Overseas Moving Specialists, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 112 North 12th Street

City: Brooklyn
State: NY 11211
Country: United States of America
License No.:
Name No.: 001310

Acronym: Overseas Transport International Corp.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 30 Montgomery Street, Suite 1440
City: Jersey City
State: NJ 07302
Country: United States of America
License No.:
Name No.: 006074

Acronym: Ozean/Stinnes Lines
DBA Name: NA.
Person type: Foreign Joint Service—Consortium Agreement
Street: Ballindamm 8
City: 2000 Hamburg 1
State:
Country: Germany Federal Republic (West)
License No.:
Name No.: 008623

Acronym: P.T. Trikora Lloyd
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 1 Jalan Malaka
City: Jakarta
State:
Country: Indonesia
License No.:
Name No.: 000823

Acronym: Pac-Asiatic Container Line
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 3766 Gaviota Avenue
City: Long Beach
State: CA 90807
Country: United States of America
License No.:
Name No.: 007950

Acronym: Pacific Container Lines Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 939 S. Atlantic Blvd. #207
City: Monterey Park
State: CA 91754
Country: United States of America
License No.:
Name No.: 002269

Acronym: Pacific Islands International, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1318 Madison Avenue, Suite 3
City: New York
State: NY 10128
Country: United States of America
License No.:
Name No.: 007776

Acronym: Pacific Rim Express Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1525 Adrian Road
City: Burlingame
State: CA 94010
Country: United States of America
License No.:
Name No.: 007151

Acronym: Pakbox Intermodal Services
DBA Name: Paxbox B.V.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 29163
City: 3001 GD Rotterdam
State:
Country: The Netherlands
License No.:
Name No.: 006212

Acronym: Pan Universe Express (U.S.A.) Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 11976 Aviation Blvd.
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 006799

Acronym: Papua New Guinea Shipping Corporation (PTY)
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Corner Cuthbertson St. and Stanley Esp., P.O. Box 543, Port Moresby
City: Papua
State:
Country: Guinea Bissau
License No.:
Name No.: 006813

Acronym: Perch Ocean Lines of Perfect Sea Freight (HK)
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: One Marine Plaza, Suite 1000
City: San Francisco
State: CA 94111
Country: United States of America
License No.:
Name No.: 006209

Acronym: Philmacor Enterprises, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 500 North Adams Street
City: Glendale
State: CA 91206
Country: United States of America
License No.:
Name No.: 008041

Acronym: Phimco Limited
DBA Name: Magiliw Transport, Int'l
Person type: Non-Vessel-Operating Common Carrier
Street: 706 Dillon Street
City: Los Angeles
State: CA 90026
Country: United States of America
License No.:
Name No.: 07980

Acronym: Phoenix Shipping, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 505 N. Belt East, #130
City: Houston
State: TX 77060
Country: United States of America
License No.:
Name No.: 001017

Acronym: Pinterex Container Co.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1730 West 7th Street
City: Los Angeles
State: CA 90017
Country: United States of America
License No.:
Name No.: 001020

Acronym: Plantation Operating Co., Inc.
DBA Name: P.O.C. Line
Person type: Ocean Common Carrier (Vessel Operating)
Street: 1225 North Loop West, Suite 1025
City: Houston
State: TX 77008
Country: United States of America
License No.:
Name No.: 007457

Acronym: PTC Packing & Storage, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8946 NW. 61st Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 007064

Acronym: R.A.S. Professional Cargo Service
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 808 South Vermont Avenue
City: Los Angeles
State: CA 90005
Country: United States of America
License No.:
Name No.: 007818

Acronym: RADJ Inc. International
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 245 Visitacion Avenue
City: Brisbane
State: CA 94005

Country: United States of America
License No.:
Name No.: 007844

Acronym: Rank International Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1758 N.W. 82nd Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.:
Name No.: 006216

Acronym: Regency Navigation Company
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 24 North Market Street, Suite 103
City: Charleston
State: SC 29401
Country: United States of America
License No.:
Name No.: 006681

Acronym: Revco Cargo Co., Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3219 Beverly Blvd.
City: Los Angeles
State: CA 90057
Country: United States of America
License No.:
Name No.: 007869

Acronym: Rhein Express International Ltd.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4849 N. Scott Street, Suite 9
City: Schiller Park
State: IL 60176
Country: United States of America
License No.:
Name No.: 006730

Acronym: Risamar International Transport Corp.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000875

Acronym: RL Freight Services Company
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 8639 Meadow Rd.
City: Downey
State: CA 90242
Country: United States of America
License No.:
Name No.: 007598

Acronym: RMC Lines Ltd.
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 436 S. W. 8th St.
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 000851

Acronym: Roco Carriers PTE Ltd.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 16 Raffles Quay #24–03 Hong Leong Building
City: Singapore 0104
State:
Country: Singapore
License No.:
Name No.: 007300

Acronym: Roco Carriers, Ltd.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 32 Broadway —Suite 1600
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000877

Acronym: Romanian Shipping Company Constanta (NAVROM)
DBA Name: Romanian Shipping Company
Person Type: Controlled Carrier
Street: Constantza Port
City: Constantza Code 8700
State:
Country: Rumania
License No.:
Name No.: 006157

Acronym: Sae Joo Maritime
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 602 Sam Won Building 112–5 So Kong-Dong, Chung-Go
City: Seoul
State:
Country: Republic of Korea
License No.:
Name No.: 007298

Acronym: Safeway Cargo Services
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 137 S. Linden Avenue
City: South San Francisco
State: CA 94080
Country: United States of America
License No.:
Name No.: 007816

Acronym: Samex Air Forwarders Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 8621 Bellanca Avenue
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 006033

Acronym: Samjung Shipping Co., Ltd.
DBA Name: Seacon Lines
Person Type: Non-Vessel-Operating Common Carrier
Street: Rm 1605 Dae Yungak Center
City: CPO Box 6586, Seoul
State:
Country: Republic of Korea
License No.: 3111
Name No.: 006115

Acronym: Satex Shipping, S.A.
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: C/O Marine Transportation Services 1040 Port Boulevard
City: Miami
State: FL 33132
Country: United States of America
License No.:
Name No.: 007607

Acronym: Scanfreight Continental N.V.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 150 Broadway
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 001083

Acronym: Scindia Steam Navigation Co., Ltd., The
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Narrottam Morarjee Marg. Ballard Estate
City: Bombay 400 038
State:
Country: India
License No.:
Name No.: 005682

Acronym: Seacon Express Chicago, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1107 N. Ellis Street
City: Bensenville
State: IL 60106
Country: United States of America
License No.:
Name No.: 007001

Acronym: Seacon Express Los Angeles, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1111 Watson Center Road One
City: Carson
State: CA 90745
Country: United States of America
License No.:

Name No.: 006040
Acronym: Seacon Express N.Y. Corp.
DBA Name: Seacon Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place, Suite 2143
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 002852
Acronym: Servac Shipping Lines, Ltd.
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Stuyvesant Plaza-Executive Park Tower
City: Albany
State: NY 12203
Country: United States of America
License No.:
Name No.: 006049
Acronym: Skaarup Shipping Corporation
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 66 Field Point Road
City: Greenwich
State: CT 06830
Country: United States of America
License No.:
Name No.: 007014
Acronym: Skandiafallenius Spedition AB
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Packhusplatsen 2, P.O. Box 2562
City: S–403 17 Gothenburg
State:
Country: Sweden
License No.:
Name No.: 006367
Acronym: Skyway International Corp.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2nd Floor, No. 21, Lane 9, Lin Shen North Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006952
Acronym: Southern Ocean Transport, Inc.
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 505 North Belt, Suite 140
City: Houston
State: TX 77060
Country: United States of America
License No.:
Name No.: 007071
Acronym: Star Container Lines, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5710 W. Manchester Blvd, Suite 103
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007809
Acronym: Sterling Maritime Ltd.
DBA Name: Coast Container Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 31 Broad Street
City: St. Helier Jersey, Channel Islands G.B.
State:
Country: Great Britain
License No.:
Name No.: 006238
Acronym: Sudan Shipping Line Ltd.
DBA Name: NA.
Person Type: Controlled Carrier
Street: P.O. Box 426
City: Port Sudan
State:
Country: Sudan
License No.:
Name No.: 001198
Acronym: Summit Worldwide Corp.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 104 S. Central Avenue, Suite 12
City: Valley Stream
State: NY 11580
Country: United States of America
License No.:
Name No.: 008045
Acronym: Supreme Ocean Line
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 206 Ahafa Cargo Centre, 12 Kai Shun Road
City: Kowloon Bay
State:
Country: Hong Kong
License No.:
Name No.: 007306
Acronym: Swing Forwarding, Ltd.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 28th Floor Bank of America Tower, 12 Harcourt Road
City: Central
State:
Country: Hong Kong
License No.:
Name No.: 006578
Acronym: Synor International, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 175–01 Rockawaky Boulevard—Suite 206
City: Jamaica
State: NY 11696
Country: United States of America
License No.:
Name No.: 006107
Acronym: T.F.S. International Shipping Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 149–23 182nd Street
City: Jamaica
State: NY 11430
Country: United States of America
License No.:
Name No.: 006715
Acronym: T.M. Shipping Corp.
DBA Name: Adriatic America Line
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 29 Broadway
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 006924
Acronym: Taurus Container Service Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1200 Main Street, P.O. Box 9349
City: Bridegport
State: CT 06601
Country: United States of America
License No.:
Name No.: 006588
Acronym: Thielen, George
DBA Name: GT International
Person type: Non-Vessel-Operating Common Carrier
Street: 1402 Oneida Street
City: Denver
State: CO 80220
Country: United States of America
License No.:
Name No.: 005423
Acronym: Tian Fung Goh and Cargo Transport Service Ltd
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 268 Ma Chang Dao Tiamjin Cadre's Club Tian Fung Building
City: Tianjin
State:
Country: People's Republic of China
License No.:
Name No.: 005804
Acronym: Tiger Intermodal
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 211 East Ocean Blvd.—Suite 400
City: Long Beach
State: CA 90802
Country: United States of America
License No.:

Name No.: 000531
Acronym: Tisco Ocean Forwarding Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5 FL–A, Li Fung Tower No. 1 Nanking E. Rd., Sec. 4
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006896
Acronym: Tokyo Sanyu Shipping Co., Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Sanjyu Bldg., 4th Floor, 3–2–4 Hatchobori, Chuo-Ku
City: Tokyo
State:
Country: Japan
License No.:
Name No.: 005806
Acronym: Traffic Systems Corp.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 302 Comercio Street, 2nd Flr.
City: Old San Juan
State: PR 00901
Country: United States of America
License No.:
Name No.: 006805
Acronym: Tram Inter Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 155–06 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 007511
Acronym: Trans Am—Asia Corporation
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier, Ocean Freight Forwarder (Independent)
Street: 3030 W. 6th Street, Suite 211
City: Los Angeles
State: CA 90020
Country: United States of America
License No.: 3086
Name No.: 007111
Acronym: Trans Luso Intercontinental Lines, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 355 Mulberry Street
City: Newark
State: NJ 07102
Country: United States of America
License No.:
Name No.: 000560
Acronym: Trans-U.S.A. Express International, Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4448 W. Montrose Avenue
City: Chicago
State: IL 60641
Country: United States of America
License No.:
Name No.: 006290
Acronym: Transcar of North America
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 274 County Road
City: Tenafly
State: NJ 07670
Country: United States of America
License No.:
Name No.: 002145
Acronym: Transconex, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 524037
City: Miami
State: FL 23152
Country: United States of America
License No.:
Name No.: 006861
Acronym: Transmar Transportation, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 311 Oak Street
City: Oakland
State: CA 94607
Country: United States of America
License No.:
Name No.: 007285
Acronym: Transporte Caribbean S.A. (Transcaribe)
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Apartado Postal 2329
City: Panama 9 A
State:
Country: Republic of Panama
License No.:
Name No.: 006291
Acronym: Transportes Maritimos Internacional
DBA Name: Port Line
Person type: Ocean Common Carrier (Vessel Operating)
Street: Rua Actor Antonio Silva 7, 11
City: 1600 Lisbon
State:
Country: Portugal
License No.:
Name No.: 005729
Acronym: Trax Cargo Lines Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 53 Park Place—Suite 208
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 006236
Acronym: Tricon shipping Ltd.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 6223 Richmond Avenue, Suite 200
City: Houston
State: TX 77057
Country: United States of America
License No.:
Name No.: 007488
Acronym: Troy Catucci Lines Ltd.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 780 Clinton Street
City: Brooklyn
State: NY 11231
Country: United States of America
License No.:
Name No.: 005817
Acronym: U-Trust International Cargo Service
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2059 Mission Street
City: San Franciso
State: CA 94110
Country: United States of America
License No.:
Name No.: 007314
Acronym: U. S. Great Lakes Shipping Lines, Inc.
Dba Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3200 North Shore Drive, Suite 2902
City: Chicago
State: IL 60657
Country: United States of America
License No.:
Name No.: 007566
Acronym: United Africa Lines (Liberia), Inc.
Dba Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 1597
City: Monrovia
State:
Country: Liberia
License No.:
Name No.: 007122
Acronym: United Freight Systems, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 7210 N.W. 77th Street
City: Miami
State: FL 33166

Country: United States of America
License No.:
Name No.: 006787
Acronym: United Overseas Supply Co.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 16403 Ishida Avenue
City: Gardena
State: CA 90248
Country: United States of America
License No.:
Name No.: 007391
Acronym: Unitrans Illinois Consolidated, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 10400 W. Higgins
City: Rosemont
State: IL 60018
Country: United States of America
License No.:
Name No.: 007619
Acronym: Unitrans International Forwarders, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 744
City: Manila 2800
State:
Country: Phillipines
License No.:
Name No.: 007768
Acronym: Unitrans Shipping Co., Ltd.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 10400 W. Higgins
City: Rosemont
State: IL 60018
Country: United States of America
License No.:
Name No.: 007887
Acronym: Universal Cargo Management, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3711 Long Beach Boulevard, Suite 518
City: Long Beach
State: CA 90807
Country: United States of America
License No.:
Name No.: 007522
Acronym: Universal Lines, Inc.
Dba Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 389 Hwy. 17 By-Pass
City: Mt. Pleasant
State: SC 29464
Country: United States of America
License No.:
Name No.: 000077
Acronym: USB Corporation
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 19 Marten Place
City: North Arlington
State: NJ 07032
Country: United States of America
License No.:
Name No.: 007577
Acronym: Valley Express, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Market Street
City: Paterson
State: NJ 07513
Country: United States of America
License No.:
Name No.: 000003
Acronym: Vangard Freight Services, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 80 Washington Street
City: Hoboken
State: NJ 07030
Country: United States of America
License No.:
Name No.: 002168
Acronym: Venezuelan Container Line, C.A.
Dba Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Avenida Universidad Esquina El Chorro, Torro El Chorro
City: Piso 15, Caracas, Venezuela
State:
Country: Venezuela
License No.:
Name No.: 007292
Acronym: Victoria Marine Shipping, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 111 S.W. 3rd Street Suite 100
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 000013
Acronym: Viking Freight System, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 411 East Plumeria Drive
City: San Jose
State: CA 95134
Country: United States of America
License No.:
Name No.: 007793
Acronym: West Harbor International Services, Inc.
Dba Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 931 Harbison Avenue
City: National City
State: CA 92959
Country: United States of America
License No.:
Name No.: 007628
Acronym: Westamerica Line, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2907 Bat to Bay Blvd., Suite 300
City: Tampa
State: FL 33629
Country: United States of America
License No.:
Name No.: 007093
Acronym: Westamerica Steamship Lines, Inc.
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 20051
City: Tampa
State: FL 33622
Country: United States of America
License No.:
Name No.: 007275
Acronym: Westwind Africa Line
DBA Name: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 318
City: Apapa
State:
Country: Nigeria
License No.:
Name No.: 001791
Acronym: White Navigation Co. S.A.
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5/Fl., 63 Hong Chow South Road, Sec. 1
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006590
Acronym: Wide Choice Container Line
DBA Name: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Rm. 905 Far East Consortium Bldg. 204–206 Nathan Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007595
Acronym: World Airmarine, Inc.
DBA Name: NA.
Person type: Ocean Freight Forwarder (Independent) Non-Vessel-Operating Common Carrier
Street: 290 East Grand Ave
City: So. San Francisco
State: CA 94080

Country: United States of America
License No.: 1914
Name No.: 005754
Acronym: World Express Lines, Inc.
DBA Name: NA.
Person type: Non-Vessel-Operating Ocean Common Carrier
Street: 1755 West Walnut Pkwy
City: Compton
State: CA 90220
Country: United States of America
License No.:
Name No.: 005538
Acronym: Worldbond Shipping and Transportation Co Ltd
DBA Name: NA.
Person type: Non-Vessel-Operating Ocean Common Carrier
Street: B1 & B2 Basement—Kowloon Air Freight Agents Terminal, 70–78 Sung Wong Toi Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 006261
Acronym: World Asia Lines
DBA Name: NA.
Person type: Non-Vessel-Operating Ocean Common Carrier
Street: 8915 La Cienaga Blvd.
City: Inglewood
State: CA 90301
Country: United States of America
License No.:
Name No.: 005752
Acronym: Y.M. Lau Express Inter'l (Taiwan) Ltd.
DBA Name: NA.
Person type: Non-Vessel-Operating Ocean Common Carrier
Street: Jin Ling Bldg. 460 Kuang Fu South Road 11th Floor
City: Taipei 105
State:
Country: Taiwan
License No.:
Name No.: 005757
Acronym: Zade, C.A.
DBA Name: NA.
Person type: Common Carrier (Vessel Operating)
Street: EDF. General Paz, Piso 4, Ofc. 406
City: Caracas
State:
Country: Venezuela
License No.:
Name No.: 007472
Acronym: Zephyr Container Line
DBA Name: NA.
Person type: Non-Vessel-Operating Ocean Common Carrier
Street: 333 N. Marine Avenue
City: Wilmington
State: CA 90744
Country: United States of America
License No.:
Name No.: 000143

[FR Doc. 8928158 Filed 11–30–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Brookside Bancshares, Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Brookside Bancshares, Inc.*, Tulsa, Oklahoma; to engage *de novo* through its newly formed subsidiary, Brookside Mortgage Corporation, Tulsa, Oklahoma, in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 27, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–28148 Filed 11–30–89; 8:45 am]
BILLING CODE 6210–01–M

First Charlotte Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applicatioins must be received not later than December 22, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Charlotte Financial Corporation*, Charlotte, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Charlotte Bank and Trust Company, Charlotte, North Carolina.

2. *First Patriot Bankshares Corporation*, Fairfax, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Patriot National Bank of Reston, Reston, Virginia, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation,* Atlanta, Georgia, and Citizens and Southern Florida Corporation, Fort Lauderdale, Florida; to acquire 100 percent of the voting shares of M.B. Group, Inc., Marathon, Florida, and thereby indirectly acquire The Marine Bank of Monroe County, Marathon, Florida.

Board of Governors of the Federal Reserve System, November 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28149 Filed 11-30-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James B. Ingeman,* Dennis M. Sobolik, and Robert K. Severson; to acquire 35 percent of the voting shares of Crookston Financial Services, Inc., Crookston, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Joe N. Basore,* Bella Vista, Arkansas, and Burton O. George, Berryville, Arkansas; to each acquire 48.8 percent of the voting shares of Cedaredge Financial Services, Inc., Cedaredge, Colorado, and thereby indirectly acquire First National Bank of Cedaredge, Cedaredge, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Karen Smith Riecke,* Covington, Louisiana, to acquire 48.31 percent; Bryant L. Caruso, Covington, Louisiana, to acquire 1.07 percent; and RHD, Inc., Mandeville, Louisiana, to acquire 6.45 percent of the voting shares of American Bancshares-Red River, Inc., Coushatta, Louisiana, and thereby indirectly acquire American Bank and Trust Co., Coushatta, Louisiana.

2. *John F. Cattier,* United Kingdom, to acquire 4.98 percent; Pedro Cerisola, Jr., Mexico, to acquire 8.86 percent; Gary Jacobs, Laredo, Texas, to acquire 4.67 percent; and Abe S. Wilson, Laredo, Texas, to acquire 1.02 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, and thereby indirectly acquire The Laredo National Bank, Laredo, Texas.

3. *Earl G. Kendrick, Jr.,* Alexandria, Virginia; to acquire 49 percent of the voting shares of Woodforest Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Woodforest National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, November 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28150 Filed 11-30-89; 8:45 am]

BILLING CODE 6210-01-M

Mid Am, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The Organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mid Am, Inc.,* Bowling Green, Ohio; to acquire The Citizens Building and Loan Company, Lima, Ohio, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28151 Filed 11-30-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7a of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/13/89 AND 11/24/89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Saugatuck Capital Company Limited Partnership II, Schroder Venture Trust, Gerard Daniel & Co., Inc	90-0144	11/13/89
Ralph M. Ingersoll, II, Mark Goodson, The Jackson Newspapers, Inc	90-0168	11/13/89
Warburg, Pincus Investors, L.P., Mark Goodson, The Jackson Newspapers, Inc	90-0169	11/13/89
Warburg, Pincus Investors, L.P., NH Acquisition Corp. (joint venture corporation), NH Acquisition Corp. (joint venture corporation)	90-0170	11/13/89
Ralph M. Ingersoll II, NH Acquisition Corp. (joint venture corporation), NH Acquisition Corp. (joint venture corporation)	90-0171	11/13/89
American Financial Corporation, Reflector-Herald, Inc., Gulf Coast Radio, Inc	90-0218	11/13/89
Media Ventures, L.P., The Mutual Life Insurance Company of New York, Mid-Tennessee Cable Limited Partnership	90-0225	11/13/89
Security Pacific Corporation, Primerica Corporation, Commercial Credit Consumer Services, Inc	90-0234	11/13/89
Giant Industries, Inc., James E. Acridge, Giant Industries Arizona, Inc	90-0249	11/13/89
James E. Acridge, Giant Industries, Inc., Giant Industries Inc	90-0250	11/13/89
Giant Industries, Inc, Hixon Development Company, Hixon Development Company	90-0251	11/13/89
The Dai-Ichi Kangyo Bank, Limited, Manufacturers Hanover Corporation, Manufacturers Hanover Corporation	90-0255	11/13/89
Trustee in Bankruptcy for Sharon Steel Corporation, Worthington Industries, Inc., U-Brand Corporation	90-0258	11/13/89
Sage Broadcasting Corporation, Mitsubishi Corporation, Memory-Tech Inc	90-0265	11/13/89
HMK Enterprises, Inc., Robert Zeltzer, Offices Unlimited, Inc	90-0272	11/13/89
Skandia Insurance Company, Ltd., Ryder System, Inc., Capital Assurance Company, Inc	90-0275	11/13/89
Keith Rupert Murdoch, Farragut Communications, Inc., MWT, Ltd	90-0276	11/13/89
Exeter Capital, L.P., The Dun & Bradstreet Corporation, Carol Wright Sales, Inc	90-0290	11/13/89
P.E. Sadler, First Financial Management Corporation, First Financial Management Corporation	90-0291	11/13/89
First Financial Management Corporation, MicroBilt Corporation, MicroBilt Corporation	90-0293	11/13/89
Pioneer Electronic Corporation, MCA Inc., Discovision Associates	90-0133	11/14/89
Pioneer Electronic Corporation, International Business Machines Corporation, Discovision Associates	90-0142	11/14/89
General Motors Corporation, Joint Venture Corporation, Joint Venture Corporation	90-0146	11/14/89
Chrysler Corporation, Joint Venture Corporation, Joint Venture Corporation	90-0148	11/14/89
Citicorp, Douglas Wolf, IPG Financial Services, Inc	90-0197	11/14/89
Sulzer Brothers Limited, Sulzer Brothers Limited, Bird Escher Wyss-Joint Venture Partnership	90-0214	11/14/89
Trammell Crow Equity Partners II, Ltd., British Coal Staff Superannuation Scheme Trustees Ltd., Pan-American Properties, Inc	90-0284	11/14/89
Trammell Crow Equity Partners II, Ltd., Committee of Managemt. of Mineworker's Pension Scheme, Pan-American Properties, Inc	90-0285	11/14/89
Kemper Corporation, Franklin Savings Corporation, Underwood, Neuhaus & Co., Incorporated	90-0297	11/14/89
Star Gas Corporation, The Edge Companies, Inc., Tri-County Gas & Appliance Company, Inc	90-0127	11/15/89
Corporate Capital Limited, Marshall S. Cogan, Color Tile, Inc	90-0195	11/15/89
Adia S.A., Inspectorate International A.G., Inspectorate International A.G	90-0285	11/15/89
W. Don Cornwell, Landmark Communications, Inc., KNTV, Inc	90-0305	11/15/89
Nucorp, Inc., United Capital Holding Company, United Capital Holding Company	90-0312	11/15/89
PacifiCorp, J.D. Sandefer, III, Sandefer Oil Company, Sandefer Properties, Inc	90-0237	11/16/89
PacifiCorp, Jeff D. Sandefer, General Sandefer Offshore Partnership	90-0236	11/16/89
Toshiba Corporation, Diasonics, Inc., Diasonics (NMR) Inc. and Diasonics Credit Corporation	89-2629	11/17/89
Saratoga Partners II, L.P., B.F. McKinney, Oxide and Chemical Corporation	90-0145	11/17/89
H. Douglas Barclay, Syracuse Supply Company, Syracuse Supply Company	90-0257	11/17/89
Delta Air Lines, Inc., Temasek Holdings (Pte) Ltd., Singapore Airlines Limited	90-0266	11/17/89
Temasek Holdings (PTE) LTD., Delta Air Lines, Inc., Delta Air Lines, Inc	90-0267	11/17/89
Falcon First Communications, L.P., First Carolina Cable TV, L.P., First Carolina Holdings, Inc	90-0324	11/17/89
Tandem Computers Incorporated, Vallco Park, Ltd., a California Limited Partnership, Vallco Park, Ltd., a California Limited Partnership	90-0335	11/17/89
Pioneer Financial Services, Inc., The Union Central Life Insurance Company, Manhattan National Life Insurance Corporation	90-0350	11/17/89
Texaco Inc., Cardon, an Arizona general partnership, Cardon Corporation	89-2719	11/20/89
Industriforvaltnings AB Ninnevik, John B. Williams, and John R. Williams, Tri-State Tractor Co	90-0191	11/20/89
Mesa Limited Partnership, Edisto Resources Corporation, Edisto Resources Corporation	90-0241	11/20/89
Presidio Oil Company, Olympia & York Development Limited, Home Petroleum Corporation	90-0262	11/20/89
Attwoods PLC, Mindis Industrial Corporation (U.S.) Inc., Mindis Industrial Corporation (U.S.) Inc	90-0263	11/20/89
GATX Corporation, William I. Koch, Petroport Terminal Corporation	90-0286	11/20/89
Dixons Group plc, Atari Corporation, The Federated Group, Inc	90-0341	11/20/89
Holman Enterprises, Bruce M. Hinlein, Lend Lease Cars Inc., a Delaware Corporation	90-0368	11/20/89
Holman Enterprises, General Motors Corporation, General Motors Acceptance Corporation	90-0417	11/20/89
Holman Enterprises, Chrysler Corporation, Chrysler Credit Corporation	90-0418	11/20/89
Mitsui Mining & Smelting Co., Ltd., Magnox Incorporated, Magnox Incorporated	90-0124	11/21/89
HEALTHSOUTH Rehabilitation Corporation, South Highlands Hospital Association, South Highlands Hospital Association	90-0179	11/21/89
Acadia Partners, L.P., Mrs. Harriet Hartmann, L&CP Holding Corporation	90-0265	11/21/89
The United Company, Westmoreland Coal Company, Central Supply Company of Virginia, Incorporated	90-0268	11/21/89
Torchmark Corporation, Homestake Mining Company, Fairmont Oil & Gas Company	90-0270	11/21/89
Ford Motor Company, Jaguar plc, Jaguar plc	90-0288	11/21/89
Ogden Corporation, ERC International, Inc., ERC International, Inc	90-0292	11/21/89
Dominion Bankshares Corporation, Signet Banking Corporation, Signet Bank/Virginia	90-0331	11/21/89
USGI Holdings, Inc., Weyerhaeuser Company, Weyerhaeuser Mortgage Company	90-0364	11/21/89
Conventry Corporation, Group Health Plan, Inc. Voting Trust, Group Health Plan, Inc	90-0180	11/22/89
McGraw-Hill, Inc., Tab Books, Inc., Tab Books, Inc	90-0185	11/22/89
McClatchy Newspapers, Inc., The News and Observer Publishing Company, The News and Observer Publishing Company	90-0271	11/22/89
Enron Corp., James G. LaBarbe, Jr., Westdelta Production Corp	90-0332	11/22/89
Howard P. Margulees, Superior Farming Company, Superior Farming Company	90-0352	11/22/89
First Chicago Corporation, Parker-Hannifin Corporation, Parker-Hannifin Corporation	90-0217	11/24/89
Norman M. Lear, Philip J. Lombardo, Citadel Communications Co., Ltd./Canadian Broadcasting	90-0353	11/24/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-28173 Filed 11-30-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR-17]

Availability of Final Versions of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of five of the final versions of the first 25 toxicological profiles prepared by ATSDR.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) requires that ATSDR compile a priority list of at least 100 hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL), and which are determined to pose the most significant potential threat to human health. The list identifying the first 100 hazardous substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866), as required by CERCLA section 104(i)(2)(A). Section 104(i)(3) of CERCLA further requires that the Administrator of ATSDR prepare toxicological profiles for the hazardous substances included on the priority list.

Notice of the availability of the first 25 draft toxicological profiles for public review and comment was published in the **Federal Register** on October 15, 1987 (52 FR 38340), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR-2. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, between 8:00 a.m. and 4:30 p.m. Monday through Friday except legal holidays.

Availability

This notice announces the availability of five of ATSDR's final toxicological profiles for the first 25 substances as mandated by CERCLA. Additional final profiles will be announced in the **Federal Register** as they become available. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, VA 22161:

Toxicological profile	NTIS order No.	CAS No.
Aldrin/Dieldrin	PB/89/214514/AS	309-00-2/60-57-1
Benzene	PB/89/209464/AS	71-43-2
Chromium	PB/89/236885/AS	7440-47-3
Selected PCBs	PB/89/225403/AS	
Aroclor:		
1260		11096-82-5
1254		11097-69-1
1248		12672-29-6
1242		53469-21-9
1232		11141-16-5
1221		11104-28-2
1016		12674-11-2
2,3,7,8-Tetrachlorodibenco-p-dioxin	PB/89/214522/AS	1746-01-6

Dated: November 27, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-28197 Filed 11-30-89; 8:45 am]

BILLING CODE 4160-70-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Following is the package submitted to OMB since the last publication on October 20, 1989.

(Call the Reports Clearance Officer on 202-252-5604 for a copy of package.)

Worksheet for the Integrated AFDC, Food Stamp and Medicaid Quality Control Reviews—FSA-4340—0970-0072—The integrated worksheet serves to document the findings of state quality control reviewers who review the correctness of a sample of eligibility decisions made by the states for the AFDC, Food Stamp and Medicaid programs. The findings are used to identify areas where corrective action is needed. The following represents the AFDC burden estimate only.

Respondents: State or local governments; Number of Respondents: 63,000; Frequency of Response: 1; Average Burden per Response: 11.0236 hours; Estimated Annual Burden: 694,487 hours.

OMB Desk Clearance Officer: Justin Kopca

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: November 20, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89-27894 Filed 11-30-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89N-0503]

Drug Export; Once-a-day Benylin Cold Controlled Release Capsule (Pseudoephedrine Hydrochloride 240 mg., USP and Chlorpheniramine Maleate 24 mg., USP)

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is annoucing that KV Pharmaceutical Company has filed an application requesting approval for the export of the human drug Once-A-Day Benylin Cold Controlled Release Capsule (Pseudoephedrine Hydrochloride 240 mg., USP and Chlorpheniramine Maleate 24 mg., USP) bulk to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockest Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contract person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contract person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-5073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register**) within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144, has filed an application requesting approval for the export of the drug Once-A-Day Benylin Cold Controlled Release Capsule (Pseudoephedrine Hydrochloride 240 mg., USP and Chlorpheniramine Maleate 24 mg., USP) in bulk, to Canada. This product is indicated for use for the temporary relief of nasal congestion due to the common cold, hay fever, or other upper respiratory allergies. Temporarily dries runny nose and relieves sneezing, itching of the nose or throat and itchy, watery eyes due to hay fever or other upper respiratory allergies. Temporarily reduces sneezing associated with the common cold. The application was received and filed in the Center for Drug Evaluation and Research on November 8, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant infomation on the application to do by December 11, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 22, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-28169 Filed 11-30-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Board scheduled to meet during the month of December 1989:

NAME: National Advisory Committee on Rural Health, Health Care Financing Work Group, HHS.

DATE AND TIME: December 11, 1989, 4:00 p.m.

PLACE: Office of Rural Health Policy, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

PURPOSE: The Work Group is concerned with financing issues related to rural health care delivery.

AGENDA: The meeting will be conducted through a telephone conference call. The Work Group will discuss items for inclusion in the agenda for the January meeting.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the discussion should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Agenda items are subject to change as priorities dictate.

Dated: November 27, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28168 Filed 11-30-89; 8:45 am]

BILLING CODE 4165-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1989:

NAME: National Advisory Committee on Rural Health, Health Services Delivery Work Group, HHS.

DATE AND TIME: December 4, 1989, 1:00 p.m.

PLACE: Room 14-22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

PURPOSE: The Work Group defines issues and makes recommendations on the priorities and strategies which should be considered regarding the delivery of health care services in rural areas.

AGENDA: This meeting will be conducted through a telephone conference call. The Work Group will discuss items for inclusion in the agenda for the January meeting.

* * * * *

NAME: National Advisory Committee on Rural Health, Health Professions Work Group, HHS.

BEST COPY AVAILABLE

DATE AND TIME: December 11, 1989, 1:00 p.m.

PLACE: Room 14–22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

PURPOSES: The Work Group is concerned with the supply and distribution of health personnel in rural areas.

AGENDA: This meeting will be conducted through a telephone conference call. The Work Group will discuss items for inclusion in the agenda for the January meeting.

Anyone requiring information regarding the subject Committees should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the above meetings should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: November 27, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–28171 Filed 11–30–89; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting; Correction

In **Federal Register** Document 89–27181 appearing at page 48031 in the issue for Monday, November 20, 1989. The January 22–24, 1990, meeting of the "National Advisory Committee on Rural Health, Health Care Financing Work Group" should read the "National Advisory Committee on Rural Health". Where "Work Group" is used, should read "Committee". All other information is correct as appears.

Dated: November 27, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–28170 Filed 11–30–89; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on November 3, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Statement for Determining Continuing Eligibility for Supplemental Security Income (SSI) Payments—0960–0145—The information collected on the form SSA–8202 is used by the Social Security Administration to determine an SSI recipient's continuing eligibility to receive those payments, as well as the amount of the payments to which he or she is entitled. The respondents are individuals whose eligibility for SSI payments is being redetermined.

Number of Respondents: 1,600,000.
Frequency of Response: 1.
Average Burden Per Response: 8 minutes.
Estimated Annual Burden: 213,333 hours.
OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: November 20, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–27611 Filed 11–30–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–N–48]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 1, 1989.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7228, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755–6300; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: November 22, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

[FR Doc. 89–27999 Filed 11–30–89; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–09–4332–09; FES 89–30]

Availability of Final Environmental Impact Statement; Yuma District Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Final Yuma District Wilderness Environmental Impact Statement.

SUMMARY: The Final Yuma District Wilderness Environmental Impact Statement assesses the environmental consequences of managing 22 wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) A "No Wilderness Alternative" for each wilderness study area; (3) A "Partial Wilderness Alternative" for ten wilderness study areas; and (4) An "Enhanced Wilderness Alternative" for two wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

Dead Mountains Northern Addition—1,815 acres; 1,815 acres nonsuitable
Dead Mountains Southern Addition—630 acres; 630 acres nonsuitable
Chemehuevi Mountains Addition—195 acres; 195 acres nonsuitable
Chemehuevi/Needles Addition—960 acres; 960 acres suitable
Needles Eastern Addition—465 acres; 465 acres nonsuitable
Crossman Peak—38,630 acres; 30,165 acres suitable, 8,465 acres nonsuitable
Mohave Wash—103,365 acres; 103,365 acres nonsuitable
Whipple Mountains Addition—1,380 acres; 1,260 acres suitable, 120 acres nonsuitable
Gibraltar Mountain—25,260 acres; 18,805 acres suitable, 6,455 acres nonsuitable
Planet Peak—17,645 acres; 16,430 acres suitable, 1,215 acres nonsuitable
Cactus Plain—70,360 acres; 62,325 acres suitable, 8,035 acres nonsuitable
Swansea—41,690 acres; 15,755 acres suitable, 25,935 acres nonsuitable
East Cactus Plain—13,735 acres; 13,735 acres suitable
Big Maria Mountains Northern Addition—415 acres; 415 acres nonsuitable
South Trigo Mountains—4,500 acres; 4,500 acres nonsuitable
Trigo Mountains—36,870 acres; 29,095 acres suitable, 7,775 acres nonsuitable
Kofa Unit 3 Southern Addition—3,400 acres; 3,400 acres nonsuitable
Kofa Unit 4 Northern Addition—1,900 acres; 1,380 acres suitable, 520 acres nonsuitable
Kofa Unit 4 Southern Addition—11,220 acres; 11,220 acres nonsuitable
Little Picacho Peak Addition—2,915 acres; 2,915 acres nonsuitable
Muggins Mountains—14,455 acres; 8,855 acres suitable, 5,600 acres nonsuitable

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council of Environment Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Impact Statement may be obtained from the District Manager, Bureau of Land Management, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th & C Street NW., Washington DC 20240;
Bureau of Land Management, Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014;
Bureau of Land Management, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365;
Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403.

FOR FURTHER INFORMATION CONTACT: Herman Kast, District Manager, Bureau of Land Management, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

Dated: November 22, 1989.

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89–27813 Filed 11–30–89; 8:45 am]

BILLING CODE 4310–32–M

[OR–050–4121–13; GPO–066]

Prineville District, Oregon; Realty Action; Correction

November 17, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Correction to **Federal Register** Notice OR–050–4121–13: GPO–033 dated October 24, 1989 published November 1, 1989 (54 FR 46133).

Please change: "The area described above aggregates approximately 2.101( ) acres in Sherman and Wheeler Counties, Oregon." to "The area described above aggregates approximately 2.101 ( ) acres in Sherman and Gilliam Counties, Oregon."

Please add the following legal descriptions to "A portion of the land described below will be used to equalize values and will also be acquired by the Federal Government."

T. 10 S., R. 20 E.,
Sec. 16: All;
Sec. 17: N½,N½S½,SE¼SW¼,S½SE¼.

Dated November 17, 1989.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 89–28195 Filed 11–30–89; 8:45 am]

BILLING CODE 4310–33

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: November 28, 1989.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperatives (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway, Inc.
(2) 333 Butternut Drive, DeWitt, NY 13214
(3) 333 Butternut Drive, DeWitt, NY 13214
(4) Ronald W. Pettee, Box 4853, Syracuse, NY 13221.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28181 Filed 11–30–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB 55; Sub 324]

CSX Transportation, Inc.; Abandonment in Thomas and Colquitt Counties, GA; Notice of Findings [1]

The Commission has issued a certificate authorizing CSX Transportation, Inc., to abandon its 15.9 mile line of railroad between Coolidge (milepost ANK–706.7) and Kingwood (milepost ANK–722.6) in Thomas and Colquitt Counties, GA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on

[1] The certificate in this proceeding was served November 16, 1989, but the Notice of Findings was inadvertently omitted from publication in the **Federal Register**. This notice corrects that omission.

the lower left-hand corner of the envelope containing the offer "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28179 Filed 11–30–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31562]

Union Pacific Railroad Co. & Missouri Pacific Railroad Co.; Trackage Rights Over Lines of Chicago & North Western Transportation Co. Between Fremont, NE, Council Bluffs, IA, and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR),[1] and Chicago and North Western Transportation Company (CNW) (collectively referred to as applicants) have notified the Commission of their intent to file an application seeking Commission approval under 49 U.S.C. 11343–45 of the acquisition of trackage rights by UP over the lines of CNW between Fremont, NE/Council Bluffs, IA, and Chicago, IL. The Commission finds this to be a significant transaction as defined in 49 CFR Part 1180. Applicants have proposed a procedural schedule, and the Commission invites interested parties to comment on it.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than December 18, 1989. Applicants' reply is due 10 days thereafter.

ADDRESSES: An original and 15 copies of all documents must refer to Finance Docket No. 31562 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31562, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents must be sent to each of applicants' representatives:

James P. Daley, Ronald J. Cuchna, Stuart F. Gassner, Law Department, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606

James V. Dolan, Paul A. Conley, Jr., Law Department, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179

Arvid E. Roach II, J. Michael Hemmer, Gregg H. Levy, David L. Meyer, William Rolleston-Daines, Richard G. Slattery, Covington & Burling, P.O. Box 7566, 1201 Pennsylvania Avenue NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: On October 27, 1989, applicants filed a notice of their intent to file an application seeking Commission approval under 49 U.S.C. 11343–45 of the acquisition of trackage rights by UP over the lines of CNW between Fremont, NE/Council Bluffs, IA, and Chicago, IL.[2] UP contracted for the trackage rights under agreements entered into in connection with the acquisition of control over CNW by Blackstone Capital Partners L.P. *See Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. Et Al.*, 5 I.C.C.2d 1015 (1989) (*Blackstone-CNW*).

The Commission finds that this is a significant transaction, as defined at 49 CFR 1180.2(b). It involves two Class I railroads and a major market extension. Because of the size and nature of the rail market involved, the proposed transaction is of regional and national transportation significance as defined in 49 U.S.C. 11345.

Applicants will use the year 1988 for purposes of their impact analyses to be filed in the application. They state that they intend to file their application on or about December 27, 1989. The application must conform to the regulations set forth at 49 CFR 1180, *et seq.*, and must contain all information required there for significant transactions, except as modified by advance waiver.

Applicants also filed a motion for protective order, a petition for waiver or clarification of railroad consolidation procedures, and a petition for adoption of schedule. The Commission is seeking comments now on applicants' proposed procedural schedule, as discussed below. The Commission addresses applicants' other requests in a separate decision.

Applicants' proposed procedural schedule is as follows:

December 27, 1989—Primary application filed.
January 26, 1990—Notice of acceptance of primary application published in the Federal Register.
February 26, 1990—Comments on primary application due except from United States Departments of Justice and Transportation (DOJ and DOT).
March 13, 1990—DOJ and DOT comments on primary application due.
March 26, 1990—Second lists of protective conditions due; responsive applications due; opposition to primary application due.
April 27, 1990—Notice of acceptance of responsive applications published in the Federal Register.
June 4, 1990—Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due.
July 2, 1990—Responses to government parties' evidence due; rebuttal in support of responsive applications due.
July 16, 1990—Hearing on all evidence (witnesses to be cross-examined only to the extent specific need is shown in order to resolve disputed issues of material fact); deadline for filing deposition excerpts.
July 25, 1990—Close of evidentiary record.
August 13, 1990—Opening briefs due.
August 27, 1990—Reply briefs due.
October 23, 1990—Decision due.

Applicants also propose the following discovery procedure: Immediately upon each evidentiary filing, the filing party shall place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a centrally located depository open to all parties, and shall make its witnesses available for discovery depositions. Any additional document discovery shall be informal and expedited. Access to documents subject to protective order shall be appropriately restricted. Parties seeking discovery depositions shall obtain approval from the Administrative Law Judge; the Judge shall be liberal in permitting depositions whenever needed to discover into pertinent issues. Parties are required to file relevant excerpts of deposition transcripts by July 16, 1990, in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve disputed issues of material fact.

We invite interested parties to submit written comment on the proposed schedule. Comments must be filed by December 18, 1989. Applicants may reply within 10 days thereafter.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: November 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28182 Filed 11–30–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub. 77x)]

Woodstock & Blocton Railway Co. and the Alabama Great Southern Railroad Co.—Abandonment and Discontinuance of Service Exemption—In Bibb County, AL

Woodstock & Blocton Railroad Company (WB) and The Alabama Great Southern Railroad Company (AGS) [1] have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for WB to abandon and AGS to discontinue operations over WB's 5.1-mile line of railroad between milepost 3.0–WB, at Vulco, and milepost 8.1–WB, at Blocton, Bibb County, AL.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 31, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 11, 1989.[4] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by December 21, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment and discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 6, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28180 11–30–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31540]

R.J. Corman Railroad Co./Memphis Line; Acquisition and Operation Exemption

R.J. Corman Railroad Co./Memphis Line (RJCM) has filed a notice of exemption to acquire and operate a 9.66-mile line of railroad owned by CSX Transportation, Inc. (CSXT), between milepost LF–128, near South Union, KY, and milepost LF–118.34, near Memphis Junction, KY.[1] The transaction was expected to be consummated on or after November 13, 1989.

Comments must be filed with the Commission and served on Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28311 Filed 11–30–89; 8:45 am]

BILLING CODE 7035–01–M

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[1] UPRR and MPRR are referred to collectively as UP.

[2] Applicants state that the application will also seek, as associated relief, Commission determinations that: (1) UP's corporate parent, Union Pacific Corporation, and its affiliates will not gain control of CNW as a result of the effectiveness of the trackage rights and certain additional contingent rights for which they contracted, subject to appropriate Commission action, in connection with the Blackstone-CNW transaction; and (2) the additional contingent rights do not require prior Commission approval or exemption before they may become effective.

UP also anticipates submitting related applications, pursuant to 49 U.S.C. 11103, for terminal trackage rights, including interchange rights, unless it reaches prior voluntary agreements with the pertinent carriers. UP expects to seek trackage rights over: (a) 20.8 miles of Indiana Harbor Belt Railroad Company track between Proviso, IL (milepost 35.98) and Blue Island, IL (milepost 15.2); (b) 1 mile of St. Charles Air Line track between a point near the Chicago River to a point near Calumet Avenue; (c) 5.4 miles of the CR&I Branch of Consolidated Rail Corporation between a point near 14th Street (milepost 0.0) and a point near 40th Street and Normal Avenue (milepost 5.4); and (d) 2.7 miles of Indiana Harbor Belt Railroad Company track between Blue Island (milepost 15.2) and Dolton Junction, IL (milepost 10.5).

[1] A subsidiary of Southern Railway Company. AGS jointly owns WB with CSX Transportation, Inc.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] CSXT was authorized to abandon service over this line in Docket No. AB–55 (Sub-No. 233X), *CSX Transportation, Inc.—Abandonment Exemption—Warren, Simpson, and Logan Counties, KY* (not printed), served September 29, 1989. CSXT notified the Commission that it exercised the abandonment authority as of October 10, 1989. By letter dated October 18, 1989, the Kentucky Heritage Council informed RJCM that it previously reviewed the historic resources on the line in connection with CSXT's abandonment and that, provided the line now remains in service, the instant transaction should not effect these resources.

DEPARTMENT OF JUSTICE

Importers of Controlled Substances; Registration

By Notice Dated September 22, 1987, and published in the Federal Register on September 28, 1987, (52 FR 36312), Diagnostic Products Corporation, 5700 West 96th Street, Los Angeles, California 90045 made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Tetrahydrocannabinols (7370)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: November 20, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 89-28106 Filed 11-30-89; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 8, 1989, Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxymorphone (9652)	II
Hydrocodone (9193)	II
Oxycodone (9143)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 2, 1990.

Dated: November 17, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-28105 Filed 11-30-89; 8:45 am]

BILLING CODE 4410-09-M

Lodging of a Consent Decree Pursuant to CERCLA; Royal N. Hardage et al.

In accordance with section 122 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622 and Department policy, 28 CFR 50.7, notice is hereby given that on November 21, 1989, a proposed consent decree in *United States* v. *Royal N. Hardage et al.* was lodged with the United States District Court for the Western District of Oklahoma in Civil Action No. 86-1401-P. The decree partially resolves claims of the United States brought under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, in connection with the Hardage waste disposal site located in Criner, Oklahoma.

Under the proposed Consent Decree, the settling parties agree to remediate the disposal area of the site by excavating drummed wastes and installing a soil vapor extraction system to remove volatile organic compounds from the disposal areas, as well as to reimburse the United States for a portion of its past costs expended in connection with this site. The United States will be seeking the remainder of the remedy recommended by the Environmental Protection Agency, as well as the remainder of its past costs, from non-settling parties.

The proposed Decree may be examined at the office of the United States Attorney for the Western District of Oklahoma, 4434 U.S. Courthouse, Oklahoma City, Oklahoma 73102; at the Region 6, Office of Regional Counsel, Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Dallas, TX 75202; and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $7.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Royal N. Hardage et al.*, DOJ Reference No. 90-7-1-30A.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-28288 Filed 11-30-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsiblities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Survey of Employees and U.S. Workers affected by the "50 Percent Rule" under the H-2A Program

Form No.	Affected public	Respondents	Frequency	Average time per response
Employer Survey	Employers	119	One-time	20 minutes
Worker Survey	Workers	322	One-time	15 minutes

119 Total hours

The Secretary of Labor needs information from those employers and U.S. Workers affected by the "50 percent rule" under the H-2A Program. Two surveys will be administered: one for approximately 119 employers in Idaho and Virginia and one for approximately 322 U.S. workers who worked for those employers between 1987 and 1989.

Extension

Employment Standards Administration

Annual Report of Earnings

1215-0136

Annually

Individuals or households

600 respondents; 100 total hours; 10 minutes per response; 1 form

Black Lung benficiaries annual report of earnings is used to adjust benefits disbursed for the preceding year and to estimate adjustments, if any, for the following year due to excess earnings.

Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study

1215-0090; CM-907; CM-933 and 933b; CM-988; CM-1159

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

On occasion

Form No.	Respondents	Average time per response
CM-907	6,500	20 min.
CM-933	13,000	5 min.
CM-933b	700	5 min.
CM-988	6,500	30 min.
CM-1159	6,500	15 min.

8,183 total hours

20 CFR part 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claim adjudication process. The medical specifications in the regulations have been formatted in a variety of forms to promote efficiency and accuracy in gathering the required data. These forms were designed to meet the need of establishing medical evidence.

Comparability of Current Work to Coal Mine Employment; Coal Mine Employment Affidavit; Affidavit of Deceased Miner's Condition 1215-0056; CM-913; CM-918; CM-1093

On occasion

Individuals or households

Form No.	Respondents	Average time per response
CM-913	900	30 min.
CM-918	100	10 min.
CM-1093	100	20 min.

500 total hours

Forms are used to help determine eligibility for benefits. CM-913 is completed by beneficiaries and compares non-coal mine work to coal mine work. CM-918 is completed by persons with knowledge of miner's coal mine employment to supplement evidence. CM-1093 is completed by persons or relatives with knowledge of deceased miner's medical condition only if medical evidence is insufficient.

Departmental Management

National Agricultural Workers Survey (NAWS)

Individuals or households; Farms; Businesses or other for profit

4,610 respondents; 57 minutes per response; 4,479 hours; 1 form

The Immigration and Nationality Act (INA) as amended by Immigration Reform and Control Act (IRCA) requires the Department of Labor and the Department of Agriculture to estimate the departure rate from Seasonal Agricultural Services (SAS) agriculture and to analyze information about wages, working conditions and recruitment practices. This survey will gather data necessary to make these estimates and carry out these analyses.

Office of the Assistant Secretary for Administration and Management

Supplemental Experience Statement

1225-0010; DL-1-2034

On Occasion

Individual or households; Federal agencies or employees

10,350 responses; 15,525 hours; average minutes per response 90;

1 form

This form is a supplement to the basic Federal employment application form (SF-171) to elicit specific job-related information from applicants to assure that their qualifications are accurately completely, and efficiently evaluated.

Employment and Training Administration

Internal Fraud Activities

1205-0187; ETA 9000

Annually

State or local governments

53 respondents; 424 total hours; 8 hrs. per respondent; 1 form

Unemployment Insurance internal fraud data increased automation of UI functions and temporary staff have heightened SESA vulnerability to internal fraud, making internal security

among the high priorities in the payment control area. ETA 9000 will help SESAs assess adequacy of internal controls and provide UIS with important data to assess national UI internal security operations.

Reinstatement

Office of Labor-Management Standards

Labor Organizations and Auxiliary Reports

1214–0001; OLMS 1214

On occasion, semi-annually, annually

Small Businesses or other organizations; Non-profit institutions; Businesses or other for-profit institutions; Businesses or other for-profit

Item No.	Report responses	Reporting time/factor	Reporting burden hrs.	Recordkeeping burden hrs.	Total burden
LM–1	801	:50	500	12	512
LM–1A	9,777	:20	3,259	195	3,455
LM–2	12,631	2:00	25,260	253	25,513
LM–3	30,473	:45	22,855	609	23,464
LM–8	264	:15	67	5	72
LM–10	238	:30	120	5	125
LM–15	916	:50	760	18	778
LM–15A	71	:20	20	2	22
LM–16	274	:20	92	5	97
LM–20	108	:20	80	3	83
LM–21	54	:30	30	2	32
LM–30	50	:30	25	2	27
S–1	170	:30	55	3	58
Simp. ann. rpt. format	4,149	:05	345	83	428
Total	49,836		53,499	1,197	54,696

The LMRDA requires unions to file annual financial reports, trusteeship reports, copies of their constitution and by laws. Under certain circumstances reports are required of union officers and employees, employers, labor consultants and surety companies. Filers are required to retain supporting records 5 years. Unions are required to retain election records 1 year.

Bureau of Labor Statistics

ES–202 State Operations Review

1220–0070;BLS–3030

Biennial

State or local governments

53 responses; 424 total hours; 8 hours per response; 1 form.

The ES–202 State Operations Review is the principal source of management information on quality and State conformance to BLS specified procedures in the collection and tabulation of the Quarterly Report on Employment, Wages and Contributions. The form is used by BLS regional office staff in their biennial interview with employment security officials to assess the status of the program.

Signed at Washington, DC this 28th day of November, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–28189 Filed 11–30–89; 8:45 am]

BILLING CODE 4510–27–M

BILLING CODE 4510–35–M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determinations

Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

VOLUME I:

Georgia	GA89–32	p.272a, p.272b
Georgia	GA89–33	p.272c, p.272d
Georgia	GA89–34	p.272e, p.272f

VOLUME I:—Continued

Pennsylvania	PA89–25	p.1016c, p.1016h

Modifications to General Wage

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I:

Connecticut	CT89–1 (Jan. 6, 1989)	p. 61, pp. 63–66
Florida	FL89–1 (Jan. 6, 1989)	p. 99, p. 100
Florida	FL89–18 (Jan. 6, 1989)	p. 145, p. 146
Georgia	GA89–3 (Jan. 6, 1989)	p. 211, pp. 211–214
Georgia	GA89–4 (Jan. 6, 1989)	p. 215, pp. 216–218
Georgia	GA89–32 (Jan. 6, 1989)	p. 272a, p. 272b
Georgia	GA89–33 (Jan. 6, 1989)	p. 272c, p. 272d
Georgia	GA89–34 (Jan. 6, 1989)	p. 272e, p. 272f
New York	NY89–2 (Jan. 6, 1989)	p. 683, pp. 684–685, pp. 688, 693
New York	NY89–7 (Jan. 6, 1989)	P. 737, pp. 738–739
New York	NY89–13 (Jan. 6, 1989)	p. 799, pp. 800–801
Pennsylvania	PA89–5 (Jan. 6, 1989)	p. 879, pp. 880–892
Pennsylvania	PA89–6 (Jan. 6, 1989)	p. 893, p. 896
Pennsylvania	PA89–23 (Jan. 6, 1989)	p. 1005, p. 1006
Pennsylvania	PA89–24 (Jan. 6, 1989)	P. 1011, p. 1012
Pennsylvania	PA89–25 (Jan. 6, 1989)	p. 1016a, p. 1016b
Pennsylvania	PA89–26 (Jan. 6, 1989)	p. 1016c, pp. 1016d–1016h
Virginia	VA89–14 (Jan. 6, 1989)	p. 1159, p. 1160

VOLUME II:

Arkansas	AR89–8 (Jan. 6, 1989)	p. 20a, p. 20b
Ohio	OH89–1 (Jan. 6, 1989)	p. 773, pp. 773–778, pp. 780–783
Ohio	OH89–29 (Jan. 6, 1989)	p. 869, p. 877

VOLUME III:

Arizona	AZ89–3 (Jan. 6, 1989)	p. 29, p. 30
North Dakota	ND89–2 (Jan. 6, 1989)	p. 229, pp. 230
Washington	WA89–1 (Jan. 6, 1989)	p. 363, p. 371

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 24th day of November, 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-27948 Filed 11-30-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 11, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 11, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 20th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Andrew T. Johnson Co., Inc. (Workers)	Boston, MA	11/20/89	11/9/89	23,615	Graphics, Blue Prints
Bruce Trucking, Inc. (Company)	Davis, OK	11/20/89	11/6/89	23,616	Haul Rock for Oil Companies
C.F. Industries, Inc.	Terre Haute, IN	11/20/89	10/6/89	23,617	Anhydrous Ammonia
Chrysler Corp. (Workers)	Sterling Heights, MI	11/20/89	10/31/89	23,618	Passenger Cars
Eaton Corp.—Fluid Power Div. (UAW)	Marshall, MI	11/20/89	11/7/89	23,619	Power Steering Pumps
F. Schumacher & Co. (ACTWU)	Miland Park, NJ	11/20/89	11/6/89	23,620	Assorted Silk Fabric
Foamex (Workers)	Corry, PA	11/20/89	9/29/89	23,621	Foam for Seats
(The) Home-Stake Royalty Corp. (Workers)	Tulsa, OK	11/20/89	11/6/89	23,622	Oil & Gas
ITT-SWF Auto Elec. No. Auenco (Workers)	Fayette, MS	11/20/89	11/8/89	23,623	Wire Harness Assemblies
Jay Scott Operations Div/Colt Firearms, Inc. (ACTWU).	Elmwood Park, NJ	11/20/89	11/6/89	23,624	Gun Grips
Lakeland Mfg., Inc. (ACTWU)	Sheboygan, WI	11/20/89	11/6/89	23,625	Men's Jackets & Coats
Plastic Mold Tool & Die (Company)	East Rutherford, NJ	11/20/89	10/24/89	23,626	Molds for Plastic Industry
Pleasent Dress Co. (ILGWU)	Lowell, MA	11/20/89	10/31/89	23,627	Ladies' Activewear & Dresses
Quaker Oats Co. (UAW)	Marion, OH	11/20/89	11/6/89	23,628	Pet Food
Reed & Barton Corp., Silversmiths, Div. (AFL-CIO).	Taunton, MA	11/20/89	11/8/89	23,629	Tableware
Shield Industries, Inc. (ILGWU)	Lowell, MA	11/20/89	10/31/89	23,630	Men's Sports Shirts
Skaff Mfg. Co. (ILGWU)	Lowell, MA	11/20/89	10/31/89	23,631	Ladies' Activewear & Dresses
TRW-Transportation-Electronic Div. (OCAW)	Knoxville, TN	11/20/89	10/20/89	23,632	Relays
Teknica, Inc. (Workers)	Houston, TX	11/20/89	11/3/89	23,633	Seismic Data
Wear-Ever (ABGWIU)	Chillicothe, OH	11/20/89	11/3/89	23,634	Aluminum Cookwear
XY Resources, Inc. (Workers)	Ardmore, OK	11/20/89	11/8/89	23,635	M.B. Relays Percision Sheet Metal

[FR Doc. 89-28190 Filed 11-30-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-23-M]

Englehard Corp.; Petition for Modification of Application of Mandatory Safety Standard

Englehard Corporation, P.O. Box 410, McIntyre, Georgia 31054 has filed a petition to modify the application of 30 CFR 56.14211(d) (blocking equipment in a raised position) to its Klondyke Mine (I.D. No. 09-00128), its Dixie Mine (I.D. No. 09-00475), its Gibraltar Mine (I.D. No. 09-00474), its Edgar Plant (I.D. No. 09-00359), its Toddville Plant (I.D. No. 09-00472), its Daveyville Plant (I.D. No. 09-00471), its Gordon Plant (I.D. No. 09-00231) located in Wilkinson County, Georgia, its Washington County Mine (I.D. No. 09-00127), its Scott Mine (I.D. No. 09-00832), its Gardner Plant (I.D. No. 09-00473) located in Washington County, Georgia and its Griffin Mine (I.D. No. 09-00131) located in Twiggs County, Georgia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or a device which prevents free and uncontrolled descent.

2. As an alternate method, petitioner requests a modification of the standard to allow personnel to be hoisted in approved buckets, suspended seats, or a boatswain's chair suspended from a cable in accordance with 29 CFR 1228.550(g) and 29 CFR 1910.28(j).

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1990. Copies of the petition are available for inspection at that address.

Dated: November 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-28192 Filed 11-30-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-169-C]

Soldier Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Soldier Creek Coal Company, P.O. Box 1, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Soldier Creek Mine (I.D. No. 42-00077) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the arrangement of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line sprinkler system to provide a safer more reliable system for combating underground belt drive fires as outlined in the petition.

3. In support of this request, petitioner states that the annual functional test of each water sprinkler system would be conducted in accordance with 30 CFR 75.1101-11.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1990. Copies of the petition are available for inspection at that address.

Dated: November 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-28191 Filed 11-30-89; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

Certificates Authorizing Employment of Learners at Special Minimum Wages

Notice is hereby give that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the knitted wear industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended).

Louis Gallet, Inc., Uniontown, PA: 5-12-89 to 5-11-90; 5 learners for normal turnover purposes. (Mens and ladies sweaters.)

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Bland Sportswear, Inc., Bland, VA: 7-22-89 to 7-23-90; 10 learners for normal labor turnover purposes. (Fleece shirts and children's & adults knit shirts.)

The learner certificates have been issued upon the representations of the employers which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment and that experienced workers for the learner occupations are not available.

The certificates may be annulled or withdrawn as indicated therein in the manner provided in 29 CFR part 528. Any interested persons may file written requests for reconsideration or review within 15 days after publication in the **Federal Register**.

Signed at Washington, DC this 17th day of November 1989.

Nancy M. Flynn,

Acting Administrator.

[FR Doc. 89-28193 Filed 11-30-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; requests for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before January 16, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or

a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–88–1 and N1–AFU–88–26). Routine and facilitative records relating to computer-communications systems.

2. Department of the Air Force (N1–AFU–90–1). Routine records relating to civilian personnel management and wage administration.

3. Department of the Air Force (N1–AFU–90–2). Over the counter medication requests.

4. Department of Agriculture, Commodity Credit Corporation (N1–161–89–1). Conference documents of the International Wheat Council and the International Wheat Agreement, 1930–1971. (Similar records held by the Department of State are scheduled for permanent retention.)

5. Department of the Interior, U.S. Geological Survey (N1–57–89–3). Photographic prints and selected negatives used by the Branch of Military Geology.

6. Department of the Interior, U.S. Geological Survey (N1–57–89–7). Analog seismic data maintained by the Branch of Seismology and Branch of Engineering Seismology and Geology, Menlo Park, California.

7. Nuclear Regulatory Commission (N1–431–89–4). Independent Spent Fuel Storage Installation Docket Files.

8. Tennessee Valley Authority, Governmental and Public Affairs (N1–142–89–6). Educational and promotional films determined during archival processing to lack sufficient archival value to warrant permanent retention by the National Archives.

9. Tennessee Valley Authority, Resource Development (N1–142–90–2). Reservoir operations support files.

Dated: November 27, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 89–28196 Filed 11–30–89; 8:45 am]

BILLING CODE 7515–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Foreign Government Discrimination in Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: This notice requests written submissions from the public concerning foreign government discrimination in procurement against United States products and services, for use in compiling the annual report on foreign discrimination in government procurement required by section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit a report on the extent to which foreign countries discriminate against United States products or services in making government procurements. In the annual report, the President is required to identify any countries that:

(i) Are Signatories to the GATT Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(ii) Are Signatories to the Agreement and are in compliance with the agreement but that maintain a significant and persistent pattern of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business, and whose products and services are acquired in significant amounts by the U.S. Government; or

(iii) Are not Signatories to the Agreement and maintain a significant and persistent pattern of discrimination in government procurement of products and services from the United States Government, and whose products and services are acquired in significant amounts by the U.S. Government.

The functions vested in the President under section 305 of the Trade Agreements Act were delegated to the United States Trade Representative (USTR) pursuant to section 4–101 of Executive Order 12661 (54 FR 779).

DATE: Submissions must be received on or before January 15, 1990.

ADDRESS: Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, and must include not less than twenty (20) copies. Submissions will be available for public inspection pursuant to 15 CFR 2003.5. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such and accompanied by a nonconfidential summary thereof.

FOR FURTHER INFORMATION CONTACT: Beverly Vaughan, Director for Government Procurement, Office of the United States Trade Representative (USTR), 600 17th Street, NW., Washington, DC 20506, (202) 395–3063, or Holly Hammonds, Associate General Counsel, USTR, (202) 395–7306.

SUPPLEMENTARY INFORMATION: Section 305 of the Trade Agreements Act requires the annual report to be submitted no later than April 30, 1990, and annually thereafter, to the appropriate Committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate Committees. The USTR is required to request consultations with any countries indentified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to section 305(d)(5) of the Trade Agreements Act, submissions are sought from any United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government. A separate submission is requested for each country indentified.

Each submission should provide in order the following general information: (1) The party submitting the information; (2) the U.S. products or services that are affected by the noncompliance or discrimination; and (3) the foreign country that is the subject of the submission, and the entities of the government whose practices are being described.

Each submission should provide in order the following specific information on non-compliance with the Agreement or on discrimination: (1) The circumstances under which discrimination has occurred, including information regarding the date and nature of procurement(s) where discrimination was encountered; (2) policies or practices which are deemed to be discriminatory (where possible, include copies of discriminatory laws, policies, or regulations); (3) the extent to which noncompliance with the code or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government. Wherever possible, submissions should address the extent to which countries identified: (i) Use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures; (ii) conduct what normally would have been one procurement as two or more procurements, in order to decrease the anticipated contract value below the Agreement's value threshold or to make the procurement less attractive to United States businesses; (iii) announce procurement opportunities providing inadequate time for U.S. businesses to submit bids; and (iv) employ specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements.

Finally, each submission should: (1) Identify requirements of the Agreement which are not being complied with by a country identified or describe how the country has maintained in government procurement a significant and persistent pattern or practice of discrimination; (2) identify the specific impact of the discriminatory policy or practice on United States business (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons); and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the United States Government.

David Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 89–28166 Filed 11–30–89; 8:45 am]

BILLING CODE 3190–01–M

President's Advisory Committee on the Points of Light Initiative Foundation

Final Meeting

ACTION: Notice of the final Meeting of President's Advisory Committee on the Points of Light Initiative Foundation.

SUMMARY: This notice announces an upcoming meeting of the President's Advisory Committee on the Points of Light Initiative Foundation. The purpose of the meeting is to complete work on the Committee's assigned task, which is the provision of recommendations to the President with respect to the legal structure of the Points of Light Initiative Foundation and the legislation needed to establish the Foundation. Specifically, the Committee will review the draft report, that reflects the decisions reached at the previous meeting, held on October 30. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. app. II, and its implementing regulation, 41 CFR part 101.6. The meeting is open to the press and public.

DATE: December 11, 1989, 9:30 a.m.

ADDRESS: Room 265, Hall of States, 444 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Committee Staff at (202–523–3349) or write to: 730 Jackson Place, NW., Washington, DC 20006.

David B. Rivkin, Jr.,

General Counsel for the Advisory Committee on Points of Light Initiative Foundation.

[FR Doc. 89–28124 Filed 11–30–89; 8:45 am]

BILLING CODE 3195–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27472; File No. 4–208]

Joint Industry Plan; Order Approving Amendments to the Intermarket Trading System Plan Relating to Boston Stock Exchange Regional Computer Interface, Pre-Opening Reports, Previous Day Consolidated Closing Price, and Third Participating Market Center Trade Throughs

The participants in the Intermarket Trading System ("ITS") [1] on September 21, 1989, submitted copies of proposed amendments to the restated ITS Plan created pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") to: (1) Recognize the use of the "Regional Computer Interface" by the BSE (Third Amendment); (2) allow for the pre-opening application to be based on the closing price on the NYSE or the Amex in certain circumstances (Eighth Amendment); (3) clarify that a specialist/market-maker who has sent a pre-opening response has a responsibility to seek a report of execution (Third Amendment); and (4) clarify the procedures for resolving third participating market center trade-throughs (Third Amendment).

Notice of the proposed amendments was given in Securities Exchange Act Release No. 34–27359 (October 13, 1989), 54 FR 43015. The Commission received no comments on the proposals. This order grants approval of the proposed amendments.

As noted above, the participants have proposed four amendments to the ITS Plan. First, the participants have proposed to recognize that the BSE will be utilizing the "Regional Computer Interface" ("RCI") as provided for in section 10(e) of the Plan, which is the automated linkage between the ITS and the Regional Switches that enable members located on the floor of the BSE and other regional exchanges to participate in ITS applications.

Second, the participants proposed to amend the ITS Plan to allow for the pre-opening application to be based on the closing prices on the NYSE or the Amex when, on a broad scale, consolidated closing prices are incorrectly displayed.[2]

[1] The ITS plan governs the operation of the ITS, which is a communication system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, the ITS links participant markets and provides facilities and procedures for: (1) Display of composite quotation information at each of the participant markets so that brokers are able to determine readily the best bid and offer available from any participant for a multiply traded security; (2) efficient routing of orders and administrative messages between market participants; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets.

The participants in the ITS are the American Stock Exchange, Inc. ("Amex"), Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Midwest Stock Exchange, Inc. ("MSE"), National Association of Securities Dealers, Inc. ("NASD"), New York Stock Exchange, Inc. ("NYSE"), Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[2] A pre-opening application must be sent through ITS whenever a market maker anticipates that the opening transaction for the day will be at a price that represents a change from the stock's "previous day's consolidated closing price," which is the last price at which a transaction in the stock was reported by Securities Information Automation Corporation ("SIAC"), a securities information processor, on the last previous day on which transactions in the stock were reported by SIAC, of more than a predetermined amount. To offset a pre-opening imbalance in a stock, a market maker will notify other participant markets of the situation by sending a message called a "pre-opening

Continued

In these situations, it is proposed that the Chairman of the ITS Operating Committee, upon the request of the Amex or the NYSE, may designate that the Amex's or the NYSE's closing prices, as appropriate, be substituted for purposes of the pre-opening application.

Third, the participants proposed to add section (c)(vi) to make it clear that a specialist/market-maker who responds to a pre-opening notification has a responsibility to seek from the opening market-maker a report of participation in the opening.[5] If, on or following trade date, the specialist/market maker does request a report through the ITS system as to his participation before 4:00 p.m. Eastern Time, and he or she does not receive a response by 9:30 a.m. Eastern Time on the next trading day, he or she need not accept a later report. If the specialist/market maker fails to so request a report, he or she must accept a report until 4:00 p.m. eastern time on the third trading day following the trade date.

Fourth, the participants proposed to amend Exhibit B of the ITS Plan, which is a model trade-through rule setting forth the rights and obligations of members of the participant markets, to clarify the procedures for resolving third exemption.[6] The proposed model rule change provides that when a member who initiates a third participant market trade through has sent a commitment to trade promptly following the trade through to satisfy the bid or offer traded through, and has preceded the commitment with an administrative message stating that the commitment was in satisfaction of the trade through, then such member will not have a further obligation to satisfy the trade through.

The Commission finds that approval of these amendments is consistent with the Act; in particular, with section 11A(a)(1)(D), which provides for the linking of all markets for qualified securities through communication and data processing facilities that foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. Further, the Commission finds that the amendments are consistent with Rule 11Aa3-2(c)(2) because they are necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the Act.

It is therefore ordered, pursuant to section 11A(a)(3)(B) of the Act that the amendments be, and hereby are, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Dated: November 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28177 Filed 11-30-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27473; File No. SR-AMEX-89-19 et al.]

Self-Regulatory Organizations; Order Approving Rule Changes by the American Stock Exchange, Inc., et al.

In the matter of: Release No. 34-27473; File Nos. SR-Amex-89-19, SR-BSE-89-02, SR-BSE-89-08, SR-CSE-89-03, SR-CSE-89-02, SR-MSE-89-04, SR-NASD-89-33, SR-NASD-89-41, SR-NYSE-89-28, SR-PSE-89-01, SR-PSE-89-07, SR-Phlx-89-04.

The American Stock Exchange, Inc. ("Amex"), Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Midwest Stock Exchange, Inc. ("MSE"), National Association of Securities Dealers, Inc. ("NASD"), New York Stock Exchange, Inc. ("NYSE"), Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"), who are participants in the Intermarket Trading System ("ITS") Plan [1], submitted proposed rule changes [2] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 to conform their ITS rules on member use of the ITS system to recent amendments to the ITS plan. [3] The proposed rule changes would: (1) Allow for the pre-opening application to be based on the closing price on the NYSE or the Amex in certain circumstances; (2) clarify that a specialist/market-maker who has sent a pre-opening response has a responsibility to seek a report of execution; and (3) clarify the procedures for resolving third participating market center trade-throughs.

The proposed rule changes were published in the **Federal Register.**[4] The Commission, however, received no comments on the proposals. This order grants approval of the proposed rule changes.

As noted above, the participants have proposed three changes to their rules. First, the participants have proposed to conform their rules to allow for the pre-opening application to be based on the closing prices of the NYSE or the Amex when, on a broad scale, consolidated closing prices are incorrectly displayed.[5]

notification" through ITS, and, to allow other markets a chance to respond, cannot open the particular stock until three minutes have elapsed.

[5] Market makers from other participant markets send "pre-opening responses," containing obligations to trade, including the number of shares and price that they are willing to trade, in response to a pre-opening application.

[6] A trade through occurs when a market maker purchases or sells any security at a price that is higher or lower than the price at which that security, at the time of such purchase or sale, is offered in one or more other participant markets. The trade through rule requires anyone who trades through another market's quotation to either break the trade or satisfy the other market's quotation, subject to certain exceptions.

[1] The ITS plan governs the operation of the ITS, which is a communication system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically the ITS links participant markets and provides facilities and procedures for: (1) display of composite quotation information at each of the participant markets so that brokers are able to determine readily the best bid and offer available from any participant for a multiply-traded security; (2) efficient routing of orders and administrative messages between market participants; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets.

[2] The file numbers of the proposed rule changes and the dates they were submitted are: SR-Amex-89-19 (August 8, 1989), SR-BSE-89-02 (April 12, 1989), SR-BSE-89-08 (September 19, 1989), SR-CSE-89-2 (June 29, 1989), SR-CSE-89-03 (September 15, 1989), SR-MSE-89-04 (July 13, 1989), SR-NASD-89-33 (July 12, 1989), SR-NASD-89-41 (September 5, 1989), SR-NYSE-89-28 (September 13, 1989), SR-PSE-89-01 (March 16, 1989), SR-PSE-89-07 (May 2, 1989), SR-Phlx-89-40 (June 15, 1989).

[3] The corresponding amendments to the ITS plan were published for comment and described in Securities Exchange Act Release No. 34-27359 (October 13, 1989).

[4] Securities Exchge Act Release Nos. 27288 (September 20, 1989), 54 FR 39598 (Amex); 26780 (May 3, 1989), 54 FR 20231 (BSE); 27282 (September 20, 1989), 54 FR 42809 (BSE); 27269 (September 20, 1989), 54 FR 39607 (CSE); 27283 (September 20, 1989), 54 FR 42810 (CSE); 27271 (September 20, 1989), 54 FR 39598 (MSE); 27272 (September 20, 1989), 54 FR 39599 (NASD); 27273 (September 20, 1989), 54 FR 39606 (NASD); 27275 (September 20, 1989), 54 FR 39609 (NYSE); 26781 (May 3, 1989), 54 FR 20224 (PSE); 27276 (September 20, 1989) 54 FR 39611 (PSE); 27278 (September 20, 1989), 54 FR 39612 (Phlx).

[5] A pre-opening application must be sent through ITS whenever a market maker anticipates that the opening transaction will be at a price that represents a change from the stock's "previous day's consolidated closing price," which is the last price at which a transaction in the stock was reported by Securities Information Automation Corporation ("SIAC"), a securities information processor, on the last previous day on which transactions in the stock were reported by SIAC, of more than a predetermined amount. To offset a pre-opening imbalance in a stock, a market maker will notify other participant markets of the situation by sending a message called a "pre-opening notification" through ITS, and to allow other markets a chance to respond, cannot open the particular stock until three minutes have elapsed.

In these situations, it is proposed that the Chairman of the ITS Operating Committee, upon the request of the Amex or the NYSE, may designate that the Amex's or the NYSE's closing prices, as appropriate, be substituted for the purposes of the pre-opening application.

Second, the participants proposed to conform their rules to add a section to make it clear that a specialist/market-maker who responds to a pre-opening notification has a responsibility to seek from the opening marketmaker a report of participation in the opening.[6] If, on or following trade date, the specialist/market-maker does request a report through the ITS system as to his participation before 4 p.m. Eastern Time, and he or she does not receive a repsonse by 9:30 a.m. Eastern Time on the next trading day, he or she need not accept a later report. If the specialist/market-maker fails to so request a report, he or she must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date.

Third, the participants proposed to change their rules to clarify the procedures for resolving third participating market center trade throughs to provide another exemption.[7] The proposed rule changes provide that when a member who initiates a third participant market trade through has sent a commitment to trade promptly following the trade through to satisfy the bid or offer traded through, and has preceded the commitment with an administrative message stating that the commitment was in satisfaction of the trade through, then such member will not have a further obligation to satisfy the trade through.

The Commission finds that approval of the proposed rule changes are consistent with section 6(b)(5) (Amex, BSE, CSE, MSE, NYSE, PSE and Phlx) and 15A(b)(6) (NASD) of the Act as they are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of free and open market and a national market system, and, in general, to protect investors and the public interest. Further, these rule changes are consistent with section 11A(a)(1)(d) of the Act which calls for the linking of all markets for qualified securites through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investor's orders, and contribute to the best execution of such orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority; 17 CFR 200.30-3(a)(29).

Dated: November 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28178 Filed 11-30-89; 8:45 am]

BILLING CODE 8010-01-M

[6] Market-makers from other participant markets send "pre-opening responses," containing obligations to trade, including the number of shares and price that they are willing to trade, in response to a pre-opening application.

[7] A trade through is when a market maker purchases or sells any security at a price that is higher or lower than the price at which that security, at the time of such purchase or sale, is offered in one or more other participant markets. The trade through rule requires anyone who trades through another market's quotation to either break the trade or satisfy the other market's quotation, subject to certain exceptions.

[Rel. No. 35-24990]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 24, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc. et al. (70-7113 and 70-7218)

Central and South West Corporation ("CSW"), a registered holding company, and CSW Credit, Inc. ("Credit"), its nonutility subsidiary company, both located at 2121 San Jacinto Street, Suite 2400, Dallas, Texas 75201, have filed a post-effective amendment to their application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior Commission orders dated July 19, 1985, July 31, 1986 and February 8, 1988 (HCAR Nos. 23767, 24157 and 24565) (collectively, "Commission Orders"), CSW was authorized to form Credit for the purposes of factoring the accounts receivable of CSW's subsidiaries and nonassociated utilities. Credit's ratio of debt to equity was to be maintained at approximately 80% debt to 20% equity. CSW and Credit are now seeking to change such requirement to a requirement that the equity ratio be no less than 15%. In addition, CSW and Credit are seeking an extension of the Commission Orders, which expire December 31, 1989, through December 31, 1990.

Eastern Utilities Associates and EUA Cogenex Corporation (70-7287)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and EUA Cogenex Corporation ("EUA Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, EUA's wholly owned nonutility subsidiary company, have filed a post-effective amendment to EUA's application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45(a) thereunder.

By order dated April 26, 1988 (HCAR No. 24628), EUA was authorized to make capital contributions and/or short-term loans to EUA Cogenex in an aggregate amount not to exceed $15 million and to effect short-term borrowings not to exceed $13.5 million under its existing credit lines to fund such loans and/or capital contributions. EUA Cogenex was authorized to effect short-term borrowings from EUA and directly from lending institutions under the EUA System's existing credit lines in an aggregate amount not to exceed $15 million. By order of the Commission dated September 29, 1988 (HCAR No. 24722), EUA was authorized to guaranty the short-term borrowings of EUA Cogenex from lending institutions in an aggregate amount not to exceed $15 million.

For the period through December 31, 1991, EUA requests that it be authorized to purchase the common stock of, and to make capital contributions and/or loans to, EUA Cogenex, such loans to be evidenced by the issuance of notes bearing interest at a rate equal to EUA's effective cost of funds from commercial lenders, as adjusted from time-to-time. The aggregate amount of such investments by EUA in EUA Cogenex is not to exceed $30 million ("Investments") at any one time outstanding.

In addition, EUA Cogenex proposes to effect borrowings under the EUA System's existing credit lines in an aggregate amount not to exceed $25 million ("Borrowings"), which EUA proposes to guaranty. Authorization of the Investments by EUA in EUA Cogenex and the Borrowings by EUA Cogenex under the existing credit lines would result in an authorized financing authority of $55 million for EUA Cogenex.

The Borrowings for EUA Cogenex and up to $15 million of EUA's Investments in EUA Cogenex will be financed by short-term borrowings under the EUA System's existing credit lines evidenced by the issuance of notes ("Notes"), which may be issued and renewed during the period ending December 31, 1991. (The remaining $15 million of EUA's Investments will be provided by the use of proceeds from the public offering of additional EUA common shares, which is the subject of SEC File No. 70-7511). Such Notes will mature in not more than nine months from their respective dates of issuance. The existing credit line arrangements include borrowing at the prime rate or money market rates, if lower, together with a commitment fee (if applicable) equal to ¼ of 1% multiplied by the credit line.

Central and South West Corporation (70-7479)

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, has filed a post-effective amendment to its application-declaration filed under Section 12(c) of the Act.

By order of the Commission dated January 21, 1988 (HCAR No. 24563) ("January Order"), CSW was authorized to purchase and retire, in open market and negotiated transactions through December 31, 1989, up to 10% (or 9,481,220 shares) of its common stock issued and outstanding. Through October 31, 1989, CSW has repurchased 746,882 shares of its common stock at an average price per share of $31.49 pursuant to the January Order.

CSW now requests authorization to continue the repurchase program through December 31, 1991 with respect to the remaining 8,734,338 shares. At September 30, 1989, XSW had 94,114,000 shares of common stock issued and outstanding. Assuming CSW's acquisition of the entire 8,734,338 shares of common stock at $36 per share, CSW's consolidated common equity to total capitalization ratio as of September 30, 1989, would have been reduced from 44.5% to 41.4%.

Eastern Utilities Associates et al. (70-7511)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its wholly owned electric public-utility subsidiary company, Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 40, 42 and 50 thereunder.

By Commission order dated July 28, 1989 (HCAR No. 24930), EUA was authorized, among othe things, to issue and sell, from time to time during the period ending May 31, 1990, up to 1,500,000 shares of EUA's common stock, par value $5 per share ("Additional Shares"), pursuant to the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22823). EUA was authorized to apply the proceeds from the issuance and sale of the Additional Shares to any or all of the following: (i) to repay short-term bank borrowings of EUA; (ii) to provide funds for, or to repay short-term bank borrowings or other debt incurred in connection with, EUA's offers to purchase all of the outstanding common stock of UNITIL Corporation and/or Fitchburg Gas and Electric Light Company; (iii) to pay underwriting costs and other expenses of the financing; and (iv) for other corporate purposes.

EUA now proposes, in addition to the use of proceeds previously authorized, to use up to $15 million to purchase the common stock of, and to make capital contributions and/or loans to, EUA Cogenex, such loans to be evidenced by the issuance of notes bearing interest at a rate equal to EUA's effective cost of funds from commercial lenders, as adjusted from time-to-time.

Yankee Atomic Electric Company (70-7580)

Yankee Atomic Electric Company ("Yankee Atomic"), 580 Main Street, Bolton, Massachusetts 01740, an electric public-utility subsidiary company of New England Electric System and Northeast Utilities, each a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Yankee Atomic proposes to enter into a revolving credit and term loan financing agreement ("Credit Agreement") with The Bank of New York ("BNY") and a syndicate of banks (collectively, "Banks") pursuant to which Yankee Atomic proposes to issue up to $40 million of notes ("Notes") at any one time outstanding. From January 1, 1990 to January 1, 1995, the borrowings will be on a revolving credit basis and will bear interest at Yankee Atomic's choice of several specified interest rates. Alternatively, Yankee Atomic would have the option under the Credit Agreement to invite the Banks to bid competitively for advances for requested maturities of up to 180 days. Yankee Atomic requests an exemption from competitive bidding requirements of Rule 50 pursuant to Subsection (a)(5) thereunder for the issuance of the Notes. Yankee Atomic will pay to the Banks a commitment fee, as specified in the Credit Agreement.

At the end of 1991 and on subsequent anniversary dates, Yankee Atomic will have the option, subject to the consent of the Banks, to extend the revolving credit period for no more than three additional one year periods. At the end of the revolving credit period (which shall not be later than January 1, 1998), the revolving credit will convert to a thirty month, amortizing term loan and will bear interest at Yankee Atomic's choice of several specified interest rates.

The Credit Agreement will also offer Yankee Atomic the option to enter into an interest rate swap with BNY during the life of the revolving credit commitment. Yankee Atomic states that in no event will the fixed rate of interest paid by Yankee Atomic exceed by more than 2.0% per annum the yield, at the time of entering into the swap agreement, on direct obligations of the U.S. Government having maturities comparable to the term of the swap arrangement. In return, the counterparty in the interest rate swap transaction would make payments to Yankee Atomic based upon the same principal amount and an agreed-upon floating interest rate index.

West Texas Utilities Company (70-7719)

West Texas Utilities Company ("WTU"), 301 Cypress, Abilene, Texas 79601-5820, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42, and 50 thereunder.

WTU proposes to issue and sell, from time-to-time through December 31, 1990, up to $75,000,000 aggregate principal amount of its first mortgage bonds ("New Bonds"). The New Bonds will have maturities of five to thirty years. Interest rates and the price to be paid to WTU for the New Bonds will be determined by competitive bidding pursuant to Rule 50 or in accordance with the alternative procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623).

WTU also proposes to acquire all or a portion of its outstanding First Mortgage Bonds Series M, 11¾%, Due August 1, 2015 ("Series M Bonds"), through a tender offer ("Tender Offer") to the holders of the Series M Bonds, for cash, prior to December 31, 1990.

WTU states that the proceeds from the sale of the New Bonds, will be applied (i) to fund the purchase of tendered Series M Bonds, (ii) to redeem on August 1, 1990, the date of expiration of the refunding protection of the Series M Bonds, any Series M Bonds not tendered in the tender offer, (iii) to repay short-term debt and (iv) for other general corporate purposes. It is anticipated that the New Bonds would be issued prior to the commencement of the Tender Offer. In the event the Tender Offer is consummated prior to the receipt of the proceeds of the New Bonds, WTU may be required to pay the purchase price of tendered Series M Bonds from internally generated funds or available short-term borrowings, pursuant to the order of the Commission dated April 5, 1989 (HCAR No. 24855).

Central Power and Light Company (70-7721)

Central Power and Light Company ("CP&L"), 539 North Carancahua Street, Corpus Christi, Texas 78401-2802, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42(a) and 50 thereunder.

CP&L proposes to issue and sell, from time-to-time through December 31, 1990, up to $170,000,000 aggregate principal amount of its First Mortgage Bonds and/or debentures ("New Securities"). The New Securities will have maturities of five to thirty years. Interest rates and the price to be paid to CP&L for the New Securities will be determined by competitive bidding pursuant to Rule 50 or in accordance with the alternative procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623).

CP&L also proposes to acquire all or a portion of its outstanding First Mortgage Bonds, Series V, 11⅝%, Due August 1, 2015 ("Series V Bonds"), and CP&L's 12% Debentures, Series 1985, Due September 1, 2015 ("Debentures") (collectively, "Securities") through a tender offer ("Tender Offer") to the holders of the Series V Bonds and Debentures, for cash, prior to December 31, 1990. The Tender Offer prices will include a premium over the market price of the Securities. The aggregate principal amount of Series V Bonds and Debentures outstanding are $85,000,000 and $85,000,000, respectively.

In the event the Tender Offer is consummated prior to the receipt of the proceeds of the New Securities CP&L may be required to pay a portion of the purchase price of tendered Securities from internally generated funds or available short-term borrowings pursuant to the order of the Commission dated April 5, 1989 (HCAR) No. 24855). In the event the proceeds from the issuance of the New Securities is greater than the amount required for the tender of the Securities, the remaining proceeds will be used for the repayment of short-term debt or for other general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28176 Filed 11-30-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17237; 812-7338]

National Bond Fund, National Securities & Research Corporation; Application

November 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: National Bond Fund (the "Fund") and National Securities & Research Corporation (the "Adviser") (collectively the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 17(b) of the 1940 Act from the provisions of section 17(a).

Summary of Application: Applicants seek an order exempting the sale of portfolio securities (the "Bonds") by the Fund to the Adviser from the prohibitions of section 17(a) of the 1940 Act.

Filing Dates: The application was initially filed on June 15, 1989, and an amendment was filed on August 25, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons mays request a hearing by writing to the SEC's Secretary and serving Applicant[s] with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1989, and should be accompanied by proof of service on the Applicant[s], in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES Secretary, SEC, 450 5th Street NW. Washington, DC 20549. Applicants, c/o Kenneth R. Meyers, Rogers & Wells, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Sheryl Siman Maliken, Staff Attorney (202) 272-2190 or Max Berueffy, Branch Chief, at (202) 272-3016.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations.

1. The Fund is a registered, open-end, diversified management investment company organized as a Massachusetts business trust. The Fund's objective is to provide an investment in a diversified group of bonds which are selected for high income. The Adviser acts as investment adviser to the Fund and places orders for the purchase and sale of the Fund's portfolio securities. The Adviser is an indirect wholly-owned subsidiary of Aitken Hume international PLC ("Aitken Hume"), a financial services firm based in the United Kingdom.

2. The Fund is governed by a Board of Trustees which oversees the management and affairs of the Fund and the services provided to the Fund by the Adviser. Mr. E. Virgil Conway ("Conway") is a member of the Board of

Trustees of the Fund. From 1969 until May 1, 1989, Conway was Chairman, Chief Executive Officer and President of The Seamen's Bank for Savings, FSB (the "Bank"), which is wholly owned by Seamen's Corporation, a savings and loan holding company (the "Holding Company"). Conway currently serves the Bank only in his capacity as a consultant. Since June, 1987 Conway has been a shareholder of the Holding Company.

3. The Fund has certain fundamental investment restrictions that are described in the registration statement for the Fund and are changeable only by vote of the shareholders. The Fund's Statement of Additional Information, dated July 8, 1988, contains the following fundamental investment restriction:

No security can be purchased or retained, if at the time any officer, trustee or shareholder of the issuer, owning more than ½ of 1% of the shares or other securities, or both, of such issuer, is an officer or trustee of the Fund.

4. The Fund currently holds Seamen's Bank for Savings, FSB, Medium Term Notes bearing interest at 15 ½%, due January 1, 1998, in the principal amount of $2,500,000 (the "Bonds"), which were purchased in June, 1987. The Holding Company has outstanding two classes of common stock, designated Class A Common Stock and Common Stock. At the time the Bonds were purchased, and at all times since then, Conway has held shares of Class A Common Stock amounting to over ½ of 1% of the shares of the Class A Common Stock issued and outstanding, and comprising over ½ of 1% of the shares of both Class A Common Stock and Common Stock issued and outstanding in the aggregate. Due to Conway's ownership of securities of the Holding Company, the purchase and holding of the Bonds violated the Fund's fundamental investment restriction described above. The Fund wishes to dispose of the Bonds to comply with its investment restrictions as contained in its registration statement in a timely manner.

5. The Bonds were purchased at 108% of par value for aggregate consideration of $2,700,000. Since 1987, the Bank's earnings have declined and the value of the Bonds and its other securities has dropped sharply. Based on current market conditions, and market quotations obtained by the Adviser and the Trustees of the Fund, bonds of the same class as the Bonds are currently quoted at prices substantially below par value. Given these conditions, the Trustees of the Fund and the Adviser recognize that it would be disadvantageous to dispose of the Bonds on the open market, which would certainly result in a large capital loss. In a written undertaking provided to the SEC, the Adviser has undertaken to reimburse the Fund for any such capital loss. However, the Trustees and the Adviser view the Fund's continued holding of the Bonds as undesirable because this would prolong the present situation in which the holding of the Bonds does not meet the constraints of the Fund's fundamental investment restrictions and contradicts the language of the Fund's Statement of Additional Information.

6. The Fund and the Adviser have determined that it would serve the best interests of all the parties for the Adviser to purchase the Bonds from the Fund at 108% of par value. This would eliminate a portfolio holding of the Fund which violates one of the Fund's fundamental investment restrictions. The purchase of the Bonds from the Fund by the Adviser has already received the necessary approvals of the Trustees of the Fund, Directors and Shareholders of the Adviser, and the Directors of Aitken Hume.

Applicant's Legal Analysis

1. Section 17(a)(2) of the 1940 Act prohibits an affiliated person of a registered investment company, acting as principal, knowingly to purchase from such registered company any security or any property. The Fund and the Adviser are "affiliated persons" of one another under section 2(a)(3) of the 1940 Act, and, for purposes of section 17(a), the Fund and the Adviser are affiliated persons. Thus, the Adviser's purchase of the Bonds from the Fund would violate section 17(a)(2).

2. Section 17(b) of the 1940 Act provides that the SEC, by order upon application, may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that:

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the federal securities law; and (3) the proposed transaction is consistent with the general purposes of the Act.

3. The Applicants believe that the proposed transaction is consistent with the standards set forth in section 17(b).

(a) The terms of the proposed purchase are reasonable and fair and do not involve overreaching on the part of any of the parties. The Adviser will pay consideration to the Fund consisting of cash in the amount of the Fund's cost of the Bonds, which will be substantially in excess of the current market value of the Bonds. The shareholders of the Fund will therefore be protected from any loss resulting from the sale of the Bonds.

(b) The proposed transaction is consistent with the policy of the Fund. One of the Fund's fundamental investment restrictions prohibits the purchase or holding of securities if an officer or trustee of the Fund holds more than ½ of 1% of the securities of the issuer. The transaction will enable the Fund to avoid a continued violation of this restriction.

(c) The proposed transaction is consistent with the general purposes of the Act to protect security holders of investment companies from inadequate disclosure, discrimination among holders of securities issued by investment companies, and self-dealing on the part of investment company affiliates to the detriment of security holders. The proposed transaction will enable the Fund to restore compliance with one of its fundamental investment restrictions, and bestow a further benefit upon the shareholders of the Fund, because it would pass the risk of capital loss on the disposition of the Bonds on to the Adviser. Applicants assert that granting the requested exemptive order would therefore be consistent with the best interests of the shareholders of the Fund.

Applicant's Conditions

Applicant agrees to the following conditions in connection with the relief requested:

1. *Best Price.* Prior to the transaction, the Fund and the Adviser will determine that the price to be paid to the Fund for the Bonds is higher than any other available price. To accomplish this, the Fund will advertise the Bonds on national bond broker wire services and solicit broker-dealers of corporate debt issues to obtain competitive bids. The Fund will document all such bids received and will proceed with the transaction only when it has received a sufficient number of bids to reasonably conclude that the price offered by the Adviser is the highest price available.

2. *Fair Price.* In the event the Fund is unable to obtain any bids for the Bonds, the Fund will gather other relevant data to insure that the Fund is receiving a fair price for the Bonds. Such other relevant data shall include prices at which recent sales of bonds of the same class as the Bonds have occurred and prices, as a percentage of par value, at which sales of similarly rated bonds of similar issuers have occurred. The portfolio manager for the Fund will identify savings institutions that have had earnings performance comparable to the Bank and will examine recent transactions in the comparably rated debt issues of those institutions. Only if the Fund is satisfied that the price offered by the Adviser compares favorably with the other data will the proposed transaction occur.

3. *Remittance of Future Profit.* The Adviser will pay to the Fund any net profit derived from any future disposition of the Bonds, whether resulting from sale, liquidation of underlying collateral, litigation involving the Bonds or the Bank, or any other source or manner of disposition. Such net profit shall consist of the amount realized by the Adviser less the amount paid to the Fund and costs incurred in connection with the disposition of the Bonds. This remittance of future profit to the Fund prevents the Adviser from obtaining any improper gain from the proposed transaction and allows the Fund's investors to retain the possibility of gain from the holding of the Bonds.

4. *Segregated Records.* The Fund and the Adviser will maintain segregated records adequate to document and support that the foregoing conditions have been fulfilled and to make certain that all necessary records of all actions taken in connection with the proposed transaction are prepared and permanently maintained.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28175 Filed 11-30-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 13 & 14, 1989. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, December 13 and 8:30 a.m. on Thursday, December 14, 1989. The agenda will include the following topics:

Wednesday, December 13, 1989

Information Systems Development
Bill of Rights Status Report
Commercial Preparers
Budget Allocation/Audit Resources
Information Returns Processing (IRP)
Human Resources Subgroup Report

Thursday, December 14, 1989

NAS Panel on Research on Taxpayer Compliance
Regulations Subgroup Report
Rulings Subgroup Report
Follow-up's, Q&A and News Items

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than December 8, 1989. Mr. Hilgen may be reached on (202) 566-4143 [not toll-free].

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, Internal Revenue Service, 1111 Constitution Avenue, NW., C:SD Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 [Not toll-free].

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-28104 Filed 11-30-89; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International Professional and Cultural Activities

The following announcement supersedes the one appearing in the Federal Register, Volume 54, Number 108 of Wednesday, June 7, 1989, pp. 24462-24463.

Summary

The Office of Private Sector Programs announces a program of grant-support to U.S. non-profit organizations for projects that link their international exchange interests with counterpart institutions/groups in other countries in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete Federal Register announcement prior to addressing inquiries to the Office.

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions. The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit institutions with counterpart institutions and organized groups in other countries. The Office gives high priority to project proposals that establish or promote linkages between American and foreign professional organizations and major cultural institutions.

Projects must include an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries.

USIS post consultation is strongly recommended for all purposes.

The Office of Private Sector Programs works with U.S. non-profit organizations on cooperative international group projects that introduce American and foreign participants to one another's traditions, arts, social, economic and political structures, and international interests. The Office will accord priority status to international projects involving leaders or potential leaders in various fields and professions, including leaders of cultural institutions, urban planners, jurists, specialized journalists (economic and cultural journalism, international affairs), business professionals, parliamentarians and economic officials. Since these programs focus on substantive issues of mutual interest, we recommend the coordination of these activities with academic institutions. The Office's projects are intellectual and cultural, not technical. Proposals falling in technical fields must have as their focus the role and function of the profession/activity within American society.

Each private sector activity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau shall maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement.

Proposals for projects taking place in the United States or oversees are

welcome for topics that involve any area of the world. However, the Office would encourage those that involve Eastern Europe, the Near East, South and Southeast Asia, and Africa.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Budget submissions should be presented in multi-column format and clearly display cost-sharing support of proposed projects. Programs generally range from one to six weeks; the duration of the entire grant period does not normally exceed one year.

Funding assistance for these discretionary grants is limited to participant travel and per diem requirements, with modest USIA funding available to cover administrative costs (salaries, benefits, other direct and indirect costs) which may not exceed 20% of the total funds requested. The grantee agency may wish to cost-share any of these expenses.

Creative Arts Competition

The Office of the Private Sector Program (E/P) also strongly encourages project proposals from U.S. non-profit organizations or institutions in the creative arts, including arts councils and humanities committees. Proposals should include an international exchange of persons component. The Office will accord priority status to projects involving international leaders of cultural institutions, cultural commentators and critics, arts administrators, specialists in historic preservation and art conservation, architects, and practicing artists in institutional projects that directly engage artists in the creation of their particular art forms. Thematic areas include: Music, Dance, Theater, Literature, Visual Arts, Folk Arts, Crafts and Folklore, Museum Exchanges, Historical Conservation, Supportive Arts Organizations, and Arts-oriented Philanthropies.

Proposed arts exchanges may operate either to or from the United States, preferably in both directions. Proposals that potentially lead to institutinal linkages will receive priority consideration in the review process.

Arts projects co-funded and co-sponsored by the E/P office would ideally enlist the participation of U.S. cultural officers in our embassies in the countries involved. In the case of proposals for bringing creative arts professionals to the United States, USIS officers abroad may nominate candidates for the proposed activities, while the creative arts grantees in the United States will make the final selection of award-winning candidates. The E/P office seeks professionalism, fairness, and some measures of balance in the distribution of awards among world areas.

The E/P office does not accept proposals for the support of performing arts tours, film festivals, independently-operating international competitions, exhibits, or academic arts programs. Only in exceptional cases, those that forge continuing collaboration between institutions, will conferences or symposia be considered.

Additional Guidelines and Restrictions

The E/P office requires co-funding with grantees in all projects. Proposals with less than 33% cost-sharing must have especially strong justification even to receive consideration.

E/P grants are not ordinarily given to support projects whose focus is purely technical, research projects, or professional training, independently-operating international competitions, youth or youth-related activities, or publications funding. Student and/or teacher/faculty exchanges or projects which are scholarly or academic in purpose should in most cases be directed to USIA's Office of Academic Programs. Youth or youth-related projects should be directed to USIA's Office of International Youth Exchange. Proposals focusing on technical aspects of science and technology do not fall within the domain of the Office and should be referred to relevant federal agencies for consideration.

Deadlines

The Office of Private Sector Programs will accept proposals from November 22, 1989 through March 2, 1990, for funding prior to October 1, 1990. Project proposals must be received a minimum of four months in advance of the activity date and will be accepted for review only when they are fully in accord with Project Proposal Information Requirements (OMB #3116–0175). For projects that would begin after December 31, 1990, competition details will be announced in the **Federal Register** on or about May 15, 1990.

Inquiries are welcome prior to submission of applications. Only under highly compelling circumstances will the Office of Private Sector Programs consider applications outside the above-mentioned timeframe.

The Office of Private Sector Programs offers the following additional guidance to prospective applicants:

1. As stated, the Office of Private Sector Programs guidelines indicate that full and complete proposals must be submitted a minimum of four months prior to the start of a program. This is necessary for two reasons. First, the Office's Congressional mandate may often be best served when U.S. private sector organizatioins work with U.S. Information Service (USIS) posts in other countries in developing projects that build ongoing institutional linkages between foreign and U.S. institutions. Projects usually serve these ends best when USIS officers have reasonable time and opportunity to lay the groundwork for successful educational and cultural programming. Second, the review process for proposals submited to USIA is multilayered and time-consuming. The four-month minimum timeframe stipulated between the receipt of proposals and the date of the proposed activity is just barely sufficient to make a project work for the benefit of all concerned.

2. Projects supported by the Office of Private Sector Programs are intended to support USIA goals abroad as well as to assist U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. While the Office welcomes clearly defined projects in the wide gamut of U.S. private-sector fields, it gives preferential consideration to projects that involve USIS posts in the nomination of foreign participants with a few toward building ongoing institutional linkages between foreign and U.S. institutions. Applicants should be aware that proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and that pre-selected participants will also be subject to USIS post review.

3. The Office of Private Sector Programs gives preferential consideration to proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

4. The Office of Private Sector Programs does not encourage proposals for the partial support of conferences. The Office evaluates such proposals in the light of benefits going beyond the context of the conference itself, most importantly their potential for creating and strengthening enduring linkages between foreign and U.S. organizations, and the extent to which topics of priority interest to USIA are discussed. Conference proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events of short-term issues. In every case, a substantial rationale for such meetings must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered.

5. Because of limited resources, the Office of Private Sector Programs encourages project proposals involving more than one country. However, single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome, provided they address the priority interests of the USIA.

For additional information and planning assistance, prospective applicants may wish to contact Dr. Raymond H. Harvey, or for creative-arts proposals, Dr. Anne-Imelda Marino Radice.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, or call (202) 485–7546.

Dated: November 13, 1989.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 89–28144 Filed 11–30–89; 8:45 am]

BILLING CODE 8230–01–M

Youth Exchange Program

The Bureau of Educational and Cultural Affairs, Youth Exchange Staff, of the U.S. Information Agency announces its intention to fund a series of educational and cultural projects during 1990 and seeks written expressions of interest and capability on the part of private sector organizations that wish to be considered for grants to conduct these projects. Please note that this is not a request for proposals. Interested, potentially qualified organizations will be sent letters inviting them to submit detailed proposals and guidelines for these submissions once the Agency has developed specific solicitations. In each instance at the time of solicitation a limited number of organizations will be competing with each other in bidding on a project design. The list of competing organizations will include, but not necessarily be limited to, those that respond to this invitation. The Agency may solicit proposals from additional organizations, which, in the Agency's discretion, it believes would be qualified.

Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose purpose is "to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life.

The purpose of the youth exchange program is interaction and interchange between foreign and American youth aged 15–30. All projects should be an opportunity for the foreign participants to share and present their ideas. Although there are a few two-way exchanges on this list, the typical project is a short-term (3–5 week) group activity for participants identified by USIS posts overseas to be conducted in several locations in the U.S. American young counterparts should be included in all aspects of the substantive program and in social and cultural activities. The components will vary depending on the theme, age of participants, length of stay, location of activities, and other specifications.

Respondents are hereby notified that budgetary constraints may prevent some of these projects from being funded. If a project is cancelled, all respondents will be informed in writing by the Agency.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the Internal Revenue Service, and be able to demonstrate expertise in a field relevant to the nature of the project on which they are bidding. Organizations with less than four years experience in the field of international exchange will only be eligible for grants under $60,000. Experience programming international visitors is desirable.

Review Process

Respondents expressing an interest in one of these projects will be sent a project design (an outline of the program and target budget figure) and will be invited to submit a proposal. Guidelines for preparing proposals will be sent at that time. Proposals submitted in response to these invitations are reviewed for legal and budgetary requirements by USIA offices responsible for these functions and for program content and cost-effectiveness by a grant review panel composed of USIA officers. The Associate Director for Educational and Cultural Affairs identifies and approves grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer.

Panels review proposals according to the following criteria and, on occasion, additional criteria relevant to the specific competition, as stated in the project description:

—Quality of substantive aspects of the proposed activities and their relevance to Agency priorities.
—Feasibility of the program plan.
—Applicant's experience relevant to the program goals.
—Multiplier effect/impact—the likely impact of the exchange experience on individuals, institutions and communities beyond the participants.
—Cost-effectiveness—greatest return on each grant dollar.
—Potential impact in the geographic area to which the project corresponds.
—Applicant's ability to conduct the program in the designated language.

Deadline

Interested organizations are requested to respond in writing by December 31, 1989, so that they may be included in limited solicitations for project designs now being prepared.

Additional Youth Exchange Program Offerings

A separate announcement is being published for exchanges of young people between the U.S. and the USSR and Eastern/Central Europe called the "Samantha Smith Memorial Exchange Program." Another is being prepared for young leader projects with Eastern Europe. For further information on these programs and on the projects listed below, please write to the Youth Exchange Staff at the address provided at the end of this announcement.

Europe

United Kingdom

A project for a small group of student leaders from key secondary schools in England, Scotland, Wales and Northern Ireland designed to introduce them to American society and the role of education in this society; also to explore important societal issues and concerns. It will be conducted either in the spring or fall of 1990.

Spain

A project for a small group (4–6) of talented young economists (aged 25–30)

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to examine European economic and trade issues, government efforts to promote market-oriented regional development, and the role of the entrepreneurial sector.

Italy

A group of young Italians (8–10 participants aged 18–25) interested in environmental issues will participate in a summer program for young American volunteers or interns in US national parks. The American grantee organization will work with the Italian National Parks Committee to arrange a reciprocal program for a group of Americans in Italy.

European Regional Projects

1. Foreign Affairs—A project for 12–15 university students and student leaders on security/defense issues (NATO), the changing landscape in Eastern Europe, and implications for East-West relations; and trade and economic issues, with special emphasis on Europe in 1992. The project may include a few participants from Eastern Europe.

2. Environment—A project for 12–15 graduate students and young professionals from Western and Eastern Europe interested in environmental issues. The emphasis will be on international policy concerns and diverse approaches to the solution of problems.

Latin America/The Caribbean

1. Community Development/Youth Leaders—This 3–4 week project will expose 10–12 young community leaders to grassroots development in the U.S., with a special focus on drug education/demand reduction/counseling. Project will be conducted in Spanish.

2. U.S.-Mexican relations—A 3-week project to send a group of U.S. university students interested in U.S.-Mexican relations to meet with Mexican students and young professionals. The American participants must be proficient in Spanish. The USIA grant will be limited to partial costs only.

3. Caribbean Drug Demand Reduction—This two-way exchange will involve approximately 10 Caribbean leaders and a similar group of Americans involved in drug awareness organizations for youth. Building upon a past youth exchange effort that resulted in the formation of a number of substance abuse youth organizations in the Caribbean, ten youth leaders from 5 Caribbean countries will come to the U.S. to participate in programs concerned with substance abuse education. Representatives of American programs will participate in similar programs in the Caribbean.

4. Dance in America—Eight young professional dancers or students of dance from Latin America will explore U.S. values, customs, and attitudes through the medium of dance during this 3–4 week project. Participants will attend master classes, take part in limited performances and meet and discuss dance and the arts with their peers. Escort interpreters will be provided.

5. U.S.-Mexican Border Affairs (Mexico)—10–12 Mexican university students and young professionals will explore issues and problems of international borders with a special focus on the U.S.-Mexican border and issues of immigration, the economy, drugs, and cultural interaction.

Africa

Depending on final funding, all projects will be from 3–4 weeks with 8–10 participants.

1. Women in Community Development—A project for women in community service organizations from francophone countries to explore health, family life, and voluntarism at the grassroots level. The program will be conducted in French.

2. Preservation of the Environment—A project for university students or young professionals involved in environment-related activities, including agriculture, aquatic environment, hazardous waste, chemical hazards, etc.

3. Science—A project for gifted students in science and math (upper high school level), to include substantial opportunities for interaction with peers, preferably during the academic school year, plus observation of scientific achievement in the private and public sectors relevant to the African situation.

Near East/South Asia

Maghreb

A project to bring junior faculty in the field of American Studies from Morocco, Algeria and Tunisia to the United States for about one month. The focus is on the American political system and history supported by discussion of the development of democratic institutions and current teaching methods in this field. The project will likely be conducted in French or Arabic.

Levant

A project to bring student leaders and young community activists from Egypt and other Arabic-speaking countries in the Levant to the United States for about one month. The focus is on the development of democratic political institutions and efforts to incorporate young people into political life. Participants would engage American experts, scholars and peers in an extensive dialogue on these issues as they relate to the U.S. and to the participating countries. Participants should be given an opportunity to observe American efforts to integrate new citizens from predominantly Muslim countries into the U.S. political culture. The project will likely be conducted in Arabic.

Pakistan

A project to bring one young Pakistani from each of that country's four provinces to the U.S. for three weeks. Winners of an essay competition about the works of Dr. Martin Luther King, their program will concentrate on methods used to achieve peaceful political change as demonstrated by Dr. King and the civil rights movement. The visitors will observe how young Americans begin to participate in the political system, and they will engage such peers in an extensive exchange of views.

South Asia

A project for university students and young leaders from India and neighboring countries. It will focus on the development of democratic political institutions and efforts to incorporate young people into political life. The participants will also examine the use of law to advance the public interest and drug abuse education and prevention programs.

Regional Project

A project to introduce students and young leaders from various countries in North Africa, the Middle East and South Asia to the ethnic diversity of American society. They will observe American efforts to integrate new citizens, especially from the Muslim world and South Asia, into U.S. society. They will exchange views with young Americans of varied backgrounds on our political system and relationships among racial and ethnic groups.

Egypt

A two-way exchange of young filmmakers. They will show their work to fellow practitioners in the host country and exchange views about current issues in film. The project will include educational site visits and opportunities to refine and develop professional skills.

East Asia/Pacific

Japan

A project to bring 10 young cultural leaders from such fields as dance (including choreographers), dram (including actors, directors, desig and technicians), filmmakers, museum curators, musicians (both performers and composers) and video to the U.S. for three-month internships at American cultural institutions. They will be assigned a "mentor" to help the personal side of getting established. The participants will contribute to a cultural presentation undertaken by the host institution. A long-term goal of this project is to enhance professional relationships between young performing artists in both countries. As needed, the program will include part-time English language study for the Japanese participants.

Regional on Business, Trade and Economics

A four-week project to bring young leaders from Japan, Korea, Australia, New Zealand, the ASEAN nations and other East Asia countries to the U.S. for a program on current economic trends and specific trade issues between the U.S. and the region. The program would be conducted in English.

ASEAN Project

A four-week project to bring young leaders (aged 20–30) from the ASEAN (Association of South East Asian Nations) to the U.S. for an in-depth exposure to American life, culture and institutions through professional meetings, university activities and short homestays. They will address specific issues between their countries and the U.S., meet American students and other young leaders and exchange views with a broad group of American peers and experts.

Australia and New Zealand Teacher Trainees

A project to bring secondary school teacher trainees from both countries, who plan to specialize in American Studies-related fields, to the U.S. in order to visit secondary schools and other educational institutions. They will observe the methods used by our teachers in American Studies, exchange views with educational professionals and discuss the views of young people in their countries with American peers.

Australia and New Zealand Student Editors

A project to bring the editors of student newspapers to the U.S. to meet their counterparts throughout this country. They will discuss the roles and influence of campus newspapers, current interests and concerns of students in both countries and meet Americans with a strong interest in their countries.

Multiregional Projects

These projects are for groups of 12–15 international participants for 3–4 week travel/observation programs in the U.S. USIS posts worldwide will be invited to submit nominations.

1. Journalism—The focus will be on openness ("glasnost") in these changing times. Freedom of the press will be the central issue, with a review of current thinking on the free flow of information. The effect on coverage and commentary of ethical considerations, national/local sensitivities and taboos, and comparative government rules will also be emphasized.

2. Environment—The project will provide a general overview of environmental policy concerns for young public administrators and graduate students of public administration. The issues include those that are the subject of worldwide debate, such as the global warming trend, air and water pollution, deforestation, the ozone layer, and development vs. conservation.

3. Trade, business and economics—A project for young economists, journalists specializing in economic coverage, and possibly young public administrators. The issues under consideration will include: trade imbalances, international debt, protectionism, the recent movement toward free market economies in historically socialist societies, and ethics in business.

4. International political affairs—American organizations with resources to put together diverse, well-balanced delegations of American youth interested in politics and international issues to participate in international youth activities and to program incoming delegations of leaders of similar youth are invited to identify themselves. Two possible events are the international youth conferences in Copenhagen and Helsinki during the summer of 1990.

For additional information, write to: The Youth Exchange Staff, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: November 15, 1989.

Csaba T. Chikes,

Director, Youth Exchange Staff.

[FR Doc. 89–28145 Filed 11–30–89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment Problems of Vietnam Veterans; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans' Affairs Advisory Committee on Readjustment Problems of Vietnam Veterans has been renewed for a two-year period beginning November 7, 1989 through November 6, 1991.

Dated: November 22, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–28125 Filed 11–30–89; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW., Washington, DC, January 9 through January 12, 1990. The session on January 9, 1990, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on January 10, 11, and 12, 1990, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the January 9 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 10–12, 1990, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and

competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b (c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Jon Peters, Program Manager, Rehabilitation Research and Development Service, Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420 (Phone: 202–233–5177) at least five days before the meeting.

Dated: November 17, 1989.

By direction of the Secretary.

Sylvia Chavez Long,
Committee Management Officer.
[FR Doc. 89–28102 Filed 11–30–89; 8:45 am]
BILLING CODE 8320–01–M

Wage Committee; Meeting

The Department of Veterans Affairs (VA) in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:
Thursday, January 11, 1990, at 2:00 p.m.
Thursday, January 25, 1990, at 2:00 p.m.
Thursday, February 8, 1990, at 2:00 p.m.
Thursday, February 22, 1990, at 2:00 p.m.
Thursday, March 8, 1990, at 2:00 p.m.
Thursday, March 22, 1990, at 2:00 p.m.

The meeting will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 17, 1989.

By Direction of the Secretary.

Sylvia Chavez Long,
Committee Management Office.
[FR Doc. 89–28103 Filed 11–30–89; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 230
Friday, December 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 5, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: Amendment to the Corporation's Budget for 1989 and the Corporation's Budget for 1990.

Memorandum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which amendments will require insured nonmember banks which fall within specified categories to file a notice with the Corporation prior to adding or replacing a member of the board of directors or employing or changing the responsibilities of an individual to a position as a senior executive officer.

Memorandum and resolution re: Proposed amendments to Parts 330 and 331 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage" and "Insurance of Trust Funds," respectively, which amendments will: (1) Restate some existing regulations so as to make them easier to understand and apply; (2) broaden the scope of the regulations to encompass a wider variety of deposit accounts offered by financial institutions and to take into account more complicated forms of deposit ownership; (3) codify longstanding staff interpretations of the Federal Deposit Insurance Act and the National Housing Act; (4) simplify the process of determining the extent to which deposit accounts are entitled to deposit insurance coverage; and (5) provide answers to some of the most frequently asked questions about deposit insurance.

Memorandum and resolution re: Amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which prohibit the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution after December 7, 1989, except on specific application to and waiver of the prohibition by the Corporation.

Memorandum and resolution re: Final amendments to Part 335 of the Corporation's rules and regulations, entitled "Securities of Nonmember Insured Banks," which amendments revise the Corporation's securities disclosure regulations issued under The Securities Exchange Act of 1934 in order to bring them into substantial similarity with those of the Securities and Exchange Commission.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments (1) continue the existing procedures for filing certified statements and making assessment payments for insured banks; and (2) prescribe new procedures for filing certified statements and making assessment payments for insured savings associations.

Memorandum and resolution re: Notice of withdrawal of proposed amendments to the Corporation's rules and regulations which would have been in the form of a new Part 354, entitled "Deposit Liabilities," and which would have proposed that certain liabilities of a bank are deposit liabilities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 28, 1989.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 89–28240 Filed 11–29–89; 8:55 am]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on December 5, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of the Inspector General:

Audit Report re:
The First State Bank, Abilene, Texas (5980) (Memo dated November 9, 1989)
Audit Report re:
Consolidated Financial Statements for Manning Savings and Loan Association, FSLIC as Receiver, and Subsidiaries as of September 30, 1987 (Memo dated October 12, 1989)
Audit Report re:
Consolidated Statement of Deficiency in Net Assets for Mainland, S.A., FSLIC as Receiver, and Subsidiaries as of September 30, 1988 (Memo dated October 27, 1989)
Audit Report re:
Financial Statements for First Savings and Loan Association of East Texas, FSLIC as Receiver, as of September 1988 (Memo dated October 27, 1989)
Audit Report re:
Inventory Closing Procedures, Addison Consolidated Office (Memo dated November 8, 1989)
Audit Report re:
Inventory Closing Procedures, Denver Consolidated Office (Memo dated November 8, 1989)

Audit Report re:
Denver Consolidated Office, Cost Center—307 (Memo dated November 8, 1989)

Discussion Agenda:
Application for Consent to Merge and Establish a Branch:

American Bank and Trust, Edmond, Oklahoma, an insured State nonmember bank, for consent to merge, under its charter and title, with Heritage National Bank, Edmond, Oklahoma, and for consent to establish the sole office of Heritage National Bank as a branch of the resultant bank.

Memorandum regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 28, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–28250 Filed 11–29–89; 11:47 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, December 6, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendment to Regulation D (Reserve Requirements of Depository Institutions) to index the low reserve tranche for transactions accounts, the reserve requirement exemption amount, and the reporting cutoff level for 1990.
2. Determination with respect to Switzerland under the Primary Dealers Act of 1988.
3. Cost of Federal Reserve notes in 1990.

Discussion Agenda

4. Proposed amendments to Regulation C (Home Mortgage Disclosure) to implement amendments to the Home Mortgage Disclosure Act regarding expanded coverage and additional disclosure of data concerning residential lending. (Published earlier for public comment; Docket No. R–0674)
5. Proposals regarding (a) clarifying amendments to Regulation CC (Availability of Funds and Collection of Checks); (b) Preemption determination under the regulation concerning funds availability laws of California; and (c) modifications to the Reserve Banks' notice of nonpayment service.
6. Proposed 1990 Federal Reserve Bank budgets.
7. Any item carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28280 Filed 11–30–89; 11:26 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, December 6, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28281 Filed 11–29–89; 11:26 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, December 7, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. NCUSIF Insurance Premium for 1990.
6. Final Rule: Sections 701.13 and 741.2, Supervisory Committee Audits and Verifications, NCUA's Rules and Regulations.
7. Final Amendment: Part 705, Community Development Revolving Loan Program for Credit Unions, and Section 701.32, Nonmember Deposits.
8. Update on Student Credit Union Pilot Program.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89–28305 Filed 11–29–89; 2:00 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 11:00 a.m., Monday, November 20, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, November 29, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89–28282 Filed 11–29–89; 11:47 am]

BILLING CODE 7545–01–M

Corrections

Federal Register
Vol. 54, No. 230
Friday, December 1, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP-300202; FRL-3643-1]

Daminozide; Revocation and Amendment of Tolerances and Food Additive Regulations

Correction

In proposed rule document 89-21162 beginning on page 37278 in the issue of Thursday, September 7, 1989, make the following corrections:

1. On page 37278, in the first column, under **SUMMARY**, in the fourth line, "regulatory" should read "regulator".

2. On page 37279, in the second column, in the table, in the third column, in the seventh line from the bottom, "0.2" should read "2.0".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 160

[OPP-300165A; FRL-3518-2]

RIN 2070-AB58

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Good Laboratory Practice Standards

Correction

In rule document 89-19087 beginning on page 34052 in the issue of Thursday, August 17, 1989, make the following correction:

§ 160.31 [Corrected]

On page 34069, in the first column, in section heading § 160.31, "facility" was mispelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42100B; FRL-3627-4]

Tributyl Phosphate; Final Test Rule

Correction

In rule document 89-18850 beginning on page 33400 in the issue of Monday, August 14, 1989, make the following corrections:

1. On page 33400, in the second column, under *A. Exposure*, in the 16th line, delete the commas after "Sloane" and "Inc."

2. On page 33401, in the first column, under *B. Testing*, in the second paragraph, in the third line, "teset" should read "test".

3. On the same page, in the second column, in the first complete paragraph, in the last line, "absoprption" should read " absorption".

4. On the same page, in the same column, under " 3. *Oncogenicity*", in the eighth line, "efforts" should read "effects".

5. On the same page, in the third column, under "*7. Neurotoxicity*", in the seventh line, "review" was mispelled.

6. On page 33403, in the third column, in the second line, "for" should read "are".

7. On page 33406, in the first column, in the sixth line, "rats" should read "rat".

8. On the same page, in the third column, in the sixth line, "of" should read "to".

9. On page 33408, in the first column, in the second paragraph, in the 10th line from the bottom, insert "the" after "in".

10. On the same page, in the same column, under *D. Persons Required to Test*, in the third line, "proceeding" should read "processing".

11. On the same page, in the second column, in the first complete paragraph, in the eighth line, "to" should read "or".

12. On the same page, in the same column, in the fourth complete paragraph, in the first line, delete, "rule to this subject", and add "subject to this rule".

§ 795.228 [Corrected]

13. On page 33411, in the first column, in § 795.228(a), in the first line the second "purpose" should read "purposes".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42099A; FRL-3645-8]

Methyl Ethyl Ketoxime; Final Test Rule

Correction

In rule document 89-21497 beginning on page 37799 in the issue of Wednesday, September 13, 1989, make the following corrections:

1. On page 37800, in the first column, under *A. Route of Administration*, in the second paragraph, in the fourth line from the bottom remove the "l" after "reproductive".

2. On page 37801, in the first column, in the third complete paragraph, in the fourth line from the bottom, "sex-relinked" should read "sex-linked".

3. On the same page, in the second column, in the first paragraph, in the 12th line, "tests" should read "testes".

4. On the same page, in the same column, in the same paragraph, in the fifth line from the bottom, "not" should be removed.

5. On the same page, in the third column, in the third complete paragraph, in the first line, "commented" should read "comments".

6. On the same page, in the same column, in the same paragraph, in the third line, "tisses" should read "tissues".

7. On page 37802, in the second column, in the second complete paragraph, in the fourth line from the bottom, "approoach" should read "approach".

8. On the same page, in the third column, in the second complete paragraph, in the last line, "mutagenci" should read "mutagenic".

9. On the same page, in the same column, in the third complete paragraph, in the third line, "tests" should read "testes".

10. On page 37803, in the third column, under *B. Required Testing and Test Standards*, in the second line, "preamble" was mispelled.

11. On the same page, in the table at the bottom, in the third column, "Reporting deadline for final report", in the sixth line, "18/17" should read "14/17".

12. On page 37804, in the second column, under *C. Test Substance*, in the third line from the bottom, "teting" should read "testing".

13. On the same page, in the third column, in the third line, "Processor" should read "Processors"

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62079; FRL 3638-2]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

Correction

In notice document 89-20575 beginning on page 36166 in the issue of Thursday, August 31, 1989, make the following correction:

On page 36168, in the second column, in the first complete paragraph, in the fourth line from the bottom, "Eighteen" should read "Fifteen".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-330; RM-6210, RM-6304, RM-6473]

Radio Broadcasting Services; Gadsden, Holly Pond, and Attalla, AL

Correction

Rule document 89-26639 beginning on page 47361 in the issue of Tuesday, November 14, 1989, was published incorrectly as a proposed rule in the rule section.

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federal register

Friday
December 1, 1989

Part II

Environmental Protection Agency

40 CFR Part 35
Technical Assistance Grants to Groups at National Priorities List Sites; Amendments to Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3555-9]

Technical Assistance Grants to Groups at National Priorities List Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendments to the interim final rule with request for comments.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), the Environmental Protection Agency (EPA or the Agency published in the **Federal Register** on March 24, 1988 (53 FR 9736) an Interim Final Rule (IFR) for the Technical Assistance Grant Program. The IFR detailed the specific requirements for citizens' group to obtain technical assistance grants. EPA stated that publication of the rule as an IFR with an immediate effective date allowed the Agency to begin accepting applications from citizens' groups for financial assistance without delay, while simultaneously accepting comments on, and developing the Final Rule.

Today EPA is publishing amendments to the IFR regarding the Technical Assistance Grant Program in order to foster greater participation of citizens' groups in the grant program. The Agency has benefitted from its early experience with the grant program and the public comments on the IFR and has decided to make immediate changes to the program. Thus, EPA has determined that publication of amendments to the IFR at this time will help streamline the grant award process while allowing the Agency the opportunity to continue to evaluate the Technical Assistance Grant Program, to accept public comments on the amendments to the IFR, and to proceed with the development of the Final Rule.

DATES: *Effective Date:* December 1, 1989.

Comments: Written comments must be submitted on or before January 30, 1990.

ADDRESSES: Written comments must be submitted to: Superfund Docket Clerk, Office of Emergency and Remedial Response (OS-240), Room M 2447, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments on today's amendments to the IFR must identify the regulatory docket as follows: "Docket CERCLA 117(e), Technical Assistance Grant Regulation."

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund docket located on the second floor of the Mall (Room M 2447) at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR part 2, a reasonable fee may charged for copying services.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Office of Emergency and Remedial Response, OS-220, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (202) 382-2460 or the RCRA/Superfund Hotline from 8:30 a.m. to 7:30 p.m., Monday-Friday, toll free at 1-(800)-424-9346 or in Washington, DC at 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Authority
  B. Background of the Rulemaking
II. Responses to Major Public Comments on Issues Being Reconsidered in the Amendments to the IFR
  A. The 35 Percent Matching Funds Requirement
  B. The 15 Percent Cap on Administrative Costs
  C. Incorporation
  D. Language Clarification
III. Existing Grants
IV. Regulatory Analyses
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act
V. Supporting Information

I. Introduction

A. Authority

These amendments to the IFR are issued under the authority of section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, hereinafter cited as CERCLA, 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting information related to Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order No. 12580 delegated to EPA the authority to implement section 117(e) in consultation with the Attorney General.

B. Background of the Rulemaking

As background to this rulemaking, pursuant to section 117(e), EPA published in the June 10, 1987 **Federal Register** (52 FR 22244) an Advance Notice of Rulemaking (ANRM) which discussed and solicited comments on several issues and various approaches that EPA was considering for accepting and evaluating applications, and for awarding and managing technical assistance grants. EPA stated that it would consider those comments in formulating the IFR.

After careful consideration of the public comments on the ANRM, EPA published the IFR in the March 24, 1988 **Federal Register**. The IFR detailed the specific requirements for obtaining technical assistance grants. The IFR enabled EPA to issue grants immediately while continuing to receive comments that the Agency stated that it would consider in the development of the Final Rule.

The Agency has benefitted from its early experience with the Technical Assistance Grant Program and has determined that certain changes need to be made immediately while the Final Rule is being developed. The Agency is issuing today amendments to the IFR to encourage more citizens' groups to participate in the Technical Assistance Grant Program and to elicit further input by the public into the development of the Final Rule.

A total of 42 comments were received in response to the IFR. Approximately two-thirds of the commenters stated that the regulations made the Technical Assistance Grant Program overly restrictive. This view was also reflected in two letters from members of Congress to the EPA Administrator: one dated September 15, 1988 signed by 10 Senators and another letter dated June 10, 1988 signed by 49 Representatives. These letters have been submitted to the Superfund Docket and are now part of the official record for the development of the Final Rule. The letter from the 49 Representatives expressed the view that the IFR, as written, would "significantly impede the ability of citizens to receive grants and use the funds in ways consistent with the intent of Congress." The letter from the 10 Senators stated that, "We believe that most 'Superfund Communities' will find the program unnecessarily difficult to use unless major changes are made to these regulations. The current regulations: (1) Discourage groups from applying; (2) unnecessarily complicate the already difficult task of obtaining a technical advisor(s); and (3) excessively restrict the uses of the Fund."

Moreover, since publication of the IFR, the Agency has learned through experience implementing the program that certain requirements of the IFR tend to dissuade citizens' groups from applying for technical assistance grants. This experience supports the statements made by the formal commenters that the Technical Assistance Grant Program is, in their view, overly restrictive and, therefore, citizens' groups are discouraged from submitting applications.

Therefore, as a result of EPA's internal review of the program, public comments, and program experience, the Agency has concluded that certain immediate changes to the IFR need to be made. The Agency believes that these changes will promote greater participation of citizens' groups in the grant program and facilitate the use of technical assistance grants at Superfund sites. Today EPA is amending the following sections of the IFR with this rule: (a) the 35 percent match required of recipient groups as discussed in § 35.4085(a); (b) the 15 percent cap on administrative costs as set forth in § 35.4085(e); and (c) the requirement for incorporation as discussed in § 35.4020.

It should also be noted that elsewhere in the March 24, 1988 **Federal Register** (53 FR 9753), EPA published an Advance Notice of Rulemaking (ANRM) to solicit comments from the public on a proposal to provide technical assistance grant applications and/or recipients with the services of an Administrative Services Contractor (ASC). It was stated that these services could include both assistance in preparing grant applications and the procurement of technical assistance, and contract management.

In light of the negative public comments, the Agency has decided not to pursue the ASC concept further. As an assistance alternative, the Agency has provided additional personnel, through its Senior Environmental Employees (SEE) Program, to assist the EPA Regional Offices in administering the Technical Assistance Grant Program. With the addition of SEE Program employees, the EPA Regional Offices are able to provide more assistance to citizens' groups than they would otherwise.

II. Responses to Major Public Comments on Issues Being Reconsidered in the Amendments to the IFR

The Agency received comments from a wide range of interested parties, including State and Federal legislators, lawyers, consultants, academicians, national and State environmental groups, State agencies, political subdivisions of a State, community groups and industry. The issues under consideration in today's rulemaking that were addressed by these commenters and EPA's responses to them are described below.

A. The 35 Percent Matching Funds Requirement

Section 117(e)(2) of CERCLA states that "[e]ach grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility."

The Agency stated at 53 FR 9743 that this language clearly expressed the intent of Congress that the affected community's ability to pay should affect the size of the match for the technical assistance grant. In the IFR, EPA set the matching funds requirement at a figure of 35 percent of total project costs. EPA invited comments on how to develop a workable system for determining the matching share based on financial need and other factors for inclusion in the Final Rule.

However, EPA believes that the 35 percent matching funds requirement has been an impediment to citizens' groups applying for technical assistance grants and that a reduction in the matching funds requirement will encourage formerly reluctant groups to apply. The Agency has arrived at this conclusion based on the following.

Every commenter who addressed this issue stated that the 35 percent matching funds requirement is excessive. Several recommended that it be set at 20 percent; while others suggested that even 20 percent would be difficult for citizens' groups to raise and offered variations. Some suggested a lenient waiver policy instead.

Several members of Congress expressed the same concerns. For example, the September 15, 1988, letter of the 10 Senators stated that "[T]he 35 percent match required of recipient groups is excessive. The figure must be lowered to 20 percent, which is the minimum level specified in the law."

EPA's experience with the program, public comments, and comments from EPA Regional personnel indicate that the 35 percent matching funds requirement has served as an impediment to citizens' groups applying for a technical assistance grant, especially those groups with few financial resources—the very groups that the grant program was designed to help. Even citizens' groups from more affluent communities have had trouble raising the 35 percent "match" of the total project costs. For example, for a $50,000 grant, which would amount to 65 percent of the total project funds, citizens' groups were required to provide the remaining $26,923 ($50,000 of Federal funds represents 65 percent of the total project funds—or $76,923—which would require a 35 percent "match" of $26,923 from the grant recipient in cash or in-kind contributions).

In today's amendments to the IFR, the Agency has determined that each grant recipient must contribute 20 percent, instead of 35 percent, of the total project costs. For example, with a $50,000 grant, which would amount to 80 percent of the total project funds, citizens' groups will be required to provide the remaining $12,500. ($50,000 of Federal funds represents 80 percent of the total project funds—or $62,500—which would require a 20 percent "match" of $12,500 from the grant recipient in cash or in-kind contributions.)

B. The 15 Percent Cap on Administrative Costs

In formulating the IFR, the Agency was concerned with the purposes for which technical assistance grant funds would be used. The Agency, for example, stated in the Preamble to the IFR at 53 FR 9743 that "In order to ensure the best use of limited technical assistance grant funds, costs of administering the grant are allowable to the extent that they do not exceed 15 percent of total project costs."

The Agency continues to be concerned with the uses of technical assistance grant funds but has determined, based upon experience and public comment, that most of the eligible goods and services for in-kind contributions fall within the administrative category. Citizens' groups tend to be able to meet the administrative portion of the matching funds requirement but have had difficulty in meeting the non-administrative portion. EPA has, therefore, concluded that the elimination of the 15 percent cap on administrative costs will enable citizens' groups to meet their matching funds requirement without having to ask for a waiver of the remaining 5 percent. The Agency believes that this will encourage greater participation of citizens' groups in the Technical Assistance Grant Program.

C. Incorporation

In formulating the IFR, the Agency determined that each grant recipient must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant was provided in order to receive a technical assistance grant. In the Preamble to the IFR at 53 FR 9740, the Agency stated that EPA's analysis concluded that incorporation offers advantages to both recipients and EPA, and does so at relatively little cost to both.

As set forth at § 35.4020(b) of the IFR, the citizens' group receiving a technical assistance grant must be a non-profit corporation that includes all the individuals and groups that joined in applying for the grant and was incorporated for the purpose of addressing the Superfund site for which the grant was to be awarded. At the time of the award, a recipient must either be incorporated or demonstrate that it has taken all necessary and appropriate actions to incorporate. Thus, applicants are not required to be incorporated at the time that the application is submitted; only recipients of technical assistance grant awards must be incorporated. However, the recipient must submit proof that the group had been incorporated by the State no later than the time of the group's first request for reimbursement for costs incurred.

The Agency has considered further those situations where the existing regulation requires an incorporated group to reincorporate for the purposes of the Technical Assistance Grant Program. Several commenters suggested this requirement could be overly restrictive in some circumstances.

The Agency has determined that in situations where a group is already incorporated with a broader mandate than addressing the site and has a substantial history of involvement at the site, the group need not reincorporate for the purpose of addressing the problems at a Superfund site. The IFR is, therefore, amended to permit a grant to an incorporated group having a history of substantial involvement at the site and if the corporation includes all the individuals and groups that joined in applying for the grant.

D. Language Clarification

Section 35.4035 of the IFR set out the evaluation criteria EPA will use in reviewing tag applications. One of the five criteria is representation of the groups and individuals affected by the site. Commenters have asked for clarification of what the Agency considers to be a "representative" group.

The Agency's intent is to make technical assistance available to a broad range of affected individuals in the community. This would include residents, other property owners, recreational and environmental interest groups, and any others (except, of course, potentially responsible parties, who are ineligible under § 35.4030) who believe their health, property values, recreation, local ecological balance, or aesthetic appreciation of their community to be diminished by the site. EPA believes that groups promoting a single interest (e.g., economic, environmental, or societal) to the exclusion of other interests do not represent the full range of community interests. Such groups exclude community members who are legitimately affected by the site, but who do not necessarily support the views of mission of the interest group. Accordingly, EPA will give preference to groups representing a diversity of community interests which require objective information from independent advisors to understand how the site and the cleanup activities affect their well-being.

The Agency stated in the Preamble to the IFR at 53 FR 9743 that "[C]osts associated with disputes with the Agency or challenges to final Agency decisions (e.g., Records of Decisions) are not allowable since this also would be inconsistent with Congressional intent of 'interpreting information'."

The IFR at § 35.4055(a)(7) prohibits the use of technical assistance grant funds for "conducting disputes with the Agency." This phrasing has been misconstrued as requiring technical assistance grant recipients to agree with EPA on every issue and decision. In fact, the provision is not meant to inhibit citizens from disagreeing with the Agency on any issue. It does mean, however, that if a citizens' group is in a dispute with the Agency as to whether it has managed its grant properly, technical assistance grant funds may not be used during the formal dispute resolution process outlined in 40 CFR Part 30, Subpart L. For example, should the Agency determine that a certain cost for which the citizens' group seeks reimbursement is an unallowable cost under the technical assistance grant agreement, the citizens' group could not use technical assistance grant funds to cover the preparation or processing of costs to appeal that decision under subpart L of the Agency's grant regulations.

The language regarding "challenges to final Agency decisions" nevertheless apparently has been misinterpreted. The IFR at § 35.4055(a)(7) prohibits the use of technical assistance grant funds to reopen final Agency decisions. Once a Record of Decision (ROD) is signed, for example or a design plan is final, grant funds cannot ordinarily be used to challenge that decision or plan, but must be spent on the next phase of the process. By limiting the use of technical assistance grant funds in this manner, however, the Agency is not seeking to constrain technical assistance grant recipients from expressing their disagreements with or opposition to any Agency action or decision. On the contrary, the Agency recognizes the importance of informed comment from citizens' groups and the need for citizens to be well-informed at the sites. However, the process of cleaning up a Superfund site requires detailed technical studies of site conditions and wastes, analysis of methods, and techniques for remediation over an extended period of time. The Records of Decision are culminations of these efforts and revisiting settled issues and past decisions is not a cost effective use of limited technical assistance grant funds for citizens' groups. However, if the Agency or a court officially reopens a Record of Decision, or formally requests comments on it, then the grant money can be used to review appropriate documents.

The Agency stated at § 35.4090(b) of the IFR that "Waivers of the matching funds requirement will only be granted in exceptional cases." Some readers have mistakenly understood this to be an independent requirement for a waiver, erroneously believing that they had to meet this standard in addition to the three criteria listed in § 35.4090(b). In fact, waivers can be granted whenever the three requirements at § 35.4090(b) are met. The Agency has concluded that the reference to "exceptional cases" should be eliminated and has amended § 35.4095(b) accordingly.

III. Existing Grants

Citizen groups that have received technical assistance grants with a matching funds requirement of greater than 20 percent or an administrative cap of 15 percent may seek an amendment of their grants. Those citizens' groups should contact the appropriate EPA Regional Office.

IV. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

(3) Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The IFR for the Technical Assistance Grant Program is a "non-major" rule, therefore these amendments are considered "non-major." The amendments would have no significant annual adverse effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that Agencies evaluate the effects of a rule for three types of small entities:

(1) Small businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, nondominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 5,000 people).

EPA has consistently considered the interests of small non-profit entities in designing the Technical Assistance Grant Program. Today EPA is amending the IFR to encourage small entities to apply. And, for some applicants the Agency may waive the matching funds requirement.

Since today's rule is not expected to have a significant impact on small non-profit entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the *Paperwork Reduction Act*, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030-0020 for activities involving the grant application process, and 2050-0083 for activities specifically related to the rule.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden the Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked "Attention, Desk Officer for EPA."

V. Supporting Information

List of Subjects in 40 CFR Part 35

Grant programs—environmental protection, Matching funds, Public involvement, Reporting and recordkeeping requirements, Hazardous wastes, Superfund.

Dated: November 27, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 35—[AMENDED]

Subpart M—Grants for Technical Assistance

1. The authority citation for subpart M continues to read as follows:

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580.

2. Section 35.4020 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 35.4020 Responsibility requirements.

* * * * *

(b) Each recipient of a technical assistance grant must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant, except as provided in paragraph (c) of this section. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof that the group has been incorporated by the State.

(c) Unless a consolidation agreement makes site-specific incorporation necessary, a previously incorporated group that includes all the individuals and groups that joined in applying for the technical assistance grant shall not be required to incorporate for the specific purpose of representing affected individuals at the site provided that the group can demonstrate that it has a substantial history of involvement at the site.

3. Section 35.4030 is amended by revising paragraph (a)(2) to read as follows:

§ 35.4030 Ineligible applicants.

(a) * * *

(2) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site except as provided in § 35.4020(c);

* * * * * *

4. Section 35.4055 is amended by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 35.4055 Ineligible activities.

(a) * * *

(1) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the technical advisor to assist an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site;

* * * * * *

(7) Reopening final Agency decisions such as the Records of Decision or conducting disputes with the Agency in accordance with its dispute resolution procedures set forth at 40 CFR Part 30, Subpart L.

5. Section 35.4085 is amended by revising paragraph (a) introductory text and removing paragraph (e) to read as follows:

§ 35.4085 Grant limitations.

* * * * * *

(a) The recipient must contribute 20 percent of the total costs of the technical assistance grant project, except as provided in § 35.4095(b) of this regulation.

* * * * * *

6. Section 35.4090 is amended by revising paragraph (b) introductory text to read as follows:

§ 35.4090 Waivers.

* * * * *

(b) Waivers of the matching funds requirement will be granted only when it is established that the grant recipient cannot meet the matching funds requirement. The Agency may waive all or part of the recipient's matching funds requirement only after a finding by the Agency that:

* * * * *

[FR Doc. 89-28143 Filed 11-30-89; 8:45 am]
BILLING CODE 1505-01-M

federal register

Friday
December 1, 1989

Part III

Department of Transportation

Office of the Secretary

49 CFR Part 40

Procedures for Transportation Workplace Drug Testing Programs; Final Rule and Notice of Conference

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. 45926; Notice No. 2]

RIN 2105-AB42

Procedures for Transportation Workplace Drug Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is adopting a final rule concerning testing procedures applicable to drug testing programs the Department requires in six transportation industries. The final rule incorporates modifications in response to comments on the Department's November 21, 1988, interim final rule on the same subject.

EFFECTIVE DATES: This rule is effective January 2, 1990, except that § 40.31(d) is effective May 30, 1990 for employers with fewer than 2000 covered employees. Compliance with all portions of this rule is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, (202-366-9306).

SUPPLEMENTARY INFORMATION: On November 21, 1988 (53 FR 47002), the Department published an interim final rule establishing drug testing procedures applicable to drug testing for transportation employees under six Department of Transportation regulations. These six regulations were published on that same date by the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, United States Coast Guard, Urban Mass Transportation Administration, and Research and Special Programs Administration. The interim final rule (49 CFR part 40) followed closely the Department of Health and Human Services (DHHS) regulation entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

The "DHHS Guidelines," as this document is known, were published in the **Federal Register** on April 11, 1988 (53 FR 11970). They were based on a notice of proposed rulemaking (NPRM) published August 14, 1987, by DHHS, and on comments to that NPRM. The DHHS Guidelines include procedures for collecting urine samples for drug testing, procedures for transmitting the samples to testing laboratories, testing procedures, procedures for evaluating test results, quality control measures applicable to the laboratories, recordkeeping and reporting requirements, and standards and procedures for DHHS certification of drug testing laboratories. The intent of the Guidelines is to safeguard the accuracy and integrity of test results and the privacy of individuals who are tested. The interim final rule modified some provisions of the DHHS Guidelines in order to adapt the Guidelines to the circumstances of transportation industries.

DHHS has informed DOT that, beginning with a November 29–December 1, 1989, conference, it is engaging in a consensus process concerning its testing guidelines and laboratory certification procedures. This effort will include consideration of many of the issues raised in this rulemaking. DOT will participate in this process. Should revisions in the DHHS Guidelines result from this process, DOT could initiate rulemaking to make this Part consistent with those changes. This does not mean that we have plans to change these rules but, rather, that they are not static, and that we intend to keep up with the state of the art in testing procedures.

The Department received over 80 comments on the interim final rule itself. In addition, the Department has incorporated into the docket for the interim final rule and reviewed comments on the NPRMs for the six operating administration drug testing rules that pertain to the DHHS Guidelines and testing procedure issues. This final rule and preamble respond to all these comments.

Response to Comments

1. Testing for Additional Drugs

The interim final rule requires employers to test for five drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). Generally speaking, if employers wish to test for drugs other than these five, the interim final rule requires them to take a second, separate sample for this purpose. The "DOT sample" may not be used for this or other purposes.

A number of comments objected to this provision, noting that other substances (e.g., barbiturates, benzodiazapines, alcohol) are abused and can cause safety problems. Some comments said that employers were already testing for these additional substances (often stating that they tested for nine or ten drugs currently), and that the rule would either make them scale back existing programs or increase their testing costs. Under the approach that most of these comments appeared to favor, an employer, where its authority to do so was not otherwise constrained (e.g., by state law or union contract), could ask the laboratory to test the "DOT sample" for any additional substances the employer chose.

When the Federal government requires an employer to conduct drug tests, it seems clear from court decisions that the fourth amendment applies to the testing that the employer conducts in response to the Federal requirement. Fourth amendment considerations would arguably apply to any testing resulting from a urine sample collection required by the Federal government, including discretionary employer testing piggybacked onto the DOT-mandated collection. The employers' discretionary testing would also probably be reviewed by the courts as part of the courts' consideration of the overall validity of DOT drug testing rules.

In determining whether a testing requirement passes fourth amendment muster, courts typically have tried to balance governmental interests underlying the testing requirement and the privacy interests of employees. One of the factors examined by the courts in determining the strength of the governmental interest is the safety necessity of testing. Another factor examined is the extent to which testing procedures protect the privacy interest of employees, thereby limiting the intrusion on rights protected by the fourth amendment.

Courts have upheld Federally-mandated drug testing for the five drugs under the DHHS Guidelines (see for instance *Skinner* v. *Railway Labor Executives Association Skinner*, 109 S.Ct. 1402 (1989)). Testing for additional drugs increases the privacy intrusion of testing. Therefore, a change in this respect may make court approval of DOT-required testing more difficult.

DHHS-approved testing protocols and positive thresholds for drugs beyond the five for which testing is now required do not exist. DHHS certification of laboratories does not extend to testing of any of the additional drugs. Consequently, the uniform standards crucial to the accuracy and integrity of the testing process, which courts have relied upon in upholding Federally-required drug testing, are not now in place for the additional drugs. This absence of uniform standards could also make defense of the DOT regulations in court more difficult.

There are also unresolved practical problems that could result from DOT permitting employers to use the "DOT sample" to test for additional drugs. Many of the additional substances commenters expressed a desire to test for are widely available as prescription drugs (e.g., barbiturates). The Medical Review Officer's task in determining whether the drug use indicated by the test is legitimate (and hence not a verified positive) is likely to be significantly more difficult in dealing with legal prescription drugs. The use of DOT-mandated tests to discover the presence of a variety of legal prescription drugs, and therefore to permit employer inferences about otherwise confidential medical conditions, could not easily be prevented.

For these reasons, the Department believes that it is inadvisable, at this time, to grant employers the discretion to test the "DOT sample" for additional drugs. As under the interim final rule, employers wishing to test for substances other than the five drugs for which testing is mandatory must do so using a second, separate sample. This means, in practice, that the employer would have to direct an employee to go to the collection site, do the DOT collection (including providing the sample and completing the paperwork), and then (either at that time or a subsequent time) return to the collection site and provide the "employer sample." In no case, under DOT regulations, would it be proper for the employer to direct the employee to fill one container and then pour off the urine into separate "DOT" and "employer" collections. Nor would it be appropriate for the employer to retain any "surplus" urine in excess of the 60 ml "DOT sample" to be used for the employer's purposes. These approaches would use the DOT-mandated collection to acquire urine to be used to test for additional drugs or for other purposes, and would raise the whole set of concerns that lie behind the Department's decision on the additional drugs issue.

At the same time, the Department is well aware of the costs and administrative burdens implicit in the "second, separate sample" approach. The concerns of employers who wish to test employees for other drugs which may impair safety are legitimate. Consequently, the Department will consider additional rulemaking to deal with all aspects of this problem. Such a rulemaking would be intended to explore means of responding to employers' concerns that would avoid or mitigate the problems we see with permitting employers to test for additional drugs, including the identification of appropriate additional drugs for which testing is warranted and the establishment of appropriate testing protocols for those drugs. The Department will also continue its contacts with DHHS and the Department of Justice in an attempt to determine if a resolution of this problem can be reached that can overcome current practical and legal obstacles.

2. Laboratory Issues

a. *Use of laboratories not certified by DHHS.* Comments suggested that the requirement to use only laboratories certified by DHHS be eliminated. In the alternative, comments suggested that laboratories certified for drug testing by the College of American Pathologists (CAP) or other recognized state or private certifying agencies could also be used, at least in some circumstances (e.g., screening tests, tests at remote sites), if not across the board. Comments cited the cost of the DHHS certification process and a concern about the available capacity of DHHS-certified labs as reasons for this request, as well as asserting that other certification programs (e.g. that operated by CAP) were equivalent to the DHHS system. In addition, comments mentioned satisfactory, existing relationships between labs and employers, which neither wanted to sever. Some comments asked for a transition mechanism to permit labs to complete the DHHS certification process without having to sever existing relationships with transportation employers.

The Department continues to believe that the DHHS certification mechanism is the best guarantee of error-free drug testing available. Its requirements are more stringent, and its inspection and quality control measures more thorough, than any other existing certification mechanism. This not to say that other certification systems, such as that of the CAP, are necessarily inadequate, only that in a program dependent for its success on the unerring accuracy of lab work, the Department is justified in insisting on the highest available standards. These standards have been recognized in court cases upholding Federal drug testing programs. To the extent, in the future, that other certification programs are recognized as equivalent by DHHS, to whose expertise the Department gives substantial deference, the Department can consider at that time permitting laboratories certified under those programs to participate.

At present, DHHS has certified 37 laboratories, which DHHS estimates to have an annual capacity of over 20 million tests. DHHS expects to certify a number of additional laboratories by year's end. This should provide capacity well in excess of that needed for all testing required under DOT rules (which by 1991, is projected to result in 3–6 million tests per year).

We recognize that some laboratories that currently conduct drug testing for transportation companies may choose not to seek DHHS certification, for reasons including costs. Such laboratories could lose some existing business. However, the Department believes that this situation does not warrant eliminating the requirement for DHHS certification, which would have serious adverse consequences for the Department's entire drug testing effort.

b. *On-site testing.* Some employers, particularly in the maritime industry, asked that the rules allow on-site testing. That is, rather than sending the initial screen test to a DHHS-approved lab for analysis, the employer would use a screen test, the result of which could be read at the collections site. If the screen test were negative, the individual would start or continue to work. If it were positive, the individual would be kept from working in a safety-sensitive position until and unless a laboratory or MRO declared the test negative. (Some employers said they would continue to pay an employee in the interim.) The advantages claimed for this approach are that it allows a quick turnaround of results, is helpful in avoiding disruptions in operations, and that it reduces the likelihood of drug users actually performing safety-sensitive functions.

In the Department's view, these claimed advantages are outweighed by the problems involved with on-site testing. With on-site testing, particularly if testing technicians have not been extensively trained, error rates are likely to be considerably higher than for tests conducted in DHHS-approved laboratories. These error rates include substantially more false negatives as well as more false positives, meaning that on-site testing could result in inadvertently allowing drug users to work in safety-sensitive jobs (since negatives would not be sent for confirmation tests). The protection for employees afforded by use of a DHHS-certified lab (indeed, any lab at all) is wholly absent at the screening test level. Nor have the comments' assertions persuaded the Department that unreasonable costs or delays will result from using DHHS-certified laboratories for testing.

With on-site testing, an employee or applicant may be deprived of an

opportunity to work and may be stigmatized as a drug user based on a less accurate type of test with fewer protections. For an employer to promise back pay, or continuing pay, to an employee while a confirmation is pending is well and good, but it is not a complete answer. It does not deal with the very real career impact of even a temporary identification of someone as a drug user and (especially in the quick turnaround situations emphasized by maritime commenters) does not address the lost job opportunities of applicants.

The Department must balance the sometimes competing, legitimate interests of both the employers and the employees its rules affect. By allowing on-site testing, we would shift the balance too far away from the employees' concerns. Like other testing procedure issues, on-site testing is likely to be discussed in the DHHS consensus process.

c. *Other comments.* One comment suggested that DOT or the labs themselves should notify their DOT-regulated clients if DHHS suspends or terminates their certification. We believe that it is not necessary to make this suggestion a regulatory requirement. However, in the event that a laboratory does lose its certification, we believe that the laboratory should notify its clients of the fact. Should laboratories fail to do so, the Department can consider, at a future time, adding a regulatory provision to this effect.

Comments suggested that all employers should be required to conduct laboratory inspections, either directly or through a neutral third party. We believe that adding such a requirement is unnecessary, in light of the extensive DHHS certification process. It would also be unduly burdensome, not only to employers (especially to small employers) but also to laboratories, whose operations could be disrupted by "inspectors" representing hundreds of employers walking through their facilities.

One comment suggested two levels of certification; one for performing screening tests and the other for performing confirmation tests. This comment dovetails with comments suggesting that a local laboratory should be allowed to perform the screening test and then send positive screens to a DHHS-approved lab for certification. On the other hand, another comment suggested that no subcontracting be allowed. In the Department's view, the existing provision (all testing of a particular specimen must be done within a single DHHS-approved lab, but one DHHS-lab can subcontract a portion of an employer's testing contract to another DHHS-certified facility) remains a good middle ground among these positions. The existing rule maintains laboratory quality and accuracy by insisting on full DHHS certification, and avoids chain of custody complications by requiring all work on a specimen to take place within one lab facility. At the same time, it permits some flexibility for employers who may wish a "master contract" with one lab but who find it convenient to have samples processed in various parts of the country.

One comment suggested authorizing union participation in laboratory inspections. The Department believes that union participation in the inspection process is best left to the collective bargaining process. Where labor and management agree to include representatives of both in an inspection, nothing in the regulation would stand in the way.

3. Blind Testing

The interim final rule required blind testing at the levels specified in the DHHS guidelines (a number equivalent to 50 percent of tests submitted in the first 90 days, up to 500; ten percent of samples in each succeeding quarter, up to 250) for all employers who would submit 1000 samples or more a year. Employers who would submit fewer than 1000 samples per year would not have to submit blind samples, if they used a laboratory to which someone else (e.g., a Federal agency, another DOT-regulated employer) submitted blind samples.

A substantial number of comments, citing what they viewed as the trouble and high expense of submitting blind samples, said that employers should never have to submit these samples. It was sufficient, in this view, to rely on the DHHS certification process. Other commenters suggested reducing the number of blind samples submitted, either by using a lower percentage (e.g., between one and five percent) or a small absolute number of specimens (e.g., between two and eight per quarter). Still other comments, to the contrary, suggested that all employers should submit blind samples, lest laboratories treat samples from a particular employer with less care because that employer is known not to submit blind samples.

The Department believes that blind sampling is an important quality control measure. Blind testing does not duplicate DHHS certification measures; it is over and above those measures. In addition to its function as a quality control technique to make sure that labs stay sharp, it tests the entire collection process. Consequently, while the Department is aware of the cost implications of blind testing, we do not believe that it would be a good idea to eliminate the requirement that employers submit blind samples. (It should be noted that blind sample costs appear to be getting lower, with a number of suppliers having informed DHHS that they plan to provide samples for between $10 and $20 each.)

However, after consulting with DHHS, we believe that the quality control objectives of blind testing can be achieved with fewer blind samples. Moreover, we believe that the administration of blind sampling can be simplified by dropping the two-tier (first vs. subsequent quarters) approach of the interim final rule and by expressing the blind sampling rate as three blind samples per 100 employee specimens, rather than as a percentage. This means that, over whatever period of time it takes for an employer to submit 100 employee specimens (whether a week or a number of years), the employer would submit three blind samples.

An employer would not have to submit more than 100 blind samples in any calendar quarter. This is a high maximum; an employer would have to be submitting over 3300 employee specimens in a quarter to reach this level. A DOT agency could raise the maximum in a case when a party (e.g., a very large consortium having several major employers as members) would submit an unusually large number of specimens. This authority would be used only rarely, in all likelihood.

With respect to smaller employers, the Department remains reluctant to impose additional financial burdens. Nevertheless, we believe that there is merit in the contention that the knowledge that even small employers will submit some blind samples is an important quality control measure that will deter potential carelessness on the part of laboratories and help employers discover problems in the processing of samples. Consequently, the Department will require all employers to submit blind samples at the three per 100 specimen rate. In submitting blind samples, smaller employers (those with fewer than 2000 covered employees) could submit all blanks or submit two separately labeled portions of a specimen from the same non-covered employee to make sure that the analyses were the same. These approaches would allow smaller employers to minimize costs. In addition, since employers with fewer than 2000 employees who are scheduled to begin testing in December 1989 or early 1990 will have had short notice of having to do blind testing, these blind testing requirements will not go into effect for them until 180 days from the date this rule is published. This "grace period" will allow these employers time to make arrangements for blind testing.

When a consortium submits blind samples, it does so collectively on behalf of all its members. The individual members would not need to submit any blind samples independently. The consortium would submit three blind samples for every 100 samples it submitted on the collective behalf of its members.

4. Positive Levels

Several comments requested that the regulation provide more stringent positive levels for one or more drugs. Marijuana was the drug most often mentioned in this connection. There were a number of suggestions for a screen positive level of 20 nanograms per milliliter (ng/ml), with a confirmation level of 10 ng/ml. (The interim final rule called for 100 and 15 ng/ml for screen and confirmation levels, respectively). Other suggestions included lowering the amphetamines screen and confirmation levels from 1000 and 500 ng/ml, respectively, to 500 and 300 ng/ml. One comment suggested a 150 ng/ml screen level for cocaine (the interim final rule established 300 ng/ml for this purpose). The argument, essentially, is that by tightening cutoff levels, especially at the screen test level, more persons using drugs would be caught.

As the comments indicate, there are a variety of preferences on the subject of positive levels. After consulting with DHHS, we believe that the existing positive levels best achieve a reasonable balance between the objectives of treating as positive significant amounts of drug metabolites in an employee's system while treating as negatives smaller quantities of metabolites that could result from such sources as passive inhalation, cross-reactivity, or ingestion of food products. Tightening positive thresholds, especially at the screen test stage, would probably increase program costs, as there would probably be a higher number of initial tests requiring confirmation (and a lower percentage of screen positives that confirmed positive). DHHS is likely to consider this issue in its consensus process on guideline issues, and the Department can revisit the issue following this DHHS consideration.

5. Observed Tests

This issue pertains to the circumstances, if any, under which direct observation of an employee providing a urine sample is permitted or required. Since direct observation makes the collection process more intrusive, the interim final rule limited direct observation to four circumstances in which there is reason to believe that a particular employee may tamper with the specimen.

Some comments requested that this limitation be relaxed or eliminated, allowing greater discretion for observed collections. The Department did not adopt this suggestion, in the view that existing safeguards in part 40 are adequate to prevent tampering and that direct observation, because of its increased intrusiveness, should be strictly limited. Limitations on direct observation are one factor in the balance between privacy and safety necessity considered by the courts.

Other comments opposed all direct observation. The Department did not adopt this comment either, believing that where, for example, there is strong evidence of tampering, direct observation is needed to ensure the integrity of the collection process. Some comments specifically opposed direct observation as part of follow-up (i.e., post-positive) testing, while other commenters favored this practice. The Department believes that direct observation may be a useful tool in follow-up testing. For example, some kinds of drug use (e.g., cocaine addiction) may be very difficult to treat; substance abuse experts suggest that many people undergoing rehabilitation suffer relapses of cocaine use. An individual who has returned to work after rehabilitation but has suffered such a relapse may have a greater incentive to attempt to beat a follow-up test, because the employer may not provide a second opportunity for rehabilitation. If the employer or EAP counselor believes that this may be the case, the opportunity for direct observation should exist.

In this connection, it should be pointed out that, under the regulation, direct observation is mandatory only when the collection site person observes behavior clearly indicating an attempt to tamper or when the specimen temperature is outside the normal temperature range and an oral body temperature reading is refused or is inconsistent with the specimen temperature. In follow-up testing and when the specific gravity and createnine content of a previous sample are below the regulatory standards, the employer has discretion to require direct observation.

Other comments suggested that the MRO should determine when a collection should be directly observed. While, in some situations, the MRO may be involved in this determination (and a company may use an MRO for this purpose), the Department does not think it would be a good idea to mandate this involvement. For example, MROs often may not be located near the testing site, making their mandatory involvement impractical.

Some comments opposed, and others favored, the current requirement that a higher-level supervisor of the collection site person, or a designated employer representative, concur with a decision of the collection site person to require direct observation. The Department believes that this requirement of the current rule is sound, as a check on the decision of a staff person to require an intrusion on privacy, and should be retained.

One comment suggested that a directly observed collection could be made if either creatinine levels or specific gravity on previous test (rather than both, as under the current rule) were below the regulatory standard. In the Department's view, it is preferable to retain the current provision. Given the additional privacy intrusion involved in a directly observed collection, it is preferable to have two, rather than one, indicators of possible dilution of a sample before proceeding to an observed collection.

6. Testing Procedure Issues

a. *Collection site person issues.* Some commenters requested that the Department establish training procedures or standards, or establish testing requirements, for collection site personnel. The Department does not believe such requirements are necessary. The interim final rule provides that, if not a licensed medical professional or technician, a collection site person must be trained for his or her function. This training is intended to be training to proficiency (i.e., the person must be trained sufficiently to ensure that he or she will perform the functions of the job competently). We would also point out the existing requirement for the provision of instructions to collection site personnel.

The Department does not believe that it would be productive to require all collection site persons to conform to a single training curriculum developed by the Department. If there is sufficient interest (expressed, for example, at forthcoming DOT drug conferences or in correspondence to the Department), the Department could consider cooperating in the development of a model training module. More extensive requirements,

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such as testing or certification, are likely to be unduly costly. Such requirements could also interfere with reasonable cause or post-accident tests, which sometimes must be conducted at medical facilities that are not regular collection sites.

One comment suggested that supervisors of employees should not be permitted to collect specimens from the employees. The concern of the commenter appeared to be that a supervisor might have the appearance of a conflict of interest in collecting a specimen from an employee the supervisor did not like. The Department agrees that it would be preferable, as a general matter, for supervisors not to collect specimens from their own subordinates. Consequently, we have altered the rule to provide that the direct supervisor of a covered employee may not act as the collection site person for that employee, except where this is impracticable (e.g., on a ship at sea, where the only person or persons available and qualified to do collections have a supervisory relationship with the employees). If individual DOT agency rules impose more stringent provisions, the more stringent requirements apply.

One comment asked that the employer's own personnel be permitted to conduct collections. The current rule permits this practice. With the exception stated above concerning direct supervisors, the Department will permit this practice to continue. It was also suggested that collection site personnel can be licensed by any state or jurisdiction. Again, this is already the case (and for MROs as well as medical professionals or technicians who collect specimens).

A number of comments suggested that the collection site person should be able to be of the opposite gender from the employee, when a same-sex person is not available. Under the current rule, a collection site person must be of the same gender as the employee in only two circumstances. One is that the individual who watches an employee provide a directly observed sample must be of the same gender as the employee. It should be pointed out that only the observer (who does not need special training) must be of the same gender as the employee. An opposite gender collection site person could still perform other collection functions, as long as a same-gender observer were used.

The second case involves and individual who "monitors" a collection. Such an individual, if he or she is not a medical professional or technician, must be of the same gender as the donor. A collection site person "monitors" a collection, for this purpose, only if he or she is in close proximity to the employee as the employee provides the sample, such that the collection site person can hear the employee's actions. For example, if the collection takes place in a public rest room, in which the employee goes into a partially partitioned stall to provide the sample, while the collection site person remains in the common area of the rest room, the collection site person would be "monitoring" the collection. On the other hand, if the collection takes place in a facility (like many medical facilities) in which the employee goes into a separate room, with a fully closable door, to donate the sample, while the collection site person remains outside, "monitoring" would not take place. In the former case, the person monitoring the collection would have to be either a medical professional or technician (of either gender) or someone without medical training who is of the same gender as the employee.

The Department believes that these requirements are important to safeguard employees' privacy. While we understand that there may be occasional situations in which the requirements make it difficult or more costly to conduct collections, we believe that, on balance, the privacy interests of employees justify these costs.

Another comment suggested that the collection site person should not be permitted to leave the collection site before the specimen is sealed and labeled. This requirement is already part of the regulation and will be retained. It was also suggested that, to increase efficiency, a collection site person could work with more than one donor at a time, with appropriate safeguards. The current rule limits the collection site person to working on one specimen at a time "in order to promote security of the specimens, avoid distraction of the collection site person and ensure against any confusion in the identity of specimens" (49 CFR 40.25(d)). These reasons remain valid, and the Department is retaining this requirement. This provision does not preclude more than one collection site person from working in a particular collection site, however, as long as each person supervises only one donor at a time.

b. *Sample Quantity.* Comments mentioned the "shy bladder" problem, in which an individual, for physiological or psychological reasons, is unable to produce sufficient urine for a sample. The Department does not believe it would be consistent with the intent of the testing program to excuse from testing persons solely on the basis that they claimed to have this problem or who, on a first attempt, were unable to produce a specimen. In its internal program, the Department, consistent with the DHHS Guidelines, tells the individual to drink additional fluid and wait a reasonable time before trying again to produce a sample. During this time, the individual remains at the collection site or otherwise under supervision. If, after a reasonable time, the individual cannot provide the sample, the individual is scheduled for a subsequent unannounced test. If the result is the same, the individual would be directed to see a physician, whose evaluation of whether there was a genuine problem or a refusal to take a test would be provided to the employer. The rule adopts a similar system, with refinements taking into account the differences among different types of testing.

Some comments also suggested, as a general matter, that a sample smaller than 60 ml (e.g., 30 ml) would be adequate. The purpose of a 60 ml sample is to allow sufficient urine for multiple GCMS confirmation tests (if the screen test is positive for multiple drugs) and for a retest, if one is requested. While a smaller quantity may be sufficient in many cases, the 60 ml sample size leaves a greater margin of safety for situations in which multiple aliquots are needed. (We would suggest, however, that if a sample reaching the laboratory inadvertently is a small amount short of the 60 ml, the test need not necessarily be cancelled. The test should be cancelled only if the amount of urine proved insufficient for all necessary analysis (including a reserve of 10 ml for possible retesting).)

A comment also suggested that female employees be excused from testing during their menstrual periods. The Department does not believe that this is essential, either for the integrity of the testing process or the comfort of employees. We recommend that when an employee states to the collection site person that the two events coincide, the collection site person should note the fact on the chain of custody form. If any substances (e.g., blood) or other chemical changes in the urine made a valid test impossible, the laboratory would cancel the test.

c. *Additional protections for employees*—Some comments urged a requirement for "split samples." That is, the employee would provide a sample which would be divided into two containers. The two containers would be separately labeled. One would be sent to the laboratory for analysis while the other would be stored (either at the same lab, a second lab, or an employer storage site). If the first sample were positive, the second sample would be tested. If the second result were negative, the test would be cancelled. The comment suggested that this system would provide an extra measure of protection for employees against employer or laboratory error.

The Department does not believe that split samples should be required as part of this regulation. Given the stringent safeguards embodied in these procedures (e.g., concerning collection, chain of custody, DHHS-approved labs, GCMS confirmation tests, and MRO verification), the likelihood of a false positive is extremely low. (For example, the Department, in over 30,000 tests run under the DHHS Guidelines, has never had a false positive.) The extra costs and administrative burden of a split sample system would be unlikely to provide significant additional, necessary protection for employees. If employers wish to use a "split sample" approach, however, the rule permits them to do so. It should be emphasized that doing so is completely voluntary; at the same time, the Department sees no compelling reason to prohibit the practice.

The Department is adopting another suggestion to increase employee confidence in the process. This comment is to require the employee to be provided with a prepackaged specimen bottle (and collection container, if applicable) prior to providing the sample. We recommend, in addition, that the collection site person shall allow the employee to select the specimen bottle and collection container he or she will use.

The Department has not adopted a suggestion for having DOT-established quality assurance guidelines. This matter is adequately handled by the DHHS certification process and blind testing requirements. A related suggestion, to allow employees who test positive access to all laboratory records, is adequately handled by the existing rule (see § 40.37).

Among other suggestions the Department is not adopting are to have an employee representative required to be present with the tested employee at the collection site (which potentially would cause crowding, delay, and interference with the process), to give employees an hour after coming off the job before taking a random test (which would cause unnecessary delay and expense), to prohibit tests during rest periods (which would needlessly complicate the timing of the testing process and make it more expensive), and to establish a separate positive threshold for retests of positive specimens (a retest is simply for the presence of the drug, making this step unnecessary). The Department agrees with comments suggesting that needed medical treatment should not be delayed in order to collect a specimen and the rule so provides.

d. *Other issues*—A comment suggested requiring a permanent collection site logbook. The DHHS Guidelines contain this requirement; the DOT procedures deleted the requirement as an unnecessary administrative burden in light of the chain of custody form called for in the rule. The Department continues to believe that the rule's chair of custody form system is adequate (one of the copies of the form is retained by the collector) for records purposes and that a permanent log book would be duplicative.

Another suggestion was to make the collection procedures of section 40.25 voluntary instead of mandatory. The Department did not adopt this comment, because doing so could result in inconsistent and potentially inadequate protections for the integrity and accuracy of the collection process.

It was suggested, with reference to § 40.25(f)(16), that it was unnecessary to send to the lab both a suspect sample and a retest sample. Since it is possible that the initial specimen could be valid, we believe that it makes sense to send both.

A comment objected to ever using public bathrooms, contending that their security could not be assured. When a public bathroom is used, it must be posted against access by persons not involved in the drug testing process and access must be controlled by the collection site person. These existing safeguards are sufficient, in the Department's view.

It was also suggested that collection site persons show an ID to the employee upon request and provide a receipt for personal belongings surrendered by the employee. We believe it is fair that, since the employee must show ID to the collection site person, the collection site person would reciprocate if asked. If surrendered personal belongings do not remain in the same room with the collection site person and the employee, we also believe it is reasonable for a receipt to be provided. The rule has been amended to provide for both these safeguards.

It was suggested that an employee not have to wash his or her hands prior to giving the sample. Because it is possible to conceal adulterants under a fingernail, we believe this practice should continue. We agree with a comment that it is preferable to store specimens in a secured area (e.g., a locked refrigerator) prior to shipment, and we recommend this practice, but we do not think it necessary to require this practice in the rule. The rule's safeguards for specimen security are sufficient, in our view, and not every location where samples are taken may have something like a locked refrigerator (e.g., remote work sites). Nor do we believe it is necessary to record the specimen temperature in every case; recording normal temperature results would simply be additional paperwork not adding to the integrity of the process.

7. Medical Review Officer Issues

a. *Who performs MRO functions?*—A number of comments said, in effect, that no one should have to perform MRO functions, since the concept of an MRO was an impediment to the efficient functioning of a drug testing program and that the MRO should be deleted from the rule. The Department continues to believe that having an MRO is crucial to a good drug testing program. The Department's program is intended to deter and detect the prohibited use of certain types of drugs, in the interest of transportation safety. Many substances (e.g., opiates, cocaine) have legitimate medical uses as well as prohibited uses. Laboratory machines, however accurate, cannot make this distinction; they just measure quantities of a chemical in urine. A trained, medically knowledgeable person—the MRO—is essential to be able to distinguish licit from prohibited use of substances. In the absence of such informed medical judgment, we believe that the system would be less likely to achieve its objective and would be very unfair. Like a sound chain of custody, GCMS-confirmed tests, and DHHS-certified labs, having an MRO is a safeguard that the DOT program cannot do without.

Some comments suggested that a staff member of a testing laboratory should be able to function as the MRO. Since laboratories may have qualified physicians on their staffs, this could be both a convenience for the many employers who do not have staff physicians of their own and a useful marketing tool for laboratories. However, the Department is concerned that there could be a conflict of interest, or the appearance of such a conflict, between a doctor's role as a staff member of a laboratory and the MRO's responsibility to determine whether test results are scientifically sufficient. To deal with this problem, the Department is amending the regulation to provide that if a laboratory wants to provide MRO services, it must establish a

separation of functions to guard against the possibility of a conflict of interest. For example, the laboratory could spin off an organizationally separate subsidiary to perform MRO functions or could erect what is sometimes called a "bubble" or "Chinese wall" around the MRO, to ensure that the MRO is not subject to communications or influences that could create the appearance or reality of a conflict of interest. In no case could the physicians performing as MROs have responsibility for, or be subject to the supervision of those who have responsibility for, the drug testing or quality control operations of the laboratory.

Comments also suggested that MROs should be able to have non-physicians on their staffs who would take care of administrative duties, making contacts with employees, etc. The current rule does not prohibit this practice, and an amendment is not needed for this purpose. MROs are likely to need staff persons for administrative duties, and these staff may certainly make the initial contacts with employees (e.g., place calls to those who have tested positive to inform them that the MRO needs to talk to them). An appropriately medically trained staff person (e.g., a nurse with substance abuse training) may gather information from an employee about the employee's explanation for a positive result. In every case, however, the MRO must make the decision about whether, and talk to the employee before, a confirmed laboratory positive is verified positive. No staff person can make this decision for the MRO. All persons working for the MRO are bound by the same requirements for confidentiality to which the MRO is subject.

Comments disagreed on whether non-physicians could serve as MROs. The Department believes that it is important for the MRO to be a physician, in order that a person with substantial medical training be in a position to make the critical medical judgment about whether an individual's drug use is legitimate.

b. *Which tests does the MRO review?*—Some commenters thought MROs should not have to review negative tests. The current regulation, while requiring negatives to be sent from the lab to the MRO, does not require substantive review of negatives by the MRO. The MRO's function with respect to negatives need be only an administrative one, and ought not add significant costs to the process, since only administrative processing fees (as distinct from fees for professional medical services) would seem to be involved. The rule now explicitly states this point.

This administrative role is an important one, however. If negatives were sent directly to the employer from the laboratory, while positives were sent to the MRO, the employer would know for certain that some identifiable employees were "lab negatives" and others were "lab positives" whose tests the MRO did not verify positive. The employer would know this simply from the fact of whether it got a negative result from the lab or the MRO. A "lab positive/verification negative" employee could easily be stigmatized as a drug user, or be subject to employer inquiries about medical use of drugs. This would be contrary to the intent of the rule with respect to employee confidentiality.

It was also suggested that MROs should not have to review positive pre-employment tests, or not review any tests except post-accident tests, or not review any tests at all. Laboratory positive tests not going to the MRO would go directly to the employer, who could take action against the employee or applicant immediately upon receipt. MRO review would occur only if an employee appealed the positive test. The advantage of this approach, comments said, is that it would allow employers to act quickly to remove drug abusers from safety sensitive positions, rather than incurring potential liability for an accident that might happen during the course of MRO verification.

The Department has not adopted this comment. The Department's rules are intended to result in the removal from safety sensitive positions only those individuals who are determined to have engaged in prohibited drug use. Until an MRO verifies that a positive laboratory result represents prohibited drug use (e.g., that there is not a legitimate explanation for the laboratory result), the condition on which employer action under the regulations is premised has not come into being. MRO verification prior to employer action is essential to the accomplishment of the purpose of these regulations.

The Department does not see any policy distinction between the need for MRO verification of one sort of test and another. In any case, a confirmed positive test resulting from legitimate use of a drug, if not subject to MRO verification procedures, can result in economic harm to, and stigmatization as an illicit drug user of, an innocent party. The final rule will continue to require MRO verification for all tests.

Comments asked that MROs, in making verification decisions, be able to consider results of tests of the employee's urine made in other labs. This issue is addressed by § 40.33(b), which provides that MROs may not consider results of urine samples that are not obtained or processed in accordance with the DOT procedures. For example, if a "split sample" is taken, all procedures affecting the second part of the sample must be the same as for the first, and all tests must be done in a DHHS-certified laboratory. Only under these conditions could the MRO consider a result from a second lab. The MRO could not consider samples taken under other conditions or at a different time. If the two lab results turned out to be different (e.g., one positive, one negative), the MRO would cancel the test and contact the laboratory director(s) and attempt to discover the reason for the discrepancy. (The same procedure would be followed if a retest of a "positive" specimen had a negative result.) As following any cancelled test, the employer would direct the employee to take another subsequent test, if appropriate.

c. *MRO procedures*—Some comments expressed concern that the regulation requires MROs to talk to employees face-to-face, a clear impracticality in many instances. The MRO must provide an opportunity for an interview of an employee testing positive as part of the verification process, but this conversation can happen via telephone or other means as well as a face-to-face discussion. If the employee, however, affirmatively turns down the opportunity (e.g., tells the MRO he does not want to discuss the matter), the MRO may proceed with verification.

The timing of the verification process concerned a number of commenters. For example, suppose an MRO is unable to locate an employee, or the employee does not return the MRO's calls. How long is the MRO supposed to wait before verifying a test as positive? The Department has incorporated the following procedure into the regulations. The MRO makes an active attempt to contact the employee. This is intended to be the primary means by which the employee is contacted; other means are mechanisms intended to be used only if the MRO's direct attempt is unsuccessful. If this attempt does not succeed after the MRO has made all reasonable efforts (i.e., the MRO has tried all the means of getting hold of the individual within a reasonable time that can reasonably be expected to be productive) the MRO would contact a designated employer representative. (What constitutes a reasonable time, and what reasonable efforts must be made, are matters for the MRO's judgment, which can vary with the circumstances of different industries or employe s. For example, the time, and the sort of efforts that would be involved, may differ depending on whether the employee involved is a truck driver who is on a cross-country trip, as opposed to a mass transit bus driver who checks into a terminal every morning before starting to drive.) The MRO will not inform the employer representative of the reason for this request, and the employer representative must take appropriate steps to safeguard confidentiality.

The employer representative must contact the employee and tell the employee to contact the MRO as soon as possible. This should be done, whenever possible, prior to the employee's next performing his or her safety-sensitive function.

If the employer representative is unable to contact the employee, the employer could place the employee on medical leave or temporary medically unqualified status. The test would still not be a verified positive until the employee had the opportunity to talk with the MRO, but the individual would not be performing a safety-sensitive function in the meantime.

In order to prevent undue delays covered by an employee's refusal to contact the MRO, the MRO could verify a confirmed positive test result if, five days after a documented contact between the MRO or designated employer representative that informed the employee that he or she was to talk to the MRO, the employee had failed to do so. The rationale for the provision would be that, having been told to talk to the MRO, the employee, by declining to do so, has waived the opportunity to prevent information concerning possible legitimate explanations for a confirmed positive drug test. As a safeguard for employees, the MRO could review the verification if the employee demonstrated that circumstances prevented the contact (e.g., the employee produced medical records to show that, the day after the employer contact, the employee was seriously injured in an automobile accident and was hospitalized for several days). If the MRO "reopened" the verification in such a case, and the employee was able to demonstrate a legitimate medical explanation for the confirmed laboratory positive, the test result would be changed to a negative.

Another suggestion was that the laboratory should routinely provide the quantitation of positive tests to the MRO, rather than only upon MRO request. The Department does not see the need for such a requirement. The MRO typically needs to know only that a test was confirmed positive. In most cases, the quantitation is not relevant to the MRO's job. When the MRO, for some reason, believes that quantitation is needed, the laboratory is obligated to provide it. This seems sufficient for accomplishing the purposes of the rule.

A question has been raised concerning whether the MRO may begin verification immediately upon receiving notification from laboratory of a confirmed positive result (e.g., by fax or computer link). The MRO may indeed begin the verification process at this point, by contacting the employee and obtaining the employee's explanation of the positive result. However, the MRO is not to declare a verified positive until he or she receives the hard copy of the original chain of custody form from the laboratory. This is because, prior to determining that the test is a verified positive, the MRO verifies the identifying information and the facial completeness of the chain of custody (i.e., determines that, on the face of the document, all the sign-offs are in the right places).

There was a request for clarification concerning whether one MRO could serve all the employers participating in a consortium. This is the case; indeed, the main purpose of a consortium is to allow employers to share the services and costs of MROs, collectors, laboratories, etc.

d. *Confidentiality issues.* Under the current regulations, the MRO is directed to tell the employer only whether the drug test is positive or negative (see § 40.27(g)(3)). This implies, but does not explicitly state, that the MRO would not inform management of other information developed in the verification process that could affect safety. Some comments pointed out that it puts an employee in a difficult position if, in order to explain a confirmed positive result as legitimate drug use, he or she must reveal information which will be passed on to an employer who then may take adverse action against the employee as a result. The passing on of this information may also raise issues about whether the MRO has breached a duty of confidentiality.

On the other hand, if the MRO learns about legal use of medications by an employee that may cause or reveal a safety problem, the MRO may have legitimate concerns about his responsibility to protect public safety and his liability in any subsequent accident attributable to the employee's use of the legal drug.

To balance these considerations, the Department has incorporated the following approach in the final rule. The MRO would inform the employee, before beginning the verification interview, that the MRO could transmit to appropriate parties (e.g., the employer, a certifying physician, a DOT agency) information concerning medications being used by the employee or the employee's medical condition only if, in the MRO's medical judgment, the information indicated that the employee may be medically unqualified under applicable DOT agency rules or would otherwise present a safety hazard. Information could also be transmitted to third parties if DOT agency regulations so provide (e.g., a DOT agency regulation calling for the provision of information to the National Transportation Safety Board in an accident investigation). The MRO could then transmit the information (e.g., that the employee was regularly taking medication that made him very drowsy while on the job).

Another confidentiality issue concerns formal proceedings (e.g., lawsuits, grievances, arbitrations) in which an employee challenges action taken by an employer as the result of a drug test. Normally, information about drug tests (see §§ 40.27(g)(3), 40.35, and 40.37) is releasable only with the consent of the employee. However, it would be unfair if, in an adversarial proceeding, one side had access to information which the other did not. Consequently, we have clarified the regulation to provide for the release of relevant information to management in the context of such a proceeding.

8. The Chain of Custody Form

The Department received a substantial number of comments concerning the chain of custody form. The Department, working with DHHS, has drafted a revised chain of custody form, which it tested in the Department's internal program. In addition, a number of comments included suggestions for revising the form. The Department has produced, from these sources, a revised chain of custody form for use by employers covered by DOT drug testing regulations. It is set out at appendix A. The portions of this regulation pertaining to the form (see § 40.23(a)) have been changed from the interim final rule to be consistent with the new form.

Employers are not required to "photocopy" this form; they may gather the information in a somewhat different format. However, employers are required to gather the information called for in § 40.23(a) and may not gather information inconsistent with that called for in these rules (e.g., information that

could compromise employee confidentiality). A form that, for example, was only a three-part form rather than a six-part form, or which failed to include the certifications, chain-of-custody provisions etc. called for in the regulation would not be consistent with part 40 requirements.

It should be noted that the back of copy 4 of the form (the employee's copy) contains space on which the employee can note, as his or her own private "memory jogger," medications or other substances which he or she is taking. This use of the space by the employee is entirely voluntary; employers may not insist on its use, and the information is not intended to be provided to the employer.

The Department is aware that, as testing begins for many employers in December 1989, they may not have time to get copies of the new form printed before testing begins. As a transitional measure, employers may continue to use forms complying with the interim final rule for a reasonable time. All new printings of forms must conform to the revised form. We urge transition to the new form as soon as possible.

9. Recordkeeping and Reporting

One issue mentioned in a number of comments concerns "batch reporting." Section 40.29(g)(1) of the interim final rule requires that the laboratory report all positive and negative results of samples submitted at the same time to the MRO at the same time. Some comments objected to this requirement on the grounds that it unnecessarily kept information from employers about negative tests during the time it took for MROs to verify the positive tests in the "batch." The purpose of the batch testing requirement was to prevent the employer from inferring which employees had positive test results from the lab (even if the tests ultimately were not verified as positives), since this inference could lead to stigmatization of the employees.

The Department believes that the batch reporting requirement is no longer necessary and has removed it from the rule. It is our understanding that, given the individual chain of custody form that would be used predominantly for DOT-mandated drug testing and the way that samples are processed in DHHS-certified laboratories, it is no longer relevant to conceive samples as arriving at and departing from laboratories in easily identifiable batches. Under these circumstances, the Department will permit laboratories to report individual results to the MRO as they become available. Likewise, MROs could report the results to the employer as they become available or, in the case of positives, as they are verified.

The Department will maintain the prohibition on the provision of results from the lab to the MRO by telephone. The potential for garbling of information in voice communications is too great. Provision of results in a written form (e.g., fax, computer link, hard copy) are needed. The Department also recommends that MROs pass on results to employers in a written form, lest mishearing of information in a phone conversation result in mistaken action with respect to an employee.

There were a number of comments concerning the monthly report provided by the laboratory to the employer (§ 40.29(g)(6)). One was that the report should not distinguish between confirmed and unconfirmed positives. The Department has not adopted this comment, on the ground that this aggregate information may be of use to employers and is likely to involve minimal cost. Another comment suggested providing this report directly to unions as well as to the employer. The Department will not mandate transmission of the report to unions, though this may be an appropriate subject for collective bargaining. Finally, a commenter expressed concern that for small employers, the facially aggregated data could provide individually identifiable information about employees. For example, if an employer only had two tests during a month, and one was positive, it would be easy for the employer to infer from the data that a specific other employee had a screen positive. To get around this problem, the rule has been changed to require labs to refrain from sending the monthly report where the data is not sufficiently aggregated to prevent compromise of information about particular individuals. In such a case, the laboratory would not provide the report until a time (e.g., a month or two later) when the data was sufficiently aggregated. (On a similar matter, laboratories and other parties should refrain from billing practices that would permit employers readily to identify individual employee's results.)

Comments suggested that employees should be notified if there is evidence of tampering or other problems with a sample (employees would be notified of a cancelled test, which would be the typical result of such problems) or, with respect to employees who had tested positive recently, if a blind sample resulted in a false positive (unnecessary, in the Department's view, in light of the provisions for retests in § 40.31(D)(6) and the fact that a false positive on a blind sample can result in action against the lab, up to and including the loss of certification). Either of these kinds of actions could also result in investigation by the concerned DOT agency or office. There was also a request for direct notification of employees, not just the MRO, of test results within five days. Since the role of the MRO in determining test results and maintaining confidentiality is very important, the Department believes the existing provision should be retained.

There were various suggestions for changing record retention requirements (e.g., reducing record retention periods, avoiding storing positive samples for a year for possible retests). The Department has concluded that existing record retention requirements are needed to facilitate monitoring of the testing process and keep sufficient safeguards of the accuracy of the process in place. It should be noted that records may be kept electronically or by other means (e.g., microfiche) as well as in paper hard copy.

10. Rulemaking Procedure and Other Issues

Some comments asked that a "waiver" provision be included in the regulation. Such a provision would allow individual employers or industries, on their own or with the consent of the relevant DOT operating administration, to establish different testing procedures from those set forth in the regulation. This would permit the various employers or industries to have testing procedures that fit their circumstances better than the general provisions of the rule, it was said.

The Department has not adopted this comment. The matters about which waivers would most likely be sought, based on the comments, are those on which comments indicated that employers preferred to proceed differently from part 40 (e.g., which drugs are tested for, positive thresholds, use of DHHS-certified labs, use of on-site screening tests, MRO verification of positives). These are matters that the Department has considered and decided in this rulemaking. Having made decisions on these issues, which affect employees as well as employers, the Department does not think it advisable to invite requests by employers to design their own procedures, which could be inconsistent with, and contrary to the rationale of, the provisions of this rule. The result could be substantial inconsistency among employers and industries and the erosion of necessary legal and practical protections for employees, which are crucial to the success of the program.

It should be pointed out that, as an Office of the Secretary of Transportation rule, part 40 is subject to the exemption procedures of 49 CFR 5.11–5.13. Under these procedures, any party may petition the Secretary for an exemption to a rule. The grounds on which an exemption may be granted are narrow. An exemption is granted only on the basis of a showing of special circumstances, not contemplated in the rulemaking, that make compliance with the generally applicable rule infeasible. By special circumstances, we mean circumstances peculiar to the applicant, which are not generally applicable to a class of parties. An exemption request is not a forum for reasserting arguments or positions considered during the rulemaking, or for seeking a *de facto* amendment to the rule. Nor are exemptions granted on the basis that the applicant would find it preferable to proceed in a way other than that set forth in the rule.

On the basis that urine testing is such a bad idea that no set of procedures could redeem it, some comments urged abolishing the procedures (and, implicitly, the entire DOT drug testing program as well). The Department is well aware of the controversial nature of drug testing. The Department is committed to drug testing as being necessary for transportation safety. These procedures are the best means of which the Department is aware to ensure that testing is fair and accurate. Other commenters urged abolishing the procedures or making them voluntary so that employers could devise their own procedures.

Given the number of employers covered by DOT drug testing rules, and the varying resources available to them, the Department believes that consistent procedures that protect the accuracy and integrity of testing and successfully balance the legitimate interests of employers and employees would be difficult to achieve under such a "voluntary" approach.

Some comments questioned the validity of issuing an interim final rule, saying that an NPRM should have been issued first or that a supplemental notice of proposed rulemaking (SNPRM) should be issued before a revised final rule. The Department does not believe that either is called for. Before the issuance of the interim final rule in November 1988, commenters had the chance to address the applicability of the DHHS Guidelines to the DOT drug testing program in the context of six operating administration NPRMs. That the Department decided, as a matter of administrative convenience, to issue one procedural rule applicable to all six operating administration rules rather than incorporating or referencing the DHHS Guidelines or a modification of them in six individual rules does not affect the validity of the rulemaking process. (It should also be pointed out that the DHHS Guidelines themselves were published after an opportunity for public comment.)

After reviewing the comments pertaining to testing procedures made in response to the six operating administration NPRMs and the comments on the interim final rule, the Department is convinced that the issues have been thoroughly raised and responded to, and that a further opportunity to comment in an SNPRM would only delay necessary revisions of the interim final rule, rather than obtain additional useful suggestions. Therefore, the Department is proceeding to a final rule at this time.

A few comments also questioned the underlying legal authority for the rule. The rule is an Office of the Secretary rule, published under the general rulemaking authority available to the Secretary of Transportation. The operating administration rules, issued under the safety and/or grant program rulemaking authority of the several administrations, are the source of the requirement that regulated employers use the part 40 procedures.

Other comments concerned the regulatory evaluation, regulatory flexibility statement, and federalism statement. The costs of drug testing, and of testing according to these procedures, are imposed on regulated parties not by part 40 but by the six operating administration rules. The costs were taken into account in the regulatory evaluations for those rules and do not need to be repeated in connection with part 40.

The same can be said, as a general matter, for the impact of part 40 on small entities. One point made in this connection was that the requirement of part 40 for DHHS certification of laboratories could reduce opportunities for small laboratories. The Department does not believe that this is the case. DHHS certification is available to any laboratory meeting DHHS requirements, which do not include a size minimum. The 37 laboratories certified to date by DHHS include smaller as well as larger laboratories. While some laboratories, including small laboratories, may conclude that the business they would gain through DHHS certification is not sufficient to make DHHS certification worthwhile to pursue, the Department does not believe that this makes a case for altering the standards for participation in the DOT drug testing program, which must remain high in order to protect the integrity of the program.

With respect to federalism, a comment suggested that there may be a federalism impact on state and local laboratory certification standards. The requirements for the use of DHHS-certified laboratories does not in any way affect or preempt state or local laboratory certification standards, which will continue to apply without change within their ambit. Part 40 simply says that for purposes of a new Federal testing requirement, DHHS certification is required in addition to whatever standards laboratories must meet under state or local law.

Section-by-Section Analysis of Changes in the Final Rule

The Department is printing the complete text of part 40, as amended, in order to facilitate its use by affected parties. As a guide to the changes made in this amendment, this section of the preamble lists the changes which this amendment makes to each section of part 40.

Heading. The Table of Contents is changed by deleting the reference to subpart C and by changing the number of the section on the use of DHHS-certified laboratories from 40.41 to 40.39. The reference to the DHHS certification standards has been deleted (as has the old appendix A itself); appendix A now contains the drug testing custody and control form. A reference to 49 U.S.C. 322 has been added to the authority citation. This citation, which is to the statute containing the Secretary's general rulemaking authority, was inadvertently omitted from the publication of the interim final rule.

Section 40.3 Definitions. A definition of "blind sample" has been added. An addition has been made to the definition of "collection site person," providing that unless it is impracticable for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee. This definition also clarifies what "monitoring" of a drug test means. Definitions have also been added to distinguish three kinds of containers used in the collection process; the collection container, specimen bottle, and shipping container.

Section 40.23 Preparation for Testing. Paragraph 40.23(a), concerning the drug testing custody and control form, has been changed in accordance with the revised form. Paragraph 40.23(b) now

contains, as subparagraph (1), a requirement for the use of a sealed specimen container, which will be presented to the employee for unsealing at the beginning of the test procedure. The existing language of paragraph (b) has been renumbered as subparagraph (2).

Section 40.23 Specimen Collection Procedures. Subparagraph 40.25(e)(2)(i) has been amended by deleting the words at the end concerning the oral temperature not equalling or exceeding that of the specimen. The temperature range provision has been clarified.

Subparagraph (f)(2) contains new language at the end providing that on employee request, the collection site person shall show his or her identification to the employee. Language has been added at the end of subparagraph (f)(4) directing that if an employee requests it, the collection site person shall provide the employee a receipt for any personal belongings. Subparagraph (f)(8) now contains language requiring that the collection site person provide to the individual a sealed specimen container for purposes of giving the sample.

Subparagraph (f)(10)(i) concerns the "shy bladder" problem. The new language provides that if the individual is unable to provide 60 ml of urine, the collection site person shall direct the individual to drink fluids and, after a reasonable time, try again to provide a complete sample. In the case of a post-accident or reasonable cause test, the individual is not required to continue the procedure beyond eight hours from the start of the collection procedure. For other types of testing, another option is provided, under which the employer is notified, and the individual is scheduled for an unannounced drug test in the near future (if an employee) or scheduled for a new preemployment test (if an applicant; of course, the employer need not hire an applicant and the referral for further evaluation or testing is not mandatory in the preemployment situation, if the employer does not want to hire the person). If the individual cannot produce a complete sample within the eight-hour period or at the subsequent test, the employer must refer the individual to a physician for a medical evaluation of whether the problem is genuine or amounts to a refusal to take a drug test. Also in subparagraph (f)(10), new subparagraph (ii) has been added, permitting, but not requiring, the use of "split samples." It should be noted that the test of the second part of a "split sample" is only for presence of the drug(s) found positive on the first test (i.e., the cutoff values of § 40.29 do not apply). A new subparagraph (iii) specifies that, except for split samples under subparagraph (ii), no portion of the sample collected under this part may be used for any purpose other than drug testing required under DOT regulations.

A new paragraph (j) has been added, concerning employees requiring medical attention. The paragraph provides that if the collection is being made from an employee in need of medical attention (e.g., in a post-accident test), necessary medical attention shall not be delayed in order to take the sample.

Section 40.29 Laboratory Analysis Procedures. Subparagraph 40.29(g)(1) has been amended by deleting the last sentence, which required "batch reporting." Subparagraph 40.29(g)(3) has been amended by adding a proviso that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test (including a challenge by an employee to an action by a DOT agency concerning the employee's medical certificate, license, or other document).

Subparagraph (g)(6) has been amended by adding language providing that monthly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary in order to prevent disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory would so inform the employer in writing.

Section 40.31 Quality Assurance and Quality Control. In subparagraph (d)(2) of this section, the blind testing requirements have been simplified and the rates reduced. All employers, regardless of size, are covered. Each employer must submit three blind samples for every 100 employee specimens submitted, to a maximum of 100 blind samples per quarter. A DOT agency could increase this maximum if necessary, for extremely large employees or consortiums. For employees with fewer than 2000 covered employees, lower cost methods of supplying blind samples are authorized by subparagraph (d)(4). Blind testing need not begin until 180 days after publication of the rule for employers with fewer than 2000 employees. Subparagraph (5) clarifies that a consortium submits blind samples on behalf of its members.

Section 40.33 Reporting and Review of Results. In paragraph (a), the word "results" at the end of the first sentence has been changed to the words "confirmed positive results from the laboratory" as a clarification, to emphasize that a review of negative results is not necessary. At the end of this paragraph, a sentence has been added to make explicit that the MRO review shall include review of the drug testing chain of custody form to ensure that it is complete and sufficient on its face.

In paragraph (b), a sentence has been added after the first present sentence stating that the MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for and is not supervised by or the supervisor of, any persons who have the responsibility for the drug testing or quality control operations of the laboratory. Later in this paragraph, clarifying amendments have been made to the sentence beginning "This action" to say that the action in question includes "conducting a medical interview with the individual" and may also include review of the individual's medical history or review of any other relevant biomedical factors.

Paragraph (c) has been amended by adding the words "for an individual" after the words "positive test result" in the first sentence. New language has been added following the first sentence. It says that the MRO shall make all reasonable efforts to contact the employee directly. If the MRO is unable to contact the employee directly after making these efforts, the MRO would contact a representative of the employer and request that the employer direct the employee to contact the MRO as soon as possible. If the employer cannot get hold of the employee within a reasonable time, the employer may place the employee on medical leave or temporary medically unqualified status. If the employer representative does contact the individual, the MRO may declare the test a verified positive if, after five days have passed from a documented contact instructing the employee to talk to the MRO, the employee has not done so. To protect employees, the MRO may reexamine the verification if the employee documents that exigent circumstances prevented the employee from contacting the MRO in time.

A new paragraph (h) has been added after the end of this section concerning

the disclosure of other medical information. It provides that the MRO may disclose medical information learned as part of the testing/verification process only if the MRO concludes that the information concerns use of medications or a medical condition that could result in the employee becoming medically unqualified under applicable DOT rules or which otherwise could adversely effect transportation safety. The MRO would inform the employee, at the start of the verification interview, of the potential disclosure of such information.

Section 40.35 Protection of employee records. A sentence has been added at the end of this section providing that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer or the decisionmaker in a lawsuit, grievance or other formal proceeding initiated by or on behalf of the individual and arising from a verified positive drug test (including a challenge to a DOT agency's action concerning an employee; medical certificate, license, or other document).

Section 40.39 Use of DHHS-certified laboratories. The section number for this section has been changed from § 40.41 to § 40.39. The last two sentences of the section, referring to the DHHS certification standards set forth in appendix A, have been deleted, as has the old appendix A itself.

Enforcement Considerations

Although not directly as a part of this rulemaking, a number of persons have raised concerns about the enforcement of the Department's drug testing programs. The six operating administration rules to which part 40 procedures apply are part of existing statutory and regulatory systems. Generally, they will be enforced in the same way as the rest of those systems. For example, FAA and FHWA personnel inspect the equipment and records of the carriers they regulate. If they find rule violations, they may initiate enforcement proceedings and impose civil penalties. The FAA or FHWA personnel would add review of compliance with drug testing requirements to the other checks they make of employers' compliance with safety rules.

During the initial stages of the implementation of the Department's drug testing rules, the Department's focus will be on assisting employers to comply with the regulations, not on penalizing inadvertent or minor errors. At the same time, the Department will not tolerate intentional violations of the rules or deliberate schemes to avoid compliance.

For example, one major industry association has expressed concern that sham consortiums could be created. Such a sham would allow members to claim that covered employees were being tested, but little or no testing would actually take place. If the Department were to determine that such a sham consortium existed, the Department would take all enforcement action possible under its regulations and, since false statements or fraudulent documentation may be involved, refer appropriate cases to Federal law enforcement authorities for possible criminal prosecution.

Regulatory Process Matters

This is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures, since it affects several operating administrations and the industries they regulate. The costs of conducting drug testing conforming with these procedures were analyzed in the regulatory evaluations or regulatory impact analyses for the operating administration drug-testing rules. The provisions of this final rule which may affect costs are relatively few. Use of a sealed collection container/specimen bottle is likely to add only marginally to program costs; this is already common practice, in any case. Since the use of a "split sample" is not mandatory, any costs incurred by employers for this purpose are assumed to be voluntary. The elimination of the "batch reporting" requirement may result in marginal savings to labs and employers in reporting costs.

There should be significant saving to larger employers because of reductions in blind testing requirements. The maximum number of blind samples to be submitted per quarter has also been lowered. The costs to employers should be reduced proportionately. Costs will also be lower because of projected reductions in per sample costs (e.g., to $10–20 per sample, according to information from DHHS.

This saving will be offset, to some degree, by adding blind sample requirements for smaller companies. But the low rate of testing for these companies, added to the lower-cost alternatives for blind samples, should mean that individual employers will not face a heavy burden. For example, a trucking company with 50 covered drivers (assuming a 50 percent random testing rate and the replacement of half of its drivers per year) would have to submit only three blind samples every two years, at minimal cost.

This rule will affect small entities in all the industries covered by DOT operating administration drug rules. The basic small entity impacts of each rule have been considered as part of the operating administrations' rulemakings. The rule to which these amendments apply includes steps to reduce small entity impacts in such areas as inspections, submission of blind samples, and permanent log books. Consequently, the Department certifies that 49 CFR part 40 will not have a significant economic impact on a substantial number of small entities.

The Department has considered the federalism implications of this rule under Executive Order 12612. The Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Federalism implications of individual operating administrations' drug rules are discussed in those rulemaking documents.

The reporting and recordkeeping requirements referenced in this regulation have been submitted for Paperwork Reduction Act approval to the Office of Management and Budget by the respective DOT operating administrations in connection with their own drug rules. This is because it is the operating administration rules, rather than this rule, that actually impose the requirements on regulated parties. However, the Office of the Secretary is seeking OMB approval under the Paperwork Reduction Act for the revised form. A **Federal Register** notice will be published when Paperwork Act Approval is obtained.

Issued this 27th day of November 1989 at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

List of Subjects in 49 CFR Part 40

Controlled substances, Transportation.

For the reasons set forth in the preamble, the Department of Transportation makes the following amendments in title 49, Code of Federal Regulations, part 40:

1. The authority citation for 49 CFR part 40 is revised to read as follows:

Authority: 49 U.S.C. 102, 301, 322.

2. 49 CFR part 40 is revised to read as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

Sec.

40.1 Applicability.
40.3 Definitions.
40.5–40.19 [Reserved]
40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.
40.39 Use of DHHS—certified laboratories.

Appendix A to Part 40—Drug Testing Custody and Control Form

Authority: 49 U.S.C. 102, 301, 322.

§ 40.1 Applicability.

This part applies to transportation employers (including self-employed individuals) conducting drug urine testing programs pursuant to regulations issued by agencies of the Department of Transportation and to such transportation employers' officers, employees, agents and contractors, to the extent and in the manner provided in DOT agency regulations.

§ 40.3 Definitions.

For purposes of this part the following definitions apply:

Aliquot. A portion of a specimen used for testing.

Blind sample or blind performance test specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Chain of custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

Collection container. A container into which the employee urinates to provide the urine sample used for a drug test.

Collection site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection site person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency. An agency (or "operating administration") of the United States Department of Transportation administering regulations requiring compliance with this part, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Urban Mass Transportation Administration and the Research and Special Programs Administration.

Employee. An individual designated in a DOT agency regulation as subject to drug urine testing and the donor of a specimen under this part. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

Employer. An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, "employer" includes an industry consortium or joint enterprise comprised of two or more employing entities, but no single employing entity is relieved of its responsibility for compliance with this part by virtue of participation in such a consortium or joint enterprise.

Initial test (also known as screening test). An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Secretary. The Secretary of Transportation or the Secretary's designee.

Shipping container. A container capable of being secured with a tamper proof seal that is used for transfer of one or more specimen bottle(s) and associated documentation from the collection site to the laboratory.

Specimen bottle. The bottle which, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

§§ 40.5–40.19 [Reserved]

§ 40.21 The drugs.

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the DHHS has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

§ 40.23 Preparation for testing.

The employer and certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a) Utilization of a standard drug testing custody and control form (carbonless manifold). The form shall be a multiple-part, carbonless record form with an original (copy 1), and a "second original" (copy 2), both of which shall accompany the specimen to the laboratory. Copies shall be provided for the Medical Review Officer (copy 3, to go directly to the MRO), the donor (copy 4), the collector (copy 5), and the employer representative (copy 6). If the employer desires to exercise the split sample option, then an additional copy of the urine custody and control form is required. This copy (copy 7) shall be the "split specimen original," and is to accompany the split specimen to the same lab, a second lab, or an employer storage site. There must be a positive link established between the first specimen and the split specimen through the specimen identification number; the split specimen identification number shall be an obvious derivative of the first specimen identification number. The form should be a permanent record on which identifying data on the donor, and on the specimen collection and transfer process, is retained. The form shall be constructed to display, at a minimum, the following elements, which shall appear on its respective parts as indicated:

(1) The following information shall appear on all parts of the form:

(i) A preprinted specimen identification number, which shall be unique to the particular collection. If the split sample option is exercised, the preprinted specimen identification number for split specimen shall be an obvious derivative of the first specimen; e.g., first specimen identification number suffixed "A," split specimen suffixed "B."

(ii) A block specifying the donor's employee identification number or Social Security number, which shall be entered by the collector.

(iii) A block specifying the employer's name, address, and identification number.

(iv) A block specifying the Medical Review Officer's name and address.

(v) Specification for which drugs the specimen identified by this form will be tested.

(vi) Specification for the reason for which this test conducted (preemployment, random, etc.), which shall be entered by the collector.

(vii) A block specifying whether or not the collector read the temperature within 4 minutes, and then notation, by the collector, that the temperature of specimen just read is within the range of 32.5–37.7C/90.5–99.8F; if not within the acceptable range, an area is provided to record the actual temperature.

(viii) A chain-of-custody block providing areas to enter the following information for each transfer of possession: Purpose of change; released by (signature/print name); received by (signature/print name); date. The words "Provide specimen for testing" and "DONOR" shall be preprinted in the initial spaces.

(ix) Information to be completed by the collector: Collector's name; date of collection; location of the collection site; a space for remarks at which unusual circumstances may be described; notation as to whether or not the split specimen was taken in accordance with Federal requirements *if* the option to offer the split specimen was exercised by the employer; and a certification statement as set forth below and a signature block with date which shall be completed by the collector:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(2) Information to be provided by the laboratory after analysis, which shall appear on parts 1, 2 and 7 (if applicable) of the form only: Accession number; laboratory name; address; a space for remarks; specimen results; and certification statement as set forth below, together with spaces to enter the printed name and signature of the certifying laboratory official and date:

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

(3) A block to be completed by the Medical Review Officer (MRO), after the review of the specimen, which shall appear on parts 1, 2 and 7 (if applicable) of the form only, provides for the MRO's name, address, and certification, to read as follows, together with spaces for signature and date:

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is:

(4) Information to be provided by the donor, which shall appear on parts 3 through 6 of the form only: Donor name (printed); daytime phone number; date of birth; and certification statement as set forth below, together with a signature block with date which shall be completed by the donor.

I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

(5) A statement to the donor which shall appear only on parts 3 and 4 of the form, as follows:

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor) of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

A form meeting the requirements of this paragraph is displayed at appendix A to this part.

(6) The drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

(b)(1) Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A clean, single-use collection container (e.g., disposable cup or sterile urinal) that is securely wrapped until used may also be employed. *If urination is directly into the specimen bottle,* the specimen bottle shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided. *If a separate collection container is used for urination,* the collection container shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided; and the collection site person shall unwrap the specimen bottle in the presence of the employee at the time the urine specimen is presented.

(2) Use of a tamperproof sealing system, designed in a manner such to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space shall be provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more preprinted labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialled to prevent undetected tampering. In the split specimen option is exercised, the split specimen and associated paperwork shall be sealed in a shipping (or storage) container and initialled to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required in this part

(i) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person is provided instructions described in this part and performs collections in accordance with those instructions.

(ii) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with this part. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(3) Unless it is impracticable for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee. If the rules of a DOT agency are more stringent than this provision regarding the use of supervisors as collection site personnel, the DOT agency rules shall prevail with respect to testing to which they apply.

(4) In any case where a collection is monitored by non-medical personnel or is directly observed, the collection site person shall be of the same gender as the donor. A collection is monitored for this purpose if the enclosure provides less than complete privacy for the donor (e.g., if a restroom stall is used and the collection site person remains in the restroom, or if the collection site person is expected to listen for use of unsecured sources of water.)

§ 40.25 Specimen collection procedures.

(a) *Designation of collection site.* (1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of uring specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other applicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) *Security.* The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) *Chain of custody.* The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person and ensure against any confusion in the identification of specimens, the collection site person shall have only one donor under his or her supervision at any time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialled, the drug testing custody and control form has been executed, and the employee has departed the site (or, in the case of an employee who was unable to provide a complete specimen, has entered a waiting area).

(e) *Privacy.* (1) Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range (32.5°–37.7 °C/90.5°–99.8 °F), and

(A) The employee declines to provide a measurement of oral body temperature, as provided in paragraph (f)(14) of the part; or

(B) Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen;

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

(3) A higher-level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described in subparagraph (2) of this paragraph.

(f) *Integrity and identity of specimen.* Employers shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water (e.g., shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container, if applicable, for this purpose.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10)(i) Upon receiving the specimen from the individual, the collection site person shall determine if it contains at least 60 milliliters of urine. If the individual is unable to provide a 60 milliliters of urine, the collection site person shall direct the individual to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle (and fresh collection container, if employed). The original specimen shall be discarded. If the employee is still unable to provide a complete specimen, the following rules apply:

(A) In the case of a post-accident test or test for reasonable cause (as defined by the DOT agency), the employee shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to 8 hours from the beginning of the collection procedure.

(B) In the case of a preemployment test, random test, periodic test or other test not for cause (as defined by the DOT agency), the employer may elect to proceed as specified in paragraph (f)(10)(i)(A) of this section (consistent with any applicable restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time.

(C) If the employee cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the employer's MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

(ii) The employer may, but is not required to, use a "split sample" method of collection.

(A) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, after determining specimen temperature, pours into two specimen bottles.

(B) The first bottle is to be used for the DOT-mandated test, and 60 ml of urine shall be poured into it. If there is no additional urine available for the second

specimen bottle, the first specimen bottle shall nevertheless be processed for testing.

(C) Up to 60 ml of the remainder of the urine shall be poured into the second specimen bottle.

(D) All requirements of this part shall be followed with respect to both samples, including the requirement that a copy of the chain of custody form accompany each bottle processed under "split sample" procedures.

(E) Any specimen collected under "split sample" procedures must be stored in a secured, refrigerated environment and an appropriate entry made in the chain of custody form.

(F) If the test of the first bottle is positive, the employee may request that the MRO direct that the second bottle be tested in a DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first bottle. The result of this test is transmitted to the MRO without regard to the cutoff values of § 40.29. The MRO shall honor such a request if it is made within 72 hours of the employee's having actual notice that he or she tested positive.

(G) Action required by DOT regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the second test.

(H) If the result of the second test is negative, the MRO shall cancel the test.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) A specimen temperature outside the range of 32.5°–37.7 °C/90.5°–99.8 °F constitutes a reason to believe that the individual has altered or substituted the specimen (see paragraph (e)(2)(i) of this section). In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in paragraph (e)(2) (i) or (iii) of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual being tested shall be present at the same time during procedures outlined in paragraphs (f)(19)–(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamperproof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.

(22)(i) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided.

(ii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.

(24) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

(25)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him or her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) *Collection control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

(h) *Transportation to laboratory.* Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.

(i) *Failure to cooperate.* If the employee refuses to cooperate with the collection process, the collection site person shall inform the employer representative and shall document the non-cooperation on the drug testing custody and control form.

(j) *Employee requiring medical attention.* If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.

(k) *Use of chain of custody forms.* A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

§ 40.27 Laboratory personnel.

(a) *Day-to-day management.* (1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by a State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), or (iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in § 40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) *Test validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-day operations and supervision of analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience, certification or license if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

§ 40.29 Laboratory analysis procedures.

(a) *Security and chain of custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are stored. Access to these

secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of DHHS, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) *Short-term refrigerated storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test cutoff levels (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(f) *Confirmatory test.* (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite[1]	15
Cocaine metabolite[2]	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) *Reporting results.* (1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. *Provided,* that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide to the employer official responsible for coordination of the drug testing program a monthly statistical summary of urinalysis testing of the employer's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing;
(A) Number of specimens received;
(B) Number of specimens reported out; and
(C) Number of specimens screened positive for:
Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamine

(ii) Confirmatory Testing:
(A) Number of specimens received for confirmation;
(B) Number of specimens confirmed positive for:
Marijuana metabolite
Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the employer in writing.

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-term storage.* Long-term frozen storage (−20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

(i) *Retesting specimens.* Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by DHHS as required in this part, the subcontractor performs all analysis and provides storage required under this part, and the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor.

(k) *Laboratory facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensing requirements.

(2) Laboratories certified in accordance with DHHS Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agent) to conduct unannounced inspections.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

(n) *Additional requirements for certified laboratories.*—(1) *Procedure manual.* Each laboratory shall have a procedure manual which includes the principles of each test preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of methods, cutoff values, mechanisms for reporting results, controls criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) *Instruments and equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these

procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel available to testify at proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

§ 40.31 Quality assurance and quality control.

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) *Laboratory quality control requirements for initial tests.* Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level.

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure the carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) *Laboratory quality control requirements for confirmation tests.* Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level. The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) *Employer blind performance test procedures.*

(1) Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(3) For employers with 2000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drug or otherwise as approved by a DOT agency) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systemic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

§ 40.33 Reporting and review of results.

(a) *Medical review officer shall review confirmed positive results.* (1) An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation.

An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

(2) The duties of the MRO with respect to negative results are purely administrative.

(b) *Medical review officer—qualifications and responsibilities.* (1) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.

(2) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.

(3) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results or urine samples that are not obtained or processed in accordance with this part.

(c) *Positive test result.* (1) Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.

(2) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

(3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

(4) If, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative; or

(iii) Other circumstances provided for in DOT agency drug testing regulations.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(ii) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(7) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

(d) *Verification for opiates; review for prescription medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) *Reanalysis authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The Medical Review Officer shall authorize a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having received actual notice of the positive test. If the retest is negative, the MRO shall cancel the test.

(f) *Result consistent with legal drug use.* If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the employer as negative.

(g) *Result scientifically insufficient.* Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. (The MRO may request that reanalysis as provided in § 40.33(e) be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the employer. The employer shall include in any required annual report to a DOT agency a summary of any negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

(h) *Disclosure of information.* Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if—

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

§ 40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

§ 40.37 Individual access to test and laboratory certification results.

Any employee who is the subject of a drug test conducted under this part shall, upon wirtten request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

§ 40.39 Use of DHHS—certified laboratories.

Employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988, and subsequent amendments thereto.

BILLING CODE 4910-62-M

APPENDIX A—DRUG TESTING CUSTODY AND CONTROL FORM

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No. . . . . | SPECIMEN IDENTIFICATION No. 123456 | PLACE OVER CAP | DATE _____ | DONOR'S INITIAL _____ | SIGNATURE OF COLLECTOR

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other (Specify):_____

IV. REASON FOR TEST (Check one)
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other (Specify): _____

V. TEMPERATURE OF SPECIMEN Has been read within 4 minutes ☐ Yes ☐ No | TEMPERATURE IS WITHIN RANGE of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—If NOT, record actual temp: _____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. SPECIMEN IDENTIFICATION No. 123456

SHIPPING BOX CUSTODY SEAL

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY. DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 3) ONLY.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—(See Copy 3 of Form)

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION. | Split sample collected in accordance with applicabe Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

TO BE COMPLETED BY THE LABORATORY

I. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen. | ACCESSION NO.

LABORATORY | ADDRESS

REMARKS.

(PRINT) Certifying Scientist's Name (Last, First, Middle) | Signature of Certifying Scientist | Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS* (found only on copies one and two):

☐ NEGATIVE ☐ POSITIVE, for the following:
- ☐ Cannabinoids as Carboxy—THC
- ☐ Cocaine Metabolites as Benzoylecgonine
- ☐ Phencyclidine
- ☐ Opiates
  - ☐ Codeine
  - ☐ Morphine
- ☐ Amphetamines
  - ☐ amphetamines
  - ☐ methamphetamines
- ☐ _____

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is: (Check one) ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER: _____ DATE: _____

COPY 1—ORIGINAL—MUST ACCOMPANY SPECIMEN TO LABORATORY—LABORATORY RETAINS

BEST COPY AVAILABLE

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:_____

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*: _____

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* _____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. SPECIMEN IDENTIFICATION No. 123456

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY. DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 3) ONLY.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII–*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

TO BE COMPLETED BY THE LABORATORY

IX. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen. | ACCESSION NO.

LABORATORY | [redacted]

REMARKS

_____ (PRINT) Certifying Scientist's Name *(Last, First, Middle)* _____ Signature of Certifying Scientist _____ Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE NIDS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS* (found only on copies one and two):

☐ NEGATIVE

☐ POSITIVE, for the following:
☐ Cannabinoids as Carboxy—THC
☐ Cocaine Metabolites as Benzoylecgonine
☐ Phencyclidine
☐ Opiates
☐ Codeine
☐ Morphine

☐ Amphetamines
☐ [redacted]
☐ [redacted]

☐ _____

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/ verification is *(Check one)* ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER: _____ DATE: _____

COPY 2—2ND ORIGINAL—MUST ACCOMPANY SPECIMEN TO LABORATORY
LAB SENDS TO MRO WITH TEST RESULTS IN SECT. IX

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:_____

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ [redacted] ☐ [redacted] ☐ Other *(Specify)*: _____

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* _____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)* | SPECIMEN IDENTIFICATION No. 123456 | DAYTIME PHONE NUMBER | DATE OF BIRTH

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE: _____ DATE: _____

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII–*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

COPY 3—TO MEDICAL REVIEW OFFICER

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*:

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* _____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)* | SPECIMEN IDENTIFICATION No. [illegible] | DAYTIME PHONE NUMBER | DATE OF BIRTH

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE: _____ DATE: _____

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor) of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—(See Copy 3 of Form)

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

COPY 4—DONOR

BACK-SIDE OF COPY 4—DONOR

LIST PRESCRIPTION DRUGS. *IT IS NOT REQUIRED, AND IS FOR YOUR USE ONLY.*

_____

_____

_____

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*:

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* _____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)* | SPECIMEN IDENTIFICATION No. [illegible]

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE: _____ DATE: _____

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—(See Copy 3 of Form)

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

COPY 5—COLLECTOR

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*:

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* ____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)* | SPECIMEN IDENTIFICATION No. 123456

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE: _____ DATE: _____

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

COPY 6—EMPLOYER

Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456*SPLIT*

PLACE OVER CAP

DATE _____ DONOR'S INITIAL _____

SIGNATURE OF COLLECTOR

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*:

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*:

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* ____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII.

SPECIMEN IDENTIFICATION
No. 123456*SPLIT*
SHIPPING BOX CUSTODY SEAL

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY. DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 5) ONLY.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)* | DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION: | Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: _____

TO BE COMPLETED BY THE LABORATORY

IX. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen. | ACCESSION NO.

LABORATORY | ADDRESS

REMARKS:

_____ (PRINT) Certifying Scientist's Name *(Last, First, Middle)* | _____ Signature of Certifying Scientist | _____ Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS* (found only on copies one and two):

☐ NEGATIVE

☐ POSITIVE, for the following:
- ☐ Cannabinoids as Carboxy—THC
- ☐ Cocaine Metabolites as Benzoylecgonine
- ☐ Phencyclidine
- ☐ Opiates
  - ☐ Codeine
  - ☐ Morphine
- ☐ Amphetamines
  - ☐ amphetamines
  - ☐ methamphetamines
- ☐ _____

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination verification is: *(Check one)* ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER: _____ DATE: _____

COPY 7—SPLIT SPECIMEN ORIGINAL—MUST ACCOMPANY SPLIT SPECIMEN TO LABORATORY—LABORATORY RETAINS

[FR Doc. 89-28061 Filed 11-28-89; 10:27 am]
BILLING CODE 4910-62-C

49 CFR Part 40

Announcement of Conferences on DOT-Required Drug Testing

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of conferences.

SUMMARY: The Department of Transportation is sponsoring a series of conferences on Implementing Programs for a Drug-Free Transportation System. This notice concerns the dates, locations, agenda, and registration information for these conferences.

DATES: Conferences are scheduled for the following dates in the following cities:

December 7–8, 1989—Washington, DC.
December 19–20, 1989—Los Angeles, California
January 4–5, 1990—New Orleans, Louisiana
January 18–19—Chicago, Illinois
January 30–31, 1990—Boston, Massachusetts
February 7–8, 1990—Denver, Colorado
February 22–23—Dallas, Texas

FOR FURTHER INFORMATION CONTACT: Donna Smith, Drug Awareness and Education Division, Office of Personnel, Department of Transportation, 400 7th Street, SW., Room 9103, Washington, DC 20590. (202–366–6000). *(See supplementary information for phone number and address of contact for conference registration.)*

SUPPLEMENTARY INFORMATION: In November 1988, the Department of Transportation published regulations requiring drug testing programs in the aviation, maritime, railroad, mass transit, pipeline, and motor carrier industries. Employers in these industries must begin drug testing between December 1989 and December 1990. The Department is pleased that those who are responsible for transportation safety are responding positively to the challenge of implementing this significant and complex program.

As we approach the starting dates for drug testing, it is important for DOT, industry, and other concerned parties to work together to implement these requirements effectively. To this end, the Department is sponsoring a series of conferences, at the times and places listed above, to examine the issues surrounding drug testing and methods to implement drug programs in the transportation industries in accordance with DOT regulations.

The conferences are designed to provide a forum for discussing the rules and how to implement them. Participants will be able to discuss implementation issues, firsthand, with DOT staff responsible for carrying out the regulations.

Each conference will be one and one half days in length. The first day will include an overview of DOT drug testing regulations, an introduction to 49 CFR part 40 (the Department's Drug Testing Procedures rule, a revision of which is being published in today's **Federal Register**; detailed discussion of such issues under part 40 as collection procedures, the chain of custody form, the testing process, quality control measures, and the role of the medical review officer; and the drug awareness and training requirements of the DOT rules. The second day (a half-day) will feature industry break-out sessions, in which employers in each industry will meet with DOT operating administration staff to discuss implementation issues of particular interest to that industry.

Conference participation will be limited to 300 at each site. Based on the number of responses received, the number of participants from a particular organization may be limited. The conference registration fee will be $50 per person. Attendees will be responsible for their own hotel reservations and charges. The hotels at which each conference will be held will be announced at a later date.

For registration materials and information, you should contact the Department's consultant who is administering the conferences, Ricard International Incorporated (RII), 1010 Wayne Avenue, Silver Spring, Maryland 20910. Contact persons at RII are John Smith, Loraine Price, and Sonny Bloom. RII phone numbers are 301–589–6248 (voice) and 301–565–5112 (fax).

Issued this 28th day of November, 1989, at Washington, DC.

Melissa J. Allen,
Deputy Assistant Secretary for Administration.

[FR Doc. 89–28229 Filed 11–30–89; 8:45 am]
BILLING CODE 4910-62-M

federal register

Friday
December 1, 1989

Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation, All Market Areas, Fiscal Year 1988

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1961; FR-2634-N-02]

Section 8 Housing Assistance Payments Program, Fair Market Rents for New Construction and Substantial Rehabilitation, All Market Areas; Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document announces final Fiscal Year 1988 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program. These FMRs are based on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. They also reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Program.

EFFECTIVE DATE: December 1, 1989, retroactive to September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments to owners on behalf of eligible families. Total housing expense represents the total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the difference between the total housing expense and the total family contribution. Initial contract rents plus any allowances for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department.

Section 8(c)(1) of the Act states that the Secretary shall establish FMRs periodically, but not less frequently than annually. Section 8(c)(1) further provides that the Department shall publish FMRs in the **Federal Register**, with reasonable time for public comment, and that the FMRs will become effective upon their publication in final form in the **Federal Register**. The Department published proposed Fiscal Year 1988 FMRs in the **Federal Register** on May 22, 1989, at 54 FR 22190, with a comment due date of June 21, 1989.

Discussion of Public Comments

The Department received 33 comments on the proposed notice that was published on May 22, 1989. The comments received were distributed as follows: three from HUD Field Offices; 17 from community development agencies; two from non-profit associations; three from private consultants; five from nonprofit housing sponsors; two from individuals; and one from a management agent.

Virtually all comments included the general statement that the FMRs were inadequate for their particular jurisdictions. In addition to this general comment, the following substantive issues were raised and addressed by the Department as follows:

1. Twenty-one commenters questioned whether the proposed rents met the HUD criteria stated in the proposed notice that FMRs are based primarily on the level of rent paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff and trended to October 1, 1989, to allow for the period of construction or rehabilitation of the projects involved.

One HUD Field Office commenter indicated that Field Office staff proposed FMR increases that were much higher than those indicated in the proposed notice, and that the proposed FMRs, as published, do not reflect market reality.

The Department disagrees with the commenters on this issue. The FMRs have their foundation in local market data since their genesis in the annual rent survey conducted by each Field Office in preparation of the annual revisions to the FMR schedules. In addition, the preamble states that they also "reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs." Therefore, while the Department acknowledges that the published rents may, in some cases, be lower than the rents proposed by HUD Field Offices, the published rents are nonetheless consistent with the criteria specified in the preamble.

2. Four commenters made the point that the intent of the Section 202 regulations is to provide funding for 100% of the development costs of Section 202 projects. Moreover, FMRs do not reflect typical rents for specialized housing for the elderly or handicapped.

Construction cost data was never intended to be, and still is not, the primary consideration in establishing FMRs and FMR limits. Moreover, the Department's policies and procedures strictly preclude the selection of HUD subsidized projects as rental comparables in developing FMRs for any given market area. As required by the Congress, HUD procedures for establishing FMRs for any market area rely on market rental comparables reflecting local market conditions. In addition, consistent with our regulations, the FMRs for the elderly and handicapped are increased five percent above the published FMRs specifically to take specialized housing factors into consideration.

3. One commenter said that the trend percentage appears to be low at four percent versus actual rental trends in the market.

The four percent adjustment was based on the Fiscal Year 1988 housing index published by the Bureau of Labor Statistics.

4. Six commenters stated that Section 202 sponsors were required to build a project in 1988 with FMRs established in Fiscal Year 1988, despite construction cost increases during that time interval.

To prevent such an inequity, this Notice has been revised to permit the Fiscal Year 1986 and Fiscal Year 1987 Section 202 selections, in certain instances, to use the Fiscal Year 1988 FMR schedules published as a Proposed Notice on May 22, 1989, and which this Notice publishes for effect. As discussed later under *Applicability* for Section 202/Section 8 projects, in certain instances the FMRs may be increased by up to 20 percent provided the project meets the Department's cost containment standards. In addition, in certain instances the contract rents may be based upon the higher of the FMRs set forth in Schedule A below or the FMRs in effect on the date of the Notice of the Section 202 Fund Reservation provided the proposal proceeds to initial loan closing on or before September 30, 1990. Furthermore, for Section 202 projects with Section 8 assistance selected during Fiscal Year 1985 and earlier, in certain instances increased FMRs may apply. This also is discussed later under *Applicability* for Section 202/Section 8 projects.

5. Six commenters stated that in severl Oregon market areas the Fiscal Year 1988 Existing Housing FMRs were higher than the proposed New Construction and Substantial Rehabilitation FMRs.

In response to this claim, our analysis shows that for the Portland market area the New Construction and Substantial Rehabilitation two bedroom FMRs are actually higher than the Existing Housing FMRs for the locality for some structural categories such as detached and 5+-story buildings.

Existing Housing FMRs are published from rental surveys that include a mixture of various structural types that are not separately identified; whereas the New Construction and Substantial Rehabilitation FMRs are published from market surveys of rentals for individual structural types such as detached, semi-detached/row, walkup, 2-4-story elevator, and 5+-story elevator buildings. Therefore, the Existing Housing FMRs normally do not lend themselves to a valid comparison with the New Construction and Substantial Rehabilitation FMRs.

This Notice

Today's document announces the Fiscal Year 1988 FMRs for new construction and substantial rehabilitation that apply to Section 8 New Construction under part 880, Substantial Rehabilitation under Part 881, Housing Finance and Development Agencies under part 883, New Construction Set-Aside for Section 515 Rural Rental Housing Projects under part 884, Housing for the Elderly and Handicapped under part 885, and Disposition of HUD-owned projects under part 886, subpart C.

The Fiscal Year 1988 FMRs are based on the levels of rent paid for recently completed or newly constructed dwelling units of modest deisgn within each market area, as determined by HUD Field Office staff, trended ahead to October 1, 1989, to allow time for the period of construction or rehabilitation of the projects involved. They are estimates of rentals that prospective tenants who are not receiving Federal rent subsidies would be willing and able to pay for recently completed or newly constructed dwelling units of modest design and with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

This Notice includes FMRs for 0, 1, 2, 3 and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, 2-4-story elevator and 5+-story elevator buildings). Construction or rehabilitation of elevator projects for families with children is prohibited unless there is no practical alternative. FMRs for family units in elevator structures are proposed for appropriate market areas; however, the determination that there is "no practical alternative" must be made on a project-by-project basis. HUD regulations also provide that high-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

With the publication for effect in the **Federal Register**, these FMRs will be made retroactive to September 15, 1988.

Section 202/Section 8 Projects

Applicability

A. For Section 202 projects with Section 8 assistance, beginning with Federal Fiscal Year 1986 selections, the FMRs on which the contract rents will be based will be the FMRs applicable to projects for the elderly or handicapped published and in effect on the date of the Notice of Section 202 Fund Reservation, except as follows:

1. These FMRs may be increased by up to 10 percent with the approval of the Field Office Manager or by up to 20 percent with the approval of the Assistant Secretary for Housing—Federal Housing Commissioner, provided that the project meets the Department's cost containment efforts.

2. For Section 202 proposals with Section 8 assistance selected in FY 1986 and FY 1987, the FMRs on which the contract rents will be based will be the FMRs set forth in Schedule A that follows this preamble, provided that the proposal proceeds to initial loan closing on or before September 30, 1990. However, for all projects where the FMRs in Schedule A that follows are lower than the FMRs in effect on the date of the Notice of the Section 202 Fund Reservation, the contract rents shall be based upon the higher of:

a. the FMRs set forth in Schedule A, or

b. the FMRs in effect on the date of the Notice of Section 202 Fund Reservation.

The decision concerning appropriate FMRs to use in project processing will be based upon an entire schedule rather than selectively choosing the highest unit rents from the currently effective FMR schedule or a previously published schedule for that area.

B. For Section 202 projects with Section 8 assistance selected during Federal Fiscal Year 1985 and earlier, and for Section 8 projects under the Section 8 New Construction and Substantial Rehabilitation Program, the applicable FMRs are those in effect on the date that the proposal or application for assistance was submitted to HUD (or by the Farmers Home Administration (FmHA) in the case of assistance under part 884, or by the State Agency in the case of assistance under part 883). The following exceptions apply:

1. For all projects where the FMRs are increased after the completion date of a processing stage, the increased FMRs will apply to all subsequent processing in reviewing contract rents and utilities.

2. For all projects where the FMRs are decreased after the completion date of a processing stage, the applicable FMR will be the higher of:

a. The FMR set forth in Schedule A of the annual publication of Fair Market Rents, or

b. The FMR set forth in a previously published schedule that was in effect at the time that the application was submitted.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs set forth in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department revises schedule A of 24 CFR part 888 to read as set forth below.

Authority: Sec. 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of

Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 27, 1989.

C. Austin Fitts,

Assistant Secretary, Housing—Federal Housing Commissioner.

PART 888—[AMENDED]

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Notes

Special Category Computations

1. FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed two bedrooms for the elderly, multiplied by 1.05.

2. Congregate housing dwelling unit FMRs are the same as for noncongregate units.

3. Single-room occupancy dwelling unit FMRs (applicable only for substantial rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type.

4. FMRs for living units in a group home developed with a direct loan under Section 202 of the Housing Act of 1959 are those for zero-bedroom or a one-bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2 to 4-story structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet, provided that the project conforms to the following criteria:

a. The project meets HUD's cost containment guidelines, and

b. Use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project.

5. Manufactured home (unit and space) FMRs shall be 95 percent of the rents for detached units of the appropriate bedroom size (except that where a manufactured home FMR is specified in the schedule for an area, the amount in the schedule shall be the FMR).

6. FMRs for manufactured home spaces in newly constructed or substantially rehabilitated manufactured home parks are determined by multiplying by 1.25 the FMRs for the spaces published for the Existing Housing Program. (For currently effective FMRs for the Existing Housing Program, see **Federal Register** documents published on April 29, 1987 (52 FR 15630), March 16, 1988 (53 FR 8888), September 21, 1988 (53 FR 36700), and May 19, 1989 (54 FR 21812).)

Rent Computations

All rents computed in accordance with this note shall be rounded down to the nearest whole dollar.

Similarly, all FMRs increased by up to 10 percent with the approval of the HUD Field Office Manager, or by up to 20 percent with the approval of the HUD Assistance Secretary for Housing, should have the result rounded down to the nearest whole dollar.

BILLING CODE 4210-27-M

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

BOSTON REGIONAL OFFICE

	MARKET: BOSTON NUMBER OF BEDROOMS					MARKET: WORCESTER NUMBER OF BEDROOMS					MARKET: FALL RIVER NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			818	1050	1141			759	971	1053			783	943	959
SEMI-DETACHED/ROW	683	689	809	954	1057	604	611	751	876	1005	601	607	768	931	943
WALKUP	594	671	804	887	1007	545	580	728	826	949	565	586	725	830	871
ELEVATOR 2-4 STY	616	748	865	1107	1209	556	639	766			585	607	741		
ELEVATOR 5+ ST/ MANUFACTURED HOME	621	753	870	1208	1334	584	673	805			590	639	774		
	EFFECTIVE DATE 100187					EFFECTIVE DATE 100187					EFFECTIVE DATE 100187				
	TRENDED DATE 100189					TRENDED DATE 100189					TRENDED DATE 100189				

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

HARTFORD OFFICE

MARKET: HARTFORD
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			724	805	829
SEMI-DETACHED/ROW	584	598	690	781	805
WALKUP	496	576	655	740	764
ELEVATOR 2-4 STY	503	585	661		
ELEVATOR 5+ STY	520	636	732		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NEW HAVEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		703	795	849
556	579	652	768	826
495	554	628	716	740
509	570	668		
527	629	744		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NEW LONDON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		700	781	816
514	519	665	742	791
463	497	654	735	762
468	513	679		
494	567	700		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NEW MILFORD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		653	728	747
538	562	648	723	742
467	542	616	694	718
472	549	621		
488	597	689		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WINDHAM
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			600	665	690
SEMI-DETACHED/ROW	506	512	573	641	668
WALKUP	419	488	547	607	625
ELEVATOR 2-4 STY	444	508	559		
ELEVATOR 5+ STY	462	539	615		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BRIDGEPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		702	750	782
575	580	669	725	758
481	557	632	703	728
488	584	640		
508	617	711		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: RIDGEFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		815	873	904
668	673	776	849	879
557	649	738	826	850
567	658	745		
585	716	824		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NORWICH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		653	728	747
525	572	648	723	742
475	553	628	695	717
483	561	633		
500	600	700		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

MANCHESTER OFFICE

	MARKET: MAINE STATEWIDE NUMBER OF BEDROOMS					MARKET: VERMONT STATE NUMBER OF BEDROOMS					MARKET: NEW HAMPSHIRE ST. NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED		595	671	766	889		616	716	798	898		593	664	765	889
SEMI-DETACHED/ROW	468	549	627	722	836	513	576	679	762	860	503	561	631	724	840
WALKUP	419	510	597	677	765	459	538	639	721	795	444	498	573	652	742
ELEVATOR 2-4 STY	469	561	706			521	595	705			469	568	654		
ELEVATOR 5+ STY	521	626	786			578	659	783			521	630	727		
MANUFACTURED HOME															
EFFECTIVE DATE	100187					100187					100187				
TRENDED DATE	100189					100189					100189				

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

PROVIDENCE OFFICE

MARKET: PROVIDENCE

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			882	1027	1149
SEMI-DETACHED/ROW	536	656	748	829	895
WALKUP	481	651	723	744	874
ELEVATOR 2-4 STY	488	646	841		
ELEVATOR 5+ STY	494	653	849		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

BUFFALO OFFICE

	MARKET: BUFFALO NUMBER OF BEDROOMS					MARKET: ELMIRA NUMBER OF BEDROOMS					MARKET: JAMESTOWN NUMBER OF BEDROOMS					MARKET: ROCHESTER NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			605	686	773			572	662	733			598	672	754			585	654	726
SEMI-DETACHED/ROW	435	455	531	625	723	358	415	521	617	688	440	469	545	625	715	456	460	538	625	706
WALKUP	346	410	493	579	617	310	359	472	585	663	361	424	504	579	669	354	413	496	563	635
ELEVATOR 2-4 STY	454	500	663			381	465	596			442	521	640			458	521	625		
ELEVATOR 5+ STY	494	540	702			419	503	635			481	561	679			497	561	668		
MANUFACTURED HOME																				
EFFECTIVE DATE	100187					100187					100187					100187				
TRENDED DATE	100189					100189					100189					100189				

	MARKET: ALBANY NUMBER OF BEDROOMS					MARKET: PLATTSBURGH NUMBER OF BEDROOMS					MARKET: SYRACUSE NUMBER OF BEDROOMS					MARKET: BINGHAMTON NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			649	784	868			585	690	762			593	683	781			572	690	763
SEMI-DETACHED/ROW	471	477	572	696	771	488	493	538	621	693	427	438	520	626	703	415	420	508	607	674
WALKUP	407	465	545	642	728	387	424	491	575	655	341	409	498	569	655	359	410	481	565	639
ELEVATOR 2-4 STY	413	500	633			432	511	621			346	454	576			364	446	567		
ELEVATOR 5+ STY	443	548	682			471	551	668			384	495	619			398	474	610		
MANUFACTURED HOME																				
EFFECTIVE DATE	100187					100187					100187					100187				
TRENDED DATE	100189					100189					100189					100189				

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

NEW YORK REGIONAL OFFICE

MARKET: NEW YORK CITY

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			953	1131	1382
SEMI-DETACHED/ROW	687	692	884	1058	1279
WALKUP	621	649	912	1151	1351
ELEVATOR 2-4 STY	664	853	1171	1487	1699
ELEVATOR 5+ STY	866	1054			
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SUFFOLK

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			1054	1278	1425
	797	844	1000	1046	1246
	640	745	897	977	1079
	822	966	1176		
	888	990	1236		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WESTCHESTER

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			955	1115	1222
	677	682	799	985	1072
	534	637	762	921	1010
	659	755	928		
	715	849	988		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ORANGE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			810	920	997
	563	612	732	873	955
	498	572	695	816	903
	667	722	912		
	717	820	1002		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ROCKLAND

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			944	1024	1100
SEMI-DETACHED/ROW	586	675	842	980	1063
WALKUP	501	636	795	923	1022
ELEVATOR 2-4 STY	567	683	845		
ELEVATOR 5+ STY	620	739	894		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NASSAU

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			1008	1151	1264
	708	715	922	1046	1159
	552	688	834	958	1061
	562	703	875		
	575	807	933		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PUTNAM

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			879	1011	1100
	587	592	754	905	987
	478	561	647	809	940
	672	762	833		
	720	828	920		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: POUGHKEEPSIE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			731	854	976
	502	534	639	731	803
	425	509	633	679	754
	648	757	872		
	677	786	942		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

NEWARK OFFICE

MARKET: NEWARK
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			1163	1300	1382
SEMI-DETACHED/ROW	657	731	927	1076	1170
WALKUP	578	647	829	962	1054
ELEVATOR 2-4 STY	668	743	947	1103	1191
ELEVATOR 5+ STY	751	842	1075	1259	1356
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: NORTH BERGEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1156	1293	1375
722	795	922	1069	1162
640	707	822	954	1047
729	804	940	1095	1184
813	904	1068	1252	1349

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FREEHOLD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1070	1204	1289
648	722	839	982	1076
568	633	742	868	961
655	730	852	1009	1096
739	830	980	1163	1264

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CAMDEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1020	1150	1229
624	629	769	935	1022
465	539	662	819	917
598	671	817	980	1067
683	770	959	1136	1232

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ATLANTIC CITY
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			982	1112	1177
SEMI-DETACHED/ROW	653	658	750	895	984
WALKUP	523	586	664	795	878
ELEVATOR 2-4 STY	630	702	792	942	1026
ELEVATOR 5+ STY	715	802	920	1096	1194
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BURLINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1020	1150	1229
621	629	789	935	1022
493	555	702	833	917
599	671	830	980	1067
683	770	959	1136	1232

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GLOUCESTER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1020	1150	1229
574	629	777	935	1022
475	553	668	830	917
599	671	828	980	1067
683	770	959	1136	1232

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TRENTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1042	1170	1249
684	707	807	954	1043
539	614	723	853	938
672	752	851	1001	1086
769	858	979	1156	1255

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: VINELAND
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			895	1024	1103
SEMI-DETACHED/ROW	560	580	664	807	897
WALKUP	414	494	576	707	792
ELEVATOR 2-4 STY	553	630	705	854	941
ELEVATOR 5+ STY	645	730	833	1010	1108
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ASBURY PARK
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		1026	1162	1243
593	666	793	940	1034
511	578	692	826	918
600	675	810	967	1053
683	781	938	1121	1222

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

CARIBBEAN OFFICE

MARKET: SAN JUAN
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			518	576	639
SEMI-DETACHED/ROW	428	439	491	535	596
WALKUP	361	417	463	505	546
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY	413	463	530	611	675
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MAYAGUEZ
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		500	550	612
401	439	464	508	570
343	408	436	477	520
385	437	543	588	658

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PONCE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		464	514	575
365	402	427	471	534
336	373	399	441	484
385	437	517	551	622

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ARECIBO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		495	545	606
396	434	459	502	565
343	404	430	472	515
385	437	543	582	653

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ST. CROIX
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			653	737	849
SEMI-DETACHED/ROW	432	504	592	684	779
WALKUP	367	432	525	591	554
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ST. THOMAS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		963	1051	1186
648	716	825	950	1078
520	605	746	830	931
525	632	772		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OLD SAN JUAN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
572	617	647	702	775
538	581	614	665	714

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

BALTIMORE OFFICE

	MARKET: BALTIMORE NUMBER OF BEDROOMS					MARKET: HAGERSTOWN NUMBER OF BEDROOMS					MARKET: SALISBURY NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			755	852	1002			653	767	884			641	707	830
SEMI-DETACHED/ROW	452	529	612	725	938	368	490	576	651	846	413	452	521	603	777
WALKUP	409	524	602	720	778	366	485	570	646	676	345	447	515	597	672
ELEVATOR 2-4 STY	442	552	654			393	492	576			358	490	537		
ELEVATOR 5+ STY	488	602	730			427	497	590			395	515	625		
MANUFACTURED HOME															
EFFECTIVE DATE	100187					EFFECTIVE DATE	100187				EFFECTIVE DATE	100187			
TRENDED DATE	100189					TRENDED DATE	100189				TRENDED DATE	100189			

PREPARED ON 102789

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

CHARLESTON OFFICE

MARKET: CHARLESTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			561	666	757
SEMI-DETACHED/ROW	346	420	532	637	735
WALKUP	325	415	521	532	601
ELEVATOR 2-4 STY	425	523	591		
ELEVATOR 5+ STY	438	530	597		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BLUEFIELD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		519	592	658
303	392	489	553	595
298	381	449	502	552
422	502	562		
430	509	570		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HUNTINGTON

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		512	618	672
312	401	498	584	645
262	390	493	556	610
399	474	569		
405	481	575		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PARKERSBURG

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		479	553	608
272	352	450	522	575
267	341	423	495	546
411	495	600		
420	502	608		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WHEELING

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			490	584	653
SEMI-DETACHED/ROW	274	363	460	566	627
WALKUP	269	352	455	526	574
ELEVATOR 2-4 STY	395	472	573		
ELEVATOR 5+ STY	400	479	578		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MARTINSBURG

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		496	584	653
293	367	459	550	627
283	342	454	526	595
441	492	547		
452	497	554		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FAIRMONT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		555	618	692
345	425	524	592	664
340	415	504	556	613
472	519	578		
480	525	585		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: POINT PLEASANT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		478	551	601
272	352	446	519	572
259	341	438	488	543
409	488	547		
414	497	555		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

PHILADELPHIA REGIONAL OFFICE

MARKET: PHILADELPHIA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW		612	766	886	993
WALKUP	479	540	682	774	856
ELEVATOR 2-4 STY	582	604	756		
ELEVATOR 5+ STY	641	720	849		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ALLENTOWN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	492	511	636	744	822
SEMI-DETACHED/ROW	436	480	598	699	780
WALKUP	515	543	637		
ELEVATOR 2-4 STY	529	581	713		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BELLEFONTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	451	517	549	713	799
SEMI-DETACHED/ROW	408	480	544	686	748
WALKUP	447	522	649		
ELEVATOR 2-4 STY	497	561	693		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HARRISBURG

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	516	521	574	713	799
SEMI-DETACHED/ROW	411	480	555	686	746
WALKUP	467	542	598		
ELEVATOR 2-4 STY	505	586	649		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LANCASTER

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	479	485	596	733	762
SEMI-DETACHED/ROW	400	468	584	695	732
WALKUP	486	562	730		
ELEVATOR 2-4 STY	511	587	755		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: YORK

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	479	485	596	733	762
SEMI-DETACHED/ROW	400	468	584	690	732
WALKUP	484	562	730		
ELEVATOR 2-4 STY	509	587	755		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: READING

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	505	511	612	735	818
SEMI-DETACHED/ROW	407	490	587	694	762
WALKUP	465	548	636		
ELEVATOR 2-4 STY	503	601	705		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SCRANTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	475	542	629	684	779
SEMI-DETACHED/ROW	407	482	598	679	762
WALKUP	504	561	668		
ELEVATOR 2-4 STY	536	597	711		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WELLSBORO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	418	517	624	716	799
SEMI-DETACHED/ROW	408	489	589	686	727
WALKUP	447	522	649		
ELEVATOR 2-4 STY	497	561	693		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

PITTSBURGH OFFICE

MARKET: PITTSBURGH

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			686	762	892
SEMI-DETACHED/ROW	487	585	649	724	847
WALKUP	418	497	579	695	813
ELEVATOR 2-4 STY	531	595	686		
ELEVATOR 5+ STY	548	620	729		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ERIE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		641	713	834
462	555	611	679	795
369	455	541	628	703
521	578	672		
540	596	722		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ALTOONA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		557	671	810
376	453	547	639	772
358	441	542	623	717
518	584	618		
531	601	657		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: JOHNSTOWN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		574	682	816
394	467	546	643	777
361	445	536	616	702
484	520	623		
493	559	656		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

RICHMOND OFFICE

	MARKET: NORTON NUMBER OF BEDROOMS					MARKET: HARRISONBURG NUMBER OF BEDROOMS					MARKET: NEWPORT NEWS NUMBER OF BEDROOMS					MARKET: NORFOLK NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	364	375	451	547	610	379	419	488	563	638	413	418	481	600	653	442	447	534	605	657
WALKUP	276	343	436	542	597	327	389	483	557	620	328	372	449	538	599	384	433	512	600	650
ELEVATOR 2-4 STY	312	378	471			363	424	519			364	407	484			419	468	547		
ELEVATOR 5+ STY	342	425	563			394	488	568			467	555	638			490	597	692		
MANUFACTURED HOME																				
EFFECTIVE DATE	100187					EFFECTIVE DATE	100187				EFFECTIVE DATE	100187				EFFECTIVE DATE	100187			
TRENDED DATE	100189					TRENDED DATE	100189				TRENDED DATE	100189				TRENDED DATE	100189			

	MARKET: CHARLOTTESVILLE NUMBER OF BEDROOMS					MARKET: RICHMOND NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED										
SEMI-DETACHED/ROW	463	469	554	655	696	426	433	502	587	638
WALKUP	385	436	522	580	646	351	412	492	580	632
ELEVATOR 2-4 STY	420	471	557			387	446	526		
ELEVATOR 5+ STY	465	563	698			438	532	657		
MANUFACTURED HOME										
EFFECTIVE DATE	100187					EFFECTIVE DATE	100187			
TRENDED DATE	100189					TRENDED DATE	100189			

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

WASHINGTON D.C. OFFICE

MARKET: WASHINGTON D.C.

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	581	653	716	796	898
WALKUP	469	553	629	729	814
ELEVATOR 2-4 STY	505	610	787		
ELEVATOR 5+ STY	566	652	846		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

WILMINGTON

	MARKET: WILMINGTON, DEL NUMBER OF BEDROOMS					MARKET: DOVER, DEL NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			658	828	866			630	755	854
SEMI-DETACHED/ROW	475	480	587	705	774	436	441	530	653	712
WALKUP	397	460	543	631	676	384	419	476	568	614
ELEVATOR 2-4 STY	438	512	646			395	485	574		
ELEVATOR 5+ STY	466	594	658			419	536	637		
MANUFACTURED HOME										
	EFFECTIVE DATE 100187					EFFECTIVE DATE 100187				
	TRENDED DATE 100189					TRENDED DATE 100189				

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

ATLANTA REGIONAL OFFICE

MARKET: ATLANTA

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			492	564	599
SEMI-DETACHED/ROW	466	497	564	681	724
WALKUP	453	481	551	667	708
ELEVATOR 2-4 STY	483	511	579		
ELEVATOR 5+ STY	541	578	659		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ALBANY

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			462	543	568
SEMI-DETACHED/ROW	344	370	434	495	527
WALKUP	334	360	421	485	517
ELEVATOR 2-4 STY	359	385	448		
ELEVATOR 5+ STY	409	435	498		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: AUGUSTA

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			502	591	628
SEMI-DETACHED/ROW	364	405	461	536	596
WALKUP	351	393	455	523	572
ELEVATOR 2-4 STY	382	421	486		
ELEVATOR 5+ STY	438	476	544		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BRUNSWICK

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			471	576	621
SEMI-DETACHED/ROW	340	378	423	543	584
WALKUP	325	364	410	529	570
ELEVATOR 2-4 STY	353	394	438		
ELEVATOR 5+ STY	413	454	495		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COLUMBUS

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			481	521	579
SEMI-DETACHED/ROW	365	400	448	496	557
WALKUP	361	382	437	480	536
ELEVATOR 2-4 STY	391	413	463		
ELEVATOR 5+ STY	446	480	517		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MACON

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			460	536	577
SEMI-DETACHED/ROW	319	346	399	474	530
WALKUP	307	333	394	461	516
ELEVATOR 2-4 STY	333	359	420		
ELEVATOR 5+ STY	396	416	478		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ROME

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			537	622	661
SEMI-DETACHED/ROW	375	414	498	565	613
WALKUP	362	400	485	552	600
ELEVATOR 2-4 STY	390	434	513		
ELEVATOR 5+ STY	446	490	569		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SAVANNAH

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			451	517	592
SEMI-DETACHED/ROW	314	356	424	509	557
WALKUP	302	337	414	484	545
ELEVATOR 2-4 STY	331	372	444		
ELEVATOR 5+ STY	385	428	497		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: VALDOSTA

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			424	509	557
SEMI-DETACHED/ROW	302	337	414	484	545
WALKUP	331	372	444		
ELEVATOR 2-4 STY	385	428	497		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

BIRMINGHAM OFFICE

MARKET: BIRMINGHAM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			583	709	802
SEMI-DETACHED/ROW	379	386	459	555	595
WALKUP	341	379	445	536	576
ELEVATOR 2-4 STY	352	399	471		
ELEVATOR 5+ STY	366	419	498		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DOTHAN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		490	620	703
333	363	421	506	552
327	358	415	487	532
339	375	438		
345	386	455		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FLORENCE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		519	658	745
341	368	437	531	575
319	362	423	511	559
334	375	447		
347	388	460		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HUNTSVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		549	701	796
399	404	483	570	620
337	398	476	555	612
386	429	518		
398	449	544		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MOBILE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			554	700	789
SEMI-DETACHED/ROW	353	382	466	535	575
WALKUP	334	375	452	522	561
ELEVATOR 2-4 STY	351	386	469		
ELEVATOR 5+ STY	357	398	486		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MONTGOMERY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		544	656	747
367	372	473	561	616
340	366	453	555	608
352	386	479		
365	405	506		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TUSCALOOSA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		516	686	774
379	397	461	561	600
351	391	447	544	583
374	411	473		
388	427	497		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

COLUMBIA OFFICE

MARKET: GREENVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			530	643	693
SEMI-DETACHED/ROW	375	401	510	604	652
WALKUP	366	391	498	589	630
ELEVATOR 2-4 STY	400	416	525		
ELEVATOR 5+ STY	425	441	550		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREENWOOD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		471	554	600
346	362	454	523	565
337	353	445	511	548
360	375	467		
382	397	488		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MYRTLE BEACH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		500	607	645
378	392	481	586	624
368	383	472	576	614
391	406	495		
414	429	519		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ROCKHILL
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		528	616	654
401	454	508	596	634
391	444	498	587	625
416	470	523		
442	495	547		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COLUMBIA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			539	634	673
SEMI-DETACHED/ROW	391	443	519	614	653
WALKUP	381	433	509	604	643
ELEVATOR 2-4 STY	406	458	534		
ELEVATOR 5+ STY	431	483	559		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: AIKEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		513	594	631
387	438	494	575	612
377	429	485	566	603
402	453	508		
426	478	572		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CHARLESTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		523	589	626
405	420	503	569	606
395	410	493	559	596
420	435	518		
445	460	543		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FLORENCE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		490	560	595
361	434	473	543	578
350	425	464	534	569
398	449	486		
422	474	508		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

GREENSBORO OFFICE

MARKET: GREENSBORO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			505	577	684
SEMI-DETACHED/ROW	400	413	493	543	652
WALKUP	349	408	488	538	648
ELEVATOR 2-4 STY	372	444	516		
ELEVATOR 5+ STY	530	570	691		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ASHEVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		483	589	673
389	395	465	565	652
332	389	448	560	647
369	425	485		
483	543	641		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CHARLOTTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		549	638	716
430	437	517	598	691
369	432	512	593	686
395	461	548		
532	572	686		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DURHAM
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		540	620	728
405	411	506	608	695
381	405	501	601	690
416	442	536		
529	576	701		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREENVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			469	540	641
SEMI-DETACHED/ROW	345	377	453	516	596
WALKUP	303	372	447	511	591
ELEVATOR 2-4 STY	337	395	470		
ELEVATOR 5+ STY	454	512	606		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: RALEIGH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		544	648	757
445	458	534	594	683
381	451	527	589	676
411	474	551		
543	608	768		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WINSTON-SALEM
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		492	586	667
385	400	465	544	629
323	395	459	539	623
352	418	490		
508	543	651		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FAYETTEVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		468	547	627
364	373	438	510	586
322	368	434	504	580
353	402	470		
	500	594		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WILMINGTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			484	572	650
SEMI-DETACHED/ROW	381	386	465	527	598
WALKUP	327	381	459	522	603
ELEVATOR 2-4 STY	361	402	481		
ELEVATOR 5+ STY	473	525	634		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ELIZABETH CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		489	555	622
332	350	444	541	617
296	345	438	522	588
323	395	475		
450	508	612		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

JACKSON OFFICE

MARKET: JACKSON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			531	641	727
SEMI-DETACHED/ROW	388	426	525	613	676
WALKUP	355	421	476	564	630
ELEVATOR 2-4 STY	437	541	629		
ELEVATOR 5+ STY	447	552	644		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CORINTH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		435	551	636
303	354	422	531	613
288	344	417	519	573
390	477	558		
403	489	573		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREENVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		526	557	640
388	430	498	541	629
349	397	475	503	579
451	504	632		
465	519	651		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREENWOOD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		489	529	623
363	411	473	506	613
323	381	448	470	540
461	504	584		
471	516	599		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GULFPORT
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			494	579	664
SEMI-DETACHED/ROW	401	423	488	564	613
WALKUP	337	390	444	543	607
ELEVATOR 2-4 STY	451	500	624		
ELEVATOR 5+ STY	462	512	639		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HATTIESBURG
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		476	547	616
333	385	458	525	590
292	348	439	487	536
414	444	551		
425	455	567		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SOUTHAVEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		519	600	684
350	434	500	586	663
337	414	494	573	629
459	509	613		
468	521	628		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

JACKSONVILLE OFFICE

MARKET: JACKSONVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			597	660	738
SEMI-DETACHED/ROW	428	492	573	642	693
WALKUP	379	424	523	631	686
ELEVATOR 2-4 STY	446	497	626		
ELEVATOR 5+ STY	501	553	698		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PENSACOLA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		540	600	702
387	433	508	568	626
328	376	457	539	575
384	436	531		
433	491	593		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KEY WEST
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		757	836	921
544	611	680	778	867
451	501	610	726	777
524	579	721		
595	663	824		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MIAMI
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		757	836	921
544	611	680	778	867
451	501	610	726	777
524	579	721		
595	663	824		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TAMPA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			576	655	773
SEMI-DETACHED/ROW	437	499	571	642	719
WALKUP	386	440	530	622	686
ELEVATOR 2-4 STY	483	541	664		
ELEVATOR 5+ STY	569	631	764		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ORLANDO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		638	712	757
423	486	598	660	732
396	459	543	616	693
473	539	657		
550	613	726		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

LOUISVILLE OFFICE

MARKET: LOUISVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			580	656	744
SEMI-DETACHED/ROW	406	458	543	611	700
WALKUP	390	436	516	594	652
ELEVATOR 2-4 STY	420	471	549		
ELEVATOR 5+ STY	455	513	596		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COVINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		539	630	741
376	429	501	585	688
359	407	472	553	646
389	442	514		
425	485	567		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OWENSBORO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		511	592	698
332	388	474	548	646
316	367	448	516	600
345	401	487		
380	443	539		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PADUCAH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		514	596	702
334	390	477	551	650
318	369	451	519	603
347	403	490		
382	446	542		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PIKEVILLE
NUMBER OF BEDROOMS

STPUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			612	697	765
SEMI-DETACHED/ROW	440	479	572	647	711
WALKUP	408	453	522	598	653
ELEVATOR 2-4 STY	455	489	587		
ELEVATOR 5+ STY	493	556	646		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

KNOXVILLE OFFICE

MARKET: KNOXVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			481	562	599
SEMI-DETACHED/ROW	379	417	466	551	589
WALKUP	364	390	454	541	578
ELEVATOR 2-4 STY	390	412	481		
ELEVATOR 5+ STY	412	439	492		
MANUFACTURED HOME					
EFFECTIVE DATE			100187		
TRENDED DATE			100189		

MARKET: CHATTANOOGA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		493	584	623
439	442	481	567	607
401	430	465	555	595
430	453	493		
453	481	521		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: JOHNSON CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		471	546	584
359	385	460	536	567
347	369	449	514	556
385	407	471		
407	433	497		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KINGSPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		471	546	584
359	385	460	536	567
343	360	449	497	536
385	407	471		
407	433	497		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OAKRIDGE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			481	562	599
SEMI-DETACHED/ROW	379	417	466	551	589
WALKUP	364	390	454	541	578
ELEVATOR 2-4 STY	390	412	481		
ELEVATOR 5+ STY	412	439	492		
MANUFACTURED HOME					
EFFECTIVE DATE			100187		
TRENDED DATE			100189		

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

NASHVILLE OFFICE

MARKET: NASHVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			512	597	641
SEMI-DETACHED/ROW	391	435	494	584	629
WALKUP	358	414	486	577	623
ELEVATOR 2-4 STY	369	435	494		
ELEVATOR 5+ STY	376	450	512		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CLARKSVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		456	552	584
332	373	436	517	570
307	350	431	504	565
332	379	448		
338	402	469		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COLUMBIA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		434	536	587
321	345	409	527	564
287	338	397	512	557
294	358	405		
306	383	443		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MEMPHIS

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		460	517	604
332	377	439	491	561
296	332	387	467	502
345	414	488		
388	459	532		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: JACKSON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			439	512	599
SEMI-DETACHED/ROW	307	350	412	475	553
WALKUP	288	332	400	463	527
ELEVATOR 2-4 STY	337	379	470		
ELEVATOR 5+ STY	359	420	505		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CHICAGO REGIONAL OFFICE

MARKET: CHICAGO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			813	1001	1154
SEMI-DETACHED/ROW	609	685	773	995	1149
WALKUP	516	643	712	851	896
ELEVATOR 2-4 STY	552	650	765	909	911
ELEVATOR 5+ STY	661	786	972	1020	1078
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BELLEVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		675	751	837
431	481	578	653	738
371	429	543	620	690
405	456	576		
462	514	648		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MOLINE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		622	767	897
451	508	560	701	821
393	449	503	638	716
418	478	539		
500	569	640		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SPRINGFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		680	765	855
403	459	538	612	690
367	431	500	577	654
396	455	534		
454	509	603		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EAST ST. LOUIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			577	664	739
SEMI-DETACHED/ROW	410	472	528	605	675
WALKUP	373	432	505	584	649
ELEVATOR 2-4 STY	397	460	541		
ELEVATOR 5+ STY	480	535	585		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CINCINNATI OFFICE

MARKET: DAYTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			638	828	915
SEMI-DETACHED/ROW	415	444	516	618	696
WALKUP	346	433	501	579	648
ELEVATOR 2-4 STY	404	537	641		
ELEVATOR 5+ STY	560	657	704		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CINCINNATI

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			713	870	937
SEMI-DETACHED/ROW	447	516	587	704	775
WALKUP	361	424	536	610	703
ELEVATOR 2-4 STY	397	530	632		
ELEVATOR 5+ STY	553	651	739		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CLEVELAND OFFICE

MARKET: CLEVELAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			743	806	869
SEMI-DETACHED/ROW	521	545	613	692	726
WALKUP	390	449	521	604	688
ELEVATOR 2-4 STY	400	475	586		
ELEVATOR 5+ STY	456	485	608		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: AKRON

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		711	779	803
496	522	589	666	699
385	439	515	589	655
390	428	520		
395	458	525		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FINDLAY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		605	678	729
413	446	496	591	626
343	371	436	530	589
348	376	485		
393	450	554		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LORAIN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		607	681	733
401	407	481	560	597
294	323	397	498	541
371	390	465		
390	396	484		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MANSFIELD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			629	684	757
SEMI-DETACHED/ROW	466	471	520	598	666
WALKUP	344	370	420	522	562
ELEVATOR 2-4 STY	379	417	498		
ELEVATOR 5+ STY	386	444	510		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TOLEDO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		704	772	822
430	491	562	645	688
364	404	478	584	620
387	420	515		
424	430	524		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: YOUNGSTOWN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		623	695	701
423	429	496	579	596
308	347	413	518	565
345	364	453		
352	372	462		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

COLUMBUS OFFICE

MARKET: COLUMBUS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			549	672	683
SEMI-DETACHED/ROW	383	420	482	563	616
WALKUP	333	409	475	520	584
ELEVATOR 2-4 STY	370	445	528		
ELEVATOR 5+ STY	419	500	590		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

DETROIT OFFICE

	MARKET: DETROIT NUMBER OF BEDROOMS					MARKET: FLINT NUMBER OF BEDROOMS					MARKET: ANN ARBOR NUMBER OF BEDROOMS					MARKET: YPSILANTI NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			668	829	966			532	680	760			659	758	799			659	758	799
SEMI-DETACHED/ROW	460	496	617	721	832	359	400	500	639	679	417	422	546	655	722	417	422	546	655	722
WALKUP	388	479	562	665	771	343	386	450	591	664	340	417	513	562	628	340	417	513	562	628
ELEVATOR 2-4 STY	415	506	578			348	405	476			382	449	532			382	449	532		
ELEVATOR 5+ STY	424	521	638			356	455	542			387	489	555			387	489	555		
MANUFACTURED HOME																				
EFFECTIVE DATE	100187					100187					100187					100187				
TRENDED DATE	100189					100189					100189					100189				

PREPARED ON 102789

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

GRAND RAPIDS OFFICE

MARKET: MT PLEASANT NUMBER OF BEDROOMS					
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			615	728	776
SEMI-DETACHED/ROW	402	453	522	647	699
WALKUP	275	369	412	512	551
ELEVATOR 2-4 STY	284	386	430		
ELEVATOR 5+ STY	441	527	612		
MANUFACTURED HOME					
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: GRAND RAPIDS NUMBER OF BEDROOMS					
-0-	-1-	-2-	-3-	-4+	
		611	722	757	
420	425	525	622	672	
309	385	489	537	574	
327	405	506			
446	520	577			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: BENTON HARBOR NUMBER OF BEDROOMS					
-0-	-1+	-2-	-3-	-4+	
		586	696	732	
400	429	536	644	679	
299	347	429	525	559	
317	365	447			
433	496	568			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: BATTLE CREEK NUMBER OF BEDROOMS					
-0-	-1-	-2-	-3-	-4+	
		638	729	768	
398	423	520	642	691	
298	383	469	567	602	
317	401	487			
458	530	595			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: LANSING NUMBER OF BEDROOMS					
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			613	753	797
SEMI-DETACHED/ROW	420	428	512	632	681
WALKUP	328	386	468	564	598
ELEVATOR 2-4 STY	347	405	486		
ELEVATOR 5+ STY	414	468	549		
MANUFACTURED HOME					
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: MUSKEGON NUMBER OF BEDROOMS					
-0-	-1-	-2-	-3-	-4+	
		619	730	767	
439	481	572	671	713	
314	397	470	557	569	
334	418	489			
454	530	590			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: TRAVERSE CITY NUMBER OF BEDROOMS					
-0-	-1+	-2-	-3-	-4+	
		663	775	811	
481	498	581	715	754	
317	412	466	572	614	
335	429	484			
502	580	644			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: MARQUETTE NUMBER OF BEDROOMS					
-0-	-1-	-2-	-3-	-4+	
		575	689	725	
363	416	524	631	668	
236	328	425	529	569	
254	346	444			
462	541	556			
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

MARKET: JACKSON NUMBER OF BEDROOMS					
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			599	730	780
SEMI-DETACHED/ROW	409	414	501	619	667
WALKUP	321	398	455	560	590
ELEVATOR 2-4 STY	327	417	474		
ELEVATOR 5+ STY	470	543	615		
MANUFACTURED HOME					
EFFECTIVE DATE 100187					
TRENDED DATE 100189					

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

INDIANAPOLIS OFFICE

MARKET: INDIANAPOLIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			582	652	716
SEMI-DETACHED/ROW	367	413	512	619	627
WALKUP	339	384	460	520	558
ELEVATOR 2-4 STY	368	407	488		
ELEVATOR 5+ STY	463	512	593		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BLOOMINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		560	632	709
345	389	484	563	616
309	359	448	526	563
346	385	479		
424	472	568		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EVANSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		554	627	685
335	386	478	558	635
301	349	441	509	555
335	376	471		
405	478	580		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FORT WAYNE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		580	647	721
390	422	505	561	626
343	387	460	516	567
379	412	490		
475	526	616		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HAMMOND
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			592	662	730
SEMI-DETACHED/ROW	397	448	531	608	688
WALKUP	363	416	496	563	599
ELEVATOR 2-4 STY	408	439	524		
ELEVATOR 5+ STY	466	532	620		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAFAYETTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		587	658	734
376	418	513	582	645
346	393	472	534	585
379	411	501		
462	516	616		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SOUTH BEND
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		586	656	732
381	425	517	595	680
349	395	475	538	582
383	417	508		
460	513	610		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TERRE HAUTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		572	646	727
379	421	507	582	647
338	389	475	546	579
374	412	503		
443	496	612		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GARY
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			581	648	717
SEMI-DETACHED/ROW	385	441	521	596	686
WALKUP	363	416	496	568	585
ELEVATOR 2-4 STY	405	439	530		
ELEVATOR 5+ STY	443	506	596		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

MILWAUKEE OFFICE

MARKET: MADISON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			650	736	770
SEMI-DETACHED/ROW	395	476	570	679	729
WALKUP	385	429	525	628	
ELEVATOR 2-4 STY	401	444	540		
ELEVATOR 5+ STY	518	561	685		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: REEDSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		592	675	707
340	427	506	622	657
335	384	459	548	
353	400	472		
468	514	630		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SUPERIOR
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		553	664	699
324	433	497	605	641
318	379	452	561	
337	398	469		
475	520	614		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MILWAUKEE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		741	825	866
430	543	646	742	802
424	481	573	700	
444	498	592		
579	629	772		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EAU CLAIRE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			520	607	643
SEMI-DETACHED/ROW	303	383	437	551	605
WALKUP	295	339	392	497	
ELEVATOR 2-4 STY	315	358	412		
ELEVATOR 5+ STY	423	465	559		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREEN BAY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		555	635	665
323	398	477	580	614
303	350	434	530	
318	365	449		
438	477	588		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WAUSAU
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		562	649	683
326	417	479	592	630
321	368	435	539	
337	385	453		
456	501	597		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

MINNEAPOLIS-ST. PAUL OFFICE

MARKET: MINNEAPOLIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED	440	445	596	686	766
SEMI-DETACHED/ROW	363	417	497	636	658
WALKUP	402	478	599		
ELEVATOR 2-4 STY	411	593	686		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DULUTH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
372	404	559	643	708
356	386	477	584	620
376	446	552		
394	481	613		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MANKATO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
413	453	570	649	726
356	398	496	573	605
389	437	512		
407	561	665		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ROCHESTER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
422	457	587	678	759
372	413	510	587	622
402	448	530		
438	591	673		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ST. CLOUD
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED	353	384	512	590	649
SEMI-DETACHED/ROW	322	361	448	540	573
WALKUP	349	423	487		
ELEVATOR 2-4 STY	354	498	589		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WORTHINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
324	345	479	545	610
295	324	418	504	536
313	384	458		
318	445	543		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

FORT WORTH REGIONAL OFFICE

MARKET: DALLAS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			550	670	778
SEMI-DETACHED/ROW	351	389	479	584	659
WALKUP	299	328	455	534	612
ELEVATOR 2-4 STY	312	356	494		
ELEVATOR 5+ STY	438	504	533		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SHERMAN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		466	578	655
297	329	407	516	595
259	296	386	471	559
270	332	419		
379	455	593		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TYLER

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		440	536	628
281	311	384	461	527
239	262	364	444	490
250	285	395		
350	403	559		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WACO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		483	593	666
308	341	421	534	618
268	307	399	488	578
280	339	434		
393	471	614		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WICHITA FALLS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			483	610	687
SEMI-DETACHED/ROW	308	341	421	534	620
WALKUP	268	307	399	488	576
ELEVATOR 2-4 STY	280	335	434		
ELEVATOR 5+ STY	393	471	614		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SAN ANGELO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		466	569	666
298	330	407	496	559
254	278	386	470	470
265	302	419		
371	427	593		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ABILENE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		464	566	662
296	328	405	493	556
252	277	384	468	517
263	300	417		
369	425	590		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LUBBOCK

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		430	583	683
301	334	411	509	574
260	285	390	476	533
272	310	423		
381	438	599		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: AMARILLO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			505	612	688
SEMI-DETACHED/ROW	323	357	440	537	605
WALKUP	275	301	418	509	562
ELEVATOR 2-4 STY	287	327	454		
ELEVATOR 5+ STY	402	463	642		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EL PASO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		469	588	673
299	332	409	512	578
261	288	388	473	537
272	312	421		
382	442	596		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MIDLAND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		430	524	614
275	304	375	457	516
234	257	356	434	479
244	278	386		
342	394	547		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ODESSA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		430	524	614
275	304	375	457	516
234	257	356	434	479
244	278	386		
342	394	547		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ALBUQUERQUE NM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			543	633	707
SEMI-DETACHED/ROW	364	387	492	578	670
WALKUP	305	356	463	538	627
ELEVATOR 2-4 STY	319	400	503		
ELEVATOR 5+ STY	448	523	694		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA FE NM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		559	707	828
371	415	487	598	695
315	340	462	530	646
329	426	501		
478	574	709		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SILVER CITY NM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		457	557	652
292	332	398	485	547
248	283	378	441	509
259	341	410		
393	479	581		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TAOS NM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		521	635	721
333	378	454	553	624
283	340	431	525	580
296	389	468		
442	529	662		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

FORT WORTH REGIONAL OFFICE

MARKET: CLOVIS NM

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			433	543	636
SEMI-DETACHED/ROW	285	323	377	464	534
WALKUP	242	263	358	411	496
ELEVATOR 2-4 STY	253	333	388		
ELEVATOR 5+ STY	372	447	549		
MANU=ACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

HOUSTON OFFICE

MARKET: HOUSTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			674	823	957
SEMI-DETACHED/ROW	361	430	552	656	747
WALKUP	336	405	527	627	722
ELEVATOR 2-4 STY	396	470	592		
ELEVATOR 5+ STY	570	666	770		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BEAUMONT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		612	699	857
338	394	477	569	657
313	369	457	544	627
373	444	552		
548	599	603		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BRYAN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		585	774	898
362	404	536	667	769
341	386	515	639	749
393	441	603		
544	653	802		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LUFKIN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		557	654	758
312	363	452	533	614
292	343	427	508	588
339	398	499		
487	567	696		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EL CAMPO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			575	673	780
SEMI-DETACHED/ROW	358	396	482	608	706
WALKUP	338	376	460	588	680
ELEVATOR 2-4 STY	393	436	545		
ELEVATOR 5+ STY	481	568	702		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TEXAS CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		668	762	882
379	456	574	650	750
358	444	560	621	719
421	509	645		
570	666	770		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

LITTLE ROCK OFFICE

MARKET: FAYETTEVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			504	575	652
SEMI-DETACHED/ROW	337	411	474	553	610
WALKUP	328	396	461	548	605
ELEVATOR 2-4 STY	350	422	493		
ELEVATOR 5+ STY	433	506	589		
MANUFACTURED HOME					
EFFECTIVE DATE			100187		
TRENDED DATE			100189		

MARKET: LITTLE ROCK
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		526	599	674
352	444	496	576	635
327	412	460	571	630
351	441	495		
436	510	600		
EFFECTIVE DATE		100187		
TRENDED DATE		100189		

MARKET: TEXARKANA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		516	593	666
339	400	478	574	631
323	389	455	569	626
346	420	489		
433	506	590		
EFFECTIVE DATE		100187		
TRENDED DATE		100189		

MARKET: FORT SMITH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		491	559	631
328	375	461	528	591
308	354	433	497	552
331	382	466		
439	517	604		
EFFECTIVE DATE		100187		
TRENDED DATE		100189		

MARKET: JONESBORO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			497	569	637
SEMI-DETACHED/ROW	334	397	465	564	619
WALKUP	320	377	445	559	614
ELEVATOR 2-4 STY	343	404	482		
ELEVATOR 5+ STY	426	499	585		
MANUFACTURED HOME					
EFFECTIVE DATE			100187		
TRENDED DATE			100189		

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

NEW ORLEANS OFFICE

MARKET: NEW ORLEANS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			455	509	591
SEMI-DETACHED/ROW	298	345	441	492	568
WALKUP	291	336	433	480	545
ELEVATOR 2-4 STY	301	346	443		
ELEVATOR 5+ STY	427	486	618		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAKE CHARLES
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		409	518	615
297	331	396	505	596
257	307	370	475	549
268	318	392		
416	463	570		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAFAYETTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		324	447	542
197	238	309	435	523
190	230	300	423	500
200	240	310		
325	371	484		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BATON ROUGE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		404	508	588
280	318	389	490	565
249	288	354	450	508
260	298	365		
395	442	551		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HOUMA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			357	478	560
SEMI-DETACHED/ROW	246	286	342	462	539
WALKUP	237	276	331	448	515
ELEVATOR 2-4 STY	247	286	341		
ELEVATOR 5+ STY	374	420	516		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SHREVEPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		429	539	619
297	331	409	517	592
271	302	382	484	541
282	313	392		
429	474	595		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ALEXANDRIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		407	481	550
294	329	388	461	527
280	313	374	444	499
290	323	385		
427	473	580		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MONROE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		411	565	635
289	323	394	547	613
278	311	386	536	592
288	321	396		
427	472	590		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

OKLAHOMA CITY OFFICE

MARKET: OKLAHOMA CITY

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			496	618	682
SEMI-DETACHED/ROW	306	349	424	510	568
WALKUP	242	291	369	480	543
ELEVATOR 2-4 STY	271	323	418		
ELEVATOR 5+ STY	353	407	516		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ADA

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			456	536	603
	306	369	415	489	552
	258	317	363	437	484
	272	336	392		
	357	419	493		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ARDMORE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			472	555	624
	317	382	430	509	572
	267	328	376	453	501
	282	348	406		
	370	419	511		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ENID

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			496	575	649
	299	363	446	549	586
	241	301	380	448	495
	256	321	409		
	347	422	513		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GUYMON

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			409	495	567
SEMI-DETACHED/ROW	272	290	356	436	498
WALKUP	217	234	299	373	421
ELEVATOR 2-4 STY	233	254	330		
ELEVATOR 5+ STY	333	352	452		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAWTON

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			548	631	712
	374	418	495	580	644
	303	349	441	521	568
	322	375	471		
	395	449	561		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SHAWNEE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			481	529	584
	326	381	461	516	567
	272	326	396	432	472
	287	345	436		
	354	395	474		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: STILLWATER

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			468	574	629
	337	360	418	527	565
	283	306	363	467	491
	298	326	393		
	353	417	490		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WOODWARD

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			406	491	562
SEMI-DETACHED/ROW	270	288	353	432	494
WALKUP	215	232	297	370	417
ELEVATOR 2-4 STY	231	252	327		
ELEVATOR 5+ STY	329	349	448		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BARTLESVILLE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			484	569	631
	297	338	470	553	616
	245	285	404	481	529
	260	305	414		
	338	373	470		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MC ALESTER

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			480	557	615
	345	350	449	517	579
	245	277	386	448	495
	259	296	407		
	308	345	459		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MUSKOGEE

	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
			437	504	572
	317	363	421	490	555
	258	301	350	435	471
	273	321	364		
	345	382	417		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TULSA

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			457	536	709
SEMI-DETACHED/ROW	281	322	394	488	535
WALKUP	227	288	366	433	500
ELEVATOR 2-4 STY	242	308	396		
ELEVATOR 5+ STY	336	399	508		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

SAN ANTONIO OFFICE

MARKET: SAN ANTONIO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			429	517	594
SEMI-DETACHED/ROW	330	347	408	492	563
WALKUP	303	327	392	471	530
ELEVATOR 2-4 STY	423	455	554		
ELEVATOR 5+ STY	433	468	569		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: AUSTIN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		471	619	718
346	388	449	593	685
317	361	420	561	636
377	453	537		
387	466	552		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CORPUS CHRISTY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		463	582	630
317	345	442	557	600
295	321	419	529	555
357	381	550		
367	394	565		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EAGLE PASS

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		443	536	597
304	354	392	474	522
284	337	375	456	489
384	440	505		
394	453	525		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HARLINGEN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			415	466	521
SEMI-DETACHED/ROW	324	332	371	415	487
WALKUP	302	315	355	385	415
ELEVATOR 2-4 STY	378	396	458		
ELEVATOR 5+ STY	396	409	473		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAREDO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		478	512	600
326	372	453	485	566
295	337	418	442	507
396	442	552		
406	555	567		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: VICTORIA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		380	580	602
292	333	370	566	589
272	314	353	548	555
370	415	482		
380	428	497		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DEL RIO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		436	527	572
274	349	430	504	545
254	330	414	485	515
354	335	546		
364	448	551		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

DES MOINES OFFICE

MARKET: DES MOINES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			635	743	846
SEMI-DETACHED/ROW	438	463	556	626	717
WALKUP	354	408	474	534	592
ELEVATOR 2-4 STY	428	474	561		
ELEVATOR 5+ STY	461	515	611		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BETTENDORF
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		531	616	695
355	396	469	535	615
302	345	415	477	541
369	412	500		
404	451	550		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CEDAR RAPIDS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		617	718	807
377	440	546	623	710
313	367	470	543	616
407	462	569		
459	511	621		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COUNCIL BLUFF
NUMEER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		587	681	788
415	443	529	596	677
332	382	449	502	556
420	476	548		
456	517	612		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DUBUQUE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			576	663	745
SEMI-DETACHED/ROW	383	442	509	582	663
WALKUP	323	378	451	529	599
ELEVATOR 2-4 STY	405	456	540		
ELEVATOR 5+ STY	441	497	593		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MASON CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		594	686	770
377	432	528	601	684
324	374	453	522	596
394	444	559		
428	484	611		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SIOUX CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		623	706	785
399	450	548	620	695
336	375	455	523	608
418	466	565		
452	505	617		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DAVENPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		532	614	692
356	405	469	536	613
307	353	415	488	552
378	422	502		
411	461	552		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WATERLOO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			500	583	662
SEMI-DETACHED/ROW	340	390	439	505	583
WALKUP	295	338	387	457	520
ELEVATOR 2-4 STY	356	402	467		
ELEVATOR 5+ STY	388	439	515		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

KANSAS CITY REGIONAL OFFICE

MARKET: KANSAS CITY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	416	455	528	646	687
SEMI-DETACHED/ROW	352	416	490	611	648
WALKUP	388	435	563		
ELEVATOR 2-4 STY	473	512	646		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SPRINGFIELD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	303	328	442	534	552
SEMI-DETACHED/ROW	254	307	416	512	549
WALKUP	302	347	435		
ELEVATOR 2-4 STY	395	439	559		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SALINA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	296	333	410	494	529
SEMI-DETACHED/ROW	259	296	367	452	487
WALKUP	334	367	470		
ELEVATOR 2-4 STY	394	427	539		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: JOPLIN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
323	366	472	560	597
269	321	412	510	547
340	390	487		
435	471	594		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TOPEKA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
336	375	454	538	573
301	334	418	516	552
352	387	495		
416	451	568		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: WICHITA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
321	381	473	565	601
285	333	433	525	560
334	367	470		
394	427	539		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ST. JOSEPH

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
303	343	415	504	542
298	338	387	477	514
349	401	502		
455	500	631		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GARDEN CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
336	373	450	534	569
297	334	411	495	530
329	362	463		
389	421	532		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SEDALIA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
297	342	433	522	559
292	337	419	508	545
354	408	510		
445	481	607		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PITTSBURG

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
300	339	403	500	535
255	293	375	464	501
329	362	463		
389	421	532		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

OMAHA OFFICE

	MARKET: OMAHA NUMBER OF BEDROOMS					MARKET: GRAND ISLAND NUMBER OF BEDROOMS					MARKET: LINCOLN NUMBER OF BEDROOMS					MARKET: NORFOLK NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	333	399	510	580	639	272	340	431	506	574	326	390	494	567	625	272	340	431	506	574
WALKUP	309	373	460	569	601	263	315	413	490	554	308	373	460	562	619	263	315	413	490	554
ELEVATOR 2-4 STY	316	419	504			314	386	497			316	421	504			314	386	497		
ELEVATOR 5+ STY	347	434	522			325	395	510			361	434	522			325	395	510		
MANUFACTURED HOME																				
EFFECTIVE DATE	100187					100187					100187					100187				
TRENDED DATE	100189					100189					100189					100189				

	MARKET: NORTH PLATTE NUMBER OF BEDROOMS					MARKET: SCOTTS BLUFF NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED										
SEMI-DETACHED/ROW	284	351	442	517	565	286	358	453	532	592
WALKUP	273	346	410	493	542	276	340	431	509	567
ELEVATOR 2-4 STY	302	383	483			321	406	515		
ELEVATOR 5+ STY	324	410	504			338	416	529		
MANUFACTURED HOME										
EFFECTIVE DATE	100187					100187				
TRENDED DATE	100189					100189				

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

ST. LOUIS OFFICE

MARKET: ST. LOUIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			638	764	822
SEMI-DETACHED/ROW	427	522	618	731	805
WALKUP	384	486	579	656	724
ELEVATOR 2-4 STY	417	523	626		
ELEVATOR 5+ ST/	465	591	799		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CAPE GIRARDEAU
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		429	493	528
305	351	413	488	533
266	314	373	461	480
295	346	417		
325	380	557		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COLUMBIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		422	555	605
290	366	403	550	600
283	360	393	528	582
307	386	466		
342	456	624		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KIRKSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		422	519	588
291	355	412	530	583
277	350	407	525	578
302	378	477		
335	448	638		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ROLLA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			441	519	563
SEMI-DETACHED/ROW	304	368	436	514	558
WALKUP	273	346	431	509	553
ELEVATOR 2-4 STY	297	373	471		
ELEVATOR 5+ ST/	332	434	576		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 8

DENVER, COLORADO REGIONAL OFFICE

MARKET: DENVER, CO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			708	834	932
SEMI-DETACHED/ROW	458	509	596	662	753
WALKUP	350	449	495	651	736
ELEVATOR 2-4 STY	369	456	556		
ELEVATOR 5+ STY	454	500	632		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GRAND JUNCT.CO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		540	660	728
311	358	435	547	627
283	314	398	500	573
349	400	485		
373	425	512		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: ASPEN/VAIL

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		545	669	750
329	380	463	578	666
302	336	426	532	614
361	416	507		
369	426	518		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FARGO, ND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		520	638	722
317	355	442	550	629
293	330	408	508	581
310	360	445		
317	369	455		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BISMARK, ND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			490	599	672
SEMI-DETACHED/ROW	304	335	412	511	579
WALKUP	280	319	378	469	531
ELEVATOR 2-4 STY	297	340	415		
ELEVATOR 5+ STY	304	349	425		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: DICKINSON, ND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		416	525	598
230	261	338	437	505
206	242	304	395	457
223	266	341		
230	275	351		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HELENA, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		480	567	610
300	350	437	553	598
272	319	399	504	590
339	393	483		
353	419	496		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BILLINGS, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		574	652	693
332	382	467	580	667
305	350	429	533	614
370	424	517		
385	450	545		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GREAT FALLS,MT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			509	586	629
SEMI-DETACHED/ROW	300	350	437	553	619
WALKUP	272	319	399	504	586
ELEVATOR 2-4 STY	339	393	488		
ELEVATOR 5+ STY	363	419	515		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MISSOULA, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		493	580	626
283	339	428	557	616
252	324	386	504	591
326	386	486		
353	415	516		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SALT LAKE CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		569	713	787
344	395	454	551	686
288	380	443	542	635
360	441	534		
397	461	556		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CEDAR CITY, UT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		506	555	603
357	385	453	508	545
277	376	433	502	524
352	424	490		
371	472	542		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: VERNAL, UT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			447	577	674
SEMI-DETACHED/ROW	219	277	314	485	578
WALKUP	172	226	309	420	506
ELEVATOR 2-4 STY	240	301	397		
ELEVATOR 5+ STY	258	321	419		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SIOUX FALLS,SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		492	572	619
313	351	416	509	573
290	324	384	470	528
304	339	416		
311	353	426		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PIERRE, SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		511	585	636
266	332	432	537	613
260	314	389	496	567
298	343	432		
306	358	442		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: RAPID CITY, SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		554	664	730
350	404	478	579	652
322	369	446	540	607
351	392	478		
358	406	488		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 8

DENVER, COLORADO REGIONAL OFFICE

MARKET: CASPER, WY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			541	658	744
SEMI-DETACHED/ROW	315	362	438	545	625
WALKUP	290	333	403	501	575
ELEVATOR 2-4 STY	352	402	485		
ELEVATOR 5+ STY	375	427	512		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CHEYENNE, WY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		543	658	743
318	363	438	544	623
293	334	404	500	574
353	403	486		
377	428	513		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CODY, WY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		577	706	791
328	381	467	586	672
300	348	428	339	622
367	422	517		
393	450	545		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

HONOLULU OFFICE

MARKET: HONOLULU

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED	.		883	1150	1306
SEMI-DETACHED/ROW	582	621	849	1016	1146
WALKUP	521	598	692	1008	1134
ELEVATOR 2-4 STY	578	672	722		
ELEVATOR 5+ STY	594	797	966		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: GUAM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		690	791	887
502	559	641	711	838
376	445	530	603	

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KAUAI

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		900	1015	1102
620	758	889	1005	1090
523	639	696	981	1066
552	670	726		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MAUI

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		813	1007	1067
671	755	796	995	1056
491	635	767	896	956
523	667	800		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: HILO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			632	791	890
SEMI-DETACHED/ROW	509	532	621	779	869
WALKUP	433	479	591	750	848
ELEVATOR 2-4 STY	467	510	625		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KONA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		775	922	1017
617	676	764	909	1006
501	572	667	814	894
531	602	699		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

LOS ANGELES OFFICE

MARKET: LOS ANGELES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			847	953	1059
SEMI-DETACHED/ROW	577	670	781	886	1001
WALKUP	518	597	721	859	935
ELEVATOR 2-4 STY	560	644	777		
ELEVATOR 5+ STY	704	799	1031		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BAKERSFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		586	736	827
424	479	538	681	769
368	451	514	656	721
396	472	536		
552	631	738		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA BARBARA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		847	942	1067
664	669	814	906	1025
473	527	682	773	839
492	552	705		
640	715	915		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: VENTURA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		799	907	1010
569	590	655	800	872
506	554	621	762	814
529	577	646		
690	750	865		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PASO ROBLES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			755	831	925
SEMI-DETACHED/ROW	515	520	647	777	865
WALKUP	433	488	601	717	775
ELEVATOR 2-4 STY	453	510	626		
ELEVATOR 5+ STY	616	588	851		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LANCASTER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		637	733	855
494	498	601	696	814
389	469	576	666	759
416	495	601		
586	670	831		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OXNARD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		799	908	1010
573	590	655	800	872
506	554	621	762	814
529	577	646		
690	750	865		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA ANA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		842	1019	1110
706	713	827	1001	1086
570	670	770	924	979
573	690	795		
730	861	1011		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SAN DIEGO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			704	836	925
SEMI-DETACHED/ROW	563	568	677	768	901
WALKUP	458	522	632	742	796
ELEVATOR 2-4 STY	495	572	690		
ELEVATOR 5+ STY	593	692	847		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EL CAJON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		704	836	925
563	568	677	768	901
458	522	632	742	796
495	572	690		
593	692	847		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA MARIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		719	816	916
538	594	686	769	857
422	478	554	616	677
446	501	577		
599	670	793		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SAN BERNARDINO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		640	772	869
498	526	628	730	851
447	504	593	598	780
478	525	615		
646	697	835		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

PHOENIX OFFICE

MARKET: PHOENIX

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			619	745	843
SEMI-DETACHED/ROW	445	511	595	708	777
WALKUP	391	482	582	682	727
ELEVATOR 2-4 STY	413	504	609		
ELEVATOR 5+ STY	501	597	732		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: CASA GRANDE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		510	607	692
364	411	481	572	649
351	406	475	555	616
382	428	497		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FLAGSTAFF

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		636	696	769
418	459	555	658	737
402	446	547	643	706
424	468	569		
525	575	707		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: TUCSON

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		564	632	719
363	432	525	608	693
344	407	520	592	653
366	438	552		
498	592	766		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: YUMA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			545	617	701
SEMI-DETACHED/ROW	397	436	519	576	653
WALKUP	382	424	512	566	625
ELEVATOR 2-4 STY	412	446	534		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KINGMAN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		529	611	698
402	437	514	578	639
376	424	508	565	627
399	458	530		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SIERRA VISTA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		532	582	670
352	397	509	569	643
336	382	498	555	613
358	404	520		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

BEST COPY AVAILABLE

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

SACRAMENTO OFFICE

MARKET: SACRAMENTO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			603	640	735
SEMI-DETACHED/ROW	493	504	576	633	696
WALKUP	384	457	521	626	701
ELEVATOR 2-4 STY	437	481	577		
ELEVATOR 5+ STY	592	650	792		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: REDDING

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		560	586	672
409	475	526	579	650
347	403	472	520	654
367	423	522		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: PLACERVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		628	672	772
523	528	603	666	731
396	473	540	657	737
466	531	633		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: YREKA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		562	657	706
360	442	541	626	674
305	372	481	576	658
325	392	503		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: S. LAKE TAHOE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			677	784	854
SEMI-DETACHED/ROW	535	540	655	760	816
WALKUP	435	512	584	699	767
ELEVATOR 2-4 STY	474	532	625		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

SAN FRANCISCO REGIONAL OFFICE

MARKET: SAN FRANCISCO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	833	865	1027	1215	1292
WALKUP	593	686	897	1093	1200
ELEVATOR 2-4 STY	652	788	1007		
ELEVATOR 5+ STY	[illegible]	962	1220		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FRESNO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	336	419	489	673	736
WALKUP	310	404	478	618	691
ELEVATOR 2-4 STY	423	526	656		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MODESTO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	384	389	467	569	627
WALKUP	363	384	461	564	622
ELEVATOR 2-4 STY	469	526	659		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SAN JOSE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	578	584	712	864	950
WALKUP	481	578	688	820	895
ELEVATOR 2-4 STY	516	599	695		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OAKLAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	564	668	850	973	1075
WALKUP	523	638	792	897	994
ELEVATOR 2-4 STY	590	646	871		
ELEVATOR 5+ STY	805	880	1147		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: MARIN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	564	668	850	973	1075
WALKUP	523	638	792	897	994
ELEVATOR 2-4 STY	590	646	871		
ELEVATOR 5+ STY	805	880	1147		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EUREKA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	353	417	531	688	749
WALKUP	348	409	508	665	702
ELEVATOR 2-4 STY	444	541	647		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA ROSA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	504	552	667	808	873
WALKUP	469	536	648	793	856
ELEVATOR 2-4 STY	580	668	825		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SANTA CRUZ

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	496	502	676	864	951
WALKUP	418	497	636	820	895
ELEVATOR 2-4 STY	516	637	768		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: RENO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	432	496	612	747	823
WALKUP	404	475	585	680	754
ELEVATOR 2-4 STY	518	607	784		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: LAS VEGAS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	401	460	535	688	751
WALKUP	377	436	529	680	735
ELEVATOR 2-4 STY	489	554	707		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

ANCHORAGE OFFICE

MARKET: ANCHORAGE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			575	638	744
SEMI-DETACHED/ROW	354	448	548	627	737
WALKUP	340	425	530	612	694
ELEVATOR 2-4 STY	365	450	555		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: FAIRBANKS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		673	761	868
400	585	667	749	858
350	512	654	732	812
400	537	679		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: JUNEAU
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		694	770	850
464	576	681	756	828
418	519	655	727	802
443	544	680		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KETCHIKAN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		629	700	796
468	475	617	686	780
454	465	607	680	754
483	490	632		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: KENAI PENINSULAR
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			558	618	702
SEMI-DETACHED/ROW	344	413	547	606	688
WALKUP	331	397	525	583	662
ELEVATOR 2-4 STY	356	422	551		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SITKA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		560	640	719
322	412	521	628	706
311	398	496	585	672
404	468	553		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

PORTLAND OFFICE

MARKET: PORTLAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			498	607	668
SEMI-DETACHED/ROW	318	379	451	549	592
WALKUP	306	376	437	504	566
ELEVATOR 2-4 STY	317	384	454		
ELEVATOR 5+ STY	369	455	616		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BEND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		381	489	546
277	297	344	422	474
216	278	323	399	442
230	299	342		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COOS BAY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		381	445	495
260	294	344	423	471
231	280	335	409	458
242	294	350		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BOISE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		437	551	598
319	352	391	509	564
286	339	385	485	528
311	349	399		
384	434	517		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: EUGENE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			401	505	563
SEMI-DETACHED/ROW	242	277	375	458	502
WALKUP	222	270	340	440	474
ELEVATOR 2-4 STY	236	288	360		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: IDAHO FALLS

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		356	401	447
261	266	317	371	417
195	246	295	356	401

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: POCATELLO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		380	501	558
265	287	352	451	487
215	268	334	430	463

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: COEUR D'ALEN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		399	494	545
267	277	361	421	465
238	255	318	400	436
261	270	338		

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

SEATTLE REGIONAL OFFICE

MARKET: SEATTLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			628	695	789
SEMI-DETACHED/ROW	351	433	528	627	727
WALKUP	343	426	523	595	612
ELEVATOR 2-4 STY	384	459	567		
ELEVATOR 5+ STY	430	498	605		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: BELLINGHAM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		478	567	646
307	350	424	523	577
262	335	414	500	562
280	352	433		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: OLYMPIA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		455	546	635
345	365	393	492	569
263	336	387	466	527
281	353	432		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: YAKIMA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		448	539	631
297	342	422	493	577
245	319	381	469	551
263	343	398		

EFFECTIVE DATE 100187
TRENDED DATE 100189

MARKET: SPOKANE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			469	541	626
SEMI-DETACHED/ROW	288	333	415	481	552
WALKUP	252	309	382	459	511
ELEVATOR 2-4 STY	270	345	399		
ELEVATOR 5+ STY	381	412	532		
MANUFACTURED HOME					

EFFECTIVE DATE 100187
TRENDED DATE 100189

PREPARED ON 102789

[FR Doc. 89-28141 Filed 11-30-89; 8:45 am]
BILLING CODE 4210-27-C

federal register

Friday
December 1, 1989

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on inmate financial responsibility. This amendmnet places into the rule a provision for a minimum monthly payment for UNICOR and non-UNICOR workers. This amendment is intended to ensure the efficient operation of the Inmate Financial Responsibility Program.

EFFECTIVE DATE: January 2, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is finalizing an amendment to its rule on inmate financial responsibility. This amendment places into the rule a provision for a minimum monthly payment for UNICOR and non-UNICOR workers. A proposed rule on this subject was published in the **Federal Register**, March 17, 1989 (54 FR 11332). Comments were received on both the proposed rule and on other final provisions of the Inmate Financial Responsibility Program (IFRP). Because only § 545.11(b) was published for public comment, the present document will address only those substantive comments directed to that proposed amendment.

A commenter stated that the proposed rule failed to provide background information necessary for intelligent public comment, namely, that the proposed rule was issued in response to a court order. We do not believe such a statement is necessary to solicit public comment. The court order directed that we promulgate the proposed amendment through the rulemaking process. Publication of these provisions as a proposed rule in the **Federal Register** is, in itself, the appropriate administrative procedure to solicit public comment.

A commenter stated that the IFRP punishes indigent inmates, and fails to distinguish between inmates sentenced before, and those sentenced after, enactment of the Sentencing Reform Act. This Act changed criteria for the imposition of fines. As stated in the **Federal Register** of April 1, 1987 (52 FR 10528), the Bureau does not believe the use of a legal standard of indigency is necessary. Financial plans ordinarily can be developed for most inmates because they are eligible for, and receive, compensation for work performed within the institution. This amendment specifies that the minimum payment for non-UNICOR and UNICOR grade 5 inmates ordinarily will be $25.00 per quarter, and that for UNICOR grades 1 through 4 inmates the minimum payment ordinarily will be at least half of their monthly pay. Regardless of the amount of the court-ordered obligation, the amount from institutional earnings which the inmate allots to the payment process remains either $25.00 per quarter or a percentage of his or her monthly pay. In the event an inmate is determined to be without institution earnings and/or outside resources, no payments would be required.

Comments were also received that the proposed rule fails to give meaningful consideration to personal savings, family support, or other non-court-ordered obligations. We disagree. The amendment allows up to half of the inmate's monthly UNICOR grade 1 through 4 earnings to be used for such purposes, and it requires a payment of only $25.00 per quarter from non-UNICOR and UNICOR grade 5 inmates. The payments that are encouraged by the IFRP are intended to assist the inmate meet his legitimate financial obligations.

A commenter stated that, under 28 U.S.C. 6334(d)(1)(A), fines may not be levied on earnings that fall below $75.00 per week. The amounts collected through the IFRP are voluntary and do not constitute a levy, and therefore do not fall within the scope of the cited statute.

A commenter stated that 18 U.S.C. 3572(d) exempts inmates from having to make any payments on fines while incarcerated, except for those explicitly ordered to be made by the sentencing court. In fact, 18 U.S.C. 3572(d) states, "a person sentenced to pay a fine or other monetary penalty shall make such payment *immediately* (emphasis added), unless, in the interest of justice, the court provides for payment on a date certain or in installments." The statute also establishes that if the judgment "* * * permits other than immediate payment, the period provided for shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense." This section clearly does not preclude making partial payment during imprisonment in the absence of specific court direction.

A commenter raised a question on the "interest meter," a situation in which making the initial payment on a fine starts calculation of interest on the outstanding balance. The commenter stated that, in some cases, an inmate may end up owing more by making payments under the program than by not making payments. Under applicable law, interest on unpaid fines may be waived in whole or part by the sentencing court. Inmates desiring waiver of interest should make that request to the court.

After due consideration of comments received, the Bureau of Prisons finds good reason to adopt the proposed rule as final with one change. The word "ordinarily" is added to the fourth sentence of § 545.11(b) to clarify that while the minimum payment provision for inmates in UNICOR grades 1 through 4 is ordinarily 50% of inmate earnings, the Warden, after consideration of the individual case, retains the discretion to modify this amount as appropriate.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 545

Prisoners, Work and compensation.

In consideration of the foregoing, part 545, subchapter C of 28 CFR, chapter V, is amended as follows:

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for part 545, subpart B, is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3821, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In 28 CFR 545.11, paragraph (b) is revised to read as follows:

§ 545.11 Procedures.

* * * * *

(b) *Payment:* The inmate is responsible for making all payments required by the financial responsibility plan, and for providing documentation

to staff. Payments may be made from earnings of the inmate within the institution or from outside resources. Ordinarily, the minimum payment for non-UNICOR and UNICOR grade 5 inmates will be $25.00 per quarter. Inmates assigned grades 1 through 4 in UNICOR ordinarily will be expected to allot not less than 50% of their monthly pay to the payment process. Allotments may exceed this percentage after considering the individual inmate's specific obligation and resources.

* * * * *

Dated: November 17, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 89–28158 Filed 11–30–89; 8:45 am]

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December 1, 1989

Part VI

Environmental Protection Agency

40 CFR Part 372
Community Right-to-Know Release Reporting; Addition of Certain Chemicals; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400021A; FRL-3659-2]

Community Right-to-Know Release Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding nine chemicals to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The addition of eight of these chemicals is based on their potential carcinogenicity or other chronic toxicity as reflected in determinations made under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA believes that these chemicals meet the criteria for addition to the list of toxic substances as established in EPCRA section 313(d)(2). EPA is also adding toluenediisocyanate (mixed isomers) (CAS Registry Number: 26471-62-5) to the section 313 list. EPA believes that mixtures of toluenediisocyanate isomers would generally cause the same health and environmental effects as the individual isomers already included on the section 313 list.

DATE: This rule is effective December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Project Manager, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Mail Stop OS-120, Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

EPA is adding nine chemicals to the list of toxic substances under section 313(c) of EPCRA. Section 313 of EPCRA requires owners and operators of covered facilities to report annually their releases of listed toxic chemicals. EPCRA section 313(d)(1) authorizes EPA to add chemicals to or delete chemicals from the list of toxic chemicals by rulemaking at any time. Section 313(d)(2) states that a chemical may be added if the Administrator determines that there is sufficient evidence to establish that a chemical is known to cause or can reasonably be anticipated to cause adverse acute human health effects beyond facility site boundaries based on frequently recurring or continuous releases, chronic human health effects, or environmental toxicity.

B. Background

On April 21, 1989 (54 FR 16138), EPA issued a proposal in the **Federal Register** to add 10 chemicals to the list of toxic chemicals under section 313 of EPCRA.

EPA proposed the addition of these nine chemicals on the basis of their carcinogenicity or other chronic toxicity as reflected in determinations made under section 102 of CERCLA. EPA also proposed the addition of toluenediisocyanate (mixed isomers). It is expected that mixtures of these isomers will generally cause the same health and environmental effects as the individual isomers already included on the section 313 list. A detailed description of EPA's methodology and rationale for the addition of these chemicals can be found in the proposed rule. The following table lists the 10 chemicals which were proposed for addition to the section 313 list. As discussed below, EPA is not finalizing its proposal to add diethylamine to the section 313 list at this time.

Table 1.—Proposed Addition Candidates: CERCLA Section 102 Chemicals with Cancer and Chronic Toxicity Concerns

CAS Registry Number	Chemical Name	RQ Score	Basis of Score	Federal Register Citation	Chemical Specific Docket Number
78-88-6	2,3-DICHLOROPROPENE	100	CTX	51 FR 34534	102RQ-R1-2-1
99-65-0	m-DINITROBENZENE	100	CTX	50 FR 13456	102RQ-10-3-60
100-25-4	p-DINITROBENZENE	100	CTX	50 FR 13456	102RQ-10-3-60
107-18-6	ALLYL ALCOHOL	100	CTX	50 FR 13456	102RQ-10-3-5
109-89-7	DIETHYLAMINE	100	CTX	51 FR 34534	102RQ-R1-2-1
120-58-1	ISOSAFROLE	100	CARC	54 FR 33426	102RQ-273C
528-29-0	o-DINITROBENZENE	100	CTX	50 FR 13456	102RQ-10-3-60
8001-58-9	CREOSOTE	1	CARC	54 FR 33426	102RQ-273C
25321-14-6	DINITROTOLUENE (mixed isomers)	10	CARC	54 FR 33426	102RQ-273C
26471-62-5	TOLUENEDIISOCYANATE (mixed isomers)				

Note: Known production volumes range from 236,000 to 315,000,000 lbs/yr.

CTX = Chronic Toxicity; CARC = Potential Carcinogenicity.

While the section 313 list has been modified in the past to reflect EPA's response to 37 section 313 petitions, this is the Agency's first internally initiated list modification. EPA plans to continue to review and modify this list as necessary to be consistent with the section 313 list criteria.

Reporting for the identified chemicals will be required for activities during the 1990 calendar year. As such, the first reports for the added chemicals must be submitted to EPA and States by July 1, 1991.

II. Summary of Public Comment

The public comment period on the proposed rule ended on June 5, 1989. A total of six comments were received from: Environmental Action Foundation (EAF); Hoechst Celanese Corporation; Entergy Services, Incorporated; The Working Group on Community Right-to-Know; National Wildlife Federation (NWF); and American Wood Preservers Institute (AWPI).

Almost all of the commenters expressed a strong support for EPA's initiative to add chemicals to the section 313 list. Along with their support, comments were received on EPA's methodology, the addition of diethylamine, and Toxic Release Inventory reporting of creosote.

Comments received from Entergy Services, Inc. dealt exclusively with their desire for EPA to adjust the CERCLA reportable quantity (RQ) for creosote from 1 lb to 100 lbs. This comment is not relevant to this final rule to add creosote to the section 313 list but has been referred to EPA's Office of Solid Waste and Emergency Response for its consideration.

A. Methodology

As discussed in the preamble of the proposed rule, EPA used a methodology premised on the review of analyses conducted under section 102 of CERCLA. EPA utilized those CERCLA reportable quantities (RQs) that had been established because of cancer or other chronic health effects.

EAF and NWF both had the opinion that EPA was overly restrictive in setting criteria for addition to the section 313 list. NWF comments focused on the fact that neither acute human toxicity nor environmental toxicity were considered in the proposal.

EPA specifically addressed this issue in the proposed rule.

> In reviewing the RQ methodology for its application to the section 313(d)(2) criteria, EPA wanted to ensure that chemicals which are added to the section 313 list have high concerns for properties which are most relevant to section 313. For example, ignitability and reactivity which are not specifically mentioned in section 313(d) have not been considered in this rulemaking. For this reason, EPA considered only the criteria of chronic toxicity and carcinogenicity. Although aquatic and mammalian toxicity are relevant to section 313, EPA chose to only address chronic human toxicity in this rulemaking. As previously stated, this is EPA's first attempt to initiate modification to the section 313 list; other section 313 toxicity endpoints, such as aquatic and mammalian toxicity, will be considered in future modifications.
>
> EPA will consider acute toxicity and environmental toxicity for future additions to the list.

EAF commented that reactivity, explosivity, and ignitability should also be considered for making additions to the list.

> EPA evaluates chemicals for addition to and deletion from the section 313 list by applying the criteria established under section 313(d)(2). While the above properties are not explicitly cited as criteria for modifications to the list, EPA can consider these properties as they may potentially relate to the specific criteria under section 313(d)(2) in future rulemakings.

B. Chemicals and Chemical Lists

EAF and NWF both stated that while the proposed additions to the section 313 list are certainly warranted, many more chemicals and chemical lists need to be evaluated. EAF generally stated that non-EPA lists should be considered for addition. NWF specifically suggested adding chemicals from the Priority Pollutant List of the Clean Water Act, sections 302 and 304 of EPCRA, section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 3001 of the Resource Conservation and Recovery Act (RCRA), section 103(a) of CERCLA, and hazardous chemicals under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard.

EPA certainly recognizes that there are many more chemicals which still need to be evaluated for addition to the section 313 list. As stated in the proposed rule:

> This action represents only the first attempt by EPA to modify the list of reportable chemicals under section 313. EPA will continue to look to other sources to add chemicals to the list which pose known or anticipated health and environmental hazards as established in section 313(d). The Agency is currently looking into a more comprehensive effort in developing a process to screen chemicals for addition to and deletion from the section 313 list.

While only at the beginning stages, EPA has begun to develop a process to screen chemicals for potential addition to the list. This will involve the evaluation of regulatory and non-regulatory lists, as developed within and outside the Agency.

EAF commented that they are concerned by one of the reasons EPA gives for using the CERCLA section 102 list as a starting point; that toxicological evaluations have already been conducted for CERCLA section 102 chemicals. They object to such criteria stating that little is known about many chemicals precisely because reporting has not been required.

EPA can only add chemicals to the list if these chemicals can be reasonably anticipated to cause one of the human health or environmental effects stated in section 313(d)(2). In other words, under section 313 EPA cannot place a reporting burden on the reporting community for a chemical for which EPA cannot reasonably anticipate human health or environmental concerns.

Using the toxicological evaluations that have already been conducted for the CERCLA section 102 chemicals allowed EPA to rely on data on carcinogenicity and chronic toxicity which has already been reviewed by EPA. EPA believes that these assessments are adequate to make the finding under section 313(d)(2) that the chemicals can be reasonably anticipated to cause cancer or other chronic effects to humans.

C. Arbitrary Selection of CERCLA RQ Values

Many of the commenters stated that EPA's selection of an RQ of 100 lbs is arbitrary and is not an indication of toxicity. Certain commenters stated that many chemicals with higher RQs may meet the criteria as established under section 313(d)(2) for addition to the list.

EPA's selection of the 100 lb RQ as a screening tool was based on its experience with the methodology and criteria to assign RQ scores for each of the seven primary areas; potential carcinogenicity, chronic toxicity, acute toxicity, environmental toxicity, mammalian toxicity, reactivity, and ignitability. EPA believes that chemicals with an RQ of 100 lbs for either cancer or chronic toxicity would most certainly meet the criteria under section 313(d)(2). However, this does not imply that chemicals assigned RQ values greater than 100 lbs do not necessarily meet the criteria under section 313(d)(2).

D. Multiple Criteria for Addition to the List

Two comments were received which interpreted the methodology for the proposed chemicals as requiring that more than one criterion under section 313(d)(2) had to be met to add a chemical to the section 313 list. The statute clearly states that the Administrator need only to establish that a chemical meet any one of the criteria to warrant addition to the section 313 list.

EPA agrees that a chemical only needs to meet one of the criteria for health and environmental effects under section 313(d)(2). There seems to be some confusion with respect to the methodology employed in the proposal. The commenters may have assumed that EPA considered only the final published RQ in screening chemicals for addition.

As stated in the proposal:

> CERCLA section 102(a) allows EPA to adjust RQ levels for specific chemicals. In establishing and adjusting the RQ levels, EPA evaluates the intrinsic physical, chemical, and toxicological properties of each chemical. The primary criteria used to adjust an RQ for a particular chemical are carcinogenicity, chronic toxicity, aquatic toxicity, mammalian toxicity, ignitability, and reactivity. EPA assigns RQ values for each of the six primary areas mentioned above. Chemicals with final RQ scores of 100 or less based on aquatic toxicity, mammalian toxicity, ignitability, and reactivity were screened for scores reflecting assessments based on their cancer and chronic toxicity potential. In other words, a chemical with a final RQ of 1 pound based on reactivity was still screened for its carcinogenicity and chronic toxicity scores. If [either] score is less than or equal to 100 pounds, then the chemical meets the threshold outlined in this proposal.

The Agency recognizes that a chemical only needs to satisfy one of the toxicity criteria to warrant its addition to the section 313 list. For this rulemaking, EPA only evaluated the RQ

values that were assigned specifically for cancer or chronic toxicity. As another example, allyl alcohol has been evaluated specifically for chronic toxicity where an RQ of 100 lbs has been assigned for chronic toxicity. While this chemical may have an even lower RQ value for one of the other endpoints mentioned above, only the chronic toxicity and carcinogenicity RQ values were considered.

E. Production Volume

EPA received several comments regarding the use of production volume as a criterion for listing and on the use of the TSCA Confidential Update System (CUS).

Commenters questioned any use of production volume for additions to the list, claiming that facilities which exceed the reporting thresholds would report under section 313 and those facilities which fall below would not. Commenters stated that it is inappropriate for EPA to look at production volume at all. The Agency should only examine chemicals' potential health and environmental effects.

Many commenters also questioned the use of the TSCA CUS noting its limitations with respect to inorganic chemicals, its accuracy, and the fact that it is a confidential data base being used for community right-to-know purposes. If production volume is going to play a role in making additions to the section 313 list, commenters stated that other production volume data should be considered.

EPA's position on these issues has been set forth in the proposal. The CERCLA section 102 list was screened for production volume to eliminate from consideration any chemical without a known production volume of at least 25,000 pounds, because 25,000 pounds is the reporting threshold for manufacturers and processors under section 313 of EPCRA. EPA wanted to ensure that it adds chemicals to the list which will result in valuable information on chemical releases into the environment. The public is not served if EPA adds chemicals to the list for which no reports would be received because the chemicals are not produced. For this reason, EPA believes it is appropriate to consider production volume on potential candidates for addition once an evaluation of the health and environmental toxicity has been conducted.

EPA agrees with the commenters that other sources, in addition to the TSCA CUS data base, should be considered in future rulemakings to include importation and chemical intermediates. It is important to stress that this is EPA's first attempt to add chemicals to the list and a more comprehensive process for making modifications to the section 313 list is being developed.

F. Diethylamine

Hoechst Celanese Corp. commented on the available data on diethylamine and requested that EPA reconsider the addition of this chemical to the section 313 list. EPA cited a 1951 study conducted by Brieger and Hodes as the basis for chronic toxicity concerns. Hoechst Celanese raises several issues with respect to this study.

(1) The study used the rabbit as the exposure species, which is an unconventional choice for inhalation studies by today's standards.

(2) Only six animals were used per dose group and the sex was not specified.

(3) While the investigators noted multiple corneal erosions and edema at 50 ppm, no such effects were noted at 100 ppm.

(4) The study was only 6 weeks in duration.

Hoechst Celanese provided a much more recent study with diethylamine conducted by (Lynch, et. al.) at the National Institute of Occupational Safety and Health (NIOSH) in 1986. The Lynch study was 24 weeks in duration and used 200 rats (100 male and female) per dose group. No effects were noted at the 25 ppm dose level. At 250 ppm, the primary effects were related to respiratory irritation. None of the effects cited in the earlier study were cited in the Lynch study.

A review of the Brieger and Hodes study indicates that this study was not conducted using EPA guidelines (conducted before there was an EPA), that it is a less than perfect study, but that the study is sufficient for setting and supporting a CERCLA RQ for chronic toxicity. It should be noted that the Lynch study is being evaluated for a possible technical update of the CERCLA RQ for diethylamine. The contention that the rabbit is an unconventional choice for inhalation testing relates to the difficulty of conducting this type of test in rabbits. It does not make the rabbit an inappropriate test species for this chemical. In fact, it is possible that the variance between the Brieger and Hodes study and the Lynch study indicates that the rabbit is a more sensitive species for the subject chemical.

However, the Hoechst Celanese comments do raise concerns regarding EPA's selection of this chemical for addition to the section 313 list of toxic chemicals. The low number of animals used in the Brieger study, the short duration of the study, the lack of a dose-dependent response, and the lack of confirmation in the more recent Lynch study are factors that indicate a need for further analysis before EPA adds this chemical to the section 313 list. Therefore, EPA is not adding diethylamine to the section 313 list pending further review.

G. Creosote

The AWPI provided comment on the proposed addition of creosote to the section 313 list. The industry is generally supportive of this idea, provided that reporting of creosote is in lieu of, and not in addition to, reporting of its listed constituents. AWPI's comments addressed four specific issues: listing of creosote as a section 313 toxic chemical; reporting of creosote under section 313 in lieu of its constituents; creosote emissions estimation methodologies; and the carcinogenicity of creosote.

1. *Listing creosote as a distinct compound.* Creosote is a distillation product from coal tar pitch. As such, it is a naturally occurring mixture in that it is not manufactured by the assembly or formulation of ingredients nor are any other substances intentionally added to it during its processing. Creosote is composed of as many as 200 individual components with 20 being generally recognized at levels of 1.0 percent or greater. (Three of these chemicals are individually listed on the section 313 list: anthracene, dibenzofuran, and naphthalene.) Industry believes that health risk assessments of the whole compound (creosote) are appropriate and are sufficient indicators of real world toxicity and exposures.

AWPI's main point is that numerous government entities have regulated and continue to look at creosote as a discrete compound with a distinct chemical identity: creosote is a listed hazardous waste under the RCRA and is a CERCLA hazardous substance. Beyond EPA, OSHA regulates creosote as a hazardous substance in the workplace, and the National Toxicology Program (NTP) and the International Agency for Research on Cancer (IARC) have both evaluated the carcinogenicity of creosote as a discrete entity. AWPI also points to the fact that creosote has been assigned a CAS registry number.

EPA generally agrees with AWPI with respect to treating creosote as a distinct entity and that reporting under section 313 should take place for that entity in lieu of the individual components. EPA wants to ensure, however, that release determinations are expressed properly under section 313.

Recognizing the complexity of creosote with respect to its constituents, EPA believes that release estimates under EPCRA section 313 should be for total organics attributable to creosote that are released to each medium. For example, while creosote is manufactured, processed, or used, releases to air might occur from the volatile components of creosote. While the number of individual components and percentages of the volatiles would be different from the original creosote mixture, EPA believes that the total amount of these volatiles must be reported as emissions of creosote to air. EPA is stressing this point since, in the above example, it might be interpreted that creosote (in its entirety) is not being emitted into the air and as such, emissions are reported as zero.

While the policy under section 313 has not necessarily been to consider a CAS registry number as the identifier for determining the reportability of a substance, EPA agrees with AWPI that treating creosote as a discrete chemical substance is reasonable for this particular situation.

2. *Reporting creosote on Form R in lieu of its constituents.* AWPI has pointed out that creosote is handled and applied as a discrete compound by government, health professionals, and industry. It makes sense to continue this approach in all regulatory contexts. Reporting of creosote and its section 313 listed constituents would result in double counting of emissions.

AWPI has also indicated that the burden of reporting for individual listed chemicals within creosote is greater than the burden would be for reporting for creosote in lieu of its constituents.

EPA agrees that reporting emissions of creosote should be in lieu of reporting section 313 listed components. Anthracene, dibenzofuran, and naphthalene are all major components of creosote. Individual reports for these substances as they result from creosote would not be required. However, it should be emphasized that facilities which separately employ a section 313 listed chemical (such as the above three) in any manufacture, process, or use activity are still subject to reporting releases of those chemicals. For example, a creosote solution in naphthalene would be considered to contain two reportable section 313 chemicals. Estimations of the releases would have to be made for the naphthalene solvent as well as creosote.

Reporting creosote as a single entity is somewhat precedent setting under section 313. In the past, EPA guidance to reporting has been chemical-specific. Individual section 313 listed chemicals in mixtures, whether or not the mixture is described by a CAS registry number, require threshold and release determinations for the individual listed chemical(s). With respect to creosote, facilities are currently making estimates of releases for the three individually listed chemicals. According to AWPI, making a single report for releases of the entity, creosote will be less burdensome than reporting individual listed chemicals. Estimating releases for creosote, while less burdensome, will not necessarily be straightforward. As such, EPA is providing guidance below for estimating creosote releases.

3. *Carcinogenicity of creosote.* AWPI contends that the IARC and NTP reviews on creosote are incomplete because they do not include unpublished studies. The unpublished studies are referred to by AWPI as three epidemiological studies which show that exposure to creosote in the wood treating industry does not adversely affect human health.

With regard to the cancer criterion under section 313, EPA must conclude that a chemical causes or can reasonably be anticipated to cause cancer in humans in order to include that chemical on the section 313 list. As with IARC and NTP, EPA can only consider data which are available when assessing the potential toxicity of any chemical. While there may be unpublished epidemiological studies on creosote which AWPI claims show no adverse human health related effects, there are still data to indicate that there is limited human evidence, and sufficient animal evidence to reasonably anticipate that creosote causes cancer in humans. IARC and NTP have concluded that creosote is a possible human carcinogen. It should be noted that AWPI did not include these unpublished reports in their comments. Despite AWPI comments concerning the epidemiologic studies, it still supported the listing of creosote under section 313.

III. Statutory Findings

After assessing public comment and the rulemaking record, EPA has determined that the chemical substances identified in Table 1 above (with the exception of diethylamine) meet the statutory toxicity criteria for listing under section 313(d)(2) of EPCRA. These determinations and the specific toxic effects of each chemical are set forth in detail in the preamble of the proposed rule and the accompanying rulemaking record.

In summary, EPA finds that isosafrole, creosote, and dinitrotoluene (mixed isomers) are known to cause or can reasonably be anticipated to cause cancer in humans. EPA has also determined that ortho-, meta-, and para-dinitrobenzene are known or can reasonably be anticipated to cause serious reproductive dysfunctions in humans. EPA has determined that there is sufficient evidence that allyl alcohol and 2,3-dichloropropene are known to cause or can reasonably be anticipated to cause serious chronic health effects in humans. Finally, EPA concludes that mixed isomers of toluenediisocyanate causes or can reasonably be anticipated to cause serious or irreversible chronic effect in humans.

IV. Guidance for Reporting Creosote

Estimating releases of creosote for purposes of section 313 should be based on the total organics attributable to creosote that are released to each medium. Contributions to the release not known to be due to creosote per se can be factored out. For example, total organics might include amounts of pentachlorophenol from other processes at the facility which should be subtracted. Fugitive emissions, solid wastes, and storage tank losses may be partially due to solvents, such as topped coal tar distillate, in the mixture and these releases can be factored out using weight fractions of these other substances.

For air releases, fugitive emissions from equipment leaks such as pumps and valves can be estimated by using the average Synthetic Organic Chemical Manufacturing Industry (SOCMI) emission factors for heavy liquid organics. If the facility had screening data for hydrocarbon leaks (defined as greater than 10,000 ppm) then this data can be used in conjunction with the leaking and non-leaking SOCMI fugitive emission factors. These fugitive emission factors are available in Appendix D of Estimating Releases and Waste Treatment Efficiencies for the Toxic Chemical Release Inventory Form, EPA 560/4-88-002.

Stack releases of creosote can be based on measured total volatile organics or hydrocarbons. Air emissions for storage tanks can be estimated with EPA published equations using the average molecular weight and vapor pressure for the creosote liquid at the storage temperature. If the molecular weight and vapor pressure of the creosote is not available, it can be calculated using the liquid concentration, molecular weight, and vapor pressure of the individual components. This procedure is further described in Appendix C of EPA 560/4-88-002.

For water releases, estimates can be based on the measured total organic concentration in wastewater times the wastewater volume. If this is not available, the concentration could be based on the solubility of creosote in water. Solid wastes should be based on the measured weight or volume (multiplied times density) of the creosote waste.

As an alternative approach, a facility could build its estimates on a chemical-by-chemical basis, including at a minimum, the 20 most abundant constituents of creosote. However, a covered facility would not be required to file separate reports for anthracene, dibenzofuran, or napthalene based on their presence in creosote.

V. Rulemaking Record

The record supporting this rule is contained in the docket number OPTS-400021A and in the CERCLA dockets referenced in Table 1. Nonconfidential documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC. The CERCLA dockets which are part of this rulemaking are available to the public in the CERCLA Public Docket Office which is located at EPA Headquarters, Rm. M2427, 401 M St., SW., Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each Federal agency to classify as "major" any rule likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates up to 619 additional reports entailing annual costs to EPA, industry, and States of about $755,000 as a result of the addition of nine chemicals to the section 313 list of toxic chemicals. EPA anticipates that this addition will not have a significant effect on competition, costs, or prices. Therefore, EPA has determined that this rule is not "major."

This rule has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. EPA estimates that the addition of 9 chemicals will require reporting from less than 1 percent of manufacturing facilities with between 10 and 50 employees.

The analysis supporting this rule anticipates that no segment of the manufacturing sector is likely to suffer significant adverse effects because of this rule. Reporting costs are estimated at less than 0.25 percent of median sales per report for affected facilities with 10 to 19 full-time employees in manufacturing SICs 20 through 39. Based on the 9 chemicals, it is unlikely that any facilities with 10 to 19 employees will have to file reports for more than 1 chemical.

Therefore, EPA certifies that this rule will not have a significant impact on a substantial number of small entities and that no Regulatory Flexibility Analysis is needed.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0093.

The public reporting burden for this collection of information is estimated to average 33 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 28, 1989.

William F. Reilly,

Administrator.

Therefore, 40 CFR part 372 is amended to read as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) by CAS No. sequence to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective Date
* * *	*	*
Allyl alcohol	107-18-6	1/01/90
Creosote	8001-58-9	1/01/90
2,3-Dichloropropene	78-88-6	1/01/90
m-Dinitrobenzene	99-65-0	1/01/90
o-Dinitrobenzene	528-29-0	1/01/90
p-Dinitrobenzene	100-25-4	1/01/90
Dinitrotoluene (mixed isomers)	25321-14-6	1/01/90
Isosafrole	120-58-1	1/01/90
Toluenediisocyanate (mixed isomers)	26471-62-5	1/01/90

(b) * * *

Cas No.	Chemical Name	Effective Date
* *	* *	*
78-88-6	2,3-Dichloropropene	1/01/90
99-65-0	m-Dinitrobenzene	1/01/90
100-25-4	p-Dinitrobenzene	1/01/90
107-18-6	Allyl alcohol	1/01/90
120-58-1	Isosafrole	1/01/90
528-29-0	o-Dinitrobenzene	1/01/90

Cas No.	Chemical Name	Effective Date
* *	* *	*
8001-58-9	Creosote	1/01/90
25321-14-6	Dinitrotoluene (mixed isomers)	1/01/90
26471-62-5	Toluenediisocyanate (mixed isomers)	1/01/90
* *	* *	*

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1310/Pub. L. 101-177
To redesignate a certain portion of the George Washington Memorial Parkway as the "Clara Barton Parkway". (Nov. 28, 1989; 103 Stat. 1296; 1 page) Price: $1.00

H.R. 2120/Pub. L. 101-178
To amend the Deep Seabed Hard Mineral Resources Act to authorize appropriations to carry out the provisions of the Act for fiscal years 1990, 1991, 1992, 1993, and 1994. (Nov. 28, 1989; 103 Stat. 1297; 1 page) Price: $1.00

H.R. 3402/Pub. L. 101-179
Support for East European Democracy (SEED) Act of 1989. (Nov. 28, 1989; 103 Stat. 1298; 27 pages) Price: $1.00

H.R. 3532/Pub. L. 101-180
Civil Rights Commission Reauthorization Act of 1989. (Nov. 28, 1989; 103 Stat. 1325; 1 page) Price: $1.00

H.J. Res. 357/Pub. L. 101-181
Providing for the reappointment of Samuel Curtis Johnson as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 28, 1989; 103 Stat. 1326; 1 page) Price: $1.00

H.J. Res. 358/Pub. L. 101-182
Providing for the reappointment of Jeannine Smith Clark as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 28, 1989; 103 Stat. 1327; 1 page) Price: $1.00

H.J. Res. 393/Pub. L. 101-183
To grant the consent of Congress to the boundary change compact between South Dakota an Nebraska. (Nov. 28, 1989; 103 Stat. 1328; 6 pages) Price: $1.00

S. 810/Pub. L. 101-184
To commemorate the contributions of Senator Clinton P. Anderson to the establishment of the National Wilderness Preservation System, and for other purposes. (Nov. 28, 1989; 103 Stat. 1334; 2 pages) Price: $1.00

S. 978/Pub. L. 101-185
National Museum of the American Indian Act. (Nov. 28, 1989; 103 Stat. 1336; 12 pages) Price: $1.00

S.J. Res. 159/Pub. L. 101-186
To designate April 22, 1990, as Earth Day, and to set aside the day for public activities promoting preservation of the global environment. (Nov. 28, 1989; 103 Stat. 1348; 2 pages) Price: $1.00

S.J. Res. 207/Pub. L. 101-187
Approving the location of the memorial to the women who served in Vietnam. (Nov. 28, 1989; 103 Stat. 1350; 1 page) Price: $1.00

S.J. Res. 218/Pub. L. 101-188
To designate the week of December 3, 1989, through December 9, 1989, as "National American Indian Heritage Week". (Nov. 28, 1989 103 Stat. 1351; 1 page) Price: $1.00

H.R. 2461/Pub. L. 101-189
National Defense Authorization Act for Fiscal Years 1990 and 1991. (Nov. 29 1989; 103 Stat. 1352; 339 pages) Price $10.00

S. 1390/Pub. L. 101-190
To provide for the construction of biomedical facilities in order to ensure a continued supply of specialized strains of mice essential to biomedical research in the United States, and for other purposes. (Nov. 29, 1989; 103 Stat. 1691; 6 pages) Price: $1.00

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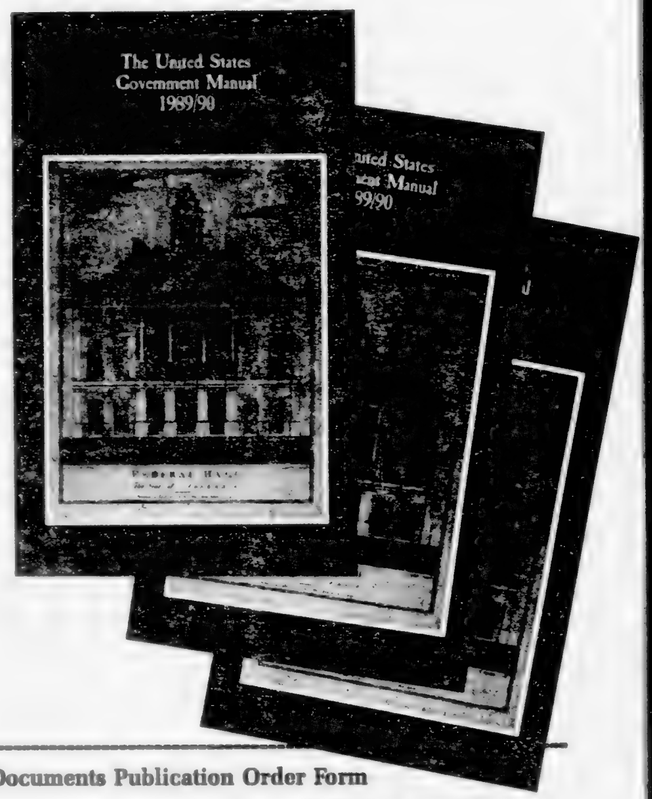
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Monday
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Rules and Regulations

Federal Register
Vol. 54, No. 231
Monday, December 4, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket Nos. AO–160–A65–R01, etc.; DA–89–028]

Milk in Certain Marketing Areas; Interim Amendment of Orders

7 CFR part	Marketing area	AO Nos.
1006	Upper Florida	AO–356–A27
1007	Georgia	AO–366–A30
1011	Tennessee Valley	AO–251–A33
1012	Tampa Bay	AO–347–A30
1013	Southeastern Florida	AO–286–A37
1030	Chicago Regional	AO–361–A26
1032	Southern Illinois–Eastern Missouri	AO–313–A37
1033	Ohio Valley	AO–166–A58
1036	Eastern Ohio–Western Pennsylvania	AO–179–A53
1040	Southern Michigan	AO–225–A40
1046	Louisville–Lexington–Evansville	AO–123–A59
1049	Indiana	AO–319–A36
1050	Central Illinois	AO–355–A25
1064	Greater Kansas City	AO–33–A58
1065	Nebraska–Western Iowa	AO–86–A45
1068	Upper Midwest	AO–178–A42
1076	Eastern South Dakota	AO–260–A28
1079	Iowa	AO–295–A39
1093	Alabama–West Florida	AO–366–A6
1094	New Orleans–Mississippi	AO–103–A50
1096	Greater Louisiana	AO–257–A37
1097	Memphis, Tennessee	AO–219–A44
1098	Nashville, Tennessee	AO–184–A53
1099	Paducah, Kentucky	AO–183–A43
1106	Southwest Plains	AO–210–A49
1108	Central Arkansas	AO–243–A40
1120	Lubbock–Plainview, Texas	AO–328–A27
1124	Pacific Northwest	AO–368–A17
1126	Texas	AO–231–A57
1131	Central Arizona	AO–271–A27
1132	Texas Panhandle	AO–252–A37
1134	Western Colorado	AO–301–A20
1135	Southwestern Idaho–Eastern Oregon	AO–380–A7
1137	Eastern Colorado	AO–326–A24
1138	Rio Grande Valley	AO–335–A33
1139	Great Basin	AO–309–A28

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim amendment of rules.

SUMMARY: This action changes on an interim basis those orders that currently provide tentative and final price announcements for Class II milk. These interim amendments would change the current method of announcing a tentative Class II milk price for each month on or before the 15th of the preceeding month, with a final Class II milk price for the month being determined and announced on the fifth day of the following month. Instead, the Class II milk price announced by the 15th of each month would be the final or effective Class II milk price for the following month. The Class II milk price will not be retroactively revised. The objective of the current pricing arrangement whereby the Class II milk price will not be less than the Minnesota–Wisconsin (M–W) manufacturing grade milk price, or Class III milk price in most Federal orders, is maintained in principle. To the extent that the announced Class II price for a given month is less than the Class III price for that same month, the difference would be included in computing the second succeeding month's Class II milk price. These changes are based on evidence presented at a public hearing held in Alexandria, Virginia, on August 22, 1989. More than the required number of producers in each of the marketing areas affected have approved the interim amendments to the order for their market.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued October 31, 1989; published November 8, 1989 (54 FR 46904).

Tentative Decision: Issued November 8, 1989; published November 15, 1989 (54 FR 47527).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome mik, and be in the public interest; and

(3) The said orders as hereby amended on an interim basis regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in,

marketing agreements upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make these interim amendments to each of the aforesaid orders effective December 4, 1989. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The interim amendments to these orders are known to handlers. The Tentative Decision of the Assistant Secretary containing proposed amendments to these orders was issued November 8, 1989, and published on November 15, 1989, in the **Federal Register** (54 FR 47527).

The changes effected by these interim amendments will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that it would be contrary to the public interest to delay the effective date of these amendments for 30 days after publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these interim amendments to each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of these interim amendments to each of the specified orders is approved by more than the required number of producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. In § 1006.50(b), the introductory test is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

3. Secton 1006.53 is revised to read as follows:

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1006.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

4. In § 1007.50(b), the introductory text is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

5. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

6. In § 1011.50(b), the introductory text is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

7. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

8. In § 1012.50(b), the introductory text is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

9. Section 1012.53 is revised to read as follows:

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1012.50(b).

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

10. In § 1013.50(b), the introductory text is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the Class II price for the second preceding month was less than the Class III price for the second preceding month.

* * * * *

11. Section 1013.53 is revised to read as follows:

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1013.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

12. In § 1030.50(b), the introductory text is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

13. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

14. In § 1032.50(b), the introductory text is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

15. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1032.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

16. In § 1033.27, paragraphs (k)(1) and (k)(3) are revised to read as follows:

§ 1033.27 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class III price for the preceding month;

(iii) The butterfat differential for the preceding month;

(2) * * *

(3) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.51(b).

* * * * *

17. In § 1033.51(b), the introductory text is revised to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

18. In § 1036.50(b), the introductory text is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

19. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

20. In § 1040.50(b), the introductory text is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

21. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class II price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

22. In § 1046.50(b), the introductory text is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

23. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

24. In § 1049.50(b), the introductory text is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

25. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

26. In § 1050.50(b), the introductory text is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

27. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1050.50(b).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

28. In § 1064.50(b), the introductory text is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) end (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

29. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1064.50(b).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

30. In § 1065.50(b), the introductory text is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

31. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

32. In § 1068.50(b), the introductory text is revised to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

33. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

34. In § 1076.50(b), the introductory text is revised to read as follows:

§ 1076.50 Class prices.

* * * * *

(b) *Class II price.* The class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

35. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1076.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

36. In Section 1079.50(b), the introductory text is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

37. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

38. In Section 1093.50(b), the introductory text is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to

§ 1093.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

39. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

40. In Section 1094.50(b), the introductory text is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

41. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

40. In § 1096.50(b), the introductory text is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraph (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

43. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

44. In § 1097.50(b), the introductory text is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

45. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

46. In § 1098.50(b), the introductory text is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

47. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1098.50(b).

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

48. In § 1099.50(b), the introductory text is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

49. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

50. In § 1106.50(b), the introductory text is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

51. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

52. In Section 1108.50(b), the introductory text is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(b) Class II price. The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

53. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

54. In Section 1120.50(b), the introductory text is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

55. Section 1120.53 is revised to read as follows:

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1120.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

56. In Section 1124.50(b), the introductory text is revised to read as follows:

§ 1124.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

57. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

58. In § 1126.50(b), the introductory text is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1126.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the

basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

59. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

60. In § 1131.50(b), the introductory text is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

61. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

62. In § 1132.50(b), the introductory text is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

63. Section 1132.53 is revised to read as follows:

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1132.50(b).

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

64. In Section 1134.50(b), the introductory text is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

65. Section 1134.53 is revised to read as follows:

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1134.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO–EASTERN OREGON MARKETING AREA

66. In § 1135.50(b), the introductory text is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

67. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

68. In § 1137.50(b), the introductory text is revised to read as follows:

§ 1137.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

69. Section 1137.53 is revised to read as follows:

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1137.50(b).

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

70. In Section 1138.50(b), the introductory text is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

71. Section 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

72. In Section 1139.50(b), the introductory text is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

73. Section 1139.53 is revised to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th of each month, the Class II price for the following month computed pursuant to § 1139.50(b); and

(c) The 5th day after the end of each month, the Class III price and the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f) for each month.

* * * * *

Effective date: December 4, 1989.

Signed at Washington, DC, on November 28, 1989.

John E. Frydenlund,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–28233 Filed 12–1–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1038R–89]

RIN 1115–AA55

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule removes the Operating Assistance for Troubled Multifamily Housing Projects (Troubled Projects (Flexible Subsidy) Program) from the list at 8 CFR 245a.5(c) of programs of Federal financial assistance for which newly legalized aliens are temporarily disqualified. The intended effect is to lessen the impact of legalization on benefit programs.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Virtue, Acting General Counsel, Immigration and Naturalization Service, Room 7048, 425 I Street, NW., Washington, DC 20536, (202–633–2895).

SUPPLEMENTARY INFORMATION: On July 12, 1989, the Department of Justice, Immigration and Naturalization Service, published the Final Rule at 54 FR 29437 implementing section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Public Law 99–603 ("IRCA"). Section 245A(H) provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to 245A(a) ("legalization") are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(H)(1)(A)(i) of the Act to identify such programs after consultation with other appropriate heads of the various departments and agencies of government.

Upon consultation with the Department of Housing and Urban Development ("HUD") the determination was made that the Rental Rehabilitation Program and the Flexible Subsidy Program should not be included as programs from which section 245A aliens were disqualified.

The Rental Rehabilitation Program does not provide assistance based on financial need, and HUD's Economic and Market Analysis Division has concluded that market rents paid by citizens in the area in which a Rental Rehabilitation project is located will not be increased if temporary resident aliens are permitted to rent units in these projects. The Rental Rehabilitation Program was not listed at 8 CFR 245a.5, and the reference at 54 FR 20435 to this program was inadvertent.

The Flexible Subsidy Program provides funds for repairs and management improvements to owners of certain troubled HUD-assisted multi-family projects. Projects that are eligible for the Flexible Subsidy Program include those projects assisted under sections 236 and 221(d)(5) of the National Housing Act, projects assisted under the Rent Supplement Program under section 101 of the Housing and Urban Development Act of 1965, certain projects which have received loans under the elderly and handicapped housing program under section 202 of the Housing Act of 1959.

Under section 214 of the Housing and Community Development Act of 1980, temporary resident aliens are generally eligible to reside in these projects. Since temporary resident aliens are eligible for the underlying projects, Flexible Subsidy assistance should not have been included as a program for which such temporary resident aliens are disqualified. The reference to the Flexible Subsidy Program at 8 CFR 245a.5(c) was inadvertent and is removed through this correction.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for part 245A continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359, 8 U.S.C. 1101 note.

§ 245a.5 [Amended]

2. Section 245a.5(c) is amended by removing the following entry:

Operating Assistance for Troubled Multifamily Housing Projects (Troubled Projects (Flexible Subsidy) Program) 14.164.

Dated: November 2, 1989.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–28203 Filed 12–1–89; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–145–AD; Amdt. 39–6407]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modification; one-time and periodic inspections; and repair, if necessary, of passenger doors to ensure proper operation of the emergency power assist door opening system. This amendment is prompted by reports of fractured emergency power assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation.

DATE: Effective January 6, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires modification; one-time and periodic inspections; and repair, if necessary, of passenger doors, was published in the **Federal Register** on August 17, 1989 (54 FR 33937).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America commented that the initial compliance time of 350 flight hours is too restrictive and not necessary because broken trigger mechanisms will be routinely discovered by the flight crew. Also, the ATA contended that new airplanes should not have to be inspected within 350 flight hours after delivery. Consequently, ATA requested that the intial compliance period be changed to 6 months. The FAA does not concur with an extension of the initial compliance period from 350 flight hours to 6 months, because fractured triggers are not easily detected during normal door operation and at least one fractured trigger was found on one airplane prior to delivery.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 205 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the initial required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total initial cost impact of the AD on U.S. operators is estimated to be $39,960. It is estimated that it would take 3 manhours per airplane to accomplish each periodic inspection, resulting in an annual estimated cost impact of $26,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757–52–0042, dated March 30, 1989 (hereafter referred to as the Service Bulletin), certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure passenger door power assist opening when required for emergency evacuation, accomplish the following:

A. For airplanes identified in the Service Bulletin as Group 1, within the next 350 flight hours after the effective date of this AD, accomplish the following in accordance with Section III., Part II., of the Service Bulletin. Any interference or improper clearance detected as a result of the required inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Modify the forward right-hand door.

2. Inspect all doors for evidence of interference between the trigger support housing and the upper hinge arm.

3. Inspect all doors for proper clearance between the power assist trigger and the door and fuselage skin.

B. For all airplanes, within the next 350 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 6 months, accomplish the following inspections in accordance with Section III., Part I., of the Service Bulletin. Any damage or improper adjustment or operation detected as a result of the inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

2. Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

3. Inspect trigger spring cylinders for proper operation.

4. Inspect roller arms for damage.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 6, 1990.

Issued in Seattle, Washington, on November 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28263 Filed 12–1–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–18–AD; Amdt. 39–6410]

Airworthiness Directives; Beech 65 and 80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Models 65, 65–80, 65–A80 and 65–B80 airplanes, which supersedes AD 70–25–01, Amendment 39–1609. The FAA has determined that improved inspection methods are available that will enhance the effectiveness of the required inspections. The new AD incorporates this improved criteria.

EFFECTIVE DATE: January 4, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Structural Inspection and Repair Manual (SIRM), applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Aviadesign Engineering Order E.O. B–8001, Issue 3, dated May 30, 1985, may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information also may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the wing main spar lower cap and associated structure on certain Beech 65 and 80 Series airplanes was published in the **Federal Register** on September 1, 1989 (54 FR 36319).

The proposal was prompted by a need to replace AD 70–25–01, Amendment 39–1609, effective November 16, 1971, which required inspection of the wing main spar lower cap and attach fittings on certain Beech 65 and 80 Series airplanes for fatigue cracks. AD 70–25–01 relied on an obsolete Beech Service Instruction (No. 0393–018) for inspection criteria. Improved criteria are now available in the Beech Structural Inspection and Repair Manual (SIRM). The SIRM methods have been mandatory for Beech 90 and 100 Series airplanes since September 1986, and are known to be effective. The criteria in AD 70–25–01 have also been used for the 90 Series, and found not to be as effective as the SIRM methods. Therefore, safety is served by adopting the SIRM methods in lieu of the AD 70–25–01 criteria.

Another deficiency of AD 70–25–01 was that it called for inspection of the wing skin adjacent to the attach fitting for cracks, and required further inspections only if skin cracks were found. It is now known that skin cracks are neither an indicator of, nor related to, the condition of the attach fitting or spar cap. The straight-forward fitting and spar cap inspection methods in the SIRM are much preferred.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Since issuing the NPRM, the FAA has re-evaluated its position of not allowing credit for inspections previously performed in accordance with AD 70–25–01, and concluded that it would be in the interest of the public to allow credit for these inspections. Accordingly, the proposal is adopted with this change and other minor editorial corrections.

The FAA has determined there are approximately 739 airplanes affected by the proposed AD. The cost of inspecting these airplanes in accordance with the proposed AD is estimated to be less than that already required by AD 70–25–01. Therefore, few, if any, small entities are expected to experience a significant economic impact as a result of this amendment.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 70-25-01, Amendment Number 39-1609, with the following new AD:

Beech: Applies to Models 65 (Serial Numbers (S/N) L-1, L-2, L-6, LF-7 through LF-76, and LC-1 through LC-180); 65-80 and 65-A80 (S/N LD-1 through LD-244); 65-A80 (S/N LD-245 through LD-289) when Beech Modification Kit No. 80-4004-1 or -3 is installed; and 65-B80 (all S/N) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect possible fatigue cracking of the wing main spar lower cap and associated structure, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, or upon accumulating 3000 hours TIS on Models 65-80 and 65-A80 airplanes, or upon accumulating 5000 hours TIS on Models 65 and 65-B80 airplanes, whichever occurs later, unless previously accomplished per AD 70-25-01, Amendment No. 39-1609, and thereafter at intervals not to exceed 1000 hours TIS (except as provided in paragraph (b) below) after the initial inspection, inspect the wing lower forward spar attach fittings, center section and outboard wing spar caps adjacent to the attach fittings by visual, fluorescent penetrant and eddy current methods as specified in the applicable section of Beech Structural Inspection and Repair Manual (SIRM), P/N 98-39006, Revision A4, dated May 1, 1987.

Note 1: Beech offers a two-day training course free of charge to qualified personnel who have prior knowledge of eddy current inspection techniques. A listing of Beech Corporate maintenance facilities may be obtained from the sources contained in paragraph (e) of this AD. A listing of other facilities employing qualified inspectors is not available.

(b) At each inspection required by paragraph (a) above, inspect any reinforcing strap installed per Supplemental Type Certificate (STC) SA1583CE for proper tension and condition in accordance with Aviadesign Engineering Order E.O. B-8001, Issue 3, dated May 30, 1985. Correct any discrepancy prior to further flight. For airplanes equipped with STC SA1583CE and inspected in accordance with paragraph (a) above, the repetitive inspection interval of 1000 hours TIS in paragraph (a) above may be extended to 3000 hours TIS.

(c) If any crack is found in a main spar lower cap or fitting, prior to further flight repair or replace the defective part using the instructions and limitations specified in the SIRM or other FAA approved instructions provided by Beech Aircraft Corporation.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 70-25-01, Amendment 39-1609.

Issued in Kansas City, Missouri on November 22, 1989.

Earse L. Tankesley,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-28262 Filed 12-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-12-AD; Amdt. 39-6409]

Airworthiness Directives; Beech 90 and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90, C90A, E90, 100, A100, and B100 airplanes, which supersedes AD 87-23-09 and AD 70-25-04. This amendment incorporates those portions of the superseded AD's which remain valid and corrects minor editorial errors.

EFFECTIVE DATE: January 4, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Structural Inspection and Repair Manual (SIRM), applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. Aviadesign Engineering Order E.O. B-8001, Issue 3, dated May 30, 1985, may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD which requires inspection of the wing main spar lower cap and attach fittings for fatigue cracks on certain Beech 90 & 100 Series airplanes was published in the **Federal Register** on September 1, 1989 (54 FR 36317). The proposal was prompted by a need to replace AD 70-25-04 by a new AD which employs up-to-date inspection methods. AD 70-25-04 relies on an obsolete Beech Service Instruction (No. 0394-018) for inspection criteria. Improved criteria are now available in the Beech Structural Inspection and Repair Manual (SIRM). Certain portions of the SIRM have been made mandatory by AD 87-23-09 for all 90 Series airplanes except Serials LJ-1 through LJ-67. The SIRM inspections are known to be effective in that at least 20 cracked wing spar components have been found by these inspections since September, 1983, out of the entire fleet of approximately 1550 airplanes. These inspections have been performed by Beech trained personnel using state-of-the-art methods. This contrasts against the inspection methods in AD 70-25-04, which have found no cracks since September, 1979, in the fleet of 67 airplanes, applying the outdated inspection criteria and not necessarily utilizing Beech-trained personnel. Additional cause for requiring improved inspections on these 67 airplanes is that the wing lower forward attach fittings are not as durable as the improved fittings on airplanes having serial numbers LJ-68 and higher. The likelihood of cracks occurring in the attach fittings of these 67 airplanes is probably higher than for the remaining fleet. The likelihood of spar cap cracks would be about the same as for the remaining fleet. Since the remaining fleet is already protected by AD 87-23-09, the first 67 airplanes should be offered the same protection.

Another deficiency of AD 70-25-04 is that it calls for inspection of the wing skin adjacent to the attach fitting for cracks, and requires further inspections only if skin cracks are found. Since skin cracks are not an indicator of, and in fact are not related to, the condition of the attach fitting or spar cap, the straight-forward fitting and spar cap inspection methods in the SIRM are much preferred.

Based on the above discussion, a new AD is being issued which will supersede AD's 70-25-04 and 87-23-09, and have the applicability of both combined. The new AD will employ the inspection methods of AD 87-23-09. Also an omission in paragraph (e) of AD 87-23-09 will be corrected by adding reference to Beech Wing Modification Kit No. 100-4007-1S.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections.

The FAA has determined there are approximately 1617 airplanes affected by this amendment. The cost of inspecting these airplanes in accordance with this AD is estimated to be the same as already required by AD 70-25-04 and AD 87-23-09. Therefore the AD will impose no additional economic impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 87-23-09, Amendment Number 39-5765, and AD 70-25-04, Amendment Number 39-1332, with the following new AD:

Beech: Applies to Models 65-90 and 65-A90 (Serial Number (S/N)) LJ-1 thru LJ-317); 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, C90 (all S/N); C90A (S/N LJ-1063 thru LJ-1087, except LJ-1085); E90, 100, A100 and B100 (all S/N) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect possible fatigue cracking of the wing main spar lower cap and associated structure, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS), after the effective date of this AD, or upon accumulating 3000 hours TIS, whichever occurs later, unless previously accomplished per AD 87-23-09, Amendment No. 39-5765, or AD 70-25-04, Amendment No. 39-1332, and thereafter at intervals not to exceed 1000 hours TIS (except as provided in paragraph (b) below) after the initial inspection, inspect the wing lower forward spar attach fittings, center section and outboard wing spar caps adjacent to the attach fittings by visual, fluorescent penetrant and eddy current methods as specified in the applicable section of Beech Structural Inspection and Repair Manual (SIRM), Part Number 98-39006, Revision A4, dated May 1, 1987. The inspection must be performed by personnel specifically trained by Beech Aircraft Corporation.

Note 1: Beech offers a two-day training course free of charge to qualified personnel who have prior knowledge of eddy current inspection techniques. A listing of Beech Corporate maintenance facilities may be obtained from the sources contained in paragraph (g) of this AD. A listing of other facilities employing qualified inspectors is not available.

(b) At each inspection required by paragraph (a) above, inspect any reinforcing strap installed per Supplemental Type Certificate (STC) SA1178CE or SA1583CE for proper tension and condition in accordance with Aviadesign Engineering Order E.O. B-8001, Issue 3, dated May 30, 1985. Correct any discrepancy prior to further flight. For airplanes so equipped and inspected, the repetitive inspection interval of 1000 hours TIS in paragraph (a) above may be extended to 3000 hours TIS.

(c) If any crack is found in a main spar lower cap or fitting, prior to further flight repair or replace the defective part using the instructions and limitations specified in the Beech SIRM or other FAA approved instructions provided by Beech Aircraft Corporation.

(d) Within one week after completion of any inspection required by paragraph (a) or (b) of this AD, complete the reporting form included with this AD as Figure 1 and mail it to the address shown thereon (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056).

(e) The initial and repetitive inspections specified in this AD are no longer required when the airplane is modified by Beech Wing Modification Kit No. 90-4077-1S or 100-4007-1S.

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(g) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service,

BEST COPY AVAILABLE

Department 52, Wichita, Kansas 67201-0085; or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705, or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 87-23-09, Amendment No. 39-5765, and AD 70-25-04, Amendment No. 39-1332.

Issued in Kansas City, Missouri, on November 22, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

BILLING CODE 4910-13-M

REPORTING FORM

Airplane Model No._____

Airplane Serial No._____

Date of inspection per this AD_____

Airframe total hours time-in-service_____

Were any fatigue cracks found? No_____ Yes_____

If "Yes" was checked above, complete the following:

Location of crack_____

_____

Was crack removable by reaming or grinding? No_____ Yes_____

Additional Comments_____

_____

Mailing Address:

FAA, Wichita ACO

Airframe Branch, Room 100

1801 Airport Road

Wichita, KS 67209

FIGURE 1

[FR Doc. 89-28284 Filed 12-1-89; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 91155-9255]

Redesignation of Processing Codes for certain CCL Entries

November 27, 1989.

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. Each Export Control Commodity Number (ECCN) on the Commodity Control List (Supplement No. 1 to § 799.1) contains a "Processing Code" paragraph that identifies the processing code for that ECCN. Section 799.1(h) of the Export Administration Regulations requires that applicants place a processing code on each export license application or reexport request. In accordance with § 772.4(e), all ECCNs listed on the same application must have the same processing code. The Office of Export Licensing uses processing codes to refer license applications to the appropriate licensing units.

This final rule amends several ECCNs on the Commodity Control List be revising the "Processing Code" paragraphs to reflect an internal Department of Commerce reorganization or to correct errors. Processing code paragraphs that heretofore read "MT" are to read now "CS" or "EE". This change is being made because the Office of Export Licensing recently disbanded the Microcomputer and Telecommunications Branch (to which the "MT" processing code refers) and all "Processing Code" paragraphs that reference "MT" must be changed to reference the processing codes of the licensing units now responsible for reviewing the applications associated with these ECCNs.

EFFECTIVE DATE: This rule is effective December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4479.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not involve a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Kathryn Sullivan, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 98-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 799.1(h) (Amended)

2. Section 799.1(h) is amended by removing the designation "MT" from the phrase "*i.e.*, CM, CS, EE, MT, SS, or TE," to read "*i.e.*, CM, CS, EE, SS, or TE,"; and by removing the phrase "Microcomputers and Telecommunications (MT)," after the phrase "Electronic Components and Instrumentation (EE)," and before the phrase "Short Supply (SS),".

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 6565G is amended by adding a "Processing Code" paragraph and adding a "Reason for Control"paragraph as set forth below:

6565G Personal computers excepted from control under ECCN 1565A because they meet the specifications of paragraph (h)(2)(iii) of 1565A.

Controls for ECCN 6565G

Unit: * * *

Validated License Required: * * *

GLV $ Value Limit: * * *

Processing Code: CS

Reason for Control: Foreign policy.

* * * * *

4. Supplement No. 1 to § 799.1 (the Commodity Control List) is amended as follows:

A. The "Processing Code" paragraph for each of the Export Control Commodity Numbers (ECCNs) listed below is revised to read "Processing Code: EE.":

Group 4—Transportation Equipment

ECCN: 9499M

Group 5—Electronics and Precision Instruments

ECCNs: 1518A, 1517A, 4517B, 1518A, 1519A, 1520A, 1526A, 1527A, 1529A, 1531A, and 4597B

B. The "Processing Code" paragraph for each of the Export Control Commodity Numbers (ECCNs) listed below is revised to read "Processing Code: CS.":

Group 5—Electronic and Precision Instruments

ECCNs: 1565A and 1567A

C. The "Processing Code" paragraph for ECCN 1572A (Commodity Group 5) is revised to read "Processing Code: CS for equipment that may be used with electronic computers; EE for all other items.".

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-28070 Filed 12-1-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1917

RIN 1218-AA22

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; supplemental statement of reasons.

SUMMARY: On January 24, 1989, the U.S. Court of Appeals for the Fifth Circuit issued its decision in *National Grain and Feed Association* v. *McLaughlin*, 866 F.2d 717, reviewing the housekeeping provisions of OSHA's final rule on grain handling facilities under section 6(f) of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 655(f). The Court remanded the standard for reconsideration of two points: first, the economic feasibility of the ⅛-inch action level for grain dust in priority housekeeping areas; and second, reasonable alternatives to applying the action level only to priority areas, including, as a minimum, the alternative of expanding the action level to the entire facility. The Court directed that OSHA more fully explain why the alternative it chose is reasonably necessary and appropriate. This notice addresses the first of these two issues; the second issue will be addressed based on the Court's evaluation of the first issue in a future notice.

In response to the Court's remand, OSHA has reviewed the rulemaking record on the grain handling standard, and has determined that the ⅛-inch action level applied in priority housekeeping areas is economically feasible. This determination incorporates a reevaluation of the Agency's determinations of appropriate sweeping rates for removal of grain dust, and a finding that the cost associated with sweeping up grain dust in priority housekeeping areas will not threaten the grain industry's long-term profitability and competitiveness.

OSHA has submitted a copy of this document to the Court in response to the remand, and has requested that the stay of the action level provision of the grain handling standard be lifted.

ADDRESS: For further information, contact Mr. James Foster, Office of Public Affairs, Occupational Safety and Health Administration, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202)-523-8151.

SUPPLEMENTARY INFORMATION:

I. Background.

On December 31, 1987, OSHA promulgated a final standard on grain handling facilities (52 FR 49592). Paragraph (i)(2) of that standard required grain elevators to initiate appropriate cleaning measures whenever grain dust accumulations reached a depth of ⅛-inch in "priority housekeeping areas." These areas included floor areas which are within 35 feet of inside bucket elevators; floors of enclosed areas containing grinding equipment; and floors of enclosed areas containing grain dryers located inside the facility. This provision of the standard was challenged in the U.S. Court of Appeals for the Fifth Circuit by the National Grain and Feed Association (the industry), and in the DC Circuit by the Food and Allied Service Trades Department, AFL-CIO (the unions). The cases were consolidated in the Fifth Circuit.

The Court upheld most of OSHA's determinations against these challenges, but remanded the standard to the Agency on two issues, both involving the feasibility of the standard. The first issue involves the economic feasibility of the action level as incorporated in the final rule, namely, as it applies to "priority housekeeping areas" in grain elevators. The Court remanded the standard to OSHA to reconsider this issue based upon its perception that there was "a significant factual gap in the record" on the costs of sweeping up grain dust in the priority areas, and the appropriate sweeping rate that should be assumed in calculating those costs. The second issue involves a fuller explanation of why OSHA believed that applying the action level only to priority areas is reasonably necessary and appropriate, and will include, at least, a consideration of the option of expanding the action level to the entire facility. This consideration will include issues of feasibility as well as need. Clearly, a feasibility determination must be made on the first issue before reaching the second: if the action level were found to be economically infeasible when applied only to certain areas of the facility, it would certainly not be feasible to extend it beyond those areas. By contrast, if the action level were found to be economically feasible in priority areas, further inquiry would be needed to determine whether extension beyond those areas would be feasible and necessary. OSHA has reviewed the record in response to the Court's remand, and has determined that the housekeeping provision in the final rule, applying the action level only to priority housekeeping areas in grain elevators, is economically feasible. The reasons for this determination are provided in this notice, and are being submitted to the Court. Based in part on the Court's evaluation of this supplemental statement of reasons, OSHA will address the second issue covered by the remand, i.e., whether the action level would be reasonably necessary and appropriate, including whether it would be economically feasible, if extended to the entire grain facility.

In *National Grain*, the Court considered the available evidence on the rate at which grain dust could be cleaned up in priority housekeeping areas. The industry relied upon the 1500 square foot per hour cleaning rate reported in the Arthur D. Little (ADL) study. The two other studies cited by the industry in support of the 1500 square foot figure provided no empirical support, but merely accepted the ADL figure as given. OSHA's cleaning rate of 8100 square per hour was based on its analysis of two studies of vacuuming rates, adjusted to allow for possible obstructions in the priority housekeeping areas. The costs of compliance and economic feasibility of the standard depend heavily upon the rate at which dust can be removed from priority housekeeping areas. The Court determined that the industry estimates appeared to be of "higher quality" than OSHA's because, in the Court's view, they were based upon "empirical observation," which addressed practical contingencies and considerations. For this reason, the Court remanded the issue of economic feasibility to the Agency. However, the Court noted that "we express no view as to the validity of the industry's evidence, and hence no opinion as to whether the agency underestimated the compliance costs of its standard (.)" 866 F.2d at 740. In the following discussion of the available evidence on cleaning rates, OSHA addresses the above issues which were left undecided by the Court, and concludes that the best available evidence supports the Agency's determination that the standard as promulgated is economically feasible for the grain industry.

In its regulatory impact analysis (RIA) of the final rule in December 1987, OSHA estimated that compliance with all provisions of the final grain handling standard would cost the grain elevator industry between $35.7 and $63.1 million per year. Of these costs, compliance with the action level in priority housekeeping areas was estimated to comprise between 49 and 71% of the total costs for this industry, or between $17.3 and $44.7 million per year. To calculate these costs, OSHA first examined the sizes and numbers of priority housekeeping areas which would be found in the various sizes of grain elevators. To these areas, OSHA then applied a cleaning rate of 8100 ft²/hour for sweeping and/or vacuuming, in order to determine the amount of time necessary to clean the priority areas. As noted above, the Court in *National Grain* directed OSHA to reconsider the question of the appropriate cleaning rate, based on the Court's view that OSHA's 8100 ft²/hour rate did not appear to take into account practical complications which might be encountered in grain elevators. In response to the Court's remand, OSHA has conducted a further review of the rulemaking and has concluded that the 8100 ft²/hour cleaning rate does take into account the types of complicating factors which were of concern to the Court. As noted in detail below, the 1500 ft²/hour figure cited by industry is based solely on unsupported assumtions contained in the ADL report. Nothing in the record demonstrates that this rate is based on empirical data. Further, although the industry has asserted that the 1500 ft²/hour figure was developed independently by three separate sets of experts, the record clearly shows that the ADL report is the only source for this figure, and that the other experts merely adopted the ADL figure.

Nonetheless, in responding to the court's remand on economic feasibility, OSHA has also reexamined the economic impacts of the standard based upon the ADL cleaning rate of 1500 ft²/hour, even though the Agency maintains that that rate is not realistic and not supported by empirical data. OSHA has determined that even if the 1500 ft²/hour figure were to be used in calculating the economic impacts of the housekeeping provisions of the grain handling standard, the standard would be economically feasible, applying the tests for economic feasibility which the Court has previously established.

II. Cleaning Rates and Costs of Housekeeping

As discussed above, the final rule requires employers to maintain grain dust accumulations below ⅛-inch in priority housekeeping areas of grain elevators. In order to calculate the costs of this provision, it is necessary to determine an appropriate cleaning rate, in square feet per hour. This rate, when multiplied by an appropriate average labor wage rate per hour, provides the labor cost per square foot. This figure is then multiplied by the total number of square feet in priority housekeeping areas which would need to meet the ⅛-inch requirement, in order to provide the total cost for compliance with this requirement. (See OSHA's Final Regulatory Impact Analysis, Docket No. H–117, Exhibit #223.) It is clear, therefore, that the cleaning rate is a central component of OSHA's cost-estimating methodology.

In developing the proposed rule, OSHA entered into a contract with Arthur D. Little, Inc. (ADL) to provide a preliminary evaluation of the grain industry and the impacts of the proposed grain handling standard. In that report,[1] ADL presented an estimated cleaning rate of 1000–1500 ft²/hour. For reasons discussed further below, OSHA concluded that this rate was unrealistically slow, and that there was no empirical support for such a figure. Therefore, OSHA searched the available literature on sweeping and vacuuming, in order to develop a more realistic and supportable cleaning rate. That search revealed two studies of vacuuming rates, which OSHA then examined and applied to the situation at hand: First, a time-and-motion study of vacuuming in a factory setting conducted by Barnes;[2] and second, an American National Standards Institute report of American Society for Testing and Materials (ASTM) standards for carpet sweeping.[3] Barnes' time-and-motion study showed a vacuuming rate of 9,400 to 11,000 square feet per hour in an evaluation of vacuuming performed on-the-job in an industrial setting, over an uncarpeted surface. By contrast, the ASTM study, applying standard test methodology, showed a vacuuming rate of 6,400 square feet per hour with a 12-inch vacuum head, but this study involved vacuuming of a carpeted surface. As will be noted, OSHA did not simply accept the cleaning rates in either of these studies, but made necessary adjustments for differences between the parameters of the studies and the actual environment to be encountered in the priority housekeeping areas of grain elevators.

OSHA's technical staff determined that dust clean-up in priority areas could be accomplished by a combination of vacuuming and sweeping. Further, it was determined that a worker using a 24-inch-wide pushbroom would cover a given sweeping area in half the time necessary for a worker using a 12-inch-wide vacuum head, and that, therefore, the sweeping employee would clean a given area twice as rapidly as the vacuuming employee. In order to avoid overstating the sweeping rate, OSHA used the ASTM study, with its lower vacuuming rate, instead of the Barnes study, as the basis for calculating the sweeping rate for the employee with the 24-inch pushbroom. Thus, if the vacuuming employee covered 6400 square feet in one hour, the sweeping employee would cover 12,800 square feet. Further, if half an area were to be swept with a 24-inch pushbroom, and the other half with a 12-inch vacuum head, the entire area would be cleaned at a rate of 9,720 square feet per hour. (Had OSHA used the Barnes factory time-and-motion study as the basis for calculating the pushbroom rate, the overall cleaning rate would have been considerably higher.[4]) However, OSHA recognized that this rate would still need to be adjusted downward to fit the grain elevator environment, because obstructions might be encountered in grain elevators which are not directly addressed in the two studies. Accordingly, OSHA adjusted the hourly average significantly, reducing it by over 15% to allow for these variations, resulting in an hourly cleaning rate of 8100 square feet. As an illustration of the area involved and the rate of cleaning assumed, it should be noted that a standard basketball court is approximately 4,050 square feet. A janitor sweeping or vacuuming the court at OSHA's estimated cleaning rate of 8,100 square feet per hour would take a full half hour to complete the job.

As noted above, ADL presented an estimated cleaning rate of 1,000 to 1,500 square feet per hour. Using the basketball court illustration, at a cleaning rate of 1,500 square feet per hour, the janitor would take nearly 3 hours to sweep or vacuum the court; at a rate of 1,000 square feet per hour, the job would take over 4 hours. OSHA concluded that this rate was unrealistically slow. It is important to note that the 1,000–1,500 rate was presented by ADL without any verification or documentation, nor was there any empirical evidence to support it. As ADL described it, "The incremental housekeeping manhours per day were estimated on the basis of average square footage per model facility and an *assumed* cleaning rate of 1000–1500 ft² per operator hour * * *"[5] (emphasis added). There was no further substantiation of this rate or the underlying assumptions in the ADL Report.

The industry has argued that three different experts independently concluded that elevators would be cleaned at the 1,000 to 1,500 square foot per hour rate: ADL; Booz, Allen & Hamilton, Inc. (Booz-Allen); and GEM Consultants, Inc. However, the record makes clear that neither Booz-Allen nor GEM did any analysis of the ADL figure or the assumptions behind it, nor did they make any effort to substantiate the ADL cleaning rate through actual observations or any other empirical data. As Booz-Allen stated, "The estimated values for the surface areas to be cleaned, the *assumed* cleaning rates, and the number of man-hours required to perform the cleaning operation used in this analysis are *based on information compiled by Arthur D. Little, Inc.* * * *"[6] (emphasis added). Similarly, GEM noted in their report that "(t)he cleaning rate is 1,500 square feet/hour.

Note: Surface areas, cleaning rate, and man-hours of required cleaning are based on information compiled by Little. * * *"[7]

The Court in *National Grain* remanded the ⅛-inch requirement to OSHA for further consideration at least in part because "the industry's data is based upon empirical observation, which * * * address(es) practical contingencies." 866 F.2d at 740. The above discussion makes it clear that that data does not have the degree of empirical support which the Court attributes to it. Had the data been as strongly supported by actual observation and experience as the industry asserts, OSHA would have been reasonably confident in its findings on cleaning rates, and certainly would not have felt it necessary to search for other sources of information which did have sufficient empirical support. It is noteworthy that even though the Court chose to remand the issue of economic feasibility to the Agency, it expressed no view as to the validity of the industry's evidence on the appropriate cleaning rate for grain elevators. OSHA believes that it has demonstrated that the Agency was correct in not relying upon the industry evidence on cleaning rates, and that the evidence which OSHA did rely on constituted the best available evidence, in accordance with the OSH Act.

Because the ADL assumptions were unsupported and not based on empirical data, OSHA sought and found a basis for a reasoned calculation of cleaning rates in studies designed to reflect the ergonomics and technology of vacuuming technique. Further, it is clear that OSHA did not blindly accept the data from the studies, but adjusted its estimates significantly in recognition of the less-than-optimal conditions for cleaning which may be found in many grain elevators. OSHA believes that these studies represent the best available evidence in this area, and that the Agency has met its burden in demonstrating the reasonableness of its determinations on both the appropriate cleaning rate and the costs of the standard.

III. Economic Feasibility.

As noted in section II of this document, OSHA maintains that its estimates of average cleaning rates are based on the best available evidence. However, in response to the Court's remand, OSHA has recalculated the total cost of the ⅛-inch action level requirement for priority housekeeping areas, using the industry's suggested cleaning rate of 1,500 square feet per hour, as found in the ADL report. Not surprisingly, the costs are significantly higher, based on the lower cleaning rate. Nonetheless, in applying the tests for economic feasibility set forth by the Supreme Court in *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981), and as applied by the Fifth Circuit in *National Grain and Feed Association* v. *OSHA*, 866 F. 2d 717 (5th Cir. 1989), and *Asbestos Information Association of North America* v. *OSHA*, 727 F. 2d 415 (5th Cir. 1984), OSHA has determined that the standard is economically feasible for the grain industry, even at an assumed cleaning rate of 1,500 square feet per hour, for reasons set forth below.

As noted, OSHA has recalculated the costs of the ⅛-inch action level in priority areas by reducing the estimated cleaning rate from the Agency's 8,100 square foot per hour figure, to the industry-endorsed ADL figure of 1,500 square feet per hour. This adjustment would raise the estimated total annual cost of the standard from the original figure of between $35.7 and $63.1 million to a revised figure of between $91.0 and $232.8 million. However, OSHA has made one further adjustment to the cleaning rate in accordance with the ADL estimates. In its RIA for the final rule, OSHA calculated the costs to be imposed by the standard for cleaning in all priority housekeeping areas, on the assumption that no housekeeping was currently carried on in those areas.[8] Although OSHA was aware that some housekeeping was, in fact, currently being performed, the Agency did not attempt to quantify the extent of this cleaning in priority areas. Accordingly, to the extent that cleaning was currently taking place in priority areas, the cost estimates of the standard included some costs which the industry was already incurring, and which would not be attributable to the standard.

In reviewing and recalculating the cost figures in response to the remand, OSHA has reconsidered these assumptions by incorporating ADL's estimate [9] of the degree to which housekeeping is currently being performed in grain elevators, in order to provide a baseline for determining the additional housekeeping costs imposed

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[1] Arthur D. Little, Inc., *Technical Feasibility and Economic Impact Analysis (EIA) for Various Standards, Provisions Applicable to Hazards in Grain Handling Facilities*. February 1, 1983. Washington, DC (Docket No. H–117, Exhibit #10).

[2] Barnes, Ralph M., *Motion and Time Study. Design and Measurement of Work*. Fifth Edition. New York: John Wiley and Sons, Inc., July 1964.

[3] American National Standards Institute. "Standard Test Method for Relative Work for Straight-Line Movement of Cleaners While Cleaning Carpet ANSI/ASTM F 557–79." In: *Annual Book of ASTM Standards*. Part 46. Philadelphia: American Society of Testing and Materials, 1979.

The American Society for Testing and Materials (ASTM), a national consensus standards group, is the primary source of test methods for materials, products and services in the United States. These standards are used extensively by industry, government, and other interested groups. ASTM committee membership is made up of the nation's experts including researchers, scientists and engineers, and the standards developed by these committees are reviewed by other experts before they receive final approval as ASTM standards.

[4] For example, using the Barnes vacuuming rate of 9400 square feet per hour, an employee using a 24-inch pushbroom would be able to cover twice the area, or 18,800 square feet per hour. Based on the Barnes data, the unadjusted rate of cleaning to be achieved by half-sweeping and half-vacuuming a given area would have been considerably higher than 9,720 square foot per hour (approximately 14,000 square feet per hour). OSHA chose to use the more conservative ASTM figure, and adjusted it even lower to allow for obstructions in the grain elevator workplace.

[5] Arthur D. Little, Inc., Report, page VI–38.

[6] Booz, Allen & Hamilton, Inc., *Some Impacts of a Proposed OSHA Standard on Grain Handling Facilities*. Washington, DC. April 1984, page I–37. (Docket No. H–117, Exhibit #16.) It should be noted that although Arthur D. Little and Booz, Allen made site visits, there is nothing in either of their reports to tie the 1500 square foot/hour rate to their observations during the site visits.

[7] GEM Consultants, Inc., and Midwest Research Institute, *Evaluation of the Proposed OSHA Standard for Grain Handling Facilities*, Washington, DC. May 30, 1984, page 25. (Docket No. H–117, Exhibit #18.)

[8] Final Regulatory Impact Analysis, page VI–25.

[9] Arthur D. Little, Inc., p. VI–30.

by the ⅛-inch action level requirement in priority areas.[10] ADL estimated, for example, that export elevators, high-throughput elevators and inland terminal elevators, respectively, currently assign an average of 9, 1.5 and 1 full-time employees per shift to perform housekeeping.

The concept of priority housekeeping areas was developed after the ADL report was prepared. Thus, ADL's estimate of current housekeeping practices covers the entire grain elevator and the report does not indicate how much housekeeping is taking place in priority areas as opposed to other areas of the facility. The available evidence, however, indicates that a high percentage of current dust control efforts takes place in priority areas; although there are no direct measures of the exact amount. OSHA believes that it is reasonable to assume that grain elevator employers, in order to maximize the effectiveness of their current dust control efforts, would choose to concentrate efforts in those areas that are the most hazardous. For the purpose of this analysis, however, OSHA has conservatively assumed that the percentage of the total cleaning effort that is taking place within priority areas is just equal to the percentage of the facility floor space that is within priority areas. Since the record contains estimates of the dimensions of both priority areas and total elevator areas,[11] OSHA has used these data to develop an estimate of the amount of housekeeping that is currently performed in priority areas.[12]

Applying the above assumptions that some dust removal activity is currently taking place in priority areas, and that these areas are cleaned at a rate of 1,500 square feet per hour, the total annual costs of the standard amount to between $78.6 and $217.7 million. Because the previous cost estimate of between $91.0 and $232.8 million included housekeeping activities which are already taking place, this compliance adjustment provides a more accurate assessment of the true impact of the standard on the grain industry.

The methodology for OSHA's new calculations of the costs and economic impacts of the standard is identical to that used in the Final Rule, with the two modifications as noted: the use of the lower ADL cleaning rate of 1,500 square feet per hour and the ADL estimates of current housekeeping efforts currently taking place in large elevators. Assuming that grain elevators would need to clean priority areas from one to three times per 8-hour shift, these modifications have the net effect of raising the estimated gross costs of the standard for grain elevators from the original estimate of between $35.7 and $63.1 million per year, to the revised estimate of between $78.6 and $217.7 million per year. The impact of both the slower cleaning rate and the inclusion of current housekeeping on total costs is shown in Table I.

[10] It must be emphasized that OSHA's rejection of the ADL sweeping rate does not involve a wholesale rejection of all other estimates and computations contained in the ADL report. As noted earlier, the ADL sweeping rate was rejected by OSHA because it was not supported by empirical data in the record. By contrast, there is record evidence to indicate that the varying amounts of housekeeping carried out in grain handling facilities were in line with the ADL estimates.

[11] Final Regulatory Impact Analysis, page VI–26.

[12] In the absence of specific data to indicate the extent of current dust control in priority areas, OSHA assumed no special emphasis in these areas. By way of example, it was estimated that less than one-sixth of the floor area within export elevators would be designated as priority areas. Thus, OSHA calculates that roughly one-sixth of the ADL estimate of current housekeeping, or 1.5 employees per shift, are currently devoted to cleaning priority areas in export elevators. The additional requirements for these facilities amount to 12,200 manhours annually.

TABLE I—COMPLIANCE COSTS OF GRAIN HANDLING STANDARD

[In thousands of dollars]

Industry Segment	At 8,100 sq ft/hr. no current housekeeping [1]		At 1,500 sq ft/hr. no current housekeeping [2]		At 1,500 sq ft/hr with some current housekeeping [3]	
	low	high	low	high	low	high
Country Elevators:						
0 to 749,999	20,834	32,914	44,349	106,314	44,349	106,314
750,000 to 999,999	3,607	5,957	10,134	25,932	10,135	25,932
1,000,000 and over	5,399	10,243	15,467	40,570	15,467	40,570
Inland Elevators	2,254	3,909	5,537	14,059	3,954	12,186
High Throughput:						
0 to 749,999	122	324	558	1,637	274	1,352
750,000 to 999,999	85	173	298	573	145	721
1,000,000 to 2,000,000	163	406	687	1,981	845	1,640
2,000,000 and over	1,895	4,715	7,974	23,005	4,007	19,038
Export Terminals:						
0 to 749,999	31	86	155	460	5	230
1,000,000 to 2,000,000	213	602	1,035	3,018	45	1,543
2,000,000 and over	1,076	2,781	4,778	13,928	209	7,122
Total	35,670	63,116	90,972	232,777	78,644	217,652

[1] The housekeeping labor costs for each industry segment were derived as follows: Total costs of manual housekeeping in priority areas = Size of avg. priority area × # of priority areas per facility × Cleaning rate × Hourly wage rate × # of facilities = [Sq. ft. of facility priority areas × (1 hr./8100 sq. ft.)] × Wage rate × # of facilities. The size of priority areas was estimated to be 3846.5 sq. ft., with 3 per elevator. For the smaller country elevators, however, the entire floor area was used [RIA, p. VI–26]. Estimated hourly employee compensation is $7.92, $7.41, and $7.48 for small, medium and large country elevators, and $10.12 for all other elevators [RIA, p. VI–32].

[2] Calculation same as for (a), except that cleaning rate is changed to 1 hr./1500 sq. ft.

[3] Calculation same as for (b) except that total manhours are reduced by the amount of current housekeeping estimated for priority areas. The revised calculation is as follows: Total cost of manual housekeeping in priority areas = [(Sq. ft. of facility priority areas × (hr./1500 sq. ft.)) - Current compliance × Hourly wage rate × # of facilities where: Current compliance = Manhrs. of current housekeeping × (Sq. ft. of facility priority areas/Sq. ft. of total facility). As described in the text, this adjustment assumes that the proportion of current housekeeping in priority areas is equivalent to the fraction of the facility square footage that is found in priority areas.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

The revised compliance cost estimates for this standard amount to considerably less than one percent of the $34.8 billion in total grain sales handled by grain elevators in the United States.[13] This is far below the impact which was judged to be reasonable by the Fifth Circuit in *Asbestos Information Association*, which involved compliance costs equaling 7.2% of total sales. Further, a more direct measure of the impact of this standard can be gauged by its projected effect on grain industry profitability. Since limited financial data from private grain companies were made available, OSHA's RIA used 1983 USDA data from grain cooperatives [14] to project the impact on industry profits from increased operating costs of this standard, assuming that these costs could not be passed along in higher prices. The number of facilities projected to have economic losses due to the standard was estimated by assuming a normal distribution of industry profits among facilities. The primary approach was to take the average compliance cost per elevator in a given sector and subtract that cost from the mean operating profit.

OSHA originally estimated that from 77 to 129 grain elevators that otherwise would have earned net profits would now experience net losses due to the standard. These facilities make up about 0.6 to 0.9 percent of all U.S. grain elevators. OSHA's revised cost estimates using the ADL cleaning rate would indicate an increase to between 192 and 470 elevators having net losses as a result of the standard, or between 1.4 and 3.4 percent of the total number of elevators.

OSHA's RIA for the Final Rule also presented a "worst case" scenario which assumed that marginal elevators would have difficulty in obtaining long-term financing and would have to absorb half of the capital costs of the standard in the first year. This scenario also assumed zero current compliance with all provisions of the standard, and three cleaning passes per shift. Under this scenario, OSHA projected that about 183 facilities, or just over one percent of U.S. elevators would experience net losses as a result of the added compliance costs for the first year. Applying the new ADL assumptions raises this figure to 670 facilities, indicating that 4.8 percent of U.S. elevators might have net losses as a result of the standard. OSHA notes, however, that this scenario is unrealistically pessimistic in that it assumes that *no* elevators are performing *any* housekeeping, while the ADL report and the record in general demonstrate the widespread existence of manual housekeeping and pneumatic cleaning systems.[15]

The above estimates are displayed by elevator type and size in Table II. Large, high-throughput elevators are projected to experience the greatest losses, although the absolute number of such elevators is small. However, even these projections probably overstate the actual economic impacts on these elevators. First, as described above, OSHA believes that the ADL cleaning rate is too low. Second, the cleaning estimates do not take into account the use of pneumatic dust control systems, which reduce the need for frequent manual cleaning with vacuums or brooms.[16] Third, the projected economic impacts are based on data for grain elevator profit levels in 1983, a comparatively poor year. The industry's financial strength was greater both before and after 1983. During the 1984–1987 period, the industry's strength improved, due to the relative decline in the U.S. dollar and the increasing worldwide demand for grain. This pattern, established in the record, is consistent with post-rulemaking developments.[17] Fourth, the estimates of economic impact do not account for the savings to employers that will result from the reduced property and personnel costs associated with the reduction in fires and explosions, estimated at $32 million per year. To the extent that the standard reduces these costs for the economically marginal elevators, the true impact on the market structure of the industry will be smaller than the projections indicate.

[13] U.S. Department of Agriculture, "National Financial Summary," *Economic Indicators of the Farm Sector*, October 1987.

[14] U.S. Department of Agriculture, Agricultural Cooperative Service. *Financial Profile of Cooperatives Handling Grain: First Handlers, $5 Million to $14.9 Million and $15 Million Sales or Larger*. ACS Research Report No. 55. Washington, DC Government Printing Office, May 1988.

[15] Indeed, both the OSH Act's general duty clause and OSHA's general industry housekeeping regulations require dust control in grain handling facilities, and OSHA has enforced both provisions as a means to move the industry towards safer practices. *National Grain and Feed Association* v. *OSHA*, 866 F.2d 717, 721 and n. 5 (5th Cir. 1989) (discussing grain dust housekeeping enforcement under section 5(a)(1) of the OSH Act, 29 U.S.C. 654(a)(1), and 29 CFR 1910.22(a)(1)).

[16] Both the ADL report and the rulemaking record indicate that most large export elevators have pneumatic dust control systems in place as a means for minimizing the accumulation of grain dust.

[17] The latest available USDA data show that the net income of farmer cooperatives in 1987 was 50 percent greater than in 1983. (U.S. Department of Agriculture. Agricultral Cooperative Service. "Cooperative Net Income of $1.5 Billion Highest Since 1980: Assets Also Up." *Farmer Cooperatives*. April 1989.) Moreover, 1987 real net farm income advanced 300 percent since 1983, with similar farm income forecast for 1988. (U.S. Department of Agriculture. *Agricultural Outlook*. April 1988.)

TABLE II—ESTIMATED IMPACT OF ⅛" Priority Area Requirement, Assuming 1,500 SQ FT SWEEP RATE

Industry segment and storage capacity in bushels	Compliance Cost/Facility (low)	Compliance Cost/Facility (high)	Number of facilities	No. (%) of Facilities with losses due to compliance (low estimate)	No. (%) of Facilities with losses due to compliance (high estimate)	No. (%) of Facilities with losses due to compliance (worst case estimate)
Country Elevators:						
<750,000	$4,163	$10,027	10,003	135 (1.3)	304 (2.9)	422 (4.0)
750,000 to 999,999	7,102	16,873	1,427	26 (1.8)	73 (5.1)	90 (6.2)
>1,000,000	12,955	34,007	1,193	21 (1.8)	61 (5.1)	79 (6.5)
Inland Terminals:						
>2,000,000	9,109	26,950	452	3 (0.4)	10 (2.2)	31 (6.8)
High Throughput:						
<1,500,000	18,242	90,160	33	1 (3.0)	3 (8.1)	5 (15.2)
1,500,000 to 2,499,000	18,242	90,160	34	0 (0.0)	3 (8.3)	5 (20.8)
>2,500,000	19,173	91,092	190	6 (3.2)	8 (4.2)	19 (10.0)
Export Terminals:						
<1,500,000	1,343	116,556	11	0 (0.0)	1 (9.1)	4 (27.3)
1,500,000 to 2,499,000	3,486	118,698	19	0 (0.0)	3 (15.8)	8 (36.8)
>2,500,000	3,486	118,698	44	0 (0.0)	3 (4.5)	8 (15.9)
Total			13,996	192 (1.4)	470 (3.4)	670 (4.8)

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

In sum, OSHA finds the standard to be economically feasible for the industry as a whole, even when using the industry's recommended rates for removal of grain dust from priority housekeeping areas. In the worst case situation, the standard would cause fewer than 5 percent of all grain elevator facilities to become unprofitable. OSHA concludes that these projections clearly demonstrate the economic feasibility of the standard for the great majority of firms in the industry.

In *National Grain*, the Fifth Circuit noted that "[t]he salutary impact of grain dust standards upon worker safety suggests that immediate implementation of the standards—even at the levels proposed by the agency—would be desirable. A stay is called for, however, unless and until economic feasibility can be established, as the law requires." 866 F.2d at 740 fn.41. On the question of economic feasibility, the Court, citing *Forging Industry Association* v. *Department of Labor*, 773 F.2d 1436 (4th Cir. 1985), established the scope of the Court's inquiry into the Agency's feasibility determinations:

> The relevent inquiry, then, is "whether OSHA has constructed 'a reasonable estimate of compliance costs and demonstrate[d] a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms.' " [*Forging Industry Ass'n* v. *Secretary of Labor*, 773 F.2d 1436, 1453] (quoting *United Steelworkers* [v. *Marshall*], 647 F.2d at 1272).

866 F.2d at 738.

OSHA has established that even when the costs of compliance with this standard are revised to reflect the 1500 square foot per hour cleaning rate supported by the regulated industry, the economic impacts of the grain handling standard are well within the parameters set forth by the Court in *National Grain*. The Court has already recognized the significance of the risks to be regulated by this standard, and the effectiveness of the ⅛-inch action level in reducing those risks. In accordance with the Court's mandate, OSHA believes that it has now demonstrated that the ⅛-inch action level in the Final Rule is economically feasible, at least insofar as its application to priority housekeeping areas. Further action by the Agency on the second element of the Court's remand, namely, consideration of whether the ⅛-inch action level should be extended to the entire grain facility, must first await the Court's review of the feasibility determinations contained in this document. If the Court agrees to lift the stay of the action level as it applies to priority housekeeping areas, OSHA intends to publish a notice to that effect in the Federal Register. Shortly thereafter, in response to the second issue remanded by the Court, OSHA will address the questions of the need for and feasibility of extending the action level to apply to the entire grain elevator.

IV. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued in response to the order of the U.S. Court of Appeals for the Fifth Circuit in *National Grain and Feed Association* v. *McLaughlin*, 866 F.2d 717 (5th Cir. 1989). That decision reviewed and remanded an occupational safety and health standard issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)); section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR part 1911.

Signed at Washington, DC, this 29th day of November, 1989.

G.F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 89–28279 Filed 12–1–89; 8:45 am]

BILLING CODE 4510-26-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces a cost of living adjustment of 4.5% in the royalty rates to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by 37 CFR 304.10(b) of the Tribunal's rules.

EFFECTIVE DATE: January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Copyright Royalty Tribunal published in the Federal Register the rates and terms for the copyright compulsory license applicable to the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 52 FR 49010. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index from the last Index published prior to December 1, 1988 to the last Index published prior to December 1, 1989 was 4.5% (1989's figure was 125.6; 1988's figure was 120.2, based on 1982–1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to use of musical compositions in the reperatory of ASCAP and BMI of $173, each, and $41 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 304

Copyrights, Music, Radio, Television.

PART 304—[AMENDED]

1. The authority citation for part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

§ 304.5 [Amended]

2. 37 CFR 304.5(c) is amended by revising paragraphs (c)(1) through (c)(4).

* * * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP annually: $173
(2) For all such compositions in the repertory of BMI annually: $173
(3) For all such compositions in the repertory of SESAC annually: $41
(4) For the performances of any other such composition: $1

* * * * *

Dated: November 29, 1989.

J.C. Argetsinger,

Acting Chairman.

[FR Doc. 89–28328 Filed 12–1–89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD62

Veterans Education; Restrictions on Making VEAP Payments to Servicepersons

AGENCIES: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The law requires that, generally, an individual must contribute to the Post-Vietnam Veterans Education Assistance Program (VEAP) fund for twelve months in order to receive educational assistance. So as to encourage participation by servicemembers, the Department of Veterans Affairs (VA) has permitted a servicemember who meets all the other eligibility requirements to receive educational assistance after he or she has completed three months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least three months of contributions to the fund. In order to comply with the law it has been VA's policy to require these servicemembers to establish a continuing allotment so that they eventually will contribute to the fund for twelve months. However, the regulation which mentions the three months' contributions does not mention the twelve months' participation requirement. This has led to instances where servicemembers, who have been paid educational assistance, have never participated for twelve months. The effect of this regulatory amendment is to correct this by putting both requirements in the same regulation.

EFFECTIVE DATE: January 3, 1990.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2668.

SUPPLEMENTARY INFORMATION: On pages 13702–13703 of the Federal Register of April 5, 1989(54 FR 13702), there was published a notice of intent to amend part 21 in order to clarify that servicepersons must commit themselves to 12 months of contributions to the VEAP fund or its equivalent before they may be paid benefits under VEAP while on active duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense certify that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities; i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 8, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: October 25, 1989.

Matthew De Vore,

Colonel, USA, Acting Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy).

PART 21—[AMENDED]

In 38 CFR part 21, Vocational Rehabilitation and Education, § 21.5143 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 21.5134 Restrictions on paying benefits to servicepersons.

* * * * *

(a) Has completed 3 months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least 3 months of contributions to the fund;

(b) Has agreed either to have a monthly deduction from his or her military pay, or has made a lump-sum contribution to the fund, or both, so that the 12 months participation requirement of § 21.5052(a) of this part will be met; and

(c) Is serving on active duty in an enlistment period subsequent to the initial period of active duty defined in § 21.5040(b)(3) of this part.

(Authority: 38 U.S.C. 1621, 1631, Pub. L. 94–502)

[FR Doc. 89–28066 Filed 12–1–89; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Certain Plants, Plant Products, and Related Articles

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations to reflect the provisions of 39 U.S.C. 3014, declaring that plants, plant products, and related articles prohibited by U.S. Department of Agriculture quarantines from moving by common carrier are nonmailable from the respective quarantined areas. The law requires the Postal Service to establish, by regulation, an exception for plant articles whose movement is allowed under conditions prescribed in the notice of quarantine or other Department of Agriculture regulations. The law also provides that notices of such quarantines must be displayed prominently at post offices in the respective quarantined areas. Another part of the new law establishes criminal penalties for knowingly mailing anything which is nonmailable under the regulations implementing 39 U.S.C. 3014.

EFFECTIVE DATE: January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. F.E. Gardner, (202) 268–5178.

SUPPLEMENTARY INFORMATION: On September 15, 1989, the Postal Service published in the Federal Register (54 FR 38255) and invited public comments on a proposal to amend its regulations on nonmailable articles and substances based on the legislation referred to in the Summary. These amendments were enacted as Public Law 100–574 on October 31, 1988, a full explanation of which was given in the proposal and is not repeated here.

The Postal Service received comments from two sources in response to the invitation, one from USDA's Animal and Plant Health Inspection Service (APHIS), and the other from the Division of Plant Industry of California's Department of Food and Agriculture (CDFA). These comments have been considered carefully, and a discussion of them follows.

While expressing no disagreement with the proposed regulatory formulation as far as it goes, both agencies focused their comments on measures to enforce the law and regulations. Both reiterated strongly held views that enforcement will be inadequate to prevent transmission of dangerous plant diseases or infestations by mail, unless additional measures are taken to provide for "profiling" and detention of mail suspected to contain plant material. The Postal Service appreciates the concerns which these agencies have previously made known to the Postal Service and to the Congress during the legislative deliberations which led to enactment of Public Law 100–574. We acknowledge that the Domestic Mail Manual amendments adopted in this rulemaking do not address mail detention or investigative profiles, and do not think that the kinds of enforcement provisions sought by the two agricultural agencies can appropriately be added to these regulations in this rulemaking.

While new 39 U.S.C. 3014 has added quarantined plant material to the long list of items made nonmailable by law, the statute did not change existing law concerning the detention of mail if suspected to contain nonmailable matter. In accordance with Fourth Amendment precepts, those classes of mail which are sealed against inspection can be detained for a brief period of time in order to assemble, without avoidable delay, evidence sufficient to satisfy the probable cause requirement for a search warrant, and to apply for, obtain, and execute the warrant. Current Postal Service regulations (part 115, Domestic Mail Manual) provide the procedural framework for detention to enforce various nonmailability laws, while observing Fourth Amendment restrictions.

The APHIS comments also suggested an amendment to Domestic Mail Manual 115.92b, concerning certain inspections in Hawaii and Puerto Rico of mail reasonably suspected of containing plant matter or pests, when the mail is not sealed against inspection or when the sender consents to inspection. The suggestion was that the provision should be extended to any area of the country where a Federal plant quarantine is in effect, in light of enactment of 39 U.S.C. 3014 which does not limit itself to Hawaii and Puerto Rico. This provision of the Manual, put in place a number of years prior to enactment of section 3014, has served to assist in the enforcement of the preexisting plant quarantine laws which also are not limited by their own terms to Hawaii and Puerto Rico. It has been our understanding that the focus on those two places for this purpose has effectively covered the serious problem areas. While we would be willing to consider any showing that this coverage falls short in actual practice, we see no purpose to extending the procedures to areas where they are not demonstrated to be warranted in fact.

"Profiling" techniques for use by law enforcement personnel are not appropriate subjects for regulations in the Domestic Mail Manual as suggested in the comments. The Postal Service and the agricultural enforcement agencies have shared their respective concerns about profiles and other aspects of enforcement procedures on previous occasions. We expect to continue to work with these agencies and other interested authorities, within applicable legal constraints.

The particular formulation for an investigative profile suggested in the CDFA comment focused on identification of plant material, in general, in the mailstream, not on specifically quarantined material. Under current law, only the specific types of plant material which are covered by applicable quarantines are nonmailable and subject to postal enforcement measures. The Postal Service has suggested both to the two agencies and to interested legislative officials that a statute which made nonmailable *all* unlicensed plant material coming from the two areas (Hawaii and Puerto Rico) whose semitropical environments entail the greatest risk might offer an opportunity for improved enforcement.

The APHIS comment letter questioned the statement in the preamble to the proposed rule that the Postal Service had met the consultation requirement in 39 U.S.C. 3014(c). This provision requires the Postal Service to adopt, by regulation, after consultations with USDA, an exception to the general restrictions on mailing quarantined plant matter, so that mailings complying with APHIS regulations under the Plant Quarantine Act will continue to be permitted. APHIS was provided an opportunity to review drafts of the new Postal Service Publication 14, which contains the detailed provisions concerning the quarantine requirements. Implementation of the new law was also discussed at a March 30, 1989 meeting of Postal Service and USDA representatives. We have heard no objection to the manner in which the regulations adopted today accomplish the regulatory exception required by section 3014(c). The concerns expressed during consultation and in the comments have related to procedures for enforcement against items which are not excepted from the mailing prohibitions. These same matters have been explored on many occasions, and all three agencies are aware of the others' concerns.

Last, CDFA's comment asked why Publication 14, which is incorporated by reference in the Domestic Mail Manual regulations and was made available in conjunction with the proposed rule, provides that a plant or plant product inspected under the Terminal Inspection Act, 7 U.S.C. 166, and found to be subject to a plant-quarantine law or regulation prohibiting its movement will be returned to the sender upon his payment of the return-postage cost, and does not say instead that it will be seized as evidence that 18 U.S.C. 1716B has been violated. This provision simply follows the statutory language in 7 U.S.C. 166, which provides that when a terminal inspection identifies quarantined material the postmaster "shall promptly notify the sender of said plants or plant products that they will be returned to him upon his request and at his expense."

After carefully considering the comments received, the Postal Service finds good reason to adopt the regulations as proposed, except, in the interest of clarity, for a word order change in the heading of § 124.66 of the Domestic Mail Manual and in the title of Postal Publication 14.

Accordingly, the Postal Service adopts the following amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise 124.66 to read as follows:

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

§ 124.66 Mailing Plants (39 U.S.C. 3014; 18 U.S.C. 1716B).

.661 General. In general, plants and plant products are mailable within the United States and its Territories and Possessions. However, to prevent the spread of plant pests, diseases, and insect infestations, the movement of plants, plant pests, plant products, and other related matter, through the mail and otherwise, is subject to certain restrictions and prohibitions of the U.S. Department of Agriculture (USDA).

.662 Mailing Restrictions. As provided by 39 U.S.C. 3014(b), any plant, plant product, or other article capable of carrying a dangerous plant disease or insect infestation is nonmailable from a quarantined area, if the movement of any such item by common carrier is prohibited by a USDA quarantine that has been established pursuant to 7 U.S.C. 161.

.663 Exceptions. Any such plant, plant product or other article is mailable from a quarantined area if (1) its movement by common carrier is allowed under conditions prescribed in the notice of quarantine or in other USDA regulations, issued under 7 U.S.C. 161, governing its inspection, disinfection, certification, and other conditions for its movement and (2) if its movement by mail complies with all such conditions.

.664 Penalties. 18 U.S.C. 1716B provides criminal penalties for mailing anything nonmailable under 39 U.S.C. 3014(b), unless the item is excepted under postal regulations.

.665 USPS Regulations. Publication 14, *Mailing Plants*, describes pertinent portions of these restrictions and prohibitions, and prescribes procedures for their application consistent with the mail security regulations in DMM 115. It also prescribes packaging requirements for plants allowed in the mail.

.666 USDA Notices and Regulations. USDA quarantine notices, issued under 7 U.S.C. 161, are prominently displayed at post offices within the respective quarantined areas. They are also published in the Federal Register and codified in 7 CFR (see, e.g., 7 CFR parts 301 and 318). Detailed information concerning them, as well as other USDA regulations, may be obtained by writing to: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, Hyattsville, MD 20782—2011.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 89–28204 Filed 12–1–89; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 80, and 87

[GEN Docket No. 89–103; FCC 89–282]

Mobile Radio Services; Implementation of Final Acts of Work Administrative Radio Conference

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order is the first in a series of rulemaking proceedings implementing the Final Acts of the 1987 World Administrative Radio Conference for Mobile Services (1987 Mobile WARC) into the Commission's Rules. This proceeding addresses those revisions of the International Radio Regulations that became effective on October 3, 1988. It amends the Table of Frequency Allocations (47 CFR 2.106), the Radiodetermination Satellite Service (RDSS), and certain maritime mobile and aeronautical mobile service rules. Those revisions that become effective on July 1, 1991, *i.e.*, changes to the high frequency (HF) maritime mobile band (4000–27500 kHz) and revisions to implement the Global Maritime Distress and Safety System (GMDSS), will be addressed in 2 separate follow-on proceedings.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632–7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GEN Docket No. 89–103, adopted September 29, 1989, and released October 19, 1989. The complete text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC, 20037; telephone 202–857–3800.

Summary of Report and Order

1. This Report and Order amends the U.S. Table of Frequency Allocations contained in Part 2 of the Commission's Rules and, except for the spectrum allocated for the Mobile Satellite Service (MSS), it reflects the frequency allocation changes adopted internationally. The MSS allocated in the bands 1530–1559/1626.5–1660.5 MHz (L-band) was fully reconsidered by the Commission on May 31, 1988, and no changes were made to the domestic MSS allocation. Because the comments and reply comments were essentially a reiteration of the previous arguments raised, no changes to the domestic

allocation at L-band were adopted by this Report and Order.

2. The Report and Order also includes a change in the feeder downlink allocation for the Radiodetermination Satellite Service (RDSS). Except for a change in the feeder downlink at 5 GHz, the RDSS was established in accordance with U.S. proposals. The change in the feeder down-link was supported by the current RDSS licensee, Geostar Positioning Corporation (GPC). GPC also proposed that Part 25 be amended to expand the RDSS feeder uplink from 6525–6541.5 MHz to 6525–6607 MHz. Because feeder uplinks are already permitted under the fixed satellite service allocated in Part 2 and this proposal did not stem from any action taken at the 1987 Mobile WARC, no change was made to the RDSS feeder uplink at 6 GHz by this proceeding. The Commission stated that this matter can best be examined during the processing of GPC's application currently on file.

3. Several other changes to the maritime mobile and aeronautical mobile services were adopted also. Of particular concern to the commenting parties was the new 10 Hz frequency tolerance for ship and coast stations using automated maritime data transmitters. Five parties requested clarification of the implementation date with regard to existing equipment. After reviewing the comments, the proposed rules were rewritten to clarify that existing transmitters used for narrow-band direct-printing (NBDP) and installed before January 2, 1992, may continue to be used indefinitely. This is in accordance with the international requirements. Likewise, the proposed rule for ship transmitters used for digital selective calling (DSC) was rewritten to permit transmitters installed before January 2, 1992, to continue to be used until February 2, 1999.

4. For coast stations using DSC transmitters, however, the Commission maintained the January 1, 1990, date currently in the Rules. It indicates that this requirement is reasonable and in the public interest. First, considering that January 1, 1990, is fast approaching, any coast station planning to add DSC equipment in the early 1990's would have already considered its equipment needs based on existing Commission Rules. Second, reliable communications can be enhanced by initially requiring this improvement on a small number of coast stations rather than the more numerous ship stations. Third, the cost of replacing equipment purchased in 1990 under old specifications is avoided. The Report and Order also clarifies that adding a separate NBDP or DSC facility to existing transmitters in use under the existing tolerances will not be considered a newly installed transmitter. Thus, such an arrangement could be used indefinitely for NBDP and until February 2, 1999, for DSC.

5. The Commission also declined, at this time, to restrict the use of frequency 156.8 MHz (channel 16) by aircraft for general calling purposes. It noted that its proposal was simply to clarify the rule and any amendment to restrict the use of 156.8 MHz below 1000 feet was outside the scope of this proceeding. The Commission stated, however, that a future proceeding would consider the matter if it is shown that continued use of 156.8 MHz by aircraft is causing serious degradation of maritime safety communications. No changes to 47 CFR 80.379 and 87.187 were adopted at this time

6. The Commission also adopted a new emission limit of 28 dB relative to the mean power for single-sideband radiotelephone transmitters operating in the bands 1605–27500 kHz. It specified additional frequencies below 4 MHz for DSC and radiotelephony calling. Detailed technical requirements for NBDP operations were replaced by references to the appropriate International Radio Consultative Committee (CCIR) Recommendations. They will ensure that future equipment meets or exceeds the international standards. New definitions were adopted for aeronautical mobile route (R) and off-route (OR) services, aeronautical mobile satellite (R) and (OR) services, land earth station, base earth station, and land mobile earth station. The definition of RDSS was amended also. The proposed editorial changes to 47 CFR 87.187 (o) and (x) were adopted. Finally, the emissions designators in 47 CFR 80.359 were moved to 47 CFR 80.207. These changes reflect the revisions to the Radio regulations adopted at the 1987 Mobile WARC, or earlier conferences.

7. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease the burden hours imposed on the public.

8. Accordingly, *it is ordered*, That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), parts 2, 25, 80, and 87 of the Commission's Rules are amended as set forth at the end of this document, effective

9. *It is further ordered*, That a copy of this Report and Order be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. *It is further ordered*, That this proceeding is terminated.

List of Subjects

47 CFR Part 2

Frequency allocations, Radio, Treaties.

47 CFR Part 25

Radio, Satellite radio communications, Satellites.

47 CFR Part 80

Coast stations, Communications equipment, Marine safety, Radio, Ship stations, Telegraph, Telephone.

47 CFR Part 87

Aeronautical stations, Air transportation, Communications equipment, General aviation, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 2, 25, 80 and 87 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. Section 2.1(c) is amended by revising the definition for *Radiodetermination-Satellite Service* and adding the others in the correct alphabetical position to read as follows:

§ 2.1 Terms and definitions.

• • • • • •

(c) • • •

Aeronautical Mobile Off-Route (OR) Service. An aeronautical mobile service intended for communications, including those relating to flight coordination, primarily outside national or international civil air routes. (RR)

Aeronautical Mobile Route (R) Service. An aeronautical mobile service reserved for communications relating to safety and regularity of flight, primarily along national or international civil air routes. (RR)

Aeronautical Mobile-Satellite Off-Route (OR) Service. An aeronautical mobile-satellite service intended for communications, including those relating to flight coordination, primarily outside national and international civil air routes. (RR)

Aeronautical Mobile-Satellite Route (R) Service. An aeronautical mobile-satellite service reserved for communications relating to safety and regularity of flights, primarily along national or international civil air routes. (RR)

• • • • • •

Base Earth Station. An earth station in the fixed-satellite service or, in some cases, in the land mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the land mobile-satellite service. (RR)

• • • • • •

Land Earth Station. An earth station in the fixed-satellite service or, in some cases, in the mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the mobile-satellite service. (RR)

Land Mobile Earth Station. A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent. (RR)

• • • • • •

Radiodetermination-Satellite Service. A radiocommunication service for the purpose of radiodetermination involving the use or one of more space stations. This service may also include feeder links necessary for its own operation. (RR)

3. In § 2.104, paragraph (c)(3) is revised to read as follows:

§ 2.104 International Table of Frequency Allocations.

• • • • • •

(c) • • •

(3) The "European Maritime Area" is bounded to the north by a line extending along parallel 72° North from its intersection with meridian 55° East of Greenwich to its intersection with meridian 5° West, then along meridian 5° West to its intersection with parallel 67° North, thence along parallel 67° North to its intersection with meridian 32° West; to the west by a line extending along meridian 32° West to its intersection with parallel 30° North; to the south by a line extending along parallel 30° North to its intersection with meridian 43° East; to the east by a line extending along meridian 43° East to its intersection with parallel 60° North, thence along parallel 60° North to its intersection with meridian 55° East and thence along meridian 55° East to its intersection with parallel 72° North.

• • • • • •

4. Section 2.106 is amended by removing Footnotes 458, 473, 583, 590, 680, 681, 698, 699, 728, 774, 775, 776, US39, US232, US241, US248, US280, and US288 in their entirety, and by amending the Table of Frequency Allocations and the subsequent Footnotes, to read as follows:

§ 2.106 Table of Frequency Allocations

International table			United States table		FCC use designators	
Region 1 allocation kHz	Region 2 allocation kHz	Region 3 allocation kHz	Government Allocation kHz	Non-Government Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
14–19.95			14–19.95	14–19.95		
	• • •		Fixed maritime mobile.	Fixed	• • •	
•	•	•	448 US294	448 US294		•
20.05–70			20.05–59	20.05–59		
	• • •		Fixed maritime mobile.	Fixed	• • •	
			448 US294	448 US294		
			59–61	59–61		• • •
			• • •	• • •		
			61–70	61–70		
			Fixed maritime mobile.	Fixed	• • •	
			448 US294	448 US294		
70–72	70–90	70–72	70–90	70–90		
• • •	• • •	• • •	Fixed maritime mobile radiolocation.	Fixed radiolocation	• • •	
72–84		72–84				
• • •		• • •				
84–86		84–86				
• • •		• • •				
86–90		86–90				
• • •		• • •	448 451 US294	448 451 US294		
90–110			90–110	90–110		
	Radionavigation 453 Fixed. 453A 454		• • •	• • •	• • •	
110–112	110–130	110–112	110–130	110–130		
• • •	• • •	• • •	Fixed maritime mobile radiolocation.	Fixed maritime mobile radiolocation.	• • •	
112–115		112–117.6				
• • •		• • •				
115–117.6						
• • •						
117.6–126		117.6–126				
• • •		• • •				
126–129		126–129				
• • •		• • •				

International table			United States table		FCC use designators	
Region 1 allocation kHz	Region 2 allocation kHz	Region 3 allocation kHz	Government Allocation kHz	Non-Government Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
129–130		129–130	451 454 US294	451 454 US294		
130–148.5	130–160	130–160	130–160	130–160		
Maritime mobile/ fixed/.						
454 457						
148.5–255						
Broadcasting						
	160–190	160–190	160–190	160–190		
	190–200		190–200	190–200		
	200–275	200–285	200–275	200–275		
	Aeronautical radionavigation aeronautical mobile.	Aeronautical radionavigation aeronautical mobile.				
460 461 462						
255–283.5						
Broadcasting/ aeronautical radionavigation/ 463.						
	275–285		275–285	275–285		
	Aeronautical radionavigation aeronautical/ mobile maritime radionavigation (radiobeacons).					
462 464 464A						
283.5–315						
Maritime radionavigation (radiobeacons) 466 /aeronautical radionavigation/.	285–315		285–325	285–325		
464A 465 466A						
315–325	315–325	315–325				
415–435	415–495		415–435	415–435		
	Maritime mobile 470 aeronautical radionavigation 470A.	Aeronautical radionavigation maritime mobile 470.	Aeronautical radionavigation maritime mobile 470.			
		469A US294	469A US294			
435–495			435–495	435–495		
Maritime Mobile 470 aeronautical radionavigation.			Maritime mobile 470 aeronautical radionavigation.	Maritime mobile 470		
465 471 472A	469 469A 471 472A.	471 US231 472A US294.	471 US231 472A US294.			
505–526.5	505–510	505–526.5	505–510	505–510		
Maritime mobile 470/ aeronautical radionavigation/.		Maritime mobile 470 474/aeronautical radionavigation/ aeronautical mobile land mobile.				
	510–525		510–525	510–525		
	Mobile 474 aeronautical radionavigation.		Aeronautical radionavigation (radiobeacons) maritime mobile (ships only).	Aeronautical radionavigation (radiobeacons) maritime mobile (ships only).		518 kHz is used for International NAVTEX in the maritime mobile service.
465 471 474 475 476.						
		471	474 US14 US18 US225.	474 US14 US18 US225.		
	525–535		525–535	525–535		
526.5–1 606.5		526.5–535				
	535–1 605	535–1 606.5	535–1 605	535–1 605		

International table			United States table		FCC use designators	
Region 1 allocation kHz	Region 2 allocation kHz	Region 3 allocation kHz	Government Allocation kHz	Non-Government Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	1 605–1 625		1 605–1 615	1 605–1 615		
	Broadcasting 480					
1 606.5–1 625		1 606.5–1 800				
Maritime Mobile 480A/Fixed/ /land Mobile/.						
			1 615–1 625	1 615–1 625		
483 484	480A 481					
1 625–1 635	1 625–1 705		1 625–1 705	1 625–1 705		
	Broadcasting 480/ fixed/ /mobile/ radiolocation 480A 481.					
1 635–1 800	1 705–1 800		1 705–1 800	1 705–1 800		
Maritime mobile 480A /fixed/ /land mobile/.						
483–484–488						
1 800–1 810	1 800–1 850	1 800–2 000	1 800–1 900	1 800–1 900		
	Amateur					
1 810–1 850						
1 850–2 000	1 850–2 000		1 900–2 000	1 900–2 000		
	Amateur fixed mobile except aeronautical mobile radiolocation radionavigation.					
	494					
2 173.5–2 190.5			2 173.5–2 190.5	2 173.5–2 190.5		
	Mobile (distress and calling).		Mobile (distress and calling).	Mobile (distress and calling).		
	500 501 500A 500B		500 501 US279 500A 500B.	500 501 US279 500A 500B.		

§ 2.106 Table of Frequency Allocations

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
74.8–75.2			74.8–75.2	74.8–75.2		
	Aeronautical radionavigation.					
	572 572A					
75.2–87.5	75.2–75.4		75.2–75.4	75.2–75.4		
	75.4–76	75.4–87	75.4–76	75.4–76		
	76–88		76–88	76–88		
		87–100				
87.5–100						
	88–100		88–108	88–108		
100–108						
	Broadcasting					
	582 584 585 586 587 588 589					
108–117.975			108–117.975	108–117.975		
	Aeronautical radionavigation.					

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	590A.					
136–137			136–137	136–137		
	Aeronautical mobile (R), fixed, Mobile except aeronautical mobile (R).					
	591 595 594A					
149.9–150.05			149.9–150.05	149.9–150.05		
	Radionavigation-satellite		Radionavigation-satellite..	Radionavigation-satellite..		
	609 609A		609A	609A		
150.05–153	150.05–156.7625		150.05–150.8	150.05–150.8		
	Fixed mobile					
			150.8–156.2475	150.8–152		
				152–152.255		
	611 613 613A					
				152.255–152.495		
				152.495–152.855		
				152.855–156.2475		
153–154						
154–156.7625						
Fixed mobile except aeronautical mobile (R).						
613 613A						
			156.2475–157.0375	156.2475–157.0375		
				Maritime mobile NG117.		
156.7625–156.8375						
156.8375–174	156.8375–174					
Fixed mobile except aeronautical mobile.			613 613A US77 US106 US107 US266	613 613A US77 US106 US107 US266		
			157.0375–157.1875	157.0375–157.1875		
613 613B 614 615.						
174–223	174–216	174–223	174–216	174–216		
	216–220		216–220	216–220		
	Fixed maritime mobile radiolocation 627.					
	627A					
328.6–335.4			328.6–335.4	328.6–335.4		
	Aeronautical radionavigation.					
	645 645A					
399.9–400.05			399.9–400.5	399.9–400.05		
	Radionavigation-satellite		Radionavigation-satellite	Radionavigation-satellite		
	609 645B		645B	645B		
406–406.1			406–406.1	406–406.1		
	Mobile-satellite (Earth-to-space).		Mobile-satellite (Earth-to-space).	Mobile-satellite (Earth-to-space).		
	649 649A		649 649A	649 649A		
420–430			420–450	420–450		
430–440	430–440					
	Radiolocation amateur.					
	653 658 659 660 660A 663 664.					

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
440–450						
470–790	470–512	470–585	470–512	470–512		
Broadcasting						
	512–608		512–608	512–608		
		585–610				
	608–614		608–614	608–614		
676 667A 682 683 684 685 686 686A 687 689 693 694.						
		610–890				
	614–806		614–806	614–806		
	Broadcasting fixed mobile.					
790–862						
Fixed broadcasting	675 692 692A 693.					
	806–890		806–902	806–821		
694 695 695A 696 697 702.	Fixed mobile broadcasting.					
862–890						
Fixed mobile except aeronautical mobile.				821–824		
Broadcasting 703						
704	692A 700					
890–942	890–902	890–942		894–896		
	Fixed mobile except aeronautical mobile.			896–901		
	Radiolocation					
				901–902		
	704A 705					
	902–928		902–928	902–928		
	Fixed amateur mobile except aeronautical mobile.					
	Radiolocation 705 707 707A.					
	928–942		928–932	928–929		
				929–932		
			932–935	932–935		
			935–941	935–940		
				940–941		
			941–944	941–944		
942–960	942–960	942–960				
Fixed mobile except aeronautical mobile broadcasting 703.			944–960	944–960		
704						
1 215–1 240			1 215–1 240	1 215–1 240		
	Radiolocation; radionavigation-satellite (space-to-Earth) 710 711 712 712A 713.					
1 240–1 260			1 240–1 300	1 240–1 300		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Radiolocation; radionavigation-satellite (space-to-earth) 710 711 712 712A 713 714.		• • •	• • •	• • •	
1 260–1 300						
	Radiolocation amateur 664 711 712 712A 713 714.					
1 429–1 525	1429–1525		1 429–1 435	1 429–1 435		
1 525–1 530	1 525–1 530	1 525–1 530	1 435–1 530	1 435–1 530		
• • •	Space operation (space-to-Earth). Earth exploration-satellite Fixed Mobile 723 722 723A	• • •	• • •	• • •	• • •	
1 530–1 533	1 530–1 533		1 530–1 535	1 530–1 535		
Space Operation (space-to-Earth) Maritime Mobile-Satellite (space-to-Earth) Earth exploration-satellite Fixed Mobile except aeronautical mobile Land Mobile-Satellite (space-to-Earth) 722 726 726A	Space operation (space-to-Earth) Maritime mobile-satellite (space-to-Earth) Earth exploration-satellite Fixed Mobile 723 Land mobile-satellite (space-to-Earth) 722 726 726A		Maritime mobile satellite (space-to-Earth) Mobile (aeronautical telemetering)	Maritime mobile satellite (space-to-Earth) Mobile (aeronautical telemetering)	• • •	
1533–1535	1533–1535					
Space operation (space-to-Earth). Maritime mobile-satellite (space-to-Earth). Earth exploration-satellite. Fixed Mobile except aeronautical mobile. Land mobile-satellite (space-to-Earth) 726B.	Space operation (space-to-Earth). Maritime mobile-satellite (space-to-Earth). Earth exploration-satellite. Fixed Mobile 723 Land mobile-satellite (space-to-Earth) 726B.					
722 726 726A	722 726 726A		722 726A US78 US272.	722 726A US78 US272.		
1 535–1 544			1 535–1 544	1 535–1 544		
Maritime mobile-satellite (space-to-Earth), Land mobile-satellite (space-to-Earth) 726B.			Maritime mobile-satellite (space-to-Earth).	Maritime mobile satellite (space-to-Earth).	• • •	
722 726A 727			722 726A	722 726A		
1 544–1 545			1 544–1 545	1 544–1 545		
Mobile-satellite (space-to-Earth)			Mobile-satellite (space-to-Earth).	Mobile satellite (space-to-Earth).	• • •	
722 727 727A			722 727A	722 727A		
1 545–1 555			1 545–1 549.5	1 545–1 549.5		
Aeronautical mobile-satellite (R) (space-to-Earth) 722 726A 727 729 729A 730.			Aeronautical mobile-satellite (R) (space-to-Earth). Mobile-satellite (space-to-Earth). 722 726A US308 US309.	Aeronautical mobile-satellite (R) (space-to-Earth). Mobile-satellite (space-to-Earth). 722 726A US308 US309.	• • •	
			1 549.5–1 558.5	1 549.5–1 558.5		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			Aeronautical mobile-satellite (R) (space-to-Earth). Mobile-satellite (space-to-Earth). 722 726A US308 US309.	Aeronautical mobile-satellite (R) (space-to-Earth). Mobile-satellite (space-to-Earth). 722 726A US308 US309.	• • •	
1 555–1 559			1 558.5–1 559	1 558.5–1 559		
Land mobile-satellite (space-to-Earth) 722 726A 727 730 730A			Aeronautical mobile-satellite (R) (space-to-Earth). 722 726A US308 US309.	Aeronautical mobile-satellite (R) (space-to-Earth). 722 726A US308 US309.	• • •	
1 559–1 610			1 559–1 610	1 559–1 610		
Aeronautical radionavigation radionavigation-satellite (space-to-Earth) 722 727 730 731 731A 731B 731C 731D.			Aeronautical radionavigation-satellite (space-to-Earth). 722 US208 US260..	Aeronautical radionavigation-satellite (space-to-Earth). 722 US208 US260..	• • •	
1 610–626.5	1 610–626.5	1 610–626.5	1 610–1626.5	1 610–1626.5		
Aeronautical radionavigation.	Aeronautical radionavigation.	Aeronautical radionavigation.	Aeronautical radionavigation.	Aeronautical radinavigation.	Aviation (87). satellite communication (25)..	
	Radiodetermination-satellite (Earth-to-space) 733A.	Radiodetermination-satellite (Earth-to-space) 733A.	733E	722 732 733 734 US208 US260 US306.	722 732 733 734 US208 US260 US306.	
722 727 730 731 731A 731B 731D 732 733 733A 733B 733E 733F 734.	722 731B 731C 732 733 733C 733D 734.	722 727 730 731B 731C 732 733 733B 734.				
1 626.5–1 631.5			1 626.5–1 645.5	1 626.5–1 645.5		
Maritime mobile-satellite (Earth-to-space) Land mobile-satellite 726B (Earth-to-space). 722 726A 727 730.			Maritime mobile-satellite (Earth-to-space).	Maritime mobile-satellite (Earth-to-space).	• • •	
1 631.5–1 634.5						
Maritime mobile-satellite (Earth-to-space). Land mobile-satellite (Earth-to-space). 722 726A 727 730 734A.						
1 634.5–1 645.5						
Maritime mobile-satellite (Earth-to-space). Land mobile-satellite 726B (Earth-to-space). 722 726A 727 730.			722 726A	722 726A		
1 645.5–1 646.5			1 645.5–1 646.5	1 645.5–1 646.5		
Mobile-satellite (Earth-to-space). 722 734B			Mobile-satellite (Earth-to-space). 722 734B	Mobile-satellite (Earth-to-space). 722 734B	• • •	
1 646.5–1 656.5			1 646.5–1 651	1 646.5–1 651		
Aeronautical mobile-satellite (R) (Earth-to-space). 722 726A 727 729A 730 735.			Aeronautical mobile-satellite (R) (Earth-to-space). Mobile-satellite (Earth-to-space). 722 726A US308 US309.	Aeronautical mobile-satellite (R) (Earth-to-space). Mobile-satellite (Earth-to-space). 722 726A US308 US309.	• • •	
			1 651–1 660	1 651–1 660		

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International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 656.5–1 660			Aeronautical mobile-satellite (R) (Earth-to-space).	Aeronautical mobile-satellite (R) (Earth-to-space).		
	Land mobile-satellite (Earth-to-space). 722 726A 727 730 730A 734A.		Mobile-satellite (Earth-to-space). 722 726A US308 US309.	Mobile-satellite (Earth-to-space). 722 726A US308 US309.		
1 660–1 660.5			1 660–1 660.5	1 660–1 660.5		
	Radio astronomy land mobile-satellite (Earth-to-space).		Aeronautical mobile-satellite (R) (Earth-to-space).	Aeronautical mobile-satellite (R) (Earth-to-space).		
			Radio astronomy	Radio astronomy		
	722 726A 730A 736.		722 726A 736 US309.	722 726A 736 US309.		
1 700–1 710	1 700–1 710		1 700–1 710	1 700–1 710		
Fixed meteorological-satellite (space-to-Earth) mobile except aeronautical mobile.						
671 722 743A						
1 710–2 290	1 710–2 290		1 710–1 850	1 710–1 850		
Fixed mobile			1 850–1 990	1 850–1 990		
722 743A 744 746 747 748 750.			1 990–2 110	1 990–2 200		
			2 110–2 200	Mobile fixed. US90 US111 US219 US222 NG23 NG118.		
			2 200–2 290	2 200–2 290		
2 290–2 300	2 290–2 300		2 290–2 300	2 290–2 300		
Fixed space research (space-to-Earth) (deep space) mobile except aeronautical mobile.						
743A						
2 300–2 450	2 300–2 450		2 300–2 310	2 300–2 310		
Fixed amateur mobile radiolocation.						
			2 310–2 390	2 310–2 390		
			2 390–2 450	2 390–2 450		
664 743A 752						
2 450–2 483.5	2 450–2 483.5		2 450–2 483.5	2 450–2 483.5		
Fixed mobile radiolocation.	Fixed mobile radiolocation.					
752 753	752					
2 483.5–2 500	2 483–2 500	2 483.5–2 500	2 483.5–2 500	2 483.5–2 500		
Fixed mobile radiolocation.	Fixed mobile radiocommunication-satellite 753A (space-to-Earth) Radiolocation.	Fixed mobile radiolocation radiodetermination-satellite (space-to-Earth) 753A.		Radiodetermination-satellite (space-to-Earth).	Satellite communication (25).	
733F 752 753A 753B 753C 753E.	752 753D	752 753C	752 US41	752 US41 NG147		
2 500–2 655	2 500–2 655	2 500–2 535	2 500–2 655	2 500–2 655		
		Fixed 782 764				
		Fixed-satellite (space-to-Earth) 761.				
		Mobile except aeronautical mobile.				
		Broadcasting-satellite 757 760.				
		754 754A				
		2 535–2 655				
2 900–3 100			2 900–3 100	2 900–3 100		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Radionavigation 773 Radiolocation.			Maritime radionavigation radiolocation 775A.	Maritime radionavigation radiolocation 775A.		
772 775A			US44 G56	US44		
3 100–3 300			3 100–3 300	3 100–3 300		
Radiolocation			Radiolocation	Radiolocation		
713 777 778			713 778 US110 G59.	713 778 US110		
5 000–5 250			5 000–5 250	5 000–5 250		
Aeronautical Radionavigation.			Aeronautical Radionavigation.	Aeronautical Radionavigation.	Aviation (87) satellite communication (25).	
733 796 797 797A 797B.			733 796 797 797A US211 US260 US307.	733 796 797 797A US211 US260 US307.		
5 470–5 650			5 470–5 600	5 470–5 600		
Maritime Radionavigation Radiolocation.			Maritime radionavigation radiolocation.	Maritime radionavigation radiolocation.		
			US50 US65	US50 US65		
			5 600–5 650	5 600–5 650		
800 801 802						
9 200–9 300			9 200–9 300	9 200–9 300		
Radiolocation Maritime Radionavigation 823.			Maritime radionavigation radiolocation.	Maritime radionavigation radiolocation.		
824 824A			US110 G59 823 824A.	US110 823 824A.		
9 300–9 500			9 300–9 500	9 300–9 500		
Radionavigation 825A Radiolocation.			Radionavigation 825A meteorological aids radiolocation.	Radionavigation 825A meteorological aids radiolocation.		
775A 824A 825			775A 824A US51 US66 US67 US71 G56.	775A 824A US51 US66 US67 US71.		

International Footnotes

448 The use of the bands 14–19.95 kHz, 20.05–70 kHz, and 70–90 kHz (72–84 kHz and 86–90 kHz in Region 1) by the maritime mobile service is limited to coast radiotelegraph stations (A1A and F1B only). Exceptionally, the use of class J2B or J7B emissions is authorized subject to the necessary bandwidth not exceeding that normally used for class A1A or F1B emissions in the band concerned.

451 In the bands 70–90 kHz (70–86 kHz in Region 1) and 110–130 kHz (112–130 kHz in Region 1), pulsed radionavigation systems may be used on condition that they do not cause harmful interference to other services to which these bands are allocated.

453A In the band 90–110 kHz, the United Kingdom may continue to use its coast radiotelegraph stations in operation on 14 September 1967, on a secondary basis.

464A In Region 1, the change of the band limit from 285 kHz to 283.5 kHz shall take place on 1 February 1990 (see Resolution 500).

466A *Additional Allocation:* in Region 1, the frequency band 285.3–285.7 kHz is also allocated to the maritime radionavigation service (other than radiobeacons) on a permitted basis.

469 *Different category of service:* in Afghanistan, Australia, China, the Overseas French Territories of Region 3, India, Indonesia, the Islamic Republic of Iran, Japan, Pakistan, Papua New Guinea and Sri Lanka, the allocation of the band 415–495 kHz to the aeronautical radionavigation service is on a permitted basis. Administrations in these countries shall take all practical steps necessary to ensure that aeronautical radionavigation stations in the band 435–495 kHz do not cause interference to reception by coast stations of ship stations transmitting on frequencies designated for ship stations on a world-wide basis (see No. 4237).

469A *Different category of service:* in Cuba, the United States of America, and Mexico the allocation of the band 415–435 kHz to the aeronautical radionavigation service is on a primary basis.

470A In Region 2, the use of the band 435–495 kHz by the aeronautical radionavigation service is limited to non-directional beacons not employing voice transmission.

471 The bands 490–495 kHz shall be subject to the provision of No. 3018 until the entry into force of the reduced guardband in accordance with Resolution 210 (Mob-87).

472 The frequency 500 kHz is an international distress and calling frequency for Morse radiotelegraphy. The conditions for its use are prescribed in Articles 37, 38, N 38 and 60.

472A In the maritime mobile service, the frequency 490 kHz is, from the date of full implementation of the GMDSS (see Resolution 331 (Mob-87)), to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of narrow-band direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles N 38 and 60, and Resolution 329 (Mob-87). In using the band 415–495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz.

474 The conditions for the use of frequency 518 kHz by the maritime mobile service are prescribed in Articles 38, N 38 and 60 (see Resolution 324 (Mob-87) and Article 14A).

480A In the band 1605–1705 kHz, in cases where a broadcasting station of Region 2 is concerned, the service area of the maritime mobile stations in Region 1 shall be limited to that provided by ground-wave propagation.

489 In Region 3, the Loran system operates either on 1850 kHz or 1950 kHz, the bands occupied being 1825–1875 kHz and 1925–1975 kHz respectively. Other services to which the band 1800–2000 kHz is allocated may use any frequency therein on condition that no harmful interference is caused to the Loran system operating on 1850 kHz or 1950 kHz.

497 In Region 2, except in Greenland, coast stations and ship stations using radiotelegraphy in the band 2065–2107 kHz shall be limited to class R3E or J3E emission and to a peak envelope power not exceeding 1 kW. Preferably, the following carrier frequencies should be used: 2065.0 kHz, 2079.0 kHz, 2082.5 kHz, 2086.0 kHz, 2093.0 kHz, 2096.5 kHz, 2100.0 kHz, 2103.5 kHz. In Argentina, Brazil and Uruguay, the carrier frequencies 2088.5 kHz and 2075.5 kHz are also used for this purpose, while the frequencies within the band 2072–2075.5 kHz are used as provided in No. 4323 BD.

500A The frequencies 2187.5 kHz, 4188 kHz, 6282 kHz, 8375 kHz, 12563 kHz and 16750 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article 38.

Note: Effective July 1, 1991, the footnote 500A will read as follows: The frequencies 2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article N 38.

500B The frequencies 2174.5 kHz, 4177.5 kHz, 6268 kHz, 8357.5 kHz, 12520 kHz and 16675 kHz are international distress frequencies for narrowband direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article 38.

Note: Effective July 1, 1991, the footnote 500B will read as follows: The frequencies 2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12520 kHz, and 16695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article N 38.

554 *Additional allocation:* in Albania, the Federal Republic of Germany, Austria, Belgium, Bulgaria, Cote d'Ivoire, Denmark, Spain, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Lybia, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Nigeria, Norway, the Netherlands, Poland, the German Democratic Republic, the United Kingdom, Senegal, Sweden, Switzerland, Swaziland, Syria, Togo, Tunisia, Turkey and Yugoslavia, the band 47–68 MHz and in Romania, the band 47–58 MHz, are also allocated to the land mobile service on a permitted basis. However, stations of the land mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the band.

572A *Additional allocation:* in Afghanistan, the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Egypt, Spain, France, Greece, Israel, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 74.8–75.2 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of Article 14.

587 *Additional allocation:* in Austria, Bulgaria, Hungary, Israel, Kenya, Mongolia, Poland, Syria, the German Democratic Republic, the United Kingdom, Somalia, Czechoslovakia, Turkey and the USSR, the band 104–108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a permitted basis until 31 December 1995 and, thereafter, on a secondary basis.

589 *Additional allocation:* in France, Romania, Sweden and Yugoslavia, the band 104–108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a permitted basis until 31 December 1995.

590A *Additional allocation:* in Afghanistan, the Federal Republic of German, Austria, Cyprus, Denmark, Egypt, Spain, France, Israel, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, Pakistan, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 108–111.975 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administrations which may be identified in the application of Article 14.

593 In the band 117.975–136 MHz, the frequency 121.5 MHz is the aeronautical emergency frequency and, where required, the frequency 123.1 MHz is the aeronautical frequency auxiliary to 121.5 MHz. Mobile stations of the maritime mobile service may communicate on these frequencies under the conditions laid down in Articles 38 and N 38 for distress and safety purposes with stations of the aeronautical mobile service.

594A *Different category of service:* as from 1 January 1990, in Bulgaria, Poland, German Democratic Republic, Romania, Czechoslovakia, Turkey and the USSR, the allocation of the band 136–137 MHz to the aeronautical mobile (OR) service is on a permitted basis.

595 Until 1 January 1990, the band 136–137 MHz is also allocated to the space operation service (space-to-Earth), meterological-satellite service (space-to-Earth) and the space research service (space-to-Earth) on a primary basis. The introduction of stations of the aeronautical mobile (R) service shall only occur after that date. After 1 January 1990, the band 136–137 MHz will also be allocated to the above-mentioned space radiocommunication services on a secondary basis (see Resolution 408 (Mob-87).

609A Recognizing that the use of the band 149.9–150.05 MHz by the fixed and mobile services may cause harmful interference to the radionavigation-satellite service, administrations are urged not to authorize such use in application No. 342.

613 The frequency 156.8 MHz is the international distress, safety and calling frequency for the maritime mobile VHF radiotelephone service. The conditions for the use of this frequency are contained in Articles 38 and N 38.

In the bands 156–156.7625 MHz, 156.8375–157.45 MHz, 160.6–160.975 MHz and 161.475–162.05 MHz, each administration shall give priority to the maritime mobile service on only such frequencies as are assigned to stations of the maritime mobile service by the administration (see Articles 38, N 38 and 60).

Any use of frequencies in these bands by station of other services to which they are allocated should be avoided in areas where such use might cause harmful interference to the maritime mobile VHF radiocommunication service.

However, the frequency 156.8 MHz and the frequency bands in which priority is given to the maritime mobile service may be used for radiocommunications on inland waterways subject to agreement between interested and affected administrations and taking into account current frequency usage and existing agreements.

613A In the maritime mobile VHF service the frequency 156.525 MHz is to be used exclusively for digital selective calling for distress, safety and calling (see Resolution 323 (Mob–87)). The conditions for the use of this frequency are prescribed in Articles 38, N 38 and 60 and in Appendix 18.

613B *Additional allocation:* in Ireland and in the United Kingdom, the band 161.3875–161.4125 MHz is also allocated to the maritime radionavigation service on a primary basis, subject to agreement obtained under the procedure set forth in Article 14.

621 *Additional allocation:* in the Federal Republic of Germany, Austria, Belgium, Denmark, Spain, Finland, France, Israel, Italy, Liechtenstein, Monaco, Norway, the Netherlands, the United Kingdom, Sweden, Switzerland and Yemen (P.D.R. of), the band 174–223 MHz is also allocated to the land mobile service on a permitted basis. However, the stations of the land mobile service shall not cause harmful interference to, nor claim protection from, broadcasting stations, existing or planned, in countries other than those listed in this footnote.

627A *Additional allocation:* in Canada, the band 216–220 MHz is also allocated to the land mobile service on a primary basis.

642 The frequency 243 MHz is the frequency in this band for use by survival craft stations and equipment used for survival purposes (see Article 38).

645A *Additional allocation:* in Afghanistan, the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Egypt, Spain, France, Greece, Israel, Italy, Japan, Jordan, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 328.6–335.4 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of Article 14.

645B Recognizing that the use of the band 399.9–400.05 MHz by the fixed and mobile service may cause harmful interference to the radionavigation satellite service, administrations are urged not to authorize such use in application of No. 342.

649 The use of the band 406–406.1 MHz by the mobile-satellite service is limited to low power satellite emergency position-indicating radiobeacons (see also Articles 38 and N 38).

649A Any emission capable of causing harmful interference to the authorized uses of the band 406–406.1 MHz is prohibited.

660A *Additional allocation:* in Mexico, the bands 430–435 MHz and 438–440 MHz are also allocated on a primary basis to the land mobile service, subject to agreement obtained under the procedure set forth in Article 14.

674 *Different category of service:* in Mexico and Venezuela, the allocation of the band 470–512 MHz to the fixed and mobile service, and in Argentina and Uruguay to the mobile service, is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

677A *Additional allocation:* in the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

686A *Additional allocation:* in the United Kingdom, the band 596–606 MHz is also allocated to the aeronautical radionavigation service on a primary basis until 31 December 1994. All new assignments to stations in the aeronautical radionavigation service in this band are subject to the agreement of the Administrations of the following countries: the Federal Republic of Germany, Belgium, Denmark, Spain, France, Ireland, Luxembourg, Morocco, Norway and the Netherlands.

692A *Additional allocation:* in Cuba, the band 614–890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under the procedure set forth in Article 14.

695A *Additional allocation:* in Austria, Italy, the United Kingdom and Swaziland, the band 790–862 MHz is also allocated to the land mobile service on a secondary basis.

697 *Additional allocation:* In the Federal Republic of Germany, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Malta and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference, or claim protection from, stations or services operating in accordance with the Table in countries other than those mentioned in connection with the band.

700 *Additional allocation:* in Region 2, the band 806–890 MHz is also allocated to the mobile-satellite service on a primary basis. The use of this service is intended for operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14.

701 *Additional allocation:* in Region 3, the bands 806–890 MHz and 942–960 MHz are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service on a primary basis. The use of this service is limited to operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table, to ensure that no harmful interference is caused to such services.

704A *Additional allocation:* in Brazil, Canada and the United States of America, the band 890–896 MHz is also allocated to the mobile-satellite service on a primary basis. The use of this service is intended for operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table.

707A *Different category of service:* in Chile, the band 903–905 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis and is subject to agreement obtained under the procedure set forth in Article 14.

712A *Additional allocation:* in Cuba, the band 1215–1300 MHz is also allocated to the radionavigation service on a primary basis subject to the agreement obtained under the procedure set forth in Article 14.

723A *Different category of service:* in Cuba, the band 1525–1530 MHz is allocated to the aeronautical mobile service on a primary basis, under the conditions specified in No. 723.

728A The bands 1530–1544 MHz, 1545–1559 MHz, 1626.5–1645.5 MHz and 1646.5–1660.5 MHz shall not be used for feeder links of any service. In exceptional circumstances, however, an earth station at a specified fixed point in any of the mobile-satellite services may be authorized by an administration to communicate via space stations using these bands.

728B The use of the bands 1533–1544, 1626.5–1631.5 and 1634.5–1645.5 MHz by the land mobile-satellite service is limited to non-speech low bit-rate data transmissions.

727A The use of the band 1544–1545 MHz by the mobile-satellite service (space-to-earth) is limited to distress and safety communications (see Article N 38).

729 Transmissions in the band 1545–1555 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

729A Notwithstanding any other provisions of the Radio Regulations relating to restrictions in the use of the bands allocated to the aeronautical mobile-satellite (R) service for public correspondence, the bands 1545–1555 MHz and 1646.5–1656.5 MHz may be authorized by administrations for public correspondence with aircraft earth stations. Such communications must cease immediately, if necessary, to permit transmission of messages with priority 1 to 6 in Article 51.

730A In the bands 1555–1559 and 1656.5–1660.5 MHz administrations may also authorize aircraft earth stations and ship earth stations to communicate with space stations in the land mobile-satellite service (see Resolution 208 (Mob–87)).

731 *Alternative allocation:* in Sweden, the band 1590–1626.5 MHz is allocated to the aeronautical radionavigation service on a primary basis.

731A In Region 1, stations of the aeronautical mobile service using the bands 1593–1594 MHz and 1625.5–1626.5 MHz shall not claim protection from, or cause harmful interference to, stations of the aeronautical radionavigation and radionavigation services, as applicable.

731B *Additional allocation:* the bands 1593–1594 MHz and 1625.5–1626.5 MHz are also allocated to the aeronautical mobile service in Region 1 (except in Syria and Tunisia) on a primary basis, and in Regions 2 and 3 (and in Syria and Tunisia) on a secondary basis. The use of these bands in the aeronautical mobile service is limited to public correspondence with aircraft (see Recommendation 408 (Mob–87)). The use of the band 1593–1594 MHz is limited to transmissions from aeronautical stations and the use of the band 1625.5–1626.5 MHz is limited to transmissions from aircraft stations.

731C *Different category of service:* the bands listed in No. 731B are allocated, subject to agreement obtained in accordance with the procedures set forth in Article 14, to the aeronautical mobile service on a primary basis in Greenland, the French Overseas Territories in Regions 2 and 3, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Pitcairn Island (see Recommendation 408 (Mob–87)).

731D In Region 1, stations of the aeronautical mobile service using the bands 1593–1594 MHz and 1625.5–1626.5 MHz shall not cause harmful interference to stations of the fixed service operating in the countries listed in No. 730.

733A In respect of the radiodetermination-satellite service the provisions of No. 953 do not apply in the frequency band 1610–1626.5 MHz.

733D *Different category of service:* in Angola, Australia, Burundi, Cote d'Ivoire, Ethiopia, India, Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia,

Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia the allocation of the band 1610–1626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. 425) subject to agreement obtained under the procedure set forth in Article 14 with other countries not listed in this provision.

733C *Different category of service:* in Venezuela, the allocation to the radiodetermination-satellite service in the band 1610–1626.5 MHz is allocated exclusively to the aeronautical radionavigation service on a secondary basis.

733D *Alternative allocation:* in Cuba, the band 1610-1626.5 MHz is allocated exclusively to the aeronautical radionavigation service on a primary basis.

733E In Regions 1 through 3 harmful interference shall not be caused to stations of the radioastronomy service using the band 1610.6–1613.8 MHz by stations of the radiodetermination-satellite service.

733F In Region 1, the bands 1610–1626.5 MHz (Earth-to-space) and 2483.5–2500 MHz (space-to-Earth) are also allocated to the radiodetermination-satellite service on a secondary basis.

734A Land earth stations and ship earth stations in the mobile-satellite services operating in the bands 1631.5–1634.5 and 1656.5–1660 MHz shall not cause harmful interference to the stations in the fixed service operating in the countries listed in No. 730.

734B The use of the band 1645.5–1646.5 MHz by the mobile satellite service (Earth-to-space) and for inter-satellite links is limited to distress and safety communications (see Article N 38).

735 Transmissions in the band 1646.5–1656.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

743A *Different category of service:* in the Federal Republic of Germany, Austria, Denmark, Finland, Israel, Norway, the Netherlands, the United Kingdom, Switzerland and Syria, in the band 1700–2450 MHz, in Sweden in the bands 1700–1710 MHz and 2290–2450 MHz and in Yugoslavia in the band 2300–2450 MHz, the allocation to the land mobile service is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

753 *Alternative allocation:* in France, the bands 2450–2483.5 MHz and 2500–2550 MHz are allocated on a primary basis to the radiolocation service and on a secondary basis to the fixed and mobile services (see Nos. 424 and 425). Such use is subject to agreement with the administrations having services operating or planned to operate in accordance with the Table which may be affected.

753A In respect of the radiodetermination-satellite service in the band 2483.5–2500 MHz, the provisions of No. 953 do not apply.

753B In Region 1, in countries other than those listed in No. 753C, harmful interference shall not be caused to, or protection shall not be claimed from, stations of the radiolocation service by stations of the radiodetermination-satellite service.

753C *Different category of service:* in Angola, Australia, Burundi, Cote d'Ivoire, Ethiopia, India, Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 425) subject to agreement obtained under the procedure of Article 14 with other countries not listed in this provision.

753D *Alternative allocation:* in Cuba, the band 2483.5–2500 MHz is allocated only to fixed, mobile and radiolocation services on a primary basis.

753E *Alternative allocation:* in France, the band 2483.5–2500 MHz is allocated on a primary basis to the radiolocation service and on a secondary basis to the mobile service (see Nos. 424 and 425). Such use is subject to agreement with the administrations having services operating or planned to operate in accordance with the Table which may be affected.

754A *Additional allocation:* subject to agreement obtained under the procedure set forth in Article 14, the band 2500–2516.5 MHz may also be used in India, the Islamic Republic of Iran, Papua New Guinea and Thailand for the radiodetermination-satellite service (space-to-Earth) for operation limited to within national boundaries.

772 In the band 2900–3100 MHz, the use of the shipborne interrogator-transponder system (SIT) shall be confined to the sub-band 2930–2950 MHz.

775A In the bands 2900–3100 MHz and 9300–9500 MHz, the response from radar transponders shall not be capable of being confused with the response from radar beacons (racons) and shall not cause interference for ship or aeronautical radars in the radionavigation service, having regard, however, to No. 347 of these Regulations.

797A *Additional allocation:* in the countries listed in Nos. 733B and 753C, and subject to agreement obtained under the procedure set forth in Article 14, and band 5150–5216 MHz is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Region 2, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In regions 1 and 3, except those countries listed in Nos. 733B and 753C, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a secondary basis. The use by the radiodetermination-satellite service is limited to feeder links in conjunction with the radiodetermination-satellite service operating in the bands 1610–1626.5 MHz and/or 2483.5–2500 MHz. The total power flux-density at the Earth's surface shall in no case exceed −150 dBW/m² in any 4 kHz band for all angles of arrival.

797B *Additional allocation:* in the Federal Republic of Germany, Austria, Denmark, Spain, France, Finland, Israel, Italy, Jordan, Morocco, Norway, the Netherlands, Pakistan, the United Kingdom, Sweden, Switzerland, Syria and Tunisia, the band 5150–5250 MHz is also allocated to the mobile service, on a primary basis, subject to the agreement obtained under the procedure set forth in Article 14.

824A In the band 9200–9500 MHz, search and rescue transponders (SART) may be used, having due regard to the appropriate CCIR Recommendation (see also Article N 38).

825A In the band 9300–9320 MHz in the radionavigation service, the use of shipborne radars, other than those existing on 1 January 1978, is not permitted until 1 January 2001.

United States (US) Footnotes

US14 When 500 kHz is being used for distress purposes, ship and coast stations using morse telegraph may use 512 kHz for calling.

US82 Until July 1, 1991, the assignable frequencies in the bands 4143.6–4146.6 kHz, 6218.6–6224.6 kHz, 8291.1–8297.3 kHz, 12429.2–12439.5 kHz, 16587.1–16598.4 kHz and 22124–22139.5 kHz may be authorized on a shared nonpriority basis to Government and non-Government ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW). Effective July 1, 1991, the assignable frequencies in the bands 4146–4152 kHz, 6224–6233 kHz, 8294–8300 kHz, 12353–12368 kHz, 16528–16549 kHz, 18825–18848 kHz, 22159–22180 kHz, and 25100–25121 kHz may be authorized on a shared non-priority basis to Government and non-Government ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW).

US235 Until implementation procedures and schedules are determined by future conferences of the International Telecommunications Union, the bands 9775–9900 kHz, 11650–11700 kHz, 11975–12050 kHz, 13600–13800 kHz, 15450–15600 kHz, 17550–17700 kHz, and 21750–21850 kHz to be implemented by the broadcasting service are allocated as an alternative allocation to the fixed service. The bands 12230–12330 kHz, 16360–16460 kHz, 17360–17410 kHz, 18780–18900 kHz, 19680–19800 kHz, 22720–22855 kHz, 25110–25210 kHz, and 26100–26175 kHz to be implemented by the maritime mobile service are also allocated as an alternative allocation to the fixed service until July 1, 1991, when these bands are to be allocated exclusively to the maritime mobile service.

US236 Until implementation procedures and schedules are determined by future conferences of the International Telecommunications Union (See Resolution 319), the bands 4000–4063 and 8100–8195 kHz are also allocated on a primary basis to the fixed service.

US284 Until July 1, 1991, the carrier frequencies 6451.9 and 6455.0 kHz may be authorized to non-Government ship telephone and coast telephone stations operating in the Mississippi River maritime mobile service system on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations and that any interference from such services must be accepted.

US285 Under exceptional circumstances, the carrier frequency 2635, 2638, and 2738 kHz may be authorized to coast stations.

US296 Until July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4160.6, 4166, 6238.6, 6242.6, 8326, 8341.5, 12485, 12489, 16654, 16658, 22186 and 22190 kHz. Effective July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4154, 4170, 6235, 6259, 8302, 8338, 12370, 12418, 16551, 16615, 16648, 18868, 22182, 22238, 25123, and 25159 kHz.

US307 The sub-band 5150–5216 MHz is also allocated for space-to-Earth transmissions in the fixed satellite service for feeder links in conjunction with the radiodetermination satellite service operating in the bands 1610–1626.5 MHz and 2483.5–2500 MHz. The total power flux density at the earth's surface shall in no case exceed −159 dBW/m per 4 kHz for all angles of arrival.

US309 Transmissions in the bands 1545–1559 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links. Transmissions in the band 1646.5–1660.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

PART 25—[AMENDED]

5. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.531 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 54. Interpret or apply Secs. 101–104, 76 Stat 419–427; 47 U.S.C. 701–744.

6. Section 25.201 is amended by revising the definition for *Radiodetermination-Satellite Service* and adding the others in the correct alphabetical position, to read as follows:

§ 25.201 Definitions.

* * * * * * *

Base Earth Station. An earth station in the fixed-satellite service or, in some cases, in the land mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the land mobile-satellite service. (RR)

* * * * * * *

Land Earth Station. An earth station in the fixed-satellite service or, in some cases, in the mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the mobile-satellite service. (RR)

Land Mobile Earth Station. A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent. (RR)

* * * * * * *

Radiodetermination-Satellite Service. A radiocommunication service for the purpose of radiodetermination involving the use of one of more space stations. This service may also include feeder links necessary for its own operation. (RR)

* * * * * * *

7. In § 25.202, paragraph (a)(2) is revised to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1)* * *

(2) The following frequencies are available for use by the Radiodetermination Satellite Service:
1610–1626.5 MHz: User-to-Satellite Link
2483.5–2500 MHz: Satellite-to-User Link
Fixed-Satellite service frequencies may be used for links between radiodetermination satellites and control centers, including the following designated bands, subject to the Rules in this subpart:
5150–5216 MHz: Satellite-to-Control Center Link
6525–6541.5 MHz: Control Center-to-Satellite Link

* * * * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

8. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

9. The table of contents for part 80, Subpart X is amended by revising the center heading entitled "SATELLITE STATIONS" and the section heading of § 80.1185 to read as follows:

Subpart X—Voluntary Radio Installations

* * * * * * *

Mobile-Satellite Stations

80.115 Supplemental eligibility for mobile-satellite stations.

* * * * * * *

10. Section 80.142 is amended by revising paragraph (b) to read as follows:

§ 80.142 Ships using radiotelegraphy.

* * * * * * *

(b) *NB-DP operating procedure.* The operation of NB-DP equipment in the maritime mobile service must be in accordance with the operating procedures contained in the latest version of CCIR Recommendation 492 that does not prevent the use of existing equipment.

* * * * * * *

11. In § 80.207, the table following paragraph (d) is amended by revising the entries for "radiotelegraphy" under "ship stations" and "land stations" to read as follows:

§ 80.207 Classes of emission.

* * * * * * *

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
156–220 MHz [2]	F1B, F2B, F2C, F3C
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
1626.5–1646.5 MHz	(4)
* * * * *	
Land Stations [1]	
Radiotelegraphy	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–2850 kHz:	
Manual	A1A, J2A
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, J2A
4000–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, A2A, F1B, F2B
72–76 MHz	A1A, A2A, F1B, F2B
156–162 MHz [2]	F1B, F2B, F2C, F3C
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
* * * * *	

[1] Excludes distress, EPIRB's, and survival craft.
[2] Frequencies used in the automated multi-station system. See § 80.385(b).
[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See § 80.385(b).

12. Section 80.209 is amended by revising the table paragraphs (a)(1) (i) and (ii), (a)(2) (i) and (ii), (a)(3) (i) and (ii) and the subsequent table footnotes to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before Jan. 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
(1) Band 100–525 kHz:		
(i) Coast stations:		
For single sideband emissions	20 Hz	20 Hz
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For digital selective calling emissions	10 Hz [3]	10 Hz [3]
For all other emissions	200	100
(ii) Ship stations:		
For transmitters with single sideband emission type accepted or type approved before Nov. 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before Nov. 30, 1977	1000	
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For transmitters with digital selective calling emissions	20 Hz [3]	10 Hz [3]
For all transmitters type accepted or type approved after Nov. 29, 1977	20 Hz	20 Hz
(2) Band 1600–4000 kHz:		
(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions	20 Hz	20 Hz
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For digital selective calling emissions	15 Hz [3]	10 Hz [3]
For all other emissions	50	50
(ii) Ship stations:		
For transmitters with single sideband and facsimile emission type accepted or type approved before Nov. 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before Nov. 30, 1977	200	
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For transmitters with digital selective calling emissions	20 Hz [3]	10 Hz [3]
For all transmitters type accepted or type approved after Nov. 29, 1977	20 Hz	20 Hz
(3) Band 4000–27500 kHz:		
(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions	20 Hz	20 Hz
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For digital selective calling emissions	15 Hz [3]	10 Hz [3]
For Morse telegraphy emissions	15	10
For all other emissions	15	15
(ii) Ship stations:		
For transmitters with Morse telegraphy emission type accepted or type approved before Nov. 30, 1977.	200 Hz	
For transmitters with other emissions type accepted or type approved before Nov. 30, 1977	50 Hz	
For narrow-band direct-printing and data emissions	10 Hz [5]	10 Hz [5]
For transmitters with digital selective calling emissions	20 Hz [3]	10 Hz [3]
For all other transmitters type accepted or type approved after Nov. 29, 1977	20 Hz	20 Hz

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

[3] Until January 1, 1990, the frequency tolerance for DSC coasts station transmitters in the MF and HF bands is 15 Hz. Thereafter, the frequency tolerance for DSC coast station transmitters in the MF and HF bands is 10 Hz.

[3] Until February 2, 1999, the frequency tolerance for DSC ship station transmitters in the MF and HF bands that were installed before January 2, 1992, is 20 Hz. The frequency tolerance for DSC ship station transmitters in the MF and HF bands installed after January 1, 1992, is 10 Hz. On February 2, 1999, the frequency tolerance for all DSC ship station transmitters in the MF and HF bands (regardless of installation date) is 10 Hz.

[4] For transmitters in the radiolocation and associated telecommand service operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

[5] The frequency tolerance for narrow-band direct-printing and data transmitters installed before January 2, 1992, is 15 Hz for coast stations and 20 Hz for ship stations. The frequency tolerance for new narrow-band direct-printing and data transmitters installed after January 1, 1992, is 10 Hz.

* * * * *

13. § 80.211, paragraph (a)(1) is revised to read as follows:

§ 80.211 Emission limitations.

* * * * *

(a) * * *

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth:

at least 25 dB for transmitters installed before February 1, 1992,

at least 28 dB for transmitters installed on or after February 1, 1992;

* * * * *

14. Section 80.215 is amended by adding a new paragraph (d)(3) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(d) * * *

(3) Digital selective calling:

All ships 415–526.5 kHz—400 W
All ships 1605–4000 kHz—400 W
All ships 4000–27500 kHz—1.5 kW

* * * * *

15. Section 80.219 is revised in its entirety to read as follows:

§ 80.219 Special requirements for narrow-band direct-printing (NB–DP) equipment.

NB–DP and data transmission equipment installed in ship and coast stations before October 1, 1990, that operate on frequencies in the 4000–27500 kHz bands must conform to the technical requirements of CCIR Recommendations 476 or 625. Equipment installed on or after October 1, 1990, must conform to the technical requirements of CCIR Recommendation 625. Equipment installed before October 1, 1990, and built in accordance with CCIR Recommendation 476, however, may continue to be used.

16. In § 80.350, paragraph (a) is revised in its entirety to read as follows:

§ 80.350 Frequencies for digital selective calling (DSC).

(a) *General purpose calling.* The following tables describe the DSC frequencies that are assignable to ship and coast stations for general purpose calling.

SHIP TRANSMIT

[In kHz unless otherwise noted]

458.5	8375.5	16751.0
2177.0 [1]	12582.0	22245.0
2189.5	12562.5	22248.5
4187.5	16750.5	156.525 MHz
6281.5		

[1] The frequency 2177.0 kHz is available to ship stations for intership calling and acknowledgement of such calls only.

COAST TRANSMIT

[In kHz unless otherwise noted]

455.5	8718.5	17232.5
2177.0	13100.0	22595.0
4357.0	13100.5	22595.5
6507.0	17232.0	156.525 MHz

* * * * *

17. Section 80.369 is amended by revising paragraph (a) to read as follows:

§ 80.369 Distress, urgency, safety, call and reply frequencies.

* * * * *

(a) In the 1605–3500 kHz band, the frequency 2182 is an international radiotelephony distress, urgency and safety frequency for ship stations, public and private coast stations, and survival craft stations. It is also used for call and reply by ship stations on a primary basis and by public coast stations on a secondary basis. The carrier frequency 2191 kHz may be used as a supplementary calling frequency in areas of heavy usage of 2182 kHz. All stations must use J3E emission when operating on 2182 and 2191 kHz, except that:

(1) H3E emission may be used on 2182 kHz for communications with foreign coast and ship stations; or,

(2) A3E emission may be used on 2182 kHz by portable survival craft stations, or transmitters authorized for use prior to January 1, 1972. See § 80.203(c).

* * * * *

18. The heading for § 80.1185 and the center heading entitled "SATELLITE STATIONS" is revised to read as follows:

Mobile-Satellite Stations

§ 80.1185 Supplemental eligibility for mobile-satellite stations.

19. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

20. Section 87.5 is amended by adding the following definitions in the correct alphabetical position to read as follows:

§ 87.5 Definitions

* * * * *

Aeronautical Mobile Off-Route (OR) Service. An aeronautical mobile service intended for communications, including those relating to flight coordination, primarily outside national or international civil air routes.(RR)

Aeronautical Mobile Route (R) Service. An aeronautical mobile service reserved for communications relating to safety and regularity of flight, primarily along national or international civil air routes.(RR)

Aeronautical Mobile-Satellite Off-Route (OR) Service. An aeronautical mobile-satellite service intended for communications, including those relating to flight coordination, primarily outside national and international civil air routes.(RR)

Aeronautical Mobile-Satellite Route (R) Service. An aeronautical mobile-satellite service reserved for communications relating to safety and regularity of flights, primarily along national or international civil air routes.(RR)

* * * * *

21. In § 87.187, paragraphs (o) and (x) are revised to read as follows:

§ 87.187 Frequencies.

* * * * *

(o) The frequency band 1435–1535 MHz is available for telemetering and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. The following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. See 87.303(d)

* * * * *

(x) Frequencies for public correspondence between ships and public coast stations in the maritime mobile service (except frequencies in the 156–174 MHz band) and coast earth stations in the maritime mobile-satellite service are available for public correspondence between aircraft and public coast stations and coast earth stations, respectively. The transmission of public correspondence from aircraft must not cause interference to maritime communications.

* * * * *

[FR Doc. 89–27791 Filed 12–1–89; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 32

[CC Docket 87–135; FCC 89–298]

Uniform System of Accounts

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on Reconsideration.

SUMMARY: In this order on reconsideration the Commission has provided telecommunications companies relief from the requirements in § 32.2000 (e) and (f) of the Uniform System of Accounts for Telecommunications Companies to maintain continuing property records for specified categories of previously capitalized tools and other work equipment costing less than $500. The Commission also established an eight-year amortization period for the underpreciated balances of the same equipment.

DATE: Relief from compliance with the provisions of 47 CFR 32.2000 (e) and (f) goes into effect May 21, 1990, but carriers will be permitted, if they wish, to adopt the requirements retroactive to January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Hugh L. Boyle or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, Revision to amend the Uniform System of Accounts, CC Docket 87–135, FCC 89–298, adopted October 24, 1989, and released November 21, 1989. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Order on Reconsideration

In a *Report and Order* released July 22, 1988 (Report and Order), 53 FR 30058, 8/10/88 the Commission amended part 32, Uniform System of Accounts for Class A and Class B Telephone Companies, by raising the expense limit

from $200 to $500 for certain items of equipment required to be capitalized under the existing rules. As a result, on a prospective basis, items in certain accounts costing $500 or less are to be expensed in the year of purchase rather than capitalized and depreciated over prescribed periods of time. The items to be accounted for in this manner include furniture and office equipment, other communications equipment, vehicles and other work equipment, and central office tools and test equipment.

The Bell Operating Companies and the United States Telephone Association separately requested partial reconsideration of the Report and Order. Asserting that the Commission's retention of requirements set out in the Report and Order to maintain continuing property records (CPR) for previously capitalized items costing between $200 and $500 reduced much of the benefit intended by the Report and Order and possibly increased administrative burdens, the petitioners requested permission for carriers to eliminate CPR requirements for the embedded balances. Further, the petitioners requested permission to amortize the undepreciated investment in previously capitalized items over the prescribed average remaining depreciable lives of the equipment.

In this Order on Reconsideration the Commission provides the additional relief by eliminating the need to maintain the CPR for the specified previously capitalized items. To accomplish this, the Commission adopts the petitioners' recommendation to segregate in the accounts the embedded balances for those asset types designated in the Report and Order costing between $200 and $500.

Such segregation is to be accomplished by establishing subsidiary records in the asset and accumulated depreciation (reserve) accounts and by recording in such subsidiary records the asset balances and the related accumulated depreciation for the embedded items that are the subject of this proceeding.

The Commission is also allowing for the amortization of the embedded balances. It expects that an eight-year amortization period should be sufficiently long to minimize the impact on rates in any jurisdiction. The order therefore requires carriers to amortize over eight years the net investment amount for the embedded balances in the subsidiary records. This shall be accomplished by monthly credits to the asset account subsidiary records and monthly debits to the accumulated depreciation subsidiary records. These monthly amounts shall be determined by dividing the subsidiary record balances by the number of months remaining in the amortization period. The difference between the debit and credit amounts so determined will be charged to Account 6565, Amortization Expense—Other. At the end of the eight-year amortization period, when the balances in the subsidiary records have been fully amortized, use of the subsidiary records shall be discontinued.

Ordering Clause

It is ordered, That under the authority contained in sections 4(i), 4(j), 220 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 220 and 405 the subject petitions for reconsideration *are granted to* the extent and subject to the conditions described herein.

List of Subjects 47 CFR Part 32

Uniform system of accounts for telecommunications companies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-27790 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-450, RM-6403]

Radio Broadcasting Services; Moulton, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Moulton, Alabama, as that community's first local FM service, in response to comments filed by L. Lynn Henley. The petitioner, Moulton Broadcasting Company, Inc. ("MBC"), failed to file comments reiterating its intention to apply for the channel, if allotted. Therefore, the proposal by MBC has been dismissed. The coordinates for Channel 276A at Moulton, Alabama, are 34-31-10 and 87-15-48. *See* 53 FR 38307, September 30, 1988. With this action, the proceeding is terminated.

DATES: This rule is effective January 11, 1990. The window period for filing applications on Channel 276A at Moulton, Alabama, will open on January 12, 1990, and close February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Moulton, Alabama, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 88-450, adopted November 8, 1989; and released November 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under Alabama by adding Moulton, Channel 276A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28211 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-491; RM-6371; RM-6550]

Radio Broadcasting Services; Vacaville and Middletown, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237B1 for Channel 237A at Vacaville, California, and modifies the Class A license of Quick Broadcasting, Inc., for Station KUIC(FM), thereby providing the area surrounding that community with additional FM service. See 53 FR 43246, October 26, 1988. Channel 237B1 may be used at the petitioner's suggested site at coordinates 38-27-30 and 121-58-22, or at its alternately suggested site at coordinates 38-27-44 and 122-04-56. (See also, **SUPPLEMENTARY INFORMATION,** *Infra.*) With this action, the proceeding is terminated with respect to RM-6371 only.

EFFECTIVE DATE: January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Report and Order, MM Docket No. 88-491, adopted November 13, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

An additional proposal filed in this proceeding on behalf of Joe L. and L. Ann Gross, seeking the allotment of a Class A FM Channel to Middletown, California, is the subject of a *Further Notice of Proposed Rule Making* and will be resolved separately.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended under the entry of Vacaville by removing Channel 237A and adding Channel 237B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28209 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-68, RM-6382]

Television Broadcasting Service; Clermont and Cocoa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 18- for Channel 68 at Clermont, Florida, and substitutes Channel *68 for Channel *18- at Cocoa, Florida, in response to a petition filed jointly by Brevard Community College, licensee of noncommercial educational TV Station WRES-TV, Channel *18-, Cocoa, and Press Television Corporation, licensee of commercial TV Station WKCF-TV, Channel 68, Clermont. See 54 FR 13534, April 4, 1989. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-68, adopted November 20, 1989, and released November 28, 1989. The full text of this Commission decision is available during business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments, is amended for Florida as follows: under Clermont, delete Channel 68 and add Channel 18-; and under Cocoa, delete Channel *18- and add Channel *68.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocationss Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28210 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1529 and 1552

[FRL-3693-2]

Acquisition Regulation; Clarification of Cost-Reimbursable Type Contracts for Determining the Availability of State and Local Tax Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action amends the Environmental Protection Agency (EPA) Acquisition Regulation (EPAAR) to clarify Contractor responsibility under cost-reimbursable type contracts for determining the availability of State and local tax exemptions and obtaining such exemptions, when available. The action is necessary to ensure Contractors do not unnecessarily pay State and local taxes for which an exemption is available. This action places the responsibility for determining the availability of an exemption on Contractors.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW., Washington, DC 20460, attn: Joseph Nemargut, Jr., Telephone (202) 382-5019.

SUPPLEMENTARY INFORMATION:

A. Background

Under cost-reimbursable type contracts, the Environmental Protection Agency (EPA) may authorize a contractor to purchase equipment needed in performance of a contract. Generally in such cases, title to the equipment vests immediately in the EPA. State and local governments may offer contractors and subcontractors exemptions from the payment of State and local taxes, such as a State sales tax on such purchases. The availability of such exemptions depends upon the particular State or local law involved.

This rule places responsibility on contractors to determine the availability of State and local tax exemptions and obtain such exemptions when available. Under the Federal Acquisition Regulation, the EPA may not reimburse Contractors and subcontractors for payment of State and local taxes for which exemptions were available.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule merely clarifies Contractor

responsibility for determining the availability of State and local tax exemptions, and obtaining such exemptions, when available. Reimbursement for payment of State and local taxes for which exemptions are available is already prohibited under the Federal Acquisition Regulation, regardless of the size of the entity.

E. Public Comments

The EPA published a notice of proposed rulemaking detailing these changes in the **Federal Register** at 54 FR 37081, on September 6, 1989. No comments were received. Therefore, this rule is being finalized without change.

List of Subjects in 48 CFR Parts 1529 and 1552

Government procurement, Taxes, Solicitation provisions and Contract clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as follows:

1. Part 1529 is added to 48 CFR chapter 15 to read as follows:

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.
1529.401–70 Cost-reimbursable type contracts.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines under FAR 31.205–41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401–70 Cost-reimbursable type contracts.

Contracting Officers shall insert the clause at 1552.229–70 in all solicitations and contracts when it is anticipated a cost-reimbursable type contract shall be used or a contractor or subcontractor shall be reimbursed for materials at cost.

PART 1552—[AMENDED]

2. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

3. Part 1552 is amended by adding section 1552.229–70 to read as follows:

1552.229–70 State and local taxes.

As prescribed in 1529.401–70, insert the following clause:

State and Local Taxes (Nov 1989)

In accordance with FAR 29.303 and FAR 31.205–41, the Contractor or any subcontractor under this contract shall not be reimbursed for payment of any State and local taxes for which an exemption is available. The Contractor is responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available. The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts at any tier. The Contractor shall notify the Contracting Officer if problems arise in obtaining a State and local tax exemption. The contractor may seek a waiver by the Contracting Officer from this requirement if the administrative burden of seeking an exemption appears to outweigh the potential savings to the Government.

(End of clause)

Dated: November 20, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89–28284 Filed 12–1–89; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM–145G; Amdt. No. 172–117]

Hazardous Substances; Correction

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This action is necessary to correct inadvertent errors that appeared in the final rule RSPA published in the **Federal Register** on Tuesday, August 21, 1989 (HM–145G; 54 FR 34666).

EFFECTIVE DATE: This amendment is effective December 4, 1989.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366–4488, Standards Division, Office of Hazardous Materials Transportation, RSPA, 400 7th Street SW., Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424–9346 or in Washington, DC (202) 382–3000.

SUPPLEMENTARY INFORMATION: On August 21, 1989, RSPA published a final rule under Docket HM–145G. That final rule contained some inadvertent errors in the appendix to 49 CFR 172.101, entitled "List of Hazardous Substances and Reportable Quantities", which this document corrects. The reportable quantities for "Dimethyl sulfate*" and "Formaldehyde*" were incorrectly listed as 10 pounds. Additionally, the reportable quantity for "Chloromethane" was incorrectly listed as 1 pound. The correct reportable quantity for all three of these materials is 100 pounds.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous substances.

In consideration of the foregoing, 49 CFR part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; Pub. L. 99–499 and 49 CFR part 1, unless otherwise noted.

Appendix to § 172.101 [Amended]

2. In "Table 1—Hazardous substances Other than Radionuclides" of the Appendix to § 172.101, which is entitled "List of Hazardous Substances and Reportable Quantities", the "Reportable Quantity (RQ) Pounds (Kilograms)" column entry for "Chloromethane", "Dimethyl sulfate*" and "Formaldehyde*", respectively, is revised to read "100 (45.4)".

Issued in Washington, DC on November 28, 1989 under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–28245 Filed 12–1–89; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 54, No. 231
Monday, December 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–89–12]

Petition for Rulemaking; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 1, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. 26050, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on November 28, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26050
Petitioner: Dale A. Smith
Regulations Affected: 14 CFR § 61.155.
Description of Petition: To allow any military crewmember performing crewmember duties at a station which would allow direct observation of both pilots, flight, engine, pneumatic, hydraulic, electric, and navigation instruments as well as monitoring all two way radio calls to be able to log "other pilot time" provided individual holds category, class, and instruments ratings for the aircraft in which he is flying.
Petitioner's Reason for the Petition: The petitioner believes this would better serve the public interest in that it would allow a greater inception of airline pilots into the public sector without draining as many military pilots from national defense. It would also save each individual pilot applying for an ATP under this rule to forgo up to 500 hours of general aviation flying.

[FR Doc. 89–28261 Filed 12–1–89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 81

[Docket No. A–88–19; AD–FRL–3693–5]

RIN 2060–AC33

Prevention of Significant Deterioration for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period extension.

SUMMARY: This notice extends for 60 days the public comment period for the proposed revisions to the maximum allowable increases (increments) for particulate matter under the requirements for prevention of significant deterioration (PSD) in 40 CFR 51.166 and 40 CFR 52.21. The proposed revisions were published on October 5, 1989 (54 FR 41218). The EPA is extending the deadline at the request of the Utility Air Regulatory Group (UARG), a group consisting of 65 electric utilities, the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association. Electric utilities are potentially affected by the proposed revisions to the PSD regulations.

DATES: The public comment period will now end on February 5, 1990.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (LE–131), Attn: Docket No. A–88–19, Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dan deRoeck at (919) 541–5593.

Dated: November 29, 1989.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–28340 Filed 12–1–89; 8:45 am]

BILLING CODE 6560-40-M

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40 CFR Part 80

[FR 13641–1]

Regulation of Fuels and Fuel Additives; General Requirements for Determination of Gasoline Metal Content

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This action announces EPA's intent to propose a testing procedure for the determination of metal content in gasoline by the use of X-ray spectrometry and possibly other analytical techniques. The primary intent of the rule will be to expand the scope of methods already approved for the determination of lead content, those being the standard atomic absorption method, the automated atomic absorption method, and the X-ray spectrometry method utilizing a tungsten tube. The method to be proposed will

expand the scope of X-ray spectrometry procedures currently allowed for lead determination in gasoline (52 FR 257, January 5, 1987) and may allow the use of several techniques not currently approved by EPA, including the use of an X-ray technique utilizing internal standards and, possibly, other unrelated methods. Depending on the comments received as a result of this Advanced Notice of Proposed Rulemaking (ANPRM), EPA may also include within the scope of the rule other metallic elements found in gasoline. Furthermore, this rule is a new approach to the approval of laboratory procedures dealing with metal content determination in gasoline, in that it addresses method equivalence and the requirements of a fully operational quality assurance program and not individual procedures for the use of specific equipment.

DATE: Comments should be submitted on or before February 2, 1990.

ADDRESS: Copies of the information relative to this ANPRM are available for inspection in public docket A–89–12 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:30 to Noon and 1:30 to 3:30 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to: Director, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475–8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545(f)(1)) prohibits, after March 31, 1977, any fuel or fuel additive manufacturer from first introducing into commerce, or increasing the concentration in use of, any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(3) requires any manufacturer to cease to distribute in commerce certain fuels and fuel additives not later than September 15, 1978. These fuels and fuel additives are any which were first introduced into commerce or increased in concentration in use prior to March 31, 1977, and after January 1, 1974, and which would otherwise have been prohibited under section 211(f)(1). On July 28, 1981, EPA published an interpretive rule (46 FR 38586) defining the term "substantially similar" found in section 211(f)(1). Among other things, the rule placed limits on the presence of certain elements in fuels and fuel additives.

Furthermore, the use of leaded gasoline in motor vehicles equipped with catalytic converters ("catalysts") as part of their emission control systems can render the catalysts inoperative. Therefore, such vehicles are designed (and labelled) to operate exclusively on unleaded gasoline and the introduction of leaded fuel into those vehicles by certain persons is prohibited (40 CFR 80.22). To ensure that fuel represented as unleaded does not contain lead in excess of the maximum established by rule (i.e. 0.05 gram of lead per U.S. gallon (gpg) of gasoline (40 CFR 80.2(g)) the Administrator has established approved testing procedures (40 CFR part 80, Appendix B). The rule to be proposed would amend the approved procedures (which utilize a manual atomic absorption method, an automated atomic absorption method, and X-ray fluorescence spectrometry with a tungsten target tube) to include other methods. The addition of this rule would allow greater flexibility and efficiency in the analysis of gasoline lead content.

The purpose of this ANPRM is two-fold. The Agency desires information on any analytical techniques which may be utilized to obtain quantitative information on metal content in gasoline in order to determine what X-ray fluorescence methods or other analytical methods, as well as what elements in addition to lead, should be included within the scope of the proposed rulemaking. Secondly, the Agency is attempting to determine which quality assurance procedures and quality assurance limits would assure adequate data for the techniques (and species) covered by the rule.

The rule will be a new approach. In previous rules, explicit procedures have been outlined for a specific type of lead determination technique. In proposing this rule, EPA will attempt to use method equivalence to confirm the efficacy of a technique. Any procedure for which it could be demonstrated that the data obtained is equivalent to data obtained by previously accepted methods would be considered to be equivalent or within the scope of the rule.

Data gathered utilizing any laboratory technique within the scope of the rule will be acceptable, if certain specified quality assurance procedures are performed and the results of such procedures fall within specified limits of acceptability. Currently, the Agency believes these limits would be 95 percent confidence limits. As such, they can be expected to be exceeded, on the average, 1 time in 20 when no problems exist during the analyses. Hence, the limits need not be considered absolute limits that, if exceeded, require corrective action. In addition, the proposed rule would address sample handling to ensure that metal concentration or matrix content does not change before testing begins.

Other Agency-approved analytical techniques to determine lead content in gasoline have required that three types of quality assurance tests would be performed on a regular basis. These include duplicate testing (an additional test of an aliquot of the sample), testing of standards (samples containing known amounts of lead such as those provided by the National Bureau of Standards), and spiked sample testing (analysis of a previously tested sample to which a known amount of lead has been added). The accuracy and repeatability required by EPA in the already approved procedures are as follows: (1) The difference between duplicates should not exceed 0.005 gpg or a relative difference of 6%. (2) Standards tested should agree with 10% of the nominal value of the standard. (3) Spiked samples should have a percent recovery of 100% ±10%.

Before such a rule is proposed, a number of questions must be answered concerning the scope of the rule and the acceptability of an equivalency approach to this type of rulemaking. In addition, EPA would like to perform correlation tests with several laboratories involved.

Request for Comments: To aid the Agency in preparing the proposed rule, we encourage comments on all aspects of X-ray fluorescence spectrometry (XRF) as well as any other appropriate analytical techniques for determining metal content in gasoline. In particular, responses are requested to the following questions.

(1) What variety of XRF and other analytical instruments, appropriate for the determination of metal content in gasoline, exist within the industrial and scientific community? What reproducibility, repeatability, and accuracy are achievable using these instruments? (A complete report of the work done to acquire the above quality assurance data including the procedures used, the raw data itself, and a description of the calculations used in analyzing the data should be submitted.) What degree of inteference and matrix effects from other materials is expected with these machines when testing for metallic elements in gasoline? Are the quality assurance techniques mentioned herein adequate to discern this interference?

(2) What should be the scope of such a proposed rule? What criteria should be used to demonstrate equivalence to already accepted techniques? What type of instruments should be considered within the scope? Could elements other than lead be included in the proposed rule? If so, what screening procedures for interfering elements would be required? To what range or ranges of concentration should the rule apply?

(3) Are duplicates, spiked samples, and standards sufficient to confirm the adequacy of a procedure's reliability? How frequently should these quality assurance tests be performed? Should any additional quality assurance procedures be included in such a rule? Are all three of these quality assurance procedures necessary? Are 95% confidence limits appropriate?

(4) Currently the quality assurance limit for the spiked samples is 100% recovery ±10%. The limit for the standard is the nominal value ±10%. EPA is considering changing these limits. Whereas the deviation between the measured and true concentrations for the standards is equal to the bias of the particular instrument combined with the precision of a single measurement, for the spiked sample, the percent recovery should be equal to 100 plus the bias of the method combined with the bias associated with the spiking process combined with the precision associated with the combination of (1) the difference between two measurements and (2) the variability associated with the spiking process. Therefore, should the limits on the spiked samples be larger than 10 percent? If so, what should the limits be for spiked samples?

In addition, the Agency is requesting laboratories that utilize procedures which may fall under the scope of this rule to volunteer to be participants in correlation testing and/or to submit any quality assurance information available on possible analytical methods.

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Authority: Sec. 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 and 7601.

Dated: November 22, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–28285 Filed 12–1–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89–20]

Definition of Shipper and Availability of Mixed Commodity Rates

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The proposed rule in this proceeding, published October 4, 1989 (54 FR 40891), would amend the Commission's tariff and service contract rules to define the term "shipper" and to address the availability of mixed commodity rates. Time for filing comments on the Notice of Proposed Rulemaking was previously extended to December 4, 1989. The Asia North America Eastbound Rate Agreement, the South Europe/U.S.A. Freight Conference, and the "8900" Lines now have requested a 30 day extension, until January 3, 1990, for filing comments. The request is based on the complexity of the issues raised by the proposed rule, and the need for all conference members to thoroughly examine all aspects of the proposed rule, and the need for all conference members to thoroughly examine all aspects of the proposed rule so as to submit complete comments with alternative suggestions. The request is supported by the Transpacific Westbound Rate Agreement, the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic & Gulf Freight Conference, the U.S.A.-North Europe Rate Agreement, and the North Europe-U.S.A. Rate Agreement. This notice extends the time for filing comments to the Notice of Proposed Rulemaking to January 3, 1990.

DATE: Comments due January 3, 1990.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–28244 Filed 12–1–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–530; RM–6901, RM–6948]

Radio Broadcasting Services; Ashdown and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually-exclusive petitions for rule making in the state of Arkansas. The first, filed on behalf of KARQ Radio, Inc., licensee of Station KARQ(FM), Channel 221A, Ashdown, Arkansas, seeks to substitute Channel 223C3 for Channel 221A at Ashdown, and to modify the facilities of Station KARQ(FM). Additionally, Channel 225A is proposed as a substitute for Channel 224A at DeQueen, Arkansas, licensed to Jay W. and Anne W. Bunyard (Bunyard Broadcasting, Inc.), for Station KDQN–FM, to accommodate the Ashdown modification proposal. The second proponent, Bunyard Broadcasting, Inc., seeks to substitute Channel 225C3 for Channel 224A at DeQueen and to modify the facilities of Station KDQN–FM accordingly. Coordinates used for Channel 223C3 at Ashdown are 33–41–56 and 94–07–24. Those for DeQueen are 34–01–57 and 94–19–43. The proposals are 42 kilometers apart, whereas 43 kilometers is required between second adjacent Class C3 channels. Each proponent desires modification at its existing transmitter site. Unless the spacing deficiency can be remedied, a comparative analysis of the proposals will be required.

DATES: Comments must be filed on or before January 18, 1990, and reply comments on or before February 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: KARQ Radio, Inc.: David M. Silverman and Robert G. Scott, Jr., Esqs., Cole, Raywid & Braverman, 1919 Penn. Ave., NW., Suite 200, Wash., DC 20006; and Bunyard Broadcasting, Inc.: Eugene T.

Smith, Esq., 715 G St., SE Wash., DC 20003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-530 adopted November 8, 1989, and released November 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28212 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-531; RM-6946]

Radio Broadcasting Services; Helena, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Delta Broadcasting, Inc., licensee of Station KCRI-FM, Channel 276A, Helena, Arkansas, seeking the substitution of FM Channel 276C3 for Channel 276A and modification of its license accordingly. Coordinates for this proposal are 34-32-50 and 90-36-40.

DATES: Comments must be filed on or before January 18, 1990, and reply comments on or before February 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 2033 M St., NW., Suite 207, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-531 adopted November 8, 1989, and released November 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28213 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-529; RM-6947]

Radio Broadcasting Services; Wynne, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of East Arkansas Broadcasters, Inc., licensee of Station KWYN-FM, Channel 224A, Wynne, Arkansas, seeking the substitution of FM Channel 223C3 for Channel 224A and modification of its license accordingly. Coordinates for this proposal are 35-11-59 and 90-43-23.

DATES: Comments must be filed on or before January 18, 1990, and reply comments on or before February 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Eugene T. Smith, Esq., 715 G Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-529, adopted November 9, 1989, and released November 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28216 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-532, RM-7010]

Radio Broadcasting Services; Brawley and El Centro, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Brawley Broadcasting Company, licensee of Station KWST(FM), Channel 233B, Brawley, California, seeking to change the community of license for Channel 233B from Brawley to El Centro, California, and to modify its license accordingly. Coordinates used for this proposal are 32-48-27 and 115-32-18.

DATES: Comments must be filed on or before January 18, 1990, and reply comments on or before February 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-532 adopted November 8, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28218 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-534, RM-7037]

Radio Broadcasting Services; Buffalo and Vine Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Larue County Broadcasting, permittee of Station WRZI(FM), Channel 288A, Buffalo, Kentucky, seeking to change the community of license for Channel 288A from Buffalo to Vine Grove, Kentucky, and to modify its permit accordingly. Coordinates used for this proposal are 37-43-09 and 86-01-13.

DATES: Comments must be filed on or before January 19, 1990, and reply comments on or before February 5, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Keith Reising, Owner, Larue County Broadcasting, 1680 Hwy 62E, Corydon, IN 47112.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-534, adopted November 13, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28219 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-536, RM-7064]

Radio Broadcasting Services; Ashley, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William V. Constine, proposing the allotment of FM Channel 223A to Ashley, Michigan, as that community's first FM broadcast service. Canadian concurrence will be requested at coordinates 43-11-12 and 84-28-30.

DATES: Comments must be filed on or before January 19, 1990, and reply comments on or before February 5, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21701. (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-536, adopted November 13, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28215 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-528, RM-7045]

Radio Broadcasting Services; Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Heart of Dixie Broadcasting, Inc., seeking the allotment of Channel 232A to Hatteras, North Carolina, as the community's second local FM service. Channel 232A can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 35-12-54 and West Longitude 75-41-30.

DATES: Comments must be filed on or before January 18, 1990, and reply comments on or before February 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, President, Heart of Dixie Broadcasting, Inc., 2557-E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-528, adopted November 8, 1989, and released November 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28214 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-535, RM-6980]

Radio Broadcasting Services; Elizabeth City, NC and Chesapeake, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edge Broadcasting Company, licensee of State WMYK(FM), Channel 229C, Elizabeth City, North Carolina, proposing the change of community of license for Channel 229C at Elizabeth City to Chesapeake, Virginia, and the modification of its license accordingly. The proposal will not require a change in Station WMYK(FM)'s present transmitter site, which is located at coordinates 36-32-57 and 76-11-21.

DATES: Comments must be filed on or before January 19, 1990, and reply comments on or before February 5, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: William M. Barnard, Esquire, Pamela C. Cooper, Esquire, McFadden, Evans & Sill, 1220 19th Street, NW., Suite 501, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-535, adopted November 13, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28220 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-527, RM-7044]

Radio Broadcasting Services; Valley City, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ingstad Broadcasting, Inc., seeking the substitution of Channel 266C1 for Channel 265A at Valley City, North Dakota, and the modification of its license for Station KLPR to specify the higher powered channel. Channel 266C1 can be allotted to Valley City in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 kilometers (5.1 miles) southwest to avoid a short-spacing to Station KBHP, Channel 266C1, Bemidji, Minnesota. The coordinates for this allotment are North Latitude 46-50-52 and West Longitude 98-03-02. Canadian concurrence is required since Valley City is located within 320 kilometers of the U.S.-Canadian border. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 266C1 at Valley City or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 19, 1990, and reply comments on or before February 5, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, Esq., Fisher, Wayland, Cooper and Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-527, adopted November 8, 1989, and released November 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28217 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

49 CFR Parts 393 and 571

[NHTSA Docket No. 88-14, Notice 2]

RIN 2127-AC53

Federal Motor Vehicle Safety Standards; Parts and Accessories Necessary for Safe Operation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Termination of rulemaking.

SUMMARY: Mr. W.A. Barr submitted a petition to NHTSA concerning the devices which connect heavy truck tractors and trailers. According to the petitioner, present designs of the lock of the fifth wheel on tractors and the kingpin on trailers make it possible for the driver to obtain what is called a "high hitch," or false latch, when the driver attempts to connect a trailer to a tractor. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. After evaluating the petition, NHTSA concluded that there was a reasonable possibility that the order requested in the petition would be issued at the conclusion of a rulemaking proceeding, and published a notice of its decision to grant the petition in the **Federal Register**. The notice also requested comments on several issues concerning high hitches. However, after analyzing all available information, including comments received in response to the notice, the agency is unable to conclude that the safety benefits of a standard for kingpin performance to eliminate high hitches would be sufficient to justify promulgating such a requirement. Accordingly, the rulemaking is terminated. This notice is being issued jointly with FHWA, since some of the issues relate to its possible regulation of vehicles currently in use as well as to this agency's regulation of newly manufactured vehicles.

FOR FURTHER INFORMATION CONTACT: NHTSA: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5274. FHWA: Mr. Robert Hagan, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2981.

SUPPLEMENTARY INFORMATION: Mr. W.A. Barr submitted a petition to NHTSA concerning the devices which connect tractors to trailers. According to the petitioner, present designs of the kingpin on trailers and the lock of the fifth wheel on tractors make it possible for the driver to obtain what is called a "high hitch," or false latch, when the driver attempts to connect a tractor to a trailer. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. According to the petitioner, the accidents which have occurred from high hitches are not frequent, but usually are very serious when an automobile strikes an uncontrolled trailer which has separated from a tractor.

Mr. Barr characterized his petition as one requesting the agency to commence a proceeding to determine whether to issue an order concerning notification and remedy of a defect in equipment that relates to motor vehicle safety. The petitioner also requested that NHTSA issue a standard for the kingpin which will not permit a high hitch. The petitioner stated that this may also mean changes to the fifth wheel locks. Mr. Barr stated that one possible approach would be to make the bottom diameter of the kingpin larger than the diameter of the recess in the lock so that the hinged lock cannot be closed if the bottom of the kingpin is placed in the recess during the hitching process.

As part of its efforts to evaluate Mr. Barr's petition, NHTSA contacted several manufacturers of fifth wheels about high hitches. The agency was advised by some manufacturer representatives that it is possible to false latch most of the designs on the

market. It was generally contended, however, that it is the responsibility of the truck driver to conduct an inspection to ensure a proper connection. NHTSA believes, based on discussions with heavy truck fleet managers, that a typical estimate for high hitches is about two or three per year for a fleet of one thousand trucks, and that most separations occur before the truck reaches the public highway. The agency is unaware of any data concerning injuries resulting from false latching.

NHTSA published a notice in August 1988, granting the petition and requesting comments. 53 FR 31378 (August 18, 1988). The agency received eleven responses, including comments from all four major fifth wheel manufacturers and seven large users of fifth wheels. None of the commenters supported the creation of a new Federal motor vehicle safety standard to address false latching.

The commenters' objections focused on the infrequency of high hitches, and the fact that many cases of high hitching are a result of the driver's failure to visually confirm the latching of the kingpin to the fifth wheel. This visual confirmation is recommended by all major fifth wheel manufacturers. In addition, NHTSA notes that the Federal Motor Carrier Safety Regulations, at 49 CFR 392.7, require a driver to confirm that the coupling device is functioning in good order. The commenters also raised concern about the costs of complying with a new standard for kingpins, particularly if existing trailers were required to be retrofitted with the new kingpin. Commenters also expressed concern about the compatibility of existing fifth wheels with a new kingpin design, suggesting that mismatched equipment might actually result in an increase in false latching incidents. In addition, three fifth wheel manufacturers indicated that they had models available which presently contain a kingpin height-sensing arrangement as part of the locking mechanism, which is designed to prevent high hitches.

Discussions between NHTSA staff and representatives of fifth wheel users and manufacturers after the agency had prepared the notice granting the petition indicated that significant progress is being made toward the development and availability of more fifth wheel units which incorporate means for sensing the position of the kingpin in relation to the fifth wheel. The discussion also indicated that there are proprietary systems currently under development by fifth wheel manufacturers which should further reduce the number of high hitches.

NHTSA believes that the industry's efforts to improve fifth wheel designs should be effective in reducing the number of high hitches without the need for new kingpin designs and the resulting concerns about compatibility between new and existing equipment.

The accident data discussed in the August 1988 notice indicate that high hitches do not result in a large number of accidents. These data are corroborated by data submitted by the commenters. NHTSA believes that based upon the information submitted by commenters and obtained by the agency in discussions with manufacturers and users of fifth wheels, the costs of a federal standard for kingpins seeking to eliminate false latching outweigh the potential safety benefits which would be gained from such an action. Accordingly, the rulemaking is terminated.

List of Subjects in 49 CFR Parts 393 and 571

Highways and roads, Highway safety, Imports, Motor carriers, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued November 29, 1989.

Thomas D. Larson,

Administrator, Federal Highway Administration.

Barry Felrice,

Associate Administrator for Rulemaking, NHTSA.

[FR Doc. 89-28253 Filed 12-1-89; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants: Reopening of Comment Period for Lower Keys Rabbit and Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service reopens the comment period on the proposed rule to list the Lower Keys rabbit as an endangered species, and the Squirrel Chimney cave shrimp as a threatened species, pursuant to the Endangered Species Act of 1973, as amended (Act). The required newspaper summaries for these proposals were inadvertently not published. The reopened comment period is to allow for the publication of newspaper notices and for subsequent comment.

DATE: Comments from all interested parties must be received by January 3, 1990.

ADDRESS: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1989 (54 FR 35905-35908), the Service proposed listing the Lower Keys rabbit (*Sylvilagus palustris hefneri*) as an endangered species, and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) as a threatened species, pursuant to the Act. The Lower Keys rabbit is restricted to a few keys in Monroe County, Florida, and is endangered by residential development. The Squirrel Chimney cave shrimp is found only at one site in Alachua County, Florida, where it is threatened by potential residential development. The comment period for the proposed rule opened on August 30, 1989, and closed on October 30, 1989.

Section 4(b)(5)(D) of the Act requires that a summary of proposed listing regulations be published in a newspaper of general circulation in the area in which the species occurs. The newspaper summaries for the Lower Keys rabbit and the Squirrel Chimney cave shrimp were apparently lost during mailing and were not published. The Service is reopening the comment period for the proposal to list those species in order to publish newspaper summaries and to receive any resulting comments.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: November 22, 1989.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 89-28254 Filed 12-1-89; 8:45 am]

BILLING CODE [illegible]

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 54, No. 231
Monday, December 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 1, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- National Agricultural Statistics Service
- Fruit, Nut, and Specialty Crops
- None
- On occasion; Monthly; Annually
- Farms; Businesses or other for-profit; 54,452 responses; 15,123 hours; not applicable under 3504(h)
- Larry Gambrell (202) 447–7737

Extension

- Forest Service
- Commercial use of "Woodsy Owl" symbol
- None
- Quarterly
- Businesses or other for-profit; 40 responses; 60 hours; not applicable under 3504(h)
- Janet H. Sledge, (202) 447–5060.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–28295 Filed 12–1–89; 8:45am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Travel and Tourism Administration.

Title: Survey of International Air Travelers.

Form Number: Agency—N/A; OMB—0605–0007.

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 165,600 respondents; 24,840 reporting hours. Average minutes per response is nine.

Needs and Uses: The National Tourism Policy Act directs the Department to assist in the collection, analysis, and dissemination of tourism data. This survey provides consumer marketing data on international travelers and is used to identify and analyze specific foreign travel markets. It is used by private and public sector entities in developing marketing programs.

Affected Public: Individuals.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dated: November 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–28225 Filed 12–1–89; 8:45 am]

BILLING CODE 3510–CW

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Puerto Rico Multi-unit Follow-up and Reconciliation Record.

Form Number: D–1011PR.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,750 hours.

Number of Respondents: 11,000.

AVG Hours Per Response: 15 minutes.

Needs and Uses: This operation is designed to improve coverage for multi-unit structures containing 50 or more units. Census workers will compare census address listing books prepared during the list/enumerate operation to an administrative list of residential addresses supplied by the Puerto Rico Electric Company. Any non-matched units will be reconciled and/or enumerated for the 1990 census counts.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–28223 Filed 12–1–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: U.S. Census—Age Search.

Form Number: BC–600, BC–649, BC–658.

Agency Approval Number: 0607–0117.

Type of Request: Revision of a currently approved collection.

Burden: 8,608 hours.

Number of Respondents: 51,080.

Avg Hours Per Response: BC–600. . . 12 min., BC–649. . . 6 min., BC–658. . . 6 min.

Needs and Uses: The Personal Census Services Branch in Pittsburg, Kansas, maintains the 1900–1980 Federal censuses for searching purposes. The purpose of searching is to furnish, upon request, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is furnished upon payment of the established fee to individuals for their use in qualifying for Social Security, old age benefits, retirement, court litigation, passports, insurance settlements, etc.

Affected Public: Individuals or households.

Frequency: Upon request.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–28224 Filed 12–1–89; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Final Amendment of Foreign Fishing Permits for the Bering Sea and Aleutian Islands Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final permit amendment.

SUMMARY: NOAA makes final its proposal to amend foreign fishing permits for vessels of the Governments of Japan, the Republic of Korea, Iceland, the People's Republic of China, and the Union of Soviet Socialist Republics. An additional restriction has been attached to the permits of all vessels of the above named countries currently authorized to receive Alaska pollock from the U.S. fishing vessels in the Bering Sea and Aleutian Islands (BSAI) management area. The restriction limits the authorizations of these vessels to receive any further amounts of Alaska pollock JVP for the balance of 1989.

EFFECTIVE DATE: November 27, 1989, 1:00 p.m. Alaska Standard Time.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427–2337, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: NOAA published a notice of proposed amendment of foreign fishing permits for the Bering Sea and Aleutian Islands groundfish fishery at 54 FR 43193, October 23, 1989. The notice provided 30 days for public comments until November 22, 1989.

The notice proposed to amend permits for vessels of the Governments of Japan, the Republic of Korea, Iceland, the People's Republic of China, and the Union of Soviet Socialist Republics, to restrict the authorization of vessels of these nations to receive Alaska pollock from U.S. vessels engaged in the directed fisheries for pollock in the Bering Sea and Aleutian Islands (BSAI). The proposed amendment would be consistent with the President's desire to accord favorable treatment to Poland in recognition of the advancement of democratic principles under its new government. It would be intended to ensure that Polish vessels authorized to receive Alaska groundfish in the BSAI have the opportunity to receive additional pollock from U.S. fishermen.

Subsequent to the publication of the notice of the proposed amendment, information was received from a representative of the Polish government indicating the Polish vessels would be able only to receive approximately 10,000 metric tons (mt) in addition to the amounts taken under the olympic system.

Related to the notice proposing the permit amendment was a notice of inseason action published at 54 FR 47684 on November 9, 1989. This action reapportioned and released in the Bering Sea subarea and from the 27,000 mt non-specific reserve 21,000 mt of Alaska pollock to DAP and 2,500 mt of Alaska pollock to JVP. In the Aleutian Islands subarea, 4,500 mt of pollock in excess of DAP needs were released to JVP. The above action provided for the continuation of the olympic JVP fishery until the amounts of pollock which could be needed to provide this opportunity for Polish vessels remained. In an action concurrent with the decision which is the subject of this notice, NOAA made available through reapportionment 6,518 mt of Alaska pollock for the JVP in the Aleutian Islands subarea and 3,500 mt of Alaska pollock in the Bering Sea subarea for JVP. This reapportionment to JVP is intended to provide an opportunity for Polish vessels to receive the entire balance of the pollock JVP in the Aleutian Islands subarea and at least 1,100 mt but no more than 3,500 mt of the reapportioned pollock JVP in the Bering Sea subarea, consistent with the President's desire to accord Poland favorable treatment.

Comments

Sixteen comments were received on the proposed permit amendment and six other comments addressed NOAA's intent to provide special consideration to Poland. Eleven comments supported the proposal; eleven comments did not support the proposal.

The following significant comments were received in opposition to the proposed amendment. Replies to these comments are provided with each item because specific points were made in each comment.

1. Notice or opportunity to comment on Poland's request was not given before NOAA published the **Federal Register** notice of its intention to abandon the olympic system. This action should have been discussed publicly before the North Pacific Fishery Management Council (NPFMC) in September. There was a lack of review in the public forum by the NPFMC as had been the standard operating procedure for more than 10 years.

Reply: NOAA concluded that the request from Poland was properly reviewed by the NPFMC in executive session. NOAA also employed the procedures set out in 50 CFR 611.3 to allow the public an opportunity to comment on the proposal.

2. That commenter also stated only fish which are surplus to U.S. needs could be made available to Poland, and that an intermediate company could be selected democratically, say by an RFP, and a lottery might be used to select which of the 81 U.S. vessels currently fishing would fish for the Poles.

Reply: The recent actions taken by the Alaska Region, NMFS, to assess fish in excess of domestic processors' needs and to apportion the excess between the amount needed for on-going joint venture operations and what might be required to provide Polish vessels this special opportunity for pollock takes into account fairness to olympic operations, the possibility of approval of a special Polish joint venture allocation, and the effects of this action on joint venture operations of other groundfish species.

3. There were said to be market implications for U.S. pollock block and other pollock product producers in competition with heavily subsidized Polish products in a highly competitive U.S. market. The pollock blocks produced in the Polish joint venture will not be used for Polish consumption, but will rather be sold on the U.S. market. The commenter said a Commerce report cites the sale of Polish blocks on the U.S. market in competition with U.S. production as a cause of lower U.S. prices.

Reply: NOAA believes the production to be derived from this proposal represents a minor part of the pollock block production from joint venture operations. If Polish vessels receive 10,000 mt from U.S. fishermen, this would represent less than four percent of the total production in 1988. NOAA does not believe this action will have a significant effect on domestic block prices.

4. Some claimed it is unfair to insert a preferred player into the joint venture process at this time when there has been a rapid decline in the available JVP. An effective preference has been provided to Poland between the DAP and JVP by this action. This preference ignores prices and the free market system. The proposal discriminates against other U.S. fishermen and fishing nations.

Reply: No preference has been inserted between the DAP and JVP fisheries. Polish vessels may only receive fish from U.S. fishermen (as distinguished from fishing directly in preference to JVP fishing). U.S. fishermen are not precluded from attempting to obtain contracts with Polish fishing companies. And as noted in the proposal, there is no implication of similar preferences in the future. NOAA therefore believes this proposal does not establish a new hierarchy of preferences.

5. Fishing in the "donut hole" apparently improves late in the season. Once having left the Bering Sea, it will be difficult to induce foreign vessels to return should Polish vessels be unable to take the amount made available.

Reply: The small amount made available is likely the controlling factor in any decision to return to the EEZ from the donut hole. With the large number of fishing vessels understood by NOAA to be operating in the donut hole, it is possible that one or two large vessels might be induced to return to the EEZ if such an opportunity were to arise for any amount of fish remaining.

6. U.S. catcher vessels must either sign up with the Polish operators, return to home port or lay over in Unalaska. Significant losses of crew, return on investment and fishing time will result from any layover to await availability of additional JVP should Polish vessels not take it.

Reply: The Government of Poland advised NOAA that it expected to take 10,000 mt of pollock if available. Less than 10,000 mt is expected to be available for harvest when complete catch reports are summarized. Should any remain unharvested, it would likely be a small amount, and of doubtful economic value if the associated costs of harvesting were unusually large. Therefore, decisions on whether to fish for Polish vessels, lay over and await the outcome of this action, or to return to home port are each U.S. vessel captain's to make.

7. Others claimed that NOAA legal counsel has advised the Council that it is illegal to compel U.S. fishermen to deliver their catch to any particular port or processor. Compelling fishermen to deliver to Polish processors was said to have GATT implications.

Reply: Neither this action nor the Magnuson Act restricts the export of fish or fish products to other nations or compels U.S. fishermen to deliver their catch to particular ports or processors. The so-called joint venture provisions of the Magnuson Act restrict the opportunity of foreign vessels to receive fish at sea from U.S. vessels within the exclusive economic zone (EEZ). The activities affected by this restriction are fish processing and fish transport within the EEZ. The General Agreement on Tariffs and Trade (GATT) applies to trade in raw materials or products; it does not apply to trade in services. Fish processing and fish transport are services and are not covered by GATT. Foreign fish buyers are free to buy U.S. fish or fish products—they may use a U.S. flag vessel to receive fish at sea or they may use a foreign flag vessel to receive fish in port. NOAA concludes there are no GATT implications.

8. One commenter claimed there is significantly more pollock surplus to DAP needs than NMPS has identified. Since this issue is not related to conservation or the National Security or defense, 17,018 mt should be released to JVP immediately.

Reply: NMPS did release 7,000 mt of pollock to JVP on November 9, but until the final decision was made to support the President's foreign policy objectives, 10,018 mt were held back as potentially available to Poland.

9. This proposal was claimed not to have originated with the President but rather with certain U.S. interests who stand to benefit by its approval.

Reply: This action was proposed and is now made final based on the President's foreign policy objectives and the support expressed by the Department of State and some members of Congress and the Senate.

The following comments were offered in support of the proposal. These comments were less specific than opposing comments and they are therefore addressed as a whole. Most of the comments supporting the proposal addressed its foreign policy aspects and viewed it as a significant contribution to U.S. efforts to assist Poland without burdening the Federal budget. The participation by domestic fishermen who will fish for Polish processing vessels was viewed as an active involvement of the private sector in assisting Poland. Some commenters understood that a part of the allocation would be directed toward filling Poland's immediate food needs and the balance would be used to produce hard currency for paying operational costs.

At least one supporting comment addressed some of the specific concerns voiced by opponents. The commenter stated that the procedural steps taken by NOAA in this notice provide for adequate public review of the proposal and that the Council in executive session interposed no objection to granting the Polish request. The commenter felt consideration in executive session was appropriate since the matter, he said, was related to the national security.

Decision

Based on the comments and views expressed to NOAA on this issue and the overriding foreign policy implications of a favorable decision, the Administrator, NOAA, had decided to amend the permits of vessels of all nations authorized to receive U.S. harvested fish in the BSAI.

The following final additional restriction has been applied to permits of the vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China, and the Union of Soviet Socialist Republics, effective 1 p.m. on November 27, 1989. This restriction is a revision of the proposal at 54 FR 43193 and takes into account its potential effects on other Alaska groundfish fisheries which may involve a bycatch of Alaska pollock. It allows more discretion to the Regional Director, Alaska Region, to allow achievement of the optimum yield in the Alaska groundfish fisheries of the BSAI.

Permit Restriction

(a) Restrictions on receipt of fish.

* * * * *

(3) The authorization to receive groundfish granted to all vessels of the nation named above is restricted effective 1:00 p.m. Alaska Standard Time, Novmeber 27, 1989. This restriction terminates that part of the authorization to receive Alaska groundfish by prohibiting the receipt of Alaska pollock from U.S. fishing vessels engaged in fisheries for Alaska groundfish in the Bering Sea and Aleutian Islands management area.

This restriction is imposed after providing notice and 30 days for comments under 50 CFR 611.3(1). The restriction is in accordance with foreign policy objectives of the United States. The Regional Director, Alaska Region, may suspend or modify this restriction in order to fully achieve the optimum yield for the Alaska groundfish fisheries.

* * * * *

Consistent with procedural requirements of § 611.3, the restriction was provided to the Department of State on Novmeber 27, 1989, for transmittal to the appropriate foreign nations. Appointed agents and designated representatives for fishing vessels of each affected nation were advised by telecommunicated copies of the restriction prior to its being made effective.

Dated: Novmeber 28, 1989.

James E. Douglas, Jr.

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-28247 Filed 11-28-89; 5:03 pm]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Members of the Pacific Fishery Management Council's Salmon Advisory Subpanel (SAS), representing recreational and charter fishing interests north of Cape Falcon, OR, will hold a public meeting on December 11, 1989, at 9:30 a.m., at the Governor House Executlodge, 621 South Capital Way, Olympia, WA. The SAS will develop fishery management plan amendment alternatives for the geographic distribution of the recreational harvest allocation north of Cape Falcon. A report of the amendment alternatives developed by the group will be reviewed by the Pacific Council and reported on at the Pacific Council's March 1990 meeting. These management alternatives could be incorporated in the next annual amendment cycle, resulting in the implementation of a preferred management alternative in 1991.

Comments pertaining to the geographic distribution of the recreational ocean salmon harvest allocation north of Cape Falcon will be accepted at appropriate times.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: November 28, 1989.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-28248 Filed 12-1-89; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0015, Copies of Crop and Market Information Reports, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9715.

Title: Copies of Crop and Market Information Report.

Control Number: 3038-0015.

Action: Extension.

Respondents: Futures Commission Merchants and Members of contract markets.

Estimated Annual Burden: 30 total hours.

Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Estimated average hours per response
1.40	30	30	0.167

Issued in Washington, DC, on November 28, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-28274 Filed 12-1-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Regional Hearings to Solicit Views From Public Officials and Individuals With Expertise and Interest in the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to provide comments on the development of a National Energy Strategy.

SUMMARY: These hearings will be the tenth and eleventh hearings in a series being conducted throughout the country by the Department of Energy to solicit comments from interested parties on a range of energy topics. Oral testimony at these hearings will be presented by invitation only. Written testimony can be submitted by any interested party at either the hearing site or directly to the Department of Energy, Office of Policy, Planning and Analysis, c/o Mr. Scott Neitzel, 1000 Independence Avenue SW., Room 7B-143, Washington, DC 20585. Please reference specific hearing(s) and topic(s).

These hearings are designed to solicit information, data, and analysis related to the development of national energy policy and objectives, strategies for achieving them, and the role that the Federal Government should play in

meeting national energy, economic, and environmental objectives.

The Department is interested in obtaining specific suggestions as to options and obstacles to efficient production and use of energy. Written comments may address general policies, regulations, economic incentives or disincentives, research and development needs, energy science, technology transfer, education, technical assistance, role of State and Local Government, the role of industry in energy policy development and implementation, or any other issues that would enhance the national dialogue on national energy strategy.

Dates, locations, and topics of the hearings are as follows: December 13, 1989—Washington, DC; "Energy, Defense, and National Security Interests" (role of stockpiles; role of foreign suppliers, globally and in the Western Hemisphere; international relations; energy interdependence). This hearing will be held between 9 a.m. and 3 p.m. at the Departmental Auditorium, Constitution Avenue between 12th and 14th Streets, NW., Washington, DC., December 14, 1989—Atlanta, GA; "Energy and the Environment" (global climate change, reconciling energy and environmental objectives). The hearing will be held between 10 a.m. and 4 p.m. at The Atlanta City Hall Complex, City Hall Council Chamber, 55 Trinity Avenue, second floor, Atlanta, Georgia.

All testimony submitted in conjunction with these hearings will be entered into the National Energy Strategy development record and made available to the public.

FOR FURTHER INFORMATION CONTACT:
For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, U.S. Department of Energy, 1000 Independence Avenue SW., PE-01, Washington, DC 20585, (202) 586-4767.

Linda G. Stuntz,
Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 89-28301 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-1-M

Financial Assistance Award to Hampton University (Research Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a research grant.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.14(e)(1), gives notice of its plans to award a 12-month Research Grant to Hampton University, Hampton, Virginia in the amount of $20,000.

The pending award is based on an unsolicited application for a research project entitled "Improved Pyrolysis Submodel for the Wen Fixed-Bed Gasifier Program." The major objective of this work is to develop a devolatilization model that will consider conductive resistance within large particles, the diffusion of released volatile matter to the surface of the particle, and the effect of release of volatile matter on physical properties of the coal such as porosity, density, heat capacity and thermal conductivity.

The data generated from this research could provide information on predicting coal devolatilization and sulfur behavior in the gasifier which would be of major use when generating the next generation of novel, efficient and environmentally acceptable gasifiers.

FOR FURTHER INFORMATION CONTACT:
Brenda L. Summers, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4340, Procurement Request No. 21-88MC27324.000.

Dated: November 27, 1989.

Louie L. Calaway,
Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-28296 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-01-M

Idaho Operations Office; Manville Sales Corp.

AGENCY: U.S. Department of Energy, Idaho Operations Office.

ACTION: Intent to negotiate and add new work to an existing Cooperative Agreement with the Manville Sales Corporation, Denver, CO.

SUMMARY: "Energy Conservation through Recycling of Asphalt Roofing Waste." The U.S. Department of Energy (DOE), Idaho Operations Office intends to negotiate, on a noncompetitive basis, an amendment to add new work to existing Cooperative Agreement DE-FC07-88ID12795, for an approximate increase of $102,000 and a 5 month extension of the duration with the Manville Sales Corporation, Denver, Colorado. This action is prompted by Public Law 97-577, the Federal Nonnuclear Energy Research and Development Act of 1974. The proposed project addition involves a single task. The objective is to determine the type of process equipment required to remove nails and reduce paper fibers found in old used roofing. Work completed to date in this project indicates the feasibility of including up to 20% relatively clean factory waste roofing (production scrape) in the manufacture of new shingles. It also appears feasible to recycle used roofing if it can be preprocessed to resemble the factory scrap so that the feedstock preparation procedures can be applied. Plasticizers can be used to restore some of the important asphalt properties to used roofing, but demolition impurities (particularly nails) must be effectively removed. It is also necessary to reduce the size of paper fibers in the old "felt base" roofing to more closely resemble modern fiber glass shingle stock in the presently developed recycling scheme. Both the nail removal and fiber reduction steps may influence the subsequent type and quantity of additives in the preprocessing formulation.

It is important to examine the potential of recycling used roofing by the currently developed process while the laboratory test equipment and the personnel are still available. This additional work will increase the total value of the existing Cooperative Agreement to an estimated $663,000. The authority for justification for acceptance of an unsolicited proposal is DOE Financial Assistance Rules 10 CFR part 600.14(e); (i) The application is meritorious based on the general evaluation as in paragraph (d) of 10 CFR part 600.14; and (ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, of if, as determined by DOE, a competitive solicitation would be inappropriate. The work at Manville Sales Corporation meets the purpose of Public Law 93-577 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: November 15, 1989.

J. Roger Gonzales,
Director, Contracts Management Division.

[FR Doc. 89-28297 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award to University of Maryland (Research Grant)

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of Acceptance of an unsolicited financial assistance application for a research grant.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.14(e)(1), gives notice of its plans to award a 12-month Research Grant to the University of Maryland Eastern Shore, Princess Anne, Maryland, in the amount of $32,697. This project will be cost shared at $19,880 Government and $12,817 University.

The pending award is based on an unsolicited application for research entitled "Analysis of Photographic Records of Coal Pyrolysis." With the financial assistance from DOE, the university would set up and apply a video-enhanced optical microscopy system for the observation and analysis of photographic records from rapid devolatilization experiments of single coal particles in order to provide information on particle size and characteristic times for particle product evolution, bubbling and swelling.

This project is relevant to the DOE mission of understanding the processes involved in coal devolatilization in order to help develop more efficient combustion and pyrolysis processes. The data generated would provide information on swelling dynamics associated with coal devolatilization which would be of major use when generating the next generation of char combustion codes and in the design of more efficient combustors.

FOR FURTHER INFORMATION CONTACT:
Brenda L. Summers, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4340, Procurement Request No. 21-88MC27328.000.

Dated: November 27, 1989.

Louie L. Calaway,
Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-28300 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-01-M

Bartlesville Project Office; Financial Assistance Award (Grant); To ParaMagnetic Logging, Inc.

AGENCY: Bartlesville Project Office, Department of Energy (DOE).

ACTION: Notice of non-competitive financial assistance (grant) award with ParaMagnetic Logging, Inc.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to ParaMagnetic Logging, Inc. (PML, Inc.), for the continuation of their effort entitled "Proof of Concept of Moving Through Casing Resistivity Apparatus."

Scope: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (A) and (D), the objective of this grant is ParaMagnetic Logging, Inc. to continue conducting basic research on the proof of concept of development of an apparatus that continuously measures formation resistivity while moving through well casing. The studies offer a technology that will allow operators to go back into old wells and inexpensively evaluate the well bore for additional missed oil and gas potential left behind in the pipe. Establishing the proof of the concept that formation resistivity can be measured through casing with a continuously moving and recording resistivity tool is the main objective. The results of much of the research will be useful for locating bypassed gas and oil and further reservoir evaluation.

The intended research will (1) complete the remaining scientific research to obtain sufficient information to design a workable Moving Thru Casing Resistivity Apparatus ("Moving TCRA"), (2) use existing apparatus to take data downhole with variations of the technology, (3) design and build the Moving TCRA, (4) test Moving TCRA in a test well at Halliburton Logging Services, (5) test Moving TCRA in test well(s) provided by ARCO, (6) test Moving TCRA in test well(s) provided by Mobil, and (7) transfer the learned technologies to industry, who would support the commercialization of the tool. The technology transfer to other research groups and oil operators would occur through publication and field trials.

The term of the grant is a twenty-two months period at an estimated value of $1,370,885.00. The DOE share is anticipated at $500,000.00. The remaining portion or $870,885.00 will be funded by Gas Research Institute.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-145, Pittsburgh, PA 15236, Attn: Maryann Lundgren, Telephone: AC (412) 892-4090.

Dated: November 22, 1989.

Gregory J. Kawalkin,
Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89-28298 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award to Texas Southern University (Research Grant)

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a research grant.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.14(e)(1), gives notice of its plans to award a 12-month Research Grant to Texas Southern University, Houston, Texas in the amount of $19,921.

The pending award is based on an unsolicited application for a research project entitled "Characterization of Kerogen in Green River Oil Shale." This research will attempt to assess the effect of steam pretreatment of oil shale on the quantity/quality of organic matter which can be extracted from oil shale. In addition, the research will encompass the development and application of a specialized analytical methodology for identifying the functional groups within the kerogen and dispersion of mineral matter throughout the keroges matrix.

Benefits that may result from this proposal are an enhanced understanding and characterization of fuel precursors in oil shale and extrapolation of these results to create designs for oil shale retorts which have greater yields or generate higher quality products.

FOR FURTHER INFORMATION CONTACT:
Brenda L. Summers, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4340, Procurement Request No. 21-88MC27325.000.

Dated: November 27, 1989.

Louie L. Calaway,
Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-28299 Filed 12-1-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF87-237-002, et al.]

Midland Cogeneration Venture Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 27, 1989.

Take notice that the following filings have been made with the Commission:

1. Midland Cogeneration Venture Limited Partnership

[Docket No. QF87-237-002]

On November 14, 1989, Midland Cogeneration Venture Limited Partnership (Applicant) of 100 Progress Place, Midland, Michigan 48640 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Midland, Michigan. The facility will consist of 12 combustion turbine-generators, 12 heat recovery boilers and an extraction/condensing steam turbine-generator. Thermal energy recovered from the facility will be used at the Dow Chemical Company for chemical manufacturing processes and space heating. The net electric power production capacity of the facility will be 1,340 MW. The primary source of energy will be natural gas.

The original application for certification was granted on March 12, 1987 (38 FERC ¶61,244). The current recertification is requested due to change in ownership structure. The Applicant proposes a leveraged lease transaction, which will involve an affiliate of Consumers Power Company and other utility affiliates as Owner Participants.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. United Associates of Delaware, L.P.

[Docket No. QF83-332-008]

On November 8, 1989, United Associates of Delaware, L.P. (Applicant), of Laurel Oak Corporate Center, P.O. Box 1108, Voorhees, New Jersey 08043, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at Pigeon Point, Wilmington, New Castle County, Delaware. The facility consists of five combustion turbine generating units, four heat recovery boilers and three extraction/condensing steam turbine generating units. Steam produced by the facility is sold to ICI Americas, Inc. for industrial uses. The net electric power production capacity of the facility is 17.5 MW. The primary energy source is a biomass in the form of a combination of refuse derived fuel and unprocessed municipal solid waste. The facility is currently in operation.

The certification of the original application as a small power production facility was issued on April 30, 1987 (39 FERC ¶62,106) and recertified on February 16, 1989 (42 FERC ¶62,113). The instant recertification is requested due to an ownership change. Applicant states that no electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. United Associates of Delaware, L.P.

[Docket No. QF83-332-007]

On November 8, 1989, United Associates of Delaware, L.P. (Applicant), of Laurel Oak Corporate Center, P.O. Box 1108, Voorhees, New Jersey 08043, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Pigeon Point, Wilmington, New Castle County, Delaware. The facility consists of five combustion turbine generating units, four heat recovery boilers and three extraction/condensing steam turbine generating units. Steam produced by the facility is sold to ICI Americas, Inc. for industrial uses. The net electric power production capacity of the facility is 17.5 MW. The primary energy source is a biomass in the form of a combination of refuse derived fuel and unprocessed municipal solid waste. The facility is currently in operation.

The certification of the original application as a cogeneration facility was issued on September 8, 1983 (24 FERC ¶62,286) and recertified on February 16, 1989 (42 FERC ¶62,113). The instant recertification is requested due to an ownership change. Applicant states that no electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28234 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-217-015, RP89-124-004, RP89-165-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that CNG Transmission Corporation ("CNG") on November 20, 1989, pursuant to Section 4 of the natural Gas Act, Section 12 of the General Terms and Conditions of CNG's tariff, and in compliance with Ordering Paragraph (C) of the Commission's Order Approving and Clarifying Settlement, issued October 6, 1989 in "CNG Transmission Corporation" Docket No. RP88-217-000 *et al.*, filed the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Second Substitute Thirteenth Revised Sheet No. 31
Third Substitute Thirteenth Revised Sheet No. 31
Substitute Alternate Thirteenth Revised Sheet No. 31
Substitute Alternate Substitute Thirteenth Revised Sheet No. 31
Substitute Fourteenth Revised Sheet No. 31
Substitute Seventh Revised Sheet No. 32
Second Substitute Alternate Seventh Revised Sheet No. 32
Second Substitute First Revised Sheet No. 39
Original Sheet No. 39A
Original Sheet No. 160J
Second Substitute First Revised Sheet No. 161
Substitute Original Sheet No. 161B
Substitute Original Sheet No. 161C
Original Sheet No. 161D

CNG states that these tariff sheets reflect the implementation of the provisions of CNG's take-or-pay settlement, approved by the October 6 Order. The sole purpose of the Substitute Tariff Sheet Nos. 31 and 32 is to reflect a reduction in the take-or-pay commodity surcharge from 0.31 cents per Dt or 0.28 cents per Dt for the period commencing November 1, 1989. The remaining sheets reflect the provisions of the settlement agreement.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All protests should be filed on or before December 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28241 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-168-017]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that on November 20, 1989, Columbia Gas Transmission Corporation (Columbia) tendered for filing certain revise tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2, with a proposed effective date of November 1, 1989.

Columbia states that the tariff sheets submitted (1) constitute the *pro forma* tariff sheets submitted as a part of the Stipulation and Agreement contained in the Offer of Settlement filed in the referenced dockets on June 29, 1989 (Stipulation) and approved, with certain modifications and conditions, by the Commission by its Order issued on October 19, 1989, and by Errata Notice issued on October 31, 1989 (October 19 Order); (2) contain the tariff modifications required by the Commission's October 19 Order; and (3) incorporate certain conforming changes necessitated by the other identified changes. The tariff sh .ets bear a proposed effective date of November 1, 1989.

Columbia states that the rate sheets (Sheet Nos. 16 and 16A2) incorporate the gas costs effective November 1, 1989, in accordance with the PGA compliance filing being filed concurrently with the instant filing in Docket No. TQ90-1-21-001.

Columbia requests any waivers of the Commission's Regulations, including the notice provisions of § 154.28, that may be necessary to implement the tariff sheets effective November 1, 1989. Columbia also requests a waiver of §§ 154.1 and 385.2011 of the Commission's Regulations, which require all tariff filings made after October 31, 1989, to be submitted on an electronic medium.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28236 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-167-013]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that on November 20, 1989, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 with a proposed effective date of November 1, 1989.

Columbia Gulf states that the tariff sheets submitted (1) constitute the *pro forma* tariff sheets submitted as a part of the Stipulation and Agreement contained in the Offer of Settlement filed in the referenced dockets on June 29, 1989 (Stipulation) and approved, with certain modifications and conditions, by the Commission by its Order issued on October 19, 1989, and by Errata Notice issued on October 31, 1989 (October 19 Order); (2) contain the 9tariff modifications required by the Commission's October 19 Order; and (3) incorporate certain conforming changes necessitated by the other identified changes. The tariff sheets bear a proposed effective date of November 1, 1989.

Columbia Gulf states that Rate Sheet No. 5A incorporates the gas costs effective November 1, 1989, in accordance with the Columbia Gas Transmission Corporation's (Columbia Gas) PGA compliance filing being filed concurrently with the instant filing in Docket No. TQ90-1-21-001.

Columbia Gulf requests any waivers of the Commission's regulations, including the notice provisions of § 154.28, that may be necessary to implement the tariff sheets effective November 1, 1989. Columbia Gulf also requests a waiver of § 385.2011 of the Commission's Regulations which requires all tariff filings made after October 31, 1989, to be submitted on an electronic medium.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28237 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-01-000]

Illinois Department of Mines and Minerals; Preliminary Finding

November 27, 1989.

In 1979 and 1982, the Illinois Department of Mines and Minerals (Illinois) notified the Commission that it had made six affirmative determinations

under section 503 of the Natural Gas Policy Act of 1978 (NGPA) [1] concerning gas from six wells operated by two different producers. NGPA Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence in the record upon which the determination was made.

If the Commission had taken no action with respect to the notices, the determination would have become final after 45 days under § 275.202(a) [2] of the regulations. However, the Commission advised Illinois and each applicant that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the application. Despite these and other requests for necessary additional information, neither Illinois nor the applicant has provided it.[3] As a result, none of the determinations has become final because § 275.202(b) of the regulations provides that the 45 day period for Commission review does not begin if the Commission notifies the jurisdictional agency, the purchaser, and all parties that the notice is deficient. The Appendix of this notice summarizes each determination and its deficiency.

Under § 275.202(a) the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Illinois are not supported by substantial evidence in the record upon which the determinations were made. Illinois or the applicant may, within 30 days after issuance of this preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

APPENDIX.—ILLINOIS INCOMPLETE NOTICES OF DETERMINATION

Applicant	Well name	NGPA section	FERC JD No.	Initial FERC letter	Deficiency in record	Purchaser
Hobson Oil Co.	Gillison #1	102(c)(1)(C)	80-05501	12/21/79	Insufficient Geological Data	Crystal Oil Co.
Do.	Gillison #2	102(c)(1)(C)	80-05502	12/21/79	do.	Do.
Do.	Ellis #1	102(c)(1)(C)	80-05503	12/21/79	do.	Do.
Do.	Tiffany #1-A	102(c)(1)(C)	80-05504	12/21/79	do.	Do.
Do.	Tiffany #2-A	102(c)(1)(C)	80-05505	12/21/79	do.	Do.
Joe A. Dull	Gahm Heirs #1	102(c)(1)(B)(i)	82-22990	04/23/82	Spudded Prior to 2/19/77	Trunkline Gas Co.

[FR Doc. 89-28242 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3413 (1982)

[2] 18 CFR 275.202(a) (1989).

[3] On May 17, 1989, the Commission sent a follow-up letter to Illinois and the applicants advising that the Commission might reverse the determinations if the required information was not received, and that refunds might be required.

[Docket No. RP90-44-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 27, 1989.

Take notice that on Nov. 21, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Seventh Revised Sheet No. 157
Fifth Revised Sheet No. 158
First Revised Sheet Nos. 205, 224, 229, and 231
Second Revised Sheet No. 234

With these tariff sheets, Northern Border proposes to (1) revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1 as called for by Northern Border's tariff every six months, (2) change the measurement basis of the gas transported through Northern Border's pipeline for gross heating value measured per cubic foot from saturated with water to measured per cubic foot dry, and (3) establish a floor of $25 for delinquency charges.

Northern Border states that Revised Sheet Nos. 157 and 158 reflect the revised Maximum Rate and Minimum Revenue Credit 1990 in accordance with Northern Border's tariff provisions under Rate Schedule IT-1. Northern Border proposes to decrease the Maximum Rate from 7.513 cents per 100 Dekatherm-Miles to 7.346 cents per 100 Dekatherm-Miles and increase the Minimum Revenue Credit from 3.854 cents per 100 Dekatherm-Miles to 4.330 cents per 100 Dekatherm-Miles. These revisions do not produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border states that Revised Sheet Nos. 205, 224, 229 and 231 reflect a proposed change in the measurement basis of the gas transported through its pipeline for gross heating value measured per cubic foot from saturated with water to measured per cubic foot dry. As a result of making this change, Northern Border's measurement basis will be consistent with that of Foothills Pipe Lines Ltd. (Foothills) and Northern Natural Gas Company (Northern Natural), which are the immediate upstream and downstream pipelines. Since all of Northern Border's firm transportation contracts are stated in million cubic feet (MCF) and not dekatherms, no adjustments to firm contract quantities are necessitated by this change.

Finally in Second Revised Sheet No. 234, Northern Border proposes to establish a floor of $25 for delinquency charges. If a delinquency charge is less than $25, then Northern Border would not invoice it to a Shipper. It has been Northern Border's experience since open access, that occasionally delinquency charges computed on bills paid late have been for very minor amounts. Northern Border does not believe it is reasonable or cost justified to bill delinquency charges for minor amounts of less than $25 and proposes to change its tariff accordingly.

Northern Border has requested that these revised tariff sheets be effective January 1, 1990. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Dec. 4, 1989. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary,

[FR Doc. 89-28238 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-027]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

November 27, 1989.

Take notice that on November 20, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff.

Original Volume No. 2
Original Sheet No. 2-C
Original Volume No. 1-A
Second Revised Sheet No. 405

Northwest tendered the revised sheets to provide for minimum and maximum rates for liquid processing services, as directed by the Commission in its October 19, 1989 Order Accepting Contested Settlement as Modified in the above-referenced docket number.

A copy of this filing is being served on all parties of record in this proceeding and on all customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28239 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-271-000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

November 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP90-271-000]

Take notice that on November 21, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-271-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Graham Energy Marketing Corporation (Graham), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated August 22, 1989, under its Rate Schedule IT, it proposes to transport up to 23,500 MMBtu per day equivalent of natural gas for Graham. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various points in Louisiana.

Southern advises that service under § 284.223(a) commenced September 21, 1989, as reported in Docket No. ST90-119. Southern further advises that it would transport 3,500 MMBtu on an average day and 1,277,500 MMBtu annually.

Comment date: January 8, 1990, in accordance with Standard paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-268-000]

Take notice that on November 20, 1989, Transcontinental Gas Pipe Line Company (Trasco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-268-000 a request pursuant to §§ 157.205 and 284.223 and the Commission's Regulations for authorization to transport natural gas for Texican Natural Gas Co. (Texican), a shipper, under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposed to transport on an interruptible basis up to 825,000 dt equivalent of natural gas on a peak day, 30,000 dt equivalent on an average day and 10,950,000 dt equivalent on an annual basis for Texican. Transco states that it would perform the transportation service for Texican under Transco's Rate Schedule IT. Transco indicates that it would transport the gas from receipt points in offshore Louisiana to various delivery points located in onshore Louisiana.

It is explained that the Service Commenced October 11, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-406. Transco indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP90-284-000]

Take notice that on November 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-284-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP88-6-000, a maximum of 41,200 MMBtu on behalf of Texaco Gas Marketing Inc., (Texaco) a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced October 18, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-00161, and estimates the volumes transported to by 41,200 MMBtu per day on peak day and average day, and 15,038,000 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: January 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18

CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28235 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-023]

Transcontinental Gas Pipe Line Corp.; Supplemental Compliance Filing

November 27, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 20, 1989 revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing.

Transco states that the purpose of this filing is to supplement its October 6, 1989 compliance filing in Docket No. RP88-68-020 to correct minor errors in the October 6 compliance filing and to reflect one development which has occurred since that filing regarding the settlement status of certain parties. Transco requests a waiver of any notice requirements so that the enclosed tariff sheets may become effective on the dates indicated in Appendix A.

Transco states that copies of the instant filing are being mailed to all parties served with copies of the October 6, 1989 compliance filing in Docket No. RP88-68-20. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28240 Filed 12-1-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-24-NG]

Consolidated Edison Co. of New York, Inc.; Conditional Order Granting a Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting conditional long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting Consolidated Edison Company of New York, Inc. (Con Edison), long-term authorization to import natural gas from Canada. The conditional order issued in FE Docket No. 89-24-NG authorizes Con Edison to import up to 30,600 Mcf of Canadian natural gas from Amoco Canada Petroleum Company, Ltd. (Amoco Canada), over a 15-year period beginning on the date of first delivery, in accordance with the pricing and other provisions established in the gas purchase contract submitted as part of its application. The order is conditioned upon entry of a final opinion and order by the DOE after its review of the environmental study of the impacts of the construction and operation of the transportation facilities related to this import prepared by the Federal Energy Regulatory Commission and completion by the DOE of its National Environmental Policy Act responsibilities.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 21, 1989.

Clifford P. Tomaszewski,

Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28302 Filed 12-1-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During Week of September 22 Through September 29, 1989

During the week of September 22 through September 29, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 27, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 22 through Sept. 29, 1989]

Dated	Name and location of applicant	Case No.	Type of submission
Sept. 25, 1989	Francisco A. Tomei, Ph.D., Lajas, Puerto Rico	KFA-0321	Appeal of an information request denial. If Granted: The September 6, 1989 Freedom of Information Request Denial issued by the Chief of FOI and Privacy Acts would be rescinded and Dr. Tomei would receive access to documents containing personal identifiable information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Sept. 22 through Sept. 29, 1989]

Dated	Name and location of applicant	Case No.	Type of submission
Oct.	True Company/T & T Gas Products Company, St. Louis, Missouri.	RR195-2	Request for modification/rescission. If Granted: The April 10, 1989 Decision and Order issued to the T & T Gas Products Company would be modified regarding the firm's application in the True Companies refund proceeding.
Sept. 26, 1989	Francisco A. Tomei, Ph.D., Lajas, Puerto Rico	KFA-0322	Appeal of an information request denial. If Granted: The August 23, 1989 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Dr. Tomei would receive access to personal documents maintained in the systems of records.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
9/22/89 thru 9/29/89	Crude Oil Refund Applications Received.	RF272-75697 thru RF272-75726.
9/22/89 thru 9/29/89	Atlantic Richfield Company Applications Received.	RF304-10441 thru RF304-10449.
9/22/89 thru 9/29/89.	Shell Oil Company Applications Received.	RF315-7256 thru RF315-7365.
9/25/89	G & E Food Mart	RF300-10868.
9/25/89	Bachum Gulf	RF300-10869.
9/25/89	Gaybrook Gulf	RF300-10870.
9/25/89	Rosson's Gulf	RF300-10871.
9/25/89	University Gulf	RF300-10872.
9/25/89	Wimpy's Eastland Gulf.	RF300-10873.
9/25/89	Georges APCO Service.	RF310-342.
9/25/89	Earl Hawley Oil Company.	RF307-10061.
9/27/89	Strasser Service Station.	RF307-10062.
9/27/89	Eddie's Spur Go Shop.	RF309-1372.
9/28/89	Catskill Central School District.	RF272-13
9/28/89	Stanley Huntowski	RF307-10063.

[FR Doc. 89-28303 Filed 12-1-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3692-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATE: Comments must be submitted on or before January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning and Evaluation

Title: Pretesting and Evaluation of Risk Communication Activities (EPA ICR #1552.01). This ICR requests approval for a new collection.

Abstract: OPPE will survey individual citizens, sometimes in target groups as homeowners, elderly, mothers of young children, etc., to ascertain how knowledge, awareness, attitudes, and behavior change in response to EPA's risk communication. EPA will use the survey results to refine risk communication printed materials and public service announcements, so that they will be more likely to achieve their objectives.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response. This time includes time for reviewing instructions, participating in focus groups, and completing and reviewing the collection of information needed.

Respondents: Individuals or households.

Estimated Number of Respondents: 620.

Estimated Total Annual Burden on Respondents: 535 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460,

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: November 20, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-28286 Filed 12-1-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3693-1]

Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Correction notice on docket information for guidance document comments.

SUMMARY: The Environmental Protection Agency (EPA) announced the availability of an interim final guidance document entitled Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities (54 FR 37500: September 11, 1989). This document provides guidance to RCRA facility permit applicants and writers concerning the statistical evaluation of ground-water monitoring data, pursuant to the recently promulgated requirements of 40 CFR part 264, subpart F (53 FR 39720: October 11, 1988). The docket information contained in the September 11, 1989 Federal Register notice was in error, and parties planning to submit comments on the guidance document should note the changes under the "ADDRESSES" section of this correction notice.

DATE: EPA will accept public comments until December 8, 1989. All comments must be postmarked on or before this date.

ADDRESS: Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and identified as follows: F-89-SGWA-FFFFF. Copies of the document entitled, "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities" are available for

viewing at all EPA Libraries and in the EPA RCRA Docket (M2427), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding Federal Holidays, by appointment only. Appointments can be made by calling (202) 475–9327. Copies cost 15 cents per page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487–4600: Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities. (NTIS # PB89–151–047).

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/Superfund Hotline, Office of Solid Waste (WH–563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telepone (800) 424–9346, or (202) 382–3000.

For technical information contact Jim Brown, (202) 382–4658.

Dated: November 20, 1989.

Christian R. Holmes,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 89–28287 Filed 12–1–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3693–4]

Center for Environmental Learning Advisory Board; Meeting

AGENCY: EPA Region III.

ACTION: Center for Environmental Learning Advisory Board; Meeting.

SUMMARY: The Director of the Center for Environmental Learning announces a meeting of the Center for Environmental Learning Advisory Board, December 12, 1989, in Washington, DC.

The following agenda items will be discussed:

Review 1989–90 work plan
Discuss national environmental education developments
Review special emphasis projects
Meet new Center for Environmental Learning staff member.

DATE: The meeting will begin at 10 a.m., December 12, 1989, and conclude at noon of the same day.

ADDRESS: The meeting will be in the Capitol Room, Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bonnie Smith, Director, Center for Environmental Learning (C3l00), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 (phone [215] 597–9076).

SUPPLEMENTARY INFORMATION: The Center for Environmental Learning will review and modify its 1989–90 agenda based on discussion among Board Members and availability of staff and budget.

Daniel Ryan,

Acting Director, Congressional and Intergovernmental Affairs.

[FR Doc. 89–28288 Filed 12–1–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30000/53A; FRL 3683–8]

Ethylene Bisdithiocarbamates: Receipt of Requests To Amend and Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This Notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces EPA's receipt of requests from registrants of certain technical and end-use EBDC pesticide products to amend their registrations to delete certain uses on food crops. Additionally, from certain other registrants, EPA has received requests that certain EBDC products be voluntarily cancelled. EBDC products affected by these requests contain the following active ingredients: maneb, mancozeb, metiram, nabam, and zineb. Certain of the requests include requests for provisions for the disposition of existing stocks of the affected products. Such provisions are described in the Notice. Additionally, this Notice announces that EPA intends to approve and give effect to these requests, thus as to the respective products, either cancelling such products or amending their registrations to delete certain food crop uses.

EPA's approval will be effective December 14, 1989. As of that date, all future distribution or sale, or use of affected EBDC products shall be in accordance with the terms and conditions described herein.

DATE: The cancellation or modification of registration shall be effective December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–557–1900.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Maneb, Metiram, and Mancozeb

As specifically discussed below, on September 6, 1989, the four major registrants of maneb, mancozeb, and metiram technical and end-use pesticide products submitted requests to EPA asking that 42 food crop uses of maneb, mancozeb and metiram be deleted from their product registrations. The registrants involved in these actions are Pennwalt Corporation (mancozeb and maneb), BASF Corporation (metiram), and Rohm and Haas Company, Pennwalt Corporation, and E.I. duPont de Nemours & Company (mancozeb).

In total, these registrants requested that their affected products be registered for no more than a total of 13 food uses. The crops which the registrants by their actions asked be deleted are listed below under each individual chemical.

Along with their requests, the registrants submitted amendments to labeling reflecting the deletion of uses. Additionally, the registrants submitted requests for labeling changes for technical products which would restrict the use of technical or manufacturing use products to formulation of end-use products for use only on one or more of the 13 remaining crops for which the particular parent EBDC continued to be registered.

Included in Unit II.A. is a summary of the text of the individual requests as relates to matters required to be included in this Notice pursuant to section 6(f)(1). Copies of each of the letters have been included in the public docket (OPP–30000/53) which is maintained for EBDC Special Review.

B. Nabam

In March, 1989, Rohm and Haas (the sole nabam registrant holding nabam agricultural uses) requested that all of their nabam food uses be voluntarily cancelled. A summary of the request appears in Unit II.A.; a copy of Rohm and Haas' letter is available through the EBDC Special Review Docket.

C. Zineb

In July, 1989, Microflo Company, the sole registrant of zineb technical product and the sole registrant supporting any uses of zineb, submitted a request to EPA that each of Microflo's zineb product registrations be voluntarily cancelled. A summary of Microflo's request appears below; a copy of the request has been placed in the docket for the EBDC Special Review. As of this date, sixteen other zineb registrants have requested voluntary cancellation for an additional 52 zineb products. Those requests have also been entered into the Special Review docket.

As discussed in Unit II.A., EPA expects to approve each of these requests to amend certain registrations to delete uses or to voluntarily cancel affected registrations and give effect to such actions on December 14, 1989. Additionally, EPA has considered the requests for existing stocks provisions following the effective date of these actions and its determinations are described below.

EPA is continuing its Special Review of the EBDC pesticides and will shortly issue a proposed decision affecting EBDC registered products and uses.

II. Summary of Requests

A. Maneb

On September 6, 1989, Pennwalt Corporation submitted requests to EPA that the following crops be deleted from its maneb product registrations and labels: Peppers, tomatoes, onions, beans, broccoli, cabbage, cantaloupes, watermelon, other melons, cucumbers, squash, apples, spinach, stone fruits, carrots, celery, turnips, cauliflower, Brussels sprouts, collards, mustard greens, kale, rhubarb, lettuce, and Chinese cabbage. As a result of Pennwalt's requests, the following food uses would remain on its maneb labels: almonds, bananas, potatoes, sugar beets, and sweet corn.

Pennwalt submitted applications for pesticide registration for each of its affected products and revised labeling. Revised labeling submitted for end-use products reflected the use deletions; revised labeling submitted for technical products included language that limited the use of the technical product into end-use product formulations for use only on one or more of the retained uses.

Along with its requests to delete uses, Pennwalt indicated that the new labeling would be used on all new products. Additionally, Pennwalt stated its intent not to relabel product currently released for shipment or in channels-of-trade until January 1, 1990. Pennwalt indicated that at that time, all remaining product would be relabled prohibiting the dropped uses. Pennwalt provided a confidential attachment which listed the amount of product in its control as of the date of the letter and an estimate of the amounts that might be used by January. Pennwalt asked that the EPA consider the status of growers near the end of the growing season in issuing a final order on the use deletion and label change.

Pennwalt additionally described a number of actions it intended to seek or undertake, pertaining to tolerance reductions and/or revocations, consumer and user awareness, and integrated pest management.

B. Metiram

BASF submitted similar requests to Pennwalt's on September 6, 1989. In its requests, BASF asked that use on apples be deleted from its metiram registrations and labeling. As a result of BASF's action, the only food use of its metiram products would be on potatoes.

BASF, like Pennwalt as noted above, submitted applications and revised labeling. It included similar language restricting the use of its technical products. BASF indicated that, as of January 1, 1990, "* * * all remaining product not in the hands of growers will be relabeled* * * *"

In other respects, the letters and other submitted materials were similar to the Pennwalt requests outlined above.

C. Mancozeb

On September 6, 1989, both duPont and Rohm and Haas submitted letters to EPA requesting that certain uses be deleted from their product mancozeb registrations and labels. On September 8, Pennwalt submitted similar requests for its mancozeb products. DuPont requested that the following food crop uses by deleted: Apples, crabapple, quince, pears, papayas, pineapple, carrots, celery, fennel, cucumbers, melons, squash (summer and winter), tobacco (plant bed and field), cotton (foliar), field corn, oats, barley, and rye. Rohm and Haas requested that the following crops be deleted: Apples, barley, cantaloupes, carrots, celery, corn (field, hybrid seedcorn), crabapple, cucumbers, fennel, melons, muskmelons, oats, papaya, pears, pineapples, quince, rye, squash, and watermelons. Pennwalt requested that the following food crops be deleted: cucumbers, melons, summer squash, field corn, celery, carrots, apples, pears, crabapple, and quince. As a result of these requests, the three registrants' mancozeb products remain registered for the following uses: asparagus, bananas, cranberries, figs, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes, and wheat.

Dupont stated that, as of January 1, 1990, "* * * all remaining saleable product will be relabeled* * * *" Rohm and Haas stated that, as of that date, "* * * all remaining product not in grower's hands will be relabeled* * * *"

In other respects, the letters were similar to the Pennwalt requests which are more fully described above.

D. Nabam

On March 13, 1989, Rohm and Haas submitted to the EPA a request that the food uses of its two registrations for end-use Nabam products be cancelled. Since these products have non-food uses as well, the EPA has interpreted Rohm and Haas's letter as a request that these registrations be amended to delete all food uses. Rohm and Haas indicated that it had not sold any of the product for several years. It indicated that the food uses should be immediately cancelled and did not request any existing stocks provision.

E. Zineb

On July 17, 1989, Micro-Flo Company submitted a request to the EPA that its five zineb product registrations be voluntarily cancelled. It choose this option rather than any which would have indicated an intent to reregister the pesticide products. Micro-Flo did not request an existing stocks provision for any of these products. As of this date, 10 other zineb registrants have requested voluntary cancellation for an additional 52 zineb products. Two of these zineb registrants requested existing stocks provisions.

III. Existing Stocks Determination

The EPA has reviewed the existing stocks and relabeling elements of the four technical registrants' actions and has concluded that registrants of affected maneb, metiram, and mancozeb products may proceed according to the plan they described in their requests for use deletion. The EPA has considered the amounts of stock represented to be in existence and under the control of these registrants and has determined that distribution and sale of these stocks until January 1, 1990, and their use would not be inconsistent with FIFRA. After that date, all product remaining which is not in growers' hands must be relabeled to reflect the use deletions.

Two zineb registrants, Universal Cooperatives and Dexol Industries, requested an existing stocks period. Because all uses of zineb were suspended in July, 1988, and remain suspended, no existing stocks provision is being granted.

Rohm and Haas did not request an existing stocks provision for their nabam product registrations.

IV. Conclusion

EPA has received and expects to approve each of the requests described above effective December 14, 1989, incorporating the requested actions and the decisions governing existing stocks provisions as described above.

V.—List of Affected Registrations

Active ingredient	Registrant	Product No.
Deleted Uses:		
mancozeb	du Pont	352-341
mancozeb	do	352-343
mancozeb	do	352-396
mancozeb	do	352-449
mancozeb	Rohm & Haas	707-078
mancozeb	do	707-093
mancozeb	do	707-102
mancozeb	do	707-156
mancozeb	do	707-162
mancozeb	do	707-179
mancozeb	do	707-180
maneb	Penniwalt	4581-225
maneb	do	4581-355
maneb	do	4581-359
metiram	BASF Corp.	7969-70
metiram	do	7969-71
nabam	Rohm & Haas	707-003
nabam	do	707-070
Cancelled Registrations:		
zineb	Rohm & Haas	DT480003
zineb	do	FL780008
zineb	do	KY800015
zineb	do	MD800009
zineb	do	MN830011
zineb	do	MO820011
zineb	do	OR840006
zineb	do	PA790005
zineb	do	PA800015
zineb	do	SC800008
zineb	do	VA800016
zineb	do	707-002
zineb	do	707-072
zineb	Micro-Flo	51036-23
zineb	do	51036-25
zineb	do	51036-62
zineb	do	51036-63
zineb	do	51036-148
zineb	Agway	8590-49
zineb	Chem-Nut	37586-41
zineb	do	37586-57
zineb	Dexol Ind.	192-121
zineb	do	192-146
zineb	FMC Corp.	AZ81001900
zineb	do	GA80001100
zineb	do	KY80001100
zineb	do	MD80001600
zineb	do	OR76002800
zineb	do	OR77006300
zineb	do	PA80001700
zineb	do	KY80001100
zineb	do	MD80001600
zineb	do	OR76002800
zineb	do	OR77006300
zineb	do	PA80001700
zineb	do	SC80001100
zineb	do	VA80001300
zineb	Imperial	746-34
zineb	PBI Gordon	33955-456
zineb	Universal Coop.	1386-75
zineb	do	1386-316
zineb	Wilbur Ellis	OR81006700
zineb	do	WA82005000
zineb	HR McLane	47056-63
zineb	do	47056-78
zineb	do	47056-87
zineb	do	47056-88
zineb	do	47056-90
zineb	do	47056-92
zineb	Holden Corp.	1772-55
zineb	do	1772-74
zineb	Morgro Chem.	42057-73
zineb	Colusa Cnty. Ag.	CA79011101
zineb	do	CA79011102

V.—List of Affected Registrations—Continued

Active ingredient	Registrant	Product No.
zineb	Riverside Cnty. Ag.	CA83002900
zineb	The Land, Epcot	FL82006900
zineb	Penn State Univ.	PA76000100

Dated: November 28, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-28289 Filed 12-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 89-97; DA 89-1433]

Southern California Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Southern California Area's (Region 5's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin. The Southern California Region is the third of the 55 regions in the National Plan to be accepted.

EFFECTIVE DATE: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted November 8, 1989, released November 21, 1989, accepting the Southern California Area's Plan for Public Safety. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

The Chief, Private Radio Bureau and the Chief Engineer have accepted the regional public safety plan for the Southern California Region, Region 5. The Region 5 plan is the third of its kind to be accepted and it represents the culmination of the efforts of the many public safety organizations that participated in its development.

In accepting this plan, the Commission's staff noted that the Southern California Region represented a challenge because of its large growing population and unique terrain. It said it was pleased to see restrictions on antenna heights and transmitter outputs and encouragement of use of special antenna patterns to limit each system's coverage so as to reuse these channels. It said it was especially pleased to see how Region 5 has combined small users into larger, trunked, more efficient systems. The staff said it believed the Region 5 Plan represented a careful balance of the public safety and special emergency mobile communication needs throughout the area and will result in efficient use of the newly allocated spectrum.

In 1987, the Commission established policies and rules for a National Plan for public safety services to ensure that the new six megahertz of public safety spectrum (821-824/866-869 MHz) be used effectively and efficiently for important public safety functions. The Commission established 55 regions and instructed each region to develop a plan for use of the newly allocated spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the area. After each plan is completed and approved by its regional planning committee, it must be submitted to the Chief, Private Radio Bureau, and the Chief Engineer. After the two Bureau Chiefs have formally accepted a plan, the individual public safety entities can begin applying for licensing in the new 800 MHz spectrum.

Upon release of the full text of the Order, the individual public safety entities in Region 5 may begin applying for licensing in the 821-824/866-869 MHz bands.

Action by the Chief, Private Radio Bureau and the Chief Engineer, November 8, 1989, by Order (DA 89-1433).

Ordering Clauses

It is ordered, That the Southern California Area Plan for Public Safety is accepted, subject to amendments contained in the Order. *It is further ordered*, That this proceeding is terminated.

List of Subjects in the Public Safety Plan

Public Safety, Special Emergency, Trunking, Land Mobile.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 89-28221 Filed 12-1-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 28, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following procurement forms, which are being handled under this delegated authority, have received initial board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 19, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below, Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202-452-3829).

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Reports

Report title: Request for Proposal; Request for Price Quotations

Agency form number: N.A.

OMB Docket number: 7100-0180

Reporters: Venders, suppliers

Annual reporting hours: 6,580

Report	Number of respondents	Frequency	Average hours per response
Request for proposal.	140	1 (one-time)	20
Request for price quotation.	7,560	1 (one-time)	0.5

Small businesses are affected.

This information collection is required to obtain a benefit (12 U.S.C. 244 and 248(1)) and is not given confidential treatment, unless requested otherwise by the respondent.

The Federal Reserve Board utilizes these two procurement forms in obtaining competitive proposals and contracts. Depending upon the product or services for which the Federal Reserve Board is seeking competitive bids, the vendor or supplier is requested to provide either basic price information for providing the good and/or service (Request for Price Quotation) or a document covering not only price information, but the means of performing a particular service and a description of the qualification of the contractor's staff who will perform the service (Request for Proposal).

Board of Governors of the Federal Reserve System, November 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28271 Filed 12-1-89; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

November 28, 1989.

Background: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, new Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Request for OMB approval to revise the following report:

1. *Report title:* Reports of Condition and Income

Agency form number: FFIEC 031-034

OMB Docket number: 7100-0036

Frequency: Quarterly

Reporters: State member banks

Annual reporting hours: 162,773

Estimated average hours per response: 37.644

Number of respondents: 1,081.

Small businesses are affected.

This information collection is mandatory (12. U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources

and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revisions for March 1990 affect several existing Call Report schedules and include the addition of a new schedule. Many of these revisions relate primarily to the reporting of information for risk-based capital purposes and to the collection of information relating to banks' off-balance sheet activities. The three Federal banking agencies adopted risk-based capital standards applicable to all banks under their supervision in the first quarter of 1989. In order for the agencies to compare risk-based capital positions to the minimum standards and to monitor the progress of banks in attaining these standards, the FFIEC is proposing to introduce a new risk-based capital schedule, Schedule RC–R. However, approximately 85 percent of all banks would have to complete only three of the nine items on the new schedule. Also, more complete data on banks' off-balance sheet activities would be collected on the revised Schedule RC–L, primarily to aid the banking agencies in their supervisory efforts. A memorandum item on Schedule RC–E is proposed to collect information on banks' deposits denominated in foreign currencies. On Schedule RC, surplus related to perpetual preferred stock would be reported separately from common stock surplus. The different risk weights attached to securities issued by different government entities for risk-based capital purposes have created the need to propose more detailed identification of bank holdings of U.S. Government agency and corporation obligations and of securities issued by states and municipalities in the U.S. on Schedule RC–B. Amounts of taxable securities issued by states and political subdivisions would be reported in an additional memorandum item on Schedule RC–B. A new memorandum item on Schedule RC–M is proposed to collect information on the noncumulative amounts reported in "Perpetual preferred stock and related surplus" on Schedule RC. If approved, the proposed revisions would be effective as of the March 31, 1990, report date.

Board of Governors of the Federal Reserve System, November 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28272 Filed 12–1–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 010]

Supplemental Funding to Cooperative Agreement With Emory University Availability of Funds for Fiscal Year 1990

Introduction

The Centers for Disease Control (CDC) announces the availability of FY 1990 funds to support methodologic research regarding medical, epidemiologic, and public health issues related to malaria chemoprophylaxis and to support operational research regarding the analysis and reporting of national nutrition surveillance data.

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Eligible Applicant

Assistance will be provided only to the International Health Track (IHT), Master of Public Health (MPH) Program, Emory University. Since 1985, Emory University and CDC have been working together to provide practical work experience for students using the combined academic, financial, and operational resources of the two institutions. The program is designed to improve the public health and management competence of the students through the promotion of a multidisciplinary approach to public health problems of developing countries. This includes the study of nutritional problems, population pressures, infectious diseases, environmental and occupational problems, and self-induced risk behavior. The supplemental funding will be used to further address issues already included in the scope of the existing agreement. No other applications are solicited or will be accepted.

The MPH Program at Emory University is uniquely qualified and possesses the only body of expertise which can complete urgently needed methodological research to address medical, epidemiologic, and public health issues regarding malaria chemoprophylaxis in less than one year and can carry out operational research targeted at the analysis and reporting of nutrition surveillance data. More specifically:

A. This cooperative effort builds on existing relationships and cooperative activities between CDC and the MPH Program at Emory University which cannot be replicated by any other institution.

B. Daily on-site interchange and close collaboration are required between the participating parties because of (a) the nature and intricacies of the problem with malaria drug resistance and acute neurologic reactions; (b) the need for frequent access to the national nutrition surveillance database maintained by CDC; and (c) the measures required to design study protocols, implement appropriate investigations, and develop guidelines in less than one year.

C. The MPH Program at Emory University has the epidemiological expertise and clinical pharmacology expertise needed to resolve issues surrounding malaria chemoprophylaxis, including CDC-trained faculty in malaria control.

D. Emory University has been designated as the major national site for training Methodist missionaries for work in third world nations and these workers urgently need up-to-date information on malaria chemoprophylaxis.

Availability of funds

It is expected that $83,096 in funds will be available to support this supplement during Fiscal Year 1990 which is the final year of the current cooperative agreement between the MPH Program at Emory University and CDC. It is anticipated that the supplement will be awarded approximately January 15, 1990. No additional extension of the project period is anticipated.

Purpose

By providing this supplement to the existing cooperative agreement, CDC and Emory will be able:

A. To increase Emory University's current level of methodologic and operational research activities regarding malaria chemoprophylaxis and nutrition surveillance.

B. To develop operational research capacity to define risk factors for malaria chemoprophylactic drugs and to draft guidelines for their use.

C. To develop staff who can strengthen malaria/tropical disease and nutrition surveillance instruction in the international public health curriculum.

D. To strengthen collaborative linkages between CDC and Emory University in the area of operational research in malaria and nutrition surveillance.

Program Requirements

The specific Cooperative Activities and Evaluation Criteria are set forth in the Request for Application (RFA) Program Announcement.

EO 12372 Review

The application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission

The International Health Track, Master of Public Health Program, Emory University is to submit an original and two copies of the application Form PHS–5161–1 (Rev. 3/89) to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Program Announcement Number 010 and contact the following:

Business

Carole J. Tully, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, GA 30305, Telephone (404) 842–6795

Technical

Stanley Foster, M.D., International Health Program Office, Centers for Disease Control, 1600 Clifton Road, NE., MS F–03, Atlanta, GA 30333, Telephone (404) 639–1750.

Dated: November 22, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–28273 Filed 12–1–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86D–0210]

Action Levels for Residues of Heptachlor and Heptachlor Epoxide in Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that on August 25, 1989, the agency established new action levels and revised a number of its existing action levels for residues of the cancelled pesticide heptachlor and its metabolite heptachlor epoxide in food and feed. FDA has taken this action in response to the Environmental Protection Agency's (EPA's) recommendation that FDA establish action levels to replace tolerances that were revoked by EPA. The EPA action level recommendations are intended to cover unavoidable residues of this pesticide and its metabolite in the food and feed commodities affected by the revocation of the tolerances. Additionally, based upon EPA's recommendations, FDA has revised or reaffirmed the previously established FDA action levels for unavoidable residues of heptachlor and heptachlor epoxide in other food and feed commodities that had not been subject to EPA tolerances or food additive regulations. Attachment A and Attachment B.9 of FDA Compliance Policy Guide (CPG) 7141.01 have been revised to reflect these changes. FDA is also announcing that (1) the entry for the pesticide Aramite has been deleted from Attachment A of CPG 7141.01 because EPA revoked the zero tolerances for Aramite and (2) the residue definition and analytical notes have been clarified for the chlordane action levels listed in Attachment B.3 of CPG 7141.01.

DATES: Written comments by February 2, 1990.

ADDRESSES: Written comments concerning the new and revised action levels for heptachlor and heptachlor epoxide residues, the deletion of Aramite from FDA guidelines, and the analytical changes in the chlordane action level listing should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of Attachment A, Attachment B.3, and Attachment B.9 in FDA's CPG 7141.01 should be submitted to the Industry Activities Section (HFF–328), Food and Drug Administration, Rm. 5425, 200 C Street SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 1989 (54 FR 33690), EPA issued a final rule revoking the tolerances under 40 CFR 180.104 and interim tolerances under 40 CFR 180.319 for the pesticide heptachlor and its metabolite heptachlor epoxide in raw agricultural commodities. EPA revoked these tolerance regulations because all food and feed uses of heptachlor had previously been cancelled.

EPA recommended in the preamble to its final rule and in a letter dated July 21, 1989, from the Acting Assistant Administrator for Pesticides and Toxic Substances, EPA, to the Associate Commissioner for Regulatory Affairs, FDA, that FDA establish the specified action levels to replace the tolerances. These action levels provide enforcement guidance to FDA field offices for unavoidable residues of this environmentally persistent pesticide that can continue to occur in the food and feed which had previously been covered by tolerances. They were recommended by EPA in accordance with EPA's policy statement on the revocation of tolerances for cancelled pesticides, which was published in the **Federal Register** of September 29, 1982 (47 FR 42956). Additionally, in the preamble of the final rule and in its letter, EPA recommended revision or reaffirmation of FDA's previously established action levels for unavoidable residues of heptachlor and heptachlor epoxide in food and feed that were not subject to EPA tolerances.

On August 25, 1989, FDA established the new and revised action levels for unavoidable residues of heptachlor and heptachlor epoxide in food and feed that were recommended by EPA. Attachment B.9 of CPG 7141.01, which listed the heptachlor and heptachlor epoxide action levels previously established by FDA, has been revised to reflect these changes. The action levels now in effect for residues of heptachlor and heptachlor epoxide, either individually or in combination, are as follows:

Commodities [1]	Action level (parts per million)
Animal Feed, processed	0.01
Artichokes	0.01
Asparagus	0.01
Brassica (cole) leafy vegetables.	0.01
Bulb vegetables	0.01
Cereal grains	0.01
Citrus fruits	0.01
Cottonseed	0.02
Cucurbit vegetables	0.01
Eggs	0.01
Figs	0.01
Fish	0.3 (edible portion)
Fruiting vegetables	0.01
Grass forage, fodder, and hay.	0.01
Leafy vegetables (except Brassica).	0.01
Legume vegetables	0.01
Milk	0.1 (fat basis)
Nongrass animal feeds	0.01
Peanuts	0.01
Pineapple	0.02
Pome fruits	0.01
Rabbit	0.02 (fat basis) [2]

Commodities [1]	Action level (parts per million)
Root and tuber vegetables	0.01
Salsify tops	0.01
Small fruits and berries	0.01
Stone fruits	0.01
Sugarcane	0.01

[1] Action levels for crop groups cover all commodities specified in 40 CFR 180.34(f).
[2] For rabbits that contain insufficient fat to conduct an analysis on a fat basis, analyze the rabbits on a whole product basis (edible portion) and assuming a 10-percent fat content use 0.02 part per million as the action level.

In establishing the action levels above, FDA advised its field offices that these as well as other established action levels for unavoidable pesticide residues in food and feed are not binding on the courts, the public (including the regulated food and feed industries), or FDA. The agency stressed in its memorandum to the field offices that enforcement action can be considered at levels below any of the action levels and that enforcement action is not necessarily required when any of the action levels is exceed.

FDA has also revised Attachment A of CPG 7141.01 which previously listed enforcement levels that the agency may have used for heptachlor and heptachlor epoxide residue findings in those food and feed commodities previously listed in 40 CFR 180.104 as having zero tolerances. Because EPA revoked these zero tolerances, FDA enforcement guidance was no longer needed; thus, Attachment A of CPG 7141.01 was revised by deleting the guidance for heptachlor and heptachlor epoxide from the listing.

The agency is also announcing that two relatively minor changes have been made in CPG 7141.01. First, the entry for Aramite has been deleted from Attachment A of CPG 7141.01 (which lists enforcement levels for pesticides having a zero tolerance). Including Aramite on this listing is no longer necessary because, in the Federal Register of May 4, 1988 (53 FR 15822), EPA issued a final rule that revoked the zero tolerances for Aramite residues in various foods and feeds. FDA field offices were informed on May 30, 1988, that the Aramite listing should be deleted from Attachment A of CPG 7141.01; however, this action was not considered sufficiently significant to warrant issuing at that time a revision of Attachment A of CPG 7141.01 and a notice in the Federal Register announcing the change.

Second, the residue definition and "analytical notes" for measuring chlordane residues that appeared in the listing of the chlordane action levels under Attachment B.3 of CPG 7141.01 have been changed. The change clarified the residue definition and chlordane reference standards to be used by FDA laboratories when measuring chlordane residues in food or feed either as total chlordane or as a summation of individual isomers of chlordane.

Copies of EPA correspondence recommending new and revised action levels for heptachlor and heptachlor epoxide, revised Attachment A, Attachment B.3, and Attachment B.9 of CPG 7141.01, and the memorandum to FDA field offices notifying them of establishment of the heptachlor and heptachlor epoxide action levels and revocation of the zero tolerances for Aramite are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may, on or before February 2, 1990, submit written comments, data, and information regarding the action levels and the other specified changes in CPG 7141.01 to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28258 Filed 12-1-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0502]

Drug Export; Actonel™ (Etidronate Disodium Tablets, USP 400 MG; Didronel®; Diphonex) Tablets and Fortipan™ (Calcuim Carbonate Tablets, USP 500 MG; Felonel) Tablets in a Sequential Therapy Package Consisting of Five Blister Cards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norwich Eaton Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Actonel™ (Etidronate Disodium Tablets, USP 400 mg; Didronel®; Diphonex) Tablets and Fortipan™ (Calcium Carbonate Tablets, USP 500 mg; Felonel) Tablets in a sequential therapy package consisting of five blister cards to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, N.Y. 13815-0191, has filed an application requesting approval for the export of the drug Actonel™ (Etidronate Disodium Tablets, USP 400 mg; Didronel®; Diphonex) Tablets and Fortipan™ (Calcium Carbonate Tablets, USP 500 mg; Felonel) Tablets in a sequential therapy package consisting of five blister cards to Canada. This product in conjunction with adequate calcium intake is indicated for the prevention and treatment of bone loss observed in patients with postmenopausal osteoporosis while reducing the risk of osteoporotic fractures. The application was received and filed in the Center for Drug Evaluation and Research on October 30, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 14, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 24, 1989.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 89-28257 Filed 12-1-89; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Edward T. Warner, Director, New York District. The topic to be discussed is small business relationships with FDA.

DATES: The meeting will be held on Monday, December 18, 1989, 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Plainedge Public Library, 1060 Hicksivlle Rd., Massapequa, NY 11756.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Assistance Program, Food and Drug Administration, 830 Third Avenue, Brooklyn, NY 11232, 718-965-5528.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: November 27, 1989.

Alan L. Hooting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28259 Filed 12-1-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee; Advisory Commission on Childhood Vaccines

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: Advisory Commission on Childhood Vaccines.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Dated: November 28, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28255 Filed 12-1-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Administration on Aging; Statement of Organization, Functions and Delegations of Authority; Correction

Correction Notice. Part D. chapter D (Office of Human Development Services) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (45 FR 64253), July 7, 1988, as amended most recently at 54 FR 21673, May 19, 1989, is amended to restate chapter D.20 Functions, paragraph E. Administration on Aging (AoA), with the following statement: Administers a program of grants to American Indians, Alaskan Natives, and Native Hawaiians under title VI of the Older Americans Act (45 CFR 1328).

Section DG, Administration on Aging (54 FR 21673, 5/19/89) is amended as follows:

DG.10. Organization. The title of the Office is amended to read: Office for American Indian, Alaskan Native and Native Hawaiian Programs.

DG.20. Functions. C. The title of the Office is amended to read: Office for American Indian, Alaskan Native and Native Hawaiian Programs.

DG.20. Functions. D. Office of State and Community Programs (DGN), third paragraph, line 38, references Office of State and Tribal Progams, is amended to read: Office of State and Community Programs.

Dated: November 27, 1989.

James E. Larson,

Acting Deputy Assistant, Secretary for Information and Resources Management.

[FR Doc. 89-28207 Filed 12-1-89; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

November 21, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Salinan Nation, c/o Ms. Jenny McLeod, P.O. Box 610546, San Jose, California 95161-1315, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on October 10, 1989, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information

BEST COPY AVAILABLE

submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627–MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343–3592.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 89–28291 Filed 12–1–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–010–00–4320–02]

Boise District Advisory Council; Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Advisory Council will meet December 14, 1989, to discuss the proposed expansion of the Saylor Creek Bombing Range in the district's Bruneau, Jarbidge, and Owyhee Resource Areas. As time permits, the council will also discuss the status of the Owyhee Resource Management Plan, NERCO DeLamar Company's proposed Stone Cabin mine near Silver City, status of the Birds of Prey research project, Silver City lot sales, and illegal dumping on public lands.

DATE: The meeting will begin at 8:30 a.m. on Thursday, December 14. It will be held in the district office conference room.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, BLM Boise District (208) 334–9661.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89–28202 Filed 12–1–89; 8:45 am]

BILLING CODE 4310–86–M

[Alaska AA–48675–0]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48675–0 has been received covering the following lands:

Copper River Meridian, Alaska

T. 11 N., R. 10 W.,
Sec. 35, E. 1/2.
(320 Acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48675–0 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1989, subject to the terms and conditions cited above.

Dated: November 22, 1989.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 89–28260 Filed 12–1–89; 8:45 am]

BILLING CODE 4310–JA–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity; Portugal

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Portugal

Project: 150–HG–008—$25,000,000, Attention: Nuno Luz de Almeida/J. Santos Rodrigues, Instituto Nacional de Habitacao, Avenida Columbano Bordalo Pinheiro, 5–8th Floor, 1000 Lisboa, Portugal, Telex No.: 64641 INH P. Telephone No.: 351/(1) 726–8209 or 2606, Telefax No.: 351/(1) 726–0729

Interested investors should submit their bids to the Borrower's representative on December 19, 1989 no later than 10:00 a.m. (EST). Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. David Leibson, Housing and Urban Development Officer, Embaixada dos Estados Unidos, Avenida das Forcas Armadas, 1507 Lisboa Codex, Lisbon, Portugal, Telex No.: 12528 AMEMB P, Telephone No.: 351/(1) 726–6600 or 6659, 8880, 8670, Telefax No.: 351/(1) 726–9109

Sean P. Walsh, Agency for International Development, PRE/H, Room 401, SA–2, Washington, D.C. 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication)

For your information the Borrower is currently considering the following terms:

(a) *Amount:* U.S. $25 million.
(b) *Term:* Up to 30 years.
(c) *Grace Period:* 10 years on repayment or principal.
(d) *Interest Rate:* Fixed, or variable, or variable with option to convert to fixed.
(e) *Closing Date:* Estimated 60 days from date of selection of investor.
(f) *Fees:* Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficial owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign

partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: November 30, 1989.

Fredrik A. Hansen,

Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 89–28357 Filed 12–1–89; 8:45 am]

BILLING CODE 6116–01–M

Senior Executive Service

November 21, 1989.

On November 15, 1989 the following persons were added as members of the Performance Review Board: Barry Goldberg, George Hill, Barbara Turner.

Dated: November 21, 1989.

Jan Barrow,

Executive Secretary, Performance Review Board.

[FR Doc. 89–28290 Filed 12–1–89; 8:45 am]

BILLING CODE 6116–01–M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on December 14–15, 1989 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street NW., Washington, DC. The Committee will (1) continue its earlier discussions on the amount and type of scientific review that is appropriate for A.I.D.'s science and technology projects; and (2) begin its consideration of research priorities for A.I.D. in the area of global warming and climate change. The Committee will also hear brief reports from A.I.D. on forestry research and biological diversity.

The meeting will begin at 8:30 a.m. on both days and adjourn at 5:00 p.m. on December 14 and 12:00 noon on December 15. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875–4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

Dated: November 15, 1989.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 89–28265 Filed 12–1–89; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on November 15, 1989, a proposed consent decree in *United States* v. *Bridge City, Texas, et al.*, Civil Action No. B–89–0978–CA, was lodged with the United States District Court for the Eastern District of Texas, Beaumont Division. The complaint filed by the United States sought injunctive relief and civil penalties for alleged violations by defendant Bridge City of the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit issued by the U.S. Environmental Protection Agency ("EPA") pursuant to section 402(a) of the Clean Water Act, 33 U.S.C. 1342(a), and two administrative orders issued by EPA. The proposed consent decree requires Bridge City to comply with the Clean Water Act and its NPDES permit in the future and imposes a $20,000 penalty for past violations.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bridge City, Texas, et al.*, Department of Justice reference number 90–5–1–1–3267.

The proposed consent decree may be examined at the Office of the United States Attorney, 700 North Street, Suite 102, Beaumont, Texas 77701 and at the Region VI Office of the U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. The proposed decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division at the Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530, or may be obtained by mail from the Environmental Enforcement Section, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Bridge City*, DOJ #90–5–1–1–3267, and enclose a check in the amount of $1.60 payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28269 Filed 12–1–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; General Motors Corp.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *General Motors Corporation*, Civil Action No. C–3–89–444 was lodged with the United States District Court for the Southern District of Ohio on 11/7/89. The action was filed pursuant to the Clean Air Act, 42 U.S.C. 7413, against General Motors Corporation ("GM").

The complaint alleges unlawful levels of emissions of volatile organic compounds ("VOC") were released from automotive motor mount paint coating lines at the General Motors Inland Division facility in Dayton, Ohio. The Consent Order enjoins GM from resuming the operation of these lines until GM is in full compliance with the Ohio State Implementation Plan's VOC limits. It also requires GM to pay a civil penalty of $32,389.00. The decree also requires GM to reduce VOC emissions, to levels below those permitted in the Ohio State Implementation Plan, at is Vandalia, Ohio facility.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States*

v. *General Motors Corporation*, DOJ Reference No. 90–5–2–1–1041.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 200 West Second Street, Room 602, Dayton, Ohio, 45402 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of $1.10 (ten cents per page copying costs) payable to the "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28286 Filed 12–1–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Mid-State Disposal, Inc. et al.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on November 15, 1989, a proposed consent decree in *United States* v. *Mid-State Disposal, Inc., et al.*, Civ. Act. No. 89–C–1017–S, was lodged with the United States District Court for the Western District of Wisconsin. This action was brought pursuant to the cleanup of the Mid-State Disposal Superfund site ("Site") located in Cleveland Township, Marathon County, Wisconsin, and for the recovery of costs expended by the United States in connection with the Site.

The consent decree is entered into between plaintiffs, the United States and the State of Wisconsin ("State"), and defendants, Weyerhaeuser Company, Steel King Industries, Felker Brothers Corporation and Mid-State Disposal, Inc., (collectively "Settling Defendants"). The Settling Defendants are among the parties potentially responsible for the contamination at the Site. The Decree requires the Settling Defendants to finance, design, and perform a $19 million remedial action at the Site, which includes requiring the Settling Defendants, *inter alia*, to: (1) Place soil/clay caps over the three waste disposal areas; (2) collect and dispose of leachate from the Site; (3) install a system to collect and vent gas released from the Site; (4) monitor the groundwater in the shallow and deeper portions of the aquifer; (5) install an alternate water supply for residences in an area down-gradient from the Site; and (6) perform long term operation and maintenance of each aspect of the remedy, other than for the alternate water supply. The Decree also requires the Settling Defendants to pay any oversight costs incurred by EPA and/or the State in the future.

Under the Decree, the State will perform the long term operation and maintenance for the alternate water supply. The State will also contribute $992,000 to the financing of the remedial action.

In addition, the Decree provides that if the monitoring wells identify further groundwater contamination, then the United States Environmental Protection Agency, in consultation with the State, may require the Settling Defendants to perform further study of the groundwater at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Mid-State Disposal, Inc., et al.*, DJ Ref. # 90–11–3–392.

The proposed consent decree may be examined at the office of the United States Attorney, Room 420, 120 N. Henry Street, Madison, Wisconsin 53703 and at the Region V Office of the Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW. Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $7.00 for copying costs payable to the "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28287 Filed 12–1–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89–99; Exemption Application No. D–7751 et al.]

Grant of Individual Exemptions; Kendall Homes, Inc. Defined Benefit Pension Plan & Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kendall Homes, Inc., Defined Benefit Pension Plan & Trust (the Pension Plan) and Profit Sharing Plan & Trust (the P/S Plan together, the Plans), Located in Flanders, New Jersey [Prohibited Transaction Exemption 89–99; Exemption Application No. D–7751]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) A proposed series of loans, originated within a five year period, by the Plans to Kendall Homes, Inc., the sponsor of the Plans, and its affiliated real estate development corporations, and (2) the personal guarantee of such loans by K.G. Hunnewell, Jr., a party in interest with respect to the Plans, provided that:

(a) Eastbank, N.A., a qualified, independent fiduciary acting for the Plans, expressly approves each loan as being in the best interests of the Plans and their participants and beneficiaries and monitors each loan to ensure that the Plans' interests are safeguarded,

(b) All terms and conditions of the loans are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties;

(c) The loans represent in the aggregate no more than 25% of the total assets of the Plans as of the date of each such transaction; and

(d) The aggregate total of all such loans made by either the Pension Plan or the P/S Plan will not exceed 25% of the assets of the particular Plan at the time of any individual loan transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 14, 1989 at 54 FR 38004.

Temporary Nature of Exemption: This exemption is effective only for those loans which are originated within five years of the date on which this exemption is published in the Federal Register.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Carstens Health Industries, Inc., Employees Profit Sharing and 401(k) Plan (the Plan), Located in Chicago, Illinois [Prohibited Transaction Exemption 89–100; Exemption Application No. D–7959]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed sale by the Plan of certain real estate limited partnership units (the Units) to Carstens Health Industries Inc., the sponsor of the Plan and as such, a party in interest with respect to the Plan, provided the sales price is the greater of $226,300 or the fair market value of the Units at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 2, 1989 at 54 FR 40541/40542.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Jay A. Baier, Ltd., Employees Profit Sharing Plan and Trust (the Plan), Located in Chicago, Illinois [Prohibited Transaction Application 89–101; Exemption Application No. D–8026]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of undivided 25% and 50% interests in two real estate partnerships to Jay A. Baier, a disqualified person with respect to the Plan.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 2, 1989 at 54 FR 40542.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Western Telecom Profit Sharing and Employee Savings Plan (the Plan), Located in Orem, Utah [Prohibited Transaction Exemption 89–102; Exemption Application No. D–8052]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain real property located in Kamas, Utah to Kamas Woodland Telephone, Inc., a party interest with respect to the Plan; provided that all terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 14, 1989 at 54 FR 38009.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

James E. McIntosh, M.D., P.A. Defined Benefit Pension Plan (the Plan), Located in Tyler, Texas [Prohibited Transaction Exemption 89–103; Exemption Application No. D–8077]

Exemption

The sanctions resulting from the applicaion of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain unimproved real property located in Missoula County, Montana to James E. McIntosh, M.D., a disqualified person with respect to the Plan; provided that all terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Monday, October 2, 1989 at 54 FR 40543.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a

[1] Because Jay A. Baier is the only participant in the Plan and the Employer is wholly owned by Jay A. Baier, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of November, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-28304 Filed 12-1-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Renewal

The Arts and Artifacts Indemnity Panel Advisory Committee is being renewed for an additional two years.

The Chairman, National Endowment for the Humanities, a member of the Federal Council on the Arts and the Humanities has determined that the renewal of this committee is necessary and in the public interest in connection with the performance of duties imposed upon the Federal Council on the Arts and Humanities by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: November 28, 1989.

Catherine Wolhowe,

Advisory Committee, Management Officer.

[FR Doc. 89-28230 Filed 12-1-89; 8:45 am]

BILLING CODE 7536-01-M

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for December 1, 1989, and published in the **Federal Register** on November 17, 1989, at pages 27843-44, has been cancelled. The meeting was to review applications for Humanities Projects in Libraries and Archives, submitted to the Division of General Programs.

Catherine Wolhowe,

Advisory Committee, Management Officer.

[FR Doc. 89-28232 Filed 12-1-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 90 Funds for Financial Assistance (Grants) To Support Research at Educational Institutions and the Exchange of Information; Announcement of Revised Funding Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of June 30, 1989 (54 FR 27778), the Nuclear Regulatory Commission announced the availability of FY90 funds to support research grants to educational institutions. That announcement stated that the ceiling for such grants was approximately $1,200,000, with about $400,000 of that amount available for new grants in FY90. Unexpected budget reductions have now reduced these figures to $1,000,000 and $200,000, respectivley. The remainder of the June 30, 1989 announcement, with the exception of the revised funding figures, remains in effect. All other elements of the program remain unchanged, e.g., application procedures, deadlines, and technical topic areas.

ADDRESS: Nuclear Regulatory Commission, Attn: Grants Officer, Division of Contracts and Property Management, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Malone, (301) 492-4297 or Ms. Yvonne Terry, (301) 492-4210.

Dated at Bethesda, MD this 28th day of November, 1989.

For the U.S. Nuclear Regulatory Commission.

Elois J. Wiggins,

Grants Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 89-28277 Filed 12-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 14-16, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on October 18, 1989.

Thursday, December 14, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will comment on items of current interest.

8:45 a.m.-11:15 a.m.: Access Authorization at Nuclear Power Plants (Open/Closed)—The Committee will review and report on the proposed final rule, 10 CFR part 73, Access Authorization Program at Nuclear Power Plants. Representatives of the NRC staff will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Safeguards Information for specific nuclear plants.

11:15 a.m.-12 noon: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1 p.m.-2:30 p.m.: Evaluation of Operational Data (Open)—The Committee will hold a briefing and discussion regarding the basis for and use of Systematic Analysis of Licensing Performance (SALP) ratings.

2:45 p.m.-3:45 p.m.: Technical Training and Qualification Program for NRC Employees (Open)—The Committee will be briefed by NRC staff representatives regarding technical training facilities and programs for NRC employees.

3:45 p.m.-4:15 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports of ACRS subcommittee activities in designated areas, including thermal-hydraulic phenomena.

4:15 p.m.-5 p.m.: ACRS Practices and Procedures (Open)—The Committee will discuss proposed changes in ACRS practices and procedures regarding the ACRS Bylaws and the Memorandum of Understanding between the NRC staff and the Committee.

5 p.m.-5:30 p.m.: Selection/Appointment of ACRS Members/Officers—(Open/Closed)—The Committee will discuss the status of candidates proposed for appointment to the Committee and the qualifications of nominees for ACRS officers during Calendar Year 1990.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, December 15, 1989

8:30 a.m.-10 a.m.: Containment Performance Improvement Program (Open)—The Committee will review and report on a proposed NRC program to evaluate the potential for containment improvements to deal with severe accidents at nuclear power plants. Representatives of the NRC staff will participate, as appropriate.

10:15 a.m.-12 noon: Coherence in the NRC Regulatory Process (Open)—The Committee will meet with NRC's Acting Executive Director for Operations to discuss the ACRS report of November 24, 1989, Coherence in the Regulatory Process and related matters.

1:30 p.m.-2:30 p.m.: Fitness for Duty (Open)—The Committee will review and report on the proposed revision to 10 CFR part 55 to require compliance with NRC's fitness-for-duty programs and conforming modification to the Commission's enforcement policy.

2:45 p.m.-5:30 p.m.: Preparation of ACRS Reports to the NRC (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, December 16, 1989

8:30 a.m.-12:30 p.m.: Preparation of ACRS Reports to the NRC (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting as noted above to discuss safeguards and security information at nuclear plants (5 U.S.C. 552b(c)(3)) and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call ot the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 7:30 a.m. and 4:15 p.m.

Dated: November 8, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-28276 Filed 12-1-89; 8:45 am]

BILLING CODE 7590-01-M

Licensing Support System Advisory Review Panel

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94-463, 86 Stat. 770-776) the U.S. Nuclear Regulatory Commission (NRC) announces the establishment of the Licensing Support System Advisory Review Panel ("Panel"). The Commission has determined that the establishment of this Panel is necessary and in the public interest in order to obtain advice and recommendations on the design, development, and operation of the Licensing Support System (LSS). The LSS is an electronic information management system containing information relevant to the Commission's high-level waste licensing proceeding.

The purpose of the Panel is to provide advice and recommendations on topics, issues, and activities related to the design, development, and operation of the LSS. Panel membership will be primarily drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, the nuclear industry, and environmental groups. These interests will provide a balanced representation of the different viewpoints, concerns, and needs related to the siting and licensing of the HLW repository, and the use of the LSS in that process. The Patent and Trademark Office and the National Archives, Federal agencies with expertise and experience in electronic information management systems, will also participate on the Panel. The Commission has appointed the NRC representative on the Panel, John C. Hoyle, as Chairman.

The first meeting of the Panel is scheduled for December 19 and 20, 1989 in Reno, Nevada at the Peppermill Hotel. The meeting will begin at 9 a.m. and conclude at 5 p.m. each day. The agenda for the first meeting will include a discussion of the status of LSS activities, establishment of the protocols for Panel activities, an overview of how the LSS capture stations will operate, and future agenda items. This meeting will be open to the public.

The establishment of the Panel will be effective upon the filing of its charter with the Commission and with the standing committees of Congress having legislative jurisdiction over the NRC.

For further information on the LSS Advisory Review Panel, including details related to its first meeting, contact Francis X. Cameron, Deputy LSS Administrator, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301-492-4030.

Dated at Rockville, Maryland this 29th Day of November, 1989.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-28275 Filed 12-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 40 to Facility Operating License No. DPR-21 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to add the maximum number of spent fuel assemblies that can be stored in the spent fuel pool. This limit reflects the expanded capacity of the spent fuel pool.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 23, 1988 (53 FR 32124). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated June 24, 1988, (2) Amendment No. to License No. DPR-21, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 28th day of November 1989.

For the Nuclear Regulatory Commission.

Michael L. Boyle,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28278 Filed 12-1-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service; Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Personnel Policy and Program Development Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the adopting authority relative to the performance of the senior executive.

Office of Personnel Management.

Constance Berry Newman,

Director.

The following have been selected as regular members of the Performance Review Board of the Office of Personnel Management:

Bill R. Phillips [Chair], Deputy Director, Office of Personnel Management
James B. Lancaster, Jr., Associate Director for Administration
Claudia Cooley, Associate Director for Personnel Systems and Oversight
Curtis J. Smith, Associate Director for Career Entry and Employee Development
Dona Wolf, Director of Policy
Frank D. Titus, Assistant Director for Financial Control and Management
Steven R. Cohen, Regional Director, Chicago Region
William G. Norton, Director, Office of Executive Administration.

The following have been selected as ad hoc members of the Performance Review Board of the Office of Personnel Management:

Anthony F. Ingrassia, Deputy Associate Director for Personnel Systems and Oversight
Leonard R. Klein, Deputy Associate Director for Career Entry and Employee Development.

[FR Doc. 89-28256 Filed 12-1-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 28, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for Bristol Myers Shares Scores, No Par Value (File No. 7-5614)
Americus Trust for Hewlett Packard Shares Scores, No Par Value (File No. 7-5615)
Americus Trust for Philip Morris Shares Scores, No Par Value (File No. 7-5616)
Americus Trust for Eastman Kodak Shares Scores, No Par Value (File No. 7-5617)
Americus Trust for Coca-Cola Shares Scores, No Par Value (File No. 7-5618)
Americus Trust for GTE Corp. Shares Scores, No Par Value (File No. 7-5619)
Americus Trust for American Express Shares Scores, No Par Value (File No. 7-5620)
Americus Trust for Xerox Shares Scores, No Par Value (File No. 7-5621)
American Fructose Corp.
Class B Common Stock, $.10 Par Value (File No. 7-5622)
Americus Trust for Amoco Shares Scores, No Par Value (File No. 7-5623)
Bond International Gold, Inc.
Ordinary Shares, Common Stock, $.01 Par Value (File No. 7-5624)
Chile Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5625)
Coeur D'Alene Mines Corp.
Common Stock, $1.00 Par Value (File No. 7-5626)
Enron Oil & Gas Co.
Common Stock, No Par Value (File No. 7-5627)
LSI Logic Corp.
Common Stock, $.01 Par Value (File No. 7-5628)
Austria Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5629)

Portugal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5630)
Potash Corp. of Saskatchewan
Common Stock, No Par Value (File No. 7-5631)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28228 Filed 12-1-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

November 28, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

AMC Government Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5556)
ACM Managed Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5557)
Acuson Corp.
Common Stock, $.0001 Par Value (File No. 7-5558)
Albany International Corp.
Common Stock, $.001 Par Value (File No. 7-5559)
Allstate Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-5560)
American Health Properties, Inc.
Common Stock, $.01 Par Value (File No. 7-5561)
American Savings, Bank, F.S.B.
Common Stock, No Par Value (File No. 7-5562)
CML Group, Inc.
Common Stock, $.10 Par Value (File No. 7-5563)
CPI Corp.
Common Stock, $.40 Par Value (File No. 7-5564)
CUC International, Inc.
Common Stock, $.01 Par Value (File No. 7-5565)
Carolco Pictures, Inc.
Common Stock, $.01 Par Value (File No. 7-5566)
Chili's, Inc.
Common Stock, $.10 Par Value (File No. 7-5567)
Colonial High Income Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7-5568)
Colonial Investment Grade Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7-5569)
Conseco, Inc.
Common Stock, No Par Value (File No. 7-5570)
Diversified Energies, Inc.
Common Stock, $1.00 Par Value (File No. 7-5571)
Edison Brothers Stores, Inc.
Common Stock, $1.00 Par Value (File No. 7-5572)
Federal Mogul Corp.
Common Stock, $5.00 Par Value (File No. 7-5573)
Franklin Principal Maturity Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5574)
Franklin Universal Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5575)
Global Income Plus Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5576)
Grace Energy Corp.
Common Stock, $1.00 Par Value (File No. 7-5577)
Healthsouth Rehabilitation Corp.
Common Stock, $.01 Par Value (File No. 7-5578)
Helvetia Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5579)
High Income Advantage Trust, III
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5580)
High Yield Income Fund, Inc.
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5581)
High Yield Plus Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5582)
Hyperion Total Return & Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5583)
Jackpot Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7-5584)
Kemper Strategic Municipal Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5585)
Lomas Mortgage Securities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5586)
MFS Income/Opportunity Trust
Shares of Beneficial Interest, No Par Value (File No. 7-5587)
MNC Financial, Inc.
Common Stock, $2.50 Par Value (File No. 7-5588)
Magnetek, Inc.
Common Stock, $.01 Par Value (File No. 7-5589)
Ogden Projects, Inc.
Common Stock, $.50 Par Value (File No. 7-5590)
Patriot Premium Dividend Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5591)
RAC Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5592)
RAC Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7-5593)
ROC Taiwan Fund
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5594)
RPS Realty Trust
Shares of Beneficial Interest, Common Stock, $.10 Par Value (File No. 7-5595)
Rexene Corp.
Common Stock, No Par Value (File No. 7-5596)
Reynolds & Reynolds Co.
Class A Common Stock, $.625 Par Value (File No. 7-5597)
Shoney's, Inc.
Common Stock, $1.00 Par Value (File No. 7-5598)
Sterling Chemicals, Inc.
Common Stock, $.01 Par Value (File No. 7-5599)
TIS Mortgage Investment Co.
Common Stock, $.001 Par Value (File No. 7-5600)
Templeton Global Governments Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5601)
Templeton Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5602)
VMS Mortgage Investment Fund
Common Stock, $.01 Par Value (File No. 7-5603)
Winchells Donut House, LP
Depositary Units, No Par Value (File No. 7-5604)
Zweig Total Return Fund
Common Stock, $.0001 Par Value (File No. 7-5605)
Federal National Mortgage Association
Warrants, No Par Value (File No. 7-5606)
First Phillipine Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5607)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28227 Filed 12-1-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 28, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Angeles Participating Mortgage Trust
Class A Shares of Beneficial Interest, No Par Value (File No. 7-5608)
Convex Computer Corporation
Common Stock, $.01 Par Value (File No. 7-5609)
MFS Special Value Trust
Shares of Beneficial Interest, Without Par Value (File No. 7-5610)
Nuveen California Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5611)
Nuveen New York Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5612)
Delta Woodside Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-5613)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28228 Filed 12-1-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1142]

Certain Nonimmigrant Visas; Validity

Public Notice 1114 of July 3, 1989 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of the countries listed in that Notice which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This notice adds Western Samoa to the list contained in Public Notice 1114 in order to conform with present reciprocal or more liberal treatment accorded United States nationals in a similar class.

This notice amends Public Notice 1114 of July 3, 1989 (54 FR 27969).

Dated: November 17, 1989.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 89-28270 Filed 12-1-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP89-11; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Automobiles Peugeot

Automobiles Peugeot (Peugeot) of Paris, France, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, "Tire Selection and Rims," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3 of Standard No. 110 requires that a tire placard be permanently affixed to the glove compartment door or an equally accessible location, and shall display the:

(a) Vehicle capacity weight;

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight and subject to the limitation of S4.3.1, for any other manufacturer-specified vehicle loading condition; and

(d) Vehicle manufacturer's recommended tire size designation.

Peugeot labeled incorrect information on 33,259 tire placards of several model years of its Peugeot 405 and Peugeot 505 vehicles. The following listing shows which models are in noncompliance with Standard No. 110 and the particular labeling noncompliance.

Model	Tire type	Noncompliances
1986 505 Sedan STI	195/60 R15H	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loade vehicle weight. 2. Lacked working "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".

Model	Tire type	Noncompliances
1987 505 Turbo Sedan	195/60 R15H	3. Incorrect designated rear seating positions and associated weight. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1987 505 Sedan STI	195/60 R15H	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1986 505 Sedan GLS	185/70 R14T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1987 505 Liberte SED	185/70 R14T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1986 505 T. Diesel SED	185/70 R14T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1987 and 1988 505 Sedan GL/DL	185/70 R14T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1986 505 Station Wagon GLS	195/70 R14T	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1986 505 T. Diesel Station Wagon	195/70 R14T	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1987 505 Liberte Station Wagon	195/70 R14T	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1987 505 Turbo Station Wagon	195/70 R14T	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1988 505 Station Wagon GLS	195/70 R14T	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1988 505 Station Wagon SW8	195/70 R14T	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1989 505 Station Wagon DL	195/65 R15T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1989 505 Station Wagon SW8	195/65 R15T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1989 505 Turbo SW	195/65 R15T	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight.
1989 505 Turbo SW8	195/65 R15T	1. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight. 2. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 3. Incorrect designated rear seating positions and associated weight.
1986 505 Turbo Sedan	205/60 R15H	Lacking wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".

Model	Tire type	Noncompliances
1986 505 Turbo SW	205/60 R15H	1. Lacking wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight.
1987 505 Turbo SW S	205/60 R15H	1. Lacking wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Printed the recommended cold inflation pressure for normal loading (2 rear occupants) instead of for maximum loaded vehicle weight.
1987 505 Turbo SED. S	205/60 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1987 and 1988 505 V6 Sedan	205/60 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1988 505 Turbo Sedan	205/60 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1988 505 Turbo SW	205/60 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1989 505 V6 Sedan STX	205/60 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1989 505 Turbo Sedan	205/60 R15H	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Incorrect designated rear seatng positions.
1988 505 Sedan STI	185/65 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1988 505 V6 SED. GLX	185/65 R15H	Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight".
1989 505 Sedan S	185/65 R15H	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Incorrect designated rear seating positions.
1989 505 V6 Sedan S	185/65 R15H	1.Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Incorrect designated rear seating positions.
1989 405 SED. DL/S	185/65 R14 M+S	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Incorrect designated rear seating positions.
1989 405 Sedan Mil6	195/60 R14V	1. Lacked wording "Vehicle Capacity Weight" and "Cold Inflation Pressure at Maximum Loaded Vehicle Weight". 2. Incorrect designated rear seating positions.

Automobiles Peugeot sold a total of 33,259 vehicles of the various models listed in the above chart which do not comply with FMVSS No. 110. The certification labels provided the correct maximum axle weight rating, however a fewer number of designated seating positions was specified than the maximum. Also, the cold tire inflation pressures were given for normal loaded vehicles (2 rear occupants) instead of maximum loaded vehicle weight (3 rear occupants).

Peugeot supports its petition by stating that the maximum axle weight rating provided can support the weight of the vehicle when the maximum designated seating positions are occupied. Peugeot also provided affidavits from the Michelin Tire Company which supported the fact that the tires which were placed on the vehicles that were marked with the incorrect vehicle capacity weight or tire pressure can still function properly under the conditions labeled on the tire placards.

Interested persons are invited to submit written data, views and arguments on the petition of Automobiles Peugeot, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20509. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 3, 1990.

Authority: 15 U.S.C. 1417; delegations of authority at 49; CFR 1.50 and 49 CFR 501.8.

Issued on: November 29, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-28252 Filed 12-1-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0052.

Form Number: ATF F 5130.9.

Type of Review: Extension.

Title: Brewer's Monthly Report of Operations.

Description: ATF Form 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operations. For this reason, ATF F 5130.9 is a method to safeguard tax revenue. This form shows taxable and nontaxable removals, overages, shortages and losses at breweries. ATF can pinpoint problems at breweries on a timely basis and take steps to protect the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 205.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,496 hours.

OMB Number: 1512-0469.

Form Number: None.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 34706), the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF-236) (51 FR 34706) establishing the same threshold for declaration of sulfites in alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,787.

Estimated Burden Hours Per Response: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1512-0482.

Form Number: ATF Reporting Requirements 5100/1.

Type of Review: Extension.

Title: Labeling and Advertising Requirements under the Federal Alcohol Administration Act.

Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcoholic beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 6,060.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occassion.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-28246 Filed 12-1-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Notice 89-109]

Ocean Thermal Depreciation Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Under section 48(l) of the Internal Revenue Code of 1986, the Secretary of the Treasury or his delegate ("the Secretary") is to designate only two locations where taxpayers will be permitted to depreciate ocean thermal energy conversion (OTEC) property under section 168(e)(3)(B). This notice affords taxpayers an opportunity to make requests for specific designations, prior to any designations being made by the Secretary.

DATES: Interested persons are invited to submit requests for specific designations by March 4, 1990.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer at 202-566-3553 (not a toll-free call).

ADDRESS: Send requests to: Internal Revenue Service, Attn: CC:PS&I:6, (Notice 89-109), Room 5116, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

SUPPLEMENTARY INFORMATION:

Background

Section 48(l)(3)(A) was added to the Internal Revenue Code by the Energy Tax Act of 1978. This section was amended by the Crude Oil Windfall Profit Tax Act of 1980 by adding subsection (ix) to include OTEC property as qualifying for the energy tax credit. Section 168(e)(3)(B) was added by the Tax Reform Act of 1986 to permit a more rapid cost recovery for OTEC property.

Part III—Administrative, Procedural and Miscellaneous Designation of locations for ocean thermal energy property

Notice 89-109

Under section 48(l)(3)(A)(ix) of the Internal Revenue Code of 1986, the term "alternative energy property" includes equipment that converts ocean thermal energy to usable energy and that is placed in service at either of two locations designated by the Secretary of the Treasury or his delegate ("the Secretary") after consultation with the Secretary of Energy. Under section 168(e)(3)(B)(vi)(I) of the Code, for purposes of determining cost recovery deductions, the term "five-year property" includes any property which is described in section 48(l)(3)(A)(ix). According to section 46(b)(2)(A)(x) of the Code, property described in section 48(l)(3)(A)(ix) is also eligible for a 15 percent energy tax credit (this provision is due to expire December 31, 1989).

The Secretary intends to designate the locations referred to in section 48(l)(3)(A)(ix) in consultation with the Department of Energy and the National Oceanic and Atmospheric Administration. Interested persons are invited to submit requests for specific designations to the Internal Revenue Service by March 4, 1990. A user fee is not required. Each request should provide sufficient information to allow the Secretary to make a fair and accurate designation of locations. At a minimum, each request must describe the specific area to be designated (with boundaries running between points of latitude and longitude, if necessary for specificity); explain the suitability of the location for the conversion of ocean thermal energy to usable energy; and discuss in general the plant design features of any proposed project. For ocean thermal energy projects containing property that is to be used predominantly outside the United States (as that geographic term is defined in section 7701(a)(9) of the Code), the request must demonstrate that the property would qualify for the benefits of sections 168(e)(3)(B)(vi)(I) or 46(b)(2)(A)(x) (see sections 168(g) and 48(a)(2)). Upon review of this information, the Secretary may request further specifics if deemed necessary for a fair and accurate decision. Upon request, a public hearing will be held

prior to any designation of locations referred to in section 48(l)(3)(A)(ix).

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-28111 Filed 12-1-89; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 193 (Rev. 2)]

Organization Functions and Authority Delegations; District Director

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order authorizes certain officials to perform the functions of the Commissioner. The text of the delegation order appears below.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, PFR:P:O, Room 3524, 1111 Constitution Avenue NW., Washington, DC 20224, telephone (202) 566-4273 (not a toll-free call).

Order No. 193 (Rev. 2)

Effective Date: November 8, 1989

Authorization to Perform Functions of the Commissioner

Pursuant to the authority vested in me as Commissioner of Internal Revenue by Treasury Department Order No. 150-10, the Senior Deputy Commissioner is authorized to perform any function the Commissioner is authorized to perform.

The Deputy Commissioner (Operations), Deputy Commissioner (Planning and Resources/Chief Financial Officer), and Chief Information Officer are each authorized to perform only those functions the Commissioner is authorized to perform which arise out of, relate to, or concern the activities or functions each administers.

Each of these officials shall perform functions under this authority in his or her own capacity and under his or her own title and shall be responsible for referring to the Commissioner any matter on which action would appropriately be taken by the Commissioner.

This authority may not be redelegated.

Delegation Order No. 193 (Rev. 1), effective August 30, 1987, is superseded.

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-28205 Filed 12-1-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 231

Monday, December 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, November 28, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Application of The Howard Savings Bank, Newark, New Jersey, a Bank Insurance Fund member and a State nonmember savings bank, for consent to purchase certain assets of and to assume the liability to pay deposits made in the three Lakewood, New Jersey, branch offices of Security Savings Bank, SLA, Vineland, New Jersey, a Savings Association Insurance Fund member and a state chartered savings and loan association; for consent to convert insurance coverage from the Savings Association Insurance Fund to the Bank Insurance Fund as contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and for consent to establish the three Lakewood, New Jersey, branch offices of Security Savings Bank, SLA as branches of The Howard Savings Bank.

Administrative enforcement proceedings.

Matters relating to the possible closing of certain insured banks.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those banks:

Silverado Banking, Savings & Loan Association Denver, Colorado

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, Washington, DC.

Dated: November 29, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-28339 Filed 11-29-89; 5:03 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 231
Monday, December 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Small Business Competitiveness Demonstration Program

Correction

In notice document 89-27385 beginning on page 48287 in the issue of Wednesday, November 22, 1989, make the following corrections:

1.On page 48288, in the second column, in the sixth line, insert the word "a" between the words "and" and "Procurement". 12. On the same page, in the third column, in the first line, "research" should read "search".

3. On the same page, in the second column below the table, in the first line remove the word "not".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of Chicago, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-25048 appearing on page 43447 in the issue of Wednesday, October 25, 1989, make the following correction:

On page 43447, in the 3rd column, in the 1st complete paragraph, the 12th line should read "$>1\times10^{-4}$ amps/torr He."

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions and Deletion

Correction

In notice document 89-26575 appearing on page 47258 in the issue of Monday, November 13, 1989, make the following correction:

In the second column, under Additions, in the *Commodities* list, the second line should read "2540-00-737-3309".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Proposed Additions

Correction

In notice document 89-26576 beginning on page 47258 in the issue of Monday, November 13, 1989, make the following correction:

On page 47258, in the third column, the last line should read "6532-01-127-2213".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0465]

Drug Export, Abbott IMx® HBsAg Test Kit

Correction

In notice document 89-26073 beginning on page 46652 in the issue of Monday, November 6, 1989, make the following corrections:

1. On page 46652, in the third column, the heading should read as set forth above.

2. On page 46653, in the second column, in the second complete paragraph, in the fifth line, insert "and" following "Food".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

Correction

In notice document 89-25699 appearing on page 46128 in the issue of Wednesday, November 1, 1989, make the following correction:

On page 46128, in the first column, under "*Agenda-Open public hearing.*" in the first line, "preset" should read "present".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 44

Termination of Waivers Granted Under the Federal Metal and Nonmetallic Mine Safety Act of 1966

Correction

In rule document 89-27446 appearing on page 48564 in the issue of Wednesday, November 22, 1989, make the following correction:

In the second column, in the fourth line, "April 2, 1990" should read "May 21, 1990".

BILLING CODE 1505-01-D

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions and Answers About Whistleblower Appeals"

Correction

In notice document 89-27855 beginning on page 48956 in the issue of Tuesday, November 28, 1989, make the following correction:

On page 48956, in the third column, under **DATE:**, in the third and fourth lines, "[insert date 30 days from date of publication]" should read "December 28, 1989".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-81]

National Environmental Policy Act; Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS, TIER-2); Ulysses Mission

Correction

In notice document 89-27331 beginning on page 48168 in the issue of Tuesday, November 21, 1989, make the following correction:

On page 48169, in the second column, in the **DATE:** paragraph, the 30-day comment period was incorrectly calculated. The **DATE:** paragraph should read:

DATE: Written comments must be submitted on or before December 21, 1989.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-27]

Revision of Transition Area; Chickasha, OK

Correction

In rule document 89-27154 appearing on page 47971 in the issue of Monday, November 20, 1989, make the following correction:

In the 2nd column, in the 1st paragraph, in the 16th line, "99°" should read "97°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 89-ASW-28]

Amendment to Times of Designation for Restricted Areas at White Sands Missile Range; NM

Correction

In rule document 89-26312 beginning on page 46887 in the issue of Wednesday, November 8, 1989, make the following correction:

On page 46888, in the first column, in the sixth line, insert "not" following "would".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8264]

RIN 1545-AK26

Temporary Regulations Under Section 383 of the Internal Revenue Code of 1986; Use of Pre-Change Attributes

Correction

In the correction to rule document 89-22108 appearing on page 46187 in the issue of Wednesday, November 1, 1989, make the following correction:

§ 1.383-1T [Corrected]

On page 46187, in the third column, under § 1.383-1T, in the fourth line, "383(l)(2)" should read "382(l)(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8259]

RIN 1545-AM89

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

Correction

In rule document 89-20916 beginning on page 37098 in the issue of Thursday, September 7, 1989, make the following corrections:

§ 1.6049-7T [Corrected]

1. On page 37106, in the third column, in § 1.6049-7T(f)(3)(ii)(B), in the fifth line, "865(c)(3)" should read "856(c)(3)".

2. On page 37107, in the first column, in § 1.6049-7T(f)(3)(ii)(C), in the second and sixth lines, "865(c)(3)(F)" should read "856(c)(3)(F)".

BILLING CODE 1505-01-D

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federal register

Monday
December 4, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75
Electrical Safety Standards for Underground Coal Mines; Proposed Rule

30 CFR Parts 56 and 57
Electrical Standards for Metal and Nonmetal Mines; Proposed Rule

30 CFR Parts 56, 57, 70, and 71
Noise; Advance Notice of Proposed Rulemaking

30 CFR Part 16
Approval Requirements for Electrical Detonators; Advance Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA10

Electrical Safety Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's electrical safety standards for underground coal mines. The proposed revisions would upgrade existing provisions consistent with advances in mining technology, provide alternative methods of compliance and reduce paperwork requirements where possible.

DATE: Written comments must be submitted on or before March 9, 1990.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 75.154, 75.155, 75.156, 75.157, 75.159, 75.160, 75.508, 75.527 and 75.1009. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents in each of the paperwork provisions would be mine operators. Each of the following public burden hour estimates includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection information. In each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

MSHA qualification of mine electricians and cable splicers (§§ 75.154/75.155/75.157/75.159). In order to become qualified to perform specified underground electrical work, individuals would be required to submit a written application to MSHA and successfully complete qualification tests developed by the Agency and administered by either a state or MSHA. The written application is necessary for administrative purposes in order to determine whether applicants meet the knowledge and experience prerequisites for qualification. It is estimated that the number of applications would average 1,300 per year, requiring 15 minutes per response. States that offer qualification tests must notify the District Manager in writing of the time and place of testing. This would allow the Agency to monitor the state tests and assure that testing is administered in a consistent and equitable fashion. The number of notifications is estimated to be 36 annually, requiring an average of five minutes per notification.

MSHA estimates that 1,932 additional applications will be received per year for qualification in low-voltage cable splicing and repair. The estimated average time per response for this requirement is five minutes. A record of all certified and qualified persons is essential to determine whether difficult and dangerous electrical work is being performed only by those persons who are qualified to do so. The average time required to record each certified or qualified person is estimated to be 15 minutes. The number of records is estimated to be 39,932 annually. The total recordkeeping burden for the qualification of mine electricians is estimated to be 11,467 hours per year.

Electrical annual refresher training and approved training programs (§§ 75.156/75.160). Submission of qualified electrician and cable splicer training plans to MSHA for approval is necessary to assure that persons qualified to perform mine electrical work receive consistent and thorough refresher training which complies with the proposed rules. The estimated number of plans submitted per year is 1,686 and it is estimated to take an average of two hours per plan. Notification of the time and place of the annual refresher training would allow the Agency to monitor the retaining to assure the training is being conducted in accordance to the plan. The number of notifications is estimated to be 1,932 per year and require an average of five minutes per notification. The total annual recording burden for training plan submissions and retraining notification is estimated to be 3,489 hours.

Examination, testing and maintenance of electric equipment and circuits (§§ 75.508/75.1009). Records of unsafe conditions and corrective action taken pertaining to all equipment are necessary to assure that known hazards are corrected before they can cause injury. The Agency estimates that records will be made of 260,832 examinations of mobile and portable equipment and circuits annually and each record will average 20 minutes. An estimated 32,412 records will be made of stationary and hand-held equipment that should also average 20 minutes per entry.

It is estimated that 1,366 records will be made of tests and 4,099 records will be made of the examinations of high-voltage switchgear. The estimated average time of each record is 35 minutes per test record and 20 minutes per examination record. It is estimated that 342 records will also be made of high-voltage grounding resistors and circuit protective devices and that the average time to make each of these records is estimated to be 55 minutes. It is also estimated that 1,122 records will be made annually of the examination and testing of trolley systems. Each of these records should take an average of two hours. The total public reporting burden for the examination and testing of electric equipment is estimated to average 102,255 hours annually.

Map of the mine electrical systems (§ 75.527). A map of the electrical system is essential during a mine emergency for locating potential sources of hazards so that appropriate precautions can be taken. The availability and accuracy of this map could therefore be crucial to the safety of miners. The Agency estimates that an average of three hours and 20 minutes will be necessary annually to maintain a map current. It is estimated that 5,675 hours will be necessary annually to keep about 1,686 mine maps up to date.

Public reporting burden for the collection of information for these electrical standards is estimated to be 122,877 hours annually.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs of OMB, Attention: Diana Rowen; Desk Officer for the Mine Safety and Health Administration.

II. Background

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing electrical safety standards for underground coal mines. These revisions are proposed pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811, and are consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act.

On July 9, 1982, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register (47 FR 30025) which announced a comprehensive review of the underground coal mining standards in 30 CFR part 75 and solicited public comments. After reviewing the comments, the Agency developed a preproposal draft of revisions to the existing electrical standards. On May 23, 1986, MSHA published a notice in the Federal Register which announced the availability of its preproposal draft and solicited written comments from all interested parties (51 FR 18899). On July 3, 1986, MSHA extended the comment period to August 15, 1986 (51 FR 24387). MSHA has received written comments regarding its preproposal draft from all segments of the coal mining community. The Agency's proposed rule takes into consideration the comments received and, where appropriate, specific comments on major provisions are discussed.

III. Discussion of Proposed Rule

A. General Discussion

Accidents and fatalities related to the use of electricity and electric equipment in underground coal mines have consistently been the cause of injuries and deaths. Since 1970, at least 110 miner fatalities which involved the use of electric equipment or circuits in underground coal mines have been reported to MSHA. These statistics reveal that working with and around electric circuits and equipment in the mining industry can be extremely hazardous for miners.

More recent information indicates that there were 26 fatalities that resulted from electrical accidents during the years 1982 to 1987. This represents approximately nine percent of the fatalities that occurred in underground coal mines during this period. In addition, there were approximately 900 nonfatal injuries from electrical accidents during this period.

The preamble to the proposed rules often makes use of injury and fatality data arising from electrical accidents. Although such information is a useful indicator of where safety standards can be improved, it is important to note the difficulty of attributing an electrical injury or fatality to just one cause. Typically, electrical accidents can occur as a result of more than one contributing hazardous electrical condition. For instance, damage to a cable which exposes its internal components would pose a shock hazard if the grounding protective devices, such as a broken grounding conductor, are also damaged or defective and do not properly cause deenergization. In such a case, both of the conditions would be a contributing cause to a resulting electrical injury or fatality.

Prevention of electrical accidents continues to be a difficult task because of the variety of conditions encountered in coal mines that can affect the function of electric equipment. However, technological advancements and improved practices can aid in the use of electricity in underground coal mines. This proposed rule reflects these advancements and would require certain measures and practices that would increase the safety protection afforded to miners. The proposal would also simplify existing standards and reduce paperwork requirements where possible.

The proposed rule would revise existing electrical safety standards in 30 CFR part 75. It would address hazards related to the use of electricity in underground coal mines by establishing improved safety standards for: qualification of persons; electric equipment in general; trailing cables; grounding; high- and low-voltage circuits; and trolley wire and trolley feeder wires.

With the goal of correcting deficiencies and providing clarity, the subparts that contain electrical standards would be reorganized and restructured to eliminate repeated references from one subpart to another. Existing standards that contain incorporations by reference would be replaced with necessary requirements, tables and charts. Electrical diagrams would also be included with the more complex standards to provide clarity.

In addition, many existing part 75 requirements would be either expanded or rewritten to better address accident history and to assist in the prevention of future accidents. These goals would be particularly addressed through proposed requirements for the use of shielded trailing cable; maintenance of circuits and equipment; electrical work procedures; protective equipment for troubleshooting, testing and handling of cables; trolley circuit protection; grounding of circuits and equipment; qualification of mine electricians, electrical retraining programs and qualification of trailing cable splicers; ground-wire monitors; battery chargers; and circuit breakers and disconnecting device identification.

Proposed requirements for shielded trailing cables would be contained in § 75.601 and would require that low-voltage alternating-current trailing cables be equipped with metallic shielding around each power conductor. This requirement would be implemented over a period of three years, depending upon the type of equipment involved. This would result in less potential for fire and electric shock due to short circuits or bare conductors in cables.

Under §§ 75.508 and 75.810 of the proposal, circuits and equipment would be required to be installed and maintained to prevent hazards. These standards would address the types and frequency of tests and examinations to be conducted on circuits and equipment. Proposed §§ 75.506 and 75.815 would set out procedures to be used by qualified electricians in the performance of electrical work. These procedures specifically pertain to proper disconnecting, locking out, grounding and tagging of circuits and equipment prior to electrical work.

The proposal would contain new requirements for use of protective equipment during troubleshooting and handling of cable. Under the proposal, troubleshooting and testing of energized circuits would be limited to low-voltage circuits, and persons performing this type of work would be required to wear properly rated rubber insulating gloves. Protective equipment would also be required to be used by persons handling energized unshielded low-voltage trailing cable and shielded high-voltage trailing cables.

Improved standards addressing the qualification of persons who perform electrical work are contained in the proposal. Under proposed § 75.153, persons applying for qualification to perform electrical work would be required to pass tests administered by MSHA or a state. The standard would recognize state programs which meet minimum requirements set out in the proposed rule. Annual refresher training would be required for electricians in accordance with proposed § 75.156 to maintain electrical qualification. New procedures pertaining to the qualification of persons for splicing and

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repair of low-voltage trailing cables are also included in the proposal.

In addition, proposed standards addressing high-voltage electric face equipment would eliminate the wide use of the petition process to accommodate the safe operation of this equipment. Elimination of petitions would be accomplished through recognition in the proposal that shielded high-voltage cable can be used within 150 feet of the working face. Safety considerations related to this change would be addressed through the incorporation of newly proposed provisions which, in the past, have been included in petitions for modification.

B. Petitions for Modification

Operators with petitions for modification that involve the standards revised under the proposed rules would need to determine the status of those petitions before the effective date of the final rule. For proposed standards which are renumbered, but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with modifications granted for standards that have been revised would need to comply with the new rule on its effective date. New petitions for modification of the rule may be submitted as necessary in accordance with 30 CFR part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

C. Section by Section Discussion

Section 75.2(j) Definitions

The definitions in this section of the proposed rule are new, included to facilitate understanding of the electrical safety standards which follow. They would be integrated into existing § 75.2 at paragraph (j), and the existing definitions of low-, medium- and high-voltage would be deleted. However, the Agency solicits comment on whether there should be a definitions section applicable only to electrical standards, distinct from existing § 75.2.

The definitions of the electrical terms used are derived from sources commonly accepted by the mining industry and electrical and electronics engineers, including the Institute of Electronic and Electrical Engineers (IEEE) *Standard Dictionary of Electrical and Electronics Terms*, and the *National Electrical Code* (NEC). Definitions found in part 18 of MSHA's regulations were also used as a source for this proposal. In some instances, definitions taken from these sources were modified to apply to electric circuits and equipment used in the coal mining industry.

The proposed definitions represent important information for the interpretation of the electrical standards proposed in subparts B and F through K. The following discussion addresses a number of the more generally used definitions. Where appropriate, other proposed definitions are discussed together with the standards in which they are used.

The term "adequate interrupting capacity" is defined by the proposal as the ability of a circuit breaker or fuse to safely interrupt all values of current which can occur at its location in excess of its trip setting or melting point. Under this definition, adequate interrupting capacity would be determined by comparing the interrupting rating of the device with the actual characteristics of the circuit to be protected. These characteristics would include the circuit's voltage, impedance and power factor or time constant. For example, proposed § 75.602 would require trailing cables to be protected against overcurrents by a circuit breaker of adequate interrupting capacity. That is, a circuit breaker capable of safely interrupting all values of current which can occur at its location in excess of its trip setting or melting point.

"Equipment safety grounding conductor" is a new term, defined as the conductor used to connect the non-current-carrying metallic parts of equipment, raceways, and other metallic enclosures to the system grounding medium. In the Agency's view, it is important to stress that grounding is intended to safeguard persons from shock and burns, and not primarily to protect equipment. Conveying this concept would best be accomplished by using the term "equipment safety grounding conductor" as opposed to "equipment grounding conductor." The IEEE *Standard Dictionary of Electrical and Electronics Terms*, IEEE Standard 100–1977 defines "safety ground conductor" in essentially the same manner as the proposed definition.

"Extended-time rated grounding resistor" is a term used primarily in subpart H, on grounding. The proposal defines it as a resistor capable of carrying rated current for a period of time which exceeds the amount of time necessary for its temperature to reach a constant value, and which is capable of operating at its maximum operating temperature for at least 90 days per year without opening. This type of resistor is one capable of operating for an extended period at increased temperatures without failing in an open position.

A definition of the term "fail-safe" is also included in the proposal. It is used in relation to ground-wire monitors and solid-state direct-current overcurrent relays in the proposed rule. It is a descriptive term, meaning that failure of any component of such devices, other than relay contacts, will not prevent the device from performing its intended function, unless the device is designed to activate a circuit-interrupting device when failure occurs.

For instance, proposed § 75.711 would require that ground-wire monitors for cables extending to face equipment be designed and constructed to be fail-safe. A ground-wire monitor is defined under the proposal as a device which monitors equipment safety grounding conductors, and causes the associated circuit breaker to trip when a change in the impedance of the grounding circuit presents a potential shock hazard. Applying the two definitions, a fail-safe ground-wire monitor would be required under § 75.711 to operate, despite failure of its component parts. It would have to perform its intended function of monitoring and tripping the circuit breaker when necessary.

The definitions of low- and high-voltage systems represent changes in the existing standards, which recognize three voltage classifications. Low-voltage is presently defined in § 75.2(j) as up to and including 660 volts, medium-voltage as 661 to 1,000 volts, and high-voltage as more than 1000 volts. The proposed standards would eliminate the medium-voltage classification, and define a "high-voltage system or circuit" as one with a nominal voltage equal to or greater than 1,040 volts. Systems or circuits having a nominal voltage less than 1,040 volts would be classified as "low-voltage." The medium-voltage category is presently used only in relation to shielding of cables. The proposed cable shielding requirements would eliminate the need for a medium-voltage classification.

The term "nominal voltage" is defined by the proposal to mean the phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system to conveniently designate its voltage class, such as 480 or 4,160 volts. The definition would clarify that the actual operating voltage of a system or circuit may vary from its nominal voltage within a range that permits satisfactory operation of equipment.

The definition of the term "overcurrent" would encompass ground faults, overloads and short-circuits, resulting from a current in excess of the rated current of equipment or the ampacity of a conductor. The proposal would also define the terms "portable electric equipment," "mobile electric equipment," and "stationary electric equipment." Portable electric equipment would be defined as units which are designed and constructed to facilitate frequent movement from one location to another, and which are not normally located at one site for extended time periods. This would include units such as rock dusters and 10 horsepower pumps. Mobile electric equipment would be defined as units capable of being moved from one location to another by power supplied from a source located on the machine, as in battery-powered scoops, or supplied with power by means of a trailing cable, as in continuous-mining machines.

By contrast, stationary electric equipment would be defined as units which are not designed for frequent movement during normal use. This would encompass units other than mobile or portable, such as belt drives, which are fixed or fastened at a specific location for extended time periods. These distinctions are relevant since some of the proposed regulations would not apply to all three categories of electric equipment.

The terms "qualified cable splicer" and "qualified electrician" would be added to the definitions section in light of proposed standards at §§ 75.153 and 75.157. A qualified cable splicer would be a person who has met the requirements of proposed § 75.157, which contains the parameters of qualification for splicing and repairing low-voltage trailing cables.

In many of the proposed standards, qualified electricians would be required to perform certain work, such as troubleshooting and testing low-voltage circuits and equipment. These persons would be defined as having met the requirements of proposed § 75.153, which contains standards for the qualification of mine electricians. These terms would only be relevant within the context of the proposed electrical standards in subparts B, and F through K. Therefore, the existing definitions of, "certified persons" and "qualified persons" at § 75.2 (a) and (b) would not be altered under the proposal.

Subpart B—Qualified Persons

Section 75.153 qualified electricians

Proposed § 75.153 specifies the process by which mine electricians would become qualified to perform underground electrical work. It is derived from existing §§ 75.153 and 75.159, and would address only qualification of mine electricians, and not all qualified persons working in underground coal mines. Several commenters to the preproposal draft suggested that a qualification program for mine electricians be adopted. These commenters pointed to the difficulty and danger involved in electrical work as the reason for requiring such a program. The proposal takes this approach.

Under paragraph (a) of the proposal, in order to become qualified to perform specified underground electrical work after the effective date of the rule, individuals would be required to successfully complete qualification tests developed by MSHA and administered by either the Agency or a state. The testing procedures, outlined in proposed § 75.154, are designed to allow the Agency to determine whether an electrician is capable of safely carrying out the underground electrical tasks required of a qualified electrician. MSHA believes that written and manual demonstrations of an electrician's familiarity with electrical hazards and safe operating procedures are crucial to mine safety.

An applicant for qualification would also have to possess at least one year of experience in a position requiring the installation and maintenance of electric circuits and equipment in a coal or other mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment. This experience requirement, retained from existing § 75.153, would ensure that qualified electricians have a background of electrical work sufficient to prepare them to safely perform electrical tasks in underground coal mines.

The proposal would credit those who have completed two and four-year educational programs in electrical technology and electrical engineering with six months of experience. This aspect of the rule would recognize the value of formal training in these specified fields when applied to the underground coal mine environment.

Existing standards permit qualification of mine electricians with one year of experience, who satisfactorily complete an MSHA-approved electrical training program conducted by a mine operator. The proposal would modify the existing rule by no longer permitting operators to qualify mine electricians under approved electrical training plans. At mines where electrical accidents and fatalities have been on the increase, MSHA inspectors have monitored training given for electrical qualification purposes under approved plans which was incomplete and inadequate. The inspectors found that such plans do not fulfill the terms of the plans approved by MSHA.

The Agency is also aware of some approved training programs which are thorough and beneficial. Additionally, some training programs include qualification testing designed to evaluate the effectiveness of training. The intent of the proposed standard is to assure a consistent qualification process according to specific criteria, using effective training programs as models. This would result in properly qualified mine electricians and assure that electrical work is safely performed by persons with adequate knowledge and skills. Further, the standard would lessen the burden on mine operators by no longer requiring approved training of a specific type and duration. Those electricians who successfully complete the requirements of proposed §§ 75.154 or 75.155 would be qualified as mine electricians, regardless of the initial training they received.

Under paragraph (b), all qualified electricians, those qualified under the proposal as well as electricians qualified before its effective date, would be required to have annual refresher training in accordance with proposed § 75.156. Existing § 75.160 would require operators' refresher training programs to be approved by MSHA. Due to changing technology and the occurrence of avoidable electrical accidents underground, annual refresher training designed to reemphasize safe operating procedures and promote awareness of new technology would be beneficial in maintaining the continued competence of qualified electricians.

Paragraph (c) provides that those electricians qualified before the effective date of the rule would remain qualified, provided they fulfill the annual refresher training requirements of proposed § 75.156. The standard would eliminate the need for time consuming and costly requalification, but would assure that electricians presently qualified are also kept abreast of new technology and safety advancements.

The MSHA District Manager would be authorized under proposed paragraph (d) to revoke an electrician's qualification for cause, including intentional violation of the requirements of part 75 and intentional defeat of any safety device or circuit. Electricians who defeat safety devices, for example, endanger themselves as well as others, and should not be considered qualified to work with potentially dangerous electric equipment and circuits. Under the standard, due process protection would be afforded to qualified

electricians when MSHA intends to revoke their qualified status. Revocation would only be permitted for cause, and would incorporate a process for administrative appeal of Agency action. Under these provisions, electricians would be given notice, ample opportunity to present arguments against revocation, and a means of appealing revocation decisions.

Section 75.154 MSHA Qualification of Mine Electricians

Derived from existing § 75.153, this proposed standard would set forth MSHA's testing procedures for qualification of mine electricians. Under paragraph (a), applications to MSHA for qualification would have to be made in writing to the District Manager of the appropriate Coal Mine Safety and Health District. Since separate tests would be given to qualify electricians in low- and high-voltage categories, applicants would have to specify the category or categories for which qualification is sought.

Paragraph (b) describes the elements of MSHA tests for low-voltage electrical qualification. Tests would include written examination of d-c and a-c theory and application, and the requirements of Federal electrical safety standards in subparts F through H, and K of part 75. Written examination in or practical demonstration of knowledge in low-voltage coal mine electrical equipment and circuits, and electric equipment permissibility requirements would also be included. It is MSHA's view that these areas represent the elements of electrical knowledge which an electrician qualified for low-voltage work should possess in order to safely perform assigned tasks.

For high-voltage qualification under paragraph (c), electricians would be examined in writing or by practical demonstration of knowledge of coal mine electric power distribution circuits and equipment. Written examination of the requirements contained in subpart I of part 75 would also be required. Qualified electricians entrusted with the installation and maintenance of high-voltage circuits and equipment should possess knowledge of the specified subjects, in MSHA's view, to assure that high-voltage electrical work is safely and accurately performed. It is MSHA's intent that Agency personnel who are themselves qualified electricians will administer qualification tests. Their presence would assure that questions or problems arising during testing can be addressed by a person knowledgeable in the subject.

Proposed § 75.155 would permit states to administer qualification testing which meets the requirements of paragraphs (b) and (c) of this section. The option described of requiring written examination or practical demonstration of the specified subjects would be determined by MSHA or the state. The Agency is aware that some states now possess the ability to provide for practical demonstrations which allow accurate evaluation of an applicant's abilities. The standard would promote the development and use of such programs where they are available. However, in order to properly evaluate an applicant's knowledge of subjects such as electrical theory and the requirements of part 75, some subjects would be examined in writing.

Paragraph (d) would allow applicants to take tests for qualification in both the low- and high-voltage categories at the same time. However, tests for each category would be evaluated separately. If the low-voltage portion of the testing is not passed, the high-voltage portion would not be evaluated. Therefore, applicants who do not successfully meet the requirements for qualification to perform low-voltage work would not be eligible to become qualified to perform high-voltage work. This provision would recognize that a great number of common electrical tasks in coal mines involve work with low-voltage circuits and equipment. An electrician qualified in low-voltage would be specifically prepared to perform these tasks. Electricians needed to perform more complex high-voltage work would have to receive additional training in the subjects listed in paragraph (c) of the proposed standard.

Knowledge of high-voltage electricity builds on that of low-voltage electricity. Although both categories share the requirement of familiarity with elements of the low-voltage category, additional training and knowledge would be required for high-voltage qualification. Separate qualification tests would allow electricians to avoid the expenditure of additional time and resources necessary to prepare for qualification in high-voltage work, when some persons would be responsible for performing only low-voltage work at a mine.

Under paragraph (e), applicants for electrical qualification would be required to achieve test scores of at least 80 percent in the voltage category tested. MSHA would also recognize, under the proposal, that practical experience is a valuable asset for mine electricians. Therefore, up to five points, one point for each year of an applicant's experience in excess of the one-year requirement of proposed § 75.153 (a), would be added to the score of each test taken.

Some commenters to the preproposal draft expressed concern that electricians with many years of service would receive too much credit toward qualification, possibly allowing them to become qualified without possessing the required skills and knowledge. The proposed rule would address this concern by limiting credit for experience to five points, to assure that experience alone would not suffice for qualification of mine electricians.

Paragraph (f) would allow electricians to retake MSHA qualification tests if scores of at least 80 percent are not achieved. The first retest could occur within 30 days of notification of the original test results. Applicants would not be eligible for further retesting until at least 30 days after retest results are received. This system would not place a limit on the number of times one could be retested. However, reasonable time intervals between testing would be required in order to promote study to improve applicants' performance on qualification tests.

Section 75.155 State Qualification of Mine Electricians

Under this proposed standard, MSHA would recognize state programs for the qualification of mine electricians for the purpose of meeting MSHA's Federal requirements. Under paragraph (a), the Agency would recognize state programs which meet certain criteria. They would have to include at least the one-year experience requirement specified in proposed § 75.153(a)(2), and the MSHA-developed tests or demonstrations specified in proposed § 75.154 (b) and (c). Alternatively, tests or demonstrations jointly developed and agreed upon by MSHA and a state could be used.

This provision would allow miners to take advantage of state programs to become Federally qualified mine electricians in response to commenters' input that many states presently have effective training and qualification programs. The Agency would allow states to either administer MSHA's tests, or meet with MSHA and develop mutually agreed upon tests or demonstrations. If agreement cannot be reached with an individual state, that state could either give MSHA's test, as a minimum, and require any other additional testing it deems appropriate for state purposes, or simply allow MSHA to administer all Federal qualification tests in that state. This standard would recognize that many states have strong interest in participating in the electrician qualification process. The Agency would like to promote the efforts of such states, and therefore allow the option of a mutually agreed upon testing scheme. MSHA specifically solicits comments from the states on this issue.

State programs would also have to include provisions to ensure the integrity and fairness of testing and grading procedures for MSHA recognition. This would provide consistent and fair testing of applicants for qualification. For instance, the state would bear the burden of keeping tests confidential and monitoring the materials used by applicants during testing.

Paragraph (b) would require tests given by states for MSHA qualification to be administered by a qualified electrician, as defined by proposed § 75.153. Therefore, a person with the requisite knowledge and experience would be available during testing to respond to questions about the interpretation or intent of the examinations.

Paragraph (c) would require that the District Manager of the district in which testing and grading is to be conducted be notified of the time and place of state-administered testing at least 20 days in advance. The District Manager would have the option of monitoring tests given by the states to ensure that the requirements of state programs recognized by MSHA are met. This aspect of the proposal would assure applicants that testing is administered in a consistent and equitable fashion, in accordance with Federal guidelines or the terms agreed upon by the Agency and the state.

Section 75.156 Electrical Annual Refresher Training Programs

This section is derived from existing § 75.153. Although the refresher training provisions proposed in this section would be similar to those found in part 48, these standards would apply to supervisory as well as non-supervisory mine personnel. All electricians who are qualified in accordance with federal requirements by MSHA or under a recognized state program would have to complete annual refresher training in order to remain qualified.

Under paragraph (a) of the proposal, mine operators would be required to have an annual refresher training program consisting of at least eight hours of safety instruction, and presented by a qualified electrician. This provision is similar to the general requirements of existing § 75.160. However, operators would be required to develop refresher training programs applicable specifically to qualified electricians under the proposal. Mine operators would be in the best position to provide a plan for compliance with the proposed refresher training requirements for qualified electricians working at their mines. Presentation of refresher training by an electrician qualified under § 75.153 would assure that material is reviewed by an instructor who is knowledgeable in the subject, and who is capable of answering difficult questions which may arise.

Operators' programs would be required to include a review of electrical accidents occurring in the industry and their causes, and a review of electrical safety procedures including lockout and tagging methods. To obtain copies of MSHA accident and fatality reports, operators can contact the appropriate MSHA district office. The District Manager would arrange for the reports to be sent to operators upon request from the National Mine Safety and Health Academy.

MSHA believes that training which covers these topics, at a minimum, would update mine electricians on current electrical technology and hazards associated with mine electrical work, and reiterate safe operating procedures designed to avoid these hazards. Dedication of a minimum of eight hours per year for review of these topics would be beneficial to the overall quality and safety of mine electrical work, and would not be unduly burdensome to operators.

Existing § 75.160 requires operators to have an approved plan for retraining of qualified persons. Paragraph (b) of the proposed standards would list minimum requirements for such plans. They would be required to consist of refresher training conducted by the operator, the Agency, a state, associations of mine operators, miners' representatives, other mine operators, private associations or educational institutions. The effect of this provision would be to allow operators to take advantage of any available programs which meet the proposed requirements, thereby affording several compliance alternatives. Operators need not expend time and resources to conduct their own refresher training, but could fulfill the proposed requirements by utilizing other available programs.

Paragraph (c) would state that only electricians who have completed annual refresher training under an operator's approved plan would be permitted to perform work required to be performed by a qualified electrician. This proposed standard would prohibit persons from doing the work of a qualified electrician if they have not successfully completed refresher training at least annually. Thus, persons doing such work would be aware of the latest technology and information about electrical hazards and safety procedures.

Under paragraph (d), derived in part from existing § 75.153 (g), electricians who do not successfully complete refresher training for a period of three consecutive years would no longer be considered qualified. To regain their qualified status, such persons would have to reapply for qualification in accordance with proposed § 75.153. This provision recognizes that there may be periods when a qualified electrician is not called upon to perform electrical work. They may engage solely in mechanical work, or in a non-mining occupation for a time. Such persons may let annual refresher training lapse, but they would be prohibited from doing the work of a qualified electrician during the lapsed period under the requirements of paragraph (c) of the section.

Within a three-year period, completion of refresher training would be sufficient to restore the electrician's qualified status. However, electricians who have not completed refresher training for three consecutive years could regain qualification only by resubmitting to the proposed qualification testing process. This standard would ensure that qualified electricians remain adequately trained in electrical work and safety procedures while they are called upon to do the work of a qualified electrician. If their position does not require them to perform the work of a qualified electrician, they are not required to complete annual retraining. However, to avoid having to retake qualification tests, they must take refresher training before the end of three years.

The District Manager would have the option of monitoring refresher training sessions under paragraph (e). Therefore, the rule would require that notification of the time and place of training be given to the District Manager at least 20 days in advance. The monitoring option would allow the Agency to evaluate the comprehensiveness and adequacy of refresher training programs, and therefore determine whether qualified electricians are being kept abreast of important safety information. In this way, the standard would assure that underground electrical work will be carried out in the safest possible manner for the protection of electricians and miners.

Paragraph (e) would allow the District Manager to revoke approval granted under existing § 75.160 of an operator's refresher training program for cause. If the program no longer complies with the

minimum requirements of the proposed rule, for instance, approval could be revoked. Additionally, section 110 (f) of the Federal Mine Safety and Health Act of 1977 makes the intentional falsification of records required by the Agency criminally punishable. Such action would also be cause for revocation of approval.

Section 75.157 Qualification for Low-Voltage Cable Splicing and Repair

Proposed § 75.157 sets forth new requirements for the qualification of persons to splice and repair low-voltage trailing cables. The intent of the standard is to allow persons other than qualified electricians to repair and splice low-voltage trailing cables, provided they are adequately trained. At the same time, miners handling or working around low-voltage trailing cables would be assured that they are maintained by persons qualified for the task.

The Agency received comments on the preproposal draft which both supported and objected to a qualification program for cable splicing and repair. Supporters of the standard felt that it could have significant overall safety value to the mining industry, by allowing qualified electricians to attend to more demanding electrical work in the mines. At least one commenter expressed concern regarding whether persons who are not qualified electricians could be adequately trained for the difficult tasks of splicing and repairing cables, particularly high-voltage cables. Therefore, the commenter suggested deletion of the proposed standard.

The proposal addresses these comments by allowing persons qualified under proposed § 75.157 to splice and repair only low-voltage trailing cables. Qualified high-voltage electricians would be required by proposed § 75.519 to splice and repair high-voltage cables, which can contain numerous components energized at very high voltages, and would therefore require the expertise of a qualified electrician. Under the proposal, the knowledge and skill of a qualified electrician would be applied to the demanding work of maintaining high-voltage cables, and low-voltage cables could be spliced and repaired by those persons specifically trained and qualified for the task. Therefore, miners would be protected against shock and fire hazards caused by improper splicing or repair of all cables.

For qualification in low-voltage cable splicing and repair, paragraph (a) of the standard would require individuals to have at least one year of experience as a miner on a working section of an underground coal mine, and successfully complete a written MSHA test administered by the Agency or a state. Additionally, applicants for qualification would be required to successfully perform a practical demonstration of their ability to splice and repair low-voltage trailing cables.

Under the proposal, applicants for qualification would be required to demonstrate their knowledge and skill in the subject to representatives of the Agency or a state. It is important that those persons charged with the maintenance of low-voltage cables be sufficiently knowledgeable about safe procedures and electrical hazards involved in order to protect miners from electrical injury caused by faulty splices or repairs. A practical demonstration of cable splicing ability would provide for a more comprehensive and accurate evaluation of an applicant's skill.

Paragraph (b) lists the subjects which would be covered by MSHA's written test. They would include written examination of lockout and tagging procedures, and other safety precautions relevant to splicing and repair of trailing cables, the applicable requirements of part 75, and the purpose and use of cable splicing components. These subjects represent, in MSHA's view, the minimum knowledge which should be required of qualified cable technicians in order to assure miner safety.

Paragraph (c) of the proposed rule would require written tests for low-voltage cable qualification to be administered, and practical demonstrations monitored by an authorized representative of the Agency, or an authorized representative of the state who is a qualified electrician or qualified for low-voltage cable splicing and repair. This would ensure the integrity of testing procedures and would provide for the presence of a person able to respond to technical questions which may arise regarding testing procedures or interpretation. The Agency would not be responsible for providing the facilities and equipment needed for practical demonstrations.

The parameters of the practical demonstrations required by the proposal are discussed in paragraph (d). Applicants would be required to demonstrate their ability to perform all safety precautions required by part 75 for splicing trailing cables, properly repair a damaged outer jacket, and demonstrate the proper methods of splicing metallic cable shielding. The proposed testing procedures would permit thorough evaluation of an applicant's practical abilities to correctly and safely splice and repair low-voltage trailing cables.

Under paragraph (e), the District Manager would have the opportunity to monitor all testing administered by a state for qualification. Notification of the time and place would be required to be given to the District Manager of the MSHA district in which testing will take place at least 20 days in advance for this purpose. This would assure that testing and evaluations are done in accordance with MSHA's regulations.

Revocation by the District Manager of a miner's qualification to splice and repair low-voltage trailing cables for cause would be possible under paragraph (f) of the proposal. Intentional violation of the requirements of part 75 or intentional defeat of safety devices or circuits would be examples of cause for revocation. Persons who intentionally disregard the safety of themselves and fellow miners would be considered unqualified by the Agency to perform cable splice and repair work. As in proposed § 75.153, miners would be given the protection of due process when the Agency intends to revoke their qualification.

Section 75.159 Records of Certified and Qualified Persons

The proposal would revise existing §§ 75.153 and 75.159, by requiring mine operators to maintain available for inspection at the mine, and certify by signature and date as accurate, a list of the names of all persons qualified as electricians or low-voltage cable splicers, the dates of qualification and retraining and the applicable voltage category. Existing § 75.159 now requires operators to maintain lists of all certified and qualified persons designated to perform duties under part 75. Requiring the operator to attest to the accuracy of the list would help to prevent abuses or mistaken inclusion of persons who have not been properly qualified. Under the proposal, authorized representatives of the Secretary and miners' representatives would be able to determine whether mine electrical work is being performed in a safe manner by qualified electricians. It would allow interested persons to readily determine whether electrical work and splicing and repairs of low-voltage cables are being carried out by those who have been properly qualified to do so.

Existing § 75.153(g) now requires individuals to certify to MSHA that they have successfully completed annual refresher training. The purpose of the standard is to aid the Agency in keeping records of qualified persons current and

issuing qualification cards. This standard would not be retained under the proposed rule. The Agency would retain its enforcement capabilities by requiring operators to certify to the accuracy of the list of qualified persons and the information required by the proposed amendment to § 75.159. However, the proposed revision may impact on the Agency's past practice of issuing qualification cards. Individuals would continue to be notified by MSHA that they have successfully completed the requirements for qualification. The Agency solicits comments on this issue from interested parties.

Scope Sections

Sections 75.500, 75.600, 75.700, 75.800, and 75.1000 Scope

Each subpart of the proposed rule would be preceded by a new scope section. Scope sections would be useful in order to clarify the rules which follow it and facilitate compliance efforts. It would also offer to interested parties a concise guide to what would be included and excluded from each proposed subpart. Subpart F would contain general requirements for the installation, maintenance, testing, examination, electrical protection, and performance of electric equipment and circuits. The subpart would also contain specific requirements for low-voltage trailing cables, encompassing mechanical protection, splicing and repair, disconnects, ground-wire monitors, and insulated handling equipment. The design and construction of permissible equipment and intrinsically safe circuits would not be addressed by the subpart, except as specified in §§ 75.503, 75.508, 75.511 and 75.529. Those subjects are covered primarily by the applicable approval regulations contained in 30 CFR part 18.

Subpart G, §§ 75.601 through 75.604, would contain requirements for low-voltage circuits. It would include standards for the design and construction, electrical protection, and cable coupler restraints of trailing cables and low-voltage a-c circuits. The subpart would also address electrical protection and performance of single-phase and three-phase low-voltage a-c systems which supply power to electric equipment located outby the working section. However, single-phase systems energized at 150 volts or less to ground would be addressed in subpart F. Also excluded from the coverage of the subpart are requirements pertaining to mechanical protection, splicing and repair, disconnecting devices, ground-wire monitors, and insulated handling equipment for low-voltage circuits.

Subpart H would include grounding requirements for circuits and equipment, including grounding of metallic parts, raceways and enclosures of electric equipment, methods of grounding a-c and d-c systems, grounding of a-c and d-c equipment frames and components, diode grounding systems, and system and supplemental ground fields. Additional grounding requirements for a-c systems supplying power to stationary lighting fixtures for illumination of working places are addressed by existing subpart R. The primary purpose of the proposed subpart is to reorganize, clarify and simplify existing standards, which are presently found throughout MSHA's regulations. This subpart would represent a consolidation of the grounding requirements for the equipment and systems specified.

Subpart I would contain requirements pertaining to high-voltage circuits and equipment used underground. Section titles in the subpart would specify where the requirements pertain only to high-voltage electric face equipment and associated trailing cables. More general standards applicable to all high-voltage equipment would be contained in subparts F and H. The applicable approval regulations in existing part 18 would address sizing of conductors and overload protection for circuits extending to and on board permissible face equipment.

Subpart K would contain requirements for trolley circuits, including installation, maintenance and electrical protection of trolley systems, and movement of off-track mining equipment and supplies in trolley entries.

Subpart F—Electric Equipment—General

Section 75.501 Permissible Electric Equipment

This proposed standard would set requirements for electric equipment used in working areas of a mine where the dangers of explosions and fire are most present. The section would consolidate the requirements in existing §§ 75.500, 75.500–1, 75.501, 75.501–2, 75.504, 75.505, 75.507, and 75.1002–1. It would offer a clear statement of existing requirements for the use of permissible equipment, and would incorporate MSHA experience regarding procedures for the safe use of some nonpermissible equipment in areas where permissible equipment is normally required.

Under paragraph (a) of the proposal, only permissible electric equipment, with specified exceptions, would be permitted to be located in or inby the last open crosscut, within 150 feet of pillar workings, or longwall and shortwall faces, in areas ventilated by air which has ventilated any working place or any worked-out area, whether pillared or non-pillared, or inaccessible areas. Permissible equipment is defined in existing 30 CFR 75.2(i) as equipment used in face areas which is designed, constructed and maintained so as not to cause a mine explosion or fire, or to the greatest extent possible, other accidents in their use.

This paragraph of the proposal would clarify for the purposes of this standard, MSHA's view that air which has ventilated working places or worked-out areas is air which can contain dangerous levels of methane. Electric equipment located in the specified areas would therefore be required to be permissible, in accordance with the existing approval regulations of part 18.

The hazards addressed by the standard would be methane and coal dust ignitions, explosions, and fires. By requiring that permissible equipment be used in areas where methane and dust concentrations are most dangerous, the risks to miners would be reduced. To enhance miner safety, electric equipment used in these areas would have to be designed, constructed, and maintained in accordance with MSHA approval regulations to eliminate possible ignition sources on such electric equipment.

Paragraph (b) of the proposed rule would be new, and would address comments to the preproposal draft that, at times, nonpermissible repair equipment is needed in working places. For instance, permissible welders are not available in the mining industry, but a welder may be required to repair immobilized electric equipment in a face area. To remedy this problem, the proposed standard would allow limited use of non-permissible repair equipment, provided proper safety precautions are taken. The proposal would allow the use of non-permissible electric welders, hand-held power tools, and test instruments in working areas only to repair disabled and immovable permissible equipment.

However, to assure miner safety, the area would have to be ventilated by air which has not been used to ventilate coal cutting or loading operations, and which contains less than 1.0 percent methane. Further, a fire extinguisher of the type described in existing § 75.1100–1(e), or a 240-pound supply of rock dust would be required to be located within fifty feet of the equipment being repaired. Repairs would have to be made under the supervision of a person

certified as defined in existing § 75.2(a), who would make tests before and during work to determine that less than 1.0 percent methane exists in the area, and make fire checks during and after the repair process.

The Agency's present policy is to permit repair of immobilized permissible equipment if repairs are undertaken in accordance with existing § 75.1106. The relevant provisions of that standard are therefore incorporated in the proposed rule. Although commenters suggested that fire extinguishers should be required within arm's reach of a miner making repairs, a fifty-foot requirement would make the extinguisher readily available, without necessitating continual movement of the extinguisher or large quantities of rock dust to within grasp. The risk to miners from the specified non-permissible repair equipment would be limited by the monitoring and safety precautions built into the proposal. The rule would incorporate the practical policy of allowing immobilized electric face equipment to be repaired with tools necessary for the task.

Paragraph (c) would be a new provision, containing a second exception to the standard at paragraph (a). It would allow the presence of certain equipment certified by MSHA as explosion-proof in areas where permissible equipment is required, provided such installations are approved by the District Manager. Explosion-proof distribution boxes, controller boxes and motors used as part of water pump assemblies, and cable couplers that are certified as explosion-proof by MSHA would be allowed in such areas under the standard. The use of pumps in areas where permissible equipment is required is often necessary to alleviate a dangerous buildup of water. Approved pumps of the size and type needed to meet the need are not always available, requiring the mine operator to assemble a pump capable of removing the water. In such instances, the formal approval process would be too time consuming when a practical necessity exists to remove water quickly and prevent flooding. Additionally, it would be economically burdensome for all mine pumps to be of an approved type, solely to meet a need which may or may not arise.

The proposed standard would allow the District Manager to approve the use of pumps assembled to remove water accumulations in specific instances without necessitating use of the formal approval process. By requiring that the equipment be explosion proof, the likelihood of its causing a fire or methane ignition would be remote. Additionally, safety considerations such as conductor size and circuit protection would be reviewed by the District Manager before the installations are approved, thereby assuring compliance with applicable provisions of part 75.

Section 75.502 Installation of Electric Conductors

As proposed, § 75.502 would limit the types of electric conductors permitted in areas where permissible equipment is required. It would be a new standard, replacing existing § 75.1002, which prohibits the use of all high-voltage cables inby the last open crosscut and within 150 feet of pillar workings.

Under the proposed standard, only trailing cables supplying power to permissible equipment, conductors of permissible equipment and intrinsically safe circuits, shielded cables, conductors of electric equipment needed to make repairs under proposed § 75.501(b), and conductors of electric equipment under proposed § 75.501(c) would be permitted in such areas. These types of conductors and cables would not pose increased risks of fire or explosion in face areas. Though not specifically mentioned in the proposed standard, cables which serve permissible blasting units would be allowed in these areas, as they would be considered conductors of permissible equipment.

This section of the proposal would prohibit the location of conductors such as trolley wires and trolley feeder wires within 150 feet of a mine face. Such electric conductors could provide a ready ignition source, and therefore should be prohibited from use in areas of the mine where methane and dust concentrations pose the highest risk of ignition.

Several commenters to the preproposal draft expressed the need for allowing high-voltage cables to be used in face areas in order to facilitate the use of longwall mining units. The proposal contains a new provision which would address the comments by allowing shielded cables, whether high or low-voltage, to be used in areas where permissible equipment is required. Therefore, shielded high-voltage cables, such as those used in the longwall mining process, would be permitted in face areas.

The modern development of longwall mining systems and the widespread desire to use them in the industry have resulted in a consistent influx of petitions to modify existing § 75.1002 to allow high-voltage cables to supply power to the high-voltage longwall units. The proposal would restructure the existing standard to allow use of such modern technological advances. One purpose for the existing prohibition of high-voltage cables in face areas was to limit the types of equipment used there. Some equipment requiring high-voltage power cables was not permissible. Therefore, prohibiting the use of high-voltage cables had the effect of prohibiting the use of some non-permissible equipment inby the last open crosscut or within 150 feet of pillar workings.

MSHA began to grant petitions for modification to 30 CFR 75.1002 to allow the use of high-voltage longwalls approximately three years ago. To date, there have been no fatal electrical accidents attributable to the use of the high-voltage longwall equipment allowed by petitions. Permitting high-voltage cables in face areas, in conjunction with requiring shielding of such cables and that the equipment served by them be permissible, would not increase the risks of fire and explosions. The proposed rule would permit operators to take advantage of a useful modern mining method without the need for utilizing the petition process.

Section 75.503 Construction, Maintenance, Modification, and Identification of Permissible Electric Equipment

This section would set requirements for the construction, maintenance, modification and identification of permissible electric equipment. It is derived from existing requirements at §§ 75.503, 75.504, 75.505, 75.506, and 75.506–1. It would simplify and clarify the requirements found in the existing standards in order to facilitate compliance efforts.

Paragraph (a) of the proposal would require permissible equipment to be constructed in accordance with the MSHA approval regulations in effect at the time the equipment is manufactured, and maintained in accordance with the regulations under which it was approved. These proposed standards would not represent great change from the existing regulations. Miners required to work with and around such equipment would be assured under the proposal that permissible equipment is maintained in permissible condition, in accordance with the approval regulations of part 18. MSHA has detailed permissibility requirements for electric equipment in part 18, which would work in conjunction with the proposal. In order to retain its permissible status, such equipment must be maintained in accordance with the applicable approval regulations.

Some commenters to the preproposal draft suggested allowing non-permissible recording devices to be attached to permissible equipment used inby the last open crosscut. Such devices are often used in testing and evaluating plans for longwall sections. Presently, an experimental permit is necessary to attach nonpermissible equipment to an approved machine. The commenters stated that the time necessary to apply for and receive an experimental permit causes delays in setting up longwall sections. This suggestion was not adopted in the proposal, because operators have begun to submit applications for experimental permits far enough in advance of their planned start-up dates. Therefore, adequate lead time is being planned for, and the problem of delays has been reduced since publication of the preproposal draft.

Under paragraph (b), field modifications of permissible equipment would be required to be made and maintained in accordance with the MSHA approval regulations in effect at the time of the modification. This provision would assure that modifications of electric equipment, including modified components of such equipment, will not affect its permissible status. Additionally, modifications to permissible equipment would have to conform to the most up-to-date permissibility standards to ensure that they reflect the state of current technology and information available to the Agency.

Under paragraph (c), a new provision under the proposal, requests for modification of permissible equipment would be required to be made in writing to MSHA's Approval and Certification Center in Triadelphia, West Virginia. Planned modifications would be required to accompany the application to facilitate evaluation of the request by the Agency.

Paragraph (d) would be a new part 75 provision, which would require approval and certification plates to be attached to permissible equipment and maintained so that model numbers, approval numbers, and certification numbers are legible. Existing § 18.11 requires approval plates to identify equipment as permissible. The proposed standard would assure that the plates are maintained so that they are legible while the equipment is in use underground. Legible approval and certification identification plates would allow interested parties to determine at a glance whether equipment operating in working areas has met with the applicable MSHA regulations, thereby helping to identify risks from electric equipment.

Section 75.504 Current Between Frames of Permissible Electric Equipment

This section of the proposal would limit the amount of current permitted to flow between the frames of any two units of permissible equipment operating where permissible equipment is required. The proposed rule would simplify and clarify existing § 75.524, but would not alter the requirements found in the existing standard.

Under the proposal, when two pieces of permissible equipment come in contact, the current permitted to flow between them could be no greater than 1.0 ampere, measured across a 0.1 ohm resistor connected between the frames of the equipment. Limiting the allowable current between the frames of such equipment would reduce the risk to miners of shocks and methane explosions due to inter-machine arcing.

Section 75.505 Installation and Maintenance of Electric Circuits and Equipment

Installation and maintenance of electric circuits and equipment would be addressed by this section, derived primarily from existing § 75.511, which specifies those persons permitted to perform work on electric circuits and equipment. Paragraph (a) would require installation and maintenance of electric circuits and equipment to be performed by a low-voltage or high-voltage qualified electrician, as applicable. This would assure that difficult and dangerous electrical work is performed by those possessing the necessary skill and training to do it. The qualification procedures for such persons are described in § 75.153 of the proposed rules.

Paragraph (b) would contain an exception to the proposed requirements of paragraph (a). Persons trained to perform electrical work who are directly supervised by a qualified electrician would be permitted to perform electrical work on low-voltage circuits. The proposal represents some change from the existing standards. As in the existing rule, trained non-electricians would be permitted to install and maintain electric circuits, but the proposal would allow them to do so only in the presence of, and under the direct supervision of a qualified electrician.

The effect of the rule would be to allow persons other than qualified electricians to assist in the installation and maintenance of low-voltage electric circuits. However, mandatory supervision would bring the expertise and training of the qualified electrician to bear on the work being done.

Some commenters to the preproposal draft expressed the view that overall improvements in electrical safety would result from the standard. Further, valuable experience would be gained by allowing trained persons to work on low-voltage circuits. In this way, persons could fulfill the experience requirements of proposed § 75.153 for future qualification as mine electricians. The proposal would adopt these views.

Paragraph (c) of the proposed standard is new, and would also embody an exception to paragraph (a). Persons qualified under proposed § 75.157 would be permitted to splice and repair low-voltage trailing cables on those parts of the cable which are external to couplers or compartments without the supervision of a qualified electrician. The Agency believes that persons meeting the qualification requirements of proposed § 75.157 would be adequately prepared to safely make splices and repairs on low-voltage trailing cables. By permitting them to do so, the rule would allow qualified electricians to attend to more difficult electrical problems in the mine, while ensuring that low-voltage cable splices and repairs are made in the safest possible manner by persons qualified to perform the tasks.

Paragraph (d) would be a new provision which sets out the direct supervision requirement referred to in paragraph (b) of the proposed rule. The supervising qualified electrician would be responsible for providing direct and immediate supervision and be present during the work. The standard is intended to clarify that at least one supervising qualified electrician must be present and available to the trained person or persons working on low-voltage circuits to provide direction and assistance.

The qualified electrician would have to be in the immediate area, such as on the same working section or in the same shop area as the work being done, to provide accessibility to the persons being supervised. A one-to-one ratio of qualified electricians and trained persons would not be required. However, remote communication with the person or persons being supervised from the mine office or some other locale would not suffice under the standard. If problems should arise beyond the skill or experience of the trained persons, a qualified electrician would be available in the immediate area to quickly come to their assistance.

The supervising electrician would be required to assure that the circuit or

equipment has been deenergized, disconnected and locked out and tagged before work is begun, and to examine and test completed work before the circuit or equipment is reenergized. These measures would assure that electrical tasks are performed safely and accurately so that they will not result in injury to miners. Further, those being supervised in the work would gain valuable experience in electrical work.

Section 75.506 Work on Electric Circuits and Equipment

This section would consolidate the procedures presently required for the performance of work on electric circuits and equipment by existing §§ 75.509, 75.511, 75.705, 75.705–1, and 75.1725. It would require deenergization of electric circuits and equipment before work on them is started, except when energization is necessary for troubleshooting and testing low-voltage circuits and equipment. Paragraph (a) would be new, requiring doors and cover plates on electric equipment which allow access to electric connections to be closed at all times, except during installation, testing, and repair. This would minimize the risk of inadvertent contact with energized components of equipment and circuits.

To deenergize circuits and equipment before work is begun, paragraph (b) of the proposal would require that the appropriate disconnecting device is opened, tagged, and locked out with a padlock and tag for each person assisting in the work. Commenters to the preproposal draft suggested a requirement for more stringent safety procedures for working on electric circuits and equipment due to the dangers involved. Data available to the Agency show that since 1970, approximately 54 fatalities occurred while miners were working on energized circuits and equipment. In the past five years alone, approximately 9 of those miner deaths were related to improper use of or failure to use disconnecting devices. Deaths and injuries have also occurred when equipment was energized before all persons had completed work.

Several commenters to the preproposal draft supported the use of individual locking devices and tags for each person performing work to assure that all persons are aware of whether the circuit or equipment being worked on has been deenergized. The proposed standard would adopt these measures. MSHA believes that the use of padlocks would best assure the safety of those conducting repairs on electric circuits and equipment. Additionally, tags would have to identify each person performing the work and identify the circuit or equipment being worked on. MSHA believes that the circuit or equipment needs to be identified in addition to the person performing the work, to adequately indicate whether all persons assisting in the work have completed their tasks. The Agency solicits comment on the benefits of requiring circuit or equipment identification on the tags. The risk of mistaken or premature removal of the padlock and resulting injury to miners, would be reduced under the proposed standards.

When two or more electric circuits are located within a single compartment, each circuit would be required to be deenergized and properly locked out before electrical work is started on any circuit. Several fatalities have occurred where an individual has contacted an energized circuit while working on a deenergized circuit in the same compartment. The proposal would prevent such occurrences.

Under paragraph (c), the proposal would require that when high-voltage power conductors are required to be deenergized, they would have to be connected to the system grounding conductor by a high-voltage qualified electrician. The high-voltage circuit would have to remain grounded until work has been completed. This provision would prevent the occurrence of reenergization of high-voltage conductors while work is being performed on an associated circuit. Further, grounding would provide a fault path to leak off excess charge in the conductor to prevent shock hazards to miners.

Unlike existing § 75.511, which allows locks to be removed by authorized persons, §§ 75.506(d) and 75.815(e) of the proposal would allow only the person who installs a padlock or tag to remove it. A commenter to the preproposal suggested a requirement that electricians performing work on circuits should have padlocks with their own unique key in order to guard against accidental energization. The suggestion was adopted in the proposal to assure that only the individual who installed a lock could signify when he or she has completed work. A master key or combination would not be available to others, who could mistakenly allow a circuit to be reenergized prematurely. All parties would be made aware of who is working on what equipment or circuit under the proposal. If individuals are made responsible for installation and removal of their own locks and tags, the risk of accidental reenergization of a circuit while work is being done on it would be eliminated.

Each person required to perform work on the circuit or equipment would be responsible for installing and removing their own locking devices, to ensure their personal safety. Between shifts, the circuit or equipment should remain tagged if work has not been completed. Additionally, the supervisor or foreman could tag the equipment or circuit or lock-out with his or her own padlock between shifts. Persons required to continue work on the next shift would be responsible for installing individual locks at that time, and removing them when their work is completed.

There may be some unusual circumstances where the mine operator could demonstrate a need to remove an employee's lock. Recently, the Occupational Safety and Health Administration (OSHA) issued a final rule with such an exception (54 FR 36644). Under the OSHA rule, the employer could remove an employee's lock if, at a minimum, the employer has procedures to: verify that the employee is not at the facility; make all reasonable efforts to contact the employee to inform the employee that the lock has been removed; and can ensure that the employee knows that the lock has been removed before resuming work at the facility. The Agency solicits comments on whether, and if so under what circumstances, such an exception would be appropriate for underground coal mining.

Paragraph (e) of the proposed standard would state that when mechanical repairs or maintenance being performed on electric equipment requires removal of power in accordance with existing § 75.1725 (c), the disconnecting devices would be required to be opened, locked out with a padlock and tagged by persons performing the work. Those persons required to do mechanical work on electric equipment are exposed to serious risk of injury, particularly since they may not have any familiarity with the electrical hazards involved, or the possibility of inadvertent start-up of the equipment. The proposal would assure proper deenergization and lockout of circuits while mechanical work is being performed.

Under paragraph (f), conductors that are not supplying power to electric equipment would be required to be deenergized and either removed from their supply source or have their supply source locked out and any exposed ends insulated. The proposal addresses shock hazards created when a person comes into contact with abandoned or unused energized conductors. Conductors should be disconnected at the conductor's supply point to assure total deenergization. The option to insulate the wiring ends and lockout the circuit is also included to allow for maintenance and repair as a compliance alternative.

Section 75.507 Electrical Troubleshooting and Testing

This section is derived primarily from existing §§ 75.509, 75.511, 75.705–1 and 75.1720, and would address safety procedures to be used when troubleshooting and testing energized circuits. Proposed § 75.506 would recognize that in some instances, it is necessary for a circuit or equipment to remain energized for troubleshooting and testing. For example, in order to discover the nature of some problems within a circuit, voltage readings must be taken while the circuit remains energized.

Under paragraph (a), the proposal would permit troubleshooting and testing only of low-voltage energized circuits by qualified electricians, when the purpose is to determine voltages and currents. Troubleshooting and testing energized circuits is extremely hazardous work. Therefore, the skills and training of a qualified electrician would be appropriate for performance of these tasks. Troubleshooting and testing would be limited to low-voltage energized circuits, primarily due to the insulation ratings of available troubleshooting and testing equipment. The insulation ratings on equipment commonly used are insufficient for miner protection for use on high-voltage circuits.

Paragraph (b) would require qualified electricians to wear rubber insulating gloves with protective coverings designed to prevent physical damage to the insulation material during troubleshooting and testing. Several commenters to the preproposal draft suggested that properly rated rubber insulating gloves be worn by persons performing troubleshooting and testing of energized circuits for protection against electric shock. A review of the fatality record has shown that at least six fatalities have occurred since 1970 due to contact with energized circuits while troubleshooting and testing without the benefit of gloves. Leather coverings, for example, would protect the insulating material of gloves against tears and physical damage which could render them ineffective for protection against electric shock to the qualified electrician.

Paragraph (c) of the proposal would require high-voltage circuits contained in the same compartment as the low-voltage circuit being tested to be deenergized, grounded, locked-out and tagged, or physically separated by a permanent barrier or partition from the low-voltage circuit before troubleshooting or testing the circuit. These methods of preventing contact with the uninvolved circuit would minimize an electrician's exposure to electric shock, electrocution, and burns from arcing. The proposal thus provides for several equally effective compliance alternatives. A "permanent" barrier is specified to assure that persons will not be forced to insert a temporary or removable barrier while work is being performed and contact energized components of the equipment.

Commenters to the preproposal draft suggested deleting the provision permitting isolation of the uninvolved energized high-voltage circuit by a barrier or partition. MSHA believes, however, that the proper use of permanent barriers of partitions would provide the same measure of protection to the electrician as would the other specified methods.

Paragraph (d) is a new provision, which would set requirements for the gloves required to be worn by qualified electricians under paragraph (b) of the standard. Rubber insulating gloves would have to be rated for at least the nominal voltage of the circuit, examined before each use for damage and defects, and removed from the underground areas of the mine when damaged or defective.

The dangers inherent in working with energized circuits require safety precautions such as the wearing of insulating gloves which are appropriately rated for the voltage of the circuit, to afford maximal protection. The proposal would make qualified electricians responsible in part for their own personal safety by requiring them to examine their gloves for damage or defects before relying on them. It would also assure that protective gloves are removed from the underground areas of the mine to prevent inadvertent use of and reliance on damaged or defective gloves.

Section 75.508 Examination and Testing of Electric Equipment and Circuits

This proposed standard would set requirements for installation, maintenance and periodic examination and testing of electric equipment used underground. The general requirements of existing §§ 75.512, 75.512–2, 75.703–3, 75.800–3, 75.800–4, 75.803, 75.900–3 and 75.900–4 would be included in and replaced by this proposed section. Paragraph (a) is new, and would require electric equipment and circuits to be installed, maintained, and used to prevent fire, electric shock, ignition, or operational hazards. Equipment or circuits that present a hazard to persons due to improper installation or maintenance, misuse, or damage would have to be deenergized and tagged as a hazard. This standard would require that equipment and circuits are maintained in continual safe condition, even between examinations and testing. If a hazardous problem is discovered at any time, the equipment or circuit would have to be deenergized and tagged as a hazard.

Paragraph (b) would require a qualified electrician to make periodic examinations of electric equipment and circuits to determine that the electrical protection, equipment grounding, permissibility, cable insulation, and control devices are being properly maintained to prevent a fire, electric shock, ignition or operational hazard from existing on the equipment. Examinations would be required to include testing of equipment and circuits when necessary to make such determinations; that is, when visual examination alone would not be sufficient to determine whether a problem exists. For instance, to discover whether continuity of the grounding conductor is being maintained in a low-voltage trailing cable, a test must be performed, because this could not be determined through visual examination alone.

Electric equipment used in underground coal mines is subjected to heavy, continual use, which can result in wear and breakdown. The mine atmosphere is also particularly harsh for electric equipment. Unless it is frequently examined, potential problems could go undiscovered, and could compromise the safety of miners working with or around such equipment. This provision would direct the steps necessary for compliance with paragraph (a) of the standard. It reflects the suggestion of commenters to the preproposal draft that more specific testing and examination requirements be included in the proposal in order to clarify the required procedures.

Paragraph (c) would specify the frequency of examinations of low-voltage electric circuits and equipment. It would retain the requirement of existing § 75.512–2 that examinations and necessary tests of mobile and portable equipment and circuits be made when installed and at least every seven days thereafter. Mobile and portable electric equipment and circuits are susceptible to the greatest risk of damage or breakdown from heavy use in a mine. The Agency believes that

frequent tests and examinations of such equipment are an essential part of an effective maintenance program. They would assist in the discovery of equipment defects before they could cause injury to miners.

Low-voltage stationary equipment and circuits would have to be examined and tested when installed and at least every 30 calendar days thereafter, as would hand-held electric power equipment under the proposed rule. The 30-day period represents a change from existing § 75.512–2, which sets a seven-day examination cycle. After considering the level of use and the possible hazards involved with hand-held and stationary equipment, the Agency's view is that examination and testing of these units every 30 days would be more appropriate. Qualified electricians would have more freedom under the proposed rule to concentrate on examination and testing of mobile and portable electric equipment, which represent a greater danger to miners.

Under paragraph (d), surface and underground high-voltage switchgear used in conjunction with circuits extending underground would have to be tested at least once every 90 calendar days. Tests would be required to include breaking the continuity of the ground-check conductor at the extreme end of the monitoring circuit when a ground-check conductor is used, to assure that the entire circuit will be properly deenergized when necessary. Additionally, the circuit breaker would be required to be opened by actuating at least one interlock switch for each power center.

Existing § 75.800–3 is interpreted to require specific testing of surface circuit breakers protecting underground high-voltage circuits, and visual examination of underground circuit breakers once each month. The proposed standard would add specific testing requirements for underground circuit breakers to be performed at least every 90 days, in addition to a visual examination, which would be required every 30 days under paragraph (e) of the section. If visual examinations are completed diligently, actuation of the underground circuit breaker every 90 days, as specified in the proposal, would be adequate to assure that it is in proper working order.

Electrical protective devices are not often called upon to deenergize high-voltage circuits. When they are needed, miners should be assured that they will properly function for their protection. Testing in the specified manner would increase the likelihood that miners are protected against injuries which can occur due to faulty protective devices and equipment. The main circuit breaker would be subject to the more stringent tests and examinations detailed in paragraph (f). Paragraph (e) would require the equipment to be visually examined at least once every 30 calendar days for hazardous conditions resulting from exposed energized parts or equipment defects.

Paragraph (f) would be a new provision, which would require surface high-voltage grounding resistors and circuit protective devices which protect underground circuits to be tested when installed and at least every twelve months thereafter. Commenters requested that specific testing procedures be included in the standard, in order to provide adequate guidance and consistency. Testing of the specified devices would be required to include passage of an amount of current through each current transformer necessary to cause the circuit breaker to open. The standard would also require activation of the circuit breaker by impressing an amount of voltage across each potential ground-fault device necessary to cause the circuit breaker to open, and a determination of whether the grounding resistor is open or shorted. These steps would ensure that protective devices and grounding resistors are maintained in operative condition.

The proposed testing requirements would involve intentional tripping of the circuit breaker to assure that protective devices will work properly at their specified voltage or current levels when called upon to do so. Experience indicates that a twelve-month testing interval is a reasonable period for determining whether adequate circuit protection is provided by the devices.

Should tests or examinations reveal a fire, electric shock, ignition or operational hazard on high-voltage equipment, paragraph (g) would require it to be removed from service or repaired. Requiring prompt repair or removal of hazardous electric equipment and circuits from service would ensure that miners working with or around them would not be injured by them. Repairs would have to be completed on such equipment before it is put back into service.

Under paragraph (h), at the completion of tests and examinations, the person responsible for making them would be required to certify by signature and date that they have been performed, and make a record of unsafe conditions found and corrective actions taken. If the same individual is responsible for examining and testing multiple units of equipment or circuits, only one certification that they have been performed would be necessary. Requiring certification of examinations and testing for each machine or circuit would be unnecessary, provided it can be ascertained that this proposed standard has been complied with.

Paragraph (i) would require the mine operator to keep records and certifications for at least one year, and make them available at the mine for inspection by authorized representatives of the Secretary and representatives of miners. These certifications and records would enable interested persons to easily determine whether equipment and circuits are being tested to assure proper maintenance. They would also aid in investigations of mine accidents and point out patterns of defects which might suggest the need for redesign of units of electric equipment.

Paragraph (j) of the proposal would be new, stating that equipment which remains idle for longer than the proposed testing intervals would not have to be examined or tested while idle. However, to address unknown hazardous conditions arising during idle periods, examination and testing would be required before such equipment is returned to service. Tests of idle equipment would serve no safety purpose, but idle equipment should be examined and tested for malfunctions or hazardous conditions, such as damaged relays or valves, before being returned to service.

Section 75.509 Switches, Control Devices, and Control Circuits

This section of the proposal is derived in part from existing §§ 75.520 and 75.1403–10(m), which contain requirements for switches and controls on underground electric equipment. The revised standard would include performance and design requirements for control circuits on electric equipment to provide for safer operation. Paragraph (a) of the proposal is derived from existing § 75.520, which requires electric equipment to be equipped with switches or other controls that are safely designed, constructed and installed. The proposal would alter and clarify the existing standard by requiring that switches and control devices be installed and maintained on equipment to prevent operational hazards. This would assure that switch wiring designed for this application is used in installation, and prevent the occurrence of malfunctioning switches and control devices.

Under paragraph (b) of the proposal, switches and control devices would have to have voltage and current ratings of at least the voltage and current of the circuit in which they are used. The hazards of electric shocks and electrocution would be averted by requiring compatibility of voltage and current ratings.

Under paragraph (c), a new provision, a-c remote control circuits would be required to have a maximum voltage of 150 volts. Control circuits for remote switches would be restricted to 150 volts in light of the history of injuries and fatalities associated with them. At least four electrocutions have occurred since 1970, when persons have contacted the frames of control switches or control circuits energized at voltages in excess of 150 volts a-c.

Paragraph (d) would require control circuits having a neutral, or one conductor solidly connected to the grounding medium, to be wired so that ground faults in the equipment will not cause it to suddenly start, prevent it from being stopped, or prevent operation of protective devices connected in the circuit. To be safely operated, equipment must have a means of preventing accidental start-up, as well as a means of stopping it when ground faults exist on the equipment.

Protective devices should also remain operable despite failures or faults. Unexpected start-up of equipment or inability to stop it could lead to serious underground accidents. Similarly, miners must be able to rely on protective devices, such as panic bars, built into equipment they operate or work around. This provision would assure that such safety features would remain operable in emergency situations.

Control circuits, under paragraph (e) of the proposal, would be required to be wired so that stop switches will deenergize the equipment if the start switch remains in the "start" position. The requirement would ensure a means of turning off electric equipment, despite a malfunction causing the switch to become stuck in the start, or on position. The hazards posed to miners from equipment malfunctions would be reduced under this provision.

Paragraph (f) is derived from the safeguard provisions in existing § 75.1403–10(m), which addresses tram control switches on rubber-tired equipment and provides that these switches be designed to automatically return to the stop or off position when released. The proposal is intended to clarify the existing standard, and would require that tram controls on rubber-tired and crawler-mounted mobile electric equipment be designed to be automatically self-centering. The proposed standard would make clear MSHA's position that self-centering tram controls are required for the safe operation of mobile electric equipment equipped with such controls. Since enactment of the existing standard, several pinning and crushing fatalities have been related to tram controls remaining in the tram position, allowing equipment to continue to travel after the tram lever was released. The proposed rule would provide clear mandatory performance regulations for tram levers to address this hazard.

Agency experience, including its investigation of the tragic 1984 Wilberg Mine fire, has indicated that overtemperature devices should be provided and maintained on air compressors. Paragraph (g) would be a new provision which would require automatic overtemperature devices to be provided and maintained on air compressors, other than those which are component parts of locomotives and rock dusting machines. These devices would be required to automatically deenergize the compressor at predetermined settings specified by the manufacturer, but at no greater than 240 degrees Fahrenheit.

At temperatures above 250 degrees, the air compressor oil can begin to break down and its lubrication qualities can be lost. A maximum 240-degree Fahrenheit deenergization setting is consistent with the recommendations of manufacturers of air compressors most commonly used in the mining industry. The risk of fire due to excessive heat could be reduced by compliance with the standard.

Section 75.510 Disconnecting Devices

This section would address requirements for disconnecting devices used to protect underground circuits and equipment. It is derived from existing §§ 75.511, 75.519, 75.519–1, 75.520, 75.601, 75.705–6, 75.705–7, 75.705–8, 75.802, 75.808, 75.809, 75.903 and 75.904, and would embody few changes from those standards. The proposal would consolidate and clarify the existing rules covering disconnecting devices.

Paragraph (a) would require a disconnecting device to be installed in each power circuit that extends underground. When located on the surface, the disconnecting device would have to be positioned within 500 feet of where the circuit enters the underground area of the mine. When located underground, the disconnecting device would have to be within 500 feet of the bottom of the shaft or borehole through which the circuit enters the mine.

The proposal would change the distance required by existing § 75.802(c) for surface high-voltage devices from 100 to 500 feet. This change would recognize that in some instances, the 100-foot distance may lead to less safety for miners if the special circumstances of a mine are not considered. For example, the 100-foot distance could require more than one disconnecting device to be installed in a high-voltage cable which extends longer than 100 feet from the mine. The proposed rule would eliminate unnecessary exposure of miners to the risks involved in making multiple terminations in such cables to install disconnecting devices. Further, due to the natural terrain and physical lay-out at some mines, the 100-foot distance could make disconnecting devices less accessible than they should be in case of emergency. The 500-foot distance would give operators greater flexibility in placing disconnecting devices where they are most easily reached in emergency situations.

Under the new provisions of paragraph (b), disconnecting devices which are not designed for load interruption and are installed at locations specified in paragraph (a)(2) of the section, would be required to be installed so that a circuit breaker operated at the disconnecting device location can deenergize the incoming power circuit before disconnects are opened. The effect of this standard would be to provide devices which are not capable of deenergizing the circuit under load with an alternative means of deenergization. The proposal would also require a visual or audible means, such as an indicating light or a horn, at the disconnect location which enables miners to easily ascertain whether power is being supplied to the device. This would reduce the risk of injury due to arcing when a circuit is disconnected under load.

Paragraph (c) would require disconnecting devices to be installed in conjunction with each circuit breaker, and at the beginning of each branch circuit and trailing cable used underground. Since 1970, at least seven fatal electrical accidents have occurred which involved the failure to use high-voltage disconnecting devices, failure to open the correct disconnecting devices, or failure to lock the devices out. The proposal would facilitate determinations of whether disconnecting devices have properly deenergized the circuit, thereby reducing the risk of electrical accidents and injuries. Additionally, compliance with the proposal would provide for deenergization of the branch circuit to facilitate testing or repairs without necessitating deenergization of the main circuit. Miners could otherwise be tempted to work on an energized circuit to avoid having to deenergize it in its entirety.

The proposal specifies that a disconnecting device be installed at the beginning of each trailing cable. This aspect of the proposal clarifies existing § 75.903, which requires that a disconnecting device be installed in conjunction with the circuit breaker. The proposal would revise this language to require installation of the disconnecting device at the beginning of each trailing cable, to assure total deenergization of the cable.

Paragraph (d), derived from existing §§ 75.601, 75.808, and 75.903, would also require that disconnecting devices be designed to provide visual evidence that all ungrounded power conductors are disconnected when the device is open. Visual evidence would consist of the ability to observe the physical opening of the controls. This would clarify the language in existing §§ 75.601 and 75.903 which require visual evidence that the power is disconnected. It would also modify existing § 75.904 to include the identification of disconnecting devices, as well as circuit breakers.

Each device would have to be equipped with a means for installing a padlock under paragraph (e) of the proposed rule, derived from existing § 75.511. Therefore, disconnecting devices would be capable of properly deenergizing the circuit being worked on, and assuring that it will remain deenergized, in accordance with the requirements of part 75.

Paragraph (f) would require each disconnecting device to be distinctly marked to indicate the specific unit of equipment that it serves. The marking would be required to be identical to the marking of the corresponding circuit breaker or fuse holer, and durable enough to withstand the mining environment. Where a plug and receptacle are used as a disconnecting device, both components would be required to bear identical markings. These provisions would ensure that the protective devices are marked and identified with the breakers they serve and that identifying markings are maintained, despite the harsh mining atmosphere. Numerous accidents have been attributed to disconnecting the wrong cable or trailing cable because of inadequate or improper identification at the circuit breaker and at the disconnecting device.

Under paragraph (g) of the proposed rule, disconnecting devices would be required to have voltage and current ratings compatible with the circuits in which they are used. This would ensure that the operating parameters of the devices are not exceeded during normal operation.

Paragraph (h) is a new provision, which would require that except for trolley taps, low-voltage disconnecting devices not have exposed energized parts, which can represent a serious hazard to miners. Because of the nature of their design and use, trolley taps would be excluded from this provision. Paragraph (i), also new, would require high-voltage disconnecting devices installed underground after the effective date of the proposed rule to be enclosed in a grounded metallic enclosure and have no exposed energized parts. The standard would provide for physical protection of the devices. Persons having to work with or near disconnecting devices would be protected from contacting dangerous voltages which can exist when energized parts are exposed.

Comments to the preproposal draft cited the shock hazards inherent in working with exposed energized parts of high-voltage disconnecting devices as a justification for requiring them to be enclosed. However, they suggested phasing out exposed parts by employing a delayed effective date for the standard. The proposal would address these suggestions by applying the enclosure requirement only to devices installed after the rule's effective date. Existing equipment having exposed parts would be required to have guarding installed in accordance with paragraph (j) of the section. MSHA solicits further public comment on the necessity of this standard, and the proposed compliance schedule.

Paragraph (j), derived from § 75.705–9, would require disconnecting devices having exposed energized parts to be guarded to prevent inadvertent contact, and be operated only by a high-voltage qualified electrician. This provision would address equipment installed prior to the effective date of the proposed standard. Although installation within metallic enclosures as specified in paragraph (i) would be preferable for new equipment, the difficulty in retrofitting existing equipment would necessitate the use of the alternative safety procedure of guarding exposed parts and requiring that work be performed only by a qualified high-voltage electrician for equipment presently in use underground.

Guarding would reduce the incidence of accidental contact with energized parts, which could inflict serious injury on miners. Due to the electrical dangers involved in working with or near high-voltage energized equipment, only those who have demonstrated that they possess the necessary knowledge and skill by compliance with proposed § 75.153 should operate disconnecting devices.

The qualified electrician referred to in the previous paragraph would be required under proposed paragraph (k) to wear rubber insulating gloves rated at least 20,000 volts, which have protective coverings, such as leather, designed to prevent physical damage to the insulating material. The use of insulated sticks, fuse tongs or pullers would also be required when operating disconnecting devices with exposed energized parts. Paragraph (l) would require such equipment to be insulated and maintained to protect the qualified electrician from exposure to voltage.

Paragraph (m) is derived from existing § 75.705–7. It would require gloves, insulated sticks, fuse tongs and pullers to be examined before each use for visible signs of physical damage and defects. If damage or defects are found, these items would be required to be removed from the underground areas of the mine. Under the standard, qualified electricians would have some responsibility for ensuring their own personal safety. It would assure that they would not use and rely for their protection on damaged or defective gloves or tools. Protective items which have been rendered ineffective would not be used inadvertently by qualified electricians responsible for operating disconnecting devices if they are required to be taken out of the underground areas of the mine.

Rubber insulating gloves would have to be electrically tested at least every six months under paragraph (o), derived from existing § 75.706. Testing would involve procedures designed to locate damaged portions of the gloves which are not discernible through visual inspection alone. These provisions are intended for the protection of electricians against unnecessary exposure to life-threatening voltages by emphasizing compliance with accepted safety practices.

Section 75.511 Cable Couplers

Proposed § 75.511 would combine and clarify existing §§ 75.607, 75.803–1, 75.805, 75.902 and 75.902–1, which address requirements for cable couplers. The proposal is intended to provide more performance-oriented standards for the devices. Paragraph (a) would require cable couplers to enclose all power conductors of the circuit in which they are used. This provision would protect miners from electric shocks due to contact with exposed energized conductors.

Couplers would also have to be equipped with a metallic outer shell when the nominal voltage of the circuit exceeds 600 volts under the proposal. A metallic outer shell would offer mechanical protection for connections, and serve to maintain a continuous grounding path for the coupler. The proposal would require that cable couplers have voltage ratings of at least the nominal voltage of the circuit, and current ratings of at least the maximum continuous current rating of the circuit in which the couplers are used. To protect against electric shocks or burns, couplers should have voltage and current ratings compatible with those of the circuits they serve.

The standard would require construction of cable couplers so that ground-check conductors or interlock circuit conductors will separate first, and equipment safety grounding conductors will separate last when the couplers are disconnected. The safety effect of this sequence would be two-fold. First, it would assure that energized phase conductors are not exposed if the coupler is mistakenly separated under load. Second, it would assure that equipment will remain grounded until after the phase conductors have been separated. In these ways the proposal would prevent electrical arcing and ignitions, and equipment grounding would be maintained while phase conductors are being separated.

Couplers would have to be equipped with an electrical or mechanical interlock on all three-phase circuits and d-c trailing cable circuits which prevents the coupler from being disconnected while energized. The voltage of interlock circuits would be limited to 40 volts on low-voltage circuits and 96 volts on high-voltage circuits under the proposal. This requirement would prevent accidental disconnection of the coupler while under load. Connecting or disconnecting cable couplers under load would be prohibited under the proposed rule. This is a restatement of existing § 75.607, intended to prevent electric shocks, flash burns and ignitions which can be caused by arcing when couplers are disconnected under load.

Paragraph (b) of the proposal is new, and would require cable couplers used on mobile battery-powered electric face equipment to either meet the approval regulations found at 30 CFR § 18.41, or be held in place by a threaded ring or an equivalent mechanical fastening equipped with a captive device removable only by a special tool for separation of the connection. The proposed standard would clarify the Agency's existing policy concerning the use of cable couplers on mobile battery-powered electric face equipment.

Existing § 18.41(f), specifies only the use of padlocks as an alternative for interlocks or explosion-proof couplers on mobile battery-powered electric equipment. However, MSHA currently permits the use of other types of mechanical locking devices, provided they are equally as safe. The proposal would incorporate this policy by allowing the use of the alternative method described.

Section 75.512 Trolley Taps

This standard is derived from existing §§ 75.514 and 75.607, which require electric conductor connections to be mechanically and electrically efficient, and prohibit the making or breaking of cable connections to junction boxes under load. These requirements have been adapted by the proposed standard to apply to trolley tap connections. Under the proposed standard, pressure-type connectors would be required to connect trolley wires and feeder wires to trolley taps when the load of the circuit exceeds 4.0 amperes. The use of standard hook type trolley taps would not be permitted under the proposal because of their tendency to cause arcing connections and excessive heating at connections with higher loads.

Pressure-type connectors are spring-loaded devices which allow for a very tight connection between trolley taps and trolley wires. Hook-type connectors do not mechanically apply pressure to the connection. The looser connection allows for heating and arcing, which could pose the risks of fire or shock to miners. Requiring pressure-type connectors could prevent these occurrences.

Loads of less than four amperes typically serve lighting circuits. Experience indicates that such loads would be provided with adequate conductivity at the power connection to the trolley wire or trolley feeder wire by use of hook-type connectors, presently used for this purpose. A four-ampere cut-off point would have the effect of excluding all motor loads from the ability to use hook-type connectors, but it would eliminate the need for specially-designed connectors for lighting circuits in and around belt drives, for example.

The proposal would not permit connection or disconnection of trolley taps under load. Such a practice would expose miners to unnecessary risk of serious injury from electrical arcing and ignitions. The proposal would ensure that safe work practices are employed to eliminate the hazards when connecting or disconnecting trolley taps.

Section 75.513 Lightning Protection

This proposed standard is derived from existing § 75.521, which requires lightning arresters for exposed ungrounded power conductors and telephone wires extending underground to prevent electric shocks and fires. Paragraph (a) of the proposal would incorporate the existing standard, but the term "surge arresters" would now be used. Surge arresters are defined by proposed § 75.2(j) as devices used to provide protection against lightning surges. They are designed to prevent lightning strikes on the surface from being transmitted to the mine power system and energizing equipment frames.

Paragraph (b) contains new provisions which would no longer require lightning arresters to be installed on power conductors and telephone wires, provided they are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shields, coverings, or enclosures throughout their entire length. These types of conductors would be, in MSHA's view, sufficiently protected against transmittal of dangerous voltages caused by surface electrical lightning surges. The proposed change would eliminate the need to cut into cables solely to install surge arresters. Thus, miners would not be exposed to the hazards involved in the process, which would not enhance the circuit's electrical protection. Some commenters to the preproposal draft objected to a requirement of surge arresters at particular locations, based on the difficulty of installation in some cases. The proposal would address such concerns by offering an alternative means of compliance under paragraph (b).

Paragraph (c) of the proposal would more clearly describe the proper surface locations for surge arresters than does the existing standard. On the surface, they would be required to be located within 100 feet of where the conductors enter the mine, are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shields, coverings or enclosures, or are supported by grounded metallic messenger wires.

Although the location of a lightning strike can clearly not be controlled, a 100-foot distance would limit the distance in which lightning could strike in by a lightning arrester, which could permit a voltage surge to be transmitted underground and cause energization of

equipment frames. Lightning strikes outby the arrester would cause excess voltage to be transmitted to ground.

Paragraph (d) would clarify the existing requirement at § 75.521 for the use of "suitable lightning arresters of approved type." The proposal would instead require that surge arresters be rated for the maximum voltage and current of the circuits they protect. Existing § 75.521 contains no such requirement. The change in the wording of the standard would make it more performance-oriented, clarifying that surge arresters should be compatible with the circuits they protect. Lightning surges would be prevented from causing excess voltages on power conductors which can be transmitted underground and energize equipment frames.

Paragraph (e) of the proposed rule would retain the existing requirement at § 75.521 that surge arresters extending underground be connected to a low-resistance ground field that is separated by at least 25 feet from neutral ground fields. This would separate the underground grounding circuit from the surface distribution grounding circuit, thereby reducing the likelihood of a lightning surge being transmitted underground from the surface power system.

Section 75.514 Lighting Fixtures and Photographic Lighting Equipment

Proposed § 75.514 would replace existing § 75.522–1, which contains standards for incandescent lighting used underground where non-permissible equipment may be used. Agency approval is presently required under existing regulations for all devices used for the purpose of lighting the areas of underground coal mines. The proposal would no longer require submittal to a lengthy approval process for lighting devices used in areas where permissible equipment is not required, because the hazards to miners outby face areas are such that prior approval of the equipment is not a necessity, in MSHA's view. The Agency believes that the proposed lighting standards will provide protection equivalent to that under existing standards.

Lighting equipment used in areas where permissible equipment is required currently must be approved under part 18. Proposed § 75.502 would still require such equipment to be permissible. This proposed standard would set installation requirements for lighting devices used only in outby areas, and would offer more flexibility in underground lighting by not restricting lamps to either incandescent or fluorescent types.

Paragraph (a) of the proposal would require lamps used to illuminate slopes and enclosed underground structures to be installed within glass, plastic or equivalent enclosures. The hazard addressed by the standard is breakage of glass and exposure of energized lighting conductors resulting from such damage. This condition gives rise to shock, short-circuit and ignition hazards. Equipment and materials that could damage the lighting fixture are often transported through slope areas of the mine. In addition, enclosed underground structures typically have limited clearance area. The possibility of equipment or persons damaging lighting fixtures and coming in contact with the exposed parts is therefore greater in these areas of the mine.

Under paragraph (b), incandescent lamps used to illuminate walkways and work areas would have to be contained in glass, plastic or equivalent enclosures, or installed within weatherproof sockets. If incandescent lamps are installed in weatherproof sockets, the proposal would require them to be located at least eight feet vertically and three feet horizontally from walkways and work areas. These provisions would assure that miners will not be shocked by contact with lighting devices. Further, the enclosures described would not allow combustible materials or water to contact energized lighting circuits and cause short-circuits or ignitions. The proposal allows the option of using weatherproof sockets in walkways since locating them eight feet above the walkway would provide equivalent protection by location.

For compliance with paragraphs (a) and (b), MSHA would consider any material similar in durability and capable of providing adequate protection against contact by persons, materials or the environment to be equivalent to glass or plastic. By allowing such an alternative, the proposal would not prevent the use of effective enclosure materials which may be developed in the future.

Paragraph (c) would require incandescent lamps located in areas other than those specified in paragraphs (a) and (b) to be installed in weatherproof sockets or within glass, plastic or equivalent enclosures. These provisions would also ensure that miners will not inadvertently contact the energized filaments of broken lighting devices and that lamps would not be able to contact and ignite combustible materials underground. Weatherproof sockets or the specified enclosures would assure that wet mining conditions will not cause short-circuits of lighting fixtures.

Paragraph (d) would reduce the risk of underground mine fires by prohibiting lamps from coming into contact with combustible materials. Except as provided in paragraphs (b)(2) and (c) of the standard, lamps would have to be enclosed within glass, plastic or equivalent enclosures to prevent such contact. Paragraph (e) is new, and would prohibit the use of low-pressure sodium lamps underground. This type of lamp typically contains enough sodium to cause a fire or explosion if the chemical should come in contact with coal dust in the presence of water. Therefore, low-pressure sodium lamps would not be suitable for use underground.

Paragraph (f) would set new provisions for the use of nonpermissible electronic photographic equipment in areas where permissible equipment is required, provided certain safety precautions are taken. Electronic photographic equipment could be used if the area is ventilated with air that has not been used to ventilate coal cutting or loading operations, which contains less than 1.0 percent methane. Air which has not ventilated coal cutting or loading operations would typically contain lower concentrations of methane, and thus, less risk of fire would be present. The equipment could only be used under supervision of a certified person, as defined in existing § 75.2(a), who would be required to test for methane before and during the operation.

The proposed rule would allow the use of photographic equipment underground under controlled conditions. This equipment would be permitted in face areas of underground coal mines provided proper safety measures are followed. Underground photography has been a particularly beneficial tool for operators and the Agency in investigating the causes of mine accidents and preparing training materials intended to avoid such accidents, and this provision would facilitate its use.

Section 75.515 Insulation of Electric Conductors and Cables

This section is derived from existing §§ 75.517, 75.517–1, and 75.804. The proposed standard is intended to simplify interpretation of current standards, although there is little substantive difference between the requirements of the existing and proposed rules. Existing § 75.517–2 would be deleted under the proposal, as it contains compliance dates which would no longer be applicable.

Paragraph (a) of the proposed rule would require insulation having a voltage rating of at least the nominal voltage of the circuit on electric power, control, ground-check, interlock and communication conductors and cables. Properly rated insulation would guard against dangerous eventualities such as short-circuits, flash burns and electrocutions. At least two fatalities have occurred since 1970 because the victims contacted cable whose insulation was inappropriate for the cable's voltage.

Trolley wires and trolley feeder wires installed with mine track, grounded power conductors of d-c feeder systems, equipment and system grounding conductors, and bare signal wires of less than 40 volts would be excepted from the insulation requirement, because of the nature of their uses underground. Insulation of trolley wires in track entries, for instance, would render them inoperative for their intended use. The proposed rule would clarify the term "trolley feeder wires" to indicate that only those used with mine track would be excepted from the standard. Feeder wires which are located in walkways, for instance, would have to be insulated under the proposed rule to protect miners from contacting energized conductors.

Equipment and safety grounding conductors would also be excepted from the insulation requirement under the proposal, since they present little or no shock hazard to miners. MSHA experience indicates that bare signal wires of less than 40 volts would not compromise miner safety as such circuits typically have very low energy levels.

Paragraph (b) is new, and would require exposed electric connections and resistor grids to be insulated. When insulation would be impractical, they would be required to be guarded to prevent inadvertent contact by persons or equipment. This provision would allow compliance alternatives of equal effectiveness for the protection of miners.

Section 75.516 Mechanical Protection of Conductors and Cables

This section would clarify §§ 75.516–2, 75.517, and 75.806. Electric conductors and cables, and communication wires and cables would be required to be protected against damage to the outer jacket and insulation. These types of cables and conductors are subjected to heavy use and rough treatment underground. They can be damaged when run over by large equipment, by rubbing against coal ribs or floor, or by wear and tear due to excessive use. This type of mechanical damage, if undiscovered, places miners at risk of injury while handling cables. The term "functional damage" means any damage which would defeat the jacket or insulation's ability to perform its protective function. Scuffing or marking of the outer jacket which does not affect the function of the jacket would not be cited under the proposal.

Existing § 75.606 requires that trailing cables be adequately protected to prevent damage by mobile electric equipment. The proposal would expand this requirement by specifying means for providing trailing cables with protection from damage by mobile electric equipment, by bridges, trenches, suspension from the mine roof, or rib or by location. These are the methods that the Agency would consider appropriate for protecting trailing cables from equipment passing over or under the cables.

The proposal would call for a bridge, trench or suspension device to be built or installed for protection of a trailing cable or for the cable to be located where it would not be exposed to damage by mobile electric equipment. The adequacy of the protection supplied by the bridge, trench, suspension device or location would be measured by how well it protected the trailing cable from physical damage. For example, where a trailing cable is located in a trench, but has been damaged by mobile electric equipment running over the trench, an MSHA inspector might conclude that there was a violation, despite use of a trench, since damage to the cable had not been prevented.

Contact with bare wires on damaged insulated conductors and cables could result in fatal electric shocks to miners. Exposed wires can also represent an ignition source for methane and coal dust. This clarified standard for the physical protection of conductors, cables, wires and trailing cables could prevent such hazards to miners.

Section 75.517 Support of Insulated Conductors and Cables

This section of the proposal is derived from existing §§ 75.516, 75.516–1, and 75.516–2, and would set requirements for the support of insulated conductors and cables. Paragraph (a) would require insulated electric conductors and cables to be installed on insulators or insulated J-hooks. The proposal would no longer limit the use of insulated J-hooks to a six-month temporary period, as does the current regulation. Insulated J-hooks would be permitted to support insulated conductors and cables under the proposal because those having appropriate dielectric and tensile strengths have been demonstrated to be excellent insulators for the protection of insulated conductors and cables.

Contact by insulated conductors and cables with combustible materials, roof, or ribs would be prohibited under the proposal, as in the existing regulations. Such contact represents a fire hazard, should the conductor's insulation become overheated or damaged. However, trailing cables, metallic shielded cables, conductors installed in conduits, equipment and system grounding conductors, and grounded power conductors on d-c feeder circuits would be excepted from the proposed support requirements. These types of conductors are designed to withstand stress and physical damage, therefore eliminating the need for the protection offered by insulators and insulated J-hooks. Conductors in conduits would be included in the excepted class because conduit provides adequate protection for the conductor.

Under paragraph (b), a new provision, materials other than insulators may be used to support cables meeting the requirements of proposed § 75.601, provided they are supported from noncombustible materials. Materials used to suspend cables would be required to be flame-resistant, insulated for at least the maximum voltage of the circuit, and have a tensile strength of at least three times the weight supported. These specifications would describe suitable materials for the support of flame-resistant trailing cables, therefore offering some flexibility to operators in their choice of support methods. This provision of the proposed rule would incorporate current Agency policy on the use of support materials other than those which would be required by paragraph (a).

Paragraph (c) would require that communications circuits be installed so as not to contact light or power circuits. The effect of this provision would be to prevent energization of the communication circuit and equipment to the voltage potential of the power circuit. The risks of electric shock or electrocution would be minimized under the standard.

Paragraph (d) would require communication wires or cables installed in track entries to be located on the opposite side of the trolley wire or trolley feeder wire. Possible physical damage to the communication circuit and the passage of voltage from the trolley circuit would thereby be prevented. The exception in the existing standard for communication wires which are buried would no longer be necessary, since burying the circuit

would be an acceptable means of installation under proposed paragraph (b), provided it does not contact light or power circuits.

Section 75.518 Insulators and Insulated J-Hooks

Proposed § 75.518 is derived from existing § 75.516–1. It would set more specific requirements than does the existing standard for insulators and insulated J-hooks suitable for the support of insulated conductors and cables. Under the proposal, insulators and insulated J-hooks would be required to have flame-resistant insulating material with a dielectric strength of at least eight times the maximum voltage of the circuit. Flame-resistance and adequate dielectric strength would assure that an overheated cable would not become grounded through the insulator and cause a ground fault in the circuit.

Additionally, a new provision of the proposal would require insulators and insulated J-hooks to have a tensile strength of at least three times the supported weight. This would prevent failure of the suspension mechanism. Failure of one of the supports could cause a chain reaction failure of all of the supports which suspend a cable. Such an occurrence could allow cables to contact the mine floor or mining equipment, which could damage the cable, creating a risk of fire or electrical injury to miners. Failure of supports could also cause heavy cable to fall and strike persons working or traveling nearby. The standard would assure that cables are adequately supported in order to prevent such injuries.

Section 75.519 Splices, Repairs and Terminations of Conductors and Trailing Cables

This section is derived from standards for maintenance of conductors and cables in existing §§ 75.511, 75.514, 75.517, 75.604, 75.804, 75.810 and 75.906. The proposal would consolidate and clarify existing requirements for splices, repairs and terminations and establish procedures for making acceptable repairs and splices in trailing cables and shielded cable. It would clarify existing standards to promote proper repair and splicing of low-voltage cables to maintain the integrity of all components within a cable, and to retain to the greatest extent possible, their original characteristics.

Under paragraph (a), high-voltage cables would be required to be spliced, terminated, or repaired by high-voltage qualified electricians. As discussed previously, the Agency feels that such persons would bring the necessary skill and knowledge to the task to assure safety. For similar reasons, paragraph (b) would require that low-voltage trailing cables be spliced, repaired or terminated by a qualified electrician or a qualified cable splicer.

Paragraph (c) of the proposal would require splices and repairs in low-voltage trailing cables to be made with splice and repair kits that meet the flame-resistance tests in existing § 18.64. Existing §§ 75.600 and 75.600–1 require that trailing cables used in underground coal mines meet the requirements for flame-resistant cables set forth in 30 CFR 18.64. The proposal would clarify the intent of the existing rule by requiring that splice and repair kits meet the flame-resistance tests in part 18.

The proposal would no longer permit the use of what are commonly called "temporary splices" in trailing cables. The *Standard Dictionary of Mining, Mineral and Related Terms* cites the Federal Coal Mine Safety Act of 1963 in defining a temporary splice as one that does not have a rubber or neoprene jacket vulcanized over the splice and bonded to the cable jacket. Presently, one temporary splice is permitted for a period of twenty-four hours in order to allow equipment served by a damaged cable to finish the shift or be moved for repairs. Such splices could be made quickly, and therefore helped to prevent costly and burdensome delays.

As noted, the proposed standard would require all low-voltage trailing cable splices to be made with splice kits. Such kits are developed to facilitate the making of splices in a quick and efficient manner. With temporary splices, the methods and types and amounts of materials used are largely up to the individual performing the work. For instance, the outer jacket is often sealed with tape in lieu of proper vulcanizing. By contrast, splice kits typically leave little room for individual differences in splicing methods. The kits contain precise instructions and materials designed to preserve the integrity of the original cable.

A review of the fatality record since 1970 reveals that at least two miners have been electrocuted as a result of contact with leakage current through temporary splices. With the use of splice kits, splices in trailing cables having adequate insulation and proper jackets can be made as easily, and in about the same time as temporary splices. Therefore, the need for temporary splices has been alleviated by advancements in splice kit technology.

Flame-resistance tests are made on assembled specimens by MSHA's Approval and Certification Center. Acceptance markings appear on the outer jacket of the repair or splice, indicating that it has passed the tests and was found to be acceptable by MSHA. This would ensure that, when the splice and repair kit was assembled in accordance with the manufacturer's instructions, the kit would have fire-resistant properties similar to those of the cable's original components. MSHA is considering proposing an approval regulation for splice and repair kits. Under such a proposal, a splice and repair kit for trailing cables would have to be approved by MSHA prior to its use in a coal mine.

Paragraph (d) would require that the outer jacket of each splice and repair in a high-voltage trailing cable be vulcanized or molded with materials that are flame-resistant in accordance with § 18.64. Under the existing regulations, splices and repairs often overlap the outer jacket of the trailing cable at each edge. This overlap, referred to as lipping, is often held down with electrical tape. The proposal would allow this practice to continue.

Paragraph (e) would require splices and repairs in all other cables to be sealed to exclude moisture. Therefore, the wetness of the underground atmosphere would not cause sparking or arcing at the splice or repair site.

Under paragraph (f), only one connection point in each conductor would be permitted in a trailing cable splice. Splice kits are not designed for more than one connection point for each conductor. A potential hazard occurs when kits are utilized outside their designed use parameters. Kits are designed in order to provide the best electrical conductivity possible. Part of this design is the single connection of two severed ends of trailing cable. The introduction of more than one connection point reduces the electrical conductivity of the splice to an unacceptable level that could lead to inadequate electrical conductivity for the circuit and an eventual shock and fire hazard on the circuit and the equipment the circuit serves.

Paragraph (g) would require that terminations of shielded high-voltage cables include stress-relief on each conductor, in order to prevent unnecessary strain on and damage to the conductors capable of creating a shock hazard. Under paragraph (h), metallic shielding of single-conductor cables would be required to be connected to messenger wires and equipment safety grounding conductors at each splice and termination. Compliance with this provision would increase the likelihood of maintaining a reliable grounding circuit.

Paragraph (i) would contain performance specifications for splices and repairs. They would be required to have conductivity and current-carrying capacity sufficient to prevent insulation damage from heated conductors. This provision would require a splice or repair to match the ampacity of the rest of the cable as closely as possible, which would reduce the risk of damage to the insulation from overheating of the connection. Damaged insulation could place miners at risk of contacting energized cable components.

Severed conductors would have to be joined by welding or compression-type connectors. MSHA's experience in evaluating the reasons for trailing cable splice separation indicates that welding and compression-type connectors are the most effective and reliable. The knotting of the severed ends of conductors or other similarly inefficient means of joining conductors would result in a weaker cable which could lead to cable separation when the cable is put under tension or is otherwise stressed. The use of knotting could also cause the splice or repair to be electrically inefficient because of the incompleteness of the connection, and create a high-resistance area within the cable. This could result in overheating, arcing and sparking of the splice, causing a shock or fire hazard. The proposal would prohibit the use of such splicing methods, and require the use of tight-fitting connections, provided for by welding or compression-type connectors.

Each power, control, and ground-check conductor would have to be individually re-insulated with insulation of at least the same thickness, temperature rating, and dielectric strength as that of the original insulation. This would address the potential hazard of splice failures due to insulation deterioration caused by overheating and voltage stresses exceeding the insulation rating. Phase-to-phase and phase-to-ground short-circuits from weaker insulation would also be prevented under the provision.

Splices and repairs would be required to have semi-conducting tape replaced over the insulation of each power conductor within shielded cables. Semi-conducting tape is part of a two-part shielding system employed in the design of the cable. It is an important safety function to replace the semi-conducting tape over the power conductor insulation to ensure that the splice or repair retains the same shielding properties as the original cable.

Additionally, the proposal would require shielding in the form of metallic braid or serving (wrap), or metallic tape to be replaced over each power conductor and applied in half-lapped layers within shielded trailing cables. As discussed previously, it is critical to maintain shielding continuity in a shielded cable splice or repair. Any break in continuity of the shielding reduces its safety function. The use of metallic serving or braid would provide for durability in the trailing cable, while also providing sufficient flexibility of the replacement shielding so that it is essentially the same as the original cable.

In shielded cables other than trailing cables, metallic shielding in the form of metallic braid, or serving (wrap), or metallic tape would be required to be replaced over each power conductor and applied in half-lapped layers. The option of using tape would be permitted only for shielded cables other than trailing cables due to the increased potential for damage to trailing cables. Tape would only be effective on cables that are not subject to the constant flexing and bending of trailing cables.

Finally, the outer jacket would have to be replaced to provide at least the same thickness and protection as that of the original jacket. Therefore, the proposal would provide for the physical strength of the repaired jacket. These provisions would serve to preserve as nearly as possible, the physical and electrical characteristics of the original cable in making splices and repairs. Therefore, the likelihood of electrical arcing or heating at the connection points would be reduced.

Section 75.520 Conductor and Cable Fittings and Strain Relief Devices

This standard is derived in part from existing §§ 75.515 and 75.605, which require suitable fittings where cables enter the metal frames of motors, splice boxes, and electric compartments. The proposed rule embodies few changes from the existing rules. Paragraph (a) would require cables to enter metallic frames of electric enclosures through fittings sized for the cables, and which prevent damage to cable jackets and the insulation of the internal conductors. Permissible equipment would be covered by the applicable approval regulations. The standard would lead to secure fittings which would cause minimal strain on and damage to the connections.

Under paragraph (b), conductors would be required to enter metallic frames of enclosures through fittings with insulated bushings sized for the conductors. The term "electric enclosures" would encompass those types of compartments specified in existing § 75.515. Insulated bushings would offer physical protection for conductors to assure that secure or tight fittings will not damage them and create a shock hazard.

Paragraph (c) would embody an exception to the previous two provisions. Cables and conductors in conduit entering metallic frames of electric enclosures would not have to be equipped with fittings or bushings when protection against damage by sharp edges is provided. The exception is intended to offer a compliance alternative for the protection of cables and conductors. Conduit would offer added physical and mechanical protection and support where a cable enters a metallic box, and therefore eliminate the need for further protective measures. Metallic conduit would prevent the stresses an unprotected cable would be subjected to, and would also provide an efficient ground path in case of damage to the cable.

Paragraph (d) would require fittings to be installed so as to prevent mechanical strain on electrical connections. Hazards resulting from improper conductor and cable fittings include electric shock and electrocution from energized equipment frames. Since 1970, at least two fatal electrical accidents have been related to improperly installed fittings on cables entering electric compartments. By requiring fittings used where cables and insulated conductors enter electric compartments to be designed to prevent strain on electrical connections, chaffing and damage to the cable or conductor would be prevented, and the number of injuries to miners from these conditions would be reduced.

Trailing cables would have to be attached to the equipment being supplied by an insulated strain clamp or cable grip. As a matter of policy, both strain clamps and cable grips are permitted to meet the existing requirement at § 75.605. The proposal would make it clear that all trailing cables may use cable grips in lieu of strain clamps to provide this protection.

Section 75.521 Damaged Conductors and Cables

This proposed section is derived from existing §§ 75.517 and 75.603 which set requirements for protection of power wires and cables, and splices in trailing cables, respectively. The proposal would set conditions under which damaged or defective conductors and cables would have to be removed from service or repaired. Under the proposal, conductors and cables would be required to be deenergized, disconnected in accordance with

proposed § 75.506, and either removed from service or repaired when the outer jacket, conductor, conductor insulation, or a splice or repair has been damaged, and when a splice or repair heats or sparks.

Maintaining conductors and cables in proper physical condition is essential to the level of safety of miners handling and working around them. Damaged outer jackets or improperly made splices, for example, could subject miners to electrical injury or electrocution. Cable damage could also provide an ignition source when energized conductors are exposed to the coal mine atmosphere. The proposed standard would address these dangers.

Section 75.522 Ampacities of Low-Voltage Conductors

This standard, derived from existing §§ 75.513 and 75.513–1, would set allowable ampacities and sizes for low-voltage conductors. Ampacity is defined by the proposal as the current-carrying capacity of electric conductors expressed in amperes. The proposed standard would consolidate ampacity regulations for conductors supplying a single motor, two or more motors, battery chargers, welders, lighting fixtures, heaters, transformers and rectifiers, multiple loads and other equipment. The standard would not apply to conductor ampacities for permissible equipment, which are specified in the appropriate approval regulations.

The proposal represents some change from the existing rules. References to the 1968 edition of the NEC, which, according to comments to the preproposal draft made interpretation cumbersome, would be deleted. The proposed rule and accompanying ampacity tables would provide operators with the information necessary to select the proper conductors to safely serve electric equipment.

Under paragraph (a), electric conductors would be required to be of a size and current-carrying capacity to assure that a rise in temperature resulting from normal operating conditions does not damage the insulation and conductors. Such damage could expose persons to electric shock, electrocution, or fire hazards. Therefore, conductor sizes and ampacities should be compatible with the voltage and current levels used in the circuit.

In paragraph (b), the required ampacities of conductors supplying a single motor would be at least 125 percent of the maximum full-load current of the motor. Paragraph (c) would set the ampacity of feeder conductors which supply one or more loads to be at least the sum of the full-load currents of all the motors plus 25 percent of the highest full-load current of the largest motor.

Paragraph (d) would require the size of conductors specified in paragraphs (a) through (c) to conform with ampacity Tables F–1 through F–4, which would accompany the standard. The tables list minimum sizes of conductors for flexible cords rated 300 and 600 volts, portable power cables rated 2,000 volts or less, and conductors other than flexible cords or portable cables rated 2,000 volts or less. The tables are based on information derived from the NEC and the Insulated Cable Engineers Association (ICEA), accepted by electrical engineers as reliable resource materials containing safe industry standards.

Section 75.523 Overcurrent Protection

This section would address overcurrent protection for electric circuits and equipment with circuit breakers, fuses or other automatic circuit interrupting devices. Overcurrent protection for high-voltage trolley circuits, trailing cables, and permissible equipment would not be addressed by the standard. Standards specifically applicable to these circuits and equipment are contained in MSHA's approval regulations in part 18 and other subparts of the proposed electrical standards. Therefore, § 75.524 would only apply to equipment and circuits which are not specifically addressed elsewhere in MSHA's rules.

Performance requirements for overcurrent protective devices would be spelled out in the proposed rule, based on references to the ratings tables accompanying the proposal. The standard and tables would replace existing §§ 75.518 and 75.518–1, which refer to the 1968 edition of the NEC for information governing overcurrent protection. The tables accompanying the proposal would codify overcurrent protection requirements, and eliminate the need for reference to the code. They are based on accepted safety standards, as well as information taken from the NEC.

Paragraph (a) of the proposed rule would require all electric circuits and equipment to be protected against overcurrents by circuit breakers, fuses, or other automatic circuit interrupting devices which meet the proposed requirements, except as otherwise provided in MSHA's regulations. The overcurrent protection provisions and the tables specifying ratings and settings for protective devices would assure proper deenergization of circuits and equipment in the event of overcurrent conditions. Arcing and conductor overheating, and the resulting hazards to miners such as fires and electric shock would thereby be prevented.

Under paragraph (b), overload devices would be required to be installed in each ungrounded conductor supplying motors. They would have to be rated or set as specified in Table F–5, detailing maximum ratings or settings of motor overload protective devices, and cause deenergization of all ungrounded power conductors of three-phase motors when any phase is overloaded. This would assure that overcurrent conditions are not transmitted to all phases.

Paragraph (c) would require circuit breakers to be installed to provide short-circuit protection for branch circuits supplying three-phase motors, and rated or set as specified in Table F–6. The reference table would list maximum ratings or settings for circuit breakers providing short-circuit protection for motor branch circuits and devices supplying power to three-phase motors.

Under paragraph (d), circuit breakers or fuses would be required to be installed to provide short-circuit protection for branch circuits supplying single-phase and d-c motors. They would have to be rated or set in accordance with proposed Table F–7. This table would set maximum ratings or settings of circuit overcurrent protection devices for single-phase motors and direct-current motors.

Paragraph (e) would require that where a setting specified in Table F–6 is insufficient for the starting current of a-c motors, the setting of a circuit breaker may be increased. However, the setting would be required to be 1300 percent or less than the motor's full-load current on instantaneous-trip circuit breakers, and 400 percent of the motor's full-load current for inverse-time circuit breakers.

Paragraph (f) would require overcurrent protection in the form of either circuit breakers or fuses for motor feeder circuits, transformers, and welders in accordance with Table F–8. Under paragraph (g), circuit breakers or fuses with ratings or settings not to exceed the full-load current ratings of the equipment would be required for the protection of all circuits and equipment not specified in paragraphs (b) through (f) of the section. Under paragraph (h), all supply conductors, control circuit conductors, lighting current conductors and those not specifically addressed in the previous paragraphs would be required to be protected in accordance with their ampacity.

Under paragraph (i), overcurrent protection would not be required on incandescent lamps supplied from d-c systems, provided the length of ungrounded conductors does not exceed eight feet. MSHA experience demonstrates that a requirement for overcurrent protection in these circumstances would not be justified since the design of incandescent bulbs is such that their filaments will fuse during an overcurrent situation. An eight-foot limitation would decrease the likelihood of the ungrounded conductor contacting the mine track. The higher resistance of a much longer conductor could cause it to overheat in such a situation, posing a fire hazard to miners.

Paragraph (j) would provide that when the required rating of a fuse or circuit breaker without an adjustable-trip unit does not correspond to a standard rating for fuses or circuit breakers, the protective device used would not be permitted to exceed the next higher standard rating. In such cases, the Agency would permit the use of a lower standard rating, or the next higher standard rating.

Circuit breakers or fuses providing short-circuit protection would be required, under paragraph (k), to be installed where the circuit conductors are connected to the supply. However, feeder tap conductors which are 25 feet or less in length, have ampacities of at least one-third of the ampacity of the feeder conductors, and terminate at a circuit breaker or fuse with current ratings that do not exceed the ampacity of the feeder tap conductors, would not have to meet the requirements of this provision. The 25-foot requirement is consistent with national standards, which recognize that a longer length could unnecessarily increase the resistance in the circuit. The proposal would limit the resistance in the circuit to a value that would allow adequate fault current to flow through the system, thereby allowing the system overcurrent protection to properly operate.

Section 75.524 General Requirements for Overcurrent Devices

This proposed section is also derived from §§ 75.518 and 75.518–1, and would contain general performance standards and specifications for overcurrent devices. Under paragraph (a), connection of fuses, circuit breakers, or a combination of both in parallel would be prohibited. This would ensure that the integrity of the protective device is maintained, and that ratings for protective overcurrent devices are used which will not cause damage to the circuit. The design of fuses and circuit breakers currently employed in the industry requires full-line current for the devices to accurately operate within their parameters.

Paragraphs (b) and (c) would require fuses and circuit breakers to have voltage ratings of at least the maximum voltage, and a continuous current rating of at least the maximum full-load current of the circuit being protected. This would assure that overcurrent devices would be effective for the protection of the circuits they serve by requiring compatibility of voltage and current ratings.

Under paragraph (d), fuses and circuit breakers would be required to have interrupting current ratings of at least the maximum fault current available at the fuse or breaker. Under this provision, the protective device would be able to clear a faulted condition without damage to itself. Therefore, the effectiveness of the protective device would be preserved, and miners would be protected from electrical hazards caused by undetected overcurrents in a circuit.

Paragraph (e) would require circuit breakers to be installed so that the "up" position of the handle indicates the "on" position. The effect of this provision would be to provide a consistent indication of when the circuit breaker is operating. Without this provision, the on position for two circuit breakers in one mine could be indicated by different directional positions. In the dark and dusty atmosphere of underground coal mines, this could easily lead to mistakes. A similar situation is presented by a standard light switch in a typical home, where the up position indicates on and the down position indicates off. These standard positions help to prevent the homeowner from changing a bulb in a live socket, for instance. Similarly, the proposed standard would minimize the risk of a miner mistakenly energizing or failing to deenergize the circuit due to confusion over the appropriate position of the circuit breaker handle.

Paragraph (f) of the proposal would prohibit automatic reclosure of circuit breakers after tripping operations, except as provided in proposed § 75.1008. Therefore, circuit breakers would remain in the open position with the circuit remaining deenergized until manually reset. Unlike surface utility lines, in which changing environmental conditions can cause and clear fault conditions, faults in an underground electric circuit will not normally clear themselves because they typically occur due to persistent fault conditions. The proposal would assure that a malfunction in the electric circuit will not persist and cause repetitive tripping of the breaker, which could represent a fire and shock hazard underground. Additionally, it would assist rescue operations if the breaker has been tripped due to a miner coming in contact with an energized component of the circuit. Automatic reclosure of the circuit breaker would allow reenergization of the circuit before rescue could be attempted, placing rescuers in danger as well.

Under paragraph (g), thermal cutouts, thermal relays, and other devices used for overload protection of motor circuits would be prohibited for use as protection against short-circuits unless they are designed for that purpose. Such devices are not normally designed to clear a short-circuit condition due to the high fault currents that could occur in a circuit.

A fuse or overcurrent trip device of a circuit breaker would be required, under paragraph (h), to be connected in series with each ungrounded power conductor. Connection in series would assure that the total current is measured in the circuit in order to evaluate whether an overcurrent is present. This would protect miners by not allowing overcurrents to go undetected, which can cause damage to cable insulation from overheating, and resultant injury to miners contacting the cable. A combination of a current transformer and relay used as an overcurrent trip device would be excepted from the proposed standard because it is designed to measure the amount of current in a circuit. Therefore, the excepted combination already provides the protection which would be offered under the proposed standard.

Paragraph (i) would require overcurrent devices to be readily accessible and protected against physical damage. This provision would assure that the physical integrity of protective devices is maintained, and that they are easily reached in an emergency situation.

Paragraph (j) would prohibit the use of renewable link-type fuses for protection of low-voltage circuits and equipment. The protective function of such fuses is easily defeated. The NEC no longer references renewable link-type fuses, though it does not specifically prohibit them. Fuses are intended to open circuits under controlled conditions when an overcurrent condition occurs by breaking the circuit connection and thereby deenergizing the circuit.

Non-renewable link-type fuses are contained in a sealed casing, and the links are manufactured to assure predictability. By contrast, the links in

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renewable link-type fuses can be changed or replaced. A problem which often arises is replacement of a link with heavy conductors or other inappropriate substances which will not melt and open the circuit when an overcurrent situation arises. This practice is comparable to placing a penny in a fuse to purposely or accidentally defeat the circuit tripping function of the device, which can cause serious fires and shock hazards. For these reasons, the Agency has determined that renewable link-type fuses are not reliable for use as low-voltage circuit protective devices.

Section 75.525 Identification of Circuit Breakers and Fuse Holders

This standard is derived from existing §§ 75.601, 75.809 and 75.904, and would require legible and durable markings for identification of circuit breakers, trolley taps, fuse switchboxes, and other fuse holders. Markings would be required to identify the specific unit of equipment protected. Without a means of identifying circuit breakers and fuses, and what equipment they serve, miners would be put at risk that someone will accidentally reenergize the wrong circuit and cause an unexpected start-up of a piece of equipment, for example.

Section 75.526 Nameplates and Markings

This proposed standard is new, and would require nameplates or other durable markings indicating the manufacturer's name and the rated voltage and current of motors, transformers and circuit breakers. The proposal would provide for greater familiarity with the equipment, the size and type of overcurrent protection required, and other details which would assist in maintenance of the equipment and proper sizing of conductors. The majority of the specified equipment presently in use in underground mines is sold with such nameplates attached. If a nameplate is damaged or dislodged from the machine, it would be a fairly simple matter for the mine operator to order a replacement plate from the manufacturer.

Section 75.527 Map of the Mine Electrical System

This proposed rule would require that a map of a mine's electrical system be maintained and be made available to representatives of miners and authorized representatives of the Secretary. The proposal is derived from existing §§ 75.508, 75.508–1 and 75.508–2, which require a map showing the location and electrical rating of all stationary electric apparatus in connection with the mine electrical system, and the location and details concerning mine trolley tracks when used in a mine.

Although the existing regulations would be altered by the proposed rule, MSHA believes that the same or a higher level of safety would be maintained under it. Unlike the existing standards, the proposal would specify the circuits and equipment covered, require inclusion on the map of information enabling evaluation of protection devices for trolley circuits, and extend the time period for updating the map.

Paragraph (a) of the proposed rule would require that a mine electrical system map be maintained and made available to authorized representatives of the Secretary and representatives of miners. The map would be required to show the size and location of circuit breakers, fuses, transformers, cables, rectifiers, switchgear, and disconnecting devices of high-voltage systems. The size and location of stationary equipment operated by 10 horsepower or larger motors, and trolley wires, trolley feeder wires and return feeder wires would have to be reflected on the map.

Trolley system information would be required, including size and location of track rails used as power conductors, with a notation as to whether one or both rails are bonded or welded at every joint, size, location and setting of d-c circuit breakers protecting trolley circuits, and the location of cutouts and deadblocks installed in trolley circuits. A map of a coal mine's electrical system is required so that all persons at the mine will be able to determine the location of the permanent equipment and circuits there. This is essential information, since the safety of miners may depend on the ability to identify and quickly locate the switches, circuits or equipment that should be deenergized during an emergency situation or maintenance operations.

Paragraph (b) of the proposal would allow up to five working days to reflect changes to the map after the affected circuit or equipment is reenergized and returned to service. The present regulations require changes in the electrical system to be reflected on the map by the end of the next working day. The proposed standard would address comments to the preproposal draft that five days is a more reasonable time period in which to accurately reflect electrical system changes on the map.

One of the most common changes in an underground electrical system is the extension of the trolley system. Many of the installations required to be shown on the mine map are permanent structures, which are rarely moved. Power centers serving stationary equipment, for example, would not normally be moved with any frequency. Therefore, the majority of the installations shown on the map would not be significantly affected by the proposed time extension. In MSHA's view, an extension of the compliance time to five days would not result in a decrease in safety for miners. A more detailed and accurate reflection of changes, such as the extension of a trolley system, could be made under the proposal than under the present standard.

Section 75.528 Alternating-Current Battery Chargers for Mining Vehicles

This proposed section would be new, and would set requirements for a-c battery chargers to enhance miner safety by helping to prevent electric shock and electrocution hazards. Under the proposal, a-c battery chargers for mining vehicles installed on or after the rule's effective date would be required to have a two-winding transformer which electrically isolates the battery charging circuit from the a-c supply circuit, and a control circuit with a maximum voltage not exceeding 150 volts.

Electrostatic, or "Faraday," shields would also be required between the secondary and primary windings when the battery charger is supplied from a circuit having a voltage greater than 150 volts. Shields would be required to be constructed of aluminum or copper, connected to the battery charger frame, and have a cross sectional area consistent with proposed § 75.714(c). A transformer fault can transfer the voltage of the primary or incoming circuit to the lower voltage secondary or outgoing circuit. This, in turn, could cause energization of the frame of the equipment being charged. Metallic Faraday shields would allow current to trip the circuit breaker if a fault occurs in the transformer.

For example, a breakdown of the insulation between a typical 480-volt primary winding and a 220-volt secondary winding could cause transmittal of the higher voltage to the secondary circuit. A grounded, metallic shield between the windings would prevent such a transfer of voltage and energization of the equipment frame. Since 1970, at least two fatal accidents have occurred as a result of short-circuits between primary and secondary windings of battery charger transformers. Several fatalities are also attributable to contact with frames of

control switches or bare control wires energized at voltages in excess of 150 volts. The proposed rule would help to prevent similar accidents in the future.

Only a-c battery chargers installed after the effective date of the proposed rule would be addressed by it. Battery chargers typically have a short service life underground, and therefore must be replaced with some frequency. Thus, as battery chargers are replaced over the next few years, all of the equipment should achieve compliance with the proposed standard. Additionally, retrofitting such equipment would be extremely difficult. Therefore, a delayed effective date which would cause the rule to apply only to new equipment would be appropriate.

Section 75.529 Emergency Deenergization Devices for Mobile Electric Equipment

This proposed standard would consolidate the requirements of existing §§ 75.523, 75.523–1 and 75.523–2, which set standards for automatic deenergization devices, commonly referred to as "panic bars." Panic bars are devices capable of quickly deenergizing the tramming motors of mobile electric face equipment in an emergency. Like the present standards, proposed § 75.529 would set performance requirements for deenergization devices, detailing proper placement and operational requirements, as well as MSHA acceptance procedures for alternative safety devices.

Paragraph (a) of the proposal would require devices capable of quickly deenergizing the tramming motors on underground mobile electric face equipment. Emergency deenergization devices consisting of an electro-mechanical stop switch and an actuating bar extending a sufficient distance in each direction from the stop switch would be required at each location from which the equipment can be operated. The effect of this provision would be to require a panic bar at every position on the equipment from which it can be operated or moved. Therefore, the operator of mobile electric equipment should be within reach of the deenergization device at all times.

On battery-powered articulated equipment, which normally place the operator at a 90-degree angle from the direction of travel, panic bars and emergency stop switches would be required on both sides of the operators' compartments. This proposal is consistent with MSHA policy addressing the implementation of existing § 75.523–2, and would provide operators of articulated equipment with the ability to quickly deenergize the tramming motors without having to alter position. MSHA's experience indicates that problems associated with impairment of vision and movement of those operating such equipment make it necessary to locate a means of actuating the stop switch on both sides of the equipment operator. This proposal would help prevent an equipment operator from being pinned, crushed, or rolled between the ribs, roof or other obstruction and the machine being operated.

When the equipment can be trammed from a location other than the operator's compartment, the proposal would require installation of actuating bars so that it is located between the operator and the machine at all times it is being trammed. This provision would assure that the deenergization device is readily accessible to equipment operators in case of emergency.

The proposal would retain the existing requirement that the actuating bar be capable of operating the electro-mechanical stop switch when it is moved a distance not to exceed two inches, by a force of fifteen pounds or less. MSHA recognizes that some resistance in the movement of the actuating bar is necessary to prevent unintentional actuation. However, the Agency believes that maximum limits are necessary to assure that panic bars are capable of easy actuation, by exertion of minimal force by the operator.

Panic bars would also be required to be installed so as not to interfere with the normal operation of the equipment. These performance criteria would assure that emergency deenergization devices are easily accessible in emergency circumstances at all locations from which equipment may be operated. Panic bars could be activated to stop the tramming of heavy equipment through use of minimum force, yet would be required to present no interference with other equipment controls. The proposal would reduce the risks of being pinned or crushed to miners working on such equipment.

Paragraph (b) would retain the existing exception from the panic bar requirement for mobile electric face equipment that is equipped with a substantially constructed cab which meets the requirements of part 75. According to existing § 75.1710(b)(2), a cab is a structure providing overhead and lateral protection against falls of roof, rib, and face, or rib and face rolls. Such cabs, then, are substantially designed to protect equipment operators against being crushed or pinned by heavy materials or objects. The presence of such cabs would assure that the operator would not be pinned or crushed by a collision with the rib, for example, while inside the operator's compartment.

Paragraph (c) of the proposed rule would permit the Director of Technical Support to approve other emergency deenergization devices if they would provide equivalent protection. Application for acceptance of alternative devices would be made to the Chief of MSHA's Approval and Certification Center in Triadelphia, West Virginia. This provision exists in the current standard to provide operators with the ability to utilize advancements in technology which may provide equivalent protection for miners with the approval of the Director of Technical Support.

Section 75.530 Use of Insulated Trailing Cable Handling Equipment

This section is derived in part from existing § 75.706, and would set requirements for the use of protective handling equipment while moving insulated trailing cables. Paragraph (a) is new, and would require the use of insulated hooks, tongs, slings, gloves, mitts, aprons, or other insulated personal protective equipment capable of protecting against shock when energized high-voltage and unshielded low-voltage trailing cables are moved manually. A review of the fatality and accident record since 1970 reveals that at least seven persons have been electrocuted while handling trailing cables as a result of contact with exposed conductors. Without shielding, and the protection against ground faults it provides, even a small, hard to detect opening in the power conductor insulation poses a shock hazard.

One commenter to the preproposal draft suggested that the proposed requirement for gloves during handling of trailing cables is unnecessary since other sections of the regulations require that trailing cables be maintained in a safe condition. This suggestion was not adopted in the proposal. An evaluation of the severe conditions to which trailing cables are normally exposed suggests that, even when trailing cables are properly examined and maintained, there is still the possibility that the cable could be damaged before a hazardous condition is detected. As another commenter pointed out, most of the fatal accidents previously referred to resulted from the handling of either a cable with an undetected defective splice or one with undetected damaged insulation. Furthermore, since coal mines are usually damp and wet and thereby

enhance conductivity, the potential for shock hazards associated with damaged energized trailing cables becomes even greater. Insulated handling devices would provide a significant measure of protection against such hazards.

Other commenters to the preproposal draft suggested deletion of the proposed requirement for the use of gloves during cable handling. They reasoned that if the proposal requires shielded cable, the need for insulated gloves or protective equipment would be eliminated. They stated that defects or damage in shielded cable would usually provide enough grounding current to deenergize the circuit so that the extra protection of insulated gloves or a similar protective device would be unnecessary. The proposal does not delete the requirement for protective devices, but would not require their use when handling low-voltage trailing cables that are shielded. In addition, to promote regulatory flexibility, the proposal adopts the suggestion of one commenter to allow equally safe alternative protective devices to be used, such as insulated hooks, tongs, etc. The Agency solicits comments on the benefits of retaining this requirement for persons handling high-voltage cables that are shielded.

Paragraph (b) would require that insulating equipment be rated for at least the nominal voltage of the circuit for low-voltage trailing cables, and for at least 20,000 volts for high-voltage trailing cables. These values would provide proper protection in light of the circuit voltages involved.

The required protective equipment would have to be examined before each use for visible signs of damage or defects, and removed from the underground area of the mine when found to be damaged or defective. Compliance with this standard would place responsibility on the user of protective equipment to inspect it for hazardous conditions. For example, a simple test commonly used to detect damage in insulating gloves is to fill them with air and observe if there is any leakage. Therefore, persons would not rely on equipment which would be ineffective for protection against shock while handling trailing cables.

Paragraph (c) would require that insulated handling equipment for use with high-voltage trailing cables be electrically tested every six months. More formal testing procedures of handling equipment would assure that minuscule, though possibly lethal damage will not go undetected.

Section 75.531 Deenergized Underground Power Circuits; Idle Days-Idle Shifts

This proposed standard would retain the existing requirements of § 75.706. It would require that power circuits underground be deenergized on idle days and idle shifts when not in use. Compliance with the standard would assure that unattended equipment remains deenergized while not in use, thereby reducing the likelihood of accidents underground. For instance, a roof fall could occur in an unattended area, causing combustible materials to contact an energized circuit and ignite. Rectifiers and transformers would be excepted from this requirement, since it is necessary for some types of equipment, such as pumps, to operate even during idle days and shifts.

Subpart G—Low-Voltage Circuits

Section 75.601 General Requirements for Trailing Cables

This section is partially new, and partially derived from the general requirements for trailing cables in existing §§ 75.600, 75.600–1, 75.701–1, 75.703–3, 75.906, and 75.907. The proposal would retain the existing requirement that trailing cables meet the flame-resistance tests of 30 CFR 18.64, and that underground trailing cable energized between 660 and 1,000 volts have metallic shielding. It would also phase in new shielding requirements over a period of three years. The shielding exception in existing § 75.907 that excludes cable on cable reels with insulation rated at 2,000 volts or more would be retained for a period of three years. The proposal would also include new performance specifications for trailing cables.

Paragraph (a) is derived from existing § 75.600, which requires that trailing cables used in coal mines meet the requirements established by the Secretary for flame-resistance, in § 75.600–1. The requirements for flame-resistance testing are set forth in 30 CFR 18.64. The proposal would combine these two rules by requiring that trailing cables be flame-resistant in accordance with 30 CFR 18.64. Presently, the Agency evaluates representative samples of trailing cables to ensure that the cables meet the flame-resistance tests, and the Agency would continue to evaluate samples of new trailing cable for this purpose under the proposal.

Paragraph (b) is new, and would require that the grounding conductors in shielded trailing cables be bare. Bare grounding conductors are recommended by ICEA standards. Additionally, few shielded cables being used in the industry are manufactured with insulated grounding conductors. The design of shielded trailing cables places the grounding conductor in direct contact with the shielding. The safety advantages of having the shielding and the bare grounding conductors in direct contact along the length of the cable is that the contact creates an enhanced ground path which ensures tripping reliability.

Bare grounding conductors are sized to carry ground fault currents effectively, whereas shielding is not. However, since they are in continuous contact, the safety provided by the shielding is enhanced by the current carrying properties of the bare grounding conductors. Consequently, even if the shielding is severed, it could still be effectively grounded for its entire length, and the grounding conductor could still carry enough grounding current from the shielding to trip the circuit breaker.

Paragraph (c) is new, and would require that ground-check conductors and interlock circuit conductors be contained in the cable and have a cross-sectional area equal to or greater than No. 10 AWG when the circuit power conductors are No. 10 AWG or larger, or the cross-sectional area of one circuit power conductor when the circuit power conductors are smaller than No. 10 AWG. The proposed sizing of these conductors and the proposed specification that they be located within the cable are based on ICEA standards for evaluating cable durability in the harsh environment of a coal mine. Conductors inside the trailing cables are afforded the additional mechanical protection of the shielding, the conductor insulation and the outer jacket, as well as the support and cushion of the other conductors inside the jacket.

Paragraph (d) is derived from existing § 75.906, which requires one or more grounding conductors in each trailing cable for mobile electric equipment, and existing § 75.907 which requires trailing cables energized from 661 volts to 1,000 volts phase-to-phase to have a grounding conductor. The proposal would require trailing cables to have at least one grounding conductor unless the cables supply double insulated tools or equipment, or equipment that is silicon-diode grounded. Providing a grounding conductor or other effective means of protection would prevent the energization of equipment frames and the resultant shock hazards to the miners.

MSHA has evaluated the safety features of double insulated tools and

appliances and has concluded that a grounding conductor would not be needed for such equipment. Double insulated tools are constructed with two independent and separate insulating systems. Should one system fail, the other would act as the back-up. Similarly, a trailing cable serving equipment protected by a silicon-diode system would not be required to have a grounding conductor. The diode system utilizes the grounded power conductor in the trailing cable to replace the grounding conductor, and it performs an equivalent safety function. The presence of the diode system on the frame of the equipment would allow any ground fault on the equipment to momentarily pass to the equipment and the attached diode. As the fault passes through the diode, the silicon-diode system would deenergize the circuit, thereby rendering the frame of the equipment safe.

A new provision in paragraph (e) would require that trailing cables for mobile haulage equipment have power conductors that are at least No. 6 AWG for a-c circuits, and No. 4 AWG for d-c circuits. These minimum sizes are presently required for trailing cables serving permissible equipment under 30 CFR part 18. Extending this requirement to all trailing cables would provide for physical strength in the structure of cables that would help ensure their durability in the underground coal mine environment.

Paragraph (f) is new, and would require that power conductors in trailing cables for non-haulage equipment employing cable reels be at least No. 8 AWG. This is the minimum size presently in use in the industry. Cables that are smaller than No. 8 AWG would not have suitable mechanical strength for use on cable reels because of the stress and constant flexing encountered by cables used with cable reel equipment.

Paragraph (g) is new, and would require that, one year after the effective date of the rule, trailing cables serving mobile electric equipment not employing cable reels and energized at between 150 volts phase-to-ground and 660 volts phase-to-phase (381 volts phase-to-ground) have grounded metallic shielding around each power conductor. The proposal would also require that, three years after the effective date of the rule, trailing cables energized at between 150 volts phase-to-ground and 660 volts phase-to-phase which serve mobile cable reel equipment have grounded metallic shielding around each power conductor.

The type of shielding specified in the standard is commonly referred to as SH–D cable. It is designed so that the metallic shield surrounds each power conductor individually. By contrast, SH–C cables are designed with shielding surrounding the entire conductor assembly. The proposal specifies that the shielding must be around each power conductor to address the risk of phase-to-phase faults. Cables which have shielding around the entire assembly are lighter weight, but they do not provide protection against phase-to-phase faults. Additionally, maintaining proper contact between the shielding and the grounding conductor can be problematic with the design of SH–C type cable. These problems were discussed in a paper by R.H. King and G.J. Conroy, "How to Prepare for Shielded Trailing Cables," presented at the Fifth Institute for Mine Health and Safety, Colorado School of Mines, November 1979.

The most common application of the proposal would be to three-phase equipment energized at 480 and 575 volts phase-to-phase, and single phase equipment energized at 240 volts phase-to-ground. Under present rules, trailing cables energized at voltages falling within these ranges are not required to be shielded.

The proposal would require metallic shielding to be connected to the grounding system. Such shielding would provide a low-resistance return path to ground so that phase-to-ground current will trip the ground-fault protective device required by proposed § 75.602. Therefore, a fault in the cable would cause the breaker to trip and deenergize the circuit before harming miners. If the fault current is insufficient to trip the circuit breaker, the shielding simply serves as a grounding path to conduct the current to ground instead of using a human body or mining machine as a path to ground.

Metallic cable shielding would provide an engineering safeguard for the protection of miners, which is a passive or "built-in" defense against shock and electrocution through contact with cable voltages. The Agency recognizes the advantage of engineering protection in some instances in addition to procedural safeguards that can be defeated by carelessness, mistake, lack of training or tampering. Cables which are properly shielded and maintained would not expose miners to the consequences of such human factors. The Agency has found that a reliable backup safety feature is necessary when the failure or violation of a procedural safeguard would otherwise result in the death of a miner.

These other safety features associated with preventing electrical cable-related accidents, such as ground-fault tripping and deenergization of cables before work is performed, are also included in present regulations and retained in the proposed rule. Compliance with these standards, as well as those requiring proper maintenance of electric equipment and circuits and the use of personal protective equipment are crucial to miner safety. Although perfect compliance with all of MSHA's mandatory standards and the absence of human error are desirable, due to many varying circumstances, it would be unrealistic to assume such circumstances at all times. Therefore, the elimination of as many factors contributing to electrical injuries as possible through a shielding requirement would lessen the risks to miners.

The proposal primarily addresses shock hazards, but would also address fire and ignition hazards associated with the use of trailing cables. An in-depth analysis of MSHA fatality reports revealed that a total of 21 cable-related fatalities occurring since 1970 could have been avoided through the use of metallic shielding on low-voltage trailing cables. Thirteen occurred from 1970 through 1978, while the remaining eight occurred since 1978. While diligent compliance with all existing electrical standards may have prevented some of the fatal accidents, it is not unusual for violations to exist that go unnoticed by the miners working on the section. For example, bad splices and cable damage are often difficult or impossible to detect by visual observation.

In reviewing the fatality reports of these 21 cases, the Agency determined that six could have been prevented by proper deenergization and locking and tagging out, while five others could have been prevented through proper installation and maintenance of grounding devices, existing requirements whose violations are more easily detected. Thus, MSHA estimates that ten fatalities during this 18-year period could have been avoided principally through the use of shielding.

MSHA further analyzed the types of equipment involved in the 21 fatalities and found that two-thirds involved cable reel equipment, and the remaining one-third involved machines employing drag cables. Roof bolters, shuttle cars, loading machines, continuous miners, a coal drill, a utility truck, and a bridge conveyor were involved in the accidents. In the ten-year period 1979 through 1988, eight fatal trailing cable-related accidents have occurred. Of these, six cable reel machines (three roof bolters and three shuttle cars) and two drag cable machines (a bridge conveyor and a continuous miner) were

involved. However, the last drag cable-related fatality occurred in 1980. MSHA believes this reduction may be attributable to several factors. First there has been a reduction in the use of conventional equipment, such as loaders and face drills, in favor of continuous-type mining equipment (resulting in fewer pieces of face equipment with drag cables). Furthermore, there has been a steady replacement of 480-volt continuous miners with 950-volt continuous miners, which existing rules already require to be equipped with shielded trailing cables. As a result, the number of low-voltage drag cable machines in use has decreased in recent years. This, combined with improved cable maintenance and more reliable and sensitive personal protective equipment, has resulted in some reduction in accidents on all cable equipment.

Given that these factors may have eliminated drag cable-related fatalities in recent years, the Agency solicits public comment on whether drag cables continue to present a hazard warranting metallic shielding. Are there certain uses of drag cables which may present less risk than others? Is the Agency's cost estimate of $4.4 million per year (presented in the Agency's Economic Impact and Regulatory Flexibility Analysis for the Proposed Rule for Electrical Safety in Underground Coal Mines, p. IV–9) accurate for the requirement to provide metallic shielding on all drag trailing cables? Based on the information available to the Agency, it is proposing to require metallic shielding on both drag cables and cables used on reel equipment. However, the Agency will reexamine the drag cable requirement in the final rulemaking.

Primarily, the use of shielded trailing cables would increase safety for miners required to physically handle the cables by reducing the likelihood of exposure to bare or shortcircuited energized power conductors. MSHA also conducted a preliminary analysis of 132 cable-related accident and injury reports involving mobile electric equipment occurring since 1983. Of these, 82 non-fatal accidents were identified as having occurred while employees were handling or attempting to perform maintenance on cables. The injuries included shocks and severe burns to the limbs and face areas, resulting in a combined total of 1,675 lost work days.

An unshielded trailing cable may be damaged to the point of exposing conductors, but continue to function properly. This hazardous condition will not be detected until a return path is established. The construction of unshielded cables does not provide this return path within the cable components unless the grounding conductor or power conductors come in contact with the exposed or damaged conductor when damage occurs. This would only occur if damage is extreme enough to result in mutilation or smashing of the cable. By contrast, the construction of the proposed type of shielded trailing cables provides a metallic outer covering surrounding each power conductor. A return path is provided by the shielding in a damaged cable to conduct dangerous currents to the ground-fault protective device instead of exposing personnel to contact with an energized circuit.

One of the identified fatalities occurred when an equipment operator stepped on or near an inadequately repaired area in a continuous miner trailing cable. The miner then reached for the controls of a shuttle car, and upon contacting the grounded metallic frame of the shuttle car, was exposed to the differing potential between the equipment frame and the cable voltage, 277 volts, a-c, which caused electrocution. An MSHA inspector who investigated the accident discovered that the cable appeared to be properly insulated. However, the victim was exposed to leakage current through damaged and wet cable insulation.

The shuttle car frame provided a path for current flow through the victim's body. If shielding had been present around the trailing cable power conductors, the leakage current would have been conducted to ground by the shielding, eliminating the shock hazard to the victim. The undiscovered damage to the cable may have been located if the fault current had been great enough to cause the circuit breaker to trip and deenergize the circuit before the individual contacted it.

Several of the fatalities occurred when miners mistakenly used a metallic tool to cut into an a-c trailing cable that had not been properly deenergized. The existing standards, as well as the proposal, would require circuits to be deenergized before work is begun, but human error or an erroneous assumption that the circuit has been deenergized can lead to such fatalities. For example, an individual qualified to perform mine electrical work was exposed to 277 volts, a-c when he cut into a damaged shuttle car trailing cable to make repairs. Another mine electrician had mistakenly deenergized the wrong trailing cable. In this case, despite the violation of existing procedural rules, the victim would not have been fatally injured if an additional, reliable engineering control in the form of grounded metallic shielding had been provided.

Shielded trailing cables would also reduce the likelihood of fire and ignitions in the presence of coal dust and methane by providing additional protection against conductor short circuits, and because the symmetrical construction of shielded cables reduces the occurrence of induced currents and subsequent intermachine arcing. A review of reports of dust and gas ignitions between 1983 and 1987 showed that four reported ignitions were attributable to trailing cables arcing and exploding. After reviewing this data, the Agency concluded that adequate cable shielding could have prevented these incidents.

The Agency is aware that some debate exists concerning the technical feasibility of requiring metallic shielding on low-voltage trailing cables used on cable reel equipment. In paragraphs (g) and (h), the proposed three-year phase-in schedule for shielded trailing cable serving equipment that employs cable reels is based on the Agency's review of available research and technology in this area. However, MSHA specifically solicits public comment on the technical feasibility and availability of metallic shielded cable, as well as the proposed compliance schedule.

The Agency has identified three primary areas of concern in the use of shielded cables on cable reel equipment; its ability to spool properly, increased weight, and flexibility. Improper layering of the cables resulting from poor spooling can greatly reduce the cable storage capacity on the reel and increase stresses on the cable from binding and twisting. Although the larger diameters of shielded cables will somewhat reduce the storage capacity of cable reels, this reduction should not be a significant factor if proper spooling techniques are used. Similarly, properly layered cable would not be exposed to increased stresses. It is expected that cable reel components presently in use can be modified to adequately handle the new shielded cable diameters.

Shielded cables constructed with shielding around each power conductor can weigh as much as 30 percent more than unshielded cables of the same size and design. Cable reels have been reported to experience difficulty in handling the added weight of such cables, increasing the probability of the equipment running over its own cables. This problem could be overcome by the use of higher reeling tensions.

Shielded cables are typically less flexible than unshielded cables, making them more susceptible to damage resulting from bending when used on cable reel equipment. Such damage can lessen the effectiveness of shielding and the cable's service life if appropriate coverage area is not used. Repeated reeling and the related flexing of the cables can cause metallic shielding to break or gap, losing its protective characteristics. However, research conducted on the electrical and mechanical performance of flexible shielding systems in portable trailing cables by the Anaconda Company, a major cable manufacturer, yielded encouraging results.

In Anaconda's research, two shielded cables, one with full copper braid shielding and one with cotton/copper braid shielding, were tested in a laboratory and subjected to repeated reeling and bending to simulate service conditions and accelerate the cable damage produced in a mine. A research paper by T.E. Hansen of the Anaconda Company, Wire and Cable Division, detailed the results of the testing. The paper, presented at the Tenth Annual Meeting Conference of the IEEE Industry Applications Society in 1975, concluded that:

> The performance of the cotton/copper and full copper braid shielded EP insulated cables under simulated service flexing conditions suggests both designs should retain their ground system integrity through a long service life. . . The possibility of a broken shield wire in a copper/cotton braid shield, penetrating the insulation to cause premature cable failure and a shorter service life than an unshielded cable seems remote, in agreement with a user's report that during 15 years experience, the durability of copper/cotton shielded cables was comparable to nonshielded cables in trailing cable applications. Hanson, T.E., "Performance of Flexible Shielding in Trailing Cables," Conference Record Cat. No. 75CH0999–31A, p. 5, 1975.

MSHA expects that shielded trailing cables which are able to withstand the flexing involved in normal cable reel usage can be made available within the specified compliance period.

The Bureau of Mines funded an investigation into the feasibility of using shielded cable in underground coal mines, undertaken at the Pennsylvania State University. Bureau of Mines Information Circular 8799, "Mine Power Systems Research, Trailing Cables," Contract #G0155197, R.H. King and J. Hanslovan, "Low-Voltage Shielded Cables", 1977. The investigation focused on safety effects, cost, reliability and life of shielded cables, and included laboratory testing of cable shielding. Tests were performed at the Pennsylvania State University Mine Electrical Research Laboratory in conjunction with the investigation. A flexing machine was used to simulate reeling effects, and it was found that, "No significant shield-wire breakage occurred in any of the SH–D samples; however, grounding conductors broke frequently. The shield maintained the grounding-circuit continuity when grounding conductors were damaged." Id. at 40.

The report concluded that the introduction of shielded low-voltage cables has potential for hazard reduction, and stressed the importance of adequate shielding coverage and a low-resistance contact between the shield and grounding conductor. In addressing the availability of low-voltage shielded cables, the report concluded, "Initially, a wide range of low-voltage shielded cables would not be available. Some cable manufacturers indicated that a one- to two-year tool-up period would be necessary. Others did not anticipate an extensive problem." Id. at 47.

Several mines are presently using shielded cable on cable reel equipment, other than rapid-tramming equipment such as shuttle cars, with encouraging results. The operators of four U.S. mines have voluntarily used shielded cable successfully on cable reels serving face drills, roof-bolters and cutting machines. Three of the mines are coal mines at which shielded cable has been used on all a-c equipment for several years. The largest conductor size used is #6 AWG. The mine operators have stated that usable cable lengths have not been affected by shielding at these mines.

Shielded cable has also been used voluntarily on cable reel equipment in a Wyoming trona mine for the past 27 years. The mine employs conventional mining methods which are nearly identical to those used in underground coal mines. Shielded trailing cables are used to supply roof bolters, face drills and cutting machines on up to 15 working sections at the mine.

Additionally, shielded cables have been required in other countries for many years. MSHA representatives have received information on the use of metallic shielded cables from government mining officials in Canada, the United Kingdom and Australia. In 1977, the Canadian Standards Association (CSA) first published a requirement for grounded shielding consisting of tinned copper, wire mesh or the equivalent around each power conductor in all cables operating on circuits over 125 volts in coal mines. (CSA Standard C22.5–1977, Wiring Methods, § 4.1.2.10.) The most recent edition of the Canadian standards retains the requirement. (CSA Standard M421–M85, Use of Electricity in Mines, § 6.9.3.3.) Although the CSA is a consensus standards organization, all provinces in which underground coal mining is performed currently enforce the shielding provision, according to Canadian officials.

Similarly, the Principal Electrical Inspector of Mines and Quarries in Great Britain informed MSHA that shielded trailing cables, including those serving shuttle cars and other cable reel equipment, have been required in Great Britain for approximately 15 years. MSHA was informed that the United Kingdom is at an advanced stage towards issuing new electricity regulations which retain their existing requirement for shielding of the individual conductors of trailing cables.

Both Canada and Great Britain have allowed an alternative compliance method in the form of semi-conducting shielding instead of metallic shielding. If mine operators in these countries choose the option of using semi-conducting shielding, resistance grounding with an extremely sensitive trip level must also be used. This is due to the fact that semi-conducting shielding is normally made of a rubberized or elastomeric type of material which has a higher resistance than metallic shielding. Although semi-conducting shielding is an option in Canada and Great Britain, mining officials in those countries estimate that it is seldom used by mine operators because of the difficulties encountered with its use.

The MSHA proposal would allow only the use of metallic shielding, as the Agency considers this the safest method of providing adequate protection against electric shock. Several problems may exist with the use of semi-conducting shielding. First, the sensitivity that would be required of the ground-fault protective system in order to provide adequate protection may be difficult to maintain due to nuisance tripping. Additionally, the design of semi-conducting shielding can make it more difficult to locate fault sources when the ground-fault protective device deenergizes a circuit. This is due to the elasticity and resilience of semi-conducting shielding, which can make damage less obvious. The Agency solicits comment on the feasibility and safety benefits of the use of semi-conducting shielding.

Canadian and British mining officials stated that the estimated life span of metallic shielded trailing cable used on shuttle cars ranges from four months to one year. The relatively short cable life

was explained to be due to the prohibition in both countries of the making of temporary and permanent cable splices in some cable components while underground. Due to this prohibition, a common practice is to cut damaged cable at the damaged point and to put it to use in some other capacity.

The information received from these countries indicates that the technology for providing shielding on cable reel equipment does exist and is being employed abroad. However, preliminary indications from some cable manufacturers suggest that producing the quantities and type of shielded cables that would be required under the proposal would be costly and time consuming. As a result, a period of time for development of shielded cables complying with the proposed requirements, retooling and inventory disposal must be considered. Therefore, the proposal would provide a one-year phase-in period for shielded cable on mobile electric equipment not employing cable reels, energized with a nominal a-c voltage from 150 volts phase-to-ground to 660 phase-to-phase, and a three-year phase-in for shielded cable on electric equipment employing cable reels.

The information gathered by the Agency suggests that, despite the present limited utilization of shielded cable on cable reels in this country, an effective and efficient shielded cable for this use is feasible and can be produced for widespread use in the coal mining industry. However, MSHA specifically encourages comments on the technical feasibility, benefits and costs of the proposed shielding requirement and implementation timetables so that the Agency can better evaluate the need for this requirement and its impact on the coal mining industry.

Paragraph (h) is derived from existing § 75.907, which requires medium-voltage trailing cables, energized at between 661 volts and 1,000 volts, to have grounded metallic shielding around each power conductor or over the assembly, except on equipment employing cable reels where the cable insulation is rated at 2,000 volts or more. The proposal would require that trailing cables energized with a nominal a-c voltage greater than 660 volts be provided with a grounded metallic shield around each power conductor on all equipment not employing cable reels on the effective date of the rule, since "medium voltage" trailing cables are presently required to have metallic shielding. Metallic shielding would be required for cables greater than 660 volts serving cable reel equipment three years after the effective date of the rule.

While the existing standard allows shielding around the power conductor assembly as one alternative in meeting its requirements, the proposal would no longer permit this, and instead would require that shielding be installed around each power conductor. It should be noted that cable having shielding around the entire assembly is generally not in use in the mining industry, and not readily available from cable manufacturers, although existing requirements permit its use.

The Agency believes that shielding around each power conductor (SH–D cable) is safer than shielding around the conductor assembly (SH–C cable) because of the increased protection and coverage it provides. SH–C cables do possess some advantages in weight and flexibility, but they do not provide phase-to-phase fault protection. Additionally, maintaining proper contact between the shielding and the grounding conductor can be problematic. These problems are not encountered with the use of SH–D type cables.

Paragraph (i) would require that prior to the end of the three-year phase-in period for cable reel equipment in paragraph (h), what is presently called "medium voltage" cables must be shielded. The effect of the standard is to retain the existing shielding requirement in § 75.907 until the proposed shielding requirements become effective. The difference between the proposed and existing standards is that shielding around the power conductor assembly would no longer be an optional compliance method. As discussed in connection with paragraph (h), the Agency would no longer consider this a viable alternative in meeting the shielding requirement.

Paragraph (j) is new, and would require that shielding around power conductors be applied in the form of braid or serving (wrap). Metallic braid would be required to provide at least 84 percent coverage, and metallic wire serving would have to provide at least 60 percent coverage. The Agency believes that this type of shielding, when applied according to the manufacturer's recommendations, would provide the best combination of coverage and physical durability. Tape would not be suitable for this use because it lacks the physical strength characteristics of braid and wrap. The coverage values are generally accepted and presently used in the mining industry.

A new standard at paragraph (k) would provide for a maximum limit on the length of any trailing cable, depending on the size of the cable. Table G–1 would specify trailing cable lengths. Limits on the length of trailing cables serving permissible equipment now exist in part 18. When the length of a particular cable increases, the resistance within that cable also increases. This would pose a potential electrical hazard, since an increase in length creates a corresponding decrease in available current at the end of the cable. Should a ground fault or short circuit occur in an extended length of cable, the fault currents available may be insufficient to trip protective devices and clear the fault. This could result in the occurrence of dangerous voltages on the frame of the equipment being served or in the cable, leading to shock and fire hazards.

Section 75.602 Electrical Protection for Alternating-Current Circuits

This section is derived from existing §§ 75.518, 75.601, 75.601–1, 75.602, 75.900 and 75.900–2, as applied to low-voltage a-c trailing cables and circuits. The proposal would establish requirements for overcurrent, ground-fault, and undervoltage protection, and would specify installation procedures for ground-fault current transformers. The proposal would delete the maximum allowable instantaneous circuit breaker settings for trailing cables specified in existing § 75.601–1, and would replace them with two tables that provide comprehensive settings for the types of circuit breakers used in underground coal mines. The Agency believes this would increase safety, as well as provide greater flexibility in the design and use of shortcircuit devices. Additionally, the proposal would require a test circuit for ground-fault protective devices on power centers six months after the effective date of the standard.

Paragraph (a) would consolidate and clarify existing §§ 75.601 and § 75.900. The proposal would require that trailing cables be protected against short circuits, undervoltages and ground faults by a circuit breaker of adequate interrupting capacity. Adequate interrupting capacity is defined for purposes of this proposal as the ability of a circuit breaker to safely interrupt all values of current which can occur at its location in excess of a breaker's trip setting.

Commenters expressed concern over the language of the preproposal draft. They interpreted this provision to mean that separate devices that are not an integral part of the circuit breaker would be required to provide undervoltage and ground-fault protection. This is not the intent of the proposal. Circuit breakers with protective devices integrated into their construction that provide short-circuit and overcurrent protection would be acceptable under the proposal. The technology making this possible is reliable, especially where the voltages are lower than 1,040 volts. A single device which provides all of the protection required by the proposed standard would be acceptable.

Paragraph (b) is partially new and partially derived from existing § 75.601. The proposal would clarify the existing standard for single-phase a-c trailing cables by requiring that single-phase trailing cables energized at 150 volts or less to ground be protected against short circuits by a circuit breaker of adequate interrupting capacity. The new portion of the proposal would require the circuit breaker to also provide ground-fault protection. This would protect against the potential hazard of one of the power conductors becoming grounded, causing a possible shock or fire.

Under the proposal, fuses would not be permitted to provide ground-fault protection. A single fuse can adequately protect only one power conductor at a time, and the proposal would address the protection of all power conductors. If fuses were provided for each power conductor, and a fault occurred on one of the conductors, all of the fuses may not open, leaving one or more of the conductors energized and creating a shock hazard.

Paragraph (c) is derived from existing § 75.601–1, which requires that circuit breakers providing short-circuit protection for trailing cables be set so as not to exceed the maximum allowable instantaneous settings specified in the accompanying table. The proposal would consolidate and clarify these requirements and provide new tables that would provide greater flexibility in the use of circuit breakers protecting a-c circuits. The proposal would require that each ungrounded power conductor of a trailing cable be protected against short circuits by one of three types of circuit breakers, set in accordance with Tables G–2 and G–3, which would accompany the standard.

Circuit breakers would have to be an inverse-time circuit breaker with a maximum current rating specified in Table G–2, an instantaneous-trip circuit breaker with a maximum instantaneous setting specified in Table G–3, or a short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds, and a maximum setting as specified in Table G–3. The Agency believes that the specified settings would provide better circuit protection than the existing settings. Inverse-time circuit breakers are not permitted under the existing rules. However, the Agency believes they would provide protection equivalent to that provided by instantaneous breakers. Commenters to the preproposal requested that more acceptable table values for maximum short-circuit protection be provided. MSHA has done this with the two new tables, and believes that the use of these tables will best serve the electrical safety needs of the coal mining industry.

Paragraph (d) is derived from existing § 75.601–1, which permits higher circuit breaker settings with the approval of an authorized representative of the Secretary. The proposal would require the District Manager to approve any such changes in writing, if technical data deem it appropriate and it would not pose a hazard to miners. This would clarify an existing Agency policy under which MSHA carefully evaluates proposed breaker setting changes before any action is taken, and then only with the consent of the District Manager.

Paragraph (e) would require overcurrent, ground-fault and undervoltage protection by circuit breakers of adequate interrupting capacity for a-c resistance-grounded three-phase circuits, a-c single-phase circuits energized at more than 150 volts-to-ground, and a-c ungrounded circuits installed in accordance with proposed § 75.701(b). The requirement that circuit breakers provide ground-fault protection is new. It would protect against the potential hazard of one of the power conductors grounding out and causing a possible shock or fire. The proposal would not allow fuses to be used for ground-fault protection or require the use of separate devices for reasons addressed in connection with proposed § 75.602(a).

Paragraph (f) of the proposal would retain and clarify existing § 75.900–2(c) by providing that when a circuit breaker is used to protect two or more branch circuits, it shall provide overcurrent protection for the smallest conductor. Compliance with the standard would ensure interruption of power whenever an overcurrent appears on any of the conductors in any branch circuit. Failure to do this could lead to overheating and damage to the conductors, resulting in shock and fire hazards.

Paragraph (g) would require overcurrent protection for low-voltage circuits in accordance with proposed section § 75.523, which contains general requirements applicable to low-voltage a-c circuits. That section is referenced here because of the importance of clarifying overcurrent protection requirements for these circuits. It should be noted that proposed § 75.523 would replace existing §§ 75.518 and 75.518–1, which incorporate by reference the 1968 edition of the NEC.

Paragraph (h) is new, and would require ground-fault devices to deenergize the faulted circuit at 40 percent or less of the maximum ground-fault current of the system. The Agency believes that this would ensure reliable tripping for a ground fault, and considers 40 percent a practical threshold value for detecting ground-fault conditions.

Paragraph (i) is also new, and would require that the ground-fault device nearest the load operate with no intentional time delay. Compliance with the standard would assure rapid deenergization of the circuit, but additional devices could be set for an intentional delay for selective tripping. However, the operating time of the device furthest from the load would be limited to one second. This would provide for a period of time in which all faults on the protected circuits must be cleared and still allow for a reasonable time delay to protect against nuisance tripping. A fault remaining on the protected circuits for more than one second would present a serious shock hazard.

Paragraph (j) is new, and would prohibit equipment safety grounding conductors from passing through or being connected in series with ground-fault current transformers. Installing ground-fault current transformers in series with an equipment safety grounding conductor would result in a failure to detect any parallel electrical path to the equipment safety grounding conductor for a ground-fault current. A similar situation occurs when equipment safety grounding conductors are passed through the ground-fault current transformers. Should a ground fault occur, devices sensing only the equipment safety grounding conductor may not be able to sense enough of the fault current to deenergize the circuit because of the parallel electrical paths. The fault current would remain on the cable and possibly on the equipment the cable serves.

Paragraph (k) is new, and would require resistance-grounded systems for trailing cables to have a test circuit, to be operated at least once each seven days, that injects a current of 50 percent or less of the maximum ground-fault current of the system, causing each circuit breaker to open. Grounding resistors and circuit breakers are the backbone safety devices of a resistance

grounded system for the prevention of fire, ignition and shock hazards. Use of a testing circuit under controlled conditions would indicate whether these devices will operate when required to do so.

Safety advantages would be gained with the use of a test circuit device in that the ground-fault device can be checked while it is still protecting the circuit, and it can be determined whether a ground-fault device needs to be replaced before an actual ground fault occurs. Since the ground-fault protective devices are passive, they do not operate until a fault exists. With a testing capability, the ability of ground-fault devices to operate if needed can be verified.

The standard would become mandatory six months after the effective date of the rule. Information available to the Agency indicates that there were 2,322 working sections in U.S. underground coal mines in 1987. Each working section represents at least one power center, which would require installation of the test circuit. MSHA is aware of existing circuitry and designs for test circuits which would comply with the proposed rule. However, based on the number of power centers involved, MSHA has estimated that a six-month phase-in of the standard is needed to allow sufficient retrofitting and installation time on all affected equipment.

Paragraph (l) is new and would require that the ground-fault current device and the circuit breaker be removed from service or repaired when the circuit breaker fails to open upon operation of the test circuit required in paragraph (k). This would ensure that both the breaker and the ground-fault devices are not used until it is determined which device is malfunctioning and that device is replaced or repaired.

Paragraph (m) is partially derived from existing § 75.900–2, which allows undervoltage devices to be circuit breakers with shunt trip or undervoltage release devices. These two options are retained in the proposal. However, it would require that when a shunt trip is used, a circuit utilizing a stored energy device must also be used to assure that the breaker will trip if the control voltage is lost. This is necessary because the shunt trip is a passive device that must be energized to trip the circuit breaker. Should power to the control circuit of the circuit breaker be lost and a fault occurs, there would be no way to trip the breaker, and the fault would remain on the circuit. A stored energy device would assure that power is retained for the device to trip the circuit breaker.

Paragraph (n) is new, and would require circuit breakers protecting multiple trailing cables operating in parallel to be interlocked so that all such trailing cables will be deenergized simultaneously. The result would be that when a unit of equipment is served by more than one trailing cable, and one of the cables is deenergized, the remaining cables would also be deenergized. This would protect against the hazard of persons mistakenly beginning work on the equipment before all trailing cables serving it have been deenergized. A shock hazard could also occur if only one breaker trips when a fault appears on the cable. The other breakers may not trip because the length of cable between their protective devices and the fault exceeds the limits of the parameters of their settings. When these breakers do not trip, the energized circuit would continue to feed the fault.

Section 75.803 Electrical Protection for Direct-Current Trailing Cables

This section would consolidate and revise the existing requirements in §§ 75.601, 75.601–1, 75.601–2, 75.601–3 and 75.900 as they apply to d-c trailing cables, and would establish some new requirements. The proposal would specify the types of circuit breakers that would be acceptable for protection of d-c trailing cables and provide more specificity as to what fuses would be allowed for short-circuit protection of ungrounded power conductors and how these fuses could be utilized.

Paragraph (a) of the proposal would consolidate and clarify existing requirements for circuit breakers and dual element fuses. It would require each ungrounded power conductor of a trailing cable to be protected against short circuits by one of three methods. It would be accompanied by revised tables that would provide greater flexibility in the application of trailing cables to d-c circuits. These tables were developed to conform to the d-c power systems presently used in underground coal mining.

The proposal would allow the use of inverse-time circuit breakers of adequate interrupting capacity, with a maximum current rating as specified in Table G–2 to protect d-c circuits. These breakers are not permitted under existing standards, but MSHA considers them as effective as the instantaneous breakers and would now allow their use. An individual fuse with a maximum current rating as specified in Table G–2 could be used under the proposal when the trailing cable is supplied from a solid-grounded system. Fuses would be inappropriate for use in conjunction with a resistance-grounded system, since they are not able to open all phases simultaneously. Also, fuses may not be sensitive enough to operate properly with resistance grounding.

Additionally, the use of an instantaneous-trip circuit breaker of adequate interrupting capacity and a maximum instantaneous setting as specified in Table G–4 would continue to be permitted under the proposal. The line-to-line instantaneous circuit breaker settings would have to be used for short-circuit protection of trailing cables supplying power to diode-grounded equipment and for those containing a separate equipment safety grounding conductor, if the circuit is provided with separate ground-fault protection. The line-to-ground values would have to be used for short-circuit and ground-fault protection of trailing cables containing a separate equipment safety grounding conductor when the circuit is not provided with separate ground-fault protection.

Paragraph (b) is derived from existing § 75.601–1, which permits an authorized representative of the Secretary to allow deviation from maximum instantaneous breaker settings when it appears justified. Since it is the Agency's policy that the District Manager carefully review and thoroughly evaluate any request to allow higher settings on breakers, MSHA has modified this requirement to conform with present policy. Under the proposal, the District Manager, and not the authorized representative, could grant permission in writing for higher breaker settings if technical data deem it appropriate and it would not pose a hazard to miners. Since fuses would be an alternative means of protecting ungrounded power conductors against short circuits under the proposal, this provision would also allow higher fuse ratings with the written permission of the District Manager.

Paragraph (c) clarifies existing § 75.601–2, which prohibits the use of fuses to provide short-circuit protection, unless specifically approved by the Secretary. The proposal would require that fuses be approved in accordance with part 28. Thus, an operator could look at the approval markings on a fuse to ascertain that it has been approved by the Secretary for use in the protection of d-c trailing cables.

Paragraph (d) is derived from existing § 75.601 which requires that when a fuse is used, it shall have adequate current interrupting capacity. The proposal would retain this rule, in effect, by requiring that fuses have a d-c voltage rating at least equal to the maximum system voltage, and by specifying in Table G–4 the maximum current ratings allowed for use with d-c trailing cables.

Paragraph (e) is new, and would require that each trailing cable in a resistance-grounded d-c circuit be protected against ground faults by a circuit breaker that deenergizes the circuit when the ground-fault current exceeds 40 percent of the current rating of the grounding resistor. This would preclude the use of fuses in resistance-grounded systems. The 40 percent deenergization setting is conservatively within the relay setting range of 40 to 50 percent typically used by power center manufacturers.

A new provision in paragraph (f) would require trailing cables supplied from a system that has the direct neutral of the rectifier bridge supply-transformer solidly grounded to be protected against ground faults by an instantaneous-trip circuit breaker of adequate interrupting capacity that deenergizes the circuit at a current value not to exceed 50 amperes. The 50 ampere value would be sufficient to provide reliable relay operation. It is also consistent with tripping values used in other protective schemes for d-c equipment, such as the relay trip values for silicon diode grounding.

Paragraph (g) is new, and would require the ground-fault device nearest the load to operate with no intentional time delay. This would deenergize the faulted circuit as quickly as possible, thereby minimizing the potential for shock and fire hazards associated with faults. Since the proposal would only require the devices nearest the load to have no intentional time delay, other ground-fault devices protecting the circuit that feeds the circuit nearest the load could have intentional time delays, which could prevent nuisance tripping in the system.

Paragraph (h) is also new, and would prohibit equipment safety grounding conductors from passing through or being connected in series with ground-fault current transformers. If a current transformer were installed in series with or around an equipment safety grounding conductor, it would fail to detect parallel electrical paths to the equipment safety grounding conductor. Should a ground fault occur, the devices would sense only the equipment safety grounding conductor and may be unable to detect enough fault current to trip the circuit breaker.

Section 75.804 Physical Restraints for Cable Couplers

This section is derived from existing § 75.802, which requires that when two or more circuit breakers with different ratings, trip elements, or instantaneous-trip ranges are installed in the same distribution box, power center, or rectifier, a means must be provided to prevent the connection of incompatible plugs and receptacles. When there are two or more circuit breakers with dissimilar settings at the same location, there is a possibility of connecting a trailing cable to the wrong circuit breaker, which may be ineffective for protecting the cable. Dangerous overheating of the cable and resulting shock and fire hazards could occur.

The proposal would retain the existing performance standard, with some language modification for clarity. Any physical restraint which prevents the connection of a cable to a circuit breaker that is not properly rated or adjusted for that cable would be acceptable. The proposal is intended to provide flexibility in choosing compliance alternatives of equivalent safety effect.

Subpart H—Grounding

Section 75.701 Low-Voltage Alternating-Current System Grounding

This section is derived from existing §§ 75.700, 75.701, 75.704, and 75.901, and would require resistance grounding for low-voltage a-c systems, defined as those having a nominal voltage of 1,040 volts or less. Of the grounding-related fatalities in underground coal mines since 1970, approximately 80 percent involved low-voltage a-c electric equipment. The requirements in this proposed section would help to reduce the number of future fatalities in underground coal mines.

The standard would require low-voltage a-c systems extending or originating underground to be grounded by having either a direct or a derived neutral connected to the grounding medium through a grounding resistor. The effect of the provision would be to require resistance-grounding for low-voltage a-c systems extending or originating underground. A resistance-grounded system is one defined in proposed § 75.2(j) as an electrical system in which the neutral point of the transformer or generator winding is intentionally grounded through a current limiting resistor. The resistor would limit ground-fault current to a value equal to or less than the values specified by this subpart, but greater than the system capacitive charging current.

Should a phase-to-ground fault occur in a low-voltage a-c system, resistance-grounding would serve to limit the voltage which could occur on frames of equipment supplied by the system. Additionally, fire hazards would be minimized since the current flow in the resistance-grounded system would be limited to 25 amperes under proposed § 75.707.

Paragraphs (a) through (e) describe exceptions to the resistance-grounding requirement, which the Agency would consider acceptable alternative grounding methods. The list of exceptions includes solid-grounded and ungrounded systems, defined in proposed § 75.2(j) as an electrical system grounded through a connection in which no impedance has been intentionally inserted, where the short-circuit current-carrying capacity of the grounding connection is at least equal to the bolted phase-to-neutral fault current. Ungrounded systems would be defined as those without an intentionally-made connection to ground, except through potential indicating or measuring devices.

Paragraph (a) would allow the use of a solid-grounded single-phase system, provided it supplies only stationary or portable electric equipment, and has either a direct neutral or a phase conductor solidly connected to the system grounding medium, so that the phase-to-ground voltage is limited to 150 volts or less. Because of its continuous movement and use underground, mobile electric equipment is susceptible to more ground faults from damage to power conductors than are stationary and portable units. The Agency believes that resistance-grounded systems would provide the most reliable ground-fault protection for mobile electric equipment, and that solid grounding is only appropriate for the protection of electrical systems which supply stationary and portable electric equipment.

Paragraph (b) would allow the use of ungrounded low-voltage a-c systems, provided they supply only stationary equipment, have ground-fault protection which automatically deenergizes all phase conductors when any one is grounded, and have all phase conductors totally enclosed in either rigid metallic conduit, metallic armored cable, metal-clad cable, or shielded cable when the phase-to-phase voltage exceeds 150 volts. Figure H–1, which would accompany the proposal, illustrates the standard. Under the proposal, conductors with a phase-to-phase voltage of 150 volts or less would be permitted to be enclosed in non-metallic conduits or cables.

Existing § 75.901(a) provides that the Secretary may permit the underground use of ungrounded low- and medium-voltage circuits which serve stationary equipment, if the circuits are either steel

armored or installed in grounded rigid steel conduit. The proposed standard would eliminate the need to request that the Secretary permit the use of such systems, provided the installation requirements are met. Overvoltage conditions associated with ungrounded systems can diminish the useful life of cable insulation and result in machine failures more frequently than in grounded systems. Therefore, an adequate detection system used for removing ground faults is essential for the effective operation of ungrounded systems.

Effective ground-fault protection and the requirement of metallic enclosures in ungrounded systems would minimize the possibility of a fault remaining on the system and energizing the frames of electric equipment. For example, an ungrounded system would be permitted to serve a stationary bore hole pump if it has a ground-fault protection system to detect faults and automatically cause deenergization of the phase conductors, as well as having totally enclosed conductors. The standard would assure that loads are connected to the source of power and that abnormally high voltages which could injure miners will not occur on the pump's frame.

The exception in paragraph (c) would allow the use of ungrounded single-phase systems having a phase-to-phase voltage of 150 volts or less, and which originate on the secondary side of a two-winding transformer equipped with a metallic, or "Faraday," shield connected to the grounding medium. The purpose of the shield would be to isolate the low-voltage secondary winding from the primary winding in the transformer to prevent primary-to-secondary transformer faults. Shielding would protect miners from exposure to dangerous voltages due to transformer faults. Figure H–2 would illustrate the provision.

Paragraph (d) would be a new provision allowing some a-c systems to be ungrounded, provided they supply only a rectifier mounted with the source transformer or generator on a common metallic frame and have the conductors totally enclosed in either rigid metallic conduit, metallic armored cable, metal clad cable, or shielded cable when the phase-to-ground voltage exceeds 150 volts. One effect of the standard would be to allow a three-phase a-c system to supply a d-c trolley rectifier having one conductor solidly connected to the track. On a 300-volt d-c trolley system, the maximum phase-to-ground voltage of the a-c system would be less than the 150 volts-to-ground maximum specified in the proposal.

The proposal would alleviate an apparent conflict between existing §§ 75.901 and 75.701–3, and would incorporate MSHA's interpretation of those standards. Existing § 75.701–3 requires equipment receiving power from d-c power systems to be grounded. Existing § 75.901(a) presently requires underground a-c systems to be resistance grounded, or ungrounded by permission of the Secretary under certain circumstances. Rectifier systems cannot have both the a-c and d-c systems grounded at the same time. Therefore, the standard would incorporate current Agency policy by permitting some a-c systems supplying rectifiers to be ungrounded, provided they comply with the specified alternative method of ground-fault protection.

Paragraph (e) would allow the use of ungrounded systems which have the supply transformer and all other components contained in a single metallic enclosure or installed on the common metallic frame of electric face equipment. These methods would eliminate the possibility of simultaneous phase-to-ground faults at the transformer and the equipment. Simultaneous faults at these locations could energize the metallic frames of all of the equipment served by the same power system, exposing miners to electric shock or electrocution.

Section 75.702 Low-Voltage Alternating-Current System Grounding Mediums

Section 75.702 would address grounding mediums for low-voltage a-c systems. It is derived from existing §§ 75.701–2 and 75.901, which address requirements for grounding of metallic frames, casings and other enclosures of equipment receiving power from single-phase 110–220-volt circuits and low-and medium-voltage three-phase a-c power systems. The proposed standard would require the system grounding medium for low-voltage a-c systems to be the metallic frame or metallic enclosure of the generator, transformer, or transformer bank, connected to a low-resistance ground field. The effect of this provision would be to require a system grounding medium for all low-voltage a-c systems which would facilitate the conduction of abnormal electric currents to a low-resistance ground field instead of energizing the equipment frames. An illustration of the provision would be found in Figure H–3.

The requirements of the existing standards would be altered by deleting the reference to borehole casings and water lines. The use of these devices would continue to be permitted under the proposal only if they meet the requirements of proposed § 75.709, which would set requirements for low-resistance ground fields.

Section 75.703 High-Voltage Alternating-Current System Grounding

This section would address requirements for high-voltage a-c system grounding, currently found in §§ 75.802 and 75.901. Under the proposed standards, there would be only two voltage categories, high- and low-voltage. Under the proposal, resistance-grounded systems having a direct or a derived neutral connected to the grounding medium through a grounding resistor would be required on high-voltage a-c systems, defined in the proposal as those with nominal voltages greater than 1,040-volts. Some 2,400-volt circuits meeting the specifications listed in the standard would be excepted from the requirement.

Paragraphs (a) through (d) list requirements for ungrounded systems which would be excepted from the resistance-grounding requirement. Ungrounded systems which supply only stationary equipment, have a nominal voltage not exceeding 2,400 volts, ground-fault protection which automatically deenergizes all phase conductors when any phase conductor is grounded, and all phase conductors totally enclosed in rigid metallic conduit, metallic armored cable, metal clad cable, or shielded cable, would be excepted from the resistance grounding requirement. Figure H–4 would accompany the standard as an illustration.

These provisions would protect miners against serious shock and electrocution hazards while working with or near high-voltage a-c equipment and circuits. Resistance-grounded systems would be appropriate for the protection of mobile and portable electric equipment, since such equipment is subjected to heavy use, and is therefore more susceptible to power cable damage and resulting ground faults. Ungrounded high-voltage a-c systems would be permitted to serve stationary equipment having ground-fault protection which minimizes miners, exposure to electrocution and electric shock.

Section 75.704 High-Voltage Alternating-Current System Grounding Mediums

This section is derived from existing § 75.802, and would require specific grounding mediums for resistance-grounded and ungrounded high-voltage a-c systems. Paragraph (a) would require the grounding medium for a resistance-grounded system to be a low-resistance ground field for a transformer-derived system, or the metallic frame of the supply transformer or generator that is connected to a low-resistance ground field. Allowing the frame of the supply generator connected to a low-resistance ground field to serve as the grounding medium would be a new provision.

The proposed standard would provide for a common grounding medium connected to a low-resistance ground field for the generator and the equipment it serves, thereby minimizing the possibility of simultaneous ground faults causing lethal voltages to occur on the generator and equipment frames. Under the existing standard, the grounding medium could be considered to be the low-resistance ground field, allowing the generator and equipment to have separate grounding mediums, which increases the possibility of simultaneous faults.

Paragraph (b) would require the grounding medium for an ungrounded electrical system to be the metallic frame or metallic enclosure of the supply transformer, transformer bank, or generator which is connected to a low-resistance ground field. These provisions would require all high-voltage a-c grounding mediums to be connected to a low-resistance ground field, so that dangerous voltages will not occur on the frames of equipment. Figure H–5 is intended to illustrate the standard.

Section 75.705 Direct-Current System Grounding

This section of the proposal would consolidate and clarify the requirements for grounding of d-c electrical systems in existing §§ 75.701–3 and 75.703–2. The proposal contains additions to the existing rules to provide for grounding of battery-powered systems, systems derived on-board mobile electric face equipment, and ungrounded d-c systems.

The standard would require d-c electrical systems extending or originating underground to be one of seven types. Under paragraph (a), solid-grounded d-c trolley systems having one conductor solidly connected to the track would be acceptable. In this way, the track would be used as the grounding medium for the system. If one conductor is connected to the track at all times, the equipment frames of units supplied with electric power by the trolley system would be precluded from carrying dangerous voltages in the event of a fault.

Under paragraph (b), d-c systems other than trolley systems would also be permitted to be solid grounded, provided they have one conductor solidly connected to the system grounding medium. Use of a solid-grounded d-c system having the direct neutral of the a-c system supplying only a rectifier bridge solidly connected to the grounding medium would be permitted under paragraph (c) of the proposed standard. The effect of this standard would be to provide solid grounding when neither line conductor of the d-c output of the system is grounded. Figure H–7 would illustrate this configuration. Line-to-ground voltages would be limited to one half of the system voltage by the requirements of the standard, an appropriate range, since most d-c system nominal voltages are no greater than 330 volts. Under the standard, such systems would be limited to 165 volts line-to-ground.

Under paragraph (d), resistance-grounded systems having either a direct or a derived neutral of the a-c system supplying the rectifier bridge connected to the grounding medium through a grounding resistor would be permitted. In this type of system, the voltages which could appear on equipment frames would be limited to a range which would help to avoid fire and shock hazards. Figure H–8 would illustrate this provision of the proposal.

Paragraph (e) of the standard would be new, and would allow the use of ungrounded systems only if they have ground-fault protection which automatically deenergizes all power conductors when any phase conductor is grounded, and a line-to-line system voltage of 330 volts or less. Under the standard, all d-c systems greater than 330 volts would be required to be intentionally grounded. Figure H–9 would show the configuration described. Compliance with the proposal would assure that systems which are not intentionally grounded are provided with effective alternative protection.

Paragraph (f) is a new provision allowing for the use of ungrounded battery-powered systems. The design of battery-powered equipment minimizes the possibility of multiple faults occurring, so the metallic frames of such equipment cannot become energized with voltages which present danger to miners. Therefore, such systems would be permitted to be ungrounded under the proposal. Similarly, ungrounded systems derived on-board mobile electric equipment would be permitted by paragraph (g). Experience indicates that intentional grounding of these systems would not provide a safety advantage for miners, since all components supplied by them are on a common grounded metallic frame.

Section 75.706 Direct-Current System Grounding Mediums

Proposed § 75.706 is derived from existing §§ 75.701–1, 75.701–3 and 75.703–2, and would address grounding mediums for d-c electrical systems. Paragraph (a) of the proposal would require the system grounding medium for each d-c trolley system to be the mine track. Experience indicates that mine track serves as an efficient grounding medium for these systems.

Under paragraph (b), the system grounding medium for d-c systems derived on-board mobile electric equipment, including battery-powered equipment, would be required to be the metallic frame of unit. In the Agency's view, the equipment frame is an effective medium for assuring that stray voltages will not appear on the frame of mobile electric equipment and place miners at risk of electrocution or electric shock.

Paragraph (c) would require that the metallic frame or enclosure of the power source, connected to a low-resistance ground field, serve as the system grounding medium for d-c systems other than trolley systems and systems derived on-board mobile electric equipment. This provision would be illustrated by Figure H–10. Connection to a low-resistance ground field would assure that unusual or accidental voltages would be conducted to ground by following a low-resistance path. These types of system grounding mediums would assure a safe and dependable grounding system for d-c electrical systems by minimizing the appearance of dangerous voltages between the metallic frames of equipment and earth when faults occur.

Section 75.707 Grounding Resistors

This section would set new performance requirements for d-c grounding resistors. Paragraph (a) would require grounding resistors used on low-voltage systems to have a resistance value that limits ground-fault current to 25 amperes or less. Ground-fault currents that are not limited by a grounding resistor could cause electrical arcing and resultant ignition of combustible materials. As discussed previously, a 25-ampere maximum current in the proposal would help to reduce the likelihood of such occurrences.

On high-voltage systems, grounding resistors would be required to have a resistance value that limits the voltage drop in the grounding circuit external to the resistor to not more than 100 volts during a ground fault. The standard

would be illustrated by Figure H–6. The 100-volt value has been an accepted industry standard since at least 1970. Experience indicates that limiting the voltage which can appear on the frames of high-voltage equipment to 100 volts or less would help to prevent dangerous potential shock hazards.

Under paragraph (b), grounding resistors would be required to be extended-time rated at a current value at least equal to the maximum ground-fault current that can flow through them, making resistors compatible with the currents to which they could be exposed. Under the proposed definition of "extended-time rated," resistors would have to be capable of operating at their maximum operating temperature for 90 days per year without failing. The new definition is intended to reflect the present state of technology with regard to grounding resistors. Failure of an open grounding resistor when subjected to faults which are not immediately cleared by the circuit breaker would be minimized. An open grounding resistor would allow ground faults to go undetected, thereby defeating the grounding protection for the circuit and leaving miners unprotected from dangerous voltages which could appear on equipment frames.

Paragraph (c) would require grounding resistors to be supported by insulators having voltage ratings at least equal to the phase-to-phase a-c voltage of the system. Appropriately insulated supports, capable of withstanding the phase-to-phase voltages in a circuit, would adequately protect the grounding resistor from shorting. A shorted grounding resistor could defeat the protective function of resistance grounding and expose miners to shock hazards and the risk of fire.

Paragraph (d) would require grounding resistors to be located in the same substation or enclosure, or installed on a common metallic frame with the a-c source that supplies the system. The proposed standard would clarify that the resistor should be located at the power source, which may not always be the power center. The standard would help to prevent a neutral conductor from opening between the transformer and grounding resistor, or shorting of the grounding resistor. Such an occurrence could disable ground-fault protective devices from detecting fault conditions and therefore allow dangerous voltages to occur on equipment frames.

Section 75.708 Loads Connected on Resistance-Grounded Systems

This section would require loads to be connected phase-to-phase on a-c systems and line-to-line on d-c systems that are resistance-grounded, presently required by §§ 75.806 and 75.905. The proposal would not change the requirements of the existing standards, but would consolidate them for clarity and consistency. The effect of the proposed standard would be to forbid line-to-ground connections on a-c and d-c systems, which can cause nuisance tripping of ground-fault devices.

Recurrent or "nuisance" tripping of a circuit when no fault condition exists could lead miners to circumvent the protective devices in the circuit in order to continue work. This would defeat the intended function of the grounding system and expose miners to unnecessary risk of electric shock. Additionally, each time the circuit is tripped, current is passed through the grounding resistor, which can cause damage and failure over time. The proposed standard would help to avert nuisance tripping and its possibly hazardous consequences.

The proposed rule would also prevent the use of the grounding conductor as a power conductor, which could increase the likelihood of inter-machine arcing or the appearance of abnormal voltages on the frames of equipment supplied by resistance-grounded systems. Use of the grounding conductor as a power conductor could cause it to fail or become damaged, rendering it ineffective for its intended function as part of the grounding protection system.

Section 75.709 Low-Resistance Ground Fields

Proposed § 75.709 would set requirements for the design and construction of low-resistance system and supplemental ground fields. These standards are presently found at §§ 75.700–1 and 75.701–1. Paragraph (a) of the proposal is new, and would require low-resistance ground fields used in the safety grounding system to be designed and installed in a manner to assure that the maximum exposure voltage under fault conditions will not create hazardous step and touch potentials. In evaluating ground field safety, the standard would require consideration of the parameters of the system, including soil resistivity, available fault currents, ground field construction, and the operating times of protective devices.

Paragraph (b) would require low-resistance ground fields used in the safety grounding system to have resistances to earth no greater than 25 ohms. Electric current follows the path of lowest resistance that it encounters. Therefore, the lower the resistance of a ground field, the more likely it is that protective devices can operate to remove ground faults and minimize the possibility of energization of equipment frames. A maximum 25-ohm resistance to earth would serve to maintain resistance at a low level to facilitate proper operation of ground-fault protective devices.

The system resistance value may deviate from the 25-ohm maximum only if evaluation of the system in accordance with the safety considerations of paragraph (a) indicates that a lower value of resistance is necessary, or a higher value of resistance may safely be used. In this manner, some flexibility would be added to the rule to take into consideration the special circumstances of each mine and its ground-fault protection system.

Under a new provision in paragraph (c), resistance to earth would be required to be tested by a low- or high-voltage qualified electrician as applicable, when installed and at least annually thereafter. Records of tests would be required to be made in accordance with proposed § 75.508. This would assure that resistance is maintained at the required value to assure effective operation of the grounding system.

Paragraph (d) would be a new requirement that the surface area of ground field materials have at least four square feet of contact with soil. For example, the use of three grounding rods measuring ⅝-inch in diameter and eight feet in length would achieve compliance with the proposed standard, since they would provide at least four square feet of contact with soil. Typically, many more than three grounding rods are presently used in the construction of ground fields. In MSHA's view, four square feet would be a suitable minimum surface area of contact with soil to ensure that the ground field has a low resistance to earth. The proposed requirements for ground fields would aid in protecting miners from shock and burn hazards due to voltages appearing between frames or enclosures of electric equipment and earth. A safe, dependable grounding medium would be provided for under this proposed standard.

Section 75.710 Alternating-Current Equipment Frame Grounding

General grounding requirements for a-c equipment would be addressed by this standard, which is derived from §§ 75.700–1, 75.701, 75.701–1, 75.802 and 75.901. Paragraph (a) lists structures to be connected to the system grounding medium by equipment safety grounding

conductors. Metallic frames, enclosures and other exposed non-current-carrying metallic parts of electric equipment would be required to be connected to the grounding medium in this manner, unless they are double insulated. Therefore, a common grounding medium would be shared by the unit of equipment and exposed non-current-carrying parts associated with it.

In case of insulation failure on a power conductor, which can allow contact between the energized conductor and some portion of a metal enclosure, the enclosure may become energized with the voltage of the conductor. Anyone contacting the enclosure would then be exposed to the voltage of the conductor. A common grounding medium would assure that no difference in voltages capable of injuring or electrocuting miners would exist between the structures. Metal frames which are double insulated would be excepted from the standard since the insulation system would provide adequate protection against these dangers. Damage to the first insulation system would not expose miners to energized parts. Some nationally recognized private concerns perform insulation testing to assure that dangerous leakages of current will not occur. Equipment which has been listed by such groups as double-insulated would be acceptable to the Agency for purposes of the exception.

Metallic fences and barriers around high-voltage equipment and installations would also have to be connected to the system grounding medium by equipment safety grounding conductors. This would prevent the occurrence of abnormal voltages on the structures due to contact with an energized conductor. A person who brushes against or leans upon an energized fence, for example, could otherwise be exposed to a serious shock hazard if the fence is not properly connected to the grounding system.

Metallic battery trays would also be required to be connected to the grounding medium by equipment safety grounding conductors. Therefore, a connection to the safety grounding system would be provided to minimize the risk of harm to miners contacting them.

Equipment safety grounding conductors would be required to connect metallic messenger wires to the system grounding medium under a new provision of the proposal. Messenger wires are sometimes used to support single-conductor energized cables in underground mines. If a splice in such a cable should become damaged where it is supported by messenger wire, the messenger wire could become energized with the voltage of the cable. This would present shock and fire hazards where energized messenger wires contact the mine roof or other combustible materials. Grounding of metallic messenger wires would avert such an eventuality.

Metallic structures or racks which support electric equipment or conductors would be required to be connected to the system grounding medium by equipment safety grounding conductors under a new provision of the proposal. Cable trays which hold energized power cables would be an example of structures addressed by the standard. A breakdown in the cable insulation could cause the metal tray to become energized with the voltage of the conductor, presenting a possibly lethal hazard to persons unknowingly coming into contact with the tray. Under the proposal, the tray would be required to be connected to the grounding medium in order to prevent shock injuries by limiting the voltage which can occur on the tray.

Paragraph (b) would require metallic cable shielding to be connected to the equipment safety grounding conductor at each termination. This provision would ensure a complete, low-impedance path to the grounding medium to prevent stray voltages from energizing the shielding and exposing miners to a shock hazard.

Before batteries are connected to a battery charger, paragraph (c) would require the metallic battery trays to be connected to the grounded metallic frame of the charger by equipment safety grounding conductors. Trays would be required to remain connected to the frame until the batteries have been disconnected from the charger. Several commenters to the preproposal draft stated their concern that continuous or permanent grounding of battery trays could create an unnecessary risk of fire. They suggested that grounding of battery trays should be required only during charging operations. The proposal would adopt this approach.

Over the last twenty years, there have been several occurrences of accidental energization of equipment being serviced by battery chargers, with resulting death to persons who unknowingly contacted the energized equipment frame. The proposed grounding standard would help to reduce the occurrence of similar accidents in the future by assuring that battery trays are properly connected to the grounding medium during operations which pose a risk of electrical injury.

Section 75.711 Ground-Wire Monitors for Alternating-Current Equipment

This section is derived in part from existing §§ 75.803, 75.803–1, 75.803–2, 75.902, 75.902–1, and 75.902–4. The existing standards require a fail-safe ground-wire monitor for resistance-grounded systems with a maximum ground check circuit voltage of 40 volts. They also require that systems not using a ground check conductor must be designed to open the breaker when the ground continuity is broken. Finally, they provide that when grounding equipment frames of stationary, portable or mobile electric equipment which receives power from resistance-grounded systems, separate connections shall be used. The proposal would reformat and retain these requirements with two exceptions. The performance standards in the proposal are intended to address newer monitor designs which were not contemplated by the existing standards.

Paragraph (a) is derived in part from § 75.902, which requires that resistance-grounded systems have a ground-wire monitor to continuously monitor the grounding circuit to assure continuity. The proposal would slightly modify this requirement, by requiring that resistance-grounded systems have ground-wire monitors to continuously monitor the continuity of the grounding circuits to the equipment affected, with two exceptions.

Low-voltage circuits supplying power to longwall illumination systems would be excepted from the requirement. The low-voltage illumination circuits would be excepted because they are connected to the metal frame of the power transformer that is well grounded and because of their low operating voltages and their safe location strung from the roof or supports.

Low-voltage stationary equipment meeting certain criteria would also be excepted from the requirement. Stationary equipment which is permanently installed at a fixed location, having all load components securely attached to a common metallic frame or structure and each component grounded by two independent equipment safety grounding conductors sized in accordance with § 75.714, would be exempted. At least one of the grounding conductors would have to be visible for its entire length. The power conductors outby the working section carrying ground-wire monitor circuits are not normally subjected to severe flexing and physical abuse that might cause damage to them. Since the hazard is reduced on permanently installed

stationary equipment, monitoring would no longer be the only method accepted for assuring the integrity of the grounding system.

Under paragraph (b), high-voltage resistance-grounded systems would be required to have ground-wire monitors to continuously monitor the continuity of the grounding circuits, except for circuits extending from systems which supply power to surface stationary equipment. Figure 11 would illustrate the provision. The use of ground-wire monitors would ensure a continuous grounding circuit to outby electric equipment at all times. Problems with the ground wire would be detected under the proposed requirements so that the circuit would be deenergized by a circuit breaker before a fault in the system could cause energization of equipment frames and result in electrical injuries to miners.

However, ground-wire monitors would not be required on surface circuits which supply stationary electric equipment located on the surface. These systems would be excepted from the ground-wire monitor requirement, provided the requirements of paragraph (c) are met. Circuits supplying stationary equipment without ground-wire monitors would have to have the metallic frames or enclosures of the equipment separately connected to supplemental low-resistance ground fields at the equipment, and to the system ground fields by equipment safety grounding conductors. Circuit breakers would have to be separately connected to supplemental ground fields at the circuit breaker, and to system ground fields by equipment safety grounding conductors.

Circuits without ground-wire monitors would also be required to have supplemental and system ground fields with resistance-to-earth values which do not exceed the value obtained by dividing 100 volts by the maximum ground-fault current of the system. These provisions would allow the specified systems to be exempted from the monitor provision but would instead require additional grounding. The ground fields described would establish a return path for ground-fault current that would assure that miners would not be exposed to voltages in excess of 100 volts.

Paragraph (d) would set performance requirements for ground-wire monitors used for electric face equipment. Ground-wire monitors would be required to be designed and constructed to be fail-safe. Use of the term fail-safe in existing standards for ground-wire monitors has resulted in some confusion. Therefore, the term "fail-safe" is defined in proposed § 75.2(j) as a device's ability to perform its intended function despite the failure of any component, other than relay contacts. Monitors would also be required to provide continuous monitoring of the grounding circuit for the equipment or motor it serves. Therefore, monitors would be a reliable method of continuously evaluating the condition of the ground wire to assure proper functioning of the grounding system and deenergization of the circuit in case of damage to the ground wire.

Paragraph (e) would clarify existing § 75.902, with one change that would incorporate present Agency policy. The existing standard requires that the ground-wire monitor trip the circuit breaker when either the ground or pilot check-wire is broken. The existing rule also provides for MSHA to approve a no-less-effective device to monitor the grounding circuit to assure continuity. Under the proposal, ground-wire monitors would be required to cause the affected circuit breaker to open when the ground-check conductor is broken at any point, and either the equipment safety grounding conductor is broken at any point, or the impedance of the grounding circuit increases beyond the amount necessary to cause a 40-volt drop in the grounding circuit external to the grounding resistor under ground-fault conditions for all low-voltage circuits and high-voltage trailing cables, or a 100-volt drop for high-voltage circuits other than trailing cables.

A ground-check conductor is used in conjunction with the ground-wire monitor to continuously evaluate the condition of the ground wire. The equipment safety grounding conductor provides a path for ground-fault currents so that circuit breakers will function to deenergize the circuit. Damage to either of these conductors would seriously threaten the effectiveness of the grounding system. Impedance capable of causing a voltage drop in excess of 40 volts in the grounding circuit external to the resistor would also lessen the effectiveness of a system's grounding protection. Therefore, ground-wire monitors would have to cause deenergization of the circuit if conductors are damaged or impedance is raised to a hazardous level.

The performance standards for ground-wire monitors in the proposed rule are intended to clarify the present use of the term "fail-safe." Additionally, the new standard would address new types and designs of monitors, including impedance-type monitors and continuity-type monitors, which are currently in use in the industry. The Agency is contemplating rulemaking in order to promulgate an approval regulation for ground-wire monitors on permissible equipment. However, under the proposal, the Agency would continue its practice of accepting only ground-wire monitors that meet MSHA's criteria for effective performance and fail-safe design.

This is presently accomplished through a testing and evaluation program administered by MSHA's Technical Support Engineering and Testing Division. Ground-wire monitors submitted for acceptance are carefully evaluated to assure compliance with the Agency's performance criteria for a fail-safe design. Units which meet the criteria and the applicable requirements of Part 75 would be accepted by Technical Support and assigned an MSHA acceptance number.

Under paragraph (f), the open-circuit voltage for ground-wire monitors would be limited to 40 volts or less on low-voltage circuits and circuits to electric face equipment. The maximum open-circuit voltage for circuits other than circuits to electric face equipment would be 96 volts. This voltage was arrived at by using a multiple of 24, a voltage common to relay ratings presently in use. The difference is attributable to the increased methane level and resultant fire hazard in areas where electric face equipment operates. These would provide for adequate voltage to allow operation of the devices, but the voltage would be low enough to minimize shock hazards to miners. The specified voltage is intended to coincide with voltages common to relay ratings.

The existing standards require that separate connections be used when practicable in grounding equipment frames of all stationary, portable or mobile electric equipment receiving power from resistance-grounded systems. The proposal would require that ground-check and equipment safety grounding conductors always be separately connected to the metallic frames or enclosures of electric equipment. MSHA's experience indicates that it is practicable in all cases to make separate connections, and this is reflected in current policy. If the grounding conductor and the ground-check conductor are secured by one connector, both could be accidentally dislodged or detached simultaneously, leaving the circuit unprotected against ground faults. This could not occur if the grounding conductor and the ground-check conductor were secured separately.

Section 75.712 Direct-Current Equipment Frame Grounding

This proposed section is derived in part from existing § 75.701–3, and would include requirements for grounding of equipment supplied with power by d-c electrical systems. Paragraph (a) would require certain equipment and structures to be connected to the appropriate grounding medium, as specified in proposed § 75.708, by equipment safety grounding conductors. The requirement would apply to metallic frames, enclosures, and other exposed, non-current-carrying metallic parts of electric conductors and equipment. This method of grounding would ensure a low-impedance connection to the system grounding medium for non-current-carrying metallic structures and parts. Metallic messenger wires used to support d-c conductors would be covered by the standard for similar [illegible].

Two new provisions would require metallic racks and structures supporting trolley wires and trolley feeder wires, and metallic overcasts in trolley entries to be connected to the system grounding medium by equipment safety grounding conductors. This part of the proposal would encompass structures such as steel arches, overcasts and square sets. A reliable grounding path would be provided under the standard in case of insulation failure where trolley wires are supported from metallic racks and structures. Mine fires have occurred since 1980 where electrical faults caused by insulation failure have energized racks or structures, which in turn ignited combustible materials. The proposed rule would help reduce the occurrences of underground fires and electric shock hazards caused by insulation failures.

Paragraph (b) would require silicon diode grounding systems to be installed in accordance with proposed § 75.713. Paragraph (c) would require component parts of complete units of equipment to be solidly connected to the frames of the equipment. Therefore, the hazard of a miner being exposed to differing voltages between the unit of equipment and its component parts would be averted. For example, a miner contacting the metallic headlight enclosure of a shuttle car which is not properly connected to the frame of the unit could receive an electric shock if the voltage which exists on the headlight enclosure differs from that of the equipment frame. Grounding through a common medium would serve to minimize the possibility of such an occurrence.

Section 75.713 Silicon Diode Grounding

This section of the proposal would govern the use of silicon diode grounding, currently addressed under §§ 75.701–3 and 75.703–3. Several commenters to the preproposal draft requested clarification of whether silicon diode grounding would continue to be acceptable under the proposal. This section would make clear under what conditions silicon diode grounding would be permitted. The proposed standard would contain specific design and performance standards for silicon diode grounding of the metallic frame, enclosure, or other exposed non-current-carrying metallic parts of mobile equipment. The proposal would encompass electric mining equipment such as roof-bolters, continuous miners, and shuttle cars.

Under the standard, when the metallic frames of mobile equipment are grounded by silicon diodes, the diode grounding system would have to meet certain criteria. Under paragraph (a), the polarity of each grounding diode would be required to be compatible with the grounded polarity of the d-c system. When the polarity of the grounding diode is proper, current will only flow from the frame of the equipment to the grounded power conductor during faults. However, if the polarity were reversed, dangerous voltages would remain on the frame of the equipment. Further, the overcurrent devices which would be required by paragraph (c) of the standard would be unable to detect the occurrence of a ground fault if polarity were reversed. Reversed polarity could therefore defeat the grounding system and expose miners to electrocution hazards.

Under paragraph (b), each grounding diode would be required to have a threaded base used to solidly connect the diode to the machine frame. This provision would serve to ensure a solid, complete grounding path for mobile equipment. It would prohibit the use of "hockey-puck" style connections, which utilize a pressure connector. Unlike hockey-puck connections, a threaded base diode would screw into the frame of equipment, keeping stray materials from interfering with the connection and the correct functioning of the diode. A threaded base would aid in the dissipation of heat, while a method such as soldering might be ineffective when exposed to excessive heat. Additionally, diodes are contained in explosion-proof enclosures, and are therefore rarely open to visual inspection. Pressure connectors could become loosened without detection of the problem.

Under paragraph (c), an overcurrent device would be required to be installed between grounding diodes and the grounded power conductor when a silicon diode grounding system is used. The overcurrent device would have to be designed to cause the main contactor or the circuit interrupting device to deenergize all circuits on the machine when 50 amperes or more flows through the grounding diode.

The proposal would therefore require the circuit breaker to trip when a current of 50 amperes or more passes through the diode. A current of less than 50 amperes, in MSHA's view, represents a reasonable cut-off point, which is presently in use in the industry. However, methane monitors would be permitted to remain functional to continuously test for dangerous gas levels despite deenergization of a circuit.

Paragraph (d) of the proposed standard would require installation of a polarizing diode in the control circuit which prevents the unit of equipment from being operated when the polarity of the supply conductors is reversed. This provision is derived from existing § 75.703–3(d)(8), and incorporates a commonly accepted industry practice. As discussed previously, improper polarity of the diode can defeat the grounding system. Under this provision, operation of equipment would be made impossible if the diode's polarity is reversed, thus preventing unanticipated energization of the frame of the equipment.

Under paragraph (e), the forward current rating of each grounding diode would have to be equal to or greater than 750 amperes when used to ground a continuous mining machine, or equal to or greater than 400 amperes when used to ground other equipment, regardless of the voltage of the equipment. Lower forward current ratings, in MSHA's view, could cause the grounding diode to open and fail to trip the circuit breaker during a fault, leaving the equipment frame ungrounded. The proposal would assure a safe and dependable grounding circuit which will not fail under overcurrent conditions for all equipment, without reference to voltage.

Paragraph (f) of the standard would require the peak inverse voltage rating of the grounding and polarizing diodes to be equal to or greater than 1,200 volts. The value is derived from existing § 75.703–3(d)(2) and (3). This proposed requirement would help to prevent failure of these two solid-state devices. Underground electric equipment can be subjected to severe overvoltages, which can cause the grounding or polarizing diode junction to rupture and short circuit, defeating the protective functions of the two types of diodes. If the polarizing diode ruptures, its ability to retard the function of the control circuit would be lost. This could allow

the equipment frame to be energized if polarity is reversed. The proposed standard would address these hazards.

Section 75.714 Equipment Safety Grounding Conductors

Design and performance requirements for equipment safety grounding conductors would be addressed in this proposed section, which is derived from existing §§ 75.701, 75.702, 75.703 and 75.804. Grounding conductors are an essential part of grounding systems in that they are used to connect non-current-carrying exposed parts of equipment and structures to a specified grounding system. They are the means of preventing the appearance of dangerous voltages on equipment frames and structures by providing a path from the equipment to the grounding medium for abnormal currents to follow. Proper performance and design of these conductors are essential to the prevention of electrical accidents related to inadequate or ineffective grounding conductors.

Paragraph (a) would require that equipment safety grounding conductors for portable and mobile electric equipment be one or more stranded copper conductors contained within the cable or flexible cord supplying the equipment. Grounding conductors should be enclosed inside cables serving heavily used portable or mobile electric equipment in order to protect them from physical damage and deterioration. Stranded copper conductors would provide the necessary flexibility and strength for use within cables or flexible cords.

Paragraph (b) would set requirements for equipment safety grounding conductors for stationary equipment. They would be required to be made of copper or an equivalent material, and be either contained together with the circuit conductors in the raceways, cables, or cords, or wrapped around the raceways, cables or cords containing the circuit conduetors. The closer the grounding conductor is located to the power conductor, the less impedance exists between the two. Thus, fault currents will flow through the conductor to the grounding medium and not directly to earth. Minimum impedance would facilitate effective operation of the circuit protection.

Paragraph (c) would detail the required cross-sectional area of equipment safety grounding conductors. When the circuit conductor is No. 6 AWG or larger, the combined cross-sectional area would be required to be equal to or greater than one-half of the cross-sectional area of the circuit conductor. When the circuit conductor is smaller than No. 6 AWG, the combined cross-sectional area of the equipment safety grounding conductor would have to be equal to or greater than that of the circuit conductor. Experience indicates that these minimum sizes for conductors would be necessary to safely carry currents to which they may be exposed.

Paragraph (d), would require equipment safety grounding conductors installed outside of raceways, cables or cords, and used to ground stationary equipment to be No. 6 AWG or larger. Grounding conductors of this size would be able to withstand physical damage and deterioration from the underground mine environment.

Under paragraph (e), switches, fuses, circuit breakers, ground-fault devices and overcurrent devices would be prohibited from being installed in equipment safety grounding conductors. This provision would ensure that the devices specified could not interfere with the operation of the grounding conductor.

Paragraph (f) of the proposed rule would require ground-wire devices installed in the equipment safety grounding conductor for the purpose of suppressing inter-machine arcing, or in conjunction with ground-wire monitoring systems, to be designed and constructed to withstand the maximum amount of phase-to-phase fault current to which they may be exposed without creating a shock or fire hazard. The effect of this provision would be to permit the use of arc suppression devices, which can minimize ignition hazards if they are substantially designed and constructed to perform their intended function despite elevated fault currents. The proposal would provide standards designed to assure that the use of such devices would not increase the hazards to miners.

Paragraph (g) of the proposed standard would require that when ground-wire devices addressed by paragraph (f), such as arc traps and ground-wire monitor filters and diodes, are used, they would have to be connected to the grounding medium by two separate grounding conductors. A single ground-wire monitor is not capable of detecting whether ground-wire devices are properly connected to the grounding medium, as well as monitor the ground wire itself. Two separate monitors would be needed. The proposed standard would provide for a back-up grounding conductor connection in case one should fail or become damaged, without necessitating the use of two monitors.

Under paragraph (h), separate connections to the mine track, the grounded return-feeder conductor, or the metallic frame or enclosure used as the grounding medium would be required for the equipment safety grounding conductor and the return power conductor on d-c powered equipment. If the grounding and return conductors are attached to the grounding medium by the same connection, both could easily be dislodged or damaged. If both are simultaneously dislodged, the frame of the equipment could become energized to hazardous voltages, creating a risk of electrical injury to miners. Separate connections would assure the integrity of the grounding system and address the hazards.

Paragraph (i) would require equipment safety grounding conductors for draw-out equipment or plugs and receptacles to be the first conductors connected when making connections, and the last conductors broken when breaking connections. In this way, the grounding system for the equipment would remain intact while draw-out units, such as circuit breakers, are being installed or removed. Therefore, ground-fault protection against arcing and ignitions would be provided while devices are being withdrawn or separated.

Under paragraph (j), equipment safety grounding conductors would be required to be connected by welds, pressure connectors or clamps. In MSHA's view, these methods would provide for the most electrically efficient connections. Finally, paragraph (k) would require equipment safety grounding conductors to be bare or properly identified. The effect of this provision would be to alert interested parties as to which of the conductors is the connection to the grounding system.

Subpart I—High-Voltage Alternating-Current Circuits

Section 75.801 High-Voltage Systems

This section of the proposal would contain new provisions requiring high-voltage electrical systems to originate on the surface, except that systems supplying power to underground face equipment would be permitted to originate either on the surface or underground. Systems which originate on the surface would pose less of a fire and shock hazard than those which originate underground. Power sources for high-voltage systems generate large amounts of electricity to supply mining equipment. If they are located underground where miners regularly work and travel, they could pose an electric shock or fire hazard.

Additionally, effective grounding systems are necessary to protect miners from exposure to energized equipment

frames caused by faults in the system. Proposed Subpart H would require high-voltage systems to be resistance-grounded and connected to a low-resistance ground field. Although quite effective for grounding purposes, the resistors used in this type of grounding system typically generate heat when subjected to a sustained grounded phase condition, which could ignite underground combustible materials. It would therefore be hazardous to allow such an ignition source to exist underground in the presence of combustible materials.

However, the standard would allow high-voltage systems that supply power to underground face equipment to originate either on the surface or underground. The Agency is aware of the availability of some specially-designed power centers which can be used safely underground to facilitate the use of high-voltage face equipment. Some equipment used in face areas, such as longwall mining units, utilize high horsepower motors which would require very large and heavy cables for transmission of power to low-voltage face equipment. Allowance of high-voltage systems serving face equipment to originate underground would alleviate the difficulty and danger of having to use such cables.

The proposed standards would set requirements for the use of high-voltage systems which originate underground to minimize risks of injury to miners from fire or electric shock. For instance, the allowable amount of heat generated by such systems would be limited under proposed § 75.808 to reduce the risk of fire. That standard would also set grounding requirements that would limit ground-fault current to less than 8.5 amperes for systems with voltages of 2,400 volts or less, and 3.75 amperes for systems with voltages greater than 2,400 volts. The proposed standards would also require ground-fault protection for motor circuits to be highly sensitive, set at 0.1 amperes or less, thereby providing a high degree of protection against ground faults.

In systems which typically originate on the surface, circuit breakers are not normally set to trip when exposed to a ground fault of less than 10 amperes. However, proposed § 75.808 would require super sensitive protective devices on underground systems which would trip the circuit breaker at an extremely low current value of 0.1 amperes.

The provisions of subpart I would also require two back-up systems for ground-fault protection of underground power sources. This would assure that faults will not exist in the system for extended periods of time sufficient to overheat the grounding resistor and cause a mine fire or shock hazard. MSHA believes that compliance with the proposed safety standards would make the use of systems which originate underground to supply face equipment safe for miners. The Agency also solicits comments on whether the need for high-voltage equipment other than that supplying face equipment is anticipated.

Section 75.802 Protection for Circuits, Other Than Trailing Cables

This section would set requirements for the protection of high-voltage circuits other than trailing cables. It is derived in part from existing §§ 75.518–1, 75.800, 75.800–1 and 75.800–2, which require circuit breakers for high-voltage circuits underground, and detail location and schematic requirements for circuit breakers. The proposal would consolidate present standards for ground-fault and undervoltage protection of high-voltage circuits, and set minimum operating requirements for protective devices.

Paragraph (a) would require circuit breakers of adequate interrupting capacity to protect high-voltage systems that supply underground electric equipment. These circuit breakers would be required to be equipped with devices which provide overcurrent protection, ground-fault protection and, except for branch circuits supplying only stationary surface loads, undervoltage protection. Figure I–1 would accompany the proposed standard to illustrate the provision.

Requiring circuit breakers to be of adequate interrupting capacity would protect against fire hazards by ensuring that circuit breakers will clear fault conditions which could otherwise generate extreme heat at the fault location. If a circuit breaker is underrated, high levels of fault current could cause it to be destroyed, possibly injuring persons operating the breakers.

Overcurrent protection in the form of devices such as relay circuits would serve to protect high-voltage systems against short circuits and overloads. Undervoltage protection on high-voltage circuits would also help to prevent injuries resulting from unexpected start-up of electric equipment after a power outage. Effective undervoltage protection would assure that the system carries enough voltage so that circuit breakers will remain energized for protection of the circuit. Undervoltage devices are designed to detect the voltage of the circuit and cause the circuit breaker to open and deenergize the circuit upon a sudden loss of voltage and keep it deenergized until manually reset. Otherwise, unexpected start-up of belts or equipment could injure miners.

Undervoltage devices would not be required for branch circuits which supply only stationary surface loads. The exception would have primary impact on surface loads such as ventilation fans, which would not normally represent a hazard if suddenly restarted after an undervoltage situation, since persons do not regularly work near such equipment. For instance, it may be desirable for surface ventilation fans to restart as quickly as possible to maintain a safe underground atmosphere for miners. By contrast, underground equipment such as pumps could cause a fire or methane ignition if it restarts suddenly while unattended.

Proposed § 75.2(l) would define undervoltage as a lack of or failure of voltage, as compared to the current interpretation of the term, which characterizes undervoltage as a 40–60 percent drop in system voltage. The change would eliminate the occurrence of circuit trips when there is a sudden load on the system resulting in a normal voltage drop. For example, use of a high-voltage continuous miner can create a heavy load on the system with no resultant hazard. The proposed definition would not require activation of undervoltage devices unless an abnormal lack of, or failure of voltage occurs.

Paragraphs (b) through (j) would contain performance requirements for the circuit protective devices which would be required under the section. Under paragraph (b), high-voltage circuits extending underground would be required to be protected by at least one circuit breaker located on the surface. This provision is derived from existing § 75.808–1, and should clarify that some breakers could be located underground for the protection of branch circuits. Compliance with the standard would assure accessibility of the device in the event of an emergency and facilitate testing and maintenance operations.

The standard would make clear that additional circuit breakers could be installed underground to provide overcurrent and ground-fault protection for branch circuits. It would allow establishment of new points of origin for ground-check circuits. For example, a circuit breaker located at the beginning of a branch circuit would allow selective deenergization of the circuit in order to address problems which may arise in an isolated part of it. The necessity to deenergize the entire circuit from the surface would be avoided under the proposed standard.

Under paragraph (c), overcurrent protection for high-voltage circuits would be required to consist of devices which protect at least two power conductors, which is consistent with existing § 75.518–1 and the NEC. In three-phase high-voltage circuits, overcurrents normally occur on at least two of the three power conductors. The standard would provide for an effective overcurrent detection system. Protection of only one power conductor could allow overcurrents to go undetected and place miners at risk if the circuit is not properly deenergized by the protective device.

Under paragraph (d), one circuit breaker used to provide overcurrent protection for two or more branch circuits would be required to provide overcurrent protection for the smallest conductor. If protection is provided only for the larger conductors, an overcurrent on the smallest conductor in the circuit could go undetected and increase the risks of fire or shock hazards.

Paragraph (e) would require overcurrent devices to have a pickup value of 125 percent or less of the ampacity for the smallest power conductors in the protected circuit, as listed in Tables I–1 and I–2, which would accompany the proposed rule. The devices would be required to have inverse-time current characteristics which cause them to operate within two seconds when a current ten times the allowable ampacity of the smallest power conductor flows in the circuit. Tables I–1 and I–2 specify allowable ampacities of shielded, high-voltage mine power cables with copper and aluminum conductors, respectively.

These performance requirements are derived from MSHA policy and the NEC. Therefore, the exiting incorporation by reference of the NEC in § 75.518–l would be deleted under the proposed rule. The pickup value is the minimum value at which devices used to detect overcurrents in the circuit will recognize the overcurrent condition and cause deenergization of a circuit. According to the NEC, currents in excess of 125 percent of the conductor ampacity could cause damage to the circuit and resulting potential fire or shock hazards to miners.

The proposed inverse-time current characteristics requirement would be a new provision. It would define the current levels which would be tolerated by the circuit without causing damage to conductors. Allowance of a current ten times the conductor's ampacity for a period of two seconds would not normally represent a hazardous condition. For example, the standard would allow brief inrush currents to enable equipment to be started up. Otherwise, the inrush of current required for energization of a piece of electric equipment would be detected as an overcurrent, and the circuit would immediately be deenergized.

Paragraph (f) would be a new standard, which would require ground-fault protective devices to be adjusted to deenergize the faulted circuit at 40 percent or less of the maximum ground-fault current of the system. This provision would set the maximum trip value of the circuit at 40 percent of ground-fault current, while existing § 75.800 does not presently specify a trip value. The maximum trip value would be determined under the proposal by the current rating of the grounding resistor used. For example, on a system with a 25-ampere grounding resistor, the ground-fault protective device would be required to operate at a fault current of 10 amperes. MSHA's view is that a 40 percent value is a reasonable level for ground fault tripping.

Under paragraph (g), a new provision, the ground-fault protective device located nearest to the load would be required to activate with no intentional time delay. The operating time of upstream ground-fault protective devices within a system could be increased under the proposal to provide selective tripping, but the operating time of the most upstream device could not exceed 3.0 seconds under the proposal.

Rapid response time of ground-fault detection devices would assure speedy tripping in overcurrent and fault situations, and thus prevent prolonged exposure to dangerous voltages. The circuit breaker nearest to the load or piece of equipment affected, would have to respond instantaneously in order to prevent fire and shock hazards. To provide for selective tripping, operating time for upstream circuit breakers may be increased, provided the most upstream device, nearest the source, operates within three seconds of the first device in order to assure rapid deenergization of the circuit.

Under paragraph (h), also new, equipment safety grounding conductors would not be permitted to pass through or be connected in series with ground-fault current transformers. It is important to prohibit such a configuration, because if a ground fault occurs in the circuit, the fault current could flow in a parallel path. Under this condition, the current transformer would not detect the fault and open the circuit, and multiple faults could result. Compliance with the proposal could reduce the occurrence of shock and fire hazards caused by fault conditions.

Paragraph (i) would require undervoltage devices to be undervoltage trip coils, or shunt trip coils energized by undervoltage relays or ground-wire monitor relays. Experience indicates that these types of devices provide the most reliable form of undervoltage protection for underground high-voltage circuits to prevent injuries to miners. Shunt trip coils without undervoltage or ground-monitor relays would not cause the circuit to trip until reenergization occurs after a loss of voltage. This could lead to sudden momentary restarting of equipment, which would place miners in danger of physical injury from unexpected energization of underground equipment. Shunt trip coils would be required to be operated by stored energy devices such as a battery or capacitor, to allow the device to receive power for activation despite deenergization of the circuit.

Paragraph (j) would be a new standard, prohibiting circuit breakers installed to protect underground high-voltage circuits from automatically reclosing after operation. This would be a new requirement for circuit breakers. Automatically reclosing circuit breakers are commonly used with success by electric utilities where faults are often caused by temporary environmental phenomena, such as lightning or wind gusts, which clear themselves naturally. However, in the underground mine environment, automatic reclosures could be dangerous to miners, because faults rarely clear themselves in high-voltage mine power systems. Injuries can occur underground when circuit breakers automatically reclose after a fault. For example, if a fault is caused when a miner inadvertently contacts an energized high-voltage conductor, it is essential that the circuit breaker not automatically reclose after tripping in order to protect the miner or those attempting rescue from shock or electrocution.

Compliance with the provision would also prevent the automatic and unexpected restarting of electric equipment. If the circuit breaker has to be manually reset after a power outage, for instance, the opportunity for unexpected reenergization of underground mine equipment would be minimized. Therefore, miners would be protected against crushing or pinning accidents from underground equipment which suddenly starts up.

Section 75.803 High-Voltage Distribution Equipment

This section is derived in part from existing § 75.803–1, and would set requirements for barriers on high-voltage distribution equipment. Paragraph (a) would be new, requiring that high-voltage distribution equipment be enclosed in a grounded metallic enclosure and have no exposed energized parts. This would assure that miners will not inadvertently come into contact with lethal voltages. To allow adequate compliance time and reduce the compliance burden, disconnecting devices installed underground on or before the effective date of the rule would be excepted from the standard.

Under paragraph (b), also new, high-voltage a-c distribution equipment would be required to be equipped with interlock and emergency stop switches. The devices would have to automatically deenergize the incoming power conductors to the distribution equipment when a cover, lid or panel that exposes energized high-voltage parts is removed or when the emergency stop switch is activated.

The proposed standard would require installation of magnetic switches or microswitches which are capable of detecting when a lid or cover over energized parts of equipment is opened. The interlock switches would be required to cause deenergization of the equipment whenever energized parts are exposed. For example, if a cover panel over an energized circuit is inadvertently removed in order to work on electric components of a unit of high-voltage equipment, it would be automatically deenergized by activation of the interlock device. Therefore, the miner engaging in work on the unit would not be exposed to dangerous voltages within the equipment. Further, activation of the emergency stop switch would serve to deenergize a unit of equipment should a hazardous situation arise.

Emergency stop switches capable of deenergizing high-voltage equipment would facilitate rescue attempts in case of emergency. Since 1970, two fatal electrical accidents have occurred when miners contacted energized high-voltage conductors or parts within equipment, and fellow miners had to call outside the mine to have the circuits deenergized prior to attempting rescue. An operative emergency stop switch on such equipment could be instrumental in lessening the effects of such accidents by allowing for rapid response to emergencies where they occur.

One commenter to the preproposal draft suggested that the requirement should only be applicable to equipment installed after the rule's effective date, in order to allow for phase-in time for replacement of existing equipment. Another commenter supported the standard as a necessary safety improvement for the benefit of miners.

A review of the fatality record since 1970 has shown that at least eight miners have been electrocuted as a result of removing high-voltage compartment covers or lids and contacting energized parts inside. At least seven of those accidents could possibly have been prevented if interlock switches had been installed to deenergize the equipment when energized parts were exposed. Due to the fatality record and the continued danger presented to miners, the Agency believes that all high-voltage electric equipment, not solely equipment installed after the effective date of the rule, should have to comply with the standard.

Paragraph (c) would set a maximum open-circuit voltage for interlock circuits at 96 volts. This would allow the use of enough voltage for the operation of the interlock circuit, but would be insufficient to cause serious injury to miners. The voltage specified in the standard is derived from the voltage permitted for ground check circuits in existing § 75.803–1. It would be compatible with the voltages allowed under the proposal for other devices used within high-voltage circuits, such as ground-wire monitors, and it should not pose operational difficulties.

Paragraph (d) would be a new standard, becoming effective 18 months after the effective date of the rule, and would require all high-voltage distribution equipment, including high-voltage switchgear and power centers to be equipped with barriers. Barriers would be required to provide separate compartments for the incoming high-voltage disconnecting switch and feed-through circuit, the power transformer, the low-voltage distribution circuits, and the control circuitry, including ground-fault protective devices and ground-wire monitors. At least two miners have been electrocuted since 1970 as a result of contact with energized components of equipment within the same compartment as the components being worked on. Compliance with the proposal would assure that persons performing work on a control circuit, for example, would not inadvertently come into contact with energized power transformer parts. Compliance with the proposed standards would reduce the risks of shock and electrocution to miners.

The standard's 18-month compliance period would allow operators and manufacturers sufficient time for retrofitting existing equipment and designing new distribution equipment which would comply with the standard. MSHA estimates that approximately 11,000 existing pieces of equipment would be affected by the proposed standard. Of that number, 60 to 70 percent would need to be entirely retrofitted for compliance. Additionally, only approximately half of the newly-manufactured equipment would be in complete compliance with the standard.

To be properly retrofitted, distribution equipment now in use should be removed from the underground areas of the mine. The compliance period would facilitate the use of a change-out retrofitting program, which would permit the removal of units of distribution equipment from service one at a time in order to be retrofitted. Therefore, production would not have to be suspended in order to retrofit all of the affected equipment at once.

Paragraph (e) would be new, requiring barriers to be constructed of grounded metal or non-conductive insulating board. The provision would assure the use of sturdy materials for isolating each compartment from the others. The use of flexible belt material, for example, would not effectively prevent contact with the energized components of a compartment adjacent to the one being worked on. Grounding, or the use of non-conductive board, would assure that abnormal voltages will not appear on the barriers and cause electrical injuries.

Section 75.804 High-Voltage Cables, Other Than Trailing Cables

This section is derived from existing §§ 75.705–1l, 75.804, 75.807 and 75.812, and would set installation and shielding requirements for high-voltage cables, other than trailing cables. Under paragraph (a), high-voltage cables would be required to be located, buried, guarded, insulated, or otherwise protected from physical damage and contact with other wires or cables. Insulation used to prevent contact with other wires or cables would have to be in addition to that provided by the conductor insulation or cable jacket. This provision would be retained from existing § 75.807, and would assure that high-voltage cables would be protected from physical damage, so as not to provide an ignition or shock hazard due to exposed energized conductors.

Under paragraph (b), high-voltage cables which are suspended above the mine floor would be required to be securely anchored. This provision would help to assure that heavy cables will not fall to the mine floor or onto equipment and injure miners or become damaged. Failure of one cable support can cause a

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chain reaction failure of all supports due to the weight of high-voltage cables. Secure anchoring would reduce the likelihood of such failures and possible miner injuries.

Paragraph (c) would require single-conductor high-voltage cables to be hung on well-supported messenger wire or insulated cable hangers. Hanging such cables from messenger wires or on insulated hangers would provide cables with physical protection against damage. The use of these support methods would assure that high-voltage cables are securely hung and protected against faults caused by physical damage.

Paragraph (d) would be retained from existing § 75.812, and would prohibit movement or handling of energized high-voltage cables. High-voltage cables can represent a great hazard to miners if they are damaged or have been improperly spliced or repaired. Contact with a faulty splice, for instance, could cause fatal injuries to a miner. The great bulk and weight of high-voltage cables could prompt cable handlers to use their bodies to help support the cable being moved. In such circumstances, insulated gloves alone would not protect the miner from exposure to the cable's voltage at a damaged or improperly spliced point. The proposal would assure that cables are deenergized before being moved to prevent electrical injuries.

Paragraph (e) would be new, requiring high-voltage cable power conductors to be at least No. 8 AWG. This size conductor would offer the necessary physical strength for the cables to withstand damage. Shock hazards and the risk of fire would be reduced under the proposed standard.

Paragraph (f) would be a new provision, requiring high-voltage cables other than single-conductor cables to contain one or more bare equipment safety grounding conductors. The purpose of a bare equipment safety grounding conductor is to detect faults in a circuit. If all conductors within a cable were insulated, faults could go undetected by the grounding conductor.

Under paragraph (g), ground-check conductors and interlock circuit conductors contained within high-voltage cables would be required to be at least No. 10 AWG. Paragraph (h) would require ground-check conductors and interlock circuit conductors which are external to high-voltage cables to be at least No. 8 AWG. This would be a new requirement for interlock circuits. These conductor sizes would be appropriate for the amount of current carried and the level of use to which the conductors would be put. Ground-check conductors and interlock circuit conductors which are not contained within the cable are subject to greater physical damage. Therefore, larger conductor sizes would be required for external circuits.

Paragraph (i) would require single-conductor cables to have equipment safety grounding conductors of either a bare ground-wire or a grounded messenger wire. This provision would give operators the option of using the messenger wire such cable is hung on for grounding purposes, or a bare grounding conductor could be added to the cable.

Paragraph (j) would require high-voltage cables to have metallic shielding around each power conductor. The percentage of coverage and acceptable types of shielding would be specified under paragraph (k) of the standard. The proposed shielding requirement would prevent voltage stresses in the conductor from damaging the remainder of the cable. Shielding is presently required under existing § 75.804, but that standard does not specify any required percentage of coverage. Due to the potential difficulty of modifying the amount of shielding on power conductors in cables presently in use to comply with the new shielding coverage requirements of paragraph (k), the standard would apply only to cables acquired after the effective date of the rule.

Paragraph (k) would be a new standard, requiring that metallic shielding be applied in the form of braid, wire serving (wrap) or tape. Metallic braid would have to supply at least 84 percent coverage, and wire serving at least 60 percent coverage. Metallic tape would be required to provide 100 percent coverage. To prevent the use of cables with inadequate shielding, the Agency believes that minimum amounts of coverage should be specified. Those included in the proposal were adopted from the Insulated Cable Engineers Association (ICEA) standards, and would represent acceptable minimum shielding requirements. The differences in the required percentages of coverage are attributable to the design of the acceptable shielding materials. Electric shock, flash burns, electrocutions, and mine fires caused by unshielded or inadequately shielded high-voltage cables would be addressed by the proposed standard.

Section 75.805 Movement of High-Voltage Power Centers and Portable Transformers

This proposed section is derived from § 75.812, which prohibits the movement of high-voltage energized power centers and portable transformers unless permitted by the Secretary. The proposed standard would require power centers and portable transformers to be deenergized before they are moved from one location to another.

Several hazards are involved with the movement of these pieces of equipment while energized. First, high-voltage power centers contain extremely hazardous voltage levels. Movement of them while energized could cause faults at or near the equipment, which could energize their frames. The energized frame of a power center could cause fatal injuries to a miner contacting it during moving operations. Second, power centers and transformers are typically very large and heavy pieces of equipment which are difficult to move. Rough treatment during movement could cause energized cables to be pulled out of their connections to the equipment. Contact with the exposed components of the cable could injure or electrocute mine personnel. Two fatalities have occurred in these circumstances within the past 15 years.

Existing § 75.812 requires operators to request permission from the Secretary prior to movement of energized power centers and portable transformers. For a permit to be granted, operators must meet the burden of showing that it is safer to move an energized power center than a deenergized power center. The intent of the standard was to allow the use of energized electric mine equipment, such as a continuous miner, to move the power center. Less than five permits have been granted on this basis since 1970.

In the past, if the power center was deenergized before movement, all of the equipment capable of moving the heavy structure was also deenergized. Large battery-powered equipment was not available in many mines when the existing standard was promulgated, so power centers often had to remain energized to supply electric power to the equipment required to move it. Today, however, the widespread use of battery-powered equipment capable of moving large and bulky loads would negate the need for allowing power centers or portable transformers to remain energized during movement. The proposed standard would eliminate hazards associated with the practice of moving energized power centers or portable transformers. In light of the danger and associated difficulty in meeting the burden of proof for the grant of a permit, the present standard would be modified as proposed.

Section 75.806 Connection Boxes

This standard would be new, and would set requirements for connection boxes used in high-voltage circuits. Connection boxes would be required to be constructed of metal or its equivalent, be watertight, have the incoming and outgoing equipment safety grounding conductors separately connected to the metallic enclosures, and be located in dry areas. Metal or an equivalent material would provide adequate physical strength to protect the connection. Moisture at the connection could cause arcing and short circuits, presenting shock hazards to miners. The proposed standard would address electric shock and electrocution hazards, as well as the risk of underground fire. Its requirements are intended to provide physical and electrical protection of the connection to minimize the risk of injury to miners at the connection site.

There has been considerable confusion in the mining industry over the acceptability of using high-voltage cable connection boxes in underground coal mines. Part 77 of MSHA's rules addresses connection boxes, but no regulation for the use of connection boxes presently appears in part 75. This has led to the filing of a large number of petitions for modification to use the structures underground. The proposal would clarify that the use of connection boxes would be an acceptable method for connecting two lengths of high-voltage cable in underground coal mines, and would establish safety requirements for their construction and use.

Sections 75.807 through 75.815 Underground Electric Face Equipment

Sections 75.807 through 75.815 would apply specifically to high-voltage power systems supplying underground electric face equipment. Presently, § 75.1002 precludes the use of high-voltage cables within 150 feet of pillared areas. Therefore, it has been a common practice for mine operators to file petitions for modification of that standard so that they may utilize equipment such as high-voltage longwall mining equipment or high-voltage continuous miners in face areas. However, proposed § 75.502 would permit the use of shielded high-voltage cables in face areas.

Electric face equipment, which is used in the working areas of a mine, in by the last open crosscut, is presently required to be permissible in accordance with approval regulations in 30 CFR part 18. The equipment addressed would still be required to comply with the requirements of part 18, but the following sections of subpart I would set additional safety requirements for the use of high-voltage equipment, trailing cables, and power cables in face areas.

The standards in the following sections would be used in lieu of petitions for modification, and are derived from the special terms and conditions included in petitions which have been granted by the Agency, as well as existing standards. In some instances, policies incorporated into existing standards for high-voltage equipment that is not required to be permissible were used as a basis for the proposed standards which would address permissible equipment.

Section 75.807 Voltage Requirements of Electric Face Equipment

This section would limit the amount of voltage which could be used by electric face equipment. Paragraph (a) would set the nominal voltage of the power circuits of electric face equipment at 4,160 volts or less. This voltage is consistent with the requirements of part 18 for permissible equipment. The hazards associated with voltages up to 4,160 volts could be minimized by compliance with the proposed requirements for circuit protective devices, conductor sizes, and grounding in this subpart and elsewhere in the proposal.

Under paragraph (b), the nominal voltage of the control circuits of electric face equipment would not be permitted to exceed 150 volts-to-ground. The effect of this provision would be to keep control circuit voltages low enough to minimize shock hazards. The 150-volt maximum is consistent with the voltage levels presently used for control circuits.

Section 75.808 Electrical Protection of Electric Face Equipment

This section is derived in part from existing §§ 75.518–1, 75.800, and 75.800–2, and would address methods of providing electrical protection for face equipment supplied by high-voltage systems. This type of equipment is used in areas where explosive concentrations of methane, coal dust and combustible materials are most likely to exist in a mine. The effects of ground faults, electrical arcing and short circuits, therefore, could have extreme consequences on the safety of miners. Effective electrical protection for face equipment would reduce the possibility of ignitions and miner contact with energized equipment frames.

Paragraph (a) would require high-voltage systems that supply electric face equipment to be protected by circuit breakers of adequate interrupting capacity, equipped with devices that provide overcurrent, ground-fault and undervoltage protection. The proposed standard, then, would require a circuit breaker for high-voltage systems serving face equipment that will function without damage to itself despite the level of current to which it is exposed. This would assure that the circuit breaker will remain undamaged by overcurrents and thus be able to clear faults in the system.

As discussed in connection with proposed § 75.802(a), overcurrent devices would assure that the high-voltage system is protected against short circuits and overloads. Ground-fault protection would also minimize the risk of shock injuries to miners. Undervoltage protective devices would be required to deenergize the circuit upon detection of a sudden loss of, or failure of voltage. The circuit would then have to be manually reset to prevent unexpected start-up of equipment, which could cause crushing injuries to miners.

Paragraph (b) would require high-voltage motor circuits to be provided with instantaneous short-circuit protection set at the lesser of no greater than 175 percent of the locked-rotor current of the motor, or no greater than 75 percent of the minimum phase-to-phase short-circuit current available at the motor terminals. This provision would set the maximum trip levels of circuit breakers serving high-voltage motor circuits to assure that adequate short-circuit current is available to trip the circuit breaker. Further, it would ensure that current high enough to allow start-up of high-voltage motors could be used without tripping the circuit.

At the specified levels, the protective devices would have to function with no intentional time delay. They would have to immediately deenergize the circuit at these levels, which experience indicates would offer adequate circuit protection. Immediate deenergization would assure that overcurrent, ground-fault or undervoltage conditions would not exist in the circuit for any prolonged periods.

Paragraph (c) is new, and would require high-voltage motor circuits to be provided with backup short-circuit protection in addition to that required in paragraph (b), and would list required trip settings for the devices. When the high-voltage circuit has a nominal voltage of more than 2,400 volts, backup short-circuit protection would have to be set at no more than 1,200 amperes. If the circuit's nominal voltage is 2,400 volts or less, the devices would be required to be set at 2,000 amperes. These settings would assure that circuit breakers used for the protection of high-voltage circuits

are tripped when exposed to fault currents from short circuits.

Paragraph (d), a new provision, would require time delays used for coordination with downstream short-circuit protective devices to be no more than 0.4 seconds. The effect of this provision would be to limit the time delay between tripping of sequential protective devices when selective tripping is used. Therefore, the circuit would be rapidly deenergized in overcurrent situations, but selective tripping would allow for deenergization of only the affected portions of the circuit, if desired.

Paragraph (e) would be new, requiring ground-fault currents to be limited by a neutral grounding resistor to not more than 6.5 amperes when the nominal voltage of the power circuit is 2,400 volts or less, and 3.75 amperes when the power circuit voltage is greater than 2,400 volts. Grounding resistors are employed in resistance-grounded systems to limit the level of fault current in a circuit. The levels specified in the proposed standard would reduce shock hazards and prevent the grounding resister from overheating and becoming an ignition source. These would be appropriately low levels for use in high-voltage systems used in face areas, where the presence of methane can pose ignition hazards. However, these levels should not cause operational problems within the system.

Paragraph (f), also new, would require high-voltage motor circuits to be provided with ground-fault protection having no intentional time delay and set at 0.1 amperes. This would provide for a highly sensitive and responsive ground-fault detection system for high-voltage circuits supplying face equipment. The protective devices would have to operate instantaneously when exposed to 0.1 amperes, under the standard. Therefore, compliance with the standard could greatly reduce the likelihood of a ground fault energizing the frames of face equipment and resulting in fire and shock hazards.

Under a new provision in paragraph (g), high-voltage circuits extending from the section power center would be required to have backup ground-fault protection set at no more than 40 percent of the current rating of the neutral grounding resistor. Backup protective devices would assure that faults occurring in a circuit extending from the section power source will not energize the frames of the face equipment served by it. The proposed standard would use the current ratings for grounding resistors, specified in paragraph (e) of the section, as a deenergization bench mark.

For example, if a 6.5 ampere grounding resistor is used, the backup device would have to operate to deenergize the circuit at 2.6 amperes or less. A 40 percent trip level would provide adequate backup protection which would assure that faults in circuits extending from the power center would not expose miners to the risks of fire or electrocution.

The standard would also require the total time delay used for coordination with downstream short-circuit protective devices to be 0.4 seconds or less. This provision would limit the time which lapses between tripping of the most upstream protective device and those positioned downstream from it when selective tripping is used. Consecutive tripping should occur with no more than 0.4 second total time delay. This would allow the use of selective tripping in order to isolate an affected circuit, but would also assure that the entire circuit is deenergized in rapid fashion to prevent prolonged exposure to dangerous fault currents.

Paragraph (h) would require the high-voltage neutral grounding resistor to be provided with overtemperature protection that will open the ground-check circuit for the high-voltage circuit supplying the section power center if the grounding resistor is subjected to a sustained ground fault. The overtemperature rating or setting of the device would have to be 50 percent or less of the maximum temperature rise of the grounding resistor. These are new provisions.

Grounding resistors typically generate heat when subjected to sustained ground faults. An overtemperature device would cause interruption of the high-voltage circuit supplying the section power center by opening the ground-wire monitor circuit before extreme heat could cause damage to the grounding resistor. Therefore, the resistor would not become disabled, leaving the circuit unprotected, and the possibility of fire would be reduced. The 50 percent overtemperature setting would assure that the affected circuit is quickly deenergized under a sustained fault, but the setting would be high enough to prevent operational problems. It would not cause deenergization of the circuit when exposed to the non-hazardous amounts of heat generated by equipment during normal use in the system.

Paragraph (i) is new, and states that equipment safety grounding conductors would be prohibited from being passed through or connected in series with ground-fault current transformers. Such a configuration, in MSHA's view, could lead to multiple faults occurring in the high-voltage circuit, because it may not allow a fault current to be conducted through the grounding conductor. Therefore, the current transformer would not detect the fault and open the circuit. Particularly in face areas of the mine, installing equipment safety grounding conductors within or in series with the current transformer could lead to ignitions and shock hazards.

Under a new provision in paragraph (j), ground-fault current devices would be required to have a test circuit that injects a current of 50 percent or less of the maximum ground-fault current of the system, and that causes the circuit breakers to open. This testing procedure would help to determine whether ground-fault current devices are functioning properly to monitor the circuit they protect. It would also test the sensitivity of the device to fault currents.

Paragraph (k) addresses types of undervoltage devices which would be acceptable for protection of high-voltage circuits supplying face equipment. The proposal would require that these devices be undervoltage trip coils or shunt trip coils energized by undervoltage relays or ground-monitor relays. Experience indicates that these devices provide the most reliable form of undervoltage protection for underground high-voltage a-c circuits, to assure that devices designed to deenergize the circuits under fault conditions will remain operational.

Undervoltage devices are used to detect the loss or failure of voltage in a circuit, so that it will be deenergized if insufficient voltage exists to energize circuit protective devices. Shunt trip coils without undervoltage or ground-monitor relays would not allow the circuit breaker to trip the circuit until the circuit is reenergized after a loss or failure of voltage. The proposed standard would therefore prevent momentary reenergization of equipment served by the circuit and reduce miners' exposure to shock hazards, as well as the risk of being pinned or crushed by face equipment which suddenly starts up. Shunt trip coils would be required to be energized by stored energy devices, such as a battery or capacitor, to assure that the coils would receive power even if the circuit has suffered a voltage failure.

Paragraph (l) would also be new, and would prohibit the use of circuit breakers which automatically reclose after operation. Automatic reclosure of the circuit breaker would allow immediate reenergization of a circuit which has sustained a fault. Faults occurring in underground electrical systems do not normally clear themselves, as surface utility lines often do. For instance, a fault could be caused by a miner or some object contacting the power conductors in a damaged high-voltage cable. Unless the object is removed, the fault will be sustained and recurrent tripping will continue if the circuit breaker is designed to automatically reclose. This could cause damage to the circuit protective system and expose miners to serious shock hazards.

Section 75.809 Disconnecting Devices for Electric Face Equipment

This standard is derived from existing § 75.808, and would also contain a new requirement for disconnecting devices for high-voltage electric face equipment. Paragraph (a) would require the main circuit breaker at the section power center to be equipped with a disconnecting device designed and installed so that it can be determined by visual observation that the contacts are open, without removing any of the section power center covers. Visual evidence of whether the contacts are open would be required, to allow miners to readily assess that circuits being worked on are deenergized before work is begun. Visual evidence which negates the need for opening the power center covers would prevent unnecessary exposure of miners to the high-voltage components of the equipment.

Paragraph (b) is new, and would require the main controller of longwall mining equipment to be equipped with a disconnecting device that automatically grounds all load power conductors when the device is in the open position. This provision would protect persons working on a circuit that is accidentally reenergized. Automatic grounding of the load power conductors would introduce an intentional fault in the circuit if inadvertent reenergization occurs, which would immediately deenergize the circuit. The persons performing the work would thus be protected from exposure to energized components of the circuit.

Section 75.810 Testing, Examination, and Maintenance of High-Voltage Electric Face Equipment

This standard is derived in part from existing §§ 75.512, 75.512–2, 75.800–3, 75.800–4. It would be used in conjunction with proposed § 75.502, which would allow the use of high-voltage cables in face areas to supply high-voltage equipment. Proper testing, examination and maintenance of high-voltage electric face equipment, such as longwall systems, operated in the presence of methane and combustible materials, would assure that it would not pose increased hazards to miners.

Paragraph (a) would require an electrician qualified for high-voltage work in accordance with proposed § 75.153 to test, examine, and maintain high-voltage face equipment and circuits to determine that the electrical protection, equipment grounding, permissibility, cable insulation, and control devices are properly maintained to prevent fire, electric shock, ignition or operational hazards from existing on the equipment. Keeping face equipment free from these hazards would be assured by the training and expertise of a high-voltage qualified electrician. Testing and examination of high-voltage equipment used in face areas on a regular basis would assure that hazardous conditions are discovered and addressed before they can cause injuries to miners.

Paragraph (b) is new, and would require each high-voltage grounding resistor and electrical protective device for face equipment to be subjected to specific tests when installed. Testing would be required to include passing an amount of current through each current transformer necessary to cause the circuit breaker to open, and impressing an amount of voltage across each potential ground-fault device necessary to cause the circuit breaker to open. The qualified electrician would be responsible for determining whether the grounding resistor is open or shorted and assuring that the overtemperature protective device is capable of opening the incoming ground-wire monitor circuit. The proposed testing procedures would represent a thorough evaluation upon installation of the equipment of whether the devices designed to eliminate hazards to miners would operate effectively when required to do so.

Paragraph (c) would require additional post-installation inspections and examinations of high-voltage face equipment on a periodic basis. At least once every seven days, such equipment would be required to be inspected and examined, including actuation of the ground-fault test circuit which would be required by proposed § 75.808(j). A seven-day interval would be a reasonable period in light of the use and location of the equipment. The standard would assure that problems which arise during normal use of mining equipment would be identified and dealt with appropriately, so that miners would not be exposed to fire or electrocution hazards. Actuation of the ground-fault test circuit would help to identify any damage or defects in the grounding systems which protect face equipment.

Paragraph (d) would require that each high-voltage circuit breaker be opened at least every 30 days by opening the corresponding ground-check conductor at the extreme end of the ground-wire monitoring circuit, where a ground-check conductor is used. This procedure would assure that the circuit breaker will operate effectively to deenergize the entirety of the circuit it protects. Testing every 30 days would be, in MSHA's view, an appropriate interval for evaluating the effectiveness of these devices.

Under paragraph (e), when examinations or tests of face equipment reveal a fire, electric shock, ignition or operational hazard, the equipment would be required to be removed from service or repaired. This provision would assure that equipment which poses any danger to miners would not be used before the hazardous condition is repaired.

Paragraphs (f) and (g) contain requirements for documentation of testing and repairs. At the completion of examinations and tests, the person who made them would be required to certify by signature and date that they have been conducted. A record of any unsafe condition found and corrective action taken would also have to be made. Certifications and records would be required to be kept for at least one year and made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine. Records and certifications of testing and repairs would be valuable tools in the investigation of mine accidents and to point out patterns of equipment defects for improvements in equipment design.

Section 75.811 Cables for High-Voltage Electric Face Equipment

This section is derived in part from existing §§ 75.800–1 and 75.804, and would set requirements for the physical and electrical protection of high-voltage power cables and trailing cables used in conjunction with electric face equipment. Paragraph (a) would require each high-voltage cable to have a voltage rating of at least the nominal phase-to-phase voltage of the circuit in which it is used. This would assure that cables serving high-voltage face equipment will possess current-carrying capability which is compatible with the current carried by the circuit. This would reduce the likelihood of fire and shock hazards caused by damage to cables having inappropriate voltage ratings.

Under paragraph (b), high-voltage cables would be required to have a

grounded metallic shield around each power conductor. The shielding component of the cable would prevent voltage stresses in the conductors from damaging the other components of the cable and causing faults in the circuit.

Paragraph (c) is new, and would require metallic shielding applied in the form of braid to provide at least 84 percent coverage. Under paragraph (d), also new, metallic shielding in the form of a serving (wrap) would have to provide at least 60 percent coverage for the power conductors. The designs of these types of shielding are determinative of the percentages of coverage which would offer effective protection for power conductors. Shielding in the form of metallic tape would not be permitted under the standard. The potential for repeated flexing of the cable could cause separation of the tape, resulting in exposure of energized power conductors. Tape shielding is unable to withstand the continuous flexing required of this type of cable. Particularly in face areas, where methane concentrations can present a greater hazard, exposure of energized conductors would pose an ignition source. Tape, therefore, would not be appropriate for shielding of high-voltage power cables supplying face equipment.

Under paragraph (e), high-voltage trailing cables would be required to be flame-resistant, in accordance with the requirements of existing § 18.64. That standard details tests for the flame-resistant characteristics of cables used in underground face areas for permissibility purposes. Flame-resistant cables would reduce the spread of fire, should a prolonged short circuit ignite the cable jacket.

Paragraph (f), a new provision, would require power conductors to be at least No. 4 AWG, therefore ensuring sufficient physical strength to lessen the likelihood of the conductors being broken. Under paragraph (g), high-voltage cables would be required to contain one or more bare equipment safety grounding conductors. The purpose of a bare equipment safety grounding conductor is to assure detection of faults in a circuit. If all conductors within a cable were insulated, it would be difficult for protective devices to detect the occurrence of a fault. Therefore, fault currents could go unchecked by the protective devices of the circuit, presenting a shock hazard by energizing the frames of equipment.

Paragraph (h) would require ground-check and interlock circuit conductors to be contained within high-voltage cables, and be at least No. 10 AWG. Containment of these conductors within the cable would protect them from physical damage. No. 10 AWG conductors would possess physical and electrical strength that is appropriate for their uses.

Section 75.812 Cable Support Systems; High-Voltage Longwall Electric Face Equipment

This section of the proposal is new, and would address the handling and support of high-voltage cables serving longwall electric face equipment. Paragraph (a) would require longwall mining systems to be equipped with cable handling systems and support systems that are designed, installed, and maintained to protect high-voltage cables from damage, and to minimize the possibility of miners inadvertently contacting the cables. Although longwall mining systems are considered to be a useful and productive mining method, the high-voltage cables used to supply them with power could present shock and fire hazards if they are damaged or defective. The handling and support systems included in the proposal would guard cables to achieve minimum exposure to physical damage or stress.

Under paragraph (b), high-voltage cables used on longwall mining systems would be required to be deenergized before removing entry conveyor belt structures. Movement of energized cables while removing entry conveyor belt structures could lead to the occurrence of faults in the circuit, which would pose risks of fire and electrocution to miners. The standard would address these dangers by requiring deenergization of the cables prior to movement of belt structures.

Section 75.813 Guarding of Cables for High-Voltage Electric Face Equipment

This proposed standard is partially new, and partially derived from existing § 75.807. It would set new guarding requirements for high-voltage cables supplying electric face equipment. Paragraph (a) would require the cables to be guarded where persons regularly work or travel over or under the cables to prevent physical damage to the cables and miner contact with them. A new provision would also require guarding where the cables leave cable handling systems or support systems to extend to electric components. The effect of this provision would be to reduce flexing and stress on cables to prevent physical damage which might pose shock and fire hazards.

Paragraph (b) would set performance requirements for guarding. It would have to protect high-voltage cables from physical damage and prevent miner contact. Guarding would also be required to be constructed of grounded metal or nonconductive, flame-resistant material. These standards would assure that guarding possesses adequate physical and electrical protective characteristics to perform its function. Use of the specified materials would assure that miners would not be exposed to the voltage of the cable.

Section 75.814 Safety Devices for High-Voltage Systems Supplying Electric Face Equipment

This is a new standard, which would set requirements for devices designed to prevent miner contact with energized internal components of high-voltage electric equipment. Paragraph (a) would require each unit of high-voltage equipment to be equipped with a barrier between the main disconnecting device and motor starter compartments and between each motor starter compartment. Compliance with the standard would assure that in gaining access to the disconnecting device, persons would not make contact with energized components of adjacent motor starter compartments.

Under paragraph (b), high-voltage equipment would be required to have covers arranged so that persons could perform work on the motor starter compartment without being exposed to energized high-voltage conductors or parts when the disconnecting device at the main controller is in the open position. This provision would minimize shock hazards to persons performing work on the equipment. Cover interlock switches would be required to automatically deenergize the high-voltage circuit supplying the unit when any cover that provides access to energized high-voltage conductors or parts is removed. Implementation of this provision would provide automatic protection for miners performing work on the internal components of the equipment.

Under paragraph (c), barriers would be required to be constructed of grounded metal or non-conductive insulating board. These materials would provide the necessary physical strength and protective electrical characteristics for an effective barrier. The proposed standard would prevent the use of materials such as belting, which would not be sturdy enough to prevent contact with the energized components of adjacent compartments.

Paragraph (d) would require control circuits of electric face equipment to have a two-winding transformer that electrically isolates it from the high-voltage circuits. Additionally, control circuits would be required to have an electrostatic, or "Faraday," shield between the secondary and primary windings. The shields would have to be made of aluminum or copper and connected to the equipment frame, with a cross-sectional area consistent with proposed § 75.714(c). The shields would prevent inadvertent contact with energized equipment components. The use of aluminum or copper materials connected to the equipment frame would assure physical strength, good conductivity, and an efficient connection to the grounding system.

Section 75.815 Procedures for Working on High-Voltage Systems Supplying Electric Face Equipment

This section is derived from existing §§ 75.509, 75.511 and 75.705. It would set requirements for performing work on high-voltage systems supplying electric face equipment. The requirements would be similar to the general requirements in proposed § 75.506 for work on electric circuits and equipment, with additional standards specifically applicable to work with high-voltage systems supplying face equipment.

Paragraph (a) would require safety precautions to be taken by the qualified electrician required to perform electrical work on high-voltage face equipment before any work, including testing, troubleshooting, and fault finding, is performed in the motor starter compartment. The qualified electrician would be responsible for assuring that the contacts of the main circuit disconnecting device at the main controller are open and grounded, locking out the disconnecting device with a padlock, and tagging the disconnecting device. These precautions would assure that the affected circuit has been properly deenergized and disconnected so that persons performing work on it would not be exposed to shock or electrocution hazards.

Paragraph (b) would detail procedures to be followed by the qualified electrician before any electrical work is performed on a high-voltage cable or motor. The electrician would be responsible for assuring that the cable is disconnected, connecting the phase conductors in the cable to the grounding conductors, locking out the cable with a padlock, and tagging the cable coupler for the cable. Work with high-voltage equipment and circuits can be extremely hazardous. Without taking precautions such as properly locking-out and tagging the affected circuit, qualified electricians would be exposed to the risk of electrocution from someone inadvertently reenergizing the circuit being working on.

Paragraph (c) is new, and would require disconnecting devices and couplers to be locked with an individual padlock for each person performing work. Therefore, the opportunity for accidental reenergization of the equipment or circuit before all persons have completed work would be reduced. For similar reasons, a new provision in paragraph (d) would require tags used on deenergized high-voltage electric circuits and equipment to identify each person performing work, and the circuit or equipment being worked on. Under paragraph (e), only the person who installed a padlock or tag would be permitted to remove it. These steps would assure that electricians working on high-voltage circuits or equipment are well-identified and protected from accidental exposure to possibly lethal electric shock.

Individual padlocks, removable only by the persons who installed them, would place responsibility on the persons performing work to assure their personal safety. If work on the circuit has not been completed by the end of a shift, the circuit should remain tagged. A mine official, such as a foreman, could attach his or her own padlock or tag the circuit until work is resumed by another qualified electrician, who would be responsible for installing an individual lock. The danger and accident history of reenergization of circuits before work has been completed make such measures necessary for the protection of miners against electrocution or electric shock.

Subpart K—Trolley Wires and Trolley Feeder Wires

Section 75.1001 Installation

This proposed standard is derived in part from existing §§ 75.516, 75.1003 and 75.1003–1. It would specify the location of trolley wires and trolley feeder wires, and specify when guarding of these wires is necessary. Paragraph (a) would require trolley wires and trolley feeder wires to be at least six inches outside of the track rail, except where the wires cross over the rails at track switches. The six-inch clearance would be measured from the trolley or trolley feeder wire to a vertical line extending from the outside of the track rail.

In MSHA's view, a 6-inch clearance would provide an appropriate margin of error to minimize possible contact between the trolley circuit and the frames of track equipment operating in the trolley entry. This provision would help protect miners from flash burns and mine fires that can occur when contact with trolley wires and trolley feeder wires takes place. Additionally, this provision would minimize trolley wire contact by personnel using or operating track-mounted equipment. Two fatalities have occurred since 1970 when track equipment operators contacted the trolley wire while attempting to reset trolley poles.

Paragraph (b) is derived from existing § 75.516, which prohibits power wires from contacting combustible materials, roof, or ribs. The proposal would modify the present standard by prohibiting trolley wires and trolley feeder wires from contacting combustible materials, metallic water lines, metallic structures, roof or ribs. Metallic water lines and metallic structures would be included in the proposal to minimize the hazards associated with trolley circuit conductors contacting metallic structures or metal waterlines. Such contact could cause electrical arcing or cause the structures to act as unintentional electrical conductors.

Paragraph (c) is derived from existing § 75.1003 which requires that trolley wires, bare trolley feeder wires and bare signal wires be insulated where they pass through doors and stoppings. This rule would be retained in the proposal with a more definitive requirement that insulation be provided for trolley wires and trolley feeder wires where they cross within six inches of power wires and cables. MSHA has identified these locations as areas where miners are frequently exposed to shock hazards.

Paragraph (d) of the proposal would require that trolley and trolley feeder wires installed after the effective date of the rule have at least six inches of radial clearance from the metallic parts of track-mounted equipment. This would establish a minimum safe distance (radial) from any metallic part of track-mounted equipment to the trolley or trolley feeder wires to minimize potential shock and fire hazards through inadvertent contact as equipment travels through trolley entries.

Paragraphs (e), (f), (g), and (h) are new, and would require the installation of deadblocks in radial stub-feed and parallel connected rectifier trolley systems. Radial stub-feed systems would be required to have deadblocks installed between adjacent rectifiers to isolate or separate the systems. Deadblocks would also be required to be installed in parallel with each stub-feed circuit breaker. Figure K–1 would illustrate the provision. Parallel-connected rectifier trolley systems would be required to have deadblocks installed in parallel with each tie-feeder breaker and each stub-feed breaker. Figure K–2 would illustrate this standard.

Deadblocks would ensure that each radial stub-feed trolley system would be electrically independent, in order to prevent the over-extension of circuit protection. When such an over-extension occurs, the system, due to increased circuit resistance, may be unable to provide the amount of short-circuit current necessary to actuate circuit protection devices. The proposal would require deadblocks to be installed at each stub-feed or tie-feeder circuit breaker for precisely the same reasons.

Paragraph (g) would require that at least two insulating gaps be provided in the deadblocks that will extinguish arcs. Requiring at least two insulating gaps would assure circuit isolation of adjacent portions of the trolley circuit and prevent fire and shock hazards when one gap is inadvertently shorted.

Under paragraph (h), each deadblock would be required to be distinctly marked at its location so it can be quickly located in the event of an emergency. This would assist emergency workers in determining where power can be accessed for emergency operations.

Section 75.1002 Insulated Hangers

Portions of this proposed standard are derived from existing § 75.516, which requires that power wires be supported on insulators. Paragraph (a) of the proposal would retain the insulator requirement. With uninsulated hangers, the voltage on the supported trolley wire or trolley feeder wire could energize the uninsulated supporting hanger, causing fire and shock hazards. Additionally, it could energize other adjacent metallic structures. The proposal would reduce the chances of such accidents by assuring that voltages and currents are confined to the trolley wires or trolley feeder wires.

The proposal would require hangers to have a dielectric strength of at least 15 times the nominal voltage of the trolley system in which they are used, under paragraph (b). MSHA arrived at this figure by evaluating the "American Standard Safety Rules for Installing and Using Electrical Equipment," 1964, sponsored by the American Mining Congress and the U.S. Bureau of Mines. After an evaluation was made, it was determined that the minimum dielectric strength would be ten times the maximum no load voltage of a typical trolley circuit, plus an additional safety factor of 1000 volts. The proposed insulation allows for a safety margin that would minimize the possibility of a hanger failing electrically and causing a mine fire or creating a shock hazard.

Paragraph (c) would require that hangers have two insulators stacked together when uninsulated wires are supported from metallic arches, square sets, overcasts, and other similar metallic structures. This new requirement would address the increased potential fire, shock, and ignition hazards associated with having the hanger attached to a metallic structure, instead of the coal mine roof. Under such circumstances, the potential hazard is greater because of the increased electrical conductivity associated with metallic structures. Moreover, insulators are susceptible to failure. A requirement for two insulators would provide an additional measure of protection.

Section 75.1003 Guarding

This section is partially derived from existing §§ 75.509, 75.510, 75.1003 and 75.1003–1, and is partially new. The requirements in the proposal emphasize that guarding is required not only where miners work, but at other locations where they are exposed on a frequent or regular basis to the shock hazards of exposed energized trolley circuits. Since 1970, there have been at least nine fatalities involving miners who came into contact with unguarded trolley wires.

Paragraph (a) of the proposal retains and clarifies the requirements of existing § 75.1003. It would require guarding of trolley wires and trolley feeder wires where supplies are loaded, unloaded or stored, at mantrip stations, on each side of all doors and stoppings through which wires pass, where persons work within 3 feet of the trolley circuit wires, except for persons operating rail-mounted haulage equipment at track switches, and where persons regularly pass under the wires. Agency experience has been that guarding is necessary on trolley circuit wires, not only where persons perform their normal work tasks and are therefore exposed to energized trolley circuits, but also where they load or unload supplies or generally work with supplies.

Paragraph (b) would require that trolley wires and trolley feeder wires be deenergized when guarding is installed or removed. An exception to this provision would allow the installation and removal of certain types of special temporary guarding while the trolley system is energized. Such temporary guarding, designed for installation or removal while the trolley system is energized, would provide adequate protection for the person during installation and removal. This temporary guarding would allow trolley systems to continue operating safely during installation or removal of guarding since it is designed to protect the installer from exposure to bare energized trolley circuit wires.

Section 75.1004 Cutout Switches

The section is derived in part from existing § 75.1000. The provisions of that standard have been retained with minor word changes for clarification. Paragraph (a) would require a cutout switch which opens both the trolley wire and trolley feeder wire at each rectifier or d-c generator, each tie feeder circuit breaker, each branch line within 100 feet of the trolley turnout, and at intervals of not more than 2,000 feet in the trolley circuit. The proposal would clarify the existing requirement that cutout switches be provided near the beginning of branch lines by requiring that cutout switches be provided at each branch line within 100 feet of the trolley turnout.

Under the existing standard, inability to locate the cutout switches in trolley systems has made it difficult for miners to quickly deenergize trolley circuits in emergency situations. If a fire were to occur on a trolley system, the ability to quickly deenergize the circuit could prevent further spread and reduce the chances of serious injury to miners. Requiring cutout switches at the specified locations would assure that effective and expeditious means for deenergizing trolley circuits are available throughout the mine.

One commenter to the preproposal draft suggested that plugs and receptacles be accepted as an alternative to a cutout switch for disconnecting power in a trolley circuit. Although plugs and receptacles can serve this purpose, they can be easily damaged, especially when located near a trolley track system. A plug and receptacle arrangement could also give rise to the possibility that a short circuit could occur inside the coupler, resulting in a hazardous situation.

Paragraph (b) is new, and would require that each cutout be distinctly marked at its location so it can be quickly found in the event of an emergency. Distinctly marked cutout switches would assure that they can be readily identified in the event of a fire or other electrical accident. The Agency believes that the poor lighting conditions in underground coal mines would justify the need for this requirement.

Section 75.1005 Circuit Protection

This section is derived from existing § 75.518–1, which incorporates by reference the 1968 edition of NEC. It is also derived from existing §§ 75.1001 and 75.1001–1 which require that trolley wires and trolley feeder wires be provided with overcurrent protection by automatic circuit interrupting devices that protect against short circuits. Short-circuit protection is accepted throughout the industry as overcurrent protection for trolley circuits. The proposal would include performance-oriented requirements for circuit breakers used to protect trolley wires and trolley feeder wires, and would specify under what conditions the breakers would be required to deenergize the system.

Paragraph (a) would require that trolley wires and trolley-feeder wires be protected against short circuits by circuit breakers. The use of fuses to provide protection for trolley circuits would not constitute compliance with the proposed rule. The proposal would, however, allow fuses to protect equipment and circuits supplied from a trolley system, but not the trolley systems themselves. Trolley circuits may be subjected to extreme overload conditions, typically up to 150 percent for 2 hours, and the circuit protective device must be capable of operating under these conditions without damaging itself or its components.

Several problems are associated with the use of fuses for protection of trolley circuits. Fuses, sized to provide short-circuit protection, could not effectively withstand the extreme overload conditions and would tend to open prematurely. Additionally, fuses sized to withstand the extreme overcurrents of trolley systems may not provide proper short-circuit protection due to their melting times. Due to the electrical characteristics of trolley systems, it is not clear whether fuses would be capable of safely interrupting overcurrents that are 200–300 percent of the current rating of the fuses.

Another problem is that fuses must be replaced after one interruption. This may expose mine personnel to unnecessary hazards because the power circuit cannot be used until the blown fuse has been replaced, thus creating the hazard of unnecessary delay in the transportation of persons and material during mine emergencies which can accompany power outages.

The proposal would require that d-c breakers not be set at more than 50 percent of the minimum available bolted short-circuit current when that current is less than 800 amperes, or 75 percent when that current is 800 amperes or more. Alternating-current breakers protecting stub-feed trolley systems could not be set at more than 40 percent of the minimum available bolted short-circuit d-c when that current is less than 800 amperes, or 60 percent when that current is 800 amperes or more, under the proposal. These settings are based on general industry standards for circuit breakers and MSHA studies. The studies included an evaluation of the relationship between currents and the voltages of arcing faults on the trolley systems. Arcing faults on trolley systems have been documented as the cause of numerous mine fires.

Paragraph (b) is derived from the NEC, which prohibits circuit breakers from being arranged or installed in parallel. That standard is currently incorporated by reference in existing § 75.518–1, and would be retained in the proposal. When two circuit breakers are installed in parallel, the amount of current required to deenergize the faulted circuit is dependent upon the opening of both circuit breakers. Should a short circuit occur, neither circuit breaker would open, and a hazardous fault would be left on the circuit. By requiring that breakers not be installed in parallel, adequate protection would be assured for trolley circuits.

Paragraph (c) is derived from an NEC standard which requires that an overcurrent device be placed in each ungrounded conductor, incorporated by reference in existing § 75.518–1. The proposal would retain the requirement and modify it for application to trolley systems in underground coal mines. It would require that a d-c circuit breaker be connected in series with the ungrounded power conductor at each rectifier supplying a radial stub-feed trolley system, unless an a-c circuit breaker is connected in series with each ungrounded conductor supplying power to the rectifier bridge. This would ensure that each conductor is provided with adequate short-circuit protection, in order to prevent the fire hazards associated with arcing ground faults on the trolley circuit. Figure K–3 would accompany the proposed standard for illustration.

Paragraph (d) is also derived from an NEC standard, and would require that one year from the effective date of the rule, at least two d-c tie-feeder circuit breakers be connected in the ungrounded power conductor of each rectifier used to supply power to a parallel-connected rectifier trolley system. This would prevent the overextension of protection for parallel-connected rectifier circuits. Such an overextension could lead to arcing faults on the trolley wires, which would act as an ideal ignition source underground. MSHA's experience with one-breaker systems indicates that short-circuit protection could be overextended when one or more of the rectifiers becomes deenergized. Figure K–4 would illustrate the proposed standard.

Paragraph (e) would require each tie-feeder breaker located at a parallel-connected rectifier to automatically open when either the rectifier bridge loses its source of power or when any main circuit breaker that is located between the tie-feeder breaker and the rectifier opens. This proposed rule addresses another circumstance under which the overextension of protection could lead to an arcing fault current that could cause a mine fire. It is derived from existing standards, as well as the NEC.

Section 75.1006 Circuit Breakers

This section is derived in part from existing §§ 75.518–1, and 75.1001–1. Paragraphs (a) through (f) are derived from the NEC, 1968, but the existing incorporation by reference in existing § 75.518–1 would be deleted under the proposal. The NEC requires that overcurrent protection devices be selected and coordinated with the total impedance and other characteristics of the circuit being protected to prevent external damage to the electric components of the circuit during fault conditions. In MSHA's view, d-c trolley systems can present extreme fire hazards upon failure of electric components, more so than other types of electrical systems. Because of this, MSHA has evaluated the NEC standards and used the results of the evaluation to develop proposed requirements that would ensure that trolley circuit breakers are properly installed with safe and effective settings.

Paragraph (a) would require that d-c circuit breakers used on trolley systems having a nominal circuit voltage of between 250 to 300 volts have a minimum voltage rating of 330 volts. Paragraph (b) would require that d-c circuit breakers used on trolley systems having a nominal circuit voltage of between 500 and 600 volts have a minimum voltage rating of 660 volts. The voltage ratings of d-c circuit breakers in paragraphs (a) and (b) would be specified to assure the proper circuit interruption based on no-load voltages of trolley systems in use at coal mines. They are based on the no-load voltages of typical trolley systems in underground coal mines.

Paragraph (c) would require that d-c circuit breakers have interrupting-current ratings with a time constant of 30 milliseconds of not less than 15,000 amperes for frame sizes less than 1,000 amperes; not less than 25,000 amperes for frame sizes 1,000 amperes to 2,000

amperes; and not less than 50,000 amperes for frame sizes over 2,000 amperes. The 30 milliseconds time constant is obtained by dividing the system inductance by the system resistance. A 1980 study by the Agency on time constants and a 1984 study by the U.S. Bureau of Mines in the same technical area indicate that time constants of trolley systems can approach 30 milliseconds. The interrupting current ratings are based on the frame size and have been derived from nationally recognized standards for trolley circuits.

Paragraph (d) would require that a-c circuit breakers installed at radial stub-feed rectifiers have an interrupting current rating not less than 20 times the continuous full load d-c ratings of the rectifiers. The factor of 20 is based on rectifiers having short-circuit current capacity levels less than 25 times the full-load current of the rectifiers. Since the conversion factor between a-c and the d-c is a value of 0.8, an adequate safety factor would be provided in the proposal by requiring the factor of 20 (25 times 0.8=20). This safety factor would provide trolley circuits with adequate protection against short circuits that have been related to numerous mine fires.

Paragraph (e) would require that d-c circuit breakers installed at the rectifiers have continuous current ratings not less than 120 percent of the continuous full-load current ratings of the rectifiers. Paragraph (f) would require that a-c breakers installed in radial stub-feed rectifiers have continuous current ratings of not less than the continuous full load d-c ratings of the rectifiers. These continuous full-load current values take into account the extreme overload conditions (up to 150 percent for 2 hours) that can occur on trolley systems. It is necessary that circuit breakers be able to withstand overloads over time without damage to components of the system. The specified values would provide a minimum factor of safety to prevent this damage.

Paragraph (g) would require that each d-c circuit breaker be equipped with an instantaneous overcurrent relay that causes the circuit breaker to deenergize the circuit with no intentional time delay. This would prevent overcurrents from extending beyond the first circuit breaker from the load while still allowing time delays on other breakers to prevent nuisance tripping. Thus, the shock and fire hazard would be minimized without tripping the entire circuit.

Paragraph (h) is new, and would require that d-c electronic overcurrent relays installed one year after the effective date of this proposed rule be fail-safe and bi-directional. Trolley systems are continuously subjected to overvoltage conditions from the operation of haulage equipment, and these overvoltage conditions are a major factor in the failure of solid-state circuit protection devices used on circuit breakers. The proposed standard would minimize the risk of fire under these circumstances.

Paragraphs (i) and (j) are new, and would require that automatically reclosing circuit breakers be equipped with load measuring devices. Paragraph (i) would require that the devices prevent the circuit breakers from reclosing whenever the prospective load current exceeds 300 amperes. Paragraph (j) would require that automatically reclosing circuit breakers installed in parallel-connected rectifier trolley systems be equipped with voltage differential devices that prevent the circuit breakers from reclosing whenever the voltage across the circuit breakers is between 15 and 85 percent of the nominal system voltage. These proposed requirements are based on MSHA's experience regarding automatic reclosing devices. When these devices are not used, effective short-circuit protection cannot be ensured, due to the possibility of the circuit breaker reclosing when short circuits or extreme overloads are present on trolley circuits.

Section 75.1007 Handling

This section of the proposal is derived in part from existing §§ 75.509 and 75.510. Existing § 75.509 requires that all power circuits and electric equipment be deenergized before work is performed, except when necessary for trouble shooting or testing. Section 75.510 requires that energized trolley wires be repaired only by a person trained to perform electrical work and to maintain electric equipment and such person be required to wear approved and tested insulated shoes and wireman's gloves. The proposal would clarify the existing exception, and would allow miners to perform certain tasks on energized trolley circuits provided safety precautions are taken.

Paragraph (a) would require the deenergization of trolley circuits before any work is done, except in specified circumstances. Deenergization would not be required when reinstalling wires in hangers or installing or removing temporary guarding designed to minimize shock hazards. Persons doing this work would be required to wear rubber boots and rubber insulating gloves with protective coverings designed to prevent physical damage to the insulating material.

Trolley wires contain dangerous amounts of voltage and also present special hazards because they are bare. Insulated boots would protect the miners from shock caused by contact with the trolley circuit and a conducting medium such as the track or a puddle of water. Because of the damp nature of some coal mines, rubber boots would be an important safety measure for protection against shock and electrocution from trolley circuits. Similarly, rated gloves would protect a miner from potential shock and flash burn hazards while working on energized trolley circuits.

Paragraph (b) is new, and would require that rubber insulating gloves used for handling trolley wires be rated for at least 1000 volts. Such gloves are rated in accordance with the American Society for Testing and Materials (ASTM). This is the lowest rated glove available under ASTM standards, and would provide the necessary protection against electric shock hazards.

Paragraphs (c) and (d) are also new, and would require the examination of rubber boots, rubber insulating gloves and protective coverings before each use for visible signs of damage or defects and their removal from use should damage or defects be found. Gloves can be easily examined before each use. An examination commonly used is to fill the gloves with air and observe if there is any leakage. If any leakage is found, the gloves would be required to be removed from service. A small hole in either the gloves or the boots is enough of an insulation failure to allow electrical current to flow through and cause injury to the wearer.

Section 75.1008 Track Bonding

This section is derived from existing § 75.514, which requires that all electrical connections be mechanically and electrically efficient. Since mine track is used as an electrical conductor in conjunction with trolley wires and trolley feeder wires, the proposal would require that the track be mechanically and electrically efficient by setting specific bonding requirements at various locations on the track. This would ensure adequate electrical conductivity of return circuits. These proposed requirements are based on accepted industry practices and MSHA's experience with trolley systems.

Paragraph (a) would require that track used to transport coal from a junction of tracks of two or more coal-producing sections have both rails welded or bonded at every joint and have the rails cross-bonded at intervals of 200 feet or less. Additionally, it would require that track used to transport coal from a single coal-producing section or used only to transport miners and supplies have one rail welded or bonded at every joint and have the rails cross-bonded at intervals of 200 feet or less. Under the standard, an authorized representative of the Secretary may require both rails to be welded or bonded at every joint when necessary to provide adequate electrical conductivity in the trolley system.

Track switches would be required to have each switch approach cross-bonded within 20 feet of the switch and the straight and curved track sections bonded together within five feet of the switch frog. Compliance with these proposed requirements would ensure miner safety by preventing loose or bad connections of track that could cause the connections to overheat during use.

Paragraph (b) would require that metal ties, when used as cross bonds, be welded to both rails. Agency experience indicates that both rails need to be welded to the metal ties to assure an electrically efficient connection. Paragraph (c) would require that track not be used before it is bonded except by equipment necessary to install the bonds. Track that is used before it is bonded can cause arcing, which can result in a fire hazard or shock hazard to persons contacting rail-mounted equipment.

Paragraph (d) would require that return-feeder wires connected in parallel with track rails be bonded to the track rails at intervals not to exceed 1,000 feet. This requirement would ensure electrically efficient connections between the track and the return-feeder wire to prevent arcing faults on the return-feeder wires.

Section 75.1009 Examinations, Tests and Maintenance of Trolley Systems

This section of the proposal is derived in part from existing §§ 75.512, and 75.1001–1, which would be modified under the proposal. The recordkeeping requirements in the existing standards would be replaced with a combination of certification and recordkeeping requirements.

Paragraph (a) would incorporate essentially the same requirements as existing § 75.512. It would require that trolley systems be tested, examined and maintained by a qualified electrician. This would ensure that work on trolley system is performed by persons who are knowledgeable of electrical hazards and skilled in preventing them.

Paragraph (b) is new, and would require that trolley circuits be tested at least once every 180 days to determine the available short circuit currents by passing measured amounts of currents through the circuits at the extreme ends of the circuits protected by each circuit breaker and measuring voltage drops at each of these locations. The test procedures are designed to ensure that protection is available against the extreme fire hazards caused by short circuits on trolley systems. Short-circuit protective devices are passive, and do not operate to deenergize the circuit until an extreme overload is present on the circuit. With this test procedure, it can be determined if the device will operate as required before a short circuit occurs on the system.

Paragraph (c) is new, and would require that the available short-circuit currents be calculated from voltage-drop tests and used to determine maximum allowable circuit breaker settings. This standard would conform to industry standards and the Agency's experience in evaluating trolley systems, and would assure that available short-circuit currents are properly determined.

Paragraph (d) would require that circuit breakers and their components be examined for physical damage once every 180 days. Electric equipment used in underground coal mines is subjected to heavy, continual use, which often results in wear and breakdown. The mine atmosphere is also particularly harsh for electric equipment. Unless it is regularly examined, potential safety problems could go undetected and could present hazards to persons working with or around the equipment.

The proposal would also require that short-circuit devices be tested and calibrated to values no more than the indicated values, and no less than 85 percent of the indicated values. The proposed values would assure that short-circuit devices detect all short circuits. Therefore, trolley systems would not become over-extended and the potential of fire hazards due to arcing faults would be reduced.

Current-actuated short-circuit devices would have to be tested and calibrated under the proposal by passing the amounts of current indicated by the settings through the devices to cause actuation. A new aspect of this proposal would allow current-actuated short-circuit devices to be tested and calibrated with external calibration sources when the devices are equipped with calibration coils. This option would allow for testing while the circuit is energized. However, compliance with the standard would assure that devices are fully operable before a hazardous fault has occurred on the system.

Electronic short-circuit devices would be required to be tested and calibrated by passing the amounts of current indicated by the settings through the devices to cause actuation. A new provision of the proposal would allow calibration voltages to be applied to sensor leads to cause actuation with the sensor leads disconnected from the shunts. Test and calibration values would be determined by the indicated settings. MSHA's experience indicates that this option would constitute an effective and reliable method for testing and calibrating electronic short-circuit devices for trolley systems.

A new provision in the proposed standard would require that load-measuring devices and load-indicating circuits be tested and calibrated by simulating load currents of 350 amperes or less through the circuit breaker. This provision reflects Agency experience and represents accepted industry practice regarding what reclosing load currents would be tolerable for underground coal mine trolley systems.

Voltage-differential devices would now be required to be tested and calibrated to prevent reclosure by applying voltages not less than 15 percent of the nominal system voltages across the circuit breaker terminals. This provision is based on evaluation of trolley systems and the safety practices needed to ensure that voltage-differential devices function properly to prevent premature breaker reclosure. Arcing faults on the circuit and the resulting fire hazard would be prevented by compliance with the standard.

Additionally, a new provision would require that loadmeasuring devices, voltage-differential relays, and reclosing selective relays, be tested and calibrated at least every 180 days to values within plus or minus (±)15 percent of the indicated values. This provision would conform to accepted industry practice and the Agency's experience in evaluating circuit breakers for trolley systems.

Paragraph (e) is new, and would require that when examinations, tests, or calibrations of trolley systems reveal a potential fire or shock hazard, the affected part of the trolley system either be removed from service or repaired. Requiring the removal or repair of potentially hazardous electric equipment or circuits would ensure that persons are not exposed to potentially hazardous conditions.

Paragraph (f) is new, and would require that trolley systems be aligned and maintained to provide for smooth tracking of trolley connectors on trolley wires. This would prohibit the presence of kinks, oversize splices, irregular surfaces, and other physical defects that cause trolley poles to dislodge. At least

two fatalities can be attributed to instances where poles were dislodged and hit a person riding in a track-mounted vehicle. Compliance with the proposed standard would reduce the likelihood of such occurrences by requiring a uniform trolley installation that should perform as designed and prevent the trolley pole from becoming dislodged.

Paragraph (g) of the proposal would require that upon the completion of examinations and tests required by this section, the person who makes the examinations and tests certify by signature and date that they have been conducted. The proposal would differ from the existing rule in that it would require a record to be made of unsafe conditions found and corrective actions taken. Where such conditions are not found, the proposal would require only the certification that the examination or test was conducted. This proposed requirement would eliminate a recordkeeping requirement in the existing rules.

Paragraph (h) would require that certifications and records be kept for at least one year and be made available at the mine for inspection by authorized representatives of the Secretary and representatives of the miners. The proposal provides essentially the same access to documents as the existing requirements. However, the proposal would also allow document access to representatives of miners. This provision is consistent with other MSHA standards that address certification and recordkeeping requirements.

Section 75.1010 Movement and Transportation of Metallic Mining Supplies and Off-Track Mining Equipment in Entries Containing Trolley Wires or Trolley Feeder Wires

This section is derived in part from existing §§ 75.1003–1 and 75.1003–2, which require that adequate precautions be taken to ensure that equipment being moved along haulageways will not come into contact with trolley wires and trolley feeder wires. The procedures necessary to meet these requirements are also specified in the present rules. The proposal would retain and reorganize the standards to clarify several alternative approaches.

Paragraph (a) would contain new requirements that would call for deenergization of trolley wires and trolley feeder wires for at least 200 feet on each side of metallic mining supplies or off-track mining equipment when they are either moved or transported under their own power or by other non-trolley powered equipment. This would assure that such supplies or equipment will come into contact with energized wires. Metallic supplies or equipment contacting energized wires could become energized, presenting a shock hazard for persons handling them. Arcing faults could also occur, leading to the possibility of a mine fire.

Paragraph (b) would address safety procedures to be taken when metallic mining supplies or off-track mining equipment are moved or transported by trolley-powered equipment. It would require that the supplies or equipment being transported not extend beyond the specified confines of the transporting car or the car directly ahead or behind the transporting car.

As an alternative, the cargo could be cleaned to remove combustible materials, grounded by means of a 4/0 AWG or larger copper conductor that is connected to the mine track or to the metallic frame of the track-haulage conveyance, placed and secured to prevent accidental movement while being transported, covered on the top and on the trolley wire side with conveyor belting or other equivalent material that is flame-resistant in accordance with § 18.65, examined by a qualified electrician beforehand, and moved or transported under the direct and immediate supervision of a certified person. Requiring these precautions would recognize that it is not always possible to transport supplies or equipment within the confines of the track haulage car. It would take the circumstances of the mine into account while ensuring the safety of the move.

Paragraph (c) of the proposal would require that when supplies or off-track equipment are moved in accordance with paragraph (b)(3) of the rule, and the maximum height of the supplies or equipment while being transported is within 12 inches of the minimum height of the trolley wire at any location along the move, additional precautions would be required. A qualified electrician would be required to be stationed at the supply rectifier, prepared to deenergize the circuit in case of an emergency.

The qualified electrician would be required to be in direct two-way communications with the certified person supervising the move and a responsible person on the surface. Trolley phones used for two-way communications would have to be battery powered unless a backup communication system is available. Finally, persons who are not directly involved in the move would be required to clear a specified area. This provision recognizes that in situations where the cargo will be coming into very close proximity to the trolley wires, extraordinary measures must be taken to assure that the move is conducted in a safe manner.

Derivation Table

The following derivation table lists the number of each proposed standard and the number of the existing standard from which it is derived.

Proposed section	Existing section
75.153(a)	75.153(a).
75.153(a)(1)	75.153(a) (1) and (3).
75.153(a)(2)	75.153(a)(3).
75.153(b)	75.153(g).
75.153(c)	75.153 (f) and (f).
75.153(d)	New.
75.154(a)	75.153(c).
75.154(b)	75.153(b).
75.154(b)(1)	75.153(b) (1) and (2).
75.154(b)(2)	75.153(b)(3).
75.154(b)(3)	75.153(b)(4).
75.154(b)(4)	75.153(b)(5).
75.154(c)	New.
75.154(c)(1)	75.153(b)(3).
75.154(c)(2)	75.153(b)(5).
75.154(d)	New.
75.154(e)	75.153(d).
75.154(f)	75.153(e).
75.155(a)(1)	75.153(a)(1).
75.155(a) (2) and (3)	New.
75.155 (b) and (c)	New.
75.156(a) (1) and (2)	New.
75.156(b)	75.160.
75.156 (c) and (d)	75.153(g).
75.156(d)	New.
75.156(f)	75.160.
75.157	New.
75.158	75.155.
75.159	75.153(g) and 75.159.
75.500	New.
75.501(a)(1)	75.500 (a) through (d), 75.500–1, 75.501, 75.501–2, 75.501–2(e), 75.501–2(b), 75.504, and 75.505.
75.501(a)(2)	75.1002–1(a).
75.501(a)(3)	75.507 and 75.507–1(a).
75.501 (b) and (c)	New.
75.502	75.1002.
75.503(a)	75.503, 75.504, 75.505, 75.506(a), 75.506(b), 75.506(c), 75.506(d), 75.506–1(a), and 75.506–1(b).
75.503(b)	75.504, 75.505, 75.506–1(a), and 75.506–1(b).
75.503 (c) and (d)	New.
75.504	75.524.
75.505(a)	75.511 and 75.512.
75.505(b)	75.511.
75.505(c)	New.
75.505(d)	75.511.
75.506(a)	New.
75.506(b)	75.509 and 75.705.
75.506(b) (1) and (2)	75.511.
75.506(b)(3)	New.
75.506(b)(4)	75.509.
75.506(c)	75.705–1 and 75.705–1 (a) and (b).
75.506(d)	75.511.
75.506(e)	75.511 and 75.1725(c).
75.506(f)	New.
75.507(a)	75.509 and 75.705–1(a).
75.507(b)	75.511 and 75.1720(c).
75.507(c)	75.511 and 75.705–1(a).
75.507(d)	New.
75.508(a)	New.
75.508(b)	75.512, 75.703–3(d)(11), 75.800–3(a), and 75.900–3.
75.508(c)	75.512–2, 75.703–3(d)(11), and 75.900–3.
75.508(d)	75.800–3 (a) and (b).
75.508(d)(1)	75.501.
75.508(d)(2)	New.
75.508(e)	75.512, 75.800–3(a).
75.508(f)	New.
75.508(g)	75.512, 75.800–3(c).
75.508(h)	75.512, 75.800–4, and 75.900–4.
75.508(i)	75.512, 75.800–4, and 75.900.
75.508(j)	New.
75.509 (a) and (b)	75.520.
75.509(c)	New.
75.509 (d) and (e)	75.520.
75.509(f)	75.1403–10(m).
75.509(g)	New.
75.510(a)	75.519, 75.519–1, and 75.802(c).
75.510(b)	New.
75.510(c)	75.601, 75.808, and 75.903.
75.510(d)	75.601, 75.808, and 75.903.
75.510(e)	75.511.
75.510(f)	75.601 and 75.809.
75.510(g)	75.520.
75.510 (h) and (i)	New.
75.510(j)	75.705–9.
75.510(k)	75.511 and 75.705–8.
75.510(l)	New.
75.510 (m) and (n)	75.705–7.
75.510(o)	75.705–8.
75.511(a)(1)	75.805.
75.511(a)(2)	75.805 and 75.902.
75.511(a)(3)	75.805 and 75.902.
75.511(a)(4)	New.
75.511(a)(5)	75.805 and 75.902.
75.511(a)(6)	75.803–1 and 75.902–1.
75.511(a)(7)	75.607.
75.511(b) (1) and (2)	New.
75.512(a)	75.514.
75.512(b)	75.607.
75.513 (a) through (e)	75.521.
75.514(a)	75.522–1(a).
75.514(b)	75.522–1 (a) and (b).
75.514 (c) and (d)	75.522–1(a).
75.514(e)	New.
75.514(f)	75.522.
75.515(a)	75.517, 75.517–1, 75.804(a), 75.812, 75.906, and 75.907.
75.515(b)	New.
75.516	75.516–2 (a) and (b), 75.517, and 75.606.
75.517(a)	75.516 and 75.516–1.
75.517(b)	New.
75.517(c)	75.516–2(c) and 75.807.
75.517(d)	75.516–2(c).
75.518	75.516–1.
75.519(a)	75.511.
75.519(b)	New.
75.519(c)	75.604(c).
75.519(d)	75.604(b), 75.604(c), 75.810, and 75.906.
75.519(e)	75.604(b).
75.519 (f) through (h)	New.
75.519(i) (1) and (2)	75.514, 75.604(a), and 75.810.
75.519(i)(3)	75.514, 75.604(b), 75.804(b), and 75.810.
75.519(i)(4)	75.514, 75.810, and 75.906.
75.519(i)(5)	75.804(b).
75.519(i)(6)	75.804(b), 75.810, and 75.906.
75.519(i)(7)	75.517, 75.604(c), 75.804(b), and 75.810.
75.520 (a) and (b)	75.515.
75.520(c)	New.
75.520(d)	75.515 and 75.605.
75.520(e)	75.505.
75.521	75.517 and 75.603.
75.522(a)	75.513 and 75.513–1.
75.522 (b) through (d)	75.513–1.
75.523 (a) through (c)	75.518 and 75.518–1.
75.523 (d) through (m)	75.518–1.
75.523(i)	75.518–2.
75.523 (j) and (k)	75.518–1.
75.524(a)	75.518–1.
75.524(b)	75.518 and 75.518–1.
75.524(c)	75.518 and 75.518–1.
75.524(d)	75.518 and 75.518–1.
75.524(e)	75.518–1.
75.524(f)	New.
75.524(g)	75.518–1.
75.524(h)	75.518 and 75.518–1.
75.524 (i) and (j)	75.518–1.
75.525	75.601, 75.809, and 75.904.
75.526	New.
75.527(a)	75.506 and 75.506–1.
75.527(b)	75.506–2.
75.528	New.
75.529	75.523, 75.523–1, and 75.523–2.
75.529(a)	75.523 and 75.523–1.
75.529(a) (1) through (3)	75.523–2(b).
75.529(a)(4)	75.523–2(c).
75.529(a)(5)	New.
75.529(b)	75.523–1(b).
75.529(c)	75.523–1(c).
75.530 (a) through (c)	New.
75.531	75.706.
75.600	New.
75.601(a)	75.600 and 75.600–1.
75.601(b)	New.
75.601(c) (1) and (2)	New.
75.601(d)	75.701–1, 75.703–3(a), 75.906, and 75.907.
75.601(d)(1)	New.
75.601(d)(2)	75.703–3(d).
75.601 (e) through (g)	New.
75.601 (h) and (i)	75.907.
75.601 (j) and (k)	New.
75.602(a)	75.601 and 75.900.
75.602(b)	75.601.
75.602(c)(1)	New.
75.602(c)(2)	75.601–1 and 75.900–2 (d).
75.602(c)(3)	75.601–1.
75.602(d)	75.601–1 and 75.900–2 (d).
75.602(e)(1)	75.900.
75.602(e)(2)	New.
75.602(e)(3)	75.900.
75.602(f)	75.900–2(c).
75.602(g)	75.518 and 75.518–1.
75.602 (h) through (k)	New.
75.602(l)	75.512.
75.602(m) (1) and (2)	75.900–2(a).
75.602(n)	New.
75.603(a)(1)	New.
75.603(a)(2)	75.601, 75.601–3, and 75.703–3(d)(4).
75.603(a)(3)	75.601–1 and 75.703–3(d)(5).
75.603(b)	75.601–1.
75.603(c)	75.601–2.
75.603(d)	75.601.
75.603(e)	75.601 and 75.900.
75.603 (f) through (h)	New.
75.603(g)	New.
75.603(h)	New.
75.604	75.602.
75.700	New.
75.701	75.901(a).
75.701(a)	75.701–2.
75.701(b)	75.901(a).
75.701 (c) through (e)	New.
75.702	75.901(a).
75.703	75.802(a).
75.703 (a) through (d)	75.802(b).
75.704(a)(1)	75.802(a).
75.704(a)(2)	New.
75.704(b)	75.701–1(a), 75.701–1(b), 75.701–1(c), and 75.701–1(d).
75.705(a)	75.701–3(a).
75.705(b)	75.701–3(b) and 75.701–3(d).
75.705 (c) and (d)	75.703–2(b).
75.705 (e) and (f)	New.
75.705(f)	New.
75.705(g)	75.705–2(c).
75.706(a)	75.701–3(a).
75.706(b)	75.703–2(b).
75.706(c)	75.701–1(d) and 75.703–2(a).
75.707(a)(1)	75.901(a) (New for direct-current).
75.707(a)(2)	75.801.
75.707(b)	75.801 and 75.901(a) (New for direct-current).
75.707(c)	75.801 and 75.901(a) (New for direct-current).
75.707(d)	75.802(a) and 75.901(a) (New for direct-current).
75.708	75.806 and 75.905.
75.709(a)	New.
75.709(b)	75.700–1 (a) through (c) and 75.701–1 (a) through (d).
75.709 (c) and (d)	New.
75.710(a)(1)	75.700–1, 75.701, 75.802(a), and 75.901(a).
75.710(a)(2)	75.701 and 75.802(a).
75.710(a)(3)	75.901(a).
75.710(a)(4)	New.
75.710(a)(5)	75.811.
75.710(b)	New.
75.710(c)	75.701–1 and 75.901(a).
75.711(a)	75.902 and 75.902–2.
75.711(a)(1)	New.
75.711(a)(2)	75.902.
75.711(b)	75.903.
75.711(c)(1)	75.704.
75.711(c)(1)	75.704–1 and 75.803.
75.711(c) (2) and (3)	75.803.
75.711(d)(1)	75.803, 75.902, and 75.902–2.
75.711(d)(2)	75.803 and 75.902.
75.711(e) (1) and (2)	75.803 and 75.902.
75.711(f)(1)	75.902–1 and part 18.
75.711(f)(2)	75.902–1.
75.711(g)	75.902–4.
75.712(a)(1)	75.701–3 (a) through (c) and 75.703–3 (a) through (c).
75.712(a) (2) through (4)	New.
75.712(b)	75.701–3(c) and 75.703–3(d).
75.712(c)	75.703 and 75.703–1.
75.713(a)	75.703–3(d)(1) and 75.703–3(d)(3).
75.713(b)	75.703–3(d)(7).
75.713(c)	75.703–3(d)(8).
75.713(d)	75.703–3(d)(8).
75.713(e)	75.703–3(d)(2), 75.703–3(d)(3), and 75.703–3(d)(10).
75.713(f)	75.703–3(d)(3).
75.714 (a) and (b)	New.
75.714(b) (1) and (2)	New.
75.714(c) (1) and (2)	75.701–4(a).
75.714 (d) through (g)	New.
75.714(h)	75.701–5.
75.714 (i) through (k)	New.
75.800	New.
75.801	New.

Proposed section	Existing section
75.802 (a) (1) through (3)	75.800.
75.802(b)	75.800–1.
75.802(c)	75.518–1.
75.802(d)	75.800–2(c).
75.802(e)(1)	75.518–1.
75.802(e)(2)	New.
75.802 (f) through (h)	New.
75.802(i) (1) and (2)	75.800–2(a).
75.802(j)	New.
75.803 (a) and (b)	New.
75.803(c)	75.803–1.
75.803 (d) and (e)	New.
75.804 (a) through (c)	75.807.
75.804(d)	75.812.
75.804 (e) and (f)	New.
75.804 (g) and (h)	75.804(a).
75.804(i)	75.705–11.
75.804(j)	75.804(a).
75.804(k) (1) through (3)	New.
75.805	75.812.
75.806	New.
75.807 (a) and (b)	New.
75.808(a)	75.518–1 and 75.800.
75.808(b)	75.518–1.
75.808(c) (1) and (2)	New.
75.808(d)	New.
75.808(e) (1) and (2)	New.
75.808 (f) through (j)	New.
75.808(k) (1) and (2)	75.800–2(a).
75.808(l)	New.
75.809(a)	75.808.
75.809(b)	New.
75.810(a)	75.512, 75.800–3(a), and 75.800–3(c).
75.810(b) (1) through (4)	New.
75.810(c)	75.512 and 75.512–2.
75.810 (d)	75.800–3 (a) and (b).
75.810(e)	75.512.
75.810 (f) and (g)	75.512 and 75.800–4.
75.811(a)	75.804(b).
75.811(b)	75.804(a).
75.811 (c) and (d)	New.
75.811(e)	75.600–1.
75.811(f)	New.
75.811 (g) and (h)	75.804(a).
75.812	New.
75.813(a)(1)	75.807.
75.813(a)(2)	New.
75.813(b)	75.807.
75.814(a)	New.
75.814(b) (1) and (2)	New.
75.814 (c) and (d)	New.
75.815(a)(1)	75.509 and 75.705.
75.815(a) (2) and (3)	75.511.
75.815(b)(1)	75.509 and 75.705.
75.815(b)(2)	75.705.
75.815(b) (3) and (4)	75.511.
75.815 (c) and (d)	New.
75.815(e)	75.511.
75.1000	New.
75.1001(a)	75.1003–1.
75.1001(b)	75.516.
75.1001(c)	75.1003.
75.1001(d)	75.1003–1.
75.1001 (e) through (h)	New.
75.1002(a)	75.516.
75.1002 (b) and (c)	New.
75.1003(a)(1)	75.1003(a).
75.1003(a)(2)	75.1003(c).
75.1003(a)(3)	75.1003(b).
75.1003(a) (4) through (6).	75.1003(a).
75.1003(b)	75.509 and 75.510.
75.1004(a) (1) and (2)	New.
75.1004(a) (3) and (4)	75.1000.
75.1004(b)	New.
75.1005 (a) through (c)	75.518–1, 75.1001, and 75.1001–1(a).
75.1005 (d) and (e)	New.
75.1006 (a) through (f)	75.518–1.
75.1006(g)	75.1001–1(a).
75.1006 (h) through (j)	New.

Proposed section	Existing section
75.1007(a)	75.509 and 75.510.
75.1007(a)(1)	75.509 and 75.510.
75.1007(a)(2)	New.
75.1007(b)	75.510
75.1007 (c) and (d)	New.
75.1008(a) (1) and (2)	75.514.
75.1008 (b) and (c)	New.
75.1008(d)	75.514.
75.1009(a)	75.512.
75.1009(b)	New.
75.1009(c)	New.
75.1009(d)	75.512 and 75.1001–1(b).
75.1009 (e) and (f)	New.
75.1009 (g) and (h)	75.1001–1(c).
75.1010(a)	75.1003–1 and 2.
75.1010(b)(1)	75.1003–1 and 75.1003–2 (a) and (g).
75.1010(b)(2)	New.
75.1010(b)(3)	75.1003–2 (a)(1), (c), (d), and (e).
75.1010(c)(1)	75.1003–2 (f).
75.1010(c)(2)	75.1003–2(f) (3) and (4).
75.1010(c)(3)	75.1003–2(f)(5).

Distribution Table

The following distribution table lists the section numbers of the existing standards and the section numbers of the proposed standards which contain revised provisions derived from the corresponding existing sections.

Existing section	Proposed section
75.153(a)	75.153(a).
75.153(a)(1)	75.153(a)(1) and 75.155(a)(1).
75.153(a)(2)	Remove.
75.153(a)(3)	75.153(a)(1) and 75.153(a)(2).
75.153(b)	75.154(b).
75.153(b) (1) and (2)	75.154(b)(1).
75.153(b)(3)	75.154(b)(2) and 75.154(c)(1).
75.153(b)(4)	75.154(b)(3).
75.153(b)(5)	75.154(b)(4) and 75.154(c)(2).
75.153(c)	75.154(a), 75.154(a)(1), and 75.154(a)(2).
75.153(d)	75.154(e).
75.153(e)	75.154(f).
75.153(f)	75.153(c).
75.153(g)	75.153(c), 75.156(c), and 75.159.
75.154	Remove.
75.155	75.158.
75.159	75.159.
75.160	75.156(b) and 75.156(e).
75.500 (a) through (d)	75.501(a)(1).
75.500–1	75.501(a)(1).
75.501	75.501(a)(1).
75.501–1	Remove.
75.501–2 and 75.501–2 (a) and (b).	75.501(a)(1).
75.501–3(a) and 75.501–3(a)(1)–(6).	Remove.
75.501–3(b) and 75.501–3(b)(1)–(3)..	Remove.
75.501–3 (c) and (d)	Remove.
75.502	Remove.
75.503	75.503(a).
75.503–1	Remove.
75.504	75.501(a)(1), 75.503(a), and 75.503(b).
75.505	75.501(a)(1), 75.503(a), and 75.503(b).

Existing section	Proposed section
75.506 (a) through (d)	75.503(a).
75.506–1 (a) and (b)	75.503(a) and 75.503(b).
75.506–1(c)	Remove.
75.507 and 75.507–1(a)	75.501(a)(3).
75.507–1(b) and (c)	Remove.
75.508	75.527(75.516.
75.516–2(c)	75.517 (c) and (d).
75.516–2(d)	Remove.
75.517	75.515(a), 75.516, 75.519(i)(7), and 75.521.
75.517–1	75.515(a).
75.517–2 (a) through (d)	Remove.
75.518	75.523(a), 75.523(b), 75.523(c), 75.524(b), 75.524(c), 75.524(d), 75.523((h), and 75.602(g).
75.518–1	75.523(a), 75.523 (b) through (h), 75.523 (j) and (k), 75.524 (a) through (e), 75.524 (g) through (j), 75.602(g), 75.802(c), 75.802(e)(1), 75.808(a), 75.808(b), 75.1005 (a) through (c), and 75.1006 (a) through (f).
75.518–2	75.523(i).
75.519 and 75.519–1	75.510 (a).
75.520	75.509 (a), (b), (d), 75.509(e), and 75.510(g).
75.521	75.513 (a) through (f).
75.522	Remove.
75.522–1(a)	75.514(a) through (d).
75.522–1(b)	75.514(b).
75.523	75.529 and 75.529(a).
75.523–1	75.529 and 75.529(a).
75.523–1(b)	75.529(b).
75.523–1(c)	75.529(c).
75.523–2	75.529.
75.523–2(b)	75.529(a) (1) through (3).
75.523–2(c)	75.529(a)(4).
75.523–3	Remove.
75.524	75.504.
Appendix A	Remove.
75.600	75.601(a).
75.600–1	75.601(a) and 75.811(e).
75.601	75.510(c), 75.510(d), 75.510(f), 75.525, 75.602(a), 75.602(b), 75.603(a)(2), 75.603(d), and 75.603(e).
75.601–1	75.602(c)(2), 75.602(c)(3), 75.602(d), 75.603(a)(3), and 75.603(b).
75.601–2	75.603(c).
75.601–3	75.603(a)(2).
75.602	75.604.
75.603	75.521.
75.604(a)	75.519(i) (1) and (2).
75.604(b)	75.519(d), 75.519(e), and 75.519(i)(3).
75.604(c)	75.519(c), 75.519(d), and 75.519(i)(7).
75.605	75.520 (d) and (e).
75.606	75.516.
75.507	75.511(a)(7) and 75.512(b).
75.700	75.710(a)(1), 75.710(b) and 75.712(a)(1).
75.700–1	75.710(a)(1).
75.700–1 (a) through (c)	75.709(b).
75.700–1(d)	Remove.
75.701	75.710(a) (1) and (2)
75.701–1	75.601(d) and 75.710(c)

Existing section	Proposed section
75.701–1 (a) and (b)	75.506(c), 75.704(b), and 75.709(b).
75.701–1(c)	75.704(b) and 75.709(b).
75.701–1(d)	75.704(b), 75.706(c), and 75.709(b).
75.701–1(e)	Remove.
75.701–2	75.701(a).
75.701–3(a)	75.705(a), 75.706(a), and 75.712(a)(1).
75.701–3(b)	75.705(b) and 75.712(a)(1).
75.701–3(c)	75.712(a)(1) and 75.712(b).
75.701–3(d)	75.705(b).
75.701–4(a)	75.714(c)(1).
75.701–4(b)	75.714(c)(2).
75.701–5	75.714(h).
75.702 and 75.702–1	Remove.
75.703 and 75.703–1	75.712(c).
75.703–2(a)	75.706(c)
75.703–2(b)	75.705(c), 75.705(d), 75.705(g), and 75.706(b).
75.703–3(a)	75.601(d) and 75.712(a)(1).
75.703–3 (b) and (c)	75.712(a)(1).
75.703–3(d) (1)	75.713(a).
75.703–3(d)	75.601(d)(2) and 75.712(b).
75.703–3(d)(1)	75.713(a).
75.703–3(d)(2)	75.713(e).
75.703–3(d)(3)	75.713(a), 75.713(e), and 75.713(f).
75.703–3(d)(4)	75.603(a)(2).
75.703–3(d)(5)	75.603(a)(3).
75.703–3(d)(6)	75.713(c).
75.703–3(d)(7)	75.713(b).
75.703–3(d)(8)	75.713(d).
75.703–3(d)(9)	Remove.
75.703–3(d)(10)	75.713(e).
75.703–3(d)(11)	75.506 (b) and (c).
75.703–4	Remove.
75.704 and 75.704–1	75.711(c)(1).
75.705	75.506(b), 75.815(a)(1), 75.815(b)(1), and 75.815(b)(2).
75.705–1	75.506(c).
75.705–1(a)	75.507 (a) and (c).
75.705–1 (b)	75.506(c).
75.705–1 (c) and (d)	Remove.
75.705–2 (a) and (b)	Remove.
75.705–3 through –5	Remove.
75.705–6	75.510 (k).
75.705–7	75.510 (m) and (n).
75.705–8	75.510(o).
75.705–9	75.510(j).
75.705–10	Remove.
75.705–11	75.804(i).
75.706	75.531.
75.800	75.802(a)(1), 75.802(a)(2), 75.802(a)(3), and 75.808(a).
75.800–1	75.802(b).
75.800–2(a)	75.802(i) (1) and (2), and 75.808(k) (1) and (2).
75.800–2(b)	Remove.
75.800–2(c)	75.802(d).
75.800–3(a)	75.508(b), 75.508(d), 75.508(e), 75.810(a), and 75.810(d).
75.800–3(b)	75.508(d) and 75.810(d).
75.800–3(c)	75.508(g) and 75.810(a).
75.800–4	75.508 (h) and (i) and 75.810 (f) and (g).
75.801	75.707(a)(2), 75.707(b), and 75.707(c).
75.802(a)	75.703, 75.704(a)(1), 75.707(d), 75.710 (a)(1) and 75.710 (a)(2).

Existing section	Proposed section
75.802(b)	75.703(a), 75.703(b), and 75.703 (c) and (d).
75.802(c)	75.510(a).
75.803	75.506(d)(1), 75.711(b), 75.711(c) (1) through (3), 75.711(d) (1) and (2), and 75.711(e) (1) and (2).
75.803–1	75.511(a)(6) and 75.803(c).
75.803–2	Remove.
75.804(a)	75.515(a), 75.804(g) through (j), 75.811(b), and 75.811 (g) and (h).
75.804(b)	75.519(i) (3), (5), (6), and (7), and 75.811(a).
75.805	75.511(a)(1), 75.511(a)(2), 75.511(a)(3), and 75.511(a)(5).
75.806	75.708.
75.807	75.517(c), 75.804(a), 75.804(b), 75.804(c), 75.813(a)(1), and 75.813(b).
75.808	75.510 (c) and (d), and 75.809(a).
75.809	75.510(f) and 75.525.
75.810	75.519(d), 75.519(i) (1), (2), (3), (4), (6), and (7).
75.811	75.710(a)(5).
75.812	75.515(a), 75.804(d), and 75.805.
75.812–1 and –2	Remove.
75.900	75.508(i), 75.602(a), 75.602(e)(1), 75.602(e)(3), and 75.603(e).
75.900–1	Remove.
75.900–2(a)	75.602(m)(1) and (2).
75.900–2(b)	Remove.
75.900–2(c)	75.602(f).
75.900–2(d)	75.602(c)(2), 75.602(d).
75.900–3	75.508 (b) and (c).
75.900–4	75.508(h).
75.901(a)	75.701, 75.701(b), 75.702, 75.707(a)(1), 75.707(b), 75.707(c), 75.707(d), 75.710 (a)(1), 75.710(a)(3), and 75.710(c).
75.902	75.511(a) (2), (3), and (5), 75.711(a), 75.711(a)(2), 75.711(d)(1), 75.711(d)(2), and 75.711(e) (1) and (2).
75.902–1	75.511(a)(6) and 75.711(f) (1) and (2).
75.902–2	75.711(a) and 75.711(d)(1).
75.902–4	75.711(g).
75.903	75.510 (c) and (d).
75.904	75.525.
75.905	75.708.
75.906	75.515(a), 75.519(d), 75.519 (i)(4), 75.519(i)(6), and 75.601(d).
75.907	75.515(a), 75.601(d), 75.601(h), and 75.601(i).
75.1000	75.1004(a)(3) and 75.1004(a)(4).
75.1001	75.1005(a), 75.1005(b), and 75.1005(c).
75.1001–1(a)	75.1005(a), 75.1005(b), 75.1005(c) and 75.1006(g).
75.1001–1(b)	75.1009(d)(1–7).

Existing section	Proposed section
75.1001–1(c)	75.1009(g) and 75.1009(h).
75.1002	75.502.
75.1002–1(a)	75.501(a)(2).
75.1002–1 (b) and (c)	Remove.
75.1003	75.1001(c).
75.1003(a)	75.1003(a)(1), 75.1003(a)(4), 75.1003(a)(5), and 75.1003 (a)(6).
75.1003(b)	75.1003(a)(3).
75.1003(c)	75.1003(a)(2).
75.1003–1	75.1001(a), 75.1001(d), 75.1010(a) and 75.1010(b)(1).
75.1003–2(a)	75.1010(a) and 75.1010(b)(1).
75.1003–2(a)(1)	75.1010(b)(3).
75.1003 2(a)(2)	Remove.
75.1003–2(b)	Remove.
75.1003–2(c) through (e)	75.1010(b)(3).
75.1003–2(f)	75.1010(c)(1).
75.1003–2(f) (1) and (2)	Remove.
75.1003–2(f)(2)	Remove.
75.1003–2(f)(3) and (4)	75.1010(c)(2).
75.1003–2(f)(5)	75.1010(c)(3).
75.1003–2(g)	75.1010(b)(1).

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the proposed changes to its electrical standards for underground coal mines. In this analysis summarized below, MSHA had determined that the proposed rule will not result in major cost increases, nor have an incremental effect of $100 million or more on the economy. Hence, the rule is not a major rule. MSHA estimates that, after all cost savings are accounted for, annual and annualized costs will increase by $8.3 million. Initial or one-time costs are expected to increase by $2.7 million. Because many provisions in the existing rule were retained, but moved to new subparts, it would not be meaningful to compare cost increases or decreases by subpart.

The requirement for grounded metallic shields around power conductors on trailing cables will result in the greatest cost increase in the proposed rule. Approximately 92 percent of the cost of the rule, or $7.6 million in annual and annualized costs, can be attributed to this requirement, found in proposed § 75.601. During the 3-year phase-in of this requirement, insulated personal protective equipment (e.g., gloves) shall be used when energized high-voltage and unshielded low-voltage trailing cables are moved manually, as required in proposed § 75.530. The costs of § 75.530 are estimated to be $510,000 annualized, including approximately

$133,000 for gloves to be worn while handling high-voltage trailing cables.

The standard that would result in the greatest initial cost would be proposed § 75.803(d), which would require barriers for high-voltage power centers, load breakers, and rectifiers. MSHA estimates that these barriers will cost $1.6 million. The proposed standard that would result in the second greatest increase in initial costs is proposed § 75.157, qualification for low-voltage cable splicing and repair. This is a new requirement and the first-year costs of qualifying persons to splice and repair low-voltage trailing cables is $859,000. However, 76 percent ($650,000) of this cost will be borne by MSHA in developing and administering a test the first year.

Substantial cost savings will also result from changes made to existing rules. The largest savings is related to proposed § 75.508(c), which calls for less frequent examination and testing of certain electrical equipment. This change will save $4.6 million per year.

MSHA estimates that between five and six fatalities and approximately 180 nonfatal injuries would be avoided each year as a result of compliance with the proposed rule. Of these nonfatal injuries, approximately 85 percent would be lost workday injuries. Approximately 2 fatalities and 60 nonfatal injuries could be prevented each year by the new standards in the proposed rule.

Two of the standards that are expected to reduce accidents are proposed §§ 75.803 and 75.601. The first of these standards would require interlocks and emergency stop switches on high-voltage distribution equipment. These switches would automatically deenergize the conductors entering the equipment when a cover or lid over energized components is removed or when the emergency stop switch is activated. Six fatalities in the last ten years were identified where this proposed requirement alone, or in conjunction with another proposed requirement, could have prevented the accident.

Proposed § 75.601, which would require grounded metallic shielding around power conductors on trailing cables, is also expected to save lives. In the last 10 years, MSHA estimates that approximately eight lives could have been saved through the use of shielding. Proposed § 75.506, which would require each person who works on a circuit to be responsible for installing and removing his or her own padlock or other locking device to deenergize the circuit prior to working on it. Approximately two lives could have been saved in the last 10 years with this requirement. Proposed § 75.519 would prohibit temporary splices, a requirement that also could have saved two lives over the 10-year period.

Rubber insulating gloves would be required while troubleshooting and testing energized circuits under proposed § 75.507. Troubleshooting and testing of low-voltage energized circuits would be limited to qualified electricians. It is estimated that these proposed requirements could have prevented two fatalities during the last ten years.

The Agency has not proposed exemption of small mines from any provision of the proposal. MSHA's proposal would clarify compliance responsibilities for all mine operators, adopt performance-oriented standards where possible, and keep recordkeeping burdens to the minimum necessary. Of the approximately 1,700 underground mining operations affected by the proposed regulations, MSHA estimates that 907 are small businesses. The total annualized and annual costs for small mines will increase by an estimated $2.4 million, or about $2,600 per mine. Initial costs will increase by approximately $0.6 million, or roughly $700 per mine. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The annual and annualized capital costs for small mines represents less than 1.0 percent of the revenues for those mines.

The Agency specifically solicits comments and data on how the proposed regulations would impact the mining industry.

List of Subjects in 30 CFR Part 75

Mine safety and health mandatory safety standards, underground coal mine electrical safety standards.

Dated: November 22, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Subparts A, B, F, G, H, I, J and K, of part 75, subchapter I of title 30, Code of Federal Regulations, as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. The table of contents to part 75 is amended by revising subparts F through K as set forth below.

3. Section 75.2(j) is revised as set forth below.

4. The heading for Subpart B and §§ 75.153, 75.154, and 75.159 are revised; § 75.155 is redesignated as § 75.158; and new §§ 75.155 through 75.157 are added as set forth below.

5. Subparts F through K are revised as set forth below.

Subpart F—Electric Equipment—General

Sec.
75.500 Scope.
75.501 Permissible electric equipment.
75.502 Installation of electric conductors, and cables.
75.503 Construction, maintenance, modification, and identification of permissible electric equipment.
75.504 Current between frames of permissible electric equipment.
75.505 Installation and maintenance of electric circuits and equipment.
75.506 Work on electric circuits and equipment.
75.507 Electrical troubleshooting and testing.
75.508 Examination and testing of electric equipment and circuits.
75.509 Switches, control devices, and control circuits.
75.510 Disconnecting devices.
75.511 Cable couplers.
75.512 Trolley taps.
75.513 Lightning protection.
75.514 Lighting fixtures and photographic lighting equipment.
75.515 Insulation of electric conductors and cables.
75.516 Mechanical protection of conductors and cables.
75.517 Support of insulated conductors and cables.
75.518 Insulators and insulated J-hooks.
75.519 Splices, repairs and terminations of conductors and cables.
75.520 Conductor and cable fittings and strain relief devices.
75.521 Damaged conductors and cables.
75.522 Ampacities of low-voltage conductors.
75.523 Overcurrent protection.
75.524 General requirements for overcurrent devices.
75.525 Identification of circuit breakers and fuse holders.
75.526 Nameplates and markings.
75.527 Map of the mine electrical system.
75.528 Alternating-current battery chargers for mining vehicles.
75.529 Emergency deenergization devices for mobile electric equipment.
75.530 Use of insulated trailing cable handling equipment.
75.531 Deenergized underground power circuits; idle days—idle shifts.

Subpart G—Low-Voltage Circuits

75.600 Scope.
75.601 General requirements for trailing cables.
75.602 Electrical protection for alternating-current circuits.

Sec.
75.603 Electrical protection for direct-current trailing cables.
75.604 Physical restraints for cable couplers.

Subpart H—Grounding

75.700 Scope.
75.701 Low-voltage alternating-current system grounding.
75.702 Low-voltage alternating-current system grounding mediums.
75.703 High-voltage alternating-current system grounding.
75.704 High-voltage alternating-current system grounding mediums.
75.705 Direct-current system grounding.
75.706 Direct-current system grounding mediums.
75.707 Grounding resistors.
75.708 Loads connected on resistance-grounded systems.
75.709 Low-resistance ground fields.
75.710 Alternating-current equipment frame grounding.
75.711 Ground-wire monitors for alternating-current equipment.
75.712 Direct-current equipment frame grounding.
75.713 Silicon diode grounding.
75.714 Equipment safety grounding conductors.

Subpart I—High-Voltage Alternating-Current Circuits

75.800 Scope.
75.801 High-voltage systems.
75.802 Protection for circuits, other than trailing cables.
75.803 High-voltage distribution equipment.
75.804 High-voltage cables, other than trailing cables.
75.805 Movement of high-voltage power centers and portable transformers.
75.806 Connection boxes.
75.807 Voltage requirements of electric face equipment.
75.808 Electrical protection of electric face equipment.
75.809 Disconnecting devices for electric face equipment.
75.810 Testing, examination, and maintenance of high-voltage electric face equipment.
75.811 Cables for high-voltage electric face equipment.
75.812 Cable support system; high-voltage longwall electric face equipment.
75.813 Guarding of cables for high-voltage electric face equipment.
75.814 Safety devices for high-voltage systems supplying electric face equipment.
75.815 Procedures for working on high-voltage systems supplying electric face equipment.

Subpart J—[Reserved]

Subpart K—Trolley Wires and Trolley Feeder Wires

75.1000 Scope.
75.1001 Installation.
75.1002 Insulated hangers.
75.1003 Guarding.
75.1004 Cutout switches.
75.1005 Circuit protection.
75.1006 Circuit breakers.
75.1007 Handling.
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75.1009 Examinations, tests and maintenance of trolley systems.
75.1010 Movement and transportation of metallic mining supplies and off-track mining equipment in entries containing trolley wires or trolley feeder wires.

Subpart A—General

§ 75.2 Definitions.

* * * * *

(j) The following definitions apply to electrical safety standards in subparts B and F through K:

(1) *"Adequate interrupting capacity for circuit breakers and fuses"* means the ability of a circuit breaker or fuse to safely interrupt all values of current which can occur at its location in excess of its trip setting or melting point.

(2) *"Ampacity"* means the current-carrying capacity of electric conductors expressed in amperes.

(3) *"Branch circuit"* means the circuit conductors extending beyond the final short-circuit device protecting the circuit.

(4) *"Branch line"* means a circuit which extends from an ongoing circuit.

(5) *"Cable"* means an assembly of one or more insulated conductors enclosed by an additional abrasion resistant covering or jacket. A cable may also contain one or more uninsulated equipment safety grounding conductors. A power cable is any cable except communication, instrumentation and control cables.

(6) *"Circuit breaker"* means a device designed to open and close a circuit by non-automatic means and to open the circuit automatically at a predetermined overcurrent value without damage to the device when operated within its rating.

(7) *"Circuit breaker adjustable-trip unit"* means a trip unit of a circuit breaker which can be set to trip at various current values and/or times within a predetermined range.

(8) *"Circuit breaker setting"* means the value of current or time at which an adjustable circuit breaker is set to trip.

(9) *"Conductor"* means a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

(10) *"Dielectric strength (withstand voltage)"* means the ability of insulating materials and spacings to withstand specified overvoltages for a specified time without flashover or puncture.

(11) *"Equipment safety grounding conductor"* means a conductor used to connect the non-current-carrying metallic parts of electric equipment, raceways, and other metallic enclosures to the system grounding medium.

(12) *"Extended-time rated grounding resistor"* means a resistor capable of carrying a rated current for a period of time that exceeds the period of time necessary for its temperature to reach a constant value, and which is capable of operating at its maximum operating temperature for at least 90 days per year without opening.

(13) *"Fail-safe"* is a term related to ground-wire monitors and solid-state direct-current overcurrent relays meaning that failure of any component other than relay contacts will not prevent a device from performing its intended function, unless the device is designed to activate a circuit-interrupting device when such failure occurs.

(14) *"Feeder circuit"* means the conductors between the power source and the final branch circuit short-circuit protective device.

(15) *"Fuse"* means an overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it.

(16) *"Ground-fault"* means an unintentional connection between an electric circuit and the grounding system.

(17) *"Ground-wire monitor"* means a device having the primary function of monitoring the equipment safety grounding conductor of a circuit and causing the affected circuit breaker to trip when a change in the impedance of the grounding circuit presents a potential electrical shock hazard.

(18) *"High-voltage distribution equipment"* means a unit of high-voltage equipment which switches, controls, or transforms an incoming high-voltage circuit to one or more high-voltage or low-voltage circuits.

(19) *"High-voltage system or circuit"* means a system or circuit with a nominal voltage greater than 1,040 volts.

(20) *"Instantaneous-trip circuit breaker"* means a circuit breaker with no intentional time delay designed in its tripping action.

(21) *"Inverse-time circuit breaker"* means a circuit breaker with an intentional time delay in its tripping action, which delay decreases as the magnitude of the current increases.

(22) *"Low-voltage system or circuit"* means a system or circuit with a nominal voltage of 1,040 volts or less.

(23) *"Maximum voltage"* means the highest root-mean-square voltage which occurs in a system or circuit under normal operating conditions.

(24) *"Mobile electric equipment"* means electric equipment capable of movement from one location to another by power supplied from a source located on the machine or transmitted to the machine by means of a trailing cable.

(25) *"Nominal voltage"* means the phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system for designation of its voltage class, such as 480 or 4,160 volts. Actual voltage at which the circuit or system operates may vary from the nominal voltage within a range that permits satisfactory operation of equipment.

(26) *"Non-adjustable circuit breaker"* means a circuit breaker which has no adjustment to alter the value of current at which it will trip or the time required for its operation.

(27) *"Off-track equipment"* means machines and devices which are not track-mounted in normal operation, such as main frames of mining machines, mobile electric face equipment, pump assemblies, battery chargers, power centers, rectifiers, switchgear, belt conveyor drive units, tailpieces, and compressors.

(28) *"Overcurrent"* means any current in excess of the rated current of equipment or the ampacity of a conductor, which may result from overload, short-circuit, or ground-fault conditions.

(29) *"Overload"* means operation of equipment in excess of normal full-load rating, or loading of a conductor in excess of rated ampacity, which would cause damage or dangerous overheating if allowed to continue.

(30) *"Parallel-connected rectifier trolley system"* means a trolley system which has two or more rectifiers connected together so that their individual output currents are added and flow to common loads.

(31) *"Portable electric equipment"* means electric equipment which is designed and constructed to facilitate frequent movement from one location to another, and which does not normally remain at a fixed location for extended periods of time.

(32) *"Qualified cable splicer"* means an individual who has met the requirements of 30 CFR 75.157.

(33) *"Qualified electrician"* means an individual who has met the requirements of 30 CFR 75.153.

(34) *"Radial stub-feed trolley system"* means a trolley system in which independent feeders branch out radially and connect one or more loads to only one source of power, through which the normal flow of energy is in one direction only.

(35) *"Resistance-grounded system"* means an electrical system in which the neutral point of the transformer or generator winding is intentionally grounded through a current limiting resistor which limits ground-fault current to a value equal to or less than the values specified in subparts H and I, but greater than the system capacitive charging current.

(36) *"Short circuit"* means an abnormal connection of relatively low impedance, whether made accidentally or intentionally, between two points of different potential.

(37) *"Solid-grounded system"* means an electrical system grounded through a connection in which no impedance has been intentionally inserted, where the short-circuit current-carrying capacity of the ground connection is at least equal to the bolted phase-to-neutral fault current.

(38) *"Splice"* means the mechanical and electrical connection of one or more severed conductors in a single length of conductor or cable.

(39) *"Stationary electric equipment"* means electric equipment other than mobile or portable that is fastened, secured or installed such that it cannot be readily moved from one location to another during normal use.

(40) *"Surge arrester"* means a device which is used to provide protection against lightning surges.

(41) *"System"* means a combination of all conductors and associated apparatus connected together without intervening transforming apparatus.

(42) *"Tie-feeder or multiple-feeder circuit breaker"* means a circuit breaker which connects together two or more independent sources of power.

(43) *"Trailing cable"* means a portable cable or flexible cord through which electrical energy is transmitted to any off-track mobile electric equipment, or a portable cable or flexible cord which receives electrical energy from a section power center, section distribution box, section rectifier, or section nipping station.

(44) *"Undervoltage protection"* means the effect of a device which operates on failure of voltage to cause and maintain the interruption of power to a circuit so as to prevent automatic restarting of the equipment.

(45) *"Ungrounded system"* means an electrical system without an intentionally-made connection to ground, except through potential indicating or measuring devices.

(46) *"Voltage-to-ground"* means the root-mean-square voltage between any conductor of the circuit or system and that point of the circuit or system which is grounded.

* * * * *

Subpart B—Qualified Persons

§ 75.153 Qualified electricians.

(a) Upon the effective date of this rule, to become a qualified electrician, an individual shall:

(1) Successfully complete the qualification tests administered by MSHA according to 30 CFR 75.154 or a state according to 30 CFR 75.155; and

(2) Have at least one year of experience in a position requiring the installation and maintenance of electric circuits and equipment in a coal or other mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment. Six months of experience may be credited to persons who have completed a two-year electrical technology program or a four-year electrical engineering program.

(b) In order to retain qualification, all qualified electricians shall complete an annual refresher training program in accordance with the requirements of 30 CFR 75.156. Annual refresher training shall be approved in accordance with 30 CFR 75.160.

(c) Electricians qualified prior to the effective date of this rule shall remain qualified, subject to fulfillment of the annual refresher training requirement.

(d) The District Manager may revoke an electrician's qualification for cause, including intentional violation of the requirements of part 75 or the intentional defeat of any safety device or circuit. Before any revocation becomes effective, the District Manager shall send written reasons for revocation to the electrician, who shall be given ten days to respond. Unless otherwise determined by the District Manager, revocation shall become effective ten days from notification to the electrician. A decision by the District Manager to revoke an electrician's qualification may be appealed by the electrician to the Administrator for Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. Such an appeal shall be submitted to the Administrator within 30 days from the effective date of the revocation. Upon revocation of an electrician's qualified status, the District Manager shall immediately notify the appropriate mine operator.

§ 75.154 MSHA qualification of mine electricians.

(a) Application to take electrical qualification tests shall be made to the District Manager of the appropriate Coal Mine Safety and Health District, and shall include:

(1) A written request to be tested for qualification in low-voltage, high-voltage or both voltage categories; and

(2) Written evidence that the applicant meets the electrical experience requirement in 30 CFR 75.153(a)(2).

(b) Tests for low-voltage qualification shall include:

(1) Written examination of direct-current and alternating-current theory and application;

(2) Written examination or practical demonstration of knowledge in low-voltage coal mine electric equipment and circuits;

(3) Written examination or practical demonstration of knowledge of permissibility requirements for coal mine electric equipment; and

(4) Written examination of the requirements of subparts F through H and subpart K of this part.

(c) Tests for high-voltage qualification shall include:

(1) Written examination or practical demonstration of knowledge of coal mine electric power distribution circuits and equipment; and

(2) Written examination of the requirements of subpart I of this part.

(d) Applicants may take tests for qualification in both the low-voltage and high-voltage categories on the same occasion, but shall not be qualified in the high-voltage category without successfully passing the low-voltage tests.

(e) A score of at least 80 percent on each of the tests in the relevant voltage category is required for qualification. One percentage point, up to five percentage points, shall be added to the score of each test for each year of the applicant's experience in excess of the required one year.

(f) Applicants for electrical qualification may retake the tests for which a score of less than 80 percent was received within 30 days following notification to the applicant of the test results. Applicants failing to achieve a score of at least 80 percent on the tests retaken are not eligible for further retesting until 30 days after the applicant is notified of the retest results.

§ 75.155 State qualification of mine electricians.

(a) State programs for the qualification of mine electricians, which include at least the following, shall be recognized by MSHA:

(1) The experience requirement specified in 30 CFR 75.153(a)(2);

(2) The MSHA-developed tests or demonstrations specified by 30 CFR 75.154 (b) and (c), or comparable tests or demonstrations jointly developed and agreed upon by MSHA and a state; and

(3) Procedures necessary to ensure the integrity and fairness of testing and grading.

(b) Tests given by the states shall be administered by a qualified electrician.

(c) The District Manager for the Coal Mine Safety and Health District in which testing and grading is to be conducted shall be notified of the time and place of testing at least 20 days in advance. The District Manager shall have the option of monitoring all testing and grading.

§ 75.156 Electrical annual refresher training programs.

(a) An electrical annual refresher training program consisting of at least eight hours of safety instruction shall be presented by a qualified electrician, and programs shall include:

(1) A review of electrical accidents occurring in the industry and their causes; and

(2) A review of electrical safety procedures including lockout and tagging methods.

(b) Operators' programs shall consist of conducting their own refresher training, or participation in refresher training programs conducted by MSHA, a state, other Federal agencies, associations of mine operators, miners' representatives, other mine operators, private associations, or educational institutions.

(c) Only electricians who have completed an annual refresher training program shall perform work required to be performed by a qualified electrician.

(d) Electricians who have not completed refresher training for a period of three consecutive years are no longer considered qualified. They may only regain their qualified status by reapplication for qualification in accordance with 30 CFR 75.153.

(e) The District Manager shall be notified of the time and place of annual refresher training at least 20 days in advance, and shall have the option of monitoring retraining sessions.

(f) Approval of an operator's electrical annual refresher training program required by 30 CFR 75.160 may be revoked by the District Manager for cause.

§ 75.157 Qualification for low-voltage cable splicing and repair.

(a) Individuals shall be considered qualified to splice or repair low-voltage trailing cables if they—

(1) Have at least one year of experience as a miner in a working section of an underground coal mine;

(2) Successfully complete a written test administered by MSHA or a state; and

(3) Successfully perform a practical demonstration of ability to splice and repair low-voltage trailing cables.

(b) Tests for qualification in low-voltage cable splicing and repair shall be developed by MSHA, and shall include written examination of—

(1) Lockout and tagging procedures, and other safety precautions relevant to the repair and splicing of trailing cables;

(2) The applicable requirements of this part; and

(3) The purpose and use of cable splicing components.

(c) Written tests shall be administered and practical demonstrations shall be monitored by an authorized representative of MSHA, or an authorized representative of the State who is a qualified electrician or qualified for low-voltage cable splicing and repair.

(d) The practical demonstration of an applicant's ability shall include:

(1) Performance of all safety precautions required by this part for splicing trailing cables;

(2) Proper splicing of a round No. 2 AWG, three-conductor, type GGC trailing cable;

(3) Proper repair of a damaged outer jacket; and

(4) Demonstration of proper methods of splicing metallic cable shielding.

(e) The District Manager of the Coal Mine Safety and Health District in which tests and demonstrations are to be conducted shall be notified of the time and place of testing at least 20 days in advance and shall have the option of monitoring the testing and demonstrations.

(f) The District Manager may revoke a miner's qualification to splice and repair low-voltage trailing cable for cause, including intentional violation of the requirements of this part or the intentional defeat of any safety device or circuit. Before any revocation becomes effective, the District Manager shall send written reasons for revocation to the miner, who shall be given ten days to respond. Unless otherwise determined by the District Manager, revocation shall become effective ten days from notification to the miner. A decision by the District Manager to revoke an individual's qualification to splice and repair cables may be appealed by the miner to the Administrator for Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203. Such an appeal shall be submitted to the Administrator within 30 days from the effective date of the revocation. Upon revocation of an individual's qualified status, the District Manager shall immediately notify the appropriate mine operator.

§ 75.150 Records of certified and qualified persons.

The operator of each coal mine shall maintain available for inspection at the mine and certify by signature and date as correct, a list of all certified and qualified persons required to perform duties under part 75. The list shall include the names of those persons who have been qualified as mine electricians, or to splice and repair low-voltage cables, the applicable voltage category and dates of qualification and retraining.

Subpart F—Electric Equipment—General

§ 75.500 Scope.

(a) This subpart contains general requirements pertaining to the installation, maintenance, testing, examination, electrical protection and performance of electric circuits and equipment. Requirements pertaining to these and other safety aspects of circuits and equipment are specified in more detail in subpart G, Low-Voltage Circuits; subpart H, Grounding; subpart I, High-Voltage Alternating-Current Circuits; and subpart K, Trolley Wires and Trolley Feeder Wires, of this part.

(b) This subpart does not contain requirements pertaining to the design and construction of permissible equipment and intrinsically safe circuits, except as provided in 30 CFR 75.503, 75.509, 75.511, and 75.529.

§ 75.501 Permissible electric equipment.

(a) Electric equipment in the following areas shall be permissible, except as specified in paragraphs (b) and (c) of this section and 30 CFR 75.514:

(1) In or inby the last open crosscut;

(2) Within 150 feet of pillar workings, or longwall and shortwall faces;

(3) Areas that are ventilated by air that has ventilated any working place or any worked-out area, whether pillared or non-pillared; and

(4) Inaccessible areas.

(b) Non-permissible electric welders, hand-held power tools and test instruments may be used to repair permissible equipment that is disabled and cannot be moved from areas where permissible equipment is required, provided:

(1) The area is ventilated with air that has not been used to ventilate coal cutting or loading operations;

(2) Repairs are made in air that contains less than 1.0 percent of methane;

(3) A fire extinguisher complying with 30 CFR 75.1100–1(e), or 240 pounds of rock dust is made available within 50 feet of the equipment being repaired; and

(4) Repairs are made under the supervision of a certified person, who shall immediately before and during such repairs, test with means approved by the Secretary to assure the presence of less than 1.0 percent methane, and shall make a diligent search for fire during and after such repairs.

(c) The following equipment which is certified by MSHA as explosion-proof may be used in areas requiring permissible equipment, provided such installations are approved by the District Manager:

(1) Distribution boxes, controller boxes, and motors used as part of water pump assemblies; and

(2) Cable couplers.

§ 75.502 Installation of electric conductors and cables.

Electric conductors and cables shall not be installed in areas where permissible equipment is required, other than the following:

(a) Trailing cables supplying power to permissible equipment.

(b) Conductors of permissible equipment.

(c) Conductors of intrinsically safe circuits.

(d) Shielded cables.

(e) Conductors of electric equipment required for making repairs as described in 30 CFR 75.501(b).

(f) Conductors of electric equipment as described in 30 CFR 75.501(c).

§ 75.503 Construction, maintenance, modification, and identification of permissible electric equipment.

(a) Electric equipment required to be permissible shall be constructed in accordance with the MSHA approval regulations in effect at the time the equipment is manufactured, and be maintained in accordance with the regulations under which the equipment was approved.

(b) Field modifications of permissible electric equipment shall be made and maintained in accordance with the MSHA approval regulations in effect at the time the equipment is modified.

(c) Written applications for modification of permissible equipment and plans for modifications shall be filed with the MSHA Approval and Certification Center, Box 251 Industrial Park Road, Triadelphia, West Virginia 26059.

(d) Approval and certification plates shall be attached to permissible electric equipment and shall be maintained so that model numbers, approval numbers, and certification numbers are legible.

§ 75.504 Current between frames of permissible electric equipment.

In areas where permissible equipment is required, the current that flows between the frames of any two units of equipment that contact each other shall not exceed 1.0 ampere as determined from the voltage that is measured across a 0.1 ohm resistor connected between the frames of the equipment.

§ 75.505 Installation and maintenance of electric circuits and equipment.

(a) Except as provided in paragraphs (b) and (c) of this section, electric circuits and equipment shall be installed and maintained by a low-voltage or high-voltage qualified electrician, as applicable.

(b) Persons trained to perform electrical work who are supervised by a qualified electrician as required in paragraph (d) of this section shall be permitted to install and maintain low-voltage circuits.

(c) Persons qualified under 30 CFR 75.157 shall be permitted to repair and splice low-voltage trailing cables on those parts of the trailing cable which are external to couplers or compartments.

(d) The qualified electrician who supervises trained persons performing electrical work shall—

(1) Provide direct and immediate supervision and be present during the work;

(2) Assure that the circuit or equipment is properly deenergized, disconnected, locked out, and tagged before work is started; and

(3) Examine the completed work before the circuit or equipment is energized.

§ 75.506 Work on electric circuits and equipment.

(a) Doors and cover plates on electric equipment which allow access to electric connections, shall be closed at all times, except during installation, testing, and repair.

(b) Except when necessary for troubleshooting and testing, as specified in 30 CFR 75.507, electric circuits and equipment shall be deenergized before electrical work is started in accordance with the following:

(1) The appropriate disconnecting device shall be opened, locked out with a padlock and tagged by persons performing the work;

(2) The disconnecting device shall be locked out with an individual padlock for each person performing work;

(3) The tag shall identify each person performing the work and identify the circuit or equipment being worked on;

(4) When two or more electric circuits are located within a single compartment, each circuit shall be deenergized and locked out before electrical work is started on any circuit.

(c) When high-voltage power conductors are required to be deenergized, they shall be connected to the system grounding conductor by a high-voltage qualified electrician, and the high-voltage circuit shall remain grounded until the work is completed.

(d) Padlocks and tags shall only be removed by the person who installed them.

(e) When mechanical repairs or maintenance being performed on electric equipment requires the power to be removed in accordance with 30 CFR 75.1725(c), the disconnecting devices shall be opened, locked out with a padlock, and tagged by the persons performing the work.

(f) Conductors that are not supplying power to electric equipment shall be deenergized and shall—

(1) Be removed from their supply source; or

(2) Have their supply source locked out and any exposed ends insulated.

§ 75.507 Electrical troubleshooting and testing.

(a) Troubleshooting and testing of energized circuits shall be performed only—

(1) On low-voltage circuits; and

(2) When the purpose of troubleshooting and testing is to determine voltages and currents.

(b) Electrical troubleshooting and testing of energized circuits shall only be performed by a qualified electrician wearing rubber insulating gloves with protective coverings designed to prevent physical damage to the insulation material.

(c) Before troubleshooting and testing a low-voltage circuit contained in a compartment with a high-voltage circuit, the high-voltage circuit shall either be deenergized, grounded, locked out and tagged, or physically separated by a permanent barrier or partition from the low-voltage circuit.

(d) Rubber insulating gloves used when troubleshooting and testing shall be—

(1) Rated at least for the nominal voltage of the circuit;

(2) Examined before each use for visible signs of damage or defects; and

(3) Removed from the underground area of the mine when damaged or defective.

§ 75.508 Examination and testing of electric equipment and circuits.

(a) Electric equipment and circuits shall be installed, maintained, and used to prevent fire, electrical shock, ignition, or operational hazards. Electric equipment or circuits that present a hazard to persons due to improper installation or maintenance, misuse, or damage, shall be deenergized and tagged as a hazard.

(b) A low- or high-voltage qualified electrician, as applicable, shall make examinations of all electric equipment and circuits to determine that the electrical protection, equipment grounding, permissibility, cable insulation, and control devices, are being properly maintained to prevent fire, electric shock, ignition or operational hazards from existing on the equipment. Examinations shall include testing when necessary to make such determinations.

(c) The examinations of low-voltage equipment and circuits required by paragraph (b) of this section shall be made:

(1) When installed, and at least every 7 days on mobile and portable electric equipment and circuits; and

(2) When installed and at least every 30 calendar days on stationary equipment and circuits and hand-held power equipment.

(d) Surface and underground high-voltage switchgear used in conjunction with circuits which extend underground shall be tested at least once each 90 calendar days as follows:

(1) The circuit breaker shall be opened by breaking the continuity of the ground-check conductor at the extreme end of the monitoring circuit when a ground-check conductor is used.

(2) The circuit breaker shall be opened by activating at least one interlock switch for each power center.

(e) The equipment specified in paragraph (d) of this section shall be visually examined at least once every 30 calendar days for hazardous conditions resulting from exposed energized parts or equipment defects.

(f) Each high-voltage grounding resistor and high-voltage circuit protective device located on the surface to protect underground circuits shall be tested when installed and at least every 12 months thereafter as follows:

(1) Pass current through each current transformer necessary to cause the circuit breaker to open.

(2) Impress voltage across each potential ground-fault device necessary to cause the circuit breaker to open.

(3) Determine whether the grounding resistor is open or shorted.

(g) When examinations or tests of equipment or circuits reveal a fire, electrical shock, ignition or operational hazard, the equipment shall either be removed from service or repaired.

(h) At the completion of examinations and tests required by this section, the person who makes the examinations and tests shall certify by signature and date that they have been conducted. A record shall be made of any unsafe condition found, and corrective action taken.

(i) Certifications and records shall be kept for at least one year, and shall be made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

(j) When equipment is idle for more than the number of days required for examination by this section, examinations need not be conducted, except that examinations shall be conducted prior to the equipment being returned to service.

§ 75.509 Switches, control devices, and control circuits.

(a) Switches and control devices shall be properly installed and maintained on electric equipment so that it can be safely operated.

(b) Switches and control devices on electric equipment shall have voltage and current ratings of at least the voltage and current of the circuit in which they are used.

(c) Alternating-current remote control circuits shall have a maximum voltage of 150 volts.

(d) Control circuits having a neutral or one conductor solidly connected to the grounding medium shall be wired so that ground faults in the circuits will not—

(1) Start equipment;

(2) Prevent equipment from being stopped; or

(3) Prevent operation of protective devices connected in the circuit.

(e) Control circuits shall be wired so that stop switches will deenergize the affected circuit if a start switch remains in the "start" position.

(f) Tram controls on mobile electric equipment shall return automatically to the neutral position when released.

(g) Automatic over-temperature switches shall be provided and maintained on air compressors other than those compressors which are component parts of locomotives and rock dusting machines. Such switches shall automatically deenergize the compressor at predetermined settings specified by the manufacturer of the compressor, not to exceed 340 degrees fahrenheit.

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§ 75.510 Disconnecting devices.

(a) A disconnecting device shall be installed in each power circuit that extends underground and shall be located—

(1) On the surface within 500 feet of where the circuits enter the underground area of the mine; and

(2) Underground, within 500 feet from the bottom of shafts and boreholes when the circuit enters the mine through a shaft or borehole.

(b) Disconnecting devices which are not designed for load interruption, and are located as specified in paragraph (a)(2) of this section shall be—

(1) Installed so that the incoming power circuit can be deenergized by a circuit breaker which can be operated at the disconnect device location, before such devices are opened; and

(2) Provided with a visual or audible means, at the disconnect location, to determine that the incoming power has been removed from such device.

(c) Disconnecting devices shall be installed in conjunction with each circuit breaker and at the beginning of each branch circuit and trailing cable used underground.

(d) Disconnecting devices shall be designed to provide visual evidence that all ungrounded power conductors of the circuit are disconnected when the devices are open.

(e) Disconnecting devices shall be equipped with a means for installing a padlock.

(f) Each disconnecting device shall be distinctly marked to indicate the specific unit of equipment that it serves. The marking shall be identical to the marking of the corresponding circuit breaker or fuse holder, and shall be of sufficient durability to withstand the mining environment. Where a plug and receptacle are used as a disconnecting device, both the plug and receptacle shall be marked identically.

(g) Disconnecting devices shall have voltage and current ratings compatible with the circuits in which they are used.

(h) Except for trolley taps, low-voltage disconnecting devices shall not have exposed energized parts.

(i) High-voltage disconnecting devices installed underground after [insert the effective date of the rule] shall be enclosed in a grounded metallic enclosure and shall have no exposed energized parts.

(j) High-voltage disconnecting devices having exposed energized parts shall be—

(1) Guarded to prevent inadvertent contact with energized parts; and

(2) Operated only be a high-voltage qualified electrician.

(k) Qualified electricians who operate high-voltage disconnecting devices with exposed energized parts shall wear rubber insulating gloves rated at least 20,000 volts which have protective coverings designed to prevent physical damage to the insulating material, and shall use insulated sticks, fuse tongs, or pullers when operating the disconnecting devices.

(l) Insulated sticks, fuse tongs, and pullers shall be insulated and maintained to protect the qualified electrician from exposure to voltage.

(m) Gloves, insulated sticks, insulated fuse tongs, and insulated pullers shall be examined before each use for visible signs of physical damage and defects.

(n) Damaged or defective gloves, sticks, fuse tongs, and pullers shall be removed from the underground areas of the mine.

(o) Rubber insulating gloves shall be electrically tested at least every 6 months.

§ 75.511 Cable couplers.

(a) Cable couplers shall—

(1) Enclose all power conductors of the circuit in which the coupler is used;

(2) Be equipped with a metallic outer shell when the nominal voltage of the circuit exceeds 600 volts;

(3) Have voltage ratings of at least the nominal voltage of the circuit in which the couplers are used;

(4) Have current ratings of at least the maximum continuous current rating of the circuit in which the couplers are used;

(5) Be constructed so that ground-check conductors or interlock circuit conductors will separate first and equipment safety grounding conductors will separate last when the couplers are disconnected;

(6) Be equipped with an electrical or mechanical interlock on all three phase circuits and direct-current trailing cable circuits which prevents the coupler from being disconnected while energized. The voltage of interlock circuits shall not exceed 40 volts on low-voltage circuits or 96 volts on high-voltage circuits; and

(7) Not be connected or disconnected under load.

(b) Cable couplers on mobile battery-powered electric face equipment shall:

(1) Meet the requirements of 30 CFR 18.41; or

(2) Be held in place by a threaded ring or equivalent mechanical fastening equipped with a captive device removable only by a special tool to separate the connection.

§ 75.512 Trolley taps.

(a) Trolley taps shall be connected to trolley wires and feeder wires only by pressure-type connectors when the load of the circuit exceeds 4 amperes.

(b) Trolley taps shall not be connected or disconnected under load.

§ 75.513 Lightning protection.

(a) Surge arresters shall be provided for exposed ungrounded power conductors and telephone wires that extend underground.

(b) Power conductors and telephone wires that are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shields, coverings, or enclosures, throughout their entire length need not be equipped with surge arresters.

(c) Surge arresters shall be located on the surface within 100 feet of the point where the conductors—

(1) Enter the mine;

(2) Are buried;

(3) Are installed beneath a protective metallic covering;

(4) Are enclosed within grounded metallic shields, coverings, or enclosures; or

(5) Are supported by grounded metallic messenger wires.

(d) Surge arresters shall be rated for the voltage and current of the circuit they protect.

(e) Surge arresters providing lightning protection for conductors that extend underground shall be connected to a low-resistance ground field that is separated from neutral ground fields by a distance of not less than 25 feet.

§ 75.514 Lighting fixtures and photographic lighting equipment.

(a) Lamps used to illuminate slopes and enclosed underground structures shall be installed within glass, plastic or equivalent enclosures.

(b) Incandescent lamps used to illuminate walkways and work areas shall be installed—

(1) Within glass, plastic or equivalent enclosures; or

(2) In weatherproof sockets, provided they are located at least eight feet above travelways and work areas.

(c) In locations other than those specified by paragraphs (a) and (b) of this section, incandescent lamps shall be installed in weatherproof sockets, or within glass, plastic or equivalent enclosures.

(d) Lamps shall not contact combustible materials, and except as provided in paragraphs (b)(2) and (c) of this section, shall be enclosed within glass, plastic or equivalent enclosures.

(e) Low-pressure sodium lamps shall not be used underground.

(f) Non-permissible electronic photographic equipment may be used in underground mines in areas where permissible equipment is required provided that—

(1) Such areas are ventilated with air that has not been used to ventilate coal cutting or loading operations;

(2) The air in such areas contain less than 1.0 percent methane; and

(3) The equipment is used under the supervision of a certified person who shall immediately before and during its use, test with means approved by the Secretary to assure the presence of less than 1.0 percent methane.

§ 75.515 Insulation of electric conductors and cables.

(a) Electric power, control, ground-check, interlock and communication conductors and cables shall have insulation with a voltage rating of at least the nominal voltage of the circuit in which they are used, except for—

(1) Trolley wires and trolley feeder wires installed with mine track;

(2) Grounded power conductors of direct-current feeder systems;

(3) Equipment and system grounding conductors; and

(4) Bare signal wires of 40 volts or less.

(b) Exposed electric connections and resistor grids shall be insulated. When insulation would be impractical, they shall be guarded to prevent inadvertent contact by persons or equipment.

§ 75.516 Mechanical protection of conductors and cables.

Electric conductors and cables, and communication wires and cables shall be protected to prevent functional damage to the outer jacket and insulation. Trailing cables shall be protected against damage from mobile electric equipment by bridges, trenches, suspension from the mine roof or rib, or by location.

§ 75.517 Support of insulated conductors and cables.

(a) Insulated electric conductors and cables shall be supported by insulators or insulated J-hooks and shall not contact combustible materials, roof, or ribs, except for the following:

(1) Trailing cables;

(2) Metallic shielded cables;

(3) Conductors installed in conduits;

(4) Equipment and system grounding conductors; and

(5) Grounded power conductors on direct-current feeder circuits.

(b) Materials other than insulators may be used to support cables meeting the requirements of 30 CFR 75.601, provided such cables are supported from non-combustible materials. Materials used to support the cables shall be flame resistant, insulated for at least the maximum voltage of the circuit, and have a tensile strength of at least three times the weight supported.

(c) Communication circuits shall not contact light or power circuits.

(d) Communication wires or cables installed in track entries shall be installed in the entry on the opposite side of the trolley wire or trolley feeder wire.

§ 75.518 Insulators and insulated J-hooks.

Insulators and insulated J-hooks shall have—

(a) Flame-resistant insulating material;

(b) Insulating material with a dielectric strength of at least eight times the maximum voltage of the circuit; and

(c) A tensile strength of at least three times the supported weight.

§ 75.519 Splices, repairs and terminations of conductors and cables.

(a) High-voltage cables shall be spliced, terminated, or repaired by high-voltage qualified electricians.

(b) Low-voltage trailing cables shall be spliced, repaired, or terminated by a qualified electrician or a qualified cable splicer.

(c) Splices and repairs in low-voltage trailing cables shall be made with splice and repair kits that meet the flame-resistance tests in 30 CFR 18.64.

(d) The outer jacket of each splice and repair in a high-voltage trailing cable shall be vulcanized or molded with materials that are flame resistant in accordance with 30 CFR 18.64.

(e) Splices and repairs in cables shall be sealed to exclude moisture.

(f) A splice in a trailing cable shall contain only one connection point in each conductor.

(g) Terminations of shielded high-voltage cables shall include stress-relief on each power conductor.

(h) Metallic shielding of single-conductor cables shall be connected to messenger wires and equipment safety grounding conductors at each splice and termination.

(i) Each splice and repair shall have—

(1) Conductivity and current-carrying capacity that prevents insulation damage due to heating of conductors;

(2) The severed conductors joined by welding or compression-type conductors;

(3) Each power, control, and ground check conductor individually reinsulated with insulation having a thickness temperature rating, and dielectric strength of at least that of the original insulation;

(4) Semiconducting tape replaced over the insulation of each power conductor within shielded cables;

(5) Metallic shielding in the form of metallic braid or serving (wrap) replaced over each power conductor and applied in half-lapped layers, on shielded trailing cables;

(6) Metallic shielding in the form of metallic braid or serving (wrap), or metallic tape replaced over each power conductor and applied in half-lapped layers, on shielded cables other than trailing cables; and

(7) The outer jacket replaced to provide at least the same thickness and protection as that of the original jacket.

§ 75.520 Conductor and cable fittings and strain relief devices.

(a) Except as provided in paragraph (c), cables shall enter metallic frames of electric enclosures through fittings sized for the cable which prevent damage to cable jackets and the insulation of the internal conductors.

(b) Except as provided in paragraph (c), conductors shall enter metallic frames of electric enclosures through fittings with insulated bushings sized for the conductors.

(c) Cables and conductors in conduit that enter metallic frames of electric enclosures need not be equipped with fittings or bushings when protection against damage by sharp edges is provided.

(d) Cables and conductors shall be secured to prevent mechanical strain on electrical connections.

(e) Trailing cables shall be attached to the equipment supplied by an insulated strain clamp or cable grip.

§ 75.521 Damaged conductors and cables.

Conductors and cables shall be deenergized, disconnected in accordance with 30 CFR 75.506, and either removed from service or repaired when they have—

(a) A damaged outer jacket;

(b) Damaged conductor insulation;

(c) A damaged conductor;

(d) A damaged splice or repair; or

(e) A splice that heats or sparks.

§ 75.522 Ampacities of low-voltage conductors.

(a) Electric conductors shall be of a size and current-carrying capacity to assure that a rise in temperature resulting from normal operating conditions does not damage the insulation and conductors.

(b) Branch circuit conductors supplying electric equipment shall have ampacities of at least 125 percent of the maximum full-load current rating of the equipment.

(c) Feeder circuit conductors supplying one or more loads shall have ampacities of at least the sum of the full-

load current rating of each load, plus 25 percent of the highest full-load current rating of the largest load.

(d) The ampacity of conductors for the equipment specified in paragraphs (b) and (c) of this section shall be at least that specified in Tables F–1 through F–4 below:

(1) Table F–1 for flexible cords rated 300 and 600 volts.

TABLE F–1.—ALLOWABLE AMPACITIES OF 300- AND 600-VOLT FLEXIBLE CORDS; COPPER CONDUCTORS

Conductor size AWG	Types S, SO, SJO, ST, STO, SJT, SJTO, SOO, SJOO, STOO, SJTOO		Types AFS, AFSJ, HSJ, HSJO, HS, HSO
	Current-carrying conductors		Current-carrying conductors
	2	3	3
14	18	15	20
12	25	20	30
10	30	25	35
8	.....	35	.....

(2) Table F–2 for portable power cables rated 2,000 volts or less.

TABLE F–2.—ALLOWABLE AMPACITIES OF SHIELDED AND UNSHIELDED 0- TO 2000-VOLT PORTABLE POWER CABLES; COPPER CONDUCTORS

[Based on Ambient Air Temperature of 20 °C (68 °F)]

Conductor size AWG or MCM	Ampacities—Number of current-carrying conductors in cable or raceway						
	1		2		3		
	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	90 °C [2]
8	75	90	63	80	63	70	.....
6	100	120	91	112	91	98	110
4	138	171	113	160	106	123	144
3	163	197	131	171	125	142	165
2	188	227	150	197	144	163	188
1	213	260	175	225	168	190	217
1/0	250	304	213	258	181	219	249
2/0	294	352	244	296	213	254	287
3/0	344	407	281	337	244	294	329
4/0	394	472	325	387	275	339	379
250	428	525	356	420	306	378	419
300	494	590	356	472	344	421	470
350	556	651	475	514	371	465	515
400	603	706	492	555	406	507	555
500	681	830	518	610	469	575	632

[1] 0–2000 Volt Insulation, Unshielded Portable Power Cable
[2] 0–2000 Volt Insulation, Shielded Portable Power Cable

(3) Tables F–3 and F–4 for conductors other than flexible cords, or portable cables rated 2,000 volts or less.

TABLE F–3.—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60 °C TO 90 °C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18	.....	.....	.....	15	.....	.....	.....	.....	.....
16	.....	.....	20	19	.....	.....	.....	.....	.....
14	20	20	27	25	.....	.....	.....	.....	.....
12	25	25	33	30	20	20	27	25	12
10	35	35	43	40	29	30	35	35	10
8	48	55	58	59	35	44	43	49	8
6	64	72	76	81	44	55	60	65	6
4	81	94	103	103	64	72	82	81	4
3	96	111	120	119	75	89	92	92	3
2	110	127	136	140	87	99	109	108	2
1	127	144	158	162	98	111	110	124	1

TABLE F–3.—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60 °C TO 90 °C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))—Continued

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
0	144	166	179	184	116	133	141	145	0
00	167	193	207	211	133	149	158	162	00
000	191	221	234	243	150	171	185	189	000
0000	225	254	272	281	173	199	212	221	0000
250	248	282	298	313	190	227	239	246	250
300	277	315	337	346	219	254	272	275	300
350	299	343	370	378	243	276	294	302	350
400	323	370	397	410	260	296	321	329	400
500	370	420	451	464	300	343	364	378	500
600	410	464	500	513	329	376	402	416	600
700	445	508	544	562	358	414	446	454	700
750	462	525	560	576	370	425	457	470	750
800	474	541	582	599	381	436	467	486	800
900	502	575	614	632	410	470	506	518	900
1000	525	602	641	664	433	492	527	540	1000
1250	572	652	696	718	468	536	571	589	1250
1500	601	691	739	761	502	575	614	632	1500
1750	629	718	766	794	526	602	647	654	1750
2000	647	735	788	810	543	619	660	680	2000

TABLE F–4.—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2,000 VOLTS (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size awg or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18	.....	.....	.....	19	.....	.....	.....	.....	.....
16	.....	.....	25	25	.....	.....	.....	.....	.....
14	25	30	33	35	.....	.....	.....	.....	.....
12	30	35	43	40	25	30	30	35	12
10	40	50	60	55	35	40	43	40	10
8	59	77	82	86	52	61	65	65	8
6	92	105	109	113	69	80	87	86	6
4	121	138	147	151	92	111	114	119	4
3	139	160	174	178	110	127	136	140	3
2	162	188	201	205	127	149	158	162	2
1	191	215	234	238	150	171	179	189	1
0	225	254	272	281	173	199	212	221	0
00	260	293	315	324	200	232	245	254	00
000	300	343	364	378	231	265	286	297	000
0000	347	396	424	437	271	309	332	340	0000
250	393	448	478	491	306	348	375	383	250
300	433	492	527	545	335	387	413	427	300
350	485	558	596	616	381	436	467	481	350
400	526	602	647	664	410	470	505	516	400
500	595	665	734	756	468	536	571	589	500
600	664	762	815	842	526	597	647	664	600
700	728	834	897	923	576	657	707	726	700
750	757	867	929	958	595	685	734	756	750
800	785	901	962	994	618	713	761	783	800
900	843	961	1033	1064	670	774	826	848	900
1000	901	1033	1109	1139	722	829	886	913	1000
1250	1028	1177	1261	1296	820	945	1011	1037	1250
1500	1132	1298	1386	1431	918	1050	1125	1161	1500
1750	1236	1414	1516	1561	1010	1160	1245	1290	1750
2000	1334	1531	1636	1685	1109	1271	1365	1442	2000

§ 75.523 Overcurrent protection.

(a) All electric circuits and equipment shall be protected against overcurrents by circuit breakers, fuses, or other automatic circuit interrupting devices in accordance with this section, except as otherwise provided in MSHA's regulations.

(b) Overload devices shall be installed in each ungrounded power conductor supplying motors and shall—

(1) Be rated or set as specified in Table F–5; and

(2) Cause deenergization of all ungrounded power conductors when any conductor is overloaded.

TABLE F–5.—MAXIMUM RATING OR SETTING OF MOTOR OVERLOAD PROTECTIVE DEVICES

Motor markings	Percent of full load current
Service Factor Greater than 1.15	125
Temperature Rise not Over 40 degrees C	125
All Others	115

(c) Circuit breakers shall be installed to provide short-circuit protection for branch circuits supplying three-phase motors and shall be rated or set as specified in Table F–6.

TABLE F–6.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH-CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR THREE-PHASE MOTORS

Type of motor	Percent of full-load current	
	Instantaneous trip breaker	Inverse time breaker
All Polyphase Squirrel-Cage and Synchronous Motors with Full-Voltage, Resistor or Reactor Starting:		
No Code Letter	700	250
Code Letter F to V	700	250
Code Letter B to E	700	200
Code Letter A	700	150
All AC Squirrel-Cage and Synchronous Motors with Auto-transformer Starting:		
Not More than 30 Amps No Code Letter	700	200
More than 30 Amps:		
No Code Letter	700	200

TABLE F–6.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH-CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR THREE-PHASE MOTORS—Continued

Type of motor	Percent of full-load current	
	Instantaneous trip breaker	Inverse time breaker
Code Letter F to V	700	200
Code Letter B to E	700	200
Code Letter A	700	150
High-Reactance Squirrel-Cage:		
Not More than 30 Amps No Code Letter	700	250
More than 30 Amps No Code Letter	700	200
Wound-Rotor—No Code Letter	700	150

(d) Circuit breakers or fuses shall be installed to provide short-circuit protection for branch circuits supplying single-phase and direct-current motors and shall be rated or set as specified in Table F–7.

TABLE F–7.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH-CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR SINGLE-PHASE MOTORS AND DIRECT-CURRENT MOTORS

Type of motor	Percent of full-load current			
	Nontime delay fuse	Dual element (time-delay) fuse	Instantaneous trip breaker	Inverse time breaker
Single-Phase, All Types No Code Letter	300	175	700	250
All AC Single-Phase with Full-Voltage, Resistor or Reactor Starting:				
No Code Letter	300	175	700	250
Code Letter F to V	300	175	700	250
Code Letter B to E	250	175	700	200
Code Letter A	150	150	700	150
Direct-Current (Constant Voltage)				
No More than 50 HP No Code Letter	150	150	250	150
More than 50 HP No Code Letter	150	150	175	150

(e) Where the setting specified in Table F–6 above is not sufficient for the starting current of alternating-current motors, the setting of a circuit breaker shall be permitted to be increased, but shall in no case exceed 1,300 percent of the motor's full-load current on instantaneous trip circuit breakers and 400 percent of the motor's full-load current for inverse-time circuit breakers.

(f) Circuit overcurrent protection for motor feeder circuits, transformers, and welders shall be provided by either circuit breakers or fuses in accordance with Table F–8 below:

TABLE F–8.—MAXIMUM OVERCURRENT PROTECTION SETTINGS FOR TRANSFORMERS, WELDERS, WELDER BRANCH CIRCUITS, AND MOTOR FEEDER CIRCUITS

Circuits and equipment	Ratings	Location
Transformers	250% of rated full load primary current	Each ungrounded power conductor supplying power to the transformer.
Welders	200% of rated primary current	Each ungrounded power conductor supplying power to equipment.
Welder Branch Circuit	200% of cable ampacity	Each ungrounded power conductor.
Motor Feeder Circuits	100% of the fuse or circuit breaker rating protecting the largest motor plus the sum of the full load currents of all the other motors supplied from the system or 100% of the ampacity of the feeder conductors.	Each ungrounded power conductor at the beginning of the feeder circuit.

(g) All electric equipment not addressed in paragraphs (b) through (f) of this section shall be protected by circuit breakers or fuses with ratings or settings not to exceed the full load current ratings of the equipment.

(h) All supply, control, lighting, and other conductors not addressed in paragraphs (b) through (f) of this section shall be protected at their ampacity.

(i) Overcurrent protection shall not be required on incandescent lamps supplied from direct-current systems, provided the length of ungrounded conductors does not exceed eight feet.

(j) When the required rating of a fuse or circuit breaker without an adjustable trip unit does not correspond to a standard rating for fuses or circuit breakers, the protective device used shall not exceed the next higher standard device rating.

(k) Circuit breakers or fuses providing short-circuit protection shall be installed where the circuit conductors are connected to the supply, except for feeder tap conductors that—

(1) Do not exceed 25 feet in length;

(2) Have ampacities of at least one-third of the ampacity of the feeder conductors; and

(3) Terminate at a circuit breaker or fuse with a current rating that does not exceed the ampacity of the feeder tap conductors.

§ 75.524 General requirements for overcurrent devices.

(a) Fuses, circuit breakers, or a combination of both shall not be connected in parallel.

(b) Fuses and circuit breakers shall have voltage ratings of at least the maximum voltage of the circuit being protected.

(c) Fuses and circuit breakers shall have a continuous current rating of at least the maximum full-load current of the circuit.

(d) Fuses and circuit breakers shall have interrupting current ratings of at least the maximum fault current available at the fuse or breaker.

(e) Circuit breakers shall be installed so that the "up" position of the handle indicates the "on" position.

(f) Circuit breakers shall not automatically reclose after tripping operations, except as provided in 30 CFR 75.1006.

(g) Thermal cutouts, thermal relays and other devices used for overload protection of motor circuits shall not be used for protection against short circuits, unless the devices are designed for short-circuit protection.

(h) A fuse or an overcurrent trip device of a circuit breaker shall be connected in series with each ungrounded power conductor, except that a combination of a current transformer and relay used as an overcurrent trip device does not have to be installed in series.

(i) Overcurrent devices shall be readily accessible and protected against physical damage.

(j) Renewable link-type fuses shall not be used for protection of low-voltage circuits and equipment.

§ 75.525 Identification of circuit breakers and fuse holders.

Circuit breakers, trolley taps, fuse switchboxes, and other fuse holders shall be legibly, durably, and distinctively marked to identify the unit of equipment or circuit protected.

§ 75.526 Nameplates and markings.

Motors, transformers, and circuit breakers shall have a nameplate or other durable markings indicating the manufacturer's name and the rated voltage and current.

§ 75.527 Map of the mine electrical system.

(a) A map of the mine electrical system shall be maintained and made available for inspection by authorized representatives of the Secretary and representatives of the miners, and shall indicate—

(1) The size and location of circuit breakers, fuses, transformers, cables, rectifiers, switchgear, and disconnecting devices of high-voltage systems;

(2) The size and location of stationary equipment operated by 10 horsepower or larger motors;

(3) The size and location of trolley wires, trolley feeder wires and return feeder wires;

(4) The size and location of track rails used as power conductors with a notation as to whether one or both rails are bonded or welded at every joint;

(5) The size, location and settings of direct-current circuit breakers protecting trolley circuits;

(6) The location of cutout switches and deadblocks installed in trolley circuits; and

(7) The size and location of compressor stations.

(b) Changes in the mine electrical system shall be reflected on the map within 5 working days after the circuit or equipment is reenergized and returned to service.

§ 75.528 Alternating-current battery chargers for mining vehicles.

Alternating-current battery chargers for mining vehicles installed on or after [insert the effective date of the rule] shall have—

(a) A two-winding transformer that electrically isolates the battery charging circuit from the alternating-current supply circuit;

(b) A control circuit with a maximum voltage which does not exceed 150 volts; and

(c) An electrostatic (Faraday) shield between the secondary and primary windings when the charger is supplied from a circuit having a voltage that exceeds 150 volts. Such shields shall be aluminum or copper, connected to the battery charger frame, and have a cross-sectional area consistent with 30 CFR 75.714(c).

§ 75.529 Emergency deenergization devices for mobile electric equipment.

(a) Except as provided in paragraph (b) of this section, mobile electric face equipment shall have devices capable of quickly deenergizing the tramming motors of the equipment as follows:

(1) An emergency deenergization device consisting of an electro-mechanical stop switch and an actuating bar extending a sufficient distance in each direction from the stop switch to permit quick actuation of the device shall be installed at each location from which the equipment can be operated;

(2) Actuating bars shall be installed on both sides of the operator's compartment on battery-powered articulated equipment that has the seating arranged so that the equipment operator normally faces a position 90 degrees from the direction of travel;

(3) When the equipment can be trammed from a location other than the operator compartment, the actuating bar shall be installed so that the bar is located between the operator and the machine at all times the machine is being trammed;

(4) The actuating bar shall be capable of causing the electro-mechanical stop switch to operate when it is moved a distance not to exceed two inches, and by a force of fifteen pounds or less; and

(5) Actuating bars shall not interfere with the normal operation of the equipment.

(b) Mobile electric face equipment that is equipped with a substantially constructed cab which meets the requirements of part 75 shall not be required to be provided with devices that will quickly deenergize the tramming motors of the equipment in the event of an emergency.

(c) The Director of Technical Support may approve other emergency deenergization devices if it is determined that equivalent protection would be provided. Operators shall apply to the Chief of the Approval and

Certification Center, Mine Safety and Health Administration, Industrial Park Boulevard, Rural Route 1, Box 251, Triadelphia, West Virginia 26059, for acceptance of the installation of other devices used in lieu of devices that will deenergize the tramming motors.

§ 75.530 Use of insulated trailing cable handling equipment.

(a) When energized high-voltage and unshielded low-voltage trailing cables are moved manually, insulated hooks, tongs, slings, gloves, mitts, aprons or other insulated personal protective equipment capable of protecting against shock shall be used.

(b) Insulated personal protective equipment shall be—

(1) Rated for at least the nominal voltage of the circuit for low-voltage trailing cables;

(2) Rated for at least 20,000 volts for high-voltage trailing cables;

(3) Examined before each use for visible signs of damage or defects; and

(4) Removed from the underground area of the mine when damaged or defective.

(c) Insulated handling equipment for use with high-voltage trailing cables shall be electrically tested every 6 months.

§ 75.531 Deenergized underground power circuits; idle days—idle shifts.

When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

Subpart G—Low-Voltage Circuits

§ 75.600 Scope.

(a) The standards in this subpart contain requirements pertaining to low-voltage circuits, and include:

(1) Section 75.601, which addresses design and construction of trailing cables;

(2) Sections 75.602 and 75.603, which address electrical protection (short circuit, ground-fault, and undervoltage) of trailing cables. Section 75.602 also addresses electrical protection (overcurrent, ground-fault, and undervoltage) of low-voltage alternating-current systems which supply power to electric equipment located out by the working section, except for requirements pertaining to single-phase systems energized at 150 volts or less to ground, which are specified in subpart F. Specific requirements for overcurrent protection are specified in subpart F; and

(3) Section 75.604 addresses cable coupler physical restraint requirements for all low-voltage circuits.

(b) This subpart does not contain requirements pertaining to:

(1) Mechanical protection, splicing and repair, disconnecting devices, ground-wire monitors, and insulated handling equipment for low-voltage circuits, which are specified in subpart F of this part;

(2) System and equipment grounding, which are specified in subpart H;

(3) Electrical protection of alternating-current systems supplying power to stationary lighting fixtures for illumination of working places, which are specified in subparts F and R;

(4) Splicing and repairing of low-voltage cables and conductors, which are addressed in subpart F.

(5) The design and construction of on-board circuits and components of permissible equipment and intrinsically safe circuits.

§ 75.601 General requirements for trailing cables.

(a) Each trailing cable shall be flame resistant in accordance with 30 CFR 18.64.

(b) Each grounding conductor in a shielded trailing cable shall be bare.

(c) Ground-check and interlock conductors shall be contained in the cable and shall have a cross-sectional area equal to or greater than:

(1) No. 10 AWG when the circuit power conductors are No. 10 AWG or larger; or

(2) The cross-sectional area of one circuit power conductor when the circuit power conductors are smaller than No. 10 AWG.

(d) Each trailing cable shall contain at least one equipment safety grounding conductor unless the cable supplies—

(1) A tool that is double insulated; or

(2) A unit of equipment that is silicon diode grounded in accordance with subpart H.

(e) The power conductors in trailing cables for mobile haulage equipment shall be at least—

(1) No. 6 AWG for cables supplying alternating-current equipment; and

(2) No. 4 AWG for cables supplying direct-current equipment.

(f) Each power conductor in trailing cables for non-haulage equipment employing cable reels shall be at least No. 8 AWG.

(g) Trailing cables for mobile electric equipment energized with a nominal alternating-current voltage from 150 volts phase-to-ground to 660 volts phase-to-phase (381 volts phase-to-ground) shall be provided with a grounded metallic shield around each power conductor in accordance with the following schedule:

(1) Mobile electric equipment not employing cable reels after [insert date one year from the effective date of the final rule]; and

(2) Cable reel equipment after [insert date three years from the effective date of the final rule].

(h) Trailing cables energized with a nominal alternating-current voltage greater than 660 volts (381 volts phase-to-ground) shall be provided with a grounded metallic shield around each power conductor in accordance with the following schedule:

(1) Equipment not employing cable reels on and after [insert the effective date of the final rule]; and

(2) Cable reel equipment after [insert date three years from the effective date of the final rule].

(i) Prior to [insert date three years after the effective date of the final rule], trailing cables for low-voltage cable reel equipment energized with a nominal alternating-current voltage greater than 660 volts (381 volts phase-to-ground) shall be provided with a grounded metallic shield around each power conductor unless provided with insulation with a voltage rating of at least 2,000 volts.

(j) Metallic shielding on shielded cables acquired after [insert the effective date] shall be applied in the form of braid or serving (wrap) to meet the following applicable requirements.

(1) Metallic braid shall provide at least 84 percent coverage.

(2) Metallic wire serving (wrap) shall provide at least 60 percent coverage.

(k) The length of a trailing cable shall not exceed the length specified in Table G–1 of this section.

TABLE G–1—MAXIMUM LENGTH OF TRAILING CABLE

	Conductor size		Maximum cable length in feet	
	AWG [1]	MCM [2]	Direct current	Alternating current
Less than.	8	.....	500	750
	6	.....	550	750
	4	.....	600	750
	3	.....	650	750
	2	.....	700	750
	1	.....	750	750
	1/0	.....	800	800
	2/0	.....	850	850
	3/0	.....	900	900
	4/0	.....	1000	1000
		250 or greater.	1000	1000

[1] AWG means American wire gage.
[2] MCM means one thousand circular mils.

§ 75.602 Electrical protection for alternating-current circuits.

(a) Except as provided in paragraph (b), each trailing cable shall be protected against short circuits, undervoltages, and ground faults by a circuit breaker of adequate interrupting capacity.

(b) Each single-phase trailing cable energized at 150 volts or less to ground shall be protected against short circuits and ground faults by a circuit breaker of adequate interrupting capacity.

(c) Each ungrounded power conductor of a trailing cable shall be protected by—

(1) An inverse-time circuit breaker with a maximum current rating specified in Table G–2 below;

(2) An instantaneous-trip circuit breaker with a maximum instantaneous setting specified in Table G–3 below; or,

(3) A short-time delay electronic circuit breaker having a time delay not to exceed 0.1 second and a maximum setting as specified in Table G–3.

TABLE G–2—MAXIMUM RATINGS OF FUSES PROTECTING DIRECT-CURRENT TRAILING CABLES AND INVERSE-TIME CIRCUIT BREAKERS

Conductor size (AWG or MCM)	Maximum inverse-time circuit breaker or fuse rating (amperes)		
	1 Ungrounded power conductor	2 Ungrounded power conductors	3 Ungrounded power conductors
14	15	15	15
12	20	20	20
10	30	30	25
8	50	50	50
6	90	70	70
4	110	110	110
3	150	150	150
2	150	175	175
1	175	200	200
1/0	200	225	225
2/0	250	250	250
3/0	300	300	300
4/0	350	350	350
250	350	350	350
300	400	350	350
350	450	350	350
400	500	400	400
500	600	450	400

TABLE G–3.—MAXIMUM SETTINGS OF INSTANTANEOUS AND ELECTRONIC CIRCUIT BREAKERS PROTECTING 480, 600, AND 1040 VOLT ALTERNATING-CURRENT TRAILING CABLES

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
14	0–500	75	100	.....
	501–750	50	75	.....
12	0–500	125	175	.....

TABLE G–3.—MAXIMUM SETTINGS OF INSTANTANEOUS AND ELECTRONIC CIRCUIT BREAKERS PROTECTING 480, 600, AND 1040 VOLT ALTERNATING-CURRENT TRAILING CABLES—Continued

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
10	501–750	100	125	.....
	0–500	200	250	.....
8	501–750	150	200	.....
	0–500	300	400	.....
6	501–750	200	300	.....
	0–550	450	550	550
4	501–750	350	450	700
	0–500	750	900	1250
3	501–600	650	800	1100
	601–750	550	650	1000
2	0–500	900	1100	1400
	501–550	700	900	1200
	551–750	650	800	1100
1	0–500	1100	1250	1500
	501–600	950	1100	1400
	601–750	800	950	1250
1/0	0–500	1300	1450	1650
	501–600	1100	1300	1550
	601–750	950	1100	1400
2/0	0–500	1500	1650	1750
	501–600	1300	1500	1650
	601–750	1100	1300	1500
	751–800	1050	1250	1500
3/0	0–500	1700	1800	1850
	501–600	1500	1650	1750
	601–750	1350	1450	1650
	751–850	1200	1350	1550
4/0	0–500	1900	1950	1900
	501–600	1700	1800	1800
	601–750	1500	1650	1700
	751–900	1300	1450	1650
250	0–500	2100	2100	1950
	501–600	1900	1950	1900
	601–750	1700	1900	1800
	751–1000	1400	1550	1650
300	0–500	2150	2150	2000
	501–600	2000	2050	1900
	601–750	1750	1850	1850
	751–1000	1500	1650	1700
350	0–500	2300	2250	2000
	501–600	2100	2100	1950
	600–750	1900	1950	1900
	751–1000	1600	1750	1750
400	0–500	2350	2300	2050
	501–600	2200	2200	2000
	601–750	2000	2000	1900
	751–1000	1700	1800	1800
500	0–500	2450	2350	2100
	501–600	2250	2250	2000
	601–750	2050	2100	1950
	751–1000	1800	1850	1850
	0–500	2500	2400	2100
	501–600	2350	2300	2050
	601–750	2150	2150	1950
	751–1000	1900	1950	1850

(d) Upon investigation, the District Manager may permit in writing other circuit breaker short-circuit settings if technical data deem it appropriate and it does not pose a hazard to the miners.

(e) Overcurrent, ground-fault and undervoltage protection shall be provided by circuit breakers of adequate interrupting capacity for the following alternating-current circuits, other than trailing cables:

(1) Resistance-grounded three-phase circuits.

(2) Single-phase circuits energized at more than 150 volts-to-ground.

(3) Ungrounded circuits installed in accordance with 30 CFR 75.701(b).

(f) A circuit breaker used to protect two or more branch circuits shall provide overcurrent protection for the smallest conductor.

(g) Overcurrent protection for alternating-current circuits other than trailing cables shall meet the requirements of 30 CFR 75.523.

(h) Ground-fault devices shall deenergize the faulted circuit at 40 percent or less of the maximum ground-fault current of the system.

(i) The ground-fault device nearest the connected load shall be activated with no intentional time delay. When the operating times of upstream ground-fault detection devices within a system are increased to provide selective tripping, the operating time of the most upstream device shall not exceed 1.0 second.

(j) Equipment safety grounding conductors shall not pass through or be connected in series with ground-fault current transformers.

(k) Effective [insert date six months after effective date] resistance-grounded systems for trailing cables shall have a test circuit that injects a current of 50 percent or less of the maximum ground-fault current of the system. The test circuit shall be operated at least once every seven days, causing each circuit breaker to open.

(l) The ground-fault current device and circuit breaker shall be removed from service or repaired when the circuit breaker fails to open upon operation of the test circuit required by paragraph (k) of this section.

(m) Undervoltage devices shall be—

(1) Undervoltage trip coils; or

(2) Shunt trip coils energized by undervoltage relays or ground-monitor relays. Such coils shall be energized by stored energy devices to assure the circuit breaker will trip upon loss of control voltage.

(n) Circuit breakers protecting multiple trailing cables operating in parallel shall be interlocked such that all such trailing cables will be deenergized simultaneously.

§ 75.603 Electrical protection for direct-current trailing cables.

(a) Except as provided in paragraph (f), each ungrounded power conductor of a trailing cable shall be protected against short circuits by one of the following:

(1) An inverse-time circuit breaker of adequate interrupting capacity with a

maximum current rating as specified in Table G–2 above;

(2) An individual fuse with a maximum current rating as specified in Table G–2 when the trailing cable is supplied from a solid-grounded system; or

(3) An instantaneous-trip circuit breaker of adequate interrupting capacity with a maximum instantaneous setting as specified in Table G–4.

TABLE G–4.—MAXIMUM SETTINGS OF INSTANTANEOUS CIRCUIT BREAKERS PROTECTING 300 AND 600 VOLT DIRECT-CURRENT TRAILING CABLES

Conductor size (AWG or MCM)	Cable length (feet)	300 VDC maximum instantaneous circuit breaker setting (amperes)		600 VDC maximum instantaneous circuit breaker setting (amperes)	
		Line-line [1]	Line-ground [2]	Line-line [1]	Line-ground [2]
14	0–500	50	50	50	50
12	0–500	75	75	125	125
10	0–500	75	75	200	200
8	0–500	100	100	300	300
6	0–500	200	100	450	300
4	0–500	450	250	600	500
	501–600	350	200	550	400
3	0–500	450	350	700	550
	501–650	400	250	600	450
2	0–500	600	450	750	600
	501–600	550	400	700	550
	601–700	495	300	650	500
1	0–500	900	600	1400	1050
	501–600	750	500	1250	950
	601–750	600	400	1050	800
1/0	0–500	1100	750	1600	1250
	501–600	950	650	1450	1100
	601–750	750	550	1250	950
	751–800	700	500	1200	900
2/0	0–500	1350	950	1900	1450
	501–600	1150	800	1650	1300
	601–750	950	650	1450	1100
	751–850	850	600	1350	1050
3/0	0–500	1550	1150	2000	1550
	501–600	1400	1000	1850	1500
	601–750	1150	800	1650	1300
	751–900	1000	700	1500	1150
4/0	0–500	1550	1400	2200	1850
	501–600	1500	1200	2050	1700
	601–750	1400	1000	1850	1500
	751–1000	1100	750	1600	1250
250	0–500	2050	1550	2350	2000
	501–600	1900	1250	2200	1850
	601–750	1550	1150	2000	1650
	751–1000	1250	900	1750	1400
300	0–500	2300	1750	2450	2150
	501–600	2050	1550	2350	2000
	601–750	1750	1300	2150	1800
	751–1000	1450	1050	1900	1550
350	0–500	2550	1950	2600	2300
	501–600	2250	1700	2450	2150
	601–750	1950	1500	2300	1950
	751–1000	1600	1200	2050	1700
400	0–500	2750	2150	2650	2400
	501–600	2450	1900	2550	2250
	601–750	2150	1600	2400	2050
	751–1000	1750	1350	2150	1800
500	0–500	3050	2450	2800	2550
	501–600	2800	2200	2700	2400
	601–750	2450	1900	2550	2250
	751–1000	2050	1550	2350	2000

[1] The line-to-line instantaneous circuit breaker settings shall be used for trailing cables supplying power to diode grounded equipment and for trailing cables containing a separate equipment safety grounding conductor if the circuit is provided with separate ground-fault protection.

[2] The line-to-ground instantaneous circuit breaker settings shall be used for trailing cables containing a separate equipment safety grounding conductor when the circuit is not provided with separate ground-fault protection.

(b) Upon investigation, the District Manager may permit in writing higher fuse ratings or circuit breaker settings than those specified in paragraph (a) of this section for short-circuit protection if technical data deem them appropriate and they do not pose a hazard to the miners.

(c) Fuses shall be approved in accordance with part 28 of this Chapter.

(d) Fuses shall have a direct-current voltage rating of at least equal to the maximum system voltage.

(e) Each trailing cable supplied from a resistance-grounded system shall be protected against ground faults by a circuit breaker of adequate interrupting capacity, that deenergizes the circuit when the ground-fault current exceeds 40 percent of the current rating of the grounding resistor.

(f) Each trailing cable supplied power from a system that has the direct neutral of the rectifier bridge supply-transformer solidly grounded shall be protected against ground faults by an instantaneous trip circuit breaker of adequate interrupting capacity that deenergizes the circuit at a ground-fault current value not to exceed 50 amperes.

(g) The ground-fault device nearest the load shall operate with no intentional time delay.

(h) Equipment safety grounding conductors shall not pass through or be connected in series with ground-fault current transformers.

§ 75.604 Physical restraints for cable couplers.

When two or more circuit breakers with different ratings, trip elements, or instantaneous trip ranges are installed in the same distribution box, power center, or rectifier, each cable coupler (plug) shall be equipped with a physical restraint to prevent the connection of a cable to a circuit breaker that is not properly rated or adjusted for that cable.

Subpart H—Grounding

§ 75.700 Scope.

(a) The standards in this subpart apply to—

(1) Grounding of metallic parts, raceways and enclosures of electric equipment;

(2) Grounding methods of alternating-current and direct-current systems;

(3) Grounding of alternating-current equipment frames and components, including battery cases, connected to alternating-current battery charging systems;

(4) Grounding of direct-current equipment frames and components including messenger wires, metallic racks and structures that support power conductors and metallic overcasts;

(5) Diode grounding systems; and

(6) System and supplemental low-resistance ground fields.

(b) Additional requirements for grounding high-voltage electric face equipment are also specified in subpart I.

(c) Additional requirements for grounding alternating-current systems supplying power to stationary lighting fixtures for illumination of working places are specified in more detail in subpart R.

§ 75.701 Low-voltage alternating-current system grounding.

Each low-voltage alternating-current system that extends or originates underground, shall be grounded by having either a direct or a derived neutral connected to the grounding medium through a grounding resistor, except for the following systems:

(a) A solidly-grounded single-phase system that—

(1) Supplies only stationary or portable electric equipment; and

(2) Has either a direct neutral or phase conductor solidly connected to the system grounding medium so that the phase-to-ground voltage is 150 volts or less.

(b) An ungrounded system that—

(1) Supplies only stationary equipment;

(2) Has ground-fault protection which automatically deenergizes all phase conductors when any phase conductor is grounded; and

(3) Has all phase conductors totally enclosed in either rigid metallic conduit, metallic armored cable, metal-clad cable or shielded cable when the phase-to-phase voltage exceeds 150 volts. See Figure H–1 in Appendix A.

(c) An ungrounded single-phase system that—

(1) Has a phase-to-phase voltage of 150 volts or less; and

(2) Originates on the secondary side of a two-winding transformer equipped with a metallic (Faraday) shield connected to the grounding medium to isolate the low-voltage secondary winding from the primary winding. See Figure H–2 in Appendix A.

(d) An ungrounded system that—

(1) Supplies only a rectifier which is mounted with the source transformer or generator on a common metallic frame; and

(2) Has the conductors totally enclosed in either rigid metallic conduit, metallic armored cable, metal clad cable, or shielded cable when the phase-to-ground voltage exceeds 150 volts.

(e) An ungrounded system that has the supply transformers and all other components contained in a single metallic enclosure or installed on the common metallic frame of electric face equipment.

§ 75.702 Low-voltage alternating-current system grounding medium.

The system grounding medium for a low-voltage alternating-current system shall be the metallic frame or metallic enclosure of the generator, transformer, or transformer bank that is connected to a low-resistance ground field. See Figure H–3 in Appendix A.

§ 75.703 High-voltage alternating-current system grounding.

High-voltage alternating-current systems that extend underground shall be grounded by having either a direct or a derived neutral connected to the grounding medium through a grounding resistor, except for ungrounded systems that—

(a) Supply only stationary equipment;

(b) Have a nominal phase-to-phase voltage which does not exceed 2,400 volts;

(c) Have ground-fault protection which automatically deenergizes all phase conductors when any phase conductor is grounded; and

(d) Have all phase conductors totally enclosed in rigid metallic conduit, metallic armored cable, metal-clad cable, or shielded cable. See Figure H–4 in Appendix A.

§ 75.704 High-voltage alternating-current system grounding mediums.

(a) The system grounding medium for a resistance-grounded system shall be—

(1) A low-resistance ground field for a transformer-derived system; or

(2) The metallic frame of the supply transformer or generator that is connected to a low-resistance ground field.

(b) The system grounding medium for an ungrounded system shall be the metallic frame or metallic enclosure of the supply transformer, transformer bank, or generator which is connected to a low-resistance ground field. See Figure H–5 in Appendix A.

§ 75.705 Direct-current system grounding.

Each direct-current system that extends or originates underground shall be one of the following systems:

(a) A solid-grounded trolley system that has one conductor solidly connected to the track.

(b) A solid-grounded system, other than a trolley system, that has one conductor solidly connected to the system grounding medium.

(c) A solid-grounded system that has the direct neutral of the alternating-current system supplying only a rectifier bridge solidly connected to the system grounding medium. See Figure H–7 in Appendix A.

(d) A resistance-grounded system that has either a direct or a derived neutral of the alternating-current system supplying only a rectifier bridge connected to the grounding medium through a grounding resistor. See Figure H–8 in Appendix A.

(e) An ungrounded system that has—

(1) Ground-fault protection which automatically deenergizes all power conductors when any phase conductor is grounded; and

(2) A line-to-line system voltage of 330 volts or less. See Figure H–9 in Appendix A.

(f) A battery-powered system that is ungrounded.

(g) An ungrounded system derived on-board mobile electric equipment.

§ 75.706 Direct-current system grounding mediums.

(a) The system grounding medium for each direct-current trolley system shall be the mine track.

(b) The system grounding medium for direct-current systems derived on-board mobile electric equipment, including battery-powered equipment, shall be the metallic frame of the equipment.

(c) The system grounding mediums for all other direct-current systems shall be the metallic frame or metallic enclosure of the power source that is connected to a low-resistance ground field. See Figure H–10 in Appendix A.

§ 75.707 Grounding resistors.

Each grounding resistor shall—

(a) Have a resistance value that—

(1) Limits ground-fault currents to 25 amperes or less on low-voltage systems; and

(2) Limits the voltage drop in the grounding circuit external to the resistor to not more than 100 volts during a ground-fault on high-voltage systems. See Figure H–6 in Appendix A;

(b) Be extended-time rated at a current value at least equal to the maximum ground-fault current that can flow through the resistor;

(c) Be supported by insulators which have voltage ratings that are at least equal to the phase-to-phase alternating-current voltage of the system; and

(d) Be located in the same substation or enclosure or installed on a common metallic frame with the alternating-current source supplying the system.

§ 75.708 Loads connected on resistance-grounded systems.

Loads shall be connected phase-to-phase on alternating-current systems and line-to-line on direct-current systems that are resistance-grounded.

§ 75.709 Low-resistance ground fields.

(a) Low-resistance ground fields used in the safety grounding system shall be designed and installed in a manner to assure that the maximum exposure voltage under fault conditions will not create hazardous step and touch potentials. The following parameters shall be considered in evaluating ground field safety—

(1) Soil resistivity;

(2) Available fault current;

(3) Grounding field construction; and

(4) Operating times of protective devices.

(b) Low-resistance ground fields used in the safety grounding system shall be maintained at 25 ohms or less, unless an evaluation of the system in accordance with paragraph (a) of this section indicates that—

(1) A lower value of resistance is necessary; or

(2) A higher value of resistance may be used.

(c) Resistance to earth shall be tested by a low-voltage or high-voltage qualified electrician, as applicable, when installed and at least annually thereafter. Records of such tests shall be made in accordance with 30 CFR 75.508.

(d) Materials used for ground fields shall have at least four square feet of surface area in contact with soil.

§ 75.710 Alternating-current equipment frame grounding.

(a) The following equipment shall be connected to the system grounding mediums required by 30 CFR 75.702 and 75.704 by equipment safety grounding conductors:

(1) Metallic frames, enclosures, and other exposed non-current-carrying metallic parts of conductors and equipment, unless double insulated.

(2) Metallic fences and barriers around high-voltage equipment and installations.

(3) Metallic battery trays.

(4) Metallic messenger wires.

(5) Metallic structures or racks that support electric equipment or conductors.

(b) Metallic cable shielding shall be connected to the equipment safety grounding conductor at each termination.

(c) Before batteries are connected to a battery charger, the metallic battery trays shall be connected to the grounded metallic frame of the battery charger and shall remain connected until the batteries have been disconnected from the charger.

§ 75.711 Ground-wire monitors for alternating-current equipment.

(a) Low-voltage resistance-grounded systems shall have ground-wire monitors to continuously monitor the continuity of the grounding circuits to the equipment affected except for—

(1) Low-voltage circuits supplying power to longwall illumination systems; and

(2) Low-voltage stationary equipment installed in accordance with all of the following:

(i) The equipment is permanently installed at a fixed location.

(ii) All load components of the equipment are securely attached to a common metallic frame or structure.

(iii) Each component of the equipment is grounded by two independent equipment safety grounding conductors each sized in accordance with 30 CFR 75.714.

(iv) At least one of the equipment safety grounding conductors to each component is visible for its entire length.

(b) High-voltage resistance-grounded systems shall have ground-wire monitors to continuously monitor the continuity of the grounding circuits, except for the portions of the circuits extending from resistance-grounded systems that supply power to either surface stationary equipment or stationary circuit breakers located downstream and used to protect circuits extending underground.

(c) Circuits supplying surface stationary equipment that are not equipped with ground-wire monitors shall meet the following:

(1) Metallic frames or enclosures of the equipment shall be separately connected to supplemental ground fields at the equipment, and to the system ground field by equipment safety grounding conductors. See Figure H–11 in Appendix A.

(2) Circuit breakers shall be separately connected to supplemental ground fields at the circuit breaker, and to the system ground fields by equipment safety grounding conductors. See Figure H–11 in Appendix A.

(3) Supplemental system ground fields shall have resistance-to-earth values which do not exceed the value obtained by dividing 100 volts by the maximum ground-fault current of the system.

(d) Ground-wire monitors for cables extending to electric face equipment shall—

(1) Be designed and constructed to be fail safe; and

(2) Provide continuous monitoring of the grounding circuit to the equipment.

(e) Ground-wire monitors shall cause the affected circuit breaker to open when:

(1) The ground-check conductor is broken at any point; and

(2) Either the equipment safety grounding conductor is broken at any point, or the impedance of the grounding circuit increases beyond the amount necessary to cause a drop in the voltage of the grounding circuit external to the grounding resistor equal to—

(i) 40 volts under ground-fault conditions for all low-voltage circuits and high-voltage trailing cables; or

(ii) 100 volts under ground-fault conditions for high-voltage circuits other than trailing cables.

(f) The open circuit voltage for ground-wire monitors shall not exceed—

(1) 40 volts for low-voltage circuits and circuits to electric face equipment; and

(2) 90 volts for high-voltage circuits other than circuits to electric face equipment.

(g) Ground-check and equipment safety grounding conductors shall be separately connected to the metallic frames or enclosures of electric equipment.

§ 75.712 Direct-current equipment frame grounding.

(a) The following shall be connected to the appropriate grounding medium required by 30 CFR 75.708 by equipment safety grounding conductors—

(1) Metallic frames, enclosures, and other exposed noncurrent-carrying metallic parts of conductors and equipment.

(2) Metallic messenger wires used to support direct-current conductors.

(3) Metallic racks and structures used to support trolley wires and trolley feeder wires.

(4) Metallic overcasts in trolley entries.

(b) Silicon diode grounding systems shall be installed in accordance with 30 CFR 75.713.

(c) Component parts of complete units of equipment shall be solidly connected to the frames of the equipment.

§ 75.713 Silicon diode grounding.

When the metallic frames of mobile equipment are grounded by silicon diodes, the diode grounding system shall meet the following:

(a) The polarity of each grounding diode shall be compatible with the grounded polarity of the direct-current system.

(b) Each grounding diode shall have a threaded base used to solidly connect the diode to the machine frame.

(c) An overcurrent device shall be installed between the grounding diode(s) and the grounded power conductor, and shall cause the main conductor or the circuit interrupting device to deenergize all circuits on the machine when 50 amperes or more flows through the grounding diode, except that methane monitor circuits may remain energized.

(d) A polarizing diode that prevents the unit of equipment from being operated when the polarity of the supply conductors is reversed shall be installed in the control circuit.

(e) The forward current rating of each grounding diode shall be equal to or greater than 750 amperes when used to ground a continuous mining machine or equal to or greater than 400 amperes when used to ground other equipment.

(f) The peak inverse voltage rating of the grounding and polarizing diodes shall be at least 1,200 volts.

§ 75.714 Equipment safety grounding conductors.

(a) Equipment safety grounding conductors for portable and mobile electric equipment shall be one or more stranded copper conductors contained within the cable or flexible cord supplying the equipment.

(b) Equipment safety grounding conductors for stationary equipment shall be copper or equivalent, and be either—

(1) Contained together with the circuit conductors in the raceways, cables, or cords; or

(2) Wrapped around the raceways, cables, or cords containing the circuit conductors.

(c) The combined cross-sectional area of equipment safety grounding conductors shall be equal to or greater than—

(1) One-half the cross-sectional area of one circuit conductor when the circuit conductor is No. 6 AWG or larger; or

(2) The cross-sectional area of one circuit conductor when the circuit conductor is smaller than No. 6 AWG.

(d) Equipment safety grounding conductors installed outside of raceways, cables, or cords and used to ground stationary equipment shall be No. 6 AWG or larger.

(e) Switches, fuses, circuit breakers, ground-fault devices and overcurrent devices shall not be installed in equipment safety grounding conductors.

(f) Ground-wire devices installed in the equipment safety grounding conductor for the purpose of inter-machine arc suppression or in conjunction with ground-wire monitoring systems shall be designed and constructed to withstand the maximum amount of phase-to-phase fault current to which they may be exposed without creating an electrical shock or fire hazard.

(g) When used, ground-wire devices specified in paragraph (f) of this section shall be connected to the grounding medium with two separate conductors.

(h) On direct-current powered equipment, the equipment safety grounding conductor and the return power conductor shall be separately connected to the mine track, grounded return-feeder conductor, or metallic frame or enclosure used as the grounding medium.

(i) Equipment safety grounding conductors for draw-out equipment or plugs and receptacles shall be the first conductors made when making connections and the last conductors broken when breaking connections.

(j) Equipment safety grounding conductors shall be connected by welds, pressure connectors, or clamps.

(k) Equipment safety grounding conductors shall be bare or shall be properly identified.

Subpart I—High-Voltage Alternating-Current Circuits

§ 75.800 Scope.

(a) This subpart contains requirements pertaining to high-voltage circuits and equipment used underground. Section titles in this subpart specify when the requirements pertain only to high-voltage electric face equipment and associated trailing cables. Several requirements pertaining to all high-voltage circuits and equipment are also specified in subparts F and H.

(b) This subpart does not apply to the ampacities of conductors and overload protection for circuits extending to and on board permissible face equipment, which are specified in the applicable approval regulations.

§ 75.801 High-voltage systems.

High-voltage systems shall originate on the surface, except systems that supply power to underground face equipment may originate underground.

§ 75.802 Protection for circuits, other than trailing cables.

(a) High-voltage systems supplying underground electric equipment shall be protected by circuit breakers of adequate interrupting capacity which are equipped with devices that provide all of the following:

(1) Overcurrent protection.

(2) Ground-fault protection.

(3) Undervoltage protection, except for branch circuits supplying only stationary surface loads. See Figure I–1 in Appendix A.

(b) High-voltage circuits that extend underground shall be protected by at least one circuit breaker located on the surface.

(c) Overcurrent protection for high-voltage circuits shall consist of protective devices that protect at least two power conductors.

(d) A circuit breaker used to provide protection for two or more branch circuits shall provide overcurrent protection for the smallest conductor.

(e) Overcurrent devices shall have—

(1) A pickup value of 125 percent or less of the ampacity for the smallest power conductors in the protected circuit as listed in Tables I–1 and I–2; and

(2) Inverse-time current characteristics that require the device to operate within 2 seconds when a current 10 times the allowable ampacity of the smallest power conductor, as listed in Tables I–1 and I–2, flows in the circuit.

TABLE I-1 ALLOWABLE AMPACITIES OF SHIELDED, THREE CONDUCTOR, 2001-15,000 VOLT, MINE POWER CABLE; COPPER CONDUCTORS

[Based on Ambient Temperature of 20 °C]

Conductor size (AWG or MCM)	Ampacities			
	2001-8000 Volts		8001-15000 Volts	
	75 °C	90 °C	75 °C	90 °C
8	99	110		
6	130	144		
2	170	186	175	194
1	196	217	200	221
1/0	226	249	230	254
2/0	260	287	263	290
3/0	299	329	301	334
4/0	344	379	346	384
250	379	419	383	424
300	423	470	426	473
350	465	513	468	517
400	506	555	502	550
500	571	632	571	632

TABLE I-2.—ALLOWABLE AMPACITIES OF SHIELDED, THREE CONDUCTOR, 2001-15,000 VOLT MINE POWER CABLES; ALUMINUM CONDUCTORS

[Based on Ambient Temperature of 20° C]

Conductor size (AWG or MCM)	Ampacities			
	2001-8000 Volts		8001-15000 Volts	
	75° C	90° C	75° C	90° C
6	101	112		
4	133	146	136	
3	153		156	
1/0	176	186	179	186
2/0	202	223	205	227
3/0	234	257	238	261
4/0	269	296	271	300
250	296	326	300	332
350	366	404	367	406
400	396	426	397	433
500	456	503	453	500

(f) Ground-fault protective devices shall be adjusted to deenergize the faulted circuit at 40 percent or less of the maximum ground-fault current of the system.

(g) The ground-fault protective device nearest to the load shall activate with no intentional time delay. When the operating times of upstream ground-fault detection devices within a system are increased to provide selective tripping, the operating time of the most upstream ground-fault detection device shall not exceed 3.0 seconds.

(h) Equipment safety grounding conductors shall not pass through or be connected in series with ground-fault current transformers.

(i) Undervoltage devices shall be—

(1) Undervoltage trip coils; or

(2) Shunt trip coils energized by undervoltage relays or ground-monitor relays. Such coils shall be energized by stored energy devices to assure the circuit breaker will trip upon loss of control voltage.

(j) A circuit breaker which is installed to protect an underground high-voltage circuit shall not automatically reclose after operation.

§ 75.803 High-voltage distribution equipment.

(a) Except for disconnecting devices installed underground on or before [insert effective date of the rule], high-voltage distribution equipment shall be enclosed in a grounded metallic enclosure, and shall have no exposed energized parts.

(b) High-voltage alternating-current distribution equipment shall be equipped with interlock and emergency stop switches which will automatically deenergize the incoming power conductors to the distribution equipment when a cover, lid, or panel that exposes energized high-voltage parts is removed, or when the emergency stop switch is actuated.

(c) The open-circuit voltage for an interlock circuit shall not exceed 96 volts.

(d) Effective [insert date 18 months after the effective date of the rule], all high-voltage distribution equipment, including high-voltage switchgear and power centers shall be equipped with barriers that provide separate compartments for:

(1) The incoming high-voltage disconnecting switch and feed-through circuit;

(2) The power transformer;

(3) The low-voltage distribution circuits; and

(4) The control circuitry, including ground-fault protective devices and ground-wire monitors.

(e) Barriers shall be constructed of grounded metal or nonconductive insulating board.

§ 75.804 High-voltage cables, other than trailing cables.

(a) High-voltage cables shall be located, buried, guarded or insulated to provide protection against physical damage and contact with other wires or cables. Insulation to prevent contact with other wires or cables shall be in addition to that provided by the conductor insulation or cable jacket.

(b) High-voltage cables suspended above the mine floor shall be securely anchored.

(c) Single-conductor high-voltage cables shall be hung on a well supported grounded messenger wire or on insulated cable hangers.

(d) High-voltage cables shall not be moved or handled while energized.

(e) The power conductors in high-voltage cables shall be at least No. 8 AWG.

(f) Each high-voltage cable, other than a single-conductor cable, shall contain one or more bare equipment safety grounding conductors.

(g) Ground-check conductors and interlock circuit conductors contained in high-voltage cables shall be at least No. 10 AWG.

(h) Ground-check conductors and interlock circuit conductors which are external to high-voltage cables shall be at least No. 8 AWG.

(i) Single-conductor cables shall have equipment safety grounding conductors of either a bare ground-wire or a grounded messenger wire.

(j) High-voltage cables shall have grounded metallic shielding around each power conductor.

(k) Metallic shielding on high-voltage cables acquired after [insert the effective date of the rule] shall be applied in the form of braid, wire serving (wrap) or tape, as follows:

(1) Metallic braid shall provide at least 84 percent coverage.

(2) Metallic wire serving (wrap) shall provide at least 60 percent coverage.

(3) Metallic tape shall provide 100 percent coverage.

§ 75.805 Movement of high-voltage power centers and portable transformers.

Power centers and portable transformers shall be deenergized before they are moved from one location to another.

§ 75.806 Connection boxes.

Connection boxes used in high-voltage circuits shall—

(a) Be constructed of metal or its equivalent;

(b) Be watertight;

(c) Have the incoming and outgoing equipment safety grounding conductors separately connected to the metallic enclosures; and

(d) Be located in dry areas.

§ 75.807 Voltage requirements of electric face equipment.

(a) The nominal voltage of the power circuits of electric face equipment shall not exceed 4160 volts.

(b) The nominal voltage of the control circuits of electric face equipment shall not exceed 150 volts-to-ground.

§ 75.808 Electrical protection of electric face equipment.

(a) High-voltage systems supplying electric face equipment shall be protected by circuit breakers of adequate interrupting capacity which are equipped with devices that provide all of the following:

(1) Overcurrent protection.

(2) Ground-fault protection.

(3) Undervoltage protection.

(b) Each high-voltage motor circuit shall be provided with instantaneous short-circuit protection set at not more than 175 percent of the locked-rotor current of the motor or at not more than 75 percent of the minimum phase-to-phase short-circuit current available at the motor terminals, whichever value is less.

(c) High-voltage motor circuits shall be provided with backup short-circuit protection set at not more than—

(1) 1,200 amperes when the nominal voltage of the circuit exceeds 2,400 volts; or

(2) 2,000 amperes when the nominal voltage of the circuit is 2,400 volts or less.

(d) Time delays used for coordination with downstream short-circuit protective devices shall be not more than 0.4 seconds.

(e) Ground-fault currents shall be limited by a neutral grounding resistor to not more than—

(1) 6.5 amperes when the nominal voltage of the power circuit is 2,400 volts or less; or

(2) 3.75 amperes when the nominal voltage of the power circuit exceeds 2,400 volts.

(f) High-voltage motor circuits shall be provided with ground-fault protection, with no intentional time delay, set at not more than 0.1 amperes.

(g) High-voltage circuits extending from the section power center shall be provided with backup ground-fault protection set at not more than 40 percent of the current rating of the neutral grounding resistor. Time delays used for coordination with downstream ground-fault protection devices shall be not more than 0.4 seconds.

(h) The high-voltage neutral grounding resistor shall be provided with overtemperature protection that will open the ground-wire monitor circuit for the high-voltage circuit supplying the section power center if the grounding resistor is subjected to a sustained ground fault. The overtemperature rating or setting shall not exceed 50 percent of the maximum temperature rise of the grounding resistor.

(i) Equipment safety grounding conductors shall not pass through or be connected in series with ground-fault current transformers.

(j) Ground-fault current devices shall have a test circuit that injects a current of 50 percent or less of the maximum ground-fault current of the system and causes the circuit breakers to open.

(k) Undervoltage devices shall be—

(1) Undervoltage trip coils; or

(2) Shunt trip coils energized by undervoltage relays or ground-monitor relays. Such coils shall be energized by stored energy devices to assure the circuit breaker will trip upon loss of control voltage.

(l) Circuit breakers shall not automatically reclose after operation.

§ 75.809 Disconnecting devices for electric face equipment.

(a) The main circuit breaker at the section power center shall be equipped with a disconnecting device designed and installed so that it can be determined by visual observation that the contacts are open without removing any of the section power center covers.

(b) The main controller of longwall mining equipment shall be equipped with a disconnecting device that automatically grounds all load power conductors when the device is in the open position.

§ 75.810 Testing, examination, and maintenance of high-voltage electric face equipment.

(a) A high-voltage qualified electrician shall test, examine, and maintain high-voltage face equipment and circuits to determine that the electrical protection, equipment grounding, permissibility, cable insulation, and control devices, are being properly maintained to prevent fire, electrical shock, ignition or operational hazards from existing on the equipment.

(b) Each high-voltage grounding resistor and electrical protective device for electric face equipment shall be tested when installed in accordance with the following:

(1) Pass current through each current transformer necessary to cause the circuit breaker to open.

(2) Impress voltage across each potential ground-fault device necessary to cause the circuit breaker to open.

(3) Determine whether the grounding resistor is open or shorted.

(4) Assure that the overtemperature protective device will open the incoming ground-wire monitor circuit.

(c) Each unit of high-voltage electric face equipment shall be inspected and examined at least every seven days. Examination shall include actuation of the ground-fault test circuit required by 30 CFR 75.808(j).

(d) Each high-voltage circuit breaker shall be opened at least every 30 days by opening the corresponding ground-check conductor at the extreme end of the ground-wire monitoring circuit, where a ground-check conductor is used.

(e) When examinations or tests of equipment reveal a fire, electrical shock, ignition or operational hazard, the equipment shall either be removed from service or repaired.

(f) At the completion of examinations and tests required by this section, the person who makes the examinations and tests shall certify by signature and date that they have been conducted. A record shall be made of any unsafe condition found, and corrective action taken.

(g) Certifications and records shall be kept for at least one year, and shall be made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

§ 75.811 Cables for high-voltage electric face equipment.

(a) Each high-voltage cable shall have a voltage rating of at least the nominal phase-to-phase voltage of the circuit in which it is used.

(b) Each high-voltage cable shall have grounded metallic shielding around each power conductor.

(c) Metallic shielding applied in the form of a braid shall provide at least 84 percent coverage.

(d) Metallic shielding applied in the form of a serving (wrap) shall provide at least 60 percent coverage.

(e) High-voltage trailing cables shall be flame resistant in accordance with 30 CFR 18.64.

(f) The power conductors shall be at least No. 4 AWG.

(g) High-voltage trailing cables shall contain one or more bare equipment safety grounding conductors.

(h) Ground-check and interlock circuit conductors shall be contained within the high-voltage cable, and be at least No. 10 AWG.

§ 75.812 Cable support system; high-voltage longwall electric face equipment.

(a) Longwall mining systems shall be equipped with cable handling systems and support systems that are designed, installed, and maintained to protect the high-voltage cables from damage and to minimize the possibility of miners inadvertently contacting the cables.

(b) High-voltage cables used on longwall mining systems shall be deenergized prior to the removal of the entry conveyor belt structure.

§ 75.813 Guarding of cables for high-voltage electric face equipment.

(a) High-voltage cables shall be guarded at the following locations:

(1) Where persons regularly work or travel over or under the cables; and

(2) Where the cables leave cable handling systems or support systems to extend to electric components.

(b) Guarding shall protect the cables from damage and prevent miners from contacting the cables. The guarding shall be grounded metal or nonconductive, flame-resistant material.

§ 75.814 Safety devices for high-voltage systems supplying electric face equipment.

(a) Each unit of high-voltage equipment shall be equipped with a barrier between—

(1) The main disconnecting device and motor starter compartment; and

(2) Each motor starter compartment.

(b) Each unit of high-voltage equipment shall have—

(1) Covers arranged so that persons can work in the motor starter compartment without being exposed to energized high-voltage conductors or parts when the disconnecting device at the main controller is in the open position; and

(2) Cover interlock switches provided to automatically deenergize the high-voltage circuit supplying the unit when any cover that provides access to energized high-voltage conductors or parts is removed.

(c) Barriers shall be constructed of grounded metal or nonconductive insulating board.

(d) Control circuits of electric face equipment shall have—

(1) A two-winding transformer that electrically isolates the control circuit from the high-voltage circuits; and

(2) An electrostatic (Faraday) shielded between the secondary and primary windings. Such shields shall be aluminum or copper, connected to the equipment frame, and have a cross-sectional area consistent with 30 CFR § 75.714(c).

§ 75.815 Procedures for working on high-voltage systems supplying electric face equipment.

(a) Before any electrical work, including testing, troubleshooting, and fault finding, is performed in the motor starter compartment, the high-voltage qualified electrician who performs the work shall—

(1) Assure that the contacts of the main circuit disconnecting device at the main controller are open and grounded;

(2) Lock out the disconnecting device with a padlock and;

(3) Tag the disconnecting device.

(b) Before any electrical work, including testing, troubleshooting and fault finding, is performed on a high-voltage cable or motor, the high-voltage qualified electrician who performs the work shall—

(1) Assure that the high-voltage cable is disconnected;

(2) Connect the phase conductors in the high-voltage cable to the grounding conductors;

(3) Lock out the cable with a padlock and;

(4) Tag the cable coupler for the cable.

(c) Disconnecting devices and couplers shall be locked with an individual padlock for each person performing work.

(d) Tags used on deenergized electric circuits and equipment shall identify each person performing work on the circuit or equipment and identify the circuit or equipment being worked on.

(e) Padlocks and tags shall only be removed by the persons who installed them.

Subpart J—[Reserved]

Subpart K—Trolley Wires and Trolley Feeder Wires

§ 75.1000 Scope.

Sections 75.1001 through 75.1010 apply to all trolley systems that extend or originate underground. These sections provide requirements for—

(a) The installation and maintenance of trolley systems;

(b) Electrical protection of trolley systems; and

(c) Movement of off-track mining equipment and supplies in trolley entries.

§ 75.1001 Installation.

(a) Trolley wires and trolley feeder wires shall be located at least six inches outside of the track rail except where the wires cross over the rails at track switches.

(b) Trolley wires and trolley feeder wires shall not contact combustible materials, metallic waterlines, metallic structures, roof, or ribs.

(c) Trolley wires, bare trolley feeder wires, and bare signal wires shall be insulated where they pass through doors and stoppings and where they cross

within six inches of power wires and cables.

(d) Trolley wires and bare trolley feeder wires installed after [Insert the effective date] shall have at least six inches of radial clearance from the metallic parts of track-mounted equipment to the wires.

(e) Radial stub-feed trolley systems shall be provided with deadblocks installed—

(1) Between adjacent rectifiers; and

(2) In parallel with each stub-feed circuit breaker. See Figure K–1 in Appendix A.

(f) Parallel-connected rectifier trolley systems shall be provided with deadblocks installed—

(1) In parallel with each tie-feeder circuit breaker; and

(2) In parallel with each stub-feed circuit breaker. See Figure K–2 in Appendix A.

(g) Deadblocks shall be provided with at least two insulating gaps which will extinguish arcs on the trolley system.

(h) Each deadblock shall be distinctly marked at its location so as to be found quickly in event of an emergency.

§ 75.1002 Insulated hangers.

(a) Trolley wires and trolley feeder wires shall be supported on insulated hangers.

(b) Insulated hangers shall have a dielectric strength of at least 15 times the nominal voltage of the trolley system on which they are used.

(c) Each insulated hanger shall have two insulators stacked together when uninsulated wires are supported from metallic arches, square sets, overcasts, and other similar metallic structures.

§ 75.1003 Guarding.

(a) Energized trolley wires and bare trolley feeder wires shall be guarded to prevent accidental contact—

(1) Where supplies are stored, loaded, or unloaded;

(2) At mantrip stations;

(3) On each side of all doors and stoppings through which wires pass;

(4) Where a person works within three feet of the trolley wire except for a person operating rail-mounted haulage equipment;

(5) At track switches; and

(6) Where persons regularly pass under the wires.

(b) Trolley wires and trolley feeder wires shall be deenergized when guarding is installed or removed unless the guarding is temporary guarding designed to minimize shock hazards while it is being installed or removed. Temporary guarding shall be installed or removed in accordance with 30 CFR § 75.1007.

§ 75.1004 Cutout switches.

(a) A cutout switch which opens both the trolley wire and trolley feeder wire, shall be provided at—

(1) Each rectifier or direct-current generator.

(2) Each tie feeder circuit breaker.

(3) Each branch line within 100 feet of the trolley turnout.

(4) Intervals of not more than 2,000 feet in the trolley circuit.

(b) Each cutout switch shall be distinctly marked at its location so as to be found quickly in event of an emergency.

§ 75.1005 Circuit protection.

(a) Trolley wires and trolley feeder wires shall be protected against short circuits by circuit breakers as follows:

(1) Direct-current circuit breakers set at not more than 50 percent of the minimum available bolted short-circuit current when that current is less than 800 amperes.

(2) Direct-current circuit breaker set at not more than 75 percent of the minimum available bolted short-circuit current when that current is 800 amperes or more.

(3) Alternating-current circuit breakers protecting radial stub-feed trolley systems set at not more than:

(i) 40 percent of the minimum available bolted short-circuit direct-current when that current is less than 800 amperes; or

(ii) 60 percent of the minimum available bolted short-circuit direct-current when that current is 800 amperes or more.

(b) Circuit breakers shall not be connected in parallel.

(c) A direct-current circuit breaker shall be connected in series with the ungrounded power conductor at each rectifier supplying a radial stub-feed trolley system, unless an alternating-current circuit breaker is connected in series with each ungrounded conductor supplying power to the rectifier bridge. See Figure K–3 in Appendix A.

(d) On or after [insert date one year from the effective date of the rule], at least two direct-current tie-feeder circuit breakers shall be connected in the ungrounded power conductor of each rectifier used to supply power to a parallel-connected rectifier trolley system. See Figure K–4 in Appendix A.

(e) Each tie-feeder circuit breaker located at a parallel-connected rectifier shall automatically open when either—

(1) The rectifier bridge loses its source of power; or

(2) When any main circuit breaker located between the tie-feeder breaker and the rectifier opens.

§ 75.1006 Circuit breakers.

(a) Direct-current circuit breakers used on trolley systems with nominal circuit voltages of 250 to 300 volts shall have a minimum voltage rating of 330 volts.

(b) Direct-current circuit breakers used on trolley systems with nominal circuit voltage of 500 to 600 volts shall have a minimum voltage rating of 660 volts.

(c) Direct-current circuit breakers shall have interrupting-current ratings not less than the following values at a time constant (L/R) of 30 milliseconds:

(1) 15,000 amperes for frame sizes less than 1,000 amperes.

(2) 25,000 amperes for frame sizes 1,000 amperes to 2,000 amperes.

(3) 50,000 amperes for frame sizes over 2,000 amperes.

(d) Alternating-current circuit breakers installed at radial stub-feed rectifiers shall have an interrupting current rating not less than 20 times the continuous full load direct-current ratings of the rectifiers.

(e) Direct-current circuit breakers installed at rectifiers shall have continuous current ratings not less than 120 percent of the continuous full-load current ratings of the rectifiers.

(f) Alternating-current circuit breakers installed in radial stub-feed rectifiers shall have continuous current ratings not less than the continuous full load direct-current ratings of the rectifiers.

(g) Each direct-current circuit breaker shall be equipped with an instantaneous overcurrent relay that causes the circuit breaker to deenergize the circuit with no intentional time delay.

(h) Direct-current electronic overcurrent relays installed after [insert date one year from the effective date] shall be—

(1) Fail-safe; and

(2) Bi-directional.

(i) Automatically reclosing circuit breakers shall be equipped with load measuring devices that prevent the circuit breakers from reclosing whenever the prospective load current exceeds 300 amperes.

(j) Automatically reclosing circuit breakers installed in parallel-connected rectifier trolley systems shall be equipped with voltage differential devices that prevent the circuit breakers from reclosing whenever the voltage across the circuit breakers is between 15 and 85 percent of the nominal system voltage.

§ 75.1007 Handling.

(a) Trolley wires and trolley feeder wires shall be deenergized before any mechanical or electrical work is

performed on them except that persons wearing rubber boots and rubber insulating gloves with protective coverings designed to prevent physical damage to the insulating material may—

(1) Reinstall wires in hangers; or

(2) Install or remove temporary guarding that is designed to minimize shock hazards.

(b) Rubber insulating gloves used for handling trolley wires or trolley feeder wires shall be rated for at least 1,000 volts.

(c) Rubber boots, rubber insulating gloves, and protective coverings shall be examined before each use for visible signs of damage or defects.

(d) Boots, rubber gloves, and protective coverings with visible signs of damage or defects shall not be used.

§ 75.1008 Track bonding.

(a) Mine track used as a power conductor shall be welded or bonded as follows:

(1) Track used to transport coal from a junction of tracks of two or more coal-producing sections shall have both rails welded or bonded at every joint and shall have the rails crossbonded at intervals of 200 feet or less.

(2) Track used to transport coal from a single coal-producing section or used to transport only miners and supplies shall have one rail welded or bonded at every joint and shall have the rails cross-bonded at intervals of 200 feet or less. An authorized representative of the Secretary may require that both rails be welded or bonded at every joint when necessary to provide adequate electrical conductivity of the trolley system.

(3) Track switches shall have each switch approach cross-bonded within 20 feet of the switch and shall have the straight and curved track sections bonded together within five (5) feet of the switch frog.

(b) Metal ties when used as cross bonds shall be welded to both rails.

(c) Track shall not be used before it is bonded except when using equipment necessary to install the bonds.

(d) Return-feeder wires connected in parallel with track rails shall be bonded to the track rails at intervals not to exceed 1,000 feet.

§ 75.1009 Examinations, tests and maintenance of trolley systems.

(a) Trolley systems shall be tested, examined and maintained by a qualified electrician.

(b) Trolley circuits shall be tested at least once every 180 days to determine available short-circuit currents by—

(1) Passing measured amounts of currents through the circuits at the extreme ends of the circuits protected by each circuit breaker; and

(2) Measuring voltage drops at each of these locations.

(c) Available short-circuit currents shall be calculated from voltage-drop tests and used to determine maximum allowable circuit breaker settings.

(d) Circuit breakers shall be examined, tested and calibrated at least once every 180 days in accordance with the following:

(1) Circuit breakers and components shall be examined for physical damage.

(2) Short-circuit devices shall be tested and calibrated to values no greater than the indicated values and no less than 85 percent of the indicated values.

(3) Current-actuated short-circuit devices shall either be tested and calibrated by passing the amounts of current indicated by the settings through the devices to cause actuation or be tested and calibrated with external calibration sources when the devices are equipped with calibration coils.

(4) Electronic short-circuit devices shall be tested and calibrated either by passing current through the circuit breaker to cause actuation or by applying calibration voltages to the sensor leads to cause actuation with the sensor leads disconnected from the shunts. The test and calibration values shall be determined by the indicated settings.

(5) Load-measuring devices and load-indicating circuits shall be tested and calibrated to prevent reclosure by simulating load currents of 350 amperes or less through the circuit breaker.

(6) Voltage-differential devices shall be tested and calibrated to prevent reclosure by applying voltages not less than 15 percent of the nominal system voltages across the circuit breaker terminals.

(7) Load-measuring devices, voltage-differential relays, reclosing selective relays, and load-indicating circuits shall be tested and calibrated to values within plus or minus (±) 15 percent of the indicated values.

(e) When examinations, tests, or calibrations of trolley systems reveal a potential fire or shock hazard, the affected part of the trolley system shall either be removed from service or repaired.

(f) Trolley wires shall be aligned and maintained to provide for smooth tracking of trolley connectors on trolley wires.

(g) At the completion of examinations and tests required by this section, the person who makes the examinations and tests shall certify by signature and date that they have been conducted. A record shall be made of any unsafe condition found and corrective action taken.

(h) Certifications and records shall be kept for at least one year and shall be made available at the mine for inspection by authorized representatives of the Secretary and representatives of the miners.

§ 75.1010 Movement and transportation of metallic mining supplies and off-track mining equipment in entries containing trolley wires or trolley feeder wires.

(a) When metallic mining supplies or off-track mining equipment is either moved or transported under its own power or by other non-trolley-powered equipment, trolley wires and trolley feeder wires shall be deenergized for a distance of at least 200 feet on each side of the supplies or off-track mining equipment.

(b) When metallic mining supplies or off-track mining equipment are moved or transported by trolley-powered equipment, the supplies or off-track equipment shall be either—

(1) Placed and secured in a mine car so that no portion of the supplies or equipment extends above any side or end of the car used to transport the equipment.

(2) Transported on a supply car, provided that no portion of the supplies or equipment extends above the height of the vehicle located immediately in front of or behind the supply car; or

(3) Be moved in accordance with the following:

(i) Supplies or equipment shall be cleaned to remove combustible materials.

(ii) Supplies or equipment shall be grounded by a 4/0 AWG or larger copper conductor that is connected to the mine track or to the metallic frame of the track-haulage conveyance.

(iii) Supplies or equipment shall be placed and secured to prevent accidental movement (shifting) while being transported.

(iv) Supplies or equipment shall be covered on the top and on the trolley wire side with conveyor belting or other equivalent material that is flame-resistant in accordance with 30 CFR 18.65.

(v) Supplies or equipment shall be examined by a qualified electrician prior to moving or transporting the unit to ensure that it has been cleaned, grounded and covered.

(vi) Supplies or equipment shall be moved or transported under the direct and immediate supervision of a certified person.

(c) When supplies or off-track mining equipment are moved in accordance with paragraph (b)(3) of this section, and the vertical clearance between the supplies or equipment being transported and the trolley wire or trolley feeder wire at any location along the move is less than 12 inches, the following additional requirements shall be followed:

(1) A qualified electrician shall be stationed at the rectifier which supplies power to the trolley circuit where the supplies or equipment is being transported so that the trolley circuit can be deenergized in case of an emergency.

(2) Direct two-way communications shall be provided between the qualified electrician, the certified person supervising the move and a responsible person on the surface. Trolley phones used for two-way communication shall be battery powered unless a backup communication system is available which can be readily connected to the mine communication system.

(3) Miners who are not directly involved in the equipment move shall not be in the current of air that has passed over the supplies or equipment.

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Appendix A—Illustrations

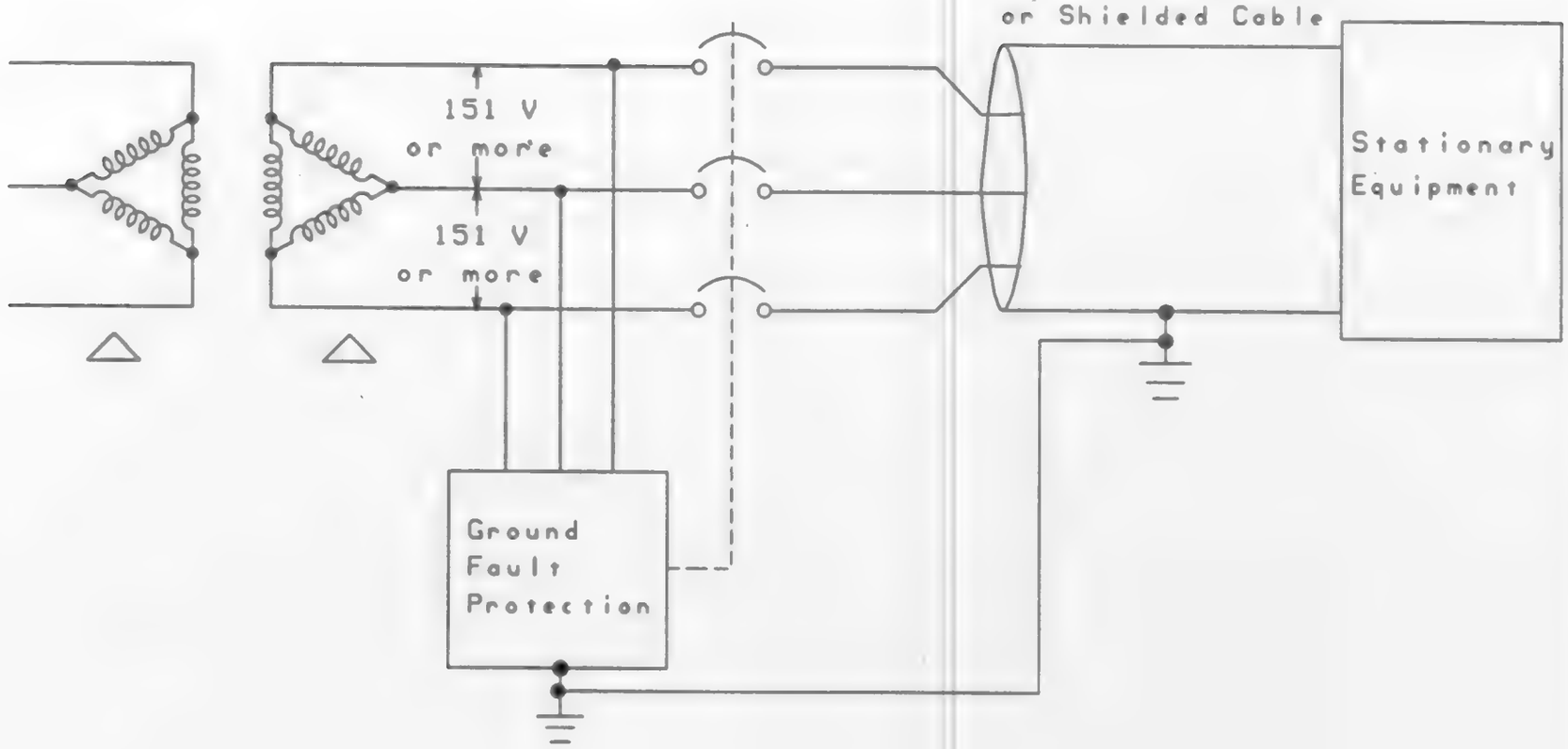


Figure H-1 - Illustration for requirements of 75.701(b)(3)

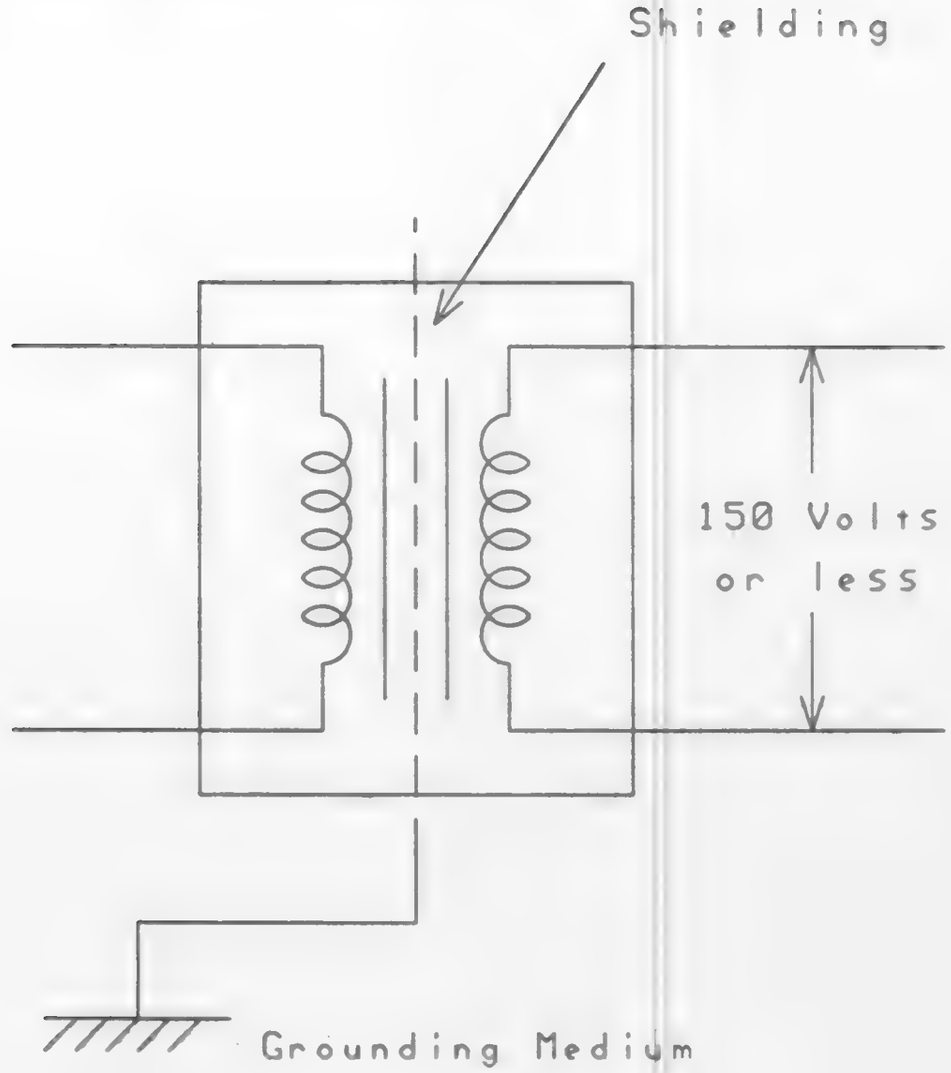


Figure H-2 - Illustration of a Faraday shield for 75.701(c)(2)

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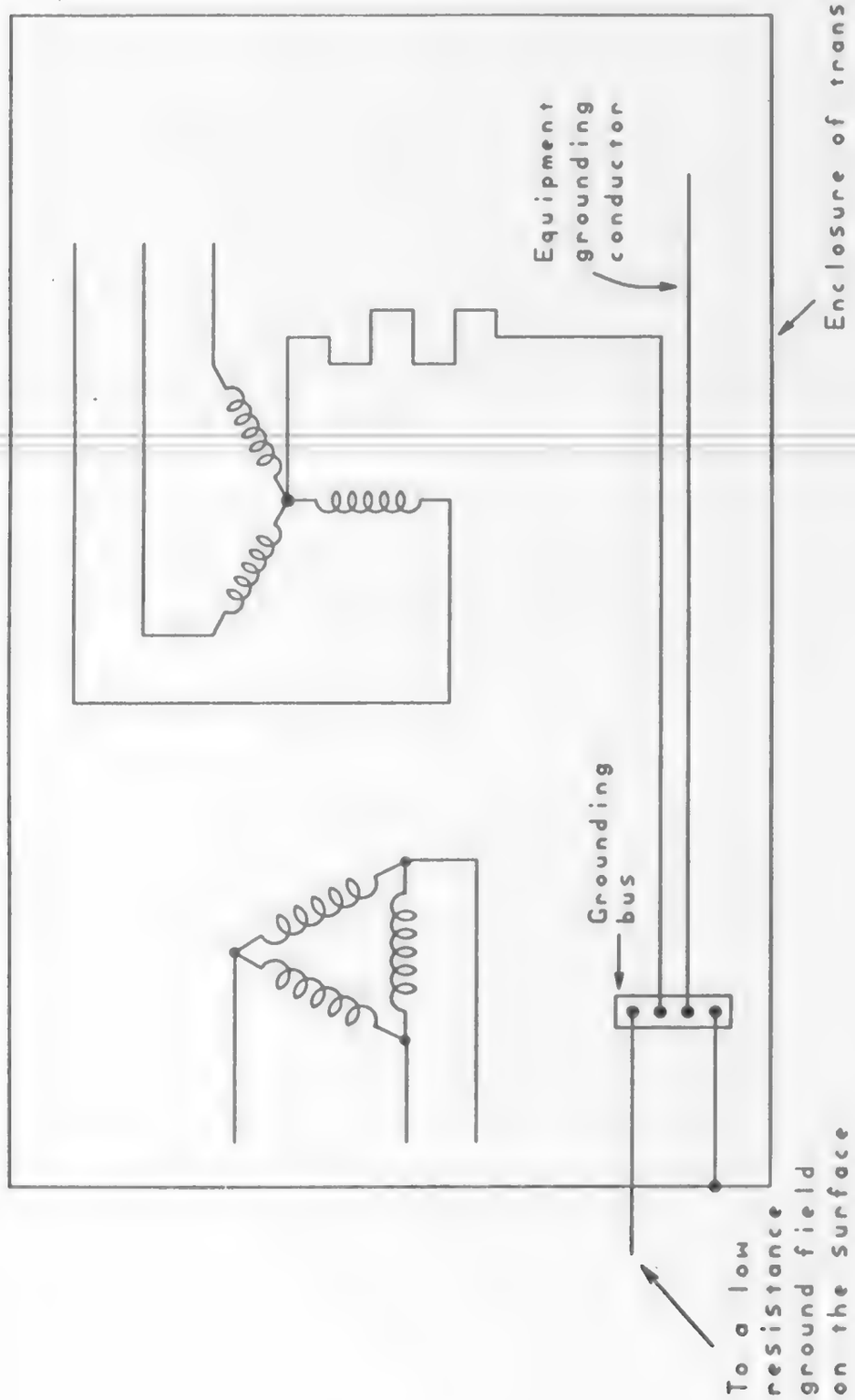


Figure H-3 - Illustration of a grounding medium for 75.702

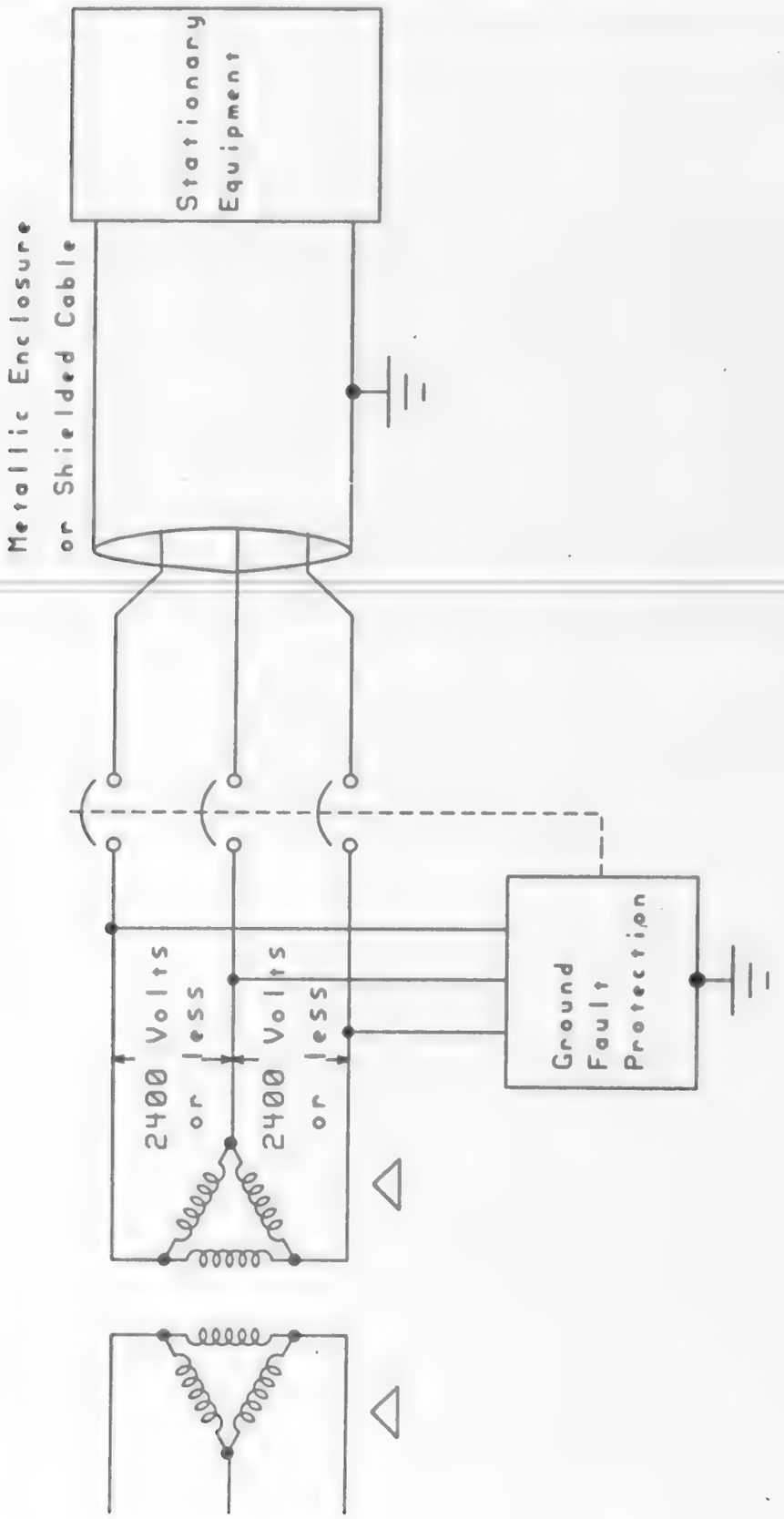


Figure H-4 - Illustration for requirements of 75.703

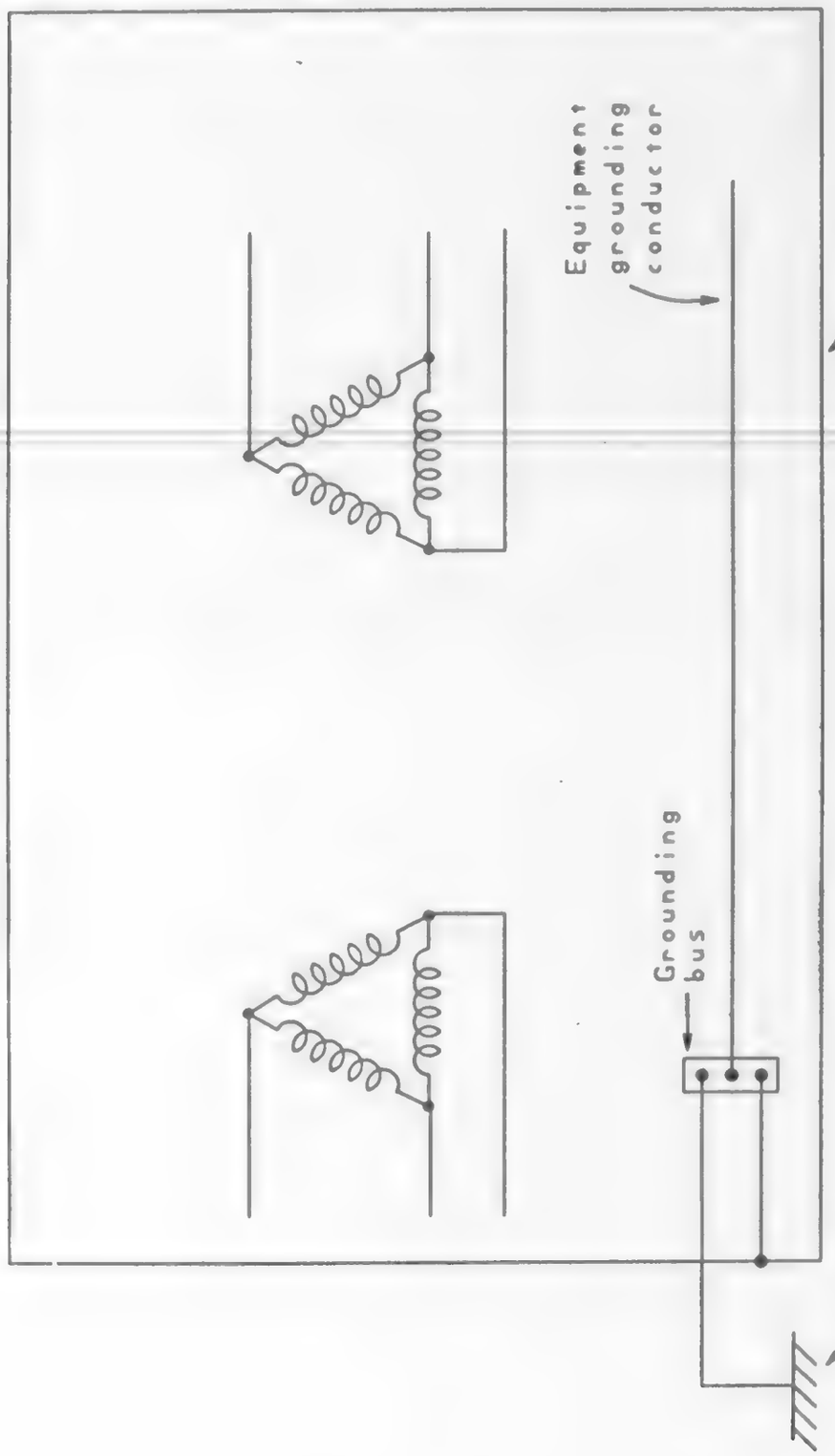


Figure H-5 - Illustration of a grounding medium for 75.704(b)

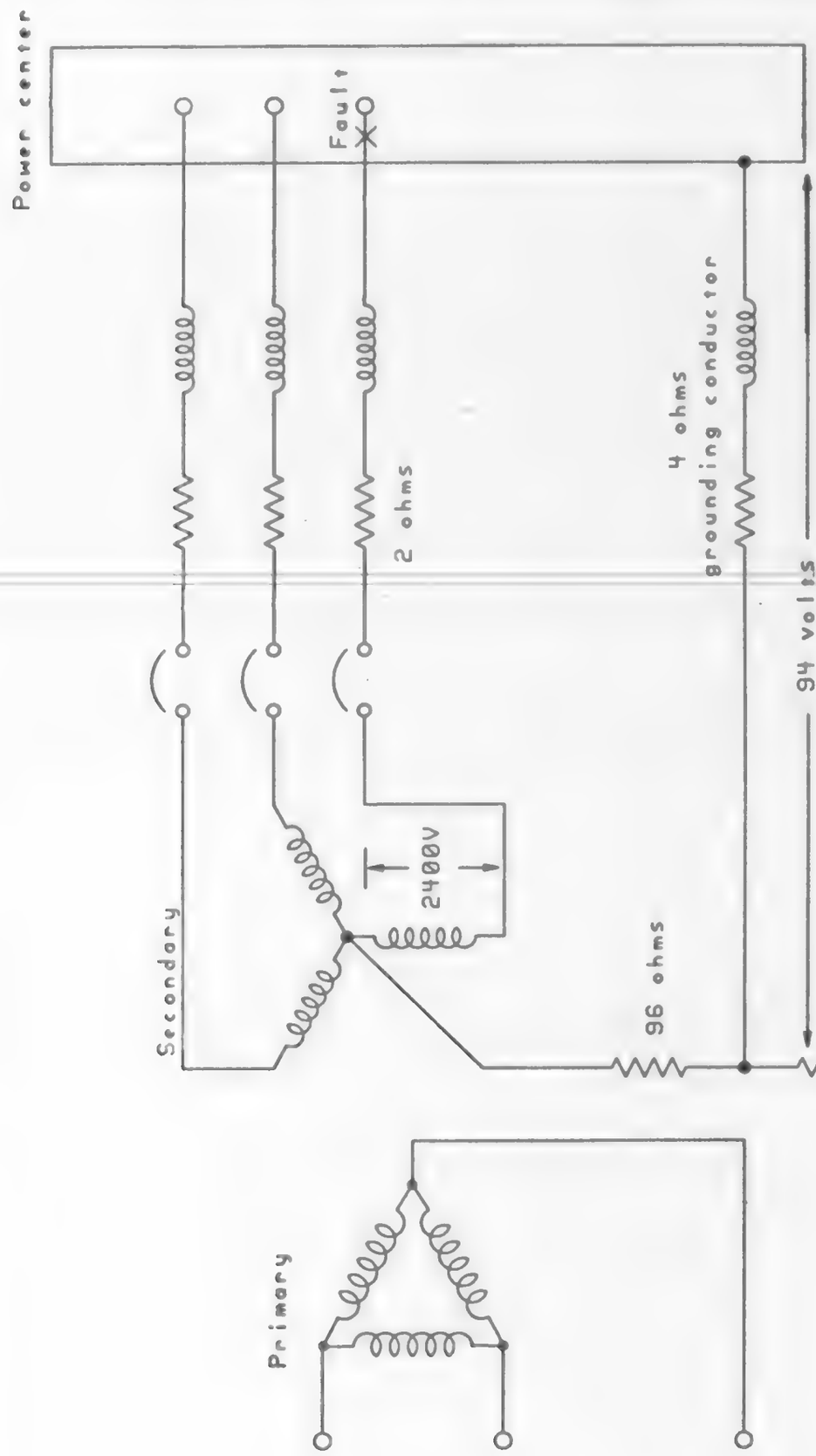


Figure H-6 - Illustration of requirements for 75.707(a)(2)

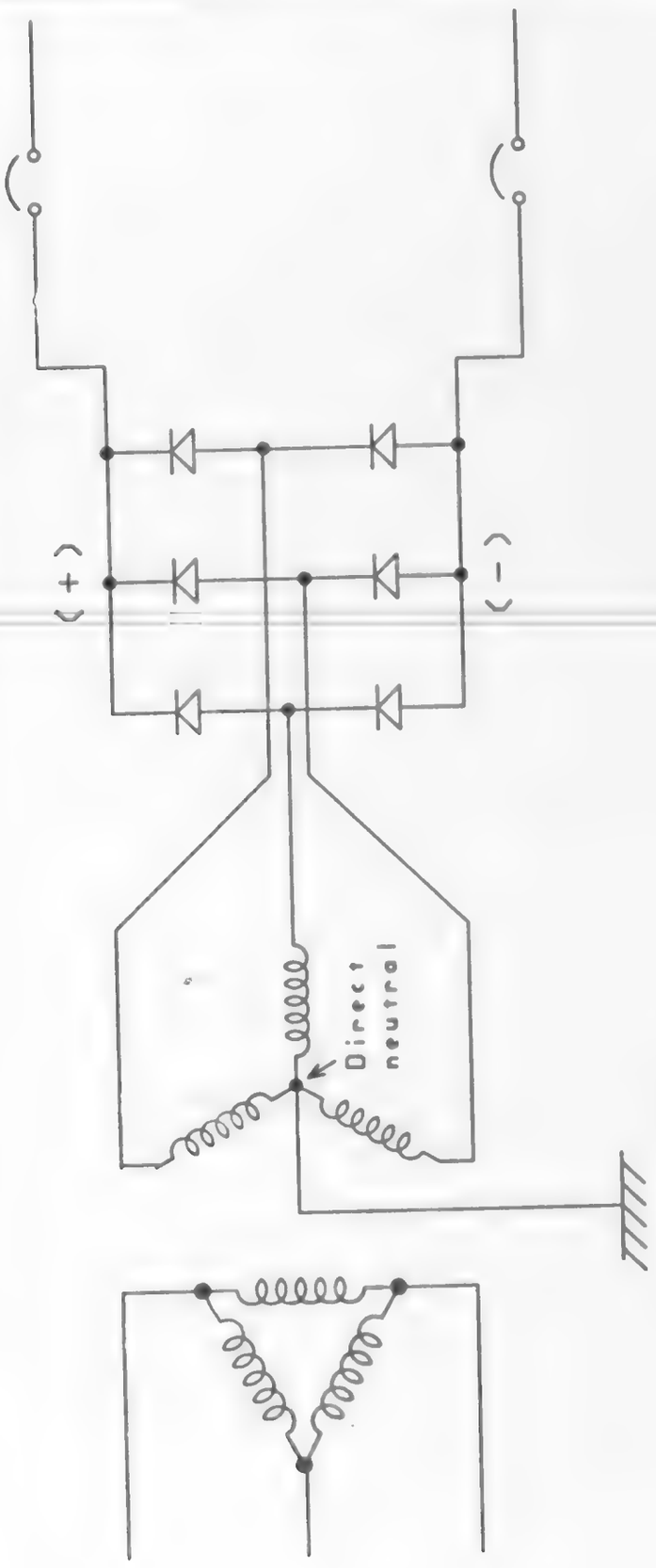


Figure H-7 - Illustration for 75.705(c)

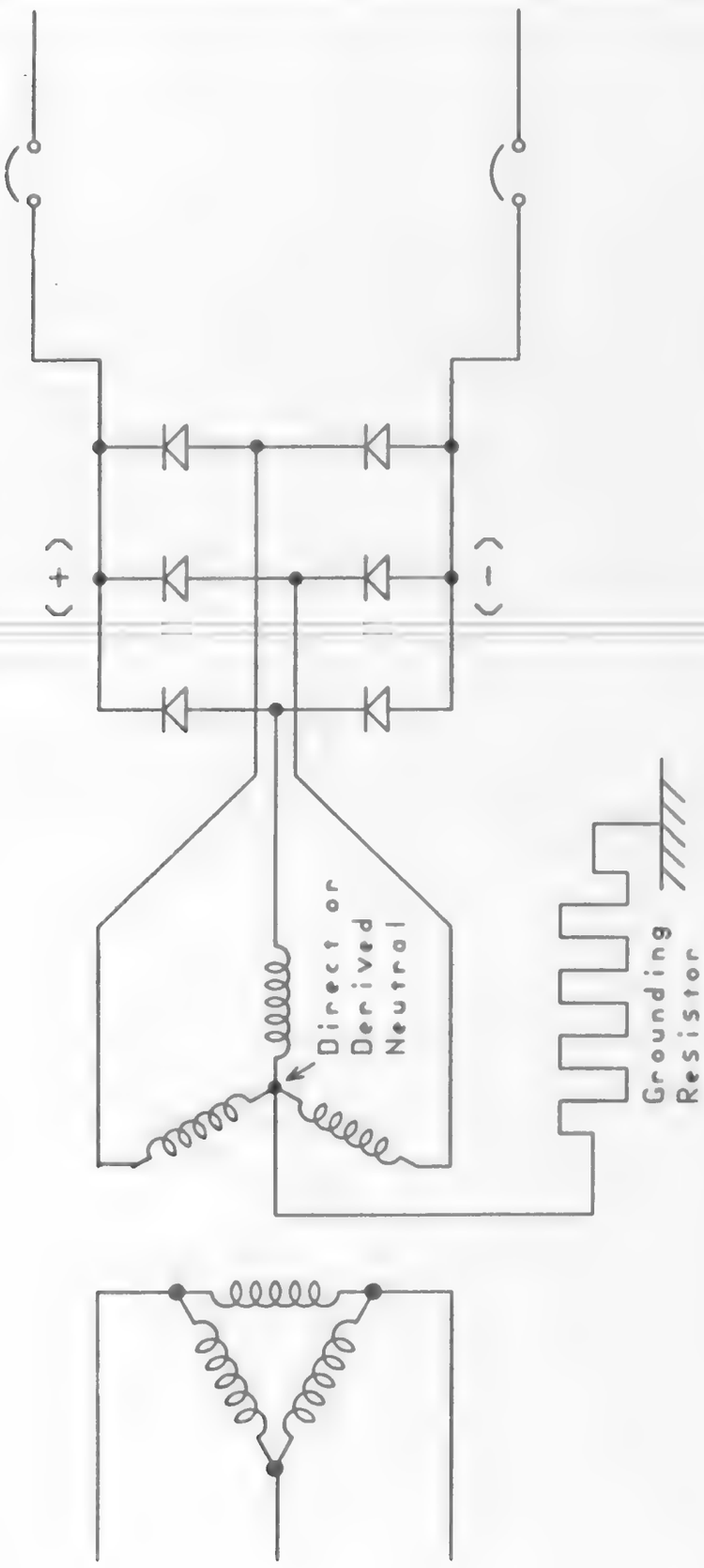


Figure H-8 - Illustration for 75.705(d)

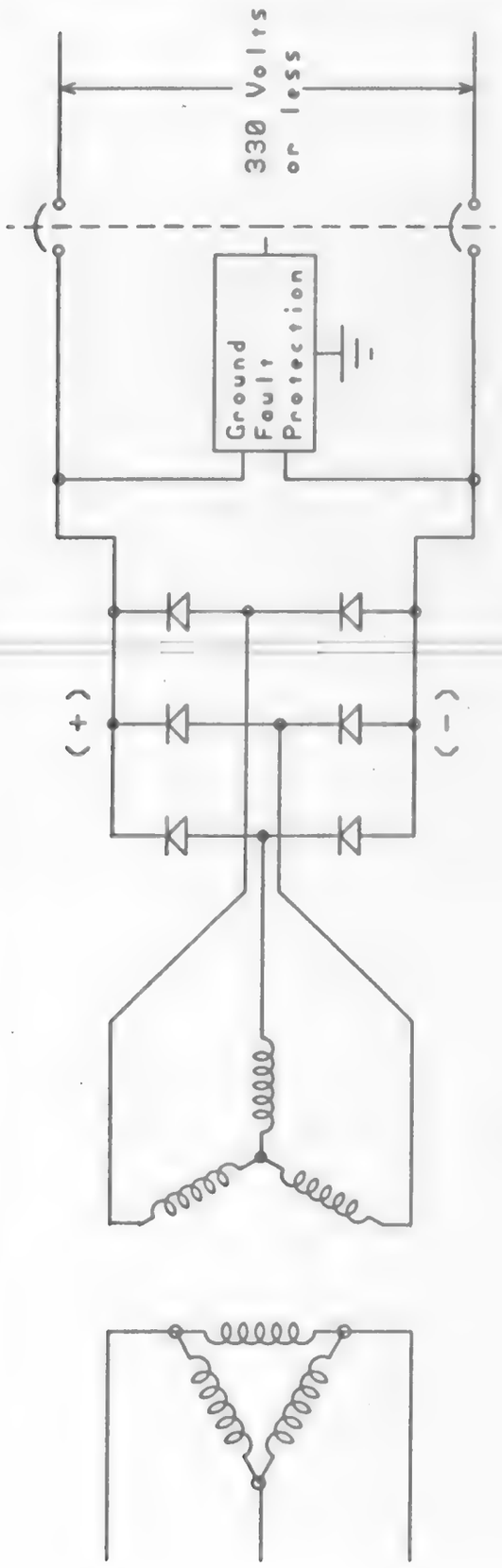


Figure H-9 - Illustration for 75.705(e)

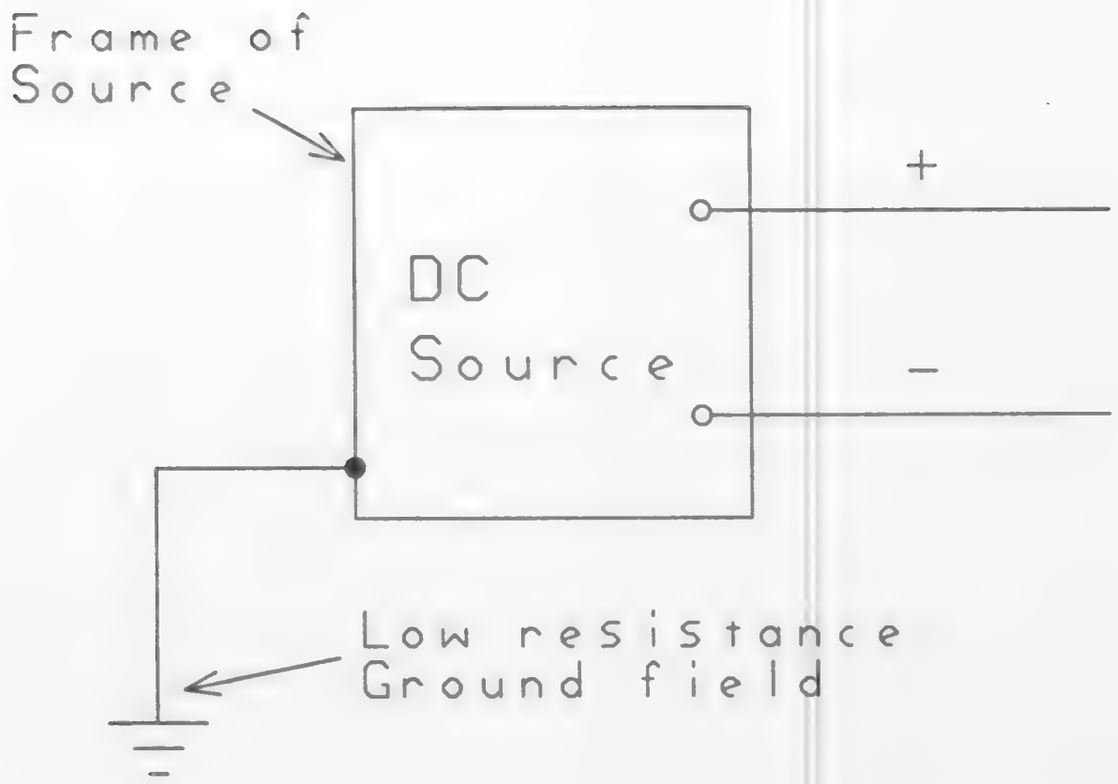


Figure H-10 - Illustration for 75.706(c)

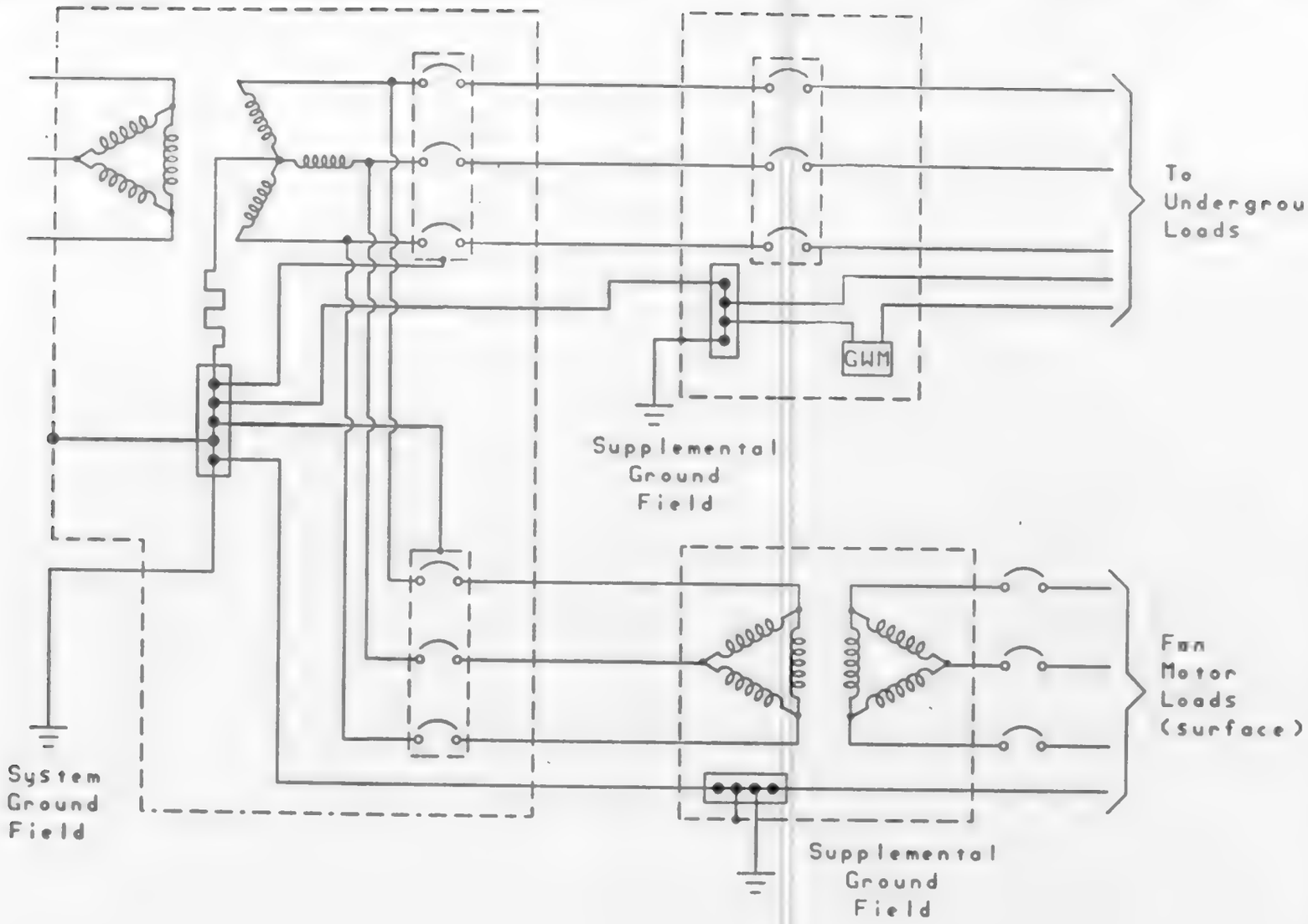


Figure H-11 - Illustration of ground wire monitoring and supplemental ground fields for 75.711(c)

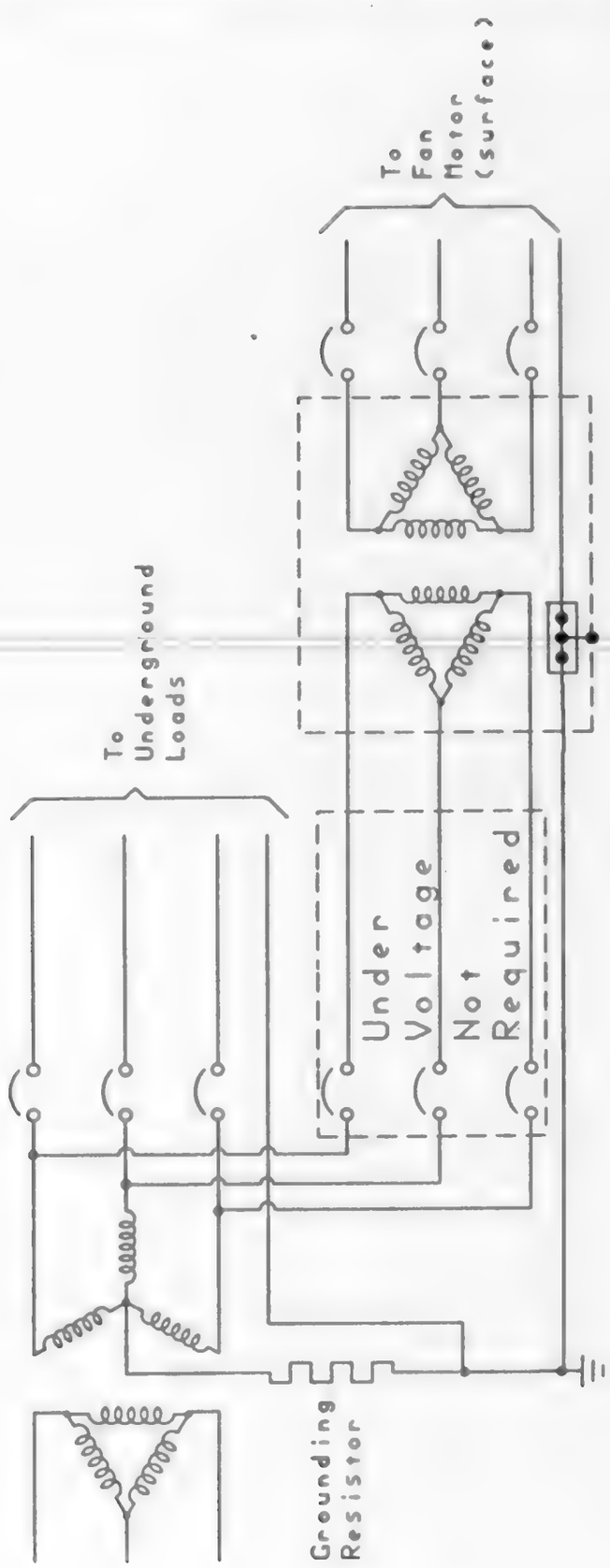


Figure I-1 - Illustration of a branch circuit for 75.802(a)(3)

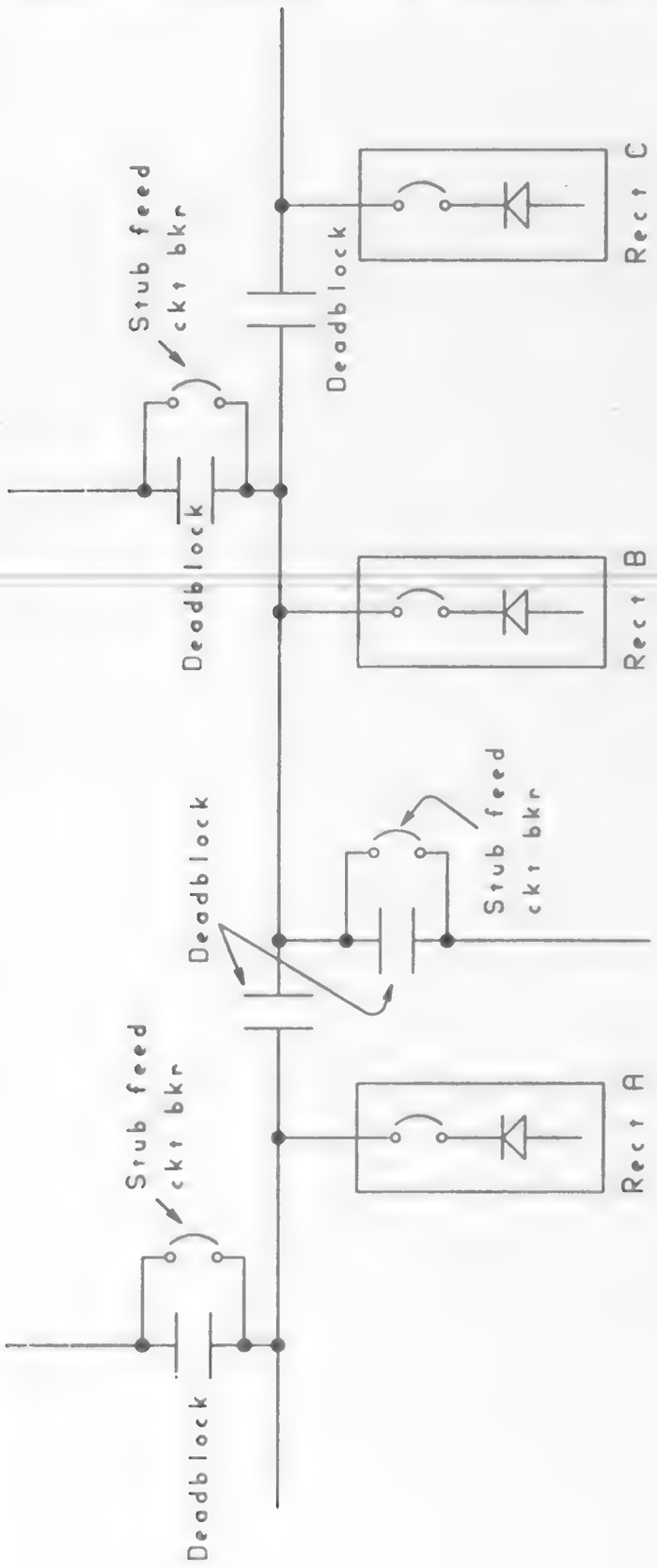


Figure K-1 - Illustration of a typical radial stub feed trolley system for 75.1001(e)(2)

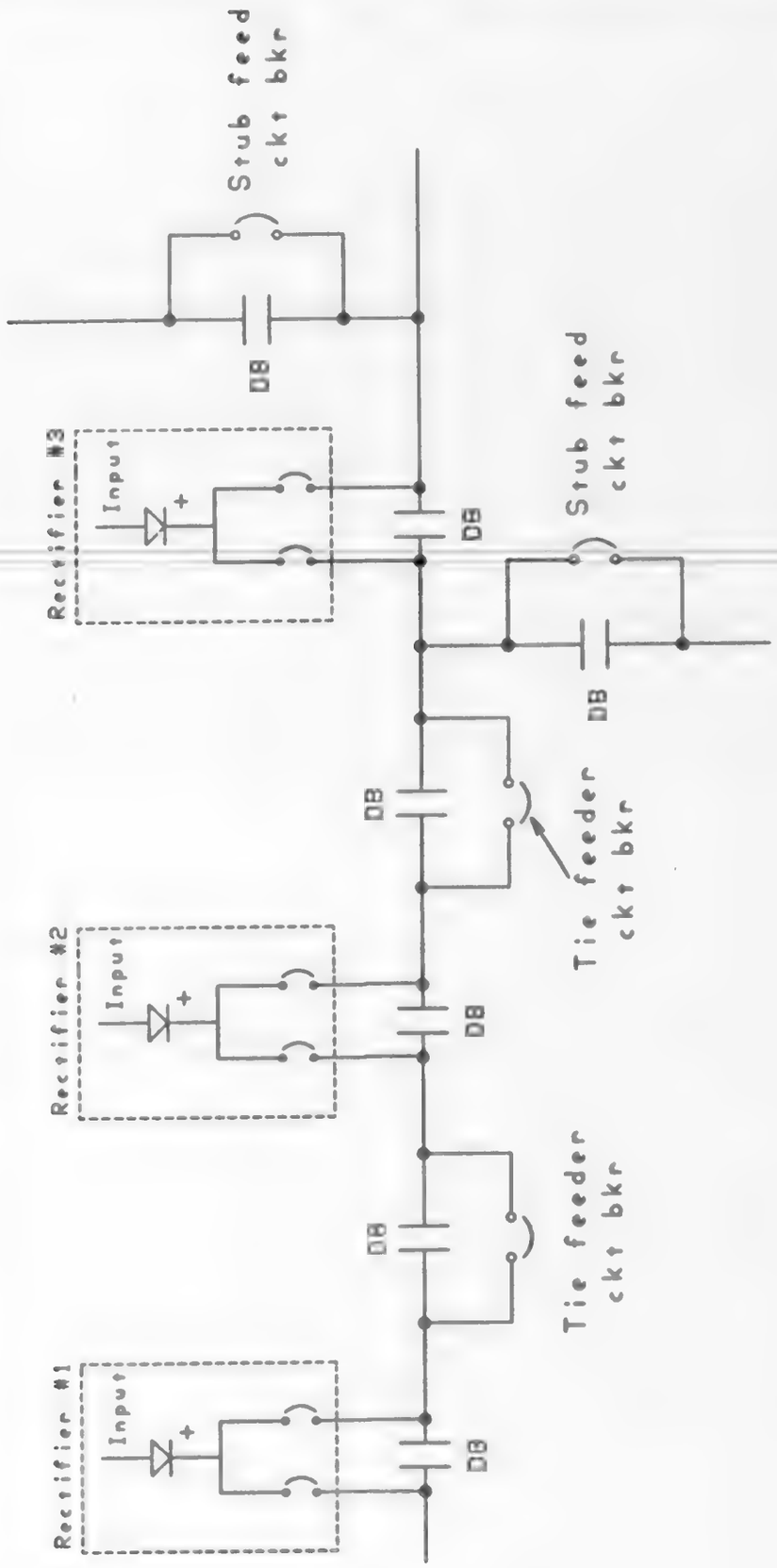


Figure K-2 - Illustration of a typical parallel-connected rectifier trolley system for 75.101(f)(2)

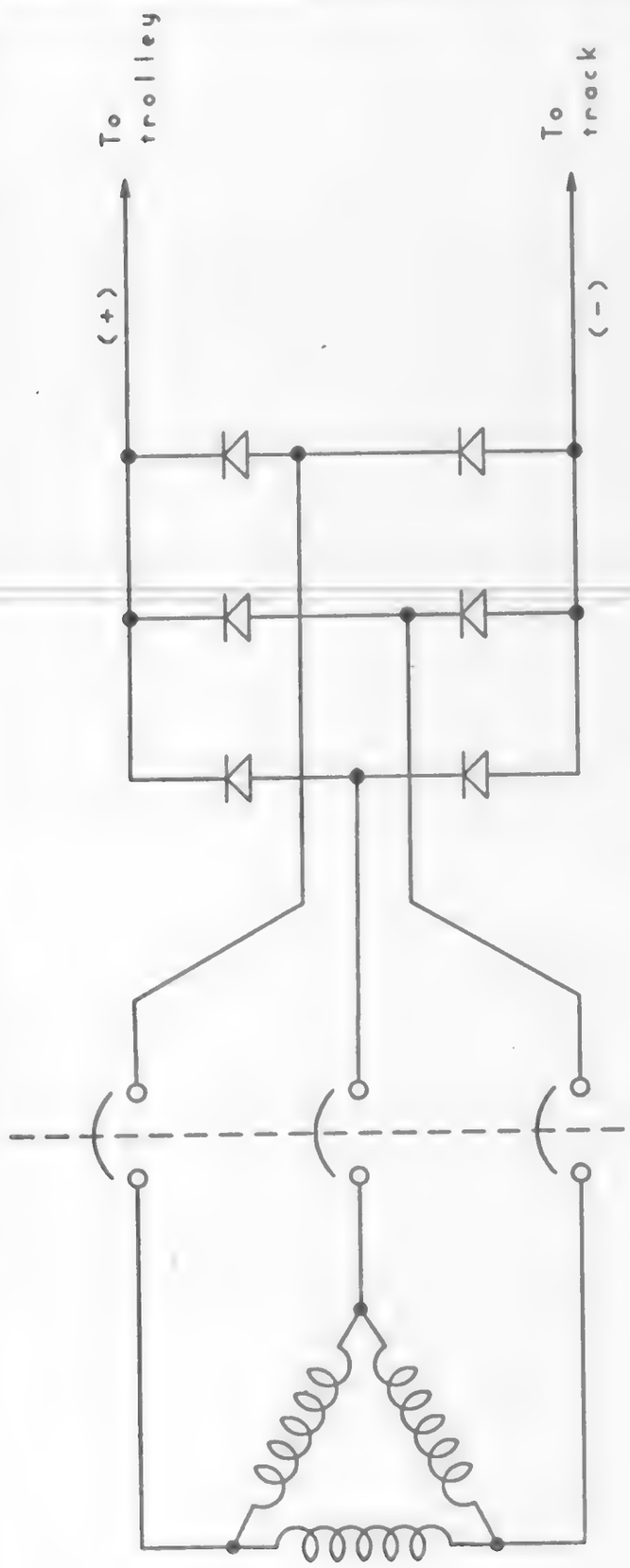


Figure K-3 - Illustration of a typical AC circuit breaker protecting a stub feed trolley system for 75.1005(c)

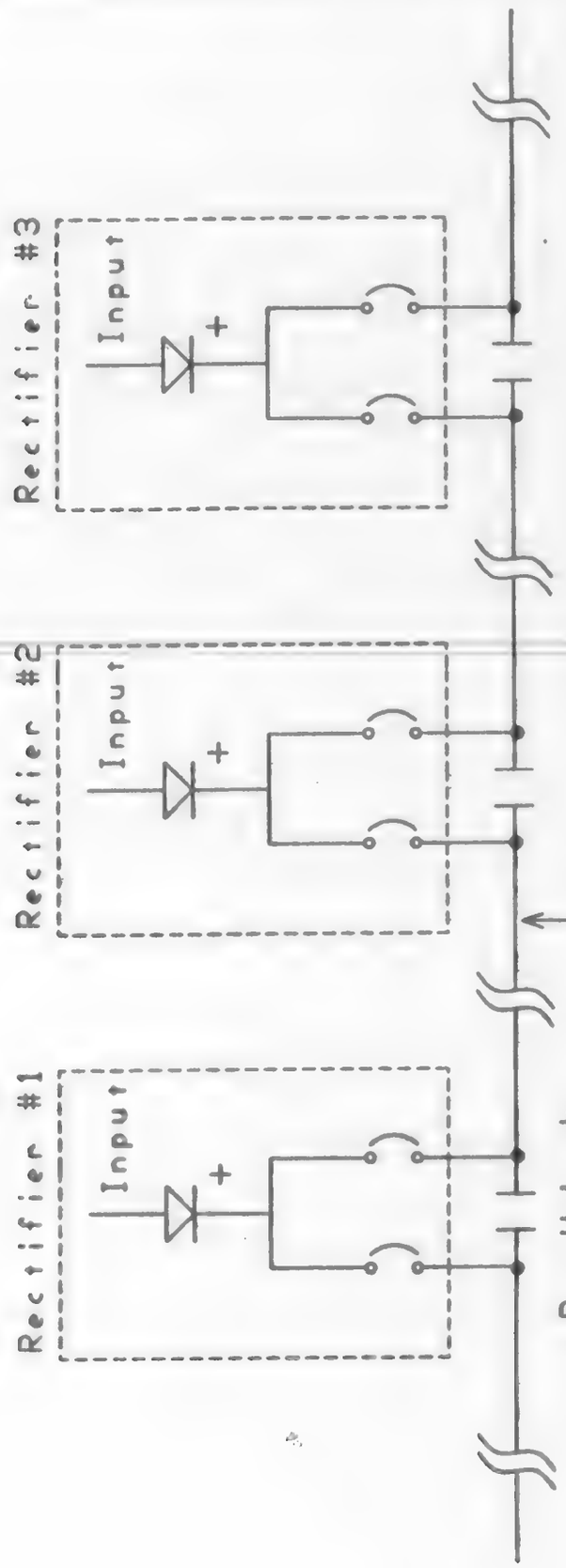


Figure K-4 - Illustrations for 75.1005(d)

[FR Doc. 89-27709 Filed 11-28-89; 8:45 am]
BILLING CODE 4510-43-C

DEPARTMENT OF LABOR

RIN 1219-AA14

30 CFR Parts 56 and 57

Electrical Standards for Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update and clarify the Mine Safety and Health Administration's (MSHA) electrical safety standards at metal and nonmetal mines. These revisions would upgrade existing provisions consistent with technological advances in mining, eliminate unnecessary and duplicative standards and recordkeeping requirements, and allow for compliance alternatives.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before March 9, 1990.

ADDRESS: Send comments and requests for public hearings to the Office of Standards, Regulations, and Variances; MSHA, Room 631, Ballston Towers #3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, or Yvonne Johnson, Project Officer, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This proposed rule is part of MSHA's comprehensive review of its metal and nonmetal safety and health standards. MSHA announced the availability of a preproposal draft on May 20, 1983 (48 FR 22895), and invited public comment. During the review process, MSHA received suggestions and recommendations from many commenters. MSHA addressed commenters' suggestions in the proposal, as well as the specific goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

To aid in comparing the existing standards with the revised standards, this document includes a derivation table and a distribution table which cross-reference the existing standard numbers with the proposed standard numbers. In the following discussion, the designation "56/57" indicates that the standard applies to both parts 56 and 57.

The proposed revisions to Subpart K of parts 56 and 57 are contained in eight distinct categories, titled: "General;" "Work on Electric Equipment and Circuits;" "Guarding, Insulation, Separation;" "Connections, Switches, Controls;" "Safety Grounding;" "Power Cables and Conductors;" "Trailing Cables;" and "Trolley Circuits for Track Haulage." The categorization of related standards would facilitate location and use of the proposed rule. Definitions of terms used throughout and specifically applicable to subpart K would be contained in proposed §§ 56/57.12000.

II. Discussion and Summary of the Proposed Rule

A. General Discussion

In drafting this proposed rule, MSHA considered the recommendations of commenters to the preproposal draft. The revisions are intended to provide mine operators with improved standards to address electrical hazards. The primary benefit of the proposed standards would be increased protection for miners who are exposed to the hazards related to the use of electricity in metal and nonmetal mines, and the prevention of future electrical injuries and fatalities. The standards are directed toward miner safety, rather than protection of equipment.

MSHA estimates that full compliance with the existing electrical standards should have prevented 66 fatalities and 1,012 nonfatal injuries from 1978 through 1988. During this same period, an estimated additional 2 fatalities and 17 nonfatal injuries could have been prevented under the proposal. These additional benefits are due primarily to the proposed requirement for undervoltage protection and the expansion and clarification of standards addressing the insulation, termination, and shielding of power conductors. The proposed non-substantive changes to existing standards, such as expanded provisions to improve clarity, as well as the proposed new requirement for a qualified electrician to perform specified work, will increase the likelihood of preventing injuries that should have been prevented by existing requirements.

Electrical hazards are a leading cause of fatal and nonfatal injuries in the nation's metal and nonmetal mines. MSHA personnel recently undertook an informal analysis of all electricity-related accident and injury reports filed with the Agency for the 11-year period 1978 through 1988. The analysis showed that there were an estimated 1,300 electrical accidents occurring during that period, involving injuries to miners such as shocks and burns. This number includes 80 fatal electrocutions, approximately 372 non-fatal shock injuries, and 841 burn injuries.[1] The results of MSHA's accident and injury review are referred to throughout the preamble to the proposed rule.

The following is an approximate breakdown of the major electricity-related contributing factors to these injuries, including multiple causes for individual injuries, as appropriate:

Source	Nonfatal	Fatal	Total
More than 650 volts, line-to-line	169	40	209
Electrical maintenance	491	19	510
Grounding, faulty or the absence of	136	14	150
Failure to lock out	309	21	330
Cable handling	49	4	53
Contact with overhead conductors, by raised truck bed, front-end loaders, cranes	53	22	75
Lightning	11	1	12

Such accidents cost the mining industry $12,400 per nonfatal accident, and $674,000 per fatal accident each year. (Ref. Bureau of Mines Contract J0 113005; Analysis of Economic Impact of Fatal/Nonfatal Accidents in Surface Coal and Metal and Nonmetal Mines, November 1983). This includes losses from production downtime, direct and indirect damages to machinery, and compensation for injury and loss of life.

Electric power is essential to the mining and processing of minerals. Many types of mining equipment, such as continuous miners, loaders, shuttle cars, draglines, shovels and drills, are electrically powered. In addition, electricity is used for the transportation of material on conveyors, electric railroads, and for processing plants.

While the usefulness of electricity to the mining industry is undisputed, there are hazards associated with its use which must be understood and avoided to prevent injuries. Electrical fault conditions such as short-circuits, accidental grounds, overloads, or poor connections can cause shocks, burns, and fires resulting in death and injuries. Of 49 fatal electrical accidents during the six-year period 1978-1983, the majority occurred when persons contacted the energized frames of

[1] The analysis did not include a review of mechanical or crushing injuries caused by accidental electric equipment startup.

equipment, or contacted exposed energized parts of electric equipment or circuits.

The number of similar electrical accidents could be reduced by the proper selection and installation of equipment by enclosing or isolating energized parts, providing safe working space around equipment, using adequate insulation, safety grounding, and warning signs, locking switches in the open position under certain circumstances, using insulated flooring or gloves, and regular inspection and maintenance. The proposed rule would provide performance-oriented standards, where possible, to safeguard miners against the hazards arising from the use of electricity in mines.

To lessen the economic impact and allow for the continued use of existing equipment, certain proposed standards would provide for "grandfathering." Grandfathering, and the use of alternative compliance methods, would address the economic concerns expressed by small mine operators without causing a diminution of safety. In accordance with the requirements of the Paperwork Reduction Act, incorporations by reference and recordkeeping requirements have been deleted. For example, the proposal would eliminate the existing recordkeeping requirements in §§ 56/57.12028.

B. Transfers

Two existing standards which are more appropriately addressed in Subpart K (Electricity) would be transferred from Subpart C (Fire Prevention and Control). They are existing §§ 56/57.4011 and 57.4057, which address abandoned electric circuits and trailing cables. They are being proposed under Subpart K as §§ 56/57.12104 and 57.12700. The existing standards will remain codified with Fire Prevention and Control standards as §§ 56/57.4011 and 57.4057 until revisions to Subpart K are published as a final rule.

C. Incorporations By Reference

Existing §§ 56/57.12045 and 56/57.12048 incorporate by reference the *National Electrical Code* of 1968 (NEC). Existing §§ 56/57.12047 incorporate by reference the *National Electrical Safety Code* of 1961 (NESC); Part 2: "Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines;" and Supplement 2, 1968 (NESC). The NEC contains nationally recognized safety standards for the electrical industry. The proposed rule would replace the incorporated documents with specific performance-oriented requirements.

D. Petitions for Modification

Operators with petitions for modification that involve the standards revised under the proposed rule would need to determine the status of those petitions before the effective date of the final rule. For proposed standards which are renumbered, but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. Operators with modifications granted for standards that have been revised would need to comply with the new rule on its effective date. New petitions for modification of the rule may be submitted, as necessary, in accordance with 30 CFR part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

E. Definitions

Sections 56/57.12000 would contain definitions of terms used throughout the proposal which apply specifically to Subpart K, to facilitate comprehension of the standards. Existing §§ 56/57.2 would be revised and several definitions deleted to eliminate repetition. The proposal would incorporate a definition of the term "cable"which conforms to that used by the Insulated Cable Engineering Association (ICEA). The term is used in several of the proposed standards, and it is defined in response to commenters, concerns that a distinction needs to be made between "power cables" and other specific types of cables.

A power cable would be defined so as to encompass all types of cables, including feeder cables, trailing cables, and flexible cords which conduct power. Several commenters to the preproposal draft objected to this definition and suggested exclusion of low energy cables such as communication, instrumentation and control cables. This recommendation was adopted and is reflected in the proposed language.

The definition of "cable" was revised to reflect that a cable may include uninsulated equipment safety grounding conductors to distinguish it from a "conductor". Commenters also requested that a specific definition of the term "trailing cable" be included in the proposal to identify it as a special purpose flexible power cable.

The proposed definition of a "circuit breaker" is consistent with the Institute of Electrical and Electronics Engineers (IEEE) and NEC definitions of the term. The phrase "injury to itself" would be replaced with the phrase "damage to the device". One commenter suggested that the definition of a circuit breaker should include "overcurrent and ground-fault settings." This approach would result in redundancy, as specific overcurrent and ground-fault settings are listed within the proposed standards in subpart K.

Commenters also suggested that the word "current" be substituted for "overcurrent," stating that "overcurrent" does not allow for use of magnetic and filament type breakers. Overcurrent was retained because it addresses the intended hazards and is consistent with IEEE and NEC definitions. As used in the proposed definitions, it means any current in excess of the rated current of equipment, or the ampacity of a conductor, which may result from ground-fault, overload or short-circuit conditions.

This proposal would revise the existing definition of a "conductor" in response to recommendations from several commenters. The proposal would clarify that a conductor is a wire which is intended to carry an electric current. This change would prevent application of electrical requirements to materials such as messenger wires, metallic equipment frames, and fences which are capable of carrying electric current, but are not intended for that purpose. This change would not except messenger wires intended for use as equipment safety grounding conductors from complying with applicable requirements.

"Equipment safety grounding conductor" would be a new term describing the conductor which connects the non-current-carrying metallic parts of electric equipment, raceways and other metallic enclosures to the safety grounding system. Commenters suggested using the term "equipment grounding conductor," as used by the NEC. The NEC is design-oriented and related directly to the installation and protection of equipment. By contrast, MSHA's proposed standards are primarily performance-oriented, and intended to enhance miner safety. In the Agency's view, it is important to stress that grounding is intended to safeguard persons from shock and burns, and not primarily to protect equipment. Conveying this concept would best be accomplished by using the term "equipment safety grounding conductor" as opposed to "equipment grounding conductor." The IEEE Standard 277-1983, "IEEE Recommended Practice for Cement Plant Power Distribution," uses this term to describe proper equipment grounding of quarry-related mining equipment, and

its *Standard Dictionary of Electrical and Electronics Terms*, IEEE Standard 100–1977, defines "safety ground conductor" in essentially the same manner as the proposed definition.

The existing definition of the word "insulated" would be revised by removal of explanatory language and clarification that compliance flexibility exists. The existing definition of "insulation" would be deleted, as its meaning is spelled out within the proposed standards.

New definitions of the terms "mobile electric equipment," "portable electric equipment" and "stationary electric equipment" would be included in the proposal as a means for classifying equipment according to the electrical hazards associated with its use. Varying methods of protection would be required under the proposal in accordance with the type of equipment. Therefore, separate definitions were necessary to distinguish between machine types. Equipment characteristics such as facility and method of movement, and type and duration of use were considered in defining these terms.

The proposal would incorporate a new definition of the term "overcurrent" derived from commenter suggestions and the NEC definition. Commenters indicated that a definition is necessary to distinguish "overcurrent" from "overload." Overcurrent is a descriptive term applied to ground-fault, short-circuit and overload conditions, where equipment is operated or conductors are loaded in excess of their rating or ampacity. The proposed definition of "overload" would revise the existing definition to clarify the term, and distinguish it from other faults. It is consistent with the NEC definition of an overload.

Several of the proposed standards would require electrical work to be performed by a "qualified electrician." That term is new, and would be defined as an individual who has met the requirements of proposed §§ 56/57.12100. Those sections would require certain mine electricians to be qualified under an operator's electrical training and qualification program.

The proposal would include a new definition of the term "rated," as used in Subpart K. A device is rated by testing it and making a comparison with a national consensus standard such as those prepared by the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the IEEE, the ICEA, and Factory Mutual (FM). If no nationally-developed consensus standard is applicable, the manufacturer provides documentation that a device has been tested and does not present a burn, fire or shock hazard.

The proposed new definition of the term "safety grounding system" is derived from the IEEE and NEC definitions of "grounding system" and "equipment grounding conductor." It would be defined as a complete installation intended to provide a low-impedance fault current path to the system's protective device for non-current-carrying metallic parts enclosing electric conductors or circuits.

The proposal would modify the existing definition of a "short circuit" by changing the term "resistance" to "impedance" as suggested by commenters. The term "potential" has been retained and is consistent with the IEEE definition (Standard 100–1977).

Several other definitions have been included in the proposal to facilitate interpretation of the proposed standards and identify new terms. For instance, the proposed rule would utilize the terms "nominal voltage," "jacket," and "ground fault." They have been explained in proposed §§ 56/57.12000 for convenience.

Existing definitions of the terms "low potential" and "high potential" would be eliminated under the proposal. In lieu of utilizing broad voltage classifications, the proposed standards would apply to specific equipment or circuit voltages. Therefore, the low- and high-voltage categories were no longer necessary. Likewise, existing definitions of "electrical grounding" and "reverse-current protection" would be deleted, as they are not used in the proposed standards. The definition of a "distribution box" would be included in the applicable standards.

F. Section-by-Section Analysis

The following analysis examines the proposed rule and its effect on existing standards.

General

Sections 56/57.12100 Qualified Electricians

Sections 56/57.12100 would be new, addressing the qualification of mine electricians. Because of the danger and difficulty involved in some mine electrical work, Subpart K would require certain tasks to be performed by a qualified electrician. This standard would require such work to be performed by individuals who have met the requirements of an operator's qualification program. In the Agency's view, such persons would possess the knowledge and skill necessary to safely and accurately complete electrical work which affects their own well-being, as well as the well-being of other miners.

The need for specific qualifications to perform electrical work is illustrated by the number and types of electrical accidents occurring in metal and nonmetal mines. A review of electrical accident reports from 1978 through 1988 has indicated that 17 of the 80 electricity-related fatalities during that time (approximately 21%), and 382 of the 1213 nonfatal electricity-related injuries (approximately 32%) reported involved persons who had not been properly trained in electrical work procedures. Many of the injuries and fatalities reported to MSHA involved non-electricians engaged in electrical maintenance or repair work. For example, in 1986, a mechanic was electrocuted when he inserted fuse cut-outs, one in each hand, into a high-voltage overhead feeder while standing in the raised bucket of a frontend loader. An individual trained in electricity and its hazards would never have attempted this, knowing such a procedure would lead to death or serious injury.

The intent of the standard is to assure that persons engaged in dangerous electrical work are made aware, not only of the proper technical procedures, but of the hazards associated with such work. Additionally, requiring certain work to be performed by trained, qualified electricians would serve to enhance compliance with other mandatory electrical standards in 30 CFR parts 56 and 57. Persons knowledgeable in these requirements are more apt to be diligent in complying with them.

The standard would offer a wide variety of compliance alternatives, to be chosen at the option of the mine operator. For instance, metal and nonmetal mine electricians could be qualified under procedures used by other Federal or state agencies. As an alternative, operators could take advantage of labor union apprenticeship programs for the qualification of mine electricians, as is presently the practice in some mines. This flexibility in compliance alternatives would serve to promote training of mine electricians. MSHA does not want to discourage participation in training programs, such as apprenticeships, under the standard. Additionally, electrical work is often done by independent contractors, particularly in smaller metal and nonmetal mines. Providing qualification compliance alternatives would not disallow such a practice.

Sections 56/57.12101 Electric Equipment and Conductors

This proposed standard would revise and combine existing §§ 56/57.12002, 56/57.12030, 56/57.12035, 56/57.12040 and 56/57.12041. It would address safe practices for the selection, installation, use and maintenance of electric equipment and conductors. Paragraph (a) would require electric equipment and conductors to be installed and maintained by a qualified electrician, and used in a manner which prevents shock and burn hazards to persons. Equipment and conductors presenting such hazards would be required to be tagged and the hazard corrected. This would assure that persons responsible for the maintenance and repair of electric equipment have the knowledge and skill necessary to perform the work safely, and that miners working near electric equipment are not exposed to the risk of injury.

The preproposal draft listed several environmental factors to be considered with the use of electric equipment and wiring. Several commenters suggested that paragraph (a) be deleted or revised, because the environmental factors listed were vague and did not enhance safety. The environmental factors listed in paragraph (a) have been deleted, and the standard has been revised to clarify its intent.

Paragraph (b) would require electric equipment and conductors installed after the effective date of the rule to be selected and located in surroundings compatible with their design and intended use. This would minimize the compliance burden of the proposal on operators, particularly of small mines, while assuring miner protection on newly installed equipment.

Sections 56/57.12102 Bare Conductors

This section would revise existing §§ 56/57.12012. It would limit the allowable voltage of bare conductors accessible to contact by persons to 40 volts. Several commenters believed that the preproposal draft coverage of all bare conductors accessible to contact would expand the scope of the existing standards, which only address bare signal wires. This position was not adopted in the proposal because the same shock hazard exists on all exposed bare conductors, regardless of whether it is a signal wire or power conductor.

In the preproposal draft, the term "potential" in existing §§ 56/57.12012 was replaced by the more accepted and recognized term "voltage." The term "inadvertent" was added to clarify that the phrase "accessible to contact" means accessible to inadvertent or unintentional contact. These revisions would be retained in the proposed rule.

Sections 56/57.12103 Overcurrent Protection

Sections 56/57.12103 would require overload and short-circuit protection for electric circuits and equipment, other than trailing cables, with fuses or other automatic circuit interrupting devices. Such devices would be required under paragraph (a) to safely interrupt the circuit under all overload and short-circuit fault conditions. Overcurrent protection for trailing cables and trolley circuits would be addressed in proposed §§ 56/57.12701 and 56/57.12801, respectively.

Performance requirements for overcurrent protective devices would be spelled out in the proposed rule, based on references to the ratings tables accompanying the proposal. The standard and tables would replace existing §§ 56/57.12001 and 56/57.12065. The tables accompanying the proposal would codify overcurrent protection requirements, eliminating need for reference to the NEC. They are derived from accepted safety standards, as well as information taken from the NEC.

The overcurrent protection provisions and the tables specifying ratings and settings for protective devices would assure proper deenergization of circuits and equipment in the event of overcurrent conditions. Arcing and conductor overheating, and the resulting hazards to miners such as fires and electrical shock would thereby be prevented.

Under paragraph (b), motors would be required to be protected against overloads at no more than 125 percent of their full-load current, and paragraph (c) would require short-circuit protection of motors as specified in Tables 56/57.12103–1 and 56/57.12103–2. Some commenters were concerned that specified values could prevent motors from starting. The values are based on the NEC, and should not pose frequent start-up problems. However, in the eventuality that the specified values would cause insufficient current for the starting of alternating-current (ac) motors, paragraph (d) would permit adjustments in circuit breaker trip values. In no instance would the setting be permitted to exceed 1300 percent of the motor's full-load current on instantaneous-trip circuit breakers, or 400 percent of the motor's full-load current for inverse-time circuit breakers. Therefore, the standard would provide maximum circuit protection, but would allow for the practical necessity of having sufficient current for equipment start-up.

Paragraph (e) would require all three-phase motors to be protected so that an overcurrent in any phase will deenergize all ungrounded phases. This would assure that the remaining phase conductors will not also become overloaded and increase the risk of shocks and fires. Under paragraph (f), transformers would have to be protected on the primary side, with overcurrent protection rated at no more than 250 percent of their rated full-load current.

Paragraph (g) would provide that when the required rating of a fuse or circuit breaker without an adjustable-trip unit does not correspond to a standard rating for fuses or circuit breakers, the protective device used would not be permitted to exceed the next higher standard rating. In such cases, the Agency would permit the use of a lower standard rating, or the next higher standard rating to allow for flexibility when necessary.

Circuit breakers or fuses providing short-circuit protection would be required under paragraph (h) to be installed where the circuit conductors are connected to the supply. However, feeder tap conductors which are 25 feet or less in length, have ampacities of at least one-third of the ampacity of the feeder conductors, and terminate at a circuit breaker or fuse with current ratings that do not exceed the ampacity of the feeder tap conductors, would not have to meet the requirements of this provision. The 25-foot requirement is consistent with national standards, which recognize that a longer length could significantly increase the resistance in the circuit. The proposal would limit the resistance in the circuit to a value that would allow adequate fault current to flow through the system, thereby allowing the system overcurrent protection to properly operate.

Paragraph (i) would require wiring to be protected at no more than the ampacity specified in proposed §§ 56/57.12601. However, as specified in paragraph (j), overcurrent protection would not be required on incandescent lamps supplied from direct-current (d-c) systems, provided the length of ungrounded conductors does not exceed eight feet. MSHA experience demonstrates that a requirement for overcurrent protection in these circumstances would not be justified, since the design of incandescent bulbs is such that their filaments will fuse during an overcurrent situation. The higher resistance of a conductor longer than eight feet could cause it to overheat in such a situation, posing a fire hazard to miners.

Paragraph (k) would state that the overload protection requirements of the standard would not apply where interruption of a circuit presents a hazard to persons. However, measures would have to be taken to warn persons when an overload occurs. Two examples of where an overload warning would be permitted are: (1) An electrically driven fire pump providing water or fire retardant to fight a fire which endangers miners, (2) an electrically driven mine hoist used to transport miners to a safe location during an emergency evacuation. Overload warning could be given by a warning light or alarm which clearly indicates that the circuit is overloaded.

Paragraph (l) is new, and would prohibit connection of fuses, circuit breakers, or a combination of both in parallel. This would ensure that the integrity of the protective device is maintained, and that ratings for protective overcurrent devices are used which will not cause damage to the circuit. The design of fuses and circuit breakers presently employed in the industry requires full-line current for the devices to accurately and reliably operate within their parameters.

Sections 56/57.12104 Unused Conductors

This standard would revise existing §§ 56/57.4011 and would transfer these Subpart C (Fire Prevention and Control) standards to Subpart K, because the hazards addressed are electrical. The proposal addresses shock hazards created when a person comes into contact with abandoned or unused energized conductors.

The existing standard would be revised to clarify the meaning of the term "abandoned" and identify the type of equipment the standard addresses. In response to commenters, the term "conductors" is substituted for the phrase "electric wiring" and the subheading changed from "unused wiring" to "unused conductors." Some commenters stated that confusion exists about where conductors should be disconnected. The proposal specifies that the disconnection shall be made at the conductor's supply point. The standard would also include the option of insulating the conductor ends and locking-out the circuit to allow for maintenance and repair, as suggested by some commenters. MSHA considers the combination of insulating and locking-out exposed ends to provide protection equivalent to removing the conductor from its supply source. If the conductors were merely insulated, and the supply source was not also locked out, an individual would be able to energize the conductor by mistake. In addition, the insulation could be damaged, rendering it ineffective. Locking-out would provide back-up protection. The combination of these two would make it impossible to mistakenly energize an unused conductor.

Sections 56/57.12105 Doors and Cover Plates

This standard would revise existing §§ 56/57.12032, and would require that doors and cover plates on electric equipment which allow access to electric connections be kept closed, except during installation, testing and repairs. The term "door" would be substituted for the term "inspection" for clarity. Commenters indicated that a shock hazard occurs only with exposed uninsulated connections, and recommended the standard apply only to these connections. This recommendation was not adopted in the proposal, since insulated connections are exposed to damaging environmental conditions such as water, sunlight, vibration and material spillage, which can cause deterioration of the insulation. If insulated connections are damaged and accessible to contact, a shock hazard would exist.

One effect of this standard would be to assure that control switches are not located in the same compartment as electric connections. To operate such switches, persons should not be exposed to injury through contact with electrical connections. Such switches should be positioned on the outside of the compartments.

Sections 56/57.12106 Danger Signs

This proposed section is derived from and combines existing §§ 56/57.12021 and 56/57.12022. It would require the posting of visible danger signs at all substations, switchyards and control centers to warn against entry by unauthorized persons, due to potential shock and electrocution hazards involved with such locations.

Several commenters objected to the preproposal draft standard's application to "major electrical installations," stating that its scope would require posting of warning signs in unnecessary areas. In response to these concerns, the proposal has been revised to require posting of signs only at the specified areas. The proposal would adopt commenters' recommendations that the term "prohibit" be deleted since signs cannot prohibit entry, but only warn against entry. One commenter recommended that warnings should be aimed at "unauthorized persons." This suggestion was not adopted because the proposed language adequately identifies persons to be alerted by warning signs.

Sections 56/57.12130 Clearance of Equipment

This section would combine and revise existing §§ 56/57.12045 and 56/57.12071. It would address shock hazards created when equipment such as cranes, trucks, end-loaders, shovels, ladders, surveyor rods, tools or supplies contact bare overhead conductors. According to MSHA's review of injury reports from 1978 through 1988, approximately 75 electrical injuries, including 22 fatalities, have occurred under these circumstances.

Paragraph (a) would require bare overhead conductors of more than 650 volts, line-to-line, installed parallel to roadways and under which haulage trucks have access, to be suspended at least ten feet higher than the raised bed of any haulage truck used at the mine. A ten-foot clearance would prevent contact by individuals, as well as accidental energization of the haulage equipment frame. Commenters believed that this provision would require all overhead high-voltage conductors to be raised. The proposal has been revised to only address conductors alongside the road, and not those that cross over the road. An example would be a truck parking area adjacent to a haulage road. In response to commenters' suggestions, the proposal would apply only to bare conductors of more than 650 volts. MSHA estimates that half of the electricity-related fatalities from 1978 through 1988 involved greater than 650 volts.

Under paragraph (b), when equipment is moved or operated near energized bare overhead conductors of less than 69,000 volts, and the clearance is less than 10 feet, the conductors would be required to be deenergized, or other precautionary measures taken to prevent energization of the equipment frames. This provision would not apply to trolley conductors, but would apply to overhead utility or power conductors. It would minimize the risk of persons being shocked or electrocuted through contact with energized conductors.

Paragraph (c) would contain safety precautions to be used when equipment is moved or operated near energized bare overhead conductors of 69,000 volts or more. Such conductors would be required to be deenergized, or a minimum clearance established between the conductor and the equipment, as specified in Table 56/57.12130, accompanying the standard. The distances specified would provide minimum safety clearance for the protection of persons.

Commenters expressed concern that compliance with the preproposal draft requirement of a 50-foot limitation for storing and stockpiling supplies and materials near overhead high-voltage conductors would be difficult to achieve. In response to these concerns, the 50-foot limitation was deleted. Paragraph (d) of the proposal would only prohibit storage and stockpiling of supplies and materials directly underneath bare conductors.

Work on Electric Equipment and Circuits

Sections 56/57.12200 Lockout Procedures.

This section would revise existing §§ 56/57.12016 and 56/57.12017. It would mandate lockout procedures to provide protection against mechanical and electrical hazards. Paragraph (a) would require electric circuits and equipment to be deenergized before electrical or mechanical work is performed on them, except when energization is necessary for performing mechanical work. This provision would assure that persons are protected against shock and electrocution, as well as being caught in or pinned by equipment.

From 1978 through 1988, there were 209 electrical injuries, including 40 fatalities, involving contact with voltages over 650 volts. During the same time period, MSHA estimates that 510 accidents, 19 fatal, occurred during electrical maintenance work. For example, one individual was killed by contacting an energized 13,200-volt line while cleaning an insulator. If the circuit had been properly deenergized and locked out during maintenance, the fatality would not have occurred. Performance of work on equipment or circuits which were not properly locked out was a contributing factor in 309 nonfatal and 21 fatal accidents during that time. Many of the victims had attempted to work directly on energized circuits. The proposed standard would strengthen existing standards to assure that electrical and mechanical work is performed with minimum risk, and that involved circuits and equipment are deenergized unless power is essential to performing mechanical work.

Paragraph (b) would require installation of individual padlocks for each person performing work and individual tags identifying each person to prevent the circuits from being inadvertently energized and equipment set in motion prior to the completion of work. Additionally, to assure the safety of each individual, only the person installing a padlock or tag would be permitted to remove it. The provision in existing §§ 56/57.12016 allowing authorized persons to remove locks and tags would not be retained under the proposal in order to enhance miner safety.

There may be some unusual circumstances in which the mine operator could demonstrate a need to remove an employee's lock. Recently, the Occupational Safety and Health Administration (OSHA) issued a final rule with such an exception. (54 FR 36644) Under the OSHA rule, the employer could remove an employee's lock if, at a minimum, the employer has procedures to: verify that the employee is not at the facility; make all reasonable efforts to contact and inform the employee that the lock has been removed; and ensure that the employee knows that the lock has been removed before resuming work at the facility. The Agency solicits comments on whether and under what circumstances such an exception would be appropriate for metal and nonmetal mining.

At least two of the fatal accidents previously mentioned occurred when power was accidentally applied to circuits being tested. The proposed requirement would greatly reduce the likelihood of accidental reenergization before all persons are able to place themselves out of danger, or before each person working on the circuit is identified. Each individual would be made responsible for installing and removing a padlock and tag. At the change of shifts, it would be the responsibility of a foreman or other supervisory personnel to assure that the circuit or equipment being worked on is properly tagged or locked out.

The rule would specifically require a padlock for locking out purposes since this device is presently in use throughout the industry. Most electric equipment in use is capable of easy installation of a means to attach a padlock. The Agency does not foresee a necessity for extensive alteration of equipment designs for compliance purposes. MSHA considers padlocks to be the most reliable, tamper proof devices available for the purpose.

The need for both locks and tags stems from the nature of the mining industry. Specifically, the underground environment is normally quite dark, making it difficult to visually ascertain whether a tag has been affixed to a circuit. Additionally, mining differs from other industries in the lengths of the circuits used. An electrical cable used underground may extend hundreds of feet, snaking around corners and entries. Such use would be unusual in a non-mining setting. These conditions facilitate the possibility of electrical accidents, absent appropriate precautions, and indicate a need for requiring both locking-out and tagging of electric circuits or equipment before work is performed on them. However, MSHA solicits comment on whether to permit the option of tagging out circuits and equipment alone in surface facilities and structures which are more similar to typical industrial atmospheres.

Paragraph (c) of the proposed rule would permit testing to locate electrical problems and adjusting of energized circuits, provided safety precautions are taken. The circuit voltage would have to be 1040 volts or less, the work performed by a qualified electrician, as specified in proposed §§ 56/57.12100, and procedures, tools and equipment used which are designed to assure personal safety. This would be an option only when it would be impractical to deenergize the circuit. The term "troubleshooting" was deleted and the word "adjusting" is now used for clarification.

Sections 56/57.12201 Plugs and Receptacles

This standard would revise existing §§ 56/57.12007. It would help to reduce shock and burn hazards by prohibiting the practice of making or breaking cable connections under load on circuits greater than 150 volts, line-to-ground. The proposal has been clarified by inclusion of a voltage limitation, and would allow for connectors of the load-break type. The title of the preproposal draft standard "Load-Break Disconnects," was revised in response to comments that the title and standard's language were inconsistent.

Some commenters suggested the voltage level be raised to 480, while others suggested it be deleted. It was also suggested that the value be made 150 volts to achieve consistency with other proposed standards. A value of 150 volts, line-to-ground was chosen because it would not diminish the safety measures intended by the standard.

Sections 56/57.12202 Fuses

This section is derived from existing §§ 56/57.12036 and 56/57.12037, and would address shock and burn hazards that may be created when installing or removing fuses by hand. Some commenters were concerned that the preproposal draft did not allow the use of "screw-in type fuses," which can be safely handled without the use of a tool. The proposal provides for the use of "tools or procedures," that would prevent electric shock or burns. This

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language would have the effect of permitting the use of screw-in type fuses. One commenter recommended that the proposal not allow a fuse to be installed by hand in an energized circuit. This recommendation was not adopted, since some fuses can safely be installed by hand in energized circuits using the proper procedures.

Sections 56/57.12203 Cable Handling

Existing §§ 56/57.12014 and 56/57.12039 would be revised under this proposed standard for handling energized cables. Paragraph (a) of the proposal would prohibit movement of power cables energized to a voltage in excess of 150 volts line-to ground by other equipment unless sleds or slings insulated from the equipment are used. To avoid confusion, the standard specifies that the pulling or dragging of a trailing cable by the equipment it powers would not be prohibited.

Several commenters suggested that MSHA accept the alternative use of shielded cable with ground fault tripping set at 25 amperes. These measures do not provide sufficient personal protection against shock, because 25 amperes is five-thousand times the accepted safe level of current, according to information made available to the Agency. Some commenters suggested that MSHA limit the application of the proposed rule to cables of more than 650 volts, line-to-line. This recommendation was not adopted, because the hazards addressed also apply to cables of 650 volts or less, line-to-line.

Paragraph (b) is derived from existing §§ 56/57.12104. It would require the use of insulated hooks, tongs, slings, gloves, mitts, aprons, or other insulated personal protective equipment capable of protecting against shock when power cables energized to a voltage in excess of 150 volts line-to-ground are moved manually. One commenter suggested that insulated aprons should be an acceptable means of personal protection for cable handlers. This recommendation was adopted, and the proposal includes examples of equipment which would be acceptable for compliance purposes. The specific equipment used would be left to the discretion of the operator, provided it offers adequate miner protection.

Paragraph (c) would set standards for the maintenance of insulated handling equipment. It would have to be examined before each use for visible signs of damage or defects, and removed from use when damaged or defective. These procedures would assure that miners will not rely for their protection on equipment which no longer retains its protective characteristics.

Under paragraph (d), surplus trailing cables serving shovels, cranes and similar equipment would be required to be stored in cable boats, on reels mounted on the equipment, or in some other manner which would protect them from mechanical damage. Compliance with this provision would assure that when surplus cables are put into use, they will not expose miners to shock or fire hazards. One commenter recommended that paragraph 1(b) of the preproposal draft dealing with storage of surplus cables be combined with preproposal draft §§ 56/57.12–65. This suggestion was not adopted, because preproposal draft standard §§ 56/57.12–65 dealt with guarding.

Sections 56/57.12204 Access

This section would revise existing §§ 56/57.12019. Its purpose is to prevent electric shock by providing for the minimum amount of safe working space around energized electric equipment. Under paragraph (a), working space would be required around installations and equipment constructed after the effective date of the rule, where access to exposed energized electric equipment is necessary.

The proposed rule would clarify the term "suitable clearance" in the existing standard by including a table of minimum working spaces derived from the National Fire Protection Association, Inc. (NFPA), 70 E. Table 56/57.12204 would accompany the standard, along with explanatory materials. Some commenters suggested that the table should not apply to stationary, mobile or portable installations. However, the Agency believes that the proposed table incorporates safe working area clearances for all types of equipment.

Commenters also suggested that the table should only apply to new installations, because "suitable clearance" has been accepted in the past. In response, the proposal would apply only to equipment installations constructed after the effective date of the proposal. This would minimize the economic impact of the requirement, while upgrading overall safety. For existing installations, the standard would provide for an alternative to compliance with Table 2, by allowing the use of precautionary measures which protect persons from electric shock or burns. Examples of such measures would be deenergization or the use of insulated gloves or insulated blankets.

Guarding; Insulation; Separation

Sections 56/57.12300 Connections and Grids

Existing §§ 56/57.12023 would be revised under this section. It would require insulation of exposed electric connections and resistor grids. Where insulation would be impractical, they would be required to be guarded to prevent inadvertent contact by persons or equipment. The existing standard contains specific language that permits protection by location as an acceptable means of compliance. The preproposal draft revision deleted this language. Several commenters requested that it be retained in the proposed rule to provide an alternative method of compliance. This language was not retained because parts protected by location are not considered exposed and would not be addressed under the standard.

For purposes of this section, a connection or resistor grid would be considered to be exposed if it is bare and inadequately protected by guarding, isolation or insulation. Under the proposal, insulating or guarding would only be required for exposed electric connections and resistor grids that are not otherwise protected by their location. Insulation would be preferred to guarding. However, guarding may be used to comply with this standard where insulation would be impractical. The existing standard applied to all connections and grids and needed specific language to allow for the alternative of protection by location. Requiring guarding of connections and grids which are located so as to prevent contact would be unnecessarily redundant.

Some commenters recommended that the term "bare" be substituted for the term "exposed." This recommendation was not adopted because exposed more accurately describes the hazardous conditions addressed by the standard.

Sections 56/57.12301 Communication Conductors

This standard would revise existing §§ 56/57.12010 and 56/57.12048. Paragraph (a) would require all communication conductors to be isolated or insulated to prevent them from contacting bare energized parts. The provision would apply only to bare energized parts, while existing §§ 56/57.12010 applies to all energized power conductors and sources. The Agency's view is that proper insulation or isolation would address the shock hazard.

Paragraph (b) would require communication conductors carried on

poles supporting insulated power conductors to be located below the power conductors. Persons working on communication conductors are exposed to shock hazards from power conductors located on the same pole. The preproposal draft standard encompassed insulated and uninsulated power conductors, and would have required a space of at least 30 inches between conductors to provide access to the higher conductors. In response to comments, the proposal would apply only to uninsulated power conductors, and the 30-inch spacing requirement has been deleted.

Paragraph (c) would prohibit attachment of communication conductors to a crossarm that carries uninsulated power conductors. Several commenters suggested insertion of the phrase "if located below power conductors." This recommendation was not adopted because paragraph (b) would require all communication conductors to occupy the lower pole position when the pole is shared by a power conductor. The proposed rule would delete incorporation by reference to the NEC in existing §§ 56/57.12048, and would instead include specific compliance requirements.

Sections 56/57.12302 Lights, Guarding

This standard would revise existing §§ 56/57.12038 and would require guarding of portable extension lights and lights less than eight feet above travelways and working places to prevent a hazard to persons. The existing standard contains a height reference of seven feet, which was changed to eight feet in the preproposal draft. The eight-foot height reference would be retained, despite commenters concerns that it may not be possible in all mines.

Lights which are seven feet or less above travelways and working places are within easy reach of individuals of average height. An eight-foot clearance would place lights out of the reach of most persons, and assure that they would not be injured by inadvertent contact with lighting components. In mines where an eight-foot clearance is not attainable, the alternative protection of guarding to prevent hazards would be available under the proposal.

Paragraph (b) would require guarding of other types of lights when they present a hazard to persons, and paragraph (c) would prohibit lamps from contacting combustible materials. One commenter suggested the standard should require guarding of lamps to provide protection against falling glass from a broken lamp or one that has exploded. A broken or exploded lamp could create a shock or burn hazard and would be covered under paragraph (b) of the proposed standard. Additionally, the standard would address the risk of fire from mine lighting.

Sections 56/57.12330 Transformers

This standard would revise existing §§ 56/57.12026, 56/57.12067 and 56/57.12068. Paragraph (a) would require compliance with one of four equally protective alternative methods of preventing persons from inadvertently contacting energized transformer parts. Transformers would be required to be of the totally enclosed type, or installed so that exposed energized parts are at least eight feet above the ground. An eight-foot elevation of these parts would be permitted as an alternative to an enclosure because it exceeds the height of the tallest person, and inadvertent contact with the bare energized parts would be difficult.

Additionally, guarding could be achieved by installing the equipment in a transformer house or surrounding it by a sturdy fence at least six feet high and separated by at least three feet from any parts, casings or energized conductors. Any of these four methods of isolating or separating transformer parts from contact would be acceptable to the Agency. Some commenters recommended that transformers of 650 volts or less, line-to-line be specifically excepted from the requirements of the proposed standard because compliance would be difficult. The Agency believes that the allowance of four alternative methods of compliance would remove the need for such an exception.

Paragraph (b) would require gates or doors of transformer enclosures to be locked to prevent unauthorized access to exposed energized parts which are less than eight feet above ground. Locking would minimize the risk of unqualified persons gaining access to the transformer enclosure and being shocked or electrocuted. The phrase "gates or doors" was added to the provision, and the term "exposed" was substituted for "bare" to clarify the standard's intent. Finally, paragraph (c) would require metallic transformer houses and fences to be connected to the metallic case of the safety grounded transformer. This would assure that fault conditions would not energize the metallic structure of the equipment.

Sections 56/57.12331 Substations

This standard is derived from existing §§ 56/57.12026 and 57.12065, and would contain guarding requirements for substations. The proposed rule was revised to require enclosure of substations containing exposed energized parts subject to inadvertent contact by persons. Additionally, when the enclosure is a metallic fence or structure, it would be required to be connected to the substation's safety grounding system to minimize shock hazards.

Connections; Switches; Controls

Sections 56/57.12400 Identification

This standard would revise existing §§ 56/57.12016. It would require circuit breakers, trailey taps, fuse switchboxes and other disconnecting devices to be legibly, durably and distinctively marked to show which electric equipment they supply. This standard would assure accurate identification of equipment and their protective devices, and reduce the risk of inadvertent energization of equipment or circuits being worked on. Devices which can be identified by their proximity to the equipment would be exempted from the requirement. The recommendation of one commenter to remove the exception from the standard was not adopted, as it would result in requiring unnecessary labeling of all circuit breakers and disconnect devices.

The proposal adopts commenters suggestions for substituting the term "devices" for "switches" to allow for state-of-the-art equipment. The word "other" was added for clarity since circuit breakers are also disconnecting devices.

Sections 56/57.12401 Insulating Mats

This standard is derived from existing §§ 56/57.12020. It would prevent electric shocks and electrocutions by requiring insulating mats at all switchboards and power-control switches where energized parts create shock hazards. The existing standard requires protective insulation at all switchboards and power-control switches, including on units of mobile equipment, where shock hazards exist. The proposal would apply only to switchboards and control switches where a hazard exists due to exposed energized parts, including on mobile equipment. The broader scope of the existing standard was not retained because the hazard to persons is far less when energized parts are not exposed and cannot be contacted.

Several commenters suggested changing the term "exposed" to "bare." However, IEEE Standard 100–1977 defines exposed parts as live parts "that can be inadvertently touched or approached nearer than a safe distance by a person." The preproposal draft wording has been retained because it clarifies the intent of the standard and

achieves consistency with the other proposed standards.

Some commenters recommended that the standard allow for the use of grounded metallic plates as an alternative to insulating mats. With the use of metallic plates, if a person contacts a live part or an internal component of equipment, an electrical path is completed to ground through the person, resulting in an electrical injury or electrocution. Use of an insulating mat may prevent this type of occurrence. Other commenters expressed concern about the effectiveness of the mat when covered with water. Under this condition the mat is no longer insulating and would not meet the requirements of the proposed rule. One commenter expressed concern that the revision, unlike the existing standard, would fail to provide protection for persons exposed to electrical fault conditions. This hazard would be addressed in the proposed safety grounding provisions of this subpart.

Sections 56/57.12402 Undervoltage Protection

This proposed standard would be new, and would prevent the unintentional start-up of electrically-powered equipment such as mine hoists, elevators, tool heads, arc welders and conveyor belts. Starting of such machinery without warning can expose persons to crushing and pinning accidents, as well as entanglement in equipment parts. To prevent these occurrences, electric powered machinery must be equipped with undervoltage protection.

The proposed standard would require that upon loss of voltage, the equipment remain deenergized until manually restarted. Undervoltage devices are designed to detect the voltage of the circuit and cause the circuit breaker to open and deenergize the circuit upon a sudden loss of voltage, and keep it deenergized until manually reset. Otherwise, unexpected start-up of belts or equipment could injure miners.

Several commenters requested clarification of the term "undervoltage." Some commenters indicated the use of undervoltage is much broader than the phrase "loss of power," and recommended the title be changed to "loss of power protection." This recommendation was not adopted because the term undervoltage more clearly expresses the Agency's intent.

The concept of "undervoltage protection" is based on the *IEEE Dictionary of Electrical and Electronics Terms*, Standard 100–1977, definition as "the effect of a device, operative on the reduction or failure of voltage, to cause and maintain the interruption of power to the main circuit. Note: The principal objective of this device is to prevent automatic restarting of the equipment. Standard undervoltage or low-voltage protection devices are not designed to become effective at any specific degree of voltage reduction."

One interpretation of the term characterizes undervoltage as a large percentage drop in system voltage, as opposed to a total loss of voltage. The proposed language would eliminate the occurrence of circuit trips when there is a sudden load on the system resulting in a normal voltage drop. For example, use of a high-voltage continuous miner can create a heavy load on the system, with no resultant hazard. Pumps, level control circuits and equipment that by design can automatically start and stop safely would not be required to have undervoltage protection. Such a requirement would be unnecessarily restrictive.

Section 57.12460 Branch Circuit Disconnecting Devices

This standard would revise existing § 57.12084, applicable to underground metal and nonmetal mines. It would require the use of disconnecting devices underground at all branch circuits extending from primary power circuits. This provision would allow main power circuits to remain energized, while permitting deenergization of branch circuits to perform work or repairs. It would eliminate the need for the dangerous practice of performing work on energized circuits.

Paragraph (a) would require such devices to be designed to be opened under load without hazard to persons. This would limit the occurrence of electrical injuries caused by arcing or sparking when devices are opened under load. Some commenters suggested the words "designed to be opened under load" be substituted for "that can be opened under load," used in the preproposal draft. This recommendation was adopted, because all disconnecting devices designed to be opened under load without hazard by necessity can be opened under load without hazard.

Paragraph (b) would require disconnecting devices for underground branch circuits to be located as close as practical to shafts, adits, levels and boreholes. Compliance with the provision would facilitate quick access to the devices in case of an emergency situation.

Under paragraph (c), disconnecting devices would be required to be provided with a means of visually showing that the branch circuit is disconnected when the device is open. Compliance with the standard would eliminate the risk of unknowingly working on an energized circuit. Several commenters suggested substituting "indicate" for "visually show" to allow the use of molded case circuit breakers, vacuum breakers and others. This recommendation was not adopted because the possibility exists that an indication could give a false signal that the device is open, when it is not open. The proposal was revised to require visual disconnects only for disconnecting devices at branch circuits extending from primary power circuits and to allow alternate means of compliance.

Safety Grounding

Sections 56/57.12500 Grounding

This section would revise existing §§ 56/57.12025 and 56/57.12027. It would require mines that use electricity to have safety grounding systems, and give performance objectives for such systems. From 1978 through 1988, MSHA estimates that there were 150 grounding-related accidents in metal and nonmetal mines, including 14 fatal injuries. These figures indicate the need for reliable safety grounding systems for the protection of miners.

The proposed standard does not specify design criteria for the grounding system. The methods and designs used to achieve this goal would be left to the designer of the system. The preproposal draft contained an equation, ($V^2t=30375$), that some commenters objected to. It has been deleted from the proposal and placed in Appendix 1 as a reference. The performance objective of the proposal can be obtained by using the equation or other methods.

The equation was derived from IEEE Standard 80–1976, § 4.3 (Duration); $I^2t=0.0135$. The equation used in the proposal's appendix differs from the IEEE equation because it relates voltage to time with an assumed body resistance of 1500 ohms whereas, the IEEE equation relates current to time without assuming body resistance. The body resistance factor may make the proposal equation easier to use.

The 1500 ohm value is based on Underwriters Laboratories, Inc., "Standard for Ground-Fault Circuit Interrupters" (UL 943). This value is 50 percent higher than the recommended value of 1000 ohms in IEEE Standard 80–1976, § 5, but safety would not be diminished because the 1000 ohm value does not factor in contact resistance to Earth.

Some commenters suggested that the standard should apply only to fault conditions of more than 100 volts. However, information available to the Agency indicates that a shock hazard could exist using this voltage. This has been shown by C.F. Dalziel, a recognized authority on shock hazards, using the equation $I^2t=0.0135$, developed by Dalziel. (Ref. IEEE Standard 80–1976). According to Dalziel, values below this curve, for current and time, will provide protection for 99.5 percent of the population against ventricular fibrillation.

IEEE Standard 80, § 4.3 (Duration), used this equation as a basis for determining shock hazards and designing substation ground grids. One hundred volts can be tolerated for approximately 3 seconds, if the assumption is made that the person's total resistance is 1500 ohms. Therefore, to achieve compliance with the standard, a voltage of 100 volts, for example, would have to be cleared within three seconds, so as not to present a disabling or fatal shock. In addition, MSHA fatality data documents that persons have been killed through exposure to voltages less than 100 volts. For example, a welder was killed when his neck came into contact with the electrode of an electric welder energized at approximately 80 volts.

In response to some commenters, the proposal was modified to limit the number of faults that must be used to determine if a shock hazard exists. On grounded systems, a line-to-ground fault would be used to determine if a shock hazard exists. On ungrounded systems, a double line-to-ground fault with one of the faults at the source would be used. The operation of lightning arresters and faults in the utility system have been removed from the proposal.

Paragraph (b) would require the voltage on non-current carrying metallic parts of equipment to be controlled by limiting the magnitude or the duration of the voltage, or a combination of both. Appendix I, following the proposed rule, would be a useful guide for compliance purposes. Using the formula in the appendix, a voltage of 100 volts, for example, should be cleared within three seconds. This would limit the possible exposure time to voltages capable of causing injury or death to persons.

Some commenters questioned the method to be used to limit step and touch potentials. Using IEEE Standard 80, ground grids can be designed around any substation for the purpose of limiting step and touch potentials. The resistivity, or resistance of a volume of Earth, of the soil in which the grid is placed is a minor factor in determining the grid design.

Sections 56/57.12501 Alternating-Current Equipment

General grounding requirements for a-c equipment would be addressed by this standard, which is derived from §§ 56/57.12025, 56/57.12027 and 56/57.12033. Paragraph (a) lists structures to be connected to the safety grounding system by equipment safety grounding conductors. For reasons discussed in connection with the proposed definitions, the term "equipment safety grounding conductor" is employed by the proposal. The format of the preproposal draft has been altered in response to recommendations made by commenters. Alternating-current and d-c equipment are addressed in separate sections, and portable, mobile and stationary equipment are addressed within those standards.

Metallic frames, enclosures and other exposed non-current-carrying metallic parts of electric equipment would be required to be connected to the safety grounding system by equipment safety grounding conductors. Therefore, a common safety grounding system would be shared by the unit of equipment and exposed non-current-carrying metallic parts associated with it. In case of insulation failure on a power conductor, which can allow contact between the energized conductor and some portion of a metallic enclosure, the enclosure may become energized with the voltage of the conductor. Anyone contacting the enclosure would then be exposed to the voltage of the conductor. A common safety grounding system would assure that no difference in voltages capable of injuring or electrocuting miners would exist between the structures.

Metallic fences and barriers around high-voltage equipment and installations would also have to be connected to the safety grounding system by equipment safety grounding conductors. This would prevent the occurrence of abnormal voltages on the structures due to contact with an energized conductor. A person who brushes against or leans upon an energized fence, for example, could otherwise be exposed to a serious shock hazard if the fence is not properly connected to the safety grounding system.

Metallic enclosures of a-c conductors would also be required to be connected to the safety grounding system by equipment safety grounding conductors. Therefore, a complete grounding path would be provided for enclosures of a-c conductors, to minimize the risk of harm to persons contacting them. Equipment safety grounding conductors would also be required to connect metallic messenger wires to the safety grounding system. Messenger wires are sometimes used to support single-conductor energized cables in mines. If a splice in such a cable should become damaged where it is supported by messenger wire, the messenger wire could become energized with the voltage of the cable. This would present shock and fire hazards where energized messenger wires contact other structures.

Metallic structures or racks which support electric equipment or conductors would be addressed under the provision. Cable trays which hold energized power cables would be an example of structures addressed by the standard. A breakdown in the cable's insulation could cause the metallic tray to become energized with the voltage of the conductor, presenting a possibly lethal hazard to persons unknowingly coming into contact with the tray. Under the proposal, the tray would be required to be connected to the safety grounding system in order to limit the voltage which could occur on it.

Paragraph (b) would require metallic cable shielding to be connected to the safety grounding system by equipment safety grounding conductors at each termination. This provision would ensure a complete, low-impedance path to the safety grounding system, to prevent stray voltages from energizing the shielding and creating a shock hazard.

Before batteries on battery-powered equipment are connected to a battery charger, paragraph (c) would require the metallic battery trays to be connected to the grounded metallic frame of the charger by equipment safety grounding conductors. Trays would be required to remain connected to the frame until the batteries have been disconnected from the charger. A primary to secondary fault could energize the entire equipment frame. Under the proposed standard, this occurrence would be prevented, since faults would be cleared by the safety grounding system. This standard is intended to apply only to battery-powered equipment, and not all equipment which is started by the use of a battery.

Over the last twenty years, accidental energization of equipment being serviced by battery chargers has occurred, with resulting death to persons who unknowingly contacted the energized equipment frame. The proposed grounding standard would help to reduce the occurrence of similar accidents in the future by assuring that battery trays are properly connected to the safety grounding system during operations which pose a risk of electrical injury. In response to one

commenter's concern, it should be noted that the proposal is not intended to apply to automobiles and trucks, since it addresses battery-powered, rather than battery-started, equipment.

Paragraph (d) would require metallic cable hangers or supporting structures to be connected to the safety grounding system or insulated from the cable. These precautions would protect persons from shock and fire hazards should damage to the cable occur.

Under paragraph (e), exposed metallic enclosures of hand-held electric equipment would be required to be connected to the safety grounding system, except in three instances. Equipment which is double insulated, as determined by an independent testing laboratory, and which does not present a shock hazard, or equipment which is operated at a maximum of 40 volts would not be required to be connected to the safety grounding system.

Hand-held equipment which is double insulated would be exempted from the standard, because two independent insulation systems would provide adequate protection against shock hazards. Damage to one of the insulation systems would not expose miners to energized parts. Some nationally recognized private concerns perform insulation testing to assure that dangerous leakages of current will not occur. Equipment which has been listed by such groups as double-insulated, and which would not present a shock hazard would be acceptable to the Agency for purposes of the exception.

Some commenters stated that even double insulated tools should be grounded with a safety grounding conductor. However, the Agency believes that this would place an unnecessary restriction on the use of equipment that is generally accepted as being safe to operate without an equipment safety grounding conductor. Tests conducted by MSHA contained in Publication U.S.D.O.L. IR-1081 (1978), support the position that double insulation is a safe alternative to equipment safety grounding for hand-held tools. Other commenters expressed concern that the use of double insulated tools would be unsafe in wet locations. However, requiring an equipment safety grounding conductor would not make double insulated tools any safer to use in wet locations. The majority of hand-held electric equipment, with or without equipment safety grounding conductors, is not designed to be used in wet locations.

Under paragraph (f), generator powered equipment mounted on the same metallic frame as the generator would not be required to be connected to the mine's safety grounding system. This would exempt the specified equipment from the requirements of the standard, as it is a self-contained unit. Therefore, there is no likelihood of the occurrence of differing potentials on the metallic frame. No safety advantage would be gained by connecting such equipment to the safety grounding system.

Sections 56/57.12502 Direct-Current Equipment

This standard would revise existing §§ 56/57.12025 and 56/57.12027, and would contain grounding requirements for d-c equipment. The terms "grounded" and "equivalent protection" in the existing standards have been replaced with specific requirements. Mine operators have expressed their opinion that these terms are vague and subject to varying interpretation and misunderstanding. Accidents have resulted where the standard has been interpreted to mean that any connection to earth provides acceptable safety grounding. The proposal also sets necessary exceptions to the requirement for equipment that must be connected to the mine's safety grounding system.

This section would also list several types of equipment and structures which would be required to be connected to the mine safety grounding system by equipment safety grounding conductors. It would address metallic frames, enclosures and other exposed non-current-carrying metallic parts of conductors and equipment, metallic messenger wires used to support d–c conductors, metallic racks and structures used to support trolley wires and trolley feeder wires, and metallic overcasts in trolley systems.

For reasons discussed in connection with the previous section, shock and fire hazards would be prevented by the proposed requirements. Several commenters expressed their view that it is not necessary to require grounding of all d–c systems or rubber-tired trolley assist systems. However, in MSHA's view, metallic frames that enclose or are subject to becoming energized by electric circuits must be safety grounded to prevent injuries or fatalities to persons who contact them. The same hazards to miners exist on this type of equipment as any other equipment frame. Therefore, the same necessity for effective safety grounding exists.

Paragraph (b) would require silicon diode grounding systems to be installed in accordance with proposed §§ 56/57.12504, which would detail safety requirements for that method of grounding. Paragraph (c) would require that component parts of complete units of equipment be solidly connected to the frames of the equipment for grounding purposes, to assure a common connection to the safety grounding system.

Under paragraph (d), equipment which is double insulated, as determined by an independent testing laboratory, and which does not present a shock hazard, or equipment powered by internal batteries which are an integral part of the equipment, or equipment which is operated at a maximum of 40 volts, would not be required to be connected to the safety grounding system. These types of equipment would be exempted from the requirements of the standard for reasons discussed in connection with paragraph (e) of the previous section.

Paragraph (e) would be an exception to the proposed standard. Generator-powered equipment mounted on the same metallic frame as the generator would not be required to be connected to the mine's safety grounding system. As discussed in connection with the previous section, no safety advantage would be gained by connecting such equipment to the safety grounding system.

Sections 56/57.12503 Equipment Safety Grounding Conductors

Design and performance requirements for equipment safety grounding conductors would be addressed in this proposed section, which is derived from existing §§ 56/57.12025 and 56/57.12027. Equipment safety grounding conductors are an essential part of grounding systems in that they are used to connect non-current-carrying exposed metallic parts of equipment and structures to the mine safety grounding system. They are the means of preventing the appearance of dangerous voltages on equipment frames and structures by providing a path from the equipment to the safety grounding system. Proper performance and design of these conductors are essential to the prevention of electrical accidents related to inadequate or ineffective grounding conductors.

Paragraph (a) would require that equipment safety grounding conductors for portable and mobile electric equipment be one or more stranded copper conductors contained within the cable or flexible cord supplying the equipment. Grounding conductors should be enclosed inside cables serving heavily-used portable or mobile electric equipment in order to protect them from physical damage and deterioration. Stranded copper conductors would provide the necessary flexibility and strength for use within cables or flexible cords.

Paragraph (b) would set requirements for equipment safety grounding conductors for stationary equipment. They would be required to be contained together with the circuit conductors in the raceways, cables, or cords, or wrapped around the raceways, cables or cords containing the circuit conductors, or a continuous metal framework, conduit, or metallic conducting medium that complies with the voltage exposure requirements of proposed §§ 56/57.12500. The closer the grounding conductor is located to the power conductor, the less impedance exists between the two. Thus, fault currents will follow the conductor to the safety grounding system, and not directly to earth. Minimum impedance would facilitate effective operation of the equipment safety grounding conductor.

Paragraph (c) would detail the required cross-sectional area of equipment safety grounding conductors. When the circuit conductor is No. 6 AWG (American Wire Gauge) or larger, the combined cross-sectional area would be required to be equal to or greater than one half of the cross-sectional area of the circuit conductor. When the circuit conductor is smaller than No. 6 AWG, the combined cross-sectional area of the equipment safety grounding conductor would have to be equal to that of the circuit conductor.

These conductor sizes, at a minimum, would assure that they are capable of safely carrying the currents to which they may be exposed, and also provide the necessary mechanical strength. The sizes are consistent with the recommendations made in the Bureau of Mines Final Report, No. G0155102, entitled "Open-Pit Metal Mining Grounding Systems." The report resulted from work done by the Pennsylvania State University on behalf of the Bureau of Mines.

Paragraph (d), would require equipment safety grounding conductors installed outside of raceways, cables or cords, and used to ground stationary equipment to be No. 6 AWG or larger. Equipment safety grounding conductors of this size would be able to withstand physical damage and deterioration from the harsh mining environment. Otherwise, the flexing and movement to which such cables are subjected could cause damage to the grounding conductor without damaging the larger phase conductors.

Under paragraph (e), switches, fuses, circuit breakers, ground-fault devices and overcurrent devices would be prohibited from being installed in equipment safety grounding conductors. This would be a preventative measure to ensure that the devices specified could not interfere with the operation of the grounding conductor.

Paragraph (f) of the proposed rule would require ground-wire devices installed in the equipment safety grounding conductor for the purpose of suppressing inter-machine arcing, or in conjunction with ground-wire monitoring systems, to be substantially designed and constructed to withstand the maximum amount of phase-to-phase current to which they may be exposed from simultaneous ground-faults. The effect of this provision would be to permit the use of arc suppression devices, which can minimize shock hazards, if they are substantially designed and constructed to perform their intended function despite elevated fault currents. The proposal would provide standards designed to assure that the use of such devices would not increase the possibility of electric shock hazards.

Paragraph (g) of the proposed standard would require that when ground-wire devices addressed by paragraph (f), such as arc traps and ground-wire monitor filters and diodes, are used, they would have to be connected to the safety grounding system by two separate equipment safety grounding conductors. A single ground-wire monitor is not capable of detecting both the integrity of the ground-wire and whether ground-wire devices are properly connected to the safety grounding system. The proposed standard would provide for a back-up equipment safety grounding conductor connection in case one should fail or become damaged. A second conductor would ensure that the grounding conductors will not become open, without the expense associated with a second ground-wire monitor. MSHA solicits comment on the necessity of a second equipment safety grounding conductor, and the safety benefits thereof.

Under paragraph (h), separate connections to the mine track, the grounded return-feeder conductor, or the metallic frame or enclosure used as the safety grounding system would be required for the equipment safety grounding conductor and the return power conductor on d-c powered equipment. If the equipment safety grounding and return conductors are attached to the safety grounding system by the same connection, both could easily be dislodged or damaged. If both are simultaneously dislodged, the frame of the equipment could become energized, creating a risk of electrical injury to miners. Separate connections would assure the integrity of the safety grounding system, and address the hazards.

Paragraph (i) would require equipment safety grounding conductors for draw-out equipment or plugs and receptacles to be the first conductors connected when making connections, and the last conductors broken when breaking connections. In this way, the safety grounding system for the equipment would remain intact while draw-out units, such as circuit breakers, are being installed or removed. Therefore, ground-fault protection against arcing and ignitions would be provided while devices are being withdrawn or separated.

Under paragraph (j), when power is supplied between separate metallic parts of equipment, the parts would be required to be connected together through an equipment safety grounding conductor. Compliance with this provision would assure that hazardous potentials do not develop between the component parts of the equipment. For example, a person contacting the metallic headlight enclosure of a unit of equipment which is not properly connected to the frame of the unit could receive an electrical shock if the voltage which exists on the headlight enclosure differs from that of the equipment frame. Grounding through a common safety grounding system would serve to minimize the possibility of such an occurrence.

Paragraph (k) would require the frame of a portable or mobile generator supplying remote loads to have equipment safety grounding conductors connecting the frames of each remote load to the frame of the generator. This standard would address power take-off equipment, for example. It would assure that remote loads and the equipment supplying them are connected to a common safety grounding system.

Finally, paragraph (l) would require equipment safety grounding conductors to be bare or properly identified. The effect of this provision would be to identify the conductors that are the connection to the safety grounding system. This section would assure that persons would not mistake the equipment safety grounding conductor for a power conductor. The standard would minimize the possibility of an equipment safety grounding conductor being connected to an incoming power conductor and energizing the equipment frame.

Sections 56/57.12504 Silicon Diode Grounding

This section of the proposal would govern the use of silicon diode grounding, and is derived from §§ 56/57.12025 and 56/57.12027. It would make clear under what conditions silicon diode grounding would be permitted. The proposed standard would contain specific design and performance standards for silicon diode grounding of metallic frames, enclosures, or other exposed non-current-carrying metallic parts of off-track equipment.

Under the proposed standard, when the metallic frames of off-track equipment are grounded by silicon diodes, the diode grounding system would have to meet several requirements. The standard would allow for the compliance alternative of silicon diode grounding, but only if proper safety precautions are taken. These proposed requirements are similar to the conditions typically included in petitions for modification of mandatory standards granted by the Agency on the grounds that the alternative compliance scheme provides equivalent miner protection.

Under paragraph (a), the polarity of each grounding diode would be required to be compatible with the grounded polarity of the d-c system. When the polarity of the grounding diode is proper, current will only flow from the frame of the equipment to the grounded power conductor during faults. However, if the polarity is reversed, dangerous voltages would remain on the frame of the equipment. Further, the overcurrent devices which would be required by paragraph (c) of the standard would be unable to detect the occurrence of a ground-fault if polarity was reversed. Reversed polarity could therefore defeat the safety grounding system, and expose miners to electrocution hazards.

Under paragraph (b), each grounding diode would be required to have a threaded base used to solidly connect the diode to the machine frame. This provision would also serve to ensure a proper, complete grounding path for off-track equipment. It would prohibit the use of "hockey-puck" style connections, which utilize a pressure connector. Unlike hockey-puck connections, a threaded base diode would screw into the frame of equipment, keeping debris from interfering with the connection and the correct functioning of the diode. The standard would also preclude the use of welding for such connections, as the heat involved with the process could destroy the diode.

Under paragraph (c), an overcurrent device would be required to be installed between grounding diodes and the grounded power conductor when a silicon diode grounding system is used. The overcurrent device would have to be designed to cause the main contactor or the circuit interrupting device to deenergize all circuits on the machine when 50 amperes or more flows through the grounding diode. The proposal would therefore require the circuit breaker to trip when a current of 50 amperes or more passes through the diode. A current of less than 50 amperes, in MSHA's view, represents a safe cut-off value. However, methane monitors would be permitted to remain functional to continuously test for dangerous gas levels despite deenergization of a circuit.

Paragraph (d) of the standard would require installation of a polarizing diode in the control circuit which prevents the unit of equipment from being operated when the polarity of the supply conductors is reversed. As discussed previously, improper polarity of the diode can defeat the grounding system. Under this provision, operation of equipment would be made impossible if the supply diode's polarity is reversed, thus preventing unanticipated energization of the frame of the equipment. The standard imposes a precautionary condition on the use of an alternative method of silicon diode grounding.

Under paragraph (e) of the proposal, the forward current rating of each grounding diode would have to be equal to or greater than 750 amperes when used to ground a continuous mining machine, or equal to or greater than 400 amperes when used to ground other equipment, regardless of the voltage of the equipment. Lower forward current ratings, in MSHA's view, could cause the grounding diode to open and fail to trip the circuit breaker during a fault, leaving the equipment frame ungrounded. The proposal would assure a safe and dependable safety grounding circuit which will not fail under overcurrent conditions for all equipment, without reference to voltage. The provision refers to the current or size of the diode, which is an alternative to requiring a grounding conductor, instead of the equipment voltage.

Paragraph (f) of the standard would require the peak reverse voltage rating of the grounding and polarizing diodes to be equal to or greater than 1,200 volts. This provision would help to prevent failure of the solid state device. Electric equipment can be subjected to severe overvoltages, which can cause the grounding or polarizing diode junction to rupture, short circuit, or open, leaving equipment frames exposed to energization. If the polarizing diode ruptures, its ability to retard the function of the control circuit would be lost. This could allow the equipment frame to be energized if polarity is reversed. The proposed standard would address these hazards.

Sections 56/57.12505 Low-Resistance Ground Fields

This proposed standard would set requirements for the design and construction of low-resistance ground fields. It is derived from §§ 56/57.12025, 56/57.12027 and 56/57.12028. Paragraph (a) of the proposal would require low-resistance ground fields used in the safety grounding system to be designed and installed in a manner to assure that the maximum exposure voltage under fault conditions does not create hazardous step and touch potentials. In evaluating ground field safety, the standard would require consideration of the parameters of the system, including soil resistivity, available fault currents, ground field construction, and the operating times of protective devices.

Under paragraph (b), low-resistance ground fields used in the safety grounding system would be required to be maintained at 25 ohms or less. Electric current follows the path of lowest resistance that it encounters. Therefore, the lower the resistance of a ground field, the more likely it is that protective devices can operate to remove ground faults and minimize the possibility of energization of equipment frames. A maximum 25-ohm resistance to earth would serve to maintain resistance at a low level to facilitate the proper operation of ground-fault protective devices.

The system resistance value may deviate from the 25-ohm maximum only if evaluation of the system in accordance with the safety considerations of paragraph (a) indicates that a lower value of resistance is necessary, or a higher value of resistance may safely be used. In this manner, some flexibility would be added to the rule to take into consideration the special circumstances of each mine and its ground-fault protection system.

Paragraph (c) would be a new requirement that the surface area of ground field materials have at least four square feet of contact with soil. For example, the use of three grounding rods measuring 5/8-inch in diameter and eight feet in length would be one method of achieving compliance with the proposed standard, since they would provide at least four square feet of contact with soil. Typically, many more than three grounding rods are presently used in the construction of ground fields. In MSHA's view, four square feet would be a suitable minimum surface contact area to ensure that the ground field has a low resistance to earth. The proposed requirements for ground fields would aid in protecting miners from shock and burn hazards due to voltages appearing between frames or enclosures of electric equipment and earth. A safe, dependable safety grounding system would be provided for under this proposed standard.

Sections 56/57.12506 Testing

This standard would revise existing §§ 56/57.12028, and would detail procedures for testing of the safety grounding system. Existing recordkeeping requirements would be deleted under the proposal, as past experience has shown that records in this case do not give an indication of the safety of the grounding system. Other revisions are based on the results of a study of Electrical Accidents Relating to Grounding Systems at Surface and Underground Metal and Nonmetal Mines, 1978–1983, conducted by MSHA.

The study attributed at least 80 electrical accidents, including five fatalities in that time period, to either a faulty grounding system or the lack of a grounding system.[3] Additionally, the study concluded that, "Most of the accidents could have been prevented if a well designed grounding system were installed and maintained. Maintaining the integrity of the ground circuit is of paramount importance for safe operation of electrical equipment." The testing procedures outlined in the proposal would assure that problems arising in mine safety grounding systems are identified and dealt with in a prompt manner to avoid the occurrence of future injuries and fatalities.

Paragraph (a) would require continuity tests to assure the integrity of the system on all installations made after the effective date of the rule, and when repairs are made to the safety grounding system. The safety grounding system would additionally be required to be reviewed at intervals not to exceed twelve months to assure that the maximum voltage exposure under fault conditions complies with the requirements of subpart K. Initial testing and annual review of the safety grounding system would assure that installation and maintenance of the system are being properly performed, and that a complete, low-impedance ground path is available to prevent occurrence of lethal voltages on equipment frames. The standard would also simplify and clarify the testing required under the existing standard.

For mine power systems utilizing a-c voltage of less than 650 volts, paragraph (c) would require the resistance to earth of the safety grounding system's connection to earth to be maintained at 25 ohms or less, and be physically separated from the substation grounding system. The separation would be required to be the larger of 25 feet or five times the largest dimension of the safety grounding system's connection to earth. As discussed earlier, a resistance value of 25 ohms or less would provide a low-impedance path to ground for fault currents, instead of energizing equipment frames.

The standard would also take into consideration the practical necessities at each mine. It would allow deviation from the value of 25-ohms or less when such a value could not be attained, but only if the operator assures that the system complies with the ground field requirements of proposed §§ 56/57.12505. The voltage level was raised from 600 volts to 650 volts in the proposal to be consistent with other standards in subpart K.

Physical separation from the substation grounding system would prevent transmission of fault current occurring on the substation system to the safety grounding system and energizing equipment frames. Several commenters suggested that separation of the safety grounding system from the substation ground contradicts IEEE Standard 80–1976, § 16.5, which addresses separate grounds, and interconnected grounds in a substation. The IEEE Standard states that these grounds should be interconnected, but should not be used to provide safety grounding for equipment outside the substation.

This is clearly supported by IEEE Standard 142–1982, § 2.6, and accompanying figures 20 and 21(a) and (b). Figures 21(a) and 21(b) show the shock hazard that can occur when the safety grounding system is tied to the substation ground. IEEE Standard 142–1982, requires at least a 50-foot separation of ground beds. The proposal requires at least a 25-foot separation. The separation distance would increase as a function of the size of the safety grounding system's connection to earth. The required separation would be a physical separation and not a complete electrical isolation.

Paragraph (d), would contain requirements for reviewing mine power systems utilizing a-c voltages greater than 650 volts line-to-line. Review would be required to include determinations of the safety grounding system's resistance to earth at its connection to earth. Some commenters to the preproposal draft were not certain of where the resistance measurement of the grounding system would be required to be taken. The proposal would clarify that tests must be conducted where the equipment safety grounding conductor is intentionally connected to earth.

A determination of the maximum fault current able to flow into the safety grounding system, and the impedance of the safety grounding system at electric loads or sources of 500 kVA or larger would also be required. Several commenters wanted to know how to obtain the voltage exposure. There are several acceptable methods including calculations, measurements, or a combination of the two, dependent upon the configuration of the system. The voltage determinations do not have to be conducted if the system has not changed since the effective date of this standard. Some commenters suggested referencing the NEC. The proposal is largely performance-oriented, and is not intended to provide design criteria. However, the NEC could be used as a source for obtaining compliance with the proposed standard.

Paragraph (e) would require a weekly check to be made of the continuity of all mobile equipment safety grounding conductors, except when they are continuously monitored with an MSHA tested ground-wire monitoring device. The preproposal draft referenced a fail safe grounding system as a testing alternative, which generated confusion on the part of some commenters. For clarity, the proposal has been altered to allow the use of a ground-wire monitoring device tested by MSHA. These devices are available and have been required and used in mines for several years. The proposal would not require ground-wire monitors, but would permit their use as an alternate means of compliance.

Additionally, commenters requested that the interval for checking the continuity of equipment safety grounding conductors be increased from a weekly check to a monthly check on mobile equipment. In MSHA's view, a monthly interval would be too infrequent for checking equipment safety grounding conductors. Mobile equipment is constantly in motion, causing flexing and potential damage to the cables serving it, as well as equipment safety grounding conductors. Unlike phase conductors, equipment

[3] As previously noted, MSHA estimates that from 1986 through 1988, an additional 60 nonfatal and six fatal grounding-related accidents have occurred.

safety grounding conductors will not prevent a machine from operating if broken. Additionally, most mines use a weekly electrical maintenance schedule, during which the section is shut down to perform examinations and repairs. The continuity check could be done coincidentally with the maintenance shut down, under the proposal. Without frequent checks, it would be impossible to tell whether the conductor is broken or damaged, rendering the safety grounding system ineffective for preventing electric shocks. MSHA solicits comments on the appropriateness of the interval.

Power Cables and Conductors

Sections 56/57.12600 Installation

This proposed standard would revise existing §§ 56/57.12004, 56/57.12011 and 57.12082, and would address installation of cables and insulated conductors and prevention of mechanical damage to them. Paragraph (a) would require that they be installed so that they are protected against physical damage, adverse ambient conditions and failure of adjacent mechanical systems.

Several commenters expressed the view that it is impossible to protect cables from all physical damage because of the nature of mining operations and the difficulty of achieving sufficient protection. The Agency continues to believe that it is possible and necessary to protect cables from physical damage in order to assure a safe work place. IEEE Standard 242 (1975), "IEEE Recommended Practice for Protection and Coordination of Industrial and Commercial Power Systems," addresses this subject in Chapter 11 on Conductor Protection. The IEEE Standard 242 Section 11.6, "Physical Protection of Cables" addresses mechanical hazards, adverse ambient conditions and damage by foreign elements. The proposed standard would reflect the philosophy of IEEE Standard 242 by requiring protection from damage caused by vehicles, falling objects, misdirected excavation, water, chemicals, bursting pipelines and broken conveyor belts. Minor or cosmetic damage that does not reduce the protective function of the jacket would not be cited under the proposal.

Paragraph (b) of the proposal would minimize the hazard of inadvertent energization of pipelines by prohibiting their use for the support of cables and insulated conductors. However, the proposal would allow cables and pipelines to be installed on the same support, provided work can be performed on pipelines without creating a shock hazard. The preproposal draft would also have prohibited cables and insulated conductors from contacting pipelines. Several commenters indicated that no hazard is created when cables contact pipelines because cables are equipped with shielding or jackets which would protect them from damage from pipelines. In response to those comments, paragraph (c) would prohibit only insulated conductors from contacting pipelines.

Sections 56/57.12601 Ampacity

The proposed standard for cable and conductor ampacities is derived from existing §§ 56/57.12004. New ampacity tables, derived from the NEC and ICEA standards, for proper sizing of conductors would accompany the standard. Paragraph (a) would require electric conductors to be of a size and current-carrying capacity to assure that a rise in temperature resulting from normal operating conditions does not exceed the rating of the insulation and conductors. Exceeding the rating assigned by the manufacturer could expose persons to electric shock or electrocution hazards by causing deterioration of the insulation and conductors. Therefore, conductor sizes and ampacities should be compatible with the current level rated for and used in the circuit.

Under paragraph (b), branch circuit conductors supplying electric equipment would be required to have ampacities of at least 125 percent of the full-load current rating of the equipment. The 125 percent value would provide a buffer, and take the occurrence of higher than normal currents into consideration. For similar reasons, paragraph (c) would require the ampacity of feeder circuit conductors which supply multiple loads to be at least the sum of the full-load current ratings of all the loads plus 25 percent of the highest full-load current of the largest load.

Under paragraph (d), the size of conductors for electric equipment would be required to conform to ampacity Tables 56/57.12601–1 through 56/57.12601–10, or other tables appropriate for the conditions where the conductors are used. Several commenters to the preproposal draft expressed concern about being limited to using the tables supplied. The tables included in the standard are intended to be used as a reference to aid in compliance efforts. However, the use of other appropriate tables would be acceptable to the Agency, provided no safety hazards are introduced.

Some commenters requested derating factors for ambient temperatures. Under paragraph (e), conductor ampacities would be required to be corrected according to the ambient temperature where the conductor is used, if this temperature is other than the temperature at which the conductor was rated. Deterioration of conductor insulation due to a higher ambient temperature than the insulation rating could present a shock hazard. Table 56/57.12601–11 was included because the derating factors vary as a function of the rated temperature of the conductor. The determination of what value is to be used would be left to the operator.

Paragraph (f) would require that when four or more conductors are contained in the same raceway, conduit, or cable, the maximum allowable load current must be reduced according to Table 56/57.12601–12 accompanying the standard. Some commenters recommended that derating factors be included when three or more conductors are contained in a raceway. In response to these commenters the proposal includes derating factors from Article 310 of the NEC.

Some commenters expressed concern that the preproposal draft did not specify the length of conductors. Lengths were not specified, because this would impose design criteria for installations where conductors are used. These revisions are intended to be performance- rather than design-oriented where possible, while preserving a high level of miner safety.

Sections 56/57.12602 Insulation, Termination and Shielding

This section is derived from existing §§ 56/57.12008, and would specify insulation requirements for power cables and conductors. Paragraph (a) would require power cables and conductors to have insulation rated for at least the voltage of the circuit in which the conductor is applied. Trolley wires and uninsulated surface overhead conductors of more than 650 volts line-to-line would be exempted from the insulation requirement due to their use and accessibility.

A potential hazard is created when the conductor insulation rating is below the nominal impressed voltage, possibly causing the insulation to break down and result in damage to the cable. Damaged cable would present a readily available ignition source for a mine fire or explosion, as well as produce a potential shock hazard to persons handling the cable or working on or near the equipment served by the cable. The conductor insulation voltage rating is usually identified on the outer jacket of the cable. Operators could, by looking at this identification, determine the adequacy of the cable for use in a particular circuit.

Some commenters suggested that paragraph (a) refer to insulated conductors instead of all conductors. "Insulated" was excluded because the only conductors at a mine that can be bare are trolley wires and overhead conductors of more than 650 volts, line-to-line. In underground mines, only trolley wires below 2kV can be bare. Commenters also expressed concern that field testing in the preproposal draft was dictating design standards, with no increase in miner safety. In response to these concerns, the proposal has been revised to delete reference to insulation performance requirements.

Under paragraph (b), a new provision, power cables and conductors installed on the surface in circuits with line-to-line voltages above 2,000 volts and subject to contact by persons would be required to have metallic shielding around each power conductor. Some commenters indicated the preproposal draft did not recognize "approved" use of unshielded conductors and stated that the use of metallic shielding is unnecessary in some protected locations. In response to commenters, the proposal has been modified to require shielding of cables and conductors in underground areas of mines, and on surface areas of mines only where they are accessible to persons.

"The IEEE Recommended Practice for Electric Power Distribution for Industrial Plants," standard 141–1976, recommends shielding be provided on cables between 2kV and 8kV. Shielding is required by the NEC (310–6, 400–31(b), 1984) on cables above 2kV. Cables in all underground and some surface mine areas would be subjected to conditions stated in IEEE Standard 141–1976, and would require shielding. Under a provision solely applicable to underground mines, § 57.12602(b) would require all power cables and conductors installed underground in circuits with line-to-line voltages above 2,000 volts to have insulation and metallic shielding around each power conductor. The exception for inaccessible cables and conductors would not apply underground due to the limited clearances and the increased risk of damage to cables and conductors in the underground environment.

Under paragraph (c), metallic enclosed power cables and conductors would not be required to be shielded, provided the enclosure is continuous and connected to the safety grounding system. This provision would give an alternative to shielding which offers equal protection. A continuous enclosure, solidly connected to the safety grounding system would assure an efficient grounding path, and added physical protection for cables and conductors.

Paragraph (d) would require cables to enter metallic frames of electric enclosures through fittings sized for the cables, which prevent damage to the cable jackets and the insulation of the internal conductors. The standard would lead to secure fittings which would cause minimal strain on the connections. Under paragraph (e), insulated conductors would be required to enter metallic frames of electric enclosures through fittings with insulated bushings sized for the conductors. Insulated bushings would offer physical protection for the insulation of conductors not protected by a jacket.

Paragraph (f) is new, and would contain an exception to the proposed requirements of paragraphs (d) and (e). It would state that cables and conductors in conduit that enter metallic frames of electric enclosures would not be required to be equipped with fittings or bushings when protection against damage by sharp edges is provided. This provision would offer a compliance alternative designed to provide the same measure of protection.

Paragraph (g) is new, and would require conductors to be secured so as to prevent mechanical strain on electrical connections. Hazards resulting from improper conductor and cable fittings include electric shock and electrocution from energized equipment frames. By requiring fittings at locations where cables and insulated conductors enter electric compartments to be designed to prevent strain on electrical connections, chaffing and damage to the cable or conductors would be prevented, and the number of injuries to persons from these conditions would be reduced.

Some commenters felt jackets would not be proper protection for cables and conductors where they enter frames. The proposal would not allow jacketing to serve as protection under these conditions. Cables should enter frames through proper fittings to prevent damage to the jacket and internal conductors. Commenters also suggested elimination of insulated bushings. This recommendation was not adopted because conductors having only an outer protective jacket are not sufficiently protected from damage where they enter metal boxes.

Sections 56/57.12603 Splices and Repairs

This standard is derived primarily from existing §§ 56/57.12013 and 57.12088, and would set safety requirements for splicing and repair of cables. Existing practices on splices and splicing methods were researched by the Bureau of Mines (Mine Trailing Cables and Cable Splices, Contract #J0198106). The results show a high failure rate of splices. The proposal would define the type of cable splices permitted and is intended to reduce the number of accidents involving splice failures and burning cables. The proposal does not limit the number of splices in a cable.

Paragraph (a) is new, and would require that cables be spliced, terminated or repaired by a qualified electrician, defined in the proposal as an individual who has met the requirements of an operator's qualification program in accordance with proposed §§ 56/57.12100. This would assure that persons are protected against shock and fire hazards created by improperly-spliced cables. By requiring that cables be attended to by qualified electricians, the knowledge and training of such individuals would be brought to bear on a difficult and potentially hazardous task.

Paragraph (b) would require splices in trailing cables to contain only one connection point in each conductor. A single connection of two severed ends of trailing cable would provide the best possible electrical conductivity. The introduction of more than one connection point would reduce the electrical conductivity of the splice to an unacceptable level which could lead to inadequate electrical protection for the circuit and a shock and fire hazard on the circuit and the equipment it serves.

Paragraph (c) would require terminations of cable shielding to be connected to equipment safety grounding conductors at each splice and termination. This would assure that shielding is connected to the safety grounding system to prevent individuals from contacting dangerous voltages under fault conditions.

Paragraph (d) would set standards for splices and repairs of cables. They would be required to have conductivity and current-carrying capacity sufficient to prevent insulation damage from heating of conductors. This provision would require a splice or repair to match the ampacity of the rest of the cable as closely as possible, which would reduce the risk of damage to the insulation from overheating of the connection. Damaged insulation could place miners at risk of contacting energized cable components.

It would also require severed conductors to be joined by welding or compression-type connectors. The Agency is aware of the use of some unsafe splicing methods in the industry.

For instance, square knot splices and soldering, which create high-resistance areas within the cable, are sometimes used. High resistance can lead to excessive heating and arcing at the location of the splice or repair and cause the connection to open.

The NEC recommends exothermic welding, pressure connectors and clamps for joining severed grounding conductors to assure an electrically efficient and mechanically strong splice. The NEC standard would not allow soldering for that purpose. The proposed rule would adopt the NEC treatment of grounding conductors for all components of trailing cables. It would require tight-fitting connections formed by welding or compression-type connectors. The proposal would prohibit the use of unsafe splicing methods which can give rise to shock and fire hazards.

Each power, control, and ground-check conductor would be required to be individually re-insulated with insulation having at least the same thickness, temperature rating, and dielectric strength as that of the original insulation. By requiring replacement insulation to have the same protective characteristics as the original insulation, the proposal would assure that the integrity of the cable insulation is maintained. Phase-to-phase and phase-to-ground short-circuits from weaker insulation could also be prevented under the provision.

Splices and repairs would be required to have semiconducting tape replaced over the insulation of each power conductor within shielded cable. This would help to seal the point of joinder to assure an efficient electrical connection. Within shielded cable, shielding in the form of metallic braid or serving (wrap), or metallic tape applied in half-lapped layers replaced over each power conductor would be required.

The outer jacket of the cable would be required to be replaced to provide at least the same thickness and protection as that of the original jacket. Therefore, the proposal would require the repaired jacket to have physical strength equal to the original jacket. Finally, the outer jacket would have to be sealed, vulcanized, molded, or fused to the cable's original jacket to prevent the moisture of the underground environment from causing sparking at the splice or repair.

Several commenters objected to use of the word "bonding" to describe joining the spliced outer jacket to the original cable jacket. Some commenters believed that "bonding" means only vulcanizing. The proposed standard is now more specific about the process of connecting the replacement jacket to the original jacket. These provisions would preserve, as nearly as possible, the dielectric and mechanical strength of the original cable in making splices and repairs. Therefore, the likelihood of electrical arcing or heating at the point of connection would be reduced.

Paragraph (e) of the proposal would allow the use of one trailing cable splice which does not meet the requirements of paragraph (d) for the time period necessary to move the equipment for repair of the cable, provided the splice is mechanically strong and insulated to prevent shock. Although the terms "permanent" and "temporary" would not be employed by the proposal, this standard would provide for safe movement of equipment using one short-term splice to facilitate repair work if precautions are taken to prevent shock hazards.

Section 57.12603 would contain a paragraph (f), applicable only to underground areas of metal and nonmetal mines. It would require splices and repairs in trailing cables used underground to be made with splice and repair kits that meet the flame-resistance tests in 30 CFR 18.64. Flame-resistance tests are made on assembled specimens by MSHA's Approval and Certification Center. Acceptance markings appear on the outer jacket of the repair or splice, indicating that it has passed the tests and was found to be acceptable by MSHA. This would ensure that, when the splice and repair kit was assembled in accordance with the manufacturer's instructions, the kit would have fire-resistant properties similar to those of the cable's original components. MSHA is considering proposing an approval regulation for splice and repair kits. Under such a proposal, a splice and repair kit for trailing cables would have to be approved by MSHA prior to its use in a mine.

Sections 56/57.12604 Lightning Protection

This standard would revise existing §§ 56/57.12065 and 56/57.12069. It would provide requirements intended to prevent transmission of lightning voltages to the mine electrical system. Information available to MSHA indicates that 12 lightning-related accidents, one of them fatal, occurred from 1978 through 1988. The proposal would require surge arresters to be provided for exposed ungrounded power conductors and telephone wires in order to prevent similar accidents in the future. Several commenters suggested that the term "surge arrester" should be changed to "lightning arrester." The IEEE defines "surge arrester" and does not define "lightning arrester." The proposal would continue use of the term "surge arrester," which would be defined in proposed §§ 56/57.12000.

Paragraph (b) contains new provisions which would no longer require surge arresters to be installed on power conductors and telephone wires, provided they are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shielding, coverings, or enclosures throughout their entire length. These types of conductors would be, in MSHA's view, sufficiently protected against transmittal of dangerous voltages caused by surface electrical lightning surges. The proposed change would eliminate the need to cut into these cables solely to install surge arresters. Thus, persons would not be unnecessarily exposed to the hazards involved in the installation process.

Use of the term "suitable lightning arresters" in the existing rule would be replaced and clarified in the proposal by a requirement that surge arresters be rated for the voltage and current of the circuit they protect. The proposal would no longer require that surge arresters be of an approved type, since performance parameters have been included in the standard.

Some commenters indicated that surge arresters are not sized according to current rating. The Bureau of Mines conducted a study in 1981 in conjunction with the Pennsylvania State University on power systems. Their report, Contract No. J0155009, showed four important parameters for the proper application of surge arresters. These parameters were: voltage rating, sparkover voltage, discharge current and the IR discharge voltage. The report describes the classes of arresters with typical voltage rating ranges and current withstand voltages for each class. To clarify MSHA's intent, the proposal would be revised to require proper sizing according to the class of application. For example, the "Distribution Class" is typically rated for 1kV to 18kV, and they can withstand a 65kA current surge.

Proposed § 57.12604 would contain additional requirements for surge arresters at underground metal and nonmetal mines. Surge arresters for conductors that enter an underground mine would be required to be located on the surface within 100 feet of the point where the conductors enter the mine, are buried, installed beneath a protective metallic covering, enclosed within grounded metallic shields, coverings or enclosures, or supported by grounded metallic messenger wires. Although the location of a lightning strike can clearly not be controlled, a 100-foot distance would severely limit the distance in which lightning could strike inby a surge arrester, possibly transmitting a voltage surge underground and energizing equipment frames. Lightning strikes outby the arrester would cause excess voltage to be transmitted to ground.

At underground mines, surge arresters for conductors extending underground would be required to be connected to a low-resistance ground field that is separated from neutral ground fields by a distance of not less than 25 feet. This would separate the underground grounding circuit from the surface distribution grounding circuit, thereby reducing the likelihood of a lightning surge being transmitted underground from the surface power system.

Some commenters claimed that separation of surge arrester grounds from equipment grounds would be dangerous. The separation of arrester grounds from equipment grounds provides protection by shunting the lightning transient energy to the arrester grounds. The 1972 and 1982 publications of the "IEEE Recommended Practice for Grounding of Industrial and Commercial Power Systems," Standard 142, § 2.6, describes proper separation. The separation of ground fields for surface mines would be addressed by proposed § 56.12506(c).

Sections 56/57.12630 Support Structures and Guy Wires

This section would revise existing §§ 56/57.12047, and provide requirements for support structures and guy wires. The incorporation by reference to the NESC was deleted, and replaced by the inclusion of specific requirements, using NESC standards as a reference guide. Paragraph (a) would require guy wires attached to structures supporting uninsulated overhead power conductors, other that phone wires, to be electrically connected to the equipment safety grounding conductor at the supporting structure end of the guy wire.

Alternatively, such guy wires could be provided with one or more insulators which have a dry flashover voltage at least double the nominal voltage, and a wet flashover voltage at least as high as the nominal voltage. The insulators, in this case, would be required to be at least eight feet from the ground. Commenters requested clarification of this provision. It means that the insulator cannot be less than 8 feet from the earth, regardless of degree or direction of slope of the earth around the base of the guy wire where persons could walk. Several commenters expressed objection to the specificity of the insulator rating included in the preproposal draft. Ratings are needed to provide safety, and are consistent with those in ANSI C29.1-1976, "Electrical Power Insulators."

Some commenters believed that the preproposal standard intended to encompass guy wires supporting telephone lines. However, telephone lines are not considered to be power conductors for purposes of this standard. Commenters also expressed uncertainty about the voltages which would be addressed by the standard. It would cover all power conductor voltages.

Additionally, commenters questioned the effect of the preproposal draft on public utility equipment installed on mine property. Where guy wires supporting overhead power conductors are present on public utility lines, they are typically and routinely provided with grounding or insulation. Any guy wires which support uninsulated overhead power conductors installed on mine property, which have the potential for causing injury to miners would fall within the coverage of the standard, although the rule would not require installation of guy wires. Enforcement of the standard under MSHA jurisdiction would depend upon the circumstances and location of the guy wires. The proposed requirement is adopted from NESC standards, used as a guideline by operators as well as utilities for many years. The proposal provides for two equivalent performance-oriented compliance alternatives intended to achieve the same safety objective.

Sections 57.12660 Support in Shafts and Boreholes

This standard would specify requirements for providing support for power cables and insulated conductors in shafts and boreholes, and is derived from existing § 57.12083, applicable to underground metal and nonmetal mines. Paragraph (a) would require power cables and insulated conductors in shafts and boreholes to be supported by clamping or strain relief devices which prevent strain on the conductors and functional damage to the jacket and insulation. Several commenters suggested that damage to the outer jacket cannot be avoided since one function of the jacket is to protect the internal conductors from physical damage. A small amount of physical damage, which does not affect the function of the jacket, will not create a hazard. The word "functional" has been added to the proposal to accommodate this situation.

The preproposal draft would have addressed power cables alone, but in response to commenter suggestions, the phrase "or insulated conductors" was added. Several commenters recommended adding "or other methods" to provide for other means of cable support. This recommendation is not adopted, but paragraph (c) of the proposal would allow for other methods when the cable is designed to be self-supported.

Paragraph (b) would require clamp or strain relief devices to be installed as close to the top of the cable or conductor run as practical. Under paragraph (c), additional support devices would be required to be installed in vertical shafts and boreholes along the cable or conductor run at distances not greater than the values specified in Table 57.12660, accompanying the standard. Some commenters objected that the table of spacing for conductor supports cannot be applied to all mining conditions. However, the table would provide only the maximum permitted distances between supports, allowing for shorter distances where necessary. It would not require additional supports for specially designed cables such as steel wire armor cables.

Commenters suggested that "shaft" be defined in the proposal. The term has not been defined because the Agency believes that it is readily understood by persons in the mining community, but the term "vertical" was added for clarity. The proposal would adopt the commenter suggestion that the proposal apply to boreholes as well as shafts.

Trailing Cables

Sections 56/57.12700 Insulation; Shielding

This section would revise existing § 57.4057, applicable only to underground cables, and transfer the standard from Subpart C, Fire Prevention and Control, to Subpart K. The proposed standard would include requirements for trailing cables in all mine electrical systems, including surface mines and mills. Under the proposal, trailing cables would be required to have conductor insulation rated for at least the line-to-line voltage of the circuit, and shielding for the purpose of confining the voltage stresses when used to supply equipment over 2,000 volts line-to-line. Trailing cables used in underground mines would also be required to have flame resistant qualities in accordance with existing 30 CFR § 18.64 due to the confined space in

underground mines and the possibility of smoke and fires.

Several commenters objected to parts of the preproposal draft which they interpreted as setting forth design criteria. The proposal is not intended to impose unnecessary design criteria. For instance, it would not specify the name or type of conductor insulation or shielding. It would only require conductor insulation to be rated for at least the line-to-line voltage.

One commenter stated that requiring shielding for cables that carry voltages greater than 2,000 volts would be unnecessary, because there are cable designs that do not need shielding above 2,000 volts. However, the need for cable shielding under these voltage conditions is supported by the NEC (Article 400, "Flexible Cords and Cables"). A shielding requirement is also supported by research conducted at the Pennsylvania State University for the Bureau of Mines, Final Report, Contract No. G015512, "Open Pit Metal Mining Grounding Systems," August, 1976. MSHA is persuaded that shielding is needed for cable voltages greater than 2,000 volts by the conclusions arrived at by these recognized bodies. Therefore, the suggestion of the commenter has not been implemented.

Sections 56/57.12701 Overcurrent Protection.

This standard would revise existing §§ 56/57.12003, and provide requirements for overcurrent protection for trailing cables of portable and mobile electric equipment. The term "mobile equipment" in existing §§ 56/57.12003 has been expanded to include "portable electric equipment". Paragraph (a) would require trailing cables serving portable and mobile equipment to have short-circuit and ground-fault protection for each ungrounded conductor that will safely interrupt all ungrounded conductors under fault conditions. A new ground-fault protection provision for trailing cables was included in the preproposal draft, and would be retained in the proposal in order to prevent explosion and shock hazards. Without such protection, faults could energize equipment frames and expose persons to contact with lethal voltages.

Under paragraph (b), ungrounded trailing cable conductors energized at voltages of 1,040 volts or less would be required to be protected by an inverse-time circuit breaker with a maximum current rating as specified in Table 56/57.12701–1, accompanying the standard. The table was derived from an IEEE publication.

Alternatively, such cables could be protected by an instantaneous-trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds. Such protective devices would be required to have a maximum instantaneous setting of not more than the values listed in Table 56/57.12701–2 for 480–, 600–, and 1,040–volt trailing cables. The values in Table 56/57.12701–3 would be applicable to 300– and 600–volt d-c trailing cables.

Another option would be protection by an instantaneous-trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds, and a setting that does not exceed the lower value of either 115 percent of the maximum starting current for the unit of electric equipment, or 60 percent of the lowest value of bolted phase-to-phase short circuit current at any point in the circuit. This protection option would apply only when the circuit to be protected does not function properly using values listed in the tables, and a circuit analysis assures that the circuit does not present a hazard to miners. If the circuit breaker won't function properly, the operator would be permitted to set a higher or lower trip level after determining that it would not pose a hazard.

Under paragraph (c), ungrounded conductors of trailing cables energized at voltages greater than 1,040 volts would be required to have instantaneous short-circuit protection. The setting of such devices would be prohibited from exceeding the lower of either 175 percent of the maximum starting current for the unit of electric equipment, or 75 percent of the minimum phase-to-phase short-circuit current available at any point in the circuit.

Some commenters expressed concern that the proposal would prohibit the use of fuses. The use of fuses would not be prohibited, but when used, they would have to be provided with a means for opening all ungrounded phases during a fault. The requirements of paragraphs (a) and (b) would apply to the use of fuses to protect trailing cables and when applying circuit breakers at voltages other than those specified in the tables.

Several commenters objected to the standard, indicating that overcurrent protection only protects equipment. A fire from electric equipment however, especially underground equipment, could endanger the lives of miners. An underground mine is a confined area where a fire could expose miners to smoke and toxic gasses. Therefore, the protective measures which would be required under the proposal are necessary.

Some commenters suggested that the NEC be incorporated by reference, instead of placing ground-fault protection requirements and tables in the proposal. This recommendation has not been adopted due to the difficulty of ascertaining compliance requirements when incorporation by reference is used. The Agency believes that including the relevant portions of such documents in the standard facilitates an accurate understanding of its requirements. The tables and other proposals in this Subpart are based on accepted industry standards, and would provide necessary protection against hazards that are unique to the mining industry.

Several of the commenters supported the need for short-circuit and ground-fault protection. The Bureau of Mines, Final Report, No. G0155102, "Open Pit Metal Mining Grounding Systems," August, 1976, recommended the use of short-circuit and ground-fault protection.

Sections 56/57.12702 Attachment

This section is derived from existing §§ 56/57.12038. It would require trailing cables to be attached to equipment so that functional damage to the cable jacket and damage to the insulation of the internal conductors is prevented and strain does not occur on electric connections. The performance-oriented language of the standard is intended to assure proper protection of cables from chaffing and other damage which can defeat the protective function of the jacket, as well as offer support for the cable. The use of devices such as strain clamps or cable grips would be suitable for compliance with the proposed standard.

Several commenters to the preproposal draft suggested that damage to the outer jacket cannot be prevented, because one function of the jacket is to protect the conductors from physical damage. A small amount of damage or abrasion which does not affect the protective function of the jacket would not create a hazard. The word "functional" has been added to the proposal to reflect this intent.

Sections 56/57.12703 Portable Distribution Boxes

This section would provide standards for protective devices on portable distribution boxes, and is derived from existing §§ 56/57.12006. The proposal would require portable distribution boxes to have a disconnecting device for each branch circuit, and a means to clearly show that each circuit has been physically disconnected. For purposes of this standard, indications such as a plug removed and separated from its

receptacle would suffice. Several commenters suggested that visual indications, such as lights, alone would not ensure disconnection of a circuit and could result in a worker being exposed to electric shock. MSHA agrees, because of the unreliability of light indicators. They may burn out and fail to function when needed. The intent of the standard is to ensure disconnection, and to clearly indicate whether the circuit has been disconnected. The standard has been altered to clarify this intent.

Under a new provision in paragraph (c), portable distribution boxes would be required to have a means which identifies each disconnecting device and cable with its related load, and a means of preventing connection of a cable to the wrong protective device when two or more cables connect to the same distribution box. Accidental or inadvertent energization of circuits and equipment being worked on has been the cause of many electrical accidents in metal and nonmetal mines. The standard would require proper use and identification of circuit protective devices to prevent such injuries.

Several commenters recommended that paragraph (c) be revised by substituting the phrase "higher rated circuit breaker" for "wrong circuit breaker". This recommendation has not been adopted, because the intent of the proposal is to prevent accidents which occur because of an improper cable connection. The phrase "wrong protective device" was used in the proposal to allow for compliance alternatives.

Sections 56/57.12704 Guarding

This section would require trailing cables and power conductors to be protected against physical damage from mobile equipment or other loads by bridges, trenches, suspension, or by location. It is derived from existing §§ 56/57.12005. The method of protection, from among these alternatives, is left to the discretion of the operator. In underground mines, trailing cables would be permitted to be protected from damage by suspension from the mine roof or rib.

The adequacy of the protection supplied by the bridge, or other method would be measured by how well it protected the trailing cable from physical damage. For example, where a trailing cable is located in a trench, but has been damaged by mobile equipment running over the trench, an MSHA inspector might conclude that there was a violation, even though there was a trench constructed, since damage to the cable had not been prevented.

Sections 56/57.12705 Disconnecting Devices

This standard would be new, and would require that disconnecting devices for trailing cables be equipped with a means for installing a padlock. As discussed in connection with proposed §§ 56/ 57.12200, miners have been injured and killed by contact with inadvertently or prematurely energized equipment or circuits. The proposed standard would strengthen existing rules to assure that electrical and mechanical work is performed with minimum risk, and that involved circuits and equipment remain deenergized while work is being performed.

Each trailing cable disconnecting device, in MSHA's view, should be equipped with a means for installing a padlock, so that miners would not be able to disconnect the circuit at a location that could not be locked out. For instance, if a circuit with several disconnecting devices could only be locked out at the device nearest the power source, a miner might choose to disconnect at a device nearer to his or her work station. If that device had no means of locking-out, the possibility of mistaken reenergization of the circuit would exist. As previously noted, MSHA's accident and injury data for 1978 through 1988 shows that 330 accidents, 21 of them fatal, were attributable to the failure to lock out. Miners should not be exposed to that hazard. The procedure involved in providing a means to install a padlock might be drilling a hole in the device or attaching a hasp and staple. Many of the disconnecting devices being manufactured are currently equipped with means for installing a padlock.

Trolley Circuits for Track Haulage

Sections 56/57.12800 Installation and Maintenance

This section would revise existing §§ 56/57.12050 and 57.12086. Its intent is to minimize the risk of persons contacting bare trolley conductors, and the risk of injury resulting from trolley pole dewirements. The proposed standard would require trolley wires and exposed trolley-feeder wires to be installed opposite the clearance side of haulageways, except where such installation would create a greater hazard. The specified installation location would help to prevent persons or equipment from contacting energized trolley wires.

Trolley wires and exposed trolley feeder wires would be required to be suspended at least seven feet above the track. Compliance with the seven-foot clearance provisions would make inadvertent contact with the trolley wire and resulting shock difficult. Finally, trolley wires would be required to be aligned and maintained to provide for smooth tracking of trolley collectors on trolley wires. This would reduce arcing and sparking, thereby minimizing the risk of electrical injuries and fires.

Some commenters expressed concern about the application of this section to cranes. Cranes would not be addressed by this section and this is reflected in the section title. Commenters also recommended that the proposal apply to "exposed" trolley feeder wires. The opening phrase of the proposal has been altered to reflect that position.

Sections 56/57.12801 Circuit Protection and Isolation

This standard would revise existing §§ 56/57.12065. It would require trolley wires and trolley-feeder wires to be protected against overcurrent by an automatic circuit interrupting device which deenergizes the circuit if a short-circuit occurs at any point in the system. Several commenters objected to this provision as being too design-oriented. However, the proposal allows for compliance alternatives; any automatic circuit interrupting device that can accomplish the requirement would be acceptable.

The trip setting of such devices would be required not to exceed 50 percent of the minimum available bolted short-circuit current when the current is less than 800 amperes. When the current is 800 amperes or more, the device's trip setting could not exceed 75 percent of the minimum available bolted short-circuit current. Above 800 amperes, there is more available fault current. Therefore, the trip setting of the device need not be as sensitive at this level as with currents below 800 amperes.

The protective device must be adjusted to open at a fault current value that is less than the minimum expected fault current. The proposal would require that the trip setting interrupting devices not exceed 50 percent of the maximum (bolted) fault current available at the point in the system which yields least (minimum) short-circuit current.

Some commenters considered the values specified in the preproposal draft to be too high, and suggested that values should not be established. Values have been included in the proposal, but they would not be fixed values. They are expressed as upper limits for the minimum expected fault current, and lower values would be acceptable. For example, if an operator considers the 50 percent value hazardous, a lower setting

would still achieve compliance with the standard.

The proposal would require that trolley wires and trolley feeder wires be provided with a means of isolation at intervals of not more than 2,000 feet and near the beginning of each branch line. Compliance with this provision would minimize the risks of fire and shock. Without an accessible means of isolation, miners could be tempted to work on or near an exposed, energized trolley circuit, subjecting themselves to the hazards of shock or electrocution. A nearby means of isolation could also be useful for deenergizing the circuit in the event of an accident or emergency. The 2,000-foot distance has been in wide use in the mining industry for many years without adverse effects. The proposed spacing is comparable to that which has been recommended by the Bureau of Mines (Miners' Circular, Bureau of Mines, Electrical and Mechanical Hazards and Falls of Persons at Metal and Nonmetallic Mines, March, 1955).

Sections 56/57.12802 Track Bonding

This section would consolidate and clarify existing §§ 56/57.12042 and 57.12081, which address track bonding and bonding of metal pipelines to ground return circuits. Paragraph (a) would require track serving as the trolley circuit return to be bonded at every joint and crossbonded at intervals not exceeding 200 feet. Paragraph (b) would require metallic pipelines and structures installed less than ten feet from track serving as the trolley circuit return to be insulated or guarded, or bonded to the track at intervals not exceeding 1,000 feet, to prevent shock hazards. The provision has been clarified to indicate that it would not apply to other materials temporarily lying alongside the track.

A suggestion by some commenters that "structures" not be covered by the revision was not adopted because of the hazards associated with structures installed near tracks. Shock and fire hazards would arise if the trolley wire should contact structures which are not bonded, insulated or guarded. By contrast, if the trolley line contacts a bonded structure, operation of the short-circuit device would remove these hazards.

The preproposal draft contained a provision for insulating or guarding safety grounding conductors near the track. Several commenters indicated that this requirement may conflict with other requirements contained in paragraphs (b) and (c), and should be deleted. MSHA agrees with this recommendation, and the language has been deleted from the proposal.

Paragraph (c) would specify that when rails are moved or replaced, or when broken bonds are discovered, they shall be rebonded within three working shifts. Several commenters objected to the preproposal draft, which would have required immediate repair of broken bonds. As with existing §§ 56/57.12042, the preproposal draft would have required repairs to be made when the break occurs. The proposed change to a three shift maximum would allow adequate time to perform the necessary work, yet assure that rebonding is done in a prompt manner.

MSHA's present policy on enforcement of the three shift repair requirement in existing §§ 56/57.12042 would remain in effect under the proposal. A citation for a violation of the standard would not be issued until the end of the third working shift after rails are moved, replaced or a broken bond is discovered. That is, assuming a three shift operation, if a broken bond is discovered on a day shift, the citation would be issued at the end of the next day shift if the broken bond is still not repaired. A citation would not be issued if the bond has been repaired within this period of time.

Since mine track is used as an electrical conductor in conjunction with trolley wires and trolley feeder wires, compliance with the proposal would assure that the track is mechanically and electrically efficient by setting specific bonding requirements at regular intervals on the track. This would ensure adequate electrical conductivity of return circuits. These proposed requirements are based on accepted industry practice and MSHA's experience with trolley systems.

Sections 56/57.12803 Trolley Guarding

This section is derived from existing §§ 56/57.12066 and 57.12080, and would designate specific locations and conditions for guarding of energized trolley wires and bare trolley feeder wires to prevent accidental contact. The requirements in the proposal emphasize that guarding is required not only where miners work, but at other locations where they are exposed on a frequent or regular basis to the shock hazards of exposed energized trolley circuits. Specific locations are addressed in the proposal to clarify where guarding would be required.

Paragraph (a) would require guarding at all points where supplies are stored, loaded or unloaded, at mantrip stations, on each side of doors and stoppings through which wires pass, where persons other than those operating rail-mounted haulage equipment work within three feet of the wire, at track switches, and where persons regularly pass under the wire. Protection from energized trolley circuits is necessary not only where persons perform their normal work tasks, but also where they load, unload or generally work with supplies transported by rail.

Paragraph (b) of the proposal would require trolley wires and trolley feeder wires to be deenergized when guarding is installed or removed. An exception to this provision would allow the installation and removal of temporary guarding designed to minimize shock hazards while work is being conducted in the area while the trolley system is energized. This temporary guarding would allow operators to continue operation of trolley systems while installing or removing guarding. This type of guarding is designed to protect the persons from exposure to the bare energized trolley circuit wires.

Some commenters recommended that guarding by location be permitted in the rule. MSHA agrees. Installation of guards would not be necessary if location would prevent persons or metallic tools and equipment from contacting trolley wires. Installation of guards would only be required under the proposal where persons can contact energized trolley wires. When persons work in close proximity to exposed trolley wires, temporary trolley wire guarding may be used to prevent electric shock.

Sections 56/57.12804 Circuits Powered from Trolley Wires

This standard is derived from existing §§ 56/57.12053. It would address the hazards of electric shock from loose or disconnected return wires and from fires caused by high-resistance connections. It would require the return wire of all circuits powered from trolley wires to be connected to the trolley wire return circuit to assure continuity and prevent arcing. Some commenters to the preproposal draft expressed concern that the word "securely" was omitted from the draft proposal. The proposal substitutes performance language for the word "securely".

G. Derivation Table

The following derivation table lists the number of each proposed standard, and the number of the existing standard from which it is derived. Standards that uniformly appear in 30 CFR parts 56 and 57 are designated in this table as 56/57.

DERIVATION TABLE

Proposed number	Existing number
56/57.12100	New
56/57.12101(a)	56/57.12002
	56/57.12030
	56/57.12040
	56/57.12041
56/57.12101(b)	56/57.12035
	56/57.12043
56/57.12102	56/57.12012
56/57.12103(a)	56/57.12001
	56/57.12065
56/57.12103(b)	56/57.12001
56/57.12103 (c) through (k).	56/57.12001
	56/57.12065
56/57.12103(1)	New
56/57.12104	56/57.4011
56/57.12105	56/57.12032
56/57.12106	56/57.12021
	56/57.12022
56/57.12130	56/57.12045
	56/57.12071
56/57.12200 (a) and (b)	56/57.12016
	56/57.12017
56/57.12200(c)(1)	56/57.12017
56/57.12200(c)(2)	New
56/57.12200(c)(3)	56/57.12017
56/57.12200(c)(4)	New
56/57.12201	56/57.12007
56/57.12202	56/57.12038
	56/57.12037
56/57.12203 (a), (b) and (c).	56/57.12014
56/57.12203(d)	56/57.12039
56/57.12204	56/57.12019
56/57.12300	56/57.12023
56/57.12301	56/57.12010
	56/57.12048
56/57.12302	56/57.12034
56/57.12330(a)	56/57.12067
56/57.12330(b)	56/57.12068
56/57.12330(c)	56/57.12026
56/57.12331	56/57.12026
	56/57.12085
56/57.12400	56/57.12018
56/57.12401	56/57.12020
56/57.12402	New
57.12460	57.12084
56/57.12500	56/57.12025
	56/57.12027
56/57.12501 (a) through (d).	56/57.12025
	56/57.12027
56/57.12501(e)	56/57.12033
56/57.12501(f)	56/57.12025
	56/57.12027
56/57.12502	56/57.12025
	56/57.12027
56/57.12503	56/57.12025
	56/57.12027
56/57.12504	56/57.12025
	56/57.12027
56/57.12505	56/57.12025
	56/57.12027
	56/57.12028
56/58.12506	56/57.12028
56/57.12600	56/57.12004
	56/57.12011
	56/57.12082
56/57.12601	56/57.12004
56/57.12602(a)	56/57.12006
56/57.12602 (b) and (c)	New.
56/57.12602 (d) and (e)	56/57.12008
56/57.12602(f)	New
56/57.12602(g)	56/57.12008
56/57.12603(a)	New
56/57.12603 (b) through (e).	56/57.12013
	57.12086
57.12603(f)	New

DERIVATION TABLE—Continued

Proposed number	Existing number
56/57.12604	56/57.12055
	56/57.12059
56/57.12630	56/57.12047
57.12660	57.12083
56/57.12700 (a) and (b)	New
57.12700(c)	57.4057
56/57.12701	56/57.12003
56/57.12702	56/57.12036
56/57.12703 (a) and (b)	56/57.12006
56/57.12703(c)	New
56/57.12704	56/57.12005
56/57.12705	New
56/57.12800	56/57.12050
	57.12096
56/57.12801	56/57.12065
56/57.12802 (a), (b) and (c).	56/57.12042
	57.12081
56/57.12803(a)(1)	56/57.12066
56/57.12803(a)(2)	57.12080
56/57.12803(a)(3)	New
56/57.12803(a)(4)	57.12080
56/57.12803(a)(5)	New
56/57.12803(a)(6)	57.12080
56/57.12803(b)	56/57.12066
56/57.12804	56/57.12053

H. Distribution Table

For the convenience of the reader, the following distribution table has been added as a cross-reference guide. Standards that uniformly appear in 30 CFR parts 56 and 57 are designated in this table as 56/57.

DISTRIBUTION TABLE

Existing No.	Proposed No.
56/57.12001	56/57.12103
56/57.12002	56/57.12101
56/57.12003	56/57.12701
56/57.12004	56/57.12600
	56/57.12601
56/57.12005	56/57.12704
56/58.12006	56/57.12703
56/57.12007	56/57.12201
56/57.12008	56/57.12602
56/57.12010	56/57.12301
56/57.12011	56/57.12600
56/57.12012	56/57.12102
56/57.12013	56/57.12603
56/57.12014	56/57.12203
56/57.12016	56/57.12200
56/57.12017	56/57.12300
56/57.12018	56/57.12400
56/57.12019	56/57.12204
56/57.12020	56/57.12401
56/57.12021	56/57.12106
56/57.12022	56/57.12106
56/57.12023	56/57.12300
56/57.12025	56/57.12500
	56/57.12501
	56/57.12502
	56/57.12503
	56/57.12504
	56/57.12505
56/57.12026	56/57.12330
	56/57.12331
56/57.12027	56/57.12500
	56/57.12501
	56/57.12502
	56/57.12503
	56/57.12504
	56/57.12505

DISTRIBUTION TABLE—Continued

Existing No.	Proposed No.
56/57.12028	56/57.12506
56/57.12030	56/57.12101
56/57.12032	56/57.12105
56/57.12033	56/57.12503
56/57.12034	56/57.12302
56/57.12035	56/57.12101
56/57.12036	56/57.12202
56/57.12037	56/57.12202
56/57.12038	56/57.12702
56/57.12039	56/57.12203
56/57.12040	56/57.12101
56/57.12041	56/57.12101
56/57.12043	56/57.12035
56/57.12045	56/57.12105
56/57.12047	56/57.12630
56/57.12048	56/57.12301
56/57.12050	56/57.12600
56/57.12059	56/57.12604
56/57.12065	56/57.12103
	56/57.12604
	56/57.12801
56/57.12066	56/57.12803
56/57.12067	56/57.12330
56/57.12068	56/57.12330
56/57.12069	56/57.12604
56/57.12071	56/57.12130
57.12080	56/57.12803
57.12081	56/57.12802
57.12082	56/57.12600
57.12083	57.12660
57.12084	57.12460
57.12085	56/57.12031
57.12086	56/57.12600
57.12088	56/57.12603
56/57.4011	56/57.12104
57.4057	56/57.12700
New	56/57.12100
New	56/57.12402
New	56/57.12705

II. Executive Order 12291 and the Regulatory Flexibility Act

MSHA has prepared an initial analysis in accordance with Executive Order 12291, to identify potential costs and benefits associated with the proposed revisions to the electrical standards for metal and nonmetal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In the analysis, MSHA has determined that the proposed rule would not result in major cost increases, nor have an economic effect of $100 million or more. The proposed rule does not meet the criteria for a major rule and, therefore, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies should evaluate and include, wherever possible, compliance alternatives which minimize any adverse impact on small businesses. This proposed rule contains many alternatives to the existing regulations which would especially benefit small mining operations. In addition, the

proposal adopts performance-oriented requirements and clarifies compliance responsibilities.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposal with those of the existing requirements. In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the proposed rule, the Agency projected capital expenditures and recurring costs. A copy of the complete analysis is available upon request.

The proposed regulations would affect about 11,700 metal and nonmetal mining operations. MSHA estimates that approximately 9800 (84 percent) of these mines are small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees.

MSHA estimates that the total initial cost of the revised safety standards for electricity is $1.27 million, compared to $1.53 million for the existing standards, representing a cost decrease of $0.3 million, or 17 percent. The total annually recurring costs of the proposed rule is $18.2 million, compared to $14.7 million for the existing standards, representing a cost increase of $3.5 million, or 24 percent. The largest cost decrease is due to the proposed reduction in the frequency of resistance testing, which should reduce costs by $2.5 million annually. This decrease is totally offset, however, by annual cost increases of $2.9 million for qualified electricians and $2.5 million for metallic shielded cables.

MSHA estimates that the total initial cost of the revised standards for electricity at small mines is $0.66 million, compared to $0.82 million for the existing standards, a cost decrease of $0.17 million, representing a cost decrease of 21 percent. The total annually recurring costs of the proposed rule at small mines is $7.9 million, compared to $7.4 million for existing standards, representing a cost increase of $0.48 million, or 7 percent. The proposed rule does not represent a significant economic impact on a substantial number of small businesses under the Regulatory Flexibility Act.

The proposed rule reorganizes, clarifies and upgrades existing provisions. The primary benefit of the proposed rule is the protection that would be provided to the nation's metal and nonmetal miners against electrical hazards. It would allow for advances in mining technology and grandfathering of existing equipment. The proposed rule would increase compliance flexibility, while ensuring the safety of persons who work at the nation's mines. Some costs are reduced because the Agency has eliminated recordkeeping requirements and allowed for increased flexibility through compliance alternatives.

III. Paperwork Reduction Act

There are no paperwork requirements contained in these proposed standards. The paperwork reduction is due to the elimination of the recordkeeping requirement in proposed § 56/57.12506 for resistance testing of safety grounding systems.

List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Electricity.

Dated: November 22, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend subparts A, C and K of part 56 and subparts A, C and K of part 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations to read as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for part 56 is proposed to be revised to read as follows:

Authority: 30 U.S.C. 811.

Subpart A—General

§ 56.2 [Amended]

2. In § 56.2, the definitions of "distribution box," "electrical grounding," "high potential," "insulation," "low potential," "major electrical installation," and "reverse-current protection" are removed.

Subpart C—Fire Prevention and Control

3. The authority citation for subpart C continues to read as follows:

Authority: Sec. 101, Federal Mine Safety and Health Act of 1977, Pub. L. 91–173, as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811).

4. Section 56.4011 is removed.

5. Subpart K is revised to read as follows:

Subpart K—Electricity

Sec.
56.12000 Definitions.

General
56.12100 Qualified electricians.
56.12101 Electric equipment and conductors.
56.12102 Bare conductors.
56.12103 Overcurrent protection.
56.12104 Unused conductors.
56.12105 Doors and cover plates.
56.12106 Danger signs.
56.12130 Clearance of equipment.

Work on Electric Equipment and Circuits
56.12200 Lockout procedures.
56.12201 Plugs and receptacles.
56.12202 Fuses.
56.12203 Cable handling.
56.12204 Access.

Guarding; Insulation; Separation
56.12300 Connections and grids.
56.12301 Communication conductors.
56.12302 Lights, guarding.
56.12330 Transformers.
56.12331 Substations.

Connections; Switches; Controls
56.12400 Identification.
56.12401 Insulating mats.
56.12402 Undervoltage protection.

Safety Grounding
56.12500 Grounding.
56.12501 Alternating-current equipment.
56.12502 Direct-current equipment.
56.12503 Equipment safety grounding conductors.
56.12504 Silicon diode grounding.
56.12505 Low-resistance ground fields.
56.12506 Testing.

Power Cables and Conductors
56.12600 Installation.
56.12601 Ampacity.
56.12602 Insulation, termination and shielding.
56.12603 Splices, repairs and terminations of conductors and cables.
56.12604 Lightning protection.
56.12630 Support structures and guy wires

Trailing Cables
56.12700 Insulation; shielding.
56.12701 Overcurrent protection.
56.12702 Attachment.
56.12703 Portable distribution boxes.
56.12704 Guarding.
56.12705 Disconnecting devices.

Trolley Circuits for Track Haulage
56.12800 Installation and maintenance.
56.12801 Circuit protection and isolation.
56.12802 Track bonding.
56.12803 Guarding.
56.12804 Circuits powered from trolley wires.

Appendix I for Subpart K—Electricity

Subpart K—Electricity

§ 56.12000 Definitions.

The following definitions apply in this subpart.

"Ampacity" means the current-carrying capacity of electric conductors expressed in amperes.

"Branch circuit" means the circuit conductors extending beyond the final short-circuit device protecting the circuit.

"Cable" means an assembly of one or more insulated conductors enclosed by an additional abrasion resistant covering or jacket. A cable may also contain one or more uninsulated equipment safety grounding conductors. A power cable is any cable except communication, instrumentation and control cables.

"Circuit breaker" means a device designed to open and close a circuit by non-automatic means and to open the circuit automatically on a predetermined overcurrent value without damage to the device when operated within its rating.

"Circuit breaker setting" means the value of current or time at which an adjustable circuit breaker is set to trip.

"Conductor" means a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

"Equipment safety grounding conductor" means a conductor used to connect the non-current-carrying metallic parts of electric equipment, raceways and other metallic enclosures to the safety grounding system.

"Feeder-circuit" means the conductors between the power source and the final branch-circuit short-circuit protective device.

"Fuse" means an overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it.

"Ground-fault" means an unintentional connection between an electric circuit and the safety grounding system.

"Ground-wire monitor" means a device having the primary function of monitoring the equipment safety grounding conductor of a circuit and causing the affected circuit breaker to trip when a change in the impedance of the grounding circuit presents a potential electrical shock hazard.

"Instantaneous-trip circuit breaker" means a circuit breaker with no intentional time delay designed in its tripping action.

"Insulated" means separated from other conducting surfaces by insulation which is a dielectric substance that offers a high resistance to the passage of current and to a disruptive discharge through the substance.

"Inverse-time circuit breaker" means a circuit breaker with an intentional time delay in its tripping action, which delay decreases as the magnitude of the current increases.

"Jacket" means a continuous nonmetallic protective outer covering provided on cables. The primary function of the covering is to provide protection of the internal components against physical, chemical, and thermal damage, and to exclude moisture.

"Mobile electric equipment" means electric equipment capable of movement from one location to another by power supplied from a source located on the machine or transmitted to the machine by means of a trailing cable.

"Nominal voltage" means the phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system for designation of its voltage class, such as 480 or 4160 volts. Actual voltage at which the circuit or system operates may vary from the nominal voltage within a range that permits satisfactory operation of equipment.

"Overcurrent" means any current in excess of the rated current of equipment or the ampacity of a conductor, which may result from overload, short-circuit, or ground-fault conditions.

"Overload" means operation of equipment in excess of normal full-load rating, or loading of a conductor in excess of rated ampacity, which would cause damage or dangerous overheating if allowed to continue.

"Portable electric equipment" means electric equipment which is designed and constructed to facilitate frequent movement from one location to another and which does not normally remain at a fixed location for extended periods of time.

"Qualified electrician" means an individual who has met the requirements of 30 CFR 56.12100.

"Rated" means marked to certify that according to established test procedures, electric equipment will perform its functions without presenting a burn, fire or shock hazard when applied within the maximum limits of its marked electrical parameters.

"Safety grounding system" means a complete installation consisting of one or more ground electrodes, grids, equipment safety grounding conductors and interconnected grounding connections. The purpose is to provide a low impedance fault current path to the system's protective device for all non-current-carrying metallic parts enclosing electric conductors or circuits.

"Short circuit" means an abnormal connection of relatively low impedance, whether made accidentally or intentionally, between two points of different potential.

"Splice" means the mechanical and electrical connection of one or more severed conductors in a single length of conductor or cable.

"Stationary electric equipment" means electric equipment other than mobile or portable that is fastened, secured or installed such that it cannot be readily moved from one location to another during normal use.

"Surge arrester" means a protective device which is used to provide protection against lightning surges.

"Trailing cable" means a portable cable or flexible cord through which electrical energy is transmitted to any mobile electric equipment, or a portable cable or flexible cord which receives electrical energy from a section power center, section distribution box or section rectifier.

"Undervoltage protection" means the effect of a device which operates on failure of voltage to cause and maintain the interruption of power to a circuit so as to prevent automatic restarting of the equipment.

General

§ 56.12100 Qualified electricians.

(a) Work required by this subpart to be performed by a qualified electrician shall be performed by an individual who has met the requirements of an operator's qualification program.

(b) Operator's programs shall include conducting their own qualification training or testing, or participation in training or testing conducted by MSHA, other Federal agencies, a state, associations of mine operators, other mine operators, national labor organizations, private associations, or educational institutions.

§ 56.12101 Electric equipment and conductors.

(a) Electric equipment and conductors shall be installed, and maintained by a qualified electrician, and used in a manner which prevents shock and burn hazards to persons. Electric equipment and conductors which present a hazard to persons due to improper installation, maintenance, misuse or damage shall be tagged as a hazard until corrected.

(b) All electric equipment and conductors installed after [Insert the effective date of this rule] shall be selected and located in surroundings compatible with their design and intended use.

§ 56.12102 Bare conductors.

The voltage of bare conductors, other than trolley conductors, accessible to inadvertent contact by persons shall not exceed 40 volts.

§ 56.12103 Overcurrent protection.

(a) Electric equipment and conductors, other than trailing cables, shall be protected against overloads and short circuits with fuses or automatic circuit interrupting devices. Such fuses and devices shall be of a type and capacity to safely interrupt the circuit under all overload and short circuit fault conditions.

(b) Motors shall be protected against overload at no more than 125 percent of the full load current of the motors.

(c) Short-circuit protection of motors shall be provided as specified in Tables 56.12103–1 and 56.12103–2.

(d) Where the protection specified in Tables 56.12103–1 and 56.12103–2 is not sufficient for the starting current of the motor—

(1) A higher rated non-time-delay fuse shall be permitted, but shall in no case exceed 400 percent of the full-load current of the motor or 600 amperes;

(2) A higher rated standard (dual element) fuse shall be permitted, but shall in no case exceed 225 percent of the full-load current of the motor;

(3) A higher rated inverse time circuit breaker shall be permitted, but shall in no case exceed 400 percent of the full-load current of the motor;

(4) A higher rated fuse in the 601–6000 ampere classification shall be permitted, but shall in no case exceed 300 percent of the full-load current of the motor; or

(5) A higher rating or adjustment of an instantaneous trip circuit breaker shall be permitted, but shall in no case exceed 1300 percent of the full-load current of the motor.

(e) All three-phase motors shall be protected with overcurrent devices so that an overcurrent in any phase will deenergize all ungrounded phases.

(f) Transformers shall be protected on the primary side with overcurrent protection rated at no more than 250 percent of their rated full-load current.

(g) When the required rating of a fuse or circuit breaker without an adjustable trip unit does not correspond to a standard rating for a fuse or circuit breaker, the protective device used shall not exceed the next higher standard device rating.

(h) Circuit breakers or fuses providing short-circuit protection shall be installed where the circuit conductors are connected to the supply, except for feeder tap conductors that—

(1) Do not exceed 25 feet in length;

(2) Have ampacities of at least one-third of the ampacity of the feeder conductors; and

(3) Terminate at a circuit breaker or fuse with a current rating that does not exceed the ampacity of the feeder tap conductors.

(i) Wiring shall be protected against overcurrent at no more than the ampacity specified in 30 CFR 56.12601.

(j) Overcurrent protection shall not be required on incandescent lamps supplied from direct-current systems, provided the length of ungrounded conductors does not exceed eight feet.

(k) Where interruption of a circuit presents a hazard to persons, the overload protection requirement of this section does not apply if measures are taken to warn persons when an overload occurs.

(l) Fuses, circuit breakers, or a combination of both shall not be connected in parallel.

TABLE 56.12103–1.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH—CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR THREE-PHASE MOTORS

Type of motor	Percent of full-load current			
	Non-time delay fuse	Dual element (Time-delay fuse)	Instantaneous trip breaker	Inverse time breaker
Squirrel-cage and synchronous motors with full-voltage, resistor or reactor starting:				
No code letter	300	175	700	250
Code letter F to V	300	175	700	250
Code letter B to E	250	175	700	200
Code letter A	150	150	700	150
All AC squirrel-cage and synchronous motors with autotransformer starting:				
Not more than 30 amps:				
No code letter	250	175	700	200
More than 30 amps:				
No code letter	300	175	700	200
Code letter F to V	250	175	700	200
Code letter B to E	300	175	700	200
Code letter A	150	150	700	150
High-reactance squirrel-cage:				
Not more than 30 amps:				
No code letter	250	175	700	250
More than 30 amps:				
No code letter	300	175	700	200
Wound-rotor—No code letter	150	150	700	150

TABLE 56.12103–2.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH—CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR SINGLE-PHASE MOTORS AND DIRECT-CURRENT MOTORS

Type of motor	Percent of full-load current			
	Non-time delay fuse	Dual element (Time-delay) fuse	Instantaneous trip breaker	Inverse time breaker
Single-phase, all types:				
No code letter	300	175	700	250
All AC single-phase with full-voltage, resistor or reactor starting:				
No code letter	300	175	700	250
Code letter F to V	300	175	700	250
Code letter B to E	250	175	700	200
Code letter A	150	150	700	150
Direct-current (constant voltage):				
No more than 50 HP:				
No code letter	150	150	250	150
More than 50 HP:				
No code letter	150	150	250	150

§ 56.12104 Unused Conductors.

Conductors that are not supplying power to electric equipment shall be deenergized and shall—

(a) Be removed from their supply source; or

(b) Have their supply source locked out and any exposed ends insulated.

§ 56.12105 Doors and cover plates.

Doors and cover plates on electric equipment, which allow access to electric connections, shall be closed at all times except during installation, testing and repair.

§ 56.12106 Danger signs.

Visible danger signs shall be posted at all substations, switchyards and control centers to warn persons against entry who have not been specifically assigned to perform duties in those locations.

§ 56.12130 Clearance of equipment.

(a) Bare overhead conductors of more than 650 volts, line-to-line which are installed parallel along a roadway and under which haulage trucks have access shall be suspended at a height at least 10 feet higher than the raised bed of any haulage truck used at the mine.

(b) When equipment is moved or operated near energized bare overhead conductors of less than 69,000 volts (other than trolley conductors) and the clearance is less than 10 feet, the conductors shall be deenergized or other precautionary measures shall be taken to prevent the equipment frames from being energized.

(c) When equipment is moved or operated near energized bare overhead conductors of 69,000 volts or more, the conductors shall be either deenergized or the minimum distance of the conductors from the equipment shall be as in Table 56.12130.

(d) Supplies or materials shall not be stored or stockpiled under bare overhead conductors of more than 650 volts, line-to-line.

TABLE 56.12130 [1]—MINIMUM DISTANCE FROM ENERGIZED CONDUCTORS

Conductor voltage	Distance (in feet)
69 to 114 kV	12
115 to 229 kV	15
230 to 344 kV	20
345 to 499 kV	25
500 kV or more	35

[1] Derived from *National Electrical Safety Code* Table 124–1.

Work on Electric Equipment and Circuits

§ 56.12200 Lockout procedures.

(a) Before electrical or mechanical work is performed on electric circuits or equipment, electric power to the circuits or equipment shall be deenergized except when electric power is a necessary part of the work procedure for accomplishing the mechanical work.

(b) Individual padlocks and identifying tags for each person performing work shall be installed to prevent the power circuit from being energized and the equipment set in motion without the knowledge of persons working on the circuits and equipment. Padlocks and tags shall only be removed by the persons who installed them.

(c) When testing circuits to locate an electrical problem, or adjusting electric circuits, the circuits do not have to be deenergized if—

(1) The circuit voltage is 1040 volts or less;

(2) Testing or adjusting is performed by a qualified electrician in accordance with 30 CFR 56.12100.

(3) The person uses procedures, tools and equipment to assure personal safety when in close proximity to energized parts; and

(4) It would be impractical to deenergize.

§ 56.12201 Plugs and receptacles.

Power cable plugs and receptacles for circuits greater than 150 volts, line-to-ground, shall not be connected or disconnected under load unless they are of the load-break type.

§ 56.12202 Fuses.

Fuses shall be installed or removed using tools or procedures that prevent electric shock or burns.

§ 56.12203 Cable handling.

(a) Power cables energized to a voltage in excess of 150 volts, line-to-ground, shall not be moved by other equipment unless sleds, or slings insulated from that equipment are used. This does not prohibit pulling or dragging of a trailing cable by the equipment it powers.

(b) When power cables energized to a voltage in excess of 150 volts, line-to-ground, are moved manually, insulated hooks, tongs, slings, gloves, mitts, aprons or other insulated personal protective equipment capable of protecting against shock, shall be used.

(c) Insulated handling equipment shall be—

(1) Examined before each use for visible signs of damage or defects; and

(2) Removed from use when damaged or defective.

(d) Surplus trailing cables serving shovels, cranes and similar equipment shall be stored—

(1) In cable boats;

(2) On reels mounted on the equipment; or

(3) In a manner which would protect them from mechanical damage.

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§ 56.12204 Access.

(a) For installations and equipment constructed after [Insert the effective date of this rule], working space shall be provided in accordance with Table 56.12204 where access to exposed energized electric equipment is necessary.

(b) For existing installations and equipment, working space in accordance with Table 56.12204 shall be provided where access to exposed energized electric equipment is necessary, unless other precautionary measures are used to protect persons from electric shock or burns.

TABLE 56.12204.[1]—MINIMUM WORKING SPACE

Nominal voltage to ground	Minimum clear distance for condition (ft) [2]		
	(A)	(B)	(C)
0 to 150 V	3	3	3
151 to 600 V	3	3½	4
601 to 2,500 V	3	4	5
2,501 to 9,000 V	4	5	6
9,001 to 25,000 V	5	6	9
25,001 to 75 kV	6	8	10
Above 75 kV	8	10	12

[1] NFPA, 70 E. Tables 110–16A and 110–34A.

[2] As used in Table 56.12204, conditions (A), (B), (C) are as follows:

(A) Exposed energized parts on one side and no energized or grounded parts on the other side of the working space, or exposed energized parts on both sides guarded by wood or other insulating materials. Insulated conductors operating at not over 300 volts are not considered energized parts.

(B) Exposed energized parts on one side and grounded parts on the other side. Concrete, brick or rock walls will be considered as grounded surfaces.

(C) Exposed energized parts on both sides of the work space.

Guarding; Insulation; Separation

§ 56.12300 Connections and grids.

Exposed electric connections and resistor grids that are not protected by location shall be insulated. Where this is impractical they shall be guarded to prevent inadvertent contact by persons or equipment.

§ 56.12301 Communication conductors.

(a) Communication conductors shall be isolated or insulated to prevent them from contacting bare energized parts.

(b) Communication conductors carried on poles supporting uninsulated power conductors shall be located below the power conductors.

(c) Communication conductors shall not be attached to a crossarm that carries uninsulated power conductors.

§ 56.12302 Lights, guarding.

(a) Portable extension lights and lights less than 8 feet above travelways and working places shall be guarded to prevent a hazard to persons.

(b) Other lights shall be guarded when they present a hazard.

(c) Lamps shall not contact combustible materials.

§ 56.12330 Transformers.

(a) Transformers shall be—

(1) Totally enclosed;

(2) Installed so exposed energized parts are at least 8 feet above the ground; or

(3) Installed in a transformer house.

(4) Surrounded by a sturdy fence at least 6 feet high and at least 3 feet from any parts, casings or energized conductors.

(b) Gates or doors of transformer enclosures shall be locked to prevent unauthorized access to exposed energized parts which are less than 8 feet above the ground.

(c) Metallic transformer houses and fences shall be connected to the metallic case of the safety grounded transformer.

§ 56.12331 Substations.

Substations containing exposed energized parts that can be inadvertently contacted by persons shall be enclosed. When the enclosure is a metallic structure or fence it shall be connected to the substation's safety grounding system.

Connections; Switches; Controls

§ 56.12400. Identification.

Circuit breakers, trolley taps, fuse switchboxes and other disconnecting devices shall be legibly, durably, and distinctively marked to show which electric equipment they supply, except where the circuit breakers and devices can be identified by their proximity to the equipment.

§ 56.12401 Insulating mats.

Insulating mats shall be provided at all switchboards and power control switches where shock hazards exist due to exposed energized parts.

§ 56.12402 Undervoltage protection.

(a) Electric powered machinery shall include undervoltage protection to prevent shocks, burns, unwanted motion or unintentional starting. When voltage is lost, the equipment shall remain deenergized until manually restarted.

(b) Pumps, level control circuits and other equipment that by their design can automatically start and stop safely are not required to have undervoltage protection.

Safety Grounding

§ 56.12500 Grounding.

(a) All electric circuits shall have a safety grounding system. The system's performance shall limit the voltage on non-current-carrying metallic parts of electric equipment that a person can contact to a value that shall not cause a disabling or fatal shock under the following fault conditions—

(1) Single line-to-ground on grounded power systems; or

(2) Double line-to-ground on ungrounded power systems, with one of the faults at the source.

(b) The voltage on non-current-carrying metallic parts of electric equipment shall be controlled by—

(1) Limiting the magnitude of the voltage;

(2) Limiting the duration of the voltage; or

(3) A combination of these two.

See Appendix I for Subpart K.

§ 56.12501 Alternating-current equipment.

(a) The following equipment shall be connected to the safety grounding system by equipment safety grounding conductors:

(1) Metallic frames, enclosures, and other exposed non-current-carrying metallic parts of electric equipment.

(2) Metallic fences and barriers around high-voltage equipment and installations.

(3) Metallic enclosures of alternating-current conductors.

(4) Metallic battery trays.

(5) Metallic messenger wires.

(6) Metallic structures or racks that support electric equipment or conductors.

(b) Metallic cable shielding shall be connected to the safety grounding system at each termination by equipment safety grounding conductors.

(c) Before batteries on battery-powered equipment are connected to a battery charger, the metallic battery trays shall be connected to the grounded metallic frame of the battery charger, and shall remain connected until the batteries have been disconnected from the charger.

(d) Metallic cable hangers or supporting structures shall either be connected to the safety grounding system or insulated from the cable.

(e) Exposed metallic enclosures or portions of hand-held electric equipment shall be connected to the safety grounding system, except when the equipment is—

(1) Double insulated as determined by an independent testing laboratory and does not present a shock hazard; or

(2) Operated at a maximum of 40 volts.

(f) Generator powered equipment mounted on the same metallic frame as the generator is not required to be connected to the mine's safety grounding system.

§ 56.12502 Direct-current equipment.

(a) The following shall be connected to the mine safety grounding system by equipment safety grounding conductors

(1) Metallic frames, enclosures, and other exposed non-current-carrying metallic parts of conductors and equipment.

(2) Metallic messenger wires used to support direct-current conductors.

(3) Metallic racks and structures used to support trolley wires and trolley feeder wires.

(4) Metallic overcasts in trolley entries.

(b) Silicon diode grounding systems shall be installed in accordance with 30 CFR 56.12504.

(c) Component parts of complete units of equipment shall be solidly connected to the frames of the equipment.

(d) Exposed metallic enclosures or portions of hand-held electric equipment shall be connected to the safety grounding system, except when the equipment is—

(1) Double insulated as determined by an independent testing laboratory and does not present a shock hazard;

(2) Operated at a maximum of 40 volts; or

(3) Powered by internal batteries which are a integral part of the equipment.

(e) Generator powered equipment mounted on the same metallic frame as the generator is not required to be connected to the mine's safety grounding system.

§ 56.12503 Equipment safety grounding conductors.

(a) Equipment safety grounding conductors for portable and mobile electric equipment shall be one or more stranded copper conductors contained within the cable or flexible cord supplying the equipment.

(b) Equipment safety grounding conductors for stationary equipment shall be—

(1) Contained together with the circuit conductors in the raceways, cables, or cords;

(2) Wrapped around the raceways, cables, or cords containing the circuit conductors; or

(3) A continuous metal conduit or metallic raceway that complies with the voltage exposure requirements of 30 CFR § 56.12500.

(c) The combined cross-sectional area of equipment safety grounding conductors shall be equal to or greater than—

(1) One-half the cross-sectional area of one circuit conductor when the circuit conductor is No. 6 AWG or larger; or

(2) The cross-sectional area of one circuit conductor when the circuit conductor is smaller than No. 6 AWG.

(d) Equipment safety grounding conductors installed outside of raceways, cables, or cords and used to ground stationary equipment shall be No. 6 AWG or larger.

(e) Switches, fuses, circuit breakers, ground-fault devices and overcurrent devices shall not be installed in equipment safety grounding conductors.

(f) Ground-wire devices installed in the equipment safety grounding conductor for the purpose of inter-machine arc suppression or in conjunction with ground-wire monitoring systems shall be designed and constructed to withstand the maximum amount of phase-to-phase fault current to which they may be exposed without creating an electrical shock or fire hazard.

(g) When used, ground-wire devices specified in paragraph (f) of this section shall be connected to the safety grounding system with two separate conductors.

(h) On direct-current powered equipment, the equipment safety grounding conductor and the return power conductor shall be separately connected to the mine track, grounded return-feeder conductor, or metallic frame or enclosure used as the safety grounding system.

(i) Equipment safety grounding conductors for draw-out equipment or plugs and receptacles shall be the first conductors made when making connections and the last conductors broken when breaking connections.

(j) When power is supplied between separate metallic parts of equipment, the parts shall be connected together through an equipment safety grounding conductor.

(k) The frame of a portable or mobile generator supplying remote loads shall have equipment safety grounding conductors connecting the frames of each remote load to the frame of the generator.

(l) Equipment safety grounding conductors shall be bare or shall be properly identified.

§ 56.12504 Silicon diode grounding.

When the metallic frames of off-track equipment are grounded by silicon diodes, the diode grounding system shall meet the following conditions:

(a) The polarity of each grounding diode shall be compatible with the grounded polarity of the direct-current systems.

(b) Each grounding diode shall have a threaded base used to solidly connect the diode to the machine frame.

(c) An overcurrent device shall be installed between the grounding diode(s) and the grounded power conductor, and shall cause the main conductor or the circuit interrupting device to deenergize all circuits on the machine when 50 amperes or more flows through the grounding diode, except that methane monitor circuits may remain energized.

(d) A polarizing diode that prevents the unit of equipment from being operated when the polarity of the supply conductors is reversed shall be installed in the control circuit.

(e) The forward current rating of each grounding diode shall be equal to or greater than 750 amperes when used to ground a continuous mining machine or equal to or greater than 400 amperes when used to ground other equipment.

(f) The peak reverse voltage rating of the grounding and polarizing diodes shall be at least 1,200 volts.

§ 56.12505 Low-resistance ground fields.

(a) Low-resistance ground fields used in the safety grounding system shall be designed and installed in a manner which assures that the maximum exposure voltage under fault conditions does not create hazardous step and touch potentials. The following parameters shall be considered in evaluating ground field safety—

(1) Soil resistivity;

(2) Available fault current;

(3) Ground field construction; and

(4) Operating times of protective devices.

(b) Low-resistance ground fields used in the safety grounding system shall be maintained at 25 ohms or less unless an evaluation of the system in accordance with paragraph (a) indicates that—

(1) a lower value of resistance is necessary; or

(2) a higher value of resistance can be used.

(c) Materials used for ground fields shall have at least four square feet of surface area in contact with soil.

§ 56.12506 Testing.

(a) On all installations made after [Insert the effective date of this rule], and when repairs or modifications are made to the safety grounding system, continuity tests shall be made to assure the integrity of the system.

(b) The safety grounding system shall be reviewed at intervals not to exceed twelve months to assure that the maximum voltage exposure under fault conditions complies with requirements of this subpart.

(c) For mine power systems utilizing an alternating-current voltage of less than 650 volts, line-to-line, the resistance to earth of the safety grounding system's connection to earth shall be maintained at 25 ohms or less and be physically separated from the substation grounding system. This separation shall be either 25 feet or 5 times the largest dimension of the safety grounding system's connection to earth, whichever is larger. When 25 ohms or less cannot be obtained, the operator shall assure that the system complies with 30 CFR 56.12505.

(d) When reviewing a mine power system utilizing an alternating-current voltage greater than 650 volts, line-to-line, the review shall include determinations of the—

(1) Safety grounding system's resistance to earth at its connection to earth;

(2) Maximum fault current that can flow into the safety grounding system at electric loads or sources of 500 kVA or larger; and

(3) Impedance of the safety grounding system at electric loads or sources of 500 kVA or larger.

(e) A weekly check of continuity shall be made of all mobile equipment safety grounding conductors, except when they are continuously monitored with an MSHA tested ground-wire monitoring device.

Power Cables and Conductors

§ 56.12600 Installation.

(a) Cables and insulated conductors shall be installed so that they are protected against physical damage, adverse ambient conditions and failure of adjacent mechanical systems.

(b) Cables and insulated conductors shall not be supported from pipelines.

(c) Insulated conductors shall not contact pipelines.

(d) When cables and pipelines are supported from the same supports, clearance to prevent shock hazards during maintenance to pipelines shall be provided.

56.12601 Ampacity.

(a) Electric conductors shall be of a size and currentcarrying capacity to assure that a rise in temperature resulting from normal operating conditions does not exceed the rating of the insulation and conductors.

(b) Branch circuit conductors supplying electric equipment shall have ampacities of at least 125 percent of the full-load current rating of the equipment.

(c) Feeder circuit conductors supplying multiple loads shall have ampacities of at least the sum of the full-load current ratings of each load plus 25 percent of the highest full load current rating of the largest load.

(d) The size of conductors for electric equipment shall be at least that specified in ampacity Tables 56.12601–1 through 56.12601–10 below, or other tables that are appropriate for the conditions under which the conductors are used.

(e) Ampacity of conductors shall be corrected according to Table 56.12601–11, if the ambient temperature is other than the temperature at which the conductor was rated.

(f) When four or more conductors are contained in the same raceway, conduit or cable, the maximum allowable load current shall be reduced according to Table 56.12601–12.

TABLE 56.12601–1. ALLOWABLE AMPACITIES OF 300- AND 600-VOLT FLEXIBLE CORDS; COPPER CONDUCTORS

Conductor size AWG	Types S, SO, SJO, ST, STO, SJT, SJTO, SOO, SJOO, STOO, SJTOO—Current-carrying conductors		Types AFS, AFSJ, HSJ, HSJO, HS, MSO—Current-carrying conductors
	2	3	3
14	18	15	20
12	25	20	30
10	30	25	35
8		35	

TABLE 56.12601–2—ALLOWABLE AMPACITIES OF SHIELDED AND UNSHIELDED 0– TO 2000–VOLT PORTABLE POWER CABLES; COPPER CONDUCTORS (BASED ON AMBIENT AIR TEMPERATURE OF 20.C (68.F))

Conductor size AWG Or MCM	Ampacities—Number of Current-Carrying Conductors in Cable Or Raceway						
	1		2		3		
	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	90 °C [2]
8	73	88	63	85	53	70	
6	106	129	81	112	81	93	110
4	138	171	113	150	106	123	144
3	163	197	131	171	125	142	165
2	188	227	150	197	144	163	186
1	213	263	175	225	163	190	217
1/0	250	304	213	256	181	219	249
2/0	294	352	244	295	213	254	287
3/0	344	407	281	337	244	294	329
4/0	394	472	325	387	275	339	378
250	438	525	356	428	306	375	419
300	494	590	388	472	344	421	470
350	556	651	419	514	381	465	518
400	600	706	450	555	406	507	555
500	681	820	519	618	469	575	632

[1] 0–2000 Volt Insulation, Unshielded Portable Power Cable.
[2] 0–2000 Volt Insulation, Shielded Portable Power Cable.

TABLE 56.12601–3.—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60 °C TO 90 °C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				15					
16			20	19					
14	20	20	27	25					
12	25	25	33	30	20	20	27	25	12
10	35	35	43	40	29	30	33	35	10
8	46	55	60	59	35	44	43	42	8
6	64	72	76	81	46	55	60	65	6
4	81	94	103	103	64	72	82	81	4
3	98	111	120	119	75	83	92	92	3
2	110	127	136	140	87	99	109	108	2
1	127	144	158	162	96	111	120	124	1
0	144	166	179	184	116	133	141	146	0
00	167	193	207	211	129	148	158	162	00
000	191	221	234	243	150	171	185	189	000
0000	225	254	272	281	173	196	212	221	0000
250	248	282	290	313	196	227	229	248	250
300	277	315	337	348	219	254	272	275	300
350	299	343	370	378	242	278	294	302	350
400	323	370	397	410	260	298	321	329	400
500	370	420	451	464	300	343	364	378	500
600	410	464	500	513	329	376	402	416	600
700	445	508	544	562	350	414	440	454	700
750	462	525	560	578	370	425	457	470	750
800	474	541	582	599	381	436	467	488	800
900	502	575	614	632	410	470	506	518	900
1000	526	602	641	664	433	492	527	540	1000
1250	572	652	696	718	466	536	571	589	1250
1500	601	681	739	761	502	575	614	632	1500
1750	629	718	756	794	526	602	647	664	1750
2000	647	735	768	810	543	619	662	680	2000

TABLE 56.12601–4— ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2000 VOLTS (BASED ON AMBIENT AIR TEMPERATURE OF 20° C (68° F))

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				19					
16			25	26					
14	25	30	33	35					
12	30	35	43	40	25	30	33	35	12
10	40	50	60	55	35	40	43	40	10
8	59	77	82	86	52	51	65	65	8
6	92	105	109	113	69	83	87	86	6
4	121	138	147	151	92	111	114	119	4
3	139	160	174	176	110	127	136	140	3
2	165	188	201	205	127	148	158	162	2
1	191	215	234	238	150	171	179	186	1
0	225	254	272	281	173	199	212	221	0
00	260	293	315	324	201	232	246	254	00
000	300	343	364	376	231	265	285	297	000
0000	347	396	424	437	271	309	332	340	0000
250	393	446	478	491	306	348	375	383	250
300	433	492	527	545	235	387	413	427	300
350	485	556	598	616	381	436	467	481	350
400	526	602	647	664	410	470	505	518	400
500	595	685	734	756	468	536	571	589	500
600	664	762	815	842	526	597	647	664	600
700	726	834	897	923	576	657	707	729	700
750	757	867	929	956	595	685	734	758	750
800	785	901	962	984	618	713	761	780	800
900	843	961	1033	1064	670	774	826	848	900
1000	901	1033	1109	1139	722	829	886	913	1000
1250	1026	1177	1261	1295	820	945	1011	1037	1250
1500	1132	1298	1386	1431	918	1050	1125	1161	1500
1750	1236	1414	1516	1561	1010	1160	1245	1280	1750
2000	1334	1531	1636	1685	1109	1271	1359	1442	2000

TABLE 56.12601-5—ALLOWABLE AMPACITIES OF SHIELDED, THREE CONDUCTOR, 2,001-15,000 VOLT, MINE POWER CABLE; COPPER CONDUCTORS

[Based on Ambient Temperature of 20 °C]

Ampacities	Conductor size (AWG or MCM)			
	2,001-8,000 volts		8,001-15,000 volts	
	75 °C	90 °C	75 °C	90 °C
6	99	110		
4	130	144		
2	170	188	175	194
1	198	217	200	221
1/0	226	249	230	254
2/0	260	287	263	290
3/0	299	329	301	334
4/0	343	379	346	384
250	379	419	383	424
300	423	470	426	473
350	465	513	468	517
400	500	555	501	558
500	571	632	571	632

TABLE 56.12601-6—ALLOWABLE AMPACITIES OF SHIELDED, THREE CONDUCTOR, 2,001-15,000 VOLT MINE POWER CABLES; ALUMINUM CONDUCTORS

[Based on Ambient Temperature of 20 °C]

Ampacities	Conductor size (AWG or MCM)			
	2,001-8,000 volts		8,001-15,000 volts	
	75 °C	90 °C	75 °C	90 °C
4	101	112		
2	133	146	136	
1	153		156	
1/0	175	195	179	198
2/0	200	223	205	227
3/0	234	257	236	261
4/0	269	296	271	300
250	298	328	300	332
350	366	404	367	406
400	396	436	397	433
500	458	502	453	500

TABLE 56.12601-7—AMPACITY OVERHEAD COPPER CONDUCTORS

Conductor AWG [1]	CM [2]	Copper, ampacity in amperes
	6,400	51
10	10,380	56
	10,820	71
9	13,090	79
8	16,510	92
6	26,240	124
4	41,740	156
3	52,620	193
2	66,360	223
1	83,700	260
1/0	105,600	301
2/0	133,100	350
3/0	167,800	405
4/0	211,600	472
	250,000	547
	300,000	615
	350,000	680
	400,000	730
	450,000	787
	500,000	842
	600,000	945
	700,000	1042
	750,000	1087
	800,000	1131

TABLE 56.12601-7—AMPACITY OVERHEAD COPPER CONDUCTORS—Continued

Conductor AWG [1]	CM [2]	Copper, ampacity in amperes
	1,000,000	1295

[1] AWG means American Wire Gage.
[2] CM means Circular Mils.

TABLE 56.12601-8—AMPACITY OVERHEAD ACSR [1] CONDUCTORS

Conductor Size AWG [2]	CM [2]	ACSR, ampacity in amperes
6		104
4		139
2		184
1		210
1/0		240
2/0		275
3/0		318
4/0		360
	266,800	452
	300,000	492
	336,400	534

TABLE 56.12601-8—AMPACITY OVERHEAD ACSR [1] CONDUCTORS—Continued

Conductor Size AWG [2]	CM [2]	ACSR, ampacity in amperes
	397,500	593
	477,000	665
	556,500	732
	605,000	772
	636,000	797
	666,600	805
	715,500	858
	795,000	881
	874,500	935
	900,000	926
	954,000	950
	1,033,500	1010
	1,113,000	1060
	1,192,500	1099
	1,272,000	1148
	1,351,500	1186
	1,431,000	1237
	1,510,500	1276
	1,590,000	1313
	1,780,000	1434

[1] Aluminum Cable Steel Reinforced.
[2] AWG means American Wire Gage.

[2] CM means Circular Mils.

TABLE 56.12601-9—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60 °C TO 90 °C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE

[Based on Ambient Air Temperatures of 30 °C (86 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				14					
16			18	18					
14	20	20	25	25					
12	25	25	30	30	20	20	25	25	12
10	30	35	40	40	25	30	30	35	10
8	40	50	55	55	30	40	40	45	8
6	55	65	70	75	40	50	55	60	6
4	70	85	95	95	55	65	75	75	4
3	85	100	110	110	65	75	85	85	3
2	95	115	125	130	75	90	100	100	2
1	110	130	145	150	85	100	110	115	1
1/0	125	150	165	170	100	120	130	135	1/0
2/0	145	175	190	195	115	135	145	150	2/0
3/0	165	200	215	225	130	155	170	175	3/0
4/0	195	230	250	260	150	180	195	205	4/0
250	215	255	275	290	170	205	220	230	250
300	240	285	310	320	190	230	250	255	300
350	260	310	340	350	210	250	270	280	350
400	280	335	365	380	225	270	295	305	400
500	320	380	415	430	260	310	335	350	500
600	355	420	460	475	285	340	370	385	600
700	385	460	500	520	310	375	405	420	700
750	400	475	515	535	320	385	420	435	750
800	410	490	535	555	330	395	430	450	800
900	435	520	565	585	355	425	465	480	900
1000	455	545	590	615	375	445	465	500	1000
1250	495	590	640	665	405	485	525	545	1250
1500	520	625	680	705	435	520	560	580	1500
1750	545	650	705	735	455	545	595	615	1750
2000	560	665	725	750	470	560	610	630	2000

TABLE 56.12601-10—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2000 VOLTS

[Based on Ambient Air Temperatures of 30 °C (86 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				18					
16			23	24					
14	25	30	30	35					
12	30	35	40	40	25	30	30	35	12
10	40	50	55	55	35	40	40	40	10
8	60	70	75	80	45	55	60	60	8
6	80	95	100	105	60	75	80	80	6
4	105	125	135	140	80	100	105	110	4
3	120	145	160	165	95	115	125	130	3
2	140	170	185	190	110	135	145	150	2
1	165	195	215	220	130	155	165	175	1
1/0	195	230	250	260	150	180	195	205	1/0
2/0	225	265	290	300	175	210	225	235	2/0
3/0	260	310	335	350	200	240	265	275	3/0
4/0	300	360	390	405	235	280	305	315	4/0
250	340	405	440	455	265	315	345	355	250
300	375	445	485	505	290	350	380	395	300
350	420	505	550	570	330	395	430	445	350
400	455	545	595	615	355	425	465	480	400
500	515	620	675	700	405	485	525	545	500
600	575	690	750	780	455	540	595	615	600
700	630	755	825	855	500	595	650	675	700
750	655	785	855	885	515	620	675	700	750
800	680	815	885	920	535	645	700	725	800
900	730	870	950	985	580	700	760	785	900
1000	780	935	1020	1055	625	750	815	845	1000
1250	890	1065	1160	1200	710	855	930	960	1250
1500	980	1175	1275	1325	795	950	1035	1075	1500
1750	1070	1280	1395	1445	875	1050	1145	1185	1750

TABLE 56.12601-10—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2000 VOLTS—Continued

[Based on Ambient Air Temperatures of 30 °C (86 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
3000	1155	1385	1505	1560	890	1150	1250	1335	3000

TABLE 56.12601-11.—AMPACITY CORRECTION FACTORS

[For Ambient Temperatures other than 20 °C, Multiply the Ampacities from Tables 56.12601-2 Through 56.12601-6 by the Appropriate Factor Shown Below]

Ambient temperature °C	Correction factor				Ambient temperature °F
	60°	75°	85°	90°	
21–25	.91	.94	.95	.96	70–77
26–30	.82	.88	.90	.91	79–86
31–35	.71	.82	.85	.87	88–95
36–40	.58	.75	.80	.82	97–104
41–45	.41	.67	.74	.76	106–113

[For Ambient Temperatures other than 30 °C, Multiply the Ampacities from Tables 56.12601-1, 56.12601-11 and 56.12601-12 by the Appropriate Factor Shown Below.]

Ambient temperature °C	Correction factor				Ambient temperature °F
	60°	75°	85°	90°	
21–25	1.08	1.05	1.04	1.04	70–77
26–30	1.00	1.00	1.00	1.00	79–86
31–35	.91	.94	.96	.96	88–95
36–40	.82	.88	.90	.91	97–104
41–45	.71	.82	.85	.87	106–113

TABLE 56.12601-12.—AMPACITY DERATING FACTORS

Number of conductors	Percent of ampacity value
4 through 6	80
7 through 24	70
25 through 42	60
43 and above	50

Derived from notes to NEC Tables 310–16 through 310–19.

§ 56.12602 Insulation, termination and shielding.

(a) Power cables and conductors, other than trolley wires and uninsulated surface overhead conductors of more than 650 volts, line-to-line, shall have insulation rated for at least the voltage of the circuit in which the cable or conductor is applied.

(b) Power cables and conductors installed on the surface in circuits with line-to-line voltages above 2,000 volts and subject to contact by persons shall have metallic shielding around each power conductor.

(c) Metallic enclosed power cables and conductors are not required to be shielded provided the enclosure is continuous and connected to the safety grounding system.

(d) Except as provided in paragraph (f) of this section, cables shall enter metallic frames of electric enclosures through fittings sized for the cables which prevent damage to the cable jackets and the insulation of the internal conductors.

(e) Except as provided in paragraph (f) of this section, conductors shall enter metallic frames of electric enclosures through fittings with insulated bushings sized for the conductors.

(f) Cables and conductors in conduit that enter metallic frames of electric enclosures need not be equipped with fittings or bushings when protection against damage by sharp edges is otherwise provided.

(g) Cables and conductors shall be secured to prevent mechanical strain on electrical connections.

§ 56.12603 Splices, repairs and terminations of conductors and cables.

(a) Cables shall be spliced, terminated, or repaired by a qualified electrician.

(b) A splice in a trailing cable shall contain only one connection point in each conductor.

(c) Terminations of shields in cables shall be connected to equipment safety grounding conductors at each splice and termination.

(d) Except as provided in paragraph (e) of this section, each splice and repair shall have—

(1) Conductivity and current-carrying capacity that prevents insulation damage due to heating of conductors;

(2) The severed conductors joined by welding or compression-type connectors;

(3) Each power, control, and ground check conductor individually reinsulated with insulation having a thickness, temperature rating, and dielectric strength of at least that of the original insulation;

(4) Semiconducting tape replaced over the insulation of each power conductor within shielded cables;

(5) Metallic shielding in the form of metallic braid or serving (wrap), or metallic tape replaced over each power conductor and applied in half-lapped layers, on shielded cables;

(6) The outer jacket replaced to provide at least the same thickness and protection as that of the original jacket; and

(7) The outer jacket sealed, vulcanized, molded, or fused to the cable's original jacket to exclude moisture.

(e) One trailing cable splice which does not meet the requirements of paragraph (d) of this section shall be permitted for the time period necessary to move the equipment for repair of the cable, provided the splice is mechanically strong and insulated to prevent shock.

§ 56.12604 Lightning protection.

(a) Surge arresters shall be provided for exposed ungrounded power conductors and telephone wires.

(b) Power conductors and telephone wires that are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shields, coverings, or enclosures, throughout their entire length need not be equipped with surge arresters.

(c) Surge arresters shall be rated for the voltage and current of the circuit they protect.

§ 56.12630 Support structures and guy wires.

Guy wires attached to structures supporting uninsulated overhead power conductors, other than telephone wires, shall be—

(a) Electrically connected to the equipment safety grounding conductor at the supporting structure end of the guy wire; or

(b) Provided with one or more insulators which have a dry flashover voltage at least double the nominal voltage and a wet flashover voltage at least as high as the nominal voltage. The insulators shall be at least 8 feet from the ground.

Trailing Cables

§ 56.12700 Insulation; shielding.

Trailing cables used in mine electrical systems shall have—

(a) Conductor insulation rated for at least the line-to-line voltage; and

(b) Shielding for the purpose of confining the voltage stresses when used to supply equipment at over 2,000 volts line-to-line.

§ 56.12701 Overcurrent protection.

(a) Each trailing cable of portable and mobile equipment shall have short-circuit and ground-fault protection for each ungrounded conductor that shall safely interrupt all ungrounded conductors under fault conditions.

(b) Ungrounded conductors of trailing cables energized at voltages of 1040 volts or less shall be protected by one of the following—

(1) An inverse-time circuit breaker with a maximum current rating as specified in Table 56.12701-1.

(2) An instantaneous-trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds with a maximum instantaneous setting not more than—

(i) The values listed in Table 56.12701-2 for 480-, 600-, and 1040-volt trailing cables; or

(ii) The values listed in Table 56.12701-3 for 300- and 600-volt direct-current trailing cables.

(3) An instantaneous-trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds with a setting that does not exceed the lower value of either 115 percent of the maximum starting current for the unit of electric equipment or 60 percent of the lowest value of bolted phase-to-phase short-circuit current at any point in the circuit when—

(i) The circuit to be protected does not function properly using values listed in the tables; and

(ii) A circuit analysis assures that the circuit does not present a hazard to the miners.

(4) Fuses which provide no less protection than that specified above.

(c) Ungrounded conductors of trailing cables energized at voltages greater than 1040 volts shall be provided with instantaneous short-circuit protection with a setting that does not exceed the lower value of either 175 percent of the maximum starting current for the unit of electric equipment or 75 percent of the minimum phase-to-phase short-circuit current available at any point in the circuit.

TABLE 56.12701-1.—MAXIMUM RATINGS OF FUSES PROTECTING DIRECT-CURRENT TRAILING CABLES AND INVERSE-TIME CIRCUIT BREAKERS PROTECTING ALTERNATING-CURRENT TRAILING CABLES

[Maximum Inverse-Time Circuit Breaker or Fuse Rating (Amperes)]

Conductor size (AWG or MCM)	1 Ungrounded power conductor	2 Ungrounded power conductors	3 Ungrounded power conductors
14	15	15	15
12	20	20	20
10	30	30	25
8	40	50	50
6	50	70	70
4	110	110	110
3	150	150	150
2	150	175	175
1	175	200	200
1/0	200	225	225
2/0	200	250	250
4/0	250	350	350
250	350	350	350
300	400	350	350
350	450	350	350
400	500	400	400
500	600	450	450

TABLE 56.12701-2.—Maximum Settings of Instantaneous and Electronic Circuit Breakers Protection 480, 600, and 1040-Volt Alternating Current Trailing Cables

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
14	0–500	75	100	
	501–750	50	75	
12	0–500	125	175	
	501–750	100	125	
10	0–500	200	250	
	501–750	150	200	
8	0–500	300	400	
	501–750	200	300	
6	0–550	450	550	850
	501–750	350	450	750
4	0–500	750	900	1250

TABLE 56.12701-2.—Maximum Settings of Instantaneous and Electronic Circuit Breakers Protection 480, 600, and 1040-Volt Alternating Current Trailing Cables—Continued

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
	501–600	850	800	1100
	601–750	550	650	1000
3	0–500	900	1100	1400
	501–650	700	900	1200
	651–750	550	800	1100
2	0–500	1100	1250	1500
	501–600	950	1100	1400
	601–750	800	950	1250
1	0–500	1300	1450	1650
	501–600	1100	1300	1550
	601–750	950	1100	1400
1/0	0–500	1500	1650	1750
	501–600	1300	1500	1650
	601–750	1100	1300	1500
	751–800	1050	1250	1500
2/0	0–500	1700	1800	1850
	501–600	1500	1650	1750
	601–750	1350	1450	1650
	751–850	1200	1350	1550
3/0	0–500	1900	1950	1900
	501–600	1700	1800	1800
	601–750	1500	1650	1700
	751–900	1300	1450	1650
4/0	0–500	2100	2100	1950
	501–600	1900	1950	1900
	601–750	1700	1800	1800
	751–1000	1400	1550	1650
250	0–500	2150	2150	2000
	501–600	2000	2050	1900
	601–750	1750	1850	1850
	751–1000	1500	1650	1700
300	0–500	2300	2250	2000
	501–600	2150	2100	1950
	601–750	1900	1950	1900
	751–1000	1600	1750	1750
350	0–500	2350	2300	2050
	601–750	2000	2000	1900
	751–1000	1700	1800	1800
400	0–500	2450	2350	2100
	501–600	2250	2250	2000
	601–750	2050	2100	1950
	751–1000	1800	1850	1850
500	0–500	2500	2400	2100
	501–600	2350	2300	2050
	601–750	2150	2150	1950
	751–1000	1900	1950	1850

TABLE 56.12701-3—Maximum Settings of Instantaneous Circuit Breakers Protecting 300- and 600-Volt Direct Current Trailing Cables

Conductor size (AWG or MCM)	Cable length (feet)	300VDC Maximum instantaneous circuit breaker setting (amperes)		600 VDC Maximum instantaneous circuit breaker setting (amperes)	
		Line-line [1]	Line-ground [2]	Line-line [1]	Line-ground [2]
14	0–500	50	50	50	50
12	0–500	75	75	125	125
10	0–500	75	75	200	200
8	0–500	100	100	300	300
6	0–500	300	100	450	300
4	0–500	450	250	600	500
	501–600	850	200	850	400
3	0–500	450	350	700	550
	501–650	400	250	600	450
2	0–500	600	450	750	600
	501–600	850	400	700	550
	601–700	450	300	650	500
1	0–500	900	600	1400	1050
	501–600	750	500	1250	950
	601–750	600	400	1050	800
1/0	0–500	1100	750	1600	1250
	501–600	950	650	1450	1100
	601–750	750	550	1250	950
	751–800	700	500	1200	900

TABLE 56.12701-3—Maximum Settings of Instantaneous Circuit Breakers Protecting 300- and 600-Volt Direct Current Trailing Cables—Continued

Conductor size (AWG or MCM)	Cable length (feet)	300VDC Maximum instantaneous circuit breaker setting (amperes)		600 VDC Maximum instantaneous circuit breaker setting (amperes)	
		Line-line [1]	Line-ground [2]	Line-line [1]	Line-ground [2]
2/0	0–500	1350	850	1800	1450
	501–600	1150	800	1650	1300
	601–750	950	650	1450	1100
	751–850	800	600	1350	1050
3/0	0–500	1550	1150	2000	1650
	501–600	1400	1000	1850	1500
	601–750	1150	800	1650	1300
	751–900	1000	700	1500	1150
4/0	0–500	1850	1400	2200	1850
	501–600	1600	1200	2050	1700
	601–750	1400	1000	1850	1500
250	0–500	2050	1550	2350	2000
	501–600	1800	1350	2200	1850
	601–750	1550	1150	2000	1650
	751–1000	1250	800	1750	1400
300	0–500	2300	1750	2450	2150
	501–600	2050	1550	2350	2000
	601–750	1750	1300	2150	1800
	751–1000	1450	1050	1900	1550
350	0–500	2550	1950	2600	2300
	501–600	2250	1700	2450	2150
	601–750	1950	1500	2300	1950
	751–1000	1600	1200	2050	1700
400	0–500	2750	2150	2650	2400
	501–600	2450	1900	2550	2250
	601–750	2150	1600	2400	2150
	751–1000	1750	1350	2150	1800
500	0–500	3050	2450	3300	2950
	501–600	2800	2200	2700	2400
	601–750	2450	1900	2550	2250
	751–1000	2050	1550	2350	2000
600	0–500	3250	2650	3450	3050
	501–600	3000	2400	2750	2400
	601–750	2650	2050	2650	2350
	751–1000	2250	1700	2400	2100
700	0–500	3500	2900	2950	2750
	501–600	3250	2600	2850	2500
	601–750	2900	2300	2750	2450
	751–1000	2450	1900	2550	2250
800	0–500	3700	3100	3000	2800
	501–600	3450	2800	2900	2700
	601–750	3100	2500	2800	2450
	751–1000	2650	2050	2650	2350
900	0–500	3900	3300	3050	2850
	501–600	3650	3000	3000	2850
	601–750	3300	2650	2850	2650
	751–1000	2850	2250	2700	2450
1000	0–500	4050	3450	3100	2900
	501–600	3800	3150	3000	2850
	601–750	3450	2800	2900	2700
	751–1000	3000	2400	2750	2600

[1] The line-to-line instantaneous circuit breaker settings shall be used for trailing cables supplying power to diode grounded equipment and for trailing cables containing a separate equipment safety grounding conductor if the circuit is provided with separate ground-fault protection.
[2] The line-to-ground instantaneous circuit breaker settings shall be used for trailing cables containing a separate equipment safety grounding conductor when the circuit is not provided with separate ground-fault protection.

§ 56.12702 Attachment.

Trailing cables shall be attached to equipment so that functional damage to the cable jacket and damage to the insulation of the internal conductors is prevented, and strain does not occur on electric connections.

§ 56.12703 Portable distribution boxes.

Portable distribution boxes shall have—

(a) A disconnecting device for each branch circuit and a means to clearly show that each circuit has been physically disconnected;

(b) A means which identifies each disconnecting device and cable with its related load; and

(c) A means to prevent connecting a cable to the wrong protective device when two or more cables connect to the same distribution box.

§ 56.12704 Guarding.

Trailing cables and power conductors shall be protected against physical damage from mobile equipment by bridges, trenches, suspension, or by location.

§ 56.12705 Disconnecting devices.

Disconnecting devices for trailing cables shall be equipped with a means for installing a padlock.

Trolley Circuits for Track Haulage

§ 56.12800 Installation and Maintenance.

Trolley wires and exposed trolley-feeder wires shall be—

(a) Installed opposite the clearance side of haulageways, except where such installation creates a greater hazard;

(b) Suspended at least 7 feet above the track; and

(c) Aligned and maintained to provide for smooth tracking of trolley collectors on trolley wires.

§ 56.12801 Circuit protection and isolation.

(a) Trolley wires and trolley-feeder wires shall be protected against overcurrent by an automatic circuit interrupting device which deenergizes the affected circuit if a short circuit occurs at any point in the system.

(b) The trip setting of the device required by paragraph (a) of this section shall not exceed 50 percent of the minimum available bolted short-circuit current when that current is less than 800 amperes; or 75 percent of the minimum available bolted short-circuit current when that current is 800 amperes or more.

(c) Trolley wires and trolley-feeder wires shall be provided with a means of isolation at intervals of not more than 2,000 feet and near the beginning of all branch lines.

§ 56.12802 Track bonding.

(a) Track serving as the trolley circuit return shall be bonded or welded at every joint and crossbonded at intervals not exceeding 200 feet.

(b) Metallic pipelines and structures installed less than 10 feet from track serving as the trolley circuit return shall be insulated or guarded, or bonded to the track at intervals not exceeding 1000 feet to prevent shock hazards.

(c) When rails are moved or replaced, or when broken bonds are discovered, they shall be rebonded within three working shifts.

§ 56.12803 Guarding.

(a) Energized trolley wires and bare trolley-feeder wires shall be guarded where accidental contact with them is possible, including:

(1) Where supplies are stored, loaded, or unloaded.

(2) At mantrip stations.

(3) On each side of all doors and stoppings through which wires pass.

(4) Where a person works within three feet of the trolley wire except for a person operating rail-mounted haulage equipment.

(5) At track switches.

(6) Where persons regularly pass under the wires.

(b) Trolley wires and trolley feeder wires shall be deenergized when guarding is installed or removed, unless the guarding is temporary guarding designed to minimize shock hazards while work is being conducted in the area.

§ 56.12804 Circuits powered from trolley wires.

The return wire of all circuits powered from the trolley wires shall be connected to the trolley wire return circuit to assure continuity and prevent arcing.

Appendix I for Subpart K-Electricity

Mine operators seeking further information may consult the following national consensus standards:

MSHA Standard	National Consensus Standard
56/57.12101	NFPA 70 (NEC)
56/57.12103	
56/57.12130	
56/57.12204	
56/57.12301	
56/57.12400	
56/57.12500 [1] to 56/57.12506	NFPA 70 (NEC), IEEE Stds. 80-1976, 81-1983, 277-1983 142-1982, UL-943 and ANSI C-2 (NESC).
56/57.12600	IEEE Std. 242
56/57.12601	NEC, ICEA P-50-431, S-19-81 and P-48-426
56/57.12602	IEEE Std. 141-1976 and NEC
56/57.12604	IEEE Std. 142-1982
56/57.12630	NESC
57.12660	NEC
56/57.12700	NEC

[1] A method that may be used for protection of persons from disabling or fatal electric shock, under ground-fault conditions, is to limit voltage exposure. The term voltage exposure refers to a combination of voltage and the length of time that the voltage exists.

Voltage exposure should not exceed

$V^2t = 30375$

where v = voltage in volts

t = time in seconds

This equation is based on IEEE Std. 80-1976 using 1500 ohms as a person's body resistance. This would allow a combination of system grounding, ground-fault protection and overcurrent protection to be used to provide protection from disabling or fatal shocks.

PART 57—SAFETY AND HEALTH STANDARDS-UNDERGROUND METAL AND NONMETAL MINES

6. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

Subpart A—General

§ 56.2 [Amended]

7. In § 57.2, the definitions of "distribution box," "electrical grounding," "high potential," "insulation," "low potential," "major electrical installation," and "reverse-current protection" are removed.

Subpart C—Fire Prevention and Control

8. The authority citation for subpart C continues to read as follows:

Authority: Sec. 101, Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (300.S.C.811).

9. Sections 57.4011 and 57.4057 are §§ 57.4011 and 57.4057 [Removed] removed.

10. Subpart K is revised to read as follows:

Subpart K—Electricity

Sec.

57.12000 Definitions.

General

57.12100 Qualified electricians.
57.12101 Electric equipment and conductors
57.12102 Bare conductors.
57.12103 Overcurrent protection.
57.12104 Unused conductors.
57.12105 Doors and cover plates.
57.12106 Danger signs.
57.12130 Clearance of equipment.

WORK ON ELECTRIC EQUIPMENT AND CIRCUITS

57.12200 Lockout procedures.
57.12201 Plugs and receptacles.
57.12202 Fuses.
57.12203 Cable handling.
57.12204 Access.

GUARDING; INSULATION; SEPARATION

57.12300 Connections and grids.
57.12301 Communication conductors.
57.12302 Lights, guarding.
57.12330 Transformers.
57.12331 Substations.

CONNECTIONS; SWITCHES; CONTROLS

57.12400 Identification.
57.12401 Insulating mats.
57.12402 Undervoltage protection.
57.12460 Branch Circuit Disconnecting Devices

SAFETY GROUNDING

57.12500 Grounding.
57.12501 Alternating-current equipment.
57.12502 Direct-current equipment.
57.12503 Equipment safety grounding conductors.
57.12504 Silicon diode grounding.
57.12505 Low-resistance ground fields.
57.12506 Testing.

POWER CABLES AND CONDUCTORS

57.12600 Installation.
57.12601 Ampacity.
57.12602 Insulation, termination and shielding.
57.12603 Splices, repairs and terminations of conductors and cables.
57.12604 Lightning protection.
57.12630 Support structures and guy wires.
57.12660 Support in shafts and boreholes.

TRAILING CABLES

57.12700 Insulation; flame resistance; shielding.

Sec.

57.12701 Overcurrent protection.
57.12702 Attachment.
57.12703 Portable distribution boxes.
57.12704 Guarding.
57.12705 Disconnecting devices.

TROLLEY CIRCUITS FOR TRACK HAULAGE

57.12800 Installation and maintenance.
57.12801 Circuit protection and isolation.
57.12802 Track bonding.

Appendix I to Subpart K—Electricity Subpart K—Electricity

57.12803 Guarding.
57.12804 Circuits powered from trolley wires.

§ 57.12000 Definitions.

The following definitions apply in this subpart.

"Ampacity" means the current-carrying capacity of electric conductors expressed in amperes.

"Branch circuit" means the circuit conductors extending beyond the final short-circuit device protecting the circuit.

"Cable" means an assembly of one or more insulated conductors enclosed by an additional abrasion resistant covering or jacket. A cable may also contain one or more uninsulated equipment safety grounding conductors. A power cable is any cable except communication, instrumentation and control cables.

"Circuit breaker" means a device designed to open and close a circuit by non-automatic means and to open the circuit automatically on a predetermined overcurrent value without damage to the device when operated within its rating.

"Circuit breaker setting" means the value of current or time at which an adjustable circuit breaker is set to trip.

"Conductor" means a bare or insulated wire or combination of wires not insulated from one another, suitable for carrying an electric current.

"Equipment safety grounding conductor" means a conductor used to connect the non-current-carrying metallic parts of electric equipment, raceways and other metallic enclosures to the safety grounding system.

"Feeder-circuit" means the conductors between the power source and the final branch-circuit short-circuit protective device.

"Fuse" means an overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it.

"Ground-fault" means an unintentional connection between an electric circuit and the safety grounding system.

"Ground-wire monitor" means a device having the primary function of monitoring the equipment safety grounding conductor of a circuit and causing the affected circuit breaker to trip when a change in the impedance of the grounding circuit presents a potential electrical shock hazard.

"Instantaneous-trip circuit breaker" means a circuit breaker with no intentional time delay designed in its tripping action.

"Insulated" means separated from other conducting surfaces by insulation which is a dielectric substance that offers a high resistance to the passage of current and to a disruptive discharge through the substance.

"Inverse-time circuit breaker" means a circuit breaker with an intentional time delay in its tripping action, which delay decreases as the magnitude of the current increases.

"Jacket" means a continuous nonmetallic protective outer covering provided on cables. The primary function of the covering is to provide protection of the internal components against physical, chemical, and thermal damage, and to exclude moisture.

"Mobile electric equipment" means electric equipment capable of movement from one location to another by power supplied from a source located on the machine or transmitted to the machine by means of a trailing cable.

"Nominal voltage" means the phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system for designation of its voltage class, such as 480 or 4160 volts. Actual voltage at which the circuit or system operates may vary from the nominal voltage within a range that permits satisfactory operation of equipment.

"Overcurrent" means any current in excess of the rated current of equipment or the ampacity of a conductor, which may result from overload, short-circuit, or ground-fault conditions.

"Overload" means operation of equipment in excess of normal full-load rating, or loading of a conductor in excess of rated ampacity, which would cause damage or dangerous overheating if allowed to continue.

"Portable electric equipment" means electric equipment which is designed and constructed to facilitate frequent movement from one location to another and which does not normally remain at a fixed location for extended periods of time.

"Qualified electrician" means an individual who has met the requirements of 30 CFR 57.12100.

"Rated" means marked to certify that according to established test procedures, electric equipment will perform its functions without presenting a burn, fire or shock hazard when applied within the maximum limits of its marked electrical parameters.

"Safety grounding system" means a complete installation consisting of one or more ground electrodes, grids, equipment safety grounding conductors and interconnected grounding connections. The purpose is to provide a low impedance fault current path to the system's protective device for all non-current-carrying metallic parts enclosing electric conductors or circuits.

"Short circuit" means an abnormal connection of relatively low impedance, whether made accidentally or intentionally, between two points of different potential.

"Splice" means the mechanical and electrical connection of one or more severed conductors in a single length of conductor or cable.

"Stationary electric equipment" means electric equipment other than mobile or portable that is fastened, secured or installed such that it cannot be readily moved from one location to another during normal use.

"Surge arrester" means a protective device which is used to provide protection against lightning surges.

"Trailing cable" means a portable cable or flexible cord through which electrical energy is transmitted to any mobile electric equipment, or a portable cable or flexible cord which receives electrical energy from a section power center, section distribution box or section rectifier.

"Undervoltage protection" means the effect of a device which operates on failure of voltage to cause and maintain the interruption of power to a circuit so as to prevent automatic restarting of the equipment.

General

§ 57.12100 Qualified electricians.

(a) Work required by this subpart to be performed by a qualified electrician shall be performed by an individual who has met the requirements of an operator's qualification program.

(b) Operator's programs shall include conducting their own qualification training or testing, or participation in training or testing conducted by MSHA, other Federal agencies, a state, associations of mine operators, other mine operators, national labor organizations, private associations, or educational institutions.

§ 57.12101 Electric equipment and conductors.

(a) Electric equipment and conductors shall be installed, and maintained by a

qualified electrician, and used in a manner which prevents shock and burn hazards to persons. Electric equipment and conductors which present a hazard to persons due to improper installation, maintenance, misuse or damage shall be tagged as a hazard until corrected.

(b) All electric equipment and conductors installed after [Insert the effective date of this rule] shall be selected and located in surroundings compatible with their design and intended use.

§ 57.12102 Bare conductors.

The voltage of bare conductors, other than trolley conductors, accessible to inadvertent contact by persons shall not exceed 40 volts.

§ 57.12103 Overcurrent protection.

(a) Electric equipment and conductors, other than trailing cables, shall be protected against overloads and short circuits with fuses or automatic circuit interrupting devices. Such fuses and devices shall be of a type and capacity to safely interrupt the circuit under all overload and short circuit fault conditions.

(b) Motors shall be protected against overload at no more than 125 percent of the full-load current of the motors.

(c) Short-circuit protection of motors shall be provided as specified in Tables 57.12103–1 and 57.12103–2.

(d) Where the protection specified in Tables 57.12103–1 and 57.12103–2 is not sufficient for the starting current of the motor—

(1) A higher rated non-time-delay fuse shall be permitted, but shall in no case exceed 400 percent of the full-load current of the motor or 600 amperes;

(2) A higher rated standard (dual element) fuse shall be permitted, but shall in no case exceed 225 percent of the full-load current of the motor;

(3) A higher rated inverse time circuit breaker shall be permitted, but shall in no case exceed 400 percent of the full-load current of the motor;

(4) A higher rated fuse in the 601–6000 ampere classification shall be permitted, but shall in no case exceed 300 percent of the full-load current of the motor; or

(5) A higher rating or adjustment of an instantaneous trip circuit breaker shall be permitted, but shall in no case exceed 1300 percent of the full-load current of the motor.

(e) All three-phase motors shall be protected with overcurrent devices so that an overcurrent in any phase will deenergize all ungrounded phases.

(f) Transformers shall be protected on the primary side with overcurrent protection rated at no more than 250 percent of their rated full-load current.

(g) When the required rating of a fuse or circuit breaker without an adjustable trip unit does not correspond to a standard rating for a fuse or circuit breaker, the protective device used shall not exceed the next higher standard device rating.

(h) Circuit breakers or fuses providing short-circuit protection shall be installed where the circuit conductors are connected to the supply, except for feeder tap conductors that—

(1) Do not exceed 25 feet in length;

(2) Have ampacities of at least one-third of the ampacity of the feeder conductors; and

(3) Terminate at a circuit breaker or fuse with a current rating that does not exceed the ampacity of the feeder tap conductors.

(i) Wiring shall be protected against overcurrent at no more than the ampacity specified in 30 CFR 57.12601.

(j) Overcurrent protection shall not be required on incandescent lamps supplied from direct-current systems, provided the length of ungrounded conductors does not exceed eight feet.

(k) Where interruption of a circuit presents a hazard to persons, the overload protection requirement of this section does not apply if measures are taken to warn persons when an overload occurs.

(l) Fuses, circuit breakers, or a combination of both shall not be connected in parallel.

TABLE 57.12103–1.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH-CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR THREE-PHASE MOTORS

Type of motor	Percent of full-load current			
	Non-time delay fuse	Dual element (time delay) fuse	Instantaneous trip breaker	Inverse time breaker
Squirrel-cage and synchronous motors with full-voltage, resistor or reactor starting:				
No code letter	300	175	700	250
Code letter F to V	300	175	700	250
Code letter B to E	250	175	700	200
Code letter A	150	150	700	150
All AC squirrel-cage and synchronous motors with autotransformer starting:				
Not more than 30 Amps—No code letter	250	175	700	200
More than 30 Amps—No code letter	200	175	700	200
Code letter F to V	250	175	700	200
Code letter B to E	200	175	700	200
Code letter A	150	150	700	150
High-reactance squirrel cage:				
Not more than 30 amps—No code letter	250	175	700	250
More than 30 amps—No code letter	200	175	700	200
Wound-Rotor—No code letter	150	150	700	150

TABLE 57.12103–2.—MAXIMUM RATING OR SETTING OF MOTOR BRANCH-CIRCUIT SHORT-CIRCUIT PROTECTIVE DEVICES FOR SINGLE-PHASE MOTORS AND DIRECT-CURRENT MOTORS

Type of motor	Percent of full-load current			
	Non-time delay fuse	Dual element (time delay) fuse	Instantaneous trip breaker	Inverse time breaker
Single-Phase, All Types—No Code Letter	300	175	700	250
All AC Single-Phase with Full-Voltage, Resistor or Reactor Starting:				
No Code Letter	300	175	700	250
Code Letter F to V	300	175	700	250
Code Letter B to E	250	175	700	200
Code Letter A	150	150	700	150
Direct-Current (Constant Voltage):				
No More than 50—HP No Code Letter	150	150	250	150
More than 50 HP—No Code Letter	150	150	250	150

§ 57.12104 Unused conductors.

Conductors that are not supplying power to electric equipment shall be deenergized and shall—

(a) Be removed from their supply source; or

(b) Have their supply source locked out and any exposed ends insulated.

§ 57.12105 Doors and cover plates.

Doors and cover plates on electric equipment, which allow access to electric connections, shall be closed at all times except during installation, testing and repair.

§ 57.12106 Danger signs.

Visible danger signs shall be posted at all substations, switchyards and control centers to warn persons against entry who have not been specifically assigned to perform duties in those locations.

§ 57.12130 Clearance of equipment.

(a) Bare overhead conductors of more than 650 volts, line-to-line which are installed parallel along a roadway and under which haulage trucks have access shall be suspended at a height at least 10 feet higher than the raised bed of any haulage truck used at the mine.

(b) When equipment is moved or operated near energized bare overhead conductors of less than 69,000 volts, other than trolley conductors, and the clearance is less than 10 feet, the conductors shall be deenergized or other precautionary measures shall be taken to prevent the equipment frames from being energized.

(c) When equipment is moved or operated near energized bare overhead conductors of 69,000 volts or more, the conductors shall be either deenergized or the minimum distance of the conductors from the equipment shall be as in Table 57.12130.

(d) Supplies or materials shall not be stored or stockpiled under bare overhead conductors of more than 650 volts, line-to-line.

TABLE 57.12130 [1] MINIMUM DISTANCE FROM ENERGIZED CONDUCTORS

Conductor voltage	Distance
69–114 kV	12
115–229 kV	15
230–344 kV	20
345–499 kV	25
500 kV or more	35 ft.

[1] Derived from National Electrical Safety Code Table 124–1.

Work on Electric Equipment and Circuits

§ 57.12200

Lockout procedures.

(a) Before electrical or mechanical work is performed on electric circuits or equipment, electric power to the circuits or equipment shall be deenergized except when electric power is a necessary part of the work procedure needed for accomplishing the mechanical work.

(b) Individual padlocks and identifying tags for each person performing work shall be installed to prevent the power circuit from being energized and the equipment set in motion without the knowledge of persons working on the circuits and equipment. Padlocks and tags shall only be removed by the persons who installed them.

(c) When testing circuits to locate an electrical problem, or adjusting electric circuits, the circuits do not have to be deenergized if

(1) The circuit voltage is 1040 volts or less;

(2) Testing or adjusting is performed by a qualified electrician in accordance with 30 CFR 57.12100.

(3) The person uses procedures, tools and equipment to assure personal safety when in close proximity to energized parts; and

(4) It would be impractical to deenergize.

§ 57.12201 Plugs and receptacles.

Power cable plugs and receptacles for circuits greater than 150 volts, line-to-ground, shall not be connected or disconnected under load unless they are of the load-break type.

§ 57.12202 Fuses.

Fuses shall be installed or removed using tools or procedures that prevent electric shock or burns.

§ 57.12203 Cable handling.

(a) Power cables energized to a voltage in excess of 150 volts, line-to-ground, shall not be moved by other equipment unless sleds, or slings insulated from that equipment are used. This does not prohibit pulling or dragging of a trailing cable by the equipment it powers.

(b) When power cables energized to a voltage in excess of 150 volts, line-to-ground, are moved manually, insulated hooks, tongs, slings, gloves, mitts, aprons or other insulated personal protective equipment capable of protecting against shock, shall be used.

(c) Insulated handling equipment shall be

(1) Examined before each use for visible signs of damage or defects; and

(2) Removed from use when damaged or defective.

(d) Surplus trailing cables serving shovels, cranes and similar equipment shall be stored—

(1) In cable boats;

(2) On reels mounted on the equipment; or

(3) In a manner which would protect them from mechanical damage.

§ 57.12204 Access.

(a) For installations and equipment constructed after [Insert the effective date of this rule], working space shall be

provided in accordance with Table 57.12204 where access to exposed energized electric equipment is necessary.

(b) For existing installations and equipment, working space in accordance with Table 57.12204 shall be provided where access to exposed energized electric equipment is necessary, unless other precautionary measures are used to protect persons from electric shock or burns.

TABLE 57.12204 [1]—MINIMUM WORKING SPACE

Nominal voltage to ground	Minimum clear distance for condition (ft) (A)	(B)	(C)
0–150 V	3	3	3
151–600 V	[illegible]	3½	[illegible]
601–2,500 V	[illegible]	[illegible]	[illegible]
2,501–9,000 V	[illegible]	5	[illegible]
9,001–25,000 V	[illegible]	[illegible]	[illegible]
25,001–75 kV	[illegible]	[illegible]	10
Above 75 kV	[illegible]	10	12

[1] NFPA, 70 E. Tables 110–16A and 110–34A.

As used in Table 57.12204, conditions (A), (B), (C) are as follows:

(A) Exposed energized parts on one side and no energized or grounded parts on the other side of the working space, or exposed energized parts on both sides guarded by wood or other insulating materials. Insulated conductors operating at not over 300 volts are not considered energized parts.

(B) Exposed energized parts on one side and grounded parts on the other side. Concrete, brick or rock walls will be considered to be grounded surfaces.

(C) Exposed energized parts on both sides of the work space.

Guarding; Insulation; Separation

§ 57.12300 Connections and grids.

Exposed electric connections and resistor grids that are not protected by location shall be insulated. Where this is impractical they shall be guarded to prevent inadvertent contact by persons or equipment.

§ 57.12301 Communication conductors.

(a) Communication conductors shall be isolated or insulated to prevent them from contacting bare energized parts.

(b) Communication conductors carried on poles supporting uninsulated power conductors shall be located below the power conductors.

(c) Communication conductors shall not be attached to a crossarm that carries uninsulated power conductors.

§ 57.12302 Lights, guarding.

(a) Portable extension lights and lights less than 8 feet above travelways and working places shall be guarded to prevent a hazard to persons.

(b) Other lights shall be guarded when they present a hazard.

(c) Lamps shall not contact combustible materials.

§ 57.12330 Transformers.

(a) Transformers shall be—

(1) Totally enclosed;

(2) Installed so exposed energized parts are at least 8 feet above the ground; or

(3) Installed in a transformer house.

(4) Surrounded by a sturdy fence at least 6 feet high and at least 3 feet from any parts, casings or energized conductors.

(b) Gates or doors of transformer enclosures shall be locked to prevent unauthorized access to exposed energized parts which are less than 8 feet above the ground.

(c) Metallic transformer houses and fences shall be connected to the metallic case of the safety grounded transformer.

§ 57.12331 Substations.

Substations containing exposed energized parts that can be inadvertently contacted by persons shall be enclosed. When the enclosure is a metallic structure or fence it shall be connected to the substation's safety grounding system.

Connections; Switches; Controls

§ 57.12400 Identification.

Circuit breakers, trolley taps, fuse switchboxes and other disconnecting devices shall be legibly, durably, and distinctively marked to show which electric equipment they supply, except where the circuit breakers and devices can be identified by their proximity to the equipment.

§ 57.12401 Insulating mats.

Insulating mats shall be provided at all switchboards and power control switches where shock hazards exist due to exposed energized parts.

§ 57.12402 Undervoltage protection.

(a) Electric powered machinery shall include undervoltage protection to prevent shocks, burns, unwanted motion or unintentional starting. When voltage is lost, the equipment shall remain deenergized until manually restarted.

(b) Pumps, level control circuits and other equipment that by its design can automatically start and stop safely are not required to have undervoltage protection.

§ 57.12460 Branch circuit disconnecting devices.

Disconnecting devices shall be provided underground at all branch circuits extending from primary power circuits and shall be—

(a) Designed to be opened under load without hazard to persons;

(b) As close as practical to shafts, adits, levels and boreholes; and

(c) Provided with means to visually show that the branch circuit is disconnected when the device is open.

Safety Grounding

§ 57.12500 Grounding.

(a) All electric circuits shall have a safety grounding system. The system's performance shall limit the voltage on non-current-carrying metallic parts of electric equipment that a person can contact to a value that shall not cause a disabling or fatal shock under the following fault conditions—

(1) Single line-to-ground on grounded power systems; or

(2) Double line-to-ground on ungrounded power systems, with one of the faults at the source.

(b) The voltage on non-current-carrying metallic parts of electric equipment shall be controlled by—

(1) Limiting the magnitude of the voltage;

(2) Limiting the duration of the voltage; or

(3) A combination of these two.

See Appendix I to Subpart K.

§ 57.12501 Alternating-current equipment.

(a) The following equipment shall be connected to the safety grounding system by equipment safety grounding conductors:

(1) Metallic frames, enclosures, and other exposed non-current-carrying metallic parts of electric equipment.

(2) Metallic fences and barriers around high-voltage equipment and installations.

(3) Metallic enclosures of alternating-current conductors.

(4) Metallic battery trays.

(5) Metallic messenger wires.

(6) Metallic structures or racks that support electric equipment or conductors.

(b) Metallic cable shielding shall be connected to the safety grounding system at each termination by equipment safety grounding conductors.

(c) Before batteries on battery-powered equipment are connected to a battery charger, the metallic battery trays shall be connected to the grounded metallic frame of the battery charger, and shall remain connected until the batteries have been disconnected from the charger.

(d) Metallic cable hangers or supporting structures shall either be connected to the safety grounding system or insulated from the cable.

(e) Exposed metallic enclosures or portions of hand-held electric equipment shall be connected to the safety grounding system, except when the equipment is—

(1) Double insulated as determined by an independent testing laboratory and does not present a shock hazard; or

(2) Operated at a maximum of 40 volts.

(f) Generator powered equipment mounted on the same metallic frame as the generator is not required to be connected to the mine's safety grounding system.

§ 57.12502 Direct-current equipment.

(a) The following shall be connected to the mine safety grounding system by equipment safety grounding conductors—

(1) Metallic frames, enclosures, and other exposed non-current-carrying metallic parts of conductors and equipment.

(2) Metallic messenger wires used to support direct-current conductors.

(3) Metallic racks and structures used to support trolley wires and trolley feeder wires.

(4) Metallic overcasts in trolley entries.

(b) Silicon diode grounding systems shall be installed in accordance with 30 CFR 57.12504.

(c) Component parts of complete units of equipment shall be solidly connected to the frames of the equipment.

(d) Exposed metallic enclosures or portions of hand-held electric equipment shall be connected to the safety grounding system, except when the equipment is—

(1) Double insulated as determined by an independent testing laboratory and does not present a shock hazard;

(2) Operated at a maximum of 40 volts; or

(3) Powered by internal batteries which are an integral part of the equipment.

(e) Generator powered equipment mounted on the same metallic frame as the generator is not required to be connected to the mine's safety grounding system.

§ 57.12503 Equipment safety grounding conductors.

(a) Equipment safety grounding conductors for portable and mobile electric equipment shall be one or more stranded copper conductors contained within the cable or flexible cord supplying the equipment.

(b) Equipment safety grounding conductors for stationary equipment shall be—

(1) Contained together with the circuit conductors in the raceways, cables, or cords;

(2) Wrapped around the raceways, cables, or cords containing the circuit conductors; or

(3) A continuous metal conduit or metallic raceway that complies with the voltage exposure requirements of 30 CFR 57.12500.

(c) The combined cross-sectional area of equipment safety grounding conductors shall be equal to or greater than—

(1) One-half the cross-sectional area of one circuit conductor when the circuit conductor is No. 6 AWG or larger; or

(2) The cross-sectional area of one circuit conductor when the circuit conductor is smaller than No. 6 AWG.

(d) Equipment safety grounding conductors installed outside of raceways, cables, or cords and used to ground stationary equipment shall be No. 6 AWG or larger.

(e) Switches, fuses, circuit breakers, ground-fault devices and overcurrent devices shall not be installed in equipment safety grounding conductors.

(f) Ground-wire devices installed in the equipment safety grounding conductor for the purpose of inter-machine arc suppression or in conjunction with ground-wire monitoring systems shall be designed and constructed to withstand the maximum amount of phase-to-phase fault current to which they may be exposed without creating an electrical shock or fire hazard.

(g) When used, ground-wire devices specified in paragraph (f) of this section shall be connected to the safety grounding system with two separate conductors.

(h) On direct-current powered equipment, the equipment safety grounding conductor and the return power conductor shall be separately connected to the mine track, grounded return-feeder conductor, or metallic frame or enclosure used as the safety grounding system.

(i) Equipment safety grounding conductors for draw-out equipment or plugs and receptacles shall be the first conductors made when making connections and the last conductors broken when breaking connections.

(j) When power is supplied between separate metallic parts of equipment, the parts shall be connected together through an equipment safety grounding conductor.

(k) The frame of a portable or mobile generator supplying remote loads shall have equipment safety grounding conductors connecting the frames of each remote load to the frame of the generator.

(l) Equipment safety grounding conductors shall be bare or shall be properly identified.

§ 57.12504 Silicon diode grounding.

When the metallic frames of off-track equipment are grounded by silicon diodes, the diode grounding system shall meet the following conditions:

(a) The polarity of each grounding diode shall be compatible with the grounded polarity of the direct-current systems.

(b) Each grounding diode shall have a threaded base used to solidly connect the diode to the machine frame.

(c) An overcurrent device shall be installed between the grounding diode(s) and the grounded power conductor, and shall cause the main conductor or the circuit interrupting device to deenergize all circuits on the machine when 50 amperes or more flows through the grounding diode, except that methane monitor circuits may remain energized.

(d) A polarizing diode that prevents the unit of equipment from being operated when the polarity of the supply conductors is reversed shall be installed in the control circuit.

(e) The forward current rating of each grounding diode shall be equal to or greater than 750 amperes when used to ground a continuous mining machine or equal to or greater than 400 amperes when used to ground other equipment.

(f) The peak reverse voltage rating of the grounding and polarizing diodes shall be at least 1,200 volts.

§ 57.12505 Low-resistance ground fields.

(a) Low-resistance ground fields used in the safety grounding system shall be designed and installed in a manner which assures that the maximum exposure voltage under fault conditions does not create hazardous step and touch potentials. The following parameters shall be considered in evaluating ground field safety—

(1) Soil resistivity;

(2) Available fault current;

(3) Ground field construction; and

(4) Operating times of protective devices.

(b) Low-resistance ground fields used in the safety grounding system shall be maintained at 25 ohms or less unless an evaluation of the system in accordance with paragraph (a) indicates that—

(1) a lower value of resistance is necessary; or

(2) a higher value of resistance can be used.

(c) Materials used for ground fields shall have at least four square feet of surface area in contact with soil.

§ 57.12506 Testing.

(a) On all installations after [Insert the effective date of this rule], and when repairs or modifications are made to the safety grounding system, continuity tests shall be made to assure the integrity of the system.

(b) The safety grounding system shall be reviewed at intervals not to exceed twelve months to assure that the maximum voltage exposure under fault conditions complies with requirements of this subpart.

(c) For mine power systems utilizing an alternating-current voltage of less than 650 volts, line-to-line, the resistance to earth of the safety grounding system's connection to earth shall be maintained at 25 ohms or less and be physically separated from the substation grounding system. This separation shall be either 25 feet or 5 times the largest dimension of the safety grounding system's connection to earth, whichever is larger. When 25 ohms or less cannot be obtained, the operator shall assure that the system complies with 30 CFR 57.12505.

(d) When reviewing a mine power system utilizing an alternating-current voltage greater than 650 volts, line-to-line, the review shall include determinations of the—

(1) Safety grounding system's resistance to earth at its connection to earth;

(2) Maximum fault current that can flow into the safety grounding system at electric loads or sources of 500 kVA or larger; and

(3) Impedance of the safety grounding system at electric loads or sources of 500 kVA or larger.

(e) A weekly check of continuity shall be made of all mobile equipment safety grounding conductors, except when they are continuously monitored with an MSHA tested ground-wire monitoring device.

Power Cables and Conductors

§ 57.12600 Installation.

(a) Cables and insulated conductors shall be installed so that they are protected against physical damage, adverse ambient conditions and failure of adjacent mechanical systems.

(b) Cables and insulated conductors shall not be supported from pipelines.

(c) Insulated conductors shall not contact pipelines.

(d) When cables and pipelines are supported from the same supports, clearance to prevent shock hazards during maintenance to pipelines shall be provided.

§ 57.12601 Ampacity.

(a) Electric conductors shall be of a size and current-carrying capacity to assure that a rise in temperature resulting from normal operating conditions does not exceed the rating of the insulation and conductors.

(b) Branch circuit conductors supplying electric equipment shall have ampacities of at least 125 percent of the full-load current rating of the equipment.

(c) Feeder circuit conductors supplying multiple loads shall have ampacities of at least the sum of the full-load current ratings of each load plus 25 percent of the highest full load current rating of the largest load.

(d) The size of conductors for electric equipment shall be at least that specified in ampacity Tables 57.12601–1 through 57.12601–10 below, or other tables that are appropriate for the conditions under which the conductors are used.

(e) Ampacity of conductors shall be corrected according to Table 57.12601–11, if the ambient temperature is other than the temperature at which the conductor was rated.

(f) When four or more conductors are contained in the same raceway, conduit or cable, the maximum allowable load current shall be reduced according to Table 57.12601–12.

TABLE 57.12601–1.—ALLOWABLE AMPACITIES OF 300- AND 600-VOLT FLEXIBLE CORDS; COPPER CONDUCTORS

Conductor Size AWG	Types S, SO, SJO, ST, STO, SJT, SJTO, SOO, SJOO, STOO, SJTOO		Types AFS, AFSJ, HSJ, HSJO, HS, HSO
	Current-Carrying Conductors		Current-Carrying Conductors
	2	3	3
14	18	15	20
12	25	20	30
10	30	25	35
8		35	

TABLE 57,12601–2—ALLOWABLE AMPACITIES OF SHIELDED AND UNSHIELDED 0- TO 2000-VOLT PORTABLE POWER CABLES; COPPER CONDUCTORS (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))

Ampacities	Conductor Size AWG or MCM						
	Number of Current-Carrying Conductors in Cable or Raceway						
	1		2		3		
	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	75 °C [1]	90 °C [1]	90 °C [2]
8	75	95	60	85	63	70	
6	105	12	81	112	81	90	110
4	138	171	113	150	106	123	144
3	162	197	131	171	125	142	165
2	188	227	150	197	144	163	188
1	213	263	175	225	163	190	217
1/0	250	304	213	258	181	219	249
2/0	294	352	244	295	213	254	287
3/0	344	407	281	337	244	294	329
4/0	394	472	325	387	275	339	379
250	438	525	356	428	306	376	419
300	494	590	388	472	344	421	470
350	556	651	419	514	381	465	513
400	600	708	450	555	406	507	555
500	681	820	519	816	469	575	632

[1] 0–2000 Volt Insulation, Unshielded Portable Power Cable.
[2] 0–2000 Volt Insulation, Shielded Portable Power Cable.

TABLE 57.12601–3—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60 °C TO 90 °C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE (BASED ON AMBIENT AIR TEMPERATURE OF 20 °C (68 °F))

Conductor size AWG or MCM	Copper				Aluminum or copper- clad aluminum				
	Insulation temperature rating				Insulation temperature rating		Conductor size AWG or MCM		
	60°	75°	85°	90°	60°	75°	85°	90°	
18				18					
16			20	19					
14	20	20	27	25					
12	25	25	33	30	20	20	27	25	12
10	35	35	43	40	29	30	33	35	10
8	46	55	60	55	35	44	43	40	8
6	64	72	76	81	46	55	60	65	6
4	81	84	103	105	64	72	82	81	4
3	96	111	120	119	75	83	92	92	3
2	110	127	136	140	87	99	109	108	2
1	127	144	158	162	96	111	120	124	1
0	144	166	179	184	116	133	141	146	0
00	167	193	207	211	133	149	156	162	00
000	191	221	234	243	150	171	185	189	000
0000	225	254	272	281	173	199	212	221	0000
250	248	282	299	312	196	227	239	248	250
300	277	315	337	346	219	254	272	275	300
350	299	343	370	378	243	275	294	302	350
400	323	370	397	410	260	296	321	329	400
500	370	420	451	464	300	343	364	378	500
600	410	464	500	513	329	376	402	416	600
700	445	506	544	562	358	414	440	454	700
750	462	525	560	576	370	425	457	470	750
800	474	541	582	599	381	436	467	486	800
900	502	575	614	632	410	470	506	518	900
1000	526	602	641	664	433	492	527	540	1000
1250	572	652	696	716	468	536	571	589	1250
1500	601	691	739	761	502	575	614	632	1500
1750	629	718	766	794	526	602	647	664	1750
2000	647	735	768	810	543	618	663	680	2000

TABLE 57.12601–4.—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2000 VOLTS

[Based on Ambient Air Temperature of 20 °C (68 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				19					
16			25	25					
14	25	30	33	35					
12	30	35	43	40	25	30	33	35	12
10	40	50	60	55	35	40	43	40	10
8	69	77	82	86	52	61	65	66	8
6	92	105	106	113	69	83	87	85	6
4	121	138	147	151	92	111	114	119	4
3	139	160	174	178	110	127	136	140	3
2	162	188	201	205	127	148	158	162	2
1	191	215	234	236	150	171	179	189	1
0	225	254	272	291	173	198	212	221	0
00	260	293	315	324	202	232	245	254	00
000	300	343	364	378	231	265	288	297	000
0000	347	398	424	437	271	309	332	340	0000
250	393	448	476	491	306	345	375	385	250
300	433	492	527	545	335	387	413	427	300
350	465	558	596	616	361	436	457	481	350
400	526	602	647	664	410	470	505	518	400
500	595	665	734	756	468	536	571	589	500
600	664	762	815	842	526	597	647	664	600
700	728	824	897	923	578	657	707	729	700
750	757	867	929	956	595	685	734	756	750
800	785	901	962	994	616	713	761	783	800
900	843	961	1033	1064	670	774	826	848	900
1000	901	1033	1109	1139	722	826	880	910	1000
1250	1028	1177	1261	1296	820	945	1011	1037	1250
1500	1132	1296	1388	1431	918	1050	1125	1161	1500
1750	1236	1414	1516	1561	1010	1160	1245	1280	1750

TABLE 57.12601-4.—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2000 VOLTS—Continued

[Based on Ambient Air Temperature of 20 °C (68 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
2000	1334	1531	1608	1685	1109	1271	1359	1442	2000

TABLE 57.12601-5—Allowable Ampacities of Shielded, Three Conductor, 2,001-15,000 VOLT, MINE POWER CABLE; COPPER CONDUCTORS (BASED ON AMBIENT TEMPERATURE OF 20 °C)

	Conductor size (AWG or MCM)		Ampacities	
	2,001-8,000 volts		8,001-15,000 volts	
	75 °C	90 °C	75 °C	90 °C
8	90	110		
4	130	144		
2	170	188	175	194
1	196	217	200	221
1/0	226	249	230	254
2/0	260	287	263	290
3/0	296	329	301	334
4/0	343	378	348	384
250	379	419	383	424
300	423	470	426	473
350	465	513	468	517
400	500	555	501	558
500	571	632	571	632

TABLE 57.12601-6.—ALLOWABLE AMPACITIES OF SHIELDED, THREE CONDUCTOR, 2,001-15,000 VOLT MINE POWER CABLES; ALUMINUM CONDUCTORS (BASED ON AMBIENT TEMPERATURE OF 20 °C)

	Conductor size (AWG or MCM)		Ampacities	
	2,001-8,000 volts		8,001-15,000 volts	
	75 °C	90 °C	75 °C	90 °C
4	101	112		
2	133	146	136	
1	153		156	
1/0	178	195	179	198
2/0	203	223	205	227
3/0	234	257	236	261
4/0	269	296	271	300
250	298	328	300	332
350	366	404	367	406
400	396	435	397	433
500	458	502	453	500

TABLE 57.12601-7.—AMPACITY OVERHEAD COPPER CONDUCTORS

Conductor size AWG [1]	CM [2]	Copper, ampacity in amperes
—	8,400	51
10	10,380	68
—	10,820	71
9	13,090	79
8	16,510	92
6	26,240	124
4	41,740	166
3	52,620	193
2	66,360	223
1	83,700	260
1/0	105,600	301
2/0	133,100	350
3/0	167,800	406
4/0	211,600	472

TABLE 57.12601-7.—AMPACITY OVERHEAD COPPER CONDUCTORS—Continued

Conductor size AWG [1]	CM [2]	Copper, ampacity in amperes
	250,000	547
	300,000	613
	350,000	680
	400,000	730
	450,000	767
	500,000	842
	600,000	945
	700,000	1042
	750,000	1087
	800,000	1131
	1,000,000	895

[1] AWG means American Wire Gage.
[2] CM means Circular Mils.

TABLE 57.12601-8.—AMPACITY OVERHEAD ACSR [1] Conductors

Conductor size AWG [2]	CM [2]	ACSR, ampacity in amperes
6		104
4		139
2		184
1		210
1/0		240
2/0		275
3/0		318
4/0		360
	266,800	452
	300,000	492
	336,400	534
	397,500	593
	477,000	665
	556,500	732
	605,000	772

TABLE 57.12601-8.—AMPACITY OVERHEAD ACSR [1] Conductors—Continued

Conductor size AWG [2]	CM [2]	ACSR, ampacity in amperes
	636,000	797
	666,600	805
	715,500	856
	795,000	961
	874,500	935
	900,000	926
	954,000	980

TABLE 57.12601-8.—AMPACITY OVERHEAD ACSR [1] Conductors—Continued

Conductor size AWG [2]	CM [2]	ACSR, ampacity in amperes
	1,033,500	1010
	1,113,000	1060
	1,192,500	1099
	1,192,500	1108
	1,272,000	1148
	1,351,500	1188
	1,431,000	1237

TABLE 57.12601-8.—AMPACITY OVERHEAD ACSR [1] Conductors—Continued

Conductor size AWG [2]	CM [2]	ACSR, ampacity in amperes
	1,510,500	1278
	1,590,000	1313
	1,780,000	1434

[1] Aluminum Cable Steel Reinforced.
[2] AWG means American Wire Gage.
[3] CM means Circular Mils.

TABLE 57.12601-9—ALLOWABLE AMPACITIES OF INSULATED CONDUCTORS RATED 0 TO 2000 VOLTS, 60°C TO 90°C, NOT MORE THAN THREE CURRENT-CARRYING CONDUCTORS IN RACEWAY OR CABLE

[Based on Ambient Air Temperatures of 30 °C (86 °F)]

Conductor size AWG or MCM	Copper				Aluminum or copper-clad aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				14					
16			18	18					
14	20	20	25	25					
12	25	25	30	30	20	20	25	25	12
10	30	35	40	40	25	30	30	35	10
8	40	50	55	55	30	40	40	45	8
6	55	65	75	75	40	50	55	60	6
4	70	85	95	95	55	65	75	75	4
3	85	100	110	110	65	75	85	85	3
2	95	115	125	130	75	90	100	100	2
1	110	130	145	150	85	100	110	115	1
1/0	125	150	165	170	100	120	130	135	1/0
2/0	145	175	190	195	115	135	145	150	2/0
3/0	165	200	215	225	130	155	170	175	3/0
4/0	195	230	250	260	150	180	195	205	4/0
250	215	255	275	290	170	205	220	230	250
300	240	285	310	320	190	230	250	255	300
350	260	310	340	350	210	250	270	280	350
400	280	335	365	380	225	270	295	305	400
500	320	380	415	430	260	310	335	350	500
600	355	420	460	475	285	340	370	385	600
700	385	460	500	520	310	375	405	420	700
750	400	475	515	535	320	385	420	435	750
800	410	490	535	555	330	395	430	450	800
900	435	520	565	585	355	425	465	480	900
1000	455	545	590	615	375	445	485	500	1000
1250	495	590	640	665	405	485	525	545	1250
1500	520	625	680	705	435	520	565	585	1500
1750	545	650	705	735	455	545	595	615	1750
2000	560	665	725	750	470	560	610	630	2000

TABLE 57.12601-10.—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2,000 VOLTS (Based on Ambient Air Temperature of 30°C (86°F))

Conductor size AWG or MCM	Copper				Aluminum or Copper-Clad Aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
18				18					
16			23	24					
14	25	30	30	35					
12	30	35	40	40	25	30	30	35	12
10	40	50	55	55	35	40	40	40	10
8	50	70	75	80	45	55	60	60	8
6	80	95	100	105	60	75	80	80	6
4	105	125	135	140	80	100	105	110	4
3	120	145	150	155	95	115	125	130	3
2	140	170	185	190	110	135	145	150	2
1	165	195	215	220	130	155	165	175	1
1/0	195	230	250	260	150	180	195	205	1/0
2/0	225	265	290	300	175	210	225	235	2/0
3/0	260	310	335	350	205	240	260	275	3/0

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TABLE 57.12601-10.—ALLOWABLE AMPACITIES OF SINGLE CONDUCTORS RATED 0 TO 2,000 Volts (Based on Ambient Air Temperature of 30°C (86°F))—Continued

Conductor size AWG or MCM	Copper				Aluminum or Copper-Clad Aluminum				Conductor size AWG or MCM
	Insulation temperature rating				Insulation temperature rating				
	60°	75°	85°	90°	60°	75°	85°	90°	
4/0	300	360	390	405	235	280	305	315	4/0
250	340	405	440	455	265	315	345	355	250
300	375	445	485	505	290	350	380	395	300
350	420	505	550	570	330	395	430	445	350
400	455	545	595	615	355	425	466	480	400
500	515	620	675	700	405	485	525	545	500
600	575	690	750	780	455	540	595	615	600
700	630	755	825	855	500	595	650	675	700
750	655	785	855	885	515	620	675	700	750
800	680	815	885	920	535	645	700	725	800
900	730	870	950	965	580	700	760	785	900
1000	780	935	1020	1055	625	750	815	845	1000
1250	890	1065	1160	1200	710	855	930	960	1250
1500	980	1175	1275	1325	795	950	1035	1075	1500
1750	1070	1290	1395	1445	875	1050	1145	1185	1750
2000	1155	1385	1505	1560	960	1150	1250	1335	2000

TABLE 57.12601-11.—AMPACITY CORRECTION FACTORS

[For Ambient Temperatures other than 20 °C, Multiply the Ampacities from Tables 57.12601-2 Through 57.12601-6 by the Appropriate Factor Shown Below]

Ambient temperature °C	Correction Factor				Ambient temperature °F
	60°	75°	85°	90°	
21-25	.91	.94	.95	.96	70-77
26-30	.82	.88	.90	.91	79-86
31-35	.71	.82	.85	.87	88-95
36-40	.58	.75	.80	.82	97-104
41-45	.41	.67	.74	.76	106-113

[For Ambient Temperatures other than 30 °C, Multiply the Ampacities from Tables 57.12601-1, 57.12601-11, and 57.12601-12 by the Appropriate Factor Shown Below]

Ambient temperature °C	Correction factor				Ambient temperature °F
	60°	75°	85°	90°	
21-25	1.08	1.05	1.04	1.04	70-77
26-30	1.00	1.00	1.00	1.00	79-86
31-35	.91	.94	.96	.96	88-95
36-40	.82	.88	.90	.91	97-104
41-45	.71	.82	.88	.87	106-113

TABLE 57.12601-12.—AMPACITY DERATING FACTORS

Number of conductors	Percent of ampacity value
4 through 6	80
7 through 24	70
25 through 42	60
43 and above	50

Derived from notes to NEC tables 310-16 through 310-19.

§ 57.12602 Insulation, termination and shielding.

(a) Power cables and conductors, other than trolley wires and uninsulated surface overhead conductors of more than 650 volts, line-to-line, shall have insulation rated for at least the voltage of the circuit in which the cable or conductor is applied.

(b) Power cables and conductors:

(1) Installed on the surface in circuits with line-to-line voltages above 2,000 volts and subject to contact by persons shall have metallic shielding around each power conductor.

(2) Installed underground in circuits with line-to-line voltage above 2,000 volts shall have insulation and metallic shielding around each power conductor.

(c) Metallic enclosed power cables and conductors are not required to be shielded provided the enclosure is continuous and connected to the safety grounding system.

(d) Except as provided in paragraph (f) of this section, cables shall enter metallic frames of electric enclosures through fittings sized for the cables which prevent damage to the cable jackets and the insulation of the internal conductors.

(e) Except as provided in paragraph (f) of this section, conductors shall enter metallic frames of electric enclosures through fittings with insulated bushings sized for the conductors.

(f) Cables and conductors in conduit that enter metallic frames of electric enclosures need not be equipped with fittings or bushings when protection against damage by sharp edges is otherwise provided.

(g) Cables and conductors shall be secured to prevent mechanical strain on electrical connections.

§ 57.12603 Splices, repairs and terminations of conductors and cables.

(a) Cables shall be spliced, terminated, or repaired by a qualified electrician.

(b) A splice in a trailing cable shall contain only one connection point in each conductor.

(c) Terminations of shields in cables shall be connected to equipment safety grounding conductors at each splice and termination.

(d) Except as specified in paragraph (e) of this section, each splice and repair shall have—

(1) Conductivity and current-carrying capacity that prevents insulation damage due to heating of conductors;

(2) The severed conductors joined by welding or compression-type connectors;

(3) Each power, control, and ground check conductor individually reinsulated with insulation having a thickness, temperature rating, and dielectric strength of at least that of the original insulation;

(4) Semiconducting tape replaced over the insulation of each power conductor within shielded cables;

(5) Metallic shielding in the form of metallic braid or serving (wrap), or metallic tape replaced over each power conductor and applied in half-lapped layers, on shielded cables;

(6) The outer jacket replaced to provide at least the same thickness and protection as that of the original jacket; and

(7) The outer jacket sealed, vulcanized, molded, or fused to the cable's original jacket to exclude moisture.

(e) One trailing cable splice which does not meet the requirements of paragraph (d) of this section shall be permitted for the time period necessary to move the equipment for repair of the cable, provided the splice is mechanically strong and insulated to prevent shock.

(f) Splices and repairs in trailing cables used underground shall be made with splice and repair kits that meet the flame-resistance tests in 30 CFR 18.64.

§ 57.12604 Lightning protection.

(a) Surge arresters shall be provided for exposed ungrounded power conductors and telephone wires.

(b) Power conductors and telephone wires that are buried, installed beneath a protective metallic covering, or enclosed within grounded metallic shields, coverings, or enclosures, throughout their entire length need not be equipped with surge arresters.

(c) Surge arresters for conductors that enter an underground mine shall be located on the surface within 100 feet of the point where the conductors—

(1) Enter the mine;

(2) Are buried;

(3) Are installed beneath a protective metallic covering;

(4) Are enclosed within grounded metallic shields, coverings, or enclosures; or

(5) Are supported by grounded metallic messenger wires.

(d) Surge arresters shall be rated for the voltage and current of the circuit they protect.

(e) Surge arresters for conductors that extend underground shall be connected to a low-resistance ground field that is separated from neutral ground fields by a distance of not less than 25 feet.

§ 57.12630 Support structures and guy wires.

Guy wires attached to structures supporting uninsulated overhead power conductors, other than telephone wires shall be—

(a) Electrically connected to the equipment safety grounding conductor at the supporting structure end of the guy wire; or

(b) Provided with one or more insulators which have a dry flashover voltage at least double the nominal voltage and a wet flashover voltage at least as high as the nominal voltage. The insulators shall be at least 8 feet from the ground.

§ 57.12660 Support in shafts and boreholes.

(a) Power cables and insulated conductors in shafts and boreholes shall be supported by clamping or strain relief devices which prevent strain on the conductors and functional damage to the jacket and insulation;

(b) A clamp or strain relief device shall be installed as close to the top of the cable or conductor run as practical; and

(c) In vertical shafts and boreholes, additional support devices shall be installed along the cable or conductor run at distances not greater than the values specified in Table 57.12660 unless the cable is a self-supporting type.

Table 57.12660—Spacing for Conductor Supports

Conductor size [1]	Aluminum or copper-clad aluminum, feet	Copper, feet
No. 18 through No. 8	100	100
No. 6 through No. 0	200	100
No. 00 through No. 0000	150	80
211,601 through 350,000 CM	135	80
350,001 through 500,000 CM	120	80
500,001 through 750,000 CM	95	40
Above 750,000 CM	85	35

Derived from NEC Table 300-19(a).

[1] American wire gage or circular mils.

Trailing Cables

§ 57.12700 Insulation; flame resistance; shielding.

Trailing cables used in mine electrical systems shall have—

(a) Conductor insulation rated for at least the line-to-line voltage;

(b) Shielding for the purpose of confining the voltage stresses when used to supply equipment at over 2,000 volts line-to-line; and

(c) Flame resistance qualities in accordance with 30 CFR 18.64 when used underground.

§ 57.12701 Overcurrent protection.

(a) Each trailing cable of portable and mobile equipment shall have short-circuit and ground-fault protection for each ungrounded conductor that shall safely interrupt all ungrounded conductors under fault conditions.

(b) Ungrounded conductors of trailing cables energized at voltages of 1040 volts or less shall be protected by one of the following—

(1) An inverse-time circuit breaker with a maximum current rating as specified in Table 57.12701-1.

(2) An instantaneous-trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds with a maximum instantaneous setting not more than—

(i) The values listed in Table 57.12701-2 for 480-, 600-, and 1040-volt trailing cables; or

(ii) The values listed in Table 57.12701-3 for 300- and 600-volt direct-current trailing cables.

(3) An instantaneous trip or short-time delay electronic circuit breaker having a time delay not to exceed 0.1 seconds with a setting that does not exceed the lower value of either 115 percent of the maximum starting current for the unit of electric equipment or 60 percent of the lowest value of bolted phase-to-phase short-circuit current at any point in the circuit when—

(i) The circuit to be protected does not function properly using values listed in the tables; and

(ii) A circuit analysis assures that the circuit does not present a hazard to the miners.

(4) Fuses which provide no less protection than that specified above.

(c) Ungrounded conductors of trailing cables energized at voltages greater than 1040 volts shall be provided with instantaneous short-circuit protection with a setting that does not exceed the lower value of either 175 percent of the maximum starting current for the unit of electric equipment or 75 percent of the minimum phase-to-phase short-circuit current available at any point in the circuit.

TABLE 57.12701-1.—MAXIMUM RATINGS OF FUSES PROTECTING DIRECT CURRENT TRAILING CABLES AND INVERSE-TIME CIRCUIT BREAKERS PROTECTING ALTERNATING CURRENT TRAILING CABLES

[Maximum Inverse-Time Circuit Breaker or Fuse Rating (Amperes)]

Conductor Size (AWG or MCM)	1 Ungrounded power conductor	2 Ungrounded power conductors	3 Ungrounded power conductors
14	15	15	15
12	20	20	20
10	30	30	25
8	50	50	50
6	80	70	70
4	110	110	110
3	150	150	150
2	150	175	175
1	175	200	200
1/0	200	225	225
2/0	250	250	250
3/0	300	300	300
4/0	350	350	350
250	350	350	350
300	400	350	350
350	450	350	350
400	500	400	400
500	600	450	400

TABLE 57.12701-2.—MAXIMUM SETTINGS OF INSTANTANEOUS AND ELECTRONIC CIRCUIT BREAKERS PROTECTION 480, 600, AND 1040- VOLT ALTERNATING-CURRENT TRAILING CABLES

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit-breaker setting (amperes)		
		480V	600V	1040V
14	0–500	75	100	.....
	501–750	50	75	.....
12	0–500	125	175	.....
	501–750	100	125	.....
10	0–500	200	250	.....
	501–750	150	200	.....
8	0–500	300	400	.....
	501–750	200	300	.....
6	0–550	450	550	850
	501–750	350	450	700
4	0–500	750	900	1250
	501–600	650	800	1100
	601–750	650	650	1000
3	0–500	900	1100	1400
	501–650	700	900	1200
	651–750	650	800	1100
2	0–500	1100	1250	1500
	501–600	950	1100	1400
	601–750	800	950	1250
1	0–500	1300	1450	1650
	501–600	1100	1300	1550
	601–750	950	1100	1400
1/0	0–500	1500	1650	1750
	501–600	1300	1500	1650
	601–750	1100	1300	1500
	751–800	1050	1250	1500
2/0	0–500	1700	1800	1850
	501–600	1500	1550	1750
	601–750	1350	1450	1650
	751–850	1200	1350	1550
3/0	0–500	1900	1950	1900
	501–600	1700	1800	1800
	601–750	1500	1650	1700
	751–900	1300	1450	1650

TABLE 57.12701-2.—MAXIMUM SETTINGS OF INSTANTANEOUS AND ELECTRONIC CIRCUIT BREAKERS PROTECTION 480, 600, AND 1040- VOLT ALTERNATING-CURRENT TRAILING CABLES

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
4/0	0–500	2100	2100	1950
	501–600	1900	1950	1900
	601–750	1700	1800	1800
	751–1000	1400	1550	1650

TABLE 57.12701-2.—MAXIMUM SETTINGS OF INSTANTANEOUS AND ELECTRONIC CIRCUIT BREAKERS PROTECTION 480, 600, AND 1040- VOLT ALTERNATING-CURRENT TRAILING CABLES—Continued

Conductor size (AWG or MCM)	Cable length (feet)	Maximum circuit breaker setting (amperes)		
		480V	600V	1040V
250	0–500	2150	2150	2000
	501–600	2000	2050	1900
	601–750	1750	1850	1850
	751–1000	1500	1650	1700
300	0–500	2300	2250	2000
	501–600	2100	2100	1950
	600–750	1900	1950	1900
	751–1000	1600	1750	1750
350	0–500	2350	2300	2050
	501–600	2200	2200	2000
	501–750	2000	2000	1900
	751–1000	1700	1800	1800
400	0–500	2450	2350	2100
	501–600	2250	2250	2000
	601–750	2050	2100	1950
	751–1000	1800	1850	1850
500	0–500	2500	2400	2100
	501–600	2350	2300	2050
	601–750	2150	2150	1950
	751–1000	1900	1950	1850

TABLE 57.12701-3.—MAXIMUM SETTINGS OF INSTANTANEOUS CIRCUIT BREAKERS PROTECTING 300- AND 600-VOLT DIRECT-CURRENT TRAILING CABLES

Conductor size (AWG or MCM)	Cable length (feet)	300VDC Maximum instantaneous circuit breaker setting (amperes)		600VDC Maximum instantaneous circuit breaker setting (amperes)	
		Line-line [1]	Line-ground [2]	Line—line [1]	Line—ground [2]
14	0–500	50	50	50	50
12	0–500	75	75	125	125
10	0–500	75	75	200	200
8	0–500	100	100	300	300
6	0–500	200	100	450	300
4	0–300	450	250	800	500
	501–600	350	200	550	400
3	0–500	450	350	700	550
	501–650	400	250	800	450
2	0–500	600	450	750	600
	501–600	550	400	700	550
	601–700	450	300	850	500
1	0–500	900	600	1400	1050
	501–600	750	500	1250	950
	601–750	600	400	1050	800
1/0	0–500	1100	750	1600	1250
	501–600	950	650	1450	1100
	601–750	750	550	1250	950
	751–800	700	500	1200	900
2/0	0–500	1350	950	1800	1450
	501–600	1150	800	1650	1300
	601–750	950	650	1450	1100
	751–850	850	600	1350	1050
3/0	0–500	1550	1150	2000	1650
	501–600	1400	1000	1850	1500
	601–750	1150	800	1650	1300
	751–900	1000	700	1500	1150
4/0	0–500	1850	1400	2200	1650
	501–600	1600	1200	2050	1700
	601–750	1400	1000	1850	1500
250	0–500	2050	1550	2350	2000
	501–600	1800	1350	2200	1850
	601–750	1550	1150	2000	1650
	751–1000	1250	900	1750	1400
300	751–1000	1100	750	1600	1250
	0–300	2300	1750	2450	2150
	501–600	2050	1550	2350	2000
	601–750	1750	1300	2150	1800
	751–1000	1450	1050	1900	1550
350	0–500	2550	1950	2600	2300
	501–600	2250	1700	2450	2150
	601–750	1950	1500	2300	1950
	751–1000	1600	1200	2050	1700
400	0–500	2750	2150	2550	2400

TABLE 57.12701-3.—MAXIMUM SETTINGS OF INSTANTANEOUS CIRCUIT BREAKERS PROTECTING 300- AND 600-VOLT DIRECT-CURRENT TRAILING CABLES—Continued

Conductor size (AWG or MCM)	Cable length (feet)	300VDC Maximum instantaneous circuit breaker setting (amperes)		600VDC Maximum instantaneous circuit breaker setting (amperes)	
		Line-line [1]	Line-ground [2]	Line—line [1]	Line—ground [2]
	501–600	2450	1900	2550	2250
	601–750	2150	1600	2400	2050
	751–1000	1750	1350	2150	1800
500	0–500	3050	2450	2800	2550
	501–600	2800	2200	2700	2400
	601–750	2450	1900	2550	2250
	751–1000	2050	1550	2350	2000
600	0–500	3250	2550	2850	2650
	501–600	3000	2400	2750	2500
	601–750	2650	2050	2650	2350
	751–1000	2250	1700	2400	2100
700	0–500	3500	2900	2950	2750
	501–600	3250	2600	2950	2600
	601–750	2900	2300	2750	2450
	751–1000	2450	1900	2550	2250
800	0–500	3700	3100	3000	2800
	501–600	3450	2800	2900	2700
	601–750	3100	2500	2900	2500
	751–1000	2650	2050	2850	2350
900	0–500	3900	3300	3050	2850
	501–600	3650	3000	3000	2850
	601–750	3300	2650	2850	2650
	751–1000	2850	2250	2700	2450
1000	0–500	4050	3450	3100	2900
	501–600	3800	3150	3000	2850
	601–750	3450	2800	2900	2700
	751–1000	3000	2400	2750	2500

[1] The line-to-line instantaneous circuit breaker settings shall be used for trailing cables supplying power to diode grounded equipment and for trailing cables containing a separate equipment safety grounding conductor if the circuit is provided with separate ground-fault protection.

[2] The line-to-ground instantaneous circuit breaker settings shall be used for trailing cables containing a separate equipment safety grounding conductor when the circuit is not provided with separate ground-fault protection.

§ 57.12702 Attachment.

Trailing cables shall be attached to equipment so that functional damage to the cable jacket and damage to the insulation of the internal conductors is prevented, and strain does not occur on electric connections.

§ 57.12703 Portable distribution boxes.

Portable distribution boxes shall have—

(a) A disconnecting device for each branch circuit and a means to clearly show that each circuit has been physically disconnected;

(b) A means which identifies each disconnecting device and cable with its related load; and

(c) A means to prevent connecting a cable to the wrong protective device when two or more cables connect to the same distribution box.

§ 57.12704 Guarding.

Trailing cables and power conductors shall be protected against physical damage from mobile equipment by bridges, trenches, suspension from the mine roof or rib, or by location.

§ 57.12705 Disconnecting devices.

Disconnecting devices for trailing cables shall be equipped with a means for installing a padlock.

Trolley Circuits for Track Haulage

§ 57.12800 Installation and maintenance.

Trolley wires and exposed trolley-feeder wires shall be—

(a) Installed opposite the clearance side of haulageways, except where such installation creates a greater hazard;

(b) Suspended at least 7 feet above the track; and

(c) Aligned and maintained to provide for smooth tracking of trolley collectors on trolley wires.

§ 57.12801 Circuit protection and isolation.

(a) Trolley wires and trolley-feeder wires shall be protected against overcurrent by an automatic circuit interrupting device which deenergizes the affected circuit if a short circuit occurs at any point in the system.

(b) The trip setting of the device required by paragraph (a) of this section shall not exceed 50 percent of the minimum available bolted short-circuit current when that current is less than 800 amperes; or 75 percent of the minimum available bolted short-circuit current when that current is 800 amperes or more.

(c) Trolley wires and trolley-feeder wires shall be provided with a means of isolation at intervals of not more than 2,000 feet and near the beginning of all branch lines.

§ 57.12802 Track bonding.

(a) Track serving as the trolley circuit return shall be bonded or welded at every joint and crossbonded at intervals not exceeding 200 feet.

(b) Metallic pipelines and structures installed less than 10 feet from track serving as the trolley circuit return shall be insulated or guarded, or bonded to the track at intervals not exceeding 1000 feet to prevent shock hazards.

(c) When rails are moved, or replaced, or when broken bonds are discovered, they shall be rebonded within three working shifts.

§ 57.12803 Guarding.

(a) Energized trolley wires and bare trolley-feeder wires shall be guarded where accidental contact with them is possible, including:

(1) Where supplies are stored, loaded, or unloaded.

(2) At mantrip stations.

(3) On each side of all doors and stoppings through which wires pass.

(4) Where a person works within three feet of the trolley wire except for a person operating rail-mounted haulage equipment.

(5) At track switches.

(6) Where persons regularly pass under the wires.

(b) Trolley wires and trolley feeder wires shall be deenergized when guarding is installed or removed, unless the guarding is temporary guarding designed to minimize shock hazards while work is being conducted in the area.

§ 57.12804 Circuits powered from trolley wires.

The return wire of all circuits powered from the trolley wires shall be connected to the trolley wire return circuit to assure continuity and prevent arcing.

Appendix I to Subpart K—Electricity

Mine operators seeking further information may consult the following national consensus standards:

MSHA standard	National consensus standard
56/57.12101; 56/57.12103, 56/57.12130, 56/57.12204, 56/57.12301, 56/57.12400.	NFPA 70 (NEC).
56/57.12500 [1] to 56/57.12506.	NFPA 70 (NEC), IEEE Stds. 80–1976, 81–1983, 277–1983, 142–1982, UL–943 and ANSI C–2 (NESC).
56/57.12600	IEEE Std. 242.
56/57.12601	NEC, ICEA P–50–431, S–19–81 and P–48–426.
56/57.12602	IEEE Std. 141–1976 and NEC.
56/57.12604	IEEE Std. 142–1982.
56/57.12630	NESC.
57.12660	NEC.
56/57.12700	NEC.

[1] A method that may be used for protection of persons from disabling or fatal electric shock, under ground-fault conditions, is to limit voltage exposure. The term voltage exposure refers to a combination of voltage and the length of time that the voltage exists.

Voltage exposure should not exceed

$V^2t = 30375$

where v = voltage in volts
t = time in seconds

This equation is based on IEEE Std. 80–1976 using 1500 ohms as a person's body resistance. This would allow a combination of system grounding, ground-fault protection and overcurrent protection to be used to provide protection from disabling or fatal shocks.

[FR Doc. 89–27798 Filed 11–28–89; 8:45 am]
BILLING CODE 4510–43–M

30 CFR Parts 56, 57, 70, and 71

RIN 1219–AA53

Noise

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to revise its standards for coal and metal/nonmetal mines to reduce the incidence of noise-induced hearing loss among miners.

Members of the mining community have asked MSHA to revise its standards to provide one noise standard covering all mines, citing the differences among MSHA's standards for coal and metal/nonmetal mines, and between MSHA's standards and those set by the Occupational Safety and Health Administration (OSHA). This notice seeks comments on various aspects of the issues that the Agency will review in developing a proposed rule. In revising its standards, MSHA will consider the requirements of the Federal Mine Safety and Health Act of 1977 (Mine Act), the comments received in response to this notice, OSHA's standards, the uniqueness of the mining industry, and recent technological developments.

DATE: Submit comments and information by March 5, 1990.

ADDRESS: Submit comments to Office of Standards, Regulations, and Variances, MSHA; 4015 Wilson Boulevard, Room 631; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Permanent hearing loss can result from overexposure to many sources of noise in mining. To prevent such loss, MSHA has standards for noise exposure in coal mines (30 CFR 70.500 and 71.800) and metal/nonmetal mines (30 CFR 56.5050 and 57.5050). Despite MSHA's efforts, hearings loss among miners continues to be a problem. Workers' compensation awards for hearing loss among miners have increased over the past 10 years. In addition, since 1981, mine operators have reported to MSHA 1216 hearing loss cases among miners. Among these, 424 have received all their noise exposure since MSHA implemented its noise standards. The Agency is reassessing whether its noise standards provide adequate protection to miners.

Although MSHA's noise standards are based on a 90 decibels, A-weighting (dBA), 8-hour permissible exposure limit (PEL), and require engineering or administrative controls to reduce the miner's exposure to within the PEL, substantial differences exist among the other provisions in MSHA's standards for coal and metal/nonmetal mines. Under MSHA's standards for coal mines, for example, such controls may include hearing protection devices (HPDs). MSHA standards also require coal mine operators to monitor miners' noise exposure. In determining whether a miner's exposure exceeds the PEL, coal mine inspectors make allowances for attenuation provided by HPDs. When a miner's exposure exceeds the PEL, coal mine operators must implement a hearing conservation plan. The plan must include provisions for instituting engineering or administrative controls to reduce noise levels. Such controls may include personal HPDs. Coal operators also must implement preemployment and periodic audiograms. MSHA's standards for metal/nonmetal mines do not permit the use of HPDs instead of feasible engineering or administrative controls, nor do they contain provisions for a hearing conservation program (HCP).

MSHA's standards also differ from the OSHA noise standard (29 CFR 1910.95). In 1983, OSHA revised its noise standard to include requirements for an HCP to reduce the incidence of hearing loss in general industry. OSHA's HCP provisions reflect more recent developments in hearing conservation than MSHA's hearing conservation plan for coal mines.

II. Specific Issues

Because an MSHA standard would affect all of the mining industry, commenters should provide specific rationale to support their positions based upon particular mining methods, practices, and conditions. Mine operators should identify and discuss both the quantifiable and non-quantifiable benefits and costs of compliance. Economic information should include capital, maintenance, and on-going costs. While MSHA requests comments on all relevant noise standard issues, the Agency is interested particularly in comments on the following specific issues.

A. Definition of Problem

(1) Definition of Hearing Loss

MSHA's noise standards and reporting requirements do not define noise induced hearing loss or the

amount of loss that is reportable. Under 30 CFR part 50, MSHA currently requires mine operators to report hearing loss if a miner is awarded workers' compensation for such loss under a State compensation program or if a physician determines the hearing loss to be occupationally related. MSHA, however, is in the process of revising its reporting requirements for occupational illness under 30 CFR part 50 (53 FR 45878, November 14, 1988).

OSHA considers a confirmed "Standard Threshold Shift" (STS) as providing an early indication of noise-induced hearing loss. OSHA defines an STS as a change in hearing threshold of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear relative to the baseline audiogram.

—MSHA is considering, and is interested in suggestions on, an appropriate definition of hearing impairment. How many current miners would have a hearing loss based on the suggested criteria? Include any information relating noise exposure to such loss. What are the number of State compensation awards to miners for hearing loss; what are the costs for these awards; and what are the ages, occupations, and degree of loss of these miners?

(2) Non-occupational Hearing Loss

Off-the-job exposure to loud noise sources may be significant.

—MSHA requests data on methods to differentiate accurately and reliably between occupational and non-occupational noise-induced hearing loss.

B. Hazard Assessment

(1) Permissible Exposure Limit (PEL)

Under MSHA and OSHA noise standards, the PEL is an employee's maximum allowable daily noise exposure. Both Agencies base their PEL on a 90 dBA, 8-hour time-weighted average (TWA) exposure. OSHA uses an 85 dBA, 8-hour TWA, however, as the action level to trigger the provisions of their HCP. NIOSH recommended 85 dBA as a PEL in their criteria for a recommended standard for occupational exposure to noise (1972). The Ontario Government and the U.S. Air Force also use an 85 dBA PEL.

—What PEL and action level are appropriate for mining and what action should be triggered at each? How many miners are exposed at each of these levels? What are the costs and benefits with the various PEL and action levels?

(2) Threshold Level

The threshold is the level below which no noise is integrated into the noise dose computation. MSHA uses a threshold equal to the PEL (90 dBA). OSHA requires a threshold of 90 dBA when sampling for compliance with their PEL and 80 dBA when sampling for inclusion in an HCP.

—What threshold levels should MSHA use?

(3) Exchange Rate

The exchange rate is the amount of increase in sound pressure level (in decibels) which would require halving of the allowable exposure time to maintain the same noise dose. MSHA and OSHA use a 5-dBA exchange rate, which is based on the assumption that there is intermittency (7 cycles per day) in the daily exposure and that the ear has time to recover during the quiet periods. Several European countries and the U.S. Air Force use a 3-dBA exchange rate which is based on the theory that the hazard to hearing is determined by the total energy entering the ear on a daily basis.

—Which exchange rate should be used? What is the amount of hearing impairment that would be expected when a 5-dBA or 3-dBA exchange rate is used at the suggested PEL or action level? What would be the costs and benefits with the various exchange rates?

(4) Impulse/Impact Noise

MSHA's standards for metal/nonmetal mines require that impulse/impact noise not exceed 140 dB peak sound pressure level; however, they do not define such noise. MSHA does not have a separate provision addressing impulse/impact noise in coal mines. OSHA's limit for impulse/impact noise is identical to MSHA's for metal/nonmetal mines. Although OSHA does not define such noise specifically, it defines continuous noise as occurring when noise level variations peak at intervals of 1 second or less. OSHA considers all noise which is not continuous to be impulse/impact noise.

MSHA does not know of any currently manufactured personal noise dosimeters capable of separating impulse/impact noise from continuous noise. The American National Standards Institute's (ANSI) S12.7–1986, "Standard Method for Measuring Impulse Noise," presents a method for measuring impulse/impact noise; but, it is not based on dosimetry.

—How much impulse/impact noise is there in the mining environment? Should MSHA distinguish between impulse/impact noise and continuous noise? If so, how should impulse/impact noise be defined and measured?

C. Exposure Monitoring

(1) Monitoring Requirements

Section 101(a)(7) of the Mine Act requires health standards, where appropriate, to provide for monitoring miner's exposure in a manner that assures miners maximum protection. Currently, coal mine operators must monitor miner's noise exposure twice a year and certify the results to MSHA. MSHA standards for coal mines also specify when to sample, how to sample, who is qualified to sample, and reporting requirements. MSHA noise standards for metal/nonmetal mines do not require operator monitoring. MSHA recently proposed to require operator monitoring for exposure to airborne contaminants in its Air Quality proposed rule (54 FR 35760, August 29, 1989). OSHA requires employers to develop and implement a monitoring program designed to identify employees for inclusion in the HCP, but does not specify a sampling methodology.

—Should operator monitoring be specification or performance oriented? Should the results be used both for determining a miner's noise exposure, as well as for identifying miners for inclusion in an HCP? How often should miners be monitored? What would be the costs for mine operators to conduct monitoring?

(2) Sampling Strategy

MSHA standards for coal mines require personal sampling when exposure measurements are made with a noise dosimeter. Noise exposure measurements made with a sound level meter (SLM) are required to be made at locations where the noise is typical of that entering the miner's ear. MSHA's recently proposed Air Quality proposal would require operator monitoring to be representative of the affected miner's exposure and would not specify personal or area sampling. MSHA currently bases enforcement actions on individual personal samples taken by an inspector.

OSHA allows employers to use representative personal or area sampling; however, in areas with significant variations in sound level or high worker mobility, the employer would have to show that area sampling produces results equivalent to personal sampling.

—Should MSHA require a specific sampling method for operator monitoring? Should MSHA allow representative sampling to characterize the exposure of a similarly exposed group or should each miner be sampled?

(3) Sampling Duration

In conducting noise surveys, MSHA and OSHA require that noise levels be integrated over the entire work shift, regardless of its duration. Neither Agency specifically address novel work schedules. A significant number of miners work a schedule different than a 40-hour, 5-day work week.

—Should MSHA adjust exposure results to account for work shifts different than 8 hours? If so, how should they be adjusted?

(4) Survey Instruments

MSHA and OSHA permit the use of either an SLM or a personal noise dosimeter for measuring noise exposure.

—Should MSHA specify the type of instrument for operator sampling?

(5) Instrumentation Standards

MSHA currently requires that SLMs meet ANSI S1.4–1971, "Specifications for Sound Level Meters," and that personal noise dosimeters comply with the "MSHA Test Procedures and Acceptability Criteria for Noise Dosimeters," IR–1072, 1978. MSHA requires Agency testing of personal noise dosimeters for use in coal mines. Instruments used by MSHA inspectors in metal/nonmetal mines also undergo such testing. In addition, all instruments used in gassy metal/nonmetal mines and underground coal mines must meet the permissibility requirements in 30 CFR part 18. OSHA's standards do not contain specifications for instruments used for employee monitoring.

—Should MSHA's standard include instrument specifications for operator sampling? If so, should they be based on ANSI standards for SLMs, ANSI S1.4–1983; personal noise dosimeters, ANSI S1.25–1978 (being revised); and acoustical calibrators, ANSI S1.40–1984?

(6) Instrument Availability

If different thresholds were to be set for the PEL and hearing conservation purposes, monitoring at both thresholds would require the use of an instrument with dual threshold settings or two separate instruments. Some instruments used by mine operators might not be capable of measuring at dual thresholds or of adjusting the threshold setting. In addition, instruments currently in use might not meet recent ANSI standards for SLMs, acoustical calibrators, and ANSI's proposed standard for personal noise dosimeters.

—What specific instruments do mine operators use to conduct noise exposure monitoring? If dual thresholds are proposed, would operator monitoring at both threshold settings be necessary?

(7) Instrument Calibration

MSHA's standards for coal mines require annual calibration of personal noise dosimeters and acoustical calibrators used by operators. They also specify minimum requirements for conducting these calibrations. MSHA has no such requirements for metal/nonmetal mines. OSHA requires calibration of noise survey instruments, but does not specify a methodology.

—How often should MSHA require calibration of noise survey instruments? What calibration procedures should MSHA specify?

D. Methods of Compliance

(1) Selection of Controls

MSHA requires coal mine operators to institute administrative or engineering controls to achieve compliance. Such controls may include hearing protective devices (HPDs). Upon finding a violation, MSHA also requires the coal mine operator to implement an HCP. MSHA requires metal/nonmetal mines to use feasible administrative or engineering controls and, if such controls do not reduce exposure to within the PEL, to provide and use HPDs.

OSHA's noise standard requires employers to provide and employees to use HPDs whenever administrative and engineering controls cannot reduce an employee's exposure to the PEL. OSHA further requires that employers make HPDs available to all employees with an 8-hour TWA exposure of 85 dBA or greater, at no cost to the employee, and that these employees use the HPDs, if they have not had a baseline audiogram within 6 months of their first exposure at or above the action level, or if they have experienced an STS.

—What are the appropriateness, effectiveness, costs, benefits, and feasibility of these compliance methods or of alternative methods to protect miners' hearing? How effective are HPDs in comparison with engineering or administrative controls? Can the use of HPDs alone provide sufficient protection, or are the other elements in an HCP, such as training and audiometric testing, needed to offer effective protection? What are the costs to mine operators for providing HPDs alone?

(2) Engineering Controls

Engineering controls may include interrupting the path of the noise, retrofitting noise controls, and changes in machine design or mining process. In some situations, engineering controls may not be technologically or economically feasible.

—How available are engineering noise controls for mining equipment and processes? Provide examples describing the problem, the engineering control, and the amount of reduction achieved. Information also should address costs, benefits, long-term durability, and degree of acceptance by the miners. Are retrofit noise controls as feasible as engineering design changes? Provide specific examples of equipment for which engineering noise controls or retrofit controls are not available or feasible.

(3) Administrative Controls

Administrative controls involve changing the work shift, such as moving the miner to an area or task with lower noise levels in order to limit total exposure.

—Provide information describing the types of administrative controls in use, along with their costs and benefits.

E. Hearing Conservation Program (HCP)

(1) Elements of an HCP

MSHA's standards for coal mines require that the coal mine operator submit to MSHA, within 60 days of the issuance of a citation, a written plan for an HCP to assure compliance. The plan must include provisions for reducing ambient noise levels, the administrative and engineering controls used to assure compliance, personal HPDs, and pre-employment and periodic audiograms. The MSHA District Manager must approve the plan. MSHA's standards for metal/nonmetal mines do not require an HCP.

OSHA requires all employers to implement an HCP when a worker's exposure exceeds an 85 dBA 8-hour TWA. OSHA's HCP requires employer monitoring, audiometric testing and evaluation, fitting and availability of HPDs, employee training, employee notification, and recordkeeping.

—What elements are appropriate for an effective HCP for the mining industry? What are the costs, benefits, and concerns with implementing such requirements? How effective are existing programs? Should an HCP be mandatory for all mines or should it be triggered on the basis of a violation or an action level?

(2) Audiometric Testing

Audiometric testing measures a person's hearing threshold. MSHA requires audiometric testing as part of hearing conservation plans for coal mines, but does not specify how such testing is to be conducted. Under the Mine Act, mine operators must provide required medical monitoring at no cost

to the miners. OSHA's standard includes detailed requirements for audiometric testing, to be provided at no cost to employees, when an employee's exposure equals or exceeds an 8-hour TWA of 85 dBA.

—Who conducts audiometric testing for miners under existing HCPs—mine personnel or outside contract personnel? How many audiograms are conducted on each miner annually? What are the costs involved? What types of audiometers are used?

(3) Qualifications for Conducting Audiograms

MSHA does not address qualifications of persons conducting audiometric testing; whereas OSHA does.

—Should MSHA require audiometric testing to be done by a physician, an audiologist, or other medical personnel competent in administering audiograms?

(4) Audiometer Specifications

Audiometers are designed according to ANSI S3.6–1969 (R1986), "Specifications for Audiometers". OSHA and ANSI both specify procedures and instruments for audiometer calibration. OSHA requires a daily functional check (biological calibration) of the audiometer, an annual acoustic calibration, and an exhaustive calibration of the audiometer every 2 years.

—Should MSHA specify requirements for audiometers, including calibration? If so, should MSHA base these requirements on ANSI standards or appropriate sections from OSHA's standard?

(5) Background Noise Levels

Both ANSI S3.1–1977 (R1986), "Criteria for Permissible Maximum Abient Noise During Audiometric Testing," and OSHA limit the background noise permitted in an audiometric test toom.

—What background noise limits should MSHA require in audiometric test rooms?

(6) Baseline Audiograms

MSHA does not address baseline audiograms. OSHA defines a baseline audiogram as the one indicating the least hearing loss after correction for presbycusis (loss of hearing due to aging). Future audiograms are compared to this baseline to determine the presence of an STS. The baseline audiogram can be the first one taken at the onset of employment or it can be a pre-existing audiogram. OSHA permits the substitution of an annual audiogram for a baseline audiogram when the threshold shift is persistent or indicates significant improvement in hearing. OSHA requires that the employee avoid high noise levels for 14 hours prior to an audiometric test. OSHA allows employees to wear HPDs as a substitute for this 14-hour quiet period.

—Should MSHA require baseline audiograms? If so, should existing audiograms be used? Should baseline audiograms be replaced if subsequent testing shows an improvement in the hearing threshold? How soon after a miner is included in an HCP should audiometric testing be conducted? What is a suitable quiet period prior to the performance of an audiometric test? Can HPDs be substituted for the noise-free period?

(7) Presbycusis

In its 1972 noise criteria document, NIOSH recommended one set of presbycusis correcitons and there are others in the scientific literature. The American Medical Association makes no provision for correction of audiometric data for presbycusis in its 1959 and 1979 hearing impairment criteria. MSHA does not address presbycusis. OSHA allows for the correction of audiograms for presbycusis according to criteria specified in their standard.

—Should audiometric data be corrected for presbycusis? If so, what criteria should be used?

(8) Confirmation of Standard Threshold Shift (STS)

Once an STS is found, OSHA permits a hearing retest within 30 days to confirm the STS. If confirmed, OSHA would consider the results of the retest to be the employee's annual audiogram. If not confirmed, OSHA requires that qualified personnel review the problem audiogram and determine whether there is a need for further evaluation. Possible reasons for a non-cnfirmed STS are: improper wearing of an HPD; inadequate protection from the HPD; a medical condition, such as a cold; non-occupational noise exposure; or a highly susceptible individual.

—What criteria should MSHA use to confirm a significant hearing loss, including the time limit and conditions under which such confirmation should be obtained?

(9) Follow-up Procedures

Under OSHA's standard, an employee's annual audiogram is compared to the baseline audiogram. OSHA requires a physician, audiologist, or otolaryngologist to review the audiogram to confirm an STS and to determine if there is a need for further medical treatment. Other follow-up procedures required by OSHA include: notifying the employee; providing HPDs offering greater attenuation, if necessary; requiring HPD fitting and use: and training employees in HPD use. If subsequent testing does not indicate a persistent threshold shift, the use of HPDs may be discontinued.

—Are such follow-up procedures appropriate in an MSHA standard? If not, are other procedures necessary and effective? What follow-up procedures do mine operators currently use and what are the costs of such procedures? Should MSHA include criteria for directing miners for further medical follow-up? Should MSHA require a physician, an audiologist, or other qualified medical personnel to evaluate audiograms?

(10) Miner Transfer

The Mine Act requires health standards to include, as appropriate, provisions for removing a miner from hazardous exposure where that miner may suffer material impairment of health or functional capacity. Such provisions currently exist for respirable coal mine dust (part 90 Miner Program). MSHA also recently proposed miner transfer provisions under certain circumstances in its Air Quality proposal. MSHA has no similar transfer program for miners with a work-related hearing loss. OSHA has no requirement for transferring employees who have demonstrated hearing loss due to occupational noise exposure.

—Is a transfer provision appropriate for hearing loss? If so, what conditions should trigger transfer of miners with hearing loss? Should the miner be allowed to refuse a transfer? Under what conditions could the miner be returned to the original area or job assignment? What are the costs and benefits of such provisions?

(11) Training

Neither MSHA's hearing conservation plan requirements for coal mines nor MSHA's noise standard for metal/nonmetal mines specifically require miner training on the hazards of noise or on the proper fitting and wearing of HPDs. MSHA's generic training standards at 30 CFR Part 48, however, do require some training in health areas.

OSHA requires employers to provide annual training to all employees covered by an HCP. OSHA's required training includes the effects of noise on hearing; the advantages and limitations of HPDs; the purpose and operation of the audiometric testing program; and the fitting, care, and use of HPDs.

—What specific training requirements should be included as part of an HCP? What would be the costs of conducting such training?

(12) HCP Evaluation

The ANSI S12–12 working group is developing recommended guidelines for analyzing audiometric testing data to evaluate HCPs.

—Should MSHA specify criteria and procedures to be used to evaluate the effectiveness of HCPs? If so, what methods or techniques can be used? Describe the suggested methodology, actual instances where it was used, and the results of the evaluation.

F. Hearing Protection Devices (HPD)

(1) HPD Usage Problems

The use of HPDs may mask warning signals and make it difficult to localize sound. If the miner has a hearing impairment, it may interfere with speech communication. In addition, adjustment, removal, and maintenance of ear plugs and ear muffs in dirty, unsanitary environments may lead to personal hygiene problems.

—What other problems or concerns are associated with the use of HPDs in the mining environment?

(2) HPD Fitting

To encourage their use, OSHA requires HPDs to be fitted to provide maximum attenuation and comfort.

—What criteria should MSHA use to evaluate the proper fitting of an HPD? Should MSHA require mine operators to make available a selection of HPDs?

(3) HPD Ratings

Manufacturers of HPDs voluntarily rate them according to a method proposed by the Environmental Protection Agency (42 FR 31730, June 22, 1977) which results in a Noise Reduction Rating (NRR). MSHA field studies and various other studies, including "A Field Investigation of Noise Reduction Afforded by Insert-Type Hearing Protectors," [DHEW (NIOSH) Publication No. 79–115], suggest that the NRR significantly overestimates the amount of attenuation provided by HPDs in actual use. MSHA has not determined an appropriate amount to derate the HPD to account for field usage at this time. MSHA inspection policy uses the NRR to estimate the effectiveness of HPDs. In the case where dual HPDs are used (an earplug worn under an earmuff), MSHA policy for metal/nonmetal mines is to add 6 dBA to the higher NRR of the two protectors.

—How should MSHA calculate HPD attenuation to reflect field usage in mining?

(4) Credit for Personal Protection

MSHA accepts the attenuation of HPDs worn by miners for determining compliance in coal mines, but not in metal/nonmetal mines.

—What consideration should MSHA give to the attenuation of HPDs in its enforcement strategy?

G. Recordkeeping

(1) Required Records

MSHA requires coal mine operators to maintain a record containing the name, date, and organization providing the annual calibration for each acoustical calibrator and personal noise dosimeter used to conduct noise surveys. Although these operators also are required to submit the results of noise exposure surveys, there is no requirement to keep a record of these surveys. MSHA has no noise recordkeeping requirements for metal/nonmetal mines.

OSHA requires records of exposure measurements, audiometric testing, and instrument calibration. OSHA requires retention of exposure records for 2 years and audiometric test records for the duration of the affected worker's employment. OSHA also provides for employee access to records and transfer of records to a successor employer when the employer ceases to do business.

At this time, MSHA believes that any improved noise standard should contain recordkeeping and access requirements. Please provide suggestions for these requirements.

—What records should be required and where and how long should they be maintained? What would be the costs and benefits of such provisions?

(2) Notification

MSHA's noise standards for coal mines do not contain miner notification requirements either for exposure survey or audiometric testing results. MSHA is considering a requirement that mine operators notify miners (1) when their exposure exceeds allowable limits, (2) when they have a significant hearing loss, and (3), if appropriate, when the operator obtains results of further audiological evaluation.

OSHA requires the employer to notify each employee of survey results if they are exposed at or above an 8-hour TWA of 85 dBA, but does not specify time frames or mode of communication. In addition, OSHA requires affected employees to be informed, in writing within 21 days, when the results of audiometric testing indicate an STS. Other notifications are required based on the results of subsequent audiological examination and testing.

—What should be the format and time frames for notifications? What would be the costs and benefits of such notification requirements in mining?

(3) Warning Signs

MSHA does not specifically require posting of warning signs in high noise areas, as required for other mining hazards, such as unsupported roof, high voltage, and blasting agents. OSHA does not require posting high noise areas.

—Should MSHA require posting of warning signs for areas exceeding a specified noise level? What noise level?

Dated: November 22, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89–27817 Filed 11–28–89; 8:45 am]

BILLING CODE 4510–43–M

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30 CFR Part 15

RIN 1219–AA84

Approval Requirements for Electric Detonators

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the process of revising the underground coal mine safety standards for explosives and blasting and related requirements for equipment and products which are approved by MSHA for use in blasting operations. MSHA has already issued final rules for the approval and use of explosives. The final rule for approval of blasting units is also being prepared by the Agency. MSHA is seeking comment on the need to develop approval requirements for detonators.

DATE: All comments and information should be submitted by February 2, 1990.

ADDRESS: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 8, 1984, MSHA published a notice of availability of a preproposal draft of approval regulations for explosives and related blasting equipment in underground coal mines (49 FR 19601).

including one for approval of electric detonators. On November 18, 1988, MSHA issued final rules for the approval and use of explosives (53 FR 46748, 53 FR 46768). A final rule addressing the approval of blasting units also will soon be issued. However, the Agency has not further addressed approval of detonators.

Foreign detonators have entered the market since 1987 which require an initiating current exceeding the tested capacity of blasting units approved under 30 CFR part 25. Tests conducted in 1985 by the Bureau of Mines identified a domestic detonator with a no-fire current level characteristic below that which is commonly accepted as safe in the explosives industry. A lowered no-fire characteristic creates the possibility of premature detonation of explosives during circuit testing or a greater sensitivity to stray electrical currents. Because some detonators currently available on the market are incompatible with approved blasting units and explosives, MSHA believes that it is appropriate to reassess the need for approval requirements for electric detonators.

Specific Issues Identified for Comment

There are three elements present in an electric blasting system: the explosive, the blasting unit and the electric detonator.

Degraded performance, incompatibility or improper functioning of any of these elements has the potential to contribute to a blasting accident caused by incomplete or premature detonation or misfired explosives. Because of the difficulty inherent in isolating causal factors after explosives accidents occur, little data exist to indicate and identify specific performance problems. Although there is an absence of specific data, the Agency's field and technical experience indicate that the potential exists for fault in all portions of a blasting system including the detonator.

In this advance notice of proposed rulemaking, MSHA is seeking comments and information on a number of issues including the need for detonator approval regulations and the economic impact such regulations would have on detonator manufacturers and the mining industry. Commenters should provide detailed rationale to support their positions based upon particular experiences, technical factors, data and industry circumstances. MSHA particularly requests comments on the following specific issues:

1. *Firing current.* To ensure compatibility and proper functioning of detonators with MSHA approved blasting units, the required firing current characteristics of detonators should be defined and assessed. MSHA is aware of detonators that require a firing current that exceeds the tested capacity of approved blasting units.

—What firing current parameters should be addressed to ensure reliable firing in a blasting circuit containing multiple detonators and to ensure compatibility with MSHA approved blasting units?

—What testing procedure or means to assess firing current characteristics should be considered?

2. *Initiating strength.* To ensure that detonators possess sufficient strength to initiate all types of MSHA approved explosives, the initiating strength should be defined and evaluated.

—What limits should be established and what methods or tests should be considered?

3. *No-fire/all-fire current.* To protect detonators against sources of extraneous electrical current or energy, a minimum no-fire current level should be established for detonators. Tests of some detonators by the Bureau of Mines show reduced no-fire current levels which could lead to detonation of explosives during circuit testing or greater sensitivity to detonation from stray electrical currents.

—What no-fire current level should be established and what methods should be used to determine the no-fire current level of a detonator.

4. *Firing time accuracy.* One characteristic of a detonator is the accuracy of its firing time relative to its designated delay period. If the range of firing time of one designated delay period detonator overlaps the range of firing time of a different designated delay period detonator, then loaded boreholes will fire out of sequence and a blown out shot can result.

—What firing time accuracy criteria should be considered for delay detonators and what methods should be used to determine this parameter?

5. *Arching.* An arching malfunction may occur when the magnitude and duration of the firing current are of such value that the energy delivered to a detonator cannot be easily dissipated. This can cause erratic firing time, shell rupture or ejection of the sealing plug. These malfunctions can cause misfiring of explosives.

—What limits should be considered to prevent arcing of detonators when used with approved blasting units?

—What tests or methods should be utilized to evaluate a detonator's resistance to arcing?

6. *Electrostatic resistance and shunting.* Extraneous electrical energy can cause unplanned initiation of a detonator.

—What tests or methods should be used to evaluate and prevent initiation of a detonator from electrostatic discharge generated from a static charge and to determine electrical resistance and adequate shunting of detonators?

7. *Leg wire insulation.* Detonator leg wires must be properly insulated to prevent exposure of wire and potential shorting.

—What means or test should be utilized to evaluate leg wire insulation?

List of Subjects in 30 CFR Part 16

Explosives, Mine safety and health, Reporting and recordkeeping requirements, Research and underground mining.

Dated: November 5, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-27818 Filed 11-28-89; 8:45 am]

BILLING CODE [illegible]

federal register

Monday
December 4, 1989

Part III

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Proposed Rule With Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-3495-5]

RIN 2040-AB56

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend 40 CFR part 136 by adding new biological measurements and test procedures for the analysis of pollutants under 304(h) of the Clean Water Act (CWA) and by updating others. Table IA, "List of Approved Biological Test Methods" would be amended by (1) adding methods to measure the toxicity of pollutants in effluents and receiving waters (including short-term methods for estimating the acute and chronic toxicity to freshwater and marine organisms); (2) adding methods to measure mutagenicity; (3) adding methods for monitoring viruses in wastewaters and sludges; and (4) updating citations to microbiological methods. Under the national policy for development of water quality-based permit limits, toxicity tests play an important role in the issuance of National Pollutant Discharge Elimination System (NPDES) permits. This proposal will promote uniformity in the test methods used to estimate the potential toxicity of discharged pollutants to aquatic life and the risk to human health.

DATE: Comments on this proposal must be submitted on or before February 2, 1990.

ADDRESS: Comments on this proposal should be labeled as "section 304(h): Comments on Proposed Rules" and submitted to: Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory—Cincinnati, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

That portion of the public docket proposed for incorporation by reference into 40 CFR part 136 is available upon request during this comment period from Mrs. Betty Thomas, Environmental Monitoring Systems Laboratory—Cincinnati, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Telephone Number: (513) 569-7302.

The entire public docket will be available for inspection from 8:00 a.m. to 4:00 p.m. in EPA's Public Information Reference Unit, Room M2904 (rear of the EPA Library), PM-211D, 401 M Street, Southwest, Washington, DC 20460, and at the Environmental Monitoring Systems Laboratory—Cincinnati, at the Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, from 8:00 a.m. to 4:30 p.m., Monday through Friday. The EPA information regulation (40 CFR part 2) allows the Agency to charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg at the address listed above, or call (513) 569-7306.

I. Authority

Today's proposal is pursuant to the authority of sections 301, 304(h), and 501(a) of the CWA, U.S.C. 1251 *et seq.* Section 301 forbids anyone to discharge any pollutant into navigable waters unless the discharge complies with a NPDES permit, issued under section 402 of the CWA. Subsection 304(h) requires the Administrator to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of the Act or permit applications pursuant to section 402 of the CWA." Section 501(a) authorizes the Administrator "to prescribe such regulations as are necessary to carry out his function under the Act."

The Administrator has also made these tests methods applicable to monitoring and reporting of NPDES permits (40 CFR part 122, subsections 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the CWA (40 CFR part 403, subsections 403.10 and 403.12).

II. Background

A. Analytical Methods Under Part 136

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations that reflect the best available technology economically achievable. New source discharges must meet the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that the limits will result in the attainment of water quality standards and protect designated water uses, including an adequate margin of safety.

To ensure compliance with these effluent limitations, EPA has promulgated regulations providing nationally-approved testing procedures in 40 CFR part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral), nutrient, demand, residue, radiological, organic, bacteriological, and physical parameters. Today's proposal would add methods to the list of nationally-approved methods.

An equivalency program is also provided in 40 CFR part 136. Under this program the Administrator may approve alternative test procedures developed and proposed by dischargers or other persons. If discharges or other persons wish to use such alternate test procedures, they must apply to the State or Regional EPA permitting office (for limited approval) and to the Director or the Environmental Monitoring and Support Laboratory (now the Environmental Monitoring Systems Laboratory) in Cincinnati (for nationwide approval).

Finally, there may be discharges from some particular industries which need to be regulated on the basis of parameters or test procedures which have not been proposed and approved within the scope of the test procedures guidelines under 40 CFR part 136. EPA may include such parameters and alternate test procedures within the rule-making for these industries in accordance with the provisions prescribed at 40 CFR 401.13, "Test Procedures for Measurements."

B. Toxicity Testing

Until recently, Agency programs for the control of toxic discharges were based largely on effluent limitations for individual chemicals. Chemical-specific measurements involve the use of laboratory-generated water quality criteria or State standards to limit specific toxicants directly. The analysis of those chemicals is done in a comprehensive testing program that, unlike whole-effluent testing, attempts to consider a range of toxic endpoints including human health impact and bioaccumulation. Once a criterion is developed, the number is applied as a permit limit to ensure that the level of that toxicant is not exceeded in the discharge.

Data on the toxicity of substances to aquatic organisms, however, are available for only a limited number of elements and compounds. Effluent limitations on specific compounds, therefore, do not necessarily provide adequate protection for aquatic life when the toxicity of effluent components is not known; effects of effluent components are additive, synergistic, or antagonistic, and/or when an effluent has not been chemically characterized. In such situations, it is often more feasible to examine the whole effluent toxicity and instream impacts using biological methods rather than attempt to identify all toxic pollutants, determine the effects of each a pollutant individually, and then attempt to assess their collective effect.

In whole effluent toxicity testing, toxicity itself can be used as the effluent parameter. The toxicants creating that toxicity need not be specifically identified or controlled where the effluent's toxicity is limited. An analogy between effluent toxicity and biochemical oxygen demand (BOD) can be drawn. Both are measurements of a biological effect. Both can be qualified. In neither case are the causative agents of the biological effect specifically identified. Thus, whole effluent toxicity is like BOD in that it is a useful parameter for reducing an undesirable effect caused by the discharge of a complex mixture of waste materials.

The Declaration of Goals and Policy at section 101(a)(3) of the Act states that "it is the national goal that the discharge of toxic pollutants in toxic amounts be prohibited." Section 502 (13), describes toxic pollutants as "* * * those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, physiological malfunctions, behavioral abnormalities, physical deformation, birth defects, genetic mutations, and cancer." Today's proposed rule would establish procedures to measure some of these effects. Owners or operators of NPDES facilities may be required to perform one or more of these tests to assure compliance with relevant water quality standards. Both the DC and Ninth Circuit Courts of Appeals have recently upheld EPA's authority to set and measure limits on toxicity without regulating specific toxic pollutants (NRDC v. EPA No. 86-1607 Slip Op., D.C. Cir. Sept. 20, 1988; NRDC et al. v. EPA No. 86-7390 Slip Op., 9th Cir., Dec. 5, 1988).

C. EPA's Policy on Effluent Toxicity Testing

To achieve the goals of the Federal water pollution control legislation, extensive effluent toxicity screening programs were conducted during the 1970s by the EPA regional and state programs and permittees. Acute toxicity tests (USEPA, 1975, Methods for Acute Toxicity Tests with Fish, Macroinvertebrates, and Amphibians, National Water Quality Research Laboratory, Duluth, Minnesota; Peltier, 1978, Environmental Monitoring Systems Laboratory, USEPA, Cincinnati, Ohio, EPA/600/4-78/012) were used to measure effluent toxicity and to estimate the effects of toxic effluents on aquatic life in receiving waters. During this period, short-term inexpensive methods were not available to detect the more subtle, low-level, long-term (chronic), adverse effects (such as reduction in growth and reproduction, and occurrence of terata) of effluents on aquatic organisms. Rapid developments in toxicity test methods during the past five years, however, have resulted in the availability of several methods that permit detection of the low-level, adverse effects (chronic toxicity) of effluents to freshwater and marine organisms in nine days or less.

As a result of the increased awareness of the value of effluent toxicity test data for toxics control in the water quality program and the NPDES permit program, the EPA issued a national policy statement entitled, "Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants," in the **Federal Register** Vol. 49, No. 48, Friday, March 9, 1984 (p. 9016).

This new Agency policy recommends the use of toxicity data to assess and control the discharge of toxic pollutants to the nation's waters through the NPDES permits program. The policy states: "Biological testing of effluents is an important aspect of the water quality-based approach for controlling toxic pollutants. Effluent toxicity data, in conjunction with other data, can be used to establish control priorities, assess compliance with state water quality standards, and set permit limitations to achieve those standards."

The 1984 Agency policy also addresses the technical approach for assessing and controlling the discharge of toxic pollutants to the nation's waters through the NPDES permit program. Application of chemical and biological methods for assuring that effluent discharges are regulated in accordance with federal and state requirements was discussed. The policy further stated that "EPA will use an integrated strategy consisting of both biological and chemical methods to address toxic and non-conventional pollutants from industrial and municipal sources. In addition to enforcing specific discharge limits for toxic pollutants, EPA and the States will use biological techniques and available data on the biological effects of chemicals to assess toxicity impacts and human health hazards based on the general standards of 'no toxic materials in toxic amounts'."

To provide additional guidance on the implementation of the biomonitoring policy, a technical support document on the use of effluent and receiving water toxicity data was published in September 1985 by the Office of Water Enforcement and Permits (OWEP) and the Office of Water Regulations and Standards (OWRS) ("Technical Support Document for Water Quality-Based Toxics Control," Office of Water Enforcement and Permits, USEPA, Washington, DC, Sept. 1985). The "Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants (EPA-440/4-87/005)," also provides important background information on the use of part 136 methods.

Because of the new Agency policy, the use of effluent toxicity tests has increased steadily within the EPA and state NPDES programs to identify toxic discharges, and by permittees as a self-monitoring tool (USEPA, 1979, Interim NPDES Compliance Biomonitoring Inspection Manual, Washington, DC). To meet USEPA program needs, the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-Cincinnati) prepared standardized acute and chronic toxicity methods to minimize intralaboratory and interlaboratory variability in toxicity tests conducted by USEPA regional and state programs and NPDES permittees.

D. Related Rulemaking to Measure the Acute Toxicity of Drilling Fluids to Marine Organisms

On August 28, 1985, EPA proposed at 50 FR 34592, effluent limitations guidelines and new source performance standards applicable to the Oil and Gas Extraction Point Source Category, Offshore Category. That notice included a proposed test method to determine the acute toxicity of the suspended particulate phase (SPP) of drilling fluids using *Mysidopsis bahia*. In a notice of data availability published at 53 FR 41356 (October 21, 1988), the Agency stated that it is conducting a further evaluation of the proposed test method as part of the offshore subcategory

rulemaking. The proposed test method would be applicable to the measurement of the toxicity of laboratory-formulated drilling fluids, and drilling fluids that have been used in bore holes. EPA intends to codify the final test methods at 40 CFR part 136 at a later date.

E. Precision and Accuracy of the Proposed Test Methods

In approving prior part 136 methods, EPA characterized the precision and accuracy of the methods. Information on the single laboratory precision of each of the proposed tests is included with the method in the respective toxicity test manual provided in the rulemaking docket. The methods in this proposal have precision profiles comparable to previously established part 136 methods. Accordingly, EPA believes the precision profiles are acceptable. The precision profiles have no further regulatory impact than data by which testers can compare their own results.

When measuring the amount of a specific chemical analyte, it is possible to prepare samples with a known concentration. From these samples one can test for the bias of a method by determining deviations from the true value. The biological methods in this proposal cannot be characterized in a similar fashion because there is no way of measuring a certain amount of toxicity, for example, and mixing it in a solution to create a sample with a true reference toxicity value. Our knowledge of the toxic effects of chemicals, complex mixtures in effluents, and surface waters, is gained from the biological test itself, and is dependent upon the nature of the test organisms. While test results can be compared, there is no true value from which to measure deviations and to determine bias or accuracy.

III. Methods for Measuring the Toxicity of Effluents and Surface Waters to Aquatic Organisms

A. Methods to Measure the Acute Toxicity of Effluents to Freshwater and Marine Organisms

EPA is today proposing methods to measure the acute toxicity of effluents to five freshwater and marine organisms, including three invertebrates and two fish, as described in the Agency methods manual (EPA/600/4–85/013): (1) a 24–48 hour acute toxicity test for the daphnids, *Daphnia pulex* and *D. magna*, (2) a 96 hour acute toxicity test for the mysid, *Mysidopsis bahia*, and (3) a 96 hour acute toxicity test for fathead minnows, *Pimephales promelas*, and the Atlantic silverside, *Menidia menidia*. This document is in the rulemaking record.

The first toxicity test methods developed specifically for effluents were published by EMSL-Cincinnati in 1978 (EPA/600/4–78/012). The methods, developed by the Bioassay Subcommittee of the Biological Advisory Committee sponsored by EMSL-Cincinnati, were updated, expanded, and republished in 1985 (EPA/600/4–85/013).

The 1985 manual includes a preliminary range-finding test, a screening test, and definitive, multi-concentration, static and flow-through toxicity tests. Also included are guidelines on laboratory safety, quality assurance, facilities and equipment, effluent sampling and holding times, dilution water, test species selection and handling, data interpretation and utilization, report preparation, organism culturing, and dilutor and mobile bioassay laboratory design.

Prior to publication, the 1985 test methods received extensive Agency and public review. Copies of the draft 1985 methods manual were sent to approximately 300 persons representing a broad cross-section of public and private agencies, including major trade organizations, large industries, large environmental consulting firms, universities, state and interstate water pollution control agencies, and other Federal agencies.

The acute toxicity tests in the manual involve exposure of 20 test organisms to each of five effluent concentrations and a control water. The test duration depends on the test species, and ranges from a few hours for screening tests to 96 hours for definitive tests with fish and some invertebrates. The manual includes a list of recommended freshwater and marine test organisms, and provides summaries of test conditions for five of the most commonly used organisms—*Daphnia, Ceriodaphnia*, fathead minnows, mysids, and silversides.

The tests described in this manual are based on the cumulative experience of USEPA regional and state effluent toxicity monitoring programs acquired during the past decade. The tests are used to determine the effluent concentration, expressed as a percent volume, that causes the death of 50% of the organisms (LC50) within the prescribed test period. Where death is not easily detected, such as with some invertebrates, immobilization is considered equivalent to death (EC50). Methods for determining the LC50 (or EC50) include graphical and Probit analyses.

The data are used to predict potential acute and chronic toxicity in the receiving water, based on the LC50 (or EC50) and appropriate dilution, application, and persistence factors. The tests are conducted as a part of NPDES applications, compliance biomonitoring inspections, performance audit inspections, and special investigations. The tests are performed in a central test laboratory or are conducted on-site by the regulatory agency or the permittee. Acute toxicity tests can be used in toxicity reduction evaluations to identify toxic waste streams within plants, to aid in the development and implementation of toxicity reduction plans, and also can be used to compare and control the effectiveness of various treatment technologies for a given type of industry, irrespective of the receiving water (Federal Register Vol. 49, No. 48, Friday, March 9, 1984, p. 9016).

Two types of acute toxicity tests, static and flow-through, are described. The selection of the test type will depend upon the objectives of the test, available resources, requirements of the test organisms, and effluent characteristics, such as fluctuations in effluent toxicity. Special environmental requirements of some organisms (such as flowing water, or fluctuating water levels) may preclude the use of static tests.

Static tests include: (1) Non-renewal tests in which the test organisms are exposed to the same effluent solution for the duration of the test, and, (2) renewal tests in which the test organisms are exposed to a fresh solution of the same concentration of effluent every 24 hours or other prescribed interval, either by transferring the test organisms from one test chamber to another or by replacing all or a portion of the effluent solution in the test chambers. The renewal system is preferred because interfering factors such as toxicant adsorption on the walls of the test chambers, volatilization, uptake by test organisms and metabolism may affect toxicity.

Two types of flow-through tests are described: (1) Effluent is pumped continuously from the sampling point directly to the dilutor system; and (2) effluent grab or composite samples are collected periodically, placed in a tank adjacent to the test laboratory, and pumped continuously from the tank to the dilutor system. The flow-through method employing continuous effluent sampling is the preferred method for on-site tests. Because of the large volume (often 400 L/day) of effluent normally required, flow-through tests are generally considered too costly and impractical to conduct at off-site laboratories.

Parameters and Units

The results of the test are reported as acute toxicity (LC50 or EC50; Lethal Concentration—50, or Effective Concentration—50) expressed in percent effluent, which is the concentration of effluent causing death (or immobilization, or other adverse effect) in 50% of the test organisms.

Precision

Data on single laboratory precision from 92 reference toxicant tests with three species are provided in the manual (EPA/600/4–85/013).

Data on multi-laboratory precision from 153 reference toxicant tests with six species are also provided in the manual.

Comments

EPA solicits comments on the acute toxicity tests for such factors as the recommended species, dilution water, effluent sampling methods, test conditions (age of organisms, number of test organisms per treatment, effluent concentration interval, temperature, food and feeding regime, etc.), data analysis techniques, and data interpretation.

B. Short-Term Methods to Estimate the Chronic Toxicity of Effluents and Surface Waters to Freshwater, Estuarine, and Marine Organisms

EPA today is proposing two sets of short-term chronic toxicity test methods: (1) Four methods for freshwater organisms and (2) six methods for estuarine and marine organisms, found in the USEPA methods manuals, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms Second Edition" (EPA/600/4–89/001), and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Estuarine and Marine Organisms" (EPA/600/4–87/028), respectively. The tests are used to estimate one or more of the following: (1) The chronic toxicity of effluents collected at the end of the discharge pipe and tested with a standard dilution water; (2) the chronic toxicity of effluents collected at the end of the discharge pipe and tested with dilution water consisting of non-toxic receiving water collected upstream or beyond the influence of the outfall, or with other uncontaminated surface water or standard dilution water having approximately the same hardness or salinity as the receiving water, depending on the nature of the receiving water (fresh or saline) and test organisms; (3) the toxicity of diluted effluent in the receiving water downstream or at increasing distance from the outfall; and (4) the effects of mulitiple discharges on the quality of the receiving water. The tests may also be useful in developing site-specific water quality criteria.

The use of short-term, subchronic and chronic toxicity tests in the NPDES Program is recommended in the 1984 USEPA policy on water-quality based permit limits. The short-term chronic methods are more effective analytical tools because they provide a more direct estimate of the effects of toxic effluents in receiving waters than was provided by acute toxicity tests, at a greatly reduced level of effort compared to earlier chronic toxicity test methods (i.e. fish full-life-cycle chronic and 30-day early life-stage tests, and the 21- to 28-day invertebrate life-cycle tests). The endpoints generally used in chronic tests are growth and reproduction. The effects include the synergistic, antagonistic, and additive effects of all the chemical, physical, and biological components that adversely affect the physiological and biochemical functions of the test organisms.

1. Short-Term Chronic Toxicity Test Methods for Freshwater Organisms

The proposed toxicity test methods for freshwater organisms are found in the manual, "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms, Second Edition (EPA/600/4–89/001)." This manual describes four- to seven-day methods for estimating the chronic toxicity of effluents and receiving waters to three species: (1) The fathead minnow, *Pimephales promelus*; (2) the cladoceran, *Ceriodaphnia dubia*; and (3) the alga, *Selenastrum capricornutum*. Guidelines are also included on laboratory safety, quality assurance, facilities and equipment, dilution water, effluent sampling and holding, data analysis, report preparation, and organism culturing and handling. Listings and machine-readable copies of computer programs for statistical analysis of the data referred to in the manual are available from EMSL–Cincinnati.

a. *The proposed short-term chronic tests are:*

(1) *Method 1000.0:* Fathead Minnow (*Pimephales promelas*) Larval Survival and Growth Test. Larvae (perferrably less than 24 hours old) are exposed to a control water and at least five concentrations of effluent, or to receiving water for seven days. Test results are based on the survival and weight of the larvae in test solutions, compared to the controls.

(2) *Method 1001.0:* Fathead Minnow (*Pimephales promelas*) Embryo-larval Survival and Teratogenicity Test. Fathead minnow embryos are exposed in a static renewal system to a control water and five different concentrations of effluent, or to receiving water, from shortly after egg fertilization to hatch, and the larvae are exposed an additional four days posthatch (total of eight days). Test results are based on the combined frequency of both mortality and gross morphological deformities (terata) in test solutions, compared to the controls. The test is useful for screening for teratogens because organisms are exposed during embryonic development.

(3) *Method 1002.0: Ceriodaphnia dubia* Survival and Reproduction test. *Ceriodaphnia* neonates are exposed to a control water and at least five different concentrations of effluent, or to receiving water, in a static renewal system for seven days. Test results are based on survival and reproduction in test solutions, compared to the controls.

(4) *Method 1003.0:* Algal (*Selenastrum capricornutum*) Growth Test. A *Selenastrum* population is exposed to a control water and to at least five different concentrations of effluent, or to receiving water, in a static system, for 96 hours. The population responses in test solutions is compared to the controls in terms of changes in cell density (cell counts per milliliter), biomass, chlorophyll content, or absorbance.

b. *Parameters and Units:* The results of the short-term chronic toxicity tests with effluents are expressed as the NOEC, which is the highest percent effluent concentration at which no adverse effect on survival, growth, or reproduction is observed.

c. *Precision:* The precision of the freshwater chronic toxicity tests is discussed in the respective methods sections in the methods manual (EPA/600/4–89/001). Results from repetitive tests generally fall within one concentration interval of the median value.

2. Short-Term Chronic Toxicity Test Methods for Estuarine and Marine Organisms

The proposed short-term chronic toxicity tests for estuarine and marine organisms are contained in the manual, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Estuarine and Marine

Organisms" (EPA/600/4–87/028). This manual describes six short-term (one-hour to nine-day) methods for estimating the chronic toxicity of effluents and receiving waters to five species: The sheepshead minnow, *Cyprinodon variegatus*; the inland silverside, *Menidia beryllina*; the mysid, *Mysidopsis bahia*; the sea urchin, *Arbacia punctulata*; and the red macroalga, *Champia parvula*. Guidelines are also included on laboratory safety, quality assurance, facilities and equipment, dilution water, effluent sampling methods and holding times and temperatures, data analysis, report preparation, and organism culturing and handling. Listings and machine-readable copies of computer programs for data analysis referred to in the manual are available from EMSL-Cincinnati.

a. *The proposed short-term chronic tests are:*

(1) *Method 1004.0:* Sheepshead Minnow (*Cyprinodon variegatus*) Larval Survival and Growth Test. Larvae (preferrably less than 24 hours old) are exposed for seven days in a static renewal system to a control water and at least five concentrations of effluent, or to receiving water. Test results are based on the survival and weight of the larvae in test solutions, compared to the controls.

(2) *Method 1005.0:* Sheepshead Minnow (*Cyprinodon variegatus*) Embryo-larval Survival and Teratogenicity Test. Sheepshead minnow embryos are exposed in a static renewal system to a control water and at least five different concentrations of effluent, or to receiving water, from shortly after fertilization of the eggs to hatch, and the larvae are exposed for an additional four days posthatch (total of nine days). Test results are based on the combined frequency of both mortality and gross morphological deformities (terata) in the test solutions, compared to the controls. The test is useful in screening for teratogens because organisms are exposed during embryonic development.

(3) *Method 1006.0:* Inland silverside (*Menidia beryllina*), Larval Survival and Growth Test. Larvae (preferably 7–11 days old) are exposed seven days in a static renewal system to a control water and at least five concentrations of effluent, or to receiving water. Test results are based on the survival and weight of the larvae in the test solutions, compared to the controls.

(4) *Method 1007.0: Mysidopsis bahia* Survival, Growth, and Fecundity Test. Seven-day old mysids are exposed seven days in a static renewal system to a control water and at least five different concentrations of effluent, or to receiving water. Test results are based on survival, growth, and egg production of the mysids in the test solutions, compared to the controls.

(5) *Method 1008.0: Arbacia punctulata* Fertilization Test. *Arbacia* sperm are exposed one hour in a static system to control medium and at least five concentrations of effluent, or to receiving water. Eggs are then added to the sperm and both are exposed for an additional 20 min. The response is measured in terms of the percent fertilization of the eggs compared to the control.

(6) *Method 1009.0: Champia parvula* Reproduction Test. Branches of male and female plants are placed together for 48 hours in a static system and exposed to a control medium and at least five concentrations of effluent, or in receiving water. The exposed plants are then transferred to control medium for a recovery period of 5–7 days. After the recovery period, the number of reproductive structures (cystocarps) that develop on the female plants as a result of fertilization in the test solutions are compared to the controls.

b. *Parameters and Units*: The results of the estuarine and marine short-term chronic toxicity tests with effluents are expressed as the NOEC, which is the highest percent effluent concentration at which no adverse effect on survival, growth, or reproduction is observed.

c. *Precision*: The precision of the chronic toxicity tests is discussed in the respective methods sections in the manual. Results from repetitive tests generally fall within one concentration interval of the median value.

3. Comments:

EPA solicits comments on the freshwater and marine short-term chronic toxicity tests for such factors as the recommended test species, the quality of dilution water, effluent sampling methods, test conditions (age of organisms, number of test organisms per treatment, number of replicate test chambers, effluent concentration intervals, temperature, test duration, food and feeding regime, etc.), data analysis techniques, and data interpretation.

IV. Methods to Measure the Mutagenicity (Genotoxicity) of Wastewaters, Sludges, and Surface Waters

EPA is today proposing as a mutagenicity test method the Ames Test described in *Interim Procedures for Conducting the Salmonella/Microsomal Mutagenicity Assay (Ames Test)*, Environmental Monitoring Systems Laboratory, USEPA, Las Vegas, Nevada, EPA/600/4–82/068, which is based on Ames et al., 1975, *Mutation Res.* 31:347. The test involves the use of specially developed histidine-dependent *Salmonella typhimurium* that are reverted to histidine independence when exposed to mutagenic agents. Generally, four strains are recommended, TA98, TA100, TA1535, and TA1537. Strain TA97 may be used in lieu of or in addition to strain TA1537 (Kier, L. D., D. J. Brusick, A. E. Auletta, E. S. Von Halle, M. M. Brown, V. F. Simmon, V. Dunkel, J. McCann, K. Moretelmans, M. Prival, T. K. Rao, and V. Ray, 1986, "The *Salmonella typhimurium*/Mammalian Microsomal Assay. A Report of the U.S. Environmental Protection Agency Gene-Tox Program." *Mut. Res.* 168:69–240). Additional strains may be used to detect mutagans not currently identified by the Ames Test (Maron and Ames, 1984. Revised Methods for the *Salmonella* Mutagenicity Test. In: B.J. Kilbey, et al., eds., *Handbook of Mutagenicity Test Procedures*. Second edition. Elsevier Science Publishers).

Section 502(13) of the CWA defines mutagenic (genotoxic) agents as toxic substances subject to control. Mutagenic activity has been reported in both domestic and industrial waste discharged to surface waters and has been included in the Agency's toxics control strategy. Mutagenicity tests are used world-wide to monitor for mutagens in environmental samples. They are performed routinely on effluents in some municipal and EPA monitoring laboratories and are included in state toxics control programs.

Concern about exposure to mutagenic agents in the environment is based on the understanding that chemicals that damage the DNA of cells may lead to severe health consequences. Damage to the DNA in reproductive cells may lead to development of heritable mutations or birth defects, while interruption of the genetic control of cells may trigger carcinogenicity. Some carcinogens modify the genetic material directly (genotoxic carcinogens) while others may modify the expression of cellular genetic control (nongenotoxic carcinogens).

The Ames Test is designed to detect intrinsic mutagenic potential, but will not detect nongenotoxic carcinogens and is not suitable for predicting heritable effects.

Some mutagens are directly active, while others require metabolic (enzyme) activation. The Ames Test is performed both with and without metabolic activation, which is accomplished by adding a mammalian microsome fraction (called S–9) from livers of rodents treated prior to sacrifice with a non-specific enzyme-inducing agent such as Aroclor 1254.

Toxic substances in wastewater samples are usually concentrated by organic extraction techniques before they are tested. Results of the tests can be expressed in terms of the number of revertants (number of bacteria that are mutated) per unit volume of sample or as the number of revertants per gram of extracted organic matter per liter of water tested. Results with test samples are compared to the spontaneous rate of mutation (reversion) in untreated control cultures.

A decade of research and testing had established a positive correlation between carcinogenicity and mutagenicity/genotoxicity. Short-term tests such as the *Salmonella* mammalian microsomal assay (Ames Test) identify substances that have a high potential for being mammalian mutagens and carcinogens. The EPA's Gene-Tox Program found that the Ames Test correctly identified 175 (79%) of 223 carcinogens and 29 (62%) of the 47 noncarcinogens tested with an overall accuracy of 76% (204/270). While the Ames Test accuracy is comparable to other short-term tests, its reproducibility, widespread use, and relatively low cost are advantages to its use as the primary test system for genotoxicity.

The chemical class of the agents being tested can influence results. This may be of particular importance in testing effluents and in interpreting test results. The USEPA's Gene-Tox Program found that the Ames Test was particularly sensitive to epoxides, amines, amides, sulfonamides, nitro compounds, nitrosoamines, and polycyclic aromatic hydrocarbons. Conversely, it was particularly insensitive to halides, organolead, organomercury and organophosphorus compounds, metals, and phosphate esters. Specificity was high for halides, carbamates, ureas, thioureas, and dicarboximides and was low for amines, amides, sulfonamides, nitro compounds, and polycyclic aramatic hydrocarbons.

A. Parameters and Units:

The results of mutagenicity tests with effluents are expressed as the number of revertants per liter.

B. Precision:

The single laboratory precision of the Ames Test (CV) is in the range of 10–15%.

C. Comments:

EPA solicits comments on the Ames Test for factors such as the sample extraction techniques, test conditions (tester strains, metabolic activation, etc.), calculation of test results, data interpretation, and any other relevant issue.

V. Methods to Recover and Enumerate Human Enteric Viruses in Wastewater, Sludges, and Surface Waters

EPA today proposes methods for the recovery and enumeration of human enteric viruses described in "USEPA Manual of Methods for Virology" (EPA/600/4–84/013). Pathogenic viruses are included in the definition of "toxic pollutants" to be controlled under section 502(13) of the CWA. The virus manual was prepared to meet the mandates of the Act and presents standardized step-by-step procedures for recovering viruses from most environmental samples other than air. Technicians trained in microbiology and familiar with aseptic techniques and safety procedures should be able to easily follow the methods in the manual.

The only characteristics of life that viruses are capable of manifesting are their ability to multiply, control processes within the cells they infect, and mutate. These characteristics are manifested only when inside a suitable host cell. Their ability to remain "infectious" outside a host cell is dependent on environmental conditions and exposure time. Viruses in sewage discharged to surface waters may remain infectious until they reach water treatment plant intakes and recreational areas of downstream communities. If virus-containing sewage or sludges are discharged to land, infectious viruses can contaminate crops or groundwaters. If discharged to oceans, viruses can contaminate recreational beaches or shellfish waters.

The smallest number of infectious human enteric viruses detectable with mammalian cell cultures may be sufficient to cause disease in susceptible individuals who consume them. To detect viruses present in low concentrations, they must be concentrated from large volumes of water.

More than 100 different serological types of enteric viruses of human origin have been reported in environmental waters. The numbers of viruses detected in sewage range from less than 100/L to more than 100,000/L. Because viruses do not multiply outside of susceptible living cells, dilution in receiving waters and deactivation with time eventually reduce the numbers of infectious viruses to levels often barely detectable by the most sensitive techniques available, even when concentrated from volumes of water as great as 1000 L.

The awareness of the importance of viruses in environmental samples has led to development and standardization of a number of techniques for recovering viruses from recreational waters, drinking water supplies, finished drinking water, sewage effluents, and land-applied sludges.

A. The proposed virus methods are:

1. Sampling: Because viruses are highly infectious, they must be concentrated from large volumes of sample if present only in small concentrations.

2. Concentration: The concentration technique uses virus adsorption onto filter surfaces, followed by elution. It is essential to increase the concentration of viruses in the final sample to a level at which they can be detected in a test. A second concentration step is sometimes required, depending on the sample source.

3. Detection: Viruses are detected and quantified by inoculating an aliquot of the sample concentrate into mammalian cell cultures.

4. Identification: Viruses are identified in neutralization tests using specific antisera.

B. Parameters and Units:

Test results are expressed as numbers of plaque-forming units per mL, or per gram of dry weight, depending on the nature of the test sample. Identified isolates are expressed as a percent of the virus type present in the sample.

C. Precision:

The single-laboratory precision of virus recovery and enumeration methods is in the range of 10–18%. The multi-laboratory method precision is 60–70%.

D. Comments:

Comments are invited on the recommended virus procedures for factors such as the various steps in the methods, method precision, and any other relevant issue.

VI. Revision of Table II, Preservation and Holding Times

In support of the expansion of the scope of parameters in part 136, EPA proposes to specify sample containers, preservation techniques, and maximum holding times for the new biological tests. These revisions are presented as proposed amendments to Table II of part 136. The Agency's reasoning for

each of these criteria is in the background document for each method.

VII. Additional Rulemaking Under Consideration by USEPA

Methods to measure toxic pollutants in sludges are under consideration by the EPA for amendment of the proposed 304(h) regulation in the near future. EPA has proposed a method for enteroviruses particularly appropriate for municipal sewage treatment plant sludges. Methods suitable for the measurement of specific chemical substances in sludges are under development or are being considered for proposal in this part.

VIII. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major for the following reasons:

1. It only prescribes analytical methods and sample handling requirements that ensure a uniform measure of pollutants across all wastewater discharges within minimum acceptance criteria. It does not require that analyses actually be performed. Other existing rules require such analyses. The purpose is to ensure that the quality of the environmental monitoring data meets certain minimum standards.

2. The impact of this regulation will be far less than $100 million. The regulation affects unit monitoring cost for the NPDES programs, e.g., effluent guidelines regulations and the NPDES implementation regulations, and the pretreatment programs. However, this rule does not itself impose those costs. The monitoring costs for other programs are considered in the rule making for each program.

3. These regulations will potentially affect all NPDES permittees and will not be concentrated on any particular sectors of American industry, and will not be significant. Accordingly, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will significantly affect a substantial number of small entities so as to require a regulatory analysis. The regulation requires no new reports beyond those now required. The analytical techniques approved here either can be handled by small facilities, or are widely available by contract at a reasonable price. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have significant adverse economic impact on a substantial number of small facilities.

C. Paperwork Reduction Act

This rule does not impose any additional burdens on respondents. If additional burden results from more frequent use of the tests, this burden will be taken into account by amending existing information collection requests.

IX. Public Docket

All of the documents listed below are available only for public inspection and copying at Room M2904, U. S. Environmental Protection Agency, 401 M Street SW, Washington, DC from 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays. The documents are also available for inspection and copying at the Office of the Director, Environmental Monitoring Systems Laboratory, Room 591, or at the Library, Room 406, U. S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

X. Materials Proposed for Incorporation by Reference Into 40 CFR Part 136

1. Berg, G., R.S. Safferman, D.R. Dahling, D. Berman, and C.J. Hurst. 1984. USEPA Manual of Methods for Virology. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio (EPA/600/4–84/013). Table IA, Note 7.

2. Williams, L.R., and J.E. Preston. eds. 1983. Interim procedures for conducting the Salmonella/Microsomal mutagenicity assay (Ames Test). Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Las Vegas, Nevada (EPA/600/4–82/068). Table IA, Note 8.

3. Peltier, W.H. and C.I. Weber eds. 1985. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio (EPA/600/4–85/013). Table IA, Note 9.

4. Weber, C.I., W.H. Peltier, T.J. Norberg-King, W.B. Horning, II, F.A. Kessler, J.R. Menkedick, T.W. Neiheisel, P.A. Lewis, D.J. Klemm, Q.H. Pickering, E.L. Robinson, J.M. Lazorchak, L.J. Wymer, and R.W. Freyberg. 1989. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms, Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. (EPA/600/4–89/001). Table IA, Note 10.

5. Weber, C.I., W.B. Horning, II, D.J. Klemm, T.W. Neiheisel, P.A. Lewis, E.L. Robinson J.R. Menkedick, and F.A. Kessler. eds. 1988. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/4–87/028. Table 1A, Note 11.

XI. Request for Comments

USEPA requests public analysis, comments, and information on all aspects of this proposal. Comment is specifically solicited on the acute and chronic toxicity tests, including sampling methods, test conditions (age of organisms, number of test organisms per treatment, number of replicate test chambers, effluent concentration intervals, temperature, test duration, food and feeding regime, etc.), data analysis techniques, and data interpretation.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: October 31, 1989.

William K. Reilly,

Administrator.

In consideration of the preceding, USEPA proposes to amend chapter I, subchapter D of title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 is revised to read as follows:

Authority: Secs. 301, 302, 304(h), 307, 501(a) and 502, Pub. L. 95–217, Stat. 1566, et seq. (33 U.S.C. 1251, et seq. (Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987).

§ 136.3 [Amended]

2. In § 136.3(a), Table IA is revised to read as follows:

TABLE IA. LIST OF APPROVED BIOLOGICAL METHODS

Parameter and Units	Method [1]	EPA	Standard methods, 17th ed.	Other
Bacteria:				
1. Coliform (fecal), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 132 [2]	9221C	
	Membrane filter (MF) [3], single step	p. 124 [2]	9222D	B-0050-85 [4]
2. Coliform (fecal) in presence of chlorine, number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 132 [2]	9221C	
	MF, single step [5]	p. 124 [2]	9222D	
3. Coliform (total), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 114 [2]	9221B	
	MF [3] single step or two step	p. 108 [2]	9222B	B-0025-85 [4]
4. Coliform (total), in presence of chlorine, number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 114 [2]	9221B	
	MF [3] with enrichment	p. 111 [2]	9222B + B.5c	
5. Fecal streptococci, number per 100 mL	MPN, 5 tube, 3 dilution	p. 136 [2]	9230B	
	MF [3], or	p. 136 [2]	9230C	B-0055-85 [4]
	Plate count	p. 143 [2]		
Enteroviruses:				
6. Enteroviruses in water, plaque forming units per liter.	Absorption, elution, and organic flocculation, followed by:	Ch. 6 [6]	9510 B, C, D, E	
	Plaque assay (cell culture infectivity)	Ch. 9 [6]	9510G	
	Identification	Ch. 10 [6]	9510G	
7. Enteroviruses in sludge, plaque forming units per liter.	Beef extract elution, and organic flocculation, followed by:	Ch. 12 [6]	9510G	
	Plaque assay (cell culture infectivity)	Ch. 7 [6]	9510F	
	Identification	Ch. 9 [6]	9510G	
Mutagenicity:		Ch. 10 [6]	9510G	
8. Mutagenicity (revertants per liter)	Ames Test, test strains TA97, TA98, TA100, and TA102.	Ch. 12 [6]	9510G	
Acute and Chronic Toxicity:		Note 7		
9. Toxicity, acute, fresh water organisms, percent effluent.	*Daphnia* and *Ceriodaphnia*, 48-h static mortality	p. 39 [8]		
	Fathead minnow, 48-h static mortality, or 48 to 96-h flow-through mortality.	p. 41 [8]		
10. Toxicity, acute, estuarine and marine organisms, percent effluent.	Mysids, 48-h static mortality, or 48 to 96-h flow-through mortality.	p. 40 [8]		
	Silversides, 48-h static mortality, or 48 to 96-h flow-through mortality.	p. 42 [8]		
11. Toxicity, chronic, fresh water organisms, percent effluent.	Fathead minnow larval survival and growth	1000.0 [9]		
	Fathead minnow embryo-larval survival and teratogenicity.	1001.0 [9]		
	Ceriodaphnia survival and reproduction	1002.0 [9]		
	Selenastrum growth	1003.0 [9]		
12. Toxicity, chronic, estuarine and marine organisms, percent effluent.	Sheepshead minnow larval survival and growth	1004.0 [10]		
	Sheepshead minnow embryo-larval survival and teratogenicity.	1005.0 [10]		
	Menidia beryllina larval survival and growth	1006.0 [10]		
	Mysidopsis bahia survival, growth, and fecundity	1007.0 [10]		
	Arbacia punctulata fertilization	1008.0 [10]		
	Champia parvula reproduction	1009.0 [10]		

[1] The method must be specified when results are reported.

[2] A 0.45 um membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] Bordner, R.H., and J.A. Winter, eds. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017.

[4] Britton, L.J., and P.E. Greeson, eds. 1988 Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples," U.S. Geological Survey Techniques of Water Resources Investigations, Book 5, Chapter A4, Laboratory Analysis, U.S. Geological Survey, U.S. Department of Interior, Reston, Virginia.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Berg, G., R.S. Safferman, D.R. Dahling, D. Berman, and C.J. Hurst, 1984. USEPA Manual of Methods for Virology. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/4–84/013. (Chapter 9 revised January 1987; Chapter 10 revised December 1987; Chapter 12 revised May 1988; Chapter 7 revised September 1989).

[7] Williams, L.R., and J.E. Preston, eds. 1983. Interim Procedures for Conducting the Salmonella/Microsomal Mutagenicity Assay (Ames Test). Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Las Vegas, Nevada. EPA/600/4–82/068.

[8] Peltier, W.H., and C.I. Weber, eds. 1985. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/4–85/013.

[9] Weber, C.I., W.H. Peltier, T.J. Norberg-King, W.B. Horning, II, F.A. Kessler, J.R. Menkedick, T.W. Neiheisel, P.A. Lewis, D.J. Klemm, Q.H. Pickering, E.L. Robinson, J.M. Lazorchak, L.J. Wymer, and R.W. Freyberg. 1989. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms, Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. (EPA/600/4–89/001).

[10] Weber, C.I., W.B. Horning, II, D.J. Klemm, T.W. Neiheisel, P.A. Lewis, E.L. Robinson, J.R. Menkedick, and F.A. Kessler, eds. 1988. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/4–87/028.

3. In Section 136.3(e), Table II is amended by revising entry IA and footnotes 1 and 4 to read as follows:

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TABLE II. REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter no./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
Table IA—biological tests:			
1–5. Bacteria	P,G	Cool, 4 °C, 0.008% $Na_2S_2O_3$.	6 h.
6–7. Enteroviruses	P,G	Cool, 4 °C	24 h.
8. Mutagenicity	G, Teflon-lined cap.	Cool, 4 °C	7 days.
9–12. Acute and chronic toxicity	P,G	Cool, 4 °C	36 h.

[1] Polyethylene (P) or glass (G). For microbiology, plastic sample containers must be made of sterilizable materials (polypropylene or other autoclavable plastic).
[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.
[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR Part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.82 or greater); Sulfuric acid (H_2SO_4) in water solutions of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).
[4] Samples should be analyzed as soon as possible after collection. The times listed in the table are the maximum times that samples may be held before analysis and still be considered valid. Virus samples can be stored indefinitely at −70 C. Samples used for toxicity tests are to be used for test initiation or for renewal of test solutions within 36 h of collection as grab samples or after removal from composite samplers. Samples for biological or chemical analysis may be held for longer periods than specified in this table only if the permittee or monitoring laboratory has data on file to show that the specific types of samples under study are stable for the longer time and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details.

4. Section 136.3(b) is amended by revising references (2), (7) and (12) and by adding references (32), (33), (34), (35), (36) and (37) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations

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(34) Peltier, W. H., and C. I. Weber, eds. 1985. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/4–85/013. Available from: National Technical Information Service, 5285 Port Royal Road., Springfield, Virginia 22161. Publ. No. PB–85–205383. Cost: $28.95. Table 1A, Note 8.

(35) Weber, C. I., W. H. Peltier, T. J. Norberg-King, W. B. Horning, II, F. A. Kessler, J. R. Menkedick, T. W. Neiheisel, P. A. Lewis, D. J. Klemm, Q. H. Pickering, E. L. Robinson, J. M. Lazorchak, L. J. Wymer, and R. W. Freyberg. 1989. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms, Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. (EPA/600/4–89/001). This manual and a supplemental published September 1989 (EPA/600/4–89/001A) are available from ORD Publications, P.O. Box 12505, U.S. Environmental Protection Agency, Cincinnati, Ohio 45212. Table 1A, Note 9.

(36) Weber, C. I., W. B. Horning, II, D. J. Klemm, T. W. Neiheisel, P. A. Lewis, E. L. Robinson, J. R. Menkedick, and F. A. Kessler, Eds. 1988. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. EPA/600/4–87/028. Available from the National Technical Information Service, 5285 Port Royal Road., Springfield, Virginia 22161. Publication No. PB–89–220503/AS. Cost: $42.95. Table 1A, Note 10.

(37) American Public Health Association. 1989. Standard Methods for the Examination of Water and Wastewater, 17th Edition. Amer. Publ. Hlth. Assoc., 1015 15th Street NW., Washington, DC 20005. Cost: $120.00. Table 1A.

[FR Doc. 27933 Filed 12-1-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
December 4, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 291

Methadone in Maintenance Treatment of Narcotic Addicts; Proposed Interim Maintenance Treatment; Public Hearing and Reopening of Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 88N-0444]

RIN 0905-AC33

Methadone in Maintenance Treatment of Narcotic Addicts; Proposed Interim Maintenance Treatment; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA), with the concurrence of the National Institute of Drug Abuse (NIDA), is announcing a public hearing to solicit information and views of interested persons on the proposed rule to revise the conditions for the use of methadone in the treatment of narcotic addicts. The proposed rule was pubished in the Federal Register of March 2, 1989 (54 FR 8973). The proposal would allow narcotic treatment programs to provide minimum service (interim) maintenance treatment to patients awaiting placement in comprehensive maintenance treatment. FDA and NIDA will use information presented at the public hearing, together with the written comments submitted in response to the proposal and to the issues discussed in this notice, in the development of a final FDA and NIDA action on this matter.

DATES: Written notices of participation should be filed by January 29, 1990. The hearing will begin at 9 a.m. on February 28, 1990. The record of the hearing will remain open for 15 days following the hearing, by which date any additional written material must be submitted.

ADDRESSES: The public hearing will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Transcripts of the hearing, copies of data and information submitted during the hearing, and any written comments will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT:

Persons needing information about the hearing should contact:

Nicholas P. Reuter, Office of the Associate Commissioner for Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

Persons needing information about the substantive issues to be addressed at the hearing should contact:

Robert J. Meyer

or

Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of March 2, 1989 (54 FR 8973), FDA and NIDA jointly published a proposed regulation to revise the conditions for the use of methadone in the maintenance treatment of narcotic addicts. The proposal would allow narcotic treatment programs to provide minimum service (interim) maintenance treatment to patients awaiting placement in comprehensive maintenance treatment. The proposal was in response to the human immunodeficiency (HIV) epidemic in the intravenous (IV) drug-abusing population and was intended to allow programs additional flexibility to admit more narcotic addicts into treatment as quickly as possible.

The proposed rule contained the following minimum standards for interim maintenance treatment:

A program would be allowed to provide interim maintenance treatment only if it also provides comprehensive maintenance treatment to which an interim patient may be transferred;

A program would be allowed to place a patient in interim maintenance treatment only when there are no openings available in comprehensive maintenance treatment;

A program would be required to establish and follow written criteria regarding priorities for transferring a patient from interim maintenance to comprehensive maintenance treatment;

A program would be required to evaluate a patient 6 months after admission to interim maintenance treatment to determine if the patient meets established transfer priority criteria and, if necessary, at 6-month intervals thereafter; and

All other requirements for comprehensive maintenance treatment would apply to interim maintenance treatment with the following exceptions:

1. Methadone would be required to be administered daily under observation, i.e., take-home medication would not be allowed;

2. Drug-screening tests would not be required except for the initial drug screening test;

3. Treatment plans and treatment plan evaluations would not be required;

4. Primary counselors would not be required to be assigned to patients; and

5. Counseling, rehabilitative, vocational, and educational services generally would not be required to be provided, except that counseling on avoiding HIV transmission would have to be provided.

Interested persons should refer to the March 2, 1989, proposal for details of the proposed interim maintenance treatment provisions.

FDA and NIDA received over 80 comments on the proposal. These comments revealed a large number of differing opinions both on the desirability of adopting interim maintenance standards and on a number of related issues as well. (Copies of all received comments are included in Docket No. 88N-0444 and may be inspected at the Dockets Management Branch (address above).) The agencies believe that it is necessary to improve the current administrative record before making a decision regarding any final action based on the March 2, 1989, proposal. Therefore, FDA and NIDA have concluded that a public hearing should be held to obtain further public comment to enable the agencies to make decisions on the unresolved matters.

The agencies note that the provision of the proposal requiring counseling on avoiding transmission of HIV was uniformly commented upon favorably. This provision would apply to all patients in methadone treatment programs. The agencies believe that there is an adequate administrative record on this issue and this requirement will be incorporated either into the final rule resulting from this proposal or in a separate final rule which will proceed with that portion of the rulemaking.

II. Public Hearing Topics

In order to promote a more useful discussion at the public hearing, FDA and NIDA developed the following list of questions and issues after considering comments submitted in response to the March 2, 1989, proposal. This list is not intended to be exclusive and presentations and comments on other issues related to interim maintenance are encouraged. However, participants should keep in mind that the basic purpose of the hearing is to gather factual information for the administrative record and the presiding officers may not schedule presentations that deal with irrelevant matters.

Topic A: HIV Risk Reduction Benefits of Interim Maintenance

The burgeoning HIV epidemic among IV drug abusers is a major concern to the agencies. FDA and NIDA believe that interim maintenance treatment's ability to decrease the spread of HIV infection is a key factor in determining the agencies' course of action.

1. *Could interim maintenance have a detrimental effect on comprehensive maintenance? If so, will the magnitude of this effect outweigh the anticipated HIV risk reduction benefits of interim maintenance?* Some comments have postulated that interim maintenance will substantially weaken comprehensive maintenance as a treatment modality due to the perception that could develop that interim maintenance is more cost efficient than comprehensive maintenance. These comments contended that the possible decrease or elimination of comprehensive maintenance as a successful treatment modality will ultimately prove counterproductive from both the drug abuse treatment and HIV transmission standpoints.

2. *Will the increasing "poly-drug abuse" profile of IV narcotic addicts and methadone maintenance patients diminish the impact of interim maintenance in curtailing high-risk HIV transmission behavior?* Several comments noted the increased prevalence of concomitant IV cocaine abuse with IV narcotic abuse and stated that, because methadone treatment is not effective in treating nonnarcotics drug addiction, interim maintenance treatment will not be successful in reducing needle-sharing associated with IV poly-drug abuse. Additionally, some comments stated that without counselor contact associated with comprehensive maintenance, the behavioral aspects of narcotic addiction will result in a failure of interim maintenance to reduce needle-sharing.

Topic B: Waiting Lists for Methodone Treatment

Interim maintenance treatment was conceived as a response to a reported waiting list crisis in methadone maintenance treatment. The extent of the problem, both now and in the future, and the impact interim maintenance treatment will have on the problem are of concern to the agencies.

1. *What are the nature and extent of existing methadone maintenance treatment waiting lists?* Many comments questioned the existence of an extensive, nationwide, or regional waiting list problem associated with methodone maintenance programs.

2. *How has (or will) the funding allocated by Congress to allow drug abuse treatment programs with demonstrable waiting lists to expand treatment affect the waiting list problem?* The Alcohol, Drug Abuse, and Mental Health Administration published a notice in the Federal Register of February 24, 1989 (54 FR 7990), requesting applications from drug abuse treatment programs with verifiable waiting lists for the purpose of awarding $75 million in competitive grants to expand the treatment capacity of those programs. Approximately 400 drug abuse treatment programs claiming verifiable waiting lists have applied.

3. *Would requiring city or State authorities to certify the existence of waiting lists as a preexisting condition for interim maintenance be appropriate? If so, what criteria are appropriate for these authorities to apply?* Several comments contended that there may be a financial incentive for methadone treatment programs to retain patients in the interim maintenance setting. Additional comments stated that many, if not most, patients would prefer the less structured treatment found in interim maintenance and thus, if given the choice, would choose interim maintenance over comprehensive maintenance. These comments suggested that some mechanism must be created to assure that all comprehensive treatment slots are filled in a given locality before patients may be placed in interim maintenance.

Topic C: Proposed Interim Maintenance Treatment Provisions

If FDA and NIDA determine that implementing regulations for interim maintenance treatment is a desirable course of action, the agencies will have to determine what standards need to be established to best implement interim maintenance.

1. *Should interim maintenance patients be monitored for drug abuse activity?* Many comments objected to the lack of required random drug screening tests. The agencies are uncertain that such testing should be required in an interim maintenance setting. The agencies are interested in what types of therapeutic or administrative decisions would be made based on these tests and whether those decisions are of a nature that would warrant requiring drug screening tests.

2. *What are the elements of a sound policy regarding transferring an interim maintenance patient to comprehensive maintenance? Should a limit to place on the time a patient can remain in interim maintenance?* Some comments stated that formal patient evaluations at 6-month intervals to determine whether patients meet a program's transfer priority criteria were too long. These comments recommended that formal patient evaluations be conducted for patients at 3-month intervals, but detailed reasons for their conclusions were not given. Other comments discussed limiting the period of time a patient could spend in interim maintenance without providing the kind of information the agencies needed to make a decision on the issue.

It should be noted that due to the consensus that has developed on the desirability of requiring counseling on avoiding transmission of HIV, no oral presentations will be scheduled on that topic, even though it was part of the March 2, 1989, proposal. However, interested persons may submit written comments on the topic, if they choose.

III. Exemption Process

FDA and NIDA are taking this opportunity to remind the narcotic treatment community that the exemption process provided for in 21 CFR 291.505(d)(11) can be used by a program to establish treatment modifications similar to the interim maintenance approach described in the March 2, 1989, proposal. All exemption requests are handled on a case-by-case basis. Those programs requesting an exemption to establish some type of "interim" service should be prepared to demonstrate that there is a shortage of methadone treatment slots available in its immediate locale. The exemption request should include a description of a systematic procedure for documenting and administering a waiting list that substantially meets the criteria set out in the eligibility provision of section IV.(3) of the Alcohol, Drug Abuse, and Mental Health Administration's Drug Abuse Treatment Waiting List Reduction Grant Program published in the Federal Register of February 24, 1989 (54 FR 7990). In addition, the exemption request should state the period of time to be covered by the exemption and submit a copy of their transfer priority criteria. Programs applying for an exemption should otherwise be generally guided by the March 2, 1989, proposed rule. FDA and NIDA may require additional information and prescribe additional conditions before granting the exemption. Treatment programs are reminded that the appropriate State authority must concur in any exemption before it is granted by FDA. Programs

interested in obtaining further information about the exemption process should contact the Regulatory Management Branch (HFD–342), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–295–8029.

IV. Notice of Hearing Under 21 CFR Part 15

As discussed above, the agencies have received many sharply divided comments regarding the interim maintenance proposal. Some of the comments suggested that the agencies convene an expert meeting to address the complex issues that will have an impact on the proposal. The agencies believe that there is merit in those suggestions, particularly in light of the incomplete state of the current administrative record. The agencies believe that the more structured format and formalized procedures of a public hearing at which experts can testify will best elicit the types and quantity of data necessary to supplement the administrative record. Accordingly, the Commissioner of Food and Drugs, with the concurrence of the Director of NIDA, is announcing a public hearing under 21 CFR part 15.

The public hearing, scheduled to begin at 9 a.m. at the Jack Masur Auditorium (address above) on February 28, 1990, will be extended to an additional day if the number of participants warrants the extension. The presiding officers will be Stuart L. Nightingale, M.D., Associate Commissioner for Health Affairs, FDA, and Charles R. Schuster, Ph.D., Director, National Institute on Drug Abuse. The presiding officers will be accompanied by a panel of FDA, NIDA, and other Public Health Service employees with relevant expertise. The procedures governing the hearing are found at part 15.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before January 29, 1990. To assure timely handling, any outer envelope should be clearly marked with Docket No. 88N–0444 and the statement "Interim Maintenance Treatment-Hearing." The notice of participation should contain the interested person's name, address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA and NIDA may ask that groups having similar interests consolidate their comments and present them through a single representative or that representatives of these groups present their comments as part of a panel. FDA and NIDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA and NIDA may allow interested persons attending the hearing who did not submit a notice of participation in advance of the hearing to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Nicholas Reuter, 301–443–1382, no later than January 29, 1990. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Dockets Management Branch by the close of business on February 5, 1990.

After reviewing the notices of participation and accompanying information, FDA and NIDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 88N–0444.

To provide time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 15 days following the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch. To assure timely handling, any outer envelope should be clearly marked with Docket No. 88N–0444 and the statement "Interim Maintenance Treatment-Hearing."

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under Part 15, are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in 21 CFR 15.30(h).

Charles R. Schuster, Director, NIDA has informed FDA that he concurs with the wording and issuing of this notice and that NIDA intends to participate fully in the conduct of the hearing.

Dated: November 28, 1989

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28356 11–30–89; 2:41 pm]

BILLING CODE 4160–01–M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S. 338/Pub. L. 101–191

To authorize the Secretary of the Interior to provide for the development of a trails interpretation center in the city of Council Bluffs, Iowa, and for other purposes. (Nov. 29, 1989; 103 Stat. 1697; 3 pages) Price: $1.00

S. 737/Pub. L. 101–192

To adjust the boundry of Rocky Mountain National Park. (Nov. 29, 1989; 103 Stat. 1700; 1 page) Price: $1.00

CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

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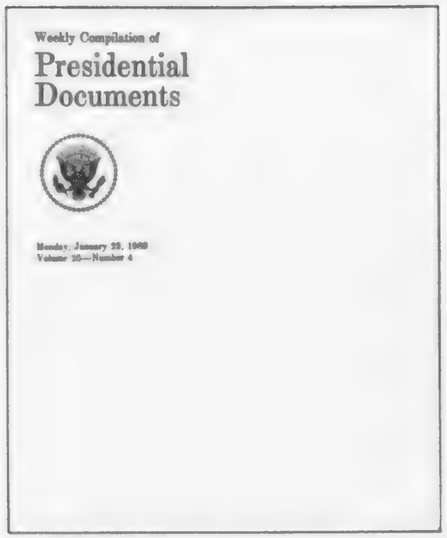
[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

OFFICE OF GOVERNMENT ETHICS

5 CFR Ch. XVI

RIN's 3206-AD71; 3206-AD72

Establishment of New Chapter XVI and Transfer Thereto and Redesignation of Certain Regulations From Chapter I of 5 CFR

AGENCIES: Office of Government Ethics and Office of Personnel Management.

ACTION: Final rule.

SUMMARY: By this document, the Office of Government Ethics ("OGE" or "Office") established chapter XVI in title 5 of the Code of Federal Regulations for publication of its rules, regulations and policy statements. The Office, formerly part of the Office of Personnel Management, is now a separate agency in the executive branch of the government. OGE was made an executive agency by Public Law 100-598, amending the Ethics in Government Act. OGE is also transferring and redesignating, with the concurrence of the Office of Personnel Management, certain regulations concerning executive branch government ethics which have appeared at chapter I of title 5, Code of Federal Regulations.

EFFECTIVE DATE: December 5, 1989.

ADDRESSES: Any comments on this document may be sent to: The Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Mr. Gressman, Office of the General Counsel; as well as to the Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Mr. Rick, Office of the General Counsel.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of the General Counsel, Office of Government Ethics, telephone (202/FTS) 523-5757; or Stuart D. Rick, Office of the General Counsel, Office of Personnel Management, telephone (202/FTS) 632-5030.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Establishment of a New Chapter XVI of 5 CFR

The 1988 reauthorization legislation for the Office of Government Ethics provided for the Office to become a separate executive agency of the United States government effective on October 1, 1989. See sections 3 and 10 of Public Law 100-598 (November 3, 1988, 102 Stat. 3031, 3055) amending section 401 of the Ethics in Government Act of 1978, 5 U.S.C. appendix IV, 401. Previously, OGE was a part of the Office of Personnel Management. In conjunction with its new separate agency status, the Office of Government Ethics is hereby establishing a new chapter XVI of title 5, Code of Federal Regulations. Chapter XVI will contain OGE's substantitive and procedural regulations as well as appropriate policy statements of the Office.

Table of Contents

The table of contents for chapter XVI, set forth below, includes certain current regulations of the Office which have been codified in 5 CFR chapter I which are being redesignated. In addition, the table includes some of the part titles which OGE intends to issue as soon as practical; these are shown as reserved parts. Additional titles, both substantive and procedural, will be added as needed in the future by publication in the Federal Register. Two subchapters are being provided for initially—subchapter A on organization and procedures and subchapter B on government ethics.

Redesignation of Certain Government Ethics Regulations

As noted, certain existing regulations of the Office dealing with the subject of government ethics are being transferred to chapter XVI and redesignated, with the concurrence of OGE's former parent agency, the Office of Personnel Management. The first regulation being redesignated is 5 CFR part 2634 (old 5 CFR part 734) entitled "Executive Personnel Financial Disclosure Requirements." This part constitutes the public financial reporting regulation for high-level executive branch officials pursuant to title II of the Ethics in Government Act, 5 U.S.C. appendix III.

The second redesignated regulation is 5 CFR part 2637 (old 5 CFR part 737), entitled "Regulations Concerning Post Employment Conflict of Interest." Part 2637 gives content to the post government employment restrictions applicable to former executive branch officials in 18 U.S.C. 207 of the conflict of interest laws. The section numbering of this part is also being revised to reflect subpart divisions, as is the case for the other redesignated regulations.

Further, OGE is redesignating 5 CFR 2638 (old 5 CFR part 738). The title of this part, previously entitled "Office of Government Ethics," is being revised to read "Office of Government Ethics and Executive Agency Ethics Program Responsibilities." The revised title will more accurately reflect the scope of this part setting forth ethics program responsibilities for the executive branch under the Ethics in Government Act, especially in light of future rules to implement the additional corrective action and agency reports responsibilities under section 402 of the Ethics Act, as amended by Public Law 100-598. See 5 U.S.C. appendix IV, 402.

Finally, the authority citations for these redesignated parts are being updated, including substitution of applicable United States Code citations in place of public law and Statutes at Large references. No substantive revisions to OGE's regulations are being adopted at this time; the changes in the recent government ethics legislation will be reflected in the redesignated parts in the future.

Retention of Current Designation for One Ethics Regulation

One existing regulation of the Office of Government Ethics and the Office of Personnel Management, 5 CFR part 735, entitled "Employee Responsibilities and Conduct," is not being redesignated at this time for the following reasons. First, that part is a joint responsibility of OGE and OPM. Most sections thereof (subparts A, B and C) are standards of conduct reflective of the Executive Orders on government ethics and the conflict of interest laws. However, certain provisions are derived from the

authority of the Office of Personnel Management to regulate federal employee conduct generally.

The government-wide standards which are subject to OPM issuance will stay in part 735 of OPM's chapter I of 5 CFR. The standards in 5 CFR part 735 reflective of government ethics principles will be replaced once OGE issues new standards regulations pursuant to Executive Order 12674. That order provides that OGE, in consultation with the Attorney General and OPM, is to promulgate a new single and comprehensive set of standards of conduct for the executive branch (to be supplemented as appropriate with agency-specific addenda). See sections 201(a) and 301(a) of E.O. 12674. OGE is reserving a new part 2635 of 5 CFR for the forthcoming "Principles of Ethical Conduct."

Moreover, one portion of the current 5 CFR part 735, subpart D, deals with confidential financial reporting by certain mid-level executive branch officials. Section 201(d) of E.O. 12674 reaffirms that there are to be superseding regulations to be promulgated by OGE on that topic as well. OGE has been working on these regulations and is reserving a new part 2633 to accommodate them.

Pending revision, the savings clause in section 502(a) of E.O. 12674 provides for the continuing effectiveness of the current 5 CFR part 735 regulations as well as of other government ethics actions of the executive branch under the prior ethics Executive Orders 11222 and 12565 and the present executive agency standards of conduct promulgated thereunder.

B. Procedural Matters

Administrative Procedure Act

The regulations being transferred and redesignated were previously promulgated in due accordance with the notice and opportunity for public comment requirements of the Administrative Procedure Act, 5 U.S.C. 553 (some of the provisions were published on an interim basis or deemed exempt from such requirements as justified at the time). Since no substantive changes are being effectuated to these rules by this transfer and redesignation, no notice of proposed rulemaking and comment period are necessary. Further, the designation of a new chapter for OGE does not include any new regulations at this time; thus, notice or comment are likewise unnecessary. Moreover, OGE finds that it is in the public interest that OGE's new chapter be established and that the executive branch government ethics regulations indicated above be transferred thereto as soon as possible. Therefore, the chapter establishment and transfer of regulations to redesignated parts as set forth in this document will be effective immediately and without prior notice and opportunity for public comment.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these rules and because they will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis is required.

E.O. 12291

The Office of Government Ethics has determined that these are not major rules as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

These rules do not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they are simply being transferred and redesignated from OPM's chapter I of 5 CFR to OGE's new chapter XVI of 5 CFR.

List of Subjects in 5 CFR Parts 2634, 2637 and 2638

Conflict of interests, Ethical conduct, Financial disclosure.

Approved: November 27, 1989.

Donald E. Campbell,

Acting Director, Office of Government Ethics.

Approved: November 30, 1989.

Constance B. Newman,

Director, Office of Personnel Management.

Authority: Secion 401 of the Ethics in Government Act, as amended by secs. 3, 10, 103 Stat. 3031, 3035 (5 U.S.C. Appendix IV, sec. 401).

Accordingly, the Office of Government Ethics hereby establishes a new chapter XVI and amends, with the concurrence of the Office of Personnel Management, chapter I, both of title 5, Code of Federal Regulations, as set forth below.

1. Title 5 is amended by adding a chapter XVI (consisting of subchapters A and B) to read as follows:

CHAPTER XVI—OFFICE OF GOVERNMENT ETHICS

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

Part

2600 Organization and Functions [Reserved]
2602 Employee Responsibilities and Conduct, Addendum [Reserved]
2604 Freedom of Information Act Rules [Reserved]
2606 Privacy Act Rules [Reserved]
2608 Rules of Practice [Reserved]
2610 Implementation of the Equal Access to Justice Act [Reserved]
2612 Use of Penalty Mail in the Location and Recovery of Missing Children [Reserved]

SUBCHAPTER B—GOVERNMENT ETHICS

Part

2633 Executive Agency Regulations Governing Non-Public Financial Disclosure Reports [Reserved].
2634 Executive Personnel Financial Disclosure Requirements
2635 Principles of ethical conduct [Reserved].
2637 Regulations Concerning Post Employment Conflict of Interest.
2638 Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

2. Title 5 of the Code of Federal Regulations is amended by transferring and redesignating certain regulations from 5 CFR chapter I to 5 CFR chapter XVI as set forth in the following redesignation table which shows the relationship of each former CFR part, subpart and section number under 5 CFR chapter I and the new part, subpart and section number under 5 CFR chapter XVI:

REDESIGNATION TABLE

5 CFR chapter I, subchapter B, old section numbers	5 CFR chapter XVI, subchapter B, new section numbers
Part 734	Part 2634
Subpart A	Subpart A
734.101	2634.101
734.102	2634.102
734.103	2634.103
734.104	2634.104
734.105	2634.105
Subpart B	Subpart B
734.201	2634.201
734.202	2634.202
734.203	2634.203
734.204	2634.204
734.205	2634.205
Subpart C	Subpart C
734.301	2634.301
734.302	2634.302
734.303	2634.303
734.304	2634.304
Subpart D	Subpart D
734.401	2634.401
734.402	2634.402
734.403	2634.403
734.404	2634.404
734.405	2634.405
734.406	2634.406

REDESIGNATION TABLE—Continued

5 CFR chapter I, subchapter B, old section numbers	5 CFR chapter XVI, subchapter B, new section numbers
734.407	2634.407
734.408	2634.408
Subpart E	Subpart E
734.501	2634.501
734.502	2634.502
Subpart F	Subpart F
734.601	2634.601
734.602	2634.602
734.603	2634.603
734.604	2634.604
734.605	2634.605
Subpart G	Subpart G
734.701	2634.701
734.702	2634.702
734.709	2634.703
Subpart H	Subpart H
734.801	2634.801
734.802	2634.802
734.803	2634.803
734.804	2634.804
734.805	2634.805
Subpart I	Subpart I
734.901	2634.901
734.902	2634.902
734.903	2634.903
Appendix A to Part 734	Appendix A to Part 2634
Appendix B to Part 734	Appendix B to Part 2634
Part 737	Part 2637
Subpart A	Subpart A
737.1	2637.101
737.3	2637.102
Subpart B	Subpart B
737.5	2637.201
737.7	2637.202
737.9	2637.203
737.11	2637.204
737.13	2637.205
737.15	2637.206
737.17	2637.207
737.19	2637.208
737.21	2637.209
737.23	2637.210
737.25	2637.211
737.27	2637.212
737.29	2637.213
737.31	2637.214
737.32	2637.215
737.33	2637.216
Part 738	Part 2638
Subpart A	Subpart A
738.101	2638.101
738.102	2638.102
738.103	2638.103
738.104	2638.104
Subpart B	Subpart B
738.201	2638.201
738.202	2638.202
738.203	2638.203
738.204	2638.204
Subpart C	Subpart C
738.301	2638.301
738.302	2638.302
738.303	2638.303
738.304	2638.304
738.305	2638.305
738.306	2638.306
738.307	2638.307
738.308	2638.308
738.309	2638.309
738.310	2638.310
738.311	2638.311
738.312	2638.312
738.313	2638.313

3. All internal references in the redesignated parts and sections are changed accordingly.

4. The authority citation for newly designated part 2634 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV.

5. The authority citation for newly designated part 2637 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV; 18 U.S.C. 207.

6. The authority citation for newly designated part 2638 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV.

7. The title of newly designated part 2638 is revised to read as follows:

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

[FR Doc. 89-28367 Filed 12-4-89; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV-89-111FR]

1989-90 Expenses and Assessment Rate Under Marketing Order No. 989; Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish an assessment rate under Marketing Order No. 989 for the 1989-90 fiscal year established under the federal marketing order for raisins produced from grapes grown in California. Authorization of this budget will allow the Raisin Administrative Committee (Committee) to incur reasonable and necessary expenses to administer the marketing order program. Funds for the program will be derived from assessments on handlers of California raisins.

EFFECTIVE DATES: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3920.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of handlers and the majority of producers of raisins may be classified as small entities.

The federal marketing order for California raisins requires that the assessment rate for a particular marketing year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the cost for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing

anticipated expenses by expected shipments of assessable raisins. That rate is applied to actual shipments to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the approval of expenditures and the assessment rate must be expedited so that the Committee will have funds to meet its obligations.

The Committee met on October 5, 1989, as required by the marketing order, and unanimously recommended 1989–90 marketing order expenditures of $483,405 and an assessment rate of $1.50 per assessable ton of raisins. In comparison, 1988–89 marketing year budgeted expenditures were $435,000, and the assessment rate was 1.50 per ton. Assessment income for 1989–90 is estimated at $483,405 based on 322,270 tons of assessable raisins.

While this action will impose some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing order. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 989.340 and is based on Committee recommendations and other information. A proposed rule was published in the November 2, 1989, issue of the **Federal Register** (54 FR 46269). Comments on the proposed rule were invited from interested persons until November 13, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.340 is added to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

§ 989.340 Expenses and assessment rate.

Expenses of $483,405 by the Raisin Administrative Committee are authorized and an assessment rate payable by each handler in accordance with § 989.80 of $1.50 per ton of assessable raisins is established for the crop year ending July 31, 1990. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: November 30, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28380 Filed 12–4–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–02; Amendment 39–6352]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of certain first stage fan blade retaining plates on certain PW JT8D engines. The AD requires replacing the original retaining plates, and the retaining plates which were introduced by Spare Parts Bulletin (SPB) P–0822, dated July 22, 1976, with a new improved retaining plate. The AD is needed to prevent a first stage fan blade liberation which could result in fire, inflight shutdown, engine cowl release, or airframe damage.

DATES: Effective—January 1, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 1, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable Alert Service Bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined at the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Avitation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617 273–7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires replacement of certain first stage fan blade retaining plates on certain PW JT8D turbofan engines was published in the **Federal Register** on April 19, 1989 (54 FR 15771).

The proposal was prompted by nineteen first stage fan blade liberation events. Thirteen of these events resulted in either fire, engine cowl release, or airframe damage. Fifteen of the nineteen blade liberation events occurred with the original retaining plates. However, four events occurred with improved design retaining plates which were introduced by SPB P–0822, dated July 22, 1976. Also, there have been seven first stage fan blade liberation events caused by bird ingestion, all occurring on wing-mounted engines containing the original design retaining plates. Consequently, the risk of a blade liberation due to an ingestion event is dependent on the engine installation position in addition to the retaining plate design.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Four comments were received concerning the proposed rule.

One commenter stated that the first improved retaining plate design was introduced by SPB P–0822, dated July 22, 1976, and not by Serivce Bulletin (SB) 5739 as stated in the notice of proposed rulemaking (NPRM). The FAA concurs that SPB P–0822, dated July 22, 1976, is the document which introduced the first improved retaining plate design.

Three commenters stated that the proposed compliance schedule based solely on calendar date was too restrictive and should be changed to allow an option to comply with an engine operating time limit.

The FAA concurs with these commenters. The schedule chosen for the NPRM met an acceptable level of safety with minimal economic impact. At the time the NPRM was issued, allowing an engine operating time limit option, while still maintaining an acceptable level of safety, would have resulted in substantial compliance schedule reductions (calendar and operation time). However, no additional first stage fan blade liberation events have occurred, partly because operators have begun to replace the retaining plates thus reducing the affected population. Consequently, the decrease in occurrence rate permits a relaxation of the compliance schedule and an engine operating time limit option will be included in the AD. However, it should be noted that this relaxation of the compliance schedule may result in an increased economic impact if operators take full advantage of the compliance schedule. The FAA has revised the regulatory evaluation accordingly.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preperation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 5,175 engines (domestic fleet) with a maximum total cost of two million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which JT8D–9 through JT8D–17AR model engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fire, inflight shutdown, engine cowl release, or airframe damage associated with a first stage fan blade liberation, remove certain first stage fan blade retaining plates in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) 5841, dated February 15, 1989, and replace with an improved design retaining plate as follows:

(a) Replace retaining plate Part Numbers (P/N) 520451, 616645, or 539616 with retaining plate P/N 803996 at the next shop visit but no later than:

(1) Two years or 4,000 hours in service after the effective date of this AD, whichever occurs later, for wing-mounted engines.

(2) Four years or 8,000 hours in service after the effective date of this AD, whichever occurs later, for fuselage-mounted engines.

(b) Replace retaining plate P/N 760297, 793935, or 802710 with retaining plate P/N 803996 at the next shop visit but no later than five years or 10,000 hours in service after the effective date of this AD, whichever occurs later.

Notes: (1) A shop visit occurs following engine removal where the subsequent engine maintenance entails the following:

(a) Separation of a major engine flange (lettered or numbered), other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(b) Removal of a disk, hub, or spool.

(2) FAA approved first stage fan blade retaining plate designs may be used in lieu of P/N 803996 retaining plate as an alternate method of compliance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The inspection/replacement procedures shall be done in accordance with PW ASB 5841, dated February 15, 1989. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, NW., room 8301, Washington, DC 20591.

This amendment becomes effective on January 1, 1990.

Issued in Burlington, Massachusetts, on September 27, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–28314 Filed 12–4–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

RIN 0960–AC78

Federal Old-Age, Survivors and Disability Insurance (1950——); Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are extending the expiration date of the cardiovascular system listing found in appendix 1 of part 404, subpart P from December 6, 1989, to June 6, 1991. We have made no revisions in the medical criteria in the cardiovascular listings; they remain the

same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in part A of the listing, and any revised criteria will be published as proposed rules when we have completed our review. Under these final rules extending the expiration date of the existing criteria, we will continue to use the existing criteria until any revised criteria are published as final rules.

EFFECTIVE DATE: This final rule will be effective December 5, 1989.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1755.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the Federal Register (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent an adult from performing any gainful activity (part A), or in the case of children under the age of 18, impairments which compare in severity to impairments that would make an adult disabled (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the Supplemental Security Income for the Aged, Blind, and Disabled program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A termination date of December 6, 1989, was established for part A of the cardiovascular system listing. Part B of the listing has a termination date of December 6, 1993.

In November 1984, SSA convened an expert medical panel to review the current cardiovascular listings and propose revisions to them based upon the latest advances in medical knowledge and technology. The Cardiovascular Panel was comprised of representatives from national medical professional groups and Federal and State representatives with expertise in the evaluation of disability claims involving cardiovascular impairments.

The panel met seven times and submitted their final report to SSA on July 22, 1987, for consideration as the basis for listing changes. Panel deliberations were very thorough due to the need to consider significant medical advances with respect to the evaluation and treatment of cardiovascular impairments. The final report was advisory only and requires careful study as we review the existing listing and consider the development of new regulations. The potential program impact of the changes recommended by the panel requires careful analysis and consideration within the agency. So that we will have an opportunity to consider these thoroughly, we are extending the expiration date of part A of the cardiovascular listing.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because opportunity for public comment is unnecessary. Prior notice and comment before publication are unnecessary because these regulations only extend the expiration date of Part A of the cardiovascular listings and make no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing cardiovascular listings is completed, proposed revisions to the existing criteria will, of course, be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

List of Subjects

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: November 17, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 28, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P—is amended as follows:

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b) and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

Appendix 1 to subpart P—[Amended]

2. Appendix 1 to subpart P, is amended by revising the fourth paragraph of the introductory text to read as follows:

The cardiovascular system (4.00) will no longer be effective on June 6, 1991.

[FR Doc. 89–28453 Filed 12–4–89; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Gonadorelin Sterile Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Laboratories, Inc. The NADA provides for intramuscular use of gonadorelin sterile solution for cattle to treat cystic ovaries.

EFFECTIVE DATE: December 5, 1989.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Inc., P.O. Box 518, 800 5th St., NW., Fort Dodge, IA 50501, filed NADA 139–237, providing for intramuscular use of gonadorelin sterile solution for treatment of cystic ovaries (ovarian follicular cysts) in cattle to reduce the time to first estrus. The NADA is approved and new § 522.1077 (21 CFR 522.1077) is added to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1077 is added to read as follows:

§ 522.1077 Gonadorelin injectable.

(a) *Specifications.* Each milliliter sterile aqueous solution contains 50 micrograms of gonadorelin (as hydrochloride).

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle*—(1) *Amount.* 100 micrograms per cow intramuscularly.

(2) *Indications for use.* For the treatment of cystic ovaries (ovarian follicular cysts) in cattle to reduce the time to first estrus.

(3) *Limitations.* For intramuscular use only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 28, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–28315 Filed 12–4–89; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–5106]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the New Year's Eve Celebration Fireworks Display. The fireworks display will be launched from the Town Point Park Fireworks—Mast Area, Town Point Park, Norfolk, Virginia, on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas from 10:00 p.m., December 31, 1989 to 1:30 a.m., January 1, 1990. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 10:00 p.m., December 31, 1989 to 1:30 a.m., January 1, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 6:00 p.m. to 8:00 p.m., January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: Norfolk Festevents, Ltd. submitted an application on January 19, 1989 to hold a fireworks display from 10:00 p.m., December 31, 1989 to 1:30 a.m., January 1, 1990. The fireworks display will be launched from the Town Point Park Fireworks—Mast Area, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The fireworks will be launched from within the regulated area. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 100.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33

CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Dated: November 29, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-28386 Filed 12-4-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6856]

Suspension of Community Eligibility; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Regular Program Conversions Region I				
Maine: Millinocket, Town of Penobscot County	230111	June 12, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Dec. 5, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Region III				
Pennsylvania:				
Creekside, Borough of Indiana County	420499	Sept. 10, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Green, Township of Indiana County	421718	Feb. 18, 1976, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Morris, Township of Clearfield County	421529	Nov. 17, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Petrolia, Borough of Butler County	420221	Mar. 3, 1977, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Shelocta, Borough of Indiana County	420506	Oct. 7, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Walker, Township of Schuylkill County	422026	Mar. 19, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Weatherly, Borough of Carbon County	420255	May 28, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Region V				
Illinois:				
Dowell, Village of Jackson County	170875	Apr. 20, 1979, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Muddy, Village of Saline County	170599	July 10, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Wisconsin:				
Shawano, City of Shawano County	550421	Apr. 30, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Eleva, Village of Trempealeau County	550441	May 23, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Price County unincorporated areas	550343	Dec. 29, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Region VII				
Nebraska: Elk Creek, Village of Johnson County	310014	Sept. 25, 1979, Emerg.; Sept. 4, 1985, Reg.; Dec. 5, 1989, Susp.	9-4-1985	Do.
Region X				
Oregon: Lake County unincorporated areas	410115	Mar. 3, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Washington: Clallam County unincorporated areas	530021	Nov. 27, 1973, Emerg.; Nov. 5, 1980, Reg.; Dec. 5, 1989, Susp.	12-5-1989	Do.
Region II				
New York: Lincoln, Town of Madison County	360405	Sept. 10, 1975, Emerg.; Sept. 4, 1985, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Dec. 15, 1989.
Region III				
Pennsylvania: Hyndman, Borough of Bedford County.	420121	Apr. 29, 1975, Emerg.; Dec. 15, 1989, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Virginia: Wise County unincorporated areas	510174	Oct. 30, 1974, Emerg.; Aug. 17, 1981, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Region IV				
Georgia: Fitzgerald, City of Ben Hill County	130007	Dec. 26, 1973, Emerg.; Dec. 15, 1989, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
North Carolina:				
Moore County unincorporated areas	370164	June 4, 1975, Emerg.; Dec. 15, 1989, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Pinebluff, Town of Moore County	370337	Sept. 25, 1979 Emerg.; July. 17, 1986, Reg.; Dec. 15, 1989, Susp.	7-17-1986	Do.
Swain County unincorporated areas	370227	Feb. 3, 1980, Emerg.; July. 17, 1986, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Region V				
Wisconsin: Park Falls, City of Price County	550344	Apr. 17, 1974, Emerg.; Dec. 15, 1989, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Ohio:				
Paulding County unincorporated areas	390777	Mar. 14, 1978, Emerg.; Dec. 5, 1989, Reg.; Dec. 15, 1989, Susp.	12-5-1989	Dec. 5, 1989.
Waupaca, City of Waupaca County	550502	May 13, 1975, Emerg.; Aug. 3, 1989, Reg.; Dec. 15, 1989, Susp.	12-5-1989	Dec. 15, 1989.
Region VII				
Kansas:				
Jackson County unincorporated areas	200147	July 15, 1983, Emerg.; Dec. 15, 1989, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.
Parsons, City of Labette County	200184	Oct. 3, 1974, Emerg.; July 16, 1979, Reg.; Dec. 15, 1989, Susp.	12-5-1989	Do.
Missouri: Bolivar, City of Polk County	290259	July 24, 1975, Emerg.; June 16, 1988, Reg.; Dec. 15, 1989, Susp.	12-15-1989	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension; Rein.–Reinstatement.

Issued: November 22, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-28475 Filed 12-4-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 90

[PR Docket No. 88-567; FCC 89-301]

Private Land Mobile Radio Service Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making, 54 FR 1733 (January 17, 1989), the Commission adopted a Report and Order to permit applicants that file routine private land mobile station applications for facilities on shared frequencies to commence operations on a conditional basis during the application processing period upon the filing of their applications if they certify that certain conditions are satisfied. The satisfaction of these conditions indicates that the application can be routinely granted because it involves no special issues.

EFFECTIVE DATE: June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Jerold Feldman, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, PR Docket No. 88-567, adopted on October 26, 1989 and released November 24, 1989. The full text of the Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Compliance Branch (room 5202), 2025 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100

M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

1. In response to a January 1988 petition for rule making and a January 1989 notice of proposed rule making, the Commission issued a Report and Order adopting a system of conditional authority for applicants filing routine private land mobile station applications for certain shared frequencies. The conditional licensing procedure applies to applicants for shared frequencies in the bands below 470 MHz and in the one-way frequencies in the 929–930 MHz band. This procedure also encompasses applicants seeking to modify, assign or transfer existing stations in these frequency bands. Applicants for itinerant operations are also covered by this procedure.

2. This procedure permits applicants to commence conditional operations during the application processing period upon the filing of their applications with the Commission if they certify that certain conditions have been met. The satisfaction of these conditions indicates that the application involves no special issues and that the application will not be subject to challenge. These conditions are:

(1) That the proposed station is south of Line A or west of Line C and does not require Canadian coordination;

(2) That granting the application does not require rule waiver;

(3) That the proposed antenna structure has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by § 17.4 of the Commission's Rules; or that the proposed antenna or tower structure does not exceed 6.1 meters (20 feet) above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the Federal Communications Commission;

(4) That the applicant has determined that the proposed station will not significantly affect the environment as defined by § 1.1307 of the Commission's Rules;

(5) That the proposed station protects radio "quiet" zones and monitoring facilities as specified in § 90.177 of the Commission's Rules; and

(6) That the required frequency coordination procedures have been completed and that an application has been submitted to the Commission stating the frequency the applicant expects to use.

3. The above certifications will be contained on a new Conditional Temporary Authorization Form 572C. The executed original Form 572C must be retained by the applicant with the station records as evidence for conditional authority. Form 572C will contain express provisions warning the applicant that conditional authority may be terminated by the Commission at any time without a right to a hearing. In addition, the applicant will be required to acknowledge that it assumes all risks, including monetary loss due to equipment purchase, in the event conditional authority is terminated or the application is subsequently dismissed or denied.

4. Accordingly, *it is ordered*, that, pursuant to the authority of sections 4(i), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a), parts 1, 2 and 90 of the Commission's Rules, 47 CFR part 90, are amended effective June 30, 1990, as set forth below.

5. *It is further ordered*, that this proceeding is terminated.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio, Reporting and recordkeeping requirements.

47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Administrative practice and procedure, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 1, 2, and 90 of the Commission's Rules (47 CFR Ch. I) are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 1.922 is amended by adding a new FCC form and title as follows:

§ 1.922 Forms to be used.

FCC form	Title
• • • • •	
572C	Conditional Temporary Authorization to Operate a Part 90 Radio Station.
• • • • •	

3. Section 1.925 is amended by redesignating current paragraph (1) as paragraph (i) and revising it and by adding new paragraph (i) to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit or temporary operating authority.

• • • • •

(i) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz and in the one-way paging 929–930 MHz band or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed formal application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with §§ 90.175 and 90.176. Operation under such a permit is evidenced by retaining with the station records the original conditional licensing 572C Certification Form containing the certifications that satisfy the provisions of § 90.159(b).

(j) An applicant for a General Mobile Radio Service system license, sharing a multiple-licensed base station used as a mobile relay station, may operate the system for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 574–T, after mailing FCC Form 574 to the Commission.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. Section 2.302 is amended by adding a new class of station, composition of call sign, and call sign block to the table of call signs following the entry "Part 90 temporary permit" to read as follows:

§ 2.302 Call signs.

• • • • •

Class of station	Composition of call sign	Call sign blocks
•	•	•
Part 90 conditional permit.	2 letters, 7 digits...	WT plus local telephone number.
•	•	•

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.159 is amended by revising its title and by designating the existing text of this rule section as paragraph (a) and adding new paragraphs (b), (c), (d), and (e) as follows:

§ 90.159 Temporary and conditional permits.

• • • • •

(b) An applicant proposing to operate a new private land mobile radio station or modify an existing station below 470 MHz or in the one-way paging 929–930 MHz band that is required to submit a frequency recommendation pursuant to § 90.175 (a) through (e) may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127 if the application is accompanied by evidence of frequency coordination in accordance with §§ 90.175 and 90.176, and provided that the applicant certifies that the following conditions are satisfied:

(1) The proposed station location is south of Line A or west of Line C as defined in § 90.7.

(2) The proposed antenna structure has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by § 17.4 of the Commission's Rules; or the proposed antenna or tower structure does not exceed 6.1 meters (20 feet) above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC.

(3) The grant of the application does not require a waiver of the Commission's Rules.

(4) The applicant has determined that the proposed facility will not significantly affect the environment as defined in § 1.1307.

(5) The applicant has determined that the proposed station affords the level of protection to radio "quiet" zones and monitoring facilities as specified in § 90.177.

(6) The applicant has submitted an application to the Commission stating the frequency the applicant intends to use and that the frequency coordination requirements specified in §§ 90.175 and 90.176 for selection and use of this frequency have been satisfied.

(c) An applicant proposing to operate an itinerant station, or, an applicant seeking the assignment of authorization or transfer of control of a license for an existing station operating below 470 MHz, or in the 929–930 MHz band, may operate the subject station during the pendency of the application for a period not to exceed 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127. Conditional authority ceases immediately if the application is returned by the Commission because it is not acceptable for filing. All other categories of applications listed in § 90.175(f) that do not require evidence of frequency coordination are excluded from the provisions of this rule section.

(d) A conditional authorization pursuant to paragraphs (b) and (c) of this section is evidenced by retaining the original executed conditional licensing 572C Certification Form with the station records. Conditional authorization does not prejudice any action the Commission may take on the subject application. Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. Consistent with § 90.175(d), the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. Authority reverts back to the original licensee if an assignee or transferee's conditional authority is cancelled.

(e) The transmissions of new stations operating pursuant to conditional authority shall be identified by a temporary call sign consisting of the prefix "WT" followed by the applicant's local seven digit business telephone number as provided in § 2.302. Transmissions by applicants for the modification, assignment of authorization or transfer of control of an existing station shall be identified by the station's call sign.

[FR Doc. 89–28208 Filed 12–4–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 232
Tuesday, December 5, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 349

[Docket No. 80N-145B]

Over-the-Counter Ophthalmic Drug Products for Emergency First Aid Use; Safety and Efficacy Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for ingredients contained in eyewash drug products used for emergency first aid treatment of chemical burns of the eye(s). The agency will review the submitted data to determine whether these products are generally recognized as safe and effective for their labeled uses. This notice also describes the agency's general regulatory policy governing the marketing of over-the-counter (OTC) emergency first aid eyewash drug products during the pendency of this review. This request is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Data and information to be submitted by June 4, 1990.

ADDRESSES: Submissions should be sent to the Division of OTC Drug Evaluation (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In 1972, FDA established the OTC drug review to evaluate all drugs sold OTC. The final regulations providing for the OTC drug review under § 130.301 (recodified as § 330.10) were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). The agency appointed 17 advisory review panels to evaluate safety and effectiveness data of active ingredients found in OTC drug products. An advisory review panel, the Advisory Review Panel on OTC Ophthalmic Drug Products (Ophthalmic Panel), reviewed OTC ophthalmic drug products.

In its report on OTC ophthalmic drug products (published in the **Federal Register** of May 6, 1980; 45 FR 30002), the Ophthalmic Panel, in a general discussion of eyewashes, stated that eyewashes, eye lotions, and eye irrigating solutions are used to dilute or remove irritants such as foreign bodies, pollen, and noxious chemicals from the eye (45 FR 30046). The Panel mentioned that eyewashes, eye lotions, and eye irrigating solutions are not only used by consumers for cleaning and washing irritants from the eyes, but they are also used for the emergency flushing of chemicals or foreign bodies from the eye(s) in homes, places of work, first aid stations, clinics, and hospitals (45 FR 30047). The Panel recognized that these products are important components of first aid and emergency kits in industrial settings, clinics, and hospitals. In addition to their emergency first aid use, the Panel noted that irrigating fluids are used by medical personnel for irrigation following diagnostic procedures and for postoperative irrigation. Even though the Panel was aware of the existence and use of emergency first aid eyewashes and irrigating solutions, it did not consider these products further for these uses because no submissions were made by any company for these products or uses.

Following the publication of the Panel's report, no comments were submitted on the use of emergency first aid eyewashes or irrigating solutions. Accordingly, these products were not discussed in the tentative final monograph for OTC ophthalmic drug products that was published in the **Federal Register** of June 28, 1983 (48 FR 29788) or in the final rule that was published in the **Federal Register** of March 4, 1988 (53 FR 7076).

After the final rule was published, the agency received a request for an advisory opinion (Ref. 1) regarding the status of a product used for emergency first aid treatment of chemical burns of the eyes and the skin. The product was described as a sterile phosphate buffered solution containing sodium phosphate, U.S.P. and monobasic postassium phosphate, NF, preserved with edetate disodium, U.S.P. 1:2000 and benzalkonium chloride, U.S.P. 1:5000, for use immediately following a chemical burn to thoroughly flush the eyes and skin for the express purpose of removing the chemical irritant, and to relieve the discomfort and burning caused by the irritating chemical prior to seeking medical treatment. Noting that the final monograph for OTC ophthalmic drug products (21 CFR Part 349) is silent regarding the use of emergency first aid eyewashes for the treatment of chemical burns, the requester questioned how this product, which has a long marketing history, is to be regulated. The requester recommended that no regulatory action be considered until the problem has been resolved and a decision has been made by the agency as to how this type of product is to be regulated.

The agency is aware that a need exists for eyewash products for emergency first aid treatment of chemical burns (including acid and alkali burns). These products would be considered drugs just as eyewash products in the ophthalmic drug products final monograph are considered drugs. (See discussion of the drug status of eyewash products in comment 2 in the tentative final monograph at 48 FR 29789.)

A number of these eyewash products for emergency first aid treatment of chemical burns have been marketed prior to the effective date of the ophthalmic drug products final monograph. However, the agency currently has little data on which to make a determination as to the safety, effectiveness, and labeling of these products. The agency is aware that the majority of these products (1) are not intended to be marketed directly to individual consumers; (2) are often packaged in large volume containers not normally found at the retail level of distribution, especially for OTC ophthalmic drug products; (3) may be stored for long periods of time under different environmental conditions; (4) may be marketed in different types of containers and closure systems; and (5) may be used with nonplumbed, plumbed, self-contained emergency eyewash, or shower equipment/stations, etc. The agency is not aware of all of the various labeling formats and labeling statements or the formulations of all the various eyewash products that are offered for emergency first aid ophthalmic use.

The agency is also aware that a number of these products are initially used without medical supervision like other OTC drug products. The agency believes these products could be regulated under the existing monograph for OTC ophthalmic drug products.

The agency is also aware that ophthalmic irrigating solutions are used by medical personnel for irrigating the eye(s) following diagnostic procedures and for postoperative irrigation. The agency believes that professional labeling for such uses of these products could be addressed in the existing monograph for OTC ophthalmic drug products.

Accordingly, FDA invites the submission of data, published and unpublished, and any other information pertinent to all active ingredients in eyewash drug products used for emergency first aid treatment of chemical burns of the eyes. These data and information will facilitate the agency's review and aid in its determination as to whether these OTC drugs for human use are generally recognized as safe and effective and not misbranded under their recommended conditions of use, and will provide all interested persons an opportunity to present for consideration the best data and information available to support the stated claims for these products. Any relevant data and information on eyewash ingredients that may have been submitted to earlier rulemakings should be resubmitted to facilitate the agency's review of this class of drug products. Even though the final monograph for OTC ophthalmic drug products (21 CFR Part 349) became effective on March 6, 1989, any data submitted pursuant to this call-for-data notice will be reviewed and addressed as part of the agency's ongoing review of all OTC drug products. If appropriate, as determined by the agency's review of any submitted data, the agency will proposed to amend the final monogram for OTC ophthalmic drug products to include eyewashes for emergency first aid treatment of chemical burns of the eye(s) and eye irrigating solutions for use following diagnostic procedures and for postoperative irrigation.

Under the agency's general regulatory policy governing the marketing of OTC drug products that do not have an approved new drug application (NDA) during the pendency of the OTC drug review, OTC drug products may be permitted to be marketed without the risk of regulatory action provided the following conditions are met:

(1) The product or similarly formulated and labeled products were marketed as OTC drugs at the inception of the OTC drug review on May 11, 1972, a date that was later extended to on or before December 4, 1975. (See 21 CFR 330.13.)

(2) Such product does not constitute a hazard to health.

(3) The product formulation is not regarded to be a prescription drug within the meaning of section 503(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)).

(4) It is an OTC drug and does not bear claims for serious disease conditions that require the attention and supervision of a licensed practitioner.

Emergency first aid eyewash products and eye irrigating solutions that do not meet the above criteria may not be marketed OTC pending evaluation of these products for the treatment of chemical burns and for irrigation of the eye(s) unless the product is the subject of an approved NDA.

It should be noted that, in the past, in order for a product to be eligible for the OTC drug review, the product or similarly formulated and labeled products had to be marketed as OTC drugs at the inception of the OTC drug review (May 11, 1972), a date that was later extended to on or before December 4, 1975. In addition, prescription drug products were eligible for the review, but they had to continue to be marketed on a prescription basis while data were being evaluated to ascertain whether the ingredient or combination of ingredients in the product had become generally recognized as safe and effective for OTC use.

The agency emphasizes that this current review is not intended to apply to new chemical entities that have not previously been marketed for OTC use regardless of the claims. Data on such products should be submitted to the agency for evaluation in a new drug application pursuant to 21 CFR part 314. Manufacturers should include any information that would establish that their product is not subject to action under the general regulatory policy described above as part of the data and information submitted in response to this call-for-data. If such information does not exist or is found to be inadequate, such products are at risk of regulatory action being instituted by the agency during the course of this review. To be considered in this review, eight copies of the data and information must be submitted, preferably bound, indexed, and on standard size paper (approximately 8½ by 11 inches). The agency suggests that all submissions be in the format described in 21 CFR 330.10(a)(2).

In accordance with § 330.10(a)(2), all submitted data on eyewash ingredients and claims for first aid relief of acid and alkali burns of the eye(s) will be handled as confidential by the agency. However, all the submitted information will be put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 30 days after publication of any proposed rules resulting from the review of the submitted material, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the act (21 U.S.C. 331(j)). At the time of publications, requests for confidentiality should be submitted to William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210) (address above).

Data and information should be addressed to the Division of OTC Drug Evaluation (address above). Data submitted after the closing date of June 4, 1990, will not be considered except by petition pursuant to § 10.30 (21 CFR 10.30).

As noted above, some of these products are also labeled for use on the skin. The current call-for-data only applies to use of these products in the eyes. Use of these products on the skin will be addressed at a later date in a different OTC drug rulemaking.

Reference

(1) Comment No. AP, Docket No. 80N-0145, Dockets Management Branch.

Dated: November 23, 1989.

James S. Benson,

Acting Deputy Commissioner of Food and Drugs.

[FR Doc. 89-28316 Filed 12-4-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment and Instruction of Inmates; Contact With Media; Withdrawal of Proposed Rule

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule; withdrawal.

SUMMARY: By this document the Bureau of Prisons is withdrawing its proposed rule on Contact With the Media which

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was published in the **Federal Register** on November 28, 1989, in order to allow for further agency review.

DATE: This withdrawal is effective November 30, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is withdrawing its proposed rule on Contact With the Media which was published in the Federal Register on November 28, 1989 (54 FR 49052).

List of Subjects in 28 CFR Part 540

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), the proposed rule on Contact With the Media amending part 540 in subchapter C of 28 CFR, Chapter V published in the Federal Register of November 28, 1989 is withdrawn.

Clair A. Cripe,

Acting Director, Bureau of Prisons.

[FR Doc. 89–28385 Filed 11–30–89; 1:40 pm]

BILLING CODE 4410–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment to the Utah Coal Mining and Reclamation Act pertains to rulemaking authority and procedures; deadline for review and proposal of revision of rules; permit applications, permit findings issued to the applicant and other interested parties; civil penalties for violations; civil actions; dedicated credits, transfer of funds, and investment by State Treasurer; judicial review of rules and orders; and adjudicative procedures that supersede chapter 46b, title 63. The amendment is intended to clarify ambiguities, improve operational efficiency, and incorporate certain State initiatives.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 4, 1990. If requested, a public hearing on the proposed amendment will be held on December 30, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on December 20, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office:

Robert. H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Ste. 350, Salt Lake City, UT 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, at the address listed in "ADDRESSES" or Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.12, 944.15, 944.16, and 944.30.

II. Proposed Amendment

During the ongoing oversight of the Utah program, OSM discovered revisions to the Utah Coal Mining and Reclamation Act that OSM had not previously reviewed and approved. OSM notified Utah by letter dated October 19, 1989, that any changes to Utah's Act that had not been submitted to OSM for approval must be submitted as a State program amendment (administrative record No. UT–536).

By letter dated November 13, 1989, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–540). The statutes that Utah proposes to amend are: 40–10–6.5, rulemaking authority and procedure; 40–10–6.6, deadline for review and proposal of revision of rules; 40–10–10, permit applications; 40–10–14, permit findings issued to the applicant and other interested parties; 40–10–20, civil penalty for violations; 40–10–21, civil actions; 40–10–25, dedicated credits, transfer of funds, and investment by state treasurer; 40–10–30, judicial review of rules and orders; and 40–10–31, adjudicative procedures that supersede chapter 46b, title 63.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on December 20, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish.to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES."A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 27, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–28353 Filed 12–04–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58a

[DoD Directive 6485.aa]

Human Immunodeficiency Virus (HIV–1)

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: This part establishes the policy promulgate by the August 8, 1988 Deputy Secretary of Defense memorandum on HIV–1/AIDS, as well as several DoD Instructions issued by the Assistant Secretary of Defense (Health Affairs) and the Assistant Secretary of Defense (Force Management and Personnel). The part contains no major policy changes. It denies eligibility for appointment or enlistment for military service to individuals with serologic evidence of HIV–1 infection; requires periodic screening of active duty and Reserve component military personnel for evidence of HIV–1 infection; refers active duty personnel with serologic evidence of HIV–1 infection for a medical evaluation of fitness for continued service in the same manner as personnel with other progressive illnesses; and denies eligibility for extended active duty (duty for a period of more than 30 days) to those Reserve component members with serologic evidence of HIV–1 infection. The Director also provides for the retirement or separation of Service members infected with HIV–1 who are determined to be unfit for further duty; ensures the safety of the blood supply through policies of the Armed Services Blood Program Office, the guidelines of the Food and Drug Administration, and the accreditation requirements of the American Association of Blood Banks; and, complies with statutory limitations on the use of the information obtained from a Service member during or as a result of an epidemiologic assessment interview and the results obtained from laboratory tests for HIV–1. Finally, it establishes an aggressive disease surveillance and health education program, and provides education and voluntary HIV–1 serologic screening for DoD health care beneficiaries. Mandatory testing of civilian is accomplished solely in compliance with host nation requirements.

DATES: Written comments on this proposed rule are due by January 4, 1990.

ADDRESSES: Comments should be sent to: Office of the Assistant Secretary of Defense (Health Affairs), The Pentagon, Room 3D336, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. M. Peterson, telephone (202) 695–7116.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 58a

Armed forces reserves, Human Immunodeficiency Virus, HIV–1, Military personnel.

PART 58a—HUMAN IMMUNODEFICIENCY VIRUS (HIV–1)

Sec.

58a.1 Purpose.
58a.2 Applicability and scope.
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Appendix F to Part 58a—HIV–1 Testing of DoD Civilian Employees.
Appendix G to Part 58a—Limitations on the Use of Information.
Appendix H to Part 58a—Personnel Notification and Epidemiological Investigation.
Appendix I to Part 58a—Retention and Separation.

Authority: 10 U.S.C. 113.

§ 58a.1 Purpose.

This part implements DoD policy on identification, surveillance, and administration of personnel infected with Human Immunodeficiency Virus (HIV–1) and cancels:

(a) Deputy Secretary of Defense memorandum, "Policy on Identification, Surveillance, and Administration, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)," August 4, 1988.

(b) Deputy Secretary of Defense memorandum, "Recommendations for Revision of DoD Human Immunodeficiency Virus (HIV) Policy," March 8, 1988.

(c) Assistant Secretary of Defense (Force Management and Personnel) memorandum, "Information and Guidance on HIV for DoD Civilians," January 22, 1988.

(d) Assistant Secretary of Defense (Health Affairs) memorandum, "Policy on Clinical Evaluation, Staging and Disease Coding of Military Personnel Infected with Human Immunodeficiency Virus (HIV)," September 11, 1987.

(e) Assistant Secretary of Defense (Health Affairs) memorandum, "The DoD HTLV–III Testing Program," December 5, 1985.

(f) Assistant Secretary of Defense (Health Affairs) memorandum, "Military Implementation of Public Health Service Provisional Recommendations Concerning Testing Blood and Plasma for Antibodies to HTLV–III," July 17, 1985.

§ 58a.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments (including their Reserve components), the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as

"DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 58a.3 Definitions.

(a) *Serologic evidence of HIV–1 infection.* A positive test by a Food and Drug Administration approved enzyme immunoassay (ELISA) serologic test that is confirmed by a positive immunoelectrophoresis test (Western blot).

(b) *HIV–1/AIDS Education Program.* Any combination of information, education, and behavior change strategies designed to facilitate behavioral alteration that will improve or protect health. Included are those activities intended to support or influence individuals in managing their own health through lifestyle decisions and self-care. Operationally, such programs include community, worksite, and clinical aspects utilizing appropriate public health education methodologies.

§ 58a.4 Policy.

It is DoD policy to:

(a) Deny eligibility for appointment or enlistment for military service to individuals with serologic evidence of HIV–1 infection.

(b) Periodically screen active duty and reserve component military personnel for serologic evidence of HIV–1 infection.

(c) Refer active duty personnel with serologic evidence of HIV–1 infection for a medical evaluation of fitness for continued service in the same manner as personnel with other progressive illnesses as specified in DoD Directive 1332.18.[1] Medical evaluation shall be conducted in accordance with the standard clinical protocol as described in Appendix A of this part. Individuals with serologic evidence of HIV–1 infection who are fit for duty shall not be separated solely on the basis of serologic evidence of HIV–1 infection.

(d) Deny eligibility for extended active duty (duty for a period of more than 30 days) to those Reserve component members with serologic evidence of HIV–1 infection (except under conditions of mobilization and upon the decision of the Secretary concerned). Reserve component members who are not on extended active duty or who are not on extended full time National Guard duty and who show serologic evidence of HIV–1 infection shall be transferred involuntarily to the Standby Reserve only if they cannot be utilized in the Selected Reserve.

(e) Retire or separate Service members infected with HIV–1 who are determined to be unfit for further duty as implemented in DoD Directive 1332.18.

(f) Ensure the safety of the blood supply through policies of the Armed Services Blood Program Office, the guidelines for the Food and Drug Administration, and the accreditation requirements of the American Association of Blood Banks.

(g) Comply with statutory limitations on the use of the information obtained from a Service member during or as a result of an epidemiologic assessment interview and the results obtained from laboratory tests for HIV–1, as provided in this part.

(h) Control transmission of HIV–1 through an aggressive disease surveillance and health education program.

(i) Provide education and voluntary HIV–1 serologic screening for DoD health care beneficiaries.

§ 58a.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)), in coordination with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), the General Counsel, Department of Defense (GC, DoD), and the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)), is responsible for establishing policies, procedures, and standards for the identification, surveillance, and administration of personnel infected with HIV–1. The ASD(HA) shall provide overall policy guidance and approval for the HIV–1/AIDS education and information efforts and shall establish the HIV–1/AIDS Information and Education Coordinating Committee.

(b) The *Secretaries of the Military Departments* shall establish Service policies, procedures, and standards for the identification, surveillance, education, and administration of personnel infected with HIV–1 based on the policies established by this part.

§ 58a.6 Procedures.

(a) Applicants for military service and, periodically, active duty and reserve component military personnel shall be screened for serologic evidence of HIV–1 infection. Testing and interpretation of results shall be in accordance with the procedures as described in Appendix B to this part.

(b) Applicants for enlisted service shall be screened at the Military Entrance Processing Stations (MEPS) or the initial point of entry to military service. Officer candidates shall be screened during their pre-appointment and/or pre-contracting physical examination.

(c) The administration of officer applicants who are ineligible for appointment due to serologic evidence of HIV–1 infection shall be in accordance with the procedures as described in Appendix C to this part.

(d) Applicants for Reserve components shall be screened during the normal entry physical examinations or in the pre-appointment programs established for officers. Those individuals with serologic evidence of HIV–1 infection who are required to meet accession medical fitness standards in order to enlist or be appointed are not eligible for military service with the Reserve components.

(e) Initial testing and periodic retesting of active duty and Reserve component personnel shall be accomplished in the priority listed in Appendix D of this part.

(f) Active duty personnel (including active Guard/Reserve shall receive a medical evaluation for serologic evidence of HIV–1 infection in accordance with the procedures in Appendices A, D, and E to this part.

(g) Each Military Service shall appoint an HIV–1/AIDS education program coordinator to serve as the focal point for all HIV–1/AIDS education program issues and to integrate the activities of the medical and personnel departments.

(h) An HIV–1/AIDS Information and Education Coordinating Committee shall be established to enhance communication among the Military Services, recommend joint policy and program actions, review program implementation, and recommend methodologies and procedures for program evaluation. The Committee shall be chaired by OASD(HA). Additional members shall include two representatives from the Office of the Assistant Secretary of Defense (Force Management and Personnel) and the HIV–1/AIDS education program coordinator from each Military Service.

(i) Each Military Service shall prepare a plan for the implementation of a comprehensive HIV–1/AIDS education program that includes specific objectives with measurable action steps. The plan shall address information, education, and behavior change strategies as described in Appendix D to this part.

(j) Mandatory screening of civilians (inlcuding DoD contractor personnel and their families) for serologic evidence of HIV–1 infection for sponsorship, employment, or assignment overseas is not authorized except pursuant to valid requirements imposed by the host country. Information and guidance on civilian issues is described in Appendix F to this part.

(k) The medical assessment of each exposure to and/or case of HIV–1 infection seen at a military medical treatment facility shall include an epidemological assessment of the potential transmission of HIV–1 to other persons at risk of infection, including sexual and other intimate contacts and family of the patient. The occurrence of HIV–1 infection or serologic evidence of HIV–1 infection shall not be used as a basis for any disciplinary action against an individual, except as described in Appendix G to this part.

(l) Each military medical service shall conduct on ongoing clinical evaluation of each active duty Service member with serologic evidence of HIV–1 infection at least annually (CD4 lymphocyte percentages or counts monitored at least every 6 months), provide appropriate preventive medicine counseling to all individual patients, and provide public health education materials to that medical services' beneficiary population. Each military medical service shall conduct longitudinal clinical evaluations of active duty Service members with serologic evidence of HIV–1 infection and prepare internal reports to facilitate timely review and reassessment of current policy guidelines.

(m) All military medical treatment organizations, inlcuding physicians, hospitals, medical clinics, other health care facilities, and clinical laboratories, shall notify promptly the cognizant military health authority whenever a diagnosis of HIV–1 infection is made or whenever laboratory examination of any specimen derived from the human body yields microscopic, cultural, immunologic, serologic, or other evidence indicative of infection with HIV–1 in accordance with Appendix H to this part.

(n) Each Military Department shall ensure that a mechanism is established to gather data on the epidemiology of HIV–1 infection of its members. Such epidemiological research shall be accomplished in a manner to assure appropriate protection of information given by the Service member regarding the means of transmission. The Department of the Army, as the lead agency for infectious disease research within the Department of Defense, shall budget for and fund DoD HIV–1 research efforts in accordance with guidance provided by the ASD(HA). The research program shall focus on the epidemiology and natural history of HIV–1 infections in military and military associated populations; on improving the methods for rapid diagnosis and patient evaluation; and, on studies of the immune response to HIV–1 infection, including the potential for increased risk in the military operational environment.

(o) Service members with serologic evidence of HIV–1 infection shall be assigned within the United States. Additionally, the Secretaries of the Military Departments may restrict such individuals to non-deployable units or positions for purposes of force readiness. Further, in order to protect the health and safety of Service members with serologic evidence of HIV–1 infection and of other Service members (and for no other reason), the Secretaries of the Military Departments may, on a case-by-case basis, limit assignment of HIV–1 infected individuals with respect to the nature and location of the duties performed in accordance with operational requirements.

(p) Active duty and Reserve component personnel with serologic evidence of HIV–1 infection shall be retained or separated in accordance with Appendix I to this part.

(q) The ASD(HA) may revise the standard clinical protocol (Appendix D to this part), as appropriate.

Appendix A to Part 58a—Standard Clinical Protocol

A. Medical Evaluation

1. A complete medical evaluation shall be accomplished at least annually on all individuals with serologic evidence of HIV–1 infection. This medical evaluation shall be documented in a manner consistent with the Medical Evaluation Board requirements of each Service.

2. The medical work-up shall, at a minimum, include the following:

a. History and physical examination, to include a neurological and neuropsychiatric evaluation.

b. CBC with differential and platelet count.

c. Total lymphocyte count, total T-cell count, and absolute CD4 and CD8 levels.

d. Chest x-ray (PA and lateral).

e. Skin tests (PPD, mumps, trichophyton, candida, tetanus).

f. Lumbar puncture with CSF differential, total protein, protein electrophoresis, and serology.

3. Because of high association of HIV–1 infection with other sexually transmitted diseases, the work-up shall include tests for syphilis, hepatitis (Anti-HAV, HBsAg, and Anti-HBc), urethritis, and cervicitis or proctitis.

4. The Surgeon General of each Military Department shall designate component military MTFs which are to be used to evaluate and treat individuals with serologic evidence of HIV–1 infection. The initial evaluation and annual re-evalution of Service members with serologic evidence of HIV–1 infection shall ordinarily be accomplished within the individual's respective Military Department. In the case of symptomatic individuals, subsequent hospitalizations or continuation of care following the initial evaluation may be at any designated MTF within DoD.

5. A frozen blood specimen on all HIV–1 positive individuals shall be maintained. The Military Departments shall maintain central serum banks.

6. The following shall be included in the minimum psychiatric evaluation screening of HIV–1 infected individuals at the initial and follow-up evaluations:

a. Questionnaire assessing sociodemographic and psychosocial risk factors relating to suicide, drug and alcohol abuse, and major mental illness.

b. Michigan Alcohol Screening Test (MAST).

c. Evaluation of the red blood cell mean corpuscular volume (MCV), which frequently increases in chronic alcohol use. Other factors, such as prescription drug effects and other medical illnesses, can elevate the MCV and should be identified when assessing the significance of this screening parameter.

d. Perceived Social Support Questionnaire.

e. SCL–90R. This should be evaluated in the context of non-psychiatric patient norms with a cutoff of greater than 2 standard deviations.

f. Standard mental health evaluation by a psychiatric nurse, psychiatric social worker, psychologist, trained non-psychiatric physician, or psychiatrist depending on local MTF resources.

g. Referral to Psychiatry Consultation Liaison if any of the above suggest a potential problem.

B. Armed Forces HIV–1 Disease Classification

1. All patients with either serologic evidence of HIV–1 infection or a positive virus isolation shall be classified according to the following scheme:

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

Class	HIV-1 antibody and/or virus isolation	Chronic lymphadenopathy	T-Helper cells/cubic millimeter	DHS	Thrush	O.I.
1	+	–	400	WNL		
2	+	+	400	WNL		
3	+	±	400	WNL		
4	+	±	400	P		
5	+	±	400	P/C	+	
6	+	±	400	P/C	+/–	+

2. Because of the natural variability of the number of T-helper cells, classification of HIV–1 infections shall not be based on a single T-helper cell determination. A second count at an interval of at least 1 month is required if the initial CD4 absolute number of less than 400 cells/cubic millimeter. The higher of the two counts shall be used for purposes of staging. All HIV–1 infected personnel shall have CD4 lymphocyte percentages or counts monitored at least every 6 months.

There are a small number of patients who cannot be readily classified using the above scheme. When a patient falls between two classes the lower class shall be selected, e.g., select class 4 if patient falls between class 4 and class 5.

4. Classes 1 through 6 require demonstration of the presence of HIV–1 anitbody to structural proteins and/or HIV–1 virus isolation.

5. An individual will occasionally be found with at least 400 T–helper cells per cubic millimeter who demonstrates cutaneous anergy. In staging, if the CD4 number is 400 cells/cubic millimeter or greater, the individual will be placed in class 2, except when thrush is present (see 6 below).

6. Class 5 is defined by the occurrence of either complete anergy (DHS=C) or partial anergy (DHS=P) with thrush.

7. The presence of symptoms is denoted by the addition of the letter B after the class, e.g., class 5B. Symptoms are defined as fever greater than 100.5 F for 3 weeks, unexplained weight loss of greater than 10 percent of body weight over 3 months, night sweats for at least 3 weeks, or chronic diarrhea for at least 1 month. Many of these patients can be documented to have an occult opportunistic infection by a careful and complete reevaluation.

8. Kaposi's sarcoma is designated by adding the letter K after the appropriate class, e.g., class 4K. Current evidence suggests that this neoplastic process is not dependent on sever T-helper cell depletion.

9. The occurrence of other neoplasms is designated by adding the letter N after the appropriate class, e.g., class 4N.

10. Central nervous system HIV–1 is neurologic disease (demyelinating disease, encephalopathy and/or neuropathy) secondary to infection of the nervous system by HIV–1 itself and is designated by adding CNS after the appropriate stage, e.g., class 4CNS. An abnormal CSF (e.g., pleocytosis, increased CSF protein, increased CSF IgG, or oligoclonal bands) does not alone warrant this designation.

11. HIV–1 antibody is defined as the presence of antibody to the structural proteins of HIV–1 as determined by Western blot techniques or supplemental tests. HIV–1 virus isolation also fulfills criteria to document infection.

12. Chronic lymphadenopathy is defined as two or more extrainguinal sites with lymph nodes greater than or equal to 1 centimeter in diameter that persist for more than 3 months.

13. T-helper cells are expressed as cells/cubic millimeter. Quantitative depletion must be persistent for at least 1 month to be placed in class 3 or a higher class.

14. Delayed hypersensitivity (DHS) is defined as within normal limits (WNL) when an intact cutaneous response to at least 2 of the following 4 test antigens is observed: tetanus, trichophyton, mumps, and candida. A partial (P) response is defined as an intact cutaneous response to only one of the above 4 antigens. The letter C represents complete cutaneous anergy to all 4 test antigens.

15. Thrush is defined as clinical oral candidiasis including a positive KOH preparation.

16. Opportunistic infection (O.I) is marked positive when infections such as pneumocystis carinii pneumonia, CNS or disseminated toxoplasmosis, chronic cryptosporidiosis, candida esophagitis, disseminated histoplasmosis, CNS or disseminated cryptococcosis, disseminated atypical mycobacterial disease, extrapulmonary tuberculosis, disseminated nocardiosis, disseminated CMV, or chronic mucocutaneous herpes simplex occur. Other disseminated or chronic nonself-limited infections with agents in which cellular immunity plays a privotal role in host defense (i.e., viral, parasitic, fungal, mycobacterial, certain other bacterial agents) should be anticipated to cause opportunistic disease in patients with classes 5 and 6. Kaposi's sarcoma does not in and of itself fulfill staging criteria for class 6.

C. Medical Record Coding of HIV–1 Infections

1. MTFs shall use both the 0400 and V codes from the ICD 9–CM. The V codes were developed to support the DoD classification system and remain unchanged. The appropriate V code shall be used whenever an individual is evaluated by an MTF. They can be used alone following the initial screening process or in conjunction with the 0400 codes. The following 0400 codes describe the site of infection and are compatible with civilian practice:

Code	Description
0420	HIV–1 Infection with Specified Infections
0421	HIV–1 Infection causing other Specified Infections
0422	HIV–1 Infection with Specified Malignant Neoplasms
0429	AIDS with or without other Conditions
0430	HIV–1 Infection causing Lymphadenopathy
0431	HIV–1 Infection causing Specified Disease of CNS
0432	HIV–1 Infection causing other Disorder of Immune Mechanism
0433	HIV–1 Infection causing other Specified Conditions
0439	AIDS-Related Complex with or without other Conditions
0440	HIV–1 Infections causing Specific Acute Infections
0449	HIV–1 Infection not otherwise Specified
V73.71	Human Immunosuppressive Virus-1 (HIV–1) Antibody Positive, class 1 of infection
V73.72	As above, class 2 of infection
V73.73	As above, class 3 of infection
V73.74	As above, class 4 of infection
V73.75	As above, class 5 of infection
V73.76	As above, class 6 of infection
V73.79	HIV–1 Antibody Positive, class of infection unspecified
V72.60	Serologic Test Only—HIV–1 Antibody Negative (ELISA or comparable screening test negative) N.B., A single positive ELISA which is negative and on repeat ELISA testing is negative
V72.61	Serologic Test Only—HIV–1 Antibody Unconfirmed (Repeatedly Reactive ELISA with negative WB)
V72.62	Serologic Test Only—HIV–1 Antibody Positive (WV or comparable antibody assay positive)
V72.69	Other Laboratory Examination

D. Disposition of Individuals Infected

1. The Armed Forces classification system shall not be used solely for determinations of disability/unfitness for duty. Fitness for duty

determinations shall be in accordance with DoD Directive 1332.18.

2. Service members infected with HIV–1 who show signs of immunological deficiency (e.g., persistent reduction in their level of T-helper lymphocytes below 400 cells/cubic millimeter for greater than 1 month without other demonstrable cause; reduced or absent delayed hypersensitively as measured by the standardized battery of skin tests; development of thrush; increased susceptibility to either common or uncommon infections; and, more severe episodes of infection than usually seen with a given organism) and/or a progressive clinical illness (e.g., development of neurological manifestations; Kaposi's sarcoma; other lymphoreticular malignancies; thrombocytopenia; diffuse, persistent lymphadenopathy; unexplained weight loss, diarrhea, anorexia, fever, malaise or fatigue) shall be referred to a Medical Evaluation Board regardless of the clinical state of the disease.

Appendix B to Part 58a—HIV–1 Testing and Interpretation of Results

A. Laboratories

1. In-house laboratories shall be used to conduct the initial test on clinical specimens collected outside the continental United States and on blood banking specimens.

2. Either in-house or contract laboratories shall be used to conduct the initial test on CONUS Service member specimens.

3. Confirmatory testing shall be limited to not more than two contract laboratories since the confirmatory test is subjective and tight controls must be maintained on both the procedures and interpretation of results.

4. After awarding a contract, final approval of the laboratory shall be contingent on an inspection by the appropriate Service. The laboratory must correctly identify 95 percent of the samples in an open panel (20 specimens) provided by a reference laboratory. The inspection shall focus on the laboratory facilities, standard operation procedure manuals, training of technicians, specimen handling procedures, reporting capabilities, and internal quality control procedures.

5. The Services shall conduct a semi-annual quality assurance inspection of each contract laboratory.

6. All specimens positive on the confirmatory test shall be stored frozen.

B. Specimen Collection and Handling

1. Blood samples shall be collected using appropriate vacutainer tubes.

2. At a minimum each sample shall have a label containing the individual's social security number and a laboratory assigned number.

3. Centrifuge samples and separate serum within 6 hours of collection.

4. Specimens shall be refrigerated prior to the initial test. If the initial test is not conducted within 7 days, or is unknown, the specimens shall be frozen.

5. Cold packs or dry ice shall be used to maintain specimens at refrigerated temperatures during transit between laboratories.

C. Initial Test

1. The initial test shall be conducted using an FDA approved ELISA test kit and results interpreted according to the manufacturer's package insert.

2. The laboratory shall establish an internal quality control program that includes a minimum total of 10 percent quality control samples per batch (e.g., standards, negatives, positive controls, and blind samples).

3. All controls and blinds shall be 100 percent correct before the entire batch results are considered acceptable.

D. Confirmatory Test

1. Each laboratory preforming the Western blot (WB) test shall conduct the test using a scientifically acceptable procedure.

2. The laboratory shall validate its procedure using a protocol that establishes, at a minimum, the accuracy, precision, and reproducibility of the method.

3. The internal quality control program shall include a minimum total of 20 percent quality control samples (e.g., standards, negatives, positive controls, blind samples).

4. WB test results shall be interpreted as follows:

a. Positive when it exhibits at least two or three bands at p24, gp41, and gp120/160.

b. Negative when it exhibits no bands.

c. An indeterminate shall be resolved using supplemental tests of a different technology. The following scheme shall be used to report results when supplemental testing is conducted to resolve indeterminate WB results.

List test	Result					
First ELISA	–	+	+	+	+	+
2nd/3rd ELISA		–	+	+	+	+
Western blot	–	+	–/–	+/–	+/–	+/–
Supplemental				–	+	+/–
Laboratory Report	–	–	–	+	–	+

+ =positive
– =negative
+/– =indeterminate

E. Reference Laboratory and External Proficiency Testing

1. Each Military Department shall establish a reference laboratory to provide panels of specimens to its blood banks conducting ELISA testing, to its contract laboratories conducting Western blot testing, and to the reference laboratories of the other Services.

2. The open panels shall consist of 20 specimens containing approximately 50 percent negatives and 50 percent positives.

3. The panels shall be provided at least quarterly. Each laboratory shall report correctly 95 percent of the samples.

4. The Military Departments shall retain the responsibility to interpret all confirmatory results on specimens analyzed by contract laboratories.

5. The specific requirements for the external proficiency testing program (number of blind and open samples, frequency, criteria for acceptable performance, etc) shall depend on the workload of each laboratory doing confirmatory testing.

Appendix C to Part 58a—Administration of Officer Applicants

Administration of officer applicants who are ineligible for appointment due to serologic evidence of HIV–1 infection shall be in accordance with the following provisions:

1. Enlisted members who are candidates for appointment through Officer Candidate School (OCS) or Officer Training School (OTS) programs shall be disenrolled immediately from the program. If OCS/OTS is the individual's initial entry training, the individual shall be discharged. If the sole basis for discharge is serologic evidence of HIV–1 infection, an honorable or entry level discharge, as appropriate, shall be issued. A candidate who has completed initial entry training during the current period of service prior to entry into candidate status shall be administered in accordance with Service regulations.

2. Individuals in pre-appointment programs such as Reserve Officer Training Corps (ROTC) shall be disenrolled from the program. However, the Secretary of the Service concerned, or the designated representative, may delay disenrollment to the end of the academic term (i.e., semester, quarter, or similar period) in which serologic evidence of HIV–1 infection is confirmed. Disenrolled participants shall be permitted to retain any financial support through the end of the academic term in which the disenrollment is effected. Financial assistance received in these programs is not subject to recoupment if the sole basis for disenrollment is serologic evidence of HIV–1 infection.

3. Service academy cadets and midshipmen shall be separated from the respective Service academy and discharged. The Secretary of the Service concerned, or the designated representative, may delay separation to the end of the current academic year. A cadet or midshipman granted such a delay in the final academic year, who is otherwise qualified, may be graduated without commission and thereafter discharged. If the sole basis for discharge is serologic evidence of HIV–1 infection, an honorable discharge shall be issued.

4. Commissioned officers in DoD sponsored professional education programs leading to appointment in a professional military specialty (including but not limited to medical, dental, chaplain, and legal/judge advocate) shall be disenrolled from the program at the end of the academic term in which serologic evidence of HIV–1 infection is confirmed. Disenrolled officers shall be administered in accordance with Service regulations; except as specifically prohibited by statute, any additional service obligation incurred by participation in such programs shall be waived and financial assistance received in these programs shall not be subject to recoupment. Periods spent by such officers in these programs shall be applied fully toward satisfaction of any pre-existing service obligation.

Appendix D to Part 58a—Disease Surveillance and Health Education

A. General

Prevention of harm to personnel with serologic evidence of HIV–1 infection and control of transmission of HIV–1, a communicable disease, are dependent on an aggressive disease surveillance and health education program. Those persons whose behaviors put them and others at high risk of infection, followed by those who are infected, shall receive the highest priority for information, education, and behavior change programs.

B. Disease Surveillance

1. Periodic retesting of personnel shall be accomplished in the following priority order:

a. Military personnel serving in, or subject to deployment in short notice to, areas of the world with a high risk of endemic disease or with minimal existing medical capability.

b. Military personnel serving in, or pending assignment to, all other overseas permanent duty stations.

c. Military personnel serving in units subject to deployment overseas.

d. Other military personnel or units deemed appropriate by the respective Military Department, such as medical personnel involved in the care of HIV–1 infected patients, patients being treated for sexually transmitted diseases or presenting at sexually transmitted disease clinics, patients being treated for alcohol and drug abuse or admitted to alcohol and drug rehabilitation units, and patients at prenatal clinics.

e. All remaining military personnel in conjunction with routinely scheduled periodic physical examinations.

2. Active duty personnel (to include active Guard/Reserve) with serologic evidence of HIV–1 infection shall receive a medical evaluation to determine the status of their potential infection and the potential adverse consequences to the individual of serving in a particular geographic region. Documentation of the medical evaluation shall be equivalent to the medical board component of the Physical Evaluation Board process. The standard clinical protocol at Appendix A to this part shall be used to ensure consistent evaluation and classification of patients at all military medical treatment facilities. These individuals shall be counseled regarding the significance of a positive HIV–1 antibody test and referred to their private physicians for medical care and counseling.

3. The surveillance of military personnel for HIV–1 infection is being accomplished for force readiness reasons. It is also essential that all reasonable efforts be made to afford protection and education to our other health care beneficiaries on effective means to contain this disease.

4. For medical and public health purposes, an appropriate and vigorous HIV–1/AIDS education program and voluntary HIV–1 serologic screening program shall be offered to all beneficiaries of the military health care system in accordance with published recommendations of the U.S. Public Health Service and as indicated by standard medical practice. HIV–1 serologic screening shall be offered to beneficiaries presenting with sexually transmitted disease and at sexually transmitted disease clinics, with alcohol and drug abuse problems and at alcohol and drug rehabilitation units, and at prenatal clinics.

5. Beneficiaries who are concerned about whether they have been exposed to HIV–1 should consult with local DoD medical personnel. As is the procedure for other medical problems, such as, other sexually transmitted disease, cardiovascular disease, breast cancer, and hepatitis, the beneficiary may obtain an appointment and discuss his or her concerns directly with the physician. The appropriate supporting tests, including laboratory evaluation, shall be determined by the physician.

C. Health Education

Health education shall be accomplished within the following program framework:

ATTACHMENT TO APPENDIX D TO PART 58A—DOD HIV–1 AIDS INFORMATION AND EDUCATION PROGRAM FRAMEWORK

Goal	Verification	Assumptions
Reduction is occurrence of HIV–1 infection in military personnel and other DoD beneficiaries.	Statistics, as available resulting from testing done by Services.	All active duty tested initially and results available; all active duty tested periodically.
Objectives		
1. Provide information, education/behavior change programs on the prevention of HIV–1 infection and AIDS.	DoD survey measuring knowledge and attitudes about high risk behavior.	Information, education and behavior change programs promote behavioral risk reduction; DoD survey will continue.
	Identified programs targeting recruits at point of entry; commanders and supervisors; personnel overseas, drug and alcohol orientations, ROTC, and Service Academies.	Mass media resources including print, radio, and TV is an essential component of a comprehensive program.
2. Implement programs to provide information on the prevention of HIV–1 infection and AIDS to students in DoD schools.	Survey measuring knowledge and attitudes about HIV–1 infection and AIDS.	
	Curriculum includes the prevention of HIV–1 infection...	
3. Provide information, education, and motivation programs to those persons infected or whose behaviors put them and others at high risk of infection.	Annual Service-wide assessment of program availability, accessibility and utilization.	Requires strong involvement of medical, nursing, drug and alcohol, and dental personnel.
	Identified programs targeting patients in sexually transmitted disease clinics, drug and alcohol rehab programs, family planning clincis, and blood banks.	
4. Provide information and education programs for health care personnel on HIV–1 and AIDS, addressing the needs of patients and staff.	Evaluation by Services of the extent to which all appropriate health care providers are integrated in the prevention efforts.	Key to changing attitudes/behaviors is the provision of factual information from persons in whom the recipient has confidence.
	Assessment of knowledge and program implementation by physicians nurses, dentists, and other health care providers.	Health care providers have current information about the disease. Infection control training is OSHA requirements.
	Identified programs targeting health care personnel, drug and alcohol counselors, emergency response personnel (police, fire, security, EMS).	

Activities	Measure of accomplishment	Assumptions
Information, Education, and Behavior Change Programs and Resources Targeting—		
A. *Person to Person*		
—Persons infected or at increased risk (including family members).		
—Patients seen in sexually transmitted disease clinics, drug and alcohol rehab programs, and prenatal clinics, clinical laboratories and blood banks, family planning clinics, and other appropriate group clinics/classes.		
—Occupational health program patients particularly at-risk occupational groups.		
B. *Groups*		
—DoDDS teachers and students		
—Health Care Personnel		
—Commanders and Supervisors		
—Drug and Alcohol Counselors		
—Emergency Personnel: Police, fire, security, etc		
—Health Care Beneficiaries Overseas		
—Recruits at points of entry into the Services		
—Drug and alcohol orientations and Service treatment programs.		
—Chaplains		
—Parent, family, and youth support programs		
—ROTC and Service Academies		
—Family and community service centers, child care providers.		
C. *Mass Media*		
—Print media newspapers, journals, posters, printed under DoD sponsorship.		
—Radio and Television		

Appendix E to Part 58a—Procedure For Evaluating T-Helper Cell Count

A. Analytical Procedure

1. Each laboratory performing T-helper cell counts shall maintain a current and complete standard operating procedure manual. The absolute T-helper cell count is a product of the percentage of T-helper cells (defined as CD4 positive lymphocytes) and the absolute lymphocyte level. The percentage of CD4 positive lymphocytes is determined by immunophenotyping blood cells using flow cytometry instrumentation. The absolute lymphocyte count is determined using hematology instrumentation.

2. Flow cytometry instruments shall be equipped for two-color fluorochrome analysis with an electronic compensator to offset the spectral overlap of the most commonly used fluorochromes, fluorescein and pyhcoerythrin. Additionally, equipment shall have logarithmic scale capability with a minimum measured output of 3 decades and provide simultaneous 4 parameter analysis including right angle light scatter, forward light scatter, green fluorescence, and red fluorescence.

3. Flow cytometry analysis shall be capable of distinguishing between the following cell surface phenotypic expressions: CD2, CD3, CD4, CD8, CD14, CD45, and a B lymphocyte marker of either CD19 or CD20 specificity. All monoclonal antibody reagents shall be conjugated with either fluorescein isothiocyanate or phycoerythrin. Due to the ready availability of directly conjugated monoclonal reagents, no indirect staining procedures shall be used for the above lymphocyte markers. A monoclonal antibody that does not universally identify CD4 cells in all specimens shall not be used for the determination of CD4 lymphocytes. Only reagents with specificity to CD2, CD3, CD4, CD8, CD14, CD19, CD20, and CD45 are acceptable under this procedure.

4. Blood specimens for the absolute lymphocyte count and lymphcyte immunophenotype shall be drawn during the same venipuncture between 0600 and 0900 hours. The absolute lymphocyte count shall be performed on an ethylenediamine tetraacetate (EDTA) anticoagulated whole blood specimen within 4 hours of specimen collection. The absolute lymphocyte count shall be determined on an automated hematology instrument with a locally verified inter-run and intra-run coefficient of variation of less than 5 percent. The whole blood lysate procedure shall be used for low cytometry cell preparations. Flow cytometry specimens shall be stained and lysed within a time period which has been locally demonstrated to yield an overall cell viability greater than the 90 percent. Blood specimens shall be stained and lysed by a standard method which shall be detailed in the laboratory's standard operating procedure manual. All blood specimens for cell surface phenotyping shall be analyzed for nonspecific binding with vendor-matched, isotype-matched, and conjugate-matched control antibody reagents for each test antibody used. As this standard applies to lymphocyte immunophenotyping, lymphocyte populations shall be defined by those cells gated on forward and right angle light scatter that are at least 95 percent positive for CD45 (the brightest CD45 population which is specific for lymphocyte) and no more than 5 percent positive for CD14.

B. Internal Quality Control Program

1. Each laboratory shall maintain a comprehensive internal quality control program. On each day of operation, at a minimum, the following flow cytometry procedures or reagents shall be monitored:

a. Optical focusing and alignment of all lenses and light paths for forward angle light scatter, right angle light scatter, red fluorescence, and green fluorescence.

b. Fluorescent intensity beads, particles or cells with fluorescence in the range of biological samples.

c. Fluorescent compensation beads, particles or cells with fluorescence in the range of biological samples.

d. A human blood control sample.

2. Each laboratory shall establish tolerance limits for each of the above procedures or reagents. Appropriate corrective action shall be taken and documented when any quality control reagent exceeds established tolerance limits. Routine maintenance and function verification checks shall be accomplished in a timely fashion. The laboratory director shall review corrective and quality control records regularly.

C. External Quality Control Program

The Army is responsible for establishing and operating an external quality control program to evaluate the results reported by the flow cytometry laboratories. The external quality control program shall include a hematology survey to monitor the performance of the absolute lymphocyte count and a flow cytometry survey to monitor the performance of each immunophenotyping procedure.

D. Recording and Reporting Data

The laboratory director shall review and verify the reported results. The laboratory report shall contain data from which absolute and relative values may be calculated for each lymphocyte subpopulation along with locally derived normal ranges inclusive of the fifth and ninety-fifth percentiles. The laboratory shall maintain permanent files of reports, internal and external quality control records, and instrument maintenance and performance verification checks.

E. Personnel Qualifications

1. The importance of accurate flow cytometry determinations requires that all personnel involved with the flow cytometry instrumentation be properly trained.

2. The director of the flow cytometry laboratory shall hold a doctoral degree in a biologic science or be a physician, and shall possess experience in immunology or cell biology.

3. A supervisor, if applicable, shall hold a bachelor's degree in a biological science and have at least 2 years experience in flow cytometry.

F. Safety

All laboratories shall comply with the biosafety level 2 standards established by the Centers for Disease Control. All procedures having the potential to create infectious aerosols shall be conducted within the confines of a Class II biological safety cabinet. Although certain specimen processing procedures may inactivate infectious agents, all materials shall be treated as infectious throughout all procedures. All material generated in the processing and evaluation of blood specimens shall be decontaminated and disposed of according to established hazardous waste disposal policies.

Appendix F to Part 58a—HIV–1 Testing of DoD Civilian Employees

A. Screening

1. Mandatory screening of DoD civilian employees for serologic evidence of HIV–1 infection is not authorized except pursuant to specific, valid requirements imposed by host countries where DoD civilian employees may be assigned to perform their official duties.

2. Voluntary testing, periodic retesting, and recording of test results are authorized for DoD employees, who, in the performance of their official duties, are exposed to the blood or body fluids of an individual infected with HIV–1, in accordance with the provisions of DoD 6055.5–M. Generally, such employees hold positions in health care occupations or in other positions that may involve the administration of emergency medical care.

B. Personnel Disposition

The Department of Defense endorses the information and guidance issued by the Office of Personnel Management (OPM) to facilitate the proper handling of personnel situations where HIV–1/AIDS is a factor as listed in Federal Personnel Manual (FPM) System Bulletin 793–42. The OPM guidance recognizes that:

1. The kind of nonsexual person-to-person contact that occurs among workers and clients in the workplace does not pose a risk for transmission of HIV–1.

2. HIV–1 infected employees shall be allowed to continue working as long as they are able to maintain acceptable performance and do not pose a safety or health threat to themselves or others in the workplace. In all cases, the employee's right to privacy shall be carefully observed.

3. In cases where HIV–1 infection results in medical conditions which impair the employee's health and ability to perform safely and effectively, the employing activity shall treat the HIV–1 infected employee in the same manner as those who suffer from other serious illnesses. Employees with AIDS-related conditions shall be accommodated in the same manner that other medical conditions warrant.

4. Applicants for employment may not be denied employment solely on the basis of HIV–1 infection, and current employees may not be denied consideration for promotions, transfers, reassignment, or similar actions (including overseas assignment), except as in subsection B.3. of this Appendix.

5. Information and training shall be provided. The scope and content of training shall be appropriate to the setting and the audience. All supervisors, for example, shall have at least basic information about the guidelines and policies that apply to HIV–1/AIDS in the workplace. Such information may be communicated as a part of basic supervisory training or through the distribution of printed material. More comprehensive training may be necessary to respond to specific employee concerns. Training materials may be obtained through local health organizations, military health care facilities, and the Office of Personnel Management.

Appendix G to Part 58a—Limitations on the Use of Information

A. Limitations of Results

1. Results obtained from laboratory tests performed under this program shall not be used as the sole basis for separation of a Service member, but may be used to support a separation based upon physical disability or as specifically authorized by this part.

2. Laboratory test results confirming the serologic evidence of HIV–1 infection shall not be used as an independent basis for any disciplinary or adverse administrative action. However, such results may be used for other purposes, including, but not limited to:

a. In a separation under the accession testing program.

b. In a voluntary separation for the convenience of the government.

c. In any other administrative separation action authorized by DoD policy.

d. In any other manner consistent with law or regulation (e.g., the Federal or Military Rules or Evidence or the rules of evidence of a state), including to establish the HIV–1 seropositively of a Service member:

(1) Who disregards the preventive medicine counseling or the prevention medicine order, or both, in an administration or disciplinary action based on such disregard of disobedience.

(2) As an element in any permissible administrative or disciplinary action, or in any criminal prosecution (e.g., as an element of proof of an offense charged under the Uniform Code Military Justice or under the code of a state or the United States).

(3) As a proper ancillary matter in an administrative or disciplinary action, or in any criminal prosecution (e.g., as a matter in aggravation in a court-martial in which the HIV–1 positive Service member is convicted of an act of rape committed after being informed that he is HIV–1 positive).

B. Limitations on the Use of Information Obtained in the Epidemiological Assessment Interview

Information obtained from a Service member during or as a result of an epidemiologic assessment interview shall not be used against the Service member in a court martial; nonjudicial punishment; involuntary seperation (other than for medical reasons); administrative or punitive reduction in grade: denial of promotion; an unfavorable entry in a personnel record; a bar to reenlistment; or any other action considered by the Secretary of the Service concerned to be an adverse personnel action.

1. The above limitations do not apply to the introduction of evidence for impeachment purposes in any proceeding in which the evidence of drug abuse or relevant sexual activity (or lack thereof) has been first introduced by the Service member or to disciplinary or other action based on independently derive evidence.

2. The above limitations do not apply to, on a case-by-case basis, nonadverse personnel actions, such as reassignment; disqualification (temporary or permanent) from a personnel reliability program; denial, suspension, or revocation of a security clearance; suspension or termination of access to classified information; and removal (tempoarary or permanent) from flight status or other duties requiring a high degree of stability or alertness, including explosive ordnance disposal or deep-sea diving.

C. General

Except as authorized by this part, if any such personnel actions are taken because of or are supported by serologic evidence of HIV–1 infection or information as described in section A., of this Appendix, no unfavorable entry shall be placed in a personnel record in connection with such actions. Recording a personnel action is not itself an unfavorable entry in a personnel record. Additionally, information that reflects that an individual has serologic or other evidence of infection with HIV–1 is not an unfavorable entry in a personnel record.

Appendix H to Part 58a—Personnel Notification and Epidemiological Investigation

A. Personnel Notification

1. Upon notification by a medical health authority of an individual with serologic or other laboratory or clinical evidence of HIV–1 infection, the cognizant military health authority shall undertake preventive medicine intervention including counseling of the individual and others at risk of infection, such as his or her sexual contacts (who are military health care beneficiaries), regarding transmission of the virus. The cognizant military health authority will coordinate with military and civilian blood bank organizations to trace back possible exposure through blood transfusion or donation of infected blood and refer appropriate case-contact information to the appropriate military or civilian health authority.

2. All individuals with serologic evidence of HIV–1 infection who are military health care beneficiaries shall be counseled by a physician or designated health care provider regarding the significance of a positive antibody test. They shall be advised as to the mode of transmission of this virus, the appropriate precautions and personal hygiene measures required to minimize transmission through sexual activities and/or intimate contact with blood or blood products, and of the need to advise any past sexual partners of their infection. Women shall be advised of the risk of perinatal transmission during past, current and future pregnancies. The infected individuals shall be informed that they are ineligible to donate blood and shall be placed on a permanent donor deferral list.

3. Service members identified to be at risk shall be counseled and tested for serologic evidence of HIV–1 infection. Other DoD beneficiaries, such as retirees and family members, identified to be at risk and offered serologic testing, clinical evaluation, and counseling. The names of individuals identified to be at risk who are not eligible for military health care shall be provided to local civilian health authorities unless prohibited by the appropriate state or host nation civilian health authority. Anonymity of the HIV–1 index case shall be maintained unless reporting is required by civil authorities.

B. Epidemiological Investigation

1. Epidemiological investigation shall attempt to determine potential contacts of patients who have serologic or other laboratory or clinical evidence of HIV–1 investigation. The patient shall be informed of the importance of case-contact notification to interrupt disease transmission and shall be informed that contracts will be advised of their potential exposure to HIV–1. Individuals at risk of infection include sexual contacts (male and female); children born to infected mothers; recipients of blood or blood products, organs, tissues, or sperm; and users of contaminated intravenous drug paraphernalia. Those individuals determined to be at risk who are identified and who are eligible for health care in the military medical system shall be notified. Additionally, the Secretaries of the Military Departments shall provide for the notification, either through local public health authorities or by DoD health care professionals, of the spouses of Reserve component members found to be HIV–1 infected. Such notifications shall comply with the infividual's right to privacy. The Secretaries of the Military Departments shall designate all spouses (regardless of the Service affiliation of the HIV–1 infected reservists) who are notified under this provision to receive serologic testing and counseling on a voluntary basis from medical treatment facilities under the Secretaries' jurisdiction.

2. Communicable disease reporting of civil authorities shall be followed to the extent consistent with this part through liaison between the military public health autorities and the appropriate local, State, territorial, Federal, or host-nation health jurisdiction.

Appendix I to Part 58a—Retention and Separation

A. Retention

1. Service members with serologic evidence of HIV–1 infection shall be referred for a medical evaluation for documentation of fitness for continued service in the same manner as personnel with other progressive illnesses. Evaluation will be conducted in accordance with the standard clinical protocol as described in Appendix A to this part. Service members with serologic evidence of HIV–1 infection who are evaluated as fit for duty shall not be separated solely on the basis of serologic evidence of HIV–1 infection.

2. Reserve component members with serologic evidence of HIV–1 infection are ineligible for extended active duty except under conditions of mobilization. Reserve component members who are not on extended active duty or who are not on extended full time National Guard duty and how show serologic evidence of HIV–1 infection shall be transferred involuntarily to the Standby Reserve only if they cannot be utilized in the Selected Reserve.

B. Separation

1. Service members who are infected with HIV–1 and are determined to be physically unfit for further duty shall be retired or separated in accordance with the policies in DoD Directive 1332.18.

2. Service members with serological evidence of HIV–1 infection who are found not to have complied with lawfully ordered preventive medicine procedures for individual patients are subject to appropriate administrative and disciplinary action, which may include separation.

3. Separation of Service members with serologic evidence of HIV–1 infection under the plenary authority of the Secretary of the Military Department concerned, if requested by the individual, is permitted.

Dated: November 29, 1989.

L. M. Byrum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28334 Filed 12–4–89; 8:45 am]

BILLING CODE 3810–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

Assignment and Utilization of Space

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: On November 1, 1989 (54 FR 46206), a proposed regulation was published in the **Federal Register** which revised procedures concerning the assignment and utilization of space in Federal facilities under custody and control of GSA. As noted in the November 1, 1989, publication, some concern has been raised by agencies with regard to the appropriate share of telecommunications costs between GSA (PBS) and the user agencies. The purpose of this publication is to revise those portions of the regulation relating to telecommunications and clarify the relative responsibility of GSA and the agencies. The following sections of the proposed FPMR amendment have been revised: Section 101–17.101(g), Section 101–17.102(k), and Section 101–17.205.

DATES: Comments due by: Agencies comments on this revision will be included in the review of comments on the entire document and should be submitted on or before January 4, 1990.

ADDRESSES: Comments should be submitted to the General Services Administration, Public Buildings Service (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate (202–566–1025).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chose the alternative approach involving the least net cost to society.

List of subjects in 41 CFR part 101–17: Administrative practice and procedure, Federal buildings and facilities, Government property management.

Accordingly, It is proposed to amend 41 CFR chapter 101 as follows:

PART 101–17—[AMENDED]

1. The authority citation for part 101–17 as proposed at 54 FR 46207 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

2. Section 101–17.101 as proposed at 54 FR 46207 is amended by revising paragraph (g) to read as follows:

§ 101–107.101 Policies.

* * * * *

(g) The GSA move policy is implemented to require agencies to relinquish all or a portion of assigned space if this action is in the best interest of the Government and would not unreasonably interfere with the agency's performance of its mission.

(1) GSA will fund standard alterations and agencies will reimburse GSA for the cost of above-standard requirements. See § 101–17.205.

(2) For telecommunications relocations caused by physical relocation of organizations occupying space controlled by GSA, the organizations causing the relocation will financially reimburse the organization being relocated for the value of "like telecommunications service" that must be abandoned due to the relocation. "Like telecommunications service" is defined as the replacement value, as determined by a GSA telecommunications technical services contractor, for the service available at the old location. "Like telecommunications service" does not include any upgrades to the existing telecommunications service. Telecommunication relocation cost related to physical relocations at lease expiration or due to expansion will be borne by the organization relocating or expanding. Cost of agencies displaced by an expanding agency will be borne by the expanding agency. Cost for consolidations at lease expiration will be borne by the consolidating organization. GSA will bear "like telephone service" only for GSA directed moves, GSA initiated consolidations, or emergency relocations.

* * * * *

3. Section 101–17.102 as proposed at 54 FR 46208 is amended by revising paragraphs (k) thru (jj) and by adding a new paragraph (kk) to read as follows:

§ 101–17.102 Definition of terms.

* * * * *

(k) *GSA-directed move* means any relocation action which occurs as result of an emergency, a GSA initiated repair/alteration project, or GSA initiated consolidation. GSA will be responsible for paying standard alterations, replication of the existing above-standard alterations, moving costs and the cost of providing like telecommunication service for the relocated agency.

(l) *Initial space layout* means the specific placement of workstations, furniture and equipment for new space assignments. These initial services are provided by GSA at no cost to the agencies, upon agency request.

(m) *Inventory* means a summary, survey, or itemized list of the space, assets, or materials under the control of a Federal agency.

(n) *Joint-use space* means occupiable space, such as cafeterias, conference rooms, credit unions, snack bars, and certain wellness/physical fitness facilities and child care centers, which is available for common use by personnel of any Federal agency.

(o) *Measurement of space;*

(1) *Gross square footage* means all floor area (including all openings in floor slabs) measured to the outer surfaces of exterior or enclosing walls, and includes all floors, mezzanines, halls, vestibules, stairwells, service and equipment rooms, penthouses, enclosed passages and walks, finished usable space with sloping ceilings (such as attic space) having 5 feet or more headroom, and appended covered shipping or receiving platforms at truck or railroad car height. Also included in gross floor area, but calculated on one-half of actual floor area, are covered open porches, passages and walks, with appended uncovered receiving and shipping platforms at truck or railroad care height.

(2) *Net usable space* means the area to be leased for occupancy by personnel and/or equipment. It is determined by:

(i) Computing the inside gross area of the space by measuring from the normal inside finish of exterior walls, or the room side finish of fixed corridor and shaft walls, or the center of tenant separating partitions.

(ii) Making no deductions for the columns and projections enclosing the structural elements of the building.

(iii) Deducting from the gross area the following, including enclosing walls when applicable:

(A) Toilets and lounges
(B) Stairwells
(C) Elevators and escalator shafts
(D) Building equipment and service areas
(E) Entrance and elevator lobbies
(F) Stacks and shafts
(G) Fully enclosed convectors when the housing rests on the floor, each end abuts a column or wall, and the convector occupies at least 50 percent of the length of the exterior wall.

(3) *Occupiable area* means that portion of the gross area which is available for use by an occupant's personnel or furnishings, as well as space which is available jointly to the various occupants of the buildings, such as auditoriums, health units, and snack bars. Occupiable area includes that space available for an occupant's personnel and furnishings which is used to provide circulation, whether or not defined by ceiling high partitions. Occupiable area does not include that space in the building which is devoted to its operations and maintenance, including craft shops, gear rooms, and building supply storage and issue rooms. Occupiable area is computed by measuring from the occupant's side of ceiling-high corridor partitions or partitions enclosing mechanical, toilet, and/or custodial space to the inside finish of permanent exterior building walls or to the face of the convector if the convector occupies at least 50 percent of the length of the exterior wall. When computing occupiable area separated by partitions, measurements are taken from the center line of the partitions.

(p) *Non-Federal organizations* means organizations such as credit unions, concessions operated by the blind and handicapped, and organizations under the direct sponsorship of a Federal agency such as grantees and contractors.

(q) *Office support area* means all secondary/shared workstations, extraordinary circulation space, and those specific and discrete areas constructed as office space and used to meet mission needs outside the agency's requirements for housing personnel, such as public-oriented or centralized reception, hearing or meeting facilities, service, inspection, distribution, storage or processing activities. Such space is most cost-effectively collocated with normal office space. Illustrations are contained in § 101–17.6.

(r) *Office support area allowance* is the percentage of office space, over and above the primary office area requirement, allocated for office support functions.

(s) *Personnel* means the peak number of persons to be housed during a single 8-hour shift, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees and budgeted vacancies. Employees of other agencies and organizations who are housed in the space assignment are also included in the personnel total.

(t) *Primary office area* is the personnel-occupied area in which an activity's normal operational functions are performed.

(u) *Primary office area utilization rate* is an indicator of the efficiency with which the primay office area is used. It is calculated by dividing the total occupied primary office area square footage by the total number of people in that area.

(v) *Request for space* or "space requests" means a written document upon which an agency provides GSA with the information necessary to assign space. A request for space shall be submitted on Standard Form 81 and Standard Form 81–A, and the Space Requirements Questionnaire. (See § 101–17.4901–81 and 101–17.4901–81A, Standard forms.) The request shall, at a minimum, contain descriptions of the amount of space, personnel to be housed, geographic area, time period required and funding availability.

(w) *Secondary/shared workstations* are nondedicated workstations used more than 50 percent of the time by two or more persons occupying a space assignment during an 8-hour shift. They function in support of the occupancy agency's mission and are distinct from the primary personnel-occupied workstations.

(x) *Space* means space in buildings, and land incidental to the use thereof, which is under the custody and control of a Federal agency.

(y) *Space allocation standard* means an agreement between GSA and an agency, written in terms which permit nationwide application, used as a basis for establishing that agency's space requirements. These standards identify the specific amount of space an agency will be allocated, and establish exceptions to general guidelines for GSA and agency responsibility in initial tenant funding.

(z) *Space assigned by GSA* means space in buildings, and land incidental to its use, which is under the custody and control of GSA; space made available by the U.S. Postal Service; or space for which a permit for use has been issued to GSA by another agency.

(aa) *Space assignment* means an administrative action by GSA which authorizes the occupancy and use of space by a Federal agency or other eligible entity.

(bb) *Space inspection* means a reconnaissance-type evaluation of the manner in which assignments are being utilized to determine whether a utilization survey is warranted.

(cc) *Space planning* means the process of using recognized professional techniques of space programming, planning, layout and interior design to determine the best location and the most efficient configuration for agency facilities.

(dd) *Space requirements program* means the statement of an agency's space needs as expressed on Standard Form 81–A, Space Requirements Worksheet, Space Requirements Questionnaire and additional supporting documentation such as adjacency diagrams, and summarized on Standard Form 81, Request for Space. (See § 101–17.4901–81 and 101–71.4901–81A, Standard forms.)

(ee) *Space typicals* means examples of workspace and support space allocations based on functional analysis.

(ff) *Space utilization survey* means the process of employing recognized professional techniques to determine how efficiently an agency is utilizing its workspace, and to verify that space is being used in accordance with this regulation.

(gg) *Special purpose space* means work space which is or has been constructed and predominantly utilized for the special purpose of an agency and is not generally suitable for the use of other agencies. This includes, but is not limited to, schools, hospitals, mints, embassies, and consulates.

(hh) *Standard alterations (SA's)* are those alterations necessary to prepare an agency's space to meet a particular classification, i.e., office, storage, or special, and permit occupancy of the space. (See § 101–17.207).

(ii) *Unique agency space* means any general purpose space which either consists of more than 50 percent special-type space not likely to be needed by another agency, or space of any type located in an area where it would be impractical to house another agency. (See § 101–17.302(d).)

(jj) *Work space* means federally-controlled space in buildings and structures (permanent, semipermanent, or temporary) which provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it. It is further classified as "office space", "storage space", or "special space". (Also, see § 101–17.601, Space classifications and standard alterations.)

(1) *Office space* means space which provides an environment suitable in its present state for an office operation.

(2) *Storage space* means space generally consisting of concrete, wood block, or unfinished floors; bare block or brick interior walls; unfinished ceilings; and similar construction containing minimal lighting and heating. It includes attics, basements, sheds, parking structures and other unfinished building areas.

(3) *Special space* means space which has unique architectural/construction features, requires the installation of special equipment or requires varying sums to construct, maintain and/or operate as compared to office and storage space.

(kk) *Workstation* means a location within an office space assignment that provides a working area for one or more persons during a single 8-hour shift. Secondary or shared workstations; are part of office support area.

4. Section 101–17.205 as proposed at 54 FR 46212 is amended by revising paragraphs (b)(3), (c), and (d) and by adding a new paragraph (e) and concluding text at the end of the section to read as follows:

§ 101–17.205 Move policy.

* * * * *

(b) * * *

(3) When an expanding agency has a justifiable need for contiguous expansion space and has to displace a neighboring agency, the expanding agency shall pay for its own moving costs and the displaced agency's moving cost and replication of the existing above-standard alterations and like telecommunications service.

(c) *Consolidation.* It is Federal Government and GSA policy to continually review the opportunities for consolidating several locations into one location. GSA shall prepare an economic analysis that demonstrates the cost of consolidation. To the maximum extent practicable, agency consolidation shall be planned to coincide with lease expiration in order to keep costs to a minimum and reduce adverse impacts on agencies. When an agency consolidation is GSA-directed, GSA will pay for standard alterations, existing above-standard alterations, moving costs and like telecommunications service.

(d) *Emergency relocation.* An emergency relocation results from an extraordinary event such as a fire, natural disaster, or immediate threat to the health and safety of occupants of the space which renders the current space unusable and requires that it be vacated. In these cases, it is necessary to act swiftly and expeditiously to react to the emergency. This may require obtaining approvals and funding authorizations from OMB and Congress. It is best to have a central coordinator for such a task and GSA is suited for this role. GSA will be responsible for paying standard alterations, existing above-standard alterations, moving costs and like telecommunications service for emergency relocations.

(e) *Repair and alteration relocations.* When an agency activity is displaced by

construction activities in their assigned space resulting from a GSA repair and alteration project, GSA will be responsible for funding standard alterations, replication of existing above-standard alterations, moving costs and like telecommunications service.

A summary of relocation situations and identification of the responsible party (GSA or agency) is as follows:

Move situations	Standard alterations	Existing above standard alterations	Moving costs	Telecommunications
I. Lease Expiration	GSA	Agency	GSA	Agency.
II. Agency Expansion:				
1. Avail Contiguous	GSA	Agency	GSA	Agency.
2. Unavail Contiguous	GSA	Agency	GSA	Agency.
3. Split Assignment	GSA	Agency	GSA	Agency.
4. Displaces an agency				
A. Expanding Agency	GSA	ExpAgc	ExpAgc	ExpAgc.
B. Displaced Agency	GSA	ExpAgc	ExpAgc	ExpAgc.
III. Consolidations:				
Agency Initiated	GSA	Agency	GSA	Agency.
GSA Initiated	GSA	GSA	GSA	GSA.
IV. Emergency	GSA	GSA	GSA	GSA.
V. Repair/Alterations	GSA	GSA	GSA	GSA.

NOTE: Agency shall be responsible for funding all above-standard alterations and telecommunications not currently provided in their existing location.

Dated: November 22, 1989.

W. Zoellner,

Commissioner, Public Buildings Service.

[FR Doc. 89-28325 Filed 12-4-89; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 89-24; Notice]

RIN 2127-AC77

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes three amendments of the Federal motor vehicle lighting standard to delete all references to "optical combinations" of lamps. The first would delete the prohibition against optical combinations of clearance lamps and identification lamps. The purpose of this action would be to eliminate a requirement deemed no longer necessary for safety.

The second proposed amendment would substitute clarifying phrases for the term "optically combined" and "combined" in sections S5.1.1.26, and S5.4. The third amendment would also substitute clarifying phrases in two SAE standards incorporated by reference in Standard No. 108 where the term "optically combined" appears.

This notice responds to a petition by the Truck Safety Equipment Institute (TSEI).

DATES: The comment closing date for the proposal is January 19, 1990. Effective date of the amendment would be 30 days after publication of the final rule in the **Federal Register**. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: From its very beginning, Motor Vehicle Safety Standard No. 108, in one version or another, has allowed two or more lamps, reflective devices, or items of associated equipment to be combined, if the requirements for each are met, provided that certain specified lamps were not "opticlaly combined" (*See, e.g.*, S3.3, S3.4.4.3, 23 CFR 255.21 revised as of January 1, 1968, Motor Vehicle Safety Standard No. 108). The current provisions are contained in S5.1.1.26 and S5.4.1. They are also contained in two SAE standards incorporated by reference.

Specifically, paragraph S5.4.1 permits lighting equipment to be "combined", provided that "no clearance lamp may be combined optically with any taillamp or identification lamp, and no high mounted stop lamp shall be combined with any other lamp or reflective device." Paragraph 4.2 of SAE Standard J586c *Stop Lamps*, August 1970, and paragraph 4.4 of SAE Standard J588e *Turn Signal Lamps*, September 1970, both state "When a stop signal is optically combined with the turn signal, the circuit shall be such that the stop signal cannot be turned on in the turn signal which is flashing". The second sentence of paragraph S5.1.1.26 of Standard No. 108, states that "A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing." The agency has never adopted a definition of "optically combined", but has over the years attempted to clarify the term by issuing a variety of interpretations.

On June 14, 1988, the Truck Safety Equipment Institute ("TSEI") petitioned the agency for rulemaking to amend Standard No. 108 to adopt the Society of Automotive Engineers' (SAE) definition of the term "combined optically" as set forth in SAE Information Report J387 OCT88 "Terminology—Motor Vehicle Lighting." Until the revision of SAE J387 in 1988, the term had been undefined, though appearing in the two SAE standards for many years, as well as Standard No. 108. TSEI had examined the opinion letters issued by NHTSA and concluded that they were inconsistent, alleging, for example, that one had "apparently been used to justify designs which have the clearance lamp bulb mounted in close proximity to the dual filament stop/tail lamp bulb * * * Both use a common lens area for the output of the tail and clearance functions. It does not appear that this is in keeping with either the spirit or the intent of FMVSS 108." The petitioner also mentioned that Canada had adopted, effective September 2, 1987, a definition of "combined optically" which is substantially similar to that of the SAE.

In considering TSEI's petition, NHTSA examined the existing prohibitions against lamp combinations. The agency has tentatively concluded that it is no longer necessary to forbid the "optical combination" of clearance lamps and identification lamps. The locational requirements of Standard No. 108 with respect to each are so dissimilar that they could not be met with an "optically combined" lamp. Under Table II of Standard No. 108, the three lamp cluster of identification lamps are to be mounted within a narrow space around the vertical centerline on vehicles whose overall width is 80 inches or more, while clearance lamps must be mounted to indicate the overall width of that vehicle. Further, under paragraph S5.1.1.4, when the rear identification lamps are mounted at the extreme height of the vehicle, the rear clearance lamps need not be located as close as practicable to the top of the vehicle. In the judgment of the agency, the likelihood of "optical combination" of identification and clearance lamps is infinitesimal.

The agency has also considered the prohibition against optically combining taillamps and clearance lamps. These lamps serve similar functions, namely the indication of the width and presence of the vehicle. Section S5.3.1.4 allows clearance lamps to be mounted at a location other than as close to the top of the vehicle as practicable if the identification lamps are mounted at the extreme height of the vehicle. The agency believes that the presence of both of these lamps provide a measure of desirable redundancy in marking the width and presence of a large vehicle, notwithstanding their different minimum intensity values. The agency continues to be concerned about the conspicuity of wide vehicles, and thus believes that the intent of the existing requirement should be preserved. The agency is proposing an amendment of S5.4 that would prohibit a taillamp from sharing a light source, lens, or lamp body with a clearance lamp. This, in essence, is the same prohibition but expressed in clearer language. The agency also wishes to clarify its existing prohibition against combining the center highmounted stop lamp with other lighting devices, by proposing that the center lamp not share a light source, lens, or lamp body with any other lamp or reflector.

In reviewing paragraph S5.1.1.26, containing the other direct reference to "optically combined", the agency wishes to distinguish a lamp that performs two functions (stop, turn signal) with a single filament from one that performs these two functions with more than one filament. Accordingly it is proposing a revision of that paragraph to delete the term "optically combined" and replace it with language to clarify that a light source that performs a stop function but not a turn signal function shall provide that function regardless of whether any turn signal is flashing.

Finally, with reference to the identically worded sentence in the two SAE standards, NHTSA proposes to delete the phrase "when the stop signal is optically combined with the turn signal" and replace it with "when a light source performs both stop and turn signal functions". This would be accomplished by adding language to paragraph S5.1.1.26. Removal of the term "optically combined" from Standard No. 108 will therefore cure the ambiguities that have existed, and constitute a grant of TSEI's petition.

Because the amendments would clarify existing requirements, and remove existing restrictions, it is proposed that the amendments become effective 30 days after their publication in the **Federal Register**. However, the agency wishes to receive comments as to whether a later effective date would be in the public interest.

Impacts

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation," nor significant under Department of Transportation regulatory policies and procedures. The primary effect of adopting the proposals would be to relieve a restriction and to clarify existing requirements. In proposing these amendments, NHTSA has tentatively concluded that the savings in costs to manufacturers would be minimal, as it knows of no existing lamp designs that would be affected. Therefore, the agency has not prepared a full regulatory evaluation.

NHTSA has analyzed this proposal for purposes of the National Environmental Policy Act. It is not anticipated that a rule based on the proposal would have a significant effect upon the environment because its effect is to clarify existing requirements, and to remove restrictions.

The agency has also considered the effects of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Furthermore, small organizations and governmental jurisdictions would not be significantly affected as the price of new vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism," and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. Please submit 10 copies of written comments and 2 copies of films, tapes, and other materials. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-

addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 571 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

In § 571.108 Paragraphs S5.1.1.26 and S5.4 would be revised to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.1.26(a) Paragraph 4.2 of SAE Standard J586c *Stop Lamps,* August 1970, and paragraph 4.4 of SAE Standard J588e *Turn Signal Lamps,* September 1970, do not apply.

(b) If a light source in a lamp performs both stop lamp and turn signal functions, it shall not begin to perform the stop lamp function when it is performing its turn signal function.

(c) If a light source in a lamp performs only a stop lamp function, it shall perform its stop lamp function regardless of whether any turn signal is flashing.

(d) Note 6 of Table 1 in SAE Standard J588e *Turn Signal Lamps,* September 1970, does not apply.

* * * * *

S5.4 *Equipment combinations.* Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, except that a taillamp shall not share a light source, lens, or lamp body with a clearance lamp, and a center highmounted stop lamp shall not share a light source, lens, or lamp body with any other lamp or reflective device.

* * * * *

Issued on: November 29, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-28331 Filed 12-04-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 54, No. 232

Tuesday, December 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Public Law No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Thursday, December 14 and Friday, December 15, 1989 in the Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC. The meeting on December 14 will begin at 1 p.m. and end at approximately 5 p.m.; the meeting on December 15 will begin at 9 a.m. and end at approximately 12:15 p.m.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Federal Regulation of Biotechnology.
2. Agency Indexing of Adjudicatory Decisions.
3. Procedures for Resolving Federal Personnel Disputes.
4. Processing and Review of Visa Denials.
5. Improved Use of Medical Personnel in Social Security Disability Determinations.
6. Agency Administration of Failed or Failing Depository Institutions.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037, telephone (202) 254-7020.

Dated: November 30, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-28389 Filed 12-4-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 454]

Resolution and Order Approving With Restrictions, the Application of Greater Kansas City Foreign-Trade Zone, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, filed with the Foreign-Trade Zones Board (the Board) on October 21, 1988, requesting special-purpose subzone status for the small engine manufacturing plant of Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), located in Nodaway County, Missouri, adjacent the Kansas City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to certain conditions, approves the application subject to the following conditions:

1. With regard to all foreign merchandise admitted to the subzone for the manufacture of small industrial engines, KMM shall elect privileged foreign status (19 CFR 146.41) beginning two years from the date of subzone activation.

2. Prior to the expiration of the foregoing two-year time period, the Board shall conduct a review to determine whether KMM is adhering to the domestic sourcing plan stated in the application, and whether there is no significant evidence of harmful economic effects; and, a two-year extension of the original period shall be considered if a positive determination is made on both these factors.

3. KMM shall elect privileged foreign status on any foreign merchandise subject to antidumping and countervailing duty orders upon its admission to the subzone.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Kawasaki Small Engine Plant in Nodaway County, Missouri, Adjacent to the Kansas City Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 U.S.C. 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 15, has made application (filed October 21, 1988, FTZ Docket 3388, 53 FR 43912) in due and proper form to the Board for authority to establish a specal-purpose subzone at the small engine manufacturing plant (small industrial engines and engines for Kawasaki motorcycles, jetskis and all-terrain vehicles) of Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), located in Nodaway County, Missouri, adjacent to the Kansas City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest provided approval is given subject to the restrictions in the resolution accompanying this action;

Now therefore, in accordance with the application filed October 21, 1988, the Board hereby authorizes the establishment of a subzone at

Kawasaki's small engine plant in Nodaway County, Missouri, designated on the records of the Board as Foreign-Trade Subzone No. 15E, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the restrictions in the resolution accompanying this action, and also to the following expressed conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 27th day of November, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates.

Attest: John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 89-28347 Filed 12-4-89; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board; Approval for Expansion of Foreign-Trade Zone 70 Detroit, MI

[Order No. 453]

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 70, has applied to the Board for authority to expand its general-purpose zone at two sites in Detroit, Michigan, within the Detroit Customs port of entry;

Whereas, the application was accepted for filing on February 16, 1988, and notice inviting public comment was given in the **Federal Register** on February 29, 1988 (Docket 10–88, 53 FR 6020);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Detroit area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed February 16, 1988. The grant does not include authority for manufacturing operations, and the grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 27th day of November, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 89-28346 Filed 12-4-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-580-008]

Color Television Receivers From Korea; Preliminary Results of Antidumping Duty, Administrative Review

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners, a domestic interested party, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers from Korea. The review covers four manufacturers and/or exporters for the period April 1, 1986 through March 31, 1987, and one manufacturer for the period April 1, 1987 through March 31, 1988. The review also covers certain entries made during the period January 9, 1986 through March 31 1986. As a result of the review, the Department has preliminarily determined the dumping margins to range between 0.04 and 6.87 percent Interested parties are invited to comment on these preliminary results

EFFECTIVE DATE: December 5, 1989.

FOR FURTHER INFORMATION CONTACT: Edmond A. O'Neill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U S Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/ 5255.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 24975) the final results of its last administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). In April 1987, the petitioners, a domestic interested party, and certain respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the review on May 20, 1987 (52 FR 18937).

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et. seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise was classifiable under item numbers

864.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules [HTS] items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

The review covers four manufacturers and/or exporters for the period April 1, 1986 through March 31, 1987, and one manufacturer for the period April 1, 1987 through March 31, 1988.

On October 20, 1986, we determined that printed circuit boards (PCBs) and color picture tubes (CPTs) imported from Korea and subsequently assembled into color television receivers are included in the scope, and we instructed the Customs Service to suspend liquidation on all such entries made on or after January 9, 1986. Because we did not include sales of PCBs and CPTs entered between January 9 and March 31, 1986 in the third administrative review, we are covering those sales in this review.

United States Price

In calculating United States price, we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act of 1930. Purchase price and ESP were based on the packed f.o.b., c.i.f. or delivered prices to the first unrelated purchaser in the United States.

For sales of PCBs and CPTs subsequently assembled into complete color television receivers in the United States, in order to avoid application of antidumping duties to the value added in the United States, we used the U.S. price net of all costs associated with the U.S. assembly operation, including the value of all U.S. labor, materials, selling, general and administrative expenses, and allocated profit.

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, we preliminarily determine that purchase price is the most appropriate determinant of United States price because:

1. The merchandise in question was shipped directly from the manufacturers to the unrelated buyers, without being introduced into the inventory of the related selling agent;
2. Direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

For those sales to the first unrelated purchaser that took place after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Tariff Act.

We made deductions, where applicable, for foreign inland freight, Electronics Industry Association of Korea export fees, letter of credit and postage fees, ocean freight, marine insurance, U.S. and Korean brokerage and handling charges, Korean customs clearing fees, wharfage, export license fees, U.S. forwarding and handling charges, discounts, royalties, rebates, commissions to unrelated parties, warranty, advertising and sales promotion, after-sales warehousing, and the U.S. subsidiary's selling expenses. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used in merchandise exported to the United States. We accounted for taxes imposed in Korea, but rebated or not collected by reason of exportation of the merchandise to the United States, by multiplying the ex-factory price of the televisions sold in the United States by the Korean tax rates and adding the result to the U.S. price. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, third country price, or constructed value, as defined in section 773 of the Tariff Act. Home market prices were used where sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a reliable basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, forwarding charges, rebates, commissions, discounts, warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, differences in credit expenses, and packing. We also made adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences, where appropriate.

We disallowed a claim made by Gold Star for a level of trade adjustment because the information that the company provided did not demonstrate that the level of trade in the home market was different than that in the U.S. market. No other adjustments were claimed or allowed.

For Cosmos, we used third country sales as the basis of FMV because the company had no home market sales. The third countries were Panama, Chile, Taiwan, Canada, Mexico, Paraguay, Hong Kong, and Japan.

Petitioner alleged that Daewoo and Gold Star sold color televisions in the home market at prices below their costs of production. We considered the allegation sufficient to warrant a below-cost investigation. We found below-cost sales for both companies. However, because the below-cost sales constituted less than 10 percent of all the models we examined for both companies, we included all sales in our calculation of FMV.

We used constructed value for Gold Star, Samsung, and Quantronics where we could not match sales of such or similar merchandise between the U.S. market and the home market or third country market. We also used constructed value as the basis of FMV for U.S. sales of PCBs and CPTs subsequently assembled in the United States because there were no sales of PCBs and CPTs in the home market or third country markets. Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. Where the actual cost for general

expenses was below the statutory minimum of 10 percent of the cost of production and fabrication, we added the statutory minimum amount, in accordance with section 773(e) of the Act. Where the actual profit was less than the statutory minimum of eight percent of the sum of general expenses and cost, we added the statutory minimum. Where the actual amount of general expenses and profit were above the statutory minimum amounts, we added the actual amounts.

Preliminary Results of Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the dumping margins to be:

Manufacturer/exporter	Period	Margin (percent)
Cosmos Electronics Manufacturing Korea, Ltd	04/01/87 to 03/31/88	6.87
Daewoo Electronics Co., Ltd	04/01/86 to 03/31/87	2.76
Gold Star Co., Ltd	01/09/86 to 03/31/87	2.46
Quantronics Manufacturing Korea, Ltd	04/01/86 to 03/31/87	0.04
Samsung Electronics Co., Ltd	01/09/86 to 03/31/87	0.25

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as is convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after the submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of this Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all firms except Samsung and Quantronics. Since the cash deposit rate for Samsung and Quantronics is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1987 and who is unrelated to any reviewed firm, a cash deposit of 6.87 percent shall be required. These deposit requirements are effective for all shipments of Korean color television receivers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (to be codified at 19 CFR 353.22).

Dated: November 16, 1989.

Lisa B. Barry,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 28351 Filed 12-4-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of negative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On February 27, 1989, the Department of Commerce began an inquiry into the possible circumvention of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The anti-circumvention inquiry covered eight manufacturers of this product and their U.S. subsidiaries and, generally, the period June 1, 1987 through December 31, 1988.

We preliminarily determine that the manufacturers investigated are not circumventing the antidumping duty order on forklift trucks from Japan. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: December 5, 1989.

FOR FURTHER INFORMATION CONTACT: David Mason, Jr. or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 20882) the antidumping duty order on certain internal-combustion, industrial forklift trucks ("forklift trucks") from Japan. On September 23, 1988, the petitioners (the Hyster Corporation, the Independent Lift Truck Builders Union, the International Union-Allied Industrial Workers of America (AFL-CIO), the United Shop and Service Employees, and an Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama manufacturing facilities) alleged that the antidumping duty order on forklift trucks was being circumvented and requested that the Department investigate the matter.

The petitioners alleged that imports of forklift truck components and parts had risen dramatically after publication of the antidumping duty order, that imports of completed forklift trucks had declined, and that this was a clear indication of circumvention. Upon examination of the data submitted by petitioner and a review of import statistics, we determined that a substantial increase in imports of components occurred after the issuance of the antidumping duty order. Moreover, we determined that imports of completed forklift trucks subject to the order had declined.

On February 27, 1989, we presented anti-circumvention requests for information to the eight known forklift truck manufacturers: Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Toyota"); Toyo Umpanki; Nissan Motor Corporation Company, Ltd., Nissan Industrial Equipment Company and Barrett Industrial Trucks, Inc. ("Nissan"); Mitsubishi Heavy Industries and Mitsubishi Forklift America ("Mitsubishi"); Komatsu Forklift Company, Ltd. and Komatsu Forklift Manufacturing Company of U.S.A. ("Komatsu"); Yale Materials Handling Corporation and Sumitomo-Yale Company, Ltd. ("Sumitomo-Yale"); Kasagi Forklift Inc.; and Sanki Industrial Company.

Toyota, Toyo Umpanki, Kasagi Forklift Inc., and Sanki Industrial Company, Ltd. reported that they did not have U.S. manufacturing or assembly facilities during the period covered by the requests for information.

On April 21, 1989, we received responses to our anti-circumvention requests for information from Nissan, Mitsubishi, Komatsu, and Sumitomo-Yale. Subsequently, we requested and received supplementary information from each of these respondents.

Scope of the Antidumping Duty Order

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Products covered by the antidumping duty order are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. During the anti-circumvention period of inquiry, such merchandise was classified under Tariff Schedules of the United States Annotated ("TSUSA") items 692.4025, 692.4030, and 692.4070, and is currently classifiable under HTS item numbers 8427.20.00 and 8427.90.00. The products covered by the order are further described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Components parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Products not covered by the order are genuine used forklifts. Forklift trucks are considered used if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States.

Scope of the Anti-circumvention Inquiry

Products subject to the anti-circumvention inquiry are forklift truck components and parts used in the production of certain internal-combustion, industrial forklift trucks as defined above. Our calculations of value are based on data for the period June 1, 1987 through December 31, 1988. However, our examination of qualitative factors includes relevant events outside this period.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Tariff Act of 1930, as amended, ("the Tariff Act") provides that if:

(1) Merchandise of the same class or kind as that covered by an existing antidumping or countervailing duty order is being sold in the United States;

(2) Such merchandise sold in the United States is completed or assembled in the United States from parts or components which were produced in the country with respect to which the order or finding applies; and

(3) The difference between the value of the completed merchandise sold in the United States and the value of the imported parts or components from the country with respect to which the antidumping order or finding applies is small, the Department, after taking into consideration any advice which the U.S. International Trade Commission provides, may included those parts or components within the scope of that antidumping duty order.

In reaching a determination on whether to include parts or components within an order, section 781(a)(2) of the Tariff Act directs the Department to consider such factors as (1) the pattern of trade, (2) whether the manufacturer or exporter is related to the entity that assembled or completed the merchandise sold in the United States, and (3) whether imports of the parts of components from the country with respect to which the antidumping duty order or finding applies have increased after issuance of that order or finding.

While we have considered each of the three factors stipulated in the statute, we have not limited our analysis to those factors. Our review of the legislative history of this provision indicates that other factors may properly be considered before rendering an anti-circumvention determination. The report of the Committee on Finance, U.S. Senate states:

> (T)he Committee has not attempted to develop a precise meaning for the term "small" as used in these sections, principally in recognition that different cases present different factual situations * * *. While these subsections grant the Commerce Department substantial discretion in interpreting these measures so as to allow it the flexibility to apply the provisions in an appropriate manner, the Committee expects the Commerce Department to use this authority to combat diversion and circumvention of the antidumping and countervailing duty laws. S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)

The legislative history suggests that Congress intended the Department to make anti-circumvention determinations on a case-by-case basis. Our review of the legislative history also suggests that Congress intended that we examine the extent of the U.S. production process. (See for example, H.R. Rep. No. 40 at 134-35 in which the Committee cites the shipment of picture tubes and printed circuit boards for assembly into a completed television receiver or the importation of steel pipe which is subsequently threaded as examples of circumvention of existing antidumping orders. See also S. Rep. No. 71 at 101, in which the then current law is described as permitting firms subject to an order to evade the effect of the order by ". . . making slight changes in their method of production or shipment." Finally see H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. rec H2031 (daily ed., April 20, 1988) at H2035, which notes that "(T)he anti-circumvention provision is intended to cover efforts to circumvent an order by importing disassembled or unfinished merchandise for assembly in the United States.") Therefore, we have considered the nature of the processing performed in the United States, the level of respondents' U.S. investment at the U.S. facility, and the extend of respondents' U.S. production facilities.

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Preliminary Calculation of Difference in Value

We calculated the difference in value between the forklift trucks completed and sold in the United States and the value of the components used in the production of that merchandise which were produced in Japan. We determined that the differences in value ranged from 25% to 40%. (Since the precise figures are business proprietary, each of the stated percentages is approximated within a range of plus or minus 10%.)

Value of Completed Merchandise

We used the weighted-average, monthly, ex-factory selling price of the completed forklift trucks on a model-specific basis to represent that value of the forklift trucks. Where applicable, we deducted U.S. inland freight to derive the ex-factory price of the completed forklift truck.

Value of Japanese Components

We used the price from the respondents' related suppliers to represent the value of Japanese components. We used these prices because, on average, the prices from related suppliers exceeded the suppliers' cost of manufacture for each of the respondents. We included in our calculation of Japanese value all movement expenses that the respondents incurred on Japanese component purchases which were not included in the selling price for the Japanese components. Finally, we allocated general, selling, and administrative expenses ("GS&A") and profit of the U.S. facilities to the value of Japanese components using the ratio of the value of Japanese components to the sum of the value of Japanese components, third-country components, U.S. components, and U.S. assembly.

Value of Third-Country Components

We used the price from the respondents' unrelated third-country suppliers to represent the value of third-country components. We included in our calculation of third-country value all movement expenses that the respondents incurred on third-country component purchases which were not included in the selling price for third-country components. Finally, we allocated GS&A expenses and profit of the U.S. facilities to the value of third-country components using the ratio of the value of third-country components to the sum of the value of Japanese components, third-country components, U.S. components, and U.S. assembly.

Value of U.S. Components and U.S. Assembly

We used the price from respondents' unrelated U.S. suppliers to represent the value of U.S. components. We included in our calculation of U.S. value all movement expenses that the respondents incurred on U.S. component purchases which were not included in the selling price for U.S. components. U.S. assembly expenses included fabrication and overhead expenses incurred by the respondents in their U.S. assembly operations. In addition, the cost of U.S. labor for subassembly of Japanese parts and components was included in the U.S. value. Finally, we allocated GS&A and profit of the U.S. facilities to the value of U.S. components and U.S. assembly using the ratio of the value of U.S. components and U.S. assembly to the sum of the value of Japanese components, third-country components, U.S. components, and U.S. assembly.

Factors

As directed by section 781(a)(2) of the Tariff Act, in making our determination we considered the pattern of trade, whether the manufacturer or exporter is related to the entity that sold the completed forklift truck, and whether imports of forklift truck parts or components from Japan had increased and imports of forklift trucks has decreased, after issuance of the antidumping duty order.

The pattern of trade for the marketing of Japanese forklift trucks was the same as that for forklift trucks produced and assembled in the United States by the investigated firms. For instance, the distribution system for trucks completed from forklift truck components was the same as the distribution system for forklift trucks imported from Japan. Components are sourced globally in the forklift truck industry. Each of the respondents purchased components from Japanese, third-country, and U.S. sources, and then transformed these components into a finished forklift truck. (The valuation of these components was discussed in the "Preliminary Calculation of Difference in Value" section of this notice.)

Each manufacturer or exporter of forklift truck components was related to the entity that sold assembled or completed forklift trucks, and shipments of forklift truck components had increased and imports of forklift trucks had decreased since issuance of the antidumpting duty order.

These facts alone do not establish the extent of the assembly or completion operations in the United States. Thus, in determining the nature of the respondents' forklift truck operations in the United States, we examined additional factors such as the level of investment, and the degree of sophistication of respondents' U.S. production processes.

Our analysis of respondents' U.S. production operations has primarily focused upon the total amount of "value" that these facilities added in manufacturing forklift trucks.

Each of the four respondents made considerable component purchases from U.S. and other country suppliers and added value through the fabrication and assembly process. These purchases represent more than the purchase of mere raw material, but also include the procurement of assembly, product design, and labor. For example, the purchase of cut-to-shape steel plate from a U.S. supplier represents more than the purchase of raw steel, it also represents the purchase of the fabrication of that steel into a component designed to function in a completed forklift truck.

Our analysis of respondents' forklift truck manufacturing processes indicates that each of the respondents is performing substantial production operations in the United States. We based our analysis on a comparison of the U.S. manufacturing process as set forth in the ITC's Final Determination (USITC Publication 2082, May, 1988) and the respondents' description of their production processes. According to the ITC account, there are three distinct processes in the manufacturing of a completed forklift truck: (1) Fabrication of the frame, (2) fabrication of the mast, and (3) final assembly of the forklift truck.

We find that none of the respondents assembled forklift trucks wholly from a pre-assembled package of components or a series of "kits" manufactured in Japan. Moreover, none of respondents' operations constitute a simple assembly operation. All four respondents' U.S. facilities included comprehensive assembly operations. For example, each respondent attached the engine and transmission to the frame, fitted the drive and steering axles, and added the hydraulic system, the engine and steering controls. In addition, the respondents frequently added the upright, the counterweight, and any additional custom attachments. Thus, each respondent performed substantially all of the assembly functions outlined in the ITC determination.

In addition to these assembly operations, we observed that respondents performed a number of other production operations. For example, one respondent established several assembly stations for the subassembly of three major components and several minor components. Other respondents also subassembled several components.

Moreover, each respondent has begun important manufacturing functions in the United States. For example, one respondent fabricates four major components. That fabrication process involves burning, shearing, bending, sawing, drilling and welding of parts in order to construct these major components. Three respondents engaged in some U.S. frame production, and two respondents performed either some or all of their mast fabrication production in the United States. Such additional processes are not part of simple main assembly-line functions, and do not constitute a simple "snap-together" operation.

Additionally, the extent of respondents' U.S. production operations has generally expanded since respondents established their U.S. facilities. For example, one respondent began mast fabrication, while another commenced both mast and frame fabrication. One respondent, using robotic production techniques, now produces complete frames in the United States. Thus, respondents' operations have gone beyond the simple assembly operation contemplated by the statute. Respondents have clearly made more than a "slight change in their method of production or shipment" since, during the fair value investigation, essentially complete forklift trucks were imported.

We further note that all respondents made substantial investments in plant and equipment which is indicative of the magnitude of their U.S. operations. These investments represents a significant part of a *bona fide* effort to establish major production operations outside of Japan. We also note that each of the respondents has a production workforce that is comparable in size to a U.S. domestic forklift truck manufacturer. Moreover, the size of the U.S. workforce for each respondent in conjunction with their substantial U.S. investments is an additional indication of significant production activity.

In sum, we find that the level of production operations is too great to characterize these operations as completion or assembly operations established for the purpose of evading the antidumping duty order. Rather, respondents' current U.S. operations, their investment in these facilities, and the expanding nature of their operations represent the substantial establishment of major U.S. production operations.

Negative Preliminary Determination of Circumvention Inquiry

We preliminarily determine that no circumvention of the antidumping duty order is occurring within the meaning of section 781(a) of the Tariff Act, and that the difference between the value of forklifts sold in the United States and the value of Japanese components is not small for this industry. Observers should not construe the determination of "small" in this case to be necessarily synonymous with the determination of "small" that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make such determinations on a case-by-case basis.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final determination of the anti-circumvention inquiry, including the results of its analysis of any written or oral comments. If, consistent with section 781(e) of the Tariff Act, we refer this matter to the ITC, we will issue our final determination within 15 days of receiving advice from the ITC. If referral to the ITC is not necessary, we will issue our final determination within 60 days of publication of this negative preliminary determination.

This negative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. Section 1677j).

Dated: November 28, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28349 Filed 12-4-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-810]

Initiation of Countervailing Duty Investigation; Plastic Tubing Corrugators From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of plastic tubing corrugators (PTCs), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of PTCs from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before January 31, 1990.

EFFECTIVE DATE: December 5, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 and (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On November 7, 1989, we received a petition in proper form from Cullom Machine Tool & Die, Inc. of Cleveland, Tennessee. This petition is filed on behalf of the U.S. industry producing PTCs. In compliance with the filing requirements of section 355.12 of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.12), the petition alleges that producers and exporters of PTCs in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section

771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on PTCs from Canada and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian manufacturers, producers, or exporters of PTCs, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition filed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before January 31, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is plastic tubing corrugators (PTCs) which is defined as all machines and apparatus therefor (including mold sets, dies, and perforators, but excluding separately imported and/or free-standing extrusion machines) designed to manufacture continuous lengths of corrugated plastic tubing whether such machines and apparatus are imported as part of the systems or separately. These goods are described for tariff classification purposes as blow molding machines and vacuum molding machines and other thermoforming machines, all the foregoing used for working rubber or plastics or for the manufacture of products from these materials. PTCs are currently provided for under the following HTS subheadings: 8477.30.00.00 and 8477.40.00.00.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Canada and the provincial government of Ontario which allegedly confer subsidies on manufacturers, producers, or exporters of PTCs. We are initiating an investigation of the following programs:

A. Federal Programs

1. Export Credit Financing
2. Certain Investment Tax Credits
3. Regional Development Incentive Program and Industrial and Regional Development Program
4. Loans under the Enterprise Development Program
5. Program for Export Market Development
6. Community-Based Industrial Adjustment Program Grants

B. Joint Federal/Provincial Programs

1. General Development Agreements
2. Economic and Regional Development Agreements

C. Provincial Programs

1. Ontario Development Corporation Export Support Loans, Other Loans and Loan Guarantees
2. Provision of Electricity by Ontario Hydro to Corma

As noted above, section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We are not initiating an investigation of the programs listed below because the supporting documentation required by section 702(b) was not provided in the petition.

1. Federal Expansion and Development/ Northern Ontario (FEDNOR)

Petitioner alleges that a countervailable benefit is conferred on Canadian manufacturers, producers, and exporters of PTCs in the form of loan insurance and grants covering up to 35 percent of eligible capital costs over a five-year period. Since petitioner has provided no evidence that Corma is eligible to receive benefits contingent upon location in northern Ontario, we are not initiating an investigation on this program.

2. Equity Infusions, Grants, Loans, and Loan Guarantees

Petitioner alleges that the federal government of Canada and the provincial government of Ontario have provided capital to Corma, Inc., on terms inconsistent with commercial considerations and that Corma, Inc., is unequityworthy. Petitioner has also alleged the government provision of grants, loans, and loan guarantees in addition to those specified above. Petitioner, however, has provided no evidence or documentation in support of these allegations. Since we deem such evidence necessary to initiate on the above allegations, we are not initiating an investigation on these allegations.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of PTCs from Canada. Petitioner claims that the products concerned benefit from export subsidies that are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and that imports have been massive over a relatively short period of time. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

In accordance with section 702(d) of the Act, we will notify the ITC and make available to it all non-privileged and non-proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by December 23, 1989, whether there is a reasonable indication that imports of PTCs materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: November 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28348 Filed 12-4-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Oak Beach Inn Corp. From Objection by New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On June 2, 1989, Oak Beach Inn Corporation (Appellant) filed with the Department of Commerce (Department) a notice of appeal under Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3(A), and implementing regulations, 15 CFR part 930, subpart H. The appeal arose from an objection by the New York Department of State (State) to the Appellant's consistency certification for an intake pipe for a fire sprinkler system, construction of bulkhead with fill, the maintenance of an existing deck, and the enclosure of a second deck. On August 25, 1989, the Department granted appellant a 30-day extension to file its brief in support of its consistency appeal. That brief was due on October 10, 1989. Appellant has failed to file a brief. Accordingly, the Department dismissed the appeal on October 31, 1989 for good cause pursuant to 15 CFR 930.128 (1988). That dismissal bars the Appellant from filing another appeal from the State's original objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: November 28, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89-28367 Filed 11-30-89; 8:45 am]

BILLING CODE 1612-CR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Hungary

November 29, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce 202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In addition to setting forth limits for the 1990 agreement year, the limits for Categories 434, 435 and 448 are being reduced for carryforward used in 1989.

A copy of the current bilateral textile agreement between the Governments of the United States and the Hungarian People's Republic is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Impelmentation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC [illegible]

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Republic of Hungary; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following restraint limits:

Category	12-Mon. restraint limit
300/301	1,274,141 kilograms.
313	12,448,014 square [illegible]
410	852,934 square meters.
433	8,186 dozen.
434	7,196 dozen.
435	12,749 dozen.
442	18,362 dozen.
443	86,288 numbers.
444	25,449 numbers.
445/446	42,040 dozen of which not more than 31,530 dozen shall be in Category 445 and not more than 31,530 dozen shall be in Category 446.
448	19,127 dozen.
604	784,485 kilograms.
645/646	101,236 dozen.
669-P [1]	625,050 kilograms.

[1] In Category 669-P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.000.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Hungary.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 89-28350 Filed 12-4-89; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule 549 and Conforming Rule Amendments Establishing a Large Order Execution Procedure

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new contract market rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined, pursuant to section 5a(12) of the Commodity Exchange Act ("Act"), to review the Chicago Mercantile Exchange's ("CME" or "Exchange") proposed Rule 549 and conforming rule amendments for approval. CME's proposed rule would establish a Large Order Execution ("LOX") procedure. Under the proposed rule, a member who received an order or orders for 300 or more Standard & Poor's 500 ("S&P 500") Stock Index futures contracts would be able to solicit interest off the Exchange floor in the opposite side of the trade prior to its execution in the pit. Through this solicitation, the member could establish an intended execution price and maximum quantity of the trade. Such action would require the written consent of the customer.

Once the member had solicited interest in the opposite side of a LOX, the Exchange would require a broker to execute the trade in the pit. During execution of the order, the broker would announce one side of the LOX to the floor and would fill all orders in the pit at the intended execution price or better. The broker then would cross the balance of that side with the unexposed side without any further bid or offer. The Commission has determined that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Act.

DATE: Comments must be received by January 4, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Shauna L. Turnbull, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

A. Background

By letter dated September 27, 1989, the CME submitted proposed Rule 549 and conforming rule amendments under Commission Regulation 1.41(c). The Commission determined to review the proposal for approval and informed the CME of its decision in a letter dated October 10, 1989.

In support of the proposal, the CME represented that the procedure would facilitate the execution of large trades and may lessen volatility. Specifically, the CME stated that this proposal could result in liquidity at a lower cost for customers with large orders and could bring in additional trading interest that may lessen price moves caused by such orders. The proposed rule is intended to establish a procedure that is comparable to the block facilitation rules followed at securities exchanges.

The CME represented that the establishment of a LOX procedure would benefit customers with large orders who do not want to reveal information about their orders prior to execution. Thus, the proposed procedure differs from sunshine trading, which is intended to benefit customers who are willing to reveal information about their orders prior to execution. Should the Commission approve the proposed rule, the Exchange would implement the LOX procedure as a six-month pilot program.

B. Proposed Large Order Execution Procedure

The proposed Exchange rule and conforming rule amendments would establish a procedure for the execution of an order or orders for 300 or more S&P 500 futures contracts. A member who received such an order would be allowed to solicit interest off the Exchange floor in the opposite side prior to its execution on the floor of the Exchange. The member also could solicit interest in the opposite side or orders for more than one customer that are aggregated for execution purposes (*i.e.*, bunched orders), provided that each order that was to be aggregated was for 300 or more contracts. The member could execute a LOX transaction only with the customer's prior written consent. This consent could be for a particular transaction or be a blanket consent that covered a six-month period.

During pre-trade negotiations, the member would arrange the "intended execution price" and maximum quantity of the LOX. There would be no restrictions on whom the member solicited for the opposite side, how the member should solicit such a person, or how many people the member would solicit. CME did note that a member could not solicit interest in a LOX unless he first received a customer's order. In addition, a solicited party could not approach others to determine their interest in the transaction. After negotiating the opposite side of the LOX, the member would give orders for both sides of the trade to one broker for execution on the floor.

A broker with LOX orders would be required to inform a designated Exchange official of his intention to execute such a trade. The Exchange has stated that this designated official would be a supervisor, manager, or market coordinator who would be located in the pulpit, which is a raised area in the S&P 500 pit. This Exchange official would make a duplicate of the orders and would have the broker's clerk initial the copies to verify their accuracy. In addition, the designated official would ensure that an announcement regarding the LOX was displayed on the Translux board, which is an electronic wall board that is visible to the S&P pit and surrounding order desks. Information displayed on the Translux board would include an announcement of the imminent LOX, an indication of whether it was a buy or sell transaction, the trader's acronym, the quantity, and the delivery month symbol. The Exchange official also would sound an instrument, which may be a whistle, to alert the pit that a LOX was about to be executed. The CME would not disseminate information about the LOX outside of the Exchange floor, although persons on the floor could inform others of the imminent LOX. There would not be a waiting period between the Exchange's announcement of the LOX procedure and its implementation.

In implementing the procedure, a broker would announce to the pit that he was executing a LOX to buy or sell and would state the quantity of the trade. He would not announce the intended execution price at that time. If the intended execution price was at or below the existing bid, the broker would announce the full quantity of the order to sell. Alternatively, if the intended execution price was at or above the existing offer, the broker would announce the full quantity of the order to buy. In cases where the intended execution price was between the existing bid and offer and both sides of the proposed LOX consisted exclusively of customers' orders, the broker either would bid the full quantity of the order to buy or offer the full quantity of the order to sell at his discretion. If, however, the intended execution price were between the existing bid and offer and only one side of the proposed LOX was composed entirely of customers' orders, then the broker would bid or offer the customers' side of the trade to the pit.

Following the initial announcement of a LOX to the pit, the broker would hit existing bids or accept offers until he reached the intended execution price. At that point, the broker would fill all bids or offers at that price. He then would announce his intention to "cross" the balance at that price and would effect the "cross" without any further announcement by matching the two sides of the LOX.

For example, if the current bid was 334.75 and current offer was 334.80 and the broker held a LOX order for 300 S&P 500 contracts with an intended execution price of 334.95, then the broker would announce to the pit the full quantity to buy. The broker then would accept offers and bid the remaining quantity of the order until he had reached the intended execution price. Assuming that the broker bought 200 S&P 500 contracts from the pit at prices that were better than or equal to the intended execution price, the broker then would cross the remaining 100 contracts at the intended execution price with a like quantity of the side that had not been exposed to the market.

According to the proposed rule, all such trades would be crossed in the presence of the designated Exchange official. The CME would require the broker who crossed the trade to identify the transaction clearly on his trading card and, immediately upon completion, to present the card to the Exchange official for verification, initialing, and time-stamping. The Exchange official then would enter information about the transaction on the Exchange's current cross trade form, which would show the commodity, date, price, quantity, delivery month, and broker.

The Exchange stated that it would assign a code to each trade involved in a LOX procedure which would appear in its trade register. This code would facilitate record surveillance of the trades by allowing their isolation. Record surveillance would include all normal trade practice review programs, including the Exchange's computerized Market Analysis, Trading Ahead of Customer's Orders, Direct/Indirect Trading Against, and Direct Trading Against with Collaborator reports. The CME also would monitor LOX transactions for frontrunning violations. The Exchange is in the process of reviewing its frontrunning interpretation to ensure that it addresses all relevant violations. With regard to floor surveillance, the Exchange would rely on the designated Exchange official to monitor LOX transactions on the floor.

II. Request for Comments

The Commission requests comments on any aspect of proposed CME Rule 549 and the conforming rule amendments that members of the public believe may raise issues under the Act or Commission regulations. In particular, the Commission invites comment on the following specific matters:

1. The need for a mechanism to increase market liquidity for large orders and facilitate the execution of large futures orders;

2. The ability of the LOX procedure to increase market liquidity for large orders and facilitate large order execution;

3. The consistency of the proposal with the price discovery function of the market;

4. The consistency of the proposal with sections 15, 4b(D), and 4c(a) of the Act and Commission Regulations 1.38 and 1.39;

5. The extent to which the LOX procedure presents any unique opportunities to manipulate prices;

6. The need to address the possibility that brokers solicited to take the other side of LOX orders may attempt to enter proprietary trades based on their knowledge of the impending LOX trade;

7. The adequacy of the provisions for notice to and consent from customers whose orders are executed through the LOX procedure;

8. The adequacy of special surveillance procedures contained in the proposal, including their ability to ensure that the LOX procedure does not facilitate violations of the Act and Commission regulations; and

9. The viability of any alternative means to achieve the purposes of the proposal.

Copies of the CME's submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views, or arguments on the proposed regulation should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 29, 1989.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-28355 Filed 12-4-89; 8:45 am]
BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Board of Visitors, Defense Intelligence College

ACTION: Renewal of the board of visitors, Defense Intelligence College.

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the Board of Visitors, Defense Intelligence College has been determined to be in the public interest and has been reviewed.

The Board of Visitors, Defense Intelligence College provides advice and recommendations to the Director, Defense Intelligence Agency and the Commandant, Defense Intelligence College on the full range of College activities, to include: the mission, policies, faculty, students, curricula, educational methods, research and administration. In its oversight role, the Board of Visitors is analogous to a board of trustees and is a mandatory requirement for continued accreditation.

Dated: November 29, 1989.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89-28336 Filed 12-4-89; 8:45 am]
BILLING CODE 3810-01-M

Establishment of the Executive Level Group for Defense Corporate Information Management

ACTION: Establishment of the executive level group for defense corporate information management.

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the Executive Level Group for Defense Corporate Information Management has been determined to be necessary and in the public interest, and is being established.

The Executive Level Group for Defense Corporate Information Management will provide advice

regarding: recommending an overall approach and action plan to enhance the availability and standardization of information in common functional areas through a Corporate Information Management Program for the Department of Defense; reviewing the procedures and products of functional groups, such as, inventory control, warehousing, civilian payroll, etc.), including information requirements and data formats; reviewing the processes and procedures used for overseeing the development of new information systems and software: and, recommending corrective actions, as deemed necessary.

The Executive Level Group will be composed of a well-balanced membership from both industry and government, with recognized experts in strategic information management and related areas of concern to the Department of Defense.

Dated: November 29, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-28335 Filed 12-4-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Acceptance of Group Application; U.S. Civilian Flight Crew and Aviation Ground Support Employees of American Airlines Who Served Overseas as a Result of American Airlines' Contract With the Air Transport Command During the Period December 14, 1941 Through January 4, 1946.

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "U.S. Civilian Flight Crew and Aviation Ground Support Employees Who Served Overseas as a Result of American Airlines' Contract with the Air Transport Command during the Period December 14, 1941, through January 4, 1946." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MRC), Washington, D.C. 20330-1000. Copies of documents or other materials submitted cannot be returned. For futher information, contact Lt Col Harris, (202) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-28366 Filed 12-4-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974, Amend Systems of Records Notice

AGENCY: Department of the Army, DOD.

ACTION: Amend three systems of records notices for public comment.

SUMMARY: The Department of the Army proposes to amend three systems of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The systems notices for the amended systems are set forth below.

DATES: These amendments will be effective January 4, 1990, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Mr. Robert Priest, Chief, Systems Management Branch, HQ, Army Information Systems Command (AS-OPS-MR), Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the Federal Register as follows: 50 FR 22090, May 29, 1985 (Compilation, changes follow)

51 FR 23576, Jun 30, 1986
51 FR 30900, Aug 29, 1986
51 FR 40479, Nov 7, 1986
51 FR 44361, Dec 9, 1986
52 FR 11847, Apr 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul 9, 1987
52 FR 32329, Aug 27, 1987
52 FR 43932, Nov 17, 1987
53 FR 12971, Apr 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun 8, 1988
53 FR 28247, Jul 27, 1988
53 FR 29249, Jul 27, 1988
53 FR 28430, Jul 28, 1988
53 FR 34576, Sep 7, 1988
53 FR 49586, Dec 8, 1988
53 FR 51580, Dec 22, 1988
54 FR 10034, Mar 9, 1989
54 FR 11790, Mar 22, 1989
54 FR 14835, Apr 13, 1989
54 FR 46965, Nov 8, 1989

These three systems of records were formally under the purview of the Department of the Navy. They are being transferred to the Department of the Army's inventory and the amendments reflect this transfer. The specific changes to the records systems being amended are set forth below, followed by the systems notices, as amended, published in their entirety. The amended notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 29, 1989.

SYSTEM NAME:

A1021.01NDU

DODCI Student Record System.

SYSTEM LOCATION:

Department of Defense Computer Institute, Washington Navy Yard, Washington, DC 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute. These are primarily DOD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DOD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, Social Security Number, home address, home telephone number, military rank or rate, civilian grade, branch of service, DOD agency or activity and course ID attended. Also, associated file of consolidated listing of students for each course offering arranged by DOD agency or activity and name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

Maintained by DODCI Student Operations Section to respond to individuals requesting official verification of attendance to a specific course; to respond to students, agency or activity requesting official record of training completed. Used to compile statistical data of student output, e.g., attendance by course, attendance by branch of service, agency or activity. Statistical data is not compiled by name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Army's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card file, paper copies forms, and hard disk/magnetic tape.

RETRIEVABILITY:

Name and course ID.

SAFEGUARDS:

Maintained in administrative office which is locked after normal working hours, accessible only to authorized office staff and director or delegate on demand.

RETENTION AND DISPOSAL:

Records are retained for five fiscal years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Chief, Student Operations Section DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374. Individual must provide course title and year of attendance.

RECORD ACCESS PROCEDURE:

Individuals seeking to access records about themselves contained in this system of records should address inquiries to the Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

CONTESTING RECORD PROCEDURES:

The Department of the Army rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 430-21-8; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enrollment and registration request for DoD management education and training program courses (DD Form 1556, SF 182, orders, letters/messages), and course listing of students reviewed by course manager and individual students.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1021.02NDU

SYSTEM NAME:

DODCI Student/Faculty/Senior Staff Biography System

SYSTEM LOCATION:

Department of Defense Computer Institute, Washington Navy Yard, Washington, DC 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All faculty members, senior staff members, and guest lecturers currently instructing or managing at the DODCI. All students who are attending or who have completed a course of instruction presented by the Department of Defense Computer Institute. These are primarily DoD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DoD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic summary forms individually submitted upon request by each DODCI faculty member, senior staff member, guest lecturer, or student. Students record consists of name, rank or rate, civilian grade, organization and division, office phone number, current and previous job titles and positions, number of months with present job title, major duties of present job, formal education completed, course ID, objectives for attending DODCI course, computer-related and other technical training and experience, information on usage of computers in present position, influence and authority student has over design of computer-based systems including security and privacy aspects, extent involved in planning and design of teleprocessing systems.

Faculty/senior staff record consists of name, rank or rate, current and previous job titles and positions, former major duties, formal education completed, computer-related and other technical training experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

The student biographical summaries are used by course managers and functional department heads to evaluate education level, computer related work experience, and general computer backgrouond of DODCI students. Establishes student qualifications to attend a requested course and if course objectives have satisfied personal objectives of students attending course. Statistical summarization of information contained in the system provides basis for modification and revision to course content. Serves as vehicle to place student into appropriate laboratory and seminar group in courses requiring such a breakout.

Information on faculty/senior staff members contained in the biographical summaries is provided to students as an attachment to their student notebooks. Records are used to identify faculty and senior staff members, areas of data processing and information management expertise for consultation purposes and as an expertise preamble to the next scheduled lecturer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Army's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer hard disk/magnetic tape.

RETRIEVABILITY:

By name for faculty/senior staff members. Course ID and name for students.

SAFEGUARDS:

Maintained in Student Operations Section which is locked after normal working hours, access controlled by system manager and accessible only to authorized faculty members, director or administration, and director or delegate on demand.

RETENTION AND DISPOSAL:

All completed individual student biographical summaries are retained in a file folder marked by course ID and course date. Individual student biographical summaries are retained by course for two fiscal years preceding the fiscal year in progress. All individual faculty and senior staff biographical summaries are retained in a master file

folder until no longer providing services to DODCI. Master file is reviewed periodically to maintain currency.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374. Individual must provide course title and year of attendance.

RECORD ACCESS PROCEDURE:

Individuals seeking to access records about themselves contained in this system of records should address inquiries to the Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

CONTESTING RECORD PROCEDURE:

The Department of the Army rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 430–21–8; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student biography forms are of DODCI origin and completed by each individual student. Forms are completed either the first day of the course or, in the case of certain specific courses, are mailed to the prospective student requesting return prior to commencement of the course.

Biographies are authorized by each faculty and senior staff member soon after arrival at DODCI. Guest lecturers are requested to voluntarily submit biographies for use in course notebooks. Content is never changed, but in some cases selectively reduced in length so as not to exceed one page. Format and content are generated solely by DODCI member and are subjected only to editorial review.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1021.03NDU

SYSTEM NAME:

DODCI Course Evaluation System.

SYSTEM LOCATION:

Department of Defense Computer Institute, Washington Navy Yard, Washington, DC 20374.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students who have completed a course of instruction presented by the Department of Defense Computer Institute. These are primarily DoD military and civilian personnel as regular students; personnel from other federal, state and local government agencies who have attended courses on a space available basis; military and civilian personnel from foreign governments who requested and were granted authority to attend courses; and personnel from private industry who are under direct contract to a DoD activity who sponsor their attendance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual student evaluation of entire course and random sampling of specific lecture presentations. Includes course ID; objectives for attending course; statement concerning realization of personal objectives, numerical or qualitative rating of overall course, lab sessions and/or specific lectures; list of strengths and weaknesses of course; list of lecture subjects of particular benefit or of little use to student; list of lecture subjects which should be expanded or reduced in coverage; and list of topics not covered in course but should be included. Comments concerning course content, sequence, lecture presentation, teaching techniques, audio visual aids, physical facilities and administrative support are solicited and recorded. Categories are posed as questions with ample space to encourage written response to student opinion in a structured but non-restrictive format. These Course Evaluation Forms also contain hard core factual information, i.e., course ID, course dates, student name, rank/rate/grade, branch of service, duty station or agency, and present job title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The system is used to evaluate course, lecture, teaching techniques and individual instructor effectiveness. It provides basis for modification and revision to course content and sequence and lecture content. It provides input to long-range plan for course update, additions and revisions. The evaluation of all attendees to a particular course are reviewed as a composite group by DODCI faculty members to determine problem areas, trends, and provides a continuous evaluation of course effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Army's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer hard disk/magnetic tape.

RETRIEVABILITY:

Course ID and student name.

SAFEGUARDS:

Maintained in Student Operations Section Office which is locked after normal working hours, access controlled by system manager and accessible only to authorized faculty members. Director of Administration and Director delegate on demand.

RETENTION AND DISPOSAL:

All completed individual evaluations of students attending a specific course are retained by course ID and course date. Individual student evaluation forms are retained by course for two fiscal years preceding the fiscal year in progress.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374. Individual must provide course title and year of attendance.

RECORD ACCESS PROCEDURE:

Individuals seeking to access records about themselves contained in this system of record should address inquiries to the Chief, Student Operations Section, DoD Computer Institute, Building 175, Washington Navy Yard, Washington, DC 20374.

CONTESTING RECORD PROCEDURE:

The Department of the Army rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 430–21–8; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student course evaluation forms are of DODCI origin and distributed in class and completed by each individual student.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–28337 Filed 12–4–89; 8:45 am]

BILLING CODE 3810–01

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements regarding Mistake in Bid.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtained verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 4,673; responses per respondent, *1;* total annual responses, *4,673;* hours per response, *.5;* and total response burden hours, *2,337.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0038, Mistake in Bid.

Dated: November 28, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28369 Filed 11–28–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Presolicitation Notice and Response.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response are used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents.

The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *5,900;* responses per respondent, *8;* total annual responses, *47,200;* hours per response, *.167;* and total response burden hours, *7,882.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response.

Dated: November 28, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28370 Filed 12–4–89; 8:45 am]

BILLING CODE 6820–JC

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89–1121–003, RP90–17–001]

Mississippi River Transmission Corp.; Filing

November 28, 1989.

Take notice that on November 20, 1989, Mississippi River Transmission Corporation (MRT) filed Substitute Thirty-Sixth Revised Sheet No. 4 and Alternate Substitute Thirty-Sixth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective December 1, 1989.

MRT states that these tariff sheets, which were previously filed on October 23, 1989, contained an error in the D–2 rate component of the Base Tariff Rate. As a result of the error, MRT states that the Demand Charge D–2 under Schedule CD–1 and the single part rates under

Rate Schedule SGS–1 and PI–1 have been overstated by approximately 1.2 cents. MRT requests that the Commission substitute the tariff sheets filed November 20, 1989, which reflects the correct Base Tariff Rates, in lieu of the two tariff sheets filed on October 23, 1989.

MRT states that a copy of this filing has been on all of its jurisdictional customers and state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28321 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–1–25–001 and TM90–2–25–001]

Mississippi River Transmission

November 28, 1989.

Take notice that on November 20, 1989, Mississippi River Transmission Corporation (MRT) filed revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

MRT states that the Thirty-Seventh Revised Sheet No. 4 and Alternate Thirty-Seventh Revised Sheet No. 4 filed therewith contained an error in the D–2 rate component of the Base Tariff Rate. MRT also states that the result of the error, Demand Charge D–2 under Rate Schedule CD–1 and the single part rates under Rate Schedule SGS–1 and PT–1 are overstated by approximately 1.2¢. MRT states that the reduction was approved by FERC Order dated September 18, 1989, but inadvertently not reflected in MRT's October 23, 1989 compliance filing in Docket No. CP89–1121, or in the October 30, 1989 filing with this proceeding.

MRT states that a copy of this filing with tariff sheets is being served to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinios and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before December 7, 1989. Protests with be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28317 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–1–25–002 and CP89–1121–004]

Mississippi River Transmission Corp.; Tariff Filing

November 28, 1989.

Take notice that on November 22, 1989, Mississippi River Transmission Corporation (MRT) submitted for filing the below listed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. These tariff sheets reflect a December 1, 1989 effective date.

Substitute Thirty-Seventh Revised Sheet No. 4

Substitute Alternate Thirty-Seventh Revised Sheet No. 4

MRT states that on October 30, 1989, it submitted its quarterly purchased gas cost adjustment (PGA) in the captioned proceedings. MRT later determined that Thirty-Seventh Revised Sheet No. 4 and Alternate Thirty-Seventh Revised Sheet No. 4 filed therewith were incorrect because they did not appropriately reflect an approximate 1.2¢ reduction in the D–2 rate component of the Base Tariff Rate of MRT's sale for resale rate schedules. MRT claims such reduction had been approved by Commission order dated September 18, 1989 in Docket No. CP89–1121, but inadvertently was not reflected as part of the October 30, 1989 PGA filing.

MRT requests waiver of the notice provisions of its tariff and the Commission's Regulations to permit the tariff sheets contained in the instant filing to be placed in effect December 1, 1989 in lieu of those previously submitted.

MRT states that copies of the filing have been served upon all of MRT's jurisdictional customers and state commissions, as well as on all parties reflected on the Commission's Official Service Lists in the above-captioned dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28318 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–3–37–000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

November 28, 1989.

Take notice that on November 22, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Thirty-Second Revised Sheet No. 10–A

Original Volume No. 1–A

Sixth Revised Sheet No. 202

Original Volume No. 2

Seventh Revised Sheet No. 2.2

Eighteenth Revised Sheet No. 2–B

Northwest states that the purpose of this filing is to restate its fuel reimbursement percentages consistent with the separate gathering service established pursuant to the Joint Offer of Settlement in Docket No. RP88–47 which was approved by Commission order dated October 19, 1989, and which became "final" on November 20, 1989.

Northwest requests waiver of the Commission's regulations to permit an effective date of December 1, 1989. A copy of this filing has been served on all parties of record in this docket and on all affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28319 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–55–002]

Questar Pipeline Co.; Rate Change

November 28, 1989.

Take notice that on November 22, 1989, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

Tariff sheet	Proposed effective date
First Revised Volume No. 1	
Second Revised Second Substitute Twenty-First Revised Sheet No. 12	June 1, 1989.
Second Revised Substitute Twenty-Second Revised Sheet No. 12	July 1, 1989.
Second Revised Second Substitute Twenty-Third Revised Sheet No. 12	Sept. 1, 1989.
Second Revised Second Substitute Twenty-Fourth Revised Sheet No. 12	Oct. 1, 1989.
Second Revised Twenty-Fifth Revised Sheet No. 12	Nov. 1, 1989.
First Revised Twenty-Sixth Revised Sheet No. 12	Dec. 1, 1989.
First Revised Twenty-Seventh Revised Sheet No. 12	Jan. 1, 1989.

Questar Pipeline states that the purpose of the filing is to comply with the Commission letter order dated November 7, 1989, on the captioned docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211, (1988)). All such protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28322 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA86–19–001]

System Energy Resources, Inc.; Filing

November 28, 1989.

Take notice that on November 22, 1989, System Energy Resources, Inc. tendered for filing its compliance refund report pursuant to the Commission's order issued on September 20, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28323 Filed 12–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP85–177–071, CP88–136–017, RP88–67–027]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 20, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective August 28, 1989
- Substitute Third Revised Sheet No. 485
- Substitute Third Revised Sheet No. 486
- Substitute Fifth Revised Sheet No. 489

Proposed to be Effective October 16, 1989
- Substitute Sixth Revised Sheet No. 484
- Substitute Fourth Revised Sheet No. 485
- Substitute Fourth Revised Sheet No. 486
- Substitute Third Revised Sheet No. 487
- Substitute Third Revised Sheet No. 488
- Substitute Sixth Revised Sheet No. 489

Proposed to be Effective November 1, 1989
- Substitute Seventh Revised Sheet No. 484
- Substitute Fourth Revised Sheet No. 488

Texas Eastern states that the purpose of this filing is to reflect the revisions to Texas Eastern's September 13, October 13, and October 31, 1989 tariff filings as required by the Commission's November 3, 1989 Order on Rehearing (November 3 Order) in Docket Nos. RP85–177–063, CP88–136–008, and RP88–67–014.

Texas Eastern states that Ordering Paragraph (C) of the November 3 Order requires Texas Eastern to lower Associated Natural Gas Company's (Associated) D–2 billing determinant to reflect the nomination level contained in its recently executed Rate Schedule CD–2 agreement. Sheet No. 484 proposed to be effective October 16, 1989 reflects such lower D–2 billing determinant. In addition, consistent with the November 3 Order Texas Eastern is also lowering the D–2 billing determinants for United Cities Gas Co. effective August 28, 1989 and for Allied Gas Company, *et al.*, the City of Cairo, Illinois, and the Borough of Chambersburg, Pa. effective October 16, 1989. These revisions are reflected on Sheet Nos. 484 and 488. These lower D–2 billing determinants are based on lower annual contract levels nominated new Rate Schedule CD–2 agreements that have been executed by these customers.

Texas Eastern is also correcting Equitrans, Inc.'s (Equitrans) D–2 levels as contained in the October 31, 1989 tariff filing in Docket No. RP90–30. Equitrans, in a motion filed on November 14, 1989, stated the proposed D–2 billing determinants contained in the October 31, 1989 filing for Equitrans should be 32,560,555 dekatherms. Texas Eastern agrees and Sheet No. 487 proposed to be effective October 16, 1989 reflects the D–2 billing determinant favored by Equitrans which is lower than the currently effective D–2, and is based on the Annual Contract Quantity contained in its new Rate Schedule CD–1 agreement.

This proposed effective dates of the above tariff sheets are as listed above.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28324 Filed 12-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-49-000]

Williston Basin Interstate Pipeline Co.; Gas Research Institute Funding Unit Adjustment Filing

November 28, 1989.

Take notice that on November 22, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1
First Revised Twentieth Revised Sheet No. 10
Original Volume No. 1-A
First Revised Fifteenth Revised Sheet No. 11
Twentieth Revised Sheet No. 12
Original Volume No. 1-B
First Revised Ninth Revised Sheet No. 10
First Revised Ninth Revised Sheet No. 11
Original Volume No. 2
Fifteenth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is January 1, 1990.

Williston Basin states that the instant filing reflects the inclusion of the Gas Research Institute funding unit of 1.26 cents per Dkt (1.30 cents per Mcf), as authorized by the Commission in its "Opinion Amending and Approving Gas Research Institute's 1990 Research Development and Demonstration Program and Related Five-year plan for 1990-1994," issued on October 10, 1989 in Docket No. RP89-187-000.

Any person desiring to be heard or to protest said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such petitions or protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28320 Filed 12-4-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-78-NG]

Carson Water Co.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 6, 1989, of an application filed by Carson Water Company (Carson) requesting blanket authorization to export from the United States to Mexico up to 4,000,000 Mcf of natural gas over a two-year period commencing with the date of first delivery. Carson intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported gas. Carson states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 4, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6560.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Carson, a wholly-owned subsidiary of Southwest Gas Corporation (Southwest) located in Las Vegas, Nevada, is a landholding and natural gas development company incorporated in the State of Nevada. Carson intends to export natural gas to Mexico for spot market sales, primarily to the Mexican local distribution company exports will be provided by producers in, but not limited to, Mexico and Texas, and transported in the United States to the Mexican border by El Paso Natural Gas Company (El Paso). Carson will arrange the proposed export sales through its marketer, Santa Fe Gas Marketing (Santa Fe), a division of Carson.

Carson states that all export sales will result from arms-length negotiations and that prices will be determined by market conditions. Carson further states that in addition to furthering DOE policy goals of enhancing cross-border competition in the marketplace, that the adequate supply of gas in the United States' coupled with the short-term nature of blanket export authority requested make it unlikely the export volumes would be needed domestically during the term of the authorization.

This export application will be reviewed under section 3 of the natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any point of exit on the international border where existing pipeline facilities are located.

Carson requests that an authorization be granted on an expedited basis. A decision on Carson's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Carson's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 28, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28383 Filed 12-4-89; 8:45 am]

BILLING CODE 6450-01-M

[FE DOCKET NO. 89-55-NG]

JMC Selkirk, Inc.; Application for Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy DOE gives notice of receipt on August 11, 1989, of an application filed by JMC Selkirk, Inc. (JMC Selkirk) for long-term authorization to import from Paramount Resources Ltd. (Paramount), up to a maximum daily quantity (MDQ) of 23,000 Mcf of Canadian natural gas to fuel the initial unit of a new cogeneration facility to be constructed at the site of the General Electric Company plastics facility in Selkirk, New York. JMC Selkirk requests authorization to import the gas beginning on an interruptible basis for a six-month testing period, and thereafter on a firm basis for 15 years commencing upon commercial operation. The 79-megawatt unit is expected to commence commercial operation in late 1991.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comment are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 4, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9622;

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: JMC Selkirk, a Delaware corporation with its principal place of business in Boston, Massachusetts, will develop, own and operate the cogeneration plant. Bechtel Power Corporation has been selected as the turn-key contractor to construct the initial unit. Niagara Mohawk Power Corporation (Niagara Mohawk) has agreed to purchase electricity under a power sales agreement that was approved by the New York Public Service Commission on March 30, 1987.

JMC Selkirk and Paramount have agreed upon the terms of a gas purchase contract that will be executed upon receipt and acceptance of all necessary regulatory authorizations. Firm deliveries of gas are to commence upon commercial operation of the initial unit after interruptible deliveries to provide gas for testing the initial unit. It is noted that a second, 250-megawatt unit, not encompassed by this application, is expected to commence commercial operation in late 1993.

The point of delivery would be the point of interconnection between the provincial pipeline systems and TransCanada PipeLines Limited (TransCanada) near Empress, Alberta.

JMC Selkirk would be responsible for downstream transportation costs via TransCanada, Iroquois Gas Transmission System (Iroquois) and Tennessee Gas Pipeline Company (Tennessee) to the plant site in Selkirk, New York. The initial 100 percent load factor rates to be charged by Iroquois and Tennessee are projected to be $.41 and $.2012 per MMBtu, respectively.

Both Iroquois (Docket No. CP89–634–000) and Tennessee (Docket No. CP89–629–000) have applied to the Fedreal Energy Regulatory Commission (FERC) for authority under section 7 of the NGA to construct facilities and to transport the gas.

The MDQ of 23,000 Mcf would be subject to reduction if the applicant takes less than 75 percent of the annual contract quantity (MDQ times the number of days in the contract year) and fails to make up the deficiency in the succeeding contract year. In addition, according to the application, JMC Selkirk would be required to pay Paramount an amount equal to the product of the deficiency times the applicable commodity rate, plus interest.

The price for firm sales at the Empress, Alberta, delivery point would be comprised of a monthly demand charge and a commodity charge for each MMBtu of gas delivered. The demand charge is equal to the average demand charge per MMBtu at 100 percent load factor for provincial pipeline deliveries to Empress, Alberta, and any monthly take-or-pay liabilities. The commodity charge would initially be equal to $1.60 (U.S.) per MMBtu, less the 100 percent load factor charge for provincial pipeline deliveries to Empress, Alberta. This base price would be subject to monthly adjustments based on changes in a pricing index comprised of the gas cost component of CNG Transmission Corporation's RQ rate schedule and the price of No. 6 fuel oil (Platt's Oilgram Price Report, spot cargoes, New York harbor). The fuel components of the pricing index would be weighted based on the production each fuel is utilized by Niagara Mohawk to produce electricity provided, however, that in no event will the gas component be less than one-third of the fuel index. Either party would be able to request renegotiation of the commodity price and method of adjustment at the end of any contract year. Absent agreement, there would be limited provision for arbitration. The express purpose of arbitration, according to the proposed contract, would be to produce net-back prices comparable to net-backs under other long-term contracts entered into by Alberta producers.

The price for interruptible sales would be a one-part price. It would consist of the sum of the commodity price for firm sales under the contract and either the per Mcf demand charge at 100 percent load factor for firm sales under the contract or the actual cost to Paramount of interruptible transportation.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because the volumes are needed by the proposed new cogeneration facility, the price of the gas is competitive, and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC is currently preparing an Environmental Impact Statement (EIS) in FERC Docket Nos. CP89–629–000 and CP89–634–000 on the impacts of constructing and operating the proposed pipeline facilities. The DOE is a cooperating agency in the EIS process and any natural gas import authorization issued concerning the volumes to be imported would be conditioned upon completion of that process. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of JMC Selkirk's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 28, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–28384 Filed 12–4–89; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Involvement Notification for Subsurface Oil Production Project; Caddo-Pine Island Field, Caddo, Parish, LA

AGENCY: Office of Fossil Energy, DOD.

ACTION: Notice of floodplain involvement.

SUMMARY: The Department of Energy (DOE) proposes to fund operations by the Improved Gravity Drainage (IGD) Company of Houston of a subsurface oil production demonstration project in the Caddo-Pine Island Field, Caddo Parish, Louisiana, under a cost-shared grant. This project is a research and development program action to develop and demonstrate an underground approach to secure access to a shallow, low pressure oil reservoir via shafts and entries, and allowing the oil to drain by gravity into high angle and horizontal wells into the mine located in strata underneath the oil reservoir. Proposed surface-disturbing activities include three evaluation wells, two mine shafts and associated operations, flowlines, a saltwater injection well, and access roads. All surface activities and oil and gas waste disposal will take place outside of upland wetlands areas which are in the general vicinity of the proposed action. Floodplains involved include Clyde Place Canal-Black Bayou. In accordance with DOE regulations for compliance with flooplain/wetland environmental review requirements (10 CFR part 10220), DOE will prepare a floodplain/wetland assessment which will be incorporated into an environmental assessment for this proposed action. Maps and further information are available from DOE at the address shown below.

DATE: December 20, 1989.

ADDRESS: Address comments to the Director, U.S. Department of Energy, Metairie Site Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

Issued at Washington, DC, November 28, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89–28382 Filed 12–4–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3693–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATE: Comments must be submitted on or before January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry. (IRC #0662.03; OMB #2060–0012). This is a reinstatement of a previously approved collection.

Abstract: Owners or operators of plants producing any organic chemical must keep records of VOC's emission from process equipment leaks at various intervals. They must also submit reports of these leaks and VOC's emission to EPA. EPA uses these data to determine industry's compliance with the standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9.42 hours per response for reporting, and 80 hours annually per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners/operators of synthetic organic chemical manufacturing industry.

Estimated No. of Respondents: 1,162.

Estimated Total Annual Burden on Respondents: 123,826 hours.

Frequency of collection: Semi-annually.

Title: NSPS for Metallic Mineral Processing Plants (Subpart LL). (ICR #0982.03; OMB #2060–0016). This is a reinstatement of a previously approved collection.

Abstract: Owners/operators must notify EPA of construction, modifications, startups, shutdowns, date and results of initial performance test. Owners/operators of facilities using any wet scrubbing device must install, calibrate, and maintain continuous monitoring devices to measure pressure drop and flow rate. Weekly records of the pressure drop and flow rate must be maintained, and semi-annual reports must be submitted when pressure drop and flow rate differ from the most recent performance test. EPA uses these data to determine compliance with the standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 34 hours per response, with two responses per respondent, and 62.5 annual hours per recordkeepers. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and complete and review the collection of information.

Respondents: Owners/operators of metallic mineral processing plants.

Estimated No. of Respondents. 11.

Estimated Total Annual Burden on Respondents: 1,496 hours.

Frequency of Collection: Semi-annually.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Sandy Farmer,
U.S. Environmental Protection Agency,
Information Policy Branch,
401 M Street, SW.,
Washington, DC 20460

and

Nicolas Garcia,
Office of Management and Budget,
Office of Information and Regulatory Affairs,
726 Jackson Place, NW.,
Washington, DC 20530.

Dated: November 27, 1989.

Richard Westlund,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89–28381 Filed 12–4–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.
Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).
Form Number: FFIEC 031, 032, 033, 034.
OMB Number: 3064–0052.
Expiration Date of Current OMB Clearance: August 31, 1990.
Frequency of Response: Quarterly.
Respondents: Insured state nonmember commercial and savings banks.
Number of Respondents: 8,053.
Number of Responses Per Respondent: 4.
Total Annual Responses: 32,212.
Average Number of Hours Per Response: 21.94.
Total Annual Burden Hours: 706,624.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FIDC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Steet, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before January 4, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the FFIEC Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial and savings banks. These changes will fulfill two objectives: (1) To provide the banking agencies with sufficient data to permit the monitoring of banks' risk-based capital levels, while limiting the amount of information reported by individual banks on the basis of bank size and capital level and (2) to provide other data considered necessary for bank supervisory purposes, particularly with respect to the nature and extent of banks' off-balance sheet activities. These changes will be implemented through the adoption of:

(1) A new risk-based capital schedule (Schedule RC–R), including a simplified risk-based capital test for banks with less than $1 billion in total assets whose outcome will determine whether such banks are exempt from completing the entire schedule;

(2) A revised version of the current off-balance sheet schedule (Schedule RC–L);

(3) Modifications of existing items or the addition of new items in five other schedules applicable to all reporting banks:

(a) The reclassification on the balance sheet (Schedule RC) of surplus (additional paid-in capital) related to perpetual preferred stock;

(b) A more detailed breakdown in the securities schedule (Schedule RC–B) of bank holdings of "U.S. Government agency and corporation obligations" and "Securities issued by states and political subdivisions in the U.S." with the present item for taxable municipal securities moved to a memorandum item;

(c) A new memorandum item in the deposit schedule (Schedule RC–E) for foreign currency denominated deposits (in domestic offices);

(d) A new item for noncumulative perpetual preferred stock and related surplus (and a new item on qualifying intangibles for national banks only) in the memoranda schedule (Schedule RC–M); and

(e) A new memorandum item for the number of deposit accounts of $100,000 or less in the schedule for deposit insurance data (Schedule RC–O); and

(4) The addition of a new memorandum item on nonaccrual residential mortgages in the supplemental schedule (Schedule RC–J) completed only by savings banks.

The effective data for these reporting changes, if approved, will be the March 31, 1990, report date, except for the change to Schedule RC–O which will take effect as of June 30, 1990. Nonetheless, as is customary for Call Report changes, banks may provide reasonable estimates for any of the new items in their March 31, 1990, Call Reports for which the requested information is not readily available.

Dated: November 29, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–28338 Filed 12–4–89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

First Bancorporation of Ohio, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bancorporation of Ohio,* Akron, Ohio; to engage *de novo,* through its subsidiary, Bancorp Trust Company, National Association, Naples, Florida, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancshares, Inc.,* Walnut, Illinois; to engage *de novo* in insurance agency activities in a small town pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the Villages of Ohio and Walnut, Illinois.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp,* Portland, Oregon; to engage *de novo* through a yet-to-be-named re-insurance company, in underwriting credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28341 Filed 12–4–89; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire First Interstate Management Services of Wisconsin, Inc., Sheboygan, Minnesota, and thereby engage in management consulting activities pursuant to § 225.25(b)(11); and courier services to be conducted in connection with data processing activities pursuant to § 225.25(b)(10) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28342 Filed 12–4–89; 8:45 am]

BILLING CODE 6210-01-M

Star Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 22, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Star Banc Corporation,* Cincinnati, Ohio; to acquire 100 percent of the voting shares of Fir-Ban, Inc., Verona, Kentucky, and thereby indirectly acquire Verona Bank, Verona, Kentucky.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FCFT, Inc.,* Princeton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Flat Top Bankshares, Inc., Bluefield, West Virginia, and thereby indirectly acquire The Flat Top National Bank of Bluefield, Bluefield, West Virginia, and Peoples Bank of Bluewell, Bluewell, West Virginia; and First Community Bancshares, Inc., Princeton, West Virginia, and thereby indirectly acquire First Community Bank, Inc., Princeton, West Virginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Farmers National Bancorp, Inc.,* Genesco, Illinois; to acquire 100 percent of the voting shares of woodhull State Bank, Woodhull, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Corn Belt Bancorp, Inc.,* Pittsfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Corn Belt Bank and Trust Company, Pittsfield, Illinois.

Board of Governors of the Federal Reserve System, November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28343 Filed 12–4–89; 8:45 am]

BILLING CODE 6210-01-M

The Toronto-Dominion Bank; Proposals To Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements of All Types of Securities as Agent, and Engage in Other Securities-Related Activities

The Toronto-Dominion Bank, Toronto, Ontario, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Toronto Dominion Securities Corp. ("Company") in the following activities: (1) Underwriting and dealing, to a limited

extent, in commercial paper (which will be of prime quality, short-term, sold in minimum denominations of $100,000, and exempt from registration requirements of the Securities Act of 1933), municipal revenue bonds (including industrial development bonds that are limited to "public ownership" industrial development bonds, where the issuer or the governmental unit on behalf of which the banks are issued is the sole owner of the financed facility), 1–4 family mortgage-related securities, and consumer receivable-related securities ("ineligible securities"); (2) the placement, as agent for issuers, of all types of obligations and securities, registered and nonregistered; (3) providing financial and transaction advice, including (i) advice in connection with mergers and acquisitions, divestitures, financing transactions, capital structuring, loan syndications, interest rate swaps, interest rate caps, and similar currency and interest rate transactions; (ii) acting as broker with respect to interest rate swaps, caps, and similar currency and interest rate transactions; and (iii) providing valuations and fairness opinions in connection with mergers, acquisitions, and similar transactions; (4) providing securities brokerage and investment advice on a combined basis ("full-service brokerage") to institutional and retail customers; (5) arranging for sales of loans or other extensions of credit originated by affiliated and unaffiliated lenders as agent; and (6) providing financial advice to Canadian federal, provincial, and municipal governments and their agents with respect to the issuance of their securities in the United States. Company would conduct the proposed activities on a nationwide basis.

Applicant also proposed to engage, through Company, as an incident to the underwriting activities described above, in hedging its positions by engaging in forward, futures, options, and options on futures contracts. Company is currently authorized to underwrite and deal in obligations that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Applicant has applied to underwrite and deal in ineligible securities as set forth in the Board's Orders approving those activities for a number of bank holding companies, with certain exceptions. See, e.g., Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987); and Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987). In particular, Applicant has proposed that certain of the limitations placed on the underwriting and dealing activities in the above Orders be limited to Applicant's U.S. operations.

The Board has also approved the private placement of all types of obligations and securities under certain limitations. See J.P. Morgan & Company Incorporated, ___ Federal Reserve Bulletin ___ (November 22, 1989); Bankers Trust New York Corporation, ___ Federal Reserve Bulletin ___ (October 30, 1989). Applicant has agreed to comply with most of the limitations placed on those activities, with certain exceptions. In particular, Applicant has proposed that certain of the limitations placed on the private placement activities in the above Orders be limited to Applicant's U.S. operations.

Applicant has applied to engage in providing financial and transaction advice pursuant to the Board's Orders in Signet Banking Corporation, 73 Federal Reserve Bulletin 59 (1987) and The Nippon Credit Bank, Ltd., 75 Federal Reserve Bulletin 308 (1989). The Board approved the brokerage of interest rate and currency swaps in The Sumitomo Bank, Limited, 75 Federal Reserve Bulletin 582 (1989).

Applicant has applied to engage in full-service brokerage activities as set forth in the Board's Orders approving those activities for a number of bank holding companies. *See*, e.g., First Union Corporation, 75 Federal Reserve Bulletin 645 (1989); SouthTrust Corporation, 75 Federal Reserve Bulletin 647 (1989); The Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988).

In addition, the Board has previously approved acting as financial advisor to Canadian goernmental entities and their agents. See, e.g., Canadian Imperial Bank of Commerce, 74 Federal Reserve Bulletin 571 (1988). Finally, the proposed activity of arranging loan sales is encompassed within the authorization of § 225.25(b)(1) of the Baord's Regulation Y, 12 CFR 225.25(b)(1). See Bryn Mawr Bank Corporation, 74 Federal Reserve Bulletin 329 (1988).

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant contends that it would not be "engaged principally" in underwriting or dealing in bank-ineligible securities on the basis of its commitment not to engage in such activities in an amount exceeding 10 percent of Applicant's gross revenue in any rolling two-year period. *See* Board's Order dated September 21, 1989. In addition, Applicant contends that the proposed placement activities do not raise an issue under section 20 in that the proposed activities do not differ in any material respect from those approved in Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 138 (1987), and *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 483 U.S. 1005 (1987).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 4, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28344 Filed 12–4–89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: University of Nevada, Las Vegas, Las Vegas, NV; PRT–742984

The applicant requests a permit to place desert tortoises (*Gopherus agassizii*) in temperature-controlled rooms and draw blood from the tortoises via cardiac puncture to measure the effect of cold-acclimation on blood-gas transport in this species. The tortoises will be obtained on loan from the Nevada Department of Wildlife.

Applicant: Reynolds Electrical & Engineering Co., Inc., Las Vegas, NV, PRT–744522

The applicant requests a permit to capture, mark, weigh, attach radio transmitters, and release desert tortoises (*Gopherus agassizii*) on the Nevada Test Site in Nye County, Nevada, for scientific research purposes. Applicant also requests authorization to salvage road-killed specimens and parts, including shells, found on the Test Site.

Applicant: Institute for Conservation Biology, c/o Stanford University, Stanford, CA, PRT–744580

The applicant requests a permit to live-trap salt marsh harvest mice (*Reithrodontomys raviventris*) in tidal and diked marsh on Central San Francisco Bay near Corte Madera, California, to established whether this species exists on land that has been designated for construction of a flood control barrier. Any mice trapped will be sexed, weighed, assessed for reproductive condition and immediately released.

Applicant: Knoxville Zoological Gardens, Knoxville, TN, PRT–744704

The applicant requests a permit to import one captive born male drill (*Papio leucophaeus*) from the Burgers' Zoo, The Netherlands, for purposes of zoological display and captive breeding.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–744705

The applicant requests a permit to import four male and five female tigers (*Panthera tigris*) from Japan. The tigers were born to applicant's tigers while on tour in Japan and will be imported, reexported and reimported for display and breeding purposes.

Applicant: Michael J. O'Farrell, Las Vegas, NV, PRT–744707

The applicant requests a permit to live-trap, mark, measure, and release Stephen's kangaroo rats (*Dipodomys stephensi*) throughout this species' historic range in California for survey and research purposes.

Applicant: Jones & Stokes Associates, Inc., Sacramento, CA, PRT–744677

The applicant requests a permit to live-trap, radio-collar, sex, weigh, tag, draw blood and release San Joaquin kit foxes (*Vulpes macrotis mutica*) in Fort Hunter Liggett, Monterey County, California to determine kit fox habitat use, movement, home range, probable causes of mortality, use of artificial dens, food habits, food preferences and the effects of operation of the U.S. Army Corps of Engineers Multi-Purpose Range Complex on kit foxes.

Applicant: San Diego Wild Animal Park, San Diego, CA, PRT–744556

The applicant requests a permit to import one captive-born male drill (*Papio leucophaeus*) from the Hannover Zoo, West Germany, for the purpose of captive propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 29, 1989.

Karen Wilson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–28333 Filed 12–4–89; 8:45 am]

BILLING CODE 4310-55-M

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Proposed State Correctional Facility Near Delano, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Corrections (CDC) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The application has been assigned permit Number PRT 744882. The proposed permit, which is for a period not to exceed 50 years, would authorize the incidental take of three endangered species: San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelia silus*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). The proposed take would occur as a result of the construction and operation of a 2,450-bed prison on a 634.83-acre site near Delano, Kern County, California.

The Service has prepared an environmental assessment (EA) for the incidental take permit application. The Finding of No Significant Impact (FONSI) will not be signed before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before January 4, 1990.

ADDRESS: Comments regarding the adequacy of the EA should be addressed to: Mr. Wayne S. White, Field Supervisor, U.S. Fish and Service, Sacramento Field Station, 2800 Cottage Way, Room #1823, Sacramento, California 95824–1846. Interested parties may comment on the application by submitting written views, arguments, or data to: Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507. Please refer to the file number PRT 74482 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Lehman, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Room #1823, Sacramento, California 95825–1846 (916/978–4866 or FTS 460–4866). Individuals wishing copies of the EA for review should immediately contact the above individual. Individuals wishing a copy of the incidental take permit application should immediately contact Susan Lawrence of the Office of Management Authority (703/358–2104 or FTS 921–2104).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species, like the San Joaquin kit fox, blunt-nosed leopard lizard, and Tipton kangaroo rat. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations

BEST COPY AVAILABLE

governing permits for endangered species are at 50 CFR 17.22.

The CDC plans to construct and operate a prison on a 634.83-acre parcel, which is located approximately 3 miles northwest of Delano, Kern County, California. The parcel includes the western half of Section 5 and the eastern half of Section 6 in Township 25 South, Range 25 East (Mount Diablo Baseline Meridian). The proposed State correctional facility consists of a 2,450-bed prison that comprises a 1,750-bed reception center, 500-bed medium-security facility, and 200-bed minimum-security support facility. Other facility structures include a warehouse, vehicle maintenance building, fire station, central kitchen building, and a firing range. These structures will permanently eliminate 287.32 acres of endangered species habitat. In addition, operation activities (e.g., driving to and from facility) may effect additional take of endangered species remaining on the unused portion of parcel or adjoining land. CDC proposes to compensate the incidental take via several on-site and off-site mitigation measures. Such measures include the off-site acquisition and fencing of 514 acres of endangered species habitat, a maintenance endowment of $514,200 for the acquired habitat, the revegetation of disturbed sites outside the prison operation area with native plants, the attempted removal of endangered species from the future operation area, and various on-site measures to be undertaken by CDC during construction and operation of their facility.

Although the CDC considered two alternative sites, both parcels were rejected because of endangered species impacts, impacts to adjoining agricultural lands, local concerns, and/or high acquisition cost. CDC maintains that the failure to complete this project at "the selected site would result in unacceptably high levels of inmate overcrowding in the state-wide prison system." The selection of either alternative site would result in a construction delay of seven months to a year according to the CDC. Selection of a new alternative site would delay construction an additional year.

Dated: November 30, 1989.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-28352 Filed 12-4-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Refunds Due Payors as a Result of Federal Regulatory Commission Orders Nos. 451 and 451-A

November 28, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to stop 2-year period under Section 10 of the Outer Continental Shelf Lands Act.

SUMMARY: The purpose of this Notice is to announce that the 2-year period prescribed in Section 10 of the Outer Continental Shelf Lands Act is stopped for refund requests resulting from a recent court decision invalidating Federal Energy Regulatory Commission (FERC) Order Nos. 451 and 451-A.

EFFECTIVE DATE: December 5, 1989.

ADDRESSES: All written requests for further information should be submitted to the Minerals Management Service, Royalty Management Program, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Whitcomb, Rules and Procedures Branch, FTS 328-3432, (303) 231-3432.

SUPPLEMENTARY INFORMATION:

I. Background

The FERC Order No. 451 which was published in the **Federal Register** on July 18, 1986 (51 FR 22186), allowed producers to renegotiate the prices they received for interstate gas qualifying under NGPA sections 104 and 106 (old interstate gas). Under Order No. 451, which was effective July 18, 1986, producers were allowed to negotiate with their purchasers for a price higher than the then current NGPA maximum lawful price (MLP) for any of their old interstate gas, up to a price equal to the MLP for Post-1974 gas.

Producers could obtain a higher price for their old interstate gas through price nomination under the "Good Faith Negotiation" (GFN) procedures or through voluntary renegotiations with their purchasers outside of the scope of the GFN procedures. The GFN procedures also authorized purchasers to negotiate lower prices for new gas under any contracts covering both old and new interstate gas. Under Order No. 451, the GFN procedures could not be implemented until after October 31, 1986, however, voluntary negotiations could commence any time after July 18, 1986. Order No. 451 also provided for certain gas contracts to be abandoned if negotiations under the GFN procedures were not successful. Once abandoned, that gas was eligible for prices up to the MLP for Post-1974 gas under any new contract that the producer could secure. Under Order No 451-A, which was published in the **Federal Register** on December 24, 1986 (51 FR 46762), FERC modified and clarified the procedures for price renegotiations and extended the starting date of the implementation of GFN procedures to after January 23, 1987.

On February 5, 1988, FERC issued Order No. 490, which was published in the **Federal Register** on February 12, 1988 (53 FR 4121). This rule, which was effective April 12, 1988, permitted abandonment of old interstate gas under contracts that terminated, expired, or were modified after the effective date of the Order. Consequently, such gas would become eligible for prices up to the MLP for Post-1974 gas in accordance with Order No. 451.

The U.S. Court of Appeals for the Fifth Circuit recently vacated FERC Orders 451 and 451-A in *Mobil Oil Exploration and Producing Southeast Incorporated et al. v. Federal Energy Regulatory Commission* (No. 86-4840, September 15, 1989). The court held that FERC exceeded the scope of its authority under the NGPA in promulgating Order No. 451. In addition, the appeals court determined that pregranted abandonment did not comply with the requirements of section 7(b) of the Natural Gas Act of 1938. Therefore, any prices higher than the NGPA-established MLP for old interstate gas paid pursuant to any negotiation or renegotiation under Order Nos. 451 or 451-A are invalidated under this decision. This includes prices paid pursuant to (1) voluntary renegotiations, (2) renegotiations under the GFN procedures, (3) new contracts covering gas abandoned under the GFN procedures, and (4) new contracts covering gas abandoned pursuant to Order No. 490.

Federal and Indian lessees who paid royalty based on the higher negotiated or renegotiated prices may be due a refund on the portion of royalty based on the protion of the price in excess of that permitted in the *Mobil* v. *FERC* decision if that decision is upheld. The FERC has requested that the Fifth Circuit reconsider its decision.

II. Section 10 Notice

For Outer Continental Shelf (OCS) leases, applicants are referred to Solicitor's Opinion M-36942, 88 I.D. 1090 (1981), regarding the 2-year period for filing of refund requests under Section 10 of the OCS Lands Act of 1953, 43 U.S.C. 1339. Notice is hereby provided that MMS is stopping the running of the 2-year period as of September 15, 1989, the date of the Fifth Circuit's decision, for refunds resulting from this decision. Therefore, royalty payors may wait until a final decision in *Mobil* v. *FERC* and the issuance of any FERC refund procedures before filing royalty refund requests with MMS. It is not necessary for payors to file preliminary or contingent refund requests to stop the running of the 2-year period in Section 10. Refund requests should follow the procedures in Section 4.4.2 of the MMS *Oil and Gas Payor Handbook*.

III. Unauthorized Recoupments

Payors may not recoup any amount they claim as a result of the decision in *Mobil* v. *FERC* against a current or future royalty payment obligation without following the procedures prescribed in Section 4.4.2 of the MMS *Oil and Gas Payor Handbook*. See *Santa Fe Energy Company*, 106 IB 333. Taking unauthorized recoupments may result in enforcement action, including the assessment of civil penalties authorized under 30 CFR 241.51 (1988). See 30 U.S.C. 1719 and 43 U.S.C. 1350.

Dated: November 28, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-28354 Filed 12-4-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Extension of Period of Availability of Draft Environmental Impact Statement/General Management Plan/Minerals Management Plan (EIS/GMP/MMP) for Big Cypress National Preserve, FL

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a Draft Environmental Impact Statement on the General Management Plan/Minerals Management Plan for Big Cypress National Preserve. The GMP/MMP presents a basic management philosophy that meets the legislative requirements for resource protection and for public use and enjoyment of the preserve, it guides the National Park Service in addressing issues and achieving management objectives over a 10- to 15-year period. This document was previously made available for public comment for a period of 90 days ending December 1, 1989.

DATES: Comments on the Draft EIS/GMP/MMP will be accepted for an additional period of 90 days ending on March 1, 1990.

ADDRESSES: Comments should be sent to the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303. Copies of the EIS/GMP/MMP are available for review at the following locations.

National Park Service, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia
Broward County Public Library, 1301 West Companys Road, Fort Lauderdale, Florida
Homestead Public Library, 700 North Homestead, Homestead, Florida
Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida
Collier County Public Library, 650 Central Avenue, Naples, Florida
Everglades National Park Headquarters, Homestead, Florida
Big Cypress National Preserve, Headquarters and Oasis Ranger Station, Ochopee, Florida
Big Cypress Land Acquisition Office, 201 8th Street, South, Naples, Florida.

FOR FURTHER INFORMATION CONTACT: Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, Telephone (813) 695-2000.

Robert F. Newkirk,

Regional Director, Southeast Region.

[FR Doc. 89-28361 Filed 12-4-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-88 (Sub-No. 4X)]

Bessemer and Lake Erie Railroad Co.—Abandonment Exemption In Butler County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.8-mile line of railroad between milepost 7.1, near Boyers, and milepost 9.9, near Hilliards, in Butler County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 4, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 15, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kimberly J. Gallagher, Bessemer and Lake Erie Railroad Company, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 8, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28399 Filed 12-4-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-88 (Sub-No. 5X)]

Bessemer and Lake Erie Railroad Co.—Abandonment Exemption in Erie County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 5.73-mile line of railroad between Survey Station 303+85, at or near Lexington, and a point near Survey Station 6+00, about 1.5 miles west of Lake City, Erie County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 4, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 15, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kimberly J. Gallagher, Bessemer and Lake Erie Railroad Company, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 8, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28398 Filed 12-4-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 75)]

Wabash Railroad Co. and Norfolk and Western Railway Co.—Abandonment and Discontinuance—In Will, Kankakee, Livingston, Ford and Champaign Counties, IL; Notice of Findings

The Commission has found that the public convenience and necessity permit the Wabash Railroad Company to abandon and the Norfolk and Western Railway Company (NW) to discontinue operations over 81.85 miles of railroad in Illinois between: (a) milepost C-40.9 (Manhattan), and milepost C-114.3 (Gibson City); (b) milepost F-6.3 and milepost F-7.25 (Honegger); and (c) milepost SC-327.6 (Sidney), and milepost SC-338.1 (Urbana). NW is also granted authority to abandon 0.7 mile of railroad at Gibson City, IL located between mileposts SP-339.4 and SP-340.1, and to discontinue trackage rights operations over 5.4 miles of line owned by Toledo, Peoria and Western Railway Company (TPW) between milepost TP-46.4 (Forrest), and milepost TP-51.8 (Honegger).

A certificate will be issued authorizing abandonment unless, within 15 days after this publication, the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: November 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28364 Filed 12-4-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 24, 1989, a Consent Decree in *United States* v. *Alcan Aluminum Corp., et al.*, Civil Action No. 3:CV-89-1657, was lodged with the United States District Court for the Middle District of Pennsylvania.

The complaint filed by the United States alleges that Alcan Aluminum Corp., BASF Corp., Beazer Materials and Services, Inc., Borg-Warner Corp., Carrier Corp., Chemical Leaman Tank Lines, Inc., Chemical Management, Inc., Chrysler Motors Corp., Dana Corp., Dart Industries Inc., Exxon Corp., Ford Motor Company, Goulds Pumps, Inc., Hitchcock Gas Engine Company, Inc., Ingersoll-Rand Company, NEAPCO, Inc., Rome Strip Steel Co., Inc., The Stanley Works, Inc., TRW, Inc., and United Technologies Corp., are responsible to reimburse the United States for costs incurred by the Environmental Protection Agency ("EPA") in responding to the release and threatened release of hazardous substances from the Butler Tunnel Superfund Site in Pittston, Pennsylvania (the "Site") from September 1985 through January 7, 1987. The complaint alleges that the Defendants arranged for the transport to and disposal of liquid wastes containing hazardous substances at the Site. Also in the complaint, the United States, on behalf of EPA, seeks judgment against the Defendants jointly and severally for reimbursement of response costs in excess of $814,000.00, under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

In the Consent Decree, seventeen "Settling Defendants", BASF Corp., Beazer Materials and Services, Inc., Borg-Warner Corp., Carrier Corp., Chemical Leaman Tank Lines, Inc., Chrysler Motors Corp., Dana Corp., Dart Industries, Inc., Exxon Corp., Ford Motor Company, Goulds Pumps, Inc., Hitchcock Gas Engine Company, Inc., Ingersoll-Rand Company, Rome Strip Steel Co., Inc., The Stanley Works, Inc., TRW, Inc., and United Technologies Corp., have agreed to reimburse the Hazardous Substance Response Trust Fund (the "Fund") in the amount of $800,000.00. The United States, on behalf of the Department of Defense, has also agreed to reimburse the Fund $28,500.00, to resolve the Settling Defendants' claims for contribution under section 113(f) of CERCLA, 42 U.S.C. 9613(f), against the United States. Defendants Alcan Aluminum Corp., Chemical Management, Inc., and NEAPCO, Inc., have not agreed to resolve their liability to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Alcan Aluminum Corp., et al.*, DOJ Ref. No. 90-11-3-134. The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, U.S. Courthouse and Post Office, Suite 309, Scranton, Pennsylvania. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy of the Consent Decree by mail, please enclose a check in the amount of $3.20 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-28379 Filed 12-4-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 15, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 15, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
A.O. Smith Electrical Product Co. (IBEW)	Upper Sandusky, OH	11/27/89	11/11/89	22,636	Electrical Motors.
AT&T Network Systems (IBEW)	Oklahoma City, OK	11/27/89	11/15/89	23,637	Computers & Switch Equipment.
Allen-Bradley Co. (Workers)	Greensboro, NC	11/27/89	10/27/89	23,638	Electronic Components.
Bank One (Workers)	Odessa, TX	11/27/89	11/2/89	22,639	Banking Services.
Digicon Geophysical Corp. (Workers)	Oklahoma City, OK	11/27/89	11/10/89	22,640	Oil & Gas.

Appendix

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Eaton Corp. (Workers)	Marion, OH	11/27/89	11/7/89	23,641	Forgings for Trucks.
Eltee Pulsitron, Inc. (Workers)	W Coldwell, NJ	11/27/89	10/27/89	23,642	Machine Tools.
Flushing Shirt Co. (ACTWU)	Frostburg, MD	11/27/89	11/14/89	23,643	Uniform Shirts.
(The) Grove Co. (Workers)	St. Louis, MO	11/27/89	11/1/89	23,644	Ladies' Sportswear.
Harris Smith Drilling Co. (Company)	Ardmore, OK	11/27/89	11/9/89	23,645	Drilling Oil & Gas.
Health-Tex (ACTWU)	Cumberland, RI	11/27/89	11/14/89	23,646	Childrens' Playwear.
Hy Grade Corp. (ACTWU)	Taylor & Old Forge, PA	11/27/89	11/14/89	23,647	Men's & Women's Pants.
ITT Hancock (UAW)	Ithaca, MI	11/27/89	11/4/89	23,648	Automative Power Seat Adjusters.
Microwave Products of America, Inc. (Company).	Sioux Falls, SD	11/27/89	10/16/89	23,649	Microwave Ovens.
Microwave Products of America, Inc. (Company).	Memphis, TN	11/27/89	10/26/89	23,650	Microwave Ovens.
Pandora Industries, Inc. (Workers)	Manchester, NH	11/27/89	11/15/89	23,651	Misses' Sportswear.
Seminole of Houston (ACTWU)	Houston, MS	11/27/89	11/14/89	23,652	Men's Slacks.
Square D. Co. (IBEW)	Secaucus, NJ	11/27/89	11/8/89	23,653	Panelboards, Switchboards & Switchgears.
(The) Tailors Shop (ACTWU)	Old Forge, PA	11/27/89	11/14/89	23,654	Mens' & Ladies' Pants & Shorts.
Teledyne Portland Forge (Boilermakers)	Portind, IN	11/27/89	11/10/89	23,655	Gear Forgings.
Trico Products Corp. (UAW)	Buffalo, NY	11/27/89	11/7/89	23,656	Windshield Wiper Systems.
Vassarette (ACTWU)	Hamilton, AL	11/27/89	11/14/89	23,657	Ladies' Undergarments.
Villager Inc. (ILGWU)	Philadelphia, PA	10/30/89	10/16/89	23,658	Ladies' Sportswear.

[FR Doc. 89-28371 Filed 12-4-89; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,427; Sensus Technologies, Inc., Uniontown, PA

TA-W-23,443; Ellwood City Iron & Wire Co., Ellwood City, PA

TA-W-23,442; Corlett-Turner Co., Holland, MI

TA-W-23,271; Pullman Power Products, Williamsport, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,414; Coopervision Cilco, Bellevue, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,451; Robinson Thread Co., Worcester, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,425; Pulsonix, Inc., Englewood, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,437; AT&T Microelectronics, Richmond, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,455; Wella Corp., Englewood, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,488; France Rental Tool, Inc., Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,419; Mid-Continent Supply Co., Fort Worth, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,420; Mid-Continent Supply Co., Natchez, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,463; Balcron Oil, Billings, MT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,445; Hercules Engines, Inc., Canton, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,477; Swaco Oilfield Services, Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,440; Bluebonnet Savings Bank, Colorado City, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,527; Transcontinent Oil Co., Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,447; Lee C. Moore Corp., Tulsa, OK

U.S. imports of oilfield machinery were negligible.

TA-W-23,415; Cotter Corp., Schwartzwalder Mine, Golden, CO

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-23,417; Grand Drilling, Inc., Breckenridge, TX

A certification was issued covering all workers separated on or after September 14, 1988 and before November 1, 1989.

TA-W-23,409; American Recreation Products, Inc., New Haven, MO

A certification was issued covering all workers separated on or after September 14, 1988.

TA-W-23,416; Cuddle Wit, Inc., Orange, NJ

A certification was issued covering all workers separated on or after September 11, 1988.

TA-W-23,435; Van Dorn Plastic Machinery Co., West Boylston, MA

A certification was issued covering all workers separated on or after September 12, 1988.

TA-W-23,458; Coleman-Western Cutlery, Longmont, CO

A certification was issued covering all workers separated on or after September 19, 1988.

TA-W-23,452; Rooster, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after September 22, 1988 and before July 31, 1989.

TA-W-23,453; Ship'n Shore, Div. of Crystal Brands, Inc., Barley, GA

A certification was issued covering all workers separated on or after September 20, 1988.

TA-W-23,426; Seagate Technology, Delray Beach, FL

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-21,145; Transit American, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after September 19, 1988.

TA-W-21,184; Geosource, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,184A; Geosource, Inc., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,184B; Geosource, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,184C; Geosource, Inc., New Orleans, TX

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-21,228; Smith Energy Service, Golden, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,229; Smith Energy Service, Brighton, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,230; Smith Energy Service, Rangely, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,231; Smith Energy Service, Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,232; Smith Energy Service, Fruita, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,233; Smith Energy Service, Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,234; Smith Energy Service, Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,235; Smith Energy Service, Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,235A; Smith Energy Service, Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,235B; Smith Energy Service, El Reno, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,235C; Smith Energy Service, Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,235D; Smith Energy Service, Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,484; The Louisiana Land & Exploration Co., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,483; The Louisiana Land & Exploration Co., New Orleans, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,485; The Louisiana Land & Exploration Co., So. Louisiana Div., Houma, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,488; The Louisiana Land & Exploration Co., So. Eastern Dist., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,805; CRC Mallard Workover & Drilling, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,623 and TA-W-21,624; Forman Petroleum Corp., New Orleans, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,632; John Drilling Co., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,713; Dixilyn-Field Drilling Co., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before August 30, 1987.

TA-W-22,070; Shields Drilling Co., Inc., Russell, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,566; Hamman Oil & Refining Co., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1987.

TA–W–21,658; Phoenix Management Corp., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before September 30, 1987.

TA–W–21,600; Buzzini Drilling Co., Kennedy, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,172; Dekalb Industries, Smithville, TN

A certification was issued covering all workers separated on or after September 19, 1987 and before July 30, 1988.

TA–W–21,620; Elder Well Servicing Co., San Angelo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,659; Portland Manufacturing Co., Inc., Portland, TN

A certification was issued covering all workers separated on or after October 1, 1987 and before July 30, 1988.

TA–W–21,791; Baker & Taylor Drilling Co., Inc., Amarillo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,975; Sundance Exploration, Amarillo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,804; Co2 In Action, Amarillo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,758; Seismograph Service Corp., Englewood, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,440; Jeansville Corp, Orangburg, SC

A certification was issued covering all workers separated on or after October 7, 1987 and before November 30, 1988.

TA–W–21,667; Steven A. Zanetis Drilling & Producing, Olney, IL

A certification was issued covering all workers separated on or after November 4, 1987.

TA–W–22,040; Gilmore, Howard & Provins Drilling Co., Traverse City, MI

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,603; Cardinal Drilling Co., Billings MT

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,935; Scientific Drilling International, Headquartered In Houston, TX And At Various Plant Locations:

TA–W–21,935A Bakerfield, CA
TA–W–21,953B Ventura, CA
TA–W–21,953C Lafayette, LA
TA–W–21,953D New Orleans, LA
TA–W–21,953E Oklahoma City, OK
TA–W–21,953F Midland, TX
TA–W–21,953G Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,673; Tolle, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,501; Young Exploration Co., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,725; Hope Drilling Co., Inc., Santa Anna, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,696; Butler Johnson, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,296; Otis Engineering Corp., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA–W–22,297; Otis Engineering Corp., New Iberia, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA–W–22,264; Wilbros Drilling Co., Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,264A; Wilbros Drilling Co., Inc. Located In The State of TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,988; Tri-State Oil Tool, Inc., Bossier City, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,989; Tri-State Oil Tool, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,015; Bullock Drilling Co., Inc., Casper, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before June 1, 1988.

TA–W–22,142; Geoservice, Inc., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985 and before July 15, 1988.

TA–W–22,143; Geoservice, Inc., Houston, TX

A certification was issued covering all workers separated on or after July 15, 1986 and before January 31, 1987.

TA–W–21,677; WEK Drilling, Roswell, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,993; Venango Drilling, Oil City, PA

A certification was issued covering all workers separated on or after December 1, 1987.

TA–W–21,914; Nabors Alaska Drilling, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after July 1, 1986 and before January 1, 1988.

TS–W–21,821; Damson Oil Corp., Houston, TX & Operating at Various Locations in The Following States:

TA–W–21,821A CA
TA–W–21,821B CO
TA–W–21,821C IL
TA–W–21,821D IN
TA–W–21,821E LA
TA–W–21,821F MT
TA–W–21,821G NM
TA–W–21,821H ND
TA–W–21,821I OK
TA–W–21,821J PA
TA–W–21,821K TX
TA–W–21,821L WY

A certification was issued covering all workers separated on or after November 1, 1987.

TA–W–22,231; Holiday Formals, Inc., Hialeah, FL

A certification was issued covering all workers separated on or after November 16, 1987.

TA–W–22,266; Wyatt Drilling Co., Fairfield, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before March 31, 1987.

TA–W–22,034; Farrar Oil Co., Mount Vernon, IL

A certification was issued covering all workers engaged in services related to drilling services separated on or after October 1, 1985.

TA–W–22,023; Crystal Springs Oil, Inc., Seneca, PA

A certification was issued covering all workers separated on or after October 1, 1985 and before March 26, 1987

TA–W–22,314; Crescent Petroleum Corp., Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 1, 1987.

I hereby certify that the aforementioned determinations were issued during the month of November 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who to write to the above address.

Dated: November 28, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–28372 Filed 12–4–89; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Alaska State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending subpart R of part 1952.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

By letter dated March 4, 1987, from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State on its own initiative submitted an amendment to AAC 07., Logging Code, Article 1. The Code was originally approved in the **Federal Register** (41 FR 56409) on December 28, 1976.

The State standard amendment, which is contained in Subchapter 07., Alaska Occupational Safety and Health Code, was adopted by the State on December 17, 1986, with an effective date of January 16, 1987, under authority vested in Jim Sampson, Commissioner, by AS 18.60.020, and after notice and opportunity for public comments under AS 44.62.190, 44.62.200, and 44.62.210.

The State-initiated amendment was developed to address the hazards of hillside logging and employee exposure to dislodged unstable objects rolling downhill. This amendment provides safe work practices.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that there is no comparable Federal standard and that the State standard continues to be as effective as when previously approved in the **Federal Register**. The State amendment does not diminish current standards in effect and is minor in nature. OSHA therefore approves this standard amendment; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following location: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington, 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Ave. NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standard amendment was adopted in accordance with the procedural requirements of State law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective December 5, 1989.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6108 (29 U.S.C. 667)

Signed at Seattle, Washington this 10th day of March, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89–28373 Filed 12–4–89; 8:45 am]

BILLING CODE 4510–26–M

Alaska State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On September 28, 1984, notice as published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending Subpart R of part 1952.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by

letter dated January 20, 1987 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1910.145(f), Accident Prevention Signs and Tags, as amended and published in the **Federal Register** (51 FR 33260) on September 19, 1986. The State's original standards were published in the **Federal Register** (40 FR 43101) on September 18, 1975. The State's amended standards, AAC 01.1202(f), Accident Prevention Tags, were promulgated after notifications of the State's proposed amendments in the statewide media on October 31, and November 6, 1986 failed to elicit a request for public hearings. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State's standards amendments were adopted on December 9, 1986 with an effective date of January 30, 1987. The State incorporated editorial modifications, including using the State's numbering system and changing the word *shall* to *must*.

In response to a Federal standards change, the state has submitted by letter dated April 7, 1987 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1910.430(e)(1), as amended and published in the **Federal Register** (51 FR 33033) on September 18, 1986. The State's original standard was published in the **Federal Register** (43 FR 57670) on December 8, 1978. This State standard amendment, which is contained in AAC 06.500(e)(1), Commercial Diving Operations, Equipment, was promulgated after notifications were published in the statewide media on December 26, 1986 and January 2, 1987. The public notifications failed to elicit a request for public hearing. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State standard amendment was adopted on February 19, 1987 with an effective date of April 15, 1987. The State incorporated the State's numbering system.

In response to Federal standards changes, the State has submitted by letter dated June 20, 1988 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards amendment comparable to 29 CFR 1910.268(c), subpart R, Telecommunications, amended, as published in the **Federal Register** (52 FR 36387) on September 28, 1987. The State's original standards received **Federal Register** approval (41 FR 52557) on November 30, 1976. The State standards amendment, which is contained in AAC 03.100(e), Telecommunications, was promulgated after public hearings which were held on February 29, and March 1 and 2, 1988. Notifications of the hearings were published in statewide media on January 13, 15, 20, and February 10, 1988. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State incorporated editorial modifications consisting of using the State's numbering system and changing the word *shall* to *must*.

In response to Federal standards changes, the State has submitted by letter dated May 15, 1989 from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1926.550(g), Crane or Derrick Suspended Personnel Platforms, as published in the **Federal Register** (53 FR 29139) on August 2, 1988. The State standard amendment, which is contained in AAC 05.140(a), Construction Code, Crane or Derrick Suspended Personnel Platforms, was promulgated after notifications of the State's proposed amendments in the statewide media on December 19, 20, 26, and 27, 1988. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. Public hearings were held on January 17 through 19, 1989. The State's standard amendment was adopted on February 21, 1989 with an effective date of April 21, 1989. The State incorporated editorial modifications, including using the State's numbering system, changing the word *shall* and *must*, and adding a drawing of a manbasket.

In response to Federal standard changes, the State has submitted by letter dated May 17, 1989 from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.177 (b) and (d)(5), Servicing of Single Piece and Multi-piece Rim Wheels, as amended and published in the **Federal Register** (53 FR 34737) on September 8, 1988. The State's original standards were published in the **Federal Register** (49 FR 32126) on August 10, 1984. The State's amended standards, AAC 01.0810, Servicing of Single Piece and Multi-piece Rim Wheels, were promulgated after notifications of the State's proposed amendments in the statewide media on February 21, and February 28, 1989 failed to elicit a request for public hearings. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State's standard amendments were adopted on March 23, 1989 with an effective date of May 21, 1989. The State incorporated editorial modifications, including using the State's numbering system and changing the word *shall* to *must*.

2. *Decision.* The above State standard amendments have been reviewed and compared with the relevant Federal standards. OSHA has determined that the State standard amendments are at least as effective as the comparable Federal standard amendments, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and the Federal standards amendments are minimal and that the standard amendments are thus substantially identical. OSHA therefore approves the amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Ave. NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standard amendments were adopted in accordance with the procedural requirements of State law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective December 5, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington this 26th day of May, 1989.

Ronald T. Tumchara,

Acting Regional Administrator.

[FR Doc. 89-28374 Filed 12-4-89; 8:45 am]

BILLING CODE 4510-26-M

Maryland State Standards; Notice of Approval

1. *Background*—Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated July 5, 1989, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted a State standard identical to: 29 CFR 1910.1000, Subpart Z, pertaining to an amendment to the Air Contaminants Standards for General Industry as published in the **Federal Register** of January 19, 1989, (54 FR 2920). This standard is contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standard was promulgated after a public hearing on February 8, 1989. This standand was effective on July 10, 1989.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N-3476, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 5, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 13th day of July 1989.

Richard Soltan,

Deputy Regional Administrator.

[FR Doc. 89-28375 Filed 12-4-89; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision. The Oregon plan provides for adoption of Federal standards as State standards by reference.

In response to Federal standards changes, the State has submitted by letter dated March 3, 1989 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1910.20, Access to Employee Exposure and Medical Records, as published in the **Federal Register** (53 FR 38162) on September 29, 1988. The State's rules pertaining to Access to Employee Exposure and Medical Records, contained in OAR 437-02-015, were adopted by reference and became effective on March 1, 1989, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 3-1989. Concurrently, OAR 437-200, Employee Access to Exposure and Medical Records, which had been approved on May 1, 1981 (46 FR 24750) was repealed by the same Oregon APD Administrative Order. On February 1, 1989, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No requests for a public hearing were received.

In response to a Federal standard change, the State submitted by letter dated July 8, 1987 from Darrel D. Douglas, Administrator, Accident Prevention Division, to James W. Lake, Regional Administrator, a standard change comparable to 29 CFR 1910.145(f) amended, Accident Prevention Tags, as published in the **Federal Register** on September 19, 1986 (51 FR 33260). The State's original standard, OAR 437, Chapter 28, Accident Signs, Symbols and Tags, received **Federal Register** approval (41 FR 43485) on November 1, 1976 and was subsequently recodified as OAR 437-Division 54. The State's recodification project received **Federal Register** approval (52 FR 27078) on July 17, 1987. This standard was adopted effective by the State on March 17, 1987 after the Notice of Proposed Amendment of Rules was mailed on February 18, 1987, to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. The State incorporated editorial modifications, including the State's numbering system,

and changed the heading in 1910.145(8) to "Biological hazard signs and tags." One comment was received and resolved by the State through a letter of clarification to the sender.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard amendment for Access to Employee Exposure and Medical Records is identical to the Federal standard amendment and that the State's standard amendment for Accident Prevention Tags is at least as effective as the comparable Federal standard amendment, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standard amendment for Accident Prevention Tags are minimal and that the standard amendment is thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval for the State standard amendment for Accident Prevention Tags is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards amendments are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards amendments were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 5, 1989.

(Sec. 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington this 10th day of March, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-28376 Filed 12-4-89; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated February 23, 1988, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment identical to the amended Federal standard at 29 CFR 1910.141(c)(1)(i), General Environmental Controls; Sanitation, Toilet Facilities, as published in the Federal Register (43 FR 49736) on October 24, 1978. The Washington Sanitation, Toilet Facilities amendment is contained in WAC 296-24-12007. It was adopted on November 30, 1987, and became effective on December 30, 1987, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order number 87-24. The State originally amended its standard in response to the 1978 Federal amendment on November 13, 1980. Its amendment contained significant differences from the Federal amendment but was approved on May 10, 1985 (50 FR 19822). The State is now making one part of its standard identical to the Federal standard at 1910.141(c)(1)(i) by adding a phrase which had been omitted from the footnote to Table B-1.

In response to Federal standards changes, the State has submitted by letter dated September 7, 1984, from Richard E. Martin, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard 29 CFR 1910.177, Servicing of Single Piece and Multi-Piece Rim Wheels (Amended), as published in the **Federal Register** (49 FR 4350) on February 3, 1984. The State's amendment replaces, in its entirety, the orginal State standard WAC 296-24-217, Servicing of Multi-Piece Rim Wheels, which received **Federal Register** approval (46 FR 35229) on July 7, 1981. The State standard, which is identical to the Federal standard, is contained in WAC 296-24-217. It was adopted on August 21, 1984, and became effective on September 20, 1984, pursuant to RCW 34.04.040(2), 49.17.040, 47.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.4, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 84-18.

2. *Decision.* Having reviewed the State's submissions in comparison with the Federal standards, it has been determined that the State's standards are identical to the Federal Standards and accordingly are approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Ave NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 5, 1989.

(Sec. 18, Pub. L. 91-596, 84 STAT. 6108 (29 U.S.C. 667).

Signed at Seattle, Washington this 14th day of July, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-28378 Filed 12-4-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-82]

Intent to Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Jack Cantwell, Incorporated, of Englewood Cliffs, New Jersey 07632, a partially exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,080,960, entitled, "An Ultrasonic Technique for Characterizing Skin Burns," which issued to the United States of America, as now represented by the Administrator of the National Aeronautics and Space Administration as provided under 35 U.S.C. 207(a)(2), and a partially exclusive royalty-bearing world-wide revocable license, to practice the invention described and claimed in pending United States Patent Application Serial No. 07/422,726, filed October 17, 1989 (LAR-13,966-1) by the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The aforesaid patent and pending patent will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATE: Comments to this notice must be received by January 30, 1990.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: November 22, 1989.

Gary L. Tesch,

Deputy General Counsel.

[FR Doc. 89-28363 Filed 12-4-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

1. *Importance of Education and Human Resources.* One established criterion in NSF's merit review of proposals is the effect of the proposed research on the infrastructure of science and engineering. Reviewers are asked to consider the potential of the proposal to improve the quality, institutional distribution, or effectiveness of the Nation's scientific and engineering research, education, and work force. The NSF is particularly concerned about the development of scientists and engineers for the future. To make this more explicit, Principal Investigators (PI) will now be asked to specify the relationship of the project to the education and development of human resources.

2. *Importance of Quality of Publications in the Merit Review Process.* Evaluation of scientific productivity must emphasize quality of published work rather than quantity. To ensure this emphasis, NSF will now limit the number of publications considered in reviewing a grant application.

Effective Date: This collection of information will become effective January 3,1990, subject to approval by the Office of Management and Budget. Public comments should be submitted to: Herman G. Fleming, Reports Clearance Officer, Rm. 208, National Science Foundation, 1800G Street, NW., Washington, DC 20550, and to: Office of Management and Budget, Paperwork Reduction Project (3145-0058, Washington, DC, 20503. All comments will be available for public inspection in Rm. 208, at the above NSF address between the hours of 9 a.m. and 4 p.m.

Title: Changes in NSF Proposal Format: Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process.

Affected Public: Any institution/individual submitting a proposal to the National Science Foundation.

Respondents/Burden Hours: 37,000 respondents. NSF estimates that 120 hours are required to submit a proposal. This information collection will not effect the total amount of time required to submit a proposal. While additional information is being requested, some current collection is being deleted.

Changes: (1) Education and Human Resources: A Statement must be included specifying the potential of the proposed research to contribute to the education and the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. This statement may include, but is not limited to, the role of the research in student training, course preparation, and seminars, particularly for undergraduates. Special effectiveness or achievement in the area of producing professional scientists and engineers from groups presently underrepresented should be described. 2) A complete list of publications for the past five years is no longer required. Biographical Sketches, in addition to data on educational background and career, must now include the following: a) a list of up to five publications most relevant to the research proposed and up to five other significant research publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from citing prior NSF support. Only the list of ten will be used in merit review. b) a list of the names of graduate students with whom the PI has had an association as thesis advisor and postdoctoral scholars

sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored. and 3) to avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own postdoctoral advisors.

Dated: November 29, 1989

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 89-28309 Filed 12-4-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Applications of Advanced Technologies, Science and Engineering Education.

Date and time: December 17, 1989 from 8:00 a.m. to 6:00 p.m.

Place: Harvard-Smithsonian Center, Cambridge, MA.

Type of meeting: Closed.

Contact person: Dr. Andrew R. Molnar, Applications of Advanced Technologies, National Science Foundation, Room 635A, 1800 G Street NW., Washington, DC 20550, (202) 357-7064.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-28310 Filed 12-4-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Containment Systems; Meeting

The ACRS Subcommittee on Containment Systems will hold a meeting on December 12, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, December 12, 1989—1:00 p.m. until the conclusion of business.

The Subcommittee will discuss the NCR staff's document on the Containment Performance Improvements (CIP) Program (all containment types other than the BWR Mark I).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of the consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 27, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-28306 Filed 12-4-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Subcommittees on Containment Systems, and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on December 13, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, December 13, 1989—8:30 a.m. until the conclusion of business.*

The Subcommittees will continue to discuss containment design criteria for future plants with invited speakers from industry, national laboratories and NRC staff.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of the consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with invited speakers as noted above.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 27, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-28307 Filed 12-4-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. DPR-31 and DPR-41, issued to Florida Power and Light Company (FPL, the licensee), for operation of the Turkey Point Nuclear Power Plant, Units 3 and 4, located in Dade County, Florida.

The amendments, requested by the licensee by letter of June 5, 1989, as supplemented November 3, 1989, would replace the current custom Technical Specifications (TS) licensed in the early 1970's with a set of TS based on the Westinghouse Standard Technical Specifications (STS). This is compatible with the NRC and industry initiative to standardize and improve TS.

The changes in the TS can be grouped into 4 categories: non-technical changes, more stringent requirements, relocation of selected requirements to other controlled documents, and relaxations of existing requirements.

Non-technical changes are intended to make the TS easier to use for plant operations personnel.

More stringent requirements are either more conservative than corresponding requirements in the current TS, or are additional restrictions which are not in the current TS. The more stringent requirements provide a safety enhancement.

Relocation of selected requirements involves items that are currently in the TS that meet the criteria set forth in staff guidance provided as a part of the Commission's Technical Specification Improvement Program. These items may be removed from the TS and placed in some other controlled document. Once these items have been relocated, the licensee generally would be able to revise them under the provisions of 10 CFR 50.59 without a license amendment.

The relaxation of existing requirements is based on operating experience. When restrictions are shown to provide little or no safety benefit, and place a burden on the licensee, their removal from the TS may be justified. In most cases, the relaxations have been incorporated in the STS or have previously been granted to individual plants on a plant-specific basis.

For further details regarding the proposed changes in the TS, see the application for amendment dated June 5 and November 3, 1989, which is available in the Local Public Document Room and the Commission's Public Document Room.

Prior to issuance of the proposed license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 4, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located in the Environmental and Urban Affairs Library, Florida International University, Miami, Florida, 33199. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petition shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties on the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator

should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow, Director, Project Directorate II–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 5, 1989, as supplemented November 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Environmental and Urban Affairs Library, Florida International University, Miami, Florida, 33199.

Dated at Rockville, Maryland, this 29th day of November 1989.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–28359 Filed 12–4–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL and 50–444–OL (Offsite Emergency Planning)]

Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2; Appointment of Adjudicatory Employee

Commissioners: Kenneth M. Carr, Chairman, Thomas M. Roberts, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Thomas J. Ploski, a Commission employee in Region III, Division of Radiation Safety and Safeguards, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issuer in the above-captioned proceeding related to consideration of emergency planning requirements.

Mr. Ploski has not been engaged in the performance of any investigative or litigating function in connection with the Seabrook facility or in any factually-related proceeding.

Until such time as a final decision is issued, interested persons outside the agency and agency employees performing investigation or litigating functions in the Seabrook operating license proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Ploski.

It is so ordered.

Dated at Rockville, Maryland this 29th day of November, 1989.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–28358 Filed 12–4–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Unit Nos. 1 and 2; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–24 and DPR–27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 located in Manitowoc County, Wisconsin.

The proposed amendments would revise provisions of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS) relating to the permissible heatup and cooldown curves. The heatup and cooldown limitation curves have been revised to be applicable through 18.1 effective full power years. Further, the technical specifications have been simplified by taking the most limiting set of curves derived for either Unit 1 or Unit 2 and making that set applicable to both units. The proposed changes are necessary to provide an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductible failure. These curves need to be revised periodically to account for changes in reactor vessel materials characteristics due to neutron embrittlement. Specifically, the proposed amendments would replace TS figures 15.3.1–1 and 15.3.1–2 with revised heatup and cooldown curves applicable to both units. Technical Specification figures 15.3.1–3 and 15.3.1–4, applicable to Unit 2 only, would be deleted. Technical Specification references to these figures in TSs 15.3.1.B.1, 15.3.1.B.4, 15.3.1.F.3, and 15.3.15.A.1 would be changed to reflect the use of only one set of heatup and cooldown limit curves for both units. The Basis section for TS 15.3.1.B would also be changed both to reflect the use of only one set of heatup and cooldown curves and to reflect revised methodology for how these curves are calculated. Finally, the Basis section for TS 15.3.1.F would be revised to correct a reference from 10 CFR Part 50, Appendix G, Section IV.A.2.c to Section IV.A.3.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes would not involve a significant increase in the probablity or consequences of an accident previously evaluated. The proposed heatup and cooldown curves were calculated using the most limiting reactor vessel weld material and neutron fluence information from either unit as input to NRC accepted methodolgy delineated in Regulatory Guide 1.99, Revision 2. The underlying purpose of these curves remains unchanged, i.e. to define an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. The proposed amendments would not create

the possibility of a new or different kind of accident from any accident previously evaluated since the amendments would not result in any physical changes either to plant equipment or procedures. Finally, the proposed amendments would not involve a significant reduction in a margin of safety for the same reasons discussed above under the probability or consequences of an accident previously evaluated. Indeed, the purpose of these changes is to preserve that margin of safety by altering the heatup and cooldown curves to account for the change in reactor vessel materials properties due to neutron embrittlement. No other safety margins are affected.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects

that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1, (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 3, 1989, as amended October 3, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC 20555, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 28th day of November 1989.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–28360 Filed 12–4–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27481; File No. SR–CSE–89–6]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Compliance With Surveillance Data Requests

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 4.2 and 8.14 of Chapters IV and VII, respectively, of the Exchange Rules of the Board of Trustees to provide for the timely submission of surveillance data requests.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CSE proposes to make the following changes to the Exchange Rules of the board of Trustees:

Rule 4.2. The Exchange proposes to prescribe certain time limits within which members will be required to respond to Exchange requests for trading data.[1]

Rule 8.14. The Exchange seeks to impose fines on membes who fail to comply with specified time periods in submitting responses to Exchange requests for trading data.[2]

The purpose of the proposed rule change is to extend the Exchange's minor rule disciplinary plan [3] to members who fail to comply promptly with surveillance requests for information in connection with any investigation within the Exchange's disciplinary jurisdiction. The proposed rule change is similar to others filed by various self-regulatory organizations [4] and is in keeping with an Intermarket Surveillance Group and Commission initiative to encourage firms to submit, in an automated format, customer and proprietary trading data that the Exchange may routinely request in connection with surveillance inquiries.

The Exchange intends to utilize the present fine schedule set out in Rule 8.14 for those firms that do not comply with the timely submission requirements. The Exchange believes the proposed rules will expedite investigations and provide for immediate discipline of members who fail to respond in a timely fashion to information requests.

The statutory basis for the proposed rule change is Section 6(b) (1) of the Act

[1] The Exchange proposes the following time frames for compliance with Exchange data requests:

1st Request—10 business days
2nd Request—5 business days
3rd Request—5 business days

The third request letter will be sent to the Member's Compliance Officerf and/or Senior Officer.

[2] The Exchange proposes to make the following fines, enumerated under Rule 8.14, applicable to members who fail to comply with the time frames prescribed in Rule 4.2:

Fine amount	Individual	Member organization
First time fined	[illegible]	$500
* Second time fined	[illegible]	1,000
* Third time fined	[illegible]	2,500

* Within a "rolling" 12-month period.

[3] *See* Securities Exchange Act Release No. 26053 (September 1, 1988), 53 FR 34851 (September 8, 1988) (order approving the Cincinnati Stock Exchange's proposal to establish a minor rule violation enforcement and reporting plan). *See also,* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), wherein the Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations to submit, for Commisson approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[4] *See e.g.,* Securities Exchange Release No. 26737 (April 17, 1989), 54 FR 16438–I (April 24, 1989) (approval of Boston Stock Exchange minor rule violation enforcement and reporting plan). *See also,* New York Stock Exchange Rule 476A regarding imposition of fines for minor rule violations.

because it will facilitate the enforcement by the Exchange of compliance with the provisions of the Act, and the rules and regulations thereunder, by requiring members to comply promptly with information requests made by the Exchange.

Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commision may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self—regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–89–6 and should be submitted by December 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28365 Filed 12–04–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27471; File No. SR–PSE–89–21]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Narrowing of Certain Options Bid/Ask Differentials

On August 15, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to narrow the bid-ask differential for certain options quotations and modify the permissible bid-ask differential provisions for stock options that are in-the-money.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27223 (September 6, 1989), 54 FR 37660 (September 13, 1989). No comments were received on the proposed rule change.

Currently, Exchange rules provide for a maximum differential of ¼ of $1 between the bid and the offer for each option contract for which the bid is $1 or less, a maximum differential of ⅜ of $1 where the bid is more than $1 but does not exceed $5, a maximum differential of ½ of $1 where the bid is more than $5 but does not exceed $10, a maximum differential of ¾ of $1 where the bid is more than $10 but does not exceed $20, and a maximum differential of $1 when the last bid is 20⅛ or more.

The current proposal provides for a maximum bid-ask differential of ⅛ of $1 for each option contract for which the bid is less than $2. Each option contract for which the bid is $2 or more, but less than $5, will be subject to a maximum price differential of ⅜ of $1.[3] The current proposal also provides that, for in-the-money options, the bid-ask differential in the underlying security is greater than the bid-ask differential set forth in Exchange Rule VI, Section 79, then the permissible bid-ask differential may be identical to those in the underlying security market.

The Exchange believes that the proposed rule change is designed to promote just and equitable principals of trade and protect the investing public.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[4] Specifically, with regard to narrowing the maximum allowable bid-ask differential, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will perfect the mechanism of a free and open market by providing improved price continuity and tighter, more liquid markets to public investors. The Commission believes that all orders, including public customer orders, will benefit from the narrower bid-ask differentials.

The Commission also believes that, in light of the narrower bid-ask differentials, it is reasonable to permit in-the-money options quotations to reflect the market conditions of the underlying securities, even though such a rule may increase the instances where a narrower bid-ask differential will be bypassed. In this regard, the Commission previously has permitted quotations for in-the-money options to be identical to spreads in the underlying market.[5] In addition, the Commission believes that this exemption from the bid-ask differential requirements will occur only in rare circumstances, and, as a result, will have a minimal impact on the market. Moreover, in many of these occurrences, the narrowing of the permissible spread by the proposed rule change will make the maximum differential tighter than the spread in the underlying stock. The use of the underlying stock spread in these instances only would occur because of the tighter minimum option spread differential.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Therefore, the effect of the proposal is to narrow the maximum allowable bid-ask spread from ⅜ of $1 to ¼ of $1, for option contracts bid at between $1 and less than $2.

[4] 15 U.S.C. 78f (1982).

[5] *See,* Securities Exchange Act Release Nos. 27235 (September 11, 1989), 54 FR 38560 (September 19, 1989) and 26824 (June 21, 1989), 54 FR 26284 (June 22, 1989).

[6] 15 U.S.C. 78s(b)(2) (1982).

proposed rule change (SR–PSE–89–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: November 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28332 Filed 12–4–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order to Show Cause; Mall/Business Express Canadian Commuter Route Transfer

AGENCY: Office of the Secretary, DOT.

ACTION: Order 89–11–60, statement of tentative findings and conclusions and order to show cause, undocketed.

SUMMARY: By Order 89–11–60, the Department proposes to transfer the authority of Mall Airways, Inc. to serve eight U.S.-Canada transborder markets to Business to Business Express, Inc. The transferred authorities would be effective for five-year period from the date of a final order transferring the authority. The Department is also granting the petition of Presidential Airways, Inc. for review of staff action, taken February 3, 1989, and on review, affirms the staff's decision to allow Mall to retain its authority to serve the Dulles-Toronto market.

DATES: Comments on, or objections to, the Department's tentative findings and conclusions are due December 3, 1989. Answers are due not later than December 11, 1989.

ADDRESS: Comments and objections should be filed with the Licensing Division, P–45, Office of International Aviation, Department of Transportation, 400 7th Street SW., Washington, DC 20590 and served upon all persons listed in ordering paragraph 7 of Order 89–11–60.

Dated: November 29, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–28330 Filed 12–4–89; 8:45 am]

BILLING CODE 4910–62–M

[7] 17 CFR 200.30–3(a)(12) (1989).

Federal Highway Administration

Environmental Impact Statement: Guilford County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway in Guildford County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2856.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed I–85 Greensboro Bypass in Guilford County. The proposed action would be the construction of a new 14-mile, multi-lane, divided facility from I–85 in the east, between Mt. Hope Church Road (SR–2045) and McConnell Road (SR–3000), to I–85 in the south between Groometown Road (SR–1129) and Holden Road (SR–1117). This facility will be access controlled. The thoroughfare plan for Greensboro and Guilford County includes the I–85 Greensboro Bypass. The proposed project is needed to serve the existing and anticipated future traffic demand and to relieve congestion, delay and inconvenience to users desiring alternate routes.

Alternates under consideration include (1) the "no-build," (2) improving existing facilities, and (3) controlled access highway on a new location.

A complete public involvement plan has been prepared. Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. Newsletters will be prepared and distributed. Public meetings and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the corridor hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89–28362 Filed 12–4–89; 8:45 am]

BILLING CODE 4910–23–M

Federal Railroad Administration

[Docket No. RST–83–1]

Petition for Exemption or Waiver of Compliance; National Railroad Passenger Corp.

The National Railroad Passenger Corporation (Amtrak) submitted a petition to the Federal Railroad Administration (FRA), Docket Number RST–83–1, for a waiver of the requirements of 49 CFR 213.57(b) in the operation of passenger train service between Washington, DC and New York City. The details of this petition are set forth in the **Federal Register**, Volume 54, Number 125, Friday, June 30, 1989, pages 27790 and 27791.

Notice is hereby given, in accordance with the provisions conained in 49 CFR 211.51, that FRA, in order to more fully consider this petition, requested Amtrak to operate a test train between the two cities for the purpose of evaluating passenger ride quality at curving speeds producing four inches of cant deficiency. A single round trip is contemplated with the consist of the non-revenue test train being limited to a locomotive, a spacer car and the Amtrak instrumented track measuring car, No. 10002. This test is to be concluded by December 1, 1989.

FRA responded promptly to the Amtrak petition, one step being the granting of a temporary waiver of compliance with 49 CFR 213.57(b) in order to conduct this test. This temporary waiver was granted with the understanding that FRA's decision would be reviewed in the light of any public comments received in response to this public notice. The decision to grant a temporary waiver, prior to receipt and consideration of public comment, was based on the determination that immediate action was required in the public interest.

On the subject of this test, FRA is seeking information and comments of all interested parties. As noted, FRA intends to review its decision to conduct

this test in the light of these comments. In addition, FRA will take these comments into account in assessing future Amtrak test programs. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by January 18, 1990, the party submits a written request for hearing that demonstrates that his or her position cannot be properly represented by written statements.

All written communications concerning this test should reference "FRA General Docket No. RST–83–1" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by January 18, 1990, will be considered in this proceeding and in evaluating any future tests of a similar nature. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on November 28, 1989.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 89–28327 Filed 12–4–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

Mr. Mark L. Goodson submitted a petition dated June 19, 1989, requesting that formal steps be taken to recall all vehicles that use the "window shade" type shoulder harness assembly (those equipped with tension relievers). He also requested that Federal Motor Vehicle Safety Standard (FMVSS) 209 be amended to forbid the use of this type of shoulder harness assembly. This notice deals with Mr. Goodson's petition for a recall of vehicles equipped with tension relievers. The question of initiating rulemaking to forbid prospectively manufacturers from equipping vehicles with these devices will be dealt within a separate notice. It should be noted that the issue of whether to amend a safety standard prospectively is separate from the issue of whether existing vehicles that would not comply with the proposed amended standard contain a safety-related defect.

In support of his petition, Mr. Goodson stated that (1) the window shade type shoulder harness allows intentional and unintentional slack to be introduced into the shoulder belt, and that (2) he has investigated many instances in which the shoulder belt slack was a factor that influenced the level and types of injuries sustained in motor vehicle accidents. Mr. Goodson refers to a fatal accident report in which his findings and those of the County Medical Examiner's Office in Dallas, Texas, imply that the presence of the window shade type shoulder harness was a contributing factor in the fatality. Mr. Goodson stated that the crash should have been easily survivable had it not been for the presence of the window shade type relief device.

Tension relievers have been permitted by FMVSS 208, 49 CFR 571.208, since 1974 and the issues raised by Mr. Goodson have been considered subsequently. For example, in an April 1985 proposed rule, the agency noted that the effectiveness of a safety belt system could be reduced if excessive slack were introduced into the belt. However, the agency also recognized that a belt system must be used to be effective at all; and concluded that "the added potential to improve belt fit and the added comfort of these devices is desirable in certain circumstances, since it could operate to enhance proper belt use." 50 FR 14580, 14582 (April 12, 1985).

NHTSA reiterated this view when it finalized the April proposal: Allowing manufacturers to install tension relieving devices makes it possible for an occupant to introduce a small amount of slack to relieve shoulder belt pressure or to divert the belt away from the neck. As a result, safety belt use is promoted. This factor could outweigh any loss in effectiveness due to the introduction of a recommended amount of slack in normal use. 50 FR 46056, 46059 (November 6, 1985)

The petition requests NHTSA to order manufacturers to provide notification and remedy of a safety-related defect. Since these devices have been used widely over the past 15 years and the agency has explicitly permitted their use, there is no reasonable possibility that such an order would be issued at the conclusion of an investigation into this issue. Further commitment of resources to pursue the question is not warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 29, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89–28328 Filed 12–4–89; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

Intent To Prepare Environmental Impact Statement on Alternative Transit and Highway Improvements in the Portland Metropolitan Area, (Multnomah and Washington Counties), OR.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) are undertaking the preparation of a Supplemental Draft Environmental Impact Statement (SDEIS) for transit and highway improvements in the Westside Corridor of the Portland metropolitan region. The SDEIS will be prepared in cooperation with the Federal Highway Administration (FHWA) and the Oregon Department of Transportation(ODOT). A draft environmental impact statement was prepared in 1982 documenting the impacts of a range of transit alternatives in the Westside Corridor. This SDEIS will update the documented environmental impacts and mitigation for the Westside Light Rail Transit (LRT) alignment and analyze additional options currently being considered for segments of the alignment. These options include long and short tunnels as discussed below. The SDEIS will also update to current conditions No-Build and Transportation Systems Management (TSM) alternatives for an analysis of the LRT Alternatives' transportation benefits, costs, cost-effectiveness and environmental impacts. The SDEIS will also include highway improvements in the Westside Corridor and this SDEIS will serve as the original environmental analysis for several of the highway improvements as they were not included in the 1982 Draft Environmental Impact Statement.

The EIS is being prepared in conformance with 40 CFR part 1500,

BEST COPY AVAILABLE

Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT:

Patricia Levine, Urban Mass Transportation Administration, Region 10, 915 2nd Ave. Seattle, WA. 98174 (206) 442-4210, or Ron Higbee, Tri-Met, 115 NW 1st Avenue, Suite 500, Portland, OR 97209, (503) 273-4322.

SUPPLEMENTARY INFORMATION:

Corridor Description

The Westside Corridor is a major travel corridor which includes the central business districts of the cities of Portland and Beaverton and extends westward into Washington County. The corridor parallels on Sunset Highway (US 26), Highway 217 and the Burlington Northern (BN) Railroad. Its boundaries are approximately the Willamette River to the east, 185th Ave. to the West, the West Hills and Forest Park to the north and Beaverton Hillsdale and TV Highways to the south.

Alternatives

Transit Alternatives:

1. A No-Build Alternative will serve as a baseline condition against which to evaluate the environmental impacts of the TSM and LRT Alternatives. The No-Build alternative defines the year 2005 consequences of only modest increases of transit system capacity and no expansion of system coverage over today. The No-Build Alternative is constrained by anticipated revenue generated by Tri-Met's current revenue sources. The Westside Corridor transit system would consist of buses and operate much like today, however, in a more congested traffic environment. Current peak hour bus lines would be upgraded to all day service, and a new transit center and park-and-ride lots would be added at the interchange between US 26 and Highway 217.

2. A Transportation Systems Management (TSM) Alternative consists of a package of low to moderate cost improvements designed to make efficient use of the existing bus and highway system. The TSM alternative also provides a basis for evaluating the cost-effectiveness of the Westside LRT Alternatives. Unconstrained by Tri-Met's existing revenue sources, the TSM proposes a significant increase in Westside Corridor bus service comparable to the service expansion proposed in the Westside LTR Alternative. Both bus service levels and coverage are enhanced. Limited stop, trunk line bus service to downtown Portland during peak hours is greatly enhanced over the No-Build Alternative. A new transit center at Tanasbourne and additional park-and-ride lots along T.V. highway would be included. Bus priority measures to speed the flow of trunk line buses are added at intersections along T.V. Highway and Canyon Road. Bus stop facilities are added to US 26 interchanges from Cornell/158th east to the Zoo Interchange.

3. The Westside LRT Alternatives provide a twelve-mile long light rail line, generally separated from all traffic, in place of the bus trunk lines operating in mixed traffic proposed in the TSM Alternative. The Westside LRT line would connect with the Banfield LRT line in downtown Portland. The aim is to have through operation of light rail trains between the Westside and Eastside of the metropolitan area. Feeder bus service is virtually identical to the TSM Alternative feeder bus service. Additionally, the LRT alternatives propose 13 light rail stations and five park-and-ride lots. The SDEIS will examine termni of the light rail line at the Sunset Transit Center (intersection of Sunset Highway and Highway 217), Murray Boulevard as well as 185th Avenue.

As stated above, the SDEIS will evaluate options to the Westside LRT alignment adopted in 1983. Alignment options being considered for two segments—Sunset Canyon/West Hills and Central Beaverton—are as follows:

1. Sunset Canyon/West Hills, segment (Vista Bridge to Sunset Highway/Highway 217 Interchange)

a. (1983 adopted) South Side Surface Alignment

b. North Side Short Tunnel/Surface Option

c. Long Tunnel with and without Zoo and/or Sylvan stations.

2. Central Beaverton segment (Highway 217 at Center Street to Murray Boulevard via the existing Beaverton Transit Center)

a. 1983 adopted alignment along Golf Creek, the southside of Beaverton Transit Center, Beaverdam Road, and the Burlington Northern (BN) Railroad.

b. East of Beaverton Transit Center the option is north of the 1983 alignment, roughly midway between Golf Creek and Center Street, running by the north side of Beaverton Transit Center. West of the Transit Center the option traverses south of the 1983 alignment to follow a short segment of Henry Street and then curves north to rejoin the BN Railroad right-of-way at Murray Boulevard.

Highway Alternatives

1. No Build. No highway improvements would be constructed.

2. Build. A series of highway interchange and lane addition improvements to US 26 and Highway 217 between the Zoo Interchange and the T.V. Highway Interchange in Beaverton are included in both the TSM and LRT alternatives. These improvements will correct existing highway design deficiencies, improve highway operating safety, smooth traffic flow west of the Sylvan Interchange, and balance eastbound and westbound capacity east of Sylvan Interchange. However, these improvements will *not* increase highway capacity through the Vista Ridge Tunnels or on SW. Jefferson Street into downtown Portland; consistent with Portland's Regional Transportation Plan. (RTP). The specific improvements are as follows:

a. Sunset Highway Westbound Truck climbing Lane extension from the Zoo Interchange to the Canyon Road off ramp;

b. Westbound on-ramp to Sunset Highway at the Zoo Interchange;

c. Sylvan/Canyon/Cemetery Interchange; Collector-distributor Road Improvements.

d. Sunset Highway widening from four to six lanes between the Canyon Road exit/entrance and the Highway 217 Interchange;

e. Sunset Highway/Highway 217 Interchange improvements to match the approach highway widening and increase ramp capacity;

f. Highway 217 Widening from four to six through lanes between the Sunset Highway Interchange and the (Canyon Road) T.V. Highway Interchange.

g. Ramp metering of all eastbound on ramps along 217 and Sunset Highway in the Corridor;

Probable Effects

Impacts proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics land slide potential), changes in the social environment (land use, development, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion on main highways and near transit stations and park and ride lots, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic, and cost effectiveness and financial measures as required by current Federal (NEPA), State and local environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments

A public meeting will be held, if requested by interested citizens or agencies, to discuss the range of alternatives and impacts to be addressed in the SDEIS. A request for a meeting should be made to Terry L. Ebersole, Regional Manager, Suite 3142, Urban Mass Transportation Administration, 915 2nd Ave., Seattle, WA 98174 within thirty days of the date of this Notice. In addition comments may be submitted in writing to Terry L. Ebersole, Regional Manager. Comments should address the alternatives to be considered, impacts to be addressed, and scope of the SDEIS.

Louis F. Mraz, Jr.,

Acting Western Area Director.

[FR Doc. 89-28329 Filed 12-4-89; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 232
Tuesday, December 5, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:12 p.m. on Wednesday, November 29, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) The application of Babcock & Brown, a proposed new bank to be located at 1747 Pennsylvania Avenue, NW., Washington, DC, for Federal deposit insurance; (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) personnel matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C.552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: November 30, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-28481 Filed 12-1-89; 2:06 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, December 6, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1 *Secretary of Labor on behalf of Price and Vacha; and United Mine Workers of America v. Jim Walter Resources, Inc.*, Docket No. SE 87-128-D. (Issues include whether the administrative law judge erred in finding that the operator unlawfully discriminated against complainants.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following Oral Argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider the following:

1. *Secretary of Labor on behalf of Price & Vacha, etc. v. Jim Walter Resources, Inc.*, SE 87-128-D. (see oral argument listing)

It was determined by a unanimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-28451 Filed 12-1-89; 11:16 am]

BILLING CODE 6735-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 4, 11, 18, and 25, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 4

Tuesday, December 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 11—Tentative

Thursday, December 14

10:00 a.m.
Briefing on Status of Implementation of the Severe Accident Master Integration Plan and Status of Licensee Progress on IPE (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Risk Communication (Public Meeting)

Wednesday, December 20

2:00 p.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 21

2:00 p.m.
Briefing on NRC Actions for Cleanup of Contaminated Sites Under NRC Jurisdiction (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, December 22

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of December 25—Tentative

There are no Commission meetings scheduled for the Week of December 25

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: November 30, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-28494 Filed 12-1-89; 2:08 pm]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 11, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried foward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28529 Filed 12-1-89 3:53 pm]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:23 p.m. on Wednesday, November 29, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Chairman L. William Seidman, (Director M. Danny Wall, Director of the Office of Thrift Supervision, was absent for the vote at the beginning of the meeting), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(b) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(9)(b)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC

Dated: November 30, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-28427 Filed 11-30-89; 4:56 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 4, 1989.

A closed meeting will be held on Tuesday, December 5, 1989, at 3:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 5, 1989, at 3:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2200.

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28493 Filed 12-1-89; 2:07 pm]

BILLING CODE 8010-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, December 7, 1989.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, N.W. ground floor (conference room).

STATUS: Open session.—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-sixth meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: November 29, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-28479 Filed 12-1-89; 2:05 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 54, No. 231
Tuesday, December 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1957

Sale of Section 502 Rural Housing Loans

Correction

In rule document 89-26961 beginning on page 47957 in the issue of Monday, November 20, 1989, make the following correction:

On page 47958, in the first column, in the fifth line, "Part 157" should read "Part 1957".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

Correction

In notice document 89-21208 appearing on page 37496 in the issue of Monday, September 11, 1989, make the following correction:

On page 37496, in the table under "Countervailing Duty Proceedings", in the entry "Argentina: * * *", in the second column, "07/14/88-12/31/89" should read "07/14/88-12/31/88".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 91158-9258]

Foreign Fishing

Correction

In rule document 89-26956 beginning on page 47680 in the issue of Thursday, November 16, 1989, make the following corrections:

Appendix A to Subpart A [Corrected]

1. On page 47681, in Table 1., in the first column, in the eighth line, "Northeast" should read "Northwest".

2. On page 47682, in the first column, in the file line, the filing date should read "11-15-89".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[Docket No. 121RA-LDR; FRL-3625-9]

National Oil and Hazardous Substance Pollution Contingency Plan: Applicability of RCRA Land Disposal Restrictions to CERCLA Response Actions

Correction

Document 89-23721, beginning on page 41566 in the issue of Tuesday, October 10, 1989, was published in the "Notices" section of the issue. It should have appeared in the "Proposed Rules" section.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30302; FRL 3664-4]

Certain Companies; Applications to Register Pesticide Products

Correction

In notice document 89-27214 beginning on page 48313 in the issue of Wednesday, November 22, 1989, make the following corrections:

On page 48314, in the first column, in the third item under "**SUPPLEMENTARY INFORMATION**", in the nirth line, remove the "1" after "aminocarbonyl" and, in the 10th line, the second "*N*" should be followed by a hyphen.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00279; FRL-3630-6]

Nominations to the Scientific Advisory Panel; Request for Comments

Correction

In notice document 89-19247 beginning on page 33767 in the issue of Wednesday, August 16, 1989, make the following corrections:

1. On page 33767, in the first column, under **SUMMARY**, in the first line, "provide" was mispelled.

2. On the same page, in the second column, "**FOR FURTHER INFORMATION**" should read "**FOR FURTHER INFORMATION CONTACT**".

3. On page 33768, in the third column, in the first complete paragraph, in the 10th line, "diplomate" was mispelled.

4. On page 33769, in the first column, in the 29th line, "NIEHAS" should read "NIEHS".

5. On the same page, in the second column, in the first complete paragraph, in the ninth line, "pharacology" should read "pharmacology".

6. On page 33770, in the first column, in the first complete paragraph, in the third line, "an" should read "and". In the 16th line, "1968" should read "1969".

7. On the same page, in the second column, in the fifth line, "Southampton College" was mispelled, in the ninth line, "Signa" should read "Sigma", and in the 13th line, "chemicals" was mispelled.

8. On the same page, in the same column, in the third line of the final paragraph, "Laboratory" was mispelled.

9. On the same page, in the third column, in the first complete paragraph, in the sixth line from the end, "Diseases" should read "Disease".

10. On page 33771, in the first column, in the sixth line, the second "on" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0451]

ICI Americas, Inc.; Filing of Food Additive Petition

Correction

In notice document 89-26989 appearing on page 47828 in the issue of Friday, November 17, 1989, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "19877" should read "19897".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89P-0225]

Ice Cream Deviating From the Standard of Identity; Temporary Permit for Market Testing

Correction

In notice document 89-27056 appearing on page 47829 in the issue of Friday, November 17, 1989, make the following correction:

In the third column, in the first complete paragraph, in the seventh line, insert "February 15, 1990" following "than".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Assessments for Incorrect or Late Reports and Failure to Report

November 1, 1989.

Correction

In notice document 89-27051 appearing on page 47838 in the issue of Friday, November 17, 1989, make the following correction:

In the 2nd column, in the 1st complete paragraph, in the 9th through the 15th lines, ""nonrespondent exceptions' will be $10 per month under AFS. The rates were established by MMS for PAAS on non-respondent reports will be $3 per month. The rate established by MMS for 'nonrespondent exceptions' will per month under AFS. The rates were" should read ""nonrespondent exceptions.' Based on actual costs incurred, the rate established by MMS for PAAS on non-respondent reports will be $3 per month. The rate established by MMS for 'nonrespondent exceptions' will be $10 per month under AFS. The rates were".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432 and 540

Performance Management and Recognition System

Correction

In rule document 89-27878 beginning on page 49075 in the issue of Wednesday, November 29, 1989, make the following corrections:

1. On page 49076, in the third column, in the last line of the first incomplete paragraph "acceptable" should read "unacceptable".

2. On page 49077, in the first column, section number "§ 431.107" should read "§ 432.107".

§ 432.107 [Corrected]

3. On the same page, in the third column, in § 432.107(b), in the eighteenth line insert "ending" between "period" and "on".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6846; 34-27281; 35-24954; 39-2227; IC-17146 IA-1205]

Organization, Functions and Authority Delegations

Correction

In rule document 89-23303 beginning on page 40862 in the issue of Wednesday, October 4, 1989, make the following correction:

§ 200.303 [Corrected]

On page 40862, in the 3rd column, in § 200.303(a)(2), in the 11th line, "e.s.t." should read "c.s.t.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-5]

Establishment of the Memphis Terminal Control Area and Revocation of the Memphis International Airport, Airport Radar Service Area; TN

Correction

In rule document 89-25785 beginning on page 46226 in the issue of Thursday, November 2, 1989 make the following correction:

§ 71.403 [Correctly designated]

. On page 46227, in the first column, the section number "§ 71.501" should read "§ 71.403".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 89-96]

Implementation of the Air Carrier Smuggling Prevention Program

Correction

In rule document 89-27025 beginning on page 47761 in the issue of Friday, November 17, 1989, make the following correction:

On page 47763, in the first column, in amendatory instruction 2, in the third line, "171.176" should read "122.176".

BILLING CODE 1505-01-D

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federal register

Tuesday
December 5, 1989

Part II

Department of the Interior

Bureau of Indian Affairs

Fiscal Year 1990 Indian Child Welfare Act Grant Program; Availability of Title II Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year 1990 Indian Child Welfare Act Grant Program; Availability of Title II Funds

November 28, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of title II funds.

SUMMARY: The Indian Child Welfare Act makes available grant funds from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of improving child welfare services to Indian children and families.

EFFECTIVE DATE: The closing date for receipt of applications for this program is February 16, 1990.

ADDRESSES: Bureau of Indian Affairs' area offices are listed in Part IV of this announcement. BIA/Division of Social Services, Room 310 SIB, 18th and C Streets NW., Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or the Acting Chief, Division of Social Services at the address listed above; Telephone (202) 343–6434.

SUPPLEMENTARY INFORMATION: The Assistant Secretary—Indian Affairs is announcing procedures necessary to apply for grant funds under title II of the Indian Child Welfare Act.

Applications for single-year programs as well as renewal applications for existing multi-year projects will be accepted. The available funding for all applications is $8.4 million. This includes approximately $2.0 million for new single-year applications. It is important that applicants carefully review requirements detailed in this announcement related to deadlines, indirect cost, and page limitations. If an application is not received by the close of business on February 16, 1990, the application will not be reviewed. If the applicant does not itemize indirect costs in its proposed budget a total of five points will automatically be deducted from Criteria V—"Fiscal Capabilities, Budget and Budget Justification, part (b)." If an application is longer than the established page limitation, only the first forty pages of the application will be reviewed.

Authority: The Indian Child Welfare Act, Public Law 95–608 authorized the utilization of funds for grants to Indian tribes, organizations, and multi-service Indian centers. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Part I. General Information

A. Background

This announcement provides information on opportunities to apply for Indian Child Welfare Act (ICWA) grant funds for FY 1990. The Indian Child Welfare Act of 1978 (Pub. L. 95–608, 25 U.S.C. 1902, 25 U.S.C. 1931 and 1932) limits the use of grant funds for the following activities:

(1) To prevent separation of Indian children from their families when possible;

(2) When separation is necessary, to reunite Indian children with their families as soon as possible;

(3) When reunification is not possible, to arrange permanent placements with extended families or through adoption; and

(4) To carry out work with Indian children and their families in accordance with the preferences of the ICWA, following procedures and practices which reflect the unique values of Indian culture.

An applicant for an Indian Child Welfare Act Grant may submit only one grant application for this program during this application period (refer to 25 CFR 23.21(b)).

B. BIA Indian Child Welfare Act Grant Program Purpose

The purposes of the Bureau of Indian Affairs' Indian Child Welfare grants as specifically stated in the law are:

(1) The establishment and operation of Indian child and family service programs which promote the stability of Indian families, and

(2) The provision of non-Federal matching shares for the other Federal financial assistance programs which contribute to the same purpose.

These purposes are further defined in Public Law 95–608, sections 201 and 202; 25 U.S.C. 1931 and 1932; and 25 CFR 23.22.

The objective of every Indian child and family service program shall be to prevent the breakup of Indian families, and insure that the permanent removal of an Indian child from the custody of his/her parent or Indian custodian shall be a last resort.

C. Eligible Applicants

The governing body of any tribe or tribes, or any nonprofit off-reservation Indian organization or multi-service Indian center, may apply individually or as a consortium for a grant. No applicant may submit more than one application.

A consortium is created by an agreement or association between two or more eligible applicants.

New applications for projects of one year duration, as well as renewal applications for multi-year applications originally funded in FY 1989 may be submitted in response to this announcement.

Part II. Available Funds

The appropriation for this program in Fiscal Year 1990 is $8.4 million. This includes funding for existing multi-year programs. Approximately $2.0 million dollars will be available for single year grant applications nationwide this funding period. Grants will be awarded to individual tribes, organizations, or to consortia of tribes and organizations within the following categories:

(a) A maximum of up to $50,000 for eligible applicants with a total service area population of 2,500 or less;

(b) A maximum of up to $75,000 for eligible applicants with a total service area population greater than 2,500 but less than 5,000;

(c) A maximum of up to $100,000 for eligible applicants with a total service area population greater than 5,000 but less than 7,500;

(d) A maximum of up to $150,000 for eligible applicants with a total service area population of 7,500 but less than 15,000;

(e) A maximum of up to $300,000 for eligible applicants with a total service area of greater than 15,000.

Applicants in the State of Alaska will be allowed a 25 perent cost of living adjustment to the total maximum amount for which they may apply.

Notwithstanding the above grant guidelines, consortia having a total service area population of 5,000 or less, may apply for a maximum grant of up to $100,000 because of the greater administrative costs associated with operating a small consortium. Consortia with service area populations greater than 5,000 must comply with the grant guidelines set above.

Service area population means the total number of Indians eligible for service under 25 CFR 23.2 (d)(2) and/or (3), in the geographical area to which the tribe, or organization, or multi-service center can realistically provide the services proposed in the application. The service area population is used only to determine maximum grant allocations that a tribe, multi-service center, or organization may be eligible to receive. These population figures must be based on identifiable statistical resources.

All costs associated with the administration of proposed projects shall be line itemized. Indirect cost as well as all other administrative costs must be broken down by percentage and dollar amounts. All administrative costs will be carefully scrutinized in relation to proposed funds used for direct services. If the applicant does not itemize indirect costs in its proposed budget, a total of five points will automatically be deducted from Criteria V—"Fiscal Capabilities, Budget and Budget Justification, Part (b)."

In accordance with 25 CFR 23.25(a)(8), the reasonableness and relevance of the estimated costs for the project are considered in the rating of all project applications. Administrative costs are only allowable within the funding specified by the grant formula and limitations specified in this announcement.

Applicants will not be funded for more than their demonstrated need, as specifically addressed in 25 CFR 23.24 and 23.25. The statistical requirements established in these regulations, as well as the tribe's multi-service center's or organization's prior service record will be used in determining need. Examples of necessary data include the number of actual or estimated Indian family breakups, and the number of persons who will receive direct services from any portion of the proposed program, by program area.

In accordance with 25 CFR 23.27(c)(3), if an applicant has been a grantee during the preceding fiscal year and proposes to continue essentially the same service program, the applicant, at the time of application, must provide a satisfactory evaluation from the area office along with the other materials required in this subsection.

A satisfactory evaluation means at a minimum, the timely submission of all fiscal and programmatic reports, including utilization of the corrective analysis form when programmatic changes are necessary. At no time may any Indian tribe, organization, or multi-service center which is either an eligible individual applicant in accordance with 25 CFR 23.21 or a member of a consortium, receive Indian Child Welfare Act grant funds greater than a maximum grant of $300,000 through a direct grant or through subgranting procedures with approved applicants.

Part III. Application and Selection Criteria

A. Statutory Authority

The Indian Child Welfare Program from the Bureau of Indian Affairs is authorized by Title II of Public Law 95–608, the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*, 25 CFR part 23). The appropriation for the grant program is $8.4 million. The Central Office will retain 10 percent of the total available funding, to assure funding for any applicant who may appeal a denial at the area office level. If these funds are not utilized for appeals, they will be distributed through the area offices to approved applicants.

B. The Closing Date for Receipt of Applications

The closing date for receipt of all applications under this Program Announcement is February 16, 1990. Applications for Indian Child Welfare Act Grants must be received in the appropriate Bureau of Indian Affairs' Social Services Area/Agency Office, as specified in 25 CFR 23.28, on/or before 4:15 p.m. or the applicable close of business for that office on the closing date of the application period. Post marks will not be considered as meeting the timeframe for applications received after the application deadline. The names and addresses of Bureau Social Service Area Offices and staff are listed at the end of this announcement. Hand delivered applications are accepted during normal working hours Monday through Friday. Applications which do not meet this criteria are considered late applications and will not be considered in the current competition.

C. Program Priorities

Indian Child Welfare Act grants are for the purpose of:

(1) Establishment and operation of Indian child and family service programs. In accordance with the policy in 25 CFR 23.3 to emphasize the design and funding of programs to promote the stability of Indian families, program priorities have been established to be utilized by area offices in the competitive review process when more than one application obtains the same competitive score. These priorities reemphasize the programmatic interest in maintaining the family and preventing out-of-home placements. Program priorities are listed below in descending order:

(a) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(b) Family Assistance (including homemaker and home counselors), daycare, after-school care, recreational activities, respite-care, and employment.

(c) A system for the tribes and Indian organizations to license or otherwise regulate Indian foster and adoptive homes or the preparation and implementation of child welfare codes within their legal jurisdictional authority, or pursuant to a state-tribal and/or Indian organization agreement.

(d) Guidance, legal representation and advice to Indian families involved in tribal, state or federal child custody proceedings.

(e) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters. (Funding of tribal court staff is not allowable.)

(f) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(g) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they could be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(h) Home improvement programs.

(i) Other programs designed to meet the purpose of the Act. Planning or feasibility grants may be undertaken for any one of the above listed program purposes. These applications will be ranked according to the priority of the program under consideration.

(2) Providing non-Federal matching shares for other Federal financial assistance programs as prescribed in 25 CFR 23.43. The order of priorities of matching share grants will correlate with the purpose of the program receiving the match.

D. Content of the Application

The application shall be no longer than 40 pages, double spaced, excluding the appendix. The table of contents and appendices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. Any application whose narrative exceeds 40 pages will not be reviewed past page 40.

The application shall include standard form 424 and the following information:

(1) Name and address of Indian tribal governing body(ies) or Indian organization applying for a grant,

(2) Descriptive name of project,

(3) Grant funds requested,

(4) The unduplicated client service population directly benefiting from the project,

(5) Length of project,

(6) Beginning date,

(7) Project budget categories or items,

(8) Program narrative statement (including three year plans if current multi-year grantee),

(9) Certification or evidence of request by Indian tribe or board of Indian

organization (preferably covering the duration of the proposed project).

(10) Evidence of substantial community support for the proposed program. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(11) Name and address of the Bureau office to which an application is submitted.

(12) Date application is submitted to the Bureau, and

(13) Additional information pertaining to grant applications for funds to be used as matching shares.

Information included in the appendix should related specifically to the application. The appendix may include, but is not limited to the following: Resolutions, support letters, position descriptions, fiscal management/accounting certification, operational monitoring system, non-profit status documentation.

E. Evaluation Criteria

The content of the application and the following factors are considered in the competitive review of these grant applications:

(1) The degree to which an applicant demonstrates in the program narrative an understanding of the social service problems or issues impacting the client population which the applicant proposes to serve. (If an applicant identifies alcohol or drug abuse as a major problem or issue impacting Indian children and families, they must also clearly address current efforts to coordinate existing resources to attack these problems. This may include information on the development or contents of the Tribal Action Plan specified under section 4206 of the Omnibus Drug and Alcohol Abuse Act of 1988.)

(2) The degree to which and the methods by which the applicant intends to fulfill the purpose of the grant, specifically relating to the goals and objectives of the program to the issues and problems impacting the client population. (The proposed methods outlined in the application should have an established basis for operation, e.g., a tribal placement program requires tribally established licensing or placement standards on which to operate, or a program to assist the tribal court requires a tribal code and a tribe court with which to work, etc.)

(3) Whether the applicant presents narrative, quantitative data and demographics of the client population to be served. Examples of such data include:

(a) The number of actual or estimated Indian child placements outside the home;

(b) The number of actual or estimated Indian family breakups; and

(c) The need for a directly related preventive program. (Refer to part II for further explanation.)

(4) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining accessibility include:

(a) Cultural barriers;

(b) Discrimination against Indians;

(c) Inability of potential Indian clientele to pay for service;

(d) Lack of programs which provide free service to indigent families;

(e) Technical barriers created by existing public or private programs;

(f) Availability of transportation to existing programs;

(g) Distance between the Indian community to be served under the proposal and nearest existing programs;

(h) Quality of service provided to Indian clientele; and

(i) Relevance of service provided to specific needs of Indian clientele.

(5) The proper justification of the extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of family breakup, taking into consideration all the factors listed in paragraphs (1), (2), (3), and (4) of this section. Proper justification must be given for any duplication of services.

(6) Evidence of substantial community support for the proposed program from the Indian community or communities to be served. Such support may be evidenced by:

(a) Letters of support from individuals and families to be served;

(b) Local Indian community representation in and control over the Indian entity requesting the grant;

(c) Letters from local social service or social service related agencies familiar with the applicant's past work experience;

(7) The explanation of proposed facilities and of the structure of the tribal or Indian organization requesting grant funds, and the position description of any position to be funded with grant funds, identifying qualifications, responsibilities, and lines of supervision.

(8) The reasonableness and relevance of the estimated costs of the proposed program or service.

An application shall not receive a preliminary approval unless a review of the application determines that it:

(a) Contains all the information required in "D. Content of an Application".

(b) Receives a minimum score of 85 in a competitive review under the scoring process using the selection criteria established in regulation.

(c) If an applicant has been a grantee during the year immediately preceding the year for which an application is being made, and has made an application to continue essentially the same service program, satisfactory evaluation(s) from the area office review of the program must be provided in addition to the other materials required in this subsection.

F. Single Year Grant Review Process

The Assistant Secretary—Indian Affairs or his/her designated representative shall select for grants under the Indian Child Welfare Act those proposals which will in his/her judgment best promote the purposes of the Act. Such selection will be made through a review process in which each application will be scored competitively using the BIA review criteria listed above at the appropriate Bureau Social Service Office referred to in 25 CFR 23.30, 23.31, or 23.33. Grant applications will be reviewed by a panel of reviewers qualified by training and/or experience in human services to Indian populations. These recommendations will be used by the Assistant Secretary—Indian Affairs' designated representative to preliminary approve or disapprove all single year grant applications, and make funding recommendations to the Central Office. The Assistant Secretary—Indian Affairs has final funding authority.

G. Procedures for Submission of Multi-Year Renewal Applications

The Assistant Secretary—Indian Affairs may award grants for the second year of approved multi-year project proposals as authorized in 25 CFR 23.37. *No new multi-year projects shall be considered in the FY 1990 application period.* Funding of projects is subject to the availability of funds in accordance with 25 CFR 23.27(e). Only current grantees who have FY 1989 approved multi-year projects may submit renewal applications.

Current multi-year projects grantees must submit three copies of renewal applications which contain the following information to the appropriate agency or area office:

(1) New SF–424;

(2) Updated information required in 25 CFR 23.24, 23.25, 23.26 and 23.27(c)(3);

(3) Updated Operational Monitoring System (OMS);

(4) Proposed budget.

Grantees must have a satisfactory evaluation of the current year of their multi-year project from the Area Office in order to be considered for funding for subsequent project years (25 CFR 23.27(c)(3)).

As stated in 25 CFR 23.37(e), requests (e.g., resolutions) from tribal governing bodies or Indian organizations which cover the duration of the multi-year project will fulfill the requirements specified in 25 CFR 23.26 and do not need to be resubmitted on an annual basis. Resolutions that covered only one year of the project must be updated for the year which the grantee is submitting a renewal application.

Grantees must comply with 25 CFR part 276 in terms of both financial and performance reporting requirements. Failure to meet and comply with regulatory requirements may result in suspension, cancellation and/or termination of program funds. The OMS for a multi-year renewal application must demonstrate a developmental approach to the delivery of the proposed child and family service project (25 CFR 23.37(d)(2)). In revising or updating the OMS, renewal applicants shall submit an OMS–2. Applicants may specify that the OMS–2 does not require updating and should note such in the renewal application.

H. Renewal Application Review

Upon submission of the initial application and the renewal application, the area/agency certification form will be completed by the appropriate area/agency office specified in 25 CFR 23.30 or 23.31. The applicant must include a satisfactory evaluation of their existing ICWA program (25 CFR 23.27(c)(3)) to include with their renewal application.

Materials submitted for renewal shall not be subject to competitive review. The area social worker or designated social services staff shall review renewal applications for compliance with 25 CFR part 23 and 25 CFR part 276. The area social worker or designated social services staff shall make recommendations based on this review.

I. Renewal Application Funding

Funding shall be in accordance with the formula published in the **Federal Register** (25 CFR 23.27(e)(1)). Funding after the first year of a multi-year project will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan submitted in the previous year(s) of the project (25 CFR 23.37(f)), demonstrated need, and the availability of funds.

J. Appeals

In accordance with 25 CFR 2.20(c), 23.63, and 23.64, the Assistant Secretary—Indian Affairs has made a determination to assume administrative jurisdiction over all Fiscal Year 1990 Indian Child Welfare Act Grant Application appeals.

Notice(s) of appeals must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice is filed in the office of the official whose decision is being appealed. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office. (25 CFR 2.9(a), 2.13(a).) No extension of time will be granted for filing a notice of appeal. (25 CFR 2.9(a), 2.16.)

The Statement of Reasons must be filed within the next 30 days in the office of the official whose decision is being appealed. It may be included in or filed with the notice of appeal. (25 CFR 2.10.) The Assistant Secretary—Indian Affairs shall take action and render a decision in accordance with the provisions required in 25 CFR 2.20.

Part IV. BIA Area Offices—Area Social Workers

Aberdeen—Dean Krahulec, 115 4th Avenue SE., Aberdeen, SD 57401; (605) 226–7351

Albuquerque—Joe Naranjo, 615 1st Street, P.O. Box 26567, Albuquerque, NM 87125–6567; (505) 766–3321

Anadarko—Jerry Bridges, P.O. Box 368, Anadarko, OK 73005; (405) 247–6673 ext. 257

Billings—Louise Reyes, 316 N. 26th Street, Billings, MT 59101; (406) 657–6651

Eastern—Evelyn Roanhorse, 18th and C Streets NW., Code 1000, Washington, DC 20240; (703) 235–3179

Juneau—Jimmie Clemmons, P.O. Box 3–8000, Juneau, AK 99802–1219; (907) 586–7611

Minneapolis—Rosalie V. Clark, 15 South Fifth Street, 10th Floor, Minneapolis, MN 55402; (612) 349–3615

Muskogee—Alice Allen, Old Federal Building, Muskogee, OK 74401; (918) 687–2507

Navajo—Nancy Evans, P.O. Box M, Window Rock, AZ 86515; (602) 871–5151

Phoenix—Elizabeth Black Owl, One North First Street, P.O. Box 10, Phoenix, AZ 85004; (602) 241–2262

Portland—Area Social Worker, 1002 NE Holladay, P.O. Box 3785, Portland, OR 97232; (503) 231–6783/6785

Sacramento—Kevin Sanders, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825; (916) 978–4691.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 89–28313 Filed 12–4–89; 8:45 am]

BILLING CODE 4310–02–M

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federal register

Tuesday
December 5, 1989

Part III

Department of Transportation

Coast Guard

Approval of Inflatable Lifejackets; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 78-174b]

RIN 2115-AC16

Approval of Inflatable Lifejackets

AGENCY: Coast Guard, DOT.

ACTION: Interim Final Rule.

SUMMARY: This interim final rule establishes structural and performance standards and procedures for approval of inflatable lifejackets, as well as requirements for associated manuals, servicing programs, and shore-side service facilities. Inflatable lifejackets need only minimal stowage space and are well suited for use on vessels that have stowage space and weight limitations. Inflatable lifejackets are allowed only on certain inspected vessels and submersibles and must be serviced annually at approved servicing facilities. Their use is optional but, if carried, certain limitations apply.

DATES: *Effective date*: This rule becomes effective on January 4, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1990. *Comment Date*: Comments must be received by January 19, 1990.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 78-174b), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001. Comments will be available for examination and copying at, and may be delivered to, Room 3600 at the above address, between the hours of 8 a.m., and 3 p.m. Monday through Friday, except holidays. The telephone number is (202) 267-1477.

A final regulatory evaluation has been included in the public docket for this rulemaking. The regulatory evaluation and other materials referenced in this document may be inspected and copied at the Marine Safety Council, between the hours of 8 a.m. and 3 p.m. Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Wehr, Office of Marine Safety, Security, and Environmental Protection, Attn: G-MVI-3/14, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1444.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking. A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on May 29, 1985 (50 FR 21862 and 21878). Corrections to this NPRM were published in the Federal Register of June 18, 1985 (50 FR 25274). The comment period on the proposal ended on July 15, 1985. Comments were received from a total of 19 parties.

Hybrid Personal Flotation Devices (PFD's). The NPRM proposed requirements for both hybrid PFD's and inflatable lifejackets. An interim final rule promulgating hybrid PFD requirements was published in the Federal Register on August 22, 1985 (50 FR 33923). Corrections to this rule were published on February 4, 1986 (51 FR 4349). Comments that addressed concerns relating to the hybrid requirements were analyzed and discussed in that publication. Some of those comments are also relevant to inflatable lifejackets and are addressed in the discussion of comments in this rulemaking.

Carriage Requirements for Inflatable Lifejackets. Provisions relating to carriage of inflatable lifejackets as substitutes for other required lifejackets on board various types of vessels will be included in regulations being proposed under a project to update the lifesaving appliances and arrangements for all vessels to implement the 1983 Amendments to SOLAS 1974 (SOLAS 74/83) (Docket CGD 84-069) (new Subchapter W). Advance notice of this related rulemaking was published in the Federal Register of April 29, 1985 (50 FR 17530). A Notice of Proposed Rulemaking was published April 21, 1989 (54 FR 16198). Until the rulemaking is completed, inflatable lifejackets may be accepted for carriage under the equivalency provisions in the various vessel regulations by contacting the Commandant (G-MVI) according to 46 CFR 30.15, 46 CFR 70.15, 46 CFR 90.15, 46 CFR 108.105, 46 CFR 167.35-1, 46 CFR 169.109, and 46 CFR 175.15. The Coast Guard expects to follow the guidelines in the inflatable PFD NPRM published on May 29, 1985 when granting an acceptance.

Request for public hearing. Two requests for a public hearing were received at the end of the comment period. As discussed in the interim final rule for hybrid PFD's published in the Federal Register on August 22, 1985 (50 FR 33923), no public hearings were held because the written comments received during the comment period provided such ample information with detailed recommendations that a public hearing would not, in all probability, provide any new information. Also, the concerns of those requesting public hearings had already been discussed in several public meeting of the National Boating Safety Advisory Council (NBSAC), and were adequately documented for Coast Guard review and consideration. The Coast Guard, therefore, determined there was not a sufficient need for having a public hearing.

Drafting Information

The principal persons involved in drafting this rule were: Mr. Samuel Wehr, Office of Marine Safety, Security, and Environmental Protection, and Christena Green, Office of the Chief Counsel.

Discussion of Comments and Revisions Made

General

Reliability and "Type" Designation of Inflatables as Opposed to Hybrids. One commenter requested an explanation of why inflatables are to be approved for Type I PFD service while hybrids are being approved only for Type II or III service. The performance type assigned to the device is to designate differences in intended use and flotation performance for the device. Type I devices are reversible and provide face-up flotation, among other things. If a commercial hybrid PFD can be made to be reversible, to have the necessary face-up flotation performance, and to meet the other Type I performance requirements, it could be accepted for carriage in lieu of Type I on at least certain classes of vessels, if not all classes.

The commenter also stated that the hybrid would appear to be more reliable because of its inherent buoyancy. The reliability of all types of PFD's is basically equivalent but is achieved in different ways. Because hybrid PFD's have inherent buoyancy and are REQUIRED TO BE WORN, they are permitted to be serviced by the user instead of an approved servicing facility. Because inflatables have no inherent buoyancy and required wear is not practical on large commercial vessels, inflatable lifejackets are required to be serviced annually at an approved servicing facility to ensure an equivalent level of reliable operation. These differences were discussed in the Notice of Proposed Rulemaking (NPRM) (50 FR 21879-81) under the headings "5. *Coast Guard Studies*", "11. *PFD Reliability*", "13. *Need for Annual Servicing*", and "17. *REQUIRED TO BE WORN*". The preamble emphasized the need for professional servicing of inflatable lifejackets. The differences between hybrid and inflatable servicing requirements were also discussed in the interim final rules for carriage of hybrid PFD's under the heading "7. *Need for Annual Servicing*" (51 FR 4339).

Use of Inflatables on Recreational boats. One commenter suggested that the Coast Guard evaluate overseas experience with use of inflatable lifejackets on recreational boats and permit their use on recreational boats in U.S. waters. Overseas experience was specifically solicited on the ANPRM. Many foreign governments responded and their comments are in the docket. There was no indication that inflatables would provide any additional benefit to recreational boating than hybrid PFD's. Further, Coast Guard studies discussed in the NPRM on inflatable lifejackets and hybrid PFD's indicate that a professional servicing program is needed to maintain continuing reliability of inflatable lifejackets. In a recreational boating environment, inflatables failed to operate approximately 20% of the time when not in a structured servicing program. Inflatables present a higher risk of fatalities than hybrids if not serviced regularly and properly. Since no satisfactory servicing program is available or could feasibly be developed for recreational boating, totally inflatable lifejackets are not being permitted to meet the carriage requirements on recreational boats at this time.

The Coast Guard continues to research ways to overcome this "operational reliability" problem. Proposals have been requested for research grants (54 FR 3552); data continues to be gathered on the use of hybrid PFD's; and discussions continue with industry, laboratory standards writing organizations, and state boating law administrators. When new hardware developments, carriage conditions, or other innovations reduce the risk of inflation failure to an acceptable level, a new rulemaking could be initiated to address this issue.

Work Vest Approval. Because of the apparent inconsistency in approving hybrids, but not inflatables, as work vests, one commenter suggested that inflatables might also be approved as work vests. This suggestion has not been adopted. It has not yet been demonstrated that an inflatable can be used in a work environment without significant unnoticed damage to an inflatable chamber making the device totally ineffective or otherwise rendering the device unserviceable. The inherent buoyancy in hybrids, however, permits them to be considered for use as work vests. As the studies mentioned in the NPRM indicate, the 10 pounds of inherent buoyancy in a commercial hybrid provides adequate flotation for most people. The Coast Guard believes that the risk of a hybrid with a damaged inflation chamber not supporting a user is minimal. However, the risk is too great to be considered with an inflatable work vest which has a damaged inflation chamber or which has an automatic inflation system of unknown reliability.

Use of Devices of the same or similar design. One commenter recommended that inflatable lifejackets carried on board a vessel be required to be "identical" rather than "of the same or similar design and have the same method of operation". The commenter stated that use of different styles on the same craft would compromise the donning and use demonstration and thus cause confusion and increase donning time in an emergency. This comment has not been adopted. Requiring "identical" lifejackets would make it difficult to replace damaged lifejackets and allowing use of similar designs is considered sufficient to avoid confusion in use.

Minimum Buoyancy Requirement. One commenter suggested that a minimum buoyancy of 35 lb. be required in inflatable lifejackets. Such a requirement would be design restrictive and is unnecessary because the performance requirements for inflatable lifejackets in the rule provide the same or better support, while allowing for future innovations in design. Therefore, this comment has not been adopted.

New Terminology. The term "lifejacket" replaces "life preserver" in all but the existing regulations 46 CFR 160.001 in order to be consistent with SOLAS 74/83 terminology. In subpart 160.001 only one paragraph is changed, and it would be confusing to use "lifejacket" without changing the term throughout. All regulations which are revised to comply with SOLAS 74/83 will use the term "lifejacket".

New Subpart Number. Since all lifesaving equipment regulations which meet SOLAS 74/83 are using a one hundred series designation, the inflatable lifejacket subpart number has been changed from "160.076" to "160.176".

Sections open to Comment. Section 160.176-13(d) (3) & (4), Static Measurements & Average Requirements; section 160.176-13(g), Lanyard Pull Test; and section 160.176-19, Servicing, have been significantly changed due to public comments, International Maritime Organization (IMO) clarifications of SOLAS 74/83, and Coast Guard observations. The changes to these sections are discussed in detail in the following section. As these items were not included in the notice of proposed rulemaking for this project, the Coast Guard is extending an opportunity for all interested parties to comment upon them. All comments submitted within the next forty-five days will be considered by the Coast Guard in determining whether to retain or make further modifications to these provisions.

Persons submitting comments should include their name and address, identify this rule as CGD 78-174b, and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

Other Changes or Suggested Changes to Specific Sections

Section Reorganization. The sections dealing with procedures for approval have been relocated to the front of the subpart to be consistent with other recent equipment approval subparts and to improve the clarity of the regulation. This change required renumbering several other sections. The reorganized section numbers are as follows:

Section No. in NPRM	Section No. in Final Rule	Section Title
160.076-1	160.176-1	Scope.
None	160.176-2	Application.
160.076-3	160.176-3	Definitions.
160.076-5	160.176-4	Incorporation by Reference.
160.076-25	160.176-5	Approval Procedures.
160.076-27	160.176-6	Procedure for Approval of Design or Material Revision.
160.076-29	160.176-7	Independent Laboratories.
160.076-7	160.176-8	Materials.
160.076-9	160.176-9	Construction.
160.076-11	160.176-11	Performance.
160.076-13	160.176-13	Approval Tests.
160.076-15	160.176-15	Production Tests and Inspections.
160.076-17	160.176-17	Manufacturer Records.
160.076-19	160.176-19	Servicing.
160.076-21	160.176-21	User Manuals.
160.076-23	160.176-23	Marking.

Section 160.176-2, Application. For clarity, a new section, "Application" has been added by taking material from the proposed "Scope".

Section 160.176-3(h), Reference Vest. One commenter stated that the reference vest could not be made according to the description in the proposal, and suggested a Type I PFD made according to Subpart 160.055 should be used. One of the tests which used the reference vest (§ 160.176-13(d))

has been revised to eliminate the need for the reference vest, but no alternative is yet available for the other test (§ 160.176–9(a)(7)). Therefore § 160.176–3(h) has been revised to parallel the hybrid subpart (§ 160.077–3(j)). The revised specification allows larger front insert envelopes.

Section 160.176–5(c), Approval of Servicing Facilities. This section has been rewritten to clarify the details of what must be submitted for approval and to correspond with the changes to the section on servicing, § 160.176–19.

Section 160.176–8(a)(3), Use of Independent Laboratories. Reference to subpart 159.010 has been added to clarify the procedures for laboratory acceptance. This section has been changed to be consistent with hybrid PFD interim final rule published August 22, 1985 (50 FR 33923).

Section 160.176–8, Material Requirements. The weathering resistance requirement is dropped where the material is suitably shielded from UV exposure and the retained strength requirement is reduced from 45% to 40%. For the fungus resistance requirement, materials that are covered in use are permitted to be tested with the covering. For the corrosion resistance requirements, expendable elements are exempted from this requirement, and the alternative to run a salt spray test is provided. These sections have been changed to be consistent with the hybrid PFD interim final rule published August 22, 1985 (50 FR 33923).

Section 160.176–8(a)(4), Weathering Resistance. Two commenters suggested that this section be revised or that implementation be delayed to allow more materials to become available which meet the requirement. Two revisions, the waiver of the requirement if the material is suitably covered to protect it, and the change from 45% to 40% strength retention, which were made in the hybrid PFD interim final rule, have been made to the requirements in this section. These changes make an ample supply of materials available.

Section 160.176–9(a)(8), Reversibility. One commenter stated that the requirement for inflatable lifejackets to be reversible was unnecessary and might eliminate some superior designs. The requirement for reversibility is intended to increase the ease of donning, especially under conditions of poor lighting, and for this reason it is also a requirement of SOLAS 74/83. However, SOLAS also allows non-reversible designs as long as they can only be donned in one way. Section 160.176–9(a)(6) has been revised to include this exception.

Section 160.176–13(b) (3) and (4), Donning Test. One commenter questioned the feasibility of the 30 second donning requirement, suggested that there should be a disqualification procedure using a reference vest, and requested a description of the "jersey gloves" required to be used in this test. The 30 second requirement is feasible. Averaging effectively eliminates the need for a disqualification procedure. The term "jersey gloves" refers to gloves made from heavy, cotton-knit fabric and the section has been revised to reflect this description.

Section 160.176–13(d)(2)(ii), Righting Test. One commenter suggested that there should be a test subject disqualification procedure using a reference vest for this test and the tests in §§ 160.176–13(d) (3) and (4) and 160.176–13(f). Swim test subjects sometimes fail to perform properly and thereby adversely affect the test results for the lifejacket being tested. Accordingly, the test procedure must provide for discounting the results from such subjects. It is the testing organization's responsibility to correct the performance of a subject who is not following the test procedures. SOLAS 74/83 makes no provision for disregarding the results of a test subject because of poor results in a reference vest. It is, however, sometimes difficult to detect some subject performance problems. The use of the reference vest described in the hybrid regulation, § 160.176–3(h), is recommended for training and evaluation of test subjects but not for one-to-one comparison of each test result. Therefore the proposal has not been changed.

Other In-water Tests. One commenter suggested that several other tests should also be run in comparison to a reference vest or be modified. Comments on the following have not been adopted because (as noted above) they were not consistent with SOLAS 74/83 or were impractical:

Section 160.176–13(d) (3) and (4), Static Measurements and HELP Position Tests.

Section 160.176–13(f), Water Emergence.

Section 160.176–13(d) (3) and (4), Static Measurements & Average Requirements. The freeboard, torso angle, and face plane angle requirements have been revised in § 160.176–13(d)(3) and average requirements added in a new § 160.176–13(d)(4) to reflect a clarification of the SOLAS 74/83 requirements approved by the International Maritime Organization (IMO).

Section 160.176–13(e), Jump Test. One commenter stated that there should be a warning about the potential for injury from this test and suggested that subjects be advised to wear protective clothing during this test. The advisory note in § 160.176–13(e) has been revised accordingly. Additionally, paragraphs (2) and (3) of this section have been rewritten for greater clarity.

Section 160.176–13(g), Lanyard Pull Test. The lanyard test has been divided into two tests to add an evaluation of the strength of the lanyard in addition to the force necessary to activate the inflation mechanism. Since activation of the lifejacket manual inflation mechanism is achieved through pulling on the lanyard, failure of the lanyard could be a critical defect. Therefore, this additional test is necessary.

Section 160.176–13(h), Temperature Cycling Tests. Paragraph (2) of this section has been rewritten for greater clarity and to specify the temperature of the water to be used to activate the automatic inflation mechanisms. The temperature is the same as the test for hybrid PFD's.

Section 160.176–13(m), Salt Spray Exposure and Section 160.176–13(m)(2), Rain Exposure. One commenter questioned the duration of the salt spray test. The proposed duration of 760 hours was an error and has been corrected to 720 hours. Another commenter stated that it was unreasonable to expect an automatic inflation mechanism not to prematurely inflate during these tests. If a cover on the inflation mechanism is part of the lifejacket design, the inflation mechanism may remain covered during the test. This should preclude premature inflation.

Minor Changes. The following sections have been revised as a result of the comments:

Figure 160.176–13(n)(2) has been redrawn.

In Section 160.176–13(q) the fuel depth has been changed to 1 inch.

In Section 160.176–13(t) the maximum pressure loss has been increased from 4% to 5%.

Section 160.176–13(r). Solvent Exposure. One commenter suggested that the test fuel used and the duration of this test should be changed because it was believed to be excessive and unrealistic. The duration is not excessive but the effects of the fuel are perhaps more pernicious than might be expected in the intended use environment. The 24 hour exposure is a SOLAS 74/83 requirement and represents the cumulative effects of liquid fuel and fuel vapors on the device over its useful life. Reference fuel B, however, is a more volatile fuel than is used on commercial vessels. The Coast Guard has, therefore, changed the test fuel to diesel fuel.

Section 160.176–13(u). Seam Strength. One commenter stated that he believed that the requirement for seam strength stated as 80% of the fabric breaking strength was too restrictive and would eliminate some perfectly good materials. The problem with an 80% requirement is that when a very heavy duty fabric is used, then an equally heavy duty thread is required, when in fact a lighter thread may provide a service life exceeding that of the other components in the lifejacket. Lighter threads are easier to work with and the requirement may actually discourage the use of more durable fabrics. Although the 80% requirement is believed to be good design practice in most cases, it probably is excessive in this case and has been deleted.

Section 160.176–19. Servicing. One commenter stated that the requirement to have the lifejackets sent out to a servicing facility would be time consuming, expensive, and would require having a large supply of extra lifejackets on hand. He stated that there should be some provision to allow a company to have its own trained/certified employee service the equipment. The Coast Guard agrees. The interim final rule has been revised to provide for approval of such companies as "other servicing facilities".

Although not significantly different than originally envisioned, more detail has been added to clarify the provisions of this section according to the above.

It should be noted that the Coast Guard is working on revisions to the liferaft servicing requirements under Docket CGD 81–010 (revised Subpart 160.051). Advance notice of this related rulemaking was published in the Federal Register of August 14, 1986 (51 FR 29117). If that rulemaking results in significant improvements over the lifejacket servicing program in this rule, the Coast Guard will initiate further rulemaking to revise the servicing provisions for inflatable lifejackets.

Section 160.176–21. User Manuals. This section has been revised to clarify who must provide the manuals and to whom they must be provided. This section has also been reorganized for greater clarity.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under ADDRESSES. Copies may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The evaluation provides a detailed explanation of the estimated costs of these proposed regulations. The total approval costs per design are expected to be approximately $4000 for inflatables. Costs to approve other types of PFD's are approximately $2000. The additional cost to approve inflatable lifejackets could easily be absorbed in the cost of the units produced. The cost increase would be small when considering the number of lifejackets to be produced under authorization of each approval certificate. The Coast Guard anticipates that within the first year after issuing the interim final rules, one or two inflatable lifejacket designs would be approved.

Production inspection costs imposed by these regulations would be approximately $1,000 for the largest size lot of inflatable lifejackets permitted. This cost is similar to that incurred for other types of approved PFD's.

The retail cost, per device, is expected to be $100–$200 for inflatable lifejackets. These costs would be optional since carriage is optional. Currently approved PFD's range in price from $7 to $200 with an average cost of about $40.00 for Type I devices that could be replaced by inflatable lifejackets.

These regulations provide an alternative to users for whom limited stowage space or other operational considerations make the carriage of conventional inherently buoyant PFD's impractical or inadvisable. For these users, the optional carriage of inflatable lifejackets will meet their specific operational needs and will therefore justify the higher cost relative to inherently buoyant PFD's.

These regulations will have little or no effect on federal, state, or local governments except in their capacities as consumers of PFD's. Coast Guard steps to implement these rules will be done within the scope of ongoing marine safety activities, and there will be no need for additional federal budget commitments.

Based upon the information in the evaluation, as discussed above, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements in this regulation were reviewed by the Office of Management and Budget for approval under the Paperwork Reduction Act. The requirements listed below were approved on March 1, 1988, under consolidated OMB Number 2115–0141, "Reporting and Recordkeeping Requirements for Fire Fighting Equipment, Structural Fire Protection Materials, Lifesaving Equipment, and Marine Sanitation Devices".

Paperwork Requirements	OMB Approval Numbers
a. § 160.176–5	2115–0141
b. § 160.176–6	2115–0141
c. § 160.176–8(a)	2115–0141
d. § 160.176–17	2115–0141
e. § 160.176–19	2115–0141
f. § 160.176–21	2115–0141
g. § 160.176–23	2115–0141

List of Subjects in 46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

Regulations

In consideration of the foregoing, part 160 of title 46 of the Code of Federal Regulations is amended as set out below:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. The Table of Contents for part 160 is amended by adding subpart 160.176 to read as follows:

Subpart 160.176—Inflatable Lifejackets

Sec.
160.176–1 Scope.
160.176–2 Application.
160.176–3 Definitions.
160.176–4 Incorporation by Reference.
160.176–5 Approval Procedures.
160.176–6 Procedure for Approval of Design or Material Revision.
160.176–7 Independent Laboratories.
160.176–8 Materials.
160.176–9 Construction.
160.176–11 Performance.
160.176–13 Approval Tests.
160.176–15 Production Tests and Inspections.

Sec.
160.176–17 Manufacturer Records.
160.176–19 Servicing.
160.176–21 User Manuals.
160.176–23 Marking.

* * * * *

3. Paragraph (c) of § 160.001–2 is revised to read as follows:

§ 160.001–2 General characteristics of life preservers.

* * * * *

(c) Life preservers which depend upon loose or granulated material for buoyancy are prohibited.

* * * * *

4. A new subpart 160.176 is added to read as follows:

Subpart 160.176—Inflatable Lifejackets

§ 160.176–1 Scope.

(a) This subpart contains structural and performance standards and procedures for approval of inflatable lifejackets, as well as requirements for associated manuals, servicing programs, and shore-side service facilities.

(b) Other regulations in this chapter provide that inflatable lifejackets must be:

(1) Serviced annually at designated servicing facilities; and

(2) Maintained in accordance with their user manuals.

(c) Inflatable lifejackets approved under this subpart—

(1) Rely entirely upon inflation for buoyancy;

(2) Meet the requirements for lifejackets in the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83);

(3) Have performance equivalent to Type I Personal Flotation Devices (PFD's) with any one chamber deflated; and

(4) Are designed to be worn by adults.

§ 160.176–2 Application.

(a) Inflatable lifejackets approved under this subpart may be used to meet carriage requirements for Type I PFD's only on:

(1) Uninspected submersible vessels; and

(2) Inspected vessels for which a servicing program has been approved by the Commandant.

§ 160.176–3 Definitions.

(a) "Commandant" means the Chief of the Survival Systems Branch, U.S. Coast Guard Office of Merchant Marine Safety. Address: Commandant (G–MVI–3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, D.C. 20593–0001.

(b) "First quality workmanship" means construction which is free from any defect materially affecting appearance or serviceability.

(c) "Functional deterioration" means—

(1) Damage such as deformation in hardware or a rip, tear, or loose stitches;

(2) Decline in any performance characteristic; or

(3) Any other change making the lifejacket unfit for use.

(d) "Functional residual capacity" (FRC) means the amount of lung volume a person has remaining at the bottom of the normal breathing cycle when at rest.

(e) "Inflation medium" means any solid, liquid, or gas, that, when activated, provides inflation for buoyancy.

(f) "Inspector" means an independent laboratory representative assigned to perform the duties described in § 160.176–15 of this subpart.

(g) "PFD" means personal flotation device as defined in 33 CFR 175.13.

(h) "Reference vest" means a model AK–1 PFD meeting Subpart 160.047 of this part, except that, in lieu of the weight and displacement values prescribed in Tables 160.047–4(c)(2) and § 160.047–(4)(c)(4), each front insert must have a weight of kapok of at least 8.25 oz. and a volume displacement of 9.0 ± 0.25 lb., and the back insert must have a weight of kapok of at least 5.5 oz. and a volume displacement of 6.0 ± 0.25 lb. To achieve the specified volume displacement, front insert envelopes may be larger than the dimensions prescribed by § 160.047–1(b).

(i) [Reserved]

(j) "Second stage donning" means adjustments or steps necessary to make a lifejacket provide its intended flotation characteristics after the device has been properly donned and then inflated.

§ 160.176–4 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC and at the U.S. Coast Guard, Survival Systems Branch (G–MVI–3), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in Paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race St., Philadelphia, PA 19103
ASTM B 177–73/79 Standard Method of Salt Spray (Fog) Testing, 1973—160.176–8; 160.176–13
ASTM D 751–79 Standard Methods of Testing Coated Fabrics, 1979—160.176–13
ASTM D 975–81 Standard Specification for Diesel Fuel Oils, 1981—160.176–13
ASTM D 1434–75 Gas Transmission Rate of Plastic Film and Sheeting, 1975—160.176–13

Federal Aviation Administration Technical Standard Order

Policy and Procedure Br., AWS–110, Aircraft Engineering Division, Office of Airworthiness, 800 Independence Ave., SW., Washington, DC 20591
TSO–C13d, Federal Aviation Administration Standard for Life Preservers, January 3, 1983—160.176–8

Federal Standards

Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120
In Federal Test Method Standard No. 191A (dated July 20, 1978) the following methods:
(1) Method 5100, Strength and Elongation, Breaking of Woven Cloth; Grab Method—160.176–13
(2) Method 5132, Strength of Cloth, Tearing; Falling-Pendulum Method—160.176–13
(3) Method 5134, Strength of Cloth, Tearing; Tongue Method—160.176–13
(4) Method 5804.1, Weathering Resistance of Cloth; Accelerated Weathering Method—160.176–8
(5) Method 5762, Mildew Resistance of Textile Materials: Soil Burial Method—160.176–8
Federal Standard No. 751a, Stitches, Seams, and Stitching, January 25, 1965—160.176–

Military Specifications

Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120
MIL–L–24611—Life Preserver Support Package For Life Preserver, MK 4, dated May 18, 1982—160.176–8

National Institute of Standards and Technology (NIST) (formerly National Bureau of Standards)

C/O Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402
Special Pub. 440, *Color: Universal Language and Dictionary of Names;* "The Universal Color Language" and "The Color Names Dictionary", 1976—160.176–

Underwriters Laboratories (UL)

Underwriters Laboratories, Inc., P.O. Box 13995, Research Triangle Park, NC 27709–

UL 1191, "Components for Personal Flotation Devices", November 11, 1984—160.176–8; 160.176–13

§ 160.176–5 Approval procedures.

(a) *Modifications to general procedures.* Subpart 159.005 of this chapter contains the approval procedures. Those procedures must be followed, except as modified in this paragraph.

(1) Preapproval review under §§ 159.005–5 and 159.005–7 may be omitted if a similar design has already been approved.

(2) The information required under § 159.005–5(a)(2) (i) through (iii) of this chapter must be included in the application.

(3) The application must also include the following:

(i) The Type of performance (*i.e.* Type I or Type V) that the lifejacket is designed to provide.

(ii) Any special purpose(s) for which the lifejacket is designed and the vessel(s) or vessel type(s) on which its use is planned.

(iii) Buoyancy and torque tolerances to be allowed in production.

(iv) The text of any optional marking to be provided in addition to required text.

(v) The service manual and written guidelines required by §§ 160.176–19(c) and 160.176–19(d) of the part and the user's manual required by § 160.176–21 of this Part.

(vi) A list of proposed servicing facilities.

(4) The description of quality control procedures required by § 159.005–9 of this chapter to be submitted with the test report may be omitted as long as the manufacturer's planned quality control procedures comply with § 160.176–15 of this part.

(5) The test report must include, in addition to information required by § 159.005–9 of this chapter, a report of inspection of each proposed servicing facility. The report must include the time, date, place, and name of the person doing the inspection and observations that show whether the facility meets §§ 160.176–19(b)(2), 160–176–19(b)(4), and 160.176–19(d) of this part.

(6) The certificate of approval, when issued, is accompanied by a letter to the manufacturer listing the servicing facilities that have been approved. Copies of the letter are also provided for each facility.

(7) An approval will be suspended or terminated under § 159.005–15 of this chapter if the manufacturer fails to maintain approved servicing facilities that meet § 160.176–19 of this part.

(b) *Manuals and guidelines.* The manuals and servicing facility guidelines required by this subpart are reviewed with the application for lifejacket approval. Changes will be required if needed to comply with §§ 160.176–19 and 160.176–21 of this Part.

(c) *Approval of servicing facilities.* (1) Approval of servicing facilities initially proposed for use is considered during and as a part of the lifejacket approval process described in paragraph (a) of this section.

(2) Other servicing facilities may subsequently be considered for approval, upon submission of a letter of application to Commandant containing each of the applicable items required of manufacturers and laboratories under § 159.005–5 of this Chapter and the following:

(i) A copy of guidelines meeting § 160.176–19(d) of this Part, if different from those originally approved with the lifejacket;

(ii) A list of the sources the servicing facility proposes to use for parts and manuals for the servicing of the make and model of lifejacket applied for; and

(iii) A report of inspection prepared by an independent laboratory which includes the time, date, and place of the inspection, the name of the inspector, and observations that show whether the facility meets §§ 160.176–19(b)(2) through 160.176–19(b)(4) and 160.176–19(d) of this part.

(3) To conduct servicing at a remote or mobile site, the servicing facility must be authorized in its letter of approval to conduct this type of servicing. Approval for servicing at these sites is obtained according to paragraph (c)(2) of this section except that portable or mobile equipment must be available when evaluating the compliance with § 160.176–19(b)(3) of this part.

(4) Each change to equipment, procedure, or qualification and training of personnel of an approved servicing facility must be also approved.

(d) *Waiver of tests.* If a manufacturer requests that any test in this subpart be waived, one of the following must be provided to the Commandant as justification for the waiver:

(1) Acceptable test results on a lifejacket of sufficiently similar design.

(2) Engineering analysis showing that the test is not applicable to the particular design or that by design or construction the lifejacket can not fail the test.

(e) *Alternative requirements.* A lifejacket that does not meet requirements in this subpart may still be approved if the device—

(1) Meets other requirements prescribed by the Commandant in place of or in addition to requirements in this subpart; and

(2) Provides at least the same degree of safety provided by other lifejackets that do comply with this subpart.

§ 160.176–6 Procedure for approval of design or material revision.

(a) Each change in design, material, or construction must be approved by the Commandant before being used in lifejacket production.

(b) Determinations of equivalence of design, construction, and materials may only be made by the Commandant.

§ 160.176–7 Independent laboratories.

A list of independent laboratories which have been accepted by the Commandant for conducting or supervising the following tests and inspections required by this subpart, may be obtained from the Commandant:

(a) Approval tests.

(b) Production tests and inspections.

(c) Inspection of approved servicing facilities.

(d) Testing of materials for the purpose of making the certification required by § 160.176–8(a)(3) of this part.

§ 160.176–8 Materials.

(a) *General*—(1) *Certification.* Each lot of material used in manufacturing lifejackets must have a certification of compliance with the requirements in this section. The certification must be made by the lifejacket manufacturer, the material supplier, or an independent laboratory accepted by the Commandant in accordance with Subpart 159.010 of this Chapter to make the certification. Each certification by a lifejacket manufacturer or a supplier must be accompanied by test results that show compliance with this section and must be notarized. Each certification by an independent laboratory must state the laboratory's acceptance.

(2) *Condition of materials.* All materials must be new.

(3) *Temperature range.* Unless otherwise specified in standards incorporated by reference in this section, all materials must be usable in all weather conditions throughout a temperature range of −30 °C to +65 °C(−22 ° F to +150 °F).

(4) *Weathering resistance.* Each non-metallic component which is not suitably covered to shield against ultraviolet exposure must retain at least 40% of its strength after being subjected to 300 hours of sunshine carbon arc weathering as specified by Method 5804.1 of Federal Test Method Standard Number 191A.

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(5) *Fungus resistance.* Each non-metallic component must retain at least 90% of its strength after being subjected to the mildew resistance test specified by Method 5762 of Federal Test Method Standard No. 191A when untreated cotton is used as the control specimen. Also, the gas transmission rate of inflation chamber materials must not be increased by more than 10% after being subjected to this test. Materials that are covered when used in the lifejacket may be tested with the covering material.

(6) *Corrosion resistance.* Each metal component must—

(i) Be galvanically compatible with each other metal part in contact with it; and

(ii) Unless it is expendable (such as an inflation medium cartridge), be 410 stainless steel, have salt water and salt air corrosion characteristics equal or superior to 410 stainless steel, or perform its intended function and have no visible pitting or other damage on any surface after 720 hours of salt spray testing according to ASTM B 117.

(7) *Materials not covered.* Materials having no additional specific requirements in this section must be of good quality and suitable for the purpose intended.

(b) *Fabric*—(1) *All fabric.* All fabric must—

(i) Be of a type accepted for use on Type I life preservers approved under Subpart 160.002 of this part; or

(ii) Meet the Type V requirements for "Fabrics for Wearable Devices" in UL 1191 except that breaking strength must be at least 400 N (90 lb.) in both directions of greater and lesser thread count.

(2) *Rubber coated fabric.* Rubber coated fabric must be of a copper-inhibiting type.

(c) *Inflation chamber materials.*—(1) *All materials.* (i) The average permeability of inflation chamber material, determined according to the procedures specified in § 160.176–13(y)(3) of this Part, must not be more than 110% of the permeability of the materials determined in approval testing prescribed in § 160.176–13(y)(3) of this part.

(ii) The average grab breaking strength and tear strength of the material, determined according to the procedures specified in §§ 160.176–13(y)(1) and 160.176–13(y)(2) of this Part, must be at least 90% of the grab breaking strength and tear strength determined from testing prescribed in §§ 160.176–13(y)(1) and 160.176–13(y)(2) of this Part. No individual sample result for breaking strength or tear strength may be more than 20% below the results obtained in approval testing.

(2) *Fabric covered chambers.* Each material used in the construction of inflation chambers that are covered with fabric must meet the requirements specified for—

(i) "Bladder" materials in section 3.2.6 of MIL–L–24611(SH) if the material is an unsupported film; or

(ii) Coated fabric in section 3.1.1 of TSO–C13d if the material is a coated fabric.

(3) *Uncovered chambers.* Each material used in the construction of inflation chambers that are not covered with fabric must meet the requirements specified in paragraph (c)(2)(ii) of this section.

(d) *Thread.* All thread used in structural seams must meet § 160.001–2(j) of this chapter. Thread and fabric combinations must have similar elongation and durability characteristics.

(e) *Webbing.* Webbing used as a body strap, tie tape or drawstring, or reinforcing tape must meet § 160.002–3(e), § 160.002–3(f), § 160.002–3(h) of this part respectively. Webbing used for tie tape or drawstring must easily hold a knot and be easily tied and untied. Webbing used as reinforcing tape must not chafe the wearer.

(f) *Closures*—(1) *Strength.* Each buckle, snap hook, dee ring or other type of fastening must have a minimum breaking strength of 1600 N (360 lbs). The width of each opening in a closure, through which body strap webbing passes, must be the same as the width of that webbing.

(2) *Means of Locking.* Each closure used to secure a lifejacket to the body, except a zipper, must have a quick and positive locking mechanism, such as a snap hook and dee ring.

(3) *Zipper.* If a zipper is used to secure the lifejacket to the body, it must be—

(i) Easily initiated;

(ii) Non-jamming;

(iii) Right handed;

(iv) Of a locking type; and

(v) Used in combination with another type of closure that has a quick and positive means of locking.

(g) *Inflation medium.* (1) No inflation medium may contain any compound that is more toxic than CO_2 if inhaled through any of the oral inflation mechanisms.

(2) Any chemical reaction of inflation medium during inflation must not produce a toxic residue.

(h) *Adhesives.* Adhesives must be waterproof and acceptable for use with the materials being bonded.

(i) [Reserved]

(j) *Retroreflective Material.* Each lifejacket must have at least 200 sq. cm. (31 sq. in.) of retroreflective material on its front side, at least 200 sq. cm. on its back side, and at least 200 sq. cm. of material on each reversible side. The retroreflective material must be Type I material that is approved under Subpart 164.018 of this chapter. The retroreflective material attached on each side must be divided equally between the upper quadrants of the side. Attachment of retroreflective material must not impair lifejacket performance or durability.

(k) *PFD Light.* Each lifejacket must have a PFD light that is approved under Subpart 161.012 of this chapter. The light must be securely attached to the front shoulder area of the lifejacket. Attachment of the light must not impair lifejacket performance.

§ 160.176–9 Construction.

(a) *General Features.* Each inflatable lifejacket must—

(1) Have at least two inflation chambers;

(2) Be constructed so that the intended method of donning is obvious to an untrained wearer;

(3) If approved for use on a passenger vessel, be inside a sealed, non-reusable package that can be easily opened;

(4) Have a retainer for each adjustable closure to prevent any part of the closure from being easily removed from the lifejacket;

(5) Be universally sized for wearers weighing over 40 kg. (90 pounds) and have a chest size range of at least 76 to 120 cm. (30 to 52 in.);

(6) Unless the lifejacket is designed so that it can only be donned in one way, be constructed to be donned with either the inner or outer surface of the lifejacket next to the wearer (be reversible);

(7) Not have a channel that can direct water to the wearer's face to any greater extent than that of the reference vest defined in § 160.176–3(h) of this part;

(8) Not have edges, projections, or corners, either external or internal, that are sharp enough to damage the lifejacket or to cause injury to anyone using or maintaining the lifejacket;

(9) Have a means for drainage of entrapped water;

(10) Be primarily vivid reddish orange, as defined by sections 13 and 14 of the "Color Names Dictionary," on its external surfaces;

(11) Be of first quality workmanship;

(12) Unless otherwise allowed by the approval certificate—

(i) Not incorporate means obviously intended for attaching the lifejacket to the vessel; and

(ii) Not have any instructions indicating attachment to a vessel is intended; and

(13) Meet any additional requirements that the Commandant may prescribe, if necessary, to approve unique or novel designs.

(b) Inflation mechanisms. (1) Each inflatable lifejacket must have

(i) At least one automatic inflation mechanism;

(ii) At least two manual inflation mechanisms on separate chambers;

(iii) At least one oral inflation mechanism on each chamber; and

(iv) At least one manual inflation mechanism or one automatic inflation mechanism on each inflation chamber.

(2) Each inflation mechanism must

(i) Have an intended method of operation that is obvious to an untrained wearer;

(ii) Not require tools to activate the mechanism;

(iii) Be located outside its inflation chamber; and

(iv) Be in a ready to use condition.

(3) Each oral inflation mechanism must

(i) Be easily accessible after inflation for the wearer to "top off" each chamber by mouth;

(ii) Operate without pulling on the mechanism;

(iii) Not be able to be locked in the open or closed position; and

(iv) Have a non-toxic mouthpiece.

(4) Each manual inflation mechanism must

(i) Provide an easy means of inflation that requires only one deliberate action on the part of the wearer to actuate it;

(ii) Have a simple method for replacing its inflation medium cartridge; and

(iii) Be operated by pulling on an inflation handle that is marked "Jerk to Inflate" at two visible locations.

(5) Each automatic inflation mechanism must

(i) Have a simple method for replacing its inflation medium cartridge and water sensitive element;

(ii) Have an obvious method of indicating whether the mechanism has been activated; and

(iii) Be incapable of assembly without its water sensitive element.

(6) The marking required for the inflation handle of a manual inflation mechanism must be waterproof, permanent, and readable from a distance of 2.5 m (8 feet).

(c) *Deflation mechanism.* (1) Each chamber must have its own deflation mechanism.

(2) Each deflation mechanism must

(i) Be readily accessible to either hand when the lifejacket is worn while inflated;

(ii) Not require tools to operate it;

(iii) Not be able to be locked in the open or closed position; and

(iv) Have an intended method of operation which is obvious to an untrained wearer.

(3) The deflation mechanism may also be the oral inflation mechanism.

(d) *Sewn seams.* Stitching used in each structural seam of a lifejacket must provide performance equal to or better than a Class 300 Lockstitch meeting Federal Standard No. 751a.

(e) *Textiles.* All cut edges of textile materials must be treated or sewn to minimize raveling.

(f) *Body strap attachment.* Each body strap assembly must be securely attached to the lifejacket.

§ 160.176–11 Performance.

(a) *General.* Each inflatable lifejacket must be able to pass the tests in § 160.176–13 of this Part.

(b) *Snag Hazard.* The lifejacket must not present a snag hazard when properly worn.

(c) *Chamber Attachment.* Each inflation chamber on or inside an inflatable lifejacket must not be able to be moved to a position that-

(1) Prevents full inflation; or

(2) Allows inflation in a location other than in its intended location.

(d) *Comfort.* The lifejacket must not cause significant discomfort to the wearer during and after inflation.

§ 160.176–13 Approval Tests.

(a) *General.* (1) This section contains requirements for approval tests and examinations of inflatable lifejackets. Each test or examination must be conducted or supervised by an independent laboratory. The tests must be done using lifejackets that have been constructed in accordance with the plans and specifications in the application for approval. Unless otherwise specified, only one lifejacket, which may or many not have been subjected to other tests, is required to be tested in each test. One or more lifejackets that have been tested as prescribed in paragraph (h) of this section must be used for the tests prescribed in paragraphs (j), (n), (q), and (r) of this section. The tests prescribed in paragraph (y) of this section require one or more lifejackets as specified in that paragraph.

(2) All data relating to buoyancy and pressure must be taken at, or corrected to, an atmospheric pressure of 760 mm (29.92 inches) of mercury and a temperature of 20°C (68°F).

(3) The tests in this section are not required to be run in the order listed, except where a particular order is specified.

(4) Some tests in this section require a lifejacket to be tested while being worn. In each of these tests the test subjects must represent a range of small, medium, and large heights and weights. Unless otherwise specified, a minimum of 18 test subjects, including both males and females, must be used. The test subjects must not be practiced in the use of the lifejacket being tested. However, they must be familiar with the use of other Coast Guard approved lifejackets. Unless specified otherwise, test subjects must wear only swim suits. Each test subject must be able to swim and relax in the water.

Note: Some tests have inherent hazards for which adequate safeguards must be taken to protect personnel and property in conducting the tests.

(b) *Donning.* (1) No second stage donning is allowed in the tests in this paragraph. An uninflated lifejacket with size adjustment at its mid-range is given to each test subject with the instruction: "Please don as quickly as possible, adjust to fit snugly, and inflate." Each subject must, within one minute, don the uninflated lifejacket, adjust it to fit snugly, and then inflate it.

(2) The average time of all subjects to complete the test in paragraph (b)(1) of this section must not exceed 30 seconds. The criteria in this paragraph do not apply to the tests in paragraphs (b)(3) and (b)(4) of this section.

(3) The test in paragraph (b)(1) of this section is repeated with each subject wearing an insulated, hooded parka and gloves made from heavy, cotton-jersey (knit) fabric.

(4) The test in paragraph (b)(1) of this section is then repeated twice more with a fully inflated lifejacket. In the first test the subjects must wear swim suits and in the second test, parka and gloves.

(c) *Inflation tests.* No second stage donning is allowed in the tests in this paragraph. A lifejacket with each automatic inflation mechanism disabled must be used for the tests prescribed in paragraphs (c)(1) and (c)(2) of this section.

(1) Each test subject dons an uninflated lifejacket and is instructed to enter the water and swim for approximately 30 seconds and then, on command, inflate the lifejacket using only oral inflation mechanisms. Within 30 seconds after the command is given, the lifejacket must be sufficiently inflated to float each subject with respiration unimpeded.

(2) Each test subject dons an uninflated lifejacket and is instructed to enter the water and swim for approximately 30 seconds, bring both hands to the surface, and then, on command, inflate the lifejacket using each manual inflation mechanism. Each test subject must find and operate all the manual inflation mechanisms within 5 seconds after the command is given. The manual inflation mechanisms must inflate the lifejacket sufficiently to float the wearers within 5 seconds after the mechanisms are operated. Within 20 seconds after activation each subject must be floating in the position described in paragraph (d)(3) of this section.

(3) One small and one large test subject don uninflated lifejackets and jump feet first from a height of 1 meter into the water. The automatic inflation mechanisms must inflate the lifejackets sufficiently to float the wearers within 10 seconds after the subjects enter the water. Within 20 seconds after entering the water each subject must be floating in the position described in paragraph (d)(3) of this section.

(4) Air at a pressure of 4.2 kPa (0.6 psig) is applied separately to each oral inflation mechanism of — (i) a packed lifejacket if the lifejacket is provided in a reusable package; or (ii) an unpacked lifejacket if it is provided with no package or is in a sealed or non-reusable package. In each application the chamber must fully inflate within 1 minute.

(5) Each oral inflation mechanism of an unpacked lifejacket is connected to a regulated air source constantly supplying air at a pressure of 7 kPa (1 psig). Each mechanism must pass at least 100,000 cc of air per minute.

(d) *Flotation stability*—(1) *Uninflated flotation stability.* Lifejackets with their automatic inflation mechanisms disabled must be used for this test. Each subject dons an uninflated lifejacket, enters the water, and assumes an upright, slightly back of vertical, position. Each subject then relaxes. For each subject that floats, the uninflated lifejacket must not tend to turn the wearer face-down when the head is allowed to fall back.

(2) *Righting action.* (i) Each test subject dons an uninflated lifejacket, enters the water, allows the automatic inflation mechanism to inflate the lifejacket, and swims for 30 seconds. While swimming, freedom of movement and comfort are observed and noted by the person conducting the test. Freedom of movement and comfort must comply with § 160.176-11(d). Also, each subject must demonstrate that the lifejacket can be adjusted while the subject is in the water.

(ii) Each subject then takes three gentle breast strokes and while still face-down in the water, relaxes completely while slowly exhaling to FRC. Each subject remains in this limp position long enough to determine if the lifejacket will turn the subject from the face-down position to a position in which the subject's breathing is not impaired. The time from the last breast stroke until breathing is not impaired is recorded. Each subject repeats these steps three times, and the average time for the three righting action is calculated. This average time must not exceed 5 seconds.

(iii) If the lifejacket does not have automatic inflation mechanisms for all chambers, the tests in paragraphs (d)(2)(i) and (d)(2)(ii) of this section are repeated with each lifejacket fully inflated.

(iv) Each subject then performs the test in paragraph (d)(2)(ii) of this section with one chamber of the lifejacket deflated. This test is then repeated as many times as necessary to test the lifejacket with a different chamber deflated until each chamber has been tested in this manner.

(v) Each subject then performs the test in paragraph (d)(2)(ii) of this section but exhales to FRC at the end of the third breast stroke and holds the breath prior to relaxing.

(3) *Static measurements.* At the end of each test with each subject in § 160.176-13(d)(2)(ii), through § 160.176-13(d)(2)(v)—

(i) The freeboard (the distance from the water surface to the bottom of the mouth) must be at least 100 mm (4.0 in.) without repositioning of any part of the body and at least 120 mm (4.75 in.) after the head is positioned on the lifejacket for maximum freeboard and then relaxed;

(ii) The distance from water surface to the lower portion of the ear canal must be at least 50 mm (2 in.);

(iii) The torso angle (the angle between a vertical line and a line passing through the shoulder and hip) must be between 20° and 65° (back of vertical);

(iv) The face-plane angle (the angle between a vertical line and a line passing through the most forward part of the forehead and chin) must be between 15° and 60° (back of vertical);

(v) The lowest mark on a vertical scale 6 m (20 ft.) from and in front of the subject which the subject can see without moving the head must be no higher than 0.3 m (12 in.) from the water level.

(vi) The subject when looking to the side, must be able to see the water within 3 m (10 ft.) away; and

(vii) At least 75% of the retroreflective material on the outside of the lifejacket, and the PFD light, must be above the water.

(4) *Average requirements.* The test results for all subjects must be averaged for the following static measurements and must comply with the following:

(i) The average freeboard prior to positioning the head for maximum freeboard must be at least 120 mm (4.75 in.);

(ii) The average torso angle must be between 30° and 50° (back of vertical); and

(iii) The average face-plane angle must be between 20° and 50° (back of vertical).

(5) *"HELP" Position.* Starting in a relaxed, face-up position of static balance, each subject brings the legs and arms in towards the body so as to attain the "HELP" position (a fetal position, but holding the head back). The lifejacket must not turn the subject face down in the water.

(e) *Jump test.* (1) Each test subject dons an uninflated lifejacket and with hands above head, jumps feet first, into the water from a height of 4.5 m (15 ft.). No second stage donning is allowed during this test and the lifejacket must—

(i) Inflate automatically, float the subject to the surface, and stabilize the body with the mouth out of the water;

(ii) Maintain its intended position on the wearer;

(iii) Not be damaged; and

(iv) Not cause injury to the wearer.

(2) The jump test in paragraph (e)(1) of this section is repeated using a lifejacket which has been fully inflated manually.

(3) The jump test in paragraph (e)(2) of this section is then conducted with one chamber deflated. This test is then repeated as many times as necessary to test the lifejacket with a different chamber deflated until each chamber has been tested in this manner.

Note: Before conducting these tests at the 4.5 m height, subjects should first do the test from heights of 1 m and 3 m to lessen the possibility of injury. It is suggested that subjects wear a long-sleeve cotton shirt to prevent abrasions when testing the device in the inflated condition and that the teeth should be tightly clenched together when jumping.

(f) *Water emergence*—(1) *Equipment.* A pool with a wooden platform at one side must be used for this test. The platform must be 300 mm (12 in.) above the water surface and must not float on the water. The platform must have a smooth painted surface. Alternatively, a Coast Guard approved inflatable liferaft may be used in lieu of a platform.

(2) *Qualifying.* Each test subject enters the water wearing only a bathing suit and swims 25 m. The subject must then be able to emerge from the pool onto the platform using only his or her hands on the top of the platform as an aid and without pushing off of the bottom of the pool. Any subject unable to emerge onto the platform within 30 seconds is disqualified for this test. If less than 2/3 of the test subjects qualify, substitute subjects must be used.

(3) *Test.* Each qualified subject dons an inflated lifejacket, enters the water and swims 25 m. Afterward, at least 2/3 of the qualified subjects must then be able to climb out of the pool in the manner prescribed in paragraph (f)(2) of this section within 45 seconds while wearing the lifejacket. If marking on the lifejacket so indicates, and if the wearer can read the marking while the lifejacket is being worn, the subjects may deflate the device during the 45 second attempt.

(g) *Lanyard pull test and strength.* (1) An uninflated lifejacket is placed on a rigid metal test form built according to Figure 160.176-13(n)(2) and suspended vertically.

(2) The inflation handle of each manual inflation mechanism is attached to a force indicator. The force indicator is then used to activate each manual inflation mechanism separately. The force required to activate each mechanism is recorded. In each test the force must be between 25 and 70 N (5 and 15 lb.).

(3) A weight of 225 N (50 lb.) is in turn attached to the inflation handle of each manual inflation mechanism. The weight is then allowed to hang freely for 5 minutes from each manual inflation mechanism. The handle must not separate from the mechanism.

(h) *Temperature cycling tests.* (1) Three uninflated lifejackets, 2 packed and 1 unpacked, are maintained at room temperature (20 ± 3°C (68 + 6°F)) for 4 hours and then at a temperature of 65 ± 2°C (150 ± 5°F) for 20 hours. The lifejackets are then maintained at room temperature for at least 4 hours, after which they are maintained at a temperature of minus 30 ± 2 °C (−22 ± 5°F) for 20 hours. This cycle is then repeated once.

(2) Upon the completion of the conditioning in paragraph (h)(1) of this section all sealed or non-reusable packaging is removed from the two packed units. The lifejackets must show no functional deterioration after being inflated immediately after removal from the conditioning. The lifejackets must be inflated as follows:

(i) One unit which was packed during conditioning must fully inflate within 2 minutes using only oral inflation.

(ii) The other unit which was packed during conditioning must fully inflate within 45 seconds of submersion in water at 2 ± 2°C (37 ± 5°F) as a result of automatic inflation.

(iii) The unit which was unpacked during conditioning must fully inflate within 30 seconds of activation of the manual inflation mechanisms.

(3) The same 3 lifejackets used for the test in paragraph (h)(1) of this section are deflated and, with 2 repacked and 1 unpacked, are maintained at room temperature for 4 hours and then at a temperature of minus 30 ± 2°C (−22 ± 5°F) for 20 hours. The lifejackets are then stored at room temperature for at least 4 hours, after which they are maintained at a temperature of 65 ± 2°C (150 ± 5°F) for 20 hours. This cycle is then repeated once. The steps in paragraph (h)(2) of this section are then repeated, and the lifejackets must meet the criteria in that paragraph.

(i) [Reserved]

(j) *Buoyancy and inflation medium retention test.* A lifejacket which has been used in the tests in paragraph (h) of this section must be used for this test.

(1) *Equipment.* The following equipment is required for this test:

(i) A wire mesh basket that is large enough to hold the inflated lifejacket without compressing it, is designed not to allow the lifejacket to float free, and is heavy enough to overcome the buoyancy of the lifejacket.

(ii) A scale that is sensitive to ±13 g (0.5 oz.) and that has an error of less than ±13 g (0.5 oz.).

(iii) A test tank, filled with fresh water, that is large enough to hold the basket with its top 50 mm (2 in.) below the surface without the basket touching the tank.

(2) *Method.* One inflation chamber is inflated using its automatic inflation mechanism. The lifejacket is placed in the basket. The basket is then suspended from the scale and submerged in the test tank with the lifejacket and basket completely below the water surface. An initial reading of the scale is taken after 30 minutes and again after 24 hours. The buoyancy of the lifejacket is the submerged weight of the basket minus the submerged weight of the basket with the lifejacket inside. This test is repeated as many times as necessary until each chamber has been tested. On each chamber that does not have an automatic inflation mechanism the manual or oral inflation mechanism may be used.

(3) *Requirement.* The buoyancy of each inflation chamber must be within the tolerances specified in the plans and specifications for the lifejacket required by § 160.176-5(a)(2) of this Part. Each inflation chamber must retain at least 95% of its initial buoyancy after being submerged for 24 hours.

(k) *Uninflated floatation test.* A packed lifejacket, with all automatic inflation mechanisms disabled, is dropped from a height of 1 m (3 ft.) into fresh water. The lifejacket must remain floating on the surface of the water for at least 30 minutes. This test is repeated with an unpacked, uninflated lifejacket, with all automatic inflation mechanisms disabled.

(l) [Reserved]

(m) *Environmental tests.*—(1) *Salt spray exposure.* An uninflated lifejacket is subjected to 720 hours of salt spray as specified by ASTM B 117. The automatic inflation mechanism(s) must not be activated by the salt spray. The lifejacket is then inflated first using the automatic inflation mechanism(s) and then twice more using first the manual mechanisms and then the oral mechanisms. The lifejacket must show no functional deterioration.

(2) *Rain exposure.* An uninflated lifejacket is mounted on a rigid metal test form built according to Figure 160.176-13(n)(2). The test form must be vertical. Spray nozzles that deliver 0.05 mm of water per second (0.7 inch/hour) over the area of the lifejacket at a temperature between 2 and 16 °C (35 and 60 °F) and at a 45° angle below horizontal toward the lifejacket are mounted 1.5 m (4.5 ft.) above the base of the test form. There must be at least 4 nozzles evenly spaced around the lifejacket at a horizontal distance of 1 m from the center of the lifejacket and each nozzle must deliver water at the same rate. Water is then sprayed on the lifejacket for 1 hour. The lifejacket must not inflate during the test.

(n) *Tensile tests.* Two lifejackets that have been subjected to the tests in paragraph (h) of this section must be used for these tests.

(1) *Body tensile test.* (i) In this test one lifejacket must be fully inflated and the other deflated.

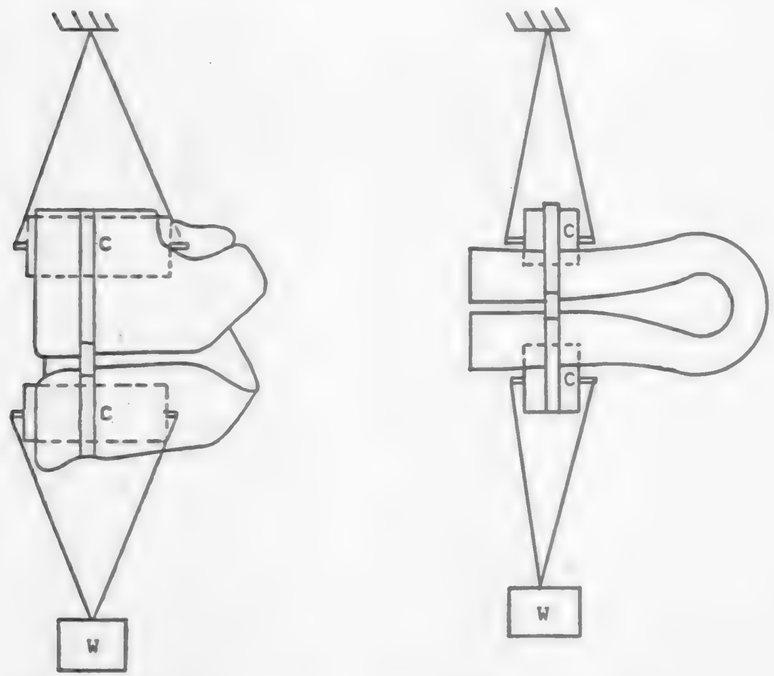
(ii) Two unconnected rigid cylinders are passed through the body portion of each lifejacket, or through the encircling body strap for yoke style devices, with one closure fastened and adjusted to its mid range, as shown in Figure 160.176-13(n)(1). Each cylinder must be 125 mm (5 inches) in diameter. The top cylinder is connected to a winch or pulley system. The bottom cylinder is connected to a test load which when combined with the weight of the lower cylinder and the linkage equals 325 kg

(720 lb.). The winch or pulley system lifts the top cylinder so the test load is raised off of its support. The test load is left suspended for 30 minutes.

(iii) There must be no functional deterioration of any component of either lifejacket during the test. Each friction type closure must not permit slippage of more than 25 mm (1 in.).

(iv) If a lifejacket has friction type closures, the test must be repeated immediately after the lifejacket has been immersed in water for a least 2 minutes.

(v) The test is repeated until each different type of closure is tested separately.



Vest style lifejacket Yoke style lifejacket

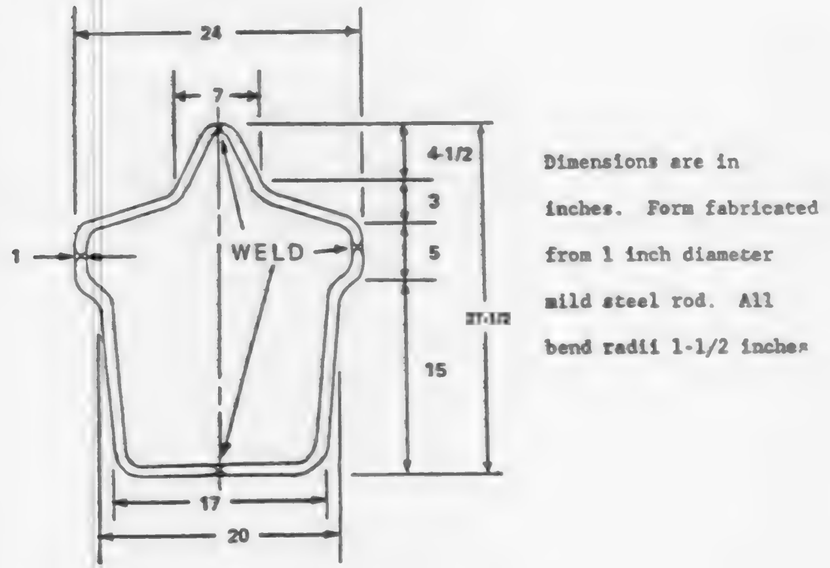
C - Cylinder (5 inches in diameter)

W - Test Weight

Figure 160.176-13(n)(1) Body Tensile Test Arrangement

(2) *Shoulder tensile test.* Each shoulder section of a lifejacket is subjected to this test separately. A fully inflated lifejacket, with all closures fastened, must be secured to a rigid metal test form built according to Figure 160.176–13(n)(2). A 2 ± ¼ in. wide web is passed through the shoulder section of the lifejacket and is connected to a winch or pulley system. The bottom portion of the form is connected to a dead weight load which when combined

with the weight of the form and the linkage equals 90 kg. (200 lb.). The winch or pulley system is operated to raise the weight off of its support. The weight is left suspended for 30 minutes. There must be no functional deterioration of any component of the lifejacket during the test



Dimensions are in inches. Form fabricated from 1 inch diameter mild steel rod. All bend radii 1-1/2 inches

Figure 160.176-13(n)(2) Test Form

(3) *Strength of attachment of inflation mechanism.* (i) A fully inflated lifejacket is secured to a rigid metal test form as in Figure 160.176–13(n)(2), and the pressure of each inflated chamber is measured. The top portion of the form is then connnected to a winch or pulley system. A 35 kg (75 lb.) weight is attached by a line to one of the inflation mechanisms as close as possible to the point of attachment on the lifejacket. The winch or pulley system is operated to raise the weight off of its support. The weight is left suspended for 5 minutes and then released. The inflation chamber to which the inflation mechanism is attached must not lose more than 3 kPa (0.4 psig) or 20% of its original pressure.

(ii) The test is paragraph (n)(3)(i) of this section is repeated until each type of inflation mechanism has been tested separately.

(iii) The test is then repeated as many additional times as necessary to test each joint in each type of inflation mechanism beyond its point of attachment to an inflation chamber. In each test the point of attachment must be as close as possible to the joint being tested.

(o) [Reserved]

(p) *Impact test.* (1) An uninflated lifejacket is secured to the test form shown in Figure 160.176–13(n)(2). The lifejacket, with the automatic inflation mechanism disabled, is secured to the form as it is intended to be worn. The lifejacket is accelerated to 25 m/s (50 mph) horizontally and is then dropped from a height of not more than 0.5 m (1.5 ft.) into the water in the following positions:

(i) Face down, shoulder forward.

(ii) Face down, shoulder back.

(iii) Back down, shoulder forward.

(iv) Back down, shoulder back.

(v) Left side down, shoulder forward.

(vi) Right side down, shoulder back.

(2) Following each impact, there must be no sign of functional deterioration, and the lifejacket must not come off of the test form. After each impact the closures may be readjusted as necessary.

(3) Following the six impacts, the lifejacket must fully inflate using only its oral inflation mechanisms.

(4) The test in this paragraph is repeated on the same lifejacket after inflating, with manual inflation

mechanisms, all chambers that have those mechanism.

(q) *Flame exposure test.* A lifejacket that has been subjected to the tests in paragraph (h) of this section must be used for this test.

(1) *Equipment.* The following equipment is required for this test:

(i) A test pan 300 mm by 450 mm by 80 mm (12 in. by 18 in. by 2½ in.) containing 12 mm (½ in.) of water under 25 mm (1 in.) of N-heptane.

(ii) an arrangement to hold the lifejacket over the N-heptane.

(2) *Method.* The test is only conducted when there is no significant air movement other than that caused by the fire. The N-heptane is ignited and allowed to burn for 30 seconds. A lifejacket which has been fully inflated with air is then passed through the flames in an upright, forward, vertical, free-hanging position with the bottom of the lifejacket 240 mm C 9½ in.) above the top edge of the test pan. The lifejacket is exposed to the flames for 2 seconds.

(3) *Requirement.* The lifejacket must not burn or melt for more than 6 seconds after being removed from the flames. The lifejacket must remain inflated throughout the test. If the lifejacket sustains any visible damage other than discoloration after being exposed to the flames, the lifejacket must—

(i) pass the test in paragraph (e)(2) of this section, except that only one subject is used and the test is done six times; and

(ii) pass the tensile test in paragraph (n)(1) of this section, except that a weight of 245 kg (540 lb.) is used in lieu of the 325 kg (720 lb.) weight.

(r) *Solvent exposure test.* Lifejackets with their automatic inflation mechanisms disabled must be used for this test. Two uninflated lifejackets that have been subjected to the tests in paragraph (h) of this section are totally submerged in diesel fuel, grade No. 2–D as defined in ASTM D 975, for 24 hours. The lifejackets are then removed and the excess fuel removed. One lifejacket must fully inflate using only its manual inflation mechanisms and the other using only its oral inflation mechanisms. The lifejackets must show no functional deterioration as a result of the test.

(s) *Puncture test.* A fully inflated lifejacket is placed on a flat, level surface. A test point 4 mm (5/32 in.) in diameter tapering to a rounded point, 1 mm (3/64 in.) in diameter, is pressed against an inflation chamber of the lifejacket perpendicular to the surface of the chamber at a rate of 300 mm/minute (12 in./minute). The test point is applied until the inflation chamber is punctured or the chamber walls are touching each other. The force required to puncture the inflation chamber or make the chamber walls touch each other is recorded. The force required must exceed 30 N (7 lb.).

(t) *Inflation chamber tests*—(1) *Over-pressure test.* One lifejacket is used in this test. Before pressurizing the lifejacket, each over-pressure valve, if any, must be blocked. One inflation chamber is then pressurized with air to 70 kPa (10 psig) and held for 5 minutes. After the 5 minute period, there must be no sign of permanent deformation, damage, or pressure loss of more than 3.5 kPa (0.5 psig). This test is then repeated as many times as necessary to test a different chamber until each chamber has been tested in this manner.

(2) *Air retention test.* One inflation chamber of a lifejacket is filled with air until air escapes from the over-pressure valve or, if the lifejacket does not have an over-pressure valve, until its design pressure, as stated in the plans and specifications, is reached. After 12 hours the lifejacket must still be firm with an internal pressure of at least 14 kPa (2.0 psig). This test is then repeated as many times as necessary to test a different chamber until each chamber has been tested in this manner.

(u) *Seam strength test.* Samples of each type of structural sewn seam must be subjected to and pass the "Seam Strength (Sewability) Test" specified in Underwriters Laboratories Standard UL 1191 except that the breaking strength of each seam in the directions of both greater and lesser thread count must be at least 400 N (90 lb.).

(v) [Reserved]

(w) *Visual examination.* One complete lifejacket must be visually examined for compliance with the requirements of §§ 160.176–9 and 160.176–11 of this Part

(x) [Reserved]

(y) *Inflation chamber properties.* The tests in this paragraph must be run after successful completion of all other approval tests. The results of these tests will be used to check the quality of incoming lifejacket components and the production process. Test samples must come from one or more lifejackets that were each used in all of the tests in paragraphs (e), (j), (p), (s), and (t) of this section.

(1) *Grab breaking strength.* The grab breaking strength of chamber materials must be determined according to Method No. 5100 of Federal Test Method Standard 191A or ASTM D 751.

(2) *Tear strength.* The tear strength of chamber materials must be determined according to Method No. 5132 or 5134 of Federal Test Method Standard 191A or ASTM D 751.

(3) *Permeability.* The permeability of chamber materials must be determined according to ASTM D 1434 using CO_2 as the test gas.

(4) *Seam strength.* The seam strength of the seams in each inflation chamber of at least one lifejacket must be determined according to ASTM D 751 except that 25 by 200 mm (1 by 8 in.) samples may be used where insufficient length of straight seam is available.

(z) *Additional tests.* The Commandant may prescribe additional tests, if necessary, to approve novel or unique designs.

§ 160.176–15 Production tests and inspections.

(a) *General.* (1) Production tests and inspections must be conducted in accordance with this section and subpart 159.007 of this chapter.

(2) The Commandant may prescribe additional production tests and inspections if needed to maintain quality control and check for compliance with the requirements in this subpart.

(b) *Test and inspection responsibilities.* In addition to responsibilities set out in Part 159 of this chapter, each manufacturer of an inflatable lifejacket and each independent laboratory inspector must comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all required tests and examinations on each lifejacket lot before the independent laboratory inspector tests and inspects the lot;

(ii) Perform required testing of each incoming lot of inflation chamber material before using that lot in production;

(iii) Have procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product;

(iv) Have a continuing program of employee training and a program for maintaining production and test equipment;

(v) Have an inspector from the independent laboratory observe the production methods used in producing the first lifejacket lot produced and observe any revisions made thereafter in production methods;

(vi) Admit the inspector and any Coast Guard representative to any place in the factory where work is done on lifejackets or component materials, and where completed lifejackets are stored; and

(vii) Allow the inspector and any Coast Guard representative to take samples of completed lifejackets or of components materials for tests prescribed in this subpart.

(2) *Independent laboratory.* (i) An inspector may not perform or supervise any production test or inspection unless—

(A) The manufacturer has a current approval certificate; and

(B) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(ii) An inspector must perform or supervise all required tests and inspections of each lifejacket lot produced.

(iii) During each inspection, the inspector must check for noncompliance with the manufacturer's quality control procedures.

(iv) At least once each calendar quarter, the inspector must, as a check on manufacturer compliance with this section, examine the manufacturer's records required by § 160.176–17 of this Part and observe the manufacturer in performing each of the tests required by paragraph (h) of this section.

(c) *Lifejacket lots.* A lot number must be assigned to each group of lifejackets produced. No lot may exceed 1000 lifejackets. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. Changes in lots of component materials must be treated as changes in materials. Lots must be numbered serially. The lot number assigned, along with the approval number, must enable the lifejacket manufacturer, by referring to the records required by this subpart, to determine who produced the components used in the lifejacket.

(d) *Samples.* (1) Samples used in testing and inspections must be selected at random. Sampling must be done only when all lifejackets or materials in the lot are available for selection.

(2) Each sample lifejacket selected must be complete, unless otherwise specified in paragraph (h) of this section.

(3) The inspector may not select the same samples tested by the manufacturer.

(4) The number of samples selected per lot must be at least the applicable number listed in Table 160.176–15A or Table 160.176–15B.

TABLE 160.176–15A.—MANUFACTURER'S SAMPLING PLAN

	Number of Samples Per Lot					
	Lot Size					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Inflation Chamber Materials	SEE NOTE (1)					
Seam Strength	1	1	2	2	3	4
Over-pressure [2] [3]	1	2	3	4	6	6
Air Retention	EVERY DEVICE IN THE LOT					
Buoyancy & Inflation Media Retention	1	2	3	4	6	6
Tensile Strength [4]	1	1	1	1	1	1
Detailed Product Examination	2	2	3	4	6	6
Retest Sample Size [3]	—	—	13	13	20	20
Final Lot Inspection:	EVERY DEVICE IN THE LOT					

[1] Samples must be selected from each lot of incoming material. The tests referenced in §§ 160.176–13(y)(1) through 160.176–13(y)(4) of this Part prescribe the number of samples to select.

[2] Samples selected for this test may not be the same samples selected for other tests.

[3] If any sample fails the over-pressure test, the number of samples to be tested in the next lot produced must be at least 2% of the total number of lifejackets in the lot or 10 lifejackets, whichever is greater.

[4] This test is required only when a new lot of materials is used and when a revised production process is used. However, the test must be run at least once every calendar quarter regardless of whether a new lot of materials or a revised process is started in that quarter.

TABLE 160.176–15B.—INSPECTOR'S SAMPLING PLAN

	Number of samples per lot					
	Lot size					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Over-pressure [1]	1	2	3	4	6	6
Air Retention	1	2	3	4	6	6
Buoyancy & Inflation Media Retention	1	2	3	4	6	6
Tensile Strength [2]	1	1	1	1	1	1
Waterproof marking	SEE NOTE (3) FOR SAMPLING					
Detailed Product Examination	2	2	2	3	3	3
Retest Sample Size [1]	10	10	13	13	20	20
Final Lot Inspection:	20	32	50	60	70	80

[1] Samples selected for this test may not be the same lifejackets selected for other tests.

[2] This test may be omitted if the manufacturer has previously conducted it on the lot and the inspector has conducted the test on a previous lot during the same calendar quarter.

[3] One sample of each means of marking on each type of fabric or finish used in lifejacket construction must be tested. This test is only required when a new lot of materials is used. However, the test must be run at least once every calendar quarter regardless of whether a new lot of materials is started in that quarter.

(e) *Accept/reject criteria: manufacturer testing.* (1) A lifejacket lot passes production testing if each sample passes each test.

(2) In lots of 200 or fewer lifejackets, the lot must be rejected if any sample fails one or more tests.

(3) In lots of more than 200 lifejackets, the lot must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.176–15A, one or more samples fail the test.

(4) A rejected lifejacket lot may be retested only if allowed under paragraph (k) of this section.

(5) In testing inflation chamber materials, a lot is accepted only if the average of the results of testing the minimum number of samples prescribed in the reference tests in § 160.176–13(y) of this Part is within the tolerances specified in § 160.176–8(c)(1) of this Part. A rejected lot may not be used in production.

(f) *Accept/reject criteria: independent laboratory testing.* (1) A lot passes production testing if each sample passes each test.

(2) A lot must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.176–15B, one or more samples fail the test.

(3) A rejected lot may be retested only if allowed under paragraph (k) of this section.

(g) *Facilities and equipment*—(1) *General.* The manufacturer must provide the test equipment and facilities described in this section for performing production tests, examinations, and inspections.

(2) *Calibration.* The manufacturer must have the calibration of all test equipment checked at least every six months by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) *Equipment.* The following equipment is required:

(i) *A sample basket* for buoyancy tests. It must be made of wire mesh and be of sufficient size and durability to securely hold a completely inflated lifejacket under water without compressing it. The basket must be heavy enough or be sufficiently weighted to submerge when holding an inflated test sample.

(ii) *A tank filled with fresh water* for buoyancy tests. The height of the tank must be sufficient to allow a water depth of 5 cm (2 inches) minimum between the top of the basket and water surface when the basket is not touching the bottom. The length and width of the tank must be sufficient to prevent each submerged basket from contacting another basket or the tank sides and bottom. Means for locking or sealing the tank must be provided to prevent disturbance of any samples or a change in water level during testing.

(iii) *A scale* that has sufficient capacity to weigh a submerged basket for buoyancy tests. The scale must be sensitive to 13 g (0.5 oz.) and must not have an error exceeding ±13 g (0.5 oz.).

(iv) *Tensile test equipment* that is suitable for applying pulling force in conducting body strap assembly strength subtests. The equipment assembly may be (A) a known weight and winch, (B) a scale, winch, and fixed anchor, or (C) a tensile test machine that is capable of holding a given tension. The assembly must provide accuracy to maintain a pulling force within ±2 percent of specified force. Additionally, if the closed loop test method in § 160.176–13(h)(1) of this Part is used, two cylinders of the type described in that method must be provided.

(v) *A thermometer* that is sensitive to 0.5 °C (1 °F) and does not have an error exceeding ±0.25 °C (0.5 °F).

(vi) *A barometer* that is capable of reading mm (inches) of mercury with a sensitivity of 1 mm (0.05 in.) Hg and an error not exceeding ±5 mm (0.02 in.) Hg.

(vii) *A regulated air supply* that is capable of supplying the air necessary to conduct the tests specified in paragraphs (h)(4) and (h)(5) of this section.

(viii) *A pressure gauge* that is capable of measuring air pressure with a sensitivity of 1 kPa (0.1 psig) and an error not exceeding ±0.5 kPa (0.05 psig).

(ix) *A torque wrench* if any screw fasteners are used. The wrench must be sensitive to, and have an error of less than, one half the specified tolerance for the torque values of the fasteners.

(4) *Facilities:* The manufacturer must provide a suitable place and the necessary apparatus for the inspector to use in conducting or supervising tests. For the final lot inspection, the manufacturer must provide a suitable working environment and a smooth-top table for the inspector's use.

(h) *Production tests and examinations.*—(1) *General.* (i) Samples used in testing must be selected according to paragraph (d) of this section.

(ii) On each sample selected—

(A) The manufacturer must conduct the tests in paragraphs (h)(2) through (h)(8) of this section; and

(B) The independent laboratory inspector must conduct or supervise the tests in paragraphs (h)(4) through (h)(9) of this section.

(iii) Each individual test result must, in addition to meeting the requirements in this paragraph, meet the requirements, if any, set out in the approved plans and specifications required by § 160.176–5(a)(2) of this Part.

(2) *Inflation chamber materials.* Each sample must be tested according to §§ 160.176–13(y)(1) through 160.176–13(y)(3) of this Part. The average and individual results of testing the minimum number of samples prescribed by § 160.176–13(y) of this Part must comply with the requirements in § 160.176–8(c)(1) of this Part.

(3) *Seam strength.* The seams in each inflation chamber of each sample must be tested according to § 160.176–13(y)(4) of this Part. The results for each inflation chamber must be at least 90% of the results obtained in approval testing.

(4) *Over-pressure.* Each sample must be tested according to and meet § 160.176–13(t)(1) of this Part.

(5) *Air retention.* Each sample must be tested according to and meet § 160.176–13(t)(2) of this Part.

(6) *Buoyancy and inflation medium retention.* Each sample must be tested according to and meet § 160.176–13(j) of this part. Each buoyancy value must fall within the tolerances specified in the approved plans and specifications.

(7) *Tensile strength.* Each sample must be tested according to and meet § 160.176–13(n) of this Part.

(8) *Detailed product examination.* Each sample lifejacket must be disassembled to the extent necessary to determine compliance with the following:

(i) All dimensions and seam allowances must be within tolerances prescribed in the approved plans and specifications required by § 160.176–5(a)(2) of this part.

(ii) The torque of each screw type mechanical fastener must be within its tolerance as prescribed in the approved plans and specifications.

(iii) The arrangement, markings, and workmanship must be as specified in the approved plans and specifications and this subpart.

(iv) The lifejacket must not otherwise be defective.

(9) *Waterproof marking test.* Each sample is completely submerged in fresh water for a minimum of 30 minutes, and then removed and immediately placed on a hard surface. The markings are vigorously rubbed with the fingers for 15 seconds. If the printing becomes illegible, the sample is rejected.

(i) [Reserved]

(j) *Final lot examination and inspection.*—(1) *General.* On each lifejacket lot that passes production testing, the manufacturer must perform a final lot examination and an independent laboratory inspector must perform a final lot inspection. Samples must be selected according to paragraph (d) of this section. Each final lot examination and inspectin must show—

(i) First quality workmanship;

(ii) That the general arrangement and attachment of all components such as body straps, closures, inflation mechanisms, tie tapes, drawstrings, etc. are as specified in the approved plans and specifications; and

(iii) Compliance with the marking requirements in § 160.176–23 of this Part.

(2) *Accept/reject criteria.* Each nonconforming lifejacket must be rejected. If three or more nonconforming lifejackets are rejected for the same kind of defect, lot examination or inspection must be discontinued and the lot rejected.

(3) *Manufacturer examination.* This examination must be done by a manufacturer's representative who is familiar with the approved plans and specifications required by § 160.176–5(a)(2) of this Part, the functioning of the lifejacket and its components, and the production testing procedures. This person must not be responsible for meeting production schedules or be supervised by someone who is. This person must prepare and sign the record required by § 159.007–13(a) of this chapter and § 160.176–17(b) of this part.

(4) *Independent laboratory inspection.* (i) The inspector must discontinue lot inspection and reject the lot if observation of the records for the lot or of individual lifejackets shows noncompliance with this section or the manufacturer's quality control procedures.

(ii) An inspector may not perform a final lot inspection unless the manufacturer has a current approval certificate.

(iii) If the inspector rejects a lot, the Commandant must be advised immediately.

(iv) The inspector must prepare and sign the inspection record required by § 159.007–13(a) of this chapter and § 160.176–17(b) of this Part. If the lot passes, the record must also include the inspector's certification to that effect and a certification that no evidence of noncompliance with this section was observed.

(v) If the lot passes, each lifejacket in the lot must be plainly marked with the words, "Inspected and Passed, (Date), (Inspection Laboratory ID)." This marking must be done in the presence of the inspector. The marking must be permanent and waterproof. The stamp which contains the marking must be kept in the independent laboratory's custody at all times.

(k) *Disposition of rejected lifejacket lot or lifejacket.* (1) A rejected lifejacket lot may be resubmitted for testing, examination or inspection if the manufacturer first removes and destroys each defective lifejacket or, if authorized by the Commandant, reworks the lot to correct the defect.

(2) Any lifejacket rejected in a final lot examination or inspection may be resubmitted for examination or inspection if all defects have been corrected and reexamination or reinspection is authorized by the Commandant.

(3) A rejected lot or rejected lifejacket may not be sold or offered for sale under representation that it meets this subpart or that it is Coast Guard approved.

§ 160.176–17 Manufacturer records.

(a) Each manufacturer of inflatable lifejackets must keep the records required by § 159.007–13 of this chapter except that they must be retained for at least 120 months after the month in which the inspection or test was conducted.

(b) Each record required by § 159.007–13 of this chapter must also include the following information:

(1) For each test, the serial number of the test instrument used if there is more than one available.

(2) For each test and inspection, the identification of the samples used, the lot number, the approval number, and the number of lifejackets in the lot.

(3) For each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot.

(c) The description or photographs of procedures and apparatus used in testing is not required for the records prescribed in § 159.007–13 of this chapter as long as the manufacturer's procedures and apparatus meet the requirements of this subpart.

(d) Each manufacturer of inflatable lifejackets must also keep the following records:

(1) Records for all materials used in production including the following:

(i) Name and address of the supplier.

(ii) Date of purchase and receipt.

(iii) Lot number.

(iv) Certification meeting § 160.176–8(a)(3) of this part.

(2) A copy of this subpart.

(3) Each document incorporated by reference in § 160.176–4 of this Part.

(4) A copy of the approved plans and specifications required by § 160.176–5(a)(2) of this part.

(5) The approval certificate.

(6) Calibration of test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(7) A listing of current and formerly approved servicing facilities.

(e) The records required by paragraph (d)(1) of this section must be kept for at least 120 months after preparation. All other records required by paragraph (d) of this section must be kept for at least 60 months after the lifejacket approval expires or is terminated.

§ 160.176–19 Servicing.

(a) *General.* This section contains requirements for servicing facilities, manuals, training, guidelines, and records. Other regulations in this chapter require inflatable lifejackets to be serviced at approved facilities at 12 month intervals.

(1) Each manufacturer of an approved inflatable lifejacket must provide one or more Coast Guard approved facilities for servicing those lifejackets. The manufacturer must notify the Commandant whenever an approved facility under its organization no longer provides servicing of a lifejacket make and model listed in the guidelines required by paragraph (d) of this section.

(2) Each manufacturer of an approved inflatable lifejacket must make replacement parts available to Coast Guard approved independent servicing facilities.

(b) *Servicing facilities.* Each Coast Guard approved servicing facility must meet the requirements of this paragraph and paragraph (d) of this section in order to receive and keep its approval for each make and model of lifejacket. Approval is obtained according to § 160.176–5(c) of this Part.

(1) Each servicing facility must conduct lifejacket servicing according to its servicing guidelines and follow the procedures in the service manual required by this section.

(2) Each servicing facility must have a suitable site for servicing which must be clean, well lit, free from excessive dust, drafts, and strong sunlight, and have appropriate temperature and humidity control as specified in the service manual.

(3) Each servicing facility must have the appropriate service, repair, and test equipment and spare parts for performing required tests and repairs.

(4) Each servicing facility must have a current manufacturer's service manual for each make and model of lifejacket serviced.

(5) A servicing facility may have more than one servicing site provided that each site meets the requirements of paragraph (b)(2) of this section.

(6) Each servicing facility must be inspected at intervals not exceeding six

months by an accepted independent laboratory, and a report of the inspections must be submitted to the Commandant at least annually. The report must contain enough information to show compliance with paragraphs (b)(1) through (4) of this section and paragraph (d) of this section. Where a facility uses more than one site the report must show compliance at each site at least biennially.

(c) *Service manual.* (1) Each manufacturer of an approved inflatable lifejacket must prepare a service manual for the lifejacket. The service manual must be approved by the Commandant according to § 160.176–5(b) of this part.

(2) The manufacturer must make the service manual, service manual revisions, and service bulletins available to each approved servicing facility.

(3) Each service manual must contain the following:

(i) Detailed procedures for inspecting, servicing, and repackaging the lifejacket.

(ii) A list of approved replacement parts and materials to be used for servicing and repairs, if any.

(iii) A requirement to mark the date and servicing facility name on each lifejacket serviced.

(iv) Frequency of servicing.

(v) Any specific restrictions or special procedures prescribed by the Coast Guard or manufacturer.

(4) Each service manual revision and service bulletin which authorizes the modification of a lifejacket, or which affects a requirement under this subpart, must be approved by the Commandant. Other revisions and service bulletins are not required to be approved, but a copy of each must be sent to the Commandant when it is issued. At least once each year, the manufacturer must provide to the Commandant and to each servicing facility approved to service its lifejackets a bulletin listing each service manual revision and bulletin in effect.

(d) *Servicing facilities guidelines.* Each servicing facility must have written guidelines that include the following:

(1) Identification of each make and model of lifejacket which may be serviced by the facility as well as the manual and revision to be used for servicing.

(2) Identification of the person, by title or position, who is responsible for the servicing program.

(3) Training and qualifications of servicing technicians.

(4) Provisions for the facility to retain a copy of its current letter of approval from the Coast Guard at each site.

(5) Requirements to—

(i) Ensure each inflatable lifejacket serviced under its Coast Guard approval is serviced in accordance with the manufacturer's service manual;

(ii) Keep servicing technicians informed of each approved servicing manual revision and bulletin and ensure servicing technicians understand each change and new technique related to the lifejackets serviced by the facility;

(iii) Calibrate each pressure gauge, weighing scale, and mechanically-operated barometer at intervals of not more than one year;

(iv) Ensure each inflatable lifejacket serviced under the facility's Coast Guard approval is serviced by or under the supervision of a servicing technician who meets the requirements of item (3) of this paragraph;

(v) Specify each make and model of lifejacket it is approved to service when it represents itself as approved by the U.S. Coast Guard; and

(vi) Not service any lifejacket for a U.S. registered commercial vessel, unless it is approved by the U.S. Coast Guard to service the make and model of lifejacket.

(e) *Servicing records.* Each servicing facility must maintain records of all completed servicing. These records must be retained for at least 5 years after they are made, be made available to any Coast Guard representative and independent laboratory inspector upon request, and include at least the following:

(1) Date of servicing, number of lifejackets serviced, lot identification, approval number, and test results data for the lifejackets serviced.

(2) Identification of the person conducting the servicing.

(3) Identity of the vessel receiving the serviced lifejackets.

(4) Date of return to the vessel.

§ 160.176–21 User manuals.

(a) The manufacturer must develop a user's manual for each model of inflatable lifejacket. The content of the manual must be provided for approval according to §§ 160.176–5(a)(3)(v) and 160.176–5(b) of this Part.

(b) A user's manual must be provided with each lifejacket except that only five manuals need be provided to a single user vessel if more than five lifejackets are carried on board.

(c) Each user's manual must contain in detail the following:

(1) Instructions on use of the lifejacket and replacement of expendable parts.

(2) Procedures for examining serviceability of lifejackets and the frequency of examination.

(3) Pages for logging on board examinations.

(4) Frequency of required servicing at approved servicing facilities.

(5) Instructions, if any, on proper stowage.

(6) Procedures for getting the lifejackets repaired by a servicing facility or the manufacturer.

(7) Procedures for making emergency repairs on board.

(8) Any specific restrictions or special instructions.

§ 160.176–23 Marking.

(a) *General.* Each inflatable lifejacket must be marked with the information required by this section. Each marking must be waterproof, clear, and permanent. Except as provided elsewhere in this subpart, each marking must be readable from a distance of three feet.

(b) *Prominence.* Each marking required in paragraph (d) of this section, except vital care and use instructions, if any, must be less prominent and in smaller print than markings required in paragraph (c) of this section. Each optional marking must be significantly less prominent and smaller than required markings. The marking "ADULT" must be in at least 18 mm (¾ inch) high bold capital lettering. If a lifejacket is stored in a package, the package must also have the marking "ADULT" or this marking must be easily visible through the package.

(c) *Text.* Each inflatable lifejacket must be marked with the following text in the exact order shown:

ADULT—For a person weighing more than 90 pounds.

Type V PFD—Approved for use on *(see paragraph (e) of this section for exact text to be used here)* in lieu of *(see paragraph (f) of this section for exact text to be used here).*

This lifejacket must be serviced, stowed, and used in accordance with *(insert description of service manual and user's manual).*

When fully inflated this lifejacket provides a minimum buoyant force of *(insert the design buoyancy in lb.).*

(d) *Other Information.* Each lifejacket must also be marked with the following information below the text required by paragraph (c) of this section:

(1) U.S. Coast Guard Approval No. *(insert assigned approval number).*

(2) Manufacturer's or private labeler's name and address.

(3) Lot Number.

(4) Date, or year and calendar quarter, of manufacture.

(5) Necessary vital care or use instructions, if any, such as the following:

(i) Warning against dry cleaning.

(ii) Size and type of inflation medium cartridges required.

(iii) Specific donning instructions.

(3) *Approved applications.* The text to be inserted in paragraph (c) of this section as the approved use will be one or more of the following as identified by the Commandant on the approval certificate issued according to § 159.005–13(a)(2) of this chapter:

(1) The name of the vessel.

(2) The type of vessel.

(3) Specific purpose or limitation approved by the Coast Guard.

(f) *Type equivalence.* The exact text to be inserted in paragraph (c) of this section as the approved performance type will be one of the following as identified by the Commandant on the approval certificate:

(1) Type I PFD.

(2) Type V PFD—*(insert exact text of additional description noted on the approval certificate).*

Dated: October 23, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–28752 Filed 12–4–89; 8:45 am]

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federal register

Tuesday
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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15 and 52
Federal Acquisition Regulation (FAR); Solicitation Provisions for Negotiated Construction Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

Federal Acquisition Regulation (FAR); Solicitation Provisions for Negotiated Construction Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revising the Federal Acquisition Regulation (FAR) to prescribe the solicitation provision at 52.215–39, Preparation of Offers-Construction, for use in all negotiated construction solicitation in lieu of the provision at 52.215–13, Preparation of Offers, prescribed in 15.407(d)(1). Alternate I is added to the provision at 52.215–16, Contract Award, prescribe in 15.407(d)(4). The provision at FAR 52.215–39, Preparation of Offers-Construction, prescribed in 15.407(i), is also added.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 5, 1990 to be considered in the formulation of a final rule. Consistent with our efforts to expedite the rulemaking process, comments received after the date specified may not be considered.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89–78 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–78.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely supplies instructions to prospective offerors. However, comments received from small entities concerning the affected sections of the FAR will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–78) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: November 27, 1989.

Alberta A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.407 is amended by revising paragraphs (d)(1) through (d)(4) and by adding paragraph (k) to read as follows:

15.407 Solicitation provisions.

* * * * *

(d) The contracting officer shall—

(1) Insert in RFP's for other than construction the provision at 52.215–13, Preparation of Offers;

(2) Insert in RFP's the provision at 52.215–14, Explanation to Prospective Offerors;

(3) Insert in RFP's the provisions at 52.215–15, Failure to Submit Offer; and

(4) Insert in RFP's for other than construction the provision at 52.215–16, Contract Award. If the RFP is for construction, the contracting officer shall use the provision with its Alternate I.

* * * * *

(k) The contracting officer shall insert in RFP's for construction the provision at 52.215–39, Preparation of Offers—Construction.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215–16 is amended by adding Alternate I following the clause to read as follows:

52.215–16 Contract award.

* * * * *

Alternate I (NOV 1989). In accordance with the prescription in 15.407(d)(4), substitute the following for paragraph (d) of the basic provision:

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the offer.

4. Section 52.215–39 is added to read as follows:

52.215–39 Preparation of offers—construction.

As prescribed in 15.407(k), insert the following provision:

Preparation of Offers—Construction (Nov 1989)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this subsection.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision.)

[FR Doc. 89–28368 Filed 12–4–89; 8:45 am]

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H.R. 2748 / Pub. L. 101–193

Intelligence Authorization Act, Fiscal Year 1990. (Nov. 30, 1989; 103 Stat. 1701; 15 pages) Price: $1.00

H.R. 3660 / Pub. L. 101–194

Ethics Reform Act of 1989. (Nov. 30, 1989; 103 Stat. 1716; 68 pages) Price: $2.00

In the List of Public Laws printed in the **Federal Register** on December 1, 1989, Pub. L. 101–183 and Pub. L. 101–184 were incorrectly printed. They should read as follows:

H.J. Res. 393 / Pub. L. 101–183

To grant the consent of Congress to the boundary change compact between South Dakota and Nebraska. (Nov. 28, 1989; 103 Stat. 1328; 6 pages) Price: $1.00

S. 818 / Pub. L. 101–184

To commemorate the contributions of Senator Clinton P. Anderson to the establishment of the National Wilderness Preservation System, and for other purposes. (Nov. 28, 1989; 103 Stat. 1334; 2 pages) Price: $1.00

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12-6-89
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12-6-89
Vol. 54 No. 233
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Wednesday
December 6, 1989

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Rules and Regulations

Federal Register
Vol. 54, No. 233
Wednesday, December 6, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS NO. 1221-89]

Adjustment to Permanent Resident Status

AGENCY: Immigration and Naturalization Service; Justice.

ACTION: Final rule.

SUMMARY: This rule amends procedures for the adjustment of status of applicants under section 210 of the Immigration and Nationality Act (Act) from temporary resident status to permanent resident status and adds the definition of the term ADIT. This rule removes the requirement for a determination that an alien has maintained temporary resident status prior to adjustment.

EFFECTIVE DATE: This rule is effective December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Program (SAW), 202-786-3658.

SUPPLEMENTARY INFORMATION: On August 3, 1989, a proposed rule with request for comments was published in the Federal Register at 54 FR 31966. The comment period expired on September 5, 1989. The Service received 4 comments during the comment period.

Most commentors commended the Service for choosing an efficient, rational method for adjusting SAWs to permanent resident status, consistent with language in the Act. These commentors requested that the Service conduct a broad public education campaign to educate SAWs on the procedures, to ensure understanding of the process, and to ensure there is no confusion with the second stage procedures applicable to Section 245A legalization applicants.

The Service intends to notify all eligible aliens by mail when to appear for processing for their permanent resident status. Additionally, the Service will conduct outreach activities and a media campaign to inform SAW temporary residents of their rights and responsibilities.

The term ADIT in the interim rule refers to Alien Documentation, Identification and Telecommunications card, Form I-89 which is used by the Service for production of the Alien Registration Receipt Card, Form I-551. Form I-551, commonly called the "green card", is an alien's proof of permanent resident status. The definition of the term ADIT has been added to the regulations to insure understanding by persons outside the agency.

One commentor recommended the Service provide more detail in the regulations with regard to ADIT processing and verification of eligibility for permanent residence prior to adjustment to ensure uniformity of processing. The Service believes uniformity of processing will not be a problem since ADIT processing has been an ongoing function of the Service for many years.

One commentor suggested the process be streamlined even more by granting both temporary and permanent status simultaneously to those qualifying SAWs whose applications have been backlogged beyond one year. The Service is attempting to adjudicate all applications prior to the adjustment date. However, in the event that an application is approved subsequent to the adjustment date a notice will advise the alien of his/her adjustment to permanent resident status and to appear for ADIT processing. This is a procedural matter and will not be included in the rule.

One commentor opposed the automatic adjustment of status proposed because of the high number of fraudulent cases that were approved before the Immigration and Naturalization Service was made aware of fraud profiles. The commentor felt the Service should review the cases before adjusting them to permanent resident. As stated in the preamble to the proposed rule, the Service has determined that the procedures for determining maintenance of status are unduly burdensome on aliens and the Service and are not necessary because aliens who are found deportable are subject to deportation even after adjustment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status.

Accordingly, part 210 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR Part 2.

2. In § 210.1, paragraphs (b) through (r) are redesignated as paragraphs (c) through (s) and a new paragraph (b) is added to read as follows:

§ 210.1 Definition of terms used in this part.

* * * * *

(b) *ADIT, Alien Documentation, Identification and Telecommunications card, Form I-89.* Used to collect key data concerning an alien. When processed together with an alien's photographs, fingerprints and signature, this form becomes the source document for generation of Form I-551 Alien Registration Receipt Card.

* * * * *

3. Section 210.5 is amended by revising the heading of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2) and revising it, to read as follows:

§ 210.5 Adjustment to permanent resident status.

* * * * *

(b) *ADIT processing*—(1) *General.* To obtain proof of permanent resident status an alien described in paragraph

(a) of this section must appear at a legalization or Service office designated for this purpose for preparation of Form I–551, Alien Registration Receipt Card. Such appearance may be prior to the date of adjustment, but only upon invitation by the Service. Form I–551 shall be issued subsequent to the date of adjustment.

(2) Upon appearance at a Service office for preparation of Form I–551, an alien must present proof of identity, suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I–89.

* * * * *

Dated: November 3, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–28417 Filed 12–5–89; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 264

[INS Number: 1247–89]

RIN 1115–AA39

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides for the reporting and recordkeeping requirements for registration of aliens, including applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to correct an inadvertent deletion of a portion of 8 CFR 264.1(c). Futhermore, this rule adds the requirement that aliens adjusted from temporary resident status to permanent resident status pursuant to section 210(a)(2) of the Act file Form I–90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I–551.

DATES: This interim rule is effective December 6, 1989. Comments must be received on or before January 5, 1990.

ADDRESSES: Written comments should be mailed in triplicate to the Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786–5651.

SUPPLEMENTARY INFORMATION: When the Service published an interim rule, a portion of 8 CFR 264.1(c) was inadvertently removed. On October 31, 1988 rule, 8 CFR 264.1(c) was amended to provide for the submission of Form I–695 to legalization and other Service offices. The replacement of text was to have started at the beginning of the sentence which read "Application by an alien lawfully admitted for temporary residence * * *".

The replacement text was, however, inserted in the wrong place, beginning with the sentence which read, "Application by an alien lawfully admitted for permanent residence * * *" This rule provides for the return of the inadvertently omitted portion of § 264.1(c) and makes grammatical and structural changes.

Section 264.1(c) is also being amended to require Special Agricultural Worker (SAW) temporary residents who automatically adjust their status to that of a permanent resident pursuant to section 210(a)(2) of the Act to file Form I–90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I–551. The filing of the I–90 will allow SAWs to obtain proof of their lawful permanent resident status. The Service has determined that the verification of eligibility, identification of the alien, costs and card processing are the same for all permanent residents, including SAWs, to obtain proof of alien registration. The fee required by 8 CFR103.7(b) will be collected. The interim rule is being issued to allow for the timely processing of Group I SAWs who will be automatically adjusted to permanent resident status on December 1, 1989, while allowing for public comment.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR part 299.5.

List of Subjects in 8 CFR Part 264

Reporting and recordkeeping requirements.

Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

1. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305; 66 Stat. 173, 191, 223–225; 71 Stat. 641.

2. In § 264.1 paragraph (c) is revised to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(c) *Replacement of registration.* Any alien whose evidence of registration has been lost, mutilated, or destroyed, shall immediately apply for new evidence of registration.

(1) *Nonimmigrants.* (i) Application for replacement of Form I–185, Nonresident Alien Canadian Border Crossing Card, shall be made on Form I–175.

(ii) Application for Replacement of Form I–186, Nonresident Alien Mexican Border Crossing Card, shall be made on Form I–190.

(iii) Application for replacement of Form I–94, Arrival-Departure Record, or Form I–95, Crewman's Landing Permit, shall be made on Form I–102, except that a new form I–94 may be issued in lieu of one lost, mutilated, or destroyed without application therefor, when the alien is an applicant for extension of his or her temporary stay or change of nonimmigrant classification.

(2) *Permanent residents*—Application by an alien lawfully admitted for permanent residence for Form I–551, Alien Registration Receipt Card, shall be made on Form I–90. (i) *Who can file.* An I–90 application may be filed by a lawful permanent resident:

(A) To replace a lost, stolen or destroyed card;

(B) To replace a mutilated card;

(C) To obtain a card when it is established that Form I–551 was never received;

(D) To replace evidence of permanent residence issued on alien registration cards predating the use of Form I–151 and I–551;

(E) To correct a card;

(F) To change a name or other biographic data;

(G) Who has attained the age of 14 and is seeking to be registered and fingerprinted pursuant to section 262(b) of the Act;

(H) Who is an alien commuter taking up actual permanent residence in the United States; or

(I) Whose status was automatically adjusted from temporary residence pursuant to § 210.5 of this chapter.

(ii) *Fee.* An I–90 application must be submitted with the nonrefundable fee required by § 103.7(b)(1), except that a fee is not required when the application is filed under paragraphs (c)(2)(i)(C) through (c)(2)(i)(H) of this section.

(iii) *Accompanying documents.*—(A) *Photographs.* An I–90 application must be filed with two color photographs meeting the specifications on the application form.

(B) *Prior evidence of alien registration.* An I–90 application filed under paragraph (c)(2)(i) (B), (D), (E), (F), (G) or (H) of this section must be filed with the prior Alien Registration Receipt Card or other evidence of permanent residence or commuter status.

(C) *Evidence of name or other biographic change.* An I–90 application filed under paragraph (c)(2)(i)(F) of this section must be filed with the order, issued by a court of competent jurisdiction, changing the applicant's name, or with the applicant's marriage certificate. An application to change other biographic data on a card must be filed with documentary evidence conclusively establishing the new data.

(D) *Fingerprint chart.* An I–90 application shall be filed under paragraph (c)(2)(i)(G) of this section must be filed with a completed Form FD–258 Fingerprint Chart.

(iv) *Filing.*— (A) *Where to file.* An I–90 application shall be filed by the applicant, in person, at the Service office that has jurisdiction over his or her place or residence. If the applicant's place of residence is outside the United States and there is no Service office in that foreign country, the application shall be filed by the applicant, in person, at the American Consulate with jurisdiction over his or her place of residence.

(B) *Data collection form.* An applicant must execute the signature and fingerprint blocks of Form I–89, Data Collection Form, at a Service office when filing an I–90 application.

(v) *Processing.*—(A) *Interview.* An applicant may be required to appear before an immigration officer or consular officer and be interviewed under oath concerning eligibility.

(B) *Waiver of requirements.* The Service may waive the photograph, in person filing and I–89 execution requirements of this section in cases of confinement due to advanced age or physical infirmity.

(vi) *Decision.* If an application is denied, the applicant shall be notified of the reasons for denial. No appeal shall lie from this decision.

(3) *Temporary residents.* Application by an alien lawfully admitted for temporary residence for Form I–688, Temporary Resident Card, shall be made on Form I–695. (i) *Who can file.* An I–695 application may be filed by a lawful temporary resident:

(A) To replace a lost, stolen, or detroyed card;

(B) To replace a mutilated card;

(C) To change a name or other biographic data.

(ii) *Fee.* An I–695 application must be submitted with the fee required by § 103.7(b)(1) of this chapter.

(iii) *Accompanying documents.*—(A) *Photographs.* An I–695 application must be filed with two color photographs meeting the specifications on the application form.

(B) *Prior evidence of alien registration.* Any Form I–688 in the applicant's possession must be submitted with the application.

(C) *Evidence of name or other biographic change.* An I–695 application filed under paragraph (c)(2)(i)(D) of this section must be filed with the order, issued by a court of competent jurisdiction, changing the applicant's name, or with the applicant's marriage certificate. An application to change other biographic data on a card must be filed with documentary evidence conclusively establishing the new data.

(iv) *Filing.*—(A) *Where to file.* An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States. An alien outside the United States shall appear at an American Consulate or Service office abroad and present a full account of the circumstances involving the loss or destruction of Form I–688. A cable shall be sent to the Service's Central Office Records Management Branch for verification of status. Subsequent to verification that temporary residence was granted, a transportation letter will be issued to the temporary resident alien. Upon entry to the United States, the alien shall submit the I–695 to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States.

(B) *Camera ready card.* Prior to the issuance of Form I–688, all applicants, regardless of age, shall appear at the appropriate legalization or Service office for placement of fingerprint and signature on I–688.

(v) *Processing.*—(A) *Interview.* An alien who files application Form I–695 may be required to appear in person before an immigration officer prior to the adjudication of the application and be interviewed under oath concerning his or her eligibility for issuance of I–688 as evidence of his or her registration.

(B) *Waiver of requirements.* The Service may waive the photograph, interview or the placement of fingerprint and signature on the I–688 for a child under 14 or when it is impractical because of the health or advanced age of the applicant.

(c) *Fingerprint chart.* An applicant may be required to present a completed fingerprint chart, FD–258.

(vi) *Decision.* The decision on an application for replacement of evidence of registration shall be made by the Regional Processing Facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the Regional Processing Facility director denying the application.

* * * * *

Dated: November 17, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

FR Doc. 89–28418 Filed 12–5–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 345

[Docket No. CAS–RM–79–112–C]

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings

AGENCY: U.S. Department of Energy (DOE).

ACTION: Preliminary Statement of Reasons for Adoption of Standby Loss Criteria; Corrections.

SUMMARY: On November 30, 1989 (54 FR 49724), DOE published a preliminary statement of reasons for adoption of standby loss criteria. The Preliminary Statement was published pursuant to the October 6, 1989, Memorandum and Order of the United States District Court for the District of Columbia in Civil Action No. 89–1315, Gas Appliance Manufacturers Association, Inc. *et al.*, v. Secretary of Energy. The Preliminary Statement as published contained

editorial errors. These errors are corrected as set forth below.

FOR FURTHER INFORMATION CONTACT: Peter A. Greenlee (202) 586–9507.

On page 49725, the last line of the second full paragraph of the first column should read, "modification to the service water heating criteria of ANSI/ASHRAE/IES Standard 90A–1980 was developed during that period."; page 49731, in the twelfth line as continued to the thirteenth line of the third paragraph of the first column [Ruegg 1988] should be replaced with [Lippiatt and Ruegg 1988]; page 49732, the second line of the second column "¾ in." should be replaced with "1 in."; page 49732, line 15 as continued to line 16 of the second full paragraph "[ASHRAE 1985]" should be replaced with "[ASHRAE 1987]"; page 49732, line eight of the third paragraph of the second column "¾ in." should be replaced with "1 in."; page 49734, in lines five and six of the fourth paragraph of the first column the figures "$38.94" and "$49.01" should be replaced with the figures "$39.61" and "$52.33" respectively; page 49734, the second full paragraph of text in the second column "The oil heater analyzed was. . . ." should be replaced with, "The oil-fired water heater analyzed was similar in geometry to a commercially available model manufactured by A.O. Smith—6 in. flue, 23.75 in. wide tank, 47.9 in. high tank (A.O. Smith 1988)".

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89–28628 Filed 12–5–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R–0672]

Truth in Lending; Determination of Effect on State Law (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination that certain provisions in the law of Wisconsin dealing with disclosures and adjustment notices for variable-rate transactions are not inconsistent with the Truth in Lending Act and Regulation Z, and are therefore not preempted by federal law.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. Preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

(2) *Discussion of specific request and final determination.* The Board was asked to determine whether specific provisions of the Wisconsin Statutes requiring disclosures and adjustment notices for certain variable-rate transactions are inconsistent with amendments to Regulation Z (12 CFR 226.18(f)(1), 226.19(b)(2), and 226.20(c)) which regulate disclosure of closed-end variable-rate transactions. The requesting party asked whether Wisconsin Statutes § 138.056(4) and (6) requiring creditors to provide consumers with notice of a change in the interest rate and disclosures, respectively, in the case of certain variable-rate transactions are preempted by § § 226.18(f)(1), and 226.19(b) and 226.20(c). The requesting party also questioned whether Wisconsin Statutes § 422.421(5) is preempted by § 226.20(c).

The Board published a proposed determination on August 4, 1989 (54 FR 32089). The Board proposed a determination that the Wisconsin provisions dealing with disclosures and adjustment notices are not inconsistent with the federal law or regulation. One comment letter was received which opposed the determination on the basis that the Board had not balanced its decision by weighing the "informed use of credit" by consumers against the cost to creditors of establishing specific procedures for transactions in Wisconsin. After careful review of the issue, and for the reasons discussed below, the Board has determined these Wisconsin provisions are not inconsistent with the federal law and therefore preemption is not appropriate.

The Board concluded that certain substantive and timing requirements of Wisconsin's variable-rate provisions do not contradict federal requirements since a creditor can comply with both sets of requirements without violating either the state or federal law. (See the notice of proposed preemption determination for further detail on the sections reviewed by the Board.) In certain circumstances, the state law required additional or different information from the required by the federal law. Generally, state law requirements that call for the disclosure of information not covered by the federal law, or that require more detailed disclosure, do not contradict the federal requirements.

In general, the state and the federal disclosures can be combined. Certain disclosures, however, are required by § 226.17(a) to be segregated from other information although they may all appear on the same page. In addition, creditors should note that if the state and federal disclosures are combined, the timing requirements of Regulation Z will be controlling.

This notice does not contain an effective date since the Board has determined there is no preemption of state law. A concern was raised about delaying the effective date of this determination to allow creditors to change their uniform procedures, forms and computer systems to comply with both the federal and state disclosures. The commentary to Regulation Z provides that creditors may independently apply the Board's preemption standards to a state law and, if they conclude that the state law is inconsistent with federal law, choose not to give the state-required disclosures. (See comment 28(a)-4.) However, the commentary further notes that nothing in § 226.28(a) provides the creditor with immunity for violations of state law if the creditor chooses not to make state disclosures and the Board later determines that the state law is not preempted. Accordingly, the Board has not delayed the effective date of this determination.

After careful review of the Wisconsin sections discussed above, the Board has determined the state law is not inconsistent with the Truth in Lending Act and Regulation Z, and therefore not preempted.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Truth in Lending.

Board of Governors of the Federal Reserve System, November 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28446 Filed 12–5–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–135–AD; Amdt. 39–6414]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which requires modification or replacement of certain fuselage and wing structural components. This amendment is prompted by reports of cracking discovered during full-scale fatigue testing of the Model ATR42 airframe. This condition, if not corrected, could result in structural failure of the fuselage or wing.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Aerospatiale Model ATR–42 series airplanes, which requires modification or replacement of certain fuselage and wing structural components, was published in the **Federal Register** on August 22, 1989 (54 FR 34778).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, Aerospatiale, recommended that the applicability of paragraph G. be amended to read "for airplane Serial Numbers 003 to 152," since Modification 1931 has been introduced on airplanes with Serial Number 152. The FAA does not concur. Paragraph G., which currently applies to airplanes "Serial Numbers 003 through 151," appropriately covers all airplanes requiring this modification.

Since the issuance of the Notice, Aerospatiale has issued Service Bulletin ATR42–53–0004, Revision 4, dated July 25, 1989, and Service Bulletin ATR42–57–0027, Revision 2, dated July 6, 1989, which clarify and update the procedures to reinforce the fuselage center section and center wing box. Paragraphs D. and G. of the final rule have been revised to reflect the latest revision to these service bulletins.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 50 airplanes of U.S. registry will be affected by this AD. The entire cost of the modifications and replacements required by this AD would be borne by the manufacturer; therefore, there is no cost impact on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42 series airplanes, certificated in any category. Compliance is required prior to the accumulation of 10,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent failure of structural components of the fuselage and wing, accomplish the following:

A. For airplane Serial Numbers 003 through 151: Reinforce fuselage frame 26, in accordance with Aerospatiale Service Bulletin ATR42–53–0042, dated May 3, 1989.

B. For airplane Serial Numbers 003 through 032, 034, and 035: Reinforce the fuselage secondary frames, in accordance with Aerospatiale Service Bulletin ATR42–53–0023, Revision 2, dated May 25, 1989.

C. For airplane Serial Numbers 003 through 059: Perform a cold expansion of the outer wing lower skin attach fastener holes, in accordance with Aerospatiale Service Bulletin ATR42–57–0010, Revision 1, dated May 20, 1989.

D. For airplane Serial Numbers 003 through 071: Reinforce fuselage frames 24 and 28, in accordance with Aerospatiale Service Bulletin ATR42–53–0004, Revision 4, dated July 25, 1989.

E. For airplane Serial Numbers 003 through 084, 086, 087, and 089 through 093: Perform a cold expansion of attach holes and reinforce wing/fuselage junction fittings, in accordance with Aerospatiale Service Bulletin ATR42–53–0031, Revision 1, dated May 20, 1989.

F. For airplane Serial Numbers 003 through 119: Perform a cold expansion of the wing front and rear spar attach holes, in accordance with Aerospatiale Service Bulletin ATR42–57–0021, Revision 1, dated May 20, 1989.

G. For airplane Serial Numbers 003 through 151: Replace the wing center box, in accordance with Aerospatiale Service Bulletin ATR42–57–0027, Revision 2, dated July 6, 1989.

H. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060, Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28441 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-118-AD; Amdt. 39-6413]

Airworthiness Directives; Airbus Industrie Models A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Models A300, A310, and A300-600 series airplanes, which requires modification of the nose landing gear (NLG) barrel. This amendment is prompted by fatigue testing of the NLG barrel which revealed fatigue cracks between the attachment clevis of the telescopic strut and the upper bearing of the shock absorber. This condition, if not corrected, could lead to collapse of the NLG.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Airbus Industrie Models A300, A310, and A300-600 series airplanes, which require modification of the nose landing gear barrel hinge, was published in the **Federal Register** on July 28, 1989 (54 FR 31047).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the rule.

The other commenter questioned the need for the rule since the referenced service bulletin will become a part of the Significant Structural Inspection Program (SSIP). The FAA does not concur with this commenter's assessment that this AD is unnecessary. The FAA acknowledges that the service bulletin may be part of the SSIP; however, the SSIP document is currently in preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes that are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the pubic interest require the adoption of the rule as proposed.

It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 62 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $77,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,153,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Models A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

A. Prior to the accumulation of 26,000 landings or within 30 days after the effective date of this AD, whichever occurs later, modify the NLG barrel, in accordance with one of the following service bulletins, as applicable:

Airplane Model	Service Bulletins
A300	A300-32-385, Rev. 1, dated October 15, 1988.
A310	A300-32-2039, Rev. 1, dated October 15, 1988.
A300-600	A300-32-6022, Rev. 1, dated October 15, 1988.

Note.—The above-referenced service bulletins reference Messier-Hispano-Bugatti Service Bulletin 470-32-577 for additional modification procedures.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Ways South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

FR Doc. 89-28440 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-142-AD; Amdt. 39-6412]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, which currently requires repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. Broken or damaged unlocking pins, if not corrected, could prevent emergency extension of the MLG. This amendment requires installation of a modification of the emergency release mechanism of each MLG door uplock unit, which terminates the need for the repetitive inspections. This amendment is prompted by development of new pins and levers which are not service life limited.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-06-05, Amendment 39-6151 (54 FR 11163; March 17, 1989), applicable to Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, to require installation of a modification of the emergency release mechanism of each main landing gear (MLG) uplock unit, was published in the **Federal Register** on August 22, 1989 (54 FR 34787).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Falcon Jet, representing the manufacturer, pointed out that one service bulletin number called out in the proposal was incorrect, and that the maintenance manual procedure for the Falcon 900 was not identified. The FAA concurs with this comment, and the final rule has been corrected to indicate the correct service bulletin numbers and to include the specific maintenance manual references for each affected model.

The commenter also requested deleting paragaph A.2., which would require that inspection of the main landing gear (MLG) emergency unlocking system be repeated prior to the accumulation of 2,000 landings if no damage was discovered during the initial inspection. The commenter noted that the parallel French AD requires additional inspections at 50 landing intervals only upon *accumulation* of 2,000 landings, and contends that the intent of the rule will be more clearly understood if paragraph A.2. is deleted. This commenter also noted that the repetitive inspections beginning at 2,000 hours are intended to be performed whether or not damage is noted during the initial inspection at 1,000 landings. In addition, the commenter requested changing the compliance time of proposed paragraph D. from "Within 120 days after the effective date of this AD, modify . . ." to "Prior to the accumulation of 2,000 landings since delivery of the airplane, or within 120 days after the effective date of this AD, whichever occurs later, modify . . ." The reason given by the commenter for this request is to make the French and U.S. AD's parallel in terms of compliance time for the required action. The FAA concurs with these comments. The suggested changes in wording make the intent of the required actions clearer, and result in commonality with the French AD. The compliance times reflected in paragraphs A. and B. do not change, and the incorporation of the 2,000 landings grace period in paragraph D. does not result in a reduction in safety because the inspections mandated by paragraphs A. through C. will assure system integrity for up to 2,000 landings. Acordingly, the final rule has been changed to reflect these comments.

In addition to the above, the commenter provided clarification regarding the part numbers of the MLG door unlocking system pins and levers. This commenter noted that the two different part number pins addressed by the service bulletin and this action are interchangeable, and that the life limit of 2,000 landings on the pins has to do with the use of the original part number lever. Neither the old nor the new part number pin is life limited when used with the new design lever. This comment is considered to be for information only. The commenter did not request any change to the rule regarding this clarification.

A second commenter supported the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 171 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $645 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $192,375.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends, 14 CFR Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by amending Amendment 39-6151 (54 FR 11163; March 17, 1989), AD 89-06-05, as follows:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to Model Mystere Falcon 50 and 900 series airplanes as listed in AMD-BA Service Bulletins F-50-208, Revision 1, and F-900-52, Revision 1, both dated July 25, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inability to open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Prior to the accumulation of 1,000 landings on the MLG door emergency unlocking pin, or within 7 days after March 24, 1989 (the effective date of AD 89-05-05, Amendment 39-6151), whichever occurs later, verify the integrity of the MLG door emergency unlocking system by operating the manual opening system, in accordance with the instructions in the AMD-BA Falcon 50 Maintenance Manual Work Card 480.0, paragraph 3, or Falcon 900 Maintenance Procedure No. 32-120, as applicable. If the unlocking pin is broken or damaged, replace the pin with a serviceable pin of the same part number prior to further flight.

B. Upon accumulation of 2,000 landings on the MLG door emergency unlocking pin, or within 50 landings after the effective date of this AD, whichever occurs later, repeat the inspection described in paragraph A., above, and continue to perform this inspection at intervals not to exceed 50 landings.

C. Following the replacement of any unlocking pin with a new pin, repeat the inspections required by paragraphs A. and B., above.

D. Prior to the accumulation of 2,000 landings on the airplane, or within 120 days after the effective date of this AD, whichever occurs later, modify the emergency release mechanism of each MLG door uplock unit in accordance with AMD-BA Service Bulletin F50-208 (F50-32-18), Revision 1, or F900-52 (F900-32-4), Revision 1, both dated July 25, 1989. Accomplishment of this modification constitutes terminating action for the inspections required by paragraphs A. through C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6151, AD 89-06-05.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-28439 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-10-AD; Amdt. 39-6385]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, Correction.

SUMMARY: This action corrects the amendment number of an airworthiness directive (AD) previously published in the **Federal Register** on November 3, 1989 (54 FR 46370). There are no other changes in the AD, which is applicable to all Boeing Model 727 series airplanes and requires inspection of the Number 1 and 3 engine aft mount support fittings, and repair or replacement, if necessary.

DATES: This corrective action is effective December 6, 1989. The effective date of Amendment 39-6385, AD 89-23-17, continues to be December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 25, 1989, the FAA issued a final rule, AD 89-23-17, applicable to all Boeing Model 727 series airplanes, which requires inspection of the Number 1 and 3 engine aft mount support fittings, and repair or replacement, if necessary. When the final rule was published in the **Federal Register** on November 3, 1989 (54 FR 46370), an incorrect amendment number of "39-6395" was cited. This action corrects the amendment number to "Amendment 39-6385."

Since this action only corrects an amendment number in a final rule, it has no adverse economic impact and imposes no additional burden on any

person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Air transportation, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration corrects 14 CFR Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by correcting the amendment number of AD 89-23-17, Docket 89-NM-10-AD, published in the **Federal Register** on November 3, 1989 (54 FR 46370), to read "Amendment 39-6385."

This correction is effective December 6, 1989.

The effective date of Airworthiness Directive 89-23-17, Amendment 39-6385, is December 11, 1989.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28438 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-11; Amdt. 39-6403]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI Model 204B, 205A, 205A-1, 212, and 412 helicopters by individual letters. The AD required inspections of the main transmission spiral bevel gear for evidence of gear tooth failure and replacement, as necessary. This AD is necessary to prevent failure of the transmission spiral bevel gear which could result in possible loss of the helicopter.

EFFECTIVE DATE: Effective January 3, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 89-08-05, issued April 12, 1989, which contained this amendment.

Compliance: Compliance required as indicated, unless already accomplished.

ADDRESS: The applicable AD-related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: On April 12, 1989, Priority Letter AD 89-08-05 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 204B, 205A, 205A-1, 212, and 412 helicopters. The AD required inspections of the transmission spiral bevel gear for evidence of gear tooth failure and replacement of any unserviceable main transmission spiral bevel gear with a serviceable part. The AD was prompted by a report received by the FAA in which a pilot of a Bell Model 212 helicopter heard an occasional and unusual noise coming from the transmission area during flight. Upon returning to base, an inspection of the helicopter revealed two large pieces of gear tooth material fractured from the main transmission spiral bevel gear, part number (P/N) 204-040-701-103. A metallurgical examination of the failed gear teeth attributes this failure to the presence of a low alloy metallic inclusion which occurred during processing of the gear material. This condition may result in early failure, prior to 250 hours' time in service, of some of these gears. AD action was necessary to prevent failure of the transmission spiral bevel gear, which could result in possible loss of the helicopter. The AD, as published, includes a new paragraph (e) to provide for ferry flights in accordance with FAR 21.197 and 21.199, adds serial number (S/N) 33185 and removes S/N 33188 in the NOTE following the applicability paragraph, and adds S/N A-4229 in the NOTE after paragraph (b)(3). The S/N's 33185 and A-4229 were inadvertently omitted from the priority letter AD, and S/N 33188 was determined not to be affected by the AD.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued April 12, 1989, to all known U.S. owners and operators of certain BHTI Model 204B, 205A, 205A-1, 212, and 412 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26 1979). If it is determined that this emergency regulation would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to all Bell Helicopter Textron, Inc., (BHTI) Model 204B, 205A, 205A-1, 212, and 412 helicopters, certificated in any category, with main transmission spiral bevel gear, P/N 204-040-701-103, having less than 250 hours' time in service upon effective date of this AD and delivered as spares or in a new transmission between January 1, 1988, and April 4, 1989. The spare (uninstalled) spiral bevel gears, P/N 204-040-701-103, affected serial numbers are as follows:

A-3819	A-4070	A-4275
A-3821	A-4071	A-4280
A-3825	A-4075	A-4282
A-3826	A-4077	A-4288
A-3829	A-4078	A-4289
A-3833	A-4079	A-4290
A-3834	A-4080	A-4303
A-3836	A-4081	A-4319
A-3838	A-4083	A-4320
A-3840	A-4084	A-4325
A-3843	A-4085	A-4327
A-3847	A-4087	A-4328
A-3848	A-4088	A-4329
A-3850	A-4090	A-4332
A-3855	A-4091	A-4333
A-3856	A-4092	A-4334
A-3857	A-4093	A-4335
A-3858	A-4094	A-4336
A-3861	A-4095A	A-4337
A-3878	A-4096	A-4358
A-3880	A-4097	A-4366
A-3885	A-4098	A-4368
A-3886	A-4107	A-4369
A-3889	A-4108	A-4370
A-3891	A-4109	A-4371
A-3892	A-4147	A-4372
A-3893	A-4184	A-4374
A-3895	A-4186	A-4376
A-3896	A-4187	A-4377
A-3897	A-4188	A-4378
A-3899	A-4191	A-4379
A-3901	A-4192	A-4380
A-3911	A-4193	A-4383
A-3915	A-4213	A-4385
A-3916	A-4229	A-4386
A-3919	A-4233	A-4387
A-3920	A-4235	A-4394
A-4008	A-4236	A-4395
A-4014	A-4241	A-4397
A-4017	A-4243	A-4400
A-4019	A-4244	A-4401
A-4020	A-4245	A-4403
A-4021	A-4254	A-4411
A-4027	A-4266	A-4417
A-4029	A-4267	A-4418
A-4068	A-4274	A-4428

The following Model 212 serial numbered helicopters were delivered with affected main transmission spiral bevel gears: S/N's 31304, 31305, and 31307. The following Model 412 serial numbered helicopters were delivered with the affected main transmission spiral bevel gears: S/N's 33175, 33177, 33178, 33179, 33181, 33182, 33185, 33186, 33190, 33192, 33194, and 33195. (Docket No. 89-ASW-11)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main transmission spiral bevel gear which could result in possible loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time in service upon effective date of this AD, and thereafter, before the first flight of each day, accomplish the following:

(1) Remove and inspect the transmission internal sump oil filter for evidence of metal contamination (e.g., steel particles in splinter, granular, or flake form).

(2) If the metal contamination is evident, disassemble the main transmission to determine the extent of damage and replace any unserviceable parts with serviceable parts before further flight.

(b) Within the next 10 hours' time in service upon effective date of this AD and thereafter, at intervals not to exceed 50 hours' time in service from the last inspection, accomplish the following:

(1) Remove a quill pad cover, P/N 204-040-174-001, or rotor brake quill from the transmission main ring gear case to gain access to the main transmission spiral bevel gear.

(2) Utilizing a bright light and a dental mirror, inspect all teeth in the spiral bevel gear, P/N 204-040-701-103, for evidence of cracks, chipping, and metal deformation. If cracks, chipping, or metal deformation is evident, the part must be removed from service and replaced with a serviceable part before the further flight.

(3) Reinstall pad cover, P/N 204-040-174-001, or rotor brake quill, whichever is applicable.

(c) The provisions of this AD do not apply when the time in service of the spiral bevel gear, P/N 204-040-701-103, reaches or exceeds 250 hours' time in service.

Note.—Spiral bevel gear, P/N 204-040-701-103, affected by this AD may be returned to Bell Helicopter Textron, Inc., Attn: CPR Monitor, 3000 South Norwood & Trinity Boulevard, Hurst, Texas 76053, for inspection and reidentification. After reidentification, the provisions of this AD no longer apply.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, Fort Worth, Texas.

(e) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the inspection requirements of this AD may be accomplished.

This amendment becomes effective January 3, 1990, as to all persons except those persons to who it was made immediately effective by Priority Letter AD 89-08-05, issued April 12, 1989, which contained this amendment.

Issued in Fort Worth, Texas, on November 16, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-28437 Filed 12-5-89; 8:45am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing certain option contracts traded on the London Futures and Options Exchange to be offered or sold to persons located in the United States. This Order is issued pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

EFFECTIVE DATE: January 5, 1990.

FOR FURTHER INFORMATION CONTACT: David A. Naatz, Esq. or Victoria R. Hartke, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the London Futures and Options Exchange to be Offered or Sold in the United States Thirty Days After Notice to the Commission and Publication in the Federal Register of the Option Contracts to be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated June 6, 1989, the London Commodity Exchange (1986) Limited ("London Fox"), a recognized investment exchange ("RIE") under United Kingdom law which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"), requested that the Commission authorize the offer or sale of option contracts traded on London Fox to persons located in the United States under Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) the existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on London Fox; [7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded, including, among other things, the determination by the Commission under Rule 30.10, 17 CFR 30.10 (1988), to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom.[8]

In determining that London Fox's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer or sale of the products subject to this Order.[9]

Based upon the representations of London Fox contained in its letter dated June 6, 1989, as supplemented, SIB's letter dated July 28, 1989 in which SIB confirms that it monitors London Fox for compliance with its obligations as an RIE, [10] the existence of information sharing arrangements with SIB and other relevant United Kingdom authorities, [11] the determination of the Commission to grant Rule 30.10 relief to specified firms in the United Kingdom by Orders dated May 15, 1989, the memorandum from the Division of Trading and Markets to the Commission dated November 6, 1989 ("Staff Memorandum") recommending the approval of the Order herein, and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer or sale in the United States of options traded on London Fox subject to the following conditions:

(1) except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any London Fox option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) that SIB and London Fox represent that London Fox is an RIE under the Financial Services Act and, as such, is subject to regulatory obligations under that Act, that transactions on London Fox in the London Fox option(s) referenced in the **Federal Register** notice [12] will be subject to the rules

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[1] *See* 52 FR 28980, 28998 (August 5, 1987). Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer or sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On July 20, 1988, the Commission issued orders authorizing certain option contracts traded on the Montreal Exchange, the Singapore International Monetary Exchange and the Sydney Futures Exchange to be offered or sold in the United States. On September 12, 1989, the Commission issued an order authorizing certain option contracts traded on the London International Financial Futures Exchange to be offered or sold in the United States.

[3] Rule 30.1(b), 17 CFR § 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty" or "decline guaranty," made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1986), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105. The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

[8] *See* Orders of the Commission dated May 15, 1989 granting Rule 30.10 relief to the Securities and Investments Board, the Association of Futures Brokers and Dealers, The Securities Association and the Investment Management Regulatory Organisation. 54 FR 21599 (May 19, 1989). In issuing such Orders, the Commission determined that the requirements in Appendix A to Part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules," which sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10, had generally been satisfied. *Id.*

[9] The Commission has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i)(1988), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[10] *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[11] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the "Side Letter Relating to UK/US MOU" signed on May 15, 1989.

[12] The option contracts which will initially be offered or sold pursuant to this Order, a summary of the terms and conditions for which are attached hereto as Exhibit A, are options on cocoa, coffee, raw sugar and white sugar.

of London Fox and that SIB and/or London Fox provide the Commission with information as to all material changes thereto promptly;

(3) that options on futures on stock indices [13] and options on futures on foreign government debt securities [14] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) that options traded pursuant to this Order may only be offset on London Fox or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) that options traded pursuant to the Order herein may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988), and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached hereto as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*see* 53 FR 3338 (February 5, 1988) and subsequent orders and letters of the Commission); and

(6) if experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC on November 30, 1989.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[13] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[14] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

Exhibit A

Traded Options on the Robusta Coffee Contract

Basic contract terms

Trading months: January, March, May, July, September, November.

Trading hours: 09:45 to 12:32 hours. 14:30 to 17:00 hours. (As for the underlying Futures Contract trading in Traded Options will continue until trading in the underlying Futures Contracts has ceased).

Contract unit: 5 tonnes.

Minimum price fluctuation: £1 per tonne.

Exercise/Strike price increments: £50 per tonne.

Quoted trading months: Identical to the first six quoted months on the underlying futures, subject to the introduction of a new position immediately on expiry of the "old" option month. Six months always quoted.

Expiry date: Shall be the close of business on the third Wednesday in the preceding month. Declaration (or non-declaration) instructions shall be given to the Clearing House not later than one hour after the close of business.

Traded Options on the No. 5 White Sugar Contract

Basic contract terms

Trading months: March, May, August, October, December.

Trading hours: 09:45 to 19:10 hours.

Contract unit: 50 tonnes.

Minimum price fluctuation: $0.05 per tonne.

Exercise/Strike price increments:

Quoted trading months: Identical to the first six quoted months on the underlying futures, subject to the introduction of a new position immediately on expiry of the "old" option month. Six months always quoted.

Expiry date: Shall be the close of business on the first business day in the preceding month. Declaration (or non-declaration) instructions shall be given to the Clearing House not later than one hour after the close of business.

Traded Options on the No. 6 Raw Sugar Contract

Basic contract terms

Trading months: March, May, August, October, December.

Trading hours: 10:30 to 12:30 hours. 14:30 to 19:00 hours. (As for the underlying Futures Contract trading in Traded Options will continue until trading in the underlying Futures Contracts has ceased).

Contract unit: 50 tonnes.

Minimum price fluctuation: $0.05 per tonne.

Exercise/Strike price increments: $10 per tonne.

Quoted trading months: Identical to the first six quoted months on the underlying futures, subject to the introduction of a new position immediately on expiry of the "old" option month. Six months always quoted.

Expiry date: Shall be the close of business on the third Wednesday in the preceding month. Declaration (or non-declaration) instructions shall be given to the Clearing House not later than one hour after the close of business.

Traded Options on the No. 7 Cocoa Contract

Basic contract terms

Trading months: March, May, July, September, December.

Trading hours: 10:00 to 12:58 hours. 14:30 to 16:45 hours. (As for the underlying Futures Contract trading in Traded Options will continue until trading in the underlying Futures Contracts has ceased).

Contract unit: 10 tonnes.

Minimum price fluctuation: £1 per tonne.

Exercise/Strike price increments: £50 per tonne.

Quoted trading months: Identical to the first six quoted months on the underlying futures, subject to the introduction of a new position immediately on expiry of the "old" option month. Six months always quoted.

Expiry date: Shall be the close of business on the third Wednesday in the preceding month. Declaration (or non-declaration) instructions shall be given to the Clearing House not later than one hour after the close of business.

Exhibit B—Addendum to CFTC Options Disclosure Statement (CFTC Rule 33.7)

The CFTC "Options Disclosure Statement," a copy of which is attached, is modified as set forth below to reflect some particular features of London Fox options:

(i) London Fox is a board of trade (exchange) located *outside* the United States on which certain options are authorized by the CFTC for sale in the United States;

(ii) London Fox option contracts have provision for deferred payment of the option premium, are market-to-market and are subject to initial margin requirements. Consequently, the futures commission merchant ("FMC") or a firm granted an exemption from the FCM registration requirement might not require the purchaser of a London Fox option to put up the full premium at purchase.

Although there is provision for deferred payment of premium, the purchaser of an option is still subject to the risk of losing the entire purchase price of the option, that is, the option premium plus all transaction costs. Consequently, before *purchasing* an option, an individual should fully understand the applicable margin requirements, and particularly should be aware of the obligation to pay variation margin in the case of adverse market movement. Although the purchaser may receive some accruing profit during the life of the option, he should be aware that in order to realize and retain any value from the option, it will be necessary either to offset the option position or to exercise the option.

November 6, 1989.

Memorandum

To: The Commission.

From: The Division of Trading and Markets.

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the London Futures and Options Exchange to be Offered or Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the London Futures and Options Exchange to be offered or sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted:

Division of Economic Analysis
Division of Enforcement
Office of the Executive Director
Office of the General Counsel

I. INTRODUCTION

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28986.

[1] Rule 30.1(b), 17 CFR 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," made or to be made on or subject to the rules of a foreign board of trade.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban, [2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product to a customer resident in the United States until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular order has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign exchange-traded options.[5]

By letter dated June 6, 1989, the London Commodity Exchange (1986) Limited ("London Fox"), a recognized investment exchange ("RIE") under United Kingdom law which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"), [6] requested that the Commission authorize the offer or sale of option contracts traded on London Fox to persons located in the United States.

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of London Fox to offer or sell option products traded on London Fox in the United States, in particular addressing: (1) the availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for monitoring compliance with sales practice obligations; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer or sale of London Fox option products; and (4) the regulatory environment in which such options are traded.

The review of London Fox's petition under Commission Rule 30.3(a) has been facilitated by the Commission's determination by Orders issued on May 15, 1989, under Rule 30.10, 17 CFR § 30.10 (1988), to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom. Specifically, on May 15, 1989, the Commission granted the Rule 30.10 petitions of the SIB and of certain self-regulating organisations ("SROs"), *i.e.*, the Association of Futures Brokers and Dealers ("AFBD"), The Securities Association ("TSA") and the Investment Management Regulatory Organization ("IMRO"), which are responsible for regulating the investment business activities of firms which they designate. In granting such petitions, the Commission determined that the requirements in Appendix A to part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules," [7] generally had been satisfied and that compliance with the rules of the SIB and/or the equivalent rules of the relevant SRO may be substituted, subject to certain conditions, for

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

[5] 51 FR 12104, 12105.

[6] *See* Section 37 of the Financial Services Act ("FSA") and Order of SIB dated April 25, 1988 declaring London Fox to be an RIE attached as Appendix 3 to the June 6, 1989 Petition of London Fox.

SIB has confirmed that it monitors all RIEs, including London Fox, for compliance with their obligations as RIEs. *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[7] Appendix A sets forth the elements the Commission will evaluate in determining whether a particular regulatory progam may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.

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compliance with specified sections of the Commodity Exchange Act.

As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached Order permitting certain option contracts traded on London Fox to be offered or sold in the United States.[9]

III. Discussion

Information Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer or sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information. [9]

Information sharing arrangements have been the subject of extensive discussion between the Commission and the United Kingdom regulatory bodies in connection with the execution of the "Memorandum of Understanding between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in matters relating to Securities and between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in matters related to Futures" signed on September 23, 1986, as supplemented by the "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to that document, (hereinafter collectively referred to as "UK/US MOU", and the Side Letter Relating to UK/US MOU ("Side Letter") entered into on May 15, 1989 by the SIB and the Commission. In particular, the Side Letter provides for information sharing necessary to monitor compliance with applicable Part 30 rules and the terms and conditions of any order issued by the Commission under part 30, including any foreign option order issued pursuant to Commission Rule 30.3(a). In addition, the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States SROs and the Addendum to the FISMOU signed on May 15, 1989 provides for routine and "as needed" information sharing in connection with the financial condition of firms which are exempt from compliance with certain financial requirements pursuant to the FISMOU and the Addendum thereto.

Further, in its June 6, 1989 Petition, London Fox has represented that it is committed to cooperating with United Kingdom regulatory authorities by sharing information with such authorities and that, as an RIE, London Fox is obligated to do so under the FSA.[10]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[11] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[12] In this connection, London Fox represents that under the FSA, SIB or the SRO to which a specific firm belongs is responsible for establishing sales practice rules and monitoring compliance with such rules. Specifically, London Fox represents, and the Commission staff determined in connection with its review of the relevant Rule 30.10 petitions, that SIB, AFBD, TSA and IMRO each has sales practice rules which address, without limitation, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, contents of customer accounts, discretionary accounts and misleading advertising.[13] Further, SIB and the SROs have rules relating to "best execution." These rules are intended to prevent a firm from taking advantage of a customer's order, whether for its own account or for that of another customer. For example, SIB Conduct of Business Rule 5.15 establishes the priorities to be given to customers' orders in instances where a firm also is trading for its own account.

Additionally, the SIB and United Kingdom SROs have procedures for conducting sales practice audits of firms in the United Kingdom selling London Fox options into the United States.[14] In particular, under part 15 of SIB's Conduct of Business Rules, firms are required to establish and maintain written rules and compliance procedures to ensure compliance with the requirements of the FSA and the rules or regulations made by SIB under the FSA. SIB has established a direct regulation division to maintain continuous oversight with respect to firms which it has authorized. As a condition of recognition by SIB as an SRO, the SRO must demonstrate to SIB that it has rules relating to, among other things, protection of investors, the monitoring and enforcement of compliance with its rules and the promotion and maintenance of high standards of integrity and fair dealing which provide protection to investors "at least equivalent" to that provided by SIB under its rules. Also, the National Futures Association ("NFA") has confirmed by letter dated August 16, 1989 that the sales practices of firms located in the United States engaged in such activities will be audited.[15]

In conjunction with the SROs' sales practice programs, London Fox, through its Compliance Committee, conducts surveillance to monitor members' compliance with London Fox's rules.[16]

[9] *See* Exhibit A of the Order recommended herein which contains the list of option contracts and a summary of their terms and conditions. Additional London Fox option contracts may be offered or sold thirty days after publication of the terms and conditions of the specific option contract in the **Federal Register**. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission s economic purpose test, 17 CFR 33.4(a)(5)(i) (1988), or other criteria relating to the specific terms and conditions of the option contract. *See* 17 CFR 33.4.

[9] 52 FR 28980, 28986.

[10] *See* FSA, Schedule 4, paragraph 5 and Appendix 3 to June 6, 1989 Petition of London Fox, to which is attached a Memorandum of Understanding between SIB and London Fox.

[11] *See* 46 FR 54500, 54502 (November 3, 1981).

[12] *Id.*

[13] *See* Rules of SIB, AFBD, TSA and IMRO as discussed in Staff Memoranda dated May 5, 1989 recommending that the Commission grant the Rule 30.10 petition of the above-referenced entities.

[14] *Id.*

[15] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and option activities of NFA members and associates. By letter dated August 16, 1989, from Daniel A. Driscoll, Vice-President of NFA, to Andrea M. Corcoran, Commission, NFA confirmed that arrangements have been made to provide sales practice audits of firms in the United States selling London Fox options.

[16] *See* Appendix 5 to June 6, 1989 Petition of London Fox; *see also* London Fox Floor Trading Rules and Procedures submitted with letter dated October 10, 1989 from P.A.S. Rucker, London Fox, to Andrea M. Corcoran, Commission.

London Fox has represented that the compliance function is undertaken by, among others, two Compliance Officers and its Membership Secretary as follows: [17]

(i) *The Compliance Officer*—The Compliance Officer has overall responsibility for ensuring the compliance function within [London Fox] by overseeing the Markets through Market staff and dealing with any infractions brought to his attention. He also undertakes investigations into certain areas which, from time to time, he considers need attention. He is responsible directly to the Chairman of [London Fox] and is involved in the wider aspects of relations with other Exchanges, the regulatory bodies and the [International Commodities Clearing House ("ICCH")]. In conjunction with the Director of Operations he monitors Members' positions both on a day to day basis and during the liquidation of the Spot positions.

(ii) *The Membership Secretary*—The Membership Secretary is responsible for the maintenance of all membership records, processing new applications for membership and the maintenance of net worth and financial monitoring of all classes of membership in conjunction with the Director of Finance, a Chartered Accountant, who ensures that Members' accounts are scrutinised.

(iii) *The Assistant Compliance Officer (Audit)*—The role of this Officer is to undertake an audit on a weekly basis of a particular market, certain Members etc. by thoroughly investigating all trading slips that are relevant to the particular audit and ensuring that they agree with the time/sales print out, are correctly timed and dated and that no unusual trading pattern is evident. Infractions in trading or writing of slips are brought to the attention of the Compliance Officer and/or the market Managers for action as necessary. Any unusual trading pattern is fully investigated to ensure that no irregularities are being perpetrated.

(iv) *The Exchange Floor and the Market Managers*—These Officers have the day to day running of the Markets in their charge and are charged with ensuring that the Trading Rules are complied with, that discipline is maintained on the Floor and that the trading slips are correctly produced and entered for registration by [ICCH]. They are also responsible for the price reporting input for the market and quote vendor screens.

London Fox has also represented that trade reporting on its floor is as follows: [18]

1. All trades effected on the Floor of [London Fox] are required under the Rules (Rule 24.02) to be registered with [ICCH] and to be traded in accordance with the Trading Rules from time to time in force (In the case of Traded Options Section 37 of the Rule Book applies).

2. Upon completion of a trade the two parties to it complete Buyers and Sellers trading slips * * * and present these to the Rostrum Staff for checking and inputting into the system for registration with [ICCH].

3. Slips must be timed and dated in the section provided and then submitted to the Rostrum within 15 minutes of the trade taking place. These are verified with the time/sales print out by the Assistant Compliance Officer (Audit) when auditing the work of the Markets. Traders may hand write the time [to the minute] [19] and date or, alternatively, use a time stamp machine provided by [London Fox] for their use. These are controlled centrally to ensure accurate time keeping.

4. Rostrum Clerks are employed to enter the details of the trades into the [ICCH] computer system and these are "matched" by the computer and are registered by [ICCH]. After 15 minutes an "unmatched" trade is shown on a screen by the mnemonic of that party who has put in a slip and who is expecting his counterparty to put in his slip. It is the duty of the Trader concerned to do so immediately and the Market staff to ensure that this is done. To leave an "unmatched" trade unattended is considered by [London Fox] to be a serious offence.

5. Rostrum Clerks are also employed to input the price details to a computer on a second by second basis so that screens are constantly updated on the Markets, in Members' offices and to quote vendors who buy the signal for dissemination worldwide. Print outs are available for audit purposes and are also available, of course, to Members, the public, etc. and are used to check queries and complaints * * *.

Dispute Resolution

The availability of a forum to address complaints with respect to trade execution is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment.

In recommending that the Commission grant the Rule 30.10 petition of SIB, AFBD, TSA and IMRO, the Staff Memoranda dated May 5, 1989 noted that SIB and each of the United Kingdom SROs have procedures for dispute resolution to redress customer complaints. However, to facilitate a customer's access to a dispute resolution forum, the Commission granted Rule 30.10 relief subject to the condition that each United Kingdom firm consent to participate in NFA's expended arbitration program to cover disputes between United States customers and non-NFA member foreign firms in connection with transactions subject to part 30. Such consent, however, is subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. Further, United Kingdom firms may require their United States customers to first exhaust certain mediation or conciliation procedures made available in the United Kingdom prior to initiating an NFA arbitration proceeding.[20]

In its June 6, 1989 Petition London Fox states that its arbitration rules in section 23 provide for the compulsory referral of disputes arising out of any London Fox contract to arbitration in accordance with London Fox rules. Its Petition further states, however, that § 23.01 of its arbitration rules provides that London Fox may nevertheless determine that "another arbitration tribunal has jurisdiction over the dispute and that the dispute should be referred to that tribunal." [21] In this connection, London Fox has clarified its position regarding a United States customer's access to an arbitration forum as follows: [21]

[London Fox's] position in respect of options is that where the dispute arises primarily out of delivery, clearing, settlement or floor practices, jurisdiction should normally be retained by London Fox * * *. In other disputes, London Fox would consider declining jurisdiction if arbitration by some other body (*e.g.* NFA or AFBD) was available and seemed more appropriate.[22]

Where the dispute does not arise primarily out of delivery, clearing, settlement or floor practices, London Fox's position on arbitration is such that a United States customer may elect the forum in which he desires to arbitrate, NFA or United Kingdom arbitration.[23]

London Fox's arbitration program is fully available to United States customers of London Fox members. The rules envisage that the parties to the dispute may not be located in the United Kingdom and generally provide for written submissions by the parties. In

[17] *Id.*

[18] *See* Appendix 6 to June 6, 1989 Petition of London Fox.

[19] *See* letter dated October 10, 1989 from P.A.S. Rucker, London Fox, to Andrea M. Corcoran, Commission.

[20] The United Kingdom mediation/conciliation and arbitration programs were examined in connection with the issuance of the Commission's Rule 30.10 Orders, and NFA's new international arbitration program was reviewed in connection with the Commission's approval of amendments to NFA's rules which became effective on June 12, 1989.

[21] *See also* Appendix 2 of the June 6, 1989 Petition of London Fox, which contains London Fox Rulebook, and letter dated September 14, 1989 from J.P.B. Hecks, London Fox, to Jean A. Webb, Commission, transmitting recent amendments to London Fox rules.

[22] *See* letter dated October 10, 1989 from P.A.S. Rucker, London Fox, to Andrea M. Corcoran, Commission.

[23] *See* letter dated October 27, 1989 from P.A.S. Rucker, London Fox, to Jane C. Kang, Commission.

this connection London Fox has stated: [24]

> Rule 23.07(a) provides for a *viva voce* (that is, oral) hearing, if a request for a hearing is made within strict time limits. Otherwise, the arbitrators have discretion to refuse such a hearing and to decide the case on the basis of written submissions. London Fox generally would expect arbitrators, where they have discretion to take into account the practicality and cost of attendance at a *viva voce* hearing by a party not located in the United Kingdom in deciding how to exercise their discretion in this regard. London Fox would also expect them to take into account any request made by either party, the need to avoid injustice, and the need to ensure that a fair ruling can be given. London Fox is considering amending its rule to give, in all cases, the arbitrators discretion whether or not to hold a hearing.

In any event, a party need not appear at the hearing in person but may be represented by any agent engaged in the business of finance.[25]

Failure by a London Fox member to refer or to participate in the reference of a dispute to arbitration under London Fox rules or to comply with an award made against him is a disciplinary offense which may result in such member's suspension or expulsion from London Fox.[26] The party obtaining an award in his favor may obtain a judgment in any court of competent jurisdiction to enforce the award. The decision of the arbitrators will be final, but a party may refer an issue to the High Court in England with the Court's leave on a point of law, on the grounds that the arbitrators engaged in improper conduct during the proceedings, the award was improperly procured or on certain other bases.

Regulatory Environment

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing options business with United States firms or customers.[27]

This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[28] The United Kingdom regulatory system under the Financial Services Act, however, was the subject of detailed scrutiny during the Commission's consideration of the petitions submitted by SIB, AFBD, TSA and IMRO on behalf of designated firms for relief from the application of certain Commission rules under Commission Rule 30.10. In reviewing such petitions, the Commission's staff examined, among other things, the regulation of United Kingdom RIEs, including London Fox. In addition, in connection with this petition, SIB has confirmed that:

> In issuing any Order pursuant to section 37 of the Financial Services Act 1986 declaring an exchange to be a recognised investment exchange ("RIE"), the Securities and Investments Board ("SIB") must determine, among other things, that such an exchange has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules.
>
> In connection with the foregoing, as the United Kingdom authority with supervisory responsibilities over RIEs, the SIB confirms to the Commodity Futures Trading Commission that it monitors all RIEs for compliance with their obligations as RIEs.[29]

Further, Commission staff analyzed the rules of SIB, AFBD, TSA and IMRO as they related to fitness review or qualifications of persons, minimum financial requirements, protection of customer funds, recordkeeping and reporting requirements and sales practice and compliance standards. The Staff Memoranda dated May 5, 1989 concluded that subject to the terms and conditions recommended therein, the systems and rules in effect in the United Kingdom afforded protections comparable to those in effect in the United States.

The only matter of note in connection with London Fox's petition under Rule 30.3(a) which was not considered in the context of the Commission's consideration of the Rule 30.10 petitions of the SIB, AFBD, TSA and IMRO relates to the requirement that any firm which offers or sells any such London Fox option product must provide the Commission's options risk disclosure statement in Rule 33.7.

The Commission stated in granting the Rule 30.10 petitions of SIB, AFBD, TSA and IMRO that in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale to customers resident in the United States, the Commission would assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7. The Division has reviewed the general risk disclosure statements required to be provided under the rules of SIB and the United Kingdom SROs [30] and believes that the risks addressed in such disclosure statements in connection with option transactions are not as comprehensive as the risk disclosures contained in Commission Rule 33.7. Accordingly, the Division recommends that the Commission require as a condition of granting London Fox's petition that any firm, including a firm in the United Kingdom granted relief under Rule 30.10, provide customers resident in the United States with the options risk disclosure statement required by Rule 33.7. That disclosure document contemplates that the full premium for the option will be paid by the customer.

However, all option contracts traded on London Fox are designed with a provision for deferred payment (on exercise or expiry) of the option premium rather than payment at purchase.[31] In this connection, London Fox has represented that in order to maintain prudent cover against the risk of loss in option positions, a system of margining supports the form of contract. This system is similar in principle and practice to that used for futures contracts, and involves three elements: [32]

(i) Daily revaluation of positions (marking-to-market) resulting in positive or negative variation margin;

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[24] *See* letter dated October 10, 1989 from P.A.S. Rucker, London Fox, to Andrea M. Corcoran, Commission.

[25] *See* London Fox rule 23.07(c).

[26] *See* London Fox rule 23.10(a).

[27] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[28] 52 FR 28980, 29001.

[29] *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[30] *See* SIB Conduct of Business Rules 4.15(3)(a) and 4.16(3) and AFBD Rules 5.45.1 and 5.45.4.

[31] By letters dated July 11 and 27, 1989, the Chicago Board of Trade and the Chicago Mercantile Exchange, respectively, petitioned the Commission for repeal of Commission Regulation 33.4(a)(2), 17 CFR 33.4(a)(2) (1988), which requires the full payment of the premium in connection with the purchase of a domestic-exchange traded option. On March 14, 1989, the Commission published a Notice of Petition for Rulemaking and a Request for Comments to delete Commission Regulation 33.4(a)(2) in order to permit the development of "futures-style margining" of commodity options. 54 FR 11233 (March 17, 1989).

[32] *See* June 6, 1989 Petition of London Fox.

(ii) Initial margin calculated to provide protection against short term position risk; and

(iii) Full integration with the margining of related futures contracts.

The form of the option contract and associated margining do not affect the "traditional" characteristic of purchased options in that the maximum potential loss is limited to the price of the option (*i.e.* premium).

In the staff memorandum dated August 30, 1989 recommending that LIFFE option products be approved under Commission Rule 30.3(a), the staff summarized a supplement filed by LIFFE which described the main benefits of the option margining system operated by ICCH in respect of LIFFE options.[33] London Fox has represented that ICCH operates the same system of margining in respect of London Fox options.[34] A summary of the LIFFE supplement is set forth below:

—Improve utilisation of funds and cash flow.
As for futures contracts, the buyer of the option contracts does not need to pay the full price at the time of purchase, and the daily variation margin results in improved cash flow.

—Profits made available *without* the need for early exercise.
Cash-flow problems are reduced where options are used in hedging strategies in conjunction with futures or other options. By making available profits through daily variation margin, there is less likely to be a need to liquidate a position for reasons of cash flow rather than risk—an important advantage at times of major market movements, such as occurred in October 1987.

—Encouragement of risk-management.
Major users have commented that daily variation margin assists them in monitoring profit and loss, and [the Exchange] believes that this has proved to be a significant benefit. This is consistent with what happens with futures contracts and builds on that experience.

—Appreciation by users of the risks involved in option trading.
A positive feature is that option margining discourages the naked writing of options * * * as the seller is prevented from using options to generate immediate cash in order to avoid problems elsewhere.

In connection with the foregoing, in order to ensure that customers in the United States solicited to trade a London Fox option contract understand that London Fox permits the deferred payment of premium on such product, the Division further recommends that the Commission require as a condition of issuing the Order attached hereto that firms provide the Addendum attached to that Order as Exhibit B if they elect not to collect the full premium as margin from customers at the time of purchases.

IV. Conclusion

Based upon the foregoing, the representations of London Fox contained in its letter dated June 28, 1989, as supplemented, SIB's letter dated July 28, 1989 confirming that it monitors London Fox for compliance with its obligations as an RIE, the issuance by the Commission or Rule 30.10 petitions to SIB, AFBD, TSA and IMRO on May 15, 1989, the existence of, among other things, information sharing arrangements as discussed above and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attach Order authorizing the offer or sale in the United States of options traded on London Fox subject to the following terms and conditions:

(1) except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any London Fox option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to the Order;

(2) that SIB and London Fox represent that London Fox is an RIE under the FSA and, as such, is subject to regulatory obligations under that Act, that transactions of London Fox in the London Fox option(s) referenced in the **Federal Register** notice will be subject to the rules of London Fox and that SIB and/or London Fox will provide the Commission will information as to all material changes thereto promptly;

(3) that options on futures on stock indices [35] and options on futures on foreign government debt securities [36] will not be permitted to be offered or sold absent certain additional procedures;

(4) that options traded pursuant to the Order may only be offset on London Fox or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) that options traded pursuant to the Order may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7 and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached to the Order as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*see* 53 FR 3338 (Feb. 5, 1988) and subsequent orders and letters of the Commission); and

(6) if experience demonstrates that the continued effectiveness of the Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the Order, as appropriate, on its own motion.

London Fox has specified that the following option contracts, a summary of the terms and conditions for which are attached hereto, will initially be offered or sold in the United States: Options on cocoa, coffee, raw sugar and white sugar. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the Order granting authorization to offer or sell London Fox options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the Order is approved by the Commission, the Division intends to monitor the offer or sale of London Fox options to persons in the United States pursuant to the terms of the recommended Order and to make recommendations for further action to the Commission, as appropriate, in light of the operation of that program.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1) (A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix B—to part 30 is amended by adding the following entry alphabetically:

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[33] *See* June 6, 1989 supplement by LIFFE to its May 24, 1989 Petition.

[34] *See* letter dated October 10, 1989 from P.A.S. Rucker, London Fox, to Andrea M. Corcoran, Commission.

[35] *See* 52 FR 28980, 29982 n.6 and section 2a(1) of the Act.

[36] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
London futures and options exchange	Options on robusta coffee, No. 5 white sugar, No. 6 raw sugar, and No. 7 cocoa.	December ___, 1989; 54 FR ___

[FR 89–28457 Filed 12–5–89; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Foreign Option Transactions; London

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing certain option contracts traded on the International Petroleum Exchange of London ("IPE") to be offered or sold to persons located in the United States. This Order is issued pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), which makes it unlawful for any person to engage in the offer or sale of a foreign option to be offered in the United States.[1]

EFFECTIVE DATE: January 5, 1990.

FOR FURTHER INFORMATION CONTACT: David A. Naatz, Esq. or Victoria R. Hartke, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the International Petroleum Exchange of London to be Offered or Sold in the United States Thirty Days after Notice to the Commission and Publication in the **Federal Register** of the Option Contracts to be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * * 52 FR 28988.

In view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures and foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated June 28, 1989, the International Petroleum Exchange of London Limited ("IPE"), a recognized investment exchange ("RIE") under United Kingdom law which is subject to regulatory oversight by the United Kingdom Securities and Investment Board ("SIB"), requested that the Commission authorize the offer or sale of option contracts traded on IPE to persons located in the United States under Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on IPE; [7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits

[1] *See* 52 FR 28980, 28998 (August 5, 1987). Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer or sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On July 20, 1988, the Commission issued orders authorizing certain option contracts traded on the Montreal Exchange, the Singapore International Monetary Exchange and the Sydney Futures Exchange to be offered or sold in the United States. On September 12, 1989, the Commission issued an order authorizing certain option contracts traded on the London International Financial Futures Exchange to be offered or sold in the United States.

[3] Rule 30.1(b), 17 CFR 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty" or "decline guaranty," made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Public Law No. 99–641, section 102, 100 Stat. 3556 (1986), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105. The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded, including, among other things, the determination by the Commission under Rule 30.10, 17 CFR 30.10 (1988), the exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom.[8]

In determining that IPE's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer or sale of the products subject to this Order.[9]

Based upon the representations of IPE contained in its letter dated June 28, 1989, as supplemented, SIB's letter dated July 28, 1989 in which SIB confirms that it monitors IPE for compliance with its obligations as an RIE,[10] the existence of information sharing arrangements with SIB and other relevant United Kingdom authorities,[11] the determination of the Commission to grant Rule 30.10 relief to specified firms in the United Kingdom by Orders dated May 15, 1989, the memorandum from the Division of Trading and Markets to the Commission dated November 6, 1989 ("Staff Memorandum") recommending the approval of the Order herein, and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer or sale in the United States of options traded on IPE subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any IPE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) That SIB and IPE represent that IPE is an RIE under the Financial Services Act and, as such, is subject to regulatory obligations under that Act, that transactions on IPE in the IPE option(s) referenced in the **Federal Register** notice [12] will be subject to the rules of IPE and that SIB and/or IPE provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [13] and options on futures on foreign government debt securities [14] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on IPE or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) That options traded pursuant to the Order herein may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988), and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached hereto as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*see* 53 FR 3338 (February 5, 1988) and subsequent orders and letters of the Commission); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC, on November 30, 1989.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

Exhibit A—Option on Brent Crude Oil Future

Unit of Trading: One lot of 1,000 net barrels of IPE's underlying crude oil futures contract.

Delivery Months: The first three months quoted on the underlying futures contract with a new position being introduced immediately on expiry of the first option month. Three months will always be quoted.

Declaration Date: Any trading day for the duration of the contract and up to one hour after cessation of trading in the spot month.

Last Trading Day: Close of business on the 3rd business day before the cessation of trading in the underlying crude oil futures contract.

Quotation: US Dollars & Cents.

Minimum Price Fluctuation: One US Cent per barrel.

Strike Price Increments: Multiples of fifty cents per barrel.

Initial Margin: The initial margin charged by the Clearing House for long and short options positions is calculated with reference to daily published risk factors and the level of initial margin for

[8] *See* Orders of the Commission dated May 15, 1989 granting Rule 30.10 relief to the Securities and Investments Board, the Association of Futures Brokers and Dealers, The Securities Association and the Investment Management Regulatory Organisation. 54 FR 21599 (May 19, 1989). In issuing such Orders, the Commission determined that the requirements in Appendix A to part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules," which sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10, had generally been satisfied. *Id.*

[9] The Commission has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1988), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[10] *See* letter from M. B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[11] *See e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the "Side Letter Relating to UK/US MOU" signed on May 15, 1989.

[12] The option contracts which will initially be offered or sold pursuant to his Order, a summary of the terms and conditions for which are attached hereto as Exhibit A, are options on gas oil and crude oil.

[13] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[14] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

the related futures contract which it cannot exceed.

The initial margin is reduced for all options and options futures combinations which include offsetting positions.

Options Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option. Positions are marked—to market daily.

Automatic Exercise: Options that are 26 cents or more in-the-money at time of expiry are automatically exercised.

Trading Hours: 0925–1730 hours inclusive.

Options on Gas Oil Future

Unit of Trading: One lot of 100 metric tonnes of IPE's underlying gas oil contract.

Delivery Months: The first three months quoted on the underlying futures contract with a new position being introduced immediately on expiry of the first option month. Three months will always be quoted.

Declaration Date: Any trading day for the duration of the contract and up to one hour after cessation of trading in the spot month.

Last Trading Day: Close of business on the 3rd Wednesday of the month prior to the month in which notice to deliver is given.

Quotation: US dollars & cents.

Minimum Price Fluctuation: 5 US cents per tonne.

Strike Price Increments: Multiples of US $5.00 per tonne.

Initial Margin: The initial margin charged by the Clearing House for long and short option positions is calculated with reference to daily published risk factors and the level of initial margin for the related futures contract which it cannot exceed.

The initial margin is reduced for all options and options-futures combinations which include offsetting positions.

Options Price: The contract price is payable by the buyer to the seller on exercise or expiry of the option. Positions are marked—to market daily.

Automatic Exercise: Options that are $2.51 or more in-the-money at time of expiry are automatically exercised.

Trading Hours: 0915–1724 hours inclusive.

Exhibit B—Addendum to CFTC Options Disclosure Statement (CFTC Rule 33.7)

The CFTC "Options Disclosure Statement," a copy of which is attached, is modified as set forth below to reflect some particular features of IPE options:

(i) IPE is a board of trade (exchange) located *outside* the United States on which certain options are authorized by the CFTC for sale in the United States;

(ii) IPE options contracts have provision for deferred payment of the option premium, are market-to-market and are subject to initial margin requirements. Consequently, the futures commission merchant ("FCM") or a firm granted an exemption from the FCM registration requirement might not require the purchaser of an IPE option to put up the full premium at purchase.

Although there is provision for deferred payment of premium, the purchaser of an option is still subject to the risk of losing the entire purchase price of the option, that is, the option premium plus all transaction costs. Consequently, before *purchasing* an option, an individual should fully understand the applicable margin requirements, and particularly should be aware of the obligation to pay variation margin in the case of adverse market movement. Although the purchaser may receive some accruing profit during the life of the option, he should be aware that in order to realize and retain any value from the option, it will be necessary either to offset the option positon or to exercise the option.

November 6, 1989.

Memorandum

To: The Commission.

From: The Division of Trading and Markets.

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the International Petroleum Exchange of London to be Offered or Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the International Petroleum Exchange of London to be offered or sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted: Division of Economic Analysis, Division of Enforcement, Office of the Executive Director, Office of the General Counsel.

I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * * . 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product to a customer resident in the United States until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular order has been transmitted to and executed on a foreign exchange in determining whether to authorize

[1] Rule 30.1(b), 17 CFR 30.1(b) (1988), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance quaranty" or "decline quaranty," made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Public Law No. 99-64, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1988), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1988), may continue to be offered or sold.

transactions in specific foreign exchange-traded options.[5]

By letter dated June 28, 1989, the International Petroleum Exchange of London Limited ("IPE"), a recognized investment exchange ("RIE") under United Kingdom law which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"),[6] requested that the Commission authorize the offer or sale of option contracts traded on IPE to persons located in the United States.

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of IPE to offer or sell option products traded on IPE in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for monitoring compliance with sales practice obligations; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer or sale of IPE option products; and (4) the regulatory environment in which such options are traded.

The review of IPE's petition under Commission Rule 30.3(a) has been facilitated by the Commission's determination by Orders issued on May 15, 1989, under Rule 30.10, 17 CFR 30.10 (1988), to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom. Specifically, on May 15, 1989, the Commission granted the Rule 30.10 petitions of the SIB and of certain self-regulating organisations ("SROs"), *i.e.*, the Association of Futures Brokers and Dealers ("AFBD"), The Securities Association ("TSA") and the Investment Management Regulatory Organisation ("IMRO"), which are responsible for regulating the investment business activities of firms which they designate. In granting such petitions, the Commission determined that the requirements in Appendix A to part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules," [7] generally had been satisfied and that compliance with the rules of the SIB and/or the equivalent rules of the relevant SRO may be substituted, subject to certain conditions, for compliance with specified sections of the Commodity Exchange Act.

As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached Order permitting certain option contracts traded on IPE to be offered or sold in the United States.[8]

III. Discussion

Information Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer or sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[9]

Information sharing arrangements have been the subject of extensive discussion between the Commission and the United Kingdom regulatory bodies in connection with the execution of the "Memorandum of Understanding between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in matters relating to Securities and between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in matters related to Futures" signed on September 23, 1986, as supplemented by the "Memorandum Relating to UK/US MOU" signed on November 22, 1988, adding the SIB as a signatory to that document, (hereinafter collectively referred to as "UK/US MOU"), and the Side Letter Relating to UK/US MOU ("Side Letter") entered into on May 15, 1989, by the SIB and the Commission. In particular, the Side Letter provides for information sharing necessary to monitor compliance with applicable Part 30 rules and the terms and conditions of any order issued by the Commission under Part 30, including any foreign option order issued pursuant to Commission Rule 30.3(a). In addition, the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988, by, among others, the SIB, the Commission and United Kingdom and United States SROs and the Addendum to the FISMOU signed on May 15, 1989, provides for routine and "as needed" information sharing in connection with the financial condition of firms which are exempt from compliance with certain financial requirements pursuant to the FISMOU and the Addendum thereto.

Further, in its June 28, 1989 Petition, IPE has represented that it is committed to cooperating with United Kingdom regulatory authorities by sharing information with such authorities and that, as an RIE, IPE is obligated to do so under the FSA.[10]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[11] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[12] In this connection, IPE represents that under the FSA, SIB or the SRO to which a specific firm belongs is responsible for establishing sales practice rules and monitoring compliance with such rules. Specifically, IPE represents, and the

[5] 51 FR 12104, 12105.

[6] *See* Section 37 of the Financial Services Act ("FSA") and Order of SIB dated April 25, 1988, declaring IPE to be an RIE attached as Appendix 3 to the June 28, 1989, Petition of IPE. SIB has confirmed that it monitors all RIEs, including IPE, for compliance with their obligations as RIEs. *See* letter from M.B. Gittins, SIB, to Andrea M. Corcoran, Commission, dated July 28, 1989.

[7] Appendix A sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.

[8] *See* Exhibit A of the Order recommended herein which contains the list of option contracts and a summary of their terms and conditions. Additional IPE option contracts may be offered or sold thirty days after publication of the terms and conditions of the specific option contract in the **Federal Register**. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1988), or other criteria relating to the specific terms and conditions of the option contract. *See* 17 CFR 33.4.

[9] 52 FR 28980, 28988.

[10] *See* FSA, Schedule 4, paragraph 5 and Appendix 3 to June 28, 1989 Petition of IPE, to which is attached a Memorandum of Understanding between SID and IPE.

[11] *See* 46 FR 54500, 54502 (November 3, 1981).

[12] *Id.*

Commission staff determined in connection with its review of the relevant Rule 30.10 petitions, that SIB, AFBD, TSA and IMRO each has sales practices rules which address, without limitation, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, contents of customer accounts, discretionary accounts and misleading advertising.[13] Further, SIB and the SROs have rules relating to "best execution." These rules are intended to prevent a firm from taking advantage of a customer's order, whether for its own account or for that of another customer. For example, SIB Conduct of Business Rule 5.15 establishes the priorities to be given to customers' orders in instances where a firm also is trading for its own account.

Additionally, the SIB and United Kingdom SROs have procedures for conducting sales practice audits of firms in the United Kingdom selling IPE options into the United States.[14] In particular, under part 15 of SIB's Conduct of Business Rules, firms are required to establish and maintain written rules and compliance procedures to ensure compliance with the requirements of the FSA and the rules or regulations made by SIB under the FSA. SIB has established a direct regulation division to maintain continuous oversight with respect to firms which it has authorized. As a condition of recognition by SIB as an SRO, the SRO must demonstrate to SIB that it has rules relating to, among other things, protection of investors, the monitoring and enforcement of compliance with its rules and the promotion and maintenance of high standards of integrity and fair dealing which provide protection to investors "at least equivalent" to that provided by SIB under its rules. Also, the National Futures Association ("NFA") has confirmed by letter dated August 16, 1989 that the sales practices of firms located in the United States engaged in such activities will be audited.[15]

In conjunction with the SROs' sales practice programs, IPE conducts daily surveillance of both its members and the market. IPE has represented that its surveillance procedures encompass the following: [16]

Description of the Surveillance Procedures of the IPE

The Surveillance of both the members and the market is carried out under the coordination of the Compliance Officer of [IPE]. The objective of the surveillance is to ensure that a fair, orderly and secure market is maintained in accordance with IPE rules and the requirements of the FSA and the SIB.

Floor Surveillance

The day to day surveillance of floor trading is carried out by the Floor Operations Manager and his staff to ensure that the IPE trading procedures and the IPE rules are complied with.

Financial Integrity

The financial integrity of members is maintained by both the IPE, AFBD and [the International Commodities Clearing House Ltd. ("ICCH")]. Members are required to submit annual audited accounts to the IPE together with more frequent returns to AFBD and ICCH. The IPE has agreements with both these bodies to report to [IPE] problems of a financial nature to do with the IPE members.

The level of initial margin to be called from clients is set by the Board of Directors of the IPE in close consultation with [ICCH]. Should there be violent changes in price or volatility then [ICCH] or [IPE] may initiate an intra day margin call.[17]

The size of a member's open position is monitored daily by the IPE and independently by [ICCH] to ensure there are no undue concentrations of positions on either options or futures contracts. * * *

[IPE] is in close contact with [ICCH] on matters concerning trading positions, expires, deliveries, margin levels etc. and also invites a director of ICCH to attend all of its Board meetings.

The IPE Compliance Officer is a member of the Joint Exchange Committee of compliance officers. The Committee consists of the Compliance Officers of all the London futures exchanges where compliance issues are discussed and aired and if appropriate formulated for joint implementation.

In addition to the foregoing, IPE has described its trade reporting and time stamping procedures as follows:

The IPE supervises and regulates trading in energy futures and options contracts through the operation of a conventional "Open outcry—Pit System" of execution. The trading cycle basically falls into three distinct phases; pre-trade, points of trade and post trade activity and is managed by the operation of three main systems.

1. *The Floor Procedures.*

[IPE has issued a] detailed manual, promulgated from and having equal status in terms of enforcement with [IPE] Rules. The Floor Procedures establish a standardised code of practice and conduct relative to the receipt and administration of orders, the market terminology and methodology to be used in publicly quoting, accepting, confirming and reporting business executed and the after trade management of business processing leading to the receipt of a matched trade by [ICCH], from which the final allocation registration and guarantee of business can be effected. The Floor Procedures also cover other trade support activities, particularly trade dispute resolution, disciplinary and certain emergency fall back procedures * * *.

2. *The Price Reporting System* ("PRS").

The purpose of the IPE "PRS" is to provide members, staff and market users with a real time display of price quotations (bids and offers) and transaction levels both on and remote to the market floor, in support of the pre-trade and point of trade activity. The system achieves its purpose by displaying on screen and electronic wall boards, located on the market floor, formats of continuously updated quotations and transaction/volume information.

At the same time the data flow (unedited) is transmitted via an agency quote vendor system * * * to all major international quote vendors, from whom all market users and other interested parties may gain easy access to current market information. The responsibility for "PRS" input and the quality control

[13] *See* rules of SIB, AFBD, TSA and IMRO as discussed in Staff Memoranda dated May 5, 1989 recommending that the Commission grant the Rule 30.10 petition of the above-referenced entities.

[14] *Id.*

[15] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and option activities of NFA members and associates. By letter dated August 16, 1989, from Daniel A. Driscoll, Vice-President of NFA, to Andrea M. Corcoran, Commission, NFA confirmed that arrangements have been made to provide sales practice audits of firms in the United States selling IPE options.

[16] *See* Appendix 5 to June 28, 1989 Petition of IPE; *see also* IPE Floor Operations Manual submitted with letter dated October 9, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

[17] In this connection, IPE has stated that:

The initial margin called by ICCH is prudently set in accordance with current daily fluctuations. Should the price of a contract move (up or down) to such a degree as to substantially reduce the level of cover provided by the initial margin then this would be deemed a violent movement in price.

Option premiums are determined by, among other things, the volatility of the underlying market. Thus if the volatility (implied or historic) moved such that the cover provided by the initial margin on the option premium [was] substantially reduced then this would be deemed a violent change in volatility.

See letter dated October 9, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

of the information carried is vested in [IPE] staff, who, as independent observers of the trading activity, have supervisory powers to enforce and ensure compliance with all floor procedures and may rule invalid and therefore eliminate all false or erroneous information at source. In addition to the real time display and data feed, the IPE "PRS" also includes on a daily basis a retrievable data file, commonly referred to as a "Time & Sales" record. This facility, is regarded as a "Public" document and in addition to its availability to operations staff and compliance offices for the purposes of trade analysis and dispute resolution function, is also available, unconditionally, to members, non-members, clients and prospective users of [IPE].

* * * * *

3. *The Trade Matching System* ("TMS")

[The purpose of "TMS"] is to match, (in real time), the independent sellers and buyers of all transactions executed on [IPE] and to transmit to [ICCH's] central computer a continuous stream of matched trades for subsequent allocation, registration and guarantee. Apart from this primary function "TMS" also serves to identify in real time those transactions which may for certain reasons be subject to error or dispute * * *.

4. The Execution cycle of a typical client order through the IPE market is as follows:

(i) [T]he details of any client order must be recorded on an order slip, and the order slip must then be time-stamped.

(ii) As a minimum requirement the following details must be clearly recorded: Contract type, delivery month, quantity, price and instruction whether to sell or buy. In traded options the relevant exercise or strike price, together with additional contract designation relative to Call or Put options must also be shown. Upon completion the order may either be physically carried, declared by voice call or hand signalled to a qualified trader in the appropriate pit.

(iii) Consistent with standard market terminology the order will then be quoted and executed with relevant data being input to the "PRS" by independent [IPE] officials. Upon execution of the order the trader will note details of the trade and his counterparty onto a dual purpose trading card/clearing [slip] * * * [A] copy of the slip must be submitted for entry into "TMS" no later than 15 minutes after the recording of the first transaction on the slip. The manual recording of the time [to the minute] [18] of each transaction upon the slip is a mandatory requirement of [IPE].

The details of all trades recorded on the transaction slip are entered and timed into the "TMS" which continuously matches purchase and sale slips throughout the business day * * *.

(iv) For the purpose of audit and/or compliance inquiry, members are required to retain all trader cards/slips and order slips for a minimum period of 6 months. [IPE] similarly retains on site all clearing slips for 1 month prior to archiving for retrieval within 24 hours notice, all slips for the previous 2 years.

5. The capacity and performance criteria of the Trade Supervision procedures and systems are constantly monitored and upgraded. In this context it is proposed to add the following refinements to "PRS" and "TMS" within the next 6 months.

(i) An upgraded "TMS" facility to incorporate trade allocation in addition to trade match at floor level, together with improved mismatch display and inquiry formats.

(ii) The introduction of a combined video and audio pit surveillance system to support the "PRS" and Time and sales activities.

* * * * *

Dispute Resolution

The availability of a forum to address complaints with respect to trade execution is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment.

In recommending that the Commission grant the Rule 30.10 petition of SIB, AFBD, TSA and IMRO, the Staff Memoranda dated May 5, 1989 noted that SIB and each of the United Kingdom SROs have procedures for dispute resolution to redress customer complaints. However, to facilitate a customer's access to a dispute resolution forum, the Commission granted Rule 30.10 relief subject to the condition that each United Kingdom firm consent to participate in NFA's expanded arbitration program to cover disputes between United States customers and non-NFA member foreign firms in connection with transactions subject to part 30. Such consent, however, is subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. Further, United Kingdom firms may require their United States customers to first exhaust certain mediation or conciliation procedures made available in the United Kingdom prior to initiating an NFA arbitration proceeding.[19]

In its June 28, 1989 Petition, IPE states that its arbitration rules in section H provide for the compulsory referral of disputes arising out of any IPE contract to IPE arbitration. Its Petition further states, however, that rule 144(g) of its arbitration rules provides that IPE may nevertheless determine that "another arbitration tribunal has jurisdiction over the dispute and that the dispute shall be referred to that tribunal." [20] In this connection, IPE has clarified its position regarding a United States customer's access to an arbitration forum as follows:

[IPE's] position is that where the dispute arises primarily out of delivery, clearing, settlement or floor practices, IPE would normally retain jurisdiction. In other disputes, IPE would consider declining jurisdiction if arbitration by some other body (*e.g.* NFA or AFBD) was available and seemed more appropriate. [21]

Where the dispute does not arise primarily out of delivery, clearing, settlement or floor practices, IPE's position on arbitration is such that a [United States] customer may elect the forum in which he desires to arbitrate, NFA or United Kingdom arbitration.[22]

IPE's arbitration program is fully available to United States customers of IPE members. The rules envisage that the parties to the dispute may not be located in the United Kingdom and generally provide for written submissions by the parties. Although rule 146 provides for the possibility of a *viva voce* (that is, oral) hearing, paragraph (i) of rule 146 gives the arbitrators discretion to refuse such a hearing and to decide the case on the

[18] *See* letter dated October 9, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

[19] The United Kingdom mediation/conciliation and arbitration programs were examined in connection with the issuance of the Commission's Rule 30.10 Orders, and NFA's new international arbitration program was reviewed in connection with the Commission's approval of amendments to NFA's rules which became effective on June 12, 1989.

[20] *See also* Appendix 2 of the June 28, 1989 Petition of IPE, which contains IPE rulebook, and letter dated September 19, 1989 from Graham Wright, IPE, to Jean A. Webb, Commission, transmitting recent amendments to IPE rules.

[21] *See* letter dated October 9, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

[22] *See* letter dated October 18, 1989 from Graham Wright, IPE, to Jane C. Kang, Commission.

basis of written submissions. In this connection, IPE has further stated: [48]

That it would expect its arbitrators to take into account the practicality and cost of attendance at a hearing by a party not located in the United Kingdom. In addition, [IPE] would expect arbitrators to take into account any request made by either party for a hearing with or without witnesses made (in accordance with IPE rule 146(i)) not later than 14 days after lodgement of the statement of defense and the need to avoid injustice and to ensure that a fair ruling can be given.

In any event, a party need not appear at the hearing in person but may be represented by any agent engaged in the business of finance.[24]

Failure by an IPE member to refer or to participate in the reference of a dispute to arbitration or to comply with an award made against him is a disciplinary offense which may result in such member's suspension or expulsion from IPE.[25] The party obtaining an award in his favor may obtain a judgment in any court of competent jurisdiction to enforce the award. The decision of the arbitrators will be final, but a party may refer an issue to the High Court in England with the Court's leave on a point of law, on the grounds that the arbitrators engaged in improper conduct during the proceedings, the award was improperly procured or on certain other bases.

Regulatory Environment

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing options business with United States firms or customers.[26] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[27] The United Kingdom regulatory system under the Financial Services Act, however, was the subject of detailed scrutiny during the Commission's consideration of the petitions submitted by SIB, AFBD, TSA and IMRO on behalf of designated firms for relief from the application of certain Commission rules under Commission Rule 30.10. In reviewing such petitions, the Commission's staff examined, among other things, the regulation of United Kingdom RIEs, including IPE. In addition, in connection with this petition, SIB has confirmed that:

In issuing any Order pursuant to section 37 of the Financial Services Act 1986 declaring an exchange to be a recognized investment exchange ("RIE"), the Securities and Investments Board ("SIB") must determine, among other things, that such an exchange has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules.

In connection with the foregoing, as the United Kingdom authority with supervisory responsibilities over RIEs, the SIB confirms to the Commodity Futures Trading Commission that it monitors all RIEs for compliance with their obligations as RIEs.[28]

Further, Commission staff analyzed the rules of SIB, AFBD, TSA and IMRO as they related to fitness review or qualifications of persons, minimum financial requirements, protection of customer funds, recordkeeping and reporting requirements and sales practice and compliance standards. The Staff Memoranda dated May 5, 1989 concluded that subject to the terms and conditions recommended therein, the systems and rules in effect in the United Kingdom afforded protections comparable to those in effect in the United States.

The only matter of note in connection with IPE's petition under Rule 30.3(a) which was not considered in the context of the Commission's consideration of the Rule 30.10 petitions of the SIB, AFBD, TSA and IMRO relates to the requirement that any firm which offers or sells any such IPE option product must provide the Commission's options risk disclosure statement in Rule 33.7.

The Commission stated in granting the Rule 30.10 petitions of SIB, AFBD, TSA and IMRO that in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale to customers resident in the United States, the Commission would assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7. The Division has reviewed the general risk disclosure statements required to be provided under the rules of SIB and the United Kingdom SRO's [29] and believes that the risks addressed in such disclosure statements in connection with option transactions are not as comprehensive as the risk disclosures contained in Commission Rule 33.7. Accordingly, the Division recommends that the Commission require as a condition of granting IPE's petition that any firm, including a firm in the United Kingdom granted relief under Rule 30.10, provide customers resident in the United States with the options risk disclosure statement required by Rule 33.7. That disclosure document contemplates that the full premium for the option will be paid by the customer.

However, all option contracts traded on IPE are designed with a provision for deferred payment (on exercise or expiry) of the option premium rather than payment at purchase.[30] In this connection, IPE has represented that in order to maintain prudent cover against the risk of loss in option positions, a system of margining supports the form of contract. This system is similar in principle and practice to that used for futures contracts, and involves three elements: [31]

(i) Daily revaluation of positions (marking-to-market) resulting in positive or negative variation margin;

(ii) Initial margin calculated to provide protection against short term position risk;

(iii) Full integration with the margining of related futures contracts.

The form of the option contract and associated margining do not affect the "traditional" characteristic of purchased options in that the maximum potential loss is limited to the price of the option (*i.e.* premium).

In the staff memorandum dated August 30, 1989 recommending that London International Financial Futures Exchange ("LIFFE") option products be approved under Commission Rule 30.3(a), the staff summarized a supplement filed by LIFFE which described the main benefits of the option margining system operated by ICCH in respect of LIFFE options.[32] IPE has represented that ICCH operates the same system of margining in respect of IPE options.[33] A summary of the LIFFE supplement is set forth below:

—Improved utilisation of funds and cash flow.

As for futures contracts, the buyer of the option contracts does not need to pay the full price at the time of purchase, and the daily variation margin results in improved cash flow.

—Profits made available *without* the need for early exercise.

Cash-flow problems are reduced where options are used in hedging strategies in conjunction with futures or other options. By making available profits through daily variation margin, there is less likely to be a need to liquidate a position for reasons of cash flow rather than risk—an important advantage at times of major market movements, such as occurred in October 1987.

—Encouragement of risk-management.

Major users have commented that daily variation margin assists them in monitoring profit and loss, and [the Exchange] believes that this has proved to be a significant benefit. This is consistent with what happens with futures contracts and builds on that experience.

—Appreciation by users of the risks involved in option trading.

A positive feature is that option margining discourages the naked writing of options . . .[] as the seller is prevented from using options to generate immediate cash in order to avoid problems elsewhere.

In connection with the foregoing, in order to ensure that customers in the United States solicited to trade an IPE option contract understand that IPE permits the deferred payment of premium on such product, the Division further recommends that the Commission require as a condition of issuing the Order attached hereto that firms provide the Addendum attached to that Order as Exhibit B if they elect not to collect the full premium as margin from customers at the time of purchase.

IV. Conclusion

Based upon the foregoing, the representations of IPE contained in its letter dated June 28, 1989, as supplemented, SIB's letter dated July 28, 1989 confirming that it monitors IPE for compliance with its obligations as an RIE, the issuance by the Commission of Rule 30.10 petitions to SIB, AFBD, TSA and IMRO on May 15, 1989, the existence of, among other things, information sharing arrangements as discussed above and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the Federal Register this memorandum and approve and publish the attached Order authorizing the offer or sale in the United States of options traded on IPE subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any IPE option product in the United States will be made until thirty days after publication in the Federal Register of notice specifying the particular option(s) to be offered or sold pursuant to the Order;

(2) That SIB and IPE represent that IPE is an RIE under the FSA and, as such, is subject to regulatory obligations under that Act, that transactions on IPE in the IPE option(s) referenced in the Federal Register notice will be subject to the rules of IPE and that SIB and/or IPE will provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [34] and options on futures on foreign government debt securities [35] will not be permitted to be offered or sold absent certain additional procedures;

(4) That options traded pursuant to the Order may only be offset on IPE or another market with respect to which the Commission has issued an order under Commission Rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) That options traded pursuant to the Order may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission Rule 33.7 and, if the persons elect not to collect the full premium for the contract as margin from the customer at the time of purchase, the Addendum thereto attached to the Order as Exhibit B, but may not be offered or sold by persons doing business in the United States pursuant to interim relief granted and extended by the Commission (*see* 53 FR 3338 (Feb. 5, 1988) and subsequent orders and letters of the Commission); and

(6) If experience demonstrates that the continued effectiveness of the Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the Order, as appropriate, on its own motion.

IPE has specified that the following option contracts, a summary of the terms and conditions for which are attached hereto, will initially be offered or sold in the United States: options on gas oil and crude oil. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the Order granting authorization to offer or sell IPE options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the Order is approved by the Commission, the Division intends to monitor the offer or sale of IPE options to persons in the United States pursuant to the terms of the recommended Order and to make recommendations for further action to the Commission, as appropriate, in light of the operation of that program.

Attachments

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
International Petroleum Exchange of London.	Options on Brent crude oil, and gas oil.	December ____, 1989; 54 FR ____.

[28] *See* letter dated October 6, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

[24] *See* IPE rule 146(k).

[25] *See* IPE rules 4.3 and 131.

[26] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[27] 52 FR 28980, 28981.

[48] *See* letter from H.K. Cattle, SIB, to Andrea M. Corcoran, Commission, dated July 26, 1988.

[29] *See* SIB Conduct of Business Rules 4.12(3)(a) and 4.16(3) and AFBD Rules 5.45.1 and 5.45.4.

[30] By letters dated July 11 and 27, 1989, the Chicago Board of Trade and the Chicago Mercantile Exchange, respectively, petitioned the Commission for repeal of Commission Regulation 33.4(a)(2), 17 CFR 33.4(a)(2) (1988), which requires the full payment of the premium in connection with the purchase of a domestic-exchange traded option. On March 14, 1989, the Commission published a Notice of Petition for Rulemaking and a Request for Comments to delete Commission Regulation 33.4(a)(2) in order to permit the development of "futures-style margining" of commodity options. 54 FR 11283 (March 17, 1989).

[31] *See* June 28, 1989 Petition of IPE.

[32] *See* June 6, 1989 supplement by LIFFE to its May 24, 1989 Petition.

[33] *See* letter dated October 9, 1989 from Graham Wright, IPE, to Andrea M. Corcoran, Commission.

[34] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[35] *See* section 2a(1) of the Act, section 9(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–6 promulgated thereunder.

Exchange	Type of contract	FR date and citation
•	•	•

[FR Doc. 89-28456 Filed 12-5-89; 8:45 am]
BILLING CODE 8011-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0419]

RIN 0905-AA06

Aphrodisiac Drug Products for Over-the-Counter Human Use; Final Rule; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is issuing a clarification of its final rule establishing that any aphrodisiac drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded (July 7, 1989; 54 FR 28780). In discussing the impact of this final rule on the marketing of aphrodisiac drug products, the agency stated in the preamble to the final rule that "On or after January 8, 1990, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA)." (See 54 FR 28780.) In order to avoid a possible misunderstanding of the intent of this language, FDA is adding another sentence, immediately after the above statement, for clarification. Thus, aphrodisiac drug products already in interstate commerce on the effective date of this final rule that are subsequently relabeled or repackaged will be regarded as a new product introduced into interstate commerce and, hence, in violation of the Federal Food, Drug, and Cosmetic Act.

DATES: Written comments on the clarification by January 5, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301-295-8000.

SUPPLEMENTARY INFORMATION: In FR Doc. 15954, appearing on page 28780, second column, in the **Federal Register** of Friday, July 7, 1989, the following sentence is added to the second complete paragraph, after the second sentence under **"SUPPLEMENTARY INFORMATION"** to read as follows: "Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce."

Dated: November 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28391 Filed 12-5-89; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 310

[Docket No. 80N-0357]

RIN 0905-AA06

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use; Final Rule; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; clarification.

SUMMARY: the Food and Drug Administration (FDA) is issuing a clarification of its final rule establishing that any over-the-counter (OTC) hair grower or hair loss prevention drug product for external use is not generally recognized as safe and effective and is misbranded (July 7, 1989; 54 FR 28772). In discussing the impact of this final rule on the marketing of hair grower and hair loss prevention drug products, the agency stated in the preamble to the final rule that "On or after January 8, 1990, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA)." (See 54 FR 28772.) In order to avoid a possible misunderstanding of the intent of this language, FDA is adding another sentence, immediately after the above statement, for clarification. Thus, hair grower or hair loss prevention drug products already in interstate commerce on the effective date of this final rule that are subsequently relabeled or repackaged will be regarded as a new product introduced into interstate commerce and, hence, in violation of the Federal Food, Drug, and Cosmetic Act.

DATES: Written comments on the clarification by January 5, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301-295-8000.

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Dated: November 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28392 Filed 12-5-89; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Detomidine Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Farmos Group, Ltd., providing for the safe and effective use of Dormosedan™ (detomidine hydrochloride) injection as a sedative and analgesic to facilitate minor surgical and diagnostic procedures in mature horses and yearlings.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Farmos Group, Ltd., P.O. BOX 425, SF-20101 Turku 10, Finland, filed NADA 140-862 which provides for intravenous or intramuscular use of Dormosedan™ (detomidine hydrochloride) injection as a sedative and analgesic to facilitate minor surgical and diagnostic procedures in mature horses and yearlings. The application is approved and the regulations are amended in 21 CFR 510.600(c) and in 21 CFR part 522 by adding a new § 522.536. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510: Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522: Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The Authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Farmos Group, Ltd." and in the table in paragraph (c)(2) by numerically adding an entry for "052483" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsor of approved application.

• • • • • •

(c) • • •

(1) • • •

Firm name and address	Drug labeler code
• • • • •	
Farmos Group, Ltd., P.O. Box 425, SF-20101 Turku 10, Finland	052483
• • • • •	

(2) • • •

Drug labeler code	Firm name and address
•	• • • • •
052483	Farmos Group, Ltd., P.O. Box 425, SF-20101 Turku 10, Finland.
•	• • • • •

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 522.536 is added to read as follows:

§ 522.536 Detomidine hydrochloride injection.

(a) *Specification.* Each milliliter of sterile aqueous solution contains 10 milligrams of detomidine hydrocholoride.

(b) *Sponsor.* See 052483 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* For sedation, analgesia, or sedation and analgesia: 20 or 40 micrograms per kilogram (0.2 or 0.4 milliliter per 100 kilogram or 220 pounds) by body weight, depending on depth and duration required.

(2) *Indication for use.* As a sedative and analgesic to facilitate minor surgical and diagnostic procedures in mature horses and yearlings.

(3) *Limitations.* For sedation administer intraveneously (IV) or intramuscularly (IM); for analgesia by IV; for both sedation and analgesia by IV. Do not use in horses with pre-existing atrioventricular or sinoauricular block, with severe coronary insufficiency, cerebrovascular disease, respiratory disease, or chronic renal failure. Do not use in breeding animals. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 27, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-28360 Filed 12-5-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 89-20]

RIN 2125-AC35

Truck Size and Weight; National Network—Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA, by this notice, modifies the National Network for commercial motor vehicles by adding and deleting certain routes in Oregon. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. It is maintained under 23 CFR part 658, appendix A, as amended. The additions and deletions have been requested by the State of Oregon based on an evaluation concerning 53-foot long semitrailers.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366-0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of highways in 50 States, the District of Columbia, and Puerto Rico on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Public Law 97-424, 96 Stat. 2097, may operate, was established by the final rule

published in the **Federal Register** at 49 FR 23302, June 5, 1984. Routes on the National Network are listed or described by category in appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also listed in the 1984 final rule at State request.

The National Network consists of the Interstate System and other qualifying Federal-aid primary highways. The FHWA has the authority to revise, and when requested, to rule upon additions to and deletions from the National Network as stated in the June 5, 1984, final rule, and outlined in 23 CFR 658.11. One such revision was a final rule for the State of Oregon published on June 5, 1989, at 54 FR 23976.

On January 29, 1988, the FHWA published a final rule which added appendix B to part 658 (53 FR 2597) establishing a grandfathered semitrailer length of 53 feet in Oregon. Subsequently, the State of Oregon requested the addition of two route segments and the deletion of fifteen route segments on the National Network after evaluating the entire National Network in Oregon to determine if the routes could safely accommodate a 53-foot semitrailer. State and FHWA evaluations for the proposed revisions considered safety, availability of alternate routes, network connections and the effects on interstate commerce, local industry and the environment.

The factors considered with respect to safety were accident rates, traffic volumes, horizontal curvature, off-tracking on horizontal curves, grades, lane widths, shoulder widths, and sight distances.

The FHWA then developed a notice of proposed rulemaking (NPRM) which was published in the **Federal Register** on August 29, 1989. It explained in detail the circumstances leading to the State's request for additions and deletions and requested comments from interested parties regarding the proposal. In the NPRM, the FHWA proposed to further amend the June 5, 1984, final rule by adding or deleting certain routes in the State of Oregon.

The FHWA received no comments in response to the NPRM (published at 54 FR 35703 on August 29, 1989). The NPRM (Docket 89–20) comment period closed on September 28, 1989.

The following are the additions and deletions based on the NPRM proposals.

Added Route Segments

The two following route segments in the State of Oregon are added to the National Network to provide connections between two routes presently on the National Network:

OR 35 from Baseline Road to I–84 Hood River;
OR 140 from White City to US 97 Klamath Falls.

This final rule also clarifies the terminus of OR 11 which is at I–84 rather than at US 30 in Pendleton.

Deleted Route Segments

The ten following route segments are deleted from the National Network because of sharp horizontal curvature and narrow lane width:

US 20 between Newport and Philomath;
US 26 between Prineville and Mitchell;
US 197 between The Dalles and Maupin;
US 395 between Pendleton and Long Creek;
OR 47 between Forest Grove and McMinnville;
OR 51 between Monmouth and Salem;
OR 82 between LaGrande and Joseph;
OR 99 between Ashland and I–5 north of Central Point;
OR 208 between Wasco and Condon;
OR 206/207 between Heppner and Kinzua Road.

The five following segments are deleted from the National Network because they serve no significant interstate commerce or national purpose:

US 30 at Cascade Locks;
US 30 at Pendleton;
US 101 between Gold Beach and the California State line;
US 101 between Tillamook and Beaver;
OR 62 between White City and Trail.

All fifteen of the deleted segments are determined to be unsuitable for the semitrailers with 53-foot long grandfather dimensions. However, the State of Oregon has noted that the deleted segments will continue to be available, under State law, to all other STAA authorized vehicles.

Regulatory Impact

The FHWA has considered the impacts of this rulemaking and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking will technically amend the June 5, 1984, final rule by adding and deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network, and the changes will have negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications of this action in accordance with the principles and policymaking criteria of E.O. 12612, *Federalism*, of October 26, 1987. This final rule is in response to an application filed by the State. There are no adverse impacts on the State or significant intrusions into State authority as a result of this rulemaking. Therefore, it has been determined that this action does not have sufficient implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on November 29, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby amends chapter I of title 23, Code of Federal Regulations, by amending appendix A to part 658 for the State of Oregon to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. app. 2311, 2312, 2313, and 2316), as amended by Public Law 98–17, 97 Stat. 59, and Public Law 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A—[Amended]

2. Appendix A to part 658 is amended for the State of Oregon by removing the following Poster Route Number entries:

Route	From	To
OR 11	US 30 Pendleton.	WA State Line.
OR 35	Baseline Road MP 82.11.	I–84 Hood River.

and adding in their places the following:

Route	From	To
OR 11	I–84 Pendleton	WA State Line.
OR 35	US 26 Government Camp.	I–84 Hood River.

3. Appendix A to part 658 is amended for the State of Oregon by removing the Posted Route Number entries:

Route	From	To
US 20	US 101 Newport.	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	Mitchell.
US 30	in Cascade Locks.	
US 30	I–84 W. of Pendleton.	I–84 E. of Pendleton.
IS 101	CA State Line	Gold Beach.
US 101	MP 75.54 N. of Beaver.	WA State Line.
US 197	OR 216 Maupin	WA State Line.
US 395	Long Creek	Pendleton.
OR 47	OR 99W near McMinnville.	US 26 N. of Banks.
OR 51	OR 99W Monmouth.	OR 22 near Eola.
OR 62	Medford	Trail.
OR 82	I–84 La Grande	Joseph.
OR 99	Ashland	Central Point.
OR 140	US 97 Klamath Falls.	OR 39 E. of Klamath Falls.
OR 206	US 97 Wasco	OR 19 Condon.
OR 207	US 730 Cold Springs Jct.	MP 23.56 Kinzua Rd.

and adding in place of US 20, US 26, US 101, US 197, OR 47, OR 62, OR 140 and OR 207 the following, respectively:

Route	From	To
US 20	OR 34 W. Int. Philomath.	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 101	OR 6 Tillamook	WA State Line.
US 197	I–84 The Dalles	WA State Line.
OR 47	OR 6 Forest Grove.	US 26 N. of Banks.
OR 62	Medford	OR 140 White City.
OR 140	OR 62 White City.	OR 39 E. of Klamath Falls.
OR 207	US 730 Cold Springs Jct.	OR 74 S. Int. Heppner.

[FR Doc. 89–28404 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 8275]

RIN 1545–AJ05

Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: Section 6050M of the Internal Revenue Code ("Code"), which was added to the Code by the Tax Reform Act of 1986, requires Federal executive agencies to make a return to the Internal Revenue Service reporting the name, address, and taxpayer identification number (TIN) of each person with which the agency enters into a contract, together with any other information required by Treasury regulations. This document contains final rules concerning compliance with the new reporting requirements imposed by section 6050M.

EFFECTIVE DATE: The final regulations are effective January 1, 1989, and apply to Federal executive agencies with respect to their contracts (including their contract actions treated as new contracts) entered into (or treated as entered into) on or after January 1, 1989, except that, with respect to a basic or initial contract entered into before January 1, 1989, the regulations do not apply to an increase contract action treated as a new contract if the increase occurs before April 1, 1990, or if the increase is not in excess of $50,000.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) or telephone (202) 566–3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document provides final regulations to be added to the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301) under section 6050M of the Internal Revenue Code of 1986. These final rules provide the needed guidance for complying with the provisions of section 6050M, which was enacted by section 1522 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat 2085) and amended by section 1015 (f) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647; 102 Stat 3342).

These rules were published in proposed form in the **Federal Register** on July 29, 1988 (53 FR 28669). The preamble of that notice of proposed rulemaking contains an explanation of the proposed rules. There was no public hearing. After consideration of comments regarding the proposed rules, those rules are adopted, as revised by this Treasury decision.

Explanation of Provisions

Section 6050M requires the head of every Federal executive agency to file an information return with the Internal Revenue Service setting forth the name, address, and TIN of each person with which that agency enters into a contract, as well as any other information prescribed under Treasury regulations. The information returns filed under section 6050M will be used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

A. Providing Contract Information Required by Form or Other Administrative Guidance

The proposed regulations at § 1.6050M–1(a) set forth the information required to be reported with respect to each contract for which reporting is required. Proposed regulations § 1.6050M–1(a) (1)–(5) requiring the reporting of certain specific information with respect to each contract, and proposing regulations § 1.6050M–1(a)(6) required that there be reported for each contract "any other information required by Forms 8596 and 8596A and their instructions, or by any other administrative guidance issued by the Internal Revenue Service (such as a revenue procedure)." Several commentors expressed concern about the possibility of the Internal Revenue Service's later requiring, through Forms 8596 and 8596A or other administrative guidance, that additional specific

information be provided with respect to contracts being entered into.

This would appear to be of particular concern to those Federal executive agencies planning to elect under § 1.6050M–1(d)(5) to have the Director of the Federal Procurement Data Center (FPDC) make returns on behalf of the agency. That election is available only with respect to the agency's contracts for which all the information required to be reported under § 1.6050M–1(a) is also required to be submitted to the FPDC by the Federal Procurement Data System (FPDS). The Office of Federal Procurement Policy (OFPP) under the Office of Management and Budget determines the FPDS requirements concerning what information is to be submitted to the FPDC. Implementing a change in the type of information required to be submitted to the FPDC generally is a lengthy process. If the Internal Revenue Service, without consulting with the OFPP, were to require that additional information be reported with respect to contracts entered into, Federal executive agencies would not be able to have the Director of the FPDC make returns on their behalf unless and until the OFPP revised the FPDS to require that such additional information for contracts entered into be submitted to the FPDC.

The Internal Revenue Service expects that the majority of the information it receives under § 1.6050M–1 will come through the FPDC. Furthermore, the Internal Revenue Service knows that any significant additional contract information reporting requirement that is not carefully coordinated with the OFPP would, at least temporarily, seriously disrupt the flow of contract information to the Internal Revenue Service. The Internal Revenue Service has no plans to implement requirements for additional data that would disrupt the flow of contract information. Accordingly, § 6050M–1(a), including § 1.6050M–1(a)(6), as proposed, is adopted without change. It is anticipated that Forms 8596 and 8596A will require to be reported, in addition to the information required under § 1.6050M–1(a), the name and employer identification number of the Federal executive agency making the return. It is also anticipated that Form 8596A, which will be used to transmit the aggregate of the Forms 8596 filed for each quarter, will require a single statement of the name, address, and title of the person at the agency to whom a request for an offset against any unpaid tax liability of a contract can be sent.

B. Certification Requirement

Many commentors objected to the requirement in the proposed rules that the head of the Federal executive agency (or his or her delegate) sign the returns (or the submission to the FPDC if electing to have the Director of the FPDC make required returns on the agency's behalf) declaring under penalties of perjury that the provided information is, to the best of his or her knowledge and belief, true, correct, and complete. Concern was expressed that the head of the agency (or his or her delegate) might be prosecuted if that person so certified a return while knowing that the agency's records from which the return was made contained a statistically known percentage of inaccuracies or omissions in contract information.

Section 6065 of the Code provides that, "Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury." Virtually all returns, whether made by members of the general public or by government agencies, currently are required to be certified under the penalties of perjury. The Internal Revenue Service views this requirement as an important element in the administration of the internal revenue laws and regulations. In the interest of an evenhanded, effective administration of these laws and regulations, the Internal Revenue Service believes that it would be inappropriate in this case to waive the general requirement a return "contain or be verified by a written declaration that it is made under the penalties of perjury." Accordingly, the final rules retain a requirement that the returns be certified under the penalties of perjury.

The concerns of the commentors appear to be unfounded. Section 7206(1) of the Code provides that "any person who *willfully* makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter * * * shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution." (emphasis added). The Supreme Court has interpreted the word "willfully" as used in section 7206(1) of the Code as referring to a "voluntary, intentional disregard of a known legal duty." *United States* v. *Bishop*, 412 U.S. 346, 360 (1972).

Nonetheless, in order to further reassure Federal executive agencies making the required certification, the final regulations have added § 1.6050–1(d)(6) and modified § 1.6050M–1(d)(5)(i)(B). Basically, the head of a Federal executive agency (or his or her delegate) will under penalties of perjury certify that each return (or the information submitted by the agency to the FPDC to be used in making returns), to the best of such official's knowledge and belief, is compiled from agency records maintained in the normal course of business for the purpose of making a true, correct, and complete return as required by section 6050M.

C. Effective Dates

The regulations were proposed to apply to Federal executive agencies with respect to their contracts (and their contract actions treated as new contracts under § 1.6050M–1(e)) entered into (or treated as entered into) on or after October 1, 1988. The proposed regulations reserved on the issue of reporting by Federal executive agencies regarding their contracts (and their contract actions treated as new contracts) entered into (or treated as entered into) before October 1, 1988.

Several commentors suggested a later implementation of the reporting requirements, generally on the grounds that to require reporting with respect to contracts (and contract actions treated as new contracts) entered into (or treated as entered into) during the quarter beginning October 1, 1988, does not give agencies enough time to properly implement data collection and reporting systems.

Notice 87–1, which was published in Internal Revenue Bulletin 1987–1, dated January 5, 1987, gave notice, as of that date, of the Internal Revenue Service's intent to collect information of the type that is required to be reported by the final regulations. Furthermore, Notice 87–1 indicated that there would be an earlier implementation of contract reporting requirements than that which was provided in the proposed regulations published in the **Federal Register** on July 29, 1988. In light of such notice, it would be reasonable for the final regulations to adopt the proposed implementation date.

Nonetheless, because related amendments to the Federal Acquisition Regulation were promulgated with an effective date of November 25, 1988 (see Federal Acquisition Circular 84–40, Item I, published in the **Federal Register** on October 26, 1988, at 53 FR 43386) and because these final regulations will not be published in the **Federal Register** until December 6, 1989, the final regulations set forth in this document do provide for a later implementation of the reporting requirements. The regulations generally apply to Federal executive agencies with respect to their contracts (including into (or treated as entered into) on or after January 1, 1989. The one exception is that, with respect to a basic or initial contract entered into before January 1, 1989, the regulations do not apply to an increase contract action treated as a new contract if the increase occurs before April 1, 1990, or if the increase is not in excess of $50,000. The regulations do not require Federal executive agencies to report information with respect to contracts (including contract actions treated as new contracts) entered into (or treated as entered into) before January 1, 1989, or with respect to an increase contract action referred to in the preceding sentence. Paragraph (f)(3) of the regulations illustrates application of the effective date in the case of an increase contract action that is treated as the entering into of a new contract.

The normal rule for the due date of returns, as proposed and adopted, is that the returns for contracts entered into during a calendar quarter must be filed on or before the last day of the month following that quarter. In light of the fact that these final regulations will not be published in the **Federal Register** until December 6, 1989, and in order to give Federal executive agencies adequate time to set-up reporting systems, the final regulations provide that, notwithstanding the normal rule, returns filed before May 7, 1990, will be considered timely filed.

D. Contracts Entered Into Using Non-Appropriated Funds

There is nothing in statutory language relating to section 6050M or in the related legislative history to suggest that the reporting requirements should be different for an agency's contracts entered into using non-appropriated funds. Apparently, however, while many agencies already have in place systems for gathering and reporting data with respect to other contracts, they have no such systems concerning contracts entered into using non-appropriated funds. Furthermore, it apparently would require a substantial amount of time to set up such systems. Accordingly, § 1.6050M–1(b)(2)(vi) is added to the definition of contract to provide a reservation with respect to treatment of contracts entered into using non-appropriated funds. When an appropriate effective date for treating such contracts as contracts for purposes of section 6050M has been determined, the regulations will be amended prospectively to remove the reservation and to provide appropriate rules for such contracts.

E. Other Significant Issues

A few commentors raised questions as to whether certain specific types of arrangements are "contracts" within the meaning of § 1.6050M–1(b)(2) and, if so, whether it would be appropriate for the regulations to exclude certain of those arrangements from the reporting requirements of § 1.6050M–1(a). In response to these questions, § 1.6050M–1(c)(1) (viii) and (ix) are added to the final regulations. Section 1.6050M–1(c)(1)(viii) excludes from the reporting requirements any contract under which all money (or other property) that will be received by the contractor after the 120th day after the contract action will come directly from persons other than a Federal executive agency or an agent of such an agency. Section 1.6050M–1(c)(1)(ix) provides that a contract need not be reported if the Commissioner determines that the contract information described in § 1.6050M–1(a) will not facilitate tax collection because of the agency's manner, method, or timing of payment under that type of contract. The flexibility this provides will be especially useful in the case of contracts of an unforseen type that are not otherwise excluded from the reporting requirement despite the fact that the information to be reported would not facilitate tax collection.

Addition of the special rule at § 1.6050M–1(c)(2) for certain classified or confidential contracts merely reflects the enactment of the Technical and Miscellaneous Revenue Act of 1988 on November 10, 1988, which, at section 1015(f), added section 6050M(e) to the Code.

A few comments were made in favor generally of reducing the reporting burden by means such as (1) reducing the frequency of reporting or the type of information to be reported, (2) expanding the exceptions to contract reporting, or (3) providing for a later return due date. These comments were not adopted. The Internal Revenue Service believes that the nature of the information required to be reported and the timing of the reporting under the regulations is the least burdensome that is consistent with the effective implementation of section 6050M.

Special Analysis

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these final regulations is Keith E. Stanley of the Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other Offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Parts 1.6001–1—1.6109–2

Income taxes, Administration and procedures, Filing requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of Information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.6050M–1 also issued under 26 U.S.C. 6050M.

Par. 2. A new § 1.6050M–1 is added to read as follows:

§ 1.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies.

(a) *General rule.* Except as otherwise provided in paragraph (c) of this section, the head of every Federal executive agency or his or her delegate shall make an information return to the Internal Revenue Service reporting the following information with respect to each contract entered into by that Federal executive agency—

(1) Name and address of the contractor;

(2) Contractor's TIN and, if the contractor is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, the name and TIN of the common parent of the affiliated group;

(3) The date of the contract action;

(4) The expected date of completion of the contract as determined under any reasonable method, such as the expected contract delivery date under the contract schedule;

(5) The total amount obligated under the contract action; and

(6) Any other information required by Forms 8596 and 8596A and their instructions, or by any other administrative guidance issued by the Internal Revenue Service (such as a revenue procedure).

See paragraph (e) of this section relating to the manner in which to report increases in amounts obligated under existing contracts. See paragraph (d)(5) of this section for special rules for agencies that submit contract information to the Federal Procurement Data Center. For provisions concerning the requesting and furnishing of identifying numbers, see section 6109 and the regulations thereunder.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Federal executive agency.* The term "Federal executive agency" means—

(i) Any executive agency (as defined in 5 U.S.C. 105) other than the General Accounting Office;

(ii) Any military department (as defined in 5 U.S.C. 102); and

(iii) The United States Postal Service and the Postal Rate Commission.

(2) *Contract*—(i) *General rule.* The term "contract" means an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term "contract" includes, for example, such an obligation arising from a written agreement executed by the agency and the contractor, an award or notice of award, a job order or task letter issued under a basic ordering agreement, a letter contract, an order that becomes effective only upon written acceptance or performance, or an action described in paragraph (e) of this section.

(ii) *Exceptions.* For purposes of this section, the term "contract" does not include—

(A) A license granted by a Federal executive agency;

(B) An obligation of a contractor (other than a Federal executive agency) to a subcontractor;

(C) A debt instrument of the United States Government or a Federal agency, such as a Treasury note, Treasury bond, Treasury bill, savings bond, or similar instrument; or

(D) An obligation of a Federal executive agency to lend money, lease property to a lessee, or sell property.

(iii) *Special rule for certain contracts of the Small Business Administration.* Any subcontract entered into by the Small Business Administration (SBA) under a prime contract between the SBA and a procuring Federal executive agency pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall not be treated as a contract of the SBA but shall be treated as a contract of the procuring agency for purposes of this section.

(iv) *Certain schedule contracts.* For purposes of this section, any of the following contracts entered into on behalf of one or more Federal executive agencies is not a "contract" to be reported by the General Services Administration or the Veterans Administration at the time of execution:

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An Automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Veterans Administration. Instead, an order placed by a Federal executive agency, including the General Services Administration or the Veterans Administration, under such a schedule contract is a "contract" for purposes of this section.

(v) *Blanket purchase agreements.* For purposes of this section, the term "contract" does not include a blanket purchase agreement between one or more Federal executive agencies and one or more contractors. Instead, an order placed by a Federal executive agency under the terms of a blanket purchase agreement is a "contract" for purposes of this section.

(vi) *Contracts entered into using non-appropriated funds.* [Reserved]

(3) *Contractor.* The term "contractor" means any person who enters into a contract with a Federal executive agency.

(4) *Person and TIN.* The terms "person" and "TIN" are defined in sections 7701(a) (1) and (41), respectively.

(c) *Exceptions to information reporting requirement*—(1) *General exceptions.* The following do not need to be reported pursuant to this section:

(i) Any contract or contract action for which the amount obligated is $25,000 or less;

(ii) Any contract with a contractor who, in making the agreement, is acting in his or her capacity as an employee of a Federal executive agency (*e.g.*, any contract of employment under which the employee is paid wages subject to the withholding provisions contained in chapter 24 of subtitle C);

(iii) Any contract between a Federal executive agency and another Federal governmental unit (or any agency or instrumentality thereof);

(iv) Any contract with a foreign government (or any agency or instrumentality thereof);

(v) Any contract with a state or local governmental unit (or any agency or instrumentality thereof);

(vi) Any contract with a person who is not required to have a TIN (see, for example, § 301.6109–1(g));

(vii) Any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid on or before the 120th day following the date of the contract action, and for which it is reasonable to except that all amounts will be so paid.

(viii) Any contract under which all money (or other property) that will be received by the contractor after the 120th day after the date of the contract action will come from persons other than a Federal executive agency or an agent of such an agency (*e.g.*, a contract under which the contractor will collect amounts owed to a Federal executive agency by the agency's debtor and will remit to the agency the money collected less an amount that serves as the contractor's consideration under the contract).

(ix) Any contract for which the Commissioner determines that the information described in paragraph (a) of this section will not facilitate the collection of Federal tax liabilities because of the manner, method, or timing of payment by the agency under that contract.

(2) *Special rule for certain classified or confidential contracts.* Contracts described in section 6050M(e)(3), relating to certain classified or confidential contracts, are to be reported only in accordance with section 6050M(e)(2).

(d) *Filing requirements*—(1) *Frequency and time for filing.* The information returns required by this section with respect to contracts of a Federal executive agency entered into on or after January 1, 1989, must be filed on a quarterly basis for the calendar quarters ending on the last day of March, June, September, and December. Except as provided in paragraph (d)(5) of this section, the returns for contracts entered into during a calendar quarter must be filed on or before the last day of the month following that quarter. Notwithstanding the preceding sentence, returns filed before May 7, 1990, will be considered timely filed.

(2) *Form of reporting*—(i) *General rule concerning magnetic media.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter shall be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required returns shall be made on magnetic media (within the meaning of § 301.6011–2(a)(1)) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Magnetic media exception for low-volume filers.* Any Federal executive agency that on any October 1 has a reasonable expectation of entering into, during the one year period beginning on that date, fewer than 250 contracts that are subject to the reporting requirements under this section may make the information returns required by this section for each quarter of that one year period on the prescribed paper Form 8596 in accordance with the instructions accompanying such form.

(3) *Place of filing*—(i) *Returns on magnetic media.* Information returns made under this section on magnetic media shall be filed with the Internal Revenue Service at the Martinsburg Computing Center, Martinsburg, West Virginia 25401–1359, in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on Form 8596 shall be filed with the Internal Revenue Service at the location specified in the instructions for that form.

(4) *Special rule concerning multiple returns.* To the extent permitted in any revenue procedure or other guidance relating to the filing of information returns under this section, a Federal executive agency which files information returns under this section on magnetic media may make more than one magnetic media submission for any quarter, if each submission for that quarter contains all of the information required by paragraph (a) of this section with respect to contracts entered into by one or more departments, branches, bureaus, agencies, or other readily identifiable operating functions (such as a geographic region) of the Federal executive agency.

(5) *Special rules for agencies reporting to the Federal Procurement Data Center*—(i) *Election to have the Director of the Federal Procurement Data Center make returns on behalf of agency.* If, in complying with the requirements of the Federal Procurement Data System (FPDS) (as established under the authority of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et seq.*), a Federal executive agency is required to submit to the Federal Procurement Data Center (FPDC) all the information with respect to one or more contracts required to be reported by paragraph (a) of this section, that Federal executive agency may, in lieu of making returns directly to the Internal Revenue Service with respect to those contracts, elect to have the Director of the FPDC (or his or her delegate) make the required returns with respect to all of those contracts on its behalf. In order to make this election for such contracts entered into during a calendar quarter, the head of a Federal executive agency (or his or her delegate) shall attach to its submission to the FPDC for that quarter a signed statement to the effect that:

(A) The Director of the FPDC (or his or her delegate) is authorized, in accordance with an election made under 26 CFR 1.6050M–1(d)(5), to make, on the agency's behalf, the required returns for such contracts for that quarter, and

(B) Under the penalties of perjury, such official has examined the information to be submitted by the agency to the FPDC for making those returns and certifies that information to be, to the best of such official's knowledge and belief, a compilation of agency records maintained in the normal course of business for the purpose of providing the information necessary for making true, correct, and complete returns as required by section 6050M.

If the election is made, the Director of the FPDC (or his or her delegate) shall, on the electing agency's behalf, make the returns required by paragraph (a) of this section with respect to the contracts to which the election applies.

(ii) *Time, manner, and place of filing.* The Director of the FPDC (or his or her delegate) must—

(A) Make the required returns for a quarter on or before the earlier of:

(*1*) 45 days following the date that the contract information is required to be submitted to the FPDC, or

(*2*) 90 days following the end of the calendar quarter for which the election is made, except that, if that calendar quarter ends September 30, 105 days following the end of that quarter, and

(B) Comply with paragraph (d)(2)(i) and (3)(i) of this section, relating to form and place of filing.

Notwithstanding the preceding sentence, returns made before May 7, 1990, will be considered timely filed.

(iii) *Contracts reported directly to the Internal Revenue Service.* Even if the election is made, all information with respect to any particular contract required to be reported under paragraph (a) of this section must be reported directly to the Internal Revenue Service by the electing agency if the FPDS does not require that information to be submitted to the FPDC. An electing agency shall not, however, make direct returns to the Internal Revenue Service of contract information that is subject to the election.

(6) *Certification of return*—(i) *Returns made directly with the Internal Revenue Service.* Each return made under this section by a Federal executive agency directly with the Internal Revenue Service on magnetic media or on Forms 8596 and 8596–A shall be signed by the head of the Federal executive agency (or his or her delegate) under the penalties of perjury, certifying that such official has examined the return, that it is prepared pursuant to the requirements of section 6050M and that, to the best of such official's knowledge and belief, it is compiled from agency records maintained in the normal course of business for the purpose of making a true, correct, and complete return as required by section 6050M.

(ii) *Returns made by Director of FPDC on agency's behalf.* Each return made under this section by the Director of the FPDC on behalf of a Federal executive agency shall be signed by the Director of the FPDC (or his or her delegate) under the penalties of perjury, certifying that such official has examined the return, that it is prepared pursuant to the requirements of section 6050M and that, to the best of such official's knowledge and belief, it is compiled from information submitted by the Federal executive agency to the FPDC pursuant to § 1.6050M–1(d)(5)(i) for the purpose of making a true, correct, and complete return as required by section 6050M.

(e) *Special rules relating to increases in amount obligated.* If, through the exercise of an option contained in a basic or initial contract or under any other rule of contract law, express or implied, the amount of money or other property obligated under the contract is

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increased by more than $25,000 in one contract action, then that action shall be treated as the entering into of a new contract with respect to which the information required by paragraph (a) of this section is to be reported to the Internal Revenue Service for the calendar quarter in which the increase occurs.

(f) *Effective date*—(1) *Contracts required to be reported.* Except as otherwise provided in this paragraph (f), this section applies to each Federal executive agency with respect to its contracts entered into on or after January 1, 1989 (including any increase in amount obligated on or after January 1, 1989, that is treated as a new contract under paragraph (e) of this section).

(2) *Contracts not required to be reported.* A Federal executive agency is not required to report—

(i) Any basic or initial contract entered into before January 1, 1989,

(ii) Any increase contract action occurring before January 1, 1989, that is treated as a new contract under paragraph (e) of this section, or

(iii) Any increase contract action that is treated as a new contract under paragraph (e) of this section if the basic or initial contract to which that contract action relates was entered into before January 1, 1989, and—

(A) The increase occurs before April 1, 1990, or

(B) The amount of the increase does not exceed $50,000.

(3) *Illustration*—(i) If Federal executive agency enters into an initial contract on December 1, 1988, and the amount of money obligated under the contract is increased by $55,000 on April 15, 1990, then (A) there is no reporting requirement with respect to the contract when entered into on December 1, 1988, and (B) the April 15, 1990, increase, which is treated as a new contract under paragraph (e) of this section, is subject to the reporting requirements of this section because it is considered to be a new contract entered into on April 15, 1990.

(ii) If the $55,000 increase had occurred before April 1, 1990, there would have been no reporting requirement with respect to that increase.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * *
§ 301.6050M–1 is also issued under 26 U.S.C. 6050M.

Par. 4. A new § 301.6050M–1 is added to read as follows:

§ 301.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies.

For provisions relating to the requirements of returns of information relating to persons receiving contracts from certain Federal executive agencies, see § 1.6050M–1 of this chapter (Income Tax Regulations).

Approved: November 6, 1989.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 89–28396 Filed 12–5–89; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; partial stay of effective date for two substances.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989, at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until February 1, 1990.

DATE: These actions take effect on December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989 at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989 start-up date of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until December 1, 1989. See 54 FR 36765; September 5, 1989 and 54 FR 41244; October 6, 1989.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989 start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until February 1, 1990.

This document was prepared under the direction of G. F. Scannell, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9–83 (48 FR 35736).

Signed at Washington, DC, this 28th day of November, 1989.

G. F. Scannell,
Assistant Secretary.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, the Transitional limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

* * * * *

§ 1910.1000 [Amended]

2. Section 1910.1000, Table Z–1–A is amended by revising the Note at the end of the Table to read as follows:

Note: Pursuant to administrative stays effective September 1, 1989 and published in the **Federal Register** on September 5, 1989, and extended in part by notices published in the **Federal Register** on October 6, 1989 and on December 6, 1989, the September 1, 1989 start-up specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows: Until February 1, 1990 for nitroglycerin and ethylene glycol dinitrate in the explosives industry; until October 1, 1989 for perchloroethylene in the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of Courtaulds Fibers, Inc. v. U.S. Department of Labor, No. 89–7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the **Federal Register** notice of the termination of the carbon monoxide stay.

[FR Doc. 89–28401 Filed 12–5–89; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

31 CFR Part 129

Foreign Portfolio Investment Survey; Reporting Requirements

AGENCY: Treasury.

ACTION: Notice of reporting requirements and availability of forms.

SUMMARY: By this notice the Department of the Treasury is informing the public that it is conducting a survey of foreign portfolio investment in the United States. All persons who meet the reporting requirements set forth in this Notice must report. Survey data is based on foreign holdings as of December 31, 1989, and reports are due at the Department of the Treasury by June 30, 1990. Any United States issuer of securities that meets the benchmark survey asset test for a routine large issuer and any United States holder of record that exceeds the exemption level for aggregate foreign holdings should contact the Department of the Treasury at the telephone number listed below to obtain a copy of the Forms and Instructions if its Chief Financial Officer has not yet received a copy.

FOR FURTHER INFORMATION CONTACT: William Griever, Foreign Portfolio Investment Project, Office of the Assistant Secretary, International Affairs, U.S. Department of the Treasury, Washington, DC 20220, Telephone: (202) 566–5297.

SUPPLEMENTARY INFORMATION: The International Investment and Trade in Services Survey Act (22 U.S.C. 3101, et seq.) as amended, (the "Act"), and E.O. 11961 of January 19, 1977, (42 FR 4321), as amended, require the Department of the Treasury to conduct periodic comprehensive surveys of foreign portfolio investment in the United States. Regulations governing the current Survey were published in the **Federal Register**, April 9, 1984, at 49 FR 14054–14057, also found at 31 CFR Part 129 (1988), and amended by regulations published on September 15, 1989, at 54 FR 38227–38228. The Supplementary Information section of the 1984 regulations (49 FR 14054) stated that the exemption levels would subsequently be published in the **Federal Register**.

Who Must Report and Exemption Levels

United States Issuers of Securities

The reporting obligations of United States issuers are governed by the following classifications:

Routine Large Issuer Reporters—Asset Test

A report is required on Form FPI–1 (Report for United States Issuers of Securities) from every United States business enterprise issuer (irrespective of whether it has evidence of foreign investment in its securities) which, as of the latest available closing date of its accounting records, had:

(1) Total consolidated assets of more than *$1 billion*, if it is a nonbanking business enterprise;

(2) Total consolidated assets of more than *$2 billion*, if it is a banking business enterprise.

Selective Small Issuer Reporters—Response Required When Contacted

A report on Form FPI–1 is also required from every United States issuer with total consolidated assets of at least $10 million that is informed by the Department of the Treasury that it must report.

United States Holders of Record

The reporting obligations of United States holders of record are the following: A report is required on Form FPI–2 (Report for United States Holders of Record) from every United States person who acts on behalf of a foreign person as a holder of record and who holds for all its foreign customers combined investments in securities of United States issuers aggregating more than $20 million based on fair market value as of December 31, 1989.

Charles Schotta,
Deputy Assistant Secretary for Arabian Peninsula Affairs.

[FR Doc. 89–28509 Filed 12–5–89; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905–AD04

Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the existing regulations implementing Grants for Predoctoral, Graduate and Faculty Development Education Programs in Family Medicine to extend the period of Federal support for trainees in faculty development programs supported under this authority from 1 calendar year to 24 cumulative months. This amendment to extend the total period of stipend support will improve the effectiveness of these grant programs to attract and retain fellows.

EFFECTIVE DATE: This final rule is effective December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Marilyn H. Gaston, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Service Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–6190.

SUPPLEMENTARY INFORMATION: On October 16, 1980, the Assistant Secretary for Health, with the approval of the Secretary, published in the **Federal Register** (45 FR 68890) a final rule (and amendments to the final rule on March 28, 1984 (49 FR 11612)), governing programs administered under section 786(a) of the Public Health Service Act (the Act). Grants are awarded to schools of medicine or osteopathic medicine, hospitals, and other public or private nonprofit entities for projects to: (a) Plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to practice family medicine or to trainees in faculty development programs who plan to teach in family medicine training programs.

This amendment is to both clarify and ease a restriction contained in

§ 57.1604(d) of the current regulations. This provision states that—

> Each program must be no longer than 1 calendar year for any trainee.

The revised section reads as follows:

> "Stipend support from grant funds may be no longer than 24 cumulative months for any trainee."

The Department is clarifying this provision to indicate that the limitation refers specifically to the length of time for which stipend support may be given to trainees, rather than to a limitation on the length of time of a particular training program. Indeed, program of greater than 1 year in duration have received support under this grant program.

The Department has found that a number of quality training programs are now 2 or more years in length. This period of training is used to more fully develop the teaching, research, and management skills needed by new family medicine faculty. To improve the effectiveness of these grant programs to attract and retain fellows, the Department is revising § 56.1604(d) to permit stipend support of trainees up to 24 cumulative months. "Cumulative" modifies the number of months to allow full support for trainees in programs that schedule breaks in the training period, thus extending the total period of support beyond 2 calendar years.

Justification for Omitting Notice of Proposed Rulemaking

The Department believes that this amendment will create greater flexibility for both the Department and the grantees in the administration of this grant program. The Secretary has therefore determined, according to 5 U.S.C. 553 and Department policy, that it would be both unnecessary and contrary to the public interest to obtain public comment on these regulations or to delay their effective date.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This amendment does not affect the recordkeeping or reporting requirements for the Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine.

List of Subjects in 42 CFR Part 57

Dental health,
Education of the disadvantaged,
Educational facilities,
Educational study program,
Emergency medical services,
Grant programs-education,
Grant programs-health,
Health facilities,
Health professions,
Loan programs-health,
Medical and dental schools,
Scholarships and fellowships,
Student aid.

Accordingly, 42 CFR part 57, Subpart Q is amended as set forth below:

Dated: August 30, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.895, Grants for Faculty Development in Family Medicine)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine.

1. The authority citation for Subpart Q of Part 57 continues to read as follows:

> **Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 786(a), Public Health Service Act, 90 Stat. 2316 (42 U.S.C. 295g–6(a)).

2. Section 57.1604 is amended by revising paragraph (d)(4) to read as follows:

§ 57.1604 What requirements must a project meet?

* * * * *

(d) * * *

(4) Stipend support from grant funds may be no longer than 24 cumulative months for any trainee.

* * * * *

[FR Doc. 89–28454 Filed 12–5–89; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 2, 3, 10, 12, 15, 24, 30, 42, 50, 69, 70, 90, 107, 110, 146, 147, 147A, 148, 150, 151, 153, 154, 159, 167, 168, 169, 170, 175, 188, and 197

[CGD 88–033]

RIN 2115–AD00

Appeal Procedures and Coast Guard Organization

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a uniform appeals section to replace all existing appeals sections in 46 CFR chapter I, except for subpart J of part 5 which deals with suspension and revocation hearings. All existing appeals sections in 46 CFR chapter I are amended to reference the uniform appeals section in part 1. A similar reference is added to some parts in chapter I which do not currently address appeal procedures. This rule also updates the Coast Guard organization contained in part 1. The current procedure for appealing a Coast Guard requirement is confusing because existing appeals sections vary in wording and do not contain complete guidance necessary for making an appeal. Certain aspects of the Coast Guard organization contained in part 1 are not correct. This rule will clarify the appeal process, eliminate repetitive sections, and update the Coast Guard organization.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael E. Raber, Office of Marine Safety, Security, and Environmental Protection (G–MTH–4/13), U.S. Coast Guard, Washington, DC 20593–0001, (202) 267–2997.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this final rule, and good cause exists for making it effective in less than 30 days following publication in the **Federal Register**. Coast Guard regulations in 46 CFR chapter I contain numerous sections intended to advise the public on administrative appeal procedures. These sections vary in wording and content. Many do not contain all the information necessary for making an appeal. In addition, other parts contain no guidance on appealing requirements covered by that part. To reduce repetitive sections and improve overall clarity, this final rule adds a uniform appeals section to 46 CFR part 1. All existing appeals sections in chapter I, except subpart J of part 5 which deal with suspension and revocation hearings, are amended to contain only a reference to part 1. A similar reference to part 1 is added to some parts not currently containing an appeals section. The official to whom an appeal is made is an important aspect in the procedures for appealing a Coast Guard requirement. Accordingly, the organization section in part 1 is updated to reflect the current Coast Guard organization. Because this rulemaking clarifies agency organization, practice, and procedure, notice and comment are unnecessary. Further, because of the need of the public to know the information necessary to make an appeal, the Coast Guard finds good cause to make this rulemaking effective in less than 30 days after publication in the **Federal Register**.

Regulatory Evaluation

This rulemaking is considered to be non-major under Executive Order 12291, and non-significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be minimal and further economic evaluation is unnecessary. This rulemaking merely adds a uniform appeals section in part 1 of title 46, amends all existing appeals sections to cross reference the uniform appeals section in part 1, adds a similar reference to some parts not currently containing an appeals section, and updates the Coast Guard organization. Accordingly, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this final rule are Lieutenant Michael E. Raber, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 3

Oceanographic research vessels, Reporting and recordkeeping requirements, Research.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 107

Incorporation by reference, Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Incorporation by reference, Reporting and recordkeeping requirements.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 147

Arms and munitions, Hazardous materials transportation, Incorporation by reference, Marine safety, Packaging and containers.

46 CFR Part 147A

Fire prevention, Hazardous substances, Occupational safety and health, Pesticides and pests, Seamen, Vessels.

46 CFR Part 148

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 150

Hazardous materials, transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 170

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 197

Diving, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons set forth in the preamble, title 46, chapter I of the Code of Federal Regulations, is amended as follows.

1. Part 1 is revised to read as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

Subpart 1.0—Organization and General Flow of Functions

Sec.

1.01–5 Definitions of terms used in this part.
1.01–10 Organization.
1.01–15 Organization; districts.
1.01–20 Suspension and revocation proceedings.
1.01–25 General flow of functions.
1.01–30 Judicial review.
1.01–35 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart 1.03—Rights of Appeal

1.03–10 Definition of terms used in this subpart.
1.03–15 General.
1.03–20 Appeals from decisions or actions of an OCMI.
1.03–25 Appeals from decisions or actions of a District Commander.
1.03–30 Appeals from decisions or actions of the Marine Safety Center.
1.03–35 Appeals from decisions or actions of a recognized classification society acting on behalf of the Coast Guard.
1.03–40 Appeals from decisions or actions of a tonnage measurement authority.

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

Subpart 1.01—Organization and General Flow of Functions

§ 1.01–05 Definitions of terms used in this part.

(a) The term "*Commandant*" means the Commandant of the Coast Guard.

(b) The term "*District Commander*" means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a district.

§ 1.01–10 Organization.

(a) The Commandant is the head of the agency and exercises overall direction over the policy and administration of the Coast Guard.

(b) To carry out the regulatory and enforcement aspects of marine safety, the staff officers designated in this paragraph are assigned to the Commandant. The chain of military command is from the Commandant directly to the District Commanders. The staff officers at Headquarters act only on the basis of the Commandant's authority and direction.

(1) The Chief, Office of Marine Safety, Security, and Environmental Protection, under the general direction of the Commandant, directs, supervises and coordinates the activities of the Chief, Marine Technical and Hazardous Materials Division, the Chief, Merchant Vessel Inspection and Documentation Division, the Chief, Merchant Vessel Personnel Division, the Chief, Marine Investigation Division, the Chief, Port Safety and Security Division, The Chief, Marine Environmental Response Division. The programs administered by the Chief, Port Safety and Security Division and the Chief, Marine Environmental Response Division are guided by regulations contained in 33 CFR chapter I. The Chief, Office of Marine Safety, Security, and Environmental Protection exercises technical control over the Commanding Officer, Marine Safety Center and through the District Commander, supervises the administration of the Marine Safety Divisions of District Offices and Officers in Charge, Marine Inspection.

(i) The Chief, Marine Technical and Hazardous Materials Division (G–MTH), at Headquarters, under the direction of the Chief, Office of Marine Safety, Security, and Environmental Protection, evaluates plans and specifications for the construction or alteration of commercial vessels and marine structures; develops policies and regulations on load line matters and supervises classification societies authorized to assign load lines on behalf of the Coast Guard; provides technical assistance with respect to enforcing and improving merchant marine material standards; administers the program for the development of safe containment systems for certain bulk dangerous cargoes; administers the certification program for foreign vessels carrying cargoes of unusual hazard, and evaluates the hazards involved in the shipment of dangerous cargoes.

(ii) The Chief, Merchant Vessel Inspection and Documentation Division (G–MVI), at Headquarters, under the direction of the Chief, Office of Marine Safety, Security, and Environmental Protection, administers the inspection program for merchant vessels, including those engaged in outer continental shelf activities, and the program of enforcing and improving merchant marine material and operational safety standards; reviews marine casualties other than recreational boating safety accidents and initiates regulatory projects to enhance marine safety based on that review; examines and approves lifesaving and firefighting equipment; administers the vessel measurement and tonnage program, and administers the vessel documentation program.

(iii) The Chief, Merchant Vessel Personnel Division (G–MVP), at Headquarters, under the direction of the Chief, Office of Marine Safety, Security, and Environmental Protection, administers the program for the enforcement and development of prescribed merchant marine personnel standards, including but not limited to the licensing, certificating, shipment, and discharge of seamen, and the manning of vessels.

(iv) The Chief, Marine Investigating Division (G–MMI), at Headquarters, under the direction of the Chief, Office of Marine Safety, Security, and Environmental Protection, reviews investigations of marine casualties; reviews the records of proceedings to suspend and revoke licenses, certificates and documents held by maritime personnel; and compiles, maintains, reviews and evaluates statistics obtained from marine casualty investigations.

(v) The Commanding Officer, Marine Safety Center (G–MSC), under the technical control of the Chief, Office of Marine Safety, Security, and Environmental Protection, conducts the review and approval of plans, calculations, and other materials concerning the design, construction, alteration, and repair of commercial vessels to determine conformance with the marine inspection laws, regulations and implementing directives.

(2) The Chief Counsel of the Coast Guard at Headquarters, under the general direction and supervision of the General Counsel, Department of Transportation and the Commandant, considers cases involving alleged violations of navigation and vessel inspection laws or regulations prescribed thereunder and published in this chapter or in 33 CFR chapter I, and reviews appeals to the Commandant from statutory monetary penalties assessed therefor. Upon completion of such a review, the Chief Counsel prepares a proposed action for the Commandant's consideration or, in appropriate cases, takes final action on behalf of, and as directed by, the Commandant.

§ 1.01–15 Organization; districts.

(a) To assist the District Commander in carrying out the regulatory and enforcement aspects of marine safety in the Coast Guard Districts, there is assigned to each District Commander a staff officer designated as Chief, Marine Safety Division. The chain of military command is from the District Commander to each Officer in Charge, Marine Inspection, within the district. The Chief, Marine Safety Division, is a staff officer assigned to the District Commander and acts only on the basis of the authority and by direction of the District Commander.

(1) The Chiefs, Marine Safety Division, in the District Offices, under the supervision of their respective District Commanders, direct the activities in their district relative to vessel, factory and shipyard inspections; reports and investigations of marine casualties and accidents; processing of violations of navigation and vessel inspection laws; the licensing, certificating, shipment and discharge of seaman; the investigation and institution of proceedings looking to suspension and revocation under 46 U.S.C. chapter 77 of licenses, certificates, and documents held by persons; and all other marine safety regulatory activities except those functions related to recreational boating when under the supervision of the Chiefs, Boating Safety Division, in the District Offices.

(2) Unless otherwise provided for, the Chiefs, Boating Safety Division, in the District Offices, under the supervision of their respective District Commanders, direct the activities in their districts relative to administration of the law enforcement program applicable to uninspected vessels used for recreational purposes and the imposition and collection of penalties in connection therewith; maintain liaison with Federal and State agencies having related interests; develop and coordinate agreements and arrangements with Federal and State agencies for cooperation in the enforcement of State and Federal laws related to recreational boating; and review investigative reports of recreational boating accidents.

(b) The Officers in Charge, Marine Inspection, in the Coast Guard districts, under the supervision of their respective District Commanders, are in charge of marine inspection offices and marine safety offices located in various ports and have command responsibility with assigned marine safety zones for the performance of duties with respect to the inspection, enforcement, and administration of navigation and vessel inspection laws, and rules, and regulations governing marine safety. The Officer in Charge, Marine Inspection, has been designated and delegated to give immediate direction to Coast Guard activities relating to marine safety functions consisting of inspection of vessels in order to determine that they comply with the applicable laws, rules, and regulations relating to construction, equipment, manning and operation, and to be satisfied that such vessels are in seaworthy condition for the services in which such vessels are to be operated; shipyard inspections; factory inspections of materials and equipment for vessels; the licensing, certificating, shipment and discharge of seaman; investigations of marine casualties and accidents; investigations of violations of law; negligence, misconduct, unskillfullness, incompetence or misbehavior of persons holding licenses, certificates, or documents issued by the Coast Guard; initiations of actions seeking suspension or revocation under 46 U.S.C. chapter 77 of licenses, certificates and documents held by persons, and presentation of cases at hearings before Administrative Law Judges; and the enforcement of navigation, vessel inspection and seaman laws in general.

Note: Licensing and Certification functions are performed only by the Officer in Charge, Marine Inspection, at the following locations:

Boston, MA
New York, NY
Baltimore, MD
Charleston, SC
Miami, FL
New Orleans, LA
Houston, TX
Memphis, TN
St. Louis, MO
Toledo, OH
Long Beach, CA
San Francisco, CA
Portland, OR
Seattle, WA
Anchorage, AK
Juneau, AK
Honolulu, HI

Where the term "Officer in Charge, Marine Inspection", "Marine Inspection Office," or "Marine Safety Office" is used within the context of parts 10, 12 or 187 of this chapter, it is understood to mean that particular "Officer" or "Office" at one of the above listed locations.

(c) For descriptions of Coast Guard districts and marine safety zones, see 33 CFR part 3.

§ 1.01–20 Suspension and revocation proceedings.

(a) The Commandant takes final agency action on each proceeding concerned with revocation.

(b) The Commandant has delegated authority to the Vice Commandant in 33 CFR 1.01–40 to take final agency action under subparts I, J, and K of part 5 of this chapter on each proceeding except on a petition or appeal in a case on which an order of revocation has been issued.

(c) The Commandant assigns to his staff a Chief Administrative Law Judge who is an Administrative Law Judge appointed under 5 U.S.C. 3105 and whose assignment is to:

(1) Act as adviser and special assistant to the Commandant on matters concerning the administration of hearings conducted under 46 U.S.C. chapter 77;

(2) Conduct hearings under 46 U.S.C. chapter 77;

(3) Train new Administrative Law Judges assigned to conduct hearings under 46 U.S.C. chapter 77;

(4) Review the written decisions and orders of each Administrative Law Judge assigned to conduct a hearing under 46 U.S.C. chapter 77; and

(5) Act as adviser to the Chief Counsel in preparation of the final action of proceedings conducted under subparts I, J, and K of part 5 of this chapter.

(d) The Chief Counsel of the Coast Guard, under the general direction and supervision of the Commandant, U.S. Coast Guard:

(1) Acts as an adviser and as a special assistant to the Commandant in matters of law; and

(2) Prepares for the consideration of the Commandant or the Vice Commandant, as appropriate, proposed decisions on cases on appeal or review in suspension and revocation proceedings.

§ 1.01–25 General flow of functions.

(a) The Officer in Charge, Marine Inspection, has final authority with respect to the functions described in

§ 1.01–15(b) of this subpart, subject to the rights of appeal set forth in subpart 1.03 of this part.

(b) The general course and method by which the functions (other than those dealing with suspension and revocation of licenses, certificates, or documents described in paragraph (c) of this section) concerning marine safety activities are channeled begins with the Officer in Charge, Marine Inspection, at the local Marine Safety Office. From this officer the course is to the Chief, Marine Safety Division, on the staff of the District Commander and then to the District Commander. From the District Commander the course is to the Chief of one of the divisions within the Office of Marine Safety, Security, and Environmental Protection at Headquarters. In most administrative cases the channel ends at this point; however, on matters of policy and other appropriate cases, the course continues to the Chief, Office of Marine Safety, Security, and Environmental Protection, and then to the Commandant, whose decisions are final.

(c) In proceedings involving the suspension or revocation of a Coast Guard license, certificate or document issued to an individual, the course and method by which such proceedings are channeled are as follows:

(1) In the United States, the Commonwealth of Puerto Rico, Territory of Guam, the Virgin Islands, and other possessions, the proceedings are initiated by the preferment of charges and specifications against the holder of the Coast Guard license, certificate or document. A Coast Guard Investigating Officer under the supervision of an Officer in Charge, Marine Inspection, or an Officer in Charge, Marine Inspection causes the charges and specifications to be served on the person described therein (person charged) who is a holder of a Coast Guard license, certificate or document. At a hearing the Coast Guard submits evidence to support the charges and specifications, while the person charged may submit evidence in rebuttal or mitigation. The Administrative Law Judge renders a decision on the basis of the evidence adduced at the hearing and the law. The Administrative Law Judge's decision is given to the person charged.

(i) In a case where an appeal is made by the person charged, the notice of appeal is filed with the Administrative Law Judge who heard the case or with any Officer in Charge, Marine Inspection, for forwarding to such Administrative Law Judge.

(d) In the performance of their duties, all Coast Guard Administrative Law Judges are bound by law and the regulations in this chapter or in 33 CFR chapter I. Statements of policy, clarification of points of procedure, and general administrative instructions are published in "Administrative Law Judges' Circulars" and "Administrative Law Judges' Internal Practices and Procedures Series." The Chief Administrative Law Judge, located in the Office of the Commandant, U.S. Coast Guard, maintains a complete file of these publications for reading purposes during normal working hours.

§ 1.01–30 Judicial review.

(a) Nothing in this chapter shall be construed to prohibit any party from seeking judicial review of any Commandant's decision or action taken pursuant to the regulations in this part or part 5 of this chapter with respect to suspension and revocation proceedings arising under 46 U.S.C. chapter 77.

(b) If the person found guilty of any offense fails to make a timely appeal, the decision of the administrative law judge is final and binding on the person charged as of the date that the decision is delivered to the person charged or his authorized representative.

§ 1.01–35 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record keeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 2.01	2115–0007
§ 2.95–10	2115–0141
§ 3.10	2115–0053
Part 4	2115–0003
Part 6	2115–0005

Subpart 1.03—Rights of Appeal

§ 1.03–10 Definition of terms used in this subpart.

(a) The term "*recognized classification society*" means the American Bureau of Shipping or other classification society recognized by the Commandant.

(b) The term "*new vessel*" means:

(1) For vessels which require a Certificate of Inspection, a new vessel is a vessel which has not received an initial Certificate of Inspection.

(2) For vessels which do not require a Certificate of Inspection, a new vessel is a vessel which has not received a Load Line assignment.

(c) The term "*existing vessel*" means a vessel which is not a new vessel.

§ 1.03–15 General.

(a) Any person directly affected by a decision or action taken under this chapter, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapter dealing with suspension and revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside or revised.

(b) When requesting that a decision or action be reconsidered or reviewed, as may be required by this subpart, such request must be made within 30 days after the decision is rendered or the action is taken.

(c) When making a formal appeal of a decision or action, as permitted by this subpart, such appeal must be submitted in writing and received by the authority to whom the appeal is required to be made within 30 days after the decision or action being appealed, or within 30 days after the last administrative action required by this subpart. Upon written request and for good cause, the 30 day time limit may be extended by the authority to whom the appeal is required to be made.

(d) A formal appeal must contain a description of the decision or action being appealed and the appellant's reason(s) why the decision or action should be set aside or revised.

(e) When considering an appeal, the Commandant or a District Commander may stay the effect of a decision or action being appealed pending determination of the appeal.

(f) While a request for reconsideration or review or a formal appeal is pending, the original decision or action remains in effect, unless otherwise stayed under paragraph (e) of this section.

(g) The Commandant may delegate authority to act on administrative appeals under this subpart to the Chief, Office of Marine Safety, Security, and Environmental Protection and appropriate division chiefs within the Office of Marine Safety, Security, and Environmental Protection.

(h) Formal appeals made to the Commandant shall be addressed to:

(1) Commandant (G–MVI) for appeals involving vessel inspection issues or tonnage measurement issues; or

(2) Commandant (G–MVP) for appeals involving vessel manning or other personnel issues; or

(3) Commandant (G–MTH) for appeals involving load line issues or plan review issues.

(i) Failure to submit a formal appeal in accordance with the procedures and time limits contained in this subpart results in the decision or action becoming final agency action.

(j) Any decision made by the Commandant or by the Chief, Office of Marine Safety, Security, and Environmental Protection or division chief pursuant to authority delegated by the Commandant is final agency action on the appeal.

§ 1.03–20 Appeals from decisions or actions of an OCMI.

Any person directly affected by a decision or action of an OCMI may, after requesting reconsideration of the decision or action by the cognizant OCMI, make a formal appeal of that decision or action, via the office of the cognizant OCMI, to the District Commander of the district in which the office of the cognizant OCMI is located, in accordance with the procedures contained in § 1.03–15 of this subpart.

§ 1.03–25 Appeals from decisions or actions of a District Commander.

Any person directly affected by a decision or action of a District Commander made pursuant to § 1.03–20 of this subpart, may make a formal appeal of that decision or action, via the office of the cognizant District Commander, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

§ 1.03–30 Appeals from decisions or actions of the Marine Safety Center.

(a) Any person directly affected by a decision or action of the Marine Safety Center which affects a new vessel or plans for a vessel to be built may, after requesting reconsideration of the decision or action by the Commanding Officer, Marine Safety Center, make a formal appeal of that decision or action, via the Commanding Officer, Marine Safety Center, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

(b) Any person directly affected by a decision or action of the Marine Safety Center which affects an existing vessel, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in § 1.03–20 of this subpart.

§ 1.03–35 Appeals from decisions or actions of a recognized classification society acting on behalf of the Coast Guard.

(a) Any person directly affected by a decision or action of a recognized classification society performing plan review on behalf of the Coast Guard may, after requesting reconsideration of the decision or action by the classification society, make a formal appeal, via the classification society headquarters, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

(b) Any person directly affected by a decision or action of a recognized classification society acting as a marine inspector, as defined in § 30.10–43 of this chapter, on behalf of the Coast Guard, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in § 1.03–20 of this subpart.

(c) Any person directly affected by a decision or action of a recognized classification society acting as a load line assigning authority, as defined in § 42.05–10 of this chapter, may, after requesting reconsideration of the decision or action by the classification society, make a formal appeal, via the classification society headquarters, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

§ 1.03–40 Appeals from decisions or actions of a tonnage measurement authority.

(a) Any person directly affected by a decision or action of an officer or employee of the Coast Guard, when acting as a tonnage measurement authority under § 69.15 of this chapter, may make a formal appeal of that decision or action to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

(b) Any person directly affected by a decision or action of an organization authorized to measure vessels on behalf of the Coast Guard, as identified in § 69.15(a) of this chapter or pursuant to a delegation of authority under § 69.27 of this chapter, may make a formal appeal of that decision or action, via the measurement organization, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

PART 2—VESSEL INSPECTIONS

2. The authority citation for part 2 continues to read as follows:

Authority: 22 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, ch. 1155, §§ 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

3. Section 2.01–70 is revised to read as follows:

§ 2.01–70 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

4. The authority citation for part 3 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

5. Section 3.10–10 is added to read as follows:

§ 3.10–10 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

6. The authority citation for part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

7. Section 10.204 is revised to read as follows:

§ 10.204 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 continues to read as follows:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

9. Section 12.02–25 is revised to read as follows:

§ 12.02–25 Right of appeal.

Any person directly affected by a decision or action taken under this part,

by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 15—MANNING REQUIREMENTS

10. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

11. Section 15.510 is revised to read as follows:

§ 15.510 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 24—GENERAL PROVISIONS

12. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

13. Section 24.01–7 is added to read as follows:

§ 24.01–7 Right of appeal.

Any person directly affected by a decision or action taken under this Subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 30—GENERAL PROVISIONS

14. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 30.01–2 also issued under the authority of 44 U.S.C. 3507.

15. Section 30.20–50 is revised to read as follows:

§ 30.20–50 Right of appeal.

Any person directly affected by a decision or action taken under this Subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

16. The authority citation for part 42 continues to read as follows:

Authority: 46 U.S.C. 5115; 49 CFR 1.45, 1.46; § 42.01–5 also issued under the authority of 44 U.S.C. 3507.

17. Section 42.07–75 is revised to read as follows:

§ 42.07–75 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 50—GENERAL PROVISIONS

18. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01–20 also issued under the authority of 44 U.S.C. 3507.

19. Section 50.20–40 is revised to read as follows:

§ 50.20–41 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 69—MEASUREMENT OF VESSELS

20. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46; § 69.27 is issued under 44 U.S.C. 3507; 49 CFR 1.45.

21. Section 69.21 is revised to read as follows:

§ 69.21 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 70—GENERAL PROVISIONS

22. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 70.01–15 also issued under the authority of 44 U.S.C. 3507.

23. Section 70.01–7 is added to read as follows:

§ 70.01–7 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 90—GENERAL PROVISIONS

24. The authority citation for part 90 continues to read as follows:

Authority: 43 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

25. Section 90.01–7 is added to read as follows:

§ 90.01–7 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 107—INSPECTION AND CERTIFICATION

26. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

27. Section 107.01–3 is added to read as follows:

§ 107.01–3 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 110—GENERAL PROVISIONS

28. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 4104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under the authority of 44 U.S.C. 3507.

29. Section 110.01–4 is added to read as follows:

§ 110.01–4 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

30. The authority citation for part 146 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1904; 49 CFR 1.45, 1.46; § 146.01–5 also issued under the authority of 44 U.S.C. 3507.

31. Section 146.01–4 is added to read as follows:

§ 146.01–4 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 147—REGULATIONS GOVERNING USE OF DANGEROUS ARTICLES AS SHIPS' STORES AND SUPPLIES ON BOARD VESSELS

32. The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

33. Section 147.35 is added to read as follows:

§ 147.35 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

34. The authority citation for part 147A continues to read as follows:

Authority: 46 U.S.C. App. 1804; 49 CFR 1.46.

35. Section 147A.6 is added to read as follows:

§ 147A.6 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

36. The authority citation for part 148 continues to read as follows:

Authority: 49 U.S.C. App. 1804; 49 CFR 1.46.

37. Section 148.01–15 is added to read as follows:

§ 148.01–15 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 150—COMPATIBILITY OF CARGOES

38. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; § 150.105 also issued under the authority of 44 U.S.C. 3507.

39. Section 150.170 is added to read as follows:

§ 150.170 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

40. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

41. Section 151.01–35 is added to read as follows:

§ 151.01–35 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

42. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

43. Section 153.3 is revised to read as follows:

§ 153.3 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

44. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Section 154.40 is added to read as follows:

§ 154.40 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

46. The authority citation for part 159 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; § 159.001–9 also issued under the authority of 44 U.S.C. 3507.

47. Section 159.001–2 is added to read as follows:

§ 159.001–2 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

48. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

49. Section 167.10–50 is revised to read as follows:

§ 167.10–50 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

50. The authority citation for part 168 continues to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. App. 1295g; 49 CFR 1.46.

51. Section 168.05–15 is added to read as follows:

§ 168.05–15 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 169—SAILING SCHOOL VESSELS

52. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

53. Section 169.113 is revised to read as follows:

§ 169.113 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

54. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

55. Section 170.003 is added to read as follows:

§ 170.003 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

PART 175—GENERAL PROVISIONS

56. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 175.01–3 also issued under the authority of 44 U.S.C. 3507.

57. Section 157.30–1 is revised to read as follows:

§ 175.30–1 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subchapter 1.03 of this chapter.

PART 188—GENERAL PROVISIONS

58. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 5115; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

59. Section 188.01–7 is added to read as follows:

§ 188.01–7 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subchapter 1.03 of this chapter.

PART 197—GENERAL PROVISIONS

60. The authority citation for part 197 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; 49 CFR 1.46.

61. Section 197.203 is added to read as follows:

§ 197.203 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with subpart 1.03 of this chapter.

Dated: November 22, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–28461 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

49 CFR Parts 107,171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM–183, 183A; Amdt. Nos. 107–20, 171–100, 172–115, 173–212, 176–27, 177–71, 178–89, 180–2]

RIN 2137–AA42

Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; further extension of effective date.

SUMMARY: RSPA is further extending the effective date of a final rule published on June 20, 1989, under Docket Nos. HM–183, 183A from February 12, 1990 to June 12, 1990. This action is necessary to allow RSPA and the Federal Highway Administration (FHWA) more time to review petitions for reconsideration received in response to the final rule.

EFFECTIVE DATE: June 12, 1990.

FOR FURTHER INFORMATION CONTACT:

Charles Hochman, (202) 366–4545, or Hattie Mitchell, (202) 366–4488, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; or

Richard Singer, (202) 366–2994, Office of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On June 12, 1989, RSPA published a final rule (Docket Nos. HM–183, 183A; 54 FR 24982) establishing new standards pertaining to the use, requalification, and manufacture of cargo tank motor vehicles. The final rule granted a period of 90 days for receiving petitions for reconsideration. In response to requests from two petitioners, on September 15, 1989 (54 FR 38233), RSPA extended the closing date for receiving petitions for reconsideration from September 12, 1989 to November 14, 1989, and similarly extended the effective date of the final rule from December 12, 1989 to February 12, 1990. RSPA received over 90 petitions for reconsideration over the period of 150 days granted for filing petitions to the final rule. This action, which further extends the effective date of the final rule, is necessary because RSPA finds it impracticable to take action and respond to certain issues discussed in the petitions within 90 days as prescribed by 49 CFR 106.37(b).

This extension of the effective date of the final rule to June 12, 1990, allows additional time for RSPA and FHWA to study issues raised in the petitions for reconsideration and to prepare an appropriate response. Based on a preliminary review of the petitions for reconsideration received, RSPA anticipates that adjustments will be made in other compliance dates appearing in the final rule.

Issued in Washington, DC, on November 30, 1989, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator.

[FR Doc. 89–28400 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–60–M

Federal Highway Administration

49 CFR Part 325

RIN 2125–AA27

[OMCS Docket No. MC–62–1; Notice No. 89–3]

Compliance With Interstate Motor Carrier Noise Emission Standards

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Motor Carrier Safety Regulations (FMCSRs) to: (1) Incorporate the Environmental Protection Agency's (EPA) amended noise emission standards for commercial motor vehicles operating in interstate commerce; and (2) allow a minimum distance of 31 feet for measuring the level of exterior noise of commercial motor vehicles. This action will allow greater flexibility in the enforcement of the noise emission standards.

This action also gives notice that the FHWA will retain the 2 decibel (2dB(A)) correction factor for measurements made at acoustically hard sites. The EPA noise emission standards are based on the use of soft test sites during the highway, or pass-by, operations test and the use of hard test sites during the stationary, or run-up, operations test. Available research indicates that the hard site correction factor is both workable and equitable in the enforcement of the motor carrier noise emission standards. This notice also terminates a settlement agreement stemming from a legal action filed by Salt Lake County, Utah, against the U.S. Department of Transportation concerning measurement distances and correction factors.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT:

Mr. Rogert Hagan, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 18 of the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234, 1249) authorizes the EPA to issue noise emission standards for interstate motor carriers. The legislation also directs the Secretary of Transportation to promulgate regulations to ensure compliance with the Federal standards prescribed by EPA. The regulations are enforced through the use of powers and duties of inspection authorized in 49 U.S.C. 504 and 507.

On October 29, 1974, the EPA promulgated regulations prescribing noise emission standards for vehicles having a gross vehicle weight rating (GVWR) or a gross combination weight rating (GCWR) of 10,000 pounds (4,536 Kg.) or more, operated by motor carriers engaged in interstate commerce (39 FR 38208). On September 12, 1975, the FHWA issued a final rule specifying the measurement methodologies for determining whether commercial motor vehicles conform to these noise emission standards (40 FR 42432).

Revised Noise Standards

On January 8, 1986 the EPA amended its rules by establishing revised standards for external noise emissions for motor carriers engaged in interstate commerce (51 FR 850). The noise limits under 40 CFR part 202, subpart B, have been reduced by 3 decibels (3dB)(A) for 1986 and later model year vehicles having a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These vehicles can be no louder than 83 dB(A) at speeds of 35 miles per hour (MPH) or less; 87 dB(A) at speeds above 35 MPH; and 85 dB(A) when the vehicle is accelerated to maximum engine speed with the vehicle stationary. Accordingly, 49 CFR part 325 is being amended so that the prescribed noise levels correspond with those of the EPA.

Salt Lake County, Utah, Petition

On December 11, 1975, Salt Lake County, Utah, petitioned the United States Court of Appeals for the District of Columbia Circuit, for a review of a number of technical points contained in the noise standards promulgated by the FHWA. As part of the settlement of the case, the FHWA published a Notice of Proposed Rulemaking (NPRM) on April 3, 1980, concerning Salt Lake County's request to: (1) reduce the minimum measurement distance specified in 49 CFR 325.7 from 35 feet to 31 feet, and (2) reconsider the application of a 2dB(A) correction factor at acoustically hard sites as specified in 49 CFR 325.7(a) (45 FR 22120). Section 325.5 of the FMCSRs defines "hard test site" as any test site having the ground surface covered with concrete, asphalt, packed dirt, gravel or similar reflective material for more than ½ the distance between the microphone target point and the microphone location point.

Measurement distance of 31 feet. This issue deals with the minimum allowable distance from the centerline of the lane of travel to the microphone location point which is permissible for measuring noise. The present requirements specify a minumum 35-foot distance with the standard distance being 50 feet. Salt Lake County, Utah, petitioned to have the minimum distance reduced to 31 feet. Its request was based on the premise that the number of enforcement sites, and therefore overall enforcement levels, would increase significantly with the availability of sites having shorter vehicle-to-microphone distances.

Discussion of Comments

Eight comments were received in response to the NPRM, seven of which responded to the proposal to reduce measurement distance. Comments were received from the American Trucking Associations, Inc. (ATA), the Ford Motor Company, General Motors Corporation, Mack Trucks, Inc., and four State governmental agencies. Two of the three truck manufacturers did not agree with Salt Lake County's contention that the minimum measurement distance could be reduced to 31 feet without a loss of accuracy. A third manufacturer did not oppose the proposal assuming an appropriate correction factor would be added to the readings at that distance. An additional 1dB(A) allowance was suggested. This viewpoint was essentially identical to that of the ATA.

The State agencies commenting on this subject either expressed no viewpoint or supported the motion that allowance for closer measuring distances would be desirable. One of these agencies submitted data supporting its view. The New York Department of Environmental Conservation (NYDEC) made simultaneous measurements at 33 feet and 50 feet at a soft site on an unspecified number of vehicles. Section 325.5 of the FMCSRs defines "Soft test site" as any test site having the ground surface covered with grass, other ground cover, or similar absorptive material for ½ or more of the distance between the microphone target point and the microphone location point. The NYDEC found the average difference between the readings to be 3.4d(A), thus supporting the idea that for distances down to 31 feet a 4dB(A) correction factor (1dB(A) more than is required at distances down to 35 feet) is appropriate.

Noise Research. The EPA noise emission standards are based on measurements made at 50 feet from the centerline of the lane of vehicle travel. Allowances for measurements made at other distances were included to facilitate enforcement activities. These allowances were made with the understanding that, with the addition of appropriate correction factors, measurements made at these alternate sites could be made to yield equivalent results to those which would have been recorded had the measurement been made at the standard 50-foot location.

Based on data available at the time (notably "Research on Highway Noise Measurement Sites"),[1] the technical judgment was made by the FHWA in 1975 that the possibility of error exists at measurement distances less than 35 feet and measurements equivalent to the standard could not be ensured. Therefore, it was decided to limit the measurement distance to a minimum of 35 feet.

"Research on Highway Noise Measurement Sites" recommends that a 6dB(A) correction factor be added to any measurements made at a distance of 31 feet.[2] This overall 6dB(A) correction factor appears to take into account both distance and ground surface effects (i.e., 4dB(A) for distance, 2dB(A) for ground surface). The study also recommends that for all measuring distances below 35 feet, the measurement should be taken from the nearest side of the vehicle, and not from the centerline of the lane of vehicle travel.[2]

[1] Footnotes appear at the end of article.

A study by E.J. Rickley and R.W. Quinn provides data on vehicle-to-microphone distances down to the 31-foot range in question.[4] It supports the observation that if a 4dB(A) correction factor is added at a standard soft site, results essentially equivalent to a 50-foot measurement can be obtained. It should be noted that as a practical matter, measurements made at this distance will almost always be at acoustically hard sites.

The FHWA agrees that reducing the minimum allowable distance to 31 feet will increase enforcement flexibility. Accordingly, the FHWA is modifying 49 CFR 325.7, Allowable Noise Levels, and 325.73, Microphone Distance Correction Factors, to allow measurements to be made at vehicle-to-microphone distances of 31 feet. The FHWA is including appropriate correction factors for this distance, based on docket comments and research findings discussed above.

Hard Site Correction Factor

The NPRM of April 3, 1980 (45 FR 22120) proposed to eliminate the 2dB(A) correction factor for measurements made at acoustically hard sites.

Comments received on the need or lack of need for the 2dB(A) correction factor were varied. In general, the State noise enforcement agencies suggested the correction factor was not necessary, while the truck manufacturers and the ATA contended it was necessary. The Illinois EPA submitted research showing a 1.17 dB(A) difference between measurements made at hard and soft sites.[5] However, a closer review of the data indicates that if the data is weighted on a per vehicle basis as opposed to a per site basis, the average difference becomes 1.45dB(A).

"Research on Highway Noise Measurement Sites" and similar studies[6, 7] affirm the validity of the 2dB(A) correction factor for field enforcement purposes. Variations were found, however, primarily as a function of degree of site "hardness" and the type of vehicle operation being measured. These differences do not appear to weaken the argument that the 2dB(A) correction factor is workable and equitable.

These variations demonstrate the importance of the enforcement official's selection of the measurement site. In performing highway operations testing, attempts should be made to use the standard 50-foot soft site. If this is not possible and a hard test site is chosen, research indicates that the correction factor is best applied at sites that are predominantly hard, i.e., at least 66.6 percent of the site is made up of reflective material.

The EPA published a final rule prescribing noise emission standards for motor vehicles operating in interstate commerce on October 29, 1974 (39 FR 38208). The EPA addressed the issue of correction factors in the preamble to that rule:

> The standards are defined with sufficient particularity that their stringency is established for all practical purposes. EPA anticipates that the compliance regulations of the Department of Transportation will include a measurement methodology which contains correction factors for variation in site conditions. Such correction factors would make practical enforcement feasible at more sites and would thereby enhance the effect of the noise standards [39 FR 38211].

It is therefore clear that elimination of the 2dB(A) correction factor would amount to a change in the noise emission standard itself. The correction factor is essential to the accurate implementation of the standard.

Accordingly, the FHWA has determined that the ground surface correction factor prescribed in 49 CFR Section 325.75 will be retained.

Form MCS-63, Driver Equipment Compliance Check, is the inspection form specified in § 325.13(c) for recording noise emission findings. In August 1976, the FHWA adopted a new reporting form—Noise Level Compliance Check, Form MCS-141. This change facilitates the use of sites for noise emissions testing which may not be compatible with the site requirements for vehicle safety inspections. Accordingly, § 325.13 (c) and (d) are being amended to show the new form which is used for recording noise emissions only.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. All amendments contained in this final rule have been the subject of an NPRM issued either by FHWA or EPA.

The economic impact, if any, anticipated as a result of this rulemaking action will be minimal. Accordingly, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action does not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Footnotes

[1] Ben H. Sharp, "Research on Highway Noise Measurement Sites". Wyle Laboratories, El Segundo, California (for California Highway Patrol), WCR 72-1, March, 1972, p. 49.
[2] *Ibid.*, p. 16.
[3] *Ibid.*, p. 48.
[4] E.J. Rickley and R.W. Quinn, "An Investigation of Site Effects on Roadside Measurement of Truck Noise." Transportation Systems Center, Cambridge, Massachusetts (for the U.S. Department of Transportation), DOT-TSC-OST-76-6, January, 1977.
[5] Robert D. Hellweg, Jr., "The Effect of Ground Cover on Truck Passby A-Weighted Sound Level Measurements". Division of Land/Noise Pollution Control, Illinois Environmental Protection Agency, Springfield, Illinois, DNLPC TR N80-1, July, 1980, p. 12.
[6] Donald B. Pies, "Assessment of Ground Surface Corrections for Motor Vehicle Noise Measurements." Wyle Research, El Segundo, California (for U.S. Environmental Protection Agency), WCR 77-9, February, 1977, p. 1-2.
[7] Rickley, op. cit., p. 19.

List of Subjects in 49 CFR Part 325

Highways and roads, Motor carriers, Motor vehicle safety, Noise control.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

Issued on: November 29, 1989.

T.D. Larson,
Administrator.

In consideration of the foregoing, title 49, Code of Federal Regulations, chapter III, part 325, is amended as follows:

PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

1. The authority citation for part 325 continues to read as follows:

Authority: Sec. 18, 86 Stat. 1234, 1249-1250 (42 U.S.C. 4917).

§ 325.7 [Amended]

2. Table 1, in § 325.7, is revised to read as follows:

§ 325.7 Allowable noise levels.

TABLE 1.—MAXIMUM PERMISSIBLE SOUND LEVEL READINGS (Decibel (A)) [1, 2]

	Highway operation test				Stationary tests	
	Soft site		Hard Site			
	35 mi/h or less	Above 35 mi/h	35 mi/h or less	Above 35 mi/h	Soft site	Hard site
If the distance between the microphone location point and the microphone target point is—						
31 ft (9.5m) or more but less than 35 ft (10.7m)	87	91	89	93	89	91
35 ft (10.7m) or more but less than 39 ft (11.9m)	86	90	88	92	88	90
39 ft (11.9m) or more but less than 43 ft (13.1m)	85	89	87	91	87	89
43 ft (13.1m) or more but less than 48 ft (14.6m)	84	88	86	90	86	88
48 ft (14.6m) or more but less than 58 ft (17.1m)	83	87	85	89	85	87
58 ft (17.1m) or more but less than 70 ft (21.3m)	82	86	84	88	84	86
70 ft (21.3m) or more but less than 83 ft (25.3m)	81	85	83	87	83	85

[1] The speeds shown refer to measurements taken at sites having speed limits as indicated. These speed limits do not necessarily have to be posted.
[2] This table is based on motor carrier noise emission requirements specified in 40 CFR 202.20 and 40 CFR 202.21.

§ 325.13 [Amended]

3. Section 325.13 is amended by replacing the words "MCS-63" with "MCS-141" throughout the section, and replacing the words "Driver-Equipment Compliance Check" with "Noise Level Compliance Check" throughout the section.

§ 325.33 [Amended]

4. Section 325.33, paragraph (a), is amended by replacing the words "35 feet (10.7n)" with "31 feet (9.5m)."

5. Section 325.53, paragraph (a)(1), is amended by replacing the words "35 feet (10.7m)" with "31 feet (9.5m)."

§ 325.73 [Amended]

6. Section 325.73 is amended by adding to Table 2 the following entry to appear as a new first entry:

§ 325.73 Microphone distance correction factors.[1]

* * * * *

Table 2.—Distance correction factors

If the distance between the microphone location point and the microphone target point is—	The value dB(A) to be applied to the observed sound level reading is—
31 feet (9.5m) or more but less than 35 feet (10.7m).	—4.

* * * * *

[FR Doc. 89-28405 Filed 12-5-89; 8:45 am]
BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 55 (Sub-No. 79)]

Delegation of Authority Where Subsidies Established Under 49 U.S.C. 10905 are Discontinued

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule, at 49 CFR 1011.8(c)(8), that delegates authority to the Director of the Office of Proceedings to issue decisions, after 60 days' notice by any person discontinuing subsidies established under 49 U.S.C. 10905 and at the railroad's request: (1) In application proceedings, immediately issuing certificates of abandonment or discontinuance; and (2) in exemption proceedings, immediately vacating the decision that postponed the effective date of either a notice of exemption or a decision granting an exemption. The amended rule is set forth below.

EFFECTIVE DATE: December 6 1989.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon (202) 275-7615 (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Any person may offer to pay a subsidy to the rail carrier proposing to abandon or discontinue all or part of a railroad line. 49 U.S.C. 10905(c). Any subsidy so provided may be discontinued on 60 days' notice. Unless, within such period, another financially responsible person enters into a subsidy agreement at least as beneficial to the carrier as that which is to be discontinued, the Commission is required, at the carrier's request: (1) In application proceedings, immediately to issue a certificate authorizing the abandonment or discontinuance of service on the line (49 U.S.C. 10905(f)(5)); or (2) in exemption proceedings, to issue a decision vacating the decision that postponed the effective date of either the notice of exemption or the decision granting the exemption (49 CFR 1152.27(j)(2)).

The Commission has decided, for administrative efficiency, to delegate authority to the Director of the Office of Proceedings to issue such decisions, which will become the final action of the Commission. If a decision is appealed, however, the matter will be reconsidered by the entire Commission.

This action involves a minor revision to 49 CFR Part 1011, specifically the addition of a new subsection to the delegations of authority to the Office of Proceedings appearing at 49 CFR 1011.8(c). This rule change, however, does not require public notice and opportunity for comment before implementation. Under 5 U.S.C. 553(b)(A), rules of agency procedure or practice are expressly exempted from the notice and comment requirements of the Administrative Procedure Act. The delegation of authority noticed here involves only Commission processing methods and does not adversely affect any party's rights.

Environmental and Energy Considerations

We conclude that the delegation of authority noticed here will not

significantly affect either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

We certify that the delegation of authority noticed here will not have a significant effect on a substantial number of small entities. Because the delegation is made for administrative efficiency, our action should indirectly benefit small entities.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority delegations.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10305 and 10321.

Decided: November 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley concurred in the result. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1011 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, and 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.8 is amended by adding a new paragraph (c)(8) to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(8) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10905 and at the railroad's request: (i) in application proceedings, immediately issuing certificates of abandonment or discontinuance; and (ii) in exemption proceedings, immediately vacating the decision that postponed the effective date of either the notice of exemption or the decision granting the exemption.

* * * * *

[FR Doc. 89-28501 Filed 12-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 620, 672, and 675

[Docket No. 90899-9253]

RIN 0648-AC72

Foreign Fishing; General Provisions for Domestic Fisheries; Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 13 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 18 to the FMP for Groundfish of the Gulf of Alaska (GOA). Regulations implement the following measures specific to both Amendments 13 and 18: (1) Specific seasons are deleted from the FMPs and all future seasons changes will be established by regulatory amendment; (2) a comprehensive data collection program is approved, which consists of augmented recordkeeping and reporting requirements and a mandatory observer program; and (3) the Secretary's authority to separate or combine species within the target species category is clarified. Regulations specific to Amendment 13: (1) areas in the vicinity of the Walrus Islands are closed to fishing for groundfish, and (2) fixed percentages of the allowable harvest amount of sablefish are allocated to trawl gear and fixed gear. Regulations specific to Amendment 18: (1) Shelikof Strait is established as a management district for purposes of managing pollock; (2) areas around Kodiak Island are closed to bottom trawl gear; and (3) Pacific halibut prohibited species catch limits for fixed gear and trawl gear are established for one year. This action is necessary to promote management and conservation of groundfish and other fish resources. It is intended to further the goals and objectives contained in both FMPs that govern these fisheries.

EFFECTIVE DATE: January 1, 1990; except § 672.24(c)(1)–(c)(5) which are effective from January 1, 1990, through December 31, 1992; § 672.20(f)(2) is suspended from January 1, 1990, through December 31, 1990; and § 672.20(f)(3)(i) and (f)(3)(ii) which are effective January 1, 1990, through December 31, 1990.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809). Copies of a publication describing derivations of standard product recovery rates may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg or Susan J. Salveson (Fishery Management Biologists, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR parts 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

The Council approved for review by the Secretary of Commerce (Secretary) under Section 304(b) of the Magnuson Act the parts of Amendments 13 and 18 that are listed in the above summary. The official receipt date for Secretarial review of these amendments was July 29, 1989. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove FMPs or FMP amendments before the close of the 95th day following the receipt date. Following receipt of Amendments 13 and 18, the Secretary immediately commenced a review of the amendments to determine whether they were consistent with the provisions of the Magnuson Act and any other applicable law. A Notice of Availability of the amendments was published in the Federal Register (54 FR 31861, August 2, 1989). It invited review of, and comment on, the amendments until September 27, 1989. A proposed rule was filed with the Office of the Federal Register on August 28, 1989, and published on September 1, 1989 (54 FR 36333). It invited comments until October 12, 1989. The final rule implementing Amendments 13 and 18 takes comments received into account. Comments received are summarized and responded to below (see Public Comments Received).

The preamble to the proposed rule described and presented the reasons for each measure contained in the amendments. The Secretary has reviewed each measure and the reasons for it. During his review, the Secretary has considered comments received from the public, fishing associations, and interested agencies. He has determined that each measure is consistent with the Magnuson Act and other applicable law. He has approved Amendments 13 and 18 as authorized under Section 304 of the Magnuson Act.

The following is a summary from the proposed rule of what each measure requires or accomplishes:

(1) Fishing seasons are deleted from the FMPs but are retained in regulations implementing the FMPs. Future season changes will be proposed as a regulatory amendment and implemented by the Secretary in consultation with the Council. Since the Secretary must consider whether a regulatory amendment is consistent with the Magnuson Act and other applicable law, appropriate analyses will accompany future regulatory amendments.

(2) New recordkeeping and reporting requirements are established to allow the collection of adequate and reliable fishery data. Under the recordkeeping requirements, each catcher/processor, mothership processor, and shoreside processor utilizing groundfish harvested off Alaska must maintain a daily cumulative production log (DCPL); each vessel 5 net tons and larger that harvests groundfish off Alaska must maintain a daily fishing log (DFL); and each shoreside processor is required to maintain a product transfer log similar to that currently required of at-sea processors.

Under the reporting requirements, each processor that is required to maintain a product transfer log must submit to NMFS on a weekly basis copies of the transfer log entries for each week in which transfers occurred. Each catcher/processor vessel, mothership processor vessel, and shoreside processing facility must submit a weekly production report in product weight. Each processor and catcher vessel required to maintain a DCPL and/or DFL must submit on a quarterly basis to NMFS a copy of the DCPL and/or DFL records. Each processor (i.e., at-sea and shoreside) or its parent company is required to submit annually a monthly product value report that summarizes sales in quantity and value by species and product form.

(3) A mandatory observer program is authorized. This program requires vessels and shoreside processing facilities to accommodate an observer under provisions set forth under an Observer Plan. At the time the regulations were proposed, the Observer Plan, which provided details of the observer program was still being developed. NMFS has now prepared the Observer Plan. It describes the responsibilities that will be imposed on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS contractors who will provide observers. Minimal qualifications of observers are also stated in the Observer Plan. Specific provisions of the Observer Plan will be published in the Federal Register as a separate rulemaking.

(4) Current authority in the BSAI and GOA FMPs and implementing regulations is clarified to indicate that the Secretary is able to split or combine species within the target species category for purposes of managing larger or smaller stock components.

(5) Portions of the Bering Sea subarea between three and twelve miles from islands named "The Twins" and "Round Island," and from Cape Pierce, are closed to fishing for groundfish from April 1 through September 30 of 1990 and 1991 for purposes of protecting walrus haulout areas.

(6) Respective sablefish total allowable catches (TACs) in the Bering Sea and Aleutian Island subareas are allocated to users of trawl gear and fixed gear in the following proportions:

Bering Sea subarea: trawl gear—50 percent and fixed gear—50 percent; and

Aleutian Islands subarea: trawl gear—25 percent and fixed gear—75 percent.

TACs for each gear type will be monitored independently of the other. Fisheries conducted by the two gear types will then be closed separately, which will prevent one gear type from harvesting amounts of sablefish that the other gear type might have depended upon.

(7) An area known as Shelikof Strait in the Gulf of Alaska and presently part of the Central Regulatory Area is established as a regulatory district for purposes of managing harvests of pollock. Coordinates defining the new Shelikof Strait district are listed at § 672.2 of this rulemaking.

(8) For purposes of protecting king crab, closures affecting Type I and Type II areas of the EEZ around Kodiak Island are in effect from January 1, 1990 through December 31, 1992. Type I areas are closed to bottom trawling year-round. Type II areas are closed to bottom trawling from February 15 through June 15. Either of these two types of areas could be expanded by a third type of closed area, referred to as a "Type III" area, to accommodate positive changes in king crab stocks. Implementation of a Type III area would be accomplished by proposed and final rulemaking.

(9) Regulations are promulgated to provide the Secretary authority to establish separate halibut prohibited species catch (PSC) limits in the Gulf of Alaska for fixed gear and trawl gear. For the 1990 fishing year only, PSC limits for fixed and trawl gear are 750 metric tons and 2,000 metric tons, respectively.

The preamble of the proposed rule indicated that the availability of the product recovery rates would be announced by a notice in the Federal Register. Those rates are now available and such a notice is not necessary. The product recovery rates are available from the address indicated above.

Changes From the Proposed Rule in the Final Rule

1. *Recordkeeping and Reporting Requirements.* The final rule reflects numerous editorial changes that resolve minor ambiguities within the proposed rule. More substantive changes are discussed below.

(a) The final rule reflects the following additions and revisions to the definitions set forth in §§ 672.2 and 675.2. These changes help resolve unclear language within the proposed rule and facilitate compliance with recordkeeping and reporting requirements under §§ 672.5 and 675.5:

(i) The definition of "reporting area" is revised in the final rule. A reporting area differs from a statistical area in two respects. First, it includes state waters and second, unlike some statistical areas, each reporting area is distinct without any overlapping reporting areas. The final rule adds language to make sure each reporting area is distinct. The only other change notes that the statistical area number or numbers may be used to describe a reporting area.

(ii) A definition for "fish product weight" is included in the final rule, and replaces related language in the proposed rule. "Fish product weight" is the weight of a fish product based on the number of production units, such as cartons, and the weight of those units. "Fish product weight" does not include packaging but may include water and other additives reported to NMFS; NMFS may use these weights to calculate net weight, allowing up to 5 percent for water, and to calculate round weight equivalents. The standard product recovery rates that will be used by NMFS to calculate round weight

equivalents may be obtained from the Regional Director at the address above.

(iii) Definitions are added for "day," "quarter," and "weekly reporting period" and for "vessel" and "processor vessel."

(b) In §§ 672.5(a) and 675.5(a) of the final rule, the general requirements, applicability, and related provisions are reorganized and revised to clarify that requirements for timeliness, accuracy, use of the English language, and availability for inspection apply to all records and reports and not only to logbooks. A requirement that these records, reports, and logbooks be maintained in a legible manner is added.

(c) Sections 672.5(b)(2)(iii) and 675.5(b)(2)(iii) of the proposed rule required that most daily catch information be recorded by noon of the day following the catch although some information must be recorded within two hours. Sections 672.5(b)(2)(iv) and 675.5(b)(2)(iv) of the final rule are revised to specify that these entries must be recorded prior to a delivery even if the delivery or off-loading occurs prior to the expiration of these time limits.

(d) Sections 672.5(b)(3)(ii)(A)(*7*) and 675.5 (b)(3)(ii)(A)(*7*) of the proposed rule required information on crew size or employee number to be reported on the daily cumulative production logbook. The forms and the preamble of the proposed rule suggested that additional information about the number of the crew involved in processing, fishing, and other activities could be required. The material submitted under the Paperwork Reduction Act (PRA) for the proposed rule assumed this additional information was required. Sections 672.5(b)(3)(ii)(A)(*8*) and 675.5 (b)(3)(ii)(A)(*8*) of the final rule adds these requirements.

(e) Sections 672.5(b)(2)(ii)(B)(*11*), 672.5(b)(3)(ii)(B)(*1*)(*vii*), 675.5(b)(2)(ii)(B)(*11*), and 675.5 (b)(3)(ii)(B)(*1*)(*vii*) of the proposed rule attempted to consolidate recordkeeping requirements under a proposed marine mammal logbook program and the Alaska groundfish logbook program to relieve the recordkeeping burden on operators of fishing and processing vessels. The final rule eliminates reference to the marine mammal logbook program and associated recordkeeping requirements, because the final rule for the marine mammal logbook program would necessitate redundant recordkeeping in the groundfish logbook program, and the recordkeeping burden on vessel operators would not be reduced. The NMFS intends to pursue the consolidation of recordkeeping requirements under the Marine Mammal Protection Act and the Magnuson Act in the future with the aim of reducing recordkeeping and reporting burdens on the Alaska groundfish industry.

(f) Sections 672.5(c)(3)(iii) and 675.5(c)(3)(iii) of the final rule revise the annual submission date of the Alaska Groundfish Processor Monthly Product Value Report from March 1 to February 1. This change was made to obtain more timely submission of product value information recorded during the previous year.

(g) Sections 672.5(c)(1)(ii) and 675.5(c)(1)(ii) of the proposed rule made some minor changes to processor vessel requirements to submit check-in reports. Sections 672.5(c)(1) and 675.5(c)(1) of the final rule provide more detail on the check-in/check-out notices although changes are not substantive.

(h) Sections 672.5(c)(1)(i) and 675.5(c)(1)(i) of the proposed rule addressed requirements for the submission of Alaska State fish tickets. The final rule eliminates this requirement, although vessels and groundfish processors registered under the laws of the State of Alaska will need to comply with State fish ticket requirements under Alaska State statutes. Federal groundfish managers have full access to information collected on Alaska State fish tickets without accompanying Federal regulations requiring that fish tickets be submitted. Therefore, Federal regulations for submission of Alaska State fish tickets are viewed as redundant to similar Alaska State regulations and are removed from Sections 672.5 and 675.5 of the final rule. The NOAA does not intend by this action to preempt application of Alaska State fish ticket regulations and statutes to groundfish fisheries in the EEZ off Alaska.

2. *Pacific Halibut Prohibited Species Catch Limits.* Paragraph (f) in § 672.20 is changed by revising paragraph (f)(1) to indicate the apportionment of halibut PSC between trawl and longline gear. The proposed rule had used paragraph (f)(3) to accomplish this, which resulted in language that was redundant to paragraph (f)(1).

The Regional Director has determined that continuing the apportionment of halibut PSC between trawl and longline gear is superior to letting it lapse on December 31, 1990, and is consistent with the Magnuson Act and other applicable law. The Regional Director made this determination because (1) the GOA FMP authorizes halibut PSC limits to be apportioned among gear types, (2) the Council has requested that a regulatory amendment be implemented to accomplish this apportionment, and (3) this measure is analyzed in the draft EA/RIR prepared for the draft Amendment 18.

3. *Trawl closures in the Gulf of Alaska.* In section 672.24 of the proposed rule, paragraph (c)(3) is deleted. This paragraph described trawl closures (Type III areas) in the Kodiak Island area that may be implemented by regulatory amendment, pending a "significant recruitment event" within the local red king crab population. A description of the Type III areas is found in the GOA FMP, as are the criteria that will be used to define a recruitment event. Under provisions set forth in the FMP, the Type III trawl closures will be specified in section 672.24 by regulatory amendment when the occurrence of a recruitment event necessitates the implementation of Type III area trawl closures to further protect red king crab.

4. *Sablefish allocation.* Paragraph (c) in § 675.24 is added to authorize the Regional Director to close directed sablefish fishing by an authorized gear type prior to its harvesting its full share of the sablefish TAC. This change is necessary to provide retainable bycatch amounts of sablefish to support other target fisheries by the affected gear types.

Public Comments Received

Twenty-eight letters of comments were received from fishing associations, individual fishermen, and State and Federal agencies by the end of the comment period. One letter commented generally about the adequacy of procedures followed during the rulemaking process with respect to the Magnuson Act. With respect to the measure allocating sablefish between trawl gear and fixed gear in the Bering Sea and Aleutian Islands management area, twenty letters, including those from five associations that represent fixed gear interests, commented favorably on the measure. One letter from an association representing trawl interests commented that the proposed allocation of sablefish between fixed gear and trawl gear violates national standards 1, 4, 5, and 6, and that the status quo should be maintained. With respect to the measure that would establish an area closure to protect walrus, one letter commented favorably on the measure, and one letter from an association representing trawl interests commented that the status quo should be maintained. With respect to the measure for recordkeeping and reporting requirements, four letters commented favorably on the measure. With respect to the measure that would establish fixed prohibited species catch limits for Pacific halibut in the Gulf of Alaska, one letter commented that the status quo should be maintained.

Although further comments will be invited in separate rulemaking on provisions pertaining to the Observer Plan, proposed rulemaking for Amendments 13 and 18 had requested comments on the observer program. With respect to the observer program, seven letters commented favorably on the measure, albeit one letter stated that the level of observer coverage should be less than that adopted by the Council, and also questioned whether any domestic program is authorized under the Magnuson Act.

Issues and concerns raised by these comments are summarized and responded to below.

Comment 1: The procedure used for rulemaking is inappropriate and not in compliance with the Magnuson Act, because the Council did not provide to the public any draft fishery management plan language or regulations for public review.

Response: Although provision for public review of draft FMP language and regulations for each alternative considered by the Council would be desirable, such provision usually is not practicable, given the many alternatives that are often proposed to solve a fishery management problem. Once the Council determines tentatively a preferred alternative for a particular measure, it directs Council staff to prepare FMP language and regulations, which then are before the Council when it makes its final recommendation.

Comment 2: The measure to allocate sablefish between trawl and fixed gear in the Bering Sea and Aleutian Islands management area is necessary to promote stability in the sablefish fishery.

Response: The Regional Director concurs and has approved this measure.

Comment 3: Allocating sablefish between trawl and fixed gear for both the Bering Sea and Aleutian Islands management subareas violates national standard 1, because allocating available amounts of sablefish between gear types might result in insufficient amounts of bycatch to support trawl fisheries, which might cause premature closure of target fisheries or treatment of sablefish as prohibited species. These respective options would cause underharvesting of other species or overfishing of sablefish.

Response: The Regional Director finds that this measure would not necessarily result in premature closure of the sablefish target fishery nor treatment of sablefish as a prohibited species by fixed or trawl gear. As a result of this final rulemaking, the Regional Director may prohibit directed fishing for sablefish by either fixed or trawl gear before the sablefish allocation to that gear share is reached in order to provide retainable bycatch amounts to support other target fisheries. This action would minimize treatment of sablefish as a prohibited species, and reduce the possibility of overharvesting sablefish.

On the other hand, if either or both gear shares were reached, further catches of sablefish by either or both gear types would be treated as a prohibited species and discarded at sea. Additional fishing mortality resulting from such treatment would not be expected to cause overfishing, because in most other groundfish target fisheries sablefish bycatches are very small. For example, in the Bering Sea subarea, sablefish bycatches are only one percent or less of the catch of the pollock, flatfish, and Pacific cod, in the aggregate. In 1989 to date, trawl gear caught about 480 metric tons of sablefish in the Bering Subarea while catching about 853,000 metric tons of other groundfish species, which represents a very small bycatch rate. In the Aleutian Islands subarea, sablefish bycatches are also small. Again in 1989 to date, trawl gear caught about 670 metric tons of sablefish while catching about 19,000 metric tons of other groundfish species, which represents only a 4 percent bycatch rate.

Sablefish bycatches are small, because sablefish occur mostly in deep water and are not caught except in small amounts during operations that harvest shallow water groundfish species such as flounder, Pacific cod, and pollock. Only in the deep water fisheries for rockfish species and Greenland turbot are larger bycatches of sablefish likely. Sablefish bycatches may approach 10 percent of the aggregate catch of rockfish and turbot, although actual bycatch rates are often smaller. If sablefish were a prohibited species when taken incidentally in rockfish and Greenland turbot fisheries, discard mortality could be further minimized. For example, fishermen are able to shift fishing areas to reduce sablefish bycatches while fishing for rockfish and Greenland turbot. Also, regulatory authority exists to implement time and area closures to reduce the sablefish bycatches, while still allowing for harvests of rockfish and Greenland turbot.

In some years sablefish stocks could decline to a level that would halt a directed fishery by a gear type early in the fishing year. The Regional Director would respond to such a decline, as necessary, to protect sablefish stocks. Because regulatory mechanisms exist to minimize sablefish bycatches while allowing for full harvests of other groundfish species, this measure should not result in overfishing sablefish stocks or cause underharvesting of other groundfish species. This measure, therefore, is consistent with National Standard 1.

Comment 4: Allocating sablefish between trawl and fixed gear in the Bering Sea and Aleutian Islands management area violates National Standard 4, because the measure to allocate sablefish between gear types (e.g., 75 percent and 25 percent to fixed and trawl gear, respectively, in the Aleutian Islands subarea) (1) is not fair or equitable, and (2) does not suggest any furthering of conservation objectives. It may, in fact, increase the likelihood of overfishing, particularly if sablefish allocations for bycatch are not adequate to prevent wastage of the sablefish resource, and if the mortality of sablefish from killer whale predation in the directed hook-and-line fishery continues not to be counted against the sablefish quota.

Response: The Regional Director finds that this measure is fair and equitable. As stated in the EA/RIR, by public testimony to the Council and, as indicated by NMFS catch data, this measure maintains the trend in sablefish catches that has developed in recent years. Fixed gear harvested most (about 90 percent) of the sablefish in the Aleutian Islands subarea and about half of the sablefish in the Bering Sea subarea during the years 1985 through 1988. Based on public testimony at its June 20–23, 1989 meeting, the Council accommodated additional trawl sablefish bycatch needs by increasing the trawl share of the sablefish quota from 10 percent to 25 percent. This difference was subtracted from the fixed gear share.

Nothing in this measure is designed to allocate excessive shares to any one entity. Although the share allocated to fixed gear in the Aleutian Islands subarea is larger than the trawl share, it is not excessive. On the contrary, the share allocated to fixed gear is less than amounts harvested by that gear in each of the last four years. In the Bering Sea subarea, the fifty percent split is roughly equivalent to amounts harvested by fixed gear during the last four years. Nor does the gear share allocation itself prohibit any future participant from fishing for sablefish with either gear type.

The Regional Director also finds that this measure is reasonably calculated to promote conservation. The Guidelines for Fishery Management Plans at 50 CFR

602.14 state that numerous methods for allocating fishing privileges are based on conservation measures, as well as management measures. An allocation measure may promote conservation by encouraging a more easily managed use of the fishery resource. Fixed gear includes hook-and-line gear and pot gear. Both types utilize determinable numbers of hooks or pots per set, which makes calculation of catches per units of effort more exact than when trawl gear is used. Better estimates of harvest rates promote more accurate projections of when quotas may be achieved. Better estimates of sablefish bycatch rates needed to support target fisheries by fixed and trawl gear for other groundfish species will also promote "single species management"; under this management system the Regional Director is able to curtail directed fishing by either gear type to retain enough of the respective gear share to support other target fisheries. For these reasons, this allocation measure promotes a more easily managed sablefish fishery, which is especially important when quotas are small. When multiple gear types target on a single, small quota, projecting when the quota might be reached is more difficult, increasing the risk of overharvesting a stock, which in turn could lead to overfishing. Thus, this measure will promote conservation by allowing management of total fishing mortality by year's end to equal directed and bycatch mortality by both gear types. Such enhanced management will reduce the risk of overfishing sablefish stocks.

Other factors to be considered are the social consequences of allocation, and the dependency on the fishery by present participants. Fixed gear fishermen have shown a high degree of dependence on the sablefish resource in the Aleutian Islands subarea, where sablefish constitutes most of the fixed gear catch. For example, through September 1989, fixed gear fishermen harvested a total of 3,100 metric tons of groundfish, of which 2,037 metric tons, or 66 percent, was sablefish. In contrast, trawl gear fishermen harvested a total of 19,182 metric tons of groundfish, of which 675 metric tons, or 4 percent, was sablefish.

Fixed gear fishermen are not able to fish in many areas in the Bering Sea/Aleutian Islands management area unless they compete with trawl gear. Fixed gear fishermen can deploy their gear in the Aleutian Islands subarea with less fear of ground preemptions by trawl gear. Although trawling is conducted in this area, it is not especially suitable for trawl gear, because the slopes are steeper and rockier compared to the smoother and flatter areas of the Bering Sea subarea. By securing fishing rights to sablefish in the Aleutian Islands subarea, fixed gear fishermen also achieve a more stable opportunity on which they can depend over the long term. This achievement promotes stability in the fixed gear fishery. As a result, those segments of the industry that depend on the fixed gear fishery, including vessel operators and crew, and the community/processor infrastructure that has developed to support the vessels, will continue to receive benefits that have resulted from the fixed gear fishery. Retaining the status quo would have imposed adverse social consequences on fixed gear fishermen if trawl gear were to dominate the sablefish fishery.

With respect to the comment referring to killer whale mortality in the hook-and-line fishery, the extent of that mortality is not known. The Secretary anticipates that domestic observer information will be collected on the wastage associated with this mortality and that this information will be considered during the annual establishment of sablefish TACs.

The Regional Director finds that this measure is fair and equitable, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the allocation privileges. He concludes that this measure is consistent with national standard 4.

Comment 5: Allocating sablefish between trawl and fixed gear in the Bering Sea and Aleutian Islands management area violates national standard 5, because the sablefish allocation measure fails to promote efficiency in the utilization of the sablefish resource, and because it has economic allocation as its sole purpose.

Response: As discussed in the response to comment #4, the sablefish allocation measure will promote conservation. Another purpose, however, is maintenance of the socioeconomic stability of the sablefish fixed gear users who have depended on sablefish during the past four years. Sablefish constituted 66 percent of the total groundfish catch in 1989 by fishermen using fixed gear, compared to trawl fishermen whose sablefish catch amounted to just 4 percent of their total groundfish catch in the Aleutian Islands subarea. Written and oral testimony to the Council from fixed gear fishermen and their representatives focused on the likelihood of trawl vessels preempting sablefish harvests that would have been caught by fixed gear. The catching capacity of trawl vessels is so large that the sablefish quota in both the Bering Sea and Aleutian Islands subareas could be fully harvested. As quotas for other groundfish species that are largely harvested only by trawl gear become exhausted earlier in the fishing year, operators of trawl vessels may be tempted to fish for sablefish in areas currently utilized by fixed gear vessels.

Fixed gear fishermen would have only limited options for fishing in the Bering Sea and Aleutian Islands subareas if they do not have sablefish as a target species. Those options include fishing for Pacific cod. But, because fisherman operating trawl vessels that have huge harvesting capacity also target on Pacific cod, fixed gear fishermen would not be expected to be able to depend on that resource over the long term. A similar action was taken by the Council in Amendment 14 to the GOA FMP which allocated 80 percent of the sablefish quota to hook-and-line gear. The Council's action allocates a high enough proportion to fixed gear fishermen in the Bering Sea and Aleutian Islands subarea to give them a viable, dependable fishery while also allowing trawl fishing for sablefish to continue at roughly historical levels. This action promotes stability in the fixed gear fishery and prevents the adverse social consequences on fixed gear fishermen that would occur if trawl gear were to dominate the sablefish fishery.

Another purpose satisfied by this measure is greater efficiency in managing the sablefish fishery by NMFS. The Guidelines for Fishery Management Plans at 50 CFR 602.14 state that management regimes that allow a fishery to operate at the lowest possible cost (e.g., in terms of fishing effort and administration) for a particular catch level are considered efficient. With respect to this measure, the potential to better manage the sablefish fishery is realized as relationships between amounts of fixed gear and the amount of sablefish allocation become known. Better estimates of sablefish bycatch rates needed to support target fisheries by fixed and trawl gear for other groundfish species will also promote "single species management", because amounts of sablefish that ought to be retained as bycatch will be easier to determine.

When more than one gear type is targeting on a single quota, the fishery is more difficult to manage, because the amounts of quota that either gear type might harvest is usually not known in advance of the fishery. Different gear types might harvest an unexpected amount of an available quota in any one year in proportions that are different from a preceding year.

More efficient management of the fishery is promoted when a quota is allocated to separate gear types. The status quo alternative would have retained a mixed gear fishery of uncertain proportions, thereby maintaining higher administrative costs than would this measure. The Secretary finds that this measure is entirely consistent with national standard 5.

Comment 6: Allocating sablefish between trawl and fixed gear in the Bering Sea and Aleutian Islands management area violates national standard 6, because the sablefish percentages would be arbitrarily fixed without consideration of, or allowances for, variations in (1) sablefish abundance or the abundance of other groundfish species, or (2) the gear mix necessary to harvest the groundfish resources.

Response: The Regional Director finds that the sablefish percentages take into consideration variations in sablefish abundance and the abundance of other groundfish species, as well as the gear mix necessary to harvest the groundfish resources. The Regional Director recognizes that in some years the sablefish stock may be too low to provide adequate bycatch for other directed fisheries. In the event of low sablefish stock status, other regulatory mechanisms, such as time/area closures, can be used to reduce bycatches of sablefish. As discussed above, the bycatch rate of sablefish in many of the other groundfish target fisheries is so low that relatively small amounts of sablefish are required for bycatch. Because the allocation percentages implemented by this measure approximate catch percentages during the past four years, and because other fisheries have been successfully prosecuted with these percentages, the Regional Director finds no significant conflicts. For these reasons, the Regional Director concludes that this measure is consistent with national standard 6.

Comment 7: Allocating sablefish between trawl and fixed gear in the Bering Sea and Aleutian Islands management area is inconsistent with (1) a purpose of the Magnuson Act, which is to foster development of the under-utilized groundfish resources off Alaska, and (2) the goals and objectives of the BSAI FMP, which include promotion of the "rational and optimal use" of the groundfish resources as a whole, and the orderly development of the domestic groundfish fisheries.

Response: The Regional Director finds that this measure will not conflict with the stated purpose of the Magnuson Act. Practically all the groundfish resources are being fully utilized. Because the sablefish bycatch requirements in most of the other groundfish target fisheries are so small, full achievement of other groundfish quotas ought to be realized. The Regional Director also finds that this measure is consistent with the goals and objectives of the BSAI FMP, because this measure preserves the status quo in the groundfish fisheries, which developed during the past four years. Allocating sablefish gear shares promotes orderly fishing; fixed gear users will have a certain amount of sablefish they can depend upon, without fear of preemption by trawl gear.

Comment 8: The Regional Director's approval of the observer program adopted by the Council requiring 100 percent observer coverage on domestic vessels equal to or greater than 125 feet is discriminatory, imposes costs that exceed the benefits in terms of accuracy achieved, and is not within the scope of the Magnuson Act.

Response: The availability of accurate and timely fishery data is critical to wise conservation and management of fishery resources. The quantity and quality of scientific information influence the establishment of maximum sustainable yield, optimum yield, quotas for target species, catch limits for prohibited species, and management unit composition. Accurate fishery data provide the primary foundation for allocative determinations, judgments of efficiency, adjustments for variations and contingencies and evaluation of costs and benefits.

Section 201(i) of the Magnuson Act requires that a U.S. observer be onboard each foreign fishing vessel while that vessel is engaged in fishing activities within the EEZ. Section 201(i)(3) of the Magnuson Act further states that the purpose of observers onboard foreign vessels is to carry out scientific, compliance monitoring, and other functions deemed necessary or appropriate to carry out the purposes of the Magnuson Act. With the elimination of foreign fishing in the Gulf of Alaska and the ongoing reduction of joint venture activity in the Bering Sea, the limited amount of fishery information collected by observers on foreign vessels is not adequate to conserve and manage the Alaskan groundfish fisheries.

The rapid development of the domestic groundfish fishery off Alaska and the contentious issues that have developed between various interest groups within the fishing industry creates an immediate need for the collection of adequate domestic observer information on which to base informed fishery management decisions. Secretarial approval of a mandatory observer program is based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. Secretarial authority for this action is found under Sections 303(a)(1) and 303(b)(8) of the Magnuson Act, which state:

> 303(a).—Any fishery management plan which is prepared by any Council, or by the Regional Director, with respect to any fishery, shall—(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—(A) necessary and appropriate for the conservation and management of the fishery; . . . [and]
>
> 303(b).—Any fishery management plan which is prepared by any Council, or by the Regional Director, with respect to any fishery may—. . .(8) prescribe measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

The Council's rationale for requiring 100 percent observer coverage on vessels 125 feet in length and longer was based on the fact that vessels of this size category harvest most of the groundfish. A full discussion on the necessity for this level of coverage will be presented in the proposed rulemaking that sets forth specific provisions of the Observer Plan that would implement the comprehensive observer program. Assuring that every vessel 125 feet in length and larger will have an observer onboard at all times, particularly during the start up period of the observer program, may be difficult. Deployment of well trained observers who will do an adequate job onboard vessels is a priority. The high standards required for domestic observers and NMFS' desire for a rational deployment scheme may restrict the number of observers that are available at the beginning of the 1990 fishing year. NMFS anticipates working with the industry to develop and refine the domestic Observer Plan to meet the needs of both fishery management agencies and the fishing industry.

Comment 9: The **Federal Register** notice of proposed rulemaking was inadequate to advise the public of the scope and impact of the proposed observer program. The Observer Plan should be published in the **Federal Register** for public comment and review

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before any decision on its approvability is made by the Regional Director.

Response: With respect to regulations implementing the observer program, the Council intended that regulations would reference an Observer Plan, which would have had the effect of regulations. The Regional Director determined that opportunity for public comment on aspects of the observer program would be more adequately provided if published as a separate rulemaking in the **Federal Register.** Therefore, a proposed rule will be published in the **Federal Register** that will request additional comments on this program and the provisions of the Observer Plan.

Comment 10: Observers ought to be placed on some catcher vessels delivering codends to motherships to record possible marine mammal interactions that may not result in actual entrapment in fishing nets.

Response: The number of qualified, trained natural resource observers available for deployment on domestic fishing vessels at the beginning of the 1990 fishing year will be limited. With regard to at-sea deployment, the most efficient use of observers is to place them at the point where first sorting of catch occurs. This scheme does not provide for observer coverage of vessels delivering unsorted codends to mothership processors. This policy is supported by the Marine Mammal Protection Act (MMPA) as amended by Pub. L. 100-711, which states that:

> The Regional Director shall not be required to place an observer on a vessel in a fishery if the Regional Director finds that . . . in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered.

Records of marine mammal interactions must be maintained by operators of catcher vessels and submitted annually to NMFS under rules implementing the MMPA at 50 CFR 229.6(c)(2). The NMFS will take appropriate enforcement action if information becomes available that these records are not being accurately maintained and submitted.

Comment 11: Information obtained by observers on board domestic fishing vessels is mandatory if conservation and management of the groundfish fisheries are to be achieved in accordance with the Magnuson Act.

Response: The Regional Director concurs and has accordingly authorized the comprehensive domestic observer program.

Comment 12: The Walrus Islands fishing closures affect only trawl activity, and are thus discriminatory and impose unnecessary inefficiencies to the Nation's fisheries by removing excellent yellowfin sole fishing grounds. Although this action is proposed as a means to protect walrus, any benefit to walrus cannot be realistically assessed because (A) this measure fails to prohibit all vessel activity within the closed areas; and (B) the State of Alaska has not acted in a complementary fashion to control hunting impacts on walrus populations or to adequately limit human intrusions onto Round Island.

Response: Under the Magnuson Act, the Council and the Secretary must avoid irreversible or long-term adverse effects on all elements of the marine environment, including marine mammals and all other marine species. The 1990-91 groundfish fishery closures between 3 and 12 miles from the Twin Islands, Round Island, and Cape Peirce is implemented to monitor the effect of groundfish operations on walrus in northern Bristol Bay. This measure is being taken as a result of circumstantial evidence that suggests the reduction in the number of walrus observed in this area during 1987 and 1988 may be related to the initiation of the yellowfin sole fishery in northern Bristol Bay. This premise is supported by additional evidence acquired by the U.S. Fish and Wildlife Service that associates the March 1989 closure of the yellowfin sole fishery in northern Bristol Bay with the first observed increase in the number of walrus on Round Island since the onset of that fishery in 1987.

The final rule prohibits all groundfish fishing by all gear types in the 3–12 mile "sanctuary" surrounding major walrus haulout sites in the Walrus Islands area. Although this measure preempts the yellowfin sole fishery from operating in the closed area, vessels should be able to adjust their operations to harvest the total allowable catch of yellowfin sole with little or no additional cost. As discussed in the EA/RIR/FRFA, groundfish vessels are still able to fish within northern Bristol Bay outside of the 12 mile closure where, based on 1986–88 joint venture observer data, estimates of CPUE for yellowfin sole are greater than or equal to the CPUE within the closed area. In addition, fishing for groundfish in this area may occur either before or after the closed period.

Although the State of Alaska has not instituted a prohibition of all vessel traffic within State waters surrounding major walrus haulout sites in the Walrus Islands area, it has initiated numerous restrictions in recent years to limit human disturbance to walrus in the Round Island area. In 1984, the State closed the area within 2 miles of Round Island to all vessels without a special use permit. This area was increased in 1989 to a 3-mile radius because of concern about acoustic disturbance from fishing vessels to walrus. As a matter of policy, the State does not issue special use permits to vessels used for fishing activity in this area. In addition to placing progressively more stringent limitations on access to Round Island by fishing and tourist vessels, the State has placed an overall limit of 30 visitors on the island at any one time, with no more than 15 visitors allowed to stay over night. Most access in recent years has been by boat, as opposed to sea planes, in an attempt to reduce noise around the Island. Furthermore, at the request of the State, the Federal Aeronautical Administration (FAA) recently issued a notice of airspace restriction within one-half mile of Round Island that prohibits overflights of less than 2,000 feet. The purpose of the FAA notice is to reduce disturbance due to planes associated with the herring fishery.

The yellowfin sole joint venture fishery has been the only groundfish fishery to operate in northern Bristol Bay. No shoreside processing of groundfish has occurred in this area and the Regional Director does not anticipate domestic groundfish fishing within State waters. The Regional Director will cooperate with the State to ensure that necessary action is taken if additional measures need to be implemented to protect walrus or to minimize human disturbance to the walrus environment in northern Bristol Bay.

Comment 13: Walrus populations are at very high levels in the Bering Sea. These population levels are impacting the walrus' food supply and producing natural relocations of the walrus population away from the Round Island area.

Response: Localized depletion of clams and other mollusks due to excessive predation by walrus could be a contributing factor to relocation movements of walrus from one foraging area to another. However, observations and preliminary studies by State of Alaska and U.S. Fish and Wildlife Service personnel suggest that environmental disturbances due to trawling activity in the northern Bristol Bay area may be more directly responsible for the fluctuating numbers of walrus observed in this area over the past three years. The U.S. Fish and Wildlife Service intends to monitor walrus in the Walrus Islands area over the next two years and may produce more conclusive evidence on the effect of various natural and man-made disturbances on walrus activity and local abundance levels.

Comment 14: With respect to the Walrus Islands closures, the NMFS should consider and seek clarification about (1) criteria to be used in determining if the closure has had its desired effect, (2) the range of research and monitoring studies needed to assess the effectiveness of the proposed closures, and (3) the potential benefits to the yellowfin sole fishery of preventing harvests of spawning yellowfin sole in Togiak Bay.

Response: The Regional Director concurs that a program should be in place to monitor and assess the effect of the Walrus Islands groundfish fishery closures on the walrus population in northern Bristol Bay. Because the intent of these closures is to reduce and assess the impact of groundfish operations on walrus habitat, NMFS does not intend to conduct a specific assessment on the impact of the closures on the yellowfin sole stock.

In 1989, the U.S. Fish and Wildlife Service conducted a preliminary study on the methodology and logistics that could be used in a program developed to assess the impact of trawl groundfish operations on the northern Bristol Bay walrus population. That agency will continue to be responsible for the monitoring of walrus in this area and gathering evidence on the impact of fishing operations on walrus that are using the Round Island, Twin Islands, and Cape Peirce haulout sites.

Comment 15: With respect to the measure for new recordkeeping and reporting requirements, the NMFS should review the proposed and alternative data reporting and observer programs pertinent to the 1988 amendments to the MMPA to ascertain consistency between the two reporting programs.

Response: As mentioned above in the discussion on changes from the proposed rule in the final rule, the groundfish logbook program, as approved by the Regional Director, does not attempt to consolidate recordkeeping and reporting requirements under the MMPA and the rules implementing the Alaska groundfish FMPs. NMFS intends to pursue the consolidation of recordkeeping requirements under the MMPA and the Magnuson Act in the future to reduce the recordkeeping burden on the Alaska groundfish industry. Any future consolidation of recordkeeping requirements programs will maintain consistency between the Alaskan groundfish and marine mammal logbook programs.

Comment 16: With respect to the measure for new recordkeeping and reporting requirements, maintenance of daily fishing and processing logs should be required of all catcher/processor vessels, not just those over 5 net tons. This change would eliminate the need to prove the size of a vessel and facilitate enforcement on the smaller vessels.

Response: All domestic vessels 5 net tons and larger are required to obtain a U.S. Coast Guard Documentation Number. This number and the vessel's net tonnage are required on Federal groundfish vessel permit applications. Operators of vessels less than 5 net tons are required to report their ADF&G vessel number and net tonnage on their Federal groundfish permit applications. Thus, federal enforcement officials could verify a vessel's reported tonnage through either the Coast Guard Documentation Number or through information on the vessel's Federal groundfish permit application.

Most of the Alaskan groundfish harvest takes place within the EEZ and few vessels smaller than 5 net tons fish for groundfish outside of State waters. These vessels harvest a minimal amount of groundfish relative to larger vessels, and the burden to small vessel operators to maintain groundfish logbooks is not warranted. This determination is also consistent with the purposes of the Regulatory Flexibility Act.

Comment 17: With respect to the measure for new recordkeeping and reporting requirements, haul time and haul position should be included as log entries within two hours of the haul for use in comparing against charts, navigation logs, and other documents to facilitate enforcement.

Response: Comment noted. The recordkeeping requirements contained in the final rule do require haul times and positions to be recorded in logbooks within two hours of the haul.

Comment 18: The State of Alaska should have access to the information collected by the Alaska groundfish logbook program. The State has a vested interest in the Alaskan groundfish fisheries, and the cooperative sharing of data among Federal and State management agencies should bring more analytical resources to bear upon groundfish issues, and greatly improve the information available for decisionmaking.

Response: The Regional Director will continue to pursue the means by which the State of Alaska may gain access to the confidential information collected by the Alaska groundfish logbook program. In order for the State to have access to statutorily confidential information collected under Federal regulations, the State would need to have the independent legal authority to collect the groundfish logbooks. If the State gains such authority and the State can maintain the degree of confidentiality mandated by Federal statutes, a cooperative agreement may be drawn up that would allow the State to collect Alaska groundfish logbooks from the groundfish industry, thereby gaining access to specific logbook information.

Comment 19: It is important that the Alaska State fish ticket system be maintained for groundfish. The current fish ticket system contains important data on individual fishing operations which are not collected by the proposed logbook program.

Response: The Regional Director concurs that the Alaska State fish ticket system provides specific information on groundfish landings made by individual vessels. This information is also collected for catcher/processor vessels under the NMFS' weekly production report and the associated logbook records. The logbook program does not record specific landings information for vessels delivering to mothership processor vessels or shoreside processing facilities and NMFS will continue to rely on State fish tickets for specific landings information for these catcher vessels. NMFS is pursuing a cooperative agreement with the State of Alaska that would eliminate the need for catcher/processor vessels to submit both State fish tickets and weekly production reports. Although these vessels will be required to submit both documents under State and Federal regulations during 1990, it is anticipated that by 1991, only the weekly production report will be required under the cooperative agreement, which would give the Alaska Department of Fish and Game access to information collected on the weekly production reports.

Comment 20: The measure to establish fixed prohibited species catch limits for Pacific halibut, and thus suspend the framework for establishing these limits, should retain the criteria in existing regulations for judging the appropriateness of the prohibited species catch limits and flexibility to allow incentives for avoiding halibut.

Response: The Council reconsidered and rejected this option at its September 26–29, 1989, meeting. Because this measure expresses the prohibited species catch limits in the FMP, criteria that would allow Pacific halibut bycatches to exceed the limits in the FMP would be inconsistent with the FMP. Any such criteria could only be

implemented by amending the FMP or by taking emergency action. The Council considered this point when it adopted this measure at its June 1989 meeting and heard advice from the Regional Director that prohibited species catch limits would be inflexible during the effective period for this measure. The Council reconsidered this point at its September 1989 meeting and rejected the option of withdrawing this measure during the open comment period. The Secretary has approved this measure.

Classification

The Regional Director determined that the FMP amendments are necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and in the Bering Sea/Aleutian Islands and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries, NOAA, found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the EA/RIR/FRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this rule will have significant effects on a substantial number of small entities. Thus, a final Regulatory Flexibility Analysis (FRFA) has been prepared. You may obtain a copy of this analysis from the Council at the address listed above.

The Under Secretary determined that this final rule contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement has been approved by the Office of Management and Budget (OMB) under Control Number 0648-0213. Most of the information collected under the recordkeeping and reporting requirements is effort, production and value information normally maintained by the groundfish vessel operators and processing plant owners for their own internal business purposes. The public recordkeeping and reporting burden for this collection of information is limited to the amount of time necessary for vessel operators and processor plant owners to transfer this information to the required logbook or report and to submit this information to the NMFS. A summary of the additional burden follows:

Additional burden is estimated to average 30 to 36 hours per year (about 10 to 13 minutes per day) for floating processors, 24 hours per year (less than 20 minutes per day) for shoreside processing plants, and 5.5 hours per year (about 10 minutes per day) for vessels harvesting groundfish. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The final rule (§ 672.5(c)(1) and § 675.5 (c)(1)) makes a minor change to an existing regulation that requires catcher/processors and mothership processors to submit checkin/checkout reports to NMFS, Alaska Region. The burden associated with this regulation averages less than 10 minutes per response and is approved under OMB No. 0648-0213.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the NMFS at the address above, and to the Office of Information and Regulatory Affairs, Office of Management of Budget, Washington DC 20503 (Attn. NOAA Desk Officer).

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 611, 620, 672, and 675

Fisheries, Fishing vessels, Reporting and recordkeeping.

Dated: November 30, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 C F R Parts 611, 620, 672, and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.92, paragraph (c)(2)(i) introductory text is revised to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(2) * * *

(i) The catch and retention of the amount of any groundfish in the Gulf of Alaska for which a nation has an allocation is permitted during fishing seasons specified at 50 CFR 672.23, except in the following circumstances:

* * * * *

3. In § 611.93, revise paragraph (b)(3)(i) introductory text, redesignate paragraphs (c)(2) through (c)(4) as (c)(3) through (c)(5) and add a new paragraph (c)(2) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(3) * * *

(i) The catch and retention of the amount of any groundfish in the Bering Sea and Aleutian Islands management area for which a nation has an allocation is permitted during fishing seasons specified at 50 CFR 675.23, except in the following circumstances:

* * * * *

(c) * * *

(2) *Fishing.* No fishing is allowed during April 1 through September 30 of each of the 1990 and 1991 fishing years in that part of the Bering Sea subarea shoreward of a line on which each point is 12 miles from the baseline used to measure the Territorial Sea around islands named Round Island and The Twins as shown on National Oceanic Survey Chart INT 500, and around Cape Peirce (160°40′ W. longitude, 58°40′ N. latitude).

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

6. The authority citation for part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 672.2, the definition for *Off-bottom trawl* is removed the definitions of *Statistical area* and *Pelagic trawl* are revised, new definitions for *Daily reporting period or day, Fish product weight, Processor vessel, Quarterly reporting period or quarter, Reporting area, Vessel,* and *Weekly reported period* are added in alphabetical order and the definition *Regulatory district* is amended by revising the introductory text and adding a new paragraph (4) to read as follows:

§ 672.2 Definitions.

* * * * *

Daily reporting period or day is the period from midnight until the following midnight using Alaska local time (A.L.T).

* * * * *

Fish product weight means the weight of the fish product to the nearest tenth of a metric ton (0.1 mt) based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individually frozen fish. The weight of a production unit is based on the average weight of the product as determined by analyzing representative samples. The weight of the production unit does not include packaging. The weight of the production unit does include water added to the product and other additives reported to NMFS. NMFS may use the weight of the production units, with an allowance for water added not to exceed 5 percent of the weight of the production unit, to determine net weight and to calculate round weight equivalents.

* * * * *

Pelagic trawl means a trawl on which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it protective devices, such as rollers or bobbins, that would make it suitable for fishing in contact with the seabed.

* * * * *

Processor vessel, unless otherwise restricted, includes any vessel which is used for, equipped to be used for, or of a type which is normally used for processing, including specifically catcher/processor vessels and mothership processor vessels.

Quarterly reporting period or quarter means a three-month period; the first quarter is from January 1 through March 31, the second quarter is from April 1 through June 30, the third quarter is from July 1 through September 30, and the fourth quarter is from October 1 through December 31.

* * * * *

Regulatory district means any of the three districts of the Eastern Regulatory area or the Shelikof Strait district described as follows:

* * * * *

(4) *Shelikof Strait district*—all waters of the EEZ enclosed by a line connecting the following points in the order listed

[illegible] DOCK [illegible]

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

4. The authority citation for Part 620 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 620.3 is amended by revising paragraph (d) as follows:

§ 620.3 Relation to other laws.

* * * * *

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at parts 216 and 229 of this title.

* * * * *

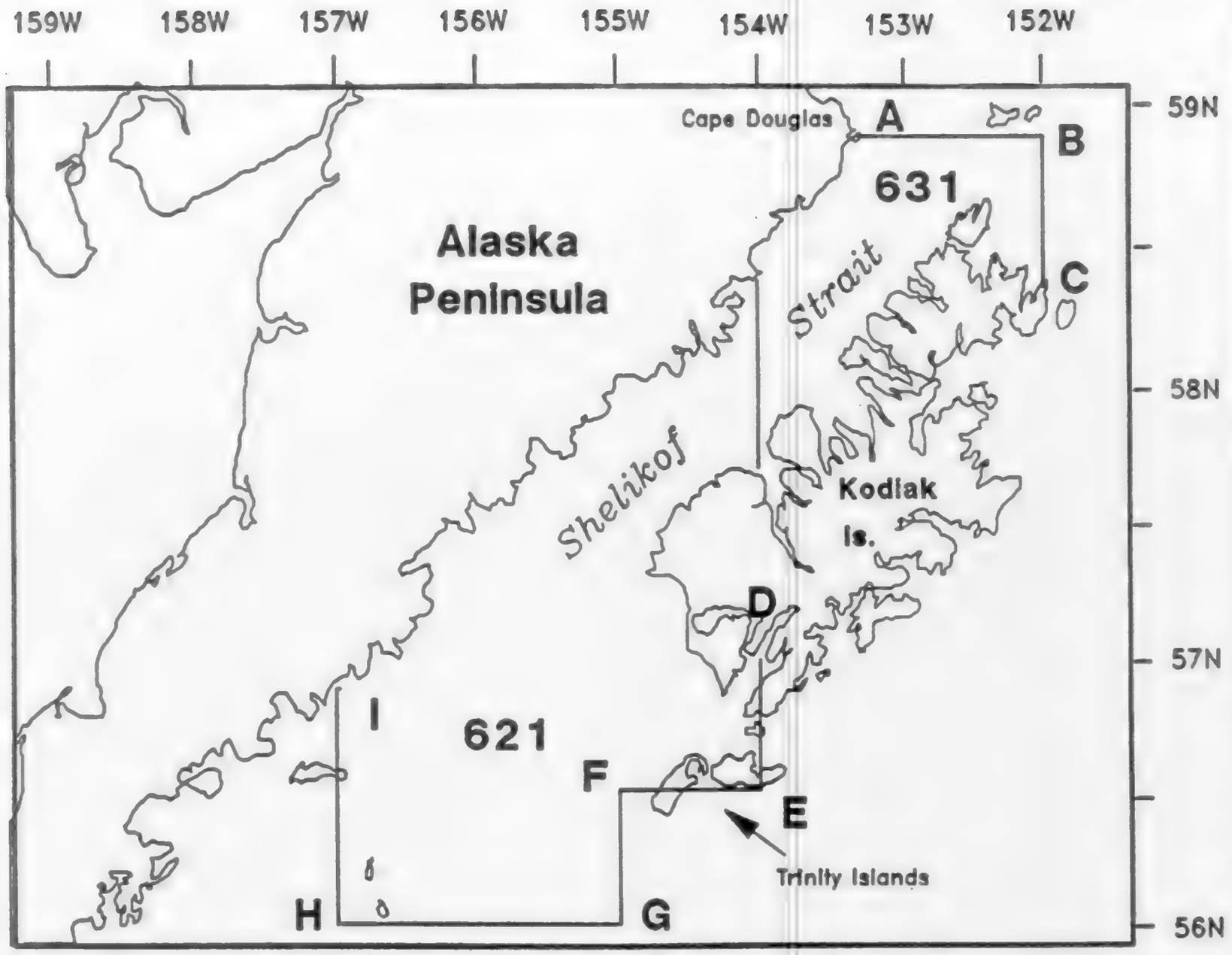


Figure 1. Boundaries of the Shelikof Strait District in the Gulf of Alaska

BILLING CODE 3510-22-C

Reference point	N. lat.	W. long.	Description
A	58°51' N.	158°15' W.	Cape Douglas, then east to
B	58°51' N.	152°00' W.	then south to the intersection of 152°00'W. with Afognak Island, then counter clockwise around the western shorelines of Afognak, Kodiak, and Raspberry Islands to
C			
D	57°00' N.	154°00' W.	Alitak Bay then south to
E	56°30' N.	154°00' W.	then west through Trinity islands to
F	56°30' N.	155°00' W.	then south to
G	56°00' N.	155°00' W.	then west to
H	56°00'N.	157°00' W.	then north to intersection of 157°00'W. with the Alaska Peninsula.
I			

Reporting area means the relevant Gulf of Alaska statistical area and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area. Except for pollock, with respect to any groundfish species, any groundfish species group or any prohibited species, the relevant Gulf of Alaska statistical areas include each of the following statistical areas described below: 61, 62, 63, 64, 65, and 68. With respect to pollock, the relevant Gulf of Alaska statistical areas include each of the following statistical areas or portions of statistical areas: 61, 621, 631, 64, 65, 68, that portion of 62 outside of 621, and that portion of 63 outside of 631. A reporting area may be described by the same number or numbers used to identify the associated statistical area(s).

Statistical area means any one of the nine statistical areas of the EEZ in the Gulf of Alaska defined as follows:

(1) Statistical Area 61—between 170°00′ and 159°00′ W. longitudes;

(2) Statistical Area 62—between 159°00′ and 154°00′ W. longitudes;

(3) Statistical Area 620—Shelikof Strait district as defined by this section under the heading, "*Regulatory district.*"

(4) Statistical Area 621—that part of the Shelikof Strait District between 157°00′ and 154°00′ W. longitudes.

(5) Statistical Area 631—that part of the Shelikof Strait District between 154°00′ and 152°00′ W. longitudes.

(6) Statistical Area 63—between 154°00′ and 147°00′ W. longitude;

(7) Statistical Area 64—between 147°00′ and 140°00′ W. longitudes;

(8) Statistical Area 65—east of 137°00′ W. longitude and north of 54°30′ N. latitude;

(9) Statistical Area 68—between 140°00′ and 137°00′ W. longitudes.

* * * * *

Vessel, unless otherwise restricted, include catcher vessels and processor vessels.

Weekly reporting period means from midnight Sunday morning until midnight of the following Saturday night, Alaska local time (ALT).

8. Section 672.3 is amended by revising paragraph (b) as follows:

§ 672.3 Relation to other laws.

* * * * *

(b) For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92; for those governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands, see 50 CFR 611.93. For regulations governing fishing for groundfish in the Bering Sea and Aleutian Islands by vessels of the United States, see 50 CFR Part 675; for those governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals, see 50 CFR 216.24 and 50 CFR 229. For regulations governing fishing for Pacific halibut by vessels of the United States, see 50 CFR 301.

9. In § 672.5 paragraph (a) is revised, paragraph (b) is redesignated as paragraph (d) and the heading revised, and paragraph (c) is redesignated as paragraph (e); and new paragraphs (b) and (c) are added to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) *Applicability and general requirements.* (1) *Applicability.* The operator of a vessel and the manager of a shoreside processing facility are each responsible for compliance with the applicable recordkeeping and reporting requirements of this section. In addition, the owner of a vessel or shoreside processing facility must ensure that the operator or manager complies with these requirements and is jointly and severally responsible for compliance. Except as otherwise provided, this section applies to all vessels required to have a Federal groundfish fishing permit under § 672.4 of this part. Except as otherwise provided, this section applies to all processor vessels and shoreside processing facilities that receive groundfish from vessels regulated under this Part. This section applies to any fishing or processing that involves any groundfish species, species group or prohibited species regulated under this Part.

(2) *General requirements.* The operators and managers of vessels and shoreside processing facilities must comply with the recordkeeping, reporting, logbook and notice requirements of this section; must maintain timely and accurate records, reports and logbooks required by this section; must maintain all required records, reports and logbooks in a legible manner and in English; and must maintain all required records, reports and logbooks based on Alaska Local Time (ALT). All reporting periods are calculated using ALT.

(3) *Requirement of availability for inspection.* The operator of a vessel and the manager of a shoreside processing facility must make available the original copy of any record, report or logbook required under this section immediately upon the request of an authorized officer or observer at any time during which the record, report or logbook is required to be maintained by the operator or manager.

(4) *Requirements related to submissions.* (i) Records and reports which are required to be submitted to the Alaska Fisheries Science Center must be addressed or delivered to the National Marine Fisheries Service, 7600 Sand Point Way NE Building 4, Seattle, Washington 98115.

(ii) Records, reports, and notices which are required to be submitted or provided to the Regional Director must be submitted or provided in the manner specified by the Regional Director.

(b) *Logbooks.* The operator of any catcher vessel 5 net tons or larger, the operator of any processor vessel, and the manager of any shoreside processing facility must meet the following recordkeeping requirements if that vessel or facility harvests or processes groundfish from any reporting area in the Gulf of Alaska:

(1) *General.*—(i) *Retention of logbook records during the fishing year.* The operator of a vessel must retain the original copy of all logbooks required under this section on board the vessel until the end of the fishing year and for as long after the end of the fishing year as fish or fish products recorded in the logbook are retained on board that vessel. The manager of each shoreside processing facility must retain the

original copy of all logbooks required under this section within the processing facility until the end of the fishing year and for as long after the end of the fishing year as fish and fish products recorded in the logbook are retained at the processing facility.

(ii) *Prescribed logbooks.* The Regional Director will prescribe and provide logbooks required under this section. The operator of a vessel and the manager of a shoreside processing facility must use these prescribed logbooks.

(iii) *Entries and alterations in logbooks.* The operator or manager must maintain and record information as required by instructions in the logbooks and in accordance with this section. No person may remove any original page of any logbook. Any entry or recording of information which is required to be made in a logbook must be made in indelible ink. No person may alter or change any entry or record in a logbook except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(2) *Daily fishing logbook.* (i) The operator of a catcher/processor or catcher vessel harvesting groundfish from any reporting area in the Gulf of Alaska must maintain onboard a daily fishing logbook of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. Daily effort entries are required for each day the vessel conducts fishing operations. Daily entries are not required for those days when the fishing vessel stays in port. The operator of a catcher/processor vessel will be provided with a daily fishing logbook that also functions as a daily cumulative production logbook required under paragraph (b)(3) of this section.

(ii) *Daily fishing logbook; contents.* (A) The daily fishing logbook must record the following effort information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the vessel conducted any fishing operation after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted with more than one gear type or in more than one reporting area during any day, a separate page in the daily fishing logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The vessel's name and ADF&G vessel number.

(*4*) The reporting area where the vessel is conducting fishing activity.

(*5*) The gear type used by the vessel pelagic trawl, bottom trawl, hook and line, or pot gear).

(*6*) The signature of the operator of the vessel.

(*7*) The size if the crew.

(*8*) Daily discard amounts of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discard amounts of each prohibited species listed under § 672.20(e) of this part by number, except for discard amounts of herring, which must be reported by round weight (0.1 mt).

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed:

(*1*) The trawl or set number. This number must be consecutive beginning with number one for the first haul or set of the day.

(*2*) The time at the beginning of the trawl or set.

(*3*) The position of the vessel at the beginning of the trawl or set in geographic coordinates.

(*4*) The sea depth at the beginning of the trawl or set in fathoms.

(*5*) Information concerning the gear used by the vessel. If the vessel is using longline gear, this information must include the average number of hooks or pots per skate and the number of skates used. If the vessel is using trawl gear, this information must include average trawl depth in fathoms.

(*6*) The duration of the set or trawl in minutes.

(*7*) The position of the vessel at the completion of the trawl or set in geographic coordinates.

(*8*) The estimated total weight of the catch for the trawl or set in round weight to the nearest metric ton (mt).

(iii) *Maintenance of the daily fishing logbook.* Entries in the daily fishing logbook as to trawl or set number, time, position, and estimated catch weight must be recorded within two hours after completion of the applicable trawl or set. All other information required in the daily fishing log under paragraph (b)(2)(ii) of this section must be recorded by noon of the following day.

(iv) *In all cases, upon delivery or landing; provision of discard information to processors.* Notwithstanding other time limits, all information required under paragraph (b)(2)(ii) must be recorded in the daily fishing logbook prior to the time when the vessel's catch is off-loaded. The daily discard information for each day since the previous offload must be provided to the processor receiving the catch. The processor must record this discard information in the daily cumulative production logbook and in the weekly production report.

(v) *Quarterly submission of daily fishing logbooks.* The operator of a catcher vessel or catcher/processor vessel must submit a copy of the daily fishing logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the daily fishing logbook for fishing activities conducted during the first quarter must be submitted by May 1 of that year, for the second quarter, by August 1 of that year, for the third quarter, by November 1 of that year, and for the fourth quarter, by February 1 of the following year.

(3) *Daily cumulative production logbook. (i)* The operator of a processor vessel and the manager of a shoreside processing facility that receives or processes groundfish from any reporting area in the Gulf of Alaska must maintain on the processor vessel or within the processing facility a daily cumulative production logbook of estimated catch receipt (if applicable), species discard amounts, and retained groundfish product information as described in paragraph (b)(3)(ii) of this section. Daily entries are required for each day a processor vessel or facility receives or processes groundfish.

(ii) *Daily cumulative production logbook; contents.* (A) The daily cumulative production logbook must record the following information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the processor vessel or processing facility conducted any fishing or processing activity after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the daily cumulative production logbook must be used for each day's entries. If fish received by the processor vessel or facility during any day are harvested with more than one gear type or are harvested from more than one reporting area, a separate page in the daily cumulative production logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The name of the processing vessel or facility.

(*4*) The ADF&G vessel number or the Alaska State processor code, whichever is applicable.

(*5*) The reporting area where the groundfish was harvested.

(*6*) The gear type used to harvest the groundfish received by the processing vessel or facility (pelagic trawl, bottom trawl, hook and line, or pot gear).

(*7*) The signature of the operator of the processing vessel or the manager of the facility.

(*8*) The number of crew or employees engaged by a processor for fishing, processing, or other activities.

(*9*) The amounts of each groundfish species, groundfish species group, and prohibited species listed under §672.20(e) of this part, that are discarded in related fishing or processing activity. These amounts should include discards reported to a processor by operators of catcher vessels under § 672.5(b)(2)(iv) of this part. Discard amounts of groundfish should be recorded to the nearest tenth of a metric ton (0.1 mt) round weight. Discard amounts for each prohibited species listed under § 672.20(e) of this part must be recorded by number, except for discard amounts of herring, which must be recorded by round weight (0.1 mt).

(*10*) Species product information for each day of processing activity. Fish product weight must be specified to the nearest tenth of a metric ton (0.1 mt). Product information must include the following information for any product resulting from the processing of any groundfish species or species group for which a total allowable catch (TAC) is specified under § 672.20 of this part:

(*i*) The product by species and product type codes.

(*ii*) The daily total amount of the product produced by species and product type codes in fish product weight.

(*iii*) The weekly total amount of the product produced by species and product type codes in fish product weight to be carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total amount for each product is zero and nothing shall be carried forward from the previous weekly reporting period.

(*iv*) The updated weekly total amount of the product produced by species and product type codes in fish product weight calculated by adding the relevant daily total and the weekly total to be carried forward.

(B) The daily cumulative production logbook must record the following information for each catch receipt:

(*1*) For each groundfish set or codend received by mothership processor vessel:

(*i*) The State of Alaska fish ticket number.

(*ii*) The time when the set or codend is received.

(*iii*) The position of the mothership processor vessel in geographic coordinates when the set or codend is received.

(*iv*) The name of the catcher vessel delivering the set or codend.

(*v*) The ADF&G vessel number of the catcher vessel delivering the set or codend.

(*vi*) The estimated total weight of the set or codend in round weight to the nearest metric ton (mt).

(*2*) For each groundfish landing received by shoreside processors from catcher vessels:

(*i*) The State of Alaska fish ticket number.

(*ii*) The time when the catch is received.

(*iii*) The name of the vessel delivering the catch.

(*iv*) The ADF&G vessel number of the vessel delivering the catch.

(*v*) The estimated total weight of the catch in round weight to the nearest metric ton (mt).

(iii) *Maintenance of the Daily cumulative production logbook.* Information concerning the catch receipt number or State of Alaska fish ticket numbr, time of receipt, the name of the delivering vessel and, for mothership processor vessel, the position of that vessel and the estimated catch receipt weight, must be recorded in the daily cumulative production logbook within 2 hours after the set, codend or catch is received. All other information required in the daily cumulative production logbook under paragraph (b)(3)(ii) of this section must be recorded by noon of the day following the day the catch receipt or production occurred. Information concerning product amounts must be recorded in the daily cumulative production logbook by noon of the day following the processing of the product regardless of when the set, codend or catch is received.

(iv) *Quarterly submission of the daily cumulative production logbook.* The operator of a processor vessel or manager of a shoreside processing facility must submit a copy of the daily cumulative production logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the daily cumulative production logbook for activities conducted during the first quarter must be submitted by May 1 of that year, for the second quarter, by August 1 of that year, for the third quarter, by November 1 of that year, and the fourth quarter, by February 1 of the following year.

(4) *Product transfer logbooks.* The operator of a processor vessel and the manager of a shoreside processing facility must record, in a separate transfer logbook, each transfer. A transfer includes any loading, offloading, shipment or receipt of any processed groundfish product, including quantities transferred outside the EEZ, within any state's territorial waters, or within the internal waters of any state or at any shoreside facility. Product transfer information must be recorded in the product transfer logbook within 12 hours of the completion of the transfer.

(i) *Product transfer logbooks; contents.* The transfer logbook must record the following information:

(A) *The page number.* This number must be consecutive beginning with page one for the first transfer occurring after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year.

(B) *The time, date and location.* This information must include the time and date when the transfer began and the time and date when it is completed. If the product transfer logbook is maintained for a processor vessel, this information must include the location of the transfer. If the processor vessel is at sea, the location of the transfer must be specified in geographic coordinates. If the processor vessel is in port, the location of the transfer must be specified by identifying that port.

(C) *Identification information.* If the product transfer logbook is maintained for a processor vessel, the identification information must include the vessel's name, the Federal permit number, the ADF&G vessel number and radio call sign. If the product transfer logbook is maintained for a shoreside processing facility, the identification information must include the name of the facility, the location of the facility, and the Alaska State Processor Code number.

(D) *Company representative information.* Company representative information must include the name of a person representing the processor vessel or facility, the telephone number for that person and either a telex or facsimile number for that person.

(E) *Transfer information.* The transfer information must include the type of transfer involved and must specify whether the transfer is a shipment of offloading or whether it is a receipt or loading.

(F) *Second party information.* Second party information must include information concerning the other parties involved in the transfer, including the name, Federal permit number and radio call sign of any vessel involved, the name of any shipping agent involved, and the name and location of any processing facility involved. If the transfer involves a shipment, the second

party information must include the destination of the carrier or vessel receiving the fish product.

(G) *The total amount of the products transferred by species code and product type in fish product weight to the nearest tenth of a metric ton (0.1 mt).* Information concerning the amount of the product must include the total number of production units transferred and the estimated weight of each production unit type.

(ii) *Submission of product transfer logbooks.* An operator of a processor vessel and a manager of a shoreside processing facility must submit a copy of the product transfer logbook to the Regional Director for each week when any product transfer activity occurred. Copies of the product transfer logbooks must be received by the Regional Director within one week after the week when the transfer occurred.

(c) *Other reporting requirements.* The operator or manager of any vessel or shoreside processor of the United States that harvests or processes groundfish caught from any reporting area in the Gulf of Alaska must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements:

(1) *Alaska groundfish check-in/check-out notices:* (i) *Requirement.* Prior to the commencement of any fishing activity in, or the receipt of any groundfish from, any Gulf of Alaska reporting area during any fishing year by any processor vessel, the operator of the vessel must provide a check-in notice to the Regional Director. Upon the completion of fishing activity in or the receipt of any groundfish from any Gulf of Alaska reporting area during any fishing year by any processor vessel, the operator of the vessel must provide a check-out notice to the Regional Director.

(ii) *Check-in/check-out notices; contents:* The notice of check-in or check-out must include the following information:

(A) The processor vessel's name, radio call sign, and, if applicable, Federal groundfish permit number;

(B) Time and date information. If the notice concerns the commencement of fishing activity or the receipt of groundfish, this information must include the time and date of when these activities will commence. If the notice concerns the completion of fishing activities or the receipt of groundfish, this information must include the time and date of when these activities ceased.

(C) Location. The reporting area and position in geographic coordinates where the fishing activity or receipt of groundfish is expected to occur or has occurred.

(iii) *Check-in/check-out notices; submission or method of providing notice.* The operator of a processor vessel required to provide a check-in or check-out notice must provide that notice through the means and in the manner prescribed by the Regional Director.

(2) *Weekly production reports.*—(i) *Requirements for processor vessels.* The operator of a processor vessel which conducts fishing activity in, or receives groundfish from, any Gulf of Alaska reporting area at any time during fishing year must submit weekly production reports. Weekly production reports are required for a processor vessel for any week during the period beginning with the date specified in the check-in notice and ending after all groundfish harvested from and fish products prepared with any groundfish harvested from any Gulf of Alaska reporting area are off-loaded. Weekly production reports are required during this period even if no groundfish is harvested or received or processed during a particular week and these weekly production reports should specify "zero" with respect to the amounts harvested, received or produced.

(iii) *Weekly production reports; contents.* The weekly production report must have a separate page for each gear type used. Each page must include the following information:

(A) The name of the person submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. If the weekly production report is submitted or a processor vessel, this information must include the name and radio call sign of that vessel. If the weekly report is submitted for a shoreside processing facility, this information must include the name of the plant.

(C) Federal permit number or Alaska State processor code, whichever is applicable.

(D) The end date of the weekly reporting period.

(E) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, bottom trawl, hook and line, or pot gear).

(F) The reporting area or areas from which groundfish was harvested and retained during the weekly reporting period with the reporting area or areas specified for each groundfish species or species group.

(G) The number of days when fishing activities were conducted and when fish were received.

(H) The total estimated catch weight or catch receipt for each reporting area to the nearest metric ton (mt).

(I) The amount of each product by species code and product type with the amount produced during the weekly reporting period specified in fish product weight for each groundfish species or species group for which a total allowable catch is specified under § 672.20 of this part.

(J) The amount of each groundfish species, groundfish species group, or prohibited species listed under § 672.20(e) of this part, which is discarded in related fishing operations during the weekly reporting period.

(iv) *Weekly production reports; submission.* Weekly production reports must be submitted to the Regional Director. Weekly production reports must be received by the Regional Director within one week after the end of the applicable weekly reporting period.

(3) *Monthly product value report.* (i) *Requirement.* The operator of a processor vessel and the manager of a shoreside processing facility or the parent company of that vessel or facility must prepare a monthly product value report for each month the vessel or facility sells any groundfish harvested from or any fish product produced from groundfish harvested from any Gulf of Alaska reporting area.

(ii) *Monthly product value reports; contents.* The monthly product value report must contain the following information:

(A) Company representative information. This information must include the name of the person representing the processing vessel, facility or company, the telephone number for that person and either a telex or facsimile number for that person.

(B) The name of the vessel or facility.

(C) Federal permit number or Alaska State processor code, whichever is applicable.

(D) The month and year.

(E) The products sold during the monthly reporting period by species code and product type with the amount specified in fish product weight for each product type and for each groundfish species or species group for which a total allowable catch is specified under § 672.20. The size or sizes of the products sold, the grade or grades of the products sold, if applicable, and the value of the products sold must also be specified.

(iii) *Monthly product value reports; submission.* The operator of a processor vessel and the manager of a shoreside processing facility or the parent company of that vessel or facility must submit monthly product value reports on an annual basis to the Alaska Fisheries Science Center. Monthly product value reports for a calendar year must be received by February 1 of the following year.

(d) *Groundfish utilization surveys.*

* * * * *

10. § 672.7 is amended by adding paragraph (d) as follows:

§ 672.7 Prohibitions.

* * * * *

(d) Fish for groundfish except in compliance with the terms of an observer plan as provided by § 672.27 of this part.

* * * * *

11. In § 672.20, paragraphs (a)(2) and (f)(1) are revised, paragraph (f)(2) is suspended from January 1, 1990, through December 31, 1990, and a new paragraph (f)(3) is added from January 1, 1990, through December 31, 1990, to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c)(1) of this section.

* * * * *

(f) * * *

(1) *Gear closures.* (i) Trawl gear. If during the year, the Regional Director determines that the catch of halibut by vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of halibut provided for under paragraph (f)(2) or (f)(3) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than pelagic trawl gear for the rest of the year by DAP or JVP vessels in the area to which the PSC limit applies.

(ii) Hook-and-line and pot gear. If during the year, the Regional Director determines that the catch of halibut by vessels using hook-and-line or pot gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of halibut provided for under paragraph (f)(2) or (f)(3) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing with hook-and-line or pot gear for the rest of the year by DAP or JVP vessels in the area to which the PSC limit applies.

* * * * *

(3) Pacific halibut PSC limits. (i) A PSC limit of 2,000 mt of Pacific halibut for trawl gear is established.

(ii) A PSC limit of 750 mt of Pacific halibut for hook-and-line and pot gear, combined, is established.

(iii) The Pacific halibut PSC limits established for trawl gear and for hook and line and pot gear are allocated to DAP and to JVP in proportion to the specified DAP and JVP amounts of groundfish apportionment.

12. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish during the January 1–December 31 fishing year in the statistical areas defined at § 672.2 is authorized from January 1 through December 31, subject to the other provisions of this part, except as provided in paragraph (b) of this section.

(b) Fishing for sablefish is authorized with hook-and-line gear from 12:00 noon Alaska local time on April 1 through December 31, subject to other provisions of this part.

13. In § 672.24, paragraph (c) is revised effective from January 1, 1990, through December 31, 1992 to read as follows:

§ 672.24 Gear limitations.

* * * * *

(c) *Trawls other than pelagic trawls.* (1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Alitak Flats and Towers Areas:* All water of Alitak Flats and the Towers Areas enclosed by a line connecting the following seven points in the order listed:

Reference point	N. lat.	W. long.	Land description
a	56°59'4"	154°31'1"	Low Cape.
b	57°00'0"	155°00'0"	
c	56°17'0"	155°00'0"	
d	56°17'0"	153°52'0"	
e	56°33'5"	153°52'0"	Cape Sitkunak.
f	56°54'5"	153°32'5"	East point of Two-headed Island.
g	56°56'0"	153°35'5"	Kodiak Island, thence, along the coastline of Kodiak Island until intersection at
a	56°59'4"	154°31'1"	Low Cape.

(ii) *Marmot Flats Area:* All water enclosed by a line connecting the following five points in the clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	58°00'0"	152°30'0"	
b	58°00'0"	151°47'0"	
c	57°37'0"	151°47'0"	
d	57°37'0"	152°10'1"	Cape Chiniak, thence, along the coastline of Kodiak Island to
e	57°54'5"	152°30'0"	North Cape.
a	58°00'0"	152°30'0"	

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter clockwise order listed:

Reference point	N. lat.	W. long.
a	56°07'0"	155°13'0"
b	56°07'0"	156°00'0"
c	55°41'0"	156°00'0"
d	55°41'0"	155°13'0"
a	56°07'0"	155°13'0"

(ii) *Barnabas Area:* All waters enclosed by a line connecting the following six points in the counter clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	57°00'0"	153°18'0"	Black Point.
b	56°56'0"	153°09'0"	
c	57°22'0"	152°18'5"	South Tip of Ugak Island.
d	57°23'5"	152°17'5"	North Tip of Ugak Island.
e	57°25'3"	152°20'0"	Narrow Cape, thence, along the coastline of Ugak Island to
f	57°04'2"	153°30'0"	Cape Kasick to
a	57°00'0"	153°18'0"	Black Point, incl. inshore waters.

(3) Each person using a trawl to fish in any area limited to pelagic trawling under paragraph (c)(1) and (c)(2) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device, and must

retain all net-sonde recordings aboard the fishing vessel during the fishing year.

(4) No person using a trawl to fish in any area limited to pelagic trawling under paragraphs (c)(1) and (c)(2) of this section may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sonde device.

BILLING CODE 3510-22-M

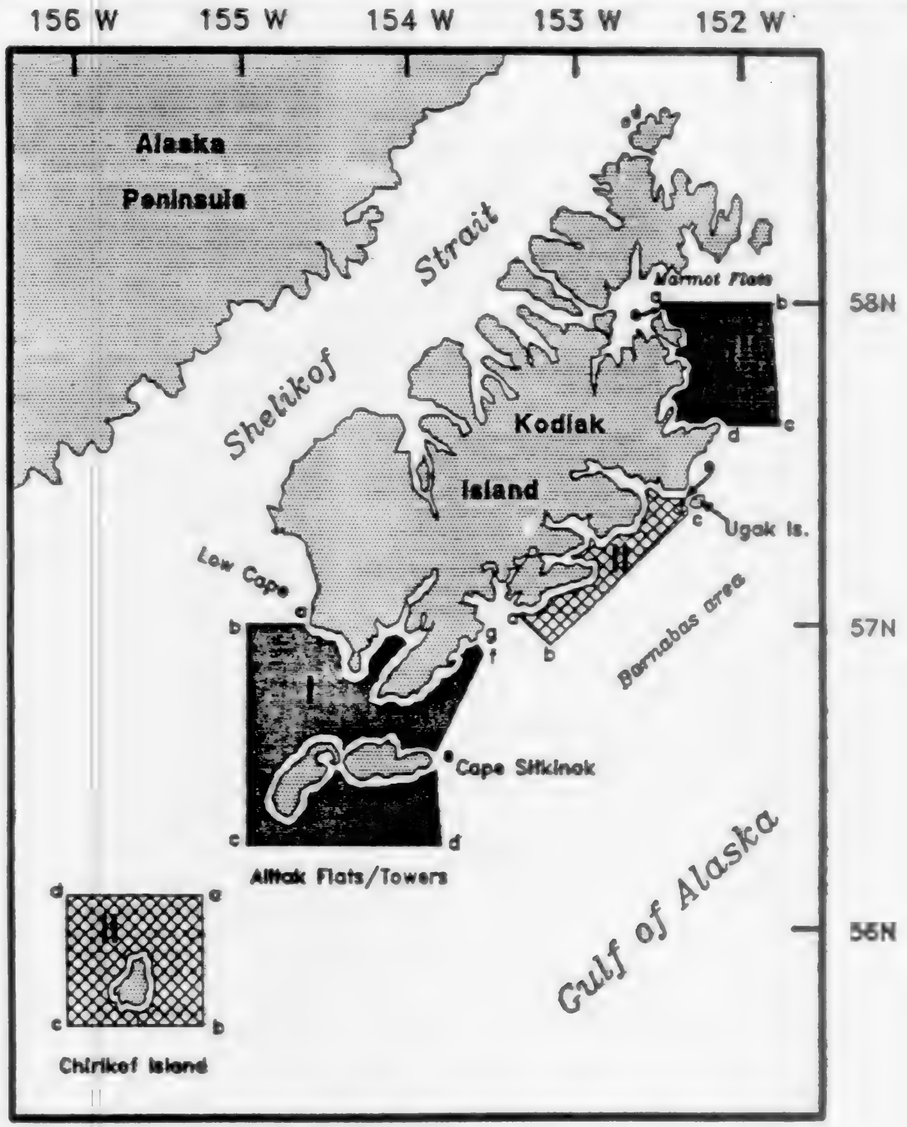


Figure 2. Areas around Kodiak Island closed to trawling except with pelagic trawls. TYPE I areas are closed year round. TYPE II areas are closed February 15 to June 15.
See section 672.24, Gear Limitations, for coordinate descriptions.

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14. § 672.27 is revised to read as follows:

§ 672.27 Observers.

All fishing vessels subject to this part and all shoreside processing facilities that receive groundfish from vessels subject to this part, must comply with terms contained in an observer plan that has been prepared by the Secretary, in consultation with the Council, for purposes of providing data useful in management of the groundfish fishery, unless specifically exempt from such compliance by the observer plan.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

15. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

16. In § 675.2, the definition for *Bottom trawl* is extended indefinitely; and new definitions for *Daily reporting period or day, Fish product weight, Pelagic trawl, Processor vessel, Quarterly reporting period or quarter, Reporting area, Vessel,* and *Weekly reporting period* are added in alphabetical order as follows:

§ 675.2 Definitions.

* * * * *

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

* * * * *

Daily reporting period or day is the period from midnight until the following midnight using Alaska local time (ALT).

* * * * *

Fish product weight means the weight of the fish product to the nearest tenth of a metric ton (0.1 mt) based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individually frozen fish. The weight of a production unit is based on the average weight of the product as determined by analyzing representative samples. The weight of the production unit does not include packaging. The weight of the production unit does include water added to the product and other additives reported to NMFS. NMFS may use the weight of the production units, with an allowance for water added not to exceed 5 percent of the weight of the production unit, to determine net weight, and to calculate round weight equivalents.

* * * * *

Pelagic trawl means a trawl on which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it any protective devices, such as rollers or bobbins, that would make it suitable for fishing in contact with the seabed.

* * * * *

Processor vessel, unless otherwise restricted, includes any vessel which is used for, equipped to be used for, or of a type which is normally used for processing, including specifically catcher/processor vessels and mothership processor vessels.

Quarterly reporting period or quarter means a three month period; the first quarter is from January 1 through March 31, the second quarter is from April 1 through June 30, the third quarter is from July 1 through September 30, and the fourth quarter is from October 1 through December 31.

* * * * *

Reporting area means the relevant Bering Sea and Aleutian Islands statistical area and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area. A reporting area may be described by the same number or numbers used to identify the associated statistical area(s).

* * * * *

Vessel, unless otherwise restricted, includes catcher vessels and processor vessels.

Weekly reporting period means from midnight Sunday morning until midnight of the following Saturday night, Alaska local time (ALT).

17. Section 675.3 is amended by revising paragraph (b) as follows:

§ 675.3 Relation to other laws.

* * * * *

(b) For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR Part 611.92. For regulations governing foreign fishing in the Bering Sea and Aleutian Islands area, see 50 CFR Part 611.93. For regulations concerning the conservation of halibut, see Part 301 of this chapter. For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see Part 672 of this chapter; and for those governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals, see 50 CFR 216.24 and 50 CFR 229.

18. In § 675.5, paragraph (a) is revised, paragraph (b) is redesignated as paragraph (d) and the heading revised, and new paragraphs (b) and (c) are added to read as follows:

§ 675.5 Recordkeeping and reporting.

(a) *Applicability and general requirements*—(1) *Applicability.* The operator of a vessel and the manager of a shoreside processing facility are each responsible for compliance with the applicable recordkeeping and reporting requirements of this section. In addition, the owner of the vessel or shoreside processing facility must ensure that the operator or manager complies with these requirements and is jointly and severally responsible for compliance. Except as otherwise provided, this section applies to all vessels required to have a Federal groundfish fishing permit under § 675.4 of this part. Except as otherwise provided, this section applies to all processor vessels and shoreside processing facilities that receive groundfish from vessels regulated under this Part. This section applies to any fishing or processing that involves any groundfish species, species group or prohibited species regulated under this Part.

(2) *General requirements.* The operators and managers of vessels and shoreside processing facilities must comply with the recordkeeping, reporting, logbook and notice requirements of this section, must maintain timely and accurate records, reports and logbooks required by this section, must maintain all required records, reports and logbooks in a legible manner and in English, and must maintain all required records, reports and logbooks based on Alaska Local Time (ALT). All reporting periods are calculated using ALT.

(3) *Requirement of availability for inspection.* The operator of a vessel and the manager of a shoreside processing facility must make available the original copy of any record, report or logbook required under this section immediately upon the request of an authorized officer or observer at any time during which the record, report or logbook is required to be maintained by the operator or manager.

(4) *Requirements related to submissions.* (i) Records and reports which are required to be submitted to the Alaska Fisheries Science Center must be addressed or delivered to the National Marine Fisheries Service, 7600 Sand Point Way NE Building 4, Seattle, Washington 98115.

(ii) Records, reports, and notices which are required to be submitted or provided to the Regional Director must be submitted or provided in the manner specified by the Regional Director.

(b) *Logbooks.* The operator of any catcher vessel 5 net tons or larger, the operator of any processor vessel, and the manager of any shoreside processing facility must comply with the following recordkeeping requirements if that vessel or facility harvests or processes groundfish from any Bering Sea and Aleutian Islands reporting area:

(1) *General*—(i) *Retention of logbook records during the fishing year.* The operator of a vessel must retain the original copy of all logbooks required under this section on board the vessel until the end of the fishing year and for as long after the end of the fishing year as fish or fish products recorded in the logbook are retained on board that vessel. The manager of each shoreside processing facility must retain the original copy of all logbooks required under this section within the processing facility until the end of the fishing year and for as long after the end of the fishing year as fish and fish products recorded in the logbook are retained at the processing facility.

(ii) *Prescribed logbooks.* The Regional Director will prescribe and provide logbooks required under this section. The operator of a vessel and the manager of a shoreside processing facility must use these prescribed logbooks.

(iii) *Entries and alterations in logbooks.* The operator or manager must maintain and record information as required by instructions in the logbooks and in accordance with this section. No person may remove any original page of any logbook. Any entry or recording of information which is required to be made in a logbook must be made in indelible ink. No person may alter or change any entry or record in a logbook except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(2) *Daily fishing logbook.* (i) The operator of a catcher/processor or catcher vessel harvesting groundfish from any Bering Sea and Aleutian Islands reporting area must maintain onboard a daily fishing log of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. Daily effort entries are required for each day the vessel conducts fishing operations. Daily entries are not required for those days when the fishing vessel stays in port. The operator of a catcher/processor vessel will be provided with a daily fishing logbook that also functions as a daily cumulative production logbook required under paragraph (b)(3) of this section.

(ii) *Daily fishing logbook; contents.* (A) The daily fishing log must record the following effort information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the vessel conducted any fishing operation after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the daily fishing logbook must be used for each day's fishing activity. If fishing activity is conducted with more than one gear type or in more than one reporting area, during any day, a separate page in the daily fishing logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The vessel's name and the ADF&G vessel number.

(*4*) The reporting area where the vessel is conducting fishing activity.

(*5*) The gear type used by the vessel (pelagic trawl, bottom trawl, hook and line, or pot gear).

(*6*) The signature of the operator of the vessel.

(*7*) The size of the crew.

(*8*) Daily discard amounts of each groundfish species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discard amounts of each prohibited species listed under § 675.20(e) of this part by number, except for discard amounts of herring, which must be reported by round weight (0.1 mt).

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed:

(*1*) The trawl or set number. This number must be consecutive beginning with number one for the first haul or set of the day.

(*2*) The time at the beginning of the trawl or set.

(*3*) The position of the vessel at the beginning of the trawl or set in geographic coordinates.

(*4*) The sea depth at the beginning of the trawl or set in fathoms.

(*5*) Information concerning the gear used by the vessel. If the vessel is using longline gear, this information must include the average number of hooks or pots per skate and the number of skates used. If the vessel is using trawl gear, this information must include average trawl depth in fathoms.

(*6*) The duration of the set or trawl in minutes.

(*7*) The position of the vessel at the completion of the trawl or set in geographic coordinates.

(*8*) The estimated total weight of the catch for the trawl or set in round weight to the nearest metric ton (mt).

(iii) *Maintenance of the daily fishing logbook.* Entries in the daily fishing logbook as to trawl or set number, time, position, and estimated catch weight must be recorded within two hours after completion of the applicable trawl or set. All other information required in the daily fishing log under paragraph (b)(2)(ii) of this section must be recorded by noon of the following day.

(iv) *In all cases, upon delivery or landing; provision of discard information to processors.* Notwithstanding other time limits, all information required under paragraph (b)(2)(ii) must be recorded in the daily fishing logbook prior to the time when the vessel's catch is off-loaded. The daily discard information for each day since the previous offload must be provided to the processor receiving the catch. The processor must record this discard information in the daily cumulative production logbook and in the weekly production report.

(v) *Quarterly submission of daily fishing logbooks.* The operator of a catcher vessel or catcher/processor vessel must submit a copy of the daily fishing logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the daily fishing logbook or fishing activities conducted during the first quarter must be submitted by May 1 of that year, for the second quarter, by August 1 of that year, for the third quarter, by November 1 of that year, and for the fourth quarter, by February 1 of the following year.

(3) *Daily cumulative production logbook.* (i) The operator of a processor vessel and the manager of a shoreside processing facility that receives or processes groundfish from any Bering Sea and Aleutian Islands reporting area must maintain on the processor vessel or within the processing facility a daily cumulative production logbook of estimated catch receipt (if applicable), species discard amounts, and retained groundfish product information as described in paragraph (b)(3)(ii) of this section. Daily entries are required for each day a processor vessel or facility receives or processes groundfish.

(ii) *Daily cumulative production logbook; contents.* (A) The daily cumulative production logbook must record the following information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the processor vessel or processing facility conducted any fishing or processing activity after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the daily cumulative production logbook must be used for each day's entries. If fish received by the processor vessel or facility during

any day are harvested with more than one gear type or are harvested from more than one reporting area, a separate page in the daily cumulative production logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The name of the processing vessel or facility.

(*4*) The ADF&G vessel number or the Alaska State processor code, whichever is applicable.

(*5*) The reporting area where the groundfish was harvested.

(*6*) The gear type used to harvest the groundfish received by the processing vessel or facility (pelagic trawl, bottom trawl, hook and line, or pot gear).

(*7*) The signature of the operator of the processing vessel or the manager of the facility.

(*8*) The number of crew or employees engaged by a processor for fishing, processing, or other activities.

(*9*) The amounts of each groundfish species, groundfish species group, and prohibited species listed under § 675.20(c) of this part, that are discarded in related fishing or processing activity. These amounts should include discards reported to a processor by operators of catcher vessels under § 675.5(b)(2)(iv) of this part. Discard amounts of groundfish should be recorded to the nearest tenth of a metric ton (0.1 mt) round weight. Discard amounts for each prohibited species listed under § 675.20(c) of this part must be recorded by number, except for discard amounts of herring, which must be recorded by round weight (0.1 mt).

(*10*) Species product information for each day of processing activity. Fish product weight must be specified to the nearest tenth of a metric ton (0.1 mt). Product information must include the following information for any product resulting from the processing of any groundfish species or species group for which a total allowable catch (TAC) is specified under § 675.20 of this part:

(*i*) The product by species and product type codes.

(*ii*) The daily total amount of the product produced by species and product type codes in fish product weight.

(*iii*) The weekly total amount of the product produced by species and product type codes in fish product weight to be carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total amount for each product is zero and nothing shall be carried forward from the previous weekly reporting period.

(*iv*) The updated weekly total amount of the product produced by species and product type codes in fish product weight calculated by adding the relevant daily total and the weekly total to be carried forward.

(B) The daily cumulative production logbook must record the following information for each catch receipt;

(*1*) For each groundfish set or codend received by mothership processor vessel:

(*i*) The State of Alaska fish ticket number.

(*ii*) The time when the set or codend is received.

(*iii*) The position of the mothership processor vessel in geographic coordinates when the set or codend is received.

(*iv*) The name of the catcher vessel delivering the set or codend.

(*v*) The ADF&G vessel number of the catcher vessel delivering the set or codend.

(*vi*) The estimated total weight of the set or codend in round weight to the nearest metric ton (mt).

(*2*) For each groundfish landing received by shoreside processors from catcher vessels:

(*i*) The State of Alaska fish ticket number.

(*ii*) The time when the catch is received.

(*iii*) The name of the vessel delivering the catch.

(*iv*) The ADF&G vessel number of the vessel delivering the catch.

(*v*) The estimated total weight of the catch in round weight to the nearest metric ton (mt).

(iii) *Maintenance of the Daily cumulative production logbook.* Information concerning the catch receipt number or State of Alaska fish ticket number, time of receipt, the name of the delivering vessel and, for a mothership processor vessel, the position of that vessel and the estimated catch receipt weight, must be recorded in the daily cumulative production logbook within 2 hours after the set, codend or catch is received. All other information required in the daily cumulative production logbook under paragraph (b)(3)(ii) of this section must be recorded by noon of the day following the day the catch receipt or production occurred. Information concerning product amounts must be recorded in the daily cumulative production logbook by noon of the day following the processing of the product regardless of when the set, codend or catch is received.

(iv) *Quarterly submission of the daily cumulative production logbook.* The operator of a processor vessel or manager of a shoreside processing facility must submit a copy of the daily cumulative production logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the daily cumulative production logbook for activities conducted during the first quarter must be submitted by May 1 of that year, for the second quarter, by August 1 of that year, for the third quarter, by November 1 of that year, and for the fourth quarter, by February 1 of the following year.

(4) *Product transfer logbooks.* The operator of a processor vessel and the manager of a shoreside processing facility must record, in a separate transfer logbook, each transfer. A transfer includes any loading, offloading, shipment or receipt of any processed groundfish product, including quantities transferred outside the EEZ, within any state's territorial waters, or within the internal waters of any state or at any shoreside facility. Product transfer information must be recorded in the product transfer logbook within 12 hours of the completion of the product transfer.

(i) *Product transfer logbooks; contents.* The transfer logbook must record the following information:

(A) The page number. This number must be consecutive beginning with page one for the first transfer occurring after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year.

(B) The time, date and location. This information must include the time and date when the transfer began and the time and date when it is completed. If the product transfer logbook is maintained for a processor vessel, this information must include the location of the transfer. If the processor vessel is at sea, the location of the transfer must be specified in geographic coordinates. If the processor vessel is in port, the location of the transfer must be specified by identifying that port.

(C) Identification information. If the product transfer logbook is maintained for a processor vessel, the identification information must include the vessel's name, the Federal permit number, the ADF&G vessel number and radio call sign. If the product transfer logbook is maintained for a shoreside processing facility, the identification information must include the name of the facility, the location of the facility, and the Alaska State Processor Code number.

(D) Company representative information. Company representative information must include the name of a person representing the processor vessel or facility, the telephone number for that person and either a telex or facsimile number for that person.

(E) Transfer information. The transfer information must include the type of transfer involved and must specify whether the transfer is a shipment or offloading or whether it is a receipt or loading.

(F) Second party information. Second party information must include information concerning the other parties involved in the transfer, including the name, Federal permit number and radio call sign of any vessel involved, the name of any shipping agent involved, and the name and location of any processing facility involved. If the transfer involves a shipment, the second party information must include the destination of the carrier or vessel receiving the fish product.

(G) The total amount of the products transferred by species code and product type in fish product weight to the nearest tenth of a metric ton (0.1 mt). Information concerning the amount of the product must include the total number of production units transferred and the estimated weight of each production unit type.

(ii) *Submission of product transfer logs.* An operator of a processor vessel and a manager of a shoreside processing facility must submit a copy of the product transfer logbook to the Regional Director for each week when any product transfer activity occurred. Copies of the product transfer logbooks must be received by the Regional Director within one week after the week when the transfer occurred.

(c) *Other reporting requirements.* The operator or manager of any vessel or shoreside processor of the United States that harvests or processes groundfish caught from any Bering Sea and Aleutian Islands reporting area must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements:

(1) *Alaska groundfish check-in/check-out notices:* (i) *Requirement.* Prior to the commencement of any fishing activity in, or the receipt of any groundfish from, any Bering Sea and Aleutian Islands reporting area during any fishing year by any processor vessel, the operator of the vessel must provide a check-in notice to the Regional Director. Upon the completion of fishing activity in or the receipt of any groundfish from any Bering Sea and Aleutian Islands reporting area during any fishing year by any processor vessel, the operator of the vessel must provide a check-out notice to the Regional Director.

(ii) *Check-in/check-out notices; contents:* The notice of check-in or check-out must include the following information:

(A) The processor vessel's name, radio call sign, and, if applicable, Federal groundfish permit number;

(B) Time and date information. If the notice concerns the commencement of fishing activity or the receipt of groundfish, this information must include the time and date of when these activities will commence. If the notice concerns the completion of fishing activities or the receipt of groundfish, this information must include the time and date of when these activities ceased.

(C) Location. The reporting area and position in geographic coordinates where the fishing activity or receipt of groundfish is expected to occur or has occurred.

(iii) *Check-in/check-out notices; submission or method of providing notice.* The operator of a processor vessel required to provide a check-in or check-out notice must provide that notice through the means and in the manner prescribed by the Regional Director.

(2) *Weekly production reports*—(i) *Requirements for processor vessels.* The operator of a processor vessel which conducts fishing activity in, or receives groundfish from, any Bering Sea and Aleutian Islands reporting area at any time during a fishing year must submit weekly production reports. Weekly production reports are required for a processor vessel for any week during the period beginning with the date specified in the check-in notice and ending after all groundfish harvested from and fish products prepared with any goundfish harvested from any Bering Sea and Aleutian Islands reporting area are off-loaded. Weekly production reports are required during this period even if no groundfish is harvested or received or processed during a particular week and these weekly production reports should specify "zero" with respect to the amounts harvested, received or produced.

(ii) *Weekly production reports; requirements for shoreside processors.* The manager of a shoreside processing facility must submit weekly production reports beginning with the first week of the year when the facility receives any groundfish from a Bering Sea and Aleutian Islands reporting area and continuing until the end of the year or until the facility ceases groundfish production for the year. Weekly production reports are required during this period even if no groundfish is received or processed during a particular week and these weekly production reports should specify "zero" with respect to the amounts harvested, received or produced.

(iii) *Weekly production reports; contents.* The weekly production report must have a separate page for each gear type used. Each page must include the following information:

(A) The name of the person submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. If the weekly production report is submitted for a processor vessel, this information must include the name and radio call sign of that vessel. If the weekly report is submitted for a shoreside processing facility, this information must include the name of the plant.

(C) Federal permit number or Alaska State processor code, whichever is applicable.

(D) The end date of the weekly reporting period.

(E) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, bottom trawl, hook and line, or pot gear).

(F) The reporting area or areas from which groundfish was harvested and retained during the weekly reporting period with the reporting area or areas specified for each groundfish species or species group.

(G) The number of days when fishing activities were conducted and when fish were received.

(H) The total estimated catch weight or catch receipt for each reporting area to the nearest metric ton (mt).

(I) The amount of each product by species code and product type with the amount produced during the weekly reporting period specified in fish product weight for each groundfish species or species group for which a total allowable catch is specified under § 675.20 of this part.

(J) The amount of each groundfish species, groundfish species group, or prohibited species listed under § 675.20(c) of this part, which is discarded in related fishing operations during the weekly reporting period.

(iv) *Weekly production reports; submission.* Weekly production reports must be submitted to the Regional Director. Weekly production reports must be received by the Regional Director within one week after the end of the applicable weekly reporting period.

(3) *Monthly product value report*—(i) *Requirement.* The operator of a processor vessel and the manager of a shoreside processing facility or the parent company of that vessel or facility

must prepare a monthly product value report for each month the vessel or facility sells any groundfish harvested from or any fish product produced from groundfish harvested from any Bering Sea and Aleutian Islands reporting area.

(ii) *Monthly product value reports; contents.* The monthly product value report must contain the following information:

(A) Company representative information. This information must include the name of the person representing the processing vessel, facility or company, the telephone number for that person and either a telex or facsimile number for that person.

(B) The name of the vessel or facility.

(C) Federal permit number or Alaska State processor code, whichever is applicable.

(D) The month and year.

(E) The products sold during the monthly reporting period by species code and product type with the amount specified in fish product weight for each product type and for each groundfish species or species group for which a total allowable catch is specified under § 675.20. The size or sizes of the products sold, the grade or grades of the products sold, if applicable, and the value of the products sold must also be specified.

(iii) *Monthly product value reports; submission.* The operator of a processor vessel and the manager of a shoreside processing facility or the parent company of that vessel or facility must submit monthly product value reports on an annual basis to the Alaska Fisheries Science Center. Monthly product value reports for a calendar year must be received by February 1 of the following year.

(d) *Groundfish utilization surveys.*

* * * * *

19. Section 675.7 is amended by adding paragraph (d) as follows:

§ 675.7 Prohibitions.

* * * * *

(d) Fish for groundfish except in compliance with the terms of an observer plan as provided by § 675.25 of this part.

20. In § 675.20, paragraph (a)(2) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (b) of this section. The sum of the TACs so specified must be within the OY range of 1.4–2.0 million mt for target species and the "other species" category.

* * * * *

21. In § 675.22, paragraph (f) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(f) No fishing is allowed during April 1 through September 30 of each of the 1990 and 1991 fishing years in that part of the Bering Sea subarea shoreward of a line on which each point is 12 miles from the base line used to measure the Territorial Sea around islands named Round Island and The Twins as shown on National Oceanic Survey Chart INT 500, and around Cape Peirce (160°10′ W. longitude, 58°40′ N. latitude).

22. § 675.23 is added as follows:

§ 675.23 Seasons.

Fishing for groundfish during the January 1–December 31 fishing year in the statistical areas defined at § 675.2 of this part is authorized from January 1 through December 31, subject to other provisions of this part.

23. Section 675.24 is added to read as follows:

§ 675.24 Gear allocations.

Vessels using gear types other than those specified by paragraphs (a) and (b) of this section, must treat sablefish as a prohibited species.

(a) In the Bering Sea subarea, defined at § 675.2 of this part, hook-and-line and pot gear may be used to take up to 50 percent of the TAC for sablefish; trawl gear may be used to take up to 50 percent of the TAC for sablefish.

(b) In the Aleutian Islands subarea, defined at § 675.2 of this park, hook-and line and pot gear may be used to take up to 75 percent of the TAC for sablefish; trawl gear may be used to take up to 25 percent of the TAC for sablefish.

(c) Sablefish closures. (1) When the Regional Director determines that the share of the sablefish TAC assigned to any type of gear for any year and any subarea under this paragraph may be taken before the end of that year, the Regional Director, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by notice in the **Federal Register**, prohibit directed fishing for sablefish by persons using that type of gear in that subarea for the remainder of the year.

(2) When the Regional Director determines that the share of the sablefish TAC assigned to any type of gear for any year and any subarea under this paragraph is or will be reached, the Regional Director will, by notice in the **Federal Register**, require that sablefish be treated as a prohibited species by persons using that type of gear in that subarea for the remainder of that year.

24. Section 675.25 is added to read as follows:

§ 675.25 Observers.

All fishing vessels subject to this part and all shoreside processor facilities that receive groundfish from vessels subject to this part, must comply with terms contained in an observer plan that has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery, unless specifically exempt from such compliance by the observer plan.

[FR Doc. 89–28368 Filed 12–1–89; 11:07 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 233
Wednesday, December 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–219–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for cracks in the wing top skins, and repair, if necessary. This proposal is prompted by the results of the manufacturer's full-scale fatigue testing which revealed cracks in the wing top skin center and front spar joints between Ribs 1 and 7 due to shear stresses from landing gear loads. This condition, if not corrected, could result in reduced structural capability of the wings.

DATE: Comments must be received no later than January 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–219–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comment to Docket Number 89–NM–219–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. During full-scale fatigue testing, the manufacturer discovered cracks in the wing top skin center and front spar joints between Ribs 1 and 7. The cracks started in clearance fit fastener holes in skin-to-spar joints due to shear stresses from landing gear loads. Additionally, cracks have been found in this area of the top skin on six Model A300 B2 series airplanes in service. These cracks may also be associated with high landing gear loads. This condition, if not corrected, could lead to reduced structural capability of the wings.

Airbus Industrie has issued Service Bulletin A300–57–158, dated June 10, 1989, which describes procedures for repetitive inspections to detect cracks in the wing top skins, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89–109–097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect cracks in the wing top skins, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2–1C, B2K–3C, and B2–203 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wings, accomplish the following:

A. Perform a close visual inspection of the wing top skins in the areas bounded by the front and rear spars between Ribs 1 and 7, paying particular attention to the immediate vicinity of the center spar position, in accordance with Airbus Industrie Service Bulletin A300–57–158, dated June 10, 1988, as follows:

1. For airplanes that have accumulated less than 10,000 landings, the initial inspection must be performed prior to the accumulation of 12,000 landings.

2. For airplanes that have accumulated at least 10,000 landings, but not more than 15,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

3. For airplanes that have accumulated 15,000 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspection at intervals not to exceed 3,000 landings.

C. If cracks are found or suspected, confirm the finding by eddy current inspection, and repair, prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, Northwest Mountain Region. Repeat the inspections at intervals not to exceed 3,000 landings.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28443 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–220–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive ultrasonic inspections to detect cracks in the front and rear spar bottom boom inboard and outboard of Rib 9, and repair, if necessary. This proposal is prompted by fatigue testing by the manufacturer, which revealed cracks emanating from bolt holes inboard and outboard of Rib 9 on the front and rear spar bottom booms. This condition, if not corrected, could lead to reduced structural capability of the wings.

DATE: Comments must be received no later than January 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–220–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–220–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. The manufacturer reported that, during full-scale fatigue tests, cracks were found emanating from bolt holes inboard and outboard of Rib 9 on the front and rear spar bottom booms. This condition, if not corrected, could lead to reduced structural capability of the wing.

Airbus Industrie has issued Service Bulletin A300–57–152, dated November 30, 1988, which describes procedures for repetitive ultrasonic inspections for cracks in the bolt holes in the front and rear spar bottom boom inboard and outboard of Rib 9, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89–109–097(B), dated July 19, 1989, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive ultrasonic inspections to detect cracks in the bolt holes in the front and rear spar bottom boom inboard and outboard of Rib 9, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be effected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $36,960.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–57–152, dated November 30, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing, accomplish the following:

A. Perform an ultrasonic inspection of the front and rear spar bottom boom inboard and outboard of Rib 9, in accordance with Airbus Industrie Service Bulletin A300–57–152, dated November 30, 1988.

1. Perform the initial and repetitive inspections as follows:

a. For airplanes that have accumulated less than 22,000 landings, perform the initial inspection prior to the accumulation of 24,000 landings. Repeat the inspection at intervals not to exceed 9,000 landings.

b. For airplanes that have accumulated 22,000 or more landings but less than 27,000, perform the initial inspection within 2,000 landings after the effective date of this AD. Repeat the inspection at intervals not to exceed 9,000 landings.

c. For airplanes that have accumulated 27,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD. Repeat the inspection at intervals not to exceed 9,000 landings.

2. If cracks are found, repair prior to further flight in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Repetitive inspections must be conducted thereafter in accordance with paragraph A.1., above.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28444 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–218–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notices proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive visual or high frequency eddy current inspections to detect cracks in the wing bottom skin in the area of the magnetic level indicator (MLI) and slat can drains between Ribs 8 and 9. This proposal is prompted by the manufacturer's full-scale fatigue testing which revealed cracks emanating from either the peripheral bolt holes or the larger central holes of the MLI's and also the peripheral bolt holes or central holes of the slat can drains. This condition, if not corrected, could result in reduced structural capability of the wings.

DATE: Comments must be received no later than January 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–218–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA,

BEST COPY AVAILABLE

Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89–NM–218–AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. During full-scale fatigue testing, the manufacturer discovered cracks in the area of the magnetic level indicators (MLI) and slat can drains between Ribs 8 and 9. The cracks were found emanating from either the peripheral bolt holes or the larger central holes of the MLI's, and also from the peripheral bolt holes or central holes of the slat can drains. This condition, if not corrected, could result in reduced structural capability of the wings.

Airbus Industrie has issued Service Bulletin A300–57–153, dated November 30, 1988, which describes procedures for repetitive visual or high frequency eddy current (HFEC) inspections to detect cracks in the wing bottom skin at MLI and slat can drain holes between Ribs 8 and 9, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89–109–097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual or HFEC inspections to detect cracks in the wing bottom skin at MLI and slat can drain holes between Ribs 8 and 9, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–57–153, dated November 30, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wings, accomplish the following:

A. Perform a visual or high frequency eddy current (HFEC) inspection of the wing bottom skin at magnetic level indicator (MLI) and slat can drain holes between Ribs 8 and 9, in accordance with Airbus Industrie Service Bulletin A300–57–153, dated November 30, 1988, as follows:

1. Model A300 B2 series airplanes:

a. For airplanes that have accumulated less than 19,000 landings, the initial inspection must be performed prior to the accumulation of 21,000 landings.

b. For airplanes that have accumulated at least 19,000 landings but not more than 24,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated more than 24,000 landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4–100 and B4–2C series airplanes:

a. For airplanes that have accumulated less than 16,000 landings, the initial inspection must be performed prior to the accumulation of 18,000 landings.

b. For airplanes that have accumulated at least 16,000 landings, but not more than 20,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated more than 20,000 landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

3. Model A300 B4–200 series airplanes:

a. For airplanes that have accumulated less than 12,000 landings, the initial inspection must be performed prior to the accumulation of 14,000 landings.

b. For airplanes that have accumulated at least 12,000 landings, but not more than 16,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated more than 16,000 landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspections required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes:

a. If the immediately preceding inspection was performed visually, the next inspection must be performed within 3,300 landings.

b. If the immediately preceding inspection was performed using HFEC, the next inspection must be performed within 7,000 landings.

2. For Model A300 B4–100 and B4–2C series airplanes.

a. If the immediately preceding inspection was performed visually, the next inspection must be performed within 3,000 landings.

b. If the immediately preceding inspection was performed using HFEC, the next inspection must be performed within 6,000 landings.

3. For Model A300 B4–200 series airplanes:

a. If the immediately preceding inspection was performed visually, the next inspection must be performed within 1,700 landings.

b. If the immediately preceding inspection was performed using HFEC, the next inspection must be performed within 4,600 landings.

C. If cracks are found, repair prior to further flight in a manner approved by the Manager, Standardization Branch ANM–113, FAA Northwest Mountain Region. Repeat inspections thereafter at intervals specified in paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28445 Filed 12–5–89; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–211–AD]

Airworthiness Directives; Boeing Model 767 –200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require the installation of a mechanical power transfer unit (PTU) system between the left and right hydraulic systems of each airplane. This proposal is prompted by analysis which indicates that airplane pitch control capability is marginal with adverse center-of-gravity (CG) and gross weight combinations when both left and center hydraulic systems become inoperative. This condition, if not corrected, could result in insufficient pitch control maneuvering capability in certain combinations of operational parameters of airspeed, weight, and CG.

DATE: Comments must be received no later than January 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–211–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn M. Dail, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card/on which the following statement is made: "Comments to Docket Number 89–NM–211–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that the loss of both the left (L)'and center (C) hydraulic systems on Model 767 series airplanes could result in a condition where pitch control would be marginal for certain center-of-gravity (CG) and gross weight combinations. Insufficient pitch control capability would result from the loss of stabilizer trim, a condition which would result in the stabilizer trim remaining in its last commanded position. This condition if not corrected, can result in a significant reduction in elevator effectiveness at certain trim positions, and could result in insufficient pitch control maneuvering capability in certain combinations of operational parameters of airspeed, weight, and CG.

As of this date, there has not been a single event of hydraulic failure resulting in the loss of both the left and center hydraulic systems. However, the FAA has determined that the addition of the power transfer (PTU) unit system will provide an additional hydraulic power source for stabilizer pitch control and landing flare capability. The PTU system adds the right hydraulic system

as a third power source for the stabilizer to provide stabilizer trim capability if either low pressure of the left and the center hydraulic systems, or low quantity of the left and low pressure of the center hydraulic systems should occur in flight. Also, the PTU system preserves the left system elevators for additional pitch capability if there is a loss in the left hydraulic system downstream of the isolation shutoff valve.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–29A0039, dated May 11, 1989, which describes procedures to install a hydraulic power transfer unit system and associated components on certain airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the hydraulic system in accordance with the service bulletin previously described (for those airplanes listed in the service bulletin), or in a manner approved by the Manager, Seattle Aircraft Certification Office (for all other affected airplanes).

A revision to the service bulletin is being prepared which will add the remaining airplanes to the effectivity. Once that revision is issued and aproved, the FAA may consider revising this action to include it as a source of service information.

There are approximately 245 Boeing Model 767–200 and 767–300 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD, that it would take approximately 130 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts would be provided to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $551,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767–200 and 767–300 series airplanes on which Production Revision Release (PRR) B–11777 has not been incorporated, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent the loss of stabilizer trim and decreased pitch control authority, accomplish the following:

A. For airplanes identified in Boeing Alert Service Bulletin 767–29A0039, dated May 11, 1989: Install the hydraulic power transfer unit system with its associated components in accordance with the procedures outlined in that service bulletin.

B. For all other airplanes: Install a hydraulic power transfer unit system with its associated components in accordance with the procedures approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Moutain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28442 Filed 12–5–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Availability of Petition to Initiate Rulemaking on Surface Coal Mining and Reclamation Operations; Permanent Program Performance Standards for Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and enforcement (OSM) of the United States Department of the Interior (DOI) seeks comments concerning the rule change suggested in a petition, submitted pursuant to the Surface Mining Control operations at surface coal mines.

The petitioner suggests that OSM amend its rules by revising 30 CFR 817.62 and 30 CFR 817.67 to provide increased protection from blasting damage outside the permit area than is afforded under the current rules. OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition.

Such comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATE: OSM will accept written comments on the petition until 5 p.m. Eastern time on January 5, 1990.

ADDRESSES: Mail comments on proposal to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue, NW., Washington, DC. 20240; or hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Adminstrative Record, Room 5131, 1100 L. St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dermot W. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the proposed revisions, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR Part 817 are available for inspection and may be obtained at the location listed under "ADDRESSES".

Public Hearing

OSM will not hold a public hearing on the proposed revision, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m., during the comment period. In order to arrange such a meeting, call or write to the person identified under "FOR FURTHER INFORMATION CONTACT."

II. Background and Substance of Petition

OSM received a letter dated November 1, 1989, from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana petitioning for rulemaking to revise 30 CFR 817.62 and 30 CFR 817.67. Ms. Zell and Mr. Albrecht recommend the present regulatory language be replaced with the revised language provided in their petition. Ms. Zell and Mr. Albrecht contend that the existing rules have an inappropriate scientific basis and do not provide adequate protection for older structures from airblast and ground motion due to cast blasting, especially when such structures are built on glacial or other poorly consolidated deposits and/or overlie abandoned underground mine workings. Older structures are defined as being more than 20 years old and built with walls and ceilings of plaster-on-lath rather than gypsumboard drywall.

SMCRA was signed into law on August 3, 1977. Section 515(b)(15) of the Act contains the Statutory requirements governing blasting operations at surface coal mines. The current regulations implementing these requirements were published in final on March 8, 1983 (48 FR 9809).

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decison either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(2)(C), is needed.

List of Subjects in 30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Surface Mining Reclamation and Enforcement Office, Underground mining.

Dated: November 29, 1989.

Harry M. Snyder,

Director.

Appendix

The text of the petition dated November 1, 1989, from Ms. Shirley Zell and Mr. John Albrecht, is as follows:

BEFORE THE DIRECTOR OF THE OFFICE OF SURFACE MINING

PETITION TO AMEND RULES:

§ 817.62 Use of Explosives: Preblasting Survey

§ 817.67 Use of Explosives: Control of Adverse Effects

Pursuant to "The Surface Mining Control and Reclamation Act of 1977", Public Law 95–87 Section 201(g) this is a petition to request amendments to Sections 817.62 and 817.67 of the "code of federal regulations."

Section 817.67 (a) General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

The Federal regulations under 30 CFR 817.61 through 817.68 were developed for comparatively undisturbed geologic conditions. These regulations do not contain sound technical parameters regarding blast vibrations, frequency, long durations, structure response, long-term blasting vibration effects and the impacts and relationships between vibration and subsidence on houses.

Coal Industry is using new methods, such as cast blasting which was not the technique being used when research was done that the current regulations were based on. Cast blasting is a type of blast in which the energy from the blast is used to cast and fragment the shot material as opposed to just fragmenting as in a conventional shot. Cast blasting is helping operators increase production rates at their mines, while lowering stripping costs. One characteristic of cast blasting is that very large amounts of explosives per delay are utilized. The damage criteria was developed to quantify the response of and damage to residential type structures from small to intermediate sized blasts. Cast blasts can not be defined as small to intermediate sized blasts. There are still no clear-cut formulas to assure that the blaster can design a successful cast. Cast blasting produces a high amount of air overpressure. You can not compare ground vibrations or airblast from cast blasting to those of conventional blasting. A scientific study is needed analyzing waveforms recorded during conventional and cast blasting.

Low-level blasting vibrations are suspected to have the potential for accelerating subsidence. The effects of low-level blasting vibrations on subsidence-prone areas need to be investigated.

The current blasting standards need to be reduced immediately for the protection of people and property. Few experiences affect the average citizen more significantly than

the experience of having a surface coal mine operation next to your community. The Constitution of the United States of America gives citizens a right to life, liberty, and property. Should the blasting standards remain static, their inadequacies will continue to produce problems for all parties involved.

Dated: November 1, 1989.

Respectfully submitted,

Shirley Zell

—John Albrecht

PROPOSED AMENDMENTS TO THE SURFACE MINE BLASTING PERFORMANCE STANDARDS OF 30 CFR 817.62 AND 817.67

§ 817.62 Use of explosives: Preblasting survey.

(a) At least thirty (30) days before initiation of blasting in a permit area, the operator shall notify, in writing, all residents or owners of structures located within one (1) mile of the permit area how to request a preblast or condition survey.

(b) On the written request to the regulatory authority or the operator by a resident or owner of a dwelling or structure that is located within one (1) mile of any part of the permit area, or within an area determined by the regulatory authority to be appropriate in a particular situation on the basis of complaints or other information received by the regulatory authority, the operator shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the regulatory authority and to the person requesting the survey. For any structure where, in accordance with this section, a survey has been requested by a previous resident or previous owner and the survey has been conducted by the operator and copies of the survey report have been provided to the previous owner or resident and the regulatory authority, the operator shall only be required to provide a copy of the previously completed survey report to any new or subsequent owner upon written request by the new or subsequent owner. If a structure is renovated or added to, subsequent to a survey, then upon request by the resident or owner a survey of such additions and renovations shall be performed by the operator in accordance with this section.

(c) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(d) All survey requests received by the operator more than ten (10) days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. If the request is made after the start of blasting the operator shall conduct a condition survey of the dwelling or structure. A condition survey shall contain information identical to a preblasting survey, but need not be completed prior to initiation of blasting.

(e) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions of proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be promptly provided to the person requesting the survey and to the regulatory authority. If the person requesting the survey disagrees with the result of the survey, he or she may notify, in writing, both the operator and the regulatory authority of the specific area of disagreement.

SUPPORTING FACTS FOR AMENDMENTS TO § 817.62

The current provisions require the operator to carry out a preblast survey of any dwelling or structure within one-half (½) mile of the permit area if requested in writing by the owner or resident. The owner or resident must be contacted by letter at least 30 days before the start of blasting, notifying them how they may request a preblasting survey. The current provisions are inadequate. Many citizen blasting complaints are from people who live more than one-half (½) mile from the mine site. This is because low frequency vibrations dominate at large distance. Even at relatively low amplitudes, less than 0.50 inches per second, the low frequencies tend to amplify the structure response as they correspond to the natural frequency of individual structures. Geologic conditions which favor the generation of low frequency vibrations (3 to 18 Hz) can increase the potential for structural damage, because these frequencies match the natural frequencies of low rise residential structures. Ground motion at the same frequency as the structure's natural frequency causes increased vibrational energy transfer into the structure. Every blasting operation, its environment, and its surrounding structures are unique.

By offering and conducting preblast or condition surveys for people who are or will be subjected to the adverse vibrations from blasting, a coal company has a chance to let the public know who they are, that they are concerned about the feelings of the public, and are taking or planning to take all necessary steps to prevent damage to homes. When the preblast or condition survey is conducted it is often the best opportunity to let the public know what is to be expected from the mining operation. Such requirements could be beneficial to residents and industry alike since it could (1) require surveys where low frequency vibrations are a problem, (2) more effectively alert the public as to its rights to a preblast or condition survey in particular problem situations, (3) protect coal companies from unsubstantiated damage claims, and (4) the survey report would determine the condition of the dwelling or structure and alert the regulatory authority of the presence of fragile conditions.

Recalling the intent of the Surface Mining Control and Reclamation Act of 1977 the regulatory authority must provide positive protection against damage to public or private property. It is clear that the possibility of actual damage is dependent not only on the peak particle velocity, but also on the frequency content of that vibration, on the type of terrain or rock upon which the structure stands and on the local geologic conditions. It is also dependent on the type of structure, the height of the structure, the natural frequency of the structure, and of course, on the state of repair-or-disrepair-of the structure. Even when that structure can be said to be in a good state of repair, it might also be that it is old. Factors such as this dictate special considerations, perhaps specific velocity limitations. The preblast survey or condition survey report should include recommendations for whatever changes are needed to prevent blasting damage.

§ 817.67 Use of explosives: Control of adverse effects.

(a) General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) Airblast—(1) Limits. (i) Airblast shall be controlled so that it does not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community of institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (±3 dB)	Maximum level, in dB
0.1 Hz or lower-flat response [1]	134 peak.
2 Hz or lower-flat response	133 peak.
6 Hz or lower-flat response	129 peak.
C-weighted-slow response [1]	

[1] Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority may specify lower maximum allowable airblast levels than those of subsection (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) Monitoring. (i) Airblast shall be monitored and recorded by the operator for each blast to ensure compliance with the airblast standards. (ii) The regulatory authority may require an operator to conduct additional airblast measurements of blasts and may specify the locations at which such measurements are taken. (iii) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site.

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 817.68(c); or

(3) Beyond the permit boundary.

(d) Ground vibration—(1) General. In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved by the regulatory authority. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of section (d)(2), the blasting-level chart of subsection (d)(3) of this section, or by the regulatory authority under subsection (d)(4) of this section. All structures in the vicinity of the blasting area, not listed in subsection (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(2) Maximum peak particle velocity. (i) The maximum peak particle velocity shall not exceed 0.50 inch per second at the location of any dwelling, public building, school, church or commercial or institutional building. (ii) A seismographic record shall be provided for each blast. Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

(3) Blasting-level chart. (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

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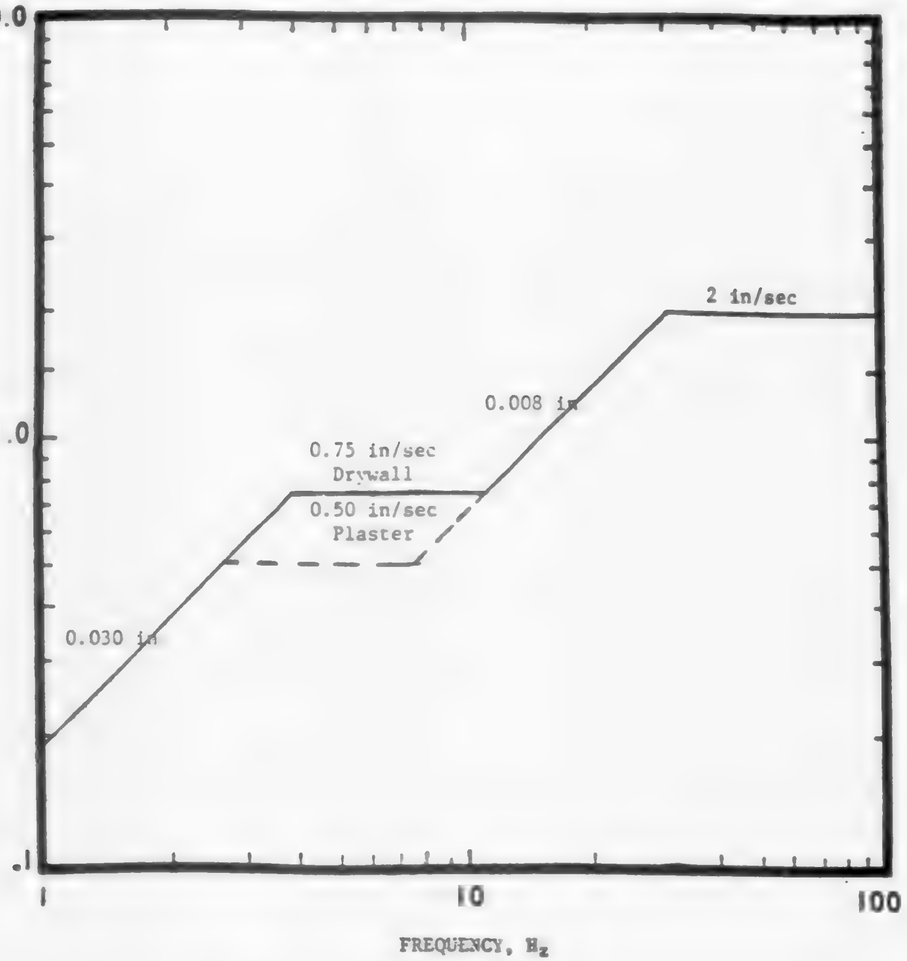


Figure 1. Alternative blasting level criteria.
(Source: Bureau of Mines RI8507 Appendix B)

(ii) If the figure 1 limits are used, seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The Method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(4) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this secton, if determined necessary to provide damage protection of if so recommended in any preblast or condition survey report provided pursuant to § 817.62.

(5) The regulatory agency may require an operator to conduct additional seismic monitoring of blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(6) All blasts shall be monitored at the location of the dwelling, public building, school, church, or community or institutional building that is located nearest to the blast and which the operator does not own. Other locations may be approved if it is not possible to locate the seismograph at the afore-mentioned location.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structure owned by the permittee and not leased to another person,

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

SUPPORTING FACTS FOR AMENDMENTS TO § 816.67

Public Law 95–87 the "Surface Mining Control and Reclamation Act of 1977" Section 507. Permit application requirements (g) states "Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 515(b)(15)." Section 515(b)(15) states in part "insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public or private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area."

Two adverse effects of blasting are airblast and ground motion. The regulatory authority approves the standards that the operator will have to comply with. Surface mining operations damage the property of citizens and create hazards dangerous to life and property by degrading the quality of life in local communities. How does the regulatory authority know if people are being injured or damage is being done to public or private property if the operator isn't required to monitor their blasting? Why do we have compliance limits if operators are not required to monitor their blasting? Doesn't the regulatory authority have a moral obligation to require continuous monitoring to protect the homeowner since it is the regulatory authority that approves the standards in the permit that allows the operator to blast? Since homeowners are almost always responsible for the burden of proving that their health or property has been adversely effected by a surface mining operation continuous airblast and seismic monitoring should be mandatory for all operations. Blasting with explosives is not an exact science and there are to many unknown factors. Wouldn't continuous airblast and seismic monitoring protect the operator from unfounded claims and litigation or does the operator have something to hide? Citizens do not trust a coal operator to honestly fill out the blasting records. Isn't not requiring continuous airblast and seismic monitoring allowing the fox to watch the hen house and opening the door to the operator to falsify blasting records? Wouldn't continuous airblast and seismic monitoring provide the operator with data he could use to evaluate the effects of the blasting operation? Wouldn't continuous airblast and seismic monitoring allow the regulatory authority to have immediate access to records necessary to evaluate vibration characteristics when investigations into blasting complaints are conducted? The only way the regulatory authority can determine whether a problem exists is to evaluate airblast and seismic data. Without continuous airblast and seismic monitoring too many questions remain unanswered when problems arise for all parties involved, the regulatory authority, the operator, and the homeowner. The homeowner is the victim to this situation.

Existing Federal and State regulations pertaining to the Use of explosives: Control of adverse effects are not adequate to protect society and the environment from the adverse effects of surface coal mining. Recent studies have shown that frequency has a very considerable effect on the possibility of blast vibration damage. The current blasting vibration limits are based on quarry blasting (limestone, granite, dense rocks) which are characterized by high particle velocities and high frequency waves. This is not the case for strip mine blasting which occurs in areas of low-strength, low-velocity materials (alluvium, conglomerates, glacial till, poorly cemented, and inherently weak rock, thick beds of various soils and water-saturated sand) which are characterized by low particle velocity, low frequency, long duration vibrations which increases the structural response and damage potential. What works at high frequencies in hard massive limestone may not work at lower frequencies typical of coal mine overburden.

The **Federal Register** / Vol. 48, No. 46 / Tuesday, March 8, 1983 / Rules and Regulations page 9799 defines older and modern homes: *Older homes* more than 20 years old with construction elements such as plaster-on-lath interiors and deteriorated or rigid, easily fractured construction materials. *Modern Homes* less than 20 years old with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations, and other wood-frame and wood-clad structure. Structural response varies from structure to structure and within each structure. The vibration standards do not address structural response which is the homeowners greatest concern. Are standards set to protect all structures or is it the regulatory authorities position to wait to see if damage occurs before deciding what vibrations a structure can withstand? Who determines if the property at risk might be a particularly vulnerable building? Many mining operations have surrounding neighbors whose homes are older. All homes require protection.

The Office of Surface Mining chose not to adpt the Bureau of Mines blasting criteria as published in RI 8507 and then included it in the Office of Surface Mining Blasting Guidance Manual, page 120, Section: Actual Blast Damage Criteria, which states "Practical, safe criteria for blasts that generate low-frequency ground vibrations are 0.75 in/sec for modern gypsumboard houses and 0.50 in/sec for plaster on lath interiors. For frequencies above 40 Hz, a safe particle velocity maximum of 2.0 in/sec is recommended for all houses." Does the regulatory authority's responsibility lie with protecting the health and property of citizens living near a mine? Without effective regulations that contain sound technical parameters regarding blast vibrations, structure response, and damage citizens lives will continue to be devastated as damage continues to occur to their homes.

Bureau of Mines Information Circular/1983, IC 8925, by Richard A. Dick, Larry R. Fletcher, and Dennis V. D'Andrea states on page 79 "Two vibration limits are important; the level above which damage is likely to occur and the level above which neighbors are likely to complain. There is no precise level at which damage begins to occur. The damage level depends on the type, condition, and age of the structure, the type of ground on which the structure is built, and the frequency of the vibration, in hertz. Research completed by the Bureau of Mines in the late 1970's recommends that for very close-in construction blasting, where the frequency is above 40 Hz, vibration levels be kept below 2 in/sec to minimize damage. However, all mine and quarry blast vibrations, and those from large construction jobs, have frequencies below 40 Hz. For these blasts it is recommended that the vibration level be kept below 0.75 in/sec for homes of modern, drywall construction and below 0.50 in/sec for older homes with plaster-on-lath walls. These values could change as more research is done."

Bureau of Mines Report of Investigation/ 1980 RI 8485 by David E. Siskind, Virgil J. Stachura, Mark S. Stagg, and John W. Kopp states on page 55 "Direct measurement of blast damage and reanalysis of the nine previous studies have demonstrated that a stricter safe vibration level is required for low-frequency situations. In addition, the concept of a threshold for the most superficial types of damage needs to be

reintroduced in the light of the late data. Nonstructural cracks on interior walls are the most sensitive indicators of blast damage, and have a threshold level (with a 95-pct confidence of nondamage) of 0.75 in/sec. Inclusion of the Bureau's shaker tests and the Dvorak blast data lowers this to approximately 0.05 in/sec, although the shaker tests are somewhat suspect since they produce only localized vibrations and last longer than blasts. This lower criterion is applicable to sensitive residential structures (plaster interior walls), superficial damage (hairline plaster cracks), and low-frequency ground vibrations (structure on soft ground or thick overburden, and/or at long distances). Wallboard (gypsum Drywall) is more damage resistant than plaster by a factor of approximately two, and as previously discussed the high-frequency damage threshold is considrably higher (2 to 3 in/sec)."

Bureau of Mines Report of Investigations/1980 RI 8507 by David E. Siskind, Mark S. Stagg, John W. Kopp, and Charles H. Dowding states on pages 58 and 59 "Safe vibration levels for blasting are given in table 13, being defined as levels unlikely to produce interior cracking or other damage in residences. Implicit in these values are assumptions that the structures are cited on a firm foundation, do not exceed 2 stories, and have the dimensions of typical residences, and that the vibration wave trains are not longer than a few seconds." Also, "The almost-constant particle velocities for the lower damage probabilities of 2 and 1 pct strongly suggest that the 0.50 in/sec level will provide protection from blast damage in >95 pct of the cases. The damage probabilities realistically refer to numbers of homes being affected by a given shot rather than the number of shots required to damage a single home. This results from the much wider variation of damage susceptibilities among structures with various degrees of prestrain as compared with a time-dependent susceptibility for a given structure. Additional work on fatigue and special soil and foundation types may later justify stricter criteria." Also, "Data are insufficient for a thorough analysis of the damage potentials in structures of various construction types."

TABLE 13.—SAFE LEVELS OF BLASTING VIBRATIONS FOR RESIDENTIAL TYPE STRUCTURES

Type of structure	Ground vibration-peak particle velocity, in/sec	
	At low frequency [1] (<40 Hz)	At high frequency (>40 Hz)
Modern homes, Drywall interiors	0.75	2.0
Older homes, plaster on wood lath construction for interior walls	.50	2.0

[1] All spectral peaks within 6 dB (50 pct) amplitude of the predominant frequency must be analyzed.

Also, "The safest approach is to consider the low-frequency part of the time history separately, and where it is below 40 Hz, use the 0.75 in/sec or 0.50 in/sec criteria." Also, "Particle velocity is the most practical descriptor for regulating the damage potential for a class of structures with well-defined response characteristics (e.g., single-family residences)." Also, damage potentials for low-frequency blasts (<40 Hz) are considerably higher than those for higher frequency blasts (>40 Hz), with the latter often produced by close-in construction and excavation blasts." Also, "Practical safe criteria for blasts that generate low-frequency ground vibrations are 0.75 in/sec for modern gypsumboard houses and 0.50 in/sec for plaster on lath interiors. For frequencies above 40 Hz, a safe particle velocity maximum of 2.0 in/sec is recommended for all houses."

The Bureau of Mines criteria is needed until additional work on fatigue, special soil and foundation types, effects of cast blasting on structural response, effects of blasting on abandoned underground workings, damage potentials in structures of various construction types may later justify stricter criteria.

The coal industry's supporting consultancy which makes its livelihood off the industry are users of the Bureau of Mines research published in RI 8507. They have adopted it into their seismograph reports and sales literature, and use it to show that good practices are being followed.

The eight millisecond criteria, as it is commonly called, originated with a Bureau of Mines study conducted in 1962 by a researcher named Duvall. This study dealt with construction and quarry blasting. Duvall found that if explosive charges were separated in time by at least 8 milliseconds, the individual ground vibration pulses caused by the detonation of the charges may be considered separate and should preclude the occurrence of constructive interference and unreasonably high ground vibrations. The researchers found a correlation with charge separation and resulting ground vibration levels and based on their data recommended that 8 milliseconds (ms) be used a minimum separation between explosive charges. Since 1962 little research has done to substantiate the validity of the 8 ms criteria for different types of blasting. This study on construction and quarry blasting produced ground vibrations of high particle velocities and high frequencies. This is not the case where low-strength, low velocity materials are found in old stream and lake beds and hydraulically filled ground as found at strip mine operations where severe structural responses, long duration wave trains, low frequencies, and abnormally large strains (or displacements) often result. Recent research by the Bureau of Mines has found that the 8 ms minimum time separation for independent charges appears insufficiently long for low-frequency sites and should not be used in cases of vibrations with dominant frequencies below about 10 Hz. The 8 ms criterion is not very useful when you have a low-frequency problem. Explosive users and related professionals have also made this finding.

When citizens who are adversely affected by a surface mine operation know that tax dollars are being spent on research, these citizens expect the findings of these research projects to be put into effect so that they do not have to bear an unreasonable personal cost when their health or property are threatened.

[FR Doc. 89-28459 Filed 12-5-89; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 54, No. 233
Wednesday, December 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program (ACP), the Emergency Conservation Program (ECP), and the Forestry Incentives Program (FIP). Comments and suggestions will be received from the public concerning these conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATES: *Meeting Date:* December 19, 1989.

ADDRESSES: Meeting Location: Room 5086 South Building, U.S. Department of Agiculture, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agiculture, Room 4723, South Building, Washington, DC 20013, 202-447-7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting is scheduled to be held from 9:00 a.m. to 12:00 noon on December 19, 1989, in Room 5086 South Building, U.S. Department of Agriculture, Washington, DC. Meeting sessions will be open to the public. The agenda will include consideration of State and County Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, ECP and FIP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by ASCS. Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals or groups interested in making recommendations may also make them in writing and submit them to Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723-S, Washington, DC 20013. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of the limitations of space available, persons desiring to attend the meeting should call Mr. Vincent Grimes (202) 447-7333 to make reservations.

Signed at Washington, DC, on November 30, 1989.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-28458 Filed 12-5-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Nursery Pest Management Activities, Including the Control of Unwanted Vegetation, Diseases, Insects and other Animals in the J.W. Toumey Nursery, Ottawa National Forest, Gogebic County, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for Nursery Pest Management Activities at the J.W. Toumey Nursery, Watersmeet, Michigan. The proposed action is to control unwanted vegetation, disease, insects and animals in the J.W. Toumey Nursery. The nursery management activities that require controls include the cover crop, seed pre-treatment, nursery seedbed preparation, sowing, seedling growth from germination to lifting, and seedbed storage. The control methods under consideration include biological, chemical, manual, mechanical techniques, and a combination of these techniques in an integrated pest management strategy. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by December 29, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to David H. Morton, USDA Forest Service, Ottawa National Forest, East U.S. 2, Ironwood, Michigan 49938.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Nursery Manager, J.W. Toumey Nursery, USDA Forest Service, Ottawa National Forest, P.O. Box 445, Watersmeet, Michigan 49969. (906) 358-4523.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternative pest management strategies for this project. One of those is no action. This means that pest management is not done. Other alternatives will consider a range of methods for the control of unwanted vegetation, diseases, insects and other animals in the J.W. Toumey Nursery. The methods under consideration include biological, chemical, manual, mechanical techniques, and a combination of these techniques in an integrated pest management strategy. The activities that require controls include the cover crop, seed pre-treatment, nursery seedbed preparation, sowing, seedling growth from germination to lifting and seedling storage.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed project. This input will be used in

preparation of the draft EIS. The scoping process includes:

1. Identifying the issues and determining the significant issues to be considered and analyzed within the EIS.
2. Determining the effective use of time and money in conducting the analysis.
3. Identifying potential environmental effects of the proposed action and alternatives, (i.e. direct, indirect, and cumulative effects, and connected actions).
4. Determining potential cooperating agencies.
5. Identifying groups or individuals interested or affected by the decision.

David H. Morton, Forest Supervisor, Ottawa National Forest, Ironwood, Michigan, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1990. At that time, EPA will publish in the **Federal Register** a Notice of Availability of the draft EIS.

The comment period on the draft EIS will be 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management project participate at that time. Comments on the draft EIS should be as specific as possible. They may address the adequacy of the statement or the merit of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and will alert an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by December, 1990. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and the reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: November 30, 1989.

David H. Morton,

Forest Supervisor.

[FR Doc. 89-28480 Filed 12-5-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 91043-9243]

Foreign Availability Assessment; Initiation of an Assessment on High Purity Polycrystalline Silicon

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment with a request for comments.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability, the Office of Foreign Availability (OFA) is initiating an assessment to investigate the foreign availability of high purity polycrystalline silicon. OFA is also seeking public comments on the foreign availability of high purity polycrystalline silicon.

DATE: The period for submission of information will close January 5, 1990.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202)377-5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security reasons.

Pursuant to sections 5(f) (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On 12 September 1989, OFA accepted for filing an allegation of foreign availability for high purity polycrystalline silicon, which is controlled for national security reasons under Export Control Commodity Number (ECCN) 1757A(f).

After determining that we had received a completed submission claiming foreign availability for high purity polycrystalline silicon, and that it was supported by reasonable evidence addressing the established criteria, the Office of Foreign Availability initiated an assessment on 12 September 1989. Consistent with the requirements of the EAA, the Department intends to publish in the **Federal Register** the results of the assessment by 12 February 1990.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of high purity polycrystalline silicon. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce.

The following types of information would be of use:

—The names and locations of the non-U.S. sources;
—Key attributes and characteristics of the items on which quality comparisons may be made;
—The non-U.S. sources' production quantitites and/or sales;
—An estimate of market demand and of the economic impact of the control; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 provides additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b)(3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b)(3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information recieved after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: November 30, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-28469 Filed 12-5-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 91044-9244]

Foreign Availability Assessment; Initiation of an Assessment on Polycrystalline Silicon Rods and Chunks

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment with a request for comments.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability under § 791.4 of the Export Administration Regulations, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability to Poland of polycrystalline silicon rods and chunks. The Office of Foreign Availability is also seeking public comments on the foreign availability to proscribed countries to polycrystalline silicon rods and chunks.

DATE: The period for submission of information will close January 5, 1990.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION: Under sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security reasons.

Pursuant to sections 5(f) (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice.

On 5 September 1989, OFA accepted for filing an allegation of foreign availability for polycrystalline silicon rods and chunks in connection with a denied export license to Poland per § 791.4 of the EAR. This item is controlled for national security reasons under Export Control Commodity Number (ECCN) 1757A(f).

After determining that we had received a completed submission claiming foreign availability to Poland for specific shipments of polycrystalline silicon rods and chunks, and that it was supported by reasonable evidence addressing the established criteria, the Office of Foreign Availability initiated an assessment on 5 September 1989. Consistent with the requirements of the EAA, the Department intends to publish in the **Federal Register** the results of the assessment by 5 February 1990.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability to proscribed countries of polycrystalline silicon rods and chunks. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce.

The following types of information would be of use:

—The names and locations of non-U.S. sources;
—Key attributes and characteristics of the items on which quality comparisons may be made;

—The non-U.S. sources' production quantities and/or sales;
—An estimate of market demand and of the economic impact of the control; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 provides additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its propriety nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: November 29, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-28466 Filed 12-5-89; 8:45 am]
BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Foreign Fishing; Notice of Final Amendment of Foreign Fishing Permits for the Bering Sea and Aleutian Islands Groundfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final Permit Amendment; correction.

SUMMARY: This document corrects the final permit amendment for foreign vessels published December 4, 1989 (54 FR 50009). A comment and response in opposition to the proposed amendment were inadvertently omitted.

EFFECTIVE DATE: November 27, 1989, 01:00 p.m., Alaska Standard Time.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427–2337, or telex 467856 US COMM FISH CL.

In FR Doc. 89–28248 beginning on page 50009 in the issue of December 4, 1989, make the following correction.

On page 50010, third column, after the reply to comment 9, insert the following:

"10. One commenter suggested that NOAA explore the ramifications the proposal might have on the political and economic situation in Poland and investigate how the proposal would affect the U.S. goals of encouraging democratic self-government in Poland and developing a market-based economy in that country.

"Reply: The suggestions of the commenter indicate that NOAA should make a thorough analysis of the foreign policy implications of this proposal. Analysis of foreign policy is the responsibility of the Department of State, and NOAA relied on that Department's expertise with respect to the foreign policy implications of this proposal. That Department initiated the request, encouraged our action, and supported the proposal. Accordingly, NOAA believes the action taken will have a beneficial affect on U.S. foreign policy with respect to Poland."

Dated: December 4, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-28626 Filed 12-5-89; 8:45 am]
BILLING CODE 3510-22-M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Meeting

Under the Federal Crop Insurance Commission Act of 1988 [7 U.S.C. 1508 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: December 12, 1989.

Time: 8:30 a.m.–noon, 2:00 p.m.–5:30 p.m.

Place: Hyatt Regency Washington Hotel, 400 New Jersey Avenue NW., Washington, DC 20001, Telephone: (202) 657–3388.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To review the extent to which the Commission's recommendations for improvements in the Federal crop insurance program have been implemented; to draft the Commission's December monthly report; to consider other possible recommendations to improve the program; and to consider any other item of business necessary for the effective functioning of the Commission.

At this meeting, the Commission will be reviewing the extent to which its recommendations for improvements in the Federal crop insurance program are being implemented.

In April 1989, the Commission submitted an interim report to the congressional agriculture committees and the Secretary of Agriculture. The report sets forth the Commission's findings and recommendations for immediate administrative improvements in the Federal crop insurance program that it believes would foster increased participation by farmers. The Commission's findings and recommendations fall into four general categories: (1) Increased responsiveness to producer needs; (2) broadening participation; (3) program simplification; and (4) improvement of delivery system performance.

In July 1989, the Commission submitted its principal report to the congressional agriculture committees and the Secretary. In addition to recommendations for administrative improvements in the Federal crop insurance program, the report includes recommendations for legislation and a status report on the improvement of program administration by the Secretary based on the recommendations made by the Commission in the April report. The recommendations and findings of the Commission contained in the July report fall into four general categories: (1) Increased responsiveness to producer needs; (2) broadening participation; (3) program simplification; and (4) improved program administration.

Under the Federal Crop Insurance Commission Act of 1988, the Commission is charged with the responsibility of continuing to monitor the Federal crop insurance program and reporting on a monthly basis, through December 31, 1990, to the congressional agriculture committees and the Secretary on (1) the extent to which the recommendations of the Commission have been implemented, and (2) the level of participation in the program by producers.

The Commission considers the continued monitoring and monthly reporting a very serious responsibility. In addition to meeting the statutory requirements, the Commission intends to use the monthly reporting process as a means of furnishing the congressional agriculture committees and the Secretary with any additional recommendations it may develop on ways to improve the program.

The Commission also intends to study and analyze the recommendations contained in the April report and the July report and furnish the congressional agriculture committees and the Secretary, through the monthly reporting process, with any views or comments it may develop with respect to such recommendations.

Accordingly, at this meeting, the Commission will be reviewing the extent to which its recommendations are being implemented; drafting the Commission's December report; and considering other possible recommendations to improve the Federal crop insurance program. The Commission will also consider any other item of business necessary for the effective functioning of the Commission.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street NW., Suite 880, Washington, DC, 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 30th day of November 1989.

Kellye A. Eversole,
Executive Director.

[FR Doc. 89-28523 Filed 12-5-89; 8:45 am]
BILLING CODE 3410-FW-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold a meeting on Tuesday, December 19, 1989. The Commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, enacted December 22, 1987.

DATE, TIME, AND PLACE: December 19, 1989, 9:30 a.m.–3:30 p.m., Association of American Railroads, 50 F Street, NW., Washington, DC (4th Floor Conference Center).

AGENDA: The open meeting will include a discussion of Railroad Retirement Account investments, the extension of benefits to certain categories of spouses, and the review of the latest privatization proposal of the Office of Management and Budget.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, 1111 18th Street, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, volume 54 FR, NO. 40, Thursday, March 2, 1989, Page 8856.

Keneth J. Zoll,
Executive Director.

[FR Doc. 89-28533 Filed 12-5-89; 8:45 am]
BILLING CODE 8826-43-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Requirements for Participating in the Special Access and Special Regime Programs

November 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amendment of requirements and procedures for participation in the Special Access Program for Caribbean Basin Countries and the Mexico Special Regime Program.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, Commodity Industry Specialist, the Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION: This notice identifies new implementation and enforcement procedures for the Special Access Program under the CBI and the Mexico Special Regime Program.

Background

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for their exports of qualifying assembled textile products. These guaranteed access levels are separate from the quota or designated consultation levels applicable to textile products not assembled solely from U.S. formed and cut fabric.

Pursuant to authority delegated by Executive Order No. 11651 of March 3, 1972, as amended, and in accordance

with the President's Announcement of February 20, 1986, the Committee for the Implementation of Textile Agreements (CITA), announced the Special Access Program, published on June 11, 1986 (51 FR 21208) and (July 10, 1987 (52 FR 26057)), the requirements for participation in the Special Access Program. Under the Special Access Program, the United States has established Guaranteed Access Levels, or GALS, assuring access to the U.S. market for textile products which fulfill the requirements of the Special Access Program.

A June 11, 1986 Federal Register notice announced that firms participating in the program must complete a Special Access Program CBI Export Declaration, Form ITA–370P (available from the U.S. Government Printing Office), for each qualifying shipment (See 52 FR 18414 (May 15, 1987)). That notice also explained the three-part Form ITA–370P and the procedures for presenting the form to the U.S. Customs Service.

On February 13, 1988, the Government of the United States and the Government of Mexico entered into a textile agreement, effective January 1, 1988. Under the terms of that agreement, a Special Regime was established under which a number of categories were placed under quotas which distinguish between Mexican products produced from foreign fabric and Mexican products assembled from U.S. formed and cut fabric. In essence, each category has a sublimit for products that are not assembled from U.S. formed and cut fabrics.

On May 3, 1988 and August 25, 1988, notices were published in the Federal Register (53 FR 15723 and 53 FR 32421), announcing requirements for firms participating in the Special Regime Program. The notices explained that merchandise qualifying for entry under the Special Regime Program must be accompanied by a Form ITA–370P.

Effective January 1, 1990 new implementation and enforcement procedures will be in place for the Special Access and Special Regime Programs.

New Implementation Procedures

Revised ITA–370P Form

As announced in the Federal Register on November 9, 1988, effective January 1, 1990 all goods exported under these programs must be accompanied by the new revised ITA–370P form. The form is available from the U.S. Government Printing Office.

The principal revisions to the form are:

—A pre-inscribed certification number
—The inclusion of the importer of record number on the Shipper's Declaration and the Importer's Declaration (the importer of record number in the Shipper's and Importer's sections must match)
—A reference stating "Also identify foreign findings, trimmings, & elastic strips of less than one inch in width. (Such foreign findings, trimmings & elastic strips may not exceed 25 percent of the cost of the components of the assembled article.)". This specific reference to trim and findings is not intended as a change in practice or policy but as a reminder that the records pertaining to foreign components must be retained by the importer.
—The elimination in the Shipper's Declaration of specific references to weight, yarn size, thread count, pattern, and color.

Entry Procedure

The new entry procedure is designed to ease the administrative burden on importers by establishing a streamlined system similar to a checking account. An account consists of the importer's ID number, textile category, and country of exportation. On exportation from the United States the quantity as reported on the 370P will be credited to the importer's account. Upon importation the amount imported will be debited against the importer's account, if there is a credit balance the shipment may be released.

Automated Commercial System (ACS)

The inventory system for the Special Access Program and Special Regime will be incorporated into the ACS, thus eliminating the use of personal computers for record keeping and clearing procedures. The requirement of exporting and importing for the Special Regime at ports within the same districts of San Diego, Nogales, El Paso and Laredo will be eliminated.

Reconciliation

The U.S. Customs Service (Customs) will maintain the balance for each account. Should an importer's records differ from those of Customs, the importer should provide Customs with a complete accounting of all exportations and importations. Customs will verify the importer's records against its own. Until the discrepancy is resolved, Customs will implement the Program using its figures.

Enforcement Procedures

In order to determine if the cut components were of U.S. origin and the imported apparel was made from U.S. formed fabric, Customs will conduct a series of Post Entry Compliance Reviews. These reviews will be conducted by Customs beginning April 1, 1990 for entries made in the first quarter of 1990 and shall continue for each successive quarter.

Recordkeeping for Compliance Reviews

The importer must provide Customs officials conducting the review with documented proof that all goods entered under the Programs were made from U.S. cut and formed fabric. Customs officials will request documents for goods in one textile category, from one country, entered in the prior calendar quarter. Documents should be organized and filed to facilitate a request for this information. It is recommended that the documents be kept in a single location to expedite the review. The following documents are required to be made available for the Compliance Reviews conducted by Customs.

Records—by calendar quarter, by country, by category:

- Entry documents made during the quarter
- Documents covering the involved entries:

—ITA–370P
—Cutting ticket including name and location of facility
—Mill invoice (the name of the mill where the fabric was formed, if the fabric was purchased from a third party the importer is responsible for obtaining the mill invoice. Also required is a signed statement from a principal at the mill that the fabric is of U.S. origin. This can be stated directly on the invoice or in a separate document that relates to each specific shipment of fabric).
—Transportation documents (mill to cutting facility; cutting facility to border/assembler).
—Export documentation

Penalties

19 U.S.C. 1592 authorizes the imposition of civil penalties against any person who by fraud, gross negligence, or negligence enters or attempts to enter goods into the United States by means of a false document, statement, or act.

Companies must maintain full and complete records and provide access to them upon request, and penalties may be imposed if companies are found to have misrepresented significant information such as the origin, quantity, or nature of the component parts or the country of assembly. Importers found to be violating the terms of the Program or intent of the Program may be prohibited from further participation in the Program.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–28447 Filed 12–5–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Civil Aircraft Landing Permit System; DD Forms 2400, 2401 and 2402; and OMB control number 0701–0050.

Type of Request: Extension of the expiration date of a currently approved collection.

Average Burden Hours/Minutes Per Response: 5 hours.

Frequency of Response: Reporting on Occasion.

Number of Respondents: 6,000.

Annual Burden Hours: 3,000.

Annual Responses: 6,000.

Needs and Uses: "Respondents are civil aircraft owners/operators applying for use of military airfields. The information provided is aircraft data, justification for use, and insurance coverage.

Affected Public: Individuals.

Frequency: Onetime only.

Respondent's Obligation: Required to obtain or retain a benefit..

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: November 30, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28402 Filed 12–5–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A–1]

Strengthening Institutions Program, Title III, Part A of the Higher Education Act of 1965, as Amended; Notice Inviting Applications for New Awards for Fiscal Year 1990

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability to enable institutions to become self-sufficient.

Deadline for Transmittal of Applications: March 12, 1990.

Applications Available: Applications will be mailed by January 15, 1990, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: $23,000,000.

Estimated Range of Awards: $20,000 to $25,000 for planning grants; $125,000 to $500,000 for development grants.

Average Size of Awards: $23,000 for planning grants; $185,000 per year for one- to three-year development grants; $450,000 per year for four- and five-year development grants.

Project Period: Up to 12 months for planning grants; up to 60 months for development grants.

Estimated Number of Awards: 12 planning grants and 80 development grants.

Special Funding Considerations: In tie-breaking situations described in § 607.23 of the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under §§ 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market value, per FTE student, is less than the average, per FTE student, at similar type institutions; or which has expenditures for library materials, per FTE student, which are less than the average, per FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national averages for base year 1985–86.

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year Public Institutions	$25.00	$120.00
Two-year Nonprofit, Private Institutions	$321.00	$105.00
Four-year Public Institutions	$109.00	$206.00
Four-year Nonprofit, Private Institutions	$955.00	$360.00

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, and 85; and (b) the Strengthening Institutions Program Regulations, 34 CFR part 607.

For Information, Contact: Dr. Louis J. Venuto, U.S. Department of Education, 400 Maryland Avenue SW., Room 3042, ROB–3, Washington, DC 20202–5335. Telephone: (202) 732–3314.

Authority: 20 U.S.C. 1057.

Dated: November 27, 1989.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–28419 Filed 12–5–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award—Intent To Renew Grant With the National Association of Regulatory Utility Commissioners (NARUC)

AGENCY: United States Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it is renewing a financial assistance award under Grant Number DE–FG01–89CE28301 to NARUC to build on the knowledge base developed under the current grant, and transfer and implement that knowledge into substantial improvements in the practice of Least-Cost Utility Planning (LCUP) among the State Commissions.

Scope: The objective of the proposed 18 month project is to evaluate emerging LCUP techniques and transfer LCUP information data among regulators and utilities as follows: (1) The Development of a Technical Appendix to Accompany the NARUC "White Paper" on Financial and Regulatory Incentives; (2) Research and Analysis of Case Studies Which Involve a Coordinated Agreement Between a State Regulatory Commisson and One or More Utilities Subject to the

Regulation of the Commission; (3) Coordination of a National Workshop on Regulatory Options for Incorporating Environmental Externalities into Utility Resource Planning; and (4) Preparation of a Report Identifying Priority Information Needs and Methods for Transferring and Data, Relating to Renewable Energy Technologies to Regulators and Utilities.

The Grant is being awarded on a non-competitive basis because NARUC has the exclusive domestic capability to perform this activity successfully based upon previous performance, technical expertise and the unique nature of the organization. There is no known other regulatory entity which is conducting or planning to conduct such activities.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurment Operations, ATTN: Lisa Tillman, MA–405.42, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–28498 Filed 12–5–89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant)

AGENCY: San Francisco Operations Office, DOE.

ACTION: Grant solicitation announcement for laser fusion research applications.

SUMMARY: Department of Energy (DOE) San Francisco Operations Office (SAN) announces that it plans to conduct a technically competitive solicitation for basic research experiments in high-energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester/Laboratory for Laser Energetics (UR/LLE). Universities or other higher education institutions, private sector not-for-profit or for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the FY91 cycle of this program is $700,000, and multiple awards are anticipated.

Grant Solicitation Number: DE–PS03–90SF18479.

The actual work to be accomplished will be determined by the experiments that are selected for award. Proposed experiments will be evaluated and ranked through scientific peer review against predetermined, published and available criteria. Final selection for awards will be made by the DOE from among the top ranked applications. It is anticipated that multiple grants will be awarded within the available funding.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of inertial fusion and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science, and biology and chemistry will be considered on a second priority basis.

The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the OMEGA laser, a 2.5 trillion watt, 24-beam laser system (at 0.35 μm) and the Glass Development Laser (GDL) a 250 billion watt, single-beam prototype for OMEGA (at 0.35 μm). The NLUF offers the capability for laser-matter interaction experiments or for using short (100 picosecond) pulses of laser light, X-rays, or neutron for probing the structure of matter. More technical information about the facilities and potential collaboration at the NLUF can be obtained from: Dr. James Knauer, Manager, Telephone No.: (716) 275–2074, National Laser User's Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

The solicitation document contains all the information relative to this acquisition for prospective applicants. The solicitation is targeted for release in mid-December 1989. Recipients of the NLUF solicitation during the last (FY90) cycle of the program will automatically be sent a copy of the solicitation. New interested parties can obtain copies of the solicitation document by submitting a written request to: James Solomon, CM, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

James H. Solomon,

Contracting Officer, Contracts Management Division.

[FR Doc. 89–28499 Filed 12–5–89; 8:45 am]

BILLING CODE 6450-01-M

Rank Taylor Hobson, Inc.; Intent to Grant Exclusive Patent License

AGENCY: Office of the General Counsel, DOE.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Rank Taylor Hobson, Inc., of Keene, NH, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,435,905, entitled "Telescoping Magnetic Ball Bar Test Gage." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATE: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 5, 1990.

ADDRESS: Office of Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, Washington, DC 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Rank Taylor Hobson, Inc., of Keene, NH, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,435,905, entitled "Telescoping Magnetic Ball Bar Test Gage." Applicant has submitted a plan for commercialization of the invention, contingent on obtaining exclusivity.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on November 30, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89–28500 Filed 12–5–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER90–80–000, et al.]

Doswell Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Doswell Limited Partnership

[Docket No. ER90–80–000]

November 23, 1989.

Take notice that on November 22, 1989, Doswell Limited Partnership, organized under the laws of the Commonwealth of Virginia, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Virginia Electric and Power Company.

Comment date: December 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ER90–79–000]

November 28, 1989.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric), on November 22, 1989, tendered for filing a Settlement Agreement and revised rates for wholesale rate reduction of $2,678,000 (4%).

Wisconsin Electric requests waiver of the Commission's notice requirements in order to allow an effective date of January 1, 1990. Wisconsin Electric is authorized to state that its wholesale customers join in the requested effective rate.

Copies of the filing have been served on the wholesale customers, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: December 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Centel Corporation

[Docket No. ER90–72–000]

November 28, 1989.

Take notice that on November 7, 1989, Centel Corporation (Centel), tendered for filing a notice of cancellation of Rate Schedule 88–Mwh–5, FERC No. 88 Supplement 13. Centel requests an effective date of October 1, 1988.

Copies of the filing were served upon the Mayor of Coats and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: December 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER89–485–000]

November 28, 1989.

Take notice that on November 22, 1989, the Kansas Power and Light Company (KPL) tendered for filing Rate Schedule FERC Nos. 254, 255 and 256 consisting of revised Transmission Agreements dated June 1, 1978 between KPL and Kansas Gas & Electric Company, Centel Corporation—Western Power Division and Missouri Public Service Company. KPL states that the filing has been submitted in compliance with the Commission's October 23, 1989, Order in Docket No. ER89–485–000.

Comment date: December 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ES90–13–000]

November 30, 1989.

Take notice that on November 27, 1989, Illinois Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to section 204 of the Federal Power Act, to issue not more than $500 million aggregate principal amount of unsecured short-term notes and commercial paper notes to be issued from time to time with a final maturity date no later than December 31, 1991.

Comment date: December 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Southern Utilities Company

[Docket No. ES90–7–000

November 30, 1989.

Take notice that on November 27, 1989, Iowa Southern Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to section 204 of the Federal Power Act, to issue not more than $15 million aggregate principal amount of unsecured short-term promissory notes and commercial paper notes to be issued from time to time prior to January 1, 1992.

Comment date: December 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28415 Filed 12–5–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90–229–000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP90–229–000]

November 28, 1989.

Take notice that on November 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP90–229–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for permission and approval to abandon the firm transportation service for gas sales delivered to Marathon LeTourneau Company (Marathon), under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United states that Marathon has consented to this proposal and that such abandonment of 150 Mcfd to Marathon

in Warren County, Mississippi, would be accomplished withqut detriment to its other existing customers. United also states that such service was authorized at Docket No. CP87–220 and the contract expired on its own terms.

Comment date: January 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP90–235–000]

November 28, 1989.

Take notice that on November 13, 1989, Williams Natural Gas Company (WNG) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90–235–000, an application pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act, as amended, for a blanket certificate authorizing WNG to sell natural gas for resale under a new Limited Sales Service Rate Schedule (LSS), to transport natural gas for direct sale end-users, and for pregranted abandonment authorization of each service, as more fully described in the application.

Specifically, WNG proposes to offer a limited sales service to any qualified purchaser of natural gas on an interruptible basis, only to the extent that the company determines that it has sufficient capacity and excess gas supply available beyond those quantities currently required to meet WNG's firm sales obligations.

WNG proposes to charge for any LSS sales transaction the rate negotiated between the parties within a range established by the currently effective maximum and minimum rates for the LSS Rate Schedule. WNG states that the LSS program is an essential tool to permit it to manage its system supply more effectively and that it also will allow WNG to sell supplies at more competitive prices. Further WNG proposes various terms and conditions for rendering LSS service, including tariff revisions, nominations, scheduling, determination of deliveries, suspension and termination of the service, and a form of service agreement which will be presented as pro forma tariff sheets to be included in WNG's FERC Gas Tariff.

Comment date: December 19, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP90–270–000]

November 29, 1989.

Take notice that on November 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–270–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to United Cities Gas Corporation (United Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that United Cities has requested and Southern has agreed to convert 9,000 Mcf of United Cities' Contract Demand to firm transportation demand under Southern's Rate Schedule FT. Southern states that it has entered into a service agreement with United Cities under Rate Schedule FT, dated October 20, 1988, and Southern therefore requests authorization to abandon 9,000 Mcf of its sales service to United Cities effective November 1, 1988.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: December 20, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90–281–000]

November 29, 1989.

Take notice that on November 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90–281–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for BP Gas Inc. (BP) under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that the total volume of natural gas to be transported for BP on a peak day would be 50,000 dt; on an average day would be 3,500 dt; and on an annual basis would be 1,277,500 dt.

Transco indicates that it would receive the natural gas at an existing receipt point in offshore Louisiana and would deliver the natural gas at an existing delivery point in offshore Louisiana.

Transco states that it commenced the transportation of natural gas for BP on October 1, 1989, in Docket No. ST90–474–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: January 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP90–278–000

November 29, 1989.

Take notice that on November 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–278–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of National Steel Corporation (National), an end-user of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 13,400 Dt. per day for National. Tennessee states that construction of facilities would not be required to provide the proposed service.

Tennessee further states that the maximum day, average day, and annual transportation volumes would be approximately 13,400 Dt., 13,400 Dt. and 4,891,000 Dt. respectively.

Tennessee advises that service under § 284.223(a) commenced November 2, 1989, as reported in Docket No. ST90–555.

Comment date: January 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on their filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28416 Filed 12–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2643 Oregon]

Pacific Power & Light Co.; Intent To File an Application for Subsequent License

November 30, 1989.

Take notice that on December 28, 1988, Pacific Power & Light Company, the existing licensee for the Bend Hydroelectric Project No. 2643, filed a notice of intent to file an applicaiton for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2643 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (*see* Docket No. RM 87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426). The original license for Project No. 2643 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Deschutes River in Deschutes County, Oregon. The principal works of the Bend Project include a 14–foot–high, 250–foot–long timber-crib spillway dam and a 150–foot–long buttressed concrete gravity wing wall; a reservoir of about 40 acres; a powerhouse with an installed capacity of 1,110 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 920 SW 6th Avenue, Portland, Oregon 97204, Attn: S. A. deSousa, telephone (503) 464–5343.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28412 Filed 12–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2187 Colorado]

Public Service Company of Colorado, Intent To File an Application for Subsequent License

November 30, 1989.

Take notice that on December 22, 1988, Public Service Company of Colorado, the existing licensee for the Georgetown Hydroelectric Project No. 2187, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2187 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (*see* Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426). The original license for Project No. 2187 was issued effective August 1, 1964, and expires December 31, 1993.

The project is located on South Clear Creek in Clear Creek County, Colorado. The principal works of the Georgetown Project include five dams and reservoirs; interconnecting water conduits; a powerhouse with an installed capacity of 1,440 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by order No. 513). The above information is now available from the licensee at 550–15th Street, Denver, CO 80202, Attn: John W. Steck, telephone (303) 571–7643.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28413 Filed 12–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2544 Washington]

The Washington Water Power Co., et al.; Intent To File an Application for Subsequent License

November 30, 1989.

Take notice that on December 19, 1988, The Washington Water Power Company (Lessee-Operator) and Lee W. Cagle (Owner), the existing licensee for the Meyers Falls Hydroelectric Project No. 2544, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2544 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (*see* Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 7, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426). The original license for Project No. 2544 was issued

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effective January 1, 1961, and expires December 31, 1993.

The project is located on the Colville River in Stevens County, Washington. The principal works of the Meyers Falls Project include a 25-foot-high, 306-foot-long timber and concrete buttress dam with earthfill sections at each end; a forebay; a concrete intake structure; a 4-foot-diameter, 325-foot-long penstock; a powerhouse with an installed capacity of 1,200 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at PO Box 3727, Spokane, WA 99220.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28414 Filed 12-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9625-002 California]

Frontier Land and Power; Surrender of Exemption

November 30, 1989.

Take notice that Frontier Land and Power, Exemptee for the Mohawk Power Project No. 1, has requested that its exemption be terminated. The exemption for Project No. 9625 was issued June 30, 1986. The project would have been located on the pipe conduit which is part of a private water distribution system that obtains water from an unnamed tributary to Sulfur Creek near Clio in Plumas County, California.

The Exemptee filed the request on May 2, 1988, and the exemption for Project No. 9625 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28420 Filed 12-5-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3693-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduciton act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before January 4, 1990.

FOR FURTHER INFORMATON CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Significant New Use Rules for Existing Chemicals (EPA ICR # 1188.03; OMB # 2070-0038). This ICR requests renewal of the existig clearance.

Abstract: Under section 5 of the Toxic Substances Control Act, EPA has the authority to monitor and control significant new uses of chemical substances. When EPA designates a chemical use as a significant new use, the initating party—chemical manufacturer, importer or processor—must use the Premanufacture Notice form to notify the Agency 90 days prior to commencing the use.

Burden Statement: The public reporting burden for this collection of information is estimated to vary from 30 to 180 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers, importers, and processors.

Estimated No. of Respondents: 2.

Estimated Total Annual Burden on Respondents: 359 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460; and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070-0057), Washington, DC 20503, Telephone: (202) 395-3084.

Dated: November 22, 1989.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-28482 Filed 12-5-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3694-3]

Extension of the Public Comment Period for the Proposed Determination to Restrict the Specification of Leonard Pond and its Wetlands as Disposal Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice to extend the comment period for August 30, 1989 § 404(c) Proposed Determination.

SUMMARY: A Public Notice entitled "Proposed Determination to Restrict the Specification of Leonard Pond and Its Wetlands as Disposal Sites" was published in the **Federal Register** on August 30, 1989 [54 FR 35927]. That notice indicated that comments should be received at the address listed below on or before October 16, 1989. That time frame was extended to November 27, 1989 [54 FR 45801] at the request of a landowner in the area of the proposed determination and the U.S. Fish and Wildlife Service in order to submit information pertaining to the environmental values and the nature and scope of the section 404(c) action. In order to allow completion of the comments, EPA is hereby extending the comment period for all interested parties until close of business, December 11, 1989.

This time extension is made under authority of 40 CFR 231.8

DATE: Comments should be postmarked on or before December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, EPA Water Quality Branch, JFK Federal Building, WWP-1900, Boston, MA 02203-2211, (617) 565-4450.

Dated: November 30, 1989.

Stephen Ells,

Acting Regional Administrator, Region I.

[FR Doc. 89-2851 Filed 12-5-89; 8:45 am]

BILLING CODE 6560-50-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

Biotechnology Science Coordinating Committee; Meeting

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Open meeting.

Name: Federal Coordinating Council for Science, Engineering, and Technology, Biotechnology Science Coordinating Committee (BSCC).

Correction

In notice document 89-27812 on page 48960 in the issue of Tuesday, November 28, 1989, make the following corrections:

Date and Time: Thursday, December 21, 1989; 3:00-5:00 p.m.

Dated: December 1, 1989.

Barbara J. Dinzing,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 89-28543 Filed 12-1-89; 5:09 pm]

BILLING CODE 3170-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: New collection.

Title: Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Undercapitalized Insured Depository Institutions.

Form Number: Letter application.

Frequency of Response: On occasion.

Respondents: Undercapitalized insured depository institutions wishing to accept or renew brokered deposits.

Number of Respondents: 370.

Number of Responses Per Respondent: 1.

Total Annual Responses: 370.

Average Number of Hours Per Response: 6.

Total Annual Burden Hours: 2,220.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before February 5, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 224 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (codified to 12 U.S.C. 1831f) prohibits the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution (bank or thrift) after December 7, 1989, except on specified application to and waiver of the prohibition by the FDIC. In order to obtain a waiver, an undercapitalized institution must demonstrate that its acceptance of such deposits does not constitute an unsafe or unsound practice.

The FDIC is requesting OMB approval to require certain information whenever an undercapitalized insured depository institution (bank or thrift) applies to the FDIC for a waiver from the statutory prohibition on the acceptance of brokered deposits. The information will be used by the FDIC to decide whether to grant the waiver requested. The information is expected to be prescribed in a new § 337.6(d) of the FDIC's regulations (12 CFR 337.6) and consists essentially of the undercapitalized institution's plans to meet applicable capital requirements within a reasonable time period; the volume, rates and maturities on brokered deposits currently held; the scope of the waiver sought in terms of the volume and cost of brokered deposits to be obtained or retained and the time period for which a waiver may be needed; alternative funding sources available to the institution; and the reasons the institution believes that its acceptance of brokered deposits does not constitute an unsafe or unsound practice in its particular circumstances.

Dated: November 30, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-28426 Filed 12-5-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-848-DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-848-DR), dated November 17, 1989, and related determinations.

DATED: November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: The notice of a major disaster for the State of Alabama, dated November 17, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 17, 1989:

Jackson County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-28471 Filed 12-5-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-848-DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA-848-DR), dated November 17, 1989, and related determinations.

DATED: November 17, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated November 17, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from tornadoes and severe storms on November 15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster: Madison County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–28472 Filed 12–5–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–849–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–849–DR), dated November 22, 1989, and related determinations.

DATED: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated November 22, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from heavy rains and flooding on November 7–9, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster: The parishes of Jefferson, Orleans, and St. Charles for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–28473 Filed 12–5–89; 8:45 am]

BILLING CODE 6718–02–M

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: January 7–9, 1990.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time:

January 7—2:00 p.m. to 5:00 p.m.
January 8—9:00 a.m. to 5:00 p.m.
January 9—8:30 a.m. to Agenda Completion

Proposed Agenda: Old Business, New Business; Annual Report, Visit Classes.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before December 27, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street S.W., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: November 16, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89–28474 Filed 12–5–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of the Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–002161–006

Title: Port of Seattle Terminal Agreement.
Parties:
Port of Seattle (Port)
Cargill, Inc. (Cargill)

Synopsis: The Agreement amends the basic agreement. It provides for a change in the procedure for billing dockage. It also provides that Cargill will share the dockage revenue with the Port on a 50/50 basis. Cargill will bill and collect all dockage charges from vessels using the leased premises and have the exclusive right to assess vessels a service facility charge for use of the premises.

Agreement No.: 224–010974–005

Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland (Port)
International Transportation Service, Inc. (ITS)

Synopsis: The Agreement amends the basic agreement to provide for the Port to reimburse, out of certain wharfage revenue at the assigned facilities, ITS for its costs in making certain transtainer runway improvements to the marine terminal facilities assigned under the basic agreement.

Agreement Nos.: 224–200178–001, 224–200178–002.

Title: Port Authority of New York and New Jersey Terminal Agreement.
Parties:
Port Authority of New York and New Jersey (Port Authority)
Carco, Inc. (Carco)

Synopsis: Agreement No. 224–200178–001 amends the basic agreement for the lease of premises at the Port Authority Auto Marine Terminal to provide for the interim operation of certain terminal facilities pending completion of construction work at the leased facilities by Carco as set forth in section 5(a) of the basic agreement.

Agreement No. 224–200178–002 further amends the basic agreement to increase the amount which the Port Authority will reimburse Carco for construction costs.

By Order of the Federal Maritime Commission.

Dated: November 30, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28435 Filed 12–5–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D–0398]

Sponsored Compounds Used in Food-Producing Animals; Guideline for the Safety Evaluation of Bound Residues From Carcinogenic Animal Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline, "VIII. Guideline for the Human Food Safety Evaluation of Bound Residues Derived from Carcinogenic New Animal Drugs," that describes the kinds of tests that the sponsor may conduct to establish the safety of bound residues derived from carcinogenic animal drugs. This guideline applies to human food safety, not to target animal safety. FDA invites interested persons to submit written comments on this guideline.

DATES: Written comments on the guideline may be submitted at any time. FDA will respond to comments received before February 5, 1990.

ADDRESSES: Submit written requests for single copies of "VIII. Guideline for the Human Food Safety Evaluation of Bound Residues Derived from Carcinogenic New Animal Drugs" to the Division of Chemistry (HFV–140), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on "VIII. Guideline for the Human Food Safety Evaluation of Bound Residues Derived from Carcinogenic New Animal Drugs" to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV–144), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2841.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 31, 1987 (52 FR 49589), FDA announced the availability of a series of seven guidelines that describe the tests that a sponsor of a new animal drug may conduct to establish the safe conditions of use of the drug in food-producing animals. Although one of these guidelines, "I. Guideline for Metabolism Studies and for Selection of Residues for Toxicological Testing," discussed in general terms some considerations FDA has made with respect to bound residues, FDA had not prepared a guideline dealing specifically with the safety evaluation of bound residues derived from carcinogenic drugs.

The human food safety assessment of bound residues derived from carcinogenic animal drugs has long challenged FDA scientifically and policywise. The complex nature of bound residues, which result primarily from the reaction of a drug metabolite with cellular macromolecules, makes the usual approaches to a safety evaluation unsuitable. FDA has prepared a guideline entitled "VIII. Guideline for the Human Food Safety Evaluation of Bound Residues Derived from Carcinogenic New Animal Drugs." In this guideline FDA describes the kinds of data it will consider in evaluating the toxicological significance of bound residues derived from carcinogenic animal drugs.

This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guideline to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Sponsors may rely upon a guideline with the assurance that it represents procedures acceptable to the agency (see § 10.90). If such persons believe that alternative procedures are also applicable, a guidelines does not preclude them from pursuing the alternative procedures. Under such circumstances, however, the agency encourages sponsors to discuss the alternative procedures in advance with FDA to prevent the expenditure of money and effort for work that may later be found to be unacceptable.

This notice is issued under 21 CFR 10.35

Dated: November 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28399 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0504]

Drug Export; Imodium® A-D (Loperamide HCL) Caplet, 2 mg.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that McNeil Consumer Products Co. has filed an application requesting approval for the export of the human drug Imodium® A-D (Loperamide HCL) Caplet, 2 mg. to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that McNeil Consumer Products Co., Camp Hill Rd., Ft. Washington, PA 19034, has filed an application requesting approval for the export of the drug Imodium® A-D (Loperamide HCL) Caplet, 2 mg., to Canada. This drug is indicated for use to control the symptoms of diarrhea. The application was received and filed in the Center for Drug Evaluation and Research on October 20, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 18, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 21, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-28394 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0416]

Vitarine Pharmaceuticals, Inc.; Proposal to Withdraw Approval of Abbreviated Antibiotic Drug Applications and Abbreviated New Drug Applications; Opportunity for a Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that proposed to withdraw approval of certain abbreviated antibiotic drug applications (AADA's) and abbreviated new drug applications (ANDA's) held by Vitarine Pharmaceuticals, Inc., 227-15 North Conduit Ave., Springfield Gardens, NY 11413 (54 FR 40740; October 3, 1989). The notice inadvertently omitted the words "250 mg &" in the listing for AADA 61-471. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Margaret Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-23374, appearing at page 40740 in the **Federal Register** of Tuesday, October 3, 1989, the following correction is made: On page 40747, first column, under the heading "Proposed Action and Notice of Opportunity for Hearing", the listing for "AADA 61-471" is corrected to read "AADA 61-471; Tetracycline Hydrochloride 250 mg & 500 mg Capsules".

Dated: November 28, 1989.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 89-28395 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0481]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyisobutylene and isobutylene/isoprene copolymers as components of food-contact materials sterilized with a hydrogen peroxide solution.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4176) has been filed by Exxon Chemical Co., P.O. Box 45, Linden, NJ 07036, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of polyisobutylene and isobutylene/isoprene copolymers as components of food-contact materials sterilized with a hydrogen peroxide solution.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 28, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-28448 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0193]

Second Draft Proposed Standard for the Infant Apnea Monitor; Availability; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989" to request public comment. FDA is also announcing that it is holding a public meeting to discuss the draft standard in conjunction with the Eighth Annual Conference on Apnea of Infancy to be held on January 25 to 27, 1990, Rancho Mirage, CA 92270.

DATES: Comments on the "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989" by March 26, 1990. The public meeting will be held on January 24, 1990, from 1 p.m. to 5 p.m., in the California Room of the Gene Autry Hotel, 4200 East Palm Canyon Dr., Palm Springs, CA 92264.

ADDRESSES: Submit written requests for single copies of the "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989" to the Operations Staff (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft standard to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft standard and any received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: E. Jane McCarthy, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 1982 (47 FR 39816), FDA published a final rule under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) classifying the generic type of device, the breathing (ventilatory) frequency monitor (21 CFR 868.2375), into class II (performance standards). In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish for the breathing frequency monitor a performance standard under section 514 of the act (21 U.S.C. 360d). In a notice published in the **Federal Register** of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(c) of the act and 21 CFR Part 861. The notice invited any interested persons to submit an existing standard as a proposed performance standard for the device, or to submit an offer to develop such a proposed standard. In that notice, FDA limited its proceeding to those breathing frequency monitors commonly called noenatal apnea monitors, which are intended for use on infants to detect cessation of breathing.

In the **Federal Register** of July 1, 1986 (51 FR 23832), FDA announced that, in accordance with the provisions of section 514(e)(3) of the act and 21 CFR 861.32, FDA may, upon application (which may be made before the acceptance of the offer), agree to contribute to the accepted offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard that would be developed without such contribution. Subsequently, FDA allocated approximately $250,000 to contribute to the offeror's cost for the first year of effort in developing a proposed standard.

In the **Federal Register** of April 22, 1988 (53 FR 13296), FDA advised that a notice of grant award (cooperative agreement) had been issued to the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. The cooperative agreement with ECRI was completed on August 31, 1988. Because certain requirements for the infant apnea monitor were unable to be addressed in the draft document delivered to the agency, FDA proceeded to develop a proposed standard for the infant apnea monitor, using the information developed during the cooperative agreement with ECRI (21 U.S.C. 360d(f)).

In the **Federal Register** of January 4, 1989 (54 FR 187), FDA announced the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," to request public comment. Under 21 CFR 861.30, FDA shall provide interested persons an opportunity to participate in the development of a standard by accepting comments, and where appropriate, holding public meetings on issues relating to development of the standard.

Accordingly, in the same notice, FDA also announced an open public meeting to discuss the draft standard. The meeting was held on January 25, 1989, in conjunction with the Seventh Annual Conference on Apnea of Infancy held in Rancho Mirage, CA 92270.

In the **Federal Register** of July 25, 1989 (54 FR 30951), FDA announced an open public meeting that was held on September 11 and 12, 1989, at the Crowne Plaza Holiday Inn, Rockville, MD 20852, to discuss the current sensor modalities and devices used to measure infant apnea, combinations of sensors used to detect apnea and the pathophysiological result of apnea, and the currently used test methods.

II. Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989

Based on 22 written comments received in response to the **Federal Register** request for comments on the first draft proposed standard and on comments and information received at the public meetings, FDA revised the first draft proposed standard. FDA is now making available for comment its "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989."

FDA is also announcing that it will hold an open public meeting to discuss the second draft proposed standard on January 24, 1990, from 1 p.m. to 5 p.m. at the Gene Autry Hotel (address above). FDA's public meeting will be held in conjunction with the Eighth Annual Conference on Apnea of Infancy, January 25 to 27, 1990, Rancho Mirage, CA 92270.

A summary of the proceedings of the public meeting, as well as all data and information submitted voluntarily to FDA during the public meeting to discuss the draft standard will become part of the administrative record and will be available to the public under 21 CFR 20.111 from the Dockets Management Branch (address above). After comments, data, and information are submitted at the open public meeting and in response to this request for comments on the second "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989," FDA will publish in the **Federal Register** a

proposed mandatory standard under section 514(g) of the act of (21 U.S.C. 360d(g) and 21 CFR 10.40).

Interested persons should submit to the Dockets Management Branch (address above) written comments on the "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989" by March 28, 1990. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1989.

Alan L. Hoeting,

Acting Associate Commission for Regulatory Affairs.

[FR Doc. 89-28449 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress.

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Dr. Marilyn H. Gaston, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6190.

Dated: November 30, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28450 Filed 12-5-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Consensus Development Conference on Noise and Hearing Loss

Notice is hereby given of the NIH Consensus Development Conference on "Noise and Hearing Loss" sponsored by the National Institute on Deafness and Other Communication Disorders and by the NIH Office of Medical Applications of Research. The conference will be held January 22-24, 1990 in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

There are approximately 28 million people in the United States with impaired hearing. In many instances, exposure to occupational and recreational noise has caused irreversible damage to the inner ear. Daily, people are exposed to hazardous levels of noise on their jobs, including firefighters, military personnel, disc jockeys, construction workers, musicians, farmers, industrial arts teachers, computer operators, factory workers, as well as taxicab, truck, and bus drivers to name a few. Exposure to live or recorded high-volume music, recreational vehicles, airports, heavy traffic, lawn mowers, household appliances, chain saws, and power tools are all sources of potentially damaging noise.

During the last decade, significant progress has been made in understanding the effects of noise on the inner ear, but important questions remained unsolved. The purpose of this Consensus Development Conference is to examine what is known of the epidemiology, pathogenesis, and pathophysiology of noise-induced hearing loss as well as its prevention and management. The conference will bring together biomedical and behavioral scientists, health care providers, and the public, and it will address: (1) The characteristics of noise-related hearing loss, (2) acoustic parameters of hazardous noise exposure, (3) individual and age-specific susceptibility, and (4) prevention strategies.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

- What is noise-related hearing loss?
- What sounds can damage hearing?
- What factors, including age, determine an individual's susceptibility to noise-related hearing loss?
- What can be done to prevent noise-related hearing loss?
- What are the directions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Dina Rice, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-5555.

Dated: November 28, 1989.

William Raum,

Acting Director, NIH.

[FR Doc. 89-28430 Filed 12-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on January 30-31, 1990, in Building 31, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to recess on January 30 and 8:30 a.m. to adjournment on January 31 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: November 29, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28431 Filed 12-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung and Blood Institute, January 8-9, 1990, Federal Building, Room B119, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from approximately 8:30 a.m. on January 8, to adjournment on January 9, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4235, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 29, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28432 Filed 12-5-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2085]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 29, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Coinsurance Umbrella Reporting System.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This automated data collection system will enable the Department to evaluate and review on an on-going basis the coinsuring lender's underwriting practices and subsequent project performance. The information will assist HUD in its responsibility to monitor lenders to assure adherence and compliance to statutory and regulatory requirements.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	[illegible]		12		3.34		[illegible]

Total Estimated Burden Hours: 2,806.

Status: Reinstatement.

Contact: Matthew Andrea, HUD (202) 755-4956, John Allison, OMB, (202) 395-6880.

Date: November 29, 1989.

[FR Doc. 89-28409 Filed 12-5-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2084]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Reporting burden:

	Number of respondents	x	Frequency response	x	Hours per response	=	Burden hours
Unsolicited Proposals	200		1		80		16,000

Total Estimated Burden Hours: 16,000.
Status: New.
Contact: Maggie H. Taylor, HUD, (202) 755–6090, John Allison, OMB, (202) 395–6880.

Date: November 30, 1989.

[FR Doc. 89–28410 Filed 12–5–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2083]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 29, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Mortgagee's Certification and Application/Monthly Summary of Assistance Payments Due Under section 235(b), 235(j), or 235(i) or of Interest Reduction Payments Due Under section 236.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Form Monthly Summary of Assistance Payments (HUD–300), will be submitted by mortgages with the Form, Mortgagee's Certification and Application or Interest Reduction Payments (HUD–93102). The information is needed because all assistance payments disbursed under this program must be monitored by the Department.

Form HUD–300 supports the billing information provided on Form HUD–93102 for each mortgage.

Form Number: HUD–300 and 93102.
Respondents: Business or Other For-Profit.
Frequency of Submission: Monthly.
Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–300	962		13.756		1		13,224
HUD–93102	962		.18		.25		4,329

Total Estimated Burden Hours: 17,553.
Status: Reinstatement.
Contact: Florence Brooks, HUD, (202) 755–7330; John Allison, OMB, (202) 395–6880.

Date: November 29, 1989.

[FR Doc. 89–28411 Filed 12–5–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–00–4212–14; WIES 038811]

Realty Action; Sale of Public Land in Vilas County, Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public lands in Vilas County, Wisconsin (WIES 038811 in Town of Land O'Lakes and WIES 041887, Town of Winchester)—direct sales.

SUMMARY: The following public land(s) have been examined and determined to be suitable for sale under section 203(a)(1) of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value shown below.

Fourth Principal Meridian, Wisconsin

WIES 038811
T.43N., R.10E., Section 32
Town of Land O'Lakes
Government Lot 5, (0.06 acres)

Appraised Fair Market Value $50.00

Fourth Principal Meridian, Wisconsin

WIES 041887
T.43N., R.5E., Section 4
Town of Winchester
Government Lot 10, Lot 25 (0.54 acres)

Appraised Fair Market Value $4000.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The above described land (WIES 038811) is being offered by direct sale to Glenn E. and Carol L. Ninko, and (WIES 041887) is being offered by direct sales to Sulo and Margaret Wainio. The Patent(s) will be subject to valid existing rights.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Milwaukee District, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning these sales is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Paulette Francis at 414–291–4416.

Chris Hanson,

Acting District Manager.

[FR Doc. 89–28397 Filed 12–5–89; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–940–00–4730–12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., November 27, 1989.

Sixth Principal Meridian

T. 57 N., R. 62 W.

The plat showing a subdivision of original lots 6 and 13, section 5, T. 57 N., R. 62 W., Sixth Principal Meridian, Wyoming, was accepted November 21, 1989.

T. 58 N., R. 62 W.

The plat showing a subdivision of original lot 20, section 31, T. 58 N., R. 62 W., Sixth Principal Meridian, Wyoming, was accepted November 21, 1989.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

T. 50 N., R. 75 W.

The plat representing the dependent resurvey of a portion of the south boundary, the east and west boundaries and the subdivisional lines, T. 50 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 481, was accepted November 21, 1989.

T. 50 N., R. 76 W.

The plat representing the dependent resurvey of the Ninth Auxiliary Meridian West, through T. 50 N., between Rs. 76 and 77 W., a portion of the south boundary and the subdivisional lines, T. 50 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 481, was accepted November 21, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: November 27, 1989.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 89–28495 Filed 12–5–89; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Katmai National Park and Preserve/Aniakchak National Monument and Preserve and the Chairperson of Aniakchak National Monument Subsistence Resource Commission announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of guests.

(2) Status of new appointments to commission.

(3) Role of Subsistence Resource Commission.

(4) Overview of recent AFN Subsistence Workshop and Chairmen's Meeting.

(5) Overview of impact of *Exxon Valdez* Oil Spill on Aniakchak coast.

(6) Review of minutes from last meeting.

(7) Elect new Chairperson.

(8) Review and redraft the Subsistence Hunting Plan Recommendations.

(9) New business.

DATE: The meeting will begin at 10:00 a.m. on Thursday, January 11, 1990 and conclude at 5:00 p.m. The meeting will reconvene at 10:00 a.m. on Friday, January 12, 1990 and conclude at 1:00 p.m.

ADDRESS: The meeting will be held at the Port Heiden Hall, Port Heiden, Alaska.

FOR FURTHER INFORMATION CONTACT: G. Ray Bane, Superintendent, Katmai National Park and Preserve/Aniakchak National Monument, P.O. Box 7, King Salmon, AK 99613. Phone (907) 146–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 89–28434 Filed 12–5–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 21, 1989.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Morgan County

Madison Historic District (Boundary Increase), Roughly Main St., Old Post Rd., Academy St., Dixie St., and Washington, St., Madison, 89002159

MASSACHUSETTS

Essex County

Manchester Village Historic District, Roughly Friend, School, North, Washington, Sea, Union, Central, Bennett, Bridge Sts., and Ashland Ave., Manchester, 89002155

NORTH CAROLINA

Buncombe County

Alexander, Mrs. Minnie, Cottage, 218 Patton Ave., Asheville, 89002135

Jackson County

Hedden, Elisha Calor, House, Main St., and Old Webster-Sylva Rd., Webster, 89002133

Webster Baptist Church, MC 116 and SR 1340, Webster, 89002137

Webster Methodist Church, MC 116/Main St., Webster, 89002130

Jones County

Bryan-Bell Farm, MC 58, 1 mi. E of SR 1119, Pollocksville vicinity, 89002155

Lenoir County

Sunrell and McCoy Building (Kinston MPS), Kinston, 89002134

Madison County

White, James W., House, 5 Hill St., Marshall, 89002130

Nash County

Bellemonte, 3400 N. Wesleyan Blvd., Rocky Mount, 89002132

Robeson County

Lumberton Commercial Historic District, Roughly Sixth St., Elm St., Fifth St., Chestnut St., Second St., Walnut St., Seaboard Coast Railroad tracks, & Water St., Lumberton 89002131

Wake County

Downtown Garner Historic District, Roughly Garner Rd. and Main St. from New Rand Rd. to Broughton St., Garner, 89002157

Green-Hartsfield House, SR 2303 at jct. with SR 2304, Rolesville vicinity, 89002158

SOUTH CAROLINA

Berkeley County

Otranto Plantation Indigo Vats, SC Sec. Rd. 503, E of Goose Creek, Goose Creek vicinity, 89002150.

Darlington County

Japonica Hall, S. Main St., Society Hill, 89002153

Greenville County

First National Bank, 102 S. Main St., Greenville, 89002152

Tullyton, 606 Hickory Tavern Rd., Fountain Inn vicinity, 89002151

Lancaster County

Allison, Robert Barnwell, House (Lancaster County MPS), 404 Chesterfield Ave., Lancaster, 89002148

East Richland Street—East Church Street Historic District, (Lancaster County MPS), Roughly bounded by E. Church St., Ingram St., E. Richland St., and Hart St., Kershaw, 89002142

Heath Springs Depot (Lancaster County MPS), E. Railroad Ave., Heath Springs, 89002147

Huey, Thomas Walker, House (Lancaster County MPS), Jct. of SC 200 and SC 285, Lancaster vicinity, 89002146

Ivy, Adam, House (Lancaster County MPS), SC 55, 1.5 mi. SW of jct. with Co. Rd. 2109, Van Wyck vicinity, 89002144

Lancaster Cotton Oil Company (Lancaster County MPS), S. Main St. at Lancaster & Chester Railroad tracks, Lancaster, 89002145

Matson Street Historic District (Lancaster County MPS), Matson St. from Hilton to Pine Sts., Kershaw, 89002143

Sapp, William Harrison, House (Lancaster County MPS), SC 522 and SC 51, Tradesville vicinity, 89002141

Pickens County

Clemson College Sheep Barn (Clemson University MPS), S. Palmetto Blvd., Clemson University Campus, Clemson, 89002140

Clemson University Historic District I (Clemson University MPS), Northern portion of campus along US 76, Clemson, 89002136

Clemson University Historic District II (Clemson University MPS), Center of campus, Clemson, 89002139

Richland County

Waverly Historic District, Roughly bounded by Hampton St., Heidt St., Gervais St., and Harden St., Columbia, 89002154

Sumter County

Heriot-Moise House, Jct. Brewington Rd. and US 401, Sumter vicinity, 89002149

[FR Doc. 89–28433 Filed 12–5–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 377–TA–298]

Certain Low Friction Drawer Supports, Components Thereof, and Products Containing Same; Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 4) issued on October 31, 1989, by the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of a consent order.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Official of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On April 28, 1989, GWN, Inc. d/b/a Delta Industries (Delta) filed a complaint with the Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), alleging unfair practices in the importation and sale in the United States of certain low friction drawer supports, components thereof, and products containing the same. Specifically, Delta alleged that respondent GM International, Inc. imported certain disc rollers, which were alleged to infringe claims 1–6, 9, and 11–15 of U.S. Letters Patent 4,236,773 (the '773 patent), and certain drawer slides, which were alleged to infringe claims 11 and 15 of U.S. Letters Patent 4,125,297 (the '297 patent). The Commission voted to institute an investigation on May 23, 1989, and published a notice of institution on May 31, 1989. 54 FR 23294. The ALJ granted a motion to amend the complaint on July 5, 1989; the Commission published a notice not to review that initial determination on August 9, 1989. 54 FR 32701.

On October 27, 1989, the parties filed an Amended Joint Motion for Termination of the Investigation and for Entry of Consent Order Based on a Consent Order Agreement (Motion). On October 30, 1989, the Commission's investigative attorney (IA) filed a response in support of the Motion. The ALJ found that the consent order agreement (Agreement) contains a proposed consent order (Consent Order), an admission of all jurisdictional facts, an express waiver of all rights to seek judicial review or otherwise challenge or consent the validity of the consesnt order, and a statement that the enforcement, modification, and revocation of the Order will be carried out pursuant to subpart C of part 211 of the Commission's rules. Accordingly, the ALJ found that the requirements of interim rule 211.22(a) were met. The ALJ further found that the Agreement and Order are consistent with the public interest, and granted the motion to terminate the investigation by issuing the ID.

No petitions for review, comments from other government agencies, or written comments from the public were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

Issued: November 24, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–28490 Filed 12–5–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–292]

Certain Methods of Making Carbonated Candy Products; Change of Investigative Attorneys

Notice is hereby given that, as of this date, David A. Guth, Esq. and Daniel M. Duty, Esq., of the Office of Unfair Import Investigations have been designated as the Commission investigative attorneys in the above-cited investigation instead of David A. Guth, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: November 30, 1989.

Respectfully submitted,

Jeffrey R. Whieldon,

Acting Director, Office of Unfair Import Investigations.

[FR Doc. 89–28492 Filed 12–5–89; 8:45 am]

BILLING CODE 7020–02–M

Certain Novelty Teleidoscopes; Decision Not To Review an Initial Determination Finding Respondent Rich Trees International in Default

[Investigation No. 337–TA–295]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation finding respondent Rich Trees International (Rich Trees) in default pursuant to Commission interim rule 210.25.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1090. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 13, 1989, pursuant to a motion filed by complainant Homespun Imports, Inc., d/b/a Silver Deer Ltd., the presiding ALJ ordered respondent Rich Trees to show cause why it should not be found in default. No response to the show cause order was received. Consequently, the ALJ issued the subject ID (Order No. 18) finding Rich Trees in default pursuant to Commission interim rule 210.25, and finding that Rich Trees is deemed to have waived its right to be served with documents and to contest the allegations at issue in this investigation. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.25 and 210.53(h) (53 FR 33070, Aug. 29, 1988).

Issued: November 29, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–28488 Filed 12–5–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-296]

Certain Novelty Teleidoscopes; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Man's Trading Company (Man's).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1989.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–252–1805.

Issued: November 28, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–28489 Filed 12–5–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-295]

Certain Novelty Teleidoscopes; Decision Not To Review Initial Determination Terminating Three Respondents on the Basis of Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (IDs) (Order Nos. 16 and 17) issued by the presiding administrative law judge (ALJ) terminating, respectively, respondents China Toy and Novelty Co. (China Toy) and Western Novelty Co. (Western), and Universal Specialties Co. (Universal), from the above-captioned investigation on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–253–1090.

SUPPLEMENTARY INFORMATION: On October 18, 1989, the presiding ALJ issued an ID terminating the investigation with respect to China Toy and Western. The ID granted joint motions of complainant Homespun Imports, Inc., d/b/a Silver Deer Ltd. (Silver Deer) and China Toy, and Silver Deer and Western, to terminate the investigation with respect to those respondents on the basis of settlement agreements. On October 19, 1989, the presiding ALJ issued an ID terminating the investigation with respect to Universal. The ID granted a joint motion of Silver Deer and Universal to terminate the investigation with respect to Universal on the basis of a settlement agreement.

No petitions for review of the IDs or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h) (53 FR 33070, Aug. 29, 1988).

Issued: November 29, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–28491 Filed 12–5–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-295]

Certain Novelty Teleidoscopes; Commission Decision Not To Review Initial Determinations Terminating Two Respondents on the Basis of Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (IDs) (Orders Nos. 19 and 20) issued by the presiding administrative law judge (ALJ) terminating, respectively, respondents Imperial Toy Corporation (Imperial Toy) and Importoys, Inc. (Importoys) from the above-captioned investigation on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 25, 1989, the presiding ALJ issued an ID (Order No. 19) terminating the investigation with respect to Imperial Toy. The ID granted a joint motion of complainant Homespun Imports, Inc., d/b/a Silver Deer Ltd. (Silver Deer) and Imperial Toy to terminate the investigation with respect to Imperial Toy on the basis of a settlement agreement. On October 26, 1989, the presiding ALJ issued an ID (Order No. 20) terminating the investigation with respect to Importoys. The ID granted a joint motion of Silver Deer and Importoys to terminate the investigation with respect to Importoys on the basis of a settlement agreement.

No petitions for review of the IDs or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.51 and 210.53(h) (53 FR 33068–70, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 29, 1989.

[FR Doc. 89–28485 Filed 12–5–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-296]

Certain Phenylene Sulfide Polymers and Polymer Compounds and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Hoechst Celanese Corporation (Hoechst Celanese), Kureha Chemical Industry Co., Ltd. (Kureha), and Polyplastics Co., Ltd. (Polyplastic).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 24, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW. Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary of the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1802.

Issued: November 29, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–28486 Filed 12–5–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-435 (Final)]

Certain Steel Pails From Mexico; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–435 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain steel pails,[1] provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before January 22, 1990, and the Commission will make its final injury determination by March 14, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201), as amended.

EFFECTIVE DATE: November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Brian C. Walters (202–252–1186), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain steel pails from Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on May 31, 1989, by counsel for the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 31080, July 26, 1989).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will

[1] For purposes of this investigation, certain steel pails are defined as cylindrical containers of steel with a volume (capacity) of 1 to 7 gallons, and outside diameter of 11–¾ inches or greater, and a wall thickness of 29–22 guage steel, presented empty, whether or not coated or lined. This investigation includes, but is not limited to, openhead, tighthead, and dome top steel pails.

prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to section 207.7(a), of the Commission's rules (19 CFR 207.7(a) as amended (53 FR 33039, August 29, 1988, and 54 FR 5220, February 2, 1989)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on January 26, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on February 8, 1990, at the U.S. International Trade Commission, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 30, 1990). A nonparty who has testimony that may aid the Commission's deliberation may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 2, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is February 5, 1990.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the precedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 15, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 15, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 20, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 27, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-28487 Filed 12-5-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-426 and 428 (Final)]

Certain Telephone Systems and Subassemblies Thereof From Japan and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan and Taiwan of certain small business telephone systems and subassemblies thereof,[3] provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States (previously in items 682.60, 684.57, 684.58, and 684.59 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissenting.

[3] For the purposes of these investigations, "certain small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, the foregoing with intercom or internal calling capability and total nonblocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of such a system. These subassemblies are defined as follows: control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch; circuit cards and modules, including power supplies; and telephone sets and consoles, consisting of proprietary corded telephone sets or consoles.

Background

The Commission instituted these investigations effective August 2, 1989, following preliminary determinations by the Department of Commerce that imports of certain small business telephone systems and subassemblies thereof from Japan, Korea, and Taiwan were being sold at LTFV within the meaning of section 735 of the act (19 U.S.C. 1673d(a)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 16, 1989 (54 FR 33783). The hearing was held in Washington, DC, on October 31, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 29, 1989. The views of the Commission are contained in USITC Publication 2237 (November 1989), entitled "Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-426 and 428 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: December 1, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-28510 Filed 12-5-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 393]

Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Publication of cost recovery percentage.

SUMMARY: Section 202 of the Staggers Rail Act of 1980 requires the Commission to calculate an annual Cost Recovery Percentage (CRP) for all railroad traffic. The CRP is a revenue to variable cost percentage calculated using railroad unit costs and a statistical sample of railroad traffic. If the CRP falls between 170 percent and 180 percent it becomes the jurisdictional threshold for rate regulation of market dominant traffic. The Commission found that the CRP for both 1986 and 1987 was in excess of 180 percent. The jurisdictional threshold remains at 180 percent of variable costs.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354; Robert C. Hasek (202) 275-0838; (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Decided: November 29, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28502 Filed 12-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on November 22, 1989 a proposed consent decree in *United States* v. *TBG Inc. and Indian Head Industries, Inc.*, Civil Action No. was lodged with the United States District Court for the Northern District of California. The complaint filed by the United States, under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, alleged that defendant TBG Inc. is the owner of property and the improvements which are a part of the MGM Brakes Site ("the facility") in Cloverdale, California and that TBG Inc. is the successor in interest to corporations that owned and operated the facility at times when hazardous substances were disposed. The complaint also alleges that Indian Head Industries, Inc. is the operator of a casting plant at the facility. The complaint further alleges that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint also sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases. The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated September 29, 1988. More specifically the defendants will be required to excavate PCB-contaminated soil at the Site and properly dispose of the excavated soil on at off-site landfill operating in compliance with the Resource, Conservation, and Recovery Act and/or the Toxic Substances Control Act. The defendants are also required to clean up the groundwater to specified levels under the consent decree. The defendants will pay all future costs at the Site, and pay past costs in an amount of $823,119.55. Under the consent decree the United States will provide the defendants a covenant not to sue with a release as to off-site PCB disposal pursuant to 42 U.S.C. 9622(f)(2)(A).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *TBG Inc. and Indian Head Industries, Inc.* D.J. Ref. 90-11-2-186.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102

or at the Region IX office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California, 94105, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *TBG Inc. and Indian Head Industries, Inc.* D.J. Ref. 90–11–2–188 and enclose a check in the amount of $40.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–28486 Filed 12–5–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: November 29, 1989.

Affirmative Decisions on Petitions for Modification

Docket No.: M–85–6–C.
FR Notice: 50 FR 13891C.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–8–C.
FR Notice: 50 FR 13892.
Petitioner: Picklands Mather and Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Use of metal locking devices, each consisting of a fabricated metal bracket and a metal locking screw, in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate. Granted with conditions.

Docket No.: M–85–10–C.
FR Notice: 50 FR 13887.
Petitioner: Barnes and Tucker Company.
Reg Affected: 30 CFR 75.1100–0.
Summary of Findings: Petitioner's proposal to maintain a dry waterline along the slope belt conveyor, equipped with an automatic actuating valve considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–45–C.
FR Notice: 50 FR 35614.
Petitioner: Jim Walter Resources, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cables (2,300 volt) to supply power to permissible longwall face equipment in or inby the last open crosscut considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–77–C.
FR Notice: 50 FR 35615.
Petitioner: Plateau Mining Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to develop the coal mine with a two-entry longwall development system, to use the belt entry as a separate intake split or air to the longwall face, and to provide the belt intake entry with an environmental monitoring system for low-level carbon monoxide monitoring considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–96–C.
FR Notice: 51 FR 33612.
Petitioner: S. and T. Coal Company.
Reg Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filter-type self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–119–C.
FR Notice: 51 FR 36491.
Petitioner: R. S. and W. Coal Company.
Reg Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filter-type self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–128–C.
FR Notice: 51 FR 36490.
Petitioner: Buck Mountain Coal Company.
Reg Affected: 30 CFR 75.1714.
Summary of Findings: Petitioner's proposal to use filter-type self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–155–C.
FR Notice: 50 FR 47293.
Petitioner: National Mines Corporation.
Reg Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–85–202–C.
FR Notice: 51 FR 10697.
Petitioner: River Processing, Inc.
Reg Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–85–207–C.
FR Notice: 51 FR 10697.
Petitioner: Peabody Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish measurement stations where the air quality and quantity will be measured and where the air quality readings will be conducted by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–208–C.
FR Notice: 51 FR 10696.
Petitioner: Eastern Coal Corporation.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish two evaluation points where checks for methane, and direction and velocity of the airflow will be made by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–112–C.
FR Notice: 51 FR 33309.
Petitioner: A. and D. Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–115–C.
FR Notice: 51 FR 33818.
Petitioner: Atascosa Mining Company.
Reg Affected: 30 CFR 77.216–3(a).
Summary of Findings: Petitioner's proposal to inspect the ponds on a monthly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–116–C.
FR Notice: 51 FR 28906.
Petitioner: Consol Pennsylvania Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Use of spring-loaded metal locking devices in lieu of padlocks for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–234–C.
FR Notice: 52 FR 13145.
Petitioner: Pyro Mining Company.
Reg Affected: 30 CFR 75.303.
Summary of Findings: Petitioner's proposal to cut the southwest panel into the main aircourse at the intake air shaft, to use the panel to ventilate number one and three units, and to install continuous reading methane and carbon monoxide sensors considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–218–C.
FR Notice: 52 FR 42356.
Petitioner: Ratliff Elkhorn Coal Company, Inc.
Reg Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a dimunition of safety. Granted.

Docket No.: M–87–248–C.
FR Notice: 52 FR 46863.
Petitioner: Big Diamond Coal Company.
Reg Affected: 30 CFR 75.301.
Summary of Findings: Proposed air flow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–253–C.
FR Notice: 53 FR 13343.
Petitioner: The Helen Mining Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal that a mine examiner conduct weekly examinations of the return aircourses by traveling the aircourse and examining the inby and outby ends of the roof falls to ensure proper flow and volume, and to test for methane considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–261–C.
FR Notice: 53 FR 1419.
Petitioner: C. and B. Coal Company, Inc.
Reg Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–275–C.
FR Notice: 53 FR 9825.
Petitioner: Kelly Energy Company, Inc.
Reg Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–87–292–C.
FR Notice: 53 FR 2548.
Petitioner: BethEnergy Mines, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cables (4,160 volt) to supply power to permissible longwall face equipment in or in by the last open crosscut considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–296–C.
FR Notice: 53 FR 3472.
Petitioner: M. and F. Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–46–C.
FR Notice: 53 FR 15475.
Petitioner: S. and J. Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–49–C.
FR Notice: 53 FR 28714.
Petitioner: The Helen Mining Company.
Reg Affected: 30 CFR 75.205.
Summary of Findings: Petitioner's proposal method of installing roof bolts using a continuous mining machine with intergral roof-bolting equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–67–C.
FR Notice: 53 FR 20029.
Petitioner: Duquesne Light Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to install an electrical installation in fireproof enclosures and to have the electrical equipment examined and maintained by a qualified person considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–69–C.
FR Notice: 53 FR 14868.
Petitioner: Bend Branch Coal Company.
Reg Affected: 30 CFR 75.301.
Summary of Findings: Petitioner's proposal to use an underground auger mining machine after traditional room and pillar mining is performed considered acceptable alternate method. Granted in part with conditions.

Docket No.: M–88–77–C.
FR Notice: 53 FR 25021.
Petitioner: Paramount Coal Corporation.
Reg Affected: 30 CFR 75.1713–6.
Summary of Findings: Petitioner's proposed method of fulfilling the requirements for 10 class hours of training in a course of instruction for initial first aid training, and five class hours of refresher first aid training annually, considered acceptable alternate method. Granted in part.

Docket No.: M–88–80–C.
FR Notice: 53 FR 20033.
Petitioner: Quarto Mining Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to increase the maximum

length of trailing cables, and increase the voltage supplied to the shuttle cars considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–82–C.
FR Notice: 53 FR 19348.
Petitioner: A. and G. Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–83–C.
FR Notice: 53 FR 18917.
Petitioner: Gang Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–88–C.
FR Notice: 53 FR 20031.
Petitioner: Hawkeye Services Corporation.
Reg Affected: 30 CFR 77.811.
Summary of Findings: Petitioner's proposal to use a rubber-tired, trailer-mounted, portable generator, connected with a short length of trailing cable and pulled by a tractor truck, to move large electric mining shovels and draglines, using specific equipment and safety procedures considered acceptable alternate method. Granted.

Docket No.: M–88–91–C.
FR Notice: 53 FR 19350.
Petitioner: Krystal Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–92–C.
FR Notice: 53 FR 19351.
Petitioner: Rough Hill Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–95–C.
FR Notice: 53 FR 25023.
Petitioner: Wolf-Creek Collieries Company.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to clean out and plug all active oil and gas wells encountered in the No. 4 Mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–96–C.
FR Notice: 53 FR 22234.
Petitioner: Freeman United Coal Mining Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation stations at specific locations where a person would make weekly examinations for the quantity of air and test for methane, considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–97–C.
FR Notice: 53 FR 20028.
Petitioner: AMAX Coal Company.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–98–C.
FR Notice: 53 FR 25022.
Petitioner: Rushton Mining Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish monitoring stations at which examinations for hazardous conditions would be conducted considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–106–C.
FR Notice: 53 FR 25022.
Petitioner: Quarto Mining Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to house a rectifier installation in a fireproof structure considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–113–C.
FR Notice: 53 FR 26688.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to house electric equipment in a fireproof structure considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–118–C.
FR Notice: 53 FR 26906.
Petitioner: Quarto Mining Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to house a pump installation in a fireproof structure considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–122–C.
FR Notice: 53 FR 27780.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cable (2400 volt) to supply power to the longwall mining equipment inby the last open crosscut and within 150 feet of gob areas considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–123–C.
FR Notice: 53 FR 29967.
Petitioner: Green River Coal Company, Inc.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to use a TRW submergible pump to drain water from the pump beneath the intake air shaft in lieu of a permanent pump housed in a fireproof structure considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–126–C.
FR Notice: 53 FR 31774.
Petitioner: Clinchfield Coal Company.
Reg Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal that a qualified person conduct a weekly functional test on each deluge type spray system and that the results be recorded in a book kept on the surface considered acceptable alternate method. Granted in part with conditions.

Docket No.: M–88–129–C.
FR Notice: 53 FR 28907.
Petitioner: Summit Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–133–C.
FR Notice: 53 FR 28715.
Petitioner: Michael Mining Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–134–C.
FR Notice: 53 FR 32120.
Petitioner: The Ohio Valley Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish input and output evaluation stations in lieu of traveling the aircourse in its entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–139–C.
FR Notice: 53 FR 32799.
Petitioner: Rushton Mining Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish safe evaluation procedures for the safety of the examiners considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–141–C.
FR Notice: 53 FR 31775.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal that the carbon monoxide monitoring system be examined visually at least once each coal-producing shift and tested for functional operation at intervals not exceeding 7 days to ensure the monitoring system is functioning properly and that required maintenance is being performed considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–146–C.
FR Notice: 53 FR 33193.
Petitioner: Consolidated Coal Company.
Reg Affected: 30 CFR 75.902.
Summary of Findings: Petitioner's proposal to design and install low- and medium-voltage, three phase alternating current, resistance grounded circuits underground without ground wire monitoring considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–152–C.
FR Notice: 53 FR 34597.
Petitioner: Beckley Coal Mining Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish checkpoints where a certified person will make weekly examinations considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–172–C.
FR Notice: 53 FR 36514.

Petitioner: Amy Coal Company (formerly Helton Energy).
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–177–C.
FR Notice: 53 FR 37658.

Petitioner: EMCO Coal Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–4–M.
FR Notice: 50 FR 27074.

Petitioner: Texasgulf Chemicals Company.
Reg Affected: 30 CFR 57.21046.
Summary of Findings: Petitioner's proposal that crosscuts be made at intervals not in excess of 250 feet between entries and between rooms in lieu of 100 feet considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–25–M.
FR Notice: 51 FR 5617.

Petitioner: Union Oil Company of California.
Reg Affected: 30 CFR 57.110058.
Summary of Findings: Petitioner's proposal to locate its primary check-in and check-out system in the underground lamp room where an accurate record of persons in the mine will be recorded considered acceptable alternative method. Granted.

Docket No.: M–85–27–M.
FR Notice: 51 FR 3278.

Petitioner: Hecla Mining Company.
Reg Affected: 57.11037.
Summary of Findings: Lengthening the legs of the hexagonal crib and the raise caps would cause a diminution and deterioration of the structural integrity of the hexagonal crib and raised caps, resulting in a diminution of safety. Granted.

Docket No.: M–86–7–M.
FR Notice: 51 FR 39435.

Petitioner: Climax Molybdenum Company.
Reg Affected: 30 CFR 57.4533.
Summary of Findings: Petitioner's proposal to use a positive pressure ventilation system which eliminates the hazard of smoke or gas from a surface fire entering the underground mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–14–M.
FR Notice: 51 FR 40093.

Petitioner: (Tg Soda Ash, Inc., formerly Texasgulf Chemicals Company).
Reg Affected: 30 CFR 57.4761.
Summary of Findings: Petitioner's proposal to use air from the shop to ventilate working areas in the mine and to install a carbon monoxide sensor at a specific location considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–15–M
FR Notice: 52 FR 4204.

Petitioner: Blue Ridge Stone Corporation.
Reg Affected: 30 CFR 56.9087.
Summary of Findings: Petitioner's proposal to use a visual warning in lieu of an audible warning on the two loaders working in the area considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–33–M.
FR Notice: 52 FR 47040.
Petitioner: Vermont Marble Company.
Reg Affected: 30 CFR 56.19017.
Summary of Findings: Petitioner's proposal to add an additional qualified hoist operator at the derrick hoist controls when hoisting persons considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–43–M.
FR Notice: 53 FR 7061.

Petitioner: Green Limestone Company.
Reg Affected: 30 CFR 57.4463.
Summary of Findings: Petitioner's proposal to use propane to fuel a maintenance truck in lieu of liquified petroleum gas considered acceptable alternate method. Granted with conditions.

[FR Doc. 89–28506 Filed 12–5–89; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–89–170–C]

De'Lyn Limited, Inc.; Petition for Modification of Application of Mandatory Safety Standard

De'Lyn Limited, Inc., P.O. Drawer 907, Skelton, West Virginia 25919 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 7 (I.D. No. 46–07162) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use a Lo-Lo Belt in return air from the face for a distance of 300 feet.

3. In support of this request petitioner states that—

(a) A barrier pillar would be left between panels in order to provide greater roof stability. At 300-foot intervals, an entry would be driven through the barrier pillar to provide direct access to the return;

(b) All equipment in the area would be permissible;

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(c) Alternative haulage methods are impractical and would not conform to the seam height. Also, such methods would be dangerous to operators, and to workers crawling on their hands and knees;

(d) In case of a belt fire, face personnel would be in fresh air, and any dangerous condition would be quickly observed by personnel traveling the belt; and

(e) The 300-foot section of the Lo-Lo Belt affected would be examined once every hour.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 5, 1990. Copies of the petition are available for inspection at that address.

Dated: November 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-28505 Filed 12-5-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereafter called the Assistant Secretary) (29 CFR 1953.4) will review an approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision. The Oregon plan provides for adoption of Federal standards as State standards by reference.

In response to Federal standards changes, the State has submitted by letter dated March 3, 1989 from John A. Pompel, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1910.177, Servicing of Multi-piece and Single Piece Rim Wheels, Final Rule, as published in the **Federal Register** (53 FR 34737) on September 8, 1988.

The State's rules pertaining to Servicing of Multi-piece and Single Piece Rim Wheels, contained in OAR 437-02-220(2), were adopted by reference and became effective on March 1, 1989, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 2-1989. Concurrently, equivalent State rules contained in Division 56, Vehicles, which pertained to servicing of Multi-piece and Single Piece Rim Wheels were repealed by the same Administrative Order. On January 30, 1989, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No requests for a public hearing were received.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard and accordingly is approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety And Health Administration, Room N-3476, 200 Constitution Ave. NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendment is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard amendment was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 6, 1989, (Sec. 18, Pub. L. 91-596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington this 11th day of May, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-28507 Filed 12-5-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-33]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: December 19, 1989, 9 a.m. to 5 p.m., December 20, 1989, 8:30 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1525).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss Life Sciences status and issues, activities of the Space Science and applications Advisory Committee and the Aerospace Medicine Advisory Committee, receive Life Sciences Division Reports, and new start activities for 1992. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 17 members. The meeting will be closed on Wednesday, December 20, 1989, from 10:30 a.m. to 11:45 a.m. to discuss and evaluate qualifications of candidates being considered for membership on the Subcommittee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 45 including Subcommittee members).

Type of Meeting: Open—except for a closed session as noted in the agenda below.

AGENDA:

Tuesday, December 19, 1989

9 a.m.—Introduction and Chairman's Remarks.
9:15 a.m.—Office of Space Science and Applications Status and Implications for Life Sciences.
10:15 a.m.—Life Sciences Status and Issues.
1:30 p.m.—Activities of the Space Science and Applications Advisory Committee (SSAAC), the Aerospace Medicine Advisory Committee (AMAC), and other Advisory Committees.
2:15 p.m.—Life Sciences Division Reports.
5 p.m.—Adjourn.

Wednesday, December 20, 1989

8:30 a.m.—New Start Activities for 1992.
10:30 a.m.—Closed Session.
1 p.m.—Committee Strategy and Actions.
2 p.m.—Adjourn.

Dated: November 30, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-28467 Filed 12-5-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Advisory Committee on the White House Conference on Library and Information Services

Date and Time: Dec. 12 & 13, 1989.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Delegate Room, Washington, DC 20037, 857-3388.

Status: Dec. 12, 1989—1:00 p.m.-9:30 p.m., Open; Dec. 13, 1989—8:45 a.m.-9:00 p.m., Open.

Matters To Be Discussed: Advisory Committee, Subcommittee Meetings:

—Goals and Objectives Development
—Delegate Selection
—Preconference Activities
—Public Relations and Awareness
—Exhibits Planning and Development
—Resources
—Public and Private Sector Liaison
Review and Approval of Agenda and Minutes
Reports by all Advisory Committee Subcommittees: Including Executive Director Subcommittee
Federal Funding Budget and Spending Plan
Report by FSCS/WHC Statistics Working Group
Report on Support Activities—Networking, Federal Library
WHCLIS Administrative Update

Persons appearing before, or submitting any written statements to, the Advisory Committee are asked to hand over to the Committee prior to presenting testimony, 80 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

Special provisions will be made for handicapped individuals by contacting John W.A. Parsons 1—(202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: White House Conference on Library and Information Services, 1111 18th Street, NW., Suite 302, Washington, DC 20036, 1-(202) 254-3100.

Dated: November 30, 1989.

Mary Alice Hedge Rezatar,

Associate Director, NCLIS, Designated Federal Official.

Tuesday—December 12, 1989

1:00-3:00 p.m.—Subcommittee Meetings
Asp's Suite—Delegate Selection Subcommittee,
—William Asp, Chairman, Discussion of Draft Report on Delegate Selection Guidelines
Board Room—Exhibits Planning and Development Subcommittee,
—Richard Akeroyd, Chairman, Discuss Planning for the Conference Exhibit including specific components of the exhibit and assigning tasks to subcommittee members
Asp's Suite—Pre-Conference Activities Subcommittee
—Virginia Young, Chairwomen, Discuss assistance to the States, Territories and Native Americans
Board Room—Public and Private Sector Liaison Subcommittee
—Joseph Fitzsimmons, Chairman, Discuss Private Sector Participation and possible exhibition interests
Reeves Suite—Public Relations and Awareness Subcommittee
—James Roberts, Chairman, Logo, Brochure, Newsletter, Mailing Lists, Speakers Bureau, Budget Requirements, Press Releases
Board Room—Resources Subcommittee
—Hugh Mahoney, Chairman, Foundation Grants, Individual Fundraising, Total Funding Projections for WHC
4:00-4:15 p.m.—Welcome; Delegate Room
—Daniel H. Carter, Advisory Committee Chairman
—Introduction of Advisory Committee Members and Guests
—Review and Approval of Agenda
4:15-4:20 p.m.—Executive Director Selection Subcommittee Report
—Jerald Newman, Chair
4:20-5:15 p.m.—Goals and Objectives Development Subcommittee Report
—Gordon Ambach, Chair
5:15-6:30 p.m.—Delegate Selection Subcommittee Report—William G. Asp, Chair
6:30-7:15 p.m.—Break
7:15-9:30 p.m.—Working Dinner (See Below)
7:45-9:30 p.m.—Preconference Activities Subcommittee Report
—Virginia Young, Chairwoman

Wednesday—December 13, 1989

Delegate Room

8:45-9:00 a.m.—Set Next Meeting Date
9:00-9:30 a.m.—Federal Funding Budget and Spending Plan
—Daniel H. Carter
9:30-10:00 a.m.—Resources Subcommittee Report
—Hugh Mahoney, Chairman
10:00-10:30—Public and Private Sector Liaison Subcommittee Report
—Joseph Fitzsimmons, Chairman
10:30-10:45 a.m.—Break
10:45-12:00 Noon—Discussion of Emerging Issues
—Daniel H. Carter

12:00–1:00 p.m.—Working Lunch (See Below)
12:30–1:00 p.m.—Public Relations and Awareness Subcommittee Report —James Roberts, Chair
1:00–2:00 p.m.—Charles McClure, Professor of Information Studies, Syracuse University
2:00–2:15 p.m.—Break
2:15–3:30 p.m.—Exhibits Planning and Development Subcommittee Report —Richard Akeroyd, Chair
3:30–4:00 p.m.—FSCS/WHC Statistics Working Group Report —John Lorenz, FSCS Coordinator
4:00–4:45 p.m.—Networking Support Activities —Henriette Avram, Associate Librarian for Collections, Library of Congress
4:45–5:30 p.m.—Federal Library Support Activities —Mary Berghaus Levering, Executive Director, Federal Library Information Center Committee (FLICC)
5:30–7:00 p.m.—Break
7:00–9:00 p.m.—Working Dinner (See Below)
7:30–8:30 p.m.—Old and New Business
8:30–8:45 p.m.—Administrative Update —Mary Alice Hedge Reszetar
8:45–9:00 p.m.—Summary Remarks —Daniel H. Carter
9:00 p.m.—Adjourn

Note: All subcommittee meetings and the Advisory Committee meetings are open to the public and have been published in the **Federal Register.**

As time allows public comment will be invited.

[FR Doc. 89–28428 Filed 12–5–89; 8:45 am]

BILLING CODE 7527–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SNYDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of a working group of the Commission.

DATES AND TIMES: January 4, 1990, 9:00 a.m. to 5:00 p.m. January 5, 1990, 9:00 a.m. TO 5:00 p.m.

PLACE: St. Paul Hotel, St. Paul, Minnesota.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., Suite 815, Washington, DC 20006 (202/254–5125).

AGENDA:

On January 4 the working group will hear from a variety of public witnesses with experience responding to the HIV epidemic on Local, State and Federal levels of government.

On January 5 the working group will focus on developing a consensus document which will be presented at the next full meeting of the National Commission on AIDS.

Maureen Byrnes,

Executive Director.

[FR Doc. 89–28403 Filed 12–5–89; 8:45 am]

BILLING CODE 6125–01–M

NUCLEAR REGULATORY COMMISSION

Staff Assessment of Proposed Amended Agreement Between the Nuclear Regulatory Commission

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Utah.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amended agreement received from the Governor of the State of Utah for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed amended program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the proposed amended agreement, program narrative, including the referenced appendices, applicable State legislation and Utah regulations, is available for public inspection in the Commission's public document room at 2120 L Street, NW, Washington, DC. Exemptions from the Commission's regulatory authority, which would implement this proposed amended agreement, have been published in the **Federal Register** and codified as part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before December 15, 1989.

ADDRESSES: Submit comments to: the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301–492–0328.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Utah Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Utah for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for land disposal of source, byproduct and special nuclear material received from other persons pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register.**

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review

[1] A. Byproduct materials as defined in 11e.(1)
B. Byproduct materials as defined in 11e.(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. On March 29, 1984, the Governor of Utah signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. In a letter dated July 17, 1989, Governor Norman H. Bangerter of the State of Utah requested that the Commission enter into an amended agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, under which the State would also assume responsibility for regulating the land disposal of these materials received from other persons. The Governor certified that the State of Utah has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Utah desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for permanent disposal of low-level waste containing the material for which Utah has assumed regulatory authority under the 1984 agreement but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act). The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The proposed amendment to the agreement covers the following areas:

1. Amending Article I of the Agreement of March 29, 1984 to add land disposal of source, byproduct and special nuclear material received from other persons to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of March 29, 1984 to delete land disposal of source, byproduct and special nuclear material received from other persons from the list of materials and activities over which the Commission continues to retain regulatory authority and responsibility.

3. Specifies the effective date of the amended agreement.

C. Utah Code Annotated (UCA) 26–1–27 through 26–1–29 authorizes the State Department of Health to issue licenses to, and perform inspections of (see, also, UCA 26–23–8), users of radioactive materials under the 1984 agreement and otherwise carry out a total radiation control program. Utah Radiation Control Rules UCA–10 through UCA–80 adopted November 8, 1982 under authority of 26–1–27 through 26–1–29 Utah Code Annotated 1953, as amended, provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These regulations have been determined to be compatible with the Commission's regulations. Utah Radiation Control Rules R447–10 through R447–70 were amended and recodified in July 1989. Regulations R447–25 were adopted in July 1988 for licensing requirements for land disposal of radioactive waste.

D. On March 29, 1984, under enabling legislation in UCA 26–1–29, Utah assumed regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material and special nuclear material in quantities not sufficient to form a critical mass. The program audits conducted since that time have resulted in an NRC finding that the Utah radiation control program is compatible with that of the NRC and is adequate to protect public health and safety. In addition to Utah's agreement program, Utah is involved in several environmental radiation issues including monitoring indoor radon, monitoring uranium mill tailings, particularly at the Vitro uranium mill, and monitoring and assessment of the State environmental program. In addition, the Department issued to Envirocare of Utah, Inc., a license to receive, store, and dispose, by shallow land burial, naturally occurring radioactive material (NORM) waste with a radium–226 concentration not to exceed 2,000 picocuries per gram. NORM material is not regulated by the Nuclear Regulatory Commission.

E. The State's proposed programs for low-level radioactive waste disposal are assessed under Criteria numbers 9, "Radioactive Waste Disposal" and 20 "Qualification of Regulatory and Inspection Personnel." Additional criteria relating to prior evaluation of uses of radioactive materials, inspection and administration,[2] are addressed as appropriate to supplement information found in the staff assessment of the original Utah proposed agreement published in the **Federal Register** on December 30, 1983 (48 FR 57674–57684).

[2] Criteria 13, "Prior Evaluation of Hazards and Uses Exceptions," 14, "Evaluation Criteria," 16, "Inspection, Purpose, Frequency," and 27, "Coverage, Amendments reciprocity."

II. NRC Staff Assessment of the Proposed Amendment to Utah Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[3]

Objectives

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requiremetns and applicable supporting sections set forth in 10 CFR part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97–425).

The Utah regulations contain provisions relating to the disposal of radioactive materials into the air, water ans sewer and burial in soil which are essentially uniform with those of 10 CFR

[3] NRC Statement of Policy published in the **Federal Register** January 23, 1961 (46 FR 7540–7546). A correction was published July 16, 1961 (46 FR 36969) and a revision of Criterion 9 published in the **Federal Register** July 21, 1963 (48 FR 33376).

part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Utah regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR part 61.

The Utah regulations provide for land disposal of low-level radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and supporting sections set out in 10 CFR part 61. The Utah regulations include provisions for financial arrangements for decontamination, closure and stabilization. Under the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425), the financial arrangements for long term monitoring and maintenance at specific sites in Utah will be subject to Commission review and approval prior to Utah relieving the site operator of licensed responsibility.

References: URC–R447–15–310, URC–R447–15–302, URC–R447–15–303, URC–R447–304, URC–R447–15–304, URC–R447–15–306, URC–R447–15–307, URC–R447–15–308, URC–R447–15–309, URC–R447–15–311, URC–R447–25; Section 151(a)(2), Pub. L. 97–425.

Prior Evaluation of Uses of Radioactive Materials

13. Prior Evaluation of Hazards and Uses, Exceptions

In the present state of knowledge, it it necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the disposal of radioactive materials, the Utah Bureau of Radiation Control will required the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: URC–447–25, Utah Program Statement, section III.D "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

14. Evaluation Criteria

In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal for disposal of radioactive material, the Utah Bureau of Radiation Control will make the findings required by URC–R447–25–11, including, among other, findings that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public and that the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life or property.

Other special requirements for the issiance of specific licenses are contained in the regulations.

References: URC–R447–25, *see*, especially, R447–25–11, Utah Program Statement, Section III.D. "Procedures for Review of a Low-Level Radioactive Waste Disposal License Application."

Inspection

16. Purpose, Frequency

The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Utah low-level waste disposal icensees will be subject to inspection by the Bureau of Radiation Control. Upon instruction from the Bureau, licensees shall perform or permit the Bureau to perform such reasonable tests and surveys as the Bureau deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: Utah Program Statement, section III.E "Compliance Program for a Low-Level Radioactive Waste Disposal Facility."

Personnel

20. Qualifications of Regulatory and Inspection Personnel

The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use, and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology, and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear materials which might come to the

regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons performing a more limited function in evaluation and inspection. These pesons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the ratiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or as its command, not only for routine functions, but also for emergency cases.

Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste—(a) *Number of Personnel.*-There are approximately 230 specific licenses in the State of Utah. The Bureau of Radiation Control has responsibility for the low-level waste (LLW) management regulatory program as a joint function of Radioactive Materials and Machine Licensing Section and Environmental Monitoring and Mill Tailings Management Section. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The Bureau of Radiation Control has identified seven staff members who will provide supervision, technical support and administrative assistance during the various phases of regulating a licensed low-level waste disposal facility. These personnel and summaries of their duties are:

Larry F. Anderson: Director, Bureau of Radiation Control. Responsible for administration of Bureau programs.

Mark S. Day: Environmental Health Engineer. Responsible for the Utah's inactive uranium mill tailings remedial action project.

Dane L. Finerfrock: Environmental Health Manager, Environmental Monitoring and Mill Tailings Management Section. Responsible for radon-in-residences monitoring, statewide environmental radiation monitoring, licensing and inspection of low-level radioactive waste disposal facilities, and inactive uranium mill tailings remedial action programs.

Blaine N. Howard: Health Physicist. Responsible for licensing and inspection in materials program.

John D. Hultquist: Environmental Health Scientist. Responsible for inspection of low-level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Craig W. Jones: Environmental Health Manager, Radioactive Materials and Machine Licensing Section. Responsible for the Agreement State program including licensing and inspection of low-level disposal facilities.

Raymond G. Nelson: Environmental Health Scientist. Responsible for regulation of low-level waste disposal facilities, environmental monitoring and inactive uranium mill tailings remedial action project.

Cindy Wignall: Environmental Health Technician. Responsible for supporting both sections as a technical assistant in meeting the Bureau's goals.

In addition, Utah has identified staff with expertise in various disciplines within the Department and other State agencies for support during the pre-operational and licensing stage. Expertise in disciplines not provided by Utah personnel either on staff or covered by agreements with other State agencies will be provided by contracts with the State.

(b) *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of low-level radioactive waste disposal facilities is shown below.

Larry F. Anderson—B.S. Chemistry, MPA (Health), Brigham Young University.

NIOSH Course 549, *Recognition, Evaluation, and Control of Occupational Hazards.* October 1972.

NIOSH Course 582, *Sampling and Evaluating Airbourne Asbestos Dust.* April 10–12, 1973.

Utah State Division of Health, *Visible Emission Evaluation Course.* June 19, 1973.

American Industrial Hygiene Association, *Industrial Toxicology Seminar.* A 24-hour course ending April 30, 1975.

OSHA, *Fundamentals of Occupational Injury Investigation.* Short course ending April 1, 1977.

U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending January 27, 1978.

U.S. Environmental Protection Agency, *Grants Administration Seminar.* A 16-hour course ending May 16, 1989.

Safety International Training Center, *Hydrogen Sulfide and EQuipment for Instructors.* A 12-hour course ending June 19, 1979.

Rocky Mountain Center for Occupational and Environmental Health, University of Utah, *Health and Exposures in the Smelter Environment.* A 20-hour course ending March 29, 1980.

U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course held in January 1984.

U.S. Nuclear Regulatory Commission, *Industrial Radiography.* A 40-hour course held May 1985.

Harvard School of Public Health, *Biological Effects of Ionizing Radiation.* A 40-hour course held in March 1989.

Mark S. Day—B.S. Civil and Environmental Engineering, Utah State University.
Center for Professional Advancement, *Hydraulic Conveying.* A 1-week course in 1974.
University of California, *Resolution of Construction Claims.* A 1-week course in 1983.
Management Consultants Incorporated, *Federal Procurement of Construction Projects.* A 1-week course in 1985.
Air Force Institute of Technology, *Contingency Engineering.* A 2-week course in 1986.
Air Force Institute of Technology, *Hazardous Waste Management.* A 2-week course in 1986.
Dane L. Finerfrock—*B.S. Meteorology, B.S. Biology, University of Utah.*
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 10-week course ending April 1981.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.
U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course held in August 17, 1980.
Western Interstate Energy Board, *Workshop on Low-Level Radioactive Waste.* A 16-hour course ending July 16, 1980.
U.S. Department of Health, Education and Welfare, *Basic Course for Investigators: Diagnostic X-Ray Surveillance.* A 80-hour course ending March 14, 1980.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September, 1979.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in November 16, 1984.
U.S. Nuclear Regulatory Commission, *License Inspection Procedures.* A 40-hour course ending in June 18, 1985.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.
Blaine N. Howard—B.S. Math and Physics, Ricks College. M.S. Radiological Health, New York University. M.S. Physics and Math, Brigham Young University.
Bureau of Radiological Health, *Medical X-Ray Protection.* Held October 30-November 10, 1972.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course held in 1978.
National Legislative Conference, *States Role in Radioactive Material Management.* Held December 9–11, 1974.
U.S. Environmental Protection Agency, *Drinking Water Regulations and Radioanalytical Workshop.* Held January 10–12, 1978.
X-Ray Workshop, Richfield, Utah. March 14–15, 1979
Actinides in Man and Animals Workshop, Snowbird, Utah. October 15–17, 1979.
U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending September 12, 1980.
NWTS Annual Information Meeting, Columbus, Ohio. December 8–10, 1980.
Waste Management 1981—American Nuclear Society, Tucson, Arizona. February 23–27, 1981.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 80-hour course ending in September 1982.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in July 30, 1982.
U.S. Nuclear Regulatory Commission, *Radon Monitoring.* A 40-hour course ending in November 1982.
Conference of Radiation control Program Directors, *Radiation Instruments.* A 24-hour course ending September 1983.
U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1988.
U.S. Nuclear Regulatory Commission, *Safety Aspects of Industrial Radiography.* A 40-hour course ending September 1989.
John D. Hultquist—B.S. Environmental Science/Biology, University of Tennessee.
U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in March 1988.
Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.
U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1989.
U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending August 1989.
U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.
Craig W. Jones—B.S. Biology, M.S.P.H. (Industrial Hygiene), University of Utah.
U.S. Nuclear Regulatory Commission, *Radiological Emergency Response Operation Training Course.* A 64-hour course ending August 8, 1980.
Department of Health and Human Services, *Radiopharmaceutical Quality Assurance.* A 16-hour course ending November 1984.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in February 1985.
U.S. Environmental Protection Agency, *Air Surveillance for Hazardous Materials.* A 40-hour course ending in April 1985.
U.S. Nuclear Regulatory Commission, *Medical Uses of Radionuclides.* A 40-hour course ending June 1985.
Oak Ridge Associated Universities, *Health Physics and Radiation Protection.* A 5-week course ending August 1985.
U.S. Nuclear Regulatory Commission, *Introduction Licensing Practices and Procedures.* A 40-hour course ending in September 1985.
U.S. Nuclear Regulatory Commission, *Radiation Protection Engineering.* A 40-hour course ending in November 1986.
U.S. Nuclear Regulatory Commission, *Gas and Oil Well Logging.* A 40-hour course ending in November 1987.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials.* A 40-hour course ending in August 1988.
Raymond G. Nelson—Completed 2 years towards B.S. in Geophysics, University of Utah.
U.S. Environmental Protection Agency, *Basic Risk and Decision Making.* A 16-hour course ending in September 1988.
Utah Division of Comprehensive Emergency Management, *Fundamental Course for Radiological Monitors.* An 8-hour course ending March 1989.
U.S. Environmental Protection Agency, *Reducing Radon in Structures.* A 24-hour course ending in March 1989.
U.S. Environmental Protection Agency, *RCRA Ground Water Monitoring.* A 24-hour course ending in April 1989.
U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending August 1989.
U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.
U.S. Nuclear Regulatory Commission, *Inspection Procedures.* A 40-hour course ending in June 1989.
U.S. Nuclear Regulatory Commission, *Transportation of Radioactive Materials. A 40-hour course ending in August 1989.*
U.S. Department of Energy, *First Responders WIPP Training.* An 8-hour course ending in August 1989.
U.S. Environmental Protection Agency, *Hazardous Material Response for First Responders.* A 40-hour course ending in September 1989.

Reference: Utah Program Statement, section II.D "Low-Level Radioactive Waste Management," section IV "Staffing, Supervision, and Equipment for a Low-Level Waste Program," and Appendix E.

Administration

27. Coverage, Amendments, Reciprocity

The proposed amendment to the Utah agreement provides for the assumption of regulatory authority over land disposal of source, byproduct and special nuclear material received from other persons.

Reference: Proposed Amendment to Agreement, section I.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The staff has concluded that the State of Utah meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Utah agreement. Since the State is not seeking authority over uranium milling activities, subsection O. is not applicable to the proposed amendment to the Utah amended agreement.

Dated at Rockville, Maryland, this 7th day of November 1989.

For the U.S. Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs.

Appendix A

Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on April 1, 1984, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 26–1–29 to enter into this amendment to the Agreement of March 29, 1984, between the Commission and the State of Utah; and

Whereas, The Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on *(date to be inserted)* that the State of Utah has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the land disposal within the State of source, byproduct and special nuclear material received from other persons and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on *(date to be inserted)*, that the program for regulation of materials covered by the amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1989, is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended.

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, is amended by deleting "and" at the end of paragraph B., by adding "and," after the words "critical mass" in paragraph C., and by inserting the following new paragraph immediately after paragraph C.:

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Section 2. Article II of the Agreement of March 29, 1984, is amended by deleting paragraph E. and by redesignating paragraph F. as paragraph E.

This amendment shall become effective on *(date to be inserted)*, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984.

Done at Salt Lake City, Utah, in triplicate, this ——— day of ———, 1989.

For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

Chairman

For the State of Utah.

Norman H. Bangerter,

Governor

[FR Doc. 89–2695 Filed 11–14–89; 8:45 am]

BILLING CODE 7590–41–M

[Docket No. 50–247]

Consolidated Edison Co. of New York, Inc. Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identificaton of Proposed Action: This Environmental Assessment is written in connection with the proposed core power level increase for the Indian Point Nuclear Generating Unit No. 2 in response to the licensee's application for a licence amendment dated September 30, 1988, as supplemented January 10, March 30, and April 14, 1989. The

proposed action would increase the rated core power level for Indian Point Unit 2 from the current level of 2758 Megawatts-thermal (MWt) to 3071.4 MWt, and upgrade the Nuclear Steam Supply System (NSSS) thermal power from the current level of 2770 MWt to 3083.4 MWt. This increase would represent an increase of approximately 11.3 percent over the current rated core power and NSSS thermal power.

The Need for the Proposed Action: The proposed action would increase the electrical output by approximately 115 Megawatts-electrical (MWe) and thus provide additional electrical power to the grid which services the commercial and domestic areas in the State of New York.

Environmental Impacts of the Proposed Action: A slight change in environmental impact can be expected for the proposed increase in power. The proposed core uprating is projected to increase the rejected heat by approximately 11.3 percent. However, the NRC-approved Final Environmental Statement (FES) related to operation of Indian Point Nuclear Generating Plant Unit No. 2, September 1972, (Volume I, page I–1, section I.) has already addressed plant operation up to a stretch NSSS power rating of 3228 MWt (core power level of 3216 MWt). Thus, the approximately 11.3 percent increase in rejected heat has already been evaluated and determined to not significantly impact on the quality of the human environment. Also, the proposed increase in the NSSS power involves no significant change in types or significant increase in the amount of any effluents that may be released offsite which have not already been evaluated and approved in the FES for a NSSS power rating of 3228 MWt. Similarly, as enveloped by the FES, there would be no significant increase in individual or cumulative occupational radiation exposure.

Alternatives to the Proposed Action: The principal alternative to the proposed action would be to deny the requested amendment. This alternative would be in contradiction to the fact that the NRC-approved FES has already addressed operation up to a NSSS stretch power rating of 3228 MWt.

Alternative Use of Resources: This action does not involve the use of any resources not considered previously in the FES for Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated September 30, 1988, as supplemented January 10, March 30, and April 14, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 28th day of November 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–28464 Filed 12–5–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (the licensee), for operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action: The proposed amendment would revise reactor protection system (RPS) trip level settings as specified in Section 2 of the Technical Specifications (TS). Specifically, (1) the turbine stop valve closure scram bypass setpoint would be changed from 45% of rated power as measured by the turbine first stage pressure to 50% of rated reactor thermal power; (2) the turbine control valve fast closure scram bypass setpoint would be changed from 301 MWe to 50% of rated reactor thermal power; and (3) the average power range monitor (APRM) flux scram trip setting would be changed from an initial generator power greater than 307 MWe to 50% of rated reactor thermal power.

The proposed amendment was requested by the licensee in a letter dated August 17, 1987.

The Need for the Proposed Action: The proposed changes to the TS are needed to help minimize spurious scrams that occur more frequently at low power and to have consistency in the basis for these scram setpoints.

Environmental Impacts of the Proposed Action: The Commission has completed its evaluation of the proposed changes to the TS. The licensee evaluated the proposed setpoint change to 50% of rated thermal power using that change as the basis for the evaluation of bounding transients. The justification of the change in the scram bypass setpoint to 50% power is documented in the General Electric Analysis MDE–276–1285, "Millstone Nuclear Power Station, Unit No. 1 Scram Bypass Setpoint Evaluation," dated December 1985. The proposed action does not involve a significant increase in the probability or consequences of an accident previously analyzed in that they are bounded by and do not affect the current design basis accident analyses. The proposed action does not create the possibility of a new or different kind of accident from any previously analyzed in that there are no new failure modes created and any changes in plant response are bounded by current analyses. In addition, the proposed action does not involve any significant reduction in a margin of safety because the action does not impact any plant safety limits. The proposed changes to the TS would not affect plant effluents during normal or accident conditions. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action involves setpoints of the RPS which is located within the restricted area as defined in 10 CFR part 20. The action does not affect non-radiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that the proposed action has no significant non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing was published in the **Federal Register** on March 31, 1988 (53 FR 10451). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action: Since the Commission concluded that there was no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and might result in additional surplus scrams at low power.

Alternative Use of Resources: These actions do not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for Millstone Nuclear Power Station.

Agencies and Persons Consulted: The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 17, 1987, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 27th day of November 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–28465 Filed 12–5–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–255]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action: The exemption, proposed by letter dated August 25, 1989, provide partial relief from the requirement of Paragraph III.D.2.(b)(ii) to leak test, at or above the calculated design basis accident peak containment pressure (Pa), containment air locks which were opened during a period when containment integrity was not required. The exemption would permit the substitution of a between-the-seals leak test at reduced pressure but not less than 10 psig provided that no maintenance, modification, or other activity has been performed which could affect the sealing capability of the air locks.

The Need for the Proposed Action: Whenever the facility is in cold shutdown, containment integrity is not required. If during this time an air lock door is opened, an overall air lock test at Pa must be performed prior to leaving the cold shutdown condition to comply with Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50. The air lock door designs are such that a test at Pa of the entire air lock can be performed only with structural bracing (strongbacks) installed on the inner door. These stronglocks are needed because the pressure exerted on the inner door during the test is in the reverse direction to the pressure exerted during accidents. In contrast to the requirements of the referenced paragraph, Paragraph III.D.2.(b)(iii) of Appendix J to 10 CFR part 50 permits testing of containment air locks that have been opened during periods when containment integrity is required by the technical specifications to be tested by the alternate method described above.

There is no reason to expect an air lock to leak excessively merely because a door was opened during cold shutdown or refueling vice during other operating conditions, provided there has been no maintenance, modification, or other activity that could affect the leak-tightness or sealing capability of the air lock. The alternate testing permitted by the proposed exemption will prove air lock integrity following cold shutdown or refueling in the same manner that the air lock is proven during periods when containment integrity is required. The proposed exemption is required to allow the licensee to conduct the alternate air lock testing as described above.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impact of the proposed exemptions and has determined that the probability of accidents has not been increased by the proposed alternative testing, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed exemption does not affect routine radiological plant effluents or occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Since the Commission concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact attributable to this facility and would result in a larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources: This action does not involve use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant dated February 1978.

Agencies and Persons Consulted: The Commission's staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated August 25, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 29th day of November 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–28466 Filed 12–5–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Revision

The **Federal Register** notice published Tuesday, November 28, 1989 (54 FR 48957) announcing ACRS Subcommittee on Human Factors scheduled for December 6, 1989 has been rescheduled for December 12, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, December 12, 1989—1 p.m. until the conclusion of business

The Subcommittee will discuss: (1) Proposed changes to 10 CFR 55, Operator Licenses, (2) a letter from R. Stater (public) to R. Fraley, ACRS concerning operator training deficiencies, and (3) access authorization rule.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 29, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–28462 Filed 12–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–2061–ML; ASLBP No. 83–495–01–ML]

Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility); Hearing

November 29, 1989.

Before Administrative Judges John H Frye III, Chairman Dr. James H. Carpenter; Dr. Jerry R. Kline

Please take notice that a hearing in the matter will take place on December 14 and 15 at the following locations:

December 14: Courtroom 1669, US District Court, 219 South Dearborn Street, Chicago, IL.

December 15: Courtroom 2781, US Court of Appeals, 219 South Dearborn Street, Chicago, IL.

Each day's session will commence at 9:00 am and adjourn at 5:00 pm.

For the Atomic Safety and Licensing Board.

John H Frye III,

Chairman, Administrative Judge.

[FR Doc. 89–28463 Filed 12–5–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on October 31, 1989 (54 FR 43507). Individual authorities established or revoked under Schedule A, B, or C between October 1, 1989, and October 31, 1989, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions were established:

Federal Housing Finance Board

All positions in the Federal Housing Finance Board. No new appointments may be made under this authority after December 31, 1992. Effective October 2, 1989.

Department of Veterans Affairs, Board of Veterans' Appeals

Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointment under this authority shall be for a term of 9 years, and may be renewed. Effective October 23, 1989.

Schedule C

Administrative Conference of the U.S.

One Confidential Assistant to the Chairman. Effective October 18, 1989.

U. S. Arms Control and Disarmament Agency

One Congressional Affairs Specialist to the Director, Congressional Affairs Office. Effective October 2, 1989.

Department of Agriculture

One Congressional Assistant to the Assistant Secretary for Congressional Relations. Effective October 10, 1989.

One Southwest Area Director, to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective October 12, 1989.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective October 12, 1989.

One Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective October 12, 1989.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective October 13, 1989.

One Staff Assistant to the Assistant Secretary for Administration. Effective October 26, 1989.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective October 27, 1989.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective October 27, 1989.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective October 27, 1989.

Commodity Futures Trading Commission

One Government Affairs Officer to the Chairman. Effective October 2, 1989.

One Economist to the Chairman. Effective October 20, 1989.

Department of Commerce

One Director, Office of Public Affairs, to the Assistant to the Secretary for Economic Development. Effective October 11, 1989.

One Special Assistant to the Assistant Secretary for Oceans and Atmosphere. Effective October 20, 1989.

One Confidential Assistant to the Director, Office of External Affairs. Effective October 20, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Investigations. Effective October 20, 1989.

One Special Assistant to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration. Effective October 25, 1989.

Consumer Product Safety Commission

One Staff Assistant to the Commissioner. Effective October 27, 1989.

Department of Defense

One Private Secretary to the Assistant Secretary of Defense (Special Operations/Low-Intensity Conflict). Effective October 10, 1989.

One Confidential Assistant to the Special Assistant and Deputy Secretary. Effective October 19, 1989.

One Personal and Confidential Assistant to the Assistant Secretary of Defense for International Security Policy. Effective October 19, 1989.

Department of Energy

One Staff Assistant to the Assistant Secretary for Environment, Safety and Health. Effective October 19, 1989.

One Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison. Effective October 19, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for Fossil Energy. Effective October 27, 1989.

Department of Education

One Confidential Assistant to the Director, Private Sector Initiative Staff. Effective October 12, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Student Financial Assistant Programs. Effective October 19, 1989.

One Confidential Assistant to the Assistant Secretary for the Office of Civil Rights. Effective October 27, 1989.

One Confidential Assistant to the Assistant Secretary for the Office of Civil Rights. Effective October 27, 1989.

Export-Import Bank of the United States

One Special Assistant to the First Vice President and Vice Chairman. Effective October 27, 1989.

General Services Administration

One Staff Assistant for Special Projects to the Acting Administrator. Effective October 2, 1989.

One Special Assistant to the Assistant to the Administrator for Child Care and Development Programs. Effective October 2, 1989.

One Confidential Assistant to the Associate Administrator for Public Affairs. Effective October 11, 1989.

One Staff Assistant to the Deputy Chief of Staff. Effective October 16, 1989.

One Confidential Assistant to the Regional Administrator, Region 2 (New York). Effective October 17, 1989.

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective October 23, 1989.

Two Legislative Assistants to the Associate Administrator for Congressional Affairs. Effective October 23, 1989.

One Congressional Relations Officer to the Associate Administrator for Congressional Affairs. Effective October 23, 1989.

One Director of Legislation to the Associate Administrator for Congressional Affairs. Effective October 30, 1989.

Department of Health and Human Services

One Special Assistant to the Assistant Secretary for Health. Effective October 10, 1989.

One Confidential Staff Assistant to the Assistant Secretary for Health. Effective October 10, 1989.

One Special Assistant to the Associate Commissioner Office of Public Affairs, Social Security Administration. Effective October 10, 1989.

One Deputy Director, Office of Public Liaison, to the Director. Effective October 12, 1989.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Boards and Commissions. Effective October 17, 1989.

One Special Assistant to the Deputy Commissioner for Programs, Social Security Administration. Effective October 17, 1989.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Public Affairs. Effective October 2, 1989.

One Special Assistant to the Assistant Secretary of Policy, Development and Research. Effective October 4, 1989.

One Staff Assistant to the Regional Administrator-Regional Housing Commissioner, Atlanta, Georgia. Effective October 4, 1989.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 20, 1989.

Department of the Interior

One Special Assistant to the Director, Fish and Wildlife Service. Effective October 4, 1989.

One Special Assistant to the Director, National Park Service. Effective October 6, 1989.

One Special Assistant to the Assistant Secretary for Territorial and International Affairs. Effective October 10, 1989.

One Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs. Effective October 11, 1989.

One Staff Assistant to the Director, U.S. Geological Survey. Effective October 19, 1989.

One Special Assistant to the Director, Bureau of Mines. Effective October 19, 1989.

One Special Assistant to the Director, National Park Service. Effective October 24, 1989.

One Special Assistant to the Director, Bureau of Mines. Effective October 26, 1989.

One Staff Assistant to the Deputy Director, External Affairs. Effective October 26, 1989.

One Staff Assistant to the Director, Bureau of Land Management. Effective October 27, 1989.

U.S. International Trade Commission

One Staff Assistant (Economics) to the Commissioner. Effective October 27, 1989.

Department of Justice

One Assistant to the Attorney General. Effective October 13, 1989.

One Staff Assistant to the Attorney General. Effective October 13, 1989.

One Special Assistant to the Assistant to the Attorney General. Effective October 20, 1989.

Department of Labor

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 20, 1989.

One Staff Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration. Effective October 20, 1989.

One Assistant to the Secretary's Representative. Effective October 20, 1989.

One Staff Assistant to the Assistant Secretary for Policy. Effective October 26, 1989.

One Staff Assistant to the Assistant Secretary for Employment Standards. Effective October 27, 1989.

One Special Assistant to the Assistant Secretary for Pension and Welfare Benefits. Effective October 27, 1989.

Office of Management and Budget

One Secretary (typing) to the Administrator, Office of Information and Regulatory Affairs. Effective October 10, 1989.

Office of Personnel Management

One Deputy Director of Policy to the Director. Effective October 17, 1989.

Pension Benefit Guaranty Corporation

One Confidential Assistant to the Executive Director. Effective October 20, 1989.

Small Business Administration

One Assistant to the Administrator for Public Communications. Effective October 2, 1989.

One Special Assistant to the Regional Administrator. Effective October 2, 1989.

One Director, Private Sector Initiatives, to the Associate Deputy Administrator for Special Programs. Effective October 2, 1989.

One Staff Assistant to the Assistant Administrator for Public Communications. Effective October 20, 1989.

Department of State

One Senior Policy Advisor to the Ambassador-at-Large for Refugee Affairs. Effective October 2, 1989.

One Staff Assistant to the Deputy Secretary. Effective October 10, 1989.

One Secretary to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective October 10, 1989.

One Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs. Effective October 16, 1989.

One Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective October 18, 1989.

One Secretary to the U.S. Permanent Representative to the Organization of American States. Effective October 18, 1989.

One Secretary (Steno) to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective October 18, 1989.

United States Tax Court

One Secretary (Confidential Assistant) to the Judge. Effective October 17, 1989.

Department of Transportation

One Special Assistant to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration. Effective October 2, 1989.

One Director of Intergovernmental Affairs to the Administrator, National Highway Traffic Safety Administration. Effective October 2, 1989.

One Staff Assistant to the Assistant Secretary for Governmental Affairs. Effective October 4, 1989.

One Special Assistant for Policy and International Affairs. Effective October 13, 1989.

One Director, Office of Intergovernmental and Industry Affairs, to the Assistant Secretary for Governmental Affairs. Effective October 25, 1989.

United States Information Agency

One Staff Assistant to the Director, Office of Private Sector Programs. Effective October 10, 1989.

One Executive Director, Advisory Board for Radio Broadcasting to Cuba, to the Chairman of the Advisory Board. Effective October 10, 1989.

One Public Affairs Assistant to the Director, Voice of America. Effective October 24, 1989.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–28424 Filed 12–5–89; 8:45 am]

BILLING CODE 3325–01–M

Privacy Act of 1974; New Computer Matching Program

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of new computer matching program—OPM/Department of Labor, Office of Worker's Compensation Programs (OWCP).

SUMMARY: OPM is hereby issuing public notice of its intent to conduct a computer matching program with the OWCP. The match will identify individuals receiving prohibited concurrent benefits under the Civil Service Retirement Act (CSRA) or the Federal Employees' Retirement System Act (FERSA) and the Federal Employees' Compensation Act (FECA). Both the CSRA and FERSA, on one hand, and the FECA, on the other, prohibit the receipt of certain concurrent payments covering the same period of time. The match will involve the OPM system of records published as OPM CENTRAL–1, Civil Service Retirement and Insurance Records (OPM/CENTRAL–1) (49 FR 36950, September 20, 1984) and the Department of Labor system of records published as DOL/ESA–13, 47 FR 134, pp. 30362–30393, July 13, 1982, as amended in 50 FR 25, pp. 5141–5145, February 6, 1985. The purpose of the match is to identify and/or prevent erroneous payments under both the CSRA, FERSA and FECA.

DATE: The data exchange will begin at a date mutually agreed upon by the OWCP and OPM after October 1, 1989, unless comments are received which will result in a contrary determination. Subsequent matches will take place semi-annually on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Landers, (202) 632–4682.

SUPPLEMENTARY INFORMATION: The computer matching program between OWCP and OPM will involve comparison of beneficiaries under the FECA and the CSRA and FERSA. The match will identify beneficiaries receiving payment of compensation for wage loss or death under the FECA and those receiving retirement or death benefits under the CSRA and FERSA covering the same period of time.

The concurrent receipt of benefits under the FECA based on wage loss and under the CSRA and FERSA for retirement, or under the FECA, CSRA or FERSA based on the death of the Federal employee is prohibited. It is the responsibility of OPM to monitor retirement annuity and survivor benefits paid under the CSRA or FERSA to ensure that its beneficiaries are not receiving benefits under the FECA which are prohibited during receipt of

benefits under the CSRA or FERSA. Similarly, it is the responsibility of the OWCP to ensure that Federal employees or dependents of deceased Federal employees receiving benefits under the FECA are not also receiving benefits under the CSRA which are prohibited.

By comparing the information received through this computer matching program on a recurring basis, the agencies will be able to make at timely and more accurate adjustment in the benefits payable. The match will prevent overpayment, fraud and abuse, thus assuring that benefits payments are proper under the appropriate Act.

Additional information, regarding the matching program, including the authority for the program, a description of the matches, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition following completion of the matches are provided in the text below. Office of Personnel Management.

Constance Berry Newman,

Director.

Matching of Records Between Office of Workers' Compensation Programs and Office of Personnel Management

A. *Authority:* The Civil Service Retirement Act (CSRA), U.S.C. 8331, et seq.; the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. 8401, et seq.; and the Federal Employees' Compensation Act (FECA), 5 U.S.C., et seq.

B. *Description of Computer Matching Program:* The OPM pays annuities or survivor benefits to individuals who may also receive benefits under the FECA. It is the responsibility of the OPM as the administrator of the CSRA and FERSA to assure that such benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient and nonobtrusive method of determining whether these individuals are receiving benefits from the OWCP and the OPM prohibited by the FECA and the CSRA and FERSA. The OWCP will provide OPM with extracts of its payment files containing data (names, social security numbers, dates of birth, claim numbers, payee relationship codes, addresses, zip codes, and payment data) needed to identify the individual and determine if he or she is receiving benefits from both organizations at the same time. OPM will match OWCP's extract of its payment files against its payment records for the same dates to determine if benefit were being paid on the same date by both agencies. OPM will provide OWCP with a listing of valid matches. Both organizations will detect, identify, and follow-up on payment of prohibited dual benefits. An individual identified as receiving prohibited dual benefits will be afforded an opportunity to contest the findings and proposed actions and the opportunity to elect the benefits he or she wishes to receive. The organization responsible for initiating recovery of the overpayment of benefits will afford the individual due process before any payment modifications are made.

C. *Personal Records to be Matched:* The OPM system of records published as OPM CENTRAL–1, Civil Service Retirement and Insurance Records, 49 FR 36950, September 20, 1984, which contains payment data on recipients of CSRA and FERSA benefits disbursed by OPM will be matched to OWCP records published as DOL/ESA–13, 47 FR 134, pp. 30382–30393, July 12, 1982, as amended in 50 FR 25, pp. 5141–5145, February 6, 1985, which contains data pertinent to the payment of Federal employees and their dependents under the FECA.

D. *Dates:* Data exchanges will begin during calendar year 1989 at a mutually agreeable time and will be repeated every six months, until one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

E. *Privacy Safeguards and Security:* The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818). Security safeguards include limiting access only to the files agreed to and only to agency personnel having a "need to know." All automated records will be password protected and the data listing will be locked in file areas after normal duty hours. Records matched or created by the match will be stored in an area that is physically safe from access by unauthorized persons during duty hours and nonduty hours or when not in use.

F. *Disposal of Records:* The files will remain the property of the respective source agencies and all records including those not containing matches will be returned to the source agency for destruction. "Hits," the records relating to matched individuals, will be disposed of in accordance with the provisions of the Privacy Act and the Federal Record Schedules after serving their purpose. The data obtained from the hits will be entered in the claims file, subject to release only under the provisions of the Privacy Act.

[FR Doc. 89–28425 Filed 12–5–89; 8:45 am]

BILLING CODE 4325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Certain Actions Affecting the 1989 Annual Review

This publication provides notice that: (a) ABB Capacitores, S.A. has withdrawn its petition (Case Number 89–31) concerning Harmonized Tariff Schedule item 8532.10.00; and (b) that a review concerning the expropriation of certain U.S.-owned properties by the Government of Peru (Case Number 003–CP–89) is being terminated at the request of the petitioner, American International Group, Inc. These cases were being considered in the 1989 Annual Review of the GSP. The TPSC had formally initiated the review of these cases in a notice of August 10, 1989 (54 FR 32891). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 89–28452 Filed 12–5–89; 8:45 am]

BILLING CODE 3190–01–M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under Subsection 170 (1), of Public Law 100–408, the Price-Anderson Amendments Act of 1988, will hold a meeting on December 21, 1989, from 10:00 a.m.–5:00 p.m., at the Quality Hotel Capitol Hill, 415 New Jersey Ave, NW., Washington, DC 20001. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress no later than August 20, 1990.

At this meeting, Harold Peterson and Shlomo S. Yaniv, individual technical experts from the Nuclear Regulatory Commission, will discuss the assessment of health effects of ionizing radiation. There may be additional speakers. The Commission will also

conduct working sessions to begin work on its report to Congress.

The public is permitted to attend this meeting, and there will be time during the session for brief statements. Transcripts or minutes of the meeting will be available at the Commission office, 600 E St., NW., Room 660.

For further information, contact Jerome Saltzman at 600 E St., NW., Room 660, Washington, DC 20004, (202) 272-5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202) 272-5695 at least two days before the meeting date.

Dated: December 1, 1989.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 89-28511 Filed 12-5-89; 8:45 am]

BILLING CODE 6820-SP-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Zotek, Inc.; Order of Suspension of Trading

November 30, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Zotek, Inc. and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Zotek's assets and equity, the identity and background of its officers and affiliates, and other matters. Specifically, questions have been raised concerning an alleged merger between Zotek, Inc. and L'il Partners, Inc., the scope of operations of L'il Partners and the identity of persons in control of both companies. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Zotek.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Zotek, over-the-counter or otherwise, is suspended for the period from 12:00 p.m. (EST) on November 30, 1989 through 11:59 a.m. (EST) on December 9, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28484 Filed 12-5-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted January 5, 1990. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: SBDC Quarterly and Financial Report.

Form Nos.: N/A.

Frequency: Quarterly.

Description of respondents: SBDC Directors.

Annual Responses: 216.

Annual Burden Hours: 14,256.

Title: Small Business Development Centers, Onsite Review and Recordkeeping Requirements.

Form Nos.: 1496.

Description of respondents: SBDC's.

Annual Responses: 27.

Annual Burden: 3,768.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-28508 Filed 12-5-89; 8:45 am]

BILLING CODE 8025-01-M

Assistance to Individuals or Enterprises Eligible Under the Women's Business Ownership Act of 1988

The Program Announcement No. OWBO-89-002 is intended to assist SBA's Office of Women's Business Ownership in providing Financial, Management and Marketing Assistance to individuals and enterprises eligible for assistance under HR 5050 or the "Women's Business Ownership Act of 1988." Eligible Client(s) include women starting their own business, expanding their existing businesses and those who are economically/socially disadvantaged. Applicant must be an established private business and/or organization either for profit or non profit. Organizations submitting applications/proposals must be able to furnish at least 50% of the required services in-house and are allowed to use outside consultants for the remaining 50%. The geographic area(s) of concerns is unlimited. However, Applicant must establish an office (if nonexistent) within the geographic area proposed and absorb the expense of the new office with the applicant's matching funds. A written commitment(s) of cash contributions from private sector source(s) must be obtained by the recipient after application has been approved, but prior to the disbursement of Federal funds. Matching funds must be solely in the form of cash equal to the amount of the Federal share, may not contain contributions of a in-kind or indirect nature, and may not come from a governmental (Federal, State, or Local) source. No partial applicants will be accepted for consideration. Recipients conducting current FY'89 projects under the Women's Business Ownership Act may submit proposals for additional funding. Applicants must submit their application/proposal on or before 12 January 1990, at 4:00 p.m., local time, at the SBA Office specified in the program announcement. For further information Contact Lindsey Johnson, Bill Truitt at 202/653-8000, or Sally Murrell at 202/653-7744, or write SBA, Office of Procurement and Grants Management, 1441 L Street NW., Room 220, Washington, DC 20416. Attention: Sally Murrell, Agreement Officer.

Joe Maas,

Assistant Administrator for Administrator.

[FR Doc. 89-28408 Filed 12-5-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0299]

First City, Texas Ventures, Inc., Issuance of a Small Business Investment Company License

On June 7, 1989 a notice was published in the Federal Register (54 FR 24480) stating that an application has been filed by First City, Texas Ventures, Inc. with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)), for a license to operate as a small business investment company.

Interested parties were given until close of business Thursday, July 6, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-0299 on October 25, 1989, to First City, Texas Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 28, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-28407 Filed 12-5-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1330]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Trade Documentation; Meeting

The Study Group on International Trade Documentation will hold its third meeting at 9:30 a.m. on Tuesday, December 19, 1989 in New York City at Brooklyn Law School at 250 Joralemon Street, Brooklyn, New York in the Annex Board Room. The Study Group carries out its functions as part of the Secretary of State's Advisory Committee on Private International Law.

The purpose of the meeting is to review possible United States positions in connection with a project by the United Nations Commission on International Trade Law (UNCITRAL) to develop a model national law on letters of credit and international bank guarantees. The proposed model national law will be the subject of a meeting of the UNCITRAL Working Group on International Contract Practices in January 1990.

The study group may also review the possible relationship between the UNCITRAL project and three other law unification projects: The International Chamber of Commerce (ICC) draft rules on international bank guarantees, ICC consideration of possible revision of Pub. No. 400, Uniform Customs and Practice for Documentary Credits, and the American Law Institute-Uniform Law Commissioners Permanent Editorial Board decision to consider possible revision of Uniform Commercial Code Article 5.

Information on the UNCITRAL project is available in several Reports prepared by the Secretariat on Stand-By Letters of Credit and Bank Guarantees—United Nations Docs. A/CN.9/301, March 21, 1988; A/CN.9/WG.II/WP.63, September 16, 1988; A/CN.9/316, December 12, 1988, and A/CN.9/WG II/WP.65, Nov. 13, 1989. For additional information or for copies of the Reports contact Harold S. Burman of the Office of the Legal Adviser, L/PIL, Room 402, 2100 "K" Street NW., Washington DC 20037-7180, or by FAX at (202) 632-5283 or by calling direct to (202) 653-9852.

Members of the general public may attend the meeting up to the capacity of the meeting room. As access to the meeting room is controlled, the office indicated above should be notified not later than Friday, December 15, 1989 of the name, affiliation, address and phone number of persons wishing to attend.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 89-28429 Filed 12-5-89; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-100]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 9, 1990, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the 17 October 1989, meeting.
3. Report from the Aids to Navigation Subcommittee.
4. New Business.
5. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G. A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard District (oan) Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: November 22, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-28480 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Hennepin County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hennepin County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Stephen Bahler, Area Engineer, Federal Highway Administration, Suite 490, Metro Square Building, St. Paul, Minnesota, 55101, Telephone: (612) 290-3259.

Steve Hay, Project Manager, Minnesota Department of Transportation, 2055 North Lilac Drive, Golden Valley, Minnesota 55422, Telephone: (612) 593-8535.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve Trunk Highway 101 in the vicinity of the Grays Bay Causeway in Hennepin County, Minnesota. The length of the proposed project is approximately 0.75 miles.

The proposed improvements to the corridor include replacing the existing Grays Bay Bridge, flattening two sharp curves, and the construction of a boat launching facility. Alternatives under consideration include (1) taking no

action; (2) using an alternate channel crossing location; and (3) minor variations in roadway alignment.

A Scoping Document describing the proposed action and soliciting comments has been prepared and sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public informational meeting was held in April 1989 and a scoping meeting was held on November 8, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 22, 1989.

Alan Friesen,

District Engineer, St. Paul, Minnesota.

[FR Doc. 89-28497 Filed 12-5-89; 8:45 am]

BILLING CODE 4910-27-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 29, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: IRS Customer Needs Survey.
Description: The data collected will be used to evaluate the types of services that the IRS now provides to taxpayers, the delivery systems for these services, and ways to improve both.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 18,700.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,471 hours.

OMB Number: 1545-0199.
Form Number: 5306-SEP.
Type of Review: Extension.
Title: Application for Approval of Prototype Simplified Employee Pension—SEP.
Description: This form is issued by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 650.
Frequency of Response: On occasion.
Estimated Burden Hours per Response:

Recordkeeping	8 hrs., 8 mins.
Learning about the law or the form.	52 mins.
Copying, assembling, and sending the form to IRS.	2 hrs., 14 mins.

Estimated Total Reporting Burden: 7,300 hours.

OMB Number: 1545-0798.
Form Number: None.
Type of Review: Extension.
Title: 26 CFR 31.6001-1 Records in General; 26 CFR 31.6001-2 Additional Records Under FICA; 26 CFR 31.6001-3 Additional Records Under Railroad Retirement Act; 26 CFR 31.6001-5 Additional Records in Connection With Collection of Income Tax at Source on Wages; 26 CFR 31.6001-6 Notice by District Director Requiring Returns, Statements, or the Keeping of Records.
Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. 26 CFR 31.6001 has special application to employment taxes. These records are needed to ensure compliance with the Code.
Respondents: Individuals or households; State or local governments, Farms, Businesses or other for-profit; Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 5,676,263.
Frequency of Response: Other.
Estimated Burden Hours per Recordkeeper:

For domestic employers	1 hour, 44 minutes
For agricultural employers	1 hour, 34 minutes
For railroad employers	12 hours, 26 minutes
For all other employers	6 hours, 5 minutes

Estimated Total Reporting Burden: 30,273,950 hours.

Clearance Officer: Garrick Shear. (202) 535-4296, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-28470 Filed 12-5-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 30, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0081.
Form Number: FFIEC 031-034.
Type of Review: Extension.
Title: Reports of Condition and Income (Interagency Call Report).
Description: Reports are filed pursuant to 12 U.S.C. 161 and 164. Data are used to monitor the financial condition and earnings performance of individual banks as well as the entire banking industry. Data are also used for research, program planning, and OCC publications.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,400.
Estimated Burden Hours Per Respondent: 33 hours, 24 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 587,840 hours.
Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-28478 Filed 12-5-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 30, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0021.
Form Number: TD F 90-22.1.
Type of Review: Extension.
Title: Report of Foreign Bank and Financial Accounts.
Description: This reporting requirement is intended to discourage the use of foreign financial accounts to facilitate illegal activities including tax fraud. A failure to report that is related to other violations of law is a felony. It will also be used for economic analysis. Banks, multi-national corporations, and wealthy individuals are the ones most affected by the requirement.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 200,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 34,000 hours.
Clearance Officer: Dale A. Morgan (202) 566-2693, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-28477 Filed 12-5-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 30, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0166.
Form Number: None.
Type of Review: Extension.
Title: Import Sanctions Against Toshiba Machine Company and the Kongsberg Trading Company.
Description: The declaration will be used by importers of products of the Toshiba Machine Company and the Kongsberg Trading Company for requesting an exception to the three year prohibition on the importation of all products which were produced by these companies.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2.
Estimated Burden Hours Per Response: 17 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 249 hours.
Clearance Officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-28478 Filed 12-5-89; 8:45 am]

BILLING CODE 4810-25-M

Federal Deposit Insurance System Study

AGENCY: Department of the Treasury.

ACTION: Request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is conducting a study of the federal deposit insurance system, as directed by section 1001 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183 (1989). Pursuant to FIRREA, the Secretary intends to complete the study within 18 months from the date of enactment of FIRREA (August 9, 1989) and to submit to the United States Congress a final report containing a detailed statement of findings, conclusions, and recommendations, if any, for administrative and/or legislative action determined by the Secretary to be appropriate.

In recognition and support of the legislation's requirement of consultation with the private sector and to gather the information needed for the study, this notice invites all interested parties to present their views on the topics discussed below and on any other issues relating to the study that they may wish to bring to the attention of the Secretary. The Secretary strongly encourages all interested parties to submit comments for the record.

DATE: Comments must be received by March 9, 1990.

ADDRESS: Interested parties are requested to submit ten (10) copies of written data, views, or arguments regarding any or all of the topics discussed below or otherwise relevant to the study. Copies will be distributed to the numerous participating agencies and will be used to create a public file to be maintained at the Department of the Treasury.

Such copies may be sent to:

Federal Deposit Insurance System Study, Department of the Treasury, Room 3025, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION: For further information, please contact: Gordon Eastburn, Director of the Office of Financial Institutions Policy, at 202-566-5337; Brian S. Tishuk, Financial Analyst.

at 202–566–4212; or Elizabeth Shiry, Study Coordinator, at 202–566–2505.

SUPPLEMENTARY INFORMATION: On August 9, 1989, President George Bush signed into law the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183 (1989). Section 1001 of FIRREA directed the Secretary of the Treasury to conduct a study of the federal deposit insurance system in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the National Credit Union Administration, the Director of the Office of Management and Budget, and individuals from the private sector.

Need for Federal Deposit Insurance Study

The federal deposit insurance system was created by the Banking Act of 1933. During the past 56 years, the financial services marketplace has changed dramatically, and individuals and organizations in both the public and private sector have questioned how well the deposit insurance system is working—particularly in light of the failure of the thrift insurance fund—and whether the current system needs major reforms.

Through the deposit insurance system study, the Secretary will, among other things, examine the strengths and weaknesses of the deposit insurance system, consider proposed methods of reducing the risk of loss to the federal deposit insurance funds, and analyze the feasibility and desirability of alternatives to the system itself.

Suggested Format of Comments

Section 1001 of FIRREA lists the topics relating to the deposit insurance system Congress directed the Secretary to study. These topics and other related issues are presented below and have been grouped under broad headings. In preparing comments, please discuss the issues pertaining to deposit insurance, analyze the strengths and weaknesses of the existing programs, and propose any alternative policies or programs.

Federal Deposit Insurance System Issues

Purpose and History of Federal Deposit Insurance

Interested parties are requested to provide the Secretary with their views on the goals of the federal deposit insurance system and the success of the system in meeting these goals. The traditional goals of federal deposit insurance include: Stabilizing the financial system and protecting depositors. Commentators may address these and other goals in a discussion of the purpose and history of the current federal deposit insurance system.

In addition, commentators may address the concerns that the system has engendered, such as the subsidization of certain bank activities, the "too big to fail" problem, and the system's incentive for depository institution operators to take excessive risks because the federal deposit insurance funds will bear most of the ultimate losses.

Interested parties are also requested to review the deposit insurance systems of foreign countries to compare and contrast those systems with our current one.

Monitoring and Measuring Risk

Auditing and On-Site Examination. The Secretary seeks comments on whether a closer relationship between depository institution auditors and regulators would benefit the deposit insurance system.

Interested parties are asked specifically to address the following issues: (1) Requiring the independent auditors and accountants of a federally insured depository institution to report the results of any audit of the institution to the appropriate regulator(s); (2) requiring the appropriate regulator(s) to share reports on a depository institution with the institution's independent auditors and accountants; and (3) requiring the independent auditors and accountants of federally insured depository institutions to participate in conferences between the regulator and the depository institution.

Comments are also requested on the feasibility of adopting regulations that are the same as, or similar to, the audit provisions of England's Banking Act, enacted on May 15, 1987, which affects the Bank of England's relationship with auditors and reporting accountants (including sections 8, 39, 41, 45, 46, 47, 82, 83, 85, and 94 of such Act). Comments may explore whether such a law would be necessary if some or all of the three other audit proposals were adopted, or whether the Bank of England provisions show more merit than the other three proposals.

Market Value Accounting. The Secretary seeks comments on the feasibility of implementing market value accounting. Commentators are asked to discuss how such an accounting system could be developed and the impact it would have on depository institutions. Specifically, interested parties could discuss the implications of such an accounting system on capital requirements, especially for depository institutions with long-term assets. Making long-term assets to market on a daily basis may lead to large swings in the assets' value and commensurate swings in the need for capital. Comments may also address the feasibility of exempting long-term assets from any market value accounting proposal.

Risk-Management Techniques. Interested parties are requested to consider the feasibility of developing and administering through the appropriate federal depository institution regulators an examination of the principles and techniques of risk management and the application of such principles and techniques to the management of insured institutions.

Incentives to Control Risk

Scope of Deposit Insurance Coverage. Comments are requested on the scope of deposit insurance coverage and its impact on the liability of the insurance fund, that is, whether to change the level of deposit insurance and/or the types of deposits and accounts eligible for coverage. In addition, interested parties may wish to discuss the implications on, and incentives for, market discipline of providing *de facto* insurance of all accounts in certain circumstances.

In particular, interested parties are requested to discuss: (1) Limiting each depositor to one insured account per institution; (2) reducing the amount insured, or providing for a graduated decrease in the insured percentage of the amount deposited as the amount deposited increases; (3) combining federal with private insurance in order to bring the market discipline of private insurance to bear on the management of the depository institution; and (4) ensuring by law or regulation that when an insured depository institution is closed, the appropriate federal insurance fund will honor only its explicit liabilities and will never make good any losses on deposits not explicitly covered by federal deposit insurance.

Risk-Based Premiums. Comments are also requested on the feasibility of charging risk-based premiums for federal deposit insurance. Commentators should address how risk would be measured and the criteria by which premiums would differ. In particular, comments should discuss how asset quality and interest rate risk would be measured; how management quality would be gauged; how an institution's profitability and capital level would figure in the risk calculus; and what relationship risk-based premiums would have with risk-based capital requirements. Comments should also address how the cutoff points of the differing levels of premiums would be determined and how large the differences among the premiums would have to be to induce the desired behavior.

Capital Adequacy. Interested parties are requested to consider capital adequacy in a discussion of protecting against a depository institution's level of risk to the insurance fund.

Optimal Fund Reserve Level. Commentators may also address the relationship of the current system's assessment structure to the optimal level of insurance fund reserves.

Closure or Recapitalization of Insolvent, or Nearly Insolvent, Institutions

The Secretary seeks comments on defining the policies to be followed when determining whether to recapitalize or to close federally insured depository institutions that are, or are about to become, insolvent. Commentators should discuss how the appropriate regulator would determine whether to assist or to arrange to close a federally insured depository institution before it becomes insolvent. When certain criteria are defined, should the early intervention be mandatory or discretionary?

The Office of Thrift Supervision plans to issue soon a notice of proposed rulemaking for determining whether to assist or to declare an institution to be in an unsafe and unsound condition when its capital level falls below a certain threshold. The Office of the Comptroller of the Currency is currently finalizing its own regulation, which would require a similar determination to be made when an institution's equity has been depleted. The Federal Deposit Insurance Corporation has the authority to suspend the federal deposit insurance of an insured institution if that institution has insufficient capital or if it is otherwise being operated in an unsafe and unsound manner.

Commentators may wish to discuss these methods of addressing the issue in their analysis and to address the feasibility of applying any of them to all depository institutions. Interested parties may also address what the appropriate threshold (of capital, equity, or some other measure) ought to be and whether only a single regulator should be authorized to make such a determination for all depository institutions. Some may also wish to discuss the legal or economic ramifications of the proposal, including any incentives it may have for depository institution managers as they approach the applicable threshold.

Alternative Federal Deposit Insurance Systems

Comments are requested on the feasibility of alternative deposit insurance system structures, including supplementing or replacing the current system structure with private or state insurance. Interested parties may also discuss the feasibility of structures that do not include the insurance of deposits.

Modifying the Insurance Base

Interested parties are also requested to discuss whether the insurance base should be modified. Specifically, comments are requested on: (1) Adding collateralized borrowings to the insurance base; (2) limiting brokered deposits; and (3) assessing premiums on foreign deposits. Comments are also requested on the desirability of retaining multiple insured accounts.

Comments should address the feasibility of each of these proposals and the effect each would have on the deposit insurance system.

State and Federal Bankruptcy Exemptions

Comments are requested on the feasibility of three proposed methods of addressing the disparate treatment of depository institutions, as the holders of loan assets, under state and federal bankruptcy laws. Some state bankruptcy laws provide more generous exemptions than does the federal law, which affects not only the bankrupt individual, but the ability of the depository institution holding the loan to collect on it.

The three methods of addressing this issue are: (1) Establishing uniform exemptions; (2) placing limits on exemptions when necessary to repay obligations owed to federally insured depository institutions; and (3) requiring a borrower from a federally insured depository institution to post a personal or corporate bond when obtaining a mortgage on real property.

Credit Unions

Capital Adequacy. The Secretary seeks comments on whether insured credit union capital levels are adequate and whether the Credit Union Share Insurance Fund is adequately capitalized. Currently, credit union premium payments are carried as assets by both the Share Insurance Fund and by the paying credit unions. Comments are requested on how this arrangement is likely to work in a crisis affecting a number of credit unions, or the credit union industry as a whole.

Separating the Regulation Function From the Insurance Function. The Secretary also seeks comments on whether the regulatory and insurance functions, currently performed by a single agency, the National Credit Union Administration, should be separated within the credit union regulatory structure.

Federal Home Loan Bank System Housing Subsidies

The Secretary seeks comments on the efficiency of providing credit subsidies for housing through the Federal Home Loan Bank System.

Interrelationships of Regulation, Federal Deposit Insurance, and Financial Activities

This section will draw on the preceding sections to discuss the current interrelationships among deposit insurance, regulation, and financial activities; how that interrelationship has evolved; and the appropriate interrelationship for the future. The Secretary encourages interested parties to submit comments on this issue.

Dated: December 1, 1989.

David W. Mullins, Jr.,

Assistant Secretary (Domestic Finance).

Department of the Treasury.

[FR Doc. 89–28436 Filed 12–5–89; 8:45 am]

BILLING CODE 4810–25–M

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 54, No. 233
Wednesday, December 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 217 and 252

Department of Defense Federal Acquisition Regulation Supplement; Master Agreements for Repair and Alteration of Vessels

Correction

In proposed rule document 89-26009 beginning on page 46953 in the issue of Wednesday, November 8, 1989, make the following correction:

On page 46953, in the first column, under the **DATE:**, in the fifth line, "January 5, 1989" should read "January 5, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

Defense Intelligence Agency Advisory Board; Closed Meeting

Correction

In notice document 89-26555 appearing on page 47259 in the issue of Monday, November 13, 1989, make the following corrections:

1.On page 47259, in the second column, the document heading should read as set forth above.

2.On page 47259, in the second column, in the document text, in the 19th line, between "Secretary" and "or," insert "of the Air Force (SAF/MRC), Washington, DC 20330-1000. Copies of documents".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81015; FRL-3634-5]

TSCA Inventory; Notice of Intent to Remove 217 Reported Chemical Substances

Correction

In notice document 89-19825 beginning on page 35241 in the issue of Thursday, August 24, 1989, make the following corrections:

1. On page 35243, in the table, in the entry for CAS Registry No., 66558-73-4, "N,N',N" should be followed by a double prime (") instead of a "greater than" symbol (>).

2. In entry "68025-49-0", "-phosphinylidynetris", should be preceded by a double prime (") instead of a "greater than" symbol (>).

3. In entry "68083-43-2", remove the "greater than" symbol (>), and insert a double prime (").

4. On page 35244, the third entry "68227-48-5", "2,2',2" should be followed by a double prime (") instead of a "greater than" symbol.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50692; FRL-3657-1]

Issuance of Experimental Use Permits

Correction

In notice document 89-25738 beginning on page 46115 in the issue of Wednesday, November 1, 1989, make the following corrections:

1. On page 46115, in the first column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the ninth line,"semii-dwarf" should read "semi-dwarf".

2. On the same page, in the second column, in the second complete paragraph, in the first line, "275-EUP-63." should read "275-EUP-65.".

3. On the same page, in the same columnn, in the 3rd complete paragraph, in the 11th line, "April 12, 1990" should read "April 12, 1991".

4. On the same page, in the third column, in the second complete paragraph, in the eighth line, "3-hydroxyl-2" should read "3-hydroxy-2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442 and 452

[Docket No. 89N-0129]

Antibiotic Drugs; Updatings and Technical Changes

Correction

In rule document 89-26580 beginning on page 47349 in the issue of Tuesday, November 14, 1989, make the following corrections:

§ 442.119 [Corrected]

1. On page 47352, in the first column, in § 442.119(b)(1)(iii), in the definitions for the equation, coresponding to P_a, in the third line following "activity", insert "per".

§ 452.510b [Corrected]

2. On the same page in the third column, in § 452.510b(a)(2), in the fifth line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components

Correction

In proposed rule document 89-24366 beginning on page 42674 in the issue of Tuseday, October 17, 1989, make the following corrections:

1. On page 42675, in the first column, under *A. Applicability (§ 1020.30(a))*, in the fifth line, "gantry" was misspelled.

2. On the same page, in the same column, under the same heading, in the second paragraph, in the 9th and 10th lines, "(21 CFR 1020.30)" should read "(21 CFR 1020.30(a))".

§ 1020.30 [Corrected]

3. On page 42686, in the second column, in § 1080.30(k), in the last line, before "kilogram", insert ' coulombs per".

§ 1020.31 [Corrected]

4. On page 42687, in the third column, in § 1080.31(a)(3)(ii), in the 10th line "deliver" was misspelled.

5. On page 42688, in the first column, in § 1080.31(c)(1), in the fifth line, the parenthetical preceding "obtained" should read "(C/kg/mAs (or mR/mAs))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0436]

Ocular Technologies, Inc.; Premarket Approval of OTI-05 (Polymacon) Soft Contact Lenses and LATHE-40 (Polymacon) Soft Contact Lenses (Clear)

Correction

In notice document 89-26652 beginning on page 47410 in the issue of Tuesday, November 14, 1989, make the following corrections:

1. On page 47410, in the second column, under **DATES:**, in the second line "December 13, 1989" should read "December 14, 1989".

2. On the same page, in the third column, under **Opportunity for Administrative Review**, in the second paragraph, in the second line, "December 13, 1989" should read "December 14, 1989".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-305]

Investigation

Correction

In notice document 89-26286 beginning on page 46993 in the issue of Wednesday, November 8, 1989, make the following correction:

In the second column, appearing on page 46993, under **Investigation**, in the second and fourth lines "honeycomb", was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL-2-89]

American Gas Association Laboratories; Notice of Application

Correction

In notice document 89-27355 beginning on page 48166 in the issue of Tuesday, November 21, 1989, make the following corrections:

1. On page 48166, in the first column, under **DATE:**, in the third line, "January 27, 1990" should read "January 22, 1990".

2. On page 48166, in the 2nd column, in the 3rd complete paragraph, in the 10th line, "January 22, 1989" should read "January 22, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meetings; Bangor, ME Terminal Radar Service Area

Correction

In notice document 89-27551 beginning on page 48714 in the issue of Friday, November 24, 1989, make the following correction:

On page 48715, in the first column, under **DATE:**, in the second line "Time: p.m." should read "Time: 7 p.m.".

BILLING CODE 1505-01-D

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federal register

Wednesday
December 6, 1989

Part II

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820-AA71

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends 34 CFR part 300 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Lucille Sleger, Division of Assistance to States, Office of Special Education Programs, U.S. Department of Education (Mary E. Switzer Building, Room 3622), 400 Maryland Avenue, SW., Washington, DC 20202-7240, Telephone: (202) 732-1104.

SUPPLEMENTARY INFORMATION: On April 27, 1989, final regulations implementing the Amendments to part B of the Education of the Handicapped Act (part B) that are included in the Education of the Handicapped Act Amendments of 1986 (1986 Amendments) and in the Handicapped Programs Technical Amendments of 1988 (1988 Amendments) published in the **Federal Register** (54 FR 18248-18256). The effective date of certain sections of these regulations was delayed until information collection requirements contained in these sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects

Administative practice and procedures, Education, Education of the handicapped, Grant Programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: November 29, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 300 of title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411-1420, unless otherwise noted.

300.152, 300.153 and 300.260 [Amended]

2. Sections 300.152, 300.153, and 300.260 are amended by adding "(Approved by the Office of Management and Budget under control number 1820-0030)" following each of those sections.

[FR Doc. 89-28421 Filed 12-5-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
December 6, 1989

Part III

Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA45

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 303 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irwin, Office of Special Education Programs, U.S. Department of Education (Mary E. Switzer Building, Room 4618), 400 Maryland Avenue SW., Washington, DC 20202-7240, Telephone: (202) 732-1114.

SUPPLEMENTARY INFORMATION: On June 22, 1989, final regulations implementing the 1986 Amendments to the Education of the Handicapped Act (EHA) were published in the **Federal Register** (54 FR 26306-26348). The effective date of certain sections of these regulations was delayed until information collection requirements contained in these sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 303

Education, Education of the handicapped, Grant Programs—education, Medical personnel, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.181; Early Intervention Program for Infants and Toddlers with Handicaps)

Dated: November 29, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 303 of title 34 of the Code of Federal Regulations as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

1. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471-1485 unless otherwise noted.

§ 303.113, §§ 303.141 through 303.146, §§ 303.148 through 303.150, § 303.151, § 303.152, §§ 303.160 through 303.175, § 303.301, § 303.341, § 303.344, § 303.403, § 303.420, § 303.510, § 303.520, and § 303.540 [Amended]

2. Section 303.113, §§ 303.141 through 303.146; §§ 303.148 through 303.150, § 303.151, § 303.152, §§ 303.160 through 303.175, § 303.301, § 303.341; § 303.344, § 303.403; § 303.420; § 303.510; § 303.520; and § 303.540 are amended by adding "(Approved by the Office of Management and Budget under control number 1820-0550)" following each of those sections.

[FR Doc. 89-28422 Filed 12-5-89; 8:45 am]

BILLING CODE 4000-01-M

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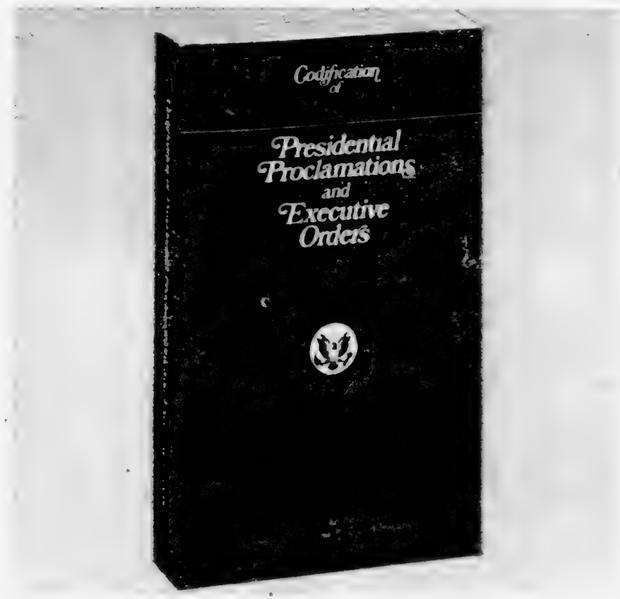
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Rules and Regulations

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1810

Implementation of the Whistleblower Protection Act; Investigative Authority of the Special Counsel; Correction

AGENCY: Office of Special Counsel.

ACTION: Interim regulations; correction.

SUMMARY: On November 14, 1989, in **Federal Register** Document Number 89–26707, the Office of Special Counsel published interim regulations to implement the provisions of the Whistleblower Protection Act. 54 FR 47341. Inadvertently omitted from that document was the authority citation for Part 1810. This publication corrects that omission.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653–8982.

Dated: November 30, 1989.

Mary F. Wieseman,
Special Counsel.

On page 47342, column 2, of Volume 54, **Federal Register**, in the issue of Tuesday, November 14, 1989, correctly add the authority citation for part 1810 to read as follows:

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Authority: 5 U.S.C. 1212(e).

[FR Doc. 89–28634 Filed 12–6–89; 8:45 am]
BILLING CODE 7405–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 693, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period from November 26 through December 2, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 693, Amendment 1 (7 CFR part 910) is effective for the period from November 26 through December 2, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This amendment is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. The action amends § 910.993 (Lemon Regulation No. 693) which was published in the **Federal Register** on November 27, 1989 (54 FR 8739). It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on November 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 2 vote, recommended that the quantity of lemons deemed advisable to be handled during the specified week be increased from 300,000 cartons to 325,000. The Committee reports that the demand for lemons has improved beyond what was anticipated by the Committee on November 21, 1989, when the 300,000 carton recommendation was made.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make this action effective as specified, and handlers have been

apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.993 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.993 Lemon Regulation 693, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 26, 1989, through December 2, 1989, is established at 325,000 cartons.

Dated: November 29, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–28607 Filed 12–6–89; 8:45 am]

BILLING CODE 3410-02-M

Agriculture Marketing Service

7 CFR Part 919

[Docket No. FV 90–103FR]

Peaches Grown in Mesa County, Colorado; 1989–90 Fiscal Period Expenses

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for the 1989–90 fiscal period for the Administrative Committee (committee), established under Marketing Order No. 919. This action is needed by the committee to pay anticipated marketing order expenses necessary to continue to administer the order.

EFFECTIVE DATE: July 1, 1989 through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 919, both as amended (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 28 handlers subject to regulation under the marketing order for peaches grown in Mesa County. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $3,500,000. Likewise, there are about 260 peach producers in Mesa County. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of the Mesa County peach handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Mesa County peaches. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input into the committee's budget recommendation.

An assessment rate is normally recommended by the committee as part of its budget recommendation. However, an assessment rate was not recommended with this budget because a freeze in March, 1989, so severely damaged the Colorado peach crop that there was no assessable production this season.

Until March, 1989, the Federal program had operated jointly with a State marketing order for Mesa County peaches. The State marketing order accounted for more than 95 percent of the assessments and expenses of the two orders. After the State marketing order failed a State-run continuance referendum last January, the committee requested an increase in the 1988–89 Federal expenses and assessment rate. The recommended increases were necessary to cover operating expenses for the last quarter of the fiscal period. The $12,248.70 revised budget (54 FR 20514) required an increase in the assessment rate from one cent to just over four cents per bushel and included some funds transferred from the terminated State order.

In order to maintain its operations this year and be in a position to serve the industry next year, the committee met on September 19, 1989, and unanimously recommended approval of expenditures of $26,572 for the 1989–90 fiscal period. Major expenditure items for the 1989–90 fiscal period, compared with the Federal marketing order's increased expenses for 1988–89, are as follows:

	1989–90	1988–89
Program Operations (salary, rent, etc.).	$8,751.00	$4,930.97
Committee Expenses (per diem, etc.).	450.00	50.00
Compliance	1,000.00	-
Market Research and Development.	5,224.00	7,227.73
Contingency (Reserve)	11,147.00	-
Total	26,572.00	12,248.70

Because of the total loss of the crop after the freeze, funds to cover 1989–90 expenditures will not be raised through assessments on 1989–90 crop peaches. Rather, income will come from the following sources:

- $2,107 carried over from the 1988–89 operating budget,
- $4,365 in 1988–89 assessments paid by handlers after June 30, 1989,
- $15,900 voluntary contributions (refunds from the State program donated by industry members),
- $3,700 miscellaneous income, including payments by the State government for services rendered by the committee, and
- $500 unexpended funds from the State promotion program.

The voluntary contributions represent money refunded to industry handlers and subsequently donated to the committee after the State marketing order program was terminated.

Notice of this action was published in the November 8, 1989, issue of the Federal Register (54 FR 46903). The comment period ended November 20, 1989. No comments were received.

This action will not impose any additional direct costs on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Because committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures must be expedited. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 919

Colorado, Marketing agreements and orders, Peaches.

For the reasons set forth in the preamble, 7 CFR part 919 is amended as follows:

PART 919—PEACHES GROWN IN MESA COUNTY, CO

1. The authority citation for 7 CFR part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 919.228 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 919.228 Expenses.

Expenses of $26,572 are authorized to be incurred by the Administrative Committee for the fiscal period ending June 30, 1990. Unexpended funds from the 1988–89 fiscal period may be carried over as a reserve.

Dated: December 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28608 Filed 12–6–89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984

[FV–89–108FR]

Expenses and Assessment Rate for Walnuts Grown in California for 1989–90

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 984 for the 1989–90 marketing year established under the walnut marketing order. This action is needed for the Walnut Marketing Board (Board), the agency responsible for the local administration of the order, to operate during the 1989–90 marketing year. The Board incurs expenses on a continuous basis and needs to collect funds during the year to pay those expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), both as amended, regulating the handling of walnuts grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of walnuts grown in California who are subject to regulation under the walnut marketing order and approximately 5,000 producers of walnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 15, 1989, and unanimously recommended 1989–90 marketing order expenditures of $1,463,782 and an assessment rate of $0.0085 per kernelweight pound of walnuts. In comparison, 1988–89 marketing year budgeted expenditures were $1,475,294, and the assessment rate was $0.0065 per kernelweight pound of walnuts. Major budget categories for 1989–90 are $79,436 for administrative expenses, $300,000 for production research, $700,000 for the domestic market research and development program, and $37,000 for the 1990 crop estimate. Comparable actual expenditures for the 1988–89 crop were $75,999, $244,968, $688,554, and $30,500.

respectively. Assessment income for 1989–90 is estimated to total as much as $1,539,707 based on an estimated crop of 181,142,000 kernelweight pounds of walnuts.

While this final action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 984.341 and is based on Board recommendations and other available information. A proposed rule was published in the **Federal Register** on October 31, 1989 (54 FR 45738). Comments on the proposed rule were invited from interested persons until November 10, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

California, Marketing agreements and orders, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 984.341 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 984.341 Expenses and assessment rate.

Expenses of $1,463,782 by the Walnut Marketing Board are authorized and an assessment rate of $0.0085 per kernelweight pound of merchantable walnuts is established for the 1989–90 marketing year ending July 31, 1990.

Dated: December 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28609 Filed 12–6–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0671]

RIN 7100–AA97

Equal Credit Opportunity Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments mandate that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial. Creditors are also required to retain records relating to business credit applications for at least one year.

The revisions to Regulation B implement the statutory amendments and define coverage based on a credit applicant's gross revenues. Creditors must provide written notices and retain records in accordance with the new law on credit applications involving businesses with gross revenues of $1 million or less. Applications from businesses with gross revenues greater than $1 million and applications for trade credit and similar types of business credit are subject to modified notice and recordkeeping rules provided in Regulation B. Business credit transactions, regardless of the revenue size of the business, remain covered by all other relevant provisions of the Equal Credit Opportunity Act and Regulation B.

EFFECTIVE DATE: December 8, 1989, but mandatory compliance is not required until April 1, 1990.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452–2412 or 452–3667: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR part 202. A staff commentary to the regulation, 12 CFR part 202 Supp. I, applies and interprets its requirements. The fourth proposed update to the commentary to Regulation B, including interpretations of the ECOA amendments on business credit, is published elsewhere in this **Federal Register**.

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions from some of the regulation's requirements for certain types of credit, including extensions of credit primarily for business, commercial or agricultural purposes ("business credit"). The current exceptions for business credit relate to written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons.

The Women's Business Ownership Act Amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B did not provide business credit applicants, particularly small-business owners, adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Public Law No. 100–533, 102 Stat. 2689. The primary intent of the statutory amendments is to provide small-business owners the same procedural rights under the ECOA that are afforded to consumer credit borrowers. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial in writing and (2) retain records on business credit applications for at least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirements of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

The Revisions to Regulation B

On July 14, 1989, the Board published for comment a proposed rule to amend Regulation B to implement the amended statute. (54 FR 29734) The Board received approximately 200 comment letters on the proposal. More than half of the commenters generally objected to the legislation without addressing specific aspects of the Board's proposal. About one-third of the letters provided comment on the proposed rules. There was general support for the use of gross revenues as the test to identify the business credit applicants intended by the Congress to be covered by the amendments, though some commenters preferred that coverage be based on a loan size or some dual revenue and loan-size test. Some expressed concern about the costs associated with the proposed record retention rules.

Based on express findings required by the act, the comments, and further analysis, the Board has issued herein a final rule that defines the business credit applications to which the new notice and recordkeeping rules apply and provides alternative ways for complying with the notice requirements. Some commenters had suggested that the dollar amount of the revenue cutoff be lower. Smaller financial institutions were concerned that the amendments would have a disproportionate impact on their institutions because the proposed cutoff would cover virtually all of their loans. Other commenters believed that the revenue cutoff should be much higher. In the final rule, the Board has increased the test for coverage from $500,000 to $1 million in gross revenues. This figure covers approximately 86 percent of all for-profit businesses and will afford the ECOA's procedural rights to a wider variety of businesses. The Board has also revised the provisions on notice and recordkeeping that govern all other business credit transactions, and has eliminated an exception that used to permit marital status inquiries in business credit applications.

The new notice and record retention rules applicable to business credit generally are similar to the rules that govern nonbusiness credit. The primary difference relates to recordkeeping rules—12 months for business credit and 25 months for nonbusiness credit. Creditors that elect to follow the rules governing nonbusiness credit for all transactions will be in full compliance with the act and regulation. Similarly, creditors may, but are not required to, treat all applications for business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with the new requirements.

The new provisions contained in paragraph (a)(3)(i) of § 202.9 (Notifications) and paragraphs (b)(1)–(4) of § 202.12 (Record Retention) govern applications from businesses that had gross revenues of $1 million or less in its preceding fiscal year. Applications for trade credit, credit incident to factoring arrangements, and similar types of business credit—as well as credit applications from businesses with revenues exceeding $1 million—are subject to the modified rules for notification and record retention set forth in §§ 202.9(a)(3)(ii) and 202.12(b)(5) of Regulation B, respectively.

(2) Section-by-Section Summary

The following is a section-by-section summary of the final rule implementing the amendments to the ECOA contained in the Women's Business Ownership Act.

Section 202.2—Definitions

2(g)—Business Credit

The definition of business credit previously contained in § 202.3(d)(1) has been moved to § 202.2 (Definitions), paragraph 2(g). The definition of "Board," previously contained in § 202.2(g), has been removed to avoid the need to renumber succeeding paragraphs. As used in the regulation, the term Board means the Board of Governors of the Federal Reserve System.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

3(a)–(d)—Public Utilities, Securities, Incidental and Government Credit Exceptions

In addition to business credit, Regulation B provides exceptions from certain provisions for credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); and extensions of credit to federal and state governments. In the July proposal, the Board solicited comment on the appropriateness of retaining the special rules for these classes of transactions. Except in the case of incidental credit, the Board received no unfavorable comment. The final rule retains the current exceptions in § 202.3 of the regulation for all four categories without change, except that the government credit exception has been redesignated § 202.3(d).

The Board believes that the limited exceptions remain appropriate. The exceptions for public utilities credit are minimal and relate to marital status inquiries, reporting credit information to third parties, and record retention. Public utilities credit is subject to most of the regulatory requirements including, for example, the rules governing information that may be considered in evaluating applications and the rules for notifying applicants of credit denials. Securities credit is subject to the Securities Exchange Act of 1934 which continues to impose duties upon securities brokers and dealers to ascertain certain information about business entities and individuals applying for credit, such as legal relationships and the types of ownership interest in property. Therefore, the Board believes that the exceptions from Regulation B's restrictions (on inquiries about spouses and marital status and on obtaining the signatures of guarantors and cosigners) remain appropriate. Extension of credit to governments or governmental subdivisions are subject to the general rule barring unlawful credit discrimination; the costs of compliance clearly outweigh any protections that might be afforded by applying all of the other ECOA requirements.

One commenter opposed the incidental credit exception on the ground that consumers are not receiving the full protections of the act because some retail sellers deliberately structure financing arrangements to fall within the exception. Notwithstanding this comment, the credit transactions to which the exception applies are largely incidental to some other activity (such as the providing of health care or other professional services) where the creditor extends credit as an accommodation to the consumer and is not in the business of extending credit.

Business credit exceptions

The provisions of paragraph (d) on business credit have been moved to other sections or eliminated as discussed below. Paragraph (e) on credit

to governments has been redesignated paragraph (d).

Former paragraph (d)(1) containing the definition of business credit has been moved to § 202.2(g). Former paragraph (d)(2) contained exceptions for all business credit transactions relating to marital status inquiries and credit reporting; the final rule eliminates both exceptions as discussed below. The substance of the rules in paragraph (d)(3) notifications is now in § 202.9(a)(3)(ii). The substance of the rules on record retention in that paragraph is now in § 202.12(b)(5).

The final rule prohibits creditors from inquiring about the marital status of a business credit applicant for unsecured credit. The regulation permits creditors to inquire about marital status if an applicant resides in a community property state or relies on property located in such a state to repay a debt, or applies for secured credit. A few commenters expressed concern that not knowing the marital status of an applicant for unsecured business credit, particularly in the case of a sole proprietor, would adversely affect the creditor's ability to determine ownership rights in property held by the applicant. The prohibition on marital status inquiries, however, does not impair a creditor's ability to inquire about ownership rights in, or the name of any co-owner of, property relied upon by a credit applicant to satisfy a debt in the event of default. (*See generally* § 202.5(d)(1) and accompanying commentary.)

The final rule deletes an exception for business credit from § 202.10 regarding the reporting of credit information for joint accounts held by spouses. Some commenters expressed concern that eliminating the exception might lead to confusion about whether the reporting requirements apply to the business accounts of sole proprietors. Section 202.10 was designed to remedy a situation related to consumer credit accounts, where credit histories used to be reported only in the husband's name and, as a consequence, married women who become divorced or widowed were left without a credit history. The provision is not relevant to business applicants such as corporations or partnerships, nor is it intended to apply to individual business applicants such as sole proprietors. Consequently, as a technical matter, no specific exception is necessary. Nevertheless, to address any possible ambiguity, the Board's official staff commentary to Regulation B will make clear that the credit reporting rules apply only to consumer accounts.

Section 202.9—Notifications

9(a)—Notification of action taken, ECOA notice, and statement of specific reasons

Paragraph (a)(3)—Notification to Business Credit Applicants

Paragraph (a)(3) contains the notification requirements for business credit applicants.

Paragraph (a)(3)(i)

Paragraph (a)(3)(i) implements section 703(a)(5) of the act, which requires creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for the denial of loan applications. These rules govern credit applications from businesses with $1 million or less in gross revenues (including applications from individuals applying for business-purpose credit), except that applications for trade similar credit (regardless of the revenue size of the business) are governed by the rules in paragraph (a)(3)(ii).

Creditors may notify business credit applicants of a credit decision orally or in writing. Notice of the credit decision must be given in accordance with the timing requirements of paragraph (a)(1)—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant).

Creditors must satisfy the requirement to provide a written notice of the right to a statement of reasons in one of two ways. The creditor may follow the rule used for nonbusiness credit and give the written notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide a written statement of the specific reasons for a credit denial, instead of merely giving notice of the right.

Alternatively, the creditor may give the notice to business applicants at the time of application. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant, as long as the notice is given in a form the applicant may retain. The disclosure should be readily noticeable, but there are no special requirements regarding location, type size, or type face.

Whether a notice is provided at the time of application or when adverse action is taken, the notice must contain all the information required by paragraph (a)(2) except that—as noted above—creditors are permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor. Two model forms are provided in Appendix C to the regulation and are discussed below.

Oral notification for telephone applications

The Board recognizes that creditors that handle business credit applications by telephone (for example, when dealing with existing customers) might find it difficult to comply with the written notification requirements. Paragraph (a)(3)(i)(C) therefore provides that when an application for business credit is made solely by telephone, compliance with the notice requirements may be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In such instances, the creditor does not have to recite the information, normally required in a written notification, that is contained in the ECOA notice specified in § 202.9(b)(1).

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is an application under § 202.2(f). A request for an advance under an existing line of credit is not considered an "application" for credit and therefore it does not trigger the notice requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2).

Inquiries from potential applicants seeking credit information are not subject to the notice requirements. Such inquiries are, however, subject to § 202.5(a), which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Paragraph (a)(3)(ii)

The rules on notification in paragraph (a)(3)(ii), formerly part of § 202.3(d)(3), apply to credit applications by businesses with gross revenues exceeding $1 million and applications for all types of trade credit, credit incident to factoring, and similar business credit (regardless of the applicant's revenues). The Board has simplified the application of these rules for both applicants and creditors and has provided greater uniformity among the timing requirements.

Applicants for business credit covered by paragraph (a)(3)(ii) must be notified of a credit denial, orally or in writing, within a reasonable time after the creditor receives a completed application. (Notice given in accordance with the timing requirements of § 202.9(a)(1) is deemed "reasonable" in all instances.) Under the revisions, applicants have up to 60 days after a denial (the same rule as for business credit below the revenue cutoff and for nonbusiness credit) to request written reasons for the denial. This changes the previous rule, which gave business credit applicants up to 30 days after a credit denial in which to submit a written request.

Section 202.12—Record Retention

Paragraph (b)—Preservation of Records

The revisions to § 202.12(b) implement section 703(a)(5) of the act, which requires creditors to retain records relating to business credit applications for no less than one year. Paragraphs (b)(1) through (4) are amended to distinguish between business credit records, which must be retained for 12 months, and nonbusiness credit records, which must be retained for 25 months.

The Board had proposed in July that records relating to business credit applicants be retained for 25 months. Similarly, records relating to applications from businesses with revenues above the cutoff and applications for trade and similar credit would have been subject to a 60-day retention period in all cases and to a 25-month retention period when an applicant submitted a written request that records be retained. The Board believed the ease of compliance associated with a more uniform timing rule for all types of credit records would benefit creditors.

Many commenters supported the Board's efforts to achieve consistency in timing rules. However, commercial lenders also described the disparity in the volume of data typically obtained to evaluate consumer and business applications, and objected to the incremental costs associated with storing business records (particularly on denied loans) for 25 rather than 12 months.

The final rule provides for an overall 12-month record retention period for business credit applications. The Board believes that compliance can be monitored adequately by reviewing transactions within this time period. The rules in § 202.12(b)(4), which require the longer retention of records by creditors that are the subject of enforcement procedures and investigations, will continue to preserve records where a creditor's actions come under scrutiny.

Paragraph (b)(5)—Special Rule for Certain Business Credit Applications

Previously, the regulation (in § 202.3(d)(3)) required creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant made a written request to have records kept, the creditor had to retain the records for 25 months. In the revised regulation, the substance of former § 202.3(d) on record retention has been modified and moved to § 202.12(b)(5). That provision now applies only to applications from businesses with gross revenues greater than $1 million, trade credit and similar business credit applications. If a creditor receives a written request for a statement of reasons from such applicants, the creditor is required both to give the reasons and also to retain records for 12 months. This eliminates the need for rejected business credit applicants to make two distinct requests regarding the credit decision and provides uniform rules. Absent a written request from an applicant, a creditor does not have to retain records beyond the initial 60-day period.

Appendix C—Sample Notification Forms

Appendix C to Regulation B contains sample notification forms. The Board is adding two sample notices—forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice for giving a statement of reasons for a credit denial; the reasons for a credit denial contained in the form are illustrative only. Form C–8 is a sample disclosure of the *right* to a statement of reasons, of the type that would be given at the time of application.

A creditor may design its own notices or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and § 202.9(a)(3), respectively, for applications for business credit.

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation B that contains the final Regulatory Flexibility Analysis. A copy may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

(4) Text of revisions

Pursuant to authority granted in 15 U.S.C. 1691b(a) of the ECOA, the Board amends 12 CFR part 202 as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by revising paragraph (g) to read as follows:

§ 202.2—Definitions.

. . . . . .

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in § 202.3 (a), (b), and (d).

. . . . . .

§ 202.3—[Amended]

3. Section 202.3 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

4. Section 202.9 is amended by adding paragraph (a)(3). Paragraphs (a) (1) and (2) are republished to read as follows:

§ 202.9—Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of

section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a) (1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, orally or in writing, within a reasonable time of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

* * * * *

5. Section 202.12 is amended by revising paragraph (b)(1) introductory text and paragraphs (b)(2)–(4) and adding paragraph (b)(5) to read as follows:

§ 202.12—Record Retention.

* * * * *

(b) *Preservation of records*—(1) *Applications.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

* * * * *

(2) *Existing accounts.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(3) *Other applications.* For 25 months (12 months for business credit) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information specified in this section beyond 25 months (12 months for business credit) if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

* * * * *

5. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample forms C–7 and C–8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains eight sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under § 202.9(a) (1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under § 202.9(a) (1) and (2)(ii). For C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3).

* * * * *

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirements of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with § § 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of § 202.9(a)(2) (i) and (ii), respectively, for applications for business credit.

* * * * *

FORM C–7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor's name

Creditor's address

Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as Value or type of collateral not sufficient Lack of established earnings record Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

By order of the Board of Governors of the Federal Reserve System, dated December 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–28552 Filed 12–6–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–78–AD; Amdt. 39–6417]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary. This amendment is prompted by fatigue testing by the manufacturer, which revealed cracks on the run-outs of stringers 22 to 28 at the forward and rear internal side of the left-hand and right-hand frame 47. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airport Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary, was published in the **Federal Register** on July 11, 1989 (54 FR 29050).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters questioned the need for the rule since the referenced service bulletin will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletin may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

One commenter requested that the proposed compliance time of 750 landings for accomplishing the initial inspection be extended to be compatible with its "C" check maintenance visit. For the commenter, this would be equivalent to 1,660 landings. The details of the commenter's operations and total number of takeoffs and landings were not provided. The FAA does not concur with the request. The comments are made with regard to a specific operation and not in regards to the general effect of the AD on all affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time (number of accumulated landings) allowable for the affected airplanes to continue to operate prior to the required inspections without compromising safety. Since maintenance schedules may vary from operator to operator, there would be no assurance that the inspection will be accomplished during that time. Under the provisions of paragraph E. of the rule, however, operators may apply for the approval of an alternate means of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a detailed visual or eddy current inspection of stringers 22 to 28 run-outs at fuselage frame 47, in accordance with Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 20,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 9,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 18,400 landings.

2. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 17,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 7,900 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 15,800 landings.

3. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 13,800 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 6,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,400 landings.

4. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 10,000 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 20,100 landings.

B. If cracks found are less than or equal to 1 mm (.039 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989. Repeat inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 1 mm (.039 inch), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, Northwest Mountain Region. Repeat the inspections at intervals shown in paragraph A., above.

D. If no cracks are found, perform repetitive inspections at intervals shown in paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28564 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-139-AD; Amendment 39-6416]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires the replacement of aluminum brake control shafts with steel shafts. This amendment is prompted by reports of fractures of aluminum shafts on Boeing Model 757 series airplanes. The Model 767 is similar to the Model 757 in this area. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, the complete loss of braking on the airplane.

EFFECTIVE DATE: January 12, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, which requires the replacement of aluminum brake control shafts with steel shafts, was published in the **Federal Register** on August 17, 1989 (54 FR 33936).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America expressed no objection to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 152 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Cost of required parts is estimated to be $2,656 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $199,392.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes listed in Boeing Service Bulletin 767-32-0081, dated April 27, 1989, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 15,000 landings, whichever occurs later, unless previously accomplished.

To prevent partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve module shafts with steel shafts, in accordance with Boeing Service Bulletin 767-32-0061 dated April 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28566 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-109-AD; Amendment 39-6415]

Airworthiness Directives; McDonnell Douglas Model DC-9 -15F, -32F, -33F, and -34F Series Airplanes, Including C-9A and C-9B (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series airplanes, which currently requires certain inspection and modifications of the main cargo door assembly to prevent inadvertent opening of the main cargo door in flight. This amendment requires installation of a main cargo door hydraulic isolation valve; installation of an additional, and modification of the existing, door-open indicating system; installation of a main cargo door lock pin viewing window; installation of a main cargo door vent system; installation of a vent door-open indicating circuit; installation of a main cargo door hinge pin retainer; and modification of the main cargo door latch operating mechanism. This amendment is prompted by further review of the main cargo door design and operation by the FAA and constitutes terminating action for the existing AD.

EFFECTIVE DATE: Effective January 13, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-11-02, Amendment 39-6216 (54 FR 21; 164; May 18, 1989), applicable to Model DC-9 -15F, -32F, -33F, and -34F series airplanes, including C-9A and C-9B (Military) airplanes, to require inspection and modification of the main cargo door hydraulic control valve and control panel access door, visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, inspection and modification of the exterior markings on the main cargo door, and functional checks of the door-open indicating system, was published in the **Federal Register** on August 2, 1989 (54 FR 31847).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America submitted comments on behalf of one member. The member requested that the proposed compliance time of one year for modification to add a main cargo door hinge pin retainer and a vent door-open indicating system be changed to be one year after parts and service bulletins become available. This commenter points out that the service bulletins are not yet available. The FAA does not concur with the request. McDonnell Douglas has stated that parts and service bulletins will be available for installation on in-service Model DC-9 airplanes by December 1989. Therefore, in light of the effective date of this AD and the schedule for parts availability, the FAA has determined that extension of the compliance time is inappropriate and not justified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 86 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of the required modification parts is estimated to be $80,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,540,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6216 (54 FR 21416; May 18, 1989), AD 89-11-02, as follows:

McDonnell Douglas: Applies to Model DC-9-15F, -32F, -33F, and -34F, including C-9A and C-9B (Military) series airplanes, as listed in McDonnell Douglas DC-9 Service Bulletin 52-70, dated January 22, 1969; Service Bulletin 52-87, dated June 7, 1974; Service Bulletin 52-91, Revision 2, dated August 12, 1976; Service Bulletin 52-92, Revision 2, dated November 21, 1985; Service Bulletin 52-93, Revision 1, dated May 3, 1976; and Service Bulletin 52-100, dated September 30, 1976; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within the next 14 days after May 30, 1989 (the effective date of Amendment 39-6216), ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane, perform a visual check of the exterior manual latch controls to ensure that the latch actuating socket and the lock pin handle are in the LOCK position; or

2. Perform a visual check of the latches and lock pins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lock pins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph F.2. of this AD have previously been accomplished, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with Paragraph 1. McDonnell Douglas All Operator's Letter (AOL) 9-799, dated April 16, 1974. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 9-799

C. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door, spacer block, and "T" handle stowage clip, in accordance with McDonnell Douglas AOL 9-799A, dated January 22, 1975, and AOL 9-799, dated April 16, 1974, paragraph 2.A. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door cannot be secured in the down and locked position, repair prior to further flight.

D. Unless previously accomplished in accordance with Paragraph (2) of AD 75-03-03, Amendment 39-2076, within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle, Douglas P/N 4777888-1; and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5819985-5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

E. Within the next 30 days after May 30, 1989 (the effective date of Amendment 39-6216), inspect the main cargo door exterior lock pin handle and latch actuating socket markings in accordance with Paragraph 4.C. of McDonnell Douglas AOL 9-799, dated April 16, 1974; and McDonnell Douglas Drawings 7910689, Revision P, dated November 29, 1973, Item Numbers 16 and 18 (DC-9-15F), or Drawing 7910868, Revision AK, dated January 21, 1977, Item Numbers 16 and 18 (DC-9-32F, -33F, and -34F). If the exterior markings are not correct, modify in accordance with the above specified McDonnell Douglas drawings prior to further flight.

F. Within the next six months after the effective date of this amendment, accomplish the following:

1. Install a main cargo door hydraulic isolation valve in accordance with McDonnell Douglas Service Bulletin 52-91, Revision 2, dated August 12, 1976; and

2. Install a new main cargo door-open indicating circuit, revise the existing main cargo door-open indicating circuit, and install a main cargo door-open indicating system test circuit, in accordance with McDonnell Douglas Service Bulletin 52-92, Revision 2, dated November 21, 1985. Compliance with the requirements of paragraph B., above, may be terminated upon the accomplishment of the requirements of this paragraph.

G. Within one year after the effective date of this amendment, accomplish the following:

1. Install a main cargo door lock pin viewing window in accordance with McDonnell Douglas Service Bulletin 52-93, Revision 1, dated May 3, 1976; and

2. Install a main cargo door vent system in accordance with McDonnell Douglas Service Bulletin 52-100, dated September 30, 1976; and

3. Modify the main cargo door latch operating mechanism in accordance with McDonnell Douglas Service Bulletins 52-70, dated January 22, 1969, and 52-87, dated June 7, 1974; and

4. Install a main cargo door hinge pin retainer on each end of the hinge, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will retain the hinge pin in the event of a structural failure of the pin; and

5. Install a vent door-open indicating system, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched.

H. Compliance with the requirements of paragraphs F., G.1., G.2., G.3., and G.5., above, constitutes terminating action for the initial and repetitive inspections required by paragraphs A., B., and C., of this AD.

I. The checks and modifications specified in paragraphs A. through G. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

J. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 84-23-02 for Model DC-9 series airplanes only.

Note: The requirements of AD 84-23-02 relating to Model DC-8 series airplanes are not affected by this AD.

K. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California. Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39-6215, AD 89-11-02.

This amendment becomes effective January 13, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28567 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-73-AD; Amendment 39-5418]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model DC-9-10 through -80 series, Model MD-88, and C-9 (Military) series airplanes, which requires inspection and replacement or repair, as necessary, of the rudder control sector. This amendment is prompted by reports of cracks at the cotter pin hole near the ball end of the rudder control cable. This condition, if not corrected, could result in disengagement of the rudder cable and loss of rudder control.

EFFECTIVE DATE: January 13, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-10 through -80 series, Model MD-88, and C-9 (Military) series airplanes, which requires an inspection of the rudder sector and repair or replacement, as necessary, was published in the Federal Register on June 30, 1989 (54 FR 27652).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Four commenters suggested that the proposed compliance time for the inspection be extended to the "C" check maintenance interval, which is 15 months for most major operators. The commenters indicated that, although the required inspection could readily be accomplished during an "overnight hold," operators would need to accomplish the inspection at a main base since, if cracks were found, sufficient time and equipment would be available at the main base after inspection to perform the necessary repairs. The FAA disagrees. Due to the uncertain nature of crack growth in that part of the rudder control sector, the FAA has determined that the compliance period of 60 days is appropriate. However, as explained below, the final rule has been revised to provide for a temporary repair to enable operators to reach a main base for the accomplishment of a permanent repair or replacement.

Two commenters suggested that the manufacturer identify a block of airplanes that are most susceptible to cracking, and requested that a compliance period of 60 days be imposed on those affected airplanes only. The remainder of the airplanes should be subject to a 15-month compliance period. The FAA does not concur, since the manufacturer has not been able to conclusively identify such a block of airplanes.

Three commenters suggested that a temporary repair be allowed on airplanes found with a cracked rudder control sector. The FAA agrees. The final rule has been revised to permit a temporary repair if cracks are found or if a wall thickness of .020 inch or less is

found; however, a permanent repair or replacement must then be performed within 6 months or 1,000 landings, whichever occurs earlier.

The economic analysis paragraph, below, has been revised to indicate that one-half manhour, rather than 8 manhours, would be required to accomplish the required actions (that is, inspection of the rudder control sector). The Notice inadvertently included additional manhours necessary to accomplish "on condition" replacement of the sector.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

There are approximately 1,431 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 861 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–10 through–80, Model MD88, and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the rudder control sector, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), visually inspect the rudder control sector for cracks and acceptable wall thickness, in accordance with Figure 2 of McDonnell Douglas Alert Service Bulletin A27–302, dated February 17, 1989.

1. If no cracks are found and the wall thickness is more than .020 inch, no further action is required.

2. If cracks are found or if a wall thickness of .020 inch or less is found, prior to further flight, perform either a permanent or temporary repair or replace the rudder control sector, in accordance with the accomplishment instructions of McDonnell Douglas Service Bulletin A27–302, dated February 17, 1989.

3. If a temporary repair is performed, replace or permanently repair the rudder control sector within 6 months or 1,000 landings, whichever occurs earlier, in accordance with McDonnell Douglas Service Bulletin A27–302, dated February 17, 1989.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM–108L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806–2425.

C. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C2–165 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 13, 1990.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28565 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ASW–47]

Revision of Transition Area; Oklahoma, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Oklahoma, OK, Transition Area by making an editorial change to the existing legal description. The existing legal description of the Oklahoma, OK, Transition Area excludes that portion within R–5601A. Based on a special airspace review, R–5601A is being redesigned in order to lessen the burden on the flying public. To correctly reflect the change, the legal description should state that the Oklahoma, OK, Transition Area should exclude that portion witnin "R–5601" and not just in "R–5601A."

EFFECTIVE DATE: 0901 U.T.C., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations makes an editorial change to the existing legal description of the Oklahoma, OK, Transition Area. The existing legal description of the Oklahoma, OK, Transition Area excludes that portion within R–5601A. Based on a special airspace review, R–5601A is being redesigned in order to lessen the burden on the flying public. To correctly reflect the change, the legal description should state that the Oklahoma, OK, Transition Area excludes that portion within "R–5601" and not just in "R–5601A." I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because this action is a minor editorial amendment in which the public would not be particularly interested. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Oklahoma, OK [Revised]

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Oklahoma, excluding that portion within R–5601.

Issued in Fort Worth, TX, on November 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–28563 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 132, 141, 142 and 143

[T.D. 89–104]

RIN 1515–AA72

Customs Regulations Amendments Concerning Statement Processing and Automated Clearinghouse

AGENCY: U.S Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customers Regulations to provide users of Customs Automated Broker Interface (ABI) with the option of paying their entry/entry summaries and entry summaries by the statement processing method. Statement processing allows entry/entry summaries and entry summaries to be grouped and payment made for the group with a single payment. The document also establishes Automated Clearinghouse (ACH), an electronic payment mechanism, as the preferred method of payment of Customs duties, taxes and fees relative to ABI statements.

Further, the document provides an exception to the requirement that for entries of quota-class merchandise, estimated duties must be attached to the entry summary documentation. The document states that if an ABI participant chooses to do so, entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters can be paid through statement processing and ACH if the preponderance of the ABI filer's non-special class entry summaries are also processed under statement processing and ACH. If an ABI participant opts to use statement processing for quota-class entries and the preponderance of his non-special class entries, he must use ACH. Further, quota status and quota priority can be acquired without estimated duties being attached to entry/entry summary documentation if statement processing and ACH are used.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: James Childress, Commercial System Division (202–343–6584).

SUPPLEMENTARY INFORMATION:

Background

Historically, Customs has generally required that estimated duties be attached to the submission of entry documentation or entry summary documentation. This payment was usually made by an individual check covering the entry or the entry summary. Through Customs Automated Commercial System (ACS), Customs has developed a method known as statement processing which allow one payment to cover multiple entry summaries. Further, Customs has developed an enhancement to statement processing which no longer requires that the estimated duties be attached to the submission of entry summary documentation. The enhancement is known as Automated Clearinghouse (ACH); ACH is an electronic payment mechanism. A filter who is on Customs ABI may transmit his entry data to Customs through the ABI, may elect to use statement processing, and use ACH to effect payment. The entry documentation and ACH payment authorization must be submitted within 10 working days after entry of the merchandise.

Customs published a document in the **Federal Register** (54 FR 10019) on March 9, 1989, proposing amendments to the Customs Regulations providing: (1) For the voluntary use by ABI participants of statement processing; (2) that all ABI participants using statement processing must pay their statements through the use of the ACH electronic payment mechanism; (3) that the payment of estimated duties regarding entry/entry summaries for special classes of merchandise, consisting of quota-class merchandise and other classes designated by Customs Headquarters, be allowed through ABI statement processing if the preponderance of the ABI participant's non-special class entry summaries are also processed under statement processing; and (4) that quota priority and status could be acquired without estimated duties being attached to the entry/entry summary documentation if statement processing and ACH are used.

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Twenty comments were received in response to the proposal. Most commenters were in favor of the general concept set forth in the proposed rulemaking. However, there were several concerns. A discussion of the comments and our responses follows.

Analysis of Comments

Comments: Most commenters were opposed to the requirement that if an ABI participant uses statement processing, the ABI participant must use ACH.

Response: In view of the negative comments from the trade about mandatory ACH payment of all statements, Customs has decided to permit check or cash payment for a statement which does not include entries for quota-class merchandise. Customs has decided, however, that ABI participants who wish to gain release of quota-class and/or other special classes of merchandise without being required to attach estimated duties to the entry/entry summary documentation must use statement processing and the ACH method of payment for these transactions and for the largest portion of their Customs transactions. (See later discussion).

The incentive of offering deferred payment for entries of quota and other special class merchandise if payment is made by ACH and other marketing methods will be employed by Customs to encourage importers and brokers to adopt the ACH method of payment. Customs is committed to establishing ACH as the preferred method of payment.

Comment: Several comments received from individual brokers and trade associations requested that Customs maintain the option that broker's clients can pay Customs charges through the broker directly from their own accounts. The comments indicated that Customs should provide this option either for those clients who might elect to use ACH and have statement payments debited directly from their accounts, or for those clients who do not desire to use ACH, but currently provide the broker with a check payable to the "U.S. Customs Service" for their duties, taxes and fees that appear on an ABI statement.

Response: We agree that a broker's client should maintain the option to pay Customs directly through his own account. When a client elects to use the ACH method and have the funds debited directly from his own account, the client would be required to provide directly to Customs the bank transit routing number and the bank account number for each of his accounts from which ACH payments could be electronically debited. Customs would then assign a unique payer's unit number to each of his accounts and provide the assigned unit number(s) directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. The funds would then be electronically withdrawn directly from the client's account.

Although ACH is the preferred payment method for ABI statements, it will not be possible for all entry filers in all instances. Therefore, Customs will continue to permit entry filers to pay by check payable to the "U.S. Customs Service" for duties, taxes, and fees, according to existing Customs regulations. However, it should be recognized that a particular statement payment must be accomplished entirely through ACH or completely by conventional method (check, cash, etc.). A mixing of payment methods for a single statement will not be accepted.

Comment: Some commenters were opposed to the proposed rule stating that the statement date must be the payment date. It was believed by certain commenters that the internal processes of a broker or importer may require early generation of the preliminary statement to allow the staff sufficient time to audit the proposed payments and perform any necessary amendments to the statement to ensure that proper payment can be tendered by the tenth working day.

Response: Customs recognizes the necessity of having adequate time to perform internal verification of proposed duty payments. Therefore, Customs has removed the requirement that statement date will be payment date. It should be noted, however, that the principal listed on the statement will be responsible for ensuring that the statement payment is timely made (that all related statement entries will be satisfied within 10 working days from the date of entry).

Comment: Several commenters stated that there should be an expedited administrative refund process for those ACH transactions which may be accepted over and above any required statement payment. These commenters stated that the administrative refund process should provide for refunding without need for the formal protest process and without any requirement for an entry-by-entry liquidation or reliquidation process; and any refund amount should be electronically provided to the payer.

Response: Customs agrees that a payer whose account is overdrawn directly as a result of an error by Customs or the Treasury-designated ACH processor should be entitled to immediate administrative relief without the need for formal protest action or liquidation or reliquidation action. Customs has the authority to provide such relief pursuant to 19 U.S.C. 1520(a)(4). However, because Customs believes that such errors will occur on a very isolated basis, administrative relief can be handled on a case-by-case basis without a formal provision. The reasons Customs believes that errors will be rare are twofold. First, the ACH payment process will be accomplished through ABI on a computer-to-computer basis with no manual intervention. Secondly, before an ACH payment authorization transaction is accepted for subsequent transmission to the Treasury-designated ACH processor, a strict set of edits must be completely passed relative to statement data and amount; if the ACH payment authorization is not error-free, it will not be accepted by Customs for subsequent transmission to the ACH processor. If an error does occur, Customs should be notified promptly so that immediate action can be instituted to ascertain the cause and take prompt action to satisfy the payer. It should be recognized that if the error was a result of an error at the payer's bank without culpability on the part of Customs or the Treasury-designated processor, Customs will not be responsible for the refund; the matter would have to be resolved with the payer's bank.

Comment: Several commenters were concerned with the system's security. There were concerns presented regarding protection against outside tampering with the system to prevent conversion of funds to outside personal accounts. In addition, assurances were sought that ACH withdrawals would be made only for specific unpaid ABI statements and that Customs would debit the correct account for the ACH transaction.

Response: Although Customs cannot provide a 100 percent guarantee that a violation of the system could not occur, every precaution has been taken to avoid this possibility. The existing levels of security required to access both the Customs and bank system have been in place and operational for several years without experiencing any outside tampering.

Furthermore, the ACH authorization transaction input through ABI for statement payment and the resulting transmission to the Treasury-designated ACH processor contain no reference to the specific bank or bank account information. Instead, the Customs-assigned unique payer's unit number is used which is identifiable only to the ACH processor as to bank and bank account. The Customs system does not maintain a file which would provide any person inside or outside of Customs with accessibility to payer bank or bank account information. Also, the ACH processor system requires multiple levels of security to be satisfied before access can be gained to that system. There is no method available to gain access to the files of the ACH processor through Customs to obtain information regarding bank and bank account information.

The ACH electronic payment mechanism is initiated based on acceptance of a payment authorization transaction being received through ABI from the payer. Customs will not generate an internal transaction on its own initiative to accomplish an ACH payment. Customs acceptance of the ACH payment authorization is dependent on multiple edits being satisfied. Among these will be that the payer unit number provided in the transaction is eligible to accomplish payment of the statement number indicated in the transaction. Also, the statement number provided must be unpaid and the amount provided in the payment transaction must correspond exactly to the unpaid amount of the statement number provided. If any of these validations are not met, the transaction is not accepted by Customs for payment; the initiator of the ABI transaction is electronically notified as to what errors exist with the transaction. Most importantly, the unaccepted payment authorization will not be passed to the Treasury-designated ACH processor for funds withdrawal. Only error-free transactions are given to the ACH processor for eventual electronic withdrawal of funds.

The actual electronic withdrawal of funds from the payer's account will be accomplished through the Treasury-designated ACH processor. The bank and account from which funds are withdrawn will be dictated by the payer unit number provided in the accepted ABI payment authorization transaction. It is emphasized that it is the responsibility of the payer to ensure that all bank account information provided to Customs is correct and that the correct payer unit number is utilized in each ACH payment authorization transaction. If payers take this responsibility seriously, there is little need for concern regarding the correct accounts being debited for ACH transactions.

Comment: Some commenters were concerned that Customs may reduce the float period as soon as all ABI brokers are on ACH.

Response: Pursuant to this final rule, ACH is the payment method which should be utilized whenever possible by those ABI participants who use statement processing. Initially, Customs will electronically debit, through the Treasury-designated ACH processor, the payor's account on the second business day following the accepted payment date provided in the ABI acceptance notification record. However, it should be noted that the Treasury Department has reserved the right to review the effectiveness of ACH after a one year operational period. As a result of this review, Treasury could request changes to the program including a reduction in the float period.

Comment: Because the electronic ACH payment will not generate a cancelled check document, some commenters stated that the regulations should identify the document that an ACH user can present to substantiate that Customs duties for statement entries have been paid through an ACH transaction.

Response: The ABI statement process generates a final statement only after complete payment of the statement has been processed through the Customs financial system, either through an ABI–ACH transaction or by a Customs cashier entering a check or cash payment to the system. Therefore, the final statement could be utilized as evidence that statement payment has occurred through an ACH transaction in lieu of presenting a cancelled check. Section 24.25(c)(4), Customs Regulations, will be revised to indicate this.

Comment: Some commenters stated that Customs should provide a definition of the term "preponderance" in relation to its use in the requirement that entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters can be paid through statement processing and ACH if the preponderance of the ABI filer's non-special class entry summaries are also processed under statement processing and ACH.

Response: The term "preponderance" was intended by Customs to mean the largest possible portion of a filer's non-special class entry summaries eligible for statement processing. To clarify the provision, "largest possible portion" is used in the final rule. All entries are eligible for statement processing except vessel repair entries and warehouse withdrawals. Customs does not wish to provide an exact percentage of eligible non-special class entry summaries that must be handled through statement processing and paid via the ACH payment mechanism, because Customs recognizes that there are valid business reasons which brokers may have for not using ACH in certain circumstances and the number of times that there are valid business reasons can vary from broker to broker. An example of a valid business reason why a broker has not paid an eligible entry summary through ACH is that the importer paid the broker with a check payable to " U.S. Customs." Because Customs does expect brokers who are using statement processing and ACH for quota and special class entries to use statement processing and ACH for the largest possible portion of their non-special class entries, a filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. While Customs will not in the normal course of events ask a filer to articulate his reasons for not using statement processing and ACH for a particular entry, if Customs believes that a broker is taking advantage of ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by Customs as to why he has not used statement processing and ACH for certain entries. If Customs is not satisfied, after such consultation, that there were sound business reasons for the exclusion or deletion of non-special class entries, Customs may disqualify the participant from using statement processing/ACH for quota-class entries.

Comment: One commenter questioned why ACH is available only to ABI participants.

Response: The decision to make ACH available only to ABI participants was made by Customs. From a Customs standpoint, the effectiveness of the ACH payment process is dependent on accurate payment data being accepted through a controlled automated environment. The immediate method available which would provide Customs with the most effective means for operation of the ACH payment process is ABI. The ABI provides Customs with an immediate interface with the trade community which incorporates edits and validations to ensure accuracy and correctness of individual entry amounts. This existing interface can be readily adapted by Customs to accept a payment authorization and edit for correctness and provide data back to the payer indicating acceptance or error.

Additionally, the ABI format provides Customs levels of security which have been operational for some time without experiencing outside tampering which ensures protection of the ACH transaction from outside manipulation.

Comment: One commenter asked about the consequences of not accomplishing the ACH transaction timely because either Customs or the filer was experiencing computer difficulties.

Response: Customs is currently developing a policy of how it should handle the unavailability of processing due to a Customs computer problem. The goal of the policy Customs is designing is to provide operational guidelines in those instances of temporary Customs computer or communications problems. Where computer problems prevent the timely transmission of ACH payments, the option to bring check or cash payment to the Customs statement processing location is generally still available. As a general rule, the allowance of additional time to file ABI statement entries due to downtime of a filer's system should be granted. The allowance of additional time to file or pay through ACH due to filer computer breakdown is at the sole discretion of the District Director. Generally, every effort will be made to alleviate the risk of potential penalty action if Customs is timely notified of such problems.

Comment: Several commenters were concerned about the government having direct access to their bank accounts.

Response: Although the participating broker or importer would be required to provide their bank and bank account number to Customs, the broker or importer will dictate when and for what amount an electronic withdrawal will occur. Customs does not maintain an automatic access to the account.

The process to initiate electronic withdrawals through the Treasury-designated ACH processor is started only when Customs receives through ABI a payment authorization for a particular statement at a specific amount using a valid payer's unit number. If such a transaction is not received or is not accepted error-free, no transaction will be passed to the Treasury-designated ACH processor for electronic withdrawal. There is no manual intervention by Customs; only the data accepted error-free will be passed to the ACH processor. The ACH payment accepted will be applied only to the Customs duties owed on the entries which make up the specified statement.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments with the modifications discussed above should be adopted. In addition, Customs has decided to eliminate the requirement of performing a freeze function on all preliminary statements which are to be paid through ACH. The "freeze" procedure was installed as part of the pilot test process to ensure that the broker payment amount transmitted directly to the Treasury-designated ACH processor would ultimately agree with the actual Customs preliminary statement amount. This procedure is no longer necessary under the ABI-ACH payment process because the ACH payment authorization will be transmitted directly to Customs via ABI and required to pass strict edits to ensure that statement data and amount are in complete agreement with existing Customs data before the payment authorization is accepted.

Inapplicability of Delayed Effective Date

Because this amendment neither imposes any additional burdens on, or takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Executive Order

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork and Reduction Act (44 U.S.C. 3504 (h)) under control number 1515–0167. The estimated average burden asssociated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515–0167), Washington, DC 20503.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

19 CFR Parts 141, 142 and 143

Customs duties and inspection, Entry, Imports.

Amendments to the Regulations

Parts 24, 132, 141, 142 and 143, Customs Regulations (19 CFR parts 24, 132, 141, 142 and 143) are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general and relevant specific authority citation for part 24, CUSTOMS REGULATIONS (19 CFR part 24), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701; Public Law 99–662.

§ 24.1 also issued under 19 U.S.C. 197, 198, 1646.

2. Section 24.1(a) is amended by republishing the introductory text and by adding a paragraph (8) to read as follows:

§ 24.1 Collection of customs duties, taxes and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, and other charges (see § 111.29(b) and 141.1(b) of this chapter): * * *

(8) Participants in the Automated Broker Interface may use statement processing as described in § 24.25 of this part. Statement processing allows entry/entry summaries and entry summaries to be grouped by either importer or by filer, and allows payment of related duties, taxes and fees by a single payment, rather than by individual checks for each entry. The preferred method of payment for users of statement processing is by Automated Clearinghouse.

* * * * *

3. Part 24 is amended by adding a new § 24.25 to read as follows:

§ 24.25 Statement processing and Automated Clearinghouse.

(a) *Description.* Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries on a daily basis. The related duties, taxes and fees may be paid with a single payment. The preferred method of payment is by Automated Clearinghouse (ACH), except where the importer of record has provided a separate check payable to the "U.S. Customs Service" for Customs charges (duties, taxes, or other debts owed Customs (see § 111.29(b) of this chapter)). A particular statement payment must be accomplished entirely through ACH or completely by check or cash. A mixing of payment methods for a single statement will not be accepted. ACH is an arrangement in which the filer electronically provides payment authorization for the Treasury-designated ACH processor to perform an electronic debit to the payer's bank account. The payment amount will then be automatically credited to the account of the Department of the Treasury. If a filer chooses to use statement processing for entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters under § 142.13(c) of this chapter, he must also use statement processing as a normal course of business for the largest possible portion (see § 24.25(d)) of his eligible non-special class entries; further, he must use the ACH payment mechanism to pay all his ABI statements containing entries for quota-class merchandise. In no circumstance will check or cash be acceptable for payment of ABI statements containing entries for quota-class merchandise.

(b) *How to elect participation*—(1) *Statement processing.* An ABI filer must notify Customs in writing of the intention to utilize statement processing.

(2) *Automated Clearinghouse.* If an ABI filer pays his statements through ACH, rather than by check, he must provide to Customs the bank routing number and the bank account number for each account from which ACH payments are to be electronically debited. Upon the determination by Customs that the ABI filer has the necessary software to participate and otherwise qualifies to participate in ACH, Customs shall assign a unique identifying payer's unit number to the participant and the Treasury-designated ACH processor. This unique number assigned by Customs will alert the ACH processor as to which bank and account to issue the electronic debit. If a client of a ABI filer opts to pay Customs charges from his own account through an ABI filer, the client must provide directly to Customs the bank transit routing number and the bank account number for each of his accounts from which ACH payments can be electronically debited. Customs will then assign a unique payer's unit number to each of his accounts and provide the assigned unit number directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. It is the responsibility of the participant to ensure that all bank account information is accurate and that the correct unique payer's unit number is utilized for each ACH transaction.

(c) *Procedure for filer.* (1) The filer shall transmit entry/entry summary and entry summary data through ABI indicating whether payment for a particular entry summary will be by individual check or by using statement processing. If statement processing is indicated, the filer shall designate whether the entry summary is to be grouped by importer or broker, and shall provide a valid scheduled statement date (within 10 days of entry, but not a Saturday, Sunday or holiday).

(2) Customs shall provide a preliminary statement to the ABI filer on the scheduled statement date. The preliminary statement shall contain all entry/entry summaries and entry summaries scheduled for that statement date. The preliminary statement shall be printed by the filer, who will review the statement entries and the statement totals, assemble the required entry summaries as listed in the statement, and present them to Customs with the preliminary statement. This presentation must be made within 10 working days after entry of the merchandise. If a filer elects to perform deletions from the preliminary statement (other than items related to special classes of merchandise provided for in § 142.13(c) of this chaper), the filer shall notify Customs in such manner as designated by Customs Headquarters. Any entry number deleted from a statement may be paid by an individual check or scheduled for another statement by transmitting the entry summary data through ABI with a future payment date.

(3) The ABI filer using statement processing is responsible for ensuring that payment is made within 10 days of the entry of the related merchandise.

(4) When payments are made through ACH, Customs shall, upon acceptance of the ACH payment authorization, identify the preliminary statement as paid and shall post the appropriate amounts to the related entries. The final statement generally shall be available to the filer the day following the acceptance of the ACH payment; this final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

(d) *Choice of excluding certain entries from statement processing.* An ABI filer using statement processing, generally, has the right to inform Customs electronically whether he desires that a particular entry summary be paid by individual payment or through statement processing. If a filer opts to use statement processing for entry/entry summaries for quota-class and other special classes of merchandise defined in § 142.13(c) of this chapter, he shall use statement processing in the normal course of business for the largest possible portion of his eligible non-special class entries also; further, he shall pay for these entry/entry summaries through ACH. If a filer opts to use statement processing and, therefore, ACH for entry/entry summaries for special classes of merchandise defined in § 142.13(c) of this chapter, these entry/entry summaries cannot be deleted from a statement. A filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. If Customs believes that a broker is using ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by Customs as to why he has not used statement processing and ACH for certain entries. If Customs is not satisfied, after such consultation, that there were sound articulable business reasons for the exclusion or deletion of non-special class entries, Customs may disqualify the participant from using statement processing/ACH for quota-class entries.

(e) *Scheduled statement date.* Entry/entry summaries and entry summaries must be designated for statement processing within 10 working days after the date of entry. It is the responsibility

of the ABI filer using statement processing to ensure that the elected scheduled statement date is within that 10-day timeframe. Customs will not warn the filer if the scheduled statement date given is late.

PART 132—QUOTAS

1. The authority citation of part 132, Customs Regulations (19 CFR part 132), continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

2. Section 132.1(d) is revised to read as follows:

§ 132.1 Definitions.

* * * * *

(d) *Presentation.* "Presentation" is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)); or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary, without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface; or

(3) A withdrawal for consumption with estimated duties attached.

* * * * *

3. The text of § 132.11(b) is revised to read as follows:

§ 132.11 Quota priority and status.

* * * * *

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption, which serves as both the entry and entry summary, or by a withdrawal for consumption, shall be regarded as entered for purposes of quota priority and shall acquire quota status if:

(1) The entry summary or withdrawal for consumption is in proper form, and duties have been attached to the entry summary or withdrawal for consumption in proper form; or

(2) The entry summary for consumption is in proper form, and the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface.

* * * * *

4. Section 132.11a is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 132.11a Time of presentation.

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry/entry summary for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached; or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface (see § 132.1(d)(2); payment must be subsequently made by the statement processing method as set forth in § 24.25 of this chapter); or

(3) A withdrawal for consumption with estimated duties attached.

* * * * *

(c) *Failure to use statement processing method.* If presentation is chosen to be made pursuant to § 132.11a(a)(2) and payment is not made as required through the statement processing method, the district director may require filing of an entry summary for consumption with estimated duties attached as described in § 132.11(a)(1) for future filings.

§ 132.14 [Amended]

5. The first sentences of paragraphs (a) (1), (2), (3), (4)(i) introductory text and (4)(ii) introductory text in § 132.14 are amended by inserting the word "proper" before the words "presentation of an entry summary for consumption, or withdrawal for consumption."

6. The first sentences of paragraphs (a) (1), (2), (3), (4)(i) introductory text and (4)(ii) introductory text in § 132.14 are amended by removing the words "with estimated duties attached" following the words "presentation of an entry summary for consumption, or a withdrawal for consumption" and replacing them with "pursuant to § 132.1 of this part."

PART 141—ENTRY OF MERCHANDISE

1. The general and relevant specific authority for part 141, Customs Regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505.

2. The introductory paragraph of § 141.101 is revised to read as follows:

§ 141.101 Time of deposit.

Estimated duties shall either be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, or be transmitted to Customs according to the statement processing method as described in § 24.25 of this chapter, except in the following cases:

* * * * *

2. The second sentence of § 141.62(b)(2)(ii) is amended by inserting the words "or without the estimated duties attached, if the entry/entry summary information and a scheduled statement date have been successfully received by Customs via the Automated Broker Interface," between the words "with the estimated duties attached," and "shall be the time of presentation for quota purposes."

§ 141.68 [Amended]

3. Section 141.68(b) is amended by deleting the period at the end of the paragraph and adding, "except as provided in § 142.13(c)."

4. Section 141.68(d) is amended by inserting between the words "with estimated duties attached," and "as provided in § 132.11a of this chapter," the words "or if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface, without the estimated duties attached,".

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.13 (c)(1) and (c)(2) are revised to read as follows:

§ 142.13 When entry summary must be filed at time of entry.

* * * * *

(c) *Special classes of merchandise*—(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of:

(i) An entry summary for consumption with estimated duties attached; or

(ii) A withdrawal for consumption with estimated duties attached; or

(iii) An entry summary for consumption, without the estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface. (See part 132 and § 24.25 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, or an entry summary for consumption, without the estimated duties attached if the entry/entry summary information and a valid scheduled statement date have previously been transmitted to Customs via the Automated Broker Interface (see § 24.25 of this chapter) shall be filed at the time of entry before release of any other merchandise of a class designated by Customs Headquarters.

* * * * *

3. Section 142.21(e) is revised to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise*—(1) *Tariff rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. If proper presentation is not made until after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall pay duties at the over-quota rate.

(2) *Absolute.* At the discretion of the district director, perishable merchandise of a class approved by Customs Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the district director, until an entry summary is properly presented pursuant to § 132.1 of this chapter. A proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has properly presented an entry summary, he may either present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

* * * * *

4. Section 142.22(b)(1) is revised to read as follows:

§ 142.22 Application for special permit for immediate delivery.

* * * * *

(b) *Customs custody.* * * *

(1) An entry summary for consumption, with estimated duties attached; an entry summary for consumption without estimated duties attached, if entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have successfully been received by Customs via the Automated Broker Interface; an entry summary for warehouse; or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

* * * * *

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation of part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. The first sentence of § 143.28 is revised to read as follows:

§ 143.28 Deposit of duties and release of merchandise.

Unless statement processing and ACH are used pursuant to § 24.25 of this chapter, the estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs Officer, whether at the customhouse or elsewhere. * * *

Approved: November 30, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-28513 Filed 12-6-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 89F-0078]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of *cis* and *trans*-1,4-cyclohexanedimethanoldibenzoate as a component of adhesives used in the manufacture of packaging intended to contact food. This action responds to a petition filed by Velsicol Chemical Corp.

DATES: Effective December 7, 1989. Written objections and requests for a hearing by January 8, 1990.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 6, 1989 (54 FR 13951), FDA announced that a food additive petition (FAP 9B4139) had been filed by Velsicol Chemical Corp., 5600 North River Rd., Rosemont, IL 60018-5119, proposing that § 175.105 Adhesives (21 CFR 175.105) be amended to provide for the safe use of a mixture of *cis* and *trans*-1,4-cyclohexanedimethanoldibenzoate as a component of adhesives used in the manufacture of packaging intended to contact food.

FDA has evaluated in the petition and other relevant material. The agency concludes that the proposed food additive use is safe. Therefore, the agency is amending § 175.105(c)(5) by adding a new entry to the table. The agency also concludes that use of the CAS Registry Number for this additive specifies the additive as a mixture, precluding the necessity to list the terms *cis* and *trans*.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 8, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry in the table to read as follows:

§ 175.105. Adhesives

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
1,4-Cyclohexanedimethanoldibenzoate (CAS Reg. No. 35541-81-2).	
* * * * *	

Dated: November 29, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-28571 Filed 12-6-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 89-56]

Special Local Regulations: City of Pompano Beach, FL, Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Pompano Beach Christmas Boat Parade. The event will be held on December 10, 1989, from 6:30 p.m. to 9:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 10, 1989, at 5:30 p.m. e.s.t. and will terminate on December 10, 1989, at approximately 10:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm, Jr., (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information: The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm, Jr., Project Officer, USCG Group Miami Beach, FL.

Discussion of Regulations: The Pompano Beach Christmas Boat Parade is a night time parade of vessels ranging in length from 23 feet to 125 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at Lake Santa Barbara then proceed north up the Intracoastal Waterway (ICW) to Hillsboro Boulevard Bridge where it will disband. 150 vessels are expected to participate in the parade and over 100 spectator vessels are expected along the parade route. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the ICW.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0756 is added as follows:

§ 100.35-0756 Pompano Beach Christmas Parade, FL.

(a) *Regulated Area:* A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) in the vicinity of Pompano Beach, Florida. The parade starts at Lake Santa Barbara, then proceeds north to Hillsboro Boulevard Bridge, where the parade will disband.

(b) *Special Local Regulations:* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonpartcipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date:* These regulations are effective on December 10, 1989, at 5:30 p.m. e.s.t. and terminate on December 10, 1989, at approximately 10:00 p.m. e.s.t.

Dated: November 27, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-28541 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD1-89-140]

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Department of Transportation (NJDOT), the Coast Guard is issuing temporary regulations governing the Route 70 drawbridge over Manasquan River, mile 3.4 at Riviera Beach, between Point Pleasant and Manasquan, New Jersey, to provide that the draw need not be opened for the passage of vessels for three months from 1 December 1989 through 1 March 1990. This temporary regulation is being made to facilitate structural and machinery repairs to the bascule span. This action will relieve the bridge owner of the burden of having to open the draw during the reconstruction of the bridge and will only permit marine traffic which can pass under the closed span to transit the waterway above the bridge. After three months, the proposed regulation will terminate, and the bridge will return to the prior mode of operation.

EFFECTIVE DATE: These regulations are effective 9 a.m. 1 December 1989 through 5 p.m. 1 March 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulation is issued under 33 CFR 117.35(d).

Drafting Information: The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John B. Gately, project attorney.

Discussion of Final Temporary Regulations: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after of **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective day would be contrary to the public interest since implementation of these temporary regulations is necessary to facilitate the bridge repairs prior to the start of the next recreational boating season. The bridge machinery and structure are in a deteriorated condition and NJDOT has multiple bridge contracts in place to effect the repairs to this structure during this winter. The primary users of the bridge are taller vessels that utilize the marine facilities upstream of the bridge. These facilities expressed minimal concern providing repairs completed by 1 March 1990. The 1986, 1987 and 1988 bridge opening logs, for the same three months, indicate 12, 22 and 17 total vessel openings, respectively; and 28, 13 and 0 openings for test or repairs. Current regulations provide that the draw of the Route 70 bridge shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. The temporary regulation would suspend a portion of the existing regulation and allow the bridge to remain in the closed position at all times from 9 a.m. on 1 December 1989 through 1 March 1990. The existing bridge (built in 1937) is a single leaf bascule bridge. The vertical clearance above mean low and mean high water is 18 and 15 feet, respectively.

Economic Assessment and Certification: These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished during the winter months when these facilities are closed or have minimal activity and recreational boats are out of the water. The regulation also will not prevent the passage of vessels who are able to pass under the closed span. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment: This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.727 is amended by designating the existing test as paragraph (a) and suspending it for the period 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990, and paragraph (b) is added to read as follows for the period 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990.

Note: Because this is a temporary rule, this paragraph will not be codified in the CFR.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.727 Manasquan River.

* * * * *

(b) Repair of the S70 bridge. The draw of the S70 bridge, mile 3.4, at Riviera Beach, need not be opened for the passage of any vessel and paragraph (a) of this section is suspended from 9 a.m., December 1, 1989, through 5 p.m., March 1, 1990, inclusive, to effect major repairs to the bridge.

Dated: December 1, 1989.

R.O. Buttrick,

Captain, U. S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 89-28542 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3692-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves Ohio Administrative Code (OAC) Rules 3745-17-01, 03, and 10 as they apply to four boilers: (1) The one gas and No. 2 oil-fired boiler and (2) the three coal-fired boilers at Youngstown Thermal Corporation in Youngstown (Mahoning County), Ohio. Youngstown Thermal is

located in the portion of Mahoning County that is designated a nonattainment area for total suspended particulates (TSP). The revision establishes particulate matter limits of 0.02 pound of particulate emissions per million BTU for the one gas and No. 2 oil-fired boiler and 0.14 pound of particulate emissions per million BTU for the three coal-fired boilers. This action is based on February 17, 1988, and January 4, 1989, revision requests that were submitted to USEPA by the State of Ohio.

DATES: This action will be effective February 5, 1990, unless notice is received by January 8, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State submittal and other materials related to this rulemaking are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On February 17, 1988, the State of Ohio submitted to USEPA a revision to the TSP portion of its State Implementation Plan (SIP). The revision was in the form of a Findings and Orders for the one gas and No. 2 oil-fired boiler (B001) and the three coal-fired boilers (B002, B003 and B004) located at the Youngstown Thermal Corporation in Youngstown, Mahoning County, Ohio. On January 4, 1989, it submitted its underlying State TSP rules and requested that we rulemake on these rules as they apply to Youngstown Thermal, but not to all other sources in Ohio. These rules are OAC Rule 3745–17–01, Definitions; Rule 3745–17–03, Measurement Methods and Procedures; and Rule 3745–17–10, Restrictions on Particulate Emissions from Fuel Burning Equipment. (Ohio has requested that we withhold further rulemaking on these rules as they apply to other sources in the State, while it evaluates and develops its PM_{10} plans.)[1]

Youngstown Thermal is located in that portion of Mahoning County that is designated nonattainment for TSP (40 CFR 81.336).[2] There is no approved Part D TSP SIP for Mahoning County.

The State is requesting that the particulate emission limitation applicable to the one gas and No. 2 oil-fired boiler and the three coal-fired boilers be established pursuant to Ohio Administrative Code (OAC) Rule 3745–17–10, Restrictions on Particulate Emissions from Fuel Burning Equipment. These boilers are currently governed by the emission limitations in Federal SIP Regulation AP–3–11, Restriction on Emission of Particulate Matter from Fuel Burning Equipment. [AP–3–11 was approved on April 15, 1974 (39 FR 41691)].

After today's action, the particulate emission limitations in the federally approved SIP for this source will be consistent with those in the current State rule. USEPA's specific discussion of the emission limitations is found under the "Discussion of Revision Request" section, which follows.

Discussion of Revision Request

Emission Limitations

The following emission limitations are derived from Rule 10 and contained in the Findings and Orders:

- For B001 the maximum allowable particulate emission rate shall not exceed 0.02 pound of particulate emissions per million BTU actual heat input.
- For B002, B003, and B004 the maximum allowable particulate emission rate for each boiler shall not exceed 0.14 pound of particulate emissions per million BTU actual heat input. (This limit is enforceable for each unit individually.)

The following emission limitation is derived from AP–3–11 and is the emission limitation for these boilers under the federally approved SIP.

- For each of the four boilers, the allowable particulate emission limitation is 0.126 pound per million BTU actual heat input.

Under USEPA's July 1, 1987, PM_{10} criteria, which must be satisfied in evaluating TSP emission rate changes in the interim, the total allowable emission rates must provide progress towards ensuring attainment and maintenance of the PM_{10} NAAQS. To meet this criteria, USEPA compares the overall control level obtained under AP–3–11 with that obtained under Rule 10. The major difference between the two regulations is that AP–3–11 does not recognize the derating of boilers, and it requires the aggregation of all boilers at a facility (regardless of the type of fuel used) for purposes of determining the allowable mass emission rate. The comparison showed that the total allowable emission of TSP (from all boilers) is 49.5 lb/hr under Rule 10 and 58.0 lb/hr under AP–3–11. Thus, the emission limitations under Rule 10 are most stringent and result in a 15 percent decrease in allowable emissions. USEPA concludes that the emission limitations found in the Findings and Orders will ensure progress towards attainment and maintenance of the PM_{10} NAAQS and are approvable.

Compliance Testing

As a method of determining compliance with the emission limitations, stack testing shall be performed in accordance with USEPA Methods 1–5, 40 CFR part 60, appendix A.[3]

Final Action on Findings and Orders

USEPA is approving the following emission limitations for the boilers at Youngstown Thermal:

B001: 0.02 pound of particulate emissions per million BTU

B002, B003, and B004: 0.14 pound of particulate emissions per million BTU

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on February 5, 1990. However, if we receive notice by January 8, 1990 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

[1] On July 1, 1987 (52 FR 24634), USEPA promulgated its new 10 micrometer based particulate matter (PM_{10}) National Ambient Air Quality Standard (NAAQS). States are required to submit plans which assure attainment and maintenance of the PM_{10} NAAQS.

[2] The PM_{10} standards eliminated the previous TSP NAAQS, although States must enforce TSP NAAQS until new PM_{10} SIPs are promulgated and the TSP SIPs replaced. It is now within the discretion of the State to determine whether revisions to the TSP SIP, based upon a TSP standard which has been removed, should be processed. The State, in the February 17, 1988, SIP revision submittal, has requested that USEPA process the Youngstown Thermal TSP SIP revision.

[3] Youngstown Thermal has installed additional particulate controls for its coalfired boilers which include new (or upgraded) multi-clone mechanical collectors and side-stream baghouses, along with associated fans, ductwork, and instrumentation.

This action has been classified as a Table 3 action by the Regional Administrator, under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1990. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Total suspended particulates.

Note—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

Dated: September 27, 1989.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1870 is amended by adding paragraph (c)(85) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(85) On February 17, 1988, and January 4, 1989, the Ohio Environmental Protection Agency Submitted a revision to the total suspended particulate SIP for Youngstown Thermal Corporation located in Youngstown, Ohio. This revision establishes a 0.02 lb/MMBTU emission limit for the one gas and Number 2 oil-fired boiler (B001) and a 0.14 lb/MMBTU limit for the three coal-fired boilers (B002, B003, and B004).

(i) *Incorporation by reference.* (A) Ohio Administrative Code (OAC) Rule 3745–17–01, effective in Ohio on October 1, 1983; Rule 3745–17–03, effective in Ohio on October 15, 1983; and Rule 3745–17–10, effective in Ohio on October 1, 1983, as they apply to Youngstown Thermal Energy Corporation in Youngstown, Ohio only.

[FR Doc. 89–28308 Filed 12–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–34; RM–5603, RM–6235]

Radio Broadcasting Services; Drakesboro and Madisonville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Madisonville, Kentucky, at the request of Madisonville Media, and Channel 280A to Drakesboro, Kentucky, in response to a counterproposal filed by Janice L. O'Brien. Channel 295A can be allotted to Madisonville in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 37–19–41 and West Longitude 87–29–56. Channel 280A can be allotted to Drakesboro in compliance with the minimum distance separation requirements with a site restriction of 6.6 milometers (4.1 miles) southeast in order to avoid a short spacing to Station WIKY(FM), Channel 281B, Evansville, Indiana. The coordinates are North Latitude 37–09–57 and West Longitude 87–00–41. With this action, this proceeding is terminated.

DATES: Effective January 18, 1990; The window period for filing applications will open on January 19, 1990; and close on February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media (202) 634–5530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–34, adopted November 13, 1989, and released December 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended by adding Drakesboro, Kentucky, Channel 280A, and Madisonville, Kentucky, Channel 295A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28616 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–587, RM–6471; RM–6629]

Radio Broadcasting Services; Comanche, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment is being made to correct an error that has been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, for Comanche, Oklahoma, is amended by removing Channel 244A and adding in its place Channel 245C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28617 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-237; RM-5191, RM-5546]

Radio Broadcasting Services; Greeneville and Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Colonial Heights, Tennessee, as that community's first FM service, at the request of Murray Communications. We have also dismissed the proposal to allot Channel 290A to Greeneville, Tennessee, filed by Burley Broadcasters, Inc., for its failure to continue to express an interest in the proposal. *See* 51 FR 23087, June 25, 1986. With this action, this proceeding is terminated.

DATES: Effective January 18, 1990; The window period for filing applications will open on January 19, 1990, and close on February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-237, adopted November 15, and released December 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Tennessee, by adding Colonial Heights, Channel 290A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28618 Filed 12-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 270, 280, 281, 282, 285, 290, 295, and 299

[Docket No. 80860-9229]

RIN 0648-AC47

Fish and Seafood Promotion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement the Fish and Seafood Promotion Act of 1986 (Act), as it pertains to seafood marketing councils for one or more species of fish or fish products. This rule governs the establishment and operations of such councils. Additional requirements applicable to the operations of the councils appear in the Act and continue to be applicable. This rule is intended to implement the Act and to provide a vehicle to strengthen the competitiveness of the United States fishing industry in the domestic and international marketplace; encourage development and utilization of all species of fish available for harvest by the United States fishing industry; encourage the utilization of domestically-produced fish through enhancement of markets, promotion and public relations; help the United States fishing industry develop methods to improve product quality and efficiency in the marketplace; develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and inform and educate the public about the nutritional value of fish in the diet.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Shirley V. Smith, Office of Trade and Industry Services, (301) 427-2358.

SUPPLEMENTARY INFORMATION: The Fish and Seafood Promotion Act of 1986, enacted November 14, 1986, authorizes a National Fish and Seafood Promotional Council and seafood marketing councils for one or more species of fish or fish products. The National Council has been established. It is authorized by the Act to enter into agreements with applicants to fund referenda to establish and terminate species-specific seafood marketing councils, coordinate their activities, and fund referenda to establish quality standards.

The Secretary will establish a council upon (1) application of particular sectors of industry to the Secretary of Commerce (Secretary) for establishment of a council; (2) favorable review of the application by the Secretary, and (3) passage of a referendum conducted by the Secretary among sector participants on the proposed charter. The Secretary will appoint members to a seafood marketing council from lists of nominees supplied by the industry. Councils are required to submit annual plans and budgets for species-specific marketing and promotion, including consumer education, research, and other activities of the councils. Councils are funded through self-assessment by certain segments of the industry represented on the councils. They are authorized to develop quality standards for the fish or fish products being promoted. Once quality standards are developed, the Secretary shall issue regulations in § 270.14 of this part governing the use of official identifiers associated with those standards.

The rule governs the establishment and operations of councils. Additional requirements applicable to the operations of councils appear in the Act and continue in effect.

Comments and Responses

On December 21, 1988, a proposed rule governing the establishment and operations of species-specific seafood marketing councils under the Act was published in the **Federal Register** (53 FR 51284). A copy of the proposed rule was also mailed to NMFS regional offices, regional fisheries development foundations, industry associations, individual companies, and other interested parties. Notice of availability of the proposed rule was also published in a number of fishing industry publications. Five responses were received (one from a fisheries development foundation, three from industry trade associations, and one from a county government) in response to the invitation to submit comments.

Comments and recommendations from the public covered several provisions of the proposed rule, e.g., application, petition, list of sector participants, referendum, nomination of council members, council boundary, assessments, quality standards, books, records and reports, and clarification of terms and definitions. All comments were considered. Some changes were made in the final rule as a result of the recommendations. Where recommendations were inconsistent with Administration policy or the intent of the Act, they were not accepted. The comments are summarized below with NMFS's response.

1. Definitions

Comment: One commenter recommended that a definition of "value" be added.

Response: The agency agrees and, for clarification purposes, has also included definitions of "consumer education," "fish," and "research" from the Act. The definition of "receiver" has been modified to indicate that acquiring fish means taking title to the fish and the definition of "sector participant" has been modified to include the fact that sector participants must meet eligibility requirements as defined by petitioners to vote in a referendum.

2. Application

a. *Comment:* One commenter suggested that the agency prepare a step-by-step guide that could be used in preparing an application to establish a council. This guide should include examples of those documents, such as council charters, required by the rule.

Response: The final rule contains a step-by-step guide regarding submission of an application that lists all of the requirements for the petition, charter, and list of sector participants. If additional information is needed by applicants, it may be requested.

b. *Comment:* A commenter suggested that in the section regarding review of application, the turn-around time for the Secretary to act on an application (approve/disapprove) be reduced to 90 days (from 180 days as stated in the proposed rule).

Response: The 180 day review period described in the proposed rule (§ 270.4) is the maximum allowed by the Act for the Secretary to render a final determination on the acceptability of the application. This amount of time is not unreasonable if the proposed council has a substantial number of participants whose eligibility would have to be verified by the Secretary, and/or if the application is deficient, thus requiring considerable revisions by the petitioners and further review and verification by the Secretary. In the case of a proposed council with a small number of participants and a complete application, the turn-around time could be less than 180 days. Clarifying language has been added to the final rule to indicate that if a negative final determination has been made by the Secretary and provided in writing to the petitioners who submitted the application, a corrected application may be submitted to the Secretary for approval. The Secretary then has 180 days from receipt of the corrected application to render a final determination on its acceptability.

3. Petition

a. *Comment:* A commenter requested a defintion of the term "sufficient resources" as it is used in the proposed rule, which requires that the petition contain a statement that, if a council is established, sufficient resources will be available to the council for initial administrative expenditures pending collection of assessments.

Response: NMFS agrees and has modified the final rule to provide examples of "sufficient resources," such as cash, donated office space, services, supplies, etc.

b. *Comment:* A commenter suggested that the requirement of 10 percent for the minimum value of fish handled by the applicants in a particular sector wishing to initiate a council is too high. The commenter suggested a 5 percent threshold.

Response: The 10 percent threshold is specified in § 210(d)(1)(B) of the Act (16 U.S.C. 4009) and is not discretionary.

4. List of Sector Participants

a. *Comment:* One commenter suggested that a provision be incorporated within the final rule allowing NMFS to assist with the development of the list of sector participants.

Response: It is recognized that development of the list of sector participants meeting the minimum requirements stated in the proposed charter may be difficult. The Act requires the petitioners, to the extent practicable, to develop such a list. The Secretary will, to the extent practicable, verify the validity of the petitioners' list, which may require adding names or deleting names provided by the petitioners. In addition, the agency will provide appropriate information in its possession of a non-proprietary nature to assist the petitioners in developing this list.

b. *Comment:* One commenter recommended a triennial rather than an annual update of sector participant data to reduce administrative costs.

Response: The requirement for an annual update of sector participant data is seen as beneficial to both the council and the Secretary. For example, the council will need a current list of sector participants in each sector represented on the council, particularly for the purpose of collecting assessments. The Secretary will need a current list for enforcement purposes and should the need arise for conducting a referendum to terminate a council.

5. Referenda

a. *Comment:* A commenter inquired whether the agency will provide a preliminary estimate of the cost of a referendum and thereby the size of the requisite bond in order for applicants to estimate the amount of bond that would be necessary.

Response: Once an application has been approved, the agency will be able to provide the applicants with an estimate of the total cost for conduct of the referendum. After the referendum has been conducted, the Secretary will notify the applicants of the exact cost. Although the cost of each referendum will vary according to the size of the council, there are some cost categories that will be common to the conduct of all referenda, e.g., verification of the list of sector participants, publication of the application in the **Federal Register**, printing and postage costs for the ballots, etc. In the event a public hearing is requested, this would also add to the cost.

b. *Comment:* One commenter suggested that the final rule should reflect the opportunity for the National Fish and Seafood Promotional Council to enter into agreements with applicants to fund a referendum to establish a species-specific seafood marketing council.

Response: The preamble to the rule contains the statement that the National Council may enter into agreements with one or more species-specific councils and is authorized by the Act to fund referenda to establish and terminate such councils and fund referenda to establish quality standards. (See Supplementary Information section of the preamble of this rule.)

c. *Comment:* A commenter suggested that an agreement between the applicant and the National Council to fund a referendum should be acceptable to the Secretary as suitable security to cover the cost of a referendum.

Response: The agency agrees and the final rule has been revised to reflect this.

d. *Comment:* A commenter requested that the sections of the rule regarding voting results be clarified to make clear that the 66 percent value criterion is based on the total value of fish and fish products handled in the sector by those eligible to vote, and not the value of the products handled by both eligible and ineligible sector participants.

Response: It is the agency's opinion that this 66 percent value criterion refers to the total value of fish and fish products handled in each sector by those who meet the eligibility requirements, as defined by the

petitioners, to vote in the referendum. The final rule has been modified to clarify this point.

e. *Comment:* A commenter asked in which sector or sectors a seafood company should vote if it is vertically integrated.

Response: A vertically integrated seafood company may qualify to vote in more than one sector, depending on the requirements established for each sector by the council. The final rule has been modified to request that the petitioners specify in the List of Sector Participants all sectors for which a sector participant meets the eligibility requirements to vote in a referendum. However, only one vote per company per referendum will be accepted, regardless of the number of sectors for which the participant may qualify. The ballot for each referendum will request that each person voting certify in which sector he/she is voting in that particular referendum. This certification by sector participants voting in a referendum will be important to the Secretary and the council in order to determine the success or failure of a referendum, since the percentage of sector participants voting favorably and the value of fish products they handled in a sector will determine the outcome of a referendum. (See § 270.7 Results of referendum of the final rule.)

f. *Comment:* One commenter inquired as to whether a referendum would pass if most of the sectors of a proposed council voted for the charter and one sector voted against it.

Response: The referendum to establish a council would pass if the votes cast in favor of the proposed charter constitute a majority of the sector participants voting in *each* and *every* sector. Further, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter that were handled during such period, in that sector, by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

6. Nomination of Council Members

Comment: One commenter suggested that the final rule include language specifically to include nominations for membership on a council from associations representing those sectors.

Response: Since an association is included in the definition of "person" (also referred to as sector participant in the Act), an association could nominate members for the council and be a sector participant on the council if it met the minimum requirements for participation on the council.

7. Geographic Area of a Council

Comment: A commenter asked if it is possible to define a geographic boundary for a council specific to imports.

Response: The geographic area may be drawn in any manner the council desires. However, there is only one geographic area per council, which covers all sector participants. There cannot be an area for importers and a different area for receiver/processors within the same council.

8. Assessments

a. *Comment:* One commenter asked if a council would have the authority to assess products from Total Allowable Levels of Foreign Fishing (TALFF) or joint-venture harvests.

Response: The agency believes that assessing joint-venture operations or TALFF harvests would not be within the scope of the Act. The Act states that any person meeting the minimum requirements specified in each charter as measured by income, volume, or other relevant factors, may participate in a council. The Act goes further to define persons as any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States. Based on these definitions, owners of foreign vessels harvesting under a TALFF allocation and receiving fish from U.S. harvesting vessels under joint-venture permits cannot be council participants, and therefore, cannot be assessed.

Further, the Act provides that only receivers or importers, or both, may be assessed. Foreign fishing vessels operating under a TALFF allocation involve a foreign flag fishing vessel and a foreign receiver, who may not be assessed. Joint-venture operations involve an American flag fishing vessel selling to a foreign receiver, who may not be assessed. If an American partner in a joint-venture operation acts as a receiver on behalf of the foreign partner, in order for the American partner to be assessed for joint-venture products it would have to be shown that the American partner actually took possession (title) of the product. The definition of "receiver" in the final rule has been modified to indicate that "acquiring" fish or fish products means taking possession of or title to same.

b. *Comment:* Another commenter asked if products of importers who are members of a council, conducting business outside the boundary of a council, are assessed.

Response: No. Only those products of importer participants that are entered or withdrawn from a warehouse for commercial purpose within the geographic area of a council may be assessed. If council participants conduct business over a large area, this might argue for a larger geographic area for a council or even a national council.

c. *Comment:* One commenter asked if products from outside the geographic boundary of a council are then brought into this area, how and at what point, if any, are they assessed? Do these products, in essence, become imports?

Response: Domestic products harvested within the geographic area of a council are assessed at the point receivers receive them. Products are classified as imports only if they are brought into the geographic area covered by the council from outside of the United States in accordance with the customs laws of the United States. Imported products are assessed at the time they are entered or withdrawn from a warehouse for commercial purposes. If the product is harvested by a domestic vessel, processed aboard a foreign vessel, then transhipped back to a domestic vessel for landing in the United States, that product *may* be considered an import by the U.S. Customs Service, depending upon the degree of processing aboard the foreign vessel.

d. *Comment:* A commenter asked how importers would be treated who are members of a council, maintaining offices within its boundary, but bring no products within the boundary.

Response: Imported products will be assessed only if they are brought into the geographic area of a council for commercial purposes. If only administrative offices of the importer are located within the geographic area of a council, and no product is moved within that area, no assessment would be collected and there would be no need for that importer to be involved in the council.

e. *Comment:* Another commenter asked if product taken on consignment could be assessed.

Response: No. Product taken on consignment would be assessed when it leaves a warehouse for commercial purposes as a result of a financial transaction between a buyer and seller.

f. *Comment:* One commenter asked if a procedure could be established to ensure that receivers of product, subject to assessment, report accurate information to a council for assessment purposes, and if the council has authority to establish such a procedure.

Response: Each council has the authority to establish procedures to update its records regarding value of product handled by its sector participants and other appropriate information. In addition, the Act states that sector participants shall make available to the Secretary such information and data as are necessary for the effectuation, administration, or enforcement of this Act or any order or regulation issued pursuant to this Act. Although proprietary information must be maintained on a confidential basis by the Secretary or other officers and employees of the Department of Commerce, the Act states that if a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this Act is violating such assessment, order or regulation, the council may refer the matter to the Secretary. Whenever a matter has been referred to the Secretary by a council and the Secretary or the Attorney General fails to take appropriate action within 60 days of such referral, the council may, upon filing notice with the Secretary or Attorney General and other interested parties, bring an action in its own name.

g. *Comment:* With respect to the requirement that the notice of assessment contain "the amount of the assessment," a commenter inquired if this is to be in the form of a rate, which will be applied to the appropriate volume of product handled. Or, the commentor asked, will the person subject to assessment have declared a volume to the council and the council in effect is sending him a invoice?

Response: This cannot be answered at this time. The method of collecting assessments is required to be developed by the applicants and specified in the proposed charter for each council. The Secretary reviews and approves each charter or charter amendment. The amount of the assessment may be a rate based on a percentage of cost or on a fixed amount per unit of volume or weight (pounds, metric tons, gallons, etc.) of product handled. A new section, Method of imposing assessments (Section 270.16), has been added to the final rule to clarify this issue.

h. *Comment:* A commenter requested that the agency define the term "value." Does it means purchase value, i.e., the amount paid for the product at purchase by the sector participant, or sales value?

Response: The value of fish and fish products is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units as the price a receiver pays to a harvester or an importer pays to a foreign supplier. Value may also be expressed in units of weight or volume, e.g., pounds, metric tons, gallons, etc.

i. *Comment:* A commenter asked if it would be possible to base assessments on weight or volume rather than value.

Response: It is the agency's opinion that petitioners may establish an assessment rate based on value, which may be expressed in monetary units or units of volume or weight. For example, an assessment could be based on a percentage of cost such as 2 percent per $1000 of the initial purchase price of the product. It could also be based on a fixed amount per unit of weight or volume, e.g., $.01 per pound or $.02 per gallon.

9. Books, Records, and Reports

Comment: One commenter recommended that books and records should be maintained for 3 years, except where a council is dissolved in less than 3 years.

Response: The agency has determined that books and records of a council must be maintained for a minimum of 3 years even if a council is terminated in less than 3 years. The purpose of this requirement is to enable the Secretary to ensure that all remaining business of the terminated council is concluded in an orderly manner. The 3-year time limit is in accordance with OMB guidelines for implementing the Paperwork Reduction Act.

10. Quality Standards

a. *Comment:* Section 270.13(g) of the proposed rule stated that "[n]o quality standard adopted by a council may be used in the advertising or promotion of fish and fish products as being inspected by the United States Government unless the standard requires sector participants to be in the National Seafood Inspection Program (NSIP) and the product has been inspected or is under an NSIP-approved inspection program." A commenter recommended that because of the development of a seafood surveillance program for all seafood products, it would be appropriate to insert the phrase "or equivalent Federally-approved inspection program" after NSIP.

Response: It is not the agency's intent to include references to programs that are not currently in place. Designation of NSIP refers to the current U.S. Department of Commerce voluntary seafood inspection program only. The final rule has been changed to indicate this.

b. *Comment:* One commenter requested clarification as to what is meant by the provision in the proposed rule that the intent of quality standards may not be to "discriminate" against importers who are not members of the council, and that quality standards may not be developed for the purpose of creating non-tariff barriers. It was also unclear to this commenter why a quality standard must be compatible with the General Agreement on Tariffs and Trade (GATT) since these quality standards are not mandatory and no one will be prevented from selling product due to quality standards adopted by a council.

Response: "Discriminatory" quality standards are those standards that might directly or indirectly prevent foreign products from competing with U.S.-produced products. It is recognized that the "intent" of a quality standard may be difficult to establish. Although quality standards are not mandatory, the use of the identifier associated with quality standards adopted by a council will be Federally regulated. This identifier certifies that the product met certain quality standards when the identifier was affixed to it. Since the Secretary is authorized to approve/disapprove the quality standards and promulgate regulations governing the use of the identifier should the referendum to adopt the standard pass, it is important that these standards be consistent with U.S. obligations under the GATT.

11. Other

a. *Extension of Comment Period.*

Commeht: One commenter requested an extension of the 60-day time period for public comment on the proposed rule to address pertinent issues which may arise at the completion of the Seafood Marketing Council feasibility studies. The commenter suggested that the language of the proposed rule may not cover some aspects critical to the running of a successful referendum and the formation of a council.

Response: An extension of the comment period is not warranted. Issues related to unique aspects associated with particular councils will be dealt with on a case-by-case basis in accordance with the Act. If circumstances dictate, the final rule can be amended in the future.

b. *Positive Support for Councils.* One commenter wrote in support of seafood marketing councils in the New England area.

c. *Time Period Covered by Assessment.* Paragraph 270.15(a) of the proposed rule contained several items

that must be included in the "Notice of assessment." One item, the period of time covered by the assessment, was inadvertently omitted. The final rule has been modified to include this requirement.

Changes from the Proposed Rule

This final rule contains only minor changes from the proposed rule. Most changes have been discussed in the Comment and Discussion section of this notice. In some instances, the final rule has been recognized and certain of the Act's requirements have been added to the regulatory text. This was done to make the regulations more readable.

Classification

The Under Secretary for Oceans and Atmosphere, NOAA, reviewed this rule in accordance with Executive Order 12291 and determined that it is not a "major rule" requiring a regulatory impact analysis. This determination was made because this action is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certifed to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the rule will not have a direct regulatory impact on the general public, industry, or small businesses since it only establishes procedures and requirements for preparing an application for a council charter and for conducting activities necessary to establish and operate species-specific seafood marketing councils. The rule does not require industry action and does not impose significant direct costs on small entities. Therefore, a regulatory flexibility analysis has not been prepared. If individuals do decide to take action under the Act, it would be done on a voluntary basis and any costs for consulting with members of the industry on the application would likely be minor. It is unlikely that the costs would be so great as to affect a firm's financial condition, cash flow position, liquidity position, or its ability to remain in the industry.

Individual councils, once established, may have an impact on small entities, but this cannot be determined prior to receipt of an application for a proposed charter with ranges of assessments based on volume, income, etc., of sector participants to be involved in a council. Specifically, the imposition of assessments on certain members of the industry could have an effect on a firm's financial situation. Any other costs or requirements that would impose a cost on industry would also have to be considered and analyzed. Since these parameters will vary with each application, a determination of impact will be made on a case-by-case basis as applications for council charters are received. If a significant economic effect on a substantial number of small entities is involved, the agency will prepare initial and final regulatory flexibility analyses.

This rule is being made effective immediately upon publication. Since the rule establishes procedures and requirements for preparing applications for charters and for conducting activities necessary to establish and operate species-specific seafood marketing councils, it is not a substantive rule for which section 553(d) of the Administrative Procedure Act requires a 30-day delay in effective date.

The information collection requirements subject to the Paperwork Reduction Act (PRA) contained in this rule have been approved by the Office of Management and Budget under Control Number 0648–0215. The estimated reporting time for the collection requirement in § 270.3 is 320 hours, with an average of 320 hours per response. All other information requirements in the rule are imposed on the councils, once they are established. The estimated reporting time for these information requirements varies from 1 to 160 hours per response, with an average reporting time of 6.9 hours per responses. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this information collection and estimate of reporting time, including suggestions for reductions, should be sent to both the Office of Trade and Industry Services, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Paperwork Reduction Project 0648–0215, Washington, DC 20503.

This rule does not have the potential for a significant effect on the environment and is therefore exempt from the preparation of either an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 270

Administrative practice and procedure, Fish, Marketing and Seafood.

For the reasons set out in the preamble, title 50 CFR chapter II is amended as follows:

1. Subchapter H consisting of parts 280, 281, 282, and 285; subchapter I consisting of part 290; subchapter J consisting of part 296; and subchapter K consisting of part 299 are redesignated as subchapters I, J, K, and L, respectively.

2. A new subchapter H, consisting of part 270, is added to read as follows:

SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

Sec.

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270.21 Dissolution of councils.

Authority: 16 U.S.C. 4001–4017.

§ 270.1 Scope.

This part describes matters pertaining to the establishment, representation, organization, practices, and procedures of seafood marketing councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

Act means the Fish and Seafood Promotion Act of 1986 (Pub. L. 99–659) and any subsequent amendments.

Consumer education means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

Council means a seafood marketing council for one or more species of fish and fish products of that species established under Section 210 of the Act (16 U.S.C. 4009).

Fiscal year means any 12-month period as shall be recommended by a council and approved by the Secretary.

Fish means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

Harvester means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

Marketer means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

National Council means the National Fish and Seafood Promotional Council established by Section 205 of the Act (16 U.S.C. 4004).

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier) or it may be expressed in units of weight or volume (pounds, gallons, etc.).

§ 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants, as described in the proposed charter, may file an application with the Secretary for a charter for a seafood marketing council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910. Applications should not be bound.

(b) The application consists of three parts:

(1) A petition or document requesting the Secretary to establish a council;

(2) A proposed charter under which the proposed council will operate; and

(3) A list of eligible referendum participants.

(c) Content of application.

(1) *Petition or requesting document.* The petition or requesting document submitted by the applicants to the Secretary requesting that the council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners. The petition or requesting document must also include a statement that, if established, the council will have sufficient resources, (e.g., cash, donated office space, services, supplies, etc.), available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter*—A proposed charter must contain, at a minimum, the following information:

(i) The name of the council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the council will implement marketing and promotion plans under the Act. (The American Fisheries Society's "List of Common and Scientific Names of Fishes from the United States and Canada" (latest edition) or where available, an appropriate volume of its "List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada" (latest edition) should be used as the authority for all scientific and common names;

(iv) A description of the geographic area (State(s)) within the United States covered by the council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the council. (The number of council members should be manageable, while ensuring equitable geographic representation. The term for members shall be 3 years. Initially, to ensure continuity, half of the members' terms shall be 2 years and half shall be 3 years. Reappointments are permissible);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in

business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates under Section 213 of the Act (16 U.S.C. 4012), based on a fixed amount per unit of weight or measure, or on a percentage of cost of the product handled;

(ix) The proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds, including interest earned, to sector participants subject to assessment who request the same in accordance with the time limits specified in Section 215 of the Act (16 U.S.C. 4014);

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairperson of the council; and

(xvii) A provision that members of the council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the council.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter. The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the petitioners in developing the list of sector participants.

(Approved by the Office of Management and Budget under control number 0648-0215)

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a council, the Secretary will:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3 of this part and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the council. The Secretary may require additional information from the applicants or proposed participants in order to verify eligibility. The Secretary may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If the Secretary finds minor deficiencies in an application that can be corrected within the 180-day review period, the Secretary will advise the applicants in writing of what must be submitted by a date certain to correct the deficiencies.

(d) If the Secretary makes a final negative determination, on an application, the Secretary will advise the applicants in writing of the reason for the determination. The applicants may submit another application at any time thereafter. The Secretary then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under § 270.4 of this part, the Secretary, within 90 days after the date of the last affirmative determination, shall conduct a referendum on the adoption of the proposed charter. The Secretary will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum. A written agreement between the petitioners and the National Fish and Seafood Promotional Council to fund the referendum is also considered acceptable security. The Secretary will initially pay all costs of a referendum to establish a council. Within 2 years after establishment, the council must reimbuse the Secretary for the total actual costs of the referendum from assessments collected by the council. If a referendum fails to result in establishment of a council, the Secretary will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of Government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum. Costs associated with each referendum may vary according to the number of sector participants and locations, and whether a public meeting is requested.

(b) No less than thirty (30) days prior to holding a referendum, the Secretary will—

(1) Publish (by such means that will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish council.* The Secretary will, by order, establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(b) *Unfavorable vote to establish council.* If a referendum fails to pass in any sector of the proposed council, the Secretary will not establish the council or approve the proposed charter. The Secretary shall immediately recover the cost of conducting the referendum according to Section 270.5(a) of this part.

(c) *Notification of referendum results.* The Secretary will notify the applicants of the results of the referendum and publish the results of the referendum in the **Federal Register** and local media of the geographic area of the proposed council.

§ 270.8 Nomination of council members.

Within 30 days after a council is established, the Secretary will solicit nominations for council members from the sectors represented on the council in accordance with the approved charter. If the harvesters and receivers represented on the council are engaged in business in two or more States, but within the geographic area of the council, the nominations made under this section must, to the extent practicable, result in equitable representation for those States. Nominees must be knowledgeable and experienced with regard to the activities of, and be or have been actively engaged in the business of, the sector that such person will represent on the council. Therefore, a résumé will be required for each nominee.

§ 270.9 Vacancies and removal of council members.

(a) A vacancy on a council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(b) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the council by the Secretary if two-thirds of the members of the council recommend action. All requests from a council to the Secretary for removal of a council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Notice of council meetings.

The council shall give the Secretary the same notice of its meetings as it gives to its members.

§ 270.11 Books, records and reports.

The council must maintain books and records for a minimum of 3 years, prepare and submit to the Secretary semi-annually a progress report on implementation of the marketing and promotion plan and a financial report with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be conducted by an independent public accountant and submitted to the Secretary at the end of each fiscal year.

§ 270.12 Update of sector participant data.

The council shall submit to the Secretary at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.13 Quality standards.

Each council may—

(a) Develop and submit to the Secretary for approval, or upon the request of a council the Secretary will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a council by a majority of its members following a referendum conducted by the council among sector participants of the concerned sector(s). In order for a quality standard to be brought before council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The council must submit a plan to conduct the referendum on the quality standards to the Secretary for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by the Secretary shall be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps the Secretary deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) for fish and fish products.

(g) No quality standard adopted by a council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subsection also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the council must develop and file with the Secretary an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by § 270.14 of this part.

§ 270.14 [Reserved]

§ 270.15 Deposit of funds.

All funds collected or received by a council under this section must be deposited in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guarariteed as to principal and interest by the United States Government.

(b) The council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) Risk-free. All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are Federally insured in full.

(2) Short-term. Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) Collateralization. Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve bank. Otherwise another depository must hold the collateral.

§ 270.16 Method of imposing assessments.

Assessments shall be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved council charter. Assessment rates will be based on value which may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector shall be in the form of a percentage of the cost or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter shall be in the form of a percentage of the cost or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector shall be in the form of a percentage of the cost that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

§ 270.17 Notice of assessment.

(a) The council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which shall not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with the Secretary at any time during the time period to which the assessment (or the marketing and promotion plan) applies, including the right to request a hearing on the petition. The notice must state that the petition must be filed in accordance with the procedures in § 270.19 of this part.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in § 270.20 of this part. The notice must state that refunds may only be requested for a period covering 90 days or more from the date the assessment is collected and the council will make the refund within 60 days from the date of the demand.

§ 270.18 Payment of assessments.

Persons subject to an assessment must pay the assessment on the date due, whether or not they have demanded a refund or filed a petition of objection with the Secretary under § 270.19 of this part.

§ 270.19 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under Section 270.17 of this part may request the Secretary to modify or take other appropriate action regarding the assessment or plan by filing a written petition with the Secretary. Petitions of objection may be filed only upon one or more of the following grounds. That—

(1) the assessment;

(2) the marketing and promotion plan on which the assessment was based; or

(3) any obligation imposed on the petitioner under the plan,

is not in accordance with law. Filing a petition does not relieve the petitioner of the obligation to pay the assessment when it is due. A petition may be filed only during the time period to which the assessment, or the marketing a promotion plan, applies.

(b) *Contents of petition.* A petition must be addressed to the Secretary, U.S. Department of Commerce, Washington, DC 20230, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* The Secretary will promptly furnish the appropriate council with a copy of the petition.

(d) *Opportunity for informal hearing.*

(1) Any person filing a petition may request an informal hearing on the petition. The hearing request must be submitted with the petition.

(2) If a request for hearing is timely filed, or if the Secretary determines that a hearing is advisable, the Secretary will so notify the petitioner and the council. The petitioner, the council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. The Secretary may consolidate two or more hearing requests into a single proceeding.

(3) Final Decision. Following the hearing, or if no hearing is held, as soon as practicable, the Secretary will decide the matter and serve written notice of the decision on the petitioner and the council. The Secretary's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency.

§ 270.20 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the council a refund of such assessment, including interest earned. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the council and approved by the Secretary. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the council, that sector participant may no longer participate in a referendum or other business of the council during the remainder of the assessment rate period. However, if assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the council.

§ 270.21 Dissolution of councils.

If a referendum conducted under section 216 of the Act (16 U.S.C. 4015) results in the requisite number of votes cast in favor of terminating a council, the Secretary shall by order terminate the council subject to such terms and conditions as necessary to ensure that all remaining affairs of the council are concluded on an orderly basis.

Dated: November 30, 1989.

James E. Douglas,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-28423 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC-1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The proposed revisions include interpretations of the final rule amending Regulation B to implement Equal Credit Opportunity Act amendments on business credit (published elsewhere in this **Federal Register**) as well as interpretations about data collection.

DATE: Comments must be received on or before February 7, 1990.

ADDRESSES: Comments should refer to Docket No. EC-1 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2222 of the Eccles Building between 8:45 and 5:15 p.m. weekdays or the guard station in the Eccles Building Courtyard entrance on 20th Street NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202).

The Board has published an official staff commentary (12 CFR part 202 (Supp. I)) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and is updated periodically to address significant questions that arise. This notice contains the proposed fourth update, which the Board expects to adopt in final form in March 1990.

(2) Proposed Revisions

Most of the proposed revisions to the commentary interpret the final rule amending Regulation B to implement ECOA amendments primarily concerning business credit that were part of the Women's Business Ownership Act of 1988, Public Law No. 100-533, 102 Stat. 2689. (The final rule is published elsewhere in this **Federal Register**.) Other proposed revisions to the commentary address questions that have arisen about data collection, including some related to amendments to the Home Mortgage Disclosure Act and Regulation C.

Section 202.2—Definitions

2(g) Business Credit

In the recent amendments to the regulation, the definition of business credit has been moved from § 202.3(d)(1) to § 202.2(g). Accordingly, comment 3(d)-1 would be redesignated comment 2(g)-1.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

3(d) Government Credit

In the recent amendments to the regulation, § 202.3(e) has been redesignated § 202.3(d). Accordingly, comment 3(e)-1 on governmental credit would be redesignated comment 3(d)-1.

Section 202.5—Rules Concerning Taking of Applications

5(b) General Rules Concerning Requests for Information

Paragraph 5(b)(2). Comment 5(b)(2)-1 would be added to clarify that the term "state law," as used in § 202.5 (b)(2), includes the requirements of any political subdivision thereof. For example, a creditor may request, pursuant to a local ordinance, information required for monitoring purposes that is otherwise prohibited by § 202.5 (c) and (d). Comment 5(b)(2)-2 would be added to clarify that a lender exempt from certain reporting requirements under the Home Mortgage Disclosure Act but which voluntarily collects the information in accordance with the requirements of that act and Regulation C may do so without violating the ECOA.

Section 202.9—Notifications

9(a) Notification of Action taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(3). Section 202.9(a)(3), added by the recent amendments to the regulation, contains the rules for providing notifications on business credit applications. Comments 9(a)(3)-1 through -4 would give creditors further guidance in complying with this paragraph.

Section 202.10—Furnishing of Credit Information

Comment 10-1 would be revised to clarify that the scope of the section is intended to govern consumer credit only. The section addresses consumer credit accounts where credit histories were typically reported only in the husband's name, and married women who became divorced or widowed were left with no credit history. The section was not intended to apply to individual business credit applicants such as sole proprietors.

Section 202.13—Information for Monitoring Purposes

A cross reference to the commentary to § 202.5(b)(2) would be added as comment 13(a)-7.

List of Subjects in 12 CFR Part 202

Banks; Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

(3) Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend the official staff commentary to Regulation B (12 CFR part 202 Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

2. In § 202.2, comment 2(g)-1 and a heading would be added to read as follows:

§ 202.2 Definitions.

* * * * *

►*2(g) Business Credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.◄

* * * * *

3. In § 202.3, comment 3(e)-1 and the heading and comment 3(d)(3)-1 would be removed; comment 3(d)-1 and the heading would be revised to read as follows:

§ 202.3 Limited exceptions for certain classes of transactions.

* * * * *

*3(d) ►Government Credit—*1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For examples, credit extended to local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.◄

* * * * *

4. In § 202.5, comments 5(b)(2)-1 and 5(b)(2)-2 and a heading would be added to read as follows:

§ 202.5 Rules concerning taking of applications.

* * * * *

5(b) General rules concerning requests for information.

* * * * *

►*Paragraph 5(b)(2)*

1. *Local laws.* Information that may be collected pursuant to a state statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some transactions not covered by § 202.13. A creditor with assets under $30 million is not required to collect and report these data but may do so at its option under Regulation C without violating the ECOA or Regulation B.◄

* * * * *

5. In § 202.9, comments 9(a)(3)-1 through 9(a)(3)-4 and a heading would be added to read as follows:

§ 202.9 Notifications.

* * * * *

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

* * * * *

►*Paragraph 9(a)(3)*

1. *Coverage.* Application of the rules in this paragraph generally depend on the revenue size of a business credit applicant. A creditor may rely on the applicant's assertions about the revenue size of a business. Applications to start a business and applications by individuals applying for business-purpose credit are governed by the rules in § 202.9(a)(3)(i).

2. *Trade credit.* The term "trade credit" generally involves financing between a seller and a buyer of inventory or equipment.

3. *General compliance.* In complying with the notice provisions of the act and regulation, creditors offering business credit may follow the rules governing nonbusiness credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with § 202.9(a)(3)(i).

4. *Timing of notification.* Under § 202.9(a)(3)(ii)(A), a creditor is required in all cases to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.◄

* * * * *

6. In § 202.10, comment 10-1 would be revised to read as follows:

§ 202.10 Furnishing of credit information.

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to creditors that furnish credit information ►about consumer credit transactions◄ to credit bureaus or to other creditors. There is no requirement that a creditor furnish credit information on its accounts.

* * * * *

7. In § 202.13, comment 13(a)-7 would be added to read as follows:

§ 202.13 Information for monitoring purposes.

13(a) Information to be requested.

* * * * *

►7. *Data collection under Regulation C.* See comment 5(b)(2)-2.◄

Board of Governors of the Federal Reserve System, December 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28551 Filed 12-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-223-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, repair if necessary, and eventual modification. This proposal is

prompted by reports of cracks found during routine maintenance checks. This condition, if not corrected, could lead to failure of these brackets and subsequent structural and system damage to the airplane.

DATE: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–223–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918.
ailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking actions on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–223–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. There have been numerous reports of cracks found in outer shroud box aft hinge brackets during routine maintenance. Bracket failure may cause vertical movement of the inboard shroud box structure in the immediate area and subsequent fouling of the inboard flap top skin. This contact would be progressively loaded during airbrake deployment. When a bracket fails, the loads may transfer to the remaining supports and they may also eventually crack. This condition, if not corrected, could lead to complete failure of the aft hinge brackets and subsequent structural and system damage.

Airbus Industrie has issued Service Bulletin A300–57–142, dated December 17, 1986, which describes procedures for repetitive close visual inspections to detect cracks in the outer shroud box aft hinge brackets; and Service Bulletin A300–57–143, Revision 2, dated July 10, 1989, which describes procedures to replace the existing aluminum alloy brackets with new steel brackets (Modification 6661H1033). Accomplishment of this modification (replacement) terminates the need for the repetitive inspections. The French DGAC has classified these service bulletins as mandatory, and has issued Airworthiness Directive 89–091–094(B)R1, dated July 19, 1989, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, repair if necessary, and eventual modification, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required inspection and 27 manhours to accomplish the modification, and that the average labor cost would be $40 per manhour. The estimated cost for the modification kit is $4,840. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $401,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 6, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–57–142, dated December 17, 1986, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the outer shroud box aft hinge brackets, accomplish the following:

A. Prior to the accumulation of 5,000 landings or within the next 300 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a close visual inspection to detect cracks in the outer shroud box aft hinge brackets, in accordance with Airbus Industrie Service Bulletin A300–57–142, dated December 17, 1986.

B. If cracks are detected, prior to further flight, perform a close visual inspection to detect cracks or damage in the remaining supports (shroud box forward hinge brackets, inner shroud box forward attachments, and the attachment brackets at the inboard end of the inner box shroud box), the inner and outer shroud box structure in the vicinity of the failed bracket, and the top skin of the inboard flap, in accordance with the service bulletin.

1. If cracks or damage are found in the remaining supports, the inner and outer shroud box structure, or top skin of the inboard flap, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

2. Replace any cracked or failed brackets prior to further flight with improved aft hinge brackets, in accordance with Airbus Industrie Service Bulletin A300–57–143, Revision 2, dated July 10, 1989.

C. Within two years after the effective date of this AD, replace all existing aluminum alloy brackets with new improved steel brackets (Modification 6661H1033), in accordance with Airbus Industrie Service Bulletin A300–57–143, Revision 2, dated July 10, 1989. The repetitive inspections required by paragraph A., above, may be terminated following the replacement with the new steel brackets (Modification 6661H1033).

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 28, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–28568 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–542; RM–6695]

Radio Broadcasting Services; Monroeville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Monroe Broadcasting Company, Inc., licensee of Station WMFC–FM, Channel 257A, Monroeville, Alabama, seeking the substitution of FM Channel 257C2 for Channel 257A and modification of its license accordingly. Coordinates for this proposal are 31–30–51 and 87–17–55.

DATES: Comments must be filed on or before November 15, 1990, and reply comments on or before December 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd Powell & Taylor, 1764 Church Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–542, adopted November 15, 1989, and released December 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public shoud note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28619 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.

Date: January 10, 11, and 12, 1990.

Time:

9 a.m. to approximately 5 p.m. on January 10.

9 a.m. to approximately 5 p.m. on January 11.

9 a.m. to approximately 1 p.m. on January 12.

Place: Room 104–A, the "Williamsburg Room", USDA Adminstration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of biosafety guidelines for biotechnology research in agriculture and research priorities for agricultural biotechnology.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202 447–9165.

Done at Washingotn, DC, this 20th day of November, 1989.

Charles E. Hess,

Assistant Secretary, Science and Education.

[FR Doc. 89–28606 Filed 12–6–89; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Under authority of section 20 of the United States Grain Standards Act (Act), the Secretary of Agriculture established the Federal Grain Inspection Service Advisory Committee (Advisory Committee) on September 29, 1981. Public Law 100–518 extended the authority for the Advisory Committee through September 30, 1993, and the Advisory Committee was renewed by the Secretary of Agriculture on February 8, 1989, to provide advice to the Administrator of the Federal Grain Inspection Service (FGIS) with respect to the implementation of the Act.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, representing the interests of producing, processing, storing, merchandising, consuming, and exporting industries, including expertise on research related to the policies in section 2 of the Act. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

In accordance with Public Law 100–518, five of the initial 15 members were appointed for terms of 1 year, five were appointed for 2 years, and five were appointed for 3 years. Also alternate members were appointed for the same terms. The appointments of the members serving 1-year terms expire during February 1990. Hereafter appointments will be for 3-year terms except for replacements for those who resign. (One member resigned who was initially given a 3-year appointment.)

Nominations are needed for persons to serve on the Advisory Committee to replace (1) the five members and five alternate members whose terms expire during February 1990 and (2) the unexpired term (2 years) of the member who resigned.

Persons interested in serving on the Advisory Committee or persons interested in nominating persons to serve should contact in writing: Administrator, FGIS, Room 1094–S, P.O. Box 96454, Washington, D.C. 20090–6454, and request a copy of Form AD–755, which must be completed and submitted to the Administrator at the above address not later than (60 days after publication).

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of committee members and alternates will be made by the Secretary.

Dated: December 1, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–28614 Filed 12–6–89; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. OEE–1–89.02, OEE–1–89.03]

Franciscus Govaerts, Individually and Doing Business as Printlas Europa, Respondent; Order

On November 22, 1989, the Administrative Law Judge (ALJ) entered his Recommended Decision in the above-referenced matter. The Decision, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision of the ALJ.

Respondent's request to vacate the Temporary Denial Order that was originally issued on April 6, 1989 (54 FR 14667) and renewed by the Assistant Secretary for Export Enforcement on October 4, 1989 (54 FR 41660) is denied. There is reason to believe that the Temporary Denial Order in this case is required in the public interest to prevent an imminent violation of the Export Administration Act and the Export Administration Regulations.

This constitutes final agency action on this matter.

Dated: November 30, 1989.

Dennis Kloske,

Under Secretary for Export Administration.

Recommended Decision

Appearance for Respondent: Franciscus Govaerts, Printlas Europa, Torenakker 8–5731 CC, Mierlo, Holland.

Appearance for Agency: Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Avenue NW., Washington, DC 20230.

Background

This is an appeal from the renewal of a Temporary Denial Order against Appellants dated October 4, 1989 (54 FR 41660, October 11, 1989). The original *ex parte* denial order was issued on April 6, 1989 (54 FR 14667). That Order denied U.S. Export Privileges to these and a number of other parties. It was issued by the Assistant Secretary for Export Enforcement pursuant to authority delegated under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420) and the implementing regulations 15 CFR parts 768–799.

A Petition to Vacate that order was filed on behalf of Appellants on November 8, 1989.

Issue

The principal issue for consideration in this appeal is whether the record contains an adequate basis to sustain the extraordinary temporary denial order.

Discussion

In this appeal Appellant Govaerts raises essentially the same objections asserted to the Assistant Secretary in the renewal process. That agency action, which was published in the Federal Register at 54 FR 41660, October 11, 1989, sets forth in some detail the background, violations, other parties and Mr. Govaert's claim that he was the victim of a scam by Customs agents who lured him into committing the acts which constitute the violations charged. His criminal conviction and sentence foreclose denial of the essential facts which form the basis for the action taken here. *Spawr Optical Research Inc. v. Baldrige*, 649 F.Supp 1366 (D.D.C. 1986). As was recently noted in the denial of the *Roger Van Alphen* Docket No. OEE 1–89.01 (FR) who is named in the order with the Appellant, the background and facts are clear. The indication that substantial amounts of money may still be available to this cabal, in particular, warrants continued concern.

Conclusion

The evidence submitted, and that summarized in the publication of the renewal temporary denial order cited above, reflect a reasonable possibility that Appellants, together with the three other individuals, engaged in efforts to export controlled equipment unlawfully from the United States to Bulgaria. This record further reflects that Appellants and these other individuals may have the means to continue such efforts.[1] The Appellants fail to overcome that showing. I conclude that there is reason to believe that the Temporary Denial Order is required in the public interest to prevent an imminent violation of the Act and the Regulations.

I therefore recommend that the appeal be *Denied.*

Dated: November 22, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89–28547 Filed 12–6–89; 8:45 am]

BILLING CODE 3510–01–M

[Docket Nos. 9112–01, 9113–01]

Actions Affecting Export Privileges: Ji Wai Sun, Hua Ko Electronics Co., Ltd., Respondents

Summary

Pursuant to the two October 30, 1989 recommended Decisions and Orders of the Administrative Law Judge (ALJ), which are attached hereto and affirmed by me, Ji Wai Sun and Hua Ko Electronics Co., Ltd., and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of fifteen years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799). This action is further subject to the other conditions as enumerated in the recommended Orders of the ALJ.

Order

On October 30, 1989, the ALJ entered his recommended Decisions and Orders in the two above-referenced matters. The Decisions and Orders, copies of which are attached hereto and made a part hereof, have been referred to me for final action. Having examined the record and based on the facts in these cases, I hereby affirm the Decisions and Order of the ALJ.

This constitutes final agency action in these matters.

Dated: November 29, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Appearance for Respondent: Ji Wai Sun, 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong.

Appearance for Agency: G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a March 29, 1989 charging letter against Respondent Ji Wai Sun. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the "Act"), and the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1]

In the charging letter, the Agency listed fourteen 1983–84 export transactions from the United States to Hong Kong in which the Agency alleged that Respondent was involved. Various

[1] Though the record reflects a grievous criminal violation, it is devoid of a substantial showing respecting why this extraordinary remedy needs to be extended. Government Agents were present and observed the violations when they occurred through December 1988. The Appellant Govaerts entered a guilty plea to criminal charges in June 1989 and was sentenced on August 17, 1989. Others in the group were similarly identified and action initiated. On the face of the presentation there has been more than adequate opportunity to issue a charging letter. In these short turnaround appeals there is not time to address what may be valid concerns about the degree of culpability and appropriate sanction. The extensive compilation of materials presented here would appear to be more than sufficient to initiate the charging letter proceeding. It is noted that both in the initial and the renewal request Agency Counsel has indicated that the charging letter would be forthcoming. With Temporary Denial Orders remaining outstanding for in excess of seven years, this agency has a poor record on these matters. Congress' recent action in extending the time for such issuances and renewals will be jeopardized if they are not closely monitored. Agency Counsel should certainly make a clear showing of why charges have not been filed and when they will be.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesignated as 15 CFR parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

of these transactions, according to the charging letter, violated §§ 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.6 of the Regulations.

When Respondent failed to answer the charging letter, an order declared him to be in default; and that order directed the Agency to make the default submission prescribed by § 788.8 of the Regulations, which the Agency did. Respondent failed also to reply to a subsequent order to show cause why this matter should not be adjudicated on the basis of the Agency's default submission and of the order declaring him in default. To date, Respondent has made no submission in this proceeding.

Discussion

The Agency's default submission included evidence that its charging letter had been served on Respondent (Agency's July 18, 1989 Motion (hereinafter "Motion"), Exhibit 2). As noted, the charging letter alleged that Respondent violated the Regulations through his involvement in fourteen exports or attempted exports from the United States to Hong Kong that occurred from February 1983 to July 1984. The alleged violations were: Conspiracy (§ 787.3(b)); misrepresentation on export control documents (§ 787.5.(a)(1)(ii)); two attempted unauthorized exports (§ 787.3(a)); and an unauthorized export (§ 787.6). In its default submission, the Agency proposed a fifteen-year denial of U.S. export privileges as the appropriate sanction.

The Agency submitted a large amount of documentary evidence—106 exhibits—to make its case (Motion). In this same submission, the Agency withdrew its charge regarding the unauthorized export (*id.* 19) and one of the two attempted unauthorized exports (*id.*). The Agency in this submission withdrew also its charges concerning some of the fourteen listed export transactions (*id.* 16, 17, 19).

The thrust of the Agency's presentation was that Respondent worked with several other parties, located in the United States and Hong Kong, to arrange a series of exports to one of the parties, a Hong Kong firm. The subject matter of these exports was the commodities and technical data used in the production of semiconductor devices. The problem for the exports was that this Hong Kong firm was then regarded by the Commerce Department as an unacceptable end user for exports requiring a validated license, a fact known to Respondent and his alleged co-conspirators. Consequently, according to the Agency, they structured the exports so that the Hong Kong destination appeared to be a party other than this firm.

While the Agency advanced considerable detail regarding a number of the fourteen export transactions at issue, it pressed its case especially respecting a July 1984 attempted export (see, *e.g.*, Agency's July 18, 1989 Recommended Decision and Order 2–3). For this export, the Agency charged that Respondent and his co-conspirators made a material misrepresentation on the export license application (Motion Exhibits 102, 103), and that these commodities were controlled for national security reasons (Motion Exhibits 96–98). The Agency charged further that Respondent and his co-conspirators attempted an unauthorized export of these commodities (Motion Exhibits 104–106), and that the alleged conspiracy included the misrepresentation and the attempted export (Motion Exhibits 99–101).

The Agency did not state why it singled out this July 1984 export transaction for special attention among the fourteen alleged export transactions. The Agency's motive may have been that its withdrawal of several of the original fourteen export transactions (Motion 19) left this July 1984 transaction as the only one allegedly occurring within five years of the issuance of the March 1989 charging letter.

Conclusion

The Agency's presentation satisfactorily established a material misrepresentation on the export license application for the attempted July 1984 export (Motion Exhibits 102, 103), and a national security basis for the pertinent export licensing requirement (Motion Exhibits 96–98). The attempt to make the unauthorized export was also established (Motion Exhibits 104–106), as was Respondent's participation in a conspiracy that produced the misrepresentation and the attempt (*e.g.*, Motion Exhibits 99–101, 104, 106).

The Agency's presentation further demonstrated that the violations involved in this attempted July 1984 export repeated a pattern evident in other of the fourteen alleged previous export transactions. In sum, the conclusion follows that Respondent, in connection with this July 1984 export, violated § 787.3(a) of the Regulations (attempt), § 787.5(a)(1)(ii) (misrepresentaiton), and § 787.3(b) (conspiracy).

As a sanction, the Agency proposed a fifteen-year denial of Respondent's U.S. export privileges, stressing the deliberateness of the violations (Motion 21–22). The Agency's proposal is reasonable, and it shall be implemented in the Order set forth below.

As the Agency noted (Motion 3–4), Respondent is already subject to a ten-year denial period, in consequence of an Order based on another series of export transactions (53 FR 29352 (August 4, 1988)). That denial period began to run July 30, 1988, and the last five years were to be suspended, provided Respondent remained free of other violations. The fifteen-year denial period imposed by the instant Order will begin as soon as Agency action on this Order becomes final, and this Order contains no provision for suspension. Therefore these fifteen years will run concurrently with the remaining years of the earlier imposed ten-year denial, and these fifteen years will then continue until their full fifteen-year period has expired.

Order

I. For a period of fifteen years from the date of the final Agency action, Respondent: Ji Wai Sun, 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong, and all successors, assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 30, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Appearance for Respondent: Hua Ko Electronics Co., Ltd., 9 Dai shun Street, Tai Po Industrial Estate, New Territories, Hong Kong.

Appearance for Agency: G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th and Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

On March 29, 1989 the Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a charging letter against Respondent Hua Ko Electronics Co., Ltd. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the "Act"), and the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1]

The charging letter listed fourteen 1983–84 export transactions from the United States to Hong Kong in which, it alleged, Respondent was involved. Various of these transactions, according to the charging letter, violated §§ 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.6 of the Regulations.

Respondent failed to answer the charging letter. Consequently an order declared him to be in default, and directed the Agency to make the default submission prescribed by § 788.8 of the Regulations. The Agency made its default submission. A subsequent order directed Respondent to show cause why this matter should not be adjudicated on the basis of the Agency's default submission and of the order declaring Respondent in default. Respondent failed also to respond to that order and, to date, has made no submission in this proceeding.

Discussion

In its default submission, the Agency included evidence that its charging letter had been served on Respondent (Agency's July 18, 1989 Motion (hereinafter "Motion"), Exhibit 2). As noted, the charging letter alleged that Respondent violated the Regulations through its involvement in fourteen exports or atempted exports from the United States to Hong Kong that occurred from February 1983 to July 1984. The alleged violations were: conspiracy (§ 787.3(b)); misrepresentation on export control documents (§ 787.5.(a)(1)(ii)); two attempted unauthorized exports (§ 787.3(a)); and an unauthorized export (§ 787.6). In its default submission, the Agency proposed a fifteen-year denial of U.S. export privileges as the appropriate sanction.

The Agency's default submission comprised a substantial amount of documentary evidence—106 exhibits—to make its case (Motion). In this same submission, the Agency withdrew its charge regarding the unauthorized export (*id.* 19) and one of the two attempted unauthorized exports (*id.*). In this submission the Agency withdrew as well its charges concerning some of the fourteen listed export transactions (*id.* 16, 17, 19).

The Agency's thesis was that Respondent worked with several parties, located in the United States and Hong Kong, to obtain, through a series of exports from the United States, commodities and technical data used in the production of semiconductor devices. The problem in obtaining these exports was that Respondent was then regarded by the Commerce Department as an unacceptable end user for exports requiring a validated license, a fact known to Respondent and its alleged co-conspirators. Consequently, according to the Agency, they arranged the exports so that the Hong Kong destination appeared to be a party other than Respondent.

Although the Agency presented considerable detail regarding a number of the fourteen export transactions it alleged, it pursued its case especially respecting a July 1984 attempted export (see, *e.g.*, Agency's July 18, 1989 Recommended Decision and Order 2–3). The Agency charged that Respondent and its co-conspirators made a material misrepresentation on the export license application for this export (Motion Exhibits 102, 103), and that these commodities were controlled for national security reasons (Motion Exhibits 96–98). The Agency charged

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesignated as 15 CFR parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

further that Respondent and its co-conspirators attempted to export these commodities without proper authorization (Motion Exhibits 104–106), and that the alleged conspiracy existed regarding the misrepresentation and the attempted export (Motion Exhibits 99–101).

The Agency did not explain its emphasis on this particular July 1984 attempted export as against all others of the fourteen alleged export transactions. But the Agency's rationales may have been that, after the Agency withdrew several of the original fourteen export transactions (Motion 19), this July 1984 transaction remained as the only one allegedly occurring within five years prior to issuance of the March 1989 charging letter.

Conclusion

The Agency sufficiently documented its charge of a material misrepresentation on the export license application for the attempted July 1984 export (Motion Exhibits 102, 103), and of the national security basis for the licensing requirements for the commodities at issue (Motion Exhibits 96–98). The Agency's documentation also established satisfactorily its charge that an export lacking proper authorization was attempted of the commodities described in this application (Motion Exhibits 104–106). Finally, the Agency's presentation proved that Respondent participated in a conspiracy that produced the misrepresentation and the attempt (*e.g.*, Motion Exhibits 99–101, 104, 106).

The Agency's documentation demonstrated further that the violations involved in this attempted July 1984 export repeated a pattern evident in other of the fourteen alleged previous export transactions. In total, the evidence of record compels the conclusion that Respondent, in connection with this July 1984 export, violated § 787.3(a) of the Regulations (attempt), § 787.5(a)(1)(ii) (misrepresentation), and § 787.3(b) (conspiracy).

For a sanction, the Agency based its proposed fifteen-year denial of Respondent's U.S. export privileges on the deliberateness of the violations (Motion 21–22). The Agency has justified its proposed sanction, and it shall be implemented in the Order set forth below.

As the Agency noted (Motion 3–4), Respondent is already subject to a ten-year denial period, in consequence of an Order based on another series of export transactions (53 FR 29352 (August 4, 1988)). That denial period began to run July 30, 1988, and the last five years were to be suspended, provided Respondent remained free of other violations. The fifteen-year denial period imposed by the instant Order will begin as soon as Agency action on this Order becomes final, and this Order contains no provision for suspension. Therefore these fifteen years will run concurrently with the remaining years of the earlier imposed ten-year denial, and these fifteen years will then continue until their full fifteen-year period has expired.

Order

I. For a period of fifteen years from the date of the final Agency action, Respondent Hua Ko Electronics Co., Ltd., 9 Dai Shun Street, Tai Po Industrial Estate, New Territories, Hong Kong, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject ot the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or the export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose or, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 30, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-28540 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-201-801]

Postponement of Final Antidumping Duty Determination; Certain Steel Pails From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have permitted a request from the respondent in the antidumping duty investigation to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended.

Based on this request, we are postponing our final determination as to whether sales of certain steel pails from Mexico have occurred at less than fair value until not later than March 23, 1990.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 377–4136 or Bradford Ward at (202) 377–5288, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 15, 1989, we published a preliminary determination of sales at less than fair value of this merchandise. That notice stated that if the investigation proceeded normally, we would make our final determination by January 22, 1990.

On November 27, 1989, Envases de Plastico, S.A. de C.V., a respondent which accounts for virtually all exports of the subject merchandise to the United States, requested a postponement of the final determination in the antidumping duty investigation for an additional sixty days, pursuant to section 735(a)(2)(A) of the Act. Pursuant to 19 CFR 353.20(b)(1), if exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Consequently, we are postponing our final determination in this investigation until not later than March 23, 1990.

Public Comment: As the Department did not receive any requests for a hearing within ten days of publication of our preliminary determination, as provided for in § 353.38(b) of the Department's regulations, no hearing will be held in this investigation. Interested parties who wish to comment on the preliminary determination in the antidumping duty investigation may submit case briefs and rebuttal briefs, in accordance with § 353.38 of the Department's regulations.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by February 7, 1990. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by February 14, 1990. Written arguments will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: November 30, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28548 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-006]

Polypropylene Film From Mexico Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on polypropylene film from Mexico. Interested parties who object to this termination must submit their comments in writing not later than December 31, 1989.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Willams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1982, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on polypropylene film from Mexico (47 FR 54772).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on polypropylene film from Mexico for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by 19 CFR 355.25, the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than December 31, 1989, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by December 31, 1989, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28683 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of

an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,541,231, "Process for Reinforced Yarn with Glass Fiber Core", to Firesafe Products Corporation, having a place of business at 276 Fifth Avenue, New York, New York. The invention involves a process for producing a yarn with glass fiber cores and a staple fiber sheath that is relatively torque-free and balanced in the plied state and can be woven without slashing. The patent rights in this invention have been assigned to the United States of America.

The contemplated license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The contemplated license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-28622 Filed 12-6-89; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has applied for designattion as a futures contract market in natural gas. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before January 8, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYMEX natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Joseph Storer or Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The NYMEX originally applied for designation as a futures contract market in natural gas in March 1984, and that original proposal was published in the **Federal Register** on April 18, 1984 (49 FR 15255). In view of the substantive changes to the original application with the NYMEX's November 10, 1989, resubmission of the proposal and the major changes in the natural gas cash market since 1984, the Director of the Division believes that an additional opportunity for public comment on the proposed natural gas futures designation application is warranted.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on November 30, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-28530 Filed 12-6-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of Proposed Admendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, and 12586. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 701, Discovery—Disclosure by the Defense; R.C. M. 705, Pretrial Agreements—Procedure; R.C.M. 707, Speedy Trial; R.C.M. 908(b), Appeals by the United States—Pretrial Confinement of Accused Pending Appeal; R.C.M. 1113(a), Execution of Sentence—Confinement. The proposed changes would also amend section VII, part III (Military Rules of Evidence) by adding the following new rule: M.R.E. 707—Polygraph Examinations. The proposed changes would also amend the following Paragraphs, part IV (Punitive Articles): Para. 4e—Article 80 (Attempts)—Maximum Punishment; Para. 35c—Article 111 (Drunk or Reckless Driving)—Elements; Para 57d—Article 131 (Perjury)—Lesser Included Offenses; and Para. 96f—Article 134 (Obstructing Justice)—Sample Specification.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Theron," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable a law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of The Judge Advocate General (DAJA-CL), Department of the Army, Pentagon (Room 2D434), Washington, DC 20310-2213. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATT: Major Thomas O. Mason.

DATE: Comments on the proposed changes must be received not later than February 20, 1990 for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Thoams O. Mason, (202) 695-2193.

Dated: December 1, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaision Officer Department of Defense.

[FR Doc. 89-28544 Filed 12-6-89; 8:45 am]

BILLING CODE 3810-01-M

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DoD.

ACTION: Announce Membership of Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Mobilization Systems Planning Activity (DMSPA). the publication of the PRB membership is required by 5 U.S.C. 43149(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive performance appraisals and makes recommendations regarding performance and performance awards to the Director.

DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Garrett, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD(FM&P), Correspondence and Control Division, The Pentagon, Room 3E759, Washington, DC, telephone (703) 756-7916.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following register constitutes members of the Defense Mobilization Systems Planning Activity PRB who will serve one-year renewable terms effective November 29, 1989.

Mr. George Hoffman
Mr. Bruce J. Campbell
Dr. Michael L. Ioffredo
Mr. E. William Harding
Mr. Thomas M. Stanners

Dated: December 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89-28545 Filed 12-6-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Acceptance of Group Application Under Public Law 95-202 and DODD 1000.20; Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944 Through December 31, 1945

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944 Through December 21, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MRC), Washington, DC 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact Lt Col Harris, (202) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-28575 Filed 12-6-89; 8:45 am]

BILLING CODE 3910-01-M

Department of Army

Environmental Statement on Proposed Land Acquisition at Yakima Firing Center, WA; Extension of Public Comment Period

AGENCY: Department of the Army, DOD.

SUMMARY: The U.S. Army published a Draft Supplemental Environmental Impact Statement on the proposed land acquisition at the Yakima Firing Center in Kittitas County, Washington. The formal public comment period ended on 13 November 1989. The Army has received requests to extend the public comment period. Based on those requests, the Army has decided to extend the public comment period until 27 December 1989. Written comments should be forwarded to: Commander, Headquarters, I Corps & Fort Lewis, Attention: AFZH-DEQ (Mr. Stedman), Fort Lewis, Washington 98433-5000.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 89-28588 Filed 12-6-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Lennox Industries (F-018)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Application for an Interim Waiver from Lennox Industries' (Lennox) requesting relief from the existing Department of Energy (DOE) test procedures for furnaces regarding (a) blower time delay and (b) the determination of the off-cycle draft factor (Df) for Lennox's G20 and G20R series atmospheric furnaces.

Today's notice also publishes a "Petition for Waiver" from Lennox. The company's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification and in the determination of Df. Lennox seeks to test using a blower delay time of 45 seconds instead of the specified 1.5 minute delay between burner on-time and blower on-time and determining Df by tracer gas test measurements instead of the specified value of 1.0 for atmospheric burners. DOE is soliciting comments, data and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data and information not later than January 8, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-018, Mail Stop CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA) Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces.

The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determined that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

On August 1, 1989, Lennox filed an Application for Interim Waiver regarding (a) blower time delay and (b) the determination of Df. The first part of Lennox's application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 45 second blower time delay when testing its G20 and G20R series atmospheric furnaces. Lennox states that the 45 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by the Department to the Coleman Company, 50 FR 2710, January 18, 1985, the Magic Chef Company, 50 FR 41553, October 11, 1985, the Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and the Trane Company, 54 FR 19226, May 4, 1989. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

The second part of Lennox's application seeks an interim waiver from the DOE test procedure that requires the use of a 1.0 value for Df for an atmospheric furnace. The application states that the G20 and G20R series of atmospheric furnaces will incorporate an electromechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle. Lennox claims the restriction of the damper is similar to the restriction of flow caused by a power burner during the off-cycle. Thus, it should be given a similar Df value as allowed for power burners.

Lennox states that the current test method does not give credit for the energy savings due to the reduced flow and, as a result, provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox requests a waiver from the furnace test procedure to allow Df to be determined by tracer gas test measurements and to use the calculations set forth in the test procedures for power burners. When tested using the tracer gas method for determination of Df, which is allowed in the test procedure for power burners, Lennox claims the G20 furnace indicates an Annual Fuel Utilization Efficiency (AFUE) which averages at least 4.0 percent higher than is indicated when tested under the current method of test for atmospheric furnaces using the specified value of 1.0 for Df.

For the purpose of reducing off-cycle losses, there should be no difference between restricting the air flow through the heat exchanger by stopping the combustion air blower in a power burner and restricting the air flow by some sort of electromechanically operated damper. It appears likely that the Petition for Waiver will be granted for the determination of Df.

Because Lennox's Petition for Waiver requesting relief from the DOE test procedures concerning blower time delay and the determination of Df appear likely to be granted, the company's Application for Interim Waiver on these subjects is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waivers" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Lennox Industries.

Issued in Washington, DC, November 30, 1989.

Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

November 30, 1989.

Mr. Hal H. Rhea,

Vice President Research and Development, Lennox Industries, Inc., P.O. Box 877, Carrollton, Texas 75006

Dear Mr. Rhea: This is in response to your August 1, 1989, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces when testing the company's G20 and G20R series gas-fueled forced-air atmospheric furnaces regarding (a) blower time delay, and (b) the determination of off-cycle draft factor (Df).

Previous waivers for timed blower delay control have been granted to the Coleman Company, 50 F.R. 2710, January 18, 1985, Magic Chef Company, 50 F.R. 41553, October 11, 1985, Rheem Manufacturing Company, 53 F.R. 48574, December 1, 1988, and the Trane Company, 54 F.R. 19226, May 4, 1989. It appears likely that Lennox's Petition for Waiver will be granted.

For the purpose of reducing the off-cycle losses calculated by using Df, there should be no difference between restricting the air flow through the heat exchanger by stopping the combustion air blower in a power burner and restricting the air flow by some sort of electro-mechanically operated damper. It appears likely that Lennox's Petition for Waiver concerning the determination of the off-cycle draft factor, Df, will be granted.

Thus, Lennox's Application for an Interim Waiver concerning blower time delay and the determination of the value of Df is granted for the reasons stated above.

Lennox shall be permitted to test its G20 and G20R series of atmospheric furnaces on the basis of the test procedures specified in 10 CFR Part 430, with the modification set forth below.

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103-1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturer's recommended on-period draft.

(ii) Sections 8.9.2 and 8.9.2.1 of ANSI/ASHRAE Standard 103-1982 to be deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors Dp, Df, and Ds for Systems equipped with Power Burners or Draft Inducers or Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. Draft Factors Dp, Df, and Ds are to be determined as described in 9.4. The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

8.9.2.1 On power burner or induced draft systems not employing automatic stack dampers or systems with a stack damper and a draft diverter or draft hood or atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle, determine Df (the ratio of gas mass flow rate through the flue during the off-cycle to the gas mass flow rate through the flue during the on-cycle at identical temperatures) during the cool-down test described in 9.2.

(iii) The title of Section 9.4 of ANSI/ASHRAE Standard 103-1982 to be deleted and replaced with the following title:

9.4 Optional Test Procedures for Determining Draft Factors for Dp, Df, and Ds for Systems Equipped with Power Burners or Induced Draft Fans or for Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

(iv) Tables 6 and 7 of ANSI/ASHRAE Standard 103-1982 to be deleted and replaced with the following tables:

TABLE 6.—INDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS AND OIL-FIRED NON-CONDENSING FURNACES OR BOILERS UTILIZING INDOOR AIR FOR COMBUSTION AND DRAFT CONTROL

Type of burner	Units without a stack damper but with draft hood or draft diverter			Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
Atmospheric 1	2.4	1.0	1.0	3	1.4	1.0	1.0
Power° 2° +	[illegible]	0.4	1.0	[illegible]	1.4	0.4	0.85

	Units With a Stack Damper and						
	Draft hood or draft diverter			Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
[illegible]	2.4	1.0	Do	7	1.4	1.0	Ds
[illegible]	2.4	[illegible]	Do	[illegible]	1.4	0.4	(Do)(D_s')

where

$$D'_o = \frac{0.4+(0.4)\,(Do)(Do\text{-}1/(S/F),}{Do(1-1/(S/F))} \text{ if } Do>1/(S/F)$$

0.4, if $Do<1/(S/F)$

*Ds=Df=0.4

S/F=1

*See 11.4 second paragraph for direct exhaust units employing forced or induced draft, or power burners that utilize indoor air and have no draft control device.

*A power burner may incorporate a device on its air inlet which opens when the applicance is in operation and closes the air inlet when the appliance is in the standby condition.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 2 with Df=1.0 or as determined by the optional test procedure described in section 9.4.

TABLE 7.—INDOOR DRAFT FACTORS, OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS

Type of Burner	Units without a stack or flue damper		
	System No.	Df	
Atmospheric	9	1.00	
Power*	10+	0.40	
Units with a flue damper		Type of draft	S/F
System No.			
11	Df	None	1
	Do	Barometric Damper.	1.4
12	0.4 x Do	Draft Diverter.	2.4

*Also includes forced and induced draft equipment.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 10 with Df=1.0 or as determined by the optional test procedure described in section 9.4.

This interim waiver is based upon the presumed validity of statements and all allegations submitted by the company. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The interim waiver shall remain in effect until the Department of Energy issues a determination on Lennox's Petition for Waiver.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

August 1, 1989.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy

1000 Independence Avenue SW.,

Washington, DC 20585

Dear Sir: This is a petition for waiver submitted pursuant to Title 10 CFR Part 430.27. Waiver is requested from the uniform test method for measuring energy consumption of furnaces. In the interest of saving energy, Lennox Industries Inc. has developed a series of atmospheric G20 and G20R furnaces which will utilize a 45 second fixed time delay blower relay. Waiver is requested from the 1.5 minute time delay requirement between the burner ignition and indoor blower activation in the heat-up portion of the test as outlined in Appendix N to Subpart B of Part 430 (Section 9.3.1 of ANSI/ASHRAE 103–82). We have found that under the current method of test the flue gas temperature as measured in the stack reaches a value which is higher than will be seen in actual operation resulting in inaccurate comparative data. Our test data indicates that an energy savings of approximately 0.7% on the AFUE is achievable with this reduction in blower delay. Previous waivers for this type of timed blower delay control have been granted to the Coleman Company (50 FR 2710, January 18, 1985), Magic Chef Company (50 FR 41533, October 11, 1985), and Rheem Manufacturing Company (53 FR 48574, December 1, 1988).

We are requesting that Lennox Industries Inc. be permitted to test its G20 series and G20R series of furnaces on the basis of the test procedures specified in 10 CFR part 430 with the following modification:

Section 9.3.1 of ANSI/ASHRAE Standard 103–82 to be deleted and replaced with the following paragraph:

Gas—and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together, (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

The G20 and G20R series of atmospheric furnaces will also incorporate an electro-mechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle. This is similar to the restriction of flow caused by a power burner during the off-cycle. Because the damper is electro-mechanically operated, opening and closing times are of the same order as times required to bring a combustion air blower up to speed/prove air flow (10 sec) and for the blower impeller to slow down after power is removed (3 sec). The current test method does not give Lennox credit for the energy savings due to the reduced flow and as a result provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox Industries Inc. requests a waiver from the furnace test procedure as described in Appendix N to Subpart B of Part 430 to allow the off-cycle draft factor Df to be determined by tracer gas test measurements and calculations similar to a method that can be employed on power burners. Under the current test procedure as specified in Appendix N to Subpart B of Part 430 (Section 8.9.1 and Draft Factor Tables 6 and 7 of ANSI/ASHRAE 103–82) the draft factor Df is set to a default value of 1.00 for an atmospheric furnace. When tested by tracer gas measurement as is specified for power burners in Section 9.4 of ANSI/ASHRAE 103–82, the draft factor Df was found to be in the range of .20 to .30 resulting in a greatly reduced energy loss. Lennox requests that the draft factor Df be calculated as for a power burner as is specified in ANSI/ASHRAE 103–1982. In this way, the actual flow during the off cycle and the resultant energy loss would be determined by test measurement rather than by the assumed draft factor specified in the procedure.

When tested using the tracer gas method for determination of draft factor Df as described above, the G20 furnace indicates an Annual Fuel Utilization Efficiency (AFUE) which averages at least 4.0% higher than is indicated when tested under the current method of test for atmospheric furnaces using the default value of 1.00 for Df. We feel that the homeowner should be allowed to take advantage of the energy savings which this efficiency increase represents.

We are requesting that Lennox Industries Inc. be permitted to test its G20 series and G20R series of furnaces on the basis of the test procedures specified in 10 CFR part 430 with the following modifications:

(1) Sections 8.9.2 and 8.9.2.1 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors Dp, Df, and Ds for systems equipped with Power Burners or Draft Inducers or Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

8.9.2.1 On power burner or induced draft systems not employing automatic stack dampers or systems with a stack damper and a draft diverter or draft hood or atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle determine Df (the ratio of gas mass flow rate through the flue during the on-cycle at identical temperatures) during the cool-down test described in 9.2.

(2) The following section to be added to ANSI/ASHRAE Standard 103–1982:

8.9.2.3 Optional Methods for determining Draft Factors Dp, Df, and Ds on atmospheric systems with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle. Draft factors to be determined as is described in 9.4.

(3) The title of Section 9.4 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following paragraph:

9.4 Optional Test Procedures for Determining Draft Factors for Dp, Df, and Ds for Systems Equipped with Power Burners of Induced Draft Fans or for Atmospheric Systems with an Electro-Mechanical Device that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

4) Tables 6 and 7 of ANSI/ASHRAE Standard 103–1982 to be deleted and replaced with the following tables:

TABLE 6.—INDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS AND OIL-FIRED NON-CONDENSING FURNACES OR BOILERS UTILIZING INDOOR AIR FOR COMBUSTION AND DRAFT CONTROL

Type of burner	Units without a stack damper but with draft hood or draft diverter			Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
Atmospheric	2	1.0	1.0	3	1.4	1.0	1.0
Power* 2*+	2	0.4	1.0	4	1.4	0.4	0.85

Units with a stack damper and								
Draft hood or draft diverter				Barometric draft control			
System No.	S/F	Df	Ds	System No.	S/F	Df	Ds
5	2.4	1.0	Do	7	1.4	1.0	Do
6	2.4	0.4	Do	8	1.4	0.4	(Do)(Dp')

where

0.4, if $Do < 1/(S/F)$

$$Dp' = \frac{0.4+(0.85\text{–}(0.4)(Do))(Do\text{–}1/(S/F)),}{Do91-1/(S/F))} \text{ if } Do > 1/(S/F)$$

*Ds=Df=-0.4

S/F=1

*See 11.4 second paragraph for direct exhause units employing forced or induced draft, or power burners that utilize indoor air and have no draft control device.

*A power burner may incorporate a device on its air inlet which opens when the appliance is in operation and closes the air inlet when the appliance is in the standby condition.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 2 with Df=1.0 or as determined by optional test procedure.

TABLE 7.—OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS

Type of burner	Units without a stack or flue damper		
	System No.	Df	
Atmospheric	9	1.00	
Power*	10+	0.40	
Units with a flue damper		Type of draft	S/F
System No.			
11	Df	None	1
	Do	Barometric Damper.	1.4

TABLE 7.—OUTDOOR DRAFT FACTORS, FACTORS DESCRIBING AIR FLOW RATE FOR GAS OR OIL-FIRED FURNACES/BOILERS INTENDED FOR INSTALLATION OUT-OF-DOORS; IN UNHEATED SPACES (SUCH AS AN ATTIC OR CRAWL SPACE); OR INTENDED FOR INDOOR INSTALLATION BUT EQUIPPED WITH A DIRECT VENT SYSTEM AND ALL CONDENSING FURNACES OR BOILERS—Continued

Type of burner	Units without a stack or flue damper		
	System No.	Df	
12	0.40 x Do	Draft Diverter.	2.4

*Also includes forced and induced draft equipment.

+An atmospheric furnace with an electro-mechanical device that restricts the flow through the heat exchanger in the off-cycle may be tested as a system 10 with Df=1.0 or as determined by optional test procedure.

At the initial meeting of ASHRAE SPC 103–1988 on June 28, 1989, it was recommended that the 103 standard be revised to allow tracer gas to be used on atmosphere furnaces as an optional method for determining draft factors. There were no objections, and a sub-committee is being formed to review the recommendation. We suggest that the SPC 103–1988 committee accept our proposed revisions and propose that DOE adopt the revised standard as the basis for the DOE test procedure.

Sincerely, Lennox Industries Inc.

Hal H. Rhea,

Vice President, Research and Development.

[FR Doc. 89–28612 Filed 12–6–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP89–161–004]

ANR Pipeline Co.; Proposed Changes in Gas Tariff Pursuant to Amendment To Motion To Place Tariff Sheets Into Effect on November 1, 1989

November 30, 1989.

Take notice that on November 22, 1989, ANR Pipeline Company (ANR) tendered for filing certain revised tariff sheets to be effective November 1, 1989. Such tariff sheets replace certain of the tariff sheets which were filed by ANR on October 31, 1989 with its "Motion to Place Substitute Tariff Sheets Into Effect on November 1, 1989", and adds other tariff sheets.

ANR states that this filing was made necessary by, and is in compliance with, the Commission's Order of October 31, 1989 herein (Order Granting In Part and Denying In Part Rehearing and Granting Clarification), which Order made it necessary to amend the tariff sheets filed with ANR's October 31, 1989 Motion, so as to change certain aspects of ANR's design of rates, with resultant change of rate levels, and of ANR's tariff terms.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28602 Filed 12–6–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–62084; FRL–3685–4]

Availability of Applications for the 1990 Award Cycle of the Asbestos School Hazard Abatement Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of applications for the 1990 award cycle of the Asbestos School Hazard Abatement Act (ASHAA) of 1984 program. The program was established to offer financial assistance to financially needy schools so that they may abate asbestos materials which pose a serious health hazard to building occupants. Assistance is offered in the form of loans and/or grants and is available for public and non-profit private elementary and secondary schools.

DATES: All complete applications must be submitted by Local Education Agencies (LEAs) to State ASHAA Designees by January 22, 1990, and by the States to EPA by February 2, 1990, to be considered for FY 90 funding awards.

ADDRESS: For obtaining an application package written request should be sent to: EPA ASHAA Coordination Center, c/o ATLIS Federal Services, Inc., 6011 Executive Blvd., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm E–545, 401 M St., SW., Washington, DC 20460, Toll free: 800–835–6700, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Asbestos School Hazard Abatement Act (ASHAA) to offer financial assistance to financially needy schools so that they may abate asbestos materials which pose a serious health hazard to building occupants. Assistance is offered in the form of loans and/or grants and is available for public and non-profit private elementary and secondary schools. Since 1985, over $201 million has been offered to Local Education Agencies (LEAs) for 2,194 abatement projects.

In November, Congress appropriated $50 million for the 1990 asbestos in schools program. Congress intended that Federal funds under the ASHAA loan and grant program be directed to school districts which have both the most serious asbestos hazards and the greatest financial need. To apply for these funds a school district must submit a 1990 ASHAA application in accordance with the following schedule: (1) LEAs must submit applications to State ASHAA Designees by January 22, 1990, and (2) States must submit applications to EPA by February 2, 1990.

An application package for the 1990 award cycle may be obtained through the ASHAA Coordination Center by calling the toll free line: 1–800–462–6706 or by making a written request to the EPA ASHAA Coordination Center at the address listed under the ADDRESS unit. The package includes a policy statement explaining the selection process, an application containing detailed instructions for applying for funds, and the addresses of the State ASHAA Designees to whom LEAs should submit their applications. Applications will be made available after December 6, 1989. EPA will announce 1990 award recipients before the end of May 1990.

Dated: December 1, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89–28611; Filed 12–6–89; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 29, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0299.

Title: Section 94.51, Time to Construct (Private Microwave).

Action: Extension.

Respondents: State or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 50 responses; 17 hours total annual burden; 20 minutes average burden per respondent.

Needs and Uses: Rule requires those licensees who are unable to construct their private microwave stations within 12 months to request an extension of time to construct their facilities. This information is used by Commission personnel to determine whether to grant an extension of time to construct.

OMB Number: 3060–0280.

Title: Section 90.633 (f) & (g), Conventional systems loading requirements (wide area systems).

Action: Extension.

Respondents: State or local governments, businesses, and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 15 responses; 15 hours total annual burden; 1 hour average burden per response.

Needs and Uses: This rule provides for the authorization of wide area or ribbon private radio communication systems upon an appropriate showing of need.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28531 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Reply Comments on AM Improvement Hearing

Reply comments in the matter of AM Improvement must be filed with the Secretary of the Federal Communications Commission before the close of business on Monday, December 18, 1989. These reply comments may be filed either in MM Docket No. 87–267 or in one of the pending AM dockets to which they relate.

The Commission may direct written questions to specific panelists who appeared at the November 16, 1989, *en banc* hearing. Copies of the questions and replies will be made a part of the record in MM Docket No. 87–267.

For further information on this matter please contact William Hassinger at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–28532 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Sunbelt Broadcasters	San Clemente, CA	BPH–850712G4	89–503
B. Southern California Broadcasting Company	Do.	BPH–850712NV	
C. San Clemente Broadcasting Corp.	Do.	BPH–850712SI	
D. Stephanie Rodriguez Vallejos	Do.	BPH–850712SM	
E. On The Beach Broadcasting	Do.	BPH–850712UP	
F. James Harden and Claudia Harden, A Partnership	Do.	BPH–850712VI	
G. Portola Broadcasting Corporation	Do.	BPH–850712VJ	
H. Pamela McClatchey	Do.	BPH–850711NT (Previously dismissed)	
I. Michael J. Miller d/b/a San Clemente FM Services	Do.	BPH–850712SH (Previously dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	B,C,D,E,F,G,
2. Site Availability	I
3. Environmental	B,C,E,F,G,
4. Comparative	A,B,C,D,E,F,G
5. Ultimate	A,B,C,D,E,F,G

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraph

1. To determine whether the proposals of B (Southern), C (SCBC), D (Vallejos), E (Beach), F (Harden) and G (Portola) are consistent with the minimum separation requirements of Section 73.207 of the Commission's Rules and, if not, whether circumstances exist which warrant waiver of the appropriate rule section.

[FR Doc. 89–28621 Filed 12–6–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following

FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board meeting:

Date of Meeting: December 20, 1989.

Time: 9 a.m.–4 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget, personnel and programs. The status of a review of Civil Defense Programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Sessions on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Acting Director.

[FR Doc. 89–28603 Filed 12–6–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

City of Los Angeles Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–206255–002

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, California Stevedore & Ballast Company.

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, P.O. Box 151, San Pedro, CA 90733–0101.

Synopsis: The Agreement reduces the assigned premises from 22.8 acres to 21.52 acres and reduces the monthly minimum guarantee from $121,600 to $114,773. The Agreement also provides that the monthly revenue sharing of wharfage, dockage, storage and demurrage shall be on a 50/50 from $1.00 until Port has received $143,467, then on a 75/25 basis thereafter (Port receives 25%).

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Poling,

Secretary.

[FR Doc. 89–28525 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

Port of Oakland Terminal Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–001953–007

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Matson Terminal, Inc. (Matson).

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, 66 Jack London Square, Oakland, CA 94607.

Synopsis: The Agreement amends the basic agreement to adjust Matson's rent for certain leased marine terminal facilities in the Port's 7th Street Terminal Area, pursuant to provisions set forth in the basic agreement. Matson will pay the Port $131,857.00 a month for the period covered by the Agreement.

Agreement No.: 224–001953A–002

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Matson Terminal, Inc. (Matson).

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, 66 Jack London Square, Oakland, CA 94607.

Synopsis: The Agreement amends the basic agreement to adjust Matson's rent for certain freight station facilities in the Port's 7th Street Terminal Area, pursuant to provisions set forth in the basic agreement. Matson will pay the Port $22,101.00 a month for the period covered by the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28553 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

West Coast/Middle East and West Asia Rate Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010748–008

Title: West Coast/Middle East and West Asia Rate Agreement.

Parties: American President Lines, Ltd., Dampskibsselskabet AF 1912 Aktieselskab, Aktieselskabet Dampskibsselskabet Svendborg.

Synopsis: The proposed amendment would delete India, Pakistan, Bangladesh, Sri Lanka and Burma from the scope of the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28524 Filed 12–6–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M–0491]

Sterling Drug Inc.; Premarket Approval of Original Biobrane® (Blue Label)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sterling Drug Inc., New York, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Original BioBrane® (Blue Label). After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 20, 1989, of the approval of the application.

DATES: Petitions for administrative review by January 8, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

SUPPLEMENTARY INFORMATION: On May 2, 1988, Sterling Drug Inc., New York, NY 10016, submitted to CDRH an application for premarket approval of Original BioBrane®, a biosynthetic wound dressing. The device is indicated for use as a temporary coverage of clean, excised, full-thickness burn wounds, and is intended to remain adherent until autografting is clinically appropriate.

On June 24, 1988, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 20, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 8, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–28573 Filed 12–6–89; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–90–8400]

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services, and the Agricultural and Livestock Service, Ministry of Agriculture of the Republic of Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, Department of Health and Human Services, and the Agricultural and Livestock Service, Ministry of Agriculture of the Republic of Chile. This MOU affirms the parties' cooperation in establishing and implementing emergency procedures to ensure that fresh fruit exported from Chile to the United States is safe and wholesome and is offered for entry into the United States in accordance with the Federal Food, Drug, and Cosmetic Act.

DATES: The agreement became effective October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

BEST COPY AVAILABLE

Dated: November 30, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Regarding

Cooperation in establishing and implementing emergency procedures to ensure the safety of fresh fruit exported to the United States from the Republic of Chile.

I. Purpose

The Food and Drug Administration ("FDA") of the Department of Health and Human Services of the United States of America, and the Agricultural and Livestock Service ("SAG"), (hereinafter the Parties), of the Ministry of Agriculture of the Republic of Chile, agree to cooperate to assure that fresh fruit exported from Chile to the United States is safe and wholesome, and is being offered for entry into the United States in accordance with the Federal Food, Drug and Cosmetic Act. Further, the parties have emergency procedures and this document establishes necessary communications to facilitate the resolution of problems.

II. Background

In consideration of the effects of the 1989 incident with fruit shipped from Chile to the United States, the potential impact on the public health, and the disruption of trade that it caused, the parties recognized the need to establish procedures to minimize the possibility of another such incident. The parties also agreed on the need to develop procedures that will minimize disruption of commerce if another such emergency should occur.

The Republic of Chile has instituted protective measures to avoid contamination or tampering of fresh fruit. The FDA has long maintained emergency procedures for handling situations with regulated products that threaten the health and safety of U.S. consumers. The FDA and the SAG have agreed to formalize their cooperative activities through this memorandum.

III. Responsibilities

A. Each Party will provide the other Party with a copy of its procedures for dealing with emergency situations involving fresh fruit that may present problems or concerns of major health significance.

B. When products subject to the regulatory authority of both parties are determined by either party to present a threat to public health, the finding party should promptly notify the other party by providing, the following information to the extent such information exists:

1. A description of the product sampled;
2. A description of the sampling procedure;
3. The name of vessel;
4. The pallet number;
5. Any other identifying codes and marks on products sampled;
6. A description of the methods of analysis and confirmation.

C. SAG agrees that it will enforce its emergency security regulations in Chile s necessary to assure the safety of fruit exported to the U.S. FDA will promptly notify SAG of any evidence that might warrant invoking those procedures. If that evidence consists of laboratory findings, efforts should be made jointly to verify those findings.

D SAG will verify that all the permanent security procedures to protect fresh fruit are being followed in relation to:

Agrichemical storerooms
Packing and selection plants (satellite plants)
Fruit processing centers and cold storage houses
Seaports and airports
Any laboratory used by SAG

E. The parties agree to consult immediately to maximize the protection of the public health and minimize the impact on commerce and to attempt to identify specific adulterated lots, whenever there is a well-founded suspicion of contamination or tampering.

F. FDA and SAG will exchange and provide information relative to known or suspected chemical contamination of fruit resulting either from the misuse of chemicals or from intentional tampering. Such information will be made available on request and may include:

1. Methods and procedures for sampling
2. Methods of analysis
3. Methods of confirmation
4. Specifications and tolerances
5. Reference standards
6. Procedures for check analysis
7. Routine inspection procedures
8. Laws and regulations
9. Name of the grower, packer, shipper, and receiver, as appropriate

IV. Liaison Officers

The Parties agree to transmit the information required under this agreement to the liaison officer identified below.

A. For FDA: Director, Division of Emergency and Epidemiological, Operations, HFC–160, Office of Regional Operations, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4667, Fax: 443–3757.

B. For SAG: Director of Plant Protection Division, 140 Bulnes Avenue, Santiago, Chile, Telephone: 6968500, Fax: 721812.

V. Entry Into Force, Duration, Extension, Amendment, Termination

This agreement enters into force upon signature by both parties and will remain in force for a period of 10 years. It may be renewed or amended by written consent of the Parties. It may be terminated by either Party upon thirty-day advance written notice to the other Party.

The Food and Drug Administration, Department of Health and Human Services, The United States of America.

Dated: October 27, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

The Agricultural and Livestock Service, Ministry of Agriculture of The Republic of Chile.

Dated: October 27, 1989.

Octavio Errazuriz,

Ambassador of Chile.

[FR Doc. 89–28574 Filed 12–6–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Program Announcement, Proposed Review Criteria, Funding Priority and Special Considerations for Special Project Grants to Schools of Public Health

The Health Resources and Services Administration (HRSA) announces acceptance of applications for Fiscal Year 1990 Special Project Grants to Schools of Public Health. This grant program is authorized under section 790A, title VII of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Public Law 100–607. Comments are invited on the proposed review criteria, funding priority and special considerations listed below.

Approximately $822,000.00 is available to fund 5 competitive grant awards.

Section 790A of the Public Health Service Act, as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects:

(1) For preventive medicine;

(2) For health promotion and disease prevention;

(3) For increasing the enrollment in such schools of public health of individuals from disadvantaged backgrounds; and

(4) To improve access and quality in health care.

"A school of public health" means a school located in the United States which has been accredited by an organization recognized by the Secretary of the U.S. Department of Education. The Council on Education for Public Health is the recognized accrediting organization.

Grants will be awarded on a competitive basis. Schools of public health are encouraged to focus on projects that address national or regional issues and problems described in: The Future of Public Health (Institute of Medicine Study); Promoting Health/Preventing Disease: Objectives for the Nation; and the Sixth Report to the President and Congress on the Status of Health Professions in the United States. PHS has sent the accredited schools of public health copies of these documents.

Some of the key public health education and training issues identified in these reports are: Substance Abuse; HIV/AIDS; Health Promotion and Disease Prevention; Geriatrics; Environmental Health; Personnel Shortages; Recruitment of Physicians, Scientists, Engineers, and Disadvantaged; and Training of Student to Work in Public Health Agencies.

Proposed Review Criteria

The HRSA proposes to review applications taking into consideration the following factors:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of Medicine study titled The Future of Public Health; Objectives for the Nation; and the Sixth Report to the President and Congress on the Status of Health Professions in the United States;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when aplicable; and
- Where there is an institutional plan and commitment for self-sufficiency when Federal support ends.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The Administration is not proposing a funding preference for Fiscal Year 1990.

Proposed Funding Priority for FY 1990

For Fiscal Year 1990, HRSA proposes to give a funding priority to projects that both involve trainees and have a greater percentage of underrepresented minority trainees involvement in their activities than the percentage of full-time equivalent underrepresented minority trainees enrolled in the school of public health during the previous academic year.

For purposes of this funding priority, the following definition applies. "Underrepresented minority" means a trainee who comes from a racial or ethnic group whose representation in the health professions discipline is a lesser percentage than its population parity in the United States.

Certain minority population groups continue to be underrepresented in the health professions and have insufficient access to health care. Therefore, increased underrepresented minority involvement will help promote equal access to health care. Accordingly, this funding priority is designed to promote, through special project grants to schools of public health initiatives that will encourage and support increased involvement of underrepresented minority health trainees.

Proposed Special Consideration for FY 1990

It is proposed to give a special consideration to applications which address the following areas of emphasis and issues:

(1) Substance abuse;
(2) HIV/AIDS;
(3) Geriatrics;
(4) Environmental health; and
(5) Training students to work in public health agencies.

These issues are discussed in The Future of Public Health (Institute of Medicine Study); Promoting Health, Preventing Disease: Objectives for the Nation (HHS Report); and The Sixth Report to the President and Congress on the Status of Health Professions in the United States.

The emphasis areas and issues identified above are current problems facing public health professionals in governmental, private and voluntary health agencies and organizations. Accredited schools of public health are in a unique position to develop and expand education and training programs for resources development to address these national and/or regional issues.

Interested persons are invited to comment on the proposed review criteria, proposed funding priority and proposed special considerations. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before January 9, 1990 will be considered before the final reveiw criteria, funding priority, and special consideration will be applied. No funds will be allocated or final selections made until a final notice is published stating whether the review criteria, funding priority and special considerations will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, MD 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions for this program are being submitted for OMB review.

Application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Officer at the above address.

Questions concerning the programmatic aspects of Special Project Grants to Schools of Public Health should be directed to: Chief, Public Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–09, Rockville, MD 20857, Telephone: (301) 443–6757.

The application deadline date is January 12, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) received on or before the deadline date, or

(2) postmarked on or before the deadline and received in time for

submission to the independent revelw group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program will be listed at 13.188 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100)

Dated December 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-28590 Filed 12-4-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, December 15, 1989, Building 31C, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on December 15 from 1 p.m. to 2 p.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 15 from 2 p.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would consitiute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days before the meeting due to changes in the schedule of the meeting.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita Palekar, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, Room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantive program information.

Dated: December 1, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28704 Filed 12-6-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 51 FR 8032, March 7, 1986, and 53 FR 2890, February 2, 1988) is amended to reflect the modification of some functions in the Food and Drug Administration.

FDA proposes to establish a Speechwriting Staff and a Management Staff in the Office of Public Affairs (OPA). In addition, the speechwriting function for the Commissioner will be transferred from the Office of Executive Operations to the new Speechwriting Staff. Establishing a Speechwriting Staff in OPA will allow for greater coordination of the Commissioner's speeches with other press initiatives. The Management Staff is being established to perform administrative activities in OPA.

Section HF-B Organization and Functions is amended as follows:

1. Insert new subparagraphs (e-4) and (e-5) reading as follows:

(e-4) *Speechwriting Staff (HFAJD).* Plans, develops, and coordinates projects to communicate broad and controversial issues to public, private, professional, academic, and international audiences.

Presents and develops authoritative Agency public policy positions in speeches, editorial documents, and other written material for use by the Commissioner.

Prepares speeches for the Commissioner, including drafting of texts and obtaining appropriate Agency clearances.

(e-5) *Management Staff (HFAJE).* Directs the effective utilization of all management resources by coordinating the management, facilities, budget, and equipment resources for the Office Public Affairs.

Reviews organizational, management, and administrative policies of the Office to appraise the efficiency and effectiveness of operations.

Identifies potential management problems and/or needs and plans, develops and conducts management studies.

2. Delete subparagraph (a-1), Office of Executive Operations (HFA-D) and insert a new subparagraph (a-1), Office of Executive Operations (HFA-D).

(a-1) *Office of Executive Operations (HFA-D).* Coordinates identification of and expedites development and implementation of the Agency's highest program priorities for the Commissioner.

Coordinates and facilitates, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the Agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key Agency officials on all activities that affect Agencywide programs, projects, and initiatives.

Performs special Agencywide assignments involving complex problems and issues related to Agency programs, strategies, and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed, and encompass the issues involved.

Reviews, analyzes, and evaluates pertinent aspects of the Agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing material, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and provides all Agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and responses to executive communication memoranda directed to, or of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate Agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's Agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the Agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Deputy Commissioner, including drafting of texts and obtaining appropriate Agency clearances.

Dated: November 14, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-28528 Filed 12-6-89; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of a computer matching program to comply with public law (Public Law) 100-503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing notice of a computer matching program that SSA conducts that is subject to the requirements of Public Law 100-503. The purpose of this publication is to meet the reporting and publication requirements of Public Law 100-503.

DATES: We filed a report of SSA's matching program that is subject to Public Law 100-503 with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on December 1, 1989. The matching program is effective as indicated in the notice that apprears in this publication below.

ADDRESSES: Interested parties may comment on this notice by writing to the SSA Privacy Officer, Social Security Administration, 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The SSA Privacy Officer at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 522a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records relating to such persons in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to aplicants and beneficiaries that their records are subject to matching;

(3) Verify match findings and provide a 30-day notice and opportunity to protest before reducing, suspending, or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board that must approve match agreements.

Public Law 100-503, as amended by Public Law 101-508, requires that we implement the above requirements by January 1, 1990.

B. SSA Computer Match Subject to Public Law 100-503

We have taken action to ensure that all of SSA's computer matching programs which were being conducted prior to enactment of Public Law 100-503 comply with the requirements of the law. Included below is a brief description of a match that SSA will be conducting as of January 1, 1990 or later. Also included in this publication is a detailed notice of the match.

- SSA Matching with Internal Revenue Service Address Data

Purpose: To enable SSA to obtain correct addresses for title II beneficiaries and title XVI recipients with outstanding overpayments.

Dated: December 1, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Notice of Computer Matching Program; Social Security Administration (SSA) Matching with Internal Revenue Service (IRS) Address Data

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is for SSA to obtain from IRS correct mailing addresses for selected title II beneficiaries and title XVI recipients. Individuals included in this matching program include those with outstanding overpayments but whose mailing address in SSA records is incorrect.

C. Authority for Conducting the Matching Program

Section 6103(m)(2) of the Internal Revenue Code provides for disclosure, upon written request, of a taxpayer's mailing address for use by officers, employees, or agents of a Federal agency for the purpose of locating such taxpayer to collect a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31 of the United States Code. SSA is authorized to recover overpayments from title II beneficiaries and title XVI recipients by sections 204 and 1631(b) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

SSA furnishes IRS with selected records from its Master Beneficiary Record, HHS/SSA/OSR, 09-06-0090 (last published in the Federal Register on May 1, 1986, page 16223) and from its Supplemental Security Income Record system of records, HHS/SSA/OSR 09-06-0103 (last published in the Federal Register on October 13, 1982, page 45635). The selected individuals include unlocatable and overpaid beneficiaries/recipients who are not currently receiving title II or title XVI payments. The IRS records consist of data on individuals maintained in the system of records, IRS 24.030, Individual Master File, Returns and Information Processing (last published in the Federal Register on March 1, 1988, page 6389).

E. Inclusive Dates of the Match

The matching program will begin on January 1, 1990, or 30 days after the matching program's agreement has been submitted to Congress, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments within 30 days from the date of publication to the SSA Privacy Officer, Room 3-D-1 Operations

Building, 6401 Security Boulevard, Baltimore, Maryland, 21235.

[FR Doc. 89-28591 Filed 12-6-89; 8:45 am]

BILLING CODE 4190-11

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2086]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 89-28569 Filed 12-6-89; 8:45 am]

BILLING CODE 4210-01-M

Submission of Proposed Information Collection to OMB

Proposal: Establishment of Ceiling Rent for Public Housing (FR-2529).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Public Housing Authorities and Indian Housing Authorities will use the information collected to determine if an alternative rent other than income-based rent should be charged tenants in public housing. The limit of the amount of rent these tenants should pay is in effect for no more than three years.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,291		1		17.166		22,161

Total Estimated Burden Hours: 22,161.

Status: New.

Contract: Edward C. Whipple, HUD, (202) 426-0744, John Allison, OMB, (202) 395-6880.

Dated: November 30, 1989.

Submission of Proposed information Collection to OMB

Proposal: Supplemental Application and Processing Form—Housing for the Elderly and Handicapped.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Borrowers of direct-loan or insured mortgage funds for multifamily housing for the elderly or handicapped will use the form to supply essential information concerning special services the borrower plans to provide (and separate budgets for these services).

Form Number: HUD-92013-E.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: One Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92013-e	400		1		.75		300

Total Estimated Burden Hours: 300.

Status: Extension.

Contact: Edward M. Winiarski, HUD, (202) 426-7624, John Allison, OMB, (202) 395-6880.

Dated November 30, 1989.

[FR Doc. 89-28569 Filed 12-6-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of secs. 12(c), 14(h)(8) and 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f), and the 1982 CNI Settlement Agreement of January 10, 1983, entered into pursuant to ANCSA and Secs. 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96-487, 94 Stat. 2371, 2475, 2531, will be issued to Chugach Alaska Corporation for approximately 127 acres. The lands involved are in the vicinity of Seward Meridian, Alaska.

Serial Number	Land Description	Approximate Acreage
AA-50379-7	T. 3 S., R. 10 E.	60
AA-50379-22	T. 2 N., R. 1 E.	67

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Times. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government or regional corporation, shall have until January 8, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 89-28576 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-JA-M

[WY-060-09-4120-17]

Public Notice of Availability for Drilling

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice of Availability of 232 Pages of Lithologic Logs, 106 Geophysical Logs, and 210 Pages of Quality Analyses for Coal Drill Holes. These holes were drilled between 1984 and 1987 using public funds by the Bureau of Land Management.

SUMMARY: Notice is hereby given that data for 106 coal drill holes are now available to the public for drilling in Campbell, Converse, Johnson, and Sheridan counties, Wyoming.

Reproduction of the data will be expedited through written request only. Copies of the data for interested parties will not be processed through telephone contact.

A list of the legal descriptions for the areas drilled is as follows:

T. 38 N., R. 74 W., SWSE, Section 1
T. 38 N., R. 74 W., SESW, Section 17
T. 39 N., R. 69 W., SESW, Section 2
T. 39 N., R. 69 W., NESW, Section 14
T. 40 N., R. 70 W., SWNE, Section 8
T. 40 N., R. 70 W., NENW, Section 20
T. 40 N., R. 70 W., NWNE, Section 29
T. 40 N., R. 70 W., NWSW, Section 29
T. 41 N., R. 70 W., NWSW, Section 9
T. 41 N., R. 70 W., NWSW, Section 11
T. 41 N., R. 70 W., SESW, Section 14
T. 41 N., R. 70 W., NENE, Section 18
T. 41 N., R. 70 W., NESW, Section 19
T. 41 N., R. 70 W., SWSW, Section 21
T. 41 N., R. 70 W., NWSW, Section 27
T. 41 N., R. 71 W., SW¼, Section 8
T. 41 N., R. 71 W., SESE, Section 8
T. 41 N., R. 71 W., NESW, Section 14
T. 41 N., R. 71 W., SENW, Section 14
T. 41 N., R. 71 W., SWNW, Section 15
T. 41 N., R. 71 W., Section 17
T. 41 N., R. 71 W., NESW, Section 17
T. 41 N., R. 71 W., Section 22
T. 41 N., R. 71 W., SWNW, Section 15
T. 41 N., R. 71 W., NWSE, Section 22
T. 41 N., R. 71 W., NENW, Section 28
T. 42 N., R. 71 W., NENE, Section 12
T. 43 N., R. 70 W., NESW, Section 5
T. 43 N., R. 70 W., NESW, Section 7
T. 43 N., R. 70 W., SWSE, Section 8
T. 43 N., R. 70 W., NWSW, Section 26
T. 43 N., R. 70 W., SWSW, Section 26
T. 43 N., R. 70 W., SESE, Section 27
T. 43 N., R. 70 W., NESW, Section 33
T. 43 N., R. 70 W., NWNE, Section 35
T. 43 N., R. 70 W., SWNE, Section 35
T. 43 N., R. 71 W., SWNE, Section 2
T. 43 N., R. 71 W., NESW, Section 7
T. 43 N., R. 71 W., NWSE, Section 11
T. 43 N., R. 71 W., SWNE, Section 13
T. 43 N., R. 71 W., SWSW, Section 25
T. 43 N., R. 72 W., SENE, Section 12
T. 44 N., R. 70 W., SWNE, Section 34
T. 44 N., R. 70 W., SWNE, Section 35
T. 44 N., R. 71 W., NENE, Section 3
T. 44 N., R. 71 W., NESE, Section 19
T. 44 N., R. 72 W., SWSE, Section 5
T. 44 N., R. 72 W., SWNW, Section 28
T. 45 N., R. 70 W., NESW, Section 10
T. 45 N., R. 70 W., SENW, Section 15
T. 45 N., R. 70 W., NESE, Section 19
T. 45 N., R. 70 W., NESW, Section 21
T. 45 N., R. 70 W., SWSE, Section 27
T. 45 N., R. 70 W., NENE, Section 28
T. 45 N., R. 70 W., NESE, Section 30
T. 45 N., R. 70 W., SESE, Section 34
T. 45 N., R. 71 W., NESW, Section 11
T. 46 N., R. 70 W., SESE, Section 5
T. 46 N., R. 70 W., NWSE, Section 5
T. 47 N., R. 71 W., NWNE, Section 17
T. 47 N., R. 71 W., NWNW, Section 20
T. 47 N., R. 71 W., NENE, Section 21
T. 47 N., R. 72 W., NWNW, Section 1
T. 47 N., R. 72 W., SWSW, Section 13
T. 47 N., R. 72 W., NESE, Section 35
T. 48 N., R. 71 W., NWNE, Section 7
T. 48 N., R. 71 W., SENE, Section 17
T. 48 N., R. 71 W., NESE, Section 18
T. 48 N., R. 71 W., SESE, Section 34
T. 48 N., R. 71 W., NESE, Section 34
T. 48 N., R. 72 W., SENW, Section 1
T. 48 N., R. 72 W., NWNW, Section 12
T. 48 N., R. 72 W., NESE, Section 13
T. 48 N., R. 72 W., SWSW, Section 24
T. 48 N., R. 72 W., NWSW, Section 25
T. 49 N., R. 70 W., NWNW, Section 18
T. 49 N., R. 71 W., SWSW, Section 11
T. 49 N., R. 71 W., NENE, Section 15
T. 49 N., R. 71 W., SWSE, Section 22
T. 49 N., R. 71 W., SENW, Section 24
T. 49 N., R. 71 W., NWNW, Section 26
T. 49 N., R. 71 W., NESW, Section 28
T. 49 N., R. 71 W., SWSW, Section 29
T. 49 N., R. 71 W., NWNE, Section 30
T. 49 N., R. 71 W., SESE, Section 31
T. 49 N., R. 71 W., SWNE, Section 34
T. 49 N., R. 71 W., SENE, Section 35
T. 49 N., R. 72 W., SWSE, Section 25
T. 50 N., R. 71 W., SWNW, Section 35
T. 50 N., R. 80 W., NWSE, Section 1
T. 50 N., R. 80 W., NWSE, Section 19
T. 50 N., R. 80 W., NWNE, Section 21
T. 50 N., R. 80 W., Section 34
T. 50 N., R. 81 W., SENE, Section 1
T. 50 N., R. 81 W., NESE, Section 10
T. 50 N., R. 81 W., NESW, Section 27
T. 51 N., R. 81 W., NENE, Section 1
T. 51 N., R. 81 W., SESE, Section 12
T. 51 N., R. 81 W., NENW, Section 18
T. 51 N., R. 81 W., SWSE, Section 23
T. 54 N., R. 81 W., NWSW, Section 12
T. 54 N., R. 81 W., NWNW, Section 25
T. 58 N., R. 84 W., SWSE, Section 23
T. 58 N., R. 84 W., NWSE, Section 23
T. 58 N., R. 84 W., SENE, Section 24
T. 58 N., R. 84 W., NWSE, Section 24
T. 58 N., R. 84 W., SWNE, Section 29
T. 58 N., R. 84 W., SWNE, Section 32

FOR FURTHER INFORMATION OR TO REQUEST COPIES: Written requests for more information or to request copies may be sent to: James W. Monroe,

District Manager, Casper District Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

Dated: November 28, 1989.

James W. Monroe,

District Manager.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28575 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-00-4212-12; A 24124]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Graham and Cochise Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands for transfer out of federal ownership in exchange for lands owned by the State of Arizona.

SUMMARY: BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public lands through consolidation of ownership.

All of the public lands in the following described sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 26 E.,
Secs. 22, 25–27, 35.
T. 10 S., R. 26 E.,
Secs. 1, 3, 4, 9–12.
T. 15 S., R. 22 E.,
Secs. 20, 22–25, 27–29, 36.
T. 15 S., R. 31 E.,
Secs. 1, 3, 4, 8–10, 13, 15–17, 20–23, 25–27.
T. 15 S., R. 32 E.,
Secs. 6, 7, 18, 19, 30, 31.
T. 16 S., R. 22 E.,
Secs. 1–4, 6, 8–10, 12, 13, 17, 18, 21–24.
T. 16 S., R. 23 E.,
Secs. 4, 6, 23, 24.
T. 16 S., R. 30 E.,
Secs. 1, 11–14, 23–25.
T. 16 S., R. 31 E.,
Secs. 1, 4–8, 11–13, 17–21, 28–30.
T. 17 S., R. 21 E.,
Sec. 13.
T. 17 S., R. 32 E.,
Secs. 6, 10, 11, 15, 21–23, 26, 27.
T. 19 S., R. 21 E.,
Secs. 14, 15.
T. 19 S., R. 22 E.,
Secs. 5, 6, 9, 19, 21–23, 25–28.
T. 19 S., R. 23 E.,
Sec. 30.
T. 19 S., R. 24 E.,
Sec. 4.
T. 19 S., R. 27 E.,
Sec. 17.
T. 20 S., R. 27 E.,
Secs. 1, 12, 13, 22, 24, 25, 27, 28, 34.
T. 20 S., R. 28 E.,
Secs. 6, 7, 18, 19, 30, 31.
T. 21 S., R. 23 E.,
Secs. 20–23, 28–30.
T. 21 S., R. 25 E.,
Secs. 29, 31, 33.
T. 21 S., R. 28 E.,
Secs. 5–8, 18–20, 30, 35.
T. 21 S., R. 30 E.,
Secs. 18, 19, 30.
T. 22 S., R. 23 E.,
Secs. 4–6.
T. 22 S., R. 24 E.,
Secs. 20, 22, 24, 25.
T. 22 S., R. 25 E.,
Secs. 5, 19, 28–30.
T. 22 S., R. 28 E.,
Secs. 6, 7, 18, 23, 30, 34.
T. 22 S., R. 29 E.,
Secs. 15, 24, 25, 31.
T. 22 S., R. 32 E.,
Secs. 17, 20.
T. 23 S., R. 23 E.,
Secs. 4, 8, 9, 15, 16, 19, 22, 28.
T. 23 S., R. 28 E.,
Secs. 3, 10, 11.
T. 24 S., R. 28 E.,
Secs. 11, 13.
T. 24 S., R. 29 E.,
Secs. 1, 5, 6, 15, 17.

The public lands within the above-described sections comprise 61,858.00 acres, more or less.

Subject to valid existing rights, the above-described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publiction of a Notice of Termination by the Authorized Officer, whichever comes first.

Final determination on disposal will await resolution of pending litigation regarding the State of Arizona's land exchange program and completion of an environmental analysis.

DATES: Until January 22, 1990, interested parties may submit comments to the Safford District Manager, 425 East Fourth Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange and exact legal descriptions are available at the Safford District Office.

Dated: November 27, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-28579 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-00-4212-13; A-23217-B]

Exchange of Public and Private Mineral Estates in Yavapai and Mohave Counties; AZ

November 28, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of mineral estates.

SUMMARY: This action informs the public of the completion of a mineral estate exchange between the United States and Santa Fe Pacific Railroad Company, and delineates administration of the mineral estate conveyed to the United States.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the mineral estate in the following described 4,966.10 acres of land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian

T. 13 N., R. 4 W.,
Sec. 6, lot 5.
T. 13 N., R. 5 W.,
Sec. 7, lots 3 and 4, E½ SW¼
T. 13 N., R. 6 W.,
Sec. 5, lots 4, 9, 10 and 13.
T. 13 N., R. 7 W.,
Sec. 23, N½ SE¼, SE¼ SE¼;
Sec. 26, NE¼.
T. 13 N., R. 8 W.,
Sec. 13, NE¼NE¼, S½NE¼.
T. 15 N., R. 9 W.,
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 17, SW¼;
Sec. 18, lots 1 to 4, incl., E½, E½W½.
T. 16 N., R. 9 W.,
Sec. 4, lots 1 to 3, incl., S½NE¼, E½SW¼ NW¼, SE¼NW¼, NE¼SW¼, E½ NW¼SW¼, S½SW¼, SE¼;
Sec. 8, E½NE¼NE¼, SE¼SW¼NE¼, SE¼NE¼, NE¼SW¼, S½NW¼SW¼, S½SW¼, SE¼.
Sec. 13, all;
Sec. 18, E½;
Sec. 19, E½;
Sec. 30, lots 2 to 4, incl., E½, E½W½.

In exchange, the mineral estate in 4,990.44 acres of land has been conveyed to the United States. The mineral estate conveyed to the United States in the following described land is being administered by the National Park Service as part of Grand Canyon National Park and Lake Mead National Recreation Area:

Gila and Salt River Meridian

T. 29 N., R. 11 W.,

Sec. 3, lots 1 to 4, incl., S½N½, S½.
T. 30 N., R. 11 W.,
Sec. 21, all.
T. 32 N., R. 13 W.,
Sec. 31, lots 1 to 4, incl. E½, E½W½;
Sec. 33, all.

The mineral estate conveyed to the United States in the remaining following described land, in or adjacent to three wilderness study areas, will be administered by the Bureau of Land Management for its public values:

Gila and Salt River Meridian

T. 13 N., R. 14 W.,
Sec. 21, all.
T. 13 N., R. 15 W.,
Sec. 25, W½.
T. 18 N., R. 16 W.,
Sec. 8, NW¼NW¼;
Sec. 13, W½W½.
T. 19 N., R. 16 W.,
Sec. 15, all.
T. 19 N., R. 17 W.,
Sec. 33, all.

The purpose of this Notice is to inform the public and interested state and local government officials of this exchange of public and private mineral estates, and to outline administration of the mineral estate conveyed to the United States.

Marsha Luke,

Chief, Branch of Lands Operations.

[FR Doc. 89-28580 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-050-00-4212-14; CA 26026]

Realty Action; Noncompetitive Sale of Public Land in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public land in Shasta County.

SUMMARY: The following public lands in Shasta County, California have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to the County of Shasta, at not less than the fair market value. The County of Shasta proposes to use the land for a buffer zone around the existing West Central Landfill and for future expansion of the landfill.

Mount Diablo Meridian

T. 30 N., R. 6 W.,
Section 4: Lots 1 and 2 of the NE¼, N½ NW¼SE¼, S½SW¼SE¼, E½SE¼.
Containing 280.03 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The lands are not needed for Federal purposes. The patent, when issued, would be subject to the following terms, conditions, and reservations:

Excepting and Reserving to the United States

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

And Subject To

A right-of-way to Pacific Gas and Electric for a power line (CA 24929).

ADDRESS: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

DATE: For a period of 45 days from the date of publication of this notice, interested persons may submit comments to the Area Manager, Redding Resource Area, at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address.

Dated: November 21, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89-28581 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-050-4212-13; CA 26128]

Realty Action; Exchange; Public Lands and Private Lands in Lake County, San Diego County and Yolo County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756).

San Bernardino Meridian

Tract 1: T. 10S., R. 3 W.,
Sec. 33, NW¼NW¼.
Containing 40.86 acres more or less.

The Trust for Public Land, 116 New Montgomery St., 4th Floor, San Francisco, CA 94102, has applied to acquire the above described public lands in exchange for private land in the Cache Creek Area of Critical Environmental Concern, described as:

Mount Diablo Meridian

Tract 1: T. 12 N., R. 4 W.,
Sec. 6, Lot 1, Lot 3, Lot 4, Lot 5, SE¼NW¼.
Tract 2: T. 13 N., R. 4 W.,
Sec. 31, Lot 4.
Containing 232.15 acres more or less.

SUPPLEMENTARY INFORMATION: A mineral evaluation has been completed on the public lands. None of the tracts were found to be prospectively valuable for minerals. The minerals on all the tracts will be transferred when patent is issued.

There will be reserved to the United States in the applied for lands, a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The purpose of this exchange is to acquire lands along Cache Creek in Lake County and Yolo County, California for Bald Eagle habitat and Tule Elk habitat. The Bald Eagle is a Federal and state listed Endangered Species.

Publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation and the public land laws, including the mining laws, for a period of two years. This exchange is expected to be consummated before the end of that period.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Clear Lake Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482; Phone (707) 462–3873. Detailed information concerning the exchange including the environmental assessment, is available for review.

DATES: For a period of 45 days from the publication of this notice in the **Federal Register**, interested parties may submit comments to the Ukiah District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482. Any adverse comments will be evaluated by the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

James F. Dawson,

Acting Clear Lake Resource Area Manager.

[FR Doc. 89-28582 Filed 12-6-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-00-4212-13, CA15889]

Realty Action; Exchange of Public and Private Lands in El Dorado County, California; Correction

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In the notice published in Federal Register, Vol. 54 FR, Page 48817, on November 27, 1989, make the following

Corrections

1. On page 48817, in the third column, in the summary, in the first paragraph, remove "acquisition" and insert "disposal."

2. The preceding notice incorrectly described Parcel B (under Selected Public Land) as being located in T.9 N, R.9 E., MDM.

The corrected legal description for Parcel B is as follows.

Selected Public Land

Parcel B (22.70ac)

T.9 N., R.10 E., MDM
Sec. 29: lot 7 (cancelled M.S. 1453)
Sec. 32: lot 3 (cancelled M.S. 1453)

D.K. Swickard,
Area Manager.
[FR Doc. 89-28623 Filed 12-6-89; 8:45 am]
BILLING CODE 4310-40-M

[CO-030-09-4212-13-2200]

Realty Action; State of Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action COC-49708, Proposed exchange of public lands for private lands in San Miguel County, Colorado.

SUMMARY: Certain parcels within the following described public land have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian, Colorado

T. 41 N., R. 13 W.,
Section 27, NW¼NW¼.
T. 45 N., R. 10 W.,
Section 33, S½S½;
Section 34, SW¼SW¼.
T. 43 N., R. 10 W.,
Section 19, Lot 4, NE¼NW¼;
Section 28, E½NW¼, NW¼SW¼;
Section 29, NE¼NE¼, NE¼SE¼;
Section 33, lot 4, W½SW¼.
T. 44 N., R. 11 W.,
Section 3, Lots 6, 7, 8, SW¼;
Section 14, NW¼SW¼;
Section 22, SE¼SE¼;
Section 23, Lots 6, 8, NE¼NE¼;
Section 24, Lot 10;
Section 27, N½NE¼.
T. 43 N., R. 11 W.,
Section 6, NW¼.
T. 43 N., R. 12 W.,
Section 1, N½, NW¼SW¼, S½S½;
Section 2, N½;
Section 7, NE¼NE¼, SE¼SW¼;
Section 8, E½SW¼;
Section 18, NE¼NW¼.
T. 44 N., R. 12 W.,
Section 9, NW¼, S½NE¼, NE¼SE¼;
Section 10, W½SW¼;
Section 15, NW¼, SW¼NE¼, SE¼;
Section 16, E½NE¼;
Section 22, E½E½;
Section 27, N½NE¼, SE¼NE¼;
Section 35, E½NW¼, S½SW¼.

In exchange, the United States would acquire certain parcels of the following described private land from William Carstens:

T. 43 N., R. 10 W.,
Section 18, SE¼SE¼ (Tract 49);
Section 19, NW¼NE¼, E½E½;
Section 20, W½W½, SE¼NW¼, E½SW¼, SW¼SE¼;
Section 29, NW¼NE¼, SE¼SE¼;
Section 32, NE¼NE¼.
T. 43 N., R 12 W.,
Section 4, E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Section 9, E½;
Section 10, NW¼, S½;
Section 12, W½, W½SE¼, SE¼SE¼;
Section 13, N½, N½SW¼;
Section 15, W½NW¼;
Section 16, E½W½.
T. 44 N., R. 12 W.,
Section 17, E½W½, W½E½;
Section 20, E½W½, W½E½;
Section 29, E½W½, W½E½, NE¼SW¼;
Section 32, W½NE¼, SE¼NE¼, NE¼SE¼;
Section 33, SW¼.

DATES: On or before January 22, 1990, interested parties may submit comments to the District Manager, Montrose District.

ADDRESSES: Submit comments to District Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Chuck Finch at the above address or phone (303)-249-7791.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to dispose of tracts of unaccessible public land and scattered public lands identified for disposal in the Bureau planning document, and acquire parcels of private land contiguous to larger blocks of public land. This will improve access, manageability and usability by the public. In addition the BLM will be acquiring approximately eight miles of riparian habitat along Beaver Creek and Saltado Creek. Land values will be equalized by acreage adjustments or by cash equalization payments following formal appraisal. Approximately 2100 acres of Federal minerals will be transferred with the surface. Conveyance of the public land will be subject to a reservation to the United States of a right-of-way for ditches and canals (Act of August 30, 1890), and all other existing rights including roads, and powerlines. Site specific information on rights-of-way is available at the Montrose District Office.

Any existing grazing leases on the public lands will be cancelled. Lessees not previously notified of cancellation will be allowed a two year period before cessation of grazing use unless such period is waived.

Publication of this notice segregates the public lands from settlement, sale, location, and entry under the public land laws, including the mining laws, except for exchange for a period of two years from publication of this notice.

Dated: December 1, 1989.

Alan Kesterke,
District Manager.
[FR Doc. 89-28601 Filed 12-6-89; 8:45 am]
BILLING CODE 4310-JB-M

[CA-010-00-4410-10]

Amendment to Notice of Intent To Prepare Bishop Resource Management Plan; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Scope of project expanded; Inyo National Forest will be a cooperating agency.

SUMMARY: Pursuant to 43 CFR 1610.2(c) and 40 CFR 1501.7 and 1508.5, our previous notice (page 24153 of the June 27, 1988, FR) is hereby amended to expand the scope of the utility corridor portion of the resource management plan (RMP), to include portions of the Inyo National Forest and to include the USDA Forest Service, Inyo National Forest as a cooperating agency for the utility corridor aspects of the RMP and associated EIS.

Both the BLM and the Forest Service invite comments and suggestions on the issues to be addressed in the expanded corridor study.

DATES: Comments on the issues and scope of the corridor analysis should be received before December 31, 1989. Comments submitted after that date will be considered to the extent feasible.

ADDRESSES: Submit written comments and suggestions concerning the corridor analysis to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, California 93514 or Mike Ferguson, Area Manager, Bureau of Land Management, 787 North Main Street, Suite P, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Heather Harvey, Planner, Inyo National Forest, Bishop, California, phone 619-873-5841; or Holden Brink, Resource Management Plan Team Leader, Bishop Resource Area, Bishop, California, phone 619-872-4881.

SUPPLEMENTARY INFORMATION: The Inyo National Forest Land and Resource Management Plan was approved in August 1988. The Plan directs the Forest to participate in an Eastern Sierra Interagency Utility Corridor Study to identify an east/west corridor.

The Bishop Resource Area is currently developing their Resource Management Plan and the utility corridor study will be included in the EIS for the plan.

This study is being conducted jointly because of the need for a consistent analysis between both agencies to ensure that any designated corridor will be acceptable to both.

The agencies will identify and consider a range of alternatives. One of these will be the designation of no utility corridors.

Dated: November 27, 1989.

Robert D. Rheiner, Jr.,
District Manager.
[FR Doc. 89-28577 filed 12-6-89; 8:45 am]
BILLING CODE 4310-40-M

[ID-942-00-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., November 29, 1989.

The plat representing the dependent resurvey of portions of the south, east, and west boundaries, and subdivisional lines; the subdivision of certain sections, the survey of lot 6 in section 4, and lots 1 and 4 in section 9, T. 9 S., R. 13 E., Boise Meridian, Idaho, Group No. 692, was accepted November 22, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 29, 1989.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.
[FR Doc. 89-28583 Filed 12-6-89; 8:45 am]
BILLING CODE 4310-96-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of hearings.

SUMMARY: The Advisory Committee on Civil Rules has proposed amendments to the Federal Rules of Civil Procedure. The proposed rules amendments are: 4, New Rules 4.1, 5, 12, 14, 15, 16, 24, 26, 28, 30, 34, 35, 36, 41, 44, 45, 47, 48, 50, 52, 53, 56, 63, 72, 77, New Forms 1-A, and 1-B, Form 18 A, and Proposed Amendments to the Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C, Rule E.

In order that persons and organizations wishing to do so may comment orally on the proposed rules, hearings on them will be held at the United States Courthouse in San Francisco, California on January 9, 1990, and at the United States Courthouse in Chicago, Illinois on February 2, 1990.

Those interested in obtaining copies of the proposed amendments or in presenting oral comments at the hearings, should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, no later than December 22, 1989, for the hearings in January in San Francisco, and January 12, 1990, for the hearings in February in Chicago.

Dated: November 30, 1989.

James E. Macklin, Jr.,
Secretary, Committee on Rules of Practice and Procedure.
[FR Doc. 89-28604 Filed 12-6-89; 8:45 am]
BILLING CODE 2210-01-M

Hearings of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of hearings.

SUMMARY: The Advisory Committee on Bankruptcy Rules has proposed amendments to the Bankruptcy Rules. The proposed rules amendments, are: 1002, 1007, 1017, 1019, 2003, 2007, 2007.1, 2011, 2013, 2014, 2015, 2020, 3001, 3002, 3016, 3018, 4001, 4007, 5002, 5009, 6003, 7062, 8002, 9027, 9034, 9035, and Part X.

In order that persons and organizations wishing to do so may comment orally on the proposed rules, hearings on them will be held at the United States Courthouse in San Francisco, California on January 18, 1990, the National Courts Building in Washington, DC, on February 1, 1990, and the United States Courthouse on February 15, 1990, in Dallas, Texas.

Those interested in obtaining copies of the proposed amendments or in presenting oral comments at the hearings, should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, no later than December 29, 1989, for the hearings in January in San Francisco, and January 15, 1990, for the hearings in Washington, DC, and February 1, 1990, for the hearings in Dallas, TX.

Dated: November 30, 1990.

James E. Macklin, Jr.,
Secretary, Committee on Rules of Practice and Procedure.
[FR Doc. 89-28605 Filed 12-6-89; 8:45 am]
BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-51]

John F. Horvat, M.D.; Denial of Application

On June 16, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John F. Horvat, M.D., (Respondent) of 1728 Jonathan Street, Suite 204, Allentown, Pennsylvania 18104, proposing to deny his application, executed on July 11, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 3, 1989, the Government filed a Motion for Summary Disposition alleging that Respondent was not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. Respondent filed a response to the Government's motion. On October 4, 1989, Judge Bittner issued her opinion and recommended ruling. No exceptions were filed, and on November 15, 1989, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21

CFR 1316.67, hereby issues his final order in this matter.

The Administrative Law Judge found that on February 16, 1989, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine, automatically suspended Respondent's license to practice medicine and surgery. Therefore, Respondent is currently without authorization to handle controlled substances in Pennsylvania. Respondent, in his response to the motion for summary disposition, did not deny that his state license to practice medicine had been suspended. Rather, Respondent argued that he has appealed the automatic suspension of his license to practice medicine and surgery, that he believes that he will prevail in this appeal, and that under these circumstances a summary disposition is inappropriate at this time.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Wingfield Drugs, Inc.*, Docket No. 87-13, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, Docket No. 87-54, 52 FR 47770 (1987); and *Bobby Watts, M.D.*, Docket No. 87-71, 53 Fed. Reg. 11919 (1988). Judge Bittner concluded that it is clear that Respondent is not currently licensed to practice medicine or authorized to handle controlled substances in Pennsylvania, and as a result of Respondent's lack of this state authority, he is not currently entitled to a DEA registration.

The Administrative Law Judge further found that there was no merit to Respondent's contention that summary disposition would be inappropriate at this time. An application for a DEA registration may be denied where the applicant's state license or registration has been suspended, and it does not matter whether or not the state action is final or on appeal. See, *Robert F. Witek, D.D.S, supra.*

Finally, Judge Bittner concluded that the motion for summary disposition was properly entertained and must be granted. When no fact question is involved, or when the facts are agreed, there is no requirement that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB* v. *International Association of Bridge, Stuctural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

The Administrator hereby adopts the opinion and recommended decision of the Administrative Law Judge. The Administrator concludes that Respondent's application for a DEA registration should be denied due to his lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 21 CFR 0.100(b), orders that the application for a DEA Certificate of Registration executed by Respondent on July 11, 1988, and any other pending applications submitted by Respondent be, and they hereby are, denied. This order is effective December 7, 1989.

Dated: November 29, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-28528 Filed 12-6-89; 845 am]

BILLING CODE 4410-09-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27484; File No. SR-MSRB-89-12]

Self-Regulatory Organization; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Supervision and Preservation of Records

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to Board rules G-27 on supervision and G-9 on preservation of records (hereafter referred to as "the proposed rule change"). The proposed rule change will provide more specific guidance in rule G-27 as to the supervisory responsibilities of dealers and clarify rule G-9 as it applies to rule G-27. The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of six months following the date of Commission approval in order to provide dealers an opportunity to review their procedures to ensure compliance with the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule G-27 on supervision requires a dealer to supervise the municipal securities activities of its associated persons and the conduct of its business. It specifies that one or more municipal securities principals must be designated to supervise the dealer and also requires a dealer to have and enforce written supervisory procedures. Rule G-27 places responsibility for ensuring compliance with Board and other rules directly on the dealer. This provides important customer protections and ensures the continued integrity of the municipal securities market. The Board has reviewed the requirements of rule G-27 and determined that the proposed rule change provides more specific guidance as to the supervisory responsibilities of municipal securities dealers. The proposed rule change also clarifies rule G-9 on the retention of records as it applies to rule G-27.

The proposed rule change to rule G-27 will require a dealer to establish an effective supervisory system that has three major components: (i) The specific designation of each principal, including his area of supervisory responsibility; (ii) the adoption and maintenance of detailed written supervisory procedures designed to ensure that a dealer's business and the municipal securities activities of its associated persons are in compliance with Board and other applicable rules; and (iii) at least an annual review of its supervisory system and written procedures to ensure that they are adequate and up-to-date and to determine whether the dealer is in compliance with Board and other applicable rules. These requirements are consistent with the practices of many dealers who have established effective supervisory systems and with the supervisory requirements of other self-regulatory organizations.

Section (a)

Section (a) of the rule would be amended to reiterate a dealer's essential obligation to supervise the conduct of its municipal securities business and the municipal securities activities of its associated persons. The duty of a dealer to supervise its own securities activities is well settled under the federal securities laws and under the shingle theory.

Section (b)

All supervision must be effected through and by a qualified principal. Rule G-27 permits considerable flexibility, subject to certain minimum numerical requirements specified in rule G-3(b), on standards of professional qualification, to delegate supervisory responsibility to one or more principals in a manner that best serves the administrative and other practical concerns of a dealer.

Section (b) of the rule would be amended to simply restate, in a more organized fashion, which category of principal may discharge various supervisory responsibilities. In general, supervisory responsibilities for the municipal securities activities of a dealer must rest with a qualified municipal securities principal. However, rule G-27(b) specifies a number of supervisory responsibilities that also may be performed by municipal securities sales principals, by general securities principals, and by financial and operations principals. In addition, this section provides that a dealer that is not a bank dealer or an introducing broker must appoint at least one financial and operations principal to discharge SEC financial reporting and customer protection requirements and to be principally responsible for the books and records of the dealer; the chief financial officer of such a dealer must be a financial and operations principal. An introducing broker may appoint either a financial and operations principal or a municipal securities principal to supervise its books and records or act as the chief financial officer.

A written record of the name of each designated principal and of his supervisory responsibilities must be maintained for six years as required in rule G-9 and the dealer's records must be updated as changes occur. It should be emphasized that nothing in the proposed rule change alters the long-standing position of the Board that a principal designated as responsible for supervising the municipal activities of a branch office or unit need not be physically located there as long as the supervisor effectively can supervise the associated persons and activities of the branch office or unit from his different location.

Section (c)

One of the principal provisions of rule G-27 has been the requirement that a dealer establish written supervisory procedures to assure compliance with Board and other applicable rules. This ensures that designated principals are informed about the scope of their duties and permits the dealer to oversee its principals' activities. Section (c) of the rule would be amended to provide additional guidance as to what matters should be covered in written supervisory procedures. The Board anticipates that supervisory procedures will cover all supervisory activities permitted of principals under rule G-3. In addition, section (c) would specifically require written supervisory procedures to provide for the periodic review of each office in which municipal securities activities occur, including branch offices or units. Among other things, the section would anticipate that the written supervisory procedures specifically will address Board rules and how supervision will occur. For example, paragraph (c)(iii) of the amended rule would require the regular and frequent review and approval by a designated principal of customer accounts in which transactions occur. The purpose of this requirement, which is contained in current rule G-27, is to detect and prevent irregularities and abuses. The Board expects dealers to establish procedures that effectively obtain this objective and are capable of compliance. Thus, in determining when an account must be reviewed, a dealer might look to the volume and frequency of trading and the nature of the securities traded. Such guidelines would be appropriate if they are articulated clearly in a dealer's written supervisory procedures.

Section (d)

Section (d) of the amended rule would require a dealer to revive and update its supervisory procedures when necessary to respond to changes in Board or other applicable rules, administrative changes at the dealer, and other relevant developments. The intent of the Board is to ensure that a dealer is aware of current regulatory developments and will educate its supervisors and associated persons in all applicable requirements to ensure compliance.

The proposed rule change also clarifies a dealer's obligation to evaluate its compliance with Board and other applicable rules at least annually. The proposed rule change permits a dealer to develop its own procedures for evaluation compliance. For example, some dealers may require principals to report on compliance issues periodically or to submit written compliance reports summarizing activities under their particular supervision. In addition, a dealer must be satisfied that its designated principals are following their respective written supervisory procedures. This can be accomplished by ensuring that a designated principal keep notes sufficient to permit adequate oversight by the dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft published in August 1989. The Board received one comment letter on the exposure draft. The commentator did not specifically address the proposed rule amendments but requested that the Board of the National Association of Securities Dealers, Inc. ("NASD") make a form of supervisory procedures available to firms so that they may more easily comply with the requirement for written supervisory procedures. The Board has not developed such a form because of the differences in how securities firms and bank dealers arrange their supervisory structure and how they ensure compliance with Board rules. The Board's staff contacted the NASD for its reaction to this suggestion. The NASD noted that it also has not prepared a form of procedures for dealers because of the differences in compliance procedures. The NASD stated that its examiners are willing to comment on the adequacy of written supervisory procedures but firms must determine their own method for compliance.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28539 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27488; File No. SR-MSRB-89-9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Delivery of Official Statements and Recordkeeping

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing proposed rule G-36 regarding the delivery of official statements and other information to the Board or its designee, proposed amendments to rule G-8 on recordkeeping and proposed Form G-36 (hereafter "the proposed rule change"). The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of 30 days following the date of approval in order to allow dealers time to develop procedures to comply with the new requirements. The proposed rule change would require underwriters to send to the Board copies of official statements and certain other information for certain new issue municipal securities for inclusion in the Board's planned central electronic repository.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The complexities of municipal securities (*e.g.*, complex extraordinary and other call features, put options and variable and/or convertible interest rates) make it essential that professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. Such information generally is available in official statements for new issue municipal securities. The Board has been concerned, however, that the flow of information in the new issue market has not been adequate to ensure that market participants have access to the official statement for a new issue at the time trading begins in the issue. In addition, in the secondary market, it appears that dealers that need descriptive information for issues they are trading usually do not have access to the official statements that contain the information. The Board believes that these information problems can be ameliorated by the creation of a repository for official statements and other documents.

Proposed Rule G-36

The Board plans to create a repository that would function much like a public library that stores and indexes the documents and provides copies of the documents to parties requesting them for a fee. In furtherance of that goal, the Board adopted the proposed rule change. Rule G-36(b) would require underwriters of issues subject to Securities Exchange Act rule 15c2-12 to provide to the Board or its designee a copy of the final official statement and a completed Form G-36 which includes CUSIP numbers for these issues to permit the information to be indexed by CUSIP number. In addition, rule G-36(c) would require underwriters of certain issues not subject to rule 15c2-12 to send to the Board a copy of the official statement in final form if prepared by or on behalf of the issuer, along with a completed Form G-36. These issues include those less than $1 million, but not those qualified for the exemption set forth in rule 15c2-12(c), regardless of the amount of the issue (*e.g.*, certain privately-placed and short-term issues). Official statements for issues exempt from rule 15c2-12 pursuant to section (c) would not be required to be sent to the repository because the Board believes that such documents may not be very useful to repository customers. Privately-placed securities probably will not be heavily traded in the secondary market and short-term issues will mature soon after the official statement is placed in the repository. The Board, of course, will accept any of these official statements if provided voluntarily to the repository, along with a completed Form G-36.

The official statements must be sent, by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of receipt from the issuer for issues subject to rule 15c2-12 but no later than 10 business days after the date of the final agreement to purchase, offer or sell the municipal securities, and within one business day of closing for other issues. The latter requirement ensures that the Board is not inserting itself into the official statement preparation process—but recognizes that if final official statements are prepared, they should be done by closing.

In addition, rule G-36(d) would require underwriters to send to the Board amended or "stickered" official statements if the issuer provides the amendment during the underwriting period. Underwriters also must provide a statement including the CUSIP number or numbers for the issue, the fact that official statements previously had been sent to the Board and that the official statement has been amended.

Rule G-36(e) would provide that, if an issue is cancelled after documents are provided to the Board or its designee, the underwriter must notify the Board promptly, in writing, of this fact. Through this provision the Board would ensure that the repository does not collect and disseminate documents for cancelled issues. If a syndicate is formed for the underwriting of the issue, rule G-36(f) would require the managing underwriter to take the actions required under draft rule G-36. Finally, rule G-36(g) would require that, within 60 days of the effective date of the rule, underwriters deliver the documents and written information referred to in rule G-36 for each offering of municipal securities from the effective date of SEC rule 15c2-12 (January 1, 1990) to the effective date of draft rule G-36.

Proposed Amendments to Rule G-8

The proposed rule change also would require the underwriter to keep a record of the name, par amount and CUSIP number or numbers of all issues subject to rule G-36, along with the dates that the documents and written information referred to in rule G-36 are received from the issuer and are sent to the Board or its designee and, for issues subject to rule 15c2-12, the date of the final agreement to purchase, offer, or sell the municipal securities. The proposed rule change is designed to assist in ensuring compliance with certain of the requirements of SEC rule 15c2-12 and Board rule G-36.

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. An official statement repository will significantly increase the scope of information concerning municipal securities made available to the general public and market participants in furtherance of the Board's rulemaking purposes. In addition, a repository would allow the Board to consider possible rulemaking initiatives to ensure that customers have complete information regarding municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition since it applies equally to all brokers, dealers and municipal securities dealers. In addition, the Board realizes that information vendors may wish to disseminate information acquired from the repository. The Board believes that the creation of a central repository will not impose any burden on competition among such information vendors or between the Board and such vendors because, as noted by the Board in its "Guiding Principles for a Central Electronic Repository," the Board will operate the repository in a manner that: (1) Will provide equal access to documents to any person; (2) will not confer special or unfair economic benefit to any person; and (3) will encourage and facilitate the development of information dissemination services by private vendors.[1] The Board wishes to emphasize that official statements are public documents that are now and will continue to be available, upon request, through a number of channels, such as issuers and underwriters.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In August 1989, the Board published for comment draft rule G-36 and draft amendments to rule G-8. The Board received 10 comments in response to the draft rule.

In general, most of the commentators support the concept of a central repository for official statements operated by the Board. One commentator suggests that the Board consider a completely voluntary repository, and one commentator believes the Board should not develop a repository. The comments on specific provisions of the rule are summarized and discussed below.

[1] The Commission is concerned that the proposed rule change may competitively disadvantage those information vendors interested in becoming a Nationally Recognized Municipal Securities Information Repository or "NRMSIR," and therefore requests that commentators address whether the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Commentators are also asked to consider whether the Commission should, if so requested, designate the Board a NRMSIR if proposed rule G-36 is approved and in effect. *See* page 23, below.

1. Draft Rule G-36—(a) What Issues Should be Subject to Draft Rule G-36

Four commentators state that the Board should make the rule applicable to all issues, not just those subject to SEC rule 15c2-12, if official statements are made available by the issuer. One commentator notes that this should ensure that disclosure documentation is available in the repository for as many issues as possible. One commentator states that such a requirement would make the rule parallel with rule G-32, which requires dealers to deliver final official statements to new issue customers for all issues for which a final official statement is prepared by the issuer. One commentator adds that the Board should consider the cost impact on small underwriters of such a requirement.

Three commentators, however, state that the Board should limit application of draft rule G-36 to issues subject to SEC rule 15c2-12. One states that the delivery requirements under draft rule G-36 and SEC rule 15c2-12 should parallel one another. Another notes that "final official statement" is a defined term in SEC rule 15c2-12 and that making draft rule G-36 apply to issues not subject to rule 15c2-12 would require underwriters to judge whether what they have received from the issuer is a "final official statement." It states that the SEC decided not to place such a burden on underwriters and suggests that the Board allow underwriters to send such documents to the Board voluntarily.

The Board has determined to extend the rule to certain issues not subject to SEC rule 15c2-12, *i.e.*, certain issues of less than $1 million. The Board believes it would be beneficial to have those official statements in the repository. The rule will not be extended to other issues exempt from rule 15c2-12 (*i.e.*, certain private placements and short-term issues, whether above or below the $1 million threshold) because such documentation may not be very useful to repository customers. Privately-placed securities probably will not be heavily traded in the secondary market and short-term issues will mature soon after the official statement is placed in the repository. Official statements for issues not subject to rule G-36 may be provided voluntarily to the repository, along with a completed Form G-36.

(b) What Documents Should be Delivered—(i) Refunding Documents

While there is consensus that final official statements should be delivered to the Board, three commentators state

that there are problems with the requirement to deliver refunding documents. One states that the definition of refunding documents in the draft rule is vague and unnecessarily broad and places an unwarranted burden on underwriters, as well as the users of a central repository, because it could include a number of lengthy documents (*e.g.*, bond ordinance, legal opinion, escrow agreement, and arbitrage certificate) that the Board does not really want in its repository and that customers of the repository will not use. It notes that information regarding the escrow and scheduled redemptions of refunded bonds typically is available in a notice of defeasance and notice of call and that the rule should be revised to require the filing only of these documents for refunded issues. It also suggests that the delivery requirement be delayed until closing of the issue because of the changes in the documents that can occur up until that time.

Another commentator asks that the Board delete the mandatory filing requirement of refunding documents and make it voluntary because, with such a requirement, the Board appears to be extending itself beyond the scope of information within the underwriter's control. It notes that refunding documents are not required to be provided to underwriters under rule 15c2–12, and, if accessible to the underwriter, may only be so by closing. It also notes that refunding documents are often incomplete without reference to the documents of the refunded issue—which documentation would not necessarily be available in the repository.

Since its December 1987 letter to the SEC suggesting the establishment of a central electronic repository, the Board has stated that refunding documents should be included in the repository because of the importance of such information to the purchase and sale of the refunded issue. However, certain commentators on this issue were concerned about the definition of refunding documents and the timing of delivery. While the Board believes the timing problem could be resolved by moving delivery back to the issue's closing, the definitional problem remains. One commentator notes that the mass quantity of paper that is included in the current definition of refunding documents is unnecessary—only a notice of defeasance and notice of call are necessary. It is clear, however, that not all notices of defeasance set forth the necessary information. In addition, since a refunding does not negate the refunded issue's indenture, it may be important to refer back to that document as well. In fact, it might be useful to require dealers to deliver a copy of the official statement for the refunded issue, along with the other refunding documents, to ensure that repository users have as complete a picture as possible of the refunded issue.

Because few of the commentators focused on the definition of refunding documents and the Board wants to ensure that it receives useful information on refunded issues, without also receiving unnecessary documents, the sections of the rule dealing with delivery of refunding documents have been deleted at this time. However, because of the importance of including such information in the repository, revised provisions along the lines discussed above will be published for additional industry comment.

(ii) "Stickered" Official Statements

Six commentators agree that draft rule G–36 should apply to stickered official statements if the issuer provides the information during the underwriting period. One notes that if certain information is sufficiently material to require an amendment to the official statement, that information should be available to all investors, including those relying on the central repository. Another suggests that the filing requirement for stickered official statements be delayed until three business days after receipt of the information from the issuer.

In response to these comments, the Board has added a new section (d) to draft rule G–36 to require dealers to deliver to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of receipt from the issuer, amended or "stickered" official statements, if prepared by the issuer during the underwriting period. Dealers also must provide a statement including the CUSIP number or numbers for the issue, the fact that the official statement previously had been sent to the Board and that the official statement has been amended.

(c) Where Should the Documents be Delivered

One commentator asks that the Board revise the draft rule to require dealers to send the required documents to the Board and any Nationally Recognized Municipal Securities Information Repository ("NRMSIR"). It states that it should not be unduly burdensome for underwriters to provide such documents since the number of NRMSIR applicants does not appear to be great. In addition, it notes that having the documents delivered to the Board and the NRMSIRs ensures that each NRMSIR has a complete set of all official statements and refunding documents without a requirement for an electronic linkage between the NRMSIRs and the Board.

One commentator states that, once the Board receives NRMSIR status, it is not clear whether other entities will apply for such status. It adds, however, that other entities are free to establish repositories with services that may be needed by the underwriting community (*e.g.*, production of copies of official statements in bulk) and that underwriters would readily forward disclosure documents to these entities. Another commentator notes that underwriters should not be required to provide documents for free to more than one repository because repositories sell such information.

There seems to be a misconception, at least on the part of one commentator, about the function of the Board's repository. The Board's repository will be the "public library" for official statements that will not only collect and disseminate the information for one or two months after the underwriting period, but also will retain the information for the life of the issue and for a certain period beyond. Its main functions are to be the permanent base for historical information on municipal securities and the central location for dissemination of more current municipal securities documents to assist the functioning of the municipal securities market and facilitate Board rulemaking.

In regard to the commentator's specific comment that draft rule G–36 be revised to require dealers to send copies of official statements to the Board and all NRMSIRs, the Board decided against making such a change. It is unclear how many organizations will apply for NRMSIR status—particularly if the Board provides them, by rule, with the right to receive free official statements for all new issues. The Board believes it would be onerous to put such an open-ended burden on the dealer community. In addition, it is not clear how dealers can be kept apprised of which entities have acquired NRMSIR status and how the enforcement agencies (*i.e.*, NASD and banking agencies) could inspect for compliance with such a rule.

The Board also believes that it is inappropriate to write rules that benefit certain private, profit-making ventures. In addition, the Board does not believe it would be fair to mandate that certain information disseminators (*i.e.*, NRMSIRs) receive free documents while other information disseminators do not—only because they did not apply for NRMSIR status. Once the Board's repository is operational, the Board will provide information to any party, including NRMSIRs, which requests it. The Board expects that the pricing of documents in the repository will take into account the difference between single document requests and multi-document requests which can be handled less expensively (*i.e.*, in "bulk"). Any organization that provides a useful service to dealers should be able to obtain official statements voluntarily from dealers. The Board will urge dealers to send official statements to NRMSIRs and other information vendors prior to and after the Board's repository begins operation.

(d) When Should the Documents for Issues Subject to SEC Rule 15c2–12 be Delivered—(i) Delivery Within One Business Day of Receipt from Issuer

A number of commentators question the portion of the draft rule requiring, for issues subject to SEC rule 15c2–12, delivery of the required documents to the Board within one business day after receipt of the final official statement from the issuer. Five commentators suggest that the Board change the requirement to "send" within one business day by first class mail. This would allow the required documents to reach the Board quickly, but not require dealers to pay for an overnight delivery service. Since rule 15c2–12 requires underwriters to deliver official statements to potential customers for at least 25 days after the end of the underwriting period, one commentator notes that Board receipt of official statements a day or two later will not affect the availability of official statements to investors. One also notes that rule 15c2–22 has a "send within one business day" official statement delivery requirement as well.

The proposed rule change was revised to require dealers to send the official statement to the Board within one business day of receipt from the issuer by certified or registered mail, or some other equally prompt means that provides a record of sending (*e.g.*, by messenger, overnight delivery service, etc.). While this one to two day delay could be a problem for repository customers that need the documents quickly, the Board believes that the proposed revision is a helpful compromise. The requirement for some kind of receipt should assist dealers in keeping certain records regarding compliance with the rule, as required by the draft amendments to rule G–8.

(ii) Delivery No Later Than Eight Business Days After Concluding Any Final Agreement to Purchase the Issue

Two commentators state that the eight business day limit in the rule would be a burden on dealers and result in technical violations of rule G–36 if the issuer or its agent fails to meet its contractual obligation under rule 15c2–12 to provide a final official statement to the underwriter within seven business days of the date of the final agreement to purchase, offer, or sell the municipal securities. One notes that the timeframe for delivery of a final official statement to potential customers under rule 15c2–12 runs from the time the final official statement "becomes available," not the contractual delivery date. It notes that, by doing this, the SEC avoided raising technical issues of noncompliance due to force majeure and contractual enforcement issues and achieved the overall purpose of delivering the final official statement to the marketplace.

If the issuer fails to comply with its contractual delivery requirement, a dealer would not be able to comply with draft rule G–36. The Board believes that dealers should not be subject to a rule violation for something outside of their control; however, it is important that issuers and underwriters do everything possible to ensure that the issuer is able to comply with its contractual requirement to provide final official statements in a timely fashion. The Board revised this provision to require dealers to send the official statement no later than 10 business days from the date of the final agreement to purchase the securities. Changing the "delivery no later than eight business days" requirement to "send no later than 10 business days" gives dealers an additional three business days past the contractual delivery date to send the official statement before any violation of rule G–36 occurs. While the possibility exists that the issuer will not be able to comply with its contractual obligation, the Board believes that underwriters should do everything possible to ensure issuer compliance.

(iii) Cancelled Issues

In regard to sending the Board information about cancelled issues, two commentators state that the requirement is a good one and one commentator adds that the information could be provided to the Board within five business days of cancellation. The "promptly" standard in the draft rule remains.

(iv) Issues From January 1, 1990

One commentator is opposed to the requirement that underwriters provide copies of official statements from January 1 to the effective date of rule G–36 because of the administrative burdens and costs for underwriters. The provision remains because the burden on dealers should not be great since the Board expects the rule to become effective early in 1990. The Board also plans to accept voluntary delivery of official statements prior to the rule's effective date.

2. Draft Amendments to Rule G–8

Two commentators agree that the draft amendments to rule G–8 would be helpful to ensure compliance with rule G–36. In response to the Board's question whether any further recordkeeping requirements to ensure compliance with SEC rule 15c2–12 should be added, two commentators state their opposition to any such requirement because they believe underwriters should be able to develop their own method of compliance and not be chilled by being required to record certain items under the Board's rules.

The proposed rule change was revised to require dealers to keep records regarding compliance with draft rule G–36, including the new provisions regarding issues not subject to rule 15c2–12 and stickered official statements. While the Board has the authority to adopt extensive recordkeeping requirements to ensure compliance with rule 15c2–12, the Board added only one item to the draft amendments to rule G–8 at this time—the date of the final agreement to purchase the issue. This will allow enforcement agencies to review the timing of the delivery of official statements by issuers or their agents to underwriters and the subsequent sending of the official statements to the Board. If, over time, compliance procedures with SEC rule 15c2–12 seem to be lacking, the Board could consider whether additional rulemaking is necessary.

3. Miscellaneous—(i) Liability

One commentator states that additional legal responsibility for the contents of a document should not arise solely by the transmittal of that document to a central repository. It suggests that the Board not disseminate official statements until the SEC adopts a safe harbor for underwriters that submit information to the repository to ensure that there will be no additional liability. In addition, it would like clarification that neither the Board,

underwriters nor issuers have a duty to update the information in the repository, apart from the requirements in rule G–36 regarding stickered official statements and cancelled issues. The SEC staff is aware of the commentator's concerns.

(ii) Trustee Information

Two commentators ask the Board to consider widening the scope of information available in the repository to include trustee disclosure information. This suggestion will be reviewed by the Board as repository plans proceed. Of course, the Board does not have the authority to require trustees to submit any documents to the Board.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission specifically requests comment on whether the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including sections 15B and 23 thereunder.[2] The Commission would also like commentators to address whether it should, if so requested, designate the Board a Nationally Recognized Municipal Securities Information Repository or "NRMSIR" if proposed rule G–36 is approved and in effect.

Interested people are invited to submit written data, views and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28593 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27489; File No. SR–NASD–89–42]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Shareholder Approval of Certain Transactions for NASDAQ National Market System Issuers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1989 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies existing part III 5(i) of Schedule D to the NASD By-Laws which requires shareholder approval of certain transactions by issuers of securities traded in the NASDAQ National Market System. The rule change alters from 25% to 20% the threshold at which shareholder approval of issuances of stock in connection with certain acquisitions is required. The rule change also makes other clarifications and modifications of the current rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends part III of Schedule D to the NASD's By-Laws which relates to qualification standards for NASDAQ National Market System (NASDAQ/NMS) issuers and in particular section 5(i) which requires shareholder approval of certain issuances of securities. The proposed rule change responds in part, to a letter from the Division of Market Regulation dated September 5, 1989 to Joseph R. Hardiman, President of the NASD, as well as to a comment letter received by the Commission in response to the recent Schedule D amendment which added section 5(i) of part III to the Schedule.[1] When the Commission approved that rule filing, it noted that it was in the process of reviewing a New York Stock Exchange ("NYSE") filing that would amend the NYSE shareholder approval policy[2] and that the NASD had represented that, upon approval of the NYSE rule filing, it would consider making conforming changes to the NASD rule within a period of ninety days. The present proposed rule change is submitted pursuant to that representation.

The proposed rule change would require shareholder approval for certain issuances of 20% or more of an issuer's outstanding common shares. Specifically, such approval would be required in the context of an issuance for less than book or market value or in connection with the acquisition of another company. The NYSE rule requires shareholder approval when common shares are to be issued in any transaction and the 20% threshold is met. Section 1(c) of the NASD rule would require shareholder approval of the acquisition of the stock or assets of another company in two circumstances. The first is where an officer, director or substantial security holder of the issuer has a five percent or greater interest in the company or assets to be acquired, and the issuance could result in an increase in outstanding common shares or voting power of five percent or more. The second circumstance is where the issuance will be equal to 20% or more of the outstanding shares or voting power of the issuer.

Similarly, shareholder approval will be required for issuances of securities for less than the greater of book or market value (other than in the context of a public offering) if either (a) the issuance equals 20% of outstanding stock or (b) if a smaller issuance coupled with sales by the officers, directors or substantial security holders meets the 20% threshold. The NASD believes that the approach taken in the proposal with respect to acquisitions and other transactions strikes an appropriate balance between shareholder protection and burden upon issuers.

In addition, the proposed rule change clarifies the fact that, with respect to stock option plans, shareholder approval is required of the plan itself and not of each issuance of securities pursuant to the plan. It removes the reference to "key employees" and provides that the rule does not generally apply to broadly based plans or arrangements, or to issuances which are an inducement to initial employment with a company. The proposed rule change also establishes a *de minimis* exception to requiring shareholder approval with respect to option plans or arrangements where the securities which may be issued pursuant to the plan do not exceed the lesser of 1% of the number of shares/voting power outstanding or 25,000 shares. This exception is not contained in the NYSE rule.

The proposal also incorporates the NYSE exception to the shareholder approval requirement relating to distressed companies and, mirroring the NYSE rule, requires shareholder approval of the issuance of securities in connection with any transaction resulting in a change of control of the issuer. Definitional explanations of a substantial security holder and the term "voting power" are also provided in the proposal.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act which requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest. The NASD believes that the proposed rule protects investors and is consistent with the purposes of the Act in permitting participation in significant corporate events by those investors. The NASD also believes that the proposed rule change will help assure fair competition among market places and in general will serve to enhance the development of the National Market System mandated by Congress in that the standards will assure that issuers traded in the NASDAQ National Market System will meet non-quantitative criteria consistent with a national interest in those securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. The proposed rule change, however, addresses the comment received by the Commission in response to its publication of the NASD's previous filing of SA–NASD–88–36.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28534 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27490; File No. SR–NASD–89–54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Limit Order Capabilities of the Association's Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] *See* Securities Exchange Act Release No. 26433 (January 9, 1989), 54 FR 1463.

[2] *See* Securities Exchange Act Release No. 27035 (July 14, 1989), 54 FR 30490. The NYSE amendment requires shareholder approval for all issuances of 20% or more of an issuer's outstanding common shares, a reduction in the threshold from an earlier proposed level of 25%. In its September 5th letter, the Division stated "this change reflected the Commission's belief that a rise to 25% might frustrate the intent of the shareholder approval policy." The letter also stated the Division's belief that a similar analysis should apply to the shareholder approval requirements of each marketplace and requested the NASD to consider amending its rule to substitute the 20% threshold, and to consider other conforming changes with NYSE's amended policy.

[2] Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such regulation and to balance any anti-competitive impact against the regulatory benefits gained in furthering the purposes of the Act.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend until February 28, 1990 the Commission's temporary approval of the limit order capabilities of the NASD's Small Order Execution System ("SOES") that was approved for a ninety day period on January 19, 1989, and extended until November 30, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend the Commission's temporary approval of the SOES limit order system until February 28, 1990. This extension will allow the NASD to continue to monitor utilization of the system and will provide an opportunity for the Commission to consider the permanent approval of the limit order system with enhancements relative to crossing or matching of customer limit orders resident in the system. For a detailed description of the proposed limit order enhancements the Association will file an amendment to filing No. SR–NASD–89–9, requesting permanent approval of the SOES limit order file, in the near future.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1) (B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Act. Sections 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register** and in any event before November 30, 1989, the date on which the temporary approval for the SOES Limit Order processing function expires. The Association believes that the enhancement to the SOES system is currently benefitting members and their public customers by providing an automated method of processing limit orders for all SOES participants that is comparable to proprietary systems now utilized by some member firms. In light of these factors, the NASD requests that the Commission approve this rule change on an accelerated basis. During the term of the extension, the Commission will have the opportunity to consider permanent approval of the system with enhancements relating to the crossing of limit orders entered between the spread while providing members and their customers with the ongoing advantage of the ability to use the SOES limit order function.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(5) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof in that accelerated approval will benefit public investors by continuing to provide limit order storage and execution capabilities which can result in more efficient handling of customer orders. The Commission believes that the benefits of extending the temporary rule change until February 28, 1990 outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28535 Filed 12–6–89; 8:45 am]

BILLING CODE [illegible]

[Rel. No. 34–27480; [File No. SR–OCC–89–06]]

Self-Regulatory Organization; The Options Clearing Corporation Order Approving a Proposed Rule Change Increasing the Minimum Required Contribution to OCC's Clearing Fund and Allowing OCC to Charge Certain Losses and Deficiencies Against Retained Earnings

November 28, 1989.

On June 28, 1989, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–89–06) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule would increase the minimum required contribution to OCC's Stock Clearing Fund ("Stock Fund") and Non-Equity Securities Clearing Fund ("Non-Equity Fund") (collectively "Clearing Fund"). The proposed rule also gives OCC's Board of Directors ("Board") more flexibility in dealing with OCC's financial affairs. Notice of the proposed rule change appeared in the **Federal Register** on July 27, 1989.[2] No comments were received. This release approves OCC's proposed rule change.

I. Description of the Proposal

OCC's proposed rule change amends OCC's Rules by increasing a member's minimum required contribution to OCC's Clearing Fund. The proposal amends Rule 1001(a)[3] by increasing a member's minimum required contribution to the Stock Fund from $10,000 to $75,000. It also amends Rule 1001(b)[4] by increasing a member's minimum required contribution to the Non-Equity Fund from $50,000 to $75,000.

The proposal also amends OCC's By-laws by giving OCC's Board of Directors ("Board") more discretion in dealing with OCC's financial affairs. The proposal grants the Board the authority to increase a member's minimum required contribution to the Clearing Fund during the first three months of membership.[5] The proposal further allows OCC to charge any loss caused by a clearing member's default or a deficiency in a member's required clearing fund contribution against OCC's retained earnings.[6]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 27048 (July 20, 1989), 54 FR 31278.

[3] *See* OCC Rules ("Rules"), Chapter 10, Rule 1001(a).

[4] *See* Rules, Chapter 10, Rule 1001(b).

[5] *See* section III.B., *infra.*

[6] *See* section III.C., *infra.*

II. OCC's Rationale

OCC believes that the proposed rule change is consistent with section 17A of the Act[7] because it will provide additional financial integrity to OCC's guaranty of the clearance and settlement of exchange-traded options. OCC believes that its proposal will increase investor confidence by ensuring that OCC maintain an independent source of liquidity with sufficient funds to cover losses arising out of member default.

III. Discussion

A. Increase in Minimum Required Contribution to Clearing Fund

Section 17A of the Act provides that the rules of a clearing agency must, among other things, be designed to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible. A clearing agency's rules must also be designed to protect investors and the public interest.[8] As explained in the Division of Market Regulation's standards for review of clearing agency registration applications ("Standards"),[9] one way to protect participants from risk is for clearing agencies to establish, by rule, an appropriate level of clearing fund contributions based, among other things, on an assessment of the risks to which they are subject.[10] OCC has reassessed the risks to which it is subject in light of the events of October, 1987[11] and, based on that assessment, believes that increasing the minimum required contribution to the Clearing Fund is appropriate at this time.[12]

The Commission believes that OCC's decision to increase minimum required contribution to its Clearing Fund is appropriate and consistent with the Act.[13] OCC's minimum required contribution to its Stock Fund and Non-Equity Fund have remained constant since 1972 (the year of OCC's inception) and 1984 respectively. Since these dates, activity in OCC-issued stock and non-equity options has increased dramatically.

For example, volume for combined equity and non-equity options increased (on an average daily basis) 30% between 1985 and 1988.[14] In addition, average non-equity option premiums have increased over 50% between 1984 and 1988.[15]

The Commission also believes that raising OCC's minimum required contribution to the Stock Fund will better protect OCC from any realistic exposure inherent in options trading.[16] For example, OCC's minimum required contribution to the Stock Fund ($10,000) has not been increased since OCC's formation in 1972. Thus, because of the effects of inflation, this amount no longer provides OCC with the same degree of coverage that it initially provided.

[7] 15 U.S.C. 78q–1 (1982).

[8] *See* 15 U.S.C. 78q–1(b)(3)(F) (1982).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[10] *Id.* at 41923.

[11] On October 19, 1987, OCC, among others, was monitoring the financial condition of one of its clearing members, Shaine, because of its difficulty in meeting settlement obligations and its high risk exposure in uncovered S&P 100 put options. Because of the dramatic decrease in the price of such options on October 19, Shaine was unable to meet its margin calls on that day. Consequently, on October 20, Shaine was placed in liquidation. OCC converted Shaine's margin and clearing fund deposits to cash, netted out Shaine's open positions, and closed out Shaine's netted positions by the end of the day. OCC sustained an $8.5 million loss on the liquidation and allocated such loss pro-rata among OCC's clearing members. This was the first time that OCC's members had been assessed pro-rata for losses caused by a clearing member's default.

Because almost all of Shaine's positions were in non-equity options, 99.25% of the loss was charged to the Non-Equity Fund and 0.75% was charged to the Stock Fund. *See The October 1987 Market Break,* Report by the Division of Market Regulation, United States Securities and Exchange Commission, at 10–48, (February, 1988) ("Market Break Report").

[12] On August 31, 1988, a subcommittee of OCC's margin committee issued a report to OCC's Board of Directors analyzing various aspects of OCC's risk management policies and procedures. ("Backup System Report"). The subcommittee recommended that in view of the events of October, 1987, the minimum required contribution to the Stock Fund and Non-Equity Fund be increased to $75,000. *See* Backup System Report at 58.

[13] The President's Working Group on Financial Markets recommended that clearing organizations review the adequacy of their required clearing fund contributions. See Interim Report of the President's Working Group on Financial Markets (May 1988) Appendix D ("Working Group Report").

[14] OCC's combined equity and non-equity contract volume has increased from 776,400 (on an average daily basis) at the end of 1984 to an average of 1,012,000 (on an average daily basis) for the period 1985 through 1988. *See* Securities Exchange Act Release No. 27048 (July 20, 1989) 54 FR 31276.

[15] OCC's average non-equity options premium has increased from $247.06 per contract in 1984 to an average of $371.12 per contract for the period between 1985 through 1988. See Securities Exchange Act Release No. 27048 (July 20, 1989) 54 FR 31276.

[16] OCC studied the impact of its proposed increase in minimum required clearing fund contributions by picking an arbitrary date (June 30, 1989) and examining whether its clearing fund, as increased under OCC's proposal, would be sufficient to cover OCC's five largest net pays and collects on that date. OCC has informed the Commission that its clearing fund levels on June 30, 1989 would have been three times greater than the total of the five largest net pays to OCC, and fifteen times greater than the total of the five largest collects from OCC.

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The Commission recognizes that increasing the minimum required contribution to OCC's Clearing Fund may serve as a barrier to entry to prospective clearing members, particularly for members and prospective members who desire to participate only in the stock option markets. The Commission believes, however, that the benefits of enhancing OCC's protection against member default outweighs any additional cost to prospective members and existing members with limited capital resources by increasing the amount of capital necessary to participate in OCC. Any prospective member or existing member, who is precluded from becoming or remaining a member because it can not meet OCC's minimum required Clearing Fund contribution, may participate indirectly in OCC by entering into correspondent relationships with other OCC clearing members.

Although the Commission traditionally has not attempted to determine whether a specific dollar amount of Clearing Fund contributions is appropriate,[17] the Commission must review the proposed fund contributions to determine whether the minimum contribution level set by OCC is reasonable in relation to the risks posed to OCC by the activity of its members and is consistent with OCC's obligation to safeguard funds and securities in its custody and control under Section 17A of the Act.[18]

The Commission believes that OCC's proposed minimum required clearing fund contributions enhance OCC's ability to safeguard funds and securities and are adequate in light of the risks posed to OCC by its members' trading activity.[19] As an initial matter, OCC's proposal would result in approximately a 3% increase in the overall dollar amount of OCC's Clearing Fund.[20] Moreover, the composition of OCC's Clearing Fund is such that OCC is assured of having a liquid pool of assets to draw upon in the event of a member default. Under OCC's Bylaws, contributions to its Clearing Fund must be in the form of cash or U.S. Treasury securities.[21] OCC protects the assets in its Clearing Fund against market risk by marking to market daily the Treasury securities contributed to the Clearing Fund. OCC also protects the assets in the Clearing Fund against liquidation risk by valuing short term Treasury securities (i.e.. those with less than one year to maturity) at the lesser of their par value or their current market value. Similarly, all other Treasury securities are valued at the lesser of their par value or 95% of their current market value.

OCC's proposal also allows OCC's Clearing Fund to better fulfill one of its basic objectives. For many years, OCC has attempted to set its Clearing Fund requirements at a level sufficient to replace the individual margin deposits of all but the very largest clearing members. OCC has studied whether the proposed increase to its minimum required Clearing Fund contribution would meet this standard by examining the extent to which the Clearing Fund, as increased under OCC's proposal, would cover the margin requirements of its members on a particular day. OCC has informed the Commission that its Stock Fund and Non-Equity Fund on April 15, 1988, would have been sufficient to cover the margin requirements of all but three or four, respectively, of its members' margin requirements on that date.[22] In addition, OCC also has examined whether its Clearing Fund, as increased under the proposal, would be sufficient to cover its five largest net pays and collects under normal market conditions. OCC has informed the Commission that its Clearing Fund levels on April 15, 1988, would have been nine times greater than the total of the five largest net pays to OCC, and eleven times greater than the five largest net collects from OCC on that date.[23]

It is important to note that OCC's Clearing Fund is just one aspect of the systems OCC has in place to protect against the risks posed by member trading activity. Since the October, 1987 market break, OCC has taken a number of steps to increase its level of protection against member default.[24] For example, OCC has increased its members' initial and maintenance net capital requirements from $150,000 and $100,000 to $1,000,000 and $750,000, respectively. OCC has also increased the capital requirements for clearing members that clear for other firms as facilities managers.[25] Moreover, OCC also has a concentration monitoring system in place which monitors its members' positions on a real time basis to determine whether any member has established an unusually large position in a single class of options.[26] OCC has

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[17] *See* Securities Exchange Act Release No. 19999 (July 21, 1983), 48 FR 34554.

[18] Under Section 17A(b)(3)(A), a registered clearing agency must be so organized and have the capacity to safeguard funds and securities that are subject to its custody or control, or for which it is responsible. *See* 15 U.S.C. 78q–1(b)(3)(A) (1982).

[19] After approval of the instant proposal, OCC's clearing fund will incorporate most of the recommendations suggested by the Working Group Report, the Back-up System Report and the Market Break Report.

[20] This figure is derived by calculating the total dollar amount of assets in OCC's Clearing Fund on April 15, 1988, under OCC's present Clearing Fund formula and under OCC's proposed Clearing Fund formula. On April 15, 1988, OCC had $57.9 million in its Non-Equity Fund and $81.0 million in its Stock Fund. Under OCC's proposal, those amounts would be increased to $59.6 million and $83.39 million, respectively

[21] See Article 8, section 3 of OCC's By-laws. OCC's policy of accepting only cash or Treasury securities as acceptable forms of clearing fund deposits is consistent with the Working Group's recommendation that clearing organizations reduce their clearing funds' reliance on letters of credit and increase the liquidity of such funds by accepting only highly liquid assets (such as U.S. Treasury securities) as acceptable forms of deposit.

[22] For example, OCC's five largest equity option margin requirements on April 15, 1988, were as follows:

Firm A	$109.76 million
Firm B	$108.52 million
Firm C	$89.43 million
Firm D	$75.07 million
Firm E	$61.07 million

Under OCC's proposal, OCC would have had $83.39 million in its Stock Fund on the above date.

OCC's five largest non-equity options margin requirements on April 15, 1988 were as follows:

Firm A	$128.62 million
Firm B	$94.26 million
Firm C	$73.03 million
Firm D	$63.69 million
Firm E	$50.14 million

Under OCC's proposal, OCC would have had $59.63 million in its Non-Equity Fund on the above date. Telephone conversation between Michael Cahill, Assistant Vice-President, OCC, and Ross Pazzol, Attorney, Division of Market Regulation, October 3, 1989.

[23] On April 15, 1988, the five largest net pays to OCC totaled $14.99 million, while the five largest net collects from OCC totaled $12.49 million. Under OCC's proposed increase, OCC would have had $143.02 million in its Clearing Fund on April 15, 1988. Telephone conversation between Michael Cahill, Assistant Vice-President, OCC, and Ross Pazzol, Attorney, Division of Market Regulation, October 3, 1989.

[24] Many of the actions taken by OCC were suggested by either the Market Break Report, the Working Group Report or the Backup System Report.

[25] *See* Securities Exchange Act Release No. 26840 (May 19, 1989), 54 FR 23004.

[26] OCC determines the theoretical liquidating value of a member's position with a projection of the margin interval (*i.e.*, the assumed maximum one-day price movement in the asset or index underlying the option) on each option product at three times its regular interval. The projected theoretical portfolio liquidating value is then compared to the margin requirement for the position at its regular interval. The difference between the projected value and the current margin is compared to the excess net capital of the member. This analysis is done by option class and product group for each member account. OCC's surveillance staff reviews any account in which the difference between the projected value and the current margin held exceeds 40% of the member's excess net capital. OCC reviews any account where such difference is 100% in greater detail. If OCC determines that a member's position poses concentration risk, OCC first requires that member

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also taken steps to reduce the number of intermarket payment flows by entering into a cross-margining agreement with the Chicago Mercantile Exchange.[27] In addition, OCC has decreased from 45 to 15 minutes the amount of time needed to calculate variation (i.e. intraday) margin calls and has established procedures allowing it to debit its members' accounts directly to fund these calls.

OCC has also taken steps to improve the quality of information it receives about its members' financial situation. For example, OCC is a member of the Securities Clearing Group, a group of seven clearing agencies that have agreed to consult with one another whenever a common member has been placed on surveillance and to facilitate the monitoring of common member financial condition.[28] OCC also has agreed to participate in the Chicago Board of Trade Clearing Corporation's ("CBTCC") centralized pay and collect system.[29] The Commission believes that, viewed as a whole, all of the above actions will reduce the systemic risk inherent in the clearance and settlement process by better enabling OCC to fulfill its role as the guarantor of its members' settlement obligations.[30]

It should be noted that OCC's proposal, would, for the first time, establish parity between the minimum required contribution to the Stock Fund and the Non-Equity Fund. Under section 17A(b)(3)(D) of the Act, [31] the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees and other charges among its participants. The Commission believes OCC's proposal is consistent with this standard for the reasons provided below.

Historically, OCC's minimum required clearing fund contribution for non-equity options always has been higher than its minimum required clearing fund contribution for stock options. This disparity was the result of a number of factors. For example, the premium [32] for non-equity options generally was higher than the premium for stock options.[33] Further, the value of the unit of trading for non-equity options generally was greater than such value for equity options.[34]

In addition, OCC, along with all other market participants, sought to provide adequate protection against unforeseen risks of loss when non-equity options were first introduced. Thus, OCC believed that its exposure in connection with members nonequity options activity was greater than its exposure resulting from members' stock options activity.[35]

After gaining some experience with respect to non-equity options, OCC, in 1984, reassessed the risks associated with such options and decreased its minimum required Non-Equity Fund contribution from $100,000 to $50,000.[36] OCC believed that decrease was appropriate because the majority of non-equity option trading involved options on broad-based stock indices whose premiums were at approximately the same level as equity option premiums.[37] In addition, because of the high volume of non-equity options trading in general, and of stock index option trading in particular, OCC estimated that the volume weighted average dollar amount of a non-equity options contract was much lower than expected.[38] Even after this decrease became effective, however, OCC still required a minimum contribution to its non-equity clearing fund which was five times greater than the minimum required contribution to OCC's Stock Fund.

The Commission believes that OCC's proposal to establish parity between the minimum required contributions to its Stock Fund and Non-Equity Fund is consistent with section 17A(b)(3)(D) of the Act. OCC has a number of mechanisms in place which help it offset any possible additional risks associated with the issuance, clearance and settlement of non-equity options. For example, OCC monitors its members' positions on a real time basis to determine whether any member has established an unusually large position in a single class of options.[39] OCC also uses a sophisticated portfolio analysis to determine the appropriate level of a member's daily non-equity options margin requirement.[40] Finally, OCC has gained substantial experience with a wide variety of non-equity options during different market conditions and is familiar with the risks associated with such options. Accordingly, the Commission believes that OCC's identical minimum contribution requirements are appropriate under section 17A(b)(3)(D).

B. Board of Directors Discretion to Increase a New Member's Minimum Required Clearing Fund Deposit

OCC is also amending its rules to grant the Board the authority to increase a member's minimum required clearing fund deposit during its first three months as a member. Currently, OCC requires new members to deposit the minimum required amount to the appropriate clearing fund upon admission to membership at OCC. This amount remains constant during the member's first three months of membership.[41] After such time period, a member's minimum required clearing fund contribution may be increased to reflect the risks posed to OCC by such member's trading activity. OCC proposes to grant the Board the

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to provide cover for short call positions. OCC also may require members to reduce their exposure to large market moves by purchasing or selling options contracts to hedge their position. OCC also may require members to maintain higher than normal margin deposits for concentrated positions. *See* Backup System Report at 47–49.

[27] *See* Securities Exchange Act Release No. 27296 (September 28, 1989) [File No. SR–OCC–89–1]. This development also implements one of the recommendations made in the Working Group Report.

[28] *See* Securities Exchange Act Release No. 27044 (July 18, 1989), 54 FR 30963.

[29] The CBTCC has in place a system for the routine electronic exchange of pay and collect data provided by various futures clearing organizations and OCC. OCC's participation in this system follows the Working Group's recommendation that securities and futures clearing organizations work toward developing a centralized facility for the collection of pay and collect data.

[30] The Commission notes that OCC has still not completed action on some of the recommendations made in the Backup Report, including, guaranteeing trades as they are compared, instead of making OCC's guarantee conditional upon payment of the premium.

[31] *See* 15 U.S.C. 78q–1(b)(3)(D) (1982).

[32] The "premium" of an option is its contract price.

[33] *See* Securities Exchange Act Release No. 19139 (October 14, 1982), 47 FR 46940.

[34] *Id.*

[35] *Id.*

[36] *See* Securities Exchange Act Release No. 21437 (October 31, 1984), 49 FR 44347.

[37] *Id.*

[38] *Id.*

[39] *See* note 26, *supra.*

[40] Both OCC's equity and non-equity option margin calculations are based, in part, on options premiums. In both systems, margin is marked to market daily based on closing ask prices. The second component of equity options margin is based on a flat 30% of the current value of the underlying securities. The second component of non-equity options margin is more flexible and is adjusted according to the current risk posed to OCC by the member's position. *See* Market Break Report at 10–[illegible]

OCC's non-equity options margin system uses options price theory to project the cost of liquidating a member's position in the event of an assumed "worst-case" change in the price of the underlying asset or index. The margin requirement on the same class of options equals the premium plus the additional margin for that class group. OCC calculates the additional margin by determining the assumed maximum one-day price movement in the underlying assets and by projecting the liquidating value of such position. To provide additional protection, OCC presumes that the cost of liquidating a member's out of the money positions would increase by a minimum of 25% of the margin interval. *See* Market Break Report at 10–36. For a more detailed description of OCC's non-equity options margin system, *see* Backup System Report at 24–28. OCC recently filed a proposed rule change with the Commission which would apply OCC's non-equity options margin methodology to equity options. See File No SR–OCC–89–12.

[41] *See* Article 8, section 2 of OCC's By-laws.

authority to increase a member's minimum required clearing fund contribution during the first three months of its membership.

The Commission believes that the proposal serves to protect investors and the public interest and is thus consistent with Section 17A. As stated previously,[43] the Standards require a clearing agency to make an assessment of the risks to which it is subject and set its clearing fund requirements accordingly. The Commission views this obligation to be fluid rather than static and believes that a clearing agency's rules should give it the flexibility to make adjustments to its minimum required clearing fund contributions as circumstances may necessitate.

Under OCC's current rules, a new member's required clearing fund contribution is fixed for three months, but a member's level of options activity is not limited accordingly during such period. The anomalous result is that OCC is required to allow a new member to maintain a minimum required clearing fund deposit which may bear no reasonable relationship to the risk such member's options activity poses to OCC during the initial phase of its membership.[43] Such a result is inconsistent with the policy established by the Standards and with OCC's previous actions.[44] Therefore, the Commission believes that OCC's proposal to give the Board the flexibility to adjust a new member's minimum required clearing fund contribution is designed to safeguard securities and funds in OCC's custody or control or for which it is responsible under section 17A(b)(3)(A).

C. Charging Losses to Retained Earnings

OCC also is amending its rules to permit it to charge losses resulting from clearing member, bank or clearing organization defaults to OCC's retained earnings, instead of charging such losses either pro-rata to the clearing fund contributions of non-defaulting clearing members or to OCC's current earnings. Similar to OCC's proposal to give the Board discretion to increase a member's minimum required clearing fund deposit, the discretion to charge losses to retained earnings gives OCC additional flexibility in dealing with losses by providing it with an additional source of funds to draw upon in the event of a default. Accordingly, the Commission believes that this proposal is consistent with section 17A of the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–OCC–89–06) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28594 Filed 12–6–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27491; File No. SR–PHILADEP–89–02]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Granting Temporary Approval of a Proposed Rule Change Concerning Enhancements to Telecommunications System

November 30, 1989.

On April 26, 1989, the Philadelphia Depository Trust Company ("PHILADEP") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] filed a proposed rule change to effect certain enhancements to Philanet Terminal Communications System ("PTCS") and to establish PTCS as a permanent service.[2] Notice of the proposal appeared in the **Federal Register** on June 7, 1989.[3] No comments were received. This order approves the proposal on a temporary basis until March 31, 1990.

I. Description

The proposal would authorize PHILADEP to offer its participants additional telecommunications services including interfaced clearing agency services, and increased protection against unauthorized access to participant account information. Participants may connect to PTCS by using a dedicated line or a dial-up connection. To prevent unauthorized access to PHILADEP's computers and to participant's account information, direct access and dial-up participants must use a two-step sign-on procedure:

Step 1: The participant enters the command "CSSN," which will prompt the system to respond with a request for the participant's name and password.[4]

Step 2: The participant must enter his name and password. The password will not appear on the screen when typed so that it remains concealed. The security system will validate both name and associated password before allowing the participant to proceed. If an unauthorized password is entered, PTCS security will not allow further access to the system's services.

To further protect the integrity of PHILADEP's telecommunications services, PHILADEP requires dial-up participants to pass an additional level of access before they are allowed access to PTCS. If the participant's equipment uses a different line speed than PHILADEP's standard line speed, the participant must re-enter the password for verification before PHILADEP will upgrade or convert its line speed to allow access to PTCS.

If the dial-up user's terminal equipment is physically compatible with PTCS, PHILADEP will configure the user's software with a five digit access code to be maintained in the participant's software equipment. The five digit access code does not have to be entered by the participant at sign-on time. When the participant dials-in, the access code will be matched automatically with a code maintained in PHILADEP's communications software.

PTCS uses a software security package ("account security") to insure that only participants from authorized terminals can access the participant's account. Account security is based on the participant's account code and the identification of the terminal where the transaction originated ("terminal ID"). PHILADEP's administrative personnel maintains an account list and issues account codes and terminal IDs to participants who are authorized to access PTCS. PHILADEP's systems software is programmed by PHILADEP's Financial Automation Corporation (FAC) to automatically search for the participant's terminal ID from the system's data table when the participant's account code and ID are entered from the participant's terminal. The data table is a part of PHILADEP's communications software and is maintained by administrative personnel after initial programming. When a transaction is entered, the system will use the account code to access the participant's Account Profile (from the data table) where a list of valid terminal IDs for the participant's account is maintained. The system will search the list of IDs for a match on the terminal that submitted the transaction. If a match is found, processing will continue. If no match is found, an error message will be returned to the terminal that submitted the transaction, and processing will be terminated.

PHILADEP reports that it has not experienced any security breaches to date under its current security measures. PHILADEP, however, continues to evaluate the efficacy of access to PTCS through dial-up connections. In addition, PHILADEP plans to implement dial-back measures by early 1990. Moreover, PHILADEP plans to conduct a full security audit by 1990 to evaluate the effectiveness of its current security system.

The proposed rule change is designed to meet participant demand for additional uses[5] by offering participants access and inquiry concerning: (1) Final money settlement information; (2) deliveries and receives that make up a participant's settlement figure; (3) reorganization notices; (4) daily reorganization settlements; (5) daily dividend and interest settlement and announcement information; and (6) customer transfer of securities information. Through PTCS, participants may reprint individual tickets or groups of delivery or receive movement tickets at their terminal printers. Also, in the event a delivering firm enters a delivery order but has insufficient position to fill it immediately, PHILADEP'S Delivery Order Recycle facility will generate a notice ticket for the receiving firm of the intent to deliver. The system will monitor the delivering firm's incoming position for two hours after the delivery order is received. If sufficient position is accrued during this period, the delivery order will be matched and filled the same day. Deliveries that are not filled by the cutoff time will pend in the system to the following day, and the intent to deliver notice will be generated each morning for a maximum period of thirty days until the order is filled or cancelled. Also added to PTCS is PHILADEP'S Reorganization Notice facility which will provide a daily listing of expiring voluntary offers for participants and a last warning notice (one day before cutoff date) of PHILADEP's cutoff date for excepting instructions for voluntary offers.

II. PHILADEP's Rationale

PHILADEP believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances PHILADEP's "capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible."[6] PHILADEP also believes the proposal is consistent with the Congressional objective of facilitating the development of a national system for clearance and settlement of securities transactions. In particular, the proposal represents "[n]ew data processing and communications techniques [that] create the opportunity for more efficient and safe procedures for clearance and settlement."[7] In light of the above, PHILADEP believes that it is appropriate for the Commission to authorize PTCS to be implemented on a permanent basis at this time.

III. Conclusion

The Commission believes that the proposal is consistent with the Act and, in particular, with section 17A of the Act. The proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and encourage the use of automation techniques. The use of dial-up connections will allow greater participation in PHILADEP's automated communications system.

The use of dial-up connections, however, raises safety and security concerns. Therefore, in order to assess the adequacy of PHILADEP's PTCS, the Commission is approving the proposal on a temporary basis until March 31, 1990. During the temporary approval period, the Commission will continue to review the proposal and expects to seek further information from PHILADEP regarding the safety and security of its communications system.

It is therefore ordered, that PHILADEP's proposed rule change (SR–PHILADEP 89–02) be, and hereby is approved on a temporary basis until March 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28536 Filed 12–6–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27492; File No. SR–PSE–89–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to a Lead Market Maker System ("LMM") in Certain Options Contracts

Pursuant to section 9(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 5, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PSE Rule VI in order to adopt Sections 88 and 89 governing the establishment and structure of a Lead Market Maker ("LMM") System. The proposed LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. For these options classes, an Exchange member that is designated an LMM assumes responsibilities and acquires rights beyond those undertaken by PSE market makers that trade in that options class. The Exchange proposes to establish the LMM System for certain options classes, primarily new options classes and current options classes with comparatively low volume. Any options class converted to the LMM system would be assigned to a segregated area of the Options Trading Floor designated for such purpose.

The PSE proposes that an LMM, in addition to fulfilling general market maker obligations, must, among other things, be present throughout every business day, assure that disseminated market quotations are accurate, assure that each disseminated market quotation shall be honored for a minimum of ten contracts, and participate at all times in any automated execution system that is operating. As a result of being an LMM, a member will be allocated 20% participation in trades occurring on his disseminated bids and

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[43] *See* discussion at note 10, *supra.*

[43] Other protective measures reduce the potential risk to OCC. For example, a new member's margin deposit requirement is not subject to any fixed limit and will vary depending on the risk associated with the member's options positions. *See* note 28, *supra.*

[44] *See* notes 21 and 24, *supra.*

[1] 15 U.S.C. 78s(b)(1).

[2] PTCS is an electronic communications system linking PHILADEP to its participants. The PTCS proposal was previously filed and approved as a pilot program. *See* Securities Exchange Act Release No. 20519 (December 30, 1983) 49 FR 966.

[3] *See* Securities Exchange Act Release No. 26872 (May 30, 1989), 54 FR 24451.

[4] Each PHILADEP participant is assigned a confidential and unique password. Passwords will expire at the end of thirty days, but may be changed by the participant at any time.

[5] *See* Securities Exchange Act Release No. 20519 (December 30, 1983) 49 FR 966 (January 6, 1984).

[6] 15 U.S.C. § 78q–1 (1988).

[7] *Id.*

offers in his LMM-appointed options class.

The PSE proposal establishes financial requirements for prospective LMMs and outlines the selection process that the LMM Appointment Committee ("Committee") will utilize to select LMMs. The proposal also provides the Committee, among other things, with authority to relieve an LMM of his appointment and to discontinue the use of the LMM System in a particular options class under certain conditions. Additionally the proposal establishes limitations on dealings by LMMs and "chinese wall" procedures to prevent improper activity as a result of LMM affiliations with upstairs firms.

The PSE requests that these rules be implemented on an eighteen (18) month pilot basis in order to allow the PSE an opportunity to evaluate the effectiveness of this LMM System. The full text of the proposed rule is available at the PSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The proposed rule amendment establishes the structure of an eighteen (18) month pilot program of a system for options trading to be known as the LMM system.

The purpose of the proposed LMM pilot program is to enhance the ability of the Exchange to compete in the changing options trading market, especially in light of the multiple trading system scheduled to begin on January 22, 1990, pursuant to Rule 19C–5 under the Act.

The LMM pilot program is basically broken down into two main segments, both of which are to be incorporated into Exchange Rule VI. The first part, detailed in proposed Section 88, establishes the basic trading elements and structure of the pilot program. In addition to establishing the basic life span of the system at 18 months, it also sets the parameters for those options classes that fall under the LMM system. These will include options classes offered for trading after January 1, 1990, or in any existing options class whose average monthly volume for the previous six months ranks it in the bottom 20% of class activity for the Option Floor.

Other elements of section 88 outline the guidelines for the appointment and removal of an LMM, the structure of the LMM Appointment Committee, the criteria and duties by which an LMM performance will be measured and the hearing process to be used when an LMM appointment is denied or terminated.

The second part of the LMM proposal is contained within proposed section 89, which details the elements to be observed in establishing a "chinese wall" designed to prevent improper activity from occurring as a result of LMM affiliations with upstairs firms.

The PSE believes the proposed rule change is consistent with section 6(b)(5) of the Act, in that it will facilitate transactions, will act in accordance with designs to foster a free and open market, and will promote the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The LMM is the result of extensive discussions generated from the Multiple Trading Sub-Committee, the Options Floor Trading Committee and a group representing pit traders.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28595 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27487; File No. SR–PHLX–89–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Required Staffing on the Options Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(l), notice is hereby given that on November 8, 1989 the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–3(a)(12) (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Floor Procedure Advice E–I in accordance with PHLX Rule 970 regarding the required staffing on the options trading floor after the close for the purposes of effecting adjustments and changes to rectify incorrect trades. The following is the full text of the proposed amendment (italics indicate additions; brackets indicate deletions).

E–1 Required Staffing of Options Floor

Every options specialist unit, floor brokerage unit, clearing firm, Floor Broker and Registered Options Trader must have a representative available on the floor for the thirty minutes before opening and the thirty minutes after the close of trading and one hour after the preliminary trade reports are distributed. Such representatives must be authorized to make appropriate changes and corrections to trades of or guaranteed by such specialist unit, floor brokerage unit, clearing firm, Floor Broker and registered Options Trader. *Additionally, on expiration Saturday such representatives must be available on The Floor from 8:00 AM to the Exchange's last call for adjustments in expiring options.*

Fine Schedule

1st Occurrance—Warning
2nd Occurance—$500.00
3rd Occurance—$500.00
4th and Thereafter—Sanction is discretionary with business Conduct Committee

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to meet the urgency of correcting transactional errors or mismatched trades on expiration Saturday by requiring a representative for floor brokers and ROT's to be available on the trading floor on expiration Saturday. In this respect, the business of clearing transactions on expiration Saturday is like every other trading day. Therefore, it is imperative to require the trading firms to be properly staffed on expiration Saturday to carry on all the ordinary business activities and responsibilities incident to the trading.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to further facilitate transactions in securities, to promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: November 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28596 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17248; 812–7289]

American Tax Credit Properties II L.P., Notice of Application

November 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: American Tax Credit Properties II L.P. (the "Partnership") and Richman Tax Credit Properties II L.P. (the "General Partner").

Relevant 1940 act sections: Exemption under section 6(c) from all provisions of the 1940 Act.

Summary of application: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act to permit the Partnership to invest in other limited partnerships that, in turn, will engage in the ownership, operation, and possibly development or rehabilitation of low and moderate income housing projects that qualify for certain tax credits allowable under the Internal Revenue Code of 1986.

Filing date: The application was filed on April 10, 1989 and amended on September 15, 1989, and November 20, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1989, and should be

[1] 17 CFR 200.30–3(a)(12) (1989).

accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 750 Taxter Road, Suite 420, Elmsford, New York 10523.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie Monaco, Branch Chief, at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland, (301) 258-4300).

Applicants' Representations

1. The Partnership was formed under the Delaware Revised Uniform Limited Partnership Act on October 26, 1988. On November 1, 1988, the Partnership filed a Registration Statement (as amended on February 28, 1989 and April 21, 1989) under the Securities Act of 1933 ("Securities Act") for the sale of 100,000 units of Limited Partnership interests ("Units") at $1,000 per Unit. The registration statement was declared effective May 9, 1989. The offering will terminate no later than December 31, 1989. The Partnership intends to offer 50,000 Units but has registered 100,000 Units because Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Selling Agent"), the Partnership and the General Partner have the right, exercisable by mutual agreement, to sell (on the same terms and conditions as the other Units) up to an additional 50,000 Units on behalf of the Partnership. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

2. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Partnerships") which will engage in the ownership, operation, and possibly development or rehabilitation of low and moderate income housing ("Properties") benefitting from some form of federal, state, or local government housing assistance. The ownership of such Properties is expected to generate certain tax credits allowable under the Internal Revenue Code of 1986 ("Code"). The Partnership's principal investment objectives are to invest in Local Partnerships which own and operate Properties in a manner which will: (i) Provide the Limited Partners with low-income credits and, to a lesser extent, rehabilitation credits which may be used to offset their federal income tax liability; (ii) allocate passive losses to individual Limited Partners to offset passive income that they may realize from rental real estate investments and other passive activities, and allocate passive losses to corporate Limited Partners to offset active business income; (iii) preserve and protect the Partnership's capital; (iv) provide to the Limited Partners, to the extent feasible, distributions of cash, if any, from the operations of the Properties (current taxes on which are expected to be substantially deferred); and (v) provide to the Limited Partners, to the extent feasible, distributions of cash, if any, from sale or refinancing proceeds upon the disposition or refinancing of the Properties, including amounts attributable to capital appreciation. In no case will investments be made in Properties that are not eligible for low-income credits.

3. The Partnership intends to acquire 90% to 99% of the interest in the Local Partnerships. However, to the extent the Partnership has less than the amount of funds necessary to acquire a 90% to 99% interest in a particular Local Partnership (such as may be the case with respect to amounts remaining after all other investments have been made), the Partnership may invest such amounts in joint ventures with affiliates. The Partnership does not anticipate that the aggregate of such amounts will exceed 5% of the gross offering proceeds. Furthermore, such investment is subject to certain restrictions, as disclosed in the Partnership's prospectus, to minimize conflicts of interest. Such restrictions require, for example, that (i) the investment objectives of the affiliate be substantially the same as those of the Partnership; (ii) there be no duplicative property management or other fees; (iii) the Partnership has a right of first refusal to buy if the affiliate wishes to sell its interest; and (iv) the investment be on substantially the same terms and conditions.

4. Offers to sell and sales to the public of the Units are to be effected through the Selling Agent. However, any subscriptions for Units must be approved by the General Partner, which approval is conditioned upon representations as to suitability of the investment for each subscriber. Each subscriber will represent, among other things, that he meets the general investor suitability standards. Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified Investor") who meets the following requirements: (a) for corporate investors (i) corporations subject to Subchapter S of the Code and C Corporations that are personal service corporations must reasonably expect to have substantial unsheltered passive activity income; (ii) C Corporations that are not closely held and are not personal service corporations must reasonably expect to have sufficient taxable income from all sources to use the low-income and rehabilitation credits and any Partnership losses; and (iii) closely-held C Corporations that are not personal service corporations must reasonably expect to have taxable income from an active trade or business and/or sufficient unsheltered passive activity income to use the low-income and rehabilitation credits; or (b) in the case of noncorporate investors, (i) such investors must reasonably expect to have an annual adjusted gross income, and married investors expect to have a combined annual adjusted gross income, of not more than $200,000 in each year in which they will be allocated low-income credits; or (ii) such investors must have substantial unsheltered passive activity income. In addition, each subscriber must represent that he (i) has a net worth (exclusive of home, home furnishings, and personal automobiles) of at least $30,000 and an annual gross income of not less than $30,000; (ii) has a net worth (exclusive of home, home furnishings, and personal automobiles) of at least $75,000; or (iii) is purchasing in a fiduciary capacity for a person or entity having the net worth and annual gross income as set forth in clause (i) or such net worth as set forth in clause (ii). Units will be sold in certain states only to persons who meet additional or alternative standards that will be set forth in the prospectus; provided, however, that in no event shall the Partnership employ any such suitability standard which is less restrictive than set forth above. Furthermore, no transfer of Units will be permitted unless the transferee meets the same suitability standards as the transferor Limited Partner. The Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") imposes substantial restrictions on transferability of the Units. The Partnership believes that the suitability standards set forth above are consistent with the requirements of Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release No. 8456") and are consistent with the guidelines of those states that prescribe suitability standards.

5. All proceeds of the public offering of Units initially will be placed in an escrow account with Security Pacific National Trust Company (New York). Any net proceeds of the offering which the Partnership has not invested in Local Partnerships or applied to reserves upon release from escrow will be returned by the Partnership to the Limited Partners *pro rata* as a return of capital. The Partnership will invest any net proceeds not immediately utilized to acquire Local Partnership interests or for other Partnership purposes (such as the establishment of an initial reserve) in permitted interim investments including (i) readily marketable securities issued by states or municipalities within the United States rated "A" or better by a recognized rating agency; (ii) direct obligations of, or obligations unconditionally guaranteed by, the United States or any agency thereof; (iii) commercial paper issued by any corporation organized and doing business under the laws of the United States or any state thereof rated in one of the two highest categories by Moody's Investor Service, Inc. and by Standard & Poor's Corporation; (iv) certificates of deposit or Eurodollar certificates of deposit issued by commercial banks organized and doing business under the laws of the United States or any state thereof (or, in the case of Eurodollar certificates of deposit, a branch of any such bank); (v) debt securities issued by corporations organized and doing business under the laws of the United States or any state thereof rated "A" or better by a recognized rating agency, provided that a dealer which is a member of the New York Stock Exchange maintains a regular market in such securities; (vi) collateralized repurchase agreements with domestic banks having a duration no longer than 60 days (or any extension or renewal for a period not exceeding the period of initial agreement) with respect to or secured by any of the types of securities specified in clauses (i) through (iii) above; and (vii) shares of any open-end investment company which has assets of not less than $200 million and invests primarily in securities of the type enumerated above or banker's acceptances; provided, however, that if the value of "investment securities" (as defined in the 1940 Act) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities and cash items) at any time, such excess may be invested only in government securities. The Partnership does not intend to trade and will not speculate in any temporary investments.

6. The Partnership will be controlled by its General Partner, while the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership business. Limited Partners owning a majority of Partnership interests, however, will have the right to (i) amend the Partnerships Agreement (subject to certain limitations); (ii) remove the General Partner and elect a replacement therefor; and (iii) dissolve the Partnership. Each Limited Partner also is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that the General Partner cannot take certain significant actions without the consent of a majority in interest of the Limited Partners, including (i) the sale of all or substantially all of the Partnership's assets; (ii) the dissolution of the Partnership; and (iii) any amendment of the Partnership Agreement except for certain ministerial or technical amendments.

8. The Selling Agent will receive commissions of $60 per Unit and a financial advisory fee of $20 per Unit. In addition, the Selling Agent will be reimbursed by the Partnership or the General Partner up to the limits specified in the prospectus for out-of-pocket expenses incurred by it in connection with the offering. Selling commissions and other remunerations based on 6% of the gross proceeds customarily are charged in securities offerings of this type and are consistent with the guidelines of the National Association of Securities Dealers, Inc.

9. Acquisition phase fees payable to the General Partner or its affiliates will be limited by the Statement of Policy on Real Estate Programs adopted by the North American Securities Administrators Association, Inc. (the "NASAA guidelines"). In addition, the General Partner and its affiliates will receive substantial fees and compensation from the Partnership, including acquisition expenses allowances, property development fees, management fees, property management fees, and administration fees. Further, the local general partners will receive substantial fees and compensation from each Local Partnership. In addition to fees and interests, the General Partner and its affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

10. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus, and no compensation will be payable to the General Partner or any of its affiliates not so specified. The substantial fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been arrived at through arm's length negotiations. All such compensation, however, is believed to be fair and on terms no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines, including the NASAA guidelines.

11. The Partnership believes that any potential conflict of interest between the General Partner or its affiliates and the Limited Partners are disclosed in the prospectus, including the receipt of fees and other compensation by the General Partner and its affiliates, competition by Local Partnerships with affiliates of the General Partner for Properties, and the risks involved in the Partnership's investments in joint ventures with other partnerships formed by the General Partner. The Partnership Agreement contains various provisions designed to eliminate or significantly reduce these and other conflicts of interest. For example, in connection with investment opportunities which might be available to more than one entity that the General Partner or one of its affiliates advises or manages, the determination of suitability of the investment for each entity will be based on a review of each entity's portfolio. If an investment is suitable for more than one entity, priority will be given to the entity having uninvested funds for the longest period of time. In addition, the Partnership will distribute to the Limited Partners reports concerning its business and operations in order to ensure that Limited Partners receive extensive information about the Partnership.

12. The Partnership Agreement provides for indemnification of the General Partner and its affiliates against any losses, judgments, liabilities, costs, expenses and amounts paid in settlement of claims sustained in connection with the Partnership, provided that the same were not the result of fraud, negligence, misconduct or breach of fiduciary duty. The General Partner is aware, however, and the prospectus discloses that it is the opinion of the SEC that indemnification

for liabilities arising under the Securities Act is contrary to public policy and, therefore, unenforceable.

Applicants' Legal Conclusion

1. The Applicants assert that the exemption of the Partnership from all provisions of the Act pursuant to section 6(c) of the Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure is the primary means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; (c) the limited partnership form insulates each Limited Partner from personal liability and limits the financial risk of such partner to the amount he has invested in the program, while also allowing him to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; and (d) the limited partnership form is incompatible with many provisions of the 1940 Act, such as the requirement that investment companies be managed by unaffiliated persons or the asset coverage limitations in section 18. Thus, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity and frustrate the public policy established by the housing laws.

2. Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier limited partners engaged in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons * * *." The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (1) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially taxshelter, investments would not be unsuitable;" and (2) "requirements for fair dealing by the General Partners of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection.

3. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Partnership by various federal, state and local agencies, provided protection to investors in Units comparable to, and in some respects greater than, that provided by the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28537 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17247; File No. 812-7398]

Confederation Life Insurance and Annuity Company, et al.

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Confederation Life Insurance and Annuity Company ("CLIAC"); CLIAC Separate Account A; and Confederation Financial Services, (U.S.), Inc. ("CFS").

Relevant 1940 act sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account with respect to certain variable annuity contracts.

Filing Date: The application was filed on September 25, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Steven P. Sprague, Esq., Confederation Life Insurance and Annuity Company, P.O. Box 105103, 260 Interstate North, Atlanta, Georgia 30348.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, at (202) 272-3046 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application: the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. CLIAC, a stock life insurance company incorporated under the laws of the State of Georgia, is a wholly owned subsidiary of Confederation Life Insurance Company, a Canadian mutual insurance company. The Separate Account was established by CLIAC in connection with the proposed issuance of individual deferred variable annuity contracts ("Contracts"). CFS will serve as distributor and principal underwriter of the Contracts.

2. The Separate Account will invest in shares of the Oppenheimer Variable Account Funds ("Series Fund"). The Series Fund is an open-end, diversified management investment company with a number of series, or portfolios. The Separate Account has a number of subaccounts, each of which invests solely in the specific corresponding portfolio of the Series Fund.

3. CLIAC will deduct an Annual Contract Fee of $30 per year per contract from the Accumulation Account at the end of each policy year prior to the Annuity Date (and on full surrender on any date other than a Contract Anniversary) to partially compensate CLIAC for administrative services provided to contract owners. This charge is guaranteed not to increase. In addition, there is a daily charge to the Separate Account at an effective annual rate of 0.10% of the Separate Account assets. This charge may be increased in the future. CLIAC does not anticipate any profit from these charges; they are cost-based in accordance with Rule 26a-1 under the Act.

4. On full surrenders or partial withdrawals, CLIAC will deduct a contingent deferred sales charge of up to 6% of the amount withdrawn to cover expenses relating to the sale of the Contracts. The aggregate contingent deferred sales charge is guaranteed never to exceed 6% of total deposits. The charge scales down to 0 on withdrawals of deposits made more than five years prior to the withdrawal.

5. CLIAC imposes a daily charge to compensate it for bearing certain mortality and expense risks under the Contracts. This charge is equal to an effective annual rate of 1.25% of the net assets of the Separate Account. Of that amount, approximately .95% is attributable to mortality risks, and approximately .30% is attributable to expense risks. CLIAC guarantees that this charge will never increase. CLIAC currently anticipates a profit from this charge. CLIAC does not anticipate that the contingent deferred sales charges will generate sufficient funds to pay the costs of distributing the contracts. If these charges are insufficient sales costs, the deficiency will be met from CLIAC's general account funds, which may include amounts derived from the charge for mortality and expense risks.

6. The mortality risk borne by CLIAC arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live, and from its obligation to pay a death benefit that may be higher than the value of the Accumulation Account of a Contract. The expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by CLIAC.

7. CLIAC argues that the mortality and expense risk charge is a reasonable charge to compensate CLIAC for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the value of the Accumulation Account of a Contract will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

8. CLIAC represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon CLIAC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. CLIAC will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

9. CLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Owner. The basis for such conclusion is set forth in a memorandum which will be maintained by CLIAC at its administrative offices and will be available to the Commission.

10. CLIAC also represents that the Separate Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28538 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17244, 812-7375]

First Investors Fund for Growth, Inc., et al.; Application for Order Approving Substitution of Securities in Unit Investment Trust

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order Approving Substitution under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Investors Fund for Growth, Inc. ("Fund for Growth"), First Investors International Securities Fund, Inc. ("International Securities Fund"), First Investors Management Company, Inc. ("Management Company"), First Investors Corporation ("First Investors"), and First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Fund for Growth, Inc. ("Plan").

Relevant 1940 act sections: Approval requested for substitution of shares pursuant to section 26(b).

Summary of application: Applicants seek an order allowing them to substitute the shares of International Securities Fund for shares of Fund for Growth as the underlying securities of the Plan.

Filing date: The application was filed on August 9, 1989 and amended on November 21, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; on behalf of Applicants, First Investors Corporation, 120 Wall Street, New York, New York 10005, Attention: Andrew J. Donohue, Senior Vice President, Secretary and General Counsel.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Law Clerk, at (202) 272-2511, or Max Berueffy, Branch Chief, at (202) 272-3016.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Fund for Growth and International Securities Fund (collectively the "Funds") are diversified open-end management investment companies registered under the 1940 Act. The Management Company is organized under the laws of the State of New York and registered as an investment adviser under the Investment Advisers Act of 1940. The Management Company states that its primary business is as investment adviser of the First Investors group of mutual funds, which includes the Funds. First Investors is organized under the laws of the State of New York and registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as a counderwriter of the First Investors group of mutual funds and as sponsor and underwriter of single payment and periodic payment plans for investment in certain registered investment companies that are members of the First

Investors group of mutual funds. Applicants have indicated that for the purposes of the 1940 Act, First Investors is the underwriter, depositor, and sponsor of the Plan as those terms have been interpreted by the SEC with respect to periodic payment plans.

2. The Plan provides for long-term investment in shares of the Fund for Growth, through single payment and periodic payment plans, with or without insurance. The Plan is organized as a unit investment trust and registered under the 1940 Act (File No. 811–1359). Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of the Fund for Growth at the current net asset value of such shares.

3. The Board of Directors of Fund for Growth has determined that, under present market conditions, continuation of the Fund for Growth's current policies would not achieve optimal results for its shareholders, and that the more flexible approach employed by the International Securities Fund, including the ability to take advantage of investment opportunities in other markets and additional types of securities, would better enable the Fund for Growth to achieve its objective of long-term capital appreciation. The Board further determined that since International Securities Fund likewise has the primary investment objective of long-term capital growth, the proposed reorganization would best serve Fund for Growth shareholders by affording them the opportunity to participate in a fund with a compatible investment objective. Although International Securities Fund has higher investment advisory, custodian, and accounting fees, the Board of Directors of Fund for Growth believes that these higher fees will be offset by the potential advantages of the International Securities Fund's flexible investment policies.

4. On March 23, 1989, the Funds entered into an Agreement and Plan of Reorganization (the "Agreement") which provides for the transfer of substantially all of the assets of Fund for Growth to International Securities Fund in exchange for shares of common stock of International Securities Fund having the same aggregate net asset value. Pursuant to the Agreement, shares of International Securities Fund will be distributed to Fund for Growth shareholders. Fund for Growth will subsequently file an application to terminate its registration under the 1940 Act and will be liquidated and dissolved.

5. Consummation of the Agreement was specifically predicated on obtaining the approval of a majority of Fund for Growth shareholders at a special meeting of shareholders. Shareholders of Fund for Growth approved the Agreement on August 30, 1989. Holders of Plan accounts ("Planholders") were advised of, and had voting privileges with respect to the Agreement. If a Planholder did not exercise this voting privilege, the Plan's custodian voted such Planholders' shares of the Fund for Growth in proportion to the shares of those Planholders who did exercise their voting privileges.

6. The respective Boards of Directors of the Funds have each unanimously approved the reorganization as being in the best interest of the respective fund shareholders without diluting their interests, after having considered, among other factors, the objectives and policies of each fund, the assets and liabilities of each fund, the prospects of each fund individually and combined, and the fairness to the respective shareholders of each fund as a result of the exchange of shares being done on a net asset value basis.

7. In particular, the respective Boards found that both funds have the same general investment objective of long-term capital growth. Although the investment policies employed to achieve these objectives differ, the Directors of the Funds believe the policies are compatible, because they generally involve investment in equity securities that offer potential for capital appreciation. Consummation of the proposed reorganization and resultant combination of Funds should result in reductions in certain costs of operating the Funds. Additionally, the Boards of Directors of the Funds have each determined that the combination of assets of the Funds would permit greater portfolio diversification, resulting in decreased risk exposure to shareholders under various market conditions. Furthermore, the larger asset base should result in reductions of certain operating expenses applicable to the Funds.

8. The Board of Directors of First Investors has determined that the best course of action for Planholders under the Plan is to provide for continuity of their long-term investment objectives through the continuance of the Plan by means of a substitution of the shares of International Securities Fund for the shares of Fund for Growth in accordance with the reorganization. In so determining, the Board of Directors of First Investors took into account all of the factors considered by the representative Boards of Directors of the Funds.

9. In approving the proposed substitution of shares, the Board of Directors of First Investors noted the following additional factors: (a) The rights of Planholders under the Plan will not be changed as a result of the reorganization; (b) First Investors will remain as the Plan Sponsor, and after the substitution of shares, the only other change to the Plan would be the change of its name to reflect the substituted securities of International Securities Fund; (c) the substitution would be subject to Planholder approval and therefore would not be at the Sponsor's discretion; (d) the Plan permits Planholders adequate voting rights and full disclosure in connection with the reorganization and the proposed substitution; (e) the underlying exchange of shares in connection with the reorganization and the proposed substitution will be at net asset value; and, (f) while the consummation of the reorganization is not expressly contingent on the receipt of a favorable opinion from special counsel, it is anticipated that the substitution will be done on a tax-free basis to Planholders.

10. Applicants state that all expenses and charges involved in the proposed substitution will be borne by First Investors as sponsor except proper transfer taxes and charges customarily charged to shareholders by state or local authorities for securities transfers and that there are no back-end sales charges in connection with the proposed substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act makes it unlawful for the depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission approves the substitution.

2. Applicants submit, for all the reasons stated herein, that the order requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Accordingly, Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28599 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17243, 812–7366]

First Investors Discovery Fund, Inc., et al.; Application for Order Approving Substitution of Securities in Unit Investment Trust

November 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order Approving Substitution under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Investors Discovery Fund, Inc. ("Discovery Fund"), First Investors International Securities Fund, Inc. ("International Securities Fund"), First Investors Management Company, Inc. ("Management Company"), First Investors Corporation ("First Investors"), and First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Discovery Fund, Inc. ("Plan").

Relevant 1940 act sections: Approval requested for substitution of shares pursuant to section 26(b).

Summary of application: Applicants seek an order allowing them to substitute the shares of International Securities Fund for shares of the Discovery Fund as the underlying securities of the Plan.

Filing Date: The application was filed on July 31, 1989 and amended on November 21, 1989.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; on behalf of Applicants, First Investors Corporation, 120 Wall Street, New York, New York 10005, Attention: Andrew J. Donohue, Senior Vice President, Secretary and General Counsel.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Law Clerk, at (202) 272–2511, or Max Berueffy, Branch Chief, at (202) 272–3016.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Discovery Fund and International Securities Fund (collectively the "Funds") are diversified open-end management investment companies registered under the 1940 Act. The Management Company is organized under the laws of the State of New York and registered as an investment adviser under the Investment Advisers Act of 1940. The Management Company states that its primary business is as investment adviser of the First Investors group of mutual funds, which includes the Funds. First Investors is organized under the laws of the State of New York and registered as a broker-dealer under the Securities Exchange Act of 1934. First Investors' primary business is as a co-underwriter of the First Investors group of mutual funds and as sponsor and underwriter of single payment and periodic payment plans for investment in certain registered investment companies that are members of the First Investors group of mutual funds. Applicants have indicated that for the purposes of the 1940 Act, First Investors is the underwriter, depositor, and sponsor of the Plan as those terms have been interpreted by the SEC with respect to periodic payment plans.

2. The Plan provides for long-term investment in shares of the Discovery Fund, through single payment and periodic payment plans, with or without insurance. The Plan is organized as a unit investment trust and registered under the 1940 Act (File No. 811–1903). Purchase payments for accounts established under the Plan, net of charges and expenses applicable at the time of purchase, are invested in shares of the Discovery Fund at the current net asset value of such shares.

3. The Board of Directors of Discovery Fund has determined that, under present market conditions, continuation of the Discovery Fund's current policies would not achieve optimal results for its shareholders, and that the more flexible approach employed by the International Securities Fund, including the ability to take advantage of investment opportunities in other markets and additional types of securities, would better enable the Discovery Fund to achieve its objective of long-term capital appreciation. The Board further determined that since International Securities Fund likewise has the primary investment objective of long-term capital growth, the proposed reorganization would best serve the Discovery Fund shareholders by affording them the opportunity to participate in a fund with a compatible investment objective. Although International Securities Fund has higher investment advisory, custodian, and accounting fees, the Board of Directors of the Discovery Fund believes that these higher fees will be offset by the potential advantages of the International Securities Fund's flexible investment policies.

4. On March 23, 1989, the Funds entered into an Agreement and Plan of Reorganization (the "Agreement") which provides for the transfer of substantially all of the assets of the Discovery Fund to International Securities Fund in exchange for shares of common stock of International Securities Fund having the same aggregate net asset value. Pursuant to the Agreement, shares of International Securities Fund will be distributed to Discovery Fund shareholders. Discovery Fund will subsequently file an application to terminate its registration under the 1940 Act and will be liquidated and dissolved.

5. Consummation of the Agreement was specifically predicated on obtaining the approval of a majority of the Discovery Fund shareholders at a special meeting of shareholders. Shareholders of the Discovery Fund approved the Agreement on September 22, 1989. Holders of Plan accounts ("Planholders") were advised of, and had voting privileges with respect to the Agreement. If a Planholder did not exercise this voting privilege, the Plan's custodian voted such Planholders' shares of the discovery Fund in proportion to the shares of those Planholders who did exercise their voting privileges.

6. The respective Boards of Directors of the Funds have each unanimously approved the reorganization as being in the best interest of the respective fund shareholders without diluting their interests, after having considered, among other factors, the objectives and policies of each fund, the assets and liabilities of each fund, the prospects of each fund individually and combined, and the fairness to the respective shareholders of each fund as a result of the exchange of shares being done on a net asset value basis.

7. In particular, the respective Boards found that both funds have the same general investment objective of long-

term capital growth. Although the investment policies employed to achieve these objectives differ, the Directors of the Funds believe the policies are compatible, because they generally involve investment in equity securities that offer potential for capital appreciation. Consummation of the proposed reorganization and resultant combination of the Funds should result in reductions in certain costs of operating the Funds. Additionally, the Boards of Directors of the Funds have each determined that the combination of assets of the Funds would permit greater portfolio diversification, resulting in decreased risk exposure to shareholders under various market conditions. Furthermore, the larger asset base should result in reductions of certain operating expenses applicable to the Funds.

8. The Board of Directors of First Investors has determined that the best course of action for Planholders under the Plan is to provide for continuity of their long-term investment objectives through the continuance of the Plan by means of a substitution of the shares of International Securities Fund for the shares of the Discovery Fund in accordance with the reorganization. In so determining, the Board of Directors of First Investors took into account all of the factors considered by the representative Boards of Directors of the Funds.

9. In approving the proposed substitution of shares, the Board of Directors of First Investors noted the following additional factors: (a) The rights of Planholders under the Plan will not be changed as a result of the reorganization; (b) First Investors will remain as the Plan Sponsor, and after the substitution of shares, the only other change to the Plan would be the change of its name to reflect the substituted securities of International Securities Fund; (c) the substitution would be subject to Planholder approval and therefore would not be at the Sponsor's discretion; (d) the Plan permits Planholders adequate voting rights and full disclosure in connection with the reorganization and the proposed substitution; (e) the underlying exchange of shares in connection with the reorganization and the proposed substitution will be at net asset value; and, (f) while the consummation of the reorganization is not expressly contingent on the receipt of a favorable opinion from special counsel, it is anticipated that the substitution will be done on a tax-free basis to Planholders.

10. Applicants state that all expenses and charges involved in the proposed substitution will be borne by First Investors as sponsor except proper transfer taxes and charges customarily charged to shareholders by state or local authorities for securities transfers and that there are no back-end sales charges in connection with the proposed substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act makes it unlawful for the depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security unless the Commission approves the substitution.

2. Applicants submit, for all the reasons stated herein, that the order requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Accordingly, Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28598 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17240; File No. 812-7412]

The Guardian Insurance & Annuity Company, Inc., et al.

November 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Guardian Insurance & Annuity Company, Inc. ("GIAC"); The Guardian Separate Account D ("Separate Account"); and Guardian Investor Services Corporation.

Relevant 1940 act sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of application: Applicants seek an order to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Account pursuant to certain variable annuity contracts.

Filing date: October 16, 1989.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Clifford E. Kirsch, Acting Assistant Director (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Separate Account was established in connection with the proposed issuance of individual single premium deferred variable annuity contracts, individual flexible premium deferred variable annuity contracts, and a group unallocated contract (the "Contracts").

2. The Separate Account will invest in shares of the following diversified, open-end management investment companies: the Guardian Cash Fund, the Guardian Stock Fund, the Guardian Bond Fund, Value Line Centurion Fund, and Value Line Strategic Asset Management Trust (the "Funds"). The Separate Account has a number of investment divisions, each of which invests solely in a specific corresponding Fund.

3. GIAC imposes a charge of 1.15% to compensate it for bearing certain mortality and expense risks under the Contracts. The mortality risk borne by GIAC arises from its obligation to make monthly annuity payments regardless of how long all annuitants may live and from its obligation under some forms of the Contracts to pay a death benefit that may be higher than the accumulation value of the Contract. The expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by GIAC.

4. In addition to the deduction of a mortality and expense risk charge, GIAC will impose a charge for administrative expenses and a contingent deferred sales charge on certain withdrawals and surrenders. Premium taxes will also be deducted. At the present time, no charges will be deducted for transfers.

5. Under the single premium contract, the contingent deferred sales charge is 6% of the amount withdrawn in the first two contract years, declining by 1% each year after the second year until the charge is 0% in the eighth contract year. Under the flexible premium and group unallocated contracts, the contingent deferred sales charge is the lesser of 6% of the amount withdrawn or 6% of the total payments made during the 84 months immediately preceding the date of the withdrawal. Contingent deferred sales charges may also be imposed upon the selection of certain annuity payout options under the Contracts.

6. GIAC claims that the mortality and expense risk charge is a reasonable charge to compensate GIAC for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk assumed in connection with any death benefit guarantees provided under the Contracts; for the risk that the accumulation value of the Contract will be less than the death benefit under some forms of the Contracts; and for the risk that administrative expenses will be greater than amounts derived from the administrative charges.

7. GIAC represents that the charge of 1.15% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon GIAC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. GIAC will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants further acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by sales charges.

9. GIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by GIAC at its executive office and will be available to the Commission.

10. GIAC also represents that the Separate Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28597 Filed 12-6-89; 8:45am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17245]

Order Temporarily Suspending Redemption of Investment Company Shares Pursuant to Section 22(e)(3) of the Investment Company Act of 1940

November 29, 1989; Time Entered: 6:00 p.m. e.s.t.

In the matter of: Municipal Lease Securities Fund, Inc., 208 South LaSalle Street, Suite 1818, Chicago, Illinois 60604, (File No. 811-4437).

Municipal Lease Securities Fund, Inc. ("MLS Fund") is an open-end investment company registered with the Commission under the Investment Company Act of 1940. Based upon an inspection by its staff, it appears to the Commission that it is not reasonably practicable for the MLS Fund to determine the value of its net assets. The MLS Fund has requested that the Commission issue an Order pursuant to section 22(e) temporarily suspending redemption of the fund's shares.

Section 22(e) of the Investment Company Act provides, in relevant part, that no registered investment company shall suspend the right of redemption except "(2) for any period during which an emergency exists as a result of which * * * (B) it is not reasonably practicable for such company fairly to determine the value of its net assets; or (3) for such other periods as the Commission may by order permit for the protection of security holders of the company."

The Commission further believes that the suspension of the right of redemption of the MLS Fund's outstanding redeemable securities and of payment for shares submitted for redemption but for which payment has not yet been made as of the date and time of the order herein is necessary for the protection of the MLS Fund's shareholders.

Therefore, beginning as of 6:00 p.m., E.S.T., Wednesday, November 29, 1989, *it is ordered* pursuant to section 22(e)(3) of the Investment Company Act that the MLS Fund shall (1) suspend the right of redemption of its outstanding redeemable securities, and (2) postpone the date of payment for shares submitted for redemption but upon which payment has not yet been made as of the date and time of this order. This order shall expire at 11:59 p.m., e.s.t., Friday, December 8, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28600 Filed 12-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24992]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 30, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–7535)

New England Electric System ("NEES"), a registered holding company, and ten of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company (Mass Electric"), The Naragansett Electric Company ("Narragansett"), NEES Energy, Inc. ("NEES Energy"), New England Electric Transmission Corporation ("Neet"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass. Hydro"), New England Hydro-Transmission Corporation ("NH Hydro") New England Power Service Company ("Service Company"), 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to an application-declaration in this proceeding pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40, 45 and 50(a)(5) thereunder.

By orders in this proceeding dated October 21, 1988 (HCAR No. 24733) and July 7, 1989 (HCAR No. 24921), each of the above named subsidiaries with the exeception of NEES Energy, NEEI, Mass. Hydro, and NH Hydro) was authorized through October 31, 1990 to borrow from the NEES money pool and/or, in the cases of Mass Electric and Power Company, to issue commercial paper up to the following maximum outstanding amounts: Granite—$7 million; Mass Electric—$110 million; Narragansett—$50 million; NEET—$10 million; Power Company—$300 million and Service Company—$10 million.

Granite now seeks to increase its short-term borrowing authority from the current $7 million to $12 million.

General Public Utilities Corporation, et al. (70–7720)

GPU Nuclear Corporation ("GPU Nuclear"), One Upper Pond Road, Parsippany, New Jersey 07054, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("MetEd"), 1800 Pottsville Pike, Reading, Pennsylvania 19640, and Pennsylvania Electric Company ("PennElec"), 10001 Broad Street, Johnstown, Pennsylvania 15907, each a subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, have filed an application-declaration under section 13(b) of the Act and Rules 87, 90, and 91 thereunder.

By order dated September 4, 1980 (HCAR No. 21708), GPU was authorized to organize GPU Nuclear to provide certain operating and maintenance services for all nuclear generating facilities owned by JCP&L, MetEd, and PennElec, and related research and development. GPU Nuclear commenced operations on or about January 1, 1982.

GPU Nuclear now proposes to enter into separate service agreements to provide certain additional services, at cost, to JCP&L, MetEd and PennElec in relation to their non-nuclear operations. Specifically, GPU Nuclear proposes to provide: (1) Certain operations and maintenance services for JCP&L's two combustion turbine units and all related equipment located at Forked River, New Jersey, which is adjacent to GPU Nuclear's Oyster Creek Nuclear Generating Station, for which such turbine units provide backup and emergency A/C power supply; and (2) certain laboratory services to JCP&L, Met Ed and PennElec in support of the operation of their generation stations, transmission and distribution divisions, and other non-nuclear functions.

CNG Transmission Corporation, et al. (70–7722)

CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301 and The Peoples Natural Gas Company ("Peoples"), 625 Liberty Ave., Pittsburgh, Pennsylvania 15222–3199, wholly-owned subsidiary companies of Consolidated Natural Gas Company, a registered holding company, have filed an application-declaration under sections 9(a), 10, and 12(d) of the Act and Rules 43 and 44 thereunder.

Transmission and Peoples propose that Peoples exchange all of its natural gas properties within and around the North Summit Pool located in Fayette County, Pennsylvania for all of Transmission's natural gas properties within and around the Jacksonville Pool, located in Indiana County, Pennsylvania. Transmission states that it desires to acquire all outstanding oil and gas interest and gas storage rights in the North Summit Pool for the purpose of converting it to a storage pool. Peoples states that it would like to expand its gas production facilities and reserves in the Jacksonville Pool which is nearer to its market.

No other consideration is proposed to be given in connection with this exchange. The properties to be transferred by Transmission have a net book value of approximately $139,300 and consist of oil and gas leases, pipeline rights of way, production well leases and unit operating agreements located in the Jacksonville Pool, as well as two production wells located in Armstrong County, just outside of that pool. The properties to be transferred by Peoples have a net book value of approximately $35,000 and consist of the same type of producing properties as it is receiving from Transmission. Transmission and Peoples state that the properties proposed to be exchanged have, in the aggregate, approximately equal amounts of natural gas reserves and approximately equal market values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28540 Filed 12–6–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1143]

Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), the use of the United States passport for travel to, in, or through Libya was restricted. These restrictions have subsequently been extended on November 29, 1982 (47 FR 54888), November 29, 1983 (48 FR 55529), November 29, 1984 (49 FR 47585), November 25, 1985 (50 FR 49809), December 9, 1986 (51 FR 44855), December 10, 1987 (52 FR 46876), and December 8, 1988 (53 FR 49633). These actions were required by the unsettled relations between the United States and the Government of Libya and threats of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: December 2, 1989.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89–28570 Filed 12–6–89; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89–14]

Lower Mississippi River Waterway Safety Advisory Committee; Aids to Navigation Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Aids to Navigation Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Thursday, December 14, 1989 at the Crescent River Port Pilots' Office, 409 Belle Chasse Highway South, Belle Chasse, Louisiana. The meeting is scheduled to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. European Vessel Traffic Services.
2. Buoys at Cubits Gap.
3. Recommendations for the New Orleans Vessel Traffic Service.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander Gary A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–3074.

Dated: November 28, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–28592 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the City of Charlotte. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Charlotte/Douglas International Airport were in compliance with applicable requirements effective July 11, 1989. The proposed noise compatibility program will be approved or disapproved on or before May 19, 1990.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is November 20, 1989. The public comment period ends January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts; Atlanta Airports District Office; 1680 Phoenix Parkway, Suite 101; Atlanta, Georgia 30349, Telephone FTS 257-9306 or 404/994–5306. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Charlotte/Douglas International Airport which will be approved or disapproved on or before May 19, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Charlotte/Douglas International Airport, effective on November 20, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 19, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations.

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Atlanta Airports District Office, FAA, 1680 Phoenix Parkway, Suite 101, Atlanta, GA 30349

Office of the Aviation Director, Charlotte/Douglas International Airport, 6501 Old Dowd Road, Terminal Building, Charlotte, NC 28214

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Atlanta, Georgia.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 89–28562 Filed 12–6–89; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Jackson International Airport, Jackson, MS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Jackson Municipal Airport Authority for the Jackson International Airport (formerly Jackson Municipal Airport), under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Jackson International Airport (formerly Jackson Municipal Airport) under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 21, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 22, 1989. The public comment period ends January 21, 1990.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Civil Engineer, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306; telephone no. (601) 965–4628. Comments on the proposed noise compatibility program should also be submitted to this address.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Jackson International Airport (formerly Jackson Municipal Airport) are in compliance with applicable requirements of part 150, effective November 22, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 21, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Jackson Municipal Airport Authority submitted to the FAA on November 3, 1989, noise exposure maps, descriptions and other documentation which were produced during preparation of the Jackson Municipal Airport FAR part 150 Airport Noise Compatibility Study from January 1987 through November 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Jackson Municipal Airport Authority. The specific maps under consideration are 1987 Contours With Existing Off-airport Land Use and 1992 Contours With Existing Off-airport Land Use. The FAA has determined that these maps for the Jackson International Airport (formerly Jackson Municipal Airport) are in compliance with applicable requirements. This determination is effective on November 22, 1989. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedure contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Jackson International Airport (formerly Jackson Municipal Airport), also effective on November 22, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 21, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208-2306

Jackson Municipal Airport Authority, Post Office Box 98108, Jackson, Mississippi 39298-8109

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Jackson, Mississippi, November 22, 1989.

Newton L. Taylor,

Manager, Jackson Airports District Office.

[FR Doc. 89–28560 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Key West International Airport Key West, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monroe County Board of County Commissioners for Key West International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Key West International Airport are in compliance with applicable requirements of part 150, effective November 14, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Monroe County Board of County Commissioners. The specific maps under consideration are current NEM entitled "1987 Existing Noise Exposure Map" and Five-year NEM entitled "1992 Noise Exposure Map" in the submission. The FAA has determined that the maps for Key West International Airport are in compliance with applicable requirements. This determination is effective on November 14, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Indpendence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Airport Director's Office, Room 203, Key West International Airport, 3491 South Roosevelt Boulevard, Key West, Florida 33040.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**

Issued in Orlando, Florida, November 14, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89–28556 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice Marathon Airport, Marathon, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monroe County Board of County Commissioners for Marathon Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airport Planning specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Marathon Airport are in compliance with applicable requirements of part 150, effective November 14, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such

operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatability program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Monroe County Board of County Commissioners. The specific maps under consideration are titled "1987 Existing Noise Exposure Map" and "1991 Noise Exposure Map" in the submission. The FAA has determined that these maps for Marathon Airport are in compliance with applicable requirements. FAA's determination on airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute aproval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Airport Director's Office, Room 203, Key West International Airport, 3491 South Roosevelt Boulevard, Key West, FL 33040

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 14, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-28557 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Termination of Review of Noise Compatibility Program; Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program at the request of the Greater Orlando Aviation Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150.

EFFECTIVE DATE: The effective date of the FAA's termination of its review of the Orlando International Airport Noise Compatibility Program is November 22, 1989.

FOR FURTHER INFORMATION: Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the FAA determined that the noise exposure maps submitted by the Greater Orlando Aviation Authority were in compliance with applicable requirements and began its review of the noise compatibility program. On November 17, 1989, the Greater Orlando Aviation Authority requested that FAA suspend its review and processing of the noise compatibility program to allow a additional time to finalize planned future operational procedures in coordination with the Air Traffic Control Tower (ATCT) at Orlando International Airport. When the FAA has received revised documentation, FAA will reissue appropriate notice establishing new review and approval periods in accordance with section 150.33(e) of 14 CFR part 150.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 22, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-28558 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Richard Lloyd Jones, Jr. Airport, Tulsa, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Tulsa Airports Improvements Trust for Richard Lloyd Jones, Jr. Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Richard Lloyd Jones, Jr. Airport under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before May 21, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is November 22, 1989. The public comment period ends January 21, 1990.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0612, (817) 624-5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Richard Lloyd Jones, Jr. Airport are in compliance with applicable requirements of part 150, effective Novmeber 22, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 21, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Tulsa Airports Improvement Trust submitted to the FAA on November 18, 1988 noise exposure maps, descriptions and other documentation which were produced during the development of FAR Part 150 Noise Exposure and Land Use Compatibility Program. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Tulsa Airports Improvement Trust. The specific maps under consideration are Figure 19, Existing Noise Exposure Map-1987, with Existing Land Use (page 63) and Figure 25, Future Noise Exposure Map-1993, with Existing Land Use (page 90) in the submission.

The FAA has determined that these maps for Richard Lloyd Jones, Jr. Airport are in compliance with applicable requirements. This determination is effective on November 22, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Richard Lloyd Jones, Jr. Airport, also effective on November 22, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 21, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, ASW-600, Fort Worth, Texas 76193-0600

Tulsa Airports Improvement Trust, Richard Lloyd Jones, Jr. Airport, Jenks, Oklahoma 74037

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, November 22, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89-28559 Filed 12-6-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Southwest Florida Regional Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lee County, Florida for the Southwest Florida Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Southwest Florida Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 16, 1990.

BEST COPY AVAILABLE

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 17, 1989. The public comment period ends January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827–5096, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Southwest Florida Regional Airport are in compliance with applicable requirements of part 150, effective November 17, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 16, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Lee County, Florida submitted to the FAA on October 5, 1989 noise exposure maps, descriptions and other documentation which were produced during development of the FAR part 150 Noise Compatibility study between October 3, 1984 and October 4, 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Lee County, Florida. The specific maps under consideration are "1987 Existing Noise Contours" and "1992 Abated Noise Contours" in the submission. The FAA has determined that these maps for the Southwest Florida Regional airport are in compliance with applicable requirements. This determination is effective on November 17, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Southwest Florida Regional Airport, also effective on November 17, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 16, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827–5096.

Lee County Department of Airports, 16000 Chamberlin Parkway, SE., Fort Myers, Florida 33913.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, November 17, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89–28555 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program; Spirit of St. Louis Airport, Chesterfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by St. Louis County under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980) On April 28, 1989, the FAA determined that the noise exposure maps submitted by St. Louis County under part 150 were in compliance with applicable requirements. On October 23, 1989 the Associate Administrator for Airports approved the Spirit of St. Louis noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Spirit of St. Louis noise compatibility program is October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Ornes, Federal Aviation Administration, Airports Division, 601 E. 12 St., Kansas City, MO 64106, (Telephone (816) 426–6614). Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Spirit of St. Louis Airport, effective October 23, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its jusdgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government. and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

St. Louis County submitted to the FAA on January 19, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 18, 1987 through April 28, 1989. The Spirit of St. Louis Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 28, 1989. Notice of this determination was published in the **Federal Register** on May 19, 1989.

The Spirit of St. Louis Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 28, 1989 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eighteen (18) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective October 23, 1989.

Outright approval was granted for seventeen (17) of the specific program elements. The approved program elements include eight (8) noise abatement measures and nine (9) land use management measures designed to remedy existing noise problems and prevent future noncompatible land uses around the airport. One measure, the establishment of height and hazard zoning, was disapproved for purposes of FAR part 150. While the FAA encourages this type of zoning for safety reasons, it is not a noise mitigation measure under part 150.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 23, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Spirit of St. Louis Airport, Chesterfield, MO.

Issued in Kansas City, Missouri, November 20, 1989.

Michael J. Faltermeier,

Acting Manager, Airports Division, ACE–600.

[FR Doc. 89–28561 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Bonner County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a

proposed highway project in Bonner County, Idaho.

FOR FURTHER INFORMATION CONTACT: Robert Clour, Assistant Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, telephone: (208) 334–1843; or Charles Rountree, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707–1129, telephone (208) 334–8484.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Idaho Transportation Department will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Highway 95 in and around the City of Sandpoint, Idaho. The proposed highway location alternatives vary in length from two to nine miles long and will provide a minimum of two-travel lanes.

The improvement is considered necessary to relieve current and projected traffic congestion on U.S. Highway 95. Alternatives under consideration include (1) taking no action and (2) various location options within the study corridor.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Scoping for the project consists of a series of public meetings which began on February 23, 1989, and a drop-in information office in Sandpoint which opened November 7, 1988. Another public meeting will be held and a formal scoping meeting will be held with involved or interested government agencies and private organizations. A public location hearing will be held upon completion of the public participation process and circulation of the Draft Environmental Impact Statement. Public notice will be posted as to the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration or Idaho Transportation Department at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 28, 1989.

Robert G. Clour,

Assistant Division Administrator, Boise, Idaho.

[FR Doc. 89–28585 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Fresno, Clovis, and Fresno County, CA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1140.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct a new 8.8-mile freeway on Route 168 from future Route 180 in Fresno to Temperance Avenue in Clovis, California (post miles R0.0 to R8.8). Route 168 is a principal arterial in Fresno County that is a major component of the Fresno-Clovis Metropolitan Area (FCMA) circulation system, and a principal travel route for recreational, commercial, and commute traffic between the FCMA and its rural service area to the north and east. Without improvements, average daily traffic (ADT) for the Route 168 urban corridor is estimated to be as high 65,500 by 2010 with severe congestion.

Alternatives being studied include:

1. *New Freeway on Adopted Alignment.* This would connect future Route 180 to Temperance Avenue by a new 4- to 8-lane freeway on an adopted alignment beginning at future Route 180 between Cedar and Maple avenues, running north to Shaw Avenue, and then northeast to Temperance Avenue north of Tollhouse Road.

2. *Improve Existing Route 168.* This alternative involves modifications to Shaw Avenue, Clovis Avenue, and Tollhouse Road between Route 41 and Clovis Avenue. Two variations of the alternative are being evaluated: modifications only to the existing Route 168 and modifications to other principal north-south and east-west arterials in the general Route 168 corridor.

3. *New Freeway In Eastern Corridor.* This would connect the future Route 180 freeway with Temperance Avenue north of Herndon Avenue in a corridor on the eastern side of the FCMA. Possible alignments for this alternative are being studied in a corridor that is bounded by Fowler Avenue on the west and Temperance or Locan avenues on the east.

4. *Transportation System Management (TSM).* This alternative would consider a variety of strategies designed to improve traffic flows along the major east-west and north-south arterials in the route 168 corridor without construction of costly roadway modifications. Strategies being studied for this alternative include improved public transit, carpools, vanpools, traffic signalization, and lane restriping.

5. *Mass Transit.* This alternative would examine strategies to divert people from automobiles to mass transit, reducing traffic capacity demands in the existing Route 168 corridor.

6. *No Build.* This alternative would provide no improvements to Route 168 in the project area.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at the completion of historic resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on November 29, 1989.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 89–28586 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Mendocino County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Mendocino County, California.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration (FHWA), P.O. Box 1915, Sacramento, CA 95812–1915, Telephone (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct an eight mile long freeway to bypass the City of Willits, located in Mendocino County, California.

Alternatives under consideration include: Taking no action, and several alternatives involving construction on new alignments to the east or west of Willits, including one alignment through the center of Little Lake Valley.

A bypass, if constructed, would relieve congestion on existing Route 101, which serves as the primary arterial of the City of Willits for a distance of three miles.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. In addition, scoping meetings will be held during December 1989 and January 1990. Public notice will be given of public meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 29, 1989.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89–28587 Filed 12–6–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 33–89]

Treasury Notes, Series AG–1991

Washington, November 29, 1989.

The Secretary announced on November 28, 1989, that the interest rate on the notes designated Series AG–1991, described in Department Circular—Public Debt Series—No. 33–89 dated November 24, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–28540 Filed 12–6–89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 34–89]

Treasury Notes, Series J–1995

Washington, November 30, 1989.

The Secretary announced on November 29, 1989, that the interest rate on the notes designated Series J–1995, described in Department Circular—Public Debt Series—No. 34–89 dated November 23, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–28550 Filed 12–6–89; 8:45 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

[AC–12]

Bullitt Federal Savings & Loan Association, Shepherdsville, KY (OTS No. 7037); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 9, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Bullitt Federal Savings and Loan Association, Shepherdsville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Cincinnati District Office, 2000 Atrium TWO, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–28514 Filed 12–6–89; 8:45 am]

BILLING CODE 6720-01-M

[AC–10]

Home Savings Bank, S.A., Appleton, WI (OTS No. 0177); Final Action Approval of Conversion Application

Dated: November 2, 1989.

Notice is hereby given that on October 17, 1989, the General Counsel of the Office of Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Savings Bank, S.A., Appleton, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, Chicago District Office, 11 East Wacker Drive, Chicago, Illinois 60601.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–28515 Filed 12–6–89; 8:45 am]

BILLING CODE 6720-01-M

[AC–11]

Mid America Federal Savings Bank, Clarendon Hills, IL (OTS No. 2098; Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 2, 1989, the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Mid America Federal Savings Bank, Clarendon Hills, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Office of Thrift Supervision.
M. Danny Wall,
Director.
[FR Doc. 89-28516 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

[AC-13]

Peoples Building & Savings Association, Troy, OH, (OTS No. 0993); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 6, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Peoples Building and Savings Association, Troy, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Cincinnati District Office, 2000 Atrium Two, 221 E. Fourth Street, Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.
M. Danny Wall,
Director.
[FR Doc. 89-28517 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

[AC-14]

Financial Federal Savings & Loan Association, Long Island City, NY (OTS No. 5182); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Financial Federal Savings and Loan Association, Long Island City, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, One World Trade Center, Floor 103, New York, New York 10048.

By the Office of Thrift Supervision
M. Danny Wall,
Director.
[FR Doc. 89-28518 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

[AC-15]

Catano Federal Savings Bank, Catano, PR (OTS No. 7854); Final Action Approval of Conversion Application

Date: November 20, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Catano Federal Savings Bank, Catano, Puerto Rico for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, One World Trade Center, Floor 103, New York, New York 10048.

[AC-16]

Metropolitan Federal Savings & Loan Association of Seattle, Seattle, WA (OTS No. 3373); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Metropolitan Federal Savings & Loan Association of Seattle, Seattle, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Seattle District Office, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101-1693.

By the Office of Thrift Supervision.
M. Danny Wall,
Director.
[FR Doc. 89-28521 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

[AC-17]

Workmen's Federal Savings Bank, Mt. Airy, NC (OTS No. 1327); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Mid America Federal Savings Bank, Clarendon Hills, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.
M. Danny Wall,
Director.
[FR Doc. 89-28522 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

[AC-18]

Home Federal Savings & Loan Association, Kings Mountain, NC (OTS No. 5385); Final Action Approval of Conversion Application

Date: November 22, 1989.

Notice is hereby given that on November 13, 1989, the Chief Counsel, acting pursuant to the authority delegated to him or his designee, approved the application of Home Federal Savings and Loan Association, Kings Mountain, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

By the Office of Thrift Supervision
M. Danny Wall,
Director.
[FR Doc. 89-28519 Filed 12-6-89; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application for contract designation submitted by the Chicago Board of Trade to trade options on Oats futures

Application for contract designation submitted by the Chicago Mercantile Exchange to trade options on physical gold

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-28707 Filed 12-5-89; 12:53 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, December 19, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-28708 Filed 12-5-89; 12:53 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules on Dual Trading
Report on Broker Associations

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-28709 Filed 12-5-89; 12:53 pm]
BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Tuesday, December 12, 1989

December 5, 1989.

The Federal Communications Commission will hold an Open Meeting on Tuesday, December 12, 1989. It is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC. Seven matters will be considered, including three Private Radio, two Common Carrier, and two Mass Media items, in the order set forth below.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules regarding the establishment of a Personal Emergency Locator Transmitter Service. Summary: The Commission will consider whether to propose to implement a new Personal Emergency Locator Transmitter Service for use by individuals in remote sites.

Common Carrier—2—Title: AT&T v. Northwestern Bell Tel. Co. (File No. E-88-21). Summary: The Commission will consider issues raised in AT&T's complaint against Northwestern Bell.

Common Carrier—3—Title: MCI Telecomm. Corp. v. Pacific Northwest Bell, *et al.* Summary: The Commission will consider issues raised in MCI's complaints against local exchange carriers.

Mass Media—4—Title: In the Matter of Competition, Rate Deregulation, and Commission's Policies Relating to the Provision of Cable Television Service. Summary: The Commission will consider issues relating to cable rates and competition in the cable and related industries.

Mass Media—5—Title: Notice of Apparent Liability for forfeiture of $4,000 issued to Paragon Communications, the operator of a cable television system serving Graham, Texas. Summary: The Commission will determine whether issuance of a $4,000 forfeiture is warranted, based on apparent violations of Section 76.605(a)(11) (cable television signal leakage) of the Commission's Rules.

Private Radio—6—Title: Application for review of monetary forefeiture imposed against Texidor Security Equipment, Inc., licensee of station KNDE-383 in the Business Radio Service. Summary: The Commission will consider a $3000 forfeiture imposed against Texidor Security Equipment, Inc., for violation of Section 90.403(e) of the Rules.

Private Radio—7—Title: Application for review of forfeiture imposed against amateur radio operator David B. Hodges. Summary: The Commission will consider whether to uphold a $1200 forfeiture against David B. Hodges for violation of Sections 97.84 and 97.125 of the Rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632-5050.

Issued: December 5, 1989.
Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 89-28758 Filed 12-5-89; 3:35 pm]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATED AND TIME: Thursday, December 7, 1989, 10:00 a.m., Open Meeting.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Drug Free Workplace Revised Instruction.

DATE AND TIME: Tuesday, December 12, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 14, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinions
A. Draft AO 1989-29:
Edean S. Hayashida on behalf of GEM of Hawaii, Inc.
B. Draft AO 1989-30:
William C. Oldaker, Esquire on behalf of Senator Joseph R. Biden, Jr.
Proposed Allocation Regulations—"Consideration of Final Rules."
Proposed Final Repayment Determination and Statement of Reasons—Pete du Pont for President, Inc.
FY 1990 Management Plan
Attorney Grade Levels
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat, Federal Election Commission.

[FR Doc. 89-28739 Filed 12-5-89; 2:19 pm]

BILLING CODE 6715-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, December 7, 1989.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED Portions open to public:

(1) Oral Argument in Kraft, Inc., Docket 9208.

Portions closed to the public:

(2) Executive Session to follow Oral Argument in Kraft, Inc., Docket 9208.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 89-28757 Filed 12-5-89; 3:35 pm]

BILLING CODE 6750-01-M

Corrections

Federal Register
Vol. 54, No. 234
Thursday, December 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0477]

Drug Export; Ortho™ HIV-1 Recombinant ELISA Test System

Correction

In notice document 89-26855 beginning on page 47572 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47573, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the fourth and fifth lines, the phone number should read "301-295-8191".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0455]

T Cell Sciences, Inc.; Premarket Approval of Cellfree® Interleukin-2 Receptor Bead Assay Kit

Correction

In document 89-26709 appearing on page 47574 in the issue of Wednesday, November 15, 1989, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION**, in the third paragraph, in the second line, "CDRD" should read "CDRH".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket 89M-0356]

Newlensco; Premarket Approval of Classic Series ™ Models MP-1010, MP-1011, MP-1110, MP-1111, MP-1210, and MP-1410 Posterior Chamber Intraocular Lenses

Correction

In document 89-26710 beginning on page 47574 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47575, in the first column, under **Opportunity for Administrative Review**, in the ninth line, "part 21" should read "part 12".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0456]

Oncor, Inc.; Premarket Approval of Oncor B/T Gene Rearrangement Test

Correction

In notice document 89-26771 beginning on page 47576 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47576, in the third column, under **SUMMARY:**, in the 12th line, "application" should read "applicant".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0464]

N&N Contact Lens International, Inc.; Premarket Approval of Softouch (Ocufilcon C) Soft (Hydrophilic) Contact Lenses and Softouch Toric (Ocufilcon C) Soft (Hydrophilic) Contact Lenses

Correction

In document 89-26772 beginning on page 47577 in the issue of Wednesday, November 15, 1989, make the following correction:

On page 47577, in the second column, in the heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0458]

Surgidev Corp.; Premarket Approval of the Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses Models BUV20-20A0, BUV20-20A4, UV20-20A4, BUV24A4, and LRUV20-24A4

Correction

In notice document 89-26714 appearing on page 47579 in the issue of Wednesday, November 15, 1989, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "Crogdon" should read "Brogdon".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-025-N]

Medicare Program; Monthly Actuarial Rates, Supplementary Medical Insurance Premium Rate, and Catastrophic Coverage Premium Beginning January 1, 1990

Correction

In notice document 89-25508 beginning on page 43862 in the issue of Friday, October 27, 1989, make the following corrections:

1. On page 43864, in the second column, in paragraph 2., in the fourth line, "$8.75" should read "$8.57".

2. On page 43866, in Table 4, in the entry "Covered services (at level recognized):", in the fourth line, "Total services" should read "Group practice prepayment plans".

3. On the same page, in the same table, in the entry "Cost-sharing:", under "Coinsurance", in the fourth column, "-15.59" should read "-15.49".

4. On page 43867, in Table 5, under the heading "This projection", in the second, third, and fourth columns, remove "1989", "1990", and "1991".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-05284]

Proposed Continuation of Withdrawals; Idaho

Correction

In notice document 89-26285 beginning on page 46991 in the issue of Wednesday, November 8, 1989, make the following correction:

On page 46992, in the second column, under the "Yellowjacket Administrative Site" in the third line, "NW¼SW¼ NE¼" should read "NW¼SW¼NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Ch. V

[No. 89-244]

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989

Correction

In rule document 89-26716 beginning on page 49411 in the issue of Thursday, November 30, 1989, make the following correction:

On page 49545, in the third column, in the heading for **SUBCHAPTER D**, remove "AFFECTING" and insert "APPLICABLE TO".

BILLING CODE 1505-01-D

VOL 54 SS 2 3 4 DE 7 1989 UMI

federal register

Thursday
December 7, 1989

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 626 et al.
Job Training Partnership Act; Incentive Bonuses Under Title V

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 629, and 637

RIN 1205-AA75

Job Training Partnership Act; Incentive Bonuses Under Title V

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is publishing a proposed rule to establish regulations for the incentive bonus programs under the new Title V of the Job Taining Partnership Act. Title V provides for incentive bonuses to States in which certain employable dependent individuals are successfully placed in jobs.

DATE: Comments on the proposed rule are invited from the public. Comments shall be received no later than February 5, 1990.

ADDRESS: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested. Send comments regarding the paperwork reduction burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for ETA, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Telephone: (202) 535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On October 13, 1982, the Job Training Partnership Act (JTPA) was enacted to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment. Pub. L. 97-300, as amended; 29 U.S.C. 15 *et seq.*

Title I of JTPA sets forth general requirements for programs under JTPA, as well as some requirements for State operation of programs under JTPA. Title II of JTPA provides requirements for State operation of adult and youth programs under JTPA. Title III of JTPA provides for operation of State and local programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans and migrant farmworkers; as well as for the Job Corps, veterans and other specialized programs.

On November 7, 1988, Congress enacted the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628, 102 Stat. 3224. Subtitle B of Title VII of Pub. L. 100-628 is the Jobs for Employable Dependent Individuals Act (Act), 102 Stat. at 3248. The Act amends JTPA by adding a new JTPA Title V and redesignating the preexisting Title V and later portions of JTPA. The new JTPA Title V (29 U.S.C. 1791 *et seq.*) establishes an incentive bonus program for States which provide services to certain categories of individuals and move these individuals off various assistance programs and into employment.

Incentive Bonus Program

Section 510(e) of JTPA requires the Secretary of Labor to issue regulations with respect to title V (29 U.S.C. 1791i(e)). Those regulations are proposed by this document and are discussed below.

Allotments to States

Section 637.10 contains the provision added to JTPA by section 714(d)(2) of the Act (JTPA section 3(e)(2); 29 U.S.C. 1502(e)(2)) that no funds appropriated to carry out programs under Title V may be used for this purpose unless the total funds appropriated for Title II-A under JTPA in the same program year exceed the previous year's appropriation plus an amount equal to any increase in the consumer price index. Further, section 714(d)(2) of the Act amends JTPA to authorize the appropriation of funds only for fiscal years 1990 through 1994 (JTPA Section 3(e)(1); 29 U.S.C. 1502(e)(1)). Therefore, there is currently no appropriation for the implementation of programs under Title V and no funds are assured in future fiscal years.

Notice of Intent to Participate

Section 637.11 provides that any State desiring to participate in programs under Title V shall submit a notice of intent to participate to the Secretary of Labor (Secretary) at least 30 days before the beginning of its first program year (July 1-June 30) of participation, i.e., by June 1. These notices shall be in letter form and shall be developed in accordance with instructions issued by the Secretary.

Even though funds may not be available under Title V, the Department of Labor (Department or DOL) will accept notices of intent to participate from States for program year (PY) 1990 (July 1, 1990-June 30, 1991). This will enable States to begin serving eligible individuals and collecting necessary data.

Beginning on July 1 of the program year following its submission of its notice of intent to participate, the State may begin counting those eligible individuals who complete the participation eligibility criteria established at § 637.15. For those States submitting notices of intent to participate for PY 1990, completion of all activities required for an incentive bonus must occur after July 1, 1990 and prior to June 30, 1991 in order for such individuals to be considered in determining the State's incentive bonus.

Incentive Bonus Program Applications

Section 637.12 provides that an Incentive Bonus Program Application shall be submitted by any State seeking an incentive bonus payment under this program. The application shall be developed in accordance with instructions issued by the Secretary and shall be submitted no later than August 31 following the end of the program year for which the bonus is being claimed. This application shall contain a certification by the State that documentation is available to support the eligibility of each individual claimed for the bonus. In addition, any State wishing to participate in this incentive bonus program must have a written procedure for establishing eligibility and tracking individuals who are eligible to be counted for the bonus. This procedure must be provided to the Secretary no later than March 31 of the State's first program year of participation.

Since PY 1990 is the first program year in which States may participate in this program, the first application for bonuses shall be submitted no later than August 31, 1991. However, funds may not be available to honor any bonuses at that time unless funds for this program have been appropriated.

Review and Approval of Applications for Incentive Bonus Payments

Section 637.13 provides that the Secretary shall review applications and shall verify their accuracy using a sampling methodology. If more than 10 percent of the application amount sampled contains questioned information, however, the State must review all the information in such application and resubmit it. The Secretary shall accept the State's determination of an individual's eligibility to be counted for the purpose of bonus determination unless the Secretary establishes that such individual is not eligible.

Startup Grants

Section 637.14 provides that States may apply for startup funds no later than 120 days before the beginning of the first program year of the State's participation. The Secretary shall determine the amount of the startup grant based on the need demonstrated in the application. No funds are currently available for startup grants. The Department shall notify the States when such funds become available.

Distribution of Incentive Funds

Section 637.18 provides that States shall distribute not less than 85 percent of the incentive bonuses received to participating SDAs by an equitable method of distribution which is based on an agreement between the Governor and the Service Delivery Areas that reflects the degree to which the effort of the SDA contributed to the State's qualification for incentive bonus funds. The SDAs, in turn, should consider distributing funds, other than those reserved for administrative costs at the SDA level, equitably among service deliverers within the service delivery area, including participating State and local agencies, and community-based organizations that demonstrated effectiveness in delivering the employment and training services to eligible individuals who were claimed for incentive bonus purposes.

Subpart D—Data Collection

Separate regulations under this subpart are expected to be issued jointly by the Departments of Labor, Health and Human Services, and the Interior, as required by section 509(b) of JTPA, as amended by section 712(a)(3) of the Act (29 U.S.C. 1791h(b)) on or before March 1, 1990. Representatives from these Departments have established a work group which has been charged with the responsibility for these regulations. The work group will address the confidentiality of the data and information necessary to fulfill the requirements of this program, which will be shared among the three Departments.

Regulatory Impact

The rule affects only States and service delivery areas which receive funds under the Job Training Partnership Act. It will not have the financial or other impact to make it a major rule, and preparation of a regulatory impact analysis is unnecessary. See E.O. 12291, 5 U.S.C. 601 note.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Paperwork Reduction Act

Public reporting burden for the collection of information is estimated to average two hours per individual claimed in each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for ETA, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17-250, "Job Training Partnership Act (JTPA)" (JTPA Titles I and II Programs).

List of Subjects in 20 CFR Parts 626 and 637

Grant programs, Labor, Manpower training programs, Dislocated worker programs.

Proposed Rule

Accordingly, it is proposed that chapter V of title 20, Code of Federal Regulations, be amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The Authority citation for Part 626 is revised to read:

Authority: 29 U.S.C. 1579(c); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

2. In § 626.3, the consolidated table of contents for the Job Training Partnership Act regulations is amended as follows:

(a) By removing the reference to "Part 629—General Provisions Governing Programs Under Titles I, II, and III of the Job Training Partnership Act" and adding in lieu thereof a reference to "Part 629—General Provisions Governing Programs Under Titles I, II, III and V of the Job Training Partnership Act"; and

(b) By removing the entry "Parts 637-638—[Reserved]" adding in lieu thereof the following:

* * * * *

Sec. 626.3 Table of Contents for the regulations under the Job Training Partnership Act.

* * * * *

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
637.1 Scope and purpose.
637.2 Definitions.

Subpart B—Program Planning and Operation

637.10 Allotments to States.
637.11 Notice of intent to participate.
637.12 Incentive bonus program applications.
637.13 Review, verification and approval of applications for incentive bonus payments.
637.14 Startup grants.
637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.
637.16 Determination of incentive bonus.
637.17 Determination of placement bonus base.
637.18 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standard Procedures

637.20 Management systems, reporting, and recordkeeping.
637.21 Federal monitoring and oversight.
637.22 Audits.

Subpart D—Data Collection [Reserved]

* * * * *

3. Section 626.4 is amended by removing from the introductory language the term "Titles I, II, and III of the Act" and adding in lieu thereof the term "Titles I, II, III, and V of the Act."

4. The authority citation for part 627 is revised to read.

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

§ 627.4 [Amended]

5. Section 627.4(b) is amended by removing the number "501" and adding in lieu thereof the number "601."

6. The authority citation to part 629 is revised to read:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

7. The heading for part 629 is revised to read as follows:

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, III, AND V OF THE JOB TRAINING PARTNERSHIP ACT

* * * * *

8. Section 629.1 is amended as follows:

§ 629.1 [Amended]

(a) By removing from paragraphs (a), (b), and (e) the phrase "Titles I, II, and III" and adding in lieu thereof the phrase "Titles I, II, III and V"; and

(b) By adding a new paragraph (f), to read as follows:

§ 629.1 General program requirements.

* * * * *

(f) Each reference in this part to Title II of the Act or any part of Title II shall apply as well to Title V of the Act and to programs under part 637 of this chapter.

9. A new part 637 is added, to read as follows:

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
637.1 Scope and purpose.
637.2 Definitions.

Subpart B—Program Planning and Operation

637.10 Allotments to States.
637.11 Notice of intent to participate.
637.12 Incentive bonus program applications.
637.13 Review, verification and approval of applications for incentive bonus payments.
637.14 Startup grants.
637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.
637.16 Determination of incentive bonuses.
637.17 Determination of placement bonus base.
637.18 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standards and Procedures

637.20 Management systems, reporting and recordkeeping.
637.21 Federal monitoring and oversight.
637.22 Audits.

Subpart D—Data Collection [Reserved]

Authority: 29 U.S.C. 1579(a); 29 U.S.C. 1791i(e).

Subpart A—General Provisions

§ 637.1 Scope and purpose.

(a) This part implements title V of the Act which creates a program to provide incentive bonuses to States in which certain employable dependent individuals are successfully placed in jobs.

(b) This part applies to programs operated with funds under Title V of the Job Training Partnership Act.

§ 637.2 Definitions.

In addition to the definitions contained in sections 4, 301, 303(e), and 502 of the Act and in § 626.4 of this chapter, the following definitions apply to the administration of Title V of the Act and this part:

"Continuous employment" means gainful employment under which any wages or salaries are reportable for unemployment insurance purposes, when such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters from employment with one or more employers (section 502(4)).

"Department (DOL)" means the United States Department of Labor.

"Disability assistance" means benefits offered pursuant to Title XVI of the Social Security Act, relating to the supplemental security income program (section 502(2)).

"Federal contribution" means the amount of the Federal component of cash payments to individuals within the participating State under welfare and/or disability assistance programs, including Part A of Title IV of the Social Security Act (section 502(6)).

"Head of household" means an individual physically residing in the same household with a dependent child or children related by birth, marriage or adoption. "JTPA" and "Act" mean the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), as amended.

"Layoff" means a reduction in force that is not the result of a permanent plant closure, but which results in an employment loss for an indefinite period (i.e., no date for the employees' return to work has been established).

"Long-term recipient" means an individual who has received welfare and/or disability assistance benefits for 24 months during the 28-month period immediately preceding application for programs under this part (section 502(3)).

"Marketable or significant work experience" means experience in a paid, unpaid, or supported work setting performing functions that resulted in the acquisition of skills, abilities, and knowledge sufficient to enhance an individual's employability to the extent that the individual can apply and be considered for unsubsidized employment positions on a competitive basis with other applicants. Such employment positions shall be considered to be those for which the participant would not have qualified prior to participation in programs under this part.

"Natural disaster" means a hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic erruption, landslide, mudslide, drought, fire, explosion, or other natural catastrophe which results in the loss of employment.

"Permanent closure of a plant or facility" means a plant or facility that has terminated all employment at the plant or facility site and does not intend to reopen the plant or resume business on that site and where the plant or facility is not expected to be sold and reopened by another owner.

"Program year" means the annual period from July 1 through June 30.

"Successful participation in education" means the condition when an eligible individual has:

(i) Reenrolled in secondary school or its equivalent and matriculated to the next grade level or its equivalent within 1 year of enrollment;

(ii) Enrolled in an accredited vocational or technical school not less than full time and has made satisfactory progress in a course of study which can reasonably be expected to lead to employment; or

(iii) Obtained the equivalent of a secondary school diploma within 12 months following the individual's determination of eligibility for the incentive bonus program (section 504(c)).

"Successful participation in other activities" means the condition when an eligible individual has completed those activities that provide an individual with the skills necessary to apply for and be considered for unsubsidized employment opportunities on a competitive basis with other applicants. Such employment opportunities shall be considered to be those for which the participant would not have qualified

prior to participation in programs under this part.

"Successful participation in training" means the condition when an eligible individual has successfully completed a training program offered under JTPA, including a regionally accredited vocational skill classroom training program, an on-the-job training program or a work experience program, which can reasonably be expected to lead to unsubsidized employment.

"Supported employment" means competitive work in integrated work settings:

(i) For individuals with severe handicaps for whom competitive employment has not traditionally occurred, or

(ii) For individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicap, need ongoing support services to perform such work. Such term includes transitional employment for individuals with chronic mental illness (section 502(5)).

"Welfare assistance" means:

(i) Cash payments made pursuant to Part A of Title IV of the Social Security Act, relating to aid to families with dependent children (AFDC).

(ii) General welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. 13), commonly referred to as the Snyder Act; or

(iii) Cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) (section 502(1)).

Subpart B—Program Planning and Operation

§ 637.10 Allotments to States.

(a) Funds appropriated to carry out programs under this part may be used by the Secretary for such programs only if the total funds appropriated under Title II–A of JTPA for the same program year exceed the total of the funds appropriated for the Title II–A program for the previous program year adjusted by the change in the Consumer Price Index for All Urban Consumers since the previous year appropriation (section 3(e)(2)).

(b) For each program year for which funds are appropriated to carry out programs under this part, the Secretary shall pay to each participating State the amount the State is eligible to receive in accordance with this part. No payments shall be made for any years for which funds are not appropriated and/or not available (section 507(a)).

(c) If the appropriation is not sufficient to pay to each State the amount it is eligible to receive in accordance with this part, the State shall receive a percentage of the total available funds equal to the percentage of its bonus compared to the national total of bonuses (section 507(b)).

(d) If an additional amount is made available after the application of paragraph (c) of this section, such additional amount shall be allocated among the States by increasing payment in the same manner as was used to reduce payment, except that no State shall be paid an amount which exceeds the amount to which it is eligible (section 507(c)).

(e) Following the submission and approval of an application for an incentive bonus payment, but prior to receipt of such payment, Governors may reserve from State funds an amount equal to the amount of the approved bonus incentive request and may use such amount for activities authorized under this program. Subsequent bonus payments received may be used for reimbursement of such expenditures (section 508(a)).

§ 637.11 Notice of intent to participate.

(a) Any State seeking to participate in the incentive bonus program shall notify the Secretary of its intent to do so no later than 30 days before the beginning of its first program year of participation (i.e., June 1) (section 506(a)).

(b) Pursuant to instructions issued by the Secretary, the notification referenced in paragraph (a) of this section shall be in the form of a letter from the Governor to the Secretary advising the Secretary of the State's intention to apply for, receive and expend bonuses under this program in a manner consistent with this part (section 506(b)(2)).

(c) The notice of intent to participate shall also advise the Secretary of a decision by any service delivery area not to participate in the program (section 506(d)).

(d) Incentive bonuses may be claimed by a State for individuals who participate in education, training, or other activities under JTPA and are placed in employment after the State's submission of a notice of intent to participate.

(e) A Governor may withdraw the State's participation in the incentive bonus program in any program year by submitting a written notice of withdrawal. A State that decides to withdraw must assure that it is in compliance with the requirements of § 637.14(d) of this part.

§ 637.12 Incentive bonus program applications.

(a) Any State participating in title V activities shall have a written procedure for establishing the eligibility of individuals for whom an incentive bonus may be claimed and for tracking the activities of such individuals to assure that they comply with all statutory requirements necessary to qualify for an incentive bonus. A copy of this written procedure shall be provided to the Secretary no later than March 31 of the State's first program year of participation. Modifications to the procedure shall be provided immediately.

(b) Any State seeking to receive an incentive bonus under this title shall submit an Incentive Bonus Program application pursuant to instructions issued by the Secretary (section 506(b)(1)).

(c) Such application for any program year shall be submitted by the State to the Secretary no later than August 31 following the end of the program year for which the bonus is being claimed. A copy of such application shall also be submitted at the same time to the appropriate DOL Employment and Training Administration Regional Office.

(d) A State shall submit with each Incentive Bonus Program application a certification that documentation is available to support that each individual for whom a bonus is being claimed did, in fact, meet the requirements of § 637.15 of this part.

(e) All documentation referenced in paragraph (c) of this section shall be available to the Secretary, as determined necessary by the Secretary, for verification and audit purposes.

§ 637.13 Review, verification and approval of applications for incentive bonus payments.

(a) The Secretary shall review all applications for overall compliance with JTPA, the requirements of this part, and the instructions issued by the Secretary.

(b) The Secretary shall verify the accuracy of the information contained in each application using a sampling methodology developed by the Department of Labor and approved by the Comptroller General of the United States (section 506(c)).

(c) The Secretary shall accept for payment purposes the State's eligibility finding for an individual unless the Secretary establishes that such individual is not eligible. If the Secretary establishes that such individual is not eligible, the amount of the incentive

bonus payment shall be reduced accordingly (section 506(c)).

(d) The Secretary shall inform a State within 60 days after receipt of the application as to whether or not its application has been approved (section 506(c)).

(e) Where less than 10 percent of any sample, selected in accordance with the procedure established under paragraph (b) of this section, contains questioned information, such application shall be approved, but the amount of the bonus payment shall be reduced proportionately by the percentage of the sample questioned.

(f) When more than 10 percent of any sample contains questioned information, such application shall be denied. Subject to paragraph (g) of this section, the State shall then be required to review all the information contained in the application and resubmit it.

(g) Whenever the Department questions, pursuant to paragraph (e) or (f) of this section, a State's application for an incentive bonus payment, an initial notice of reduction or denial of payment shall be issued. The Governor will then be provided sufficient time to respond to the reasons for such denial before a final decision is made. The Department will work with the State to resolve any question raised during the verification review.

(h) If additional information provided does not resolve questions raised during the verification review, a final denial of payment shall be issued. The Governor may then appeal the decision in accordance with the procedures at §§ 629.54(d) and 629.57 of this chapter.

§ 637.14 Startup grants.

(a) *General.* (1) Each State agreeing to participate shall be eligible to apply for startup funds which may be available for expenditure during the first 2 years of the State's participation in the program (section 510(c)(3)(A)).

(2) Expenditure of any portion of the State startup grant funds shall be considered an agreement by the State to participate in this program for not less than two consecutive program years, beginning with the first program year in which these incentive grant funds may be expended. Expenditure of the startup funds may commence at the start of the program year following the program year in which the determination to provide startup grant funds is made (section 510(c)(3)(A)).

(b) *Application.* (1 Any State wishing to apply for startup funds shall submit to the Secretary a State startup grant application no later than 120 days before the beginning of the first program year of the State's participation in the incentive bonus program (section 510(a)).

(2) Such application shall include at a minimum the following information:

(i) A line item budget listing the specific activities for which funds are being requested, and the requested amount for each activity.

(ii) A justification of need for each activity including a description of how the activity would facilitate participation; and

(iii) The total amount of funds requested; and

(c) *Determination of Awards.* The Secretary shall determine the amount to be awarded to the State based on the need demonstrated in the application. The Secretary shall notify the State of this determination within 60 days of submission (section 510(c) (1) and (2)).

(d) Where a State decides not to submit the notice of intent to participate as required under this part, the State shall not incur any costs against any funds awarded in accordance with this section. In such a situation, all funds awarded by the Secretary pursuant to this section shall be recaptured by the Secretary.

(e) Any amount of any award of startup costs made to a State, against which costs have not been incurred by the end of the second program year following the program year in which the determination was made, shall be reallocated and reobligated to one or more other participating States. In accordance with section 161(b) of the Act, costs may be incurred against such reallotted funds only during the third program year following the program year in which the funds were originally awarded (section 510(c)(3)(B)).

(f)(1) Startup grant funds shall be used for activities described in section 508(b) of the Act and for higher costs incurred in overcoming the substantial barriers to employment experienced by eligible individuals under this part (section 510(c)(3)(C))

(2) Startup grant funds may be allocated by the State to State agencies or service delivery areas within the State for activities consistent with paragraph (f)(1) of this section (section 510(d)).

§ 637.15 Eligibility criteria for individuals eligible to be counted in determining incentive bonuses.

(a)(1) In determining the State entitlement to an incentive bonus payment, a State may count individuals who meet the requirements of paragraph (b) of this section, provided that:

(i) Such individuals are in excess of the total number of such eligible individuals placed in employment in the State during the base period as established in this part (section 505(a)); and

(ii) Such individuals no longer receive cash benefits provided under welfare assistance or disability assistance, unless receipt of such cash benefit:

(A) Is limited to 1 calendar quarter, or an equivalent period, during 5 calendar quarters used to determine continuous employment; and

(B) Was caused by a termination of employment due to a layoff or permanent closure of a plant or facility or a relocation of Federal facilities or a natural disaster (section 504(a)(4)).

(2) Individuals counted pursuant to paragraph (a)(1) of this section must also:

(i) Have successfully participated in education, training, or other activities, irrespective of funding source (section 504(a)(1));

(ii) Have been placed in unsubsidized continuous employment, or supported employment following such participation (section 504(a)(2)); and

(iii) Receive from such employment a qualified wage or income which is greater than or equal to such individual's placement bonus base (section 504(a)(3)).

(b) An individual shall be eligible to be counted as part of the State's entitlement to an incentive bonus payment under this part if the individual meets the requirements of paragraph (a) of this section and is:

(1) A long-term recipient of welfare assistance, who is the head of a household; and had no marketable or significant work experience during the year preceding determination of eligibility for this program under the Act;

(2) A young recipient who is the head of household; was receiving welfare assistance at the time determination of eligibility was made for this program under this Act; has not attained 22 years of age; and has not completed secondary school or its equivalent; and had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this part,

(3) A blind or disabled recipient who is a long-term recipient of disability assistance, and had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this part, or

(4) A young blind or disabled recipient who has not attained 22 years of age, was receiving disability assistance at the time determination of eligibility was made for programs under this Act; and had no marketable or significant work experience during the year preceding such determination of eligibility (section 503).

§ 637.16 Determination of incentive bonuses.

(a) The amount of the incentive bonus to which a State shall be entitled shall be determined in accordance with the requirements in this section.

(b) The 3-year period for claiming bonuses for any particular individual shall begin on the date that such individual first successfully completes the eligibility requirements that the State utilized as the basis for claiming initial bonus.

(c) The total incentive bonus to which a State shall be entitled shall be the sum of the incentive bonuses for each eligible individual. For purposes of claiming an incentive bonus, an individual shall be determined eligible to be included if the participant successfully completes each performance requirement prior to the end of the program year for which the total incentive bonus is being claimed by the State. Performance requirements are:

(1) *For the first year*—(i) *For the long-term recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives welfare assistance (section 504(a)).

(ii) *For the young recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives welfare assistance (section 504(a) and (c)).

(iii) *For the blind or disabled recipient* Such individual must have successfully participated in education, training or other activities provided under JTPA, successfully completed one year of unsubsidized continuous employment or one year of supported employment following participation in JTPA activities, received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives disability assistance (section 504(a)).

(iv) *For the young blind or disabled recipient.* Such individual must have successfully participated in education, training or other activities provided under JTPA; successfully completed one year of unsubsidized continuous employment or one year of supported employment following participation in JTPA activities; received a wage or income which is greater than or equal to such individual's placement bonus base; and no longer receives disability assistance (section 504(a) and (c)).

(2) *For the second year:* All individuals for whom a placement bonus was approved or a first year must meet the same first year bonus payments requirements in the second year as they met for the first year bonus payment except that participation in training, education or other activities will not be required. This includes a second year of continuous employment or supported work. For purposes of determining continuous employment, the second year shall begin with the quarter following the last quarter used in determining the first year's continuous employment period.

(3) *For the third year:* All individuals for whom a placement bonus was approved for a second year must meet the same second year bonus payment requirements in the third year as they met for the second year bonus payment. This includes a third year of continuous employment or supported work. For the purposes of determining continuous employment, the third year shall begin with the quarter following the last quarter used in determining the second year's continuous employment period.

(d) Placement bonuses may only be claimed for successful placements in excess of the number of such placements of individuals meeting the eligibility requirements in this part made in the State during Program Year (PY) 1987 or such other base period as provided by agreement between the Governor and the Secretary To establish the base period a State shall submit, pursuant to instructions issued by the Secretary, base period documentation to the Secretary no later than March 31 of the first program year of a State's participation in the Incentive Bonus Program. Such documentation must include the total number of placements of eligible individuals made in the State during PY 1987 or such other year as may be agreed to by the Governor and the Secretary. If the State wishes to request a base period other than PY 1987, it must explain the reasons for requesting such base period and include documentation of the total number of eligible individuals made in the State during that proposed base period, as well as during PY 1987 If no agreement can be reached, PY 1987 shall be the base period. The Secretary shall consider the request for the establishment of such base period and respond to the request in a timely fashion. Pursuant to section 505(a) of the Act, the Secretary reserves the right to suggest a different base period. The final decision on a base period shall be reached pursuant to agreement between the Secretary and the Governor (section 505(a)).

(e) In computing the number of successful placements in the base period, the State shall document all such placements of individuals eligible under this part who participated in the same types of programs or activities which the State will use in subsequent program years to determine eligibility for incentive bonuses. The State shall maintain written procedures describing the methods used to determine eligibility and placements during the base year.

(f) The dollar amount of the placement bonus for each eligible individual for each year shall be 75 percent of the placement bonus base (section 505(a)).

§ 637.17 Determination of placement bonus base.

(a) The placement bonus base for the long-term recipient is equal to one-half of the sum of the Federal contribution to amounts received by the long-term recipient and family for the two years prior to determination of eligibility under this part under:

(1) Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(2) General welfare assistance under the Snyder Act (25 U.S.C. 13); or

(3) Section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)), relating to cash assistance and/or medical assistance to refugees (section 5050(b)(1)).

(b) The placement bonus base for the young recipient, who has received benefits under Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), or general welfare assistance under the Snyder Act (25 U.S.C. 13), or section 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e) relating to cash assistance and/or medical assistance, is equal to the annual amount to which the young recipient would have been entitled for the one year period prior to the determination of eligibility under this part (section 505(b)(2)).

(c) The placement bonus base for the blind or disabled recipient is equal to one-half of the sum of the Federal contribution in amounts received by the blind or disabled recipient under Title XVII of the Social Security Act (42 U.S.C. 1801 *et seq*) for the two years

prior to determination of eligibility under this part (section 505(c)(1)).

(d) The placement bonus base for the young blind or disabled recipient who has received benefits under Title XVI of the Social Security Act (42 U.S.C. 1801 *et seq.*) is equal to the annual amount to which the young blind or disabled recipient would have been entitled for the one year period prior to the determination of eligibility under this part (section 505(c)(2)).

§ 637.18 Use of incentive bonuses.

(a) During any program year, the Governor may use an amount not to exceed 15 percent of the State's total bonus payment, or an amount reserved from State funds which is equivalent to not more than 15 percent of the amount of the approved bonus payments, for the administrative costs incurred under this program, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses (section 508(b)(1)(A)).

(b) The remainder, not less than 85 percent of the incentive bonuses received, shall be distributed to participating SDAs by an equitable method of distribution which is based on the degree to which the effort of the SDA contributed to the State's qualification for incentive bonus funds. The Governor and representatives of participating SDAs shall agree on the method of distribution to be used (section 508(b)(1)(B)).

(c) Except as provided in paragraph (d) of this section, SDAs may use a maximum of 10 percent of the incentive bonus received from the State for the administrative costs of establishing and maintaining systems necessary for operation of programs under this Title, including incentive payments described in section 508(c) of the Act, technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities (section 508(b)(2)(A)).

(d) If an SDA determines that administrative costs will exceed 10 percent, the SDA may, in accordance with criteria and guidelines established by the Governor, and subject to approval by the Governor, use an additional 5 percent for administration (section 508(b)(2)(B)).

(e) All remaining funds received by the SDA shall be used for activities similar to activities described in section 204 of JTPA and shall be subject to regulations governing the operation of programs under Title II–A of JTPA (section 508(b)(2)(A)).

Subpart C—Additional Title V Administrative Standards and Procedures

§ 637.20 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that the State's financial management system and recordkeeping system comply with § 629.35 of this chapter.

(b) Notwithstanding the provisions of § 629.36 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary regarding activities funded under this part. Reports shall be required semi-annually and annually. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period (section 165(a)(2)).

(c) The Governor shall assure that appropriate and adequate records are maintained for the required time period to support all incentive bonus payment applications. Such records shall include documentation to support individuals' eligibility under this part.

§ 637.21 Federal monitoring and oversight.

The Secretary shall conduct oversight of the programs and activities conducted in accordance with this part. The Secretary shall issue separate guidelines regarding the process to be followed in conducting such oversight.

§ 637.22 Audits.

The Governor shall ensure that the State complies with the audit provisions at § 629.42 of this chapter.

Signed at Washington, DC, this 30th day of November, 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–28406 Filed 12–6–89; 8:45 am]

BILLING CODE 4510-30-M

federal register

Thursday
December 7, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872

Dental Devices; Premarket Approval of Endosseous Implant; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 88N-0244]

Dental Devices; Effective Date of Requirement for Premarket Approval of Endosseous Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endosseous implant, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information. This action is a followup to FDA's notice of intent of January 6, 1989 (54 FR 550).

DATES: Comments by February 5, 1990; requests for a change in classification by December 22, 1989. FDA intends that, if a final rule is issued based on this proposal, PMA's will be required to be submitted by September 1, 1992.

ADDRESSES: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) provides for the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (performance standards), or class III (premarket approval). As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices." Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that the PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed (see 21 CFR 872.3).

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate a proceeding to reclassify the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act mandates that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334).

Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval" (H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976)).

II. Classification of Endosseous Implant

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule (21 CFR 872.3640) classifying the endosseous implant into class III. The preamble to the proposal to classify the device (45 FR 85962; December 30, 1980) included the recommendation of the Dental Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the endosseous implant. The preamble to the final rule classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was February 28, 1990, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later.

In the **Federal Register** of January 6, 1989 (54 FR 550 at 551), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using those factors, FDA has determined that the endosseous implant has a high priority for initiating a proceeding to require premarket approval.

Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the endosseous implant have an approved PMA or a PDP that has been declared completed.

A. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the endosseous implant by September 1, 1992. This additional period is intended to allow manufacturers to conduct clinical trials that are anticipated to span a 3-year period. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the endosseous implant during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health" (see § 872.3).

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any endosseous implant which is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the endosseous implant is not filed with FDA by September 1, 1992, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

B. Description of Device

The endosseous implant is a device made of material, such as titanium, intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, and to restore the patient's chewing function. The abutment used as the actual attachment site of the prosthesis is considered part of the endosseous implant. Endosseous implants indicated for prosthetic attachment are used to attach either removable or fixed prostheses (crown, partial dentures, or complete dentures) and inserted in either the maxillary or mandibular alveolar ridge.

C. Proposed Findings with Respect to Risk and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the endosseous implant to have an approved PMA or a declared complete PDP, and (2) the benefits to the public from use of the device.

D. Degree of Risk

The Panel identified several risks associated with endosseous implants: Local soft tissue degeneration and bone resorption, paresthesia, perforation of maxillary sinus, perforation of labial and lingual plates, and exfoliation. In addition to the risks identified by the Panel, FDA believes that local and systemic infection and implant fracture are significant risks associated with the use of endosseous implants for prosthetic attachment. After reviewing all available literature on endosseous implants for prosthetic attachment, the Panel based its recommendations, in part, on its conclusion that the safety and effectiveness of the device depends on its design and that it is not possible to establish an adequate performance standard for this generic type of device.

The existence of risks associated with implants for prosthetic attachment have been documented in numerous books and articles (Refs. 1, 2, 5, 6, 8, 9, and 11 through 16), but the rate of occurrence is poorly documented. Specific manufacturers have reported only successes or failures. The reports show that a small percentage of designs have been implanted in patients in excess of 5 to 10 years with success rates of 70 percent or better (Ref. 17).

E. Benefits of Device

In addition to esthetics, the primary benefit achieved by placing an endosseous implant for prosthetic attachment in the mandibular or maxillary bone is to regain or improve masticatory function. According to a national survey by the National Institute of Dental Research (Ref. 10) concerning the oral health of employed adults in the United States, 10 percent of adults, age 50 to 64, and 15 percent over 64 have complete tooth loss in one arch. Total tooth loss affects approximately 5 percent of those aged 40 to 44, and 50 percent of the adults 80 and over. As far as average tooth loss is concerned, persons from 18 to 34 years of age had lost fewer than 2 teeth, persons 55 to 64 years had lost 10 teeth, and persons 65 and older had lost 17.9 teeth. It is important to note that not all of these

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adults described in the aforementioned statistics would be eligible for prosthetic type endosseous implants. Other types of dental procedures may be more appropriate or there may be inadequate bone support for implants. The statistics do describe a large pool of people who could benefit from prosthetic type endosseous implants.

F. Discussion of Risks and Benefits

The probable risks and benefits to the public from use of endosseous implants have not been well defined. The numerous designs of endosseous implants that are currently on the market do not have adequate clinical evidence to demonstrate that the implants are safe and effective.

In June 1978, the Harvard Consensus Conference (Ref. 11) reported that the safety and effectiveness of endosseous implants had not been established. The conference also detailed the fact that although numerous articles have been published relating to the success of the implants, they invariably fail to cull meaningful data from their work.

In other words, reports generated on this type of implant are based on clinical opinion rather than scientific evidence. In addition, the Harvard Consensus Conference (June 1978) (Ref. 11) indicated that implants had been implanted for long periods of time, but numerous implants had resulted in immeasurable destruction in patients' mouths.

In more than 10 years since the Harvard Consensus Conference, there have been reports of success in prosthetic type endosseous implants, but these reports pertain to a limited number of designs (Refs. 7 and 12). Still, scientifically valid evidence of safety and effectiveness does not exist in the published literature for many of these implant systems (Ref. 7). The American Dental Association (ADA), in analyzing the present state of endosseous implants, does not endorse the routine use of these devices (Refs. 3 and 4).

Based on the lack of scientific data reported in the literature and proliferation of designs and coatings of different implant systems, FDA concludes that there is not an adequate basis for establishing the safety and effectiveness of endosseous implants and the generic type of device should be subject to premarket approval to determine whether the risks of using the device are adequately balanced by its benefits. Applicants should submit PMA's in accordance with FDA's "Premarket Approval (PMA) Manual" and "Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application for an Endosseous Implant for Prosthetic Attachment—May 16, 1989" (available upon request from the Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850).

The submission should contain all data and information on: (1) The risks known to the applicant, including those risks that have not been identified in this document, (2) data supporting the effectiveness, based on its indications for use, of the specific endosseous implant, and (3) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness for the device for which premarket approval is sought.

III. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (iv) of the act and § 860.132 (21 CFR 860.132) of FDA's regulations governing classification of devices to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposals to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402 and 53411; November 26, 1982).

A request for a change in the classification of the implanted endosseous implant is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by December 22, 1989.

The agency advises that to assure timely filing of any such petition, requests should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the endosseous implant is submitted, the agency will by February 5, 1990, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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3. Council on Dental Materials, Instruments, and Equipment, "Dental Endosseous Implant," *Journal of the American Dental Association*, pp. 949–950, December 1986.
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8. Lemons, J.E., "Dental Implant Retrieval Analysis," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.
9. McKenny, R., and J.E. Lemons, eds., The Dental Implant, PSG Publishing Co., Massachusetts, 1985.
10. Meskin, L.H., and J. Brown, "Prevalence and Patterns of Tooth Loss in U.S. Adult and Senior Populations," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.
11. National Institutes of Health, "Dental Implants: Benefit and Risk, A Consensus Development Conference," Harvard University, June 13 and 14, 1978.
12. National Institutes of Health, "NIH Consensus Development Conference—Dental Implants," Bethesda, MD, 1988.
13. Newman, M.G., and T.F. Fleming, "Periodontal Considerations of Implants and Implant-Associated Microbiota," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.
14. Schnitman, P.A., and L.B. Shulman, "Recommendations of the Consensus Development Conference on Dental Implants," *Journal of the American Dental Association*, pp. 373–377, 1979.
15. Shulman, L. B., "Surgical Considerations in Implant Dentistry," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.
16. Smith, D. C., and D. F. Williams, Biocompatibility of Dental Materials, Vol. IV, CRC Press, Florida, 1982.
17. Weiss, Charles M., "Fibro-Osteal and Osteal Integration," National Institutes of Health Consensus Conference on Dental Implants, Bethesda, MD, 1988.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(12) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final regulation based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 872.3640 is amended by revising paragraph (c) to read as follows:

§ 872.3640 Endosseous implant.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 1, 1992, for any endosseous implant that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of publication of a final rule) been found to be substantially equivalent to an endosseous implant that was in commercial distribution before May 28, 1976. Any other endosseous implant shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: October 11, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28572 Filed 12–6–89; 8:45 am]

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federal register

Thursday
December 7, 1989

Part IV

The President

Proclamation 6080—National American Indian Heritage Week, 1989

Proclamation 6081—National Cities Fight Back Against Drugs Week, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6080 of December 5, 1989

National American Indian Heritage Week, 1989

By the President of the United States of America

A Proclamation

During our recent celebration of Thanksgiving, our Nation paused to reflect upon the peace and prosperity with which we have been blessed by our Creator. In so doing, we carried on a tradition observed by the pilgrims at Plymouth Colony when they gathered to give thanks for an abundant harvest following a cold and bitter winter. The settlers at Plymouth Colony were able to reap that harvest largely because of the help they received from neighboring Indians. Today, as we observe American Indian Heritage Week, we recall the many contributions Native Americans have made over the years to the development of this great land.

On numerous occasions, American Indians helped the early settlers gain a firm footing in the New World, showing them how to farm the strange new soil or acting as guides through uncharted territory. Indeed, throughout our Nation's history, we have learned much from Native Americans. Our cultural heritage has been enriched immeasurably by the many different customs and traditions practiced by American Indians and Native Alaskans. Each tribe has shared with us wonderful portions of its unique history and character.

Native Americans have also served this country with distinction, sharing the wealth of their knowledge and talents. They have been courageous members of the Armed Forces, and they have participated in public service at every level—including the Office of Vice President.

While national policies regarding Indian affairs have been uncertain and often inequitable in the past, tribal elected governments and the United States have now established a unique and special government-to-government relationship, which was strengthened and renewed during the last 2 decades. Today we look forward to greater economic independence and self-sufficiency for Native Americans, and we reaffirm our support for increased Indian control over tribal government affairs.

The Congress, by Senate Joint Resolution 218, has designated the week beginning December 3, 1989, and ending December 9, 1989, as "National American Indian Heritage Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning December 3, 1989, and ending December 9, 1989, as National American Indian Heritage Week, and I ask all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-28847
Filed 12-6-89; 11:58 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6081 of December 5, 1989

National Cities Fight Back Against Drugs Week, 1989

By the President of the United States of America

A Proclamation

The frightening consequences of drug trafficking and illicit drug use can be witnessed in communities throughout the United States—in troubled schools, in neighborhoods scarred by violence, and in overburdened hospitals, social service programs, and law enforcement agencies. All of us pay the tremendous economic costs of the drug problem, but it exacts a far greater toll in the number of lives lost and families destroyed. Those costs can never be reclaimed.

While no part of our Nation has been able to avoid the devastating effects of the traffic and use of illegal drugs, America's cities—large and small—bear the brunt of this plague. In far too many of our Nation's cities, it is unsafe to walk the streets in certain areas; families take shelter behind bolted doors and drawn shades; and hospital staffs struggle to save the lives of infants born addicted to drugs.

Fortunately, however, this terrible problem is not going unchallenged. In every area of the country, cities are fighting back. Today, concerned residents of our Nation's cities are working together to regain control of their streets, their parks, their schools, and their lives.

In the finest tradition of democratic government and voluntary association, individual citizens are standing shoulder to shoulder with local authorities as they confront the merchants of death who deal drugs. They are marching in the streets, asserting their right to live without fear in secure homes and neighborhoods, and they are voting for leaders who will be tough on crime. They are also remaining vigilant against suspicious activity in their communities while encouraging young people to resist the temptation to try drugs. These determined men and women are behaving as responsible citizens in a free and just society by working closely with their local representatives and law enforcement agencies.

Ultimately, it is the actions of concerned Americans that will win the war on drugs. The American people will prevail in this fight because the small percentage of persons who currently buy and sell drugs must one day recognize and accept the morally just stance of the vast majority who do not. This week, we salute those Americans in cities all across our Nation who are serving as full partners in this all-important campaign. They are helping to build a better future for our Nation—a future that is drug-free.

The Congress, by Senate Joint Resolution 205, has designated the week of December 3 through December 9, 1989, as "National Cities Fight Back Against Drugs Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of December 3 through December 9, 1989, as National Cities Fight Back Against Drugs Week. I invite the Governors of the several States, the chief officials of local governments, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-28648
Filed 12-6-89; 11:59 am]
Billing code 3195-01-M

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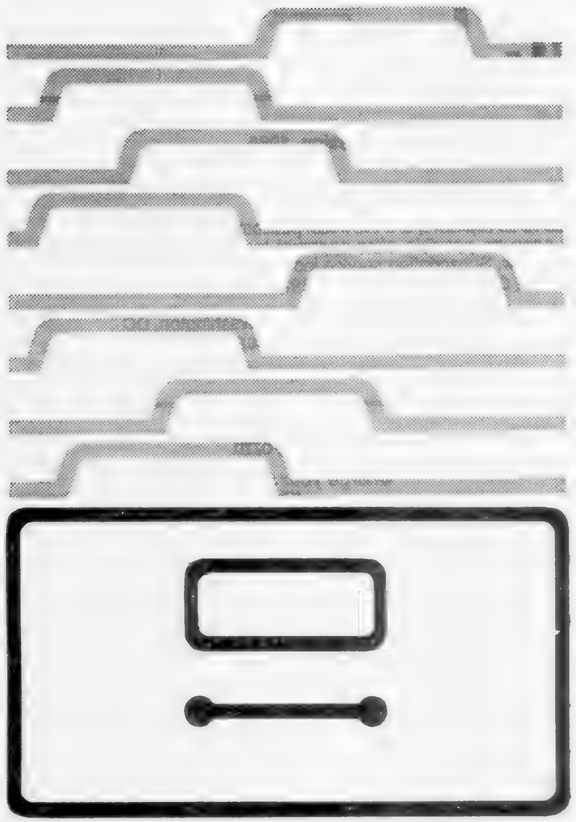
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Rules and Regulations

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1210

RIN 3124-AA20

Debt Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982. This rule will enhance the Merit Systems Protection Board's (MSPB) ability to collect debts by providing guidance to its officers and employees charged with debt collection responsibilities. This final rule authorizes the Federal Government to collect debts owed by a Federal employee to the United States through salary offset. In addition, the rule provides notice to those with delinquent accounts of MSPB's claims collection practices.

DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Lawshe, (202) 653–7263.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management of July 3, 1984, 49 FR 27470, codified in 5 CFR part 550, subpart K.

List of Subjects in 5 CFR Part 1210

Debt Management; Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR by adding part 1210 as follows:

PART 1210—DEBT MANAGEMENT

Subpart A—Salary Offset

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1210.1 Purpose and scope.
1210.2 Definitions.
1210.3 Applicability.
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Subpart B—Claims Collection

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1210.32 Compromise, suspension and termination.
1210.33 Omissions not a defense.

Subpart A—Salary Offset

Authority: 5 U.S.C. 5514, Executive Order 11809 (redesignated Executive Order 12107), and 5 CFR 550 subpart K.

§ 1210.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. These regulations apply to all Federal employees who owe debts to the MSPB and to current employees of the MSPB who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq. 4 CFR parts 101 through 105; 5 CFR part 1210.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount of validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 1210.2 Definitions.

(a) *Agency.* An executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

(b) *Chairman.* The Chairman of the MSPB or the Chairman's designee.

(c) *Creditor agency.* The agency to which the debt is owed.

(d) *Debt.* An amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(e) *Disposable pay.* The amount that remains from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Hearing official.* An individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairman of the MSPB.

(g) *Paying Agency.* The agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

(h) *Salary offset.* An administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1210.3 Applicability.

(a) These regulations are to be followed when:

(1) The MSPB is owed a debt by an individual currently employed by another Federal agency;

(2) The MSPB is owed a debt by an individual who is a current employee of the MSPB; or

(3) The MSPB employs an individual who owes a debt to another Federal agency.

§ 1210.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairman of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the federal Claims Collections Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1210.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chairman of the MSPB stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Chairman no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1210.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1210.7 Coordinating offset with another Federal agency.

(a) *The MSPB as the creditor agency.* (1) When the Chairman determines that an employee of a Federal agency owes a delinquent debt to the MSPB, the Chairman shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that MSPB regulations for salary offset have been approved by the Office of Personnel Management;

(iii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, if collection is to be made in installments;

(iv) Adivse the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, MSPB must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairman may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *MSPB as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the MSPB has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The MSPB shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the MSPB and before the debt is collected completely, the MSPB must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1210.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chairman's notice of intention to offset as provided in § 1210.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15 percent of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary payment or leave in accordance with 31 U.S.C. 3716.

§ 1210.9 Refunds.

(a) The MSPB will refund promptly any amounts deducted to satisfy debts owed to the MSPB when the debt is waived, found not owed to the MSPB, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by MSPB to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1210.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1210.11 Nonwaiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract law unless there are statutes or contract(s) to the contrary.

§ 1210.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: July 24, 1987.

Subpart B—Claims Collection

Authority: The authority for this part is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3719; the Federal Claims Collection Standards at 4 CFR parts 101–105, as amended by 49 FR 8889, 5 U.S.C. 552a, and Office of Management and Budget Circular A–129.

§ 1210.21 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the MSPB who are responsible for the collection and disposition of debts owed to the United States. The activities covered include: collecting claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges, and referring debts that cannot be disposed of by the MSPB to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1210.22 Definitions.

(a) *Claim or debt.* An amount or property owed to the United States which includes, but is not limited to: Overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue or delinquent if it is not paid by the due date specified in the initial notice of the debt (see § 1210.26) or if the debtor fails to satisfy his or her obligation under a repayment agreement.

(b) *Debtor.* An individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

(c) *MSPB.* The Merit Systems Protection Board.

(d) *Administrative offset.* Satisfying a debt by withholding money payable by the United States to or held by the United States for a debtor.

§ 1210.23 Other remedies.

The remedies and sanctions available to the MSPB under this part are not intended to be exclusive. The Chairman of the MSPB or his designee may impose other appropriate sanctions upon a debtor for prolonged or repeated failure to pay a debt. For example, the Chairman or his designee may place the debtor's name on a list of debarred, suspended, or ineligible contractors. In such cases the debtor will be advised of the MSPB's action.

§ 1210.24 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The MSPB will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false claims, or misrepresentation shall not be compromised, terminated, suspended, or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend, or otherwise dispose of such debts.

§ 1210.25 Collection.

(a) The MSPB will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30 day intervals. When necessary to protect the

Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is involved in insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1210.26 Notices to debtor.

The first written demand for payment must inform the debtor of the following:

(a) The amount and nature of the debt;

(b) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(c) The assessment of interest under § 1210.27 from the date the notice was mailed if payment is not received within the 30 days;

(d) The right to dispute the debt;

(e) The office, address and telephone number that the debtor should contact to discuss repayment and reconsideration of the debt; and

(f) The sanctions available to the MSPB to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or the Department of Justice for litigation.

§ 1210.27 Interest, penalties, and administrative costs.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The MSPB will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness, except that if a debtor defaults on a repayment agreement interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(c) The MSPB shall charge debtors for administrative costs incurred in handling overdue debts.

(d) Interest will not be charged on administrative costs.

(e) The MSPB shall assess a penalty charge, not to exceed 6 percent per year on debts which have been delinquent for more than 90 days. This change shall accrue from the date that the debt became delinquent.

(f) The Chairman or his designee may waive in whole or in part the collection of interest and administrative and penalty charges if determined that collection would be against equity or not in the best interests of the United States. The MSPB shall waive the collection of interest on the debt or any part of the debt which is paid within 30 days after the date on which interest began to accrue.

§ 1210.28 Administrative offset.

(a) The MSPB may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the MSPB and the debtor agree to the offset;

(3) Offset is cost effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(b) The MSPB may offset a debt owed to another Federal agency from amounts due or payable by the MSPB to the debtor or request another Federal agency to offset a debt owed to the MSPB;

(c) Prior to initiating administrative offset, the MSPB will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt; and

(3) The applicable interest.

(d) The MSPB may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (c) of this section if:

(1) Failure of offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1210.29 Use of credit reporting agencies.

(a) The MSPB may report delinquent accounts to credit reporting agencies consistent with the notice requirements contained in the § 1210.26. Individual debtors must be given at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency.

(b) Debts may be reported to consumer or commercial reporting agencies. Consumer reporting agencies are defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The MSPB may disclose only an individual's name, address, Social Security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1210.30 Collection services.

(a) The MSPB may contract for collection services to recover outstanding debts. The MSPB may refer delinquent debts to private collection agencies listed on the schedule compiled by the General Services Administration. In such contracts, the MSPB will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the MSPB any data contained in its files relating to the debt account upon agency request or upon returning an account to the MSPB for referral to the Department of Justice for litigation.

§ 1210.31 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the MSPB determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1210.32 Compromise, suspension and termination.

(a) The Chairman of the MSPB or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than $20,000. MSPB procedures for writing off outstanding accounts are available to the public.

(b) The Chairman of the MSPB may compromise, suspend or terminate collection of debts where the outstanding principal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the MSPB will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1210.33 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

Dated: December 5, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-28706 Filed 12-7-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Docket No. 7694S]

Potato Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published an interim rule with request for comment in the **Federal Register** on Tuesday, October 24, 1989, at 54 FR 43276, amending the Potato Crop Insurance Regulations (7 CFR 422) by changing the end of insurance period for potatoes in Delaware, Maryland, and New Jersey. In that publication the heading to the document was inadvertently titled as the General Crop Insurance Regulations. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 89-24986, appearing at page 43276, is corrected by amending the title of the document to read as follows: "Potato Crop Insurance Regulations".

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on November 29, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-28649 Filed 12-7-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 697]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 8 through December 14, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 697 (7 CFR part 907) is effective for the period from December 8 through December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets.

The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42986). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 5, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of eight to one with one abstention, that 2,050,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989–90 marketing policy. This recommended amount is the same as that estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 2,050,000 cartons, 1,988,500 are allotted for District 1, and 61,500 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 30, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,586,000 cartons compared with 1,259,000 cartons shipped during the week ending on December 1, 1988. Export shipments totaled 166,000 cartons compared with 135,000 cartons shipped during the week ending on December 1, 1988, and processing and other uses accounted for 321,000 cartons compared with 239,000 cartons shipped during the week ending on December 1, 1988.

Fresh domestic shipments to date this season total 6,734,000 cartons compared with 4,015,000 cartons shipped by this time last season. Export shipments total 950,000 cartons compared with 347,000 cartons shipped by this time last season. Processing and other use shipments total 1,687,000 cartons compared with 1,055,000 cartons shipped by this time last season.

For the week ending on November 30, 1989, handlers in District 1 had net undershipments of 98,000 cartons and handlers in District 3 had net undershipments of 3,000 cartons. Thus, undershipments of 101,000 cartons will be carried over into the week ending on December 7, 1989. Preliminary adjusted allotment for the week ending on December 7, 1989, is 1,723,000 cartons.

The average f.o.b. shipping point price for the week ending on November 30, 1989, was $7.38 per carton based on a reported sales volume of 1,342,000 cartons compared with last week's average of $7.89 per carton on a reported sales volume of 826,000 cartons. The season average f.o.b. shipping point price to date is $8.47 per carton. The average f.o.b. shipping point price for the week ending on December 1, 1988, was $8.73 per carton; the season average f.o.b. shipping point price at this time last season was $9.81 per carton.

The Committee reports that overall demand for navel oranges has improved and now ranges from good to excellent.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 8 through December 14, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 5, 1989, and this action needs to be effective for the regulatory week which begins on December 8, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.997 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regualtions.

§ 907.997 Navel Orange Regulation 697.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 8 through December 14, 1989, is established as follows:

(a) District 1: 1,988,500 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 61,500 cartons;
(d) District 4: unlimited cartons.

Dated: December 6, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–28883 Filed 12–7–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 695]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 695 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period from December 10 through December 16, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 695 (7 CFR part 910) is effective for the period from December 10 through December 16, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulation Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 5, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demands for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the

Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.995 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.995 Lemon Regulation 695.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 10, 1989, through December 16, 1989, is established at 300,000 cartons.

Dated: December 6, 1989.

Charles R. Brader,

Director Fruit and Vegetable Division.

[FR Doc. 89–28882 Filed 12–7–89; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedures for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: modification.

SUMMARY: The NRC is publishing a modification to its Enforcement Policy to add an additional civil penalty adjustment factor for violations involving maintenance deficiencies. This policy is codified as Appendix C to 10 CFR part 2.

EFFECTIVE DATE: December 8, 1989. However, it will only be applied for violations which occur after March 8, 1990. Comments submitted on or before February 6, 1990, will be considered.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0741.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Commission issued a Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430) which stated the Commission's expectations in the area of maintenance and its intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a Notice of Proposed Rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs. The Commission recognizes that the industry and individual licensees have made improvements in their maintenance programs. Indeed, the Commission has seen noticeable progress by the industry over the past four years in the area of nuclear power plant maintenance. The Commission also recognizes that the industry is committed to continue to improve maintenance. Nevertheless, NRC maintenance team inspections have confirmed that further improvements are necessary, especially with regard to effective implementation of maintenance programs. In view of the progress made to date, as well as the industry's expressed commitment to continue to improve maintenance, the Commission has decided to hold rulemaking in abeyance for a period of 18 months from the effective date of the Revised Policy Statement on Maintenance of Nuclear Power Plants which was published elsewhere in this issue. The Commission will assess the need for rulemaking at the conclusion of this 18 month period, based upon industry initiatives and progress in improving maintenance.

The Commission believes that a strong maintenance program can make a significant contribution to safety. In the Revised Policy Statement on the Maintenance of Nuclear Power Plants, the Commission stated its intention to emphasize maintenance in enforcing existing requirements for power reactors. Consistent with that position, the Enforcement Policy is being revised to provide such emphasis by adding maintenance failures as an escalating factor in assessing civil penalties where it has been concluded that the violation involves a significant regulatory concern. The Commission acknowledges that inclusion of the root cause of a violation as an escalation factor when considering a civil penalty is a change from past practice. Further, the Commission recognizes that consideration of only one root cause (maintenance) as a specific escalating factor focuses on only a fraction of the possible casual factors that may be involved in a particular violation.

By this change, the Commission is not establishing a new group of civil penalty actions. Consistent with current practice, a violation will be considered for escalated action (Severity Level I, II, or III violations) based on the violation, including its impact, circumstances, and root causes. Special escalation will only apply if the violation or problem area (aggregated violations) has a maintenance root cause.

The Commission concludes that modifying the Enforcement Policy to permit increased civil penalties for Severity Level I, II, or III violations which occur 90 days or later after the date of this notice and which result from maintenance deficiencies may provide a further incentive to ensure that all licensees place appropriate attention on maintenance of equipment whose failure could significantly impact safety. Use of the Commission's enforcement program in this manner to emphasize the importance of meeting existing requirements related to maintenance is warranted because of the varying quality of licensee maintenance programs, including implementation, and the decision to hold in abeyance the rulemaking on maintenance. By this revision to the Enforcement Policy, the Commission is putting licensees on notice that the decision to defer a maintenance rule does not mean the Commission does not expect a serious licensee effort in the maintenance area. It is expected that the revision to the Enforcement Policy will remain effective at least until the Commission reconsiders the need for rulemaking in the maintenance area.

Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification to the Enforcement Policy is effective upon issuance. However, the modification for maintenance will only be applied for violations which occur 90 days or later after the date of publication.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Appendix C. section V.B is amended by adding section V.B.7 directly after paragraph 3 of section V.B.6 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

V. Enforcement Actions. * * *

B. Civil Penalty * * *

7. Maintenance-Related Cause

The base civil penalty may be increased as much as 50% for cases where a cause of a maintenance-related violation at a power reactor is a programmatic failure. For the purposes of application of this factor, a cause of the violation shall be considered to be maintenance-related if the violation could have been prevented by implementing a maintenance program consistent with the scope and activities defined by the Revised Policy Statement on the Maintenance of Nuclear Power Plants. In assessing this factor, consideration will be given to, among other things, whether a failure to perform maintenance or improperly performed maintenance was a programmatic failure. The degree of the programmatic failure will be considered in applying this factor.

* * * * *

Dated at Rockville, Maryland, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–28742 Filed 12–7–89; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Maintenance of Nuclear Power Plants; Revised Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised policy statement.

SUMMARY: The Commission believes safety can be enhanced by improving nuclear power plant maintenance across the nuclear industry. Consistent with this belief, the Commission previously published a final policy statement on maintenance on March 23, 1988 (53 FR 9430), and a proposed rule on November 28, 1988 (53 FR 47822). The Commission recognizes that the industry and individual licensees have made improvements in their maintenance programs. Indeed, the Commission has seen noticeable progress by the industry over the past four years in the area of nuclear power plant maintenance. The Commission also recognizes that the industry is committed to continue to improve maintenance. Nevertheless, NRC maintenance team inspections have confirmed that further improvements are necessary, especially with regard to effective implementation of maintenance programs. In view of the progress made to date, as well as the industry's expressed commitment to continue to improve maintenance, the Commission has decided to hold rulemaking in abeyance for an 18 month period to monitor industry initiatives and progress and, at the end of this 18 month period, to assess the need for rulemaking in this area. This revised policy statement is being issued to describe the Commission's expectations during this 18 month period, as well as the Commission's planned actions during and at the conclusion of this period. This policy statement contains a voluntary solicitation of reporting and record keeping that is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It will be submitted to the Office of Management and Budget for review and approval of the information collections.

EFFECTIVE DATE: This revised policy statement is effective December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Moni Day, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3730.

Background

On March 23, 1988 (53 FR 9430), the Commission published a Policy Statement on Maintenance of Nuclear Power Plants which stated the Commission's expectations in the area of maintenance and the intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a notice of proposed rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs.

NRC's rulemaking initiative served to increase industry attention on this important aspect of nuclear power plant safety. The Commission acknowledges industry's effort and progress directed toward improvements in maintenance and endorses industry maintenance initiatives; however, recent NRC inspections of licensee maintenance programs and their implementation, and evaluations of plant operational data indicate that many licensee maintenance programs need further improvement. For example, there remains a wide variation across the industry in the effectiveness of the implementation of maintenance programs. Areas of weakness include engineering support, root cause analysis, trending, and recordkeeping.

The Commission believes that good maintenance is a key factor in achieving and maintaining a high level of safety in plant operations throughout the life of a nuclear power plant by helping to ensure that equipment will perform its intended function when required. In addition, a well-documented and executed maintenance program is expected to be significant in plant life extension decisions. Because maintenance plays such an important and integral role with plant operations in assuring public safety, the Commission is convinced that continued industry attention and improvement in the maintenance area is needed not only to improve maintenance at some nuclear power plants today, but to ensure performance of effective maintenance at all nuclear power plants in the future. Therefore, the Commission has decided to hold rulemaking in abeyance for a period of 18 months from the effective date of this revised policy statement to permit the Commission to monitor industry initiatives and progress in improving maintenance and to evaluate the need for additional rulemaking.

The Commission is issuing this revised policy statement to describe the Commission's expectations and future actions planned in the maintenance area, and to restate the Commission's views with respect to what constitutes an effective maintenance program.

Revised Policy Statement

The Commission desires to have in place an industry-wide program that will ensure effective maintenance is achieved and maintained over the life of each plant. The Commission expects each licensee to assume responsibility for assuring that an effective maintenance program is or has been developed, implemented and maintained at his facility. The Commission recognizes that the Nuclear Management and Resources Council (NUMARC) and the Institute for Nuclear Power Operations (INPO) can contribute, through their leadership, to an industry-wide program for improving

and maintaining effective maintenance and encourages such leadership.

During the next 18 months, the Commission intends to closely monitor individual licensees and the industry as a whole and assess the need for additional rulemaking in the area of maintenance. This monitoring will include completion of the ongoing Maintenance Team Inspections (including some selected reinspections) and review of other inspection results, and performance indicators; and industry's and individual licensee's performance, commitments, and progress toward improvement. Industry groups and individual licensees are encouraged to provide information to document their commitments and to demonstrate their performance and improvement in maintenance. In addition, the Commission intends to continue development of a rule on maintenance so that at the end of the 18 month period, if rulemaking is determined to be necessary, the Commission will be in a position to promulgate such a rule.

In enforcing existing requirements over this time period, the Commission intends to emphasize maintenance by assessing whether a safety significant violation (i.e., Severity Level III or higher) of license conditions or regulations could have been prevented if an effective maintenance program had been implemented. Accordingly, the Commission, by separate action, is modifying its enforcement policy to provide that, for safety-significant violations where a civil penalty is appropriate, the amount of the penalty for such a violation may be escalated where a programmatic inadequacy in maintenance is a root cause. Furthermore, plant specific orders or letters requesting information pursuant to 10 CFR 50.54(f) may be issued where poor or declining maintenance performance raises safety issues. Additional Commission actions and expectations are discussed below.

The Commission believes that the development and use of a comprehensive performance-based standard for maintenance, which provides guidance and requirements on the scope, goals, performance and activities associated with an effective maintenance program, is important in assuring that maintenance is improved, where necessary, and remains effective over the life of each plant. Therefore, during the next 18 months, the Commission intends to continue to develop, on a cooperative basis with the industry and public, a maintenance standard for commercial nuclear power plants. In this regard, the Commission has issued for comment a standard for maintenance in the form of a draft regulatory guide and announced its availability in the **Federal Register** (54 FR 33988; August 17, 1989). The Commission also intends to hold a workshop early in 1990 to promote further dialogue on the standard. The industry and the public are encouraged to assist in the refinement of this standard or propose a suitable alternative standard for NRC endorsement (to be considered, any alternative standard would need to be proposed to the Commission by March 1, 1990). The Commission intends to have a standard available for use in approximately 1 year and will encourage voluntary industry use and adoption of this standard. Adoption and use of an acceptable standard will be a consideration in evaluating industry's and individual licensee's commitment to achieving and sustaining effective maintenance.

An integral part of an effective maintenance program is the monitoring and feedback of results. The Commission believes that such programs should utilize quantitative information regarding operational history, especially component failures and system reliability/availability to monitor and adjust the maintenance program. Performance indicators that are based upon actual component reliability, system reliability/availability and failure history provide a useful indication of maintenance effectiveness. Such measures are most effective when they are based on a well-structured and component-oriented system, e.g., the Nuclear Plant Reliability Data System (NPRDS), to capture and track equipment history data. The Commission encourages the use of the industry-wide NPRDS data for this purpose, including improved industry use of and participation in the NPRDS to gauge the effectiveness of maintenance. Licensee reporting of such data to the system in a timely and complete manner and licensee use of such data to monitor component failures and system reliability/availability for comparison with overall plant goals or standards, represents one acceptable element of maintenance monitoring.

The Commission intends to develop, validate, and use maintenance effectiveness indicators. The Commission also encourages development and use of such indicators by licensees and the industry such that the progress of improvement in maintenance can be closely monitored. To that effect, the Commission has solicited industry participation in a joint NRC/licensee project with the objective of sharing and comparing development work on maintenance effectiveness indicators.

Finally, the Commission reemphasizes its previous views with respect to elements of an effective maintenance program. Specifically, the Commission expects the scope of each licensee's maintenance program to include all systems, structures and components addressed by existing regulations and licensee commitments and described in the documents (e.g., Final Safety Analysis Report) required by 10 CFR 50.34, whose failure could significantly impact the safety or security of the facility. This includes systems, structures, and components in the balance of plant, since experience has shown that failures in many balance of plant systems, structures, and components can and do have an impact on plant safety or security.

In addition, the Commission defines maintenance as the aggregate of those actions which prevent the degradation or failure of, and which promptly restore the intended function of, structures, systems, and components. As such, maintenance includes not only the activities traditionally associated with identifying and correcting actual or potential degraded conditions (i.e., repair, surveillance, diagnostic examinations, and preventive measures) but extends to include all supporting functions for the conduct of these activities. Accordingly, each commercial nuclear power plant should either have in place or develop and implement a well-defined maintenance program to assure that the above is accomplished. Activities and supporting functions that should be considered in a maintenance program, as defined in this policy statement, are listed below:

(1) Maintenance Management and Technology

Corrective and preventive maintenance programs (the latter may include reliability-centered and predictive maintenance activities) to integrate and focus these activities on structures, systems, and components whose failure could significantly impact safety and to prioritize preventive maintenance tasks. Maintenance management and technology should include consideration of:

(i) Planning.
(ii) Scheduling.
(iii) Staffing.
(iv) Shift Coverage.
(v) Resource Allocation.
(vi) Control of Contracted Maintenance Services.
(vii) Availability of Parts, Tools, and Facilities.
(viii) Measures of Maintenance Program Effectiveness.
(ix) Internal communications between the maintenance organization and plant operations and support groups, as well as communications between plant and corporate management and the plant maintenance organization.
(x) External communications between the plant maintenance organization and individual vendors to consider their recommendations or requirements.

(2) Engineering

Ensure engineering support to maintenance, including root cause analysis and updating the maintenance program as a result of plant modifications.

(3) Radiation Exposure Control

Ensure radiological exposure control including ALARA during maintenance activities.

(4) Maintenance Personnel Qualification and Training

Develop and apply maintenance personnel qualifications and training requirements.

(5) Quality Assurance

Ensure use of quality assurance and quality control to maintenance-related activities.

(6) Documentation

Develop equipment history and trending, maintenance record-keeping, and maintenance procedures.

(7) Testing and Return to Service

Develop and use post-maintenance testing and return to service procedures.

In accordance with the above, the Commission intends to monitor individual licensee and industry commitments, performance, and improvement in maintenance over the next 18 months, and to evaluate the need for additional rulemaking to ensure that effective maintenance is achieved and maintained over the life of each nuclear power plant.

Dated at Rockville, MD, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-28741 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 545

[No. 89-358]

RIN 1550-AA06

Agency Offices

Date: October 31, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is amending its regulations at 12 CFR part 545 to remove the current restriction banning Federal savings associations from establishing agency offices to originate and service loans outside the same state as the home office of the savings association or the same state of any association's branch office. This change affords Federal savings associations the flexibility required to effectively and efficiently service and manage their multi-state operations. Additionally, the Office is amending 12 CFR 545.96(d) to require notification in writing of agency openings and closings

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 906-7488; or Cheryl Martin, Regional Director, (202) 906-7869; or Kathleen Willard, Deputy Director, (202) 906-6789; or Patrick G. Berkakos, Director, Corporate Activities, Supervision (Operations), Office of Thrift Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In order to allow Federal savings associations to operate more efficiently and to complete more effectively in existing markets, the Federal Home Loan Bank Board ("Board"), predecessor to the Office, proposed to amend 12 CFR 545.96 to remove the restriction that Federal savings associations may not establish agency offices to originate and service loans outside the same state as the home office of the savings association or the same state of any association's branch office. The Board proposed to remove the restriction, thereby allowing Federal savings associations to establish agency offices on a nationwide basis without regard to the location of the home or branch office(s). Board Res. No. 89-1768, 54 FR 30555 (July 21, 1989). The comment period expired on September 19, 1989. The Office received sixteen comments in response to this proposal. Ten were submitted by savings associations, one by a savings association and its nondiversified savings and loan holding company, two by trade associations, one by a service corporation of a savings association involved in out-of-state mortgage banking activities, and two by law firms on behalf of clients.

All of the commenters supported the proposal and strongly favored the adoption of a final rule. None of the commenters expressed any concern about the proposal to expand the geograpical area in which lending offices can be established. Several commenters raised questions about the activities and operations of these offices including state authority over such offices, operation of such offices under a trade name, exportation of interest rates, and the extent of activities to which they can engage. The proposed rule was limited to the question of location of such offices and not to the expansion or modification of the range of activities that such offices could engage in on a more limited geographic basis. Consequently, the Office does not believe it is appropriate to respond to such inquiries at this time. To the extent that commenters have legal questions about the activities of such offices, legal opinions may be requested from the Chief Counsel's office. The commenters noted that allowing agency offices (also referred to as loan production offices) to operate outside an association's branching territory would have numerous benefits, such as:

(1) Increasing the efficiency of Federal savings associations by eliminating the need to create a subsidiary mortgage organization and thus reducing loan origination costs;

(2) Benefiting consumers as a result of increased competition among lending institutions and reduced origination costs;

(3) Eliminating separate recordkeeping, issuance of stock, and formal borrowing arrangements between parent and service corporation, thereby reducing costs and increasing competitiveness;

(4) Permitting Federal savings associations to offer the same lending services as national banks;

(5) Assisting Federal savings associations to originate high quality residential mortgage loans;

(6) Permitting Federal savings associations to open an office in strong lending markets more quickly; and

(7) Assisting Federal savings associations to increase profits, in light of changes due to the Financial Institutions Reform, Recovery and

Enforcement Act of 1989 and the Office's risk-based capital rule.

Having considered the comments summarized above, the Office is adopting an amendment to 12 CFR 545.96 to remove the restriction that Federal savings associations may not establish agency offices to originate and service mortgage loans outside the same state as the home office or any branch office of the savings association. The Office is also amending the section to require notification in writing of agency openings and closings.

Executive Order 12291

It is certified that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Office is providing the following final regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated in the **SUPPLEMENTARY INFORMATION** section.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated in the **SUPPLEMENTARY INFORMATION** section.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule would have no disportionate impact on small institutions or other entities. Small institutions as well as large ones will benefit from the rule.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office hereby amends part 545, subchapter C, chapter V, title 12, *Code of Federal Regulations*, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

2. Amend § 545.96 by revising paragraphs (a) and (d) to read as follows:

§ 545.96 Agency.

(a) *General.* A Federal savings association may, without approval of the Office, to the extent authorized by its board of directors, establish or maintain agencies that only service and originate (but do not approve) loans and contracts or manage or sell real estate owned by the Federal savings association.

* * * * *

(d) *Notice.* A Federal savings association shall notify the District Director in writing when it opens or closes an agency.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-28648 Filed 12-7-89; 8:45 am]

BILLING CODE 6725-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) (Act) authorities the Small Business Administration (SBA) to guaranty an international trade loan up through $1,000,000, plus a working capital loan of up through $250,000. Final regulations were published on June 5, 1989 (54 FR 23960). Section 7(a)(12) of the Act authorizes SBA to guaranty a pollution control loan up through $1,000,000. Final regulations were published on September 27, 1989 (54 FR 39519). This final rule increases the delegated approval authority of designated SBA officials to reflect these larger guaranty amounts for the two programs.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Room 804–D, Washington, DC 20416, telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to SBA's organization and procedures; therefore, notice of proposed rulemaking, public participation, analysis under Executive Orders 12291 and 12612 and a regulatory flexibility review, 5 U.S.C. 601, *et seq.*, are not required and this amendment is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegation (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

Accordingly, part 101 of title 13, chapter I of the Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

§ 101.3–2 [Amended]

2. In § 101.3–2, part I, section A, the introductory text of item 1.b is revised and a paragraph is added after the table as follows:

Section A—Loan Approval Authority

1. * * *

b. Guaranty loans. 7(a) business loans (except sections 7(a)(12), 7(a)(13), and 7(a)(16):

* * * * *

All the listed officials with approval or decline authority of $750,000 shall have the authority to approve or decline pollution control loans up to and including $1,000,000 under section 7(a)(12) and international trade loans up to and including $1,250,000 under section 7(a)(16).

(Catalog of Federal Domestic Assistance, No. 59.012 Small Business Loans)

Dated: October 31, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–28697 Filed 12–7–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Epsiprantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories. The NADA provides for use of epsiprantel tablets as canine and feline anthelmintics.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620, filed NADA 140–893 which provides for use of 12.5-, 25-, 50-, and 100-milligram (mg) Cestex® (epsiprantel) Tablets as an anthelmintic for dogs.

The 12.5–mg tablet is also indicated for use as an anthelmintic in cats. The drug is used for removal of canine and feline cestodes (*Dipylidium caninum* and *Taenia pisiformis* in dogs and *D. caninum* and *T. taeniaeformis* in cats). The NADA is approved and the regulations are amended by adding a new 21 CFR 520.816 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.816 is added to read as follows:

§ 520.816 Epsiprantel tablets.

(a) *Specifications.* Each tablet contains either 12.5, 25, 50, or 100 milligrams of epsiprantel.

(b) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 2.5 milligrams per pound of body weight.

(ii) *Indications for use.* Removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*.

(2) *Cats*—(i) *Amount.* 1.25 milligrams per pound of body weight.

(ii) *Indications for use.* Removal of feline cestodes *D. caninum* and *T. taeniaeformis*.

(3) *Limitations.* For oral use only as a single dose. Do not use in animals less than 7 weeks of age. Safety of use in pregnant or breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–28667 Filed 12–7–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, 251, 252, and 256

Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government; Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf; Outer Continental Shelf (OCS) Oil and Gas Information Program; and Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This rule corrects a number of inadvertent errors that appear in the regulations of the Minerals Management Service (MMS). In addition, several addresses are changed due to a recent consolidation of many of the Washington, DC, area MMS employees. This action is required to notify the public of the errors and changes of addresses referred to above. This rule will facilitate public access to MMS and its regulatory program.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION: The final rule published by MMS in the Federal Register on April 1, 1988 (53 FR 10596), consolidated and restructured various existing rules contained in regulations, OCS Orders, and Notices to Lessees and Operators. That rule contained, or created, a number of errors that are being corrected by this action. These errors are technical in nature and are primarily inadvertent omissions, typographical errors, and changes in references. Additional changes are being made to notify the public of a change of address for several offices of MMS that occurred in April and May 1989.

The MMS is issuing this technical amendment of 30 CFR parts 218, 250, 251, 252, and 256 as a final rule under the authority of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) for the following reasons:

(1) The changes in the rules are determined to be "technical amendments" or attributable to changes made by the rules published on April 1, 1988, or as the result of the relocation of several offices of MMS in April and May 1989.

(2) The final rules have already been subject to public review and comment.

(3) The substance of the final rules has not changed.

This final rule is being made effective upon publication under the authority conferred by 5 U.S.C. 553(d) for the reasons set forth in the preceding paragraph.

This notice makes technical corrections to 30 CFR Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government; 30 CFR Part 250—Oil and Gas and Sulphur Operations in the Outer Continental Shelf, as published by MMS on April 1, 1988 (53 FR 10596); 30 CFR Part 251—Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf; 30 CFR Part 252—Outer Continental Shelf (OCS) Oil and Gas Information Program; and 30 CFR 256—Outer Continental Shelf

Minerals and Rights-of-Way Management, General.

This rule does not establish any new information collection and reporting requirements nor does it change the substance of the subject regulations.

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Thus a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

Author: This document was prepared by Jeff Wiese, Offshore Rules and Operations Division, MMS.

List of Subjects

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: November 17, 1989.

M. Edward Cassidy,

Deputy Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR parts 218, 250, 251, 252, and 256 are amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 218.154 [Amended]

2. Section 218.154, in paragraph (a), remove the phrase " § 250.12(a)(1) (ii), (iii) or (iv) of the title, the Director," and add in its place the phrase "30 CFR 250.10 (b)(2) through (b)(4), the Regional Supervisor,".

§ 218.154 [Amended]

3. Section 218.154, in the introductory text of paragraph (b), remove the word "Director" and add in its place the words "Regional Supervisor"; in paragraph (b)(1), remove the citation "30 CFR 250.12 (b)(1) or (c)" and in its place add the citation "30 CFR 250.10(a); and in paragraph (b)(2), remove the citation "30 CFR 250.12 (a)(1)(i) or (c)" and add in its place the citation "30 CFR 250.10 (b)(1), (b)(5) through (b)(7), or (c)".

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

4. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

§ 250.3 [Amended]

5. Section 250.3, in paragraph (b) add the word "or" following the words "natural resources,".

§ 250.12 [Amended]

6. Section 250.12, in paragraph (e)(5), remove the incorrectly spelled word "forfieted" and add in its place the correctly spelled word "forfeited".

§ 250.33 [Amended]

7. Section 250.33, in the introductory text of paragraph (b)(19), add the phrase "or § 250.46" after the citation "§ 250.45".

§ 250.34 [Amended]

8. Section 250.34, in the introductory text of paragraph (b)(12), add the phrase "or § 250.46" after the citation "§ 250.45".

§ 250.34 [Amended]

9. Section 250.34, in the third sentence of paragraph (q)(2), add a comma between the words "evaluated" and "requires".

§ 250.51 [Amended]

10. Section 250.51, in the first sentence of paragraph (g), remove the word "drilling".

§ 250.53 [Amended]

11. Section 250.53, in paragraph (c), remove the citation "9.3" and add in its place the citation "9.4".

§ 250.79 [Amended]

12. Section 250.79, in the second sentence, remove the word "safety" and add in its place the word "safely".

§ 250.85 [Amended]

13. Section 250.85, in the last sentence of paragraph (c)(1), remove the phrase "of rig air" and add in its place the phrase "if rig air".

§ 250.86 [Amended]

14. Section 250.86, in the second sentence of paragraph (a), remove the word "rate" and add in its place the word "rated".

§ 250.100 [Amended]

15. Section 250.100, in the second sentence, remove the phrase "remote operated or automatic-manual" and add in its place the phrase "remote operated manual or automatic".

§ 250.105 [Amended]

16. Section 250.105, in the last sentence of paragraph (c)(1), remove the phrase "operations of rig" and add in its place the phrase "operations if rig".

§ 250.106 [Amended]

17. Section 250.106, in the third sentence of paragraph (a), remove the word "sized" and add in its place the word "sizes".

§ 250.106 [Amended]

18. Section 250.106, in the fourth sentence of paragraph (b)(2), remove the word "blindor" and add in its place the words "blind or".

§ 250.107 [Amended]

19. Section 250.107, in the second sentence of paragraph (d), remove the word "reinstated" and add in its place the word "reinstalled".

§ 250.121 [Amended]

20. Section 250.121, in the introductory text of paragraph (d). add the words "one of" after the word "that" so that it reads "* * * satisfaction that one of the following criteria are met:", and in paragraph (d)(2), remove the last word "and" and add in its place the word "or".

§ 250.126 [Amended]

21. Section 250.126, in the last sentence of paragraph (a), remove the address "12203 Sunrise Valley Drive; Reston, Virginia 22091" and add in its place the address "381 Elden Street; Herndon, Virginia 22070-4817".

§ 250.154 [Amended]

22. Section 250.154, in the first sentence of paragraph (b)(2), remove the word "delivering" and add in its place the word "boarding".

§ 250.154 [Amended]

23. Section 250.154, in the second sentence of paragraph (b)(3), remove the word "at" and add in its place the phrase "not to exceed" so that the sentence reads: "The PSHL shall be set not to exceed 15 percent above and below the normal operating pressure range."

§ 250.159 [Amended]

24. Section 250.159, in the first sentence of paragraph (a)(1), remove the incorrectly spelled word "pipline" and add in its place the correctly spelled word "pipeline".

§ 250.161 [Amended]

25. Section 250.161, in paragraph (c)(2), remove the citation "(d)(1)" and add in its place the citation "(c)(1)".

§ 250.180 [Amended]

26. Section 250.180, in the first sentence of paragraph (f)(1), add the words "based, shall be" between the words "be equipped" so that it reads "* * * which royalty shall be based, shall be equipped with a * * *".

§ 250.204 [Amended]

27. Section 250.204, in the last sentence of paragraph (e), remove the citation "§ 250.23" and add in its place the citation "§ 250.24".

§ 250.206 [Amended]

28. Section 250.206, in paragraph (a)(4), remove the form number "(Form DI-10408)" and add in its place the form number "(Form DI-1040)".

§ 250.210 [Amended]

29. Section 250.210, in the last sentence of the introductory paragraph, remove the word "test" and add in its place the word "text".

§ 250.210 [Amended]

30. Section 250.210, in the first sentence of paragraph (b), remove the address "Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, Virginia 22091" and add in its place "Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070-4817".

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

31. The authority citation for part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970).

§ 251.5-3 [Amended]

32. Section 251.5-3, in paragraph (a), remove the address "1951 Kidwell Drive, Vienna, Virginia 22180" and add in its place the address "381 Elden Street, Herndon, Virginia 22070-4817".

§ 251.6-3 [Amended]

33. Section 251.6-3, in the first sentence of paragraph (a), remove the incorrectly spelled word "stratigraghic" and add in its place the correctly spelled word "stratigraphic".

PART 252—OUTER CONTINENTAL SHELF (OCS) OIL AND GAS INFORMATION PROGRAM

34. The authority citation for part 252 continues to read as follows:

Authority: OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; Freedom of Information Act, 5 U.S.C. 552; § 252.3 also issued under Pub. L. 99-190 making continuing appropriations for Fiscal Year 1986, and for other purposes.

§ 252.5 [Amended]

35. Section 252.5, in the first sentence of paragraph (a), remove the phrase "in conjunction with the Director of the Bureau of Land Management" and the citation "43 CFR 3300.2"; and add in the place of the citation "30 CFR 256.10" so that the sentence reads: "The Director shall prepare an index of OCS information (see 30 CFR 256.10)."

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

36. The authority citation for part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 256.0 [Amended]

37. Section 256.0 in the first sentence add the phrase "of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance" after the word "Office" so that the sentence reads: "The information collection requirements contained in 30 CFR part 256 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0006."

§ 256.7 [Amended]

38. Section 256.7, in paragraph (a), remove the words "Geological Survey" and "part 250 *et seq*" and add in their places the words "Minerals Management Service" and parts 250 and 270", respectively, so that the sentence reads: "For Minerals Management Service regulations governing exploration, development and production on leases, see 30 CFR parts 250 and 270."

§ 256.72 [Amended]

39. In § 256.72, remove the phrase "as provided in 30 CFR 250.33".

§ 256.73 [Amended]

40. Section 256.73, in paragraph (a), remove the word "Director" and the citation "30 CFR 250.12(c), (d)(1) or (d)(4)", and add in their places the words "Regional Supervisor" and the citation "30 CFR 250.10(a), (b)(2) through (b)(7), or (c)", respectively.

§ 256.73 [Amended]

41. Section 256.73, in paragraph (b), remove the word "Director" and the citation "30 CFR 250.12(c), (d)(1), or (d)(4)", and add in their places the words "Regional Supervisor" and the

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citation "30 CFR 250.10(a), (b)(2) through (b)(7), or (c)", respectively.

[FR Doc. 89-28584 Filed 12-7-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Final rule: correction.

SUMMARY: The Financial Management Service is correcting clerical errors in referencing paragraphs as a result of the amendments which appeared in the Federal Register on May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Sheryl Morrow, Manager, Policy Research Branch, Financial Management Service, U.S. Department of the Treasury, room 328, Liberty Center, 401 14th Street SW., Washington, DC 20227, (202) 287-0308.

SUPPLEMENTARY INFORMATION: The Financial Management Service has promulgated regulations for Federal payments made through financial institutions by the Automated Clearing House Method. Amendments to the regulations promulgated on May 12, 1989 (54 FR 20568) added certain provisions which caused some paragraph references to change. Errors in the reference to paragraphs are corrected by this notice.

The following corrections are made in 31 CFR part 210 published on May 12, 1989 (54 FR 20568).

§§ 210.10–210.14 [Correctly Redesignated as §§ 210.11–210.15]

1. Section 210.10 is redesignated as § 210.11.
2. Section 210.11 is redesignated as § 210.12.
3. Section 210.12 is redesignated as § 210.13.
4. Section 210.13 is redesignated as § 210.14.
5. Section 210.14 is redesignated as § 210.15.

W.E. Douglas,

Commissioner.

[FR Doc. 89-28631 Filed 12-7-89; 8:45 am]

BILLING CODE 4810-35-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 33 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations for mailing etiologic agent preparations, clinical specimens and biological products, and regulations concerning the eligibility of "Plus" issues for second-class mail privileges, have previously been published in the Federal Register.

EFFECTIVE DATE: December 17, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 33, dated December 17, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following excerpt from the Summary of Changes section of the transmittal letter for issue 33 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Summary of Changes

Chapter 1

Section 113.84, *Recruiting Posters,* is amended to delete the last sentence pertaining to the display of recruitment posters because it conflicts with the flag display policy in *Administrative Support Manual* 440. (PB 21750, 11-16-89)

Section 122.4, *Simplified Address,* is retitled *Alternative Addressing Formats.* Concurrently, **section 122.41** is retitled *Simplified Address Format,* and other sections are renumbered to provide clearer organizational structure within the section. (PB 21750, 11-16-89)

Exhibits 122.63*a–r* are revised to reflect mail processing changes effective September 23, 1989. (PB 21744, 9-28-89)

* * * * *

Section 124.83, *Live Animals,* is amended to provide for the mailing of live day-old partridges and quail. (PB 21745, 10-5-89)

Section 124.83*b(1)* is revised to allow adult chickens, guinea fowl, turkeys, doves, pheasants, partridges, quail, ducks, geese and swan, as well as pigeons, to enter the mailstream via Express Mail if they are packaged in biologically secure containers approved by the Office of Classification and Rates Administration. (PB 21747, 10-19-89)

Section 137.252 is updated with several new agencies and deletes/changes several business reply mailer permits. Additionally, the titles of several agencies have been changed and others have changed from a sampling number (RPW) to direct accountability (M).

Section 145.927*a, Responsibility,* is revised to clarify that the final approval authority is the General Manager of the Rates and Classification Center that serves the post office where the AMS request was submitted. No other concurrence is required. (PB 21744, 9-28-89)

Section 146.123, is amended to clarify procedures for handling mailable matter found in the mailstream without postage affixed that is intended for delivery by a private delivery company. (PB 21748, 10-26-89)

Section 148.2, *Appeal of Ruling,* is revised to add that, in addition to a General Manager, Rates and Classification Center, any general manager of a division in the Office of Classification and Rates Administration may assess a revenue deficiency. (PB 21743, 9-21-89)

Chapter 3

Section 326, *Priority Mail,* is amended to authorize the use of merchandise return service to provide reshipment, via Priority Mail, for mail sent to post office box addresses at one or more other postal facilities. (PB 21749, 11-2-89)

Sections 362.4, 362.5, 362.6, and 365.25 are revised and **362.4** was added to modify the rate markings and postage payment requirements for pieces mailed at the ZIP+4 and ZIP+4 Barcoded rates. Material previously contained in 362.4 was renumbered 362.5. (PB 21749, 11-2-89)

Chapter 4

* * * * *

Section 429 is revised to: (1) clarify that "external dimensions" of the supplement referred to in **429.112***e* and **429.182***c* are the length and height; (2) amend **429.114** to clearly provide mailers of supplements to unbound publications with the option of complying with the requirements for supplements to bound publications; (3) amend **429.31***g* to clarify the definition of "label carrier" to provide that it is a single, unfolded, and uncreased sheet of paper or card stock; and (4) amend **429.31***g(4)* to extend the alternatives for placement of addresses and address labels to include addresses on subscription, renewal, gift, and request forms and receipts. (PB 21744, 9-28-89)

Section 429.31*g(2)* **"Note" under** *General Addressing* is revised to include instructions for printing material on the front of a label carrier and to further clarify the placement of advertisement material on the reverse side of label carriers. (PB 21745, 10-5-89)

Section 445.223*e,* **445.233, and 445.242** are amended to (1) remind that second-class mail for foreign destinations must be prepared in sacks according to regulations in *International Mail Manual* 244.52 and (2) to emphasize that such mail cannot be prepared on pallets. (PB 21744, 9-28-89)

Chapter 6

Sections 662.4, 662.5, and 662.6 are revised to modify the rate markings and postage payment requirements for pieces mailed at ZIP+4 and ZIP+4 Barcoded rates. (PB 21749, 11-2-89)

Sections 667.13, 667.32, and 667.42 have been revised specifically to allow mailers of nonidentical-weight bulk third-class mailings the more stringent option of preparing sacks whenever 125 pieces or 15 pounds of pieces is developed for the same presort destination, provided adequate documentation can be presented in support of the mailing. These sections were also reorganized and recodified for added clarification. (PB 21750, 11-16-89)

Section 681.32, *Meter Stamps,* is revised to provide that regulations which allow the lowest rate to be affixed to each piece in a metered or precanceled stamp ZIP+4 mailing apply to mailings of nonidentical-weight pieces as well as identical-weight pieces. The application of this regulation to nonidentical-weight pieces is being permitted because the documentation required for the ZIP+4 rate levels involved is sufficiently detailed to allow verification of the mailings for accurate preparation and postage payment. (PB 21739, 8-24-89)

Chapter 7

Section 725.4*d,* adds the words "library rate" for clarification. (PB 21749, 11-2-89)

Chapter 9

Exhibit 911.21 is revised to add a note clarifying that $25,000 is the maximum amount of postal insurance available. Fees for articles valued over that amount are for handling only. (PB 21744, 9-28-89)

Section 911.22, *Payment of Fees and Postage,* is revised to include the requirement that whenever a permit is used on registered mail, the exact amount of postage and fees paid must be shown within the imprint. (PB 21749, 11-16-89)

Part 919, *Merchandise Return,* is amended to authorize the use of merchandise return service to provide reshipment, via Priority Mail, for mail sent to post office box addresses at one or more other postal facilities. (PB 21749, 11-2-89)

Section 919.41, is amended to provide for printing of the merchandise label directly on the mailpiece. (PB 21739, 8-24-89)

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
XX	Dec. 17, 1989	54 FR [insert FR page number]

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-28629 Filed 12-7-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3694-6]

Ocean Dumping: Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Barataria Bay Waterway (BBWW) for the continued disposal of dredged material removed from the BBWW. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time, but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on January 8, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, room 298, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2280 or FTS/255-2280.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the BBWW site for the disposal of material dredged from the BBWW. In January 1980, the interim status of the BBWW site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions

significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Barataria Bay Waterway, Louisiana Ocean Dredged Material Disposal Site Designation." On August 11, 1989, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this final EIS closed on September 11, 1989. No comments were received on the Final EIS.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. The State of Louisiana has indicated that EPA's action is not consistent with the Louisiana Coastal Zone Management Program. However, EPA has determined that designation of the BBWW site is consistent, to the maximum extent practicable, with the Coastal Zone Management Act.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Final EIS based on information from the COE. The nearest land disposal area occurs about 3.5 miles north of the disposal site. However, this area is already used for disposal of material dredged from the bay portion of the BBWW. Using this or other sites would increase costs considerably and reduce their life expectancy, necessitating acquisition of new areas. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with BBWW material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located further east or immediately west of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

The EIS presented the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On August 18, 1989, EPA proposed designation of this site for the continuing disposal of dredged materials from the BBWW. The public comment period on this proposed action closed on October 2, 1989. No comments were received on the proposed rule.

The BBWW ocean disposal site is located off the Barataria Basin of southeast Louisiana. The northern end of the site is about 1.25 miles southeast of Grand Terre Island and about 2.0 miles east of Grand Isle in Jefferson Parish. The site extends approximately three miles offshore. Water depths at the site range from 8 to 20 feet. The coordinates of the rectangular shaped site are as follows: 29°16'10" N., 89°56'20" W.; 29°14'19" N., 89°53'16" W.; 29°14'00" N., 89°53'38" W.; 29°16'29" N., 89°55'59" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (2.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The BBWW ocean disposal site represents a small area of the total range of the fisheries resource. Impacts to endangered or threatened turtles and whales that might utilize the area for the listed activities are negligible. Grand Terre Island harbors a bird nesting colony consisting of black skimmers. This colony is located about 2.5 miles from the disposal site.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The existing ocean disposal site is about 1 mile from the nearest beach on Grand Terre Island. The Grand Terre beach is sparsely used because it is small and accessible only by boat. There is a beach on the eastern end of Grand Isle in Grand Isle State Park, about 1.5 miles to the east, that attracts visitors. The turbidity plume resulting from disposal would be diluted to ambient levels well before reaching either of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The material to be disposed of is from the adjacent area of the BBWW and consists of a mixture of sand, silt and clay obtained by hydraulic dredge. Sediment grain size generally decreases in the offshore direction, with sands being predominant in the disposal site. Approximately 500,000 cubic yards of material are disposed of in the site during each use. The material is removed with a hydraulic dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Barataria Pass are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally to a minor extent with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which can cause mortality of benthic organisms. During a site study in December 1980, waters were supersaturated with oxygen at all depths. During June 1981, waters were partially saturated or supersaturated with oxygen down to about sixteen feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current is to the west, but easterly currents occur with storm events. Data on the specifics of currents in the area are sparse.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

Dredged materials from the construction and maintenance of the BBWW have been disposed of at the site since 1960, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor release of trace metals, and a temporary change in sediment grain size. Since the effects of disposal are temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the BBWW. Dredging facilitates shipping; periodic use of the disposal site has some potential for interferring with ship movement in the BBWW during disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The BBWW site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.4 feet, which should not result in vessel groundings.

The nearest oyster leases are on the north side of Grand Terre Island about 2.0 miles to the northwest of the site. Designation of the disposal site would not impact these or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located near the Grand Isle State Park recreation area. There has been no apparent impact to the park from use of the disposal site and no impact is expected to occur in the future.

Petroleum and mineral-extracting activities occur offshore within 8.0 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. There is a major oil and gas collection facility that occurs on the eastern end of Grand Isle; it has not been impacted by the use of the disposal site. Intermittent dumping does not interfere with the exploration of production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals were below EPA's water quality criteria during the 1980–1981 study. Chlorinated hydrocarbon concentrations (CHC) in and near the BBWW disposal site were below detection limits, except for dieldrin and DDE. These chemicals were found at slightly higher levels than EPA's 24-hour average criteria, but at levels well below the single measurement criteria.

Nutrient concentrations, turbidity, and suspended solids are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

During the 1980–1981 study, concentrations of chemicals in sediments were strongly related to grain size, with highest levels in silts and clays. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types. Total hydrocarbon concentrations were three to four times higher in June than in December, probably due to riverine sources. The presence of unresolved high molecular weight hydrocarbons showed evidence of chronic petroleum contamination. Concentrations of cyanide, phenol and oil and grease were low and were comparable inside and outside the disposal site.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by

polychaete worms and the little surf clam. The little surf clam only became dominant during summer on sand substrate. Polychaetes tended to reach highest densities in fine grained sediments. Statistical analyses demonstrated a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from southern Louisiana.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

Fort Livingston is a registered historic site on the west end of Grand Terre Island, due north of the disposal site. This landmark has undergone marked subsidence and cannot be restored. A survey to identify other archeological and historical resources is not required at this time. However, a Nautical Resources Plan for the Corps is being prepared in consultation with the Louisiana State Historic Preservation Officer. Under guidelines established by this plan, studies may be done in the future to evaluate impacts to historic shipwrecks that may result from use of the disposal site.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation. The designation of the BBWW site as an EPA approved Ocean Dumping Site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. And although the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: October 16, 1989.

Robert E. Layton, Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Barataria Bay Waterway, La.—Bar Channel and adding paragraph (b)(81) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(81) Barataria Bay Waterway, Louisiana—Region 6:

Location: 29°16'10" N., 89°56'20" W.; 29°14'19" N., 89°53'16" W.; 29°14'00" N., 89°53'36" W.; 29°16'29" N., 89°55'59" W.

Size: 1.4 square nautical miles.

Depth: Ranges from 8–20 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Barataria Bay Waterway, Louisiana.

[FR Doc. 89–28694 Filed 12–7–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket No. 87–505]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: This Memorandum Opinion and Order (*MO&O*) adopted by the Chief, Common Carrier Bureau (Bureau), approves procedures manuals and serves as the final regulatory step needed to permit implementation of a new service priority system, called the Telecommunications Service Priority (TSP) System, adopted by the Commission's Report and Order (*Order*) in Gen. Docket 87–505 (FCC 88–341) released November 17, 1988 and published in 3 FCC Rcd 6650 and 53 FR 47535 (1988), with corrections published in 54 FR 151 and 54 FR 1471 (1989). By its *Order*, the Commission amended subpart D and appendices A and B to part 64 of its Rules and Regulations governing (a) the system of priorities for restoration of vital private line services during emergency situations and (b) a precedence system to ensure that communications vital to the national interest will be afforded priority handling in all situations ranging from normal peacetime conditions to various stages of crises.

EFFECTIVE DATE: September 10, 1990.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1800.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O* in Gen. Docket No. 87–505 adopted November 30, 1989, and released December 1, 1989. The complete document may be inspected and copied during the weekday hours (excluding federal holidays) of 9 a.m. to 4:30 p.m. in the Commission's Public Reference Room, room 239, 1919 M St., NW., Washington, DC; or a transcript may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of MO&O

1. The Order amending Part 64 of the rules was initiated by a petition from the Secretary of Defense (DoD) through the National Communications System (NCS), which contended that the Commission's current Restoration Priority (RP) System no longer addresses today's needs for priority treatment of National Security Emergency Preparedness telecommunications service. In its *Order*, the Commission adopted rules to create the TSP System, replacing the RP System, and delegated authority to the Bureau to review implementation manuals to be submitted by DoD. The manuals were filed by DoD on July 14, 1989, in conjunction with its Petition for Declaratory Ruling. By its submission, DoD sought approval of the manuals that will be used by government and industry to implement TSP. The Commission issued public notice on July 20, 1989, inviting comments. Thirteen parties filed comments. The *MO&O* summarizes the comments, resolves the issues raised, and approves the manuals, finding that they contain no provisions which exceed the limitations on delegated authority imposed on NCS by the Commission and do not, on their face, violate any other Commission policy or decision.

2. The *MO&O* also expresses the Bureau's anticipation that future administrative and procedural questions pertaining to the TSP process generally will be addressed in the first instance through the participative process engendered by the Oversight Committee currently being created by NCS.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 89–28615 Filed 12–7–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

Access Charges

[CC Docket Nos. 78–72, 80–286; FCC 89–241]

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain changes to the part 69 access charge rules that will more equitably distribute the burden of supporting high cost and lifeline assistance among interexchange carriers (IXCs). Under the Commission's rules, the costs associated with the high cost fund and lifeline assistance programs are recovered through a charge assessed on IXCs in proportion to their number of presubscribed lines. The current method of assessing charges could result in some very small IXCs being billed for high cost and lifeline assistance support while other medium sized IXCs would not be billed. Thus, the Commission issued a notice of proposed rulemaking (53 FR 47836 (11/28/88)) that proposed changing the criteria governing which IXCs would be assessed charges to recover the costs attributable to the high cost and lifeline programs. The rules, as amended, will require that only IXCs with more than .05 percent of all nationwide presubscribed lines pay the per-line charge to fund these programs, thereby ensuring a fair distribution of the responsibility of supporting these programs.

EFFECTIVE DATE: January 8, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 89–241), adopted July 21, 1989 and released August 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 19, 1987, the Commission released an order (NTS Recovery Order, 52 FR 21536 (6/8/87)) that adopted a Federal/State Joint Board Recommended Decision (52 FR 19896 (5/28/87)) that recommended improvements in the existing non-traffic sensitive (NTS) cost recovery mechanisms. The Joint Board recommendation involved the level of subscriber line charges, expansion of the Federal lifeline assistance program, a retargeting of high cost assistance measures, and a restructuring of the existing common line tariff and pooling system, as well as the mechanism for recovery of high cost and lifeline assistance.

2. Originally, the costs of high cost assistance and the lifeline programs were recovered through the nationwide common line pooling process and the carrier common line (CCL) charge. However, in the May 19, 1987 NTS Recovery Order, the Commission amended the rules so as to fund all of these programs through a charge assessed on IXCs in proportion to their number of presubscribed lines.

3. At the end of 1987, NECA conducted a voluntary data collection to gather presubscribed line information from the LECs in order to develop a workable new system for high cost and lifeline billing. The preliminary data collected by NECA indicated that the existing presubscribed lines criteria yielded unexpected and anomalous results in the selection of IXCs that are assessed charges for high cost and lifeline assistance support. NECA informed the Commission that, based on its analysis of the presubscribed line data, the present rules would cause some very small IXCs to be billed for high cost and lifeline assistance support while other medium size IXCs would not be billed. Thus, the Commission issued a notice of proposed rulemaking (53 FR 47836 (11/28/88)) that proposed changing the criteria governing which IXCs would be assessed charges for costs attributable to these programs.

4. The Notice proposed to reformulate the existing criteria and require that only IXCs with more than .05 percent of all nationwide presubscribed lines pay the per-line charge to fund these programs. This adjustment would reduce the discriminatory effect of the current rules on small IXCs and simplify the tasks of administering these programs. In its Memorandum Opinion and Order, the Commission adopted the proposals and amended its rules to reflect the new procedures for recovering the costs attributable to the high-cost and lifeline programs.

Ordering Clauses

1. Accordingly, *it is ordered*, That pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein *are adopted* effective 30 days from the release of this order.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Part 69 of title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.5 is amended by revising paragraph (d) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(d) Universal Service Fund and Lifeline Assistance charges shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

3. Section 69.116 is amended by revising paragraph (a) to read as follows:

§ 69.116 Universal service fund.

* * * * *

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * *

4. Section 69.117 is amended by revising paragraph (a) to read as follows:

§ 69.117 Lifeline assistance.

* * * * *

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services and that have at least .05 percent of the total common lines presubscribed to interexchange carriers in all study areas.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-28658 Filed 12-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

[Docket No. 91175-9275]

Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations for the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) to temporarily close an area of approximately 14 square nautical miles in the exclusive economic zone (EEZ) southwest of St. Thomas, U.S. Virgin Islands to fishing during the spawning season for red hind. The intended effect of this rule is to prevent harvest of the overfished red hind during the height of their spawning season in an area where they are most susceptible to harvest.

EFFECTIVE DATE: This rule is effective from December 6, 1989, through February 28, 1990.

ADDRESSES: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP, prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Red hind once ranked among the five most important species and, since the decline of Nassau grouper, is the most economically important grouper in the shallow-water reef fish fishery. Red hind spawn seasonally in aggregations at specific locations. They are fished throughout the year but are particularly vulnerable to capture during their mid-December through February spawning season in an area in the EEZ southwest of St. Thomas near the edge of the continental shelf. During this period, fishing effort in this area is very effective so much so that the red hind population has been severely decimated. Continued high fishing mortality of red hind may cause a collapse of the fishery. Fishery biologists, fishery managers, and local fishermen are in agreement that the red hind resource is in jeopardy. In its draft of amendment 1 to the FMP, the Council has included provisions to prohibit fishing in the area southwest of St. Thomas during the red hind spawning season. During public hearings on amendment 1, the prohibition was overwhelmingly accepted. However, amendment 1 cannot be implemented by the December 1989 commencement of the spawning season for red hind.

The Council has found that the probability of excessive harvest of red hind in the forthcoming spawning season constitutes an emergency. The Secretary concurs. Accordingly, the Secretary is promulgating this emergency interim rule to be effective for not more than 90 days, as authorized by section 305 (e)(2)(B) and (e)(3)(B) of the Magnuson Act.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Secretary finds for good cause (i.e., to prevent fishing that would jeopardize the continued viability of red hind as a fishery resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553 (b)(B) and (d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 669.7, effective from December 6, 1989, through February 28, 1990, in paragraph (c), the reference to "669.21" is revised to read "669.21(a)"; and a new paragraph (m) is added to read as follows:

§ 669.7 Prohibitions.

* * * * *

(m) Fish in the area and during the time specified in 669.21(b).

3. In § 669.21, effective from December 6, 1989, through February 28, 1990, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 669.21 Closed seasons.

* * * * *

(b) Effective from December 6, 1989, through February 28, 1990, fishing is prohibited in the area bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	18 13.2' N.	65 06.0' W.
B	18 13.2' N.	64 59.0' W.
C	18 11.8' N.	64 58.0' W.
D	18 10.7' N.	65 06.0' W.
A	18 13.2' N.	65 06.0' W.

[FR Doc. 89-28684 Filed 12-5-89; 3:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-208]

Papayas; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) published in the **Federal Register** on Wednesday, October 11, 1989 (54 FR 41597) a proposed rule to establish voluntary U.S. Standards for Grades of Papayas. AMS is extending the comment period to provide interested persons with additional time in which to prepare comments on the proposed rule

DATE: Comments must be postmarked or courier dated on or before January 10, 1990.

ADDRESS: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent, in duplicate, to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, at the above address or call (202) 447-2093.

SUPPLEMENTARY INFORMATION: AMS published in the **Federal Register** on Wednesday, October 11, 1989, (54 FR 41597) a proposed rule to establish voluntary U.S. Standards for Grades of Papayas. The proposed standards would provide the papaya industry with voluntary U.S. grade standards containing three grade levels, tolerances for each, and definitions for terms used by the industry and in the grades. These grade standards would serve as a common trading language for papayas marketed nationally and internationally.

The proposed rule provided for a comment period to obtain public views and comments on the establishment and content of the proposed standards. Comments were to be submitted on or before December 11, 1989. J.R. Brooks & Son, Inc., Homestead, Florida, a grower/packer/importer of papayas submitted a written request to extend the comment period.

The request indicated that more time was needed to consult with interested industry members in order to evaluate the proposal and the effects it would have on the papaya industry.

Therefore, in order to provide additional industry review and to allow interested persons additional time for comment, the comment period is hereby extended until January 10, 1990.

Authority: (Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624).

Dated: December 5, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-28696 Filed 12-7-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment; Blasting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indiana Surface Mining Statute provisions concerning blasting. The amendment is intended to provide the statutory authority to allow the director to, if invited, enter upon a blasting complainant's property to investigate a complaint.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 8, 1990; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on January 2, 1990; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 26, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226—6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232—1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, (317) 226—6166; (FTS) 331—6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditons of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated November 8, 1989, (Administrative Record No. IND—0707), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Code (IC) 13-1.1-10. The proposed amendment is part of Indiana's 1989 House Enrolled Act No. 1069, and adds a Section 3 to IC 13-4.1-10 which allows the director, after receiving a complaint about blast related property damage, to, if invited, enter upon the blasting complainant's property to investigate the complaint.

The remaining provisions of House Enrolled Act No. 1069 instruct the IDNR to perform certain tasks related to Indiana's enforcement of surface coal mining related blasting and appropriate funds to purchase blast monitoring equipment.

Since these provisions do not alter the approved Indiana program, they are not State program amendments pursuant to the Federal rules at 30 CFR 732.17 and, therefore, will not be discussed here.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on December 26, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-28656 Filed 12-7-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3694-7]

Approval and Promulgation of State Air Quality Plans; Massachusetts; Withdrawal of Proposed Approval of RACT for the Non-CTG Processes at the O'Day Corp. in Fall River, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: EPA is withdrawing a proposed action to approve a revision of the Massachusetts State Implementation Plan (SIP). The Massachusetts Department of Environmental Protection (DEP) has formally withdrawn a SIP revision request which would have imposed reasonably available control technology (RACT) on certain processes at the O'Day Corporation (formerly Starcraft Sailboat Products) in Fall River, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Nam Nguyen, (617) 565-3249; FTS 835-3249.

SUPPLEMENTARY INFORMATION: On September 8, 1988 (53 FR 34788), EPA published a notice of proposed rulemaking proposing to approve a request from the Massachusetts DEP, formerly called the Department of Environmental Quality Engineering, to revise the Massachusetts SIP. The DEP's SIP revision consisted of a proposed plan approval (State Order SM-85-171-IF) imposing RACT on volatile organic compound (VOC) emitting operations at the O'Day Corporation in Fall River that are not otherwise subject to RACT under Massachusetts SIP regulations developed pursuant to EPA's Control Techniques Guidelines (CTG) documents.

The Massachusetts' SIP includes Regulation 310 CMR 7.18(17) which requires RACT on sources which emit 100 tons per year (TPY) or more of VOCs from non-CTG processes. At the time DEP originally submitted its proposed RACT plan for O'Day Corporation in Fall River, that facility had existing non-CTG processes which emitted more than 100 TPY of VOCs.

On August 10, 1989, the DEP submitted a copy of the correspondence it had received on August 8, 1989 confirming that the O'Day Corporation facility in Fall River had shut-down on April 14, 1989 as a result of being forced into bankruptcy proceedings by its creditors. In that August 10, 1989 letter, the DEP withdrew its SIP revision request for the company submitted on

June 29, 1987 and asked that EPA withdraw is September 8, 1988 notice of proposed rulemaking. Since the company is no longer in operation, it does not need to have RACT determined for it under Massachusetts SIP Regulation 310 CMR 7.18(17). Therefore, as a result of Massachusetts' withdrawal of its proposed plan approval for the O'Day Corporation, RACT is not defined for the previously existing VOC-emitting equipment at the O'Day Corporation facility in Fall River, Massachusetts. Therefore, the resulting reductions in VOC emissions due to the shutdown of the facility are not creditable for offsetting or emission trading purposes. This is because only reductions in emissions below RACT are considered surplus reductions pursuant to EPA's December 4, 1986 Emissions Trading Policy Statement and other applicable EPA regulations and policies. In the future, if any emission reduction credits are to be utilized from this facility, a RACT level of control will have to be defined and approved for the O'Day Corporation. EPA is hereby withdrawing its proposed action published on September 8, 1988 (53 FR 34788) to approve the SIP revision for the O'Day Corporation.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 28, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89–28650 Filed 12–7–89; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–525, RM–7120]

Radio Broadcasting Services; Harker Heights, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mid-Texas Communications, Inc., licensee of Station KIXS(FM), Channel 288A at Harker Heights, Texas, proposing the substitution of Channel 286C2 for Channel 288A at Harker Heights, and the modification of the station's license to specify operation on the higher powered frequency. The proposed site for Channel 286C2 at Harker Heights is located 30.6 kilometers (19.0 miles) southeast of the city at coordinates 30–54–50 and 97–30–00.

DATES: Comments must be filed on or before January 16, 1990, and reply comments on or before January 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John E. Fiorini, III, Esquire, Mark Van Bergh, Esquire, Joal R. Hall, Esquire, Heron, Burchette, Ruckert & Rothwell, Suite 700, 1025 Thomas Jefferson Street, NW., Washington, DC. 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–525, adopted November 8, 1989, and released November 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28659 Filed 12–7–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–491, RM–6650]

Radio Broadcasting Services; Middletown, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Further Notice to provide an opportunity to comment on a counterproposal filed on behalf of Joe L. and L. Ann Gross to allot FM Channel 254A to Middletown, CA, as a first local service. (See Commission's First Report and Order, adopted November 13, 1989, and released November 28, 1989 (54 FR 49996, December 4, 1989).) Additional information is requested to determine whether Middletown qualifies as a "community" for allotment purposes. Coordinates used for Chanel 254A at Middletown are 38–45–12 and 122–36–54.

DATES: Comments must be filed on or before January 25, 1990, and reply comments on or before February 9, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 88–491, adopted November 15, 1989, and released December 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28620 Filed 12–7–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Property Transfer Records.
Form Number: GP–2, GP–2A.
Agency approval Number: None.
Type of Request: New collection.
Burden: 1,300 hours.
Number of Respondents: 1,400.
Avg Hours Per Response: 56 minutes.
Needs and Uses: This survey will collect data for the Census Bureau on the content and organization of local real property transfer records, estimated volume of realty transfers, and on automated data processing capability of reporting jurisdictions. The survey is an intergral part of the planning for the Taxable Property Values (TPV) Survey, a major component of the 1992 Census of Governments.
Affected Public: State or local governments.
Frequency: Once during the 5 years census cycle.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28662 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Quarterly Survey of the Finances of Public-Employee Retirement Systems.
Form Number: F–10.
Agency Approval Number: 0607–0143.
Type of Request: Revision of a currently approved collection.
Burden: 272 hours.
Number of Respondents: 68.
Avg Hours Per Response: 1 hour.
Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the receipts, expenditures, and cash and security holdings of the 104 largest public-employee retirement systems. Census conducts this survey at the request of the Council of Economic Advisors and the Federal Reserve Board. Economists from these and other agencies use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.
Affected Public: State or local governments.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28663 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Assessed Values.
Form Number: GP–33.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 133 hours.
Number of Respondents: 53.
Avg Hours Per Response: 2 hours and 30 minutes
Needs and Uses: This survey provides data on the assessed values of real property in each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Census Bureau will conduct this survey twice during the 5-year Census of Governments cycle. It uses the data collected in 1990 as a basis for sample selection for the 1992 Taxable Property Values Survey, and it uses the data collected in 1992 to compile the Census of Governments report, *Taxable Property Values and Assessment/Sales Price Ratios.* The Advisory Commission on Intergovernmental Relations uses the data in calculating its measure of fiscal capacity of state and local governments.
Affected Public: State or local governments.
Frequency: Twice during the 5 year census cycle.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room

3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28664 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Local Assessment Records.
Form Number: GP–1, GP–1A.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,750 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: GP–1—1 hour. GP–1A—30 minutes.
Needs and Uses: This survey will collect information on the content and organization of local assessment records, the estimated number of realty parcels on the assessment rolls, and automation capabilities of reporting jurisdictions. The Census Bureau will use the information collected to plan and carry out data enumeration for the Taxable Property Values Survey of the 1992 Census of Governments.
Affected Public: State or local governments.
Frequency: One time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28665 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Annual Survey of State tax Collections.
Form Number: F–5, F–5A, F–5–L1, F–5–L2.
Agency Approval Number: 0607–0046.
Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Burden: 109 hours.
Number of Respondents: 79.
Avg Hours Per Response: 1 hour and 23 minutes.
Needs and Uses: This form is used to collect information on the annual tax collections of each state and the District of Columbia. The data collected are a key component of the national income accounts maintained by the Department of Commerce. They are used in long established Census Bureau reports in the government finance series and provide important information to officials and researchers in the analysis of state government finances.
Affected Public: State or local governments.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 1, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–28666 Filed 12–7–89; 8:45 am]
BILLING CODE 3510–07–M

Bureau of Export Administration

[Docket No. 91168–9268]

Foreign Availability Assessments: Initiation of an Assessment on 5.25-Inch Hard Disk Drives

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f)(1) of the Export Administration Act, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability of 5.25-inch hard disk drives of less than 45 megabytes formatted capacity that are compatible with the ST–412 type interface. OFA is seeking public comments on the foreign availability of such equipment.

DATES: The period of submission of information will close January 8, 1990.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB–097, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael Andrews, Office of Foreign Availability, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377–4547.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and (h) of the Export Administration Act of 1979 (EAA), as amended, the Office of Foreign Availability (OFA) assesses foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability of these items.

Pursuant to sections 5(f)(3) and (9) of the EAA, OFA is publishing this notice.

On July 28, 1989, OFA accepted for filing a foreign availability allegation relating to decontrol of 5.25-inch hard disk drives, following Review. This item is controlled for national security reasons under paragraph (h) of Export

Control Commodity Number (ECCN) 1565A of the Commodity Control List (15 CFR 799.1, Supp. 1): Digital computers and related equipment. Upon acceptance of the allegation, OFA initiated an assessment of the foreign availability of 5.25-inch hard disk drives. The Department intends to submit the results of the assessment for publication in the **Federal Register** by December 28, 1989.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of 5.25-inch hard disk drives of less than 45 megabytes formatted capacity that are compatible with the ST-412 type interface. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce at the above address.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogs, brochures, or operations of maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

Supplement No. 1 to part 791 proves additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) or (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: December 4, 1989.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-28670 Filed 12-7-89; 8:45 am]

BILLING CODE [illegible]

National Oceanic and Atmospheric Administration

Additional Public Hearing on Swim-With-The-Dolphin Programs

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of an additional public hearing on swim-with-the-dolphin programs.

SUMMARY: NOAA Fisheries has prepared a programmatic environmental impact statement (EIS) in accordance with the National Environmental Policy Act, and has conducted hearings on the use of marine mammals in swim-with-the-dolphin programs (54 FR 46755). These programs allow a member of the public, including any general visitor or customer, to enter the water with a captive marine mammal for recreational swimming, snorkeling or scuba diving activities. Provisional authority to conduct these programs on an experimental basis expires on December 31, 1989. NOAA Fisheries is considering the consequences of swim-with-the-dolphins programs and has requested comments on the draft EIS. In order to allow time for full consideration of public comment on the final EIS and decision, NOAA Fisheries intends to extend the provisional authority for the four existing programs until April 30, 1990, as stated in the draft EIS.

DATES: Hearings on the draft EIS were held in Honolulu, Hawaii on November 20, 1989; Islamorada, Florida on November 28, 1989; and Washington, DC on December 4, 1989. An additional hearing has been scheduled for Ft. Myers, Florida on December 19, 1989 at 4-7 p.m. Written comments on the draft EIS are due by December 28, 1989.

ADDRESSES: Written comments on the draft EIS may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland 20910. A copy of the draft EIS may be obtained by writing to this address or from the information contact listed below. The address for the Ft. Myers hearing is the Commissioner's Meeting Room, 2120 Main Street, Ft. Myers, Florida 33901.

FOR FURTHER INFORMATION CONTACT: Charles Oravetz or Jeff Brown in St. Petersburg, Florida at 813/893-3366; or Jaunice Yates in Washington, DC at 301/427-2289. Please notify one of these individuals at least seven days in advance of the hearing if you wish to testify. A written copy of your testimony will also be required.

Dated: December 1, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-28625 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 8, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 6 and 20, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 41327 and 43103) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46550). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Strap, Webbing
5340-00-235-4432
5340-00-235-4434
5340-00-451-8157
Water-Displacing Compound
6850-00-142-9389
6580-00-142-9409
Deicing-Defroster Fluid
[illegible]
Penetrating Fluid
[illegible]
[illegible]
6850-00-985-7180

Services

Fast Pack/Carton Recycling and Pallet Repair
Sacramento Army Depot
Sacramento, California
Publications Distribution
Pacific Northwest Research Station (PNW)
Research Information Service
319 SW Pine Street
Portland, Oregon

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28687 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: January 8, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Strap, Webbing
5340-00-454-5963
Sweatshirt
8415-00-269-0403
8415-00-262-1534
8415-00-262-1535
8415-00-262-1536
Sweatpants
8415-00-268-1878
8415-00-268-8779
8415-00-268-8160

Services

Machining Parts
Mare Island Naval Shipyard
Vallejo, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28688 Filed 12-7-89; 8:45 am]

BILLING CODE [illegible]

Procurement List 1990; Proposed Deletion and Correction

On page 48759 of FR Doc. 89-27698 in the issue of Monday, November 27, 1989, the Clothing, Operating Room entry reading 6530- should read 6532-.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28689 Filed 12-7-89; 8:45 am]

BILLING CODE [illegible]

Procurement List 1990; Establishment; Correction

In FR Doc. 89-25872 appearing at page 46540 in the issue for Friday, November 3, 1989, make the following corrections:

1. On page 46560, second column, in the seventy-first line, 011 Street should read "O" Street.

2. On page 46562, first column, in the forty-second line, North Carolina Street should read North Capitol Street.

3. On page 46562, second column, under Laundry, the first entry under

Department of Health and Human Services, the heading should be Department of Defense, the second and third entries should remain under the Health and Human Services heading.

4. On page 46562, second column, in the fifty-fourth line, 300 C Street should read 330 C Street.

5. On page 46562, third column, in line sixty, 12201 should appear before Sunrise Valley Drive.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-28690 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-23-M

Performance Review Board Membership; Senior Executive Service

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Notice

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Connie S. Corley, Administrative Officer, Committee for Purchase from the Blind and Other Severely Handicapped, 1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202-3509, (703) 557-1145.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) (1) through (5) requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Kenneth L. Johnsen, Associate Director for Information Management, Selective Service System
2. Jeffrey S. Lubbers, Research Director, Administrative Conference of the United States
3. John P. Kratzke, Associate Director, Policy, Office of Information Resources Management, Department of Agriculture.

Frank Gearda, Jr.,

Chairman.

[FR Doc. 89-28691 Filed 12-7-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Los Angeles International Golf Club, Los Angeles, CA, Permit

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The proposed action is to issue a permit pursuant to section 404 of the Clean Water Act to allow fill in Big Tujunga Wash necessary to construct flood protection facilities required by the City of Los Angeles in conjunction with the proposed Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Castonon, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-5606.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed action would result in the construction of the Los Angeles International Golf Club, which will impact waters of the United States. The proposed Los Angeles International Golf Club is intended to provide a private golf facility suitable for the Los Angeles Open Golf Tournament in accordance with Professional Golf Association Tour guidelines and the Los Angeles Junior Chamber of Commerce. Construction activities include deepening a natural channel to enhance flood protection, building stabilization structures to reduce water velocities, and constructing golf course landforms on adjacent upland property. Approximately 1.5 million cubic yards of dredged material will be discharged over the entire site, a portion of which will be deposited in the waterways.

2. Alternatives

All underdeveloped parcels of 220 acres or greater in the City of Los Angeles were considered as potential alternative sites. Of the potential alternative sites considered, the applicant determined that there were three potential sites for the project within the Los Angeles area. The three alternative sites to be evaluated are: (1) A 650-acre site near Rancho Calabassas in western Los Angeles County: (2) a 220-acre parcel in the Chatsworth reservoir, owned by the Department of Water Power; and (3) a private owned 178-acre parcel in the Chatsworth area.

3. Scoping Process.

A Public Notice was published on January 27, 1989 and distributed to the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch mailing list. The public was invited to comment, and numerous comments were received. Federal, state, and local agencies and other interested private organizations are encouraged to send their written comments to Mr. David Castanon at the address provided above. Significant issues to be analyzed in depth in the DEIS include:

a. Grading and Geology

The project may substantially alter existing site topography and drainage patterns. The project has the potential to result in unstable earth conditions or in geologic substructures.

b. Biological Resources

Discharge of dredged material may result in the loss of regionally significant alluvial scrub resources. The DEIS will evaluate potential impacts to the Federally listed endangered slender-horned spineflower (*Centrostegia Eptoceras*), the Federally listed endangered least Bell's vireo (*Vireo belli pusillus*), one Federal Candidate Category 1 plant species, and three Federal Candidate Category 2 animal species.

c. Cultural Resources

The DEIS will evaluate potential impacts to historic and pre-historic cultural resources.

d. Recreation Opportunities

The potential benefits of the opportunity for tournament level golf within the region will be evaluated. Potential impacts to existing equestrian use will be assessed.

e. Public Safety

The potential flood control benefits to existing adjacent residences will be assessed.

f. Transportation and Circulation

A traffic study will be required to determine the impact of project generated vehicular traffic on local intersections during special events. The proposed project will generate special events. The proposed project will generate a need for guest parking.

A consultation pursuant to section 7 of the Endangered Species Act was formally initiated in March 1989 which resulted in a draft jeopardy opinion on the project impacts to *Centrostegia Eptoceras* the project has been redesigned several times to produce a reasonable and prudent alternative that will not jeopardize the continued existence of the species.

Formal coordination will be undertaken with U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Development of Fish and Game, State Historic Preservation Office, and City of Los Angeles.

4. Scoping Meeting

Currently, there are no plans to hold a scoping meeting.

5. DEIS Schedule

The current schedule estimates that the DEIS will be available for public review and comment in Winter 1990.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-28735 Filed 12-7-89; 8:45 am]

BILLING CODE 3710-KF-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet 10, January 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agenda of the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28671 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet January 11-12, 1990 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda of the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28672 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet February 15-16, 1990 from 9 a.m. to 5 p.m. each day, in Los Alamos, New Mexico. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-28673 Filed 12-7-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 8, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: December 4, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Foreign Language and Area Studies Program—Institutional List of Awardees and—Student Performance Report.
Frequency: Annually.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden:
Responses: 1420
Burden Hours: 2156
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Individuals and Non-profit institutions that have participated in the Foreign Language and Areas Studies Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Grants for Desegregation Assistance Centers, New and Continuation.
Frequency: Annually.
Affected Public: State or local Governments; Non-profit institutions.
Reporting Burden:
Responses: 40
Burden Hours: 1540
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application is used by non-profit organizations to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Office of Educational Research and Improvement

Type of Review: New.
Title: IEA Reading Literacy Study.
Frequency: On Occasion.
Affected Public: Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 2,096
Burden Hours: 4,728
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will collect data on reading skills and activities of fourth and ninth graders. This study is intended to develop a unified definition of literacy and measure the comparative ability of educational systems to teach literacy skills.

[FR Doc. 89–28647 Filed 12–7–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Babcock and Wilcox Company

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Cooperative Agreement No. DE–FC05–90CE40905 to Babcock and Wilcox Company.

Project Scope: The funding for this cooperative agreement will allow the grantee to perform research and development required to construct and test an instrument for real-time, in-situ measurement of lignin in pulp. This effort will include process characterization tests to resolve key technical issues identified during prior feasibility tests. Babcock and Wilcox has completed Phase I of the sensor development and demonstration of feasibility. They have furthered their technology by in-house R&D of their own. Phase I results indicate that the proposed technology has a significant potential for improving process control in the pulp and paper industry.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Babcock and Wilcox. This project represents a unique idea for which a competitive solicitation would be inappropriate.

This is a project with high technical merit, representing an innovative technology which has a strong possibility for potential savings in industry. The term of this cooperative agreement is for two years from date of award. The total estimated DOE cost is $463,873.

FOR FURTHER INFORMATION CONTACT: S.F. Sobczynski, Program Manager, CE–142, U.S. Department of Energy, Washington, DC 20585, (202) 586-1878.

Issued in Oak Ridge, Tennessee, on October 26, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–28712 Filed 12–7–89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to Kenneth H. Raihala

AGENCY: U.S. Department of Energy.

ACTION: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award of $27,713 based on an unsolicited application under Grant Number DE–FG01–90CE15365 to Kenneth H. Raihala.

Scope: The funding for this grant will provide for the testing of an engineering prototype of a safety damper for a wood or coal burning stove. Based on the analysis of the test data, the results will be further used to optimize assembly components and to determine assembly characteristics.

Eligibility: Based on receipt of an unsolicited application, eligibility for this award is being limited to Kenneth H. Raihala, who has high qualifications in this specialized field of energy research and development. The safety "stovepipe damper assembly" invention is an unique control device for a conventional stovepipe damper to prevent flue overheating. The proposed pilot project has high technical merit representing an innovative technology, is technically sound, commercially feasible, and greatly reduces the possibility of chimney fires in wood burning stoves.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA-405.42, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–28716 Filed 12–7–89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Cooperative Agreement); Washington State University

AGENCY: Richland Operations Office, U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive financial assistance cooperative agreement to Washington State University, which now operates as a branch state university campus, the former Tri-Cities University Center in Richland, Washington.

Scope: The award will help support an educational program of course work leading to MS & PhD degrees in the physical and biological sciences, in engineering, and business.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons:

The activity to be supported is continuation of an existing advanced degree program which DOE has previously supported, initially through a cost sharing contractual arrangement and more recently with a cooperative agreement.

It is currently being conducted at the Washington State University, Tri-Cities branch campus, which, as a result of action by the State legislature, replaces the Tri-Cities University Center, a cooperative venture of the two state research universities which has been supported by DOE. Through Washington State University, the State of Washington provides the facilities for the program and about 70% of the cost, currently estimated at about $2,500,000 per year. DOE wishes to insure that the graduate degree program continue to be available in Richland in order to continue to attract and retain qualified employees at the Hanford site.

The present arrangement is the only one through which advanced degrees in the sciences and engineering are available in this area. No other awardee is presently available, and any other arrangement would seriously disrupt the educational programs of students pursuing advanced degrees. It has therefore been determined that it is appropriate to provide assistance to this activity on a noncompetitive basis.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–2039.

Dated: November 13, 1989.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 89–28713 Filed 12–7–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Utilization Research, Division of Energy Conversion and Utilization Technologies, Research Opportunity Announcement; 1990

I. Introduction

Pursuant to the authority of the Competition in Contracting Act of 1984 (CICA), as implemented by Federal Acquisition Regulation (FAR) 6.102(d)(2) and 35.016, the Energy Conversion and Utilization Technologies Division (ECUT), Office of Energy Utilization Research (OEUR), Department of Energy (DOE) issues this Research Opportunity Announcement (ROA) for Tribology research." Research Opportunity Announcement" is the designated name for DOE's form of a broad agency announcement. The ROA is a general solicitation which uses the scientific and peer review process for the evaluation of proposals. This type of solicitation procedure is considered a competitive selection procedure under CICA and the FAR. Universities or other institutions of higher education, not-for-profit, for-profit, non-Federal agencies, unaffiliated individuals, or other entities are invited to submit competitive proposal(s) to conduct applied research in the field of Tribology in the areas set forth in Section II, Appendix A, of this ROA.

Proposals for development ("development" as defined in FAR 35.001) are not being requested, will not be evaluated, and will not be selected under this ROA. Further, proposals submitted by specific entities which operate Government-owned or controlled research, development, special production, or testing establishments, such as DOE's management and operating (M&O) contractor facilities and Federally Funded Research and Development Centers chartered by other agencies, are not being requested, will not be evaluated, and will not be selected under this ROA.

The ECUT Program supports generic long-term, high-risk, basic and applied research which private enterprise cannot or will not pursue in energy conversion and utilization techniques that conserve energy. The program is mainly intended to support researchers in industry and academe to explore ideas or concepts aimed at specific applications, bringing them to a stage where private industry or other government programs can move them into more advanced technology and engineering development.

Its goals are to: Evaluate new concepts for improved energy efficiency or alternative fuel use in energy conversion and utilization, establish feasibility of revolutionary concepts that significantly reduce energy consumption, and expand the technology base necessary for development of improvements in energy conversion and utilization. The program attempts to be a bridge between basic research and large-scale technology and engineering technology.

The mission of the ECUT-Tribology Program is to provide U.S. industry with the base technology necessary to achieve savings in annual U.S. energy consumption through major tribological advances such as, reducing the significant limitations in the operation of existing and advanced tribological systems operating in severe environments, e.g., high temperatures, speeds, and loads, corrosive gases/liquids (and combinations thereof). This mission will be achieved through a combination of direct energy savings, savings of embodied energy, and enhanced productivity.

By means of this ROA, and through the award of contracts in the areas of research set out in appendix A of this ROA (and as elucidated in the above ECUT-Tribology Program Mission Statement), DOE hopes to further the objectives of its ECUT-Tribology research program. The total amount of annual funding available for research contracts awarded as a result, of this ROA is estimated to be $500,000. However, DOE makes no commitments, either express or implied that this total amount of funding will be made available for contract awards under this

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ROA. Total funds made available for contract awards will be based on the quality of the proposals received in relation to the objectives of the Tribology research program. It is expected that the period of funding for the contracts awarded under this ROA will generally not exceed three years, however DOE may award contracts for longer periods.

II. Definitions

The terms "Basic Research," and "Applied Research" are defined in FAR–35.001. The primary aim of ECUT-supported applied research is to produce enabling technologies for specific applications as opposed to the discipline oriented, theoretical, scientific studies implicit in basic research.

"Objective Review" means a thorough, consistent, and independent examination and evaluation of a proposal by three or more persons knowledgeable in the field of endeavor for which support is requested. Such review is conducted to provide facts and advice to the selection official based upon the evaluation criteria in the ROA.

"Peer Reviewer" means a professional individual, selected to conduct an objective review of a research proposal. The person is not employed by the Government, has expertise in the same or related scientific or technical field as the research area set forth in the proposal, and is recognized in the scientific or technical community.

"Scientific Reviewer" means a professional Government employee, who has expertise in the same or related scientific field as the research area set forth in the proposal selected to conduct an objective of a research proposal.

III. Proposal Submission Instructions

A. The open period (that is, the time period during which proposals will be accepted from entities by DOE) for submission and receipt of proposals in response to this ROA is the twelve-month period beginning on the date of publication of this ROA in the Federal Register and ending at 4:30 p.m. (local time at the place designated for receipt of proposals) twelve months after the date of publication in the Federal Register.

B. Proposals may be submitted at any time the open period of the ROA. Proposals received subsequent to the expiration of the open period will be considered in accordance with FAR subpart 15.412. Therefore, the FAR provision, 52.215–10 entitled "Late Submissions, Modifications, and Withdrawals of Proposals" is incorporated herein by reference with full force and effect.

C. An original and four copies of a proposal (whether for a new research effort or for the continuation of an existing research contract) shall be submitted to: U.S. Department of Energy, Attn: ECUT-Tribology Program ROA, FY 1990, Building 201, Room No. 3C–12, 9800 South Cass Avenue, Argonne, Illinois 60439.

D. Entities may submit more than one proposal for any area of research within the scope of this ROA. However, each proposal for research shall be submitted as an individual proposal submission.

E. All proposals shall be clearly identified with the ROA identification number and title affixed to the shipping label.

F. A proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The proposed research is within the specific area of research contemplated by the ROA; (2) the proposal is received during the open period of the ROA; and (3) the proposal is full responsive to the requirements of the ROA.

IV. Proposal Preparation Instructions

Each proposal shall contain three distinct sections marked: Section I-Offerer Information, Section II-Technical Proposal, Section III-Cost Proposal. The following information shall be included:

A. Section I-Offerer Information

1. Name and address of offerer;
2. The ROA identification number;
3. The date of submission of the proposal, and the offer acceptance period;
4. The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or may in future, provide funds for the same or similar research activities of the offerer;
5. A proposal cover sheet signed by the offerer, and by an individual authorized to contractually obligate the offerer.

B. Section II-Technical Proposal

1. A detailed description of the proposed research, including the objectives of the research, the methodology and procedures for accomplishing those objectives, the anticipated results, and the relationship of the proposed research to the program objectives and evaluation criteria described in this ROA. This description should include a discussion and listing (with references) of any previous or ongoing research performed by the offerer in areas related to those contemplated by the ROA.
2. A detailed task breakdown and schedule depicting and defining key research milestones.
3. A description of the offerer's proposed methods and scope of management support and controls, including cost management techniques and subcontracting practices. Provide an example of these methods having been applied to a successfully completed contract, if one is available; otherwise a statement that the Principal Investigator is a new Investigator and has had no previous contracts with the Government.
4. A description of the facilities and other resources which will be used in performance of the research. Indicate specifically that these facilities will be available to the proposed principal investigators for this task period.
5. A description of any facilities and other non-monetary resources requested to be furnished by the Government for use by the offerer.
6. Resumés for the proposed principal investigator(s) and other key individuals.

C. Section III—Cost Propoal

1. A budget with supporting justification sufficient to evaluate the costs of the proposed project. (A fully executed Standard Form SF–1411, and supporting documents).
2. A description of all proposed cost-sharing arrangements.

V. Other Information for Proposers

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded. This Announcement implies no commitment by the Government to make an award. A decision to award will be determined through evaluation of proposals received and the availability of funds.

VI. Point of Contact

The point of contact of all matters relating to this ROA is: Mr. David Mello, Attn: ECUT–Tribology Program ROA, FY 1990, Code CE–121, Room 5E–066, U.S. Department of Energy HQ, Washington, DC 20585, Telephone: (202) 586—5377.

Requests for information or for any forms required by this ROA should be submitted in writing to: Mr. Eric Simpson, U.S. Department of Energy, Chicago Operations Office, Attn: ECUT–Tribology Program ROA, FY 1990, Building 201, Room 3C–12, 9800 South Cass Avenue, Argonne, Illinois 60439, Telephone: (312) 972–2108.

Collect telephone calls will not be accepted by DOE personnel.

VII. Proposal Evaluation

The evaluation of each proposal will begin upon its receipt, or as soon as possible thereafter. Should the acceptance period for a proposal expire, the proposer may, in response to DOE's request, be required to revalidate the terms of the original proposal. All proposals will undergo an initial review, to determine (1) the responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, (2) the relevance of the proposed effort to the broad areas of research contemplated by the ROA and, (3) does not unduly duplicate work already funded. If, after completion of the initial review, a proposal is determined not to meet the requirements stated in this paragraph, the proposer shall be promptly notified that its proposal has been eliminated from any further competition under the ROA and the general basis for such a determination.

The following considerations will be used by the DOE Selection Official to determine the importance and relevance of the proposed research of ECUT's mission:

A. Factors Used in Determining Importance or Relevance to Program

1. A goal of the ECUT Division is to foster industry-academia-government collaboration in its sponsored research. It is important that proposals be explicit in describing all collaborative elements of the work, and the rationale for the collaboration.

2. A further goal of the ECUT Division is to foster the development of enabling technologies through applied research. Proposals from industry should indicate the shortcomings of present technology and indicate the importance of this work in adding to the knowledge base leading to the development of an enabling technology.

3. Proposals from academe should indicate the relevance of the work to a proven or perceived industrial need e.g., how this work might lead to the development of needed enabling technology.

4. Proposals from other Governmental units (State, Local) should describe the complementary nature of the work, its relevance to ECUT's interests, and the prospects for co-funding with that agency and/or its industrial clients.

5. Co-funding is a very relevant aspect of ECUT sponsorship. It is one measure of the importance of the work to the participants, and it can be indicative of early application of the technology.

The above factors will not be weighed or point scored.

B. Criteria Used in Objective Review of Proposals

Proposals which survive the initial review will be objectively reviewed against the following criteria, which are of equal importance, by at least three scientific and peer reviewers. The composition of the group may be any mix of these reviewers.

1. (The Project) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offerer under previous or existing contracts or other arrangements;
2. (The People) The qualifications, capabilities, experience, and demonstrated past performance of the offerer, principal investigator, and/or key personnel;
3. (Relevance) The appropriateness of the proposed method or approach in helping DOE to achieve its research objectives;
4. (The Workplace) The adequacy of the offerer's facilities and resources;
5. (Management) The adequacy of the offerer's management plan;
6. (The Cost) The realism of the proposed costs relative to known research conducted under similar circumstances, and the extent and nature of cost-sharing.

C. Relative Weighting of the Evaluation Criteria

All criteria will be weighted equally so that the broadest range of opportunity for new ideas may be accommodated. One proposal may be most meritorious because of an extraordinary opportunity for significant cost-sharing with industry, another proposal may be most valuable because of a combination of relevance to present DOE objectives and a unique research capability predicated upon specialized equipment on hand. Therefore the proposal overall rating will be derived by evaluating the relative merits of each Evaluation Criterion on a score of 0 to 4, representing a range of "Not Acceptable," to "Outstanding," respectively. It is the cumulative score of each proposal that will determine the relative standing of all competing proposals.

VIII. Proposal Selection

Proposals will be selected for award based upon the evaluation criteria described in this announcement and the availability of funds. After the selection of a technology for funding, DOE may, if necessary, enter into negotiations with a proposer prior to the award of a contract. Such negotiations are not a commitment that DOE will make an award. Resultant contracts will be negotiated, awarded, and administered by DOE in accordance with the Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), and other controlling policies and procedures.

Issued in Chicago, Illinois, on November 27, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

Appendix A—Research Agenda

I. ECUT Program Overview

The Division of Energy Conversion and Utilization Technologies (ECUT).

This Program supports long-term, high-risk, interdisciplinary applied research to assure an adequate enabling technology base for efficient future energy conversion and utilization systems and feasible alternate fuels. It is a research program focused on knowledge of processes and materials needed to enable the improvement of the efficiency of energy-using components, devices and systems, and their capacity to use alternative energy sources.

ECUT draws from basic research to establish the feasibility of revolutionary concepts that significantly reduce energy consumption, evaluates new concepts for improved efficiency or alternative fuel use in energy conversion and end-use, and expands the technology base to enable development of improvements in the efficiency of energy conversion and utilization.

ECUT undertakes those activities that address specific technology-limiting problems and conducts research in five priority technology areas.

The ECUT-Combustion Technology-research program supports the development of new technologies related to engine combustion and continuous processes in boilers, furnaces, incinerators, turbines, and industrial process heat devices. ECUT Thermal Sciences research focuses on improved understanding of thermodynamics, fluid systems, direct energy conversion concepts, and heat/

mass transfer processes. The ECUT Materials research program seeks to design, discover, synthesize, and characterize the performance of new energy-conserving materials and processing technologies for a variety of end-uses. Research supported by the ECUT Biocatalysis program investigates new chemical and biochemical catalytic processes employing the power of the science of molecular biology. The ECUT Tribology research program provides support for investigating lubrication phenomena, friction and wear characterization, and analytical tribological computational simulation models.

II. The ECUT-Tribology Program

The mission of the ECUT-Tribology Program is to provide the base technology necessary to achieve savings in annual US energy consumption through major tribological advances. This may be achieved through direct energy savings, savings of embodied energy, or enhanced productivity. Also, the mission is to reduce the significant limitations in the operation of existing and advanced tribological systems which have to operate in severe environments such as high temperatures, speeds, loads, corrosive gases/liquids, and combinations thereof. The program has established close ties with US Industry and universities to determine current and future needs for advances of tribological systems and to facilitate the transfer of the new technologies which are developed in this program.

The ECUT-Tribology research program provides support for investigations of lubrication phenomena, friction and wear mechanisms, tribological surface modifications, and tribological design methodologies (tools). The following areas are of primary interest:

Tribology by Design: Performance of concurrent theoretical, computational, and experimental investigations having the objective of developing a predictive capability regarding the tribological properties of materials and components. The research contemplated includes development, from first principles, of theoretical models, empirical models, simulations, and experimental measurements with sufficient resolution to validate theoretical predictions. The goal is to develop computational procedures to support design of materials and components yielding any desired tribological characteristic. Such a capability has the potential of significantly reducing tribological losses in current and future energy systems.

Engineered Tribological Interfaces: Investigation of processes, mechanisms, materials, and techniques for the control of the tribological properties of surface (component) interfaces. Activities in this research area include surface modification, insitu emplacement of lubricious materials, advanced lubrication techniques, and microscopic level diagnostics. The goal is to provide replicable engineering approaches to reducing tribological losses beyond that possible with conventional lubrication and coatings.

Exteme Environmental Tribology: Investigations of tribological approaches and systems with the potential to expand the extremes of currently available tribological performance. This includes materials, processing and lubrication techniques. Examples are: Vapor phase lubrication, diamond films, ceramic composites, and intermetallics. The goal is to develop new methods of achieving required tribological performance in the more demanding operating environments which will exist in advanced energy systems.

[FR Doc. 89-28717 Filed 12-7-89; 8:45 am]
BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Between the Governments of the United States of America, Sweden, and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement of Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SW(JA)-5, for the transfer from Japan to Sweden of 8 irradiated fuel segments containing 2,076 grams of uranium, enriched to 1.25 percent in the isotope uranium-235, and 17 grams of plutonium, for power ramp testing in the R-2 reactor at Studsvik, Sweden.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 4, 1989.

Thad Grundy, Jr.

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-28715 Filed 12-7-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP90-46-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 1, 1989.

Take notice that ANR Pipeline Company ("ANR") on November 27, 1989 tendered for filing as a part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets:

Twenty-Fifth Revised Sheet No. 18
Fourth Revised Sheet No. 88
Fourth Revised Sheet No. 89
Fourth Revised Sheet No. 90
Third Revised Sheet No. 90A
Original Sheet No. 90A.1
First Revised Sheet No. 124
First Revised Sheet No. 125
Original Sheet No. 126
Original Sheet No. 127

ANR states that the above-reterenced tariff sheets are being filed under Section 2.104 of the Commission's Regulations to implement partial recovery of $24.8 million of additional buyout buydown costs. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 and SGS-1 sales customers and to recover up to fifty percent of such costs through a volumetric buyout buydown surcharge of 0.55¢ per dth applicable to each sales and transportation Rate Schedule under Original Volume Nos. 1, 1-A and 2 of ANR's FERC Gas Tariff, but all subject to reservation of rights to make changes, including the achieve 100 percent cost recovery by increased direct charge recovery.

ANR has requested that the Commission accept this filing, to become effective December 27, 1989.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1-A and 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 8, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28638 Filed 12-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP90-284-000]

Commonwealth Gas Co. v. Distrigas of Massachusetts Corp. et al.; Complaint, Request for Hearing, and Request for Emergency Relief

December 1, 1989.

Take notice that on November 28, 1989, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, Commonwealth Gas Company (COM/Gas) filed an emergency complaint against Distrigas of Massachusetts Corporation (DOMAC), Boston Gas Company (Boston Gas), and Algonquin Gas Transmission Company (Algonquin) requesting that the Commission immediately issue a cease and desist order against DOMAC, Boston Gas, and Algonquin to prevent them from completing steps now underway to deliver vaporized Algerian liquefied natural gas (Algerian gas) into COM/Gas's system and to set the complaint for investigation and hearing.

COM/Gas alleges that Algonquin delivers 100 percent of the natural gas received by COM/Gas to serve the Cambridge and Somerville areas of Massachusetts through deliveries from the Algonquin J System at COM/Gas' Brookford Street and Third Street take stations (Cambridge Stations). COM/Gas further claims that since 1975, DOMAC has been making sales of Algerian gas from its LNG import facilities in Everett, Massachusetts, to customers all over the Northeast, principally by displacement, by delivering the Algerian gas to Boston Gas Company. COM/Gas also claims that some of the Algerian gas is sold in liquid form and transported by truck to customers that have LNG tanks. COM/Gas asserts that approximately in January of 1989, DOMAC Boston Gas, and Algonquin agreed among themselves to change the existing pattern of distribution because Boston Gas could not absorb any more Algerian gas and because DOMAC wished to sell and transport more vaporized Algerian gas. COM/Gas contends that DOMAC, Boston Gas, and Algonquin decided that they would deliver the Algerian gas directly into Algonquin's interstate pipeline system for redelivery to COM/Gas which is a sales customer of Algonquin but not of DOMAC.

COM/Gas asserts that Algonquin has notified COM/Gas that, as early as December of 1989, Boston Gas will begin delivering Algerian gas from DOMAC into the Algonquin J System at a point between the two Cambridge Stations, and that once DOMAC, Boston Gas, and Algonquin flow the gas in this manner, COM/Gas alleges that it will be unable to avoid receiving it, and the Algerian gas will, at times, displace entirely the domestic gas that Algonquin normally delivers to COM/Gas.

COM/Gas contends that the Algerian gas has significantly different chemical compositions that affect the performance of consumer appliances and that when Algerian gas is supplied undiluted and without opportunity to survey and adjust consumer appliances, a significant number of furnaces, stoves, hot water heaters, and other appliances that operate acceptably on domestic gas in the homes and businesses of COM/Gas' customers could experience incomplete combustion and could produce excessive amounts of toxic carbon monoxide within occupied space. COM/Gas alleges that DOMAC and Algonquin have stated to COM/Gas that they do not believe that the safety precautions proposed by COM/Gas need to be taken and that they will not allow COM/Gas an opportunity to take those precautions before receiving the Algerian gas. Furthermore, COM/Gas alleges that each has stated to COM/Gas that they do not require authorization from the Commission before delivering the Algerian gas to COM/Gas.

COM/Gas asserts that since January 1989, COM/Gas has attempted to reach agreement with DOMAC and Algonquin concerning the timing and manner of delivering Algerian gas but that the companies have thus far failed to take the steps COM/Gas believes are required protect the safety of its customers by (i) failing to provide COM/Gas with data it requested concerning the chemical composition of the gas to be supplied to permit a determination of the number of appliances that will need to be adjusted; (ii) refusing to commit to allow COM/Gas time to identify and adjust or replace as necessary the burners of consumers' appliances that would emit carbon monoxide before delivering the Algerian gas; (iii) refusing to agree to operating procedures (a) to phase in the Algerian gas, (b) to commence initial deliveries outside of the peak heating season when service calls are at their maximum and forced safety-indaced shutdowns of furnaces would severely affect the health and welfare of customers, and (c) to identify individuals responsible for and commit to halt deliveries if life-threatening emergencies develop.

COM/Gas alleges that despite nine months of effort by COM/Gas to cooperate and negotiate agreements to provide these necessary protections, COM/Gas faces an unprecedented crisis:

(i) Either it must close the valves to Algonquin, leaving 31,000 customers without heat indefinitely in subfreezing weather; or

(ii) Allow the Algerian gas to enter homes and businesses despite the fact that a significant number of appliances may, as a result, emit carbon monoxide, a deadly gas which is odorless, colorless and tasteless, and which therefore cannot be detected by human senses.

COM/Gas asserts that the Commission possesses ample authority under sections 3, 7, and 16 of the NGA to assure that imported gas is delivered in a safe manner. Further, COM/Gas alleges that none of the companies involved has sought or obtained the authorization under the NGA to deliver Algerian gas to COM/Gas in displacement of domestic supplies as contemplated by the proposed transaction. In addition, COM/Gas claims that DOMAC's, Boston Gas's, and Algonquin's imminent plans to deliver the gas supply without permitting the completion of necessary safety precautions constitutes a violation of the NGA. COM/Gas claims that because of the potential threat to life and the imminence of the delivery of Algerian gas in an unsafe manner, emergency action by the Commission is required.

COM/Gas alleges that it is not seeking to affect the existing delivery of Algerian gas to Boston Gas or deliveries of Algerian gas by truck since such deliveries do not implicate the public safety and lack of legal authorization

issues raised by deliveries of Algerian gas to COM/Gas' system, and that all existing sales arrangements therefore would be unaffected by the relief sought by COM/Gas. COM/Gas states that only the incremental sales by DOMAC that are dependent on the physical delivery of gas to the Algonquin J System would be temporarily delayed, pending resolution of the legal authorization and safety issues.

COM/Gas requests that the Commission:

(1) Without awaiting any response, by telephone order direct DOMAC, Boston Gas and Algonquin to cease and desist from preparing to deliver Algerian gas to COM/Gas' system until such time as the Commission concludes this proceeding and issues an order on the merits (such cease and desist order should, however, specifically exclude existing deliveries of Algerian gas to Boston Gas to be consumed on Boston Gas' system or deliveries of such gas by truck);
(2) Establish an expedited procedural schedule for this proceeding;
(3) Set the Complaint for investigation and hearing;
(4) Upon conclusion of the investigation and hearing, issue an order on the merits prohibiting Algonquin, DOMAC and Boston Gas from initiating deliveries of Algerian gas to Algonquin's J System until all required safety measures have been implemented; and
(5) Grant COM/Gas all other relief to which it is entitled.

Any person desiring to be heard or to protest with reference to said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions or protests should be filed on or before December 8, 1989. Protests filed with the Commision will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Respondents' answers to the complaint are due on or before December 8, 1989. No replies to respondents' answers will be accepted. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28641 Filed 12-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-45-000]

Southern Natural Gas Co.; Petition for Waiver

December 1, 1989.

Take notice that on November 22, 1989, Southern Natural Gas Company (Southern) filed a petition for a waiver of §§ 154.304 and 154.308 of the Commission's Regulations, which require Southern to make its next quarterly purchased gas adjustment (PGA) filing by the end of November to be effective January 1, 1990. Southern requests authorization to continue to include in its sales rates the cost of gas reflected in Southern's immediately preceding PGA filings.

Southern states that since its currently effective rates authorized in Docket No. TF90-1-7 already reflect the commodity cost of gas which Southern has agreed to guarantee its customers, Southern believes that it would be both unnecessary and administratively inefficient for it to make another PGA filing merely to continue the current rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before December 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28640 Filed 12-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-209-025]

United Gas Pipe Line Co.; Proposed Changes in FERC Tariff

December 1, 1989.

Take notice that United Gas Pipe Line Company (United) on November 27, 1989, tendered for filing certain revised tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1.

United states that this filing is made in compliance with the Order Modifying and Approving Base Stipulation and Agreement and Denying Motion to Sever issued on March 17, 1989 (March 17, 1989 Order) by the Federal Energy Regulatory Commission (Commission) and the Order Granting and Denying Rehearing in Part issued on October 27, 1989 concerning the November 28, 1988 Base Stipulation and Agreement (Settlement) in Docket Nos. RP85-209, *et al.*

United states that contained in the above-referenced tariff sheets are numerous issues resolved in the Settlement, including FTS rates based on the same zones used in Rate Schedule ITS and revisions to sections of United's sales rate schedules and General Terms and Conditions to reflect directives and clarifications from the Commission regarding overrun services and United's system management plan. The submitted tariff sheets include cancellation of Rate Schedule G (Alternate) and the suspension of the Alaskan Natural Gas Tracking System. Also included in this filing are tariff sheets which document reductions in Contract Maximum Daily Quantity and D-1 and D-2 billing demand for Southern Natural Gas Company and Mississippi River Transmission pursuant to the Settlement as well as tariff sheets which reflect Customer Entitlement Quantities (CEQ) for the 12 months beginning November 1, 1989. United further states that tariff sheets are included herein which relate to take-or-pay issues resolved by the Commission's order approving the Settlement. United asserts that the cost shown on these tariff sheets are those which are set out in the Settlement updated to reflect interest and to reflect actual costs as filed in Docket No. RP89-138. United states that tariff sheets are also included to reflect refunds due in Docket No. IN88-5-001 which will be offset against take-or-pay costs allocable to United's jurisdictional customers in compliance with the March 17, 1989 Order.

United states that copies of this filing were served on all parties of United's Docket No. RP88-92 service list.

Any person desiring to protest said filing should file a protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 8, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-28639 Filed 12-7-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-70-NG]

Westar Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 12, 1989, of an application filed by Westar Marketing Company (Westar) for blanket authorization to import up to 10 Bcf of Canadian natural gas for a two-year term beginning on the date of first delivery. Westar proposes to import gas at the existing international border delivery point on the interstate pipeline system of Northwest Pipeline Corporation (Northwest) located near Sumas, Washington, and anticipates transporting the imported gas through the existing pipeline facilities of Northwest, Colorado Interstate Gas Company (Colorado), and Questar Pipeline Company (Questar). Westar states that the requested authorization requires no new facilities. The company indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than 4:30 p.m., e.s.t., January 8, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Westar, a general partnership with its principal place of business in Salt Lake City, Utah, proposes to import natural gas it may purchase from various Canadian suppliers, including Wainoco Oil Corporation (Wainoco), for resale to various industrial customers and other marketers for delivery in the Pacific Northwest and Rocky Mountain region. According to Westar, the specific terms of each contract will be the product of arms-length negotiations between it and the Canadian suppliers. Additionally, Westar maintains that any shipments of Canadian gas will be based on its specific needs and those of its customers and will necessarily reflect market conditions at the time of the purchase agreements. Each supply contract will be structured to meet competition in the marketplace.

In support of its application, Westar asserts that the requested blanket authorization will facilitate short-term spot market transactions, thereby enhancing competition in the marketplace. Westar further maintains that there will be minimal potential for undue long-term dependence on foreign gas supplies because of the short-term nature of imports anticipate under the requested authorization.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file

additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of Westar's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28714 Filed 12-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3695-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 20, 1989 through November 24, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J65153-MT

Rating EC2, Trail Creek Timber, Sale, Implementation, Beaverhead National Forest, Wisdom Range District, Beaverhead County, MT.

Summary

EPA believes that this project should include a feedback mechanism and monitoring plan that has adequate funding.

Final EISs

ERP No. F-BLM-K65116-CA

Arcata Planning Area, Land and Resource Management Plan, Implementation, Humboldt, Mendocino, Trinity and Sonoma Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F1-BLM-L70009-AK

Utility Corridor Planning Area Resource Management Plan and Central Arctic Management, WSA Recommendations, Implementation, AK.

Summary

Review of this document has been completed and the project found to be satisfactory.

ERP No. F-BOP-K81019-CA

Taft Federal Correctional Institution, Construction and Operation, Kern County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FB-NRC-A06162-PA

Three Mile Island Nuclear Power Station, Unit 2, Decontamination and Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Londonderry Township, Dauphin County, PA.

Summary

Review of the final was not deemed necessary.

Regulations

ERP No. R-FEM-A86234-00

44 CFR Part 206; Disaster Assistance; Hazard Mitigation Planning (Subpart M) (54 FR 37952).

Summary

EPA suggests that the protection of natural and beneficial values of floodplains be added to a hazard mitigation plan goal of flood losses.

Dated: December 5, 1989.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 89-28721 Filed 12-7-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3694-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed November 27, 1989 Through December 1, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890335, FSuppl. COE, MI, Sault Ste. Marie Federal Facilities, Operation, Maintenance and Minor Improvements, Implementation, Chippewa County, MI, Due: January 8, 1990, Contact: Donald Williams (313) 226-6753.

EIS No. 890336, Draft, FHW, WI, Wisconsin Trunk Highway 29 Improvement, Shawano Bypass Construction, Section 404 Permit and Funding Shawano County, WI, Due: January 22, 1990, Contact: R.W. Cooper (608) 264-5395.

EIS No. 890337, Draft, BLM, AZ, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino Counties, AZ, Due: March 2, 1990, Contact: Dennis Curtis (801) 673-3545.

EIS No. 890338, Draft, NPS, VA, George Washington Memorial Parkway, Potomac Greens Interchange Development, Construction Permit, Special Use Permit, Daingerfield Island, VA, Due: January 29, 1990, Contact: Jack Benjamin (202) 416-6715.

EIS No. 890339, Draft, AFS, MT, Mill/Emigrant Timber Sale, Implementation, Gallatin National Forest, Livingston Ranger District, Park County, MT, due: January 23, 1990, Contact: Rita E. Beard (406) 222-1892.

EIS No. 890340, Final, COE, IL, Liverpool Village Flood Control Project, Implementation, Illinois River, Fulton County, IL, Due: January 8, 1990, Contact: John Bellinger (202) 272-0166.

EIS No. 890341, Final, AFS, WY, Mountain Meadow Guest Ranch Expansion, Site Development Plan Approval, Special Use Permit Renewal, Medicine Bow National Forest, Albany Country, WY, Due: January 8, 1990, Contact: Terry B. Dilts, (307) 745-8971.

Amended Notices

EIS No. 890353, Draft, FHW, VA, Southeastern Expressway Improvement, I-464/I-64 to VA-44 (Norfolk-Virginia Beach Expressway) Construction Section 10 & 404 Permits, CGD Bridge Permit, York and James City Counties, VA, Due: January 5, 1990, Contact: James M. Tumlin (804) 771-2371. Published FR 9-22-89—Review period extended.

Dated: December 5, 1989.

Willima D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-28720 Filed 12-7-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Environmental Impact Statements (EIS's); Designation of Ocean Dredged Material Disposal Sites (ODMDS's) for Two Navigation Channels in Coastal Louisiana

AGENCIES: U.S. Environmental Protection Agency (EPA), Region 6 and U.S. Army Corps of Engineers (COE), New Orleans District.

ACTION: Notice of intent to prepare draft EIS's on the final designation of ODMDS's off coastal Louisiana.

PURPOSE: In accordance with Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 and 40 CFR part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), the EPA and the COE will jointly prepare draft EIS's on EPA's designation of ODMDS's off coastal Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Thomas, U.S. Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202-2733, Telephone (214) 655-2260 or Mr. Robert Martinson, U.S. Army Corps of Engineers, Environmental Analysis Branch (CELMN-PD-RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862-2526.

Summary: The proposed DEIS's will provide information regarding the environmental impacts from continued use of ocean dredged materials disposal sites (ODMD's) for two navigation channels in coastal Louisiana—the Mermentau River in Cameron Parish, and Freshwater Bayou in Vermilion Parish. Without dredging, operating depths would decrease and limit economically important ship traffic utilizing the channels. Each of the above navigation channels extends into the Gulf of Mexico until it reaches a depth equal to the authorized channel depth. During maintenance dredging of the channels in the Gulf, material is placed in a disposal site westward of and parallel to each channel. The sites proposed for designation have been used for over 17 years. These sites received a 3-year interim designation from EPA in 1977, based on historical use. In January 1980, the interim designation of each site was extended indefinitely. The EPA has now determined that it will voluntarily prepare a draft and final EIS for each designation action. The EPA and COE will function as joint lead agencies in preparing these draft EIS's.

Alternatives: Alternatives to be considered in the draft EIS's include no action, final designation of the interim designated ODMDS's, relocation of the ODMDS's to alternate ocean areas, and land disposal and beach nourishment. Other alternatives may be identified during the scoping process.

Scoping: No formal scoping meetings are planned. A Scoping Input Request will be distributed in early December 1989 to allow Federal, state, and local agencies; environmental groups; and other interested parties an opportunity to provide input and assist in identification of significant issues and alternatives to be addressed in the draft EIS's. Comments received as a result of the Scoping Input Request will be compiled and analyzed. A scoping document summarizing the results will be made available to all respondents.

Estimated Date of Release: The draft EIS's are currently scheduled to be available for public review as follows: Mermentau River ODMDS—Spring 1990, Freshwater Bayou ODMDS—Summer 1990.

Dated: December 4, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-28722 Filed 12-7-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00101; FRL-3684-4]

Biotechnology Science Advisory Committee; Subcommittee on Biotechnology Health; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Biotechnology Health. The meeting will be open to the public. The Subcommittee will review and discuss biotechnology health safety work and EPA's proposed biotechnology health research plan. Advice and recommendations will be sought from the Subcommittee about the content and future direction of the biotechnology health research program at EPA.

DATE: The meeting will be held on Tuesday, December 19, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-28726; Filed 12-7-89; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-00102; FRL-3684-3]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee (BSAC). The meeting will be open to the public. The Committee will hear and discuss reports from various Subcommittees, including the Subcommittee on Antibiotic Resistance Markers, the BSAC Subcommittee on Mobile Genetic Elements, and the BSAC Subcommittee on Health. The BSAC will also receive updates on various activities, such as the microcosm workgroup, monitoring and greenhouse guidelines, the Good Developmental Practices workgroup, and the Offices of Pesticides and Toxic Substances rulemaking activities.

DATE: The meeting will be held on Wednesday, December 20, 1989, starting

at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date. Time will be allocated for public comments on the Scope Definition developed by a Subcommittee of the Biotechnology Science Coordinating Committee. Requests for comments should be given to Charlene Dunn at 202-382-6900. Priority will be given to commenters who have provided written comments in advance of the meeting.

Dated: December 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89–28727 Filed 12–7–89; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 1, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Response: Annually and other.

Estimated Annual Burden: 38 Responses; 986 Hours.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities. Subjected carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to § 43.61(d).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–28660 Filed 12–7–89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 1, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0170.

Title: Section 73.1030, Notifications concerning interference to radio astronomy, research, and receiving installations.

Action: Extension.

Respondents: Businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 30 responses; 30 hours total annual burden; 1 hour average burden per respondent.

Needs and Uses: Broadcast licensees must provide written notification to the Interference Office of Green Bank, WV, setting forth the particulars of a proposed station when it is within the geographical coordinates of the National Radio Astronomy Observatory or the Naval Radio Research Observatory in West Virginia. The information is used by the Interference Office to enable it to file objections with the Commission to minimize potential interference to observatories.

OMB Number: 3060–0184.

Title: Section 73.1740, Minimum Operating Schedule.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 311 responses; 158 hours total annual burden; 30 minutes average burden per response.

Needs and Uses: Licensees of commercial broadcast stations are required to notify the Commission when events beyond their control make it impossible to continue operating or to adhere to the operating schedule and to again notify the Commission upon return to normal operation. This information is used by the Commission staff to authorize temporarily a limited operation or a discontinuance of operation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–28661 Filed 12–7–89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Asia North America Eastbound Rate Agreement, et al.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–051.

Title: Asia North America Eastbound Rate Agreement ("ANERA").

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification provides that a party to the Agreement who knowingly discloses confidential information in violation of the provisions of Article 15 (Breach of Confidentiality) shall be liable to reimburse the Agreement and any other parties for all damages and costs which may result from such violation.

Agreement No.: 217–010855–003

Title: V.A.G. Transport/Hoegh-Ugland Auto Liners Space Charter Agreement.

Parties:

V.A.G. Transport GmbH ("V.A.G Transport")
Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed amendment would delete V.A.G. Transport as a party to the Agreement and would add V.A.G Transport GmbH & Co. O.H.G. as a party. The parties have requested a shortened review period.

Agreement No.: 232–011199–001

Title: V.A.G Transport/Kommar Reciprocal Space Charter and Sailing Agreement.

Parties:

V.A.G Transport GmbH ("V.A.G Transport")
Kommar Companhia Maritima S.A.

Synopsis: The proposed amendment would delete V.A.G Transport as a party to the Agreement and would add V.A.G Transport GmbH & Co. O.H.G. as a party. The parties have requested a shortened review period.

Agreement No.: 232–011230–002

Title: V.A.G Transport/Tecomar Reciprocal Space Charter and Sailing Agreement.

Parties:

V.A.G Transport GmbH
Tecomar S.A.

Synopsis: The modification amends the Agreement by substituting for V.A.G Transport GmbH, the newly-formed legal entity of V.A.G Transport GmbH & Co. O.H.G. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 4, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–28630 Filed 12–7–89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1990 program guidelines/application solicitation for labor-management committees.

SUMMARY The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1990 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. No comments were received on the draft version.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

A. Introduction

The following is the final solicitation for the Fiscal Year 1990 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects to mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the

establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY90, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. Problem Statement

The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses WHY the effort is needed.

2. Results or Benefits Expected

By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. Approach

This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represents 70% of the area or plant workforce);

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position description for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. Major Milestones

This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1990 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. Evaluation

Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. Letters of Commitment

Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable.

7. Other Requirements

Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all courses and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility versus its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal Government agencies and their employees are not eligible.

Third party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee and FY88 grantees seeking continuation funding.

D. Allocations

FMCS has been given an allocation of $1.4 million for this program. However, this amount may be reduced by about $25,000 due to federally mandated budget reductions. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY90 appropriation to contract for program support purposes other than administration. In FY90, approximately $400,000 will be reserved to continue successful grants funded in FY88.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the intitial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants;

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-mangement committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY90 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applicants should be signed by both a labor and management representative and be postmarked no later than May 5, 1990. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427. FMCS will not accept videotaped submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY90 grant applicants will be notified of results and all grant awards will be made before September 28, 1990. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY90, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on December 11, 1989. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427; or by calling 202/653-5320.

Robert P. Baker,

Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 89-28734 Filed 12-7-89; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

The Bank of Tokyo, Limited; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *The Bank of Tokyo, Limited*, Tokyo, Japan; to acquire indirect ownership through Service Corp. II, New York, New York, of certain assets of certain leasing subsidiaries within BancNew England Leasing Group, a group of affiliated companies controlled by the Bank of New England Corporation and Bank of New England, N.A., including the hardware, software, office space, furniture and fixtures, personnel and contracts (including servicing contracts) for the purpose of engaging in (1) leasing personal or real property or acting as agent, broker or advisor in leasing such property, pursuant to the Board's Regulation Y § 225.25(b)(5); (2) making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts), for Service Corp. II's account or for the account of others, such as would be made, for example, by companies engaged in consumer finance, credit card, mortgage, commercial finance and factoring, pursuant to the Board's Regulation Y, § 225.25(b)(1); (3) acting as investment or financial advisor pursuant to the Board's Regulation Y, § 225.25(b)(4); and (4) providing to other data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel, data bases or access to such services, facilities or data bases by any technological means, pursuant to the Board's Regulation Y, § 225.25(b)(7). The acquisition of these assets and the establishment and operation of Service Corp. II is part of a larger transaction in which The Bank of Tokyo, Limited, will acquire indirectly through its subsidiary banks in New York and California certain of the leasing assets and/or of the stock of certain leasing subsidiaries within BancNew England Leasing Group.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28652 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England, and *Barclays Bank PLC*, London, England; to engage *de novo* through Barclays de Zoete Wedd, Inc., New York, New York, in (i) providing for affiliated and unaffiliated financial and nonfinancial institutional clients, advice in connection with merger, acquisition, divestiture, leveraged buyouts, capital-raising vehicles and other corporate transactions (including advice regarding the terms and features of different publicly-traded bonds available to finance a client's activities, such as market considerations, feasibility studies, and negotiations with bond rating agencies, and including acting as a "dealer-manager" in a tender or exchange offer (which function shall not encompass the purchase of securities either as agent or principal, and valuations and fairness opinions in connection with merger, acquisition, divestiture and similar transactions and to provide ancillary services or functions incidental to the foregoing activities; (ii) making and servicing loans, or other extensions of credit for the company's account or the account of others, as authorized by the Board's Regulation Y, 12 CFR 225.25(b)(1); and (iii) providing investment and financial advice, as authorized by the Board's Regulation Y, 12 CFR 225.25(b)(4).

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28653 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Greenwood National Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activties

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve. Bank indicated or the offices of the Board of Governors not later than December 29, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Bancorporation*, Greenwood, South Carolina; to engage *de novo* through GNB Mortgage Company, Greenwood, South Carolina, in acting as a mortgage broker engaged in the origination of single family residential first mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CB Bancshares, Inc.*, Honolulu, Hawaii; to engage *de novo* through Credit Finance and Mortgage, Inc. (to be known as City Finance and Mortgage, Inc.), Honolulu, Hawaii, in industrial banking pursuant to § 225.25(b)(2) of the Board's Regulation Y and making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *U.S. Bancorp*, Portland, Oregon; to engage through U.S. Bancorp Mortgage Company, Portland, Oregon, in arranging commercial real estate equity financing which involves the transfer of title, risk and control of income producing real estate to investors including: pension funds and their advisors, life insurance companies and their investment affiliates, REITS, corporations, investment companies, trusts, partnerships, and individuals. The various forms of equity financing will include: Outright sale, convertible mortgages, participating mortgages, joint ventures, and sale/leasebacks. The above activities involve the transfer of title, in whole or in part from one entity to another and, except for an outright sale, involve both debt and equity financing.

U.S. Bancorp, in summary, will limit its participation to those transactions where the financing exceeds $1 million; where Bancorp and its affiliates do not provide financing to the investors, and where U.S. Bancorp and its affiliates do not have an interest in or participate in managing, developing or syndicating a project for which U.S. Bancorp and its affiliates arrange financing. Neither will U.S. Bancorp receive fees based on profits to be derived from any project or fees that are larger than those charged by an unaffiliated company. This activity is permissible for bank holding companies pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28654 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

Synovus Financial Corp. et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 29, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.*, Columbus, Georgia; to acquire 100 percent of the voting shares and merge with NBWC Corporation, Monroe, Georgia, and thereby indirectly acquire The National Bank of Walton County, Monroe, Georgia.

2. *TB&C Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares and merge with NBWC Corporation, Monroe, Georgia, and thereby indirectly acquire The National Bank of Walton County, Monroe, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blackhawk Bancorp, Inc.*, Beloit, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Beloit Savings Bank (to be named Blackhawk State Bank), Beloit, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Walden Holding Company*, Jonesboro, Arkansas; to become a bank holding company by acquiring at least 97 percent of the voting shares of Planters and Stockmen Bank, Pocahontas, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Glenwood Bancshares, Inc.*, Glenwood City, Wisconsin; to acquire 100 percent of the voting shares of Elmwood Financial Services, Inc., Elmwood, Wisconsin, and thereby indirectly acquire First State Bank, Elmwood, Wisconsin.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chrisman-Sawyer Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 87.18 percent of the voting shares of First City Bank, Independence, Missouri.

Board of Governors of the Federal Reserve System, December 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28655 Filed 12-7-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3261]

An-Mar International, Ltd., Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Wood Dale, Ill. maker of suntanning devices, from misrepresenting that its devices provide health benefits and that they do not pose a risk of any harmful side effect. In addition, the order requires respondents' promotional materials to contain a warning statement regarding potential eye injury, skin cancer, skin aging and photosensitive reactions.

DATE: Complaint and Order issued July 17, 1989.[1]

FOR FURTHER INFORMATION CONTACT: William Brinley, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520-A, Cleveland, OH, 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Tuesday, May 9, 1989, there was published in the **Federal Register**, 54 FR 19912, a proposed consent agreement with analysis in the Matter of An-Mar International, Ltd., Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 89-28710 Filed 12-7-89; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3263]

SILO, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Philadelphia, PA based corporation, that operates stores that sell major appliances, to pay $45,000 in civil penalties.

DATE: Complaint and Order issued July 20, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Kathryn Nielsen, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 442-4656.

[1] Copies of the Compliant and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the Energy Policy and Conservation Act (EPCA), the Commission may enforce the Appliance Labeling Rule by accepting administrative consent orders. Section 1.92 of the Federal Trade Commission's Rules of Practice provides for the assessment of civil penalties for violations of section 332 of the EPCA, 42 U.S.C. 6302, and of the Appliance Labeling Rule. Therefore, the Commission has ordered the issuance of the complaint and consent agreement, in disposition of this proceeding.

Donald S. Clark,

Secretary.

[FR Doc. 89-28711 Filed 12-7-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Additions to Senior Executive Service Performance Review Board Membership

Title 5, U.S.C. 4314(c)(4), of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

On November 24, 1989, the Department of Health and Human Services' PRB membership was published in the **Federal Register**. The following members are hereby added to that membership:

John McLachlan, Ph.D.
Steven Paul, M.D.

Dated: December 1, 1989.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 89-28627 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the **Federal Register** submission for FSA.

(For a copy of the proposed rules below, call the FSA Reports Clearance Officer on 202-252-5604.)

Request for approval of a new submittal, Child Support Enforcement Program-Extension of Services to Medicaid Applicants and Recipients and Former AFDC Recipients—NEW—The information is needed to ensure that IV-D agencies collect and provide various parties the information necessary to efficiently provide child support enforcement services to Medicaid-only applicants and recipients and to former AFDC recipients. The information collection requirements contained in proposed regulations implementing sections 9141 and 9142 of the Omnibus Budget Reconciliation Act (OBRA) are:

A. *Title 45 CFR 302.33(a) State Plan Revision*—Respondents: State or local governments, Number of respondents 54; Frequency of response: 1; Average Burden per response: 43 minutes; Estimated Burden: 39 hours.

B. *Title 45 CFR 302.33(a)(4) Notifying Family of Available IV-D Services*—Respondents: State or local governments; Number of respondents 54; Frequency of responses: 7000; Average Burden per response: 0.5 minutes; Estimated Burden: 3,150 hours.

C. *Title 45 CFR 302.33(D)(1)(ii) Notifying Court or Administrative Authority of Cost Recovery Policy*—Respondents: State or local governments; Number of respondents 24; Frequency of response: 80; Average Burden per response: 1.0 minutes; Estimated Burden: 32 hours.

D. *Title 45 CFR 302.33(d)(5) Notifying Family of Cost Recovery Policy*—Respondents: State or local governments; Number of respondents 24; Frequency of response: 8000; Average Burden per response: 0.5 minute; Estimated Burden: 1600 hours.

E. *Title 45 CFR 302.33(e)(2) Notifying Family of Assignment Policy*—Respondents: State or local governments; Number of respondents 10; Frequency of response: 9,000; Average Burden per response: 0.5 minute; Estimated Burden: 750 hours.

F. *Title 45 CFR 302.51(e) Forwarding Medical Support to Medicaid Agency*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 900; Average Burden per response: 0.5 minute; Estimated Burden: 405 hours.

G. *Title 45 CFR 306.50(a) Providing IV-D Case Information to Medicaid Agency*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 1800; Average Burden per response: 5.0 minutes; Estimated Burden: 8,100 hours.

H. *Combined Title 45 CFR 306.50(b) and 306.51(c) Notifying Family of Available Medical Support Services*—Respondents: State or local governments; Number of respondents 54; Frequency of response: 9000; Average Burden per response: 0.1 minutes; Estimated Burden: 810 hours.

Total Estimated Burden for all Collections: 14,886.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: November 28, 1989.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-28312 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the **Federal Register** Submission for FSA.

(For a copy of the package below, call the FSA, Reports Clearance Officer on 202 252-5602.)

April 1990 CPS Supplement on Child Support and Alimony—The information is required by Title IV-D of the Social Security Act as amended by PL-98-378. The survey will obtain information on women eligible to receive child support. It will obtain social and economic characteristics as well as needed information on receipt and awarding of child support. Respondents: Individuals or Households; Number of Respondents: 27,000; Frequency of Response: 1; Average Burden per response: 2.5 minutes; Estimated Annual Burden: 1,125 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the

following address: OMB Reports Management Branch, New Executive Office Building, room 3201 725 17th Street, NW. Washington, DC 20503.

Dated: December 1, 1989.

Silvia E. Vela,

Deputy Associate Administrator, Office of Information and Management Systems, FSA.

[FR Doc. 89-28632 Filed 12-7-89; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Committee on Rural Health.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026. Thomas Jefferson Building, Second Street and Independence Avenue. SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library. HHS North Building. room G-400, 330 Independence Avenue, SW., Washington. DC, telephone (202) 245-6791. Copies may be obtained from: Mr. Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-0836.

Dated: December 4, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28668 Filed 12-7-89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration

Final Funding Preferences for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration (HRSA) announces the final funding preference for Fiscal Year 1990 for Grants for Residency Training in the General Practice of Dentistry.

Section 785 of the PHS Act (formerly section 786(b)) authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

To receive support, programs must meet the requirements of final regulations at 42 CFR part 57, subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Proposed funding preferences were published in the **Federal Register** of August 9, 1989 (54 FR 32898) for public comment. Nine comments were received during the 30-day comment period. Seven were from individuals and two were from professional organizations representing U.S. dental schools, hospital dental programs and hospital dentists.

The proposed funding preferences addressed the following categories of programs: Initiation, expansion, and improvement. All respondents urged the Department to consolidate funding preferences 1 (new programs) and 2 (expanding programs) on the basis that both preferences address the overall grant program objective of increasing the number of training opportunities in advanced general dentistry education. The respondents asserted that both new and expanding programs should compete equally for grant support. In response, the Department is consolidating these two preferences as suggested.

One of the professional organizations suggested that the maximum number of years to define a program as new be increased from three to five, in recognition of the time required to establish a new program. By consolidating the proposed funding preferences 1 and 2, the proposed expansion of Category 1 is no longer relevant. However, to continue to encourage eligible institutions to proceed with initiating and expanding programs in years when no competitive grant funds are available, and to assist recently established programs during their more costly start up years, a sixth funding priority is proposed for projects which have been operating an advanced general dentistry program for five years or less, that are proposing to increase the number of trainees in the program, and that have not previously received grant funds under this authority.

The notice of August 9, 1989, included five funding priorities to be used in the determination of funding. The consolidation of the funding *preferences* 1 and 2 affects funding *priority* 1, since a new program cannot meet the documentation requirements of the priority, where an existing program can. This would give an unfair advantage to applicants from existing programs. The Department is therefore expanding funding priority 1 to include programs which do not have a trainee track record but provide a plan for the recruitment, selection and increased enrollment of underrepresented minorities.

The funding preferences for making FY 1990 grant awards are established as follows. Funding Preference 1, new training positions (created by new or expanding programs) will be funded first, followed by program improvements. Within Funding Preference 1, first funding will be for approved applications designed to establish programs in States in which no nonfederally supported residency or advanced educational programs in general dentistry are currently in operation.

In response to the comments, the following are final FY 1990 funding priorities:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees, or demonstrate a plan for the recruitment, selection and increased enrollment of underrepresented minorities;

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population;

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS infection-related diseases;

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer-developed guidelines and standards;

(5) Applications proposing to provide substantial *multidisciplinary* geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities; and

(6) Applicants which have been operating an advanced general dentistry program for five years or less, who are proposing to increase the number of trainees in the program, and which have not received funds under this authority.

Dated: December 4, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-28669 Filed 12-7-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meetings

Notice of meetings of the National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, and Microbiology and Infectious Diseases Subcommittee.

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 18-19, 1990 at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on January 18 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10:15 a.m. to recess for meetings of the Council subcommittee. On January 19 the meeting will be open to the public from approximatley 8:30 a.m. until 12:15 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include an update on Biomedical Research Training Programs; and, a report on the NIAID Task Force on Immunology and Allergy.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10:15 a.m. on January 18, in conference rooms 4, 7 and 8 respectively. The meeting of the full Council will be closed from approximately 12:15 p.m. until adjournment on January 19 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 1, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-28705 Filed 12-7-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on November 17, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Possible Misconduct in Science—42 CFR part 50—New—As required by section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funding to investigate and report any allegations of misconduct in science. Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Reporting	2,500	[illegible]	2.06
Recordkeeping	[illegible]	[illegible]	1

Estimated annual burden..... 29,801 hours

2. NHIS Medical Records Evaluation—0920-0239—The National Health Interview Survey, an ongoing survey of the civilian, non-institutionalized population, monitors the nation's health. This study will evaluate procedures for collecting diagnostic data from household respondents. Survey data from household interviews will be compared to data from medical records. *Respondents:* Individuals or households; non-profit institutions; *Number of Respondents:* 1,100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.78 hours; *Estimated Annual Burden:* 862 hours.

3. Family of HIV Seroprevalence Surveys—0920-0232—This study is designed to measure the level of HIV prevalence in the U.S. It consists of a family of both blinded and non-blinded serologic surveys among patients in TB

clinics, STD clinics, family planning and other women's health clinics and drug abuse treatment clinics, as well as studies among HIV positive blood donors, transfusion recipients and their heterosexual partners and homeless persons. *Respondents:* Individuals or households; *Number of Respondents:* 60,149; *Number of Responses Per Respondent:* 1; *Average Burden per Response:* .265 hours; *Estimated Annual Burden:* 15,913 hours.

4. 1990 National Household Survey on Drug Abuse—0930–0110—The 1990 National Survey consists of personal interviews with respondents age 12 years and older randomly selected from the household population of the U.S. Findings will provide prevalence and trend data for use by Federal and State agencies to evaluate present drug abuse control policies and to determine policy and strategy for education, treatment and prevention activities. *Respondents:* Individuals or households; *Number of Respondents:* 10,287; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.15 hours; *Estimated Annual Burden:* 11,844 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 1, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–28686 Filed 12–7–89; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2088]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Secretary's Discretionary Fund, Technical Assistance Program: Evaluation Questionnaire.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The Form will be used to solicit comments on contractor performance from participants receiving technical assistance from contract awards in the Secretary's Discretionary Fund, section 107, Technical Assistance Program. The participants' comments will be used to alert the contract GTR to emerging contract problems that need correction during the contract period and for future contractor selections. The respondents will be recipients of technical assistance provided by HUD contractors to Community Development Block Grant and Urban Development Action Grant grantees.

Form Number: HUD–40011, and 40011.1.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	2,400		1		.25		600
Follow-Up	2,400		1		.0833		200

Total Estimated Burden Hours: 800.

Status: Revision.

Contact: Edward P. Winkler, HUD, (202) 755–6032, John Allison, OMB, (202) 395–6880.

Dated: December 4, 1989.

[FR Doc. 89–28681 Filed 12–7–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2606–N–49]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 8, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755-7300; TDD number for the hearing- and speech-impaired (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:

U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583;

U.S. Army Corps of Engineers: Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000, (202) 272–1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535–7067; Air Force: H. L. Lovejoy, Bolling AFB, HQ–USAF/LEER, Washington, DC 20332–5000 (202) 767–4191; Department of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319D, Washington, DC 20590, (202) 366–4246.

Dated: December 4, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)
(Number of Properties [ ])

Alaska

Wrangell Narrows Reservation [1]
see below, AK
Landholding Agency: DOT
Location: 6 miles south of City of Petersburgh along the Mitkof highway (surplus)
Comment: 42.15 acres; restrictions—easement right-of-way to US Forest Service

Kansas

Portion of Cheney Dam and Reservoir [1]
Sedgwick County, KS
Landholding Agency: GSA
Location: about 40 miles West of Wichita, KS
Comment: Located immediately below a dam; 150.8 acres; wheat crops

Massachusetts

Monmouth Beach [1]
Cape Cod, MA
Landholding Agency: DOT
Location: ———
Comment: 0.1 acre; possible periodic flooding

New Jersey

Portion of former Nike Battery #80 [1]
Middlesex County

BEST COPY AVAILABLE

Old Bridge, NJ
Landholding Agency: GSA
Location: GSA #2-GR-NJ-526A
(excess)
Comment: 35.444 acres; no improvements

Oregon

Port Orford Radio Site [1]
Port Orford
Curry, OR
Landholding Agency: DOT
Location: ———
Comment: 5.17 acres; current use radio site
Suitable Building (by State)
(Number of Properties [ ])

Kansas

Pomona Lake [1]
Vassar, KS
Landholding Agency: COE
Location: Osage County
Comment: one story frame bldg; 1,275sf; possible off-site removal; possible asbestos
Air Route Surveillance Radar [2]
Johnson Co. Industrial Airport
Gardner, KS
Landholding Agency: DOT
Location: (surplus)
Comment: 1.2 acres; 4 story metal and one story concrete; structural problems

Massachusetts

Nahant Tower [1]
Suffolk County
Nahant, MA
Landholding Agency: DOT
Location: (excess)
Comment: concrete tower on 0.1 acres; no utilities

Minnesota

Orwell Dam Reservoir [1]
RFD #4, Box 100
Fergus Falls, MN
Landholding Agency: COE
Location: ———
Comment: one story frame bldg; 1040sf; possible asbestos

Oklahoma

Vance Air Force Base [1]
Bldg. 111
Enid, OK
Landholding Agency: AIR FORCE
Location: Property #111; (excess); Garfield County
Comment: off-site removal only; 3769sf; possible asbestos

Puerto Rico

Mona Island [4]
Mona Island, PR
Landholding Agency: DOT
Location: (excess)
Comment: 209 acres; bldg—lighthouse; no utilities
Unsuitable Land (by State)
(Number of Properties [ ])

Alaska

Sanak Harbor [1]
Sanak Island, AK
Landholding Agency: DOT
Location: latitude 54 degrees 30' North, longitude 162 degrees 50' Wide, as shown on USCG and Geodetic Survey Chart #8841
Reason: Not accessible by road
Comment: 98 acres; probable historical and/or archaeological site

Mississippi

Vernon-Anderson Road [1]
Vernon-Anderson Road
Flora, MS
Landholding Agency: GSA
Location: GSA #4-D-MS-475; (excess)
Reason: Other
Comment: Road right-of-way; storm drainage ditches

Washington

Puttin Island [1]
San Juan County, WA
Landholding Agency: DOT
Location: ———
Reason: Not accessible by road
Comment: 5 acres
Unsuitable Building (by State)
(Number of Properties [ ])

Alaska

6th Infantry Division (Light) [1]
Fort Wainwright, AK
Landholding Agency: ARMY
Location: Property #4006; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material
6th Infantry Division (Light) [1]
Bldg. 3705
Fort Wainwright, AK
Landholding Agency: ARMY
Location: Property #3705; (excess)
Reason: Secured area

California

Sierra Army Depot [1]
SDSSI-EPS
Herlong, CA
Landholding Agency: ARMY
Location: Property #S-554; Lassen County
Reason: Secured areas, Within 2000 ft. from flammable or explosive material

Georgia

94 CSG/DE [1]
Dobbins, AFB
Dobbins, GA
Landholding Agency: AIR FORCE
Location: Property #556; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Louisiana

Bldgs. T-8222, 8224 [2]
Fort Polk, LA
Landholding Agency: ARMY
Location: Property #T-8222, 8224; (excess)
Reason: Secured area

Massachusetts

Westover AFB [1]
Bldg. 1900
Chicopee, MA
Landholding Agency: AIR FORCE
Location: Property #1900; Hampden County
Reason: Secured area

Michigan

U.S. Army Garrison-Selfridge [2]
AMSTA-XEM
Mt. Clemens, MI
Landholding Agency: ARMY
Location: Property #602, 604; (excess); Macomb County
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Minnesota

934th Tactical Airlift Group [1]
Bldg. 622
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #622; Minneapolis-St. Paul IAP
Reason: Within 2000 ft. from flammable or explosive material
934th Tactical Airlift Group (AFRES) [1]
Bldg. 810
Hennepin, MN
Landholding Agency: AIR FORCE
Location: Property #810; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material
934th Tactical Airlift Group (AFRES) [1]
Bldg. 864
Hennepin, MN
Landholding Agency: AIR FORCE
Location: Property #864; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material
934th Tactical Airlift Group (AFRES) [1]
Bldg. 40
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #40; Minneapolis-St. Paul IAP
Reason: Secured area, Within 2000 ft. from flammable or explosive material

934th Tactical Airlift Group (AFRES) [1]
Bldg. 616
Hennepin County, MN
Landholding Agency: AIR FORCE
Location: Property #616; Minneapolis-St. Paul IAP
Reason: Within 2000 ft. from flammable or explosive material

New York

914th Tactical Airlift Group [1]
Niagara Falls International Airport
Niagara Falls, NY
Landholding Agency: AIR FORCE
Location: Property #518; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material
914th Tactical Airlift Group [1]
Niagara Falls International Airport
Niagara Falls, NY
Landholding Agency: AIR FORCE
Location: Property #524; (excess)
Reason: Secured area, Within 2000 ft. from flammable or explosive material

Tennessee

Holston Army Ammunition Plant [1]
Kingsport, TN
Landholding Agency: ARMY
Location: Property No. 1, Area B; Hawkins County; (excess)
Reason: Within 2000 ft. from flammable or explosive material

Texas

Building 2211 [1]
Fort Hood, TX
Landholding Agency: ARMY
Location: Property #2211; (excess)
Reason: Secured area
MSD Brownsville [2]
Cameron County
Brownsville, TX
Landholding Agency: DOT
Location: ———
Reason: Floodway

Virginia

Bucks Elbow RML Facility [1]
Private Government Road
Waynesboro, VA
Landholding Agency: DOT
Location: Albemarle County
Reason: Secured area

Wisconsin

Dwelling [1]
400 E College Avenue
Milwaukee, WI
Landholding Agency: AIR FORCE
Location: ———
Reason: Secured area, Within 2000 ft. from flammable or explosive material

[FR Doc. 89-28651 Filed 12-7-89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-00-4211-14; S 3324]

Realty Action; Intent To Terminate Right-of-Way Grant

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: notice of intent to terminate right-of-way grant (S 3324).

SUMMARY: This Notice is to advise all interested parties that the Bureau of Land Management intends to take action to terminate abandoned right-of-way grant S 3324.

SUPPLEMENTARY INFORMATION: Right-of-way grant S 3324 was issued on August 26, 1905, to the Diamond & Caldor Railway Company over Federal land in El Dorado County, California. The right-of-way was issued under authority of the Act of March 3, 1875. A record search found that in 1953 the right-of-way was dismantled and abandoned and the Diamond & Caldor Railway Company was dissolved. In view of the abandonment, action is being referred to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge, pursuant to 43 CFR part 4, to determine if grounds for termination exist and that such action is justified.

DATE: On or before January 8, 1990, parties claiming an interest in the right-of-way may request a hearing.

ADDRESS: Parties claiming an interest in the right-of-way should contact the Bakersfield District Office in writing at 800 Truxtun Avenue, Bakersfield, CA 93301. The Bureau of Land Management will notify any interested parties as to the date, time and place for the hearing.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, District Realty Specialist, at the above address or telephone at (805) 861-4191.

Dated: December 1, 1989.
Nancy J. Cotner,
Associate District Manager.

[FR Doc. 89-28674 Filed 12-7-89; 8:45 am]
BILLING CODE 4310-40-M

[NV-930-00-4214-10; N-52289]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

November 29, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency has filed an application to withdraw 3,892.02 acres of public lands to protect the integrity of the site which is proposed for land application of digested sludge from the Reno-Sparks Wastewater Treatment Facility. This notice closes the lands for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mining laws. The lands will remain open to leasing under the mineral leasing laws.

DATE: Comments and requests for a public meeting should be received on or before March 8, 1989.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-328-6326.

SUPPLEMENTARY INFORMATION: On November 21, 1989, the U.S. Environmental Protection Agency filed an application to withdraw the following described public lands from settlement, sale, location, and entry under the public land laws, including the mining laws, subject to valid existing reights:

Mount Diablo Meridian

T. 23 N., R. 20 E.,
Sec. 2, Lots 3 and 4, S½NW¼, NW¼SW¼, S½SW¼;
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, Lot 1, S½NE¼, SE¼;
Sec. 9, E½;
Sec. 10, All;
Sec. 11, E½E½, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 12, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 14, S½NW¼;
Sec. 15, S½NE¼, NW¼NW¼, S½NW¼, SW¼, SW¼SE¼;
Sec. 16, NE¼.

The area described contains 3,892.02 acres in Washoe County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer

that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer after consultation with the Environmental Protection Agency are any temporary uses which will not interfere with the purpose of the withdrawal.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89-28634 Filed 12-7-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31546]

Clyde S. and Saundra Forbes and CSF Acquisition, Inc.; Continuance in Control Exemption

Clyde S. and Saundra Forbes (Forbes) and CSF Acquisition, Inc., (CSF) filed a notice of exemption to continue to control New Hampshire and Vermont Railroad Company (NH&V). The Forbes control CSF, a non-carrier formed to acquire and operate shortline railroads. CSF already controls Florida West Coast Railroad Company (FWC), a class III shortline railroad headquartered in Trenton, FL. Once incorporated, NH&V will also be a wholly owned subsidiary of CSF.

NH&V concurrently filed a notice of exemption in Finance Docket No. 31547, *New Hampshire and Vermont R. Co.—Lease, Oper. and Acq. Exemp.—& B.&M. Corp.* to lease, operate and ultimately to purchase approximately 80 miles of Boston and Maine Corporation lines located in Coos and Grafton Counties, NH.

Forbes and CSF state that: (1) FWC and NH&V will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier.

This transaction involves the continuance in control of a nonconnecting carrier, and comes within the class exemption in 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.* 390 I.C.C. 60 (1989).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28503 Filed 12-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31547]

New Hampshire and Vermont Railroad Co.; Lease, Operation and Acquisition Exemption

New Hampshire and Vermont Railroad Company [1] (NH&V), a non-carrier, has filed a notice of exemption to lease, operate, and ultimately purchase approximately 80 miles of Boston and Maine Corporation's (B&M) North Country Branch in Coos and Grafton Counties, NH.[2] The track involved consists of the Berlin Branch, extending from milepost MPC 94.01 at or near Woodsville, NH, to milepost MPC 154.34 at or near Berlin, NH; and the Groveton Branch, extending from MPC 126.93 at or near Waumbek Junction, NH, to MPC 146.22 at or near Groveton, NH.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31546, *Clyde S. and Saundra Forbes and CSF Acquisition Inc.—Cont. in Control Exemp.—New Hampshire and Vermont R. Co.* There the continued control of NH&V and a nonconnecting carrier is being exempted from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305(1988).[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab inito.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[4] The filing of a petition to revoke willnot automatically stay the transaction.

Decided: November 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[1] A new company that will be incorporated prior to consummation.

[2] For purposes of calculating the effective date of the exemption, the notice will be considered having been filed on November 16, 1989, the date NH&V supplemented the record with the required certification that its projected revenues would not exceed those that would qualify it as a Class III carrier.

[3] Applicant has certified to the New Hampshire State Historic Preservation Officer that this transaction will not lead to the transfer of properties qualifying for inclusion in the National Register of Historic Places.

[4] A petition to revoke the exemption or, alternatively, a motion to strike the verified notice was filed by 15 Rail Labor parties on November 1, 1989. They contend that the exemption request was improperly filed and cannot be acted on because applicant is not incorporated and, therefore, not a legal entity. On November 20, 1989, applicant responded, contending that our rules are not limited to legal entities and that in any event NH&V became a Florida corporation on November 9, 1989. Since NH&V is now incorporated, Rail Labor's petition/motion is moot.

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Mine Safety Appliances Company, Inc.*, Civil Action No. 87-1531, was lodged with the United States District Court for the Western District of Pennsylvania on November 29, 1989. The Consent Decree requires the compliance by the Defendant with certain requirements under the Resource Conservation and Recovery Act, as well as the payment by the Defendant of a civil penalty of $130,000.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Mine Safety Appliances Company, Inc.*, D.J. Ref. No. 90-7-1-359.

The Consent Decree may be examined at: (1) The Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; (2) the Environmenal Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530; and (3) the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $1.60 (10 cents per page) to cover the costs of copying.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-28732 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on November 30, 1989 a proposed consent decree in *United States* v. *City of Springfield, Mo. and Litton Industries, Inc.*, Civil Action No. 89-3440-CV-S-2 was lodged with the United States District Court for the Western District of Missouri. The proposed consent decree involves claims by the United States pursuant to CERCLA for recovery of clean-up costs incurred and to be incurred at the Fulbright and Sac River Landfills near Springfield, Missouri as well as claims for injunctive relief.

The proposed consent decree requires the defendants to perform the remedial action selected in the Record of Decision issued by the United States Environmental Protection Agency ("EPA") on September 30, 1988, which specifies removal and off-site disposal of drums, drum remnants and contaminated soil found in the Fulbright Sinkhole; post-closure monitoring of surface and ground water; and deed restrictions on the use of the property. The defendants are also required to prepare a contingency plan for leachate management is necessary. In addition, defendants are required to pay $272,157.91 to the EPA for post costs expended at the Site and to reimburse EPA for any additional response costs incurred after the issuance of the Record of Decision. In return, the defendants are given a release from claims for certain past indirect costs totalling $104,803.57.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Springfield et al.*, D.J. Ref. No. 90-11-2-448.

The proposed consent decree may be examined at the Office of the United States' Attorney for the Western District of Missouri, 227 United States Courthouse, 870 Boonville, Springfield, Missouri 65501 and at the Region VII Office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-28733 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Recording Industry Association of America

Notice is hereby given that, on October 30, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Recording Industry Association of America, Inc. ("RIAA"), for itself and on behalf of its member companies, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of new parties to the venture. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following parties have joined the venture, effective August 1, 1989: April Records, Brimstone Records, LeFrak-Moelis Records, Motown Records, Narada Productions, Inc., SBK Records Group, Heart & Soul Productions, Ltd., Nise Productions, Inc., and Tip Records.

The following are no longer participants in the venture, effective August 1, 1989: Attack/Ambush Records, Bee Gee Records, M Records, Inc., MTM Music Group, Birthright Records, Inc., and Track Record Company.

No other changes have been made in either the membership or planned activity of the RIAA.

On March 27, 1989, RIAA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 1, 1989, 54 FR 18607.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-28729 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that, on October 31, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional party has become a member of PERF: Coastal Biotechnology, Inc., 310 First Street, Post

Office Box 1871, Roanoke, Virginia 24008.

No other changes have been made in either the membership or the planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986, June 23, 1986, February 3, 1989 and March 21, 1989, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), March 1, 1989 (54 FR 8607), and April 20, 1989 (54 FR 16014), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-28730 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; MRI Ventures, Inc. et al., Pyrolysis Materials Research Consortium

Notice is hereby given that, on October 27, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice was filed by MRI Ventures, Inc. ("MRIV") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the members of the Pyrolysis Materials Research Consortium ("Consortium") and (2) the nature and objectives of the Consortium. The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the members of the Consortium and its general areas of planned activities are given below.

The members of the Consortium are:

Allied-Signal Corporation, Margaret & Bermuda Streets, Philadelphia, PA 19137;

Aristech Chemical Corporation, 600 Grant Street, Pittsburgh, PA 15230-0250;

Georgia-Pacific Resins, Inc. 133 Peachtree Street, N.E., P.O. Box 105605, Atlanta, GA 30348-5606;

MRI Ventures, Inc., 425 Volker Boulevard, Kansas City, MO 64110-2299;

Plastics Engineering Company, 3518 Lakeshore Road, P.O. Box 758, Sheboygan, WI 53082-0758;

Pyrotech Corporation, 8016 State Line, Suite 101, Leawood, KS 66208-2710.

The nature and planned activities of the Consortium are to assist in the develpment of, and subsequently to commercialize, technologies for (1) breaking down waste or other low-cost biomass materials such as sawdust or bark, via fast pyrolysis, into constituent chemicals; (2) processing or separating the chemicals into commercially usable products or feedstocks; and (3) converting the feedstocks into commercially usable products such as phenolic resins and aromatic hydrocarbons.

The technologies are the result of research and development work of the Solar Energy Research Institute ("SERI"), which is a United States Department of Energy ("DOE") laboratory managed by Midwest Research Institute ("MRI"). Initial membership in the Consortium was determined by MRIV, a subsidiary of MRI, following review of responses to an open invitation for indications of interest, based on the capabilities and willingness of prospective members to help achieve the development and commercialization of the technologies.

Joseph M. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-28731 Filed 12-7-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for all Urban Consumers United States City Average

Pursuant to the requirements of Public Law 95-602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 4.5 percent between October 1988 and October 1989 from a level of 120.8 (1982-84=100) in October 1988 to level of 125.6 (1982-84=100) in October 1989. Signed at Washington, DC, on the 30th day of November 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-28737 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its tudy of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to the prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organizations, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page numbers(s).

Volume II

Iowa:
IA89-2 ..... p.27, pp.28-30.

Volume III

California:
CA89-5 ..... p.104c, pp.104d-104t.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Relaed Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL89-13 (Jan. 6, 1989) ..... p. 129, p. 130.
FL89-17 (Jan. 6, 1989) ..... p. 141, p. 142.
FL89-36 (Jan. 6, 1989) ..... p. 183, p. 184.
FL89-38 (Jan. 6, 1989) ..... p. 191, pp. 192-193.
FL89-42 (Jan. 6, 1989) ..... p. 201, p. 202.
FL89-44 (Jan. 6, 1989) ..... p. 205, p. 206.
FL89-45 (Jan. 6, 1989) ..... p. 206a, p. 206-b, p. 206c.

Georgia:
GA89-31 (Jan. 6, 1989) ..... p. 271, p. 271-272b.

Pennsylvania:
PA89-26 (Jan. 6, 1989) ..... p. 1016c, p. 1016e.

West Virginia:
WV89-2 (Jan. 6, 1989) ..... p. 1209, p. 1211, p. 1213, p. 1217.

Volume II

Texas:
TX89-7 (Jan. 6, 1989) ..... p. 999, p. 1000.

Volume III

Alaska:
AK89-1 (Jan. 6, 1989) ..... p. 1, pp. 2-3.

California:
CA89-1 (Jan. 6, 1989) ..... p. 33, pp. 33-42.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-28455 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Company, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of MET Electrical Testing Company, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is February 6, 1990.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the MET Electrical Testing Company, Inc., which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and which was so recognized (see 54 FR 21136, 5/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Expansion of Recognition: MET Electrical Testing Company, Inc. (MET) submitted an application for expansion of its current recognition to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL #913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations, and ANSI/UL #1262—Laboratory Equipment.

The NRTL Recognition Program staff made an in-depth study of the details of MET's original recognition and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closley related to MET's current areas of recognition.

Preliminary Finding

Based upon a review of the details of MET's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to list products to the two aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to MET's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of the MET Electrical Testing Company, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 6, 1990, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 4th day of December 1989.

Gerald F. Scannell,

Assistant Secretary.

[FR Doc. 89–28738 Filed 12–7–89; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[License No. SNM42; Docket No. 70–27]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Amendment of Special Nuclear Material; Babcock & Wilcox; Naval Nuclear Fuel Division; Lynchburg, VA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM–42 for Babcock & Wilcox Naval Nuclear Fuel Division (NNFD) located in Lynchburg, Virginia.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is amendment of License No. SNM–42 to allow the processing of slightly irradiated fuel for uranium recovery. The uranium fuel which NNFD proposes to recover was used, or intended to be used, in zero-power critical assembly experiments performed at Bettis Atomic Power Laboratory and Knolls Atomic Power Laboratory between 1959 and 1977. The recovery steps will be the same as those used for non-irradiated fuel, viz., dissolution of fuel rods in acid, solvent extraction to separate the uranium from the fission products and other components in the scrap, and uranium concentration and recovery. The liquid waste containing the fission products will be treated for fission product removal in the new Recovery System before being transferred to the existing Waste Treatment Facility (WTF).

In the new Recovery System, the liquid waste will be neutralized and flocculated by the addition of a polymer to settle, by gravity, most of the fission products. The supernatant liquid from the flocculation process will be processed in a volume reduction evaporator to concentrate the remaining fission products. The evaporator concentrate and the flocculation solids will be solidified in concrete and sent to an authorized burial ground. The condensate from the first reduction evaporator will then be processed in a scrub evaporator to further reduce the quantity of fission products in the bulk of the liquid waste. The concentrate with fission products from the second evaporator will be sent back to the first evaporator for processing. The condensate from the scrub evaporator will be monitored and if results are satisfactory, sent to the existing WTF where additional quantities of radioactive materials will be removed by routine treatment. The air effluent from the new treatment facility will be passed through two high efficiency particulate air filters and routed through the existing recovery process ventilation system to be released via a building stack.

NNFD plans to divide the total quantity of fuel into six campaigns for processing; two campaigns a year for 3 years. The maximum amount to be processed in any 1 year is 332.5 kg of U–235.

The Need For The Proposed Action

NNFD plans to recover uranium from some slightly irradiated fuel and therefore, requests an amendment to their license to authorize this action.

Environmental Impacts of the Proposed Action

Processing of the irradiated fuel will be conducted in place of routine recovery processing. NNFD representatives state that the existing operation has no history of elevated environmental releases. As the process will be the same, uranium releases should not change. Similarly, non-radiological chemical emissions should not change.

NNFD calculated the quantity of byproduct material that will be released in the gaseous effluents by comparing the current uranium released to the amount of uranium materials processed. This ratio was then applied to the byproduct material. Since Kr–85 is a noble gas, 100 percent was assumed to be released; noble gas would not be removed by filtration or scrubbing. The estimated byproduct material released in the gaseous effluent during the processing period (3 months/year) are 6.8E–2 μCi of Cs–137, 3.3E–2 μCi of Sr–90, 3.32E–2 μCi of Y–90, and 2,917 μCi of Kr–85. The maximum estimated concentrations during the processing period, calculated using the 1988 average flow rate for the recovery ventilation system, are all less than 0.1 percent of the maximum permissible concentration (MPC) in 10 CFR part 20, appendix B, table II.

NNFD will sample the gaseous emissions from the recovery operations and analyze the samples for gross beta activity. An action level of 1.5E–12 μCi/ml based on the Sr–90 MPC has been proposed. If the action level is exceeded, further analysis will be performed to determine the isotopic content of the sample. If after further analysis, the concentration of any single isotope exceeds 50 percent of the value in 10 CFR part 20, appendix B, table II, further corrective action will be taken, which

may include repair, replacement, cleaning, modification, and/or addition of equipment.

NNFD calculated the quantity of byproduct material that will be released in the liquied effluents by making some conservative assumptions as to the removal efficiency of the treatment systems. A removal efficiency of 80 percent (greater than 90 percent is expected) was used for the new treatment system. This leaves 20 percent of the fission products contained in the liquid waste that will be discharged to the current WTF. Based on current operating histories and NNFD–RL byproduct inputs, a 20 percent removal efficiency was used for the WTF. The collection removal efficiency used for release calculations is therefore 84 percent; 16 percent of the fission products are available for ultimate release to the James River. NNFD estimates that in the 3-month processing period each year that 4,294 μCi of Cs–137, 2,118 μCi of Sr–90, and 2,118 μCi of Y–90 would be discharged with the liquid effluent. The concentration in the effluent prior to discharge to the James River, based on the 1988 average flow of all liquid effluents, expressed as a percentage of MPC, was less than 1 percent for Cs–137 and Y–90 and 10.4 percent for Sr–90.

These concentrations would be further reduced upon entry and mixing in the James River. The Sr-90 concentration in the James River (based on an average flow of 3.39E+15 cm^3/yr) would be less than 1 percent of the MPC and EPA's drinking water standards.

NNFD has proposed an action level of 3E–8 μCi/ml, based on the Sr-90 MPC. If this action level is exceeded, NNFD proposes to perform an investigation and take corrective action if the investigation indicates that the annual average concentration would exceed the action level. While the action level triggering the investigation is acceptable, the corrective action should not be based on an annual average concentration but on whether any single isotope exceeds a set percentage of the value identified in 10 CFR part 20, appendix B, table II. Because NNFD has not set an acceptable percentage, the staff will set the percentage at 25 percent. The staff recommends that any investigation include an isotopic analysis. Further, it is recommended that if any single isotope exceeds 25 percent of the value identified in 10 CFR part 20, appendix B, table II, further corrective action should be taken. NNFD's proposed corrective action may include additional dilution of the liquid effluent stream. This corrective action is not acceptable to the staff. The staff recommends that the corrective action include steps to reduce the quantity of fission products discharged and not dilution of the stream.

NNFD performed a dose assessment using Regulatory Guide 1.109. Atmospheric release estimates were made assuming worst case conditions. A hypothetical person was assumed to live at the nearest site boundary (400 m from the recovery stack). The whole body dose was calculated to be 5.46E–3 mrem/yr, and the dose to the bone was 1.14E–2 mrem. These doses are incremental doses. The actual nearest resident is located approximately 1,370 m from the recovery stack. The incremental annual dose to the nearest resident due to the recovery of two campaigns of irradiated fuel is estimated to be 1.4E–5 mrem to the bone and 6.4E–6 mrem to the body. The cumulative dose to the nearest resident (based on the dose calculations of operations at the NNFD, the Research Lab, and the Commercial plant from the 1986 Environmental Assessment for renewal of the Research Lab license) would be 1.6E–1 mrem to the bone and 5.1E–2 mrem to the body. The doses due to NNFD operations are well below the 25 mrem limit established by EPA in 40 CFR part 61. Additionally, the cumulative doses from the three facilities are well below the 25 mrem permitted by 10 CFR part 20, § 20.105(c), which incorporates the provisions of EPA's standards in 40 CFR part 190 (the Commercial plant is subject to 40 CFR part 190). Staff, therefore, concludes there is no adverse impact to the maximally exposed individual from the release of radioactivity due to operations of the plant.

NNFD has not proposed any changes to the environmental monitoring program. NNFD has stated that the boundary air monitors will be closely monitored when operations are in progress. It is recommended the NNFD collect quarterly sediment samples from the pond and river and analyze them for Sr-90 and Cs-137. Water samples from the river and the wells around the pond should also be analyzed for gross beta (based on Sr-9).

The potential for an accident and the consequences of an accident involving the zero-power scrap material are no different than those for an accident during routine scrap recovery.

Conclusion

The release of some byproduct material in the effluents is unavoidable. However, potential exposures are well within acceptable limits, and the staff concludes that there will be no significant impact associated with recovery of the irradiated fuel. The staff is recommending, however, that: (1) Sediment samples from the pond and river be collected quarterly and analyzed for Sr-90 and Cs-137, (2) water samples from the river and the wells around the pond be analyzed for gross beta (Sr-90), (3) the investigation conducted when the liquid effluent exceeds the action level include an isotopic analyses, (4) the corrective action level for gross beta in liquids be changed to any single isotope that exceeds 25 percent of the MPC, and (5) the corrective action be changed to remove dilution as an option and include actions that would reduce the quantity of fission products released.

Alternatives to the Proposed Action

Alternatives to the proposed action include complete denial of NNFD's amendment application. This action would result in NNFD not processing the irradiated fuel. Since impacts from the recovery operations are expected to be minor, this alternative does not offer any real benefit.

Agencies and Persons Consulted

In performing this assessment, the staff utilized the amendment application dated October 11, 1989, and the December 1986 Environmental Assessment for the Research Center.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–42. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Babcock & Wilcox, Naval Nuclear Fuel Division, P.O. Box 785, Lynchburg, Virginia 24505-0785); and must comply with the requirements set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." Subpart L of 10 CFR part 2, which became effective March 30, 1989, was published in the **Federal Register** on February 28, 1989.

Dated at Rockville, Maryland, this 30th day of November, 1989.

For the Nuclear Regulatory Commission.

Glen L. Sjoblom,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-28677 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

Maine Yankee Atomic Power Co. Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-309]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix E, to the Maine Yankee Atomic Power Company (MYAPC/licensee) for the Maine Yankee Atomic Power Station located at the licensee's site in Lincoln County, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from certain schedule requirements of appendix E of 10 CFR part 50.

On October 27, 1989, MYAPC requested an exemption from section IV.F.3, which requires that each licensee at each site shall exercise with offsite authorities such that State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway Emergency Planning Zone (EPZ).

The Need for the Proposed Action

The proposed exemption is needed because the Federal Emergency Management Agency (FEMA) will be unable to observe the exercise as scheduled due to demands on the agency associated with recent emergencies in California and South Carolina. The off-site aspects of the biennial exercise were to be evaluated by FEMA. The licensee requested that the emergency plan exercise be rescheduled to a time convenient for all affected parties.

Environmental Impact of the Proposed Action

The proposed exemption constitutes an exemption from the requirement that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

Since the last full participation exercise at Maine Yankee in 1987, State and local governments have paticipated on a limited basis with the licensee in September 1988 and four times this calendar year. The most recent exercise, conducted in November 1989, included onsite personnel and limited offsite participation. In addition, emergency preparedness training sessions were conducted for each of the sixteen communities and two counties in the primary plume exposure pathway between September 12 and October 25, 1989. The training sessions, conducted by representatives from Maine Yankee, the Maine Emergency Management Agency, the Maine Division of Health Engineering, and Maine Yankee's consultant, reviewed the key aspects of the communities' responsibilities during a radiological emergency.

The requested exemption is a temporary one and a full participation biennial exercise will be conducted at the earliest future date that is convenient for all affected parties and prior to the end of 1990. The State of Maine supports the rescheduling of the exercise. The exemption concludes that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Maine Yankee Atomic Power Station. Accordingly, the exemption does not adversely affect either the probability or the consequences of any accident at this facility or radiation levels at the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station.

Agencies and Persons Contacted

On November 2, 1989, FEMA confirmed their non-availability for the scheduled full-participation emergency preparedness exercise at Maine Yankee and indicated their availability for participation in late 1990. In addition, the State of Maine supported rescheduling the exercise. The Commission has received substantial information concerning emergency planning at the Maine Yankee facility in connection with the licensee's requested exemption.

This information was considered by the NRC in the evaluation of the requested exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action; see the licensee's letters dated October 27 and November 6, 1989. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wicasset, Maine 04578.

Dated at Rockville, Maryland, this 1st day of December 1989

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorates I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28676 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-10 and No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees) for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the following Technical Specifications (TS) to increase the interval for the 18-month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24-month fuel cycle:

a. TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation."
b. TS 3/4.3.3.1, "Radiation Monitoring Instrumentation."
c. TS 3/4.4.10, "Reactor Gas Vent System."

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

For each of the proposed amendments, the licensees provided analyses to demonstrate the reliability of the systems. The staff reviewed the licensees' analyses and agrees that reliability of the systems would not be significantly degraded by extension of the surveillance intervals. Therefore, the staff has approved the proposed 24-month surveillance interval for these proposed changes.

As a result, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 24, 1989 (54 FR 8038), February 24, 1989 (54 FR 8034), and May 16, 1989 (54 FR 21142). No request for hearing or petition for leave to intervene was filed following these notices.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for amendments dated December 19, 1989, December 30, 1988 and April 7, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 18th day of October, 1989.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28678 Filed 12-7-89; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on Research Activities Related to Resolution of Technical Issues in Regard to Direct Containment Heating and High Pressure Melt Ejection Phenomena

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The NRC has supported a research program on high pressure melt ejection (HPME) and direct containment heating (DCH) over the past several years. This research has greatly increased the basic knowledge of HPME and DCH phenomena. In conjunction with implementing the revised Severe Accident Research Program (SARP) plan, the NRC is reviewing research in this area with respect to our ability to resolve this issue. As part of this reevaluation of the focus of future research efforts, the NRC is conducting a workshop to solicit technical assessments and views from experts in the research community and industry. A preliminary workshop agenda is provided as supplementary information.

DATES: The workshop will be held on December 18 and 19, 1989. Notification of intent to attend the meeting should be received by the staff no later then December 11, 1989. Written comments on matters covered by the meeting should be provided to the NRC no later than January 31, 1990.

ADDRESSES: The workshop will be held at the Annapolis Waterfront Hotel, 80 Compromise Street, Annapolis, Maryland 21401. Notification of intent to attend and written comments on the workshop should be sent to Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Farouk Eltawila, Office of Nuclear Regulatory Research, U.S. Nuclear

Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3569.

SUPPLEMENTARY INFORMATION:

Preliminary Workshop Agenda

December 18, 1989:		
08:45 a.m.	Introduction and description of Workshop Purpose	Sheron.
09:15 a.m.	Current Status of DCH Research	Constantd.
09:45 a.m.	The Current Prespective of Risk from DCH	
09:45 a.m.	—What does NUREG–1150 tell us about DCH risk?	Murphy.
10:30 a.m.	—Break	
10:45 a.m.	—Current Research at SNL vs. NUREG–1150 insights	Gauster, Dalgren.
(SNL) 11:30 a.m.	—General Discussion	All.
12:00 Noon	Lunch	
01:15 p.m.	The Experimental Program	
01:15 p.m.	—SASM—What have we learned?	Zuber.
02:00 p.m (INEL).	—Perspectives on in-vessel behavior as it affects DCH and DCH experiments	Allison.
02:45 p.m.	—The scaling relationship between BNL and SNL experimental programs	BNL.
03:30 p.m.	—Break	
03:45 p.m.	—The future of SURTSEY—Addressing the scaling questions	SNL.
04:30 p.m.	—Discussion	All.
05:00 p.m.	Adjourn	
December 19, 1989:		
08:30 a.m.	The Analysis Program	
08:30 a.m (SNL).	—Does the current experimental program answer the question?	Bergeron.
09:15 a.m.	—How do we know when the codes are "good enough"?	Zuber.
10:00 a.m.	—Break	
10:15 a.m.	—Are the consequences of HPME containment and lower cavity geomentry dependent?	BNL, SNL.
11:00 a.m.	—General Discussion	
12:00 Noon	Lunch	
01:15 p.m.	Closure	
01:15 p.m.	—The need to close the issue	Sheron.
02:00 p.m.	—Will the current research program achieve closure?	Eltawila.
02:45 p.m.	—The cost/benefit of depressurization	INEL.
03:30 p.m.	—Break	
03:45 p.m.	—Discussion	
04:30 p.m.	Conclusions	
05:15 p.m.	Adjourn	

Dated in Rockville, Maryland, this 4th day of December, 1989.

For the Nuclear Regulatory Commission.

Brian Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 89–28680 Filed 12–7–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting Rescheduled

The ACRS Subcommittee on Human Factors scheduled for December 11, 1989 has been rescheduled for Tuesday, December 12, 1989, 1:00 p.m., Room P–110, 7920 Norfolk Avenue, Bethesda, MD. All other items remain the same as previously published.

Dated: December 4, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–28740 Filed 12–7–89; 8:45 am]

BILLING CODE 7590–01–M

[General Licensee 10 CFR 150.20; EA 89–190]

American Testing and Inspection, Inc., Joliet, Illinois; Order Modifying License

I

American Testing and Inspection, Inc. (ATI or licensee) is the holder of a Byproduct Materials License issued by the State of Illinois on January 8, 1988, which authorizes ATI to possess and use licensed byproduct materials to perform industrial radiography within the State of Illinois. In accordance with 10 CFR 150.20 and its Illinois license, ATI is authorized to possess and use licensed byproduct materials to perform industrial radiography in non-Agreement States. ATI's Illinois License No. IL–01085–01 is due to expire on August 31, 1992, at which time ATI's authorization under the Nuclear Regulatory Commission's (Commission or NRC) regulations would also terminate.

II

On February 27, 1989, the Commission issued to ATI an Order to Show Cause Why the General License Should Not Be Revoked and Order Suspending License (Effective Immediately). The basis for that Order, as described therein, was a group of violations committed by ATI while a licensee of the Commission prior to the transfer to the State of Illinois of the Commission's jurisdiction over Illinois holders of specific materials licenses. The Order suspended ATI's general license to perform radiography pursuant to 10 CFR 150.20 in non-Agreement States and required the licensee to show cause why the general license should not be revoked because the NRC lacked reasonable assurance that ATI would conduct radiography in accordance with regulatory requirements. The suspension was immediately effective, pursuant to 10 CFR 2.202(f), because of the willful nature of the violations and because the public health, safety, and interest so required.

III

By letter dated April 5, 1989, the licensee responded to the Order. ATI admitted that several of the violations occurred as stated in the Order. However, the licensee denied that those violations were made knowingly or willfully on the part of its President. ATI also denied several of the violations. While not availing itself of an opportunity to request a hearing, ATI did request that the NRC vacate the Order.

After consideration of the licensee's response and statements of fact, explanations, and arguments for vacation of the Order contained therein, the staff has concluded, as set forth in the Appendix to this Order, that: (1) The violations occurred as stated, (2) the licensee willfully violated the Commission's requirements because it exhibited at least careless disregard, if not deliberateness, in violating its license requirements, and (3) the President, as the chief executive officer and radiation safety officer (RSO) of ATI, is responsible either directly or indirectly for the actions of ATI's employees in the performance of licensed activities and therefore has responsibility for the violations that occurred. Consequently, the staff lacks reasonable assurance that this licensee will comply with the Commission's requirements without significant additional actions.

The licensee has taken corrective action in response to the violations, including replacing those persons it employed during the time when the violations occurred with more experienced and mature individuals and restructuring its management to assure that its employees complete their utilization logs on time. Therefore, revocation of the general license is not now warranted. The President's continued control over licensed activities and continued responsibilities as RSO, however, render the licensee's corrective action, while necessary to assure the safety of the license's future operations, insufficient to warrant unconditionally lifting the suspension of the general license. Accordingly, modification of the license is necessary to give the staff reasonable assurance that ATI and its President will conduct future licensed activities in non-Agreement States in accordance with NRC requirements under the general license of 10 CFR 150.20. If the licensee complies with the conditions set forth in sections IV and V of this Order, then the suspension of the general license will be lifted.

On the basis of the above information and the staff's evaluation as stated in the appendix, I am prepared to lift the suspension of ATI's license if the President of ATI and other persons responsible for the supervision of licensed activities will comply with NRC requirements, including this Order, in the future. Accordingly, I have determined to modify the February 27, 1989, Order to permit continuation of licensed activities in non-Agreement States where the NRC has jurisdiction upon the licensee's satisfaction of the conditions given in section IV, below.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (Act) and the Commission's regulations in 10 CFR parts 2, 30, 34 and 150. It is hereby ordered that the general license provided by 10 CFR 150.20 is modified as follows:

A. With respect to activities under NRC jurisdiction: (1) The licensee shall replace Mr. Ronald Preston as RSO with an individual whose qualifications have been evaluated and approved by the NRC; (2) Mr. Ronald Preston shall certify in writing, under oath or affirmation, to the Regional Administrator that (a) he has reviewed the Commission's requirements for radiography including his license and procedures, (b) he fully understands these requirements, (c) he is committed also to comply with these requirements and (d) he, to the best of his ability, will assure that his employees also comply with these requirements.

B. At least 7 days prior to engaging in licensed activities at locations that are under NRC jurisdiction, the licensee shall give notice to the NRC by filing 4 copies of NRC Form 241, "Report of Proposed Activities in non-Agreement States," with the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137;

C. The licensee shall engage the services of a qualified independent consultant or organization (organization) that is capable of auditing and evaluating the licensee's radiography program and, if needed, making recommendations for corrective actions. The licensee shall submit the name and qualifications of the independent organization, together with the organization's plan for accomplishing the tasks listed below, to the Regional Administrator, Region III, for review and approval. The organization shall be approved by the NRC prior to ATI resuming licensed activities in non-Agreement States. After being approved by the Regional Administrator, USNRC, Region III, the organization shall:

At intervals not to exceed 3 months, beginning with the date of resumption of activities in non-Agreement States, observe all ATI radiographers and conduct an audit of the ATI radiation safety program for work performed in non-Agreement States to ensure compliance with NRC regulatory statements;

D. Within 30 days after completing its observations and audits of ATI's radiographic activities in non-Agreement States, as described in section IV.C. above, the organization shall submit written reports of its findings and recommendations or corrective action directly to the Regional Administrator, Region III, as well as to the licensee;

E. Within 30 days after receiving the organization's report, the licensee shall notify the Regional Administrator, Region III, of its corrective actions in response to the observations and recommendations in the report. For those recommendations not implemented, the licensee shall describe in writing why such actions were not taken;

V

Upon completion of the action required by section IV.A and the receipt of approvals required by section IV.C, the suspension ordered by the February 27, 1989 Order is lifted and the licensee may resume operations in accordance with the general license provided under 10 CFR 150.20 as modified by the conditions of Section IV of this Order.

The Regional Administrator, Region III, may for good cause shown, relax, modify, or rescind any of the above requirements upon written request of the licensee.

VI

The licensee or any other person adversely affected by this Order may request a hearing within twenty days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and

should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 30th day of November 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On February 27, 1989, an Order to Show Cause Why License Should Not Be Revoked and Order Suspending License (Effective Immediately) was issued to American Testing and Inspection, Inc. (ATI) based upon violations identified during NRC inspections and an investigation from March 1987–January 1989. The Order described the violations and stated that portions of the violations involved willfulness on the part of the licensee's staff and the licensee's President, who is also the Radiation Safety Officer (RSO). The licensee responded to the Order in a letter dated April 5, 1989. In its response, the licensee admits some of the violations occurred as referenced but denies that these violations were made knowingly or willfully on the part of its President and RSO. The licensee requests that NRC vacate the Order based upon cause submitted. Provided below are (1) the violations as presented in the Order; (2) the licensee's response to the violations; (3) The NRC's evaluation of the licensee's response; (4) the licensee's basis for withdrawal of the Order; and (5) the NRC's conclusions. The NRC evaluation has been organized to correspond to the licensee's April 5, 1989 response.

1. Violation No. 1

"It was concluded that ATI willfully used unqualified radiographers in violation of 10 CFR 34.31 on at least three occasions * * *.

a. An ATI employee who had not completed the required radiographer's training performed radiography on July 1, 1986, at the direction of the President (who is also the Radiation Safety Officer (RSO)) of ATI * * *".

Summary of Licensee's Response

The licensee admits that the employee, Mr. Jump, had not completed the training program to become a radiographer. However, the licensee contends that Mr. Jump was working with an experienced radiographer, Mr. Anderson, during field training on July 1, 1986. The licensee contends Mr. Jump inappropriately signed documentation indicating he was the radiographer for the job performed on July 1, 1986.

In regard to the President's involvement, the licensee contends that he did not direct Mr. Jump to perform unauthorized radiography since he (the President) was on vacation and assignment of employees to perform radiography was made by the lead radiographer, Mr. Jobbe. The licensee also contends that the President first gained knowledge of this event after returning from vacation.

NRC's Evaluation of ATI's Response

The NRC recognizes that two individuals, Messrs. Jump and Anderson, were both at the jobsite on July 1, 1986. Mr. Anderson, in sworn statements, told NRC investigators that Mr. Jump performed the entire job, including setting up the radiography camera, making exposures with the radioactive source and securing the source in the shielded camera upon completing the job. Mr. Jump also stated, in sworn statements, that he set up all the shots to be taken with the radiography sources; however, he states that Mr. Anderson actually did the moving of the source in and out of the camera. The activities performed by Mr. Jump are required by ATI's license to be performed by a radiographer or assistant who has completed the training specified in 10 CFR part 34. Mr. Jump had not completed the training to function as a radiographer or assistant radiographer in training; therefore, the NRC maintains Mr. Jump was unqualified to perform the radiographic activities that occurred on July 1, 1986. Therefore, the NRC concludes that Mr. Jump, an unqualified individual, performed radiography activities.

The NRC agrees the President was out of town on July 1, 1986. The NRC does not agree that the President had no prior knowledge of Mr. Jump being involved in radiography work. Although the President stated to investigators that Mr. Jobbe made all work assignments on July 1, 1986, Mr. Jobbe stated, in a sworn statement, that he did not assign Mr. Jump to that job, but rather the President made assignments at that time. In addition, the NRC has a sworn statement from Mr. Anderson that prior to July 1, 1986, the President directed him (Mr. Anderson) to accompany and observe Mr. Jump performing radiography. The statements of the President and Mr. Jobbe contradict each other. Based upon the statement by Mr. Anderson, however, the NRC concludes that the President knew or should have been aware that Mr. Jump would be performing radiography and that he was not fully trained or authorized to do so.

b. "* * * another ATI employee who was not trained as a radiographer performed radiography on February 3, 1987 * * *.

Summary of ATI's Response

The licensee admits that a violation occurred when an unqualified individual performed radiography on February 3, 1987. The licensee contends that the President was not aware of the violation until he was told by the lead radiographer, Mr. Jobbe. The licensee also states that the President was not aware of the violation prior to its occurrence, nor was he in the State of Illinois when the violation occurred. The licensee submits documentation to support that during February 2 through 6, 1987, the President was out of town working with Mr. S. A. Turner, President of Corrosion Monitoring Services, in Indianapolis, Indiana.

NRC's Evaluation of ATI's Response

The licensee does not contest the violation but denies that the President knowingly and willfully violated NRC requirements, since he was out of town at the time. Based upon statements made to NRC staff by the lead radiographer (Mr. Jobbe), the unqualified individual (Mr. Elliott), and a Clark Oil inspector during the 1987 and 1988 NRC inspection and investigation, the NRC agrees with the licensee's assessment that the President was out of town and did not knowingly or willfully permit this violation to occur. The NRC Order, however, does not single out the President as knowingly and willfully permitting this violation to occur. The Order refers to the licensee as an entity in regard to willfulness. Other licensee employees (i.e., Messrs. Jobbe and Elliot) were aware that Mr. Elliot was left at the Clark Oil site to perform radiography. The licensee's response also indicates that Mr. Elliot was left to perform radiography (i.e., crank the source back into its shielded container). Based upon these facts, the NRC concludes that the licensee's employees and, thus, the licensee willfully allowed an unqualified radiographer to perform radiography on February 3, 1987.

c. "* * * another ATI employee who was not trained as a radiographer performed radiography on March 13, 1987 * * *.

Summary of ATI's Response

The licensee admits that a violation occurred in that radiography was performed by an unqualified individual Mr. Elliot, on March 13, 1987. The licensee denies that this violation occurred at the direction or with the prior knowledge of the licensee's President. The licensee supports this statement by submitting a locator sheet showing that the President was scheduled out of town on March 13, 1987 and he left early that day. The licensee admits Mr. Elliot was assigned to perform work on March 13, 1987 without the presence of an authorized radiographer. However, the licensee contends that its staff did not know radiography would be performed at the site.

NRC's Evaluation of ATI's Response

The licensee admits that a violation occurred in that an unqualified individual performed radiography. With respect to the President's knowledge of this, the licensee provides a locator sheet to show that the President was out of town and could not be aware of the assignment of this unqualified individual. The NRC, however, has a sworn statement from the unqualified radiographer that the President did, in fact, ask Mr. Elliot to go to the jobsite prior to March 13, 1987. The NRC also has a sworn statement from Mr. Jobbe that the President assigned Mr. Elliot to do the radiography job on March 13, 1987; however, Mr. Jobbe's statement contradicts those he told NRC inspectors during the inspection. During the inspection, Mr. Jobbe told NRC inspectors that he (Mr. Jobbe) assigned Mr. Elliot to perform radiography on March 13, 1987.

The licensee also contends its staff did not know Mr. Elliot would perform radiography. However, the licensee permitted Mr. Elliot to go to the jobsite with radioactive materials that could be used to perform radiography.

The NRC Order stated that the licensee willfully permitted an unqualified individual to perform radiography. The Order did not single out the President. The NRC maintains that the licensee, whether by Mr. Jobbe or the President, permitted this to occur since the licensee sent Mr. Illiot to the jobsite with radioactive materials he was not qualified to use. The licensee did not restrict him from using the materials to perform radiography and he performed licensed activities.

2. Violation No. 2

a. "* * * employees willfully failed to complete and maintain current utilization logs in violation of 10 CFR 34.27 * * * (This failure) * * * violated the record keeping requirements of 10 CFR 34.28, 34.33 and 34.43 * * *."

Summary of ATI's Response

The licensee admits that prior to the 1987 NRC inspection utilization logs were not maintained as required, but denies having knowledge of willful intent on the part of its employees.

The licensee insists that its employees were trained in the requirements of maintaining current utilization logs. Further, the licensee points out that past NRC inspections (1983–1986) never resulted in a violation related to utilization logs.

NRC's Evaluation of ATI's Response

The NRC agrees that employees (i.e., radiographers) were trained in the requirements of maintaining logs as stated in the licensee's response. In addition, NRC's inspection and investigation showed that employees knew the logs were required to be completed and were not completed on time (i.e., utilization logs were anywhere from a month to a year delinquent). Some radiographers said that the logs were only requested just prior to the NRC inspection, which the licensee knew was conducted normally every 12 months. The President admitted to NRC inspectors and investigators that he had been "lax" about keeping up with his staff's logs. NRC concludes that with the President's knowledge, specific radiographers (Anderson and Small) failed to complete utilization logs when they knew the logs were required to be completed (i.e., willful failure).

b. "Further evidence revealed that the RSO personally failed to complete utilization logs between January 1986 and March 1987, even though he had regularly performed radiography during that time."

Summary of ATI's Response

The licensee admits that the President did not personally maintain utilization logs during the period in question. However, the licensee notes that the President did not regularly perform radiography. In addition, when he was involved in radiographic operations, the utilization logs were generated by one of the other radiographers on the job with him. The licensee furnished three examples of this practice in its response.

NRC Evaluation of ATI's response

The President knew there was a requirement for utilization logs as shown by (1) training of licensee employees, including the President, in the requirement for maintaining utilization logs (see licensee's response to Violation 2.a, page 5); (2) the President providing logs for NRC inspections; and (3) the President admitting to the NRC inspectors and investigators that he was "lax" in keeping up with his staff's logs.

The President admitted to NRC inspectors and investigators that he failed to complete utilization logs of work he performed from January 1986 to March 1987. The licensee contends, however, that in most cases, logs were generated by other radiographers. The information submitted by the licensee does not demonstrate that logs were generated in most cases. The licensee only produced three examples where logs were maintained, yet, the President participated in at least 29 radiography procedures during the period in question. Such records were not available during the inspection. In addition, record reviews indicate that the President performed radiography in the absence of other radiographers on at least 5 occasions during the period in question, and no utilization logs were maintained.

c. "* * * utilization logs were not completed until months after the jobs were completed * * *. It was determined that when utilization logs were completed late, employees fabricated lost information in the backfitted logs."

Summary of ATI's Response

The licensee admits knowing that some utilization logs were generated some time after the specific jobs were performed. The licensee denies having directed any of its employees to fabricate utilization logs, however, and further denies knowledge of such fabrication on the part of any individual employed by the licensee. As corrective action, the licensee states that in April 1987 it instituted a "No Logs-No Pay" policy to ensure that logs would be completed on a timely basis.

NRC's Evaluation of ATI's Response

The licensee responds to this violation by stating that it did not direct any employee to fabricate logs and it had no knowledge of such fabrication. The NRC did not state the licensee directed employees to fabricate logs, but that the employees in fact fabricated the records.

The licensee employees admitted to NRC inspectors and investigators that utilization logs were commonly generated long after the specific jobs were performed. ATI contends that it understood these logs contained legitimate information recalled by its employees or readily available from other documents. The NRC agrees that some of the information required was available; however, other information such as camera serial numbers, dosimeter results and survey measurements were not available on any other record. Sworn statements by the licensee's radiographers (Anderson, Baker and Bednarowicz) made to the NRC investigators substantiate that this type of information could not be accurately recalled by employees after the periods of time involved here had elapsed. The NRC confirmed that Anderson fabricated information in his utilization logs. The licensee has not presented any information to change NRC's conclusion that records were fabricated.

3. Violation No. 3

a. "It was determined that one ATI employee had not been field audited for the fourth quarter of 1986 * * *".

Summary of ATI's Response

The licensee assumed that this particular violation was in reference to a former employee, Mr. Small. The licensee states that an audit was not performed due to Mr. Small having terminated employment in November 1986 and thus not being available during the time the fourth quarter audits were performed.

NRC's Evaluation of ATI's Response

The NRC does not refute the licensee's statements about Mr. Small. However, Mr. Small was not the individual referred to in the NRC's Order. The individual in question was Mr. Jobbe, an ATI radiographer, employed at least until June 1987. The President indicated to the investigators that his failure to audit Mr. Jobbe would have been an oversight. During the NRC inspection, the President also acknowledged that he failed to audit Mr. Jobbe during the fourth quarter of 1986. Accordingly, this violation is valid.

b. "It was determined that * * * another employee had not been field audited for the third and fourth quarters of 1986."

Summary of ATI's Response

The licensee contends that field audits for this radiographer were performed in July 1986 during his first independent radiographic operation. The licensee states that it was unable to audit this radiographer further because he terminated his employment prior to the end of the third quarter of 1986 (i.e., August 1986). It stated this individual was allowed to perform "free-lance" radiography on four occasions during the fourth quarter primarily to earn spending money while in college; however, he was not audited by ATI during this quarter, since he was not considered a regular employee of ATI.

NRC's Evaluation of ATI's Response

The NRC investigation did not produce evidence to refute the licensee's statement that the radiographer was audited in July 1986, other than statements from the radiographer that he did not recall being audited. Therefore, the NRC accepts the licensee's assertion that the July 1986 audit

was performed as stated in the licensee's response.

The licensee's response indicates that no other audit was performed during the period July–November 1986 and contends this was due to the radiographer not being regularly employed. The licensee contends the radiographer was not subject to audits, since he was not a regular employee during this time. This individual, however, performed radiography in November 1986 and was not audited from July 1986 to November 1986, an interval exceeding three months. Thus, the licensee is in violation of the requirement in the license and 10 CFR 34.11(d)(1). The NRC disagrees with the licensee's contention that the radiographer was not subject to the requirement for audits due to irregular employment. The requirements for audits in the license and 10 CFR 34.11(d)(1) do not excuse licensees from auditing irregularly employed individuals. It may be particularly important to audit irregularly employees due to their lack of regular experience.

c. "The RSO stated that the latter employee (Mr. Jump) has not been audited because he was not working as a radiographer in the third and fourth quarters of 1986. This was subsequently determined to be a false statement as evidence revealed the individual had performed radiography in those two quarters."

Summary of ATI's Response

The licensee admits the President made the statement about Mr. Jump not working as a radiographer. The licensee contends this was made because the President considered Mr. Jump not employed during the months of August 18–December 1986 in the third quarter of 1986 and October–December 1986 in the fourth quarter of 1986.

NRC's Evaluation of ATI's Response

During the inspection, the President told NRC inspectors that Mr. Jump was not audited because he did not perform radiography during the scheduled audit months of August 1986 and November 1986. This statement was later proven false because NRC review of the licensee's records showed that Mr. Jump did perform radiography in August 1986 and November 1986. The licensee's response also admits that Mr. Jump performed radiography in August and November 1986.

Subsequently, during sworn statements to the investigators, the President admitted Mr. Jump worked in August 1986, but "was not employed here in the winter after that because he was back in school." The licensee's response also admits that Mr. Jump worked in October and November 1986. However, the licensee claims this was not "employment" since Mr. Jump was hired as a "free lance" radiographer. The regulation, however, is not limited to individuals who are employed full-time to perform radiography, but applies to any person who acts as a radiographer under the authority of the license. Because Mr. Jump performed work for ATI under its NRC license, the regulation required the licensee to audit his performance.

d. "It was also determined that on August 27, 1986 the RSO willfully falsified documentation of a field audit for an ATI radiographer. Evidence revealed that the radiographer was not at the job site on the date that the RSO had documented the field audit."

Summary of ATI's Response

The licensee denies that its President willfully falsified documentation of the August 27, 1986 field audit. The licensee admits the audit form was completed by the President. The licensee contends the documentation was for a field audit of Mr. Anderson performed by the President on August 27, 1986 at a job site in Troy Grove, Illinois. The licensee contends that the President had time to perform the audit on August 27, 1986 after performing radiography in Bloomington, Illinois. The licensee contends that the audit report is true and accurate, with the exception of the billing company.

NRC's Evaluation of ATI's Response

During the investigation, the President provided sworn testimony that the audit was of Mr. Anderson, but at Phillips in Kankakee, Illinois, the only error being that the form was misdated. The licensee now maintains in its response that the audit was done at Ni-Cas, Troy Grove, Illino.

4. Violation No. 4

"On January 5, 1989, * * * the NRC inspector identified that on 55 occasions from January 13 to December 20, 1988, ATI violated the provisions of reciprocity as stated in 10 CFR 150.20(b)(1). Specifically, ATI failed to notify the Regional Administrator of USNRC Region III, either by telephone or by filing copies of Form–241 at least three days before engaging in licensed activities * * * in Indiana, a non-Agreement State."

Summary of ATI's Response

The licensee admits that it failed to submit copies of Form–241 prior to working in Indiana between January 13 and December 20, 1988, in violation of the regulations. The licensee claims it was unaware that an Illinois license does not authorize radiographic operations outside the State of Illinois. The licensee also claims it was not aware of the general license requirements for NRC notification when performing licensed activities outside Illinois.

NRC's Evaluation of ATI's Response

The NRC received a letter, dated November 3, 1988, from the licensee's President which indicates he was aware of the NRC notification requirements in 10 CFR 150.20. In that letter, the President states "I request that my above referenced NRC license be 'split' when Illinois becomes an Agreement State, whereby I may retain an NRC license for our services to temporary job sites outside of Illinois jurisdiction. I realize that reciprocity requests can be made of the NRC, federal facilities and other Agreement States to recognize the Illinois license, but retaining an NRC license seems to be a method to reduce paperwork that would otherwise be required for performing services to federal facilities in Illinois and in NRC jurisdictions outside of Illinois." This demonstrates that the President was aware at one time of the requirements for filing the notifications with the NRC. Licensees are charged with the knowledge of Commission requirements. Moreover, the failure to be aware of the limitations of the Illinois license raises substantial questions of the capability of the President to be a RSO.

5. ATI's Arguments to Show Why Order Should be Vacated

The licensee sets forth the following reasons as a basis why its general license under the provisions of 10 CFR 150.20 should not remain suspended and should not be revoked:

a. ATI has documented that the violations identified during the inspection conducted were not made knowingly or willfully on the part of its President.

b. ATI identified several problems within its organization attributable to specific individuals and no longer employs these individuals.

c. ATI presently employs an entirely new crew of radiographers who are mature and experienced.

d. ATI established the position of Office Manager and a new policy to ensure utilization logs are completed and compliance is aggressively assured.

e. ATI's inspection history has been very good, except for the period 1986 through March 1987.

f. ATI has been in full compliance with reciprocity requirements since January 1989, when its staff was made aware of, and fully understood, the requirements.

NRC's Evaluation of ATI's Arguments for Vacation of Order and Conclusion

The NRC concludes that the licensee's President was responsible either directly or indirectly for violations of NRC requirements, and he remains in control of ATI's licensed activities. In addition, licensee employees knowingly violated NRC requirements and these employees were under the supervision of the President. While the termination of all radiographers, radiographer assistants and helpers employed by ATI prior to the 1987 special inspection and the hiring of new experienced radiographers provide some assurance of future compliance, the licensee's response did not propose adequate methods or steps to assure that the President or other persons responsible for supervision of licensed activities will, in view of past supervisory failures, comply with NRC requirements in the future. Therefore, after carefully reviewing all of the relevant circumstances, the NRC staff has concluded that, while revocation of the licensee's response does not provide an adequate basis for lifting the suspension Order at this time without additional requirements to provide adequate assurance that the President of ATI or other persons responsible for the supervison of licensed activities will comply with NRC requirements in the future.

[FR Doc. 89–28679 Filed 12–7–89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62]

Further Modification to the Determination To Impose Increased Duties on Certain Products of the European Community

AGENCY: Office of the United States Trade Representative.

ACTION: Modification to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative suspends the application of the increased duty on imports of certain tomato sauces from the European Community.

EFFECTIVE DATE: 12:01 a.m., December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, Office of the United States Trade Representative, Washington, DC 20506, (202) 395–3074.

SUPPLEMENTARY INFORMATION: In Proclamation No. 5759 of December 24, 1987, the President increased United States customs duties on certain articles the product of the European Community (EC) in response to action by the EC prohibiting imports into the European Community of U.S. beef and beef products. The increased duties apply to products exported from the EC on or after January 1, 1989, or entered, or withdrawn from warehouse for consumption, on or after February 1, 1989. Following imposition of the increased duties, the United States and the European Community announced the formation of a Task Force to develop ways in which U.S. meat exporters might resume shipping to the Community. As a result of the Task Force discussions, the United States and the European Community agreed on an interim measure administered by the EC to enable U.S. producers of meat not treated with hormones to ship such meat to Europe. The United States agreed to reduce its retaliation to the extent that U.S. beef and beef products are shipped under the interim measure. Effective July 28, 1989, the USTR reduced the retaliation by suspending the application of the increased duty on imports of certain pork hams and shoulders from the EC (54 FR 31398). This notice further reduces the retaliation by suspending the application of the increased duty on imports of certain tomato sauces.

Partial Suspension of Increased Duties

Pursuant to the authority granted to me in Proclamation No. 5759, I am hereby suspending the increased duty imposed by that Proclamation under subheading 9903.23.15 of the Harmonized Tariff Schedule of the United States (HTS) on tomato sauces provided for in HTS subheading 2103.20.40. I have determined that it is in the interest of the United States to suspend the increased duty on such tomato sauces in response to the permitted shipments of U.S. meat to the EC.

Modifications

Pursuant to the authority delegated by the President to the USTR in Proclamation 5759, the increased duty imposed under subheading 9903.23.15 on tomato sauces provided for in HTS subheading 2103.20.40, as set forth in Annex B to Proclamation 5759, is suspended.

Accordingly, the Harmonized Tariff Schedule of the United States is hereby modified by striking out subheading 9903.23.15 and by inserting in lieu thereof the following new subheadings, with article descriptions at the same level of indentation as that of subheading 9903.23.20:

Heading/ subheading	Article description	Rates of duty 1-gen. (percent)	Rates of duty 2
"9903.23.14	Other tomato sauces (provided for in subheading 2103.20.40.	100	No change.
9903.23.16	Tomatoes, prepared or preserved (except paste) otherwise than by the processes specified in chapter 7 or 11 or in heading 2001 (provided for in subheading 2002.10 or 2002.90).	100	No change."

The increased rate of duty provided for in HTS subheading 9903.23.14 is hereby suspended, and that subheading shall be shaded in the HTS. The modifications to the HTS made by this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on December 8, 1989.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89–28657 Filed 12–7–89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27509; File No. SR–NASD–89–36, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Registration Category, Study Outline and Specifications for Series 28 Examination, Introducing Broker/Dealer Financial and Operations Principal

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the above numbered proposed rule change,[1] as described in Items I, II, and III below. Notice of the original proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27144, August 15, 1989) and by publication in the **Federal Register** (54 FR 34843, August 22, 1989). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment changes Schedule C of the NASD By-Laws to add an additional category of registration, Introducing Broker/Dealer Financial and Operations Principal. Upon effectiveness of the proposed amendment, the new text would be designated as part II, section (2)(c) of Schedule C.

The NASD is also submitting the examination specifications and study outline for this registration category.

[1] The NASD submitted Amendment No. 2 to the proposed rule change. It is available for inspection in the Public Reference Room. The Amendment, dated November 20, 1989, requests accelerated approval for the proposed rule change, which the Commission has denied.

The examination will be designated Series 28. These items do not involve any textual changes to the NASD's By-Laws, Schedules to the By-Laws, rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In implementing the recommendations of the Regulatory Review Task Force, the NASD Board of Governors determined that it was appropriate to approve a new registration category, introducing Broker/Dealer Financial and Operations Principle, for principles of introducing general securities firms. All introducing and clearing firms are required to qualify financial and operations principles on the Series 27 examination. It was recognized, however, that the Series 27 examination tested knowledge of subject areas such as margin accounts, the Uniform Practice Code and the Customer Protection Rule (Rule 15c3–3 under the Act), which would not be relevant to the financial and operations principle at an introducing firm. The Board determined that the proposed registration category would address this situation, while still assuring an appropriate level of qualification in introducing firms in the financial and operations area. The proposed registration category is also intended to provide greater flexibility to members in qualifying their personnel.

With respect to the Series 28 examination, specifications, and study outline, it is the NASD's responsibility under section 15A(g)(3) of the Act to prescribe standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations that are administered to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act pursuant to which the NASD prescribes standards of training, experience, and competence for persons associated with NASD members.

Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the new registration category or the study outline and specifications impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments regarding the new registration category, study outline and specifications were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the Federal Register within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Streets NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28918 Filed 12–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27494; File No. SR–NASD–89–44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 29, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to extend for one year the informational linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE").

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 27335, October 3, 1989) and by publication in the Federal Register (54 FR 41890, October 12, 1989). No comments were received with respect to the proposed rule change.

On October 2, 1987, the Commission issued an order approving operation of the NASD–ISE linkage for a pilot term of two years, through October 2, 1989.[3] In its original order granting interim approval of the pilot, the Commission noted certain competitive concerns raised by Instinet Corporation.[4] In response to those concerns, the NASD and ISE agreed to narrow the universe of firms and terminals permitted access to linkage information at no cost. These changes were reflected in the October 2, 1987, order, in which, however, the Commission stated that it was not reaching a final determination of the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Securities Exchange Act Release No. 24879 (Oct. 2, 1987), 52 FR 37684 (Oct. 8, 1987).

[4] *See* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15089 (Apr. 29, 1986), and letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 14, 1986.

issues raised by Instinet.[5] The order requested that the NASD compile certain information relative to the linkage's operation and examine the feasibility of separately allocating costs associated with the linkage. On May 31, 1989, the NASD submitted to the Commission linkage data on the number of common issues, the levels of market maker participation, aggregate monthly trading volumes in common issues, and query traffic emanating from participating NASDAQ market makers. On September 11, 1989, the NASD submitted information on its costs respecting operation of the linkage. The ISE has declined to submit cost allocation information.[6]

On September 29, 1989, the Commission granted accelerated approval to a two-month extension of the pilot, through December 2, 1989, in order to allow the NASD to formulate and submit a more comprehensive proposed rule change, which is the subject of this order.[7]

The present proposed rule change requests a one-year extension of the pilot to allow additional time to assess the results of the linkage relative to the business objectives of the two markets and to allow the NASD and ISE to evaluate the feasibility of enhancing the linkage to include automated order routing and execution capabilities and more efficient automated procedures for clearance and settlement of international securities transactions. The NASD has indicated in its proposed rule change that the October 1987 market break and the subsequent dedication of substantial resources by the NASD and ISE to addressing the regulatory and operational concerns that were raised has meant that neither market has had sufficient opportunity to operate or consider enhancements to the pilot under more normal market conditions.

The Commission believes that the NASD and ISE should be provided the additional year requested in order to develop the operational and cost information sought by the Commission in its October 1987 order, especially in light of the extraordinary events of the market break. We do not anticipate that continuation of the pilot under the same circumstances provided for in our two-year approval order will raise any additional concerns. The Commission, however, expects that during the additional year extension both parties to the linkage will make a good faith effort to address those concerns that have been raised throughout this process.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved for a period of one year from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 1, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28636 Filed 12–7–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27486; File No. SR–PHLX–89–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Index Hedge Exemption One-Year Pilot

On August 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that establishes a one-year pilot program during which public customers may apply for a hedge exemption from Utility Index Option ("UTY") position limits.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27280 (September 20, 1989), 54 FR 39605 (September 27, 1989). No comments were received on the proposed rule change.

The Exchange's proposed rule change provides for a one-year pilot program during which public customers may request Exchange approval for a "hedge exemption" from position limits on the UTY.[3] Specifically, the Exchange proposes to exempt from its position limits any position taken by a public customer in UTY options that is hedged by at least ten UTY-component stocks, of which no one component stock may account for more than 15 percent of the stock portfolio hedging the UTY position. [4] The proposed exemption applies to positions in UTY options that are hedged against either long or short stock portfolios. The PHLX believes that the increased position limits are necessary to assist in the development of a more active and liquid UTY options market. Specifically, the Exchange believes that increased position limits are needed to better meet the needs of investors who would use the UTY for investment and hedging purposes.

The Exchange believes that the proposed rule provides several safeguards against manipulation. In particular, no one UTY-component stock can account for more than 15 percent of the hedged stock portfolio and a minimum of ten stocks must be included in the hedging portfolio. In addition, no UTY position, inclusive of a hedged position permissible under the proposal, can exceed twice the specified UTY position limit (*i.e.*, 16,000 contracts) [5] and the maximum size of any UTY position above 8,000 contracts cannot exceed the unhedged value of the underlying hedging stock portfolio. The proposal also requires that both the option and stock positions be initiated and liquidated in an orderly manner. This requires that a reduction in the options position must occur at or before a corresponding reduction in the stock portfolio position. In addition, to further ameliorate the potential for adverse impacts on the market, the Exchange proposes to leave UTY exercise limits unchanged, except that no exercise

[5] Instinet appealed to the full Commission the approval of the two-year pilot, which had been granted for the Commission by the Division of Market Regulation pursuant to delegated authority. The Commission affirmed the Division's delegated determination (Securities Exchange Act Release No. 26710, Apr. 11, 1989; 54 FR 15293, Apr. 17, 1989).

[6] *See* letter from Peter Cox, Director-International Equity Market, ISE, to Robert E. Aber, Vice President and Deputy General Counsel, NASD, dated June 1, 1989.

[7] Securities Exchange Act Release No. 27320 (September 29, 1989), 54 FR 41548 (October 10, 1989).

[8] The Commission hereby incorporates by reference the findings and conclusions contained in its order affirming the delegated determination of the Division of Market Regulation. See fn. 5, *supra.*

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Currently, the customer position limits for UTY options is 8,000 contracts and the rule does not exempt positions hedged with stock portfolios.

[4] The UTY was approved by the Commission on September 9, 1987. The UTY index is a capitalization-weighted index consisting of twenty geographically diverse, highly capitalized New York Stock Exchange ("NYSE")—listed electric utility common stocks. The UTY option is a cash-settled, European style contract. See Securities Exchange Act Release No. 24889 (September 9, 1987), 52 FR 35021.

[5] See letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated November 2, 1989, amending the maximum hedged position limit to twice that of the specified UTY position limit.

restrictions will apply in expiring series from the last business day prior to expiration until expiration.[6]

The Exchange's Surveillance staff has designed surveillance procedures to monitor use of the hedge exemption. If an entity is identified as exceeding the existing UTY position limit, and an offsetting stock position does not exist, the entity will lose its exemption, be precluded from affecting additional opening transactions, and be required to close out those positions in excess of the current position limit. As a more routine compliance monitoring procedure, the PHLX will require member firms representing customers who seek the exemption to apply for the exemption on a form prescribed by the Exchange. The application form will require the firm carrying the customer's position to telefax, on the Wednesday prior to expiration, data to the PHLX surveillance department regarding the status of the account's portfolio (*i.e.*, the current UTY position and any changes made to the stock portfolio since the filing of the application for examption). Additionally, the PHLX surveillance department will closely monitor UTY trading activity in connection with contemporaneous trading in the securities underlying the UTY to detect and deter potential frontrunning and mini-manipulation abuses.

The Commission concludes, as it has with other hedged position limit exemption programs in place on other options exchanges,[7] that the proposal will allow more effective hedging of underlying stock portfolios and may increase the depth and liquidity of the UTY options markets. At the same time, for several reasons the Commission does not believe that allowing public customer's a hedge exemption from UTY option position limits to the level proposed by the PHLX will increase the potential for disruption or manipulation in the markets for the stocks underlying the UTY.

First, the PHLX proposal has incorporated safeguards from the exisiting index hedge programs that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the PHLX proposal provides that: (1) UTY position limits must be hedged by at least ten UTY-component stocks, of which no one component stock position may account for more than 15 percent of the stock portforlio being hedged by the UTY position; (2) the maximum size of the exempt position cannot exceed the unhedged value of the underlying hedging stock portfolio; (3) the maximum UTY hedged position cannot exceed two times the established UTY hedged position cannot exceed two times the established UTY position limit; and (4) reductions in options positions must occur at or before corresponding reductions in the stock portfolio position.

Second, because the UTY is a narrow-based index, the PHLX has proposed to exempt hedged UTY positions for an additional 8,000 contracts. In other words, the maximum overall position permitted can only be double the maximum unhedged limit. This is the exact hedge exemption limit for individual equity options, and is less than the hedge exemption limit for broad based index options.[8]

Third, to the extent any potential for manipulation or disruption might increase because of larger UTY positions, the Commission believes the PHLX's surveillance procedures, as described above, will be adequate to detect and deter such activity. The Commission also notes that the Exchange has proposed a one-year pilot program for the hedge exemption to the UTY position limit. Therefore, over the course of the pilot, the Exchange and the Commission will be able to monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[9]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will allow public customers to utilize more effectively the UTY options market for investment and hedging purposes and may increase the depth and liquidity of the UTY market, thereby removing inpediments to and perfecting the mechanism of a free and open market and protecting investors and the public interest.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–89–27) is approved for a one year period ending November 30, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: November 30, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–28637 Filed 12–7–89; 8:45 am]

BILLING CODE 8010–01–M

[6] By eliminating exercise restrictions on expiration, UTY hedge exemption customers who hold expiring positions will be able to roll their hedge positions into forward months without effecting their stock positions.

[7] The Commission has approved pilot programs proposed by the American Stock Exchange and the Chicago Board Options Exchange to permit the exchanges to grant position limit exemptions for positions in broad-based index option hedged with a qualified stock portfolio. These programs require that the hedging stock portfolio include twenty stocks and that no single stock may represent more than 15% of the value of the hedged stock position. See Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (order approving File No. SR–CBOE–87–25) and Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 28738 (order approving File No. SR–AMEX–16). These proposals were recently extended and modified. See Securities Exchange Act Release No. 27322 (Sept. 29, 1989), 54 FR 41869 (order approving File No. SR–CBOE–89–6) and Securities Exchange Act Release No. 27328. (Oct. 2, 1989), 54 FR 42121 (order approving File No. SR–AMEX–89–20).

[8] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988), order approving PHLX rule change to permit hedged position limits for equity options.

[9] The Commission expects the PHLX to determine from the monitoring program information including, but not limited to, the following: (1) The persons who use the exemption; (2) how often the exemption is used; (3) the size (dollar value) of any portfolio hedged; (4) the number of stocks represented in these portfolios and the quantity of each stock hedged; and (5) the size (number of contracts) of UTY options positions held pursuant to the exemption. The PHLX also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the UTY hedge exemption rule.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. 34–27495; File No. SR–NYSE–89–40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Pricing Procedures for Standard Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1989 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend for one year its pilot program regarding pricing procedures used for standard odd-lot market orders contained in Exchange Rule 124.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose. In December 1987, the Commission approved proposed amendments to the Exchange's pricing procedures for standard odd-lot market orders as a two year pilot program.[2] These pricing procedures provide that standard odd-lot market orders are to be executed at a price based on the prevailing NYSE quotation in the stock at the time the order reaches the system, *i.e.*, buy orders will be executed on the NYSE bid, and sell orders at the NYSE offer. No odd-lot differential will be charged on these orders.

In the Approval Order, the Commission requested that the Exchange continue to study odd-lot pricing. In particular, the Commission requested the Exchange to analyze the difference between using the best bid or offer disseminated by markets participating in the Intermarket Trading System ("ITS") and the NYSE bid and offer (without an odd-lot differential) to price off-lot orders.

Pursuant to the Commission's request, the Exchange staff began a review of the pricing of standard odd-lot market orders following the Commission's approval of the two-year pilot. That review is continuing. In the coming months, the Exchange staff commits to work to develop an amended pricing procedure for odd-lot market orders that takes into consideration the bids and offers disseminated by other ITS market participants and to file the proposed pricing procedures with the Commission for approval. The Exchange further commits to implement the new pricing procedure as soon as possible after receiving Commission approval. The Exchange is proposing a one year extension of the pilot program to allow sufficient time to complete its review and to implement the new odd-lot pricing procedure.

Basis. The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received written comments on this rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6[3] and the rules and regulations thereunder. In particular, the Exchange's existing pricing procedures for standard odd-lot market orders are consistent with section 6(b)(5) of the Act,[4] in that they should facilitate the execution and accurate reporting of odd-lot transactions, and also should assist in the prompt and accurate clearance and settlement of such transactions. In addition, the current pricing procedures have been in place for two years and the Exchange states that they have operated well during this time.[5] The Commission believes it is reasonable to extend the pilot program for one more year to enable the Exchange to complete its review of the pricing of standard odd-lot market orders.

The Commission reiterates the request stated in its 1987 Approval Order, however, that the NYSE analyze the difference in executions between using the ITS best bid or offer and the NYSE quote without the odd-lot differential. Specifically, the Commission is interested in whether customers generally are receiving a better execution, both in terms of price and time, using the NYSE system. The Commission also is interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that the NYSE provide a report on these questions by April 1, 1990. Further, absent compelling reasons, if SuperDot becomes fully effective during the one-year extension of the pilot period with the ITS best bid or offer as its reference point, the NYSE will be required to conform its odd-lot system to the SuperDot pricing system within a reasonable period of time.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission and utilized by the NYSE for the past two years.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which will expire on December 7, 1989, to continue without interruption.

[2] See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472 (approving File No. SR–NYSE–87–20) ("Approval Order").

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472 (approving File No. SR–NYSE–87–20) for a complete description of the Exchange's odd-lot pricing procedures and the Commission's rationale for approving those procedures on a two-year pilot basis. The discussion in that order is incorporated by reference into this order.

[6] No comments were received on the proposed rule change which implemented these procedures. See Securities Exchange Act Release No. 25177 (December 7, 1987), 52 FR 47472.

BEST COPY AVAILABLE

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-40 and should be submitted by December 29, 1989.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved for a one-year period ending on December 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28685 Filed 12-7-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2391]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 17, 1989, and the Notice of Amendment dated November 21, 1989, I find that the counties of Madison and Jackson in the State of Alabama constitute a disaster area as a result of damages caused by tornadoes and severe storms on November 15, 1989. Applications for loans for physical damage may be filed until the close of business on January 16, 1990, and for economic injury until the close of business on August 17, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of De Kalb, Limestone, Marshall, and Morgan in the State of Alabama; Franklin, Lincoln and Marion in the State of Tennessee, and Dade County in the State of Georgia may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Alabama is 239112, and for economic injury the number is 688500. In Tennessee, the economic injury number is 688600 and in Georgia the economic injury number is 689100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28698 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2393]

Georgia; Declaration of Disaster Loan Area

The Coweta County and the contiguous counties of Carroll, Fayette, Fulton, Heard, Meriwether, Spalding and Troup, in the State of Georgia, constitute a disaster area as a result of damages from tornadoes, high winds and heavy rains which occurred on November 15, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 29, 1990 and for economic injury until the close of business on August 29, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 239312 and for economic injury the number is 688800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 29, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-28699 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2394 and 2395]

Illinois; Declaration of Disaster Loan Area

The St. Clair County and the contiguous counties of Clinton, Madison, Monroe, Randolph, and Washington in the State of Illinois and St. Louis County in the State of Missouri constitute a disaster area as a result of damages from severe thunderstorms containing extremely strong winds which occurred on November 15, 1989.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 29, 1990 and for economic injury until the close of business on July 29, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 239411 and for economic injury the number is 688900 in the State of Illinois. For St. Louis County in the State of Missouri, the number assigned for physical damage is 239511 and for economic injury the number is 689000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-28700 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2392]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 22, 1989, I find that the Parishes of Jefferson, Orleans, and St. Charles in the State of Louisiana constitute a disaster area as a result of damages caused by heavy rains and flooding on November 7-9, 1989.

Application for loans for physical damage may be filed until the close of business on January 22, 1990, and for economic injury until the close of business on August 22, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous Parishes of St. John the Baptist, LaFourche, Plaquemines, St. Bernard, and St. Tammany in the State of Louisiana may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Louisiana is 239206, and for economic injury the number is 688700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28701 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2383; Amdt. 3]

Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 22, 1989, to extend the termination date for filing applications for physical damage until December 6, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 21, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 30, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28702 Filed 12-7-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 1, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46289.

Date Filed: November 29, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 1989.

Description: Application of Malev Hungarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, for an amendment of its foreign air carrier permit, authorizing it to engage in scheduled foreign air transportation of persons, property and mail, and charter foreign air transportation of persons and property, between Budapest and the co-terminal points New York, Chicago and Los Angeles, via intermediate points in Europe and Canada.

Docket Number: 42217.

Date Filed: December 1, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1989.

Description: Application of Trans World Airlines, Inc. pursuant to section 401(b) of the Act and subpart Q of the Regulations, requests renewal of its certificate of public convenience and necessity for Route 468 (St. Louis-London).

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-28703 Filed 12-7-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-093]

Coast Guard Consumer Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of Coast Guard consumer program update.

SUMMARY: This notice contains updated information on the Coast Guard Consumer Program, which was first published in the **Federal Register** on December 1, 1980 (45 FR 79674) in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Program."

EFFECTIVE DATE: December 8, 1989.

ADDRESSES: Interested persons may receive a copy of Consumer Fact Sheet #1 by contacting: Chief, Consumer and Regulatory Affairs Branch (G-NAB-5), U.S. Coast Guard Headquarters, Washington, DC 20593-0001. Telephone: Coast Guard Boating Safety Hotline toll

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

free 800–368–5647 (in Washington, DC call 267–0780).

FOR FURTHER INFORMATION CONTACT: Richard Bergen, (202) 267–0972.

Supplementary Information: This Notice is intended to inform the public that the Coast Guard Consumer Program has been updated to reflect the current Coast Guard organization and other changes (i.e. Rules of the Road Advisory Committee (RORAC), new Hotlines). Coast Guard Consumer Fact Sheet #1 contains the updated information. The Fact Sheet identifies persons in the Coast Guard that are responsible for responding to consumer complaints and inquiries, and explains what consumer-oriented services are provided through Coast Guard programs.

Dated: November 14, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–28646 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–103]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the twenty-second meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 25, 1990 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, TX. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–28644 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–101]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 4, 1990 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, TX. The meeting is scheduled to begin at 10:30 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–28644 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–102]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 4, 1990 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, TX. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: November 30, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–28645 Filed 12–7–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0923.
Form Number: None.
Type of Review: Extension.
Title: Tax-Exempt Entity Leasing.
Description: The regulations are necessary to implement Congressionally enacted elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.
Respondents: State or local governments, Non-profit institutions.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 28635 Filed 12–7–89; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No 5]

Surety Companies Acceptable of Federal Bonds; National American Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27816 to reflect this addition:

National American Insurance Company

Business Address: P.O. Drawer 9, 1008 Manvel Avenue, Chandler, OK 74834.

Underwriting Limitation b/: $1,435,000.
Surety License: c/: All except As, CT, DE, GU, ME, MA, NH, NJ, NC, PR, VT, and VI.
Incorporated in: Nebraska.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: December 4, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89–28633 Filed 12–7–89; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 235
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

December 5, 1989.

DATE AND TIME: Friday, December 15, 1989, 9:00 a.m.–12:00 Noon.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of October Meeting
Approval of Minutes of November Meeting
III. Announcements
IV. Draft Chapter for and Draft Report on
Economic Status of Black Women: An Exploratory Investigation
V. SAC Reports and Recharters
Southeast Asian Refugees and Their Access to Health and Mental Health Services
Selected Civil Rights Issues in Iowa's Public Education
Civil Rights Implications of Minority Student Dropouts
Indiana, Kansas, and Louisiana SAC Recharters
VI. Commission Subcommittee Reports
VII. Staff Director's Report
A. FOIA Regulations
B. FY 1990 Budget
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,
Acting Solicitor.

[FR Doc. 89–28769 Filed 12–5–89; 4:28 pm]
BILLING CODE 6335–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 12, 1989, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

OPEN SESSION

1. Consent Calendar:
—Request from the St. Paul BC for equity voting in the election of one director;
—Request for the transfer of direct lending authority from the St. Paul FCB to the Bismarck FLBA;
—Request for the authority to make rural housing loans from the Mountain FLBA, third district;
2. Rules and Regulations;
—Advance Notice of Proposed Ruemaking for the termination of System institution status;
3. California Livestock PCA, eleventh district, request to terminate System institution status;
4. Proposed 1990 Budget, Farm Credit System Building Association;

***CLOSED SESSION**

5. Sections 7.10 and 7.11 of the Farm Credit Act of 1971, as amended;
6. Examination and enforcement matters;
7. Agency litigation matters; and
8. Jackson FLB/FLBA, in receivership.

Dated: December 6, 1989.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 28834 Filed 12–6–89 2:12 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Monday, December 4, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain administrative enforcement proceedings.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89–28771 Filed 12–5–89; 4:29 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 12, 1989, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Bylaws of the Corporation.

Discussion Agenda

Memorandum re: Amendment to the Corporation's Budget for 1989 and the Corporation's Budget for 1990.

Memorandum and resolution re: Proposed interim rule, in the form of a new Part 312 of

the Corporation's rules and regulations, to be entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which would prescribe entrance and exit fees to be paid by insured depository institutions that participate in certain "conversion transactions" authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control.

Memorandum and resolution re: Final amendments to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing, which amendments incorporate the changes made by the Fair Housing Amendments Act of 1988 to the Civil Rights Act of 1968 which prohibit discriminatory housing practices based on handicap and familial status and discrimination in "residential real estate-related transactions" as defined in the law.

Memorandum regarding disclosure of final orders with respect to administrative enforcement actions.

Memorandum and resolution re: Notice of solicitation of comments, suggestions and any relevant data or statistics from interested parties for use in a study concerning directors' and officers' liability insurance and depository institution bonds.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 89–28772 Filed 12–5–89; 4:29 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on December 12, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (C)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (C)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552B(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 5, 1989.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 89–28773 Filed 12–5–89; 4:29 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 2:00 p.m. on Tuesday, December 5, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum re: Amendment to the Corporation's Budget for 1989 and the Corporation's Budget for 1990.

Memorandum and resolution re: Notice of withdrawal of proposed amendments to the Corporation's rules and regulations which would have been in the form of a new Part 354, entitled "Deposit Liabilities," and which would have proposed that certain liabilities of a bank are deposit liabilities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 6, 1989.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89–28904 Filed 12–6–89; 3:57 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, December 5, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a certain delegation of authority with respect to a supervisory matter.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed

meeting by authority of subsections (c)(2), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(8), and (c)(9)(A)(ii)).

Dated: December 6, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-28905 Filed 12-6-89; 3:57 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—December 13, 1989.

PLACE: Hearing Room One—1100 L Street N.W., Washington, D.C. 20573-0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Transpacific Trades Malpractices
2. Service Commitments and Damage Provisions in Service Contracts-Circular Letter 1-89.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-28828 Filed 12-6-89; 2:10 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 13, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Streeet entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28790 Filed 12-5-89; 5:00 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on December 15, 1989. The meeting will commence at 9:30 a.m. and continue until all official business is completed.

PLACE: Old Towne Holiday Inn, Brent Room I & II, Fifth Floor, 480 King Street, Alexandria, VA 20314, (703) 549-6080.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)]].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —December 1, 1989
3. Discussion of LSC FY 1991 Budget Proposals and Action Thereon.
4. Discussion of FY 1990 Appropriations Act and Action Thereon.
5. Report and Action on Requests for Emergency Funding.
6. Review of Office of the Inspector General, Compliance with Inspector General Act Amendment of 1988 and Public Law 95-452, and Activities of Inspector General to Date.
7. Performance Appraisal of President Wear and Action Thereof.
   a. Accomplishments.
   b. Report and Accounting of Use of Outside Law Firms by Corporation Staff.
   c. Report and Accounting of Pursuit of Lobbying Activities by Corporation Staff.
8. Discussion and Action on Whether Corporate Resources Should Continue To Be Expended in Pursuant of Lobbying the Executive As To Nominees For the Board of Directors of the Legal Services Corporation.
9. Election of Board Chairman and Vice Chairman for 1990.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: December 6, 1989.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 89-28908 Filed 12-6-89; 3:58 pm]

BILLING CODE 7050-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, December 14, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Actions Under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Operational Modifications for the Office of Inspector General. Closed pursuant to exemption (2).
5. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-28896 Filed 12-6-89; 2:14 pm]

BILLING CODE 7535-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:18 p.m. on Tuesday, December 5, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clark (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8) and (c)(9)(A) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Dated: December 5, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-28833 Filed 12-6-89; 2:11 p.m.]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), Notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 2:15 p.m. on Tuesday, December 12, 1989, to consider the following matters:

Summary Agenda

No Cases

Discussion Agenda

A. Resolution Program for Minority Institutions

This program implements provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") to encourage the continued minority ownership of failed minority-owned thrift institutions.

B. Minority and Women Outreach Contracting Program

This program implements provisions of FIRREA to ensure that minority- and women-owned companies or individuals are given the opportunity to participate fully in all contractual activities that the Corporation enters into for the goods and services required to manage and dispose of assets acquired from failed thrift institutions.

C. Memorandum re: Severance Pay Policy for Conservatorship Employees

RTC's policy regarding severance pay agreements made between the Federal Savings and Loan Insurance Corporation and employees of savings and loan associations placed into conservatorship.

D. Memorandum re: Indemnification Policy For Conservatorship Employees

RTC's policy for indemnifying employees handling the disposition of assets for savings and loan associations placed into conservatorship.

E. Standards of Conduct for RTC Employees

Proposed rules governing conflicts of interest, ethical responsibilities, and post-employment restrictions for RTC's Board members, officers, and employees.

The meeting will be held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898-3604.

Dated: December 5, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-28835 Filed 12-6-89; 2:13 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 217
Friday, December 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1802]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Correction

In notice document 89-28114 beginning on page 49796 in the issue of Friday, December 1, 1989, make the following correction:

On page 49797, in the first column, in the eighth line, the deadline for filing petition oppositions should read "December 18, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 89N-0326]

Antibiotic Drugs; Cefuroxime Sodium Injection

Correction

In rule document 89-23214 beginning on page 40653 in the issue of Tuesday, October 3, 1989, make the following correction:

§ 442.18 [Corrected]

On page 40654, in the first column, in the section heading, "89Cefuroxime" should read "Cefuroxime".

BILLING CODE 1505-01-D

federal register

Friday
December 8, 1989

PART II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91
Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91

[Docket No. 26078; Notice No. 89-32]

RIN 2120-AC67

Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to require installation of shoulder harnesses at all seats of rotorcraft manufactured after 1 year after publication in the **Federal Register** of any final rule resulting from this notice. This notice responds to a safety recommendation from the National Transportation Safety Board (NTSB) and would enhance protection of occupants in rotorcraft. Similar rules have been adopted for certain small airplanes.

DATES: Comments must be received on or before June 6, 1990.

ADDRESSES: Comments on the notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC-10), Docket No. 26078; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26078. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. H. Major, Rotorcraft Directorate, ASW-111, Aircraft Certification Service, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates and benefit estimates. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statment is made: "Comments to Docket No. 26078." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, attn: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background and Explanation

This notice proposes amendments to parts 21, 27, 29 and 91 of the Federal Aviation Regulations (FAR) to require installation and use of shoulder harnesses (also called upper torso restraints) at all seats of U.S. civil rotorcraft, manufactured after 1 year after publication in the **Federal Register** of any final rule resulting from this notice, regardless of the original type certification basis. Based on past experience, the FAA believes that a 1-year period would provide industry adequate time to design, fabricate, and install the proposed shoulder harnesses.

This notice responds to NTSB Safety Recommendation No. A-85-70 to enhance protection of rotorcraft occupants during a minor crash landing as presently defined in the standards of §§ 27.561 and 29.561. Copies of this recommendation and two other associated recommendations are contained in the docket for this notice. Similar standards for shoulder harnesses in certain small airplanes were adopted by amendments 21-58, 23-32, and 91-191 (50 FR 46872; November 13, 1985).

Amendments 27-21 and 29-24 (49 FR 44422; November 6, 1984) revised §§ 27.785 and 29.785 to require a safety belt and harness for each crewmember seat or for each seat beside a crewmember seat (front seat occupants) for new rotorcraft designs for which an application for type certification was submitted after December 6, 1984. Design and performance standards for the safety belt and harness were included in the amendments. A 60/40 percent distribution of the occupant restraint loads was adopted in amendments 27-25 and 29-29 (54 FR 47310; November 13, 1989). The NTSB recommends additional standards (Recommendation No. A-85-70) requiring a safety belt and harness at all seats of normal and transport category rotorcraft manufactured after December 31, 1987. Newly produced, but older designs, would be equipped with a shoulder harness at each seat regardless of the seat location and orientation in the rotorcraft. For example, a side- or aft-facing seat would be equipped with a harness.

Amendment 91-191 revised § 91.14(a)(1), (2), and (3) to address mandatory use of shoulder harnesses in an aircraft whenever they are installed (whether optional or required equipment). Section 91.14 has been recently redesignated as § 91.107 by amendment 91-211 (54 FR 34284; August 18, 1989). This operating rule also applies to rotorcraft, since rotorcraft are aircraft, and would not be changed. Shoulder harnesses have been installed in rotorcraft for many years as optional and also as required equipment because of certain aircraft design features. Section 91.205 would be amended by adding a new paragraph (b)(16) to complement proposed new §§ 27.2 and 29.2. Proposed new §§ 27.2 and 29.2 would require a shoulder harness for each seat, regardless of location and orientation, in U.S. civil rotorcraft manufactured 1 year after publication in the **Federal Register** of any final rule resulting from this notice. TSO-C114 prescribes minimum performance standards for a safety belt and shoulder harness. This TSO would be an acceptable standard.

The revisions adopted in amendments 27-25 and 29-29 improve occupant protection for certain survivable normal and transport category rotorcraft landing impacts and apply to wholly new rotorcraft designs. The objective of the proposals in this particular notice is to respond to NTSB Recommendation No. A-85-70, which applies to existing designs. This notice responds to this NTSB recommendation except the compliance date would be 1 year after publication in the **Federal Register** of any final rule resulting from this notice, rather than December 31, 1987.

Seat Standards

The airworthiness standards in parts 27 and 29, through amendments 27-21 and 29-24, require shoulder harnesses and safety belts for the front seat occupants of rotorcraft. Safety belts and shoulder harnesses or equivalent provisions that protect the other occupants from head injury due to injurious objects are required by §§ 27.785(b) and 29.785(b). These standards apply to wholly new rotorcraft designs and not to newly manufactured aircraft of previously certificated designs.

Prior to amendments 27-21 and 29-24, safety belts were specifically required for all seats. Shoulder harnesses could be installed as a requirement for certification of a particular rotorcraft design or as an optional feature as mentioned before. Many rotorcraft designs are presently equipped with approved harnesses for the front seats. These safety belts and harnesses meet or exceed the strength standards specified in parts 27 and 29 until amendments 27-25 and 29-29 were effective. These strength standards are 4g's down and 4g's forward and also describe, in part, minor crash conditions. These minor crash conditions were not changed from the rotorcraft standards adopted in Civil Air Regulations (CAR) part 6 of January 1951 and part 7 of August 1956 until amendments 27-25 and 29-29 were effective. CAR part 6 contains normal category rotorcraft standards and CAR part 7 contains transport rotorcraft standards. The normal vertical limit and ultimate landing load factors, derived from the prescribed vertical velocity limit landing impact condition, such as 6.55 feet per second (fps) minimum, may override the 4g minor crash (vertical impact) landing condition stated. A flight vertical ultimate load factor prescribed by either § 27.337 or § 29.337 may also override this 4.0g vertical down factor. In summary, the rotorcraft capabilities or characteristics, in many cases, result in occupant seat and belt design standards that exceed the empirical minor crash landing standards that predate amendments 27-25 and 29-29; e.g., 4.0g's down.

Studies

Various studies of small airplane and rotorcraft accidents have been made. One such study is Report No. DOT/FAA/CT-85/11, Analysis of Rotorcraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria, June 1985, contained in the docket for this notice. This report indicates that installation and use of a shoulder harness at each seat of civil rotorcraft designed to comply with the present strength standards such as 4g's down or limit vertical descent speed of 6.5 fps would enhance safety of the occupants.

According to the data in Table 12 and Figure 7 of Report No. DOT/FAA/CT-85/11, 52 percent of survivable rotorcraft accidents occur at less than 6.5 fps vertical impact velocity. According to the data in Table 13 and Figure 9 of the report, 63 percent of the survivable accidents occur at less than 7 fps longitudinal impact velocity. In addition, the report indicates (Figure 23) that approximately 8 percent of the occupants may experience a spinal injury for a vertical impact of 6.5 fps.

Installation and use of a shoulder harness that restrains the occupant from potential secondary impact, and that properly supports the upper torso for the vertical impact loads, when used in conjunction with a safety belt that is designed to the minor crash condition airworthiness standards, should enhance safety of the occupants in 52 to 68 percent of rotorcraft impacts. The use of a harness may alleviate the 8 percent occurrence of the potential spinal injuries associated with vertical impact cases of 6.5 fps or less.

Economic Impact

The following is a summary of the preliminary industry cost impact and benefit evaluation or analysis of the proposed amendments. The estimates in this regulatory evaluation are based on the best information currently available to the FAA. The FAA finds that, with the exception of §§ 21.17 and 21.101, the proposals in this notice would result in increased costs to rotorcraft manufacturers and operators. The proposed amendments to §§ 21.17 and 21.101 merely make those sections consistent with the addition of proposed new §§ 27.2 and 29.2. For the purpose of this economic analysis, §§ 27.2, 27.785, and 91.205 have been examined as if they were a single proposal affecting the manufacture and operation of part 27 normal category rotorcraft. Similarly, §§ 29.2, 29.785, and 91.205 have been examined as if they were a single proposal affecting the manufacture and operation of part 29 transport category rotorcraft.

Expected Benefits and Costs

Adoption of the proposals would be cost effective for both parts 27 and 29 rotorcraft. The expected benefit, in excess of expected manufacturing and aircraft operation costs, over the lifetime of a seat in a rotorcraft, is $2,071 for each part 27 seat manufactured pursuant to the proposal and $966 for each part 29 seat. A sensitivity analysis shows that benefits exceed costs even when worst-case assumptions are used for certain key cost and benefit parameters.

The benefits expected from this rule, if adopted, are benefits to society derived from the value of fewer fatalities and less severe injuries from survivable rotorcraft accidents. Benefits per rotorcraft seat were estimated based on (1) accident rates; (2) fatality and injury rates and the reductions that can be expected in those rates due to harness usage; and (3) the value of reduced injuries and fatalities per accident and over the life of the seat. Survivable accident rates for rotorcraft were calculated using NTSB accident data. Injury and fatality rates with and without shoulder harnesses were estimated from both NTSB accident data and a technical study of accidents contained in Report No. DOT/FAA/CT-85/11 noted previously. The benefit accruing to a seat due to a single accident occurring sometime during the life of the seat was estimated by (1) considering the probability that such an accident would occur at all; (2) apportioning the single-accident benefit over the seat's lifetime by the probability that the single accident will occur in each particular year; and (3) calculating the discounted sum of benefits over the life of a seat (assuming a 10 percent discount rate and a 30-year useful seat life). This resulted in an estimated economic benefit to society over the life cycle of a seat manufactured pursuant to this rule, if adopted, of $2,194 per seat for part 27 rotorcraft and $1,288 per seat for part 29 rotorcraft.

The cost parameters identified for manufacturers and operators consist of (1) one-time only costs (i.e., conducting the initial design, development, and testing; acquiring and installing a shoulder harness/lap belt combination instead of a lap belt only; and strengthening freestanding seats and other seats to support a harness); (2) occasional costs (i.e., maintaining and replacing a harness combination); and (3) annual operating costs (i.e., the fuel consumption and reduced payload associated with the weight penalty of the harness installation). The expected costs, summed and discounted over the expected life of a seat, are estimated to total approximately $123 and $322 per seat for parts 27 and 29 rotorcraft, respectively. Thus, the expected benefits less expected costs of the proposed rule

are $2,071 ($2,194–$123) for part 27 rotorcraft and $966 ($1,288–$322) for part 29 rotorcraft.

The FAA appreciates the effect of potential variations of the expected reduction in fatalities and injuries (benefits) and the expected cost of these changes when implemented. The agency has analyzed the sensitivity of the key assumptions and variables. The values of 18 key parameters were decreased by 20 percent and the resulting percent changes in net benefit were calculated. Only 4 of the 18 parameters were determined to have high sensitivities: The harness utilization rate, the number of seats per rotorcraft, the annual probability of having a survivable injury accident, and the proportion of active rotorcraft. Extreme yet reasonable values for these four parameters and the weight and penalty were then tested. For example, the harness utilization rate of 100 percent was replaced with a rate of 84.6 percent, based on estimates by Simula, Inc., Tempe, Arizona, for the mid 1970's. The weight penalty was tripled as an extreme, worst-case assumption. The other three parameters were similarly changed to reflect the worst case. In all five cases, benefits still exceeded costs for both part 27 and part 29 rotorcraft even under worst-case assumptions. A copy of the preliminary regulatory evaluation is in the docket for this notice.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the proposed amendments to parts 21, 27, 29, and 91 would not have a significant economic impact, negative or positive, on a substantial number of small entities.

The proposed rules would directly affect rotorcraft manufacturers and rotorcraft operators. The FAA "small entity"-size standards criteria adopted per the RFA define a small helicopter or aircraft parts manufacturer as an independently owned and managed firm having fewer than 75 employees. Under this size standard criterion, only 3 of the 11 helicopter manufacturers in business today are small entities. Accordingly, the proposed amendments to parts 27 and 29 contained in this notice will not impact a substantial number of small entities.

The proposed rule would affect those commercial rotorcraft operators purchasing newly manufactured rotorcraft. The FAA classifies an operator of aircraft for hire as a small entity, hereafter called "small operator," if the operator owns, but not necessarily operates, nine or fewer aircraft. The FAA's threshold criteria for significant economic impact vary according to the aircraft used and the kind of service provided. For example, the annualized cost threshold for a small entity that operates aircraft for hire in nonscheduled service is less than $3,600, whereas in scheduled service it is $51,000.

The total lifetime increase in the operating cost of rotorcraft that comply with the proposed rules is estimated at approximately $71 per normal category rotorcraft and $463 per transport rotorcraft. If a small operator were to purchase nine new part 27 rotorcraft (that comply with the proposed rules) within a 10-year period, the total cost increase resulting from the proposals is estimated to be $639, which is substantially less than either $3,600 or $51,000. A small operator with part 29 transport rotorcraft would only exceed the cost threshold of $3,600 by $104 if the operator replaced at least eight transport rotorcraft of a fleet of nine over a 10-year period. This occurrence would be very unlikely. Nevertheless, if this did occur among all present small U.S. operators with eight to nine transport rotorcraft, only 106 small operators would be affected which is considerably less than one-third of the 810 small U.S. operators. Accordingly, the FAA has determined that the proposed rules would not have a significant impact on more than one-third (i.e., will not impact a substantial number) of the small commercial rotorcraft operators.

International Trade Statement

The additional cost imposed by these proposals, if adopted, is not likely to result in a competitive trade disadvantage or advantage for U.S. manufacturers in domestic or foreign markets. This conclusion is based on the fact that foreign manufacturers must comply with the certification standards of parts 27 and 29 as a condition to entry into U.S. markets. Considering the size of the U.S. market, foreign manufacturers are likely to comply with certification standards of the United States which is the largest segment of their export market. Further, foreign and U.S. rotorcraft manufacturers are expected to pass any new certification costs on to consumers in their respective domestic and foreign markets.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR

Part 21

Air transportation, Aircraft, Aviation safety, Safety.

Parts 27 and 29

Aircraft, Aviation safety, Safety, Air transportation, Rotorcraft.

Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 21, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR parts 21, 27, 29, and 91) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 21.17 [Amended]

2. By amending § 21.17 by adding ", §§ 27.2, 29.2," immediately after "25.2" in the introductory text of paragraph (a).

§ 21.101 [Amended]

3. By amending § 21.101 by adding ", §§ 27.2, 29.2," immediately after "§ 25.2" in the introductory text of paragraph (a).

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

5. By adding a new § 27.2 after § 27.1 and before the heading **"Subpart B—Flight"** to read as follows:

§ 27.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), or any such foreign manufactured rotorcraft for entry into the United States, must meet the requirements of § 27.785(b) and (c) in effect (30 days after publication of the amendment in the **Federal Register**). For the purpose of this paragraph, the date of manufacture is—

(a) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(b) In the case of a foreign-manufactured rotorcraft, the date the foreign civil airworthiness authority certifies the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

6. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

7. By adding a new § 29.2 after § 29.1 and before the heading **"Subpart B—Flight"** to read as follows:

§ 29.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), or any such foreign manufactured rotorcraft for entry into the United States, must meet the requirements of § 29.785(b) and (c) in effect (30 days after publication of the amendment in the **Federal Register**). For the purpose of this paragraph, the date of manufacture is—

(a) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(b) In the case of a foreign manufactured rotorcraft, the date the foreign civil airworthiness authority certifies the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. By amending § 91.205[1] by adding a new paragraph (b)(16) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

* * * * *

(b) * * *

(16) For rotorcraft manufactured after (1 year after publication of the amendment in the **Federal Register**), a shoulder harness for each seat that meets the requirements of § 27.785(b) and (c) or § 29.785(b) and (c) of this chapter in effect (30 days after publication of the amendment in the **Federal Register**).

* * * * *

Issued in Washington, DC, on November 30, 1989.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 89–28554 Filed 12–7–89; 8:45 am]

BILLING CODE 4910-13-M

[1] Note: This amendment would affect § 91.205 which becomes effective August 18, 1990 (see 54 FR 34284, August 18, 1989).

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federal register

Friday
December 8, 1989

Part III

Department of Commerce

National Telecommunications and Information Administration

Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum; Notice of Inquiry and Request for Comments

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: NTIA is conducting a comprehensive policy review of the use and management of the radio frequency spectrum in the United States. Public comment is requested on issues relevant to such a review. After analyzing the comments, NTIA intends to issue a report, which may propose changes in the rules and regulations governing spectrum allocation and assignment.

DATES: Comments should be filed on or before February 23, 1990, and reply comments should be filed on or before March 30, 1990, to receive full consideration.

ADDRESSES: Comments (seven copies) should be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room 4725, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph L. Gattuso, Office of Policy Analysis and Development, 202–377–1880, or Michael Allen, Office of Spectrum Management, 202–377–0805.

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I. Introduction

1. The National Telecommunications and Information Administration (NTIA) is the Executive Branch Agency principally responsible for developing and articulating domestic and international telecommunications policies. Under Executive Order 12046, NTIA acts as the principal adviser to the President on telecommunications policies. Accordingly, NTIA conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities, and presents Executive Branch views on telecommunications matters to the Congress, the Federal Communications Commission (the FCC), state and local governments, and members of the public.

2. NTIA is undertaking a comprehensive policy review of the use and management of the radio frequency spectrum in the United States. NTIA has previously analyzed many aspects of spectrum use and management, both in the context of particular allocation and assignment decisions and as part of its long-range planning responsibility. This review, however, is the first major examination of fundamental spectrum policy objectives and issues by NTIA since its organization in 1978.

3. The value of spectrum, as an invisible resource, is sometimes overlooked. Yet over the years, demand for spectrum for both commercial and governmental purposes has continued to increase. Spectrum use underlies some of the most competitive and technologically sophisticated industries in the United States and is of great importance to the national economy. Radio communications and detection equipment shipments in the United States were valued at $54 billion in 1988,[1] and represent only a portion of industries that could be considered spectrum-related. For example, spectrum provides the backbone for many consumer and business services, including radio and television broadcasting, cellular telephones, and taxicab dispatch and other radio-based services. As a result, the effective use and management of the spectrum will increasingly play a critical role in promoting U.S. economic well-being and global competitiveness. In light of this, we request information on the role of spectrum use and management in the U.S. economy.

4. In addition, many key government services rely on the use of the spectrum to control air traffic; aid the public in law enforcement, public safety, and disaster relief; contribute to national security through command and control of military forces; protect our national parks and forests; and assist in the goals of the national space program. Clearly, in light of the broad range of critical public and private activities dependent on the spectrum, the effective use and management of this valuable and scarce resource should be a national policy objective.

5. Historically, U.S. spectrum management policies were designed to minimize interference among different radio systems and to create an efficient structure in which demand for spectrum could be met. Over time, the process has become increasingly complex as it has sought to accommodate a growing and increasingly diverse set of competing user demands and policy objectives. Ideally, spectrum policies should provide incentives for efficient use of the spectrum resource. At the same time, the spectrum management system should respond flexibly to changes in demand and technology. In particular, it should permit the rapid introduction of new services as they are developed. Finally, the system must also accommodate important public services, such as national defense, public safety, and law enforcement, among others.

6. While spectrum management in the United States continues to accommodate new users and telecommunications technologies, it does so through a variety of overlapping jurisdictions, processes, and standards. There is growing concern in the spectrum policy community that the present system may not always be operating in the most effective, efficient, and equitable manner. Accordingly, NTIA believes the U.S. spectrum management system should be reviewed, and potential improvements developed and evaluated, particularly in light of increases in the demand for

[1] By comparison, the total cost of plant added in 1988 by local exchange carriers reporting to the FCC was $17.9 billion, and the total revenues of those carriers were $81.5 billion. (Unpublished data from FCC's Common Carrier Bureau, Industry Analysis Division.)

spectrum, rapidly changing developments in spectrum-related technology, and the new forms of spectrum management implemented in other countries.

7. Specific controversies pervade the spectrum management process, including whether or how much additional U.S. spectrum should be allocated for land mobile radio or "personal communications"; whether current use of the UHF television band should be amended to include additional sharing with land mobile and other services; and whether additional spectrum is required for Advanced Television (ATV). While we anticipate that comments on this Notice will address such conflicts, this study will focus on the broader and fundamental issues of spectrum management that underlie such conflicts, such as whether the current system has been successful in apportioning the spectrum resource in a way that achieves the greatest value for society; how Government and non-Government uses of the spectrum could be better coordinated and shared; and whether certain current uses of the spectrum might be more appropriate for other media, particularly in light of technological advances such as fiber optic cable. As discussed in detail below, we seek specific comments on these issues.

II. Background: Radio Frequency Use and Management

8. Spectrum management comprises two fundamental activities: (1) allocation—determining *how* a particular radio frequency band should be used by the various radio services; and (2) assignment—deciding who is authorized to use a discrete radio frequency or frequency channel under specified conditions.[2] As a resource, the spectrum has two characteristics that affect its management. First, given a specific level of technological development, the portion of the spectrum suitable for radiocommunication and other applications is finite, but can be re-used throughout the world with proper coordination and management. Second, the physical properties of various portions of the spectrum make some portions more suitable than others for specific communications functions.[3] As a result, demand for the use of some portions may be quite high, while other portions of the spectrum may be unused.

9. Historically, the spectrum has been treated as a public resource, subject to extensive management on both a national and international scale. Three major entities directly affect use of spectrum in the United States: The FCC, NTIA, and the International Telecommunication Union (ITU). The ITU establishes treaty-level obligations that affect both the nature and timing of any changes to domestic spectrum use. For example, the ITU classifies uses of the radio spectrum into 34 "Radio Services" (e.g., Broadcasting, Land Mobile, and Fixed). The International Table of Frequency Allocations represents the consensus of ITU member administrations, including the United States, regarding the frequency bands that specific services should use and acts as guidance for national plans of member nations.[4]

10. The FCC and NTIA share the ongoing U.S. spectrum management responsibilities. NTIA manages the Federal Government ("federal") uses, and the FCC manages all other U.S. uses, including state and local government ("non-federal" or "private sector").[5] This jurisdictional division, established under the Communications Act of 1934,[6] has a direct effect on the way spectrum is used and managed in the United States. Many formal and informal linkages exist between the FCC and NTIA in spectrum management, to determine the services in U.S. frequency bands through the National Table of Frequency Allocations. The most extensive is within the Interdepartment Radio Advisory Committee (IRAC) forum, which NTIA chairs.[7] The FCC has a liaison representative to the IRAC and the IRAC's major subcommittees. The FCC coordinates with the IRAC on non-federal spectrum issues that involve shared or exclusive federal bands or in bands where there might be an impact on or from federal operations.

11. Problems arise when there appear to be insufficient resources available to meet all requirements. This leads to questions as to whether the current system is sufficiently flexible to meet demands of accelerating technological developments, or whether alternative systems of allocating and assigning spectrum might better meet these demands. In addition, there are questions about how to encourage efficient technologies, whether the current organizational structures are adequate, and what planning techniques can be developed to help identify and meet future requirements. The following paragraphs discuss these issues in greater detail and request comment.

III. Areas of Inquiry

A. The Regulatory Process

1. Domestic Structure

12. NTIA relies heavily on advice from the IRAC to manage federal use of the spectrum.[8] Each federal agency (as with private sector spectrum users) usually has a direct interest in only limited portions of the spectrum. For example, some federal agencies operate extensive land mobile networks, but have only minor interests in other uses of the spectrum, while other agencies have extensive interests in radionavigation and radiolocation applications.

13. The FCC's operating bureaus manage non-federal spectrum for the numerous services within their jurisdictions.[9] For example, the Mass Media Bureau manages the licensing process for broadcasting spectrum, the Common Carrier Bureau manages the process for cellular radiotelephone licenses, and the Private Radio Bureau manages the process for non-common-carrier land mobile systems. The Field Operations Bureau performs

[2] An authorization given by the FCC for operation on a specified frequency is known as a "license." The term "assignment" will generally be used in this document for clarity in describing both federal and non-federal spectrum uses.

[3] Largely because of physical characteristics such as propagation path loss, and technological factors, such as availability (or lack thereof) of high-powered amplifiers, some parts of the spectrum are more suited and desirable for some telecommunications applications than others. For example, operations at frequencies above 20 GHz are susceptible to higher propagation path loss plus potential losses due to precipitation. In addition, amplifier technology is not as advanced as it is in lower bands. As a result, for example, bands above 20 GHz are not as suited or desirable for terrestrial television as are the VHF or UHF bands. Thus, frequency bands, particularly when they differ by several orders of magnitude, are not always interchangeable for the same service.

[4] Each nation retains the right to depart from the guidance of the International Table of Frequency Allocations in meeting its particular needs, subject to interference considerations.

[5] The terms "Government" and "Non-Government" are usually employed to express this division. Since the NTIA manages Federal Government spectrum use only and the FCC manages state and local government spectrum use, the terms "federal" and "nonfederal" will generally be used in this Notice.

[6] 47 U.S.C. 305.

[7] The IRAC provides advice to NTIA on federal spectrum management issues. See *infra*, note 8.

[8] The role of the IRAC was recognized in Exec. Order 12046, 3 CFR, 1978 Comp. 158, reprinted in 47 U.S.C. 305 app. at 115 (1988). The IRAC advises NTIA on a wide variety of spectrum management issues. One IRAC subcommittee advises NTIA on which frequency assignment requests it should grant. Another provides advice on whether spectrum requirements for major new federal systems can be satisfied. A third develops and coordinates Federal Government technical standards. See generally, Manual of Regulations & Procedures for Federal Radio Frequency ("NTIA Manual") (May 1988), incorporated by reference into 47 CFR part 300.

[9] See generally, 47 CFR part 0, Commission Organization.

enforcement and other public contact information functions. The Office of Engineering Technology (OET) is responsible for coordinating, with NTIA, the development of national policies regarding use of the spectrum. OET also performs an international coordinating liaison function with the ITU. It develops non-federal, technical standards for the "type acceptance" of equipment and maintains the frequency assignment files for most non-federal assignments.[10]

14. Although the FCC's allocation and assignment processes can sometimes move quickly when all parties agree, these processes can be laborious and time-consuming when there is a dispute among the parties, as is frequently the case when the agency attempts to change the rules governing use of particular blocks of spectrum. For non-federal users, an FCC proceeding, which is governed by the Administrative Procedure Act, [11] and applies the "public interest" standard in allocating or assigning spectrum, can take years.[12] While regulatory procedures may serve an important purpose in ensuring due process and public participation in spectrum management, they may also act as unnecessary obstacles to radio service introduction, especially if regulatory procedures could address spectrum management concerns by other means. The assignment process is generally shorter than the allocation process, but can still be lengthy and can impose costs that affect the eventual development of a service. How could spectrum management procedures be streamlined to accommodate new services and technologies in a timely manner? What laws, regulations, or policies would have to be changed to do so?

15. In some cases, the FCC relies on private user groups for specific spectrum management functions. The FCC rules permit private groups to manage some assignments in the private land mobile radio service via certified coordinators.[13] In addition, coordination of frequency use by satellite earth stations in frequency bands shared with terrestrial microwave radio relay stations is performed by private companies. Such companies have developed extensive data bases, associated frequency management models, and automated coordination techniques. We invite parties to comment on the appropriate role of private groups and companies in spectrum management. How effective have these user groups been in equitably approving license requests for nonmembers? Should such user group frequency management be encouraged? Is it necessary to modify current processes so that the interests of parties not already using the spectrum are advanced? Could other types of services be managed through the use of private groups? What type of government oversight over such groups is needed?

16. The NTIA spectrum management process can be more rapid than the FCC process because NTIA manages fewer users and because NTIA's management procedures are not subject to the Administrative Procedure Act. The legal standards governing the FCC process provide for public comment and require the FCC to publish detailed rationales for its management decisions. On the other hand, the NTIA process is not open to the public because classified information may be involved.[14] Similarly, although NTIA rationales for its management decisions are generally provided to the IRAC, they are not published as public documents. Are the FCC and NTIA spectrum management processes effective and efficient? If not, what can be done to make them so? Should the NTIA process be more accessible to the private sector? How might this be done?

17. There is no direct avenue for private sector requests for use of federal spectrum. The current procedure is a two-step process: The private sector requests federal spectrum by contacting the FCC, which then requests such spectrum from NTIA. Should there be a formal procedure that addresses private sector requirements for federal spectrum?

2. Domestic Coordination

18. The jurisdictional division between NTIA and the FCC can make management of the spectrum complicated and possibly provides another obstacle to more efficient spectrum use. As previously discussed, there has been increased sharing of spectrum between jurisdictions. Nationally, the spectrum (up to 300 GHz) is allocated as follows: 1.4 percent is federal exclusive, 5.5 percent is non-federal exclusive, and 93.1 percent is shared between the two. When considering the more desirable spectrum below 30 GHz, about 7.5 percent is federal exclusive, 33 percent is non-federal exclusive, and 59.5 percent is shared.

19. It should be noted, however, that for many shared allocations, there are both primary and secondary services. Stations in the primary service have the highest rank. Stations in the secondary service cannot interfere with stations in the primary service or claim protection from such stations. In a shared band, the federal and non-federal allocated services may be both primary, or one primary and the other secondary.

20. While NTIA and the FCC expend considerable efforts on coordination of their spectrum activities, the division of management responsibilities between the two agencies can make efficient spectrum sharing more difficult in certain respects. For example, the absence of unified databases or a single source of information about spectrum use makes evaluations of such use more difficult. This split of jurisdiction and of information data bases also tends to make it more difficult for technology innovators and developers to find spectrum that might be used for a particular purpose, regardless of whether it is categorized as federal or non-federal.

21. NTIA seeks additional information on the strengths and weaknesses of the existing domestic coordination process as well as possible actions to correct any weaknesses. Parties should address in detail the administrative, economic, and technical factors that affect both perceived problems and possible solutions. Is the present sharing arrangement adequate to effectively manage the spectrum in a timely manner? If not, what improvements should be made? What steps should be taken to improve the process through which a potential new user can obtain information concerning the use or occupancy on specific frequencies or in the band(s) of interest? Should general data bases of frequency assignments and equipment characteristics be kept and made publicly accessible? Should there be a single authority to centralize or focus national telecommunications policy and coordination? If so, how should it be structured?

3. International Structure and Coordination

22. The ITU holds regional or world administrative radio conferences (RARCs or WARCs) to revise the International Table of Frequency Allocations and the rules, regulations, and procedures that have treaty status among the signatories of the ITU. International coordination of frequencies and satellite orbital positions are performed under the auspices of the ITU. We request comment on how this process could be improved.

23. Preparation of U.S. proposals and positions for ITU conferences is a multi-year process of negotiation and planning by U.S. organizations involved in spectrum use and management, including NTIA, the FCC, and the Department of State. The agencies coordinate closely in developing the U.S. positions and proposals. The FCC issues notices of inquiry to obtain public comments and normally establishes a public advisory committee for additional advice. NTIA prepares its proposals and positions through the IRAC. Is the present planning for U.S. participation in international conferences satisfactory for advancing U.S. positions relative to international spectrum policies? How could this process be improved? What are the alternative processes that could make the conference preparation and implementation more effective, timely, and efficient? How could the United States more effectively participate in the ITU?

24. Other international events also require the U.S. to plan carefully its spectrum management policies. For example, the European Community is implementing a program to harmonize internal markets by 1992. This is likely to have an impact on European positions and proposals for spectrum use and management. In addition, unification could strengthen European advocacy of specific proposals for international spectrum regulation and standards development. NTIA requests comment on the effects of such developments on U.S. spectrum policies.

B. "Block" Allocation System Issues

25. The International and National Tables of Frequency Allocation divide spectrum into "blocks" for use by particular radio services. Some advantages of the block allocation system are that it apportions spectrum to meet predicted future demand; allows relatively easy development of coordination procedures to avoid interference; increases design certainty for equipment manufacturers; and reserves spectrum for socially desirable, but otherwise uneconomic, uses. The block system also has the advantage of familiarity, since the allocations are well known, and its administration is proceeding on an ongoing basis, nationally and internationally.[15]

26. The block system also has several disadvantages, including a tendency to become rigid and difficult to change. This may retard innovation. There may be excess demand for spectrum in particular blocks or in particular geographic areas. In addition, once settled in a block, the same stability that allows design certainty for equipment manufacturers, entrenches user investment in the equipment needed for a particular service and commits use of that band to those services regardless of subsequent technological or marketplace developments. We ask parties to comment on the strengths and weaknesses of the block allocation system and to address the specific issues we raise below.

1. Impediments to Innovation

27. The current block allocation system is designed to provide simple technical and service rules for avoiding harmful interference. Since similar devices and radio services operate in a given allocation band, it is possible to establish a set of standard rules for their compatible development and operation. These rules permit straightforward management and use of the spectrum, since little or no interpretation or technical calculations are required to permit the interference-free operation of a new system. Over time, however, the rules become rigid and difficult to change to accommodate new technologies and services.

28. The current block allocation system operates with some flexibility through the use of "footnotes," which are exceptions to the allocations, and through accommodations performed on a case-by-case basis.[16] However, there is some question as to whether these measures address the needs of innovative services. How successfully does the current block allocation system accommodate growth of expanding and new services?

29. A rigid allocation structure can cause problems. New radio systems may be developed that, while more efficient, are not compatible with present systems, do not clearly fall into a single allocated service, or for which there is no suitable allocation at all. Restrictions in the current structure may cause users to operate out of band or to be denied use of the spectrum altogether. The frequency allocation process must be more responsive if it is to accommodate increasing demand and complexity of spectrum use as technology evolves. Would allocation flexibility improve if the definitions of certain radio services were amended? If so, which services? How should their definitions be amended?

30. A block allocation system can impose a considerable burden on the innovator—that is, the creator of a "new" radiocommunications service. The current system permits innovators to obtain experimental authorizations for developmental purposes. However, an innovator usually must determine what spectrum is potentially available in both the non-federal and federal sectors. Then, once the system is sufficiently developed, the innovator must petition for reallocation of the spectrum for the service, if necessary, and new service rules must be implemented before the product can be brought to market. Depending on the technical characteristics of the new service, spectrum may not be readily available. If so, the innovator must participate in an administrative process for reallocation of the spectrum. The outcome of such a proceeding is uncertain, and the innovator cannot be assured that any suitable spectrum will eventually be made available for the new service.

31. The accommodation of new technologies is particularly difficult when a radiocommunication application is developed that does not conform to one of the existing defined services. The existing users of the spectrum have little incentive to make room for such a new service. Examples are seen in the efforts to find spectrum for Lo-Jack [17] and

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[10] The Private Radio Bureau maintains the frequency assignment files for some non-federal assignments.

[11] 5 U.S.C. 551–59, 701–706.

[12] Cellular telephone service is an often cited example of the long time it takes to institute a new use of spectrum. The first proceeding to allocate spectrum for cellular telephony was commenced in 1968; the spectrum allocation was made in 1975, although the first commercial cellular license was not granted until 1981. As part of that process, for example, the comparative analysis of non-wireline cellular applications in the 30 largest markets consumed, on average, 412 days (13.7 months) from hearing designation to grant of a construction permit. See Rural Cellular Non-Wireline Licensing: Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation, 100th Cong., 2d Sess. 6 (1988) (testimony of G. Brock, FCC Common Carrier Bureau).

[13] See 47 CFR, part 90, subpart H, *Policies Governing the Assignment of Frequencies*. Congress recognized the role of advisory coordinating committees when it amended the Communications Act in 1982. 47 U.S.C. 332(b). Congress has encouraged the Commission to develop mechanisms to monitor the performance of coordinating committees. The FCC has undertaken several proceedings since 1982. See, *e.g.*, Notice of Proposed Rulemaking, *Frequency Coordination in the Private Land Mobile Radio Service*, PR Docket No. 88–548 (released August 15, 1989).

[14] The FCC represents the non-federal sector interests in the NTIA process.

[15] See, *e.g.*, A. Felker and K. Gordon, *A Framework for Decentralized Radio Service*, Federal Communications Commission, Office of Plans And Policy (September 1983); W. Longman, *Flexible Allocation of the Radio Spectrum*, in Telecommunication Journal, Vol. 55, no. X (1988) at [illegible].

[16] In recent years both NTIA and the FCC have addressed some congestion concerns by introducing additional flexibility in the way assignments are made in certain blocks. See *infra*, paras. 45–62.

[17] See Report and Order, *Amendment of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems*, Gen. Docket 88–566 (released October 16, 1989), otherwise known as "Lo-Jack."

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BETRS.[19] Another example of inflexibility in the allocation table occurs when a system is multiservice and capable of performing several functions.[19]

32. The current system may reduce incentives for the development of innovative, efficient, or new services. What types of services and users does the block allocation system favor? Which does it disadvantage? Can the process of introducing new and experimental systems be streamlined, particularly when a reallocation of spectrum would be required under the current system? If a new service is offered in a band that is allocated primarily for some other use, when should the service be moved? Alternatively, should the allocation be changed?

2. Excess Demand

33. Demand for a particular block of spectrum may exceed available supply in a given geographical area, especially in congested urban areas. For example, additional assignments within the VHF television allocation are not available in most metropolitan areas, a fact that cannot be changed without changing the underlying technical standards of the VHF television service. Similarly, the rapid growth in demand for services such as land mobile radio and cellular telephony, and the potential demand for an even greater number of mobile communications systems, places pressure on other allocations.[20] Does the block system adequately provide for future spectrum demand? What modifications might be desirable?

34. Most frequency blocks are allocated to the same services throughout the United States. Such allocations do not accommodate regional differences in spectrum use, and some blocks may be lightly used in certain geographic areas or at certain times of the day and heavily used in other areas or at other times. Moreover, lightly-used frequency blocks may not always be in the most desirable portions of the spectrum or in the geographic areas where overall demand for spectrum is greatest. What changes in the current system would enable it to more effectively accommodate regional, temporal, and other variations in spectrum usage?

3. Entrenched Technologies

35. In addition to limiting a service to a block of spectrum, the current system also tends to set *de facto* technical standards for equipment to be used in that block, based on the capabilities of the technology at the time the spectrum was allocated. A standard technology for a block provides certainty to equipment manufacturers and can result in heavy user investment in conforming equipment. Conversely, such standardization commits use of that band to that service. As a result, existing users may have few incentives to change to new, more spectrum-efficient technologies. The outdated technology thus becomes entrenched, since the current users would incur seemingly unwarranted costs to update their equipment. On the other hand, the costs to prospective users of introducing new technology can be high. The implementation of newer, more efficient communications systems can be hampered by the presence of older, less efficient ones. What is the effect of the current allocation system on such investment decisions?

36. Transitions from old to new technologies in specific bands do occur. In the land mobile services, conditions became sufficiently crowded and technology improved through the years that federal channel plans for using the allocated bands, which were initially based on 100 kHz channels, were modified to channels of 50 kHz, then 25 kHz and now 12.5 kHz. The initial 100 kHz channel width was the minimum width technologically feasible in the 1940s. However, the combination of advancing technology and crowded spectrum produced a pressure for more channels and hence a narrower channel width. There have been similar decreases in channel widths in the non-federal land mobile arena.[21] How can spectrum managers most efficiently expedite a transition from older, less efficient technologies, to newer, more efficient technologies under the existing block system? How could the current system be altered to encourage the deployment of "spectrum-conserving" technologies when crowding occurs? When new, more spectrum-efficient technologies or services are developed in bands where there is little crowding, should spectrum managers seek to force or encourage conversion to the new technology? What modifications to the present system would provide the right signals to spectrum managers and users to anticipate possible spectrum shortages in presently non-crowded bands and implement new technologies before shortages occur?

C. Alternatives to Apportioning and Valuing Spectrum

37. We recognize both the strengths and weaknesses of the existing allocation and assignment system and its usefulness in apportioning the spectrum resource. Apportionment [22] involves choosing among competing uses or users of the spectrum. While ideally the requirements of all spectrum users should be met, any spectrum management process explicitly or implicitly establishes priorities for spectrum use in apportioning usable spectrum. We seek to examine the criteria used in the present management system and alternative systems for making apportionment decisions.

38. We request information regarding alternatives to the present system for apportioning spectrum among competing uses and users, the current issues that such alternatives would address, and comparison of their costs and benefits. As part of such an analysis, we request information on the effects of changing the system on existing spectrum users. Should any new apportionment scheme be applied to the entire spectrum or only specific portions? What role would federal users play in any alternative allocation scheme? Should such a scheme be applied in exactly the same fashion to private and federal users? If not, what differences would apply? How would any alternative scheme preserve the strengths of the block allocation system—particularly its success in controlling interference and in promoting uniform national radio standards? Would gains in U.S. competitiveness result?

39. We also request parties to comment on the new spectrum management systems and techniques being introduced in other countries—such as New Zealand, Canada, and Australia.[23] What are the strengths and weaknesses of such systems? Could some or all of these techniques be adapted to the U.S. environment?

40. In addition, we invite parties to comment on what legal authority exists or would be needed to permit the FCC or NTIA to implement any proposed alternatives for apportioning spectrum. For example, would current statutory provisions provide the basis for implementing alternatives or would new statutory authority be necessary?

1. Present Apportionment Criteria: Equity Issues

41. Historically, the United States has managed spectrum for the public "in trust." Spectrum licensees under the Communications Act have been called "temporary permittees—fiduciaries—of this great public resource." [24] The Communications Act charges the FCC with determining whether a non-federal spectrum use serves "the public interest, convenience, or necessity." [25] An administrative finding of "the public interest" constitutes the primary formal standard for apportioning non-federal spectrum.

42. The Communications Act does not define the criteria by which the FCC is to judge the public interest; the FCC has broad discretion to elucidate and give specific content to the public interest standard.[26]

43. The specific criteria used by the FCC in making frequency assignments vary for the different services. For some services, such as private land mobile radio below 800 MHz or the amateur radio service, users are not assigned use of a frequency, there are no set limits on the number of applicants, and there are no competing applications for licenses.[27] Where there are competing applications for an exclusive license in a particular service, the FCC primarily uses two procedures for making assignments: comparative hearings [28] and lotteries.[29] The comparative hearing procedure, used for broadcast licenses, considers public interest factors such as "diversification of control" and "best practicable service to the public." [30] The lottery process was adopted both to expedite the assignment process and to choose fairly among applicants.[31] To date it has been employed for such services as cellular telephone, low power television, and specialized mobile radio.[32] Under the current U.S. spectrum management system, the FCC makes spectrum assignments essentially without charge to users, although it assesses certain administrative and other license fees to applicants for certain radio services.[33]

44. NTIA apportions spectrum among federal users with the advice of the IRAC.[34] The basic role of representatives appointed to serve on the IRAC is to function "in the interest of the United States as a whole." [35] The IRAC negotiates a consensus among the various federal agencies, taking guidance from the goals, and in accordance with the procedures, set forth in the NTIA manual.[36] NTIA assigns spectrum to federal users with no charges or fees.

45. NTIA seeks comment on the current criteria for apportioning spectrum. Do these criteria provide for the efficient and fair use of spectrum? Is demand for spectrum being met? In what spectrum bands is demand not being met? What particular services require additional spectrum? Are new services and users being accommodated?

After several years with an experimental license, the FCC granted the Lo-Jack system an allocation (by footnote to the allocation tables) on a co-primary basis with federal users in a previously exclusive federal land mobile allocation. This was after the FCC determined that it could not find a suitable nationwide allocation in non-federal allocations and NTIA provided federal spectrum for use on a permanent basis.

[18] Report and Order, *In the Matter of Basic Exchange Telecommunications Radio Service*, 3 FCC Rcd 214 (64 Rad. Reg.2d (P&F) 368) (1987) (referred to as "BETRS"). A BETRS system is used to extend basic telephone service to areas where, because of factors such as remoteness and geography, it is prohibitively expensive to provide such services over wires. The BETRS decision allowed Rural Radio Services (RRS), of which BETRS is a part, to construct radio loops between fixed subscriber points using frequencies allocated for land mobile use. RRS was upgraded to a co-primary user in two separate Public Land Mobile Service (PLMS) bands.

[19] Some new radars are used for both radiolocation and radionavigation functions. The radar may be able to operate in a radiolocation band on a primary basis, but its radionavigation functions would be on a non-interference basis only.

[20] An example of this type of pressure over the years is reflected in the FCC's decisions to increase sharing and reallocate use of the UHF broadcasting spectrum to help relieve congestion in land mobile bands. In 1970, the FCC approved sharing of broadcast channels 14–20 with land mobile. First Report and Order, *Land Mobile UHF-TV Channel Sharing*, Docket No. 18261, 23 FCC 2d 325 (19 Rad. Reg.2d (P&F) 1585) (1970), and reallocated channels 70–83 exclusively to land mobile. First Report and Order and Second Notice of Inquiry, *Future Use of the Frequency Band 806–960 MHz*, Docket No. 18262, 35 FR 8644 (18 Rad. Reg 2d (P&F) 1663) (1970). In 1985, the FCC proposed further sharing of the UHF broadcast spectrum, again to relieve congestion in the private land mobile frequency bands, particularly in the nation's largest metropolitan areas. In 1987, broadcast interests successfully petitioned the FCC to delay making a decision on further sharing of the UHF broadcasting band pending the completion of the FCC's ATV inquiry. Order, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Service*, 2 FCC Rcd 6441 (63 Rad. Reg. 2d (P&F) 1695) (1987).

[21] Some private land mobile services currently use 12.5 kHz bandwidths. Both government and private sector land mobile users are testing 5 kHz "narrowband" technologies.

[22] The term "apportionment," as used in this paper, refers to the overall process of spectrum resource distribution and as such, subsumes both "allocation" and "assignment."

[23] *See infra*, note 62, regarding innovative spectrum management in Canada, New Zealand and Australia.

[24] *Office of Communications of the United Church of Christ* v. *FCC*, 425 F.2d 543, 546 (D.C. Cir. 1969) (broadcast regulation).

[25] See 47 U.S.C. 303, 307, 309(a), 310(d).

[26] See, *e.g.*, *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981).

[27] For a discussion of sharing in the private land mobile radio services, see Report and Order, *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC 2d 1093, 1095 (60 Rad. Reg.2d (P&F) 41) (1986).

[28] 47 U.S.C. 307, 309(e); *see also Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945); *Johnston Broadcasting* v. *FCC*, 175 F.2d 351 (D.C. Cir. 1949).

[29] 47 U.S.C. 309(i). The FCC first employed lotteries in 1983 to process cellular telephone and low power television applications, and has increased the number of services licensed by random selection. In March 1989, the FCC proposed to introduce lottery procedures to the assignment of radio and television licenses. *Amendment of the Commission's Rules to Allow the Selection from Among Competing Applicants for New AM, FM, and Television Stations by Random Selection (Lottery)*, MM Docket No. 89–15, 4 FCC Rcd 2256 (1989).

[30] Using the comparative criteria, an administrative law judge must compare applicants and award preferences that ultimately will decide the assignment. The basic elements upon which evidence is taken at a comparative hearing were established in the FCC's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (5 Rad. Reg.2d (P&F) 1901) (1965). Six specific factors are discussed in the *Policy Statement*: (1) Diversification of control of the media of mass communications, (2) full time participation in station operation by owners, (3) proposed program service, (4) past broadcast record, (5) efficient use of frequency, and (6) character. See also *West Michigan Broadcasting Co.* v. *FCC* 735 F.2d 601, 604–605 (D.C. Cir. 1984) *cert. den.* 470 U.S. 1027 (1985). In addition, the Commission considers other factors in the comparative setting, including minority or female ownership, which were added by case law. *See, e.g., TV 9, Inc.* v. *FCC*, 495 F2d 929, 936–938 (D.C. Cir. 1973) *cert. den.* 419 U.S. 986 (1974). (merit for minority ownership). *Winter Park Communications, Inc.* v. *FCC*, 873 F.2d 601

[31] Under 1982 legislation, preferences may be awarded to applicants who would increase the diversification of ownership of mass media communications and additional significant preferences awarded to applicants controlled by members of minority groups. 47 U.S.C. 309(i)(3)(A).

[32] In the past decade, the FCC has moved away from pervasive management of non-federal spectrum through such deregulatory initiatives as giving operational and technical flexibility to licensees and by permitting frequency coordination by private organizations and privately negotiated interference agreements. See *infra*, para. 45–52 and *supra*, para 15. For an extensive discussion of recent FCC deregulatory measures, see D. Webbink, "Spectrum Deregulation and Market Forces," paper presented at a conference on "The Consequences of Current US Electromagnetic Spectrum Allocation Policies and Processes," Center for Telecommunications and Information Studies, Columbia University, (October 14, 1988, revised July 8, 1989).

[33] See generally, 47 CFR 1.1101 *et seq*. In addition, there may be costs incurred in securing a license (e.g., engineering and legal fees).

[34] See Exec. Order 12046, *supra*, note 8; see also NTIA Manual, *supra*, note 8, at 1.2, 1.3.

[35] NTIA Manual, *supra*, note 8, at 1.3.4, 1.4.2.

[36] The authority and organization of the IRAC are set out in Chapter I of the NTIA manual. Chapter 2 identifies the following objectives to be followed in spectrum management: "(a) to enhance the conduct of foreign affairs; (b) to serve the national security and defense; (c) to safeguard life and property; (d) to support crime prevention and law enforcement; (e) to support the national and international transportation systems; (f) to foster conservation of natural resources; (g) to provide for the national and international dissemination of educational, general, and public interest information and entertainment; (h) to make available rapid, efficient, nationwide and worldwide radiocommunication services; (i) to promote scientific research, development, and exploration; (j) to stimulate social and economic progress; and (k) in summary, to improve the well being of man." *Id.* at 2.1.

2. Flexible Use Proposals

46. As noted above, under a rigid allocation scheme, new technologies and services may develop that do not satisfy the requirements of existing blocks. To meet these needs, flexible use proposals for apportioning spectrum focus on encouraging flexibility in spectrum use, without substantially overhauling the spectrum management system.

47. Throughout the 1980s, spectrum managers have been moving toward permitting greater technical flexibility within frequency blocks, while not changing the block allocation system in its entirety. The FCC has addressed some congestion concerns by permitting certain new systems that employ advanced technologies to meet more flexible technical standards. For example, under rules established in 1982, cellular radio operators have flexibility to install innovative cellular technology that is neither based on older technical specifications nor otherwise defined by the FCC's regulations.[37] Alternatively, flexibility theoretically could be improved by redefining the radio services. Would allocation flexibility improve if the definitions of additional radio services were amended? If so, how should the definitions be amended? How should services that perform one or more functions, e.g. communications and navigation, be defined?

48. Other "flexible use" proposals would permit the operation of multiple systems, determined primarily by users, in one frequency block. For example, the FCC has allowed broadcasters to offer "auxiliary services" on their assigned frequency when the primary services they provide remain unchanged. Thus, FM stations may use their so-called subsidiary communications authorization (SCA) for both broadcasting and other non-broadcast uses such as paging.[38] In 1985, the FCC proposed to give certain UHF television licensees a high degree of flexibility in determining how to use their assigned channels.[39] This proposal, which is pending until the completion of the FCC's Advanced Television (ATV) inquiry [40], would allow licensees to decide whether to (a) maintain certain neighboring channels now set aside for interference protection in their current "unused" status, (b) operate other services (such as land mobile) in those channels, or (c) allow others to operate on those channels. The proposal would have allowed the user, rather than the FCC, a limited degree of choice in providing spectrum access to new users. In a separate proceeding, the FCC has suggested granting AM broadcast licensees permission to reduce interference by mutual agreement.[41]

49. We seek comment on the extent to which such flexible use proposals would increase spectrum efficiency and fairness. Could these proposals be adapted for portions of spectrum other than those already proposed? Are such proposals workable? What problems are associated with them?

50. An increasingly important method of allocating spectrum relies on the avoidance of interference as its apportionment criterion. This can be used to make the existing block allocation system more flexible by responding to the introduction of new technologies on the basis of whether they meet technical "interference limits." For example, radio services could be allowed to operate within a given band of frequencies, with limitations only on emissions outside of the band or out of the user's authorized geographic area. As long as any station in any service does not affect the spectrum in another service by more than a predetermined interference limit, that station would be acceptable. NTIA seeks information on how the current block allocation system can be made more flexible through the use of interference criteria to provide spectrum to new users. How useful would such a method be in providing spectrum to new systems? Which existing bands could accommodate new users through interference criteria and which could not? What types of new users could these bands accommodate? How should the use of interference criteria in management decisions be combined with other existing criteria?

51. A more limited example of a system based on "interference criteria" is one that operates today for assignments in the Low Power Television (LPTV) service. Each new LPTV station is "engineered" into the existing assignments, with new locations defined on the basis of predicted desired-to-undesired (D/U) signal strength at the edge of the stations' service areas.[42] This provides more flexibility since the location of stations is not predetermined, but is designated to fit into the service areas of existing stations.[43] This concept does not eliminate the need for band boundaries and services, but may allow new technologies to be accommodated in previously unavailable frequency bands. We request comment on the degree to which such a scheme promotes efficiency and fairness.

52. Finally, the FCC's rules already permit flexibility in the operation of certain devices that emit low levels of radio frequency energy but are not regulated as authorized radio services. These range from systems that transmit low-power signals for communications purposes (such as garage door openers), to systems that emit signals incidental to their operation (for example, the low-level signals emitted by personal computers). Such systems are covered by part 15 of the FCC rules and are non-licensed. Part 18 of the FCC Rules covers a similar group known as Industrial, Scientific, and Medical (ISM) equipment, which is also non-licensed. ISM equipment, such as microwave ovens and industrial heaters, uses radio frequency technology. As non-licensed equipment, these devices and systems operate without radio service status. They must not cause harmful interference to authorized services, and must accept interference from such services. In some cases, such as powerline-carrier systems, continued electrical service to the community depends on such "nonstatus" equipment.

53. As use of such non-licensed devices proliferates, the potential for their interference with radio services also increases. At the same time, pressure from users of these devices is becoming a significant factor in resolving interference problems. How does the increasing use of spectrum by non-licensed devices affect other spectrum users? How should the value of non-licensed devices be determined in comparison to authorized radio services for purposes of spectrum management? How should the spectrum manager consider desires of consumers? What role should technical standards play, whether for the non-licensed devices or the authorized radio equipment? In cases of interference to or from authorized services, should the burden of eliminating the interference be changed, and if so, how? Should non-licensed safety or security devices continue to operate on an unprotected basis?

3. Market-Based Systems General Principles—Auctions

54. For years there have been proposals to manage spectrum through a market system—that is, by using economic value to the user as a criterion for setting priorities among competing demands for the spectrum resource. Under such proposals, decisions concerning spectrum use would be based, at least in part, on users' willingness to pay for spectrum, rather than on administrative determinations of what constitutes appropriate allocations for types of service and assignments for individual users.[44] One commonly advanced proposal is for the FCC to distribute currently unassigned frequency channels in certain bands through auctions.[45] A bill now pending in the Senate, for example, would authorize competitive bidding on an experimental basis for part of the currently unassigned spectrum.[46] Auctions, however, constitute just one type of market-based approach to spectrum management. Other specific market-based proposals have been made over the years.[47]

55. Proponents of market-based spectrum management argue that it would provide an efficient and equitable way of apportioning the spectrum resource. Such a system, they claim, would allow users to determine how spectrum should be allocated and assigned based on their perceived needs as expressed by willingness to pay, thus bringing demand into equilibrium with supply. Allocations of spectrum would tend to increase for uses with the highest economic value to society and decrease for those with the lowest value. Since users are paying for spectrum, they would have incentives to employ the resource efficiently by, for example, not seeking more spectrum than they need and deploying cost-effective spectrum-conserving technology.[48]

56. Some claim that an organized market system would also add flexibility by allowing usage to change with technology and consumer demand. Such a system, supporters claim, could be administratively less burdensome than comparative hearings, and under some proposals, could be self-regulating, requiring fewer management resources.[49]

57. Opponents of the use of market principles question their fairness and efficacy and, among other things, contend that such a system would favor users with "deep pockets." [50] They also express concern whether the "public interest" standard of the Communications Act could be satisfied if there were wholesale conversion to market principles as the basis for allocating spectrum or assigning frequencies. For example, comparative hearings for broadcast licenses consider "non-economic" public interest factors, such as minority ownership, to promote social goals. Furthermore, the present system is designed to accommodate socially desirable uses such as public safety communications and remote sensing of weather that might not compete successfully in a market environment.

58. Opponents also contend that a market-based process would in fact require greater resources than the present system to perform the basic tasks of spectrum management: limiting interference and protecting the rights of users. They also argue that a change to a market system could cause coordination problems with neighboring countries such as Canada and Mexico and in the ITU process.

59. NTIA seeks comment on the extent to which further application of market principles to spectrum management is appropriate. Would such a proposed system be any more efficient or fair than the current system? How could such a system more effectively prevent "warehousing" of spectrum by users? To what degree can reliance on market principles be reconciled with the public interest requirement of the Communications Act? What would be the role of NTIA, and of federal spectrum users, in such a system? Who is likely to gain, and who is likely to lose, from such a system? How would spectrum needs for such purposes as public safety uses be accommodated? Are such principles more appropriate for some types of services than others? Should such principles be applied to current, as well as new, users? What modification would be necessary to the present system of shared and exclusive allocations?

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[37] Second Report and Order, *800 MHz Reserve Channel Release, Private Land Mobile Radio Service*, 90 FCC 2d 1281 (52 Rad. Reg.2d (P&F) (1) (1982). For other examples of current and proposed technical flexibility see Webbink, *supra*, note 32.

[38] See Report and Order, *Subsidiary Communications Authorization*, BC Docket No. 81-352, 47 Fed. Reg. 1386 (50 Rad. Reg. 2d (P&F) 1189) (1982); First Report and Order, *Subsidiary Communications Authorization*, BC Docket No. 82-536, 48 Fed. Reg. 28445, 53 Rad. Reg.2d (P&F) 1519 (1983). Operational flexibility using the SCA has progressed incrementally since 1955. For a discussion of this area, see Webbink, *supra*, note 32 at 9.

[39] Notice of Proposed Rulemaking, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Services*, Gen. Docket 85-172, 50 Fed. Reg. 25587 (released June 10, 1985). See generally Felker and Gordon *supra*, note 15.

[40] Order, *Further Sharing of the UHF Television Band by Private Land Mobile Radio Service*, *supra*, 2 FCC Rcd 6441. See also, *supra*, note 20.

[41] Notice of Proposed Rulemaking, *Policies to Encourage Interference Reduction Between AM Broadcast Stations*, MM Docket 89-46, 54 Fed. Reg. 11972 (released March 17, 1989).

[42] See Felker and Gordon, *supra*, note 15, at 17, 18.

[43] This process would be somewhat limited since the technical characteristics of certain types of services may preclude the operation of other services within the same band.

[44] *See, e.g.*, R. Coase, *The Federal Communications Commission*, 2 J. of L. and Econ. 1 (Oct. 1959); A.S. DeVany, et al., *A Property System for Market Allocation of the Electromagnetic Spectrum: a Legal-Economic-Engineering Study*, 21 Stan. L. Rev. 1499 (June 1969); D.R. Ewing, *Economic Efficiency: The Objective of Spectrum Management*, IEEE Transactions on Electromagnetic Compatibility, Vol. 20 (Nov. 1978); J.R. Minasian, *Property Rights in Radiation: An Alternative Approach to Radio Frequency Allocation*, 18 J. of L. and Econ. 221 (April 1975); M. Mueller, *Property Rights in Radio Communication: The Key to the Reform of Telecommunications Regulation* (CATO Institute) (1982).

[45] See E. Kwerel and A.D. Felker, *Using Auctions to Select FCC Licensees*, Federal Communications Commission, Office of Plans and Policy (working paper, May 1985).

[46] S. 170, the *Spectrum Assignment Improvements Act of 1989*, 101st Cong., 1st Sess. (1989).

[47] Numerous proposals for using market principles have been considered by the Congress in recent years. The views of both proponents and opponents of such proposals are contained in the testimony given in the Congress. See, *e.g.*, *Spectrum Auctions: FCC Proposals for the Airwaves: Hearing Before Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Comm. on Energy and Commerce*, 99th Cong., 2d Sess. (Oct. 1, 1986); and *Communications Transfer Fee Act of 1987: Hearing on S. 1935 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 100th Cong., 2d Sess. (April 27, 1988).

Market principles have also been studied previously within the Executive Branch, particularly in the late 1960s and early 1970s. See, *e.g.*, E. Rostow, *Final Report: President's Task Force on Communications Policy* (Dec. 7, 1968); Office of Telecommunications Policy, Executive Office of the President, *Economic Efficiency and the Allocation, Allotment and Assignment of Government Spectrum-Space* (report by G.B. Thompson, consultant) (March 1973); Office of Telecommunications Policy, Executive Office of the President, *Management of Federal Spectrum Use Through Shadow Prices: Can it be Rendered Practicable?* (technical proposal submitted by General Electric Company—TEMPO Center for Advanced Studies) (April 3, 1972); and Office of Telecommunications Policy, Executive Office of the President, *Paying for Airwaves Use—Concept and Experiment for Including the Economic Value of Spectrum in OTP/IRAC Process to Allocate and Assign Airwaves Use within the U.S. Government* (June 1973).

[48] By "cost-effective," we mean that users would have spectrum-conserving incentives to deploy technology up to, but not beyond, the point at which the cost of saving an additional unit of spectrum through technology equals the cost of "purchasing" an equivalent unit through the market-based spectrum management system.

[49] Market-based systems for spectrum allocation and assignment could also produce significant revenues for the public Treasury. The issues raised by such potential "revenue enhancement" are discussed *infra*, at subsection 4, para. 67-70.

[50] See, e.g., testimony given in *Spectrum Auctions: FCC Proposals for the Airwaves*, *supra*, note 47, (statement of John J. McDonnell, Jr. on behalf of the Information and Telecommunications Technologies Group of the Electronic Industries Association at 61-63). See also statements of Emmett B. Kitchen Jr. on behalf of the National Association of Business and Educational Radio, Inc., and Michael E. Brunner, on behalf of the National Telephone Cooperative Association.

60. Finally, some foreign countries, such as New Zealand and Australia, have recently adopted market-based systems for apportioning at least part of their spectrum. We wish to examine the experiences of these and other countries in this area. What types of market-based systems have been employed? What benefits were realized and what problems were encountered? How relevant to U.S. spectrum issues is the experience of these other countries?

Property Rights

61. Proposals for using market principles in spectrum management often include the creation of unambiguous and enforceable spectrum "property rights" that could be more or less freely transferred at a price. Such transferable rights, it is argued, would permit a true market in spectrum to develop in which the value of various parts of spectrum would be determined through their sale. Currently, a non-federal licensee has no recognized property right in its assigned spectrum and may not "buy" or "sell" spectrum rights.[51] In practice, however, existing assignments have substantial monetary value on a "secondary market" among private users, and are bought and sold in what have been called "private auctions."[52] Such "auctions" are possible because non-federal licenses are transferable. Frequently, licensees transfer their assignments as part of a sale of a spectrum-related business to another firm.[53] While such transfers are subject to FCC review and approval, it is rare for such a license transfer to be disapproved.[54] The prices paid by the acquiring firms in such cases suggest that often the economic value of the spectrum assignment represents a substantial part of the value of the overall transaction.[55]

62. The current system may be said to create "quasi-property rights" in spectrum. To the extent that the current system is unsatisfactory, is it because these rights operate within the current allocation and assignment system, with the disadvantages described above? Is it because the value of spectrum is captured by private parties receiving a "windfall" in receiving a license, and not by the public?

63. While proponents argue that broad spectrum property rights are necessary to an effective market-based apportionment system, others object that instituting property rights for spectrum users would be a major and unwarranted departure from the traditional "public trust" theory of spectrum management. They question the fairness of such a move, which would alter the current status of spectrum users as "fiduciaries" of the public. Opponents of recognizing property rights in spectrum argue that while license revocations, failure to renew, and denials of transfers of licenses are all rare, they do occur [56] and serve the salutary purpose of deterring behavior by licenses that is inconsistent with the public interest. We seek comment on the extent to which property rights in spectrum should be recognized. To what extent are such rights desirable? To what extent should they be limited or conditioned by the imposition of some of the public interest obligations that apply in the present system? Would the existence of such rights add efficiency to the use of spectrum? Are they more appropriate for some types of users than others (for example, mobile communications v. broadcasting)?

Leases

64. One specific market-based apportionment alternative we wish to examine is the assessment of a fee on use of a particular portion of spectrum, in exchange for the right to operate on that spectrum for a defined duration—in effect, a "lease" of spectrum.

65. Such an approach may be an appropriate way to make spectrum currently allocated for federal use available to the private sector, while maintaining the government's ability to reclaim the spectrum at a later date if needed. The process would be akin to common Federal Government leases of various economic rights to resources, such as rights to oil, minerals, grazing land, timber, or water.[57] It appears that, if well-designed, these leases, by permitting the economic exploitation of valuable resources under government control while preserving the rights and interests of the government in the underlying property, could well serve the interests of both the private and public sectors. In the present context, federal leases potentially could provide spectrum for valuable commercial purposes while still allowing the government the right to reclaim the spectrum if future demands or critical public purposes, such as national defense or public safety, so require.

66. Leases might also provide an attractive alternative to innovators and entrepreneurs who find it difficult to obtain any spectrum under the present regulatory system, but who might not be able to afford to "purchase" spectrum in an alternative system based on auctions.[58]

67. NTIA seeks comment on whether spectrum leases would be a viable spectrum management alternative. What types of users would be best served by spectrum leases? What terms (for example, length, conditions, termination rights, subleasing rights) would make leases attractive?[59] What would be the best method of setting lease rates?

4. Revenue Enhancement Proposals

68. Distinct from the use of market principles to achieve the goals of economically efficient spectrum use and equitable spectrum apportionment, certain proposals for spectrum management reform include revenue enhancement for the Federal Government as an explicit goal. Under the current spectrum management system, the question arises whether the United States, as the nation's "supplier" of spectrum, should earn a return on spectrum used by the public. Such use fees or other mechanisms could potentially be a large source of revenue for the government.[60] We request comment on how such a system could operate.

69. Most market-based proposals for spectrum reform would produce revenue enhancement benefits, as well as the efficiency and equity benefits discussed above. However, revenue enhancement does not require a market-based solution. Recent proposals for realizing revenue from spectrum assignments would use a variety of mechanisms for assessing spectrum use charges. One proposal for broadcasting suggests granting licenses for 30 to 40 years, and charging licensees an annual fee of one or two percent of gross revenues for the duration of the license.[61] We also note that certain other countries [62] are considering or have implemented proposals to sell or lease the spectrum or obtain revenues from license fees. We request comment on whether the current spectrum management system should be modified for purposes of revenue enhancement, or whether a new system should be established. What would be an appropriate and accurate way to assess charges for spectrum use? How would such proposals affect current and future users? Should government spectrum users be included in any such proposals?

70. While some revenue enhancement proposals are designed to raise general revenue for the Treasury, others would use the proceeds from any fees to establish specialized telecommunications programs. For example, a bill introduced in the Senate in 1987 would have imposed a fee on license transfers and used the proceeds to fund public broadcasting.[63]

71. Opponents of fees question their appropriateness, especially when applied to non-commercial services, such as amateur radio or public safety, or for federal users. We request comment on whether proceeds from any such fee program should be targeted, and, if so, for what purposes?

D. Spectrum Conservation: Technology Issues

1. Accommodating Demand for Spectrum Through Technology

72. Under the current allocation system, technological innovations can increase the supply of usable spectrum, through either the use of spectrum at higher frequencies, or techniques that allow more users in the same frequency bands. Since, as noted above, certain frequency bands have physical properties more desirable than others for some uses, continuous expansion to higher frequencies over time becomes difficult.[64] Under these conditions, the most feasible options are either to develop technologies that use the spectrum more efficiently or to reallocate portions of the spectrum.

73. Although advanced technologies can allow more options and potentially greater use of the spectrum, existing rules and regulations are not always able to accommodate this flexibility. We request comment on how policy-makers can develop spectrum management techniques that accommodate unanticipated innovative use in order to avoid spectrum waste.

74. One of the difficulties with evaluating spectrum conservation techniques is in quantifying spectrum use. Several models that do so have been proposed.[65] NTIA has also developed computer models that graphically portray spectrum use and assess spectrum conservation techniques.[66] One of these models is the Spectrum Use Measure (SUM), which graphically illustrates spectrum use (by using assignment data) as a function of geography and frequency bands. SUM can be used as an indicator for planning the use of frequency bands in certain parts of the country and determining locations for the application of tighter spectrum standards to accommodate increased demand. How effective are such models? What are their strengths and limitations? Are there other models that might be more effective? We request information and procedures on how to assess relative levels of spectrum use by different services. How can one evaluate efficient use of the spectrum when comparing disparate services, such as land mobile to broadcasting?

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[51] 47 U.S.C. 301. See also, *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

[52] For example, *see Spectrum Auctions: FCC Proposals for the Airwaves, Hearing Before the Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce: supra*, note 47 (statement of Mark S. Fowler, Chairman of the Federal Communications Commission at 8–12, and opening statement of Hon. Thomas J. Tauke at 18.) See also discussion in H. Geller and D. Lampert, *Charging for Spectrum Use*, Benton Foundation Project on Communications and Information Policy Options, at 13 (1989).

[53] It has been estimated that over 65 percent of commercial TV stations and 75 percent of commercial radio stations are not owned by the initial licensee, with similar turnover in the newer cellular and SMRS markets. *Spectrum Auctions: FCC Proposals for the Airwaves: Hearing Before the Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, supra*, note 47 (testimony of Mark S. Fowler, Chairman, Federal Communications Commission, at 9).

[54] In 1982 the FCC eliminated its antitrafficking policy and rule requiring that applications for assignment of broadcast facilities held less than three years be designated for hearing and substituted a one-year rule for licenses obtained in a comparative hearing or license lottery. Report and Order, *Broadcast Station Voluntary Assignments or Transfers of Control*, BC Docket No. 81–897, 47 Fed. Reg. 55924 (52 Rad. Reg. 2d (P&F) 1081) (1982), *recon. den.* 50 Fed. Reg. 6044 (57 Rad. Reg. 2d (P&F) 1149 (1985). In 1983, the FCC also eliminated its antitrafficking rules with respect to common carrier paging systems. Report and Order, *Public Mobile Services Rule Revision*, CC Docket No. 80–57, 95 FCC 2d 769 (54 Rad. Reg. 2d (P&F) 1661) (1983).

[55] It has been estimated over half the value of a mass media property is attributable to its license, as opposed to physical assets. *Communications Transfer Fee Act of 1987: Hearing on S. 1935 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, supra*, note 47 (statement of Charles H. Kadlec at 59). Mr. Kadlec also stated that mass media accounts for two-thirds to three quarters of total communications spectrum transactions, and that the average broadcast (radio or television) station sale was for $4.3 million. He stated, however, that averages are misleading, citing examples of transactions with much higher sales prices, including the purchase of VHF television station KTLA in Los Angeles for more than $500 million.

[56] *See, e.g., Fidelity Television, Inc.* v. *FCC*, 502 F. 2d 443 (D.C. Cir. 1974); *Fidelity Television, Inc.* v. *FCC*, 515 F. 2d 684 (D.C. Cir.), *cert. den.* 423 U.S. 926 (1975); RKO General, Inc. v. FCC, 670 F. 2d 215 (D.C. Cir. 1981), *cert. den.* 456 U.S. 927, 457 U.S. 1119 (1982).

[57] For example, under 43 U.S.C. 1337(a)(1), the Secretary of the Interior is authorized to grant certain oil and gas leases to the highest bidder by a competitive bidding process. The Secretary may, under this section, accept several types of bids, including "cash bonus" bids with an accompanying royalty or "variable royalty" bids. See also the Mineral Leasing Act of 1920, 30 U.S.C. 181–287.

[58] A lease system allowing for an up-front payment with the payment of a fee (or royalty) based on gross revenues thereafter, similar to oil and gas leases (*supra*, previous note), could benefit entrepreneurial spectrum users by lowering barriers to entry.

[59] While long-term leases provide certainty to a lessee, they also increase the risk to the lessor that needed spectrum will be unavailable in the future should circumstances change. We ask commenters to address various lease alternatives that could satisfy both the need of the lessee for certainty (so that investment in equipment and, if a new offering, start-up costs can be prudently made), with the need of the lessor for protection against future contingencies. For example, would "rolling" lease terms, with an initial specified period (e.g., five years) renewable annually thereafter for additional one-year periods, provide sufficient stability to permit private investment to their use for at least some applications?

[60] For example, FCC Chairman Alfred C. Sikes recently testified that "the 200 MHz of spectrum which H.R. 2965 proposed to transfer to non-Government use could be valued as high as $100 billion." *The Emerging Technologies Act of 1989: Hearings on H.R. 2965 before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, Nov. 2, 1989, (prepared statement of Alfred C. Sikes, Chairman of the Federal Communications Commission, at 11).

Moreover, the Administration's 1990 budget package contains a competitive bidding proposal for licenses in unassigned UHF spectrum, for the revenue-enhancement reasons discussed above. *See Building a Better America* at 154 (Feb. 9, 1989). Estimates of revenues generated by auctions vary from $500 million for the sale of four megahertz (Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options*, at 226) to $3.36 billion for the six megahertz that would be auctioned under the proposal in S. 170 (*supra*, note 46). *See* generally, *Raising Revenues with the Auction Option for the Telecommunications Spectrum*, Heritage Foundation Issue Bulletin (May 1989) at 8.

[61] Geller and Lampert, *supra*, note 52, at 14–15.

[62] Canada, for example, is currently charging both private and public sector entities for use of the spectrum, with prices set at a rate that covers the cost of spectrum management operations. New Zealand plans to begin implementation of a free market system of auctioning spectrum by the end of the year. We also understand that Australia has recently auctioned, in a closed tender limited to existing AM broadcasters, the use of 2 FM broadcast stations in 4 cities, with the intention to auction additional FM stations next year.

[63] S. 1935, the *Communications Transfer Fee Act of 1987*, 100th Cong., 1st Sess. (1987); *see* Hearings cited *supra*, note 47. *See also Broadcasting Magazine* (May 2, 1988) at 66. It has also been suggested that any proceeds derived from competitive bidding could be used for the same purpose.

[64] In addition, as noted above, the current U.S. block allocation plan restricts the frequencies available to users in each class.

[65] CCIR, *Definition of Spectrum Use and Efficiency*, Report 662–2, Vol 1., XVIth Plenary Assembly, Dubrovnik, Yugoslavia, International Radio Consultative Committee, International Telecommunication Union, Geneva, Switzerland, (1986); R.L. Hinkle and A. Ferrar, *Spectrum Conservation Techniques for Fixed Microwave Systems*, NTIA Report No. 89–243, National Telecommunications and Information Administration, U.S. Department of Commerce, (May 1989).

[66] R. Mayher, R. Haines, et al., *The SUM Data Base: A New Measure of Spectrum Use*, NTIA Report 88–236, National Telecommunications and Information Administration, U.S. Department of Commerce, (Aug. 1988); R. Haines and Litts, *The SUM Land Mobile Model: Application of the Spectrum Use Measure to the Land Mobile Model*, NTIA Report 89–248, National Telecommunications and Information Administration, U.S. Department of Commerce, (Sept. 1989).

75. Direct measurement of spectrum usage using computer controlled monitoring or measuring equipment is another way of determining whether particular frequency bands are becoming crowded. To measure actual use of an assigned frequency, NTIA uses the Radio Spectrum Measurement System (RSMS), a van equipped with radiocommunication measurement devices, capable of measuring radio signals within most of the usable spectrum. The RSMS provides information that assists in determining the level of spectrum occupancy, assuring compliance with standards, evaluating whether equipment will interfere with operations in other bands, and assessing the extent of sharing within a particular frequency band. This information, while valuable, is necessarily limited because there is only one RSMS van for the entire United States. The FCC has several monitoring vans used primarily for enforcement and interference resolution. These vans are equipped for limited occupancy studies, but are not fully automated. Is direct measurement a worthwhile technique for determining band crowding? Should the government use an RSMS-type of system to monitor and evaluate the use of the spectrum on a more comprehensive basis? If so, how should it be funded? Would more comprehensive governmental monitoring by either NTIA or the FCC lead to improved assignment practices and thus assist in more efficient use of the spectrum or would it in some way contribute to unnecessary regulatory or administrative burden? Would market-based apportionment of frequencies increase the need for this type of monitoring (for example, to detect spurious emissions and larger-than-permitted bandwidths), or would it permit government to rely more on private enforcement activities?

2. The Role of Technical Standards

76. Technical standards for radiocommunication operations, which directly affect the adoption of new technologies, are established for a number of reasons. First, individual users seek to establish an acceptable level of quality in the systems offered to them by vendors. Second, several users may seek to minimize their individual costs and increase their flexibility by procuring similar equipment from several vendors. Third, operators may need to maintain interoperability with other systems throughout an area, country, region, or the world, as in the services used by broadcasters, police, or common carriers. Fourth, manufacturers may seek to minimize the costs of producing equipment by establishing regional or worldwide standards that ensure larger markets for their products. Fifth, standards are used to "conserve spectrum" by adopting technologies that use less bandwidth, such as narrowband technology. On the other hand, standard-setting may be avoided when the benefits to particular parties are too small to justify participation in developing or using a standard.[67]

77. If set prematurely, standards can restrict the development of a technology. If set too rigidly, they can restrict the development of new replacement technologies. When standards are set they may be selected so that most of the existing equipment can meet them or so that one particularly desirable technology is used.

78. Standards based on norms for existing technologies can be clear and detailed. In theory, they act to preclude the offering of equipment inferior to the standard. In fact, they may remove a manufacturer's motivation to exceed the standard with a new, more effective, or efficient technology. Depending on the extent to which a standard is enforced and actively implemented, instead of being a "floor" for technological development, a standard may become a "ceiling," controlling technology subsequently made available. Are there effective alternatives to such standards for radiocommunication systems?

79. Standards that attempt to promote a specific technology often do so while restricting innovation of newer and possibly more desirable technologies. For example, the establishment of standards for UHF television channels 40 years ago created a number of "taboo" channels that cannot be used in a given geographic area. Television receivers, although improved since that time, are designed to rely on such taboos, even though better designs are feasible. As a result, a large portion of the UHF broadcasting band cannot be used. This represents an inefficient use of a very valuable portion of the spectrum. While technological advances, such as improved television receiver design, could allow some of the taboos to be relaxed, changes in the UHF service could not occur without significant impact on the industry and, potentially, millions of households with television sets. In light of this example, what are the costs and benefits of the existing types for standards of radiocommunication systems? How can standards be set to encourage innovation while retaining other benefits of standardization?

80. NTIA also wishes to examine the effects of standards established for one radio service on other services. For example, new, more spectrum-efficient technologies are sometimes more sensitive to interference than older, less efficient technologies. As a result, stations in one service that use new state-of-the-art technology may be sensitive to extraneous emissions from stations in another service operating in a nearby frequency band, even though the latter fully conforms to all existing standards. Conversely, new technology might cause interference to stations in other services. U.S. spectrum management policies have usually given priority to existing users, and new uses have been expected to adjust to the existing environment. As technology develops and the spectrum become more crowded, should existing users be required to adjust their operations to accommodate new users deploying more efficient technology? Who should bear economic costs of replacing or refitting the existing systems? Can flexible standards be designed so that they change as technology changes?

81. Standards are also important in terms of trade and U.S. competitiveness in industries that rely on spectrum use. We request comments on whether other countries' spectrum standards serve as trade barriers. If so, what actions should the United States take to eliminate these barriers?

3. Alternatives to Spectrum Use

82. The primary alternatives to spectrum use are wire or fiberbased technologies. Wire and fiber are, by their nature, fixed communications links, and therefore cannot entirely replace use of spectrum for mobile or radar applications. For applications where both the transmission facility and the receiver are fixed, however, wire seems a logical choice for a transmission medium. This is especially true when radio spectrum is in short supply relative to demand. In the past, certain technical characteristics of wire, including both bandwidth limitations of copper wires into the home and amplification requirements of coaxial cables in long distance, made radio a preferred communications medium for certain applications. Fiber optic cables have neither limitation. For many applications—when reliability and security are crucial, when very wide bandwidths or high data rates are required, or when digital transmission is desired—fiber may be a more desirable medium than radio, even putting aside any consideration of potential spectrum shortages.[68] What are the general trends in the shifts from radiocommunications to wire or fiber or vice versa? How will these trends affect the management and use of the spectrum? How do current spectrum management practices encourage or discourage these trends?

83. Deployment of fiber optic cable in telecommunication networks has grown rapidly in recent years, creating large amounts of capacity available for point-to-point communications, particularly in the long distance telephone market. In this particular market, is it realistic to assume that fiber could soon replace or at least reduce the importance of microwave communications, both terrestrial and satellite? Could this be possible for other than long distance uses of microwave technologies? What other types of services could use this spectrum? Should radiocommunication uses be granted when nonradio means are readily available?

84. Further deployment of fiber networks, throughout the public network and also to the home, could have the effect of preserving the finite spectrum resource for those applications for which it is better suited. The growth of fiber communications, where appropriate, and the reclamation of spectrum previously used for such communications could ultimately free additional spectrum for services more suited to radio. Future types of advanced television systems might be better suited to transmission over fiber than radio, both because of potentially wider bandwidth requirements than current broadcast television, which may be difficult to accommodate in the radio spectrum, and because of the fixed nature of television.[69] It is important to note, however, that each of these potential transitions from spectrum use to fiber use, in particular that for television, are infused with public interest concerns.[70] These concerns should be carefully evaluated before taking steps to encourage such transitions from spectrum use to fiber. Are there any conditions under which the government should take action to encourage trends toward using technologies other than radio? What types of policies could be implemented to reclaim spectrum that is not being used or is determined to be under used? How should the government allocate reclaimed spectrum to new, competing uses?

E. Forecasting Future Spectrum Requirements

85. Two of the goals of any spectrum management system are to provide for the current and future requirements of spectrum users and to avoid congestion and interference. In order to ensure that spectrum is available for these requirements, the management process must be accessible and responsive to user needs. This depends on the adequacy and timeliness of the information that spectrum managers receive on specific requirements. The radiocommunications environment is extremely dynamic. There has been tremendous technological growth during the past three decades, expanding the level and variety of spectrum use. Growth and expansion are expected to accelerate in the future, and will make the need for timely information and better foreasting methods even greater.

1. Planning Spectrum Allocations Through Requirements Identification

86. In order to satisfy U.S. spectrum requirements, NTIA and the FCC must identify current and future needs within their individual spheres of oversight and jointly determine how these needs can best be accommodated. When requirements for new allocations of the spectrum are identified, are the existing procedures used by the FCC and NTIA adequate to provide timely access to spectrum when the requirement (a) is within an existing radio service; (b) creates a new radio service; or (c) introduces a new government agency or type of user not represented in either the FCC or NTIA plans?

(a) Federal Requirements Planning

87. NTIA maintains information on federal frequency assignments within the "Government Master File." In order to accommodate new requirements of federal agencies on an ongoing basis, NTIA relies on the IRAC Spectrum Planning Subcommittee. The IRAC's member agencies submit documentation of major new systems for review. Consideration is given to changing the allocation table if the new system cannot be otherwise accommodated. The Spectrum Planning Subcommittee essentially provides a short-to-medium term forecast of federal spectrum use, since systems proposed to it will be deployed in 2 to 5 years and will remain in use for 5 to 10 years. NTIA also periodically conducts spectrum assessments to study the adequacy of the allocation tables to meet demand for particular services. These data could provide the basis for more accurate forecasts if all, rather than only major, new systems were included. Furthermore, there is no formal process for considering any potential non-federal demand for the spectrum in bands that are shared.

88. NTIA seeks comment on the adequacy of these processes in determining requirements for federal spectrum. Does the Spectrum Planning Subcommittee process adequately identify legitimate requirements for Federal Government spectrum? If not, in what ways can it be improved? What improvements can be made to contribute to the realistic portrayal of current federal spectrum use through assignment data?

(b) Non-Federal Requirements Planning

89. The FCC's source of information for present spectrum requirements is its files of non-federal license information.[71] Non-federal users must petition the FCC for changes to the allocation table when their needs cannot be met because of limitations in the table, and these petitions are subject to comment and FCC decision. Does the FCC process of responding to petitions for changes to the allocation table adequately identify and define non-federal requirements for spectrum? If not, what are potential ways for the FCC to improve its process of forecasting spectrum requirements? What improvements can be made to contribute to the realistic portrayal of current spectrum use through license data"

2. Spectrum Use Forecasting

90. Past efforts to forecast spectrum use have been only marginally successful. In the early 1960s, terrestrial services were shifted in order to accommodate direct broadcast satellites (DBS), for which serious demand in the United States has yet to materialize. On the other hand, most forecasts of the market for cellular telephone service failed to anticipate the phenomenal

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[67] See S. Besen and G. Saloner, "The Economics of Telecommunications Standards," in *Changing the Rules*, R.W. Crandall and K. Flamm (eds.), The Brookings Institution, Washington, DC, (1989).

[68] For example, consortia of electrical utilities, such as Norlight in the Midwest, have replaced their utilities' private microwave radio networks with fiber networks for reliability reasons.

[69] There is some use of portable television today (such as through Sony "Watchman" and similar receivers). This use, we believe, is still quite small compared both to overall television viewing and other broadcast uses, including AM and FM radio.

[70] Television broadcast "over-the-air" (i.e., using the radio spectrum) has traditionally been fully funded by advertisers, or, in the case of public television, by government grants and private donations, and provided to viewers at no charge. Television delivered over wire—i.e., cable television—has traditionally been supported in substantial part by charges to viewers. This difference raises substantial public interest concerns about a shift of television from spectrum-based to wire- or fiber-based delivery systems.

[71] If the FCC has permitted the control of spectrum uses to user groups, such groups maintain the data themselves.

popularity and growth of this technology and thus the need for additional spectrum to support it.

91. Little progress has been made toward planning spectrum allocations based upon methods of forecasting other than projections based on what spectrum has been used in the past. Not only is it sometimes difficult to determine what spectrum use has been in the past, since data is collected by assignment only and not by actual use of the assignment, but these projections make certain assumptions about growth patterns. Such "straightline" projections of future use based upon past activity appear to have limited success in such a rapidly changing field.

92. NTIA seeks information on forecasting techniques and methodologies available from other disciplines that, using spectrum use data as input, can contribute most effectively to a realistic portrayal of future spectrum requirements. What heuristic and non-heuristic analysis methods could be applied to spectrum forecasting? What data formats would be most useful.

93. Another important component of forecasting is the ability to define the eventual market for spectrum-based services. Generally, market assessments use historical data about licenses and radiocommunications systems and components, interviews with the potential participants in new equipment markets, and estimates by persons most familiar with support requirements. Often market assessments have relied on trend analysis in combination with highly qualitative subjective judgment. How can market assessments be made more rigorous and objective and thus provide a sounder basis for identifying future use? Are there ways to incorporate computer-based techniques, such as expert systems, into market assessment models?

94. Research and development (R&D) activities are often important indications of the general direction of the technology, missing, however, the crucial market demand component. Can monitoring of such activities prove useful in predicting future requirements? Are there useful and proven ways of determining the relationship of current R&D to the eventual marketplace and thus demand? Are there any areas of spectrum use in which significant changes in use can be predicted?

95. Not all spectrum requirements are anticipated in the spectrum management process. The demands on certain portions of the spectrum may actually depend on decisions not yet made or on technology not yet developed. As a result, managers may not accommodate some existing requirements and may not foresee other future requirements. Are any radiocommunications requirements currently unsatisfied due to the lack of available spectrum? If so, what requirements? Are any future requirements envisioned to go unmet due to the lack of available spectrum? If so, what requirements? In making such projections, commenters are asked to consider future requirements based both on the growth of current technologies and on technologies yet to be developed. How can spectrum be provided for unforeseen requirements? Are resources sufficient to identify and accommodate radiocommunications requirements? If not, where are they lacking?

3. Long-Range Planning

96. Long-range planning by spectrum managers is an important part of an efficient and equitable management system. Indeed, NTIA is required to "[d]evelop, in cooperation with the [FCC], a comprehensive long-range plan for improved management of all electromagnetic spectrum resources." [72] NTIA, with the FCC, developed a long-range plan for federal spectrum issues in June, 1989.[73]

97. We believe that a long-range plan, if properly formulated, can provide an important "window to the future" of spectrum use. Such a plan must be developed not to define rigidly the technologies of the future, but to promote flexibility and innovative spectrum developments. Such a plan should reduce, as much as possible, reliance on *ad hoc* decision-making on management questions. How can NTIA best plan to permit innovation and new developments in spectrum use while still maintaining order and continuity in the process? How would the existence of classified information regarding some federal uses affect such planning? How can the current long-range planning process be improved? How can cooperation between the FCC and NTIA be improved? How can the public best be included in the long-range planning process?

IV. Conclusion

98. NTIA hereby requests comments in this inquiry to be filed on or before February 23, 1990; and reply comments to be filed on or before March 30, 1990.

Dated: December 4, 1989.

Janice Obuchowski,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc 89-28675 Filed 12-7-89; 8:45 am]

BILLING CODE 3510-60-M

[72] Exec. Order 12046, *supra*, note 8.

[73] *Long Range Plan for Management and Use of the Radio Spectrum by Agencies and Establishments of the Federal Government*, NTIA Special Publication 89-22 (June 1989).

federal register

Friday
December 8, 1989

Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 326

Permit Regulations for Controlling Certain Activities in Waters of the United States; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 326

RIN 0710-AA15

Permit Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army amends the Corps of Engineers permit regulations at 33 CFR part 326 to adopt a new section to implement the Secretary of the Army's Class I administrative civil penalties authority under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g). The Army is taking this action in response to amendments to the Act made by the Water Quality Act of 1987, which authorize the Secretary of the Army to assess administrative civil penalties for a violation of any condition or limitation in a permit issued under section 404 of the Act. The provisions will provide a new enforcement tool offering Corps District Engineers the ability to bring timely, and cost efficient enforcement proceedings against Corps issued Clean Water Act permit condition violations.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning, HQUSACECW-OR, Washington, DC, 20314-1000, (202) 272-0199, or Mr. Martin Cohen, Office of the Chief Counsel, Washington, DC, 20314-1000, (202) 272-0027.

SUPPLEMENTARY INFORMATION: These regulations finalize the draft regulations published in the **Federal Register** for comment May 12, 1989 and complete the rulemaking process for the Class I administrative penalty authority provided in section 309(g) of the Water Quality Act of 1987, 33 U.S.C. 1319 (g). Only one comment letter was received concerning the draft regulation. The changes made in the final regulation reflect that comment letter and demonstrate the Corps desire to ensure that the procedures for these penalties are implemented in an effective and efficient manner. Transcription errors are also corrected.

Discussion of Comment and Changes

Part 326—Enforcement

The Authority line for this section is changed to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

This change recognizes the civil penalty authority provided for in section 25 of the National Fishing Enhancement Act of 1984. This Act provided the Corps with authority to assess a civil penalty for violations of the terms and conditions of Corps section 10 and section 404 permits issued for artificial reefs. This section of the National Fishing Enhancement Act is compatible with Class I administrative penalties provided for in section 309(g) of the Clean Water Act and therefore these procedures apply to both authorities.

Section 326.6 (a)(2): This section has been reworded to clarify that an administrative penalty may be pursued in conjunction with cease and desist orders and requests for restoration and/or mitigation. The intent is to insure that the intensity of the effort required in pursuit of the action is commensurate with the severity of the violation. Thus, a cease and desist order may be issued and an administrative penalty assessed. If the cease and desist order is complied with, the administrative penalty action could continue to completion. However, if a violation continues and requires seeking a judicial injunction, then it may be more appropriate to continue the action in a judicial setting rather than seeking the administrative penalty. In such instance, the administrative penalty would be discontinued and a case filed in court. It is not intended that an administrative penalty action precludes seeking judicial action for future violations by the same permittee. Each violation should be evaluated on its own merits and in the light of past action by the permittee.

Section 326.6 (a)(3)(i): The definition of "agency" has been deleted and a definition of "Corps" substituted to be consistent with the rest of the Corps regulation.

Section 326.6 (a)(3)(iv): A definition of "permittee" has been inserted that defines permittee as the person alleged to be responsible for the violation. The term permittee has been inserted in lieu of each use of the term respondent in the draft. The remaining sections were renumbered to accommodate this insertion.

Section 326.6 (a)(2)(v): This section has been changed to indicate that the Presiding Officer will be chosen by the District Engineer (DE). The DE may choose to use a member of the Corps counsel staff or any other qualified person designated by the DE. This change will allow the DE greater flexibility in appointing Presiding Officers and will avoid delays by ensuring that cases can be referred to a wider group of qualified individuals.

Section 326.6 (c)(4): This section has been changed to eliminate the requirement that a legal notice be placed in a paper of general circulation in the area. This was done in the interest of reducing the cost of implementing the penalty authority. Also, the public notice mailing lists maintained for regulatory purposes may be used or modified for use as the mailing list for a proposed penalty notice. The description of the content of the public notice has been simplified by referencing the information to be provided the permittee at the time of notice of the proposed penalty.

Section 326.6 (c)(4)(ii): This section was modified to indicate that the same public notice mailing lists used for the evaluation process may be used in developing the mailing lists for administrative penalty notices.

Section 326.6 (c)(5): This section was modified to require the same information in the public notice that is required in the notice to the permittee.

Section 326.6 (g)(4): This section was modified to indicate the district engineer could hold the hearing at a location of his choice.

Section 326.6 (h): This section was changed to reflect a requirement that the Presiding Officer shall be any qualified person designated by the DE.

Section 326.6 (h)(8): This section has been changed to eliminate the prohibition against cross-examination of the permittee. This was done to respond to the concern that the permittee was given special consideration in being allowed to cross-examine witnesses without being subject to the same rule.

Section 326.6 (j)(3): This section was modified to clarify that communications between the district engineer and his staff prior to the issuance of a proposed order do not constitute "ex parte communications."

Note 1: The Department of the Army has determined that the regulations do not contain a major provision requiring the preparation of a regulatory impact analysis under E.O. 12291.

Note 2: The Department of the Army has determined that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note 3: The Department of the Army has determined that these regulations will not affect the use or value of private property and therefore do not require a "Takings Impact Assessment" under Executive Order 12630.

Note 4: The use of the term "he" and its derivatives used in these regulations is generic and should be considered as applying to both male and female.

List of Subjects in 33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water, Pollution control, Waterways.

Dated: November 28, 1989.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army is amending 33 CFR part 326 as follows:

PART 326—ENFORCEMENT

The authority citation for part 326 is revised to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

2. Section 326.6 is added to read as follows:

§ 326.6 Class I Administrative penalties.

(a) *Introduction.* (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205 of the National Fishing Enhancement Act. Section 309(g)(2)(A) specifies that Class I civil penalties may not exceed $10,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $25,000. The National Fishing Enhancement Act, section 205(e), provides that penalties for violations of permits issued in accordance with that Act shall not exceed $10,000 for each violation.

(2) These procedures supplement the existing enforcement procedures at §§ 326.1 through 326.5. However, as a matter of Corps enforcement discretion once the Corps decides to proceed with an administrative penalty under these procedures it shall not subsequently pursue judicial action pursuant to § 326.5. Therefore, an administrative penalty should not be pursued if a subsequent judicial action for civil penalties is desired. An administrative civil penalty may be pursued in conjunction with a compliance order; request for restoration and/or request for mitigation issued under § 326.4.

(3) Definitions. For the purposes of this section of the regulation:

(i) "Corps" means the Secretary of the Army, acting through the U.S. Army Corps of Engineers, with respect to the matters covered by this regulation.

(ii) "Interested person outside the Corps" includes the permittee, any person who filed written comments on the proposed penalty order, and any other person not employed by the Corps with an interest in the subject of proposed penalty order, and any attorney of record for those persons.

(iii) "Interested Corps staff" means those Corps employees, whether temporary or permanent, who may investigate, litigate, or present evidence, arguments, or the position of the Corps in the hearing or who participated in the preparation, investigation or deliberations concerning the proposed penalty order, including any employee, contractor, or consultant who may be called as a witness.

(iv) "Permittee" means the person to whom the Corps issued a permit under section 404 of the Clean Water Act, (or section 10 of the Rivers and Harbors Act for an Artificial Reef) the conditions and limitations of which permit have allegedly been violated.

(v) "Presiding Officer" means a member of Corps Counsel staff or any other qualified person designated by the District Engineer (DE), to hold a hearing on a proposed administrative civil penalty order (hereinafter referred to as "proposed order") in accordance with the rules set forth in this regulation and to make such recommendations to the DE as prescribed in this regulation.

(vi) "Ex parte communication" means any communication, written or oral, relating to the merits of the proceeding, between the Presiding Officer and an interested person outside the Corps or the interested Corps staff, which was not originally filed or stated in the administrative record or in the hearing. Such communication is not an "ex parte communication" if all parties have received prior written notice of the proposed communication and have been given the opportunity to participate herein.

(b) *Initiation of action.* (1) If the DE or a delegatee of the DE finds that a recipient of a Department of the Army permit (hereinafter referred to as "the permittee") has violated any permit condition or limitation contained in that permit, the DE is authorized to prepare and process a proposed order in accordance with these procedures. The proposed order shall specify the amount of the penalty which the permittee may be assessed and shall describe with reasonable specificity the nature of the violation.

(2) The permittee will be provided actual notice, in writing, of the DE's proposal to issue an administrative civil penalty and will be advised of the right to request a hearing and to present evidence on the alleged violation. Notice to the permittee will be provided by certified mail, return receipt requested, or other notice, at the discretion of the DE when he determines justice so requires. This notice will be accompanied by a copy of the proposed order, and will include the following information:

(i) A description of the alleged violation and copies of the applicable law and regulations;

(ii) An explanation of the authority to initiate the proceeding;

(iii) An explanation, in general terms, of the procedure for assessing civil penalties, including opportunities for public participation;

(iv) A statement of the amount of the penalty that is proposed and a statement of the maximum amount of the penalty which the DE is authorized to assess for the violations alleged;

(v) A statement that the permittee may within 30 calendar days of receipt of the notice provided under this subparagraph, request a hearing prior to issuance of any final order. Further, that the permittee must request a hearing within 30 calendar days of receipt of the notice provided under this subparagraph in order to be entitled to receive such a hearing;

(vi) The name and address of the person to whom the permittee must send a request for hearing;

(vii) Notification that the DE may issue the final order on or after 30 calendar days following receipt of the notice provided under these rules, if the permittee does not request a hearing; and

(viii) An explanation that any final order issued under this section shall become effective 30 calendar days following its issuance unless a petition to set aside the order and to hold a hearing is filed by a person who commented on the proposed order and such petition is granted or an appeal is taken under section 309(g)(8) of the Clean Water Act.

(3) At the same time that actual notice is provided to the permittee, the DE shall give public notice of the proposed order, and provide reasonable opportunity for public comment on the proposed order, prior to issuing a final order assessing an administrative civil penalty. Procedures for giving public notice and providing the opportunity for public comment are contained in § 326.6(c).

(4) At the same time that actual notice is provided to the permittee, the DE shall provide actual notice, in writing, to the appropriate state agency for the state in which the violation occurred. Procedures for providing actual notice to and consulting with the appropriate state agency are contained in § 326.6(d).

(c) *Public notice and comment.* (1) At the same time the permittee and the appropriate state agency are provided actual notice, the DE shall provide

public notice of and a reasonable opportunity to comment on the DE's proposal to issue an administrative civil penalty against the permittee.

(2) A 30 day public comment period shall be provided. Any person may submit written comments on the proposed administrative penalty order. The DE shall include all written comments in an administrative record relating to the proposed order. Any person who comments on a proposed order shall be given notice of any hearing held on the proposed order. Such persons shall have a reasonable opportunity to be heard and to present evidence in such hearings.

(3) If no hearing is requested by the permittee, any person who has submitted comments on the proposed order shall be given notice by the DE of any final order issued, and will be given 30 calendar days in which to petition the DE to set aside the order and to provide a hearing on the penalty. The DE shall set aside the order and provide a hearing in accordance with these rules if the evidence presented by the commenter in support of the commenter's petition for a hearing is material and was not considered when the order was issued. If the DE denies a hearing, the DE shall provide notice to the commenter filing the petition for the hearing, together with the reasons for the denial. Notice of the denial and the reasons for the denial shall be published in the **Federal Register** by the DE.

(4) The DE shall give public notice by mailing a copy of the information listed in paragraph (c)(5), of this section to:

(i) Any person who requests notice;

(ii) Other persons on a mailing list developed to include some or all of the following sources:

(A) Persons who request in writing to be on the list;

(B) Persons on "area lists" developed from lists of participants in past similar proceedings in that area, including hearings or other actions related to section 404 permit issuance as required by § 325.3(d)(1). The DE may update the mailing list from time to time by requesting written indication of continued interest from those listed. The DE may delete from the list the name of any person who fails to respond to such a request.

(5) All public notices under this subpart shall contain at a minimum the information provided to the permittee as described in § 326.6(b)(2) and:

(i) A statement of the opportunity to submit written comments on the proposed order and the deadline for submission of such comments;

(ii) Any procedures through which the public may comment on or participate in proceedings to reach a final decision on the order;

(iii) The location of the administrative record referenced in § 326.6(e), the times at which the administrative record will be available for public inspection, and a statement that all information submitted by the permittee and persons commenting on the proposed order is available as part of the administrative record, subject to provisions of law restricting the public disclosure of confidential information.

(d) *State consultation.* (1) At the same time that the permittee is provided actual notice, the DE shall send the appropriate state agency written notice of proposal to issue an administrative civil penalty order. This notice will include the same information required pursuant to § 326.6(c)(5).

(2) For the purposes of this regulation, the appropriate State agency will be the agency administering the 401 certification program, unless another state agency is agreed to by the District and the respective state through formal/informal agreement with the state.

(3) The appropriate state agency will be provided the same opportunity to comment on the proposed order and participate in any hearing that is provided pursuant to § 326.6(c).

(e) *Availability of the administrative record.* (1) At any time after the public notice of a proposed penalty order is given under § 326.6(c), the DE shall make available the administrative record at reasonable times for inspection and copying by any interested person, subject to provisions of law restricting the public disclosure of confidential information. Any person requesting copies of the administrative record or portions of the administrative record may be required by the DE to pay reasonable charges for reproducing the information requested.

(2) The administrative record shall include the following:

(i) Documentation relied on by the DE to support the violations alleged in the proposed penalty order with a summary of violations, if a summary has been prepared;

(ii) Proposed penalty order or assessment notice;

(iii) Public notice of the proposed order with evidence of notice to the permittee and to the public;

(iv) Comments by the permittee and/or the public on the proposed penalty order, including any requests for a hearing;

(v) All orders or notices of the Presiding Officer;

(vi) Subpoenas issued, if any, for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with any hearings;

(vii) All submittals or responses of any persons or comments to the proceeding, including exhibits, if any;

(viii) A complete and accurate record or transcription of any hearing;

(ix) The recommended decision of the Presiding Officer and final decision and/or order of the Corps issued by the DE; and

(x) Any other appropriate documents related to the administrative proceeding;

(f) *Counsel.* A permittee may be represented at all stages of the proceeding by counsel. After receiving notification that a permittee or any other party or commenter is represented by counsel, the Presiding Officer and DE shall direct all further communications to that counsel.

(g) *Opportunity for hearing.* (1) The permittee may request a hearing and may provide written comments on the proposed administrative penalty order at any time within 30 calendar days after receipt of the notice set forth in § 326.6(b)(2). The permittee must request the hearing in writing, specifying in summary form the factual and legal issues which are in dispute and the specific factual and legal grounds for the permittee's defense.

(2) The permittee waives the right to a hearing to present evidence on the alleged violation or violations if the permittee does not submit the request for the hearing to the official designated in the notice of the proposed order within 30 calendar days of receipt of the notice. The DE shall determine the date of receipt of notice by permittee's signed and dated return receipt or such other evidence that constitutes proof of actual notice on a certain date.

(3) The DE shall promptly schedule requested hearings and provide reasonable notice of the hearing schedule to all participants, except that no hearing shall be scheduled prior to the end of the thirty day public comment period provided in § 326.6(c)(2). The DE may grant any delays or continuances necessary or desirable to resolve the case fairly.

(4) The hearing shall be held at the district office or a location chosen by the DE, except the permittee may request in writing upon a showing of good cause that the hearing be held at an alternative location. Action on such request is at the discretion of the DE.

(h) *Hearing.* (1) Hearings shall afford permittees with an opportunity to present evidence on alleged violations and shall be informal, adjudicatory hearings and shall not be subject to section 554 or 556 of the Administrative Procedure Act. Permittees may present evidence either orally or in written form in accordance with the hearing procedures specified in § 326.6(i).

(2) The DE shall give written notice of any hearing to be held under these rules to any person who commented on the proposed administrative penalty order under § 326.6(c). This notice shall specify a reasonable time prior to the hearing within which the commenter may request an opportunity to be heard and to present oral evidence or to make comments in writing in any such hearing. The notice shall require that any such request specify the facts or issues which the commenter wishes to address. Any commenter who files comments pursuant to § 326.6(c)(2) shall have a right to be heard and to present evidence at the hearing in conformance with these procedures.

(3) The DE shall select a member of the Corps counsel staff or other qualified person to serve as Presiding Officer of the hearing. The Presiding Officer shall exercise no other responsibility, direct or supervisory, for the investigation or prosecution of any case before him. The Presiding Officer shall conduct hearings as specified by these rules and make a recommended decision to the DE.

(4) The Presiding Officer shall consider each case on the basis of the evidence presented, and must have no prior connection with the case. The Presiding Officer is solely responsible for the recommended decision in each case.

(5) Ex Parte Communications. (i) No interested person outside the Corps or member of the interested Corps staff shall make, or knowingly cause to be made, any ex parte communication on the merits of the proceeding.

(ii) The Presiding Officer shall not make, or knowingly cause to be made, any ex parte communication on the proceeding to any interested person outside the Corps or to any member of the interested Corps staff.

(iii) The DE may replace the Presiding Officer in any proceeding in which it is demonstrated to the DE's satisfaction that the Presiding Officer has engaged in prohibited ex parte communications to the prejudice of any participant.

(iv) Whenever an ex parte communication in violation of this section is received by the Presiding Officer or made known to the Presiding Officer, the Presiding Officer shall immediately notify all participants in the proceeding of the circumstances and substance of the communication and may require the person who made the communication or caused it to be made, or the party whose representative made the communication or caused it to be made, to the extent consistent with justice and the policies of the Clean Water Act, to show cause why that person or party's claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(v) The prohibitions of this paragraph apply upon designation of the Presiding Officer and terminate on the date of final action or the final order.

(i) *Hearing Procedures.* (1) The Presiding Officer shall conduct a fair and impartial proceeding in which the participants are given a reasonable opportunity to present evidence.

(2) The Presiding Officer may subpoena witnesses and issue subpoenas for documents pursuant to the provisions of the Clean Water Act.

(3) The Presiding Officer shall provide interested parties a reasonable opportunity to be heard and to present evidence. Interested parties include the permittee, any person who filed a request to participate under 33 CFR 326.6(c), and any other person attending the hearing. The Presiding Officer may establish reasonable time limits for oral testimony.

(4) The permittee may not challenge the permit condition or limitation which is the subject matter of the administrative penalty order.

(5) Prior to the commencement of the hearing, the DE shall provide to the Presiding Officer the complete administrative record as of that date. During the hearing, the DE, or an authorized representative of the DE may summarize the basis for the proposed administrative order. Thereafter, the administrative record shall be admitted into evidence and the Presiding Officer shall maintain the administrative record of the proceedings and shall include in that record all documentary evidence, written statements, correspondence, the record of hearing, and any other relevant matter.

(6) The Presiding Officer shall cause a tape recording, written transcript or other permanent, verbatim record of the hearing to be made, which shall be included in the administrative record, and shall, upon written request, be made available, for inspection or copying, to the permittee or any person, subject to provisions of law restricting the public disclosure of confidential information. Any person making a request may be required to pay reasonable charges for copies of the administrative record or portions thereof.

(7) In receiving evidence, the Presiding Officer is not bound by strict rules of evidence. The Presiding Officer may determine the weight to be accorded the evidence.

(8) The permittee has the right to examine, and to respond to the administrative record. The permittee may offer into evidence, in written form or through oral testimony, a response to the administrative record including, any facts, statements, explanations, documents, testimony, or other exculpatory items which bear on any appropriate issues. The Presiding Officer may question the permittee and require the authentication of any written exhibit or statement. The Presiding Officer may exclude any repetitive or irrelevant matter.

(9) At the close of the permittee's presentation of evidence, the Presiding Officer should allow the introduction of rebuttal evidence. The Presiding Officer may allow the permittee to respond to any such rebuttal evidence submitted and to cross-examine any witness.

(10) The Presiding Officer may take official notice of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking official notice of a matter, the Presiding Officer shall give the Corps and the permittee an opportunity to show why such notice should not be taken. In any case in which official notice is taken, the Presiding Officer shall place a written statement of the matters as to which such notice was taken in the record, including the basis for such notice and a statement that the Corps or permittee consented to such notice being taken or a summary of the objections of the Corps or the permittee.

(11) After all evidence has been presented, any participant may present argument on any relevant issue, subject to reasonable time limitations set at the discretion of the Presiding Officer.

(12) The hearing record shall remain open for a period of 10 business days from the date of the hearing so that the permittee or any person who has submitted comments on the proposed order may examine and submit responses for the record.

(13) At the close of this 10 business day period, the Presiding Officer may allow the introduction of rebuttal evidence. The Presiding Officer may hold the record open for an additional 10 business days to allow the presentation of such rebuttal evidence.

(j) *The decision.* (1) Within a reasonable time following the close of the hearing and receipt of any statements following the hearing and after consultation with the state pursuant to § 326.6(d), the Presiding

Officer shall forward a recommended decision accompanied by a written statement of reasons to the DE. The decision shall recommend that the DE withdraw, issue, or modify and issue the proposed order as a final order. The recommended decision shall be based on a preponderance of the evidence in the administrative record. If the Presiding Officer finds that there is not a preponderance of evidence in the record to support the penalty or the amount of the penalty in a proposed order, the Presiding Officer may recommend that the order be withdrawn or modified and then issued on terms that are supported by a preponderance of evidence on the record. The Presiding Officer also shall make the complete administrative record available to the DE for review.

(2) The Presiding Officer's recommended decision to the DE shall become part of the administrative record and shall be made available to the parties to the proceeding at the time the DE's decision is released pursuant to § 326.6(j)(5). The Presiding Officer's recommended decision shall not become part of the administrative record until the DE's final decision is issued, and shall not be made available to the permittee or public prior to that time.

(3) The rules applicable to Presiding Officers under § 326.6(h)(5) regarding ex parte communications are also applicable to the DE and to any person who advises the DE on the decision or the order, except that communications between the DE and the Presiding Officer do not constitute ex parte communications, nor do communications between the DE and his staff prior to issuance of the proposed order.

(4) The DE may request additional information on specified issues from the participants, in whatever form the DE designates, giving all participants a fair opportunity to be heard on such additional matters. The DE shall include this additional information in the administrative record.

(5) Within a reasonable time following receipt of the Presiding Officer's recommended decision, the DE shall withdraw, issue, or modify and issue the proposed order as a final order. The DE's decision shall be based on a preponderance of the evidence in the administrative record, shall consider the penalty factors set out in section 309(g)(3) of the CWA, shall be in writing, shall include a clear and concise statement of reasons for the decision, and shall include any final order assessing a penalty. The DE's decision, once issued, shall constitute final Corps action for purposes of judicial review.

(6) The DE shall issue the final order by sending the order, or written notice of its withdrawal, to the permittee by certified mail. Issuance of the order under this subparagraph constitutes final Corps action for purposes of judicial review.

(7) The DE shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to every person who submitted written comments on the proposed order.

(8) The notice shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The notice shall also note the right of a commenter to petition for a hearing pursuant to 33 CFR 326.6(c)(3) if no hearing was previously held.

(k) *Effective date of order.* (1) Any final order issued under this subpart shall become effective 30 calendar days following its issuance unless an appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, or in the case where no hearing was held prior to the final order, and a petition for hearing is filed by a prior commenter.

(2) If a petition for hearing is received within 30 days after the final order is issued, the DE shall:

(i) Review the evidence presented by the petitioner.

(ii) If the evidence is material and was not considered in the issuance of the order, the DE shall immediately set aside the final order and schedule a hearing. In that case, a hearing will be held, a new recommendation will be made by the Presiding Officer to the DE and a new final decision issued by the DE.

(iii) If the DE denies a hearing under this subparagraph, the DE shall provide to the petitioner, and publish in the **Federal Register**, notice of, and the reasons for, such denial.

(l) *Judicial review.* (1) Any permittee against whom a final order assessing a civil penalty under these regulations or any person who provided written comments on a proposed order may obtain judicial review of the final order.

(2) In order to obtain judicial review, the permittee or commenter must file a notice of appeal in the United States District Court for either the District of Columbia, or the district in which the violation was alleged to have occurred, within 30 calendar days after the date of issuance of the final order.

(3) Simultaneously with the filing of the notice of appeal, the permittee or commenter must send a copy of such notice by certified mail to the DE and the Attorney General.

[FR Doc. 89-28613 Filed 12-7-89; 8:45 am]
BILLING CODE 3710-08-M

federal register

Friday
December 8, 1989

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA16

Safety Standards For Explosives And Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Mine Safety and Health Administration's (MSHA) existing safety standards for explosives and blasting in underground coal mines. These amendments would update and clarify the following provisions: First, proposed § 75.1301(a)(2) would recognize an alternative method of gaining experience for blasting certification for different types of mines. Second, proposed § 75.1316(a) would clarify how to measure the 50 foot distance for removal of mobile electric equipment and deenergization of stationary electric equipment. Last, § 75.1325(b) would be revised to allow multiface blasting under limited conditions.

DATES: All comments and information should be submitted by February 16, 1990.

ADDRESS: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, room 627, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would amend the Mine Safety and Health Administration's existing safety standards for explosives and blasting in underground coal mines. These amendments are proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

On November 18, 1988, MSHA published a final rule in the **Federal Register** (53 FR 46768) which became effective on January 17, 1989. Prior to the effective date of the final rule, MSHA received comments from the coal mining industry regarding 30 CFR 75.1316(a) and 75.1325(b) which raised questions concerning the jurisdiction and interpretation of these provisions. Consequently, the Agency reevaluated these provisions and published a stay of one provision, 30 CFR 75.1325(b), in the **Federal Register** on January 13, 1989 (54 FR 1360). No stay of § 75.1316(a) was issued and that provision is currently in effect. Since that time, the Agency has also received questions regarding the application of the "qualified person" provision contained in 30 CFR 75.1301. As a result of these comments and questions, certain changes to these provisions are being proposed.

II. Section-by-Section Discussion of the Proposed Rule Section

Section 75.1301 Qualified Persons.

This section sets forth requirements for becoming qualified to safely use permissible explosives or approved sheathed explosive units in underground coal mines. The present standard allows for the qualification of persons with experience in mines where production blasting is performed. MSHA has received comments that a large number of the Nation's coal mines which do not perform production blasting, do utilize explosives routinely for construction of overcast, undercasts, boom holes, sump holes, and for breaking up roof falls or performing similar activities which may include the use of sheathed explosive units. The existing standard for qualified persons does not adequately address the needs of these operations. Therefore, the Agency proposes alternative experience requirements for becoming a qualified person to perform construction blasting.

Paragraph (a)(2) currently specified minimum experience requirements for qualified persons in States that do not certify or qualify persons to use explosives. Under the proposal, paragraph (a)(2) would be divided into subparagraphs (i) and (ii) containing the requirements for persons to be qualified as production blasters and construction blasters respectively. Under the proposal, paragraph (a)(2)(i) would continue to require qualified persons performing production blasting to have at least one year of experience working underground on a coal producing section of a mine where explosives are used and demonstrate to an authorized representative of the Secretary the ability to safely use permissible explosives. Paragraph (a)(2)(ii) would be new and would require qualified persons who will only be performing construction blasting to have at least one year of experience working underground in a mine where construction blasting is performed. Similarly, persons to be qualified as construction blasters would also have to demonstrate to an authorized representative of the Secretary the ability to safely use permissible explosives.

Under the proposal, a person qualified by MSHA to only perform construction blasting would not be permitted to blast coal for production purposes. The "qualified person" card issued by MSHA for these persons would restrict the person to the performance of construction blasting only. A person with this type qualification would have to be re-qualified in order to perform production blasting and would also be required to have the specific experience stipulated in paragraph (a)(2)(i). However, a person qualified to perform production blasting would also be considered qualified to perform construction blasting under this subpart.

Section 75.1316 Preparation Before Blasting

This section proposes to clarify requirements for deenergizing or removing electric equipment from areas where blasting is to be performed. Like the current rule, it is intended to address the hazard of accidental initiation of detonators caused by stray electric current originating from contact with energized electric equipment.

Paragraph (a) of the current rule requires that before priming any explosive, all mobile electric equipment be removed to a distance of at least 50 feet from the "working place or other areas where blasting is to be performed." In addition, all stationary equipment within this distance must be deenergized. Proposed paragraph (a) would require that all mobile electric equipment be removed to a distance of at least 50 feet from "boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired." Stationary equipment within this distance would also have to be deenergized.

This modification is being processed in response to industry questions regarding interpretation of this provision following publication of the rule. Commenters questioned how this distance was to be measured. Specifically, they asked whether this is a "line of sight" measurement and whether it is to be measured through solid coal or rock.

The proposed change from "working place or other area where blasting is to be performed" to "boreholes to be loaded with explosives or sites where sheathed explosives units are to be placed and fired" is intended to specify the exact location from which the 50-foot distance is to be measured. Further, it would explicitly state that the removal or deenergization with respect to the 50-foot applies not only when firing loaded boreholes but also when firing sheathed explosive units. This distance is intended to extend through open spaces in all directions, except through solid coal or rock. Thus, compliance with § 75.1316(a) generally will not restrict mining activities in adjacent working places separated from the blasting area by a solid block of coal. Only when such mining activity is within 50 feet as measured through opened spaces will electric equipment need to be moved or deenergized.

Fifty feet is recommended by the National Safety Council as the minimum separation between the blast area and electrical power sources. A 50-foot distance is also used in metal and non-metal blasting standards (30 CFR 57.6127) and OSHA construction regulations (29 CFR Part 1926) as a safe distance to protect loaded boreholes against premature detonation by stray current from electrical power sources.

Another issue raised by operators was whether the provisions of § 75.1316(a) apply to trailing cables. Trailing cables are considered to be an integral component of the equipment to which they are attached and are a potential source of stray current. Therefore, trailing cables would be subject to the same requirements as mobile and stationary equipment and the proposal would clarify this point by adding the phrase "including trailing cables" to both paragraphs (a)(1) and (a)(2) of § 75.1316(a).

Section 75.1325 Firing Procedure

Section 75.1325(b) was published as a final rule in the **Federal Register** on November 18, 1988, and allowed only one face to be blasted at a time. However, on January 13, 1989, MSHA published a stay of this provision so that it did not become effective on January 17, 1989 with the other explosives and blasting safety standards. This action was based on comments from segments of the mining industry who questioned the basis for prohibiting firing more than one face at a time since, in their view, this blasting practice has been conducted safely in several mines. In conjunction with issuing a stay of this provision, MSHA indicated that additional substantive information relative to this blasting practice was needed. Since issuance of the stay, the Agency has taken a number of actions to further examine this issue.

In relation to this provision, MSHA conducted a reevaluation of the available record of blasting accidents occurring since 1952 to determine whether any of these accidents were related to multiface blasting. In no instance did this review find that multiface blasting was cited as the sole factor or as a contributing cause in an accident. The only reference to multiface blasting was used to describe activities underway at the time of certain accidents which occurred when blasting off the solid. No mention was made of multiface blasting in reports or data relative to accidents occurring when blasting cut coal.

In addition, MSHA conducted a literature search specifically seeking published materials related to the issue of single versus multiface blasting. No pertinent information on this issue was found which was not previously reviewed by the Agency and already a part of the rulemaking record.

MSHA also surveyed various states where explosives are used for production. An analysis of this data shows that almost two thirds of the conventional bituminous mining sections blast cut coal only. Nearly all of the mines that blast coal off the solid are located in Kentucky or West Virginia. In Kentucky, multiface blasting is prohibited when blasting off the solid. However, Kentucky has no prohibition against multiface blasting in cut coal. There is no provision limiting blasting to only one face in West Virginia. However, a permit is required to blast more than 10 boreholes per round. This has the effect of limiting multiface blasting since blasting more than 10 boreholes is only allowed under certain conditions. Several states, e.g. Virginia, Wyoming, and Colorado, do not prohibit multiface blasting, but limit the number of shots per round to 20. A review of Pennsylvania mining regulations found no specific prohibition against multiface blasting although state inspectors have broad discretionary authority to address such practices.

Following the review of accidents in the United States, MSHA surveyed other coal producing nations for possible restrictions on multiface blasting. In discussions with mining experts from Australia, apparently no restrictions are being imposed on mine operators to limit blasting to one face only. The majority of the coal mining operations are single face developments remote from each other. Polish mining operations are limited to blasting only one face at a time because of a potential gas or dust explosion and problems with roof support. However, in blasting of rock or coal with rock partings, up to 70 boreholes per round may be fired. Although firing more than one face at a time is not prohibited in England, it is not a common practice since little room and pillar mining is conducted.

Based on this reexamination of single versus multiface blasting, MSHA is proposing in paragraph (b) to limit blasting in a working place to one face at a time with one exception. Under the proposal, an exception would be allowed to permit up to three faces to be blasted at a time provided that each face has a separate kerf and a total of no more than 20 boreholes connected in a single series are fired in the round. Blasting multiple faces when shooting off the solid would not be permitted because this is a difficult blasting technique with greater potential for blown out holes that can ignite gas and dust released by the blasting off adjacent faces. This prohibition would not apply to shooting of cut coal because boreholes in this type of shooting have relief provided by the kerf which greatly diminishes the potential for blown out holes. This position would be consistent with the specific prohibition against multiface blasting in off the solid shooting in the state of Kentucky and the restriction on such blasting in West Virginia where the number of boreholes permitted to be fired in a round is limited to 10. Approximately 98 percent of all the bituminous mines conducting off the solid shooting are located in these two states.

Concern has been expressed that if multiface blasting were permitted, the firing of one face could cause disruption of the blasting circuit in another face resulting in undetonated explosives. However, in accordance with § 75.1323(i), when 20 or fewer boreholes are fired in a round, the blasting circuit must be wired in a single series without regard to the number of faces being fired. This ensures that firing energy is applied to all detonators at the same time preventing blast circuit disruption caused by the blast.

This paragraph would also specify that a permit to fire more than 20 boreholes in a round when blasting multiple faces may not be obtained from the District Manager under the provisions of § 75.1321. MSHA's past experience has shown that mine operators generally seek permits to use nonpermissible blasting units to fire more than 20 boreholes during construction blasting in rock. Presently, no mine has permission to blast more than 20 boreholes in a round in the coal face nor does the Agency foresee a need for such a permit in the future. For these reasons, the Agency proposes not to grant permits to fire more than 20 boreholes in a round when blasting

multiple faces. Should such a need arise, the operator may request a modification of this provision under part 44.

II. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA prepared an analysis in November 1988 to identify potential costs and benefits associated with the changes to its explosives and blasting standards for underground coal mines. That analysis determined that the final rule would result in a major cost increase or have an incremental effect of $100 million or more on the economy. This proposal would amend three of those standards issued in November. First, proposed § 75.1301(a)(2) would recognize an alternative method of gaining experience for blasting certification for different types of mines. Second, proposed § 75.1316(a) would clarify how to measure the 50 foot distance for removal of mobile electric equipment and deenergization of stationary electric equipment. Last, § 75.1325(b) would be revised to allow multiface blasting under limited conditions. These proposals would not have an associated cost factor that would affect a change in the original analysis. A copy of the full analysis prepared at the time of promulgation of Subpart N in November 1988 is available upon request.

III. Paperwork Reduction Act

These proposals do not contain additional collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mine, Explosives and blasting.

Dated: April 12, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations under U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

2. Section 75.1301 is amended by revising paragraph (a)(2) to read as follows:

§ 75.1301 Qualified person.

(a) * * *

(2) In States that do not certify or qualify persons to use explosives required by this section—

(i) Has at least one year of experience working underground on a coal producing section of a mine where explosives are used for production and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives to perform production blasting; or

(ii) Has at least one year of experience working underground in a mine where explosives are used for construction purposes and demonstrates to an authorized representative of the Secretary the ability to safely use permissible explosives for construction blasting.

* * * * *

3. Section 75.1316 is amended by revising paragraph (a) to read as follows:

§ 75.1316 Preparations before blasting.

(a) Before priming any explosives—

(1) All mobile electric equipment, including trailing cables, shall be removed to a distance of at least 50 feet from boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired; and

(2) All stationary electric equipment, including trailing cables, within 50 feet of boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired shall be deenergized.

* * * * *

4. Section 75.1325 is amended by revising paragraph (b) to read as follows:

§ 75.1325 Firing Procedures.

* * * * *

(b) Only one face in a working place shall be blasted at a time, except that when blasting cut coal up to three faces may be blasted in a round if each face has a separate kerf and no more than a total of 20 shots connected in a single series are fired in the round. Notwithstanding the provisions of § 75.1320, a permit to fire more than 20 boreholes in a round under the provisions of 30 CFR 75.1321 may not be obtained for use when blasting multiple faces.

* * * * *

[FR Doc. 89-28695 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Friday
December 8, 1989

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1, et al
Federal Acquisition Regulation (FAR); Procurement Integrity Act Suspension; Technical Amendment and Suspension of Interim Rule

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

[Federal Acquisition Circular 84-54]

RIN 9000-AD01

Federal Acquisition Regulation (FAR); Procurement Integrity Act Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment and suspension of interim rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-47, which implemented section 27 of the Office of Federal Procurement Policy Act (the Act) dealing with Procurement Integrity, and which was published in the **Federal Register** on May 11, 1989 (54 FR 20488), is hereby temporarily suspended. Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194), the provisions of "the Act" and of the FAR implementing regulations are suspended for the 1-year period beginning December 1, 1989, and ending November 30, 1990.

Section 27 of "the Act", and the regulations implementing that section, are suspended for a 1-year period. However, the suspension of the "the Act" does not mean that the conduct prohibited by "the Act" is now permitted. Much of the conduct that was prohibited by "the Act" is covered by various statutes and regulations that remain in effect. For example, the offer or acceptance of a bribe or gratuity is prohibited by existing statutes and regulations, including 18 U.S.C. 201, 10 U.S.C. 2207, and 5 CFR part 735. Similarly, FAR parts 14 and 15 place restrictions on the release of information related to procurements and contractor proprietary information. In addition, there are statutory penalties associated with improperly obtaining or disclosing proprietary and procurement sensitive information. With regard to engaging in employment discussions, 18 U.S.C. 208 precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is negotiating for employment. Also, with respect to post-employment restrictions, 18 U.S.C. 207 prohibits certain representational activities by former Government employees, including representation of a contractor before the Government in relation to any contract on which the former employee worked while employed by the Government. This list of proscriptions is not necessarily exhaustive.

DATES: The technical amendments to sections 8.104-2 and 3.104-10, are effective December 1, 1989.

In the interim rule published May 11, 1989 (54 FR 20488), in section 1.105, the entries for sections "3.104-9", "52.203-8", "52.203-9", and "52.237-9", and sections 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (FR 34750)), 37.207(f), 37.208, 43.106, 52.203-8, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989, through November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-54.

SUPPLEMENTARY INFORMATION:

Background

FR Doc. 89-11472, FAC 84-47, published in the **Federal Register** on May 11, 1989, implemented section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) with respect to Procurement Integrity. Pub. L. 101-28 extended the effective date of the Procurement Integrity provisions to July 16, 1989 ((FR Doc. 89-12391 published in the **Federal Register** on May 23, 1989) (54 FR 22282)).

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

Government procurement.

Dated: December 5, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, the technical amendments to sections 3.104-2 and 3.104-10, and suspension of the interim rule in the Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-47 are effective December 1, 1989.

In section 1.105, the entries for sections "3.104-9", "52.203-8", "52.203-9", and "52.237-9", and sections 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (54 FR 34750)), 37.207(f), 37.208, 43.106, 52.203-8, 52.203-9, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989 through November 30, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

L. E. Hopkins,

Deputy Assistant Administrator for Procurement, NASA.

The Administrator Designate of the Office of Federal Procurement Policy, Office of Management and Budget, concurs.

Allan V. Burman.

Therefore, 48 CFR parts 1, 3, 4, 9, 15, 37, 43, and 52 are amended as set forth below.

Item—Procurement Integrity

FAR 3.104-2 and 3.104-10 are revised, and 1.105, 3.104-1, 3.104-3 through 3.104-9, 3.104-11, 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5 (j) and (k) (redesignated from (l) and (m) in FAC 84-51 on August 21, 1989 (54 FR 34750)), 37.207(f), 37.208, 43.106, and the provision and clauses at 52.203-8, 52.203-9, 52.203-10, and 52.237-9 are suspended for the period December 1, 1989 through November 30, 1990, to implement the Ethics Reform Act of 1989, which suspends the requirements of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (Procurement Integrity) for a 1-year period.

Solicitations issued prior to December 1, 1989, for which bids have not been opened or proposals received before December 1, 1989, shall be amended, wherever practicable, to delete the provision of 52.203-8, and the clauses at 52.203-9, 52.203-10, and 52.237-9.

For solicitations for which bids have been opened or for offers that have been received prior to December 1, 1989, but where award has not been made, the contracting officer shall disregard the lack of a certification in determining eligiblity for award and shall delete the provision at 52.203-8, and the clauses at 52.203-9, 52.203-10, and 52.237-9 by administrative change.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 3.104-2 is amended by adding a second sentence to read as follows:

3.104-2 Applicability.

* * * Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194), the requirements of this section are suspended for the period December 1, 1989 through November 30, 1990.

3. Section 3.104-10 is amended by adding the introductory text to read as follows:

3.104-10 Solicitation provision and contract clauses.

Pursuant to section 507 of the Ethics Reform Act of 1989, the reqirement to include the provision and clauses at 52.203-8, 52.203-9, 52.203-10, and 52.237-9 in solicitations and contracts is suspended for the period December 1, 1989 through November 30, 1990.

* * * * *

[FR Doc. 89-28789 Filed 12-6-89; 10:20 am]

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Friday
December 8, 1989

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 396
Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspections; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[FHWA Docket No. MC-113]

RIN 2125-AC47

Inspection, Repair and Maintenance; Periodic Inspections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; delay in compliance date; request for comments.

SUMMARY: The FHWA is delaying the compliance date to July 1, 1990, when motor carriers are required to implement the periodic inspection requirements contained in the final rule, Inspection, Repair and Maintenance, published on December 7, 1988 (53 FR 49402). On December 12, 1988, the FHWA clarified that provisions of the final rule were to be complied with by December 7, 1989 (53 FR 49968) except as provided for in part 396.

This document also includes recent interpretations, makes minor technical amendments to clarify the rule and eliminates certain items from the inspection report. These interpretations are made in response to many requests the FHWA has received to clarify the intent of the final rule. The elimination of some of the items that were to be included in the inspection report is being made to simplify the recordkeeping requirements.

Although this document is a final rule, a request for public comment is being sought. Due to the complexity of the procedures, the FHWA will conduct an on-going review of the procedures to determine if further revision is warranted.

DATES: Effective date: This final rule is effective on December 7, 1989. Comments must be received not later than February 6, 1990. Motor carriers must ensure all commercial motor vehicles are inspected in accordance with the requirements of the final rule, Inspection, Repair, and Maintenance, published on December 7, 1988, and modified by this final rule, no later than July 1, 1990.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-113, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect, WordStar, or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagan, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1988, the FHWA issued a final rule requiring all commercial motor vehicles to pass an annual inspection based on Federal standards by qualified inspectors at least annually and that documentation of such inspections be maintained. (Note effective date correction at 53 FR 49968). The requirement for an annual inspection was included in the Federal Motor Carrier Safety Regulations (FMCSRs) in response to Section 210 of the Motor Carrier Safety Act of 1984. (Pub. L. 98-554, 98 Stat. 2829). The annual inspection rule is to become effective on December 7, 1989.

The FHWA has received requests for interpretations and clarifications of the final rule. The requests have generally addressed the requirement that a copy of the inspection report be maintained on the vehicle and other issues relating to documentation. Requests were also received regarding the applicability of existing inspection procedures and requirements to the new annual inspection requirement.

The American Trucking Associations (ATA) petitioned the FHWA on July 19, 1989, to extend the date for compliance with the periodic inspection requirements until one year from the date that the FHWA resolves several outstanding issues relating to this regulation.

Elsewhere in today's Federal Register the FHWA is publishing the list of States that have periodic inspection programs for commercial motor vehicles that have been determined by the FHWA to be as effective as the requirements contained in the final rule published on December 7, 1988.

Delay in Implementation Date

The FHWA is delaying the implementation date to July 1, 1990. This action is being taken for a number of reasons. The FHWA received a petition from the ATA requesting that the implementation date be extended to one year beyond the date the FHWA resolves several issues relating to the periodic inspection rule. The FHWA believes that the issues raised by the ATA did in fact need to be resolved before implementation became mandatory. To require industry to comply with the inspection rule without the benefit of a resolution to the issues raised would place an undue burden on the industry. With the resolution of the issues in this final rule, the FHWA believes an approximately 7 month delay in implementation is justifiable. The decision to extend the implementation date is also based in part on the confusion caused by the initial implementation date published (3/7/90). Although the date was corrected by the Federal Register, it is evident from the numerous inquiries received by the FHWA that the March 7, 1990, date was still considered to be the effective date by a substantial number of the inquirers.

The FHWA believes that there is sufficient time to implement the requirements of the final rule, as amended by this notice, by July 1, 1990, and therefore, the one year period requested by the ATA is denied. The FHWA has received many telephone calls and letters regarding implementation of the rule by motor carriers who intend on meeting the requirements by the previous implementation date, December 7, 1989. With the interpretations and amendments included in this final rule the FHWA believes an extension to December 8, 1990 is unwarranted. Motor carriers are already required to inspect and maintain their commercial motor vehicles to standards similar to the inspection standards contained in this rule. Further delay in the implementation of this rule would be contrary to public safety.

Interpretations

The FHWA believes the requests for interpretations and clarifications have merit and general applicability. Therefore, the requests and FHWA's responses are being published today. In order to make the interpretations broadly applicable, the specific questions received are being rephrased. The FHWA is modifying §§ 396.17(c) and 396.21(b) in the rule to codify the interpretations. The FHWA believes these modifications are technical in nature and do not require public comment.

The FHWA is further amending the final rule by eliminating some of the items that were required to be included on the inspection form § 396.21(a)). These amendments are intended to reduce the paperwork requirements and do not affect the statutory mandate or compromise safety. Because of these reasons and to ensure that the requirements for an annual inspection are in place without delay, the amendments are being made without prior public comment. A thorough discussion of these amendments is contained in the section entitled, "Amendments."

Question 1: May stickers or decals be used in lieu of the requirement that the original or copy of the inspection report be maintained on the vehicle?

Response: Yes, provided that the sticker, decal or other form of documentation contains sufficient information to clearly indicate that the vehicle is in compliance with the annual inspection requirements of Part 396 and to allow an enforcement official to obtain a copy of the full inspection report. The information that FHWA believes is sufficient includes the following:

(1) The Date of Inspection (month and year) the vehicle passed an inspection consistent with the requirements of this rule or the dates individual components passed the inspection consistent with the requirements of this rule;

(2) The Name and Address of Motor Carrier or Other Entity who is maintaining the inspection report;

(3) A Certification that the vehicle has passed a periodic inspection in accordance with the requirements of 49 CFR Part 396; and

(4) Vehicle Identification information sufficient to uniquely identify the vehicle if such information is not readily and clearly marked on the vehicle.

These four items will provide enough information to obtain a copy of the inspection report if an enforcement official is interested in checking the validity of the sticker or decal. Each of these items are discussed in greater detail below.

Date of inspection.—If the date is given in the month/year format vehicles with inspection documentation dated earlier than the current month and previous year are considered to be in violation. Example: a vehicle inspected on 9/90 (September 1990) will be due for another inspection on October 1, 1991. If the date is given in the month, day, year format the inspection is only valid for one year. Example: a vehicle inspection dated September 1, 1990, will be due for another inspection on September 1, 1991.

Multiple dates are allowed if different components are inspected at different times. The FHWA recognizes that many motor carriers have inspection, repair and preventive maintenance programs that do not provide for a one time comprehensive inspection of the vehicle. In such cases, separate dates along with the components which passed the inspection on that date may be listed. However, all components addressed in the periodic inspection standards must pass an inspection each year. If all the components are not identified or the inspection date exceeds the one-year period of the motor carrier is not in compliance with the periodic inspection requirements of part 396.

Name and address of motor carrier or other entity.—A motor carrier must be able to provide a copy of the inspection report upon request by the FHWA, or other authorized state or local officials. If a motor carrier is operating a commercial motor vehicle (CMV) which has a decal and has been inspected by another entity it is still the responsibility of the motor carrier operating the CMV to provide a copy of the inspection report when requested.

If the decal clearly indicates that the inspection report is being maintained by the motor carrier operating the vehicle and the motor carrier's name, address and motor carrier identification number as required by 49 CFR 390.21 or the Interstate Commerce Commission "MC" number are clearly and readily visible on the power unit, then such information is not required to be on decals on either the power unit or the trailer(s). The FHWA anticipates that many CMVs, especially trailers, will be inspected by entities other than motor carriers. In such cases motor carriers will have to assure themselves that the CMVs they are using have been properly inspected and that a copy of the inspection report may be quickly obtained from the inspecting entity when requested.

Motor carriers are required to produce copies of inspection reports to substantiate decals or stickers upon demand of authorized federal, state or local officials. The FHWA does not anticipate that motor carriers will be required to produce the inspection reports at the time of the roadside inspection, but within a reasonable time. In such cases the motor carrier is required to provide a copy of the annual inspection report within the time frame established by the official requesting the form. The FHWA is interested in comments on what the time limit should be for a motor carrier to provide this information.

Certification.—A statement similar to the following must be included on the sticker or decal if the vehicle passed a comprehensive inspection of all the components listed in Appendix G: "This vehicle has passed an inspection in accordance with 49 CFR 396.17 through 396.23." If only certain components passed the inspection (because only certain components were inspected or for any other reason), then the certification must list those components and the date they passed the inspection. The motor carrier is responsible for the validity of any certification.

Vehicle identification.—The FHWA is revising Paragraph 396.21(a)(5) (Now redesignated as paragraph 396.21(a)(4)) to allow forms of vehicle identification information other than license plate number and vehicle identification number. (See additional discussion under the section entitled, "Amendments.") If the vehicle is not readily, clearly and permanently marked with a unique identification, such as, a number established by the motor carrier, VIN, license or registration information, then the sticker must include this information. This same information must be included on the inspection report. That is, if a vehicle is identified with a motor carrier vehicle number on the decal or sticker, the same information must be contained on the inspection report.

The driver of the vehicle is responsible for providing the vehicle identification information to the inspector if this information is not contained on the decal or sticker.

Inspector identification.—The FHWA continues to believe that the person performing the inspection is critical, and the requirement that the inspector be identified is being retained. However, the inspector's signature on the decal is considered to be unnecessary paperwork and will not be required. While the inspector's identification is not required on the decal, it is required on the report. The motor carrier continues to be responsible for ensuring that the inspector is qualified to perform the inspection. Required production of inspection reports will generally include documentation on the qualifications of the inspector.

Motor carriers and others (i.e. commercial motor vehicle leasing companies, vehicle inspection firms, etc.) must ensure that distribution of periodic inspection decals are controlled and that only authorized individuals have access to these decals.

Question 2: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program, which has been determined to be as effective as the Federal program. However, these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program each year in order to meet the Federal periodic inspection requirements?

Response: Those commercial motor vehicles that are subject to a mandatory State inspection program must meet the periodic inspection requirement of this rule through that State's inspection program. Motor carriers with vehicles registered in a State but are not subject to the State's periodic inspection program for whatever reason, need not have the vehicle inspected through the registering State's program to meet the Federal periodic inspection requirements of 49 CFR part 396. The 49 CFR part 396 requirements may be met through either a motor carrier self-inspection, a third party inspection, a CVSA inspection or a periodic inspection performed in any State with a program that FHWA determines is as effective as the 49 CFR part 396 requirements.

Question 3: May the due date for the next inspection satisfy the requirements for the inspection date on the sticker or decal?

Response: No. The rule requires that the date of the inspection be included on the report and sticker or decal. This date may be in the format of month and year. While the FHWA recognizes that some motor carriers may be using "due date" format for their existing inspection procedures, for purposes of uniformity of enforcement and to minimize any misunderstanding, such formats would not meet the requirements of the rule.

Question 4: Must each vehicle in a combination carry separate documentation as required by the rule?

Response: Separate documentation (either a sticker or inspection report) is not needed if a single document clearly identifies all the vehicles in the commercial motor vehicle combination (i.e., tractor, trailers and dollies). The FHWA anticipates that such combined documentation will only be applicable to "married vehicles" and that in general each vehicle will have separate documentation. If vehicles with combined inspection documentation are separated, each vehicle will have to have a copy of the documentation.

Question 5: If a vehicle does not receive a Commercial Vehicle Safety Alliance (CVSA) decal because of driver violations, not vehicle violations, is the vehicle considered to have met the requirements of the annual inspection? If so, is the inspector required to place a CVSA decal on the vehicle?

Response: While a vehicle may have passed an inspection, the requirements of this rule are not met if the inspection procedures do not provide any record of such inspection. In such cases as described, an inspection report will be completed and may serve as the documentation under this rule even though a decal is not placed on the vehicle. This rule does not modify in any way State or CVSA inspection procedures.

Question 6: Does the sticker have to be located in any certain spot on the vehicle?

Response: No. The rule does not require that the sticker or other forms of documentation be located in a certain spot on the vehicle. It is the responsibility of the driver to produce the documentation when requested. Therefore, the driver must know the location of the sticker and ensure that all information on it is legible and current. The driver must also be able to produce the inspection report if that form of documentation is used.

Question 7: Must brand new equipment also pass an annual inspection? Must such vehicle meet the inspection requirements immediately?

Response: Yes, all commercial motor vehicles, including brand new vehicles, must meet the annual inspection requirement as soon as the vehicles are placed in service. Section 396.15, Driveaway-towaway operations and inspections, provides that a vehicle which is part of a shipment being delivered need not meet the annual inspection requirements.

Amendments

The FHWA is amending the final rule, Inspection, Repair and Maintenance, published on December 7, 1988, to clarify certain requirements of the rule and to reduce unnecessary paperwork burdens.

Paragraph 396.17(c) is being revised by adding paragraphs (1) and (2) to clarify the types of documentation that may be carried on the vehicle and the information that must be included in the documentation. Paragraph 396.17(c)(1) specifies that if the actual inspection report is carried on the vehicle the information contained in the report must be consistent with paragraph 396.21(a). If another form of documentation is carried on the vehicle, such as a decal or sticker, such documentation must contain the following information: (1) The date of inspection, (2) name and address of motor carrier or the entity who is maintaining the inspection report, (3) information to uniquely identify the vehicle if such information is not readily and clearly marked on the vehicle, and (4) a certification that the vehicle has passed an inspection in accordance with the requirements of §§ 396.17 through 396.23. Each of these items are discussed in detail in the response to question 1 under the section entitled, "Interpretations."

Paragraph 396.21(b)(1) is being revised to ensure that a copy of the inspection report is maintained or is readily available to the motor carrier operating the commercial motor vehicle for a period of 14 months from the date of the inspection. This time period is included to provide the enforcement agency an opportunity to obtain a copy of the inspection report to verify inspection of a vehicle up to two months after the expiration of the inspection period. The FHWA emphasizes that while the motor carrier need not maintain copies of the actual inspection reports that are the bases for decals, the motor carrier must make the necessary arrangements with the entity performing the inspection to make copies of the inspection report available to the motor carrier. The current requirement contained in paragraph 396.21(b)(1) that a motor carrier retain a copy of the inspection report for all vehicles under the motor carrier's control for more than 30 days is being deleted.

Paragraph 396.21(b)(2) is being revised to clarify that all motor carriers are required to provide a copy of the inspection report when requested regardless of the time they are in control of the vehicle. The FHWA intends that the motor carrier in control of a vehicle for any period of time is responsible during that period for knowing the location of the inspection report and for producing it if requested to do so. The FHWA further intends that there be no doubt that the motor carrier in control of a vehicle when it is due for re-inspection will be responsible for its reinspection before returning the vehicle to service.

This final rule incorporates revisions to paragraph 396.21(a). These revisions reduce unnecessary paperwork burdens and therefore make the rule more effective. Comments are requested on these revisions.

Paragraph 396.21(a)(1) is being revised by eliminating the requirement that the inspector sign the inspection report. This increase in flexibility will allow the use of electronic recordkeeping procedures in use in many motor carrier operations and reduce the paperwork burdens of this rule. The requirement for the identification of the inspector is maintained. This paragraph is further revised to acknowledge that more than one person may perform the inspection and to require only the identification of the person responsible for the inspection.

Paragraph 396.21(a)(2) is being deleted. Since the motor carrier is responsible for the annual inspection, information regarding ownership of the vehicle is unnecessary. Eliminating this requirement will reduce the paperwork burden of this rule.

Paragraph 396.21(a)(3) is being revised by deleting the clause, "if other than the registered owner" since the information on ownership in paragraph 396.21(a)(2) is being deleted.

Paragraph 396.21(a)(4) is being revised by deleting the reference to location of inspection since it serves no useful purpose.

Paragraph 396.21(a)(5) (now redesignated as paragraph 396.21(a)(4)) is revised to allow other forms of vehicle identification information provided the vehicle is uniquely identified.

Regulatory Impacts

The FHWA has considered the impacts of this final rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the December 7, 1988, final rule, by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this document have already been considered by the impact documentation prepared for the December 7, 1988, final rule. Any changes to the December 7, 1988 final rule resulting from this document would not appreciably affect the impact documentation initially prepared except for reducing unnecessary paperwork. The Regulatory Evaluation prepared for the December 7, 1988, rulemaking is available for inspection in the headquarters office of FHWA, 400 Seventh Street SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The amendments contained in this document clarify, interpret, reduce paperwork burdens and delay implementation of the provisions of the December 7, 1988, final rule. In view of the statutory mandate for this rulemaking and the desire to have the December 7, 1988, final rule implemented in a timely manner, the FHWA believes that these amendments should become effective concurrently with the December 7, 1988, final rule which is December 7, 1989. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. section 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. However, as discussed above, public comment is requested on the procedures being established to augment the FHWA's on-going review.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Impact

In promulgating the December 7, 1988, final rule, the FHWA considered the President's Executive Order on "Federalism" issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between the national government and the States. The final rule implements a specific legislative directive to establish minimum Federal safety standards for commercial motor vehicles in interstate commerce contained in sections 206 and 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505 and 2509). Therefore, it was determined that the Federalism implications to be considered under the Executive Order did not apply.

List of Subjects in 49 CFR Part 396

Highway safety, Highways and roads, Motor carrier periodic inspection, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 5, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, subtitle B, chapter III, part 396, as follows:

PART 396—[AMENDED]

1. The authority citation for part 396 continues to read as follows:

Authority: Section 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 396.17 is amended by revising paragraph (c) to read as follows:

§ 396.17 Periodic inspection.

* * * * *

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in appendix G has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with paragraph 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

* * * * *

3. Section 396.21 is revised to read as follows:

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b) (1) The original or a copy of the inspection report shall be retained by the motor carrier or other entity who is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be available for inspection upon demand of an authorized Federal, State or local official.

(3) *Exception.* Where the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, the motor carrier shall be responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

[FR Doc. 89-28770 Filed 12-6-89; 10:27 am]
BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 396

[FHWA Docket No. MC-89-10]

Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to commercial motor vehicle carriers on state periodic inspection programs.

SUMMARY: On March 16, 1989, the FHWA published a notice in the **Federal Register** (54 FR 11020) which requested States and other interested parties to identify and/or provide any information or source materials that would describe the type of periodic inspection (PI) programs now being performed in their States for commercial motor vehicles (CMVs). In addition, the FHWA requested that all States with PI programs provide an initial assessment of whether their State programs are comparable to, or as effective as, the PI requisites contained in 49 CFR 396.15 through 396.23.

This notice provides (1) information on the process of determining the effectiveness of State programs and (2) notification of the FHWA's determination of those State PI programs which are comparable to, or as effective as, the Federal standards.

DATE: Docket will remain open until further notification.

ADDRESS: Submit written, signed comments to the FHWA Docket No. MC-89-10, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards, (202) 366-2981; or Paul L. Brennan, Office of the Chief Counsel, HCC-10, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (the Act) Public Law 98-554, 98 Stat. 2829, 2839, required the Secretary of Transportation to establish standards for annual or more frequent inspection of CMVs, and for the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 49402) addressing PIs which implemented the statutory requirements of the Act and amended part 396, "Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule requires that all CMVs operating under a motor carrier's control in interstate commerce be inspected and meet the vehicle component standards at least once every 12 months.

This inspection is to be based on Federal inspection standards (also being added to part 396 of the FMCSRs), or a State inspection program determined by the FHWA to be as effective as the Federal standards. Accordingly, if the FHWA determines that the State's PI program is as effective as the requirements of part 396, then a motor carrier's commercial motor vehicles required by the state to be inspected through the state's inspection program must use that program to meet the requirements of this rule. Commercial motor vehicle inspections may be conducted: (a) By State personnel, (b) at State authorized commercial facilities, or (c) by the motor carrier itself under the auspices of a self-inspection program supervised by the State inspection authority.

If the FHWA determines that the State inspection program is not as effective as the Federal requirements then a motor carrier must ensure that the PI is performed on all commercial motor vehicles under its control as specified in part 396. This requirement may be achieved through reliance upon alternative inspection procedures, such as: (1) Self-inspection at a carrier's facility(ies); (2) a roadside inspection; or (3) inspection at a commercial garage, fleet leasing company, truck stop, or other similar commercial business. A carrier's ability to use the commercial alternative is contingent upon the business' operating and maintaining facilities appropriate for CMV inspections and employing qualified inspectors, as required by § 396.19.

Nothing in the final rule was intended to imply that the FHWA seeks to preempt a State from conducting PIs of CMVs, or that a State's inspection program does not improve highway safety. The FHWA believes that any inspection of a vehicle, even under programs not as effective as this rule, should contribute to the removal of unsafe vehicles from the highway.

Elsewhere published in today's **Federal Register** is a final rule on the subject of periodic inspection. The rule contains a revised date for implementation of the Periodic Inspection requirement, July 1, 1990. Previously, implementation was slated for December 7, 1989.

The March 16, 1989, Notice (54 FR 11020), which solicited information about existing PI programs, cited 21 States and the District of Columbia which the National Highway Traffic Safety Administration (NHTSA) had noted were performing some type of periodic inspection of passenger vehicles, small trucks, and/or commercial motor vehicles. These States are:

Arkansas	North Carolina
Delaware	Oklahoma
Hawaii	Pennsylvania
Louisiana	Rhode Island
Maine	South Carolina
Massachusetts	Texas
Mississippi	Utah
Missouri	Virginia
New Hampshire	Vermont
New Jersey	West Virginia
New York	

The NHTSA also indicated that programs for CMVs only are operated

by Illinois and Maryland. The FHWA asked for information that would confirm the existence and type of PI program performed in these jurisdictions.

In response to the March 16, 1989, Notice and subsequent communication with State inspection officials, the FHWA received responses from all 50 States and the District of Columbia. Comments were also received from other groups; these included the New Jersey Motor Truck Association, Virginia Trucking Association, Coalition for Safer, Cleaner Vehicles, ALCO Equipment, Incorporated, and Yellow Freight Systems, Incorporated. Respondents tended to clarify the extent of the individual State PI programs. Several State agencies with programs provided the requested assessment of program effectiveness to the FHWA and enclosed a copy of their most recent inspection guidelines for the FHWA's review.

Responses from the other groups varied from espousing the merits of a particular State's PI program to advocating further investigation and research into inspection requirements and technologies. Both the New Jersey Motor Trucking Association and the Virginia Trucking Association supported the FHWA's effort and encouraged the FHWA to approve their respective State's PI programs as equivalent to the standards contained in part 396. The Virginia Trucking Association also advocated changes to current FHWA requirements for inspection documentation kept with the truck, truck-tractor, bus or trailer.

Both ALCO Equipment and Yellow Freight cited the critical importance of qualified inspectors to the success of State PI programs. The FHWA agrees and inspection requirements were considered as a part of the FHWA's overall assessment of State PI programs.

The Coalition for Safer, Cleaner Vehicles (CSCV) presented a number of recommendations for improving the PI program. These included calls for: auditing procedures for fleet self-inspections programs that would ensure that inspectors are qualified and inspections properly performed and documented; a study of small fleet self-inspections; documenting individual vehicle inspections in a Statewide or national database (e.g., something like SAFETYNET), especially in States without equivalent PI programs; and undertaking demonstration projects to test and evaluate new inspection methods and equipment, with one possible goal being the merging of safety and emission inspections into one periodic inspection program. All the comments received will be used in the FHWA's evaluation of the periodic and roadside inspection programs.

Using the information provided by the respondents, the FHWA compared the documentation received with the requirements of part 396 and determined the relative comparability of each State program with Federal standards. During this effort, the FHWA endeavored to assess each State's program on its own merits without drawing comparisons with those programs offered by other States.

One discovery during the review was the variety of State instructional and procedural guidelines in use. Frequently, these concentrated on providing procedural tips for inspectors on the handling of inspection equipment or manually testing various vehicle components; in some cases, to the exclusion of any language identifying deficiencies. To ensure that inspectors capture all appropriate deficiencies in the course of their inspections, these States may wish to consider adding appropriate language to their manuals that will detail the potential defects that may be found in commercial vehicle systems, as well as the methods needed to detect them.

During the assessment process, the FHWA occasionally was unable to locate sufficient documentation of certain inspection activities. When this situation occurred, the FHWA endeavored to determine from alternative sources at the Federal, State and/or local level that a particular inspection criterion was, in fact, addressed, and that it met the requirements of part 396. Thus, the FHWA's review was not limited strictly to the documentation received from respondents. However, if a defect or deficiency described in part 396, appendix G, was either omitted from the State PI manual or inadequately documented, and no subsequent evidence could be obtained to indicate that the activity was being carried out at a level equivalent to the Federal standard, this finding was noted for consideration in making the final determination of the relative conformance of the State's program to part 396.

On this point, the majority of State inspection manuals currently do not adequately address three inspection areas described in Appendix G: "2. Coupling devices", "4. Fuel Systems", and "6. Safe Loading." The FHWA recognizes that "safe loading" is not a priority issue for review in the PIs, as most vehicles are normally checked in an unloaded condition. Nevertheless, the security of such items as the vehicle headboard, side rails; or other load protection devices must be reviewed to ensure the safe operation of the CMV. Likewise, with tractor and trailer connected, the ability to visually check the fifth wheel plate, pintle hooks, or drawbar is restricted. The danger of failing to thoroughly check these items is self-evident and should be acknowledged through appropriate documentation in the manual. In addition, fuel system checks need better documentation to ensure the timely detection of deficiencies. The FHWA urges States to include language in their manuals to provide inspectors with appropriate criteria to adequately inspect these vehicle systems.

During its review, the FHWA weighed the presence or absence of certain inspection criteria more critically than others. For example, the absence of effective criteria for brake inspections was considered by the FHWA to be a more critical deficiency than the State's insufficient consideration of "safe loading." Thus, in determining the comparability or effectiveness of a State's PI program, the FHWA gave less weight to a State's program if its manual documented a less than an effective inspection of such CMV systems as brakes, steering, lights, tires, and suspension.

Determination

Based on the review of submitted documentation and discussions with various officials, the FHWA determined that the District of Columbia and the States of Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, Virginia and West Virginia have PI programs that are comparable to, or as effective as the standards outlined in part 396.

Included among those States judged as comparable to the Federal standards are those States with PI programs which are limited to a particular CMV category or type (e.g., buses only). For motor carriers State's operating CMVs that are not captured by States' limited PI program, a alternative means, such as those described above and in the December 7, 1988 final rule, must be used to satisfy PI requirements. In addition, three States with equivalent PI programs, Arkansas, Illinois and Oklahoma, apply their programs only to intrastate motor carriers. In these three States, those interstate motor carriers that elect to have their vehicles inspected under the States' PI programs may avail themselves of State CMV inspection facilities and will be deemed

to have complied with the Federal requirement.

Of the above States, Michigan, New Jersey, and New York, have PI programs which do not cover all commercial motor vehicles. Michigan's equivalent CMV program covers only buses. New Jersey's equivalent CMV program covers only gasoline-powered vehicles. CMVs powered with other types of fuel (e.g. diesel, liquefied petroleum gas, etc.) are subject to self-inspection by the carrier, which is verified by either random roadside inspection or a "terminal audit" (safety review). Motor carriers with CMVs based in New Jersey, using fuels other than gasoline, must comply with the Federal standards through the self-inspection requirements of the State of New Jersey. In New York, the equivalent CMV program applies only to CMVs with a GVWR greater than 18,000 pounds. Motor carriers CMVs based in New York between 10,001 and 18,000 GVWR may use the State program or find alternate methods, as specified in the final rule, to periodically inspect their vehicles to comply with the Federal requirement. The FHWA has determined that the New York State periodic inspection program for buses meets the requirements of part 396.

Motor carriers with CMVs required to be inspected in these 12 States and the District of Columbia must satisfy their periodic inspection requirement through the State PI programs, except where noted. In addition, interstate motor carriers with CMVs based on Arkansas, Illinois and Oklahoma may elect, as noted above, to use these States' PI programs to meet the Federal PI requirement.

The FHWA has determined that all States having equivalent PI programs provide documentation of successfully completed inspections through the issuance of reports, certificates, or decals. These verification documents must be readily available for identification by State roadside inspection personnel to ensure that motor carriers are properly credited with compliance with the inspection requirement. Motor carriers relying on alternative inspection procedures must similarly ensure that inspection documentation is available to the operator to either display or present to inspection personnel upon demand.

The FHWA has determined that all States other than those named above either have no PI program or their PI programs are not comparable to or as effective as the federal standards. Should these States wish to modify their programs to be as "effective" or comparable to the Federal requirements, then the FHWA is ready to work with them to identify the modification(s) required. Any State wishing to be revaluated because of the development of a PI program or a modification of an existing program should contact the appropriate FHWA regional office. The addresses of these regional offices are given in part 390 of the FMCSR.

The FHWA intends to keep this docket open. If a State decides to revise its PI program and, as a result, that State's program becomes comparable to the Federal PI program, this information can be published in the **Federal Register**. The State would then be included among those States determined to have comparable or equivalent programs.

If a State decides not to change its program, or if a State does not have a PI program, motor carriers operating in those States will need to comply with the annual inspection requirements, either through programs in other States or by relying on the alternative inspection options identified above.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 5, 1989.

T.D. Larson,

Administrator.

[FR Doc. 89-28783 Filed 12-6-89; 10:27 am]

BILLING CODE 4910-22-M

federal register

Friday
December 8, 1989

Part VIII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards, Pattern of Violations, Proposed Rule; Extension of Comment Period

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards; Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rules; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for rules of practice for petitions for modification of mandatory safety standards in 30 CFR part 44 and pattern of violations in 30 CFR part 104.

DATE: Written comments on the proposed rules must be received on or before December 22, 1989.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On May 5, 1989, MSHA published in the **Federal Register** (54 FR 19492) a proposed rule to revise existing Part 44 by specifying time frames at all stages of the petition for modification process. On June 28, 1989, (54 FR 27188) MSHA extended the comment period to August 7, 1989 in response to requests from the mining community.

On May 30, 1989, MSHA published in the **Federal Register** (54 FR 23156) a proposed safety standard that would identify mines with a "pattern of violations" of mandatory safety standards that significantly and substantially contribute to safety or health hazards. On June 20, 1989, (54 FR 25881) MSHA extended the comment period to August 31, 1989 in response to requests from the mining community.

On October 19, 1989, MSHA published in the **Federal Register** (54 FR 43028) a Notice of Public Hearings which stated that the record for both proposals would remain open until December 8, 1989, for the submission of post-hearing comments. Due to requests from the mining community, MSHA is extending the comment period to December 22, 1989. All interested parties are encouraged to submit comments prior to that date.

Dated: December 6, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-28897 Filed 12-7-89; 8:45 am]

BILLING CODE 4510-43-M

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S. 974 / Pub. L. 101–195
Nevada Wilderness Protection Act of 1989. (Dec. 5, 1989; 103 Stat. 1784; 6 pages) Price: $1.00

S.J. Res. 16 / Pub. L. 101–196
Designating November 1989 and November 1990 as "National Alzheimer's Disease Month". (Dec. 5, 1989; 103 Stat. 1790; 1 page) Price: $1.00

S.J. Res. 205 / Pub. L. 101–197
Designating December 3 through 9, 1989 as "National Cities Fight Back Against Drugs Week". (Dec. 5, 1989; 103 Stat. 1791; 1 page) Price: $1.00

H.J. Res. 448 / Pub. L. 101–198
Making supplemental appropriations for the fiscal year 1990, and for other purposes. (Dec. 6, 1989; 103 Stat. 1792; 1 page) Price: $1.00

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VOL
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12-11-89
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federal register

Monday
December 11, 1989

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12-11-89
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Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-206]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. Other products may include honey, molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, and condiments. The revision will adjust the fees to recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090-6456, Telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The final rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule will amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change June 5, 1986 (51 FR 20438), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3-percent pay increase effective January 1, 1987, and a 2-percent pay increase effective January 1, 1988.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In fiscal year 1989, the following increases occurred in program operating expenses: (1) A Government-wide salary increase of 4.1 percent effective January 1, 1989; (2) a 28.3 percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all Government agencies) effective January 1, 1989; (3) a 10 percent Government-wide increase in travel entitlements effective in October 1988; and (4) a projected inflationary cost increase of 3.8 percent for fiscal year 1989. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a $900,000 loss in fiscal year 1989. Therefore, it is found that good cause exists for making this final rule effective upon publication in the Federal Register.

A notice of proposed rulemaking was published in the Federal Register (54 FR 36982-36984) on September 6, 1989 with a thirty day comment period. The comment period closed on October 6, 1989. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The program will incur over a $900,000 loss in fiscal year 1989 alone; (2) this action should be made effective upon publication in the Federal Register so that program fees will reflect the costs of services rendered as soon as possible and; (3) interested persons were afforded a thirty day comment period and no comments were received.

Accordingly, for the reasons set forth in the preamble, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.49, 52.50, 52.51, 52.52c, 52.52d) are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090 as amended (7 USC 1622, 1624).

2. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $31.00 per hour plus an additional $7.00 per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.49 is revised to read as follows:

§ 52.49 Charges for copies of inspection documents and/or inspection data.

If the applicant for inspection service requests additional copies of inspection documents and/or inspection data referable to the processed product covered thereby, the applicant may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.42: Provided, that no charge shall be made for one copy if requested at the time of the original request for inspection. Inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate for each seven (7), or fewer copies in accordance with the rate in § 52.42.

4. Section 52.50 is removed and §§ 52.51 and 52.52 are redesignated as §§ 52.50 and 52.51 and newly redesignated § 52.50 is revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $31.00 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

5. Newly redesignated section 52.51 is amended by republishing (c) introductory text and by revising paragraphs (c)(1), (c)(2), (c)(5), (d) introductory text (d)(1), (d)(2), and (d)(5) to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis:

Each inspector—$25.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—$28.00 per hour.
In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c)(1) and (2) of this section plus $7.00 per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule: [1]

(1) Each inspector—$28.00 per hour.[1]
(2) In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraph (d)(1) of this section plus $7.00 per hour.

* * * * *

Dated: December 6, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-28860 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1135

[DA-90-001]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of portions of the Southwestern Idaho-Eastern Oregon Federal milk order. The suspended provisions relate to limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. This action was requested by the Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid needs and handles reserve milk supplies. The continuation of the suspension is to prevent uneconomic movements of milk. The suspension begins in December 1989 and will continue for an indefinite period. The same order provisions have been suspended since December 1988.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 6, 1989; published November 13, 1989 (54 FR 47215).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 13, 1989 (54 FR 47215) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month of December 1989 and continuing indefinitely the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5), and (6).

Statement of Consideration

This action continues the suspension of provisions that limit the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. These provisions have been suspended since December 1988 through two previous suspension actions. The Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested this indefinite suspension.

The reasons justifying this indefinite suspension relate to the persisting conditions that led to the two prior six-month suspensions of the same order provisions. These include the costs of unloading and re-loading of about 2,000,000 pounds of milk through a supply plant each month to meet diversion requirements, which results in increased exposure of the milk to contamination and in shrinkage of milk weights. In addition, continuing uncertainties regarding production trends, economic conditions, and Class I milk utilization make it difficult to establish a diversion percentage that would allow an effective allocation of the milk supply.

Western Dairymen Cooperative, Inc. (WDCI) filed comments supporting the requested indefinite suspension, maintaining that it would aid in the efficient transportation of milk, and would in no way affect producers volumes of milk.

Sales of Class I products have increased modestly in 1988. However, production is still projected to surpass Class I needs for the market. Moreover, there appears to be no basis to conclude that additional supplies of milk would be pooled in the continued absence of diversion limits. Thus, it is reasonable to conclude that a continued suspension of the diversion requirements will allow the needs of the order to be met without causing disruption to producers who have historically supplied the Southwestern Idaho-Eastern Oregon marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1135

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended indefinitely beginning with the month of December 1989.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR part 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1135.13 [Suspended in Part]

2. In § 1135.13, paragraphs (f) (3), (4), (5), and (6) are suspended.

Signed at Washington, DC, on: December 5, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-28856 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88-013F]

RIN 0583-AA90

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to preclude the distribution in the United States of imported products which have been refused entry into the United States. The rule adds a provision to the regulations that any such products exported to another country and returned to the United States would be subject to detention in accordance with section 402 of the Federal Meat Inspection Act (FMIA) or section 19 of the Poultry Products Inspection Act (PPIA) and to seizure and condemnation in accordance with section 403 of the FMIA or section 20 of the PPIA. This rule is necessary specifically to provide that such products are subject to administrative detention and judicial seizure and condemnation as authorized under the Acts.

EFFECTIVE DATE: January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Compliance Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5604.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Current regulations prevent the distribution into human food channels of those meat or poultry products offered for importation into the United States from foreign countries and subsequently refused entry. The regulations further prohibit the reimportation of such product into the United States. Although the regulations currently do not so state, FSIS has authority under the FMIA and the PPIA to take the necessary steps to preclude the distribution in the United States of any refused entry product that has been returned to the United States. This rule does not adopt new policy, but merely specifies actions currently authorized under the Acts which provide for the administrative detention and the judicial seizure and condemnation of product in commerce, which is adulterated or misbranded or

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[1] Except a minimum of 8 hours per day will be billed for intermittent type in plant services in lieu of a minimum of 40 hours a week. Assignments in-plant for less than four weeks will be billed in accordance with § 52.42.

otherwise in violation of the FMIA or PPIA. As such, no new requirements are being placed on foreign or domestic markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule merely clarifies the regulations to reflect authority established under the FMIA and PPIA with respect to the administrative detention and judicial seizure and condemnation of meat or poultry products that are adulterated or misbranded or otherwise in violation of the FMIA or PPIA.

Background

Section 20(a) of the FMIA (21 U.S.C. 620) provides that "No carcasses, parts of carcasses, meat or meat food products * * * which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all * * * other provisions of the Act and regulations issued thereunder * * *" Section 20(b) of the FMIA further provides that "The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section unless (1) they are exported by the owner or consignee within the time fixed therefor by the Secretary, or (2) in the case of articles which are not in compliance with the Act solely because of misbranding, such articles are brought into compliance with the Act under supervision of authorized representatives of the Secretary." Section 17(a) and (b) of the PPIA (21 U.S.C. 466) contains similar language for poultry and poultry products, except that no provision is made for poultry products that do not comply because of misbranding to be brought into compliance.

Section 402 of the FMIA (21 U.S.C. 672) provides that "Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative."

Section 403(a) of the FMIA (21 U.S.C. 673) provides that "Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in commerce otherwise subject to title I or II of this Act, or is held for sale in the United States after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Act, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this Act, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 404 of this Act within the jurisdiction of which the article or animal is found." Sections 19 and 20(a) of the PPIA (21 U.S.C. 467a and 467b) contain similar provisions for poultry and poultry products.

Part 327 of the Federal meat inspection regulations (9 CFR part 327) and subpart T of the poultry products inspection regulations (9 CFR part 381, subpart T) prescribe the requirements for meat and poultry products imported into the United States as authorized by the FMIA and PPIA. Such products imported from any foreign country are inspected by departmental inspectors before they are entered into the United States. The inspectors report their findings to the Director of Customs at the port of entry where such products were offered for entry into the United States.

If any such products are identified as "U.S. Refused Entry", the inspector requests the Director of Customs to refuse entry of the product and to direct the owner or consignee of the refused entry product to export such product within 45 days. The owner or consignee may opt not to reexport the product, but rather may, within the 45-day period, either destroy the product under departmental supervision or convert the product into animal food. As previously discussed, the FMIA contains an exception to this rule that provides that any meat food product which has been refused entry solely because of misbranding may be brought into compliance with the Act under departmental supervision. This exemption is also provided in § 327.13(a)(4) of the Federal meat inspection regulations (9 CFR 327.13(a)(4)).

If the owner or consignee does not take appropriate action within the specified time period, the Acts and regulations authorize the Secretary to destroy the product for human food purposes (9 CFR 327.13(a)(6) and 381.202(a)(5)). This is necessary to prevent adulterated or misbranded product from entering into U.S. commerce.

Section 327.13(a)(7) of the Federal meat inspection regulations and § 381.202(a)(6) of the poultry products inspection regulations prohibit the return to the United States of product which had been refused entry and exported to another country (9 CFR 327.13(a)(7) and 381.202(a)(6)). If such product is returned to the United States, FSIS is authorized under the FMIA and PPIA to administratively detain the product pursuant to section 402 of the FMIA or section 19 of the PPIA, to preclude its distribution in commerce and seek judicial seizure and condemnation of such product in accordance with section 403 of the FMIA or section 20 of the PPIA. The current regulations, however, do not specify that such refused entry product is subject to detention and judicial seizure and condemnation under the law. To clarify the regulations in this regard, FSIS published a proposed rule in the **Federal Register** on January 13, 1989, to amend §§ 327.13 and 381.202 of the Federal meat and poultry products inspection regulations (54 FR 1375). The proposal would specifically provide that such returned, refused entry product shall be subject to administrative detention and judicial seizure and condemnation.

FSIS did not receive any comments in response to the proposal. Therefore, the proposal is adopted in its entirety.

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

For the reasons set forth in the preamble, parts 327 and 381, title 9 of the Code of Federal Regulations, are amended as follows:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Section 327.13 is amended by adding a sentence at the end of paragraph (a)(7) to read as follows:

§ 327.13 Foreign products offered for importation; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(7) * * * Any such product so returned to the United States shall be subject to administrative detention in accordance with section 402 of the Act and seizure and condemnation in accordance with section 403 of the Act.

* * * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 381.202 is amended by adding a sentence at the end of paragraph (a)(6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

(a) * * *

(6) * * * Any such product so returned to the United States shall be subject to administrative detention in accordance with section 19 of the Act, and seizure and condemnation in accordance with section 20 of the Act.

* * * * * *

Done at Washington, DC, on: November 15, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-28855 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 170

RIN 3150-AC61

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on April 18, 1989 (54 FR 15372), which provides for the issuance of early site permits, standard design certifications, and combined construction permits and operating licenses with conditions for nuclear power reactors. The action is necessary to correct an amendatory instruction that contained an incorrect paragraph identification.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: In the April 18, 1989, edition of the **Federal Register**, in the right-hand column of page 15398, make the following correction to amendatory instruction number 16:

In the amendatory instruction for 10 CFR 51.20, the paragraph designated as paragraph (a)(6) is correctly designated as paragraph (b)(6).

Dated at Bethesda, Maryland, this 5th day of December 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89-28838 Filed 12-8-89; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 600

RIN 3052-AB07

Organization and Functions; Service of Process

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts final regulations which establish the method to be used to serve legal process upon the agency, including identification of the agency official designated to accept service of process. The adoption of these regulations creates subpart B—Rules and Procedures for Service Upon the Farm Credit Administration—now held in reserve within 12 CFR part 600.

EFFECTIVE DATE: These regulations shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary L. Bohlke, Associate General Counsel, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: These regulations establish the proper procedures to follow in order to serve legal process upon the FCA. They provide the individual designated to receive such service, as well as the method of delivery. In promulgating the regulations, the FCA Board determined that the matter was one of internal agency procedure and practice and was exempt from the provisions of 5 U.S.C. 553(b) (1)-(3). The purpose of the rulemaking requirements of the Administrative Procedure Act is to allow public participation in the promulgation of rules which have a substantial impact on those regulated.

When regulations involve matters of agency procedure or practice, or where the agency finds good cause that the notice and public comment are unnecessary or contrary to the public interest, 5 U.S.C. 553(b) (A) and (B) provide that an agency may publish regulations in final form. Accordingly, these regulations are issued as a final rule.

Pursuant to 5 U.S.C. 553(d) and 12 U.S.C. 2252(c)(1), these regulations will be effective after the expiration of 30 days from publication during which either or both Houses of the Congress are in session.

List of Subjects in 12 CFR Part 600

Organization and functions (Government agencies).

As stated in the preamble, part 600 of chapter VI, title 12, of the Code of Federal Regulations is amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

1. The authority citation for part 600 continues to read as set forth below and all other authority citations throughout part 600 are removed.

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

2. Part 600 is amended by adding a new subpart B, consisting of § 600.10, to read as follows:

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

§ 600.10 Service of Process.

(a) Except as otherwise provided in the Farm Credit Administration regulations, the Federal Rules of Civil Procedure or by order of a court with jurisdiction over the Farm Credit Administration, any legal process upon the Farm Credit Administration shall be duly issued and served upon the Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) Service of process upon the Secretary to the Farm Credit Administration Board may be effected by personally delivering a copy of the documents to the Secretary or by sending a copy of the documents to the Secretary by registered or certified mail.

(c) The Secretary shall promptly forward a copy of all documents to the Associate General Counsel, Litigation and Enforcement, and to any Farm Credit Administration personnel named in the caption of the documents.

Dated: December 1, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–28836 Filed 12–8–89; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Parts 612, 614, 615, and 618

RIN 3052–AD06

Personnel Administration, Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts as final an interim rule which eliminates the requirement for Farm Credit institutions to submit to the FCA certain proposed policies, procedures, programs and actions for FCA's approval prior to implementation by the institution. These submissions by the institution are referred to collectively as "prior approvals".

The FCA Board determined that certain prior approvals are unnecessary in light of the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971 (Act) and Congressional intent, and are inconsistent with FCA's role as an arms's length regulator.

The elimination of these prior approvals does not relieve the Farm Credit institutions of their responsibility to develop and implement the policies, procedures, programs, and actions referred to in these regulations and to operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations. Such policies, procedures, programs, and actions continue to be subject to examination by FCA.

DATES: This regulation shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Jr., Deputy Chief, Financial Analysis and Standards Division, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4401, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On January 6, 1989, the FCA Board adopted an interim rule (54 FR 1149) and requested public comments thereon. The interim rule eliminated prior approval language contained in the following regulations: §§ 612.2150 (a) and (c); 612.2160(a); 614.4280 (a) and (b); 614.4320; 614.4321; 614.4340(a); 614.4345; 614.4460; 614.4511; 615.5040; 615.5104; 615.5135(b); 615.5143; 615.5190(b); and 618.8060. The Farm Credit Amendments Act of 1985, the Farm Credit Act Amendments of 1986, and the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971 (Act), specifically eliminated certain prior approvals from the Act. In addition, the FCA Board interpreted Congressional intent, based on those prior approvals specifically eliminated, to require the elimination of other prior approvals. Finally, the FCA Board determined that certain prior approvals should be eliminated as being inconsistent with FCA's role as an arm's length regulator. See 54 FR 1149, January 12, 1989, for a further discussion of the basis for removal of the individual prior approval requirements.

The FCA received two comments: one from the Farm Credit Corporation of America (FCCA), and one from the Farm Credit Bank of Baltimore (FCBB). Both commenters agreed with the FCA's action of eliminating the prior approvals as set forth in the interim rule. The FCCA also urged FCA to consider the elimination of certain other prior approvals not included in the interim rule. The FCBB concurred with the FCCA comment. FCA is continuing to examine prior approval requirements, including some of those which were discussed by the commenters, to determine whether such prior approvals should be eliminated. However, no action is proposed at this time.

Accordingly, the FCA Board adopts the interim rule amending 12 CFR parts 612, 614, 615, and 618 which was published at 54 FR 1149 on January 12, 1989, as a final rule without change.

List of Subjects in 12 CFR Parts 612, 614, 615, and 618

Accounting, Agriculture, Archives and records, Banks, Banking, Conflict of interest, Credit, Foreign trade, Government securities, Insurance, Investments, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

Dated: December 1, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–28837 Filed 12–8–89; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25147, Amdt. No. 23–36]

Small Airplane Airworthiness Review Program, Amendment No. 1; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcton of final rule.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on August 15, 1988 (53 FR 30802) as Small Airplane Airworthiness Review Program, Amendment No. 1. These rules relate to the adopton of airworthiness standards for cabin safety and occupant protection during emergency landing conditions for airplanes type certificated to the airworthiness standards of part 23.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION: When Amendment No. 23–36 was published in the **Federal Register**, an inadvertent error occurred. For accuracy of information, it is necessary to correct this error.

Need for immediate adoption: Since this amendment only corrects an error and imposes no additional burden on any person, I find that notice and public procedures are unnecessary and contrary to the public interest and that good cause exists for making it effective in less than 30 days.

Correction of Publication

Accordingly, in addition to the corrections published in the **Federal Register** on September 2, 1988 (53 FR 34194), the publication of Amendment No. 23–36 in the **Federal Register** issue of August 15, 1988 (53 FR 30802), is corrected as follows:

§ 23.785 [Corrected]

1. On page 30814, second column, § 23.785(m), in line ten, the referenced paragraph "§ 23.561(b)(3)" is corrected to read "§ 23.561(b)(2)."

2. On page 30814, second column, § 23.785(m)(2), in line five, the referenced paragraph "§ 23.561(b)(3)" is corrected to read "§ 23.561(b)(2)."

Issued in Washington, DC, on November 30, 1989.

Debbie E. Swank,

Acting Manager, Program Management Staff.

[FR Doc. 89–28795 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AWP–22]

Transition Area, Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition. This route addition and airspace change will help to decongest general aviation routings in the Las Vegas terminal area and increase ATC system efficiency.

EFFECTIVE DATE: 0901 u.t.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On September 28, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition (54 FR 39414). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal are received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Las Vegas, NV, transition area near Peach Springs, AZ, VORTAC to provide controlled airspace for the MEAD Eight Standard Instrument Departure, Peach Springs Transition.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Las Vegas, NV [Amended]

In the twelveth line in between "114°14'00"." and "to lat. 35°39'00" N.", insert "to lat. 35°56'00" N., long. 114°14'00" W.; to lat. 35°43'00" N., long. 113°51'00" W.; to lat. 35°35'15" N., long. 113°55'30" W.; to lat. 35°35'00" N., long. 113°56'00" W., to lat. 35°44'45" N., long. 114°14'00" W."

Issued in Los Angeles, California, on November 22, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region

[FR Doc. 89–28796 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 87P–0144]

Medical Devices; Reclassification and Codification of Absorbable Surgical Gut Suture

AGENCY: Food and Drug Administration.

ACTION: Final rule; notice of reclassification and codification.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to a manufacturer reclassifying the absorbable surgical gut suture from class III to class II. The order is being codified in the Code of Federal Regulations as specified herein.

DATES: The reclassification was effective October 9, 1988. This codification becomes effective January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On April 21, 1987, FDA filed the reclassification

petition submitted by Advanced Biosearch Associates, Danville, CA 94526–4617, on behalf of United States Surgical Corp. (U.S. Surgical), Norwalk, CT 06856, requesting reclassification of the absorbable surgical gut suture from class III to class II.

FDA consulted with the General and Plastic Surgery Devices Panel (the Panel). The Panel, during an open public meeting on August 28, 1987, recommended that FDA reclassify the absorbable surgical gut suture from class III into class II, and that such reclassification not take effect until the effective date of a performance standard for the device established under section 514 of the Federal Food, Drug, and Cosmetic Act (the act).

FDA has fully considered the Panel's recommendation, and reviewed various statements offered by persons who oppose U.S. Surgical's petition for reclassification of the absorbable surgical gut suture. After reviewing all data in the petition and presented before the Panel, and after considering the Panel's meeting, FDA, based on the information set forth, is ordering the reclassification of the absorbable surgical gut suture from class III to class II. On September 19, 1988, FDA sent to the petitioner a letter (order) which reclassified the absorbable surgical gut suture, and substantially equivalent devices of this generic type, from class III to class II, with a low priority for the development of a performance standard.

On November 8, 1988, American Cyanamid Co., Davis and Geck Division, and Ethicon, Inc., petitioned FDA for reconsideration of the order reclassifying the absorbable surgical gut suture from class III to class II. On August 23, 1988, FDA sent to American Cyanamid Co., Davis and Geck Division, and Ethicon, Inc., letters which stated that, after careful review of the petitions and a costly and extensive review of the order of September 19, 1988, and all supporting references, no basis exists to alter the agency's decision to reclassify the absorbable surgical gut suture from class III to class II.

As required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device from class III to class II. In addition, FDA is issuing a final rule that codifies the reclassification of the device by adding new § 878.4830 Absorbable surgical gut suture.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291 nor an analysis under the Regulatory Flexibility Act (Pub. L. 96–354). This reclassification will not have a significant economic impact on a substantial number of small entities. All manufacturers of absorbable surgical gut sutures will be relieved of the costs of complying with the premarket approval requirement in section 515 of the act (21 U.S.C. 360e).

There are no offsetting costs that manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings attributable to this reclassification is dependent upon the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 878.4830 is added to subpart E to read as follows:

§ 878.4830 Absorbable surgical gut suture.

(a) *Identification.* An absorbable surgical gut suture, both plain and chromic, is an absorbable, sterile, flexible thread prepared from either the serosal connective tissue layer of beef (bovine) or the submucosal fibrous tissue of sheep (ovine) intestine, and is intended for use in soft tissue approximation.

(b) *Classification.* Class II.

Dated: December 5, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28828 Filed 12–8–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Officials

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: The Administrator of the Drug Enforcement Administration, U.S. Department of Justice, is amending this subpart R of the regulations to redelegate certain additional functions and authority which were vested in him by the Chemical Diversion and Trafficking Act of 1988 and other legislation enacted since the last amendment of this subpart.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen H. Greene, Deputy Assistant Administrator, Operations Division, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7927.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988, Title VI, Subtitle A, of the Anti-Drug Abuse Act of 1988 [CDTA], Public Law 100–690, was enacted on November 18, 1988. All of the provisions of this legislation are now in effect. The CDTA authorizes the Attorney General to administer and enforce the various provisions of this legislation which amends the Controlled Substances Act, 21 U.S.C. 801, et seq., and the Controlled Substances Import and Export Act, 21 U.S.C. 951, et seq. The Attorney General has delegated his functions to the Administrator of the Drug Enforcement Administration. See 21 U.S.C. 871(a) and 965, and 28 CFR 0.100(b). Pursuant to this delegation, the Administrator has promulgated final regulations for the administration of the CDTA. These regulations were published at 54 FR 31657 on August 1, 1989, and became fully effective on October 30, 1989. To further enhance the enforcement of the CDTA and its attendant regulations, the Administrator is further delegating some of his functions to other DEA officials.

Accordingly, the Administrator is delegating to the Deputy Assistant Administrator, Operations Division, the authority to furnish regulated persons with the descriptions or identifying characteristics of persons with whom regulated transactions may not be completed without prior approval of the Administration; the authority to approve such transactions under 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and the authority to disapprove or disqualify a regular supplier or regular customer under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24. The Administrator is further delegating to the Deputy Assistant Administrator, Office of Diversion Control, the authority to promulgate and amend regulations under 21 CFR parts 1310 and 1313.

21 U.S.C. 824(g) provides that the Attorney General may, under certain circumstances, seize or place under seal controlled substances owned or possessed by a registrant whose DEA registration has expired or who has ceased to practice or do business in the manner contemplated by his registration. This authority has been delegated to the Administrator but has not been further delegated to DEA field personnel. Accordingly, the Administrator is delegating to DEA Diversion Investigators the authority to seize or place controlled substances under seal; DEA Special Agents-in-Charge are authorized to take custody of, and make disposition of, such controlled substances, as required by 21 U.S.C. 824(g).

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to sections 1(a)(3) and 1(b) of E.O. 12291, this action is not a major rule and relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with E.O. 12612. It has been determined that this matter has no federalism implications which would warrant the preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, Appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 4241 et seq., 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904, 965; 22 U.S.C. 283a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. The Appendix to subpart R is amended as follows:

Appendix to Subpart R—Redelegation of Functions

a. Section 2 is amended by adding at the end thereof the following new sentence:

Sec. 2. *Supervisors.* * * * All DEA Special Agents-in-Charge are authorized to take custody of, and make disposition of, controlled substances seized pursuant to 21 U.S.C. 824(g).

b. Section 3 is amended by revising paragraph (b) to read as follows:

Sec. 3. *Enforcement officers.*

* * * * *

(b) All DEA Diversion Investigators (series 1810 under Office of Personnel Management regulations) are authorized to administer oaths and serve subpoenas under 21 U.S.C. 875 and 876; to conduct administrative inspections and execute administrative inspection warrants under 21 U.S.C. 878(2) and 880; to seize property incident to compliance and registration inspections and investigations under 21 U.S.C. 881; and to seize or place controlled substances under seal pursuant to 21 U.S.C. 824.

c. Section 7 is amended by redesignating the existing paragraphs (h) and (i) as (i) and (j), respectively, and by adding the following new paragraphs (h) and (k):

Sec. 7. *Promulgation of regulations.*

* * * * *

(h) Part 1310, relating to records, reports and identification of parties to transactions in listed chemicals and certain machinery, but not including the authority to add and delete listed chemicals pursuant to 21 CFR 1310.02.

* * * * *

(k) Part 1313, relating to the importation and exportation of precursors and essential chemicals, but not including the authority to suspend shipments under 21 CFR 1313.41.

d. A new section 9 is added to the Appendix to subpart R, as follows:

Sec. 9. *Chemical Diversion Act Functions.* The Deputy Assistant Administrator of the DEA, Operations Division, is authorized to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transaction pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular supplier status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24.

Dated: December 4, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89–28808 Filed 12–8–89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions, and defer decision on various parts of a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), as administered by the Colorado Mined Land Reclamation Division (MLRD) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the small operator assistance program, use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, permitting, alluvial valley floors, backfilling and grading, archeology and cultural resources, vegetation, mountaintop removal mining, bonding, air pollution control plan and civil penalties. Colorado is modifying its approved program to be consistent with SMCRA and the Federal regulations and to improve the operational efficiency of its approved program. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program as administered by the MLRD. Information regarding the general background on the Colorado program, including the Secretary's

findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15 and 906.30.

II. Submission of Proposed Amendment

By letter dated August 23, 1988, Colorado submitted to OSM the proposed amendment (Administrative Record No. CO–384) to the Colorado program. The State submitted the majority of this proposed amendment in response to OSM's letters dated May 7, 1989 (Administrative Record No. CO–282) and June 9, 1987 (Administrative Record No. CO–342). These letters were issued in accordance with 30 CFR 732.17(d) and notified Colorado of required amendments to its program. The remainder of the proposed amendment was submitted at Colorado's initiative in order to improve its program. The amendment pertains to the small operator assistance program, use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, permitting, alluvial valley floors, backfilling and grading, archeology and cultural resources, vegetation, mountaintop removal mining, bonding, air pollution control plan, and civil penalties.

OSM published a notice in the **Federal Register** on October 5, 1988 (53 FR 39105), announcing receipt of the proposed amendment to the Colorado program and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. CO–399). After reviewing the proposed amendment and all comments received, OSM notified Colorado by letter dated February 7, 1989 (Administrative Record No. CO–428), of several provisions in its proposal that appeared to be inconsistent with the Federal regulations. By letter dated April 10, 1989 (Administrative Record No. CO–433), Colorado provided further clarification of and submitted revisions to the amendment. Colorado also requested that certain proposed revisions be withdrawn from consideration. The additional explanatory information and revisions pertained to the use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, alluvial valley floors, backfilling and grading, and archeology and cultural resources. The withdrawn provisions pertained to the use of explosives, hydrology and geology, coal mine waste, and backfilling and grading.

To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in the **Federal Register** on May 15, 1989 (54 FR 20862), reopening and extending the comment period (Administrative Record No. CO–443). The extended comment period closed on May 30, 1989. (Please note the following correction to a typographical error in 54 FR 20862. OSM announced that Colorado withdrew Rule 4.14.6, backfilling and grading, which should have been part of 4.14.1.) After reviewing the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated June 15, 1989 (Administrative Record No. CO–450), of a few provisions in its proposal that continued to be inconsistent with the Federal regulations. By letter dated June 28, 1989 (Administrative) Record No. CO–455), Colorado responded by withdrawing all but one of these provisions. These withdrawn provisions pertain to excess spoil, coal exploration, hydrology and geology, siltation structures and impoundments, alluvial valley floors, and archeology and cultural resources. Also, by letter dated July 12, 1989 (Administrative Record No. CO–456), Colorado submitted a correction of a typographical error to one provision pertaining to siltation structures and impoundments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Colorado on August 23, 1988, and subsequently revised on April 10, June 28, and July 12, 1989. Any provisions not specifically discussed meet the requirements of SMCRA and 30 CFR chapter VII; these provisions contain language similar to the corresponding Federal provisions. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM oversight of the Colorado program. Provisions discussed are those which are substantively different from the Federal counterpart regulations.

1. Substantive Revisions to Colorado's Program That Are Substantially Similar to the Counterpart Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantially similar to the corresponding Federal regulations: Rules 2.09.2, .3, .5, .6, and .8—small operator assistance program; 2.05.3, 4.08.1, .2, .4, .5, and .6—use of explosives; 1.04, 2.06.7, 4.09, 4.09.1, .2, .3, and .4, and 4.11.4—excess spoil; 1.04, 2.02.3 and .5, 4.21.4, and 7.08—coal exploration; 1.04, 2.03, 2.03.3, 2.04.6, and .7, 2.05.6, 4.05.1, .5, .8, .13 and .16, and 4.07.2—hydrology and geology; 4.05.3 and 4.05.4—diversions; 1.04, 2.05.3, 4.05.2, .6, and .9, and 4.11.5—siltation structures and impoundments; 1.04, 2.05.3, 4.09.2 and .3, 4.10, 4.10.1, .2, .3 and .4, 4.11, and 4.11.1, .2, .3 and .5—coal mine waste; 2.03.5, 2.04.4 and .13, 2.05.4, 2.07.3, .4, and .5, 2.08.4, .5, and .8, and 2.10.3—permitting; 1.04, 2.06.8, and 4.24.2, .3, .4, and .5—alluvial valley floors; 2.05.4, and 4.14.1, .2, and .6—backfilling and grading; 2.02.3, 2.04.4, and 2.05.6—archeology and cultural resources; 1.04—vegetation; 2.06.3—mountaintop removal; 3.02.4 and 3.03.2—bonding; 4.17—air pollution control plan; and 5.04.3—civil penalties. The Director, therefore, finds these proposed revisions to Colorado's rules to be no less effective than the corresponding Federal regulations.

2. Storm Event Design Criteria for Impoundments and Diversions, Rules 4.09.4(6) and 4.11.5(3)(b)

Colorado's existing rules at 4.09.4(6) and 4.11.5(3)(b) specify storm event design criteria for coal mine waste impounding structures and for excess spoil diversions. Colorado proposes that the 100-year, 24-hour storm event be utilized. The corresponding Federal regulations at 30 CFR 816/817.73(f) and .84(b)(2) require that the 100-year, 6-hour storm event be utilized in design specifications. OSM notified Colorado of this inconsistency, noting that 6-hour duration events normally result in larger peak flow than do 24-hour duration events, and required that Colorado substitute the 6-hour criterion for the 24-hour criterion, or present data demonstrating that the 24-hour duration event normally produces larger peak flows under conditions encountered in Colorado. Colorado chose the latter option.

In its justification (Administrative Record No. CO–389), Colorado provided several examples for mine sites in both western and eastern Colorado, comparing 6-hour to 24-hour duration storm peak flows. The results indicate that for Western slope Colorado mines, 24-hour duration storms produce higher peaks than 6-hour duration storms, other variables being constant. For Eastern slope Colorado mines, results indicate that 6-hour duration storms could result in higher peak flows than the 24-hour duration storms in specific situations.

The percentage differences in peak flows for the two durations appear to be within error ranges expected for the modeling techniques used. Colorado also pointed out that its rules provide for "or larger events as required by the (Mined Land Reclamation) Division" which allows latitude for specifying the 6-hour duration criterion in situations where it will produce a larger peak flow. On this basis and because most mining in Colorado is on the Western slope, the Director finds Colorado's rules at 4.09.4(6) and 4.11.5(3)(b), which specify the 24-hour duration criterion for spillway and diversion designs, to be no less effective than the Federal regulations at 30 CFR 816/817.73(f) and .84(b)(2).

In making this decision, the Director notes that OSM on October 27, 1988, revised the Federal regulations at 816/817.84(b)(2) by changing the 100-year, 6-hour precipitation event criterion to the probable maximum precipitation of a 6-hour or greater precipitation event (PMP; 53 FR 43584). These revised regulations do not affect OSM's approval of Colorado's proposed 24-hour storm duration criteria, but they do render Colorado's existing rule less effective with respect to the PMP criterion. By letter dated October 13, 1989 (Administrative Record No. CO–472), OSM notified Colorado in accordance with 30 CFR 732.17(d) of this required amendment to the Colorado program.

3. Cut-and-Fill Terraces on Previously Mined Areas, Rules 4.14.2 (1) and (2)(c).

The existing Colorado rule at 4.14.2(2)(c) states that in no case shall highwalls be left as part of a cut-and-fill terrace. Colorado proposed to amend this rule by adding language that would allow highwalls to be left as part of a cut-and-fill terrace only if "approved for previously mined areas in accordance with Rule 4.14.2(1)." Colorado's rule at 4.14.2(1) requires that final grades slopes shall approximate premining slopes, or any lesser slopes approved by Colorado. It allows Colorado to modify the requirements of Rule 4.14.2 where the surface coal mined lands have not been restored to the standards of the rules and sufficient spoil is not available to otherwise comply with Rule 4.14.

The Federal regulations at 30 CFR 816.106 outline the requirements for backfilling and grading of previously mined areas. This regulation exempts the elimination of highwalls on previously mined areas where there is not sufficient spoil available; but the exemption for elimination of highwalls is not extended to cut-and-fill terraces, whose governing regulations are located at 30 CFR 816.103(g). OSM questioned Colorado's interpretation of the proposed rule and required that Colorado define the term "previously mined areas" to provide an operator with guidance as to when this proposed rule would be applicable.

Colorado responded in its April 10, 1989 submittal clarifying that the proposed rule would be applied so that all available spoil would be used to reclaim a highwall in a previously mined area and that all highwalls would be eliminated to the extent possible. Colorado also clarified that no highwalls associated with cut-and-fill terraces would be allowed and proposed a definition for "previously mined areas" at Rule 1.04(94a), which is identical to the Federal definition at 30 CFR 701.5. Based on Colorado's clarification, the Director finds Colorado's proposed rule at 4.14.2(2)(c) to be no less effective than the Federal regulations at 30 CFR 816/817.106.

4. Water-Monitoring Data Reporting, Rules 4.05.13 (2) and (4)

Colorado proposed to delete from its existing rule at 4.05.13(2)(a) the requirement that ground- and surface-water monitoring reports be submitted quarterly, and instead require that these reports be submitted annually. These annual reports are to include results from samples taken during each quarter. The Federal regulations at 30 CFR 816/817.41 (c)(2) and (e)(2) require that ground- and surface-water monitoring reports be submitted quarterly. In its April 10, 1989, submittal, Colorado explained that water-monitoring data is collected quarterly and must be on file at the mine office as specified in Rule 4.05.13(4)(a). As part of its complete inspection, which is conducted quarterly, Colorado is required to evaluate all records, including hydrologic monitoring data. The lead reclamation specialist for each mine is responsible for conducting the complete inspection and reviewing the data. This is the same person who is also responsible for all permitting activities and is knowledgeable about the hydrologic monitoring requirements for the mine. When all hydrologic monitoring data collected during the year is submitted to Colorado on an annual basis, it is thoroughly reviewed by the lead reclamation specialist and a hydrologist. Based on this clarification of Colorado's inspection and permitting procedures and requirements, the Director finds the proposed rule changes at 4.05.13 (2) and (4) to be no less effective than the Federal regulations at 30 CFR 816/817.41 (c)(2) and (e)(2).

5. Design Capacity for Perennial and Intermittent Stream Diversions, Rule 4.05.4(2)(b)

Colorado's proposed rule at 4.05.4(2)(b), as modified in its April 10, 1989, submittal, requires that the capacity of the stream channel diversion be at least equal to the hydraulic stream channel immediately upstream and downstream of the diversion. The Federal regulations at 30 CFR 816/817.43(b)(2) are worded similarly except that in place of "hydraulic stream channel," the Federal regulations are worded "capacity of the unmodified stream channel." Colorado explained that the word "hydraulic" was proposed to clarify that the reclaimed channel morphology (shape) should be determined by analyzing the active flow channel, upstream and downstream, which is formed by hydraulic processes. This flow channel may be a small part of a much larger geomorphic feature such as a gully or arroyo (dry gulch). Gullies and arroyo features are the result of both hydraulic and mass movement processes; therefore, it is not necessarily appropriate to design a reclaimed channel by duplicating a large arroyo configuration, when the prevailing flow conditions dictate a smaller hydraulic channel. The proposed wording provides an operator and Colorado the opportunity to distinguish a large erosional feature such as an arroyo from the actual hydraulic flow channel which often represents a small portion of the larger erosional feature. Based upon the above clarification, the Director finds the proposed rule at 4.05.4(2)(b) to be no less effective than the Federal regulations at 30 CFR 816/817.43(b)(2).

6. Minimum Requirements for Surface- and Ground-Water Monitoring Plans, Rule 2.05.6(3)(b)(iv)

Colorado's proposed rule at 2.05.6(3)(b)(iv) requires operators, at a minimum, to monitor the level of total dissolved solids or electrical conductivity corrected to 25 °C, pH, and iron in both surface and ground water. The corresponding Federal regulations at 30 CFR 780.21 (i) and (j) and 784.14 (h) and (i) require mine operators to monitor total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese in surface and ground water. Thus, Colorado proposed to delete "total" from "total iron" and to delete "total manganese" from its provision; the Federal regulations require "total iron and total manganese." Colorado stated in its April 10, 1989, submittal to OSM

that Rule 2.05.6(3)(b)(iv) addresses the minimum data required for a monitoring plan and that if the baseline data (required at Rules 2.04.7 (1) and (2)(b)) indicate a problem with total iron or total manganese, Colorado would require the parameters to be included in the monitoring plans. (Baseline information is representative of the environment prior to mining while monitoring data provides information regarding the mine's effect on the environment.)

Colorado's rule for baseline surface-water information, Rule 2.04.7(2)(b), requires data for both total iron and total manganese as do the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2). However, Colorado's ground-water baseline information requirements at Rule 2.04.7(1) do not require specific parameters, but only "the seasonal quantity and quality of the water within each aquifer." Because specific parameters, including total iron and total manganese, are not detailed in Colorado's rule requiring baseline ground-water information, Colorado has no basis for determining whether an operator should be required to monitor the ground-water for total iron and total manganese. The counterpart Federal regulations for ground-water baseline water quality information at 30 CFR 780.21(b)(1) and 784.14(b)(1) require, at a minimum, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

The revised Colorado rule at 2.05.6(3)(b)(iv), in conjunction with the existing rule at 2.04.7(2)(b), is no less effective than the Federal regulations at 30 CFR 780.21 (b)(2) and (j) and 784.14 (b)(2) and (i) with respect to surface-water baseline information requirements and surface-water monitoring requirements. However, the Director finds the revised rule at 2.05.6(3)(b)(iv), in conjunction with the existing rule at 2.04.7(1), to be less effective than the Federal regulations at 30 CFR 780.21 (b)(1) and (i) and 784.14 (b)(1) and (h) with respect to ground-water baseline information requirements and ground-water monitoring requirements. Accordingly, the Director is not approving Rule 2.05.6(3)(b)(iv) and is requiring that Colorado either (1) amend its rule at 2.05.6(3)(b)(iv) to include in the requirements for ground-water monitoring plans both total iron and total manganese, or (2) further amend its ground-water baseline information requirements at Rule 2.04.7(1) to specifically require at a minimum, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

7. Water Quality Standards and Effluent Limitations. Rules 4.05.2(6), 4.05.2(7) and 4.05.6(2), 4.05.3, 4.05.5(1)(b), and 4.05.9(1)(a)

Colorado requires under a number of rules in § 4.05, Hydrologic Balance, compliance with water quality standards and effluent limitations. However, Colorado does not consistently use the same language as the counterpart Federal regulations. At Rule 4.05.2(6) Colorado requires that mixed drainages from disturbed and nondisturbed areas meet applicable State or Federal effluent limitations. The Federal regulations at 30 CFR 816/817.42 require all drainage from disturbed areas to meet State and Federal water quality laws and applicable effluent limitations under 40 CFR part 434. At Rule 4.05.2(7), Colorado's proposed rule regarding siltation structure design refers to "the Colorado Water Quality Act." Colorado's proposed rule at 4.05.6(2) requires all siltation structures be designed to meet Federal and State water quality standards. The Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B) require that siltation structures be designed "to meet State and Federal effluent limitations." At Rule 4.05.3, Colorado does not require that diversions of overland flow, shallow ground water, and ephemeral streams be designed to comply with all local, State and Federal regulations, as do the Federal requirements for all diversions, including miscellaneous flows (which is OSM's equivalent of overland flow, shallow ground water and ephemeral streams), at 30 CFR 816/817.43 (a)(2)(iv) and (c). At Rule 4.05.5(1)(b), Colorado proposes to require that sediment control measures "meet applicable State or Federal effluent limitations" while the Federal regulations at 30 CFR 816/817.45(a)(2) require that such measures "meet the more stringent of applicable State or Federal effluent limitations." At Rule 4.05.9(1)(a), Colorado's proposed rules require that the quality of impounded water shall be suitable on a permanent basis for its intended use, and discharge from impoundments shall meet State and Federal effluent limitations, while the Federal regulations at 30 CFR 816/817.49(b)(2) require that water in permanent impoundments shall meet State and Federal water quality standards, and discharge will meet State and Federal effluent limitations.

OSM expressed concern that the proposed revisions to the Colorado program did not clearly require that all State and Federal water quality standards and/or effluent limitations be met. In its April 10, 1989, submittal, Colorado explained that while the specific language used throughout § 4.05 may vary, the existing general requirement at Rule 4.05.1(3) applies to all of § 4.05. It states, "in no case shall Federal and State water quality statutes, regulations, standards, or effluent limitations be violated." With this clarification of Colorado's rules and policy, the Director finds Colorado's proposed rules at 4.05.2(6), 4.05.2(7), 4.05.6(2), 4.05.3, 4.05.5(1)(b), and 4.05.9(1)(a) to be no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B), .42, .43 (a)(2)(iv) and (c), .45(a)(2), and .49(b)(2).

8. Coal Exploration-Definition of "Substantially Disturb," Rule 1.04(172)

Colorado's proposed definition of "substantially disturb" for purposes of coal exploration at Rule 1.04(127) is similar to the Federal definition at 30 CFR 701.5 with the exception that the Federal regulation includes in its definition the removal of topsoil and of overburden where the Colorado proposed rule cites mechanical excavation. Colorado affirms that mechanical excavation includes the removal of soil (Administrative Record No. CO–473). Based on this clarification, the Director finds the proposed definition of "substantially disturb" at Rule 1.04(127) to be no less effective than the corresponding Federal definition at 30 CFR 701.5.

9. Deferral of Decision, Rules 4.08.5(11), 4.05.4(2)(b), 1.04(64), 4.05.6(10), 4.05.9(13), and 104(94a)

Following is a discussion of individual rules for which Colorado submitted further revisions on July 18, 1989 (Administrative Record No. CO–457). The Director is deferring decision on these specific rules until he has made a decision on all the program revisions submitted by Colorado on July 18, 1989.

(a) *Use of Explosives, Rule 4.08.5(11).* The Director is deferring decision on Rule 4.08.5(11) to the extent that it does not require that records or each blast contain the total weight or explosives used per hole and the maximum weight of explosives detonated during any 8-millisecond period.

(b) *Diversions, Rule 4.05.4(2)(b).* The Director is deferring decision on Rule 4.05.4(2)(b) to the extent that it does not require that the capacity of the channel itself *shall* be at least equal to the capacity of the unmodified stream channel immediatly upstream and downstream of the diversion (emphasis added).

(c) *Siltation Structures and Impoundments, Rules 1.04(64), 4.05.6(10), and 4.05.9(11).* The Director is deferring decision on (1) Rule 1.04(64) to the extent that it does not require that sediment ponds must be designed in accordance with Rule 4.05.9, (2) Rule 4.05.6(10) to the extent that it does not specify that all ponds and impoundments be examined on at least a quarterly basis, and (3) Rule 4.05.9(11) to the extent that it does not require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3, and that other impoundments shall be examined at least quarterly.

(d) *Backfilling and Grading, Rule 1.04(94a).* The Director is deferring decision on Rule 1.04(94a) to the extent that it does not reference SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 5039(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Colorado program. The Mine Safety and Health Administration (MSHA) responded with a comment that the revised definition of the term "impoundment" at Rule 1.04(64) as submitted by Colorado on April 10, 1989, needed clarification. MSHA questioned the criterion, "surface area greater than 20 feet," that would designate which sediment ponds, used to store water, would be regulated in accordance with other specified Colorado rules. MSHA pointed out that the 20-foot surface area, if intended to be in square feet, would be an extremely small area. OSM notified Colorado of this comment (Administrative Record No. CO–456), and Colorado responded that this was a typographical error. In its submittal dated July 12, 1989, Colorado has corrected the typographical error, and the proposed language now reads, "surface area of twenty acres."

As required by 30 CFR 732.17(h)(4), OSM provided the proposed and revised amendments, which included provisions having an effect on historic properties, to the State Historic Preservation Officer and to the Advisory council on Historic Preservation for comment. No comments were received.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

EPA reviewed Colorado's August 23, 1988 amendment and on November 9, 1988, and January 30, 1989 (Administrative Records Nos. CO–419 and CO–426), submitted comments to OSM. EPA raised two issues. EPA stated that its concurrence was (1) subject to clarification that Colorado's rules at 4.05.2(2), 4.05.2(6), 4.05.2(7), and 4.05.6(1)(b) require compliance with applicable effluent limitations and State and Federal water quality laws and regulations, and (2) conditional upon Colorado's clarification that its rules do not authorize instream treatment of coal mine wastes.

OSM raised the first issue regarding effluent limitations and water quality standards in its February 7, 1989, letter to Colorado. As discussed in finding No. 6, Colorado stated in its April 10, 1989, response to OSM, that it was not necessary to repeat the requirement that applicable local, State and Federal water quality standards and effluent limitations be met because this is required at Rule 4.05.1, which is a general requirement applying to all of section 4.05. Based on this clarification, EPA gave concurrence on this issue by letter dated June 20, 1989 (Administative Record No. CO–453).

With regard to the second issue, EPA reiterated, in its letter dated June 20, 1989, that its concurrence to Colorado's proposed amendment was dependent upon Colorado's clarification that Colorado's rules did not authorize instream treatment. OSM had raised this issue in its June 15, 1989, letter to Colorado. In its June 28, 1989, response to OSM, Colorado stated that it follows the rules of the Colorado Department of Health, Water Quality Control Division concerning instream treatment of wastes and stated that "instream treatment of mine wastes is not allowed."

Therefore, Colorado has satisified both of EPA's concerns and EPA has granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*)

Colorado also proposed to revise its rule concerning air pollution control plans at Rule 4.17. These changes have no effect upon air quality standards, and EPA's concurrence on them was not necessary. However, the Director, in accordance with 30 CFR 732.17(h)(11)(i), solicited EPA's comments on these changes; none were received.

V. Director's Decision

Based on the above findings, the Director is approving Colorado's program amendment as submitted on August 23, 1988, and revised on April 10, June 28, and July 12, 1989, with the exceptions of (1) the requirements for ground-water monitoring requirements at Rule 2.05.6(3)(b)(iv), which, as discussed in finding No. 6, the Director has determined to be inconsistent with the Federal regulations implementing SMCRA and is therefore not approving it, and (2) Rules 4.08.5(11), 4.05.4(2)(b), 1.04(64), 4.05.6(10), 4.05.9(11), and 1.04(94a) on which, as discussed in finding No. 9, the Director is deferring this decision. The Director is requiring that Colorado further amend its program to correct the less effective provision. As required by 30 CFR 732.17(h)(11)(ii), the Director solicited and received EPA's concurrence on June 20, 1989 (Administrative Record No. CO–453).

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Colorado program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Colorado of only such provisions.

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VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding a new paragraph (m) as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of Rules 2.05.6(3)(b)(iv) (groundwater monitoring), 4.08.5(11) (use of explosives), 4.05.4(2)(b) (surface-water diversions), 1.04(64), 4.05.6(10) and 4.05.9(11) (siltation structures and impoundments), and 1.04(94a) (backfilling and grading), revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on August 23, 1988, and modified and clarified on April 10, June 28, and July 12, 1989, are approved effective December 11, 1989:

2.09.2, .3, .5, .8, and .8	Small Operator Assistance Program.
2.05.3; 4.08.1, .2, .4, .5, and .6.	Use of Explosives.
1.04; 2.06.7; 4.09; 4.09.1, .2, .3, and .4; and 4.11.4.	Excess Spoil.
1.04; 2.02.3 and .5; 4.21.4; and 7.08.	Coal Exploration.
1.04; 2.03; 2.03.3; 2.04.6 and .7; 2.05.6; 4.05.1, .5, .8, .13 and .16; 4.07.2.	Hydrology and Geology.
4.05.3 and 4.05.4	Diversions.
1.04; 2.05.3; 4.05.2, .6, and .9; and 4.11.5.	Siltation Structures and Impoundments.
1.04; 2.05.3; 4.09.2 and .3; 4.10; 4.10.1, .2, .3, and .4; 4.11; 4.11.1, .2, .3, and .5.	Coal Mine Waste.
2.03.5; 2.04.4 and .13; 2.05.4; 2.07.3, .4, and .5; 2.08.4, .5, and .6; and 2.10.1.	Permitting.
1.04; 2.06.6; 4.24.2, .3, .4, and .5.	Alluvial Valley Floors.
2.05.4; 4.14.1, .2, and .6	Backfilling and Grading.
2.02.3; 2.04.4; and 2.05.6	Archeology and Cultural Resources.
1.04	Vegetation.
2.06.3	Mountaintop Removal.
3.02.4 and 3.03.2	Bonding.
4.17	Air Pollution Control Plan.
5.04.3	Civil Penalties.

4. Section 906.16 is added to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to make the following program amendment by March 12, 1990. Colorado shall amend its rule at 2.05.6(3)(b)(iv) to be consistent with the Federal regulations at 30 CFR 780.21(i) and 784.14(h) by including as required water quality parameters to be monitored, total iron and total manganese, or amend its rule at 2.04.7(1) to be consistent with the Federal regulations at 30 CFR 780.21(b)(1) and 784.14(b)(1) by including at a minimum, as required water quality parameters to be included in ground-water baseline information, total dissolved solids or specific conductance corrected to 25 °C, pH, total iron, and total manganese.

[FR Doc. 89-28831 Filed 12-8-89; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 925

Amendment to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing approval, with certain exceptions and additional requirements, of a proposed amendment to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* The amendment was submitted to OSM on August 3, 1988 and pertains to: use of explosives, training, examination and certification of blasters, operations on prime farmland, requirements for information on environmental resources, approval of permit applications, and definitions. The amendment revises the State program to be consistent with the corresponding Federal standards and incorporates the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980 the Secretary of the Interior conditionally approved the Missouri program. Information regarding the general background of the Missouri program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the November 21, 1980, **Federal Register** (45 FR 77027). Actions taken subsequent to approval are found in 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of Amendment

By letter dated August 3, 1988 Missouri submitted to OSM a proposed amendment to certain provisions of the Land Reclamation Commission Title 10–Division 40 Regulations (Administrative Record No. MO–392). OSM published a notice in the September 2, 1988 **Federal Register** (53 FR 34128) announcing receipt of the proposed amendment and inviting public comment on its adequacy. The public comment period ended October 3, 1988. No public comments were received nor was a public hearing requested.

In a letter dated October 26, 1988 OSM notified the State of OSM concerns regarding the adequacy of several State program provisions (Administrative Record No. MO–405). These provisions included training for recertification of blasters, requirements for exemptions from prime farmland performance standards, water bodies approved as an alternative postmining land use, and a finding requirement for approving long-term, intensive agricultural postmining land use. By letter dated November 22, 1988 (Administrative Record. No. MO–409) Missouri responded to OSM's concerns.

In a letter dated February 23, 1989 OSM notified the State of an additional concern regarding the adequacy of Missouri's definition of "coal processing plant" or "coal preparation plant" (Administrative Record No. MO–424). Missouri responded to this concern by letter dated March 8, 1989 (Administrative Record No. MO–423).

The Missouri amendment consists, *inter alia*, of: proposed revisions to 10 CSR 40–3.050 (1), (2), (3), and (5); and 10 CSR 40–3.210 (1), (2), and (5), all concerning the use of explosives. These revisions respond, in part, to a required program amendment placed on the Missouri program at 30 CFR 925.16 (1) and (2) as discussed in the June 16, 1988 **Federal Register** (53 FR 22475). Proposed regulations at 10 CSR 40–3.160 provide for the training, examination, and certification of blasters.

On March 4, 1983, OSM promulated 30 CFR part 850. This regulation established Federal standards for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations (48 FR 9492). Missouri was required to submit its blaster certification program by March 4, 1984. On August 6, 1984, Missouri requested a 1 year extension (Administrative Record No. MO–272). On October 26, 1984, OSM granted Missouri an extension to August 6, 1985 (49 FR 43055). On August 4, 1985, Missouri advised OSM that it would require another extension of time (Administrative Record No. MO–282). On November 15, 1985, OSM granted Missouri an extension to August 6, 1986 (50 FR 47219). By letter dated March 13, 1986, Missouri formally submitted a proposed amendment concerning blaster certification. But, by letter dated September 18, 1986, Missouri requested that the amendment be withdrawn (Administrative Record No. MO–299). On January 7, 1987, OSM granted this request (52 FR 525). On April 10, 1987, Missouri requested that the submission deadline be extended to June 30, 1988 (Administrative Record MO–309). On November 16, 1987, OSM granted an extension to June 30, 1988 (52 FR 43757).

The amendment also proposes revisions to 10 CSR 40–4.030 (4) and (7) by deleting language that exempts coal preparation plants, support facilities, and roads of surface and underground mines from meeting prime farmland performance standards; allowing water bodies to displace prime farmland as an alternative postmining land use; and adding language to require that where row crops are the dominant crops grown on prime farmland in the area, the row crop with the greatest rooting depth is to be one of the reference crops. These changes are the result of required program amendments placed on Missouri's program at 30 CFR 925.16(m) (1), (2), and (3) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

A revision to 10 CSR 40–6.040(12) would delete the term "existing" in relation to present and potential productivity of prime farmland soil survey informational requirements. This revision was submitted at the State's own initiative.

Proposed revisions to 10 CSR 40–6.070(8) would delete certain permit approval conditions including: A showing that surface coal mining and reclamation operations will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area; a requirement for the applicant to submit a performance bond prior to issuance of a permit; a showing that the applicant has satisfied requirements for approval of a long-term, intensive agricultural postmining land use approved in accordance with the requirements of 10 CSR 40–3.130 or 10 CSR 40–3.300; and a showing that all approvals required under 10 CSR 40–3 and 10 CSR 40–4 have been made. These revisions were submitted at the State's own initiative.

Proposed revisions to 10 CSR 40–8.010(1) would clarify the definition of "coal processing plant" or "coal preparation plant" per a required program amendment placed on the Missouri program at 30 CFR 925.16(m)(4) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that, except as discussed below, the Missouri program amendment submitted on August 3, 1988, meets the requirements of SMCRA and 30 CFR chapter VII. The Director may, however, require further changes in the future as a result of Federal statutory or regulatory revisions.

1. Use of Explosives

(a) At 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 Missouri proposes to delete the requirements that 12 months after approval of the blaster certification program by OSM, a person responsible for removal of coal overburden by means of explosives shall be issued a document attesting to the fact that he has met specified requirements of a blaster as outlined in 10 CSR 40–3.160, and that said person shall conduct all blasting operations accordingly. In its place, Missouri proposes to add the requirement that by July 1, 1989, all blasting operations in Missouri shall be conducted under the direction of a certified blaster. The Federal regulations at 30 CFR 816.61(c) and 817.61(c) require that all blasting operations in a State shall be conducted under the direction of a certified blaster.

In this amendment, Missouri has submitted other proposed regulations that comprehensively address the requirements, at 30 CFR part 850, of OSM's blaster training, examination, and certification program. A detailed discussion of these proposals follows. Upon approval of these proposed regulations, together with the approval of the proposed revisions at 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 Missouri's program will be consistent with the Federal requirements at 30 CFR 816.61(c), 817.61(c) and part 850. Therefore, the Director finds the proposed revisions to 10 CSR 40–3.050(1)(C)1 and 40–3.210(1)(C)1 to be no less effective than the Federal regulations.

(b) At 10 CSR 40–3.050(1)(D)1.A and 40–3.210(1)(D)1.A Missouri proposes to delete the phrase "or structure" with regard to the requirement that blast designs be submitted if blasting operations will be conducted within 1000 feet of the permit area. At 30 CFR 925.16(1)(2), OSM placed a required program amendment on Missouri to clarify the use of the term "or structure" because the inclusion of the phrase confused the intent of the regulation. By deleting the phrase, Missouri eliminates the confusion and satisfies OSM's

for fees does not render its program to be less effective than the Federal regulations.

(d) *Application.* At 10 CSR 40–3.160(5), Missouri proposes to specify the requirements for application time frames, required information and supplemental forms for application, criteria for complete applications, and rights to appeal. Proposed revisions to 10 CSR 40–3.160(5)(B)1.A (IV), (V), B and C specifically require statements by the applicants or applicants' employer(s) attesting to experience, formal training, active performance of duties of responsibility, and on-the-job training of the applicant. The proposed revisions at 10 CSR 40–3.160(5)(C) require the Land Reclamation Program to review the application for completeness and accuracy. Proposed revisions at 10 CSR 40–3.160(2)(F) would require persons seeking to become certified as blasters to obtain experience at surface operations and receive on-the-job training from a certified blaster for a period of 12 months within the last 5 year period prior to certification. The Federal regulation at 30 CFR 850.14(a)(2) requires that candidates for blaster certification be examined for practical field experience that demonstrates the candidate possesses practical knowledge of blasting techniques, understands hazards involved, and has exhibited conduct consistent with accepting responsibility for blasting operations. The Missouri regulations require experience and mandate informational requirements in the application that would allow the Land Reclamation Program to make a reasonable judgment of the candidates' qualifications and practical field experience as required by the Federal regulations.

The Director finds that Missouri's proposed revisions to 10 CSR 40–3.160(5)(B) are no less effective than the Federal regulation requirements at 30 CFR 850.14(a)(2) regarding practical field experience. The Director also finds that the additional proposed requirements at 10 CSR 40–3.160(5) are not inconsistent with or less effective than Federal regulations.

(e) *Examination.* Missouri's proposed regulations at 10 CSR 40–3.160(6)(A) require that the competence of persons directly responsible for the use of explosives shall be determined through written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives. The corresponding Federal regulation at 30 CFR 850.14(a)(1) contains this same requirement. At 10 CSR 40–3.160(6)(B), Missouri proposes to require that applicants for blaster certification be examined on topics set forth in its regulations at 10 CSR 40.3.160(3)(A). The Federal regulation at 30 CFR 850.14(b) imposes this same requirement and references a list of topics at 30 CFR 850.13(b) that is substantially the same as that set forth in 10 CSR 40–3.160(3)(A).

Missouri's proposed regulations at 10 CSR 40–3.160(6) (C), (D), (E), and (F) provide administrative direction and procedures for time frames for examination, requirements for taking the examination, consequence of failure to take the examination, test results with regard to pass or failure, re-examination, and review of test results. Although such direction and procedures are not required by Federal regulation they do not make the Missouri regulation and program less effective than the Federal regulations.

At 10 CSR 40–3.160(6)(F)1., Missouri would require an eighty percent (80 percent) score on the examination to constitute a passing grade. The Director's representative has reviewed the Missouri blaster certification examination and by letter dated April 4, 1989, has found it to be technically adequate for the specified 80 percent minimum passing score required in Missouri's regulation.

The Director finds the Missouri regulation that addresses blaster certification examination to be consistent with and no less effective than the Federal regulation examination requirements at 30 CFR 850.14.

(f) *Certification.* Among other things, Missouri's proposed regulation at 10 CSR 40–3.160(7) provides for the issuance of certification, certificate conditions, recertification, protection of certifications, and suspension and revocation requirements either substantively identical to, or consistent with the requirements set forth in the corresponding Federal regulations at 30 CFR 850.15. Additionally, Missouri includes other State-specific provisions that do not have a Federal counterpart which (1) provide criteria for determining whether a certificate will be issued at the time of initial certification or recertification, (2) establish administrative actions on recertification applications where a blaster's certificate has been suspended or revoked, (3) allow for the issuance of a temporary certificate if a person holds a valid certificate issued in other states having an OSM-approved blaster certification program, (4) establish procedures for the immediate issuance of a suspension prior to an opportunity for hearing, and (5) establish criteria for the terms and conditions of each order of suspension or revocation given by the Land Reclamation Commission. Missouri also provides more detailed procedural requirements than those provided in the Federal regulations. The additional provisions are not inconsistent or in conflict with the Federal requirements at 30 CFR part 850. Therefore, the Director finds that the Missouri blaster certification requirements are no less effective than the Federal requirements.

(g) *Certificate at the mine site.* At 10 CSR 40–3.160(7)(C)5. Missouri proposes to require that a certified blaster have the certificate on his/her person at the mine site. This satisfies a required program amendment at 30 CFR 925.16(1)(3) as discussed in the June 16, 1988 Federal Register (53 FR 22475) that Missouri amend its program to require that blaster certificates be carried by blasters or be on file at the permit area during blasting operations per 30 CFR 816.61(c)(2) and 827.61(c)(2).

Therefore, the Director finds that the proposed amendment at 10 CSR 40–3.160(7)(C)(5) is no less effective than the corresponding Federal regulations.

3. Operations on Prime Farmland

(a) *Coal Preparation Plants, Support Facilities, and Roads.* Missouri proposes to amend its regulations to delete language at 10 CSR 40–4.030(4)(A) that allows for the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time, where such uses affect a minimal amount of land. The language that Missouri proposes to delete is identical to Federal language at 30 CFR 823.11(a) that was suspended on February 21, 1985 insofar as it excluded from prime farmland performance standards those coal preparation plants, support facilites, and roads that are surface mining activities (50 FR 7278). Therefore, the Director finds that Missouri's proposed deletion at 10 CSR 40–4.030(4)(A) concerning applicability of prime farmland performance standards makes this portion of Missouri's program no less effective than the Federal regulations. The Director is also removing a required program amendment placed on the Missouri program at 30 CFR 925.16(m)(1) as discussed in the October 31, 1988 Federal Register (53 FR 43866) that required the removal of this exemption from the Missouri program.

(b) *Water Bodies.* Missouri proposes to delete existing language at 10 CSR 40–

concern; therefore the Director finds this revision to be no less effective than the Federal counterpart regulations at 30 CFR 816.61(d)(1)(i) and 817.61(d)(1)(i). The Director also finds that the required program amendment at 30 CFR 925.16(1)(2) has been satisfied.

(c) At 10 CSR 40–3.050(2)(F) and 40–3.210(2)(F), Missouri proposes that the list of people outlined in the preblast survey must no longer be submitted to the director or commission 30 days prior to blasting. Federal regulations at 30 CFR 816.62 and 817.62 do not require such a list. Accordingly, the Director finds that Missouri's proposed deletion does not render its proposed regulations at 10 CSR 40–3.050(2)(F) and 40–3.210(2)(F) less effective than the Federal regulations.

(d) At 10 CSR 40–3.050(5)(B)2.A and 40–3.210(5)(B)2.A Missouri proposes to revise the requirement to monitor air blasts at the nearest uncontrolled structure from every 3 months to every 12 months. Missouri also proposes to delete the quarterly requirement to submit a record of this monitored event, and has added a required monitoring report date of no later than January 31 of each year for the year being monitored. Federal regulations at 30 CFR 816.67(b)(2) and 817.67(b)(2) provide discretion to the regulatory authority with regard to required monitoring frequency, measurement, and location of air blasts. Missouri's proposed revisions are consistent with the exercise of this discretion; therefore, the Director finds the proposed revisions to be no less effective than the Federal regulations.

(e) At 10 CSR 40–3.050(5)(D)2.A and 40–3.210(5)(D)2.A, Missouri proposes to delete the requirement to limit maximum peak-particle velocity consideration with regard to commercial buildings located outside the permit area. Federal regulations at 30 CFR 816.67(d)(2) and 817.67(d)(2) require such a limitation only with respect to dwellings, public buildings, schools, churches, or community or institutional buildings located outside the permit area. The Federal regulations do not specifically impose the limitation on commercial buildings. Additionally, with the proposed revision, Missouri's regulation is identical to the corresponding Federal regulation. Therefore, the Director finds that Missouri's proposed deletion of commercial buildings from regulation does not render the Missouri regulations at 10 CSR 40–3.050(5)(D)2.A and 40–3.210(5)(D)2.A to be less effective than the Federal regulations.

Missouri proposes other nonsubstantive language deletions or additions at 10 CSR 40–3.050(1)(C)2, (1)(C)3.B, (1)(D)4, (3)(B)2, and 40–3.210(1)(C)2, (1)(C)3.B, and (1)(D)4. The Director finds that these changes are no less effective than the corresponding Federal regulations at 30 CFR 816.61 *et seq.*

2. Training, Examination, and Certification of Blasters

Under 30 CFR 850.12 (a) and (b), States are required to develop and adopt a program to examine and certify persons directly responsible for the use of explosives in surface coal mining and reclamation operations. To satisfy this requirement and its Missouri-specific counterpart at 30 CFR 925.16(i)(1)(ii), Missouri is adding a revised regulation at 10 CSR 40–3.160 to establish a State blaster training, examination, and certification program.

(a) *Definitions.* At 10 CSR 40–3.160(2)(C) Missouri proposes to define a "blaster" as "A person directly responsible for the use of explosives and for the direction of the blasting crew in surface coal mining operations who is certified under this rule." This is substantively identical to the definition provided in the Federal regulations at 30 CFR 850.5 which defines a "blaster" as "a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part." Accordingly, the Director finds this proposed revision to be no less effective than the Federal counterpart regulation at 30 CFR 850.5.

Missouri additionally defines the following terms: application, blast, certification, examination, experience, recertification, re-examination, revocation, surface blasting operations, suspension, and temporary certification, none of which is defined in the Federal regulations. The Director finds that the above definitions provide additional direction and guidance to the Missouri program; are not in conflict or inconsistent with the training, examination, and certification requirements of the Federal blaster program; and are no less effective than the Federal regulations.

(b) *Training.* At 10 CSR 40–3.160(3), Missouri proposes to require that a person seeking certification as a blaster must successfully complete, within the year prior to certification, a formal training course on all the topics listed in Missouri's regulation at 10 CSR 40–3.160(3)(A). Persons seeking recertification as blasters must receive formal training in at least one of the topics listed in 10 CSR 40–3.160f3)(A). The topics listed include various technical aspects as well as current Federal and State regulations applicable to the use of explosives. The Federal regulations at 30 CFR 850.13 and 850.14(b) impose identical requirements for training and course topics. At 10 CSR 40–3.160(3)(B), Missouri specifies training courses approved or sponsored by others that will be deemed acceptable by the State for purposes of meeting the above training requirements. Such other training courses include those approved or sponsored by OSM, other States with OSM approved blaster certification programs, and the Federal Mine Safety and Health Administration (MSHA). All courses must fulfill those requirements outlined in 10 CSR 40–3.160(3)(C)(1) which incorporates a required range of topics equivalent to the requirements of 10 CSR 40–3.160. Additionally, at 10 CSR 40–3.160(3)(C) Missouri proposes to allow other training courses so long as such courses are evaluated and approved by the Missouri Land Reclamation Program based upon their equivalency to the approved programs listed in Missouri's regulation at 10 CFR 40–3.160(3)(A), in terms of course content, instructor qualifications, and number of instructional hours. The Federal regulation at 30 CFR 850.13(b) does not specify the organization that must conduct the required training; the regulation only requires that the regulatory authority ensure that courses are available to train persons responsible for the use of explosives. While Missouri is not proposing to sponsor a course, by accepting training courses that are approved or sponsored by OSM, MSHA, or other states with OSM-approved blaster certification programs, Missouri does provide assurance of availability for training in the topical areas required by Federal regulation.

At 10 CSR 40–3.160(3)(E) Missouri requires persons who are not certified and who are assigned to a blasting crew to receive direction and training by the blaster in charge. The Federal regulation at 30 CFR 850.13(a)(2) contains a substantively identical requirement.

The Director finds that as submitted, the revised provisions of the Missouri blaster training program are no less effective than the training requirements of the counterpart Federal regulations at 30 CFR 850.13.

(c) *Fees.* At 10 CSR 40–3.160(4), Missouri proposes to include a schedule for the submittal of non-refundable fees and time frames and administration of fees associated with its certification and examination program. While the Federal regulations at 30 CFR part 850 do not place such requirements on the program, such requirements are not inconsistent with Federal regulations. Therefore, the Director finds that Missouri's schedule

4.030(4)(A), and in its stead to recodify subparagraph (B) as subparagraph (A). Missouri's current regulation allows for the exemption of water bodies from prime farmland performance standards provided that (1) the water bodies have been approved as an alternative postmining land use, and (2) the water bodies are designed and constructed to minimize the loss of prime farmland. In this context, Missouri's existing regulation is substantively identical to a Federal provision at 30 CFR 823.11(b). However, in the case of *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. October 1, 1984), the court held that the Federal regulations at 30 CFR 823.11(b) provided an impermissibly broad variance from the allowed post-mining land use of prime farmlands. OSM, therefore suspended 30 CFR 823.11(b) in a February 21, 1985 **Federal Register** (50 FR 7278). OSM subsequently considered this issue and promulgated a new Federal regulation at 30 CFR 785.17(e)(5) in an October 18, 1988 **Federal Register** (50 FR 40828), that states (1) the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining, and (2) water bodies to be constructed during mining and reclamation must be located within the post-reclamation non-prime farmland portions of the permit area. This new regulation further states that the creation of any such water bodies must be approved by the regulatory authority and that the consent of all affected property owners within the permit area must be obtained.

In Missouri's proposed amendment at 10 CSR 40–4.030(4)(A), Missouri proposes to (1) delete the existing requirement that water bodies "be designed and constructed to minimize the loss of prime farmland", and (2) add a requirement that the post-mining land use of water bodies will not result in an aggregate loss of prime farmland acreage in the permit area. The effect of the proposed deletion and additions will be to still allow for the approved post-mining land use of water bodies in permit areas where prime farmland is present, but only if the existence of the water bodies will not result in an aggregate loss of prime farmland acreage. Missouri's regulation will continue to require that such water bodies be approved as an alternative post-mining land use in accordance with the applicable requirements of its program. Missouri's proposal does not specifically provide, as required at 30 CFR 785.17(e)(5), that the water bodies be located within the post-reclamation non-prime farmland portions of the permit area. While Missouri is silent on the requirement that water bodies be located within the post-reclamation non-prime farmland portions of the permit area, its proposed regulations do not allow an aggregate loss of prime farmland acreage in the permit area. Missouri's proposed regulation would therefore provide for the same intent as Federal regulations in that no exemption providing for the replacement or reduction of pre-mining prime farmland acreage in the permit area would be allowed. Missouri's proposed regulation does not require, as does the Federal regulation at 30 CFR 785.17(e)(5), that the consent of all affected property owners within the permit area be obtained when a water body is proposed in association with prime farmland reclamation. Its regulations only require at 10 CSR 40–3.130, comments by the legal or equitable owner of record of the surface. However such comments would not guarantee that the legal or equitable owner of record would give the required consent. This is less effective than Federal regulation requirements.

The Director is not approving Missouri's proposed regulation at 10 CSR 40–4.030(4)(A) to the extent that it would allow the alternative post-mining land use of water bodies in association with prime farmlands without obtaining the consent of all affected property owners within the permit area. Missouri will be required at 30 CFR 925.16(n)(1) to amend its regulation at 10 CSR 40–4.030(4), to be no less effective than the Federal requirements.

(c) *Restoration of Soil Productivity on Prime Farmland.* Missouri's existing regulations at 10 CSR 40–4.030(7)(B)6 specify the crops to be selected for determining restoration of prime farmland soil productivity. Missouri proposes to add the requirement that, where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops. This is consistent with the Federal regulation at 30 CFR 823.15(b)(6) that imposes an identical requirement. The Director finds that Missouri's proposed regulation at 10 CSR 40–4.030(7)(B)6 concerning the choice of reference crops to be no less effective than the Federal regulations. In making this change Missouri has satisfied the requirement imposed by OSM at 30 CFR 926.16(m)(3) as discussed in the October 31, 1988 **Federal Register** (53 FR 43866).

4. Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources: Soil Resources Information

The State regulation at 10 CSR 40–6.040(12)(A)4 presently requires a permit applicant to provide adequate soil survey information for the permit area consisting of "(1) A map delineating different soils; (2) Soil identification; (3) Soil description; and (4) Present and potential productivity of existing soils." Missouri proposes to revise the fourth requirement of this regulation by deleting "existing", and in its stead, adding "prime farmland".

The counterpart Federal regulation at 30 CFR 779.21(a) requires an applicant to provide adequate soil survey information of the permit area consisting of (1) a map delineating different soils, (2) soil identification, (3) soil description, and (4) present and potential productivity of existing soils. However, in an August 4, 1980 **Federal Register** (45 FR 51548), this regulation was suspended to the extent that it required soil survey information for lands not qualifying as prime farmlands.

With Missouri's proposed revision, its program will still require, for both prime farmland and non-prime farmland, applicants to provide adequate soil survey information consisting of (1) a map delineating different soils, (2) soil identification, and (3) soil description. However, with respect to the requirement to provide soil survey information as to the present and potential productivity of soils, such requirement will apply only to prime farmlands.

Under the revised Federal standard, the soil survey information is required only as to prime farmland soils. Therefore the Director finds that the proposed revision to the Missouri regulation is consistent with and no less effective than the corresponding Federal regulations.

At 30 CFR 925.10(b)(4), and pursuant to the May 16, 1980 opinion of the U.S. District Court for the District of Columbia, the Director affirmatively disapproved the Missouri regulation at 10 CSR 40–6.040(12) to the extent that it required a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

The Director finds that Missouri has had the opportunity to revise this rule to reflect the court ruling and has modified its rule in part. Therefore, the affirmative disapproval is no longer necessary and is being removed.

5. Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions

At 10 CSR 40–6.070(8), Missouri proposes to remove the requirement for the regulatory authority to make certain written findings as part of the permit application approval process. The required written findings that Missouri proposes to remove include, at subparagraph J, a finding that surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations to be performed in areas adjacent to the proposed permit area; at subparagraph K, a finding that the applicant will submit the performance bond required under 10 CSR 40.7 and the regulatory program prior to the issuance of the permit; at subparagraph M, a finding that the applicant has, if applicable, satisfied the requirements for approval of long-term, intensive agricultural postmining land use, and that the proposed postmining land use of the permit area has been approved; and, at subparagraph N, a finding that all specific approvals required under 10 CSR 40–3 and 40–4 have been made.

Federal regulations at 30 CFR 773.15(c) set forth the written findings that the regulatory authority must make in order for it to approve a permit application. These regulations do not contain any requirements similar to those Missouri proposes to delete at subparagraphs (J), (K), and (N). Therefore, the Director finds that the removal of these requirements does not render the Missouri regulations inconsistent with or less effective than the Federal regulations.

The Federal regulations do, however, require at 30 CFR 773.15(c)(9), a written finding that the applicant has satisfied the requirements for approval for a long-term, intensive agricultural postmining land use in accordance with required performance standards. The Director therefore finds that Missouri's proposed removal of the written finding requirement at 10 CSR 40–6.070(8)(M) would render rthe Missouri program less effective than the corresponding Federal regulations at 30 CFR 773.15(c)(9). The Director is not approving the amendment to the extent that it deletes the written finding required by 30 CFR 773.15(c)(9) concerning approval of a long-term, intensive agricultural postmining land use. To be consistent with 30 CFR 773.15(c)(9), the Director is also requiring at 30 CFR 925.16(n)(2) a program amendment to require, for the purposes of permit application approval, a written finding that the applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive, agricultural postmining land use in accordance with the requirements of 10 CSR 40–3.130 or 40–3.300.

6. Definition

Missouri's proposed regulations at 10 CSR 40–8.010(1)(A)18 synonymously define "coal processing plant" and "coal preparation plant." Prior to Missouri's submission of the proposed definition of "coal processing plant" and "coal preparation plant", so that it would be consistent with the Federal definition of "coal preparation plant" at 30 CFR 701.5, the Director had required, at 30 CFR 925.16(m)(4), Missouri to revise its definition of "coal processing plant" and "coal preparation plant" to "include all facilities where coal is subjected to chemical or physical processing or preparation, even if it is not separating coal from its impurities." October 31, 1988 **Federal Register** (53 FR 43866). Because Missouri's proposed definition of "coal processing plant" and "coal preparation plant" fails, as mandated in the required program amendment, to include facilities where coal is subjected to chemical or physical processing or preparation, even where such facilities do not entail separating coal from its impurities, the Director finds the proposed definition to be less effective than the Federal definition at 30 CFR 701.5. Therefore, the Director is not approving the proposed revision to 10 CSR 40–8.010(1)(A)(18). The Director also finds that for the foregoing reasons, Missouri has not satisfied the required program amendment at 30 CFR 925.16(m)(4).

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. None of the agencies notified offered any substantive comments.

V. Director's Decision

Based on the above findings, with the exception of those provisions concerning regulations determined to be less effective than the Federal regulations, the Director is approving the proposed amendment submitted by Missouri on August 3, 1988.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are being amended to implement this decision. With the exception of typographical errors, this approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval. The final regulation is being made effective immediately to expedite the State program amendment process and to encourage States to bring their program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is not approving the following provisions of the proposed amendments: (1) As discussed in finding 3.b. allowing water bodies associated with prime farmland without consent of all affected property owners at 10 CSR 40–4.030(4)(A); (2) as discussed in finding 5, the deleted required written finding for a long term intensive, agricultural postmining land use at 10 CSR 40–8.070(8)(M); and (3) as discussed in finding 6, the definition of "coal processing plant" or "coal preparation plant" at 10 CSR 40–8.010(1)(A)(18).

The Director is removing the following requirements he previously placed on the Missouri program: As discussed in finding 4, the prior affirmative disapproval at 30 CFR 925.10(b)(4) of 10 CSR 40–8.040(12) regarding the requirement for soil surveys for lands other than prime farmlands; as discussed in finding 1, the prior required program amendment at 30 CFR 925.16(1)(2), concerning clarification of the term "structure" in the use of explosives; as discussed in finding 2, the prior required program amendments at 30 CFR 925.16(i), concerning the blaster training, examination, and certification program, and at § 925.16(1)(2), concerning possession or filing of the blaster certificate; as discussed in finding 3, the prior required program amendments at 30 CFR 925.16(m)(1), concerning the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads; at § 925.16(m)(2), concerning the exemption from prime farmland performance standards of water bodies; and at § 925.16(m)(3), concerning the requirement that the row crop with the greatest rooting depth be chosen as one of the reference crops.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of

an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, or other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d), of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that the approval of these amendments will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation of part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 925.10 [Amended]

2. Section 925.10 is amended by removing and reserving paragraph (b)(4).

3. Section 925.15 is amended by adding paragraph (h) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(h) With the exceptions of 10 CSR 40–4.030(4)(A) relating to water bodies placed in association with prime farmland without affected property owner consent, 10 CSR 40–8.070(8)(M) relating to a required written finding for longterm intensive agricultural postmining land use and 10 CSR 40–8.010(1)(A)(18) relating to the definitions of coal processing plant and coal preparation plant; the following provisions of the Missouri Code of State Regulations (CSR) as submitted to OSM on August 3, 1988 are approved effective December 11, 1989.

10 CSR 40–3.050(1)(C), (1)(D), (2)(F), (3)(B), (5)(B), and (5)(D), and 10 CSR 40–3.210(1)(C), (1)(D), (2)(F), (5)(B), and (5)(D)—Requirements for the Use of Explosives for Surface and Underground Operations; 10 CSR 40–3.160, Training, Examination, and Certification of Blasters; 10 CSR 40–4.030(4) and (7)(B)6—Operations on Prime Farmland; and 10 CSR 40–8.070(8)(J), (K), (L), (N) and (O)—Criteria for Permit Approval or Denial.

4. Section 925.16 is amended by adding paragraph (n) and removing and reserving paragraphs (i), (l)(2), (l)(3), (m)(1), (m)(2), and (m)(3) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(n) By March 12, 1990, amend its program at:

(1) 10 CSR 40–4.300(4)(B) to add the requirement that placement of such water bodies must receive the consent of all affected property owners within the permit area.

(2) 10 CSR 40–8.070(8)(M) to add a required written finding for permit application approval that the applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive, agricultural postmining land use as required by 30 CFR 773.15(c)(9).

[FR Doc. 89–28832 Filed 12–8–89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of Texas as a modification to its permanent regulatory program (hereinafter referred to as the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment modifies the self-bonding provisions of the Texas Coal Mining Regulations (TCMR) to maintain consistency with the corresponding Federal regulations, to provide flexibility in their application, and to establish alternate eligibility criteria for governmental applicants.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Dr., Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Information pertinent to the general background on the Texas program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions taken concerning the Texas program and program amendments are identified at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(c), the Director notified Texas by letter dated February 18, 1987 (Administrative Record No. TX–390) of changes necessary to maintain its program in a form no less stringent than SMCRA and no less effective than the implementing Federal regulations, as revised since February 16, 1980, the date when the Texas program was originally approved. The Director's February 18, 1987, letter required the State to amend its self-bonding regulations at TCMR 051.07.04.309(j) relating to financial ratios and other limitations including the need for the applicant's minimum period of operation; the ratio of current assets to current liabilities and the ratio of total liabilities to net worth; submission of unaudited financial statements for completed quarters in the current fiscal year; limitations on the guarantor; limitation on the ratio of the self-bond amount to the tangible net worth of the applicant; execution of an indemnity agreement by specified parties; and a provision for requiring annual updated financial information.

By letter dated July 31, 1987 (Administrative Record No. TX–393), Texas submitted proposed changes to its self-bonding regulations along with numerous other proposed revisions. In response to comments received in the State rulemaking process, Texas requested, by letter dated November 25, 1987 (Administrative No. TX–403), that the proposed self-bonding regulations be withdrawn from consideration and further requested an extension of time until March, 1988, to submit the proposed amendments. OSM approved this and subsequent requests for extensions until June 30, 1988, and August 31, 1988.

By letter dated August 29, 1988 (Administrative Record No. TX–411), Texas submitted the proposed amendments. OSM announced their receipt in the September 27, 1988, **Federal Register** (53 FR 37599), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their adequacy. The comment period ended October 27, 1988.

By letter dated November 15, 1988 (Administrative Record No. TX–427), OSM notified the State of deficiencies found in the amendment and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions, or other evidence to show that the State's proposed modifications were consistent with the Federal requirements. The deficiencies identified in the proposed self-bonding regulations recodified at TCMR 806.309(j) section 1 (D) and (H) 2, 3, 4, 5 (A) and (B), 6 (A) through (E), 7, 8, and 9 pertained to the definition of self-bond, requirements for a business entity, requirements for a governmental entity, third party guarantees, limitations, indemnity agreement, submission of current financial information, substitute bonding, and exceptions.

On March 21, 1989, Texas submitted a revised amendment (Administrative Record No. TX–445) to address these concerns, and to respond to the original letter from the Director dated February 18, 1987. Texas proposed revisions to the following self-bonding rules: definitions, TCMR 806.309(j)(1); requirements for a business entity, TCMR 806.309(j)(2); requirements for a governmental entity, TCMR 806.309(j)(3); requirements for a third-party guarantee, TCMR 806.309(j)(4); limitations, TCMR 806.309(j)(5); indemnity agreement, TCMR 806.309(j)(6); current financial information, TCMR 806.309(j)(7); substitute bonding, TCMR 806.309(j)(8); and applicability, TCMR 806.309(j)(9). Texas proposed the revisions at TCMR 806.309(j)(3) and TCMR 806.309(j)(9) to allow certain exceptions to the standard financial eligibility criteria.

OSM announced receipt of the revised proposed amendment in the April 17, 1989, **Federal Register** (54 FR 15227), and, in the same notice, reopened and extended the public comment period and provided opportunity for a public hearing on the adequacy of the amendment considering the additional materials submitted. The comment period closed on May 2, 1989. No one requested a public hearing; none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Texas Administrative Code submitted by Texas on August 24, 1988, and revised on March 21, 1989. Any provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations; although the Director may require further changes in the future as a result of Federal regulatory changes. Revisions that are not discussed either contain language the same or similar to the corresponding Federal regulations or concern nonsubstantive wording changes that do not affect the consistency of the program with the Federal regulations and Act.

1. Definitions

Texas has added definitions of "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," and "tangible net worth" at TCMR 806.309(j)(1) (A), (B), (C), (E), (F) and (H) respectively. Since the definitions are essentially the same as those in the Federal regulations at 30 CFR 800.23(a), the Director finds that the revised regulations are no less effective than the Federal regulations.

In addition, at TCMR 806.309(j)(1)(6), Texas has added a definition of "self-bond" to be consistent with the corresponding Federal definition at 30 CFR 800.5(c). However, the Texas regulation requires that the indemnity agreement be executed by a qualified applicant or by an applicant and a qualified third-party guarantor. The corresponding Federal definition at 30 CFR 800.5(c) requires that the indemnity agreement be executed by the applicant or by the applicant and any corporate guarantor. Since "any corporate guarantor" under the Federal regulations is in essence a third-party guarantor, Texas' use of the term "third-party" instead of "any corporate guarantor" is consistent with the Federal regulations.

Texas has added a definition of "governmental entity" at TCMR 806.309(j)(1)(D) to mean municipal corporation, political subdivision or public agency of the State of Texas. The proposed regulation is provided to clarify which governmental permit applicants would be allowed to apply for self-bonding under the proposed Texas regulations. The proposed definition does not conflict with the Federal self-bonding regulations since any permit applicant may apply for self-bonding under the Federal regulation. Therefore, the Texas definition is not inconsistent with Federal regulation requirements.

The Federal regulations on self-bonding include a definition of "parent guarantor" at 30 CFR 800.23(a). The proposed Texas regulations at TCMR 806.309(j)(1) do not provide for this definition since no special allowances for parent corporations are included in the proposed regulations. Applicants with parent guarantors are subject to the provisions of Texas' proposed regulations for third-party guarantors. Therefore, omission of the definition of parent guarantor in the Texas program is acceptable.

Since the revised State definitions are consistent with their Federal counterparts at 30 CFR 800.23(a), the Director finds that the State regulations proposed at TCMR 806.309(j)(1) are no less effective than the Federal regulations.

2. Requirements for a Business Entity

Texas has revised its regulations at TCMR 806.309(j)(2) to adopt self-bonding eligibility criteria and requirements for business entities that include designating an agent for service of process; being in continuous operation

for five years prior to application; meeting one or more of three financial tests, submitting audited financial statements with no adverse opinion that are supplemented by statements for unaudited quarters; and submitting any additional information as required. The Texas regulations are essentially the same as those set forth for Federal self-bond applicants at 30 CFR 800.23(b) (2) and (3) except that Texas would disqualify any applicant who was subject to bankruptcy during the five years before the application date. Under 30 CFR 730.11(b), States are allowed to adopt controls and regulations that are more stringent than their Federal counterparts. Since the Texas rule establishes more restrictive self-bonding eligibility criteria than the Federal rule, it is no less effective than the Federal regulation.

3. Requirements for a Governmental Entity

At TCMR 806.309(j)(3) Texas proposes to establish separate eligibility criteria for governmental entities applying to self-bond. Texas' proposed language is similar to 30 CFR 800.23(b) in that it requires a governmental applicant to (1) have an agent for service of process, (2) to have legal authorization to self-bond, (3) to execute an indemnity agreement, (4) to have been in operation for the five preceding years, (5) to submit audited financial statements, and (6) to meet certain financial eligibility criteria. As with the Federal financial criteria at 30 CFR 800.23(b)(3), Texas' proposed regulations at TCMR 806.309(j)(3)(e) require a State governmental applicant to meet one of three financial criteria. Like the first of these criteria at 30 CFR 800.23(b)(3)(i), TCMR 806.309(j)(3)(e)(i) allows an applicant to qualify with an A or higher bond rating. With respect to the remaining two criteria, Texas proposes to allow a governmental entity to either meet the financial requirements at 806.309 (j)(2)(ii) or (j)(2)(iii), which are equivalent to the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) or demonstrate that it meets equivalent criteria that are acceptable to the State. Texas has not defined or described these alternate criteria.

Therefore, the Director finds that Texas has not provided separate criteria that would ensure the same degree of risk protection as the financial criteria of the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). In addition, Texas would not require a governmental entity to meet a self-bond to net worth ratio consistent with that of the Federal regulations at 30 CFR 800.23(d). Since Texas has not provided alternate criteria that ensure the same degree of risk protection as the Federal regulations, the Director is not approving TCMR 806.309(j)(3), which would have established separate financial eligibility criteria for self-bonding by applicants defined as governmental entities.

4. Requirements for a Third-Party Guarantor

Texas proposes to revise its regulations at TCMR 806.309(j)(4) to allow the acceptance of a self-bond guaranteed by a third-party provided the guarantor meets all the conditions of TCMR 806.309(j)(2) as if it were the applicant and the applicant meets the conditions of TCMR 806.309(j)(2) (A), (B), and (D). The terms required for the resulting "third-party guarantee" are identical to those of the corresponding Federal rule at 30 CFR 800.23(c)(2). However, unlike the Federal regulation, the Texas rule does not explicitly state that the regulatory authority may require the applicant to submit additional financial information. Should Texas require additional information, this may be requested in accordance with the general authority granted by section 5(4) of the Texas Surface Coal Mining and Reclamation Act. Unlike 30 CFR 800.23(c)(1), Texas' proposed regulations do not establish separate, lesser requirements when the third-party guarantor is a parent corporation. Since 30 CFR 730.11(5) allows States to establish requirements more stringent than those of the Federal rules, the Director finds that omission of separate requirements for parent guarantors does not render the State rule less effective than the Federal rule.

Therefore, for the reasons discussed above, the Director finds that the proposed revisions to TCMR 806.309(j)(4) are no less effective than the corresponding Federal rule at 30 CFR 800.23(c)(2).

5. Limitations

Like the Federal regulation at 30 CFR 800.23(d), TCMR 806.309(j)(5) limits the sum of an applicant's or third-party guarantor's proposed and outstanding self-bonds to 25 percent of the applicant's or guarantor's tangible net worth in the United States. Since the State and Federal rules are substantively identical, the Director finds that proposed regulation at TCMR 806.309(j)(5) is no less effective than the Federal regulation, except as discussed in Finding 3.

6. Indemnity Agreement

The proposed rule at TCMR 806.309(j)(6) requires that an indemnity agreement be submitted if an applicant's self-bond is accepted by the regulatory authority. The proposed rule further requires that authorized officials of all parties bound to the self-bond execute the indemnity agreement; that two such authorized officials of each party sign the agreement; and that copies of the documents authorizing them to sign, and affidavits certifying that the indemnity agreement is valid under applicable Federal and State laws, be submitted. Additionally, Texas is requiring that under a bond forfeiture the applicant or third-party guarantor either complete the approved reclamation plan or pay the bond amount to the State, and that the indemnity agreement be referred to the State Attorney General to obtain a judgement when necessary under a bond forfeiture. The State's provisions are substantively identical to the corresponding Federal regulation at 30 CFR 800.23(c); therefore, the Director finds that they are no less effective than the Federal requirements.

7. Current Financial Information

Using the discretionary authority provided by 30 CFR 800.23, Texas has added provisions at TCMR 806.309(j)(7) that would require self-bonded permittees and third-party guarantors to annually update the financial information they originally submitted pursuant to TCMR 806.309(j) (2)(c) and (2)(e). Therefore, the Director finds that the proposed rule is no less effective than the Federal regulation.

8. Substitute Bonding

The proposed rule at TCMR 806.309(j)(8) requires that the State be notified and the self-bond be replaced with an alternate form of bond whenever the financial conditions of the applicant or third-party guarantor change so they are no longer eligible. This substitution along with the Commission approval of the substitute bond must be made within 90 days from the date of notification. If the substitution is not made, then the permittee must cease operations and begin reclamation. The revised State regulation is substantively identical to the corresponding Federal regulations at 30 CFR 800.23(g) and 30 CFR 800.18(e)(2). Therefore, the Director finds that it is no less effective than these Federal regulations.

9. Applicability

At TCMR 806.309(j)(9) Texas proposes to apply the revised self-bonding provisions at 806.309(j)(2)(c), (j)(3)(E) and (j)(5) only to new self-bond applicants. Existing self-bonded permittees would be allowed to retain and increase their current self-bonds without meeting the financial eligibility criteria of the new regulations. Under Texas' proposed rules, a revision to an existing self-bond would not require the permittee to meet the revised financial criteria of TCMA 806.309(j)(2)(c), 806.309(j)(3)(E), and (j)(5).

The Federal regulations at 30 CFR 800.23 require that all self-bonded operators meet the existing eligibility criteria, and do not contain or authorize a similar grandfather clause.

Texas has not described how it would evaluate current self-bonded permittees on an on-going basis to assure their continued financial eligibility to self-bond without separate surety. Texas has not provided information regarding what criteria, if any, the current self-bonded permittees would have to continue to meet to remain qualified under Texas' self-bonding program. Since Texas has not provided financial criteria for existing self-bonded permittees to ensure the same degree of risk protection as the Federal regulations, the Director is not approviong TCMR 806.309(j)(9).

10. Recodification

Texas has recodified its self-bonding regulations from TCMR 051.07.04.309(j) to TCMR 806.309(j). Since the recodification does not alter the content or meaning of the proposed regulations, the Director finds that the revised codification system is not inconsistent with any Federal requirements. This recodification will be discussed further in a future rulemaking.

IV. Summary and Disposition of Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment." No comments were received.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies. No substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment as submitted by Texas on August 24, 1988, and revised on March 21, 1989, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations. For the reasons discussed in Finding 3, the Director is not approving TCMR 806.309(j)(3) which would have allowed special consideration for governmental entities in meeting the financial criteria and the financial limitations necessary for self-bonding. Also, the Director is not approving TCMR 806.309(j)(9) which would have allowed existing self-bonded permittees to be excused from meeting the qualifying financial criteria of the revised regulations.

The Federal regulations at 30 CFR part 943 codifying decisions concerning the Texas program are being amended to implement this decision. The Director is approving the regulations with the provision that they be fully promulgated in a form identical to that submitted to, and reviewed by, OSM and the public. Furthermore, if deemed necessary by future Federal regulatory revisions, court decisions, and OSM revaluations of the Texas program, the Director may require further revisions. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the proposed program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Texas program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Texas of only such provisions.

VI. Procedural Requirements

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding a new paragraph (d) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(d) With the exceptions of TCMR 806.309(j)(3) relating to establishment of separate financial criteria for self-bonding by government entities and TCMR 806.309(j)(9) relating to exemption of persons with existing self-bond from meeting the qualifying financial criteria of TCMR 806.309(j)(2)(C), (j)(3)(E) and (j)(5), the following amendments submitted on August 24, 1988, as modified March 21, 1989, are approved effective December 11, 1989: Revisions and recodification of the self-bonding provisions of the Texas Coal Mining Regulations at 806.309(j)(1)(A), 806.309(j)(1)(B), 806.309(j)(1)(C), 806.309(j)(1)(D), 806.309(j)(1)(E), 806.309(j)(1)(F), 806.309(j)(1)(G), 806.309(j)(1)(H), 806.309(j)(2)(A), 806.309(j)(2)(B), 806.309(j)(2)(C), 806.309(j)(2)(D), 806.309(j)(4)(A), 806.309(j)(4)(B), 806.309(j)(4)(C), 806.309(j)(5)(A),

806.309(j)(5)(B), 806.309(j)(6)(A), 806.309(j)(6)(B), 806.309(j)(6)(C), 806.309(j)(6)(D), 806.309(j)(6)(E), 806.309(j)(7) and 806.309(j)(8).

[FR Doc. 89-28830 Filed 12-8-89; 8:45 am]
BILLING CODE 4910-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3695-8]

Standards of Performance for New Stationary Sources Supplementary Delegation of Authority to Alabama

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation.

SUMMARY: On September 11, 1989, the State of Alabama requested that EPA delegate authority for implementation and enforcement of additional categories of Standards of Performance for New Stationary Sources (NSPS). Since EPA's review of pertinent State laws, rules and regulations showed them to be adequate for the implementation and enforcement of these federal standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 30, 1989.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE, Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Mr. Richard E. Grunsnick, Chief, Air Division, Alabama Department of Environmental, 1752 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, at the EPA Region IV address listed above and phone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101 and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, NSPS.

On August 5, 1976, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the State of Alabama. On September 11, 1989, Alabama requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised (denoted by R) NSPS categories found in 40 CFR part 60:

Subpart D	Fossil Fuel-Fired Steam Generators constructed after August 17, 1971 (R)
Subpart Da	Electric Utility Steam generating Units constructed after September 18, 1978 (R)
Subpart E	Incinerators (R)
Subpart F	Portland Cement Plants (R)
Subpart G	Nitric Acid Plants (R)
Subpart H	Sulfuric Acid Plants (R)
Subpart I	Hot Mix Asphalt Facilities (R)
Subpart J	Petroleum Refineries (R)
Subpart L	Secondary Lead Smelters (R)
Subpart M	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities constructed after January 20, 1983 (R)
Subpart N	Iron and Steel Plants (R)
Subpart Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities constructed after January 20, 1983 (R)
Subpart O	Sewage Treatment Plants (R)
Subpart P	Primary Copper Smelters (R)
Subpart Q	Primary Zinc Smelters (R)
Subpart R	Primary Lead Smelters (R)
Subpart S	Primary Aluminum Reduction Plants (R)
Subpart T	Wet Process Phosphoric Acid Plants (R)
Subpart U	Superphosphoric Acid Plants (R)
Subpart V	Diammonium Phosphate Plants (R)
Subpart W	Triple Superphosphate Plants (R)
Subpart X	Granular Triple Superphosphate Storage Facilities (R)
Subpart Y	Coal Preparation Plants (R)
Subpart Z	Ferroalloy Production Facilities (R)
Subpart AA	Steel Plants: Electric arc furnaces and dust-handling equipment (R)
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (R)
Subpart BB	Kraft Pulp Mills (R)
Subpart CC	Glass Manufacturing Plants (R)
Subpart DD	Grain Elevators (R)
Subpart GG	Stationary Gas Turbines (R)
Subpart HH	Lime Manufacturing Plants (R)
Subpart KK	Lead-Acid Battery Manufacture (R)
Subpart LL	Metallic Mineral Processing Plants (R)
Subpart NN	Phosphate Rock Plants (R)
Subpart PP	Ammonium Sulfate Manufacturing (R)
Subpart UU	Asphalt Processing and Asphalt Roofing Manufacture (R)
Subpart VV	Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry (R)
Subpart XX	Bulk Gasoline Terminals (R)
Subpart LLL	Onshore Natural Gas Processing SO_2 Emissions (R)
Subpart OOO	Nonmetallic Mineral Processing Plants (R)
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants (R)
Subpart QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems
Subpart SSS	Magnetic Tape Manufacturing Industry
Subpart TTT	Industrial Surface Coating: Plastic Parts for Business Machines

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of August 5, 1976. Alabama sources subject to the requirements of subparts D, Da, E, F, G, H, I, J, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, GG, HH, KK, LL, NN, PP, UU, VV, XX, LLL, OOO, PPP, QQQ, SSS, and TTT will now be under the jurisdiction of the State of Alabama.

Action: Since review of the pertinent Alabama laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, I delegated to the State of Alabama my authority for the source categories listed above on October 30, 1989.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of section 101, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, and 7601).

Dated: December 1, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-28872 Filed 12-8-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-348-F]

RIN 0938-AC31

Medicaid Program; Eligibility Determinations Based on Disability

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule specifies HCFA's policy concerning the relationship between State Medicaid eligibility determinations based on disability and disability determinations made by the Social Security Administration (SSA) under the Supplemental Security Income (SSI) program. The rule clarifies the controlling nature of SSA determinations of disability, specifies when the State Medicaid agency must make independent disability determinations, clarifies the terminology used to describe the composition of the review team and the information considered under Medicaid in making disability determinations, and extends the Medicaid time limit for making eligibility determinations based on disability from 60 days to 90 days to ensure maximum uniformity in the disability determination process used by SSA and the State Medicaid agencies. These changes will enhance the effective and efficient administration of the Medicaid program.

EFFECTIVE DATE: January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Tomlinson, 301-966-4463.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 1902(a)(10) and 1905(a) of the Social Security Act (the Act), individuals who meet certain income and resource requirements and other general eligibility requirements and who are disabled, as defined under the Act, are eligible for Medicaid. These individuals include those who are receiving cash assistance payments under the Supplemental Security Income (SSI) program, those who are eligible to receive such payments but are not receiving them, and those who, at a minimum, meet the SSI definition of disability but are not eligible for a cash assistance payment because they have income and/or resources that exceed allowable levels. The law requires that the SSI definition of disability set forth in section 1614 of the Act must be satisfied, at a minimum, in order for an individual to be eligible for Medicaid based upon disability. The SSI definition governs eligibility, except in those States that elect to use a more restrictive definition than used under SSI (although no more restrictive than under the State's 1972 approved Medicaid plan) under the provisions of section 1902(f) of the Act. The Medicaid regulations implementing the requirement that the SSI disability definition generally must be used are located in 42 CFR 435.540. In implementing this requirement, HCFA requires that the related SSI criteria, standards, presumptions, and factors required to reach SSI decisions on disability also apply to Medicaid eligibility determinations based on disability.

This document concerns only the definition of disability, which is one factor in eligibility. It does not concern any other factors of Medicaid eligibility.

Most State Medicaid agencies have agreements with SSA under the authority of section 1634 of the Act to determine Medicaid eligibility for individuals who are recipients of SSI and federally administered State supplements. The Federal regulations that govern these agreements are located in 42 CFR 435.909 and 20 CFR 416.2101 through 416.2176.

In cases in which a State has a section 1634 agreement with SSA, and the individual files an application only with SSA for SSI, the State Medicaid agency is not required to make a Medicaid disability determination for the period starting on the effective filing date of the SSI application. This is because an application for SSI is also an application for Medicaid in such States. An applicant is required to wait until SSA makes an SSI eligibility determination. An SSA determination is to provide SSI benefits confers Medicaid eligibility in section 1634 States (if certain statutory Medicaid requirements are met) and usually confers Medicaid eligibility in other States where a separate Medicaid application is required. (An SSA determination includes disability determinations made by State agencies on behalf of SSA.) There may be instances in section 1634 States where an applicant for SSI does not intend to apply for Medicaid and limits the application or the applicant may not be aware of the link between SSI and Medicaid. In these circumstances, the individual may apply separately for Medicaid and a State may not refuse to accept the application. As discussed in detail later in this preamble, the basic rule is that any SSA decision as to disability remains controlling as to the same set of facts, unless it is changed by SSA. However, if an individual files an application with the State Medicaid agency alleging that he or she is eligible for Medicaid on the basis of disability, the State agency responsible for Medicaid determinations must make a disability determination on certain circumstances.

The circumstances under which the State Medicaid agency is required to make an independent determination of disability are as follows:

1. An individual applies for Mediaid as a noncash recipient and has not applied to SSA for SSI cash benefits, or an individual applies for Medicaid and has applied for SSI benefits and is found ineligible for SSI for a reason other than disability.

2. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State Medicaid agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's applications for Medicaid. (Section 1902(a)(8) of the Act provides that Medicaid must be furnished to eligible individuals with reasonable promptness. Regulations implementing this requirement, § 435.911, currently specify that the State Medicaid agency must make an eligibility determination based on disability within 60 days from the date a written application is submitted to the agency (the time limit is expanded in this final rule to 90 days).)

3. The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria for determining disability than SSI or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination within the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

4. The individual applies for Medicaid as a noncash recipient and alleges a disabling condition that is different from or in addition to that considered by SSA.

5. The individual applies for Medicaid as a noncash recipient more than 12

months after SSA last made a final determination that the individual was not disabled, and alleges that his or her condition has changed or deteriorated since that final determination and the individual has not reapplied for SSI on the basis of these allegations. (Any allegation of a deterioration of the condition for which SSA made a determination that is filed less than 12 months after the most recent final SSI determination must be submitted to SSA for reconsideration or reopening.)

On December 14, 1987 (52 FR 47414), we published in the **Federal Register** a proposed rule to incorporate in the Medicaid regulations HCFA's policy on the controlling nature of SSA disability determinations, the effect of new and material evidence on a prior SSA determination and other related matters. The proposed rule was issued (1) in response to numerous questions that we had received on the effects of SSI eligibility determinations based on disability on Medicaid eligibility disability determinations and (2) to clarify policy to help prevent or curtail disruptive court challenges to the policy's validity. We received correspondence from 28 respondents on the proposed rule. The specific public comments on the proposed rule and our responses are presented later in this document.

A discussion of the specific regulation changes that were proposed in the December 14, 1987 document, and that are being adopted in this final rule follows.

Effects of SSA Disability Determinations

The statute is clear that the SSI disability definition under section 1614 of the Act must be used in determining disability under Medicaid, except in those States that elect to apply a more restrictive definition, as noted above. It is clear also that, in States that have section 1634 agreements, if SSA awards SSI benefits to an individual on the basis of disability, the State also must provide Medicaid (if the individual agrees to assign any rights to third party payments, agrees to provide third party information, and does not have a Medicaid qualifying trust) and is bound by the SSA determination of disability.

Under section 1902(a)(10) of the Act, States have the option of providing Medicaid coverage to persons who are eligible for payment under specified cash assistance programs (including the SSI program), but are not receiving such payments, and to persons who are ineligible for cash payments under one of these programs solely as a result of excess income or resources (that is, they would be eligible for such payments if they met income and resource requirements). If a cash assistance program (in this case, SSI) determines or previously has determined that an individual is ineligible for cash assistance because he or she does not satisfy the categorical requirements for eligibility (in this case, disability), the individual, by definition, is not eligible for such cash assistance, and would not be eligible if income and resource standards were satisfied. Such an individual accordingly is not eligible for Medicaid under these State options. Therefore, a finding by SSA that an individual is not disabled controls for purposes of any applications for Medicaid based upon an allegation of disability for essentially the same condition and time periods.

Our basic rule is that any SSA determination as to an individual claimed disability remains controlling as to that claimed condition until it is changed by SSA. In the event a different conclusion was reached by the State Medicaid agency prior to the individual's application for SSI or because the SSA determination was not made promptly as required under 42 CFR 435.911, the State Medicaid agency's determination is superseded by the SSA determination.

It is only in those cases in which SSA has not decided disability (e.g., individuals who simply choose not to apply for SSI, or who do not apply because they are not financially eligible for SSI or who are found ineligible for SSI payments for a reason other than disability) that States must apply to SSI eligibility criteria and determine whether an applicant would be eligible for SSI if he or she applied, and were financially eligible. When the SSI program has determined that an individual is not disabled, that determination settles the question of whether the individual "would be eligible for SSI." The option of providing Medicaid to individuals who are eligible for SSI but have not applied for cash payments, or who would be eligible for SSI if they met financial requirements, was not intended to grant individuals a second chance at Medicaid after they have been found not disabled by the SSI program.

As SSA disability decision has a binding prospective effect on Medicaid eligibility. If SSA makes a determination of disability that is different from one already made by a State Medicaid agency, the SSI decision controls Medicaid eligibility based upon disability under one of the State options just described, and Federal financial participation (FFP) in Medicaid expenditures for these individuals accordingly is limited in accordance with §§ 435.1001–1003. In case in which SSA denies disability after the State agency has made a determination of eligibility, FFP is available only for the period of eligibility in which the State made a reasonable application of SSI policies, definitions, standards, and criteria until SSA reached the different determination. At that point, FFP is available only as provided in § 435.1003. In other words, States that have made a good faith effort to apply the SSA rules on disability (or more restrictive rules under section 1902(f)) will not be penalized because they made a determination that ultimately proves to be contrary to the SSA determination. For purposes of FFP and quality control guidelines, the date an SSA disability determination becomes binding on a State Medicaid agency is the date the State receives State data exchange information from SSA. The binding prospective effect of an SSI determination is subject to the administrative period permitted by 42 CFR 435.1003. State that do not take necessary action, including notice to the applicant, concerning such a determination within the period allowed under § 435.1003 will be subject to quality control errors.

We have adopted as final the proposed regulations to amend § 435.541 to incorporate the conditions under which the State Medicaid agency must make independent determinations of disability, and the effect of any SSA determinations on Medicaid eligibility.

Court Challenges

Medicaid eligibility under the State's option of providing Medicaid to individuals who would be eligible for SSI but have not applied for, or are not financially eligible for, SSI generally involves individuals who would not have received a disability determination from SSA. For this reason, the existing Medicaid regulations do not expressly address the situation in which SSA has determined that an applicant for SSI is not disabled, and that individual subsequently applies to the State for Medicaid based on disability. This has not only caused confusion, but, we believe, gave rise to the decision by certain Medicaid applicants in the State of Rhode Island to bring a Federal court challenge to HCFA's policy that SSI disability determinations control for purposes of State Medicaid applications based upon disability (*Rousseau* v. *Bordeleau* v. *Heckler*, 624 F. Supp. 355 (D.R.I. 1985)). The plaintiffs in *Rousseau* alleged that even if SSI has found an individual not disabled, and thus by

definition not eligible under the SSI categorical standard, States should still make an "independent" determination as to whether the individual "would be" eligible for SSI if he or she applies for Medicaid based upon disability.

In ruling for the plaintiffs, in a decision we believe to be erroneous, the District Court in *Rousseau* held that the existing regulations governing Medicaid applications to States based upon disability support the view that States should in such cases make independent disability determinations (624 F. Supp. at 360). We do not agree with this decision for two reasons. First, the decision in the *Rousseau* case was in part the result of a lack of clarity in the regulations which these final regulations will correct. Once these final regulations are in effect, the regulations relied upon by the court in support of its decision will have been changed and a reevaluation of the *Rousseau* decision would be in order. Secondly, we believe the statutory analysis in the *Rousseau* decision is weak because the court failed to distinguish between determining eligibility and determining disability. It is only the determination of disability that is affected by this regulation. The court incorrectly associated the authority to make the determination of "Medicaid eligibility" which the State did indeed contract out to SSA, with the authority to make determinations as to whether an applicant for SSI benefits is disabled under the SSI disability standard. This latter determination is solely the SSI program's to make in the case of an individual applying for SSD. Once SSI has made a disability determination, this determination is only a component of the ultimate determination of Medicaid eligibility, along with such other components as financial eligibility, eligibility groups contained in the State's Medicaid plan, and State residency. (Of course, a negative SSI determination on disability will end the inquiry.) The court's conclusion that Rhode Island has plenary authority to make disability determinations, and that it somehow "contracted" this authority away to SSA in the case of SSI applicants, necessarily assumes that in the absence of a section 1634 agreement, the State could make independent disability determinations even in the case of individuals who have actually been found not disabled by SSI. Rather than possessing plenary authority to determine whether individuals are disabled under the SSI disability standard, we believe that States that do not apply more restrictive disability criteria than SSI under section 1902(f) have this authority only in those cases in which there is no disability decision for purposes of the SSI program, i.e., in the case of applicants who have not applied (certain optional categorically needy) or are not financially eligible (certain optional categorically needy or medically needy) for actual SSI benefits. Finally, the argument contained in the *Rousseau* case is that favorable disability determinations should be binding on the States but not unfavorable ones.

By clearly spelling out HCFA's policy in the Medicaid regulations, we believe that such a ruling can be avoided in the future. Because the *Rousseau* decision relied in part on the court's misreading of the statute, unless and until the court's ruling is vacated or overruled, the policy set out in these regulations does not apply in the State of Rhode Island. Rhode Island and HCFA are subject to a court order requiring the State to make independent disability determinations even if SSA has found an applicant not disabled.

Another recent court decision in New Jersey supports the policy set forth in these regulations. In the case of *Fratone et. al.* v. *Department of Public Welfare et. al.* (D.N.J. Nos. 87–2569, 87–2570, February 8, 1988), the District Court upheld HCFA's policy that SSA disability determinations control prospectively for purposes of Medicaid eligibility under one of the State options and expressly rejected the court's analysis in *Rousseau*. The *Fratone* court found HCFA's policy, as implemented by New Jersey, resulted in uniform State treatment of Federal disability findings, and saw no reason why Congress would wish findings of disability to be binding on the States and findings of no disability to be meaningless for the States.

The *Fratone* court held that the Social Security Act does not require State Medicaid agencies to make their own disability determinations where SSA determined within the year preceding the application (or thereafter) that an individual was not disabled, and that neither the statute nor the regulations establish State authority to make independent disability determinations when SSA has spoken.

The court rejected the *Rousseau* court's view that the provisions of § 435.541(d) provided a basis for inferring State authority to make independent disability determinations, and found that § 435.541(d) is nothing more than a reiteration of section 1902(a)(10)(A)(i)(I) of the Act. This provision requires States to provide Medicaid to applicants who are already receiving SSI on the basis of disability. If SSA has already determined disability in favor of the applicant, the statute itself directs that a State may not deny Medicaid on the grounds of disability. It is only logical then that the procedures for State disability hearings should be inoperative in those cases.

The court concluded that there was no support in the statute, the regulations, or New Jersey's section 1634 agreement for the proposition that the State agency had an inherent authority to decide the appellant's disability claim on its merits once SSA found the individual not disabled.

Consideration of New and Material Evidence

Since SSA determinations are controlling, HCFA has determined that new and material evidence or allegations by individuals regarding previous SSA determinations of disability must be presented to SSA for reconsideration in accordance with SSA's rules. SSA is in the best position to reconsider or reopen its prior determinations. SSA has an ongoing process for making disability determinations and has a high level of expertise in this area. It is not in the interest of program efficiency or in the best interests of recipients for States to perform duplicate tasks which might arrive at different or conflicting determinations of eligibility. To do so would be wasteful of Federal tax dollars and would subject recipients unnecessarily to application of two separate processes.

Under SSA's rules, the individual may request a reconsideration within 60 days of receipt of the notice denying disability eligibility under the SSI program. If the individual does not appeal the determination within the stated time, he may still request reopening of the determination within 1 year for any reason and within 2 years for good cause. Good cause is defined as new and material evidence, clerical error, or error on the fact of the evidence (20 CFR 416.1489). If the individual's request is not made within the stated times, the time may be extended if the individual establishes good cause for the late filing of an appeal request. However, HCFA believes that a separate State Medicaid agency decision is warranted where the individual applies for Medicaid as a noncash recipient and alleges changed circumstances from those present at the time of the SSI determination which would make it unreasonable to consider the SSI determination controlling. This would occur, for example, if the applicant alleges (1) a new and different

disabling condition, or (2) a deterioration of his or her condition since SSA made its original determination, occurring at least 12 months after the date of the most recent final SSA determination, and the applicant has not applied for SSI with respect to these allegations. SSA thus has never made a determination with respect to these conditions.

We have adopted as final the proposed regulations under § 435.541 that specify that States must refer to SSA all applicants that allege new or material evidence (as opposed to a subsequent change in their condition) that affect previous SSA determinations.

Time Limits for Making Medicaid Disability Determinations

As stated earlier, under existing regulations a State is required to make eligibility determinations based on disability within 60 days of the date the individual files a written application for Medicaid with the State. In States that have section 1634 agreements with SSA, this time limit causes SSA and the State Medicaid agency to duplicate the eligibility determination process when an individual applies separately for Medicaid and SSI. Frequently, SSA does not reach its decision by the end of the 60-day period following application for Medicaid. Therefore, in order to comply with the Medicaid time limit, the State Medicaid agency is forced to make an independent disability determination. In some cases, the Medicaid agency may make a determination that later is contrary to that made by SSA. Under HCFA's existing policy, if a prior and different conclusion was reached earlier by the State Medicaid agency, the State agency's determination is superseded by the SSI determination. However, FFP is available to the State for Medicaid expenditures for the period during which the State made a reasonable application of SSI policies, definitions, standards and criteria. This system wastes both State and Federal funds. We have adopted as final the proposed Medicaid regulations that recognize the typical length of time required by SSA to process most disability determinations. These regulations extend the Medicaid time standard for making eligibility determinations based on disability from 60 days to 90 days from the date of application (§ 435.911).

Most disability claims are processed by SSA within 90 days. While some claims will remain undecided by SSA on the 90th day, extending the time limit for Medicaid State disability determinations from 60 to 90 days will substantially reduce the number of applications for Medicaid based on disability for which the State must make a determination without the benefit of an SSA disability determination. For example, in the month of April 1987, 50.3 percent of SSI claims were processed by the 60th day, and 73.4 percent of the claims were processed by the 90th day. Thus, the number of Medicaid applications for which a State Medicaid agency determination would have to be made without benefit of an SSA determination on the issue of disability will be reduced by nearly one half of the number of claims that the State would have had to process given the 60-day limit. This change will substantially remove the risk that a determination of eligibility based on disability by the State will be reversed later because of an SSA determination of ineligibility based on disability. This also will save Medicaid program funds expended for services for individuals who, in fact, are not eligible. We do not find that this change will adversely affect recipients because Medicaid eligibility is effective with the date of application and retroactive Medicaid eligibility for the period of up to 3 months before the month of application under § 435.914 must be provided if certain conditions are met.

Composition of Disability Review Teams

The Medicaid regulations under § 435.541 address the composition of the State disability review teams for making disability decisions, and the information that must be obtained and reviewed by the team. The State disability review team must, under those regulations, include a physician and a social worker "qualified by professional training and experience." The agency must obtain, for review by the team, a medical report that includes a diagnosis that is based on medical evidence and a "social history." SSI regulations (20 CFR 416.1015) provide that the disability determination must be made by a medical or psychological consultant, and a disability examiner who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments, and, as necessary, to determine the capacities of the individual to perform substantial gainful activity. SSI regulations (20 CFR part 416, subpart I) do not employ the term "social history." However, SSA does consider, in addition to the required medical reports and medical assessment, information from other sources such as public and private social welfare agencies, observations by nonmedical sources, and other practitioners that will help the agency to understand how an individual's impairment affects his or her ability to work. Although the Medicaid regulations thus call for essentially the same process as that used in the SSI program, we believe that the regulations for both programs should employ the same terminology. This will help ensure a more uniform application of the definition of disability under section 1614 of the Act.

Questions have been raised as to whether the differences between the terminology used to describe the composition of the review team and the information considered under Medicaid and the terminology used by SSA reflect any substantive difference in the process used to determine disability under the two programs. Although we do not believe that the differences in the specific terminology used to describe the requirements of the Medicaid and SSI review teams reflect any substantive differences in procedures used, we recognize that these terminology differences have been, and likely may continue to be, a source of confusion. Thus, we have adopted as final the proposed revised § 435.541 that requires that the review team be composed of individuals with the same level of skill as required by SSA under 20 CFR part 416, subpart J. This revision also requires States to use the same type of medical evidence and other nonmedical information and the methodology for obtaining and evaluating this evidence and information that is used for making disability determinations by SSA under 20 CFR part 416, subpart I. These changes serve to achieve the goal of maximum uniformity in the disability determination process.

Application of Changes to Territories

Except in one instance, we have not changed the regulations governing the categorical and application requirements for Medicaid eligibility in Guam, Puerto Rico, and the Virgin Islands under 42 CFR part 436. These Territories provide Medicaid to disabled individuals on the basis of receipt of or eligibility for assistance under the program of aid to the aged, blind, and disabled under title XVI in existence before the SSI program was created. They also are not subject to the provisions for optional use of more restrictive eligibility requirements than SSI under section 1902(f) of the Act. Persons who do not reside in, or who leave, the 50 States, the District of Columbia, or the Northern Mariana Islands are not eligible for SSI payments. Thus anyone who lives in or who moves to Guam, Puerto Rico, or the Virgin Islands is not eligible to receive SSI payments even if that person would be eligible if he or she lived in one of the 50 States, the District of Columbia, or the Northern Mariana Islands. The precedence of an SSI determination of disability in these Territories therefore is not an issue. In addition, because the Territories continue by law to use disability standards under title XVI that have been superseded by SSI in the States and are not eligible to participate in SSI, we have decided that it is not reasonable to require the Territories to follow the review team, information, and evidence requirements applied to SSA in making SSI disability determinations. However, we have adopted as final the proposed revised § 436.541 concerning the composition of the medical review teams and the information considered in making a determination of disability to make the existing requirements in the Medicaid regulations minimum requirements. If the Territories use a more rigorous set of review team, information, and evidence requirements in determining disability under their programs of aid to the aged, blind, and disabled, they also are required to follow those requirements for Medicaid disability determinations.

We believe, however, that the Territories should have the same time standard for making determinations on applications based on disability as the States. Therefore, we are maintaining in the regulations under § 436.901 application of the requirements governing the States relating to the time limit for acting on applications. As discussed earlier, we have changed the time standard from 60 to 90 days. Thus, both States and Territories are allowed 90 days to complete determinations based on disability. Because the Territories generally must use off-island facilities for consultative examinations, the additional time permits the Territories to conduct more thorough determinations of eligibility. This change also retains HCFA's policy that all States and Territories meet the same timeliness standards for action on applications.

Public Comments and Departmental Responses

Comment: One commenter alleged that under the proposed rules Medicaid applicants would have to wait up to 2 years before Medicaid could be granted.

Response: We believe the commenter has inaccurately interpreted the proposed rules. States are required by the regulations to make determinations within 90 days of the Medicaid application. If SSA has made an initial or final determination within that time, the State must follow the SSA disability determination in making its Medicaid eligibility determination. If SSA has not made an initial or final disability determination in sufficient time for the State to comply with the 90-day requirement, the State must make its own disability determination within the 90-day limit. FFP is available until SSA acts on the SSI application. The State then has the time set forth in existing regulations at § 435.1003 to determine Medicaid eligibility on some other basis if the SSA determination denies disability eligibility.

Comment: One commenter suggested that States should pend disability applications for 90 days and then have 60 days to make a decision. This could result in a period of 150 days before a decision is made on a Medicaid application.

Response: We believe a 150-day period in which to make a decision does not meet the promptness standard in section 1902(a)(8) of the Act. Section 1902(a)(8) requires assistance be furnished with reasonable promptness. We believe that a total of 90 days is a reasonable limit. In part, we have based this limit on the experience of SSA in administering the social security disability program. In 1986, the most recent year for which we have data, the average processing time from application to initial decision was 78 days. Therefore, we believe it is reasonable to expect States to be able to process disability claims within the 90-day period. We also extended the time from 60 to 90 days to encourage and provide some additional time for greater coordination and cooperation between the States and SSA. This coordination and cooperation, we believe, should be achievable because in many States the State Disability Determination Service processes both SSA disability applications and Medicaid disability determinations. It also helps prevent the uncertainty and disruption in an applicant's life that is the result of two approximately concurrent but different decisions, one of which must yield to the other.

We have made a conforming change to § 435.541(c)(3) to ensure that Medicaid disability determinations are made timely even when SSA has not made its disability determination within the time period established for the Medicaid determinations. SSA is not bound by time periods such as those used in the Medicaid program. Even though the time remaining in the 90-day time limit after a State concludes SSA will not render a determination may be short, we expect that States will take steps to do any preliminary work without waiting for SSA to act (for example, securing evidence from the applicant).

Comment: One commenter suggested that Medicaid disability determinations that are later invalidated by an SSA disability determination should not be overturned unless the determination is reviewed under the Disability Benefits Reform Act of 1984 (DEBRA). The commenter reasoned that the invalidation was a termination of disability and that DEBRA applies.

Response: DEBRA does not apply in this situation because the two determinations (the earlier State determination and the later SSA determination) are both initial determinations employing the same facts, time period, and allegations of disability. Further, the medical improvement standard in DEBRA found in section 1614(a)(4) of the Act applies to a recipient of disability-based benefits under title XVI. Therefore, the medical improvement standard in DEBRA only applies to someone actually receiving SSI payments, who SSA determines is no longer disabled. SSA decisions to terminate disability benefits previously approved by SSA occur either when SSA receives evidence that the beneficiary is no longer disabled within the meaning of the Act (for example, the beneficiary is engaged in substantial gainful activity) or a scheduled medical reexamination reveals that the individual is no longer disabled within the meaning of the Act. In these cases the medical improvement standard in DEBRA is applied in deciding whether the beneficiary is still disabled. The proposed rule does not address the issue of terminating disability because an individual is no longer disabled but rather the issue of whether and when SSA disability determinations must be followed by States in Medicaid eligibility decisions.

Comment: One commenter suggested that the requirement that applicants be referred to SSA during the 12 months after SSA made a determination denying disability then alleging a worsening of their disability, or new evidence to support an allowance, unfairly penalizes the applicant.

Response: We do not believe the applicant is penalized by the requirement. Since both Medicaid and SSI utilize the same definition of disability (unless the State elects the option to use a more restrictive definition), if the new evidence or worsened condition meets this definition, it can be to the applicant's advantage to go back to SSA since the

applicant may end up not only receiving Medicaid but SSI as well. Furthermore, the appropriate appeal forum to reconsider a determination made by SSA is SSA.

Comment: One commenter asked for an explanation of the eligibility procedures when an individual, who within 12 months of the SSA decision, became more disabled than when he or she was when SSA denied disability, but that person's income or resources have increased above the SSI thresholds.

Response: During the first 12 months after SSA has made a decision denying disability, an applicant may seek reconsideration or reopening of that decision from SSA. Whether SSA will reopen its disability determination depends on a number of factors; for example, whether the applicant submits new evidence, or whether the applicant alleges a new onset date. Ordinarily, if an applicant's income or resources are clearly above the SSI limits, SSA will deny an application on the financial basis without making a determination concerning the applicant's disability claim. Although this situation would occur only rarely, we are revising the regulation to provide an additional exception to cover cases in which a deterioration or change in condition is alleged less than 12 months after the SSA determination denying disability. SSA refuses to consider whether the new allegations would change the disability determination, and the individual no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

We also have clarified § 435.541 with respect to the period of time the State must use an existing SSA disability determination, and may not make a disability determination independent of the SSA determination. States must use the most recent SSA disability determination for a period of 12 months after the determination is made.

Comment: Several commenters suggested that SSA's relatively high reversal rate at the administrative law judge (ALJ) hearing level argues against HCFA's position as to the controlling nature of SSA disability determinations.

Response: We disagree with the commenters for two reasons. Most importantly, as explained in the preamble of the proposed rule, we believe that the applicable statutory provisions compel the interpretation that SSA disability determinations control where there is an actual or potential conflict between the SSA determination and a State disability determination. Second, reliance on the reversal rate at the ALJ level is misleading since available figures indicate that less than 20 percent of the total number of denied claims are reversed as a result of the introduction of new evidence substantiating the applicant's claim. Reversal also may occur where a claimant's condition deteriorates subsequent to the initial or reconsidered determination.

Comment: One commenter stated that § 435.541(c)(4)(ii) of the proposed regulation text seems inconsistent with the background material in the preamble to the NPRM regarding the description of circumstances under which the State Medicaid agency is required to make an independent determination of disability. The commenter read the regulatory provision as requiring that only the individual's condition must have changed or deteriorated "or" the period of disability is at least 12 months after the most recent final SSA determination before an initial determination is made. The preamble requires that both circumstances exist.

Response: Our intent for the regulatory provision as stated in the preamble is correct—that is, the individual needs to allege both a change or deterioration in his or her condition and a new period of disability. We have corrected the text of the final regulation to require that both circumstances exist.

Comment: One commenter suggested that the proposed regulations would prohibit an individual from applying for Medicaid if, within the previous 12 months, SSA had denied disability. In this context, some commenters also stated that they believed the regulations would deprive the States of the right to make eligibility determinations.

Response: The regulations do not prohibit an individual from applying for Medicaid for circumstances other than disability once a determination of SSA disability is denied. An individual may apply for Medicaid on grounds other than disability, in which case the disability determination by SSA would have no effect on eligibility. The regulation only concerns the binding effect of SSA disability determinations. The disability determination is only one part of an eligibility determination. The preamble to these final regulations and the preamble to the proposed rule explain why we require that the State use the SSA disability decision when determining the eligibility of an applicant for Medicaid as disabled. We do not consider this policy clarification to preempt in any way State authority to determine eligibility.

Comment: One commenter expressed concern that the regulation would not be cost effective because of duplication of effort if States must make disability determinations before SSA has acted in order to meet the Medicaid time limit. The commenter believes this would be especially true of States that do not have section 1634 agreements, of which there are 19. The commenter also observed that if a State does not cover the optional groups of persons who would be eligible for SSI if they applied (§ 435.210), that is, those persons not receiving SSI and not living in an institution, hence not eligible for Medicaid under the State plan, these regulations would cause duplication of effort.

Response: While duplication of effort and the costs of a duplicate decision would certainly be avoided if a State waits until SSA acts on an SSI disability application, the statutory requirement in section 1902(a)(8) of the Act mandates that a State act promptly to determine eligibility. If the State waited beyond the time limit established in the regulations at § 435.911, it would violate this statutory requirement.

With regard to the comment applicable to States without optional categorical needy programs, the State would not have to make a disability determination because the State only covers persons receiving SSI. Thus the State could deny the application without addressing the issue of disability. If the individual is found by SSA to be disabled and eligible for SSI retroactive to a month covered by the Medicaid application, the State could reopen its determination denying eligibility. In States with section 1634 agreements, reopening would be necessary since an SSI application also is an application for Medicaid. Under Medicaid the first month for which an SSI recipient could have received a check is considered the first month of receipt, even if the money is not actually received until months later. Consequently, we consider any duplication of effort to be minimal.

Comment: Several commenters expressed opposition to the proposed regulations because the regulations do not follow the *Rousseau* decision (explained earlier) and do not implement an explicit statutory provision. The commenters believe that the *Rousseau* decision correctly interprets the statute.

Response: Under the Medicaid statute, the determination of eligibility for medical assistance must be made by the State or local agency (42 U.S.C. 1396a(a)(5)). As we have explained earlier, the *Rousseau* court focused on an exception to this general principle which exists in the case of States like Rhode Island that have agreements with SSA under which SSA performs the function of determining Medicaid eligibility in the case of individuals it finds eligible for SSI. These agreements are authorized by section 1634 of the Act and are expressly limited under the regulations to individuals found eligible for SSI, i.e., "mandatory categorically needy" individuals. As Rhode Island is required to provide Medicaid to State residents who are receiving SSI, Medicaid eligibility under its agreement with the State generally involves only SSA's notification to the State of those applicants who are eligible for SSI.

It is the authority to perform this function on behalf of the State, involving individuals who, by law, must be Medicaid eligible if they are State residents, that Rhode Island delegated to SSA under its section 1634 agreement. The court construed this agreement as "contracting away the powers to make disability determinations to the federal government" and concluded that this means "that the State has that authority in the first place" (624 F. Supp. at 359).

We have already discussed earlier in this preamble under the section on "Court Challenges" the reasons why we do not agree with the commenters that the decision correctly interprets the statute. Also, as discussed earlier in this preamble, in a recent New Jersey court decision in *Fratone* v. *Department of Public Welfare*, the court supported our position and affirmed the State's denial of applications for Medicaid-only benefits when those denials were based on SSA determinations that the applicants were not disabled.

Comment: One commenter suggested that the proposed regulations would deny applicants a meaningful hearing of the Medicaid denial because the State is required to adhere to an SSA denial of disability.

Response: We do not accept this analysis. The effect on Medicaid appeals of the change we proposed to § 435.541 should be minimal. When SSA makes a disability determination that is binding on a State, the applicant is not denied a meaningful hearing on the basis for the Medicaid denial because the SSA denial of disability upon which the Medicaid denial is based is appealable through SSA's appeals process. It is not appropriate to challenge an SSA determination through the Medicaid appeals process because although the State has adopted the SSA determination the State did not make the determination. In this instance § 435.541, as revised, would prevent an appeal through the State agency as set forth in § 431.220. However, when the State makes an independent determination of disability, that is, where a binding SSA disability determination does not exist, a denial of disability is appealable through the State agency. The change in § 435.541 does not, however, affect in any way the appealability of other determinations by State agencies.

Comment: A number of comments concerned issues on how the regulations would be implemented and operational issues arising from implementation.

Response: We will address operating issues in instructions provided to States.

Additional Change

In addition to the changes made in response to comments, and discussed above, we have revised the wording of § 435.541(a) to avoid the inaccurate impression that the provisions in § 435.541(b) are limited in their application to States with section 1634 agreements. We believe that this revision has no substantive effect, and merely clarifies the intent set forth in the preamble to the NPRM.

Regulatory Analysis

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any regulations that are likely to meet the criteria for a "major rule." A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets. In addition, we prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, neither States not individuals are considered small entities.

These regulations will impact on Medicaid disability determinations in a significant way. State Medicaid agencies are currently compelled to determine Medicaid disability eligibility within 60 days of application for Medicaid. SSI, which is not so obligated, may decide contrary to the State's ruling after the 60-day State limit. We estimate that, by extending the time limit imposed on the State Medicaid agencies to 90 days, duplication of effort by section 1634 States and SSI in the determination of disability will be eliminated for a number of applications. As a result, the Medicaid program will save funds expended for benefits to individuals determined not to be eligible because a Medicaid agency's positive eligibility determination is overruled by SSA in the 60- to 90-day window.

We estimate that total annual Medicaid savings will be about $5 million, shared approximately equally by the Federal Government and the States. Therefore, we have determined, and the Secretary certifies, that these regulations are not a major rule and will not have a significant economic impact on a substantial number of small entities. Neither a regulatory impact analysis nor an initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

These regulations do not impose any new information collection or reporting requirements that are subject to approval of the Executive Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

For the reasons set out in the preamble, 42 CFR chapter IV, subchapter C, is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.541 is revised to read as follows:

§ 435.541 Determinations of disability.

(a) *Determinations made by SSA.* The following rules and those under paragraph (b) of this section apply where an individual has applied for Medicaid on the basis of disability.

(1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of

disability when the only application is filed with SSA.

(2) The agency may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in § 435.911 on the same issues presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility, as provided for under § 435.909.

(b) *Effect of SSA determinations.* (1) Except in the circumstances specified in paragraph (c)(3) of this section—

(i) An SSA disability determination is binding on an agency until the determination is changed by SSA.

(ii) If the SSA determination is changed, the new determination is also binding on the agency.

(2) The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination, except in cases specified in paragraph (c)(4) of this section.

(c) *Determinations made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist:

(1) The individual applies for Medicaid as a non-cash recipient and has not applied to SSA for SSI cash benefits, whether or not a State has a section 1634 agreement with SSA; or an individual applies for Medicaid and has applied to SSA for SSI benefits and is found ineligible for SSI for a reason other than disability.

(2) The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within 90 days from the date of the individual's application for Medicaid.

(3) The individual applies to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria than SSI for determining Medicaid eligibility under its section 1902(f) option or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination in time for the State to comply with the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

(4) The individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA, and—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; or

(ii) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements of the Act, and has not applied to SSA for a determination with respect to these allegations.

(iii) Alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Act, and—

(A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; and/or

(B) He or she no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

(d) *Basis for determinations.* The agency must make a determination of disability as provided in paragraph (c) of this section—

(1) On the basis of the evidence required under paragraph (e) of this section; and

(2) In accordance with the requirements for evaluating that evidence under the SSI program specified in 20 CFR 416.901 through 416.998.

(e) *Medical and nonmedical evidence.* The agency must obtain a medical report and other nonmedical evidence for individuals applying for Medicaid on the basis of disability. The medical report and nonmedical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR part 416, subpart I.

(f) *Disability review teams*—(1) *Function.* A review team must review the medical report and other evidence required under paragraph (e) of this section and determine on behalf of the agency whether the individual's condition meets the definition of disability.

(2) *Composition.* The review team must be composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 CFR part 416, subpart J.

(3) *Periodic reexaminations.* The review team must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this part, using the principles set forth in 20 CFR 416.989 and 416.990. If a State uses the same definition of disability as SSA, as provided for under § 435.540, and a recipient is Medicaid eligible because he or she receives SSI, this paragraph (f)(3) does not apply. The reexamination will be conducted by SSA.

3. In § 435.911, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

§ 435.911 Timely determination of eligibility.

(a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed—

(1) Ninety days for applicants who apply for Medicaid on the basis of disability; and

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as set forth below:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.541 is revised to read as follows:

§ 436.541 Determination of disability.

(a) *Basic requirements.* (1) At a minimum, the agency must use the review team, information, and evidence requirements specified in paragraph (b) through (d) of this section in making a determination of disability.

(2) If the requirements or determining disability under the State's APTD or AABD program are more restrictive than the minimum requirements specified in this section, the agency must use the requirements applied under the APTD or AABD program.

(b) The agency must obtain a medical report and a social history for individuals applying for Medicaid on the basis of disability. The medical report must include a diagnosis based on medical evidence. The social history must contain enough information to enable the agency to determine disability.

(c) A physician and social worker, qualified by professional training and experience, must review the medical report and social history and determine on behalf of the agency whether the individual meets the definition of disability. The physician must determine whether and when reexaminations will be necessary for periodic redeterminations of eligibility as required under § 435.916 of this subchapter.

(d) In subsequently determining disability, the physician and social worker must review reexamination reports and the social history and determine whether the individual continues to meet the definition. Disability is considered to continue until this determination is made.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance)

Dated: April 21, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: November 6, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-28643 Filed 12-8-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-222; RM-6259]

Radio Broadcasting Services; Mexico Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Robert G. Kerrigan, substitutes Channel 257C2 for Channel 257A at Mexico Beach, Florida, and modifies the license for Station WMQA(FM) to specify operation on the higher powered channel. Channel 257C2 can be allotted to Mexico Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 kilometers (1.6 miles) east to avoid a short spacing to Station WKSM(FM), Channel 258C2, Fort Walton Beach, Florida. The coordinates for this allotment are North Latitude 29-56-32 and West Longitude 85-23-31. With this action, this proceeding is terminated.

EFFECTIVE DATES: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-222, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under the entry for Mexico Beach, Florida, by removing Channel 257A and adding Channel 257C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28751 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-321; RM-6270]

Radio Broadcasting Services; Volcano, HA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Timothy D. Martz allots Channel 299A to Volcano, Hawaii, as the community's first FM service. Channel 299A can be allotted to Volcano, Hawaii, in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 19-26-00 and 155-15-42. With this action, this proceeding is terminated.

DATES: Effective January 19, 1990; The window period for filing applications will open on January 22, 1990, and close on February 21, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-321, adopted November 20, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Hawaii by adding Volcano, Channel 299A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-28752 Filed 12-8-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Finding of Conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Governments of Venezuela, the Republic of Panama, the Republic of Vanuatu, and the Republic of Ecuador have submitted information which demonstrates that these nations and the tuna purse seine fishing vessels under their control are in conformance with United States marine mammal regulations. As a result of this finding, yellowfin tuna from Venezuela, Panama, Vanuatu, and Ecuador may continue to be imported into the United States through 1990.

DATES: This finding is effective on December 11, 1989, and remains in effect

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until December 31, 1990 unless superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196. The documents which form the basis for these findings are available for inspection at the Southwest Regional Office during regular business hours.

SUPPLEMENTARY INFORMATION: On March 7, 1989 (54 FR 9438), the NMFS promulgated an interim rule within 50 CFR 216.24 to implement the Marine Mammal Protection Act (MMPA) Amendments of 1988, concerning the importation of yellowfin tuna caught by purse seining in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States during 1990, any nation which has purse seine vessels greater than 400 tons carrying capacity operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals in the tuna fishery comparable in most respects to that of the United States.

The 1988 Annual Reports, submitted in July 1989 for the purpose of renewing findings for 1990, contain the following:

A. Publications relating to their marine mammal regulations:

Government of Venezuela

1. Wild Animals Protection Act. Official Gazette #29289. August 11, 1970.
2. Act approving the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Official Gazette #2053 (Extraordinary). June 29, 1977.
3. Act approving the International Convention on Whaling-1946. Official Gazette #3327 (Extraordinary). January 18, 1984.
4. Joint Resolution MAC/DGSPA #459 and MARNR/DM #66. Regulates the purse-seine fishery inside and outside national waters by Venezuelan-flag vessels. Official Gazette #34063. September 30, 1988.

Republic of Panama

1. Decree No. 63. Official Gazette #21156. October 14, 1988.

Republic of Vanuatu

1. The Maritime Act No. 8 of 1981 and Maritime Act No. 36 of 1982.
2. The Maritime (Protection of Mammals) Regulation No. 33 of 1988. October 12, 1988.

Republic of Ecuador

1. Resolution No. 348. Official Register #30. September 21, 1988.

B. List of each nation's purse seine vessels greater than 400 tons which fished in the ETP, and their status from 1986 through 1989.

C. Descriptions of each nation's regulatory and enforcement programs governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna.

D. Fleet performance data for 1986, 1987 and 1988 for each nation, obtained from the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC.

The Assistant Administrator, after consulation with the Department of State, finds that the Governments of Venezuela, the Republic of Panama, the Republic of Vanuatu, and the Republic of Ecuador have met all of the current requirements for importing yellowfin tuna during 1990 into the United States, and may continue to do so through December 31, 1990, subject to the terms and conditions of the Marine Mammal Importation Regulations (50 CFR 216.24(e)).

In making these findings, it is not necessary to compare the 1988 mortality rates of these nations to that of the U.S. fleet because, as clearly provided for by the 1988 MMPA Amendments (Pub. L. 100–711), such comparability tests are to be applied starting with 1989 fishing year data not 1988 data. Although the Interim Final Rule Governing The Importation Of Tuna Taken In Association With Marine Mammals (54 FR 9438, March 7, 1989) was intended to make this clear, it did not. Therefore, a soon-to-be published Final Rule superseding the March 7, 1989 rule will make the necessary technical change to reflect the intent of the MMPA amendments concerning the need to compare 1988 mortality rate data.

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 89–28747 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO–89–A1; FV–90–100]

Kiwifruit Grown in California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed amendments to marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider amending the marketing agreement and order (hereinafter referred to as the order) which cover kiwifruit grown in California. The proposed amendments were submitted by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order. The proposed changes would authorize conducting committee nominations by mail, change the term of office from 2 years to 1 year for the three additional grower members from the districts with the greatest production, and authorize a late payment charge on delinquent handler assessments. These changes were recommended by the committee to improve the administration, operations and functioning of the marketing order program.

DATES: The hearing will begin at 9:00 a.m. on January 19, 1990.

ADDRESSES: The hearing will be held in the Processed Products Branch Training Room, 2202 Monterey Street, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from Robert J. Curry, California Marketing Field Office, USDA, AMS, 1755 North Gateway, Suite B, Fresno, California 93727, telephone (209) 456–2282, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456, telephone (202) 447–2431.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

Except for Proposal No. 4 on conforming changes which is submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, the proposals have been submitted by the Kiwifruit Administrative Committee (committee). The committee works with the Department in administering the marketing agreement and order. These proposals have been widely discussed within the California kiwifruit industry but have not received the approval of the Secretary of Agriculture.

The public hearing is for the purposes of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order and to any appropriate modifications thereof; (2) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (3) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and have any prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel, except Regional Attorneys; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 920

California, Kiwifruit, Marketing agreements and orders.

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

Testimony is invited on the following proposals or appropriate modifications of such proposals:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Proposal No. 1

Revise § 920.21 to read as follows:

Section 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be two years from the date of their selection and until their successors are selected; except that the term of office of the three additional members and their alternates selected from the three districts with the highest production in the prior fiscal period shall be one year. Except as otherwise provided in this part, the terms of office shall begin on August 1 and end on the last day of July. Members and alternates may serve up to three consecutive two-year terms or six consecutive one-year terms on the committee or a combination thereof not to exceed six years.

Proposal No. 2

Revise § 920.22 to read as follows:

Section 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the

committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

Proposal No. 3

Amend § 920.41 by revising the last sentence of paragraph (a) to read as follows:

Section 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time established by the Secretary upon recommendation of the committee, the assessment may be subject to an interest or late payment charge, or both, as established by the Secretary upon recommendation of the committee.

* * * * *

Proposal No. 4

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing.

Dated: December 6, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-28861 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 967

[FV-90-106PR]

Celery Grown in Florida; Increase in Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase expenditures under Marketing Order No. 967 for the 1988–89 and 1989–90 fiscal years established under the celery marketing order. The increases are necessary to meet previously unanticipated expenses. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 10, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, FV, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administation Branch, FV, AMS USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing order issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida who are subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administation (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of celery producers and handlers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Florida Celery Committee (Committee) and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of celery. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee conducted a telephone vote on August 24, 1989, to confirm the motion which was made at the May 24, 1989, meeting to increase expenses and unanimously recommended increasing expenses for the 1988–89 fiscal year by $32,000 bringing the total budget from $126,000 to $158,000. A final rule on the expenditures and assessment rate for the 1988–89 fiscal year was published in the August 5, 1988, issue of the **Federal Register** (53 FR 29443). The reason for the increase in expenses involves an over-expenditure of two line items in the budget which are travel by Committee personnel and promotion, merchandising and public relations. These two over-expenditures account for the total over-expenditures of $32,000. Reserve funds would be used to cover the additional expenses.

In addition, the Committee held a telephone conference on October 30, 1989, and unanimously recommended increasing expenses for the 1989–90 fiscal year by $44,000 bringing the total budget from $127,000 to $171,000. A final rule on the expenditures and assessment rate for the 1989–90 fiscal year was published in the August 25, 1989, issue of the **Federal Register** (54 FR 35316). The reason for the increase in expenses involves an over-expenditure of several line items which include: $15,000 in administative fees; $1,200 in travel expenses by Committee members; $2,000 in Committee staff travel expenses; $200 in telephone miscellaneous expenses; and $400 in the contingency reserve. These items account for the total over-expenditure of $44,000. It is not necessary to propose an increase in the assessment rate for the 1989–90 fiscal year as adequate reserve funds are available to cover the additional expenses.

There are no additional costs on handlers as a result of this proposed action. Therefore, the Administrator of the AMS had determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 967 is proposed to be amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 967.324 (Amended)

2. Section 967.324 is amended by changing "$126,000 to $158,000."

§ 967.325 (Amended)

3. Section 967.325 is amended by changing "$127,000 to $171,000."

Dated: December 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-28862 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 979

[Docket No. FV-90-110]

Melons Grown in South Texas; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate under Marketing Order 979 for the 1989–90 fiscal period. Authorization of this budget would allow the South Texas Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATES: Comments must be received by December 21, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of Texas melons may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Melon Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of melons. Because that rate would be applied to actual shipments, it must be established at a rate which would produce sufficient income to pay the committee's expenses.

The committee met on November 7, 1989, and unanimously recommended a 1989–90 budget of $327,244. This total exceeds last year's budget of $308,438 by $18,806. Administrative expenses, including salaries, travel and office expenses, have been increased $12,860. In addition, the amount budgeted for production research has been increased $10,000 to $114,398, and promotion expenses have been reduced $4,054 to $115,946.

The committee also unanimously recommended an assessment rate of 4 cents per carton, the same as last year. The recommended assessment rate, when applied to anticipated shipments of 7,650,000 cartons, would yield $306,000 in assessment revenue. This amount, when added to $21,244 from the reserve, would be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in October, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred in a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.212 is added to read as follows:

§ 979.212 Expenses and assessment rate.

Expenses of $327,244 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of melons is established for the fiscal period ending September 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: December 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–28863 Filed 12–8–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWP–26]

Proposed Revision of Los Alamitos, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revise the description of Los Alamitos AAF Control Zone, CA. The intended effect is to eliminate the control zone cutout for Meadowlark Airport. Meadowlark Airport is now permanently closed. This action will extend the Los Alamitos Control Zone to encompass the radius area over Meadowlark Airport.

DATES: Comments must be received on or before January 15, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 89–AWP–26, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWP–26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the description of the Los Alamitos Control Zone. The Meadowlark Airport zone was excluded from the Los Alamitos Control Zone. This airport has been permanently closed. This area will now be included in the revised description of Los Alamitos. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Los Alamitos AAF, CAA [Revised]

Within a 5-mile radius of Los Alamitos Armed Forces Reserve Center (lat. 33°47'30" N., long. 118°02'50" W). Excluding that portion within the Long Beach, CA, control zone. This control zone is effective from 0700 to 2200 hours local time daily, or during specific times and dates established in advance by a Notice to Airmen which will be continuously published in the "Airport/Facility Directory."

Issued in Los Angeles, California, on November 22, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89–28800 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AGL–17]

Proposed Transition Area Establishment; Casselton, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish the Casselton, ND, transition area to accommodate a new VOR/DME Runway 31 Standard Instrument Approach Procedure (SIAP) to Casselton Regional Airport, Casselton, ND. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 1, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Asst. Chief, Counsel, AGL–7, Attn: Rules Docket No. 89–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Henry D. French, Air Traffic Division, Systems Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AGL–17". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–030, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Casselton, ND. The transition area is being established to accommodate a new VOR/DME Runway 31 SIAP to Casselton Regional Airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Casselton, ND [New]

That airspace extending upward from 700 feet above the surface within a 5.5-mile

radius of the Casselton Regional Airport (lat. 46°51'15" N., long. 97°12'31" W.); and within 1.75 miles each side of the 110° bearing from the airport, extending from the 5.5-mile radius area to 6.5 miles southeast of the airport, excluding that portion which overlies the Fargo, ND, transition area.

Issued in Des Plaines, Illinois, on November 28, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-28798 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ANM-016]

Alteration of Medford Control Zone, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Medford, Oregon, Control Zone by increasing the size of controlled airspace for the establishment of an instrument approach to at the Medford-Jackson County Airport. The additional airspace would segregate aircraft operating under Visual Flight Rules (VFR) conditions from aircraft operating under Instrument Flight Rules (IFR) procedures. The area would be depicted on aeronautical charts to provide a reference for the aviation public.

DATES: Comments must be received on or before February 2, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 89-ANM-016, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jerry Parker, ANM-538, Federal Aviation Administration, Docket No. 89-ANM-016, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-016". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the Notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 A, which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.163 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for establishment of a VHF omnidirectional range/distance measuring equipment (VOR/DME) approach to the Medford-Jackson County Airport, Oregon.

The additional airspace would segregate aircraft operating under Visual Flight Rules (VFR) conditions from aircraft operating under Instrument Flight Rules (IFR) procedures. The area would be depicted on appropriate aeronautical charts, thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Section 71.163 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.163 [Amended]

2. Section 71.163 is amended as follows:

Medford Control Zone, Medford, Oregon [Amended]

On the sixth line after "VORTAC" add—"and within 5 miles each side of the Medford VORTAC 164 radial extending from the 5 mile radius zone to 28 miles south of the Medford-Jackson County Airport."

Issued in Seattle, Washington, on November 24, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 89-28799 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-35]

Proposed Alteration of Control Zone—Knob Noster Whiteman Air Force Base, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the control zone description for Whiteman Air Force Base, Knob Noster, Missouri. The Whiteman/Windsor VOR has been removed from service. Accordingly, reference to the VOR will be deleted from the control zone description.

DATES: Comments must be received on or before January 11, 1990.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to alter the control zone description at Knob Noster Whiteman Air Force Base, Missouri. This action proposes to delete reference in the control zone description to the Whiteman/Windsor VOR since this navigational aid has been removed from service.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Knob Noster Whiteman AFB, MO [Revised]

Within a 5-mile radius of Whiteman AFB, Knob Noster, Missouri, (lat. 38°43'50" N., long. 93°33'00" W.); within 2 miles each side of the Whiteman TACAN 185 radial, extending from 5-mile radius to 7 miles south of the TACAN. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on November 27, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 89-28797 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule; Power Output Claims For Amplifiers Utilized In Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Regulatory Flexibility Review, request for comments; extension of deadline for submission of comments.

SUMMARY: The Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act and its Plan for Periodic Review of Commission Rules, 46 FR 35118 (1981), is soliciting comments and data on whether the Rule on power output claims for amplifiers utilized in home entertainment products has had a significant economic impact on a substantial number of small entities and if it has, whether the Rule should be amended to minimize such impact. In the Federal Register Notice announcing this proceeding, the deadline for public comments was November 25, 1989 (54 FR 43435, October 25, 1989). Due to the request for additional time within which to prepare comments, the Commission has extended the deadline for public comments to January 26, 1990.

DATES: All comments and data should be received by the Commission no later than January 26, 1990.

ADDRESSES: Comments should be sent to Secretary, Federal Trade Commission, Washington, DC 20580. Comments should be identified as "RFA—Amplifier Rule" comments.

FOR FURTHER INFORMATION CONTACT: Robert Eliot Easton, Sr., Esq., Special Assistant—Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

List of Subjects in 16 CFR Part 432

Amplifier rule, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–28884 Filed 12–8–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AE15

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend existing procedures and requirements regarding accreditation of cretain individuals as representatives of claimants for benefits administered by VA. These amendments are designed to improve VA's ability to assure the availability of high-quality representation for claimants.

DATES: Comments must be received on or before January 10, 1990. Comments will be available for public inspection until January 22, 1990. It is proposed to make these amendments effective 30 days after publication of the final rule.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Secretary of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays), until January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Acting Deputy Assistant General Counsel (022A) 202–233–2440.

SUPPLEMENTARY INFORMATION: VA proposes two amendments to existing regulations in 38 CFR part 14. One would authorize accreditation as claim representatives of individuals working at least 1,000 hours annually for organizations recognized by VA to represent veterans' benefit claimants. The second would establish criteria for the accreditation of county veterans' service officers as claim representatives based on recommendation and supervision by State organizations recognized by VA to represent veterans' benefit claimants.

Regulations governing accreditation of service organization personnel as representatives of veteran's benefit claimants presently require that such individuals be either full-time employees or members of an organization recognized by VA to represent veterans in the benefit-claim process. The rationale for the requirement of full-time employment has been that the representative should be sufficiently dependent upon remuneration from the recognized organization as to assure accountability in the performance of responsibilities involved in the claim process. However, VA believes less-than-full-time employment does not connote lack of accountability when the representative works a considerable number of hours annually for the recognized organization and is thus significantly dependent upon the organization as a source of livelihood.

The Employment Retirement Income Security Act of 1974 (ERISA) includes a provision, 29 U.S.C. 1052(a)(3)(A), essentially requiring that employees working at least 1,000 hours per year be afforded the right to participate in employee retirement plans, thereby recognizing the significant economic nexus between such employees and their employer. Further, the part-time status of an employee does not insulate the employer from responsibility for the employee's failure to perform properly the responsibilities incident to his or her position. Part-time employment of the nature contemplated certainly suggests a greater degree of supervision and control than does mere membership in an organization, which currently is sufficient to permit accreditation. For these reasons, VA has tentatively concluded the proposed amendment to authorize accreditation of employees of recognized organizations working at least 1,000 hours annually will not undermine the purpose of VA regulations regarding recognition of organizations and representatives to assure that claimants for veterans' benefits received qualified, responsible representation in the preparation, presentation, and prosecution of claims.

The second proposed amendment would set out criteria under which a State organization which has been recognized by VA to represent claimants could seek accreditation of county veterans' service officers as representatives, even though such officers are not employed by the State organization. VA has for years recognized some such service officers under the theory that they are so closely associated with the State as to be considered State employees. However, no criteria currently exist for determining whether such service officers should qualify for accreditation on this basis. The proposed amendment would establish criteria in the regulation regarding adequate training, testing, and monitoring of county service officers to assure quality representation of veterans' benefit claimants. Further, the proposed regulations would provide recognized State organizations with clear and uniform standards to apply in determining whether to certify county service officers as qualified to represent claimants.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory-flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments affect only internal VA procedures and policies and would not have any adverse economic impact on or significantly increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance number for those regulations.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Organization and functions (Government agencies), Veterans.

Approved: November 13, 1989.

Edward J. Derwinski,

Secretary.

PART 14—[AMENDED]

In 38 CFR Part 14, LEGAL SERVICES, GENERAL COUNSEL, in § 14.629, paragraph (a)(2) is proposed to be revised and an authority citation is proposed to be added, to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys.

* * * * *

(a) * * *

(2) Is either a member in good standing or a paid employee of such organization working for it no less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veterans' service officer recommended by a recognized State organization, meets the following criteria:

(i) Has successfully completed a course of training and an examination which have been approved by a VA District Counsel within the State; and

(ii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

(Authority: 38 U.S.C. 210 (b)(1) and (c)(1) and 3402)

* * * * *

[FR Doc. 89–28759 Filed 12–8–89; 8:45 am]

BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3695–3; TN–039]

Approval and Promulgation of Implementation Plans; Tennessee; Harman Automotive, Incorporated Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to disapprove a State Implementation Plan (SIP) revision submitted by the State of Tennessee. The SIP revision, if approved, would provide for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County) to achieve compliance with the applicable volatile organic compound (VOC) regulation by averaging or "bubbling" of emissions from Sources 09 and 27 within the facility. The proposed bubble does not meet the requirements that any emissions trade must be surplus and quantifiable and is therefore not consistent with current Agency policy.

The public is invited to submit written comments on this proposed action.

DATES: Comments must be received by January 10, 1990.

ADDRESSES: Written comments should be addressed to Kay T. Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365;

State of Tennessee, Tennessee Department of Health and Environment, Air Pollution Control Division, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The Harman facility operates a mirror frame coating line (Source 09) and a mask pointing department (Source 27). Application of paints within this facility is governed by the Tennessee reasonably available control technology (RACT) regulation 1200–3–18–.21, which limits volatile organic compound (VOC) emissions for the two sources to 3.5 pounds VOC per gallon of coating, excluding water.

On July 30, 1986, the State of Tennessee, through the Tennessee Department of Health and Environment, officially submitted a source-specific SIP revision prepared by the State for a certificate of alternate control for the Harman Automotive, Incorporated facility located in Bolivar, Tennessee (Hardeman County). Hardeman County is an unclassified area for ozone. The SIP revision would allow Harman to average or "bubble" VOC emissions from Source 09 (mirror coating line) and Source 27 (mask paint department) in lieu of achieving compliance with the surface coating of miscellaneous metal parts and products RACT regulation on a line-by-line basis. Specifically, the proposed bubble provided for demonstration of compliance by: (1) Limiting the daily sum of emissions from Sources 09 and 27 to the product of the following five factors: (a) 19.33 pounds per thousand mirror frames; (b) thousand mirror frames coated in Source 09 for day; (c) ratio of mirror frames coated in Source 09 for day to metal mirror frames coated in Source 09 for day; (d) ratio of average film thickness for day to 1.5 mils; and (e) ratio of an area coated per mirror frame for day to 0.37 square foot; (2) using electrostatic coating application eqipment in Source 09; and (3) limiting emissions from Source 27 to 25 pounds per day.

The certificate of alternate control for Herman was submitted to EPA on July 30, 1986, prior to publication of the December 4, 1986, Emission Trading Policy Statement (ETPS). Despite this fact, the submittal cannot be treated as a pending bubble under the ETPS because it did not meet the requirements of the April 7, 1982, version of the trading policy. Specifically, the submittal did not meet the following criteria:

1. All reductions must be surplus. To demonstrate that the reduction is surplus, a baseline emission level must first be established. Historical emissions data was submitted for source 09 but not for source 27, and, therefore there was not sufficient information to determine whether or not the reduction was surplus. Furthermore, the emissions information which was submitted was based on 1980 production data. Although the 1982 policy did not specifically define the baseline period, it is the Region's opinion that a more recent time period should be used unless a demonstration is made that the submitted data was more representative. No such demonstration has been made by the State.

2. Alternate emission limits must be enforceable. The compliance instrument must specify applicable restrictions on hours of operation, production rates or input rates; enforceable test methods for determining compliance; and necessary recordkeeping or reporting requirements. The certificate of alternate control did not specify test methods or recordkeeping requirements.

3. All reductions must be quantifiable. To quantify the emission reduction, emissions must be calculated both before and after the reduction. Since no emissions data was submitted for source 27, the required calculations cannot be made. Therefore, the bubble did not meet the requirement to be quantifiable.

Once it was established that the bubble did not meet the requirements to be considered as a pending bubble, the submittal was evaluated against the December 4, 1986, ETPS. The State was adivsed on August 3, 1987, that the proposed SIP revision was deficient in

that it did not meet the following criteria required by the ETPS for the bubble to be approvable:

1. The action must be surplus. To determine whether or not the reduction is surplus, the state must first establish the appropriate level of baseline emissions. Baseline emissions for any source are the product of three factors: emission rate, capacity utilization, and hours of operation. Net baseline emissions are the sum of the individual baseline emissions of all sources involved in the bubble. In attainment or unclassified areas, the lower of actual or allowable values must generally be used for each of these baseline values for each source involved in the trade. For bubbles, a source's actual emissions equal its average historical emissions, in tons per year, for the two-year period preceding the source's application to trade. The State submitted 1980 emissions data for Source 09 and no data for Source 27. Furthermore, the two-year period preceding the source's application to trade is May 1984 through April 1986. No information was submitted to support the use of another time period. Therefore, the bubble does not meet the 1986 ETPS requirement that the trade be surplus.

2. Alternate emission limits must be enforceable. The April 7, 1982, and the December 6, 1986, trading policies both require that appropriate test methods and adequate recordkeeping requirements be included in the submittal in order for the bubble to be enforceable. Therefore, since the submittal did not meet the enforceability requirements of the 1982 policy, it also did not meet those of the 1986 ETPS.

3. The emission reduction must be quantifiable. The requirements that the reduction be quantifiable are the same for both the 1982 and 1986 trading policies. Therefore, the bubble does not meet the requirement that the reduction be quantifiable as specified in the December 4, 1986, ETPS for the same reasons as those cited previously for the 1982 policy.

This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following documents before submitting the revision for approval by USEPA: (1) Appendix A of the Post–1987 ozone policy, titled "Discrepancies and Inconsistencies Found in Current SIP's, (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist-Enforceability" which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Because there is no additional technical information which needs to be addressed, no technical support document has been prepared.

Proposed Action

The Harman Automotive, Incorporated bubble is not consistent with EPA's ETPS. Therefore, EPA is today proposing to disapprove this revision to the Tennessee SIP.

The public is invited to participate in this rulemaking by submitting written comments on the proposed action.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities because it applies to only one source, Harman Automotive, Incorporated. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 FR 52

Air Pollution Control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. Sections 7401–7642

Dated: April 14, 1988.

Greer C. Tidwell,

Regional Administrator.

Editorial Note: This document was received at the office of the Federal Register December 6, 1989.

[FR Doc. 89–28875 Filed 12–8–89; 8:45 am]

BILLING CODE [illegible]

(40 CFR Part 81)

[FRL—3693–8]

Designation of Areas For Air Quality Planning Purposes; Attainment Status Designations; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In the July 22, 1988, Federal Register (51 FR 26272), USEPA proposed to approve Indiana's request to redesignate Saint Joseph (St. Joseph) and Elkhart Counties, from nonattainment to attainment for ozone, if and when the State certified that it had completed implementation of its State Implementation Plan (SIP). In this supplemental proposed rulemaking notice, USEPA is proposing to disapprove Indiana's request to redesignate St. Joseph and Elkhart Counties, based on the most recent 3 years (1986 through 1988) of ozone air quality data for this area. This supplemental proposed disapproval notice supersedes with respect to ambient air data the proposed approval notice in the July 22, 1988, Federal Register.

The intent of this supplemental proposed notice is to discuss the most recent ambient air quality data from this area and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change.

DATES: Comments on this redesignation request and on the supplemental proposed rulemaking must be received by February 9, 1990.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26 , Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of USEPA has promulgated the national ambient air quality standards (NAAQS) attainment status for all areas within each State. For Indiana, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations are subject to revision whenever sufficient air quality data become available to warrant a redesignation and other requirements are met (see 51 FR 26272, July 22, 1986). For areas designated nonattainment for ozone, a revised ozone State Implementation Plan (SIP) was required which satisfies the requirements of Section 110(a) and Part D of the CAA, and which provides for attainment and maintenance of the ozone NAAQS.

St. Joseph and Elkhart Counties, Indiana (the South Bend area) were designated nonattainment for ozone. On January 30, 1985, and January 23, 1986, Indiana submitted RACT I and II volatile organic compounds (VOC) emission control regulations [1] for St. Joseph and Elkhart Counties, the last element in its ozone plan for these counties. Prior to this submittal on December 22, 1983, Indiana requested that USEPA redesignate St. Joseph and Elkhart Counties from nonattainment to attainment for ozone.

On July 22, 1988 (51 FR 26272), USEPA proposed to approve Indiana's request to redesignate St. Joseph and Elkhart Counties to attainment for ozone, if and when the State certified that it had completed implementation of its SIP. This implementation includes: RACT I and II VOC regulations, new source review requirements, and Transportation Control Measures. To date, Indiana has not certified compliance with the SIP. Today, USEPA is proposing to disapprove the State's request to redesignate St. Joseph and Elkhart Counties based upon the most recent 3 years (1986 through 1988) of ozone air quality data available. This supplemental proposed disapproval notice supersedes with respect to ambient air data the July 22, 1986, proposed approval notice.

The Ozone NAAQS

The NAAQS for ozone are violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm. (See "Guideline for the Interpretation of Ozone Air Quality Standard," EPA–450/4–79–003, which has been included in the record for this rulemaking action.) The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (due to invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days (EPA–450/4–79–003).

Criteria for Ozone Redesignations

Specific criteria for ozone redesignation reviews are given in the following USEPA documents and memoranda:

1. Memorandum entitled, "Requirement for VOC RACT Regulation for all Oxidant Nonattainment Areas," from David G. Hawkins, Assistant Administrator for Air, Noise, and Radiation, to Regional Administrators, Regions I–X, August 4, 1978.

2. Letter from Assistant Administrator David G. Hawkins to George Ferreri, Director of the Maryland Bureau of Air Quality and Noise Control, March 7, 1979.

3. "Guideline for the Interpretation of Ozone Air Quality Standards," (EPA–450/4–79–003).

4. Memorandum entitled, "Criteria for Ozone Resignations under Section 107," from Richard Rhoads to Air and Hazardous Materials Division Directors, December 7, 1979.

5. Memorandum entitled, "Section 107 Designation Policy Summary," from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Regional Air Directors, April 21, 1983.

6. Memorandum entitled, "Rulemaking Notices on Redesignations," from G.T. Helms, Chief Control Programs Operations Branch, to Chief, Air Branch, Regions I–X, June 2, 1988.

7. Memorandum entitled, "Ozone Redesignation Policy," from Gerald A. Emison, Director, Office of Air Quality Planning and Standards to Regional Air Directors, April 6, 1987, which includes a Letter from David Kee, Director, Region V, Air and Radiation Division, to Robert P. Miller, Chief, Air Quality Division, Michigan Department of Natural Resources, March 16, 1987.

8. "Policy for Ozone Redesignation—Summary," author: G.T. Helms, Chief, Control Programs Operations Branch (undated).

9. Memorandum entitled, "Criteria for Ozone Redesignations Under Section 107," from, Rhoads to Director, Air and Hazardous Materials Division Directors, December 1979.

Proposed Redesignation

Since the July 22, 1986, proposal, USEPA has become aware of a monitored violation of the ozone NAAQS in St. Joseph and Elkhart Counties. (St. Joseph and Elkhart Counties together form the South Bend ozone nonattainment area.) The current (1986 through 1988) ozone air quality data for the South Bend area show that a violation of the ozone NAAQS was recorded by the ozone monitor located at Children's Hospital in St. Joseph County. This monitor recorded three exceedances (0.137, 0.135, and 0.130 ppm) of the one-hour ozone standard (0.12 ppm) in 1988. These are daily peak one-hour ozone concentrations. An analysis of the peak air quality levels and number of missing days during the 1986 through 1988 ozone seasons (April through October) shows an average expected exceedance rate of 1.07 per year, which constitutes a violation of the NAAQS. This NAAQS violation was addressed in a July 27, 1989, National press release of areas currently violating the ozone NAAQS.

USEPA based the July 22, 1986, proposal on 4 years of data instead of 3 years because, in cases where ambient ozone levels were constant or decreasing over time, it was appropriate to consider as many years of air quality data as possible to average out the effects of variation in meteorology. As discussed above, however, recent data shows that 1988 ozone levels actually *increased* in the South Bend area, as well as in a number of other areas in the United States, indicating violations of the ozone NAAQS. USEPA's evaluation of these areas was based on the most recent 3 years of air quality data, which is consistent with USEPA's redesignation policy memorandum of June 2, 1988, and USEPA's approach for evaluating and publicly reporting areas that violate the ozone standard. Therefore, USEPA believes it is no longer appropriate in this case to consider the most recent 4 years of ozone data in calculating expected exceedance, and instead believes that the most recent 3 years of air quality data (1986–1988) should be considered for the South Bend area.

Conclusion

USEPA has determined that a violation of the ozone NAAQS has been monitored at a site in St. Joseph County. Therefore, USEPA is proposing to disapprove the State of Indiana's request to redesignate St. Joseph and Elkhart Counties to attainment for ozone because the South Bend area does not meet all the requirements for redesignation.

All interested persons are invited to submit written comments on USEPA's proposed denial of the redesignation request and the ambient data. Written

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

RACT I regulations are regulations covering sources which were contained in USEPA's first set of control technique guidelines (CTGs), i.e., those which were published before January 1, 1978. These CTGs are referred to as "Group I CTGs" and pertain to "Group I Sources." Similarly, RACT II regulations are regulations covering sources which were contained in USEPA's second set of CTGs, published between January 1, 1978, and January 1, 1979. These CTGs are referred to as "Group II CTGs" and pertain to "Group II Sources."

comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the Federal Register the Agency's final action on the redesignation request.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that disapproving this redesignation request for St. Joseph and Elkhart Counties, Indiana will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements on anyone.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness [illegible].

Authority: 42 U.S.C. 7401–7642.

Dated: August 30, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–28873 Filed 12–8–89; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 85

[AMS–FRL–3695–7]

Motor Vehicle Emissions Control System Performance Warranty Short Tests; Alternative Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: On December 23, 1988, EPA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register that would establish an alternative loaded-mode test procedure for inclusion in the Emission Control System Performance Warranty Short Tests of 40 CFR part 85, subpart W. The Agency is reopening the comment period for this rulemaking primarily to allow interested parties an opportunity to review and comment on two new studies of the alternative loaded-mode test procedure.

DATES: Comments on the rulemaking action should be submitted to the Agency at the address given below on or before January 10, 1990.

ADDRESSES: Materials relevant to the proposed loaded-test revision are contained in Public Docket No. A–88–32. The docket is located at the Environmental Protection Agency, Air Docket, Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Interested parties may inspect the docket from 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Richard S. Wilcox, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4200.

SUPPLEMENTARY INFORMATION: The Loaded Test is one of several short test procedures, which EPA has promulgated, that are intended to be used by state and local agencies to measure vehicular emissions as part of their inspection and maintenance (I/M) programs. Owners of 1981 and newer model year light-duty motor vehicles and light-duty trucks that fail an approved short test, may be eligible for certain emissions performance warranty coverage. The test procedures and performance warranty regulations are contained in 40 CFR part 85, subparts V and W.

On January 3, 1989, the State of Arizona began loaded-mode testing with dynamometer equipment and procedures that result in a lower speed and lighter load on the vehicle than specified in the current Loaded Test requirement. Just prior to that date, EPA proposed to revise the loaded-mode portion of the Loaded Test to accommodate Arizona's dynamometers (December 23, 1988, 53 FR 51956).

On February 28, 1989, EPA extended the comment period on the proposed rulemaking until March 31, 1989, in response to a request from the Motor Vehicle Manufacturers Association (MVMA) (54 FR 8358). The industry group asked for additional time to more fully evaluate the effect of the proposal on vehicle manufacturers' warranty obligations. This evaluation was to include an analysis of test data that were becoming available from the new loaded-mode testing program in Arizona.

Several developments have occurred since the comment period was extended that are relevant to the proposed rulemaking action. First, the State of Arizona continued to make other small changes to the Loaded Test procedure during the extended comment period. These changes made it impossible to fully analyze the program's test data by the close of the new comment period. Second, three new studies of the test data have now been completed and placed in the public docket for review. Two of these were conducted by EPA.[1,2] The third was prepared by Energy and Environmental Analysis, Inc. for the Arizona Department of Environmental Quality.[3] Finally, MVMA recently requested that the rulemaking's comment period be reopened for 60 days to allow interested parties an opportunity to fully address the information contained in the new studies of Arizona's I/M program, which were then available in the public docket.[4]

Due to the difficulties associated with analyzing the Arizona test data before the end of the previously extended comment period and the existence of three new reports on this subject, EPA believes that reopening the comment period is justified. However, EPA finds that an additional 60 days is unnecessarily long, because each report was provided directly to members of the automotive industry for review, as well as generally being publically available to other interested parties for some time. Therefore, the Agency is reopening the comment period for 30 days to provide an opportunity for: (1) Interested parties to review and comment on the contents of the three documents referenced above, and (2) the submission of any other analytical studies or comments pertaining to Arizona's loaded-mode test. This additional information will be considered in any subsequent final rulemaking action.

Dated: November 27, 1989.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–28874 Filed 12–8–89; 8:45 am]

BILLING CODE [illegible]

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[1] Letter to Bill Watson, Arizona Bureau of Vehicular Emissions Inspection, from Jane Armstrong, EPA, dated May 23, 1989. Docket A–88–32, Item IV–C–2.

[2] Memorandum from Edward Glover, EPA, dated November 13, 1989. Docket A–88–32, Item IV–C–1.

[3] "Analysis of the Effectiveness of Arizona's Inspection/Maintenance Program," Energy and Environmental Analysis, Inc., August 1, 1989. Docket A–88–32, Item IV–A–9.

[4] Letter from Gregory W. Walker, Motor Vehicle Manufacturers Association, to Richard Wilcox, EPA, October 30, 1989. Docket A–88–32, Item IV–D–[illegible].

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–550, RM–6983]

Radio Broadcasting Services; Knob Noster and Wheeling, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brick Broadcasting Company, proposing the substitution of FM Channel 289C3 for Channel 288A at Knob Noster, Missouri. Petitioner also requests modification of its license for Station KXKX, Channel 288A, to specify Channel 289C3. Channel 289C3 can be alloted to Knob Noster at coordinates 38–46–28 and 93–37–34. To accommodate Channel 289C3 at Knob Noster, we shall substitute Channel 290A for 289A (vacant) at Wheeling, Missouri, at coordinates 39–47–12 and 93–23–07.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bick Broadcasting Company, P.O. Box 711, 119 N 3rd Street, Hannibal, MO 63401.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–550, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve ch. nnel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28753 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–548, RM–7017]

Radio Broadcasting Services; Clintonville, WI, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sail Communication, Corp., licensee of Station WJMQ(FM), Channel 221A, Clintonville, Wisconsin, proposing the substitution of Channel 222C3 for Channel 221A at Clintonville, and the modification of its station's license accordingly. In order to accomplish the upgrade at Clintonville, the proposal requires the substitution of Channel 225A for Channel 226A at New Holstein, Wisconsin, and the modification of the construction permit for Station KFKQ(FM) at New Holstein. In addition, at Wautoma, Wisconsin, Channel 226A must be substituted for vacant but applied for Channel 222A. Channel 222C3 can be allotted to Clintonville with a site restriction of 14.5 kilometers (9 miles) northeast of the city, at coordinates 44–42–36 and 88–37–37. The coordinates used for Channel 225A at New Holstein are 44–02–18 and 88–09–06, which is the site specified in the construction permit for Station KFKQ(FM). The coordinates used for Channel 226A at Wautoma are 44–04–18 and 89–17–30. Clintonville could receive its first wide area coverage FM service, if this proposal is adopted.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lyle R. Evans, P.O. Box 52, Mayville, WI 53050 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–548, adopted November 20, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28754 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–547, RM–6899, RM–7021, RM–7100]

Radio Broadcasting Services; Hannahs Mill and Perry, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three separately filed petitions. The first two petitions, filed by Sam V. Stacy, Jr. ("Stacy"), and Dewitt Coleman, Jr. ("Coleman") propose the allotment of Channel 264A or 266A to Hannahs Mill, Georgia, as the community's first local service. The

third petition, filed by Perry Radio, Inc., ("Perry"), licensee of WPGA(FM), Channel 265A at Perry, Georgia, proposes the substitution of Channel 265C3 for Channel 265A at Perry and modification of its license to specify operation on the higher class co-channel. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 265C3 at Perry or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 264A at Hannahs Mill are North Latitude 32–52–31 and West Longitude 84–18–46, and the coordinates for Channel 266A at Hannahs Mill are North Latitude 32–51–49 and West Longitude 84–25–10. The coordinates for Channel 265C3 at Perry are North Latitude 32–20–52 and West Longitude 83–50–18.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Sam V. Stacy, Jr., 61 Terracedale Ct., Griffin, Georgia 30223 (Hannahs Mill proponent); Daniel F. Van Horn, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036–5339 (Counsel for Dewitt Coleman, Jr.); Lowell L. Register, President, Radio Perry, Inc., P.O. Box 9, Perry, Georgia 31069.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–547, adopted November 17, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28755 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–549, RM–6744]

Radio Broadcasting Services; Muskegon and Manistee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Richard L. Culpepper, proposing the substitution of FM Channel 300B1 for Channel 300A at Muskegon, Michigan, and modification of the construction permit for Station WMHG–FM accordingly. Channel 300B1 can be allotted to Muskegon at coordinates 43–17–41 and 86–13–12. To accommodate the substitution at Muskegon, it would be necessary to substitute Channel 286A for 300A (vacant) at Manistee, Michigan, at coordinates 44–14–48 and 86–19–12. Canadian concurrence will be obtained for both allotments.

DATES: Comments must be filed on or before January 26, 1990, and reply comments on or before February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland, 21701 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–549, adopted November 20, 1989, and released December 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–28756 Filed 12–8–89; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1501

[FRL 3694–4]

Acquisition Regulation Concerning Ratification of Unauthorized Commitments

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the EPA Acquisition Regulation (EPAAR) to revise EPAAR coverage on the ratification of unauthorized commitments. The EPAAR coverage has been superseded by an amendment to the Federal Acquisition Regulation (FAR). The intended effect of this action is to delete EPAAR coverage that is duplicative of the FAR and to revise the EPAAR policies and procedures on unauthorized commitments.

DATE: Written comments should be submitted not later than January 10, 1990.

ADDRESS: Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM–214F), 401 M Street SW., Washington, DC 20460, Attn: Eleanor G. Norment.

FOR FURTHER INFORMATION CONTACT: Eleanor G. Norment, at (202) 382–5035 (FTS 382–5035).

SUPPLEMENTARY INFORMATION:

A. Background

On February 22, 1988, the FAR was amended by FAC 84–33, which added regulatory coverage on the ratification of unauthorized commitments. This proposed rule deletes duplicative coverage in the EPAAR and further amends the EPAAR to clarify and strengthen controls over unauthorized commitments.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for the Office of Management and Budget [OMB] review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities. The rule merely deletes existing material from the EPAAR that is duplicative of FAR coverage and strengthens controls to reduce the occurrences of unauthorized commitments.

List of Subjects in 48 CFR Part 1501

Government procurement.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as follows:

PART 1501—[AMENDED]

1. The authority citation for part 1501 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1501.6 is amended by adding section 1501.602–3 to read as follows:

1501.602–3 Ratification of unauthorized commitments.

(a) *Definition.* "Unauthorized commitment," as used in this subpart, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. The term does not relate to the Agency process for the reservation of funds.

(b) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments include:

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changes the terms and conditions of the contract.

(c) *Ratification approvals and concurrences.* (1) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official, provided that he/she has redelegable authority. The responsible Procurement and Contracts Management Division (PCMD) Associate Director is the ratifying official for actions which arise in regional or laboratory sites which do not functionally report to a contracting office.

(3) All proposed ratification actions of $250,000 or more for which the responsible PCMD Associate Director is not the ratifying official shall be forwarded for review to the responsible PCMD Associate Director prior to approval by the ratifying official.

(d) *Procedures.* (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for small purchases exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900–8, with funding sufficient to cover the action. The appropriation data cited on the 1900–8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but should be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may

be accomplished at the discretion of the ratifying official.

(e) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602–3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) Of the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(f) *Payment of Properly Ratified Claims.* In determining the payment due date, in addition to the requirements concerning receipt and acceptance in FAR, subpart 32.9 and OMB Circular A–125, receipt of a proper invoice is not considered to have occurred until after ratification.

1501.670 [Removed]

3. Subpart 1501.6 is amended by removing section 1501.670.

Dated: November 28, 1989.

John C. Chamberlin,

Director, Office of Administration

[FR Doc. 89–28610 Filed 12–8–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–115; Notice 1]

RIN 2137 AB53

Gas Pipeline Operating Above 72 Percent of Specified Minimum Yield Strength

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: A "grandfather clause" allows certain steel gas pipelines to operate at hoop stress levels above 72 percent of the specified minimum yield strength (SYMS) of the pipe—the highest operating hoop stress permitted on steel pipe in all other regulated gas pipelines. The grandfathered pipelines may not provide as much protection against stress-related failures as lines constructed more recently in similar locations. OPS is concerned about this possible disparity in protection, and invites public participation in determining an appropriate course of action regarding the "grandfather clause.".

DATES: Interested persons are invited to submit written comments on this notice by March 12, 1989 Late filed comments will be considered to the extent practicable. All persons must submit as part of their written comments all of the material that they consider relevant to any statement of fact made by them.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in Room 8426 between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–4148, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

Over a period of about 2 years, gas transmission lines operated by the Texas Eastern Gas Pipeline Company experienced four serious accidents. The first occurred November 25, 1984, on Line 14 in St. Francisville, Louisiana because of a construction defect, killing five persons and injuring 23 others. The second, which happened April 27, 1985, on Line 10 near Beaumont, Kentucky, was caused by external corrosion inside a casing, and resulted in five deaths and three injuries. Then on October 26, 1985, Line 25 failed in Fleming County, Kentucky due to cracks propagating from a material defect, injuring four people. The defect had not been revealed during hydrostatic testing to 105 percent of SMYS. Finally, on February 21, 1986, six persons were injured near Lancaster, Kentucky when Line 15 failed due to corrosion.

Because three of these four accidents occurred within a 10-month period in one State, OPS formed a task force with the Kentucky Public Service Commission to review and evaluate Texas Eastern's operation and maintenance procedures. As set forth in its report, "Texas Eastern Gas Pipeline Company Operations and Maintenance Procedures Evaluation," November 1986, the task force found deficiencies in Texas Eastern's corrosion control program, which OPS ordered Texas Eastern to correct.

In addition to corrosion control problems, the task force's review revealed that the operating pressure of each of the four pipelines at the time and location of failure stressed the pipe to a level above 72 percent of SMYS. Except on these and other grandfathered lines described below, 72 percent of SMYS is the highest operating hoop stress permissible on steel pipe under the rules governing maximum allowable operating pressure (MAOP) (49 CFR 192.619).

The four Texas Eastern pipelines, which were initially placed in operation between 1952 and 1965, are among a group of pipelines that have been allowed to operate under an exception to the MAOP rule, often called the "grandfather clause" (§ 192.619(c)). Under this clause, pipelines put into service before July 1, 1970, and found to be in satisfactory condition, may be operated in Class 1 locations (essentially rural or offshore as defined by § 192.5) at the highest actual operating pressure they achieved during the 5 years preceding July 1, 1970, regardless of the level of hoop stress on the pipe. (The relevant date for offshore gathering lines is July 1, 1976, instead of July 1, 1970). Three of the four Texas Eastern pipelines are qualified under the grandfather clause to operate as high as 76.9 percent of SMYS, while Line 14 is qualified for operation up to 84.6 percent of SMYS. The task force recommended that OPS begin a research project to evaluate limiting the operating hoop stress of all grandfathered pipelines to 72 percent of SMYS.

History of Grandfather Clause

The "grandfather clause" was adopted at the final rule stage (35 FR 13248; August 19, 1968) in response to comments by the Federal Power Commission (now the Federal Energy Regulatory Commission (FERC)) on a DOT proposed rule concerning the maximum allowable operating pressure (MAOP) of gas pipelines (Notice 70–5, 35 FR 5482, April 2, 1970). DOT had proposed that the MAOP of any steel gas pipeline in a Class 1 location be limited either to the design pressure of its weakest element or its test pressure divided by 1.1, whichever is lower. The Federal Power Commission said the operating pressures of many interstate gas transmission lines would have to be reduced if this proposal became law because the lines' test pressures had not been high enough to qualify their current operating pressures under the proposed rule. The Commission also said it had found no evidence that requiring a reduction in the operating pressures of these pipelines would materially increase safety.

In view of these statements and because DOT did not have enough information to determine whether the existing operating pressures were unsafe, a "grandfather clause" was added to the final MAOP rule, allowing continued operation of pipelines existing on July 1, 1970, at the highest pressure achieved during the previous 5 years. Operation under the grandfather clause, however, was made subject to the rules on confirmation or revision of MAOP when population near a line increases above the Class 1 limit (§ 192.611). Additionally, in the final rule, the proposal to limit the MAOP of pipelines to "the design pressure of the weakest element" was changed to read "the design pressure of the weakest element in the segment, determined in accordance with Subparts C and D of this part." (See § 192.619(a)(1)). The effect of these changes was to limit the operating hoop stress of non-grandfathered pipelines to 72 percent of SMYS in Class 1 locations, but to allow the grandfathered lines in Class 1 locations to operate above that stress level.

The regulatory history does not explain the safety rationale for limiting the operating hoop stress of Class 1 steel pipelines to 72 percent of SMYS. DOT included this limitation in § 192.619 because it was in the 1968 edition of the *USAS B31.8 Code* and had long been a basis for the industry's recommended MAOP for steel pipelines in Class 1 locations. The 72 percent limitation is not applied universally, however. Canada allows operation at up to 80 percent of SMYS in Class 1 areas, while Japan does not allow operation at more than 40 percent of SMYS.

NTSP Position

After the task force report was released, the National Transportation Safety Board (NTSB) issued a Pipeline Accident Report (NTSB/PAR–87–1), dated February 18, 1989, on the Texas Eastern accidents near Beaumont and Lancaster, Kentucky. The report contains the following recommendation (P–87–9):

> Revise 49 CFR part 192 and, if necessary, request legislative authority to amend 49 CFR part 192 to eliminate the "grandfather clause" which permits operators of [gas] pipelines installed before [July 1, 1970], to operate at levels of stress that exceed those levels permitted for pipelines installed after the effective date of 49 CFR part 192.

In the analysis section of its Accident Report that precedes this recommendation (p. 41), NTSB concluded that if the MAOP of the Beaumont and Lancaster pipelines had been lowered to produce a hoop stress of no more than 72 percent of SMYS, the accidents probably would not have occurred until a later date. NTSB then speculated that in the Lancaster case, the resultant pressure difference at the time and place of failure (924 *vs* 965 psig) "may well have allowed the gas company [time] to have replaced the damaged segment before the accident." (Texas Eastern had begun a rehabilitation program on the Lancaster line about a year before the corrosion-caused accident occurred.) NTSB further stated in the Accident Report (p. 42) that it "does not believe it is sound engineering practice to allow older pipelines, constructed with materials and procedures inferior to those used in new pipelines, to operate at SMYS levels greater than those [allowed] new pipelines."

Preliminary Report on Research

Acting in accordance with the recommendation of its task force, OPS researched the safety considerations pertinent to the operation of pipelines above 72 percent of SMYS. The research also compared the failure record of such pipelines with those operated at 72 percent of SMYS, or less. OPS produced a preliminary report on its research titled, "A Safety Evaluation of Gas Pipelines Operating Above 72 Percent of SMYS," dated August 1987.

The preliminary research report states that the primary factors contributing to the failure of pipelines operating between 72 and 80 percent of SMYS are the number and size of defects present and their rate of growth. The report also states that while time-dependent flow growth was the cause of each failure examined, lowering operating hoop stress to 72 percent of SMYS, as NTSB recommended, would have increased the time to failure only slightly, and would not have prevented any of the failures. OPS concluded in the report that the margin between operating pressure and hydrostatic test pressure, rather than operating hoop stress limit of 72 percent of SMYS, provides primary protection against leaks or ruptures caused by growth of time-dependent defects.

OPS's research identified three operators that had lines operating above 72 percent of SMYS: Colorado Interstate Company, Texas Gas Transmission Company, and Texas Eastern Transmission Company. Since 1970, the incident rate they reported for those lines ranged from ⅓₀ to ⅓ the incident rate for lines the companies operate below 72 percent SMYS. Another company, El Paso Natural Gas Company, had lines qualified for operation above 72 percent of SMYS, but had none operating in that range.

In the preliminary research report, OPS recommended that operators test grandfathered pipelines operating above 72 percent of SMYS, and that they do not raise the MAOP of other grandfathered lines above the 72 percent level. Testing would include a one-time hydrostatic test to at least 1.25 times MAOP followed by periodic tests with an internal instrumented pig and close-interval electrical surveys. The purpose of the testing would be to minimize the likelihood of failure in service because of the growth of time-dependent defects.

At a meeting on September 22, 1987, OPS presented the preliminary research report for consideration by its gas pipeline advisory committee, the Technical Pipeline Safety Standards Committee (TPSSC). No consensus was reached on the report; the most significant point of discussion was that the recommendation for additional testing might be inappropriate in view of OPS's unfinished study on the frequency of running smart pigs. (OPS has since published a request for information regarding the feasibility of pigging pipelines at periodic intervals (Docket No. PS–105, Notice 1; 54 FR 20948, May 15, 1989), and a report is to be submitted to Congress by April 30, 1990.)

Earlier Rulemaking Effort

Notwithstanding its research conclusion that minimized the importance of the 72 percent of SMYS limit in protecting against time-dependent defect growth, OPS remained concerned that allowing grandfathered lines to operate at higher stress levels than newer pipelines results in an unnecessary safety differential in Class 1 areas. Consequently, in 1988, OPS proposed to repeal the grandfather clause. A draft notice of proposed rulemaking was developed, proposing to require that operators reduce the pressure in grandfathered lines so that they operate at a hoop stress of no more than 72 percent of SMYS by July 1, 1993.

Since the proposal, if adopted, would affect the continuity of gas service, OPS wrote FERC on August 19, 1988, to request its comments on the draft notice. On September 9, 1988, FERC replied that it supported the safety goals of the draft notice, but recommended that OPS further investigate the costs of compliance with the proposal.

On September 13, 1988, OPS again asked the TPSSC to take up the issue of the grandfathered pipelines. This time the TPSSC voted eleven to one to disapprove OPS's draft notice of proposed rulemaking. The TPSSC's objection to the proposal, as set out in the minutes of the meeting, centered on the absence of data showing that the grandfathered lines are unsafe, the need to quantify costs, and the need to justify the proposal in light of the findings of OPS's preliminary research report. Many TPSSC members felt OPS should not take general rulemaking action, but should handle safety problems found on grandfathered lines by taking enforcement action against the company concerned.

Speaking from the audience at the TPSSC meeting, representatives of Texas Eastern Gas Pipeline Company and Texas Gas Transmission Corporation voiced opposition to the OPS draft rulemaking proposal. Texas Eastern argued that its approximately 4,200 miles of grandfathered lines have operated safely above 72 percent of SMYS since 1955, with only four incidents caused by corrosion. The company attributed this safety record not only to its aggressive inspection and maintenance program, but primarily to its policy of post-construction hydrostatic testing to actual yield, which may exceed 100 percent of SMYS. It said high pressure testing provides the largest practical margin of safety against operational failures from latent material or construction defects. Texas Eastern outlined its maintenance program as: (1) Intelligent pig inspection, (2) visual inspection and removal of anomalies detected by the pig, and (3) selective high pressure hydrostatic retesting to validate the pig inspection and ensure the integrity of replaced pipe. Texas Eastern estimated that if the proposal became final, it would have to spend between $300–$350 million in the form of capital additions needed to maintain service under its delivery contracts.

Texas Gas also argued that its grandfathered lines (about 1,183 miles) were being operated safely, and that OPS had not presented any substantial evidence to justify eliminating the grandfather clause. Like Texas Eastern, Texas Gas attributed the safety record of its grandfathered lines to a strong maintenance program, which includes (1) reconditioning, (2) replacement of pipe where necessary, and (3) revalidation hydrostatic testing. Texas Gas emphasized that good maintenance can stop or retard the effect of time degradation on pipelines.

In addition to disputing the need to eliminate the grandfather clause, Texas Gas's challenged OPS's legal authority to do so, citing the restriction in section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1672(a)) against establishing safety standards that affect the design of gas pipelines in existence when the standards are adopted. Texas Gas argued that since pipeline design is a function of operating pressure, any safety standard that requires a reduction in operating pressure affects pipeline design and, therefore, may not be applied to pipelines in existence when the standard is adopted. OPS believes, however, that this argument blurs the clear distinction between pipeline design and operation contained in the statutory language that provides DOT broad regulatory authority over the operation of existing gas pipelines (49 App. U.S.C. 1672(a)). In fact, under § 192.611, DOT has already exercised this authority, without legal challenge, to require reductions in the MAOP of grandfathered lines when population near the lines increases above the Class 1 limit.

Safety Concerns

As explained previously in this document, DOT adopted the grandfather clause primarily so that gas transmission lines that had not been pressure tested to a level of at least 1.1 times their operating pressure could continue to operate in Class 1 locations without retesting or reducing pressure. However, all grandfathered lines operating above 72 percent of SMYS that OPS examined in its recent research (discussed above) had been tested well above that level. Although not exhaustive, the research covered all transmission companies subject to OPS jurisdiction. Thus, insufficient qualifying test levels do not appear to be a problem for grandfathered pipelines operating above 72 percent of SMYS.

OPS has concluded that the 72 percent limit provides only slight protection against failures caused by time-dependent defect growth. But, the 72 percent limit also protects against another type of failure. The margin between operating stress, as represented by the 72 percent limit, and SMYS protects against failures due to accidental overloading. The greater the margin, the greater the accidental overloading a pipeline can withstand before failure.

In this respect, Japanese pipelines in areas of high seismic activity are safer operating at 40 percent of SMYS than they would be if operated at 72 percent of SMYS. Besides earthquakes, accidental overloading can come, for example, from overpressure, land slides, or sudden impact. Excessive overloading can cause latent defects to grow rapidly to failure. Although OPS's research did not indicate that accidental overloading is a significant safety consideration for grandfathered pipelines, it is no less a consideration for these lines than other Class 1 lines that are subject to the 72 percent limitation. Therefore, in view of (1) the continual occurrence of accidents due to latent defects on grandfathered lines operating above 72 percent of SMYS, (2) the lower level of protection these lines provide against failures due to time-dependent defect growth and accidental overloading, and (3) the NTSB recommendation, OPS is concerned about the prudence of continuing to allow grandfathered lines to operate above 72 percent of SMYS, especially in the absence of a requirement that operators conduct a program to detect and remove as many latent defects as reasonably possible.

Request for Information

OPS is considering three alternative courses of action: (1) Repeal the grandfather clause by a date certain for lines operating above 72 percent of SMYS; (2) modify the grandfather clause for lines operating above 72 percent of SMYS, making it contingent on conducting certain remedial activities, such as hydrostatic testing and pigging; and (3) retain the grandfather clause as is.

To assist OPS in selecting a course of action and responding to the concerns of the TPSSC, interested persons are invited to answer the following questions in commenting on this notice:

1. What operators, if any, besides Colorado Interstate, Texas Gas, Texas Eastern, and El Paso have Class 1 pipelines whose MAOP is authorized by the grandfather clause of § 192.619(c)? If you are such an operator, please estimate the number of miles of pipeline involved, and the number of miles authorized to operate at hoop stress levels above 72 percent of SMYS.

2. Should OPS continue to allow grandfathered pipelines to operate at hoop stress levels above 72 percent of SMYS? If yes, please describe any safety measures over and above the requirements prescribed by part 192 that you consider necessary to qualify the lines for safe operation, estimate the costs involved in implementing these additional safety measures, and state the extent to which they are being implemented. If no, please explain your position in terms of public safety considerations, and describe the effects and estimate the costs of reducing the allowable operating hoop stress of grandfathered lines to 72 percent of SMYS.

Commenters are not limited to filing comments only on the questions presented above, and may submit any facts and views consistent with the intent of this advance notice. In addition, commenters are encouraged to provide comments on (1) "major rule" considerations under the terms of Executive Order 12291; (2) "significant rule" considerations under the terms of DOT regulatory procedures (44 FR 11634); (3) potential environmental impacts subject to the National Environmental Policy Act; (4) information collection burdens that must be reviewed under the Paperwork Reduction Act; (5) the economic impact on small entities under the Regulatory Flexibility Act; and (6) impacts on Federalism under Executive Order 12612.

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53; and App. A of part 106.

Issued in Washington, DC on December 6, 1989.

George W. Tenley, Jr.,

Director, Office of Pipeline Safety.

[FR Doc. 89–28793 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–25 Notice 1]

RIN 2127–AC69

Federal Motor Vehicle Safety Standard 205 Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Head up displays (HUD's), systems that are capable of optically projecting instrument panel readings so that they appear on some portion of the windshield, could affect the ability of drivers to view the road ahead. As a result of requests for interpretation on the extent to which HUD's and other devices may be allowed on passenger car windshields, the agency is conducting a review of visibility through windshields. This review is necessary to enable the agency to address issues such as the size and location of HUD's and determine whether it is desirable to propose new requirements for the purpose of allowing the use of HUD's while ensuring that the HUD's do not interfere with the driver's viewing of road conditions.

DATES: Comments must be received on or before January 25, 1990.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. [Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.].

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM–11, Room 5307, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 355–5276.

SUPPLEMENTARY INFORMATION: In order to assist motorists' driving performance, motor vehicle manufacturers are introducing new devices to enhance driver awareness of how their motor vehicle is operating. One such new device is the head up display (HUD), a system that is capable of optically projecting instrument panel readings so that they appear on some portion of the windshield. Although the image is not the same as a holographic image, it resembles a hologram in that the image appears to float in space in front of the viewer. The companies that are developing HUD's believe that having the readings projected in this manner places them closer to the driver's line of sight and thus allows the driver to view the information more readily than if the driver had to look further down for the information on the instrument panel.

NHTSA has a policy of facilitating technological innovations, especially those that in some respect may enhance safety. At the same time, the agency wishes to assure that innovative devices do not adversely affect safety. In the case of HUD's, the agency believes that there is a need to address several issues. One issue is the possibility that they may, depending upon their placement, interfere with the ability to see the view of road conditions ahead. Another is that, again depending on factors such as location or brightness, they may distract the driver from viewing the road ahead. Accordingly, the agency is examining these issues through the issuance of this notice. Because the areas of a windshield necessary for driver visibility to ensure safe driving are not objectively defined, this ANPRM explores two approaches to defining and regulating these areas, for the limited purpose of defining where HUD's may be placed. Neither of the approaches entails restricting the placement of existing components, such as wiper blades and hood ornaments, seen through the vehicle windshields. Finally, the approaches relate to passenger cars, multipurpose passenger vehicles (MPV's) and light trucks only.

Background of Advance Notice of Proposed Rulemaking

The agency has occasionally issued interpretation letters in response to questions relevant to HUD's, but has not attempted to address the issue through rulemaking. A brief review of these interpretations will provide a context for consideration of the rulemaking options.

Standard No. 205 embodies the concept that some window are more important than others for visibility, but does not systematically address the question whether some areas within a given window are more important than others, or how these areas are to be defined. The standard incorporates American National Standard Z–26.1–1977, and its 1980 supplement, Z–16.1a, which have also been the subject of letters requesting interpretation. In a 1974 interpretation, NHTSA stated that the reference in S5.1.1 to "levels requisite for driving visibility" (a term also used in Z26) referred to vertical height relative to the driver's eyes, but the agency did not seek to define those levels. In 1987, the developer of a HUD that employs a small membrane near the lower left edge of the windshield sought an interpretation that the membrane was not at a level requisite for driving visibility, arguing in support of its case that the membrane was transparent and that, while its light transmittance was below 70 percent, similar transmittance values were permitted for the shade bands. In its letter permitting the use of the requested HUD, the agency cited the foregoing characteristics of the HUD, as well as the fact that the HUD lay largely outside the areas of the windshield that are required to be cleared by the defroster and the windshield wipers under Standards No. 103 and 104. The interpretation thus dealt with considerations that might be relevant to a general regulatory treatment of HUD's, but in the limited context of a single HUD design.

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The final interpretation relevant to HUD's was issued in 1988 in response to a manufacturer's proposed extension of shade banding to the bottom and sides of the windshield. The banding would have allowed less than 70 percent light transmittance and was ruled unacceptable by the agency for use on the sides of the windshield and for use on the bottom of the windshield except for areas through which the shortest drivers could see only the hood or other parts of the vehicle. Although the manufacturer urged the agency to consider applying European Economic Community Directive 77/649/EEC, which sets boundaries for the driver's forward field of vision, the agency rules that this directive was inconsistent with the "requisite for driving visibility" terminology of Standard No. 205 and declined to apply the Directive. Insofar as the interpretation addressed banding that was proposed for the entire perimeter of the windshield, it did not discuss the prospects for smaller areas of reduced transmittance.

These interpretations address some issues relevant to HUD's but fall short of providing comprehensive guidance to manufacturers considering the adoption of this technology. In view of what appears to be an increasing interest in HUD's, the agency has decided to explore the issue through rulemaking.

Options for Rulemaking

The principal question is whether the agency should more precisely specify those areas of windshields that are at "levels requisite for driving visibility." The agency indicated in its 1987 letter that it plans to initiate a rulemaking action to address this issue, instead of continuing a case-by-case determination of whether particular areas are at levels requisite for driving visibility.

Accordingly, the following two options are offered for public comment. It is requested that commenters express their preference for one, and provide a rationale for their position. Any studies or quantitative data supporting the positions taken are welcome.

Option A—Adopt 77/649/EEC With Modifications

This option has the advantage of utilizing a regulation that is readily available. However, it needs to have an inconsistency resolved before adoption by NHTSA. At present, there is no uniform reference point from which to make measurements for the requirements. The Directive requires automobile manufacturers in the European market to provide an adequate forward field of vision for drivers. It limits the type, size, and location of obstructions in the 180-degree forward field of vision of drivers of specific vehicle types. The only obstructions allowed in the forward field of vision are "A" pillars, vent window division bars, rearview mirrors, and windshield wipers. Vehicles are limited to two "A" pillars which may not be larger than a specified angular size with relation to a defined point. A minimum expanse of 70% transmittance windshield is defined by six points. "A" pillars must be located outside of the windshield region, but a rearview mirror is in some cases allowed in this region in order to meet Council Directive 71/127/EEC, as amended by Directive 79/795/EEC, which specifies rear view mirror requirements for the European market.

Among the problems with the presently worded Directive is a lack of a requirement for a seating reference point (or H-point at the rearmost and lowest seat adjustment position). In the 77/649/EEC Directive the "R" point is used. The EEC defines the R point or "seating reference point" as the reference point specified by the vehicle manufacturer which has coordinates determined in relation to vehicle structure and which corresponds to the theoretical position of the point of torso thighs rotation (H point) for the lowest and most rearward normal driving positions or (as an alternative) position of use given by the vehicle manufacturer for each seating position specified by the manufacturer. This means that the EEC definition would allow the manufacturer to designate any seat adjustment position to be used for establishing the seating reference point, making the definition almost meaningless because of the myriad locations that could thus be defined as "references." The agency would instead, require a specific fixed location at the rearmost and lowest seat adjustment position.

Another problem with the EEC requirement is that it only requires a minimum expanse of 75 percent transmittance windshield defined by six outer extremity points. The area where HUD's might be located is not regulated. Modifications to 77/649/EEC could define this area better.

Option B—Formulate New Standard

This option would entail new requirements, not based on 77/649/EEC, either in the form of a new Federal Motor Vehicle Safety Standard, or as amendments to Standard 205. Option B would be based on the criteria used in the agency's previous interpretation letters to limit areas on the front windshield that may not have HUD's. Areas that are not at "levels requisite for driving visibility" would be able to have light transmittance of less than 70% and would be possible locations for HUD's. Besides limiting their placement on the windshield, NHTSA seeks information on whether to regulate HUD's for light transmittance (for both night and day), maximum and minimum brightness, size, quantity, type and form of information (numbers, letters, symbols) to be displayed, and the effect of HUD's on driver performance. Comments from the public and internal NHTSA work would to a large degree provide the basis for these requirements. Because it represents a new effort on the part of the agency, Option B would probably take longer to implement than the first option.

Miscellaneous Issues Involving HUD's and Visibility

In order to evaluate these options, the agency requests answers to the following specific questions. Any supporting quantitative data are welcome.

1. Do passenger cars sold in the United States currently meet Directive 77/649/EEC, with the seating reference point established with the driver's seat at the lowest and rearmost seat adjustment position?

2. Is Directive 77/649/EEC adequate for determining "areas" of vehicle windshields requisite for driving visibility? Are the areas between the six visibility measurement points adequately regulated? Are the areas outside of the six points adequately regulated? Without a seating reference point location precisely specified, how are visibility determinations made? How much variation can exist?

3. To what extent does Directive 77/649/EEC conflict with Standard 205 and ANS Z26? Should the rule seek to resolve conflicts between the two regulatory schemes?

4. How can the areas of vehicle windshields that are "requisite for driving visibility" for all sizes of potential drivers be determined?

5. What changes in vehicle design by manufacturers are foreseen which may enhance or restrict visibility in the windshield region for drivers in the future? For example, are variable light transmittance windshields planned for production? What is the minimum contrast that should be allowed with bright head up displays contrasted against such a darkened area?

6. What would be the costs and benefits of requiring an in-vehicle standard for windshield transmittance? This would measure the loss in transmittance due to installed configuration of the glazing, thereby accounting for such variables as the rake angle and curvature of windshield installations in vehicles.

7. Where should shade bands be allowed on windshields? Should any value other than 70 percent transmittance be permitted for the windshield, including such bands?

8. Comment is requested on both the approach used in the January 1989 article "A Study of Driver's Forward Fields of Direct View for Large Trucks by Naofumi Nagaike and Yukio Hoshino, in the JSAE Review Vol. 10, No. 1, to define critical areas of visibility, and on this approach combined with the 77/649/EEC approach.

9. Given the above considerations, what restrictions, if any, should be placed on head up displays? Should the number of HUD's or the type of information (e.g., speed, fuel level) be regulated?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above. This advance notice of proposed rulemaking is not subject to Executive Order 12291, which applies only to notices of proposed rulemaking and final rules. Moreover, NHTSA does not believe that this advance notice is a "significant" rulemaking action under either Office of Management and Budget or Department of Transportation regulatory policies and procedures. Public comment on this position is welcome. The agency acknowledges, however, that the advance notice concerns a matter in which there is substantial public interest.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

NHTSA solicits public comments on the issues presented in this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issue Date: December 6, 1989.

Barry Felrice,

Associate Administrotor for Rulemaking.

[FR Doc. 89-28792 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals in Beaufort and Chukchi Seas

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of comment period on proposed rule.

SUMMARY: The National Marine Fisheries Service is extending the comment period on a proposed rule (54 FR 40703) that would allow the harassment of marine mammals during exploration for oil and gas in the Chukchi and Beaufort Sea for the next 5 years. The extension was requested by the counsel to the Alaska Eskimo Whaling Commission and the counsel to the exploration companies requesting the rulemaking. The proposed rule was published October 3, 1989, with a 60-day comment period that ended December 4, 1989.

DATES: Comments should be received by January 16, 1990.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS (301 427-2322) or Ron Morris, Alaska Region, NMFS (907-271-5006).

Dated: December 5, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-28829 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Expanded Animal Damage Control Proposal, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to consider expanding the authorized predatory animal damage control methods on the Dixie National Forest, Utah and to recognize the transfer of the animal damage control program from the Department of Interior to the Department of Agriculture. The EIS will tier to and amend the Land and Resource Management Plan (September 1986) which provides the guidance for all natural resource management activities and establishes management standards and guidelines for the Dixie National Forest.

The Forest Service is seeking information and comments from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by December 31, 1989.

ADDRESS: Submit written comments to: Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, UT 84720-0580.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Ronald L. Rodriguez, Wildlife Biologist, Dixie National Forest, P.O. Box 0580, Cedar City, UT 84721-0580. Phone: (801) 586-2421.

SUPPLEMENTARY INFORMATION: Animal damage control activities under consideration would occur on National Forest system lands on and immediately adjacent to permitted livestock allotments.

The Forest Plan currently provides for animal damage management in cooperation with the Utah Division of Wildlife Resources, the Fish and Wildlife Service and other appropriate agencies and cooperators, and authorizes trapping (including snaring), denning, and aerial gunning as control methods.

The proposal would recognize the transfer of the animal damage control program from the Fish and Wildlife Service under the under the U.S. Department of Interior to the Animal and Plant Health Inspection Service (APHIS) under the U.S. Department of Agriculture, and expand the potential control methods and techniques to include: (1) Calling and ground shooting (which was inadvertently omitted from the Forest Plan), and (2) sodium cyanide devices (M-44's). The proposal would also discuss three control strategies: (1) Corrective control on local depredating target populations or individual animals: this control is utilized to solve problems after depredations have occurred such as coyote predation upon lambs and sheep. This strategy is employed as soon as possible after predation is confirmed. It usually requires the spot removal of individuals or small numbers of target species causing problems. (2) Preventive control or the general suppression of the offending segment of the local population of coyotes. This strategy is utilized most often on high summer sheep allotments where unacceptable high levels of losses have occurred during the preceding use period. The removal of the potential depredating target animals from these areas prior to range utilization is attempted. (3) Offending animal management. In predator depredation control the removal of only the offending individual is most effective for bear, cougar, and bobcat depredation control.

A reasonable range of alternatives will be considered. One of these will be the "no action" alternative in which no additional animal damage control measures would occur beyond those currently authorized by the Forest Plan. Other alternatives will examine the use of additional methods including calling and shooting, and sodium cyanide devices (M-44's). The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives.

Public participation is important during the analysis. During preliminary scoping, considerable public interest was expressed, resulting in the decision to prepare an Environmental Impact Statement. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participate in this extended scoping process by submitting new or additional comments by December 31, 1989.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 1978), and that environmental objections that could have raised at the draft stage may be waived if not raised until after completion of the final EIS (Wisconsin Heritages Inc., v. Harris, 490 F. Supp. 1334, 1338 [E.D. Wis 1980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in January 1990. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The Final Environmental Impact Statement is scheduled to be completed by April 1990. In the FEIS, the Forest Service will respond to the comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be document in a Record of Decision.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

Dated: November 27, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89-28794 Filed 12-8-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1990 Panel Wave 2.

Form Number: SIPP-10200, SIPP-10205(L).

Agency Approval Number: 0607-0870.

Type of Request: Revision of a currently approved collection.

Burden: 25,200 hours.

Number of Respondents: 50,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: Wave 2 of the Survey of Income and Program Participation (SIPP) is the first interview period of the 1990 Panel that contains topical modules (supplemental questions to the core SIPP questions). The modules for Wave 2 are collectively called the "Personal History" topical module. The prime reason for inclusion of this module in the SIPP is to gain pertainent information about the past experiences of SIPP sample persons.

Affected Public: Individuals or households.

Frequency: Three times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28814 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cotton Ginnings Census Program.

Form Number: CAg-1A thru CAg-1L, CAg-3, CAg-5, CAg-5a.

Agency Approval Number: 0607-0047

Type of Request: Revision of a currently approved collection.

Burden: 1,521 hours.

Number of Respondents: 1,755.

Avg Hours Per Response: 4 minutes.

Needs and Uses: Title 13 USC specifically requires that the Census Bureau collect and publish statistics for cotton ginned prior to 13 specified dates. This survey is the only source of data on current cotton ginnings. The USDA uses these data in making its monthly and annual crop production, classification, and production cost estimates. Data are used by the cotton industry and are considered vital in providing a stable market.

Affected Public: Businesses or other for-profit organizations and small businesses or organizations.

Frequency: Semi-monthly (CAg-1A thru CAg-1L). Annually (CAg-3, CAg-5, CAG-5a).

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-28815 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 452]

Approval for Expansion of Foreign-Trade Zone 89 Clark County, NV Within the Las Vegas Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

Whereas, the Nevada Development Authority, Grantee of Foreign-Trade Zone No. 89, has applied to the Board for authority to expand its general-purpose zone at sites in Clark County, Nevada, within the Las Vegas Customs port of entry;

Whereas, the application was accepted for filing on December 11, 1987, and notice inviting public comment was given in the **Federal Register** on December 18, 1987 (Docket 42-87, 52 FR 48137);

Whereas, the application was amended on January 28, 1988, withdrawing a site from the request;

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Las Vegas area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed December 11, 1987, as amended. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance

with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 4th day of December, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-28813 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 4, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The review covers one exporter of this merchandise to the United States, Rhone Poulenc Chimie de Base, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we determine that the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 32103) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988.

All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. During the review period such merchandise was classified under item number 421.3400 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period, and there are no known unliquidated entries.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent, Rhone Poulenc.

Comment 1: Rhone Poulenc contends that its margin should be based on data from the most recent review for which information is available. Rhone Poulenc has not sold ASM to the United States since 1985. The Department rejected as inadequate the company's questionnaire responses for both the 1984 and 1985 review periods. Assuming *arguendo* that the Department was justified, the next most recent information otherwise available was that used by the Department for the 1983 review period. Therefore, Rhone Poulenc contends, the 1983 data, adjusted for conditions existing in 1988, should form the basis of its margin in the current review.

Department's Position: We disagree. We verified through Customs that Rhone Poulenc did not ship ASM to the United States during the period of review. Consistent with our long-standing policy in administrative reviews covering periods where there are no shipments, we based the margin in this review on the margin found in the last review in which there were shipments. For the 1985 review period, the last period during which there were shipments, we determined that Rhone Poulenc's margin was 60 percent (*see* 52 FR 33856, September 9, 1987). Regardless of whether this rate was based on the best information otherwise available, we consider it to be a more appropriate rate than the 1983 rate because the 1985 rate is our most recent estimate of Rhone Poulenc's margin.

Comment 2. Rhone Poulenc contends that whatever antidumping margin is determined in this review period must be based on actual data. Section 776 of the Tariff Act states that, in the indicated circumstances, the Department must "use * * * information * * *" Simply adopting a rate from a prior proceeding does not comply with the statute. Instead, the statute requires the Department literally to "use" information, that is, data, in calculating a rate. Therefore, even if the Department were authorized to employ remote data from the 1980 investigation, the margin would have to be based on current currency exchange rates, interest rates, and substantive adjustment methods. Rhone Poulenc maintains that, since the most up-to-date information in the Department's possession is the 1983 review period data, and since the current rate must reflect conditions existing in 1988, not 1983, the Department should calculate the rate for the current review using the 1983 rate as the base and adjusting that rate for market conditions in 1988.

Department's Position: We disagree. Section 776 of the Tariff Act establishes rules for verification of information and the use of the best information otherwise available. It does not require the Department to simulate the most accurate and up-to-date rate using such speculative methods as those suggested by Rhone Poulenc. As explained in our response to *Comment 1*, we believe that the 1985 rate is the most appropriate dumping margin for Rhone Poulenc in this review. This margin will remain unchanged until, in a future administrative review, we determine that Rhone Poulenc has resumed shipments of ASM to the United States, and we calculate a different rate.

Final Results of Review

Based on our analysis of the comments received, we determine that the final results are the same as those presented in the preliminary results. We determine the margin to be:

Manufacturer/ Exporter	Time period	Margin (percent)
Rhone Poulenc	1/88-12/88	1 60

1 No shipments during the period; margin from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 60.00 percent for Rhone Poulenc. For any future shipments from the remaining known exporters not covered in this review, the cash deposit will continue to be at the rate for each of those firms published in the final results of the last administrative review covering the firm (53 FR 43251, October 26, 1988), or the antidumping duty order (46 FR 1667, January 7, 1981) if a review covering the firm has not been conducted.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1988, and who is unrelated to any reviewed firm, a cash deposit of 60.00 percent shall be required. This deposit requirement is effective for all shipments of anhydrous sodium metasilicate from France entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.22 of the Department's new regulations (54 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: December 1, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28811 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-809]

Antidumping Duty Order: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of certain small business telephone systems and subassemblies thereof from Japan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of certain small business telephone systems and subassemblies thereof for consumption from Japan made on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769, or (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:

The products covered by this order are certain small business telephone systems and subassemblies thereof, currently classified under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software

used on external data processing equipment.

As noted in the preliminary determination notice (54 FR 31978), the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 10, 1989, the Department made its final determination that certain small business telephone systems and subassemblies thereof from Japan are being sold at less than fair value (54 FR 42541, October 17, 1989). On November 29, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain small business telephone systems and subassemblies thereof from Japan. These antidumping duties will be assessed on all unliquidated entries of SBTS from Japan entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (54 FR 31978).

On or after the date of publication in the **Federal Register** of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin percentage
Toshiba Corp.	136.77%
Matsushita Electric Industrial Co., Ltd., Matsushita Communication Industrial Co. Ltd., Kyushu Matsushita Electric Co., Ltd.	178.93%
All Others	157.85%

This determination constitutes an antidumping duty order with respect to certain small business telephone systems and subassemblies thereof from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28809 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Administration

[A-583-806]

Antidumping Duty Order: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of certain small business telephone systems and subassemblies thereof from Taiwan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of certain small business telephone systems and subassemblies thereof for consumption from Taiwan, except those of Sun Moon Star, made on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Kathleen Boyce, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769, or 377-4198.

SUPPLEMENTARY INFORMATION: The products covered by this order are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capacity when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 10, 1989, the Department made its final determination that certain small business telephone systems and subassemblies thereof from Taiwan are being sold at less than fair value (54 FR 42543, October 17, 1989). On November 29, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain small business telephone systems and subassemblies thereof from Taiwan except those of Sun Moon Star. These antidumping duties will be assessed on all unliquidated entries of SBTS from Taiwan except those of Sun Moon Star entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (54 FR 31987).

On or after the date of publication in the **Federal Register** of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin percentage
Taiwan Nitsuko Co., Ltd.	129.73%
Sun Moon Star	0.00%
All Others	0.00%

This determination constitutes an antidumping duty order with respect to certain small business telephone systems and subassemblies thereof from Taiwan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: December 4, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-28810-Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States, G. Conradt & Sohn ("Conradt"), and the period December 1, 1987 through November 30, 1988.

We invited interested parties to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Jugelman, Office of Antidumping Compliance, Interntional Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 33256) the preliminary results of its administrative reveiw of the antidumping finding on animal glue and inedible gelatin from West Germany. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of West German animal glue and inedible gelatin. During this review period such merchandise was classifiable under item numbers 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchanidse is currently classifiable under Harmonized Tariff Schedule ("HTS") items 3503.00.20 and 3506.10.10 The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Conradt, and the period December 1, 1987 through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period and there are no known unliquidated entries.

Conradt requested revocation from the finding based on no shipments to the United States since 1976. Prusuant to § 353.25 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25), we determine that Conradt does not qualify for revocation because the absence of

shipments can no longer be used as the basis of revocation.

Final results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of review. We determine the margin to be:

Manufacturer/ exporter	Period	Margin (percent)
Conradt	12/1/87–11/30/88	[1] 67

[1] No shipments during the period; margin from the last period in which there were shipments.

Further, as provided for by § 353.22(c)(10) of the Department's regulations, a cash deposit of estimated antidumping duties of 67 percent shall be required for Conradt. For any shipments from the six remaining known manufacturers and/or exporters and the one known third-country reseller not covered in this review, the case deposit will be the same as the rates published in the final results of the last administrative review for each of these firms (49 FR 13565, April 5, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988 and who is unrelated to the reviewed frim or any previously reviewed firm, no cash deposit shall be required.

These cash deposit requirements apply to all shipments of West German animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 1, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–28812 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Alabama

December 5, 1989

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 05/1/90 to 04/30/91. The MBDC will operate in the Mobile, Alabama, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications January 15, 1990. Applications must be postmarked on or before January 15, 1990.

ADDRESS: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE., Suite 505, Atlanta, Georgia 30309, 404/347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia, Wednesday, December 27, 1989, at 9 a.m.

Dated: December 5, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 89–28858 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered Species; Modification of Permit; Southwest Fisheries Science Center (P77#36); Modification No. 1 to Permit No. 591

Pursuant to the provisions of Sections 217–222 of the Regulations Governing Endangered and Threatened Species Permits, Scientific Research Permit No. 591 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California, 92038 on October 30, 1989, (54 FR 47105), is modified as follows:

Section A.3 is added:

3. Up to 100 salvaged (found dead) olive ridley turtles (*Lepidochelys olivacea*) may be taken and imported.

This modification became effective on December 4, 1989.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–28748 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Correction

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Marine Mammals; Notice of Correction.

SUMMARY: The National Marine Fisheries Service is correcting the notice of application for a permit for the National Zoological Park—Smithsonian Institution (P6L). In notice document 89–25537, issued Tuesday, October 31, 1989, page 45776, paragraph 3 is revised as follows:

3. Name and Number of Marine Mammals: Harbor seals (*Phoca vitulina*), up to 218; * * *

Dated: December 4, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–28746 Filed 12–8–89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 91281-9281]

Mask Works; Extension of Existing Interim Orders

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Extension of existing interim orders issued under section 914 of the Semiconductor Chip Protection Act (SCPA), 17 U.S.C. 914.

SUMMARY: The Assistant Secretary and Commissioner of patents and Trademarks has determined that the existing interim orders issued under section 914 of the SCPA should be extended.

DATE: Existing interim orders for Japan and Sweden are hereby extended until July 31, 1991. Interim orders for the Member States of the European Communities, Australia, Austria, Canada, Finland and Switzerland are extended until December 31, 1990.

ADDRESS: Address correspondence to Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Commissioner of Patents and Trademarks has been delegated the task of determining when and under what conditions interim protection in the United States will be extended under section 914 of the SCPA to foreign "mask works," the series of related images representing a three-dimensional pattern in the layers of a semiconductor chip. In international parlance, mask works are also known as "integrated-circuit layout designs" or as "tophographies." To be eligible for interim mask work protection, it must be established that a foreign government is making good faith efforts and reasonable progress toward establishing a regime of protection substantially similar to that established under the SCPA, and that U.S. mask works are not subject to unauthorized distribution or commercial exploitation in the country concerned.

The Congress extended the Executive's authority to issue interim orders until July 31, 1991. Pub.L. 100–159 (1987). In doing so, Congress expressed its belief that "this process [under section 914] is promoting the protection of U.S. mask works abroad." H.R. Rep. No. 100–388, 100th Cong., 1st Sess. (1987).

Interim orders have been issued extending protection to 19 States. *See* 54 FR 13931 (April 6, 1989); *see also* 54 FR 22351 (May 23, 1989). Among those countries, Japan, Sweden, Austria and several Member States of the European Communities (EC) have laws in force.

On September 26, 1989, a Notice of Initiation of Proceeding was published at 54 FR 39491, whereby the Commissioner requested comments on the extension of interim orders issued under section 914. To allow sufficient time for a thorough review in the present proceeding, the Commissioner also extended the expiration date for the existing orders until December 31, 1989.

Comments were received from the Governments of Australia and Canada.

Summary of Comments

In its comments, the Government of Australia states that the "Circuit Layouts Act 1989" was passed by the Australian Parliament in May 1989. The Act, which will come into force sometime during 1990, will extend protection to mask works first commercially exploited in the United States, and works made by a U.S. citizen, national or resident. Prior to the Act's effective date, U.S. mask works will be protected on the basis of national treatment as artistic works under the "Copyright Act 1968."

The Government of Canada notes that a bill for the protection of "integrated-circuit topographies" is now being finalized and will be introduced in the Canadian Parliament in the near future, having been approved by the Canadian Cabinet in May 1988. The Canadian Government refers to the May 1989 diplomatic conference held in Washington under the auspices of the World Intellectual Property Organization (WIPO) to conclude a treaty for the protection of integrated-circuit layout designs. The Government states that its delegation was among those that sought to achieve a multilateral instrument that set adequate and effective minimum standards of protection. The compromises reached at the diplomatic conference, however, especially on the issues of compulsory licensing and term of protection, led Canada to reject the treaty, as did the United States and Japan. The Canadian Government affirms its hope that negotiations on trade-related aspects of intellectual property rights (TRIPS) within the General Agreement on Tariffs and Trade (GATT) will establish adequate standards of protection for integrated-circuit layout designs.

Discussion and Findings of the Commissioner

When the Commissioner last extended the interim orders in April 1989, he noted that all countries then subject to interim protection had closely cooperated with the United States to work toward establishment of the new "Treaty on Intellectual Property in Respect to Integrated Circuits," then under preparation within the WIPO. *See* 54 FR at 13932. In May 1989, a diplomatic conference for conclusion of the WIPO treaty was held in Washington at the invitation of the United States. Despite years of careful preparatory work intended to produce an effective multilateral system of chip layout-design protection, substantial compromises struck at the diplomatic conference resulted in a treaty with levels of protection that fall below international norms reflected in the laws of those countries subject to section 914 orders that have enacted chip protection legislation.

Among the treaty's deficiencies are a term of protection of insufficient duration, lack of sufficient negotiating history to support a clear prohibition against importation of products containing infringing chips, absence of any obligation for innocent infringers to

pay a royalty after notice of infringement, overly-broad compulsory licensing provisions, and an inadequate framework for dispute settlement among signatories.

As has been noted by Representative Robert W. Kastenmeier, Chairman of the House Subcommittee on Courts, Intellectual Property and the Administration of Justice, the transition provisions in section 914 were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). The legislative history of section 914 evinces congressional intent that the Executive use the issuance of interim protection orders as a means to encourage other nations to move expeditiously to establish regimes with levels of protection substantially similar to the SCPA. *See* H.R. Rept. 100–388, *supra*, at 3–4 (1987).

Based on the information available in this proceeding, the Commissioner has determined that the interim protection orders for Japan and Sweden should be extended until the expiration of statutory authority to grant such orders under section 914, that is, until July 31, 1991. Those countries have enacted laws providing protection on a level substantially similar to that of the SCPA, these laws have been in force for longer than one year, and practice under the laws reveals a high degree of effective protection for U.S. mask works.

The interim protection orders for all other countries—the Member States of the EC, Australia, Austria, Canada, Finland and Switzerland—will be extended for one year, until December 31, 1990. This will enable the Commissioner to review chip protection legislation as it comes into force in those countries, and as a practice under such legislation evolves. The Commissioner notes with approval that legislation is nearing completion in all countries subject to section 914 orders, and that the legislative texts reviewed would establish protection substantially similar to the SCPA.

In regard to the Member States of the EC, the Commissioner notes that legislation is already in force in a majority of the States. Interim orders for all twelve States will be extended for one year, however, to permit the Commissioner to evaluate the system of chip design protection to be provided in the Community as a whole when all laws are in place.

No evidence has been presented that nationals, domiciliaries or sovereign authorities or any country subject to interim protection orders are engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works.

Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9 of Title 17, United States Code

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based on the record of this proceeding commenced on September 26, 1989, I find that the governments of Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom have made and are making good-faith efforts toward providing protection for U.S. mask works. I find further that nationals, domiciliaries, and sovereign authorities of those countries, and persons controlled by them, are not engaged in the misappropriation, unauthorized distribution or unauthorized commercial exploitation of mask works. I find further that the extension of the expiration dates for interim orders will promote the purposes of the Semiconductor Chip Protection Act of 1984 and international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for Japan and Sweden are hereby extended and shall terminate on July 31, 1991. The existing interim orders for Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland and the United Kingdom are hereby extended and shall terminate on December 31, 1990.

Dated: November 30, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89–28761 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 18133, published on April 27, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Commissioner: This directive amends, but does not cancel, the directive of April 24, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the eight-month period which began on May 1, 1989 and extends through December 31, 1989.

Effective on December 12, 1989, the directive of April 24, 1989 is amended to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Peru:

Category	Adjusted 6 mon. limit [1]
219	9,348,510 square meters.
239/330	519,507 dozen of which not more than 358,491 dozen shall be in Categories 338–S/339–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–28822 Filed 12–8–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Custom port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Peru, as amended and extended by a Memorandum of Understanding dated March 3, 1989, establishes limits for the period January 1, 1990 through December 31, 1990.

The sublimit for Categories 338–S/339–S has been reduced to account for carryforward used during the previous restraint period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding, but are designed to assist only in the implementation of certain provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated March 3, 1989 between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Limits not in a Group:	
219	15,158,135 square meters
220	9,398,401 square meters
226/313	17,723,326 square meters of which not more than 3,342,755 square meters shall be in Category 226
300/607–K[1]	1,814,369 kilograms
301	1,133,981 kilograms
315	4,431,475 square meters
317/326	18,700,825 square meters of which not more than 7,533,508 square meters shall be in Category 326
338/339	700,000 dozen of which not more than 477,987 dozen shall be in Categories 338–S/339–S[2]
410	1,337,804 square meters
Cotton Apparel Group:	
237, 239, 330–336 and 340–359, as a group	14,623,229 square meters equivalent
Wool Group:	
400 and 414–469, as a group	3,762,573 square meters equivalent

[1] Category 300 and in Category 607–K, all HTS numbers except 5509.52.0000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

Imports charged to these category limits for the period May 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement and the MOU dated March 3, 1989 between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28823 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Macau

December 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Government of Macau, the U.S. Government has agreed to increase the current minimum consultation levels for Categories 239, 342 and 636.

A description of the textile and apparel categories in terms of HTS number is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC [illegible]

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 13, 1989, the directive of December 16, 1988 is amended further to increase the limits for the following categories:

Category	Amended twelve-month limit [1]
239	100,000 kilograms.
342	42,000 dozen.
636	18,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28824 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits and Sublimits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and sublimits.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits and sublimits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits and sublimits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1989.

Commission of Customs,

Department of the Treasury, Washington, DC [illegible]

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 6, 1989, the directive of December 22, 1988 is amended further to adjust the limits and sublimits for the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the United Mexican States:

Category	Adjusted twelve-month limit [1]
Limits not in a Group:	
336/636	216,794 dozen
340/640	435,024 dozen
341/641	860,177 dozen of which not more than 311,304 dozen shall be in Categories 341-Y/641-Y [2]

Category	Adjusted twelve-month limit [1]
347/348/647/648	4,531,500 dozen
351/651	849,869 dozen
352/652	2,943,951 dozen
604-A [3]	699,113 kilograms
604-O/607-O [4]	2,111,081 kilograms
Non-special regime category sublimits [1]:	
340/640	108,756 dozen
347/348/647/648	544,062 dozen
351/651	52,480 dozen
352/652	1,324,778 dozen

[1] The limits and sublimits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 341-Y/641-Y, only HTS numbers 6204.22.3060, 6206.30.3010, and 6206.30.3030 in Category 341-Y; and 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025 in Category 641-Y.

[3] In Category 604-A, only HTS number 5509.32.0000.

[4] In Category 604-O, all HTS numbers except 5509.32.0000; and in Category 607.0, all HTS numbers except 5509.53.0030 and 5509.53.0060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28825 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 4, 1989

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for Categories 313 and 315, the United States Government has decided to control imports in these categories for the period March 31, 1989 through March 30, 1990.

The United States remains committed to finding a solution concerning Categories 313 and 315. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 14986, published on April 14, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC [illegible]

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 7, 1989 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton and man-made fiber textile products in Categories 341/641 and 638/639, produced or manufactured in Thailand and exported during the period which began on March 31, 1989 and extends through March 30, 1990.

Effective on December 11, 1989, you are directed to amend the August 7, 1989 directive to include limits for cotton textile products in the following categories:

Category	Twelve-Month Limit [1]
313/11	712,810 square meters.
315/15	375,452 square meters.

[1] The limits have not been adjusted to account for any imports exported after March 30, 1989.

You are directed to amend the current counting period for Categories 313 and 315 to end on March 30, 1989.

Imports charged to the limits for Categories 313 and 315 for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances.

For imports through October 31, 1989, charges against the above restraint levels shall be 5,889,218 square meters for Category 313 and 7,285,655 square meters for Category 315. These same quantities shall be deducted from the counting period that ended on March 30, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28821 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

The Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1990

December 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUMMARY: The Committee for the Implementation of Textile Agreements announces that availability of the 1990 CORRELATION, based on the Harmonized Tariff Schedule of the United States.

Copies of the CORRELATION may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Room H3100, Washington, DC 20230, ATTN: CORRELATION, at a cost of $30 per copy. Checks or money orders

should be made payable to the U.S. Department of Commerce.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28827 Filed 12-8-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Delivery Schedules.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, GSA (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offer to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 3,440; responses per respondent, 5; total annual responses, 17,200; hours per response, .167; and total response burden hours, 2,872.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0043, Delivery Schedule.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28849 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-JC-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of currently approved information collection requirements concerning Technical Proposal—2-Step Sealed Bidding.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7628.

SUPPLEMENTARY INFORMATION: a. *Purpose*: Two-step sealed bidding is a method of contracting designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps.

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approacy, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one.

The requested information is needed, in the absence of adequate specifications, to develop a sufficiently descriptive and not unduly restrictive statement of the Government's requirements and to determine the acceptability of proposals received. The contracting officer evaluates the acceptability of the information received, based on the criteria in the request for proposals.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, 3,225; responses per respondent, 1; total annual responses, 3,225; hours per response, 8; and total response burden hours, 25,800.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0041, Technical Proposal—2-Step Sealed Bidding.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28850 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-JC-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an

extension of a currently approved information collection requirements concerning Bid Simple Disposition Instructions.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Firms submitting bids for Government contracts are occasionally required to submit samples of the product offered to show the characteristics of the item. When bid samples are required, bidders are requested to provide instructions for disposition of the samples after the Government has had a chance to inspect them. If no instructions are received, the samples are returned, collect to the bidder.

The information is used by the contracting office to dispose of the bid samples in the manner requested by the submitting firm.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; hours per response, .167; and total response burden hours, 1,334.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0040, Bid Sample Disposition Instructions.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28851 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-JC

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Place of Performance.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) Determine bidder responsibility; (b) Determine price reasonableness; (c) Conduct plant or source inspections; and (d) Determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 79,397; responses per respondent, 14; total annual responses, 1,111,558; hours per response, .07; and total response burden hours, 77,810.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0047, Place of Performance.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28852 Filed 12-8-89; 8:45 am]

BILLING CODE 6820-JC-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperowrk Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection regarding Descriptive Literature.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* "Descriptive literature" means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

The contracting officer evaluates the information received to determine the acceptability of the product in confirming to specification and solicitation requirements, e.g., design, materials, components, and performance characteristics.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; hour per response, .167; and total response burden hours, 1,334.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202)

523–4755. Please cite OMB Control No. 9000–0039, Descriptive Literature.

Dated: December 1, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–28853 Filed 12–8–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Response Actions at FUSRAP Sites in Tonawanda, New York. Notice Regarding Inclusion of the Seaway Site in the Remedial Investigation/ Feasibility Study—Environmental Impact Statement for the Tonawanda Sites.

AGENCY: Department of Energy (DOE).

ACTION: Notice Regarding Inclusion of the Seaway site in the ongoing Remedial Investigation/Feasibility Study—Environmental Impact Statement (RI/FS-EIS) or 3 other Formerly Utilized Sites Remedial Action Project (FUSRAP) sites in Tonawanda, New York.

SUMMARY: Notice is hereby given that DOE as part of its FUSRAP, is considering inclusion of the Seaway site in Tonawanda, New York, in the comprehensive environmental review and analysis process which is underway for the Linde and Ashland I and II sites in Tonawanda, New York. This process, which is being conducted in accordance with the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), was initiated when DOE issued a Notice of Intent (NOI) (53 FR 11901) on April 11, 1988, that it would undertake studies to determine the nature, extent, and environmental impacts of existing radioactive contamination at the sites and to evaluate alternative response actions. Inclusion of the Seaway site is being considered primarily because of public comments received since the NOI was issued that support including the Seaway site in the total project.

The purpose of this Notice is to present pertinent background information on the RI/FS-EIS and to solicit comments and suggestions for DOE consideration of whether to expand the scope of the RI/FS-EIS to include Seaway. Federal, State, and local agencies, interested organizations, and individuals desiring to submit comments or suggestions regarding the inclusion of the Seaway site in the RI/FS-EIS are invited to do so. Comments received during the public comment period will be addressed in the environmental documents for these sites. DOE's decision on how to proceed with Seaway will be published in the Federal Register as well as the Tonawanda area newspapers.

DATES: We request that written comments or suggestions be provided within 30 days of the publication of this Notice.

ADDRESSES: All comments or suggestions on the inclusion of the Seaway site in the RI/FS-EIS, and general questions or comments concerning the FUSRAP project or the individual sites, should be addressed to: Peter J. Gross, Director, Technical Services Division, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8723, (615) 574–0948.

Questions specifically relating to CERCLA should be forwarded to: John Tseng, Director, Office of Environmental Guidance and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9024.

Questions specifically relating to NEPA should be forwarded to: Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background

FUSRAP was established in 1974 by the U.S. Atomic Energy Commission (AEC), a statutory predecessor of DOE. The primary objective of FUSRAP is to identify and decontaminate sites where radioactive material was handled or processed under government nuclear programs. The goals of decontamination under FUSRAP are (1) to control radioactive contamination at the sites, in compliance with applicable criteria for the protection of human health and the environment, and (2) to certify the sites are in compliance with radiological criteria and guidelines after decontamination has taken place, to the extent possible.

In April 1988, DOE issued a Notice of Intent (NOI) which initiated plans for conducting the studies necessary to evaluate the extent of, the risk from, and the method to address contamination on four FUSRAP sites in New York State. These studies would integrate the requirements of both NEPA and CERCLA, and the EIS requirements under NEPA would be incorporated into the RI/FS documents of CERCLA. The NOI indicated that DOE planned to prepare an RI/FS-EIS for the four sites: Ashland I and II, Linde, and Colonie. The analyses for these sites were being presented as a single set of documents to allow DOE to make a comprehensive evaluation of disposal requirements for the FUSRAP sites. The NOI also mentioned that a fifth site, Seaway, was being addressed by a separate, independent process. The environmental documentation for this separate process would be an Engineering Evaluation/ Cost Analysis (EE/CA) supplemented as necessary to meet the requirements of NEPA.

Both the RI/FS and EE/CA approaches are established under EPA guidelines developed for compliance with CERCLA. Both approaches identify a range of potential actions applicable to remedying the site contamination and then evaluate those options to select the most appropriate course of action. The major difference in the processes is the extent of documentation required prior to implementation. The RI/FS process is typically applied to complex analyses where many options may be applicable and many alternatives many need to be implemented to resolve all of the site's problems. The EE/CA process is used for expedited response actions where the response action process is less complex and the alternatives are more fully understood. The EE/CA process therefore leads to the selection of the response action in the shortened time frame.

The DOE reasons for proceeding with EE/CA for Seaway were stated in the NOI and are provided here for completeness. "The Seaway site is being treated independently because the scope of the response action is expected to be very limited and does not appear to have the potential to result in a significant impact. Further, the property owner's use of the site is restricted until DOE reaches a decision and implements the response action. The proposed response action would be to stablize the radioactive waste in-place. Preliminary analysis indicates that this would be suitable because of the current and future use of the site (i.e., an industrial landfill) and the very low average concentration of radioactive waste at the site."

The April 1988 NOI initiated the scoping/planning process for the RI/FS-EIS process and DOE conducted public meetings in the Town of Tonawanda and in Colonie to gather public comments, input, and concerns to be addressed during the course of the environmental review studies. At these meetings, and in subsequently submitted written comments, the citizens of the Tonawanda area, as well as local, County, State, and Federal elected officials, expressed strong concern over the potential that waste from Colonie could be brought to Tonawanda for disposal. Congress included language in the congressional report which stated that "The conferees agree that DOE should not move or study the move of any FUSRAP waste in the State of New York to the town of Tonawanda New York." DOE has indicated that they will honor this language and has since taken action to separate the environmental review and analysis process for Colonie and the Tonawanda sites.

Following resolution of the issue of the environmental analysis and review process for Colonie, public concern, as represented to DOE, now revolves around two issues: (1) The removal of all waste from the Town of Tonawanda, and (2) the desire for an EIS on the waste in the Seaway landfill. Regarding the ultimate disposition of the contaminated material, DOE must first complete the RI/FS–EIS process to fully evaluate the impacts of applicable remedial action alternatives. To be responsive to the public's desire for an EIS related to the Seaway site, DOE is now considering incorporating the analysis of the Seaway site in the ongoing RI/FS–EIS process for the other Tonawanda FUSRAP sites. DOE has suspended the separate Seaway process and developed an approach for including the Seaway in the RI/FS–EIS for the other Tonawanda sites, pending comment from affected parties on the approach. DOE is most interested in receiving comments from the affected public, interested parties, elected officials and State and Federal agencies.

The following information provides pertinent background information related to this action including brief site descriptions and an overview of the schedule for completion of the RI/FS–EIS.

Site Descriptions

Linde Site—The Linde site is an operating manufacturing facility employing about 1,700 individuals. A portion of the site was operated for the processing of uranium from 1942 through 1948 by Union Carbide's Linde Air Products Corporation as part of a Federal research and development program for the Manhattan Engineer District. The total volume of radioactive wastes expected to be generated by decontamination of the Linde facility is estimated to be about 26,000 cubic yards. The wastes are low-activity, long-lived radioactive wastes consisting primarily of uranium contaminated soil and rubble. (For a further description of the site, see the April 11, 1988 NOI.)

Ashland I Site—The Ashland I site is a portion of the Ashland Oil Company's Tonawanda refinery which is no longer in service. The site was used for the disposal of uranium tailings generated from processing activities at the Linde facility in the 1940's. It is estimated that about 84,000 cubic yards of contaminated soil currently exist at Ashland I. (For a further description of the site, see the April 11, 1988 NOI.)

Seaway Site—The Seaway Industrial Park is an operating landfill of about 100 acres. The site is currently owned by the Seaway Industrial Park Development Co., Inc., and operated by Browning Ferris Industries (BFI), through its subsidiary Niagara Landfill, Inc. The site contains of a mound of refuse and fill material which is about 95 feet high at some points. In 1974, Ashland Oil Company transported approximately 6,000 cubic yards of radioactivity contaminated soils from the Ashland I property to the adjacent Seaway property and dumped it in three separate areas toward the northern end of the site. Area A consists of 10 acres. Area B is a small area, about 0.5 acre directly south of Area A. Area C covers about 1.5 acres in a narrow crescent shape to the southwest of Area B. Since its placement in 1974, portions of the waste residue have become buried under refuse and fill material. Areas B and C are entirely covered with up to 40 feet of material, and about 40 percent of Area A is covered by a layer of refuse that ranges up to 10 feet in depth. Because the contaminated soils move to the Seaway site have mixed with previously uncontaminated soil, it is currently estimated that the radiologically contaminated material on the Seaway site totals about 117,000 cubic yards. BFI has been requested by the New York State Department of Environmental Conservation (NYSDEC) to refrain from further covering of Area A with refuse.

Ashland II Site—The Ashland II site is separated from the Seaway site by a small strip of land owned by Niagara Mohawk. The site is not presently occupied or developed. The radioactively contaminated portion of the site is a fill area covering about 2 acres and the contamination is estimated to be about 48,000 cubic yards. (For further description of the site, see the April 11, 1988 NOI.)

Considering the contamination present at all four of the Tonawanda sites, the total waste volume is projected to be approximately 275,000 cubic yards with an estimated total curie content of less than 130 Ci.

Schedule for the RI/FS–EIS Process

Provided congressional funding for the FUSRAP is maintained at projected levels, DOE could issue a draft RI/FS–EIS and a draft Proposed Plan for the Tonawanda sites in 1992 if a final decision is made to include Seaway. These reports will be issued for a 45-day public review and comment period. Also at that time, there will be a public hearing so that oral as well as written comments can be provided on the draft documents. In 1993, DOE expects to issue the final RI/FS–EIS and Proposed Plan, which will include the response to public comments received on the draft reports. The DOE will select a remedial action alternative for each of the sites in one or more Records of Decision to be issued no sooner than 30 days after the final RI/FS–EIS is issued. If the Seaway EE/CA process proceeds independently, a response action could be selected as early as the winter of 1990.

Public participation in the environmental review and analysis process is encouraged. Public information meetings will be held when significant new phases of the work are planned (i.e., when important new information becomes available) or when community concern warrants a meeting. Fact sheets, technical reports, newsletters, and other information relating to the DOE activities at these four sites will be placed in the Kenmore Branch Library at the address noted below: Kenmore Branch Library, 160 Delaware Road, Village of Kenmore, New York 14217.

Nothing in this Notice or the documents to be prepared is intended to represent a statement on the applicability of NEPA to remedial actions under CERCLA.

Dated at Washington DC, this 5th day of December 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–28889 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center Financial Assistance Award; Intent to Award Grant to the Radian Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance (Grant) Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, the Pittsburgh Energy Technology Center intends to award a Financial Assistance Action based on an unsolicited proposal submitted by the Radian Corporation. The applicant is

entitled "The Joint Participation by the U.S. DOE in a Program to Evaluate Natural Gas Co-Firing at the Warrick Power Plant."

Scope: The objective of the proposed research effort is to:

(1) Extract the operational benefits of co-firing natural gas with coal. These benefits relate to reducing pulverizer loading, reducing start-up fuel costs, reducing the impact of slagging, reducing excess air requirements, and increasing generating capabilities without exceeding SO_x emission requirements.

(2) Develop broadly applicable concepts for co-firing natural gas in coal-fired boilers and to evaluate those concepts in full-scale units under actual operating conditions.

(3) Perform tests on a 144 MW wall-fired boiler and a 300 MW opposed-wall, cell-fired boiler. These two differently designed utilizing scale boilers are ideal candidates for testing the potential for natural gas co-firing.

(4) The project w.. also quantify and document the operational benefits and the costs associated with them. Hence, a more general purpose of this transaction is the transfer of this quantified experience to the sector of the public for which it will be most useful.

(5) Co-firing is considered to be a near-term technology for reducing emissions which contribute to acid rain. If co-firing is to succeed as a near-term technology, information on its implementation must be quickly disseminated to those who could first utilize it. DOE participation in this project through this transaction will accomplish this.

Government involvement in the project will be limited to participating in project meetings, reviewing reports, and project deliverables, and recommending changes in overall technical direction and scope. DOE will not execute any decision making responsibilities or direct work activities. Given DOE's limited role in both project direction and project funding, a grant has been determined the appropriate instrument for this transaction.

The term of this grant is for a seventeen (17) month period at an estimated value of $230.000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, Attention: Cynthia Y. Mitchell, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236. Telephone: (412) 892–4862.

Dated: November 29, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89–28890 Filed 12–8–89; 8:45 am]

BILLING CODE [illegible]

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, reinstatement, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, EIA's Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–6
3. 1905–0167
4. Coal Distribution Report
5. Revision—The EIA proposes only minor changes to Form EIA–6. (Form EIA–6 is one of seven forms that constitute the Coal Program Package. The other six forms are the EIA–1, 3, 4, 5, 7A, and 20.) Respondents will be asked to report in calendar year 1990 by coal-producing State. Responders originally reported by coal-producing district of origin. Three states have been divided (Kentucky, Pennsylvania, and West Virginia) to maintain historical continuity of published data and to track specific coal markets supplied by parts of these three States.
6. Quarterly
7. Mandatory
8. Businesses or other for-profit
9. 1,400 respondents
10. 5,600 responses annually
11. The estimated average hours per response for each of the respondents to the EIA–6 is 2.5 burden hours.
12. The estimated total reporting hours for the EIA–6 are 14,000.
13. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 6, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89–28893 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES90–14–000, et al.]

Duquesne Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Duquesne Light Company

[Docket No. ES90–14–000]

Take notice that on November 29, 1989, Duquesne Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to Section 204 of the Federal Power Act, to issue not more than $250 million of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date no later than December 31, 1992.

Comment date: December 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Utilities Company

[Docket No. ES90–15–000]

Take notice that on November 30, 1989, Citizens Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), seeking authority pursuant to Section 204 of the Federal Power Act, authorizing the issuance of short-term promissory notes during the period ending January 19, 1992, in aggregate principal amount not to exceed $100 million at any one time.

Comment date: December 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Indianapolis Power & Light Company

[Docket No. ER90–80–000]

Take notice that Indianapolis Power & Light Company on November 24, 1989, tendered an amendment to the filing made October 20, 1989 of Modification No. 8 to the Interconnection Agreement dated December 2, 1968, (the 1968 Agreement) between Indianapolis Power & Light Company (IPL) and Souther Indiana Gas and Electric Company (SIGECO). The 1968 Ageement is designated as Rate Schedule FPC No. 8.

The amended filing provides for fixed as opposed to variable energy charges in Service Schedule G to Modification No. 8 which covers specific transmission by SIGECO. A waiver of the 60-day notice requirement is requested to make Modification No. 8 effective December 31, 1989.

Copies of the amended filing were mailed to Southern Indiana Gas and Electric Company, Inc. and the Indiana Utility Regulatory Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER90–82–000]

Take notice that on November 22, 1989, Boston Edison Company tendered for filing supplements to its Rate schedules FPC Nos. 47 and 51 for service to the Town of Concord and Wellesley, Massachusetts. The supplements provide for the payment by Boston Edison to the Towns of amounts that Boston Edison estimates it will be required to refund to the Towns in Docket Nos. ER86–562–001 and ER87–561–001 as a result of the Commission's Opinion Nos. 299 and 299–A in Docket No. ER84–705–001.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the two Towns and Massachusetts Department of Public Utilities.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp, d.b.a. Utah Power & Light Company and Pacific Power & Light Company

[Docket No. ER90–83–000]

Take notice that on November 29, 1989, PacifiCorp, d.b.a. Pacific Power & Light Company and Utah Power & Light Company (Utah) tendered for filing, in accordance with 18 C.F.R. § 35.12, an Antelope Substation Capacity Entitlement, Operation and Maintenance Agreement between Idaho Power Company (Idaho) and Utah. The Agreement provides Idaho with contract rights in certain facilities located at the Antelope Substation to enable Idaho to supply electric power and energy to the Department of Energy's INEL site.

Utah requests a waiver of the Commission's notice requirements to permit the Agreement to become effective retroactively on October 17, 1989, the date of execution.

Copies of this filing were served on Idaho Power Company, Idaho Public Utilities Commission, and Department of Energy at INEL, and the Utah Public Service Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER90–84–000]

Take notice that on November 29, 1989, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of Service Schedule I to the Master Interconnection Agreement between RNM and Plains Electric Generation and Transmission Cooperative, Inc. (PGT) [PNM Rate Schedule FPC No. 31, Supplement 32).

Consistent with PGT's Notice of Termination of Service Schedule I, effective as of December 31, 1986, PNM requests waiver of the notice requirements of 18 CFR 35.15 to permit the proposed termination to be effective as of December 31, 1986.

Comment date: December 15, 1989, in accordance with Standard paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER90–85–000]

Take notice that on November 29, 1989, Southern California Edison Company (Edison) tendered for filing, the following amendment:

Amendment No. 1 to the Edison-Washington Between Southern California Edison Company and Washington Water Power Company

The Amendment revises the Agreement to comply with § 35.23 of the FERC regulations and deletes provisions regarding Recallable Energy.

The Agreement is effective as of February 1, 1989, and terminates on thirty (30) days' advance written notice by either Party.

Edison requests waiver of the notice provision under § 35.3 of the Commission's regulations. Edison further requests the assignment of an effective date of February 1, 1989, to coincide with the effective date specified in the Amendment and the Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

BEST COPY AVAILABLE

8. Duke Power Company

[Docket No. ER90–86–000]

Take notice that Duke Power Company (Duke) on November 29, 1989 tendered for filing amendments dated November 13, 1989 to Service Schedule C and Service Schedule E of the Interconnection Agreement between Duke and Yadkin, Inc. (Yadkin) dated October 17, 1983, as amended. The November 13, 1989 amendments were negotiated by the parties in order to maintain the production of aluminum at the Badin Works. Under the terms of the proposed amendment to Service Schedule C a floor and ceiling rate is established for rates to Yadkin Inc. The specific rate will vary with the price of aluminum. Service Schedule E limits the amount of energy in the Storage Energy Account.

Because Yadkin anticipates that purchases under the proposed amendments may begin as early as January 1, 1990, Duke requests an effective date of January 1, 1990.

Copies of this filing were served on Yadkin, Inc., the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 15, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28766 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–274–000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission

[Docket No. CP90–274–000]

November 30, 1989.

Take notice that on November 22, 1989, CNG Transmission Corporation (CNG) 445 West Main St., Clarksburg, West Virginia 26302–2450, filed in Docket No. CP90–274–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide transportation service for various shippers under CNG's blanket certificate issued in Docket No. CP86–311–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket Number	Shipper Customer	Commence Date	Max. Daily DT Avg. Daily DT Est. Annual DT	Receipt Point	Delivery Point or LDC
ST90–468	1. NGC Transportation, Inc.	10–5–89	10,000 735 268,275	A	H&B.
ST90–467	2. Soldiers & Sailors Memorial Hospital	11–2–89	500 96 35,040	C	North Penn.

Legend of Local Distribution Companies (LDC) or Delivery Points:
H&B—Hanley & Bird.
North Penn—North Penn Company.
Legend of Receipt Points:
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
C—Various interconnects between Texas Gas Transmission Corp. and CNG.

2. Tennessee Gas Pipeline Company

[Docket No. CP90–280–000]

November 30, 1989.

Take notice that on November 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O., Box 2511, Houston, Texas 77252, filed in Docket No. CP90–280–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Transworld Oil U.S.A., Inc. (Transworld), a marketer, under the blanket certificate issued in Docket No. CP87–115–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 2, 1989, under its Rate Schedule IT, it proposes to transport up to 103,200 dekatherms (dt) per day equivalent of natural gas for Transworld. Tennessee states that it would transport the gas for Transworld from receipt points located offshore Louisiana and in the states of Louisiana and Texas to ultimate points of delivery located in the states of Massachusetts and New York.

Tennessee advises that service under § 284.223(a) commenced October 19, 1989, as reported in Docket No. ST90–450 (filed November 9, 1989). Tennessee further advises that it would transport 103,200 dt on an average day and 37,668,000 dt annually.

Comment date: January 8, 1989, in accordance with Standard Paragraph G at the end of this section.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–277–000]

November 30, 1989.

Take notice that on November 27, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90–277–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one new delivery point and appurtenant facilities as a jurisdictional sales facility to deliver gas to Peoples Natural Gas Company, Division of Utilicorp United, Inc. (Peoples) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to operate one delivery point to accommodate jurisdictional natural gas deliveries to the Lac qui Parle Valley School and small residential end-users in Lac qui Parle County, Minnesota to be served by Peoples. Northern states that the volumes delivered to Peoples will be served from the existing firm entitlement of Madison, Minnesota and that no reassignment of volumes will be made to Lac qui Parle from Madison. Northern further states that the estimated fifth year peak day and annual volumes are 239 Mcf and 19,700 Mcf respectively and that the end-users would be residential and school heating.

Northern asserts that the natural gas delivered at the proposed delivery point would be served from Peoples firm entitlement for delivery to Madison, Minnesota and that the total volumes delivered to Peoples would not exceed its authorized firm entitlement.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this section.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–279–000]

November 30, 1989.

Take notice that on November 27, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77002–1188, filed in Docket No. CP90–279–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Northern states that it proposes to transports, on a firm basis, up to 10,000 MMBtu of natural gas per day for Arco from a receipt point in Hemphill County, Texas, to a delivery point in Yoakum County, Texas. Northern anticipates transporting 7,500 MMBtu of natural gas on an average day and 3,650,000 MMBtu of natural gas on an annual basis. Northern also states that construction of facilities will not be required to provide the proposed service.

Northern states that the transportation of natural gas for Arco commenced on September 27, 1989, as reported in Docket No. ST90–182–000, for a 120-day period pursuant to § 284.223(a)(1) of the of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this section.

5. Tarpon Transmission Company

[Docket No. CP90–283–000]

December 1, 1989

Take notice that on November 28, 1989, Tarpon Transmission Company (Tarpon), Post Office Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP90–283–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of LL&E Gas Marketing, Inc. (LL&E), a producer of natural gas, under its blanket authorization issued in Docket No. CP88–89–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon would perform the proposed interruptible transportation service for LL&E, pursuant to a interruptible transportation service agreement dated August 25, 1989 (No. TI–88–030). The transportation agreement is effective for a primary term of one year from the date of first delivery of gas or the date on which the parties mutually agree to terminate this agreement. The agreement shall continue from month to month after expiration of the primary term unless either party terminates the agreement upon 30 days' prior written notice. Tarpon proposes to transport up to 15,330 MMBtu of natual gas on a peak day; 3,066 MMBtu on an average day; and on an annual basis 1,119,090 MMBtu of natural gas for LL&E. Tarpon proposes to transport the gas from an existing point of receipt located in Eugene Island Area [S.A) Block 381, Offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal Area, South Addition, Offshore Louisiana. Tarpon avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tarpon commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90–569–000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP90–275–000]

December 1, 1989.

Take notice that on November 22, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–275–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 56.25 miles of 24-inch pipeline and appurtenant facilities in Clinton and Madison Counties, Illinois and St. Louis County, Missouri at an estimated cost of $29.4 million in order to effectuate the firm transportation of up to a maximum of 200,000 Mcf of natural gas per day for Laclede Gas Company (Laclede), a local distribution company serving the St. Louis, Missouri metropolitan area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the application is intended to be competitive with, and a partial alternative to, the application filed by Mississippi River Transmission Corporation (MRT) in Docket No. CP88–1991–000. Natural requests that pursuant to Section 385.212 of the Commission's Rules that its application be consolidated with the application filed by MRT in Docket No. CP88–1991–000. Natural states that its application offers a superior alternative for a portion of the services covered by MRT's proposal,

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and should be certificated in lieu thereof.

Natural states that the facilities would interconnect its Gulf Coast Mainline at its Compressor Station 310 near Centralia, in Clinton County, Illinois, with Laclede's local distribution system at a delivery point to be located in Section 36, Township 47 North, Range 7 East, St. Louis County, Missouri (Chain of Rocks Delivery Point).

Natural states that, in recent years, portions of its pipeline system have been under-subscribed on a firm basis. To encourage utilization of the under-subscribed sections, Natural states that it has had to offer discounts, particularly in offpeak periods to maintain throughput. Portions of its system remain under-subscribed on a firm basis and Natural states this capacity would be available to Laclede subject only to the operation of Natural's first-come, first-served FTS request for service.

Natural states that its rates are sufficient to cover the cost of the new facilities and still provide a contribution to the overall cost of service. Natural states that the cost of the new pipeline to the St. Louis area would be less than the additional transportation revenues that its operation is projected to bring to Natural's system, as a whole. At the same time, Natural states that its FTS service would be considerably less expensive than MRT's firm sales service. Based on a 100 percent load factor unit rate, Natural states that savings to Laclede under its proposal amounts to $.0445/MMBtu. Natural compares MRT's non-gas cost sales rates under MRT's Rate Schedule CD–1 (100 percent load factor rate—$0.4397) to its Natural's FTS transportation rate (100 percent load factor rate—$0.3952). Natural states that it assumes that gas is received in Natural's Southern Zone and transported an average of 200 miles before entering Natural's Northern Zone, where the proposed new line and delivery point into Laclede would be located.

Natural states that MRT is currently Laclede's sole supplier and transporter of natural gas, and that certification of its proposal herein would increase competition in the St. Louis area to the overall benefit of Laclede and its customers by giving Laclede a lower cost alternative of firm transportaion in lieu of firm sales service from MRT. Moreover, Natural states that its new line would available to all manner of shipper customers in and around the St. Louis metropolitan area.

In addition to such savings, Natural states that significantly greater benefits would accrue to Laclede by purchasing gas supply directly from suppliers. Although its proposal involves the construction of a new pipeline into the St. Louis area, Natural states that Laclede could immediately augment its supply by purchasing supplies on Natural's system and shipping such gas to St. Louis via natural and the newly open access MRT system. Moreover, Natural states that the strategic location of its existing pipeline system as well as the existing or possible new interconnections between other pipelines and Natural enables gas to flow into Natural's system from nearly any supply source in the United States or Canada. Such access could, Natural avers, result in significant gas purchase cost savings to Laclede while also providing Laclede with increased gas supply security. Natural states that the proposed facilities will be financed from funds on hand.

Natural states that its application and MRT's application are mutually exclusive and duplicative, and that consolidation is the only efficient and effective method of according due consideration to the relative merits of these applications. Because of the overlapping nature of these projects, Natural moves the consolidation of its proposal with MRT's proposal in Docket No. CP89–1991–000 pursuant to § 385.212 of the Commission's Rules.

Finally, Natural states that the environmental impact resulting from the construction and operation of the facilities proposed herein will not be significant. In particular, Natural believes that certification of the proposed facilities will not be a "major federal action significantly affecting the quality of the human environment."

Comment date: December 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraph:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28767 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–289–000, et al.]

Northern Natural Gas Co., et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–289–000]

December 4, 1989.

Take notice that on November 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–289–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptive transportation service for BHP Gas Marketing Company (BHP), a marketer, under the blanket certicate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for BHP. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that services under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–243 (filed October 28, 1989). Northern further advises that it would transport 52,500 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: January 18, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–290–000]

December 4, 1989.

Take notice that on November 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–290–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for PSI. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company for the account of PSI.

Northern advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–244 (filed October 28, 1989). Northern further advises that it would transport 37,500 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: January 18, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP90–282–000]

December 5, 1989.

Take notice that on November 28, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–282–000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Reliance Gas Marketing Company (Reliance) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 40,000 MMBtu of natural gas for Reliance, with an estimated average daily quantity of 5,000 MMBtu. On an annual basis, Reliance estimates a volume of 1,825,000 MMBtu.

Transportation service for Reliance commenced October 19, 1989, under the 120-day automatic provisions of Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–295.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Trancontinental Gas Pipe Line Corporation

[Docket No. CP90–287–000]

December 5, 1989.

Take notice that on November 29, 1989, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396 Houston, Texas 77251, filed in Docket No. CP90–287–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Citizens Gas Supply Company (Citizens), a marketer of natural gas, under Transco's blanket certificate issued in Docket No. CP88–328–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport on an interruptible basis up to 345,000 dt equivalent of natural gas on a peak day, 345,000 dt equivalent on an average day and 125,925,000 dt equivalent on an annual basis for Citizens. Transco states that it would perform the transportation service for Citizens and under Transco's Rate Schedule IT. Transco indicates that it would transport the gas from receipt points located on Transco's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, New Jersey and Pennsylvania to various delivery points located in Louisiana, Texas, Georgia, South Carolina, North Carolina, Virginia, Delaware, Pennsylvania, New Jersey and New York.

It is explained that the service commenced September 30, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–173. Transco indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP90–285–000]

December 5, 1989.

Take notice that on November 29, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP90–285–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Texaco Gas Marketing, Inc. (Shipper), under its blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 51,500 MMBtu on a peak day, 51,500 MMBtu on an average day and 18,797,500 MMBtu on an annual basis. United also states that pursuant to a Transportation Agreement dated July 14, 1988 as amended on September 19, 1989 between the United and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from

points of receipt located in various counties in Louisiana and Mississippi. The points of delivery and ultimate points of delivery are located in Mobil County, Alabama, Santa Rosa and Ercambia, Florida and multiple counties in Louisiana and Mississippi.

United further states that it commenced this service on October 24, 1989, as reported in Docket No. ST90–404–000.

Comment date: January 19, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP90–295–000]

December 5, 1989.

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–295–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for The Polaris Corporation (Polaris), a local distribution company, under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 70,000 MMBtu of natural gas on a peak day, 25,000 MMBtu on an average day and 9,125,000 MMBtu on an annual basis for Polaris. Southern states that it would perform the transportation service for Polaris under Southern's Rate Schedule IT. Southern indicates that it would transport the gas from numerous receipt points to a delivery point located in Iberville Parish, Louisiana.

It is explained that the service commenced September 29, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–122. Southern indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28768 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–3–49–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that ANR Pipeline Company ("ANR") on November 30, 1989 tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, six (6) copies of the tariff sheet, Twenty-Sixth Revised Sheet No. 18, to be effective January 1, 1990.

Twenty-Sixth Revised Sheet No. 18 of ANR's FERC Gas Tariff, Original Volume No. 1, reflects a net decrease of .25¢ per dekatherm in one-part rates and the commodity components of the two-part rates. This decrease is the result of a decrease in the GRI Adjustment to 1.26¢ per dekatherm, as approved by the Commission in its Opinion No. 334, issued at Docket No. RP89–187–000 on October 10, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28762 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[EL90–1–000

Adirondack Hydro Development Corp.; Filing

December 5, 1989.

Take notice that on October 20, 1989, Adirondack Development Corporation (Adirondack or petitioner) submitted for filing a petition for declaratory order.[1] Petitioner intends to apply for Commission certification or the New York State Dam Project No. 7481 [2] as a so-called "small power production facility" (16 U.S.C. 796(17)(A)) to qualify for the benefits afforded to such facilities under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 8(d)(6)(e) of the Electric Consumers Protection Act of 1986 (ECPA) established a moratorium on the application of section 210 PURPA benefits to projects, such as Project No. 7481, that use new dams or diversions, with certain exceptions for pending project requests (so-called "grandfather" provisions). Projects that come within the ECPA moratorium may qualify for PURPA benefits when the moratorium ends if they meet certain environmental criteria under section 210(j) of PURPA, as amended by section 8(a) of ECPA. The petition for declaratory order requests alternative Commission findings that either Project No. 7481 qualifies under the "grandfather" provisions and therefore does not come within the moratorium, that it meets the environmental criteria section 8(a) of ECPA.[3]

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214. All such comments, protests, and motions should be filed fifteen days after Federal Register publication of this notice. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28781 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[1] On November 8, 1989, petitioner filed a supplement to its petition because petitioner will lose tax credits needed to help finance the project if petitioner fails to begin operating the project by the end of 1990.

[2] Enerco Corporation (Enerco) is the licensee for Project No. 7481. Enerco is a subsidiary of Adirondack and, at Adirondack's request, we are considering, for the purposes of the petition, the actions and statements of Adirondack to be those of Enerco.

[3] This proceeding is not intended to determine petitoner's proposed application for certification of Project No. 7481 as a small power production facility.

[Docket No. TM90–3–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that CNG Transmission Corporation (CNG) on November 30, 1989, pursuant to section 13.5 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, and in compliance with Opinion No. 334, Gas Research Institute (GRI) Docket No. RP89–187, filed Fifteenth Revised Sheet No. 31 and Eighth Revised Sheet No. 32. The revised tariff sheets are being submitted to reflect the 1990 GRI funding unit of 1.26¢ per Dt. CNG requests an effective date of January 1, 1990, the effective date provided in Opinion No. 334.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28774 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–1–32–000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

December 4, 1989.

On November 30, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Substitute First Revision Sheet No. 7.1
Substitute First Revision Sheet No. 7.2
Substitute First Revision Sheet No. 8.1
Substitute First Revision Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on January 1, 1990.

The base tariff rates underlying Substitute First Revised Sheet Nos. 7.1 through 8.2 do not reflect implementation of CIG's settlement in Docket No. RP87–30 effective January 1, 1990. That is, the rates are at "pre-settlement" levels.[1] This, CIG states, is because the Commission has yet to act on CIG's November 17, 1989 request for clarification of the Commission's November 8, 1989 order approving CIG's settlement in Docket No. RP87–30. Should CIG receive satisfactory clarification from the Commission, and the November 8, 1989 order, as clarified, become final by December 31, 1989, CIG would restate the base tariff rates to reflect the "settlement" rates in Docket No. RP87–30 effective January 1, 1990. In addition, the PGA filing reflects a 15 cent decrease in the the Demand-1 rate and no change in the Demand-2 rate. This filing also reflects a 1.47 cent increase in the commodity rate for the G–1, P–1, SG–1, H–1, F–1 and PS–1 rate schedules. The proposed rates compare with rates filed by CIG on August 1, 1989 in Docket No. TA90–1–32, which rates were accepted by Commission Letter Order dated September 29, 1989, to become effective on October 1, 1989.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28780 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[1] Substitute First Revised Sheet Nos. 7.1 to 8.2 also reflect the new GRI charge of 1.3 cents/Mcf which was filed in Docket No. TM90–3–32 to become effective on January 1, 1990.

[Docket No. TM90–4–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1990:

One hundred forty-fourth Revised Sheet No. 16; Thirty-second Revised Sheet No. 16A2.

Columbia states that the aforementioned tariff sheets are being filed to reflect a decrease in the Gas Research Institute (GRI) funding unit to 1.26¢ per Dth as authorized by Opinion No. 334, issued by the Federal Energy Regulatory Commission (Commission) on October 10, 1989, in Docket No. RP89–187–000. Ordering Paragraph (B) of such Opinion approves the GRI funding requirement for the year 1990 and provides that members of GRI shall collect from their applicable customers a general R&D funding unit of 1.26¢ per Dth during 1990 for payment to GRI.

Copies of this filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28775 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Fourteenth Revised 37th Revised Sheet No. 8

Original Volume No. 3

First Revised Sheet No. 1039

Reason for Filing

FGT is filing the revised tariff sheets pursuant to Opinion No. 334 issued on October 10, 1989 in Docket No. RP89-187-000 by the Federal Energy Regulatory Commission (Commission) approving Gas Research Institute's (GRI) 1990 Research, Development and Demonstration Program and Five-Year Plan for 1990-1994. In Opinion No. 334 the Commission approved a GRI funding unit of 1.26 cents per dekatherm.

The proposed effective date of the tariff sheets listed above is January 1, 1990.

Copies of this filing have been served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28763 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-86-000]

Pacific Gas Transmission Co.; Change in GRI Adjustment Charge

December 4, 1989.

Take Notice that on November 29, 1989, Pacific Gas Transmission Company (PGT) tendered for filing the following sheets to its FERC Gas Tariff:

First Revised Volume No. 1

Fifth Revised Sheet No. 12

Original Volume No. 1-A

First Revised Sheet No. 4

An effective date of January 1, 1990, is proposed in accordance with Federal Energy Regulatory Commission (Commission) Opinion No. 334 in Docket No. RP89-187-000.

PGT states that this filing is made under its filed Gas Research Institute (GRI) Charge Adjustment Provision and pursuant to the Commission's Opinion No. 334 issued October 10, 1989, in Docket No. RP89-187-000. That Opinion authorizes members of the GRI to collect a general R&D funding unit of 1.26 cents per Dth of Program Funding Services for payment to GRI. This converts to 1.30 cents per Mcf. PGT further states that the change in rates will affect charges for natural gas service rendered to Pacific Gas and Electric Company under Rate Schedule PL-1 and under Rate Schedule ITS-1 to those customers who receive interruptible transportation service pursuant to section 311 of the Natural Gas Policy Act.

PGT states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory Commissions.

Any person desiring to be heard or to protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28778 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fifty-Eighth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is being filed with a proposed effective date of January 1, 1990, pursuant to the Purchased Gas Cost Adjustment provision set out in Section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Fifty-Eighth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Commission's Regulations. The Current Adjustment, which is proposed to be in effect from January 1, 1990, through March 31, 1990, reflects a decrease in jurisdictional revenues of approximately $192,000 which is attributable to a decrease in the D-1 component of $ 05 per MMBtu, a decrease in the commodity component of $.22 per MMBtu, an increase in the D-2 component of Rate Schedules G-1/I-1 of $.04 per MMBtu and an increase in the D-2 component of Rate Schedules G-2/I-2 of $.01 per MMBtu from South Georgia's quarterly PGA filing in Docket No. TQ90-1-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28764 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff:

Sixth Revised Volume No. 1
- Ninety-first Revised Sheet No. 4A
- Tenth Revised Sheet No. 4J
- Third Revised Sheet No. 9ON
- Third Revised Sheet No. 9OFF
- First Revised Sheet No. 45I

Original Volume No. 2
- Ninth Revised Sheet No. 785
- Ninth Revised Sheet No. 865
- Seventh Revised Sheet No. 904
- First Revised Sheet No. 6706

Southern states that the proposed tariff sheets are being filed with a proposed effective date of January 1, 1990, and track the reduction in the applicable Gas Research Institute (GRI) surcharge to 1.26¢ per MMBtu or 1.30¢ per Mcf as approved by the Commission in Opinion No. 334, issued on October 10, 1989.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure §§ 385.214, 385.211) All such petitions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28777 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Nineteenth Revised Sheet No. 50
Thirteenth Revised Sheet No. 51

Texas Eastern states that Sheet Nos. 50 and 51 are being filed pursuant to Section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, to include in Texas Eastern's rates the current GRI surcharge of 1.26 cents per dekatherm approved by the Commission in Opinion No. 334 issued on October 10, 1989 in Docket No. RP89-187-000. The GRI surcharge of 1.26 cents per dekatherm is reflected on Sheet Nos. 50 and 51.

The proposed effective date of the above tariff sheets is January 1, 1990.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28785 Filed 12-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM90-3-42-000, RP90-49-000 and CP88-96-008]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1989.

Take notice that on November 30, 1989, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective December 1, 1989:

Original Sheet No. 5M

Transwestern states that the above referenced tariff sheet is being filed to (A) implement the Commission's May 11, 1988, July 29, 1988 and July 31, 1989 orders approving Transwestern's GIC, and the direct billing (or refunding, as appropriate) of all amounts properly includable within Account No. 191 upon termination of Transwestern's PGA on October 1, 1989 and (B) demonstrate compliance with § 154.306 of the Commission's Regulations with respect to the 103% Assessment Test for the period March 1, 1989 through September 30, 1989.

Through its filing, Transwestern seeks to recover through the direct billing mechanism a total of $36,397,682, including $637,251 of interest which has accrued during the period October 1, 1989 through December 1, 1989, as calculated in accordance with § 154.67(c)(2)(iii)(A) of the Commission's Regulations. The $36,397,682 million represents unrecovered amounts applicable to the period prior to October 1, 1989, plus the referenced interest. In accordance with the Commission's 1988 certificate orders, $31,192,813 represents Southern California Gas Company's proportionate share of the unrecovered amount, and $5,204,869 represents Williams Natural Gas Company's proportionate share of the under-recovered amount.

The instant filing is the first filing to be made by Transwestern to direct bill those Account No. 191 costs. As Transwestern reconciles its Account No. 191 balance, it will make subsequent filings to recover amounts Transwestern is permitted to recover in accordance with the 1988 certificate orders and the 1989 compliance filing orders, including additional interest on amounts already billed through the date of payment.

Transwestern also filed, in accordance with Section 154.306 of the Commission's Regulations, its assessment of past performance in projecting purchased gas costs for Test Interval One (March 1989 through June 1989) and Test Interval Two (July 1989 through September 1989). As shown on Schedule D-1, Transwestern's actual cost of gas for these periods is substantially below the 103% ceiling.

The proposed effective date for the tariff sheet listed above is December 1, 1989.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before December 10, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28778 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–2–24–000]

Equitrans Inc.; Proposed Change in FERC Gas Tariff

December 4, 1989.

Take notice that Equitrans, Inc. (Equitrans), on November 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1990.

Original Volume No. 1
- Fourteenth Revised Sheet No. 10
- Thirteenth Revised Sheet No. 14
- Third Revised Sheet No. 23

Original Volume No. 3
- Third Revised Revised Sheet No. 4
- Third Revised Revised Sheet No. 8

Pursuant to Opinion No. 334 in Docket No. RP89–187–000 issued on October 10, 1989, the Commission has authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1990 GRI unit surcharge approved by the Commission is $.0126 per Dth and $.0130 per Mcf.

Equitrans respectfully requests that the Commission accept the above-mentioned tariff sheets and grant any waiver of the regulations as may be necessary to permit such accepted tariff sheets to become effective as proposed.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86–676–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28779 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–825–004]

V.H.C. Gas Systems, L.P.; Application To Amend a Blanket Certificate With Pregranted Abandonment

December 5, 1989.

Take notice that on December 1, 1989, V.H.C. Gas Systems, L.P. (V.H.C.) of 530 McCullough Avenue, San Antonio, Texas, 78215 filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder to amend its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89–825–000 to authorize the sale for resale of liquefied natural gas (LNG) which it will purchase from Pan National Gas Sales, Inc. (Pan National). Pan National was granted a certificate of public convenience and necessity on November 14, 1989 in Docket No. CP89–1499–000 (49 FERC ¶ 61,199) to sell the LNG which it purchases from Sonatrading, a marketing affiliate of Sonatrach, the state oil and gas company of Algeria. V.H.C. also requests authorization for the remainder of the existing term under its current blanket sales authorization and on terms and conditions set forth in that authorization, including pre-granted abandonment, and requests expedited authorization in order to commence sales for resale by January 1, 1990, the date V.H.C. must commence firm purchases of LNG from Pan National, and any waivers or relief necessary to implement the proposal set forth herein. The application is on file with the Commission and open for public inspection.

According to V.H.C., expedited action is necessary to enable V.H.C. to compete in the spot market this winter and to sustain a sales level which is anticipated to increase due to temperature sensitive load and other factors. Additionally, V.H.C. states that it believes that it will be able to place this gas in direct sales for a limited period of time but there is no guarantee that these sales will continue for a significant period of time beyond January 1, 1990.

It appears reasonable and consistent with the public interest in this case to prescribe a period of 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for V.H.C. to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28782 Filed 12–8–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

FE Docket No. 89–62–NG]

Pacific Gas Transmission Co.; Application To Extend Existing Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to extend authority to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 12, 1989, of an application filed by Pacific Gas Transmission Company (PGT) for authorization to extend PGT's existing import authorization, which expires October 31, 1993, to allow continued importation of natural gas at the currently authorized level of up to 1,023 MMcf per day through October 31, 2005. The gas would continue to be imported under the terms of PGT's existing gas sale contract with Alberta and Southern Gas Company Ltd. (Alberta and Southern) via the import point near Kingsgate, British Columbia, and transported using PGT's pipeline facilities through the States of Washington, Idaho, and Oregon, for delivery to PGT's only sales customer, Pacific Gas and Electric Company (PG&E) at the California border.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, notices of interventions, request for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., January 10, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: PGT currently is authorized, under DOE Opinion and Order No. 63 (Order 63), issued November 1, 1984, and 63–A (Order 63–A), issued April 2, 1985, to import up to 1,023 MMcf of Canadian natural gas per day from Alberta and Southern for the period November 1, 1985, through October 31, 1993, in accordance with the provision of a January 31, 1961 gas sales contract with Alberta and Southern as amended. PGT is a wholly-owned subsidiary of PG&E, a local distribution company supplying electric and gas service throughout most of northern and central California. Alberta and Southern is also a subsidiary of PG&E and serves as PG&E's Canadian gas buyer.

According to PGT's application, in October 1986, the Canadian National Energy Board (NEB) consolidated seven existing natural gas export licenses issued to Alberta and Southern into one consolidated license, No. GL–99, and extended the term of Alberta and Southern's export license from October 31, 1993, to October 31, 1994. The NEB approved volumes for export at the same level as PGT is authorized to import through October 31, 1993. On June 8, 1989, the NEB replaced License No. GL–99 with a new export License No. GL–111, authorizing the continued export of natural gas at the same volume levels as under License No. GL–99 for a period of eleven years beginning November 1, 1994, and ending October 31, 2005. By its gas import application, PGT is seeking to extend the term of its existing import authorization at presently authorized volume levels to correspond to Alberta and Southern's gas export authorization. The gas would be transported from the import point and delivered to PG&E using existing pipeline facilities of PGT.

PGT indicates that the terms of its renegotiated gas sales contract with Albert and Southern, which became effective November 1, 1984, would remain in effect during the extended terms of the import project. The renegotiated PGT/Alberta and Southern contract provided for a commodity rate at the international border of $2.99 (U.S.) per MMBtu subject to semi-annual review and adjustment, plus a demand charge based on actually incurred costs of transporting the gas within Canada to the export point. The renegotiated contract also reduced PGT's take-or-pay obligation from 60 percent to 50 percent of daily contract quantity and eliminated all of PGT's yearly, monthly and daily minimum purchase obligations. PGT states that under the most recent commodity price redetermination provision, which was made in early 1989, the commodity rate was set at $1.90 (U.S.) per MMBtu for the succeeding 15-month period.

In support of its application, PGT asserts that the Canadian gas which it proposes to import over the extended authorization term requested is of vital importance to the economy of northern and central California and continues to be needed to serve an established market in that area. PGT also asserts that the gas is competitive and market responsive and will remain so over the extended import term requested because of the flexibility provided by the price adjustment and redetermination provision of its gas sales contract with Alberta and Southern.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest [49 FR 6684, February 22, 1984]. Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, security of supply and need for the gas as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive, needed and its gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act [NEPA], 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register [54 FE 12474] a notice of amendments to its guidelines for compliance with NEPA. In that notice the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motion to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as

necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for an oral presentation should identify the substantial question or fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a dcision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of PGT's application is available for inspection and copying from the Office of Fuels Programs Docket Room, Room 3F-056, at the above address (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 30, 1989.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28891; Filed 12-8-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-72-NG]

Poco Petroleum, Inc.; Application to Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 24, 1989, of an application filed by Poco Petroleum, Inc. (Poco), requesting that the blanket import authorization previously granted in DOE/ERA Opinion and Order No. 220 (Order 220), issued January 25, 1988 (ERA Docket No. 87-64-NG), be extended for two years commencing on January 21, 1990, the expiration date of its present authorization. Order 220 extended Poco's original blanket authorization to import up to 150 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery granted in DOE/ERA Opinion and Order No. 103, issued January 17, 1986.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than January 10, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1789.

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Poco, a wholly-owned subsidiary of Poco Petroleums Ltd., a Canadian corporation, is a Delaware Corporation that is primarily active as a marketer of natural gas in the United States. Poco requests authorization to import up to 150 Bcf of Canadian natural gas during a two-year term commencing January 21, 1990. Poco further requests authority to continue to import Canadian gas from various Canadian suppliers for its own account or as agent for Canadian suppliers and/or U.S. purchasers. The spot and short-term imported volumes would continue to be sold to a variety of U.S. customers. Poco states that existing pipeline facilities would be used to transport its gas supplies, and that it would continue to file quarterly reports giving details of the individual transactions.

In support of its application, Poco asserts that the proposed extension of the term of its existing blanket import authorization to import up to 150 Bcf is not inconsistent with the public interest. Poco states that the extension requested would aliow Poco to continue to make its imported gas available to U.S. purchasers under contract terms that will be competitive in their market areas and that will remain competitive throughout the requested term of the import authority.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1989.

Constance L. Buckley,

Deptuy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28892 Filed 12-8-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders Issued During the Week of August 21 through August 25, 1989

During the week of August 21 through August 25, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

A.C.F. Trust, 08/25/89, RC272-68

The DOE issued a Supplemental Order rescinding the refund granted to A.C.F. Trust, Case No. RF272-68826 in *Mrs. Clarence Garrett, et al.*, Case No. RF272-68800, *et al.* (July 21, 1989).

Atlantic Richfield Co./Graff's Arco, Inc., 08/21/89, RF304-10117

The DOE issued a Supplemental Order concerning a Decision and Order issued on May 3, 1989 to Glow's ARCO Service *et al.* in the Atlantic Richfield Company (ARCO) special refund proceeding. As part of that Decision, a refund was granted to Graff's ARCO, Inc. (Graff's) (Case No. RF304-2622). However, both the copy of the Decision and the refund sent to Graff's were returned to the DOE, and the DOE was unable to obtain a correct address for Graff's. The refund granted to Graff's was therefore rescinded.

East Side Oil Co., 08/23/89, RF272-7[illegible]

The DOE issued a Decision and Order dismissing the Application of East Side Oil Company for a crude oil refund pursuant to the provisions of 10 CFR Part 205, Subpart V (Subpart V). The applicant had already received a refund from the Resellers' Escrow, one of the eight escrow accounts created by the Stripper Well Settlement Agreement. Under the terms of the Stripper Well escrow accounts, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, the DOE concluded that the applicant is ineligible for a Subpart V crude oil refund.

Exxon Corp./Buckner's Exxon et al., 08/23/89, RF307-0003 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $47,649.

Exxon Corp./Department of Public Utilities et al., 08/23/89, RF307-2112 et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $28,259.

Exxon Corp./Eugene Doria et al., 08/21/89, RF307-7302 et al.

The DOE issued a Decision and Order concerning 64 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a retailer of Exxon products whose allocable share is less than $5,000 or an end-user. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $51,929.

Exxon Corp./Shoals Creek Exxon, et al., 08/23/89, RF307-1815 et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $24,751.

Fieldcrest Mills, Inc., 08/24/89, RF272-6463, RD272-6463

The DOE issued a Decision and Order concerning an Application for Refund filed by Fieldcrest Mills, Inc. from the crude oil funds being disbursed by the DOE under 10 C.F.R. Part 205, Subpart V. The DOE determined that Fieldcrest's

refund claim was meritorious and granted the firm a refund of $90,984. The DOE also denied a Motion for Discovery filed by a consortium of States and rejected the States' challenge to the Fieldcrest claim. The DOE found that the industry-wide econometric data submitted by the States did not rebut the presumption that Fieldcrest was injured by the crude oil overcharges.

Fritz Blaske, 08/25/89, RA272–11

The DOE issued a Decision and Order granting a supplemental refund from crude oil funds to Fritz Blaske.The Supplemental Order adjusted Blaske's total gallonage claim listed in the Appendix to *H.G. Page & Sons, Inc., et al.*, Case Nos. RF272–66511, *et al.* (August 11, 1989). The amount of the supplemental refund is $248.

Georgia Pacific Corp. 08/24/89, RF272–153, RD272–153

The DOE granted a refund to Georgia Pacific Corporation (Georgia Pacific), a purchaser of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of thirty states and two territories of the United States (the States) filed a consolidated pleading objecting to and commenting on Georgia Pacific's application. The only evidence submitted by the States was an affidavit by the economist stating that virtually every industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. Accordingly, Georgia Pacific was granted a refund of $875,044.

Gulf Oil Corp./Crutcher Oil Co., 08/21/89, RR300–1

The DOE considered a Motion for Reconsideration filed by Crutcher Oil Company in the Gulf Oil Corporation special refund proceeding. In its original Application for Refund, Crutcher requested a refund beyond the 10 percent presumption level for consignees. The DOE found that the methodology that Crutcher had used to demonstrate its injury over-estimated its lost sales. Accordingly, Crutcher was granted a refund at the 10 percent presumption level. In the Motion for Reconsideration, Crutcher proposed a different methodology for establishing the level of injury. The DOE found that this revised methodology focused on whether there was a reduction in the consignee's sales since 1973, but failed to measure whether Gulf's actions in a particular year caused a claimant injury. The DOE found that this approach could produce an anomalous result and it was therefore rejected. The Motion for Reconsideration was accordingly denied.

Gulf Oil Corp./Jennings-Watts Oil Co., Inc., Paul Farmer, Inc., 08/23/89, RF300–5330, RF300–5480

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Jenning-Watts Oil Co., Inc. and Paul Farmer, Inc., both of which are consignees and resellers of Gulf refined products. Because the applicants were not commonly owned and were operationally distinct during the refund period, the DOE considered the applications separately in applying the appropriate presumptions of injury. The sum of the refunds granted in this Decision is $12,027.

Gulf Oil Corp./Joseph A. Hirsch et al., 08/23/89, RF300–8913 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $43,678.

Gulf Oil Corp./Plank Road Gulf et al., 08/25/89, RF300–10047 et al.

The DOE issued a Decisison and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,695.

Gulf Oil Corp./Robert C. Vaughan Dist. et al., 08/25/89, RF300–948 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $15,395.

Gulf Oil Corp./Zupin Oil Co., 08/23/89, RF300–1489, RF300–8335

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. One was submitted by Northern Oil Company, an owner of Zupin Oil Company (RF300–1489). The other was submitted by Wallace Zupin, the owner of Zupin Oil Company during the consent order period (RF300–10727). The DOE determined that Wallace Zupin was entitled to a refund for Zupin Oil Company. The total refund in this Decision is $13,237.

Murphy Oil Co./Spur Country Store, 08/24/89, RF309–1091

The DOE issued a Decision and Order denying an Application for Refund in the Murphy Oil Corporation special refund proceeding, because the applicant had already received the maximum $5,000 refund under the medium-sized retailer injury presumption for the same outlet under a different name.

Shell Oil Co./GCG Service Center et al., 08/24/89, RF315–5020 et al.

The DOE issued a Decision and Order granting 145 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $131,566.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Olympic Laundry, et al	RF272–54514	08/21/89	85	$24,550

Dismissals

The following submissions were dismissed:

Name	Case No.
Boulder Scientific Co.	KFA–0306
Hicks-Westbury, Inc.	RF300–5434
	RF300–5435
Kent Oil & Trading Co.	RF313–174
Leemilt's Petroleum, Inc.	RF313–217
Liner Exxon	RF307–984
Neuberger Oil Co.	RF307–8376

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercial published loose leaf reporter system.

Dated: November 30, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–28894 Filed 12–8–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders Issued During the Week of September 11 Through September 15, 1989

During the week of September 11 through September 15, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John Jerry Ross, 9/14/89, KFA–0313

On August 22, 1989, John Jerry Ross field an Appeal from a determination issued to him on July 25, 1989, by the Assistant Manager for Administration, Department of Energy (DOE), San Francisco Operations Office. In that determination, the Assistant Manager denied Ross request for information filed pursuant to the Freedom of Information Act. Specifically, the Assistant Manager denied Ross request for information on the grounds that the documents sought by Ross fell within Exemption 5. In considering the Appeal, the DOE found that disclosure of the withheld documents would reveal the deliberative process of the agency and consequently inhibit open and honest communication within the agency. Therefore, the Appeal was denied.

Knolls Action Project, 9/12/89, KFA–0012

The Knolls Action Project filed an Appeal from a partial denial by the Office of Naval Reactors of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain portions of the requested documents, initially withheld under Exemption 5, consisted of reasonably segregable fatual material and should be released to the public.

Ronson Management Corp., 9/12/89, KFA–0310

Ronson Management Corporation (RMC), through its attorneys, filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request for Information which RMC had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that documents were properly withheld under Exemption 5, but that certain of the documents which were initially withheld under Exemption 4 should be released to the public. Important issues that were considered in the Decision and Order were (1) whether cost proposal information was properly withheld under exemption 4, and (2) whether information regarding a winning bidder's demonstrated experience and success, as illustrated by information concerning the bidder's past projects, was properly withheld under Exemption 4.

Refund Applictions

Atlantic Richfield Co./Jerry's Arco Service, et al., 9/12/89, RF–304–1137, et al.

The DOE issued a Decision and Order concerning sixty-seven Applications for Refund filed by claimants in the Atlantic Richfield Compnay special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $73,830, representing $55,844 in principal and $17,986 in accrued interest.

Atlantic Richfield Co./New Enterprise Stone and Lime Co., Inc., et al., 9/15/89, RF304–4998, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by claimants in the Atlantic Richfield Company special refund proceeding. As end-users, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totaling $1,650,346, representing $1,248,229 in principal and $402,117 in accrued interest.

Atlantic Richfield Co./Reamstown Arco, et al., 9/15/89, RF304–8403, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $16,769, including $4,117 in accrued interest.

Atlantic Richfield Co./Russell Gullo, Inc., et al., 9/15/89, RF304–7400, et al.

The DOE issued a Decision and Order concerning thirteen Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Each of the applicants adequately documented the volume of their purchases. All of the applicants were reseller/retailers requesting refunds of $5,000 or less. The refunds granted in this Decision totaling $9,867, representing $7,464 in principal and $2,403 in accrued interest.

Beacon Oil Co./Fred's Truck Fuels, Inc., 9/11/89, RF238–14

The DOE issued a Decision and Order concerning an Application for Refund filed by Fred's Truck Fuels, Inc. (Fred's) in the Beacon Oil Company (Beacon) special refund proceeding. Fred's documented its purchases of 1,184,524 gallons of Beacon diesel fuel. Based on these purchases, Fred's allocable share of the Beacon consent order fund totaled $18,076. The firm was also eligible to receive $28 of the total motor gasoline credit that Beacon was to pay the firm under the consent order but had not paid at the date of motor gasoline decontrol. Fred's did not attempt to demonstrate injury; thus, the firm's total refund, including credit memoranda issued by Beacon but not passed through by Fred's to its own customers, was limited to $5,000 under the small claims presumption of injury. Beacon records indicated that the firm had received a total of $2,871 in motor gasoline credit. This amount was subtracted from $5,000 to calculate Fred's refund because Fred's did not attempt to show that it had passed through the credit. The total amount of Fred's refund was therefore $5,177,

equaling $2,129 in principal and $3,048 in accrued interest.

Beacon Oil Co./Reilly's Coin-Op Car Wash, 9/12/89, RF238–87

The DOE issued a Decision and Order concerning an Application for Refund filed by Reilly's Coin-Op Car Wash (Reilly's) in the Beacon Oil Company (Beacon) special refund proceeding. Reilly's documented its purchases of 527,880 gallons of Beacon motor gasoline. Based on these purchases, Reilly's allocable share of the Beacon consent order fund totaled $8,064. However, Reilly's elected to limit its refund to $5,000 under the small claims presumption of injury. The firm's refund totaled $11,783, including $6,783 in accrued interest.

City of Fairmont, 9/13/89 272–37622

The DOE issued a Decision and Ordered granting a refund from crude oil overcharge funds to the City of Fairmont, Minnesota based on purchases of refined petroleum products made by the City's electric utility during the crude oil price control period. The applicant determined the volume of the majority of its claim by consulting contemporaneous records and estimated the remainder of its claim using a reasonable and acceptable estimation technique. In addition, the applicant certified that it would notify the appropriate regulatory agency of the refund monies received and that it would pass the entirely of the refund through to its customers. The refund granted the City of Fairmont totalled $5,136.

Crown Central Petroleum Corp./ Enterprise Products Co.; 9/13/89 RF313–197

The DOE issued a Decision and Ordered considering an Application for Refund filed in the Crown Central Petroleum Corporation special refund proceeding. Enterprise Products Company, a purchaser of Crow refined petroleum products, presented evidence that it experienced a competitive disadvantage in all of its purchases of Crown propane during the refund period. Therefore, according to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶85,326 (1988), DOE granted Enterprise a refund based on the full amount of those purchases. The total refund approved in this Decision was $266,939, representing $223,567 in principal plus $43,372 in accrued interest.

Crown Central Petroleum Corp./Siler City Oil Co., Inc., Parkway East Crown, 9/15/89 RF313–175, RF313–308

The DOE issued a Decision and Ordered considering Applications for Refund filed by two purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund appilcations were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶85,326 (1988). The total amount of refunds approved in this Decision was $9,048, representing $7,578 in principal plus $1,470 in accrued interest.

Exxon Corp./Cheaspeake Corp., 9/15/89 RF396–10057

The DOE issued a Supplemental Decision and Order to the Cheaspeake Corporation (Chesapeake) in the Exxon Corp. special refund proceeding. In *Exxon Corp./Chesopeake Corp.*, 19 DOE ¶85,322 (1989), the DOE granted Chesapeake an improper refund due to the fact that the firm had been classified as a reseller. In fact, Chesapeake was an end-user and was eligible to receive its full allocable share. Accordingly, Cheasapeake was granted a supplemental refund of $10,039 ($8,146 principal and $1,893 interest).

Exxon Corp./Hempstead'S Esso Service, Inc., 9/14/89 RF307-4535

The DOE issued a Decision and Ordered concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants, resellers of petroleum products, purchased directly from Exxon during the consent order period. Each of the applicants disagreed with the gallonage information recorded on its printout sheets and submitted alternative gallonage figures, which it requested that the OHA accept in place of or in lieu of Exxon's figures. The OHA agreed to accept the applicants' figures because they were obtained from the applicants's actual records from the consent order period. The DOE determined that each of the applicants should receive a refund equal to its full allocable share. The sum of the refunds granted in this decision was $11,830 ($9,716 principal plus $2,114 interest).

Exxon Corp./State of North Carolina, Pacific Southwest Airlines, Inc., 9/14/89, RF307–5712, RF307–5734

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Because each applicant was an end-user which purchased directly from Exxon, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $90,374 ($74,217 in principal and $16,157 in intercst.)

G. Heileman Brewing Co., Inc., 9/12/89, RF272–32245, RD272–32245

A brewing company submitted an Application for Refund from crude oil overcharge funds. A group of thirty States and Territories (the States) filed identical consolidated States' Objections and Motions for Discovery in the proceeding. The States opposed receipt of any refund by Heileman and sought discovery of information in support of their opposition. The DOE determined that: (1) Heileman was presumptively entitled to a refund as an industrial end-user of petroleum products outside of the petroleum industry and had certified the volume of petroleum products it had purchased during the price control period; (2) the States had failed to rebut the presumption of eligibility; and (3) the States had failed to show that discovery with regard to Heileman's application was appropriate or that any additional information should be required of Heileman. Accordingly, Heileman's Application for Refund was granted, and the States' Objection and Motion for Discovery was dismissed.

Gulf Oil Corp., Delmarva Power and Light Co., 9/14/89, RF300–9806

The DOE issued a Decision and Order concerning an Application for Refund filed by the Delmarva Power and Light Company, a regulated public utility, in the Gulf Oil Corporation special refund proceeding. Delmarva certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The total refund amount granted in this Decision, inclusive of interest, is $69,048.

Gulf Oil Corp./Dixie Electric Membership Corp., et al., 9/14/89, RF300–10411, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $14,500.

Gulf Oil Corp./Glover Distributing Co., Inc., et al., 9/14/89, RR300–6416, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted by applicants in the Gulf Oil Corporation refund proceeding. Four of the applicants were resellers of Gulf products and two applicants were consignees. The DOE approved all of the applications by utilizing the appropriate presumption of injury. Two of the applicants, Glover Distributing Co., Inc. and Rio Oil Company, were affiliated with each other, Glover having purchased all of Rio's assets in 1976. The DOE held that, as a corporate entity, Rio was the "individual" entitled to its refund. Accordingly, Glover, as successor owner, was entitled to receive Rio's refund for purchases prior to the 1976 transfer of ownership. The sum of the refunds granted in this Decision is $18,241.

Gulf Oil Corp. Groeber Bros. Inc. of Grenada, Et Al., 9/13/89, RF300–7225, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $28,043.

Gulf Oil Corp./Kirby's Gulf, Lanett Gulf Super Service, 9/15/89, RF300–230 RF300–230, 247

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $3,175.

Gulf Oil Corp./Meyer Oil Co., T & M Enterprises, Inc., H.K.M. III, Inc., 9/14/89, RF300–7875, RF300–8018, RF300–8019

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because all three applicants were affiliated during the consent order period, the applications were considered together for the purposes of this proceeding. One of the applicants, H.K.M. III, was denied a refund because it did not sufficiently document that it was a purchaser of Gulf products. The other two applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $6,585.

Gulf Oil Corp./Stone Container Corp., et al., 9/14/89, RF300–10480, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $32,588.

Murphy Oil Corp./Tesoro Petroleum Corp., 9/13/89, RF309–858

The DOE issued a Decision and Order granting the Application for Refund filed by Tesoro Petroleum Corporation (Tesoro) in the Murphy Oil Corporation special refund proceeding. Tesoro was found to be injured as a mid-level purchaser, based on the appropriate mid-level presumption of injury defined in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). Even though Tesoro is scheduled to make future payments to the DOE pursuant to its own consent order, the refund is being sent directly to the firm, rather than held in escrow, for the following reasons: (i) the good faith displayed by Tesoro in its timely submission of the first and largest payment of $25,000,000 (on February 23, 1989), (2) the six-year duration of the payment schedule, and (3) the small size of the refund relative to the scheduled payments. The total refund granted in this Decision was $14,609, representing $12,130 in principal and $2,479 in accrued interest.

Triple T Superette, 9/13/89, RC272–70

The DOE issued a Supplemental Order rescinding the refund granted to Triple T Superette in Paul Johnson, Inc., *et al.*, 19 DOE ¶ _____, Case Nos. RF272–69001, *et al.* (August 9, 1988). The amount of the refund rescinded was $792.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Cornell Univ., et al.	RF272–17086	13	$47,026	
Ron Elsasser, et al.	RF272–38802	94	$12,837	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Williams Oil Co.	RF313–205
Albert W. Looi, Jr.	RF272–47910
Arnaudo Brothers, Inc.	RF272–70960
Arnaudo Brothers	RF272–73187
	RF272–73382
Borgen Oil	RF272–45763
Bryer E. Meyer	RF272–49967
Charles B. Wise	RF272–48111
Chester Paszkiewicz	RF272–73514
Clarence B. Allen	RF272–43543
Cumminge Allen	RF272–3097
Dale Perkins Oil Company	RF315–272
Daniel H. Firestahl	RF272–42565
Delmer Sper	RF272–73712
Donald C. Smith	RF272–53145
Douglas Patterson	RF272–44693
Douglas Wilke	RF272–48921
DW Refining	RF300–3241
Edgemont Arco	RF304–4451
	RF304–8425
Frank H. Homewood	RF272–45781
Fred B. Limesand	RF272–47535
Fredericks Const.	RF272–69996
Governor's Dr. Chevron	RF300–9696
Harold Andres	RF272–49398
Hartman Hirschler	RF300–10248
Herbert Koenen	RF272–43869
Hines Truck Stop	RF304–8405
J. Harold Walters	RF272–72144
Jack W. Lowe	RF272–42351
James Parsell	RF272–49537
John R. Boose	RF272–44901
John R. Penley	KFA–0314
John Royster	RF272–48226
Jordan Lane Chevron	RF300–10247
Lehigh Acres Shell Station	RF315–2115
Leo Schwartz	RF272–51793
Leon Lyngaas	RF272–49497
Leroy Cassingham	RF300–9893
Livingston Supreme, Inc	RF313–195
Manuael McLane	RF272–47629
Mems Bros.	RF272–59735
Myron H. Byers	RF272–48799
Newport Yellow Cab Company	RF300–10864
Paul Goodell	RF272–48652
Patterson Farms	RF272–49434
Phillip Dodds	RF272–52968
R. John Thelen	RF272–49274
Richard Davieon	RF272–52316
Robert D. Lukins	RF272–49842
Robert R. Moravek	RF272–43011
Rodger Hasse	RF272–47562
State Line Oil, Inc.	RF300–10987
Thomas M. Walters	RF272–72257
Triangle Arco Service	RF304–8892
Vonnie Bartlett	RF272–43130
Walt's Arco	RF304–7494
Washington Street Exxon	RF307–1924
West Newton Shell, Inc.	RF315–3361
Westside Cab Company	RF300–10863
Wilburn Panzier	RF272–48347
William Arterburn	RF272–57660
William Schley	RF272–47632

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 30, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-28895 Filed 12-8-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL 3695-9]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50 (41 FR 52688). The new designated method is identified as follows:

RFNA-1289-074, "Thermo Environmental Instruments Inc. Model 42 Chemiluminescence $NO/NO_x/NO_x$ Analyzer," operated on the 0-0.05* ppm, the 0-0.1* ppm, the 0-0.2* ppm, the 0-0.5 ppm, or the 0-1.0 ppm range, with any time average setting from 10 to 300 seconds. The analyzer may be operated at temperatures between 15° and 35° C and at line voltages between 105 and 130 volts, with or without any of the following options:

42-002 Rack Mounts
42-003 Internal Zero/Span and Sample Valves with Remote Activation
42-004 Sample/Ozone Flowmeters
42-005 4-20 mA Current Output
42-006 Pressure Transducer
42-007 Ozone Particulate Filter
42-008 RS-232 Interface
42-009 Permeation Dryer

*Note: Users should be aware that designation of the analyzer for operation on ranges less than 0.5 ppm is based on meeting the same absolute performance specifications required for the 0-0.5 ppm range. Thus, designation of these lower ranges does not imply commensurably better performance than that obtained on the 0-0.5 range.

This method is available from Thermo Environmental Instruments Inc., 8 West Forge Parkway, Franklin, Massachusetts 02038. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 54, July 27, 1989, page 31247.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although the may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2622.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-28876 Filed 12-8-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3695-8]

Chesapeake Bay Program; Public Meeting

A public meeting to review a draft Workplan for development of the Chesapeake Bay Toxics of Concern List will be conducted from 3:15 to 5 p.m. Monday, December 18, 1989, in the Kimball Conference Center of the National Wildlife Federation, 1400 16th Street NW., Washington, DC.

The Toxics of Concern List, an element of the Chesapeake Bay Basinwide Toxics Reduction Strategy, is to be completed by March 1990. The primary purpose of the Toxics of Concern List is to identify key toxic pollutants adversely impacting the Chesapeake Bay or with the potential to do so.

The proposed Workplace describes the overall objectives of the Toxics of Concerns List and outlines procedures to be followed in its development. The Chesapeake Bay Program Toxics Subcommittee is inviting public review and comment on the Workplace before it is put into practice.

The public review of the Workplan will follow the quarterly meeting of the Citizens Advisory Committee on the Chesapeake Executive Council scheduled for 10 a.m. to 3 p.m. December 18 at the same location. The Committee meeting is open to the public.

For further information about the public meeting, contact Tamara Vance, Alliance for the Chesapeake Bay, at 804/225-4355. For a copy of the proposed Workplan, call Ann Berger at 301/377-6270.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 89-28877 Filed 12-8-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010825A-002.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement amends the crane assignment agreement (Agreement 224-010825A) to provide Evergreen with five five-year crane assignments at Berths 227-236 at the Port of Los Angeles' Seaside Terminal and to allow Evergreen the use of certain substitute cranes on an interim basis.

By Order of the Federal Maritime Commission.

Dated: December 5, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-28743 Filed 12-8-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Yugoslavia/United States Discussion

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011284-001

Title: Yugoslavia/United States Discussion Agreement.

Parties:
Nedlloyd Lines, B.V.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would add Evergreen Marine Corporation (Taiwan) Ltd., Jugolinija, Lykes Bros. Steamship Co., Inc. and Sea-Land Service, Inc. as parties to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 5, 1989.

[FR Doc. 28-28785 Filed 12-8-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D-0470]

Frozen Dessert Processing Guidelines; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its "Frozen Dessert Processing Guidelines." FDA has developed these guidelines for use by industry, FDA, and State regulatory personnel to improve the safety and quality of frozen desserts and to assist in setting action priority recommendations when problems occur. FDA believes that adherence to these guidelines will better assure protection of the health and safety of consumers.

ADDRESSES: Submit written requests for single copies of "Frozen Dessert Processing Guidelines" to the Center for Food Safety and Applied Nutrition, Division of Cooperative Programs (HFF-340), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the Division in processing your requests. "Frozen Dessert Processing Guidelines" is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven Sims, or Johnnie Nichols, Center for Food Safety and Applied Nutrition (HFF–340), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: In October 1988, FDA completed an intensive review of the dairy industry. This review was precipitated by reports of outbreaks of various illnesses related to a number of dairy products between 1982 and 1985. As part of FDA's review, almost 600 frozen dessert and frozen dessert mix manufacturing plants were evaluated. Finished product samples in over 3 percent of these plants were found to contain pathogens such as *Listeria monocytogenes*. Contaminated products included ice cream, ice milk, dairy and nondairy novelties, as well as packaged mixes.

FDA developed these frozen dessert processing guidelines to assist State and local regulators, FDA investigators, and industry quality control personnel in reducing or eliminating pathogens and other forms of contamination in these products. The guidelines are intended for firms that assemble, pasteurize, dry, freeze, or package frozen desserts or frozen dessert mixes. The guidelines are applicable to the manufacture of mixes and finished products such as ice cream, frozen custard, goat's milk ice cream, ice milk, goat's milk, mellorine, sherbert, water ices, frozen yogurt, shake mixes, and other similar frozen dessert products, including frozen desserts consumed on interstate conveyances.

In developing these guidelines, FDA utilized current good manufacturing practice in manufacturing, packing, or holding human food (21 CFR Part 110), FDA's "Guidelines for the Prevention of Environmental Contamination," "Pasteurized Milk Ordinance (PMO)," the International Ice Cream Association's "Product Assurance Safety System (PASS) Manual," and "Principles and Guidelines for Frozen Dessert Novelty Equipment."

The guidelines are being made available under 21 CFR 10.90.

Dated: December 1, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28819 Filed 12–8–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0432]

Nutritional Therapy and Nutrition Education in Care and Management of AIDS Patients; Announcement of Study, Request for Scientific Data and Information, Tentative Report, and Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is preparing a report on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with acquired immunodeficiency syndrome (AIDS). FASEB is inviting written submission of scientific data and information on all aspects of the nutritional support of persons with AIDS. In addition, FASEB will make its tentative report publicly available in April 1990. FDA and FASEB invite written comments on that tentative report. Interested persons and organizations with questions regarding this study are invited to communicate with the LSRO contact persons listed below.

DATES: Scientific data and information should be received by January 31, 1990; the tentative report will be publicly available on or before April 2, 1990; written comments on the tentative report should be received by June 1, 1990; and further information on these dates and any extensions thereof will be available from the addresses indicated below.

ADDRESSES: Submit scientific data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Send two copies of all information to each office. Submit requests for single copies of the tentative report to the LSRO. Written comments on the tentative report should be submitted to the LSRO and to the Dockets Management Branch. Scientific data and information, the tentative report, and comments that are received on the tentative report will be available for public examination at the LSRO and the Dockets Management Branch. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, or Susan M. Pilch, Life Sciences Research Office, Federation of American Societies for Experimental Biology 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

FDA is announcing that it has asked the LSRO of FASEB, as a task under the contract, to secure information on current theories and beneficial clinical practices concerning the role of nutritional support in the care of patients with AIDS. FASEB will use this information to prepare a report for the interested scientific community and the public. The agency anticipates that this report will be useful as a basis for nutrition education in the clinical management of patients with AIDS.

The clinical course of AIDS varies, but its manifestations include many symptoms that affect food intake and nutritional status: Oral and esophageal lesions may make eating painful; fever may increase caloric requirements; nausea and vomiting may limit food intake; and intestinal infections, lesions, and other conditions may cause malabsorption and diarrhea. In addition, various drug treatments may interfere with nutrient absorption or metabolism. These factors contribute to the weight loss, various forms of malnutrition, and severe metabolic wasting that cause debilitation in many patients with AIDS.

Topics related to the nutrition care and management of pediatric, adolescent, and adult patients with AIDS that will be considered in this study include, but are not limited to, the following: The roles of nutrition and specific nutrients in immune function and resistance to infection as they may affect disease progression in AIDS; manifestations of AIDS that affect nutritional status; the etiology of malabsorption in AIDS; the etiology of metabolic wasting in AIDS; general nutritional recommendations for persons infected with human immunodeficiency virus (HIV) (including asymptomatic persons); and nutritional support recommendations for patients with gastrointestinal and other manifestations of AIDS.

This notice invites submission of scientific information and data that should be considered in developing the report on current theories and practices concerning the role of nutritional support in the care of patients with AIDS. Two copies of any comments, data, and information should be submitted to both FDA's Dockets Management Branch and the Life Sciences Research Office of FASEB (address above). The deadline for receipt of such submissions is January 31, 1990.

FASEB will make publicly available on or before April 2, 1990, its tentative report on nutritional therapy and nutritional education in the care and management of patients with AIDS. Interested persons are invited to submit written comments on the tentative report by June 1, 1990. Pursuant to its contract with FDA, FASEB will provide the agency with a final scientific report on these issues on or before September 28, 1990.

Dated: December 5, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–28820 Filed 12–8–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–89–908]

Acting Secretary of Housing and Urban Development; Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Secretary of Housing and Urban Development is not available to exercise the powers and perform the duties of the Secretary, appointees to the positions listed below are authorized to act as Secretary and exercise all the powers, functions, and duties assigned to or vested in the Secretary. Exec. Order No. 11274, 3 CFR 537 (1966–70 Comp.). However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. Under Secretary
2. General Counsel
3. Assistant Secretary for Housing-Federal Housing Commissioner
4. Assistant Secretary for Community Planning and Development
5. Assistant Secretary for Policy Development and Research
6. Assistant Secretary for Administration
7. Assistant Secretary for Legislation and Congressional Relations
8. Assistant Secretary for Fair Housing and Equal Opportunity
9. Assistant Secretary for Public Affairs
10. Assistant Secretary for Public and Indian Housing

In the event of a national security emergency and none of the officials named above is able to act, appointees to the positions listed below are authorized to act as Secretary and exercise all powers, functions, and duties assigned to or vested in the Secretary. Exec. Order No. 12656, 3 CFR 585 (1989 Comp.). However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. President, Government National Mortgage Association
2. Deputy Under Secretary for Field Coordination
3. Deputy Under Secretary for Intergovernmental Relations
4. Regional Administrator, Region I (Boston)
5. Regional Administrator, Region II (New York)
6. Regional Administrator, Region III (Philadelphia)
7. Regional Administrator, Region IV (Atlanta)
8. Regional Administrator, Region V (Chicago)
9. Regional Administrator, Region VI (Fort Worth)
10. Regional Administrator, Region VII (Kansas City)
11. Regional Administrator, Region VIII (Denver)
12. Regional Administrator, Region IX (San Francisco)
13. Regional Administrator, Region X (Seattle)

This designation supersedes the designation effective July 2, 1985, published July 11, 1985 (50 FR 28269).

Authority: Executive Order 11274, 31 FR 5243, 3 CFR 537 (1966–70 Comp.); Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 12656, 53 FR 47491, 3 CFR 585 (1989 Comp.).

Effective Date: This order is effective November 8, 1989.

Jack Kemp,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89–28787 Filed 12–8–89; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N–89–2090]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of

BEST COPY AVAILABLE

the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Quality Control Plan for Approved Mortgagees.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Mortgage Letter establishes minimum requirements for an acceptable Quality Control Plan for HUD-FHA approved mortgagees with respect to loan origination and servicing. The requirements are intended to improve the quality of loan origination and servicing by approved mortgagees and to reduce losses to HUD's insurance fund.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Buinesses or Organizations.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,200		1		40		48,000

Total Estimated Burden Hours: 48,000.

Status: New.

Contract: Andrew Zirneklis, HUD, (202) 755-6924, John Allison, OMB, (202) 395-6880.

Dated: December 4, 1989.

[FR Doc. 89-28789 Filed 12-8-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Mr. Dale Converse, PRT 744277, Sumner, IA.

The applicant requests a permit to purchase in interstate commerce two pairs of nene geese (*Nesochen (=Branta) sandvicensis*) from Rex Lamb, Carrollton, Missouri, and Van Halzen Farms, Grants Pass, Oregon, for the purpose of propagation.

Applicant: Mr. Jesse Warren, PRT 744421, Suches, GA.

The applicant requests a permit to purchase in interstate commerce two pairs of nene geese (*Nesochen (=Branta sandvicensis* from Bob Blankenship, Redding, California, for the purpose of propagation.

Applicant: Colorado State University—LCTA Lab., PRT 744554, Fort Collins, CO.

The applicant requests a permit to collect plant material from *Haplostachys haplostachya* var., *Stenogyne angustifolia* var., *angustifolia*, and *Lipochaeta venosa* in Pohakula Training area, Endangered Plant Habitat, Hawaii, for the purpose of scientific research on reproductive biology, genetics, and propagation.

Applicant: Environmental Science Associates, PRT 744294, San Francisco, CA.

The applicant requests a permit to live-trap salt harvest marsh mice (*Reithrodontomys raviventris*) in Palo Alto Baylands marsh, San Mateo County, California, to determine presence, distribution, habitat preference, and abundance. Any mice trapped will be sexed, tagged, and immediately released.

Applicant: Columbus Zoological Gardens, PRT 744553, Powell, OH.

The applicant requests a permit to import blood and skin biopsies from two male and two female pygmy chimps (*Pan paniscus*) as part of a pre-shipment health physical. The chimps are presently held at the Limburgse Zoo, Belgium, and the Columbus Zoo has applied for an import permit under PRT 743076, to import these chimps for zoological display and propagation.

Applicant: Pacific Gas & Electric Company, PRT 744835, San Ramon, CA.

The applicant requests a permit to conduct the following take activities with bald eagles (*Haliaetus leucocephalus*) in Shasta County, California, for purposes of research, management and monitoring of a resident population: capture, band, and attach telemetry transmitters, survey, repair nests, collect eggshell fragments and egg materials and draw blood.

Applicant: U.S. Fish and Wildlife Service, PRT 676811, Region 2, Albuquerque, NM.

The applicant requests an amendment and renewal of their existing permit to take various wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery plans, listing or other Service work for those species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 432, 4401 N. Fairfax Drive, Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 6, 1989.

Karen Wilson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-28888 Filed 12-8-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AK-060-00-4111-10

Request for Public Comments on Competitive Leasing; National Petroleum Reserve in Alaska (NPR-A); Correction

The text of the **Federal Register** Notice of November 3rd, 1989 (54 FR 46474-46475) is complete in its entirety. However, the paragraph numbering is incorrect. Paragraph number 5 is correctly number 3 and paragraph number 6 is correctly number 4.

In addition, the final date for public comment is extended to December 31, 1989.

ADDRESS: Direct written questions and responses to: M. Thomas Dean, Arctic District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Donald C. Meares, Natural Resource Specialist, at the address given above or telephone 907/474-2306.

M. Thomas Dean,

Manager, Arctic District.

[FR Doc. 89-28859 Filed 12-8-89; 8:45 am]

BILLING CODE 4310-84-M

[OR-933-00-4333-02; GP00-029]

Establishment and Availability of Proposed Boundaries, National Wild and Scenic Rivers System, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the establishment and the availability of proposed boundaries for river segments designated by the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

The proposed boundaries for the following designated wild, scenic and/or recreational rivers have been established by the Bureau of Land Management: Crooked (2 segments), Deschutes (2 segments), Donner und Blitzen, Grande Ronde, John Day, North Fork Crooked, North Fork Owyhee, Powder; Quartzville Creek, Salmon, Sandy, South Fork John Day, West Little Owyhee, White.

FOR FURTHER INFORMATION CONTACT: Ken White, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-2113.

The proposed boundaries for the Grande Ronde, North Fork Crooked, Salmon and White wild and scenic rivers include contiguous segments under the administration of the Forest Service, USDA.

The proposed boundaries are available for public inspection at the following office locations:

Bureau of Land Management

Headquarters Office, Room 3360, Main Interior Building, 1800 C Street, NW., Washington, DC.
Oregon State Office, 825 NE. Multnomah Street, Portland, Oregon 97208
Burns District Office, HC 74-12533, Hwy. 20 West, Hines, Oregon 97738
Prineville District Office, 185 East Fourth Street, Prineville, Oregon 97754
Salem District Office, 1717 Farby Road SE., Salem, Oregon 97306
Vale District Office, 100 Oregon Street, Vale, Oregon 97918

Forest Service

Ochoco National Forest (N.F. Crooked Wild and Scenic River), 155 N. Court, Prineville, Oregon
Mt. Hood National Forest (Salmon and White Wild and Scenic Rivers), 2955 NW. Division Street, Gresham, Oregon 97030
Umatilla National Forest (Grande Ronde Wild and Scenic River), 2517 SW. Hailey Avenue, Pendleton, Oregon 97801
Wallowa-Whitman National Forest (Grande Ronde Wild and Scenic River), 1550 Dewey Avenue, Baker, Oregon 97814

Dated: October 25, 1989.

Paul Vetterick,

Acting Oregon State Director.

[FR Doc. 89-28744 Filed 12-8-89; 8:45 am]

BILLING CODE 4310-33-M

[AA-340-00-4333-11]

Recreation Concession Leases and Vendor Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability—Recreation Concession Leases and Vendor Permits Manual.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice to making available a new Manual concerning recreation concession leases and vendor permits on BLM administered public lands and related waters.

DATE: Effective December 11, 1989.

ADDRESS: Send requests for copies to Director (340), Room 3360, Main Interior Building, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation and Cultural Resources Branch, (202) 343-9353.

SUPPLEMENTARY INFORMATION: This Manual makes use of existing authorities, regulations, and policies with respect to the issuance of recreation concession leases and vendor permits. It was developed as a direct result of field requests, in furtherance of BLM's multiple-use mission, in accordance with the Implementation Plan for Recreation 2000, and in order to consolidate program guidance into one document. Goals enhanced by this Manual include, but are not limited to: (1) Encourage private sector investment in expanding the range of outdoor recreation opportunities to the public; (2) Protect public health, safety, and reduce conflicts among users; (3) Assist in the management of limited natural resources and opportunities by controlling recreation use; and (4) Ensure the public is provided a full range of recreation facilities, services, and opportunities while recovering a free market value for the use of the National Public Lands and related waters.

In addition, it also supplements other BLM Manuals and Handbooks, e.g., BLM 1323 Manual—Cost Recovery For Reimbursable Projects/Activities; BLM 2920 Manual—Leases, Permits, and Easements; BLM 8372 Manual—Special Recreation Permits; and BLM Handbook H-8372-1—Special Recreation Permits For Commercial Use.

Dated: November 28, 1987.

Michael J. Penfold,

Acting Deputy Director.

[FR Doc. 89-28745 Filed 12-8-89; 8:45 am]

BILLING CODE 4310-84-M

[NV-930-00-4214-11; Nev-054505]

Proposed Continuation of Withdrawal; Nevada

November 30, 1989.

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The Corps of Engineers, on behalf of the U.S. Air Force, proposes that a withdrawal comprising 15,010.32 acres for the Wendover Air Force Range continue for an additional 25 years. The lands will remain closed to surface entry and mining, but will be opened to mineral leasing.

DATE: Comments should be received by March 8, 1990.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-328-6328.

The Corps of Engineers, on behalf of the U.S. Air Force, proposes that the existing land withdrawal made by Public Land Order 627, be modified and continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 32 N., R. 69 E.,
Sec. 12, a portion of the E½SE¼;
Sec. 13, a portion of the E½;
Sec. 24, All.
T. 32 N., R. 70 E.,
Sec. 3, Lots 1-6, S½NW¼, SW¼;
Sec. 4, Lots 1-4, S½N½, S½;
Sec. 5, Lots 1-4, S½N½, S½;
Sec. 6, Lots 1, 2, S½NE¼, SE¼, a portion of Lot 3, SE¼NW¼, E½SW¼;
Sec. 7-9, All;

Sec. 10, Lots 1–4, W½;
Sec. 15, Lots 1–4, W½;
Secs. 16–21, All;
Sec. 22, Lots 1–4, W½.
T. 33 N., R. 70 E.,
Sec. 15, Lots, 14, 16, 19, 21, W½SW¼, a portion of Lot 22, SE¼SW¼;
Sec. 16, Lots 2, 3, 5, 8, 10, 12, SE¼SE¼;
Sec. 20, Lots 1, 4, 5, 7, 10, 12, SE¼SE¼;
Sec. 21, Lot 1, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 22, W½, a portion of Lots 1 and 4;
Sec. 27, Lots 3, 4, W½, a portion of Lots 1 and 2;
Sec. 28, All;
Sec. 29, Lots 1, 4, 6, 7, E½, NE¼SW¼, S½SW¼;
Sec. 30, a portion of E½SE¼;
Sec. 31, E½SE¼, a portion of NE¼NE¼, S½NE¼, W½SE¼;
Secs. 32–33, All;
Sec. 34, Lots 1–4, W½;

The area described aggregates 15,010.32 acres in Elko County.

The withdrawal was originally established for the use of the military in connection with the Wendover, Utah, Army Airbase. The land is currently used for a safety and buffer zone for a common-use airfield. It is also proposed to use the area as a staging base, and to construct a new segment of runway and support facilities. The withdrawal segregates the land from operation of the public land laws generally, including the mining and mineral leasing laws. A change is proposed to reduce the segregative effect of the withdrawal by opening the lands to application under the mineral leasing laws. Mineral leases will not be approved without the concurrence of the U.S. Air Force. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawal may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89–28784 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Adams National Historic Site, Quincy, MA; Public Review Period for Land Protection Plan

In accordance with the Department of the Interior's Policy for the preparation and revision of Land Protection Plans (47 FR 19784), notice is hereby given that the National Park Service is revising the 1984 Land Protection Plan for Adams National Historic Site. A draft document is available for review from the Superintendent beginning December 15, 1989. Comments on the draft document should be submitted in writing by January 31, 1990, to the Superintendent, Adams National Historic Site, 135 Adams Street, P.O. Box 531, Quincy, Massachusetts 02269. The National Park Service prepares and periodically revises Land Protection Plans for each unit in the National Park System containing non-Federal or interest in land within its authorized boundary.

Dated: December 4, 1989.

Marie Rust,

Acting Regional Director.

[FR Doc. 89–28857 Filed 12–8–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Research Advisory Committee; Meeting Cancellation

Notice is hereby given of the cancellation of the A.I.D. Research Advisory Committee meeting scheduled for December 14–15, 1989. (Published at 54 FR 50029, Dec. 4, 1989).

Dated: November 29, 1989.

[FR Doc. 89–28846 Filed 12–8–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Address of Principal Office: USG Corporation, 101 South Wacker Drive, Chicago, Illinois 60606–4385

2. Wholly-Owned Subsidiaries Which Will Participate in the Operations and Addresses of Their Principal Offices:

Corporation and principal office address	Incorporated in
(a) United States Gypsum Company, 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(b) DAP, Inc., 855 North Third Street, Tipp City, Ohio 45373–3014.	Ohio.
(c) USG Interiors, Inc., 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(d) L&W Supply Corporation, 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.
(e) Stocking Specialists, Inc., 101 South Wacker Drive, Chicago, Illinois 60606–4385.	Delaware.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28749 Filed 12–8–89; 8:45 am]

BILLING CODE 7035–01–M

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.-Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–19539, filed October 24, 1989. NEW YORK AIRBUS, LTD. (Airbus) (30 Mahan Street, West Babylon, NY 11704)—PURCHASE—CLAUSEN BUS SERVICE, INC. (Clausen) (168–27 Baisley Boulevard, Jamaica, NY 11434). Applicants' representative: Gerald K. Gimmel, 444 North Frederick Avenue—Suite 200, Gaithersburg, MD 20877.

Airbus, a noncarrier corporation, seeks approval to acquire the assets (including the operating authority in Certificates No. MC–144471 (Sub-Nos. 1F and 2)) of Clausen. These latter certificates collectively authorize irregular-route motor common carrier service in the transportation of passengers, in charter and special operations, between points in the United States (except Hawaii).

Mr. Thomas G. Moonis and Mr. George Semke, noncarrier individuals, each own 50 percent of the stock of Airbus, CBS Bus Service, Inc. (CBS Service), CBS Bus Lines, Inc. (CBS Bus), and Harran Transportation Co., Inc. (Harran) (MC–40815). CBS Service, a noncarrier corporation, presently has pending an application in No. MC–F–19510 pursuant to which it seeks approval for the purchase of the assets, including the operating authority, of Coram Bus Service, Inc. (MC–165988). This latter authority encompasses the irregular-route motor common carrier transportation of passengers, in charter and special operations, between points in the United States (except Hawaii). Mr. Moonis and Mr. Semke presently have pending an application in No. MC–F–19510 in which they seek approval for their continuance in control of CBS Bus, upon CBS Bus' obtaining the initial motor common carrier authority it is presently seeking in No. MC–223305 which would authorize the transportation of passengers, in charter and special operations, between points in the United States (except Hawaii). Harran holds motor common carrier authority to transport: (1) Passengers, over irregular routes, in charter and special operations, between points in the United States; (2) passengers, in regular-route operations, between Bay Shore and Hauppauge, NY, and Atlantic City, NJ, over described routes, serving specified intermediate points; and (3) shipments weighting 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States. Harran also holds motor contract carrier authority to transport passengers, in special operations, beginning and ending at points in Queens, Nassau, and Suffolk Counties, NY, and extending to points in the United States, under continuing contract(s) with Resorts International, Inc., of Atlantic City, NJ.

Airbus has been granted temporary authority in No. MC–F–19539 TA to lease Clausen's above-described operating rights pending disposition of the instant finance application.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28750 Filed 12–8–89; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for license to export special nuclear material for a nuclear reactor as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or enviroamental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Material in kilograms		End use	Country of destination
	Material type	Total element	Total isotope		
Transnuclear, Inc., 11/27/89, 11/29/89, XSNMO2497.	EE-45% enriched uranium	26,291	26,785	Fuel for HFF Petten Reactor	The Netherlands.

Dated this 4th day of December 1989 at Rockville, Maryland.

C.N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 89–28854 Filed 12–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–417]

System Energy Resources, Inc., et al., Grand Gulf Nuclear Station, Unit 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Construction Permit No. CPPR–119 issued to System Energy Resources, Inc., (SERI) acting for itself and as agent for South Mississippi Electric Power Association (SMEPA), and Mississippi Power & Light Company, for construction of the Grand Gulf Nuclear Station, Unit 2, located in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change construction permit conditions to authorize the control and performance of licensed activities for Grand Gulf by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 21, 1989, as supplemented September 27 and November 21, 1989.

The Need for the Proposed Action

The SERI proposes to transfer the control and performance of licensed activities for Grand Gulf 2 to Entergy Operations, Inc. The proposed construction permit conditions will assure that SERI and SMEPA will continue in their present capacity as owners of Grand Gulf 2. The transfer to Entergy Operations, Inc. entails the transfer of SERI staff involved in nuclear activities from SERI to Entergy Operation, Inc. All staff responsible for Grand Gulf will continue after the amendment as before. There will be no physical changes associated with this amendment other than the change in

name only (to Entergy Operations, Inc.) of the nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the construction permit. The proposed changes would allow SERI to transfer the construction and management responsibilities for Grand Gulf 2 to Entergy Operations, Inc. The construction and management staff of SERI associated with Grand Gulf 2 will transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the amendment. SERI and SMEPA will continue as owners of the facility. Accordingly, the Commission concludes that this action would result in no significant radiological or non-radiological environmental impact.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2, dated September 1981.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 21, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 5th day of December 1989.

E.G. Tourigny,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28839 Filed 12-8-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27498; File No. 4-281]

Joint Industry Plan; Notice of Filing of an Amendment to the Consolidated Tape Association Plan To Introduce a New, Consolidated Form of Vendor/Computer Input User Agreement

The participants in the Consolidated Tape Association ("CTA") plan on October 16, 1989, submitted amendments to the restated CTA plan created pursuant to Rule 11Aa3-1(b)(2) and Rule 11Aa3-2(b) under the Securities Exchange Act of 1934 ("Act").[1]

I. Description of the Amendment

The purpose of the amendment is to implement a new, consolidated form of the vendor/computer input user agreements, which restates and consolidates into one form (the "Consolidated Form") the existing vendor agreements to: (1) Reduce paperwork; simplify and accelerate application processing; facilitate the administration of vendor and computer input agreements; and eliminate duplicative effort; and (2) improve the content of existing vendor agreements and addenda by eliminating provisions redundant of other protections afforded by the Consolidated Form or of statutory and common law protections and by substituting generic requirements for detailed specifications and proscriptions; and by reworking the language in general to make the agreement easier to read and understand.

A. Approach of the Consolidated Form

Section VIII of the plan requires the plan participants to enter into contracts with each vendor and computer input user ("Contracting Party" of "Contracting Parties") to govern the receipt of access to, and use of, last sale or quotation information, as appropriate. Since the adoption of the plan, the participants have fulfilled that obligation by evolving two series of agreement forms: One series for (i) the receipt of last sale and quotation information over the high speed line, (ii) the receipt of Network A last sale information over the low speed line and (iii) the use of Network A last sale and quotation information; the other for (i) the receipt of Network B last sale information over the low speed line and (ii) the use of Network B last sale and quotation information.Contracting Parties receive and use last sale and quotation information for the purposes described in Section VIII of the plan, pursuant to those agreements ("Existing Vendor Agreements").

Historically, the NYSE and the Amex have specifically tailored each Existing Vendor Agreement to meet the specific services and requirements of each Contracting Party. The evolutionary nature of those agreements, and the need to tailor them on a case-by-case basis, were in large part a function of the ever-changing technologies in the market data community. In creating the Consolidated Form, the participants have taken a different approach.

The objectives of the new approach are: (1) To enable each Contracting Party to satisfy the plan's contract requirements by entering into only one agreement with the participants for all purposes of the plan and (2) to develop one standard form of agreement that applies for all Contracting Parties, no matter what technologies or means of receipt may be used. As a result, the participants have attempted to create a contract form that addresses all foreseeable contract variables associated with the many aspects of the receipt and use of market data, even though one or more of the Consolidated Form's provisions may not apply in the context of a particular Contracting Party. The participants have used several devices in developing this universal form:

(1) *Exhibit A*—Existing Vendor Agreements already require the Contracting Party to describe the manner in which it receives, uses and safeguards market data in Exhibit A. The Consolidated Form will place greater emphasis on the content of Exhibit A. Contracting Parties will have to include more information and more detailed descriptions so that vendor-specific information will no longer have to be incorporated into the body of the agreement.

(2) *Exhibit B*—The participants recognize that the Consolidated Form cannot anticipate the many new technologies and other developments that are likely to surface. In addition, in the interest of keeping the Consolidated Form to a manageable length, the participants have determined to omit from the body of the Consolidated Form provisions governing certain infrequent uses of market data (*e.g.*, provisions governing public displays and participant-supplied equipment). Exhibit B affords the participants flexibility by incorporating those unforeseen or less frequently-used provisions into the Consolidated Form on a case-by-case basis.

(3) *Genericization*—The universal nature of the Consolidated Form requires it to take a much more generic approach to the rights and obligations of the Contracting Party. Examples include:

(a) Existing Vendor Agreements allow a wide assortment of third parties to assist Contracting Parties in their receipt and use of market data (*e.g.*, "facilities proprietors," "cablecasters," "switch service suppliers," and "installation contractors"). The Consolidated Form adopts the umbrella concept of a "Service Facilitator" to generically govern the obligations of Contracting Parties in respect of those third parties.

(b) The Consolidated Form moves to Exhibit A all vendor-specific information, such as the services a vendor will provide or the means by which a vendor will receive access tomarket data (*e.g.*, directly versus indirectly; high speed line versus low speed line). As a result, the body of the Consolidated Form contains only generic references to the manner in which a vendor receives and uses market data.

(c) The Consolidated Form omits specification of the period after which a last sale price becomes a delayed last sale price.

(d) The Consolidated Form governs the receipt and use of multiple types of information. Like its predecessor forms in use over the past few years, the Consolidated Form governs last sale and quotation information disseminated pursuant to the plan, as well as market information furnished by the NYSE and Amex outside of the plan.

(e) The Consolidated Form applies to all types of vendor services: professional subscriber services, nonprofessional subscriber services, limited access services, and, for last sale information, delayed data services. It also applies in a generic way to all other foreseeable permitted uses of market data by a Contracting Party. The information provided in Exhibit A dictates which of the Consolidated Form's provisions governing those services and uses apply in respect of a particular vendor.

B. Administrative Changes

The Consolidated Form also incorporates administrative changes from Existing Vendor Agreements. The use of a generic form necessitates many of these changes. Other changes result from the participants' evaluation of their administrative experiences under Existing Vendor Agreements. The changes include:

(1) *The NYSE as Contract Administrator*—To facilitate the use of a generic form with wide application, to reduce the burden associated with administering market data contracts and to eliminate duplicative efforts, the plans delegate to the NYSE authority to administer contracts on behalf of the Network B participants. Thus, the NYSE will act for the Network B participants in executing the Consolidated Form on behalf of the Network B participants. The delegation of authority is solely ministerial and primarily permits the NYSE to approve one or more uses of market data relating to Network B eligible securities where the NYSE has already approved identical uses of market data relating to Network A eligible securities. In all other respects, Amex continues in its present role as the Network B administrator. The amendments conform the plan to reflect this delegation of authority.

(2) *Recapture of Costs Associated with Non-Compliance*—The Consolidated Form imposes a series of financial consequences relating to the unauthorized or unreported provision or use of market data designed to end subsidy of non-complying recipients by those who comply. The consequences include:

(a) If a Contracting Party makes an unauthorized or unreported provision or use of market data, it must pay any charge payable in respect of that provision or use. In addition, if a professional subscriber, a nonprofessional subscriber and/or any other person receives market data in the chain of dissemination that commenced with the Contracting Party's illicit provision or use, the Contracting Party must pay any charge payable in respect of any unauthorized or unreported provision or use of market data by such subscriber or other person. This provision recasts and replaces a provision found in Existing Vendor Agreements that requires the Contracting Party to indemnify the participants for losses resulting from reporting failures.

(b) The Contracting Party must pay an administrative fee equal to ten percent of the charges described in the preceding paragraph to cover the participants' investigations, processing and collection costs.

(c) The Contracting Party must pay interest on any charge not remitted in a timely manner. The interest rate will be the lesser of (1) one and one-half percent per month and (2) the maximum rate permitted by law. Existing Vendor Agreements already impose this charge, subject to a maximum for any one year equal to one million dollars, adjusted for inflation since 1983.

The Consolidated Form changes that maximum amount. In respect of each professional subscriber receiving market data as a nonprofessional, the vendor need pay no more than the applicable professional subscriber fees payable for the two preceding years plus the associated administrative and interest charges described above.

(3) *Audit Requirement*—Existing Vendor Agreements require the vendor to provide an audited list of nonprofessional subscribers annually, or more frequently if the participants so request. The Consolidated Form eliminates the mandatory annual audit, but otherwise expands the scope of the audit requirement. Upon request, the Contracting Party must provide an audited list or report containing such information as the participants may request, whether the request concerns nonprofessional subscribers, professional subscribers or other services.

(4) *Service Facilitators*—The Consolidated Form introduces the term Service Facilitator to replace the assortment of third parties that Existing Vendor Agreements permit to assist the Contracting Party in its receipt or use of market data. The Existing Vendor Agreements impose a variety of obligations on the Contracting Party in respect of those third parties and often require the third party to undertake to comply with the applicable terms and conditions of the agreement. To make the Consolidated Form more generic, the participants have determined to adopt a uniform approach to govern all Service Facilitators.

(a) First, the NYSE, as the contract administrator, must determine whether the third party plays the subsidiary role of a Service Facilitator or has more substantive responsibilities in the data dissemination process (*e.g.*, a partner or joint venturer). If the latter, the NYSE may require the third party to enter into the Consolidated Form, independently of the Contracting Party.

(b) If the NYSE determines a third party to be a Service Facilitator, the Service Facilitator need not undertake in writing to comply with the applicable terms and conditions imposed by the Consolidated Form. Instead, the Consolidated Form requires the Contracting Party to guarantee Service Facilitator's compliance. In addition, the NYSE will require the Contracting Party to cause Exhibit A to adequately describe the Service Facilitator and its functions.

[1] The participants in the restated CTA plan are the American Stock Exchange ("Amex"), Boston Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange ("NYSE"), Pacific Stock Exchange, and Philadelphia Stock Exchange.

(5) *Access to Records.*—Existing Vendor Agreements grant participants the right to have access to, and to audit, the vendor's nonprofessional subscriber records. In order to improve the participants' ability to monitor compliance, the Consolidated Form expands that right of access to include all relevant records of a Contracting Party.

(6) *Reasonableness Standard*—The Consolidated Form, unlike Existing Vendor Agreements, includes a provision that requires the participants to act in a reasonable manner when acting under the Consolidated Form. While the participants have always acted in a reasonable manner under their agreements, they intend for the explicit reasonableness standard to offer added comfort to Contracting Parties.

C. Deleted Provisions

The Consolidated Form omits a number of provisions found in Existing Vendor Agreements. The omitted provisions include:

(1) *Display Requirements.*—The restated CTA plan requires Existing Vendor Agreements to contain the following provisions:

(a) For vendors of last sale information interrogation services, the agreement must require that the interrogation devices have the ability to display the most recent last sale price relating to an eligible security.

(b) For vendors retransmitting a ticker display, the agreement must require the vendor to retransmit all last sale prices without deletions and to refrain from retransmitting unless CTA has first approved the retransmission format.

(c) For quotation information vendors, the agreement must require the vendor to display quotation information in a comprehensive, nondiscriminatory manner that complies with the Act and the rules and regulations thereunder.

(d) For quotation information vendors whose services include devices not capable of displaying quotation size and of indicating that bids and offers are not firm, the agreement must require the vendor to cause such devices to have both capabilities.

(e) The vendor's transmissions must comply with all display rules under the Act and the rules and regulations thereunder.

(f) The vendor's retransmitted ticker display devices must comply with all the NYSE requirements for content, format and timeliness.

Because the Consolidated Form and the plans are, by their terms, subject to the Act and the rules thereunder, and because the relevant provisions of the Act and its rules are enforceable in and of themselves, the participants have omitted the above-listed display requirements from the Consolidated Form as either redundant or no longer necessary. To conform to the plan accordingly, the amendments delete from the plan the requirements described above.

(2) *Regulation of Transmissions*—The Consolidated Form omits a provision requiring the Contracting Party to connect and use transmission equipment and to effect transmissions in accordance with the regulations of the participants, common carriers and relevant public authorities. Instead, the Consolidated Form relies upon the requirement that the equipment be arranged and protected so as to preclude unauthorized access. The participants feel that they can omit the provisions because the rules of public authorities are enforceable without reference to the Consolidated Form.

(3) *Regulation of Vendor's Transmission Facility*—The Consolidated Form omits the several provisions relating to the Contracting Party's fcilities. The omitted provisions include:

(a) The Contracting Party may only locate its service equipment and software at premises specifically identified in Exhibit A.

(b) The Contracting Party must control those premises and access to them.

(c) The Contracting Party must prohibit all but specifically identified persons from having access to market data at its premises.

(d) The Contracting Party must comply with and enforce the participants' regulations designed to prevent improper access to market data at its premises.

In some instances, equipment components may be located at so many locations, or may be moved from one location to another at such frequent intervals, identification of those locations in Exhibit A to the contract may be administratively burdensome and generally unnecessary. Instead, the participants feel that other elements of the Consolidated Form adequately protect against abuses at transmission facilities and computer sites. In particular, the participants will rely on the following:

(a) Exhibit A must describe the transmission facilities and computer sites in detail.

(b) The Consolidated Form contains proscriptions against unauthorized access to market data. (See paragraph 13(a) of the Consolidated Form.)

(4) *Device Requirements*—The Consolidated Form omits a provision prohibiting the vendor from attaching any display device to service equipment and software unless Exhibit A describes the device in detail. Because the participants already require Exhibit A to describe all service equipment, the prohibition is redundant.

(5) *Vendor Modification of Nonprofessional Subscriber Agreements*—The Consolidated Form omits a prohibition against the vendor modifying, or vitiating the terms of, any nonprofessional subscriber's application and agreement. The Consolidated Form requires the vendor to have nonprofessional subcribers sign the appropriate application and agreement(s) or an alternate form approved by the NYSE. The omitted provision would be redundant.

(6) *Competing Data Use*—The Consolidated Form omits a provision specifying that the participants may provide market data to all other parties, including competitors of the Contracting Party. Because the Consolidated Form does not provide for any "exclusive" arrangement, no implication arises that would necessitate that participants reserve the right to provide market data to others. Moreover, the Act makes clear that the participants must provide data to all who seek it and meet the terms of the provision.

(7) *Employee Authority to Act*—The Consolidated Form omits a provision clarifying that an officer, or a person designated by an officer, is authorized to act on behalf of the NYSE or the Amex. By operation of law, an officer would have the authority to act, or to delegate another person to act, on behalf of the NYSE or the Amex for market data contract purposes, even without a specific provision.

D. Provisional Use of Consolidated Form

The participants began provisional use of the Consolidated Form in mid-1988. Since then, the participants have required all new Contracting Parties to enter into it rather than into the Existing Vendor Agreements. Copies of the Consolidated Form executed prior to its final approval contain in Exhibit B a provision specifying that it may be superseded by the ultimate form of agreement.

Since that time, the participants have solicited comments and suggestions from Contracting Parties. In particular, they helped to create, and have participated in, a vendor committee formed by the Information Industry Association's Financial Information Services Division (the "Committee") for the purpose of examining the Consolidated Form. Representatives of the participants and a cross section of the vendor community comprised the Committee. It provided a forum for discussing the concepts underlying the Consolidated Form and an opportunity for vendors to offer input. The participants explained the operation and rationale for provisions that vendors questioned and agreed to make several changes to address vendor concerns.

The Consolidated Form as filed contains modifications from the version that the participants have been using provisionally. Those modifications reflect many of the Committee's comments and suggestions as well as a number of other comments and suggestions raised by vendors and securities firms that were not on the Committee.

On August 9, 1989, the participants distributed copies of the Consolidated Form as filed to each member of the Committee. An accompanying letter explained the changes and explained why, in some instances, the participants declined to incorporate vendor comments into the Consolidated Form.

The participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form in the form filed.

Further the participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form (a) if and when it modifies the manner in which it receives or uses last sale or quotation information in a manner that would otherwise require it to execute a supplement or addendum to its Existing Vendor Agreements or (b) in lieu of an assignment of an Existing Vendor Agreement (as when a vendor merges into another corporation). By its terms, the Consolidated Form supersedes a predecessor Existing Vendor Agreement if the Consolidated Form's Exhibit A covers the service(s) that are the subject of the Existing Vendor Agreement. The participants may also ask other current Contracting Parties to execute the Consolidated Form in other instances, such as when doing so would serve administrative efficiency.

II. Implementation of The Amendment

Under section III(b) of the restated CTA plan, each of the plan's participants must execute a written amendment to the plan before the amendments can become effective. Each amendment is so executed.

III. Request For Comment

Interested persons are invited to submit written comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7–433 and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(27).

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28864 Filed 12–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27496; File No. SR–Amex–89–27]

Self-Regulatory Organizations; Notice of Propoad Rule Change by American Stock Exchange, Inc. Relating to the Comparison of Options Transactions Excluded from Clearance

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to revise its Rule 970 to provide a complete description of the procedures that members must follow to resolve options transactions excluded from clearance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Amex Rule 970 sets forth the basic framework for members to close out uncompared option transactions which cannot be resolved by mutual agreement. However, the rule does not specify in detail the actual procedures to be used in this regard. This differs significantly from the corresponding rule regarding equity transactions (Rule 723), which provides a complete description of the procedures that members must follow to resolve equity transactions excluded from clearance.

Although members generally follow procedures similar to those set forth in Rule 723 when attempting to resolve uncompared options transactions, it is important that the corresponding option rule be clear as to the precise steps that must be taken, not only to avoid confusion as to what is expected of members in this regard, but to provide increased certainty in the administration of the procedures and to help identify any abuses.

The Exchange is therefore proposing to revise Rule 970 to codify the existing procedures applicable to the resolution of disagreements arising out of uncompared option transactions. The following is a summary of the proposed revisions to Rule 970:

- Prior to the "call time" (i.e., the time designated by the Exchange when members and/or designated representatives must assembled in the area designated by the Exchange to resolve option transactions which did not clear) all parties must check contract sheets and verify uncompared trades which are the subject of Rejected Option Trade Notices (ROTNs) and review advisories which notify them that they are reported to be the contra side of uncompared trades.
- At the "call time", ROTNs are to be delivered by the uncompared side to the contra side whose name was given up.
- If the contra side "DKs" the ROTN, indicating that it does not know the trade as specified, the uncompared side

will promptly forward the ROTN to the broker who executed the order.

• If a trade is not resolved, a ruling must be obtained from a Floor Official as to whether the transaction is bona-fide.

• ROTNs must be "OK'd" to signify acceptance of the trade as specified, or DK'd no later than one-half hour prior to the opening of trading unless an agent (including a specialist) was involved in executing the order, in which case the time limit will be extended an additional 15 minutes.

• A party who has not received a response to a ROTN within the required timeframes cannot, without his consent, be held responsible for the trade to the party who failed to respond.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to "prevent fraudulent and manipulative acts and practices" and to "promote just and equitable principles of trade."

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filling will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to the file number in the caption above (SR–Amex–89–27) and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28865 Filed 12–8–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27500; File No. SR–Amex–89–29]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the American Stock Exchange, Inc. Relating to New Listing Criteria Under Section 107 of the Amex Company Guide

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend section 107 of the Amex Company Guide to provide listing guidelines to accommodate securities not otherwise covered under existing Sections of the Company Guide. Guidelines relating to subscription rights currently covered in section 107 would be incorporated into section 340 (Subscription Rights), which sets forth the procedure for listing these rights.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, and is set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Listing Guidelines*—During the past several years, the Exchange has added provisions to its listing criteria to accommodate securities that could not be readily categorized under the Exchange's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants. For example, the Exchange has recently adopted specific listing guidelines covering foreign currency and index warrants.[1]

Today, more so than at any time in the past, issuers and underwriters are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities, *e.g.*, fixed face amount debt securities incorporating an opportunity for equity appreciation and fixed amount payment certificates based on the price level of the issuer's equity securities. Such securities are often designed to achieve more than one objective in connection with a specific corporate transaction, and, on occasion, have involved assets or categories of assets that traditionally may not have been segregated or used as collateral for a particular issue. As a consequence, such securities may take a variety of forms depending upon the particular objective(s) being sought, as well as general market conditions.

The Exchange believes it necessary to provide added flexibility in its guidelines to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing criteria. The proposed section 107 guidelines are intended to allow the Exchange added flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. However, the new section 107 guidelines [2] are not intended to accommodate the listing of securities that raise significant new regulatory issues, such as Americus Trusts, and which may be expected to require a separate filing with the Commission pursuant to Rule 19b–4 under the Act.

The proposed numerical listing criteria in needed section 107 are intended to accommodate major issuers with assets of $100 million and stockholders' equity of $10 million. These guidelines substantially exceed section 101 standard listing criteria.[3] Such issuers generally will be expected to meet the earnings criteria set forth in section 101.[4] Issuers not meeting these criteria generally will be required to have assets in excess of $200 million and stockholders' equity of $10 million, or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria in proposed section 107 are comparable to those currently existing in section 102(a) for equity issues,[5] except that when trading is expected to occur in much larger than average trading units, *e.g.*, $1,000 principal amount, a minimum of 100 holders will be expected.[6] The aggregate market value of issues listed under Section 107 will be expected to be at least $20 million, the same as the standard for debt securities of non-listed securities.[7]

Where such an instrument contains cash settlement provisions, settlement will be required to be made in U.S. dollars. Where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

The Exchange will apply the guidelines for continued listing contained in sections 1001 to 1003 [8] to section 107 securities as appropriate, in light of the specific nature of the securities, *e.g.*, debt/equity characteristics.

Finally, the Exchange is further amending existing Section 107 by deleting the provision on subscription rights from Section 107 and repositioning it to Section 340 (Subscription Rights), which sets forth the Exchange's procedure for listing subscription rights.

(b) *Membership Circular*—Securities listed for trading under section 107 are likely to possess characteristics common to debt and equity instruments alike. For this reason, prior to trading securities admitted to listing under section 107, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retain or institutional interest; and such other features of the issues that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effective of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–89–29 and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28866 Filed 12–8–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27493; File No. SR–PSE–89–25]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Alternate Specialists

On September 19, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities

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[1] *See* Amex *Company Guide*, Section 106.

[2] Section 107 currently deals only with subscription rights. It states that "[t]he Exchange will not list subscription rights unless the underlying security is, or will be, listed on the Exchange . . ." Amex Company Guide.

[3] Section 101 of the Amex *Company Guide* requires, as a condition of original listing, that stockholders' equity be at least $4,000,000.

[4] Section 101 requires pre-tax income of at least $750,000 in the issuer's last fiscal year, or in two of the last three fiscal years.

[5] Section 102(a) requires a minimum public distribution of 500,000 shares together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders.

[6] This is the same number of holders required under § 104(b) for debt securities of non-listed issuers.

[7] Section 104(b) of the Amex Company Guide.

[8] These sections of the Amex Company Guide set forth the Exchange's suspension and delisting policies.

and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt, on a six month pilot basis, several policy statements relating to its alternate specialist system.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27343 (October 6, 1989), 54 FR 42429 (October 16, 1989). No comments were received on the proposal.

The PSE has proposed the adoption of several policy statements governing the activities of alternate specialists on its two equity trading floors.[3] PSE Rule II, Section 10, governs securities traded on an alternate specialist basis. The alternate specialist system was designed as a means of aiding primary specialists in the maintenance of a fair and orderly market. After an alternate specialist is approved and appointed under the PSE rules, an application is made by the alternate specialist for securities in which he or she undertakes a continuous obligation to engage "in dealings for his [or her] own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and the demand for a particular security, or a temporary distortion of the price relationships between the Exchange and other markets" (Rule II, section 10(d)).

During the course of an ongoing evaluation of the interaction of market conditions and Exchange systems, the PSE's Market Performance Committee, Equity Floor Trading Committee, and Equity Allocation Committee initiated a review of the PSE's alternate specialist system. Subsequent to this review, the Market Performance Committee approved certain policy statements governing the activities of alternate specialists, and it seeks to add these to Rule II, subsection 10(d) as commentaries .02 through .05. The Exchange requests approval of these policies for a a six month trial period to allow it an opportunity to monitor their effectiveness and determine whether additional changes are necessary.

Specifically, the Exchange proposes a clarification of the duty of alternate specialists to clear both primary specialist posts [4] on each of the PSE's two equity trading floors prior to entering into a trade.[5] It also proposes to preclude an alternate specialist whose specialist evaluation ranking falls in the bottom 10% of his or her trading floor from acting as an alternate specialist until the ranking rises above the bottom 10%.[6] Further, the proposal establishes a 500-share minimum requirement for alternate specialists who participate in certain pre-opening orders when requested to do so by a specialist.[7] Finally, the proposal requires that the names of the alternate specialists and designated stocks be displayed at each specialist post in alphabetical order.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[8] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to facilitate transactions in securities, to perfect the mechanism of a free and open market in exchange-listed securities, and protect investors and the public interest.

First, by expressly providing that alternate specialists must clear both primary specialist posts prior to entering into a trade, the Exchange is clarifying the responsibilities of alternate specialists in providing a market or improving upon a market, thereby helping to ensure that public customers obtain the best possible executions of their securities orders. Second, by providing that an alternate specialist who fails to meet certain performance criteria or who is subject to disciplinary action is precluded from acting as such for a period of time, the Exchange is ensuring that alternate specialists who have failed to engage in dealings in accordance with the rules of the PSE are prohibited from executing securities orders of public customers during this time, thus protecting the public interest. Third, the Exchange's 500-share minimum paticipation requirement for alternate specialists on certain pre-opening orders, if so requested by the primary specialist, serves as an additional means of strengthening the specialist system: by providing additional depth to the pre-opening market, the alternate specialist will assist the primary specialist in maintaining a fair and orderly market. Finally, the Exchange's proposal to clearly post the name s of alternate specialists and designated stocks will serve to eliminate confusion on the Exchange's two trading floors, as well as assist in the overall orderliness and expediency of the trading process.

In addition, the Commission believes that the proposal is consistent with section 11(b) of the Act, which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. Moreover, the Commission believes that implementation of the PSE's proposal for a six months trial period will enable the Exchange to carefully monitor and assess the effectiveness of the policies as a means of strengthening the specialist system.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved for a six month period ending on June 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28667 Filed 12–8–89; 8:45 am]

BILLING CODE 8015–01–M

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[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The PSE has two equity trading floors: one located in Los Angeles, and the other in San Francisco, California.

[4] The PSE currently requires floor brokers and alternate specialists to request a market quote from the primary specialist on each of its two trading floors (a practice known as "clearing the post") prior to entering into a trade.

[5] The new proposal will require an alternate specialist to clear both posts (*i.e.*, obtain market quotes from the applicable specialist on each trading floor) prior to effecting a transaction on the equity trading floors or on the Intermarket Trading System. Further, it proposes a sanction barring an alternate specialist who is subject to disciplinary action for failure to clear both posts from acting as an alternate specialist for a three month period.

[6] The PSE's Equity Allocation Committee may determine otherwise.

[7] The new proposal states that "[p]rior to the opening, in any order over 2,000 shares in which each primary specialist chooses to participate with at least 1,000 shares, an alternate specialist shall be required to participate with a minimum of 500 shares if requested by either specialist."

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. IC–17252; 812–7321]

United Services Fund, et al.; Notice of Application

December 4, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940, as amended (the "Act").

Applicants: United Services Funds, all future investment companies for which United Services Advisors serves as investment advisor, and United Services Advisors (collectively, the "Funds").

Relevant 1940 Act Sections: Order requested under Sections 6(c) and 17(d) of the Act and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an order permitting the Funds to deposit their uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or weekend or holiday) repurchase agreements in a total amount equal to the aggregate daily balance in the joint account.

Filing Date: The application was filed on May 12, 1989 and amended on December 4, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 11330 Interstate Highway 10 West, San Antonio, Texas 78249–3340.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, at (202) 272–3035, or Karen L. Skidmore, Branch Chief, at (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The existing Funds are series of United Services Funds, an investment company registered under the Act. The Funds are authorized to invest in repurchase agreements. United Services Advisors, Inc. (the "Adviser") serves as investment adviser to each of the Funds. Each of the Funds has or may be expected to have uninvested cash balances in its custodian bank, Frost National Bank ("Frost"), from time to time which would not be invested in portfolio securities by the portfolio manager at the end of each trading day. in the normal course of business, if the amount of such assets of each Fund is separately of sufficient size, the Adviser attempts to invest the assets of such Fund in federal securities, overnight repurchase agreements with a bank or major brokerage house, or other similar short-term investment contracts, in order to earn additional income for that Fund. A Fund with residual assets which are not of adequate size to permit such an investment is unable to invest its residual assets in a similar manner.

2. Currently, the portfolio manager of each Fund prepares a projection of the total cash available of the Fund which will not otherwise be available for the day. The projection may be adjusted during the day to reflect the addtional amounts which become available during the day, although generally, there can remain some amount of assets which is received too late or is too small to be effectively invested in a separate transaction. The repurchase desk operated by the Adviser on behalf of the Funds each morning begins negotiating the interest rate for repurchase agreements for that day and lining up the U.S. Government obligations required as collateral. Most of the morning commitments for repurchase agreements are generally completed by 7:30 a.m. (San Antonio time), with an occasional commitment as late as 8:30 a.m. (San Antonio time) in unusual circumstances.

3. In connection with the use of repurchase transactions collateralized by U.S. Government securities, each of the Funds has established the same quality standards for issues of repurchase agreements and for collateral. These include creditworthiness standards for issuers of repurchase agreements, quality standards for collateral, and requirements that the repurchase agreements be at least 102% collateralized at all times or other such percentage as the Funds may, from time to time, establish, but in no event less than 100% of the amount of the repurchase agreement (including accrued interest earned thereon). Each repurchase agreement would be made by calling a U.S. bank, a non-primary U.S. government securities dealer or a major brokerage house and indicating the rate of interest and size of the desired repurchase agreement. U.S. Government obligations to be held as collateral by the Funds would then be identified and the Funds' custodian bank would be notified. These securities would either be wired to the account of Frost at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Fund at another qualified bank or redesignated and segregated on the records of Frost if Frost is already the recorded holder of the collateral for the repurchase agreement. This procedure would occur on almost every trading day for each of the Funds which wish to enter into repurchase agreement.

4. Applicants propose to establish a joint trading account ("Account"). Each Fund will automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into such Account. The Account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The Account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the Account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balances.

5. Cash in the Account will be invested in repurchase agreements collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by any of the Funds for such investments. Each such repurchase agreement will have an overnight or over-the-weekend duration, and may have a duration of no more than seven days.

6. All investments held by the Account will be valued on an amortized cost basis. Each Fund subject to an exemptive order permitting valuation on the basis of amortized cost or relying upon Rule 2a–7 under the Act would use the average maturity of the Account for purposes of computing the Fund's average portfolio maturity with respect to the portion of its assets held in the Account on that day.

7. In order to assure that a Fund can only use its balance of the Account, Funds will not be allowed to create a negative balance in the Account for any reason. A Fund's decision to invest in the Account will be solely at the Fund's option. A Fund will not be obligated to invest in the Account nor to maintain any minimum balance. A Fund may withdraw all, or a portion, of its investment in the Account at any time. In addition, a Fund will retain the sole rights of ownership of any of its assets, including any interest payable on such assets invested in the Account. Each fund's investment in the Account will be documented daily on the books of the

Funds as well as on the books of the Funds' custodian. Applicants believe that a Fund's investment in the Account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, of any other participant Fund in the Account. Each Fund's liability on any repurchase agreement purchased by the Account will be limited to its interest in such repurchase agreement.

8. Each Fund will participate in the income earned or accrued in the Account and all instruments (*i.e.*, cash and U.S. Government securities) held in the Account on the basis of the Fund's percentage of the total amount in the Account on any day represented by its share of the Account.

9. The Adviser will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment management contract with each Fund and will not collect any additional fee for the management of the joint account. The Adviser will continue to collect its fees based upon the total net assets of each separate Fund provided in each respective investment management agreement.

10. The Account will be administered within the fidelity bond coverage required by Section 17(g) of the Act and Rule 17g–1 thereunder. The Board of Trustees of the existing Funds and of future funds participating in the Account will evaluate the Account arrangements annually, and will continue the Account only if they determine that there is a reasonable likelihood that the Account will benefit the Funds and their shareholders.

11. Each Fund will participate in the Account on the same basis as every other fund and in conformity with each Fund's fundamental investment objectives and restrictions. Participation in the Account will not result in any conflicts of interest between any of the Funds or between a Fund and the Adviser. Future investment companies for which the Adviser serves as investment adviser will be required to participate in the Account on the same terms and conditions as the existing Funds.

12. Applicants believe that the Funds will earn a higher return by participating in the Account rather than by maintaining individual accounts because it is possible to negotiate a rate of return on a large repurchase agreement which is greater than the rate of return which can be negotiated for smaller repurchase agreements. Also, at present asset levels, the Funds will reduce the aggregate amount of the related transactions fees incurred annually. During the twelve month period ending December 31, 1988, the estimted total transaction costs would have been reduced by approximately $28,800.

Applicants' Conditions

Applicants agree to operate the Account in accordance with the representations set forth in paragraphs 4 through 10 above and agree that such representations may be made express conditions of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28868 Filed 12–8–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–17249; File No. 811–4123]

USAA Life Portfolio Series, Inc., Notice of Application

December 1, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: USAA Life Portfolio Series, Inc.

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Appliction: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 27, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicant, 9800 Fredericksburg Road, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272–3027 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is a corporation established under the laws of the State of Maryland. Applicant is an open-end management investment company, registered under the 1940 Act. Applicant filed its notice of registration under the 1940 Act and a Form N–1A registration statement on October 11, 1984.

2. Applicant's Form N–1A registration statement under the Securities Act of 1933 was declared effective by the commission on August 26, 1985. The registration statement pertains to Applicant's shares of common stock, which were offered and sold only to Variable Account A of USAA Life Insurance Company (the "Separate Account") in connection with flexible premium variable life insurance policies ("Policies"), which were funded through Applicant and which were offered and sold by USAA Life Insurance Company ("USSA Life"). Four classes of shares were registered, each corresponding to one of Applicant's four investment portfolios: Balanced Portfolio, Growth Portfolio, Income Portfolio, and Money Market Portfolio.

3. The public offering of Policies and all classes of Applicant's shares commenced on May 12, 1986, but, according to Applicant, the volume of Policies sold did not meet USAA Life's expectations, which made the Policies less advantageous from the standpoint of both USAA Life and Policy owners.

4. Accordingly, sales of new Policies were suspended in February 1989, and, in June 1989, USAA Life mailed to all Policy owners a letter that offered Policy owners two previously unavailable options for terminating their Policies.

5. These new options were (a) to receive a specified amount of cash or (b) to receive a flexible premium fixed benefit life insurance policy issued by USAA Life ("Universal Policy") having a specified cash value. The specified amount of cash or cash value, as the case may be, was guaranteed to be not less than, among other things, the greater of (i) the Policy's cash value (less any outstanding Policy loan balances) as of June 13, 1989, plus a 15% bonus (subject to appropriate adjustment for premium payments, loan transactions or withdrawals subsequent to January 13, 1989) or (ii) the Policy's cash value on the date the exchange or cash-out was effected.

6. All Policy owners were also given the option of declining the exchange or cash-out offer altogether or surrendering their Policies for their cash values at any time prior to the time the exchange or cash-out was effected.

7. All Policy owners accepted either the exchange or cash-out option and all exchanges and cash-outs were effected on September 14, 1989. Checks were mailed to Policy owners on September 19, 1989 in the full amount of all cash-out proceeds due to them. Subsequently, USAA Life has caused all of Applicant's shares of record held by USAA Life or the Separate Account to be redeemed. Because these were all of Applicant's outstanding shares, Applicant paid out all of its assets as redemption proceeds or as a liquidating dividend or distribution at the time of said redemption. Applicant, therefore, has no assets and no intention to acquire any assets in the future.

8. Applicant has no security holders and no known debts or other outstanding liabilities, and Applicant is not a party to any known litigation or administrative proceedings.

9. Applicant is not now engaged, and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

10. All expenses incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by USAA Life. Each Policy owner received from USAA Life, pursuant to the exchange or cash-out offer, an amount of Universal Life cash value or an amount of cash that was greater than the cash value of his or her Policy on September 14, 1989.

11. Applicant has filed articles of dissolution with the State of Maryland, and said articles have been accepted by the state.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28869 Filed 11–8–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–17250; File No. 811–4124]

Variable Account A of USAA Life Insurance Co; Notice of Application

December 1, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice to Application for Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Variable Account A of USAA Life Insurance Company.

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 27, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 26, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant 9800 Fredericksburg Road, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272–3027 or Clifford D. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is a separate investment account of USAA Life Insurance Company ("USAA Life") established under the insurance laws of the state of Texas. Applicant is a unit investment trust investment company, registered under the 1940 Act. Applicant filed its notice of registration under the 1940 Act and a Form N–8B–2 registration statement on October 11, 1984.

2. Applicant and USAA Life a Form S–6 registration statement under the Securities Act of 1933 on October 11, 1984, which registration statement, as amended, was declared effective by the Commission on August 26, 1985. The Form S–6 registration statement pertains to units of interest under USAA Life's flexible premium variable life insurance policies ("Policies"), which are funded through Applicant. Four classes of units were registered, each corresponding to one of Applicant's four subaccounts: Balanced Subaccount, Growth Subaccount, Income Subaccount, and Money Market Subaccount.

3. The public offering of Policies commenced on May 12, 1986, but, according to Applicant, the volume of Policies sold did not meet USAA Life's expectations, which made the Policies less advantageous from the standpoint of both USAA Life and Policy owners.

4. Accordingly, sales of new Policies were suspended in February 1989, and, in June 1989, USAA Life mailed to all Policy owners a letter that offered Policy owners two previously unavailable options for terminating their Policies.

5. These new options were (a) to receive a specified amount of cash or (b) to receive a flexible premium fixed benefit life insurance policy issued by USAA Life ("Universal Policy") having a specified cash value. The specified amount of cash or cash value, as the case may be, was guaranteed to be not less than, among other things, the greater of (i) the Policy's cash value (less any outstanding Policy loan balances) as of June 13, 1989, plus a 15% bonus (subject to appropriate adjustment for premium payments, loan transactions or withdrawals subsequent to January 13, 1989) or (ii) the Policy's cash value on the date the exchange or cash-out was effected.

6. All Policy owners were also given the option of declining the exchange or cash-out offer altogether or surrendering their Policies for their cash values at any time prior to the time the exchange or cash-out was effected.

7. All Policy owners accepted either the exchange or cash-out option and all exchanges and cash-outs were effected on September 14, 1989. Checks were mailed to Policy owners on September 19, 1989 in the full amount of all cash-out proceeds due to them. Subsequently, USAA Life has caused all of Applicant's assets to be transferred to USAA Life's general account, and Applicant, therefore, has no assets and no intention to acquire any assets in the future.

8. Applicant has no security holders and no know debts or other outstanding liabilities, and Applicant is not a party

to any known litigation or administrative proceedings.

9. Applicant is not now engaged, and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

10. All expenses incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by USAA Life. Each Policy owner received from USAA Life, pursuant to the exchange or cash-out offer, an amount of Universal Life cash value or an amount of cash that was greater than the cash value of his or her Policy on September 14, 1989.

11. USAA Life will file with the Texas State Board of Authority and issue a new Certificate of Authority deleting USAA Life's variable contract authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28870 Filed 12-8-89; 8:45 am]

BILLING CODE 8010-01-M

STATE DEPARTMENT

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Friday, January 19, 1990, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Education Assistance
   (a) Final Report of 1988 Program and Initial Report on 1989 Program
   (b) Council's Efforts in Securing Contributions for 1989 Program
   (c) Recommendations of Council's Evaluation Committee Regarding Projects Submitted by Regional Overseas Schools Associations for 1990 Program
II. Forum on Current Conditions of U.S. Education
III. Initial Results of Surveys Concerning Schools Fund-Raising Drives and Activities of Overseas Schools Regional Associations
IV. Report of the Subcommittee to Increase U.S. Firms Participation in American-sponsored Overseas Schools Activities
V. Council's Communication with U.S. Corporations and Foundations
VI. Selection of Date of Council's Annual Meeting

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas Schools Advisory Council, Department of State, Room 245, SA-29, Washington, DC 20522-2902 or telephone Ms. Joyce Bruce on area code 703-875-7943, prior to January 19. The public may participate in discussions at the Chairman's instructions.

Dated: November 7, 1989.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 89-28844 Filed 12-8-89; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF STATE

[Public Notice CM-8/1331]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1000 on Wednesday, 20 December 1989, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. This public meeting is being held in preparation for:

1. The International Maritime Organization (IMO) Conference on the Revision of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (London, 26-30 March 1990); and

2. The 62nd session of the IMO Legal Committee (London, 2-6 April 1990).

Brief reports will also be presented concerning two recent international negotiating sessions:

1. The 3rd round of Intergovernmental Talks on the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS) (London, 21-22 September 1989); and

2. The 6th and final session of the IMO/UNCTAD (United Nations Conference on Trade and Development) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages (London, 25-29 September 1989).

The IMO Conference on the 1974 Athens Convention will take up a draft protocol adopted by the IMO Legal Committee at its 60th Session in October 1988. The draft protocol is limited in scope, seeking only to: (1) Enhance the compensation available thereunder; and (2) introduce a simplified procedure for updating the compensation amounts.

The U.S. has not ratified the 1974 Athens Convention. The upcoming conference negotiations are important from the U.S. perspective, however, in view of both the significant passenger cruise trade and the relationship of the 1974 liability limits to those in other international liability regimes currently under consideration.

With respect to HNS liability and compensation, the IMO Legal Committee has resumed work on this subject in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at the 1984 Diplomatic Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea. It should be noted that development and implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

Recent negotiating developments indicate a continuing strong international desire to expedite this HNS work. As a result, it is expected that the Legal Committee's entire 62nd session will be devoted to this subject. The U.S. is currently preparing an HNS paper for the 62nd session, and a progress report will be provided at the SHC meeting.

The foregoing topics will be discussed at the open SHC meeting. The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be discussed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: November 22, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-28845 Filed 12-8-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-45]

Petition for Exemption

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory acitivities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 1, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 4, 1989.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24041.
Petitioner: Butler Aircraft Co.
Regulations Affected: 14 CFR 91.211(a)(1).
Description of Relief Sought: To extend Exemption No. 2989, as amended, that allows petitioner to operate its Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under part 137 of the FAR. Exemption No. 2989, as amended, will expire on April 30, 1990.

Docket No.: 25400.
Petitioner: Big Sky Transportation Company.
Sections of the FAR Affected: 14 CFR 135.181(a)(2).
Description of Relief Sought: To extend Exemption No. 4923 that allows petitioner to operate its Swearingen SA 226TC Metro II airplanes under IFR or under VFR over the top on V536 between FCA VOR/DME and the Piken Intersection at an altitude that will allow drift down to a flight altitude not below the MEA over those routes using manufacturer's approved performance data. Exemption No. 4923 will expire on April 30, 1990.

Docket No.: 25445
Petitioner: Aviation Systems, Inc.
Sections of the FAR Affected: 14 CFR 91.79(b) and (c), 91.109, and 91.121.
Description of Relief Sought: To extend Exemption No. 5020 that allows petitioner to conduct flight inspections of navigational landing aids. Exemption No. 5020 will expire on February 28, 1990.

Docket No.: 25989
Petitioner: Capitol City Express.
Sections of the FAR Affected: 14 CFR 43.2(g).
Description of Relief Sought: To allow petitioner's pilots to change the seat configuration in air taxi aircraft.

Docket No.: 24950
Petitioner: General Electric Company, Aircraft Engine Business Group.
Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3).
Description of Relief Sought/Disposition: To extend Exemption No. 4675 that allows Class I, II, and III products, which have been manufactured, assembled, and tested by Rolls Royce Limited, located in Derby, England, to be eligible for the issuance of export airworthiness approvals. Exemption No. 4675 will expire on December 29, 1989. *Grant, November 27, 1989, Exemption No. 4675A.*

Docket No.: 25624
Petitioner: McDonnell Douglas Airplane Company.
Regulations Affected: 14 CFR 121.411 and 121.413 and Part 121, Appendix H.
Description of Relief Sought/Disposition: To allow petitioner and any Part 121 certificate holder who contracts with petitioner for training to use certain of petitioner's instructor pilots and, if appropriate, flight engineer instructors to train the initial cadre of pilots and flight engineers and also to train the certificate holder's airmen in initial, upgrade, transition, differences, and recurrent training without petitioner's instructors meeting all of the training requirements of subpart N and employment requirements of part 121, Appendix H. *Grant, November 30, 1989, Exemption No. 5117.*

Docket No.: 25760
Petitioner: Flight International.
Sections of the FAR Affected: 14 CFR 2125(b)(2) and 91.36(b).
Description of Relief Sought/Disposition: To permit operation of petitioner's Northrop F-5 aircraft in the restricted category for compensation for carriage of defense-related equipment. Exemption not Required, November 20, 1989.

Docket No.: 26052
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 25.1303(c)(1).
Description of Relief Sought/Disposition: To allow operation of two U.S.-registered Lockheed L-100-385-1-15 airplanes, Serial Numbers 193U-1201 and 193U-1203, with an overspeed warning tolerance 6 knots greater than allowed by the FAR. The petitioner requested an indefinite time period for the exemption. *Grant, November 17, 1989, Exemption No. 5113.*

Docket No.: 006NM
Petitioner: Aerospatiale.
Sections of the FAR Affected: 14 CFR 25.571(e)(2).
Description of Relief Sought/Disposition: To amend Exemption No. 4385 that allows type certification of the Model ATR 42 without showing that the airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of propeller blade impact. The amendment to Exemption No. 4385 would permit such type certification of the later Model ATR 72. *Grant, November 14, 1989, Exemption No. 4385A.*

[FR Doc. 89-28801 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-13-M

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Keahole Airport, Kailua-Kona, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by State of Hawaii, Department of Transportation for Keahole Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program tha was submitted for Keahole Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 13, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 14, 1989. The public comment period ends January 13, 1990.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP–611, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 213/297–1250. Comments on the propsoed noise compatibility should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Keahole Airport are in compliance with applicable requirements of part 150, effective November 14, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 13, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the act, may submit a noise compatible program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Hawaii, Department of Transportation, submitted to the FAA on April 4, 1988 and revised on September 20, 1989, noise exposure maps, descriptions and other documentation which were produced during the preparation of the Revised Noise Compatibility Program, Keahole Airport, Hawaii, dated November 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Exhibits 5, 6 and 7 in the submission. The FAA has determined that these maps for Keahole Airport are in compliance with applicable requirements.

This determination is effective on November 14, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Keahole Airport, also effective on November 14, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program.

The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 13, 1990. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819.

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Keahole Airport, Kailua-Kona, Hawaii 96740.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Hawthorne, California on November 14, 1989.

Herman C. Bliss,

Manager, Airports Division, AWP–600.

[FR Doc. 89–28804 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics, Special Committee 161—Minimum Aviation System Performance Standards for Radio Determination Satellite Service; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the eighth meeting of Radio Technical Committee for Aeronautics (RTCA) Special Committee 161 on Minimum Aviation System Performance Standards for Radio Determination Satellite Service to be held January 9–10, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) consideration of Comments to Proposed Final Draft Report "Minimum Aviation System Performance Standards for Radio Determination Satellite Service (RDSS), RTCA Paper No XXX–89/SC161–XX; (3) other business; and (4) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 29, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89–28802 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

Airport Traffic Control Tower at Hailey, ID; Establishment

Notice is hereby given that on or about December 1, 1989, an airport traffic control tower will be opened at the Friedman Memorial Airport, Hailey, Idaho. Hours of operation will be 7 a.m. to 11 p.m. local time daily, 7 days a week. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Issued in Seattle, Washington, on November 17, 1989.

Larry Andriesen,

Acting Regional Administrator, Northwest Mountain Region.

[FR Doc. 89–28803 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket No. S–857]

American Maritime Transport, Inc., Application for a waiver to permit Certain Foreign-Flag Operations by an Affiliate

American Maritime Transport, Inc. (AMT) by application dated October 24, 1989, as supplemented and amended by letters of November 16, 1989, November 29, 1989, and December 6, 1989, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations by Ultramar Shipping Company, Inc. (Ultramar).

The Applicants have requested the approvals required for the acquisition of 49 percent of AMT by Ultramar and the acquisition by a limited partnership to be composed of AMT (51 percent) and Ultramar (49 percent) of the subsidized vessels GOLDEN ENDEAVOR, ULTRAMAR, and ULTRASEA. Although Ultramar operates foreign-flag vessels, the Applicants aver that a section 804 waiver is not necessary since Ultramar has no voting power in AMT. By letter of November 24, 1989, the Maritime Administrator advised the Applicants that a waiver of section 804 is required for Ultramar to purchase any interest in AMT. Subsequently, the Applicants requested a section 804 waiver for the remaining term of AMT's subsidy contracts, approximately five years.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 15, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator. Dated: December 7, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89–28970 Filed 12–7–89; 12:33 pm]

BILLING CODE 4910–81–M

Research and Special Programs Administration

Grants and Denials of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in April–June 1989. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-X	DOT-E 2582	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582-X	DOT-E 2582	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582-X	DOT-E 2582	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 175.3, part 173, subparts D, E, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2709-X	DOT-E 2709	Atlas Powder Company, Dallas, TX	49 CFR 173.62, 173.93, 176.76(h), 177.821, 177.834(L)(1), 177.835(k), 46 CFR part 146.	To authorize shipment by cargo vessel. (Modes 1, 3.)
3667-X	DOT-E 3667	Groendyke Transport, Inc., Enid, OK.	49 CFR 173.315(a)	To authorize transport of a flammable compressed gas in aluminum cargo tanks otherwise built in compliance with Specification MC-330. (Mode 1.)
4291-X	DOT-E 4291	United Technologies Corp./Chemical Systems Div., San Jose, CA.	49 CFR 173.239a(a)(2)	To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2.)
4338-P	DOT-E 4338	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.119(m), 173.245a, 173.247, 174.63(lb).	To become a party to exemption 4338 (Modes 1, 2, 3.)
4453-X	DOT-E 4453	El Dorado Chemical Company, St. Louis, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Pacco, Inc., Olympia, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Alamo Explosives Company, Inc., Houston, TX.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Strawn Explosives, Inc., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Austin Powder Company, Cleveland, OH.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Wampum Hardware Company, New Galilee, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	A. M. Contracting, Grove City, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Maynes Explosives Company, Lee's Summit, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Mining Services International (MSI) Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453-X	DOT-E 4453	Cherokee Products, Inc., Jefferson City, Tn.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4575-P	DOT-E 4575	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.314(c), 173.315(a)	To become a party to exemption 4575 (Modes 1, 2, 3.)
4884-X	DOT-E 4884	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize an additional packaging, non-DOT specification steel cylinders, having a greater nominal water capacity (1000 pounds) than is presently authorized (90 pounds). (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.203(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	UNIGAS, Inc., Ponce, PR	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4884-P	DOT-E 4884	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of The West, Oakland, CA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	GenEx, Ltd., Des Moines, IA	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-X	DOT-E 4884	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
4884-P	DOT-E 4884	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884 (Modes 1, 2, 3, 4.)
5243-X	DOT-E 5243	Austin Powder Company, Cleveland, OH.	49 CFR 173.103(a), 173.66(g)(1), 177.835(g).	To authorize modified DOT specification packaging for transportation of Class C or Class A explosives. (Modes 1, 2, 3.)
5643-P	DOT-E 5643	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.76(h), 178.338.	To become a party to exemption 5653 (Modes 1, 3.)
5643-P	DOT-E 5643	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.203, 173.318, 173.320, 176.76(h), 178.338.	To become a party to exemption 5643 (Modes 1, 3.)
5749-X	DOT-E 5749	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of samller outside dimension valves; To authorize use of new bolts and studs that have lower temperature properties; and removable fiberglass panel. (Mode 1.)
5876-X	DOT-E 5876	FMC Corporation, Philadelphia, PA	49 CFR 173.365, 178.241, part 107, Appendix B.	To authorize transport of a Class B poison in DOT Specification 44D multiwall paper bags or non-DOT specification pinch bottom, heat-sealed multiwall bags. (Modes 1, 2, 3.)
5895-X	DOT-E 5895	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.100(cc), 173.104(b), 175.3.	To authorize use of a non-DOT specification inner container overpacked in a DOT Specification 12H fiberboard box, or a wooden box, for shipment of class C explosives. (Modes 1, 2, 3, 4.)
5967-X	DOT-E 5967	Rocket Research Company, Redmond, WA.	49 CFR 173.304(a)(2), 175.3, 178.44.	To authorize use of non-DOT specification cylinders conforming in part with DOT Specification 3HT, for shipment of a nonflammable gas. (Modes 1, 2, 4, 5.)
6016-X	DOT-E 6016	Airco Acety Arc, Inc., Paducah, KY	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6349-P	DOT-E 6349	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.101, 173.315(a)	To become a party to exemption 6349 (Modes 1, 2, 3.)
6418-P	DOT-E 6418	Maui Pineapple Co., Ltd., Haliimaile, HI.	49 CFR 173.357(b)	To become a party to exemption 6418 (Mode 1.)
6538-X	DOT-E 6538	Intourgas, Plein Air S.r.l., Milan, Italy	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6614-X	DOT-E 6614	Hasa Chemicals, Inc., Saugus, CA	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Clearwater Chemical Corporation, Clearwater, FL.	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6657-P	DOT-E 6657	TRI-GAS, Inc., Irving, TX	49 CFR 173.34(e)(15)(i), 175.3	To become a party to exemption 6657 (Modes 1, 2, 3, 4, 5.)
6702-X	DOT-E 6702	Seradyn, Inc., Indianapolis, IN	49 CFR 173.242(a), 173.25, 173.266(c), 175.3.	To authorize use of glass or plastic bottles overpacked in a DOT Specification 12A fiberboard box for certain corrosive liquids. (Modes 1, 2, 3, 4.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6712–X	DOT–E 6712	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC–3, 3A or 3AA cylinders. (Modes 1, 2, 3, 4, 5.)
6765–P	DOT–E 6765	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to exemption 6765 (Modes 1, 3.)
6805–P	DOT–E 6805	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 6805 (Mode 1.)
6816–X	DOT–E 6816	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6816–X	DOT–E 6816	McDonnell Douglas Astronautics Company, Saint Louis, MO.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6974–X	DOT–E 6974	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
7023–X	DOT–E 7023	Texas Instruments, Inc., Dallas, TX	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(l)(5), 173.272(g), 173.272(i)(24).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material. (Mode 1.)
7051–X	DOT–E 7051	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid.
7051–X	DOT–E 7051	Ozark-Mahoning Company, Tulsa, OK.	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box to transport a corrosive liquid. (Modes 1, 4.)
7052–X	DOT–E 7052	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101, 172.400, 175.3	To authorize modification of Paragraph 6 to include crew carrying helicopter to offshore rigs. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Ocean Technology, Inc., Burbank, CA.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	R–Con International, Salt Lake City, UT.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of reserve-activated lithium/thionyl chloride IRSS battery modules packaged in DOT Specification 19A wooden boxes. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Mercury Instruments, Inc., Cincinnati, OH.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	SAB NIFE A/S, Denmark	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Honeywell Inc., DASD/San Mateo Facility, Albuquerque, NM.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Valvcon Corporation, Milford, NJ	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Geomar International, Inc., Missouri City, TX.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Medtronic, Inc./Promeon Division, Brooklyn Center, MN.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Perfco Wireline, Inc., Houma, LA	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Telecommunication Devices, Inc. (TDI) Downers Grove, IL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Oceanstar Systems Incorporated, Cataumet, MA.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Fairchild Communications & Electronics Company, Germantown, MD.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7060–X	DOT–E 7060	Airborne Express, Inc., Wilmington, OH.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo only aircraft when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7060–X	DOT–E 7060	Central Skyport Inc., Columbus, OH	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo only aircraft when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7076–X	DOT–E 7076	LaMotte Chemical Products Company, Chestertown, MD.	49 CFR 173.286(b)	Amend to allow shipment of oxidizers and the quantity per each vial or bottle to 250 ml or 250 grams. (Modes 1, 2, 3.)
7269–X	DOT–E 7269	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a)	To authorize use of sift-proof paper or plastic bags overpaced in DOT Specification 210 fiber drums, for transportation of certain Class A explosives. (Mode 1.)
7282–X	DOT–E 7282	MarChem Corporation, Maryland Heights, MO.	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification steel portable tanks, for shipment of certain mixtures of nonpoisonous, nonflammable compressed gases. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7489–X	DOT–E 7489	Micor Company, Inc., Milwaukee, WI.	49 CFR 172.312, 173.249, 175.3	To authorize the addition of transportation via cargo aircraft. (Modes 1, 2, 3.)
7546–X	DOT–E 7546	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.119, 173.302(a), 173.304(a), 173.305(a), 173.34(d), 175.3.	To authorize use of a heat pipe radiator assembly for shipment of certain flammable liquids and nonflammable and flammable compressed gases. (Modes 1, 2, 4.)
7555–X	DOT–E 7555	Provost Cartage, Incorporated, Ville d'Anjor, Quebec, CN.	49 CFR Part 173, subpart F	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made from non-metallic materials, for transportation of certain hazardous materials. (Mode 1.)
7607–P	DOT–E 7607	Layne-Western Company, Inc., Shawnee Mission, KS.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607–X	DOT–E 7607	Ecology and Environment, Inc., Lancaster, NY.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7616–X	DOT–E 7616	Union Pacific Railroad Company, Omaha, NE.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7616–X	DOT–E 7616	Wisconsin Central, Ltd., Rosemont, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2.)
7716–X	DOT–E 7716	Kinepak, Inc., Dallas, TX	49 CFR 173.153(b)(1)	To authorize transport of ammonium nitrate in inside polyethylene bottles or foil pouches, each containing less than 3 pounds or less, overpacked in DOT Specification 12H–65 fiberboard boxes with a plastic liner bag containing not more than 36 pounds net weight. (Modes 1, 2, 3.)
7753–X	DOT–E 7753	Monsanto Chemical Company, Saint Louis, MO.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7822–X	DOT–E 7822	Air Products and Chemcials, Inc., Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize several types of expolsives in the same package, in quantities greater than authorized by 49 CFR 173.87. (Modes 1, 3.)
7835–P	DOT–E 7835	The Rinchem Co., Inc., Phoenix, AZ.	49 CFR 177.848, part 107, Appendix B(1).	To become a party to exemption 7835. (Mode 1.)
7835–X	DOT–E 7835	AGA Gas, Inc., Cleveland, OH	49 CFR 177.848, 107 Appendix B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas lable and tank car tanks bearing the poison gas lable on the same vehicle. (Mode 1.)
7835–X	DOT–E 7835	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 177.848, part 107 Appendix B(1).	To authorize transport of compressed gas in clyinders bearing the flammable gas lable, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7887–X	DOT–E 7887	Vulcan Systems, Inc., Colorado Springs, CO.	49 CFR 172.101, 173.111, 175.3, part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7943–P	DOT–E 7943	Action Chemical Company, Phoenix, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7954–P	DOT–E 7954	Jack B. Kelley, Inc., Amarillo, TX	49 CFR 172.101, 172.504, 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 7954. (Modes 1, 3.)
8065–X	DOT–E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specification plywood boxes. (Mode 1.)
8131–X	DOT–E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(d), 173.34(d), 175.3.	To authorize a greater service life, from 5 years to 15 years, or a greater number of pressurizations, for 200 to 300, for the exempted packaging. (Modes 1, 2, 4.)
8156–P	DOT–E 8156	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8195–X	DOT–E 8195	McDonnell Douglas Corporation, Saint Louis, MO.	49 CFR 173.6(b)(3), 175.3, part 173, subpart D, F, H.	To authorize use of non-DOT specification metal drums as outside containers in lieu of prescribed DOT specification fiberboard and wood containers, for shipments of flammable liquids, corrosive materials, and Class B poisons subject to 49 CFR 173.6(b)(3). (Modes 1, 2, 4, 5.)
8225–X	DOT–E 8225	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, part 173, subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded polyethylene portable tanks, for transportation of corroive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
8230–X	DOT–E 8230	J. T. Baker Inc., Phillipsburg, NJ	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8230–P	DOT–E 8230	Strem Chemicals, Inc., Newburyport, MA.	49 CFR 173.268(b)(6), 173.269(a)(4).	To become a party to exemption 8230 (Modes 1, 2, 3, 4.)
8236–P	DOT–E 8236	TRW Inc., Romeo, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, 4.)
8239–X	DOT–E 8239	Imaging and Sensing Technology Corporation, Horseheads, NY.	49 CFR 172.101 column 6(a), 172.101 column 6(b), 173.302, 175.3.	To authorize use of non-DOT specification containers for the shipment of nonflammable gases. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8248–X	DOT–E 8248	Cerametals, Inc., New York, NY	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248–X	DOT–E 8248	C. M. China Trade, Inc., New York, NY.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248–X	DOT–E 8248	China Metallurgical Import & Export Corporation Shanghai, China.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8249–X	DOT–E 8249	LPS Industries Inc., Newark, NJ	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a) and Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 173.3, 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.)
8255–X	DOT–E 8255	Applied Companies, San Fernando, CA.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of nonreusable (nonrefillable) non-DOT specification welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4.)
8256–X	DOT–E 8256	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102–16, 179.202–13.	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device. (Mode 2.)
8445–P	DOT–E 8445	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR part 173, subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E 8445	EnviroCure, Pittsburgh, PA	49 CFR part 173, subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8450–X	DOT–E 8450	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.92	To authorize 2 inch diameter sight hold in side boards of container and use of steel strapping to hold lids in place. (Mode 1.)
8451–P	DOT–E 8451	DIVEX, Inc., Columbia, SC	49 CFR 173.65, 173.66(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453–X	DOT–E 8453	Energy Ventures Corp. dba Columbus Powder Company, Columbus, In.	49 CFR 173.114a	To authorize use of non-DOT Specification cargo tanks and DOT specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8465–X	DOT–E 8465	Chase Packaging Corp., Greenwich, CT.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrate mixtures.. (Modes 1, 2, 3.)
8516–X	DOT–E 8516	Austin Powder Company, Cleveland, OH.	49 CFR 176.83(b)	To authorize stowage of certain oxidizers and blasting agents in the same hold, compartment or freight container. (Mode 3.)
8518–X	DOT–E 8518	Crosby & Overton Inc., Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–X	DOT–E 8518	Lomita Gasoline Company, Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–P	DOT–E 8518	Speed's Oil Tool Service, Inc., Santa Maria, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8518–X	DOT–E 8518	Ecology Control Industries, Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–X	DOT–E 8518	International Technology Corporation, Martinez, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–X-	DOT–E 8518	Denver Truck Sales, Commerce City, CO.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8518–X	DOT–E 8518	Central Pumping Company, Inc., La Habra, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8549–X	DOT–E 8549	United Pumping Service, Inc., City of Industry, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC–307/MC–312 except for bottom outlet valve variations, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8554–P	DOT–E 8554	Minnesota Explosives Company, Biwabik, MN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3.)
8554–P	DOT–E 8554	Energy Ventures Corp. d/b/a Columbus Powder Co., Columbus, IN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of the West, Oakland, CA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	UNIGAS, Inc., Ponce, PR	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of the South, Inc., Houston, TX.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8556–P	DOT–E 8556	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (Modes 1, 3.)
8579–X	DOT–E 8579	Austin Powder Company, Cleveland, OH.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8579–X	DOT–E 8579	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8614–X	DOT–E 8614	Arrowhead Airways, Inc., Minneapolis, MN.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8621–X	DOT–E 8621	I.T.O. Corporation, Gulfport, MS	49 CFR 176.415(c)(2)	To authorize loading or unloading of ammonium nitrate mixtures containing more than 80 percent ammonium nitrate with no organic coating at a non-isolated facility. (Mode 3.)
8627–X	DOT–E 8627	Champion Chemicals, Inc., Houston, TX.	49 CFR 173.119, 173.245, 178.253	To authorize an additional spring loaded vent on the non-DOT Specification portable tank. (Mode 1.)
8627–P	DOT–E 8627	Champion Chemicals, Inc., Houston, TX.	49 CFR 173.119, 173.245, 178.253	To become a party to exemption 8627 (Mode 1.)
8645–X	DOT–E 8645	A. M. Contracting, Grove City, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8667–X	DOT–E 8667	Federal Emergency Management Agency, Washington, DC.	49 CFR 173.416, 175.3	To authorize use of CDV–794 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials. (Modes 1, 3, 4.)
8673–X	DOT–E 8673	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 Column 6(b), 175.30.	To authorize reinstatement and renewal of exemption. (Mode 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8678–X	DOT–E 8678	Eurotainer, S.A. Paris, France	49 CFR 173.315	To renew and change six month shipping experience report requirement to two years to correspond with renewal application. (Modes, 1, 2, 3.)
8678–X	DOT–E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315	To renew and change six month shipping experience report requirement to two years to correspond with renewal application. (Modes 1, 2, 3.)
8684–X	DOT–E 8684	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315(a)(1), 178.337(1)(c)(2)(ii).	To authorize use of DOT Specification MC–331 cargo tanks equipped with a manway cover not fully complying with 49 CFR 178.337–1(c)(2)(ii), for transportation of nonflammable gases. (Mode 1.)
8689–X	DOT–E 8689	Schlumberger Well Services, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, 4.)
8706–X	DOT–E 8706	International Technology Corporation, Martinez, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/MC–312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8710–X	DOT–E 8710	Akzo Chemicals Inc., formerly Akzo Chemie America, Chicago, IL.	49 CFR 173.119, 173.21, 173.221	To authorize transport of solutions of an organic peroxide in cargo tanks complying with DOT Specification MC–307 and MC–312. (Mode 1.)
8716–X	DOT–E 8716	Foote Mineral Company, Malvern, PA.	49 CFR 173.26(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8723–X	DOT–E 8723	Winchester Building Supply Co., Inc., Winchester, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723–P	DOT–E 8723	CONA, Inc.—Ireco Explosives, Tahlequah, OK.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 3.)
8723–P	DOT–E 8723	Minnesota Explosives Company Elmrebk, MN.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 3.)
8742–X	DOT–E 8742	Cusco Fabricators Limited Ontario Canada, Richmond Hill, Ontario, C.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/MC–312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8751–X	DOT–E 8751	Delta Tech Service, Inc., Martinez, [illegible]	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340–7, 178.343–[illegible]	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1.)
8757–X	DOT–E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3, 178.42.	To authorize natural gas, classed as flammable gas, and crude oil, classed as flammable liquid, for shipment in non-DOT specification stainless steel cylinders. (Modes 1, 2, 3, 4.)
8757–X	DOT–E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3, 178.42.	To authorize rail and water as additional modes of transportation. (Modes 1, 2, 3, 4.)
8757–X	DOT–E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of compressed gases. (Modes 1, 2, 3, 4.)
8781–X	DOT–E 8781	Mauser Packaging, Limited, Litchfield, CT.	49 CFR 171.12(c), 178.116–6(a), 178.116–7(a).	To amend exemption to permit concave top head where DOT-17E now requires convex head. (Modes 1, 2, 3.)
8865–X	DOT–E 8865	Carleton Technologies, Inc., East Aurora, NY.	49 CFR 173.302(a)(4), 175.3	To authorize gas reservoirs to be refilled a maximum of 5 times and to authorize refilling of the packaging. (Modes 1, 2, 4.)
8930–X	DOT–E 8930	General Aviation, Inc., Greeneville, TN.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8956–X	DOT–E 8956	Clif Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To manufacture, mark and sell certain steel cylinders for transporting samples of liquefied petroleum gas, oil well natural gas, and other petroleum hydrocarbon gases or liquids. (Modes 1, 3, 4.)
8965–X	DOT–E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
8977–X	DOT–E 8977	Eurotainer, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of a non-DOT specification IMO-Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, 3.)
8988–X	DOT–E 8988	GOEX, Inc., Cleburne, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8988–P	DOT–E 8988	Jet Research Center, Inc., Arlington, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (Modes 1, 3, 4.)
8999–X	DOT–E 8999	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY.	49 CFR 173.154, 175.3, 175.85, part 172, subpart C, subpart D, E.	To authorize transport of emergency oxygen generators without marking, labeling, shipping papers or specification packaging. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9004–X	DOT–E 9004	Metric Corporation, Tulsa, OK	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for transportation of flammable liquids and flammable gases. (Mode 1.)
9015–X	DOT–E 9015	Monsanto Chemical Company, Saint Louis, MO.	49 CFR 173.217	To amend exemption to include any manufacturer's non-DOT specification packaging, to increase the weight limit to 3000 lbs., and to allow shipments in full container loads in stack trains. (Modes 1, 2, 3.)
9026–X	DOT–E 9026	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 172.101, 175.3, 175.30, 178.224.	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3, 4.)
9027–X	DOT–E 9027	McGean-Rohco, Inc., Cleveland, OH.	49 CFR 178.131, 178.28(h), 178.28(m).	To authorize a one-time reuse of DOT Specification 37A (single-trip) drums, for shipment of chromic acid, solid and chromic acid mixture, classed as an oxidizer. (Modes 1, 2.)
9036–X	DOT–E 9036	The Marison Company, South Elgin, IL.	49 CFR 178.37–4(a), part 173, subparts G, H.	To authorize manufacture, marking and sale of billet pierced DOT Specification 3AA cylinders, for transportation of compressed and poisonous gases. (Modes 1, 2, 3, 4, 5.)
9040–X	DOT–E 9040	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corroeive liquids. (Modes 1, 2, 3.)
9052–X	DOT–E 9052	Chemical Handling Equipment Company, Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, part 173, subpart F.	To authorize use of a non-DOT specification rotationally molded, cross-linked or linear polyethylene portable tank enclosed in a steel cage or hardwood overpack for the shipment of corroeive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9059–X	DOT–E 9059	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 172.202, 173.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for fluorine. (Modes 1, 2.)
9059–X	DOT–E 9059	Boeing Aerospace, Seattle, WA	49 CFR 172.101, 172.202, 173.302(d), 173.34(d)(4).	To authorize use of cylinders currently used for fluorine. (Modes 1, 2.)
9061–X	DOT–E 9061	SSI Group, Ltd., Fairdale, KY	49 CFR 172.504, 173.176	To authorize shipment of a small quantity of a flammable solid labeled Flammable Solid and Dangerous When Wet but without a Flammable Solid W placard on the vehicle. (Modes 1, 2.)
9064–X	DOT–E 9064	Preussag Pure Metals GMBH Goslar, West Germany.	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corroeive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9064–X	DOT–E 9064	Corning Glass Works, Corning, NY	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corroeive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9064–X	DOT–E 9064	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada.	49 CFR 172.271, 173.245, 173.247, 173.3a.	To authorize Titanium tetrachloride, classed as Corroeive material, as an additional material in the exempted composite packaging. (Modes 1, 3.)
9066–P	DOT–E 9066	Automotive Systems Laboratory, Inc. (ASL) Farmington Hills, MI.	49 CFR 171.11 (see paragraph 8.d.).	To become a party to exemption 9066 (Modes 1, 2, 3, 4.)
9078–X	DOT–E 9078	Monsanto Chemical Company, St. Louis, MO.	49 CFR 173.245	To authorize use of DOT Specification 57 stainless steel portable tanks, for transportation of a waste formic acid/phenol mixture. (Mode 1.)
9079–X	DOT–E 9079	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315	To authorize use of carbon steel DOT Specification 51 portable tanks, for transportation of a liquefied compressed gas. (Modes 1, 3.)
9108–X	DOT–E 9108	The Ensign-Bickford Company and Distributors, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9108–X	DOT–E 9108	Ensign-Bickford Company, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
9110–X	DOT–E 9110	Kemanord, Inc., Columbus, MS	49 CFR 173.163	To authorize shipment of sodium chlorate, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags. (Modes 1, 2, 3.)
9110–P	DOT–E 9110	Atochem S.A., 13011 Marseille, France.	49 CFR 173.163	To become a party to exemption 9110 (Modes 1, 2, 3.)
9141–X	DOT–E 9141	Bristol Flare Corporation, Bristol, PA.	49 CFR 172.101, 173.106	To authorize transport of certain hand signal devices, as a flammable solid instead of a class C explosive. (Mode 1.)
9142–X	DOT–E 9142	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	49 CFR 173.315, 178.245	To authorize use of a non-DOT Specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes, 1, 2, 3.)
9166–X	DOT–E 9166	Comptank, Corporation, Bothwell, Ontario, CN.	49 CFR 173.119 (a), (m), 173.346(a), 178.340, 178.342, 178.343, part 173, subpart F.	To update exemption reference for acoustic emission tests to the most recent edition of the published standard. (Mode 1.)
9192–X	DOT–E 9192	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2)	To authorize shipment of various refrigerated compressed gases classed as flammable gas in DOT Specification 4L–112 cylinders. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9193–X	DOT–E 9193	Schlumberger Well Services, Houston, TX.	49 CFR parts 100–199	To authorize shipment of a downhole logging tool (sonde) that contains an accelerator housing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5.)
9222–X	DOT–E 9222	Wilkins Trucking Company, Inc. (WTC), Charleston Heights, SC.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)
9222–X	DOT–E 9222	Caldwell Systems, Inc. (CSI), Lenoir, NC.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)
9275–X	DOT–E 9275	McCormick & Company, Inc., Hunt Valley, MD.	49 CFR parts 100–199	To authorize exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol solutions. (Modes 1, 2, 3, 4, 5.)
9277–X	DOT–E 9277	FMC Corporation—Agricultural Chemical Group, Philadelphia, PA.	49 CFR 173.377(i)	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 2, 3.)
9281–P	DOT–E 9281	Western Atlas International, Inc., Houston, TX.	49 CFR 172.101, 173.100	To become a party to exemption 9281 (Modes 1, 2, 3, 4, 5.)
9371–X	DOT–E 9371	Ronson Aviation Incorporated, Trenton, NJ.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9377–P	DOT–E 9377	Austin Power Company, Cleveland, OH.	49 CFR 173.65(a)(5)	To become a party to exemption 9377 (Modes 1, 2, 3.)
9381–P	DOT–E 9381	Environmental Audit, Inc., Placentia, CA.	49 CFR 173.154	To become a party to exemption 9381 (Modes 1, 2.)
9381–P	DOT–E 9381	Western Zinc Corporation, Rancho Dominguez, CA.	49 CFR 173.154	To become a party to exemption 9381 (Modes 1, 2.)
9386–X	DOT–E 9386	Pacific Scientific, HTL Division, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize an additional material of construction for a non-DOT specification cylinder in which nitrogen, classed as nonflammable gas, is shipped. (Modes 1, 2, 4, 5.)
9402–X	DOT–E 9402	Arbel Fauvet Rail, St. Laurent-Baingy, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9402–X	DOT–E 9402	Atochem, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9402–X	DOT–E 9402	ALGECO, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9414–P	DOT–E 9414	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.302(a)(5)	To become a party to exemption 9414 (Modes 1, 3.)
9415–X	DOT–E 9415	Sonoco Plastic Drum, Inc., Lockport, IL.	49 CFR part 173, subpart D, E, F, H.	To authorize manufacture, marking and sale of a polyethylene drum of 30-gallon capacity conforming with DOT Specification 34 except for having a single opening of four-inch diameter, for shipment of those hazardous materials authorized in DOT Specifications 34 and DOT Specifications 21C drums. (Modes 1, 2, 3.)
9416–P	DOT–E 9416	Hess and Clark, Inc., Ashland, OH	49 CFR 173.359	To become a party to exemption 9416 (Modes 1, 2, 3.)
9416–X	DOT–E 9416	Platte Chemical Company, Fremont, NE.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transportation. (Modes 1, 2, 3.)
9418–X	DOT–E 9418	West Texas Fabrication, Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize shipment of certain compressed gases classed as flammable and nonflammable in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks. (Mode 1.)
9425–X	DOT–E 9425	American Chemical & Refining Company, Inc., Waterbury, CT.	49 CFR 177.848	To authorize transport of certain alkaline corrosive solutions in the same vehicle with gold and silver cyanide solutions. (Mode 1.)
9441–X	DOT–E 9441	Amtrol, Incorporated, West Warwick, RI.	49 CFR 173.306(g)(1), part 172, subpart D, E.	To authorize manufacture, marking and sale of non-DOT specification steel water pump system tanks with outside diameter not exceeding 26 inches, for transportation of nonflammable gases. (Modes 1, 2, 3.)
9481–X	DOT–E 9481	Atlas Powder Company, Dallas, TX	49 CFR 173.77	To authorize transport of PETN wet with 25 percent water in plastic bags packed in fiberboard boxes instead of metal drums. (Mode 1.)
9485–X	DOT–E 9485	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.305	To authorize an increase in total vapor pressure for mixtures shipped under the exemption, from 140 psig at 130 degrees F to 286 psig at 130 degree F. (Modes 1, 2, 3.)
9486–X	DOT–E 9486	Biver, Inc., Chester, WV	49 CFR 173.119(a), (m), 178.245(a), 173.342–5, 173.346(a), 178–340–7, 178.343–5.	To authorize use of a non-DOT specification cargo tank designed and constructed in full compliance with DOT Specification MC–307/312, with exceptions, for transportation of a liquid and semi-solid waste material. (Mode 1.)
9487–X	DOT–E 9487	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.304	To authorize transport of an insecticide classed as a nonflammable compressed gas in DOT Specification 39 cylinders. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9498–P	DOT–E 9498	Cominco Fertilizers/A Division of Cominco Ltd., Calgary, Alberta, CN.	49 CFR 173.365, 173.367, 173.378	To become a party to exemption 9498 (Modes 1, 2, 3.)
9580–X	DOT–E 9580	McDonnell Douglass Corporation, St. Louis, MO.	49 CFR 173.120(b)	To authorize transport of internal combustion engines with flammable liquids in their fuel tanks, as part of non-self propelled apparatus, as essentially not subject to the requirements of 49 CFR Parts 100–199. (Mode 1.)
9580–X	DOT–E 9580	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 173.120(b)	To authorize transport of internal combustion engines with flammable liquids in their fuel tanks, as part of non-self propelled apparatus, as essentially not subject to the requirements of 49 CFR Parts 100–199. (Mode 1.)
9601–X	DOT–E 9601	Trical, Inc., Hollister, CA	49 CFR 173.357, 173.3a	To authorize shipment of liquid, 100% chloropicin, a Class B poison, in non-DOT specification zinc-plated steel drums, not exceeding 26-gallon capacity. (Modes 1, 3.)
9607–P	DOT–E 9607	A.H. Robins Company, Richmond, VA.	49 CFR parts 100–199	To become a party to exemption 9607 (Modes 1, 4, 5.)
9623–P	DOT–E 9623	Ireco Incorporated, Salt Lake City, UT.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1.)
9663–X	DOT–E 9663	Siego GmbH, Federal Republic Germany.	49 CFR 178.134, 178.35a, part 173	To authorize manufacture, marking and sale of cylindrical steel, overpacks similar to DOT–37M except wall thickness is 25 gage instead of 24 gage and inner polyethylene drum meets DOT–2SL except for marking, for shipment of those hazardous materials authorized in DOT–37M/2SL. (Modes 1, 2, 3.)
9666–X	DOT–E 9666	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.34(e), part 107, Appendix B.	Reinstatement of exemption that authorizes materials classed as metal alkyls solution for shipment in DOT Specification 4BA and 4BW cylinders, which are hydrostatically tested every 10 years rather than 5 years. (Modes 1, 3.)
9676–P	DOT–E 9676	J.T. Baker Inc., Phillipsburg, NJ	49 CFR 173.119(b)(4), 173.125, 178.205.	To become a party to exemption 9676 (Mode 1.)
9678–X	DOT–E 9678	Rosebrough Manufacturing Company, Avon Lake, OH.	49 CFR 173.154	To authorize shipment of various mixtures: Magnesium granules 0 to 30 percent; Salt-coated magnesium granules 0 to 30 percent; Calcium carbide 40 to 90 percent; and Calcium oxide 5 to 20 percent classed as flammable solids. (Mode 1.)
9681–X	DOT–E 9681	ICI Americas Inc./Pyrotechnic Specialties Bryen, GA.	49 CFR 173.65	To authorize limited quantities of Class A, Type 4 explosives, to be placed in special packaging not prescribed in 49 CFR. (Modes 1, 3, 4.)
9698–X	DOT–E 9698	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.247	To authorize shipment of thionyl chloride, classed as a corrosive material in non-DOT specification bottles of "Teflon" PFA, ranging in size from 16 to 16 ounces capacity, overpacked in DOT Specification 17H stainless steel drums, not to exceed 54 bottles per drum. (Mode 1.)
9701–X	DOT–E 9701	Trimeg Holdings, Ltd., Calgary, Alberta, CN.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of no more than 2,500 pounds each, and top and/or bottom outlets, for shipment of flammable and corrosive solids and oxidizer (solids only). (Modes 1, 2, 3.)
9708–X	DOT–E 9708	U.S. Department of Energy, Washington, DC.	49 CFR 173.220(b)	To authorize shipment of magnesium metal pellets, a flammable solid, in DOT Specification 44–C multiwall paper bag. (Mode 1.)
9711–P	DOT–E 9711	Konica Corporation, Tokyo, Japan	49 CFR 173.245(a)(12), 175.3	To become a party to exemption on 9711 (Modes 1, 2, 4.)
9714–X	DOT–E 9714	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.359	To authorize shipment of "Bidrin" 8 insecticide, classed as a Poison B liquid, in DOT Specification high density polyethylene containers. (Modes 1, 2, 3.)
9716–X	DOT–E 9716	Eurotainer, US Inc., 75008, Paris, France.	49 CFR 173.315, 178.245	To authorize shipment of certain compressed gases classed as flammable and nonflammable in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks. (Modes 1, 2, 3.)
9719–X	DOT–E 9719	Braid Southern Airways, Orlando, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or in quantities greater than those prescribed for shipment by air. (Mode 4.)
9723–P	DOT–E 9723	BD Technology, Inc., Arcadia, CA	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1.)
9742–X	DOT–E 9742	Bromine Compounds, Ltd., Beer-Sheva, Israel.	49 CFR 173.353, 178.245	To manufacture, mark and sell non-DOT specification steel portable tanks for shipping methyl bromide, liquid classed as poison B. (Modes 1, 2, 3.)
9744–X	DOT–E 9744	Akzo Chemicals, Inc., Chicago, IL	49 CFR 173.157(a)(5)	To increase the new weight authorized per package from 31.5 pounds to 32 pounds. (Mode 1.)
9745–P	DOT–E 9745	Wildman's Research Laboratories, Inc., St. Louis, MO.	49 CFR 173.1200(a)(6), 173.306(a), (b), (c), 175.3, 178.33.	To become a party to exemption 9745 (Modes 1, 2, 3, 4.)
9746–X	DOT–E 9746	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.264	To authorize use of DOT Specification 3BN cylinders for transportation of hydrogen fluoride, anhydrous. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9749–X	DOT–E 9749	Union Carbide Chemicals & Plastics Company Inc., Danbury, CT.	49 CFR 172.203(c)(1), 172.324(a)	To authorize shipment of a material containing a hazardous substance without listing the name of the hazardous substance on the shipping papers and on the package when transported by private or contract carriers. (Mode 1.)
9750–X	DOT–E 9750	Atlas Powder Company, Dallas, TX	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC–307 insulated cargo tank or a DOT Specification MC–311 insulated cargo tank. (Mode 1.)
9750–X	DOT–E 9750	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC–307 insulated cargo tank or a DOT Specification MC–311 insulated cargo tank. (Mode 1.)
9750–X	DOT–E 9750	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154(a)(18)	To authorize transport of ammonium nitrate solution containing not less than 13 percent water in DOT specification MC–307 insulated cargo tank or a DOT Specification MC–311 insulated cargo tank. (Mode 1.)
9752–X	DOT–E 9752	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354(a)(7)	To authorize shipment of motor fuel antiknock compound, class B poison, in a DOT Specification 12B fiberboard box with inside packaging consisting of an inner metal can, surrounded by vermiculite and then hermetically sealed in an outer metal can. (Modes 1, 3, 4.)
9761–X	DOT–E 9761	Systron Donner, Safety Systems Division, Concord, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize an increase of nominal water capacity from 75 cubic inches to 224 cubic inches (nominal). (Modes 1, 4.)
9763–X	DOT–E 9763	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.247, 173.302(a), 173.328(a).	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 3.)
9765–X	DOT–E 9765	3M, St. Paul, MN	49 CFR 173.124(a)(3)	To authorize shipment of ethylene oxide classed as a flammable liquid, contained in aluminum cartridges and cushioned in molded expanded polystyrene trays, overpacked in a DOT Specification 12B15 corrugated fiberboard box. (Modes 1, 2, 3, 4.)
9766–X	DOT–E 9766	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.92	To authorize use of non-DOT specification fiber drums containing not more than 9 TOW M114 Rocket Motors. (Modes 1, 3, 4, 5.)
9775–X	DOT–E 9775	Essex Environmental Industries, Inc., Hurst, TX.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of polyethylene, removable head salvage drum of 85-gallon for overpacking of damaged or leaking packages of hazardous materials of no greater than 55-gallon, or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)
9785–P	DOT–E 9785	Crowley Towing and Transportation Co., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	Crowley Caribbean Transport, Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	Trailer Marine Transport Corp., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	American Transport Lines Inc., Pennsauken, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	Euro-Gulf International Inc., Houston, TX.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	Australia-New Zealand Direct Line, Long Beach, CA.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9785–P	DOT–E 9785	Ocean Star Container Lines, Jersey City, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, 3.)
9801–X	DOT–E 9801	Phelps Dodge Corporation, Phoenix, AZ.	49 CFR 173.31(c)(2) and footnote (d) of Table 1.	To authorize retesting of DOT Specification 111A100W2 tank car tanks, over ten years of age, with sulfuric acid in lieu of water. (Mode 2.)
9808–X	DOT–E 9808	Apache Powder Company, Benson, AZ.	49 CFR 173.182(a)(1), 175.3	To authorize shipment of ammonium nitrate-potassium nitrate, identified as ANKN 90/10, classed as an oxidizer, in a moisture resistant, multi-ply paper bag. (Modes 1, 3, 4.)
9811–X	DOT–E 9811	Container Products Corporation, Wilmington, NC.	49 CFR 173.365	To authorize use of a "T-Bolt" closure. (Mode 1.)
9819–X	DOT–E 9819	Halliburton Company, Duncan, OK	49 CFR 173.119, 178.253, part 173, subpart F.	To authorize the deletion of the prototype testing requirement and the delection of the cargo tank marking and placarding requirement. (Mode 1.)
9858–X	DOT–E 9858	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(2)	To authorize a change of improper reference to 2P containers, an increase in equilibrium pressure of the lading at 130 degrees Fahrenheit from 160 psig to 170 psig an increase in the total weight of the package . (Mode 1.)
9878–X	DOT–E 9878	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.365(a)(2)	To authorize shipment of a solid waste, classed as a Class B poison, contained in 55-gallon capacity, DOT Specification 17C drums. (Mode 1.)
9912–X	DOT–E 9912	Poly Processing Company & Poly Cal Plastics, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, part 173, subpart F.	To authorize an additional closure system for the non-DOT Specification portable tank. (Modes 1. 2. 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9946–P	DOT–E 9946	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.327(a)	To become a party to exemption 9946. (Modes 1, 2, 3.)
9971–P	DOT–E 9971	J.T. Baker, Inc., Phillipsburg, NJ	49 CFR 173.119(a)(23), 173.245(a)(18), 175.3, 178.210.	To become a part to exemption 9971. (Modes 1, 4.)
10001–P	DOT–E 10001	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10032–P	DOT–E 10032	MCM, Management Control & Maintenence, S.A., Geneva, Switzerland.	49 CFR 173.315, 178.245	To become a party to exemption 10032. (Modes 1, 2, 3.)
10048–P	DOT–E 10048	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.134, 173.154, 173.26(m).	To become a party to exemption 10048. (Modes 1, 3.)
10069–P	DOT–E 10069	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.206, 178.61	To become a party to exemption 10069. (Modes 1, 2, 3.)
10103–P	DOT–E 10103	N.N.B.—Orion, Inc., Rochester Hills, MI.	49 CFR parts 100–177	To become a party to exemption 10103. (Mode 1.)
10106–P	DOT–E 10106	Moses Lake, Industries, Moses Lake, WA.	49 CFR 173.150 to 173.381, 178.19–2, 178.19–6.	To become a party to exemption 10106. (Modes 1, 3.)
10106–P	DOT–E 10106	Olin Hunt Specialty Products Inc., West Paterson, NJ.	49 CFR 173.150 to 173.381, 178.19–2, 178.19–6.	To become a party to exemption 10106. (Modes 1, 3.)
10126–X	DOT–E 10126	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.420	To reissue an exemption authorizing transportation of lithium batteries containing parallel branches of series connected cells without diodes by motor vehicles and cargo aircraft. (Modes 1, 4.)
10127–X	DOT–E 10127	Morton Thiokol, Inc. Huntsville, AL	49 CFR 173.92	To reissue an exemption authorizing shipment of a rocket motor with the igniter installed, by motor vehicle, previously issued as an emergency exemption. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9758–N	DOT–E 9758	Camping Gaz Int'l (nee Application des Gaz S.A.), Paris, France.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize shipment of certain flammable gases in a nonrefillable, non-DOT specification inside container conforming with the DOT Specification 2P except for diameter and capacity. (Modes 1, 2, 3.)
9849–N	DOT–E 9849	Southern Air Transport, Inc., Miami, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.3, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage by cargo-only aircraft those Class A, B, and C explosive that are not permitted or that in quantities greater than prescribed for air shipment. (Mode 4.)
9912–N	DOT–E 9912	Poly Processing Company & Poly Cal Plastics, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, part 173, subpart F.	To authorize manufacture, marking and sale of a non-DOT specification polyethylene tank in a steel frame for the shipment of certain materials classed as corroeive material, oxidizer, flammable liquid, and blasting agent. (Modes 1, 2, 3.)
9967–N	DOT–E 9967	Department of Energy, Washington, DC.	49 CFR 173.420(a)(4)	To authorize shipment of Uranium hexafluoride, classed as Radioactive material, low specific activity, in a non-DOT specification cylinder that contains more material than is prescribed. (Mode 1.)
10000–N	DOT–E 10000	Flight International, Newport News, VA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320, part 107, Appendix B.	To authorize transport of explosives that are forbidden for transport by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10007–N	DOT–E 10007	Coppa Industries, Inc., Menomonee Falls, WI.	49 CFR 173.249, 175.3	To authorize shipment of materials described as alkaline corroeive liquid, n.o.s., classed as Corroeive material, in a non-DOT composite packaging consisting of a tin can in a polyethylene insert within a DOT Specification 37A steel drum. A steel drum. (Modes 1, 2, 3, 4.)
10008–N	DOT–E 10008	Thermex Energy Corporation, Dallas, TX.	49 CFR 172.101 table. Column (6)(b), 175.30.	To authorize shipment of Detonating cord, Class A explosive by air. (Mode 4.)
10019–N	DOT–E 10019	Structural Composites Industries, Pomona, CA.	49 CFR 173 302(a)(1), 175.3	To authorize manufacture marking and sale of non-DOT Specification fiber reinforced plastic cylinders for the shipment of certain compressed gases, classed as Nonflammable gas. (Modes 1, 2, 3, 4, 5.)
10021–N	DOT–E 10021	Thermacore, Inc., Lancaster, PA	49 CFR 173 304(a)(2)	To authorize shipment of Ammonia anhydrous, classed as Nonflammable gas, in non-DOT Specification pressure vessels described as heat pipes. (Mode 1.)
10035–N	DOT–E	10035 Allied Drum Service. Louisville, KY	49 CFR 173 28(o). 178.115–10(a)	To recondition, convert, mark and sell a non-Dot specification, 16-guage 55-gallon steel drum to an open head, DOT-17C drum, for shipment of certain hazardous materials. (Modes 1, 2, 3.)
10043–N	DOT–E	10043 Texas Instruments. Inc. Dallas, TX	49 CFR 173.12	To authorize shipment of various hazardous waste materials, classed as flammable liquid, flammable solid, corrosive liquid, poison B or ORM–A, B, C and E in inside packagings ranging in size from 1 pint to 55 gallon drums in outside polyethylene bins with a 30 cubic foot capacity (Modes 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10048–N	DOT–E	10048 Epichem, Inc., Bethlehem, PA.	49 CFR 173.119, 173.134, 173.154, 173.28(m).	To authorize shipment of certain pyrophoric liquids, n.o.s., flammable liquids, n.o.s. and flammable solids, n.o.s. in non-DOT specification stainless steel cylinders (bubblers) over packed in 17C open head drums. (Modes 1, 3.)
10050–N	DOT–E	10050 Ceodeux, S.A., Lintgen, Luxembourg.	49 CFR 173.237(a)	To authorize use of pneumatically operated valves on cylinders containing poison A materials in lieu of the required packless valve having a handwheel. (Mode 1.)
10055–N	DOT–E	10055 Utensco, Port Washington, NY.	49 CFR 175.3, 178.115, 178.116, 178.117, 178.118, 178.80, 178.81, 178.82.	To authorize manufacturing, marking and sale of drums conforming to the DOT specs 5, 5A, 5B, 17C, 17E, 17F and 17H except that during manufacture the periodic hydrostatic and drop tests would not be required for shipment of those hazardous materials presently authorized in the DOT spec 5 and 17 drums. (Modes 1, 2, 3, 4.)
10056–N	DOT–E	10056 Mauser Packaging Limited, Litchfield, CT.	49 CFR 178.116–7(a)	To authorize manufacture, marking and sale of drums conforming to the DOT specification 17E except for having concave top head for shipment of those hazardous materials, presently authorized in DOT 17E drums. (Modes 1, 2, 3.)
10062–N	DOT–E	10062 Callery Chemical Company, Pittsburgh, PA.	49 CFR 173206	To authorize shipment of potassium, classed as a flammable solid, in DOT specification 4BA240 and 4BW240 steel cylinders. (Modes 1, 2, 3.)
10073–N	DOT–E	10073 Sonoco Fibre Drum Inc., Lombard, IL.	49 CFR part 173 subparts D, F, H	To authorize manufacture, marking and sale of non-DOT specification integrally lined fibre drum for shipment of corrosive liquids, flammable liquids and poison B liquids, fication 17E or composite packaging 21P/2U, 21P/2SL, 37M/2U. (Modes 1, 2, 3.)
10074–N	DOT–E	10074 Environmental Response Corporation, Santa Maria, Ca.	49 CFR 173.119, 173.121, 173.125, 173.128, 173.131, 173.139, 173,141, 173.144, 173.148, 173.149a, 173.245, 173.249, 173.255, 173.273, 178.81.	To authorize the manufacture, marking and sale of a non-DOT specification waste steel container similar to the DOT spec. 5A steel barrel for shipment of various flammable and combustible, liquids, flammable solids and corrosive materials. (Modes 1, 2.)
10075–N	DOT–E	10075 Jet Fleet Corporation, Dallas, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B".	To authorize transport of certain Class A, B, and C explosives that are forbidden for transportation by air or are in quantities greater than prescribed for air transportation. (Mode 4.)
10082–N	DOT–E	10082 SternAir, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B, subpart B.	To authorize transport of certain Class A, B and C explosives that are forbidden for carriage by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10088–N	DOT–E	10088 Hedwin Corporation, Baltimore, MD.	49 CFR 178.211, part 173 subparts D and F.	To authorize manufacture, marking and sale of non-DOT specification fiberboard boxes with an inside container meeting the DOT 2U specification, for transportation of corrosive liquids and flammable liquids (Modes 1, 3, 5.
10090–N	DOT–E 10090	Clawson Tank Company, Clarkson, MI.	49 CFR 173.266, 178.19, 178.253, part 173, subparts D and F.	To authorize manufacture marking, and sale of a rotationally molded, reusable polyethylene tank within a wire frame enclosure for transport of certain Flammable liquids, Corrosive materials and Oxidizers. (Modes 1, 2.)
10092–N	DOT–E 10092	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.91(a)(2), 173.91(a)(6)	To authorize shipment of an illuminating projectile, Class B explosive with projectiles set in a pallet base with a support cover held in place by strapping. (Mode 1.)
10093–N	DOT–E 10093	Olin Chemicals, Stamford, CT	49 CFR 173.182	To authorize shipment of Sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3.)
10096–N	DOT–E 10096	Alby Klorat AB, S–774 00, Avesta, Sweden.	49 CFR 173.163	To authorize shipment of Potassium chlorate classed as an oxidizer packed in 4-ply paper bags with a plastic lining, 56 bags of 25kg each, on a wooden pallet, shrink wrapped in plastic. (Modes 1, 2, 3.)
10102–N	DOT–E 10102	ENPAC Corporation, Jacksonville, FL.	49 CFR 173.3(c) part 173, subparts D, E, F, H.	To authorize manufacture, marking, and sale of a polyethylene, removable head drum not to exceed 20 gallon capacity for overpacking damaged or leaking packaging for disposal of hazardous materials that have spilled or leaked; or for transporting certain hazardous materials. (Modes 1, 3.)
10103–N	DOT–E 10103	General Motors Corporation, Warren, MI.	49 CFR parts 100–177	To authorize shipment of a sodium azide-based air bag module, classed as an explosive Power Device Class C, packaged in a foam molded polyethylene copolymers on a high density polyethylene pallet contained by stretch wrapping as an unregulated item. (Mode 1.)
10108–N	DOT–E 10108	Motorola Inc., Phoenix, AZ	49 CFR 173.150 to 173.381, 178.19–2, 178.19–6.	To authorize use of polyethylene drums manufactured without ultraviolet light stabilizer for shipment of certain hazardous materials that are authorized to be transported in DOT Specification 34 polyethylene drums. (Modes 1, 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10109–N	DOT–E 10109	National Aeronautics and Space Administration, Kennedy Space Center, FL.	49 CFR 173.316, 178.57	To authorize shipment of air, refrigerated liquid (cryogenic liquid), classed as a nonflammable gas, in a non-DOT Specification double walled stainless steel 3.5 liter liquid air dewar. (Mode 1.)
10114–N	DOT–E 10114	American Airlines, DFW Airport, TX	49 CFR 173.200, 175.10, 175.3	To authorize deadheading of up to six oxygen units, to be used for passenger medical service, in the passenger cabin of an airplane. (Mode 5.)
10117–N	DOT–E 10117	Blackman Uhler Chemical Division, Augusta, GA.	49 CFR 173.365	To authorize shipment of Dinitrochlorobenzene, classed as a Poison B, in a DOT Specifcaton MC 307 stainless steel cargo tank, insulated and equipped with heating coils to keep material temperature above 113 degrees F. (Mode 1.)
10118–N	DOT–E 10118	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.31(c), 179.201–1	To authorize shipment of nitric acid in a DOT Specification 103A–ALW tank car tank which is equipped with a 45 psi safety relief valve. (Mode 2.)
10122–N	DOT–E 10122	Atochem 92091, Paris, France	49 CFR 173.119(b), 173.21(b), 175.30(a).	To authorize use of a non-DOT specification insulated inside container for a specific flammable liquid solution. (Modes 1, 4.)
10131–N	DOT–E 10131	Fomo Products Inc., Norton, OH	49 CFR 173.1200(a)(8), 173.305(c), 173.306(a)(3), 178.33a.	To authorize transport of certain hazardous materials in a container conforming with the DOT Specification 2Q except for size, marking and test. (Modes 1, 2, 3.)
10133–N	DOT–E 10133	Goex, Inc., Cleburne, TX	49 CFR 173.100(hh), 173.53(g)(2), 173.86, 175.3.	To authorize transport of certain Class A detonating primers, in which the total explosive weight is more than 25 grams but less than 41 grams, as Class C detonating primers in quantities and packagings specified. (Modes 1, 2, 3, 4.)
10143–N	DOT–E 10143	Eurocom Imports, Inc., Dallas, TX	49 CFR 173.306(a), 178.33a	To authorized shipment of non-flammable compressed gas mixtures (Neon—Argon and Helium—Neon) and neon, classed as non-flammable gas in a non-DOT specification aluminum seamless cylinder similar to the DOT spec 39 cylinder. (Modes 1, 2.)
10145–N	DOT–E 10145	Automatic Sprinkler Corporation of America, Cleveland, OH.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell DOT Specification cylinders equipped with a fusible safety relief device to be used as a fire extinguisher and charged with a nonflammable liquefied compressed gas. (Mode 1.)
10149–N	DOT–E 10149	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.31(c)(13)(iv)	To authorize transport of flammable cryogenic liquids in a DOT 113A6OW–2 specification tank car tanks without replacing the outer jacket frangible disc every year as required. (Mode 2.)
10157–N	DOT–E 10157	Now Technologies, Inc., Bloomington, MN.	49 CFR 173.272	To authorize manufacture, marking and sale of a DOT Specification 3E or 2U high density polyethylene bottle fitted with an internal teflon pouch, overpacked up to four bottles to a fiberboard carton, for the shipment of up to 98% sulfuric acid. (Mode 1.)
10165–N	DOT–E 10165	U.S. Olympic Festival '89, Oklahoma City, OK.	49 CFR 173.118, 173.31, 175.30, 175.85, part 107, Appendix B, part 172, subparts C, D, E.	To authorize carriage of a small quantity of a flammable liquid in two safety lamps onboard an aircraft. (Mode 5.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453–X	DOT–E 4453	Maynes Explosives Company, Lee's Summit, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453–X	DOT–E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel mixture. (Modes 1, 3.)
EE 6614–X	DOT–E 6614	Steelcrete Company, Novi, MI	49 CFR 173.263(a)926), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 8167–X	DOT–E 8167	Manostat Corporation, New York, NY.	49 CFR 173.267, 175.3	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystryene/glass bottle inside packaging. (Modes 1, 2, 3, 4.)
EE 8363–X	DOT–E 8363	IMR Powder Company, Plattsburgh, NY.	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT Specification 12H 65 fiberboard boxes. (Modes 1, 3.)
EE 8426–9	DOT–E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8426. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8518–X	DOT3–E 8518	Universal Engineering Incorporated, Concord, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
EE 8518–P	DOT–E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
EE 8554–X	DOT–E 8554	Minnesota Explosives Company, Elmore, MN.	49 CFR 173.114a, 173.154, 173.93.	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC–306, MC–307 and MC–312 cargo tanks. (Modes 1, 3.)
EE 8554–X	DOT–E 8554	Piedmont Explosives, Inc., Statesville, NC.	49 CFR 173.114a, 173.154, 173.93.	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC–306, MC–307 and MC–312 cargo tanks. (Modes 1, 3.)
EE 8723–X	DOT–E 8723	Cherokee Explosives, Inc., Plainville, CT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8751–X	DOT–E 8751	Delta Tech Service, Inc., Martinez, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340–7, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1.)
EE 8965–X	DOT–E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
EE 9077–X	DOT–E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR parts 100–177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 guage galvanized steel. (Mode 1.)
EE 9106–X	DOT–E 9106	Ensign-Bickford Company, Simsbury, CT.	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Modes 1, 3.)
EE 9416–X	DOT–E 9416	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To authorize shipment of organophosphorous pesticide, liquid, in a DOT Specification 12P fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallons capacity. (Modes 1, 2, 3.)
EE 9416–X	DOT–E 9416	CIBA-GEIGY Corporation, Ardsley, NY.	49 CFR 173.359	To authorize shipment of organophosphorous pesticide, liquid, in a DOT Specification 12P fiberboard box containing two inside DOT Specification 2U polyethylene containers of 2½ gallons capacity. (Modes 1, 2, 3.)
EE 9678–X	DOT–E 9678	Rossborough Manufacturing Company, Avon Lake, OH.	49 CFR 173.154	To authorize use of dry bulk tank semi-trailers for shipment of magnesium and calcium salt mixtures. (Mode 1.)
EE 9713–X	DOT–E 9713	Acadia Industries, Inc., Crowley, LA.	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corroeive solids and oxidizers (solid only). (Modes 1, 2, 3.)
EE 9801–X	DOT–E 9801	Phelps Dodge Corporation, Phoenix, AZ.	49 CFR 173.31(c)(2) and footnote (d) of Table 1.	To authorize retesting of DOT Specification 111A100W2 tank car tanks, over ten years of age, with sulfuric acid in lieu of water. (Mode 2.)
EE 10089–N	DOT–E 10089	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.206, 178.61	To authorize shipment of Potassium metal classed as a flammable solid in non-DOT cylinders similar to the DOT specification 4BW cylinders except that they are constructed of Type 304, 316 and 347 stainless steel. (Modes 1, 2, 3.)
EE 10159–N	DOT–E 10159	Novamax Technologies, (U.S.), Inc., Atlanta, GA.	49 CFR 173.154, 173.245, 173.266.	To authorize use of ¾ inch vent plugs in DOT Specification 17E and DOT Specification 34 drums for certain corroeive and oxidizer materials. (Mode 1.)
EE 10160–N	DOT–E 10160	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E), 178.33a–2.	To authorize use of non-DOT specification containers which conform in part with the DOT Specification 2Q, for transportation of compressed gas, n.o.s. (Mode 1.)
EE 10180–N	DOT–E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10182–N	DOT–E 10182	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.31(b)	To authorize a one time shipment of acetaldehyde in a DOT Specification 103ALW tank car tank with defective bottom outlet piping. (Mode 2.)
EE 10183–N	DOT–E 10183	Atlas Powder Company, Dallas, TX.	49 CFR 172.101, 175.30	To authorize the transportation of detonators, Class A explosives, aboard cargo aircraft. (Mode 4.)
EE 10184–N	DOT–E 10184	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.34(e)(10), 173.34(e)(9).	To authorize the shipment of a specific gas mixtue in DOT Specification 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34(e)(9) and (e)(10). (Modes 1, 2, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10185–N	DOT–E 10185	Dow Chemical Company, Plaquemine, LA.	49 CFR 173.29(c)(2), 179.102–2	To authorize the transportation of a DOT Specification 105A500W tank car tank with a defective safety relief valve for the transportation of chlorine residue. (Mode 2.)
EE 10186–N	DOT–E 10186	E.I. du Pont de Nemours & Company, Wilmington, DE.	49 CFR 179.105–4	To authorize the transportation of certain DOT Specification 112T tank car tanks with nonconforming thermal protection systems. (Mode 2.)
EE 10189–N	DOT–E 10189	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.29(c)	To authorize a one time shipment of a residue of chlorine in a DOT Specifcation 105A500W tank car tank with a defective gasket under the manway cover plate. (Mode 2.)
EE 10191–N	DOT–E 10191	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.31(b)	To authorize a one time shipment of a residue of chlorine in a DOT Specification 105A500W tank car tank with a defective vapor valve. (Mode 2.)
EE 10192–N	DOT–E 10192	Eli Lilly and Company, Indianapolis, IN.	49 CFR 173.125, 178.205	To authorize use of a DOT Specification 12B corrugated fiberboard box with handholes with four inside polyethylene bottles. (Mode 1.)
EE 10196–N	DOT–E 10196	Penox Technologies Inc., Pittston, PA.	49 CFR 173.316, 178.57–2, 178.57–8(c).	To authorize manufacture, marking and sale of insulated non-DOT specification cylinders conforming with 49 CFR 178.57 except 178.57–2 and 178.57–8(c). (Mode 1.)
EE 10198–N	DOT–E 10198	ARCO Alaska, Inc., Anchorage, AK.	49 CFR 172.001	To authorize the transportation of ammonium bisulfite solution in 55-gallon drums. (Mode 4.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulations(s) affected	Nature of exemption thereof
6610–X	ARCO Chemical Company, Newtown Square, PA.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC–307 cargo tanks. (Modes 1, 2.)
7482–X	Monsanto Company, St. Louis, MO	49 CFR 173.245b(a)(6)	To authorize use of reconditioned non-DOT specification blow-molded high molecular weight polyethyline drum, for shipment of certain corrosive solid waste materials. (Mode 1.)
8017–X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To authorize use of DOT Specification 3AX, 3AAX, or 3T cylinders, for transportation of a flammable gas. (Mode 1.)
8151–P	Epoxylite Coroprationn, Irvine, CA	49 CFR 178.19, part 173, subparts, D, F.	To become a party to exemption 8151 (Modes 1, 2, 3.)
8273–X	TRW, Inc., Romeo, MI	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram. (Modes 1, 2, 3, 4.)
8273–X	TRW Vehicle Safety Systems, Inc., Romeo, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram. (Modes 1, 2, 3, 4.)
8656–X	Texas Nuclear Corporation, Austin, TX	49 CFR 173.302, 175.3	To authorize the shipment of nonflammable gasses in non-DOT specification metal, single-trip, inside containers. (Modes 1, 2, 3, 4, 5.)
8958–X	Track of the Wolf, Inc., Brooklyn Park, MN.	49 CFR 172.101, 173.60	To authorize transport of limited quantities of black power, classed as a flammable solid, in DOT Specification 12H fiberboard boxes. (Modes 1, 2.)
9762–N	Aqua-Tech, Inc., Port Washington, WI	49 CFR part 173, subpart D, E, F, H, subpart K, L, O.	To authorize shipment of empty containers (5 gallon capacity or less) which contain residual amounts of various hazardous materials to be loaded, based on compatibility in a bulk fiberboard box, lined with 0.006 inch polyethylene film, for disposal. (Mode 1.)
10005–N	Mobay Corporation, Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corroeive liquid, poisonous, n.o.s., classed as Corroeive material, in a non-DOT composite packaging consisting of 4 polystryrene enclosed glass bottles packaged inside a fiberboard box. (Mode 1.)
10036–N	Action-Pak, Inc., Bristol, PA	49 CFR 173.113	To authorize shipment of detonating fuze, Class C explosive, in a DOT specification 23F65 box containing a gross weight of 75 pounds, consolidated 12 cartons on a skid which is shrink-wrapped. (Mode 1.)
10061–N	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.266(e)	To authorize shipment of hydrogen peroxide concentrations, not exceeding 52%, classed as an oxidizer, in non-DOT specification tote bins. (Mode 1.)

Denials

10004–N Request by Atlantic Research Corporation Camden, AR to authorize shipment of Ammonium percholorate, classed as Oxidizer, in non-DOT Specification tanks, similar in design to the Association of American Railroad 207W railcar tanks denied April 11, 1989.

10939–N Request by Vertex Chemical Corporation St. Louis, MO to allow tank cars of liquid chlorine, classed as a nonflammable gas, to have the unloading device left in place with unloading incomplete and the tank car left unattended denied April 13, 1989.

10070-N Request by Williams Pipe Line Company Coralville, IA to authorize use of a non-DOT 1500 gallon capacity vacuum trailer for transporting waste or spilled gasoline, and crude oil, classed as flammable liquids, and fuel oil classed as a combustible liquid denied April 8, 1989.

10121-N Request by Union Pacific Railroad Company Omaha, NE to authorize filling of IM portable tanks or compartments thereof having a volume greater than 1900 gallons to be loaded to a filling density less than 80% by volume denied April 19, 1989.

10121-P Request by Union Pacific's BulkTainer Omaha, NE to authorize filling of IM portable tanks or compartments thereof having a volume greater than 1900 gallons to be loaded to a filling density less than 80% by volume April 19, 1989.

9340-X Pioneer Plastics & Services Co., Ltd., Brampton, Ontario, Canada to renew exemption authorizing the manufacture, mark and sale of non-DOT specification polyethylene portable tanks for shipment of certain hazardous materials. The renewal is denied based on the failure of the manufacture to comply with the exemption criteria. See Federal Register Notice dated May 5, 1989, Volume 54 No. 86 page 19481.

Issued in Washington, DC, on November 21, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-28760 Filed 12-8-89; 8:45 am]

BILLING CODE 4910-60-M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July—October 1989. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3004-X	DOT-E 3004	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable, and nonflammable compressed gases. (Modes 1, 2, 4, 5.)
3004-X	DOT-E 3004	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable, and nonflammable compressed gases. (Modes 1, 2, 4, 5.)
3095-X	DOT-E 3095	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.119(a), 173.245(a), 173.248(a), 173.263(a), 173.264, 173.283, 173.289, 179.342-5, 178.343-5.	To authorize use of a non-DOT specification cargo tank, for shipment of certain hazardous materials. (Modes 1, 3.)
3128-X	DOT-E 3128	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.304, 175.3	To authorize use of non-DOT specification cylinders, for transportation of a Class C explosive and a liquefied nonflammable gas. (Modes 1, 2, 3, 4.)
3415-X	DOT-E 3415	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	To authorize shipment of rocket motors, containing certain Class A or Class B explosives, without overpacking. (Mode 1.)
3549-X	DOT-E 3549	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a), 173.77	To renew and to authorize use of an optional polyethylene bottle as an additional packaging configuration for shipment of certain Class A explosives. (Modes 1, 2.)
3569-X	DOT-E 3569	Western Atlas International Inc., Houston, TX.	49 CFR 173.246, 172.101 Column 4, 175.3.	To authorize use of non-DOT specification nonrefillable cylinders, for transportation of a liquid oxidizer. (Modes 1, 2, 3, 4.)
4262-X	DOT-E 4262	Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Mode 1.)
4354-X	DOT-E 4354	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4354-X	DOT-E 4354	Vanchem, Inc., Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4354-X	DOT-E 4354	PPG Industries, Incorporated, Pittsburgh, PA.	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3a.	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4453-p	DOT-E 4453	Explo, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	Ren-Loi, Inc., Cuddy, PA	49 CFR 172.101, 173.114(a)(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	Blasting Products, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	H.L. & A.G. Belsinger, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	Mountaineer Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-P	DOT-E 4453	W.A. Murphy, Inc., El Monte, CA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4612-X	DOT-E 4612	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.135, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.259, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.)
4661-X	DOT-E 4661	Foote Mineral Company, Malvern, PA.	49 CFR 173.34(e)(1)	To authorize transport of butyl lithium in petroleum solvent in DOT Specification 4BA240 cylinders with alternative retest procedures. (Modes 1, 2, 3.)
4850-P	DOT-E 4850	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(cc), 175.3	To become a party to exemption 4850. (Modes 1, 2, 4.)
4850-P	DOT-E 4850	Drilling Measurements Inc. (DMI), Brousseard, LA.	49 CFR 173.100(cc), 175.3	To become a party to exemption 4850. (Modes 1, 2, 4.)
4932-X	DOT-E 4932	Federal Laboratories, Inc., Saltsburg, PA.	49 CFR 172.101, 173.385(a), 175.3	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends overpacked in DOT Specification 12B fiberboard box. (Modes 1, 2, 4.)
5112-X	DOT-E 5112	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5112-X	DOT-E 5112	Austin Powder Company, Cleveland, OH.	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5704-X	DOT-E 5704	Aerojet Solid Propulsion Company, Sacramento, CA.	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Midwest, Inc., Chicago, IL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Southeast, Inc., Wilmington, NC.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of Floride, Inc., Tampa, FL.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The West, San Ramon, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Mid-Atlantic, Inc., Moorestown, NJ.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of The Great Lakes, Inc., Cleveland, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Puerto Rico, Inc., Guaabo, PR.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Unigas Inc., Mercedita, PR	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5923-X	DOT-E 5923	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3.)
5945-X	DOT-E 5945	Cardox Division of Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.315, 178.245	To authorize use of a small capacity DOT Specification 51 insulated portable tank, for shipment of a nonflammable compressed gas. (Mode 1.)
5951-X	DOT-E 5951	Van Waters & Rogers, Inc., Spartanburg, SC.	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A500 type tank. (Modes 1, 2.)
5951-X	DOT-E 5951	DPC Industries, Inc., Houston, TX	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A500 type tank. (Modes 1, 2.)
6016-X	DOT-E 6016	Huber Supply Company, Inc., Mason City, IA.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6016-P	DOT-E 6016	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.315(a)	To become a party to exemption 6016. (Mode 1.)
6250-X	DOT-E 6250	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 173.101, 173.102, 173.69, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To authorize shipment of partially dis-assembled aircraft with explosive components (ejection seat and canopy related devices) remaining installed. (Modes 1, 3.)
6250-X	DOT-E 6250	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.69, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To authorize shipment of partially dis-assembled aircraft with explosive components (ejection seat and canopy related devices) remaining installed. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6293–X	DOT–E 6293	Hercules Incorporated, Wilmington, DE.	49 CFR 173.21(b), 173.248	To authorize the increase of nitric acid from 13% to 16% contained in spent mixed acid for shipment in cargo tanks. (Mode 1.)
6325–X	DOT–E 6325	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC–306, MC–307 or MC–312 cargo tanks. (Mode 1.)
6325–X	DOT–E 6325	Atlas Powder Company, Dallas, TX.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MD–306, MC–307 or MC–312 cargo tanks. (Mode 1.)
6484–X	DOT–E 6484	Angus Chemical Company, Northbrook, IL.	49 CFR 172.101, 173.149a	To authorize shipment of the following additional materials classed as flammable liquids; nitromethane, 31%; and 1-nitroethane, 31%; and 1-nitropropane, 38% for shipment in cargo tanks. (Mode 1.)
6517–X	DOT–E 6517	Coyne Cylinder Company, Huntsville, AL.	49 CFR 173.303(a)	To authorize use of non-DOT specification steel cylinders comparable to DOT Specification 4BW for shipment of acetylene. (Modes 1, 2, 3.)
6530–X	DOT–E 6530	AGL Welding Supply Company, Inc., Clifton, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	National Welders, Charlotte, NC	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1,2.)
6530–X	DOT–E 6530	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Liquid Carbonic Industrial/Medical Corporation, Chicago, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of The Midwest, Inc., Hillside, IL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of The West, Oakland, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	SOS Gases, Inc., Kearny, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Scott Specialty Gases, Plumsteadville, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specificaton 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6583–X	DOT–E 6583	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.249(a)(7)	To authorize shipment of a corrosive material in a DOT Specification 51 portable tank. (Mode 1.)
6614–X	DOT–E 6614	Steelcrete Company, Novi, MI	49 CFR 173.263(a)(28), 173.277(a)(6).	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6651–X	DOT–E 6651	Enthone, Incorporated, West Haven, CT.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1.)
6651–X	DOT–E 6651	Park Chemical Company, Detroit, MI.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers for transportation of certain Class B poisonous solids. (Mode 1.)
6657–X	DOT–E 6657	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC–3, 3A or 3AA having an age over 35 years for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, 5.)
6670–X	DOT–E 6670	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.301(d), 173.302	To authorize the addition of Hexafluoroethane (R116) classed as a non-flammable gas as an additional commodity. (Mode 1.)
6672–X	DOT–E 6672	Chandler Evans, Inc., West Hartford, CT.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of welded or seamless, nonrefillable non-DOT specification steel cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
6759–X	DOT–E 6759	Atlas Powder Company, Dallas, TX.	49 CFR 173.87, 177.835(g)(2)	To authorize transport of Class A or B explosives in an IME 22 container or compartment on the same vehicle with non-mass detonating blasting caps. (Mode 1.)
6765–X	DOT–E 6765	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Linde Gases of The South, Inc., Houston, TX.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Iwatani International Corporation of America, Fort Lee, NJ.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765–X	DOT–E 6765	Linde Gases of southern California, Inc., Santa Ana, CA.	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6769–X	DOT–E 6769	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314, 173.315	To authorize transport of trifluoromethane, in insulated DOT Specification MC–331 tank motor vehicles, and DOT Specification 105A800W tank cars. (Modes 1, 2.)
6800–X	DOT–E 6800	Sonoco Plastic Drum, Inc., Lockport, IL.	49 CFR 173.266	To authorize manufacture, marking and sale of non-DOT specification 30- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6816–X	DOT–E 6816	General Dynamics, San Diego, CA	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6861–X	DOT–E 6861	Teledyne Mccormick Selph, Hollister, CA.	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)
6874–P	DOT–E 6874	Goldstone Supply Corp., Sparks, NV.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6874–P	DOT–E 6874	Sino Pacific Trading ca., Brisbane, Queen's Land, Australia.	49 CFR 172.101, 173.370(a)(13)	To become a party of exemptioj 6874. (Modes 1, 2, 3.)
6874–P	DOT–E 6874	Nevada Chemicals, Incorporation, Salt Lake City, UT.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6874–P	DOT–E 6874	Mining Services International (MSI) Salt Lake City, UT.	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874. (Modes 1, 2, 3.)
6902–X	DOT–E 6902	Halocarbon Products Corporation, North Augusta, SC.	49 CFR 173.314(c), 179.300–15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6902–X	DOT–E 6902	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.314(c), 179.300–15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6971–P	DOT–E 6971	Ultra Scientific, Inc., North Kingstown, RI.	49 CFR Parts 100–199	To become a party to exemption 6971. (Modes 1, 2, 3, 4, 5.)
6974–X	DOT–E 6974	Tavco, Inc., Chatsworth, CA.	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7035–X	DOT–E 7035	Owens-Illinois Plastic Products Inc., Toledo, OH.	49 CFR 173.119, 173.128(a), 173.245(a)(26), 173.245b(a)(6), 173.249(a)(1), 173.250a(a)(1), 173.256, 173.257(a)(1), 173.263(a)(28), 173.265(d)(6),173.266(b)(8), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6), 173,287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.346, 173.348, 178.19.	To authorize manufacture, marking and sale of non-DOT specification reusable, molded polyethylene containers, for transportation of corrosive liquids and solids, oxidizers, flammable liquids, and Class B poisonous liquids. (Modes 1, 2, 3.)
7052–X	DOT–E 7052	Pointer, Inc., Tempe, AZ	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Dukane Corporation/Seacom Division, St. Charles, IL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	VMS Consulting Engineer, Woodmere, NY.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Environmental Pacific Corporation, Lake Oswego, OR.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Northrop Electronics System Division, Hawthorne, CA.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	NASA (National Aeronautics & Space Administration), Washington, DC.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Duracell Inc., Bethel, CT	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	LO–KATA Communication Electronics, Cornwall, England.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Hoppecke Battery Systems, Inc., Butler, NJ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–X	DOT–E 7052	Jet Propulsion Laboratory, Pasadena, CA.	49 CFR 172.101, 172.400, 175.3	To authorized shipment of batteries containing lithium and other materials, classes as flammable solid. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	FDK America, Inc., Englewood Cliffs, NJ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Fuji Electronchemical Co., Ltd., Tokyo, Japan.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Multiplier Industries Corp., Mt. Kisco, NY.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7052–P	DOT–E 7052	Unitech Industries Inc., Scottsdale, AZ.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4, 5.)
7072–X	DOT–E 7072	Container Corporation of American, Wilmington, DC.	49 CFR 173, Subparts D, E, F	To renew and to authorize an increase in drum capacity not to exceed 55 gallon capacity for shipment of certain corrosive and poision B liquids, (Modes 1, 2, 3.)
7087–X	DOT–E 7087	3M/Transportation Department, St. Paul, MN.	49 CFR 173.286(b), 175.3	To authorize shipment of small quantities of certain hazardous materials in non-DOT specification glass, polyethylene or other plastic containers. (Modes 1, 2, 3, 4, 5.)
7205–X	DOT–E 7205	U.S. Department of Defense, Falls Church, VA.	49 CFR 46 CFR 146.29–99	To authorize use of a non-DOT specification cargo tank, for transportation of a flammable gas and a nonflammable gas. (Mode 3.)
7280–X	DOT–E 7280	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.905(c), 176.905(d)	To authorize fuel tanks to be ¾ full instead of ¼ full and vehicles to be transported with battery cables connected if the holds or compartments of a vessel in which vehicles are loaded are mechanically ventilated. (Mode 3.)
7517–X	DOT–E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize manufacture, marking and sale of non-DOT specification fusion welded tank car tanks, for transportation of nonflammable compressed gases. (Modes 1, 2, 3.)
7536–X	DOT–E 7536	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29–41	To authorize an increase in the maximum allowable draft weights for five and ten ton rated booms, for shipment of military explosives. (Mode 3.)
7542–X	DOT–E 7542	Coyne Cylinder Company, Huntsville, AL.	49 CFR 173.303(a)	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, for transportation of certain flammable gases. (Modes 1, 2.)
7549–X	DOT–E 7549	ICI Americas Inc., Wilmington, DE	49 CFR 173.245a(a), 173.3a, 174.63(b), 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51, for shipment of a certain corrosive material. (Modes 1, 2, 3.)
7607–X	DOT–E 7607	Hanson Engineers, Incorporation, Springfield, IL.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607–P	DOT–E 7607	Groundwater Technology, Inc., Concord, CA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7607–X	DOT–E 7607	The Foxboro Company, South Norwalk, CT.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607–X	DOT–E 7607	I.T. Corporation (International Technology Corp.), Torrance, CA.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607–P	DOT–E 7607	Metcalf & Eddy, Inc., Santa Clara, CA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607–p	DOT–E 7607	Advanced Sciences, Inc., Englewood, CO.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607–P	DOT–E 7607	U.S. Environmental Protection Agency, Seattle, WA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7616–P	DOT–E 7616	Denver & Rio Grande Western Railroad Company, Denver, CO.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7638–X	DOT–E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize an additional model of the exempted cylinder. (Modes 1, 2, 3, 4.)
7648–P	DOT–E 7648	Sunwest Aviation, Ogden, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(i), 175.3, 175.35(a).	To become a party to exemption 7648. (Mode 4.)
7654–X	DOT–E 7654	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7694–X	DOT–E 7694	BW/IP International, Inc., Van Nuys, CA.	49 CFR 173.302(a)(4), 175.3	To autorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7694–X	DOT–E 7694	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7753–X	DOT–E 7753	FMC Corporation, Philadelphia, PA	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7753–X	DOT–E 7753	Stauffer Chemical Company, Shelton, CT.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7774–P	DOT–E 7774	Penwood Wireline, Inc., Houston, TX.	49 CFR 173.246, 175.3	To become a party to exemption 7774. (Modes 1, 2, 4.)
7835–X	DOT–E 7835	Messer Grieshem Industries, Inc., Valley Forge, PA.	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835–X	DOT–E 7835	Sunox Incorporated, Charlotte, NC	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835–X	DOT–E 7835	Lincoln Big Three, Inc., Baton Rouge, LA.	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835–P	DOT–E 7835	Welders Supply Company (WESCO), Billerica, MA.	49 CFR 177.848, Part 107, Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7891–X	DOT–E 7891	Spectrum Chemical Manufacturing Corporation, Gardena, CA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.)
7907–X	DOT–E 7907	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.127, 173.184, 178.224	To authorize shipment of wet nitrocellulose, in non-DOT specification fiberboard drums. (Modes 1, 2, 3.)
7907–X	DOT–E 7907	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.127, 173.184, 178.224	To authorize shipment of wet nitrocellulose, in non-DOT specification fiberboard drums. (Modes 1, 2, 3.)
7915–X	DOT–E 7915	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.93(b)	To authorize transport of certain propellant explosives in water in DOT Specification MC–307 or MC–312 cargo tanks. (Mode 1.)
7943–X	DOT–E 7943	Chem Lab Products, Inc., Anaheim, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To modify location of top flap handholes in the corrugated fiber box similar to DOT Specification 12B. (Mode 1.)
7943–X	DOT–E 7943	Chem Lab Products, Inc., Ontario, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943–P	DOT–E 7943	Freight Specialists/Div. of VANA Enterprises, Inc., La Verne, CA.	49 CFR 172.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7943–X	DOT–E 7943	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7943-X	DOT-E 7943	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	Alstar Company, Tracy, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7991-X	DOT-E 7991	Burlington Northern Railroad Company, Overland Park, KS.	49 CFR, Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
7991-P	DOT-E 7991	Jackson Jordan, Inc., Ludington, MI	49 CFR, Parts 100-177	To become a party to exemption 7991. (Mode 1.)
8006-X	DOT-E 8006	Esquire Novelty Corporation, Amsterdam, NY.	49 CFR 172.400(a), 172.504 Table 2.	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1000 pounds or more. (Mode 1.)
8009-P	DOT-E 8009	Marlin Gas Transport, Inc., Palm Harbor, FL.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8091-X	DOT-E 8091	American Telephone and Telegraph Company, Greensboro, NC.	49 CFR Parts 100-177	To authorize transport of certain mercury relays exempted from 49 CFR 100-177, in heat sealed glass vials, (Modes 4, 5.)
8156-P	DOT-E 8156	National Specialty Gases, Durham, NC.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to exemption 8156. (Modes 1, 2.)
8156-X	DOT-E 8156	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8167-X	DOT-E 8167	Manostat Corporation, New York, NY.	49 CFR 173.297, 175.3.	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystyrene/glass bottle inside packaging. (Modes 1, 2, 3, 4.)
8175-X	DOT-E 8175	The Norac Company, Inc., Azusa, CA.	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benozoyl peroxide, wet, in a plastic lined DOT Specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
8180-X	DOT-E 8180	Dow Corning Corporation, Midland, MI.	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To authorize use of non-DOT specification steel drums for shipment of a corrosive material and a flammable liquid. (Modes 1, 2.)
8208-X	DOT-E 8208	Jet Propulsion Laboratory, Pasadena, CA.	49 CFR 173.145, 173.276, 173.336	To authorize shipment of liquid propellant samples, frozen, in non-DOT specification plywood boxes. (Mode 1.)
8209-X	DOT-E 8209	Coastal Planes Airways, Incorporated, Warner Robins, GA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To provide for a new design bulk shipping container to hold up to 112 modules, classed as flammable solids. (Modes 1, 2, 3, 4.)
8214-P	DOT-E 8214	Mazda Motor of America, Inc., Irvine, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (Modes 1, 2, 3, 4.)
8214-X	DOT-E 8214	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize the addition of a new bulk pack for automobile module assemblies classed as flammable solids. (Modes 1, 2, 3, 4.)
8214-P	DOT-E 8214	Mitsubishi Motor Sales of America, Inc., Cypress, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3, 4.)
8215-X	DOT-E 8215	Olin Corporation/Winchester Group, East Alton, IL.	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To renew and authorize a plastic bucket of approximately 4 gallons capacity with a lid to be used for the shipment of certain Class A, B and C explosive materials. (Modes 1, 2.)
8215-X	DOT-E 8215	Olin Corporation/Winchester Group, East Alton, IL.	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To renew authorize shipment of scrap smokeless powder, wet with 30% water, classed as flammable solid instead of scrap propellant explosive, Class B explosive. (Modes 1, 2.)
8230-X	DOT-E 8230	Fisher Scientific Company, Fair Lawn, NJ.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8230-X	DOT-E 8230	Seastar Chemicals Inc., Sidney, British Columbia, CN.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8244-X	DOT-E 8244	Mann Systems, A Division of Halliburton Company, Houston, TX.	49 CFR 173.119, 173.245, 173.263, 173.264, 173.269, 46 CFR 64.9.	To authorize use of a DOT Specification marine portable tank, for shipment of certain flammable liquids, corrosive materials and combustible liquids. Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8244-X	DOT-E 8244	Halliburton Services, Duncan, OK	49 CFR 173.119, 173.245, 173.263, 173.264, 173.269, 49 CFR 64.9.	To authorize use of a DOT Specification marine portable tank, for shipment of certain flammable liquids, corrosive materials and combustible liquids. (Modes 1, 3.)
8248-X	DOT-E 8248	AT&T Technologies, Inc., Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 179.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15 C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8248-X	DOT-E 8248	American Telephone and Telegraph Company, Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8264-X	DOT-E 8264	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1, 2.)
8265-X	DOT-E 8265	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.197a, 173.93, 177.838(g).	To authorize shipment of certain solid propellant explosives and smokeless powders for small arms in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms in DOT-21C fiber drums packed in fiberboard boxes. (Modes 1, 2.)
8269-X	DOT-E 8269	Fort Worth Fabrication, Inc., Fort Worth, TX.	49 CFR 173.119(a), 172.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To reissue for transporting or offering liquid and semi-solid waste materials in non-DOT specification cargo tanks. (Mode 1.)
8278-X	DOT-E 8278	Maintenance Mechanical Corporation, Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for shipment of flammable gases and flammable liquids. (Mode 1.)
8287-X	DOT-E 8287	Rohm and Haas Company, Philadelphia, PA.	49 CFR 173.245(a)(16), 173.245(a)(26), 178.19-4(c), 178.35a-2(b).	To authorize shipmetn of a corrosive liquid in a DOT Specification 6D/2SL composite container or DOT Specification 34 drum equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polyethylene bottles with vented closures. (Modes 1, 2, 3.)
8307-X	DOT-E 8307	U.S. Department of Energy, Washington, DC.	49 CFR 173.21, 173.247, 173.25(b), 175.3.	To authorize shipment of non-pyrotechnic smoke generators containing titanium tetrachloride, ammonium hydroxide, an explosive valve and nitrogen. (Modes 1, 2, 3, 4.)
8307-X	DOT-E 8307	U.S. Department of Defense, Falls Church, VA.	49 CFR 713.21, 173.247, 173.25(b), 175.3.	To authorize shipment of non-pyrotechnic smoke generators containing titanium tetrachloride, ammonium hydroxide, an explosive valve and nitrogen. (Modes 1, 2, 3, 4.)
8354-X	DOT-E 8354	Compagnie Dee Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315	To authorize use of non-DOT specification portable tanks, for transportation of certain liquefied petroleum gases and other gases classed as flammable gases and flammable liquid. (Modes 1, 2, 3.)
8377-X	DOT-E 8377	Teledyne McCormick Selph, Hollister, CA.	49 CFR 172.101, 173.113, 175.3	To authorize transport of devices described as detonating fuzes, Class C explosives, in non-DOT specification fiberboard boxes packed in non-DOT specification strong wooden boxes. (Modes 1, 4.)
8386-X	DOT-E 8386	J.J. Mauget Company, Los Angeles, CA.	49 CFR 172.101, 172.400	To authorize transport of a Class B poison in special pressure sealed polyethylene capsules without the POISON label. (Modes 1, 2.)
8390-X	DOT-E 8390	Mallinckrodt, Inc., Paris, KY	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-998% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8396-X	DOT-E 8396	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.119, 173.21, 173.221	To authorize transport of certain organic peroxide solutions in DOT Specification MC-307 and MC-312 cargo tanks. (Mode 1.)
8426-P	DOT-E 8426	Power Master, Inc. (PMI), Fontana, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Ancon Environmental Services, Wilmington, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8426-P	DOT-E 8426	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8445-X	DOT-E 8445	University of Minnesota, Minneapolis, MN.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Merrell Dow Pharmaceuticals, Cincinnati, OH.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8445–X	DOT–E 8445	S&W Waste, Inc., South Kearny, NJ.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	Rhone-Poulenc AG Company, Research Triangle Park, NC.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	Monsanto Chemical Company, St. Louis, MO.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	U.S. Department of Defense, Falls Church, VA.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–P	DOT–E 8445	Dow Corning Corporation, Midland, MI.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–X	DOT–E 8445	The Dow Chemical Company, Midland, MI.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	McDonnell Aircraft Company, St. Louis, MO.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	DowBrands, Indianapolis, IN	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–P	DOT–E 8445	Heritage Transport, Inc., Indianapolis, IN.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–X	DOT–E 8445	Waste Conversion, Inc., Hatfield, PA.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	E&K Hazardous Waste Services, Inc., Sheboygan, WI.	49 CFR 173, Subparts D, E, F, H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–P	DOT–E 8445	Merrell Dow Research Indianapolis, IN.	49 CFR, Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8451–X	DOT–E 8451	Martin Electronics, Inc., Perry, FL	49 CFR 173.65, 173.86(e), 175.3	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of flammable liquids and flammable gases. (Modes 1, 2, 4.)
8451–P	DOT–E 8451	Trojan Corporation, Spanish Fork, UT.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8451–P	DOT–E 8451	United Technologies Corporation, San Jose, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451–P	DOT–E 8451	Talley Defense Systems, Inc., Mesa, AZ.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451–P	DOT–E 8451	Martin Electronics, Inc., Perry, FL	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451–P	DOT–E 8451	U.S. Department of the Interior, Pittsburgh, PA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453–X	DOT–E 8453	Austin Powder Company, Cleveland, OH.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453–X	DOT–E 8453	Atlas Powder Company, Dallas, TX	49 CFR 173.114	To authorize use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453–X	DOT–E 8453	Pacco Inc., So. Olympia, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8453–X	DOT–E 8453	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent. (Modes 1, 3.)
8518–P	DOT–E 8518	Parris Vaccum Service, Inc., Bakersfield, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8518–P	DOT–E 8518	Cummings Vacuum Service Inc., Shafter, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8518–X	DOT–E 8518	Barnett Trucking, Inc., Fillmore, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–P	DOT–E 8518	Ancon Environmental Services, Wilmington, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8518–X	DOT–E 8518	Universal Engineering Incorporated, Concord, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 except for bottom outlet valve variations, for transportation of flammable liquids or corrosive or poison B materials. (Mode 1.)
8518–P	DOT–E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8518–P	DOT–E 8518	Gallighen, Inc., Ventura, CA	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8519–X	DOT–E 8519	Polish Ocean Lines, Gdynia, Poland.	49 CFR 176.905(L)	To authorize stowage of motor vehicles with their fuel tanks containing gasoline, classed as a flammable liquid, in the same cargo compartment with other hazardous materials on specifically equipped roll-on/roll-off cargo vessels. (Mode 3.)
8519–X	DOT–E 8519	Lykes Brothers Steamship Company, Inc., New Orleans, LA.	49 CFR 176.905(L)	To become a party to exemption 8519. (Mode 3.)
8554–P	DOT–E 8554	Dole Explosives, Inc., Rosemount, MN.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554. (Modes 1, 3.)
8554–X	DOT–E 8554	Thermex Energy Corporation, Dallas, TX.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC–306, MC–307 and MC–312 cargo tanks. (Modes 1, 3.)
8554–X	DOT–E 8554	W.A. Murphy, Inc., El Monte, CA	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC–306, MC–307 and MC–312 cargo tanks. (Modes 1, 3.)
8556–X	DOT–E 8556	Linde Gases of the South, Inc., Houston, TX.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556–X	DOT–E 8556	Linde Gases of The Mid-Atlantic, Moorestown, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556–X	DOT–E 8556	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556–X	DOT–E 8556	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8569–X	DOT–E 8569	Allied-Signal Aerospace	49 CFR 172.101 Column 6(b), 173.276, 175.3.	To authorize carriage of class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Modes 1, 3, 4.)
8579–X	DOT–E 8579	Nitram, Inc., Tampa, FL	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8602–X	DOT–E 8602	Minnesotal Valley Engineering, Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8645–X	DOT–E 8645	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commerically designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8650–X	DOT–E 8650	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354, 174.63(b)	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound. (Modes 1, 2, 3.)
8693–X	DOT–E 8693	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.230	To authorize shipment of sodium metal dispersion in organic solvent in DOT Specification 4BW cylinders. (Modes 1, 3.)
8698–X	DOT–E 8698	Taylor-Wharton, Inc., Theodore, AL	49 CFR 173.320, 176.76	To authorize manufacture, marking and sale of vacuum insulated, non-DOT specification portable tanks, for transportation of liquid nitrogen. (Mode 3.)
8706–X	DOT–E 8706	Prairie State Equipment, Inc., Sioux Falls, SD.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of a full opening rear door feature on the non-DOT specification cargo tanks used for the shipment of liquid and semi-solid. (Mode 1.)
8708–X	DOT–E 8708	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357(b)(2)	To authorize use of non-DOT specification steel drums (overpacked, palletized and containerized), for shipment of a Class B poison. (Modes 1, 3.)
8718–P	DOT–E 8718	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a), 173.304(a), 175.3.	To become a party to exemption 8718. (Modes 1, 2, 3, 4, 5.)
8720–X	DOT–E 8720	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure non-refillable cylinders, for shipment of nonflammable and nonliquefied gases. (Modes 1, 2, 4.)
8723–X	DOT–E 8723	Atlas Powder Company, Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize oxidizers as additional commodities for shipment under DOT–E 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	SherDeb Corporation, Lehigh Valley, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–X	DOT–E 8723	Cherokee Explosives, Inc., Plainville, CT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
8723–P	DOT–E 8723	Dyna-Blast, Nortonville, KY	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	Econex Incorporated, Wheaton, IL	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	Explo, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	H.L. & A.G. Balsinger, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	Mountaineer Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	Ren-Loi, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723–P	DOT–E 8723	Blasting Products, Inc., Cuddy, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8732–X	DOT–E 8732	Chemcentral, Inc. Chicago, IL	49 CFR 173.245	To authorize use of a DOT Specification MC–303 and MC–306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732–X	DOT–E 8732	The Dow Chemical Company, Midland, MI.	49 CFR 173.245	To authorize use of a DOT Specification MC–303 and MC–306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8735–X	DOT–E 8735	Letica Corporation, Rochester, MI	49 CFR 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of non-DOT specification removable head molded polyethylene drums, for transportation of corroeive liquids and flammable liquids. (Modes 1, 2, 3.)
8750–X	DOT–E 8750	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification girth welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4.)
8772–X	DOT–E 8772	Akzo Chemicals Inc., Chicago, IL	49 CFR 172.101, Column 6(b)	To authorize an increase in the net quantity limitation, not exceeding five gallons per package, for shipment of certain corrosive liquids and flammable liquids that are corroeive, when shipped via cargo-only aircraft. (Mode 4.)
8779–X	DOT–E 8779	Acme Resin Corporation, Westchester, IL.	49 CFR 173.349	To authorize use of DOT Specification 57 portable tanks for shipment of poison B liquids. (Mode 1.)
8811–P	DOT–E 8811	Hercules Incorporated, Wilmington, DE	49 CFR 173.294, 178.340–3, 178.343–2.	To become a party to exemption 8811. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8811–P	DOT–E 8811	Aquaion Company, Wilmington, DE	49 CFR 173.294, 178.340–3, 178.343–2.	To become a party to exemption 8811. (Mode 1.)
8837–X	DOT–E 8837	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.245(a)(38), 173.256(b)(1), 173.263(a)(8), 173.277(c).	To authorize manufacture, marking and sale of non-DOT specification steel jacketed polyethylene tanks, for transportation of certain corroeive liquids. (Modes 1, 2, 3.)
8839–X	DOT–E 8839	Poly Processing Company, Inc., Monroe, LA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize an additional closure system for the non-DOT Specification portable tank. (Modes 1, 2, 3.)
8839–X	DOT–E 8839	Poly Processing Company, Monroe, LA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize use of a metal frame to contain polyethylene portable tanks for shipment of certain corroeive liquids, flammable liquids and an oxidizer. (Modes 1, 2, 3.)
8845–P	DOT–E 8845	Drilling Measurements Inc., (DMI), Broussard, LA.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845. (Modes 1, 3.)
8859–P	DOT–E 8859	Eastman Kodak Company, Rochester, NY.	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To become a party to exemption 8859. (Modes 1, 4, 5.)
8862–P	DOT–E 8862	ARC Chemical Division, Balchem Corporation, State Hill, NY.	49 CFR 173.119, 173.124(a)(4), 173.305.	To become a party to exemption 8862. (Mode 1.)
8886–X	DOT–E 8886	Nalco Chemical Company, Naperville, IL.	49 CFR 172.101 Column 6(b), 173.119, 173.245(a)(17), 175.30.	To authorize shipment of compound cleaning, liquid, in drums having a capacity exceeding the net quantity limitations for cargo only aircraft. (Mode 4.)
8901–X	DOT–E 8901	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A–A–C flute, corrugated fiberboard boxes. (Mode 1.)
8931–P	DOT–E 8931	Mersulex, Inc., North York, Ontario, Canada.	49 CFR 173.272, 179.201–1	To become a party to exemption 8931. (Mode 2.)
8938–X	DOT–E 8938	Cryogenic Services, Inc., Canton, GA.	49 CFR 173.304(a), 175.3	To authorize the addition of a welded cylinder (CSI PLC–450–HP) for use in liquefied carbon dioxide service. (Modes 1, 2, 3, 4.)
8944–X	DOT–E 8944	Union Carbide Corporation, Danbury, CT.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To renew and to modify certain procedures for acoustic emission testing of DOT Specification 3AX, 3AAX and 3T cylinders. (Modes 1, 3.)
8966–X	DOT–E 8966	Cook Slurry Company, Salt Lake City, UT.	49 CFR 173.114a(b)(3)	To authorize transport of slurry blasting agent, in DOT Specification MC–307 cargo tanks constructed of 304 stainless steel. (Mode 1).
8968–X	DOT–E 8968	Dresser Industries, Inc./Guiberson Division, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8968–P	DOT–E 8968	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8968. (Modes 1, 3, 4.)
8968–P	DOT–E 8968	Drilling Measurements, Inc. (DMI), Broussard, LA.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8968. (Modes 1, 3, 4.)
8968–X	DOT–E 8968	Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
8968–X	DOT–E 8968	Vann Systems, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
9016–X	DOT–E 9016	Van Leer Verpackungen GmbH, Koln, West Germany.	49 CFR 173.127, 173.175, 173.194, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 110 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9023–X	DOT–E 9023	Chemical Industries of Northern Greece (SICNG), Thessaloniki, Greece.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of liquefied compressed gases. (Modes 1, 2, 3.)
9047–X	DOT–E 9047	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of the West, San Ramen, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9047–X	DOT–E 9047	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	GenEx, Ltd., Des Moines, IA	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of the Midwest, Inc., Chicago, IL.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9047–X	DOT–E 9047	UNIGAS, Ind., Mercedita, PR	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9048–X	DOT–E 9048	Brooks Instrument Div./Emerson Electric Co., Statesboro, GA.	49 CFR 173.119, 173.304, 173.315	To renew and to authorize flow tubes on mechanical displacement meters to be manufactured with Type 304 and 17–4 PH stainless steel used for shipping flammable liquid or gas, n.o.s. (Mode 1.)
9066–P	DOT–E 9066	Rolls-Royce Motor Cars Inc., Lyndhurst, NJ.	49 CFR 171.11 (see paragraph 8.d.).	To become a party to exemption 9066. (Modes 1, 2, 3, 4.)
9066–X	DOT–E 9066	Volkswagen of America, Inc., Troy, MI.	49 CFR 171.11 (see paragraph 8.d.).	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (Modes 1, 2, 3, 4.)
9067–X	DOT–E 9067	Watco Truck Rigging, Inc., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corroeive liquids. (Mode 1.)
9082–X	DOT–E 9082	Rhone-Poulenc Ag Company Research Triangle Park, NC.	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 3.)
9101–X	DOT–E 9101	General Electric Company, Princeton, NJ.	49 CFR 172.101 Column 6(b), 173.92, 175.30.	To authorize party status, an additional Rocket motor, Class B explosive, and an additional shipping container. (Mode 4.)
9108–P	DOT–E 9108	SNPE Inc., Princeton, NJ	49 CFR 173.77	To become a party to exemption 9108. (Modes 1, 3.)
9110–P	DOT–E 9110	General Plastics and Chemicals Co., Natick, MA.	49 CFR 173.163	To become a party to exemption 9110. (Modes 1, 2, 3.)
9114–X	DOT–E 9114	AT&T Technologies, Inc., Lee's Summit, MO.	49 CFR 172.203(d)(1)(ii), 172.203(d)(1)(iii), 172.403(b), 172.403(g)(2), 173.415(a).	To authorize AT&T Technologies to provided packaging to be used for highway transport to the Kansas City Works of electron tubes containing small amounts of radioactive material (85Kr and 226Ra) without specific determination of total activity or Transport Index for the package. (Mode 1.)
9116–X	DOT–E 9116	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 176.19, 176.253, Part 173, Subpart F.	To authorize use of new Paxon 7004 polyethylene resin ad to reduce the minimum wall thickness from 0.375 to 0.230 for tanks built. (Modes 1, 2, 3.)
9116–X	DOT–E 9116	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173,266, 176,340, 176.19, 176.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9130–X	DOT–E 9130	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9130–X	DOT–E 9130	Hydrotech Chemical Corporation, Marietta, GA.	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9130–X	DOT–E 9130	Olin Chemicals, Stamford, CT	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9130–X	DOT–E 9130	Bio-Lab, Incorporated, Decatur, GA	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9140–X	DOT–E 9140	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize an optional stainless steel bottom discharge fitting and valve assembly for a non-DOT specification polyethylene portable tank for shipment of certain corrosive flammable or oxidizer liquid. (Modes 1, 2, 3.)
9144–X	DOT–E 9144	Cajun Bag & Supply Co., Crowley, LA.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To renew and to authorize cargo vessel as additional mode of transportation. (Modes 1, 2, 3.)
9149–X	DOT–E 9149	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.354, 174.63(b), 178.245.	To authorize use of non-DOT specification IMO Type 1 portable tanks, for transportation of motor fuel antiknock compound. (Modes 1, 2, 3.)
9150–X	DOT–E 9150	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 176.19, 176.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks with bottom outlet, for shipment of corroeive and flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9162–X	DOT–E 9162	Sun Pipe Line Company, Longview, TX.	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for transportation of flammable liquids or flammable gases. (Mode 1.)
9164–X	DOT–E 9164	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.119(b)(6)	To authorize the addition of other specific products and sludges such as lube oil sludges, anti-freeze sludge, cutting oil sludge, lubricating oils, greases and inks, for shipment in cargo tanks. (Modes 1, 2.)
9164–X	DOT–E 9164	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.119(b)(6)	To authorize manufacture, marking and sale of a non-DOT specification steel portable tank of 345 gallon capacity, with removable head, for shipment of waste paint and waste paint sludge. (Modes 1, 2.)
9169–X	DOT–E 9169	PASCO Zinc Corporation (formerly Pacific Smelting), Torrance, CA.	49 CFR 173.154	To authorize transport of a water reactive material in vented freight shipping containers. (Modes 1, 3.)
9174–X	DOT–E 9174	McDonnell Aircraft Company, St. Louis, MO.	49 CFR 173.302(a)	To authorize use of non-DOT specification cylindrical and spherical pressure vessels which are an integral part of the Space Shuttle Auxiliary Propulsion System rods, for transportation of helium and nitrogen. (Mode 1.)
9181–X	DOT–E 9181	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9181–X	DOT–E 9181	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9181–X	DOT–E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9196–P	DOT–E 9196	USDA—U.S. Department of Agriculture/Forest Serv., Washington, DC.	49 CFR 175.5(a)(2)	To become a party to exemption 9196. (Mode 4.)
9196–X	DOT–E 9196	USDA—U.S. Department of Agriculture/Forest Serv., Washington, DC.	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9196–X	DOT–E 9196	U.S. Department of the Interior (DOI), Boise, ID.	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9222–P	DOT–E 9222	Terra First, Inc., Vernon, AL	49 CFR 173.154	To become a party to exemption 9222. (Mode 1.)
9256–X	DOT–E 9256	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.86, 175.30, 48 CFR 146.20–13, Part 107, Appendix B, Subpart B(1).	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 3, 4.)
9262–P	DOT–E 9262	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9262. (Modes 1, 3, 4.)
9262–P	DOT–E 9262	Drilling Measurements, Inc. (DMI), Broussard, LA.	49 CFR 173.100(v), 175.30	To become a party to exemption 9262. (Modes 1, 3, 4.)
9269–X	DOT–E 9269	Columbia Nitrogen Corporation, Augusta, GA.	49 CFR 173.154(a)(17)	To authorize shipment of ammonium nitrate solution, containing not less than 15% water, in DOT Specification 103DW tank car tanks. (Mode 2.)
9271–P	DOT–E 9271	The Atchison, Topeka & Santa Fe Railway Company, Chicago, IL.	49 CFR 174.90	To become a party to exemption 9271. (Mode 2.)
9312–X	DOT–E 9312	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR, Parts 170–179	To authorize shipment of Space Shuttle Orbiters which contain small quantities of explosives, flammable liquids and poisons, and nonflammable gases in non-DOT specification pressure vessels. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9319-X	DOT-E 9319	Fluorowax Inc., Chaska, MN	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35a, Part 173, Subpart F.	To authorize the addition of 72% Perchloric acid diluted as an oxidizer and/or corrosive. (Modes 1, 2, 3.)
9330-X	DOT-E 9330	Bio/Air, Inc., Anchorage, AK	49 CFR 172.101, Column 6(b), 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,000 to 2,200 gallon capacity, for transportation of nitrogen refrigerated liquid. (Mode 4.)
9331-P	DOT-E 9331	Albright & Wilson Americas, Toronto, Ont., Canada Toronto, Ont., Canada.	49 CFR 173.263(a)(10)	To become a party to exemption 9331. (Mode 1.)
9332-P	DOT-E 9332	Chromalloy R & T Division, Orangeburg, NY.	49 CFR 172.101, 173.150, 175.3	To become a party to exemption 9332. (Modes 1, 2, 4.)
9346-X	DOT-E 9346	Pennzoil Company, Houston, TX	49 CFR 174.67(a)(2)	To modify exemption to authorize seventeen (17) coupled tank cars instead of twelve (12) tank cars, for shipment of oil, n.o.s. (Mode 2.)
9346-X	DOT-E 9346	Witco Corporation, Bradford, PA	49 CFR 174.67(a)(2)	To authorize setting of the brakes and blocking the wheels of the first and last tank cars on up to a twelve tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum. (Mode 2.)
9355-X	DOT-E 9355	Eastman Kodak Company, Rochester, NY.	49 CFR, Parts 100–177	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Modes 1, 2, 3, 4, 5.)
9363-X	DOT-E 9363	Columbia Astrophysics Laboratory, New York, NY.	49 CFR 173.302(a)(1)	To authorize use of non-DOT specification cylinders manufactured from monel to DOT Specification 3A with certain exceptions, for transportation of certain flammable and nonflammable gases. (Mode 1.)
9367-X	DOT-E 9367	Stone Container Corporation, Schaumburg, IL.	49 CFR 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large non-DOT specification collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.)
9396-X	DOT-E 9396	Gulf Central Storage & Terminal Company, Tulsa, OK.	49 CFR 173.314(a)	To become a party to exemption 9396. (Mode 2.)
9399-X	DOT-E 9399	Sealand Can Company, Inc., Cambridge, MA.	49 CFR 173.304(a), 178.65	To authorize rail and cargo vessels as additional modes of transportation. (Modes 1, 2, 3.)
9400-X	DOT-E 9400	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional closure system for the non-DOT specification portable tank. (Modes 1, 2, 3.)
9402-X	DOT-E 9402	NACCO, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9416-X	DOT-E 9416	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transportation. (Modes 1, 2, 3.)
9416-X	DOT-E 9416	CIBA-GEIGY Corporation, Ardsley, NY.	49 CFR 173.359	To renew and to authorize rail as an additional mode of transporation. (Modes 1, 2, 3.)
9419-X	DOT-E 9419	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc. Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To authorize use of a limited quantity of DOT Specification 3AAX or 3T cylinders that are retested by means other than the hyrostatic retest required in 49 CFR 173.34(e). (Modes 1, 3.)
9419-X	DOT-E 9419	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Appendix B.	To authorize use of a limited quantity of DOT Specification 3AAX or 3T cylinders that are retested by means other than the hyrostatic retest required in 49 CFR 173.34(e). (Modes 1, 3.)
9421-X	DOT-E 9421	Taylor-Wharton, Division of Harsco Corporation, Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of a non-DOT specification steel cylinder complying in part with DOT 3AA specification, for transportation of certain flammable and nonflammalbe gases. (Modes 1, 2, 3, 4.)
9436-X	DOT-E 9436	Union Carbided Industrial Gases, Inc., Danbury, CT.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize manufacture, marking and sale of non-DOT specification portable tanks for transportation of nonflammable refrigerated liquids. (Modes 1, 3.)
9449-X	DOT-E 9449	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	49 CFR 172.101, 173.21, 173.315(i)(3), 173.346, 173.3a, 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT specification 51 portable tank for shipment of carbamate pesticide, liquid, toxic, n.o.s. (Modes 1, 3.)
9456-X	DOT-E 9456	General Electric Company, Waterford, NY.	49 CFR 173.245, 173.280	To authorize use of DOT Specification MC-330 and MC-331 cargo tanks, for transportation of certain corrosive materials. (Mode 1.)
9458-X	DOT-E 9458	Dow Corning Corporation, Midland, MI	49 CFR 173.245, 173.266	to authorize use of DOT Specification MC-330 and MC-331 cargo tanks, for transportation of certain corrosive materials. (Mode 1.)
9460-X	DOT-E 9460	Tracor Aerospace, Inc., East Camden, AR.	49 CFR 172.101	To authorize transportation of a Class A type 4 explosive in sealed velostat bag containing not more than one pound of powder or pellets, packed in DOT Specification 12C or 17H metal drums. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9462-X	DOT-E 9462	Aztec Metal Fabricating Co., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corroseive liquids. (Mode 1.)
9464-X	DOT-E 9464	Broco, Inc., Rialto, CA	49 CFR 173.100	To authorize transport of a pest control device which has dimensions exceeding those authorized in 49 CFR, in a fiberboard card and placed in a heat sealed plastic bag. (Modes 1, 2, 3, 4, 5.)
9466-X	DOT-E 9466	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	49 CFR 173.365(a)(6)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)
9478-X	DOT-E 9478	Systron Donner, Safety Systems Division, Concord, CA.	49 CFR 173.304, 175.3, 178.46	To authorize manufacture, marking and sale of non-DOT specification cylinders conforming with DOT Specification 3AL in shape and for certain tests for shipment of nonflammable gases. (Modes 1, 2, 4.)
9480-X	DOT-E 9480	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	Airco Special Gases, Riverton, NJ	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9480-X	DOT-E 9480	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4.)
9481-X	DOT-E 9481	C-I-L, Inc., North York, Ontario, Canada.	49 CFR 173.77	To authorize transport of PETN wet with 25% water in plastic bags packed in fiberboard boxes instead of metal drums. (Mode 1.)
9485-X	DOT-E 9485	Kaw Valley, Inc., Leavenworth, KS	49 CFR 173.305	To authorize an increase in total vapor pressure for mixtures shipped under the exemption, from 140 psig at 130 degrees F to 286 psig at 130 degrees F. (Modes 1, 2, 3.)
9488-X	DOT-E 9488	Conference of Radiation Control Program Directors, Frankfort, KY.	49 CFR 173.415(a), 173.431	To authorize use of specially sealed DOT-2R containers in concrete filled steel drums (certified as DOT-7A) for one-time transport for disposal of not more than 500 millicuries of radium-226 in normal or special form without each shipper keeping a package test performance certification file. (Mode 1.)
9490-X	DOT-E 9490	National Refrigerants, Inc., Plymouth Meeting, PA.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9498-X	DOT-E 9498	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.365, 173.367, 173.370	To authorize shipment of Copper arsenide, classed as Poison B, in a non-DOT flexible intermediate bulk polypropylene bag. (Modes 1, 2, 3.)
9498-X	DOT-E 9498	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.365, 173.367, 173.370	To authorize shipment of Copper arsenide, classed as Poison B, in a non-DOT flexible intermediate bulk polypropylene bag. (Modes 1, 2, 3.)
9499-X	DOT-E 9499	Cleveland Container Corporation, Cleveland, OH.	49 CFR 178.19, Part 173, Subparts D, F.	To authorize manufacture, marking and sale of 3-½, 5, 5-½, and 6-gallon capacity DOT Specification 35 removable head polythylene drums, for shipment of corroseive and flammable liquids. (Modes 1, 2, 3.)
9505-X	DOT-E 9505	The Norac Company, Inc., Azusa, CA.	49 CFR 173.157	To authorize transport of wet benzoyl peroxide in polyethylene containers, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9506-X	DOT-E 9506	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.119(m), 173.242	To authorize transport of flammable liquids and corrosive liquids in the same outside packagings when the corrosive liquids are not in metal cans, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9507-X	DOT-E 9507	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.119, 173.302, 173.304, 173.326, 173.34, 173.346.	To authorize use of non-DOT specification full removable head salvage cylinder of 45 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressured hazardous materials. (Mode 1.)
9512-X	DOT-E 9512	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 except bottom outlet and each bottom inlet must be equipped with an additional shut-off valve, blank flange or a sealing cap, for shipment of liquid and semi-solid waste material. (Mode 1.)
9513-X	DOT-E 9513	American Cyanamid Company, Wayne, NJ.	49 CFR 173.343, 173.377	To authorize transport of an organic phosphate formulation in a bulk motor vehicle. (Mode 1.)
9528-X	DOT-E 9528	U.S. Department of Defense, Falls Church, VA.	49 CFR, Parts 100–199	To authorize transport of nonself-propelled aerospace ground equipment with gasoline or aviation fuel in the tanks. (Modes 1, 2.)
9529-X	DOT-E 9529	Viskase Corporation, Chicago, IL	49 CFR 173.121	To authorize shipment of carbon disulfide in DOT Specification MC-312 cargo tanks. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9530-X	DOT-E 9530	National Refrigerants, Inc., Plymouth Meeting, PA.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
9536-M	DOT-E 9536	Transway Systems, Inc., Stoney Creek, Ont., Canada.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tank, patterned after the MC-307 or MC-312 specifications with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
9549-P	DOT-E 9549	Penwood Wireline, Inc./A Computalog Company, Houston, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9549. (Modes 1, 3, 4.)
9552-X	DOT-E 9552	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 178.216-11	To authorize testing of DOT Specification 23G cylindrical fiberboard box once a year instead of once every six months. (Mode 1.)
9571-P	DOT-E 9571	GSX Services, Inc., Laurel, MD	49 CFR, Parts 100-117	To become a party to exemption 9571. (Modes 1, 2, 3, 4, 5.)
9577-X	DOT-E 9577	Altus Corporation, San Jose, CA	49 CFR 173.206, 173.247	To authorize shipment of a new battery set in a 30-gallon non-gallon non-DOT specification steel drum. (Mode 1.)
9599-P	DOT-E 9599	Puerto Rico Cryogenics Corporation, San Juan, PR.	49 CFR 172.203, 173.318, 173.320, 178.30; 176.76(h).	To become a party to exemption 9599. (Modes 1, 3.)
9607-P	DOT-E 9607	Applied Laboratories, Inc., Columbus, IN.	49 CFR Parts 100-199	To become a party to exemption 9607. (Modes 1, 4, 5.)
9607-P	DOT-E 9607	Barrier Industries, Inc., Port Jervis, NY.	49 CFR, Parts 100-199	To become a party to exemption 9607. (Modes 1, 4, 5.)
9610-P	DOT-E 9610	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To become a party to exemption 9610. (Modes 1, 2.)
9610-P	DOT-E 9610	ACTIV Industries, Inc., Kearneysville, WV.	49 CFR 172.203(a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To become a party to exemption 9610. (Modes 1, 2.)
9610-X	DOT-E 9610	Federal Cartridge Company, Anoka, MN.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1, 2.)
9617-X	DOT-E 9617	Explosives Technologies International, Wilmington, DE.	49 CFR 177.848(f), Part 107, Appendix B(1).	To authorize of cargo vessel as an additional mode of transportation. (Mode 1.)
9632-P	DOT-E 9632	Chemical Industries of Northern Greece (SICNG), Thessaloniki, [illegible]	49 CFR 173.315, 178.245	To become a party to exemption 9632. (Modes 1, 2, 3.)
9645-X	DOT-E 9645	Bonar Plastics Ltd., Lindsay, Ontario, CN.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To renew and authorize a design change in the polyethylene tanks to provide for a full drainage feature and modification to the ball valve feature. (Modes 1, 2.)
9658-X	DOT-E 9658	Fluoroware, Inc., Chaska, NM	49 CFR 173.119, 173.268, 173.299(b), 178.19, 178.253, Part 173, Subpart F.	To authorize the addition of 72% perchloric acid classed as an oxidizer and/or corrosive. (Modes 1, 2.)
9707-X	DOT-E 9707	Pepsi-Cola Company, Somers, NY	49 CFR 172.400	To authorize additional products and packaging configurations; request modification of placarding and shipping paper requirements and to add cargo vessel as additional mode of transportation. (Mode 1.)
9713-X	DOT-E 9713	Acadia Industries, Inc., Crowley, LA	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and oxidizers (solid only). (Modes 1, 2, 3.)
9715-X	DOT-E 9715	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(12)	To authorize shipment of dicumyl peroxide, dry, an organic peroxide, solid, inside polyethylene bags in quantities of up to 40 pounds, overpacked in a DOT Specification 12B65 corrugated fiberboard box. (Modes 1, 3.)
9717-X	DOT-E 9717	Mobay Corporation, Kansas City, [illegible]	49 CFR 173.119(b), 175.3	To authorize shipment of certain flammable liquids in inside containers of up to 1 gallon capacity, overpacked in a DOT Specification 21C fiber drum. (Modes 1, 4.)
9722-X	DOT-E 9722	Russell-Stanley West, Inc., Rancho Cucamonga, CA.	49 CFR 173.266	To authorize several different types of materials classed as either corrosive material, poison B, flammable liquid, organic peroxide or oxidizer. (Modes 1, 2, 3.)
9722-X	DOT-E 9722	Russell-Standly Corporation, Red Bank, NJ.	49 CFR 173.266	To authorize pivaloyl chloride (trimethylacetyle chloride) classed as a corrosive material, as an additional commodity. (Modes 1, 2, 3.)
9723-P	DOT-E 9723	SET Environmental, Inc., Wheeling, IL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723-P	DOT-E 9723	Heritage Transport, Inc., Indianapolis, IN.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723-X	DOT-E 9723	Aqua-Tech, Inc., Port Washington, IL.	49 CFR 177.848(b)	To authorize shipment of "lab-packs" containing cyanides and cyanide mixtures with "lab-packs" containing acids and corrosive liquids in the same transport vehicle. (Mode 1.)
9727-X	DOT-E 9727	Sherex Chemical Company, Inc., Dublin, OH.	49 CFR 173.249	To authorize shipment of an alkaline corrosive liquid, n.o.s. in new or reconditioned DOT Specification 17H steel drums. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9728-X	DOT-E 9728	Smith Systems Operation, Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer. (Mode 1.)
9729-X	DOT-E 9729	Allied-Signal Inc., Morristown, NJ	49 CFR 173.246(a)(1), 178.61-5	To authorize shipment of corrosive material in stainless steel cylinders complying with requirements of DOT Specification 4BW with specific exceptions. (Modes 1, 2, 3.)
9733-X	DOT-E 9733	Rheem Container Corporation, Kingwood, TX.	49 CFR 173.164	To authorize manufacture, marking and sale of DOT Specification 3S polyethylene drums of six-gallon capacity for the shipment of chromic acid mixture, dry, or chromic acid, solid, classed as oxidizers. (Modes 1, 2, 3.)
9741-P	DOT-E 9741	Overseas Trading Co., Inc., McAdoo, PA.	49 CFR 173.260(a)(3)	To become a party to exemption 9741. (Modes 1, 2, 3.)
9741-X	DOT-E 9741	Moura Batteries Co., Inc., Edison, NJ.	49 CFR 173.260(a)(3)	To authorize shipment of batteries palletized and shipped as a unit without means of protection from any superimposed weight. (Modes 1, 2, 3.)
9741-P	DOT-E 9741	Batteries Recovery Services, Inc. (B.R.S.), Medley, FL.	49 CFR 173.260(a)(3)	To become a party to exemption 9741. (Modes 1, 2, 3.)
9747-X	DOT-E 9747	Aerosol Services Company, Inc., City of Industry, CA.	49 CFR 173.304(d)(3), 173.306, 175.3, 178.33-2, 178.33-7.	To authorize use of a non-DOT specification packaging, comparable to a DOT-2P except for size and thickness, for shipment of materials authorized in a DOT-2P (Modes 1, 2, 3, 4.)
9751-X	DOT-E 9751	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.81(c), 175.3	To authorize transport of a Class A explosive device in limited quantities as a Class C explosive. (Modes 1, 2, 3, 4, 5.)
9755-X	DOT-E 9755	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65	To authorize transport of packages Class A explosive which exceed the weight limitation in 49 CFR 173.65(a)(4) in a non-DOT Specification wooden box. (Mode 1.)
9768-X	DOT-E 9768	Defense Technology and Procurement Agency, Berne, Switzerland.	49 CFR 172.101, 173.57, 173.79, 173.93, 175.3.	To authorize additional Class A explosives for shipment by cargo aircraft. (Mode 4.)
9769-P	DOT-E 9769	Rollins Environmental Services (FS) Inc., Wilmington, DE.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-P	DOT-E 9769	CECOS International, Inc., Livingston, LA.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-P	DOT-E 9769	Great Lakes Environmental Services, Inc., Warren, MI.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Aqua-Tech, Inc., Port Washington, WI	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Safety-Kleen Envirosystems Co., Inc., Manati, PR.	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9769-X	DOT-E 9769	Rollins Chempak, Inc., Wilmington, DE.	49 CFR 176.83, 177.848	To authorize transport of trifluoromethane, in insulated DOT Specification MC-331 tank motor vehicles, and DOT Specification 105A600W tank cars. (Modes 1, 2, 3.)
9770-X	DOT-E 9770	AMSPEC Chemical Corporation, Gloucester City, NJ.	49 CFR 173.154(a)(2), 173.28(m), 178.118.	To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, Delaware. (Mode 1.)
9773-X	DOT-E 9773	SST Industries, Inc., Cincinnati, OH	49 CFR 173.154, 173.217, 173.245b.	To authorize manufacture, marking and sale of non-DOT specification fully removable head polyethylene drums of a rated volumetric capacity not exceeding 30-gallons, for shipment of certain viscous solids, and oxidizer solids. (Modes 1, 2, 3.)
9779-X	DOT-E 9779	Unichem International, Inc., Hobbs, NM.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. (Mode 1.)
9780-X	DOT-E 9780	Majestic Lubricating Company, Tulsa, OK.	49 CFR 173.119(a)(27)	To authorize shipment of four additional materials classed as flammable liquid in the approved packaging. (Mode 1.)
9781-X	DOT-E 9781	The Chlorine Institute, Inc., Washington, DC.	49 CFR 173.304(a)(2), 173.34(d), (e).	To renew and modify special provision 8e so salvage cylinders are not limited to use for leaks that cannot bag contained by using The Chlorine Institute's Kit A. (Mode 1.)
9781-X	DOT-E 9781	Jones Chemicals, Inc., LeRoy, NY	49 CFR 173.304(a)(2), 173.34 (d), (e).	To authorize use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9782-X	DOT-E 9782	Grumman Aircraft Systems, Bethpage, NY.	49 CFR 173.206	To authorize shipment of potassium metal in non-DOT specification container. (Modes 1, 2, 4.)
9783-X	DOT-E 9783	Helios Container Systems, Inc., Addison, IL.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b, 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2260 pounds each, and top and bottom outlets, for shipment of flammable solids, oxidizing materials, poison B solids and corrosive solids. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9785–P	DOT–E 9785	Tropical Shipping and Construction Co., Ltd., Nassau, Bahamas.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, 3.)
9789–X	DOT–E 9789	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize the addition of chromium complex solutions, classed as flammable liquids, a corrosive, n.o.s., for shipment in DOT Specification 57 portable tanks. (Modes 1, 2.)
9789–X	DOT–E 9789	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize shipment of flammable liquid, corrosive, n.o.s. in DOT Specification 57 portable tanks. (Modes 1, 2.)
9790–X	DOT–E 9790	Taylor-Wharton, Division of Harsco Corporation, Indianapolis, IN.	49 CFR 173.316, 178.57–21(a)	To authorize removal of section 8.a., which requires carrying the exemption aboard the motor vehicle. (Mode 1.)
9797–X	DOT–E 9797	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.304(a)(2)	To authorize shipment of anhydrous ammonia, classed as nonflammable gas, in non-DOT specification containers, identified as aluminum alloy heat pipes. (Mode 1.)
9797–X	DOT–E 9797	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 173.304(a)(2)	To authorize shipment of anhydrous ammonia, classed as nonflammable gas, in non-DOT specification containers, identified as aluminum alloy heat pipes. (Mode 1.)
9806–X	DOT–E 9806	Stone Container Corporation, Schaumburg, IL.	49 CFR 173.182, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.)
9822–X	DOT–E 9822	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.328(a)(2), 175.3, 173.331(b)(1).	To authorize shipment of poisonous liquid R&D Samples in packagings conforming to 49 CFR 173.331(b)(1). (Mode 1.)
9827–X	DOT–E 9827	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To authorize shipment of certain organophosphorus compounds, in a DOT Specification 34 polyethylene drum with a maximum capacity of 30 gallons. (Modes 1, 2.)
9828–X	DOT–E 9828	Mobay Corporation, Kansas City, MO.	49 CFR 173.365(a)(7)	To authorize shipment of azinphos methyl mixtures, solid, classed as Poison B contained in DOT specification 12B fiberboard boxes without being contained in PVA packets. (Modes 1, 2.)
9845–P	DOT–E 9845	Marsulex, Inc., North York, Ontario, Canada.	49 CFR 173.31(c), Retest Table I	To become a party to exemption 9845. (Mode 2.)
9889–X	DOT–E 9889	Assmann Corporation of America, Garrett, IN.	49 CFR Part 173, Subparts D, E, F	To authorize polyethylene portable tanks containing certain corrosive liquids, flammable liquids, or an oxidizer to be shipped in optional metal frames. (Modes 1, 2.)
9900–X	DOT–E 9900	Natico, Inc., Chicago, IL	49 CFR 173.217, 178.224–1	To authorize shipment of those hazardous materials (solids) presently authorized in DOT Specification 21C drums as additional commodities subject to compatibility with polyethylene top head. (Modes 1, 2, 3.)
9918–X	DOT–E 9918	Hughes Aircraft Company, Tucson, AZ.	49 CFR 172.101, column 6(b), 173.57(a), 175.30.	To authorize shipment of rocket ammunition with explosive projectile, identified as tow missiles, Classed as Class A explosives. (Mode 4.)
9951–X	DOT–E 9951	Olin Ordnance St. Petersburg, FL	49 CFR 173.56(b), 173.56(c)(1), 173.86(b).	To authorize shipment of explosive projectile, Class A explosive in a specially designed package (pallet top, skidded bottom configuration). (Modes 1, 2.)
9952–X	DOT–E 9952	Grief Bros. Corporation, Springfield, NJ.	49 CFR 178.131, Part 173, Subparts D, E, F, H.	To authorize an additional plastic cover or lid for metal drum containing those materials presently authorized in DOT Specification 37A steel drums. (Modes 1, 2, 3.)
9953–P	DOT–E 9953	Jevic Transportation, Inc., Willingboro, NJ.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
9977–X	DOT–E 9977	Hercules Aerospace Company/ Aerospace Prod. Group, Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize the addition of a specifically designed trailer van configuration (Delta II Transporter) for a shipment of rocket motor, Class B explosive. (Mode 1.)
10001–P	DOT–E 10001	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10020–X	DOT–E 10020	Allwaste, Houston, TX	49 CFR 173.245b	To authorize any corrosive solid, n.o.s. materials; to be shipped in non-DOT roll-on/off containers and to provide for additional containers of 3/16 inch steel instead of the current 1/4 inch steel. (Mode 1.)
10028–X	DOT–E 10028	E.I. Du Pont De Nemours & Company, Wilmington, DE.	49 CFR 173.255(a)(4)	To modify the exemption to authorize DOT Specification 112A400W tank car tanks for shipment of dimethyl sulfate, classed as a corrosive material. (Mode 2.)
10086–P	DOT–E 10086	Jaguar Cars Limited, Whitley, Coventry, EN.	49 CFR 172.101, 173.88(g), 173.94(a).	To become a party to exemption 10086. (Modes 1, 2, 3, 4.)
10090–X	DOT–E 10090	Clawson Tank Company, Clarkson, [illegible]	49 CFR 173.266, 178.19, 178.253, Part 173, Subparts D and F.	To authorize a large polyethylene portable tank of up to 550 gallon capacity for shipment of certain corrosive materials, flammabel liquids and an oxidizer. (Modes 1, 2.)
10096–P	DOT–E 10096	Energia E. Industrias Aragonesas, S.A., Madrid, Spain.	49 CFR 173.163	To become a party to exemption 10096. (Modes 1, 2, 3.)
10145–X	DOT–E 10145	Automatic Sprinkler Corporation of America, Cleveland, OH.	49 CFR 173.304(a)(2), 173.34(d)	To authorize cargo vessel, passenger carrying aicraft, cargo aircraft and rail freight as additional modes of transportation. (Mode 1.)
10159–X	DOT–E 10159	Novamax Technologies, (U.S.), Inc., Atlanta, GA.	49 CFR 173.154, 173.245, 173.266	To renew exemption originally issued on a emergency basis for shipment of certain corrosive and oxidizer materials in DOT Specifications 17E and 34 drums equipped with 3/4 inch vents plugs. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10186–X	DOT–E 10186	E. I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 179.105–4	To authorize the transportation of certain DOT Specification 112T tank car tanks with nonconforming thermal protection systems. (Mode 2.)
10196–X	DOT–E 10196	Penox Technologies Inc., Pittston, PA.	49 CFR 173.316, 178.57–2, 178.57–8(c).	To reissue exemption issued on a emergency basis to authorize the manufacture, mark and sell of non-DOT cylinders similar to DOT–4L for shipment of oxygen classed as non-flammable gas. (Mode 1.)
10199–X	DOT–E 10199	BAJ, Ltd., Banwell, England	49 CFR 173. 206(f)	To authorizes transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9848–N	DOT–E 9848	Hamilton Standard Div., United Technologies Corp., Windsor Locks, CT.	49 CFR 173.302	To authorize shipment of nitrogen, supplied during transportation by a DOT Specification 3AA cylinder with its valve open, to a non-DOT specification container described as an electrolysis module. (Modes 1, 2.)
9950–N	DOT–E 9950	Pyronetics Devices, Inc., Denver, CO.	49 CFR 173.306, 175.3	To authorize transport of a accumulator charge with a mixture of nitrogen and helium to 6000 psi with an actuating cartridge in the valve. (Mode 1, 2, 3, 4.)
9975–N	DOT–E 9975	Allied-Signal, Inc., Morristown, NJ	49 CFR 173.173.154	To authorized shipment of an aluminum/lithium alloy (powder and flake form) in a non-DOT specification stainless steel portable tank. (Mode 1.)
10023–N	DOT–E 10023	American Chrome and Chemicals Inc., Corpus Christi, TX.	49 CFR 173.164	To authorize use of large, collapsible plastic-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds (100 kg.) and fitted with top and bottom outlets, for shipment of oxidizing materials (solids only). (Modes 1, 2, 3.)
10037–N	DOT–E 10037	NCH Corporation, Irving, TX	49 CFR 173.266	To authorize transport of a chemical kit containing corrosive liquids and solids, flammable liquids and ORM–B materials, in plastic and glass bottles, not exceeding 2 ounces capacity each, with a screw cap. (Modes 1, 2, 3, 4, 5.)
10057–N	DOT–E 10057	Mauser Packaging Limited, Litchfield, CT.	49 CFR 178.115–7(a), Part 173, Subparts D, E, F and H.	To authorize manufacture, marking and sale of non-DOT specification steel drums of triple seam construction in compliance with DOT Specification 17C with exceptions. (Modes 1, 2, 3.)
10064–N	DOT–E 10064	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3, 178.65	To authorize manufacture, marking and sell of non-DOT specification, nonrefillable cylinders, for shipment of compressed air, nitrogen, argon and helium, classed as nonflammable gases. (Modes 1, 2, 4.)
10066–N	DOT–E 10066	Conax Florida Corporation, Petersburg, FL.	49 CFR 173.304, 178.36	To authorize manufacture, marking and sell of non-DOT specification cylinder for inflation of a vacuum packed life raft. (Modes 1, 2, 3, 4, 5.)
10096–N	DOT–E 10096	Breed Automotive Corporation, Booton Township, NJ.	49 CFR 172.101, 173.88(g), 173.94(a).	To authorize transport of airbag gas generators containing a flammable solid, in not more than 85 grams of propellant, in a DOT Specification 12B fiberboard box, gross weight not to exceed 65 pounds. (Modes 1, 2, 3, 4.)
10107–N	DOT–E 10107	Beta Power, Inc., Wayne, PA	49 CFR 173.206	To authorize transport of solid metallic sodium in a ceramicelectrolyte cup containing not more than 15 grams of sodium metal surrounded by a sulfur-carbon fiber composite which is contained in a mild steel, hermetically sealed shell. (Modes 1, 4.)
10111–N	DOT–E10111	Atlantic Steamers Supply Co., Inc., Hoboken, NJ.	49 CFR 173.86, 173.92, 175.3	To authorize transport of line throwing rockets (originally classed as Class B explosives) as Class C explosives in limited quantities and in specified packagings. (Modes 1, 2, 4.)
10116–N	DOT–E10116	Western Atlas International, Inc., Houston, TX.	49 CFR 173.102(a)(1), 175.3	To authorize transport of Class C explosive power devices in DOT Specification 12B fiberboard boxes instead of the packagings required by 49 CFR 173.102. (Modes 1, 3, 4, 5.)
10129–N	DOT–E10129	Olin Ordnance Division, St. Petersburg, FL.	49 CFR 173.56	To authorize shipment of an explosive projectile, Class A explosive in non-DOT specification packaging approved by the US Department of Defense. (Modes 1, 2, 3.)
10134–N	DOT–E10134	Fluid Systems Div. of Allied-Signal Aerospace Co., Tempe, AZ.	49 CFR 173.302, 175.3, 178.44	To authorize manufacture, marking and sale of a non-DOT specification pressure vessel comperable to a DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases. (Modes 1, 2, 3, 4, 5.)
10135–N	DOT–E10135	Ciba-Geigy Corporation, Hawthorne, NY.	49 CFR 173.166	To authorize shipment of lithium amide, powdered in a DOT Specification 3B portable tanks constructed of T–304 stainless steel. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10142–N	DOT–E10142	Tuscarora Plastics, Inc., Reston, VA.	49 CFR 173.119(a)(23), 173.245(a)(18), 178.210.	To authorize manufacture, marking, and sale of a non-DOT specification corrugated fiberboard boxes with handholes, with inside glass bottles, for the transportation of flammable and corrosive liquids. (Modes 1, 2, 3, 4.)
10146–N	DOT–E10146	L'Air Liquide, Sassenage, FR	49 CFR 173.315(a)	To authorize manufacture, marking and sell of super-insulated non-DOT specification portable tanks, for transportation of liquefied helium, refrigerated liquid, classed as a nonflammable gas. (Modes 1, 3.)
10147–N	DOT–E10147	E F I Corporation, San Jose, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize manufacture, marking and sell of non-DOT specification fiber reinforced plastic (FRP) full composite cylinder for certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, 5.)
10150–N	DOT–E10150	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.91(a)(2)	To authorize transport of a rocket flare in a MIL Specification M518 fiber tube which is equivalent to a DOT Specification 15A wooden box. (Modes 1, 3.)
10154–N	DOT–E10154	Olin Corporation, East Alton, IL	49 CFR 172.300, 173.10(c)(g), 173.107(c), (g).	To authorize shipment, in bulk, of scrap small arms primers and flash tubes which are contained in a velostat bag placed in 2 polyethylene bags placed in a ½ gallon round cardboard container covered with 2 fuel oil with up to 3 of the ½ gallon containers in a wooden box. (Mode 1.)
10156–N	DOT–E 10156	Van Leer Containers, Inc., Chicago, IL.	49 CFR 175.3, Part 173, Subpart F	To authorize manufacture, marking and sell of a non-DOT specification combination packaging consisting of an inner plastic drum in a steel drum overpack for the shipment of certain corrosive liquids, n.o.s. (Modes 1, 2, 3, 4.)
10158–N	DOT–E 10158	Dynamit Nobel Special Chemistry, West Germany.	49 CFR 173.304	To authorize use of three non-DOT specification cylinders of foreign manufacture for three months. (Modes 1, 3.)
10170–N	DOT–E 10170	Cleveland Container Corporation, Cleveland, OH.	49 CFR 178.16–7, Part 173 subparts E.	To authorize manufacture marking and sell of a non-DOT specification, non-reusable, removable head polyethylene container for the shipment of flammable solids, oxidizers, and organic peroxides. (Modes 1, 2.)
10172–N	DOT–E 10172	Hoover Group, Inc. Beatrice, NE	49 CFR Part 173 Subparts D and T, Section 173.266.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, crosslinked high density polyethylene portable tank enclosed within a protective wire fram, for the shipment of corrosive liquids, flammable liquids or a oxidizer. (Modes 1, 2.)
10175–N	DOT–E 10175	Phillips Container, Cleveland, OH	49 CFR Part 173 Subpart F	To authorize manufacture, marking, and sale of non-DOT specifications 5-gallon capacity removable head polyethylene drums, for shipment of shipment of certain corrosive liquids. (Mode 1.)
10176–N	DOT–E 10176	Eveready Battery Company, Inc., Cleveland, OH.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of certain lithium batteries, classed as flammable solid, in specially designed packagings. (Modes 1, 2, 3, 4.)
10177–N	DOT–E 10177	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.80	To authorize a one time shipment of a demaged oil well perforating gun containing a small residue of explosives as a Class C explosive. (Mode 1.)
10178–N	DOT–E 10178	BW/IP International, Inc., Van Nuys, CA.	49 CFR 173.302, 175.3	To authorize manufacture marking and sale of a non-DOT specification pressure vessel (container), for transportation of helium. (Modes 1, 2, 4.)
10181–N	DOT–E 10181	Anglo Airlines, Limited, Crainley, W. Sussex, Engl.	49 CFR 172.101, 175.30	To authorize one-time transportation in cargo aircraft of detonating fuze, Class A and explosive porjectile, classed as Class A explosives. (Mode 4.)
10197–N	DOT–E 10197	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize use of a non-DOT specification wooden box for transportation of igniters for rocket motors. (Mode 1.)
10247–N	DOT–E 10247	VICI Metronics, Santa Clara, CA	49 CFR 173.4	To authorize shipment of permeation devices containing not over 5 grams of various hazardous materials—flammable and nonflammable compressed gases and Class A poisons; Class B poisons; various liquids which are both flammable and poison or flammable and corrosive. (Modes 1, 2, 3, 4, 5.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453–X	DOT–E 4453	Thermex Energy Corporation, Dallas, TX.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453–X	DOT–E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 4453–X	DOT–E 4453	Roundup Powder Company, Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6293–P	DOT–E 6293	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.21(b), 173.248	To become a party to exemption 6293. (Mode 1.)
EE 7835–X	DOT–E 7835	National Welders, Charlotte, NC	49 CFR 177.848, Part 107, Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
EE 7835–X	DOT–E 7835	National Welders Supply Co., Inc., Charlotte, NC.	49 CFR 177.848, Part 107, Appendix. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
EE 7887–X	DOT–E 7887	Estes Industries, Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize shipment of sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3, 4, 5.)
EE 7887–X	DOT–E 7887	Flight Systems, Inc., Raytown, MO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 7887–X	DOT–E 7887	Flight Systems, Inc., Raytown, MO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 7887–X	DOT–E 7887	Estes Industries, Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
EE 8230–X	DOT–E 8230	Seastar Chemicals, Sidney, British Columbia, CN.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
EE 8348–X	DOT–E 8348	Frell, Inc., Corpus Christi, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–312 except for bottom outlet valve variation, for transportation of flammable or corrosive waste, liquids or semi-solids. (Mode 1).
EE 8363–X	DOT–E 8363	IMR Powder Company, Plattsburgh, NY.	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT Specification 12H 65 fiberboard boxes. (Modes 1, 3.)
EE 8445–X	DOT–E 8445	SET Environmental, Inc., Wheeling, IL.	49 CFR, Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
EE 8723–X	DOT–E 8723	Wampum Hardware Company, New Galilee, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8723–X	DOT–E 8723	Roundup Powder Company, Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8988–X	DOT–E 8988	Baker Sand Control, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
EE 9066–X	DOT–E 9066	Volkswagen of America, Inc., Troy, MI.	49 CFR 171.11 (see paragraph 8.d.).	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (Modes 1, 2, 3, 4.)
EE 9077–X	DOT–E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR, Parts 100–177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 gauge galvanized steel. (Mode 1.)
EE 9077–X	DOT–E 9077	Central Vermont Railway, Inc., St. Albans, VT.	49 CFR, Parts 100–177	To authorize transport of railway track torpedoes and railway fusees in flagging kits constructed of 24 gauge galvanized steel. (Mode 1.)
EE 9110–P	DOT–E 9110	General Plastics and Chemicals Co., Natick, MA.	49 CFR 173.163	To become a party to exemption 9110 (Modes 1, 2, 3.)
EE 9181–X	DOT–E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
EE 9549–P	DOT–E 9549	Mecano-Tech, Inc., Houston, TX	49 CFR 173.100(v), 175.30	To become a party to exemption 9549 (Modes 1, 3, 4.)
EE 9595–X	DOT–E 9595	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.64, 173.86	To authorize transport of certain unapproved Class A explosives for disposal in packagings not presently authorized for Class A explosives, in metal or fiber drums not exceeding 55-gallon capacity with liners consisting of two polyethylene leak-proof bags. (Mode 1.)
EE 9694–X	DOT–E 9694	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.315(i)(13), 173.33(i)(9), 173.33(h)(5)(i).	To authorize use of MC–331 cargo tanks equipped with angle valves and pressure relief valves not presently authorized in the regulations. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9779–X	DOT–E 9779	Unichem International, Inc., Hobbs, NM.	49 CFR 173.119, 173.245, 178.253.	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. (Mode 1.)
EE 9848–X	DOT–E 9848	Hamilton Standard Div., United Technologies Corp., Windsor Locks, CT.	49 CFR 173.302	To authorize shipment of nitrogen, compressed, classed as nonflammable gas, in a non-DOT specification packaging. (Modes 1, 2.)
EE 10054–X	DOT–E 10054	Spectrum Chemical Manufacturing Corporation, Gardena, CA.	49 CFR 174.26(c)	To permit the shipping papers for packaging in non-placarded trailers and containers to be kept on the trailers and containers themselves. (Mode 2.)
EE 10180–X	DOT–E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10180–X	DOT–E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d)	To manufacture, mark and sell cylinders similar to DOT Specification 39 without a relief device to be used as a fire extinguisher charged with a nonflammable liquefied compressed gas. (Mode 1.)
EE 10199–N	DOT–E 10199	BAJ, Ltd. Avon, United Kingdon, England.	49 CFR 173.206(f)	To authorize transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)
EE 10199–X	DOT–E 10199	BAJ, Ltd., Banwell, England	49 CFR 173.206(f)	To authorize transportation of a Sea Petrel Aerial Target containing lithium batteries which are not authorized under regulations. (Modes 1, 3.)
EE 10223–N	DOT–E 10223	TPI International Airways, Miami, FL.	49 CFR 172.101	To authorize one time transport of rocket ammunition with explosive projectile, Class A explosive in cargo aircraft. (Mode 4.)
EE 10237–N	DOT–E 10237	LaRoche Chemical Incorporated, Baton Rouge, LA.	49 CFR 173.29(c)(2), 174.50(d), 179.102–2.	To authorize transport of a DOT Specification 105A500W tank car tank with a defective safety relief valve but equipped with a "C" kit for the transportation of chlorine residue. (Mode 2.)
EE 10247–N	DOT–E 10247	VICI Metronics, Santa Clara, CA.	49 CFR 173.4	To authorize shipment of permeation devices containing not over 5 grams of various hazardous materials—flammable and nonflammable compressed gases and Class A poisons; Class B poisons; various liquids which are both flammable and poison or flammable and corrosive. (Modes 1, 2, 3, 4, 5.)
EE 10250–N	DOT–E 10250	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR 173.314(c), Part 179	To authorize a one-time shipment of a residue of vinyl chloride in a damaged temporarily repaired DOT Specification 112T340W tank car. (Mode 2.)
EE 10250–X	DOT–E 10250	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR 173.314(c), Part 179	To authorize a one-time shipment of a residue of vinyl chloride in a damaged temporarily repaired DOT Specification 112T340W tank car. (Mode 2.)
EE 10251–N	DOT–E 10251	Borden Packaging and Industrial Products, Columbus, OH.	49 CFR 173.314(c), 179.106–3(c)	To authorize a one-time shipment of a residue of vinyl chloride in DOT Specification 105A200W tank cars without head shields and thermal protection. (Mode 2.)
EE 10252–N	DOT–E 10252	Dow Corning Corporation, Midland, MI.	49 CFR 173.314(c)	To authorize a one-time shipment of a DOT Specification 105A600W tank car filled with hydrogen chloride, refrigerated liquid, less than the required minimum permitted filling density. (Mode 2.)
EE 10253–N	DOT–E 10253	Drew Industrial Division, Ashland Chemical Company, Boonton, NJ.	49 CFR 178.19, 178.253, Part 173, Subpart D, F.	To authorize use of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame for the shipment of certain flammable liquids or corrosive liquids. (Mode 1.)
EE 10254–N	DOT–E 10254	University of Texas M.D. Anderson Cancer Center, Houston, TX.	49 CFR 178.104–3(e)	To authorize use of DOT specification 5M packages with a greater gross weight than normally authorized. (Mode 1.)

Note:—The above listed exemptions appearing with a suffix X have been granted emergency extension of their expiration date.

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5792–P	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 172.101, 173.314(c)	To become a party to exemption 5792 (Mode 2)
7052–X	Proxin Inc., Mountain View, CA	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4, 5)
8698–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.320, 176.76	To become a party to exemption 8698 (Mode 3)
8824–P	Computalog Wireline Services, Inc., Houston, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To become a party to exemption 8824 (Mode 4)
9179–N	Markings, Inc., Hingham, MA	49 CFR 173.119	To authorize shipment of paint, classed as a flammable liquid, in non-DOT specification metal portable tanks not to exceed 200 gallon capacity. (Mode 1)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9324–N	Walker Systems, Inc., Houston, TX	49 CFR 173.277(a)(9)	To authorize shipment of sodium hypochlorite, classed as a corrosive material, in non-DOT specification cargo tanks made of titanium. (Mode 1)
9557–N	Delaware Valley Industrial Gases, Inc., Waterford Works, NJ.	49 CFR 173.34(1)	To authorize rebuilding of DOT Specification 4B, 4BA and 4BW cylinders in a configuration other than the original method of manufacturing. (Modes 1, 2, 3, 4, 5)
9919–N	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.304	To authorize shipment of a flammable gas, n.o.s., which is a mixture of up to 27% dimethyl disulfide in methyl mercaptan, classed as flammable gas, in a DOT Specification 105A300W tank car. (Mode 2)
10091–N	Allergan Optical, Irvine, CA	49 CFR 173.1200(a)(8)(ii)(e)	To authorize shipment of a buffered, normal saline pressurized with nitrogen gas which is nontoxic, nonflammable and nonhydrocarbon as an aerosol Consumer Commodity, ORM–D, in plastic containers which have been waterbath tested at 100 degree F. (Modes 1, 2, 3, 4, 5)
10091–P	Allergan Optical, Irvine, CA	49 CFR 173.1200(a)(8)(ii)(e)	To become a party to exemption 10091 (Modes 1, 2, 3, 4, 5)

Denials

7648–P Request by Blue & Gold Aviation Services, Brigham City, UT to authorize carriage of aerial illuminating flares for testing purposes in cargo-only aircraft denied July 24, 1989.

9806–X Request by Stone Container Corporation, Schaumburg, IL to authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bugs having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates denied September 7, 1989.

9806–X Request by Stone Container Corporation/Bag Division, Schaumburg, IL to auhtorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipments of corrosive solids and nitrates denied September 7, 1989.

9863–N Request by Liquid Air Corporation, Walnut Creek, CA to authorize retesting of DOT Specification 3, 3A, 3AA, 3AX and 3AAX cylinders by acoustic emissions testing denied August 11, 1989.

9863–P Request by L'Air Liquide Corp., Le Blanc-Mesnil, France to authorize retesting of DOT Specification 3, 3A, 3AA, 3AX and 3AAX cylinders by acoustic emissions testing denied August 11, 1989.

10054–N Request by Norfolk Southern Corporation and Subsidiaries, Norfolk, VA to permit the shipping papers for packaging in non-placarded trailers and containers to be kept on the trailers and containers themselves denied July 27, 1989.

10112–N Request by U.S. Chemical & Plastics, Canton, OH to authorize shipment of Methyl ethyl ketone peroxide solution, classed as an organic peroxide in four tubes placed in a polyethylene bag tied, containers without labeling denied July 24, 1989.

10136–N Request by Mitisubishi International Corporation, New York, NY to authorize a shipment of Nitric Acid (over 40%), classed as an oxidizer in a non-DOT 55-gallon steel drum with a polyethylene liner denied July 19, 1989.

10179–N Request by USA Fertilizer Inc., Pocatello, ID to authorize transport of Sulfuric acid classed as a corrosive material in non-DOT specification mild steel containers cradle supported and set in pairs, ridgidly mounted on 2 truck flat beds with each pair of tanks coupled together with piping at the top denied July 27, 1989.

10263–N Request by Pan Aviation, Inc., Miami, FL to authorize carriage of various explosives by cargo aircraft denied October 13, 1989.

Issued in Washington, DC, on November 24, 1989.

Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–28805 Filed 12–8–89; 8:45 am]

BILLING CODE 4910–60–M

Date: December 5, 1989.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0001

Form Number: CF 7509

Type of Review: Revision

Title: Air Cargo Manifest

Description: The CF 7509 is the source of information that provides for the accountability, integrity and security of goods in air commerce that are imported into the United States.

Respondents: Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 150

Estimated Burden Hours Per Response/Recordkeeping: 34 minutes

Frequency of Response: On occasion

Estimated Total Reporting/Recordkeeping Burden: 116,586 hours

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–28817 Filed 12–8–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0229
Form Number: IRS 6406
Type of Review: Revision
Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.
Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 16,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 12 hours, 55 minutes.
Learning about the law or the form, 3 hours, 41 minutes.
Preparing the form, 6 hours, 51 minutes.
Copying, assembling, and sending the form to IRS, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 387,840 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

FR Doc. 89-28818 Filed 12-8-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 218; Rev. 2]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order has been revised to remove the expiration date of the authority delegated therein to the Director, Austin Compliance Center, since the Center will be a permanent operation. The text of the delegation order appears below.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, PFR:P:O, Room 3139, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: 202-566-4273, (not a toll-free telephone number).

Order No. 218 (Rev. 2)

Effective Date: December 11, 1989.

Austin Compliance Center

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by TO 150-10, I hereby delegate to the Director, Austin Compliance Center, all authorities delegated to Directors, Service Centers, that are required and necessary to administer and enforce the internal revenue laws with respect to the Collection, Criminal Investigation and Examination programs and activities. This authority may be exercised and redelegated consistent with the authorities delegated to Directors, Service Centers.

2. As of the effective date of the Order, all personnel performing any previously delegated function prior to the effective date of this Order are hereby authorized to continue to perform such function until changed by appropriate authority.

3. Delegation Order No. 218 (Rev. 1), effective October 1, 1988, is superseded.

Dated: November 30, 1989.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 89-28879 Filed 12-8-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

December 6, 1989.

DATE AND TIME: December 13, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 907th Meeting—December 13, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3195-031, Sayles Hydro Association
CAP-2.
Project No. 10775-001, May Creek, Inc.
CAP-3.
Project No. 10745-001, Robert Hoe
Project No. 10802-001, Grover-Kelly No. 2 and RK-DK
CAP-4.
Docket No. UL89-11-001 Metropolitan District Commission of Boston
CAP-5.
Docket No. UL89-5-001, City of Niles
CAP-6.
Project No. 4412-008, Thornton Lake Resource Company
CAP-7.
Project No. 4435-008, Damnation Peak Power Company
CAP-8.
Project Nos. 2716-013 and 015, Virginia Electric and Power Company
CAP-9.
Project No. 7487-004, Metropolitan Sewerage District of Buncombe County, North Carolina
CAP-10.
Docket No. EL89-8-002, North American Hydro, Inc.
CAP-11.
Project No. 10705-000, Alpyn Creek Development Corporation
CAP-12.
Docket No. EL90-1-000, Enerco Corporation
CAP-13.
Docket Nos. ER90-29-000, ER89-66-000, ER89-125-000, ER89-228-000 and ER89-633-000, Canal Electric Company
CAP-14.
Docket No. ER90-28-000, American Electric Power Service Corporation
Docket No. ER89-470-000, AEP Generating Company
CAP-15.
Docket No. ER84-560-009, Union Electric Company
CAP-16.
Docket Nos. ER84-571-007, ER85-486-003 and ER86-300-003, Utah Power & Light Company
CAP-17.
Docket Nos. ER86-107-005, ER87-327-002 and ER88-397-001, Pacific Gas and Electric Company
Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas and Electric Company
CAP-18.
Docket No. EL89-7-001, Louisiana Power & Light Company
CAP-19.
Docket No. ER84-560-013, Union Electric Company
CAP-20.
Docket No. QF90-8-000, Pinellas County, Florida
CAP-21.
Docket No. ER84-560-022, Union Electric Company
CAP-22.
Docket No. ER88-411-000, Vermont Electric Power Company
CAP-23.
Docket No. EL89-50-000, Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company
Docket No. EL89-51-000, Lubbock Power & Light Company of the City of Lubbock, Texas, and the Cities of Brownfield, Floydada, and Tulia, Texas v. Southwestern Public Service Company
CAP-24.
Docket No. EL89-54-000, Department of the Navy v. Pacific Gas and Electric Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM89-15-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. RM89-8-001, Establishment of Deadlines for First Sellers to Make and Report Refunds
CAM-3.
Docket No. GP88-27-000, Quintana Petroleum Corporation, NGPA § 103 Determination, State of Louisiana Department of Natural Resources
CAM-4.
Docket No. GP86-45-003, Placid Oil Company

Consent Gas Agenda

CAG-1.
Docket No. RP90-21-000, Transwestern Pipeline Company
CAG-2.
Omitted
CAG-3.
Docket Nos. TM90-7-28-000, 001, 002, TM91-6-25-000, 002 and 001, Panhandle Eastern Pipe Line Company
CAG-4.
Docket Nos. TM90-4-39-000, 001 and 002, Trunkline Gas Company
CAG-5.
Docket Nos. RP88-217-013 and 014, CNG Transmission Corporation
CAG-6.
Docket No. RP89-230-002, El Paso Natural Gas Company
CAG-7.
Docket No. CP86-136-013, Texas Eastern Transmission Corporation
CAG-8.
Docket Nos. RP89-96-000 and RP88-133-000, Colorado Interstate Gas Company
CAG-9.
Docket Nos. RP90-40-000 and CP87-554-003, Algonquin Gas Transmission Company
CAG-10.
Docket No. RP82-55-046, Transcontinental Gas Pipe Line Corporation
CAG-11.
Docket No. RP90-51-000, ARCO Oil and Gas Company, Texaco and Texaco Producing Inc., Shell Gas Trading Company and Shell Offshore Inc. V. Transcontinental Gas Pipe Line Corporation
CAG-12.
Docket No. RP90-41-000, Southern Natural Gas Company
CAG-13.
Docket Nos. RP89-136-009 and 000, Northern Natural Gas Company, a Division of Enron Corp.
CAG-14.
Docket Nos. RP88-68-000, RP87-7-012, RP89-122-000, RP89-123-000, CP89-1915-000, CP89-1916-000, CP84-335-002, CP74-33-013, CP83-220-000, CP61-194-000 and G-2432-000, Transcontinental Gas Pipe Line Corporation
CAG-15.
Omitted
CAG-16.
Docket No. RP89-240-002, Northern Natural Gas Company, a Division of Enron Corp.
CAG-17.
Docket Nos. RP88-68-022 and RP87-7-061, Transcontinental Gas Pipe Line Corporation
CAG-18.
Docket No. RP89-237-001, North Penn Gas Company

BEST COPY AVAILABLE

CAG–19.
Docket Nos. RP89–160–008 and 006, Trunkline Gas Company
CAG–20.
Docket Nos. TF90–1–22–001 and TF90–2–22–001, CNG Transmission Corporation
CAG–21.
Docket Nos. RP86–168–016, *et al.*, RP86–168–016, *et al.*, RP86–15–000, *et al.*, RP87–55–000, *et al.*, RP88–43–000, *et al.*, RP88–56–000, *et al.*, RP88–119–000, RP88–187–000, *et al.*, RP88–207–000, *et al.*, PR116–000, CP83–452–034, RP89–181–000, TA81–1–21–000, *et al.*, TA81–1–21–022, TA82–1–21–001, 024, 027, TA87–4–21–000, 002, TA87–5–21–000, *et al.*, TA88–2–21–000, TA89–1–21–000, TC79–127, TC86–21–000, TQ88–1–21–000, TQ88–2–21–000, TQ89–1–21–000, TQ89–2–21–000, TQ89–3–21–000, TQ89–4–21–000, TM89–2–21–000, TM89–3–21–000, TM89–4–21–000, Columbia Gas Transmission Corporation
Docket Nos. RP86–167–012, *et al.*, RP86–14–000, *et al.*, and RP89–94–000, *et al.*, Columbia Gulf Transmission Company
CAG–22.
Docket No. RP89–255–001, Texas Eastern Transmission Corporation
CAG–23.
Docket Nos. RP89–82–005, RP89–37–005, RP89–38–005 and RP89–99–005, High Island Offshore System
CAG–24.
Docket Nos. RP85–209–024, RP86–93–008, RP86–158–011, CP86–246–004, RP87–34–010, TC88–6–009, RP88–8–011, RP88–27–018, RP88–264–015, RP88–92–019, RP88–265–005, RP88–263–013, RP84–42–007, RP89–138–005, CP88–6–006, CP88–329–002, CP88–478–002 and IN86–5–013, United Gas Pipe Line Company
Docket No. CP88–440–002, Southern Natural Gas Company
Docket No. CP87–524–009, Texas Transmission Corporation
CAG–25.
Docket Nos. RP88–240–006, RP89–10–004 and RP89–125–002, Panhandle Eastern Pipe Line Company
CAG–26.
Docket No. RP88–47–026, Northwest Pipeline Corporation
CAG–27.
Docket Nos. RP89–254–001, RP89–48–005 and RP89–222–003, Transwestern Pipeline Company
CAG–28.
Docket No. RP89–242–002, Tennessee Gas Pipeline Company
CAG–29.
Docket No. RP89–245–002, Paiute Pipeline Company
CAG–30.
Docket No. RP80–97–059, Tennessee Gas Pipeline Company
CAG–31.
Docket No. RP88–25–002, South Georgia Natural Gas Company
CAG–32.
Docket Nos. RP87–73–005 and RP90–22–000, Algonquin Gas Transmission Company
CAG–33.
Docket Nos. RP89–98–008 and RP89–133–005, Colorado Interstate Gas Company
CAG–34.
Docket No. RP89–225–001, South Georgia Natural Gas Company
CAG–35.
Docket No. RP89–132–009, El Paso Natural Gas Company
CAG–36.
Docket No. RP89–141–004, Sea Robin Pipeline Company
CAG–37.
Omitted
CAG–38.
Docket No. TM89–2–2–002, East Tennessee Natural Gas Company
CAG–39.
Docket No. CP88–99–006, Transwestern Pipeline Company
CAG–40.
Docket Nos. RP89–470–002 and CP88–522–007, Tennessee Gas Pipeline Company
CAG–41.
Docket No. RP89–135–000, Arkla Energy Resources
CAG–42.
Docket Nos. RP88–228–000 and RP88–249–000 (Phase II), Tennessee Gas Pipeline Company
CAG–43.
Docket Nos. RP88–259–021 and RP89–136–000, Northern Natural Gas Company, a Division of Enron Corp.
CAG–44.
Docket No. RP88–180–000 (Phase I), Trunkline Gas Company
CAG–45.
Docket No. OR89–2–000, Trans Alaska Pipeline System
Docket Nos. IS89–7–000 and 001, Amerada Hess Pipeline Corporation
Docket Nos. IS89–8–000 and 001, ARCO Pipe Line Company
Docket Nos. SI89–9–000 and 001, BP Pipelines (Alaska), Inc.
Docket Nos. IS89–10–000 and 001, Exxon Pipeline Company
Docket Nos. IS89–11–000 and 001, Mobil Alaska Pipeline Company
Docket Nos. IS89–12–000 and 001, Phillips Alaska Pipeline Corporation
Docket Nos. IS89–13–000 and 001, Unocal Pipeline Company
CAG–46.
Docket Nos. ST89–1706–000, ST89–1775–000 and ST89–2555–003, Louisiana Intrastate Gas Corporation
CAG–47.
Docket No. ST88–5804–001, Acacia Natural Gas Corporation
CAG–48.
Docket Nos. ST85–956–003, ST85–1572–001, ST86–6–001, ST86–1010–000, ST86–1064–000, ST86–1647–000, ST86–1792–000, ST86–2087–000, ST86–2505–000, ST86–430–000, ST87–588–000, ST87–589–000, ST87–1126–000, ST87–1525–000, ST87–1526–000, ST87–1527–000, ST87–1974–000, ST87–2399–000, ST87–3708–000, ST87–3709–000, ST87–3710–000, ST87–3711–000, ST87–3874–000, ST87–4257–000, ST88–585–000, ST88–1440–000 and ST88–1441–000, Acadian Gas Pipeline System
Docket Nos. ST88–5599–001, ST88–5761–001, ST88–5762–001, ST88–5763–001, ST88–5764–001, ST88–5765–001, ST88–5766–001, ST88–5767–001, ST88–5768–001, ST88–5769–001 and ST88–5770–001, Gulf South Pipeline Company
CAG–49.
Docket Nos. RI88–615–001 and RI88–616–001, Unicon Producing Company
CAG–50.
Docket No. CP89–144–001, Texas Eastern Transmission Corporation
CAG–51.
Docket No. CP89–636–001, Columbia Gas Transmission Corporation
CAG–52.
Docket No. CP89–1314–001, East Tennessee Natural Gas Company
Docket Nos. CP89–1866–001 and CP89–1884–002, Chattanooga Gas Company
Docket No. CP88–28–005, Nora Transmission Company
CAG–53.
Docket No. CP89–32–000, Southern Natural Gas Company
CAG–54.
Docket No. CP88–266–006, Viking Gas Transmission Company
CAG–55.
Docket No. CP89–252–001, Mississippi Valley Gas Company v. Gulf Fuels Inc., and ANR Pipeline Company
CAG–56.
Docket No. CP88–475–001, El Paso Natural Gas Company
CAG–57.
Docket Nos. CP87–5–005, CP87–92–005, CP88–197–003 and CP88–388–003, Texas Eastern Transmission Corporation
Docket Nos. CP87–312–005, CP87–313–002, CP87–314–002, CP88–128–003 and CP88–197–003, CNG Transmission Corporation
Docket No. CP87–554–002, Algonquin Gas Transmission Company
Docket No. CP89–6–002, Transcontinental Gas Pipe Line Corporation
CAG–58.
Docket No. CP87–57–008, Florida Gas Transmission Company
CAG–59.
Omitted
CAG–60.
Docket Nos. CP88–171–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. CP88–092–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88–94–000, 001, CP88–194,000 and 001, National Fuel Gas Supply Corporation
Docket Nos. CP88–195–000, 001, 002 and 005, Texas Eastern Transmission Corporation and CNG Transmission Corporation
CAG–61.
Docket Nos. CP88–239–000 and 001, Questar Pipeline Company
CAG–62.
Docket No. CP89–1752–000, Southern Natural Gas Company
Docket No. CP89–1754–000, Northern Natural Gas Company, a Division of Enron Corporation
CAG–63.
Docket No. CP88–265–000, Stringray Pipeline Company
CAG–64.
Docket No. CP88–696–003, Viking Gas Transmission Company (formerly Midwestern Gas Transmission Company)
CAG–65.
Docket No. CP90–131–000, Transcontinental Gas Pipe Line Corporation
CAG–66.
Docket No. CP89–1487–000, Associated Natural Gas Company, a Division of Arkansas Western Gas Company
CAG–67.
Docket Nos. CP88–6–002, 005, RP88–6–006 and 010, United Gas Pipe Line Company
Docket No. RP88–181–000, Sea Robin Pipeline Company
Docket No. RP89–161–000, ANR Pipeline Company
Docket No. RP89–168–000, ANR Storage Company
Docket No. RP88–262–000, Panhandle Eastern Pipeline Company
Docket No. RP89–160–000, Trunkline Gas Company
Docket No. CP88–265–000, Stingray Pipeline Company
Docket Nos. RP88–228–000 and RP89–35–000, Tennessee Gas Pipeline Company

I. Licensed Project Matters

P–1.
Project Nos. 8142–005, 008, 007 and 014, Henwood Associates, Inc. Order on rehearing of May 2, 1989, order.
P–2.
Project No. 7287–006, Joseph Martin Keating. Order regarding water quality certification.
P–3.
Project No. 8133–008, B.S. Inc. Order on appeal of denial of request for extension of the deadline to initiate project construction.

II. Electric Rate Matters

ER–1.
Docket No. ER89–672–000, Public Service Company of Indiana, Inc. Order on rate filing.
ER–2.
Docket No. ER85–477–002, Southwestern Public Service Company. Opinion and order establishing just and reasonable rates.

Miscellaneous Agenda

M–1.
Docket No. RM87–33–001, Hydroelectric Relicensing Regulations Under the Federal Power Act. Order on rehearing
M–2.
Reserved
M–3. (A)
Docket No. RM87–5–001, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on rehearing.
M–3. (B)
Docket Nos. RM87–5–002 and MG88–21–000, High Island Offshore System
Docket No. MG88–36–000, U–T Offshore System
Docket Nos. RM87–5–002 and MG88–32–000, Trailblazer Pipeline Company
Docket Nos. RM87–5–002 and MG88–27–000, Sea Robin Pipeline Company
Docket No. MG88–43–000, Kentucky West Virginia Gas Company and Equitrans, Inc.
Docket No. MG88–41–000, Superior Offshore Pipeline Company and Texas Sea Rim Pipeline, Inc.
Docket No. RM87–5–002, Northern Border Pipeline Company
Docket No. RM87–5–002 and MG88–30–000, Great Lakes Gas Transmission Company
Docket No. RM87–5–000, Arkla, Inc.
Docket No. MG88–18–000, Blue Dolphin Pipe Line Company
Docket No. MG88–34–000, Canyon Creek Compression Company
Docket No. MG88–8–000, Caprock Pipeline Company
Docket No. MG88–38–000, Columbia Gas Transmission Corporation, *et al.*
Docket No. RM87–5–000, Consolidated Natural Gas Company
Docket No. MG88–39–000, Enron Interstate Pipelines
Docket No. RM87–5–000, INGAA
Docket No. RM87–5–000, Maryland Peoples Counsel
Docket No. MG88–4–000, Mid Louisiana Gas Company
Docket No. MG88–6–000, MIGC, Inc.
Docket No. RM87–5–000, Natural Gas Pipeline Company of America
Docket No. MG88–25–000, Northwest Pipeline Corporation
Docket No. MG88–10–000, Ohio River Pipeline Corporation
Docket No. RM87–5–000, Pacific Interstate Transmission Company, *et al.*
Docket No. MG87–40–000, Pelican Interstate Gas System
Docket No. MG89–5–000, Phillips Gas Pipeline Company
Docket No. MG88–29–000, South Georgia Natural Gas Company
Docket No. MG88–42–000, Texas Gas Transmission Corporation
Docket Nos. RM87–5–000 and MG88–28–000, United Gas Pipe Line Company
Docket No. MG88–37–000, Valero Interstate Transmission Company
Docket No. MG88–46–000, Valley Gas Transmission, Inc.
Docket No. MG89–9–000, West Texas Gathering. Order on clarification of Order No. 497.

I. Pipeline Rate Matters

RP–1. (A)
Docket No. RP90–15–000, Equitrans, Inc. v. Texas Eastern Transmission Corporation. Complaint concerning implementation of gas inventory charge.
RP–1. (B)
Docket Nos. RP85–177–070, RP88–67–026 and CP88–136–016, Texas Eastern Transmission Corporation. Concerning a protest to the service agreement filing.
RP–2. (C)
Docket No. RP85–177–069, Texas Eastern Transmission Corporation. Concerning delivery of storage injection gas.
RP–2.
Docket No. TA87–1–37–009, Northwest Pipeline Corporation. Concerning initial decision on gas purchasing practices.

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1.
Docket No. CP78–123–028, Northwest Alaskan Pipeline Company
Docket No. CP78–124–013, Northern Border Pipeline Company
Docket No. CP90–93–000, Natgas (U.S.) Inc.
Docket Nos. CP79–400–004 and CP79–396–007, United Gas Pipe Line Company, Northern Natural Gas Company and Natgas (U.S.) Inc. Order (1) on an application by Northern Border Pipeline Company to abandon a transportation service for United Gas Pipe Line Company and for the issuance of a certificate to Northern Border to transport gas for Natgas U.S., Inc., and (2) on an application by United, Northern Natural Gas Company and Natgas U.S. for partial abandonment and amendment of existing exchange arrangement.

Lois D. Cashell,
Secretary.
[FR Doc. 89–29020 Filed 12–7–89; 4:03 pm]
BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter to Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, December 12, 1989, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum and resolution re: Proposed amendments to part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which amendments establish, with respect to state and/or federal savings associations, interim application and notice procedures governing: (1) The conduct of, and requests to engage directly in, certain activities; (2) the divestiture of equity investments and junk bonds; and (3) prior notice of the establishment or acquisition of a subsidiary.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 7, 1989.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 89–28991 Filed 12–7–89; 1:49 pm]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, December 15, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to clarify and simplify Regulation P (Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29006 Filed 12-7-89; 3:14 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, December 15, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29009 Filed 12-7-89; 3:14 pm]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:

TIME AND DATE: 10:00 a.m. December 18, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.

2. Thrift Savings Plan activities report by the Executive Director.

3. Labor Department's audit plans for 1990.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: December 5, 1989.

Francis X. Cavanaugh,

Executive Director Federal Retirement Thrift Investment Board.

[FR Doc. 89-28931 Filed 12-6-89; 4:55 am]

BILLING CODE 6760-01-M

Corrections

Federal Register
Vol. 54, No. 236
Monday, December 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-4]
RIN 2060-AC41

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

Correction

In rule document 89-21429 beginning on page 38044 in the issue of Thursday, September 14, 1989, make the following correction:

§ 61.271 [Corrected]

On page 38078, in the third column, in § 61.271(d)(1), in the fifth line, "December 13, 1989" should read "September 14, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-09-4111-08]

Environmental Impact Statement; Bridger-Teton National Forest Plan, WY

Correction

In notice document 89-28080 appearing on page 49363 in the issue of Thursday, November 30, 1989, make the following correction:

On page 49363, in the second column, in the first complete paragraph, the first sentence should read "BLM's preferred alternative for the Bridger-Teton LRMP is to offer lands for lease, in accordance with Alternative F, which is the Forest Service Preferred Alternative".

BILLING CODE 1505-01-D

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federal register

Monday
December 11, 1989

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 240

Qualifications for Locomotive Operators; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR-9, Notice 1]

RIN 2130-AA51

Qualifications for Locomotive Operators

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to establish minimum qualifications for locomotive operators. The proposed rule would require railroads to have a formal process for training prospective locomotive operators and determining that all operators are competent before permitting them to operate a locomotive or train. The proposed procedures would require that railroads (1) make a series of four determinations about distinct aspects of a person's competency; (2) adhere to an FRA-approved training program for educating locomotive operators; and (3) employ standard methods for identifying qualified operators and monitoring their performance. FRA is proposing this regulation to minimize the potentially grave risks posed when unqualified people operate trains.

DATES: (1) Written comments must be received no later than March 1, 1990. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold public hearings on this proposal on January 25, and February 7, 1990, at the times and places set forth below. Any person who desires to make an oral statement at the hearings is requested to notify the Docket Clerk at least five working days prior to the hearing, by phone or in writing.

(3) FRA proposes to make the final rule effective on or about December 31, 1990. Addresses: (1) Prepared statements (five copies) and written comments (three copies) should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW.,Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) The public hearings will be held at the following locations and times:

—Chicago, Illinois (Thursday, January 25, 1990 at 9:30 a.m.)—Courtroom 25, United States District Court, 219 South Dearborn Avenue; and

—Washington, DC (Wednesday, February 7, 1990 at 9:30 a.m.)—Room 2230, Nassif Building, 400 Seventh Street SW.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202-366-0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Richard M. McCord, Deputy Regional Director for Safety, FRA, Portland, Oregon, (Telephone: 503-326-3011); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202-366-0628); or Edward R. English, Chief of Maintenance Programs Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (Telephone: 202-366-9186).

SUPPLEMENTARY INFORMATION:

An Overview of the FRA Proposal

Section 4 of the Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. 100-342, 102 Stat. 624) requires that FRA issue regulations to establish any necessary program for certifying or licensing locomotive operators. In this notice, FRA proposes to establish such a program for evaluating the competence and fitness of virtually all individuals who operate a locomotive. FRA's proposal builds on features of the processes currently used by individual railroads in qualifying their locomotive operators.

Classification of Operators

In this proposed rule, FRA divides locomotive operators into four distinct classifications that reflect the varying levels of difficulty associated with different types of service: (1) Locomotive servicing operators; (2) restricted train service operators; (3) terminal train service operators; and (4) unlimited train service operators. Locomotive servicing operators would be authorized to move locomotives wherever needed for servicing or maintenance purposes. Restricted train service operators would be permitted to operate only short trains at low speeds. Terminal train service operators would be authorized to operate any locomotive or train, provided that the train's operations do not exceed the distance limits for yard and transfer trains established in FRA's train brake rules. Finally, unlimited train service operators could operate all locomotives and trains in the territory on which they are qualified.

Certification

Under the proposed rule, railroads would issue certificates to qualified locomotive operators and could not require or permit anyone to operate a locomotive unless that person held the proper certificate. FRA would require that, at a minimum, railroads consider five criteria during the certificating process: does the prospective operator have (1) the necessary visual and hearing acuity to perform such service, (2) the necessary knowledge, as demonstrated by passage of a written examination, and (3) the necessary skills to operate a locomotive or train, as demonstrated by passage of a performance skills test; and is the applicant (4) eligible to become an operator, as demonstrated by a review of the person's prior record of conduct as a railroad employee and as a motor vehicle operator, and (5) familiar with the physical characteristics of the territory over which he or she will operate.

Phasing in the Certification System

To ease the transition process, individuals already authorized to operate locomotives at the time the rule becomes effective would be presumed qualified for the purpose of this rule. That presumption would terminate within three years. During those three years, all "grandfathered" operators would have to become fully qualified under this rule.

Certification Decisions

FRA proposes to have railroads continue to discharge their preexisting duty to evaluate operators, but to improve the quality of their decision making process in several ways. For example, in making a determination concerning a person's vision and hearing a railroad will have to review a competent medical evaluation of the individual's acuity levels. If warranted, the operator will be required to use appropriate corrective devices while on-duty.

In making a determination concerning the person's knowledge, a railroad would have to administer a written examination covering the appropriate rules and safety practices of that railroad. Railroads would have considerable discretion in developing these tests until experience under this rule permits greater standardization. To improve operator competency, FRA proposes to require supplemental training, triggered by the passage of time or by significant changes in operations.

In making a determination about performance skills, a railroad would have to administer a skills test by monitoring the person's computer simulated operation of a train or by monitoring actual operation of a test train. In addition, railroads would have to evaluate data concerning the person's routine performance of duty through an operational monitoring program that would include annual assessments of an operator's skills during routine operations. This testing of operator skills would be structured to reflect the varying levels of service.

Railroads would have to consider the individual's recent conduct as a railroad employee and as a motor vehicle operator—to the extent that the operator candidate voluntarily has created such a behavioral history. A point system would be used with respect to unsafe operation of a train or motor vehicle and alcohol or drug use while on duty as a railroad employee or while operating a motor vehicle.

Any single incident of substance abuse, whether associated with railroad employment or motor vehicle driving, would trigger an evaluation by a skilled professional (e.g., medical review officers and Employee Assistance Program (EAP) counselors) of the significance to be attached to such an event. Those who receive appropriate counseling or treatment after an incident would receive no points. Absent such professional findings, each incident would be assigned a value of three points and be considered under the system's criteria for eligibility. The professional would also have to consider whether the person is currently dependent on alcohol or drugs or has a treatable disorder that involves abuse of alcohol or drugs as a manifestation. If the professional concludes that such a condition exists and sufficient intervention has occurred, railroads could permit the person to perform service subject to the aftercare and testing provisions contained in FRA's alcohol and drug rules.

Any types of poor safety performance while at the controls of a train also would generate points. For example, operating without proper authority, excessive speeding, and tampering with safety devices would be the type of unsafe behavior to be assigned three points. Each of these incidents involves a very dangerous situation in which it is appropriate to hold the individual directly responsible.

Only four types of poor safety performance incidents while at the controls of a motor vehicle would have to be considered: reckless driving, excessive speeding, a moving violation in connection with a fatal accident, and driving with a revoked or suspended license. Each of these would generate two points. Certification candidates would have the responsibility for making their driving history available including data available from the National Driver's Register.

Candidates would be given an opportunity to review and comment on any adverse train operation or motor vehicle operation data before a railroad considered it. Any person with more than six points would be ineligible (at least for five years after his or her last incident). Those who have accumulated six points in two separate 5-year periods would become ineligible for life. Those with six points could be certified after they attend a training course. Individuals who have accumulated fewer than six points are eligible and must be certified absent some other disqualifying condition.

Training Future Operators

Standards for the training of future locomotive operators are included in this proposal. Railroads that elect to conduct such training programs would have to conform them to FRA's criteria concerning duration and content and obtain approval of their overall program. Students would be authorized to operate locomotives and trains when directly supervised by instructors.

Administration of the Program

Railroads would issue certificates, and operators must have that certificate in their possession while on duty. Certificates would have to be renewed at 36-month intervals using the same criteria discussed above. FRA requests comment on the wisdom of using longer intervals if the railroads employ an ongoing evaluation of operators' eligibility to remain certified. Absent such an ongoing evaluation program (i.e., one in which the railroads continually monitor for events that could push the employee's eligibility point total over six), FRA will rely on its civil penalty and disqualification procedures to respond to unlawful behavior by certified operators. FRA proposes to make certain operator actions, such as excessive speeding, that are not currently proscribed by regulation unlawful under the provisions of this rule.

Review of a railroad's decision not to certify would be performed by FRA. Initial review would be simple and prompt. Those dissatisfied with the initial review could request a formal, trial-type hearing procedure for further review. Hearing officer decisions could be appealed to the FRA Administrator before becoming administratively final.

In addition to performing this review function, FRA's role would be to monitor the railroads' adherence to the dictates of the certification program contained in this proposal. Resolution of some disputes concerning day-to-day administration of a particular railroad's program, including the employment implications of the rule's provisions, would be left to the existing processes for dispute adjustment developed under section 3 of the Railway Labor Act. This approach is similar to that taken by FRA in devising its alcohol and drug rules contained in part 219.

DETAILED DISCUSSION OF FRA'S PROPOSAL

The Industry in Perspective. Approximately 500 railroads are subject to FRA's safety jurisdiction. They differ enormously, ranging from large such as CSX Transportation, with 21,500 miles of track across 21 states and 41,500 employees, to very small operators such as the Tippecanoe Railroad with only 16 miles of track and one locomotive. Collectively, they use 25,000 locomotives, 1.4 million freight cars, and 7,000 passenger cars to transport 941 million ton miles of freight and 340 million passengers each year.

These railroads employ 34,000 people who are authorized to operate locomotives. Although individual railroads can identify these people, the industry has no centralized data base that contains information on their age, training, or experience. Nor do the large labor unions that represent these employees maintain such data.

Historical Trends. The need for qualified locomotive operators arose in England in 1812 when a railroad locomotive was first placed in commercial service. By 1830 the technology necessary to build the first steam locomotives had been brought to this country, and the first in a long line of "locomotive engineers" was employed to operate a train.

Rudimentary machines, such as the "Tom Thumb," required only basic skills to operate; no formal process was needed for selecting the people who would operate such equipment. As locomotives and the railroads on which they operate grew more complex, formal processes for selecting, training, and

qualifying locomotive operators were adopted.

Current Practices. Large railroads have devised careful selection and training programs that rely on criteria such as age, prior work experience, and physical condition. If a qualifying candidate desires to become a locomotive operator, the railroad provides training on the equipment and on the railroad's methods for operating trains, employing on-the-job teaching or classroom instruction or both. At the completion of this training, the railroad determines whether the candidate is qualified to operate a locomotive in train service on that railroad. Once deemed qualified as a locomotive operator, an individual will retain that status by meeting periodic physical examination criteria, passing periodic operating rules examinations, and not receiving adverse reports concerning duty performance.

Until recently, the effectiveness of this process for determining an individual's fitness to operate a train has not been the subject of intense debate. Although Federal and state governments historically have been actively involved in setting fitness criteria for operators of motor vehicles, ships and aircraft, they generally have not addressed locomotive operators. Even when they have adopted laws, the statutory provisions enacted by states have been limited (see for example, the laws of Alabama, Massachusetts, and New York). On the Federal level, the absence of governmental action can be accounted for, at least in part, by the relatively good record of locomotive operators and the fact that the necessary legal authority to issue rules on a broad range of rail safety subjects did not come into existence until 1970.

The Statutory Framework. When that broad authority was granted to FRA in the Federal Railroad Safety Act of 1970, analysis of the accident data indicated that FRA's first priority should be to address issues of track and equipment safety. Its focus appears to have been well placed, producing dramatic decreases in railroad accident rates. For example, since 1979 overall accident rates have declined 62.8 percent; track and equipment-related accidents have declined 75.2 percent; and on-duty fatalities for rail employees have declined 43.6 percent. No other mode of transportation even approached this magnitude of improvement during these years.

As the accident rates have fallen, the pattern of causation has gradually shifted. Human performance accidents, although also declining in absolute numbers, have become an increasing percentage of all accidents and a dominant cause of serious incidents. Until very recently, FRA has lacked the necessary tools. However with passage of the RSIA, a loophole in FRA's enforcement authority was closed when the agency acquired enforcement jurisdiction over individual railroad employees. That jurisdiction was a practical necessity for the establishment of an effective locomotive operator licensing or certification program.

Since the RSIA was enacted on June 22, 1988, FRA has instituted multiple regulatory proceedings on a wide variety of topics, including three that directly address the issue of human performance. On July 22, 1988, FRA revised all of its existing safety rules to make civil penalties applicable to individuals who commit willful violations of those rules. (See the July 28, 1988 issue of the **Federal Register**, 53 FR 28594.) Next, FRA issued a rule to prohibit tampering with safety devices and operational monitoring devices mounted on locomotives. (See the February 3, 1989 issue of the **Federal Register**, 54 FR 5485.) Finally, FRA issued proposed rules to establish the procedures for disqualifying an individual from holding a safety-sensitive function. (See the December 9, 1988 issue of the **Federal Register**, 53 FR 49695.)

The scope of this regulatory program and the magnitude of the task involved in devising an appropriate qualification system for locomotive operators have made it virtually impossible for FRA to issue a final rule in this proceeding prior to June 23, 1989, the target date established by section 4 of the RSIA. Faced with responsibility for addressing an ambitious regulatory agenda and the need to create regulations that effectively address Congressional safety concerns, FRA quickened its regulatory pace to the degree that it could legitimately do so. It has delayed issuance of a regulatory proposal in this proceeding because the number and complexity of the issues required additional time.

The Need for Regulations. In determining the need for any regulation concerning locomotive operator qualifications, FRA identified those train accidents that occurred during the period 1977 through 1987 that were caused by human factors and that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Within the 18,140 human-factor-caused accidents reported during the period, FRA identified a total of 6,990 train accidents that resulted in 61 fatalities, 1,482 personal injuries and some $387 million in property damage that can be ascribed in whole or in part to poor locomotive operator performance. These accidents included 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and 171 caused by improper use of the independent brake valve. These appear to stem from poor performance curable through improved training and monitoring. Also within that total are 1,649 accidents attributed to excessive speed and 3,375 caused by excessive in-train force levels that may not be as directly related to training as to operational monitoring. In many of these accidents the causation appears to relate to either inattentiveness or misconduct.

FRA encountered some difficulty in analyzing the data because of the absence of specific information that indisputably identifies which inadequacies are really the causal factor. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. Accident investigations do not generally identify whether the failure of locomotive operators to take effective action stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although FRA has not included draft regulatory text on this topic, FRA is considering the need to revise its accident reporting regulations to require railroads to provide additional data about the qualifications of the locomotive operator when a railroad cites the possibility of poor operator performance as the cause or contributing cause of an accident.

Despite the limitations inherent in the available accident data, FRA believes that there is a need for regulations concerning the qualifications of individuals who operate a locomotive. Consequently, FRA proposes to establish a program under which each railroad will determine that every person it authorizes to operate a locomotive meets or exceeds Federally prescribed minimum standards. For discussion purposes FRA has broken its presentation of the components of this program into the following topical areas: (1) Its scope and nature of the system, (2) its structure, and (3) its administration.

I. The Scope and Nature of the Proposed Program

(a) Types of Operations That Would Be Affected

In general, railroads permit three types of employees to operate locomotives: "engineers," "hostlers," and "transportation officers." These employees may also be known as yard engineers, hostler attendants, road foremen of engines, or traveling engineers. Regardless of title, those authorized by the railroad to operate a locomotive are generally identified on internal company lists. Such arrangements are typical of the 23 railroads that handle more than 80 percent of the freight and carry more than 90 percent of the passengers transported by rail in this country. As would be expected, the larger the railroad, the more elaborate is its program for control of locomotive operation. Although most railroads have used this discretion wisely, a railroad may ignore, misconstrue, or change company policy to meet short term objectives. When that has occurred, the absence of Federal standards has limited FRA's ability to redress the situation. FRA also has found itself handicapped in quickly responding to situations in which there was no rational company policy or where a rational policy was not adhered to.

FRA's proposal covers nearly every person who operates a locomotive, including many not known as "locomotive engineers," and nearly every railroad subject to its safety jurisdiction, including many that may lack a clear company policy on the qualifications to perform such functions. However, as discussed below, certain limited exceptions would be carved out based on the type of railroad operation or the function being performed.

FRA proposes to exclude three types of operations from this rule. The first would be for tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system (i.e., the standard gage, interconnected network of railroads that makes possible the interchange of goods and passengers throughout the nation). These rail operations frequently do not come under FRA's other rules because they are conducted on a seasonal basis and use short, physically isolated segments of track that never see any other type of operation. (They are covered, however, by FRA's accident reporting rules.) Some do not even use standard gage tracks for their operations. They have been growing in number, volume of passengers carried, frequency of service and duration of their operating season. Many have expanded their equipment rosters and have been electing to use older steam locomotives to propel their trains.

These excursion railroads have been an increasing source of concern for FRA, but prior to imposing qualification standards on their locomotive operators, FRA has concluded that there is a need to examine the broader question of general regulation of these railroads. FRA intends to initiate a safety inquiry to examine the threshold question of whether there is a need to impose safety regulations on these types of operations. FRA will then evaluate the need to bring such operations within the scope of this rule.

The second proposed exclusion addresses operations within the confines of industrial installations. These are commonly referred to as "plant railroads" and are typified by operations such as those in steel mills that do not go beyond the plant's boundaries. Third, the rule would not apply to rapid transit operations in urban areas. The section-by-section analysis of this proposal contains some additional discussion of this topic to help illustrate how this proposal would apply to certain operations that may qualify as rapid transit or as plant railroad. For a general discussion of the extent of FRA's safety jurisdiction, see the relevant portion of Appendix A to 49 CFR Part 209.

FRA also proposes to exclude two types of functions frequently performed on many railroads. This exclusion is intended to permit employees to move locomotives very short distances for inspection or maintenance purposes. FRA has concluded that this function is so minimal as not to warrant coverage under this proposal. Thus, FRA proposes to exclude employees required to operate a locomotive as an incidental aspect of their inspection, maintenance, and servicing duties. This exclusion would apply in two settings. The first involves individuals who operate locomotives only within the confines of a locomotive servicing facility isolated from general operations in accordance with the blue signal regulations (49 CFR 218.29). FRA believes that these limitations are sufficient to provide for the safety of operations. Other considerations are that the locomotives generally do not move at speeds exceeding 5 miles per hour, do not haul cars, and proceed under a very simple set of operating procedures.

Second, FRA proposes to permit an employee to move a locomotive for a distance of not more than 100 feet when necessary to perform an inspection or maintenance task outside a locomotive servicing facility. This exception would apply, for example, when the wheels of a locomotive need to be rotated a fraction of their diameter to permit an inspection of their tread and rim surfaces. Exclusion of people who perform such functions from this rule should not be interpreted as having a bearing on their inclusion or exclusion from the Hours of Service Act coverage where different considerations obtain.

(b) FRA's Approach to Certification

FRA believes that a basic level of instruction and training is required to instill the knowledge and skills necessary to safely operate a train. Since short trains moving at slow speeds in flat terrain are relatively easy to operate, FRA proposes to establish minimum levels of instruction, knowledge, and skill for such operators. For those who will operate longer trains, or trains that move at higher speeds or function in more complicated operational settings, FRA believes that higher levels of instruction, knowledge, and skills are required.

FRA's proposal divides operators into three major proficiency levels. Proficiency in the skills required at a lower level does not entitle the operator to perform duties at a higher level. However, an employee's level of competence should be fully transferable to a new environment. Simply stated, a person competent to run a train on one railroad is fully competent to perform a comparable task elsewhere, provided he or she has been qualified on the territory involved.

FRA's approach recognizes that railroad operating rules contain more similarities than differences for locomotive operators, at least among comparable railroads. The railroads themselves have been striving for a more uniform set of rule books. The recently adopted Uniform Code of Operating Rules, or "code of the west," and the new Northeast Operating Rules Advisory Committee ("NORAC") rule book are examples of this effort to use a more uniform and regionally standardized system for operating trains. Since remaining differences are relatively minor, orientation of a transplanted locomotive operator should pose no real hurdle.

Traditional industry thinking places a large premium on the operator's familiarity with the physical characteristics of the territory over which he or she will be performing service. FRA agrees but believes that territorial familiarity and train handling skill are segregable elements of the

education of a locomotive operator. FRA's proposal builds on this fact.

(c) Consequences of Certification

FRA is proposing to establish minimum qualification standards for locomotive operators. As with its other regulations, adoption of FRA minimum standards would permit railroads to adopt or continue in force more rigorous qualification criteria. FRA's proposal is designed to ensure that no unqualified person is authorized or permitted to operate a locomotive. A railroad may permit an individual to operate a locomotive only after it determines that the person has the competence to do so.

FRA's proposed rule would have no direct impact on any person's employment relationship with a railroad. The employment consequences of an individual's meeting or failing to meet FRA criteria are beyond the scope of this rule and would be left for resolution under employment contracts. Certification would mean that a railroad has affirmatively determined that an individual meets the minimum Federal qualifications required to function as a locomotive operator. An individual would not be entitled to employment as a locomotive operator because he or she is certified under this rule.

II. The Certification System

(a) Classes of Service

FRA proposes to establish the five classes of service for locomotive operators outlined below. In describing these classes, FRA has avoided references to industry terms previously used to identify those who operate locomotives. The classes of service embody ascending levels of proficiency that address these key factors: variations in controlling a train that result from the number, nature, and placement of the cars being hauled; variations related directly to the speed or changes in speed of the train and the alternatives available for responding; and finally the variations that result from changes in physical conditions including ascending and/or descending hills.

(1) Student Operators

This lowest classification would permit railroads to educate students on the operation of trains and to provide actual experience at the controls without regard to prior experience. FRA would ensure safety by having student operation occur only under the direct supervision of a fully skilled operator. Student operator classification could be used, for example, to educate new employees or to teach current operators to handle more difficult situations.

(2) Locomotive Servicing Operators

The next higher service classification would apply to individuals who have the levels of knowledge and skills needed to handle a locomotive or a group of locomotives without cars attached. Although the equipment handling skills required to operate a locomotive without cars attached are relatively simple, such operation can require significant knowledge of the railroad's operating practices and physical characteristics. For example, railroads often expect their personnel to move locomotives from servicing areas to train yards or to outlying points. Although fully competent to perform such operations, these individuals may not be qualified to operate locomotives hauling rolling stock.

(3) Restricted Train Service Operators

The next higher classification would apply to individuals who have sufficient knowledge and skill to operate simple trains, defined as trains (1) having fewer than thirty cars in the consist, (2) moving at a speed not exceeding 20 miles-per- hour, and (3) moving in an area where only one train at a time is operated. FRA believes that handling trains that exceed these criteria requires significantly greater knowledge and skill.

(4) Terminal Train Service Operators

The next higher classification would apply to individuals who have sufficient knowledge and skill to operate a wide variety of train consists, but who are not qualified to perform service in high speed operations over extensive territories. FRA proposes to permit these individuals to operate trains of any size at any prescribed speed under any operating scheme, provided the train does not travel more than 20 miles from its point of origin to its destination. Operations that do not exceed twenty miles are currently referred to as "transfer train or yard train movements" under FRA rules and are performed under a wide variety of operating practices. Train size and make-up vary significantly as do operating speeds and the impact of changes in topography. However, these variations are held within a tolerable range by the 20 mile limitation.

(5) Unlimited Train Service Operators

This highest level of proficiency would include those individuals who have sufficient knowledge and skill to operate any form of train consist and whose skills are sufficiently high to perform service in high speed operations over extensive territories. Individuals at this level would have the knowledge and ability to predict with some accuracy the performance of different consists under different operating conditions and the skill to properly maneuver the train through those different operational environments.

(b) Determinations Required Under the Certification Process

Consistent with most current practices in the industry, FRA proposes that each railroad have a program under which it would make four determinations before allowing an individual to operate a locomotive or train. FRA's proposal would establish uniform criteria for determining whether an individual: (1) has the visual and hearing acuity needed to perform their responsibilities; (2) has sufficient knowledge and training to safely operate a locomotive; (3) has effectively demonstrated that they possess the appropriate operating performance skills; and (4) has the requisite safety performance history to be eligible to assume the responsibilities of operating a locomotive.

(1) Physical Capacity

Each person who operates a locomotive must have sufficient vision to receive all manner of visual information concerning the movement of that equipment if there is going to be a reasonable expectation that the unit will be moved safely. In examining the available data, FRA has reason to believe that many of the nearly 500 railroads in this country do not have any visual acuity criteria for their locomotive operators. Although major railroads tend to employ a commonly accepted criteria, FRA has been advised that these criteria are not being fully complied with after an individual has been initially hired. Similarly, each person who operates a locomotive must have sufficient hearing acuity to identify a variety of information that is communicated audibly including warning signals and voice communications. Given the increased reliance on radio transmission of operating information, there appears to be an increasing need to assure minimum acuity levels. FRA believes that the data concerning current industry practice for visual acuity conditions is also applicable here.

FRA proposes that each prospective operator be given a periodic examination by a qualified medical person to determine whether they meet FRA mandated vision and hearing acuity standards. Although more comprehensive physical qualifications could be required for locomotive operators, FRA does not believe that necessary at this time. Unlike other modes of transportation, a railroad has some inherent, safety features that can mitigate an operators physical incapacitation. For example, it is rare that an operator is the sole occupant of the locomotive cab; and other occupants can simply bring the equipment to a halt. In addition, most locomotives are equipped with a variety of safety devices that cause a train to stop if an operator is unresponsive. Similarly, the fact that trains must follow the pathway dictated by the tracks reduces the risk that the equipment will veer out of control.

Analysis of accident data relevant to this issue proved to be difficult, since even dramatic medical events, such as heart failure, that caused a train accident are difficult to retrieve from the available data base. In part, the limitations of the data reflect the fact that the pre-accident medical condition of railroad employees has rarely been the subject of detailed inquiry by accident investigators. FRA's proposal for the particular thresholds for vision and hearing acuity were derived from published FRA research efforts (see Recommendations Concerning Critical Factors in Railroad Employee Medical Standards; C. Abernathy; Report No. DOT-TSC-RR628-PM-76-1; issued March 1976) and analogous DOT requirements for other transportation modes. FRA's proposals are compatible with existing industry guidelines on this subject.

FRA recognizes that there may be instances in which a railroad would be willing to allow a given operator to continue in service even though that person has some impairment that prevents them from meeting these standards. FRA anticipates it will resolve such issues in the context of a waiver proceeding. In such a context FRA would have sufficient detailed information available to make an informed assessment of the safety implications of deviating from these acuity standards.

(2) Knowledge: Training and Testing To Assure Competency

Locomotive operators must know about personal safety, railroad operating practices, general mechanical practices, proper train handling procedures, and proper safety procedures. FRA proposes to establish (a) minimum training requirements to assure that prospective locomotive operators receive an adequate education on those topics and (b) testing requirements to ensure that prospective operators have acquired and retained the requisite knowledge.

(a) Training Programs. FRA proposes to address both training and retraining of locomotive operators. Not all railroads provide the initial education of their employees on how to operate locomotives and trains. Instead, some seek people with prior experience on other railroads. Since the pool of experienced locomotive operators has been fairly large in the last decade, as the larger railroads in the industry have significantly reduced their work forces, small and regional railroads have had no difficulty hiring to meet their staffing needs. Even railroads that do conduct extensive training programs for other jobs do not always do so for locomotive operators. FRA is therefore not proposing a requirement that each railroad have a training program for student operators. But once a carrier elects to conduct a training program for student operators, it would be required to submit that program to FRA for approval.

FRA proposes to require that a railroad with a student training program in progress on the effective date of this rule file that program with FRA. If a program is not in progress on the effective date of this rule, the railroad that elects to initiate one would have to file that program with FRA at least 60 days before it commences training. Upon receipt, FRA would review the program and either approve it or ask for modifications. Such an approval process creates the potential for delay of a program; accordingly, FRA proposes to permit railroads to presume that their program has been approved unless FRA informs them to the contrary, in writing, within 60 days after the program is filed. FRA has also proposed minimum criteria for the structure, content, and duration of any program. Like the distinctions FRA is proposing for the classes of service, the proposed student training program contains gradations that reflect increasing complexity implicit in operating longer trains at higher speeds over more difficult terrain.

FRA's training curricula proposal builds on the foundation laid by the FRA research efforts that produced the Hale study (Proposed Qualification Requirements for Selected Railroad Jobs; A. Hale and H. Jacobs; Report No. DOT-TSC-736; issued May, 1975). It also is in keeping with the student training programs FRA has observed during the last several months on some 20 railroads that FRA studied or conferred with prior to developing this NPRM. FRA's proposed minimum training standards address classroom instruction and skill development and the establishment of curriculum requirements. Details of the proposal are discussed at greater length later in this preamble.

Continuing education is also addressed in this proposal. At a minimum, all railroads currently insist that an already skilled operator be trained on the physical characteristics of a given territory prior to his or her initial operation over that territory or when a significant period of time has elapsed since the person last operated a train over the line. A similar need arises when an experienced locomotive operator is assigned to a new territory. The advent of new technology also generates a need for additional training, e.g., the introduction of the airflow method of conducting airbrake tests or the introduction of advanced train control systems. In addition, some railroads provide refresher training to maintain and improve the knowledge of their locomotive operators.

FRA proposes to require that all railroads have a program to address the need for supplemental training. Although FRA has limited evidence to support the need for an industry wide refresher type training, FRA's proposal would entail only a minimal level of additional training for locomotive operators. The need for additional training would be triggered by the passage of time, the introduction of new technology, or changes in the territory over which the locomotive operator will be performing his or her duties.

(b) Testing Programs. FRA proposes to require that all prospective locomotive operators take a written examination to measure their knowledge of the relevant safety practices and procedures. FRA would set some criteria for the tests and prescribe consequences for failure of initial tests or subsequent periodic tests.

The railroads would have considerable latitude in designing these tests. However, FRA would require that the test be closed-book, cover at least five subject areas and contain no fewer than 150 questions. The passing score would be 85 percent. For railroads whose operators encounter electronic signal systems, the portion of the test relating to signal indications would require a score of 100 percent.

FRA's decision not to propose greater control over these tests reflects several factors. Every railroad is different in some respect. To the extent that a universal body of knowledge can be extracted from the railroads' individual safety practices and rules, FRA cannot

design a universal testing program in the brief time envisioned by Congress.

In the long term, FRA believes that the best approach may be to emulate that used by some professions, including the legal profession: a two-part examination, the first testing general knowledge and the second detailed or applied knowledge. Such a testing program would evaluate each operator's fundamental knowledge and then his or her knowledge of the unique operational factors present on the particular railroad.

FRA seeks the views of all parties on the wisdom of pursuing the creation of such a testing system and on the time and resources needed to establish such a system. Assuming that the creation of such a testing program is appropriate, but that it can not be accomplished prior to adoption of a final rule in this proceeding, what is a realistic framework for converting to such a system?

At this point, FRA proposes to allow railroads to continue using their current tests if they meet FRA criteria.

FRA will examine the tests being used by railroads to monitor the quality of their testing and if necessary seek improvements in a particular test program. FRA anticipates that railroads, particularly large railroads, will continue to use the test programs currently being administered because these generally exceed FRA's minimum requirements. For others these proposals will require that new or improved tests be developed or that grading criteria be improved.

FRA proposes to have these knowledge tests administered to each locomotive operator at least once every 36 months, and FRA proposes specific consequences for a person who fails these tests. Those consequences of failure distinguish between the case in which the test constitutes the initial examination of an operator and the case in which it is a subsequent periodic reexamination of a previously certified operator.

(i) *Consequences of Failing Initial Testing.* Subsequent to adoption of this proposed regulation, at least three different groups of people can be expected to take an initial examination. FRA identifies the first of these groups as "grandfathered operators." As noted earlier, FRA anticipates that this certification rule will be phased into effect by allowing railroads to presume for a limited period of time that existing engineers are qualified. This interim presumption of qualification, or grandfathering, requires that such grandfathered operators be administered their initial knowledge test within three years of the effective date of this rule. If such a grandfathered operator fails to achieve a passing score when they initially take this test, FRA proposes to allow that person to continue to operate locomotives for a period of not more than sixty days. During that interval the grandfathered operator must wait a minimum of thirty days and then retake a similar exam. If the grandfathered operator fails the second examination, then he or she cannot be permitted to operate a locomotive until he or she passes a second reexamination. FRA would permit an exception to that prohibition for instance when the railroad wants to permit such a person to operate under the direct supervision of an instructor. A failure of all three tests by a grandfathered operator will necessitate that the person complete a training program before again attempting to pass this testing.

FRA proposes a similar chain of consequences for the second and third groups. The second group would be comprised of student operators who are taking their initial tests after completing a training program. The third potential group of test subjects is composed of individuals who have acquired sufficient education about railroad operations and are perceived as potentially competent to qualify as a locomotive operator but do not meet the criteria for being a grandfathered operator or a student operator. Such people typically could include individuals who were previously deemed fully qualified operators but were not employed or were ill during the interval for grandfathering designation. The major difference is that a person who belongs to either the second or third group will not be permitted to operate a locomotive or train without direct supervision until successful passage of the test.

(ii) *Consequences of Failing Periodic Testing.* FRA proposes that a similar chain of consequences apply to individuals who fail subsequent periodic examinations. The failure of an initial periodic test will start a sixty day probationary period within which the person must successfully pass a retest. During that interval a railroad may, but is not required to, permit the person to continue to operate locomotives and trains under the direct supervision of a qualified operator. Failure of three examinations would also trigger the need to take a retraining program.

In devising these test failure consequences, FRA does not intend to nullify collective bargaining arrangements or company policies that establish more stringent or restrictive approaches to questions of retesting. FRA's intent here is to prevent railroads from adopting more permissive approaches, and either continually exposing people to tests until they pass or allowing people who fail tests to remain in service for indefinite periods prior to retesting.

(3) Performance Skills: Training and Testing Required

In order to be a locomotive operator, each person needs certain minimum performance skills and for each class of service those performance skills become more complex. In a manner similar to that described above, FRA proposes to establish (1) minimum training requirements to assure that future prospective locomotive operators develop adequate train handling skills and (2) testing requirements to ensure that all prospective locomotive operators possesses the requisite train handling skills.

(1) *Training Programs.* As noted above, FRA is not proposing a requirement that each railroad have a basic training program. It will be feasible for many railroads to meet this training requirement simply by hiring operators trained by another railroad. But once any railroad elects to conduct a basic training program they will be required to submit that program to FRA for approval. That program must meet certain criteria. Frequently referred to as hand-on-training or on-the-job training, the performance skills aspect of the training program is the more difficult to prescribe. FRA proposes to establish criteria concerning the duration and content of the program. FRA's criteria contain gradations that reflect the differences implicit in training a person to operate small trains, at slow speeds, in operationally simple environments and those needed to operate a variety of train consists at many speed ranges over significant variations in terrain. FRA has structured its proposal to focus on the training that would more typically be associated with that afforded to people by large railroads who desire to train individuals to be competent to operate any kind of train under any kind of condition—in essence, the kind of training that it would be appropriate if the railroad's intent was to create a "man for all seasons" at the controls of a locomotive.

(i) *Duration and Content.* FRA proposes that all students receive a minimum of sixty hours of performance skill training. The duration and content criteria that FRA proposes are best illustrated by a discussion of FRA's requirements for training a student who, it is contemplated, will become an unlimited train service operator. Such a student must receive a minimum of 480 hours of performance skill training, and operate the train for at least 240 of those hours. The trains to which the student is assigned must include whatever variety of equipment the railroad normally operates, equipment which this person can reasonably be expected to encounter as a qualified operator.

FRA has selected this minimum duration for the actual train operation portion of program because of the nature of railroad operations. Regrettably, there are many periods of time, and these periods can be quite lengthy, when a student at the controls of a locomotive will not be doing anything but waiting. By setting this minimum level, FRA experience indicates all students will receive an adequate level of operational experience during which there will be sufficient opportunity for education and skill development concerning train handling.

FRA also proposes to require that students be exposed to a variety of trains and equipment. FRA has observed instances where students were not being exposed to different locomotive types, with their variations in control configurations and performance responses. Likewise, FRA has observed instances where the trains selected for students to operate were very uniform even though such uniform train consists were not the predominant type of consists operated by that railroad. In drafting the proposed training program language FRA is affording railroads considerable latitude is deciding what structure to impose on their training programs by simply establishing performance standards for this aspect of the program. FRA's intent is to require railroads to develop effective programs that should produce highly qualified operators and to avoid structuring the program in ways that satisfy short term convenience goals for administering a training program. It should also be noted that if a railroad segments its operations because it employs a regional or a divisional structure, the railroad would only be required to expose the student to the variations in equipment and train consist peculiar to the segment where the student will eventually be operating once becoming qualified.

FRA's training proposal assumes that the student will be learning the physical characteristics of the territory as well as learning how to translate that data into effective train handling skills. Since there are multiple reasons why that dual education would not necessarily occur, FRA has included a separate provision to address situations where a student learns train handling skills but does not learn about the physical characteristics of a railroad's trackage on which they will be operating. However, FRA does not intend this rule to constrain railroads that have innovative programs including use of video cassette recorders for teaching people about the physical characteristics of their trackage.

(ii) Use of Simulators. After examining many existing training programs, FRA has decided to propose sanctioning the use of train operation simulators as an alternative to actual train handling experience. FRA proposes to permit railroads to conduct up to one half of their train handling skill performance training on simulators and to reduce the total duration of the program significantly. FRA has identified several different types of "simulators" that are currently being used by railroads. In its most basic configuration, the simulator consists of a locomotive control stand equipped with throttle, direction of movement controls and braking levers or switches. The initial enhancement to that basic mock-up configuration occurs when the controls are connected to an elementary airbrake system and the gauges associated with that system. Additional enhancement comes when this mock-up is augmented by the use of film or graphic displays of the rail right-of-way, particularly through the use of video cassette recordings.

True sophistication does not occur until the locomotive control equipment is connected to a computer that translates the physical manipulations of those control devices into data inputs concerning the resulting implications for the operation of a train. Presently there are two types of computer enhanced simulators available and in service. The more rudimentary of these employs a mathematical model to predict the longitudinal dynamic conditions which will result from particular control manipulations. This type of computer enhancement employs stored information on track configuration and equipment characteristics and displays the in-train force levels being predicted on a cathode ray tube (CRT). The most familiar of these simulators are referred to as TDAs which is short for Train Dynamics Analyzer, a popularization of a supplier's brand name identification. The highest level of simulator sophistication occurs when the computer being used for enhancement has greater capacity. These simulators use combined mathematical models to permit effective replication of all of the documented operational characteristics, concerning track profile, locomotive and car performance characteristics including lateral-over-vertical ratio calculations. The computer systems permit real time monitoring of a person's performance, capacity to interrupt the operation of the program for educational purposes, and the ability to both display the effects of control manipulation on a CRT and/or display it in a printed format. They are augmented by motion and sound replication devices and include a visual system for projecting actual films of the track and right-of-way.

FRA believes that the value of the computer enhanced simulators is difficult to overestimate. A few examples to illustrate their value will suffice. In addition to eliminating the wasted time problem inherent in field operations, the simulator permits a railroad to expose students to multiple situations they could encounter in the field but which are too dangerous to create for training purposes. Simulators make it possible to allow students to start heavy tonnage trains on severe grades; to expose them to component failure response techniques to compensate for events such as the loss of dynamic brakes in mountainous terrain; and to expose them to the management of in-train force levels attendant to poor distribution of empty and loaded cars in train consists when operating through undulating terrain.

FRA proposes to permit railroads that have the more rudimentary computer assisted simulators to substitute one hour of simulator time for two hours of field operations time and to permit up to 120 hours of the skill performance interval to occur on such simulators. For the more sophisticated devices FRA proposes to permit railroads to conduct up to 240 hours of their performance skill development program on the simulator. Moreover, FRA proposes to have one hour of simulator time be the equivalent of five hours of field operations.

FRA's proposal concerning the training of future locomotive operators contains a higher level of detail than other portions of this proposal for several reasons. A major reason for FRA's approach is that it lacks the ability to establish, in the near term, an effective universal test for all locomotive operators to measure either the performance skills or the general knowledge levels of prospective operators. In the absence of an ability to effectively test students, through standardized tests, which would allow trainers latitude when educating student operators, FRA has elected to prescribe the details of the education program. If such a universal testing methodology

can be developed, as suggested earlier in this notice, FRA would consider substituting such testing for such a detailed training requirement. The high level of detail being proposed does have some independent benefit however. Although the current training programs of some railroads are very impressive, the overall quality of such programs in the industry is uneven and this proposal would serve to significantly improve the quality of many programs.

(2) Testing Programs. FRA proposes to have each locomotive operator given a performance skill test to measure his or her capacity to safely operate locomotives or trains in accordance with relevant safety practices and procedures. As with knowledge testing, FRA proposes to establish criteria for the tests, including the consequences of failing either (i) initial tests or (ii) subsequent periodic tests.

Of necessity, railroads should and, under this proposal, would be given extensive discretion in designing and administering these tests. However, FRA proposes to establish some criteria concerning: the selection of the person who will conduct the test; the train that must be employed; the duration of the test; and the subject matter to be covered.

FRA proposes to have the performance skills tests administered by a designated person. In order to be designated, such an individual must be a supervisor of the railroad; be fully qualified to operate any train normally operated on that railroad; and have at least five years of experience in such service. FRA will permit that designated person to select the train that will be used for evaluation purposes and the duration of test program. In requiring the use of test train, FRA is not proposing that a railroad operate any train beyond those normally scheduled to be operated. A railroad can comply with this provision by simply having the evaluator and the prospective operator control a train the railroad intended to run in any event.

The primary proposed test constraint is that the test train be of the type that would normally be encountered by the operator being evaluated. FRA is concerned that the discretion being afforded railroads in this context not be abused. For example, it would not be appropriate to limit test train selection in ways that result in the operator being evaluated on a particularly easy or particularly difficult train.

FRA has not specified the duration of the evaluation period. FRA only proposes to require that the duration be sufficient to allow the designated evaluator sufficient time to monitor the operator's skills. Under the wide variety of operational situations that currently exist, FRA anticipates that in rare instances some designated evaluators may need less than one hour to effectively perform this function but in other more typical instances the observation period could last for several hours.

As a consequence of the potential variables that may be encountered by proceeding in this manner, FRA proposes to require that the designated evaluator use a system for identifying relevant data about the test regimen and providing a written explanation or record of their observations and resulting evaluation. FRA has drafted a proposed Appendix as an illustration of the type of system that could be employed.

FRA also proposes to permit railroads to conduct such tests using train operation simulators. Simulator tests would have to meet the same criteria as field tests and would have clear advantages in terms of a railroad's ability to improve the quality of the test program.

FRA proposes to have these performance skill tests administered to each locomotive operator at least once every 36 months and FRA proposes specific consequences for a person who fails these tests. Those consequences of failure distinguish between whether the test constitutes the initial examination of an operator or is a subsequent periodic reexamination of a previously certified operator.

(i) *Consequences of Failing Initial Testing.* Once again, there are at least three different groups of people who can be expected to take an initial examination. As noted earlier, FRA anticipates that this certification rule will be phased into effect by allowing railroads to initially presume people are qualified. The interim presumption of qualification, or grandfathering, concept requires that such grandfathered operators be administered their initial performance skills test within three years of the effective date of this rule. If such a grandfathered operator fails to achieve a passing score when they initially take this test, FRA proposes to immediately bar that person from operating unless operating under the direct supervision of a qualified operator. FRA proposes to have that grandfathered operator retested within a period of not more than fifteen days. If the grandfathered operator fails the second examination, then they can not be permitted to operate a locomotive, unless under direct supervision, until they pass a second reexamination. That reexamination must involve administration of a similar exam, after the lapse of thirty days. A failure of all three tests by a grandfathered operator, will necessitate that the person complete a training program before again attempting to pass this testing.

FRA proposes an analogous chain of consequences for the second and third groups. Members of these groups would be given only one opportunity to retake the exam and any one who fails the initial exam will not be permitted to operate a locomotive or train without direct supervision until successful passage of the test. FRA also proposes to limit the length of time they can function in this supervised manner.

(ii) *Consequences of Failing Periodic Testing.* FRA proposes that a similar chain of consequences apply to individuals who fail subsequent period examinations. The failure of an initial periodic test will start a sixty day probationary period within which the person must successfully pass a retest. During the interval between the first and second examinations a railroad may, but is not required to, permit the person to continue to operate locomotives and trains. Failure of three examinations would also trigger the need to take a retraining program.

(4) Operator Eligibility: Reviewing Prior Safety Conduct

Each person entrusted with operation of a locomotive is being given control of equipment that, if operated unsafely, can produce catastrophic consequences. To help minimize the risk of that occurring, railroads make decisions to exclude from the ranks of prospective locomotive operators individuals who have demonstrated the lack of a conscientious attitude about safely operating locomotives. That pattern of decision making about whether prospective operators evidence a proper regard for their own safety and that of other people constitutes the essence of the "eligibility determination" that FRA is proposing to formalize in this proceeding.

FRA's Proposal Concerning Eligibility. FRA is proposing that all railroads have a formal system for reviewing the prior conduct of prospective locomotive operators that includes clearly delineated procedures by which each railroad would make an evaluation of an individual's fitness before authorizing him or her to operate a locomotive. Although FRA's proposal is merely a continuation of a long standing industry practice, FRA has not been able to identify any clearly articulated or carefully documented approach to this issue which is currently being followed in the rail industry. In the absence of such an approach for determining a person's "eligibility" to be a locomotive operator, there appears to be a widespread pattern of making adhoc evaluations of prospective operators. Currently when railroads make such evaluations they generally tend to rely on the behavioral evidence available to them as a consequence of the prospective operator's tenure as their employee. In rare instances, railroads also have examined a prospective operator's non-employment related behavior.

Investigation into the cause of the Chase, Maryland accident revealed that the locomotive operator who precipitated the accident had been exhibiting non-employment-related behavior that might have raised concern about the wisdom of allowing that individual to continue operating a locomotive. In this instance, the non-employment related behavior involved multiple occasions on which the individual had operated a motor vehicle in a manner that suggested a certain degree of disregard for both personal and public safety. The railroad that authorized this individual to operate its locomotives apparently was not aware of this off-the-job conduct and had based its assessment of the individual's temperament on a traditional informal employment behavior evaluation system. In an apparent effort to prevent a reoccurrence of such a set of circumstances, section 4 of the RSIA requires that any qualification system which FRA imposes must, as a minimum, compel railroads to consider a prospective operator's motor vehicle driving record prior to issuance of a locomotive operator's certificate.

It is in this context that FRA begins its assessment of the factors which should be addressed in any requirement that railroads make determinations concerning the "eligibility" of individuals who seek to become certified locomotive operators. FRA proposes to continue the best aspects of prior industry practice for evaluating the prospective operator's prior railroad employment behavior and to expand upon prior practice by requiring evaluation of additional information. Discussion of FRA's proposal has been organized to address the following issues: (1) Identification of the types of data that should be considered by a railroad; including the sources for obtaining that data; (2) the mechanics of retrieving data from these sources; (3) segregation of the available data into that which may and may not be considered; (4) with respect to the former, identification of which information creates a mandatory duty to withhold certification and which information creates a discretionary or qualified right to do so including the standards that should govern the exercise of any discretion conferred on the railroad; and (5) the manner in which the information should be considered (due process).

(1) *Types and Sources of Data.* As a general proposition the more information available to decision makers, the better the quality of their decisions. Thus, railroads being obligated to evaluate a person's eligibility to operate a locomotive should have extensive access to existing information concerning that individual. Since total access is neither practical nor appropriate, FRA proposes to have railroads consider information from two types of sources: prior behavior in an employment context and prior behavior in the motor vehicle driver context.

(a) *Behavior in an Employment Context.* Although there are limitations on the availability of precise data, the information at FRA's disposal indicates that it is rare for any railroad to consider as a prospective locomotive operator any person who has not had considerable railroad experience. In some instances, there are even collective bargaining agreements that preclude a railroad from considering the training of any individuals for future locomotive operator assignments until senior train service personnel have been offered the opportunity for such training. One consequence of this is that, historically, railroads rarely have had occasion to examine the non-railroad related employment behavior of operator candidates. That in turn means that there is no available experience with evaluating non-railroad related employment behavior for FRA to rely on in formulating criteria for assessing the significance of information from that source. FRA, therefore, does not propose to require railroads to obtain and evaluate for the purpose of this rule data concerning a prospective operator's prior employment behavior in a non-railroad related employment. The absence of such data should not prove problematic because individuals entering the ranks of locomotive operators from such a background will be under close supervision as a student operator for an extended period.

Absent a sudden and dramatic change in railroad personnel selection practices that have remained stable for well over a century, FRA anticipates that most often prospective operators will have acquired multiple years of experience working for the railroad before becoming operator candidates. FRA does propose to require railroads to evaluate that railroad employment-related behavior of operator candidates. In most cases operator candidates will have acquired their railroad experience working for the very railroad that is contemplating authorizing them to operate a locomotive. In these situations the evaluating railroad will already possess the individual's behavioral record.

In those instances in which a prospective operator has been employed by more than a single railroad, the available information suggests that railroads freely exchange such information between themselves. One consequence of this practice is that all railroads will normally have available a significant amount of information about the railroad employment-related safety behavior of their prospective operators. Thus, FRA does not perceive a need to establish requirements that railroads furnish such data to other railroads. Although such information is freely exchanged, there are some potential problems associated with employment related data that must be considered. The initial problem with railroad employment data stems from the fact that railroads frequently will have information about prospective operators that relates to the person's behavior and attitudes that are not exclusively safety oriented.

The railroad industry has an elaborate system, its disciplinary proceedings, for enforcing adherence to company policy and rules that is intertwined with the resolution of minor disputes under section 3 of the Railway Labor Act (45 U.S.C. 151 et seq.). To some degree, involvement with that discipline system will reflect a prospective operator's employment behavior. As such, that data arguably can be relevant to making a decision about a person's "fitness" to be a certified locomotive operator under this proposed rule. Conversely, the data may be totally irrelevant or only marginally relevant for the purposes of FRA's safety concerns but might be perceived as highly prejudicial by a decision maker under this proposed rule. For example, data collected for productivity reasons or other collateral corporate concerns may shed little or no light on a prospective operator's fitness.

In addition to addressing issues whose safety relevancy may be dubious, the current administration of the discipline system is suspect in the view of some observers. For example, there is at least anecdotal evidence to support the proposition that similar events

receive significantly disparate treatment. Such differences exist both within and between railroads. Those differences include decisions on whether a particular person will or will not be brought before the discipline system for a given course of conduct to a wide range of punishments imposed for the same types of failure to adhere to company rules under similar circumstances. In part, these differences reflect the fact that the disciplinary system is focused on the question of whether a given individual should have his or her employment terminated or constrained. Although the disciplinary system in the railroad industry has multiple purposes beyond identifying unsafe employees, it does contain some relevant information and FRA does not believe that it is appropriate to exclude all data from that source.

The second problem that can occur involves the quality of the information being relied on. FRA proposes to address that issue by assuring that all operator candidates have an opportunity to review and comment on potentially adverse information. This aspect of the FRA's proposal is discussed in greater detail later in this notice.

(b) *Behavior in a Non-Employment Related Context.* Except for the military services and a few corporations that have enforceable policies precluding a person from engaging in unbecoming non-employment related conduct, most institutions do not attempt to regulate such conduct. The reluctance to attempt to proscribe off-duty conduct is a reflection of value placed on individual freedom in this country. Concern over public safety in the transportation field has resulted in a limited incursion on such freedom. The two most visible aspects of that incursion involve inquiry into any history of alcohol or drug abuse and use of motor vehicle driving data to evaluate the wisdom of allowing a person to pilot an airplane, captain a ship or operate a train.

FRA's proposal to consider non-employment-related behavior is confined in this proceeding to requiring railroads to evaluate a candidate's motor vehicle driving record. Most railroads do not now consider a prospective operator's motor vehicle driving record. Although legally empowered to obtain data from many state agencies, very few railroads avail themselves of the opportunity to request and use such motor vehicle data. FRA's proposal, therefore, does not significantly alter the existing situation except to make acquisition of the data mandatory. Since many parties interested in this proceeding will have only a limited familiarity with the sources of data concerning that topic and since the RSIA created new rights of access to certain aspects of the existing data base, FRA is providing an extensive discussion of this topic.

There are basically two sources of data on this subject. The first source for data is the state agency that has issued the person a motor vehicle driver's license (state of licensure). The second source is comprised of the courts and operator licensing agencies for all the states in which the person has actually operated a motor vehicle. There also is a mechanism, the National Driver Register, for identifying most instances in which either of the two primary data sources concluded that the person's conduct merited suspension, revocation, cancellation, or denial of that individual's driver's license.

The National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence, it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State, travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license. Under the provisions of a 1982 amendment to the NDR Act, four pilot states notify NHTSA concerning certain convictions for operation of a motor vehicle even if these convictions do not result in an immediate loss of driving privileges. The type of convictions reported by the pilot states are those for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. The pilot states also report traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information; the name of the person whose license is being affected; and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, color of hair, and social security account number, if a State collects such data.

At the present time there are approximately 155 million licensed motor vehicle drivers in the United States and any given time some 12 million of those licenses will be recently recorded as being revoked or being under suspension. In a typical year some 2 million new licenses will be recorded as having been suspended or revoked.

Access to the NDR data is very limited. At its inception, only state motor vehicle operator licensing agencies and individuals were given a right to request information about whether the NDR contains a listing for any particular person. In recent years it has been permissible for state agencies to furnish NDR data directly to other entities. Dissemination of NDR data has been broadened to permit the Federal Aviation Administration to acquire information about the pilots that it licenses; to allow employers of motor vehicle operators including truck drivers who are subject to the federal safety regulations to receive similar information; and now, under section 4 of the RSIA, to allow railroads that employ railroad locomotive operators subject to FRA jurisdiction to receive such information.

(2) *The Mechanics of Data Retrieval—*

(a) *Employment Records.* The information available to FRA indicates that more than two-thirds of the individuals who would be impacted by this rule are employed by one of a group of some thirty large railroads. Except in rare instances, these people will have been long term employees of that railroad and it is unlikely that they will change employers during the remainder of their railroad careers. Thus, in most instances, the task of evaluating a person's recent railroad employment behavior will not require obtaining data from an outside source. Even for the remaining one-third of the people who'd be effected by this proposal the long term employment relationships with the evaluating railroad will be the rule. For the limited group of prospective operators who have prior railroad experience on a different railroad, FRA proposes to require that the evaluating railroad request the prior employer to furnish it with information about the prospective operator's service record. To the degree that relevant information concerning the prospective operator's service record becomes available, it must be reduced to writing so that it can be relied on in the discharge of the evaluating railroad's duties under this proposal. FRA proposes to allow either the railroad supplying the data to furnish the information in writing or to have the evaluating railroad reduce data received verbally or electronically to a written format. The limited parameters of the information that FRA considers to be "relevant" information within the various types of data that could be found in a person's service record for the purposes of this rule are discussed later in this notice.

(b) *Motor Vehicle Driving Records.* As noted, there are two sources of data about a person's motor vehicle driving record. The first source is the state of licensure, which can be contacted directly, and the second source consists of the courts and operator licensing agencies for all the states in which the person has actually operated a motor vehicle, which can be initially screened through the use of the NDR.

Access to Data from the State of Licensure. The right of both railroad workers and their employers or prospective employers to have access to a state motor vehicle licensing agency's data concerning such workers' motor vehicle driving records is controlled by state law. Although many states have mechanisms by which employers, such as railroads, can obtain such information, there are some states where privacy restrictions would make such information transfers either difficult or impossible. Since individuals generally have a right to obtain information about their driving record, FRA proposes to place the responsibility on prospective locomotive operators for initiating data retrieval from the state agency that granted them their motor vehicle driver license. If a person has never been issued a license, FRA would only require that the operator candidate so inform the railroad. Conversely, if a person had been issued more than a single license within the last five years, he or she would be obligated to seek the information from all the licensing agencies which issued such a document.

Depending on the procedures adopted by a particular state agency, an individual's right to obtain the information on file with the state agency will either involve the operator candidate sending the state agency a brief letter requesting such information or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. FRA proposes to have the state agency furnish the information directly to the railroad as the operator candidate's employer or prospective employer. To cover those rare instances when an operator candidate has been issued multiple licenses, FRA would require that the operator candidate make more than a single request.

Access to NDR data. For a variety of reasons, the individual state that issues a person a motor vehicle driver license will not necessarily have available all the relevant information about that person's driving record. In particular the issuing state may not have information concerning the person's operation of a motor vehicle beyond the licensure state's boundaries. Although it would be theoretically possible to adopt a system under which it would be necessary to canvass each of the remaining 49 states to attempt to capture all potential information from those state agencies, that approach is neither reasonable or practical. Instead, FRA proposes to focus on convictions that typically cause the non-licensure state agency to act to suspend, revoke, or cancel the prospective locomotive operator's motor vehicle driver's license. Since the information that is available through an NDR check and, where necessary, follow-up inquiries to states shown to have pertinent information should identify all of the relevant actions taken by other states, FRA proposes that each locomotive operator candidate be required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the NDR.

Essentially, only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA would require that individuals seeking certification as a locomotive operator request that an NDR search be performed and that the individual direct that the results be furnished to the railroad. FRA would require that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver's license issued by a state motor vehicle licensing agency that is a "participating state" under the provisions of the NDR Act of 1982. In such instances, the state agency may access the NDR data on behalf of the prospective operator. These state agencies are identified in Appendix C of this proposed regulation.

Requesting NHTSA to Perform the NDR Check. FRA's proposed procedures for requesting NHTSA performance of an NDR check are virtually the same as those currently employed by NHTSA when it receives a request from an individual under the Privacy Act. FRA proposes to have each prospective operator submit a written request to the National Highway Traffic Safety Administration at its offices in Washington, DC. The request must contain as much information as is available concerning the requester including such details as full legal name, nickname or professional name, date of birth and sex, and drivers license number. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad, which must be properly identified. FRA proposes to have the prospective operator sign the request and have that signature notarized.

These proposed requirements are not intended to be onerous but are designed to improve the reliability of the data search. Any person may supply information in addition to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged by the NDR for such checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency to Perform the NDR Check. As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter it should contain the same data being furnished to NHTSA. At present there are only four state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. These are located in the states of North Dakota, Ohio, Virginia and Washington. It is anticipated that the number of states with such capability will increase in the near future and FRA will continue to update the identification of such states by revising the Appendix C to this regulation to identify such state agencies. Since it would be more efficient for a prospective operator to make a single request for both aspects of the information required under this

rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

Both NHTSA and the state agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a probable match and the inquiry state was not responsible for causing that entry, the agency's response normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license. NHTSA's response will include any data submitted by the issuing state in addition to that submitted by other states.

Actions When a Potential NDR Match Occurs. Although the available statistics do not indicate that the response provided after performance of an NDR check for prospective locomotive operators will contain frequent notifications that a probable record match was identified, at least some instances will occur. FRA proposes that if the NDR check results indicate a probable match and the state with the relevant data is the same state which furnished detailed data (because it had issued the person a current driving license), no further action will be required to obtain additional data. If the NDR check results indicate a probable match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA proposes to place responsibility on the railroad to contact the state with the relevant information. FRA would require the railroad to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the railroad may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not propose requiring that a railroad go beyond these modest efforts to obtain the information in the control of such a state agency. FRA proposes to allow the railroad to act upon the pending certification without the data if an individual state agency fails or refuses to supply the records. FRA's proposal though somewhat limited on this point is consistent with the RSIA which pointedly refers to consideration only of "available" information.

If the state licensing agency identified by the NDR check as having relevant information does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the operator candidate are physical description, photographs and handwriting comparisons.

Regardless of how access to the NDR is accomplished, there are only three basic results that can occur: (1) No NDR match will be found; (2) an NDR match will be found, but the listing relates to another person; (3) an NDR match will be found and the listing relates to the prospective operator. In either of the first two instances, the railroad will have a basis for limiting its evaluation of an individual's motor vehicle driving record to that compiled by the state(s) of current licensure in order to comply with this proposal. FRA does not propose to curtail a railroad's authority under state law to seek additional information from state licensing agencies concerning their employees' driving records. If a relevant NDR match does occur, the railroad will have to obtain and consider the data contained on the persons's driving record before permitting the individual to operate a locomotive.

(3) *Segregating the Data Available for Consideration.* Data concerning both the candidate's employment behavior and motor vehicle driving behavior may or may not be appropriate for the task of evaluating a prospective operator's fitness to operate a locomotive. FRA proposes to limit railroads to considering only data that is (a) timely and (b) safety performance related. Within that latter category FRA proposes to distinguish between substance abuse and non-substance-abuse-related behavior.

(a) *Timely Data.* Inquiries concerning a prospective operator's employment history should provide reliable and detailed information. FRA proposes to allow railroads to have access to all data relative to prior railroad service performed by a prospective operator, whether performed for the certifying railroad or for some other railroad. As noted earlier, FRA does not propose to require railroads to seek data concerning a prospective operator's employment related behavior while employed in a non-railroad related job or to seek railroad related employment behavior information for service that was not related to train operations.

Although railroads have considerable freedom in evaluating the significance of the data that becomes available to it under this rule for their employment decisions, FRA proposes to limit railroad discretion when evaluating this information for operator certification purposes because of concern that the older information gets about a person's behavior the more limited usefulness it has when it is being evaluated for the purpose of estimating possible future conduct. To prevent improper reliance on stale information with limited relevance, FRA proposes to preclude railroads from considering, for the purposes of determining whether a certificate should be issued under this rule, all data that is more than five years old. In this way both railroads and individuals will be focused on the kind of near term events that should be probative for evaluating future conduct.

Inquiry of state licensing agencies should provide similarly reliable and detailed information from those jurisdictions, including very recent information from the state of current licensure. Inquiry to the NDR will provide clues regarding states that have on file evidence of convictions for drunk driving, reckless driving, etc. Once the records are checked, the RSIA authorizes looking back 5 years. Neither the statute nor the legislative history clearly indicates whether the interval commences with a legal judgment or the underlying event. The statute eliminates nothing from consideration, not even alcohol/drug related convictions after which rehabilitation is completed although the conference report, like the statute, seems to lean in the direction of requiring that all alcohol/drug convictions must be considered. Moreover, when state motor vehicle licensing agencies furnish data about a person's driving record, it normally is not administratively appropriate or feasible for them to segregate that data for railroad purposes. Instead they tend to furnish the complete record on file with their agency. Although driver record retention practices of the state motor vehicle licensing agencies vary considerably, most states appear to use a minimum retention period in excess of 5 years. In contrast to state retention practices, the NDR data primarily contains information concerning actions that occurred in the preceding three years. The exception to the three year limitation is for data that was the basis for long term suspensions or revocations.

Faced with these variables in record retention practices, FRA does not propose to limit the data that may be obtained for consideration. Instead, FRA proposes to limit railroads to reliance on information contained in motor vehicle records to state actions or convictions which occurred in the five years preceding the evaluation.

(b) *Safety Performance Related Data.* One of FRA's purposes in proposing these rules is to preclude individuals who have indicated that they lack the proper regard for either their own safety or that of others from operating a locomotive. The data that will become available to railroads under this rule will not always be relevant to the direct achievement of that purpose. Thus, FRA proposes to limit a railroad's reliance on both operator's employment data and motor vehicle driving data to those events that strongly suggest how the prospective operator has previously regarded his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator. In FRA's judgement that would include all instances of alcohol or controlled substance abuse in either the employment context or the operation of a motor vehicle context. It would also include a variety of non-substance abuse incidents that evidence a failure to adequately discharge serious safety responsibilities in either an employment context or in the motor vehicle operation context.

Substance Abuse Related Data. Substance abuse data concerning a prospective operator can arise from events that occurred while the prospective operator was performing service as a railroad employee or while operating a motor vehicle in a setting totally unrelated to employment. FRA believes that both sources of data are focused on the same underlying problem and should be addressed as though they are part of a seamless web.

Regrettably the problem of substance abuse in the railroad industry, at least in terms of alcohol use, is as old as the industry. Efforts to deal with substance abuse began more than a century ago. However the industry programs to combat the substance abuse problem, including the newer aspects of illicit drug use, were not sufficiently effective to preclude FRA regulatory intervention. Thus, this analysis of detected substance abuse by prospective locomotive operators must begin with the perspective created by FRA's adoption of regulations prohibiting alcohol and drug use. (See 49 CFR part 219.)

Since 1986, FRA has prohibited possession and/or use of alcohol and controlled substances while assigned to perform service covered by the Hours of Service Act. In addition, FRA has prohibited reporting for, going on, or remaining on duty while under the influence or impaired by alcohol or a controlled substance. Thus there are few, if any, prospective operators with prior railroad service who will legitimately be able to assert that they lacked notice that such conduct was contrary to law. From that perspective, there is no basis to preclude a railroad from using any timely substance abuse information that was acquired in connection with an individual's performance of covered service. A possible exception to this involves non-medical use of controlled substances on a railroad whose policy did not, until recently, clearly prohibit such conduct. However, in most cases such non-medical use involved illicit substances. Although it is possible that a future locomotive operator candidate may appear who had been detected as having used, possessed, or been under the influence of drugs or alcohol while performing service to which FRA's regulations do not apply (and, therefore, arguably beyond the realm of safety related behavior), FRA proposes to allow a railroad to consider such data under this rule because of the pervasive corporate prohibitions against such conduct for all railroad employees and its relevance to the prospective operator's potential for substance abuse in safety-sensitive service.

FRA also does not propose to draw distinctions about this data based on the events that gave rise to acquisition of the data. Thus, the basis for the data could be compliance with the portions of FRA's rules requiring post-accident testing and random testing or the provisions that authorize reasonable cause testing under circumstances in which an individual's conduct would provide a legitimate basis to be curious about the possibility that the person's actions were the result of substance use or abuse.

FRA's rules for controlling alcohol and drug use by railroad workers also impose sanctions for those who refuse to submit to either post-accident testing or to a test administered on a random selection basis. Thus, FRA proposes to allow railroads to consider such refusals when conducting evaluations of candidates for the purpose of this rule.

FRA proposes to accord similar regulatory treatment to data concerning operation of a motor vehicle while impaired due to consumption of alcohol or a controlled substance. Convictions for driving under the influence, administrative actions in lieu of conviction and refusal to submit to a law enforcement officer's request to undergo testing will all be available to the railroad for evaluation under this rule. In electing to make available state actions that are less than "convictions" FRA is proposing to ensure that railroads are aware of those situations in which either a court asserts or retains continuing jurisdiction over a person but does not enter a judgement of conviction. Some courts use a procedure whereby a person is on probation pending judgement or is subject to deferred adjudication in order to enable a person to participate in a required rehabilitation program or community service program and thereby avoid a permanent record of conviction. Because of the significance that can attach to such information, FRA proposes to allow railroads to consider information involving the use of such procedures. FRA's proposal would also permit railroads to consider data involving a variety of state administrative responses to unacceptable substance abuse related driving behavior. For instance, some states have implied consent provisions which result in automatic or mandatory cancellations, revocations, or suspensions that are triggered by less than an alcohol or drug related motor vehicle conviction. For example, refusal to submit law enforcement officer's requested test to determine blood alcohol content automatically results in administrative suspension or revocation in many states.

Although some may question the propriety using motor vehicle driving performance for the purpose of evaluating a candidate's fitness to operate a locomotive, there can be no argument that such candidates were fully aware that such conduct was legally proscribed. Prohibitions against operating a motor vehicle while under the influence and the risk of loss of driving privileges when refusing a law enforcement official's request for chemical tests have long been a matter of state law. By acting in contravention of such laws, operator candidates have provided some insight into their attitudes concerning both their personal and public safety.

Non Substance Abuse Related Data. FRA has also identified a number of events, unrelated to substance abuse, that strongly suggest how the

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prospective operator regards his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator. The first group of these events involve the conduct a prospective operator might have engaged in while employed by a railroad either as a locomotive operator or a member of a train crew. The second group of events involve conduct by a prospective operator while engaged in operating a motor vehicle.

FRA's purpose in proposing these rules is to preclude locomotives from being operated by individuals who have indicated that they lack the proper regard for either their own safety or that of others. Thus, many of the actions or inactions that would be relevant to a railroad in determining whether to promote a person or continue a person's employment are not relevant to the question of whether that person should be considered qualified for the purposes of this rule. Since a person's service record with a railroad might include a variety of data, such as an incident of insubordination, which arguably might not be pertinent for the limited purposes of this rule, FRA proposes to limit a railroad's reliance on operator employment data to those events that involve train operations. In FRA's judgement, such actions strongly suggest how the prospective operator regards his or her safety responsibilities while performing duties directly analogous to that of a certified locomotive operator.

Employment Data. Except for a handful of people (individuals without train operation work history in the five years prior to the inquiry), those who will initially seek certification under this rule will be providing each railroad with an opportunity to evaluate the record that the prospective operator has compiled while operating a train during the preceding five years. In that interval these locomotive operator candidates will normally have had extensive experience with compliance with railroad operating rules. FRA has identified four types of events, prohibited by carrier operating rules or Federal regulations, that clearly reflect a serious failure to be attentive to operational safety concerns. All of these are the direct responsibility of locomotive operators. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; (3) failing to comply with a mandatory directive and entering a segment of track without authority; and (4) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR part 218. FRA believes that the candidates should be held accountable for instances in which they failed in the past to comport with carrier rules that required such conduct. FRA, therefore, proposes to allow railroads to consider data concerning such events.

A group of people (future student operators, operators trained in the last few years, or experienced operators who have encountered a break in locomotive service but have been working in other train crew capacities) will present railroads with a slightly different service record from that just discussed. Since all personnel performing train service operations will normally have extensive experience with compliance with railroad operating rules, FRA has considered the degree to which railroads should rely on incidents of failure to comply with carrier or federal safety rules while the person was performing in that capacity.

FRA has identified five types of events, prohibited by carrier operating rules or Federal regulations, that clearly reflect a serious failure to be attentive to operational safety concerns, if the individual was directly and personally responsible for compliance with that rule. These are: (1) Noncompliance with a train order, track warrant, timetable, special instruction or other directive with respect to the movement of a train that involves (a) operating a locomotive or train at excessive speed; (b) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (c) failing to comply with a mandatory directive and entering a segment of track without authority; (2) failure to protect train as required by a carrier rule that is consistent with § 218.37; (3) alignment of a switch in violation of a railroad operating rule or operation of a switch under a train; (4) failure to secure a handbrake or a sufficient number of handbrakes; and (5) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR Part 218. FRA believes that the candidates should be held accountable for instances in which they were directly and personally responsible for compliance and failed to comport with carrier rules or federal safety rules that required particular safety conduct. Thus, FRA proposes to permit railroads to consider data concerning such events when evaluating operator candidates.

Motor Vehicle Data. FRA has reached a similar conclusion with regard to motor vehicle driver data. There are multiple reasons that could prompt a state licensing agency to suspend, cancel or revoke a person's driver's license, for example, repeated failure to pay parking tickets or a series of minor offenses relating to the condition of a vehicle. Although the state agency would have "cause" to revoke or deny a motor vehicle driver's license for such conduct, those reasons clearly are not necessarily relevant to a railroad's evaluation.

FRA believes that, consistent with the intent of the RSIA, this regulation should be designed to identify both significant individual events and patterns of conduct that would be indicative that a particular individual presents an unacceptable risk of becoming an unsafe train operator. To accomplish that, FRA proposes to allow railroads to have access to the same data that informed the state agency decision but to limit railroads to reliance on only those types of events which reflect a significant disregard for safety or raise serious questions about a person's ability to control a vehicle.

Initially, FRA considered merely identifying those offenses and allowing railroads to have complete discretion about what responsive action should be taken. FRA now believes that, if left in that posture, the rule would not provide adequate guidance to railroads. Some railroads might feel compelled to disqualify good engineers in order to comply with their understanding of the agency's intent; others might resist taking any action even where the offenses provided a crystal clear pattern of bad conduct; and a final group might use the slightest infraction to reduce their seniority rosters.

FRA believes that the process which has evolved in the motor vehicle driver licensing context, grouping offenses into categories bearing certain per-offense weights, is a good model to follow for determining the consequences of poor driving performance. Moreover, FRA believes railroad employment data should be added into the same point system to provide an overall basis for determining a person's eligibility. In essence, FRA contemplates that a railroad locomotive operator evaluation system could be devised under which a high negative score could result in denial of certification. A lower but not insubstantial score might warrant a certification limited to a lower class of service or perhaps conditioned on more frequent supervisory oversight.

Developing an effective system requires a considerable amount of time and effort. Obviously, it is easy to make such a system very complicated in only a short time. In view of the statutory

impetus for rapid regulatory action, FRA is not prepared to present a complete model for locomotive operator decisions. Instead, FRA solicits the views of commenters on the wisdom of such an approach and would welcome efforts to help devise such a more complete system from any who favor this approach. As an interim measure, FRA is proposing in this NPRM to employ a rudimentary point system to assist in evaluating the relative consequences that should flow from data involving the poor safety performance of locomotive operators while at the controls of a motor vehicle.

In FRA's judgement, the RSIA contemplates that the commission of serious traffic offenses should be considered as indicia of a basic disregard for public safety or inability to control a vehicle. Since there is no data that permits FRA to make direct correlations between a poor driving record while controlling a motor vehicle and unsafe behavior at the controls of a locomotive, FRA proposes to take a cautious approach to reliance on motor vehicle driving records as a basis for denying a person certification as a locomotive operator. (See the May 18, 1989 edition of the **Federal Register** (54 FR 21581) for a discussion of the correlation between pilots with poor motor vehicle driving records and pilots whose poor piloting performance cause aviation accidents.) Therefore, FRA proposes initially to restrict railroads to consideration only of serious traffic offenses involving a moving vehicle. These would include excessive speed (exceeding the posted limit by more than 15 miles-per-hour), reckless driving, citation for a moving violation in connection with a fatal accident, and driving with a revoked or suspended license. These offenses in the view of Congress and FRA are so egregious that common sense indicates their probable correlation to safe railroad performance. In short, these are the types of events that serve as a basis for denial of a commercial truck driver license (see 49 U.S.C. App 2707), a setting where there is a more demonstrable behavioral correlation. FRA's list of significant events is slightly different from those enumerated in § 205(a)(3) of the National Drivers Register Act because FRA has opted to provide more precision in identifying the types of events addressed by subparagraph (B) of that section.

FRA recognizes that its current proposal will prevent railroads from considering a wide variety of traffic offenses including minor traffic offenses ranging from a failure to pay a toll or parking fee to impeding traffic by driving too slowly. Although FRA has excluded from consideration a number of types of traffic offenses that are not necessarily minor offenses, FRA proposes to exclude them because they are difficult to evaluate in the railroad operations context. For example, running a red light and driving on the wrong side of the road can be very serious events, but empowering railroads to make decisions about a person's fitness to operate a train on the basis of such conduct is not warranted at this point in time. Until FRA has gained more experience concerning the relationship between an operator's behavior at the controls of both motor vehicles and trains, it does not appear to be appropriate to attempt to fully resolve this issue. FRA contemplates initiating a second proceeding to focus on this issue and others surrounding improper conduct by locomotive operators after it has gained more experience in this area.

Although FRA does not believe that it is possible or appropriate to tackle the all aspects of motor vehicle driving data during this initial rulemaking, FRA has concluded that it is important that railroads have access to some data and that limits be placed on the railroad's use of the data, in the certification context, until clearer decisional standards can be provided. There is no way, of course, to bar railroads from making more general use of the available data, (e.g., proceeding under their own rules regarding conduct unbecoming an employee) but the matter of determining the bases on which a railroad may withhold a certification is ultimately FRA's responsibility.

(4) *Consequences of Admissible Data.* Having segregated out the data that may not be considered by railroads, this portion of the discussion focuses on FRA's proposals for the consequences of "admissible" data would be under this rule. FRA has subdivided its discussion of this topic to address (a) the consequences of substance abuse data, (b) the consequences of non-substance abuse safety performance data, and (c) the consequences when there is a mixture of the two different types of information.

Comprehension of the specific consequences being proposed for specific types of adverse data requires an understanding of the framework within which all such decisions would be made. As explained elsewhere in greater detail, FRA proceeds from the perspective that this rule should set the minimum qualifications that an individual must have to be a locomotive operator. Railroads would be free to have more rigorous standards if they so elect. As long as a person meets or exceeds FRA criteria, a railroad would be obligated to certify that individual. Although obligated to issue the certification, the railroad retains discretion, under this rule, whether or not to authorize that person to operate a locomotive. If an individual marginally meets FRA's criteria, the railroad would be given limited discretion to conditionally certify that person. Failure to meet the criteria preclude a railroad from certifying that individual either temporarily or, under certain circumstances, permanently.

Since there are both different types of data being provided by different sources and since there are unresolved concerns over both the relative value and significance that should be attached to motor vehicle driver data, FRA proposes to employ a basic point system to assist in evaluating all poor safety performance data. FRA is proposing a system under which all of the types of events identified as admissible would be given a specific point value. Any candidate who had acquired less than 6 points would be considered "eligible for certification" for the purposes of this rule. Railroads would not have discretion to alter the point value for particular incidents nor would they have the discretion to consider such a candidate "ineligible" under this rule. If a candidate had acquired 6 points the railroad would have the discretion to deem that person "eligible" provided that certain conditions were met. If a candidate had acquired more than six points, the railroad would not have the discretion to certify that person as "eligible" until 5 years had elapsed after the most recent incident being considered. Any person who had a second series of incidents so that his or her total point accumulation again exceeded 6 points would become "ineligible for certification" for the rest of his or her life.

(a) *Consequences of Substance Abuse Data.* As indicated earlier, FRA does not perceive a need to accord differing regulatory treatment to particular types of substance abuse data simply based on whether that data surfaced by virtue of the candidate's employment history or his or her motor vehicle driving history. In both settings there are clear prohibitions against engaging in such conduct and there are adequate safeguards to assure that there is reliable data available about that violation which will be considered by the railroad. Thus, as it must, FRA's

analysis of the consequences of detected substance abuse by prospective locomotive operators begins with the perspective created by its adoption of regulations prohibiting on-the-job alcohol and drug use. In selecting this starting point, FRA is not unmindful of the fact that FRA's random drug testing rule does extend the prohibition to off-duty use of illegal drugs and other non-medical use of controlled substances.

FRA's initial rules to control alcohol and drug use by railroad workers did not prescribe the consequences that would flow from an individual's failure to comply with these prohibitions. With the exception of imposing a 9-month disqualification for a refusal to submit to a post-accident test, FRA gave the railroad discretion to determine the consequences when noncompliance was detected. FRA has recently affirmed that basic approach for refusal to submit to a random test. More significantly for the purposes of this rule, FRA also imposed a suspension of unspecified duration for instances in which a random test provided positive results of controlled substance use.

The perspective created by FRA's regulations on employment related substance abuse are fairly consistent with the significance to be attached to analogous motor vehicle driving data under the RSIA. The RSIA and the conference report almost imply a Congressional intent that FRA require withholding of certification if there has been an alcohol/drug offense with no rehabilitation. The statute however does not say this; instead it uses the permissive "may" at the critical point and empowers FRA to determine the outcome in this rule. The statute permits virtually any outcome other than denial of certification to a person who has "completed rehabilitation," and even then the certification may be conditioned.

In order to assist in understanding the statutory framework within which FRA is developed this proposal, FRA has included a summary reflecting the series of three specific requirements contained in section 4 of the RSIA. These provisions read as follows:

(1) in paragraph (1)(2)(D), section 4 provides that:

> • • • [The program] shall, except as provided in paragraph (4), require the consideration of, to the extent information is available, of the motor vehicle driving record of each individual seeking licensing or certification under such program, [including a list of specific offenses] and may, based on such driving record, require disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe;

(2) in paragraph (1)(4)(A), it provides that:

> • • • In establishing the program under this subsection, the Secretary may not waive the application of requirements established under section (2)(D) to an individual or class of individuals with a conviction or, cancellation, revocation, or suspension described in paragraph (6) (A) or (B) who have not successfully completed a rehabilitation program established by a railroad or approved by the Secretary.

and (3) in paragraph (1)(6), it provides that:

> • • • No individual shall be denied a license or certification under the requirements established under paragraph (2)(D) because of—(A) a conviction for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or (B) the cancellation, revocation, or suspension of the motor vehicle operator's license of such individual on the basis of operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, if such individual subsequent to such conviction, cancellation, revocation, or suspension has successfully completed rehabilitation program established by a railroad or approved by the Secretary.

FRA interprets section 4 of the RSIA as requiring consideration of all driving history and prohibiting blanket waiver of those without rehabilitation as well as denial of certification for those who have successfully completed rehabilitation. Within these constraints, FRA is faced with determining the response that should occur under many different factual settings. For instance, what response would be appropriate if any alcohol/drug offense is identified? Should FRA's response differentiate between offenses that occurred while the person was on duty from those that occurred while off duty? Equitable results vary widely, of course, depending on the circumstances. On the one hand, a conviction for driving while impaired can be had in some states with a blood alcohol concentration (BAC) of .06%, a level not difficult to achieve if one begins drinking on an empty stomach. It would by no means establish, by itself, a need for formal, structured treatment (although many states would require participation in an alcohol education program). Such a conviction might suggest a disregard for safety, but the indication would not be strong if this were an isolated event that occurred three or four years prior. On the other hand, repeated driving while intoxicated (DWI) offenses at BAC's in excess of .10%, or a single DWI with a BAC above .20%, would indicate a clear need to evaluate the person for chemical dependency. But the single case at .20% might not indicate a disposition to unsafe conduct so much as loss of control.

FRA proceeds from the perspective that the challenge is to erect a structure for utilizing alcohol/drug information from either railroad employment or motor vehicle records that is preventive rather than punitive and predictable rather than capricious. However, it is important that the structure of this rule fit well into the overall pattern FRA has established for control of alcohol/drug use in railroad operations.

Drug Abuse Model. FRA proposes to follow a path initially blazed when considering our drug use policy. Beginning October 2, 1989 any non-medical use of controlled substances will be barred by FRA rule. Thus, a subsequent conviction for driving while under the influence of a controlled substance might be positive proof of a violation of our drug rule. Even a prior violation might be cause for concern that the drug abuse habit is continuing. Though currently FRA specifies minimum consequences only with respect to drug use detected through random testing, there is reason to believe that will change as FRA conforms the balance of the rule to the random testing provisions. The random testing rule does not bar more stringent adverse action consistent with any pertinent employment contract, but it does provide that an employee determined to have made unauthorized use of a controlled substance may not be returned to service unless: (a) the individual has been evaluated for any treatable substance abuse disorder; (b) any necessary treatment has been successfully completed, as determined by the employee assistance program (EAP) counselor; (c) a return-to-work test is negative; and (d) the individual is subject to aftercare and follow-up testing as determined necessary for a period of up to 60 months.

With respect to the drug abuser identified through motor vehicle records, FRA believes that this is almost precisely the basic structure to be employed. Even an employee recently hired who was determined to have been convicted two or three years before should be sent to the counselor for evaluation. If the EAP counselor, medical review officer (MRO), or other appropriate officer determined that there was no current treatable disorder (based on a medical examination, interview, review of employment history, etc.), it would make no sense to require the person to go receive formal, structured treatment. Chronic casual drug use (e.g., marijuana use two or three times a week with nothing else) might most profitably be treated on an outpatient basis. If, on the other hand, evaluation suggested a chemical dependency, then the individual could be required to receive appropriate inpatient treatment. This is a judgment to be made by the medical or substance abuse professional. If a dispute arises regarding the judgment, it should be resolved by medical arbitration which is available under most collective bargaining arrangements.

Alcohol Model. Alcohol, which FRA anticipates will greatly preponderate in the motor vehicle data bases presents a more difficult problem. Drug abusers can be told to stop abusing drugs, but one cannot tell a citizen to stop drinking without good reason. It is, therefore, necessary to focus on two separate problems. The first is that in the alcohol area, like the drug realm, FRA is proposing to proceed without adopting overall medical standards. However in this instance, the only standard available is freedom from a current clinical diagnosis of uncontrolled alcoholism. This standard is already in place for motor carrier drivers and aviators. It makes eminent sense that it should apply to locomotive operators. Although this approach may create some inconsistencies, the implicit creation of a medical standard as part of the eligibility criteria is the only way to put the information derived from motor vehicle records in an appropriate context with respect to follow-up of those permitted to continue in service after any required treatment. The Congressional requirement that "rehabilitation" be deemed to expunge prior alcohol offenses indicates that this is the frame of reference Congress intended. However, since many DWI/DUI offenders are not alcoholics, the Congressional framework requires elaboration. As noted above, it would make little sense to require inpatient treatment of the social drinker who only occasionally imbibes to excess; indeed, no responsible treatment center would accept such a person for inpatient treatment. On the other hand, alcohol education programs attempted by the states for DWI offenders have had little effect; and there is no empirical evidence to indicate that counseling models directed at controlled drinking (as opposed to abstinence) would be much more effective. Complicating the matter further is the fact that drinking episodes may be caused by underlying problems, only some of which may be treatable.

FRA proposes to posit a framework for decision making that builds on the framework for drugs. FRA proposes that any prospective operator with an alcohol-related conviction or suspension/revocation (including a suspension for refusal of a chemical test) must be evaluated for any treatable substance abuse disorder. If the operator candidate is diagnosed as an alcoholic, then normal primary treatment should be completed as deemed necessary, followed by return-to-service drug/alcohol urine testing, aftercare to maintain abstinence, and follow-up drug/alcohol urine testing. Those diagnosed as alcoholics would be tested according to the judgment of the railroad for up to five years using a urine alcohol/drug test or other effective method (such as a breath test), the same maximum prescribed for drug abuse follow-up. For the employee who successfully completes primary treatment and is certified, subject to follow-up, the "points" associated with discovery of the alcoholism would not be considered for a certification decision. If the operator candidate is not diagnosed as an alcoholic, then primary "rehabilitation" may be limited to counseling regarding abuse of alcohol, but the employee could be required to participate in a program of education or training with respect to abuse of alcohol or drugs (*see* e.g., § 219.405(e)).

FRA believes that the key to dealing with the alcohol issue is identifying the nature of the problem (or at least categorizing the problem), since it dictates whether future abstinence may be required. As FRA reads the statute, it has authority to issue a rule that makes possible a rational response to disparate circumstances.

The more difficult problem is how the rule should address the follow-up for the non-alcoholic. If the individual is evaluated as not requiring formal treatment, but evidences a streak of recklessness that may include later job-related drinking, how does FRA or the railroad limit that potential? FRA commences from the position that social and legal norms will not allow us to require total abstinence. However, it appears that individuals who engage in such conduct should be held accountable under this rule for their poor discharge of safety performance duties. Thus, FRA proposes to include such incidents for as part of overall safety performance evaluations point system.

FRA will separately propose amendments to the alcohol/drug regulations (49 CFR part 219) that will provide for followup testing of employees who violate prohibitions with respect to alcohol/drug use, possession or impairment, building on the follow-up requirements for random testing published last November (53 FR 47103, Nov. 21, 1988; *see* § 219.605(e)). Comment is requested in this docket as to whether, as a condition of certification, similar follow-up should be required for the non-alcoholic who has refused a chemical test on the highway or who has been convicted of an offense involving driving while intoxicated or under the influence of a controlled substance. It will be noted that unauthorized use of controlled substances will be prohibited at any time effective October 2, 1989; thus, reliably documented detection of such conduct in any context may indicate the need for responsive action by the railroad.

Although additional railroad counter measures would be beyond the scope of the FRA program for qualifying locomotive operators, nothing in this proposal would impair the right of a railroad to condition the operator's service (though not the granting of the FRA certificate) on submission to an appropriate regimen of unannounced testing for an appropriate period of time as a matter of company policy. The only appropriate tests would be on-the-job tests of blood or breath or a "two-sample" urine testing procedure, since urine from a single sample may contain residues of alcohol from periods when the employee was at liberty to drink. Blood or urine testing is bound to be expensive and objectionable as a routine practice, so breath testing is the only likely alternative. A large railroad with a logical breath testing program could readily provide for periodic, unannounced testing of locomotive operators with DWI/DUI convictions within a certain time period in the past. For instance, a single conviction in the 5-year period could warrant a two-year window of testing (from date of violation).

Transition to a New System. At the time this regulation goes into effect, many prospective operators will have already made much relevant history. Some will have had DWI's and received treatment from the EAP. Some will have had DWI's and received treatment from outside sources without the knowledge of the railroad or its EAP. Others will have had DWI's followed by maturation or self-enforced abstinence, with the consequence that their recent service record and motor vehicle driving record are excellent. Still others will have continuing substance abuse problems. It is inevitable that many currently serving locomotive operators who will wish to be Federally qualified will step forward under FRA's alcohol/drug rule and refer

themselves voluntarily for "rehabilitation" in order to find the shelter provided by the statute with respect to past behavior. It is important that FRA let the substance abuse or medical professionals evaluate the individual's problem and either prescribe a course of counseling and/or treatment or pronounce therapy already received as adequate.

To accomplish its policy goals FRA proposes to utilize the EAP counselors in a two step process under this rule. FRA proposes to have the counselors receive all of the available and "admissible" data concerning substance abuse. Employing traditional professional standards for making such evaluations, the counselor would review data, including interviewing the candidate or taking other actions deemed appropriate in particular circumstances. If, after that review of these incidents, the counselor concludes that the events were followed by an appropriate course of counseling or treatment these incidents would not be given weights for the point system. The counselor would then evaluate whether the candidate is currently affected by a psychological or physical dependence on one or more controlled substances or by any other identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation. If the counselor concludes that the candidate is currently affected or dependent, the counselor would respond in accordance with existing provisions of FRA's alcohol and drug rules concerning the handling of voluntary referrals. Since FRA believes that it is important that FRA do whatever is reasonable to encourage subsequent follow-up, FRA proposes to permit conditioning of the certification on participation in aftercare and chemical testing, as appropriate, but only to the degree such actions are provided for in part 219.

If a counselor concludes that the counseling or treatment response to the prior incident was unsuccessful and the candidate is not currently affected or dependent, FRA proposes to assign a value of three points to those alcohol and drug related incidents and to consider such points under its evaluation system. If the person had only a single incident in the five year interval being considered, the railroad would not have a basis to deem that person unqualified under this rule. If a candidate had two incidents in a five year interval, a railroad would have the discretion to consider that person qualified under this rule but in order to certify that individual as a locomotive servicing or any class of train service operator the candidate must successfully complete a training program. Under FRA's basic system, if a candidate has experienced three incidents, the railroad would not be authorized to certify that person until 5 years had elapsed after the most recent incident. FRA notes, however, that with respect to past conduct involving more than one event, some "treatable" disorder is likely to be found by the EAP counselor and allowing such events to be sheltered may be particularly appropriate, given the fact that past circumstances may have provided little impetus to voluntarily seek employment counseling. Further, this approach will mitigate the apparent harshness of having to entirely disqualify an operator candidate based on actions that did not carry this adverse sanction under Federal law at the time they occurred. Under FRA's approach, operator candidates would bear the burden of convincing the counselor that they have progressed sufficiently along the rehabilitation path and are not currently dependent. FRA would not attempt to disturb the discretion of the counselor making such evaluations.

To some limited degree imposition of consequences for individuals who are not dependent or do not have an identifiable medical disorder can be viewed as running counter to FRA's preferred method of treating substance abuse incidents as manifestations of a substance abuse disorder. Yet there is a need to establish clearly defined limits for operator conduct and to hold substance abusers accountable when they exceed those limits. FRA welcomes comments on ways to more effectively balance these competing interests in the context of this rule.

One possible alternative would be to have the EAP counselor play a different role from that outlined above. Under such an alternative the counselor would receive all of the data and be permitted to clean the slate of everyone with the "points" being banked for possible later use, if appropriate. One advantage to such an alternative is that it avoids a risk inherent in FRA's proposed solution. That risk is that everyone will be declared "treatable" unless there is some extraneous reason for not doing that. It can also be argued that the alternative precludes interpretation of the intent of the preferred approach as sending a message to alcoholics and others that safety related misconduct will be excused because of addiction.

Mandatory Rehabilitation and Reinstatement. In developing its policies with respect to misuse of alcohol and drugs by safety-sensitive railroad employees, FRA has consistently avoided imposition of any requirement that an employer provide the opportunity for company-supervised rehabilitation and subsequent right to reinstatement, where the employee has failed to take advantage of the right of voluntary referral (49 CFR part 219, subpart E) and is, instead, detected through the efforts of management. The reason for this policy position is that means of detecting violations will not deter prohibited conduct if the employee believes that the consequence of waiting to be "caught" is the same as seeking help.

The issue of locomotive operator certification does not present a different case, since the RSIA does not mandate an opportunity for rehabilitation (though it does provide for certain consequences where rehabilitation is, in fact, successfully completed). But it does suggest more complicated scenarios in which the issue of an opportunity for rehabilitation and reinstatement will arise. The following discussion examines common examples, but others can be posited.

Motor vehicle offenses prior to applying for certification; current employee. In the discussion above, we have indicated that persons already employed by the railroad in positions subject to Part 219 will be able to secure the opportunity for rehabilitation by seeking the assistance of the EAP counselor prior to applying for an FRA certificate. This will provide protective shelter in relation both to the certification process and other employment-related consequences that might otherwise obtain, assuming that the employee is truly prepared to deal successfully with the substance abuse disorder. This is, of course, a shelter that would not be available to an employee who had previously received assistance under the FRA rule or similar carrier policy.

Motor vehicle offense after certification. Similarly, an employee who experiences an off-the-job offense after being certified will be the first to know and can refer under the existing policy. A question arises as to whether the right would be available after the conviction had been reported to the railroad. *See* 49 CFR 219.401(e)(2). It would appear that Federal rules should work together to encourage the earliest possible referral, since a motor vehicle incident may indicate a rapidly deteriorating personal situation that should be dealt with as soon as possible. No particular reason appears why the opportunity for rehabilitation (with conditional right of reinstatement) should be available after the railroad discovers the unsafe conduct through a motor vehicle records check. FRA solicits comment as to whether the proposed rule, Part 219, or both, should be amended to address this issue.

Positive on-the-job test. Clearly, if an alcohol/drug violation is detected through a supervisory observation or chemical test on the job, the railroad is currently under no obligation to offer an opportunity for rehabilitation and reinstatement. Nothing in this proposal would change that outcome. However, if as a matter of collectively bargained right or management policy the violator is allowed to retain an employment relationship while undergoing rehabilitation, then the rules described above would operate.

FRA solicits comments with respect to any additional problems that may be encountered in integrating the policies of FRA's alcohol/drug rule and the rules proposed in this notice.

(b) *Consequences of Non-Substance Abuse Safety Performance Related Conduct.* Quite apart from the question of the consequences of substance abuse data, FRA anticipates that railroads will be confronted with data concerning a prospective operator's poor performance in safety related situations in either a railroad employment context or in a non-employment context of operating a motor vehicle. Both prior railroad service records and motor vehicle records involve multiple issues regarding what the certification consequences should be when various types of evidence are discovered.

Unsafe Train Operation Data. As noted earlier, FRA proposes to hold individuals responsible under this rule for their personal failure to follow one or more of a limited set of established federal or industry standards concerning the safe operation of trains. FRA is taking that approach because of the potential safety risks incurred when the following types of rules are not adhered to: (i) Noncompliance with a train order, track warrant, timetable, special instruction or other direction with respect to the movement of a train that involves (a) operating a locomotive or train at excessive speed; (b) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; or (c) failing to comply with a mandatory directive and entering a segment of track without authority; (ii) failure to protect train as required by a carrier rule that is consistent with § 218.37; (iii) alignment of a switch in violation of a railroad operating rule or operation of a switch under a train; (iv) failure to secure a handbrake or a sufficient number of handbrakes; and (v) failure to comply with the prohibitions against wilfully tampering with a safety device contained in 49 CFR Part 218.

In devising its response to this type of poor safety conduct, FRA has remained sensitive to the fact that most carrier operating rules place a train's conductor in charge of the crew and make him or her responsible for the actions of all the crew. Thus, FRA has formulated its program to hold individuals responsible only for that aspect of compliance with the requirements that was the direct and personal responsibility of the individual who is now a candidate to be locomotive operator.

FRA proposes the following structured response to such poor railroad train operation conduct: (1) A candidate who has been adjudged as having been directly and personally responsible for committing three or more of these violations of carrier or federal rules in the last five years may not be certified until five years have elapsed since occurrence of the last event in that sequence; (2) if that barred operator does return to service and either accumulates three more such incidents or is disqualified under an FRA proceeding conducted under part 209, no railroad may ever certify that individual under this rule; and (3) a person adjudged of having committed two of these violations may not be certified unless that individual undergoes a retraining program equal to the operational training of student operators.

Unsafe Motor Vehicle Operation Data. As noted, the commission of serious traffic offenses will be considered as indicia of a potentially basic disregard for public safety under this proposed rule and FRA proposes to restrict railroads to consideration of the following types of offenses: (i) Excessive speed (exceeding the posted limit by more than 15 miles-per-hour), (ii) reckless driving, (iii) citation for a moving violation in connection with a fatal accident, and (iv) driving with a revoked or suspended license. Because of the limits on its ability to correlate safety performance in a motor vehicle with safety performance in a locomotive cab, FRA proposes to employ a conservative approach to setting the threshold at which such events will provide a basis for precluding an individual from certification. Thus, FRA proposes to assign a value of two points to such incidents. If the candidate has been accumulating a poor driving record in the last 5 years FRA's proposal would preclude from certification, as either student or full fledged operator, only individuals who have been adjudged to have committed four or more serious motor vehicle driving offenses. Such individuals would have acquired more points than permitted under FRA's six point ceiling for qualifying. If an individual has committed more than one but less than four such offenses, a railroad would be authorized to temporarily certify that person. That temporary certification would be issued on the condition that such certification would terminate if the person is involved in any one of the types of poor safety performance incidents identified in this regulation. Those with only a single offense could not be deemed unqualified on the basis of motor vehicle driving history.

(c) *Consequences of Multiple Types of Data.* In reviewing data concerning an operator candidate, it is possible that a railroad will encounter instances where a candidate's records indicate multiple instances of poor safety performance but no accumulation of any single type of incidents. In those situations FRA proposes to have the railroads accumulate the total number of points attributable to any admissible incidents. If that cumulative total exceeds 6 points, the person would be deemed unqualified until the passage of five years after the most recent incident. If the person has accumulated 6 points, the railroad could not certify that individual until the person had attended a retraining program equal to the operational training of student operators. If the cumulative total is less than six points the railroad could not—based on prior conduct—deem the person unqualified under this rule.

Using this aspect of the proposed system, a person with either of the following kinds of marginal safety conduct could be deemed qualified if the relevant conditions are complied with: one substance abuse incident and one railroad performance incident or three motor vehicle driving incidents. A person with one incident from each category would not be eligible to qualify until the lapse of the five year interval from the most recent incident.

FRA seeks commenter response not only to the proposed adoption of an integrated system for evaluating prior conduct but to the wisdom of employing an alternate approach under which driving history and railroad employment history would have separate and distinct point systems. Under this alternate approach, a prospective operator's driving history (including any alcohol or drug related incidents) would have particular point values and as long as the total number of points remained below a threshold value, the operator

would be eligible for certification. A similar system would exist for poor railroad safety performance incidents. The only intermingling of the two types of data (driving history and railroad history) would occur in the context of medical qualification standards. In that context, the railroad would have to determine—based on all of the available data—whether the person was currently dependent on alcohol or drugs.

(5) *Due Process Considerations.* FRA proposes to create procedural safeguards concerning the use of behavioral information. At a minimum, there is a need to ensure the prospective operator is given access to the data and an opportunity to review and comment on it before the railroad acts in reliance on the data. FRA is concerned that in any large scale administrative scheme, such as that involved with motor vehicle licensing, there is an ever present possibility that record keeping errors will occur. The consequence of such an error under this proposed rule could adversely impact an individual's ability to pursue his or her chosen occupational field. Thus, FRA proposes to afford such a potentially affected person a reasonable opportunity to review and comment in writing about the behavioral record being evaluated by the railroad.

FRA proposes to give prospective operators a right to review any written employment record that the railroad will rely on when making its fitness determination. FRA proposes to require that the railroad notify the person of its intent to use such a record, make the record or a copy of it available to that person and then afford a reasonable opportunity for the person to offer their comments to the railroad. Similarly, under FRA's proposal, after a railroad obtains a person's driving record, the railroad will be required to notify the person of that fact, make the record or a copy of it available and afford a reasonable opportunity for comments.

The question of establishing a mechanism for reviewing the propriety of particular aspects of railroad certification decisions, such as those relating to eligibility, would normally need to be discussed only in the context of FRA's proposals for the overall administration of the certification program. Although FRA provides such a discussion later in this document, FRA is aware of the level of concern expressed by the regulated community over possible problems stemming from commencement of the use of motor vehicle driving data. Thus, FRA is alerting readers to the fact that it has accommodated the unique provisions of the RSIA, which appear to require creation of an administrative review process which would directly involve FRA in evaluating railroad decisions to deny certification based in whole or in part on motor vehicle operator driving data.

III Program Administration Concepts

(a) Basic Ideas

FRA proposes to create a certification procedure that will ensure the competency of each operator to perform various kinds of train service. Once a person becomes a "certified operator", all parties will know that he or she has successfully demonstrated the federally determined minimum level of knowledge and skills to operate a locomotive or train. Although a railroad would have the latitude to impose more stringent requirements for its employees, under this proposal a railroad would be required to certify any person who meets federal minimums. Railroads that elect to use more stringent standards and conclude that an individual fails to meet their more rigorous criteria would only have the option of not entrusting operation of locomotives and trains to those who fail to meet corporate criteria.

FRA proposes to have all locomotive operators undergo a full certification procedure within three years from the effective date of this rule.

(b) Initiation of the Program

Section 4 of the RSIA requires that any certification program for locomotive operators become effective within twelve months after issuance of the rule establishing that program. Effective implementation of the program envisioned in this proposal can be not accomplished in that interval in FRA's judgment. Not one of the approximately 500 railroads that would have to comply with this rule will have all of the program elements in place as part of its existing procedures. Until the railroads have the program elements in place, they will not be able to commence evaluating the 30,000 or more existing operators. Curtailing nationwide rail service until a sufficient number of operators can be "certified" under this rule is neither practical nor necessary since FRA data that supports the belief that most existing operators have an appropriate level knowledge and performance skills. Thus, FRA proposes to employ the concept of interim certification for the initial compliance phase of this rule. FRA proposes to have a three year interim certification period during which all locomotive operators undergo the full certification procedure prescribed by this rule. During the three year interval that would begin with the effective date of this rule, FRA believes all railroads will be able to make an orderly and effective transition to the proposed formal certification program.

On the effective date of this rule, there will be three different groups who will have to become certified. The first group is composed of persons who are or have been considered qualified to operate locomotives and trains under various company policies. The second group consists of people who are currently in training to become locomotive operators. The third group contains those who will at some point in the future seek to become locomotive operators. FRA proposes slightly different methods for implementing this program for each group so that railroads can implement this system without impairing the nation's ability to have essential rail service.

(1) Current Operators

The conversion method that FRA proposes to use for the first group would, in effect ratify prior railroad company decisions about a person's knowledge and skills, by allowing railroads to "grandfather" a person into the certification system. This "grandfather" concept being proposed is based on FRA's belief that there is no available evidence to suggest that there are significant numbers of current operators who lack the necessary knowledge and skills to operate locomotives and trains safely. That belief is grounded on FRA's safety assessment efforts over the last few years and the inability of FRA to identify with assurance either inadequate knowledge or insufficient skill levels as a recurring contributing causal factor for such train accidents.

Under FRA's proposal each railroad will be permitted to "grandfather" those locomotive operators that it deems qualified to operate locomotives and trains. Each railroad will be free to decide which of its current workers are deemed qualified to operate locomotives or trains and to determine what class of service that person is qualified to perform. Although FRA is allowing railroads considerable discretion in deciding which people it considers to be qualified on the effective date of the rule, FRA has introduced several factors to prevent abuse of that discretion. For example, FRA proposes to have the railroad identify the operational experience that the railroad relied on in reaching that conclusion. In view of the discretion being afforded railroads, FRA does not propose to create a right to administrative review by FRA of

decisions made under this "grandfathering" provision.

Grandfathered operators will be given three years from the effective date of this rule to acquire a full certification that is based on a railroad's actual individualized determinations concerning their competency and fitness. That means they will have to take and pass a knowledge test and have their performance skills evaluated in the manner previously described. In addition, they will have to undergo the motor vehicle record check and acuity evaluations provided for in this proposal. If the process is not completed within that interval, the operator will not be legally eligible to operate locomotives or trains.

(2) Current Students

The second group of people who will be impacted by this rule are persons currently in a training program. Railroads will be permitted to consider those who complete the program before the rule becomes effective as grandfathered operators under FRA's proposal. Those who are still in a training program on the effective date of the rule would have to undergo the full certification procedure before being deemed qualified. In addition to requiring that such future students undergo a full certification procedure, FRA proposes that the training program they will be given must meet FRA's proposed criteria. In this way all parties will know that future operators have received a training program designed to uniformly provide them with the necessary knowledge and skills.

(3) Former Operators

There are a limited group of people who have previously been deemed qualified to operate locomotives who will not become "grandfathered" operators. Their absence from the grandfather classification normally will occur because they are currently not working for a railroad, or because of inadvertent error in identifying such people. FRA proposes to have those persons undergo the full certification procedure before being deemed qualified under this rule.

(c) The Certification Procedure

FRA proposes to give railroads the ability to devise their own individual procedures for certifying operators within the framework of this rule. What FRA requires is that the railroad be able to demonstrate that the person, certified as being qualified, has in fact been determined to meet the regulatory criteria. Some sense of the freedom that FRA proposes to give railroads can be illustrated by the following examples. Under FRA's proposal, a railroad is free to establish a procedure under which the prospective operator must acquire and present to the railroad the data concerning their visual and hearing acuity as well as their motor vehicle driving records. Conversely, the railroad could require that the person be tested by the railroad's medical staff and execute any documents needed for the railroad to obtain the person's driving records. Railroads are free to use any sequencing of the steps in the process that they deem desirable. When it comes to testing, FRA proposes to require railroads to test a person's knowledge in writing but permit the railroad to select the design of the tests. Thus, railroads will have the ability to use a variety of testing methods including the use of multiple choice, fill-in-the-blank or essay questions. They could rely on a standardized test administered by multiple railroads or continue to use their existing tests. Railroads are free to establish their own weighing scales for grading such tests and may elect to provide training in advance of such testing. Instead of formulating a rigid procedural mechanism for making certification decisions, FRA proposes to have railroads document their procedural choices only in terms of their end result. Thus, FRA only proposes to have railroads maintain sufficient information to identify the basis on which a railroad made the determinations required when certifying a person as an operator. Conversely, the railroad would be required to provide, in writing, a detailed explanation of the basis for any decision to deny certification and furnish that to the prospective operator within 30 days of the denial.

FRA has also given railroads the power to select which corporate officer will be empowered to make the certification decision. However, FRA proposes to require that the person with that responsibility be identified on the certificate.

(d) Identification of Certified Operators

FRA is proposing a certification system under which each railroad would be required to issue a certificate to individuals that meet FRA's criteria qualification criteria which attests to that determination. The certificate envisioned by FRA would be small enough to fit within an ordinary pocket wallet and will contain essential information about the operator and the kind of service that person is authorized to perform. FRA proposes that, within six months of the effective date of this rule, all operators will possess such a certificate and must carry it with them when they are on duty. Certified operators would be required to display the certificate upon request by FRA personnel or railroad supervisory personnel, including supervisors from another railroad, if the operator is handling a locomotive or train in joint operations territory.

(e) The Consequences of Certification

The system being proposed by FRA does not directly affect any individual's employment rights. It is based on the concept that railroad employment decisions are strictly a matter between the individual and the company. It is only when a company wants to have an individual perform the task of operating a locomotive that the FRA rules would have any impact. Even then, the impact of FRA's rule would be limited to preventing a railroad from authorizing an unqualified person to operate a locomotive. FRA's proposed certification requirement is totally neutral on the employment question. The fact that an individual failed to meet FRA criteria would not preclude that person from performing other types of service for the company. Likewise, a company's conclusion that an individual is qualified followed by issuance of a certificate does not confer any federal benefit or rights on that individual to be employed as a locomotive operator. For example, a railroad could decide that a person who met FRA criteria did not meet some additional corporate standard for locomotive service and thus the railroad could decide that it did not want to hire that individual. Such decisions would not be impacted by this rule. Similarly, if the railroad had already hired the person the railroad could decide that it did not want to have that person perform service as a locomotive operator for any variety of reasons.

By contrast, FRA's proposal will impose obligations on any railroad that permits a person to operate a locomotive on its tracks. FRA's proposal would affect the duties not only of the railroad that the prospective operator is employed by but any railroad that permits that person to operate a locomotive over its lines. The most common example of the situations where this issue will present itself is in instances of joint operations. Joint operations are a very widespread method of providing rail service in which two or more railroads operate over a single track. Such operations are most often the result of contractual arrangements, such as trackage rights agreements, but can be the result of an

order from a governmental body, or a judicial proceeding. FRA does not propose to disturb such existing arrangements. It proposes to allow the railroad that controls such operations to continue to assure itself that all locomotive operators performing service on its lines are qualified. There currently are a variety of ways that the controller of joint operations establishes the qualifications of "foreign" line operators. These range from requiring that "foreign" line operators submit to their training, testing and evaluation to delegating full responsibility for training, testing and evaluating to the "foreign" line company. FRA's proposal would allow railroads to retain their existing arrangements but clearly delineate the fact that the company that controls operations retains responsibility for all persons who operate a locomotive on their lines. FRA proposes to accomplish this by permitting railroads to "endorse" the qualification decision of the railroad that employs the operator. Although FRA proposes to allow railroads that control joint operations latitude in testing a prospective operator's knowledge and performance skills, FRA is also giving railroads the responsibility to determine that all such individuals have sufficient knowledge and skill to be capable of operating a locomotive or train under circumstances that may be unique to the operator's general operating responsibilities for his or her employing railroad.

(f) Duration of the Certification

FRA proposes to have such certificates effective for a period of 3 years. Although a three year interval is consistent with current industry practices for monitoring operators knowledge and physical condition, FRA welcomes comments on the advisability of employing a longer or shorter interval. For example, if convinced that a five year interval would not entail undue risk that a person's knowledge, skill and physical condition would deteriorate to unacceptable levels, FRA believes that such a longer interval would be more consistent with its motor vehicle history provision. Whatever the length of the interval, it would be necessary to begin the process of "recertification", toward the completion of that interval. FRA proposes that those seeking recertification will be given what amounts to an entirely new set of determinations including a new search of the motor vehicle driver record system. This approach will assure that railroads are evaluating current information. While this approach is the most feasible one with regard to railroad generated data, it is not the only method for assuring that railroads have up-to-date information on motor vehicle driving data. Although FRA's draft rule language is couched in terms of a single approach, FRA has not totally ruled out alternate approaches to that issue and seeks comments on these alternate approaches.

One of the alternate approaches identified by FRA would permit the individual seeking recertification to report whether he or she had been convicted of any of the relevant driving offenses in the intervening years since their prior certification. If the prospective operator made a negative report, the railroad could rely on that representation and not conduct a review of the records. If the prospective operator reports a conviction during that period, then the standard records check would have to be conducted. The major drawback to this approach is the degree to which it relies on the candor of individual operators to report such incidents. FRA has not selected this option initially because of concerns over such candor that were generated by recent DOT audit of a similar program approach used by the Federal Aviation Administration. In that audit nearly 76% of the people failed to report to FAA that they had been convicted of driving-while-intoxicated. For more details of this audit and the FAA's responses readers can review the April 14, 1989 issue of the Federal Register (54 FR 15144). FRA has not totally rejected this alternative because there are ways to effectively police such reporting schemes to enhance the reliability of the reporting. Such monitoring schemes, however, tend to be viewed as being as onerous as the approach initially selected by FRA. FRA solicits commenter views on whether the regulated community has would prefer that FRA employ such an alternative approach or give railroads the option of using this method or that specifically proposed by FRA.

Another alternative that might be employed in this area would be to allow railroads to rely on evidence of insurability. Under this concept railroads would be allowed to rely on the investigative practices of casualty insurance companies to ferret out and evaluate the driving records of locomotive operators who are seeking recertification. If the prospective operator could provide evidence of insurability, then the railroad could rely on that evidence instead of seeking data about that person's driving record. FRA had originally entertained the idea of allowing railroads to substitute such evidence of insurability for the detailed fitness evaluation proposed in this rule but found that the propensity of railroad companies to self insure for loss or damages, including those resulting from unsafe locomotive operator conduct, had virtually eliminated insurance underwriting of this kind of risk. Thus, there are few, if any, established practices for evaluating the insurance risks posed by having "unsafe" locomotive operators in service. There is no absence of underwriting in the automobile insurance context which leads FRA to view evidence of insurability as a possible alternate solution to the recertification checks of person's driving record. There are some difficulties posed by this approach that may render it unworkable. For example, there are varying criteria used by casualty companies when making such insurance decisions in the automotive context because that is a virtually unregulated business decision by insurance companies. However, it might be possible to devise an acceptable set of evaluation criteria to guide such decision making. Assuming that criteria could be devised, FRA has no information about whether those impacted by this rule would have a desire to avail themselves of such an approach. FRA also seeks public comment on this alternate approach.

If, during a three year interval, a certified operator commences working for a railroad different from the one that issued the certificate, there is a basis under FRA's system for requiring that the second railroad only perform a limited set of evaluations focused on questions presented by differences in carrier operating rules and the physical characteristics between the two railroads. Under FRA's proposal, the certification by the new railroad would not serve to extend the interval created by the initial railroad's certification. At the conclusion of that interval, it will be necessary to again fully evaluate the operators qualifications to continue as a certified operator.

(g) Operational Monitoring

FRA accident data can be interpreted to suggest that the most pressing need that this rule should address is not concerns about the basic knowledge and skills of locomotive operators but concerns that they not develop a tendency to become complacent and inattentive. One of the most effective tools to combat such a problem is periodic monitoring of operator compliance with operating rules.

The railroad industry has long had a practice of conducting such monitoring activities under the rubric of "efficiency testing" and FRA has required railroads to have a program for such monitoring activities since 1978 under the provisions of 49 CFR part 217. To date, FRA has given railroads considerable discretion about how to conduct FRA required operational monitoring activities. FRA's investigative activities have indicated that railroads do not universally employ their discretion wisely. For example, in several of its system assessments of major railroads FRA has documented serious deficiencies in individual railroads' operational monitoring practices. (See for instance FRA System Safety Assessments Reports concerning SouthEastern Pennsylvania Transportation Authority and Consolidated Rail Corporation.)

FRA, therefore, proposes to establish specific criteria for conducting the operational monitoring of certified locomotive operators. FRA's proposal is to have each railroad conduct an on-board evaluation of each operator at least annually and to have each operator's compliance with the operating rules operationally tested at least once a year. FRA contemplates that railroads will use a single on-board evaluation to satisfy both this monitoring provision and the performance skills test proposed elsewhere in this notice. Such an approach would be acceptable to FRA provided that such dual purpose testing occurs within the time interval prescribed for performance skill testing. The remaining facets of the testing program would have to conducted so that: tests are conducted in both an announced and unannounced manner; testing occurs throughout the entire period of a day (unless the railroad conducts operations for a lesser period of time); and railroads equipped with signal systems emphasize adherence to restrictive signal indications in their testing. FRA's proposal would allow railroads that operate event recorder equipped locomotives to employ analysis of the data collected by those devices for this monitoring program as an alternative to on-board evaluations. FRA does not now contemplate permitting the use of event recorder data as a substitute for unannounced testing efforts. Although FRA has not proposed a specific approach for implementing an event recorder alternative, FRA is open to comments on the wisdom of creating such an alternative and possible suggestions on how to devise an effective regulatory formulation of such an alternative.

(h) Unlawful Behavior by Operators

FRA's proposal for certifying locomotive operators is designed to ensure that all operators are qualified, in terms of their knowledge, skill and ability, and are "eligible" to perform service at least to the degree that they have not demonstrated a prior history of taking undue safety risks. It is not designed to resolve many kinds of day-to-day issues of a particular operator's conduct. As noted, FRA proceeds from the belief that possession of an operator's certificate establishes that the individual is both proficient and not demonstrably unsafe and, therefore, should be authorized to operate a locomotive for a given interval.

It is entirely possible that during the interval before recertification will be required an operator's conduct will make it appropriate to review whether that operator should be allowed to continue to operate a locomotive. Although railroads already have one mechanism for responding to such conduct—subjecting the operator to disciplinary proceedings that can result in loss of or suspension of the operator's employment—there are many factors unrelated to safety considerations that could prompt a railroad not to exercise its disciplinary prerogatives. FRA is considering augmenting the remedial power of railroads by creating an ongoing oversight of the conduct of locomotive operators certified under this rule.

As envisioned by FRA, each railroad would be responsible for canceling or revoking its certification of an operator, if that person is involved in unlawful behavior during the certification interval. The power to withdraw certification would be invoked by the railroad whenever to operator had been involved in one or more poor safety performance incidents. Depending on the type of points system FRA adopts (unified— where all events are part of a single total—or bifurcated— where driving history and railroad operations remain separate categories), once the operator has accumulated sufficient points to preclude recertification, the railroad would be required to affirmatively act to withdraw the existing certification. In order to make either point system approach effective FRA would have to require that operators report to the railroads all relevant motor vehicle driving incidents that occur during the certification interval.

The primary alternative to that oversight approach is to use a certification of short duration and to rely on the railroads to wisely and effectively use their independent disciplinary powers to remedy behavior that occurs during the interval between certification determinations. FRA proposes to follow the short interval approach in this notice but welcomes comments on the wisdom of adopting the continuing oversight alternative.

FRA also proposes to improve the agency's capacity to respond to unlawful operator conduct. The RSIA grants FRA the authority to disqualify certain individuals. Under the statute FRA may disqualify individuals who are shown to be unfit to perform safety sensitive functions, based on the individual's violation of an FRA safety rule regulation or order. FRA has proposed adoption of the procedures that will control disqualification proceedings (53 FR 49695; December 9, 1988) and will soon issue final rules on this topic. In that proceeding, FRA identified the fact that it considered virtually all train service personnel, which would include locomotive operators, as performing a safety sensitive function.

Currently, FRA has only a limited set of rules that are specifically focused on and would govern the behavior of an individual operating a locomotive. Existing FRA rules basically prohibit locomotive operators from possessing or using alcohol and controlled substances; willfully tampering with safety devices such as cab signals and alerters; and coupling to or moving rolling equipment protected by blue signals. Thus, FRA is already postured to respond through a disqualification proceeding, if appropriate, to certain kinds of unsafe operator behavior.

In reviewing its accident data, FRA has identified three types of events that are prohibited by carrier operating rules but not current Federal regulations. In each instance FRA is confronted with potential action or inaction by an operator about control of a train which clearly is the direct and immediate responsibility of the locomotive operator and which would reflect a serious failure to be attentive to significant operational safety concerns. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (3) failing to comply with a mandatory directive and entering a segment of track without authority.

FRA proposes to make such conduct unlawful as a matter of federal regulation for the purposes of this rule. Thus, a violation of that prohibition could serve to form a predicate for disqualifying a locomotive operator. As

being proposed by FRA, the unlawful conduct of the individual locomotive operator would be attributable, for civil penalty purposes, to a railroad company that established the underlying operating rule. Although FRA does not anticipate having to seek recourse against railroads for locomotive operator noncompliance with the railroad's operating rules on a frequent basis, there may be instances in which it is appropriate to hold the railroad accountable for the unsafe conduct of its operators.

(i) Process for Reviewing Adverse Determinations

Once this rule is in effect there will be some instances, in which a railroad will make a determination adverse to the hopes of a prospective operator. Section 4 of the RSIA requires that, as a minimum, FRA provide an administrative hearing for operators who believe they have been improperly denied or granted a conditional certification on the basis of their driving history. Thus, any review scheme proposed in this rule must include some degree of FRA involvement.

Selection of the Reviewing Body

In many instances, if not all instances, the dissatisfied prospective operator will want recourse to some reviewing body different from the railroad that rendered the unfavorable decision. Short of judicial review of such decisions or recourse to administrative bodies such as Equal Employment Opportunity Commission, there are only two non-railroad mechanisms immediately available for adjudicating such reviews: an FRA-managed process or the grievance resolution procedures of the Railway Labor Act administered by the National Railroad Adjustment Board (NRAB), any of its divisions or delegates, or other boards of adjustment.

The NRAB has a long history of resolving analogous issues. The processes developed by the NRAB are familiar to most of the parties who can be expected to seek recourse to them and the quality of decisions rendered by the NRAB is well recognized. Thus, FRA initially favored having these disputes handled by that mechanism. Further study has revealed several limitations to use of the NRAB for these purposes. As noted earlier, the functions of the NRAB are significantly different from that FRA and, as has become evident in recent NRAB decisions in the alcohol and drug area, there is some danger of conflicting or inconsistent decision making that could adversely impact administration of the FRA program. Moreover, the NRAB setting brings with it attendant risks that safety regulatory policy issues will become intertwined with or subordinated to labor-management issues that are not of concern to the administration of FRA's safety program. Finally, data publicly disseminated by the National Mediation Board concerning near term fiscal problems for the NRAB, which are producing extensive case backlog and delays in case resolution.

Because of these facts FRA has temporarily rejected use of the NRAB alternative. Although FRA has rejected that alternative in making this proposal, FRA seeks the views of interested parties on whether it should rethink its entire position on this issue or at least permit the use of that mechanism as an alternative that could be selected in lieu of using the FRA system described below. In short, to permit operator candidate to have an election of remedies. Commenters favoring an election of remedies approach are asked to specifically address how they would integrate the statutory constraint concerning review of driving history into such an approach. Moreover, FRA desires to hear the views of interested parties about the availability of NRAB review for all operator certification candidates, particularly those employed by small railroads and public transportation authorities.

Although it has significant manpower and resource allocation implications for the agency, FRA proposes to shoulder responsibility for review of adverse railroad certification decisions. FRA proposes to create a special organization to resolve disputes of this nature. Although actual creation of this organization requires issuance of an internal FRA order, FRA has decided to reflect the existence of the organization and its general composition in this proposed rule to foster better public comprehension of the system FRA envisions under this regulation. FRA proposes to have this organization evaluate both adverse decisions that are based in whole or in part on motor vehicle driving data, which the RSIA appears to intend FRA to review, and all other disputed certification determinations that are properly the province of FRA review.

The actual procedures that an aggrieved certification candidate would follow under this proposal require that the person petition FRA for review of the railroad's certification decision. To initiate that process a person FRA would merely require the individual to furnish a written description of the facts and circumstances that serve as the basis for the allegation that the railroad improperly denied certification and provide a copy of the railroad's denial letter.

After giving the railroad an opportunity to submit pertinent information, FRA will decide whether the certification was wrongfully denied and issue an order granting or denying the petition. Any party that was aggrieved by that decision would have a right to challenge that order by filing a request for a hearing within 90 days.

That hearing would be a trial-type evidentiary hearing similar to that envisioned for the disqualification proceedings in Part 209. After review of the agency's decision the hearing officer would issue an order either affirming or reversing the agency's initial decision. The hearing officer's order would constitute final agency action on the matter unless an aggrieved party filed an appeal with the FRA Administrator.

FRA's proposal to make such hearings into formal, trial-type evidentiary proceedings exceeds the RSIA requirements for such hearings. However, the nature of the review that would need to be conducted in some instances appears to warrant such treatment. Moreover, providing the opportunity for trial-type proceeding is designed to ensure that, should the agency's final action undergo judicial review, it will not be trial de-novo. There are certain complications in taking this approach because of the administrative burdens and potential for delay associated with such a cumbersome review process. FRA anticipates that most disputes will be very straight-forward matters and that there will be hearings only in rare instances where there are significant factual disputes. FRA solicits comments on this aspect of the proposal as well. Specifically, FRA would be interested in views on the question of whether more informal approaches, such as that employed in resolving requests for waivers of compliance with its safety regulations (see 49 CFR Part 211), would be an adequate substitute in the opinion of interested parties.

The Degree to Which Decisions are Reviewable

FRA is proposing to establish minimum qualification standards and to permit railroads to adopt more stringent criteria. Issues concerning an individual railroad's more rigorous criteria are not a subject that FRA can appropriately review. Resolution of such issues are properly the subject of dispute resolution procedures found in the Railway Labor Act and many collective bargaining arrangements. Under the review procedures of this rule, FRA will only be concerned with questions about a failure to meet minimum FRA standards. Even within that limited subject area, FRA's review will be constrained to some degree. For example, in the absence of standardized testing, FRA will not attempt to substitute its opinion for that of the railroad on matters of subjective judgment. Thus, individuals who take and fail a operating skills performance tests and seek FRA review can anticipate that FRA will look at the overall quality of the test procedures to assure compliance with this rule but can not expect FRA to substitute its opinion for the judgment of the designated railroad evaluator about the quality of their skills.

Section-by-Section Analysis

FRA contemplates dividing this rule into subparts each of which would contain multiple sections. This proposal contains all of the anticipated subparts including those that are being reserved for future proposals.

Subpart A

This part of the proposal contains the general provisions of the rule, including in § 240.1, a formal statement of the rules purpose and scope. This section also contains a clear recitation of the fact that this rule would not constrain a railroad's ability to prescribe additional or more stringent requirements for its locomotive operators.

The statutory definition of a "railroad" includes all entities that can be construed as railroads by virtue of providing non-highway ground transportation over rails, electromagnetic guideways, or other technologies not yet in use. Thus, § 240.3 specifically identifies the fact that FRA is proposing to have these rules apply only to railroad that operates on standard gauge tracks and not situations where the railroad is employing different technologies for providing transportation service.

Section 240.3 also identifies several other situations in which FRA proposes that this rule would not apply despite the presence of standard gauge trackage. The first exclusion mirrors the statutory exclusion for rapid transit operations in urban areas that are not connected with the general system. Caution is needed because there are some rapid transit type operations that, given their links to the general system, are within FRA's jurisdiction and FRA specifically intends to have these rules apply to those rapid transit type operations. For example, the operations of Port Authority Trans Hudson (PATH) are the type rapid transit operations that FRA proposes to have this rule apply to.

The second exclusion addresses several types of operation that occur on tracks that are not part of the general railroad system (i.e., the standard gage, interconnected network of railroads that makes possible the interchange of goods and passengers throughout the nation). This exclusion would encompass operations commonly described as tourist, scenic, or excursion service to the extent it occurs on tracks that are not part of the general railroad system. This exclusion also addresses operations that occur within the confines of industrial installations commonly referred to as "plant railroads" and typified by operations such as those in steel mills that do not go beyond the plant's boundaries.

In both these instances, the key factor for exclusion is the fact that the track over which the operations are occurring is not part of the general railroad system of transportation. Again caution must be exercised in examining whether a particular factual situation meets this criteria since, even where a railroad operates outside the general system, other railroads that are unequivocally part of the general system may have occasion to enter the first railroad's property (e.g., a major railroad goes into an automobile plant to set out or pick up cars). FRA intends to adhere to its current policy of not treating such actions as creating a basis for sweeping the plant railroad under FRA's jurisdiction except for the limited area of compliance with the track safety standards. In the track standard area, FRA policy has been to treat the plant railroad as the track owner for the tracks being operated over by the general system railroad. In converse situations, where the plant railroad itself operates beyond the plant boundaries on the general system, FRA also intends to adhere to its current policy of considering the plant railroad to be subject to FRA's rules during the operations that occur on the general system trackage.

Section 240.5 contains the definitions that FRA proposes to employ in this rule. As with any new set of regulations the definitions for this proposal contain considerable information about the structure of the regulation. In this instance FRA's proposal contains a variety of terms that are different from colloquial usage of the terms in the industry and therefore should be examined carefully. The following examples illustrate the kinds of factors addressed by these definitions. FRA proposes to use the expansive definition of what constitutes a locomotive developed during revision of the Locomotive Safety Standards in 1982. Implicit in this approach is the fact that FRA's proposal will include operators of steam locomotives as well as operators of so called trackmobiles and cab control equipment. Under the definition of "locomotive operator", FRA proposes to incorporate the exclusionary concepts for inspection and maintenance activities discussed earlier. FRA has also defined the group of individuals who will be authorized to perform performance skill testing. FRA proposes to designate such persons as "designated supervisors of locomotive operators" and to establish minimum criteria for any person who will be so identified.

Section 240.7 identifies FRA's ability to grant waivers of compliance with the requirements of this rule. Requests for such waivers can be filed by any interested party. For example, a person with visual acuity problems could seek to have FRA grant a waiver of compliance with that provision. In reviewing that request, FRA would conduct a factual investigation to determine whether there was a basis to deviate from the general criteria without compromising or risking a diminution of rail safety.

Section 240.9 contains the penalty provisions of the proposed rule. As noted earlier, FRA has already provided extensive public guidance on how it intends to employ the enforcement power that exists under this provision. In addition to FRA's policy statements concerning exercise of its enforcement and disqualification authorities, readers may want to review FRA's comments on the discharge of its responsibilities under the regulations prohibiting alcohol and drug use by rail workers and those prohibiting tampering with locomotive mounted safety devices. This section also addresses the issue of imposing criminal sanctions for knowing and willful falsification of records required by this rule. The potential imposition of criminal sanctions is authorized by section 209(e) of the Federal Railroad Safety Act. Decisions to seek convictions under this provision would rest with the Department of Justice, not FRA.

Subpart B

This subpart contains the basic requirements for having qualified operators. Section 240.11 requires all railroads to determine that knowledgeable and skilled operators are at the controls of every train, even if that might impinge on the desire of some

individuals to experience the thrill of "running a train". FRA specifically proposes to prohibit railroads from requiring or permitting an unqualified person to operate on their lines. This prohibition would apply regardless of whether or not that person is an employee of the railroad. Under FRA's proposal, responsibility for determining who is qualified in joint operations would rest with the railroad that is responsible for the control of operations. Railroads that control the operations will have the duty to make a set of evaluations for each "foreign line" operator. The details of FRA's proposal on this point are contained in the discussion of subpart C below.

This subpart also contains the class of service concept that FRA is introducing in this rule. Five distinct levels of operator service are identified and the limits of their operational authority are explicitly provided for in this section. Note that a person deemed qualified to perform the more extensive operation is deemed qualified to perform the less challenging tasks.

As structured by FRA, § 240.13 also would permit a railroad to decide to employ only one class of operator or multiple classes. For example, a railroad that served the steel industry and whose operations were fully described by FRA's terminal service operator classification might elect to have all of its operators fit within that class of service designation. Such a railroad could then tailor both its knowledge and performance skill testing programs to that single group of operators. FRA has elected to propose this type of tiering arrangement in lieu of one based directly or indirectly on the size of the railroad. This type of operations oriented approach is the most safety relevant method of distinguishing between the varying operational realities that exist in the industry. It also will provide a simple method for any railroad that finds it appropriate to adjust their operations on a short notice basis.

Proposed § 240.15 addresses situations in which a railroad elects to impose additional limitations on the service a person can perform. The most prevalent reason for imposing such limitations involves a need to restrict locomotive operators to territory with which they have some familiarity with its physical characteristics. This section provides a mechanism to reinforce such railroad decisions when they are based on a safety rationale. FRA is proposing complementary provisions to ensure that individuals are not called on to perform service for which they are not qualified. These are described in the discussion of subpart J.

The concept of familiarity with the physical characteristics of the territory is deeply imbedded in the railroad industry because the safe and efficient operation of a train requires that the locomotive operator have knowledge of the geography and topography of the line of road and have a comprehension of the train performance implications of that data. FRA has addressed the issue of assuring that operators have sufficient knowledge about the physical characteristics of the territory over which they are being authorized to operate a train at several points in this proposal. Since this concept has two elements (knowledge and comprehension) and applies to at least three different groups of operators (current operators, new operators, and those with some prior experience) and is one of the most pervasive retraining practices in the industry, FRA's proposal addresses different aspects of this concept in their relevant contexts.

For example, all operators normally would have their knowledge of the physical characteristics tested through inclusion of relevant questions on this topic in the § 240.71 or § 240.77 testing. However, if a railroad so desires that testing could be done through a discrete examination for this explicit purpose. For "grandfathered" operators, the comprehension aspect automatically would be satisfied by prior operation over the territory. But, if more than a year has elapsed since a grandfathered operator performed service on a line, at least one round trip while accompanied by a qualified operator would be required under the retraining provisions of § 240.67. The topic is also relevant to "new" operators. A "new" operator would include newly trained operators and those with many years of service but without previous experience on this territory. In this setting FRA's proposal would address the topic in the context of its student training proposal in § 240.63. Although FRA has segmented its requirements concerning familiarity with physical characteristics, to associate them with the relevant aspects of this program, FRA's proposal concerning the knowledge and comprehension of physical characteristics follows the historical practices of the railroad industry.

Subpart C

This portion of the rule identifies the distinct determinations each railroad must make for each locomotive operator candidate and the various methods that railroads can rely on as alternate strategies for evaluating a prospective operator's qualifications. For example, § 240.21 authorizes railroads to upgrade a person from the student operator category to service operator status by relying on the training program. It relieves a railroad of the duty to conduct an intermediate review of their other qualification criteria. Thus, a person who was certified as a student operator and then upgraded to a locomotive or train service operator would not have to be given a new set of acuity tests or a new motor vehicle records review until the three year interval of their new certificate expired.

Section 240.23 contains provisions to address instances in which an operator might be considered a "foreign line" operator because he or she is operating a locomotive during a detour movement or over a segment of joint operations trackage. Essentially, FRA would permit the railroad controlling operations considerable latitude in selecting the method for discharging its responsibilities. The railroad could conduct an independent set of determinations, perform a partial set of determinations, focused perhaps on its operating practices, or simply respect the certifying railroad's decision. FRA's proposal for this provision does reflect the "grandfathering" concept for implementing this rule after its adoption.

Section 240.25 contains provisions to address instances in which an operator commences working for different railroad from the one that originally evaluated the operator. These provisions would also permit a railroad to continue to rely on the determinations made prior to an operator experiencing a break in service or prior to a change in corporate structure or ownership. Finally, this subpart contains a provision, section 240.27, which is designed to accommodate qualification determinations that are made pursuant to requirements issued by the Canadian Transport Commission in 1987.

Subpart D

This subpart contains FRA's proposed method for making the transition to certification status for those currently involved in operating a locomotive, the "grandfathering" concept for implementing this rule after its adoption. Section 240.31 contains the detailed elements of the "grandfathering" provision for most railroads and § 240.33 contains the analogous provisions for railroads that conduct joint operations. Note that the railroad's duty to make a formal determination concerning the "grandfathered" operator within 36 months and the person's lack of authority to continue in service as a qualified operator beyond that date are expressly provided for in these sections.

Subpart E

Section 240.41 contains the requirement that all operators be examined at intervals of not more than three years to determine that they possess the minimum levels of vision and hearing need to operate a locomotive. Both the need for such standards and the testing interval proposed are currently employed or exceeded by virtually all large railroads and commuter operators. Thus, FRA's proposal will have a minimal impact on most operators. FRA believes that only some of the emerging regional railroads and the smaller railroads will be impacted by this proposal.

FRA proposes in this subpart to have a written document to attest to the vision and hearing examination but would permit the examination to be conducted by a wide range of trained professionals. Section 240.43 contains the acuity standards that FRA proposes for an operator's vision and hearing. In essence, FRA proposes that distant vision be 20/40 with or without the use of corrective lenses. This is the same Departmental standard required for commercial truck drivers and commercial seafarers and is similar to the recommended standards of the Association of American Railroads and the FRA's research data. It is slightly lower than the requirement for commercial pilots. FRA also proposes a field of the vision and color recognition criteria. FRA's proposed hearing levels permit the use of hearing aids and would only preclude a person who is unable to perceive 50% of auditory sounds throughout the normal range of hearing. Again FRA's proposed levels for minimum acuity levels are similar to those established for commercial truck drivers, commercial seafarers and the recommendations of AAR and FRA research.

Section 240.45 requires that the examination to measure a person's hearing and vision acuity be conducted by licensed medical service personnel such as medical doctors, physician assistants and optometrists. This section also requires that when a person needs a corrective device to meet the acuity standards that fact must be noted on the person's certification documents. The person is obligated to use the corrective device while on duty. As noted earlier, an operator who does not meet these criteria can seek a waiver of compliance under the provisions of § 240.7.

Subpart F

This subpart contains the basic requirements for conducting an evaluation of a prospective operator's "eligibility". Section 240.51 sets forth the basic requirements for obtaining the data concerning the prospective operator's prior employment behavior and his or her motor vehicle driving behavior. Railroads would have the primary responsibility for obtaining employment data but the primary obligation shifts to the prospective operator to take the actions that will result in the railroad obtaining the necessary information about driving behavior. This section contains the requirement that the railroad furnish the operator candidate with an opportunity to review and comment in writing on any poor safety performance data before the railroad reviews and evaluates it.

Section 240.52 contains the corollary duty of operator candidates to seek driving history data. Depending on state agency practices, the operator candidate may have to incur nominal fees or use existing state procedures to obtain the state's records. FRA's proposal makes it mandatory that candidates adhere to such state procedural rules. Similarly the actions needed to secure the NDR data may cause the candidates to incur minimal expenses in getting their request notarized or in complying with state procedures. FRA's proposed language does not afford the candidates latitude in such instances. Since it is possible that some operator candidates will either have obtained more than one license or never have obtained any license, FRA has included proposed provisions to address both contingencies.

Section 240.53 contains the requirement for obtaining additional information from the non-issuing state agency if the NDR check reflects a probable matching record. Since results of the NDR check will be sent to the railroad, this section places primary responsibility on the railroad to obtain the data. As with the operator candidate obligations, FRA proposes to require that the railroad abide by all state agency procedures for furnishing such information and would require the candidate to assist the railroad in obtaining the NDR identified data. This section also contains a provision for addressing instance in which a railroad is unable to obtain data after reasonable efforts to do so.

Section 240.53 and 240.55 contain the respective limitations that would apply when a railroad is faced with adverse driving history information and railroad employment records concerning a prospective operator. Both contain prohibitions against using outdated information and against relying on information that does not constitute safety performance data. As drafted, substance abuse incidents will go initially to the MRO, EAP counselor or equivalent person to determine whether the event or events were followed by an appropriate course of counseling. If the person making that determination finds an appropriate course of counseling or treatment occurred, the events will not be considered under § 240.57. If the conclusion is that successful rehabilitation is not in progress or completed, then a determination must be made about whether the candidate is suffering from psychological or chemical dependency involving the use of alcohol or drugs. If that a dependency situation exists then the candidate will be treated in the same manner provided for in § 219.405(d) and the railroad can conditionally certify the person. If no dependency is found, the points ascribable to the incidents shall be considered in accordance with the provisions of section 240.57.

Section 240.57 contains the proposal to prescribe the course of conduct the railroad must follow based on the prospective operator's safety performance record. As noted earlier, a person with a poor record who has accumulated more than six points is ineligible for certification. That ineligibility will last for a five year interval unless the person has been involved in more than a single occasion of acquiring in excess of six points. Repeated poor performance would result in a lifelong disqualification.

Section 240.59 contains the provisions for conditionally approving operator candidates with marginal records. It permits certification of individuals recovering from substance abuse dependency and those who have behaved marginally but have undergone additional training to improve their future safety performance.

Subpart G

This subpart contains FRA's proposed requirements for the training of locomotive operators. It addresses initial training of individuals who desire to become locomotive operators and the supplemental training of previously qualified operators.

Section 240.61 is structured to reflect the fact that FRA proposes to allow railroads to decide whether they have a need to train people and only when they answer in the affirmative do the requirements of this section become

applicable. Once the section becomes applicable, a railroad is required to file its training program with FRA. That filing must include a detailed description of the program and include copies of the written instructional materials being used in the course so that it will be possible to determine whether the program meets the criteria established in § 240.63. In addition, if the railroad makes a significant change in the program, FRA must be informed in writing of the change and, if appropriate, given a copy of the new or modified instructional materials or the relevant portions of such materials.

FRA plans to review and evaluate these training programs. Since prior experience has demonstrated that such review cycles can be lengthy, FRA proposes to allow a railroad that has not had an affirmative response from FRA to presume that their program has been approved. Such a presumption will take effect sixty days from the date of the program's filing with FRA. Although FRA will thereby assure that delays in the review cycle do not hinder initiation of such training programs, FRA reserves the right to revoke any approval, if it subsequently determines that the program does not comply with § 240.63. Finally this section contains two different deadlines for filing such programs in order to accommodate the fact that both existing and future programs will be effected by this rule.

Section 240.63 contains the essential elements for all locomotive operator training programs. FRA proposes to have all programs contain two distinct components. Under FRA's proposal for the classroom component, the industry tendency to use very informal, learn by watching, or unstructured on-the-job training approaches will no longer be acceptable. Railroads will still be allowed to use such methods, but they will have to be used in a more structured context and employed only in a limited effort to supplement a more formal classroom type presentation. As part of its efforts to upgrade the quality of instruction, FRA also proposes to require that the railroad formalize its selection of training personnel and ensure that these people have the requisite skills. Although the larger railroads currently appear to do an adequate job in this area, a number of the intermediate size and smaller railroads appear to have inadequate practices. It should be noted that FRA proposes to require that railroads make a special effort to train newly hired workers as well as more senior workers who are not familiar with the risks associated with train operations. In FRA's judgment it is essential that such people be educated about the proper actions to take to ensure their personal safety before allowing those people to work in close proximity to moving equipment.

FRA proposes to specify both a minimum duration for each subject matter that must be addressed and for the overall classroom component of the program. The duration factors that FRA selected reflect FRA's judgment on the minimum number of hours needed and not on optimum or necessarily desirable levels of training effort. The proposal reflects a distillation of FRA studies of this subject, its prior involvement in a training program on a large railroad and current industry programs reviewed by FRA in the context of performing recent safety assessments on a number of railroads.

FRA also proposes to establish criteria for the operational experience component of the training program that is designed to teach performance skills to the operator trainee. FRA's basic concerns are that the person actually receive experience handling trains, not simply spend time in the cab making observations and that the person experience a variety of train operation experiences, not merely log a given number of hours on a single type of train because that is the fastest way to accumulate the requisite number of operational hours. Again, FRA has set minimum duration factors with gradations to reflect FRA judgment about the minimum level of training needed based on the available data. Implicit within the proposed duration factor is an assumption that the trainees are operating on the railroad on which they will later be certified to operate and are thus continuing the historical pattern of learning both the performance skills and the physical characteristics of the territory at the same time. FRA also proposes to assure that each railroad exercise care in selecting the individuals who are responsible for providing the actual train handling/performance skill training by setting forth minimum experience levels for such instructors.

Under FRA's proposal a railroad that wanted to train a person to perform limited train service, (i.e.; operate short trains at slow speeds; the kind of trains typically found on a small railroad) would have to give that person a total of 90 hours of classroom training and 60 hours of operational training for a total of 150 hours of training. On the other end of the spectrum, a large railroad that wanted to have a person capable of operating any train on the system, would have to give that person a minimum of 150 hours of classroom training and 480 hours of operational training for a total of 600 hours of training. As noted earlier, FRA proposes to allow railroads to reduce the number of hours needed to provide a person with proper operational training by employing a simulator. This section contains the specifics of that proposal to permit substitution of simulator training for actual time in the cab of a locomotive. FRA's proposal distinguishes between types of simulators but contains a minimum level of actual train operation time regardless of the type of simulator employed. If a large railroad were to employ this training option by using the more sophisticated Type 1 simulator, the total hours of training that FRA proposes to require could be reduced by nearly 150 hours. Use of a less sophisticated simulator would also bring significant reductions in the duration of the training program.

FRA anticipates that some railroads and even some non railroad entities will provide training for locomotive operators. Both this section and section 240.21 are designed to accommodate such an approach to this training requirement.

Section 240.69 contains FRA's proposal for the supplemental training of previously qualified operators. FRA's proposal to require supplemental training is limited and is based on the passage of time, the introduction of new technology, or on a lack of familiarity with the physical characteristics of a given territory.

FRA proposes to require that locomotive operators receive two types of training based on the passage of time. The first type of such training amounts to periodic refresher training. Such supplemental education would have to occur at roughly 36-month intervals and be of at least an eight hour duration. During that period, the operator would receive instruction concerning issues relating to mechanical safety topics and proper train handling techniques. The second aspect of FRA's supplemental training proposal that is predicated on the passage of time is the need to have operators maintain familiarity with the physical characteristics of the territory over which he or she can be called upon to operate a train. Given the significance of such familiarity, FRA proposes to require that if more than twelve months have elapsed since an operator operated a train over a territory it will be necessary for that individual to receive refresher training. Supplemental training concerning physical characteristics can be accomplished by operation of a locomotive for at least one round trip on that territory or attendance at a classroom training program focused on this topic and augmented by a film depicting actual operation over that territory.

The other aspect of the supplemental training proposal is predicated on changed circumstances. The need for such training can occur either when a person is initially learning to become familiar with the physical characteristics of a territory or when new technology is introduced. FRA proposes that an individual who is attempting to learn a new territory make at least three round trips over the territory. The operator must be accompanied by a another locomotive operator or designated supervisor of locomotive operators who is already conversant with the physical characteristics of that territory. The final aspect of supplemental training involves educating operators concerning new technologies. FRA proposes to identify the only two types of changes that currently warrant inclusion in a mandatory program. Although it can be argued that a prudent railroad would want to include a wider range of technologies for retraining purposes, FRA does not believe that such prudence is the proper test for federally mandating supplemental training. FRA proceeds from the posture that use of the technology should require a significantly different method for controlling a train before mandating that retraining be given. In FRA's judgment, the use of air flow methodology for conducting train airbrake tests and the new advanced train control systems undergoing research and development meet or exceed that threshold and warrant mandatory retraining. Conversely, the introduction of new locomotive cab designs or the use of end-of-train monitoring devices do not meet that test because they basically involve continued use of the existing methods of controlling the operation of a train.

Subpart H

This subpart contains the provisions concerning the testing of an operator's knowledge. Section 240.71 establishes the requirement to perform such testing before allowing new operators to enter service and to test "grandfathered" operators within 36 months of the effective date of this rule.

Section 240.73 contains the criteria for all such tests including those required for recertification under § 240.77. FRA proposes to establish only the basic criteria for these tests. Railroads are both free and encouraged to employ more extensive testing than that which FRA proposes to require. Indeed, FRA hopes that many of the large railroads that have devised far more comprehensive testing programs will assist the other railroads that lack the resources to develop such excellent programs. The criteria FRA proposes would require some railroads to eliminate poor practices that have arisen over the course of time including the use of very brief, overly simplified exams that may be taken with open rule books as well as the use of oral exams that lack any clear structure or uniformity. FRA also proposes to strengthen the signal testing aspects of many current test programs.

FRA proposes that railroads cover at least five different subjects in their tests. FRA's list of subject matter areas to be covered by these tests may require some railroads to rethink their testing practices to a limited degree. Although many railroads have excellent operating rules tests, not all railroads have addressed such topics as compliance with Federal safety rules or personal safety practices when designing the more traditional operating rules type exams for locomotive operators. FRA also encourages railroads to consider including testing of a person's knowledge about the physical characteristics of the territory when examining a person's knowledge of train handling practices.

Section 240.75 addresses the consequences of failing an initial knowledge test. It is subdivided to focus on three different groups of persons who will encounter such tests. The first group is comprised of individuals who are initially being grandfathered into this certification program. If such a person fails their initial examination, FRA proposes to allow the railroad to permit that person to continue to operate a locomotive for a period of not more than 60 days after it is determined that the failure occurred. Within that interval, and no sooner than 30 days after the first test, the person can retake the examination and the railroad is required to provide such a retake examination. Failure of the first retake exam will result in the railroad not being authorized to permit the person to operate a locomotive until the candidate successfully passes a subsequent examination. A second retake examination may occur but may not take place sooner than 30 days after the first retake. FRA does not propose to require that a railroad provide a second retake examination. If such a second retake is afforded the person and it results in a third failure, the railroad cannot permit the person to operate a locomotive or train until the person successfully completes a full scale training program.

FRA proposes a similar set of provisions for student operators who have completed a training program and for a small miscellaneous group of other operator candidates. The pool of other candidates is primarily composed of persons who potentially would have qualified under the "grandfathered" operator concept but were excluded from the ambit of that provision by virtue of the fact that they were not working for a railroad on the effective date of the rule. It would also include those who experience a lapse in service as an operator for any variety of reasons. In these instances FRA proposes to take a more restrictive approach and preclude the person from operating a locomotive, absent direct supervision, if they fail the initial test.

Section 240.77 contains the proposed requirement that railroads administer similar tests to operators at three year intervals. As noted earlier, FRA proposes that such recertification tests, like other aspects of the recertification process, occur within 90 days of the date that the current certification period terminates.

Section 240.79 delineates the consequences of failing a recertification test. FRA will allow retesting as in the initial testing effort but would preclude railroads from permitting the operator to operate a locomotive, absent direct supervision, until successfully passing the recertification test.

Subpart I

This subpart contains a similar set of provisions to that proposed for operator knowledge but focused on the issue of the operator's train handling skills. FRA's proposed provisions for evaluating a person's train handling skills are necessarily more generalized than those for knowledge testing. In addition, they are more subjective because they necessarily entail a undefinable and unquantifiable element of judgement. FRA proposes to require that railroads assign this evaluation responsibility only to people who have actual experience performing the tasks involved. In essence, FRA proposes to continue having railroads rely on the type of experienced person typically identified in the industry as road foreman of engines or traveling engineers. FRA is not concerned about the title given the evaluator but is very concerned that the person bring the proper background to the task of making complex judgments. FRA has included a

proposed delineation of the experience levels needed for such evaluators in its definition of "designated supervisor of locomotive operators" set forth in § 240.5(d).

Section 240.81 contains the requirement to conduct a performance skill test for all operators. It contains the authority to delay the initial testing of grandfathered operators for a period of not to exceed three years.

Section 240.83 contains the criteria for testing. FRA proposes to require railroads to evaluate prospective operators under whatever conditions would be considered the most demanding type of service that the person could reasonably be expected to operate once deemed qualified. FRA's intent in this regard is to preclude railroads from oversimplifying the test conditions and utilizing test environments that really do not allow an effective assessment of the prospective operator. Of particular concern to FRA is the fact there have been instances where operators have elected for many years to perform service in positions where there were only minimal demands on their skills. Then, due to changed circumstances, they were given responsibility to operate under very demanding conditions. One fairly typical illustration of this type of problem involves a situation in which an operator elects, courtesy of seniority factors, to perform yard service for many years and then finds that the yard job is no longer available and that the new assignment requires operating heavy tonnage trains over undulating topography at slow to moderate speeds. FRA proposes to have railroads evaluate that operator on the more demanding service, if in fact the operator is eligible to perform that duty. FRA's intent is not to require railroads to conduct an exhaustive analysis to select the most arduous testing conditions tailored to each of their operators. Its intent is to compel railroads to exercise reasonable care in selecting their test trains so that they are evaluating operators under conditions that constitute fairly typical circumstances that the railroad would expect the operator to encounter in the normal course of events.

Once the railroad has selected the train or trains that provide the proper evaluation mechanism, FRA proposes to permit the person making the evaluation considerable latitude in making the necessary assessment of the operator. FRA's proposed test criteria only require that the test be of sufficient duration to permit an effective evaluation. In some circumstances that duration period could be as brief as one hour or under other circumstances could last for several hours. FRA has not proposed a rating system for the evaluators or even a check list of the particular actions that warrant careful attention. However, the need for more detail in the test criteria is a subject that FRA is particularly interested in receiving comment on. FRA's decision not to propose a specific guide or checklist for such evaluations is based on the fact that many railroads have devised such guidance materials for their personnel. Review of a number of these guides has convinced FRA that there is considerable diversity of opinion about how to approach this topic and FRA has not found evidence that any particular approach is more or less effective than any other. In general what the current individual railroad guides do is provide a reminder to consider in more or less detail five basic subjects during the evaluation. Depending on the individual railroad, more or less detail and emphasis is given to the following areas: operating rules and practices; equipment inspection and testing; train handling procedures; familiarity with the physical characteristics of the territory; and, to a limited degree, compliance with Federal safety rules. FRA is not proposing use of a specific Federally devised form or, for that matter, proposing use of any form. FRA only proposes to require that the designated supervisors document the relevant data on which they base their evaluation. The level of detail for that documentation is contained in § 240.109. This section also allows a railroad to use a simulator for conducting these tests.

Section 240.85 identifies the consequences of failing an initial performance skill test. This section also distinguishes between the three groups of prospective operators: grandfathered, student and other candidates. Although FRA proposes to permit all people more than a single opportunity to pass this test, the consequence of failure would serve to immediately bar all prospective engineers from operation of a locomotive unless operating under the direct supervision of a qualified operator. For grandfathered operators, FRA proposes to permit retesting 15 days after the initial test. This brief interim period should provide sufficient opportunity for the applicant to improve his or her skills. It will also minimize the financial impact for that operator. FRA does not propose to permit the grandfathered operator to continue running a locomotive without supervision during that interval because the safety implications of failing such a test are too drastic and immediate from a safety perspective. If the grandfathered operator fails a retest, FRA proposes to authorize railroads to provide a third chance to pass the test. This second retest can be given at the railroad's option. If the railroad does provide the second retest FRA proposes to require that the second retest occur within no less than 30 days after the first retest. FRA proposes to give other candidates only two chances to pass the test. In these situations the second test must occur within 60 days of the initial test. Repeated test failures will require that the person attend a training program that complies with this rule prior to attempting passage of a second round of testing.

Sections 240.87 and 240.89 require recertification testing on a three year basis and set forth the consequences of failing such recertification tests. Again because of the safety implications of test failure, no railroad will be authorized toallow a person who fails such a test to operate without supervision until they successfully pass the retest. FRA only proposes to permit two opportunities for passing the recertification tests before imposing a duty to obtain retraining prior to seeking additional testing.

Subpart J

This subpart contains FRA's proposals for monitoring and controlling the in-service behavior of certified locomotive operators. In § 240.91 FRA proposes to make unlawful, as a matter of Federal regulation, three types of locomotive operator conduct that are prohibited by carrier operating rulesbut are not currently cognizable as violations of Federal regulation. In each instance FRA is confronted with potential action or inaction by an operator about control of a train which clearly is the direct and immediate responsibility of the locomotive operator and which would reflect a serious failure to be attentive to significant operational safety concerns. These are: (1) Operating a locomotive or train at excessive speed; (2) permitting a locomotive or train to pass any signal that requires a complete stop before reaching it; and (3) failing to comply with a mandatory directive and entering a segment of track without authority.

FRA proposes to consider speed which exceeds the limits established by timetable, train order or similar mandatory directive by 10 mph or more to be excessive. Similarly, operating a locomotive or train at a rate which exceeds the allowable speed by 50% regardless of the threshold value for speed would be considered excessive. In this context signals would encompass the same wide range of devices currently employed by the industry and is not limited to automatic roadway signals regulated by FRA in Parts 233, 235, and 236 of the FRA regulations.

Section 240.91 also contains FRA's proposed prohibition against requiring service in excess of that which an operator is allowed to perform by virtue of his or her class of service or familiarity with the physical characteristics of the territory. This section also imposes a duty on an operator to alert the railroad to his or her limitations when being scheduled to operate trains. This provision and § 240.25 address those situations in which a railroad has elected to impose additional limitations on the service a person can perform by providing a mechanism to reinforce such railroad decisions when they are based on a safety rationale.

Section 240.93 contains the requirement that railroads monitor in a specific manner the routine performance of operator conduct. It contains a provision regarding what might be described as check rides and unannounced, covert testing to ensure compliance with significant operational safety requirements. As formulated by FRA it would ensure that each operator receives, on an annual basis, both a check ride and at least one covert unannounced operational test each year.

FRA has reserved § 240.95 for the possibility that it will be convinced by commenters to include in the final rule a requirement that railroads conduct a program of constantly monitoring the eligibility status of certified operators. FRA has included tentative wording for such a requirement to aid commenters in focusing their discussion of the wisdom of adopting such a requirement.

Subpart K

This subpart contains the program records that would be required by this proposed rule. There are basically two typesof documents involved under FRA's proposal. The first is a certificate similar to the motor vehicle driving license carried by most adults. The second involves a variety of file type materials that would contain detailed information that forms the basis for the decision to issue or deny a person the certificate. FRA proposes a uniform period of five years for retention of these records with the exception of the certificate which would have no specific retention factor since its viable duration is obvious on its face.

Section 240.101 contains the proposed requirement to have each railroad issue a certificate to its operators and to have each operator carry or have in his or her possession that certificate while on duty. It also imposes a duty on the operator to display the certificate upon request by proper authorities.

Section 240.105 sets forth the proposed criteria for the document FRA proposes to have each locomotive operator carry while on duty. Basically FRA is proposing that a wallet sized document with the relevant information be issued by each railroad. Among the data would be information about a variety of possible limitations that have been placed on the operator. These could include limits on the operational territory and the need to use a device to improve audio or visual acuity. This section also contains a prohibition against efforts to falsify that certificate.

Section 240.105 also contains the basic requirement that railroads have available the data they rely on when deciding to issue or deny a person a certificate. This section also contains a prohibition against efforts to falsify that supporting data.

Section 240.107 requires railroads to identify individuals who may fit into one or more of three different categories. The first requirement is to identify the individuals the railroad considers to be its supervisor or supervisors of locomotive operators. The second requirement would be to identify the person or persons who will be authorized to sign the railroad's locomotive operator certificates. The third would be to identify the operators who will be deemed qualified under the grandfather provisions of this rule.

Section 240.109 contains a specific set of proposed criteria for documenting the testing data that each railroad would be relying on in its decision making.

Subpart L

Subpart L contains the procedures for resolving allegations that a railroad improperly refused to grant aperson a certification as a locomotive operator or denied that individual recertification. FRA's proposal for these procedures reflects the basic conceptual premise that the certification system being presented permits railroads to have their own more selective criteria for locomotive operators provided that such criteria exceed those established in this rule.

One consequence of that conceptual foundation is that there may be potential bases for allegations that a railroad improperly tested a person to determine acuity levels,knowledge or performance skills which are not properly brought to FRA for review. For example, assertions that an individual railroad's knowledge testing contained a racial bias that discriminated against one or more minorities would constitute achallenge to the program more appropriately resolved by the legal mechanisms designed to handle equal employment opportunity issues. Similarly, a challenge to a determination that an operator lacked the requisite performance skills based on a record of repeated instances of tardy operation of trains according to carrier operating schedules would constitute a challenge that is more appropriately resolved through the dispute resolution procedures of the Railway Labor Act.

FRA proposes to limit its review to those instances in which a railroad denies or fails to certify a person either initially or at a reecertification date because the railroad has decided that the individual fails to meet FRA criteria. To facilitate that review FRA proposes to require railroads which are relying on an individual's failure to meet the minimum criteria established by this regulation as the basis for denying certification to state the basis for their determination. That statement must be provided in writing to the individual being deemed unfit and must identify the specific manner in which that individual fails to meet FRA'scriteria. Railroads would be required to furnish that data within 30 days of the decision not issue a person the certificate.

FRA proposes to employ a relatively simple, efficient and expeditious process for resolving these disputes. Under section 240.111 FRA proposes to create a special internal organization to resolve disputes of this nature. Although actual creation of this organization requires issuance of an internal FRA order, FRA has decided to reflect the existence of the organization and its general composition in this proposed rule to foster better public comprehension of the system FRA envisions under this regulation.

Section 240.113 contains the actual procedures that an aggrieved certification candidate would follow under this proposal. In essence, FRA would require that the person petition FRA for review and initiation of that process would merely require the individual to furnish a written description of the facts and circumstances that serve as the basis for the allegation that the railroad improperly denied certification.

Section 240.115 contains the procedures that FRA would follow upon receipt of the petition. FRA anticipates that most of these disputes will be very

straightforward matters. Thus, FRA proposes to furnish the railroad with a copy of the person's petition and then give the railroad a 30 day response interval. Based on that written record and perhaps a field investigation by FRA regional staff, the FRA review panel will make a decision on the matter. The decision will take the form of either a grant or denial of the petition. Where granting a petition, the FRA review panel will issue an order requiring that a certificate be issued.

Section 240.117 gives the railroad or individual a right to a formal hearing in the proceeding after FRA has made an initial determination. Again very simple procedures are being proposed. Because both the railroad and the individual may have reason to contest the hearing officer's decision, both would have the right to participate in the hearing and any subsequent appeal. Section 240.119 contains the procedures for such hearings. Since FRA anticipates that such hearings only will occur in instances where there are significant factual disputes, FRA proposes to make such hearings relatively formal proceedings. Unlike current FRA procedures for rulemaking and waiver proceedings, these hearings would employ the use of testimony from sworn witnesses, rules of evidence, and cross-examination of witnesses. Following such a hearing, a party aggrieved by the hearing officer's decision could appeal to the FRA Administrator.

Appendices

FRA proposes to include at least three appendices to this rule. In the final rule Appendix A would contain a penalty schedule similar to that FRA has issued for all of its existing rules. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. (see 5 U.S.C.553(b)(3)(A)). Nevertheless interested parties are welcome to submit their views on what penalties may be appropriate.

FRA proposes to place in Appendix B the procedures that a prospective operator must follow to furnish the railroad with information about his or her motor vehicle driving record. FRA also proposes to place in Appendix C the list of participating state motor vehicle licensing agencies that can directly furnish data to operator candidates. Since, as noted earlier, there are multiple advantages when operator candidates can complete the task of obtaining data by contacting a single entity, FRA proposes to make that the preferred practice under this rule.

FRA has reserved a space for a fourth possible appendix on possible performance testing criteria. In this notice FRA has provided only an outline of what types of concerns the appendix might cover if FRA becomes convinced that the need for standardization requires greater FRA intervention. As noted earlier, FRA is not proposing to set detailed criteria for the actual conduct of the performance skill tests. However, this appendix would provide an example of how a form could be devised to assist in promoting uniformity in the application of this test.

Regulatory Impact

E.O.12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it initiates a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this proposed rule. It may be inspected and copied at Room 8201, 400 Seventh Street, SW., Washington, DC. Copies may be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation identifies total estimated potential benefits, from avoidance of accidents and incidents, of $325 million and total estimated costs of $66 million over a twenty year period that can be associated with adoption of this proposal. Both benefits and costs are stated at a discounted present value (10% discount factor) for a program life of 20 years using constant 1988 dollars. The 20 year estimated program life appears reasonable given the relatively long tenure of locomotive operators, the useful life of any equipment used for this rule's purposes and the recurring costs assumed over the life of the program.

There are two points that bear mention concerning FRA's economic evaluation. In determining the quantifiable benefits from the proposed rule, FRA selected accidents that occurred during the period 1977 through 1987 which were caused by human factors that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Within the 18,140 human factor caused accidents reported during the period, FRA identified a total of 6,980 train accidents that resulted in 61 fatalities, 1482 personal injuries and some $325 million in property damage which can be ascribed to poor locomotive operator performance. Within those accidents were 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and an additional 171 due to improper use of the independent brake valve. These appear to stem from poor performance curable through improved training. Also within that total are some 1649 accidents attributed to excessive speed and 3375 caused by excessive in-train force levels that may not be as directly related to training. The difficulty that FRA encountered in analysis of the data involves the absence of specific information that indisputably identifies inadequate training as a causal factor.

This data problem resulted in FRA encountering difficulty in reliably estimating a specific effectiveness level for accident avoidance that could be employed in estimating the benefits associated with adoption of this rule. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. In essence, accident investigation data in the railroad industry at times reflect a conclusion that locomotive operators did not take effective action. The investigations generally do not isolate whether that stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although data limitations do not make it possible for FRA to reliably estimate a specific level of effectiveness for this rule, it would only require about a 20% realization of the potential benefits to make this proposed rule economically justified. FRA believes that such a level of realization is achievable.

Regulatory Flexibility Act

FRA certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. These rules would apply to railroads and individuals seeking to operate locomotives for such railroads. Although a substantial number of small railroads would be subject to this regulation, the economic impact of this rule would not be significant for several reasons. Small railroads historically have not elected to train their own operators and thus generally would not incur the training costs associated with this proposed rule.

Thus, the only costs that a small railroad normally would incur are those associated with routine administration of the certification program. Since small railroads individually and in the aggregate employ only a few locomotive operators, FRA concludes that this economic impact would not be significant. As noted, FRA estimates that roughly 34,000 locomotive operators are currently in service. Each of these individuals could be expected to incur some nominal expenses under this rule. Every three years, each operator would be required to pay a fee of less than $10 for furnishing motor vehicle driver's license data. This fee reflects the costs associated with getting a document notarized and state motor vehicle agency documentation charges.

The proposed rule would have no direct impact on small units of government, businesses or other organizations. State rail agencies will be free to participate in the administration of this program but are not required to do so. State motor vehicle driver's licensing agencies can anticipate on a nationwide basis that they will annually receive 10,000 additional requests for motor vehicle driver's licensing data. Since such state agencies' costs are reimbursed through fees paid by the person making the data request, this proposed rule would not have a direct adverse economic impact on these agencies.

FRA specifically requests comment on the impact of this proposed rule on small entities. It welcomes any suggestions for incorporating alternate strategies to further reduce any impact on small railroads.

Paperwork Reduction Act

There are collection of information requirements contained in this proposed rule. In accordance with the Paperwork Reduction Act of 1980, the proposed requirements are being submitted to the Office of Management and Budget for approval. FRA has endeavored to keep the burden associated with this proposal as simple and as minimal as possible for such a program. For some entities that already have similar programs in place, the burden created will be minimal. For others, the burden could be extensive.

There are significant variables in the time required to comply with these requirements. Thus a total overall estimate of the reporting burden is not easily arrived at and could be seriously misleading. FRA, therefore, has elected to identify each of the proposed sections that contain information collection requirements and indicate the time estimated to fulfill each requirement. All of these estimates include time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Proposed section	Brief description	Estimated average time
240.7	Petition for a waiver of compliance	1 hour each.
240.11, 240.21 & 240.107	Certification & Recertification	1 hour each person.
240.31 & 240.107	Grandfather Certification	1 hour each person.
240.41 & 240.45	Medical Examiner Certification	1 hour each person.
240.51 & Appendix B	Obtaining and Reviewing prior employment information	1 hour per person.
	Obtaining motor vehicle driving records	3 hours per person.
	Review and Verification of motor vehicle record submitted by State agency and NDR.	1 hour per person.
	Written response to adverse record	1 hour each.
240.57 & 240.59	Evaluation of prior conduct information	2 hours each.
240.61	Training program approval	10 hours per railroad.
240.65 & 240.67	Development of supplemental training programs	40 hours per railroad.
240.73	Development of knowledge test	40 hours per railroad.
240.71, 240.75, 240.77 & 240.107	Taking that knowledge test	2 hours per person.
240.81, 240.85, 240.87 & 240.107	Conduct of skill performance test	6 hours per person.
240.93 & 240.107	Conduct of operational monitoring program	6 hours per person.
240.101	Design of Certificate	30 minutes per railroad.
	Filling out the certificate	1 hour per person.
240.103	Maintain supporting information	30 minutes per person.
240.105	Identification of supervisors	1 hour per railroad.
240.113	Review petition	30 minutes per person.
240.115	Railroad response to Review Board	10 hours each.
240.117	Formal Hearing Requests	5 hours each.

FRA solicits comments on the accuracy of the FRA estimates, the practical utility of the information, and alternative methods to obtain this information that might be less burdensome. Persons desiring to comment on this topic should submit their views in writing to FRA and to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: FRA Desk Officer, Washington, DC 20503.

The costs estimated to be associated with the proposed information collection requirements are contained in the draft regulatory evaluation. As stated earlier, FRA solicits comments and will consider alternative procedures for obtaining information concerning a certification candidate's driving record, specifically in accessing the National Driver's Register. FRA is particularly interested in ideas that would minimize use of the NDR during the early years of this program. For example, should FRA modify the requirement for performing such NDR checks to only those instances in which the operator candidate remains eligible for certification based on the data available from the state or states of licensure. Viable commenter suggestions will be considered together with the alternatives identified to date including: (1) Employing a longer interval for recertifications (e.g. five years instead of three years); (2) reliance on voluntary disclosure or evidence of insurability; or (3) a combination of alternatives (e.g. use of voluntary disclosure by the candidate with random checks of the NDR or some other method to police the validity of self reporting).

Environmental Impact

FRA has evaluated this proposed regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and related directives. This proposed regulation meets the criteria that establish this as a non-major action for environmental purposes.

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Federalism Implications

This proposed rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 240

Railroad safety, Railroad operating procedures.

Request for Public Comments

FRA proposes to adopt a new part 240 of title 49 of the Code of Federal Regulations, as set forth below. FRA solicits comment on all aspects of this proposed rule whether through written submissions, or participation in the public hearings, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposal

Therefore, in consideration of the foregoing, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

1. By revising Part 240 to read as follows:

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE OPERATORS

Subpart A—General

Sec.
240.1 Purpose and Scope.
240.3 Applicability.
240.5 Definitions.
240.7 Waivers.
240.9 Consequences for Noncompliance.

Subpart B—Railroad Responsibilities

Sec.
240.11 Qualified Operators Required.
240.13 Designation of Classes of Operator Services.
240.15 Exceeding Classification Limits Prohibited.
240.17 Additional Limitations on Service.
240.19 Familiarization With Physical Characteristics.

Subpart C—Basis for Qualification Determinations

Sec.
240.21 Qualification Determinations Required for Operators.
240.23 Qualification Determinations Required for Operators Performing in Joint Operations Territory.
240.25 Reliance on Determinations Made by Other Railroads.
240.27 Reliance on Other Qualification Requirements.

Subpart D—Interim Qualification Presumed

Sec.
240.31 Interim Presumption of Qualifications (grandfathering of existing operators).
240.33 Interim Presumptions for Joint Operations.

Subpart E—Medical Qualification Decisions

Sec.
240.41 Determinations Required.
240.43 Acuity Standards.
240.45 Examinations Required.

Subpart F—Eligibility Decisions

Sec.
240.51 Railroad's Duty to Obtain and Evaluate Information Concerning Prior Conduct.
240.52 Individual's Duty to Furnish Motor Vehicle Operator Licensing Records.
240.53 Limitations on Consideration of Motor Vehicle Licensing Data.
240.55 Limitations on Consideration of Railroad Employment Data.
240.57 Railroad Evaluation of the Consequences of Adverse Information.
240.59 Conditional Certifications.

Subpart G—Training Programs

Sec.
240.61 Structure and Approval of Training Programs for Student Locomotive Operators.
240.63 Content and Duration of Student Training Programs.
240.65 Supplemental Training Required.
240.67 Structure, Duration, and Content of Supplemental Training Programs.

Subpart H—Testing Operator Knowledge

Sec.
240.71 Initial Testing Required.
240.73 Criteria for Knowledge Tests.
240.75 Consequences of Failing Initial Testing.
240.77 Recertification Testing Required.
240.79 Consequences of Failing Recertification Test.

Subpart I—Performance Skills Testing of Operators

Sec.
240.81 Initial Testing Required.
240.83 Criteria for Initial Testing.
240.85 Consequences of Failing Initial Testing.
240.87 Recertification Testing Required.
240.89 Consequences of Failing Recertification Testing.

Subpart J—Unlawful Behavior by Operators and Operational Monitoring Requirements

Sec.
240.91 Operator Responsibilities.
240.93 Operational Monitoring Requirements.
240.95 Reserved for Possible Procedures for Oversight Responsibilities; Revoking or Suspending Certificates.

Subpart K—Program Documentation

Sec.
240.101 Criteria for the Certificate.
240.103 Supporting Documents Required.
240.105 Identification of Qualified Persons.
240.107 Documenting Certification Tests.

Subpart L—Dispute Resolution Procedures

240.111 Review Board Established.
240.113 Petition Requirements.
240.115 Processing Qualification Review Petitions.
240.117 Request for a Hearing.
240.119 Hearings.
240.120 Appeals.

Appendix A—Schedule of Civil Penalties [Reserved]

Appendix B—Procedures for Obtaining NDR Data

Appendix C—Identification of State Agencies That Perform NDR Checks

Appendix D—Potential Performance Test Criteria [Reserved]

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342 and 1.49 (m).

Subpart A—General

§ 240.1 Purpose and scope.

This part prescribes minimum requirements for the training, qualification, and certification of all operators of locomotives. Each railroad may prescribe additional or more stringent requirements for its locomotive operators.

§ 240.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) rapid transit operations in an urban area that are not connected with the general system of transportation; and

(2) a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

§ 240.5 Definitions.

As used in this part—

(a) *Alcohol* means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture or preparation containing ethyl alcohol.

(b) *Class Instructor* is a person who has been selected by a railroad to teach others and who has demonstrated to that railroad a knowledge of the subjects under instruction adequate to fulfill the responsibilities of that position.

(c) *Controlled Substance* has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301-1316).

(d) *Current Employee* is any employee with more than one year of experience in transportation service on that railroad or another railroad.

(e) *Designated Supervisor of Locomotive Operators* is a person who:

(1) Is a supervisory employee of the railroad.

(2) Is fully qualified to operate trains in road service, and

(3) Has a minimum of three years experience as a fully qualified locomotive operator performing road train service.

(f) *EAP Counselor* means a person qualified by experience, education or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

(g) *FRA Representative* means the Associate Administrator for Safety, FRA, and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under part 212 of this chapter.

(h) *Instructor Operator* means a person who:

(1) Is a qualified locomotive operator under this part;

(2) Has been selected by the railroad to teach others proper train handling procedures; and

(3) Has demonstrated an adequate knowledge of the subjects under instruction.

(i) *Joint Operations* means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of:

(1) Contractual arrangement between the railroads,

(2) Order of a governmental agency or a court of law, or

(3) Any other legally binding directive.

(j) *Knowingly* means having actual knowledge or the knowledge presumed to be possessed by a reasonable person who acts in such circumstances including knowledge obtained from the exercise of due care.

(k) *Locomotive* means a piece of on-track equipment, other than hi-rail or specialized maintenance equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passengers or both; or

(3) Without propelling motors but with one or more control stands.

(l) *Locomotive operator* means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

(1) a person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as defined in 49 CFR 218.5 (f); or

(2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

(m) *Medical examiner* means a person licensed as a doctor of medicine, doctor of osteopathy, or as a physician's assistant.

(n) *Newly Hired Employee* is any person who is hired with no prior railroad experience, or one with less than one year of experience in transportation service on that railroad or another railroad.

(o) *Railroad* means all forms of non-highway ground transportation that run on rail or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(p) *Railroad Officer* means any supervisory employee of a railroad.

(q) *Segment* means any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer.

(r) *Type 1 Simulator* means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially illustrates the route to be taken;

(3) Graphically and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train-force levels throughout the train; and

(4) Is computer enhanced so that it can be programed for specific train consists and the known physical characteristics of the line pictorially illustrated.

(s) *Type 2 Simulator* means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train-force levels throughout the train; and

(4) Is computer enhanced so that it can be programed for specific train consists and the known physical characteristics of the line pictorially illustrated.

§ 240.7 Waivers.

(a) Any person may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, he or she may grant the waiver subject to any conditions he deems necessary.

§ 240.9 Consequences for noncompliance.

(a) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250, but not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a

separate offense. Appendix A contains a schedule of civil penalty amounts used in connection with this rule.

(b) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety sensitive service in accordance with part 209 of this chapter.

(c) Any person (including a railroad, and any manager, supervisor, official, or other employee or agent of a railroad) who knowingly and wilfully falsifies any record required by part in violation of § 240.103 or § 240.105 may be subject to criminal penalties under the provisions of 45 U.S.C. 438.

Subpart B—Railroad Responsibilities

§ 240.11 Qualified operators required.

(a) After _____, no railroad subject to this part shall permit or require any person to operate a locomotive unless that person is certified as a qualified operator under the provisions of this part and has been issued a certificate that complies with the provisions of § 240.101.

(b) At an interval of not to exceed thirty six months, each railroad shall recertify that an individual is a qualified locomotive operator. That interval shall be measured from the date of the initial certification or from the date of each subsequent recertification.

(c) If a railroad relies on a certification made by another railroad, under the provisions of subpart C of this part, the interval shall be measured from the date the first railroad rendered its decision.

(d) Except where interim determinations may be made under subpart D of this part, in order to certify or recertify any person as a qualified operator, each railroad shall make the determinations required by subpart C of this part.

§ 240.13 Designation of classes of operator services.

(a) Each railroad shall designate in its certificate which of the five classes of operations, provided for in paragraph (b) of this section, that it determines an individual is qualified to perform.

(b) There shall be five classes of qualified operators:

(1) Unlimited train service operators,

(2) Terminal train service operators,

(3) Restricted train service operators,

(4) Locomotive servicing operators, and

(5) Student operators.

(c) The following operational constraints apply to each class of operator certificate:

(1) Unlimited train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them during any train operations including those that exceed the limitations for movements prescribed for Terminal and Limited train service operators.

(2) Terminal train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them during operations that are limited to switching cars, making up and breaking up trains, and the movement of trains where the movements do not exceed the definition of a yard or transfer train movement contained in 49 CFR 232.13(e)(1).

(3) Restricted train service operators may operate locomotives singly or in multiples and may move them with or without cars coupled to them provided that during operations:

(i) Speeds do not exceed 20 mph;

(ii) No more than 30 cars are coupled to the locomotive(s) at any one time; and

(iii) No more than one train is being operated on the same line segment.

(4) Locomotive servicing operators may only operate locomotives singly or in multiples but may not move cars.

(5) Student operators may only operate under direct and immediate supervision of an instructor operator.

§ 240.15 Exceeding classification limits prohibited.

No railroad shall permit or require a certified locomotive operator to perform a type of service that exceeds the limits as set forth in § 240.13 for his or her operational classification.

§ 240.17 Additional limitations on service.

(a) Each railroad is authorized to impose additional operational restrictions on the service a qualified train service operator may perform beyond those identified in § 240.15.

(b) No railroad shall permit or require a locomotive operator to operate a locomotive or train that would cause that person to exceed such additional operational restrictions imposed by the railroad.

§ 240.19 Familiarization with physical characteristics.

(a) No railroad shall permit or require a certified locomotive operator to operate a locomotive or train over its operational territory or any segment of that territory unless that person has demonstrated familiarity with the physical characteristics of the relevant operational territory.

(b) The following actions constitute demonstrating familiarity with the physical characteristics:

(1) Operation of trains over the entire territory prior to the effective date of this rule (for operators covered by subpart D) or as part of a training program (for student operators), provided that no more than one year has elapsed since the person last operated a train over the territory; or

(2) Attendance at a supplemental training program that complies with § 240.67(a).

Subpart C—Basis for Qualification Determinations

§ 240.21 Qualification determinations required for operators.

(a) Except where the interim certification permitted by subpart D of this part applies, prior to certifying any individual as an operator for any class of service, each a railroad shall determine:

(1) That the individual meets the visual and hearing acuity standards of § 240.43; and

(2) That the individual meets the eligibility requirements of § 240.57;

(b) In addition to complying with paragraph (a) of this section, prior to certifying any individual as a qualified locomotive servicing operator or any class of train service operator, each railroad shall determine:

(1) That the individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.71 or § 240.77;

(2) That the individual has the necessary operating performance skills which have been established for the class of service which that person will be performing, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.81 or § 240.87; and

(3) That the individual is familiar with the physical characteristics of the territory on which he or she will operate in accordance with the requirements of § 240.19; and

(4) Except with regard to operators who are being recertified, that the individual has successfully completed a training program under § 240.63 for the class of service he or she is being certified for.

(c) A railroad may certify a student operator as either a locomotive servicing operator or a train service operator without further review of their medical or driver records required under paragraph (a) of this section if:

(1) The person successfully completed a training program that complies with §§ 240.61 and 240.63; and

(2) A period of not more than twenty-four months has elapsed since the student operator certification was issued.

§ 240.23 Qualification determinations required for operators performing in joint operations territory.

(a) Each railroad that is responsible for controlling the conduct of joint operations with another railroad may certify a person as a qualified locomotive operator for the purposes of joint operations either by making the determinations required by § 240.21 or by relying on the certification issued by another railroad under that section.

(b) If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:

(1) That the person has been certified as a qualified operator under the provisions of this part by the railroad which employs that individual;

(2) That the person certified as a locomotive operator by the other railroad has the necessary knowledge concerning the controlling railroad's operating rules;

(3) That the person certified as a locomotive operator by the other railroad has the necessary operating skills concerning the joint operations territory; and

(4) That the person certified as a locomotive operator by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory.

§ 240.25 Reliance on determinations by other railroads.

After ____, any railroad that is considering certification of an individual as a qualified operator may give full faith and credit to determinations made by another railroad concerning that person's qualifications provided that:

(a) Those determinations are current within the provisions of § 240.11;

(b) The person receives training on and visually observes the physical characteristics of the new territory in accordance with § 240.67; and

(c) The person has the necessary knowledge concerning its operating rules.

§ 240.27 Reliance on other qualification requirements.

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this Part, that a locomotive operator is a qualified operator provided it determines that:

(1) The operator is employed by the Canadian railroad; and

(2) The operator meets or exceeds the qualifications standards of the Canadian Transport Commission for such service.

(b) Any Canadian railroad that is required to comply with this regulation may certify that a locomotive operator is a qualified operator for the purpose of compliance with this part provided it determines that:

(1) The operator is employed by the Canadian railroad; and

(2) The operator meets or exceeds the qualifications standards of the Canadian Transport Commission for such service.

Subpart D—Interim Qualification Presumed

§ 240.31 Interim presumption of qualifications (grandfathering of existing operators).

(a) Each railroad in operation on _____ (the effective date of this rule), may certify that any individual employed by it on that date is a "qualified operator" for the purpose of compliance with this part, provided that the railroad:

(1) Has previously considered that person qualified to operate a locomotive on the basis of that person's training or experience; and

(2) Identifies that person in accordance with § 240.107, including identification of the class or type of service that person is considered qualified to perform in accordance with those established in § 240.13.

(b) No railroad shall permit or require a grandfathered operator to perform locomotive or train service duties after that date (i.e., 36 months after the effective date of this rule) unless that person has been determined to be qualified in accordance with procedures that comply with § 240.21.

§ 240.33 Interim presumptions for joint operations.

(a) Each railroad which controls joint operations and is in operation on the effective date of this rule, may certify that an individual is a qualified operator for joint operational purposes provided that:

(1) This person is employed by another railroad on that date;

(2) This person is deemed by the employing railroad to be a "qualified operator" under the provisions of this part;

(3) The railroad responsible for the control of the joint operations has previously considered this person qualified to operate a locomotive on its trackage; and

(4) The railroad identifies this person in accordance with § 240.107.

(b) No railroad shall permit or require an operator certified under paragraph (a) of this section to perform locomotive or train service after _____ (i.e., 36 months after the effective date of this rule) unless that person has been determined to be qualified in accordance with the requirements of subpart C of this part.

Subpart E—Medical Qualification Decisions

§ 240.41 Determinations required.

(a) Each railroad shall determine that any individual it certifies under § 240.11(a) to be a qualified locomotive operator has visual acuity and hearing acuity that meets or exceeds the levels prescribed in § 240.43.

(b) In order to make the determination required under paragraph (a) of this section, the certifying railroad shall possess a medical examiner's certificate that the individual has been medically examined and meets these acuity standards.

§ 240.43 Acuity standards.

(a) Each locomotive operator shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses, or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of signals.

(b) Each locomotive operator shall have hearing acuity that meets or exceeds the following thresholds:

(1) If tested by use of an audiometric device (calibrated to American National Standard Z24.5–1951), the person does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid; or

(2) If tested without use of an audiometric device, the person perceives a forced whisper in the better ear at not less than 5 feet with or without use of a hearing aid.

§ 240.45 Acuity examinations required.

(a) Any examination required for compliance with § 240.43 shall be performed by a medical examiner except that

(1) A licensed optometrist may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed audiologist may perform the portion of the examination that pertains to hearing acuity.

(b) The examination required for compliance with § 240.41 shall be performed within 90 days preceding and at the same intervals as that prescribed for the initial certification and any subsequent certifications made in compliance with § 240.11.

(c) The results of the examination shall be documented in writing and either the original or a copy shall be maintained by the railroad under the provisions of § 240.105.

(d) If the examination discloses that the person needs either corrective lens and/or a hearing aid to meet the thresholds acuity levels established in § 240.43, that fact shall be noted on the certificate issued under the provisions of § 240.101 and the operator shall wear the relevant device while operating a locomotive or train.

Subpart F—Eligibility Decisions

§ 240.51 Railroad's duty to obtain and evaluate information concerning prior conduct.

(a) Each railroad shall obtain information concerning the prior conduct of an individual before making a certification or recertification decision under subpart C of this part. The information shall include data concerning that person's prior conduct as a railroad employee and the prior conduct of that individual as an operator of a motor vehicle during the 60 months preceding this evaluation.

(b) Nothing in this section shall be deemed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a qualified locomotive operator.

(c) Each railroad shall evaluate the information obtained in accordance with paragraph (a) of this section and determine that any person it certifies under the provisions of subpart C as a qualified operator meets the eligibility requirements prescribed in § 240.57.

(d) Each railroad shall review the information it has compiled concerning a prospective operator's conduct as its employee and/or the information furnished by any other railroad, if the prospective operator was employed by any another railroad.

(e) All information concerning an individual's prior railroad employment conduct that a railroad will consider in making an eligibility determination under this subpart shall be reduced to writing prior to its being considered by the railroad.

(f) Each railroad shall review:

(1) The information compiled by any state agency that issued or reissued the prospective operator a motor vehicle driver license in the last five years and furnished by the agency in accordance with § 240.52(b)(1);

(2) The information furnished as the result of the National Driver Register check performed in accordance with § 240.52(b)(2); and

(3) The information furnished as the result of compliance with paragraph (g) of this section, if the National Driver Register check reveals the existence of additional information, provided by a state agency other than the state agency or agencies that issued the prospective operator a license within the last 5 years which potentially relates to the prospective operator.

(g) If it receives information from a driver licensing agency or the National Highway Traffic Safety Administration, as the result of performance of a National Driver Register check in compliance with § 240.52(b)(2), that additional information may exist in the files of a state agency not contacted under § 240.52(b)(1) concerning a person being considered for certification or recertification, a railroad shall

(1) Request, in writing, that the chief of the driver licensing agency or agencies which compiled the information provide a copy of that agency's available information concerning the prospective operator to the railroad;

(2) Take any additional action required by State or Federal law to obtain that additional information concerning the prospective operator's driving record; and

(3) Upon receipt of that additional information, verify that the information does relate to the prospective operator through comparison of physical description, photographs or handwriting comparisons.

(h) Prior to evaluating any records concerning prior conduct by an individual obtained in compliance with this section, each railroad shall give the person seeking to be certified an opportunity to review such record or records if that record(s) contains information of the type identified in §§ 240.53 and/or 240.55 which could provide a basis for determining that the individual does not meet to eligibility criteria of § 240.57.

(i) Any person who must be given access to a record or records under paragraph (h) of this section shall be given an opportunity to comment on that record(s) in writing, if the person so desires prior to the railroad's evaluation of the record(s). Any such comment shall be retained by the railroad in accordance with § 250.103.

240.52 Individual's duty to furnish motor vehicle operator licensing records.

(a) Each person seeking certification or recertification under this part shall:

(1) Take the actions required by paragraphs (b) through (f) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent, required by State or Federal law to make information concerning his or her driving record available to that railroad.

(b) Each person seeking certification or recertification under this part shall:

(1) Request, in writing, that the chief of the driver licensing agency, identified in paragraph (c) of this section, provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other state or states that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 in accordance with the procedures contained in Appendix B unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix C.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix C, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) Any person who has never obtained a motor vehicle driving license shall notify the railroad of that fact in writing and is not required to comply with the provisions of paragraph (b).

(g) The request required for compliance with paragraph (a) of this section shall be performed within the 90 days preceding and at the same interval as that prescribed for the initial certification and any subsequent certifications made in compliance with § 240.11 of this part.

§ 240.53 Limitations on consideration of motor vehicle licensing data.

(a) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 60 months before the month in which the railroad is making its certification decision.

(b) A railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle drivers license for operating a motor vehicle while under the influence of or impaired by, alcohol or a controlled substance;

(2) A conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle driver's license for refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(3) A conviction for any of the following serious traffic violations:

(i) Excessive speeding involving any charge of operating at more than 15 miles per hour or more above the posted speed limit;

(ii) Reckless driving, as defined by State law, local law or regulation;

(iii) A moving violation of State law or local law arising in connection with a fatal traffic accident; and

(iv) Driving with a revoked or suspended license.

(c) No railroad shall assign numerical weights for the purposes of § 240.57 to motor vehicle incidents of the type identified in paragraphs (b)(1) and (b)(2) of this section, if:

(1) An EAP counselor conducts a review under the provisions of § 240.59; and

(2) The EAP counselor finds that the event(s) was followed by an appropriate course of counseling or treatment

(d) The individual seeking certification or recertification has the burden of convincing the EAP counselor of the nature, duration and effectiveness of that counseling and the finding of the EAP counselor will not be disturbed.

§ 240.55 Limitations on consideration of railroad employment data.

(a) When evaluating a person's railroad employment record a railroad shall not consider information concerning prior railroad performance of safety duty incidents that occurred more than 60 months before the month in which the railroad is making it's certification decision.

(b) A railroad shall only consider information concerning the following types of safety duty incidents:

(1) Any finding that the person used or possessed alcohol or a controlled substance while assigned by a railroad to perform service;

(2) Any finding that a person reported for, went on, or remained on duty in covered service while under the influence of or impaired by alcohol or a controlled substance;

(3) Any finding that a person refused to cooperate in providing a blood or urine sample as required by part 219 of this chapter;

(4) Any finding that a person, while performing service as a locomotive operator was responsible for

(i) Permitting a locomotive or train to operate at a speed that exceeded the maximum authorized limit by 10 miles per hour or more or exceeded the maximum speed by more than one half of the authorized speed, which ever is less;

(ii) Permitting a locomotive or train to pass any signal that requires a complete stop before passing it;

(iii) Failing to comply with any mandatory directive by entering a segment of track without authority; and

(iv) Failing to comply with the prohibitions of part 218 of this chapter by wilfully tampering with a safety device.

(5) Any finding that, while performing service related to the operation of trains and directly responsible for compliance, a person failed to comply with any mandatory directive concerning the operation of a train that involved any of the following:

(i) Operation of a locomotive or train at a speed that exceeded the maximum authorized limit by 10 miles per hour or more than half of the authorized speed;

(ii) Permitting a locomotive or train to pass any signal that requires a complete stop before passing it;

(iii) Entering a segment of track without authority;

(iv) Failure to protect a locomotive or train as required by a carrier operating rule that is consistent with 49 CFR 218.37;

(v) Misalignment of a switch or operation of switch under a train;

(vi) Failure to secure a handbrake or a sufficient number of handbrakes; and

(vii) Failure to comply with the prohibitions of part 218 of this chapter by wilfully tampering with a safety device.

(c) No railroad shall assign numerical weights for the purposes of § 240.57 to railroad performance of safety duty incidents of the type identified in paragraph (b) of this section, if:

(1) An EAP counselor conducts a review under the provisions of § 240.59; and

(2) The EAP counselor finds that the event(s) was followed by an appropriate course of counseling or treatment

(d) The individual seeking certification or recertification has the burden of convincing the EAP counselor of the nature, duration and effectiveness of that counseling and the finding of the EAP counselor will not be disturbed.

§ 240.57 Railroad evaluation of the consequences of adverse information.

(a) Except for incidents for which an EAP counselor has made a finding of acceptable counseling or treatment under § 240.59, any incident identified in either paragraphs (b)(1) or (b)(2) of § 240.53 or § 240.55, shall be assigned a value of 3 points for the purpose of evaluating their significance under this part.

(b) Any incident identified in § 240.53 (b)(3) shall be assigned a value of two points for the purpose of evaluating their significance under this part.

(c) Each railroad shall evaluate the significance of any such incidents in accordance with the following provisions:

(1) Any individual who has accumulated less than six points shall not determined to be ineligible to be a locomotive operator under this part;

(2) Any individual who has accumulated six points may be determined to be eligible to be a locomotive operator but that certification shall be conditioned on adherence to requirements imposed in compliance with § 240.59;

(3) Any person who has accumulated more than six points shall be determined to be ineligible to be a locomotive operator under this part until 5 years have elapsed since the occurrence of the most recent incident; and

(4) Any person who has accumulated more than six points and this is the second time that the individual has accumulated more than six points, shall be determined to be ineligible under this part.

§ 240.59 Conditional certifications.

(a) Any person who has been involved in any incident identified in paragraphs (b)(1) or (b)(2) of § 240.53 and/or paragraphs (b)(1) through (3) of § 240.55 shall not be certified as a locomotive operator until that person has been evaluated by an EAP counselor to determine:

(1) If the incident was followed by an appropriate course of counseling or treatment; and

(2) If the person is currently affected by a psychological or physical dependence on one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation.

(b) Prior to being certified any person identified in paragraph (a)(2) of this section shall have successfully completed any course of counseling or treatment determined to be necessary by the EAP counselor prior to performing any service as a locomotive operator as provided for under part 219 of this chapter.

(c) Any person identified in paragraph (b) of this section who is being certified under this section shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and provided for under part 219 of this chapter.

(d) Any person who has accumulated six points because of having been involved in multiple incidents identified in § 240.53 and/or § 240.55 shall not be certified as a locomotive or train service operator until that person has completed a training program that meets or exceeds the requirements contained in § 240.63.

Subpart G—Training Programs

§ 240.61 Structure and approval of training programs for student locomotive operators.

(a) After _____, any railroad that conducts a training program to qualify a person as a locomotive operator shall have a program that:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components that meet or exceed the requirements of § 240.63; and

(2) Includes both knowledge testing that complies with § 240.71 and performance skill testing that complies with § 240.61.

(b) Each railroad to which paragraph (a) of this section applies shall submit a detailed description of that training program to the Federal Railroad Administration for approval within the following intervals:

(1) If the training program is in existence on the effective date of this rule, the railroad shall file that program description no later than ninety days after the effective date of the rule and have available for inspection a copy of its instructional materials; or

(2) If the training program is not in existence on the effective date of this rule, the railroad shall file that program description at least ninety days prior to initiation of any instructional effort based on that program and have available for inspection a copy of its instructional materials.

(c) Each railroad shall be notified in writing upon approval or disapproval of its program. Approval shall be presumed, if the Federal Railroad Administration has not notified the railroad in writing of disapproval within sixty days after the program is filed.

(d) The Federal Railroad Administration reserves the right to revoke any approval, whether express or implied, if it subsequently determines that the program does not comply with the requirements of § 240.63.

§ 240.63 Content and duration of student training programs.

(a) For the purposes of this section the categories identified in this paragraph refer to the minimum training to be afforded a person seeking to perform the following types or class of service:

(1) "Category A" is for individuals who are seeking to become unlimited train service operators and thus perform operations that exceed the operational limitations for locomotives and trains contained in the Category B, C, and D operations.

(2) "Category B" is for individuals who are seeking to become terminal train service operators and thus perform operations that are limited to switching cars, making up and breaking up trains, and the movement of trains where the movement does not exceed the definition of a yard or transfer train movement as contained in the Power Brake Law, 49 CFR 232.13(e)(1).

(3) "Category C" is for individuals who are seeking to become locomotive servicing operators and thus perform operations that are limited to moving locomotives, without cars attached, over yard and main tracks between the locations where the locomotives are repaired or maintained, and the locations where the locomotives are put into or removed from road or yard service;

(4) "Category D" is for individuals who are seeking to become restricted train service operators and thus perform operations that are limited to the movement of locomotives and trains at speeds not exceeding 20 mph; with trains of less than 30 cars; and do not occur on line segments where more than one train at a time is operated.

(b) The classroom component of the program required under § 240.61 shall:

(1) Be conducted under the supervision of a qualified class instructor;

(2) Be subdivided into segments or periods of appropriate duration to effectively cover the subject matter areas identified in paragraph (b)(4) of this section;

(3) Involve the use of actual on-track equipment during less than one-half of the duration of the subject matter training period; and

(4) Meet the minimum duration for the category of service in which the person will be certified as specified in the following chart:

Subject	Minimum duration (in hours) of training for each operational class of service category			
	A	B	C	D
Personal safety, newly hired employees only	40	40	40	24
Operating rules	40	40	20	20
Mechanics	24	12	12	12
Air brakes (includes brake tests)	24	12	12	12
Train handling	30	16	8	16
Hazardous materials emergency response	16	16	8	8
Other Federal regulations, locomotive inspection, hours of service, drug and alcohol, radio procedure	16	16	16	16
Administrative matters	8	8	8	8
Total (current employees)	158	128	84	82
Total (newly hired)	198	168	124	116

(c) The performance skill component of the training program shall:

(1) Be conducted under the supervision of a qualified instructor operator located in the same control compartment,

(2) Be conducted so that the student operator is at the controls of a locomotive for at least one half of the time,

(3) Be conducted so that the student experiences whatever variety of types of trains are normally operated over the territory; and

(4) Meet the minimum duration for the category of service in which the person will be certified provided that each student shall be given the minimum total of actual train operation (i.e., combined actual and simulator operation) that is identified in the following chart:

	Minimum duration (in hours) of training for each operational class of service category			
	A	B	C	D
Performance skill training (includes physical characteristics familiarization)	460	340	80	60

(d) The minimum duration for the performance skills training identified in paragraph (c) of this section may be satisfied through the use of simulator training in accordance with the provisions of paragraphs (e), (f) and (g) of this section.

(e) If training on a simulator is substituted for a portion of the actual train operation experience when teaching performance skills, each student shall be given the minimum period of actual train operation that is identified in the following chart:

Type of simulator being substituted	Minimum period of actual train operations for each class of service			
	A	B	C	D
Type 1 simulator	240	100	80	80
Type 2 simulator	360	160	80	80

(f) One hour of training on a Type 1 simulator can be counted as up to 5 hours of total train operation experience.

(g) One hour of training on a Type 2 simulator can be counted as up to 2 hours of total train operation experience.

(h) The familiarization with physical characteristics component of the training program shall:

(1) Be conducted while the student operator is operating under the supervision of a instructor operator; and

(2) Be conducted so that the student operator is at the controls of a locomotive while making at least three round trips over the entire territory across which the student will be authorized to operate.

(i) Nothing in paragraph (h) of this section shall prevent training from being provided directly by a railroad other than that which employs the student operator's employing railroad or training by a non-railroad entity provided that the employing railroad complies with § 240.65.

§ 240.65 Supplemental training required.

(a) Each railroad to which this part applies shall make available to locomotive operators an educational training program that complies with § 240.67 of this part.

(b) The educational training program required by this section shall be made available when any of the following events occur:

(1) A locomotive operator is being authorized or directed by the railroad to operate over territory across which he or she has not previously performed locomotive operator service;

(2) A locomotive operator is being authorized or directed by the railroad to operate over territory across which he or she has not operated as a locomotive operator in more than 365 days;

(3) A locomotive operator is being authorized or directed by the railroad to operate a locomotive equipped with significant new technology as defined in § 240.67; or

(4) A period of more than 30 but less than 40 months has elapsed since the locomotive operator received an educational training program that meets the requirements of either § 240.63 or § 240.67.

§ 240.67 Structure, duration and content of supplemental training programs.

(a) Each supplemental training program that is being provided by a railroad, in compliance with paragraphs (b) (1) or (2) of § 240.65, shall

(1) Be designed to provide a locomotive operator with familiarity with the physical characteristics of the territory across which the operator is being or will be authorized to operate; and

(2) Result in that individual operating at least three round trips over the territory while at the controls of a locomotive and accompanied by an operator already familiar with and qualified on that territory.

(b) Each supplemental training program that is being provided by a railroad, in compliance with paragraph (b)(3) of § 240.65, shall be designed to provide a locomotive operator with familiarity with new technology and of sufficient duration to teach the operator how to properly perform his or her assigned responsibilities concerning that technology.

(c) Each supplemental training program that is being provided by a railroad, in compliance with paragraph (b)(4) of § 240.65, shall comply with the following:

(1) At a minimum, each operator will receive 8 hours of instruction;

(2) The instruction will be provided in a classroom type setting; and

(3) The subject matter covered will include:

(i) Good personal safety practices,

(ii) Relevant operating practices,

(iii) Relevant mechanical inspection practices,

(iv) Proper airbrake inspection procedures,

(v) Proper train handling procedures, and

(vi) Proper procedures for handling hazardous materials.

Subpart H—Testing Operator Knowledge

§ 240.71 Initial testing required.

(a) No railroad shall certify a person as a qualified locomotive servicing operator or a train service operator under the provisions of §§ 240.21 or 240.23 unless that person has taken and passed a knowledge test that complies with § 240.73, except as provided for in paragraph (b) of this section.

(b) A railroad may certify a person as a qualified locomotive servicing operator or train service operator under the provisions of § 240.31 (interim or grandfather basis for qualifications) for a period of not to exceed 36 months from the effective date of this rule without first having taken and passed a knowledge test that complies with § 240.73.

§ 240.73 Criteria for knowledge tests.

(a) Testing under this section shall be designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains.

(b) Each test shall:

(1) Be objective in nature, in written rather than oral form, and cover the following subjects:

(i) Personal safety practices;

(ii) Operating practices;

(iii) Equipment inspection practices;

(iv) Train handling practices; and

(v) Compliance with Federal safety rules.

(2) Be sufficient to:

(i) Effectively examine the subjects covered, and

(ii) To accurately measure the person's knowledge; and

(3) In no event contain less than 150 questions.

(c) The minimum passing score for such tests shall be at least 85 percent and no testing shall be done with open reference books or materials.

(d) Any railroad that is testing an individual's knowledge concerning the aspects and indications of operational signals shall have a minimum passing score of 100 percent for the signal portions of such test.

§ 240.75 Consequences of failing initial testing.

(a) *Grandfathered Operators.* If, prior to taking the test, the person being tested has been deemed a qualified operator under the grandfathering provisions of § 240.31, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator for a period of more than 60 days.

(2) During that sixty-day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive as either a locomotive servicing operator or any class of train service operator until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as student operator completing a training program that complies with § 240.61.

(b) Student Operators. If, prior to taking the test, the person being tested has been deemed a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that sixty day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a second training program that complies with § 240.61.

(c) *Other Operator Candidates.* If, prior to being tested, the person being tested has not been deemed either a qualified operator under the grandfathering provisions of § 240.31 or a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73 and if this is the first test the person has taken under this part, a railroad shall not permit that person to continue to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that sixty day interval, the person shall be given a reexamination.

(3) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(4) In the event that the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(5) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(6) In the event that the person takes a second reexamination and fails to achieve either of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a second training program that complies with § 240.61.

§ 240.77 Recertification testing required.

(a) After _____ each railroad to which this part applies shall administer written tests to all individuals seeking recertification as a locomotive operator.

(b) Testing required in paragraph (a) of this section shall be performed within 90 days preceding and at the same interval prescribed for subsequent certifications made in compliance with § 240.11.

(c) Testing under this section shall be designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains and shall comply with criteria for initial testing established under § 240.71.

§ 240.79 Consequence of failing recertification test.

(a) If the person being tested in compliance with the requirements of § 240.77 fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator for a period of more than 60 days unless that person successfully passes a reexamination within that 60 day interval.

(b) That reexamination shall comply with the requirements of § 240.73 and must not occur less than 15 days from the date of the first test.

(c) If the person takes a reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(d) That second reexamination shall comply with the requirements of § 240.73 and must not occur less than 30 days from the date of the second test.

(e) If the person takes a second reexamination and fails to achieve both of the passing scores provided for in paragraphs (c) and (d) of § 240.73, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

Subpart I—Performance Skills Testing Programs

§ 240.81 Initial testing required.

(a) No railroad shall certify a person as a qualified locomotive servicing operator or a train service operator under the provisions of §§ 240.23 or 240.25 unless that person has taken and passed a performance skills test that complies with § 240.83, except as provided for in paragraph (b) of this section.

(b) A railroad may certify a person as a qualified locomotive servicing operator or train service operator under the provisions of § 240.31 (interim or grandfather basis for qualifications) for a period of not to exceed 36 months from the effective date of this rule without first having taken and passed a performance skills test that complies with § 240.83.

§ 240.83 Criteria for initial testing.

(a) Testing under this section shall be designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform.

(b) Each test required under § 240.81 shall be conducted by a designated supervisor of locomotive operators and shall:

(1) Cover the following subjects during the test period:

(i) Operating practices;

(ii) Equipment inspection practices;

(iii) Train handling practices; and

(iv) Compliance with Federal safety rules;

(2) Be of sufficient length to effectively evaluate the person's ability to operate trains; and

(3) Be conducted when the person is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(c) The observations and evaluation of the designated supervisor of locomotive operators shall be documented in writing by the person conducting the test in accordance with the provisions of § 240.109.

(d) A railroad may substitute the use of a locomotive operations simulator to conduct the testing required under this section if:

(1) A Type 1 simulator is employed for the test, and

(2) The simulator is programmed to provide a test that meets the criteria of paragraphs (a) through (c) of this section.

§ 240.85 Consequences of failing initial testing.

(a) *Grandfathered operators.* If, prior to taking the test, the person being tested has been deemed a qualified operator under the grandfathering provisions of § 240.31, the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator until the person successfully passes a reexamination.

(2) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(3) If the person fails the reexamination, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(4) That second reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the second test.

(5) If the person fails a second reexamination, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

(b) Student Operators. If, prior to taking the test, the person being tested has been deemed a student operator under the provisions of § 240.21 the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit or require that person to continue to operate a locomotive except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that interval, the person must successfully pass a reexamination.

(3) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the second test.

(4) In the event that the person takes a reexamination and fails to demonstrate to a designated supervisor of locomotive operators the ability to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive unless that person is completing a second training program that complies with § 240.61.

(c) Other Operator Candidates. If, prior to taking the test, the person being tested has not been deemed either a qualified operator under the grandfathering provisions of § 240.31 or a student operator under the provisions of § 240.21, the following requirements shall apply:

(1) If the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested and if this is the first test the person has taken under this part, no railroad shall permit that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, for a period of more than 60 days.

(2) During that interval, the person must successfully pass a reexamination.

(3) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 30 days from the date of the first test.

(4) In the event that the person takes a reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive except as a student operator completing a training program that complies with § 240.61.

§ 240.87 Recertification testing required.

(a) After _____, each railroad to which this part applies shall administer performance skills tests to all individuals seeking recertification as a locomotive operator.

(b) Testing required in paragraph (a) of this section shall be performed in the 90 days preceding and at the same interval prescribed for subsequent certifications made in compliance with § 240.11 of this part.

(c) Testing under this section shall be designed to examine a person's

knowledge and skill in applying the railroad's rules and practices for the safe operation of trains and shall comply with criteria for initial testing established under § 240.83 of this part.

§ 240.89 Consequence of failing recertification testing.

(a) If the performance of the person being tested in compliance with the requirements of § 240.87 fails to demonstrate, in the view of the designated supervisor of locomotive operators, that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested fails to convince a designated supervisor of locomotive operators that they are able to safely operate a locomotive or train in the type or class of service for which they are being tested, no railroad shall permit or require that person to continue to operate a locomotive as either a locomotive servicing operator or any class of train service operator until the person successfully passes a reexamination.

(b) That reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(c) In the event that the person takes a reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, no railroad shall permit or require that person to operate a locomotive, except as a student operator under the direct supervision of an instructor operator, until that person successfully passes a reexamination.

(d) Any additional reexamination shall comply with the requirements of § 240.83 and must not occur less than 15 days from the date of the first test.

(e) If the person takes a second reexamination and the person's performance, in the view of the designated supervisor of locomotive operators, fails to demonstrate that the person is able to safely operate a locomotive or train in the type or class of service for which he or she is being tested, to convince a designated supervisor of locomotive operators that they are able to safely operate a locomotive or train in the type or class of service for which they are being tested, no railroad shall permit or require that person to operate a locomotive, except as a student operator completing a training program that complies with § 240.61.

Subpart J—Unlawful Behavior by Operators and Operational Monitoring Requirements

§ 240.91 Operator responsibilities.

(a) It shall be unlawful for any locomotive operator, while performing service as a locomotive operator, to:

(1) Permit a locomotive or train to operate at a speed that exceeds the maximum authorized limit by 10 miles per hour or more or exceeds the maximum speed by more than one-half of the authorized speed, whichever is less;

(2) Permit a locomotive or train to pass any signal that requires a complete stop before passing it; or

(3) Fail to comply with any mandatory directive concerning the movement of a train by entering a segment of track without authority.

(b) Each locomotive operator who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty; and

(2) Display that certificate upon the receipt of a request to do so from:

(i) A representative of the Federal Railroad Administration,

(ii) An officer of the issuing railroad, or

(iii) An officer of another railroad when operating a locomotive or train in joint operations territory.

(c) Any locomotive operator who is notified or called to operate a locomotive or train that would cause him or her to exceed the limits set forth in subpart B shall immediately notify the railroad that he or she is not qualified to perform that anticipated service.

§ 240.93 Operational monitoring requirements.

(a) Each railroad to which this part applies shall have a program to monitor the conduct of its locomotive operator by performing both on-board observations and by conducting unannounced tests.

(b) The program shall be conducted so that each locomotive operator shall be given at least one on-board observation by a qualified supervisor of locomotive operators in each calendar year and the duration of the observation shall be equal to at least one half the operator's assigned period of duty.

(c) The program shall be conducted so that each locomotive operator shall be given at least one unannounced test each calendar year.

(d) The unannounced test program shall:

(1) Test operator compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(2) Test operator compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive operator to less favorable conditions than that which existed prior to initiation of the test;

(3) Be conducted that so that the administration of these tests is effectively distributed throughout whatever portion of a 24 hour day that the railroad conducts its operations; and

(4) Be conducted so that individual tests are administered without prior notice to the operator being tested.

§ 240.95 Reserved for possible procedures for oversight responsibilities; revoking or suspending certificates.

(a) Each railroad shall maintain a record of all adverse information evaluated under § 240.57 of this part and shall continually monitor all operators currently certified by it to determine whether those operators have been involved in any additional incidents identified under §§ 240.53 and 240.55.

(b) If at any time during the duration of a certificate a railroad learns that an operator certified by it has been involved in one or more incidents, resulting in that operator accumulating more than six points as provided for under § 240.57, the railroad shall act to revoke or suspend the locomotive operator's certificate as provided for in subsection (c) of this section.

(c) The railroad shall conduct a proceeding to revoke or suspend that certificate either:

(1) Adheres to procedures for a post-suspension proceeding which conforms to the requirements of an applicable collective bargaining agreement, together with the procedures for the adjustment of disputes under section 3 of the Railway Labor Act or

(2) Adheres to the following procedures:

(i) Prior to or upon withdrawing a person from service as a locomotive operator, or prior to revoking or suspending an operator certificate, which ever occurs first, the railroad shall provide notice of the reason for its action and an opportunity for hearing before a presiding officer other than the charging official;

(ii) The hearing shall be convened within the period specified in the applicable collective bargaining agreement or, if there is no agreement, the hearing is convened within 10 calendar days of the effective date of the suspension. (In the event that the locomotive operator is unavailable for the hearing due to injury, illness or other sufficient cause the hearing shall be held within 10 days of the date the person becomes available for the hearing.);

(iii) The hearing determines that the person did in fact operate the locomotive or train or a motor vehicle in a manner identified in §§ 240.53 and/or 240.55 and that revocation or suspension of the person's certificate is the appropriate remedial action.

Subpart K—Program Documentation

§ 240.101 Criteria for the certificate.

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued;

(4) Identify any limitations, including the class of service, that restrict the persons operational authority;

(5) Show the date of its issuance;

(6) Be signed by an individual designated under the provisions of § 240.105; and

(7) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on its certificate or supplementing the certificate through other documents

(c) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that certificate; or

(2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

§ 240.103 Supporting documents required.

(a) Each railroad that issues a certificate required under § 240.11 shall maintain a record for each person to whom a certificate is issued.

(b) That record shall contain the information relied on in making each of the determinations required by this part.

(c) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that record; or

(2) Otherwise falsify that record through material misstatement, omission, or mutilation.

§ 240.105 Identification of qualified persons.

(a) Each railroad to which this part applies shall identify in writing each person it considers as a designated supervisor of locomotive operators and the basis for that designation.

(b) Each railroad to which this part applies shall designate in writing any person that it considers authorized to sign certificates required by § 240.11 and, if that authorized person is not a designated supervisor of locomotive operators, identify the basis for this authorization.

(c) No later than the effective date of this rule each railroad shall:

(1) Identify, in writing, each person it considers to be a qualified operator under the provisions of § 240.31;

(2) Identify the class of service for which that person is deemed qualified; and

(3) Identify the basis for their designation as a qualified operator.

(d) The records required under this section shall be

(1) Kept available for inspection and copying by FRA representatives; and

(2) Retained for a period of not less than five years after the year in which the record was created.

§ 240.107 Documenting tests.

(a) A copy of any written knowledge test administered under § 240.71 or § 240.77 shall be kept on file for a period of not less than five years after the year in which it was last administered.

(b) Any railroad that employs a designated supervisor of locomotive operators to conduct field evaluation of a person's operating performance skills when administering such testing in compliance with § 240.81 or § 240.87 shall:

(1) Require supervisor to document in writing the relevant operating facts on which the evaluation is based; and

(2) Keep that evaluation on file for a period of not less than five years after the year in which the test was administered.

(c) Any railroad that uses a simulator to conduct evaluation of a person's operating performance skills, when administering such testing in compliance with § 240.81 or § 240.87 shall:

(1) Document the relevant operating facts on which the evaluation is based; and

(2) Keep that evaluation on file for a period of not less than five years after the year in which the test was administered.

(d) All records required under this section shall be made available to FRA representatives upon request.

Subpart L—Dispute Resolution Procedures

§ 240.111 Review board established.

(a) Any individual may petition the Federal Railroad Administration if he or she believes that a railroad failed to comply with this regulation when determining whether he or she is qualified to be a certified locomotive operator under this regulation.

(b) The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Operator Review Board.

(c) The Locomotive Operator Review Board shall be composed of at least three employees of the Federal Railroad Administration selected by the Administrator.

§ 240.113 Petition requirements.

(a) Any person who believes that a railroad has improperly failed or refused to issue them certification or recertification as a locomotive operator may petition the Locomotive Operator Review Board for review of that action.

(b) Each petition shall:

(1) Be in writing;

(2) Be submitted in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

(3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:

(i) The petitioner's full name;

(ii) Current mailing address;

(iii) Daytime telephone number;

(iv) The name and address of the railroad; and

(v) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought; and

(5) Be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision.

§ 240.115 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA and the acknowledgement shall contain the docket number assigned to the petition.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition.

(c) The railroad will be given a period of not to exceed 30 days to submit to FRA any information that the railroad considers pertinent to the petition.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding;

(2) Provide a copy of the information being submitted to FRA to the petitioner.

(e) Each petition will then be referred to the Locomotive Operator Review Board for a decision.

(f) The Board will determine whether the denial of certification or recertification was improper and grant or deny the petition accordingly.

(g) Notice of that decision will be provided in writing to both the petitioner and the railroad.

§ 240.117 Request for a hearing.

(a) If adversely affected by the decision, either the original petitioner or the railroad involved shall have a right to an administrative hearing concerning that decision.

(b) To exercise that right, the adversely affected party shall file a written request within 20 days of service of the Board's decision on them.

(c) Failure to request a hearing within the period provided in paragraph (b) of this section constitutes a waiver of the right to a hearing.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name address, and telephone number of the respondent the requesting party's designated representative, if any;

(2) The specific facts that the requesting party alleges the railroad and/or the Board wrongly determined in making its decision; and

(3) The signature of the requesting party or the requesting party's representative, if any.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, the Federal Railroad Administration shall schedule a hearing at the earliest practicable date.

§ 240.119 Hearings.

(a) An administrative hearing for review of a locomotive operator qualification petition shall be conducted by a presiding officer and can be any person authorized by the FRA Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Federal Railroad Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing.

(d) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim.

(e) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt orderly and fair resolution of the proceeding.

(f) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of part 209 in this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(g) The party favored by FRA's disposition of the initial petition under § 240.115 may participate in the hearing as a third party. Parties may appear and be heard on their own behalf or through designated representatives. Respondents may offer relevant evidence including testimony and may conduct such cross-examination of witnesses as may be required for a full disclosure of the relevant facts.

(h) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(i) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(j) The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis therefore, concerning all material issues of fact or law presented on the record;

(2) Shall be served on the respondent and any other directly affected party;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Are not precedental.

(k) The FRA shall have the burden of proving that its grant or denial of the initial petition was in accordance with law and supported by substantial evidence.

§ 240.120 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 400 Seventh Street SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action.

Appendix A to Part 240—Schedule of Civil Penalties [Reserved]

Appendix B to Part 240—Procedures for Obtaining NDR Data

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4 (a) of the Railroad Safety Improvement Act of 1988 and §§ 240.51 and 240.53 of this part. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing or reissuing him or her certification as a qualified locomotive operator.

To fulfill that obligation a railroad must review an operator candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the state agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency. In addition, the railroad must determine whether the operator candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers or prospective employers to have access to a state motor vehicle licensing agency's data concerning such workers' driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as locomotive operators to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular state agency, this will either involve the candidate sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. In rare instances, when an operator candidate has been issued multiple licenses, it may require more than a single request.

The National Driver Register

In addition to seeking an individual state's data, each operator candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license and, under the provisions of a 1982 amendment to the statute, four pilot states notify NHTSA concerning convictions for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway even if these convictions do not result in an immediate loss of driving privileges.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information; the name of the person whose license is being affected; and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, color of hair, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive operator request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a state motor vehicle licensing agency that is participating under the provisions of a 1982 amendment to the National Driver Register Act. Participating states can access the NDR data on behalf of the prospective operator. The state agencies that currently participate in that access program are identified in Appendix C of this regulation.

—Requesting NHTSA to Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

2. The request must contain:

(a) The full legal name;

(b) Any other names used by the person (e.g. nickname or professional name);

(c) The date of birth;

(d) Sex;

(e) Height;

(f) Weight;

(g) Color of eyes;

(h) Drivers license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished including the proper name of the railroad and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive operator shall sign the request and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

—Requesting a State Agency to Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. At present there are only a limited number of state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. It is anticipated that the number of states with such capability will increase in the near future, therefore, FRA will continue to update the identification of such states by revising Appendix C to this regulation to identify such state agencies. Since it would be more efficient for a prospective operator to make a single request for both aspects of the information required under this rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry state was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license.

—Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the later event occurs, the notification will include the identification of the state motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the state with the relevant data is the same state which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that

furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to contact the state with the relevant information. FRA requires the railroad to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the railroad may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad go beyond these efforts to obtain the information in the control of such a state agency and may act upon the pending certification without the data if an individual state agency fails or refuses to supply the records.

If the non-issuing state licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the operator candidate are physical description, photographs and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective operator an opportunity to review that record and respond in writing to its contents. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of § 240.55.

Appendix C to Part 240—Identification of State Agencies That Perform NDR Checks

Under the provisions of § 240.53 of this part, each person seeking certification or recertification as a locomotive operator must request that a check of National Driver Register (NDR) be conducted and that the resulting information be furnished to their employer or prospective employer. Under the provisions of paragraph (d) of § 240.53, each person seeking certification or recertification as a locomotive operator must request that National Highway Traffic Safety Administration conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the state agencies identified in this appendix. If the operator candidate received a license from one of the designated state agencies, he or she must request the state agency to perform the NDR check. The state motor vehicle licensing agencies listed in this appendix participate in a program that authorizes these state agencies, in accordance with the 1982 amendments to the National Driver Register Act, to obtain information from the NDR on behalf of individuals seeking data about themselves. Since these state agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that operator candidates make use of this method in preference to directly contacting NHTSA.

Although the number of state agencies that participate in this manner is limited, FRA anticipates that an increasing number of states will do so in the future. This appendix will be revised periodically to reflect current participation in the program. As of March 1, 1989, the motor vehicle licensing agencies of the following states participate under the provisions of the 1982 amendment to the NDR Act: North Dakota, Ohio, Virginia, and Washington.

Appendix D to Part 240—Potential Performance Test Criteria [Reserved]

FRA recognizes that appraisals of operator performance historically have been made by railroad managers in an informal manner. Some major railroads have been using an observation form to document an appraisal because such forms tend to ensure a more thorough and systematic assessment of operator performance.

The Need for a Systematic Approach

There are numerous criteria that should be monitored when observing a person to determine whether that individual should be considered to be a qualified locomotive operator and the details of those criteria will vary for the different classes of service, types of railroads, and terrain over which trains are being operated. At a minimum, an observer's attention should concentrate on several general areas during any appraisal. Compliance with the railroad's operating rules, including its safety, train handling rules, and compliance with Federal regulations would be carefully evaluated. But, in order to effectively evaluate employees, it is necessary to have something against which to compare their performance. Any carrier who fails to have adequate operating, safety, or train handling rules will experience difficulty in establishing an objective method of measuring an individual's skill level. Any carrier which requires the evaluation of an individual's performance relative to train handling should have established preferred operating ranges for throttle use, brake application, and train speed. The absence of such criteria results in the lack of a meaningful yardstick for the observer to use in measuring others. It is essential to have a definite standard for the operator to know what he or she is being measured against.

Evaluating the performance of certain train operation skills will tend to occur in all situations. For example, it would be rare to observe any operator for a reasonable period of time and not have some opportunity to review an operator's compliance with basic safety rules, basic operating rules, and the performance of a brake test. As the complexity of the operation increases so does the number of items that the operator must comply with. Higher speeds, mountainous terrain, and various signal systems place increased emphasis on the need for operator compliance with more safety, operating, and train handling rules. Accounting for such variables in any universal monitoring scheme immediately results in a fairly complex system.

FRA is not proposing adoption of a federally mandated, all encompassing, list of what should be observed for, but rather is suggesting the minimums of what to observe for when conducting skills performance test. Instead, FRA proposes to give railroads the discretion to determine what each carrier feels is most important in order to ensure that its locomotive operators function in a safe manner. Some railroads already have well developed criteria for conducting such evaluations and will not have any need to alter their existing practices. Since all railroads are not in that posture, FRA is providing the following information to assist railroads in developing a meaningful test.

In FRA's judgement, the kinds of operating practices that should be observed for are identified below. Obviously, the less sophisticated the railroad's operations are the fewer the number of identified practices that would be relevant.

—Does the employee have the necessary books, (Operating Rules, Safety Rules, Timetable, etc.)?
—Are predeparture inspections properly conducted (Radio, Air Brake Tests, Locomotive etc.)?
—Does the employee comply with applicable safety rules?
—Does the employee read the bulletins, general orders, etc.?
—Enroute, does the employee:
  —Comply with applicable Federal Rules? (Radio)
  —Monitor gauges?
  —Properly use the horn, whistle, headlight?
  —Couple to cars at a safe speed?
  —Properly control in train slack and buff forces?
  —Properly use the train braking systems?
  —Comply with speed restrictions?
  —Display familiarity with the physical characteristics?
  —Comply with signal indications?
  —Respond properly to unusual conditions?
—At the conclusion of the trip, does the employee:
—Apply a hand brake to the locomotives?
—Properly report locomotive defects?

The Need for Objectivity, Use of Observation Form

It is essential that railroads conduct the performance skills testing in the most objective manner possible, whether this testing is conducted as a portion of the operator's initial qualification testing or periodic retesting. There is some potential for the subjective views of the person conducting the evaluation to enter into decisions concerning the competency of a particular individual to handle the position of locomotive operator. Steps can be taken, and need to be taken, to minimize the risk that personality factors adversely influence the testing procedure.

One way to reduce the entry of subjective matters into the qualification procedures is through the use of a document that specifies those criteria that the observer is to place emphasis on. The use of an observation form will reduce but not eliminate subjectivity. Any supervisory observation trip will contain some amount of subjectivity. While compliance with the operating rules or the safety rules is clear in most cases, with few opportunities for deviation, train handling offers many options with few absolute right answers. The fact that an engineer applies the train air brakes at one location rather than a few yards away does not necessarily indicate a failure but a question of judgment. The use of dynamic braking versus air brakes at a particular location may be a question of judgment unless the carrier has previously specified the use of a preferred braking method. In any case the operator's judgment, to apply or not apply a braking system at a given location, is subject to the opinion of the observer. The carrier should attempt to reduce the subjectivity through the establishment of preferred methods of train handling.

The individual performing the observation must be familiar with the carrier's preferred train handling methods, equipment, and must be qualified on the territory being used for the observation trip. In addition, the observer must be knowledgeable regarding the carrier's operating and safety rules. There simply is no value in having an unqualified person attempt to pass judgment on the skills of another.

Many of the major carriers in the nation already have some type of observation form in use. A few have attempted to develop numeric scoring system which the FRA sees as the ultimate goal for all systems of measuring engineer performance. In devising a form, FRA does not anticipate the need for major railroads to change the forms currently in use since they already have effective observation forms. Regional railroads or short lines that have not devised a form are encouraged to create and implement one.

For railroads developing any evaluation form, the areas of concern identified earlier will not be relevant in all instances. Railroads that do not have sophisticated operations would only need short list of subjects. For example, most smaller railroads would not require line items pertaining to compliance with signal rule compliance or the use of dynamic brakes. Conversely, in all instances the observation forms should include the time and location that the observer started and ended the observation. FRA believes that there should be a minimum duration for all performance skills examinations. FRA contemplates allowing railroads to select a duration appropriate for their individual circumstances and the proposed rule require only that the period be "of sufficient length" to effectively evaluate the person. In exercising its discretion FRA would prefer that the minimums selected by a railroad be stated in terms of a distance since the examination has to be of a sufficient duration to adequately monitor the operator's skills in a variety of situations. FRA also suggests that the format for the observation form include a space for recording the observer's comments. Provision for comments ideally would allow for the inclusion of "constructive criticism" without altering the import of the evaluation and would permit subjective comments where merited.

Issued in Washington, DC, on November 30, 1989.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 89-28345 Filed 12-8-89; 8:45 am]

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December 11, 1989

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2
Patent and Trademark Automated Search System Fees; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90363-9221]

RIN 0651-AA40

Patent and Trademark Automated Search System Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to set forth fees for public access to the text data bases resident on the Automated Patent System (APS) and the automated trademark search system (T-Search). Public Law 100–703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for on-line access to the automated search systems.

The Office will provide on-line access to its USPAT data base (full text of U.S. patents issued after 1974), the U.S. classification data from 1790 to the present, and to English abstracts of Japanese and Chinese patents (to the extent they are available), hereinafter referred to as APS-Text, in its Patent Search Room and to T-Search in its Trademark Search Library, located in Arlington, Virginia. Except for a series of pilot experiments which may occur over the next one or two years, the Office does not plan to provide routine remote on-line access to these data bases at any other facilities at the present time. A separate rulemaking process will be followed when the Office determines to provide such remote on-line access.

Both search systems have been made available to the public free of charge since April 3, 1989, for the purposes of education and training (familiarization).

The paper and/or microfilm collections of U.S. patents, foreign patent documents and U.S. trademark registrations continue to be available to the public free of charge, as provided by section 104(b) of Public Law 100–703. The Office reaffirms its commitment to hold a public hearing prior to making any decision concerning the elimination of the paper files.

This final rule establishes fees for use of the on-line automated search systems. In addition, procedures for public use of the automated search systems, including training and charging of fees, are presented.

In response to the notice of proposed rulemaking published in the Federal Register on May 3, 1989 (54 FR 18907), and at a public hearing held on June 30, 1989, the Office received many comments regarding problems encountered by the public in the use of T-Search. The Office believes that T-Search has proven effective for searches performed by Trademark examining attorneys in connection with their examination of applications for the registration of marks. Although the Office is establishing a fee for accessing the T-Search system, the Commissioner is immediately suspending collection of that fee to provide additional time for the public to familarize themselves with T-Search. The Office will provide the public with sixty days notice before starting to collect the fee.

EFFECTIVE DATE: February 12, 1990. Section 2.6(w) will take effect February 12, 1990 but immediately be suspended by the Commissioner. The Office will provide written notice in the Federal Register sixty days before starting to collect fees for accessing T-Search.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557–1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to establish new fees for the on-line use by the public of APS-Text, and T-Search that are to be provided in the Office's facilities in Arlington, Virginia. This final rule is consistent with the Office's Electronic Data Dissemination Policies and Guidelines, which were published in final form in the Federal Register on May 3, 1989, at 54 FR 18920. Establishment and adjustment of patent fees is provided for by section 6 and section 41 of title 35, United States Code, and section 103(b) of Public Law 100–703. Establishment and adjustment of trademark fees is authorized by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), and section 103(a) of Public Law 100–703. Information on the procedures for public use of the automated systems, including training, waivers, and the charging of fees, also is presented.

Background: In response to Public Law 96–517, the 1980 legislation which amended patent and trademark laws, the Office prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: The creation of electronic data bases that (1) would eventually replace the Office's all-paper patent and trademark files, and thereby improve the integrity and quality of Office records; and (2) would support searches, examinations, Office actions and other Office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Over 700,000 active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. A computer system has been installed to enable trademark examining attorneys to search the data base for registered and pending trademarks and associated textual data, including marks containing designs, and to retrieve, display and print all information as a substitute for paper file searches. Trademark examining attorneys have been using T-Search exclusively since January 1988 via a network of approximately 40 terminals. After a six-month experimental T-Search evaluation program conducted between June and December 1988, the capability was deployed for public use in the Trademark Search Library on April 3, 1989.

The T-Search "dead data base," trademarks cancelled, expired or abandoned since March 1984, also is available to the public, but approximately 17,000 images are missing and an additional 184,000 registrations and applications have not been quality checked. Trademark examining attorneys do not search this data base in connection with examining activities.

An Automated Patent System (APS) was installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS, that is, large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with two high resolution graphic displays and laser printers were interconnected on July 1, 1986, to enable system test and evaluation to begin in the testbed group.

On-line access to the full-text of all U.S. patents granted after 1974 and then to English language abstracts of Japanese patents was deployed to the patent examining staff beginning in 1986. On-line access to APS-Text permits examiners to search the text of approximately one million U.S. patents containing more than five billion words. Today, all examiners have been trained in the use of the full-text searching tool, and it has become a routine part of the patent examination process for many examiners. Searches are conducted from approximately 71 single screen text

terminals located throughout the Office. The APS-Text capability was deployed to the public in the Patent Search Room on April 3, 1989.

The Office intends to enter the text of virtually all U.S. patents issued after 1970. In addition, selected tabular data and chemical and mathematical equations will be added to the current full text file. Ultimately, approximately 1.2 million U.S. patents will be available to both patent examiners and the public for search in full text form.

Public evaluation of the APS full-text search capability was conducted between January 11 and April 15, 1988. Forty-two (42) public users were trained on APS-Text during January 1988, and allowed first-come/first-serve access to several terminals. Reactions of public users to APS-Text were positive. Public users found APS-Text useful for pre-application and state-of-the-art searches.

A total of 38 public users were trained on T-Search during a public evaluation period conducted between June and December 1988. Preliminary review indicted that public users considered T-Search to be useful both as a source for registrability searching and for verifying paper searches. In addition, T-Search was found to facilitate searches by class and ownership.

Public Law 100–703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for public access to the automated search systems while it continues the requirements that no more than 30 percent of automation resources may be from user fees and that the Office may not enter into exchange agreements relating to automatic data processing resources.

Section 104(c) of Public Law 100–703 allows the Commissioner to waive the payment by an individual of fees for accessing the automated search systems upon a showing of need or hardship, and if such waiver is in the public interest.

The information contained in the automated data bases, which will be available to the public at the Patent and Trademark Office in Arlington, Virginia, is available free of charge at that location in paper form, and is substantially available through commercial vendors. The Office believes it to be in the public interest to waive the fee for public access to its text data bases in situations where access to the data base is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user.

A personal, educational purpose is one in which the person using the data base is attempting to satisfy a personal need, and is not conducting a search or otherwise using the data base for compensation in any form. Examples of appropriate waiver situations would include students or teachers doing a term paper, or a university professor collecting background information for the preparation of an application for a research grant. An example of a situation where a waiver would not be appropriate would include an individual doing work for remuneration—e.g., a law student doing a pre-examination or infringement search for a law firm.

The Commissioner will further consider a fee waiver based on a genuine financial hardship. The person requesting a waiver will be required to provide information that would demonstrate a clear inability to pay the fee.

A waiver for the payment of fees is intended to be granted sparingly, and generally only when terminals are available. It is not anticipated that fees will be waived for any one individual more than once or twice each year. The Commissioner reserves the authority to control access to the data bases and deny a waiver to any individual.

The waiver policy would apply only to use of the automated system, and not to the printing or sale of copies. Any abuse of the waiver policy could lead to a ban on the use of any public search facility for that indivdual.

Cost Calculations: The Office calculated unit costs for all fees based on OMB Circular A–25, "User Fees", and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, financial statements for the Office) and included direct and indirect costs to the Office of carrying out the activity, as directed by OMB Circular A–25. User charges for both APS-Text and T-Search were based on the marginal costs of providing these services to the public.

In calculating the costs of providing access to T-Search and APS-Text to the public, the Office followed Congressional direction that fees be reasonable by reflecting the marginal cost for providing the new service and not include the costs of designing or installing the automated system for use by Office examiners, or the development of the new systems.

Prior to preparation of this final rule, all of the cost assumptions and cost calculations were reviewed and modified to ensure that they included the Office's best estimates and projections.

APS-Text

The Office is establishing the $40.00 fee for each hour of terminal session time on APS-Text. The marginal costs for one hour terminal session time on APS-Text include a portion of the lease cost of a new computer mainframe which originally was to be acquired in fiscal year 1990 for use by Office patent examiners. To meet public search requirements, the mainframe is being leased earlier than originally planned. That portion of lease costs for the three (3) month period March 1990 through May 1990 over and above the lease costs for a mainframe sized to meet only examiner needs is being passed on to the user. After May 1990, the mainframe was intended to be procured and installed to support APS. Therefore, no costs are being passed on to the public user after that time. When public usage reaches the level where a mainframe dedicated for public use is required, fee adjustments will be proposed to pass all of the costs of that mainframe on to the public.

The level of public use will affect the amount of main memory needed to support the additional search sessions. It is projected that an additional increment of main memory will be required in fiscal years 1991 and 1992. This increment would not be required to support the examiner workload alone.

The fee calculations for public access also include the costs for equipment: Network interface units, text terminals, printer noise dampeners and text terminal printers.

Other costs include a portion of the license fees that must be paid to Chemical Abstracts Service for its proprietary text and structure search software; additional personnel for the Patent Search Room, and the Office of Information Systems; computer installation costs; supplies and equipment dedicated to public use; and general and administrative overhead.

The Office is providing free access time during training on the automated search systems in accordance with § 104(c) of Public Law 100–703 which reads," a limited amount of free access shall be made available to all users of the systems for purposes of education and training."

The usage rate estimates are based on the three-month public user study performed from January through March 1988. For this study, 42 frequent Patent Search Room users were selected to be trained in the use of APS-Text. Three text terminals were made available to the trained public users at no charge. During the three-month study period,

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use of the three terminals averaged approximately 50 percent. While it is impossible to accurately predict future use by a more diverse group of public users, the cost calculations attempted to take into account the following factors and assumptions:

1. Future public users, on average, would use APS-Text less frequently than the 42 frequent users selected for the 1988 study, many of whom routinely used commercially automated text search tools.

2. Collection of a fee for use (as opposed to the absence of any charge during the study) would reduce demand for text search services when compared with usage data obtained during the study period.

3. The potential universe of public users is expected to average no more than 300 per day.

4. The average length of a public user search session is projected to be approximately 22 minutes—the average length of a search session during the 1988 test of public use.

5. Based on the preceding assumptions, if all 300 potential public users conducted a single search session during a workday, a total of 110 hours of access would be required. Twenty-five text terminals available five days a week, twelve hours a day, would provide a maximum potential of 300 hours of available text search time. Under these assumptions the number of text terminals appeared to be adequate for the foreseeable future.

6. For purposes of actual use of available text terminals, the following estimates were used:

(a) In fiscal year 1990, between four (4) and six (6) terminals would be available during the first quarter. An estimate of 45 percent utilization of available text terminal time was projected. By increasing the number of text terminals to 10 in January 1990 and 20 in April 1990, an estimate of 40 percent utilization of available text terminal time was projected. By increasing the number of text terminals to 25 in July 1990, an estimate of 35 percent utilization of available text terminal time was projected.

(b) During fiscal year 1991 and beyond, stable levels of usage were projected to be achieved, yielding an estimated 35 percent average utilization of the 25 available terminals. This utilization rate equates to 105 session hours per day, or an average of 4.2 session hours per terminal per day. At an average of 22 minutes per session, a total of 286 search sessions per day.

Although usage rates since the system was made available to the public in April 1989 have been higher than projected, the Office believes these projections are valid for the three-year fee cycle.

A summary of the fee calculations is as follows:

APS-TEXT.—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: Compensation and benefits	$918,196
Hardware and maintenance	861,293
Software (license fees)	295,876
Site preparation	38,118
Non-capital furniture	6,750
Supplies and forms	3,500
Sub-total	1,955,529
General and administrative overhead	361,773
Total cost	2,317,302
Estimated use (hours)	65,846
Unit cost (per hour)	35.14

The marginal cost for one hour of Office staff search assistance on APS-Text includes the costs of personnel compensation and benefits.

A summary of the fee calculations is as follows:

APS-TEXT.—MARGINAL COST OF ONE-HOUR OF OFFICE STAFF SEARCH ASSISTANCE

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: Annual compensation and benefits	$45,650
Total cost	45,650
Work hours (per annum)	1,776
Unit cost (per hour)	25.71

The marginal cost for a printed copy generated from APS-Text includes costs for compensation and benefits, printers, furniture for the printers, supplies and forms, and general and administrative overhead.

A summary is as follows:

APS-TEXT.—MARGINAL COST OF EACH PRINTED PAGE

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: Compensation and Benefits	$173,472
Hardware and maintenance	13,483
Non-capital furniture	5,600
Supplies and forms	35,682
Sub-total	227,837
General and administrative overhead	42,150
Total cost	269,987

APS-TEXT.—MARGINAL COST OF EACH PRINTED PAGE—Continued

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Estimated use (pages)	5,490,325
Unit cost (per page)	0.050

T-Search

The marginal cost for one hour of terminal session time on T-Search includes the costs of personnel in the Trademark Search Library, maintenance of the T-Search terminals, routine site preparation, supplies and forms, and general and administrative overhead. The Office is establishing the $40.00 fee for each hour of terminal session time on T-Search, but is immediately suspending collection of that fee in order to provide public users additional time to familiarize themselves with the system.

The comments submitted in response to the proposed rulemaking indicate that the public users have not adequately adjusted to the T-Search system. During the period collection of the fee is suspended, the public will have an opportunity to better learn the system so as to perform more effective searches than they may be experiencing now. The Office will publish a notice in the Federal Register sixty days before it begins collecting a fee for public access to T-Search.

Usage rates for T-Search during fiscal years 1990–1992 were projected to be 28 percent of the hours the system would be available to the public. This rate was extrapolated from actual usage rates during the T-Search public user pilot program which was conducted from June through December 1988. A total of 38 members of the public were trained on T-Search, and about 24 to 28 public users were active on T-Search each month. The overall usage rate of these active users was 14 percent of the hours the system was available to the public. In projecting usage rates on which to base a fee amount, it was anticipated that the overall number of users and the usage rate would double once T-Search was made available in the Trademark Search Library to all users of that search facility and training was provided on a routine basis. Although usage rates since the system was made available to the public in April 1989 have been higher than projected, the Office believes these projections are valid for the three-year fee cycle.

A summary of the fee calculations are as follows:

T-SEARCH.—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: compensation and benefits	$154,451
Hardware and maintenance	25,909
Site preparation	1,000
Supplies and forms	3,296
Sub-total	187,556
General and administrative overhead	34,666
Total cost	222,256
Estimated use (hours)	5,985
Unit cost (per hour)	37.14

The marginal cost for a printed copy generated from T-Search includes costs for compensation, and supplies and forms. A summary of the costs is as follows:

T-SEARCH.—MARGINAL COST OF EACH PRINTED PAGE

[December 1989–November 1992]

Cost element	Public share (marginal cost)
Personnel: compensation and benefits	$27,862
Hardware and maintenance	5,274
Supplies and forms	3,576
Sub-total	36,715
General and administrative overhead	6,792
Total cost	43,507
Estimated use (pages)	446,875
Unit cost (per page)	0.097

The proposed fee of $25.00 for each hour of Office staff search assistance to conduct a search using T-Search has been withdrawn. The T-Search system can be used by the public with routine assistance provided by the regular staff of the Trademark Search Library. This is similar to assistance on how to use the paper files now provided free of charge by the Trademark Search Library staff. Office employees will neither work one-on-one with members of the public in conducting searches, nor conduct searches for members of the public.

Rounding Procedures: Fee amounts were rounded so that the amount rounded would be de minimis and convenient to the user. This procedure is consistent with section 103(b) of Public Law 100–703 which allows the Office to adjust patent fees in the aggregate, and with section 103(a) of Public Law 100–703 which allows the Office to adjust trademark fees in the aggregate.

The Office has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Procedures for Public use of APS-Text and T-Search

Patent Search Room Configuration

Initially four (4) text search terminals will be installed and available for public use in the Patent Search Room. A printer will be associated with each text search terminal. An additional terminal will be located in Patent Search Room employee office space for control and administration activities. Up to twenty-one (21) more terminals and printers are planned to be added for public use during fiscal year 1990, if necessary.

Trademark Search Library Configuration

Initially three (3) T-Search terminals with associated printers will be installed and available for public use in the Trademark Search Library. The terminals will be clustered in one area of the Trademark Search Library. An additional terminal will be located in Trademark Search Library employee office space for control and administration activities. Additional terminals and printers will be added as demand warrants and space permits.

Training

To enable prospective public users to become effective on APS-Text, approximately fourteen (14) hours of free basic training is being offered. For those familiar with automated search systems, a shorter course of six (6) hours is provided. Ten (10) members of the public can be trained during each class. Training is being held at the Office's Arlington, Va. complex during normal work hours.

Four (4) hours of basic training is being offered on the use of T-Search. For those familiar with automated search systems, a shorter course of one (1) hour is available. T-Search training is being held in the Office's Arlington, Va. complex during morning, evening and weekend hours.

Enrollment in all training classes initially was on a lottery basis. Public users who wished to be trained on APS-Text or T-Search were required to submit an application form. The Office is now accepting requests for training and adding the names to the list. As of August 31, 1989, 696 people or 70 percent of all those requesting training have been trained.

System Use and Fee Procedures

To ensure equity of public access to the automated systems, as well as efficient operations, rules for use will be posted at the terminals. Users of the systems will be expected to comply with the rules and with all other regulations regarding the use of facilities.

Users are strongly encouraged to register in advance for system use. Each week, the next week's schedule will be available in the Patent Search Room and the Trademark Search Library. Should requests for blocks of terminal time exceed the availability of terminals, limits on the amount of reserved time may be instituted. Up to three (3) of the initial four (4) terminals in the Patent Search Room and up to two (2) of the initial three (3) terminals in the Trademark Search Library will be allocated to public users with advance reserved times. The remaining terminal in the Patent Search Room will be available for walk-up users and for assisted searches for infrequent users. The remaining terminal in the Trademark Search Library will be available for walk-up users. The terminal time reservation system and the number of terminals available for walk-up public use and for assisted searches (in the Patent Search Room) is subject to change based upon operational experience.

All public use of APS-Text and T-Search, with the exception of scheduled training classes, is on a pre-payment basis. In pre-paying for the use of the systems, the public may use a blank signed check, major credit card or charge to a deposit account. At the end of the search or the pre-paid amount of time, users will receive an accounting from Patent Search Room or Trademark Search Library staff for terminal time used and prints produced. The user must then finalize payment.

Discussion of Specific Rules

37 CFR 1.21 Miscellaneous fees and charges.

Section 1.21 is amended to add new paragraph (o) to set the fees for access to the Automated Patent System full-text search capability (APS-Text) and to provide for the waiver of fees under certain circumstances.

Section 1.21 is amended to add new paragraph (p) to set the fees for APS-Text search assistance by Office staff.

Section 1.21 is amended to add new paragraph (q) to set the fee for a printed copy from APS-Text.

37 CFR 2.6 Trademark fees

Section 2.6 is amended to add a new paragraph (w) to set the fees for access

to the automated trademark search system (T-Search) and to provide for the waiver of fees under certain circumstances.

Section 2.6 is amended to add new paragraph (x) to set the fee for a printed copy from T-Search.

A final rule package establishing two new fees under the provisions of Public Law 100–667, the Trademark Law Revision Act of 1988, has been published which added paragraphs (u) and (v) to § 2.6. Therefore, the rule has been modified from the proposal to add paragraphs (w) and (x) instead of paragraphs (u), (v) and (w).

Response to Comments on the Rules

A notice of proposed rulemaking to establish a basis for the charges for use of the on-line automated search systems in the Patent Search Room and Trademark Search Library located at the Patent and Trademark Office in Arlington, Virginia was published in the **Federal Register** on May 3, 1989, at 54 FR 18907. Corrections were published in the **Federal Register** on May 12, 1989, at 54 FR 20670. A notice also was published on May 30, 1989, in volume 1102 of the *Official Gazette* of the United States Patent and Trademark Office, pages 94 through 98 for patents, and pages 96 through 100 for trademarks.

A public hearing was conducted on June 30, 1989. A total of 25 comments were received: 24 respondents submitted written comments and five people presented oral testimony (four of whom also submitted written comments) at the public hearing. Of the 25 comments, twelve (12) were from individuals, seven (7) from libraries, five (5) from organizations and one (1) from business. All of the written and oral comments were considered in adopting the rules set forth herein.

Many of the comments from the representatives of the Patent Depository Libraries raised questions or commented on the proposed rules from the perspective of their impact on Patent Depository Libraries. The proposed rules and policies set forth in the **Federal Register** Notice of May 3, 1989 are applicable only to the automated search systems provided in PTO's facilities located in Arlington, Virginia. When the Office is prepared to offer the automated search systems at the Patent Depository Libraries, a proposed notice will be published for public comment. Therefore, any comments relating to procedures for accessing the automated search systems in the Patent Depository Libraries will not be addressed at this time.

Comment: Overall, nine respondents acknowledged the usefulness of the automated search systems, particularly APS-Text. Although seven respondents alleged that T-Search is not adequate to meet the needs of the public, that its response time is too slow, and that it is not sufficiently accurate to meet the specific needs of the commentor, most of these respondents acknowledged that T-Search had the potential for being a useful tool. Documentation of specific problems, for example, those associated with conducting a phonetic search, were provided. Two respondents said that T-Search is flawed and the decision to require examiners to use the system on an exclusive basis was ill-advised and regrettable.

Response: Trademark examining attorneys have been using T-Search for word mark searches since August 1987, and for word mark and design searches since January 1988. The public has been using the system since April 3, 1989.

The minutes to the September 27, 1988, meeting of the Public Advisory Committee for Trademark Affairs, express the view that: "* * * T-Search searches are more thorough than manual searches." The transcript to that meeting contains the following comments: "I don't think there is any question, but a T-search [sic] properly done gives an excellent result" and "* * * from the corporate point of view,* * * I am pleased to say that I like what I see. I like the very fast action we're getting on the first action." From the transcript to the February 23, 1988 meeting: "I'd like to start with a glowing report. I think that the registration process is working very well. From my own personal experience in terms of what the examiners are doing, they get A plus. They're really going a good job."

The consensus of the management of the Trademark Examining Operation is that the T-Search system meets the needs of the Office at this time. There is no indication in any records or activities in the PTO which would indicate that the use of T-Search has caused a deterioration in the quality of searches conducted by Trademark examining attorneys.

The difference between the perceptions of the Trademark examining attorneys and the public may be attributed to several factors: Trademark examining attorneys use the system on a daily basis; they know what the system can do and what it cannot do and avoid the latter; and they know how to utilize the system's functionalities to perform the best search possible. Futher, Trademark examining attorneys do different types of searches, and have different needs than the public. T-Search use statistics for the period April 1989 through August 1989 demonstrate that the public is making extensive use of the system. Following is a summary of those statistics:

Month	Available hours	Hours used by public	Rate of usage (percent)	Average session time (min.)
April	513	108	21	13.02
May	513	126	24	12.25
June	527	153	29	10.84
July	570	186	33	12.51
Aug.	656	217	33	9.66

This usage rate compares favorably to the projected rate of 28 percent.

Comment: Seven respondents claimed that the paper Trademark files have been allowed to deteriorate and, therefore, are not reliable for use by the public.

Response: The Office contracts for file maintenance services in both the Trademark Search Library and the Patent Search Room. Among the tasks performed by the contractor in the Trademark Search Library are maintaining the pending files, filing newly registered Trademarks, pulling erroneous registrations from the file, etc. The contract for the Trademark Search Library includes a monitoring system based on MIL–STD 105, which is a sampling plan that provides a 97 percent accuracy level. Once the contractor completes a task, Office staff check the required sample levels to ensure that filing was performed accurately. The Office is constantly monitoring the status of the paper files, but notes that maintenance of paper file integrity is subject to inherent limitations.

Comment: In view of the above comments about the inadequacy of the Trademark paper search files and T-Search, six repondents advocated the need for T-Search, at no charge to the user, as an adjunct or back-up to the paper files. One respondent suggested a similar arrangement in the Patent Search Room.

Response: The Office has adopted the $40.00 fee amount for one hour of terminal session time on both APS-Text and T-Search. In order to give the public more time to become familiar with the T-Search system, the Commissioner is immediately suspending collection of that fee. This will enable users to learn the system so as to perform more effective searches. The Office will publish a notice in the **Federal Register** announcing its decision regarding the imposition of the fee at least 60 days before starting to collect the fee amount.

At that time, the Office also will publish validated cost estimates based on usage rates and actual costs documented from the present time to the time the decision to collect a fee is made.

Comment: Two respondents claimed that the objective of automation necessarily contemplated a free search system to give meaning to the constuctive notice provisions of the Trademark Act.

Response: Registration of a trademark constitutes constructive notice and records of all active trademark registrations and pending applications are available for searching free of charge in the paper file and on TRAM (Trademark Reporting and Monitoring System) data base.

Comment: One respondent claimed that PTO is required to provide access to disclosed patent information as the information is made public; four respondents were opposed to the Office charging fees for accessing the automated search systems; two other respondents commented that the Office should not charge fees for using systems designed to be the sole searching source of the public records which the Office is charged by law to provide; and one respondent commented that the proposal to limit access to the automated data bases only to those who can pay a fee is deplorable policy at a time when there is concern about industrial competitiveness with Japan.

Response: The Office will continue to make the paper and/or microfilm collections of U.S. patents, foreign patent documents and U.S. trademark registrations available for public access free of charge. The Office also has adopted a policy whereby the hourly terminal session fee for access to the data base can be waived when it is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user. In this way, the Office will continue to provide public access to all available information free of charge.

Comment: One respondent commented that user fees for electronic data is a form of dual taxation when information was gathered, organized and produced at taxpayers expense; and two respondents claimed that users of information have contributed up to 30 percent of the $120 million for development of the APS system to date—in other words, the public already has paid for APS.

Response: In calculating the proposed fees, the Office is consistent with the Office of Management and Budget's proposed policy on user charges for Government information products, as clarified in the June 15, 1989 **Federal Register** notice entitled "Second Advance Notice of Further Policy Development on Dissemination of Information." In that notice, OMB's stated policy is that user charges for Goverment information products should be no higher than a level sufficient to recover the costs of disseminating, not collecting, the information.

The costs associated with the fees for accessing APS-Text and T-Search are directly related to the public's use of the systems; for example, the costs associated with the acquisition of the APS-Text terminals that are being used by the public. No costs associated with designing or installing the automated system for use by Office examiners, or the development of the new systems have been included. Neither have costs been included for gathering, organizing or producing information.

The **Federal Register** notice of June 15, 1989 (54 FR 25554, 25558) dealing with policy development on dissemination of information states that: "As to double taxation, OMB notes that user charges policy has a basis in statute (31 U.S.C. 9701), and the Congress has not viewed user charges as double taxation because they are applied when the recipient receives special benefits."

Comment: Two respondents stated that Government information is the same, whether it is provided in printed or electronic form.

Response: Charging fees for access to the automated search systems is consistent with PTO's fee policy. For example, fees are charged for manual search services (e.g., for a search of Office records or for a search of assignment records), and for printed copies of patents and trademarks and for copies of Office documents.

Comment: The Japanese system is available at four locations at no cost, and includes U.S. information made available at U.S. taxpayer expense.

Response: The Japanese automated search system, like the automated search systems in the PTO's search facilities, is being made available free of charge at the present time. The costs of such use, however, are being paid from general fee revenues collected by the Japanese Patent Office. Additionally, the APS-Text system currently includes Japanese English language abstracts and the Office is in the process of acquiring Japanese patent information in digital facsimile form.

Comment: One respondent commented that PTO has no responsibility to provide an expensive, complex, internal Government on-line value-added computer service, that this is far beyond the requirements of public access to patent files; and another respondent commented that it is in the public interest to have the same system that is being used by the examiners also available to the public.

Response: The Office agrees that it is in the public interest to provide the same search system capability to the public that is being used by the examiners.

Comment: One respondent stated that providing free access is not competing with the private sector, and that there always is a place for the private sector to provide value-added information.

Response: The user charges adopted for public access to the APS-Text and T-Search systems are consistent with OMB Circulars A–25 "User Charges" and A–130 "Management of Federal Information Resources," and with the PTO's Electronic Data Dissemination Policies and Guidelines. The PTO's user fees are designed to recover the marginal costs associates with providing access to the automated search systems to the public.

Comment: Five respondents stated that the proposed fees are not "reasonable" and the Office does not have documented cost estimates and usage rates to support the proposed fee amounts.

Response: The Office is meeting Congressional direction to establish "reasonable" fees by recovering only the marginal costs associated with providing public access to the automated search systems. Costs and projected usage rates were determined from the best available records, for example, financial statements for the Office and the results of the public evaluations of the APS-Text and T-Search systems. A summary of the costs used in the fee calculations is included above under "Cost Calculations." Full details of these cost calculations are available for public inspection at the Patent and Trademark Office in Suite 904 of Building 2, Crystal Park, at 2121 Crystal Drive, Arlington, Virginia.

Comment: Two respondents questioned the proposed fees for search assistance. If the search assistance is similar to that which is provided free now, there should be no fee. If the search assistance entails doing searches, the Office should not be getting into that business.

Response: The PTO is withdrawing the proposed fee for staff search assistance to conduct a search using T-Search capabilities. The fee for staff search assistance to conduct a search using APS-Text capabilities is being

adopted, because an untrained user cannot conduct a search without significant help from Office staff. Users, of course, have the option of obtaining free training on the system.

Comment: One respondent commented that user fees cannot be justified under the theory that electronic search provides a new service or offers an enhancement to the public's ability to search the patent data base, and that the public has an option of paying the fee or using the paper files. Another respondent commented that APS-Text and T-Search represent enhancements to services already provided.

Response: The fees are specifically authorized under section 104(c) of Public Law 100-703 and are calculated to allow recovery of only the marginal cost for providing the system to the public.

Comment: Two respondents claimed that the Office should ask Congress for funding to offer free access here and at the PDLs.

Response: It continues to be PTO policy, consistent with OMB Circular A-130, that costs for access to the automated search systems be borne by those who actually use the automated search systems.

Comment: One respondent claimed that the accuracy of the trademark data base is suspect.

Response: All of the backfile data base elements (registrations issued prior to September 9, 1980) have been corrected except owner information. As originally planned, the owner field will be cleaned up for active registrations issued prior to September 9, 1980. It is projected that this owner field will be cleaned up by the third quarter of fiscal year 1991.

Comment: Three respondents claimed that the public requires access to the dead data base.

Response: The Office will consider this proposal further. The dead data base is now available in electronic format for all applications and registrations that were active on January 1, 1983 and are now inactive. However, many of these records are of poor quality. Costs for cleaning up these records would be significant, and those costs would likely be reflected in the T-Search user fee.

Comment: Four respondents addressed the fee waiver policy. The proposal to waive fees appears inconsistent with PTO's position that the free paper search files provide an equal and viable resource to anyone not wanting to pay for the automated files. If paper records are inferior, then anyone seeking access to T-Search should be able to qualify for the fee waiver. If the paper records are adequate, then there should be no need to waive the access fee for anyone.

Response: The waiver policy authorized by Public Law 100-703 is designed for those individuals who, for some reason in the public interest, such as an educational purpose, need the capabilities of the automated system, for example, to manipulate the data.

Comment: One respondent commented that the procedure to enroll people in training classes by the use of a lottery was unfair and that everyone who wants to be trained should be enrolled.

Response: The lottery system was a method for establishing the initial schedules to provide training. Everyone who requests training will be trained. As of August 31, 1989, 449 out of 623 people requesting training on APS-Text, and 247 out of 376 people requesting training on T-Search have been trained.

Comment: One respondent commented that advance registration is an unrealistic approach for many searchers.

Response: At least one terminal in the Patent Search Room and one in the Trademark Search Library will be available for walk-up users. The other terminals will be available first for users with a reservation and then, if needed, for walk-up users. This system is designed to ensure equity of public access to the automated systems.

Comment: Two respondents asked for information justifying that this is not a "Major Rule" as defined by Executive Order 12291, and that the rule will not have a significant adverse impact on small entities.

Response: The no "major rule" determination and no significant adverse impact on small entities was based on the fact that the automated systems are being offered only at the Patent and Trademark Office's public search facilities located in Arlington, Virginia. The total number of users of these facilities averages less than 400 a day, and many of these users are members of law firms or commercial search services. The annual effect on the economy is expected to be about $1 million, far less than the $100 million annual threshold specified in the Executive Order. The fees for accessing the automated search systems are reasonable and should not burden small entities and, at the same time, the Office is continuing to maintain the paper search files which are available to the public free of charge. Finally, there should be no significant adverse effects on competition, because the systems are being offered only at one location, the Patent and Trademark Office in Arlington, Virginia, and the public may continue to use paper files without payment of any fee.

Comment: Five respondents commented that user fees burden small entities and run counter to a fundamental objective of the patent system which is to advance technology through dissemination of the technical information contained in patents.

Response: The Office does not believe that the fee amounts adopted will burden small entities or negatively impact the dissemination of technical information. The Office also will continue to maintain the paper search files using taxpayer funds, and provide access to the public free of charge. Further, the Office has adopted a fee waiver policy whereby the fee amount can be waived where access to the data base is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user. Full details are included above under "Background."

Comment: One respondent commented that the Office needs a policy to ensure that no user of the patent and trademark information is disenfranchised due to an inability to pay for the services necessary to its access.

Response: The Commissioner will consider a fee waiver for users with a genuine financial hardship.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rules make the Office's on-line, automated patent full-text search and trademark search systems available to the public at rates significantly less than commercial systems.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the Office is amending title 37 of the Code of Federal Regulations, chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.21 is amended by adding new paragraphs (o) through (q).

§ 1.21 Miscellaneous fees and charges.

* * * * *

(o) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using Automated Patent Sysetm full-text search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to the Automated Patent System full-text search capability (APS-Text) upon a showing of need or hardship, and if such waiver is in the public interest: $40.00.

(p) Marginal cost, paid in advance, for each hour of Office staff search assistance to conduct a search using Automated Patent System full-text search capabilities (APS-Text), prorated for the actual time used: $25.00.

(q) Marginal cost, for each printed page generated from the Automated Patent System text terminal: $0.10.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by adding new paragraphs (w) through (x).

§ 2.6 Trademark fees.

* * * * *

(w) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using T-Search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to T-Search upon a showing of need or hardship, and if such waiver is in the public interest: $40.00.

(x) Marginal cost, for each printed page generated from the T-Search terminal: $0.10.

Dated: December 4, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89-28791 Filed 12-8-89; 8:45 am]

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December 11, 1989

Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Technical Assistance Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1458; FR-2616-P-01]

RIN 2506-AA80

Community Development Technical Assistance Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update the Department's procedures governing the issuance of technical assistance awards under Title I of the Housing and Community Development Act of 1974 and add the Urban Homesteading Program as a program for which technical assistance can be provided. It would clarify the Department's authority to make such awards and make the procedures more efficient and cost-effective.

DATE: Comments due February 9, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Copies of all written comments received will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Technical Assistance Division, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6090. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The procurement and assistance requirements for the Technical Assistance Program have been approved under OMB Control Numbers 2535-0085 and 2535-0084, respectively. However, § 570.240(h)(3) of this rule has been determined by the Department to contain an additional collection of information requirement. Information on the additional requirement is provided under the Preamble heading, "Other Matters." Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

Background

HUD's Community Development Technical Assistance Program is authorized under section 107(b)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5307, (the "1974 Act"). This program is administered under the Secretary's Fund, subpart E of 24 CFR part 570, and governed by the Department's regulation at § 570.402.

As a result of amendments made to section 107(b)(4) of the 1974 Act by section 107 of the Housing and Urban-Rural Recovery Act of 1983, Public Law 98-181, (the "1983 Act"), and section 517(b)(2) of the Housing and Community Development Act of 1987, Public Law 100-242 (the "1987 Act"), and the Department's initiatives designed to improve program administration, it is necessary to revise and update § 570.402, as discussed further below. The 1987 Act added the Urban Homesteading Program authorized by section 810 of the 1974 Act as a program for which technical assistance can be provided.

This Rule

The proposed rule would update the existing regulation; however, the proposed rule would not adversely affect or narrow the entities eligible for assistance, nor would it amend the substantive bases for awarding technical assistance funds.

The amendment made by the 1983 Act clarifies that HUD can fund groups through grants or cooperative agreements (as well as contracts) for the purpose of providing technical assistance to governmental units to plan, develop and administer assistance under Title I of the 1974 Act. The proposed rule, therefore, would eliminate eligibility distinctions under § 570.402(d)(1) and (2) of the existing rule, between applicants for grants on the one hand, and for contracts on the other, and thus would permit any eligible applicant to receive technical assistance funding under a grant, contract or cooperative agreement.

The proposed rule would set out the seven national program objectives, at least one of which must be addressed by technical assistance funding. In so doing, it would update the national technical assistance objectives that are now listed.

Also, the proposed rule would identify specific activities that would be eligible for technical assistance, and, in a separate paragraph, activities that would not be eligible for assistance. Neither list of activities is all-inclusive, but each contains major activity areas and would provide, therefore, additional guidance concerning what the Department does and does not consider to be appropriate funding areas.

The proposed rule would set out selection criteria for unsolicited funding proposals and would note that for solicited proposals, review and selection criteria would be identified in HUD's request for applications or proposals. The selection criteria in the current rule were developed for the Department's Fiscal Year 1978 technical assistance funding allocation and would be no longer appropriate.

Also, the proposed rule would set out uniform application procedures that, unlike the current rule, would not distinguish between requirements for applicants for regional, national and State technical assistance funding.

HUD's environmental rule at 24 CFR 58.34(a)(7) exempts technical assistance awards from environmental requirements because activities under the proposed rule would not constitute a development decision or affect the physical condition of project areas or building sites.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not make any significant substantive changes to the Technical Assistance Program but merely would revise the program regulations to update, consolidate, and simplify provisions needed to improve program administration.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order because it would merely revise the program regulations to update, consolidate, and simplify provisions needed to improve program administration. It would not adversely affect or narrow the entities eligible for assistance, nor would it amend the substantive basis for awarding technical assistance funds.

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the proposed rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C., 605(b)), the Undersigned hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, because a very small number would be recipients of these awards, and any administrative costs related to the awards would be provided as part of the amount funded.

This rule was listed as item No. 1079 in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702, 44726), under Executive Order 12291 and the Regulatory Flexibility Act.

The Technical Assistance program is listed in the Catalog of Federal Domestic Assistance under number 14.227.

Information Collection Requirement

The collection of information requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The procurement and assistance requirements for the Technical Assistance Program have been approved under OMB Control Numbers 2535-0085 and 2535-0084, respectively. However, § 570.402(h)(3) of this proposed rule has been determined by the Department to contain an additional collection of information requirement. Information on this additional requirement is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN.—NOTICE OF PROPOSED RULEMAKING (NPRM)—COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Community Development Technical Assistance Program—Unsolicited applications/proposals information for funding purposes.	24 CFR 570.402(h)(3)	800	1	800	20	16,000

List of Subjects in 24 CFR Part 570

Grant programs: Housing and community development, Technical assistance: Housing and community development, Small cities.

Accordingly, the Department proposes to amend 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section § 570.402 would be revised to read as follows:

§ 570.402 Technical assistance awards.

(a) *General.* (1) The purpose of the Community Development Technical Assistance Program is to increase the effectiveness with which States, units of general local government, and Indian tribes plan, develop, and administer assistance under Title I and section 810 of the Act. Title I programs are the Entitlement Program (24 CFR part 570, subpart D); the section 108 Loan Guarantee Programs (24 CFR part 570, subpart M); the Urban Development Action Grant Program (24 CFR part 570, subpart G); the HUD-administered Small Cities Program (24 CFR part 570, subpart F); the State-administered Program for Non-Entitlement Communities (24 CFR part 570, subpart I) and; the Discretionary Grant Programs for New Communities, the Insular Areas and Special Projects (24 CFR part 570, subpart E), and for Indian Tribes (24 CFR part 571). The section 810 program is the Urban Homesteading Program (24 CFR part 590).

(2) Funding under this section is awarded for the provision of technical expertise in planning, managing or carrying out such programs including the activities being or to be assisted thereunder and other actions being or to be undertaken for the purpose of the program, such as meeting applicable requirements (e.g., citizen participation, nondiscrimination, OMB Circulars), increasing program management or capacity building skills, attracting business or industry to CDBG assisted economic development sites or projects, assisting eligible CDBG subrecipients such as neighborhood nonprofits or small cities in how to obtain CDBG funding from cities and States. The provision of technical expertise in other areas which may have some tangential benefit or effect on a program is insufficient to qualify for funding.

(3) Awards may be made in response to:

(i) A solicitation for applications or proposals in the form of a publicly available document which invites the submission of applications or proposals within a prescribed period of time, or

(ii) Unsolicited proposals.

(b) *Definitions.* (1) *Areawide planning organization* (APO) means an

organization authorized by law or local agreement to undertake planning and other activities for a metropolitan or non-metropolitan area.

(2) *Technical assistance* means the provision of specialized skills or knowledge for the purpose of planning or carrying out assistance under Title I and section 810 of the Act by States, units of general local government, or Indian Tribes participating, or seeking to participate, in Title I or Urban Homesteading programs.

(c) *Eligible applicants.* Eligible applicants for award of technical assistance funding are: (1) States, units of general local government, APOs, and Indian Tribes; and (2) public and private non-profit or for-profit groups, and educational institutions capable of demonstrating their qualifications to provide technical assistance to governmental units and to carry out the required tasks in a timely and cost effective manner. An applicant group must be designated as a technical assistance provider to a unit of government's Title I program or Urban Homesteading program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(d) *Technical assistance objectives.* Proposals or applications submitted under this section which address at least one of the following objectives will be given priority:

(1) Expanding homeownership and affordable housing opportunities;

(2) Creating jobs and economic development where projects eligible under Title I and the Urban Homesteading Programs are involved giving priority to proposals or applications which fall within enterprise zones designated under State or Federal laws;

(3) Helping to end the tragedy of homelessness;

(4) Empowering the poor through resident management and homesteading;

(5) Enforcing fair housing for all;

(6) Making public housing drug-free; and

(7) Eliminating fraud, waste and mismanagement.

Proposals or applications which address other objectives related to Title I or Urban Homesteading needs will be given consideration to the extent that funds are available and the need is determined to be significant.

(e) *Eligible activities.* Activities eligible for technical assistance funding include:

(1) The provision of technical or advisory services;

(2) The design and operation of training projects, such as workshops, seminars, or conferences;

(3) The development and distribution of technical materials and information; and

(4) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, or Indian Tribes in planning, developing, or administering assistance under Title I and Urban Homesteading programs in which they are participating or seeking to participate.

(f) *Ineligible activities.* Activities for which costs are ineligible under this section include:

(1) In the case of technical assistance for States, administrative expenses incurred by a State in administering its State CDBG program for non-entitlement communities;

(2) The cost of carrying out the activities authorized under the Title I and Urban Homesteading programs, such as for the provision of public services, construction, rehabilitation, and administration;

(3) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(4) Research activities;

(5) The cost of identifying units of governments needing assistance; or

(6) Activities designed primarily to benefit HUD, or to assist HUD in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to the Congress.

(g) *Criteria for selection.* In determining whether to fund proposals or applications submitted under this section, the Department will review proposals or applications under the following criteria:

(1) *For unsolicited proposals.*

(i) The extent to which the project would aid specific activities currently funded with Title I funds by a State, unit of general local government or Indian Tribe, or specific activities planned to be funded with Title I funds, or otherwise demonstrates a clear and direct connection to, and ability to aid, eligible Title I or Urban Homesteading program participants in planning, developing or administering programs funded or to be funded with Title I or Urban Homesteading funds.

(ii) The extent to which the project addresses a signifcant Title I or Urban Homesteading Program need of eligible recipients, as identified in notices published by HUD or as otherwise justified by the proposer.

(iii) The extent to which the proposal is innovative or unique;

(iv) The extent to which the proposed work plan is clear, feasible, and cost-effective.

(v) The extent to which the project addresses one or more of the Technical Assistance Program objectives listed in paragraph (d) of this section;

(vi) The qualifications of the proposed provider of the technical assistance, including the extent to which it currently possesses the skills or knowledge to be provided;

(vii) The technical and financial feasibility of the proposed project and the methods to be used to provide skills and knowledge;

(viii) The extent to which the projected benefits or expected results of the proposed technical assistance are feasible;

(ix) The extent to which the project does not duplicate other on-going technical assistance projects;

(x) The availability of Community Development Technical Assistance funding; and

(xi) The extent to which the results can be transferred to other Title I or Urban Homesteading program participants.

(xii) Any criteria required by Federal Acquisition Regulation (FAR) 15.506–2, if the proposal is to result in a contract award.

(2) *For solicited applications and proposals.* The Department's criteria for review and selection of solicited applications or proposals will be described in its public announcement of the availability of a solicitation or the solicitation itself. Each solicitation must state or incorporate by reference all information necessary to allow potential applicants or proposers to decide whether to submit an application or proposal, and to understand how applications or proposals will be evaluated, and the award made.

(h) *Submission procedures.* (1) Solicited proposals or applications shall be submitted in accordance with the time and place and content requirements stated in the Department's Federal Register Notice or request for proposal or application.

(2) Unsolicited proposals (an original and two copies) may be submitted, at any time, to: Director, Office of Program Policy Development, Community Planning and Development, 451 Seventh Street SW., Room 7148, Washington, DC 20410.

(3) Unsolicited proposals shall include the following:

(i) The Standard Form 424 as a face sheet, signed and dated by a person authorized to represent and contractually or otherwise commit the applicant making the proposal;

(ii) A concise title and brief abstract of the proposed effort including the total cost;

(iii) A Statement of Work describing the specific project tasks and sub-tasks proposed to be undertaken;

(iv) A proposed budget showing the proposed costs and person-days of effort for each task and sub-task, by cost categories, with supporting documentation of costs and a justification of person-days of effort;

(v) A narrative statement that:

(A) Identifies specific activities to be aided which are currently funded with Title I or Urban Homesteading funds by a State, unit of general local government or Indian Tribe, or specific activities planned to be funded with Title I or Urban Homesteading funds, or otherwise demonstrates a clear and direct connection to, and ability to aid, eligible Title I or Urban Homesteading program participants in planning, developing or administering programs funded or to be funded with Title I or Urban Homesteading funds.

(B) Demonstrates the extent to which the proposed Statement of Work addresses one or more of the Technical Assistance Program objectives listed in paragraph (d) of this section;

(C) Provides the names of each eligible Title I or Urban Homesteading State, units of local government, or Indian Tribe expected to be assisted under the proposal;

(D) Demonstrates that a significant Title I or Urban Homesteading program need will be addressed for each State, unit of local government, or Indian tribe proposed for assistance.

(E) Demonstrates the qualifications of the proposed provider of the technical assistance, including a brief description of the organization and the extent to which it currently possesses the skills or knowledge to be provided, previous experience in the field, and names and resumes of the key personnel who would be involved;

(F) Provides a work plan which describes the planned schedule; identifies steps in the work process required for completing the work; and the period of time needed to accomplish each step; and describes the financial and other resources allocated to each task or activity.

(G) Describes benefits or expected results of the proposed technical assistance.

(vi) A letter of designation where required under § 570.402(c), for each proposed State, local government, or Indian tribe to be assisted, must be signed by the Chief executive officer. The letter should indicate the community's need for the technical assistance proposed and designate the applicant as a provider.

(4) An unsolicited proposal may include data that the proposer does not want disclosed for any purpose other than evaluation.

(i) If the proposer wishes to restrict the proposal, the title page must be marked with the following legend:

Use and Disclosure of Data

The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal, *provided that* if a contract, grant or cooperative agreement is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract, grant or cooperative agreement. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in pages _____.

(ii) The proposer shall also mark each restricted page with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

(i) *Approval procedures.*—(1) Acceptance. HUD's acceptance of a proposal for review does not imply a commitment to provide funding.

(2) *Notification.* HUD will provide notification of whether a project will be funded or rejected.

(3) *Form of award.* (i) HUD will award technical assistance funds as a grant, cooperative agreement or contract, consistent with this section, the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308, the HUD Acquisition Regulation, and the Federal Acquisition Regulation.

(ii) When HUD's purpose is to support or stimulate a recipient-initiated or on-going technical assistance activity, an assistance instrument (grant or cooperative agreement) shall be used. A grant instrument will be used when substantial Federal involvement is not anticipated. A cooperative agreement will be used when substantial Federal involvement is anticipated. When a cooperative agreement is selected, the agreement will specify the nature of HUD's anticipated involvement in the project.

(iii) A contract shall be used when HUD's primary purpose is to obtain a provider of technical assistance to act on the Department's behalf. In such cases, the Department will define the specific tasks to be performed. In accordance with the Federal Grant and Cooperative Agreement Act, nothing in paragraph (i)(3) of this section shall preclude the Department from awarding a procurement contract in any other case when it is determined to be in the Department's best interests.

(4) Administration. Project administration will be governed by the terms of individual awards and relevant program regulations and statutory requirements. As a general rule, proposals will be funded to operate for one to two years, and periodic and final reports will be required.

(j) *Environmental and intergovernmental review.* The requirements for Environmental Reviews and Intergovernmental Reviews do not apply to technical assistance awards.

(Approved under OMB Control Numbers 2535–0085 and 2535–0064)

Dated: November 21, 1989.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89–28788 Filed 12–8–89; 8:45 am]

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Monday
December 11, 1989

Part V

Department of Transportation

Coast Guard

46 CFR Parts 38, 54, 98, and 151
Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 38, 54, 98, and 151

[CGD 85-061]

RIN 2115-AC18

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending the regulations that govern internal inspection and hydrostatic test intervals for pressure vessel cargo tanks on barges that transport liquefied gaseous cargoes and Grade A flammable liquids. This rulemaking was initiated following industry requests that the Coast Guard review and amend existing inspection requirements. These amendments will reduce industry's compliance costs due to the lengthening of inspection intervals. The present level of safety is maintained by these amendments through the use of more sophisticated examination technologies.

DATES: This Interim Final Rule is effective on January 10, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 1990. Comments on the amendments to the examination intervals for chlorine tanks, discussed in preamble paragraph 11, must be received before March 12, 1990.

ADDRESSES: Comments on the modifications to the examination intervals for chlorine tanks (see § 151.05-31(p)), discussed in preamble paragraph 11, should be submitted to Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for inspection or copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 3600, 2100 2nd Street SW., Washington, DC 20593-0001, between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The regulatory evaluation and environmental assessment have been prepared and placed in the rulemaking docket and may be inspected or copied at the same address. Copies may also be obtained by contacting CDR Hersh (see **FOR FURTHER INFORMATION CONTACT**). The Navigation and Vessel Inspection Circular (NVIC) titled "Guidelines for Nondestructive Testing of Pressure Vessel Type Cargo Tanks Aboard Tank Barges" may be obtained by mailing a request to Commanding Officer, Marine Safety Center, 2100 2nd Street, SW., Washington, DC 20593-0100, ATTN: NVIC's. Phone 202-267-0444.

FOR FURTHER INFORMATION CONTACT: CDR John G. Hersh, Standards Development Branch, Office of Marine Safety, Security, and Environmental Protection, telephone (202) 267-1181. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On September 8, 1987, a notice of proposed rulemaking (NPRM), entitled Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges, was published in the **Federal Register** (52 FR 33841). On December 1, 1987, in response to 10 requests, the deadline for submission of comments was extended from December 7, 1987, until March 7, 1988 (52 FR 45665). The Coast Guard received 13 letters commenting on the proposed rulemaking. A public hearing was not requested nor held.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR Geoffrey D. Powers, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Background

The NPRM proposed to extend the internal examination interval to 10 years for most pressure vessel type cargo tanks carrying cargoes which presently qualify for a maximum internal examination interval of eight years. Tanks dedicated to propylene oxide service would have to be internally inspected at a maximum interval of 10 years, and the periodic hydrostatic testing requirement would be removed. It was also proposed to require pressure vessel cargo tanks that are 25 years of age and older to be nondestructively tested at five year intervals. New design and fabrication requirements for those tanks permitted by regulation to be constructed as Class II and III pressure vessels were also proposed.

Discussion of Comments and Changes

Thirteen comment letters from eleven interested parties were received on the following issues raised in the NPRM.

The single most controversial proposal of the NPRM concerned nondestructive testing (NDT) of pressure vessel cargo tanks subject to the proposed 10 year internal examination interval. The proposed rules would require these tanks to undergo NDT after 25 years of service and every five years thereafter. Paragraphs 1 through 7 below address the various concerns regarding this NDT proposal.

1. One comment suggested that the proposed NDT requirements are not justified by the industry's experience with pressure vessel cargo tanks over the last 20-25 years. Two comments noted that tanks examined after 16 or more years of service show little difference from tanks inspected at the end of eight or less years of service. The Coast Guard agrees that the safety record for these tanks has been very good, but is concerned about cyclical stress failure on older tanks. The average age of in-service tanks is 18½ years; 30 vessels (16% of the affected barge fleet) are already 25 years of age or older. One comment noted that the ASME Code for pressure vessel design does not address actual expected service life of tanks and suggested that operational experience shows a service life well in excess of 40 years. Nonetheless, the Coast Guard suggests that the acutal service life of these tanks remains unknown. The Coast Guard considers it inappropriate to wait for the first tank failure to indicate the service life of these tanks carrying hazardous cargo in bulk. Therefore, a modified requirement to conduct NDT on older pressure vessel tanks is retained.

2. One comment suggested that it would be inappropriate to require NDT without a specific flaw in mind. The Coast Guard is sensitive to this argument and does indeed have specific flaws and specific locations on the tank in mind, i.e., fatigue fractures in high stress areas (saddle horns and mountings). Therefore, the modified requirement to conduct NDT on pressure vessel cargo tanks is retained.

3. Three comments suggested that metal fatigue is the most significant potential cause of barge mounted tank failure. The Coast Guard agrees. Fatigue failures are characterized by the action of repeated or fluctuating stresses that have cycled a large number of times. Barge mounted tanks are subject to fluctuating stresses in a number of ways. The most significant are bending and torsion caused by the bending and twisting of the hull, pressure changes during loading and unloading, impact caused by the barge bouncing across waves and against lock walls; and longitudinal forces caused by liquid moving in the tanks. All of these stresses are transmitted to the tank through the supports (saddles). Surface discontinuities such as grooves, notches, attachments, etc. act to concentrate the stress. The saddle support attachments to the tank represent a surface discontinuity and concentrate the applied stresses making this the most likely fatigue failure location.

Two comments noted that metal fatigue initiates at the surface at a point of stress concentration. The Coast Guard agrees. Fatigue begins as a minute crack which continues to propagate with time until it reaches a critical size and rupture occurs. Fatigue does not initiate at the center of a material cross section as this is a point where applied stresses are minimum; therefore, inspection for subsurface defects or material flaws is not necessary after initial construction. Since fatigue failures initiate at the surface, the surface at stress risers should be where NDT is focused. Such NDT methods would include visual, dye penetrant, and magnetic particle (wet or dry). Acoustic emission testing, radiography, and ultrasonic shear wave testing are more suitable for the detection of subsurface material or welding defects.

Two comments suggested that shear wave and acoustic emission results where highly subjective and that improper interpretation of the results could lead to needless repairs. The Coast Guard agrees.

In summary, the Coast Guard agrees that surface initiating fatigue fracture at a point of stress concentration is the most likely failure mechanism and that magnetic particle and dye penetrant are the most suitable NDT methods for detecting surface cracks (as well as the stress corrosion cracking likely to occur in tanks in corrosive service).

For these reasons the Coast Guard has retained the requirement for NDT. Owners of tanks requiring NDT testing must submit proposals (as required by §§ 38.25-3, 98.25-97, and 151.04-7) to the Officer in Charge, Marine Inspection. These NDT proposals must include the test methods and procedures to be used, all of which must be in accordance with Section V of the ASME Boiler and Pressure Vessel Code. In evaluating these proposals the OCMI will consider the suitability of the proposed NDT methods in detecting the type of flaws of concern on the particular tank to be examined.

4. Two comments pointed out that visual examination is a method of NDT listed in Section V of the ASME Boiler and Pressure Vessel Code and recommended that the existing policy of visual examination instead of other NDT methods be continued. The Coast Guard notes that Article 9, of Section V of the ASME Boiler and Pressure Vessel Code states that other than when used in the interpretation of the various nondestructive examination methods in the Code (i.e., radiographic, ultrasonic, dye penetrant, magnetic particle, eddy current, leak testing, and acoustic emission), generally visual examination is used only to determine the surface condition of a part, alignment of mating surfaces, shapes, or evidence of leaking.

The Coast Guard is concerned with cyclical fatigue fractures on older tanks and does not agree that visual examination is adequate to detect this type of flaw. During a recent examination of shore service tanks being converted for barge service, fluorescent magnetic particle inspection revealed over 30 cracks in circumferential and longitudinal welds. Most were 3 to 4 inches long and ¼ to ½ inch deep. One was 13 inches long, another was 27 inches long. All of the cracks were detected by fluorescent magnetic particle NDT; none of the cracks found were visible to the naked eye when the ultraviolet (black light) was turned off. As a consequence of the preceding the Coast Guard determined it was necessary to retain the requirement for NDT.

5. Eight comments suggested various internal examination intervals and NDT strategies. One comment suggested a 12 year internal examination interval until the tank reaches age 24, then an 8 year internal interval with surface crack detecting NDT to be conducted during the internal examination. One comment suggested a 12 year internal examination interval of the tank until age 24, then an 8 year internal interval without NDT. Two comments suggested a 12 year internal interval with surface crack detecting NDT during each internal examination. Two comments suggested a 12 year internal examination interval without NDT. Two comments suggested a 12 year internal examination interval with surface crack detecting NDT to begin at year age 36 and to be conducted during the internal examination. One comment suggested a 10 year internal interval with surface crack detecting NDT to begin at age 30 and to be conducted during the internal examination. Two elements are prevalent in the suggested strategies: (1) Older tanks should receive closer scrutiny either by reducing the interval between examinations or by adding an NDT requirement; and (2) NDT intervals should match a tank's internal examination interval. The Coast Guard agrees and has incorporated both these elements in this rule (see preamble paragraphs 6 and 7 below for the discussion of the NDT interval and see preamble paragraphs 9 and 10 below for the discussion of tank internal examination intervals).

6. The Coast Guard believes that the strong negative reaction received in the comments to the proposed NDT requirement (beginning at year 25 and repeated at five year intervals thereafter) can be attributed, in a large part, to industry's reluctance to remove insulation in order to conduct NDT (thickness gauging, dye penetrant or magnetic particle) on the tank's external surface. The comments discuss how insulation removal destroys a tank's vapor barrier which may be meticulously maintained and is expensive to re-establish. Given the options of insulation removal to permit external NDT or gas freeing to permit internal NDT, the comments indicate that owners would opt to gas free. The Coast Guard did not anticipate industry's reluctance to remove insulation and assumed that NDT would easily and inexpensively be conducted on the tank external surface without the need to gas free the tank.

The Coast Guard considered the following facts. Design life of these tanks is 20 to 30 years. The tanks were built with oversized scantlings because exact service loads were unknown and estimated. No definitive studies have been done by the Coast Guard or members of the industry to determine the likelihood of tank failure due to fatigue or stress corrosion cracking, and the approximate fatigue life. There are now more than 20 tanks with ages between 30 and 40 years. NDT methods are available which will allow testing for exterior surface cracks from the interior of a tank, but would require gas freeing to be done. The risks associated with shipping of hazardous cargoes do not merit waiting for failure, especially since testing will give early failure indications and lessen the chance of catastrophic failure. In past years it has been the policy of many OCMIs to extend the presently required internal examination interval of eight years, by one year increments, to a total of twelve years in some cases.

In response to industry's concerns, and in consideration of the above facts, the Coast Guard has chosen a moderate course which will provide an equivalent or higher level of safety than that presently required. The proposed NDT interval has been changed (in §§ 38.25-1(a)(5), 98.25-95(a)(4), and 151.04-5(1)), to 10 years, to coincide with the cargo tank internal examination interval. Matching the NDT interval with the cargo tank internal examination interval will afford owners and operators the opportunity to conduct the required NDT on the tank's interior surface, and avoid the need to remove insulation for the

sole purpose of conducting NDT. It is not contemplated that extensions of the internal examination interval will be granted, except in unusual circumstances.

7. As discussed in preamble paragraph 5 above, comments on the NPRM suggested a starting time (tank age) for NDT ranging from year 12 to year 36. In each case a starting time was suggested that was a multiple of the proposed tank internal examination interval. The Coast Guard is sensitive to the rationale behind this concept, i.e., facilitating NDT on the tank internal surface during a time when the tank is already gas free to meet a tank internal examination requirement. Accordingly, §§ 38.25–1(a)(5), 98.25–95(a)(4), and 151.04–5(l) have been changed to require that tanks with a 10 year internal examination interval, that are 30 years old and older, be nondestructively tested during each internal examination.

8. Three comments suggested that, as an aid to industry and Coast Guard marine inspectors, uniform guidance identifying the types of defects that are of concern and their locations on the tanks should be provided by the Coast Guard to assist in the development of the NDT proposals required by §§ 38.25–3, 98.25–97, and 151.04–7. The Coast Guard agrees. Two comments suggested that without some form of guidance, to Officers in Charge, Marine Inspection, and barge owners/operators alike, the NDT program would lack the necessary degree of consistency. The Coast Guard agrees. To assist industry in developing NDT proposals that will target the locations on the tank of most concern to the Coast Guard and utilize the NDT methods most suitable for detecting these flaws, a NVIC [Navigation and Vessel Inspection Circular] titled "Guidelines for Nondestructive Testing of Pressure Vessel Type Cargo Tanks Aboard Tank Barges" has been developed. Copies of this NVIC may be obtained by mailing a request to the office listed in **ADDRESSES**. Information to assist Officers in Charge, Marine Inspection, in the evaluation of nondestructive testing proposals will be incorporated into the Marine Safety Manual.

9. Two comments suggested it was inappropriate to justify the proposed 10 year internal examination interval based upon ANSI/NB–23 "National Board Inspection Code—1985" section U–106b, which states that the maximum period between internal inspection of pressure vessels should not exceed one-half of the remaining corrosion rate life or 10 years, whichever is less. The comments suggest that the Coast Guard overlooked section U–106c which states that vessels with a corrosion rate known to be zero need not be inspected internally. However, the Coast Guard has noted that for pressure vessels not undergoing internal inspections the provisions of U–106c require periodic external inspections, including NDT thickness measurements.

Given the options of: (1) Gas freeing a tank to permit internal examinations at 10 year intervals at the same time as regularly scheduled drydockings, internal structural examinations, safety valve tests, and inspections and reinspections for certification; or, (2) periodic external NDT thickness measurements requiring insulation removal, the Coast Guard believes that the 10 year internal examination interval is preferable.

10. Three comments noted that in the preamble to the NPRM the Coast Guard justified the proposed 10 year cargo tank internal examination interval, in part, to align it with the drydock interval (5 years for salt water service vessels and 10 years for fresh water service vessels). Because shipyards normally require gravity type tanks to be gas free as a condition of drydocking, the Coast Guard believed that alignment of the drydock and cargo tank interval would avoid an additional gas freeing expense. The comments pointed out, however, that shipyards do not require pressure vessel type cargo tanks to be gas free before drydocking or conducting hull repairs; therefore, alignment of these two inspection intervals does not necessarily result in a savings of gas freeing costs. Nonetheless, the Coast Guard believes there is an economic benefit to the industry and a workload benefit to Officers in Charge, Marine Inspection, in aligning the cargo tank internal examination interval with the drydock interval. A 10 year cargo tank internal examination interval will allow cargo tank examinations, drydock examinations, safety valve tests, internal structural examinations, and inspections and reinspections for certification to be conducted at the same time, reducing the amount of time a vessel is out of service. Therefore, the Coast Guard has retained in §§ 38.25–1(a)(1)(i), 98.25–95(a)(1)(i), and 151.04–(5)(b)(3)(i), the 10 year internal examination interval for most pressure vessel cargo tanks.

Tanks carrying cargoes which exhibit corrosive behavior or cargoes capable of forming corrosive by-products when contaminated by water will continue to be inspected more frequently than 10 years, as required by 46 CFR subchapter O (table 151.05). Included in this category are lined pressure vessel tanks carrying inorganic acids.

11. Two commenters recommended that the internal examination and hydrostatic test interval for pressure vessel tanks in chlorine service be extended to three years. Both comments suggested that industry experience demonstrates that the current two year interval makes no contribution to safety and brings with it the potential of accelerated corrosion of the interior of the tank because of water used to wash the tanks when cleaning and gas-freeing. Although only two comments were received, the commenters represented practically all of the chlorine barge transportation industry in Canada and the U.S. The Chlorine Institute membership produces 98% of the total North American chlorine capacity and has other members involved in the packaging, transportation and use of chlorine. The second comment was from American Waterways Operators representing inland transporters of liquified gaseous cargoes. The Chlorine Institute stated that the six-year hydrostatic test interval for shoreside bulk storage tanks, which are twice as large as barge tanks, has proven very satisfactory from a safety point of view, and based upon their experience they believe a four year internal examination and hydrostatic test interval would be safe. However, they agree to verification of the three year interval first.

In the NPRM, the Coast Guard explained that although it recognized that increasing the internal examination and hydrostatic testing interval would reduce tank deterioration, it was reluctant to propose regulatory requirements less stringent than standards set for other models of bulk chlorine transportation. The present requirement for a biennial (two-year) hydrostatic test and internal tank examination was adopted based on a rail car standard dating back to 1909 and recommended by the Chlorine Institute at that time. The Federal Railroad Administration and the Federal Highway Administration still require biennial hydrostatic tests for rail cars and tank trucks, respectively.

The Coast Guard agrees that since water used to clean chlorine tanks is the major source of chlorine tank corrosion, increasing the examination interval should reduce internal tank deterioration. Also, chlorine tanks are not insulated, which allows examination of the tank exterior at all times. The Coast Guard has been convinced by these additional arguments, and accordingly the internal examination interval in table 151.05 and the hydrostatic test interval in § 151.50–31(p) have been changed to three years. Despite the facts that this change in the Coast Guard's position would reduce a burden on industry and would be within the scope of the NPRM, and that no negative comments concerning this matter were received, the Coast Guard feels that some interested persons may object to the three year interval. Under these circumstances, the Coast Guard will continue to accept comments on just this issue to determine if any further rulemaking is necessary.

12. One comment suggested that the Coast Guard discontinue the current practice of having a marine inspector physically witness the safety relief valve tests and the hydrostatic testing of chlorine tanks. The comment points out that this practice requires the precise timing of the arrival of the inspector and a carefully arranged work schedule for the barge owner. The comment suggests that third party or owner testing would not decrease public safety, would be a workload benefit to the Coast Guard, and would be a scheduling benefit to the barge owner. The Coast Guard rejects this recommendation. While the Coast Guard agrees that the recommendation might reduce scheduling problems, an equivalent level of safety would not be provided. Safety valves are considered to be a critical safety feature and testing must be witnessed by the Coast Guard. Hydrostatic tests, as well as internal examinations, require subjective evaluations and would best be witnessed by the Coast Guard.

13. One comment noted that the proposed removal of § 151.01–5 is unnecessary since it was deleted in the March 12, 1987 final rule (52 FR 7765) implementing MARPOL Annex II. Accordingly, this item has been omitted from this rulemaking.

14. One comment incorrectly assumed that § 151.04–5(b)(3) would extend the internal examination interval for all tanks carrying cargoes at temperatures above −67 °F in pressure vessel type cargo tanks. Section 151.04–5(b) only applies to those tanks carrying cargoes with a "G" in the column entitled "Tank internal inspect. period-years" in Table 151.05.

15. One comment objected to the provision in § 54.20–3 which prohibits the use of joggled longitudinal seams and limits the use of joggled connections to circumferential joints on Class II and Class III pressure vessels. The commenter suggested that the prohibition should be limited to pressure vessel cargo tanks. The prohibition on the use of joggled longitudinal seams is not a new provision; this rule simply relocates this provision in the regulations. Prior to this rulemaking this provision was located in footnote 6 to Table 54.01–5(b)—Pressure Vessel Classifications. Footnote 6 did not directly prohibit the use of joggled seams, or butt welded joints with one plate edge offset (as referred to in the ASME Code), for longitudinal welds, but did reference Figure UW–13.1(k) and table UW–12 of the ASME Code. This indirectly prohibited the use of butt welded joints with one plate edge offset because the referenced sections of the ASME Code prohibited their use. The new rule more clearly explains the restrictions on the use of these joints.

16. One comment suggested that the proper sequencing of weldments would be more productive, as a quality assurance method, than the radiography proposed in § 54.25–8(c). The Coast Guard recognizes the benefits associated with the proper sequencing of weldments. However, the Coast Guard prefers the requirement for spot radiography because: (1) The extended internal inspection intervals in this rulemaking were based, in part, upon the service experience of pressure vessel cargo tanks built over the past 30 years on which radiography was routinely performed; (2) sequencing would require approval at the plan review stage and verification during fabrication which would potentially add significant delays to the production process; and (3) sequencing will not eliminate welding defects and would leave unanswered the question of critical discontinuities.

17. This rule modifies § 54.25–10, from what was proposed in the NPRM, by omitting table 54.25–10(d) and the last two sentences in paragraph (d). These sentences and the Table contained requirements for impact energies of Charpy specimens. Identical provisions are contained in UG–84 of section VIII of the ASME Code, and 46 CFR 54.01–1 already requires pressure vessels to be designed, constructed, and inspected in accordance with section VIII. To include these required Charpy specimen impact energies in § 54.25–10 would be redundant, and they have been removed.

18. This rule changes § 151.04–5 by adding modifications to paragraph (c) which were not included in the NPRM. These modifications are simply editorial changes to make the requirements for the external examination of pressure vessel cargo tanks in § 151.04–5 consistent with those in §§ 38.25–1 and 98.25–95. The substance of the requirements in § 151.04–5 has not been changed; the wording has been standardized to be more consistent with the wording in parts 38 and 98.

Incorporation by Reference

The material in §§ 38.01–3, 98.01–3, and 151.01–2 has been approved for incorporation by reference by the director of the Federal Register under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in those sections. If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulations Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to follow the progress of this action in the Unified Agenda.

E.O. 12292 and DOT Regulatory Policies and Procedures

The regulations are considered by the Coast Guard to be non-major under Executive Order 12291. In addition, these regulations are considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). An evaluation has been prepared and placed in the public docket as required by the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5, dtd May 22, 1980). The economic impact analysis was based on information supplied in response to the 1982 CTAC questionnaire and information provided in response to the ANPRM.

One of the comments to the NPRM contained cost figures. This comment argued that the estimated $500 cost to conduct NDT on a tank 30 years of age and older, used in the draft evaluation, was too low. This comment suggested $1,500 to $2,000 as a more realistic estimate. The Coast Guard feels that $1,500 to $2,000 is too high an estimate for the limited amount of NDT envisioned as necessary to confirm the condition of older tanks. However, to be conservative in its evaluation, the calculations to determine the economic benefit associated with this rulemaking used NDT costs ranging from $500 to $1,500 per tank.

The annual savings for the barge industry is estimated to be $183,462 (in 1988 dollars). This is an increase of

$87,449 from that estimated in the draft regulatory evaluation. This difference in estimated economic savings is primarily attributable to the extension of the inspection intervals for chlorine tanks. The draft regulatory evaluation was based on the inspection interval for chlorine tanks remaining unchanged. The final regulatory evaluation includes the benefit that should be realized by the 47 chlorine barges with the easing of the internal inspection and hydrostatic test intervals from two to three years.

The design and fabrication regulation modifications (contained in part 54) will also affect any self-propelled vessels that may be built with pressure vessel type tanks carrying cargoes at ambient temperatures. However, there are no existing vessels in this category, nor is it likely that any will be built in the foreseeable future. Therefore, the Coast Guard does not consider the economic impact on self-propelled vessels to be significant.

Regulatory Flexibility Act

These regulations would affect all companies that own or operate barges that are within the scope of this rulemaking; some of these companies may be small entities. For this rulemaking, the Coast Guard considers a small entity to be one operating a single barge. The amendments will provide an economic benefit to these barge owners and operators by reducing the frequency of costly inspections. The Coast Guard does not consider this economic impact to be significant. The estimated cost savings of $1,042 per barge per year represents about 2 days revenue for this type of barge. The Coast Guard has identified ten companies as small entities and the cost savings associated with these amendments will not be significant; therefore, the analysis requirements of 5 U.S.C. 603 and 604 do not apply. The Coast Guard certifies in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The affected section numbers are §§ 38.25–3, 98.25–97 and 151.04–7. The corresponding OMB Control No. is 2115–0563.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has assessed the environmental impacts of these regulations and has determined that they will not be significant. Reduced tank cleaning will result in a slight reduction in air and water pollution. Due to the small number of barges that would be affected by these regulations, this slight reduction is considered insignificant when compared to other potential sources of environmental pollution. The use of more sophisticated examination methods on older cargo tanks is expected to decrease the probability of catastrophic tank failure and improve the reliability of these tanks. This effect is more important as a safety benefit because an uncontrolled release of the type of cargo generally carried in these tanks presents an immediate threat to life but the gases tend to rapidly dissipate, thereby posing no persistent environmental threat.

List of Subjects

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety.

46 CFR Part 54

Reporting and recordkeeping requirements, vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

Regulations

For the reasons set out above, parts 38, 54, 98, and 151, of chapter I, title 46, Code of Federal Regulations, are amended as follows:

PART 38—[AMENDED]

1. The authority citation for part 38 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 38.01–3 is added, to read as follows:

§ 38.01–3 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller #28518, Columbus, OH, 43228–0518

ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing" ..... 38.25–3(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, N.Y. 10017

ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986) ..... 38.25–3(a)(1)

3. In § 38.25–1, paragraphs (a)(1), and (a)(3) and (b) are revised, and paragraphs (a)(4), (a)(5), and a note to follow paragraph (b) are added, to read as follows:

§ 38.25–1 Tests and inspections—TB/ALL.

(a) * * *

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure vessel type cargo tank on an unmanned barge carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(1)(i) of this section.

* * * * *

(3) The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation, or the thickness of the tanks may be gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(4) If required by the Officer in Charge, Marine Inspection, the owner shall conduct nondestructive testing of each tank in accordance with § 38.25–3.

(5) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of that tank, in accordance with § 38.25–3, during each internal inspection.

(b) If the marine inspector considers a hydrostatic test necessary to determine the condition of the tank, the owner shall perform the test at a pressure of 1½ times the tanks's—

(1) Maximum allowable pressure, as determined by the safety relief valve setting; or

(2) Design pressure, when cargo tanks operate at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements.

Note: See the ASME Code, Section VIII, Appendix 3 for information on design pressure.

* * * * *

4. Section 38.25–3 is added, to read as follows:

§ 38.25–3 Nondestructive testing—TB/ALL.

(a) Before nondestructive testing may be conducted to meet § 38.25–1 (a)(4) and (a)(5), the owner shall submit a proposal to the Officer in Charge, Marine Inspection for acceptance that includes—

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

PART 54—[AMENDED]

5. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

6. In § 54.01–1, Table 54.01–1(a) is amended by changing the entry "USC–6 modified by" to read "UCS–6 modified by", "USC–56 modified by" to read "UCS–56 modified by", "USC–57 modified by" to read "UCS–57, UNF–57, UHA–33, and UHT–57 modified by", and "USC–65 through UCS–67 replaced by" to read "UCS–65 through UCS–67 replaced by" under the column heading "Paragraphs in section VIII, ASME Code [1] and disposition".

7. In § 54.01–5, Table 54.01–5(b) is revised to read as follows:

§ 54.01–5 [Amended]

* * * * *

TABLE 54.01–5(b)—PRESSURE VESSEL CLASSIFICATION [8]

Class	Service contents	Class limits on pressure and temperature	Joint requirements [1,6,7]	Radiography requirements, section VIII, ASME Code [4,7]	Post weld heat treatment required [5,7]	Shop inspect. required	Plan approval required
I	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.[3]	Over 600 p.s.i. or 700 °F. Over 600 p.s.i. or 400 °F.	(1) For category A; (1) or (2) For category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with Table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME code.	Yes [9]	Yes.[9]
I–L Low temperature.	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.[3]	Over 250 p.s.i. and service temperature below 0 °F. Over 250 p.s.i. and service temperature below 0 °F.	(1) for categories A and B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. No backing rings or strips left in place.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply.	For carbon or low alloy steel, in accordance with table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code.	Yes	Yes.
II	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.[3,5,6]	30 through 600 p.s.i. or 275° through 700 °F. 200 through 600 p.s.i. or 250° through 400 °F.	(1) or (2) for category A. (1), (2), or (3) for category B. Categories C and D in accordance with UW–16 of ASME Code.	Spot, unless exempted by UW–11(c) of ASME Code.	In accordance with section VIII of ASME Code.	Yes [9]	Yes.[9]
II–L Low temperature.	(a) Vapor or gas. (b) Liquid (c) Hazardous materials.	0 through 250 p.s.i. and service temperature below 0 °F. 0 through 250 p.s.i. and service temperature below 0 °F.	(1) for category A; (1) or (2) for category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Spot. The exemption of UW–11(c) of ASME Code does not apply.	Same as for I–L except that mechanical stress relief may be substituted if allowed under Subpart 54.30 of this chapter.	Yes [9]	Yes.[9]

TABLE 54.01-5(b)—PRESSURE VESSEL CLASSIFICATION [8]—Continued

Class	Service contents	Class limits on pressure and temperature	Joint requirements [1,6,7]	Radiography requirements, section VIII, ASME Code [3,7]	Post weld heat treatment required [3,7]	Shop inspect. required	Plan approval required
III	(a) Vapor or gas. (b) Liquid (c) Hazardous materials [4,5,6]	Under 30 p.s.i. and 0° through 275 °F. Under 200 p.s.i. and 0° through 250 °F.	In accordance with Section VIII of ASME Code.	Spot, unless exempted by UW-11(c) of ASME Code.	In accordance with Section VIII of ASME Code.	Yes	Yes.

[1] Welded joint categories are defined under UW-3 of the ASME Code. Joint types are described in Table UW-12 of the ASME Code, and numbered "(1)," "(2)," etc.
[3] See § 54.25-3.
[4] See §§ 54.25-6(c) and 54.25-20(d).
[5] See §§ 54.01-15 and 54.10-3 for exemptions.
[6] Specific requirements modifying Table UCS-56 of the ASME Code are found in § 54.25-7.
[7] See § 54.20-(3) and (f).
[7] Applies only to welded pressure vessels.
[8] Does not include special requirements for heat exchanger. Section 54.01-2 contains an explanation of those special requirements.

8. In § 54.01-5, paragraph (d)(2) is revised, to read as follows:

§ 54.01-5 Scope (Modifies U-1 and U-2).

* * * * *

(d) * * *

(2) Meet § 54.01.01-35, § 54.20-3(c), and § 54.25-3 of this part;

* * * * *

9. Section 54.05-6 is revised, to read as follows:

§ 54.05-6 Toughness Test Temperatures.

Each toughness test must be conducted at temperatures not warmer than −20 °F or 10 °F below the minimum service temperature, whichever is lower, except that for service at or below −320 °F, the tests may be conducted at the service temperature in accordance with § 54.25-10(a)(2).

10. In § 54.20-3, paragraphs (c) and (f) are added, to read as follows:

§ 54.20-3 Design (modifies UW-9, UW-11(a), UW-13, and UW-16).

* * * * *

(c) A butt welded joint with one plate edge offset, as shown in Figure UW-13.1(k) of the ASME Code, may only be used for circumferential joints of Class II and Class III pressure vessels.

* * * * *

(f) Joints in Class II or III pressure vessel cargo tanks must meet the following:

(1) Category A and B joints must be type (1) or (2).

(2) Category C and D joints must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.

11. In § 54.25-8, the heading is revised and paragraph (c) is added, to read as follows:

§ 54.25-8 Radiography (modifies UW-11(a), UCS-57, UNF-57, UHA-33, and UHT-57).

* * * * *

(c) Each butt welded joint in a Class II or III pressure vessel cargo tank must be spot radiographed, in accordance with UW-52, regardless of diameter or thickness, and each weld intersection or crossing must be radiographed for a distance of at least 10 thicknesses from the intersection.

12. In § 54.25-10, the undesignated paragraph that follows the formula in paragraph (a)(2) is revised and paragraph (d) is added, to read as follows:

§ 54.25-10 Low Temperature Operation—Ferritic Steels (replaces UCS-65 through UCS-67).

(a) * * *

(2) * * *

Only temperatures due to refrigerated service usually need to be considered in determining the service temperature, except pressure vessel type cargo tanks operating at ambient temperatures must meet paragraph (d) of this section. "Refrigerated service", as used in this paragraph, means a service in which the temperature is controlled by the process and not by atmospheric conditions.

* * * * *

(d) Weldments and all materials used in pressure vessel type cargo tanks operating at ambient temperatures and constructed of materials listed in Table UCS-23 must pass Charpy impact tests in accordance with UG-84 at a temperature of −20 °F or colder, except as provided by paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is ⅝ inch or less, unless otherwise indicated:

(i) A-182, normalized and tempered.
(ii) A-302, Grades C and D.
(iii) A-336, Grades F21 and F22 that are normalized and tempered.
(iv) A-387, Grades 21 and 22 that are normalized and tempered.
(v) A-442, Grade 55 with a nominal thickness of 1" or less.
(vi) A-516, Grades 55 and 60.
(vii) A-533, Grades B and C.
(viii) All other plates, structural shapes and bars, and other product forms, except for bolting, if produced to a fine grain practice and normalized.

(2) Charpy impact tests are not required for any of the following ASTM materials if the thickness for each is 1¼ inch or less:

(i) A-203.
(ii) A-442, produced to a fine grain practice and normalized.
(iii) A-508, Class 1.
(iv) A-516, normalized.
(v) A-524.
(vi) A-537.
(vii) A-612, normalized.
(viii) A-662, normalized.
(ix) A-724, normalized.

(3) Charpy impact tests are not required for any of the following bolt materials:

(i) A-193, Grades B5, B7, B7M, and B15.
(ii) A-307, Grade B
(iii) A-325, Type 1.
(iv) A-449.

PART 98—[AMENDED]

13. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. The title of subpart 98.01 is revised, to read as follows:

Subpart 98.01—General.

15. The title of § 98.01-1 is revised, to read as follows:

§ 98.01-1 Applicability.

16. Section 98.01-3 is added, to read as follows:

§ 98.01-3 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller # 28518, Columbus, OH, 43228-0518
ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualification and Certification in Nondestructive Testing"..... 98.25-97(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, N.Y. 10017
ASME Boiler and Pressure Vessel Code, Section V, Nondestructive Examination (1986)..... 98.25-97(a)(1)

17. In § 98.25-95, paragraph (a) is revised, to read as follows:

§ 98.25-95 Tests and Inspections.

(a) Each tank shall be subjected to the tests and inspections described in this section in the presence of a marine inspector, except as otherwise provided in this part.

(1) An internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection if the tank is a pressure-vessel type cargo tank on an unmanned barge described under § 151.01-25(c) of this chapter and carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is of a type other than that described in paragraph (a)(1)(i) of this section.

(2) An external examination of unlagged tanks and the visible parts of lagged tanks is made at each biennial inspection. The owner shall ensure that the amount of insulation deemed necessary by the marine inspector is removed from insulated tanks during each internal inspection to allow spot external examination of the tanks and insulation, or the thickness of the tanks may be gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(3) If required by the Officer in Charge, Marine Inspection the owner shall conduct nondestructive testing of each tank in accordance with § 98.25-97.

(4) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, and is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of each tank in accordance with § 98.25-97, during each internal inspection.

* * * * *

18. Section 98.25-97 is added, to read as follows:

§ 98.25-97 Nondestructive testing.

(a) Before nondestructive testing may be conducted to meet § 98.25-95(a) (3) and (4), the owner shall submit a proposal to the Officer in Charge, Marine Inspection for approval that includes—

(1) The test methods and procedures to be used, all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualifications and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

PART 151—[AMENDED]

19. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

20. Section 151.01-2 is added, to read as follows:

§ 151.01-2 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the ones listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part and the sections affected, are:

American Society for Nondestructive Testing (ASNT)

4153 Arlingate Road, Caller #28518, Columbus, OH 43228-0518
ASNT "Recommended Practice No. SNT-TC-1A (1988), Personnel Qualification and Certification in Nondestructive Testing"..... 151.04-7(c)(2)

American Society of Mechanical Engineers

United Engineering Center, 345 East 47th Street, New York, NY 10017
ASME Boiler and Pressure Vessel Code Section V, Nondestructive Examination (1986)..... 151.04-7(a)(1)

§ 151.03-37 [Amended]

21. Section 151.03-37 is amended by removing the Arabic numeral "8" and adding the Roman numeral "VIII", in the first sentence.

22. Section 151.03-38 is added, to read as follows:

§ 151.03-38 Nondestructive testing.

Nondestructive testing includes ultrasonic examination, liquid penetrant examination, magnetic particle examination, radiographic examination, eddy current, and acoustic emission.

23. In § 151.04-5, the introductory text of paragraph (b) and paragraphs (b)(3) and (c) are revised, paragraphs (d) through (i) are redesignated as paragraphs (f) through (k) respectively, and new paragraphs (d), (e), and (l) and a note following paragraph (e) are added, to read as follows:

§ 151.04-6 Inspection for Certification.

* * * * *

(b) Unless otherwise specified in table 151.05, cargo tanks are internally examined as follows:

* * * * *

(3) If the tank is a pressure-vessel type cargo tank, an internal inspection of the tank is conducted within—

(i) Ten years after the last internal inspection on an unmanned barge carrying cargo at temperatures of −67 °F (−55 °C) or warmer; or

(ii) Eight years after the last internal inspection if the tank is a pressure type

cargo tank carrying cargo at temperatures colder than −67 °F (−55 °C).

• • • • •

(c) An external examination of unlagged tanks and the visible parts of l. gged tanks is made at each biennial inspection. If the vessel has single skin construction, the underwater portion of the tank need not be examined unless deemed necessary by the Officer in Charge, Marine Inspection. If an external examination of the tank is not possible because of insulation, the owner shall ensure that—

(1) The amount of insulation deemed necessary by the marine inspector is removed during each cargo tank internal inspection to allow spot external examination of the tanks and insulation; or

(2) The thickness of the tanks is gauged by a nondestructive means accepted by the marine inspector without the removal of insulation.

(d) If required by the Officer in Charge, Marine Inspection the owner shall conduct nondestructive testing of each tank designated by the Officer in Charge, Marine Inspection in accordance with § 151.04–7.

(e) If the Officer in Charge, Marine Inspection considers a hydrostatic test necessary to determine the condition of the tanks, the owner shall perform the test at a pressure of 1½ times the tank's—

(1) Maximum allowable pressure, as determined by the safety relief valve setting; or

(2) Design pressure, when cargo tanks operate at maximum allowable pressures reduced below the design pressure in order to satisfy special mechanical stress relief requirements.

Note: See the ASME Code, Section VIII, Appendix 3 for information on design pressure.

• • • • •

(l) If the tank is a pressure vessel type cargo tank with an internal inspection interval of 10 years, and is 30 years old or older, determined from the date it was built, the owner shall conduct nondestructive testing of each tank in accordance with § 151.04–7, during each internal inspection.

24. Section 151.04–7 is added, to read as follows:

§ 151.04–7 Nondestructive testing.

(a) Before nondestructive testing may be conducted to meet § 151.04–5 (d) and (l), the owner shall submit a proposal to the Officer in Charge, Marine Inspection that includes—

(1) The test methods and procedures to be used all of which must meet section V of the ASME Boiler and Pressure Vessel Code (1986);

(2) Each location on the tank to be tested; and

(3) The test method and procedure to be conducted at each location on the tank.

(b) If the Officer in Charge, Marine Inspection rejects the proposal, the Officer in Charge, Marine Inspection informs the owner of the reasons why the proposal is rejected.

(c) If the Officer in Charge, Marine Inspection accepts the proposal, then the owner shall ensure that—

(1) The proposal is followed; and

(2) Nondestructive testing is performed by personnel meeting ASNT "Recommended Practice No. SNT–TC–1A (1988), Personnel Qualification and Certification in Nondestructive Testing."

(d) Within 30 days after completing the nondestructive test, the owner shall submit a written report of the results to the Officer in Charge, Marine Inspection.

Table 151.05 [Amended]

25. Table 151.05—Summary of Minimum Requirements is amended as follows:

(a) In the column entitled "Tank internal inspect. period—years":

(1) Remove the numeral "8" and add the letter "G" for the following cargoes, listed in the column entitled "Cargo identification/Name/Pressure/Temp.":

Ammonia, anhydrous/Press/Amb;
Butadiene, butylene mixtures (containing acetylenes)/Press/Amb;
Butadiene/Press/Amb;
Dichlorodifluoromethane/Press/Amb;
Dimethylamine/Press/Amb; and
Monochlorodifluoromethane/Press/Amb;

(2) Remove the numeral "2" and add the numeral "3", for the cargo "Chlorine/Press/Amb"; and

(3) Remove the numeral "4" and add the letter "G", for the cargo "Propylene oxide/Press/Amb"; and

(b) In the column entitled "Special Requirements (Section)", for the cargo "Sulfur dioxide/Press/Amb" (listed in the column entitled "Cargo Identification/Name/Pressure/Temp"), remove the section number "151.50–35" and add "151.50–84".

§ 151.50–10 [Amended]

26. Section 151.50–10(p) is redesignated as § 151.50–12(o).

27. In § 151.50–10 paragraphs (q) and (r) are redesignated as paragraphs (p) and (q) respectively.

28. In § 151.50–31, paragraph (p) is revised, to read as follows:

§ 151.50–31 Chlorine

• • • • •

(p) During each internal inspection, each cargo tank must be tested hydrostatically to 1½ times the maximum allowable pressure as determined by the safety relief valve setting.

• • • • •

§ 151.50–32 [Amended]

29. In § 151.50–32, paragraph (h) is removed and reserved.

§ 151.50–35 [Removed]

30. Section 151.50–35 is removed.

Signed: September 12, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–28206 Filed 12–8–89; 8:45 am]
BILLING CODE 4910–14–M

federal register

Monday
December 11, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 261, 271, and 302

Hazardous Waste Management System; Identification and Listing of Hazardous Waste CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH-FRL-3630-8; EPA/OSW-FR-89-019]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous one generic category of waste generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having carbon chain lengths ranging from one to five (EPA Hazardous Waste No. F025). EPA is also responding to comments on another generic category of waste (that was promulgated as an interim final rule on February 10, 1984) generated by the same process (EPA Hazardous Waste No. F024); the Agency is also finalizing this listing without substantive change, although the listing description has been clarified. In addition, the Agency is finalizing the addition of two toxicants to Appendix VIII of part 261. The effect of this regulation is that these wastes will be or will continue to be subject to regulation, respectively, as hazardous under 40 CFR parts 261–266, 268, 270, 271, and 124. This action, however, does not apply to wastes generated during the production of chlorinated aliphatic hydrocarbons that were previously listed as hazardous on May 19, 1980.

In addition, the Agency is also making final amendments to CERCLA regulations in 40 CFR part 302 that are related to today's final hazardous waste listing. In particular, EPA is making final the designation as hazardous substances under CERCLA all of the wastes made final in today's rule and the final reportable quantities that would be applicable to those wastes.

DATES: Effective Date: The listing of EPA Hazardous Waste No. F025 becomes effective on June 11, 1990; the amended listing for EPA Hazardous Waste No. F024 becomes effective June 11, 1990.

ADDRESSES: The RCRA docket is located at the following address, and is open from 9 to 4, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (Room 2427) (OS–305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment by calling (202) 475–9327 to review docket materials. Refer to "Docket number F–89–GCAF–FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page. Copies of the non-CBI version of the listing background document, Health and Environmental Effects Profiles (HEEPs), and not readily available references are available for viewing and copying only in the OSW docket. Copies of materials relevant to the CERCLA portions of this rulemaking are contained in Room 2427, U.S. EPA, 401 M St., SW., Washington, DC 20460. The docket is available for inspection from 9:00 a.m. to 4:00 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 or at (202) 382–3000. For technical information, contact Mr. John Austin, Listing Section, Office of Solid Waste (OS–333), at (202) 382–4789. For technical information on the CERCLA final rule, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210). Both are available at U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Outline

I. Legal Authority
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  B. Applicability of Rules to Wastes That Are Recycled
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V. Relation to Other Regulations
  A. Proposed Toxicity Characteristic
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IX. State Authority
  A. Applicability of Rules in Authorized States
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XI. Regulatory Impact Analysis
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I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001 (b) and (e)(2) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(2) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602(a).

II. Background

Pursuant to section 3001 of subtitle C of the Resource Conservation and Recovery Act (RCRA), this notice finalizes the listing of two generic categories of wastes generated during the manufacture of chlorinated aliphatic hydrocarbons as hazardous wastes. The following discussion provides a brief overview of regulatory actions affecting the wastes being finalized today.

On August 22, 1979 (44 FR 49402), the Agency proposed, among other things, to list as hazardous, by generic description, a number of wastes generated from the production of chlorinated aliphatic hydrocarbons. On May 19, 1980, EPA promulgated an interim final rule which listed as hazardous a number of wastes from the production of specific chemicals within the general class of chlorinated aliphatic hydrocarbons; however, the generic listing was not promulgated at that time (see 45 FR 33084).

Then, on February 10, 1984 (see 49 FR 5308–5315), the Agency, in two separate actions, proposed the listing of one generic category of waste and made an interim final listing of a second generic category of waste generated during the manufacture of chlorinated aliphatic hydrocarbons [1] by free radical catalyzed processes, which have carbon chain lengths ranging from one to and including five ("C1–C5").[2] The category of wastes that became effective as interim final regulations, and thus has been in effect as EPA Hazardous Waste No. F024 since August 10, 1984, included distillation residues, heavy ends, tars, and reactor clean-out wastes (49 FR 5308–5312). Today's notice provides the Agency's response to a number of comments that were received on the interim final rule. Only minor changes to the F024 listing are being made in response to these comments.

The proposed listing included light ends, spent filter and filter aids, and desiccant wastes (49 FR 5313–5315). With the exception of light ends, today's notice finalizes the proposed listing of these residuals as EPA Hazardous Waste No. F025. The category of light ends has been narrowed in scope in this final rule to include only those light ends that have been condensed. These listings also do not include wastes from those processes that generate chlorinated aliphatic waste that EPA listed specifically in 1980—namely EPA Hazardous Waste Nos. K016, K018, K019, K020, K028, K029, K030, K095, and K096.

The basis for both of these actions was a determination by the Agency that the proposed and interim final wastestreams contained a wide range of potentially carcinogenic, mutagenic, teratogenic, or otherwise chronically or acutely toxic chlorinated and non-chlorinated organic compounds, which are listed below:

Table 1—Toxicants of Concern

Chloromethane
Dichloromethane
Trichloromethane
Carbon tetrachloride
Chloroethylene
1,1-Dichloroethane
1,2-Dichloroethane
trans-1,2-Dichloroethylene
1,1-Dichloroethylene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Pentachloroethane
Hexachloroethane
3-Chloropropene
Epichlorohydrin
Dichloropropane
Dichloropropene
2-Chloro-1,3-butadiene
Hexachloro-1,3-butadiene
Hexachlorocyclopentadiene
Benzene
Chlorobenzene
Dichlorobenzenes
1,2,4-Trichlorobenzene
Tetrachlorobenzene
Pentachlorobenzene
Hexachlorobenzene
Toluene
Naphthalene

One or more of these toxicants are typically present in each waste at significant concentrations, although each waste does not contain all of the individual toxic constituents of concern.

The Agency originally inferred the presence of these toxicants from knowledge of free radical reaction chemistry and from manufacturing process conditions. In conjunction with this theoretical predictive methodology, the Agency obtained representative samples and confirmed the presence of these contaminants through chemical analysis. These hazardous constituents are mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. (See the preambles to the interim final and proposed rules at 49 FR 5308 and 5313 for a more detailed explanation of our basis for listing these wastes as hazardous.)

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. These amendments had far-reaching ramifications for EPA's hazardous waste regulatory program. Section 3001(e)(2), which was one of the many provisions added by HSWA, directed EPA to make a decision on whether or not to list under subsection (b)(1) several wastes, including chlorinated aliphatics, as hazardous. By finalizing these two chlorinated aliphatics waste listings, the Agency is fulfilling its mandate under section 3001(e)(2) of RCRA.[3]

HSWA prohibits the land disposal of hazardous wastes. It also requires the Agency to set levels or methods of treatment that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that threats to human health and the environment are minimized. Wastes that meet the treatment standards are not prohibited and may be land disposed. A treatment standard is based on the performance of the best demonstrated available technologies (BDAT) to treat the waste. For a waste identified or listed after HSWA was enacted, the Agency has six months to determine specific treatment standards which the waste must achieve prior to land disposal. BDAT standards for waste F024 were promulgated on June 23, 1989. In the Land Disposal Restrictions for the Third Third of Scheduled Wastes Proposed Rule, the Agency is proposing BDAT standards for waste F025.

III. Summary of the Final Regulation

This regulation finalizes the listing as hazardous the following wastes generated from the production of chlorinated aliphatic hydrocarbons by free radical catalyzed processes, having a carbon content ranging from one to and including five, with varying amounts and positions of chlorine substitution:

- F024—Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts of positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.)
- F025—Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.

The major commercial products produced by the free radical catalyzed chemical manufacturing processes of C1–C5 chlorinated aliphatic hydrocarbons (from which the listed residual wastes are generated) include but are not limited to the following products:

Table 2—Major Commercial Products

Carbon tetrachloride
1-Chlorobutane (*n*-Butyl chloride)
Chloroethane (Ethyl chloride)
Chloroform (Trichloromethane)
2-Chloro-1,3-butadiene (Chloroprene)
Chloromethane (Methyl chloride)
2-Chloro-2-methylpropane (*t*-Butyl chloride)
3-Chloro-2-methylpropene (Methallyl chloride)
3-Chloropropene (Allyl chloride)
Dichlorobutadiene
Dichlorobutenes
1,4-Dichlorobutyne
1,2-Dichloroethane (Ethylene dichloride)
Dichloromethane (Methylene dichloride)
1,2-Dichloropropane
1,3-Dichloropropene

[1] "Chlorinated aliphatic hydrocarbons" (also known as "chlorinated aliphatics") refers to a class of organic compounds. "Hydrocarbons" are organic compounds (molecules) composed solely of the atoms hydrogen and carbon. "Aliphatic" designates that the chemical bond between cabon atoms is single, double, or triple covalent (not aromatic) bonds. (Cyclic aliphatic hydrocarbons are included in this class.) "Chlorinated" means that some of the hydrogen atoms in the "aliphatic hydrocarbon" have been chemically replaced with chlorine atoms at one or more different positions.

[2] The Agency has limited these listings to C1–C5 chlorinated aliphatic hydrocarbons for two reasons. First, C8–C10 chlorinated aliphatic hydrocarbons are not produced in significant quantity in the U.S. by the generic chemical reaction processes addressed by these listings. Second, and more importantly, the higher molecular weight chlorinated paraffin manufacturing processes typically do not produce significant amounts of organic residuals.

[3] Throughout the remainder of this notice, all references to the final listing of these two chlorinated aliphatics wastes mean the final listing of waste F024, which was promulgated as an interim final rule, and the final listing of the proposed waste F025.

Hexachlorocyclopentadiene
Tetrachloroethylene (Perchloroethylene)
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene (1,1,2-Trichloroethene)
1,2,3-Trichloropropane
1,2,3-Trichloropropene
Vinyl chloride (Chloroethene)
Vinylidene chloride (1,1-Dichloroethene)

EPA has evaluated the wastes generated from the production of these products against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), and has determined that they typically contain high concentrations of the constituents of concern listed in Table 1, that the toxicants are mobile and persistent in the environment, that these wastes have been mismanaged in the past, and that many of the toxicants in the wastes are regulated by other EPA regulations, as well as by regulations of other government agencies. The Agency, therefore, believes that these wastes are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, and thus are hazardous wastes.

Additional information on the hazards of these wastes and the toxicant constituents of these wastes may be found in the listing background document and the Health and Environmental Effects Profiles, available as described in the "ADDRESSES" section.

With respect to the proposed listing of light ends, the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however, under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases.

The Agency also added two componunds, 2-chloro-1,3-butadiene (chloroprene) and 3-chloropropene (allyl chloride), to Appendix VIII of Part 261, the list of hazardous constituents identified by the Agency as exhibiting toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. (See 49 FR 5311, February 10, 1984.)

IV. Response to Comments

EPA received comments on all aspects of the interim final and proposed regulations. The comments were submitted by generators of these wastes, an association which represents such generators, and public interest groups. The Agency has evaluated these comments carefully, and has modified the regulation, as well as the supporting documentation, as appropriate. This notice finalizes both the interim final and proposed regulations of February 10, 1984. This section presents some of the major comments as well as EPA's response to many of the comments received on both of these actions. In addition to material in this preamble, the Agency's response to these comments is also set forth in the revised listing background document available in the public docket for this rulemaking at EPA Headquarters—see "ADDRESSES" section.

A. Clarification of Scope of the Listing

A number of commenters objected to the Agency listing these wastes as a generic class. In particular, the following comments were made:

1. Before challenging the Agency's substantive decisions, several commenters argued that the Agency lacks the legal authority to list wastes generically, citing the House Committee Report which states "* * * the Administrator shall promulgate regulations identifying and *specifically listing* those hazardous wastes subject to this title." (See H.R. Rep. No. 94–1491, 94th Cong., 2nd Sess. at 56.) One commenter, however, supported such an approach, arguing that a waste-by-waste listing would be very inefficient and probably incomplete.

EPA has no doubt as to the legality of its authority to list wastes generically, and has already responded to such challenges (see preamble to part 261, 45 FR 33114, May 19, 1980).

2. A number of commenters expressed concern that a generic listing would create an inequitable situation for those persons who generate a waste that would be included in the generic class, but which may not be hazardous.

In reviewing the available data, the Agency found in all instances that wastes that would be included in the listing description contained significant levels of one or more of the hazardous constituents of concern that would cause the Agency to consider the waste hazardous. In fact, the Agency carefully reviewed the various generic production processes to ensure that no waste was mistakenly included in the listing. As discussed in the listing background document, the concentrations of the toxicants of concern were many orders of magnitude above the levels associated with human health concerns. In addition, the solubilities of the hazardous constituents of concern were also many orders of magnitude above the same levels. Thus, only a small fraction of the hazardous constituents present in the wastes need migrate and reach environmental receptors to pose a substantial hazard to human health and the environment.

The Agency used these data in combination with a methodology based on free radical chemical mechanisms to predict that significant concentrations of toxicants would be present in all of the wastes from these generic processes. In no instance did the Agency receive any comment refuting, or even questioning, the validity of this predictive methodology; nor was any analytical data provided by the commenters that would refute the listing. We, therefore, disagree with the commenters. It should be noted, however, that if a person does generate or manage a waste that contains insignificant levels of the various hazardous constituents (*i.e.*, that person believes that the waste is nonhazardous), then the person may petition the Agency to delist this waste on a case-by-case basis. See 40 CFR 260.20 and 260.22.

3. Several commenters argued that an efficient delisting procedure was not available for the exclusion of wastes in the generic class which do not have the hazardous properties for which they were listed. They commented further that, even if an efficient procedure were available, no guidance was available as to the criteria, such as concentration levels of hazardous constituents, used to determine if a waste was no longer hazardous.

As discussed above, the Agency does not believe that the wastes listed in today's rule would, without treatment, qualify as nonhazardous. Notwithstanding, the Agency acknowledges that there were some historical problems with the delisting program. Since 1984, these problems have mostly been resolved as the staff has gained experience with the program and guidance has been developed (see Petitions to Delist Hazardous Wastes: A Guidance Manual, April 1985, EPA/530–SW–85–003) to assist the regulated community in preparing delisting petitions.

4. Several commenters objected to including in the listing description for EPA Hazardous Waste No. F024 the phrase "including but not limited to." The commenters argued that the phrase is ambiguous, overly broad, and in conflict with the language from H.R. Rep. No. 94–1491, which states that the Agency should promulgate regulations identifying and specifically listing wastes. In addition, the commenters claimed that no hazard criteria can be used in evaluating the waste if the waste is not even identified.

The Agency disagrees with the commenters. The listing is sufficiently specific. The listing description clearly states that all wastes from the subject process (except those that are specifically excluded) are covered by the listing; the process is identified unambiguously in both the **Federal Register** notice and in the listing background document (*i.e.*, the support documentation provides a detailed description that explains the sources in the process from which the wastes are generated). Likewise, we have carefully explained our basis for defining these wastes as hazardous—namely, that these wastes are hazardous after considering the concentration of the toxicants in the waste, their propensity to migrate and persist, as well as other relevant criteria in § 261.11(a)(3). As discussed in the February 10, 1984 rule, many of these toxicants also are bioaccumulative, increasing the risk of exposure to higher levels of toxicants. The Agency has evaluated a large number of waste streams that contacted the raw materials, intermediates, or product streams. These wastes contain significant amounts of the hazardous constituents of concern. No commenters provided any data refuting this information. Also, as is discussed more fully in the background document, any wastes generated from new or modified processes not discussed specifically in the background document are expected to generate wastes similar to F024. If wastes generated by new or modified processes are significantly different, then a generator may always submit a delisting petition to the delisting program. The Agency, therefore, perceives no general difficulties with including the phrase "including but not limited to" in the listing description.

5. One commenter believed that listing all spent filters, filter aids, and desiccants unduly penalized manufacturers by requiring RCRA permits when they decontaminate these materials and return them to the process. Another commenter argued that wastes (*i.e.*, spent desiccants, filters, or filter aids) which do not come into contact with or derive from the product line (but which are derived from the production process) should not be included in the generic listings.

With regard to the first point, although the Agency believes it important to encourage the recycling of hazardous waste, the Agency is guided by the principle in RCRA that the paramount and overriding statutory objective of RCRA is protection of human health and the environment. The statutory policy of encouraging recycling is secondary and must give way if it is in conflict with the principal objective. See 50 FR 618, January 4, 1985. In addition, where Congress wished to further the recycling objective it said so explicitly. See RCRA section 3014 (recycled oil). Indeed, there have been a number of instances of environmental damage (*i.e.*, groundwater contamination) caused by improper storage of hazardous wastes awaiting reclamation. See Appendix A at 50 FR 658 for a summary of damage incidents resulting from the recycling of hazardous wastes. It should be noted, however, that once the filters, desiccants, *etc.*, are reclaimed and returned to the process as usable products, these filters, desiccants, *etc.*, are no longer considered wastes, and so are not subject to the RCRA subtitle C regulations. See 40 CFR 261.3(c)(2); see also 50 FR 634, January 4, 1985. Permits are required for storage prior to reclamation. See 40 CFR 261.6(c).

As to the other commenter's point, the Agency agrees that if a waste generated from the generic process does not come into contact with or derive from the product line (or any raw materials or wastes), the waste should not be included in the listing description for waste F025. However, the Agency is not aware nor was any information provided by the commenter of how a waste, which is derived from the production process, would not come into contact with the raw materials, intermediates, or wastes.

6. A number of commenters agreed with the Agency that wastewaters derived from these processes should not be included in the listing. (One commenter, however, argued that both wastewaters and the wastewater treatment sludges should be listed; see next comment for details.) The commenters believe that the wastewater exclusion would not function as such, however, since any *de minimis* losses that leak or spill from the process would be washed into the wastewater treatment system and would cause the wastewaters to be hazardous via the mixture rule. They, therefore, recommend that the listing be modified to specifically exclude those *de minimis* losses that become mixed with the wastewaters.

The Agency agrees with the commenters that wastewaters and wastewater treatment sludges should not be listed (see 49 FR 5308, February 10, 1984, for our basis on this determination); however, if waste F024 and F025 is leaked or spilled and then washed into the wastewater treatment system, the Agency believes that the wastewater should be hazardous by the mixture rule. The Agency explained in a previous rulemaking its reasons for excluding and including within the hazardous waste system mixtures of certain listed wastes and solid wastes such as wastewaters (see 46 FR 56582, November 17, 1981). In particular, in that rule, the Agency exempted from the mixture rule certain wastewater mixtures where the listed hazardous wastes will be present in such low concentrations that they do not pose a substantial hazard to human health or the environment and often will be treated in the plant's chemical, biological, or physical wastewater treatment system.

The Agency believes that only the spent solvents (wastes F001–F005) listed in § 261.31, the commercial chemical products listed in § 261.33, and wastewaters resulting from laboratory operations (where the wastewater coming from the laboratory is a small percentage of flow into the wastewater treatment system) should be covered by the wastewater mixture exemption because they are seldom principal wastestreams and often are discharged in small quantities into wastewaters as a practical way of managing them. On the other hand, the Agency believes that the other hazardous wastes listed in § 261.31 (including the F024 and F025 wastes being listed in this rulemaking) and those listed in § 261.32 typically are generated in large volumes relative to the non-hazardous wastewaters generated at the same plant, and, if mixed with the wastewater, often constitute a significant portion of the wastewater mixture, thereby causing the mixture to pose a substantial hazard to human health or the environment.[4]

Moreover, as the Agency noted in exempting mixtures of small quantities of spent solvents and wastewater from the mixture rule, it is not always possible to collect and segregate spent solvents. For example, small spills or incidental losses from various degreasing or maintenance operations around the plant are often difficult to prevent or control, even where careful

[4] Several of the hazardous constituents in wastes F024 and F025 are also listed spent solvents. However, process wastes (such as F024 and F025) where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the F001–F005 spent solvent listings (see 50 FR 53316, December 31, 1985). Therefore, the existing wastewater mixture exemption does not apply to these listed wastes.

operating procedures are followed. Such small quantities of spent solvents sometimes drain or are washed into wastewater sewer systems; in certain circumstances, it is also reasonable to discharge these small quantities into the nearest sewer connected to the wastewater treatment system. 46 FR at 56584. In contrast, EPA believes that in a well-designed and managed manufacturing plant for chlorinated aliphatic hydrocarbons, it is not unreasonably difficult to prevent small amounts of wastes from leaking or spilling into the wastewater system. Unlike the widespread prevalence of spent solvents throughout the plant, F024 and F025 wastes are principal waste streams and will be removed from discrete process units and confined and managed as hazardous wastes when this rule is finalized. For all these reasons, EPA believes that it would be unwise and unnecessary to create an additional exemption to the mixture rule for mixtures of F024 and F025 wastes and wastewater.

The regulated community may petition for an exclusion of any hazardous waste mixture on a generator- or waste-specific basis (which would require representative data from the industry). At this time, the Agency does not have sufficient information to make such a generic exclusion with the confidence that public health and the environment would still be protected; therefore, we are not modifying the rules. Another approach that the Agency is considering to address this situation is to establish *de minimis* regulatory levels for hazardous constituents in listed hazardous waste, including hazardous waste mixtures and residues.

7. One commenter stated that the Agency had sufficient data to list wastewater and wastewater treatment sludges at the time of the proposed and interim final rules. Such evidence was said to include ten damage cases from wastewater treatment lagoons described in the listing background document.

Although many incidents of contamination of ground water by chlorinated organics have been documented as a result of storing or treating wastewaters in unlined surface impoundments, the Agency has been able to document only two incidents which could be tied definitively to the *manufacture* of C1–C5 chlorinated aliphatic hydrocarbons. The incidents cited by the commenter provide evidence of the migratory potential of the hazardous constituents of concern in aqueous waste. However, the Agency does not have sufficient data at this time to characterize wastewater streams, which may be highly variable in regard to constituent concentrations. If the Agency obtains more data, it will be able to fully evaluate wastewaters and wastewater treatment sludges from these processes to determine if they should be listed. Notwithstanding the possibility of any such future determination, EPA believes that today's action satisfies the requirement in RCRA section 3001(e)(2) to make a determination of whether or not to list chlorinated aliphatics. Any future listings would be pursuant to EPA's general authority to list hazardous wastes under section 3001(b).

8. One commenter believed that the listing of light ends would be redundant, since most of the constituents of these wastes are currently regulated under § 261.33(f).

The commenter is apparently confused. The listing of commercial chemical products under § 261.33(f) does not apply to process waste streams. Rather, these listings cover unused commercial chemical products, which become wastes when disposed or are intended for disposal. Commercial chemical products consist of the pure grade of the chemical, any technical grades of the chemical, and all formulations in which the chemical is the sole active ingredient in a formulated product. Listing under § 261.31 covers wastes that are generated during certain generic production processes, such as the manufacture of chlorinated aliphatic hydrocarbons. Thus, the listing of light ends in waste F025 would not be redundant with already listed wastes.

B. Applicability of Rules to Wastes That are Recycled

Several commenters pointed out that several of the wastes may be sold as raw materials and, therefore, are not wastes. By listing them, they believed that there would be an unwarranted burden imposed on the sale of these residuals, even if necessary permitting and delisting procedures were complied with, thus encouraging customers to buy other feedstocks. Several other commenters requested that the Agency refrain from listing these wastes until it makes final its recycle/reuse rules.

The Agency agrees with the commenters that in many cases light ends from the manufacture of C1–C5 chlorinated aliphatic hydrocarbons are products and are sold as such. However, this is not always the case. If, in fact, light ends are sold as products, then the January 4, 1985 definition of solid waste regulations deal with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. See 50 FR 614. Among other things, the rule states that materials used or reused as an ingredient in an industrial process to make new products (provided the materials are not being reclaimed), or used or reused as effective substitutes for commercial products (again without being reclaimed), are not solid wastes. (See 40 CFR 261.2(e), 50 FR 664, and also preamble discussion at 50 FR 637.) If these residues (regardless of whether they are listed) are recycled in this manner, they are not considered solid wastes and therefore by definition are not hazardous wastes. See 40 CFR 261.3. However, these materials may still be solid and hazardous wastes if: (1) They are used/reused in a manner constituting disposal or used to produce products that are applied to the land; (2) they are burned for energy recovery or used to produce a fuel; (3) they are reclaimed; or (4) they are accumulated speculatively. See 40 CFR 261.2(e). (Since the recycle/reuse rules have already been promulgated, the second comment is moot.)

C. Proposal to List Condensable Light Ends

Several commenters objected strongly to the Agency's proposal to list light ends which are in the gaseous state but condensable by currently feasible technology to liquids at ambient temperature and pressure. The following arguments were offered.

Several commenters stated that the Agency does not have authority under RCRA to regulate gaseous process emissions, since these are not solid wastes (*i.e.*, they are not "contained gaseous material") as stated in the definition of solid waste. See RCRA section 1004(27). One commenter, however, supported the Agency by saying the proposal to regulate condensable light ends does not reflect in any way upon previous Agency policy applicable to contained gaseous materials, since these condensable light ends are not gaseous materials in the first place. Some commenters expressed the opinion that circumvention of regulation under RCRA by heating wastes to the gaseous state could be prevented by current permitting procedures.

Other commenters claimed that the fact that the Agency had previously listed light ends which were generated in the gaseous state did not empower the Agency to take similar action at a later date. One commenter also stated that the reason the phthalic anhydride listing of wastes K023 and K093 was not

questioned in 1980 was because, at that time, it was assumed that the listing only applied to the light ends in the condensed state. One commenter further argued that the phthalic anhydride light ends listing was not analogous, since the phthalic anhydride light ends contained maleic anhydride and phthalic anhydride, which was emitted from the process as particulates.

In addition, commenters objected to regulation under RCRA of gaseous emissions for other reasons, including that permitting would have a significant economic impact; that there currently are no standards for flares (and subsequently, permitting would be difficult); that regulation of fugitive emissions of gaseous liquids from valves and pipes might follow regulation of gaseous light ends under RCRA; that condensation of light ends to ambient temperature could cause equipment corrosion; and that the Agency had not adequately characterized these gaseous emissions.

In its proposal, the Agency explained that it believed that the exclusion from RCRA of gaseous materials that are not contained applied only to "true gases"—namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our concern was that a plant could evade regulation by designing a process to keep the process emissions in a gaseous state. See 49 FR 5314, February 10, 1984. Such a result could create human health and environmental concerns. For example, in the Bhopal incident, a volatile liquid (methyl isocyanate) escaped confinement from a storage tank in a situation analogous to the storage of condensed light ends.

Upon reconsideration of this issue (with the benefit of the comments received on the proposed rulemaking), EPA now believes our authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases (*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes).[6]

EPA, therefore, has decided not to regulate these uncondensed light ends. In the case of chlorinated aliphatic hydrocarbon manufacture, the Agency knows that manufacturers typically employ condensation devices in conjunction with distillation equipment, since the condensable fraction of these emissions is either a valuable product or recyclable feedstock material. If the light ends are condensed and reused to make new products or effective substitutes for commercial products, they will not be considered solid or hazardous wastes, as long as they have not been reclaimed and they do not meet the criteria specified in § 261.2(e). See 50 FR 637. If every disposed (prior to any such reuse), however, these condensed light ends would be considered a solid waste and subject to today's listing. Consequently, our decision should not present an environmental concern.

Although we agree with the commenter that heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste, the Agency believes that it cannot use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of (for example) installing some internal heating mechanism that generates the same liquid waste in the gaseous state. RCRA jurisdiction does not provide this kind of control over manufacturing processes. Of course, thermal treatment *after* a material becomes a hazardous waste is fully regulated under RCRA.

The Agency also agrees with the commenters that citing the phthalic anhydride light ends listing raises substantial questions with respect to establishing precedents. We have, accordingly, deleted references to it in the listing description and preamble.

D. Evaluation of the Hazardous Properties of the Wastes

Other comments expressed specific concerns with the Agency's evaluation of the hazardous properties of the wastes, either through its toxicological evaluations of individual hazardous constituents, its projection of concentration levels of constituents in the wastes, or its analysis of the ability of the constituents to migrate from the wastes.

1. Two commenters stated that some of the conclusions reached by the Agency do not accurately reflect the present state of knowledge of the oncogenic properties of the constituents in these wastes. They commented that the Agency did not attempt to clarify the level of risk (of carcinogens) or to provide substantiation of its conclusions that the Carcinogen Assessment Group (CAG) assessment documents on which the Agency relied are consistent with "current levels of knowledge and existing data"; they also stated that the Agency should have used weight of evidence characterizations in its assessment of the potential hazards of these compounds. In particular, the commenters asserted that the Agency should not have judged constituents to be "potential human carcinogens" when the evidence for carcinogenicity for several of these chemicals would fall into "Group 3: chemicals * * * which * * * cannot be classified as to their carcinogenicity to humans."

The agency's judgment on the potential carcinogenic and toxic effects resulting from continued low-level exposure to the constituents of concern are outlined in the Health and Environmental Effects Profiles for each constituent of concern. The major health concerns are summarized in the listing background document. The commenter gave no specific criticism that EPA's facts do not "reflect the present state of knowledge," (other than that noted above) and did not provide any additional data or other information to challenge the basis for EPA's decision to list. We are, therefore, unable to respond to this criticism. (It should be noted that the Agency has reviewed more recent studies addressing these constituents, and finds that this information corroborates the Agency's original decision to list. This information has been summarized and placed in the docket.)

With respect to the "weight-of-evidence" argument, the Agency promulgated guidelines for carcinogenic risk (see 51 FR 32856, September 24, 1986) which incorporates an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)
Group B—Probable human carcinogen
  Group B_1—Limited evidence of carcinogenicity in humans
  Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)

[6] EPA's previously issued guidance concerning fume incinerators (contained in the preamble to the incineration regulations) remains in effect. See 47 FR 27530, June 24, 1982. Fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste according to the definition set forth in § 261.2.

Group E—Evidence of non-carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies).

The Agency regards agents classified in Group A or B as suitable for quantitative risk assessment. The suitability of Group C agents for quantitative risk assessment requires a case-by-case review because some Group C agents do not have a data base of sufficient quality or quantity to perform a quantitative carcinogenicity risk assessment. The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Application of these guidelines shows that benzene and vinyl chloride are considered "carcinogenic to humans", the weight of evidence for carcinogenicity falling into class A. For the following hazardous constituents of concern, the weight of evidence for carcinogenicity is considered to fall into class B2. Thus, these compounds are considered to be probably carcinogenic to humans:

Carbon tetrachloride
1,2-Dichloroethane (Ethylene dichloride)
Dichloromethane (Methylene chloride)
Epichlorohydrin (1-Chloro-2, 3-epoxypropane)
Hexachlorobenzene
alpha-Hexachlorocyclohexane
gamma-Hexachlorocyclohexane
Tetrachloroethene (Perchloroethylene)
Trichloroethene (Trichloroethylene)
Trichloromethane (Chloroform)

The following constituents of concern are considered to be possible human carcinogens (class C):

1,1-Dichloroethene (Vinylidene chloride)
Hexachloro-1,3-butadiene
beta-Hexachlorocyclohexane
delta-Hexachlorocyclohexane
Hexachloroethane
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane

The listing background document has been modified to indicate the carcinogen class for each constituent of concern.

2. Several commenters argued that the discussion in the listing background document was not sufficiently specific to determine the routes of exposure by which the hazardous constituents exert their toxic effects. They further argued that one cannot conclude that health effects from ingestion and inhalation are the same.

The Agency agrees that the assessment of the risk to human health resulting from improper disposal of wastes ideally should take into account the various routes of exposure. Since most of the toxicants of concern in these wastes have relatively high vapor pressures, they are likely to be emitted to the air from most waste management practices. In addition, the solubilities and environmental persistence of these compounds are sufficiently high to cause contamination of ground and surface water (see the damage incidents described in the listing background document).

Finally, since risks based on exposure from ingestion fully support the listing of these wastes as hazardous, it would be redundant and therefore not necessary to consider the hazard posed by other routes of exposure, such as inhalation.

3. Two commenters did not agree with the Agency's comparing concentrations of hazardous constituents in wastes as "orders of magnitude greater than" the AWQC. One commenter gave the example of a tar waste that is rock hard when cool, and suggested that the Agency use the aqueous solubility of hazardous constituents as a criteria for listing, and not simply a comparison of the total concentration of a constituent to a comparison of the AWQC.

The Agency recognizes the importance of matrix effects on the extent to which hazardous constituents can be expected to leach from a waste. Accordingly, the Agency has developed a leaching test (the Toxicity Characteristics Leaching Procedure, or TCLP), which can be used as an indicator of the leachability of certain constituents from wastes. As part of the proposed Toxicity Characteristics (see June 13, 1986, 51 FR 21648), the leaching test would be used to identify wastes that clearly pose hazards due to their potential to leach specific hazardous constituents at levels that could harm human health through contamination of ground water. While several of the hazardous constituents for which waste F024 and F025 are being listed are among those that are proposed to be included in the Toxicity Characteristics, many are not. Therefore, a more qualitative assessment of hazard was used for this listing.[6]

In this assessment, we first assume that the potential for hazardous constituents to migrate from an organic waste is generally correlated to the total concentration of the constituents in that wastes (*i.e.*, the higher concentration of the constituents in the waste, the higher the concentration of the constituents is likely to be in the leachate from the waste). Second, we also consider the solubility of the contaminants in the waste. As indicated in the proposal and in the interim final rule, the solubilities of the constituents of concern are many orders of magnitude greater than the AWQC (a suggestion made by the commenter). Finally, we evaluate empirical evidence demonstrating that significant environmental exposures have resulted from leaching of hazardous constituents from similar wastes. This has been seen in numerous damage incidents from wastes containing the chlorinated toxicants of concern. In addition, a physically similar coal tar used for lining and sealing tanks for drinking water (a cohesive tarry substance) was found to leach substantial concentrations of relatively water insoluble polynuclear aromatic hydrocarbons (PAHs), such as benzo[a]pyrene, into water.

These facts demonstrate that the hazardous constituents at issue here are capable of migrating even from a fairly stable waste matrix. We believe, therefore, that our assessment is accurate with respect to the potential for hazardous constituents to leach from all of the wastes described by this listing.

4. Several commenters questioned our conclusions regarding the toxicities of specific hazardous constituents. The Agency has carefully reviewed the comments but still believes those toxicants are of concern. See the listing background document for specific responses to these comments.

Since the public comments on the proposed and interim final regulations have not refuted or seriously called into question the Agency's initial basis for listing wastes generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes having carbon chain lengths varying from one to and including five, we are today finalizing the listing of F025 as well as F024 in 40 CFR 261.31 (only minor changes are being made to the listing of F024).

V. Relation to Other Regulations

A. Proposed Toxicity Characteristic

As one of the mandates of HSWA, the Agency proposed to expand the Toxicity Characteristic (TC) by including additional toxic organic chemicals. Under the June 13, 1986 proposal, the hazardous waste listings in subpart D of 40 CFR part 261 would not be affected. All the listings would remain in effect, including those listings that were based on the presence of TC constituents. It is EPA's intention that the hazardous waste listings would continue to complement the TC. Once promulgated, the TC might capture wastes generated by the chlorinated aliphatics industry that are not covered by wastes F024 or F025. Such wastes could include wastewaters and wastewater treatment sludges.

B. Land Disposal Restrictions

HSWA mandated land disposal restrictions for wastes listed prior to the enactment of HSWA under a specific schedule (see 51 FR 19300, May 28, 1986). If the Agency failed to prohibit the wastes within the period specified, the wastes were restricted from land disposal. Waste F024, which was interim final effective August 10, 1984, was included in the second third to be evaluated for land disposal restrictions. The final rule promulgating treatment standards for the second thirds wastes included treatment standards for waste F024 (see 54 FR 26594, June 23, 1989).

Although the Agency listed Hazardous Waste No. F024 under an interim final rule prior to the enactment of HSWA, the Agency nonetheless took comment on that action. Today's action responds to comments received on that interim final rulemaking and finalizes our determination under HSWA 3001(e) to list Hazardous Waste No. F024. Today's action on F024, which does not alter the listing or its substances, but only clarifies its description, does not alter the Agency's June 23, 1989 determination in regard to the land disposal restriction.

Furthermore, HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). In the Land Disposal Restrictions for the Third Third of Scheduled Wastes Proposed Rule, the Agency is proposing a treatment standard for Hazardous Waste No. F025.

VI. Test Methods for Compounds Added to Appendices VII and VIII

Most of the substances designated in this final rule as hazardous constituents are currently listed in table 1 of appendix III of 40 CFR part 261, which designates the test methods that can be used when characterizing wastes for the purpose of delisting.

On October 1, 1984 (49 FR 38786), the Agency proposed several changes to the RCRA hazardous wastes regulations, including the addition of new methods to SW–846. After evaluating the comments, the Agency decided not to promulgate the October 1, 1984 proposal. Instead, the Agency revised SW–846 to incorporate many of the suggestions made in the comments, which were made available in the Third Edition of SW–846 (40 FR 6072, March 16, 1987). On January 23, 1989 (54 FR 3212), the Agency proposed, among other things, new and revised methods in the Third Edition of SW–846, the first update package to the Third Edition, and expansion of table 1 of Appendix III of 40 CFR part 261. Once finalized, these methods may be used to determine whether a sample contains a given Appendix VII or VIII toxic constituent. However, until the Third Edition of SW–846 is made final, the Second Edition as amended by Updates I and II, and the 47 methods that were finalized September 29, 1989 (54 FR 40260), remain as the approved methods for meeting regulatory requirements under substitle C of RCRA.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 3rd ed., September, 1986, as amended; available from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238, Document No.: 955–001–00000–1.

VII. Compounds Added to Appendix VIII

On February 10, 1984 (49 FR 5311), the Agency made interim final the addition of two compounds, 2-chloro-1,3-butadiene (chloroprene) and 3-chloropropene (allyl chloride), to Appendix VIII of part 261, the list of hazardous constituents identified by the Agency as exhibiting toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. These are two of the hazardous constituents for which wastes F024 and F025 are listed. No comments were received on this rule. Therefore, these two compounds will remain listed on Appendix VIII. However, in a notice of technical corrections to § 261.33 and Appendix VIII (53 FR 13382, April 22, 1988), the Agency inadvertently deleted allyl chloride from Appendix VIII. In today's action, EPA is making a technical correction to once again include allyl chloride in Appendix VIII.

VIII. CERCLA Designation and Reportable Quantities

All listed hazardous wastes, as well as any solid waste that meets one or more of the characteristics of a hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of CERCLA. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4, along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ immediately notify the National Response Center of the release (at (800) 424–8802 or in the Washington, DC metropolitan area at (202) 426–2675). In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance to the appropriate State emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance.

According to the "mixture rule" developed in connection with the Clean Water Act section 311 regulations and also used for notification under CERCLA and SARA (50 FR 13463, April 4, 1985), the release of mixtures must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known. When the concentrations of the individual constituents of a hazardous waste are known, the release of the hazardous waste would need to be reported to the NRC and to the appropriate LEPC and SERC when the RQ of any of the hazardous constituents is equaled or exceeded. RQs of different hazardous substances are not additive under the mixture rule (except for radionuclides, see 54 FR 22536, May 24, 1989), so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

On August 10, 1984, the effective date of the interim final rule, waste stream F024 became a CERCLA hazardous substance with a statutorily imposed one pound RQ. A one pound final adjusted RQ for waste stream F024 was promulgated on August 14, 1989 (54 FR 33426). As concerns F025, when today's rulemaking becomes effective, waste stream F025 will automatically become a CERCLA hazardous substance by virtue of its listing under RCRA. Under section 102(b) of CERCLA, a hazardous substance has a statutorily imposed RQ of one pound unless or until adjusted by regulation. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding waste F025 to 40 CFR 302.4, the codified list of CERCLA

[6] It should be noted that the hazardous waste characteristics contained in subpart C of part 261 (e.g., the Toxicity Characteristics) are "generic" in that they apply to all solid wastes and do not reflect consideration of unique aspects of certain wastestreams. Thus, the consideration of these unique aspects (volume of waste generated, damage incidents, etc.) may lead to the conclusion that a waste is hazardous and should be listed in subpart D of part 261, even if it does not exhibit any of the hazardous waste characteristics.

hazardous substances, and listing its statutory RQ of one pound.

IX. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards and applies for and is granted authorization.

As noted above, both F024 and F025 wastes are listed today pursuant to section 3001(e)(2) of HSWA. Initially, F024 was listed pursuant to RCRA on an interim final basis. However, on November 8, 1984, Congress enacted HSWA, which amended RCRA. Among other things, these amendments require EPA to decide whether or not to list chlorinated aliphatics as hazardous wastes under HSWA (see section 3001(e)(2)). Therefore, the Agency is finalizing the F024 listing, as well as the F025 listing, under HSWA. This final rulemaking does not change the substance or the effective date (August 10, 1984) of the F024 interim final rule. Therefore, today's rule has been added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

Pursuant to HSWA, today's rule is immediately effective in both authorized and non-authorized States. EPA will implement the rule in authorized States until they modify their programs to reflect these Federal standards and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or fully equivalent to EPA's. The procedures and schedule for State program modifications are described in 40 CFR 271.21.

Section 271.21(e)(2) requires that States that have final RCRA authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications for the F025 wastes must be made by July 1, 1991, if only regulatory changes are necessary, or July 1, 1992, if statutory changes are necessary. These deadlines can be extended (see § 271.21(e)(3)).

States with final RCRA authorization were required to adopt the F024 listing in accordance with § 271.21(e)(2). Since today's final listing under the HSWA for the F024 wastes makes no substantive changes from the interim final listing, any State whose program changes for the F024 wastes have already been approved need not further revise its program or submit additional changes as a result of today's final listing under the HSWA. Rather, any such previously-approved State will be deemed approved for today's F024 listing under the HSWA.

X. Compliance Dates

A. Notification

Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96–452) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator. The Agency has decided to waive the RCRA section 3010 notification requirement for *only* those persons who generate, transport, treat, store, or dispose of these hazardous wastes that have previously notified EPA or an authorized State of hazardous waste activities and have received an identification number. The Agency believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number and therefore will not have to re-notify. However, any person who generates, transports, treats, stores, or disposes of these wastes that has *not* previously notified and received an identification number, that person must notify EPA or an authorized State no later than March 12, 1990, of these activities pursuant to section 3010 of RCRA. Notification instructions are set forth in 45 FR 12746, February 26, 1980. (Note that waste F024 has been subject to notification and permitting requirements since August 10, 1984, as discussed above in section IX of this preamble.)

B. Permitting

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate F024 and F025 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective, EPA will apply Federal regulations to these wastes and to their management in both unauthorized and authorized States which have not received authorization to regulate the wastes. Note that since many States have already been authorized for F024, this rule does not affect such existing State interim status and permit requirements for F024. Facilities managing F024 in such States should already have qualified for interim status and filed appropriate permitting documents.

Facilities that treat, store, or dispose of F024 and F025 but that have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, may be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, such facilities are required to submit a section 3010 notice if they have not previously filed notification pursuant to 40 CFR 270.70(a) by March 12, 1990, and must submit a Part permit application by June 11, 1990. Under section 3005(e)(3), by June 11, 1991, land disposal facilities qualifying for interim status under section 3005(e)(A)(ii) must also submit a Part B permit application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements. If the facility fails to do so, interim status will terminate on that date.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of F024 and F025 and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended part A permit application by June 11, 1990, in accordance with § 270.72(a).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 is not able to treat, store, or dispose of F024 or F025 when the rule becomes effective on June 11, 1990, until a permit modification allowing such activity has occurred in accordance with § 270.42(g). Note that EPA has recently amended the permit modification procedures for newly listed or identified wastes. For more details on the permit modification procedures, see 53 FR 37912 *et seq.* (September 28, 1988).

XI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The total additional incurred cost for disposal of the wastes added by this rule, is less than $38,000, well under the $100 million constituting a major regulation. This insignificant cost is partly due to the fact that waste F024 has been regulated as hazardous since 1984 and therefore there should be no additional cost to comply with this rule. The cost for waste F025 results from minimal compliance requirements as these wastes are being handled as if they were hazardous (primarily due to their containing similar toxic constituents as F024) by most of the generators, who have interim status or part B permits. These generators will incur minimal increased costs for permit modifications, chemical analysis, and recordkeeping. This cost is much less than the estimated cost of $15 million stated in the proposed rule. This cost was based on conservative assumptions including that these wastes would be managed for the first time as hazardous.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

XIII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: November 29, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

§ 261.31 [Amended]

2. In § 261.31, revise the listing description for EPA hazardous waste No. F024 to read as follows:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F024	Process wastes, including, but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.)	(T)

3. In § 261.31, add the following waste stream:

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	(T)

Appendix VII—[Amended]

4. In part 261, appendix VII, add the entry for EPA Hazardous Waste No. F025 to read as follows:

EPA hazardous waste No.	Hazardous constituents for which listed
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.

5. Add the following compound in alphabetical order to appendix VIII of part 261:

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Allyl chloride	1-Propene, 3-chloro	107-18-6	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

7. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
December 11, 1989	Listing Certain Hydrocarbons Produced by Free Radical Catalyzed Processes.	54 FR _____	June 11, 1990

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

8. The authority citation for part 302 continues to read as follows:

Authority: Secs. 101(1)(14) and 102(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

9. Section 302.4 is amended by adding the waste stream F025 to Table 302.4.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code*	RCRA waste No.	Category	Pounds (kg)
F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.			[1]	[4]	F025	X	[**]1(0.454)

* Indicates the statutory source as defined by 4 below.
[1] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
[2] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).
[3] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
[4] Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
[**] Indicates that the 1-pound RQ is a CERCLA statutory RQ.
[***] The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then, the statutory RQ applies.

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Monday
December 11, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Phoenix Terminal Control Area and Revocation of Phoenix Airport Radar Service Area; Arizona; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

RIN 2120-AD00

Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Phoenix Sky Harbor International Airport, AZ. The TCA will consist of airspace from the surface or higher within a 25-mile radius of Phoenix Sky Harbor International Airport to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Phoenix Sky Harbor International Airport. Phoenix Sky Harbor International Airport is currently served by an Airport Radar Service Area (ARSA), which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

Phoenix Sky Harbor Airport qualifies for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 26 TCA's. The FAA is proposing to take action to modify or implement the application of these proven safety techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussion with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted here has been developed through substantial public participation. Initially, informal airspace meetings were held on June 30 and July 28, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Phoenix TCA. In addition, the Arizona Airspace Utilization Committee (AAUC) appointed a special task group to design a TCA to meet the needs of the flying community while providing the greatest safety. Technical assistance and support were supplied by Phoenix Terminal Radar Approach Control (TRACON) personnel. After those initial meetings and after extensive coordination with the AAUC task group, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on June 2, 1989 (54 FR 23922). Comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received 150 comments pertaining to the TCA proposal. The FAA has considered these comments and amended the final TCA design as contained in this rule. The FAA believes that the final TCA design contained herein promotes the safe and efficient use of airspace while satisfying ATC requirements.

Some comments received were not relevant to this rulemaking action and, therefore, will not be discussed. Those subject areas included controller staffing, pilot education, waivers and rules enforcement.

A significant number of standardized form letters were received that had been distributed to individuals to sign and mail in for comments. These letters expressed opposition to the proposed TCA design citing three reasons: The lack of a very high frequency omni-directional radio range (VOR) on the field at Phoenix Sky Harbor International Airport; a 25-nautical-mile circular extension from the primary airport; and the lack of a corridor for uncontrolled VFR traffic.

Persons sending these form letters, along with other comments received, requested that the FAA install a VOR on the field at Phoenix Sky Harbor International Airport to identify the TCA outer boundaries. They suggested that identifying the outer boundaries using the instrument landing system (ILS) localizer will create an unsafe situation for aircraft executing an approach into Phoenix Sky Harbor International Airport because of saturation of the localizer.

The FAA determined that a TCA can be established at the Phoenix Sky Harbor International Airport without any derogatory effect on safety as demonstrated at six established TCA's that do not utilize a VOR to describe the boundaries. The Phoenix TCA outer boundaries are described utilizing Distance Measuring Equipment (DME) from the Runway 8R ILS localizer antenna. A localizer continuously broadcasts signals; therefore, is not subject to saturation. The DME associated with the localizer responds to interrogations from an aircraft containing DME equipment; however, it would take approximately 100 aircraft simultaneously engaging the DME facility before saturation would become a factor. The capacities of DME equipment are the same whether associated with a localizer or a VOR.

Another objection mentioned in both the form letters and other comments received was an extension of the lateral limits of the TCA from 20 to 25 miles from the primary airport. The lateral limits of the Phoenix TCA are extended to 25 miles in order to contain large turbine engine-powered aircraft operating to and from the primary airport. The TCA design takes into consideration the climb characteristics of all aircraft to allow them to exit through the top of the TCA and operate above the designated floors. The 20- to 25-mile area is divided into four sections that are needed to contain aircraft landing and departing the primary airport. The altitudes extend from 8,000 feet to 10,000 feet, except in the western portion which extends from 6,000 feet to 10,000 feet, allowing nonparticipating aircraft sufficient airspace to operate beneath the TCA floor.

Some commenters believe that the Mode C veil is sufficient reason to delete the 20- to 25-mile area of the TCA. The FAA firmly believes that this TCA design will provide the safest environment for air traffic in the Phoenix area, for the reasons stated above, and because air traffic controllers will not be in direct communication with these aircraft. Nor will the controllers have altitude information on all aircraft such as gliders.

Several commenters support an uncontrolled VFR corridor. The FAA has included in the design the Biltmore VFR transition route, which extends along Interstate 10 and north over Phoenix Sky Harbor International Airport. The transition route is within TCA airspace and all TCA equipment and operating requirements will apply to aircraft using the route. Since the Biltmore transition route crosses above the primary airport, the FAA believes that radio contact with all aircraft in the transition route will provide the safest environment for both IFR and VFR aircraft. The FAA is confident that control personnel will strive to provide service to all aircraft desiring entry in the Biltmore transition route. Procedures have been implemented to record all denials and delays. An analysis will be compiled within one year after the effective date of the TCA. If the analysis reveals that adequate service is not being provided to aircraft requesting the Biltmore route, the FAA will consider alternative methods. Charts depicting the Biltmore transition route, as well as other VFR flyways, will be distributed throughout the Western-Pacific Region and will appear on the Phoenix VFR terminal area chart in future publications.

The Department of the Air Force requested a realignment of the northwest boundary along the Aqua Fria River. The Agua Fria riverbed is the only corridor through which aircraft departing and arriving Luke Air Force Base (AFB) from the north can transit without flying directly over highly populated areas, namely Sun City and Sun City West. The FAA considered all aspects of this request and deleted approximately 6 miles of TCA airspace from the northwest boundary. This action will also decrease the mix of military aircraft with other aircraft circumnavigating the TCA and operating in and around the Glendale Municipal Airport.

The City of Glendale wrote requesting the TCA floor be raised over the Glendale Municipal Airport to prevent any conflicting airspace between the TCA and the airport traffic area (ATA). The FAA altered the boundary over the Glendale Municipal Airport as described above and also deleted Glendale Avenue boundary and extended the Camelback Road boundary. This action will raise the TCA floor over the Glendale Municipal Airport to 4,000 feet MSL.

The AAUC wrote expressing appreciation that the FAA adopted their design. However, during post-NPRM AAUC meetings, the committee decided to urge the FAA to reexamine three concerns before issuing a final rule: Locating a VOR on the field at Phoenix Sky Harbor International Airport; creating a VFR transition route that does not require a clearance from ATC; and deleting the 20- to 25-mile area north and south of the TCA. The three concerns cited by the AAUC were considered and discussed above.

The Air Traffic Control Association wrote, objecting to the use of streets to delineate boundaries and preferred a more generic TCA design. Streets may be difficult to identify; therefore, the potential exists for pilots to become confused.

Due to the terrain and the specific type of operations around the Phoenix area, a generic TCA design was not feasible. Furthermore, in designing the Phoenix TCA, the FAA adopted the landmarks recommended by the AAUC. These are prominent roads and other features, and through aerial observation it was determined that they are easily identifiable.

The aviation director representing the City of Phoenix wrote requesting that the western boundary of Area B be realigned to coincide with El Mirage Road. This change was requested so that previous noise abatement agreements between the cities of Phoenix and Goodyear can be maintained.

The FAA believes that El Mirage Road is not a sufficiently prominent landmark; therefore, it would not be suitable to delineate a boundary. However, by letter of agreement, we will ensure that noise abatement objectives are accommodated.

Several commenters requested that the FAA rescind the Special Use Airspace of FAR part 93, subpart E (Luke Corridor) stating that it would no longer be needed with the establishment of the TCA.

FAR part 93, subpart E procedures were designed to segregate uncontrolled VFR aircraft operating along V-16 from military turbojet aircraft operating from/to Luke AFB. This procedure restricts uncontrolled VFR aircraft to altitudes at and below 2,000 feet MSL and at and above 5,500 feet MSL. With the implementation of the Phoenix TCA, it is now a requirement for most aircraft operating within 30 nautical miles of the primary airport to be equipped with a Mode C transponder. Revocation of subpart E (Luke Corridor), part 93—VOR Federal Airway No. 16, Phoenix, AZ, is being accomplished by a separate rulemaking action from the establishment of the Phoenix TCA. The subpart E procedure will be revoked concurrently with the establishment of the Phoenix TCA.

The Aircraft Owners and Pilots Association (AOPA) wrote requesting that the FAA install a very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) on the airport, establish a VFR special use airspace corridor, and delete the 20- to 25-mile arcs (between 8,000 to 10,000 feet MSL) before implementing the Phoenix TCA. Further, AOPA stated that the Phoenix TCA design suggests a general lack of appreciation for the airspace requirements and user needs. The AOPA noted that the TCA encroaches on certain ATA airspace (Glendale Municipal, Phoenix-Goodyear Municipal, Scottsdale Municipal, Falcon Field), and that the FAA failed to

rescind the Special Use Airspace of FAR part 93, subpart E (Luke Corridor).

Most of the AOPA's concerns have been addressed above. The FAA worked closely with the AAUC in designing the Phoenix TCA and considered all user's needs before developing the final design. Except for Glendale Municipal Airport, the upper altitude limits of the ATA's at the airports cited by AOPA have been delegated to Phoenix Terminal Radar Approach Control by letter of agreement.

The State of Montana's Department of Commerce, aeronautics division wrote requesting the FAA to incorporate the AOPA's suggestions in the final design of the TCA.

The airport director representing the City of Mesa and the Scottsdale Pilots and Aviation Association wrote commending the FAA for incorporating user groups and individual concerns in the Phoenix TCA design. However, they feel that the 20- to 25-mile arcs are not justified. Also, a "funneling" effect between southbound aircraft departing Falcon Field Airport and aircraft circumnavigating the TCA will be created unless either the Gilbert Road boundary or the Williams 1 MOA boundaries are realigned.

The FAA believes that a sufficient amount of airspace exists to accommodate aircraft wishing to circumnavigate the eastern edge of the TCA and VFR aircraft departing southbound.

The McDonnell Douglas Helicopter Company (MDHC) wrote with the following requests: Eliminate the 20- to 25-mile arc (8,000 to 10,000 feet MSL) by requiring air carriers to accept accelerated climb procedures or to allow them to exit through the TCA lateral boundaries; relocate the Salt River VOR to the Sky Harbor International Airport field; maintain a list of Biltmore transition route "turnaways" and reconsider a VFR corridor concept if this is a significant amount; negotiate a letter of agreement providing MDHC with a test area and issue a Mode "C" authorization for certain operations.

Most of MDHC's requests have been previously discussed. MDHC operations can be accommodated through a letter of agreement with the Phoenix TRACON. Also, authorization to deviate from the Mode C transponder rule are granted by the facility having ATC jurisdiction in the local area.

One commenter wrote requesting a "V" shaped TCA leading into the ends of the primary airport runways at a three degree angle forming a corridor approach/departure path.

The primary concern in any proposed TCA action is to provide the highest degree of safety while preserving the most efficient use of the available terminal airspace. While corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adequate and/or sufficient airspace required to effectively vector and sequence the vast number of aircraft served in major terminals today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

The Air Transport Association of American wrote in support of a TCA at the Phoenix Sky Harbor International Airport and concurred with the TCA design.

The Air Line Pilots Association (ALPA) wrote in support of establishment of a TCA at the Phoenix Sky Harbor International Airport, but opposed the TCA configuration. ALPA stated that while the use of landmarks such as streets to delineate boundaries accommodated local pilots, it leaves every other pilot in a quandary. ALPA believes there is no substitute for a NAVAID on the airport in defining the TCA. Also, it stated that the lateral extention of 25 miles will not ensure that all aircraft departing will be contained in the TCA during hot weather.

The lateral limits of TCA's are normally described by geographic coordinates or other appropriate references that are easily discernable. The FAA believes that the landmarks chosen to delineate the Phoenix TCA boundaries are sufficiently prominent and, therefore, easily identifiable. As noted previously, TCA boundaries based on a circular configuration would not necessarily be aligned with prominent terrain features easily discernable from the air, thus presenting pilots not locally based with a situation similar to that where streets are used to delineate the boundaries. Adequate ground references exist in the Phoenix area to enable pilots to navigate around the TCA if desired. Additionally, the Salt River VORTAC located approximately six miles east of the Phoenix Sky Harbor Airport serves as a navigational aid for pilots desiring to circumnavigate the TCA. Completion of the planned installation of a VOR/DME facility near the Phoenix Sky Harbor International Airport will provide pilots with an additional aid for navigating in the Phoenix area. The remainder of ALPA's concerns have been addressed in previous paragraphs.

The Arizona Pilots Association (APA) wrote in opposition to the Phoenix TCA design and suggested the following be included in the final TCA design: create VFR special use airspace corridor; install a VORTAC on Phoenix Sky Harbor International Airport field before TCA implementation; eliminate the 20- to 25-mile arcs north and south of the primary airport; eliminate the southern portion of Area C between Guadalupe Road and Chandler Boulevard to accommodate Chandler Municipal Airport; revise Area B to accommodate the ATA of Phoenix-Goodyear Municipal and Glendale Municipal Airports; modify the northwestern boundary to exclude airspace currently under control of Luke AFB; exclude the ATA's of Scottsdale Municipal and Falcon Field Airports; make provisions for Williams AFB aircraft that routinely penetrate TCA airspace; rescind the Luke Corridor; and incorporate user comments.

The only suggestion made by the APA that has not been previously addressed is the statement concerning Williams AFB aircraft. Military aircraft operating in and around the traffic pattern at Williams AFB are contained within the Military Operations Area (MOA) which is excluded from the TCA design. Military aircraft that wish to penetrate the TCA must have prior approval.

The Soaring Society (SSA) of America wrote stating that user forums in developing the Phoenix TCA were positive and productive. The SSA believes that this is reflected in the Phoenix TCA design which contains a variety of AAUC recommendations. The SSA also feels that revisions to the TCA design are necessary in the interest of safety and operational efficiency. Those revisions are: Delete airspace from Areas D and E; use El Mirage Road north of the Gila River as the boundary between TCA segments B and G and between B–1 and G; and delete TCA segments H and I.

The FAA deleted airspace as suggested by the SSA in Areas D and E. The other two suggestions mentioned by the SSA have been previously addressed.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Phoenix Sky Harbor International Airport, AZ. The TCA accommodates current traffic flows and provides a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at Phoenix Sky Harbor International Airport is in the interest of flight safety and will result in a greater degree of protection for the largest number of air passengers using that terminal area. Phoenix Sky Harbor International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each rulemaking action to ensure that the public is not burdened with rules having costs which outweigh benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Phoenix, AZ.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Phoenix Sky Harbor International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $881,000 (discounted, 15 years) in 1987 dollars. Approximately $471,000 (discounted) or 53 percent of the total estimated costs will be incurred by the FAA primarily for additional equipment. The remaining costs will be incurred by small general aviation (GA) aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the former Phoenix ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 26 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a TCA primary airport, within 10 nautical miles of an ARSA primary airport, or within controlled airspace of other designated airports that will also require Mode C transponders.

Thus, in evaluation, as well as the Mode C rule, assumes that all operators of aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be aircraft without electrical systems or others authorized by ATC. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators affected by this rule will only incur the opportunity cost of capital necessary for them to acquire, install, and maintain Mode C transponders one year earlier than they will be required to do so in accordance with Phase II of the Mode C rule. (Note: Initially, the date of implementation was expected to be June 1989. The regulatory evaluation that was prepared for the NPRM assumed that GA aircraft would incur the opportunity cost of installing the required avionics one and a half years earlier than they would under the Mode C rule (June 1989–December 1990). However, since the publication of the regulatory evaluation for the NPRM, the date of implementation of the final rule was moved back to November 1989. Thus, GA aircraft operators would have to purchase the required avionics one year earlier rather than one and a half years and this evaluation for the final rule has changed accordingly.)

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule would be the reduction in the probability of midair collisions resulting from converting the former ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance System (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this TCA rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot, but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft, and especially part 121 aircraft, are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 66 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate more efficient separation of aircraft in congested airspace.

As the result of these findings, if the former Phoenix ARSA had remained intact (and the recent Mode C and TCAS rules were not in effect), the Phoenix Terminal Area would be expected to experience approximately 2.7 critical NMAC's annually (or 41 critical NMAC's over the next 15 years). Due to the new TCA, however, this figure could be reduced to approximately 0.9 critical NMAC's annually (or 13 critical NMAC's over the next 15 years). Thus, over the next 15 years, this rule could result in a reduction of approximately 28 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's will never materialize as predicted primarily because of the Mode C rule and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical

miles of a TCA to be equipped with a Mode C Transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in 1989 at Phoenix is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than they otherwise would be expected without this rule. A second safety benefit will be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of mandatory ATC by 20 nautical miles due to the replacement of the Phoenix ARSA with the new TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this TCA rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these potential safety benefits are attributed to the TCAS rule. Thus, the potential safety benefits of this TCA rule and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this TCA rule, Mode C Transponder requirements are expected to ease controller workload per aircraft being controlled because of the reduction in radio communications. It will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the new TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the former Phoenix ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers. If the former Phoenix ARSA had remained intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, are attributed to this TCA final rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $881,000 (discounted, in 1987 dollars). Approximately 47 percent of this total cost estimate will fall on those GA aircraft operators without Mode C Transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $86 to $191 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these cost estimates were derived.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the former ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this TCA rule independent of the Mode C and TCAS rules; however, the FAA believes that the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's will continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Phoenix Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Phoenix, AZ [New]

Primary Airport
Phoenix Sky Harbor International Airport (lat. 33°26'10" N., long. 112°00'32" W.)
Phoenix Sky Harbor International Airport Runway 8R Instrument Landing System (ILS) Localizer Antenna (lat. 33°25'52" N., long. 111°59'11" W.)
Salt River VORTAC (SRP) (lat. 33°25'53" N., long. 111°53'17" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded on the north by a point at lat. 33°30'34" N., long. 112°10'05" W., (intersection of 51st Avenue and Camelback Road) extending east along Camelback Road until a point at lat.33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road), on the east by Pima/Price Road until a point at lat. 33°21'49" N., long. 111°53'34" W., (Pima/Price Road and Guadalupe Road), on the south by Guadalupe Road to a point at lat. 33°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) direct to a point at lat. 33°21'48" N., long. 112°06'27" W., direct to a point at lat. 33°21'48" N., long. 112°10'06" W., on the west by 51st Avenue to the point of beginning.

Area B. That airspace extending upwardfrom 3,000 feet MSL to and including 10,000 feet MSL within an area bounded on the north by a point at lat. 33°39'29" N., long. 112°21'26" W., (intersection of Litchfield Road and Camelback Road) extending east on Camelback Road to a point at lat. 33°30'34" N., long. 112°10'05" W., (Camelback Road and 51st Avenue), on the east by 51st Avenue to a point at lat. 33°21'48" N., long. 112°10'06" W., east to a point at lat. 33°21'48" N., long. 112°06'27" W., south to a point at lat. 33°18'18" N., long. 112°06'27" W., on the south by an extension of Chandler Boulevard extending west to a point at lat. 33°18'18" N., long. 112°21'26" W., on the west by Litchfield Road and an extension of Litchfield Road to the point of beginning, excluding that airspace west of the Gila River.

Area B-1. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point beginning at the intersection of the Gila River and an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00" W., extending west on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°21'26" W., extending north along an extension of Litchfield Road and Litchfield Road until intercepting the Gila River extending southeast along the Gila River to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL with the airspace bounded on the north by a point at lat. 33°32'18" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) east on Indian Bend Road and an extension of Indian Bend Road until a point at lat. 33°32'20" N., long. 111°47'20" W., (extension of Indian Bend Road intercepts Gilbert Road), on the east by Gilbert Road and an extension of Gilbert Road to a point at lat. 33°18'18" N., long. 111°47'20" W., (extension of Gilbert Road intercepts Chandler Boulevard) on the south by Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°58'18" W. (intersection of Chandler Boulevard and Interstate 10), on the west by Interstate 10 to a point at lat. 33°21'50" N., long. 111°58'05" W., (the intersection of Guadalupe Road and Interstate 10) then east on Guadalupe Road to a point at lat. 33°21'49" N., long. 111°53'34" W., (intersection of Guadalupe road and Pima/Price Road), then north on Pima/Price Road until the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°36'35" N., long. 112°13'35" W., extending east on Thunderbird Road and Cactus Road and an extension of Cactus Road (lat. 33°35'45" N., long. 111°36'20" W.) until intercepting the 20-mile arc from the ILS localizer antenna clockwise to the Williams 1 MOA, AZ, boundary, then south along the Williams 1 MOA boundary until intersecting Riggs Road and an extensionof Riggs Road, extending west on Riggs Road and an extension of Rigga Road to a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road) north on Valley Road to a point at lat. 33°15'20" N., long. 112°10'10" W., (intersection of Valley Road and Gila River) north along Gila River until intercepting an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00" W., extending east on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°06'27" W., north to a point at lat. 33°21'48" N., long. 112°06'27" W., east to a point at lat. 22°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) south on Interstate 10 to a point at lat. 33°18'19" N., long. 111°58'18" W., (intersection of Chandler Boulvard and Interstate 10) east on Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°47'20" W., (intersection of Gilbert Road and Chandler Boulevard) north on Gilbert Road and an extension of Gilbert Roadto a point at lat. 33°32'20" N., long. 111°47'20" W., (intersection of Gilbert Road and Indian Bend Road) west on Indian Bend Road to a point at lat. 33°32'18" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) south on Pima/Price Road to a point at lat. 33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road) west on Camelback Road to a point at lat. 33°30'27" N., long. 112°19'20" W.; to lat. 33°35'34" N., long. 112°13'52" W., to the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°42'10" N., long. 112°13'03" W., clockwise along the 20-mile arc of the ILS localizer antenna until intercepting an extension of Cactus Road (lat. 33°35'45" N., long. 111°36'30" W.), west on an extension of Cactus Road and Cactus Road and Thunderbird Road until a point at lat. 33°36'35" N., long. 112°13'35" W., north to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000

feet MSL within an area bounded by a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road and an Extension of Riggs Road) extending east on an extension of Riggs Road and Riggs Road until intercepting the Williams 1 MOA extending south along the Williams 1 MOA boundary until intercepting the 20-mile arc of the ILS localizer antenna clockwise until intercepting a point at lat. 33°07'30" N., long. 112°08'45" W., on Valley Road, north on Valley Road until the point of beginning.

Area G. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and Camelback Road, east on Camelback Road to a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Camelback Road and Litchfield Road) south on Litchfield Road to a point at lat. 33°18'18" N., long. 112°21'26" W., (intersection of Litchfield Road and an extension of Chandler Boulevard) west on an extension of Chandler Boulevard to a point on the 25-mile arc of the ILS localizer antenna, clockwise until the point of beginning.

Area H. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°46'35" N., long. 112°16'00" W., clockwise on the 25-mile arc of the ILS localizer antenna to the Williams 1 MOA, west along the Williams 1 MOA until intercepting the 20-mile arc of the ILS localizer antenna counterclockwise to a point at lat. 33°42'10" N., long. 112°13'03" W., extending northwest to the point of beginning, excluding that airspace between Interstate 17 and the 009° radial from the Salt River VORTAC.

Area I. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°06'40" N., long. 111°59'50" W., on the 20-mile arc of the ILS localizer antenna counterclockwise to the Williams 1 MOA south along Williams 1 MOA to the 25-mile arc of the ILS localizer antenna clockwise to a point at lat. 33°00'35" N., long. 111°59'50" W., (power transmission line) north along the power transmission line to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Phoenix Sky Harbor International Airport, AZ [Removed]

Issued in Washington, DC on December 6, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-28880 Filed 12-8-89; 3:42 pm]

BILLING CODE 4910-13-M

federal register

Monday
December 11, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Special Air Traffic Rules and Airport Traffic Patterns; Revocation of VOR Federal Airway No. 16, Phoenix, AZ; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 93

[Docket No. 26082, Amdt. No. 93-60]

RIN 2120-AC92

Special Air Traffic Rules and Airport Traffic Patterns; Revocation of VOR Federal Airway No. 16, Phoenix, AZ.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This action rescinds a regulation that segregated uncontrolled general aviation aircraft from military turbojet aircraft operating under visual flight rules (VFR) within a segment of airspace west of Phoenix, AZ, south of Luke Air Force Base (AFB), and within the confines of a portion of VOR Federal Airway No. 16 (V-16). The regulation is no longer needed because the number of such aircraft operations has been significantly reduced and aircraft are required to have a transponder with automatic altitude reporting equipment (Mode C transponder) in the airspace within 30 nautical miles of the Sky Harbor International Airport, Phoenix, AZ. This action is coincident with the effective date of the establishment of the Phoenix Terminal Control Area (TCA), AZ.

DATES: Effective date: January 11, 1990. Comments must be received on or before January 11, 1990.

ADDRESSES: Comments may be mailed or delivered in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26082, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Steenson, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this rule is final, interested persons are invited to submit written data, views, or arguments on any portion of the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26082." The post card will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the docket number.

Related Regulatory Actions

On June 21, 1988, the FAA published Amendment No. 91-203, Transponder with Automatic Altitude Reporting Capability Requirements (53 FR 23356). That rule, in part, established requirements for an aircraft to have an operating transponder with automatic altitude reporting equipment when operating within 30 nautical miles of a TCA-primary airport. This airspace is commonly referred to as a "Mode C Veil." Effective January 11, 1990, a TCA is established at Phoenix, AZ, and Phoenix Sky Harbor International Airport is designated as the primary airport within the TCA.

Background

The Air Force Petition

By way of letter dated June 24, 1987, the Chairman, Airspace and Support Management Division, U.S. Air Force, petitioned the FAA to rescind subpart E of part 93, §§ 93.71 through 93.75. In the request, the Chairman stated that the existence of a radar approach control service function at Luke AFB will, at the least, provide a level of safety equal to that provided by the regulations for Luke AFB aircraft operating within the designated airspace. In subsequent correspondence, the petitioner stated that the services provided to Luke AFB aircraft in the designated airspace, such as traffic advisories and vectors around nonparticipating traffic, also provide for the safety of nonparticipating aircraft in the affected airspace, and that the special air traffic rule is no longer needed.

Subpart E, Part 93

Subpart E of part 93 establishes special air traffic rules for operations in the vicinity of Phoenix, AZ and Luke AFB, AZ, and along a 16- by 8-mile segment of V-16 between 13 and 29 miles west of Phoenix, AZ. Certain aircraft operations conducted under VFR must comply with air traffic procedures contained in that rule. These procedures were designed to segregate uncontrolled general aviation aircraft operating along V-16 from military turbojet aircraft operating from/to Luke AFB. Specifically, military turbojet aircraft are restricted to altitudes at or above 2,500 feet mean sea level (MSL) and at or below 5,000 feet MSL. Other aircraft operations are restricted to altitudes at or below 2,000 feet MSL and at and above 5,500 feet MSL. Aircraft operating under instrument flight rules (IFR) are not affected by the regulation.

FAA Analysis of the Need for Subpart E, Part 93

At the time the regulation was established, neither a TCA nor an airport radar service area existed and approximately 1,200 military turbojet aircraft operations were conducted daily to/from Luke AFB which crossed V-16 within the designated airspace. All of these operations were conducted under VFR. Today, such operations are primarily conducted under IFR, with VFR operations limited to approximately 70 per day.

Other safety improvements have transpired since the rule was established. The amount of airspace under surveillance by air traffic control (ATC) radar systems has increased. Luke AFB now manages its own approach control function which previously was managed by the ATC facility at Sky Harbor Airport. This responsibility allows controllers at Luke AFB more time to provide traffic advisory service to participating aircraft concerning uncontrolled traffic operating in the designated airspace. Additionally, the aircraft at Luke AFB that would have been most affected by the regulation are F-15 or F-16 aircraft that have sophisticated airborne radar systems. Such radar systems are capable of not only detecting the range and distance of an aircraft posing a potential collision but also the altitude. Thus, an F-15 or F-16 pilot is better able to avoid a collision. Further, these aircraft have extremely high performance characteristics and, in the case of departing aircraft, can quickly

reach altitudes above those at which general aviation aircraft operate.

With the implementation of the Phoenix TCA, it is now a requirement for most aircraft operating within 30 nautical miles of Sky Harbor International Airport to be equipped with a Mode C transponder. Therefore, radar displays at ATC facilities having jurisdiction over the designated airspace will depict the altitudes of detected uncontrolled aircraft. With this altitude information, controllers are better able to assist pilots in avoiding uncontrolled aircraft.

Based on the foregoing discussion, the FAA has determined that the special air traffic procedures contained in subpart E of part 93 are no longer necessary and the general see-and-avoid requirement of part 91 is sufficient to maintain the appropriate level of safety in the affected airspace. Accordingly, the FAA is rescinding subpart E to coincide with the effective date of the establishment of the Phoenix TCA and to avoid a period in which both the subpart E and TCA requirements would apply.

Reasons for No Notice and Immediate Adoption

While the proposal to establish a TCA at Phoenix did not specifically propose to revoke the special air traffic rules contained in part 93, subpart E, the notice did request comments generally on the subject of air traffic rules and procedures in the Phoenix area. Sixteen commenters specifically referred to the subpart E special procedure. Most of the commenters advocated the rescission of subpart E since it would no longer be needed with the establishment of the TCA. Additionally, some commenters questioned whether the FAA had considered the effect the rule would have on operations under the proposed TCA, with the implication that rescission of the rule would eliminate any potential conflict with the new TCA procedures. The FAA agrees and believes that an element of confusion for pilots would be created by the coexistence of the V-16 special procedures area, the Phoenix TCA, and the Mode C Veil.

The FAA is convinced that the issues associated with this action were considered by the public during the comment period associated with the Phoenix TCA proposal, and the majority of comments addressing the special air traffic procedures contained in part 93, subpart E specifically support this action. Therefore, in consideration of the need to avoid any confusion on the part of pilots operating within that portion of V-16 airspace which is contained within the newly established Mode C Veil for the Phoenix TCA, the FAA finds it necessary to revoke part 93, subpart E coincident with the effective date of the Phoenix TCA. In order to promote the fullest opportunity for public discussion of this action, however, the FAA is requesting comments on the final rule to be used in any consideration of future changes to the rule. Comments on the rule must be received by January 11, 1990. Comments may be sent to the address listed under "**ADDRESSES.**"

Economic Evaluation Summary

The FAA has reviewed the revocation of the special air traffic airspace and procedures contained in subpart E of part 93 in conjunction with the establishment of the Phoenix TCA to determine what, if any, economic impact the revocation would have on the users of the affected airspace. The FAA has determined that no significant economic impact will result from such action because aircraft will still be able to use airspace without having to alter their altitudes to comply with the altitude restrictions of the regulation.

The designated airspace is situated in the vicinity of the Phoenix TCA airspace and is substantially within the Mode C Veil of that TCA. Aircraft operating within the veil are required to be equipped with a Mode C transponder. This equipment provides the necessary information to controllers concerning each aircraft's position and altitude.

Controllers use this information in issuing advisories to pilots of aircraft under their jurisdiction to enable them to avoid such detected aircraft.

The portion of the designated airspace which is not included in the Mode C Veil is rarely used by Luke AFB or general aviation aircraft. The majority of Luke AFB aircraft operate under IFR and are unaffected by the part 93 regulation. Therefore, even without the establishment of the Phoenix TCA with its Mode C Veil, the FAA believes that the regulations would no longer be required.

To the extent that the part 93, subpart E procedures differ from the procedures which pilots will use in the affected airspace, the cost of operating within this airspace will be essentially the same under either procedure. Accordingly, the economic impact on aviation users will be minimal, and further regulatory evaluation is not warranted.

International Trade Impact Analysis

The revocation of special air traffic airspace and procedures in subpart E of part 93 in conjunction with the establishment of the Phoenix TCA will not impose any new regulation or additional cost on the affected operators. Thus, it will not have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on large number of small business entities. As noted above, the revocation of special air traffic airspace and procedures in subpart E of part 93, in conjunction with the establishment of the Phoenix TCA, will not have any economic impact on the affected operators. Therefore, it is certified that, under the criteria of the RFA, a regulatory flexibility analysis is not required.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (Air), Penalties, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Subpart E—[Removed]

2. Subpart E, consisting of §§ 93.71 through 93.75, is removed.

Issued in Washington, DC, on December 8, 1989.

James B. Busey,
Administrator.

[FR Doc. 89-28681 Filed 12-8-89; 3:42 pm]

BILLING CODE 4910-13-M

federal register

Monday
December 11, 1989

Part IX

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1990; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1990; Solicitation of Applicants

Applications are invited for competitive grant awards under the Special Research Grants Program for fiscal year 1990.

The authority for this program is contained in section 2(c)(1) of the Act of August 4, 1965, Public Law 89–106, as amended (7 U.S.C. 450i(c)(1)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the programs discussed below. Proposals may be submitted by any land-grant college or university, research foundation established by a land-grant college or university, State agricultural experiment station, and any college or university having a demonstrable capacity in food and agricultural research. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; and (c) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of (1) animal health research and (2) aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program areas and guidelines are thus provided as a base from which proposals may be developed:

Program Area

1.0 Animal Health Research

CSRS Contacts: Dr. Dyarl D. King; Telephone: (202) 447–5007.

Funds will be awarded to support research seeking solutions to health problems of livestock and poultry and major agriculture species. Up to $150,000 will be awarded for the support of any one project under this program area, except in Aquaculture where the limit on a single award will be up to $80,000. A proposal will not be evaluated by more than one peer panel in the Animal Health program area.

Investigators and co-investigators who have received Special Research Grant awards in the Animal Health area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

The overall objective of this research is to develop and/or refine methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry and major agriculture species.

Research should be directed toward: (1) Basic studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on animal health; and (2) development of practical, implementable health management systems for the producer to prevent or alleviate these significant causes of animal losses. Interdisciplinary research is encouraged on predisposing factors to animal disease including the effects of production environment. Studies to more clearly define the condition of the well-being of animals used in agricultural research is encouraged. Other studies to define the needs for proper animal care in Animal Health Research and Teaching will receive consideration for funding, especially in the Swine and Poultry areas. Research may include clarification of complex or unknown etiologies including nutritional, physiological, genetic, and environmental interactions; development of improved methods of detecting disease agents or antibodies in animals, animal products, tissues, etc.; clarification of disease pathogenesis; determination of methods of disease transmission including transmission by embryo transfer, artificial insemination and importation of animal products (such studies should mimic as closely as possible the conditions in practice of collection, preparation and use of embryos, semen or such products); development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances (such alternatives may include biologic methods, sterile male techiques, artificial pheromones, etc.); development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

Emphasis on enteric diseases of Beef and Dairy Cattle, Swine, Chickens and Turkeys will receive special consideration, especially proposals which offer solutions to the *Salmonella enteritidis* and other Salmonella problems facing these industries.

The specific commodity areas, and their subcategories (not prioritized), in which projects will be funded are listed below. The commodity areas will be funded in the approximate percentages shown. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

1.1 Beef Cattle (Approximately 41 Percent of Available Funds)

(1) Respiratory diseases.
(2) Reproductive diseases.
(3) Digestive and enteric diseases (including Salmonellosis).
(4) Parasitic diseases.
(5) Metabolic diseases.

1.2 Dairy Cattle (Approximately 18 Percent of Available Funds)

(1) Mastitis.
(2) Reproductive diseases.
(3) Respiratory diseases.
(4) Digestive and enteric diseases (including Salmonellosis).
(5) Metabolic diseases.

1.3 Swine (Approximately 18 Percent of Available Funds)

(1) Enteric diseases (including Salmonellosis).
(2) Respiratory diseases.
(3) Reproductive diseases.
(4) Metabolic and musculoskeletal diseases.
(5) Parasitic diseases.

1.4 Poultry (Approximately 13 Percent of Available Funds)

(1) Respiratory diseases.
(2) Metabolic and immunologic diseases.
(3) Enteric diseases (Special emphasis on *Salmonella enteritidis* in Turkeys and Chickens).
(4) Skeletal diseases.

1.5 Sheep and Goats (Approximately 5 Percent of Available Funds)

(1) Musculoskeletal diseases.
(2) Respiratory diseases.
(3) Digestive and enteric diseases.
(4) Internal parasitic diseases.

1.6 Horses (Approximately 3 Percent of Available Funds)

(1) Respiratory diseases.
(2) Digestive and enteric diseases.
(3) Reproductive diseases.
(4) Musculoskeletal diseases.
(5) Parasitic diseases.

1.7 Aquaculture (Approximately 2 Percent of Available Funds)

(1) Infectious diseases.
(2) Parasitic diseases.

Program Area

2.0 Aquaculture Research

2.1 Integrated Aquatic Animal Health Management

2.2 Genetic Improvement

CSRS Contacts: Dr. Meryl Broussard; Telephone: (202) 447–7061.

No more than $80,000 will be awarded for support of any one project under this program area. The objective of this research area is to enhance the knowledge and technology base necessary for the continued growth of the domestic aquaculture industry as a form of production agriculture. Emphasis is placed on research leading to improved production efficiency and increased competitiveness of private sector aquaculture in the United States.

Because of the limited funds for this program area, only proposals focused on commercially important aquaculture species in the following specific subareas of inquiry will be considered:

2.1 Integrated Aquatic Animal Health Management

Priority will be given to studies aimed at reducing acute and chronic losses related to aquatic animal health in aquaculture production systems through an integrated holistic approach including studies in the following areas; physiological stress related to the quality of the aquatic production system; genetic, environmental and nutritional components of aquatic health management.

2.2 Genetic Improvement

Priority will be given to studies aimed at improving production efficiency through genetic improvement of aquacultural stocks including: Genetic mechanisms and methods to control sex determination; genetic basis for inheritance of commercially important traits such as growth, cold tolerance and pathogen susceptibility; identification of major genes affecting performance; application of biotechnology and the integration of this technology into breeding programs; basic gene structure and expression in aquatic species; performance evaluation of aquacultural stocks and utilization of crossbreeding and hybridization.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Unit, Grants Administative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S Department of Agriculture, Suite 303, Aerospace Building, Washington, DC 20250–2200, Telephone: (202) 475–5048.

What to submit

An original and nine copies of each proposal are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.) It should be noted that the September 1989 version of the Grant Application Kit must be used, as previous versions are obsolete.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior Animal Health Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Special Research Grants Program, 7 CFR part 3400, as amended.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Animal Health and Aquaculture Special Research Grants program areas. Duplicate proposals will be returned without review.

Where and When to Submit Grant Applications

Each research grant application must be submitted by the date set forth below to:

Proposal Services Unit, Grants Administative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Suite 303, Aerospace Building, Washington, DC 20250–2200.

Please Note: Hand delivered proposals should be brought to: Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20024

To be considered for funding during fiscal year 1990, proposals must be postmarked by February 26, 1990, for both the Animal Health Research and the Aquaculture Research Program areas.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Instructions

On Form CSRS–661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and the applicable program area and commodity area should be indicated in Block 8. Select one program area only. The number assigned to the commodity area must also be cited in Block 8. Example: (Animal Health, 1.5 Sheep and Goats). The final determination of the program area and commodity area will be made by agency staff members and/or the appropriate peer review panel. The code

numbers assigned to commodity areas and specific areas of inquiry are listed below:

1.0 *Animal Health Research (use appropriate commodity area 1.1 through 1.7)*
1.1 *Beef Cattle*
1.2 *Dairy Cattle*
1.3 *Swine*
1.4 *Poultry*
1.5 *Sheep and Goats*
1.6 *Horses*
1.7 *Aquaculture*
2.0 *Aquaculture Research* (Use appropriate subarea 2.1 or 2.2)
2.1 *Integrated Aquatic Animal Health Management*
2.2 *Genetic Improvement*

Supplementary Informaion

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0525–0022.

The award of any grants under the Special Research Grants Program during FY 1990 is subject to the availability of funds.

Done at Washington, DC, this 6th day of December 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89–28887 Filed 12–8–89; 8:45 am]
BILLING CODE 3410–22–M

federal register

Monday
December 11, 1989

Part X

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1990; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Rangeland Research Grants Program for Fiscal Year 1990; Solicitation of Applications

Notice is hereby given that under the authority contained in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The award of any grants under the Rangeland Research Grants Program during FY 1990 is subject to the availability of funds.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR part 3401 (51 FR 16152, April 30, 1986), in which reference is made to 7 CFR part 3400; it should be noted, however, that the amendments to 7 CFR 3480 (53 FR 49640, December 8, 1988) do not apply to the Fiscal Year 1990 Rangeland Research Grants Program. The provisions in 7 CFR part 3401 set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, apply to this program.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200. Telephone: (202) 475–5048.

What to Submit

An original and nine copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.)

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the regulations contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application must be submitted to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200.

To be considered for funding during fiscal year 1990, proposals must be received in the Proposal Services Unit by close of business on Monday, February 5, 1990. One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1990

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS–USDA; telephone (202) 447–3089.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 6th day of December 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc 89–28886 Filed 12–8–89; 8:45 am]

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federal register

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Part XI

Department of Commerce

Request for Comments on the Proposed Guidelines for Considering Whether or Not a Statistical Adjustment for the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population; Notice

DEPARTMENT OF COMMERCE

[Docket No. 91282-9282]

Request for Comments on the Proposed Guidelines for Considering Whether or not a Statistical Adjustment of the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population

AGENCY: Office of the Under Secretary for Economic Affairs, Commerce.

ACTION: Notice and request for comments.

SUMMARY: These proposed guidelines and this notice are pursuant to the Stipulation and Order agreed to by the Federal Government and the City of New York and others in the case of *City of New York et al.*, v. *Department of Commerce, et al.*, Docket No. 88 Civ. 3474 (U.S. Dist. Ct., EDNY). The purpose of this notice is to inform the public about these proposed guidelines and seeks comments on them from the widest possible audience.

DATES: Comments from the public should be received no later than January 25, 1990.

ADDRESS: Written comments should be addressed to: Michael R. Darby, Under Secretary for Economic Affairs, Room 4848 Herbert C. Hoover Building, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mark W. Plant, Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce, telephone (202) 377-3523.

SUPPLEMENTARY INFORMATION: Paragraph 4 of the Stipulation and Order referred to above in the SUMMARY provides that "* * * the Department will promptly develop and adopt guidelines articulating what defendants (Department of Commerce) believe are the relevant technical and nontechnical statistical and policy grounds for decision on whether to adjust the 1990 Decennial Census population counts."

The paragraph goes on to state that the Department's proposed guidelines shall be published in the Federal Register by December 10, 1989, with a request for comments, and then published in final form in the Federal Register by March 10, 1990.

Paragraph 5 of the Stipulation and Order states that the "Defendants (Department of Commerce) shall determine whether an adjustment satisfies the guidelines specified in para. 4 hereof (above). If the Secretary determines to make an adjustment, defendants (Department of Commerce) shall publish corrected 1990 Decennial Census population data at the earliest practicable date and in all events, not later than July 15, 1991."

Paragraph 5 of the Stipulation and Order goes on to state that "If the Secretary determines not to make an adjustment, defendants (Department of Commerce) shall publish at the earliest practicable date and, in all events, not later than July 15, 1991, a detailed statement of its grounds, including a detailed statement of which guidelines in paragraph 4 above were not met and in what respects such guidelines were not met."

Request for Comments

The Department of Commerce invites the public to comment on these proposed guidelines within 45 days of this notice. Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street and Constitution Avenue, Washington, DC 20230.

Dated: December 7, 1989.

Michael R. Darby,

Under Secretary for Economic Affairs.

Guidelines

Each of the following guidelines is accompanied by a brief explanation or example of its intent. Following that explanation a brief description of the empirical information directly bearing upon it is presented. The Census Bureau will implement the necessary technical operations to gather and evaluate this empirical information. The Bureau will use the highest level of professional judgment in implementing and evaluating these operations.

[1] The Census shall be considered the best count of the population of the United States unless an adjusted count is shown to be more accurate, within acceptable margins of statistical error, at the national, state, local, and census block levels.

Explanation: The constitutional mandate of the Census Bureau is to enumerate the population, and the investment it makes in decennial census operations is to assure that the count is the best count of the population achievable given current methodology. The census is a standard. Other data collection activities are compared to census results to assess their quality. In the past, no sample survey has had as complete coverage as the decennial census, and no coverage measurement survey has produced data of better quality than the census. Strengths and weaknesses of the census are well known and extensively documented. The census is understood and because of its quality has wide acceptance and extensive use among policy makers and other users. Before replacing the census, we must be sure that the replacement is an improvement. The assumption that any effort involving less than an attempt to enumerate the entire population can lead to a more accurate enumeration calls into question the process the Census Bureau has developed over the past two hundred years. The enumeration is based on evidence that physical persons are in a particular location or block at a particular time. A set of adjusted counts would be based on a statistical inference that unaccounted for persons were present and that persons who were actually enumerated do not exist or were counted twice. Both determinations are based on a survey of a sample of similar blocks from locations across the country. To reiterate, there is no reason to adjust the census unless the adjusted count is shown to be better for all the uses to which census counts are put. Thus, the evidence to be acceptable must show overwhelmingly that the count can be improved by statistical adjustment in order to overturn the premise that the actual enumeration is the best count possible.

Comparison of estimates of population size. The estimates of the size of the population from the original enumeration, the demographic analysis, and the post-enumeration-survey estimates will be compared to assess their consistency. The comparison will take into consideration the uncertainty inherent in the demographic analysis and post-enumeration-survey estimates. The original enumerations will be considered to be more accurate for all geographic areas unless contrary evidence is presented.

[1A] The post-enumeration survey is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: The post-enumeration survey can provide an estimate of the total count of the population, based on techniques of survey sampling. It does not provide a substitute for that complete count. Its proper use is as an adjunct to the population count which provides an estimate of its completeness, within statistical limits of error. Thus, any adjustment of the population count, using post-enumeration-survey information, must be based on the enumeration.

[1B] Demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: Although demographic analysis can provide an alternative estimate of national population counts, it cannot be used to provide data at the subnational levels required by the various uses to which census data are put. Demographic analysis is an estimate of the population principally based on administrative data sources. Although it could be considered a derived count of the population, it remains an alternative to the direct enumeration of the population, not a substitute for it. Thus any adjustment of the population using demographic analysis information must only be a supplement to the enumeration.

[1C] Any combination of the post-enumeration survey and demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: This guideline affirms that any combination of the techniques referred to in the prior two guidelines remains an inadequate surrogate for the actual enumeration of the population.

[2] The size of any undercount or overcount inferred from demographic analyses of population sub-groups shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis shall be clearly presented.

Explanation: Estimates of the size of certain cohorts of the population are based on assumptions about or studies of the behavior of these population cohorts, rather than on administrative or other records. For some cohorts these assumptions alone have led to conclusions of undercounts or overcounts in several different censuses. The extent to which such conclusions result from specific assumptions must be expressly articulated. Moreover, the extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluation of demographic analysis estimates. Demographic analysis of population estimates is susceptible to a variety of sources of error.

Numerous techniques will be used to evaluate the quality of the demographic analysis estimates. Among the potential sources of error in the demographic analysis are:

Birth registration completeness.

Net immigration of undocumented aliens.

White births, 1915–1935.

Black births, 1915–1935.

Foreign-born emigrants.

Population over age 65.

Models to translate historical birth-record racial classifications into 1990 self-reported census concepts.

The final analysis will discuss how these and other components cumulate into overall levels of error.

[3] The sources of any undercount or overcount of population subgroups inferred from the analysis of the post-enumeration survey conducted subsequent to the 1990 census shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis or the methods inherent in the analysis shall be clearly presented.

Explanation: The capture-recapture method which lies at the heart of the post-enumeration-survey models for estimating population coverage' deficiencies is not, as used in the decennial census, completely analogous to more conventional uses of the method in estimating populations of, say, fish or land-based fauna in a natural setting. Thus, it is imperative that the influence of this methodology on the undercount or overcount estimates be clearly explained. Moreover, the post-enumeration-survey adjustment mechanism relies on numerous assumptions. The extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluations for post-enumeration-survey estimates. Numerous techniques will be used to evaluate the quality of the post-enumeration-survey estimates. Among the possible sources of error for the dual system estimate of population size based on the post-enumeration survey and the census are:

Missing data.

Quality of the reported census day address.

Fabrication in the P sample.

Matching error.

Measurement of erroneous enumerations.

Balancing the estimates of gross overcount and gross undercount.

Correlation bias.

Variance

An analysis of how these and other component errors combine to produce an overall level of error will be discussed. Implicit in all evaluations is that all analyses examine data for the population as a whole and within race, sex, Hispanic origin, and geographical detail.

[4] The 1990 Census may be adjusted only if the adjusted counts are consistent and complete across all jurisdictional levels: national, state, local, and census block. Thus, for example, counts could not be adjusted at the state level and left unadjusted at the census block level. If any census block within a stratum is adjusted, then all census blocks within that same stratum must be adjusted. Any adjusted count must be arithmetically consistent across all levels of geography and with respect to age, race, Hispanic origin, and sex. This requirement does not apply when incorporating counts of military overseas into national totals for reapportionment purposes.

Explanation: If any adjusted count is to be used, it must be adjusted at every level at which census counts are used. Some strata, for which there is no conclusive evidence of an undercount, may not be adjusted. It must be arithmetically consistent to avoid unnecessary confusion and to avoid any efforts to choose among alternative sets of numbers to suit a particular purpose. It is unacceptable to conclude, for example, that one set of numbers at the level of individual states can be used for redistricting purposes, while another set could be used for apportionment purposes.

Evaluations of small area estimation. A synthetic estimation procedure might be used for adjustment. A synthetic adjustment assumes that the probability

of being missed by the census is constant for each person within an age, race, Hispanic origin, and sex category in a geographical area. A synthetic adjustment is performed in two steps. First, the preferred adjustment factors are estimated for each age, race, Hispanic origin, and sex category for a post-enumeration-survey stratum. The same age, race, Hispanic origin, and sex categories may not be appropriate for every post-enumeration-survey stratum, in which case the categories will be combined as necessary. Then the adjusted estimate in each category for the census block is obtained by multiplying the unadjusted census estimate in that category by the adjustment factor. The adjusted census estimate for the census block is computed by adding the estimated adjustments for the age, race, Hispanic origin, and sex categories. Put simply, under adjustment each individual enumerated would receive a different relative weight in the adjusted population count according to his or her race, age, sex, ethnic background, and place of residence.

The coverage error may vary substantially within the post-enumeration-survey stratum, although the strata were drawn so as to be homogeneous with respect to expected coverage error. The goal of this analysis is to determine whether or not the assumptions underlying a synthetic adjustment of the census are valid and produce counts which are more accurate at all geographic levels at which census data are used.

[5] The 1990 Census may be adjusted only if statistical models of the adjustment process of comparable reliability lead to essentially similar conclusions or if a particular model is shown unequivocally to provide the best estimate. Ultimately, one statistical model must be chosen if adjustment is to be undertaken. It must be clear that this unique model yields the most accurate counts and that its selection should be based on the available information about relative accuracy of competing methods.

Explanation: This guideline is intended to deal with the ambiguous outcomes resulting from the application of different statistical models to the Census, post-enumeration survey, and the demographic analysis. It acknowledges that individual judgment cannot be eliminated entirely from the reasoning leading to a conclusion related to the application of an adjustment. It would suggest, for example, that if all statistical models led to consistent statistical results that are all significant in one direction, the decision on adjustment would depend on the direction and the strength of the conclusions based on those results. If any one model were to be overwhelming in its accuracy, the results from this model could be accepted. In the latter instance, this guideline would require the strongest possible factual evidence to support such a conclusion. Whatever the case, however, statistical adjustment must ultimately use only one model that is shown to yield the most accurate counts.

Comparison of evaluations of the original enumeration. The demographic analysis and the post-enumeration-survey estimates provide evaluations of the original enumeration. The census coverage error rates from the demographic analysis and the post-enumeration-survey will be compared to assess the consistency of the evaluations.

[6] The 1990 Census may be adjusted only if the general rationale for the adjustment can be clearly and simply stated in a way that is understandable to the general public.

Explanation: The decennial Census is a public ceremony in which all usual residents of the United States are required to participate. If, for the first time in the history of the Census the count were statistically adjusted, and the adjustment was done in a way that is percevied to be out of the ordinary, the rationale for that action must be clearly and simply stated and understandable to the general public.

Documentation and reproducibility. The methods, assumptions, computer programs, and data used to prepare population estimates and adjustment factors will be fully documented. The documentation will be sufficiently complete for outside reviewers to reproduce the estimates. These standards apply to the post-enumeration-survey estimates, the demographic analysis estimates, and the small area estimates.

[7] The 1990 Census may be adjusted only if the resulting counts are of sufficient quality and level of detail to be usable for Congressional and legislative reapportionment, redistricting, and for all other purposes and at all levels, for which the Census Bureau publishes decennial Census data.

Explanation: The guideline recognizes that the population counts must be usable for all purposes for which the Census Bureau publishes data. Thus, the level of detail must be adequate to produce counts for all such purposes. The guideline also reinforces the fact that there can be, for the population at any one point in time, only *one* set of official government population figures. The guideline does not speak in any way to the issue of the timing of the release of adjusted figures, nor is it meant to preclude any adjustment solely on the basis of timing.

Evaluations of small area estimation. See the discussion under guideline [4], above.

[8] The 1990 Census may be adjusted only if the adjustment is fair and reasonable, and is not excessively disruptive to the orderly transfer of political representation.

Explanation: Any adjustment of the 1990 census should be fair and reasonable in its impact on the political process and on any allocation of economic resources that is based on the decennial population counts. This guideline is intended to ensure that the factor of disruption is explicitly taken into account as the decision whether or not to adjust the 1990 census is reached. It requires an explicit statement of the degree to which adjustment would be disruptive of the orderly transfer of political representation. It is not sufficient to simply state that disruption would or would not occur. Based on the empirical evidence and the recommended courses of action, the extent of disruption must be weighed against any benefits that might accrue from adjustment.

[9] The 1990 Census may be adjusted even though the differential overcount or undercount compares favorably with the results of the differential overcount and undercount in the 1980 census only if there are compelling statistical and policy reasons to do so.

Explanation: This guideline requires an examination of the results of the analysis of the adequacy of the 1990 count in terms of its comparison with the 1980 count. One fact of history is that, although there was an acknowledged undercount and overcount of population subgroups and of the entire population in 1980, the quality of the estimates of those deficiencies was not adequate to allow an adjustment of those figures. Should coverage deficiencies be no greater than they were in 1980, substantial documentation of the advantages of an adjustment in increasing the utility and accuracy of the Census count would be required to warrant a decision to adjust.

[10] Any decision whether or not to adjust the 1990 census must take into account the effects such a decision might have on future census efforts.

Explanation: The decennial census is an integral part of our democratic process. Participation in the Census must not be discouraged. Respect for the objectivity, accuracy, and confidentiality of the census process must be maintained. If an adjustment were to erode public confidence in the census or call into question the necessity of the population participating in future censuses, then that would weigh against adjustment. The extent to which adjustment or non-adjustment would be perceived as a politically motivated act, and thus would undermine the integrity of the census, should also be weighed in making any adjustment decisions.

[11] Any adjustment of the 1990 Census may not violate the United States Constitution or Federal statutes.

This guideline requires no explanation.

[12]There will be a determination whether or not to adjust the 1990 census only when sufficient data are available and analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust.

Explanation: It is inappropriate to decide to adjust without sufficient data and analysis. The Bureau will make every effort to endure such data are available and analysis is complete in time for the Secretary to decide and publish adjusted data by July 15, 1991. If however, sufficient data and analysis of the data are not available in time, a determination will be made not to adjust.

[FR Doc. 89-29003 Filed 12-7-89; 3:08 p.m.]

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Monday
December 11, 1989

Part XII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Claims Payment Cycle; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-90-N]

Medicare Program; Claims Payment Cycle

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the retention of a payment floor requirement for Medicare claims paid by intermediaries and carriers, acting on behalf of HFCA, for services provided to Medicare beneficiaries. Under the payment floor, claims and bills may not be paid until the 15th day after receipt. The 14-day retention requirement was originally provided for by section 4031 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203. We also announce a temporary waiver of the payment floor requirement for claims and bills submitted prior to October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald Gwyn, 301-966-6963.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Act, public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of Medicare beneficiaries under standards specified in their agreements.

Under section 1842 of the Act, the Secretary is authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies and then make payment to the appropriate party in accordance with contract standards.

B. Purpose of Notice

Section 4031 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, amended sections 1816 and 1842 of the Social Security Act, which govern the standards for agreements and cotracts with intermediaries and carriers. Section 4031 added new sections 1816(c)(3) and 1842(c)(3) to the Social Security Act to provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted within an applicable period of time after which the claim is received. Under this provision, for the period July 1, 1988 through September 30, 1988, claims had to be held for 10 days before payment was made. For the period of October 1, 1988 through September 30, 1989, claims had to be held for 14 days before payment could be made. This claims processing standard has led to consistent and uniform contractor claims processing operations. We also have found that use of such a standard allows for a predictable cash flow to entities submitting claims for payment. Therefore, we are announcing through this notice that intermediaries and carriers are being directed to continue to use the 14-day payment floor as the applicable period for processing claims, except as provided below.

C. Exception for Fiscal Year 1990

As stated above, we believe that the retention of the 14-day payment floor requirement provides for uniform administration and financial accountability of the program. Recently both the House of Representatives and the Senate have passed legislation to repeal the Medicare Catastrophic Coverage Act of 1988 (see Congressional Record, November 21, 1989). Our budget for the current fiscal year includes an amount for claims that may be higher than necessary due to expected reduction in claims following the repeal of certain coverages. When this legislation is signed by the President, we intend to make this funding available for faster processing and payment of claims in fiscal year 1990. As a result we are issuing a general instruction to intermediaries and carriers to waive the 14-day payment floor requirement for the balance of fiscal year 1990. All claims received from the date of publication of this notice through September 30, 1990 will be processed and paid as soon as possible without regard to the 14-day payment floor requirement.

Secs. 1816(c) and 1842(c) of the Social Security Act (42 U.S.C. 1395h(c) and 1395u(c)).

Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and Program No. 13.774, Medicare—Supplementary Medical Insurance.

Dated: December 8, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-29085 Filed 12-8-89; 12:09 pm]

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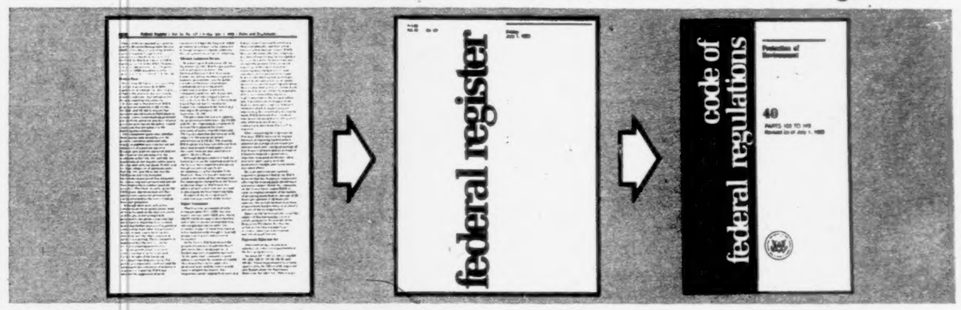
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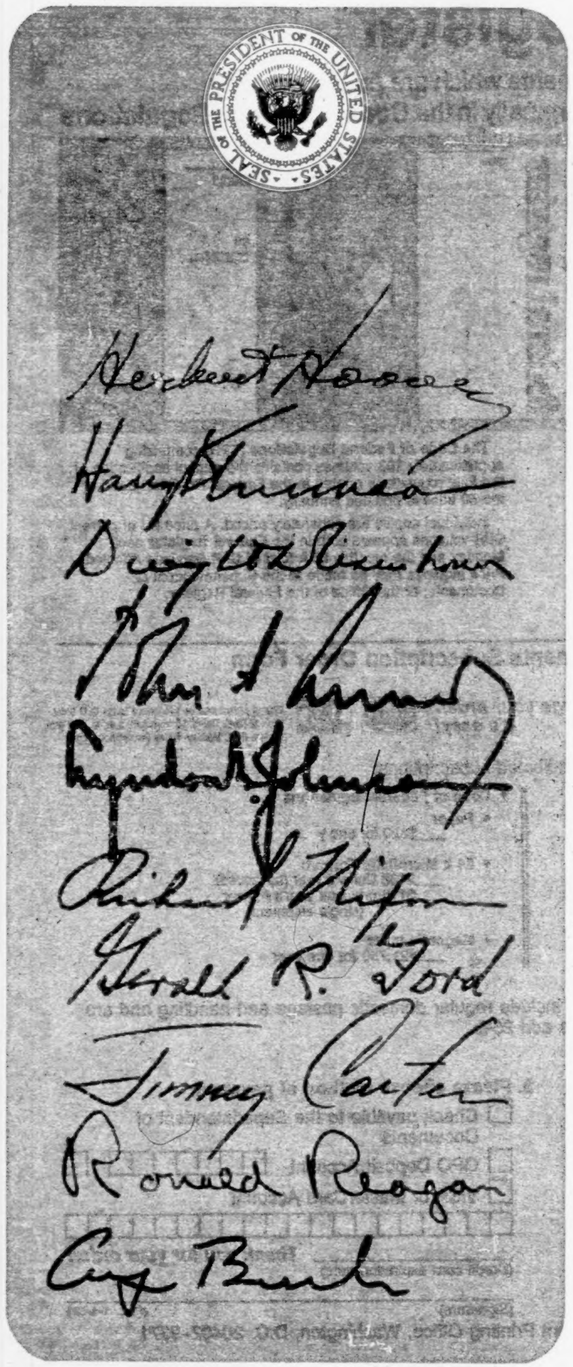
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